UNITED STATES OF AMERICA

Congressional Record

PROCEEDINGS AND DEBATES OF THE 99th CONGRESS

SECOND SESSION

VOLUME 132—PART 20

OCTOBER 3, 1986 TO OCTOBER 8, 1986

(PAGES 28211 TO 29849)

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United States of America

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PROCEEDINGS AND DEBATES OF THE 99th CONGRESS, SECOND SESSION

HOUSE OF REPRESENTATIVES—*Friday, October 3, 1986*

The House met at 10 a.m. and was called to order by the Speaker pro tempore [Mr. WRIGHT].

DESIGNATION OF SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, DC.
October 2, 1986.

I hereby designate the Honorable JIM WRIGHT to act as Speaker pro tempore on Friday, October 3, 1986.

THOMAS P. O'NEILL, JR.,
Speaker of the House of Representatives.

PRAYER

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

O God of peace, who reconciles the peoples of our world, we recognize that when we face Your loving spirit, we can better see each other. And peoples rejoice when hostages are released, the captives set free, when families are united. Our prayers also are with those yet in prison and with their families that they will know the freedom that is Your wish. May Your peace that passes all human understanding be with all Your people wherever they are, now and evermore. Amen.

THE JOURNAL

The SPEAKER pro tempore. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States was communicated to the House by Mrs. Emery, one of his secretaries.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Hallen, one of its clerks, announced that the Senate having proceeded to reconsider the bill (H.R. 4868) "An act to prohibit loans to, other investments in, and certain other activities with respect to, South Africa, and for other purposes," returned by the President of the United States with his objections, to the House of Representatives, in which it originated, and passed by the House of Representatives on reconsideration of the same, it was resolved, that the said bill pass, two-thirds of the Senators present having voted in the affirmative.

THE HOUSE IS BEING PREVENTED FROM WORKING ITS WILL ON CIVIL RIGHTS AND IMMIGRATION

(Mr. SENSENBRENNER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SENSENBRENNER. Mr. Speaker, hallelujah. After a 16-month delay, the chairmen of the Judiciary and Education and Labor Committees will file a committee report on H.R. 700, the Civil Rights Restoration Act during today's session.

Was this delay caused by the illness of a staff member or technical problems in drafting the report? No. It was caused by the fact that these two committee chairmen did not want the House to work its will on amendments which probably would have been adopted by a majority of the House.

What has happened to the Civil Rights Restoration Act, and it is not coming to the floor, is the same thing that happened to the immigration bill in not being brought to the floor under a fair and open rule to allow the House to work its will.

So two key issues involving the civil rights of our people and the security of our borders have been obstructed by the "rule or ruin" philosophy that has been caused by one party controlling this House of the Congress for 32 years.

PLEDGING THE 100TH CONGRESS NOT TO RAISE TAXES

(Mr. WALKER asked and was given permission to address the House for 1 minute.)

Mr. WALKER. Mr. Speaker, the issue is taxes. The question is, How do we begin the business of reducing our deficit?

Some politicians in Washington would have you believe that the best way to bring down deficits is by increasing taxes to the American people. A bipartisan group of 80 Members of this House is saying, "No, that is not the way."

We are calling upon the 100th Congress to pledge not to raise the taxes of the American people. We think it is important, as we look at deficit reduction, that we look at reducing spending, not raising taxes.

So we are trying to commit this Congress to telling the next Congress that we should not raise taxes in order to reduce deficits. It is high time that we recognize our responsibility to the American people and their pocketbooks, not to raise their taxes. We have recently enacted tax reform. Tax reform lowered rates for the American people. Our job now is to keep those rates down.

STATEMENT OF MAJORITY LEADER ON THE OMNIBUS TRADE BILL

(Mr. BONKER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BONKER. Mr. Speaker, as the House is winding down this session of Congress, it is most unfortunate that the Senate has not yet taken action on a comprehensive trade bill.

This morning the distinguished majority leader made a public statement that I think bears heavily on this national problem, and I would like to

take this opportunity to share it with the Members of the House.

The statement reads:

With approximately one week remaining in the 99th Congress, I call upon the Senate to take action on the Omnibus Trade Bill and provide some long-overdue help to American businesses and American workers suffering plant closures and lay-offs as a result of our nation's $170 billion trade deficit.

The House passed this vitally-needed legislation last May. For more than four months, it has languished without action in the Senate. The Administration and the Republican leadership appear to think they can stonewall the problem, pretending that it does not exist, and the American public will not know the difference.

I have news for them: During the past month I have been in ten states, from the Carolinas to the mid-West, the Rocky Mountains and the West coast, and everywhere people are talking about the preventable loss of American businesses and American jobs which this Administration has permitted by its deliberate refusal to pursue a policy aimed at restoring our country to its rightful place in world trade.

The Administration demands ever more expenditures for the Pentagon, but pursues a policy of unilateral disarmament on trade.

The Administration complains about fees to pay for cleaning up the nation's toxic wastes on the ground that they could hurt American businesses trying to meet foreign competition, but the same Administration apparently has prevailed upon the Senate leadership to let the Omnibus Trade Bill die without any action at all.

Surely Senators do not want to go home and tell the public they deliberately chose to do nothing about this problem which has already cost some four million American jobs.

One year ago, the Administration was assuring everyone that adjustments in the currency exchange rate would automatically cure the trade deficit. Those adjustments took place, but the deficit this year has grown substantially worse.

The time for talk has passed. It is time for action. The President is fond of saying we can't cure problems by just throwing money at them. Far less can we cure them by just throwing words at them.

ANNUAL REPORT ON MINE SAFETY AND HEALTH ACTIVITIES—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

The SPEAKER pro tempore laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, without objection, referred to the Committee on Education and Labor:

(For message, see proceedings of the Senate of today, Friday, October 3, 1986.)

□ 1010

PERMISSION FOR COMMITTEE ON AGRICULTURE TO FILE REPORTS ON H.R. 5215, CONSTRUCTION OF SALINITY LABORATORY IN RIVERSIDE, CA, AND H.R. 5635, FARM CREDIT ACT AMENDMENTS OF 1986

Mr. JONES of Tennessee. Mr. Speaker, I ask unanimous consent that the Committee on Agriculture may have until midnight tonight, Friday, October 3, 1986, to file reports on H.R. 5215, to authorize the construction by the Secretary of Agriculture of a salinity laboratory in Riverside, CA, and H.R. 5635, the Farm Credit Act Amendments of 1986.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Tennessee?

Mr. DAUB. Mr. Speaker, reserving the right to object, I do not believe that I will object, but my reservation is interposed at this point to inquire of my friend, the chairman of the Subcommittee on Conservation, Credit, and Rural Development of the Committee on Agriculture concerning the contents of the late filings he has requested; which subjects do they pertain to?

Mr. JONES of Tennessee. Mr. Speaker, will the gentleman yield?

Mr. DAUB. I yield to the gentleman from Tennessee.

Mr. JONES of Tennessee. I thank the gentleman for yielding.

H.R. 5635 is the bill on Farm Credit Act amendments that my subcommittee marked up yesterday afternoon in full committee, and H.R. 5215 is a salinity bill that has to do with the laboratory there that came out of the committee yesterday afternoon.

Mr. DAUB. Neither of which is related to Superfund, is that correct?

Mr. JONES of Tennessee. Absolutely not.

Mr. DAUB. Mr. Speaker, may I ask if the minority has cleared both of these items?

Mr. JONES of Tennessee. It was a unanimous agreement on both bills.

Mr. DAUB. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Tennessee?

There was no objection.

CONFERENCE REPORT ON H.R. 2005, SUPERFUND AMENDMENTS AND REAUTHORIZATION ACT OF 1986

Mr. ECKART of Ohio submitted the following conference report and statement on the bill (H.R. 2005) to amend title II of the Social Security Act and related provisions of law to make minor improvements and necessary technical changes:

CONFERENCE REPORT (H. REPT. 99-962)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the amendment of the Senate to the bill (H.R. 2005) to amend title II of the Social Security Act and related provisions of law to make minor improvements and necessary technical changes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment insert the following:

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

This Act may be cited as the "Superfund Amendments and Reauthorization Act of 1986".

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SEC. 2. CERCLA AND ADMINISTRATOR.

As used in this Act—

(1) CERCLA.—The term "CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.).

(2) ADMINISTRATOR.—The term "Administrator" means the Administrator of the Environmental Protection Agency.

SEC. 3. LIMITATION ON CONTRACT AND BORROWING AUTHORITY.

Any authority provided by this Act, including any amendment made by this Act, to enter into contracts to obligate the United States or to incur indebtedness for the repayment of which the United States is liable shall be effective only to such extent or in such amounts as are provided in appropriation Acts.

SEC. 4. EFFECTIVE DATE.

Except as otherwise specified in section 121(b) of this Act or in any other provision of titles I, II, III, and IV of this Act, the amendments made by titles I through IV of this Act shall take effect on the enactment of this Act.

TITLE I—PROVISIONS RELATING PRIMARILY TO RESPONSE AND LIABILITY

SEC. 101. AMENDMENTS TO DEFINITIONS.

(a) INDIAN TRIBE.—Paragraph (16) of section 101 of CERCLA (defining "natural resources") is amended by striking "or" the last time it appears and inserting before the punctuation at the end thereof the following: ", any Indian tribe, or, if such resources are subject to a trust restriction on alienation, any member of an Indian tribe".

(b) STATE OR LOCAL GOVERNMENT LIMITATION.—Paragraph (20) of section 101 of CERCLA (defining "owner or operator") is amended as follows:

(1) Add the following new subparagraph at the end thereof:

"(D) The term 'owner or operator' does not include a unit of State or local government which acquired ownership or control involuntarily through bankruptcy, tax delinquency, abandonment, or other circumstances in which the government involuntarily acquires title by virtue of its function as sovereign. The exclusion provided under this paragraph shall not apply to any State or local government which has caused or contributed to the release or threatened release of a hazardous substance from the facility, and such a State or local government shall be subject to the provisions of this Act in the same manner and to the same extent, both procedurally and substantively, as any nongovernmental entity, including liability under section 107.".

(2) Amend clause (iii) of subparagraph (A) to read as follows: "(iii) in the case of any facility, title or control of which was conveyed due to bankruptcy, foreclosure, tax delinquency, abandonment, or similar means to a unit of State or local government, any person who owned, operated, or otherwise controlled activities at such facility immediately beforehand.".

(3) Capitalize the first word of subparagraphs (B) and (C) and substitute a period for the semicolon at the end of subparagraphs (A), (B), and (C).

(c) RELEASE.—Paragraph (22) of section 101 of CERCLA (defining "release") is amended by inserting after "environment" the following: "(including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance or pollutant or contaminant)".

(d) REMEDIAL ACTION.—Paragraph (24) of section 101 of CERCLA (defining "remedy" and "remedial action") is amended as follows:

(1) Strike "welfare. The term does not include offsite transport" and all that follows down through the semicolon at the end of such paragraph and insert "welfare; the term includes offsite transport and offsite storage, treatment, destruction, or secure disposition of hazardous substances and associated contaminated materials.".

(2) Strike "or" before "contaminated materials" and insert "and associated".

(e) RESPONSE.—Section 101(25) of CERCLA (defining "respond" and "response") is amended by inserting at the end thereof the following: ", all such terms (including the terms 'removal' and 'remedial action') include enforcement activities related thereto.".

(f) ADDITIONAL DEFINITIONS.—Section 101 of CERCLA is amended by striking out "; and" at the end of paragraph (31) and substituting a period, by changing the semicolons at the end of paragraphs (1) through (29) to periods, by inserting "The term" at the beginning of paragraphs (1) through (22) and paragraphs (28) and (31), by inserting "The terms" at the beginning of paragraphs (23) through (27) and paragraphs (29),(30), and (32) by striking out ". the term" in the material preceding paragraph (1), and by adding the following new paragraphs at the end thereof:

"(33) The term 'pollutant or contaminant' shall include, but not be limited to, any element, substance, compound, or mixture, including disease-causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring; except that the term 'pollutant or contaminant' shall not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of paragraph (14) and shall not include natural gas, liquefied natural gas, or synthetic gas of pipeline quality (or mixtures of natural gas and such synthetic gas).

"(34) The term 'alternative water supplies' includes, but is not limited to, drinking water and household water supplies.

"(35)(A) The term 'contractual relationship', for the purpose of section 107(b)(3), includes, but is not limited to, land contracts, deeds or other instruments transferring title or possession, unless the real property on which the facility concerned is located was acquired by the defendant after the disposal or placement of the hazardous substance on, in, or at the facility, and one or more of the circumstances described in clause (i), (ii), or (iii) is also established by the defendant by a preponderance of the evidence:

"(i) At the time the defendant acquired the facility the defendant did not know and had no reason to know that any hazardous substance which is the subject of the release or threatened release was disposed of on, in, or at the facility.

"(ii) The defendant is a government entity which acquired the facility by escheat, or through any other involuntary transfer or acquisition, or through the exercise of eminent domain authority by purchase or condemnation.

"(iii) The defendant acquired the facility by inheritance or bequest.

In addition to establishing the foregoing, the defendant must establish that he has satisfied the requirements of section 107(b)(3) (a) and (b).

"(B) To establish that the defendant had no reason to know, as provided in clause (i) of subparagraph (A) of this paragraph, the defendant must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability. For purposes of the preceding sentence the court shall take into account any specialized knowledge or experience on the part of the defendant, the relationship of the purchase price to the value of the property if uncontaminated, commonly known or reasonably ascertainable information about the property, the obviousness of the presence or likely presence of contamination at the property, and the ability to detect such contamination by appropriate inspection.

"(C) Nothing in this paragraph or in section 107(b)(3) shall diminish the liability of any previous owner or operator of such facility who would otherwise be liable under this Act. Notwithstanding this paragraph, if

the defendant obtained actual knowledge of the release or threatened release of a hazardous substance at such facility when the defendant owned the real property and then subsequently transferred ownership of the property to another person without disclosing such knowledge, such defendant shall be treated as liable under section 107(a)(1) and no defense under section 107(b)(3) shall be available to such defendant.

"(D) Nothing in this paragraph shall affect the liability under this Act of a defendant who, by any act or omission, caused or contributed to the release or threatened release of a hazardous substance which is the subject of the action relating to the facility.

"(36) The term 'Indian tribe' means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village but not including any Alaska Native regional or village corporation, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.".

SEC. 102. REPORTABLE QUANTITIES.

Section 102(a) of CERCLA is amended by adding at the end thereof the following new sentences: "For all hazardous substances for which proposed regulations establishing reportable quantities were published in the Federal Register under this subsection on or before March 1, 1986, the Administrator shall promulgate under this subsection final regulations establishing reportable quantities not later than December 31, 1986. For all hazardous substances for which proposed regulations establishing reportable quantities were not published in the Federal Register under this subsection on or before March 1, 1986, the Administrator shall publish under this subsection proposed regulations establishing reportable quantities not later than December 31, 1986, and promulgate final regulations under this subsection establishing reportable quantities not later than April 30, 1988.".

SEC. 103. NOTICES; PENALTIES.

Section 103(b) of CERCLA is amended by striking out "paragraph" in the last sentence and inserting in lieu thereof "subsection" and by adjusting the left hand margin of the text of such subsection following "federally permitted release," the third place it appears so that there is no indentation of such text.

SEC. 104. RESPONSE AUTHORITIES.

(a) RESPONSE BY POTENTIALLY RESPONSIBLE PARTIES; PUBLIC HEALTH THREATS.—Section 104(a)(1) of CERCLA is amended by striking ", unless the President determines" and all that follows down through "party." and inserting a period and the following: "When the President determines that such action will be done properly and promptly by the owner or operator of the facility or vessel or by any other responsible party, the President may allow such person to carry out the action, conduct the remedial investigation, or conduct the feasibility study in accordance with section 122. No remedial investigation or feasibility study (RI/FS) shall be authorized except on a determination by the President that the party is qualified to conduct the RI/FS and only if the President contracts with or arranges for a qualified person to assist the President in overseeing and reviewing the conduct of such RI/FS and if the responsible party agrees to reimburse the Fund for any cost incurred by the President under, or in connection with, the oversight contract or arrangement. In no event shall a potentially responsible party be subject to a lesser standard of liability, receive preferential treatment, or in any other way, whether direct or indirect, benefit from any such arrangements as a response action contractor, or as a person hired or retained by such a response action contractor, with respect to the release or facility in question. The President shall give primary attention to those releases which the President deems may present a public health threat.".

(b) REMOVAL ACTION.—Section 104(a)(2) of CERCLA is amended to read as follows:

"(2) REMOVAL ACTION.—Any removal action undertaken by the President under this subsection (or by any other person referred to in section 122) should, to the extent the President deems practicable, contribute to the efficient performance of any long term remedial action with respect to the release or threatened release concerned.".

(c) LIMITATIONS ON RESPONSE.—Section 104(a) of CERCLA is further amended by adding after paragraph (2) the following new paragraphs:

"(3) LIMITATIONS ON RESPONSE.—The President shall not provide for a removal or remedial action under this section in response to a release or threat of release—

"(A) of a naturally occurring substance in its unaltered form, or altered solely through naturally occurring processes or phenomena, from a location where it is naturally found;

"(B) from products which are part of the structure of, and result in exposure within, residential buildings or business or community structures; or

"(C) into public or private drinking water supplies due to deterioration of the system through ordinary use.

"(4) EXCEPTION TO LIMITATIONS.—Notwithstanding paragraph (3) of this subsection, to the extent authorized by this section, the President may respond to any release or threat of release if in the President's discretion, it constitutes a public health or environmental emergency and no other person with the authority and capability to respond to the emergency will do so in a timely manner.".

(d) COORDINATION OF INVESTIGATIONS.—Section 104(b) of CERCLA is amended by inserting "(1) INFORMATION; STUDIES AND INVESTIGATIONS.—" after "(b)" and by adding at the end thereof the following new paragraph:

"(2) COORDINATION OF INVESTIGATIONS.—The President shall promptly notify the appropriate Federal and State natural resource trustees of potential damages to natural resources resulting from releases under investigation pursuant to this section and shall seek to coordinate the assessments, investigations, and planning under this section with such Federal and State trustees.".

(e) INITIAL OBLIGATION OF FUND.—

(1) LIMITATION.—Section 104(c)(1) of CERCLA is amended by striking out "$1,000,000" and "six months" and inserting in lieu thereof "$2,000,000" and "12 months", respectively.

(2) CONTINUED RESPONSE.—Section 104(c)(1) of CERCLA is amended by inserting before "obligations" the following: "or (C) continued response action is otherwise appropriate and consistent with the remedial action to be taken".

(f) FACILITIES OWNED AND OPERATED BY STATES.—Paragraph (3) of section 104(c) of CERCLA is amended by striking out "(ii) at least" and all that follows through the period at the end thereof and inserting "(ii) 50 percent (or such greater amount as the President may determine appropriate, taking into account the degree of responsibility of the State or political subdivision for the release) of any sums expended in response to a release at a facility, that was operated by the State or a political subdivision thereof, either directly or through a contractual relationship or otherwise, at the time of any disposal of hazardous substances therein. For the purpose of clause (ii) of this subparagraph, the term 'facility' does not include navigable waters or the beds underlying those waters.".

(g) CROSS REFERENCE TO CLEANUP STANDARDS.—Section 104(c)(4) of CERCLA is amended to read as follows:

"(4) SELECTION OF REMEDIAL ACTION.—The President shall select remedial actions to carry out this section in accordance with section 121 of this Act (relating to cleanup standards).".

(h) STATE CREDITS.—Section 104(c) of CERCLA is amended by adding the following new paragraph after paragraph (4):

"(5) STATE CREDITS.—

"(A) GRANTING OF CREDIT.—The President shall grant a State a credit against the share of the costs, for which it is responsible under paragraph (3) with respect to a facility listed on the National Priorities List under the National Contingency Plan, for amounts expended by a State for remedial action at such facility pursuant to a contract or cooperative agreement with the President. The credit under this paragraph shall be limited to those State expenses which the President determines to be reasonable, documented, direct out-of-pocket expenditures of non-Federal funds.

"(B) EXPENSES BEFORE LISTING OR AGREEMENT.—The credit under this paragraph shall include expenses for remedial action at a facility incurred before the listing of the facility on the National Priorities List or before a contract or cooperative agreement is entered into under subsection (d) for the facility if—

"(i) after such expenses are incurred the facility is listed on such list and a contract or cooperative agreement is entered into for the facility, and

"(ii) the President determines that such expenses would have been credited to the State under subparagraph (A) had the expenditures been made after listing of the facility on such list and after the date on which such contract or cooperative agreement is entered into.

"(C) RESPONSE ACTIONS BETWEEN 1978 AND 1980.—The credit under this paragraph shall include funds expended or obligated by the State or a political subdivision thereof after January 1, 1978, and before December 11, 1980, for cost-eligible response actions and claims for damages compensable under section 111.

"(D) STATE EXPENSES AFTER DECEMBER 11, 1980, IN EXCESS OF 10 PERCENT OF COSTS.—The credit under this paragraph shall include 90 percent of State expenses incurred at a facility owned, but not operated, by such State or by a political subdivision thereof. Such credit applies only to expenses incurred pursuant to a contract or cooperative agreement under subsection (d) and only to expenses incurred after December 11, 1980, but before the date of the enactment of this paragraph.

"(E) ITEM-BY-ITEM APPROVAL.—In the case of expenditures made after the date of the enactment of this paragraph, the President may require prior approval of each item of expenditure as a condition of granting a credit under this paragraph.

"(F) USE OF CREDITS.—Credits granted under this paragraph for funds expended

with respect to a facility may be used by the State to reduce all or part of the share of costs otherwise required to be paid by the State under paragraph (3) in connection with remedial actions at such facility. If the amount of funds for which credit is allowed under this paragraph exceeds such share of costs for such facility, the State may use the amount of such excess to reduce all or part of the share of such costs at other facilities in that State. A credit shall not entitle the State to any direct payment.".

(i) TREATMENT OF CERTAIN ACTIVITIES AS MAINTENANCE OR REMEDIAL ACTION.—Section 104(c) of CERCLA is amended by adding the following new paragraphs after paragraph (5):

"(6) OPERATION AND MAINTENANCE.—For the purposes of paragraph (3) of this subsection, in the case of ground or surface water contamination, completed remedial action includes the completion of treatment or other measures, whether taken onsite or offsite, necessary to restore ground and surface water quality to a level that assures protection of human health and the environment. With respect to such measures, the operation of such measures for a period of up to 10 years after the construction or installation and commencement of operation shall be considered remedial action. Activities required to maintain the effectiveness of such measures following such period or the completion of remedial action, whichever is earlier, shall be considered operation or maintenance.

"(7) LIMITATION ON SOURCE OF FUNDS FOR O&M.—During any period after the availability of funds received by the Hazardous Substance Superfund established under subchapter A of chapter 98 of the Internal Revenue Code of 1954 from tax revenues or appropriations from general revenues, the Federal share of the payment of the cost of operation or maintenance pursuant to paragraph (3)(C)(i) or paragraph (6) of this subsection (relating to operation and maintenance) shall be from funds received by the Hazardous Substance Superfund from amounts recovered on behalf of such fund under this Act.".

(j) RECONTRACTING.—Section 104(c) of CERCLA is amended by adding the following new paragraph after paragraph (7):

"(8) RECONTRACTING.—The President is authorized to undertake or continue whatever interim remedial actions the President determines to be appropriate to reduce risks to public health or the environment where the performance of a complete remedial action requires recontracting because of the discovery of sources, types, or quantities of hazardous substances not known at the time of entry into the original contract. The total cost of interim actions undertaken at a facility pursuant to this paragraph shall not exceed $2,000,000.".

(k) SITING.—Section 104(c) of CERCLA is amended by adding the following new paragraph after paragraph (8):

"(9) SITING.—Effective 3 years after the enactment of the Superfund Amendments and Reauthorization Act of 1986, the President shall not provide any remedial actions pursuant to this section unless the State in which the release occurs first enters into a contract or cooperative agreement with the President providing assurances deemed adequate by the President that the State will assure the availability of hazardous waste treatment or disposal facilities which—

"(A) have adequate capacity for the destruction, treatment, or secure disposition of all hazardous wastes that are reasonably expected to be generated within the State during the 20-year period following the date of such contract or cooperative agreement and to be disposed of, treated, or destroyed,

"(B) are within the State or outside the State in accordance with an interstate agreement or regional agreement or authority,

"(C) are acceptable to the President, and

"(D) are in compliance with the requirements of subtitle C of the Solid Waste Disposal Act.".

(l) COOPERATIVE AGREEMENTS WITH STATES.—Section 104(d)(1) of CERCLA is amended to read as follows:

"(1) COOPERATIVE AGREEMENTS.—

"(A) STATE APPLICATIONS.—A State or political subdivision thereof or Indian tribe may apply to the President to carry out actions authorized in this section. If the President determines that the State or political subdivision or Indian tribe has the capability to carry out any or all of such actions in accordance with the criteria and priorities established pursuant to section 105(a)(8) and to carry out related enforcement actions, the President may enter into a contract or cooperative agreement with the State or political subdivision or Indian tribe to carry out such actions. The President shall make a determination regarding such an application within 90 days after the President receives the application.

"(B) TERMS AND CONDITIONS.—A contract or cooperative agreement under this paragraph shall be subject to such terms and conditions as the President may prescribe. The contract or cooperative agreement may cover a specific facility or specific facilities.

"(C) REIMBURSEMENTS.—Any State which expended funds during the period beginning September 30, 1985, and ending on the date of the enactment of this subparagraph for response actions at any site included on the National Priorities List and subject to a cooperative agreement under this Act shall be reimbursed for the share of costs of such actions for which the Federal Government is responsible under this Act.".

(m) INFORMATION GATHERING AND ACCESS AUTHORITIES.—Section 104(e) of CERCLA is amended by redesignating paragraph (2) as paragraph (7) and aligning the margin of such paragraph with paragraphs (1) through (6) of such subsection, by inserting "CONFIDENTIALITY OF INFORMATION.—" before "(A) Any records", by striking out paragraph (1), and by striking out "(e)" and inserting in lieu thereof the following:

"(e) INFORMATION GATHERING AND ACCESS.—

"(1) ACTION AUTHORIZED.—Any officer, employee, or representative of the President, duly designated by the President, is authorized to take action under paragraph (2), (3), or (4) (or any combination thereof) at a vessel, facility, establishment, place, property, or location or, in the case of paragraph (3) or (4), at any vessel, facility, establishment, place, property, or location which is adjacent to the vessel, facility, establishment, place, property, or location referred to in such paragraph (3) or (4). Any duly designated officer, employee, or representative of a State or political subdivision under a contract or cooperative agreement under subsection (d)(1) is also authorized to take such action. The authority of paragraphs (3) and (4) may be exercised only if there is a reasonable basis to believe there may be a release or threat of release of a hazardous substance or pollutant or contaminant. The authority of this subsection may be exercised only for the purposes of determining the need for response, or choosing or taking any response action under this title, or otherwise enforcing the provisions of this title.

"(2) ACCESS TO INFORMATION.—Any officer, employee, or representative described in paragraph (1) may require any person who has or may have information relevant to any of the following to furnish, upon reasonable notice, information or documents relating to such matter:

"(A) The identification, nature, and quantity of materials which have been or are generated, treated, stored, or disposed of at a vessel or facility or transported to a vessel or facility.

"(B) The nature or extent of a release or threatened release of a hazardous substance or pollutant or contaminant at or from a vessel or facility.

"(C) Information relating to the ability of a person to pay for or to perform a cleanup.

In addition, upon reasonable notice, such person either (i) shall grant any such officer, employee, or representative access at all reasonable times to any vessel, facility, establishment, place, property, or location to inspect and copy all documents or records relating to such matters or (ii) shall copy and furnish to the officer, employee, or representative all such documents or records, at the option and expense of such person.

"(3) ENTRY.—Any officer, employee, or representative described in paragraph (1) is authorized to enter at reasonable times any of the following:

"(A) Any vessel, facility, establishment, or other place or property where any hazardous substance or pollutant or contaminant may be or has been generated, stored, treated, disposed of, or transported from.

"(B) Any vessel, facility, establishment, or other place or property from which or to which a hazardous substance or pollutant or contaminant has been or may have been released.

"(C) Any vessel, facility, establishment, or other place or property where such release is or may be threatened.

"(D) Any vessel, facility, establishment, or other place or property where entry is needed to determine the need for response or the appropriate response or to effectuate a response action under this title.

"(4) INSPECTION AND SAMPLES.—

"(A) AUTHORITY.—Any officer, employee or representative described in paragraph (1) is authorized to inspect and obtain samples from any vessel, facility, establishment, or other place or property referred to in paragraph (3) or from any location of any suspected hazardous substance or pollutant or contaminant. Any such officer, employee, or representative is authorized to inspect and obtain samples of any containers or labeling for suspected hazardous substances or pollutants or contaminants. Each such inspection shall be completed with reasonable promptness.

"(B) SAMPLES.—If the officer, employee, or representative obtains any samples, before leaving the premises he shall give to the owner, operator, tenant, or other person in charge of the place from which the samples were obtained a receipt describing the sample obtained and, if requested, a portion of each such sample. A copy of the results of any analysis made of such samples shall be furnished promptly to the owner, operator, tenant, or other person in charge, if such person can be located.

"(5) COMPLIANCE ORDERS.—

"(A) ISSUANCE.—If consent is not granted regarding any request made by an officer, employee, or representative under para-

graph (2), (3), or (4), the President may issue an order directing compliance with the request. The order may be issued after such notice and opportunity for consultation as is reasonably appropriate under the circumstances.

"(B) COMPLIANCE.—The President may ask the Attorney General to commence a civil action to compel compliance with a request or order referred to in subparagraph (A). Where there is a reasonable basis to believe there may be a release or threat of a release of a hazardous substance or pollutant or contaminant, the court shall take the following actions:

"(i) In the case of interference with entry or inspection, the court shall enjoin such interference or direct compliance with orders to prohibit interference with entry or inspection unless under the circumstances of the case the demand for entry or inspection is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law.

"(ii) In the case of information or document requests or orders, the court shall enjoin interference with such information or document requests or orders or direct compliance with the requests or orders to provide such information or documents unless under the circumstances of the case the demand for information or documents is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law.

The court may assess a civil penalty not to exceed $25,000 for each day of noncompliance against any person who unreasonably fails to comply with the provisions of paragraph (2), (3), or (4) or an order issued pursuant to subparagraph (A) of this paragraph.

"(6) OTHER AUTHORITY.—Nothing in this subsection shall preclude the President from securing access or obtaining information in any other lawful manner.".

(n) BASIS FOR WITHHOLDING INFORMATION.—Paragraph (7) of section 104(e) of CERCLA (formerly paragraph (2), as redesignated by subsection (l) of this section) is amended by adding the following new subparagraphs at the end thereof:

"(E) No person required to provide information under this Act may claim that the information is entitled to protection under this paragraph unless such person shows each of the following:

"(i) Such person has not disclosed the information to any other person, other than a member of a local emergency planning committee established under title III of the Amendments and Reauthorization Act of 1986, an officer or employee of the United States or a State or local government, an employee of such person, or a person who is bound by a confidentiality agreement, and such person has taken reasonable measures to protect the confidentiality of such information and intends to continue to take such measures.

"(ii) The information is not required to be disclosed, or otherwise made available, to the public under any other Federal or State law.

"(iii) Disclosure of the information is likely to cause substantial harm to the competitive position of such person.

"(iv) The specific chemical identity, if sought to be protected, is not readily discoverable through reverse engineering.

"(F) The following information with respect to any hazardous substance at the facility or vessel shall not be entitled to protection under this paragraph:

"(i) The trade name, common name, or generic class or category of the hazardous substance.

"(ii) The physical properties of the substance, including its boiling point, melting point, flash point, specific gravity, vapor density, solubility in water, and vapor pressure at 20 degrees celsius.

"(iii) The hazards to health and the environment posed by the substance, including physical hazards (such as explosion) and potential acute and chronic health hazards.

"(iv) The potential routes of human exposure to the substance at the facility, establishment, place, or property being investigated, entered, or inspected under this subsection.

"(v) The location of disposal of any waste stream.

"(vi) Any monitoring data or analysis of monitoring data pertaining to disposal activities.

"(vii) Any hydrogeologic or geologic data.

"(viii) Any groundwater monitoring data.".

(o) ACQUISITION OF PROPERTY.—

(1) IN GENERAL.—Section 104 of CERCLA is amended by adding the following new subsection at the end thereof:

"(j) ACQUISITION OF PROPERTY.—

"(1) AUTHORITY.—The President is authorized to acquire, by purchase, lease, condemnation, donation, or otherwise, any real property or any interest in real property that the President in his discretion determines is needed to conduct a remedial action under this Act. There shall be no cause of action to compel the President to acquire any interest in real property under this Act.

"(2) STATE ASSURANCE.—The President may use the authority of paragraph (1) for a remedial action only if, before an interest in real estate is acquired under this subsection, the State in which the interest to be acquired is located assures the President, through a contract or cooperative agreement or otherwise, that the State will accept transfer of the interest following completion of the remedial action.

"(3) EXEMPTION.—No Federal, State, or local government agency shall be liable under this Act solely as a result of acquiring an interest in real estate under this subsection.".

SEC. 105. NATIONAL CONTINGENCY PLAN.

(a) SUBSECTION (a) OF SECTION 105.—Section 105 of CERCLA is amended as follows:

(1) HEADING.—Insert "(a) REVISION AND REPUBLICATION.—" after "105.".

(2) HAZARD RANKING SYSTEM.—In paragraph (8)(A) insert the following after "ecosystems,": "the damage to natural resources which may affect the human food chain and which is associated with any release or threatened release, the contamination or potential contamination of the ambient air which is associated with the release or threatened release,".

(3) NATIONAL PRIORITY LIST.—In paragraph (8)(B):

(A) Strike out "at least four hundred of".

(B) Strike out "facilities at least" and insert in lieu thereof "facilities".

(C) Insert after "in such State." the following: "A State shall be allowed to designate its highest priority facility only once.".

(4) CONFORMING AMENDMENT.—In paragraph (9) insert after "therefor" the following: "and including consideration of minority firms in accordance with subsection (f)".

(5) STANDARDS AND PROCEDURES FOR INNOVATIVE TREATMENT TECHNOLOGIES.—Strike out "and" at the end of paragraph (8), strike out the period at the end of paragraph (9) and insert in lieu thereof "; and", and insert after paragraph (9) the following new paragraph:

"(10) standards and testing procedures by which alternative or innovative treatment technologies can be determined to be appropriate for utilization in response actions authorized by this Act.".

(b) NEW SUBSECTIONS.—Section 105 of CERCLA is amended by adding the following new subsections at the end thereof:

"(b) REVISION OF PLAN.—Not later than 18 months after the enactment of the Superfund Amendments and Reauthorization Act of 1986, the President shall revise the National Contingency Plan to reflect the requirements of such amendments. The portion of such Plan known as 'the National Hazardous Substance Response Plan' shall be revised to provide procedures and standards for remedial actions undertaken pursuant to this Act which are consistent with amendments made by the Superfund Amendments and Reauthorization Act of 1986 relating to the selection of remedial action.

"(c) HAZARD RANKING SYSTEM.—

"(1) REVISION.—Not later than 18 months after the enactment of the Superfund Amendments and Reauthorization Act of 1986 and after publication of notice and opportunity for submission of comments in accordance with section 553 of title 5, United States Code, the President shall by rule promulgate amendments to the hazard ranking system in effect on September 1, 1984. Such amendments shall assure, to the maximum extent feasible, that the hazard ranking system accurately assesses the relative degree of risk to human health and the environment posed by sites and facilities subject to review. The President shall establish an effective date for the amended hazard ranking system which is not later than 24 months after enactment of the Superfund Amendments and Reauthorization Act of 1986. Such amended hazard ranking system shall be applied to any site or facility to be newly listed on the National Priorities List after the effective date established by the President. Until such effective date of the regulations, the hazard ranking system in effect on September 1, 1984, shall continue in full force and effect.

"(2) HEALTH ASSESSMENT OF WATER CONTAMINATION RISKS.—In carrying out this subsection, the President shall ensure that the human health risks associated with the contamination or potential contamination (either directly or as a result of the runoff of any hazardous substance or pollutant or contaminant from sites or facilities) of surface water are appropriately assessed where such surface water is, or can be, used for recreation or potable water consumption. In making the assessment required pursuant to the preceding sentence, the President shall take into account the potential migration of any hazardous substance or pollutant or contaminant through such surface water to downstream sources of drinking water.

"(3) REEVALUATION NOT REQUIRED.—The President shall not be required to reevaluate, after the date of the enactment of the Superfund Amendments and Reauthorization Act of 1986, the hazard ranking of any facility which was evaluated in accordance with the criteria under this section before the effective date of the amendments to the hazard ranking system under this subsection and which was assigned a national priority under the National Contingency Plan.

"(4) NEW INFORMATION.—Nothing in paragraph (3) shall preclude the President from

taking new information into account in undertaking response actions under this Act.

"(d) PETITION FOR ASSESSMENT OF RELEASE.—Any person who is, or may be, affected by a release or threatened release of a hazardous substance or pollutant or contaminant, may petition the President to conduct a preliminary assessment of the hazards to public health and the environment which are associated with such release or threatened release. If the President has not previously conducted a preliminary assessment of such release, the President shall, within 12 months after the receipt of any such petition, complete such assessment or provide an explanation of why the assessment is not appropriate. If the preliminary assessment indicates that the release or threatened release concerned may pose a threat to human health or the environment, the President shall promptly evaluate such release or threatened release in accordance with the hazard ranking system referred to in paragraph (8)(A) of subsection (a) to determine the national priority of such release or threatened release.

"(e) RELEASES FROM EARLIER SITES.—Whenever there has been, after January 1, 1985, a significant release of hazardous substances or pollutants or contaminants from a site which is listed by the President as a 'Site Cleaned Up To Date' on the National Priorities List (revised edition, December 1984) the site shall be restored to the National Priorities List, without application of the hazard ranking system.

"(f) MINORITY CONTRACTORS.—In awarding contracts under this Act, the President shall consider the availability of qualified minority firms. The President shall describe, as part of any annual report submitted to the Congress under this Act, the participation of minority firms in contracts carried out under this Act. Such report shall contain a brief description of the contracts which have been awarded to minority firms under this Act and of the efforts made by the President to encourage the participation of such firms in programs carried out under this Act.

"(g) SPECIAL STUDY WASTES.—

"(1) APPLICATION—This subsection applies to facilities—

"(A) which as of the date of enactment of the Superfund Amendments and Reauthorization Act of 1986 were not included on, or proposed for inclusion on, the National Priorities List; and

"(B) at which special study wastes described in paragraph (2), (3)(A)(ii) or (3)(A)(iii) of section 3001(b) of the Solid Waste Disposal Act are present in significant quantities, including any such facility from which there has been a release of a special study waste.

"(2) CONSIDERATIONS IN ADDING FACILITIES TO NPL.—Pending revision of the hazard ranking system under subsection (c), the President shall consider each of the following factors in adding facilities covered by this section to the National Priorities List:

"(A) The extent to which hazard ranking system score for the facility is affected by the presence of any special study waste at, or any release from, such facility.

"(B) Available information as to the quantity, toxicity, and concentration of hazardous substances that are constituents of any special study waste at, or released from such facility, the extent of or potential for release of such hazardous constituents, the exposure or potential exposure to human population and the environment, and the degree of hazard to human health or the environment posed by the release of such hazardous constituents at such facility. This subparagraph refers only to available information on actual concentrations of hazardous substances and not on the total quantity of special study waste at such facility.

"(3) SAVINGS PROVISIONS.—Nothing in this subsection shall be construed to limit the authority of the President to remove any facility which as of the date of enactment of the Superfund Amendments and Reauthorization Act of 1986 is included on the National Priorities List from such List, or not to list any facility which as of such date is proposed for inclusion on such list.

"(4) INFORMATION GATHERING AND ANALYSIS.—Nothing in this Act shall be construed to preclude the expenditure of monies from the Fund for gathering and analysis of information which will enable the President to consider the specific factors required by paragraph (2).".

SEC. 106. REIMBURSEMENT.

Section 106(b) of CERCLA is amended as follows:

(1) Insert "(1)" after "(b)".

(2) Strike out "who willfully" and insert "who, without sufficient cause, willfully".

(3) Add at the end thereof the following new paragraph:

"(2)(A) Any person who receives and complies with the terms of any order issued under subsection (a) may, within 60 days after completion of the required action, petition the President for reimbursement from the Fund for the reasonable costs of such action, plus interest. Any interest payable under this paragraph shall accrue on the amounts expended from the date of expenditure at the same rate as specified for interest on investments of the Hazardous Substance Superfund established under subchapter A of chapter 98 of the Internal Revenue Code of 1954.

"(B) If the President refuses to grant all or part of a petition made under this paragraph, the petitioner may within 30 days of receipt of such refusal file an action against the President in the appropriate United States district court seeking reimbursement from the Fund.

"(C) Except as provided in subparagraph (D), to obtain reimbursement, the petitioner shall establish by a preponderance of the evidence that it is not liable for response costs under section 107(a) and that costs for which it seeks reimbursement are reasonable in light of the action required by the relevant order.

"(D) A petitioner who is liable for response costs under section 107(a) may also recover its reasonable costs of response to the extent that it can demonstrate, on the administrative record, that the President's decision in selecting the response action ordered was arbitrary and capricious or was otherwise not in accordance with law. Reimbursement awarded under this subparagraph shall include all reasonable response costs incurred by the petitioner pursuant to the portions of the order found to be arbitrary and capricious or otherwise not in accordance with law.

"(E) Reimbursement awarded by a court under subparagraph (C) or (D) may include appropriate costs, fees, and other expenses in accordance with subsections (a) and (d) of section 2412 of title 28 of the United States Code.".

SEC. 107. LIABILITY.

(a) FOREIGN VESSELS.—Section 107(a)(1) of CERCLA is amended by striking out "(otherwise subject to the jurisdiction of the United States)".

(b) RECOVERABLE COSTS AND DAMAGES.—Section 107(a) of CERCLA is amended by striking out "and" at the end of subparagraph (B), striking out the period at the end of subparagraph (C) and inserting "; and" and inserting at the end thereof the following:

"(D) the costs of any health assessment or health effects study carried out under section 104(i).

The amounts recoverable in an action under this section shall include interest on the amounts recoverable under subparagraphs (A) through (D). Such interest shall accrue from the later of (i) the date payment of a specified amount is demanded in writing, or (ii) the date of the expenditure concerned. The rate of interest on the outstanding unpaid balance of the amounts recoverable under this section shall be the same rate as is specified for interest on investments of the Hazardous Substance Superfund established under subchapter A of chapter 98 of the Internal Revenue Code of 1954. For purposes of applying such amendments to interest under this subsection, the term 'comparable maturity' shall be determined with reference to the date on which interest accruing under this subsection commences.".

(c) RENDERING CARE OR ADVICE; EMERGENCY RESPONSE ACTIONS.—Section 107(d) of CERCLA is amended to read as follows:

"(d) RENDERING CARE OR ADVICE.—

"(1) IN GENERAL.—Except as provided in paragraph (2), no person shall be liable under this title for costs or damages as a result of actions taken or omitted in the course of rendering care, assistance, or advice in accordance with the National Contingency Plan ('NCP') or at the direction of an onscene coordinator appointed under such plan, with respect to an incident creating a danger to public health or welfare or the environment as a result of any releases of a hazardous substance or the threat thereof. This paragraph shall not preclude liability for costs or damages as the result of negligence on the part of such person.

"(2) STATE AND LOCAL GOVERNMENTS.—No State or local government shall be liable under this title for costs or damages as a result of actions taken in response to an emergency created by the release or threatened release of a hazardous substance generated by or from a facility owned by another person. This paragraph shall not preclude liability for costs or damages as a result of gross negligence or intentional misconduct by the State or local government. For the purpose of the preceding sentence, reckless, willful, or wanton misconduct shall constitute gross negligence.

"(3) SAVINGS PROVISION.—This subsection shall not alter the liability of any person covered by the provisions of paragraph (1), (2), (3), or (4) of subsection (a) of this section with respect to the release or threatened release concerned.".

(d) NATURAL RESOURCES.—

(1) DESIGNATION OF FEDERAL AND STATE OFFICIALS.—Section 107(f) of CERCLA is amended by inserting "(1) NATURAL RESOURCES LIABILITY.—" after "(f)" and by adding at the end thereof the following new paragraphs:

"(2) DESIGNATION OF FEDERAL AND STATE OFFICIALS.—

"(A) FEDERAL.—The President shall designate in the National Contingency Plan published under section 105 of this Act the Federal officials who shall act on behalf of the public as trustees for natural resources under this Act and section 311 of the Federal Water Pollution Control Act. Such officials shall assess damages for injury to, destruc-

tion of, or loss of natural resources for purposes of this Act and such section 311 for those resources under their trusteeship and may, upon request of and reimbursement from a State and at the Federal officials' discretion, assess damages for those natural resources under the State's trusteeship.

"(B) STATE.—The Governor of each State shall designate State officials who may act on behalf of the public as trustees for natural resources under this Act and section 311 of the Federal Water Pollution Control Act and shall notify the President of such designations. Such State officials shall assess damages to natural resources for the purposes of this Act and such section 311 for those natural resources under their trusteeship.

"(C) REBUTTABLE PRESUMPTION.—Any determination or assessment of damages to natural resources for the purposes of this Act and section 311 of the Federal Water Pollution Control Act made by a Federal or State trustee in accordance with the regulations promulgated under section 301(c) of this Act shall have the force and effect of a rebuttable presumption on behalf of the trustee in any administrative or judicial proceeding under this Act or section 311 of the Federal Water Pollution Control Act.".

(2) USE OF RECOVERED FUNDS.—Section 107(f)(1) of CERCLA (as designated by paragraph (1) of this subsection) is amended by striking out the third sentence and inserting in lieu thereof the following: "Sums recovered by the United States Government as trustee under this subsection shall be retained by the trustee, without further appropriation, for use only to restore, replace, or acquire the equivalent of such natural resources. Sums recovered by a State as trustee under this subsection shall be available for use only to restore, replace, or acquire the equivalent of such natural resources by the State. The measure of damages in any action under subparagraph (C) of subsection (a) shall not be limited by the sums which can be used to restore or replace such resources. There shall be no double recovery under this Act for natural resource damages, including the costs of damage assessment or restoration, rehabilitation, or acquisition for the same release and natural resource".

(3) DEADLINE FOR SECTION 301 REGULATIONS.—Section 301(c)(1) of CERCLA is amended by adding the following at the end thereof: "Notwithstanding the failure of the President to promulgate the regulations required under this subsection on the required date, the President shall promulgate such regulations not later than 6 months after the enactment of the Superfund Amendments and Reauthorization Act of 1986.".

(e) FEDERAL AGENCIES.—Section 107(g) of CERCLA is amended to read as follows:

"(g) FEDERAL AGENCIES.—For provisions relating to Federal agencies, see section 120 of this Act."

(f) FEDERAL LIEN.—Section 107 of CERCLA is amended by adding at the end thereof the following new subsection:

"(l) FEDERAL LIEN.—

"(1) IN GENERAL.—All costs and damages for which a person is liable to the United States under subsection (a) of this section (other than the owner or operator of a vessel under paragraph (1) of subsection (a)) shall constitute a lien in favor of the United States upon all real property and rights to such property which—

"(A) belong to such person; and

"(B) are subject to or affected by a removal or remedial action.

"(2) DURATION.—The lien imposed by this subsection shall arise at the later of the following:

"(A) The time costs are first incurred by the United States with respect to a response action under this Act.

"(B) The time that the person referred to in paragraph (1) is provided (by certified or registered mail) written notice of potential liability.

Such lien shall continue until the liability for the costs (or a judgment against the person arising out of such liability) is satisfied or becomes unenforceable through operation of the statute of limitations provided in section 113.

"(3) NOTICE AND VALIDITY.—The lien imposed by this subsection shall be subject to the rights of any purchaser, holder of a security interest, or judgment lien creditor whose interest is perfected under applicable State law before notice of the lien has been filed in the appropriate office within the State (or county or other governmental subdivision), as designated by State law, in which the real property subject to the lien is located. Any such purchaser, holder of a security interest, or judgment lien creditor shall be afforded the same protections against the lien imposed by this subsection as are afforded under State law against a judgment lien which arises out of an unsecured obligation and which arises as of the time of the filing of the notice of the lien imposed by this subsection. If the State has not by law designated one office for the receipt of such notices of liens, the notice shall be filed in the office of the clerk of the United States district court for the district in which the real property is located. For purposes of this subsection, the terms 'purchaser' and 'security interest' shall have the definitions provided under section 6323(h) of the Internal Revenue Code of 1954.

"(4) ACTION IN REM.—The costs constituting the lien may be recovered in an action in rem in the United States district court for the district in which the removal or remedial action is occurring or has occurred. Nothing in this subsection shall affect the right of the United States to bring an action against any person to recover all costs and damages for which such person is liable under subsection (a) of this section.

"(m) MARITIME LIEN.—All costs and damages for which the owner or operator of a vessel is liable under subsection (a)(1) with respect to a release or threatened release from such vessel shall constitute a maritime lien in favor of the United States on such vessel. Such costs may be recovered in an action in rem in the district court of the United States for the district in which the vessel may be found. Nothing in this subsection shall affect the right of the United States to bring an action against the owner or operator of such vessel in any court of competent jurisdiction to recover such costs.".

SEC. 108. FINANCIAL RESPONSIBILITY.

(a) EVIDENCE OF FINANCIAL RESPONSIBILITY.—Section 108(b)(2) of CERCLA is amended by adding the following at the end thereof: "Financial responsibility may be established by any one, or any combination, of the following: insurance, guarantee, surety bond, letter of credit, or qualification as a self-insurer. In promulgating requirements under this section, the President is authorized to specify policy or other contractual terms, conditions, or defenses which are necessary, or which are unacceptable, in establishing such evidence of financial responsibility in order to effectuate the purposes of this Act.".

(b) PHASE-IN PERIOD.—Section 108(b)(3) of CERCLA is amended by striking out "over a period of not less than three and no more than six years" and inserting in lieu thereof "as quickly as can reasonably be achieved but in no event more than 4 years".

(c) DIRECT ACTION; LIABILITY.—Subsections (c) and (d) of section 108 of CERCLA are amended to read as follows:

"(c) DIRECT ACTION.—

"(1) RELEASES FROM VESSELS.—In the case of a release or threatened release from a vessel, any claim authorized by section 107 or 111 may be asserted directly against any guarantor providing evidence of financial responsibility for such vessel under subsection (a). In defending such a claim, the guarantor may invoke all rights and defenses which would be available to the owner or operator under this title. The guarantor may also invoke the defense that the incident was caused by the willful misconduct of the owner or operator, but the guarantor may not invoke any other defense that the guarantor might have been entitled to invoke in a proceeding brought by the owner or operator against him.

"(2) RELEASES FROM FACILITIES.—In the case of a release or threatened release from a facility, any claim authorized by section 107 or 111 may be asserted directly against any guarantor providing evidence of financial responsibility for such facility under subsection (b), if the person liable under section 107 is in bankruptcy, reorganization, or arrangement pursuant to the Federal Bankruptcy Code, or if, with reasonable diligence, jurisdiction in the Federal courts cannot be obtained over a person liable under section 107 who is likely to be solvent at the time of judgment. In the case of any action pursuant to this paragraph, the guarantor shall be entitled to invoke all rights and defenses which would have been available to the person liable under section 107 if any action had been brought against such person by the claimant and all rights and defenses which would have been available to the guarantor if an action had been brought against the guarantor by such person.

"(d) LIMITATION OF GUARANTOR LIABILITY.—

"(1) TOTAL LIABILITY.—The total liability of any guarantor in a direct action suit brought under this section shall be limited to the aggregate amount of the monetary limits of the policy of insurance, guarantee, surety bond, letter of credit, or similar instrument obtained from the guarantor by the person subject to liability under section 107 for the purpose of satisfying the requirement for evidence of financial responsibility.

"(2) OTHER LIABILITY.—Nothing in this subsection shall be construed to limit any other State or Federal statutory, contractual, or common law liability of a guarantor, including, but not limited to, the liability of such guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim. Nothing in this subsection shall be construed, interpreted, or applied to diminish the liability of any person under section 107 of this Act or other applicable law.".

SEC. 109. PENALTIES.

(a) VIOLATIONS AND CRIMINAL PENALTIES.—

(1) NOTICE.—Section 103(b) of CERCLA is amended as follows:

(A) Insert after "knowledge of such release" the following: "or who submits in such a notification any information which he knows to be false or misleading".

(B) Strike out "not more than $10,000 or imprisoned for not more than one year, or both" and insert in lieu thereof "in accordance with the applicable provisions of title 18 of the United States Code or imprisoned for not more than 3 years (or not more than 5 years in the case of a second or subsequent conviction), or both".

(2) DESTRUCTION OF RECORDS.—Section 103(d)(2) of CERCLA is amended by striking out "not more than $20,000, or imprisoned for not more than one year or both." and inserting in lieu thereof "in accordance with the applicable provisions of title 18 of the United States Code or imprisoned for not more than 3 years (or not more than 5 years in the case of a second or subsequent conviction), or both.".

(3) FALSE INFORMATION.—Section 112(b)(1) of CERCLA is amended by striking out "up to $5,000 or imprisoned for not more than one year, or both" and inserting in lieu thereof "in accordance with the applicable provisions of title 18 of the United States Code or imprisoned for not more than 3 years (or not more than 5 years in the case of a second or subsequent conviction), or both".

(b) SECTION 106 PENALTY.—Section 106(b) of CERCLA is amended by striking out "$5,000" and inserting in lieu thereof "$25,000".

(c) CIVIL PENALTIES AND AWARDS.—Section 109 of CERCLA is amended to read as follows:

"SEC. 109. CIVIL PENALTIES AND AWARDS.

"(a) CLASS I ADMINISTRATIVE PENALTY.—

"(1) VIOLATIONS.—A civil penalty of not more than $25,000 per violation may be assessed by the President in the case of any of the following—

"(A) A violation of the requirements of section 103(a) or (b) (relating to notice).

"(B) A violation of the requirements of section 103(d)(2) (relating to destruction of records, etc.).

"(C) A violation of the requirements of section 108 (relating to financial responsibility, etc.), the regulations issued under section 108, or with any denial or detention order under section 108.

"(D) A violation of an order under section 122(d)(3) (relating to settlement agreements for action under section 104(b)).

"(E) Any failure or refusal referred to in section 122(l) (relating to violations of administrative orders, consent decrees, or agreements under section 120).

"(2) NOTICE AND HEARINGS.—No civil penalty may be assessed under this subsection unless the person accused of the violation is given notice and opportunity for a hearing with respect to the violation.

"(3) DETERMINING AMOUNT.—In determining the amount of any penalty assessed pursuant to this subsection, the President shall take into account the nature, circumstances, extent and gravity of the violation or violations and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require.

"(4) REVIEW.—Any person against whom a civil penalty is assessed under this subsection may obtain review thereof in the appropriate district court of the United States by filing a notice of appeal in such court within 30 days from the date of such order and by simultaneously sending a copy of such notice by certified mail to the President. The President shall promptly file in such court a certified copy of the record upon which such violation was found or such penalty imposed. If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order or after the appropriate court has entered final judgment in favor of the United States, the President may request the Attorney General of the United States to institute a civil action in an appropriate district court of the United States to collect the penalty, and such court shall have jurisdiction to hear and decide any such action. In hearing such action, the court shall have authority to review the violation and the assessment of the civil penalty on the record.

"(5) SUBPOENAS.—The President may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, or documents in connection with hearings under this subsection. In case of contumacy or refusal to obey a subpoena issued pursuant to this paragraph and served upon any person, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the administrative law judge or to appear and produce documents before the administrative law judge, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

"(b) CLASS II ADMINISTRATIVE PENALTY.—A civil penalty of not more than $25,000 per day for each day during which the violation continues may be assessed by the President in the case of any of the following—

"(1) A violation of the notice requirements of section 103(a) or (b).

"(2) A violation of section 103(d)(2) (relating to destruction of records, etc.).

"(3) A violation of the requirements of section 108 (relating to financial responsibility, etc.), the regulations issued under section 108, or with any denial or detention order under section 108.

"(4) A violation of an order under section 122(d)(3) (relating to settlement agreements for action under section 104(b)).

"(5) Any failure or refusal referred to in section 122(l) (relating to violations of administrative orders, consent decrees, or agreements under section 120).

In the case of a second or subsequent violation the amount of such penalty may be not more than $75,000 for each day during which the violation continues. Any civil penalty under this subsection shall be assessed and collected in the same manner, and subject to the same provisions, as in the case of civil penalties assessed and collected after notice and opportunity for hearing on the record in accordance with section 554 of title 5 of the United States Code. In any proceeding for the assessment of a civil penalty under this subsection the President may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents and may promulgate rules for discovery procedures. Any person who requested a hearing with respect to a civil penalty under this subsection and who is aggrieved by an order assessing the civil penalty may file a petition for judicial review of such order with the United States Court of Appeals for the District of Columbia Circuit or for any other circuit in which such person resides or transacts business. Such a petition may only be filed within the 30-day period beginning on the date the order making such assessment was issued.

"(c) JUDICIAL ASSESSMENT.—The President may bring an action in the United States district court for the appropriate district to assess and collect a penalty of not more than $25,000 per day for each day during which the violation (or failure or refusal) continues in the case of any of the following—

"(1) A violation of the notice requirements of section 103(a) or (b).

"(2) A violation of section 103(d)(2) (relating to destruction of records, etc.).

"(3) A violation of the requirements of section 108 (relating to financial responsibility, etc.), the regulations issued under section 108, or with any denial or detention order under section 108.

"(4) A violation of an order under section 122(d)(3) (relating to settlement agreements for action under section 104(b)).

"(5) Any failure or refusal referred to in section 122(l) (relating to violations of administrative orders, consent decrees, or agreements under section 120).

In the case of a second or subsequent violation (or failure or refusal), the amount of such penalty may be not more than $75,000 for each day during which the violation (or failure or refusal) continues. For additional provisions providing for judicial assessment of civil penalties for failure to comply with a request or order under section 104(e) (relating to information gathering and access authorities), see section 104(e).

"(d) AWARDS.—The President may pay an award of up to $10,000 to any individual who provides information leading to the arrest and conviction of any person for a violation subject to a criminal penalty under this Act, including any violation of section 103 and any other violation referred to in this section. The President shall, by regulation, prescribe criteria for such an award and may pay any award under this subsection from the Fund, as provided in section 111.

"(e) PROCUREMENT PROCEDURES—Notwithstanding any other provision of law, any executive agency may use competitive procedures or procedures other than competitive procedures to procure the services of experts for use in preparing or prosecuting a civil or criminal action under this Act, whether or not the expert is expected to testify at trial. The executive agency need not provide any written justification for the use of procedures other than competitive procedures when procuring such expert services under this Act and need not furnish for publication in the Commerce Business Daily or otherwise any notice of solicitation or synopsis with respect to such procurement.

"(f) SAVINGS CLAUSE.—Action taken by the President pursuant to this section shall not affect or limit the President's authority to enforce any provisions of this Act.".

SEC. 110. HEALTH-RELATED AUTHORITIES.

Section 104(i) of CERCLA is amended as follows:

(1) Insert "(1)" after "(i)" and redesignate paragraphs (1), (2), (3), (4), and (5) as subparagraphs (A), (B), (C), (D), and (E).

(2) In paragraph (1), strike "and" after "Health Administration," and insert after "Social Security Administration," the following: "the Secretary of Transportation, and appropriate State and local health officials,".

(3) Insert after "chromosomal testing" in subparagraph (D)(as redesignated by paragraph (1) of this subsection) the following: "where appropriate".

(4) Add the following new paragraphs at the end thereof:

"(2)(A) Within 6 months after the enactment of the Superfund Amendments and Reauthorization Act of 1986, the Administrator of the Agency for Toxic Substances and Disease Registry (ATSDR) and the Administrator of the Environmental Protection Agency ("EPA") shall prepare a list, in order of priority, of at least 100 hazardous substances which are most commonly found at facilities on the National Priorities List and which, in their sole discretion, they determine are posing the most significant potential threat to human health due to their known or suspected toxicity to humans and the potential for human exposure to such substances at facilities on the National Priorities List or at facilities to which a response to a release or a threatened release under this section is under consideration.

"(B) Within 24 months after the enactment of the Superfund Amendments and Reauthorization Act of 1986, the Administrator of ATSDR and the Administrator of EPA shall revise the list prepared under subparagraph (A). Such revision shall include, in order of priority, the addition of 100 or more such hazardous substances. In each of the 3 consecutive 12-month periods that follow, the Administrator of ATSDR and the Administrator of EPA shall revise, in the same manner as provided in the 2 preceding sentences, such list to include not fewer than 25 additional hazardous substances per revision. The Administrator of ATSDR and the Administrator of EPA shall not less often than once every year thereafter revise such list to include additional hazardous substances in accordance with the criteria in subparagraph (A).

"(3) Based on all available information, including information maintained under paragraph (1)(B) and data developed and collected on the health effects of hazardous substances under this paragraph, the Administrator of ATSDR shall prepare toxicological profiles of each of the substances listed pursuant to paragraph (2). The toxicological profiles shall be prepared in accordance with guidelines developed by the Administrator of ATSDR and the Administrator of EPA. Such profiles shall include, but not be limited to each of the following:

"(A) An examination, summary, and interpretation of available toxicological information and epidemiologic evaluations on a hazardous substance in order to ascertain the levels of significant human exposure for the substance and the associated acute, subacute, and chronic health effects.

"(B) A determination of whether adequate information on the health effects of each substance is available or in the process of development to determine levels of exposure which present a significant risk to human health of acute, subacute, and chronic health effects.

"(C) Where appropriate, an identification of toxicological testing needed to identify the types or levels of exposure that may present significant risk of adverse health effects in humans.

Any toxicological profile or revision thereof shall reflect the Administrator of ATSDR's assessment of all relevant toxicological testing which has been peer reviewed. The profiles required to be prepared under this paragraph for those hazardous substances listed under subparagraph (A) of paragraph (2) shall be completed, at a rate of no fewer than 25 per year, within 4 years after the enactment of the Superfund Amendments and Reauthorization Act of 1986. A profile required on a substance listed pursuant to subparagraph (B) of paragraph (2) shall be completed within 3 years after addition to the list. The profiles prepared under this paragraph shall be of those substances highest on the list of priorities under paragraph (2) for which profiles have not previously been prepared. Profiles required under this paragraph shall be revised and republished as necessary, but no less often than once every 3 years. Such profiles shall be provided to the States and made available to other interested parties.

"(4) The Administrator of the ATSDR shall provide consultations upon request on health issues relating to exposure to hazardous or toxic substances, on the basis of available information, to the Administrator of EPA, State officials, and local officials. Such consultations to individuals may be provided by States under cooperative agreements established under this Act.

"(5)(A) For each hazardous substance listed pursuant to paragraph (2), the Administrator of ATSDR (in consultation with the Administrator of EPA and other agencies and programs of the Public Health Service) shall assess whether adequate information on the health effects of such substance is available. For any such substance for which adequate information is not available (or under development), the Administrator of ATSDR, in cooperation with the Director of the National Toxicology Program, shall assure the initiation of a program of research designed to determine the health effects (and techniques for development of methods to determine such health effects) of such substance. Where feasible, such program shall seek to develop methods to determine the health effects of such substance in combination with other substances with which it is commonly found. Before assuring the initiation of such program, the Administrator of ATSDR shall consider recommendations of the Interagency Testing Committee established under section 4(e) of the Toxic Substances Control Act on the types of research that should be done. Such program shall include, to the extent necessary to supplement existing information, but shall not be limited to—

"(i) laboratory and other studies to determine short, intermediate, and long-term health effects;

"(ii) laboratory and other studies to determine organ-specific, site-specific, and system-specific acute and chronic toxicity;

"(iii) laboratory and other studies to determine the manner in which such substances are metabolized or to otherwise develop an understanding of the biokinetics of such substances; and

"(iv) where there is a possibility of obtaining human data, the collection of such information.

"(B) In assessing the need to perform laboratory and other studies, as required by subparagraph (A), the Administrator of ATSDR shall consider—

"(i) the availability and quality of existing test data concerning the substance on the suspected health effect in question;

"(ii) the extent to which testing already in progress will, in a timely fashion, provide data that will be adequate to support the preparation of toxicological profiles as required by paragraph (3); and

"(iii) such other scientific and technical factors as the Administrator of ATSDR may determine are necessary for the effective implementation of this subsection.

"(C) In the development and implementation of any research program under this paragraph, the Administrator of ATSDR and the Administrator of EPA shall coordinate such research program implemented under this paragraph with the National Toxicology Program and with programs of toxicological testing established under the Toxic Substances Control Act and the Federal Insecticide, Fungicide and Rodenticide Act. The purpose of such coordination shall be to avoid duplication of effort and to assure that the hazardous substances listed pursuant to this subsection are tested thoroughly at the earliest practicable date. Where appropriate, consistent with such purpose, a research program under this paragraph may be carried out using such programs of toxicological testing.

"(D) It is the sense of the Congress that the costs of research programs under this paragraph be borne by the manufacturers and processors of the hazardous substance in question, as required in programs of toxicological testing under the Toxic Substances Control Act. Within 1 year after the enactment of the Superfund Amendments and Reauthorization Act of 1986, the Administrator of EPA shall promulgate regulations which provide, where appropriate, for payment of such costs by manufacturers and processors under the Toxic Substances Control Act, and registrants under the Federal Insecticide, Fungicide, and Rodenticide Act, and recovery of such costs from responsible parties under this Act.

"(6)(A) The Administrator of ATSDR shall perform a health assessment for each facility on the National Priorities List established under section 105. Such health assessment shall be completed not later than December 10, 1988, for each facility proposed for inclusion on such list prior to the date of the enactment of the Superfund Amendments and Reauthorization Act of 1986 or not later than one year after the date of proposal for inclusion on such list for each facility proposed for inclusion on such list after such date of enactment.

"(B) The Administrator of ATSDR may perform health assessments for releases or facilities where individual persons or licensed physicians provide information that individuals have been exposed to a hazardous substance, for which the probable source of such exposure is a release. In addition to other methods (formal or informal) of providing such information, such individual persons or licensed physicians may submit a petition to the Administrator of ATSDR providing such information and requesting a health assessment. If such a petition is submitted and the Administrator of ATSDR does not initiate a health assessment, the Administrator of ATSDR shall provide a written explanation of why a health assessment is not appropriate.

"(C) In determining the priority in which to conduct health assessments under this subsection, the Administrator of ATSDR, in consultation with the Administrator of EPA, shall give priority to those facilities at which there is documented evidence of the release of hazardous substances, at which the potential risk to human health appears highest, and for which in the judgment of the Administrator of ATSDR existing health assessment data are inadequate to assess the potential risk to human health as provided in subparagraph (F). In determining the priorities for conducting health assessments under this subsection, the Administrator of ATSDR shall consider the National Priorities List schedules and the needs of the Environmental Protection Agency and other Federal agencies pursuant to schedules for

remedial investigation and feasibility studies.

"(D) Where a health assessment is done at a site on the National Priorities List, the Administrator of ATSDR shall complete such assessment promptly and, to the maximum extent practicable, before the completion of the remedial investigation and feasibility study at the facility concerned.

"(E) Any State or political subdivision carrying out a health assessment for a facility shall report the results of the assessment to the Administrator of ATSDR and the Administrator of EPA and shall include recommendations with respect to further activities which need to be carried out under this section. The Administrator of ATSDR shall state such recommendation in any report on the results of any assessment carried out directly by the Administrator of ATSDR for such facility and shall issue periodic reports which include the results of all the assessments carried out under this subsection.

"(F) For the purposes of this subsection and section 111(c)(4), the term 'health assessments' shall include preliminary assessments of the potential risk to human health posed by individual sites and facilities, based on such factors as the nature and extent of contamination, the existence of potential pathways of human exposure (including ground or surface water contamination, air emissions, and food chain contamination), the size and potential susceptibility of the community within the likely pathways of exposure, the comparison of expected human exposure levels to the short-term and long-term health effects associated with identified hazardous substances and any available recommended exposure or tolerance limits for such hazardous substances, and the comparison of existing morbidity and mortality data on diseases that may be associated with the observed levels of exposure. The Administrator of ATSDR shall use appropriate data, risk assessments, risk evaluations and studies available from the Administrator of EPA.

"(G) The purpose of health assessments under this subsection shall be to assist in determining whether actions under paragraph (11) of this subsection should be taken to reduce human exposure to hazardous substances from a facility and whether additional information on human exposure and associated health risks is needed and should be acquired by conducting epidemiological studies under paragraph (7), establishing a registry under paragraph (8), establishing a health surveillance program under paragraph (9), or through other means. In using the results of health assessments for determining additional actions to be taken under this section, the Administrator of ATSDR may consider additional information on the risks to the potentially affected population from all sources of such hazardous substances including known point or nonpoint sources other than those from the facility in question.

"(H) At the completion of each health assessment, the Administrator of ATSDR shall provide the Administrator of EPA and each affected State with the results of such assessment, together with any recommendations for further actions under this subsection or otherwise under this Act. In addition, if the health assessment indicates that the release or threatened release concerned may pose a serious threat to human health or the environment, the Administrator of ATSDR shall so notify the Administrator of EPA who shall promptly evaluate such release or threatened release in accordance with the hazard ranking system referred to in section 105(a)(8)(A) to determine whether the site shall be placed on the National Priorities List or, if the site is already on the list, the Administrator of ATSDR may recommend to the Administrator of EPA that the site be accorded a higher priority.

"(7)(A) Whenever in the judgment of the Administrator of ATSDR it is appropriate on the basis of the results of a health assessment, the Administrator of ATSDR shall conduct a pilot study of health effects for selected groups of exposed individuals in order to determine the desirability of conducting full scale epidemiological or other health studies of the entire exposed population.

"(B) Whenever in the judgment of the Administrator of ATSDR it is appropriate on the basis of the results of such pilot study or other study or health assessment, the Administrator of ATSDR shall conduct such full scale epidemiological or other health studies as may be necessary to determine the health effects on the population exposed to hazardous substances from a release or threatened release. If a significant excess of disease in a population is identified, the letter of transmittal of such study shall include an assessment of other risk factors, other than a release, that may, in the judgment of the peer review group, be associated with such disease, if such risk factors were not taken into account in the design or conduct of the study.

"(8) In any case in which the results of a health assessment indicate a potential significant risk to human health, the Administrator of ATSDR shall consider whether the establishment of a registry of exposed persons would contribute to accomplishing the purposes of this subsection, taking into account circumstances bearing on the usefulness of such a registry, including the seriousness or unique character of identified diseases or the likelihood of population migration from the affected area.

"(9) Where the Administrator of ATSDR has determined that there is a significant increased risk of adverse health effects in humans from exposure to hazardous substances based on the results of a health assessment conducted under paragraph (6), an epidemiologic study conducted under paragraph (7), or an exposure registry that has been established under paragraph (8), and the Administrator of ATSDR has determined that such exposure is the result of a release from a facility, the Administrator of ATSDR shall initiate a health surveillance program for such population. This program shall include but not be limited to—

"(A) periodic medical testing where appropriate of population subgroups to screen for diseases for which the population or subgroup is at significant increased risk; and

"(B) a mechanism to refer for treatment those individuals within such population who are screened positive for such diseases.

"(10) Two years after the date of the enactment of the Superfund Amendments and Reauthorization Act of 1986, and every 2 years thereafter, the Administrator of ATSDR shall prepare and submit to the Administrator of EPA and to the Congress a report on the results of the activities of ATSDR regarding—

"(A) health assessments and pilot health effects studies conducted;

"(B) epidemiologic studies conducted;

"(C) hazardous substances which have been listed under paragraph (2), toxicological profiles which have been developed, and toxicologic testing which has been conducted or which is being conducted under this subsection;

"(D) registries established under paragraph (8); and

"(E) an overall assessment, based on the results of activities conducted by the Administrator of ATSDR, of the linkage between human exposure to individual or combinations of hazardous substances due to releases from facilities covered by this Act or the Solid Waste Disposal Act and any increased incidence or prevalence of adverse health effects in humans.

"(11) If a health assessment or other study carried out under this subsection contains a finding that the exposure concerned presents a significant risk to human health, the President shall take such steps as may be necessary to reduce such exposure and eliminate or substantially mitigate the significant risk to human health. Such steps may include the use of any authority under this Act, including, but not limited to—

"(A) provision of alternative water supplies, and

"(B) permanent or temporary relocation of individuals.

In any case in which information is insufficient, in the judgment of the Administrator of ATSDR or the President to determine a significant human exposure level with respect to a hazardous substance, the President may take such steps as may be necessary to reduce the exposure of any person to such hazardous substance to such level as the President deems necessary to protect human health.

"(12) In any case which is the subject of a petition, a health assessment or study, or a research program under this subsection, nothing in this subsection shall be construed to delay or otherwise affect or impair the authority of the President, the Administrator of ATSDR, or the Administrator of EPA to exercise any authority vested in the President, the Administrator of ATSDR or the Administrator of EPA under any other provision of law (including, but not limited to, the imminent hazard authority of section 7003 of the Solid Waste Disposal Act) or the response and abatement authorities of this Act.

"(13) All studies and results of research conducted under this subsection (other than health assessments) shall be reported or adopted only after appropriate peer review. Such peer review shall be completed, to the maximum extent practicable, within a period of 60 days. In the case of research conducted under the National Toxicology Program, such peer review may be conducted by the Board of Scientific Counselors. In the case of other research, such peer review shall be conducted by panels consisting of no less than three nor more than seven members, who shall be disinterested scientific experts selected for such purpose by the Administrator of ATSDR or the Administrator of EPA, as appropriate, on the basis of their reputation for scientific objectivity and the lack of institutional ties with any person involved in the conduct of the study or research under review. Support services for such panels shall be provided by the Agency for Toxic Substances and Disease Registry, or by the Environmental Protection Agency, as appropriate.

"(14) In the implementation of this subsection and other health-related authorities of this Act, the Administrator of ATSDR shall assemble, develop as necessary, and distribute to the States, and upon request to medical colleges, physicians, and other health professionals, appropriate educational ma-

terials (including short courses) on the medical surveillance, screening, and methods of diagnosis and treatment of injury or disease related to exposure to hazardous substances (giving priority to those listed in paragraph (2)), through such means as the Administrator of ATSDR deems appropriate.

"(15) The activities of the Administrator of ATSDR described in this subsection and section 111(c)(4) shall be carried out by the Administrator of ATSDR, either directly or through cooperative agreements with States (or political subdivisions thereof) which the Administrator of ATSDR determines are capable of carrying out such activities. Such activities shall include provision of consultations on health information, the conduct of health assessments, including those required under section 3019(b) of the Solid Waste Disposal Act, health studies, registries, and health surveillance.

"(16) The President shall provide adequate personnel for ATSDR, which shall not be fewer than 100 employees. For purposes of determining the number of employees under this subsection, an employee employed by ATSDR on a part-time career employment basis shall be counted as a fraction which is determined by dividing 40 hours into the average number of hours of such employee's regularly scheduled workweek.

"(17) In accordance with section 120 (relating to Federal facilities), the Administrator of ATSDR shall have the same authorities under this section with respect to facilities owned or operated by a department, agency, or instrumentality of the United States as the Administrator of ATSDR has with respect to any nongovernmental entity.

"(18) If the Administrator of ATSDR determines that it is appropriate for purposes of this section to treat a pollutant or contaminant as a hazardous substance, such pollutant or contaminant shall be treated as a hazardous substance for such purpose.".

SEC. 111. USES OF FUND.

(a) AMOUNT OF FUND.—Section 111 of CERCLA is amended by inserting after "(a)" the following: "IN GENERAL.—For the purposes specified in this section there is authorized to be appropriated from the Hazardous Substance Superfund established under subchapter A of chapter 98 of the Internal Revenue Code of 1986 not more than $8,500,000,000 for the 5-year period beginning on the date of enactment of the Superfund Amendments and Reauthorization Act of 1986, and such sums shall remain available until expended. The preceding sentence constitutes a specific authorization for the funds appropriated under title II of Public Law 99-160 (relating to payment to the Hazardous Substances Trust Fund).".

(b) USES OF FUNDS UNDER SECTION 111(a).—Section 111(a) of CERCLA is amended by striking out "; and" at the end of paragraph (3) and inserting a period, by striking out the semicolons at the end of paragraphs (1) and (2) and inserting in lieu thereof a period, by capitalizing the first letter in paragraphs (1) through (4), and by adding at the end thereof the following:

"(5) GRANTS FOR TECHNICAL ASSISTANCE.—The cost of grants under section 117(e) (relating to public participation grants for technical assistance).

"(6) LEAD CONTAMINATED SOIL.—Payment of not to exceed $15,000,000 for the costs of a pilot program for removal, decontamination, or other action with respect to lead-contaminated soil in one to three different metropolitan areas.".

(c) NATURAL RESOURCE DAMAGE CLAIMS.—

(1) LIMITATION.—Section 111(b) of CERCLA is amended by inserting "(1) IN GENERAL.—" after "(b)" and by adding at the end thereof the following new paragraph:

"(2) LIMITATION ON PAYMENT OF NATURAL RESOURCE CLAIMS.—

"(A) GENERAL REQUIREMENTS.—No natural resource claim may be paid from the Fund unless the President determines that the claimant has exhausted all administrative and judicial remedies to recover the amount of such claim from persons who may be liable under section 107.

"(B) DEFINITION.—As used in this paragraph, the term 'natural resource claim' means any claim for injury to, or destruction or loss of, natural resources. The term does not include any claim for the costs of natural resource damage assessment.".

(2) CONFORMING AMENDMENT.—Section 111(h) of CERCLA is repealed.

(d) SUBSECTION (c) AMENDMENTS.—

(1) SECTION 111(c)(4).—Section 111(c)(4) of CERCLA is amended by striking out "the costs of epidemiologic studies" and inserting "Any costs incurred in accordance with subsection (m) of this section (relating to ATSDR) and section 104(i), including the costs of epidemiologic and laboratory studies, health assessments, preparation of toxicologic profiles".

(2) NEW PARAGRAPHS IN SECTION 111(c).—Section 111(c) of CERCLA is amended by striking out "; and" at the end of paragraph (5) and inserting a period, by striking out the semicolons at the end of paragraphs (1) through (4) and inserting in lieu thereof a period, by capitalizing the first letter in paragraphs (1), (2), (3), (5), and (6), and by adding at the end thereof the following:

"(7) EVALUATION COSTS UNDER PETITION PROVISIONS OF SECTION 105(d).—Costs incurred by the President in evaluating facilities pursuant to petitions under section 105(d) (relating to petitions for assessment of release).

"(8) CONTRACT COSTS UNDER SECTION 104(a)(1).—The costs of contracts or arrangements entered into under section 104(a)(1) to oversee and review the conduct of remedial investigations and feasibility studies undertaken by persons other than the President and the costs of appropriate Federal and State oversight of remedial activities at National Priorities List sites resulting from consent orders or settlement agreements.

"(9) ACQUISITION COSTS UNDER SECTION 104(j).—The costs incurred by the President in acquiring real estate or interests in real estate under section 104(j) (relating to acquisition of property).

"(10) RESEARCH, DEVELOPMENT, AND DEMONSTRATION COSTS UNDER SECTION 311.—The cost of carrying out section 311 (relating to research, development, and demonstration), except that the amounts available for such purposes shall not exceed the amounts specified in subsection (n) of this section.

"(11) LOCAL GOVERNMENT REIMBURSEMENT.—Reimbursements to local governments under section 123, except that during the 5-fiscal-year period beginning October 1, 1986, not more than 0.1 percent of the total amount appropriated from the Fund may be used for such reimbursements.

"(12) WORKER TRAINING AND EDUCATION GRANTS.—The costs of grants under section 126(g) of the Superfund Amendments and Reauthorization Act of 1986 for training and education of workers to the extent that such costs do not exceed $10,000,000 for each of the fiscal years 1987, 1988, 1989, 1990, and 1991.

"(13) AWARDS UNDER SECTION 109.—The costs of any awards granted under section 109(d).

"(14) LEAD POISONING STUDY.—The cost of carrying out the study under subsection (f) of section 118 of the Superfund Amendments and Reauthorization Act of 1986 (relating to lead poisoning in children).".

(e) LIMITATION ON CERTAIN CLAIMS.—Section 111(e)(2) of CERCLA is amended by adding at the end the following: "No money in the Fund may be used for the payment of any claim under subsection (a)(3) or subsection (b) of this section in any fiscal year for which the President determines that all of the Fund is needed for response to threats to public health from releases or threatened releases of hazardous substances.".

(f) FUND USE OUTSIDE FEDERAL PROPERTY BOUNDARIES.—Section 111(e)(3) of CERCLA is amended by inserting the following before the period: "; except that money in the Fund shall be available for the provision of alternative water supplies (including the reimbursement of costs incurred by a municipality) in any case involving groundwater contamination outside the boundaries of a federally owned facility in which the federally owned facility is not the only potentially responsible party".

(g) INSPECTOR GENERAL.—Section 111(k) of CERCLA is amended to read as follows:

"(k) INSPECTOR GENERAL.—In each fiscal year, the Inspector General of each department, agency, or instrumentality of the United States which is carrying out any authority of this Act shall conduct an annual audit of all payments, obligations, reimbursements, or other uses of the Fund in the prior fiscal year, to assure that the Fund is being properly administered and that claims are being appropriately and expeditiously considered. The audit shall include an examination of a sample of agreements with States (in accordance with the provisions of the Single Audit Act) carrying out response actions under this title and an examination of remedial investigations and feasibility studies prepared for remedial actions. The Inspector General shall submit to the Congress an annual report regarding the audit report required under this subsection. The report shall contain such recommendations as the Inspector General deems appropriate. Each department, agency, or instrumentality of the United States shall cooperate with its inspector general in carrying out this subsection.".

(h) NEW SUBSECTIONS.—Section 111 of CERCLA is amended by adding after subsection (l) the following new subsections:

"(m) AGENCY FOR TOXIC SUBSTANCES AND DISEASE REGISTRY.—There shall be directly available to the Agency for Toxic Substances and Disease Registry to be used for the purpose of carrying out activities described in subsection (c)(4) and section 104(i) not less than $50,000,000 per fiscal year for each of fiscal years 1987 and 1988, not less than $55,000,000 for fiscal year 1989, and not less than $60,000,000 per fiscal year for each of fiscal years 1990 and 1991. Any funds so made available which are not obligated by the end of the fiscal year in which made available shall be returned to the Fund.

"(n) LIMITATIONS ON RESEARCH, DEVELOPMENT, AND DEMONSTRATION PROGRAM.—

"(1) SECTION 311(b).—For each of the fiscal years 1987, 1988, 1989, 1990, and 1991, not more than $20,000,000 of the amounts available in the Fund may be used for the purposes of carrying out the applied research, development, and demonstration program for alternative or innovative technologies and training program authorized under section 311(b) (relating to research, development, and demonstration) other than basic research. Such amounts shall remain available until expended.

"(2) SECTION 311(a).—From the amounts available in the Fund, not more than the following amounts may be used for the purposes of section 311(a) (relating to hazardous substance research, demonstration, and training activities):

"(A) For the fiscal year 1987, $3,000,000.
"(B) For the fiscal year 1988, $10,000,000.
"(C) For the fiscal year 1989, $20,000,000.
"(D) For the fiscal year 1990, $30,000,000.
"(E) For the fiscal year 1991, $35,000,000.

No more than 10 percent of such amounts shall be used for training under section 311(a) in any fiscal year.

"(3) SECTION 311(d).—For each of the fiscal years 1987, 1988, 1989, 1990, and 1991, not more than $5,000,000 of the amounts available in the Fund may be used for the purposes of section 311(d) (relating to university hazardous substance research centers).

"(o) NOTIFICATION PROCEDURES FOR LIMITATIONS ON CERTAIN PAYMENTS.—Not later than 90 days after the enactment of this subsection, the President shall develop and implement procedures to adequately notify, as soon as practicable after a site is included on the National Priorities List, concerned local and State officials and other concerned persons of the limitations, set forth in subsection (a)(2) of this section, on the payment of claims for necessary response costs incurred with respect to such site.".

(i) AUTHORIZATION OF APPROPRIATIONS.—Section 111 of CERCLA is amended by adding the following subsection after subsection (o):

"(p) GENERAL REVENUE SHARE OF SUPERFUND.—

"(1) IN GENERAL.—The following sums are authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, to the Hazardous Substance Superfund:

"(A) For fiscal year 1987, $212,500,000.
"(B) For fiscal year 1988, $212,500,000.
"(C) For fiscal year 1989, $212,500,000.
"(D) For fiscal year 1990, $212,500,000.
"(E) For fiscal year 1991, $212,500,000.

In addition there is authorized to be appropriated to the Hazardous Substance Superfund for each fiscal year an amount equal to so much of the aggregate amount authorized to be appropriated under this subsection (and paragraph (2) of section 221(b) of the Hazardous Substance Response Revenue Act of 1980) as has not been appropriated before the beginning of the fiscal year involved.

"(2) COMPUTATION.—The amounts authorized to be appropriated under paragraph (1) of this subsection in a given fiscal year shall be available only to the extent that such amount exceeds the amount determined by the Secretary under section 9507(b)(2) of the Internal Revenue Code of 1986 for the prior fiscal year.".

SEC. 112. CLAIMS PROCEDURE.

(a) CLAIMS AGAINST THE FUND FOR RESPONSE COSTS.—Section 112(a) of CERCLA is amended to read as follows:

"(a) CLAIMS AGAINST THE FUND FOR RESPONSE COSTS.—No claim may be asserted against the Fund pursuant to section 111(a) unless such claim is presented in the first instance to the owner, operator, or guarantor of the vessel or facility from which a hazardous substance has been released, if known to the claimant, and to any other person known to the claimant who may be liable under section 107. In any case where the claim has not been satisfied within 60 days of presentation in accordance with this subsection, the claimant may present the claim to the Fund for payment. No claim against the Fund may be approved or certified during the pendency of an action by the claimant in court to recover costs which are the subject of the claim.".

(b) PROCEDURES.—Section 112(b) is amended by striking "(b)(1)" and inserting "(b)(1) PRESCRIBING FORMS AND PROCEDURES.—" and by striking paragraphs (2), (3), and (4) and inserting the following:

"(2) PAYMENT OR REQUEST FOR HEARING.—The President may, if satisfied that the information developed during the processing of the claim warrants it, make and pay an award of the claim, except that no claim may be awarded to the extent that a judicial judgment has been made on the costs that are the subject of the claim. If the President declines to pay all or part of the claim, the claimant may, within 30 days after receiving notice of the President's decision, request an administrative hearing.

"(3) BURDEN OF PROOF.—In any proceeding under this subsection, the claimant shall bear the burden of proving his claim.

"(4) DECISIONS.—All administrative decisions made hereunder shall be in writing, with notification to all appropriate parties, and shall be rendered within 90 days of submission of a claim to an administrative law judge, unless all the parties to the claim agree in writing to an extension or unless the President, in his discretion, extends the time limit for a period not to exceed sixty days.

"(5) FINALITY AND APPEAL.—All administrative decisions hereunder shall be final, and any party to the proceeding may appeal a decision within 30 days of notification of the award or decision. Any such appeal shall be made to the Federal district court for the district where the release or threat of release took place. In any such appeal, the decision shall be considered binding and conclusive, and shall not be overturned except for arbitrary or capricious abuse of discretion.

"(6) PAYMENT.—Within 20 days after the expiration of the appeal period for any administrative decision concerning an award, or within 20 days after the final judicial determination of any appeal taken pursuant to this subsection, the President shall pay any such award from the Fund. The President shall determine the method, terms, and time of payment.".

(c) STATUTE OF LIMITATIONS.—Section 112(d) of CERCLA is amended to read as follows:

"(d) STATUTE OF LIMITATIONS.—

"(1) CLAIMS FOR RECOVERY OF COSTS.—No claim may be presented under this section for recovery of the costs referred to in section 107(a) after the date 6 years after the date of completion of all response action.

"(2) CLAIMS FOR RECOVERY OF DAMAGES.—No claim may be presented under this section for recovery of the damages referred to in section 107(a) unless the claim is presented within 3 years after the later of the following:

"(A) The date of the discovery of the loss and its connection with the release in question.

"(B) The date on which final regulations are promulgated under section 301(c).

"(3) MINORS AND INCOMPETENTS.—The time limitations contained herein shall not begin to run—

"(A) against a minor until the earlier of the date when such minor reaches 18 years of age or the date on which a legal representative is duly appointed for the minor, or

"(B) against an incompetent person until the earlier of the date on which such persons incompetency ends or the date on which a legal representative is duly appointed for such incompetent person.".

(d) DOUBLE RECOVERY PROHIBITED.— Section 112 of CERCLA is amended by adding the following new subsection at the end thereof:

"(f) DOUBLE RECOVERY PROHIBITED.—Where the President has paid out of the Fund for any response costs or any costs specified under section 111(c)(1) or (2), no other claim may be paid out of the Fund for the same costs.".

SEC. 113. LITIGATION, JURISDICTION, AND VENUE.

(a) NATIONWIDE SERVICE OF PROCESS.—Section 113 of CERCLA is amended by adding the following new subsection at the end thereof:

"(e) NATIONWIDE SERVICE OF PROCESS.—In any action by the United States under this Act, process may be served in any district where the defendant is found, resides, transacts business, or has appointed an agent for the service of process.".

(b) CONTRIBUTION; STATUTE OF LIMITATIONS.—Section 113 of CERCLA is amended by adding the following new subsections after subsection (e):

"(f) CONTRIBUTION.—

"(1) CONTRIBUTION.—Any person may seek contribution from any other person who is liable or potentially liable under section 107(a), during or following any civil action under section 106 or under section 107(a). Such claims shall be brought in accordance with this section and the Federal Rules of Civil Procedure, and shall be governed by Federal law. In resolving contribution claims, the court may allocate response costs among liable parties using such equitable factors as the court determines are appropriate. Nothing in this subsection shall diminish the right of any person to bring an action for contribution in the absence of a civil action under section 106 or section 107.

"(2) SETTLEMENT.—A person who has resolved its liability to the United States or a State in an administrative or judicially approved settlement shall not be liable for claims for contribution regarding matters addressed in the settlement. Such settlement does not discharge any of the other potentially liable persons unless its terms so provide, but it reduces the potential liability of the others by the amount of the settlement.

"(3) PERSONS NOT PARTY TO SETTLEMENT.—(A) If the United States or a State has obtained less than complete relief from a person who has resolved its liability to the United States or the State in an administrative or judicially approved settlement, the United States or the State may bring an action against any person who has not so resolved its liability.

"(B) A person who has resolved its liability to the United States or a State for some or all of a response action or for some or all of the costs of such action in an administrative or judicially approved settlement may seek contribution from any person who is not party to a settlement referred to in paragraph (2).

"(C) In any action under this paragraph, the rights of any person who has resolved its liability to the United States or a State shall be subordinate to the rights of the United States or the State. Any contribution action brought under this paragraph shall be governed by Federal law.

"(g) PERIOD IN WHICH ACTION MAY BE BROUGHT.—

"(1) ACTIONS FOR NATURAL RESOURCE DAMAGES.—Except as provided in paragraphs (3) and (4), no action may be commenced for damages (as defined in section 101(6)) under this Act, unless that action is com-

menced within 3 years after the later of the following:

"(A) The date of the discovery of the loss and its connection with the release in question.

"(B) The date on which regulations are promulgated under section 301(c).

With respect to any facility listed on the National Priorities List ('NPL'), any Federal facility identified under section 120 (relating to Federal facilities), or any vessel or facility at which a remedial action under this Act is otherwise scheduled, an action for damages under this Act must be commenced within 3 years after the completion of the remedial action (excluding operation and maintenance activities) in lieu of the dates referred to in subparagraph (A) or (B). In no event may an action for damages under this Act with respect to such a vessel or facility be commenced (i) prior to 60 days after the Federal or State natural resource trustee provides to the President and the potentially responsible party a notice of intent to file suit, or (ii) before selection of the remedial action if the President is diligently proceeding with a remedial investigation and feasibility study under section 104(b) or section 120 (relating to Federal facilities). The limitation in the preceding sentence on commencing an action before giving notice or before selection of the remedial action does not apply to actions filed on or before the enactment of the Superfund Amendments and Reauthorization Act of 1986.

"(2) ACTIONS FOR RECOVERY OF COSTS.—An initial action for recovery of the costs referred to in section 107 must be commenced—

"(A) for a removal action, within 3 years after completion of the removal action, except that such cost recovery action must be brought within 6 years after a determination to grant a waiver under section 104(c)(1)(C) for continued response action; and

"(B) for a remedial action, within 6 years after initiation of physical on-site construction of the remedial action, except that, if the remedial action is initiated within 3 years after the completion of the removal action, costs incurred in the removal action may be recovered in the cost recovery action brought under this subparagraph.

In any such action described in this subsection, the court shall enter a declaratory judgment on liability for response costs or damages that will be binding on any subsequent action or actions to recover further response costs or damages. A subsequent action or actions under section 107 for further response costs at the vessel or facility may be maintained at any time during the response action, but must be commenced no later than 3 years after the date of completion of all response action. Except as otherwise provided in this paragraph, an action may be commenced under section 107 for recovery of costs at any time after such costs have been incurred.

"(3) CONTRIBUTION.—No action for contribution for any response costs or damages may be commenced more than 3 years after—

"(A) the date of judgment in any action under this Act for recovery of such costs or damages, or

"(B) the date of an administrative order under section 122(g) (relating to de minimis settlements) or 122(h) (relating to cost recovery settlements) or entry of a judicially approved settlement with respect to such costs or damages.

"(4) SUBROGATION.—No action based on rights subrogated pursuant to this section by reason of payment of a claim may be commenced under this title more than 3 years after the date of payment of such claim.

"(5) ACTIONS TO RECOVER INDEMNIFICATION PAYMENTS.—Notwithstanding any other provision of this subsection, where a payment pursuant to an indemnification agreement with a response action contractor is made under section 119, an action under section 107 for recovery of such indemnification payment from a potentially responsible party may be brought at any time before the expiration of 3 years from the date on which such payment is made.

"(6) MINORS AND INCOMPETENTS.—The time limitations contained herein shall not begin to run—

"(A) against a minor until the earlier of the date when such minor reaches 18 years of age or the date on which a legal representative is duly appointed for such minor, or

"(B) against an incompetent person until the earlier of the date on which such incompetent's incompetency ends or the date on which a legal representative is duly appointed for such incompetent.".

(c) PRE-ENFORCEMENT REVIEW.—

(1) CONFORMING AMENDMENT.—Section 113(b) of CERCLA is amended by striking out "subsection" and inserting in lieu thereof "subsections" and inserting "and (h)" after "(a)".

(2) TIMING OF REVIEW; ADMINISTRATIVE RECORD.—Section 113 of CERCLA is amended by adding at the end thereof the following new subsections:

"(h) TIMING OF REVIEW.—No Federal court shall have jurisdiction under Federal law other than under section 1332 of title 28 of the United States Code (relating to diversity of citizenship jurisdiction) or under State law which is applicable or relevant and appropriate under section 121 (relating to cleanup standards) to review any challenges to removal or remedial action selected under section 104, or to review any order issued under section 106(a), in any action except one of the following:

"(1) An action under section 107 to recover response costs or damages or for contribution.

"(2) An action to enforce an order issued under section 106(a) or to recover a penalty for violation of such order.

"(3) An action for reimbursement under section 106(b)(2).

"(4) An action under section 310 (relating to citizens suits) alleging that the removal or remedial action taken under section 104 or secured under section 106 was in violation of any requirement of this Act. Such an action may not be brought with regard to a removal where a remedial action is to be undertaken at the site.

"(5) An action under section 106 in which the United States has moved to compel a remedial action.

"(i) INTERVENTION.—In any action commenced under this Act or under the Solid Waste Disposal Act in a court of the United States, any person may intervene as a matter of right when such person claims an interest relating to the subject of the action and is so situated that the disposition of the action may, as a practical matter, impair or impede the person's ability to protect that interest, unless the President or the State shows that the person's interest is adequately represented by existing parties.

"(j) JUDICIAL REVIEW.—

"(1) LIMITATION.—In any judicial action under this Act, judicial review of any issues concerning the adequacy of any response action taken or ordered by the President shall be limited to the administrative record. Otherwise applicable principles of administrative law shall govern whether any supplemental materials may be considered by the court.

"(2) STANDARD.—In considering objections raised in any judicial action under this Act, the court shall uphold the President's decision in selecting the response action unless the objecting party can demonstrate, on the administrative record, that the decision was arbitrary and capricious or otherwise not in accordance with law.

"(3) REMEDY.—If the court finds that the selection of the response action was arbitrary and capricious or otherwise not in accordance with law, the court shall award (A) only the response costs or damages that are not inconsistent with the national contingency plan, and (B) such other relief as is consistent with the National Contingency Plan.

"(4) PROCEDURAL ERRORS.—In reviewing alleged procedural errors, the court may disallow costs or damages only if the errors were so serious and related to matters of such central relevance to the action that the action would have been significantly changed had such errors not been made.

"(k) ADMINISTRATIVE RECORD AND PARTICIPATION PROCEDURES.—

"(1) ADMINISTRATIVE RECORD.—The President shall establish an administrative record upon which the President shall base the selection of a response action. The administrative record shall be available to the public at or near the facility at issue. The President also may place duplicates of the administrative record at any other location.

"(2) PARTICIPATION PROCEDURES.—

"(A) REMOVAL ACTION.—The President shall promulgate regulations in accordance with chapter 5 of title 5 of the United States Code establishing procedures for the appropriate participation of interested persons in the development of the administrative record on which the President will base the selection of removal actions and on which judicial review of removal actions will be based.

"(B) REMEDIAL ACTION.—The President shall provide for the participation of interested persons, including potentially responsible parties, in the development of the administrative record on which the President will base the selection of remedial actions and on which judicial review of remedial actions will be based. The procedures developed under this subparagraph shall include, at a minimum, each of the following:

"(i) Notice to potentially affected persons and the public, which shall be accompanied by a brief analysis of the plan and alternative plans that were considered.

"(ii) A reasonable opportunity to comment and provide information regarding the plan.

"(iii) An opportunity for a public meeting in the affected area, in accordance with section 117(a)(2)(relating to public participation).

"(iv) A response to each of the significant comments, criticisms, and new data submitted in written or oral presentations.

"(v) A statement of the basis and purpose of the selected action.

For purposes of this subparagraph, the administrative record shall include all items developed and received under this subparagraph and all items described in the second sentence of section 117(d). The President shall promulgate regulations in accordance with chapter 5 of title 5 of the United States

Code to carry out the requirements of this subparagraph.

"(C) INTERIM RECORD.—Until such regulations under subparagraphs (A) and (B) are promulgated, the administrative record shall consist of all items developed and received pursuant to current procedures for selection of the response action, including procedures for the participation of interested parties and the public. The development of an administrative record and the selection of response action under this Act shall not include an adjudicatory hearing.

"(D) POTENTIALLY RESPONSIBLE PARTIES.—The President shall make reasonable efforts to identify and notify potentially responsible parties as early as possible before selection of a response action. Nothing in this paragraph shall be construed to be a defense to liability.

"(l) NOTICE OF ACTIONS.—Whenever any action is brought under this Act in a court of the United States by a plaintiff other than the United States, the plaintiff shall provide a copy of the complaint to the Attorney General of the United States and to the Administrator of the Environmental Protection Agency.".

SEC. 114. RELATIONSHIP TO OTHER LAW.

(a) USED OIL.—Section 114 (c) of CERCLA is amended to read as follows:

"(c) RECYCLED OIL.—

"(1) SERVICE STATION DEALERS, ETC.—No person (including the United States or any State) may recover, under the authority of subsection (a)(3) or (a)(4) of section 107, from a service station dealer for any response costs or damages resulting from a release or threatened release of recycled oil, or use the authority of section 106 against a service station dealer other than a person described in subsection (a)(1) or (a)(2) of section 107, if such recycled oil—

"(A) is not mixed with any other hazardous substance, and

"(B) is stored, treated, transported, or otherwise managed in compliance with regulations or standards promulgated pursuant to section 3014 of the Solid Waste Disposal Act and other applicable authorities.

Nothing in this paragraph shall affect or modify in any way the obligations or liability of any person under any other provision of State or Federal law, including common law, for damages, injury, or loss resulting from a release or threatened release of any hazardous substance or for removal or remedial action or the costs of removal or remedial action.

"(2) PRESUMPTION.—Solely for the purposes of this subsection, a service station dealer may presume that a small quantity of used oil is not mixed with other hazardous substances if it—

"(A) has been removed from the engine of a light duty motor vehicle or household appliances by the owner of such vehicle or appliances, and

"(B) is presented, by such owner, to the dealer for collection, accumulation, and delivery to an oil recycling facility.

"(3) DEFINITION.—For purposes of this subsection, the terms 'used oil' and 'recycled oil' have the same meanings as set forth in sections 1004(36) and 1004(37) of the Solid Waste Disposal Act and regulations promulgated pursuant to that Act.

"(4) EFFECTIVE DATE.—The effective date of paragraphs (1) and (2) of this subsection shall be the effective date of regulations or standards promulgated under section 3014 of the Solid Waste Disposal Act that include, among other provisions, a requirement to conduct corrective action to respond to any releases of recycled oil under subtitle C or subtitle I of such Act.".

(b) DEFINITION OF SERVICE STATION DEALER.—Section 101 of CERCLA is amended by inserting the following at the end thereof:

"(37)(A) The term 'service station dealer' means any person—

"(i) who owns or operates a motor vehicle service station, filling station, garage, or similar retail establishment engaged in the business of selling, repairing, or servicing motor vehicles, where a significant percentage of the gross revenue of the establishment is derived from the fueling, repairing, or servicing of motor vehicles, and

"(ii) who accepts for collection, accumulation, and delivery to an oil recycling facility, recycled oil that (I) has been removed from the engine of a light duty motor vehicle or household appliances by the owner of such vehicle or appliances, and (II) is presented, by such owner, to such person for collection, accumulation, and delivery to an oil recycling facility.

"(B) For purposes of section 114(c), the term 'service station dealer' shall, notwithstanding the provisions of subparagraph (A), include any government agency that establishes a facility solely for the purpose of accepting recycled oil that satisfies the criteria set forth in subclauses (I) and (II) of subparagraph (A)(ii), and, with respect to recycled oil that satisfies the criteria set forth in subclauses (I) and (II), owners or operators of refuse collection services who are compelled by State law to collect, accumulate, and deliver such oil to an oil recycling facility.

"(C) The President shall promulgate regulations regarding the determination of what constitutes a significant percentage of the gross revenues of an establishment for purposes of this paragraph.".

SEC. 115. DELEGATION; REGULATIONS.

Section 115 of CERCLA is not amended.

SEC. 116. SCHEDULES.

Title I of CERCLA is amended by adding the following new section after section 115:

"SEC. 116. SCHEDULES.

"(a) ASSESSMENT AND LISTING OF FACILITIES.—It shall be a goal of this Act that, to the maximum extent practicable—

"(1) not later than January 1, 1988, the President shall complete preliminary assessments of all facilities that are contained (as of the date of enactment of the Superfund Amendments and Reauthorization Act of 1986) on the Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS) including in each assessment a statement as to whether a site inspection is necessary and by whom it should be carried out; and

"(2) not later than January 1, 1989, the President shall assure the completion of site inspections at all facilities for which the President has stated a site inspection is necessary pursuant to paragraph (1).

"(b) EVALUATION.—Within 4 years after enactment of the Superfund Amendments and Reauthorization Act of 1986, each facility listed (as of the date of such enactment) in the CERCLIS shall be evaluated if the President determines that such evaluation is warranted on the basis of a site inspection or preliminary assessment. The evaluation shall be in accordance with the criteria established in section 105 under the National Contingency Plan for determining priorities among release for inclusion on the National Priorities List. In the case of a facility listed in the CERCLIS after the enactment of the Superfund Amendments and Reauthorization Act of 1986, the facility shall be evaluated within 4 years after the date of such listing if the President determines that such evaluation is warranted on the basis of a site inspection or preliminary assessment.

"(c) EXPLANATIONS.—If any of the goals established by subsection (a) or (b) are not achieved, the President shall publish an explanation of why such action could not be completed by the specified date.

"(d) COMMENCEMENT OF RI/FS.—The President shall assure that remedial investigations and feasibility studies (RI/FS) are commenced for facilities listed on the National Priorities List, in addition to those commenced prior to the date of enactment of the Superfund Amendments and Reauthorization Act of 1986, in accordance with the following schedule:

"(1) not fewer than 275 by the date 36 months after the date of enactment of the Superfund Amendments and Reauthorization Act of 1986, and

"(2) if the requirement of paragraph (1) is not met, not fewer than an additional 175 by the date 4 years after such date of enactment, an additional 200 by the date 5 years after such date of enactment, and a total of 650 by the date 5 years after such date of enactment.

"(e) COMMENCEMENT OF REMEDIAL ACTION.—The President shall assure that substantial and continuous physical on-site remedial action commences at facilities on the National Priorities List, in addition to those facilities on which remedial action has commenced prior to the date of enactment of the Superfund Amendments and Reauthorization Act of 1986, at a rate not fewer than:

"(1) 175 facilities during the first 36-month period after enactment of this subsection; and

"(2) 200 additional facilities during the following 24 months after such 36-month period.".

SEC. 117. PUBLIC PARTICIPATION.

Title I of CERCLA is amended by adding the following new section after section 116:

"SEC. 117. PUBLIC PARTICIPATION.

"(a) PROPOSED PLAN.—Before adoption of any plan for remedial action to be undertaken by the President, by a State, or by any other person, under section 104, 106, 120, or 122, the President or State, as appropriate, shall take both of the following actions:

"(1) Publish a notice and brief analysis of the proposed plan and make such plan available to the public.

"(2) Provide a reasonable opportunity for submission of written and oral comments and an opportunity for a public meeting at or near the facility at issue regarding the proposed plan and regarding any proposed findings under section 121(d)(4) (relating to cleanup standards). The President or the State shall keep a transcript of the meeting and make such transcript available to the public.

The notice and analysis published under paragraph (1) shall include sufficient information as may be necessary to provide a reasonable explanation of the proposed plan and alternative proposals considered.

"(b) FINAL PLAN.—Notice of the final remedial action plan adopted shall be published and the plan shall be made available to the public before commencement of any remedial action. Such final plan shall be accompanied by a discussion of any significant changes (and the reasons for such changes) in the proposed plan and a response to each of the significant comments, criticisms, and

new data submitted in written or oral presentations under subsection (a).

"(c) EXPLANATION OF DIFFERENCES.—After adoption of a final remedial action plan—

"(1) if any remedial action is taken,

"(2) if any enforcement action under section 106 is taken, or

"(3) if any settlement or consent decree under section 106 or section 122 is entered into,

and if such action, settlement, or decree differs in any significant respects from the final plan, the President or the State shall publish an explanation of the significant differences and the reasons such changes were made.

"(d) PUBLICATION.—For the purposes of this section, publication shall include, at a minimum, publication in a major local newspaper of general circulation. In addition, each item developed, received, published, or made available to the public under this section shall be available for public inspection and copying at or near the facility at issue.

"(e) GRANTS FOR TECHNICAL ASSISTANCE.—

"(1) AUTHORITY.—Subject to such amounts as are provided in appropriations Acts and in accordance with rules promulgated by the President, the President may make grants available to any group of individuals which may be affected by a release or threatened release at any facility which is listed on the National Priorities List under the National Contingency Plan. Such grants may be used to obtain technical assistance in interpreting information with regard to the nature of the hazard, remedial investigation and feasibility study, record of decision, remedial design, selection and construction of remedial action, operation and maintenance, or removal action at such facility.

"(2) AMOUNT.—The amount of any grant under this subsection may not exceed $50,000 for a single grant recipient. The President may waive the $50,000 limitation in any case where such waiver is necessary to carry out the purposes of this subsection. Each grant recipient shall be required, as a condition of the grant, to contribute at least 20 percent of the total of costs of the technical assistance for which such grant is made. The President may waive the 20 percent contribution requirement if the grant recipient demonstrates financial need and such waiver is necessary to facilitate public participation in the selection of remedial action at the facility. Not more than one grant may be made under this subsection with respect to a single facility, but the grant may be renewed to facilitate public participation at all stages of remedial action.".

SEC. 118. MISCELLANEOUS PROVISIONS.

(a) PRIORITY FOR DRINKING WATER SUPPLIES.—Title I of CERCLA is amended by adding the following new section after section 117:

"SEC. 118. HIGH PRIORITY FOR DRINKING WATER SUPPLIES.

"For purposes of taking action under section 104 or 106 and listing facilities on the National Priorities List, the President shall give a high priority to facilities where the release of hazardous substances or pollutants or contaminants has resulted in the closing of drinking water wells or has contaminated a principal drinking water supply.".

(b) REMOVAL AND TEMPORARY STORAGE OF CONTAINERS OF RADON CONTAMINATED SOIL.—Not later than 90 days after the enactment of this Act, the Administrator shall make a grant of $7,500,000 to the State of New Jersey for transportation from residential areas in the State of New Jersey and temporary storage of approximately 14,000 containers of radon contaminated soil which is the subject of a remedial action for which a remedial investigation and feasibility study has been initiated before such date. Such containers shall be transported to and temporarily stored at any site in the State of New Jersey designated by the Governor of such State. For purposes of section 111(a) of CERCLA, the grant under this subsection for transportation and storage of such containers shall be treated as payment of governmental response cost incurred pursuant to section 104 of CERCLA.

(c) UNCONSOLIDATED QUATERNARY AQUIFER.—Notwithstanding any other provision of law, no person may—

(1) locate or authorize the location of a landfill, surface impoundment, waste pile, injection well, or land treatment facility over the Unconsolidated Quaternary Aquifer, or the recharge zone or streamflow source zone of such aquifer, in the Rockaway River Basin, New Jersey (as such aquifer and zones are described in the Federal Register, January 24, 1984, pages 2946-2948); or

(2) place or authorize the placement of solid waste in a landfill, surface impoundment, waste pile, injection well, or land treatment facility over such aquifer or zone.

This subsection may be enforced under sections 309(a) and (b) of the Federal Water Pollution Control Act. For purposes of section 309(c) of such Act, a violation of this subsection shall be considered a violation of section 301 of such Act.

(d) STUDY OF SHORTAGES OF SKILLED PERSONNEL.—The Comptroller General shall study the problem of shortages of skilled personnel in the Environmental Protection Agency to carry out response actions under CERCLA. In particular the Comptroller General shall study—

(1) the types of skilled personnel needed for response actions for which there are shortages in the Environmental Protection Agency,

(2) the extent of such shortages,

(3) pay differential between the public and private sectors for the skilled positions involved in response actions,

(4) the extent to which skilled personnel of Federal and State governments involved in response actions are leaving their positions for employment in the private sector,

(5) the success of programs of the Department of Defense and the Office of Personnel Management in retaining skilled personnel, and

(6) the types of training required to improve the skills of employees carrying out response actions.

The Comptroller General shall complete the study required by this subsection and submit a report on the results thereof to Congress not later than July 1, 1987.

(e) STATE REQUIREMENTS NOT APPLICABLE TO CERTAIN TRANSFERS.—No State or local requirement shall apply to the transfer and disposal of any hazardous substance or pollutant or contaminant from a facility at which a release or threatened release has occurred to a facility for which a final permit under section 3005(a) of the Solid Waste Disposal Act is in effect if the following conditions apply—

(1) Such permit was issued after January 1, 1983 and before November 1, 1984.

(2) The transfer and disposal is carried out pursuant to a cooperative agreement between the Administrator and the State.

(3) The facility at which the release or threatened release has occurred is identified as the McColl Site in Fullerton, California.

The terms used in this section shall have the same meaning as when used in title I of CERCLA.

(f) STUDY OF LEAD POISONING IN CHILDREN.—(1) The Administrator of the Agency for Toxic Substances and Disease Registry shall, in consultation with the Administrator of the Environmental Protection Agency and other officials as appropriate, not later than March 1, 1987, submit to the Congress, a report on the nature and extent of lead poisoning in children from environmental sources. Such report shall include, at a minimum, the following information—

(A) an estimate of the total number of children, arrayed according to Standard Metropolitan Statistical Area or other appropriate geographic unit, exposed to environmental sources of lead at concentrations sufficient to cause adverse health effects;

(B) an estimate of the total number of children exposed to environmental sources of lead arrayed according to source or source types;

(C) a statement of the long term consequences for public health of unabated exposures to environmental sources of lead and including but not limited to, diminution in intelligence, increases in morbidity and mortality; and

(D) methods and alternatives available for reducing exposures of children to environmental sources of lead.

(2) Such report shall also score and evaluate specific sites at which children are known to be exposed to environmental sources of lead due to releases, utilizing the Hazard Ranking system of the National Priorities List.

(3) The costs of preparing and submitting the report required by this section shall be borne by the Hazardous Substance Superfund established under subchapter A of chapter 98 of Internal Revenue Code of 1954.

(g) FEDERALLY LICENSED DAM.—For purposes of CERCLA in the case of the Milltown Dam in the State of Montana licensed under part 1 of the Federal Power Act and designated as FERC license number 2543-004, if a hazardous substance, pollutant, or contaminant—

(1) has been released into the environment upstream of the dam, and

(2) has subsequently come to be located in the reservoir created by such dam

notwithstanding section 101(20) of such Act, the term "owner or operator" does not include the owner or operator of the dam unless such owner or operator is a person who would otherwise be liable for such release or threatened release under section 107 of such Act.

(h) COMMUNITY RELOCATION AT TIMES BEACH SITE.—For purposes of any Missouri dioxon site at which a temporary or permanent relocation decision has been made, or is under active consideration, by the Administrator as of the enactment of this Act, the terms "remove" and "removal" as used in CERCLA shall be deemed to include the costs of permanent relocation of residents where it is determined that such permanent relocation is cost effective or may be necessary to protect health or welfare. In the case of a business located in an area of evacuation or relocation at such facility, such terms may also include the payment of those installments of principal and interest on business debt which accrue between the date of evacuation or temporary relocation and

30 days following the date that permanent relocation is actually accomplished or, if permanent relocation is formally rejected as the appropriate response, the date on which evacuation or temporary relocation ceases. In the case of an individual unemployed as a result of such evacuation or relocation, such terms may also include the provision of assistance identical to that authorized by sections 407, 408, and 409 of the Disaster Relief Act of 1974; except that the costs of such assistance shall be paid from the Trust Fund established under amendments made to the Internal Revenue Code of 1954 by this Act. Section 104(c)(1) of CERCLA shall not apply to obligations from the Fund for permanent relocation under this paragraph.

(i) LIMITED WAIVERS IN STATE OF ILLINOIS.—

(1) MOBILE INCINERATORS.—In the case of remedial actions specifically involving mobile incinerator units in the State of Illinois, if such remedial actions are undertaken by the State under the authority of a State Superfund law or equivalent authority, the State may, with the approval of the Administrator, waive any permit requirement under subtitle C of the Solid Waste Disposal Act which would be otherwise applicable to such action to the extent that the following conditions are met:

(A) NO TRANSFER.—The incinerator does not involve the transfer of a hazardous substance or pollutant or contaminant from the facility at which the release or threatened release occurs to an offsite facility.

(B) REMEDIAL ACTION.—The remedial action provides each of the following:

(i) Changes in the character or composition of the hazardous substance or pollutant or contaminant concerned so that it no longer presents a risk to public health.

(ii) Protection against accidental emissions during operation.

(iii) Protection of public health considering the multimedia impacts of the treatment process.

(C) PUBLIC PARTICIPATION.—The State provides procedures for public participation regarding the response action which are at least equivalent to the level of public participation procedures applicable under CERCLA and under the Solid Waste Disposal Act.

(2) EFFECT OF WAIVER.—The waiver of any permit requirement under this subsection shall not be construed to waive any standard or level of control which—

(A) is applicable to any hazardous substance or pollutant or contaminant involved in the remedial action; and

(B) would otherwise be contained in the permit.

Such waiver of any permit requirement under subtitle C of the Solid Waste Disposal Act shall only apply to the extent that the facility or remedial action involves the onsite treatment with a mobile incineration unit of waste present at such site. The waiver shall not apply to any other regulated or potentially regulated activity, including the use of the mobile incineration unit for actions not authorized by the State.

(3) EXPIRATION OF AUTHORITY.—The authority of this subsection shall terminate at the end of 3 years, unless the State demonstrates, to the satisfaction of the Administrator, that the operation of mobile incinerators in the State has sufficiently protected public health and the environment and is consistent with the criteria required for a permit under subtitle C of the Solid Waste Disposal Act.

(j) STUDY OF JOINT USE OF TRUCKS.—

(1) STUDY.—The Administrator, in consultation with the Secretary of Transportation, shall conduct a study of problems associated with the use of any vehicle for purposes other than the transportation of hazardous substances when that vehicle is used at other times for the transportation of hazardous substances. At a minimum, the Administrator shall consider—

(A) whether such joint use of vehicles should be prohibited, and

(B) whether, if such joint use is permitted, special safeguards should be taken to minimize threats to public health and the environment.

(2) REPORT.—The Administrator shall submit a report, along with recommendations, to Congress on the results of the study conducted under paragraph (1) not later than 180 days after the date of the enactment of this Act.

(k) RADON ASSESSMENT AND MITIGATION.—

(1) NATIONAL ASSESSMENT OF RADON GAS.—No later than one year after the enactment of this Act, the Administrator shall submit to the Congress a report which shall, to the extent possible—

(A) identify the locations in the United States where radon is found in structures where people normally live or work, including educational institutions;

(B) assess the levels of radon gas that are present in such structures;

(C) determine the level of radon gas and radon daughters which poses a threat to human health and assess for each location identified under subparagraph (A) the extent of the threat to human health;

(D) determine methods of reducing or eliminating the threat to human health of radon gas and radon daughters; and

(E) include guidance and public information materials based on the findings or research of mitigating radon.

(2) RADON MITIGATION DEMONSTRATION PROGRAM.—

(A) DEMONSTRATION PROGRAM.—The Administrator shall conduct a demonstration program to test methods and technologies of reducing or eliminating radon gas and radon daughters where it poses a threat to human health. The Administrator shall take into consideration any demonstration program underway in the Reading Prong of Pennsylvania, New Jersey, and New York and at other sites prior to enactment. The demonstration program under this section shall be conducted in the Reading Prong, and at such other sites as the Administrator considers appropriate.

(B) ANNUAL REPORTS.—The Administrator shall submit annual reports not later than February 1 of each year (beginning February 1, 1987) on the status of the demonstration program carried out under this subsection and on any such demonstration program initiated prior to enactment.

(C) LIABILITY.—Liability, if any, for persons undertaking activities pursuant to the radon mitigation demonstration program authorized under this subsection shall be determined under principles of existing law.

(3) CONSTRUCTION OF SECTION.—Nothing in this subsection shall be construed to authorize the Administrator to carry out any regulatory program or any activity other than research, development, and related reporting, information dissemination, and coordination activities specified in this subsection. Nothing in paragraph (1) or (2) shall be construed to limit the authority of the Administrator or of any other agency or instrumentality of the United States under any other authority of law.

(l) GULF COAST HAZARDOUS SUBSTANCE RESEARCH, DEVELOPMENT, AND DEMONSTRATION CENTER.—

(1) ESTABLISHMENT OF HAZARDOUS SUBSTANCE RESEARCH, DEVELOPMENT, AND DEMONSTRATION CENTER.—The Administrator shall establish a hazardous substance research, development, and demonstration center (hereinafter in this subsection referred to as the "Center") for the purpose of conducting research to aid in more effective hazardous substance response and waste management throughout the Gulf Coast.

(2) PURPOSES OF THE CENTER.—The Center shall carry out a program of research, evaluation, testing, development, and demonstration of alternative or innovative technologies which may be utilized in response actions or in normal handling of hazardous wastes to achieve better protection of human health and the environment.

(3) OPERATION OF CENTER.—(A) For purposes of operating the Center, the Administrator is authorized to enter into contracts and cooperative agreements with, and make grants to, a university related institute involved with the improvement of waste management. Such institute shall be located in Jefferson County, Texas.

(B) The Center shall be authorized to make grants, accept contributions, and enter into agreements with universities located in the States of Texas, Louisiana, Mississippi, Alabama, and Florida in order to carry out the purposes of the Center.

(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Administrator for purposes of carrying out this subsection for fiscal years beginning after September 30, 1986, not more than $5,000,000.

(m) RADON PROTECTION AT CURRENT NATIONAL PRIORITIES LIST SITES .—It is the sense of the Congress that the President, in selecting response action for facilities included on the National Priorities List published under section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 because of the presence of radon, is not required by statute or regulations to use fully demonstrated methods, particularly those involving the offsite transport and disposition of contaminated material, but may use innovative or alternative methods which protect human health and the environment in a more cost-effective manner.

(n) SPILL CONTROL TECHNOLOGY.—

(1) ESTABLISHMENT OF PROGRAM.—Within 180 days of enactment of this subsection, the Secretary of the United States Department of Energy is directed to carry out a program of testing and evaluation of technologies which may be utilized in responding to liquefied gaseous and other hazardous substance spills at the Liquefied Gaseous Fuels Spill Test Facility that threaten public health or the environment.

(2) TECHNOLOGY TRANSFER.—In carrying out the program established under this subsection, the Secretary shall conduct a technology transfer program that, at a minimum—

(A) documents and archives spill control technology;

(B) investigates and analyzes significant hazardous spill incidents;

(C) develops and provides generic emergency action plans;

(D) documents and archives spill test results;

(E) develops emergency action plans to respond to spills;

(F) conducts training of spill response personnel; and

(G) establishes safety standards for personnel engaged in spill response activities.

(3) CONTRACTS AND GRANTS.—The Secretary is directed to enter into contracts and grants with a nonprofit organization in Albany County, Wyoming, that is capable of providing the necessary technical support and which is involved in environmental activities related to such hazardous substance related emergencies.

(4) USE OF SITE.—The Secretary shall arrange for the use of the Liquefied Gaseous Fuels Spill Test Facility to carry out the provisions of this subsection.

(o) PACIFIC NORTHWEST HAZARDOUS SUBSTANCE RESEARCH, DEVELOPMENT, AND DEMONSTRATION CENTER.—

(1) ESTABLISHMENT.—The Administrator shall establish a hazardous substance research, development, and demonstration center (hereinafter in this subsection referred to as the "Center") for the purpose of conducting research to aid in more effective hazardous substance response in the Pacific Northwest.

(2) PURPOSES OF CENTER.—The Center shall carry out a program of research, evaluation, testing, development, and demonstration of alternative or innovative technologies which may be utilized in response actions to achieve more permanent protection of human health and welfare and the environment.

(3) OPERATION OF CENTER.—

(A) NONPROFIT ENTITY.—For the purposes of operating the Center, the Administrator is authorized to enter into contracts and cooperative agreements with, and make grants to, a nonprofit private entity as defined in section [201(i) of Public Law 96-517 which entity shall agree to provide the basic technical and management personnel. Such nonprofit private entity shall also agree to provide at least two permanent research facilities, one of which shall be located in Benton County, Washington, and one of which shall be located in Clallam County, Washington.

(B) AUTHORITIES.—The Center shall be authorized to make grants, accept contributions, and enter into agreements with universities located in the States of Washington, Oregon, Idaho, and Montana in order to carry out the purposes of the Center.

(4) HAZARDOUS WASTE RESEARCH AT THE HANFORD SITE.—

(A) INTERAGENCY AGREEMENTS.—The Administrator and the Secretary of Energy are authorized to enter into interagency agreements with one another for the purpose of providing for research, evaluation, testing, development, and demonstration into alternative or innovative technologies to characterize and assess the nature and extent of hazardous waste (including radioactive mixed waste) contamination at the Hanford site, in the State of Washington.

(B) FUNDING.—There is authorized to be appropriated to the Secretary of Energy for purposes of carrying out this paragraph for fiscal years beginning after September 30, 1986, not more than $5,000,000. All sums appropriated under this subparagraph shall be provided to the Administrator by the Secretary of Energy, pursuant to the interagency agreement entered into under subparagraph (A), for the purpose of the Administrator entering into contracts and cooperative agreements with, and making grants to, the Center in order to carry out the research, evaluation, testing, development, and demonstration described in paragraph (1).

(5) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Administrator for purposes of carrying out this subsection (other than paragraph (4)) for fiscal years beginning after September 30, 1986, not more than $5,000,000.

(p) SILVER CREEK TAILINGS.—Effective with the date of enactment of this Act, the facility listed in Group 7 in EPA National Priorities List Update #4 (50 Federal Register 37956, September 18, 1985), the site in Park City, Utah, which is located on tailings from noncoal mining operations, shall be deemed removed from the list of sites recommended for inclusion on the National Priorities List, unless the President determines upon site specific data not used in the proposed listing of such facility, that the facility meets requirements of the Hazard Ranking System or any revised Hazard Ranking System.

SEC. 119. RESPONSE ACTION CONTRACTORS.

Title I of CERCLA is amended by adding the following new section after section 118:

"SEC. 119. RESPONSE ACTION CONTRACTORS.

"(a) LIABILITY OF RESPONSE ACTION CONTRACTORS.—

"(1) RESPONSE ACTION CONTRACTORS.—A person who is a response action contractor with respect to any release or threatened release of a hazardous substance or pollutant or contaminant from a vessel or facility shall not be liable under this title or under any other Federal law to any person for injuries, costs, damages, expenses, or other liability (including but not limited to claims for indemnification or contribution and claims by third parties for death, personal injury, illness or loss of or damage to property or economic loss) which results from such release or threatened release.

"(2) NEGLIGENCE, ETC.—Paragraph (1) shall not apply in the case of a release that is caused by conduct of the response action contractor which is negligent, grossly negligent, or which constitutes intentional misconduct.

"(3) EFFECT ON WARRANTIES; EMPLOYER LIABILITY.—Nothing in this subsection shall affect the liability of any person under any warranty under Federal, State, or common law. Nothing in this subsection shall affect the liability of an employer who is a response action contractor to any employee of such employer under any provision of law, including any provision of any law relating to worker's compensation.

"(4) GOVERNMENTAL EMPLOYEES.—A state employee or an employee of a political subdivision who provides services relating to response action while acting within the scope of his authority as a governmental employee shall have the same exemption from liability (subject to the other provisions of this section) as is provided to the response action contractor under this section.

"(b) SAVINGS PROVISIONS.—

"(1) LIABILITY OF OTHER PERSONS.—The defense provided by section 107(b)(3) shall not be available to any potentially responsible party with respect to any costs or damages caused by any act or omission of a response action contractor. Except as provided in subsection (a)(4) and the preceding sentence, nothing in this section shall affect the liability under this Act or under any other Federal or State law of any person, other than a response action contractor.

"(2) BURDEN OF PLAINTIFF.—Nothing in this section shall affect the plaintiff's burden of establishing liability under this title.

"(c) INDEMNIFICATION.—

"(1) IN GENERAL.—The President may agree to hold harmless and indemnify any response action contractor meeting the requirements of this subsection against any liability (including the expenses of litigation or settlement) for negligence arising out of the contractor's performance in carrying out response action activities under this title, unless such liability was caused by conduct of the contractor which was grossly negligent or which constituted intentional misconduct.

"(2) APPLICABILITY.—This subsection shall apply only with respect to a response action carried out under written agreement with—

"(A) the President;

"(B) any Federal agency;

"(C) a State or political subdivision which has entered into a contract or cooperative agreement in accordance with section 104(d)(1) of this title; or

"(D) any potentially responsible party carrying out any agreement under section 122 (relating to settlements) or section 106 (relating to abatement).

"(3) SOURCE OF FUNDING.—This subsection shall not be subject to section 1301 or 1341 of title 31 of the United States Code or section 3732 of the Revised Statutes (41 U.S.C. 11) or to section 3 of the Superfund Amendments and Reauthorization Act of 1986. For purposes of section 111, amounts expended pursuant to this subsection for indemnification of any response action contractor (except with respect to federally owned or operated facilities) shall be considered governmental response costs incurred pursuant to section 104. If sufficient funds are unavailable in the Hazardous Substance Superfund established under subchapter A of chapter 98 of the Internal Revenue Code of 1954 to make payments pursuant to such indemnification or if the Fund is repealed, there are authorized to be appropriated such amounts as may be necessary to make such payments.

"(4) REQUIREMENTS.—An indemnification agreement may be provided under this subsection only if the President determines that each of the following requirements are met:

"(A) The liability covered by the indemnification agreement exceeds or is not covered by insurance available, at a fair and reasonable price, to the contractor at the time the contractor enters into the contract to provide response action, and adequate insurance to cover such liability is not generally available at the time the response action contract is entered into.

"(B) The response action contractor has made diligent efforts to obtain insurance coverage from non-Federal sources to cover such liability.

"(C) In the case of a response action contract covering more than one facility, the response action contractor agrees to continue to make such diligent efforts each time the contractor begins work under the contract at a new facility.

"(5) LIMITATIONS.—

"(A) LIABILITY COVERED.—Indemnification under this subsection shall apply only to response action contractor liability which results from a release of any hazardous substance or pollutant or contaminant if such release arises out of response action activities.

"(B) DEDUCTIBLES AND LIMITS.—An indemnification agreement under this subsection shall include deductibles and shall place limits on the amount of indemnification to be made available.

"(C) CONTRACTS WITH POTENTIALLY RESPONSIBLE PARTIES.—

"(i) DECISION TO INDEMNIFY.—In deciding whether to enter into an indemnification agreement with a response action contractor carrying out a written contract or agreement with any potentially responsible party, the President shall determine an amount which the potentially responsible party is able to indemnify the contractor. The President may enter into such an indemnification agreement only if the President deter-

mines that such amount of indemnification is inadequate to cover any reasonable potential liability of the contractor arising out of the contractor's negligence in performing the contract or agreement with such party. The President shall make the determinations in the preceding sentences (with respect to the amount and the adequacy of the amount) taking into account the total net assets and resources of potentially responsible parties with respect to the facility at the time of such determinations.

"(ii) CONDITIONS.—The President may pay a claim under an indemnification agreement referred to in clause (i) for the amount determined under clause (i) only if the contractor has exhausted all administrative, judicial, and common law claims for indemnification against all potentially responsible parties participating in the clean-up of the facility with respect to the liability of the contractor arising out of the contractor's negligence in performing the contract or agreement with such party. Such indemnification agreement shall require such contractor to pay any deductible established under subparagraph (B) before the contractor may recover any amount from the potentially responsible party or under the indemnification agreement.

"(D) RCRA FACILITIES.—No owner or operator of a facility regulated under the Solid Waste Disposal Act may be indemnified under this subsection with respect to such facility.

"(E) PERSONS RETAINED OR HIRED.—A person retained or hired by a person described in subsection (e)(2)(B) shall be eligible for indemnification under this subsection only if the President specifically approves of the retaining or hiring of such person.

"(6) COST RECOVERY.—For purposes of section 107, amounts expended pursuant to this subsection for indemnification of any person who is a response action contractor with respect to any release or threatened release shall be considered a cost of response incurred by the United States Government with respect to such release.

"(7) REGULATIONS.—The President shall promulgate regulations for carrying out the provisions of this subsection. Before promulgation of the regulations, the President shall develop guidelines to carry out this section. Development of such guidelines shall include reasonable opportunity for public comment.

"(8) STUDY.—The Comptroller General shall conduct a study in the fiscal year ending September 30, 1989, on the application of this subsection, including whether indemnification agreements under this subsection are being used, the number of claims that have been filed under such agreements, and the need for this subsection. The Comptroller General shall report the findings of the study to Congress no later than September 30, 1989.

"(d) EXCEPTION.—The exemption provided under subsection (a) and the authority of the President to offer indemnification under subsection (c) shall not apply to any person covered by the provisions of paragraph (1), (2), (3), or (4) of section 107(a) with respect to the release or threatened release concerned if such person would be covered by such provisions even if such person had not carried out any actions referred to in subsection (e) of this section.

"(e) DEFINITIONS.—For purposes of this section—

"(1) RESPONSE ACTION CONTRACT.—The term 'response action contract' means any written contract or agreement entered into by a response action contractor (as defined in paragraph (2)(A) of this subsection) with—

"(A) the President;

"(B) any Federal agency;

"(C) a State or political subdivision which has entered into a contract or cooperative agreement in accordance with section 104(d)(1) of this Act; or

"(D) any potentially responsible party carrying out an agreement under section 106 or 122;

to provide any remedial action under this Act at a facility listed on the National Priorities List, or any removal under this Act, with respect to any release or threatened release of a hazardous substance or pollutant or contaminant from the facility or to provide any evaluation, planning, engineering, surveying and mapping, design, construction, equipment, or any ancillary services thereto for such facility.

"(2) RESPONSE ACTION CONTRACTOR.—The term 'response action contractor' means—

"(A) any—

"(i) person who enters into a response action contract with respect to any release or threatened release of a hazardous substance or pollutant or contaminant from a facility and is carrying out such contract; and

"(ii) person, public or nonprofit private entity, conducting a field demonstration pursuant to section 311(b); and

"(B) any person who is retained or hired by a person described in subparagraph (A) to provide any services relating to a response action.

"(3) INSURANCE.—The term 'insurance' means liability insurance which is fair and reasonably priced, as determined by the President, and which is made available at the time the contractor enters into the response action contract to provide response action.

"(f) COMPETITION.—Response action contractors and subcontractors for program management, construction management, architectural and engineering, surveying and mapping, and related services shall be selected in accordance with title IX of the Federal Property and Administrative Services Act of 1949. The Federal selection procedures shall apply to appropriate contracts negotiated by all Federal governmental agencies involved in carrying out this Act. Such procedures shall be followed by response action contractors and subcontractors.".

SEC. 120. FEDERAL FACILITIES.

(a) IN GENERAL.—Title I of CERCLA is amended by adding the following new section after section 119:

"SEC. 120. FEDERAL FACILITIES.

"(a) APPLICATION OF ACT TO FEDERAL GOVERNMENT.—

"(1) IN GENERAL.—Each department, agency, and instrumentality of the United States (including the executive, legislative, and judicial branches of government) shall be subject to, and comply with, this Act in the same manner and to the same extent, both procedurally and substantively, as any nongovernmental entity, including liability under section 107 of this Act. Nothing in this section shall be construed to affect the liability of any person or entity under sections 106 and 107.

"(2) APPLICATION OF REQUIREMENTS TO FEDERAL FACILITIES.—All guidelines, rules, regulations, and criteria which are applicable to preliminary assessments carried out under this Act for facilities at which hazardous substances are located, applicable to evaluations of such facilities under the National Contingency Plan, applicable to inclusion on the National Priorities List, or applicable to remedial actions at such facilities shall also be applicable to facilities which are owned or operated by a department, agency, or instrumentality of the United States in the same manner and to the extent as such guidelines, rules, regulations, and criteria are applicable to other facilities. No department, agency, or instrumentality of the United States may adopt or utilize any such guidelines, rules, regulations, or criteria which are inconsistent with the guidelines, rules, regulations, and criteria established by the Administrator under this Act.

"(3) EXCEPTIONS.—This subsection shall not apply to the extent otherwise provided in this section with respect to applicable time periods. This subsection shall also not apply to any requirements relating to bonding, insurance, or financial responsibility. Nothing in this Act shall be construed to require a State to comply with section 104(c)(3) in the case of a facility which is owned or operated by any department, agency, or instrumentality of the United States.

"(4) STATE LAWS.—State laws concerning removal and remedial action, including State laws regarding enforcement, shall apply to removal and remedial action at facilities owned or operated by a department, agency, or instrumentality of the United States when such facilities are not included on the National Priorities List. The preceding sentence shall not apply to the extent a State law would apply any standard or requirement to such facilities which is more stringent than the standards and requirements applicable to facilities which are not owned or operated by any such department, agency, or instrumentality.

"(b) NOTICE.—Each department, agency, and instrumentality of the United States shall add to the inventory of Federal agency hazardous waste facilities required to be submitted under section 3016 of the Solid Waste Disposal Act (in addition to the information required under section 3016(a)(3) of such Act) information on contamination from each facility owned or operated by the department, agency, or instrumentality if such contamination affects contiguous or adjacent property owned by the department, agency, or instrumentality or by any other person, including a description of the monitoring data obtained.

"(c) FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET.—The Administrator shall establish a special Federal Agency Hazardous Waste Compliance Docket (hereinafter in this section referred to as the 'docket') which shall contain each of the following:

"(1) All information submitted under section 3016 of the Solid Waste Disposal Act and subsection (b) of this section regarding any Federal facility and notice of each subsequent action taken under this Act with respect to the facility.

"(2) Information submitted by each department, agency, or instrumentality of the United States under section 3005 or 3010 of such Act.

"(3) Information submitted by the department, agency, or instrumentality under section 103 of this Act.

The docket shall be available for public inspection at reasonable times. Six months after establishment of the docket and every 6 months thereafter, the Administrator shall publish in the Federal Register a list of the Federal facilities which have been included in the docket during the immediately pre-

ceding 6-month period. Such publication shall also indicate where in the appropriate regional office of the Environmental Protection Agency additional information may be obtained with respect to any facility on the docket. The Administrator shall establish a program to provide information to the public with respect to facilities which are included in the docket under this subsection.

"(d) ASSESSMENT AND EVALUATION.—Not later than 18 months after the enactment of the Superfund Amendments and Reauthorization Act of 1986, the Administrator shall take steps to assure that a preliminary assessment is conducted for each facility on the docket. Following such preliminary assessment, the Administrator shall, where appropriate—

"(1) evaluate such facilities in accordance with the criteria established in accordance with section 105 under the National Contingency Plan for determining priorities among releases; and

"(2) include such facilities on the National Priorities List maintained under such plan if the facility meets such criteria.

Such criteria shall be applied in the same manner as the criteria are applied to facilities which are owned or operated by other persons. Evaluation and listing under this subsection shall be completed not later than 30 months after such date of enactment. Upon the receipt of a petition from the Governor of any State, the Administrator shall make such an evaluation of any facility included in the docket.

"(e) REQUIRED ACTION BY DEPARTMENT.—

"(1) RI/FS.—Not later than 6 months after the inclusion of any facility on the National Priorities List, the department, agency, or instrumentality which owns or operates such facility shall, in consultation with the Administrator and appropriate State authorities, commence a remedial investigation and feasibility study for such facility. In the case of any facility which is listed on such list before the date of the enactment of this section, the department, agency, or instrumentality which owns or operates such facility shall, in consultation with the Administrator and appropriate State authorities, commence such an investigation and study for such facility within one year after such date of enactment. The Administrator and appropriate State authorities shall publish a timetable and deadlines for expeditious completion of such investigation and study.

"(2) COMMENCEMENT OF REMEDIAL ACTION; INTERAGENCY AGREEMENT.—The Administrator shall review the results of each investigation and study conducted as provided in paragraph (1). Within 180 days thereafter, the head of the department, agency, or instrumentality concerned shall enter into an interagency agreement with the Administrator for the expeditious completion by such department, agency, or instrumentality of all necessary remedial action at such facility. Substantial continuous physical onsite remedial action shall be commenced at each facility not later than 15 months after completion of the investigation and study. All such interagency agreements, including review of alternative remedial action plans and selection of remedial action, shall comply with the public participation requirements of section 117.

"(3) COMPLETION OF REMEDIAL ACTIONS.—Remedial actions at facilities subject to interagency agreements under this section shall be completed as expeditiously as practicable. Each agency shall include in its annual budget submissions to the Congress a review of alternative agency funding which could be used to provide for the costs of remedial action. The budget submission shall also include a statement of the hazard posed by the facility to human health, welfare, and the environment and identify the specific consequences of failure to begin and complete remedial action.

"(4) CONTENTS OF AGREEMENT.—Each interagency agreement under this subsection shall include, but shall not be limited to, each of the following:

"(A) A review of alternative remedial actions and selection of a remedial action by the head of the relevant department, agency, or instrumentality and the Administrator or, if unable to reach agreement on selection of a remedial action, selection by the Administrator.

"(B) A schedule for the completion of each such remedial action.

"(C) Arrangements for long-term operation and maintenance of the facility.

"(5) ANNUAL REPORT.—Each department, agency, or instrumentality responsible for compliance with this section shall furnish an annual report to the Congress concerning its progress in implementing the requirements of this section. Such reports shall include, but shall not be limited to, each of the following items:

"(A) A report on the progress in reaching interagency agreements under this section.

"(B) The specific cost estimates and budgetary proposals involved in each interagency agreement.

"(C) A brief summary of the public comments regarding each proposed interagency agreement.

"(D) A description of the instances in which no agreement was reached.

"(E) A report on progress in conducting investigations and studies under paragraph (1).

"(F) A report on progress in conducting remedial actions.

"(G) A report on progress in conducting remedial action at facilities which are not listed on the National Priorities List.

With respect to instances in which no agreement was reached within the required time period, the department, agency, or instrumentality filing the report under this paragraph shall include in such report an explanation of the reasons why no agreement was reached. The annual report required by this paragraph shall also contain a detailed description on a State-by-State basis of the status of each facility subject to this section, including a description of the hazard presented by each facility, plans and schedules for initiating and completing response action, enforcement status (where appropriate), and an explanation of any postponements or failure to complete response action. Such reports shall also be submitted to the affected States.

"(6) SETTLEMENTS WITH OTHER PARTIES.—If the Administrator, in consultation with the head of the relevant department, agency, or instrumentality of the United States, determines that remedial investigations and feasibility studies or remedial action will be done properly at the Federal facility by another potentially responsible party within the deadlines provided in paragraphs (1), (2), and (3) of this subsection, the Administrator may enter into an agreement with such party under section 122 (relating to settlements). Following approval by the Attorney General of any such agreement relating to a remedial action, the agreement shall be entered in the appropriate United States district court as a consent decree under section 106 of this Act.

"(f) STATE AND LOCAL PARTICIPATION.—The Administrator and each department, agency, or instrumentality responsible for compliance with this section shall afford to relevant State and local officials the opportunity to participate in the planning and selection of the remedial action, including but not limited to the review of all applicable data as it becomes available and the development of studies, reports, and action plans. In the case of State officials, the opportunity to participate shall be provided in accordance with section 121.

"(g) TRANSFER OF AUTHORITIES.—Except for authorities which are delegated by the Administrator to an officer or employee of the Environmental Protection Agency, no authority vested in the Administrator under this section may be transferred, by Executive order of the President or otherwise, to any other officer or employee of the United States or to any other person.

"(h) PROPERTY TRANSFERRED BY FEDERAL AGENCIES.—

"(1) NOTICE.—After the last day of the 6-month period beginning on the effective date of regulations under paragraph (2) of this subsection, whenever any department, agency, or instrumentality of the United States enters into any contract for the sale or other transfer of real property which is owned by the United States and on which any hazardous substance was stored for one year or more, known to have been released, or disposed of, the head of such department, agency, or instrumentality shall include in such contract notice of the type and quantity of such hazardous substance and notice of the time at which such storage, release, or disposal took place, to the extent such information is available on the basis of a complete search of agency files.

"(2) FORM OF NOTICE; REGULATIONS.—Notice under this subsection shall be provided in such form and manner as may be provided in regulations promulgated by the Administrator. As promptly as practicable after the enactment of this subsection but not later than 18 months after the date of such enactment, and after consultation with the Administrator of the General Services Administration, the Administrator shall promulgate regulations regarding the notice required to be provided under this subsection.

"(3) CONTENTS OF CERTAIN DEEDS.—After the last day of the 6-month period beginning on the effective date of regulations under paragraph (2) of this subsection, in the case of any real property owned by the United States on which any hazardous substance was stored for one year or more, known to have been released, or disposed of, each deed entered into for the transfer of such property by the United States to any other person or entity shall contain—

"(A) to the extent such information is available on the basis of a complete search of agency files—

"(i) a notice of the type and quantity of such hazardous substances,

"(ii) notice of the time at which such storage, release, or disposal took place, and

"(iii) a description of the remedial action taken, if any, and

"(B) a covenant warranting that—

"(i) all remedial action necessary to protect human health and the environment with respect to any such substance remaining on the property has been taken before the date of such transfer, and

"(ii) any additional remedial action found to be necessary after the date of such

transfer shall be conducted by the United States.

The requirements of subparagraph (B) shall not apply in any case in which the person or entity to whom the property is transferred is a potentially responsible party with respect to such real property.

"(i) OBLIGATIONS UNDER SOLID WASTE DISPOSAL ACT.—Nothing in this section shall affect or impair the obligation of any department, agency, or instrumentality of the United States to comply with any requirement of the Solid Waste Disposal Act (including corrective action requirements).

"(j) NATIONAL SECURITY.—

"(1) SITE SPECIFIC PRESIDENTIAL ORDERS.—The President may issue such orders regarding response actions at any specified site or facility of the Department of Energy or the Department of Defense as may be necessary to protect the national security interests of the United States at that site or facility. Such orders may include, where necessary to protect such interests, an exemption from any requirement contained in this title or under title III of the Superfund Amendments and Reauthorization Act of 1986 with respect to the site or facility concerned. The President shall notify the Congress within 30 days of the issuance of an order under this paragraph providing for any such exemption. Such notification shall include a statement of the reasons for the granting of the exemption. An exemption under this paragraph shall be for a specified period which may not exceed one year. Additional exemptions may be granted, each upon the President's issuance of a new order under this paragraph for the site or facility concerned. Each such additional exemption shall be for a specified period which may not exceed one year. It is the intention of the Congress that whenever an exemption is issued under this paragraph the response action shall proceed as expeditiously as practicable. The Congress shall be notified periodically of the progress of any response action with respect to which an exemption has been issued under this paragraph. No exemption shall be granted under this paragraph due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation.

"(2) CLASSIFIED INFORMATION.—Notwithstanding any other provision of law, all requirements of the Atomic Energy Act and all Executive orders concerning the handling of restricted data and national security information, including 'need to know' requirements, shall be applicable to any grant of access to classified information under the provisions of this Act or under title III of the Superfund Amendments and Reauthorization Act of 1986.".

(b) LIMITED GRANDFATHER.—Section 120 of CERCLA shall not apply to any response action or remedial action for which a plan is under development by the Department of Energy on the date of enactment of this Act with respect to facilities—

(1) owned or operated by the United States and subject to the jurisdiction of such Department;

(2) located in St. Charles and St. Louis counties, Missouri, or the city of St. Louis, Missouri, and

(3) published in the National Priorities List.

In preparing such plans, the Secretary of Energy shall consult with the Administrator of the Environmental Protection Agency.

SEC. 121. CLEANUP STANDARDS.

(a) AMENDMENT OF CERCLA.—Title I of CERCLA is amended by adding the following new section after section 120:

"SEC. 121. CLEANUP STANDARDS.

"(a) SELECTION OF REMEDIAL ACTION.—The President shall select appropriate remedial actions determined to be necessary to be carried out under section 104 or secured under section 106 which are in accordance with this section and, to the extent practicable, the national contingency plan, and which provide for cost-effective response. In evaluating the cost effectiveness of proposed alternative remedial actions, the President shall take into account the total short- and long-term costs of such actions, including the costs of operation and maintenance for the entire period during which such activities will be required.

"(b) GENERAL RULES.—(1) Remedial actions in which treatment which permanently and significantly reduces the volume, toxicity or mobility of the hazardous substances, pollutants, and contaminants is a principal element, are to be preferred over remedial actions not involving such treatment. The offsite transport and disposal of hazardous substances or contaminated materials without such treatment should be the least favored alternative remedial action where practicable treatment technologies are available. The President shall conduct an assessment of permanent solutions and alternative treatment technologies or resource recovery technologies that, in whole or in part, will result in a permanent and significant decrease in the toxicity, mobility, or volume of the hazardous substance, pollutant, or contaminant. In making such assessment, the President shall specifically address the long-term effectiveness of various alternatives. In assessing alternative remedial actions, the President shall, at a minimum, take into account:

"(A) the long-term uncertainties associated with land disposal;

"(B) the goals, objectives, and requirements of the Solid Waste Disposal Act;

"(C) the persistence, toxicity, mobility, and propensity to bioaccumulate of such hazardous substances and their constituents;

"(D) short- and long-term potential for adverse health effects from human exposure;

"(E) long-term maintenance costs;

"(F) the potential for future remedial action costs if the alternative remedial action in question were to fail; and

"(G) the potential threat to human health and the environment associated with excavation, transportation, and redisposal, or containment.

The President shall select a remedial action that is protective of human health and the environment, that is cost effective, and that utilizes permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable. If the President selects a remedial action not appropriate for a preference under this subsection, the President shall publish an explanation as to why a remedial action involving such reductions was not selected.

"(2) The President may select an alternative remedial action meeting the objectives of this subsection whether or not such action has been achieved in practice at any other facility or site that has similar characteristics. In making such a selection, the President may take into account the degree of support for such remedial action by parties interested in such site.

"(c) REVIEW.—If the President selects a remedial action that results in any hazardous substances, pollutants, or contaminants remaining at the site, the President shall review such remedial action no less often than each 5 years after the initiation of such remedial action to assure that human health and the environment are being protected by the remedial action being implemented. In addition, if upon such review it is the judgment of the President that action is appropriate at such site in accordance with section 104 or 106, the President shall take or require such action. The President shall report to the Congress a list of facilities for which such review is required, the results of all such reviews, and any actions taken as a result of such reviews.

"(d) DEGREE OF CLEANUP.—(1) Remedial actions selected under this section or otherwise required or agreed to by the President under this Act shall attain a degree of cleanup of hazardous substances, pollutants, and contaminants released into the environment and of control of further release at a minimum which assures protection of human health and the environment. Such remedial actions shall be relevant and appropriate under the circumstances presented by the release or threatened release of such substance, pollutant, or contaminant.

"(2)(A) With respect to any hazardous substance, pollutant or contaminant that will remain onsite, if—

"(i) any standard, requirement, criteria, or limitation under any Federal environmental law, including, but not limited to, the Toxic Substances Control Act, the Safe Drinking Water Act, the Clean Air Act, the Clean Water Act, the Marine Protection, Research and Sanctuaries Act, or the Solid Waste Disposal Act; or

"(ii) any promulgated standard, requirement, criteria, or limitation under a State environmental or facility siting law that is more stringent than any Federal standard, requirement, criteria, or limitation, including each such State standard, requirement, criteria, or limitation contained in a program approved, authorized or delegated by the Administrator under a statute cited in subparagraph (A), and that has been identified to the President by the State in a timely manner,

is legally applicable to the hazardous substance or pollutant or contaminant concerned or is relevant and appropriate under the circumstances of the release or threatened release of such hazardous substance or pollutant or contaminant, the remedial action selected under section 104 or secured under section 106 shall require, at the completion of the remedial action, a level or standard of control for such hazardous substance or pollutant or contaminant which at least attains such legally applicable or relevant and appropriate standard, requirement, criteria, or limitation. Such remedial action shall require a level or standard of control which at least attains Maximum Contaminant Level Goals established under the Safe Drinking Water Act and water quality criteria established under section 304 or 303 of the Clean Water Act, where such goals or criteria are relevant and appropriate under the circumstances of the release or threatened release.

"(B)(i) In determining whether or not any water quality criteria under the Clean Water Act is relevant and appropriate under the circumstances of the release or threatened release, the President shall consider the designated or potential use of the surface or

groundwater, the environmental media affected, the purposes for which such criteria were developed, and the latest information available.

"(ii) For the purposes of this section, a process for establishing alternate concentration limits to those otherwise applicable for hazardous constituents in groundwater under subparagraph (A) may not be used to establish applicable standards under this paragraph if the process assumes a point of human exposure beyond the boundary of the facility, as defined at the conclusion of the remedial investigation and feasibility study, except where—

"(I) there are known and projected points of entry of such groundwater into surface water; and

"(II) on the basis of measurements or projections, there is or will be no statistically significant increase of such constituents from such groundwater in such surface water at the point of entry or at any point where there is reason to believe accumulation of constituents may occur downstream; and

"(III) the remedial action includes enforceable measures that will preclude human exposure to the contaminated groundwater at any point between the facility boundary and all known and projected points of entry of such groundwater into surface water

then the assumed point of human exposure may be at such known and projected points of entry.

"(C)(i) Clause (ii) of this subparagraph shall be applicable only in cases where, due to the President's selection, in compliance with subsection (b)(1), of a proposed remedial action which does not permanently and significantly reduce the volume, toxicity, or mobility of hazardous substances, pollutants, or contaminants, the proposed disposition of waste generated by or associated with the remedial action selected by the President is land disposal in a State referred to in clause (ii).

"(ii) Except as provided in clauses (iii) and (iv), a State standard, requirement, criteria, or limitation (including any State siting standard or requirement) which could effectively result in the statewide prohibition of land disposal of hazardous substances, pollutants, or contaminants shall not apply.

"(iii) Any State standard, requirement, criteria, or limitation referred to in clause (ii) shall apply where each of the following conditions is met:

"(I) The State standard, requirement, criteria, or limitation is of general applicability and was adopted by formal means.

"(II) The State standard, requirement, criteria, or limitation was adopted on the basis of hydrologic, geologic, or other relevant considerations and was not adopted for the purpose of precluding onsite remedial actions or other land disposal for reasons unrelated to protection of human health and the environment.

"(III) The State arranges for, and assures payment of the incremental costs of utilizing, a facility for disposition of the hazardous substances, pollutants, or contaminants concerned.

"(iv) Where the remedial action selected by the President does not conform to a State standard and the State has initiated a law suit against the Environmental Protection Agency prior to May 1, 1986, to seek to have the remedial action conform to such standard, the President shall conform the remedial action to the State standard. The State shall assure the availability of an offsite facility for such remedial action.

"(3) In the case of any removal or remedial action involving the transfer of any hazardous substance or pollutant or contaminant offsite, such hazardous substance or pollutant or contaminant shall only be transferred to a facility which is operating in compliance with section 3004 and 3005 of the Solid Waste Disposal Act (or, where applicable, in compliance with the Toxic Substances Control Act or other applicable Federal law) and all applicable State requirements. Such substance or pollutant or contaminant may be transferred to a land disposal facility only if the President determines that both of the following requirements are met:

"(A) The unit to which the hazardous substance or pollutant or contaminant is transferred is not releasing any hazardous waste, or constituent thereof, into the groundwater or surface water or soil.

"(B) All such releases from other units at the facility are being controlled by a corrective action program approved by the Administrator under subtitle C of the Solid Waste Disposal Act.

The President shall notify the owner or operator of such facility of determinations under this paragraph.

"(4) The President may select a remedial action meeting the requirements of paragraph (1) that does not attain a level or standard of control at least equivalent to a legally applicable or relevant and appropriate standard, requirement, criteria, or limitation as required by paragraph (2) (including subparagraph (B) thereof), if the President finds that—

"(A) the remedial action selected is only part of a total remedial action that will attain such level or standard of control when completed;

"(B) compliance with such requirement at that facility will result in greater risk to human health and the environment than alternative options;

"(C) compliance with such requirements is technically impracticable from an engineering perspective;

"(D) the remedial action selected will attain a standard of performance that is equivalent to that required under the otherwise applicable standard, requirement, criteria, or limitation, through use of another method or approach;

"(E) with respect to a State standard, requirement, criteria, or limitation, the State has not consistently applied (or demonstrated the intention to consistently apply) the standard, requirement, criteria, or limitation in similar circumstances at other remedial actions within the State; or

"(F) in the case of a remedial action to be undertaken solely under section 104 using the Fund, selection of a remedial action that attains such level or standard of control will not provide a balance between the need for protection of public health and welfare and the environment at the facility under consideration, and the availability of amounts from the Fund to respond to other sites which present or may present a threat to public health or welfare or the environment, taking into consideration the relative immediacy of such threats.

The President shall publish such findings, together with an explanation and appropriate documentation.

"(e) PERMITS AND ENFORCEMENT.—(1) No Federal, State, or local permit shall be required for the portion of any removal or remedial action conducted entirely onsite, where such remedial action is selected and carried out in compliance with this section.

"(2) A State may enforce any Federal or State standard, requirement, criteria, or limitation to which the remedial action is required to conform under this Act in the United States district court for the district in which the facility is located. Any consent decree shall require the parties to attempt expeditiously to resolve disagreements concerning implementation of the remedial action informally with the appropriate Federal and State agencies. Where the parties agree, the consent decree may provide for administrative enforcement. Each consent decree shall also contain stipulated penalties for violations of the decree in an amount not to exceed $25,000 per day, which may be enforced by either the President or the State. Such stipulated penalties shall not be construed to impair or affect the authority of the court to order compliance with the specific terms of any such decree.

"(f) STATE INVOLVEMENT.—(1) The President shall promulgate regulations providing for substantial and meaningful involvement by each State in initiation, development, and selection of remedial actions to be undertaken in that State. The regulations, at a minimum, shall include each of the following:

"(A) State involvement in decisions whether to perform a preliminary assessment and site inspection.

"(B) Allocation of responsibility for hazard ranking system scoring.

"(C) State concurrence in deleting sites from the National Priorities List.

"(D) State participation in the long-term planning process for all remedial sites within the State.

"(E) A reasonable opportunity for States to review and comment on each of the following:

"(i) The remedial investigation and feasibility study and all data and technical documents leading to its issuance.

"(ii) The planned remedial action identified in the remedial investigation and feasibility study.

"(iii) The engineering design following selection of the final remedial action.

"(iv) Other technical data and reports relating to implementation of the remedy.

"(v) Any proposed finding or decision by the President to exercise the authority of subsection (d)(4).

"(F) Notice to the State of negotiations with potentially responsible parties regarding the scope of any response action at a facility in the State and an opportunity to participate in such negotiations and, subject to paragraph (2), be a party to any settlement.

"(G) Notice to the State and an opportunity to comment on the President's proposed plan for remedial action as well as on alternative plans under consideration. The President's proposed decision regarding the selection of remedial action shall be accompanied by a response to the comments submitted by the State, including an explanation regarding any decision under subsection (d)(4) on compliance with promulgated State standards. A copy of such response shall also be provided to the State.

"(H) Prompt notice and explanation of each proposed action to the State in which the facility is located.

Prior to the promulgation of such regulations, the President shall provide notice to the State of negotiations with potentially responsible parties regarding the scope of any response action at a facility in the State, and such State may participate in such ne-

gotiations and, subject to paragraph (2), any settlements.

"(2)(A) This paragraph shall apply to remedial actions secured under section 106. At least 30 days prior to the entering of any consent decree, if the President proposes to select a remedial action that does not attain a legally applicable or relevant and appropriate standard, requirement, criteria, or limitation, under the authority of subsection (d)(4), the President shall provide an opportunity for the State to concur or not concur in such selection. If the State concurs, the State may become a signatory to the consent decree.

"(B) If the State does not concur in such selection, and the State desires to have the remedial action conform to such standard, requirement, criteria, or limitation, the State shall intervene in the action under section 106 before entry of the consent decree, to seek to have the remedial action so conform. Such intervention shall be a matter of right. The remedial action shall conform to such standard, requirement, criteria, or limitation if the State establishes, on the administrative record, that the finding of the President was not supported by substantial evidence. If the court determines that the remedial action shall conform to such standard, requirement, criteria, or limitation, the remedial action shall be so modified and the State may become a signatory to the decree. If the court determines that the remedial action need not conform to such standard, requirement, criteria, or limitation, and the State pays or assures the payment of the additional costs attributable to meeting such standard, requirement, criteria, or limitation, the remedial action shall be so modified and the State shall become a signatory to the decree.

"(C) The President may conclude settlement negotiations with potentially responsible parties without State concurrence.

"(3)(A) This paragraph shall apply to remedial actions at facilities owned or operated by a department, agency, or instrumentality of the United States. At least 30 days prior to the publication of the President's final remedial action plan, if the President proposes to select a remedial action that does not attain a legally applicable or relevant and appropriate standard, requirement, criteria, or limitation, under the authority of subsection (d)(4), the President shall provide an opportunity for the State to concur or not concur in such selection. If the State concurs, or does not act within 30 days, the remedial action may proceed.

"(B) If the State does not concur in such selection as provided in subparagraph (A), and desires to have the remedial action conform to such standard, requirement, criteria, or limitation, the State may maintain an action as follows:

"(i) If the President has notified the State of selection of such a remedial action, the State may bring an action within 30 days of such notification for the sole purpose of determining whether the finding of the President is supported by substantial evidence. Such action shall be brought in the United States district court for the district in which the facility is located.

"(ii) If the State establishes, on the administrative record, that the President's finding is not supported by substantial evidence, the remedial action shall be modified to conform to such standard, requirement, criteria, or limitation.

"(iii) If the State fails to establish that the President's finding was not supported by substantial evidence and if the State pays, within 60 days of judgment, the additional costs attributable to meeting such standard, requirement, criteria, or limitation, the remedial action shall be selected to meet such standard, requirement, criteria, or limitation. If the State fails to pay within 60 days, the remedial action selected by the President shall proceed through completion.

"(C) Nothing in this section precludes, and the court shall not enjoin, the Federal agency from taking any remedial action unrelated to or not inconsistent with such standard, requirement, criteria, or limitation.".

(b) EFFECTIVE DATE.—With respect to section 121 of CERCLA, as added by this section—

(1) The requirements of section 121 of CERCLA shall not apply to any remedial action for which the Record of Decision (hereinafter in this section referred to as the "ROD") was signed, or the consent decree was lodged, before date of enactment.

(2) If the ROD was signed, or the consent decree lodged, within the 30-day period immediately following enactment of the Act, the Administrator shall certify in writing that the portion of the remedial action covered by the ROD or consent decree complies to the maximum extent practicable with section 121 of CERCLA.

Any ROD signed before enactment of this Act and reopened after enactment of this Act to modify or supplement the selection of remedy shall be subject to the requirements of section 121 of CERCLA.

SEC. 122. SETTLEMENTS.

(a) NEW SECTION.—Title I of CERCLA is amended by adding the following new section after section 121:

"SEC. 122. SETTLEMENTS.

"(a) AUTHORITY TO ENTER INTO AGREEMENTS.—The President, in his discretion, may enter into an agreement with any person (including the owner or operator of the facility from which a release or substantial threat of release emanates, or any other potentially responsible person), to perform any response action (including any action described in section 104(b)) if the President determines that such action will be done properly by such person. Whenever practicable and in the public interest, as determined by the President, the President shall act to facilitate agreements under this section that are in the public interest and consistent with the National Contingency Plan in order to expedite effective remedial actions and minimize litigation. If the President decides not to use the procedures in this section, the President shall notify in writing potentially responsible parties at the facility of such decision and the reasons why use of the procedures is inappropriate. A decision of the President to use or not to use the procedures in this section is not subject to judicial review.

"(b) AGREEMENTS WITH POTENTIALLY RESPONSIBLE PARTIES.—

"(1) MIXED FUNDING.—An agreement under this section may provide that the President will reimburse the parties to the agreement from the Fund, with interest, for certain costs of actions under the agreement that the parties have agreed to perform but which the President has agreed to finance. In any case in which the President provides such reimbursement, the President shall make all reasonable efforts to recover the amount of such reimbursement under section 107 or under other relevant authorities.

"(2) REVIEWABILITY.—The President's decisions regarding the availability of fund financing under this subsection shall not be subject to judicial review under subsection (d).

"(3) RETENTION OF FUNDS.—If, as part of any agreement, the President will be carrying out any action and the parties will be paying amounts to the President, the President may, notwithstanding any other provision of law, retain and use such amounts for purposes of carrying out the agreement.

"(4) FUTURE OBLIGATION OF FUND.—In the case of a completed remedial action pursuant to an agreement described in paragraph (1), the Fund shall be subject to an obligation for subsequent remedial actions at the same facility but only to the extent that such subsequent actions are necessary by reason of the failure of the original remedial action. Such obligation shall be in a proportion equal to, but not exceeding, the proportion contributed by the Fund for the original remedial action. The Fund's obligation for such future remedial action may be met through Fund expenditures or through payment, following settlement or enforcement action, by parties who were not signatories to the original agreement.

"(c) EFFECT OF AGREEMENT.—

"(1) LIABILITY.—Whenever the President has entered into an agreement under this section, the liability to the United States under this Act of each party to the agreement, including any future liability to the United States, arising from the release or threatened release that is the subject of the agreement shall be limited as provided in the agreement pursuant to a covenant not to sue in accordance with subsection (f). A covenant not to sue may provide that future liability to the United States of a settling potentially responsible party under the agreement may be limited to the same proportion as that established in the original settlement agreement. Nothing in this section shall limit or otherwise affect the authority of any court to review in the consent decree process under subsection (d) any covenant not to sue contained in an agreement under this section. In determining the extent to which the liability of parties to an agreement shall be limited pursuant to a covenant not to sue, the President shall be guided by the principle that a more complete covenant not to sue shall be provided for a more permanent remedy undertaken by such parties.

"(2) ACTIONS AGAINST OTHER PERSONS.—If an agreement has been entered into under this section, the President may take any action under section 106 against any person who is not a party to the agreement, once the period for submitting a proposal under subsection (e)(2)(B) has expired. Nothing in this section shall be construed to affect either of the following:

"(A) The liability of any person under section 106 or 107 with respect to any costs or damages which are not included in the agreement.

"(B) The authority of the President to maintain an action under this Act against any person who is not a party to the agreement.

"(d) ENFORCEMENT.—

"(1) CLEANUP AGREEMENTS.—

"(A) CONSENT DECREE.—Whenever the President enters into an agreement under this section with any potentially responsible party with respect to remedial action under section 106, following approval of the agreement by the Attorney General, except as otherwise provided in the case of certain administrative settlements referred to in subsection (g), the agreement shall be entered in the appropriate United States district court

as a consent decree. The President need not make any finding regarding an imminent and substantial endangerment to the public health or the environment in connection with any such agreement or consent decree.

"(B) EFFECT.—The entry of any consent decree under this subsection shall not be construed to be an acknowledgment by the parties that the release or threatened release concerned constitutes an imminent and substantial endangerment to the public health or welfare or the environment. Except as otherwise provided in the Federal Rules of Evidence, the participation by any party in the process under this section shall not be considered an admission of liability for any purpose, and the fact of such participation shall not be admissible in any judicial or administrative proceeding, including a subsequent proceeding under this section.

"(C) STRUCTURE.—The President may fashion a consent decree so that the entering of such decree and compliance with such decree or with any determination or agreement made pursuant to this section shall not be considered an admission of liability for any purpose.

"(2) PUBLIC PARTICIPATION.—

"(A) FILING OF PROPOSED JUDGMENT.—At least 30 days before a final judgment is entered under paragraph (1), the proposed judgment shall be filed with the court.

"(B) OPPORTUNITY FOR COMMENT.—The Attorney General shall provide an opportunity to persons who are not named as parties to the action to comment on the proposed judgment before its entry by the court as a final judgment. The Attorney General shall consider, and file with the court, any written comments, views, or allegations relating to the proposed judgment. The Attorney General may withdraw or withhold its consent to the proposed judgment if the comments, views, and allegations concerning the judgment disclose facts or considerations which indicate that the proposed judgment is inappropriate, improper, or inadequate.

"(3) 104(b) AGREEMENTS.—Whenever the President enters into an agreement under this section with any potentially responsible party with respect to action under section 104(b), the President shall issue an order or enter into a decree setting forth the obligations of such party. The United States district court for the district in which the release or threatened release occurs may enforce such order or decree.

"(e) SPECIAL NOTICE PROCEDURES.—

"(1) NOTICE.—Whenever the President determines that a period of negotiation under this subsection would facilitate an agreement with potentially responsible parties for taking response action (including any action described in section 104(b)) and would expedite remedial action, the President shall so notify all such parties and shall provide them with information concerning each of the following:

"(A) The names and addresses of potentially responsible parties (including owners and operators and other persons referred to in section 107(a)), to the extent such information is available.

"(B) To the extent such information is available, the volume and nature of substances contributed by each potentially responsible party identified at the facility.

"(C) A ranking by volume of the substances at the facility, to the extent such information is available.

The President shall make the information referred to in this paragraph available in advance of notice under this paragraph upon the request of a potentially responsible party in accordance with procedures provided by the President. The provisions of subsection (e) of section 104 regarding protection of confidential information apply to information provided under this paragraph. Disclosure of information generated by the President under this section to persons other than the Congress, or any duly authorized Committee thereof, is subject to other privileges or protections provided by law, including (but not limited to) those applicable to attorney work product. Nothing contained in this paragraph or in other provisions of this Act shall be construed, interpreted, or applied to diminish the required disclosure of information under other provisions of this or other Federal or State laws.

"(2) NEGOTIATION.—

"(A) MORATORIUM.—Except as provided in this subsection, the President may not commence action under section 104(a) or take any action under section 106 for 120 days after providing notice and information under this subsection with respect to such action. Except as provided in this subsection, the President may not commence a remedial investigation and feasibility study under section 104(b) for 90 days after providing notice and information under this subsection with respect to such action. The President may commence any additional studies or investigations authorized under section 104(b), including remedial design, during the negotiation period.

"(B) PROPOSALS.—Persons receiving notice and information under paragraph (1) of this subsection with respect to action under section 106 shall have 60 days from the date of receipt of such notice to make a proposal to the President for undertaking or financing the action under section 106. Persons receiving notice and information under paragraph (1) of this subsection with respect to action under section 104(b) shall have 60 days from the date of receipt of such notice to make a proposal to the President for undertaking or financing the action under section 104(b).

"(C) ADDITIONAL PARTIES.—If an additional potentially responsible party is identified during the negotiation period or after an agreement has been entered into under this subsection concerning a release or threatened release, the President may bring the additional party into the negotiation or enter into a separate agreement with such party.

"(3) PRELIMINARY ALLOCATION OF RESPONSIBILITY.—

"(A) IN GENERAL.—The President shall develop guidelines for preparing nonbinding preliminary allocations of responsibility. In developing these guidelines the President may include such factors as the President considers relevant, such as: volume, toxicity, mobility, strength of evidence, ability to pay, litigative risks, public interest considerations, precedential value, and inequities and aggravating factors. When it would expedite settlements under this section and remedial action, the President may, after completion of the remedial investigation and feasibility study, provide a nonbinding preliminary allocation of responsibility which allocates percentages of the total cost of response among potentially responsible parties at the facility.

"(B) COLLECTION OF INFORMATION.—To collect information necessary or appropriate for performing the allocation under subparagraph (A) or for otherwise implementing this section, the President may by subpoena require the attendance and testimony of witnesses and the production of reports, papers, documents, answers to questions, and other information that the President deems necessary. Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In the event of contumacy or failure or refusal of any person to obey any such subpoena, any district court of the United States in which venue is proper shall have jurisdiction to order any such person to comply with such subpoena. Any failure to obey such an order of the court is punishable by the court as a contempt thereof.

"(C) EFFECT.—The nonbinding preliminary allocation of responsibility shall not be admissible as evidence in any proceeding, and no court shall have jurisdiction to review the nonbinding preliminary allocation of responsibility. The nonbinding preliminary allocation of responsibility shall not constitute an apportionment or other statement on the divisibility of harm or causation.

"(D) COSTS.—The costs incurred by the President in producing the nonbinding preliminary allocation of responsibility shall be reimbursed by the potentially responsible parties whose offer is accepted by the President. Where an offer under this section is not accepted, such costs shall be considered costs of response.

"(E) DECISION TO REJECT OFFER.—Where the President, in his discretion, has provided a nonbinding preliminary allocation of responsibility and the potentially responsible parties have made a substantial offer providing for response to the President which he rejects, the reasons for the rejection shall be provided in a written explanation. The President's decision to reject such an offer shall not be subject to judicial review.

"(4) FAILURE TO PROPOSE.—If the President determines that a good faith proposal for undertaking or financing action under section 106 has not been submitted within 60 days of the provision of notice pursuant to this subsection, the President may thereafter commence action under section 104(a) or take an action against any person under section 106 of this Act. If the President determines that a good faith proposal for undertaking or financing action under section 104(b) has not been submitted within 60 days after the provision of notice pursuant to this subsection, the President may thereafter commence action under section 104(b).

"(5) SIGNIFICANT THREATS.—Nothing in this subsection shall limit the President's authority to undertake response or enforcement action regarding a significant threat to public health or the environment within the negotiation period established by this subsection.

"(6) INCONSISTENT RESPONSE ACTION.—When either the President, or a potentially responsible party pursuant to an administrative order or consent decree under this Act, has initiated a remedial investigation and feasibility study for a particular facility under this Act, no potentially responsible party may undertake any remedial action at the facility unless such remedial action has been authorized by the President.

"(f) COVENANT NOT TO SUE.—

"(1) DISCRETIONARY COVENANTS.—The President may, in his discretion, provide any person with a covenant not to sue concerning any liability to the United States under this Act, including future liability, resulting from a release or threatened release of a hazardous substance addressed by a remedial action, whether that action is onsite or offsite, if each of the following conditions is met:

"(A) The covenant not to sue is in the public interest.

"(B) The covenant not to sue would expedite response action consistent with the National Contingency Plan under section 105 of this Act.

"(C) The person is in full compliance with a consent decree under section 106 (including a consent decree entered into in accordance with this section) for response to the release or threatened release concerned.

"(D) The response action has been approved by the President.

"(2) SPECIAL COVENANTS NOT TO SUE.—In the case of any person to whom the President is authorized under paragraph (1) of this subsection to provide a covenant not to sue, for the portion of remedial action—

"(A) which involves the transport and secure disposition offsite of hazardous substances in a facility meeting the requirements of sections 3004 (c), (d), (e), (f), (g), (m), (o), (p), (u), and (v) and 3005(c) of the Solid Waste Disposal Act, where the President has rejected a proposed remedial action that is consistent with the National Contingency Plan that does not include such offsite disposition and has thereafter required offsite disposition; or

"(B) which involves the treatment of hazardous substances so as to destroy, eliminate, or permanently immobilize the hazardous constituents of such substances, such that, in the judgment of the President, the substances no longer present any current or currently foreseeable future significant risk to public health, welfare or the environment, no byproduct of the treatment or destruction process presents any significant hazard to public health, welfare or the environment, and all byproducts are themselves treated, destroyed, or contained in a manner which assures that such byproducts do not present any current or currently foreseeable future significant risk to public health, welfare or the environment,

the President shall provide such person with a covenant not to sue with respect to future liability to the United States under this Act for a future release or threatened release of hazardous substances from such facility, and a person provided such covenant not to sue shall not be liable to the United States under section 106 or 107 with respect to such release or threatened release at a future time.

"(3) REQUIREMENT THAT REMEDIAL ACTION BE COMPLETED.—A covenant not to sue concerning future liability to the United States shall not take effect until the President certifies that remedial action has been completed in accordance with the requirements of this Act at the facility that is the subject of such covenant.

"(4) FACTORS.—In assessing the appropriateness of a covenant not to sue under paragraph (1) and any condition to be included in a covenant not to sue under paragraph (1) or (2), the President shall consider whether the covenant or condition is in the public interest on the basis of such factors as the following:

"(A) The effectiveness and reliability of the remedy, in light of the other alternative remedies considered for the facility concerned.

"(B) The nature of the risks remaining at the facility.

"(C) The extent to which performance standards are included in the order or decree.

"(D) The extent to which the response action provides a complete remedy for the facility, including a reduction in the hazardous nature of the substances at the facility.

"(E) The extent to which the technology used in the response action is demonstrated to be effective.

"(F) Whether the Fund or other sources of funding would be available for any additional remedial actions that might eventually be necessary at the facility.

"(G) Whether the remedial action will be carried out, in whole or in significant part, by the responsible parties themselves.

"(5) SATISFACTORY PERFORMANCE.—Any covenant not to sue under this subsection shall be subject to the satisfactory performance by such party of its obligations under the agreement concerned.

"(6) ADDITIONAL CONDITION FOR FUTURE LIABILITY.—(A) Except for the portion of the remedial action which is subject to a covenant not to sue under paragraph (2) or under subsection (g) (relating to de minimis settlements), a covenant not to sue a person concerning future liability to the United States shall include an exception to the covenant that allows the President to sue such person concerning future liability resulting from the release or threatened release that is the subject of the covenant where such liability arises out of conditions which are unknown at the time the President certifies under paragraph (3) that remedial action has been completed at the facility concerned.

"(B) In extraordinary circumstances, the President may determine, after assessment of relevant factors such as those referred to in paragraph (4) and volume, toxicity, mobility, strength of evidence, ability to pay, litigative risks, public interest considerations, precedential value, and inequities and aggravating factors, not to include the exception referred to in subparagraph (A) if other terms, conditions, or requirements of the agreement containing the covenant not to sue are sufficient to provide all reasonable assurances that public health and the environment will be protected from any future releases at or from the facility.

"(C) The President is authorized to include any provisions allowing future enforcement action under section 106 or 107 that in the discretion of the President are necessary and appropriate to assure protection of public health, welfare, and the environment.

"(g) DE MINIMIS SETTLEMENTS.—

"(1) EXPEDITED FINAL SETTLEMENT.—Whenever practicable and in the public interest, as determined by the President, the President shall as promptly as possible reach a final settlement with a potentially responsible party in an administrative or civil action under section 106 or 107 if such settlement involves only a minor portion of the response costs at the facility concerned and, in the judgment of the President, the conditions in either of the following subparagraph (A) or (B) are met:

"(A) Both of the following are minimal in comparison to other hazardous substances at the facility:

"(i) The amount of the hazardous substances contributed by that party to the facility.

"(ii) The toxic or other hazardous effects of the substances contributed by that party to the facility.

"(B) The potentially responsible party—

"(i) is the owner of the real property on or in which the facility is located;

"(ii) did not conduct or permit the generation, transportation, storage, treatment, or disposal of any hazardous substance at the facility; and

"(iii) did not contribute to the release or threat of release of a hazardous substance at the facility through any action or omission.

This subparagraph (B) does not apply if the potentially responsible party purchased the real property with actual or constructive knowledge that the property was used for the generation, transportation, storage, treatment, or disposal of any hazardous substance.

"(2) COVENANT NOT TO SUE.—The President may provide a covenant not to sue with respect to the facility concerned to any party who has entered into a settlement under this subsection unless such a covenant would be inconsistent with the public interest as determined under subsection (f).

"(3) EXPEDITED AGREEMENT.—The President shall reach any such settlement or grant any such covenant not to sue as soon as possible after the President has available the information necessary to reach such a settlement or grant such a covenant.

"(4) CONSENT DECREE OR ADMINISTRATIVE ORDER.—A settlement under this subsection shall be entered as a consent decree or embodied in an administrative order setting forth the terms of the settlement. In the case of any facility where the total response costs exceed $500,000 (excluding interest), if the settlement is embodied as an administrative order, the order may be issued only with the prior written approval of the Attorney General. If the Attorney General or his designee has not approved or disapproved the order within 30 days of this referral, the order shall be deemed to be approved unless the Attorney General and the Administrator have agreed to extend the time. The district court for the district in which the release or threatened release occurs may enforce any such administrative order.

"(5) EFFECT OF AGREEMENT.—A party who has resolved its liability to the United States under this subsection shall not be liable for claims for contribution regarding matters addressed in the settlement. Such settlement does not discharge any of the other potentially responsible parties unless its terms so provide, but it reduces the potential liability of the others by the amount of the settlement.

"(6) SETTLEMENTS WITH OTHER POTENTIALLY RESPONSIBLE PARTIES.—Nothing in this subsection shall be construed to affect the authority of the President to reach settlements with other potentially responsible parties under this Act.

"(h) COST RECOVERY SETTLEMENT AUTHORITY.—

"(1) AUTHORITY TO SETTLE.—The head of any department or agency with authority to undertake a response action under this Act pursuant to the national contingency plan may consider, compromise, and settle a claim under section 107 for costs incurred by the United States Government if the claim has not been referred to the Department of Justice for further action. In the case of any facility where the total response costs exceed $500,000 (excluding interest), any claim referred to in the preceding sentence may be compromised and settled only with the prior written approval of the Attorney General.

"(2) USE OF ARBITRATION.—Arbitration in accordance with regulations promulgated under this subsection may be used as a method of settling claims of the United States where the total response costs for the facility concerned do not exceed $500,000 (excluding interest). After consultation with the Attorney General, the department or agency head may establish and publish regulations for the use of arbitration or settlement under this subsection.

"(3) RECOVERY OF CLAIMS.—If any person fails to pay a claim that has been settled under this subsection, the department or agency head shall request the Attorney General to bring a civil action in an appropriate district court to recover the amount of such claim, plus costs, attorneys' fees, and interest from the date of the settlement. In such an action, the terms of the settlement shall not be subject to review.

"(4) CLAIMS FOR CONTRIBUTION.—A person who has resolved its liability to the United States under this subsection shall not be liable for claims for contribution regarding matters addressed in the settlement. Such settlement shall not discharge any of the other potentially liable persons unless its terms so provide, but it reduces the potential liability of the others by the amount of the settlement.

"(i) SETTLEMENT PROCEDURES.—

"(1) PUBLICATION IN FEDERAL REGISTER.—At least 30 days before any settlement (including any settlement arrived at through arbitration) may become final under subsection (h), or under subsection (g) in the case of a settlement embodied in an administrative order, the head of the department or agency which has jurisdiction over the proposed settlement shall publish in the Federal Register notice of the proposed settlement. The notice shall identify the facility concerned and the parties to the proposed settlement.

"(2) COMMENT PERIOD.—For a 30-day period beginning on the date of publication of notice under paragraph (1) of a proposed settlement, the head of the department or agency which has jurisdiction over the proposed settlement shall provide an opportunity for persons who are not parties to the proposed settlement to file written comments relating to the proposed settlement.

"(3) CONSIDERATION OF COMMENTS.—The head of the department or agency shall consider any comments filed under paragraph (2) in determining whether or not to consent to the proposed settlement and may withdraw or withhold consent to the proposed settlement if such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate.

"(j) NATURAL RESOURCES.—

"(1) NOTIFICATION OF TRUSTEE.—Where a release or threatened release of any hazardous substance that is the subject of negotiations under this section may have resulted in damages to natural resources under the trusteeship of the United States, the President shall notify the Federal natural resource trustee of the negotiations and shall encourage the participation of such trustee in the negotiations.

"(2) COVENANT NOT TO SUE.—An agreement under this section may contain a covenant not to sue under section 107(a)(4)(C) for damages to natural resources under the trusteeship of the United States resulting from the release or threatened release of hazardous substances that is the subject of the agreement, but only if the Federal natural resource trustee has agreed in writing to such covenant. The Federal natural resource trustee may agree to such covenant if the potentially responsible party agrees to undertake appropriate actions necessary to protect and restore the natural resources damaged by such release or threatened release of hazardous substances.

"(k) SECTION NOT APPLICABLE TO VESSELS.—The provisions of this section shall not apply to releases from a vessel.

"(l) CIVIL PENALTIES.—A potentially responsible party which is a party to an administrative order or consent decree entered pursuant to an agreement under this section or section 120 (relating to Federal facilities) or which is a party to an agreement under section 120 and which fails or refuses to comply with any term or condition of the order, decree or agreement shall be subject to a civil penalty in accordance with section 109.

"(m) APPLICABILITY OF GENERAL PRINCIPLES OF LAW.—In the case of consent decrees and other settlements under this section (including covenants not to sue), no provision of this Act shall be construed to preclude or otherwise affect the applicability of general principles of law regarding the setting aside or modification of consent decrees or other settlements.".

(b) CONTRIBUTION.—Section 308 of CERCLA is amended by adding the following at the end thereof: "If an administrative settlement under section 122 has the effect of limiting any person's right to obtain contribution from any party to such settlement, and if the effect of such limitation would constitute a taking without just compensation in violation of the fifth amendment of the Constitution of the United States, such person shall not be entitled, under other laws of the United States, to recover compensation from the United States for such taking, but in any such case, such limitation on the right to obtain contribution shall be treated as having no force and effect.".

SEC. 123. REIMBURSEMENT TO LOCAL GOVERNMENTS.

(a) Title I of CERCLA is amended by adding the following after section 122:

"SEC. 123. REIMBURSEMENT TO LOCAL GOVERNMENTS.

"(a) APPLICATION.—Any general purpose unit of local government for a political subdivision which is affected by a release or threatened release at any facility may apply to the President for reimbursement under this section.

"(b) REIMBURSEMENT.—

"(1) TEMPORARY EMERGENCY MEASURES.—The President is authorized to reimburse local community authorities for expenses incurred (before or after the enactment of the Superfund Amendments and Reauthorization Act of 1986) in carrying out temporary emergency measures necessary to prevent or mitigate injury to human health or the environment associated with the release or threatened release of any hazardous substance or pollutant or contaminant. Such measures may include, where appropriate, security fencing to limit access, response to fires and explosions, and other measures which require immediate response at the local level.

"(2) LOCAL FUNDS NOT SUPPLANTED.—Reimbursement under this section shall not supplant local funds normally provided for response.

"(c) AMOUNT.—The amount of any reimbursement to any local authority under subsection (b)(1) may not exceed $25,000 for a single response. The reimbursement under this section with respect to a single facility shall be limited to the units of local government having jurisdiction over the political subdivision in which the facility is located.

"(d) PROCEDURE.—Reimbursements authorized pursuant to this section shall be in accordance with rules promulgated by the Administrator within one year after the enactment of the Superfund Amendments and Reauthorization Act of 1986.".

SEC. 124. METHANE RECOVERY.

(a) IN GENERAL.—Title I of CERCLA is amended by adding the following new section after section 123:

"SEC. 124. METHANE RECOVERY.

"(a) IN GENERAL.—In the case of a facility at which equipment for the recovery or processing (including recirculation of condensate) of methane has been installed, for purposes of this Act:

"(1) The owner or operator of such equipment shall not be considered an 'owner or operator', as defined in section 101(20), with respect to such facility.

"(2) The owner or operator of such equipment shall not be considered to have arranged for disposal or treatment of any hazardous substance at such facility pursuant to section 107 of this Act.

"(3) The owner or operator of such equipment shall not be subject to any action under section 106 with respect to such facility.

"(b) EXCEPTIONS.—Subsection (a) does not apply with respect to a release or threatened release of a hazardous substance from a facility described in subsection (a) if either of the following circumstances exist:

"(1) The release or threatened release was primarily caused by activities of the owner or operator of the equipment described in subsection (a).

"(2) The owner or operator of such equipment would be covered by paragraph (1), (2), (3), or (4) of subsection (a) of section 107 with respect to such release or threatened release if he were not the owner or operator of such equipment.

In the case of any release or threatened release referred to in paragraph (1), the owner or operator of the equipment described in subsection (a) shall be liable under this Act only for costs or damages primarily caused by the activities of such owner or operator.".

(b) REGULATION UNDER THE SOLID WASTE DISPOSAL ACT.—Unless the Administrator of the Environmental Protection Agency promulgates regulations under subtitle C of the Solid Waste Disposal Act addressing the extraction of wastes from landfills as part of the process of recovering methane from such landfills, the owner and operator of equipment used to recover methane from a landfill shall not be deemed to be managing, generating, transporting, treating, storing, or disposing of hazardous or liquid wastes within the meaning of that subtitle. If the aqueous or hydrocarbon phase of the condensate or any other waste material removed from the gas recovered from the landfill meets any of the characteristics identified under section 3001 of subtitle C of the Solid Waste Disposal Act, the preceding sentence shall not apply and such condensate phase or other waste material shall be deemed a hazardous waste under that subtitle, and shall be regulated accordingly.

SEC. 125. CERTAIN SPECIAL STUDY WASTES.

Title I of CERCLA is amended by adding the following new section after section 124:

"SEC. 125. SECTION 3001(b)(3)(A)(i) WASTE.

"(a) REVISION OF HAZARD RANKING SYSTEM.—This section shall apply only to facilities which are not included or proposed for inclusion on the National Priorities List and which contain substantial volumes of waste described in section 3001(b)(3)(A)(i) of the Solid Waste Disposal Act. As expeditiously as practicable, the President shall revise the hazard ranking system in effect under the National Contingency Plan with respect to such facilities in a manner which assures appropriate consideration of each of

the following site-specific characteristics of such facilities:

"(1) The quantity, toxicity, and concentrations of hazardous constituents which are present in such waste and a comparison thereof with other wastes.

"(2) The extent of, and potential for, release of such hazardous constituents into the environment.

"(3) The degree of risk to human health and the environment posed by such constituents.

"(b) INCLUSION PROHIBITED.—Until the hazard ranking system is revised as required by this section, the President may not include on the National Priorities List any facility which contains substantial volumes of waste described in section 3001(b)(3)(A)(i) of the Solid Waste Disposal Act on the basis of an evaluation made principally on the volume of such waste and not on the concentrations of the hazardous constituents of such waste. Nothing in this section shall be construed to affect the President's authority to include any such facility on the National Priorities List based on the presence of other substances at such facility or to exercise any other authority of this Act with respect to such other substances.".

SEC. 126. WORKER PROTECTION STANDARDS.

(a) PROMULGATION.—Within one year after the date of the enactment of this section, the Secretary of Labor shall, pursuant to section 6 of the Occupational Safety and Health Act of 1970, promulgate standards for the health and safety protection of employees engaged in hazardous waste operations.

(b) PROPOSED STANDARDS.—The Secretary of Labor shall issue proposed regulations on such standards which shall include, but need not be limited to, the following worker protection provisions:

(1) SITE ANALYSIS.—Requirements for a formal hazard analysis of the site and development of a site specific plan for worker protection.

(2) TRAINING.—Requirements for contractors to provide initial and routine training of workers before such workers are permitted to engage in hazardous waste operations which would expose them to toxic substances.

(3) MEDICAL SURVEILLANCE.—A program of regular medical examination, monitoring, and surveillance of workers engaged in hazardous waste operations which would expose them to toxic substances.

(4) PROTECTIVE EQUIPMENT.—Requirements for appropriate personal protective equipment, clothing, and respirators for work in hazardous waste operations.

(5) ENGINEERING CONTROLS.—Requirements for engineering controls concerning the use of equipment and exposure of workers engaged in hazardous waste operations.

(6) MAXIMUM EXPOSURE LIMITS.—Requirements for maximum exposure limitations for workers engaged in hazardous waste operations, including necessary monitoring and assessment procedures.

(7) INFORMATIONAL PROGRAM.—A program to inform workers engaged in hazardous waste operations of the nature and degree of toxic exposure likely as a result of such hazardous waste operations.

(8) HANDLING.—Requirements for the handling, transporting, labeling, and disposing of hazardous wastes.

(9) NEW TECHNOLOGY PROGRAM.—A program for the introduction of new equipment or technologies that will maintain worker protections.

(10) DECONTAMINATION PROCEDURES.—Procedures for decontamination.

(11) EMERGENCY RESPONSE.—Requirements for emergency response and protection of workers engaged in hazardous waste operations.

(c) FINAL REGULATIONS.—Final regulations under subsection (a) shall take effect one year after the date they are promulgated. In promulgating final regulations on standards under subsection (a), the Secretary of Labor shall include each of the provisions listed in paragraphs (1) through (11) of subsection (b) unless the Secretary determines that the evidence in the public record considered as a whole does not support inclusion of any such provision.

(d) SPECIFIC TRAINING STANDARDS.—

(1) OFFSITE INSTRUCTION; FIELD EXPERIENCE.—Standards promulgated under subsection (a) shall include training standards requiring that general site workers (such as equipment operators, general laborers, and other supervised personnel) engaged in hazardous substance removal or other activities which expose or potentially expose such workers to hazardous substances receive a minimum of 40 hours of initial instruction off the site, and a minimum of three days of actual field experience under the direct supervision of a trained, experienced supervisor, at the time of assignment. The requirements of the preceding sentence shall not apply to any general site worker who has received the equivalent of such training. Workers who may be exposed to unique or special hazards shall be provided additional training.

(2) TRAINING OF SUPERVISORS.—Standards promulgated under subsection (a) shall include training standards requiring that onsite managers and supervisors directly responsible for the hazardous waste operations (such as foremen) receive the same training as general site workers set forth in paragraph (1) of this subsection and at least eight additional hours of specialized training on managing hazardous waste operations. The requirements of the preceding sentence shall not apply to any person who has received the equivalent of such training.

(3) CERTIFICATION; ENFORCEMENT.—Such training standards shall contain provisions for certifying that general site workers, onsite managers, and supervisors have received the specified training and shall prohibit any individual who has not received the specified training from engaging in hazardous waste operations covered by the standard.

(4) TRAINING OF EMERGENCY RESPONSE PERSONNEL.—Such training standards shall set forth requirements for the training of workers who are responsible for responding to hazardous emergency situations who may be exposed to toxic substances in carrying out their responsibilities.

(e) INTERIM REGULATIONS.—The Secretary of Labor shall issue interim final regulations under this section within 60 days after the enactment of this section which shall provide no less protection under this section for workers employed by contractors and emergency response workers than the protections contained in the Environmental Protection Agency Manual (1981) "Health and Safety Requirements for Employees Engaged in Field Activities" and existing standards under the Occupational Safety and Health Act of 1970 found in subpart C of part 1926 of title 29 of the Code of Federal Regulations. Such interim final regulations shall take effect upon issuance and shall apply until final regulations become effective under subsection (c).

(f) COVERAGE OF CERTAIN STATE AND LOCAL EMPLOYEES.—Not later than 90 days after the promulgation of final regulations under subsection (a), the Administrator shall promulgate standards identical to those promulgated by the Secretary of Labor under subsection (a). Standards promulgated under this subsection shall apply to employees of State and local governments in each State which does not have in effect an approved State plan under section 18 of the Occupational Safety and Health Act of 1970 providing for standards for the health and safety protection of employees engaged in hazardous waste operations.

(g) GRANT PROGRAM.—

(1) GRANT PURPOSES.—Grants for the training and education of workers who are or may be engaged in activities related to hazardous waste removal or containment or emergency response may be made under this subsection.

(2) ADMINISTRATION.—Grants under this subsection shall be administered by the National Institute of Environmental Health Sciences.

(3) GRANT RECIPIENTS.—Grants shall be awarded to nonprofit organizations which demonstrate experience in implementing and operating worker health and safety training and education programs and demonstrate the ability to reach and involve in training programs target populations of workers who are or will be engaged in hazardous waste removal or containment or emergency response operations.

SEC. 127. LIABILITY LIMITS FOR OCEAN INCINERATION VESSELS.

(a) DEFINITION OF INCINERATION VESSEL.—Section 101 of CERCLA is amended by adding the following after paragraph (37):

"(38) The term 'incineration vessel' means any vessel which carries hazardous substances for the purpose of incineration of such substances, so long as such substances or residues of such substances are on board.".

(b) LIABILITY.—Section 107 of CERCLA is amended as follows:

(1) Subsection (a)(3) is amended by inserting "or incineration vessel" after "facility".

(2) Subsection (a)(4) is amended by inserting ", incineration vessels" after "facilities".

(3) Subparagraph (A) of subsection (c)(1) is amended by inserting ", other than an incineration vessel," after "vessel".

(4) Subparagraph (B) of subsection (c)(1) is amended by inserting "other than an incineration vessel," after "other vessel,".

(5) Subparagraph (D) of subsection (c)(1) is amended by inserting "any incineration vessel or" before "any facility".

(c) FINANCIAL RESPONSIBILITY.—Section 108(a) of CERCLA is amended as follows:

(1) Paragraph (1) is amended by inserting "to cover the liability prescribed under paragraph (1) of section 107(a) of this Act" after "whichever is greater)";

(2) Add a new paragraph to read as follows:

"(4) In addition to the financial responsibility provisions of paragraph (1) of this subsection, the President shall require additional evidence of financial responsibility for incineration vessels in such amounts, and to cover such liabilities recognized by law, as the President deems appropriate, taking into account the potential risks posed by incineration and transport for incineration, and any other factors deemed relevant.".

(d) SAVINGS CLAUSE.—Section 106 of the Marine Protection, Research, and Sanctuar-

ies Act of 1972 is amended by adding the following new subsection at the end thereof:

"(g) SAVINGS CLAUSE.—Nothing in this Act shall restrict, affect or modify the rights of any person (1) to seek damages or enforcement of any standard or limitation under State law, including State common law, or (2) to seek damages under other Federal law, including maritime tort law, resulting from noncompliance with any requirement of this Act or any permit under this Act.".

(e) MARITIME TORT.—Section 107(h) of CERCLA is amended by inserting ", under maritime tort law," after "with this section" and by inserting before the period "or the absence of any physical damage to the proprietary interest of the claimant".

TITLE II—MISCELLANEOUS PROVISIONS

SEC. 201. POST-CLOSURE LIABILITY PROGRAM STUDY, REPORT TO CONGRESS, AND SUSPENSION OF LIABILITY TRANSFERS.

Subsection (k) of section 107 of CERCLA is amended by adding at the end the following new paragraphs:

"(5) SUSPENSION OF LIABILITY TRANSFER.—Notwithstanding paragraphs (1), (2), (3), and (4) of this subsection and subsection (j) of section 111 of this Act, no liability shall be transferred to or assumed by the Post-Closure Liability Trust Fund established by section 232 of this Act prior to completion of the study required under paragraph (6) of this subsection, transmission of a report of such study to both Houses of Congress, and authorization of such a transfer or assumption by Act of Congress following receipt of such study and report.

"(6) STUDY OF OPTIONS FOR POST-CLOSURE PROGRAM.—

"(A) STUDY.—The Comptroller General shall conduct a study of options for a program for the management of the liabilities associated with hazardous waste treatment, storage, and disposal sites after their closure which complements the policies set forth in the Hazardous and Solid Waste Amendments of 1984 and assures the protection of human health and the environment.

"(B) PROGRAM ELEMENTS.—The program referred to in subparagraph (A) shall be designed to assure each of the following:

"(i) Incentives are created and maintained for the safe management and disposal of hazardous wastes so as to assure protection of human health and the environment.

"(ii) Members of the public will have reasonable confidence that hazardous wastes will be managed and disposed of safely and that resources will be available to address any problems that may arise and to cover costs of long-term monitoring, care, and maintenance of such sites.

"(iii) Persons who are or seek to become owners and operators of hazardous waste disposal facilities will be able to manage their potential future liabilities and to attract the investment capital necessary to build, operate, and close such facilities in a manner which assures protection of human health and the environment.

"(C) ASSESSMENTS.—The study under this paragraph shall include assessments of treatment, storage, and disposal facilities which have been or are likely to be issued a permit under section 3005 of the Solid Waste Disposal Act and the likelihood of future insolvency on the part of owners and operators of such facilities. Separate assessments shall be made for different classes of facilities and for different classes of land disposal facilities and shall include but not be limited to—

"(i) the current and future financial capabilities of facility owners and operators;

"(ii) the current and future costs associated with facilities, including the costs of routine monitoring and maintenance, compliance monitoring, corrective action, natural resource damages, and liability for damages to third parties; and

"(iii) the availability of mechanisms by which owners and operators of such facilities can assure that current and future costs, including post-closure costs, will be financed.

"(D) PROCEDURES.—In carrying out the responsibilities of this paragraph, the Comptroller General shall consult with the Administrator, the Secretary of Commerce, the Secretary of the Treasury, and the heads of other appropriate Federal agencies.

"(E) CONSIDERATION OF OPTIONS.—In conducting the study under this paragraph, the Comptroller General shall consider various mechanisms and combinations of mechanisms to complement the policies set forth in the Hazardous and Solid Waste Amendments of 1984 to serve the purposes set forth in subparagraph (B) and to assure that the current and future costs associated with hazardous waste facilities, including post-closure costs, will be adequately financed and, to the greatest extent possible, borne by the owners and operators of such facilities. Mechanisms to be considered include, but are not limited to—

"(i) revisions to closure, post-closure, and financial responsibility requirements under subtitles C and I of the Solid Waste Disposal Act;

"(ii) voluntary risk pooling by owners and operators;

"(iii) legislation to require risk pooling by owners and operators;

"(iv) modification of the Post-Closure Liability Trust Fund previously established by section 232 of this Act, and the conditions for transfer of liability under this subsection, including limiting the transfer of some or all liability under this subsection only in the case of insolvency of owners and operators;

"(v) private insurance;

"(vi) insurance provided by the Federal Government;

"(vii) coinsurance, reinsurance, or pooled-risk insurance, whether provided by the private sector or provided or assisted by the Federal Government; and

"(viii) creation of a new program to be administered by a new or existing Federal agency or by a federally chartered corporation.

"(F) RECOMMENDATIONS.—The Comptroller General shall consider options for funding any program under this section and shall, to the extent necessary, make recommendations to the appropriate committees of Congress for additional authority to implement such program.".

SEC. 202. HAZARDOUS MATERIALS TRANSPORTATION.

(a) REGULATION REQUIREMENT.—Section 306(a) of CERCLA is amended (1) by striking out "within ninety days after the date of enactment of this Act" and inserting in lieu thereof "within 30 days after the enactment of the Superfund Amendments and Reauthorization Act of 1986" and (2) by inserting "and regulated" before "as a hazardous material".

(b) CONFORMING AMENDMENT.—Section 306(b) of CERCLA is amended by inserting "and regulation" after "prior to the effective date of the listing".

SEC. 203. STATE PROCEDURAL REFORM.

(a) IN GENERAL.—Title III of CERCLA is amended by adding the following new section at the end thereof:

"SEC. 309. ACTIONS UNDER STATE LAW FOR DAMAGES FROM EXPOSURE TO HAZARDOUS SUBSTANCES.

"(a) STATE STATUTES OF LIMITATIONS FOR HAZARDOUS SUBSTANCE CASES.—

"(1) EXCEPTION TO STATE STATUTES.—In the case of any action brought under State law for personal injury, or property damages, which are caused or contributed to by exposure to any hazardous substance, or pollutant or contaminant, released into the environment from a facility, if the applicable limitations period for such action (as specified in the State statute of limitations or under common law) provides a commencement date which is earlier than the federally required commencement date, such period shall commence at the federally required commencement date in lieu of the date specified in such State statute.

"(2) STATE LAW GENERALLY APPLICABLE.—Except as provided in paragraph (1), the statute of limitations established under State law shall apply in all actions brought under State law for personal injury, or property damages, which are caused or contributed to by exposure to any hazardous substance, or pollutant or contaminant, released into the environment from a facility.

"(3) ACTIONS UNDER SECTION 107.—Nothing in this section shall apply with respect to any cause of action brought under section 107 of this Act.

"(b) DEFINITIONS.—As used in this section—

"(1) TITLE I TERMS.—The terms used in this section shall have the same meaning as when used in title I of this Act.

"(2) APPLICABLE LIMITATIONS PERIOD.—The term 'applicable limitations period' means the period specified in a statute of limitations during which a civil action referred to in subsection (a)(1) may be brought.

"(3) COMMENCEMENT DATE.—The term 'commencement date' means the date specified in a statute of limitations as the beginning of the applicable limitations period.

"(4) FEDERALLY REQUIRED COMMENCEMENT DATE.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'federally required commencement date' means the date the plaintiff knew (or reasonably should have known) that the personal injury or property damages referred to in subsection (a)(1) were caused or contributed to by the hazardous substance or pollutant or contaminant concerned.

"(B) SPECIAL RULES.—In the case of a minor or incompetent plaintiff, the term 'federally required commencement date' means the later of the date referred to in subparagraph (A) or the following:

"(i) In the case of a minor, the date on which the minor reaches the age of majority, as determined by State law, or has a legal representative appointed.

"(ii) In the case of an incompetent individual, the date on which such individual becomes competent or has had a legal representative appointed.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) of this section shall take effect with respect to actions brought after December 11, 1980.

SEC. 204. CONFORMING AMENDMENT TO FUNDING PROVISIONS.

(a) HAZARDOUS SUBSTANCES SUPERFUND.—Section 221(a) of CERCLA is amended by striking out "Hazardous Substance Re-

sponse Trust Fund" and inserting in lieu thereof "Hazardous Substances Superfund".

(b) CROSS REFERENCE TO FUNDING PROVISIONS.—Section 221(c) of CERCLA is amended to read as follows:

"(c) EXPENDITURES FROM TRUST FUND.—Amounts in the Hazardous Substances Superfund established under subchapter A of chapter 98 of the Internal Revenue Code of 1954 shall be available for expenditure only as provided in section 111 of this Act.".

SEC. 205. CLEANUP OF PETROLEUM FROM LEAKING UNDERGROUND STORAGE TANKS.

(a) DEFINITION OF PETROLEUM.—Section 9001(2)(B) of the Solid Waste Disposal Act is amended by striking out all that follows "petroleum" and inserting in lieu thereof a period. Section 9001 of such Act is amended by adding at the end thereof the following:

"(8) The term 'petroleum' means petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute).".

(b) STATE INVENTORIES.—Section 9002 of the Solid Waste Disposal Act is amended by adding the following new subsection at the end thereof:

"(c) STATE INVENTORIES.—Each State shall make 2 separate inventories of all underground storage tanks in such State containing regulated substances. One inventory shall be made with respect to petroleum and one with respect to other regulated substances. In making such inventories, the State shall utilize and aggregate the data in the notification forms submitted pursuant to subsections (a) and (b) of this section. Each State shall submit such aggregated data to the Administrator not later than 270 days after the enactment of the Superfund Amendments and Reauthorization Act of 1986.".

(c) FINANCIAL RESPONSIBILITY.—

(1) REQUIREMENTS.—Section 9003(c) of the Solid Waste Disposal Act is amended by striking "and" at the end of paragraph (4), striking the period at the end of paragraph (5) and substituting "; and" and by adding the following new paragraph at the end thereof:

"(6) requirements for maintaining evidence of financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from operating an underground storage tank.".

(2) CONFORMING AMENDMENT.—Section 9003(d) of such Act is amended by striking out paragraph (1) and renumbering paragraphs (2) through (5) as paragraphs (1) through (4), respectively.

(3) OTHER METHODS.—Section 9003(d)(1) of such Act (as redesignated by paragraph (2) of this subsection) is amended by striking out "or" after "credit," and by striking out the period at the end thereof and inserting in lieu thereof the following: "or any other method satisfactory to the Administrator.".

(4) Section 9003(d) of such Act is further amended by adding at the end thereof the following new paragraph:

"(5)(A) The Administrator, in promulgating financial responsibility regulations under this section, may establish an amount of coverage for particular classes or categories of underground storage tanks containing petroleum which shall satisfy such regulations and which shall not be less than $1,000,000 for each occurrence with an appropriate aggregate requirement.

"(B) The Administrator may set amounts lower than the amounts required by subparagraph (A) of this paragraph for underground storage tanks containing petroleum which are at facilities not engaged in petroleum production, refining, or marketing and which are not used to handle substantial quantities of petroleum.

"(C) In establishing classes and categories for purposes of this paragraph, the Administrator may consider the following factors:

"(i) The size, type, location, storage, and handling capacity of underground storage tanks in the class or category and the volume of petroleum handled by such tanks.

"(ii) The likelihood of release and the potential extent of damage from any release from underground storage tanks in the class or category.

"(iii) The economic impact of the limits on the owners and operators of each such class or category, particularly relating to the small business segment of the petroleum marketing industry.

"(iv) The availability of methods of financial responsibility in amounts greater than the amount established by this paragraph.

"(v) Such other factors as the Administrator deems pertinent.

"(D) The Administrator may suspend enforcement of the financial responsibility requirements for a particular class or category of underground storage tanks or in a particular State, if the Administrator makes a determination that methods of financial responsibility satisfying the requirements of this subsection are not generally available for underground storage tanks in that class or category, and—

"(i) steps are being taken to form a risk retention group for such class of tanks; or

"(ii) such State is taking steps to establish a fund pursuant to section 9004(c)(1) of this Act to be submitted as evidence of financial responsibility.

A suspension by the Administrator pursuant to this paragraph shall extend for a period not to exceed 180 days. A determination to suspend may be made with respect to the same class or category or for the same State at the end of such period, but only if substantial progress has been made in establishing a risk retention group, or the owners or operators in the class or category demonstrate, and the Administrator finds, that the formation of such a group is not possible and that the State is unable or unwilling to establish such a fund pursuant to clause (ii).".

(d) EPA RESPONSE PROGRAM.—Section 9003 of the Solid Waste Disposal Act is amended by adding after subsection (g) the following new subsection:

"(h) EPA RESPONSE PROGRAM FOR PETROLEUM.—

"(1) BEFORE REGULATIONS.—Before the effective date of regulations under subsection (c), the Administrator (or a State pursuant to paragraph (7)) is authorized to—

"(A) require the owner or operator of an underground storage tank to undertake corrective action with respect to any release of petroleum when the Administrator (or the State) determines that such corrective action will be done properly and promptly by the owner or operator of the underground storage tank from which the release occurs; or

"(B) undertake corrective action with respect to any release of petroleum into the environment from an underground storage tank if such action is necessary, in the judgment of the Administrator (or the State), to protect human health and the environment. The corrective action undertaken or required under this paragraph shall be such as may be necessary to protect human health and the environment. The Administrator shall use funds in the Leaking Underground Storage Tank Trust Fund for payment of costs incurred for corrective action under subparagraph (B), enforcement action under subparagraph (A), and cost recovery under paragraph (6) of this subsection. Subject to the priority requirements of paragraph (3), the Administrator (or the State) shall give priority in undertaking such actions under subparagraph (B) to cases where the Administrator (or the State) cannot identify a solvent owner or operator of the tank who will undertake action properly.

"(2) AFTER REGULATIONS.—Following the effective date of regulations under subsection (c), all actions or orders of the Administrator (or a State pursuant to paragraph (7)) described in paragraph (1) of this subsection shall be in conformity with such regulations. Following such effective date, the Administrator (or the State) may undertake corrective action with respect to any release of petroleum into the environment from an underground storage tank only if such action is necessary, in the judgment of the Administrator (or the State), to protect human health and the environment and one or more of the following situations exists:

"(A) No person can be found, within 90 days or such shorter period as may be necessary to protect human health and the environment, who is—

"(i) an owner or operator of the tank concerned,

"(ii) subject to such corrective action regulations, and

"(iii) capable of carrying out such corrective action properly.

"(B) A situation exists which requires prompt action by the Administrator (or the State) under this paragraph to protect human health and the environment.

"(C) Corrective action costs at a facility exceed the amount of coverage required by the Administrator pursuant to the provisions of subsections (c) and (d)(5) of this section and, considering the class or category of underground storage tank from which the release occurred, expenditures from the Leaking Underground Storage Tank Trust Fund are necessary to assure an effective corrective action.

"(D) The owner or operator of the tank has failed or refused to comply with an order of the Administrator under this subsection or section 9006 or with the order of a State under this subsection to comply with the corrective action regulations.

"(3) PRIORITY OF CORRECTIVE ACTIONS.—The Administrator (or a State pursuant to paragraph (7)) shall give priority in undertaking corrective actions under this subsection, and in issuing orders requiring owners or operators to undertake such actions, to releases of petroleum from underground storage tanks which pose the greatest threat to human health and the environment.

"(4) CORRECTIVE ACTION ORDERS.—The Administrator is authorized to issue orders to the owner or operator of an underground storage tank to carry out subparagraph (A) of paragraph (1) or to carry out regulations issued under subsection (c)(4). A State acting pursuant to paragraph (7) of this subsection is authorized to carry out subparagraph (A) of paragraph (1) only until the State's program is approved by the Administrator under section 9004 of this subtitle. Such orders shall be issued and enforced in the same manner and subject to the same requirements as orders under section 9006.

"(5) ALLOWABLE CORRECTIVE ACTIONS.—The corrective actions undertaken by the Administrator (or a State pursuant to paragraph (7)) under paragraph (1) or (2) may include temporary or permanent relocation of residents and alternative household water supplies. In connection with the performance of any corrective action under paragraph (1) or (2), the Administrator may undertake an exposure assessment as defined in paragraph (10) of this subsection or provide for such an assessment in a cooperative agreement with a State pursuant to paragraph (7) of this subsection. The costs of any such assessment may be treated as corrective action for purposes of paragraph (6), relating to cost recovery.

"(6) RECOVERY OF COSTS.—

"(A) IN GENERAL.—Whenever costs have been incurred by the Administrator, or by a State pursuant to paragraph (7), for undertaking corrective action or enforcement action with respect to the release of petroleum from an underground storage tank, the owner or operator of such tank shall be liable to the Administrator or the State for such costs. The liability under this paragraph shall be construed to be the standard of liability which obtains under section 311 of the Federal Water Pollution Control Act.

"(B) RECOVERY.—In determining the equities for seeking the recovery of costs under subparagraph (A), the Administrator (or a State pursuant to paragraph (7) of this subsection) may consider the amount of financial responsibility required to be maintained under subsections (c) and (d)(5) of this section and the factors considered in establishing such amount under subsection (d)(5).

"(C) EFFECT ON LIABILITY.—

"(i) NO TRANSFERS OF LIABILITY.—No indemnification, hold harmless, or similar agreement or conveyance shall be effective to transfer from the owner or operator of any underground storage tank or from any person who may be liable for a release or threat of release under this subsection, to any other person the liability imposed under this subsection. Nothing in this subsection shall bar any agreement to insure, hold harmless, or indemnify a party to such agreement for any liability under this section.

"(ii) NO BAR TO CAUSE OF ACTION.—Nothing in this subsection, including the provisions of clause (i) of this subparagraph, shall bar a cause of action that an owner or operator or any other person subject to liability under this section, or a guarantor, has or would have, by reason of subrogation or otherwise against any person.

"(D) FACILITY.—For purposes of this paragraph, the term 'facility' means, with respect to any owner or operator, all underground storage tanks used for the storage of petroleum which are owned or operated by such owner or operator and located on a single parcel of property (or on any contiguous or adjacent property).

"(7) STATE AUTHORITIES.—

"(A) GENERAL.—A State may exercise the authorities in paragraphs (1) and (2) of this subsection, subject to the terms and conditions of paragraphs (3), (5), (9), (10), and (11), and including the authorities of paragraphs (4), (6), and (8) of this subsection if—

"(i) the Administrator determines that the State has the capabilities to carry out effective corrective actions and enforcement activities; and

"(ii) the Administrator enters into a cooperative agreement with the State setting out the actions to be undertaken by the State. The Administrator may provide funds from the Leaking Underground Storage Tank Trust Fund for the reasonable costs of the State's actions under the cooperative agreement.

"(B) COST SHARE.—Following the effective date of the regulations under subsection (c) of this section, the State shall pay 10 per centum of the cost of corrective actions undertaken either by the Administrator or by the State under a cooperative agreement, except that the Administrator may take corrective action at a facility where immediate action is necessary to respond to an imminent and substantial endangerment to human health or the environment if the State fails to pay the cost share.

"(8) EMERGENCY PROCUREMENT POWERS.—Notwithstanding any other provision of law, the Administrator may authorize the use of such emergency procurement powers as he deems necessary.

"(9) DEFINITION OF OWNER.—As used in this subsection, the term 'owner' does not include any person who, without participating in the management of an underground storage tank and otherwise not engaged in petroleum production, refining, and marketing, holds indicia of ownership primarily to protect the owner's security interest in the tank.

"(10) DEFINITION OF EXPOSURE ASSESSMENT.—As used in this subsection, the term 'exposure assessment' means an assessment to determine the extent of exposure of, or potential for exposure of, individuals to petroleum from a release from an underground storage tank based on such factors as the nature and extent of contamination and the existence of or potential for pathways of human exposure (including ground or surface water contamination, air emissions, and food chain contamination), the size of the community within the likely pathways of exposure, and the comparison of expected human exposure levels to the short-term and long-term health effects associated with identified contaminants and any available recommended exposure or tolerance limits for such contaminants. Such assessment shall not delay corrective action to abate immediate hazards or reduce exposure.

"(11) FACILITIES WITHOUT FINANCIAL RESPONSIBILITY.—At any facility where the owner or operator has failed to maintain evidence of financial responsibility in amounts at least equal to the amounts established by subsection (d)(5)(A) of this section (or a lesser amount if such amount is applicable to such facility as a result of subsection (d)(5)(B) of this section) for whatever reason the Administrator shall expend no monies from the Leaking Underground Storage Tank Trust Fund to clean up releases at such facility pursuant to the provisions of paragraph (1) or (2) of this subsection. At such facilities the Administrator shall use the authorities provided in subparagraph (A) of paragraph (1) and paragraph (4) of this subsection and section 9006 of this subtitle to order corrective action to clean up such releases. States acting pursuant to paragraph (7) of this subsection shall use the authorities provided in subparagraph (A) of paragraph (1) and paragraph (4) of this subsection to order corrective action to clean up such releases. Notwithstanding the provisions of this paragraph, the Administrator may use monies from the fund to take the corrective actions authorized by paragraph (5) of this subsection to protect human health at such facilities and shall seek full recovery of the costs of all such actions pursuant to the provisions of paragraph (6)(A) of this subsection and without consideration of the factors in paragraph (6)(B) of this subsection. Nothing in this paragraph shall prevent the Administrator (or a State pursuant to paragraph (7) of this subsection) from taking corrective action at a facility where there is no solvent owner or operator or where immediate action is necessary to respond to an imminent and substantial endangerment of human health or the environment.".

(e) FINANCIAL RESPONSIBILITY IN STATE PROGRAMS.—

(1) Section 9004(c)(1) of the Solid Waste Disposal Act is amended by striking out "financed by fees on tank owners and operators and".

(2) Section 9004(c)(2) of the Solid Waste Disposal Act is amended by striking out "or" after "credit," in the first sentence and by striking out the period at the end thereof and inserting in lieu thereof the following: "or any other method satisfactory to the Administrator.". Such section is further amended by adding after the word "terms" in the second sentence the following: "including the amount of coverage required for various classes and categories of underground storage tanks pursuant to section 9003(d)(5)".

(f) AUTHORITY TO ENTER FOR CORRECTIVE ACTIONS.—

(1) Section 9005(a) of the Solid Waste Disposal Act is amended by inserting the words "taking any corrective action" after the word "study", inserting the words "acting pursuant to subsection (h)(7) of section 9003 or" after the words "or a representative of a State", striking the word "and" before the words "permit such officer", and inserting the words "and permit such officer to have access for corrective action" after the words "relating to such tanks" in the first sentence thereof. Such section is further amended by inserting the words "taking corrective action," after the word "study," in the second sentence thereof.

(2) Section 9005(a) of the Solid Waste Disposal Act is amended by striking the word "and" at the end of paragraph (2), striking out the period at the end of paragraph (3) and inserting "; and", and adding the following new paragraph at the end thereof—

"(4) to take corrective action.".

(3) Section 9005 of the Solid Waste Disposal Act is amended by changing the heading thereof to read as follows—

"INSPECTIONS, MONITORING, TESTING AND CORRECTIVE ACTION".

(g) COORDINATION WITH OTHER LAWS.—Section 9008 of the Solid Waste Disposal Act is amended to read as follows:

"STATE AUTHORITY

"SEC. 9008. Nothing in this subtitle shall preclude or deny any right of any State or political subdivision thereof to adopt or enforce any regulation, requirement, or standard of performance respecting underground storage tanks that is more stringent than a regulation, requirement, or standard of performance in effect under this subtitle or to impose any additional liability with respect to the release of regulated substances within such State or political subdivision.".

(h) POLLUTION LIABILITY INSURANCE.—

(1) STUDY.—The Comptroller General shall conduct a study of the availability of pollution liability insurance, leak insurance, and contamination insurance for owners and operators of petroleum storage and distribution facilities. The study shall assess the current and projected extent to which private insurance can contribute to the financial responsibility of owners and operators of un-

derground storage tanks and the ability of owners and operators of underground storage tanks to maintain financial responsibility through other methods. The study shall consider the experience of owners and operators of marine vessels in getting insurance for their liabilities under the Federal Water Pollution Control Act and the operation of the Water Quality Insurance Syndicate.

(2) REPORT.—The Comptroller General shall report the findings under this subsection to the Congress within 15 months after the enactment of this subsection. Such report shall include recommendations for legislative or administrative changes that will enable owners and operators of underground storage tanks to maintain financial responsibility sufficient to provide all cleanup costs and damages that may result from reasonably foreseeable releases and events.

(i) CRIMINAL PENALTIES RELATING TO USED OIL.—Subtitle C of the Solid Waste Disposal Act is amended as follows:

(1) In paragraphs (4) and (5) of section 3008(d) after "hazardous waste" insert "or any used oil not identified or listed as a hazardous waste under this subtitle".

(2) Delete "accompanied by a manifest; or" in paragraph (5) and insert "accompanied by a manifest;".

(3) Insert "; or" after paragraph (6).

(4) Add the following new paragraph after paragraph (6):

"(7) knowingly stores, treats, transports, or causes to be transported, disposes of, or otherwise handles any used oil not identified or listed as a hazardous waste under subtitle C of the Solid Waste Disposal Act—

"(A) in knowing violation of any material condition or requirement of a permit under this subtitle C; or

"(B) in knowing violation of any material condition or requirement of any applicable regulations or standards under this Act;".

(5) In section 3008(e):

(A) Insert "or used oil not identified or listed as a hazardous waste under this subtitle" immediately after "this subtitle".

(B) Strike "or" immediately before "(6)".

(C) Insert ", or (7)" immediately after "(6)".

(j) STATE PROGRAMS FOR USED OIL.—Section 3006 of the Solid Waste Disposal Act is amended by adding the following new subsection at the end thereof:

"(h) STATE PROGRAMS FOR USED OIL.—In the case of used oil which is not listed or identified under this subtitle as a hazardous waste but which is regulated under section 3014, the provisions of this section regarding State programs shall apply in the same manner and to the same extent as such provisions apply to hazardous waste identified or listed under this subtitle.".

SEC. 206. CITIZENS SUITS.

Title III of CERCLA is amended by adding the following new section after section 309:

"SEC. 310. CITIZENS SUITS.

"(a) AUTHORITY TO BRING CIVIL ACTIONS.—Except as provided in subsections (d) and (e) of this section and in section 113(h) (relating to timing of judicial review), any person may commence a civil action on his own behalf—

"(1) against any person (including the United States and any other governmental instrumentality or agency, to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of any standard, regulation, condition, requirement, or order which has become effective pursuant to this Act (including any provision of an agreement under section 120, relating to Federal facilities); or

"(2) against the President or any other officer of the United States (including the Administrator of the Environmental Protection Agency and the Administrator of the ATSDR) where there is alleged a failure of the President or of such other officer to perform any act or duty under this Act, including an act or duty under section 120 (relating to Federal facilities), which is not discretionary with the President or such other officer.

Paragraph (2) shall not apply to any act or duty under the provisions of section 311 (relating to research, development, and demonstration).

"(b) VENUE.—

"(1) ACTIONS UNDER SUBSECTION (a)(1).—Any action under subsection (a)(1) shall be brought in the district court for the district in which the alleged violation occurred.

"(2) ACTIONS UNDER SUBSECTION (a)(2).—Any action brought under subsection (a)(2) may be brought in the United States District Court for the District of Columbia.

"(c) RELIEF.—The district court shall have jurisdiction in actions brought under subsection (a)(1) to enforce the standard, regulation, condition, requirement, or order concerned (including any provision of an agreement under section 120), to order such action as may be necessary to correct the violation, and to impose any civil penalty provided for the violation. The district court shall have jurisdiction in actions brought under subsection (a)(2) to order the President or other officer to perform the act or duty concerned.

"(d) RULES APPLICABLE TO SUBSECTION (a)(1) ACTIONS.—

"(1) NOTICE.—No action may be commenced under subsection (a)(1) of this section before 60 days after the plaintiff has given notice of the violation to each of the following:

"(A) The President.

"(B) The State in which the alleged violation occurs.

"(C) Any alleged violator of the standard, regulation, condition, requirement, or order concerned (including any provision of an agreement under section 120).

Notice under this paragraph shall be given in such manner as the President shall prescribe by regulation.

"(2) DILIGENT PROSECUTION.—No action may be commenced under paragraph (1) of subsection (a) if the President has commenced and is diligently prosecuting an action under this Act, or under the Solid Waste Disposal Act to require compliance with the standard, regulation, condition, requirement, or order concerned (including any provision of an agreement under section 120).

"(e) RULES APPLICABLE TO SUBSECTION (a)(2) ACTIONS.—No action may be commenced under paragraph (2) of subsection (a) before the 60th day following the date on which the plaintiff gives notice to the Administrator or other department, agency, or instrumentality that the plaintiff will commence such action. Notice under this subsection shall be given in such manner as the President shall prescribe by regulation.

"(f) COSTS.—The court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation (including reasonable attorney and expert witness fees) to the prevailing or the substantially prevailing party whenever the court determines such an award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

"(g) INTERVENTION.—In any action under this section, the United States or the State, or both, if not a party may intervene as a matter of right. For other provisions regarding intervention, see section 113.

"(h) OTHER RIGHTS.—This Act does not affect or otherwise impair the rights of any person under Federal, State, or common law, except with respect to the timing of review as provided in section 113(h) or as otherwise provided in section 309 (relating to actions under State law).

"(i) DEFINITIONS.—The terms used in this section shall have the same meanings as when used in title I.".

SEC. 207. INDIAN TRIBES.

(a) DEFINITION.—For definition of Indian tribe, see the amendments made by section 101 of this Act.

(b) FUTURE MAINTENANCE AND COST SHARING.—Section 104(c)(3) of CERCLA is amended by adding at the end thereof the following: "In the case of remedial action to be taken on land or water held by an Indian tribe, held by the United States in trust for Indians, held by a member of an Indian tribe (if such land or water is subject to a trust restriction on alienation), or otherwise within the borders of an Indian reservation, the requirements of this paragraph for assurances regarding future maintenance and cost-sharing shall not apply, and the President shall provide the assurance required by this paragraph regarding the availability of a hazardous waste disposal facility.".

(c) LIABILITY.—Section 107 of CERCLA is amended as follows:

(1) In subsection (a) by inserting "or an Indian tribe" after "State";

(2) In subsection (f):

(A) Insert after "State" the third time that word appears the following: "and to any Indian tribe for natural resources belonging to, managed by, controlled by, or appertaining to such tribe, or held in trust for the benefit of such tribe, or belonging to a member of such tribe if such resources are subject to a trust restriction on alienation".

(B) Insert "or Indian tribe" after "State" the fourth time that word appears.

(C) Add before the period at the end of the first sentence the following: ", so long as, in the case of damages to an Indian tribe occurring pursuant to a Federal permit or license, the issuance of that permit or license was not inconsistent with the fiduciary duty of the United States with respect to such Indian tribe".

(D) Insert "or the Indian tribe" after "State government".

(3) In subsection (i) insert "or Indian tribe" after "State" the first time it appears.

(4) In subsection (j) insert "or Indian tribe" after "State" the first time it appears.

(d) NATURAL RESOURCES CLAIMS, DELEGATION, ETC.—Section 111 of CERCLA is amended as follows:

(1) In subsection (b), insert before the period at the end thereof the following: ", or by any Indian tribe or by the United States acting on behalf of any Indian tribe for natural resources belonging to, managed by, controlled by, or appertaining to such tribe, or held in trust for the benefit of such tribe, or belonging to a member of such tribe if such resources are subject to a trust restriction on alienation";

(2) In subsection (c)(2) insert "or Indian tribe" after "State".

(3) In subsection (f) insert "or Indian tribe" after "State"; and

(4) In subsection (i) insert after "State," the following: "and by the governing body of any Indian tribe having sustained damage to natural resources belonging to, managed by, controlled by, or appertaining to such tribe, or held in trust for the benefit of such tribe, or belonging to a member of such tribe if such resources are subject to a trust restriction on alienation,".

(e) TREATMENT OF TRIBES GENERALLY.—Title I of CERCLA is amended by adding the following new section after section 125:

"SEC. 126. INDIAN TRIBES.

"(a) TREATMENT GENERALLY.—The governing body of an Indian tribe shall be afforded substantially the same treatment as a State with respect to the provisions of section 103(a) (regarding notification of releases), section 104(c)(2) (regarding consultation on remedial actions), section 104(e) (regarding access to information), section 104(i) (regarding health authorities) and section 105 (regarding roles and responsibilities under the national contingency plan and submittal of priorities for remedial action, but not including the provision regarding the inclusion of at least one facility per State on the National Priorities List).

"(b) COMMUNITY RELOCATION.—Should the President determine that proper remedial action is the permanent relocation of tribal members away from a contaminated site because it is cost effective and necessary to protect their health and welfare, such finding must be concurred in by the affected tribal government before relocation shall occur. The President, in cooperation with the Secretary of the Interior, shall also assure that all benefits of the relocation program are provided to the affected tribe and that alternative land of equivalent value is available and satisfactory to the tribe. Any lands acquired for relocation of tribal members shall be held in trust by the United States for the benefit of the tribe.

"(c) STUDY.—The President shall conduct a survey, in consultation with the Indian tribes, to determine the extent of hazardous waste sites on Indian lands. Such survey shall be included within a report which shall make recommendations on the program needs of tribes under this Act, with particular emphasis on how tribal participation in the administration of such programs can be maximized. Such report shall be submitted to Congress along with the President's budget request for fiscal year 1988.

"(d) LIMITATION.—Notwithstanding any other provision of this Act, no action under this Act by an Indian tribe shall be barred until the later of the following:

"(1) The applicable period of limitations has expired.

"(2) 2 years after the United States, in its capacity as trustee for the tribe, gives written notice to the governing body of the tribe that it will not present a claim or commence an action on behalf of the tribe or fails to present a claim or commence an action within the time limitations specified in this Act.".

SEC. 208. INSURABILITY STUDY.

Section 301 of CERCLA is amended by adding the following new subsection at the end thereof:

"(g) INSURABILITY STUDY.—

"(1) STUDY BY COMPTROLLER GENERAL.—The Comptroller General of the United States, in consultation with the persons described in paragraph (2), shall undertake a study to determine the insurability, and effects on the standard of care, of the liability of each of the following:

"(A) Persons who generate hazardous substances: liability for costs and damages under this Act.

"(B) Persons who own or operate facilities: liability for costs and damages under this Act.

"(C) Persons liable for injury to persons or property caused by the release of hazardous substances into the environment.

"(2) CONSULTATION.—In conducting the study under this subsection, the Comptroller General shall consult with the following:

"(A) Representatives of the Administrator.

"(B) Representatives of persons described in subparagraphs (A) through (C) of the preceding paragraph.

"(C) Representatives (i) of groups or organizations comprised generally of persons adversely affected by releases or threatened releases of hazardous substances and (ii) of groups organized for protecting the interests of consumers.

"(D) Representatives of property and casualty insurers.

"(E) Representatives of reinsurers.

"(F) Persons responsible for the regulation of insurance at the State level.

"(3) ITEMS EVALUATED.—The study under this section shall include, among other matters, an evaluation of the following:

"(A) Current economic conditions in, and the future outlook for, the commercial market for insurance and reinsurance.

"(B) Current trends in statutory and common law remedies.

"(C) The impact of possible changes in traditional standards of liability, proof, evidence, and damages on existing statutory and common law remedies.

"(D) The effect of the standard of liability and extent of the persons upon whom it is imposed under this Act on the protection of human health and the environment and on the availability, underwriting, and pricing of insurance coverage.

"(E) Current trends, if any, in the judicial interpretation and construction of applicable insurance contracts, together with the degree to which amendments in the language of such contracts and the description of the risks assumed, could affect such trends.

"(F) The frequency and severity of a representative sample of claims closed during the calendar year immediately preceding the enactment of this subsection.

"(G) Impediments to the acquisition of insurance or other means of obtaining liability coverage other than those referred to in the preceding subparagraphs.

"(H) The effects of the standards of liability and financial responsibility requirements imposed pursuant to this Act on the cost of, and incentives for, developing and demonstrating alternative and innovative treatment technologies, as well as waste generation minimization.

"(4) SUBMISSION.—The Comptroller General shall submit a report on the results of the study to Congress with appropriate recommendations within 12 months after the enactment of this subsection.".

SEC. 209. RESEARCH, DEVELOPMENT, AND DEMONSTRATION.

(a) PURPOSE.—The purposes of this section are as follows:

(1) To establish a comprehensive and coordinated Federal program of research, development, demonstration, and training for the purpose of promoting the development of alternative and innovative treatment technologies that can be used in response actions under the CERCLA program, to provide incentives for the development and use of such technologies, and to improve the scientific capability to assess, detect and evaluate the effects on and risks to human health from hazardous substances.

(2) To establish a basic university research and education program within the Department of Health and Human Services and a research, demonstration, and training program within the Environmental Protection Agency.

(3) To reserve certain funds from the Hazardous Substance Trust Fund to support a basic research program within the Department of Health and Human Services, and an applied and developmental research program within the Environmental Protection Agency.

(4) To enhance the Environmental Protection Agency's internal research capabilities related to CERCLA activities, including site assessment and technology evaluation.

(5) To provide incentives for the development of alternative and innovative treatment technologies in a manner that supplements or coordinates with, but does not compete with or duplicate, private sector development of such technologies.

(b) AMENDMENT OF CERCLA.—Title III of CERCLA is amended by adding the following new section at the end thereof:

"SEC. 311. RESEARCH, DEVELOPMENT, AND DEMONSTRATION.

"(a) HAZARDOUS SUBSTANCE RESEARCH AND TRAINING.—

"(1) AUTHORITIES OF SECRETARY.—The Secretary of Health and Human Services (hereinafter in this subsection referred to as the Secretary), in consultation with the Administrator, shall establish and support a basic research and training program (through grants, cooperative agreements, and contracts) consisting of the following:

"(A) Basic research (including epidemiologic and ecologic studies) which may include each of the following:

"(i) Advanced techniques for the detection, assessment, and evaluation of the effects on human health of hazardous substances.

"(ii) Methods to assess the risks to human health presented by hazardous substances.

"(iii) Methods and technologies to detect hazardous substances in the environment and basic biological, chemical, and physical methods to reduce the amount and toxicity of hazardous substances.

"(B) Training, which may include each of the following:

"(i) Short courses and continuing education for State and local health and environment agency personnel and other personnel engaged in the handling of hazardous substances, in the management of facilities at which hazardous substances are located, and in the evaluation of the hazards to human health presented by such facilities.

"(ii) Graduate or advanced training in environmental and occupational health and safety and in the public health and engineering aspects of hazardous waste control.

"(iii) Graduate training in the geosciences, including hydrogeology, geological engineering, geophysics, geochemistry, and related fields necessary to meet professional personnel needs in the public and private sectors and to effectuate the purposes of this Act.

"(2) DIRECTOR OF NIEHS.—The Director of the National Institute for Environmental Health Sciences shall cooperate fully with the relevant Federal agencies referred to in subparagraph (A) of paragraph (5) in carrying out the purposes of this section.

"(3) RECIPIENTS OF GRANTS, ETC.—A grant, cooperative agreement, or contract may be made or entered into under paragraph (1) with an accredited institution of higher education. The institution may carry out the research or training under the grant, cooperative agreement, or contract through contracts, including contracts with any of the following:

"(A) Generators of hazardous wastes.

"(B) Persons involved in the detection, assessment, evaluation, and treatment of hazardous substances.

"(C) Owners and operators of facilities at which hazardous substances are located.

"(D) State and local governments.

"(4) PROCEDURES.—In making grants and entering into cooperative agreements and contracts under this subsection, the Secretary shall act through the Director of the National Institute for Environmental Health Sciences. In considering the allocation of funds for training purposes, the Director shall ensure that at least one grant, cooperative agreement, or contract shall be awarded for training described in each of clauses (i), (ii), and (iii) of paragraph (1)(B). Where applicable, the Director may choose to operate training activities in cooperation with the Director of the National Institute for Occupational Safety and Health. The procedures applicable to grants and contracts under title IV of the Public Health Service Act shall be followed under this subsection.

"(5) ADVISORY COUNCIL.—To assist in the implementation of this subsection and to aid in the coordination of research and demonstration and training activities funded from the Fund under this section, the Secretary shall appoint an advisory council (hereinafter in this subsection referred to as the 'Advisory Council') which shall consist of representatives of the following:

"(A) The relevant Federal agencies.

"(B) The chemical industry.

"(C) The toxic waste management industry.

"(D) Institutions of higher education.

"(E) State and local health and environmental agencies.

"(F) The general public.

"(6) PLANNING.—Within nine months after the date of the enactment of this subsection, the Secretary, acting through the Director of the National Institute for Environmental Health Sciences, shall issue a plan for the implementation of paragraph (1). The plan shall include priorities for actions under paragraph (1) and include research and training relevant to scientific and technological issues resulting from site specific hazardous substance response experience. The Secretary shall, to the maximum extent practicable, take appropriate steps to coordinate program activities under this plan with the activities of other Federal agencies in order to avoid duplication of effort. The plan shall be consistent with the need for the development of new technologies for meeting the goals of response actions in accordance with the provisions of this Act. The Advisory Council shall be provided an opportunity to review and comment on the plan and priorities and assist appropriate coordination among the relevant Federal agencies referred to in subparagraph (A) of paragraph (5).

"(b) ALTERNATIVE OR INNOVATIVE TREATMENT TECHNOLOGY RESEARCH AND DEMONSTRATION PROGRAM.—

"(1) ESTABLISHMENT.—The Administrator is authorized and directed to carry out a program of research, evaluation, testing, development, and demonstration of alternative or innovative treatment technologies (hereinafter in this subsection referred to as the 'program') which may be utilized in response actions to achieve more permanent protection of human health and welfare and the environment.

"(2) ADMINISTRATION.—The program shall be administered by the Administrator, acting through an office of technology demonstration and shall be coordinated with programs carried out by the Office of Solid Waste and Emergency Response and the Office of Research and Development.

"(3) CONTRACTS AND GRANTS.—In carrying out the program, the Administrator is authorized to enter into contracts and cooperative agreements with, and make grants to, persons, public entities, and nonprofit private entities which are exempt from tax under section 501(c)(3) of the Internal Revenue Code of 1954. The Administrator shall, to the maximum extent possible, enter into appropriate cost sharing arrangements under this subsection.

"(4) USE OF SITES.—In carrying out the program, the Administrator may arrange for the use of sites at which a response may be undertaken under section 104 for the purposes of carrying out research, testing, evaluation, development, and demonstration projects. Each such project shall be carried out under such terms and conditions as the Administrator shall require to assure the protection of human health and the environment and to assure adequate control by the Administrator of the research, testing, evaluation, development, and demonstration activities at the site.

"(5) DEMONSTRATION ASSISTANCE.—

"(A) PROGRAM COMPONENTS.—The demonstration assistance program shall include the following:

"(i) The publication of a solicitation and the evaluation of applications for demonstration projects utilizing alternative or innovative technologies.

"(ii) The selection of sites which are suitable for the testing and evaluation of innovative technologies.

"(iii) The development of detailed plans for innovative technology demonstration projects.

"(iv) The supervision of such demonstration projects and the providing of quality assurance for data obtained.

"(v) The evaluation of the results of alternative innovative technology demonstration projects and the determination of whether or not the technologies used are effective and feasible.

"(B) SOLICITATION.—Within 90 days after the date of the enactment of this section, and no less often than once every 12 months thereafter, the Administrator shall publish a solicitation for innovative or alternative technologies at a stage of development suitable for full-scale demonstrations at sites at which a response action may be undertaken under section 104. The purpose of any such project shall be to demonstrate the use of an alternative or innovative treatment technology with respect to hazardous substances or pollutants or contaminants which are located at the site or which are to be removed from the site. The solicitation notice shall prescribe information to be included in the application, including technical and economic data derived from the applicant's own research and development efforts, and other information sufficient to permit the Administrator to assess the technology's potential and the types of remedial action to which it may be applicable.

"(C) APPLICATIONS.—Any person and any public or private nonprofit entity may submit an application to the Administrator in response to the solicitation. The application shall contain a proposed demonstration plan setting forth how and when the project is to be carried out and such other information as the Administrator may require.

"(D) PROJECT SELECTION.—In selecting technologies to be demonstrated, the Administrator shall fully review the applications submitted and shall consider at least the criteria specified in paragraph (7). The Administrator shall select or refuse to select a project for demonstration under this subsection within 90 days of receiving the completed application for such project. In the case of a refusal to select the project, the Administrator shall notify the applicant within such 90-day period of the reasons for his refusal.

"(E) SITE SELECTION.—The Administrator shall propose 10 sites at which a response may be undertaken under section 104 to be the location of any demonstration project under this subsection within 60 days after the close of the public comment period. After an opportunity for notice and public comment, the Administrator shall select such sites and projects. In selecting any such site, the Administrator shall take into account the applicant's technical data and preferences either for onsite operation or for utilizing the site as a source of hazardous substances or pollutants or contaminants to be treated offsite.

"(F) DEMONSTRATION PLAN.—Within 60 days after the selection of the site under this paragraph to be the location of a demonstration project, the Administrator shall establish a final demonstration plan for the project, based upon the demonstration plan contained in the application for the project. Such plan shall clearly set forth how and when the demonstration project will be carried out.

"(G) SUPERVISION AND TESTING.—Each demonstration project under this subsection shall be performed by the applicant, or by a person satisfactory to the applicant, under the supervision of the Administrator. The Administrator shall enter into a written agreement with each applicant granting the Administrator the responsibility and authority for testing procedures, quality control, monitoring, and other measurements necessary to determine and evaluate the results of the demonstration project. The Administrator may pay the costs of testing, monitoring, quality control, and other measurements required by the Administrator to determine and evaluate the results of the demonstration project, and the limitations established by subparagraph (J) shall not apply to such costs.

"(H) PROJECT COMPLETION.—Each demonstration project under this subsection shall be completed within such time as is established in the demonstration plan.

"(I) EXTENSIONS.—The Administrator may extend any deadline established under this paragraph by mutual agreement with the applicant concerned.

"(J) FUNDING RESTRICTIONS.—The Administrator shall not provide any Federal assistance for any part of a full-scale field demonstration project under this subsection to any applicant unless such applicant can demonstrate that it cannot obtain appropriate private financing on reasonable terms and conditions sufficient to carry out such demonstration project without such Federal assistance. The total Federal funds for any full-scale field demonstration project under this subsection shall not exceed 50 percent of the total cost of such project estimated at the time of the award of such assistance. The

Administrator shall not expend more than $10,000,000 for assistance under the program in any fiscal year and shall not expend more than $3,000,000 for any single project.

"(6) FIELD DEMONSTRATIONS.—In carrying out the program, the Administrator shall initiate or cause to be initiated at least 10 field demonstration projects of alternative or innovative treatment technologies at sites at which a response may be undertaken under section 104, in fiscal year 1987 and each of the succeeding three fiscal years. If the Administrator determines that 10 field demonstration projects under this subsection cannot be initiated consistent with the criteria set forth in paragraph (7) in any of such fiscal years, the Administrator shall transmit to the appropriate committees of Congress a report explaining the reasons for his inability to conduct such demonstration projects.

"(7) CRITERIA.—In selecting technologies to be demonstrated under this subsection, the Administrator shall, consistent with the protection of human health and the environment, consider each of the following criteria:

"(A) The potential for contributing to solutions to those waste problems which pose the greatest threat to human health, which cannot be adequately controlled under present technologies, or which otherwise pose significant management difficulties.

"(B) The availability of technologies which have been sufficiently developed for field demonstration and which are likely to be cost-effective and reliable.

"(C) The availability and suitability of sites for demonstrating such technologies, taking into account the physical, biological, chemical, and geological characteristics of the sites, the extent and type of contamination found at the site, and the capability to conduct demonstration projects in such a manner as to assure the protection of human health and the environment.

"(D) The likelihood that the data to be generated from the demonstration project at the site will be applicable to other sites.

"(8) TECHNOLOGY TRANSFER.—In carrying out the program, the Administrator shall conduct a technology transfer program including the development, collection, evaluation, coordination, and dissemination of information relating to the utilization of alternative or innovative treatment technologies for response actions. The Administrator shall establish and maintain a central reference library for such information. The information maintained by the Administrator shall be made available to the public, subject to the provisions of section 552 of title 5 of the United States Code and section 1905 of title 18 of the United States Code, and to other Government agencies in a manner that will facilitate its dissemination; except, that upon a showing satisfactory to the Administrator by any person that any information or portion thereof obtained under this subsection by the Administrator directly or indirectly from such person, would, if made public, divulge—

"(A) trade secrets; or

"(B) other proprietary information of such person,

the Administrator shall not disclose such information and disclosure thereof shall be punishable under section 1905 of title 18 of the United States Code. This subsection is not authority to withhold information from Congress or any committee of Congress upon the request of the chairman of such committee.

"(9) TRAINING.—The Administrator is authorized and directed to carry out, through the office of technology demonstration, a program of training and an evaluation of training needs for each of the following:

"(A) Training in the procedures for the handling and removal of hazardous substances for employees who handle hazardous substances.

"(B) Training in the management of facilities at which hazardous substances are located and in the evaluation of the hazards to human health presented by such facilities for State and local health and environment agency personnel.

"(10) DEFINITION.—For purposes of this subsection, the term 'alternative or innovative treatment technologies' means those technologies, including proprietary or patented methods, which permanently alter the composition of hazardous waste through chemical, biological, or physical means so as to significantly reduce the toxicity, mobility, or volume (or any combination thereof) of the hazardous waste or contaminated materials being treated. The term also includes technologies that characterize or assess the extent of contamination, the chemical and physical character of the contaminants, and the stresses imposed by the contaminants on complex ecosystems at sites.

"(c) HAZARDOUS SUBSTANCE RESEARCH.—The Administrator may conduct and support, through grants, cooperative agreements, and contracts, research with respect to the detection, assessment, and evaluation of the effects on and risks to human health of hazardous substances and detection of hazardous substances in the environment. The Administrator shall coordinate such research with the Secretary of Health and Human Services, acting through the advisory council established under this section, in order to avoid duplication of effort.

"(d) UNIVERSITY HAZARDOUS SUBSTANCE RESEARCH CENTERS.—

"(1) GRANT PROGRAM.—The Administrator shall make grants to institutions of higher learning to establish and operate not fewer than 5 hazardous substance research centers in the United States. In carrying out the program under this subsection, the Administrator should seek to have established and operated 10 hazardous substance research centers in the United States.

"(2) RESPONSIBILITIES OF CENTERS.—The responsibilities of each hazardous substance research center established under this subsection shall include, but not be limited to, the conduct of research and training relating to the manufacture, use, transportation, disposal, and management of hazardous substances and publication and dissemination of the results of such research.

"(3) APPLICATIONS.—Any institution of higher learning interested in receiving a grant under this subsection shall submit to the Administrator an application in such form and containing such information as the Administrator may require by regulation.

"(4) SELECTION CRITERIA.—The Administrator shall select recipients of grants under this subsection on the basis of the following criteria:

"(A) The hazardous substance research center shall be located in a State which is representative of the needs of the region in which such State is located for improved hazardous waste management.

"(B) The grant recipient shall be located in an area which has experienced problems with hazardous substance management.

"(C) There is available to the grant recipient for carrying out this subsection demonstrated research resources.

"(D) The capability of the grant recipient to provide leadership in making national and regional contributions to the solution of both long-range and immediate hazardous substance management problems.

"(E) The grant recipient shall make a commitment to support ongoing hazardous substance research programs with budgeted institutional funds of at least $100,000 per year.

"(F) The grant recipient shall have an interdisciplinary staff with demonstrated expertise in hazardous substance management and research.

"(G) The grant recipient shall have a demonstrated ability to disseminate results of hazardous substance research and educational programs through an interdisciplinary continuing education program.

"(H) The projects which the grant recipient proposes to carry out under the grant are necessary and appropriate.

"(5) MAINTENANCE OF EFFORT.—No grant may be made under this subsection in any fiscal year unless the recipient of such grant enters into such agreements with the Administrator as the Administrator may require to ensure that such recipient will maintain its aggregate expenditures from all other sources for establishing and operating a regional hazardous substance research center and related research activities at or above the average level of such expenditures in its 2 fiscal years preceding the date of the enactment of this subsection.

"(6) FEDERAL SHARE.—The Federal share of a grant under this subsection shall not exceed 80 percent of the costs of establishing and operating the regional hazardous substance research center and related research activities carried out by the grant recipient.

"(7) LIMITATION ON USE OF FUNDS.—No funds made available to carry out this subsection shall be used for acquisition of real property (including buildings) or construction of any building.

"(8) ADMINISTRATION THROUGH THE OFFICE OF THE ADMINISTRATOR.—Administrative responsibility for carrying out this subsection shall be in the Office of the Administrator.

"(9) EQUITABLE DISTRIBUTION OF FUNDS.—The Administrator shall allocate funds made available to carry out this subsection equitably among the regions of the United States.

"(10) TECHNOLOGY TRANSFER ACTIVITIES.—Not less than five percent of the funds made available to carry out this subsection for any fiscal year shall be available to carry out technology transfer activities.

"(e) REPORT TO CONGRESS.—At the time of the submission of the annual budget request to Congress, the Administrator shall submit to the appropriate committees of the House of Representatives and the Senate and to the advisory council established under subsection (a), a report on the progress of the research, development, and demonstration program authorized by subsection (b), including an evaluation of each demonstration project completed in the preceding fiscal year, findings with respect to the efficacy of such demonstrated technologies in achieving permanent and significant reductions in risk from hazardous wastes, the costs of such demonstration projects, and the potential applicability of, and projected costs for, such technologies at other hazardous substance sites.

"(f) SAVING PROVISION.—Nothing in this section shall be construed to affect the provisions of the Solid Waste Disposal Act.

"(g) SMALL BUSINESS PARTICIPATION.—The Administrator shall ensure, to the maximum

extent practicable, an adequate opportunity for small business participation in the program established by subsection (b).".

SEC. 210. POLLUTION LIABILITY INSURANCE.

CERCLA is amended by adding the following new title at the end thereof:

"TITLE IV—POLLUTION INSURANCE

"SEC. 401. DEFINITIONS.

"As used in this title—

"(1) INSURANCE.—The term 'insurance' means primary insurance, excess insurance, reinsurance, surplus lines insurance, and any other arrangement for shifting and distributing risk which is determined to be insurance under applicable State or Federal law.

"(2) POLLUTION LIABILITY.—The term 'pollution liability' means liability for injuries arising from the release of hazardous substances or pollutants or contaminants.

"(3) RISK RETENTION GROUP.—The term 'risk retention group' means any corporation or other limited liability association taxable as a corporation, or as an insurance company, formed under the laws of any State—

"(A) whose primary activity consists of assuming and spreading all, or any portion, of the pollution liability of its group members;

"(B) which is organized for the primary purpose of conducting the activity described under subparagraph (A);

"(C) which is chartered or licensed as an insurance company and authorized to engage in the business of insurance under the laws of any State; and

"(D) which does not exclude any person from membership in the group solely to provide for members of such a group a competitive advantage over such a person.

"(4) PURCHASING GROUP.—The term 'purchasing group' means any group of persons which has as one of its purposes the purchase of pollution liability insurance on a group basis.

"(5) STATE.—The term 'State' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Marianas, and any other territory or possession over which the United States has jurisdiction.

"SEC. 402. STATE LAWS; SCOPE OF TITLE.

"(a) STATE LAWS.—Nothing in this title shall be construed to affect either the tort law or the law governing the interpretation of insurance contracts of any State. The definitions of pollution liability and pollution liability insurance under any State law shall not be applied for the purposes of this title, including recognition or qualification of risk retention groups or purchasing groups.

"(b) SCOPE OF TITLE.—The authority to offer or to provide insurance under this title shall be limited to coverage of pollution liability risks and this title does not authorize a risk retention group or purchasing group to provide coverage of any other line of insurance.

"SEC. 403. RISK RETENTION GROUPS.

"(a) EXEMPTION.—Except as provided in this section, a risk retention group shall be exempt from the following:

"(1) A State law, rule, or order which makes unlawful, or regulates, directly or indirectly, the operation of a risk retention group.

"(2) A State law, rule, or order which requires or permits a risk retention group to participate in any insurance insolvency guaranty association to which an insurer licensed in the State is required to belong.

"(3) A State law, rule, or order which requires any insurance policy issued to a risk retention group or any member of the group to be countersigned by an insurance agent or broker residing in the State.

"(4) A State law, rule, or order which otherwise discriminates against a risk retention group or any of its members.

"(b) EXCEPTIONS.—

"(1) STATE LAWS GENERALLY APPLICABLE.—Nothing in subsection (a) shall be construed to affect the applicability of State laws generally applicable to persons or corporations. The State in which a risk retention group is chartered may regulate the formation and operation of the group.

"(2) STATE REGULATIONS NOT SUBJECT TO EXEMPTION.—Subsection (a) shall not apply to any State law which requires a risk retention group to do any of the following:

"(A) Comply with the unfair claim settlement practices law of the State.

"(B) Pay, on a nondiscriminatory basis, applicable premium and other taxes which are levied on admitted insurers and surplus line insurers, brokers, or policyholders under the laws of the State.

"(C) Participate, on a nondiscriminatory basis, in any mechanism established or authorized under the law of the State for the equitable apportionment among insurers of pollution liability insurance losses and expenses incurred on policies written through such mechanism.

"(D) Submit to the appropriate authority reports and other information required of licensed insurers under the laws of a State relating solely to pollution liability insurance losses and expenses.

"(E) Register with and designate the State insurance commissioner as its agent solely for the purpose of receiving service of legal documents or process.

"(F) Furnish, upon request, such commissioner a copy of any financial report submitted by the risk retention group to the commissioner of the chartering or licensing jurisdiction.

"(G) Submit to an examination by the State insurance commissioner in any State in which the group is doing business to determine the group's financial condition, if—

"(i) the commissioner has reason to believe the risk retention group is in a financially impaired condition; and

"(ii) the commissioner of the jurisdiction in which the group is chartered has not begun or has refused to initiate an examination of the group.

"(H) Comply with a lawful order issued in a delinquency proceeding commenced by the State insurance commissioner if the commissioner of the jurisdiction in which the group is chartered has failed to initiate such a proceeding after notice of a finding of financial impairment under subparagraph (G).

"(c) APPLICATION OF EXEMPTIONS.—The exemptions specified in subsection (a) apply to—

"(1) pollution liability insurance coverage provided by a risk retention group for—

"(A) such group; or

"(B) any person who is a member of such group;

"(2) the sale of pollution liability insurance coverage for a risk retention group; and

"(3) the provision of insurance related services or management services for a risk retention group or any member of such a group.

"(d) AGENTS OR BROKERS.—A State may require that a person acting, or offering to act, as an agent or broker for a risk retention group obtain a license from that State, except that a State may not impose any qualification or requirement which discriminates against a nonresident agent or broker.

"SEC. 404. PURCHASING GROUPS.

"(a) EXEMPTION.—Except as provided in this section, a purchasing group is exempt from the following:

"(1) A State law, rule, or order which prohibits the establishment of a purchasing group.

"(2) A State law, rule, or order which makes it unlawful for an insurer to provide or offer to provide insurance on a basis providing, to a purchasing group or its member, advantages, based on their loss and expense experience, not afforded to other persons with respect to rates, policy forms, coverages, or other matters.

"(3) A State law, rule, or order which prohibits a purchasing group or its members from purchasing insurance on the group basis described in paragraph (2) of this subsection.

"(4) A State law, rule, or order which prohibits a purchasing group from obtaining insurance on a group basis because the group has not been in existence for a minimum period of time or because any member has not belonged to the group for a minimum period of time.

"(5) A State law, rule, or order which requires that a purchasing group must have a minimum number of members, common ownership or affiliation, or a certain legal form.

"(6) A State law, rule, or order which requires that a certain percentage of a purchasing group must obtain insurance on a group basis.

"(7) A State law, rule, or order which requires that any insurance policy issued to a purchasing group or any members of the group be countersigned by an insurance agent or broker residing in that State.

"(8) A State law, rule, or order which otherwise discriminate against a purchasing group or any of its members.

"(b) APPLICATION OF EXEMPTIONS.—The exemptions specified in subsection (a) apply to the following:

"(1) Pollution liability insurance, and comprehensive general liability insurance which includes this coverage, provided to—

"(A) a purchasing group; or

"(B) any person who is a member of a purchasing group.

"(2) The sale of any one of the following to a purchasing group or a member of the group:

"(A) Pollution liability insurance and comprehensive general liability coverage.

"(B) Insurance related services.

"(C) Management services.

"(c) AGENTS OR BROKERS.—A State may require that a person acting, or offering to act, as an agent or broker for a purchasing group obtain a license from that State, except that a State may not impose any qualification or requirement which discriminates against a nonresident agent or broker.

"SEC. 405. APPLICABILITY OF SECURITIES LAWS.

"(a) OWNERSHIP INTERESTS.—The ownership interests of members of a risk retention group shall be considered to be—

"(1) exempted securities for purposes of section 5 of the Securities Act of 1933 and for purposes of section 12 of the Securities Exchange Act of 1934; and

"(2) securities for purposes of the provisions of section 17 of the Securities Act of 1933 and the provisions of section 10 of the Securities Exchange Act of 1934.

"(b) INVESTMENT COMPANY ACT.—A risk retention group shall not be considered to be an investment company for purposes of the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.).

"(c) BLUE SKY LAW.—The ownership interests of members in a risk retention group shall not be considered securities for purposes of any State blue sky law.".

SEC. 211. DEPARTMENT OF DEFENSE ENVIRONMENTAL RESTORATION PROGRAM.

(a) IN GENERAL.—(1) Title 10, United States Code, is amended—

(A) by redesignating section 2701 as section 2721; and

(B) by inserting after chapter 159 the following new chapter:

"CHAPTER 160—ENVIRONMENTAL RESTORATION

"Sec.
"2701. Environmental restoration program.
"2702. Research, development, and demonstration program.
"2703. Environmental restoration transfer account.
"2704. Commonly found unregulated hazardous substances.
"2705. Notice of environmental restoration activities.
"2706. Annual report to Congress.
"2707. Definitions.

"§ 2701. Environmental restoration program

"(a) ENVIRONMENTAL RESTORATION PROGRAM.—

"(1) IN GENERAL.—The Secretary of Defense shall carry out a program of environmental restoration at facilities under the jurisdiction of the Secretary. The program shall be known as the 'Defense Environmental Restoration Program'.

"(2) APPLICATION OF SECTION 120 OF CERCLA.—Activities of the program described in subsection (b)(1) shall be carried out subject to, and in a manner consistent with, section 120 (relating to Federal facilities) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (hereinafter in this chapter referred to as 'CERCLA') (42 U.S.C. 9601 et seq.).

"(3) CONSULTATION WITH EPA.—The program shall be carried out in consultation with the Administrator of the Environmental Protection Agency.

"(4) ADMINISTRATIVE OFFICE WITHIN OSD.—The Secretary shall identify an office within the Office of the Secretary which shall have responsibility for carrying out the program.

"(b) PROGRAM GOALS.—Goals of the program shall include the following:

"(1) The identification, investigation, research and development, and cleanup of contamination from hazardous substances, pollutants, and contaminants.

"(2) Correction of other environmental damage (such as detection and disposal of unexploded ordnance) which creates an imminent and substantial endangerment to the public health or welfare or to the environment.

"(3) Demolition and removal of unsafe buildings and structures, including buildings and structures of the Department of Defense at sites formerly used by or under the jurisdiction of the Secretary.

"(c) RESPONSIBILITY FOR RESPONSE ACTIONS.—

"(1) BASIC RESPONSIBILITY.—The Secretary shall carry out (in accordance with the provisions of this chapter and CERCLA) all response actions with respect to releases of hazardous substances from each of the following:

"(A) Each facility or site owned by, leased to, or otherwise possessed by the United States and under the jurisdiction of the Secretary.

"(B) Each facility or site which was under the jurisdiction of the Secretary and owned by, leased to, or otherwise possessed by the United States at the time of actions leading to contamination by hazardous substances.

"(C) Each vessel owned or operated by the Department of Defense.

"(2) OTHER RESPONSIBLE PARTIES.—Paragraph (1) shall not apply to a removal or remedial action if the Administrator has provided for response action by a potentially responsible person in accordance with section 122 of CERCLA (relating to settlements).

"(3) STATE FEES AND CHARGES.—The Secretary shall pay fees and charges imposed by State authorities for permit services for the disposal of hazardous substances on lands which are under the jurisdiction of the Secretary to the same extent that nongovernmental entities are required to pay fees and charges imposed by State authorities for permit services. The preceding sentence shall not apply with respect to a payment that is the responsibility of a lessee, contractor, or other private person.

"(d) SERVICES OF OTHER AGENCIES.—The Secretary may enter into agreements on a reimbursable basis with any other Federal agency, and on a reimbursable or other basis with any State or local government agency, to obtain the services of that agency to assist the Secretary in carrying out any of the Secretary's responsibilities under this section. Services which may be obtained under this subsection include the identification, investigation, and cleanup of any offsite contamination possibly resulting from the release of a hazardous substance or waste at a facility under the Secretary's jurisdiction.

"(e) RESPONSE ACTION CONTRACTORS.—The provisions of section 119 of CERCLA apply to response action contractors (as defined in that section) who carry out response actions under this section.

"§ 2702. Research, development, and demonstration program

"(a) PROGRAM.—As part of the Defense Environmental Restoration Program, the Secretary of Defense shall carry out a program of research, development, and demonstration with respect to hazardous wastes. The program shall be carried out in consultation and cooperation with the Administrator and the advisory council established under section 311(a)(5) of CERCLA. The program shall include research, development, and demonstration with respect to each of the following:

"(1) Means of reducing the quantities of hazardous waste generated by activities and facilities under the jurisdiction of the Secretary.

"(2) Methods of treatment, disposal, and management (including recycling and detoxifying) of hazardous waste of the types and quantities generated by current and former activities of the Secretary and facilities currently and formerly under the jurisdiction of the Secretary.

"(3) Identifying more cost-effective technologies for cleanup of hazardous substances.

"(4) Toxicological data collection and methodology on risk of exposure to hazardous waste generated by the Department of Defense.

"(5) The testing, evaluation, and field demonstration of any innovative technology, processes, equipment, or related training devices which may contribute to establishment of new methods to control, contain, and treat hazardous substances, to be carried out in consultation and cooperation with, and to the extent possible in the same manner and standards as, testing, evaluation, and field demonstration carried out by the Administrator, acting through the office of technology demonstration of the Environmental Protection Agency.

"(b) SPECIAL PERMIT.—The Administrator may use the authorities of section 3005(g) of the Solid Waste Disposal Act (42 U.S.C. 6925(g)) to issue a permit for testing and evaluation which receives support under this section.

"(c) CONTRACTS AND GRANTS.—The Secretary may enter into contracts and cooperative agreements with, and make grants to, universities, public and private profit and nonprofit entities, and other persons to carry out the research, development, and demonstration authorized under this section. Such contracts may be entered into only to the extent that appropriated funds are available for that purpose.

"(d) INFORMATION COLLECTION AND DISSEMINATION.—

"(1) IN GENERAL.—The Secretary shall develop, collect, evaluate, and disseminate information related to the use (or potential use) of the treatment, disposal, and management technologies that are researched, developed, and demonstrated under this section.

"(2) ROLE OF EPA.—The functions of the Secretary under paragraph (1) shall be carried out in cooperation and consultation with the Administrator. To the extent appropriate and agreed upon by the Administrator and the Secretary, the Administrator shall evaluate and disseminate such information through the office of technology demonstration of the Environmental Protection Agency.

"§ 2703. Environmental restoration transfer account

"(a) ESTABLISHMENT OF TRANSFER ACCOUNT.—

"(1) ESTABLISHMENT.—There is hereby established in the Department of Defense an account to be known as the 'Defense Environmental Restoration Account' (hereinafter in this section referred to as the 'transfer account'). All sums appropriated to carry out the functions of the Secretary of Defense relating to environmental restoration under this chapter or any other provision of law shall be appropriated to the transfer account.

"(2) REQUIREMENT OF AUTHORIZATION OF APPROPRIATIONS.—No funds may be appropriated to the transfer account unless such sums have been specifically authorized by law.

"(3) AVAILABILITY OF FUNDS IN TRANSFER ACCOUNT.—Amounts appropriated to the transfer account shall remain available until transferred under subsection (b).

"(b) AUTHORITY TO TRANSFER TO OTHER DOD ACCOUNTS.—Amounts in the transfer account shall be available to be transferred by the Secretary to any appropriation account or fund of the Department for obligation from that account or fund. Funds so transferred shall be merged with and available for the same purposes and for the same period as the account or fund to which transferred.

"(c) OBLIGATION OF TRANSFERRED AMOUNTS.—Funds transferred under subsec-

tion (b) may only be obligated or expended from the account or fund to which transferred in order to carry out the functions of the Secretary under this chapter or environmental restoration functions under any other provision of law.

"(d) BUDGET REPORTS.—In proposing the Budget for any fiscal year pursuant to section 1105 of title 31, the President shall set forth separately the amount requested for environmental restoration programs of the Department of Defense under this chapter or any other Act.

"(e) AMOUNTS RECOVERED UNDER CERCLA.—Amounts recovered under section 107 of CERCLA for response actions of the Secretary shall be credited to the transfer account.

"§ 2704. Commonly found unregulated hazardous substances

"(a) NOTICE TO HHS.—

"(1) IN GENERAL.—The Secretary of Defense shall notify the Secretary of Health and Human Services of the hazardous substances which the Secretary of Defense determines to be the most commonly found unregulated hazardous substances at facilities under the Secretary's jurisdiction. The notification shall be of not less than the 25 most widely used such substances.

"(2) DEFINITION.—In this subsection, the term 'unregulated hazardous substance' means a hazardous substance—

"(A) for which no standard, requirement, criteria, or limitation is in effect under the Toxic Substances Control Act, the Safe Drinking Water Act, the Clean Air Act, or the Clean Water Act; and

"(B) for which no water quality criteria are in effect under any provision of the Clean Water Act.

"(b) TOXICOLOGICAL PROFILES.—The Secretary of Health and Human Services shall take such steps as necessary to ensure the timely preparation of toxicological profiles of each of the substances of which the Secretary is notified under subsection (a). The profiles of such substances shall include each of the following:

"(1) The examination, summary, and interpretation of available toxicological information and epidemiologic evaluations on a hazardous substance in order to ascertain the levels of significant human exposure for the substance and the associated acute, subacute, and chronic health effects.

"(2) A determination of whether adequate information on the health effects of each substance is available or in the process of development to determine levels of exposure which present a significant risk to human health of acute, subacute, and chronic health effects.

"(3) Where appropriate, toxicological testing directed toward determining the maximum exposure level of a hazardous substance that is safe for humans.

"(c) DOD SUPPORT.—The Secretary of Defense shall transfer to the Secretary of Health and Human Services such toxicological data, such sums from amounts appropriated to the Department of Defense, and such personnel of the Department of Defense as may be necessary (1) for the preparation of toxicological profiles under subsection (b) or (2) for other health related activities under section 104(i) of CERCLA. The Secretary of Defense and the Secretary of Health and Human Services shall enter into a memorandum of understanding regarding the manner in which this section shall be carried out, including the manner for transferring funds and personnel and for coordination of activities under this section.

"(d) EPA HEALTH ADVISORIES.—

"(1) PREPARATION.—At the request of the Secretary of Defense, the Administrator shall, in a timely manner, prepare health advisories on hazardous substances. Such an advisory shall be prepared on each hazardous substance—

"(A) for which no advisory exists;

"(B) which is found to threaten drinking water; and

"(C) which is emanating from a facility under the jurisdiction of the Secretary.

"(2) CONTENT OF HEALTH ADVISORIES.—Such health advisories shall provide specific advice on the levels of contaminants in drinking water at which adverse health effects would not be anticipated and which include a margin of safety so as to protect the most sensitive members of the population at risk. The advisories shall provide data on one-day, 10-day, and longer-term exposure periods where available toxicological data exist.

"(3) DOD SUPPORT FOR HEALTH ADVISORIES.—The Secretary of Defense shall transfer to the Administrator such toxicological data, such sums from amounts appropriated to the Department of Defense, and such personnel of the Department of Defense as may be necessary for the preparation of such health advisories. The Secretary and the Administrator shall enter into a memorandum of understanding regarding the manner in which this subsection shall be carried out, including the manner for transferring funds and personnel and for coordination of activities under this subsection.

"(e) CROSS REFERENCE.—Section 104(i) of CERCLA applies to facilities under the jurisdiction of the Secretary of Defense in the manner prescribed in that section.

"(f) FUNCTIONS OF HHS TO BE CARRIED OUT THROUGH ATSDR.—The functions of the Secretary of Health and Human Services under this section shall be carried out through the Administrator of the Agency of Toxic Substances and Disease Registry of the Department of Health and Human Services established under section 104(i) of CERCLA.

"§ 2705. Notice of environmental restoration activities

"(a) EXPEDITED NOTICE.—The Secretary of Defense shall take such actions as necessary to ensure that the regional offices of the Environmental Protection Agency and appropriate State and local authorities for the State in which a facility under the Secretary's jurisdiction is located receive prompt notice of each of the following:

"(1) The discovery of releases or threatened releases of hazardous substances at the facility.

"(2) The extent of the threat to public health and the environment which may be associated with any such release or threatened release.

"(3) Proposals made by the Secretary to carry out response actions with respect to any such release or threatened release.

"(4) The initiation of any response action with respect to such release or threatened release and the commencement of each distinct phase of such activities.

"(b) COMMENT BY EPA AND STATE AND LOCAL AUTHORITIES.—

"(1) RELEASE NOTICES.—The Secretary shall ensure that the Administrator of the Environmental Protection Agency and appropriate State and local officials have an adequate opportunity to comment on notices under paragraphs (1) and (2) of subsection (a).

"(2) PROPOSALS FOR RESPONSE ACTIONS.—The Secretary shall require that an adequate opportunity for timely review and comment be afforded to the Administrator and to appropriate State and local officials after making a proposal referred to in subsection (a)(3) and before undertaking an activity or action referred to in subsection (a)(4). The preceding sentence does not apply if the action is an emergency removal taken because of imminent and substantial endangerment to human health or the environment and consultation would be impractical.

"(c) TECHNICAL REVIEW COMMITTEE.—Whenever possible and practical, the Secretary shall establish a technical review committee to review and comment on Department of Defense actions and proposed actions with respect to releases or threatened releases of hazardous substances at installations. Members of any such committee shall include at least one representative of the Secretary, the Administrator, and appropriate State and local authorities and shall include a public representative of the community involved.

"§ 2706. Annual report to Congress

"(a) REPORT ON PROGRESS IN IMPLEMENTATION.—The Secretary of Defense shall submit to Congress a report each fiscal year describing the progress made by the Secretary during the preceding fiscal year in implementing the requirements of this chapter.

"(b) MATTERS TO BE INCLUDED.—Each such report shall include the following:

"(1) A statement for each installation under the jurisdiction of the Secretary of the number of individual facilities at which a hazardous substance has been identified.

"(2) The status of response actions contemplated or undertaken at each such facility.

"(3) The specific cost estimates and budgetary proposals involving response actions contemplated or undertaken at each such facility.

"(4) A report on progress on conducting response actions at facilities other than facilities on the National Priorities List.

"§ 2707. Definitions

"In this chapter:

"(1) The terms 'environment', 'facility', 'hazardous substance', 'person', 'release', 'removal', 'response', 'disposal', and 'hazardous waste' have the meanings given those terms in section 101 of CERCLA (42 U.S.C. 9601).

"(2) The term 'Administrator' means the Administrator of the Environmental Protection Agency.".

(2) The tables of chapters at the beginning of subtitle A, and at the beginning of part IV of subtitle A, of such title are each amended by inserting after the item relating to chapter 159 the following new item:

"160. Environmental Restoration ..... 2701".

(3) The table of sections at the beginning of chapter 161 of such title is amended to reflect the redesignation made by paragraph (1)(A).

(b) MILITARY CONSTRUCTION PROJECTS.—(1) Chapter 169 of title 10, United States Code, is amended by inserting at the end of subchapter I the following new section:

"§ 2810. Construction projects for environmental response actions

"(a) Subject to subsection (b), the Secretary of Defense may carry out a military construction project not otherwise authorized by law (or may authorize the Secretary of a military department to carry out such a project) if the Secretary of Defense determines that the project is necessary to carry out a response action under chapter 160 of this title or under the Comprehensive Envi-

ronmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.).

"(b)(1) When a decision is made to carry out a military construction project under this section, the Secretary of Defense shall submit a report in writing to the appropriate committees of Congress on that decision. Each such report shall include—

"(A) the justification for the project and the current estimate of the cost of the project; and

"(B) the justification for carrying out the project under this section.

"(2) The project may then be carried out only after the end of the 21-day period beginning on the date the notification is received by such committees.

"(c) In this section, the term 'response action' has the meaning given that term in section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601).".

(2) The table of sections at the beginning of subchapter I of such chapter is amended by adding at the end thereof the following new item:

"2810. Construction projects for environmental response actions.".

(c) EFFECTIVE DATE.—Section 2703(a)(2) of title 10, United States Code, as added by subsection (a), shall apply with respect to funds appropriated for fiscal years beginning after September 30, 1986.

SEC. 212. REPORT AND OVERSIGHT REQUIREMENTS.

Section 301 of CERCLA is amended by adding at the end thereof the following new subsection:

"(h) REPORT AND OVERSIGHT REQUIREMENTS.—

"(1) ANNUAL REPORT BY EPA.—On January 1 of each year the Administrator of the Environmental Protection Agency shall submit an annual report to Congress of such Agency on the progress achieved in implementing this Act during the preceding fiscal year. In addition such report shall specifically include each of the following:

"(A) A detailed description of each feasibility study carried out at a facility under title I of this Act.

"(B) The status and estimated date of completion of each such study.

"(C) Notice of each such study which will not meet a previously published schedule for completion and the new estimated date for completion.

"(D) An evaluation of newly developed feasible and achievable permanent treatment technologies.

"(E) Progress made in reducing the number of facilities subject to review under section 121(c).

"(F) A report on the status of all remedial and enforcement actions undertaken during the prior fiscal year, including a comparison to remedial and enforcement actions undertaken in prior fiscal years.

"(G) An estimate of the amount of resources, including the number of work years or personnel, which would be necessary for each department, agency, or instrumentality which is carrying out any activities of this Act to complete the implementation of all duties vested in the department, agency, or instrumentality under this Act.

"(2) REVIEW BY INSPECTOR GENERAL.—Consistent with the authorities of the Inspector General Act of 1978 the Inspector General of the Environmental Protection Agency shall review any report submitted under paragraph (1) related to EPA's activities for reasonableness and accuracy and submit to Congress, as a part of such report a report on the results of such review.

"(3) CONGRESSIONAL OVERSIGHT.—After receiving the reports under paragraphs (1) and (2) of this subsection in any calendar year, the appropriate authorizing committees of Congress shall conduct oversight hearings to ensure that this Act is being implemented according to the purposes of this Act and congressional intent in enacting this Act.".

SEC. 213. LOVE CANAL PROPERTY ACQUISITION.

(a) CONGRESSIONAL FINDINGS.—

(1) The area known as Love Canal located in the city of Niagara Falls and the town of Wheatfield, New York, was the first toxic waste site to receive national attention. As a result of that attention Congress investigated the problems associated with toxic waste sites and enacted CERCLA to deal with these problems.

(2) Because Love Canal came to the Nation's attention prior to the passage of CERCLA and because the fund under CERCLA was not available to compensate for all of the hardships endured by the citizens in the area, Congress has determined that special provisions are required. These provisions do not affect the lawfulness, implementation, or selection of any other response actions at Love Canal or at any other facilities.

(b) AMENDMENT OF SUPERFUND.—Title III of CERCLA is amended by adding the following new section at the end thereof:

"SEC. 312. LOVE CANAL PROPERTY ACQUISITION.

"(a) ACQUISITION OF PROPERTY IN EMERGENCY DECLARATION AREA.—The Administrator of the Environmental Protection Agency (hereinafter referred to as the 'Administrator') may make grants not to exceed $2,500,000 to the State of New York (or to any duly constituted public agency or authority thereof) for purposes of acquisition of private property in the Love Canal Emergency Declaration Area. Such acquisition shall include (but shall not be limited to) all private property within the Emergency Declaration Area, including non-owner occupied residential properties, commercial, industrial, public, religious, non-profit, and vacant properties.

"(b) PROCEDURES FOR ACQUISITION.—No property shall be acquired pursuant to this section unless the property owner voluntarily agrees to such acquisition. Compensation for any property acquired pursuant to this section shall be based upon the fair market value of the property as it existed prior to the emergency declaration. Valuation procedures for property acquired with funds provided under this section shall be in accordance with those set forth in the agreement entered into between the New York State Disaster Preparedness Commission and the Love Canal Revitalization Agency on October 9, 1980.

"(c) STATE OWNERSHIP.—The Administrator shall not provide any funds under this section for the acquisition of any properties pursuant to this section unless a public agency or authority of the State of New York first enters into a cooperative agreement with the Administrator providing assurances deemed adequate by the Administrator that the State or an agency created under the laws of the State shall take title to the properties to be so acquired.

"(d) MAINTENANCE OF PROPERTY.—The Administrator shall enter into a cooperative agreement with an appropriate public agency or authority of the State of New York under which the Administrator shall maintain or arrange for the maintenance of all properties within the Emergency Declaration Area that have been acquired by any public agency or authority of the State. Ninety (90) percent of the costs of such maintenance shall be paid by the Administrator. The remaining portion of such costs shall be paid by the State (unless a credit is available under section 104(c)). The Administrator is authorized, in his discretion, to provide technical assistance to any public agency or authority of the State of New York in order to implement the recommendations of the habitability and land-use study in order to put the land within the Emergency Declaration Area to its best use.

"(e) HABITABILITY AND LAND USE STUDY.—The Administrator shall conduct or cause to be conducted a habitability and land-use study. The study shall—

"(1) assess the risks associated with inhabiting of the Love Canal Emergency Declaration Area;

"(2) compare the level of hazardous waste contamination in that Area to that present in other comparable communities; and

"(3) assess the potential uses of the land within the Emergency Declaration Area, including but not limited to residential, industrial, commercial and recreational, and the risks associated with such potential uses.

The Administrator shall publish the findings of such study and shall work with the State of New York to develop recommendations based upon the results of such study.

"(f) FUNDING.—For purposes of section 111 [and 221(c) of this Act], the expenditures authorized by this section shall be treated as a cost specified in section 111(c).

"(g) RESPONSE.—The provisions of this section shall not affect the implementation of other response actions within the Emergency Declaration Area that the Administrator has determined (before enactment of this section) to be necessary to protect the public health or welfare or the environment.

"(h) DEFINITIONS.—For purposes of this section:

"(1) EMERGENCY DECLARATION AREA.—The terms 'Emergency Declaration Area' and 'Love Canal Emergency Declaration Area' mean the Emergency Declaration Area as defined in section 950, paragraph (2) of the General Municipal Law of the State of New York, Chapter 259, Laws of 1980, as in effect on the date of the enactment of this section.

"(2) PRIVATE PROPERTY.—As used in subsection (a), the term 'private property' means all property which is not owned by a department, agency, or instrumentality of—

"(A) the United States, or

"(B) the State of New York (or any public agency or authority thereof).".

TITLE III—EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW

SEC. 300. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This title may be cited as the "Emergency Planning and Community Right-To-Know Act of 1986".

(b) TABLE OF CONTENTS.—The table of contents of this title is as follows:

Sec. 300. Short title; table of contents.

Subtitle A—Emergency Planning and Notification

Sec. 301. Establishment of State commissions, planning districts, and local committees.

Sec. 302. Substances and facilities covered and notification.

Sec. 303. Comprehensive emergency response plans.

Sec. 304. Emergency notification.

Sec. 305. Emergency training and review of emergency systems.

Subtitle B—Reporting Requirements

Sec. 311. Material safety data sheets.

Sec. 312. Emergency and hazardous chemical inventory forms.
Sec. 313. Toxic chemical release forms.
Subtitle C—General Provisions
Sec. 321. Relationship to other law.
Sec. 322. Trade secrets.
Sec. 323. Provision of information to health professionals, doctors, and nurses.
Sec. 324. Public availability of plans, data sheets, forms, and followup notices.
Sec. 325. Enforcement.
Sec. 326. Civil Actions.
Sec. 327. Exemption.
Sec. 328. Regulations.
Sec. 329. Definitions.
Sec. 330. Authorization of appropriations.
Subtitle A—Emergency Planning and Notification

SEC. 301. ESTABLISHMENT OF STATE COMMISSIONS, PLANNING DISTRICTS, AND LOCAL COMMITTEES.

(a) ESTABLISHMENT OF STATE EMERGENCY RESPONSE COMMISSIONS.—Not later than six months after the date of the enactment of this title, the Governor of each State shall appoint a State emergency response commission. The Governor may designate as the State emergency response commission one or more existing emergency response organizations that are State-sponsored or appointed. The Governor shall, to the extent practicable, appoint persons to the State emergency response commission who have technical expertise in the emergency response field. The State emergency response commission shall appoint local emergency planning committees under subsection (c) and shall supervise and coordinate the activities of such committees. The State emergency response commission shall establish procedures for receiving and processing requests from the public for information under section 324, including tier II information under section 312. Such procedures shall include the designation of an official to serve as coordinator for information. If the Governor of any State does not designate a State emergency response commission within such period, the Governor shall operate as the State emergency response commission until the Governor makes such designation.

(b) ESTABLISHMENT OF EMERGENCY PLANNING DISTRICTS.—Not later than nine months after the date of the enactment of this title, the State emergency response commission shall designate emergency planning districts in order to facilitate preparation and implementation of emergency plans. Where appropriate, the State emergency response commission may designate existing political subdivisions or multijurisdictional planning organizations as such districts. In emergency planning areas that involve more than one State, the State emergency response commissions of all potentially affected States may designate emergency planning districts and local emergency planning committees by agreement. In making such designation, the State emergency response commission shall indicate which facilities subject to the requirements of this subtitle are within such emergency planning district.

(c) ESTABLISHMENT OF LOCAL EMERGENCY PLANNING COMMITTEES.—Not later than 30 days after designation of emergency planning districts or 10 months after the date of the enactment of this title, whichever is earlier, the State emergency response commission shall appoint members of a local emergency planning committee for each emergency planning district. Each committee shall include, at a minimum, representatives from each of the following groups or organizations: elected State and local officials; law enforcement, civil defense, firefighting, first aid, health, local environmental, hospital, and transportation personnel; broadcast and print media; community groups; and owners and operators of facilities subject to the requirements of this subtitle. Such committee shall appoint a chairperson and shall establish rules by which the committee shall function. Such rules shall include provisions for public notification of committee activities, public meetings to discuss the emergency plan, public comments, response to such comments by the committee, and distribution of the emergency plan. The local emergency planning committee shall establish procedures for receiving and processing requests from the public for information under section 324, including tier II information under section 312. Such procedures shall include the designation of an official to serve as coordinator for information.

(d) REVISIONS.—A State emergency response commission may revise its designations and appointments under subsections (b) and (c) as it deems appropriate. Interested persons may petition the State emergency response commission to modify the membership of a local emergency planning committee.

SEC. 302. SUBSTANCES AND FACILITIES COVERED AND NOTIFICATION.

(a) SUBSTANCES COVERED.—

(1) IN GENERAL.—A substance is subject to the requirements of this subtitle if the substance is on the list published under paragraph (2).

(2) LIST OF EXTREMELY HAZARDOUS SUBSTANCES.—Within 30 days after the date of the enactment of this title, the Administrator shall publish a list of extremely hazardous substances. The list shall be the same as the list of substances published in November 1985 by the Administrator in Appendix A of the "Chemical Emergency Preparedness Program Interim Guidance".

(3) THRESHOLDS.—(A) At the time the list referred to in paragraph (2) is published the Administrator shall—

(i) publish an interim final regulation establishing a threshold planning quantity for each substance on the list, taking into account the criteria described in paragraph (4), and

(ii) initiate a rulemaking in order to publish final regulations establishing a threshold planning quantity for each substance on the list.

(B) The threshold planning quantities may, at the Administrator's discretion, be based on classes of chemicals or categories of facilities.

(C) If the Administrator fails to publish an interim final regulation establishing a threshold planning quantity for a substance within 30 days after the date of the enactment of this title, the threshold planning quantity for the substance shall be 2 pounds until such time as the Administrator publishes regulations establishing a threshold for the substance.

(4) REVISIONS.—The Administrator may revise the list and thresholds under paragraphs (2) and (3) from time to time. Any revisions to the list shall take into account the toxicity, reactivity, volatility, dispersability, combustability, or flammability of a substance. For purposes of the preceding sentence, the term "toxicity" shall include any short- or long-term health effect which may result from a short-term exposure to the substance.

(b) FACILITIES COVERED.—(1) Except as provided in section 304, a facility is subject to the requirements of this subtitle if a substance on the list referred to in subsection (a) is present at the facility in an amount in excess of the threshold planning quantity established for such substance.

(2) For purposes of emergency planning, a Governor or a State emergency response commission may designate additional facilities which shall be subject to the requirements of this subtitle, if such designation is made after public notice and opportunity for comment. The Governor or State emergency response commission shall notify the facility concerned of any facility designation under this paragraph.

(c) EMERGENCY PLANNING NOTIFICATION.—Not later than seven months after the date of the enactment of this title, the owner or operator of each facility subject to the requirements of this subtitle by reason of subsection (b)(1) shall notify the State emergency response commission for the State in which such facility is located that such facility is subject to the requirements of this subtitle. Thereafter, if a substance on the list of extremely hazardous substances referred to in subsection (a) first becomes present at such facility in excess of the threshold planning quantity established for such substance, or if there is a revision of such list and the facility has present a substance on the revised list in excess of the threshold planning quantity established for such substance, the owner or operator of the facility shall notify the State emergency response commission and the local emergency planning committee within 60 days after such acquisition or revision that such facility is subject to the requirements of this subtitle.

(d) NOTIFICATION OF ADMINISTRATOR.—The State emergency response commission shall notify the Administrator of facilities subject to the requirements of this subtitle by notifying the Administrator of—

(1) each notification received from a facility under subsection (c), and

(2) each facility designated by the Governor or State emergency response commission under subsection (b)(2).

SEC. 303. COMPREHENSIVE EMERGENCY RESPONSE PLANS.

(a) PLAN REQUIRED.—Each local emergency planning committee shall complete preparation of an emergency plan in accordance with this section not later than two years after the date of the enactment of this title. The committee shall review such plan once a year, or more frequently as changed circumstances in the community or at any facility may require.

(b) RESOURCES.—Each local emergency planning committee shall evaluate the need for resources necessary to develop, implement, and exercise the emergency plan, and shall make recommendations with respect to additional resources that may be required and the means for providing such additional resources.

(c) PLAN PROVISIONS.—Each emergency plan shall include (but is not limited to) each of the following:

(1) Identification of facilities subject to the requirements of this subtitle that are within the emergency planning district, identification of routes likely to be used for the transportation of substances on the list of extremely hazardous substances referred to in section 302(a), and identification of additional facilities contributing or subjected to additional risk due to their proximity to facilities subject to the requirements of

this subtitle, such as hospitals or natural gas facilities.

(2) Methods and procedures to be followed by facility owners and operators and local emergency and medical personnel to respond to any release of such substances.

(3) Designation of a community emergency coordinator and facility emergency coordinators, who shall make determinations necessary to implement the plan.

(4) Procedures providing reliable, effective, and timely notification by the facility emergency coordinators and the community emergency coordinator to persons designated in the emergency plan, and to the public, that a release has occurred (consistent with the emergency notification requirements of section 304).

(5) Methods for determining the occurrence of a release, and the area or population likely to be affected by such release.

(6) A description of emergency equipment and facilities in the community and at each facility in the community subject to the requirements of this subtitle, and an identification of the persons responsible for such equipment and facilities.

(7) Evacuation plans, including provisions for a precautionary evacuation and alternative traffic routes.

(8) Training programs, including schedules for training of local emergency response and medical personnel.

(9) Methods and schedules for exercising the emergency plan.

(d) PROVIDING OF INFORMATION.—For each facility subject to the requirements of this subtitle:

(1) Within 30 days after establishment of a local emergency planning committee for the emergency planning district in which such facility is located, or within 11 months after the date of the enactment of this title, whichever is earlier, the owner or operator of the facility shall notify the emergency planning committee (or the Governor if there is no committee) of a facility representative who will participate in the emergency planning process as a facility emergency coordinator.

(2) The owner or operator of the facility shall promptly inform the emergency planning committee of any relevant changes occurring at such facility as such changes occur or are expected to occur.

(3) Upon request from the emergency planning committee, the owner or operator of the facility shall promptly provide information to such committee necessary for developing and implementing the emergency plan.

(e) REVIEW BY THE STATE EMERGENCY RESPONSE COMMISSION.—After completion of an emergency plan under subsection (a) for an emergency planning district, the local emergency planning committee shall submit a copy of the plan to the State emergency response commission of each State in which such district is located. The commission shall review the plan and make recommendations to the committee on revisions of the plan that may be necessary to ensure coordination of such plan with emergency response plans of other emergency planning districts. To the maximum extent practicable, such review shall not delay implementation of such plan.

(f) GUIDANCE DOCUMENTS.—The national response team, as established pursuant to the National Contingency Plan as established under section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.), shall publish guidance documents for preparation and implementation of emergency plans. Such documents shall be published not later than five months after the date of the enactment of this title.

(g) REVIEW OF PLANS BY REGIONAL RESPONSE TEAMS.—The regional response teams, as established pursuant to the National Contingency Plan as established under section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.), may review and comment upon an emergency plan or other issues related to preparation, implementation, or exercise of such a plan upon request of a local emergency planning committee. Such review shall not delay implementation of the plan.

SEC. 304. EMERGENCY NOTIFICATION.

(a) TYPES OF RELEASES.—

(1) 302(a) SUBSTANCE WHICH REQUIRES CERCLA NOTICE.—If a release of an extremely hazardous substance referred to in section 302(a) occurs from a facility at which a hazardous chemical is produced, used, or stored, and such release requires a notification under section 103(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (hereafter in this section referred to as "CERCLA") (42 U.S.C. 9601 et seq.), the owner or operator of the facility shall immediately provide notice as described in subsection (b).

(2) OTHER 302(a) SUBSTANCE.—If a release of an extremely hazardous substance referred to in section 302(a) occurs from a facility at which a hazardous chemical is produced, used, or stored, and such release is not subject to the notification requirements under section 103(a) of CERCLA, the owner or operator of the facility shall immediately provide notice as described in subsection (b), but only if the release—

(A) is not a federally permitted release as defined in section 101(10) of CERCLA,

(B) is in an amount in excess of a quantity which the Administrator has determined (by regulation) requires notice, and

(C) occurs in a manner which would require notification under section 103(a) of CERCLA.

Unless and until superseded by regulations establishing a quantity for an extremely hazardous substance described in this paragraph, a quantity of 1 pound shall be deemed that quantity the release of which requires notice as described in subsection (b).

(3) NON-302(a) SUBSTANCE WHICH REQUIRES CERCLA NOTICE.—If a release of a substance which is not on the list referred to in section 302(a) occurs at a facility at which a hazardous chemical is produced, used, or stored, and such release requires notification under section 103(a) of CERCLA, the owner or operator shall provide notice as follows:

(A) If the substance is one for which a reportable quantity has been established under section 102(a) of CERCLA, the owner or operator shall provide notice as described in subsection (b).

(B) If the substance is one for which a reportable quantity has not been established under section 102(a) of CERLCA—

(i) Until April 30, 1988, the owner or operator shall provide, for releases of one pound or more of the substance, the same notice to the community emergency coordinator for the local emergency planning committee, at the same time and in the same form, as notice is provided to the National Response Center under section 103(a) of CERCLA.

(ii) On and after April 30, 1988, the owner or operator shall provide, for releases of one pound or more of the substance, the notice as described in subsection (b).

(4) EXEMPTED RELEASES.—This section does not apply to any release which results in exposure to persons solely within the site or sites on which a facility is located.

(b) NOTIFICATION.—

(1) RECIPIENTS OF NOTICE.—Notice required under subsection (a) shall be given immediately after the release by the owner or operator of a facility (by such means as telephone, radio, or in person) to the community emergency coordinator for the local emergency planning committees, if established pursuant to section 301(c), for any area likely to be affected by the release and to the State emergency planning commission of any State likely to be affected by the release. With respect to transportation of a substance subject to the requirements of this section, or storage incident to such transportation, the notice requirements of this section with respect to a release shall be satisfied by dialing 911 or, in the absence of a 911 emergency telephone number, calling the operator.

(2) CONTENTS.—Notice required under subsection (a) shall include each of the following (to the extent known at the time of the notice and so long as no delay in responding to the emergency results):

(A) The chemical name or identity of any substance involved in the release.

(B) An indication of whether the substance is on the list referred to in section 302(a).

(C) An estimate of the quantity of any such substance that was released into the environment.

(D) The time and duration of the release.

(E) The medium or media into which the release occurred.

(F) Any known or anticipated acute or chronic health risks associated with the emergency and, where appropriate, advice regarding medical attention necessary for exposed individuals.

(G) Proper precautions to take as a result of the release, including evacuation (unless such information is readily available to the community emergency coordinator pursuant to the emergency plan).

(H) The name and telephone number of the person or persons to be contacted for further information.

(c) FOLLOWUP EMERGENCY NOTICE.—As soon as practicable after a release which requires notice under subsection (a), such owner or operator shall provide a written followup emergency notice (or notices, as more information becomes available) setting forth and updating the information required under subsection (b), and including additional information with respect to—

(1) actions taken to respond to and contain the release,

(2) any known or anticipated acute or chronic health risks associated with the release, and

(3) where appropriate, advice regarding medical attention necessary for exposed individuals.

(d) TRANSPORTATION EXEMPTION NOT APPLICABLE.—The exemption provided in section 327 (relating to transportation) does not apply to this section.

SEC. 305. EMERGENCY TRAINING AND REVIEW OF EMERGENCY SYSTEMS.

(a) EMERGENCY TRAINING.—

(1) PROGRAMS.—Officials of the United States Government carrying out existing Federal programs for emergency training are authorized to specifically provide training and education programs for Federal, State, and local personnel in hazard mitiga-

tion, emergency preparedness, fire prevention and control, disaster response, long-term disaster recovery, national security, technological and natural hazards, and emergency processes. Such programs shall provide special emphasis for such training and education with respect to hazardous chemicals.

(2) STATE AND LOCAL PROGRAM SUPPORT.—There is authorized to be appropriated to the Federal Emergency Management Agency for each of the fiscal years 1987, 1988, 1989, and 1990, $5,000,000 for making grants to support programs of State and local governments, and to support university-sponsored programs, which are designed to improve emergency planning, preparedness, mitigation, response, and recovery capabilities. Such programs shall provide special emphasis with respect to emergencies associated with hazardous chemicals. Such grants may not exceed 80 percent of the cost of any such program. The remaining 20 percent of such costs shall be funded from non-Federal sources.

(3) OTHER PROGRAMS.—Nothing in this section shall affect the availability of appropriations to the Federal Emergency Management Agency for any programs carried out by such agency other than the programs referred to in paragraph (2).

(b) REVIEW OF EMERGENCY SYSTEMS.—

(1) REVIEW.—The Administrator shall initiate, not later than 30 days after the date of the enactment of this title, a review of emergency systems for monitoring, detecting, and preventing releases of extremely hazardous substances at representative domestic facilities that produce, use, or store extremely hazardous substances. The Administrator may select representative extremely hazardous substances from the substances on the list referred to in section 302(a) for the purposes of this review. The Administrator shall report interim findings to the Congress not later than seven months after such date of enactment, and issue a final report of findings and recommendations to the Congress not later than 18 months after such date of enactment. Such report shall be prepared in consultation with the States and appropriate Federal agencies.

(2) REPORT.—The report required by this subsection shall include the Administrator's findings regarding each of the following:

(A) The status of current technological capabilities to (i) monitor, detect, and prevent, in a timely manner, significant releases of extremely hazardous substances, (ii) determine the magnitude and direction of the hazard posed by each release, (iii) identify specific substances, (iv) provide data on the specific chemical composition of such releases, and (v) determine the relative concentrations of the constituent substances.

(B) The status of public emergency alert devices or systems for providing timely and effective public warning of an accidental release of extremely hazardous substances into the environment, including releases into the atmosphere, surface water, or groundwater from facilities that produce, store, or use significant quantities of such extremely hazardous substances.

(C) The technical and economic feasibility of establishing, maintaining, and operating perimeter alert systems for detecting releases of such extremely hazardous substances into the atmosphere, surface water, or groundwater, at facilities that manufacture, use, or store significant quantities of such substances.

(3) RECOMMENDATIONS.—The report required by this subsection shall also include the Administrator's recommendations for—

(A) initiatives to support the development of new or improved technologies or systems that would facilitate the timely monitoring, detection, and prevention of releases of extremely hazardous substances, and

(B) improving devices or systems for effectively alerting the public in a timely manner, in the event of an accidental release of such extremely hazardous substances.

Subtitle B—Reporting Requirements

SEC. 311. MATERIAL SAFETY DATA SHEETS.

(a) BASIC REQUIREMENT.—

(1) SUBMISSION OF MSDS OR LIST.—The owner or operator of any facility which is required to prepare or have available a material safety data sheet for a hazardous chemical under the Occupational Safety and Health Act of 1970 and regulations promulgated under that Act (15 U.S.C. 651 et seq.) shall submit a material safety data sheet for each such chemical, or a list of such chemicals as described in paragraph (2), to each of the following:

(A) The appropriate local emergency planning committee.

(B) The State emergency response commission.

(C) The fire department with jurisdiction over the facility.

(2) CONTENTS OF LIST.—(A) The list of chemicals referred to in paragraph (1) shall include each of the following:

(i) A list of the hazardous chemicals for which a material safety data sheet is required under the Occupational Safety and Health Act of 1970 and regulations promulgated under that Act, grouped in categories of health and physical hazards as set forth under such Act and regulations promulgated under such Act, or in such other categories as the Administrator may prescribe under subparagraph (B).

(ii) The chemical name or the common name of each such chemical as provided on the material safety data sheet.

(iii) Any hazardous component of each such chemical as provided on the material safety data sheet.

(B) For purposes of the list under this paragraph, the Administrator may modify the categories of health and physical hazards as set forth under the Occupational Safety and Health Act of 1970 and regulations promulgated under that Act by requiring information to be reported in terms of groups of hazardous chemicals which present similar hazards in an emergency.

(3) TREATMENT OF MIXTURES.—An owner or operator may meet the requirements of this section with respect to a hazardous chemical which is a mixture by doing one of the following:

(A) Submitting a material safety data sheet for, or identifying on a list, each element or compound in the mixture which is a hazardous chemical. If more than one mixture has the same element or compound, only one material safety data sheet, or one listing, of the element or compound is necessary.

(B) Submitting a material safety data sheet for, or identifying on a list, the mixture itself.

(b) THRESHOLDS.—The Administrator may establish threshold quantities for hazardous chemicals below which no facility shall be subject to the provisions of this section. The threshold quantities may, in the Administrator's discretion, be based on classes of chemicals or categories of facilities.

(c) AVAILABILITY OF MSDS ON REQUEST.—

(1) TO LOCAL EMERGENCY PLANNING COMMITTEE.—If an owner or operator of a facility submits a list of chemicals under subsection (a)(1), the owner or operator, upon request by the local emergency planning committee, shall submit the material safety data sheet for any chemical on the list to such committee.

(2) TO PUBLIC.—A local emergency planning committee, upon request by any person, shall make available a material safety data sheet to the person in accordance with section 324. If the local emergency planning committee does not have the requested material safety data sheet, the committee shall request the sheet from the facility owner or operator and then make the sheet available to the person in accordance with section 324.

(d) INITIAL SUBMISSION AND UPDATING.—(1) The initial material safety data sheet or list required under this section with respect to a hazardous chemical shall be provided before the later of—

(A) 12 months after the date of the enactment of this title, or

(B) 3 months after the owner or operator of a facility is required to prepare or have available a material safety data sheet for the chemical under the Occupational Safety and Health Act of 1970 and regulations promulgated under that Act.

(2) Within 3 months following discovery by an owner or operator of significant new information concerning an aspect of a hazardous chemical for which a material safety data sheet was previously submitted to the local emergency planning committee under subsection (a), a revised sheet shall be provided to such person.

(e) HAZARDOUS CHEMICAL DEFINED.—For purposes of this section, the term "hazardous chemical" has the meaning given such term by section 1910.1200(c) of title 29 of the Code of Federal Regulations, except that such term does not include the following:

(1) Any food, food additive, color additive, drug, or cosmetic regulated by the Food and Drug Administration.

(2) Any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use.

(3) Any substance to the extent it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public.

(4) Any substance to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual.

(5) Any substance to the extent it is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate customer.

SEC. 312. EMERGENCY AND HAZARDOUS CHEMICAL INVENTORY FORMS.

(a) BASIC REQUIREMENT.—(1) The owner or operator of any facility which is required to prepare or have available a material safety data sheet for a hazardous chemical under the Occupational Safety and Health Act of 1970 and regulations promulgated under that Act shall prepare and submit an emergency and hazardous chemical inventory form (hereafter in this title referred to as an "inventory form") to each of the following:

(A) The appropriate local emergency planning committee.

(B) The State emergency response commission.

(C) The fire department with jurisdiction over the facility.

(2) The inventory form containing tier I information (as described in subsection (d)(1)) shall be submitted on or before March 1, 1988, and annually thereafter on March 1, and shall contain data with respect to the preceding calendar year. The preceding sentence does not apply if an owner or operator provides, by the same deadline and with respect to the same calendar year, tier II information (as described in subsection (d)(2)) to the recipients described in paragraph (1).

(3) An owner or operator may meet the requirements of this section with respect to a hazardous chemical which is a mixture by doing one of the following:

(A) Providing information on the inventory form on each element or compound in the mixture which is a hazardous chemical. If more than one mixture has the same element or compound, only one listing on the inventory form for the element or compound at the facility is necessary.

(B) Providing information on the inventory form on the mixture itself.

(b) THRESHOLDS.—The Administrator may establish threshold quantities for hazardous chemicals covered by this section below which no facility shall be subject to the provisions of this section. The threshold quantities may, in the Administrator's discretion, be based on classes of chemicals or categories of facilities.

(c) HAZARDOUS CHEMICALS COVERED.—A hazardous chemical subject to the requirements of this section is any hazardous chemical for which a material safety data sheet or a listing is required under section 311.

(d) CONTENTS OF FORM.—

(1) TIER I INFORMATION.—

(A) AGGREGATE INFORMATION BY CATEGORY.—An inventory form shall provide the information described in subparagraph (B) in aggregate terms for hazardous chemicals in categories of health and physical hazards as set forth under the Occupational Safety and Health Act of 1970 and regulations promulgated under that Act.

(B) REQUIRED INFORMATION.—The information referred to in subparagraph (A) is the following:

(i) An estimate (in ranges) of the maximum amount of hazardous chemicals in each category present at the facility at any time during the preceding calendar year.

(ii) An estimate (in ranges) of the average daily amount of hazardous chemicals in each category present at the facility during the preceding calendar year.

(iii) The general location of hazardous chemicals in each category.

(C) MODIFICATIONS.—For purposes of reporting information under this paragraph, the Administrator may—

(i) modify the categories of health and physical hazards as set forth under the Occupational Safety and Health Act of 1970 and regulations promulgated under that Act by requiring information to be reported in terms of groups of hazardous chemicals which present similar hazards in an emergency, or

(ii) require reporting on individual hazardous chemicals of special concern to emergency response personnel.

(2) TIER II INFORMATION.—An inventory form shall provide the following additional information for each hazardous chemical present at the facility, but only upon request and in accordance with subsection (e):

(A) The chemical name or the common name of the chemical as provided on the material safety data sheet.

(B) An estimate (in ranges) of the maximum amount of the hazardous chemical present at the facility at any time during the preceding calendar year.

(C) An estimate (in ranges) of the average daily amount of the hazardous chemical present at the facility during the preceding calendar year.

(D) A brief description of the manner of storage of the hazardous chemical.

(E) The location at the facility of the hazardous chemical.

(F) An indication of whether the owner elects to withhold location information of a specific hazardous chemical from disclosure to the public under section 324.

(e) AVAILABILITY OF TIER II INFORMATION.—

(1) AVAILABILITY TO STATE COMMISSIONS, LOCAL COMMITTEES, AND FIRE DEPARTMENTS.—Upon request by a State emergency planning commission, a local emergency planning committee, or a fire department with jurisdiction over the facility, the owner or operator of a facility shall provide tier II information, as described in subsection (d), to the person making the request. Any such request shall be with respect to a specific facility.

(2) AVAILABILITY TO OTHER STATE AND LOCAL OFFICIALS.—A State or local official acting in his or her official capacity may have access to tier II information by submitting a request to the State emergency response commission or the local emergency planning committee. Upon receipt of a request for tier II information, the State commission or local committee shall, pursuant to paragraph (1), request the facility owner or operator for the tier II information and make available such information to the official.

(3) AVAILABILITY TO PUBLIC.—

(A) IN GENERAL.—Any person may request a State emergency response commission or local emergency planning committee for tier II information relating to the preceding calendar year with respect to a facility. Any such request shall be in writing and shall be with respect to a specific facility.

(B) AUTOMATIC PROVISION OF INFORMATION TO PUBLIC.—Any tier II information which a State emergency response commission or local emergency planning committee has in its possession shall be made available to a person making a request under this paragraph in accordance with section 324. If the State emergency response commission or local emergency planning committee does not have the tier II information in its possession, upon a request for tier II information the State emergency response commission or local emergency planning committee shall, pursuant to paragraph (1), request the facility owner or operator for tier II information with respect to a hazardous chemical which a facility has stored in an amount in excess of 10,000 pounds present at the facility at any time during the preceding calendar year and make such information available in accordance with section 324 to the person making the request.

(C) DISCRETIONARY PROVISION OF INFORMATION TO PUBLIC.—In the case of tier II information which is not in the possession of a State emergency response commission or local emergency planning committee and which is with respect to a hazardous chemical which a facility has stored in an amount less than 10,000 pounds present at the facility at any time during the preceding calendar year, a request from a person must include the general need for the information. The State emergency response commission or local emergency planning committee may, pursuant to paragraph (1), request the facility owner or operator for the tier II information on behalf of the person making the request. Upon receipt of any information requested on behalf of such person, the State emergency response commission or local emergency planning committee shall make the information available in accordance with section 324 to the person.

(D) RESPONSE IN 45 DAYS.—A State emergency response commission or local emergency planning committee shall respond to a request for tier II information under this paragraph no later than 45 days after the date of receipt of the request.

(f) FIRE DEPARTMENT ACCESS.—Upon request to an owner or operator of a facility which files an inventory form under this section by the fire department with jurisdiction over the facility, the owner or operator of the facility shall allow the fire department to conduct an on-site inspection of the facility and shall provide to the fire department specific location information on hazardous chemicals at the facility.

(g) FORMAT OF FORMS.—The Administrator shall publish a uniform format for inventory forms within three months after the date of the enactment of this title. If the Administrator does not publish such forms, owners and operators of facilities subject to the requirements of this section shall provide the information required under this section by letter.

SEC. 313. TOXIC CHEMICAL RELEASE FORMS.

(a) BASIC REQUIREMENT.—The owner or operator of a facility subject to the requirements of this section shall complete a toxic chemical release form as published under subsection (g) for each toxic chemical listed under subsection (c) that was manufactured, processed, or otherwise used in quantities exceeding the toxic chemical threshold quantity established by subsection (f) during the preceding calendar year at such facility. Such form shall be submitted to the Administrator and to an official or officials of the State designated by the Governor on or before July 1, 1988, and annually thereafter on July 1 and shall contain data reflecting releases during the preceding calendar year.

(b) COVERED OWNERS AND OPERATORS OF FACILITIES.—

(1) IN GENERAL.—(A) The requirements of this section shall apply to owners and operators of facilities that have 10 or more full-time employees and that are in Standard Industrial Classification Codes 20 through 39 (as in effect on July 1, 1985) and that manufactured, processed, or otherwise used a toxic chemical listed under subsection (c) in excess of the quantity of that toxic chemical established under subsection (f) during the calendar year for which a release form is required under this section.

(B) The Administrator may add or delete Standard Industrial Classification Codes for purposes of subparagraph (A), but only to the extent necessary to provide that each Standard Industrial Code to which this section applies is relevant to the purposes of this section.

(C) For purposes of this section—

(i) The term "manufacture" means to produce, prepare, import, or compound a toxic chemical.

(ii) The term "process" means the preparation of a toxic chemical, after its manufacture, for distribution in commerce—

(I) in the same form or physical state as, or in a different form or physical state from,

that in which it was received by the person so preparing such chemical, or

(II) as part of an article containing the toxic chemical.

(2) DISCRETIONARY APPLICATION TO ADDITIONAL FACILITIES.—The Administrator, on his own motion or at the request of a Governor of a State (with regard to facilities located in that State), may apply the requirements of this section to the owners and operators of any particular facility that manufactures, processes, or otherwise uses a toxic chemical listed under subsection (c) if the Administrator determines that such action is warranted on the basis of toxicity of the toxic chemical, proximity to other facilities that release the toxic chemical or to population centers, the history of releases of such chemical at such facility, or such other factors as the Administrator deems appropriate.

(c) TOXIC CHEMICALS COVERED.—The toxic chemicals subject to the requirements of this section are those chemicals on the list in Committee Print Number 99-169 of the Senate Committee on Environment and Public Works, titled "Toxic Chemicals Subject to Section 313 of the Emergency Planning and Community Right-To-Know Act of 1986" (including any revised version of the list as may be made pursuant to subsection (d) or (e)).

(d) REVISIONS BY ADMINISTRATOR.—

(1) IN GENERAL.—The Administrator may by rule add or delete a chemical from the list described in subsection (c) at any time.

(2) ADDITIONS.—A chemical may be added if the Administrator determines, in his judgment, that there is sufficient evidence to establish any one of the following:

(A) The chemical is known to cause or can reasonably be anticipated to cause significant adverse acute human health effects at concentration levels that are reasonably likely to exist beyond facility site boundaries as a result of continuous, or frequently recurring, releases.

(B) The chemical is known to cause or can reasonably be anticipated to cause in humans—

(i) cancer or teratogenic effects, or

(ii) serious or irreversible—

(I) reproductive dysfunctions,

(II) neurological disorders,

(III) heritable genetic mutations, or

(IV) other chronic health effects.

(C) The chemical is known to cause or can reasonably be anticipated to cause, because of—

(i) its toxicity,

(ii) its toxicity and persistence in the environment, or

(iii) its toxicity and tendency to bioaccumulate in the environment,

a significant adverse effect on the environment of sufficient seriousness, in the judgment of the Administrator, to warrant reporting under this section. The number of chemicals included on the list described in subsection (c) on the basis of the preceding sentence may constitute in the aggregate no more than 25 percent of the total number of chemicals on the list.

A determination under this paragraph shall be based on generally accepted scientific principles or laboratory tests, or appropriately designed and conducted epidemiological or other population studies, available to the Administrator.

(3) DELETIONS.—A chemical may be deleted if the Administrator determines there is not sufficient evidence to establish any of the criteria described in paragraph (2).

(4) EFFECTIVE DATE.—Any revision made on or after January 1 and before December 1 of any calendar year shall take effect beginning with the next calendar year. Any revision made on or after December 1 of any calendar year and before January 1 of the next calender year shall take effect beginning with the calendar year following such next calendar year.

(e) PETITIONS.—

(1) IN GENERAL.—Any person may petition the Administrator to add or delete a chemical from the list described in subsection (c) on the basis of the criteria in subparagraph (A) or (B) of subsection (d)(2). Within 180 days after receipt of a petition, the Administrator shall take one of the following actions:

(A) Initiate a rulemaking to add or delete the chemical to the list, in accordance with subsection (d)(2) or (d)(3).

(B) Publish an explanation of why the petition is denied.

(2) GOVERNOR PETITIONS.—A State Governor may petition the Administrator to add or delete a chemical from the list described in subsection (c) on the basis of the criteria in subparagraph (A), (B), or (C) of subsection (d)(2). In the case of such a petition from a State Governor to delete a chemical, the petition shall be treated in the same manner as a petition received under paragraph (1) to delete a chemical. In the case of such a petition from a State Governor to add a chemical, the chemical will be added to the list within 180 days after receipt of the petition, unless the Administrator—

(A) initiates a rulemaking to add the chemical to the list, in accordance with subsection (d)(2), or

(B) publishes an explanation of why the Administrator believes the petition does not meet the requirements of subsection (d)(2) for adding a chemical to the list.

(f) THRESHOLD FOR REPORTING.—

(1) TOXIC CHEMICAL THRESHOLD AMOUNT.—The threshold amounts for purposes of reporting toxic chemicals under this section are as follows:

(A) With respect to a toxic chemical used at a facility, 10,000 pounds of the toxic chemical per year.

(B) With respect to a toxic chemical manufactured or processed at a facility—

(i) For the toxic chemical release form required to be submitted under this section on or before July 1, 1988, 75,000 pounds of the toxic chemical per year.

(ii) For the form required to be submitted on or before July 1, 1989, 50,000 pounds of the toxic chemical per year.

(iii) For the form required to be submitted on or before July 1, 1990, and for each form thereafter, 25,000 pounds of the toxic chemical per year.

(2) REVISIONS.—The Administrator may establish a threshold amount for a toxic chemical different from the amount established by paragraph (1). Such revised threshold shall obtain reporting on a substantial majority of total releases of the chemical at all facilities subject to the requirements of this section. The amounts established under this paragraph may, at the Administrator's discretion, be based on classes of chemicals or categories of facilities.

(g) FORM.—

(1) INFORMATION REQUIRED.—Not later than June 1, 1987, the Administrator shall publish a uniform toxic chemical release form for facilities covered by this section. If the Administrator does not publish such a form, owners and operators of facilities subject to the requirements of this section shall provide the information required under this subsection by letter postmarked on or before the date on which the form is due. Such form shall—

(A) provide for the name and location of, and principal business activities at, the facility;

(B) include an appropriate certification, signed by a senior official with management responsibility for the person or persons completing the report, regarding the accuracy and completeness of the report; and

(C) provide for submission of each of the following items of information for each listed toxic chemical known to be present at the facility:

(i) Whether the toxic chemical at the facility is manufactured, processed, or otherwise used, and the general category or categories of use of the chemical.

(ii) An estimate of the maximum amounts (in ranges) of the toxic chemical present at the facility at any time during the preceding calendar year.

(iii) For each wastestream, the waste treatment or disposal methods employed, and an estimate of the treatment efficiency typically achieved by such methods for that wastestream.

(iv) The annual quantity of the toxic chemical entering each environmental medium.

(2) USE OF AVAILABLE DATA.—In order to provide the information required under this section, the owner or operator of a facility may use readily available data (including monitoring data) collected pursuant to other provisions of law, or, where such data are not readily available, reasonable estimates of the amounts involved. Nothing in this section requires the monitoring or measurement of the quantities, concentration, or frequency of any toxic chemical released into the environment beyond that monitoring and measurement required under other provisions of law or regulation. In order to assure consistency, the Administrator shall require that data be expressed in common units.

(h) USE OF RELEASE FORM.—The release forms required under this section are intended to provide information to the Federal, State, and local governments and the public, including citizens of communities surrounding covered facilities. The release form shall be available, consistent with section 324(a), to inform persons about releases of toxic chemicals to the environment; to assist governmental agencies, researchers, and other persons in the conduct of research and data gathering; to aid in the development of appropriate regulations, guidelines, and standards; and for other similar purposes.

(i) MODIFICATIONS IN REPORTING FREQUENCY.—

(1) IN GENERAL.—The Administrator may modify the frequency of submitting a report under this section, but the Administrator may not modify the frequency to be any more often than annually. A modification may apply, either nationally or in a specific geographic area, to the following:

(A) All toxic chemical release forms required under this section.

(B) A class of toxic chemicals or a category of facilities.

(C) A specific toxic chemical.

(D) A specific facility.

(2) REQUIREMENTS.—A modification may be made under paragraph (1) only if the Administrator—

(A) makes a finding that the modification is consistent with the provisions of subsection (h), based on—

(i) experience from previously submitted toxic chemical release forms, and

(ii) determinations made under paragraph (3), and

(B) the finding is made by a rulemaking in accordance with section 553 of title 5, United States Code.

(3) DETERMINATIONS.—The Administrator shall make the following determinations with respect to a proposed modification before making a modification under paragraph (1):

(A) The extent to which information relating to the proposed modification provided on the toxic chemical release forms has been used by the Administrator or other agencies of the Federal Government, States, local governments, health professionals, and the public.

(B) The extent to which the information is (i) readily available to potential users from other sources, such as State reporting programs, and (ii) provided to the Administrator under another Federal law or through a State program.

(C) The extent to which the modification would impose additional and unreasonable burdens on facilities subject to the reporting requirements under this section.

(4) 5-YEAR REVIEW.—Any modification made under this subsection shall be reviewed at least once every 5 years. Such review shall examine the modification and ensure that the requirements of paragraphs (2) and (3) still justify continuation of the modification. Any change to a modification reviewed under this paragraph shall be made in accordance with this subsection.

(5) NOTIFICATION TO CONGRESS.—The Administrator shall notify Congress of an intention to initiate a rulemaking for a modification under this subsection. After such notification, the Administrator shall delay initiation of the rulemaking for at least 12 months, but no more than 24 months, after the date of such notification.

(6) JUDICIAL REVIEW.—In any judicial review of a rulemaking which establishes a modification under this subsection, a court may hold unlawful and set aside agency action, findings, and conclusions found to be unsupported by substantial evidence.

(7) APPLICABILITY.—A modification under this subsection may apply to a calendar year or other reporting period beginning no earlier than January 1, 1993.

(8) EFFECTIVE DATE.—Any modification made on or after January 1 and before December 1 of any calendar year shall take effect beginning with the next calendar year. Any modification made on or after December 1 of any calendar year and before January 1 of the next calendar year shall take effect beginning with the calendar year following such next calendar year.

(j) EPA MANAGEMENT OF DATA.—The Administrator shall establish and maintain in a computer data base a national toxic chemical inventory based on data submitted to the Administrator under this section. The Administrator shall make these data accessible by computer telecommunication and other means to any person on a cost reimbursable basis.

(k) REPORT.—Not later than June 30, 1991, the Comptroller General, in consultation with the Administrator and appropriate officials in the States, shall submit to the Congress a report including each of the following:

(1) A description of the steps taken by the Administrator and the States to implement the requirements of this section, including steps taken to make information collected under this section available to and accessible by the public.

(2) A description of the extent to which the information collected under this section has been used by the Environmental Protection Agency, other Federal agencies, the States, and the public, and the purposes for which the information has been used.

(3) An identification and evaluation of options for modifications to the requirements of this section for the purpose of making information collected under this section more useful.

(l) MASS BALANCE STUDY.—

(1) IN GENERAL.—The Administrator shall arrange for a mass balance study to be carried out by the National Academy of Sciences using mass balance information collected by the Administrator under paragraph (3). The Administrator shall submit to Congress a report on such study no later than 5 years after the date of the enactment of this title.

(2) PURPOSES.—The purposes of the study are as follows:

(A) To assess the value of mass balance analysis in determining the accuracy of information on toxic chemical releases.

(B) To assess the value of obtaining mass balance information, or portions thereof, to determine the waste reduction efficiency of different facilities, or categories of facilities, including the effectiveness of toxic chemical regulations promulgated under laws other than this title.

(C) To assess the utility of such information for evaluating toxic chemical management practices at facilities, or categories of facilities, covered by this section.

(D) To determine the implications of mass balance information collection on a national scale similar to the mass balance information collection carried out by the Administrator under paragraph (3), including implications of the use of such collection as part of a national annual quantity toxic chemical release program.

(3) INFORMATION COLLECTION.—(A) The Administrator shall acquire available mass balance information from States which currently conduct (or during the 5 years after the date of enactment of this title initiate) a mass balance-oriented annual quantity toxic chemical release program. If information from such States provides an inadequate representation of industry classes and categories to carry out the purposes of the study, the Administrator also may acquire mass balance information necessary for the study from a representative number of facilities in other States.

(B) Any information acquired under this section shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that the information (or a particular part thereof) to which the Administrator or any officer, employee, or representative has access under this section if made public would divulge information entitled to protection under section 1905 of title 18, United States Code, such information or part shall be considered confidential in accordance with the purposes of that section, except that such information or part may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this section.

(C) The Administrator may promulgate regulations prescribing procedures for collecting mass balance information under this paragraph.

(D) For purposes of collecting mass balance information under subparagraph (A), the Administrator may require the submission of information by a State or facility.

(4) MASS BALANCE DEFINITION.—For purposes of this subsection, the term "mass balance" means an accumulation of the annual quantities of chemicals transported to a facility, produced at a facility, consumed at a facility, used at a facility, accumulated at a facility, released from a facility, and transported from a facility as a waste or as a commercial product or byproduct or component of a commercial product or byproduct.

Subtitle C—General Provisions

SEC. 321. RELATIONSHIP TO OTHER LAW.

(a) IN GENERAL.—Nothing in this title shall—

(1) preempt any State or local law,

(2) except as provided in subsection (b), otherwise affect any State or local law or the authority of any State or local government to adopt or enforce any State or local law, or

(3) affect or modify in any way the obligations or liabilities of any person under other Federal law.

(b) EFFECT ON MSDS REQUIREMENTS.—Any State or local law enacted after August 1, 1985, which requires the submission of a material safety data sheet from facility owners or operators shall require that the data sheet be identical in content and format to the data sheet required under subsection (a) of section 311. In addition, a State or locality may require the submission of information which is supplemental to the information required on the data sheet (including information on the location and quantity of hazardous chemicals present at the facility), through additional sheets attached to the data sheet or such other means as the State or locality considers appropriate.

SEC. 322. TRADE SECRETS.

(a) AUTHORITY TO WITHHOLD INFORMATION.—

(1) GENERAL AUTHORITY.—(A) With regard to a hazardous chemical, an extremely hazardous substance, or a toxic chemical, any person required under section 303(d)(2), 303(d)(3), 311, 312, or 313 to submit information to any other person may withhold from such submittal the specific chemical identity (including the chemical name and other specific identification), as defined in regulations prescribed by the Administrator under subsection (c), if the person complies with paragraph (2).

(B) Any person withholding the specific chemical identity shall, in the place on the submittal where the chemical identity would normally be included, include the generic class or category of the hazardous chemical, extremely hazardous substance, or toxic chemical (as the case may be).

(2) REQUIREMENTS.—(A) A person is entitled to withhold information under paragraph (1) if such person—

(i) claims that such information is a trade secret, on the basis of the factors enumerated in subsection (b),

(ii) includes in the submittal referred to in paragraph (1) an explanation of the reasons why such information is claimed to be a trade secret, based on the factors enumerated in subsection (b), including a specific description of why such factors apply, and

(iii) submits to the Administrator a copy of such submittal, and the information withheld from such submittal.

(B) In submitting to the Administrator the information required by subparagraph (A)(iii), a person withholding information under this subsection may—

(i) designate, in writing and in such manner as the Administrator may prescribe

by regulation, the information which such person believes is entitled to be withheld under paragraph (1), and

(ii) submit such designated information separately from other information submitted under this subsection.

(3) LIMITATION.—The authority under this subsection to withhold information shall not apply to information which the Administrator has determined, in accordance with subsection (c), is not a trade secret.

(b) TRADE SECRET FACTORS.—No person required to provide information under this title may claim that the information is entitled to protection as a trade secret under subsection (a) unless such person shows each of the following:

(1) Such person has not disclosed the information to any other person, other than a member of a local emergency planning committee, an officer or employee of the United States or a State or local government, an employee of such person, or a person who is bound by a confidentiality agreement, and such person has taken reasonable measures to protect the confidentiality of such information and intends to continue to take such measures.

(2) The information is not required to be disclosed, or otherwise made available, to the public under any other Federal or State law.

(3) Disclosure of the information is likely to cause substantial harm to the competitive position of such person.

(4) The chemical identity is not readily discoverable through reverse engineering.

(c) TRADE SECRET REGULATIONS.—As soon as practicable after the date of enactment of this title, the Administrator shall prescribe regulations to implement this section. With respect to subsection (b)(4), such regulations shall be equivalent to comparable provisions in the Occupational Safety and Health Administration Hazard Communication Standard (29 C.F.R. 1910.1200) and any revisions of such standard prescribed by the Secretary of Labor in accordance with the final ruling of the courts of the United States in United Steelworkers of America, AFL-CIO-CLC v. Thorne G. Auchter.

(d) PETITION FOR REVIEW.—

(1) IN GENERAL.—Any person may petition the Administrator for the disclosure of the specific chemical identity of a hazardous chemical, an extremely hazardous substance, or a toxic chemical which is claimed as a trade secret under this section. The Administrator may, in the absence of a petition under this paragraph, initiate a determination, to be carried out in accordance with this subsection, as to whether information withheld constitutes a trade secret.

(2) INITIAL REVIEW.—Within 30 days after the date of receipt of a petition under paragraph (1) (or upon the Administrator's initiative), the Administrator shall review the explanation filed by a trade secret claimant under subsection (a)(2) and determine whether the explanation presents assertions which, if true, are sufficient to support a finding that the specific chemical identity is a trade secret.

(3) FINDING OF SUFFICIENT ASSERTIONS.—

(A) If the Administrator determines pursuant to paragraph (2) that the explanation presents sufficient assertions to support a finding that the specific chemical identity is a trade secret, the Administrator shall notify the trade secret claimant that he has 30 days to supplement the explanation with detailed information to support the assertions.

(B) If the Administrator determines, after receipt of any supplemental supporting detailed information under subparagraph (A), that the assertions in the explanation are true and that the specific chemical identity is a trade secret, the Administrator shall so notify the petitioner and the petitioner may seek judicial review of the determination.

(C) If the Administrator determines, after receipt of any supplemental supporting detailed information under subparagraph (A), that the assertions in the explanation are not true and that the specific chemical identity is not a trade secret, the Administrator shall notify the trade secret claimant that the Administrator intends to release the specific chemical identity. The trade secret claimant has 30 days in which he may appeal the Administrator's determination under this subparagraph to the Administrator. If the Administrator does not reverse his determination under this subparagraph in such an appeal by the trade secret claimant, the trade secret claimaint may seek judicial review of the determination.

(4) FINDING OF INSUFFICIENT ASSERTIONS.—

(A) If the Administrator determines pursuant to paragraph (2) that the explanation presents insufficient assertions to support a finding that the specific chemical identity is a trade secret, the Administrator shall notify the trade secret claimant that he has 30 days to appeal the determination to the Administrator, or, upon a showing of good cause, amend the original explanation by providing supplementary assertions to support the trade secret claim.

(B) If the Administrator does not reverse his determination under subparagraph (A) after an appeal or an examination of any supplementary assertions under subparagraph (A), the Administrator shall so notify the trade secret claimant and the trade secret claimant may seek judicial review of the determination.

(C) If the Administrator reverses his determination under subparagraph (A) after an appeal or an examination of any supplementary assertions under subparagraph (A), the procedures under paragraph (3) of this subsection apply.

(e) EXCEPTION FOR INFORMATION PROVIDED TO HEALTH PROFESSIONALS.—Nothing in this section, or regulations adopted pursuant to this section, shall authorize any person to withhold information which is required to be provided to a health professional, a doctor, or a nurse in accordance with section 323.

(f) PROVIDING INFORMATION TO THE ADMINISTRATOR; AVAILABILITY TO PUBLIC.—Any information submitted to the Administrator under subsection (a)(2) or subsection (d)(3) (except a specific chemical identity) shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that the information (or a particular part thereof) to which the Administrator has access under this section if made public would divulge information entitled to protection under section 1905 of title 18, United States Code, such information or part shall be considered confidential in accordance with the purposes of that section, except that such information or part may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this title.

(g) INFORMATION PROVIDED TO STATE.—Upon request by a State, acting through the Governor of the State, the Administrator shall provide to the State any information obtained under subsection (a)(2) and subsection (d)(3).

(h) INFORMATION ON ADVERSE EFFECTS.—(1) In any case in which the identity of a hazardous chemical or an extremely hazardous substance is claimed as a trade secret, the Governor or State emergency response commission established under section 301 shall identify the adverse health effects associated with the hazardous chemical or extremely hazardous substance and shall assure that such information is provided to any person requesting information about such hazardous chemical or extremely hazardous substance.

(2) In any case in which the identity of a toxic chemical is claimed as a trade secret, the Administrator shall identify the adverse health and environmental effects associated with the toxic chemical and shall assure that such information is included in the computer database required by section 313(j) and is provided to any person requesting information about such toxic chemical.

(i) INFORMATION PROVIDED TO CONGRESS.—Notwithstanding any limitation contained in this section or any other provision of law, all information reported to or otherwise obtained by the Administrator (or any representative of the Administrator) under this title shall be made available to a duly authorized committee of the Congress upon written request by such a committee.

SEC. 323. PROVISION OF INFORMATION TO HEALTH PROFESSIONALS, DOCTORS, AND NURSES.

(a) DIAGNOSIS OR TREATMENT BY HEALTH PROFESSIONAL.—An owner or operator of a facility which is subject to the requirements of section 311, 312, or 313 shall provide the specific chemical identity, if known, of a hazardous chemical, extremely hazardous substance, or a toxic chemical to any health professional who requests such information in writing if the health professional provides a written statement of need under this subsection and a written confidentiality agreement under subsection (d). The written statement of need shall be a statement that the health professional has a reasonable basis to suspect that—

(1) the information is needed for purposes of diagnosis or treatment of an individual,

(2) the individual or individuals being diagnosed or treated have been exposed to the chemical concerned, and

(3) knowledge of the specific chemical identity of such chemical will assist in diagnosis or treatment.

Following such a written request, the owner or operator to whom such request is made shall promptly provide the requested information to the health professional. The authority to withhold the specific chemical identity of a chemical under section 322 when such information is a trade secret shall not apply to information required to be provided under this subsection, subject to the provisions of subsection (d).

(b) MEDICAL EMERGENCY.—An owner or operator of a facility which is subject to the requirements of section 311, 312, or 313 shall provide a copy of a material safety data sheet, an inventory form, or a toxic chemical release form, including the specific chemical identity, if known, of a hazardous chemical, extremely hazardous substance, or a toxic chemical, to any treating physician or nurse who requests such information if such physician or nurse determines that—

(1) a medical emergency exists,

(2) the specific chemical identity of the chemical concerned is necessary for or will assist in emergency or first-aid diagnosis or treatment, and

(3) the individual or individuals being diagnosed or treated have been exposed to the chemical concerned.

Immediately following such a request, the owner or operator to whom such request is made shall provide the requested information to the physician or nurse. The authority to withhold the specific chemical identity of a chemical from a material safety data sheet, an inventory form, or a toxic chemical release form under section 322 when such information is a trade secret shall not apply to information required to be provided to a treating physician or nurse under this subsection. No written confidentiality agreement or statement of need shall be required as a precondition of such disclosure, but the owner or operator disclosing such information may require a written confidentiality agreement in accordance with subsection (d) and a statement setting forth the items listed in paragraphs (1) through (3) as soon as circumstances permit.

(c) PREVENTIVE MEASURES BY LOCAL HEALTH PROFESSIONALS.—

(1) PROVISION OF INFORMATION.—An owner or operator of a facility subject to the requirements of section 311, 312, or 313 shall provide the specific chemical identity, if known, of a hazardous chemical, an extremely hazardous substance, or a toxic chemical to any health professional (such as a physician, toxicologist, or epidemiologist)—

(A) who is a local government employee or a person under contract with the local government, and

(B) who requests such information in writing and provides a written statement of need under paragraph (2) and a written confidentiality agreement under subsection (d).

Following such a written request, the owner or operator to whom such request is made shall promptly provide the requested information to the local health professional. The authority to withhold the specific chemical identity of a chemical under section 322 when such information is a trade secret shall not apply to information required to be provided under this subsection, subject to the provisions of subsection (d).

(2) WRITTEN STATEMENT OF NEED.—The written statement of need shall be a statement that describes with reasonable detail one or more of the following health needs for the information:

(A) To assess exposure of persons living in a local community to the hazards of the chemical concerned.

(B) To conduct or assess sampling to determine exposure levels of various population groups.

(C) To conduct periodic medical surveillance of exposed population groups.

(D) To provide medical treatment to exposed individuals or population groups.

(E) To conduct studies to determine the health effects of exposure.

(F) To conduct studies to aid in the identification of a chemical that may reasonably be anticipated to cause an observed health effect.

(d) CONFIDENTIALITY AGREEMENT.—Any person obtaining information under subsection (a) or (c) shall, in accordance with such subsection (a) or (c), be required to agree in a written confidentiality agreement that he will not use the information for any purpose other than the health needs asserted in the statement of need, except as may otherwise be authorized by the terms of the agreement or by the person providing such information. Nothing in this subsection shall preclude the parties to a confidentiality agreement from pursuing any remedies to the extent permitted by law.

(e) REGULATIONS.—As soon as practicable after the date of the enactment of this title, the Administrator shall promulgate regulations describing criteria and parameters for the statement of need under subsection (a) and (c) and the confidentiality agreement under subsection (d).

SEC. 324. PUBLIC AVAILABILITY OF PLANS, DATA SHEETS, FORMS, AND FOLLOWUP NOTICES.

(a) AVAILABILITY TO PUBLIC.—Each emergency response plan, material safety data sheet, list described in section 311(a)(2), inventory form, toxic chemical release form, and followup emergency notice shall be made available to the general public, consistent with section 322, during normal working hours at the location or locations designated by the Administrator, Governor, State emergency response commission, or local emergency planning committee, as appropriate. Upon request by an owner or operator of a facility subject to the requirements of section 312, the State emergency response commission and the appropriate local emergency planning committee shall withhold from disclosure under this section the location of any specific chemical required by section 312(d)(2) to be contained in an inventory form as tier II information.

(b) NOTICE OF PUBLIC AVAILABILITY.—Each local emergency planning committee shall annually publish a notice in local newspapers that the emergency response plan, material safety data sheets, and inventory forms have been submitted under this section. The notice shall state that followup emergency notices may subsequently be issued. Such notice shall announce that members of the public who wish to review any such plan, sheet, form, or followup notice may do so at the location designated under subsection (a).

SEC. 325. ENFORCEMENT.

(a) CIVIL PENALTIES FOR EMERGENCY PLANNING.—The Administrator may order a facility owner or operator (except an owner or operator of a facility designated under section 302(b)(2)) to comply with section 302(c) and section 303(d). The United States district court for the district in which the facility is located shall have jurisdiction to enforce the order, and any person who violates or fails to obey such an order shall be liable to the United States for a civil penalty of not more than $25,000 for each day in which such violation occurs or such failure to comply continues.

(b) CIVIL, ADMINISTRATIVE, AND CRIMINAL PENALTIES FOR EMERGENCY NOTIFICATION.—

(1) CLASS I ADMINISTRATIVE PENALTY.—(A) A civil penalty of not more than $25,000 per violation may be assessed by the Administrator in the case of a violation of the requirements of section 304.

(B) No civil penalty may be assessed under this subsection unless the person accused of the violation is given notice and opportunity for a hearing with respect to the violation.

(C) In determining the amount of any penalty assessed pursuant to this subsection, the Administrator shall take into account the nature, circumstances, extent and gravity of the violation or violations and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require.

(2) CLASS II ADMINISTRATIVE PENALTY.—A civil penalty of not more than $25,000 per day for each day during which the violation continues may be assessed by the Administrator in the case of a violation of the requirements of section 304. In the case of a second or subsequent violation the amount of such penalty may be not more than $75,000 for each day during which the violation continues. Any civil penalty under this subsection shall be assessed and collected in the same manner, and subject to the same provisions, as in the case of civil penalties assessed and collected under section 16 of the Toxic Substances Control Act. In any proceeding for the assessment of a civil penalty under this subsection the Administrator may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents and may promulgate rules for discovery procedures.

(3) JUDICIAL ASSESSMENT.—The Administrator may bring an action in the United States District court for the appropriate district to assess and collect a penalty of not more than $25,000 per day for each day during which the violation continues in the case of a violation of the requirements of section 304. In the case of a second or subsequent violation, the amount of such penalty may be not more than $75,000 for each day during which the violation continues.

(4) CRIMINAL PENALTIES.—Any person who knowingly and willfully fails to provide notice in accordance with section 304 shall, upon conviction, be fined not more than $25,000 or imprisoned for not more than two years, or both (or in the case of a second or subsequent conviction, shall be fined not more than $50,000 or imprisoned for not more than five years, or both).

(c) CIVIL AND ADMINISTRATIVE PENALTIES FOR REPORTING REQUIREMENTS.—(1) Any person (other than a governmental entity) who violates any requirement of section 312 or 313 shall be liable to the United States for a civil penalty in an amount not to exceed $25,000 for each such violation.

(2) Any person (other than a governmental entity) who violates any requirement of section 311 or 323(b), and any person who fails to furnish to the Administrator information required under section 322(a)(2) shall be liable to the United States for a civil penalty in an amount not to exceed $10,000 for each such violation.

(3) Each day a violation described in paragraph (1) or (2) continues shall, for purposes of this subsection, constitute a separate violation.

(4) The Administrator may assess any civil penalty for which a person is liable under this subsection by administrative order or may bring an action to assess and collect the penalty in the United States district court for the district in which the person from whom the penalty is sought resides or in which such person's principal place of business is located.

(d) CIVIL, ADMINISTRATIVE, AND CRIMINAL PENALTIES WITH RESPECT TO TRADE SECRETS.—

(1) CIVIL AND ADMINISTRATIVE PENALTY FOR FRIVOLOUS CLAIMS.—If the Administrator determines—

(A)(i) under section 322(d)(4) that an explanation submitted by a trade secret claimant presents insufficient assertions to support a finding that a specific chemical identity is a trade secret, or (ii) after receiving supplemental supporting detailed information under section 322(d)(3)(A), that the specific chemical identity is not a trade secret; and

(B) that the trade secret claim is frivolous,

the trade secret claimant is liable for a penalty of $25,000 per claim. The Administrator may assess the penalty by administrative order or may bring an action in the appropriate district court of the United States to assess and collect the penalty.

(2) CRIMINAL PENALTY FOR DISCLOSURE OF TRADE SECRET INFORMATION.—Any person who knowingly and willfully divulges or discloses any information entitled to protection under section 322 shall, upon conviction, be subject to a fine of not more than $20,000 or to imprisonment not to exceed one year, or both.

(e) SPECIAL ENFORCEMENT PROVISIONS FOR SECTION 323.—Whenever any facility owner or operator required to provide information under section 323 to a health professional who has requested such information fails or refuses to provide such information in accordance with such section, such health professional may bring an action in the appropriate United States district court to require such facility owner or operator to provide the information. Such court shall have jurisdiction to issue such orders and take such other action as may be necessary to enforce the requirements of section 323.

(f) PROCEDURES FOR ADMINISTRATIVE PENALTIES.—

(1) Any person against whom a civil penalty is assessed under this section may obtain review thereof in the appropriate district court of the United States by filing a notice of appeal in such court within 30 days after the date of such order and by simultaneously sending a copy of such notice by certified mail to the Administrator. The Administrator shall promptly file in such court a certified copy of the record upon which such violation was found or such penalty imposed. If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order or after the appropriate court has entered final judgment in favor of the United States, the Administrator may request the Attorney General of the United States to institute a civil action in an appropriate district court of the United States to collect the penalty, and such court shall have jurisdiction to hear and decide any such action. In hearing such action, the court shall have authority to review the violation and the assessment of the civil penalty on the record.

(2) The Administrator may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, or documents in connection with hearings under this section. In case of contumacy or refusal to obey a subpoena issued pursuant to this paragraph and served upon any person, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the administrative law judge or to appear and produce documents before the administrative law judge, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

SEC. 326. CIVIL ACTIONS.

(a) AUTHORITY TO BRING CIVIL ACTIONS.—

(1) CITIZEN SUITS.—Except as provided in subsection (e), any person may commence a civil action on his own behalf against the following:

(A) An owner or operator of a facility for failure to do any of the following:

(i) Submit a followup emergency notice under section 304(c).

(ii) Submit a material safety data sheet or a list under section 311(a).

(iii) Complete and submit an inventory form under section 312(a) containing tier I information as described in section 312(d)(1) unless such requirement does not apply by reason of the second sentence of section 312(a)(2).

(iv) Complete and submit a toxic chemical release form under section 313(a).

(B) The Administrator for failure to do any of the following:

(i) Publish inventory forms under section 312(g).

(ii) Respond to a petition to add or delete a chemical under section 313(e)(1) within 180 days after receipt of the petition.

(iii) Publish a toxic chemical release form under 313(g).

(iv) Establish a computer database in accordance with section 313(j).

(v) Promulgate trade secret regulations under section 322(c).

(vi) Render a decision in response to a petition under section 322(d) within 9 months after receipt of the petition.

(C) The Administrator, a State Governor, or a State emergency response commission, for failure to provide a mechanism for public availability of information in accordance with section 324(a).

(D) A State Governor or a State emergency response commission for failure to respond to a request for tier II information under section 312(e)(3) within 120 days after the date of receipt of the request.

(2) STATE OR LOCAL SUITS.—

(A) Any State or local government may commence a civil action against an owner or operator of a facility for failure to do any of the following:

(i) Provide notification to the emergency response commission in the State under section 302(c).

(ii) Submit a material safety data sheet or a list under section 311(a).

(iii) Make available information requested under section 311(c).

(iv) Complete and submit an inventory form under section 312(a) containing tier I information unless such requirement does not apply by reason of the second sentence of section 312(a)(2).

(B) Any State emergency response commission or local emergency planning committee may commence a civil action against an owner or operator of a facility for failure to provide information under section 303(d) or for failure to submit tier II information under section 312(e)(1).

(C) Any State may commence a civil action against the Administrator for failure to provide information to the State under section 322(g).

(b) VENUE.—

(1) Any action under subsection (a) against an owner or operator of a facility shall be brought in the district court for the district in which the alleged violation occurred.

(2) Any action under subsection (a) against the Administrator may be brought in the United States District Court for the District of Columbia.

(c) RELIEF.—The district court shall have jurisdiction in actions brought under subsection (a) against an owner or operator of a facility to enforce the requirement concerned and to impose any civil penalty provided for violation of that requirement. The district court shall have jurisdiction in actions brought under subsection (a) against the Administrator to order the Administrator to perform the act or duty concerned.

(d) NOTICE.—

(1) No action may be commenced under subsection (a)(1)(A) prior to 60 days after the plaintiff has given notice of the alleged violation to the Administrator, the State in which the alleged violation occurs, and the alleged violator. Notice under this paragraph shall be given in such manner as the Administrator shall prescribe by regulation.

(2) No action may be commenced under subsection (a)(1)(B) or (a)(1)(C) prior to 60 days after the date on which the plaintiff gives notice to the Administrator, State Governor, or State emergency response commission (as the case may be) that the plaintiff will commence the action. Notice under this paragraph shall be given in such manner as the Administrator shall prescribe by regulation.

(e) LIMITATION.—No action may be commenced under subsection (a) against an owner or operator of a facility if the Administrator has commenced and is diligently pursuing an administrative order or civil action to enforce the requirement concerned or to impose a civil penalty under this Act with respect to the violation of the requirement.

(f) COSTS.—The court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation (including reasonable attorney and expert witness fees) to the prevailing or the substantially prevailing party whenever the court determines such an award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

(g) OTHER RIGHTS.—Nothing in this section shall restrict or expand any right which any person (or class of persons) may have under any Federal or State statute or common law to seek enforcement of any requirement or to seek any other relief (including relief against the Administrator or a State agency).

(h) INTERVENTION.—

(1) BY THE UNITED STATES.—In any action under this section the United States or the State, or both, if not a party, may intervene as a matter of right.

(2) BY PERSONS.—In any action under this section, any person may intervene as a matter of right when such person has a direct interest which is or may be adversely affected by the action and the disposition of the action may, as a practical matter, impair or impede the person's ability to protect that interest unless the Administrator or the State shows that the person's interest is adequately represented by existing parties in the action.

SEC. 327. EXEMPTION.

Except as provided in section 304, this title does not apply to the transportation, including the storage incident to such transportation, of any substance or chemical subject to the requirements of this title, including the transportation and distribution of natural gas.

SEC. 328. REGULATIONS.

The Administrator may prescribe such regulations as may be necessary to carry out this title.

SEC. 329. DEFINITIONS.

For purposes of this title—

(1) ADMINISTRATOR.—The term "Administrator" means the Administrator of the Environmental Protection Agency.

(2) ENVIRONMENT.—The term "environment" includes water, air, and land and the

interrelationship which exists among and between water, air, and land and all living things.

(3) EXTREMELY HAZARDOUS SUBSTANCE.—The term "extremely hazardous substance" means a substance on the list described in section 302(a)(2).

(4) FACILITY.—The term "facility" means all buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person which controls, is controlled by, or under common control with, such person). For purposes of section 304, the term includes motor vehicles, rolling stock, and aircraft.

(5) HAZARDOUS CHEMICAL.—The term "hazardous chemical" has the meaning given such term by section 311(e).

(6) MATERIAL SAFETY DATA SHEET.—The term "material safety data sheet" means the sheet required to be developed under section 1910.1200(g) of title 29 of the Code of Federal Regulations, as that section may be amended from time to time.

(7) PERSON.—The term "person" means any individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or interstate body.

(8) RELEASE.—The term "release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles) of any hazardous chemical, extremely hazardous substance, or toxic chemical.

(9) STATE.—The term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, and any other territory or possession over which the United States has jurisdiction.

(10) TOXIC CHEMICAL.—The term "toxic chemical" means a substance on the list described in section 313(c).

SEC. 330. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for fiscal years beginning after September 30, 1986, such sums as may be necessary to carry out this title.

TITLE IV—RADON GAS AND INDOOR AIR QUALITY RESEARCH

SEC. 401. SHORT TITLE.

This title may be cited as the "Radon Gas and Indoor Air Quality Research Act of 1986".

SEC. 402. FINDINGS.

The Congress finds that:

(1) High levels of radon gas pose a serious health threat in structures in certain areas of the country.

(2) Various scientific studies have suggested that exposure to radon, including exposure to naturally occurring radon and indoor air pollutants, poses a public health risk.

(3) Existing Federal radon and indoor air pollutant research programs are fragmented and underfunded.

(4) An adequate information base concerning exposure to radon and indoor air pollutants should be developed by the appropriate Federal agencies.

SEC. 403. RADON GAS AND INDOOR AIR QUALITY RESEARCH PROGRAM.

(a) DESIGN OF PROGRAM.—The Administrator of the Environmental Protection Agency shall establish a research program with respect to radon gas and indoor air quality. Such program shall be designed to—

(1) gather data and information on all aspects of indoor air quality in order to contribute to the understanding of health problems associated with the existence of air pollutants in the indoor environment;

(2) coordinate Federal, State, local, and private research and development efforts relating to the improvement of indoor air quality; and

(3) assess appropriate Federal Government actions to mitigate the environmental and health risks associated with indoor air quality problems.

(b) PROGRAM REQUIREMENTS.—The research program required under this section shall include—

(1) research and development concerning the identification, characterization, and monitoring of the sources and levels of indoor air pollution, including radon, which includes research and development relating to—

(A) the measurement of various pollutant concentrations and their strengths and sources,

(B) high-risk building types, and

(C) instruments for indoor air quality data collection;

(2) research relating to the effects of indoor air pollution and radon on human health;

(3) research and development relating to control technologies or other mitigation measures to prevent or abate indoor air pollution (including the development, evaluation, and testing of individual and generic control devices and systems);

(4) demonstration of methods for reducing or eliminating indoor air pollution and radon, including sealing, venting, and other methods that the Administrator determines may be effective;

(5) research, to be carried out in conjunction with the Secretary of Housing and Urban Development, for the purpose of developing—

(A) methods for assessing the potential for radon contamination of new construction, including (but not limited to) consideration of the moisture content of soil, porosity of soil, and radon content of soil; and

(B) design measures to avoid indoor air pollution; and

(6) the dissemination of information to assure the public availability of the findings of the activities under this section.

(c) ADVISORY COMMITTEES.—The Administrator shall establish a committee comprised of individuals representing Federal agencies concerned with various aspects of indoor air quality and an advisory group comprised of individuals representing the States, the scientific community, industry, and public interest organizations to assist him in carrying out the research program for radon gas and indoor air quality.

(d) IMPLEMENTATION PLAN.—Not later than 90 days after the enactment of this Act, the Administrator shall submit to the Congress a plan for implementation of the research program under this section. Such plan shall also be submitted to the EPA Science Advisory Board, which shall, within a reasonable period of time, submit its comments on such plan to Congress.

(e) REPORT.—Not later than 2 years after the enactment of this Act, the Administrator shall submit to Congress a report respecting his activities under this section and making such recommendations as appropriate.

SEC. 404. CONSTRUCTION OF TITLE.

Nothing in this title shall be construed to authorize the Administrator to carry out any regulatory program or any activity other than research, development, and related reporting, information dissemination, and coordination activities specified in this title. Nothing in this title shall be construed to limit the authority of the Administrator or of any other agency or instrumentality of the United States under any other authority of law.

SEC. 405. AUTHORIZATIONS.

There are authorized to be appropriated to carry out the activities under this title and under section 118(k) of the Superfund Amendments and Reauthorization Act of 1986 (relating to radon gas assessment and demonstration program) not to exceed $5,000,000 for each of the fiscal years 1987, 1988, and 1989. Of such sums appropriated in fiscal years 1987 and 1988, two-fifths shall be reserved for the implementation of section 118(k)(2).

TITLE V—AMENDMENTS OF THE INTERNAL REVENUE CODE OF 1986

SEC. 501. SHORT TITLE.

This title may be cited as the "Superfund Revenue Act of 1986".

PART I—SUPERFUND AND ITS REVENUE SOURCES

SEC. 511. EXTENSION OF ENVIRONMENTAL TAXES.

(a) IN GENERAL.—Subsection (d) of section 4611 of the Internal Revenue Code of 1986 (relating to termination) is amended to read as follows:

"(d) APPLICATION OF TAXES.—

"(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the taxes imposed by this section shall apply after December 31, 1986, and before January 1, 1992.

"(2) NO TAX IF UNOBLIGATED BALANCE IN FUND EXCEEDS $3,500,000,000.—If on December 31, 1989, or December 31, 1990—

"(A) the unobligated balance in the Hazardous Substance Superfund exceeds $3,500,000,000, and

"(B) the Secretary, after consultation with the Administrator of the Environmental Protection Agency, determines that the unobligated balance in the Hazardous Substance Superfund will exceed $3,500,000,000 on December 31 of 1990 or 1991, respectively, if no tax is imposed under section 59A, this section, and sections 4661 and 4671,

then no tax shall be imposed under this section during 1990 or 1991, as the case may be.

"(3) NO TAX IF AMOUNTS COLLECTED EXCEED $6,650,000,000.—

"(A) ESTIMATES BY SECRETARY.—The Secretary as of the close of each calendar quarter (and at such other times as the Secretary determines appropriate) shall make an estimate of the amount of taxes which will be collected under section 59A, this section, and sections 4661 and 4671 and credited to the Hazardous Substance Superfund during the period beginning January 1, 1987, and ending December 31, 1991.

"(B) TERMINATION IF $6,650,000,000 CREDITED BEFORE JANUARY 1, 1992.—If the Secretary estimates under subparagraph (A) that more than $6,650,000,000 will be credited to the Fund before January 1, 1992, no tax shall be imposed under this section after the date on which (as estimated by the Secretary) $6,650,000,000 will be so credited to the Fund."

(b) TECHNICAL AMENDMENT.—Section 303 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is hereby repealed.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1987.

SEC. 512. INCREASE IN TAX ON PETROLEUM.

(a) IN GENERAL.—Subsections (a) and (b) of section 4611 of the Internal Revenue Code of 1986 (relating to environmental tax on petroleum) are each amended by striking out "of 0.79 cent a barrel" and inserting in lieu thereof "at the rate specified in subsection (c)".

(b) INCREASE IN TAX.—Section 4611 of such Code is amended by redesignating subsections (c) and (d) as subsections (d) and (e), respectively, and by inserting after subsection (b) the following new subsection:

"(c) RATE OF TAX.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the rate of the taxes imposed by this section is 8.2 cents a barrel.

"(2) IMPORTED PETROLEUM PRODUCTS.—The rate of the tax imposed by subsection (a)(2) shall be 11.7 cents a barrel."

(c) ALLOWANCE OF CREDIT FOR CRUDE OIL RETURNED TO PIPELINE.—Section 4612 of such Code (relating to definitions and special rules) is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

"(c) CREDIT WHERE CRUDE OIL RETURNED TO PIPELINE.—Under regulations prescribed by the Secretary, if an operator of a United States refinery—

"(1) removes crude oil from a pipeline, and

"(2) returns a portion of such crude oil into a stream of other crude oil in the same pipeline,

there shall be allowed as a credit against the tax imposed by section 4611 to such operator an amount equal to the product of the rate of tax imposed by section 4611 on the crude oil so removed by such operator and the number of barrels of crude oil returned by such operator to such pipeline. Any crude oil so returned shall be treated for purposes of this subchapter as crude oil on which no tax has been imposed by section 4611."

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1987.

SEC. 513. CHANGES RELATING TO TAX ON CERTAIN CHEMICALS.

(a) INCREASE IN RATE OF TAX ON XYLENE.—The table contained in subsection (b) of section 4661 of the Internal Revenue Code of 1986 (relating to tax on certain chemicals) is amended by adding at the end thereof the following new sentence:

"For periods before 1992, the item relating to xylene in the preceding table shall be applied by substituting '10.13' for '4.87'."

(b) EXEMPTION FOR EXPORTS OF TAXABLE CHEMICALS.—

(1) Section 4662 of such Code (relating to definitions and special rules) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) EXEMPTION FOR EXPORTS OF TAXABLE CHEMICALS.—

"(1) TAX-FREE SALES.—

"(A) IN GENERAL.—No tax shall be imposed under section 4661 on the sale by the manufacturer or producer of any taxable chemical for export, or for resale by the purchaser to a second purchaser for export.

"(B) PROOF OF EXPORT REQUIRED.—Rules similar to the rules of section 4221(b) shall apply for purposes of subparagraph (A).

"(2) CREDIT OR REFUND WHERE TAX PAID.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), if—

"(i) tax under section 4661 was paid with respect to any taxable chemical, and

"(ii)(I) such chemical was exported by any person, or

"(II) such chemical was used as a material in the manufacture or production of a substance which was exported by any person and which, at the time of export, was a taxable substance (as defined in section 4672(a)),

credit or refund (without interest) of such tax shall be allowed or made to the person who paid such tax.

"(B) CONDITION TO ALLOWANCE.—No credit or refund shall be allowed or made under subparagraph (A) unless the person who paid the tax establishes that he—

"(i) has repaid or agreed to repay the amount of the tax to the person who exported the taxable chemical or taxable substance (as so defined), or

"(ii) has obtained the written consent of such exporter to the allowance of the credit or the making of the refund.

"(3) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection."

(2) Paragraph (1) of section 4662(d) of such Code (relating to refund or credit for certain uses) is amended—

(A) by striking out "the sale of which by such person would be taxable under such section" and inserting in lieu thereof "which is a taxable chemical", and

(B) by striking out "imposed by such section on the other substance manufactured or produced" and inserting in lieu thereof "imposed by such section on the other substance manufactured or produced (or which would have been imposed by such section on such other substance but for subsection (b) or (e) of this section)".

(c) SPECIAL RULE FOR XYLENE.—Subsection (b) of section 4662 of such Code (relating to exceptions; other special rules) is amended by adding after paragraph (6) the following new paragraph:

"(7) SPECIAL RULE FOR XYLENE.—Except in the case of any substance imported into the United States or exported from the United States, the term 'xylene' does not include any separated isomer of xylene."

(d) EXEMPTION FOR CERTAIN RECYCLED CHEMICALS.—Subsection (b) of section 4662 of such Code (relating to exceptions; other special rules) is amended by adding after paragraph (7) the following new paragraph:

"(8) RECYCLED CHROMIUM, COBALT, AND NICKEL.—

"(A) IN GENERAL.—No tax shall be imposed under section 4661(a) on any chromium, cobalt, or nickel which is diverted or recovered in the United States from any solid waste as part of a recycling process (and not as part of the original manufacturing or production process).

"(B) EXEMPTION NOT TO APPLY WHILE CORRECTIVE ACTION UNCOMPLETED.—Subparagraph (A) shall not apply during any period that required corrective action by the taxpayer at the unit at which the recycling occurs is uncompleted.

"(C) REQUIRED CORRECTIVE ACTION.—For purposes of subparagraph (B), required corrective action shall be treated as uncompleted during the period—

"(i) beginning on the date that the corrective action is required by the Administrator or an authorized State pursuant to—

"(I) a final permit under section 3005 of the Solid Waste Disposal Act or a final order under section 3004 or 3008 of such Act, or

"(II) a final order under section 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and

"(ii) ending on the date the Administrator or such State (as the case may be) certifies to the Secretary that such corrective action has been completed.

"(D) SPECIAL RULE FOR GROUNDWATER TREATMENT.—In the case of corrective action requiring groundwater treatment, such action shall be treated as completed as of the close of the 10-year period beginning on the date such action is required if such treatment complies with the permit or order applicable under subparagraph (C)(i) throughout such period. The preceding sentence shall cease to apply beginning on the date such treatment ceases to comply with such permit or order.

"(E) SOLID WASTE.—For purposes of this paragraph, the term 'solid waste' has the meaning given such term by section 1004 of the Solid Waste Disposal Act, except that such term shall not include any byproduct, coproduct, or other waste from any process of smelting, refining, or otherwise extracting any metal."

(e) EXEMPTION FOR ANIMAL FEED SUBSTANCES.—

(1) IN GENERAL.—Subsection (b) of section 4662 of such Code (relating to exceptions; other special rules) is amended by adding after paragraph (8) the following new paragraph:

"(9) SUBSTANCES USED IN THE PRODUCTION OF ANIMAL FEED.—

"(A) IN GENERAL.—In the case of—

"(i) nitric acid,

"(ii) sulfuric acid,

"(iii) ammonia, or

"(iv) methane used to produce ammonia,

which is a qualified animal feed substance, no tax shall be imposed under section 4661(a).

"(B) QUALIFIED ANIMAL FEED SUBSTANCE.—For purposes of this section, the term 'qualified animal feed substance' means any substance—

"(i) used in a qualified animal feed use by the manufacturer, producer, or importer,

"(ii) sold for use by any purchaser in a qualified animal feed use, or

"(iii) sold for resale by any purchaser for use, or resale for ultimate use, in a qualified animal feed use.

"(C) QUALIFIED ANIMAL FEED USE.—The term 'qualified animal feed use' means any use in the manufacture or production of animal feed or animal feed supplements, or of ingredients used in animal feed or animal feed supplements.

"(D) TAXATION OF NONQUALIFIED SALE OR USE.—For purposes of section 4661(a), if no tax was imposed by such section on the sale or use of any chemical by reason of subparagraph (A), the 1st person who sells or uses such chemical other than in a sale or use described in subparagraph (A) shall be treated as the manufacturer of such chemical."

(2) REFUND OR CREDIT FOR SUBSTANCES USED IN THE PRODUCTION OF ANIMAL FEED.—Subsection (d) of section 4662 of such Code (relating to refunds and credits with respect to the tax on certain chemicals) is amended by adding at the end thereof the following new paragraph:

"(4) USE IN THE PRODUCTION OF ANIMAL FEED.—Under regulations prescribed by the Secretary, if—

"(A) a tax under section 4661 was paid with respect to nitric acid, sulfuric acid, ammonia, or methane used to produce ammonia, without regard to subsection (b)(9), and

"(B) any person uses such substance as a qualified animal feed substance,

then an amount equal to the excess of the tax so paid over the tax determined with regard to subsection (b)(9) shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by this section."

(f) CERTAIN EXCHANGES BY TAXPAYERS NOT TREATED AS SALES.—Subsection (c) of section 4662 of such Code (relating to use by manufacturers) is amended to read as follows:

"(c) USE AND CERTAIN EXCHANGES BY MANUFACTURER, ETC.—

"(1) USE TREATED AS SALE.—Except as provided in subsections (b) and (e), if any person manufactures, produces, or imports any taxable chemical and uses such chemical, then such person shall be liable for tax under section 4661 in the same manner as if such chemical were sold by such person.

"(2) SPECIAL RULES FOR INVENTORY EXCHANGES.—

"(A) IN GENERAL.—Except as provided in this paragraph, in any case in which a manufacturer, producer, or importer of a taxable chemical exchanges such chemical as part of an inventory exchange with another person—

"(i) such exchange shall not be treated as a sale, and

"(ii) such other person shall, for purposes of section 4661, be treated as the manufacturer, producer, or importer of such chemical.

"(B) REGISTRATION REQUIREMENT.—Subparagraph (A) shall not apply to any inventory exchange unless—

"(i) both parties are registered with the Secretary as manufacturers, producers, or importers of taxable chemicals, and

"(ii) the person receiving the taxable chemical has, at such time as the Secretary may prescribe, notified the manufacturer, producer, or importer of such person's registration number and the internal revenue district in which such person is registered.

"(C) INVENTORY EXCHANGE.—For purposes of this paragraph, the term 'inventory exchange' means any exchange in which 2 persons exchange property which is, in the hands of each person, property described in section 1221(1)."

(g) SPECIAL RULES RELATING TO HYDROCARBON STREAMS CONTAINING ORGANIC TAXABLE CHEMICALS.—Subsection (b) of section 4662 of such Code (relating to exceptions; other special rules) is amended by adding after paragraph (9) the following new paragraph:

"(10) HYDROCARBON STREAMS CONTAINING MIXTURES OF ORGANIC TAXABLE CHEMICALS.—

"(A) IN GENERAL.—No tax shall be imposed under section 4661(a) on any organic taxable chemical while such chemical is part of an intermediate hydrocarbon stream containing a mixture of organic taxable chemicals.

"(B) REMOVAL, ETC., TREATED AS USE.—For purposes of this part, if any organic taxable chemical on which no tax was imposed by reason of subparagraph (A) is isolated, extracted, or otherwise removed from, or ceases to be part of, an intermediate hydrocarbon stream—

"(i) such isolation, extraction, removal, or cessation shall be treated as use by the person causing such event, and

"(ii) such person shall be treated as the manufacturer of such chemical.

"(C) REGISTRATION REQUIREMENT.—Subparagraph (A) shall not apply to any sale of any intermediate hydrocarbon stream unless the registration requirements of clauses (i) and (ii) of subsection (c)(2)(B) are satisfied.

"(D) ORGANIC TAXABLE CHEMICAL.—For purposes of this paragraph, the term 'organic taxable chemical' means any taxable chemical which is an organic substance."

(h) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall take effect on January 1, 1987.

(2) REPEAL OF TAX ON XYLENE FOR PERIODS BEFORE OCTOBER 1, 1985.—

(A) REFUND OF TAX PREVIOUSLY IMPOSED.—

(i) IN GENERAL.—In the case of any tax imposed by section 4661 of the Internal Revenue Code of 1954 on the sale or use of xylene before October 1, 1985, such tax (including interest, additions to tax, and additional amounts) shall not be assessed, and if assessed, the assessment shall be abated, and if collected shall be credited or refunded (with interest) as an overpayment.

(ii) CONDITION TO ALLOWANCE.—Clause (i) shall not apply to a sale of xylene unless the person who (but for clause (i)) would be liable for the tax imposed by section 4661 on such sale meets requirements similar to the requirements of paragraph (1) of section 6416(a) of such Code. For purposes of the preceding sentence, subparagraph (A) of section 6416(a)(1) of such Code shall be applied without regard to the material preceding "has not collected".

(B) WAIVER OF STATUTE OF LIMITATIONS.—If on the date of the enactment of this Act (or at any time within 1 year after such date of enactment) refund or credit of any overpayment of tax resulting from the application of subparagraph (A) is barred by any law or rule of law, refund or credit of such overpayment shall, nevertheless, be made or allowed if claim therefor is filed before the date 1 year after the date of the enactment of this Act.

(C) XYLENE TO INCLUDE ISOMERS.—For purposes of this paragraph, the term "xylene" shall include any isomer of xylene whether or not separated.

(3) INVENTORY EXCHANGES.—

(A) IN GENERAL.—Except as otherwise provided in this paragraph, the amendment made by subsection (f) shall apply as if included in the amendments made by section 211 of the Hazardous Substance Response Revenue Act of 1980.

(B) RECIPIENT MUST AGREE TO TREATMENT AS MANUFACTURER.—In the case of any inventory exchange before January 1, 1987, the amendment made by subsection (f) shall apply only if the person receiving the chemical from the manufacturer, producer, or importer in the exchange agrees to be treated as the manufacturer, producer, or importer of such chemical for purposes of subchapter B of chapter 38 of the Internal Revenue Code of 1954.

(C) EXCEPTION WHERE MANUFACTURER PAID TAX.—In the case of any inventory exchange before January 1, 1987, the amendment made by subsection (f) shall not apply if the manufacturer, producer, or importer treated such exchange as a sale for purposes of section 4661 of such Code and paid the tax imposed by such section.

(D) REGISTRATION REQUIREMENTS.—Section 4662(c)(2)(B) of such Code (as added by subsection (f)) shall apply to exchanges made after December 31, 1986.

(4) EXPORTS OF TAXABLE SUBSTANCES.—Subclause (II) of section 4662(e)(2)(A)(ii) of such Code (as added by this section) shall not apply to the export of any taxable substance (as defined in section 4672(a) of such Code) before January 1, 1989.

(5) SALES OF INTERMEDIATE HYDROCARBON STREAMS.—

(A) IN GENERAL.—Except as otherwise provided in this paragraph, the amendment made by subsection (g) shall apply as if included in the amendments made by section 211 of the Hazardous Substances Response Revenue Act of 1980.

(B) PURCHASER MUST AGREE TO TREATMENT AS MANUFACTURER.—In the case of any sale before January 1, 1987, of any intermediate hydrocarbon stream, the amendment made by subsection (g) shall apply only if the purchaser agrees to be treated as the manufacturer, producer, or importer for purposes of subchapter B of chapter 38 of such Code.

(C) EXCEPTION WHERE MANUFACTURER PAID TAX.—In the case of any sale before January 1, 1987, of any intermediate hydrocarbon stream, the amendment made by subsection (g) shall not apply if the manufacturer, producer, or importer of such stream paid the tax imposed by section 4661 with respect to such sale on all taxable chemicals contained in such stream.

(D) REGISTRATION REQUIREMENTS.—Section 4662(b)(10)(C) of such Code (as added by subsection (g)) shall apply to exchanges made after December 31, 1986.

SEC. 514. REPEAL OF POST-CLOSURE TAX AND TRUST FUND.

(a) REPEAL OF TAX.—

(1) Subchapter C of chapter 38 of the Internal Revenue Code of 1986 (relating to tax on hazardous wastes) is hereby repealed.

(2) The table of subchapters for such chapter 38 is amended by striking out the item relating to subchapter C.

(b) REPEAL OF TRUST FUND.—Section 232 of the Hazardous Substance Response Revenue Act of 1980 is hereby repealed.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall take effect on October 1, 1983.

(2) WAIVER OF STATUTE OF LIMITATIONS.—If on the date of the enactment of this Act (or at any time within 1 year after such date of enactment) refund or credit of any overpayment of tax resulting from the application of this section is barred by any law or rule of law, refund or credit of such overpayment shall, nevertheless, be made or allowed if claim therefor is filed before the date 1 year after the date of the enactment of this Act.

SEC. 515. TAX ON CERTAIN IMPORTED SUBSTANCES DERIVED FROM TAXABLE CHEMICALS.

(a) GENERAL RULE.—Chapter 38 of the Internal Revenue Code of 1986 is amended by adding after subchapter B the following new subchapter:

"Subchapter C—Tax on Certain Imported Substances

"Sec. 4671. Imposition of tax.

"Sec. 4672. Definitions and special rules.

"SEC. 4671. IMPOSITION OF TAX.

"(a) GENERAL RULE.—There is hereby imposed a tax on any taxable substance sold or used by the importer thereof.

"(b) AMOUNT OF TAX.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the amount of the tax imposed by subsection (a) with respect to any taxable substance shall be the amount of the tax which would have been imposed by section 4661 on the taxable chemicals used as materials in the manufacture or production of such substance if such taxable chemicals had been sold in the United States for use in the manufacture or production of such taxable substance.

"(2) RATE WHERE IMPORTER DOES NOT FURNISH INFORMATION TO SECRETARY.—If the importer does not furnish to the Secretary (at such time and in such manner as the Secretary shall prescribe) sufficient information to determine under paragraph (1) the amount of the tax imposed by subsection (a) on any taxable substance, the amount of the tax imposed on such taxable substance shall be 5 percent of the appraised value of such substance as of the time such substance was entered into the United States for consumption, use, or warehousing.

"(3) AUTHORITY TO PRESCRIBE RATE IN LIEU OF PARAGRAPH (2) RATE.—The Secretary may prescribe for each taxable substance a tax which, if prescribed, shall apply in lieu of the tax specified in paragraph (2) with respect to such substance. The tax prescribed by the Secretary shall be equal to the amount of tax which would be imposed by subsection (a) with respect to the taxable substance if such substance were produced using the predominant method of production of such substance.

"(c) EXEMPTIONS FOR SUBSTANCES TAXED UNDER SECTIONS 4611 AND 4661.—No tax shall be imposed by this section on the sale or use of any substance if tax is imposed on such sale or use under section 4611 or 4661.

"(d) TAX-FREE SALES, ETC. FOR SUBSTANCES USED AS CERTAIN FUELS OR IN THE PRODUCTION OF FERTILIZER OR ANIMAL FEED.—Rules similar to the following rules shall apply for purposes of applying this section with respect to taxable substances used or sold for use as described in such rules:

"(1) Paragraphs (2), (5), and (9) of section 4662(b) (relating to tax-free sales of chemicals used as fuel or in the production of fertilizer or animal feed).

"(2) Paragraphs (2), (3), and (4) of section 4662(d) (relating to refund or credit of tax on certain chemicals used as fuel or in the production of fertilizer or animal feed).

"(e) TERMINATION.—No tax shall be imposed under this section during any period during which no tax is imposed under section 4611(a).

"SEC. 4672. DEFINITIONS AND SPECIAL RULES.

"(a) TAXABLE SUBSTANCE.—For purposes of this subchapter—

"(1) IN GENERAL.—The term 'taxable substance' means any substance which, at the time of sale or use by the importer, is listed as a taxable substance by the Secretary for purposes of this subchapter.

"(2) DETERMINATION OF SUBSTANCES ON LIST.—A substance shall be listed under paragraph (1) if—

"(A) the substance is contained in the list under paragraph (3), or

"(B) the Secretary determines, in consultation with the Administrator of the Environmental Protection Agency and the Commissioner of Customs, that taxable chemicals constitute more than 50 percent of the weight of the materials used to produce such substance (determined on the basis of the predominant method of production).

"(3) INITIAL LIST OF TAXABLE SUBSTANCES.—
Cumene
Styrene
Ammonium nitrate
Nickel oxide
Isopropyl alcohol
Ethylene glycol
Vinyl chloride
Polyethylene resins, total
Polybutadiene
Styrene-butadiene, latex
Styrene-butadiene, snpf
Synthetic rubber, not containing fillers
Urea
Ferronickel
Ferrochromium nov 3 pct
Ferrochrome ov 3 pct. carbon
Unwrought nickel
Nickel waste and scrap
Wrought nickel rods and wire
Nickel powders
Phenolic resins
Polyvinylchloride resins
Polystyrene resins and copolymers
Ethyl alcohol for nonbeverage use
Ethylbenzene
Methylene chloride
Polypropylene
Propylene glycol
Formaldehyde
Acetone
Acrylonitrile
Methanol
Propylene oxide
Polypropylene resins
Ethylene oxide
Ethylene dichloride
Cyclohexane
Isophthalic acid
Maleic anhydride
Phthalic anhydride
Ethyl methyl ketone
Chloroform
Carbon tetrachloride
Chromic acid
Hydrogen peroxide
Polystyrene homopolymer resins
Melamine
Acrylic and methacrylic acid resins
Vinyl resins
Vinyl resins, NSPF.

"(4) MODIFICATIONS TO LIST.—

"(A) IN GENERAL.—The Secretary may add substances to or remove substances from the list under paragraph (3) (including items listed by reason of paragraph (2)) as necessary to carry out the purposes of this subchapter.

"(B) AUTHORITY TO ADD SUBSTANCES TO LIST BASED ON VALUE.—The Secretary may, to the extent necessary to carry out the purposes of this subchapter, add any substance to the list under paragraph (3) if such substance would be described in paragraph (2)(B) if 'value' were substituted for 'weight' therein.

"(b) OTHER DEFINITIONS.—For purposes of this subchapter—

"(1) IMPORTER.—The term 'importer' means the person entering the taxable substance for consumption, use, or warehousing.

"(2) TAXABLE CHEMICALS; UNITED STATES.—The terms 'taxable chemical' and 'United States' have the respective meanings given such terms by section 4662(a).

"(c) DISPOSITION OF REVENUES FROM PUERTO RICO AND THE VIRGIN ISLANDS.—The provisions of subsections (a)(3) and (b)(3) of section 7652 shall not apply to any tax imposed by section 4671."

(b) CLERICAL AMENDMENT.—The table of subchapters for chapter 38 of such Code is amended by adding after the item relating to subchapter B the following new item:

"Subchapter C. Tax on certain imported substances."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1989.

(d) STUDY.—

(1) IN GENERAL.—The Secretary of the Treasury or his delegate shall conduct a study of issues relating to the implementation of—

(A) the tax imposed by the section 4671 of the Internal Revenue Code of 1986 (as added by this section), and

(B) the credit for exports of taxable substances under section 4661(e)(2)(A)(ii)(II) of such Code.

In conducting such study, the Secretary of the Treasury or his delegate shall consult with the Environmental Protection Agency and the International Trade Commission.

(2) REPORT.—The report of the study under paragraph (1) shall be submitted not later than January 1, 1988, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

SEC. 516. ENVIRONMENTAL TAX.

(a) IN GENERAL.—Subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to income taxes) is amended by adding at the end thereof the following new part:

"PART VII—ENVIRONMENTAL TAX

"Sec. 59A. Environmental tax.

"SEC. 59A. ENVIRONMENTAL TAX.

"(a) IMPOSITION OF TAX.—In the case of a corporation, there is hereby imposed (in addition to any other tax imposed by this subtitle) a tax equal to 0.12 percent of the excess of—

"(1) the modified alternative minimum taxable income of such corporation for the taxable year, over

"(2) $2,000,000.

"(b) MODIFIED ALTERNATIVE MINIMUM TAXABLE INCOME.—For purposes of this section, the term 'modified alternative minimum taxable income' means alternative minimum taxable income (as defined in section 55(b)(2)) but determined without regard to—

"(1) the alternative tax net operating loss deduction (as defined in section 56(d)), and

"(2) the deduction allowed under section 164(a)(5).

"(c) SPECIAL RULES.—

"(1) SHORT TAXABLE YEARS.—The application of this section to taxable years of less than 12 months shall be in accordance with regulations prescribed by the Secretary.

"(2) SECTION 15 NOT TO APPLY.—Section 15 shall not apply to the tax imposed by this section.

"(d) APPLICATION OF TAX.—

"(1) IN GENERAL.—The tax imposed by this section shall apply to taxable years beginning after December 31, 1986, and before January 1, 1992.

"(2) EARLIER TERMINATION.—The tax imposed by this section shall not apply to taxable years—

"(A) beginning during a calendar year during which no tax is imposed under section 4611(a) by reason of paragraph (2) of section 4611(e), and

"(B) beginning after the calendar year which includes the termination date under paragraph (3) of section 4611(e)."

(b) TECHNICAL AMENDMENTS.—

(1) NO CREDITS ALLOWED AGAINST TAX.—

(A) Paragraph (2) of section 26(b) of such Code, as amended by the Tax Reform Act of 1986, is amended by redesignating subparagraphs (B) through (J) as subparagraphs (C) through (K), respectively, and by inserting after subparagraph (A) the following new subparagraph:

"(B) section 59A (relating to environmental tax),".

(B) Paragraph (3) of section 936(a) of such Code, as so amended, is amended by redesignating subparagraphs (A), (B), and (C) as subparagraphs (B), (C), and (D), respectively, and by inserting before subparagraph (B) (as so redesignated) the following new subparagraph:

"(A) section 59A (relating to environmental tax),".

(2) TAX TO BE DEDUCTIBLE FOR INCOME TAX PURPOSES.—

(A) Subsection (a) of section 164 of such Code (relating to deduction for taxes), as so amended, is amended by inserting after paragraph (4) the following new paragraph:

"(5) The environmental tax imposed by section 59A."

(B) Subsection (a) of section 275 of such Code is amended by adding at the end thereof the following new sentence: "Paragraph (1) shall not apply to the tax imposed by section 59A."

(3) LIMITATION IN CASE OF CONTROLLED CORPORATIONS.—Subsection (a) of section 1561 of such Code (relating to limitations on certain multiple tax benefits in the case of certain controlled corporations), as amended by the Tax Reform Act of 1986, is amended—

(A) by striking out "and" at the end of paragraph (2), by striking out the period at the end of paragraph (3) and inserting in lieu thereof ", and", and by inserting after paragraph (3) the following new paragraph:

"(4) one $2,000,000 amount for purposes of computing the tax imposed by section 59A.", and

(B) by striking out "(and the amount specified in paragraph (3))" and inserting in lieu thereof ", the amount specified in paragraph (3), and the amount specified in paragraph (4)".

(4) AMENDMENTS TO ESTIMATED TAX PROVISIONS.—

(A) TAX LIABILITY MUST BE ESTIMATED.—

(i) Paragraph (1) of section 6154(c) of such Code, as so amended, is amended by striking out "and" at the end of subparagraph (A), by striking out "over" at the end of subparagraph (B) and inserting in lieu thereof "and", and by adding at the end thereof the following new subparagraph:

"(C) the environmental tax imposed by section 59A, over".

(ii) Subsection (a) of section 6154 of such Code is amended by striking out "section 11" and inserting "section 11, 59A,".

(C) CONFORMING AMENDMENT TO OVERPAYMENT OF ESTIMATED TAX.—Subparagraph (A) of section 6425(c)(1) of such Code, as amended by the Tax Reform Act of 1986, is amended by striking out "plus" at the end of clause (i), by striking out "over" at the end of clause (ii) and inserting in lieu thereof "plus", and by adding at the end thereof the following new clause:

"(iii) the tax imposed by section 59A, over".

(D) CONFORMING AMENDMENT TO PENALTY FOR FAILURE TO PAY ESTIMATED TAX.—Paragraph (1) of section 6655(f) of such Code (defining tax), as so amended, is amended by striking out "plus" at the end of subparagraph (A), by striking out "over" at the end of subparagraph (B) and inserting in lieu thereof "plus", and by adding at the end thereof the following new subparagraph:

"(C) the tax imposed by section 59A, over".

(5) CLERICAL AMENDMENT.—The table of parts for subchapter A of chapter 1 of such Code is amended by adding at the end thereof the following new item:

"Part VII. Environmental tax."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1986.

SEC. 517. HAZARDOUS SUBSTANCE SUPERFUND.

(a) IN GENERAL.—Subchapter A of chapter 98 of the Internal Revenue Code of 1986 (relating to establishment of trust funds) is amended by adding after section 9506 the following new section:

"SEC. 9507. HAZARDOUS SUBSTANCE SUPERFUND.

"(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the 'Hazardous Substance Superfund' (hereinafter in this section referred to as the 'Superfund'), consisting of such amounts as may be—

"(1) appropriated to the Superfund as provided in this section,

"(2) appropriated to the Superfund pursuant to section 517(b) of the Superfund Revenue Act of 1986, or

"(3) credited to the Superfund as provided in section 9602(b).

"(b) TRANSFERS TO SUPERFUND.—There are hereby appropriated to the Superfund amounts equivalent to—

"(1) the taxes received in the Treasury under section 59A, 4611, 4661, or 4671 (relating to environmental taxes),

"(2) amounts recovered on behalf of the Superfund under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (hereinafter in this section referred to as 'CERCLA'),

"(3) all moneys recovered or collected under section 311(b)(6)(B) of the Clean Water Act,

"(4) penalties assessed under title I of CERCLA, and

"(5) punitive damages under section 107(c)(3) of CERCLA.

"(c) EXPENDITURES FROM SUPERFUND.—

"(1) IN GENERAL.—Amounts in the Superfund shall be available, as provided in appropriation Acts, only for purposes of making expenditures—

"(A) to carry out the purposes of—

"(i) paragraphs (1), (2), (5), and (6) of section 111(a) of CERCLA as in effect on the date of the enactment of the Superfund Amendments and Reauthorization Act of 1986,

"(ii) section 111(c) of CERCLA (as so in effect), other than paragraphs (1) and (2) thereof, and

"(iii) section 111(m) of CERCLA (as so in effect), or

"(B) hereafter authorized by a law which does not authorize the expenditure out of the Superfund for a general purpose not covered by subparagraph (A) (as so in effect).

"(2) EXCEPTION FOR CERTAIN TRANSFERS, ETC., OF HAZARDOUS SUBSTANCES.—No amount in the Superfund or derived from the Superfund shall be available or used for the transfer or disposal of hazardous waste carried out pursuant to a cooperative agreement between the Administrator of the Environmental Protection Agency and a State if the following conditions apply—

"(A) the transfer or disposal, if made on December 13, 1985, would not comply with a State or local requirement,

"(B) the transfer is to a facility for which a final permit under section 3005(a) of the Solid Waste Disposal Act was issued after January 1, 1983, and before November 1, 1984, and

"(C) the transfer is from a facility identified as the McColl Site in Fullerton, California.

"(d) AUTHORITY TO BORROW.—

"(1) IN GENERAL.—There are authorized to be appropriated to the Superfund, as repayable advances, such sums as may be necessary to carry out the purposes of the Superfund.

"(2) LIMITATION ON AGGREGATE ADVANCES.—The maximum aggregate amount of repayable advances to the Superfund which is outstanding at any one time shall not exceed an amount equal to the amount which the Secretary estimates will be equal to the sum of the amounts appropriated to the Superfund under subsection (b)(1) during the following 24 months.

"(3) REPAYMENT OF ADVANCES.—

"(A) IN GENERAL.—Advances made to the Superfund shall be repaid, and interest on such advances shall be paid, to the general fund of the Treasury when the Secretary determines that moneys are available for such purposes in the Superfund.

"(B) FINAL REPAYMENT.—No advance shall be made to the Superfund after December 31, 1991, and all advances to such Fund shall be repaid on or before such date.

"(C) RATE OF INTEREST.—Interest on advances made to the Superfund shall be at a rate determined by the Secretary of the Treasury (as of the close of the calendar month preceding the month in which the advance is made) to be equal to the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the anticipated period during which the advance will be outstanding and shall be compounded annually.

"(e) LIABILITY OF UNITED STATES LIMITED TO AMOUNT IN TRUST FUND.—

"(1) GENERAL RULE.—Any claim filed against the Superfund may be paid only out of the Superfund.

"(2) COORDINATION WITH OTHER PROVISIONS.—Nothing in CERCLA or the Superfund Amendments and Reauthorization Act of 1986 (or in any amendment made by either of such Acts) shall authorize the payment by the United States Government of any amount with respect to any such claim out of any source other than the Superfund.

"(3) ORDER IN WHICH UNPAID CLAIMS ARE TO BE PAID.—If at any time the Superfund has insufficient funds to pay all of the claims payable out of the Superfund at such time, such claims shall, to the extent permitted under paragraph (1), be paid in full in the order in which they were finally determined."

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, to the Hazardous Substance Superfund for fiscal year—

(1) 1987, $250,000,000,

(2) 1988, $250,000,000,

(3) 1989, $250,000,000,

(4) 1990, $250,000,000, and

(5) 1991, $250,000,000,

plus for each fiscal year an amount equal to so much of the aggregate amount authorized to be appropriated under this subsection (and paragraph (2) of section 221(b) of the Hazardous Substance Response Act of 1980, as in effect before its repeal) as has not been appropriated before the beginning of the fiscal year involved.

(c) CONFORMING AMENDMENTS.—

(1) Subtitle B of the Hazardous Substance Response Revenue Act of 1980 (relating to establishment of Hazardous Substance Response Trust Fund), as amended by section 204 of this Act, is hereby repealed.

(2) Paragraph (11) of section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended to read as follows:

"(11) The term 'Fund' or 'Trust Fund' means the Hazardous Substance Superfund established by section 9507 of the Internal Revenue Code of 1986."

(d) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 98 of such Code is amended by adding after the item re-

lating to section 9506 the following new item:

"Sec. 9507. Hazardous Substance Superfund."

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall take effect on January 1, 1987.

(2) SUPERFUND TREATED AS CONTINUATION OF OLD TRUST FUND.—The Hazardous Substance Superfund established by the amendments made by this section shall be treated for all purposes of law as a continuation of the Hazardous Substance Response Trust Fund established by section 221 of the Hazardous Substance Response Revenue Act of 1980. Any reference in any law to the Hazardous Substance Response Trust Fund established by such section 221 shall be deemed to include (wherever appropriate) a reference to the Hazardous Substance Superfund established by the amendments made by this section.

PART II—LEAKING UNDERGROUND STORAGE TANK TRUST FUND AND ITS REVENUE SOURCES

SEC. 521. ADDITIONAL TAXES ON GASOLINE, DIESEL FUEL, SPECIAL MOTOR FUELS, FUELS USED IN AVIATION, AND FUELS USED IN COMMERCIAL TRANSPORTATION ON INLAND WATERWAYS.

(a) GENERAL RULE.—

(1) GASOLINE.—

(A) GASOLINE TAX BEFORE AMENDMENT BY TAX REFORM ACT OF 1986.—

(i) IN GENERAL.—Section 4081 of the Internal Revenue Code of 1986 (relating to imposition of tax on gasoline), as in effect on the day before the date of the enactment of the Tax Reform Act of 1986, is amended by striking out subsections (a) and (b) and inserting in lieu thereof the following:

"(a) IN GENERAL.—There is hereby imposed on gasoline sold by the producer or importer thereof, or by any producer of gasoline, a tax at the rate specified in subsection (b).

"(b) RATE OF TAX.—

"(1) IN GENERAL.—The rate of the tax imposed by this section is the sum of—

"(A) the Highway Trust Fund financing rate, and

"(B) the Leaking Underground Storage Tank Trust Fund financing rate.

"(2) RATES.—For purposes of paragraph (1)—

"(A) the Highway Trust Fund financing rate is 9 cents a gallon, and

"(B) the Leaking Underground Storage Tank Trust Fund financing rate is 0.1 cents a gallon."

(ii) TERMINATION.—Section 4081 of such Code, as so in effect, is amended by adding at the end thereof the following new subsection:

"(d) TERMINATION.—

"(1) HIGHWAY TRUST FUND FINANCING RATE.—On and after October 1, 1988, the Highway Trust Fund financing rate under subsection (b)(2)(A) shall not apply.

"(2) LEAKING UNDERGROUND STORAGE TANK TRUST FUND FINANCING RATE.—

"(A) IN GENERAL.—The Leaking Underground Storage Tank Trust Fund financing rate under subsection (b)(2)(B) shall not apply after the earlier of—

"(i) December 31, 1991, or

"(ii) the last day of the termination month.

"(B) TERMINATION MONTH.—For purposes of subparagraph (A), the termination month is the 1st month as of the close of which the Secretary estimates that the net revenues from the taxes imposed by this section (to the extent attributable to the Leaking Underground Storage Tank Trust Fund financing rate under subsection (b)(2)(B)), section 4041(d), and section 4042 (to the extent attributable to the Leaking Underground Storage Tank Trust Fund financing rate under section 4042(b)) are at least $500,000,000.

"(C) NET REVENUES.—For purposes of subparagraph (B), the term 'net revenues' means the excess of gross revenues over amounts payable by reason of section 9508(c)(2) (relating to transfer from Leaking Underground Storage Tank Trust Fund for certain repayments and credits)."

(iii) TECHNICAL AMENDMENTS.—Subsection (c) of section 4081 of such Code, as so in effect, is amended—

(I) by striking out "subsection (a)" in paragraph (1) and inserting in lieu thereof "subsection (b)", and

(II) by striking out "a rate" in paragraph (2) and inserting in lieu thereof "a Highway Trust Fund financing rate".

(B) GASOLINE TAX AS AMENDED BY TAX REFORM ACT OF 1986.—

(i) IN GENERAL.—Subsections (a) and (b) of section 4081 of the Internal Revenue Code of 1986 (relating to imposition of tax on gasoline), as amended by the Tax Reform Act of 1986, are each amended by striking out "of 9 cents a gallon" and inserting in lieu thereof "at the rate specified in subsection (d)".

(ii) INCREASE IN TAX.—Section 4081 of such Code, as amended by the Tax Reform Act of 1986, is amended by striking out subsection (d) and inserting in lieu thereof the the following new subsections:

"(d) RATE OF TAX.—

"(1) IN GENERAL.—The rate of the tax imposed by this section is the sum of—

"(A) the Highway Trust Fund financing rate, and

"(B) the Leaking Underground Storage Tank Trust Fund financing rate.

"(2) RATES.—For purposes of paragraph (1)—

"(A) the Highway Trust Fund financing rate is 9 cents a gallon, and

"(B) the Leaking Underground Storage Tank Trust Fund financing rate is 0.1 cents a gallon.

"(e) TERMINATION.—

"(1) HIGHWAY TRUST FUND FINANCING RATE.—On and after October 1, 1988, the Highway Trust Fund financing rate under subsection (d)(2)(A) shall not apply.

"(2) LEAKING UNDERGROUND STORAGE TANK TRUST FUND FINANCING RATE.—

"(A) IN GENERAL.—The Leaking Underground Storage Tank Trust Fund financing rate under subsection (d)(2)(B) shall not apply after the earlier of—

"(i) December 31, 1991, or

"(ii) the last day of the termination month.

"(B) TERMINATION MONTH.—For purposes of subparagraph (A), the termination month is the 1st month as of the close of which the Secretary estimates that the net revenues from the taxes imposed by this section (to the extent attributable to the Leaking Underground Storage Tank Trust Fund financing rate under subsection (d)(2)(B)), section 4041(d), and section 4042 (to the extent attributable to the Leaking Underground Storage Tank Trust Fund financing rate under section 4042(b)) are at least $500,000,000.

"(C) NET REVENUES.—For purposes of subparagraph (B), the term 'net revenues' means the excess of gross revenues over amounts payable by reason of section 9508(c)(2) (relating to transfer from Leaking Underground Storage Tank Trust Fund for certain repayments and credits)."

(iii) TECHNICAL AMENDMENTS.—Subsection (c) of section 4081 of such Code, as amended by the Tax Reform Act of 1986, is amended—

(I) by striking out "subsection (a)" in paragraph (1) and inserting in lieu thereof "subsection (d)", and

(II) by striking out "a rate" in paragraph (2) and inserting in lieu thereof "a Highway Trust Fund financing rate".

(2) DIESEL AND SPECIAL MOTOR FUELS; FUELS USED IN AVIATION.—Section 4041 of such Code (relating to tax on special fuels) is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

"(d) ADDITIONAL TAXES TO FUND LEAKING UNDERGROUND STORAGE TANK TRUST FUND.—

"(1) LIQUIDS OTHER THAN GASOLINE, ETC., USED IN MOTOR VEHICLES, MOTORBOATS, OR TRAINS.—In addition to the taxes imposed by subsection (a), there is hereby imposed a tax of 0.1 cents a gallon on benzol, benzene, naphtha, casing head and natural gasoline, or any other liquid (other than kerosene, gas oil, liquefied petroleum gas, or fuel oil, or any product taxable under section 4081)—

"(A) sold by any person to an owner, lessee, or other operator of a motor vehicle, motorboat, or train for use as a fuel in such motor vehicle, motorboat, or train, or

"(B) used by any person as a fuel in a motor vehicle, motorboat, or train unless there was a taxable sale of such liquid under subparagraph (A).

"(2) LIQUIDS USED IN AVIATION.—In addition to the taxes imposed by subsection (c) and section 4081, there is hereby imposed a tax of 0.1 cents a gallon on any liquid—

"(A) sold by any person to an owner, lessee, or other operator of an aircraft for use as a fuel in such aircraft, or

"(B) used by any person as a fuel in an aircraft unless there was a taxable sale of such liquid under subparagraph (A).

The tax imposed by this paragraph shall not apply to any product taxable under section 4081 which is used as a fuel in an aircraft other than in noncommercial aviation.

"(3) TERMINATION.—The taxes imposed by this subsection shall not apply during any period during which the Leaking Underground Storage Tank Trust Fund financing rate under section 4081 does not apply."

(3) FUEL USED IN COMMERCIAL TRANSPORTATION ON INLAND WATERWAYS.—Subsection (b) of section 4042 of such Code (relating to amount of tax on fuel used in commercial transportation on inland waterways) is amended to read as follows:

"(b) AMOUNT OF TAX.—

"(1) IN GENERAL.—The rate of the tax imposed by subsection (a) is the sum of—

"(A) the Inland Waterways Trust Fund financing rate, and

"(B) the Leaking Underground Storage Tank Trust Fund financing rate.

"(2) RATES.—For purposes of paragraph (1)—

"(A) the Inland Waterways Trust Fund financing rate is 10 cents a gallon, and

"(B) the Leaking Underground Storage Tank Trust Fund financing rate is 0.1 cents a gallon.

"(3) EXCEPTION FOR FUEL TAXED UNDER SECTION 4041(d).—The Leaking Underground Storage Tank Trust Fund financing rate under paragraph (2)(B) shall not apply to the use of any fuel if tax under section 4041(d) was imposed on the sale of such fuel or is imposed on such use.

"(4) TERMINATION OF LEAKING UNDERGROUND STORAGE TANK TRUST FUND FINANCING RATE.—The Leaking Underground Storage Tank

Trust Fund financing rate under paragraph (2)(B) shall not apply during any period during which the Leaking Underground Storage Tank Trust Fund financing rate under section 4081 does not apply."

(b) ADDITIONAL TAXES NOT TRANSFERRED TO HIGHWAY TRUST FUND, AIRPORT AND AIRWAY TRUST FUND, AND INLAND WATERWAYS TRUST FUND.—

(1) HIGHWAY TRUST FUND.—

(A) IN GENERAL.—Subsection (b) of section 9503 of such Code (relating to transfer to Highway Trust Fund of amounts equivalent to certain taxes) is amended by adding at the end thereof the following new paragraph:

"(4) CERTAIN ADDITIONAL TAXES NOT TRANSFERRED TO HIGHWAY TRUST FUND.—For purposes of paragraphs (1) and (2), there shall not be taken into account the taxes imposed by section 4041(d) and so much of the taxes imposed by section 4081 as is attributable to the Leaking Underground Storage Tank Trust Fund financing rate."

(B) CONFORMING AMENDMENT.—Subparagraph (D) of section 9503(c)(4) of such Code (defining motorboat fuel taxes) is amended by striking out "section 4081" and inserting in lieu thereof "section 4081 (to the extent attributable to the Highway Trust Fund financing rate)".

(2) AIRPORT AND AIRWAY TRUST FUND.—Subsection (b) of section 9502 of such Code (relating to transfer to Airport and Airway Trust Fund of amounts equivalent to certain taxes) is amended—

(A) by striking out "subsections (c) and (d) of section 4041" in paragraph (1) and inserting in lieu thereof "subsections (c) and (e) of section 4041", and

(B) by striking out "section 4081" in paragraph (2) and inserting in lieu thereof "section 4081 (to the extent attributable to the Highway Trust Fund financing rate)".

(3) INLAND WATERWAYS TRUST FUND.—Paragraph (1) of section 9506(b) of such Code is amended by adding at the end thereof the following new sentence: "The preceding sentence shall apply only to so much of such taxes as are attributable to the Inland Waterways Trust Fund financing rate under section 4042(b)."

(c) REPAYMENTS FOR GASOLINE USED ON FARMS, ETC.—

(1) GASOLINE USED ON FARMS.—Subsection (h) of section 6420 of such Code (relating to termination) is amended by striking out "This section" and inserting in lieu thereof "Except with respect to taxes imposed by section 4081 at the Leaking Underground Storage Tank Trust Fund financing rate, this section".

(2) GASOLINE USED FOR CERTAIN NONHIGHWAY PURPOSES OR BY LOCAL TRANSIT SYSTEMS.—

(A) TERMINATION NOT TO APPLY TO ADDITIONAL 0.1 CENT TAX.—Subsection (h) of section 6421 of such Code (relating to effective date), as in effect on the day before the date of the enactment of the Tax Reform Act of 1986, is amended by striking out "This section" and inserting in lieu thereof "Except with respect to taxes imposed by section 4081 at the Leaking Underground Storage Tank Trust Fund financing rate, this section".

(B) REPAYMENT OF ADDITIONAL TAX FOR OFF-HIGHWAY BUSINESS USE TO APPLY ONLY TO CERTAIN VESSELS.—Subsection (e) of section 6421 of such Code, as so in effect, is amended by adding at the end thereof the following new paragraph:

"(4) SECTION NOT TO APPLY TO CERTAIN OFF-HIGHWAY BUSINESS USES WITH RESPECT TO THE TAX IMPOSED BY SECTION 4081 AT THE LEAKING UNDERGROUND STORAGE TANK TRUST FUND FINANCING RATE.—This section shall not apply with respect to the tax imposed by section 4081 at the Leaking Underground Storage Tank Trust Fund financing rate on gasoline used in any off-highway business use other than use in a vessel employed in the fisheries or in the whaling business."

(3) FUELS USED FOR NONTAXABLE PURPOSES.—

(A) Subsection (m) of section 6427 of such Code (relating to termination), as in effect on the day before the date of the enactment of the Tax Reform Act of 1986, is amended by striking out "Subsections" and inserting in lieu thereof "Except with respect to taxes imposed by section 4041(d) and section 4081 at the Leaking Underground Storage Tank Trust Fund financing rate, subsections".

(B)(i) Section 6427 of such Code, as so in effect, is amended by redesignating subsection (n) as subsection (o) and by inserting after subsection (m) the following new subsection:

"(n) PAYMENTS FOR TAXES IMPOSED BY SECTION 4041(d).—For purposes of subsections (a), (b), and (c), the taxes imposed by section 4041(d) shall be treated as imposed by section 4041(a)."

(ii) Subparagraph (A) of section 1703(e)(1) of the Tax Reform Act of 1986 is amended—

(I) by striking out "and (o)" and inserting in lieu thereof "(o), and (p)", and

(II) by striking out "and (n)" and inserting in lieu thereof "(n), and (o)".

(C) Paragraph (1) of section 6427(f) of such Code (relating to gasoline used to produce certain alcohol fuels) is amended by striking out "at the rate" and inserting in lieu thereof "at the Highway Trust Fund financing rate".

(d) CONTINUATION OF CERTAIN EXEMPTIONS FROM ADDITIONAL TAXES, ETC.—

(1) Subsection (b) of section 4041 of such Code (relating to exemption for off-highway business use; reduction in tax for qualified methanol and ethanol fuel) is amended by adding at the end thereof the following new paragraph:

"(3) COORDINATION WITH TAXES IMPOSED BY SUBSECTION (d).—

"(A) OFF-HIGHWAY BUSINESS USE.—

"(i) IN GENERAL.—Except as provided in clause (ii), rules similar to the rules of paragraph (1) shall apply with respect to the taxes imposed by subsection (d).

"(ii) LIMITATION ON EXEMPTION FOR OFF-HIGHWAY BUSINESS USE.—For purposes of subparagraph (A), paragraph (1) shall apply only with respect to off-highway business use in a vessel employed in the fisheries or in the whaling business.

"(B) QUALIFIED METHANOL AND ETHANOL FUEL.—In the case of qualified methanol or ethanol fuel, subsection (d) shall be applied by substituting '0.05 cents' for '0.1 cents' in paragraph (1) thereof."

(2) Paragraph (3) of section 4041(f) of such Code (relating to exemption for farm use) is amended by striking out "On and after" and inserting in lieu thereof "Except with respect to the taxes imposed by subsection (d), on and after".

(3) The last sentence of section 4041(g) of such Code (relating to other exemptions) is amended by striking out "Paragraphs" and inserting in lieu thereof "Except with respect to the taxes imposed by subsection (d), paragraphs".

(4)(A) The last sentence of section 4221(a) of such Code (relating to certain tax-free sales) is amended by striking out "4081" and inserting in lieu thereof "4081 (at the Highway Trust Fund financing rate)".

(B) Subparagraph (C) of section 1703(c)(2) of the Tax Reform Act of 1986 is amended to read as follows:

"(C) Subsection (a) of section 4221 (relating to certain tax-free sales) is amended—

"(i) by inserting 'or section 4081 (at the Highway Trust Fund financing rate)' before 'section 4121' in the 1st sentence, and

"(ii) by striking out '4071, or 4081 (at the Highway Trust Fund financing rate)' in the last sentence and inserting in lieu thereof 'or 4071'."

(5) Paragraph (2) of section 6416(b) of such Code is amended by inserting "or under paragraph (1)(A) or (2)(A) of section 4041(d)" after "section 4041(a)".

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1987.

SEC. 522. LEAKING UNDERGROUND STORAGE TANK TRUST FUND.

(a) IN GENERAL.—Subchapter A of chapter 98 of the Internal Revenue Code of 1986 (relating to establishment of trust funds) is amended by adding after section 9507 the following new section:

"SEC. 9508. LEAKING UNDERGROUND STORAGE TANK TRUST FUND.

"(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the 'Leaking Underground Storage Tank Trust Fund', consisting of such amounts as may be appropriated or credited to such Trust Fund as provided in this section or section 9602(b).

"(b) TRANSFERS TO TRUST FUND.—There are hereby appropriated to the Leaking Underground Storage Tank Trust Fund amounts equivalent to—

"(1) taxes received in the Treasury under section 4041(d) (relating to additional taxes on motor fuels),

"(2) taxes received in the Treasury under section 4081 (relating to tax on gasoline) to the extent attributable to the Leaking Underground Storage Tank Trust Fund financing rate under such section,

"(3) taxes received in the Treasury under section 4042 (relating to tax on fuel used in commercial transportation on inland waterways) to the extent attributable to the Leaking Underground Storage Tank Trust Fund financing rate under such section, and

"(4) amounts received in the Treasury and collected under section 9003(h)(6) of the Solid Waste Disposal Act.

"(c) EXPENDITURES.—

"(1) IN GENERAL.—Except as provided in paragraph (2), amounts in the Leaking Underground Storage Tank Trust Fund shall be available, as provided in appropriation Acts, only for purposes of making expenditures to carry out section 9003(h) of the Solid Waste Disposal Act as in effect on the date of the enactment of the Superfund Amendments and Reauthorization Act of 1986.

"(2) TRANSFERS FROM TRUST FUND FOR CERTAIN REPAYMENTS AND CREDITS.—

"(A) IN GENERAL.—The Secretary shall pay from time to time from the Leaking Underground Storage Tank Trust Fund into the general fund of the Treasury amounts equivalent to—

"(i) amounts paid under—

"(I) section 6420 (relating to amounts paid in respect of gasoline used on farms),

"(II) section 6421 (relating to amounts paid in respect of gasoline used for certain nonhighway purposes or by local transit systems), and

"(III) section 6427 (relating to fuels not used for taxable purposes), and

"(ii) credits allowed under section 34, with respect to the taxes imposed by sections 4041(d) and 4081 (to the extent attributable

to the Leaking Underground Storage Tank Trust Fund financing rate under section 4081).

"(B) TRANSFERS BASED ON ESTIMATES.—Transfers under subparagraph (A) shall be made on the basis of estimates by the Secretary, and proper adjustments shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

"(d) LIABILITY OF THE UNITED STATES LIMITED TO AMOUNT IN TRUST FUND.—

"(1) GENERAL RULE.—Any claim filed against the Leaking Underground Storage Tank Trust Fund may be paid only out of such Trust Fund.

"(2) COORDINATION WITH OTHER PROVISIONS.—Nothing in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 or the Superfund Amendments and Reauthorization Act of 1986 (or in any amendment made by either of such Acts) shall authorize the payment by the United States Government of any amount with respect to any such claim out of any source other than the Leaking Underground Storage Tank Trust Fund.

"(3) ORDER IN WHICH UNPAID CLAIMS ARE TO BE PAID.—If at any time the Leaking Underground Storage Tank Trust Fund has insufficient funds to pay all of the claims out of such Trust Fund at such time, such claims shall, to the extent permitted under paragraph (1), be paid in full in the order in which they were finally determined."

(b) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 98 of such Code is amended by adding after the item relating to section 9507 the following new item:

"Sec. 9508. Leaking Underground Storage Tank Trust Fund."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1987.

PART III—COORDINATION WITH OTHER PROVISIONS OF THIS ACT

SEC. 531. COORDINATION.

Notwithstanding any provision of this Act not contained in this title, any provision of this Act (not contained in this title) which—

(1) imposes any tax, premium, or fee,

(2) establishes any trust fund, or

(3) authorizes amounts to be expended from any trust fund,

shall have no force or effect.

And the House agree to the same.

That the House recede from its amendment to the amendment of the Senate to the title of the bill.

From the Committee on Energy and Commerce for consideration of titles I–III of the House amendment to the Senate amendment, and the entire Senate amendment, except for title II:

JOHN D. DINGELL,
JAMES J. FLORIO,
DENNIS E. ECKART,
RALPH M. HALL,
BILLY TAUZIN,
AL SWIFT,

From the Committee on Energy and Commerce:

Solely for sections 102, 103, 105, 111, 113, 115, 117, 120, 121, 122, 123, 124, and 127 of title I and title III of the House amendment to the Senate amendment, and modifications committed to conference including section 157 of the Senate amendment:

RON WYDEN.

Solely for sections 101, 104, 106, 107, 108, 109, 110, 112, 114, 116, 118, 119, 125, and 126 of title I and title II of the House amendment to the Senate amendment, and modifications committed to conference:

THOMAS J. TAUKE,
NORMAN F. LENT,
DON RITTER,

From the Committee on Energy and Commerce solely for sections 101, 104, 106, 107, 108, 109, 110, 112, 114, 116, 118, 119, 125, and 126 of title I and title II of the House amendment to the Senate amendment, and modifications committed to conference:

JACK FIELDS,

From the Committee on Public Works and Transportation for consideration of titles I, II (except for section 205) and IV of the House amendment to the Senate amendment, and title I of the Senate amendment, except for sections 110, 111, 127, 157, and 160 thereof:

JAMES J. HOWARD,
GLENN M. ANDERSON,
ROBERT A. ROE,
JOHN BREAUX,
NORMAN MINETA,
BOB EDGAR,
GENE SNYDER,

From the Committee on Public Works and Transportation for consideration of titles I, II (except for section 205) and IV of the House amendment to the Senate amendment, and title I of the Senate amendment, except for sections 110, 111, 127, 157, and 160 thereof:

ARLAN STANGELAND,
NEWT GINGRICH,

From the Committee on Public Works and Transportation for consideration of title III of the House amendment to the Senate amendment, and sections 110, 111, 127, and 160 of title I of the Senate amendment:

ROBERT A. ROE,
BOB EDGAR,
ARLAN STANGELAND,

From the Committee on Ways and Means for consideration of title V of the House amendment to the Senate amendment, and title II of the Senate amendment:

DAN ROSTENKOWSKI,
J.J. PICKLE,
C.B. RANGEL,
PETE STARK,
THOMAS J. DOWNEY,
MARTY RUSSO,
DONALD J. PEASE,

From the Committee on Ways and Means for consideration of title V of the House amendment to the Senate amendment, and title II of the Senate amendment:

GUY VANDER JAGT,
BILL FRENZEL,

From the Committee on Merchant Marine and Fisheries for consideration of sections 104, 107, 108, 111, 113, 116, 121, 122, and 127 of title I of the House amendment to the Senate amendment, and modifications committed to conference:

WALTER B. JONES,
MARIO BIAGGI,
GERRY E. STUDDS,
BOB DAVIS,

From the Committee on Merchant Marine and Fisheries for consideration of the title IV of the House amendment to the Senate amendment, and modifications committed to conference:

WALTER B. JONES,
MARIO BIAGGI,
GERRY E. STUDDS,
BARBARA A. MIKULSKI,
MIKE LOWRY,
BILLY TAUZIN,

From the Committee on Merchant Marine and Fisheries for consideration of title IV of the House amendment to the Senate amendment, and modifications committed to conference:

BOB DAVIS,
NORMAN F. LENT,

From the Committee on the Judiciary for consideration of sections 107, 113, 117, 119, and 122 of title I and sections 203 and 206 of title II of the House amendment to the Senate amendment, and modifications committed to conference:

PETER W. RODINO,
DAN GLICKMAN,
HAMILTON FISH, JR.,
THOMAS N. KINDNESS,

From the Committee on Armed Services for consideration of section 213 of title II of the House amendment to the Senate amendment, and section 162 of title I of the Senate amendment:

DAVE MCCURDY,
DAVID O'B. MARTIN,

Managers on the Part of the House.

From the Committee on Environment and Public Works for the purpose of considering all matter other than that contained in title II of the Senate amendments, and section 463 of title IV and title V of the House amendments:

ROBERT T. STAFFORD,
JOHN H. CHAFEE,
ALAN K. SIMPSON,
GORDON J. HUMPHREY,
PETE V. DOMENICI,
DAVID DURENBERGER,
LLOYD BENTSEN,

From the Committee on Environment and Public Works for the purpose of considering all matter other than that contained in title II of the Senate amendments, and section 463 of title IV and title V of the House amendments:

DANIEL PATRICK MOYNIHAN,
GEORGE MITCHELL,
MAX BAUCUS,
FRANK R. LAUTENBERG,

From the Committee on Finance for the purpose of considering section 463 of title IV and title V of the House amendments, and title II of the Senate amendments:

BOB PACKWOOD,
BOB DOLE,
WILLIAM V. ROTH, JR.,
RUSSELL B. LONG,
LLOYD BENTSEN,

From the Committee on the Judiciary for the purpose of joining in the consideration of sections 135, 143, 144, and to the extent it may affect the Federal courts or relate to claims against the United States, section 150, together with such amendments related directly thereto as may have been adopted by the House:

STROM THURMOND,
ARLEN SPECTER,
EDWARD M. KENNEDY,

Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

SECTION 1—SHORT TITLE AND TABLE OF CONTENTS

Senate amendment—The short title of the Senate amendment is the "Superfund Improvement Act of 1985".

House amendment.—The short title of the House amendment is the "Superfund Amendments of 1985".

Conference substitute.—The short title of the conference substitute is the "Superfund Amendments and Reauthorization Act of 1986". The table of contents in the confer-

ence substitute was changed to conform to the changes in the text.

SECTION 2—CERCLA AND ADMINISTRATOR

Senate amendment—The Senate amendment has no comparable provision.

House amendment—The House amendment defines the term "CERCLA" as being the Comprehensive Environmental Response, Compensation and Liability Act of 1980 and the term "Administrator" as being the Administrator of the Environmental Protection Agency.

Conference substitute—The conference substitute adopts the House provision. The term "CERCLA" refers to the 1980 Act, as amended, and references in CERCLA to "this Act" include the amendments made by the Superfund Amendments and Reauthorization Act of 1986.

SECTION 3—LIMITATION ON CONTRACT AND BORROWING AUTHORITY

Senate amendment—The Senate amendment has no comparable provision.

House amendment—The House amendment states that authorities provided by the House amendment are effective only to such extent as monies are provided in appropriations Acts.

Conference substitute—The conference substitute adopts the House provision. The amendment does not diminish any obligation of the United States under current law.

SECTION 4—EFFECTIVE DATE

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment contains no comparable provision.

Conference substitute—The conference substitute contains a provision establishing the effective date for the requirements of the Superfund Amendments and Reauthorization Act of 1986. The general rule is that the requirements of Titles I, II, III, and IV of the Act take effect on the date of enactment. There are, however, two exceptions to the general rule.

First, if otherwise specified in the Act, the requirements would take effect on the date so specified.

Second, special rules apply with respect to section 121 of CERCLA (relating to cleanup standards). The requirements of section 121 do not apply to a remedial action for which the record of decision was signed (or the consent decree was lodged) prior to the date of enactment. The requirements of section 121 apply to the maximum extent practicable to a remedial action for which the record of decision is signed (or the consent decree is lodged) within the 30-day period immediately following enactment of the Act, and the EPA Administrator must certify in writing that such requirements have been complied with to the maximum extent practicable. The requirements of section 121 apply without qualification to a remedial action for which the record of decision is signed (or the consent decree is lodged) after the 30-day period immediately following enactment of the Act. In addition, the requirements of section 121 apply without qualification to any remedial action for which a record of decision was signed (or the consent decree was lodged) before enactment of the Act and is reopened after enactment of the Act to modify or supplement the selection of the remedy.

The Conferees were informed that approximately 18 sites would reach the point of decision during the 30-day period immediately following enactment of the Act, assuming an enactment date of September 1, 1986.

TITLE I—PROVISIONS RELATING PRIMARILY TO RESPONSE AND LIABILITY

SECTION 101—AMENDMENTS TO CERCLA DEFINITIONS

RELEASE

Senate amendment—The Senate amendment does not contain any comparable provision.

House amendment—The House amendment proposes to amend section 101(22) of CERCLA, which is the definition of "release," to explicitly incorporate "the abandonment on discarding of barrels, containers, and other closed receptacles containing any hazardous substance or pollutant or contaminant."

Conference substitute—The conference substitute adopts the House proposal. This amendment to CERCLA confirms and clarifies the President's present authority under existing law to take response action with regard to such receptacles, whether or not they have broken open and are currently leaking hazardous substances, pollutants or contaminants. The phrase "containing any hazardous substance or pollutant or contaminant" includes residues of such hazardous substance or pollutant or contaminant.

REMEDIAL ACTION

Senate amendment—The Senate amendment proposes to amend section 101(24) of CERCLA, which is the definition of "remedy or remedial action," to explicitly include the off-site transport, storage or secure disposition of hazardous substances, pollutants or contaminants.

House amendment—The House amendment contains a provision identical to that of the Senate.

Conference substitute—The conference substitute adopts the identical provisions.

RESPONSE

Senate amendment—The Senate amendment does not contain any provision comparable to that of the House amendment.

House amendment—The House amendment proposes to modify CERCLA section 101(25), which is the definition of "response," to explicitly include enforcement activities.

Conference substitute—The conference substitute adopts the House proposal. This amendment clarifies and confirms that such costs are recoverable from responsible parties, as removal or remedial costs under section 107.

POLLUTANT OR CONTAMINANT

Senate amendment—The Senate amendment does not contain any provision comparable to that of the House amendment.

House amendment—The House amendment proposes to relocate the definition of "pollutant or contaminant" from section 104(a)(2) of CERCLA, which is its current placement, to section 101, which is the law's definitions section.

Conference substitute—The conference substitute adopts the House amendment. This provision does not expand CERCLA liability concerning pollutants, contaminants or hazardous substances, found in current law.

OWNER OR OPERATOR: DEFINITION OF STATE

Senate amendment—The Senate amendment contains no provision comparable to that of the House amendment.

House amendment—The House amendment amends section 101(27) of CERCLA, which is the definition of "State," to exclude units of local government.

Conference substitute—The conference substitute does not include the House amendment to the definition of "State," leaving it to the court's interpretation of this provision.

OWNER OR OPERATOR: STATE OR LOCAL GOVERNMENT LIMITATION

Senate amendment—The Senate amendment proposes to modify section 101(20) of CERCLA, which is the definition of "owner or operator," to exclude a State or local government which acquired title or possession involuntarily and by virtue of its function as sovereign.

House amendment—The House amendment contains no comparable provision.

Conference substitute—The conference substitute adopts the Senate provision, with a modification to clarify that if the unit of government caused or contributed to the release or threatened release in question, then such unit is subject to the provisions of CERCLA, both procedurally and substantively, as any non-governmental entity, including liability under section 107 and contribution under section 113.

ALTERNATIVE WATER SUPPLIES

Senate amendment—The Senate amendment proposes the addition to section 101 of CERCLA the definition of the term, "alternative water supplies."

House amendment—The House amendment does not contain any comparable provision.

Conference substitute—The conference substitute adopts the Senate amendment.

INDIAN TRIBE

Senate amendment—The Senate amendment amends section 101(16) of CERCLA, which defines "natural resources," to include as the owner, manager, or trustee of such resources any Indian tribe or, in certain instances, any member of an Indian tribe.

The Senate amendment also adds a new section 101(36) defining "Indian tribe" to mean any Indian tribe, band, nation, or other organized group or community, including any Alaska native village (but not including a regional or village corporation) which is recognized as eligible for the special programs and services by the United States to Indians because of their status as Indians.

House amendment—The House amendment contains similar provisions.

Conference substitute—The conference substitute adopts the Senate provisions.

LANDOWNER LIABILITY

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment contains a proposed modification of the third-party defense to liability of section 107(b)(3). The purpose of the House amendment was to eliminate liability which might exist under section 107 for landowners who acquired title to real property after the time hazardous substances, pollutants or contaminants had come to be located thereon and who, although they had exercised due care with respect to discovering such materials, were nonetheless ignorant of their presence.

Conference substitute—The conference substitute adds to section 101 of CERCLA, which is the definitions section, a new term, "contractual relationship." This new definition of contractual relationship is intended to clarify and confirm that under limited circumstances landowners, who acquire property without knowing of any contami-

nation at the site and without reason to know of any contamination (or as otherwise noted in the amendment) may have a defense to liability under section 107 and therefore should not be held liabie for cleaning up the site if such persons satisfy the remaining requirements of section 107(b)(3). A person who acquires property through a land contract or deed or other instrument transferring title or possession that meets the requirements of this definition may assert that an act or omission of a third party should not be considered to have occurred in connection with a contractual relationship as identified in section 107(b) and therefore is not a bar to the defense.

In the limited circumstances identified in this definition, such landowners are entitled to the defense if they exercise the requisite due care upon learning of such release or threat of release. For example, where the release or threat of release is caused by an act of vandalism, the landowner may be able to assert the defense where he exercises due care and takes satisfactory precautions against foreseeable acts as discussed below.

The Conferees recognize that the due care requirement embodied in section 107(b)(3) only requires such person to exercise that degree of due care which is reasonable under the circumstances. The requirement would include those steps necessary to protect the public from a health or environmental threat. Finally, the precautions against foreseeable acts of third parties requirement of section 107(b)(3)(b) does not prevent a subsequent purchaser after contamination has occurred from claiming the defense, but only comes into play after the landowner acquires the property. Foreseeability must be considered in light of the specific circumstances of each case. The provisions of section 101(35)(B) as to "reason to know" govern the purchaser's responsibility with regard to acts of third parties prior to the purchase.

Nothing in this provision shall affect the liability of an owner or operator whose property is taken by a government exercising its eminent domain authority by purchase or condemnation. The owner or operator is not relieved of liability under this Act if he would otherwise have been liable had the purchase or condemnation not occurred. Furthermore, a government authority acquiring property by such methods shall notify, in a timely manner, the United States Environmental Protection Agency and the Department of Justice upon discovering the existence of a hazardous substance on the property. In cases involving government purchase or condemnation, the cost of response may be offset against the just compensation due to the landowner, if any.

The duty to inquire under this provision shall be judged as of the time of acquisition. Defendants shall be held to a higher standard as public awareness of the hazards associated with hazardous substance releases has grown, as reflected by this Act, the 1980 Act and other Federal and State statutes.

Moreover, good commerical or customary practice with respect to inquiry in an effort to minimize liability shall mean that a reasonable inquiry must have been made in all circumstances, in light of best business and land transfer principles.

Those engaged in commercial transactions should, however, be held to a higher standard than those who are engaged in private residential transactions. Similarly, those who acquire property through inheritance or bequest without actual knowledge may rely upon this section if they engage in a reasonable inquiry, but they need not be held to the same standard as those who acquire property as part of a commercial or private transaction, and those who acquire property by inheritance without knowing of the inheritance shall not be liable, if they satisfy the remaining requirements of section 107(b)(3).

Finally, the provision makes clear that this definition does not alter the liability of any person who would otherwise be liable under this Act. If a person transfers property with actual knowledge of the release or threatened release without disclosing such knowledge, such person may not avail himself or herself of a section 107(b)(3) defense. However, transferring property with disclosure does not provide a person with a defense, if such person is otherwise liable.

SECTION 102—REPORTABLE QUANTITIES

Senate amendment—The Senate amendment contains no comparable provison.

House amendment—The House amendment requires the Administrator to promulgate regulations establishing reportable quantities for releases of hazardous substances by December 31, 1986.

Conference substitute—The conference substitute adopts the House provision as modified. The substitute requires promulgation of final reportable quantity regulations by December 31, 1986, for those hazardous substances for which proposed regulations were published on or before March 1, 1986. For all hazardous substances for which proposed regulations were not published before March 1, 1986, the President is required to publish proposed regulations not later than December 31, 1986, and promulgate final regulations not later than April 30, 1988.

SECTION 103—NOTICES; PENALTIES

Senate amendment—The Senate amendment amends section 103 to require notification of any release of a hazardous substance with a reportable quantity of one pound or less (or other quantity determined by the President to potentially require emergency response) to State and local emergency response officials identified under any local contingency plan or otherwise likely to be affected by the release.

House amendment—The House amendment makes a technical amendment to section 103 of CERCLA.

Conference substitute—The conference substitute adopts the House provision. The substitute does not make a substantive change to the notification requirements of section 103 since these matters are dealt with in title III of this bill.

SECTION 104—RESPONSE AUTHORITIES

SUBSECTION (a)(1)—RESPONSE BY POTENTIALLY RESPONSIBLE PARTIES

Senate amendment—Section 112(a) provides the President with the authority to authorize the owner or operator of a vessel or facility from which a release or threat of release emanates, or any other responsible party, to perform remedial or removal actions if the President determines that the action will be done properly.

House amendment—Section 104(b) authorizes the Administrator to allow an owner or operator or other responsible party to carry out removal or remedial actions in accordance with section 122. The Administrator may allow the person to perform the RI/FS if (1) the person conducting the RI/FS for the responsible party is found to be qualified by the Administrator and (2) the Administrator enters into an oversight contract with any qualified, objective person to oversee and review the conduct of the RI/FS, and (3) the responsible party agrees to reimburse the Fund for any cost incurred under the oversight contract.

Conference substitute—The conference substitute provides that where the President determines that a removal or remedial action will be done properly and promptly by the owner or operator of a facility or vessel or by any other responsible party, the President may allow such person to carry out the action in accordance with section 122. Provided, however, that no remedial investigation or feasibility study (RI/FS) may be authorized except (1) where the President determines that the party is qualified to conduct the RI/FS; (2) the President contracts with or arranges for a qualified person to oversee the conduct of the RI/FS; and (3) the responsible party agrees to reimburse the Fund for any cost incurred by the Administrator under or in connection with the oversight contract. The conference substitute also provides that in no event shall a potentially responsible party be subject to a lesser standard of liability or receive preferential treatment as a response action contractor or as a person hired or retained by a response action contract or with respect to the release or facility in question.

The term "qualified person," refers to someone with the professional qualifications, expertise, and experience necessary to provide additional assurance that the President is conducting meaningful oversight of the remedial investigation and feasibility studies being performed by potentially responsible parties in accordance with section 122. The President retains the principal responsibility to properly oversee the conduct of remedial investigation and feasibility studies and the qualified person is to work for and assist the President. Any such person contracted for or arranged for should be governed by the Agency's standards of ethical conduct relating to conflict of interest.

SUBSECTION (a)(2)—PUBLIC HEALTH THREATS

Senate amendment—Section 112(a) directs the President to give primary attention to those releases which may present a public health threat.

House amendment—Section 104(a) directs the Administrator to give primary attention to those releases which the Administrator deems may present a public health threat.

Conference substitute—The conference substitute adopts the House provision, changing the term "the Administrator" to "the President" to conform to the agreement on the use of the term "Administrator." The text of this provision has been incorporated as the last sentence of section 104(a)(1).

SUBSECTION (b)—REMOVAL ACTION

Senate amendment—The Senate amendment contains no provision relating to removal actions contributing to long-term, permanent remedies.

House amendment—Section 104(c) of the House amendment specifies that any removal action undertaken by the Administrator shall contribute to the efficient performance of any long-term remedial action to the maximum extent practicable.

Conference substitute—The conference substitute adds a new section 104(a)(2) to CERCLA to provide that any removal action undertaken by the President under subsection (a) or by any other person referred to in section 122 should, to the extent the President deems practicable, contribute to the efficient performance of any long-term

remedial action with respect to the release or threatened release concerned.

The General Accounting Office (GAO) has reported that on several occasions EPA has carried out short-term removal actions without considering how such actions will contribute to the long-term performance of remedial actions at the site. To the maximum extent practicable, the Agency should avoid wasteful, repetitive, short-term removal actions that do not contribute to the efficient, cost-effective performance of long-term remedial actions. This preference for removal actions that contribute to the efficient performance of long-term remedial actions does not constitute a defense to liability under section 107(a).

SUBSECTION (c)—LIMITATIONS ON RESPONSE

Senate amendment—Section 112(b) prohibits the President from undertaking a response action under section 104 in response to a release of a naturally occurring substance in its unaltered form or altered through natural processes; from products which are part of the structure of residential buildings or businesses or community structures which result in exposure in such structures; or into public or private drinking water supplies due to the deterioration of the system through ordinary use. These limitations on response actions will not apply, however, if in the President's discretion the releases constitute a public health or environmental emergency and no other person with the authority and capability to respond will do so in a timely manner.

House amendment—Section 118(a) prohibits the Administrator from responding to releases from (1) residential or business or community structures not used for certain hazardous waste activities; (2) public water supplies due to deterioration of the system through normal use; (3) certain coal mining activities; and (4) certain naturally occurring substances. The Administrator may respond, however, if the release constitutes a major public health or environmental emergency.

Conference substitute—The conference substitute adopts the Senate provision.

SUBSECTION (d)—COORDINATION OF INVESTIGATIONS

Senate amendment—The Senate bill contains no amendment to section 104(b) requiring notice to natural resource trustees.

House amendment—Section 104(d) of the House amendment adds a new paragraph (2) to section 104(b) that directs the Administrator to promptly notify the appropriate Federal and State natural resources trustees of potential damages to natural resources resulting from releases under investigation pursuant to section 104 and to seek to coordinate the assessments, investigations and planning under section 104 with such Federal and State trustees.

Conference substitute—The conference substitute adopts the House provision, changing Administrator to President to conform to the agreement on the use of the term "Administrator".

SUBSECTION (e)—INITIAL OBLIGATION OF FUND

Senate amendment—Section 113(a) proposed to extend the time limit for initial response actions in section 104(c)(1) from six months to one year, and to provide that the limits on initial response actions would not apply where continued response is otherwise appropriate and consistent with permanent remedy.

House amendment—Section 104(e) raises the limits on response actions in section 104(c)(1) of current law from $1 million dollars or 6 months to $2 million dollars or 12 months, respectively. The House provision also provides that the time and monetary limits on removal actions will not apply where the President determines that continued response action is otherwise appropriate and consistent with the remedial action to be taken.

Conference substitute—The conference substitute adopts the House provision.

SUBSECTION (f)—FACILITIES OWNED AND OPERATED BY STATES

Senate amendment—The Senate provision (section 115) modifies section 104(c)(3)(C)(ii) to specify that the 50 percent cost-sharing requirement (or such greater amounts as the President may determine appropriate) for response actions at facilities owned by a State or political subdivision at the time of any disposal of hazardous substances therein includes facilities that are operated by the State or political subdivision either directly or through a contractual relationship or otherwise. For the purposes of this provision, the term "facility" does not include navigable waters or the beds underlying those waters. Section 115 of the Senate bill also contains a second paragraph relating to State reimbursements for certain costs of remedial actions at facilities owned but not operated by the State.

House amendment—The House amendment contains no comparable provision.

Conference substitute—The conference substitute adopts the Senate provision relating to the 50 percent cost-sharing requirement for response actions at facilities operated by a State.

SUBSECTION (g)—CROSS REFERENCE TO CLEANUP STANDARDS

Senate amendment—The Senate amendment contains no cross-reference to cleanup standards in section 104(c)(5).

House amendment—Section 104(h) proposes to modify section 104(c)(5) of CERCLA, as redesignated, to direct the Administrator to select remedial actions to carry out section 104 in accordance with section 121 of this Act (relating to cleanup standards).

Conference substitute—The conference substitue adopts the House provision, but retains the current designation of the paragraph as section 104(c)(4).

SUBSECTION (h)—STATE CREDITS

Senate amendment—Section 114 amends the last sentence of section 104(c)(3) by directing the President to credit States for amounts expended or obligated by the State or its political subdivisions after January 1, 1978, and before December 11, 1980, for any response costs covered by section 111(a) (1) or (2) and incurred at a facility or release listed pursuant to section 105(8). The Senate provision also authorizes the President to enter into cooperative agreements with the States under which the States will take response actions in connection with the releases listed pursuant to section 105(8)(B). Finally, the Senate amendment directs the President to credit certain response costs incurred by States.

House amendment—Section 104(g) directs the Administrator to grant credits to States against the share of the costs for which they are responsible under section 104(c)(3) for amounts expended by the States pursuant to agreements with EPA for remedial actions at facilities listed on the NPL. The provision also authorizes credits for expenses of certain remedial actions incurred before the listing of the facility on the NPL or before entry into the contract or cooperative agreement with EPA. Also authorized are credits for funds expended between 1978 and 1980 for cost-eligible response actions and claims for damages compensable under section 111, and certain State expenses after December 11, 1980 but before enactment of this Act. The provision authorizes the Administrator to require prior approval for expenditures made after the date of enactment as a condition of granting credit under section 104(c)(4), and addresses the use of credits to reduce all or part of the share of costs otherwise required to be paid by a State under paragraph (3).

Conference substitute—The conference substitute adopts the House amendment, as modified by deleting section 104(c)(4)(C) of the amendment relating to administrative expenses and redesignated the provision as section 104(c)(5).

Entry into cooperative agreements is within the discretion of the President. State expenditures of funds qualifying for credit towards a State share do not create any entitlement in that State to the Federal share of costs for that facility or any other facility. Nothing in this provision shall require the President to set aside or earmark funds for expenditures in any particular State to satisfy these credit provisions.

Under section 104 the President, acting through the Environmental Protection Agency or any Federal agency acting pursuant to an agreement with the Environmental Protection Agency (such as the Corps of Engineers), can fund multi-year remedial projects on an annual basis after obligating the entire cost of implementing the Record of Decision. In such a case the State may transfer the funds that it has committed to the project on an incremental basis, and be credited with interest earned prior to actual application of the funds as work progresses.

SUBSECTION (i)—TREATMENT OF CERTAIN ACTIVITIES AS MAINTENANCE OR REMEDIAL ACTION

Senate amendment—Section 117 specifies that, for the purposes of section 104(c)(3), completed remedial actions in the case of ground or surface water contamination include the completion of treatment or other measures, whether onsite or offsite, necessary to restore ground or surface water quality to a level that assures protection of human health and the environment. The operation of such measures for a period of up to five years after the construction and installation of the operation shall be considered remedial action, whereas activities required to maintain the effectiveness of such measures following that period or the completion of the remedial action, whichever is earlier, shall be considered operation or maintenance. At such time as the dedicated tax under title V, or revenues derived therefrom, cease to be available due to termination, expiration or repeal of such tax, sums recovered or recoverable under section 107 shall be available for operation and maintenance.

House amendment—Section 104(i) proposes a new paragraph (6) to section 104(c) of CERCLA specifying that, in the case of groundwater or surface water contamination, completed remedial action includes the treatment or other measures, whether taken onsite or offsite, that are necessary to restore groundwater and surface water quality to a level that assures protection of human health and the environment. Actions required to maintain such measures following the completion of the remedial action shall be considered maintenance.

Conference substitute—The conference substitute adopts the Senate provision, modifying from five years to ten years the period during which time the activities are to be considered part of the remedial action.

SUBSECTION (j)—RECONTRACTING

Senate amendment—Section 113(b) provides that nothing in the Act shall limit the President from taking such action as may be necessary to assure continuous remedial action or to institute interim remedial action when it becomes necessary to reopen bidding or otherwise recontract for further performance of the remedial action.

House amendment—The House amendment contains no provision on recontracting.

Conference substitute—The conference substitute provides a new paragraph (8) to section 104(c) of CERCLA that authorizes the President to undertake or continue whatever interim remedial actions the President determines are appropriate to reduce risks to public health or the environment where the performance of a complete remedial action requires recontracting because of the discovery of sources, types or quantities of hazardous substances not known at the time of entry into the original contract. These interim actions, however, may not exceed $2 million.

This provision clarifies the President's existing authority to respond to releases of hazardous substances under section 104, although the $2 million cap on interim responses pending recontracting is a new restriction. The provision is intended to address situations like the Re-solve Site at North Dartmouth, Massachusetts.

SUBSECTION (k)—SITING

Senate amendment—The Senate amendment amends section 104(c) by adding a new paragraph providing that, effective three years after enactment, the President shall not provide any remedial actions pursuant to section 104 unless the State provides assurances that there will be adequate capacity and access to facilities in compliance with the hazardous waste regulatory program under subtitle C of the Solid Waste Disposal Act for the treatment or disposal of all that State's hazardous wastes for the next twenty years.

House amendment—Section 104(f) of the House amendment modifies section 104(c)(3) of CERCLA by adding an additional requirement that States assure the Administrator of the availability of hazardous waste treatment or disposal facilities that (1) have adequate capacity to accommodate the hazardous wastes that are expected to be generated within the State within the 20-year period following the date of a contract or cooperative agreement with the Administrator; (2) are within the State or outside the State in accordance with an interstate agreement or regional agreement; (3) are acceptable to the Administrator; and (4) are in compliance with subtitle C of the Solid Waste Disposal Act.

Conference substitute—The conference substitute adopts the virtually identical House and Senate provisions requiring States to provide assurances to the President of the availability of hazardous waste treatment or disposal facilities with adequate capacity to accommodate the wastes expected to be generated within the State. The reference to "hazardous wastes" in this siting requirement is intended to cover all hazardous wastes generated within the State, not only Superfund wastes generated by response or remedial actions undertaken within the State.

SUBSECTION (l)—COOPERATIVE AGREEMENTS WITH STATES

Senate amendment—Section 119 authorizes the President to enter into a contract or cooperative agreement with any State or political subdivision which has the capability to carry out any or all of the actions authorized under section 104, as determined by the President to take such actions in accordance with section 105(8). Such cooperative agreements may reimburse State or political subdivisions from the Fund for reasonable response costs or related activities, as enumerated in the Senate provision. Any contract or cooperative agreement is subject to the cost-sharing requirements of section 104(c).

House amendment—Section 104(j) modifies section 104(d)(l) of CERCLA to provide that, where the Administrator determines that a State or political subdivision has the capability to conduct any or all actions authorized by section 104 in accordance with section 105(a)(8) and carry out related enforcement actions, the Administrator may enter into a contract or cooperative agreement with the State or political subdivision to carry out such actions. The provision directs the Administrator to make such determinations within 90 days after the Administrator receives an application for such an agreement from a State or political subdivision. The provision further specifies that any State which expended funds between September 30, 1985, and the date of enactment of this bill for response actions at any site included on the NPL and subject to a cooperative agreement under the Act shall be reimbursed for the share of costs of such actions for which the Federal government is responsible.

Conference substitute—The conference substitute adopts the House provision with the addition of Indian tribes to section 104(d)(1), as amended. A decision by the President to enter into a contract or cooperative agreement is within the discretion of the President. Included within the class of activities that may be the subject of cooperative agreements under this provision are those activities associated with the overall implementation, coordination, enforcement, training, community relations, site inventory and assessment efforts, and administration of remedial activities as authorized by this Act.

SUBSECTION (m) (1)—INFORMATION-GATHERING AND ACCESS AUTHORITIES

Senate amendment—Section 120 proposes four new paragraphs to section 104(e) pertaining to access and information-gathering. Paragraph (1) authorizes any authorized representative of the President or a State to require any person to disclose information relevant to the identity and nature of materials at a facility or the nature and extent of a release or threatened release from the facility where there is reason to believe that there may be a release or a threatened release of a hazardous substance from that facility. In addition, the paragraph requires the person to provide reasonable access to the authorized representative to inspect or copy all documents and records pertaining to such matters. The paragraph also authorizes access to certain establishments or other places or properties to inspect and obtain samples under certain conditions.

Paragraph (2) provides the terms and conditions under which the President may compel compliance with such a request for access or information. Paragraph (2) also directs courts to compel compliance with this paragraph where there is a reasonable basis to believe that there is a release or threatened release of a hazardous substance unless, under the circumstances, the demand for access or information is arbitrary and capricious, an abuse of discretion or otherwise not in accordance with law. The provision authorizes up to a $10,000 civil penalty against any person who unreasonably fails to comply with the provision of paragraph (1) or an order issued under paragraph (2).

Paragraph (3) contains a "savings" clause, while paragraph (4) details provisions relating to the terms and conditions for entry to locations and access to information properly classified to protect the national security. Paragraph (5) details the requirements applicable to any person who claims that the information sought is entitled to protection under this section.

Paragraph (6) outlines the types of information that will not be entitled to protection from disclosure under this section.

House amendment—Section 104(k) proposes to modify section 104(e) of CERCLA by redesignating paragraph (2) as paragraph (8) and by adding new subsections 140(e)(1)–(7) relating to information-gathering and access. Paragraph (e)(1) authorizes any duly authorized representative of the Administrator to exercise the authorities under paragraphs (2), (3), or (4) of this subsection in accordance with certain enumerated restrictions. Any duly designated State official under a cooperative agreement or contract may use the authorities in paragraphs (2) through (4). Paragraph (2) authorizes access to information or documents described in three subparagraphs pertaining, in general, to the nature and quantity of materials at the vessel or facility, the nature or extent of the release from the vessel or facility, and other information relating to the ability of a person to pay for or perform a cleanup. The paragraph also authorizes access at all reasonable times to inspect or copy the documents relevant to such matters. When the authorized representative requests copies of documents as authorized by this action, the person with such documents must either provide the copies or furnish the documents themselves for copying. Paragraph (3) pertains to entry, authorizing an officer or employee of the Administrator or State to enter certain vessels or facility enumerated within the paragaph. Paragraph (4) pertains to inspections and samples, authorizing any duly authorized representative of the Administrator or State to inspect and obtain samples from any vessel, facility or other location described in the paragraph. The paragraph requires that a copy of the results of any analysis of samples taken pursuant to the paragraph shall be furnished to the owner, operator, tenant, or other person in charge of the location from which the samples were obtained. Paragraph (5) outlines the authorities of the Administrator to issue compliance orders and to request the Attorney General to commence civil actions to compel compliance with such orders or requests for information or access pursuant to this section. Where there is a reasonable basis to believe that a release or threat of release may occur, the paragraph describes the actions a court shall order in any civil action to compel compliance. The paragraph authorizes a civil penalty not to exceed $25,000 for each day of noncompliance. Paragraph (6) includes a savings clause that clarifies that the subsection is not intended to preclude the Administrator from securing access or obtaining information in any other lawful manner, whereas paragraph (7) re-

quires appropriate clearances for any officers or representatives of the Administrator to gain entry to locations and access to information properly classified to protect the national security.

Conference substitute—The conference substitute adopts the House language with the following modification. First, in paragraph (5)(B) (i) and (ii), the conference substitute includes the Senate language specifying that a court shall not take action where under the circumstances of the case the demand for access or information is arbitrary and capricious, an abuse of discretion or not otherwise in accordance with law. Secondly, paragraph (e)(7), relating to clearance, has been deleted.

SUBSECTION (m)(2)—BASIS FOR WITHHOLDING INFORMATION

Senate amendment—Section 120 proposes to add new paragraphs (5) and (6) to section 104(e) of CERCLA. Paragraph (5) details the terms and conditions under which a person required to provide information or documents under the Act may claim that the information is entitled to protection from disclosure. The Senate bill would require the person claiming such protection to show, at the time the claim is made, that the information is entitled to protection on the basis of certain criteria.

House amendment—The House amendment contains no amendment to section 104 relating to the basis for withholding information.

Conference substitute—The conference substitute adds two new subparagraphs (E) and (F) to section 104(e)(8) of CERCLA relating (1) to the basis for withholding information and (2) to information not entitled to protection under the section. The first subparagrpah conforms to the conference agreement in title III, relating to Emergency Planning and Community Right-to-Know. The second subparagraph is derived from the Senate provision with certain modifications.

SUBSECTION (n)—ACQUISITION OF PROPERTY

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—Section 104(n) proposes to add a new subsection to section 104 authorizing EPA to acquire by purchase, lease, condemnation, or otherwise any real property or interest in real property that the Adminstration determines is needed to conduct a remedial action under this Act during the remedial action itself or prior to it in conjunction with an investigation or removal action. The decision of the Administrator under this provision is discretionary. The provision allows the Administration to acquire such interest in real estate only if the State in which the interest is to be acquired assures the Administrator that the State will accept transfer of the interest following completion of the remedial action. The provision also provides that no Federal, State, or local government agency shall be liable under this Act solely as a result of acquiring an interest in real estate under this subsection. This provision does not limit the President's existing authority to acquire real property by purchase, lease or condemnation when necessary to carry out response actions authorized by section 104.

Conference substitute—The conference substitute adopts the House provision. If the President obtains access to property under section 104(e) to effectuate a response and the President determines that the response will result in the taking of private property, the President will exercise the property acquisition authority provided under this amendment to section 104. In addition, even if this authority is not exercised, persons who believe that their property has been taken by response action may seek compensation under the Tucker Act, 28 U.S.C. 1491.

SECTION 105—NATIONAL CONTINGENCY PLAN

Senate amendment.—The Senate amendment requires the President to revise the National Hazardous Substance Response Plan not later than twelve months after the date of enactment of these amendments to provide procedures and standards for remedial actions undertaken pursuant to CERCLA which are consistent with the amendments made by this Act.

This amendment requires the President by rule, not later than twelve months after the date of enactment of these amendments, to promulgate amendments to the Hazard Ranking System in effect on September 1, 1984. These amendments shall assure to the maximum extent feasible, the Hazard Ranking System accurately assesses the relative degree of risk to human health and environment posed by sites and facilities subject to review. These amendments shall take effect as of the date established by the President, not later than eighteen months after the enactment of the Superfund Amendments of 1984. The amended Hazard Ranking System shall be applied to any site or facility to be newly listed on the National Priority List after the effective date of the amendments. The Hazard Ranking System in effect on September 1, 1984, shall continue in full force and effect until the new regulations are in effect.

The Senate amendment eliminates the requirement that the National Contingency Plan include at least 400 facilities and clarify that States are allowed only one highest priority designation for the life of the list. The Senate amendment adds a new requirement to include standards and testing procedures by which alternative or innovative treatment technologies are appropriate for utilization in response actions.

House amendment.—The House amendment requires the Administrator within 18 months of the date of enactment to revise the National Contingency Plan to reflect the amendments made by this legislation.

The House amendment requires the Administrator to commence a review of the Hazard Ranking System (HRS or "Mitre Model") used to evaluate the priorities attached to Superfund sites not later than 12 months after the enactment of the Superfund Amendments of 1986. In conducting the review, the President shall ensure that the human health risks associated with contamination or potential contamination of surface water used for recreation or potable water consumption is appropriately assessed.

The House amendment provides that in conducting the Hazard Ranking System review, the Administrator must evaluate the preliminary pollutant limit value system used by the Department of Defense and compare it with the Hazard Ranking System.

The House amendment explicitly provides that the Administrator is not required to re-evaluate after enactment of this Act the hazard ranking of any facility which was evaluated in accordance with the criteria under section 105 of CERCLA before such enactment.

The House amendment establishes the right of any person to petition the Administrator to conduct a preliminary assessment of the hazards to public health and the environment which are associated with a release or threatened release of a hazardous substance, pollutant or contaminant. Within 12 months, the Administrator must complete such assessment or explain why such an assessment is not appropriate. If the preliminary assessment indicates that any such release may pose a threat to human health or the environment, the Administrator must promptly evaluate the release for possible inclusion on the National Priorities List.

The House amendment adds new criteria to the current law to be used in determining priority facilities: the damage to natural resources which may affect the human food chain and the contamination or potential contamination of the ambient air which is associated with a release or threatened release.

The House amendment also adds a new requirement to include standards and testing procedures by which alternative or innovative treatment technologies are appropriate for utilization in response actions.

The House amendment adds a new requirement that whenever there has been a significant release of a hazardous substance or pollutants and contaminants from a site which is listed by the President as a site cleaned up on the National Priorities List, the site shall be restored to the National Priorities List without application of the Hazard Ranking System.

The House amendment requires the Administrator to consider the availability of qualified minority firms. The Administrator shall describe, as part of any annual report submitted to the Congress under CERCLA, the participation of minority firms.

The House amendment allows the States to place only one highest priority site on the National Priorities List and deletes the requirement in current law that the National Priorities List contain no fewer than 400 sites to the extent practicable.

Conference substitute—The conference substitute adopts provisions from both the House and Senate amendments. The conference substitute adopts the Senate amendment requiring the President to revise the National Contingency Plan, changing 12 months to 18 months. To the extent there is an inconsistency between the current National Contingency Plan, including the National Hazardous Substance Response Plan, and the provisions or requirements of the Superfund Amendments and Reauthorization Act, this Act supersedes and controls as of the date of enactment.

The conference substitute adopts the Senate amendment requiring the President to promulgate, by rule, amendments to the Hazard Ranking System in effect to assure, to the maximum extent feasible, that the Hazard Ranking System accurately assesses the relative degree of risk to human health and environment posed by sites and facilities subject to review. The promulgation date is changed from 12 months after enactment of these amendments to 18 months and changing the effective date of these amendments from 18 months to 24 months.

This provision establishes a substantive standard for the Hazard Ranking System that, to the degree feasible, it accurately assesses relative risks to human health and the environment. This standard is to be applied within the context of the purpose for the National Priorities List; i.e., identifying for the States and the public those facilities and sites which appear to warrant remedial actions. (See "Report of the Committee on

Environment and Public Works," Senate Report No. 96-848, 96th Cong., 2d Sess. 60 (1980).) This standard does not, however, require the Hazard Ranking System to be equivalent to detailed risk assessments, quantitative or qualitative, such as might be performed as part of remedial actions. The standard requires the Hazard Ranking System to rank sites as accurately as the Agency believes is feasible using information from preliminary assessments and site inspections, such as ground or surface water, or air monitoring data or the equivalent information and identification of potentially and actually contaminated water supplies or sensitive environments. Meeting this standard does not require long-term monitoring or an accurate determination of the full nature and extent of contamination at sites or the projected levels of exposure such as might be done during remedial investigations and feasibility studies. This provision is intended to ensure that the Hazard Ranking System performs with a degree of accuracy appropriate to its role in expeditiously identifying candidates for response actions.

The review of the Hazard Ranking System needs to adequately consider the quantity, toxicity, and concentrations of hazardous constituents, which are present in any release, or threatened release; the extent of actual release and the potential for release of such hazardous constituents; and the exposures presented, or likely to be presented, to human populations and the environment, by the release or threatened release of such hazardous constituents through various routes of exposure.

Neither the revised Hazard Ranking System required by this section nor any other provision of law or regulation requires the conduct of risk assessments at unlisted or listed facilities.

The conference substitute adopts the House amendment requiring the President to ensure that the human health risks associated with contamination or potential contamination of surface water used for recreation or potable water consumption is appropriately assessed.

In conducting the review under this section, the Administrator shall evaluate the preliminary pollutant limit value system used by the Department of Defense to assess the risks of hazardous substances and compare such system with the Hazard Ranking System. In particular, the Administrator should study the effectiveness of each system in appropriately assessing the relative degree of risk to human health and the environment posed by facilities subject to each such system.

The President in conducting the review required by this provision should include the following items:

(1) an explanation of the Hazard Ranking System, including the manner in which it was developed and the method of determining the relative hazard at different facilities under the system;

(2) a determination of the relationship between the value determined for a facility under the Hazard Ranking System and the potential danger to human health and the environment;

(3) an examination, based on the determination under clause (2), of the effect of establishing a threshold value of 28.5 for facilities to be included on the National Priorities List;

(4) a determination based upon the determination under clause (2) and the examination under clause (3), of whether a new threshold value should be established for inclusion of facilities on such list; and

(5) a determination of the relationship between the value determined for a facility under the Hazard Ranking System and the types of remedial actions that are appropriate at such facility.

The conference substitute adopts the Senate amendment which provides that until the effective date of regulations revising the Hazard Ranking System, the system in effect on September 1, 1984, continues in full force and effect.

The conference substitute adopts the House amendment, as modified, which provides that the President is not required to reevaluate the hazard ranking of any facility which was evaluated in accordance with the criteria under section 105 of CERCLA before the effective date of the amendments to the Hazard Ranking System contemplated by this section.

The conference substitute adopts the House amendment establishing the right of any person to petition the President to conduct a preliminary assessment of the hazards to public health and the environment which are associated with a release or threatened release of a hazardous substance, pollutant or contaminant.

The conference substitute adopts the House amendment adding a new criterion to the current law to be used in determining priority facilities: the damage to natural resources which may affect the human food chain and the contamination or potential contamination of the ambient air which is associated with a release or threatened release.

The conference substitute adopts the House amendment which is similar to the Senate amendment deleting the requirement in the current law that the National Priorities List contain no fewer than 400 sites.

The conference substitute adopts the House amendment regarding the use of alternative and innovative technology.

The conference substitute adopts the House amendment requiring the relisting of sites on the National Priorities List without application of the Hazard Ranking System whenever there has been, after January 1, 1985, a significant release of hazardous substances or pollutants or contaminants from a site which is listed by the President as a "Site Cleaned Up To Date."

The conference substitute adopts the House amendment requiring the President to consider the availability of qualified minority firms.

SUBSECTION (g)—SPECIAL STUDY WASTES

Senate amendment—The Senate amendment to section 105 provides that, until the Hazard Ranking System is revised, special study waste sites described in section 3001(b)(2)(B) or (3)(A) of the Solid Waste Disposal Act may be listed on the National Priorities List only if the Administrator makes findings based on facility-specific data. Liability for costs, damages, or penalties may only be imposed if specific findings have been made and the Administrator supports those findings in court. Following completion of the study and determinations required by the Solid Waste Disposal Act, if a special study waste is not a hazardous waste listed under section 3001 of the Solid Waste Disposal Act, the waste stream, or one of the constituents thereof, may not be deemed to be a hazardous substance unless such waste, at the facility in question, has one of the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act.

House amendment—The House amendment contains a provision which applies only to fly-ash and other wastes described in section 3001(b)(3)(A)(i).

The Administrator is required to revise the Hazard Ranking System (HRS) as it applies to facilities that contain substantial volumes of fly-ash and other wastes discussed in section 3001(b)(3)(A)(i) of the Solid Waste Disposal Act that relate to the combustion of coal or other fossil fuels in a manner which assures appropriate consideration of site-specific characteristics of such facilities.

Prior to the completion of the required revision of the Hazard Ranking System, the Administrator may not add to the NPL any facility that contains waste described in section 3001(b)(3)(A)(i) of the Solid Waste Disposal Act on the basis of an evaluation relying principally on the volume of such waste and not on the actual concentrations of the hazardous constitutents of such waste. Nothing in this section affects EPA's authority to list or take other actions under the Act at facilities based upon the presence of substances other than waste described in section 3001(b)(3)(A)(i).

Conference substitute—The conference substitute adds a new provision to section 105 dealing with special study wastes other than wastes described in section 3001(b)(3)(A)(i) of the Solid Waste Disposal Act.

Pending revision of the Hazard Ranking System, the President must consider certain factors in adding facilities at which special study wastes described in paragraphs (2), (3)(A)(ii) or (3)(A)(iii) of section 3001(b) of the Solid Waste Disposal Act are present in significant quantities. Facilities included on, or proposed for inclusion on, the National Priorities List are not subject to this provision. The President must only consider available information.

In the course of determining whether to add facilities containing special study wastes to the NPL in the interim period, if the President has sampling data from past or present on-site or off-site examination of the facility or releases from the facility available, he shall consider it.

Neither the revised Hazard Ranking System required by this section nor any other provision of law or regulation requires the conduct of risk assessments at unlisted or listed facilities.

Nothing in this amendment affects or otherwise limits the President's authority under this Act to conduct response or enforcement actions (including abatement actions under section 106(a)).

SECTION 106—REIMBURSEMENT

Senate amendment—Section 144 of the Senate amendment contains a provision that amends section 106(b) of CERCLA to authorize the reimbursement of potentially responsible parties for response costs under certain circumstances.

House amendment—Section 113 of the House amendment contains a provision on reimbursement comparable to that set forth in the Senate amendment. The House amendment is also drafted as an amendment to section 106(b) of CERCLA.

Conference substitute—The conference substitute adopts new section 106(b)(2) of CERCLA as set forth in the House amendment, with modifications. This new provision authorizes reimbursement for certain

parties and the procedures for obtaining such reimbursement.

SECTION 107—LIABILITY

FOREIGN VESSELS

Senate amendment—The Senate amendment amends sections 107(a)(1) to strike "(otherwise subject to the jurisdiction of the United States)," making it clear that liability under CERCLA applies to releases from foreign vessels.

House amendment—The House amendment contains an identical provision.

Conference substitute—The conference substitute adopts the identical provisions of both bills.

COSTS AND DAMAGES

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment amends section 107(a) to clarify that all costs incurred by the United States or a State under section 104(b) and the costs of any health assessment or health effects study carried out under the expanded health authorities provisions, are recoverable costs under section 107. In addition, the House amendment provides that amounts recoverable under section 107 include interest accruing from 90 days after the date on which an action for recovery of such amounts is filed. The rate of interest is the same as that for investments of the Fund.

Conference substitute—The conference substitute amends section 107(a) to clarify that the costs of any health assessment or health effects study carried out under section 104(i) are recoverable costs under section 107. The reference to section 104(b) costs in the House amendment was deleted, since such costs are defined as costs of response in current law. The conference substitute provides that amounts recoverable under section 107 include interest accruing from the later of the date payment is demanded in writing or the date of the expenditure concerned. The rate of interest is the same as that for investments of the Fund.

EMERGENCY RESPONSE ACTIONS

Senate amendment—The Senate amendment adds a new paragraph to section 107(d) providing that State and local governments are not liable under this Act for non-negligent actions taken in response to an emergency created by the release of a hazardous substance generated by, or from a facility owned by, another person.

House amendment—The House amendment strikes "damages" in section 107(d), inserting "costs and damages," and adding a sentence clarifying that this subsection does not affect the liability of a potentially responsible party who subsequently undertakes a response action. A new paragraph is added, providing that Federal, State, and local government agencies are not liable under this Act for non-negligent actions taken in response to an emergency created by the release of a hazardous substance from a vessel, facility, or site owned by another person. A person retained or hired by a State to take any emergency response action is treated the same as the State.

Conference substitute—The conference substitute amends section 107(d) to provide that a person will not be liable under this Act for their non-negligent actions taken or omitted in the course of rendering care, assistance, or advice in accordance with the NCP or at the direction of an on-scene coordinator. A new paragraph is added, providing that State and local governments are not liable under this Act (other than for costs or damages due to gross negligence or intentional misconduct) for actions taken in response to an emergency created by the release of a hazardous substance generated by, or from a facility owned by, another person. Another new paragraph clarifies that this subsection does not apply to or alter the liability of any potentially responsible party who is otherwise covered by section 107(a).

The conference substitute retains the scope of the Senate version on the types of releases to which subsection (d)(2) applies. Subsection (d)(2) applies not only to emergency actions in response to releases or threatened releases of hazardous substances from a facility owned by a person other than a State or local government, but also to such actions concerning releases of a hazardous substance generated by a person other than a State or local government. If a State or local government nonnegligently causes damage in responding to an emergency arising out of the release of a hazardous substance generated by another person at a site which it controls through bankruptcy or other involuntary acquisition, it will not be liable under this section even though it is considered an "owner" of the facility because it has contributed to the release or threatened release from the facility in the course of responding to the emergency.

NATURAL RESOURCES

Senate amendment—The Senate amendment amends section 107(f) to relocate and modify the provisions of sections 111(h) of current law. Under new section 107(f)(2), the President shall designate in the NCP the Federal officials to act as trustees and to assess natural resource damages for the purposes of this Act and section 311 of the Clean Water Act. Such Federal trustees may, at the request of a State, assess natural resource damages for a State. Subsection (f)(2)(B) clarifies that the Governor may designate State officials to act as trustee and assess natural resource damages for natural resources under State trusteeship. Any determination or assessment of damages to natural resources made by a Federal or State trustee in accordance with the regulations promulgated in accordance with section 301(c) of the Act have the force and effect of a rebuttable presumption on behalf of the trustee in any adminsitrative or judicial proceeding under this Act or section 311 of the Clean Water Act. The President is required to promulgate the regulations required under section 301(c) of CERCLA not later than six months after enactment.

House amendment—The House amendment amends section 107(f) to relocate and modify the provisions of sections 111(h) of current law. Under new section 107(f)(2), the Federal officals designated to act as trustees under the NCP are to assess natural resource damages for the purposes of this Act and section 311 of the Clean Water Act. Such Federal trustees may, at the request of a State, assess natural resource damages for a State. Subsection (f)(2)(B) clarifies that the Governor may designate State officials to act as trustee and assess natural resource damages for natural resources under State trusteeship. Any determination or assessment of damages to natural resources made by a Federal or State trustee in accordance with the regulations promulgated in accordance with section 301(c) of the Act have the force and effect of a rebuttable presumption on behalf of the trustee in any administrative or judicial proceeding under this Act or section 311 of the Clean Water Act. Section 107(f)(1) (as redesignated by this amendment) is amended to authorize the Administrator to retain, without further appropriation, sums recovered by the United States as trustee, and use such sums to restore, replace, or acquire the equivalent of injured natural resources.

Conference substitute—The conference substitute adopts the Senate amendment to section 107(f)(2) and the House amendment to section 107(f)(1), modifying it so that the trustee, rather than the Administrator, retains the recovered funds for use without further appropriation. A trustee may use recovered funds retained under this provision to defray costs expended for damage assessment. In addition, section 107(f) is amended to clarify that there can be no double recovery for the same money damages under this subsection. The conference substitute adopts the Senate provision that directed the President to promulgate the regulations for assessing damages to natural resources under section 301 of CERCLA not later than six months after enactment, but relocates it as an amendment to section 301 itself. The deadline established by these amendments differs from that currently imposed by the court in *New Jersey* v. *Ruckelshaus*, Civil Action No. 84-1668 (JWB) (D.C.N.J. 1984), solely for the purpose of allowing additional time, if necessary, for reproposal of regulations required by section 301(c) should those initially submitted to the court be inadequate. While acknowledging the failure of the President to promulgate those regulations, this amendment does not sanction that failure or any further delay unless it is essential to assure the adequacy of the regulations. The court is to retain jurisdiction in *New Jersey* v. *Ruckelshaus* to assure compliance with not only this new provision of law, but that of the original requirement as well. Regulations were proposed under this section in December, 1985, and it may be necessary to repropose this regulation to come into conformity with the provisions of section 301(c) and the amendments to section 107(f).

FEDERAL LIEN

Senate amendment—The Senate amendment amends section 107 to provide that all costs and damages for which a person is liable to the United States under this section shall constitute a lien in favor of the United States on all real property and related rights subject to or affected by a response action. Such costs may be recovered in an action in rem in Federal district court.

House amendment—The House amendment amends section 107 to provide that all costs and damages for which a person is liable to the United States under this section shall constitute a lien in favor of the United States on all real property and related rights subject to or affected by a response action. All costs and damages for which the owner or operator of a vessel is liable to the United States under this section shall constitute a maritime lien in favor of the United States on such vessel. Such costs may be recovered in an action in rem in Federal district court.

Conference substitute—The conference substitute adopts the House provision.

SECTION 108—FINANCIAL RESPONSIBILITY

Senate amendment—The Senate amendment designates acceptable alternative methods of establishing financial responsibility and authorizes the Administrator to specify policy or other contractual terms; sets out defenses available in case of direct action against an insurer arising out of a

claim authorized by section 107 or 111; establishes total liability under the Act of any guarantor and provides that nothing in this subsection shall be construed to limit any other State or Federal statutory, contractual or common law liability of a guarantor.

House amendment—The House amendment establishes a deadline for promulgation of financial responsibility regulations; designates acceptable alternate methods of establishing financial responsibility and authorizes the Administrator to specify policy or other contractual terms; amends the existing phase-in period for imposition of financial responsibility requirements; sets out defenses available in case of direct action against an insurer arising out of vessels and other facilities; establishes total liability under the Act of any guarantor and provides that nothing in this subsection shall be construed to limit any other State or Federal statutory, contractual or common law liability of a guarantor.

Conference substitute—The conference substitute adopts the House provision with the following changes:

(1) Eliminates the deadline for promulgation of financial responsibility regulations.

(2) Substitutes the following for the provision regarding the total liability of guarantors in a direct action:

The total liability of any guarantor in a direct action suit brought under this section shall be limited to the aggregate amount of the monetary limits of the policy of insurance, guarantee, surety bond, letter of credit, or similar instrument obtained from the guarantor by the person subject to liability under section 107 for the purpose of satisfying the requirement for evidence of financial responsibility.

SECTION 109—PENALTIES

Senate amendment—The Senate amendment increases existing criminal penalties for various violations and further increases criminal penalties for subsequent violations. In addition, it establishes administrative civil penalties for certain offenses, graduated with increasing severity for subsequent violations. Administrative civil penalties may be assessed after notice and an opportunity for a hearing. District Court review of the penalty is on the record.

House amendment—The House amendment increases existing civil and criminal penalties for various violations and establishes civil penalties as supplements to some of the existing criminal penalty provisions. In addition, several new violations are made subject to civil and criminal penalties. Civil penalties are to be assessed and collected under procedures set forth in section 16 of the Toxic Substances Control Act, which requires formal administrative hearings and Court of Appeals review.

Conference substitute—The conference substitute combines provisions from the House and Senate amendments to provide increased penalties for civil and criminal violations of the law and to provide new authority to assess civil penalties administratively. Monetary fines for criminal violations will, as in the House amendment, be as set forth in the uniform criminal code. The relevant sections of the U.S. Code are currently located in title 18, sections 3623 and 3571. Potential imprisonment will be set at up to three years for first offenses, as in the House amendment, and up to five years for subsequent convictions, as in the Senate amendment. Civil penalties of up to $25,000 per day, increasing up to $75,000 per day for subsequent violations, may be assessed administratively or judicially. Penalties of up to $25,000 per violation may be assessed administratively after notice and an opportunity for a hearing, as set forth in the Senate amendment. Judicial review of such a penalty shall be in the district court and based on the record. Penalties of up to $25,000 per day, increasing for subsequent violations, may be assessed administratively after an opportunity for a formal Administrative Procedures Act hearing. Judicial review of such a civil penalty shall be in the Court of Appeals for the District of Columbia. For any given violation, the government must choose from among the three approaches included in this section: informal administrative process; formal administrative process; or judicial process. A single violation shall not be subject to multiple civil penalties. Civil penalties for failure to comply with information-gathering and access authorities can only be assessed judicially.

The conference substitute provides for criminal penalties of three years/five years for: failure to provide notice of releases under section 103 or submission of information known to be false or misleading; destruction of records in violation of section 103; and, providing false information in claims against the fund under section 112. Monetary fines are set according to the uniform criminal code provisions of Title 18, United States Code, section 3623 (or 3571 if applicable) which provide automatic fines for all offenses. As in the House amendment, there may be an award of up to $10,000 for information leading to a conviction. Civil penalties apply for each of the following: failure to provide notice of releases as required under section 103 or submission of information under section 103 known to be false or misleading; destruction of records in violation of section 103; failure to comply with section 108 financial responsibility requirements; failure to comply with an order or request under the information-gathering and access authorities of section 104; and, failure to comply with an order, decree or agreement under section 122 (relating to settlements) or section 120 (relating to Federal facilities), including interagency agreements under section 120. The fine under section 106(b) is increased from $5,000 to $25,000.

SECTION 110—HEALTH-RELATED AUTHORITIES

Senate amendment—The Senate amendment is drafted as an amendment to section 104(i) of current law, which established the Agency for Toxic Substances and Disease Registry (ATSDR).

Under the Senate amendment, ATSDR and EPA are jointly required to prepare a list of the hazardous substances most commonly found at Superfund sites. Within 6 months after enactment, ATSDR must list at least 100 such substances. Within 24 months after enactment, ATSDR must list at least 100 additional substances, and must list an appropriate additional number at least once every year thereafter.

The Senate amendment then requires ATSDR to prepare toxicological profiles on listed substances sufficient to establish the likely effect of each substance on human health, and to revise the profiles no less often than once every 5 years.

Where adequate information is not available on the health effects of a listed hazardous substance, the Senate amendment requires the Administrator of ATSDR to assure the initiation of a health effects research program. The Senate provision specifically outlines what should be the basic elements of such a research program, and requires that the Administrators of ATSDR and EPA coordinate the research program with the National Toxicology Program and with toxicological testing undertaken pursuant to the Toxic Substances Control Act (TSCA) and the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA).

The Senate amendment expresses the sense of the Congress that the costs of the research program shall be borne by the manufacturers and processors of the hazardous substance in question. Where this is not possible, the Senate amendment establishes that the costs of the research program are defined as a cost of response under section 107 of this Act, so as to be recovered from parties responsible for the release of the hazardous substances.

The Senate amendment requires the Administrator of ATSDR to perform a health assessment for each release, threatened release or facility on the National Priorities List, and establishes a schedule for the completion of such assessments. In addition, health assessments are mandated for facilities under section 3019 of the Solid Waste Disposal Act.

The Senate amendment also establishes a process whereby individuals or physicians may petition the Administrator of ATSDR to perform health assessments. In response to a petition, the Administrator of ATSDR must either initiate the health assessment or provide a written explanation of why one is not appropriate.

The Senate amendment describes a health assessment as including preliminary assessments of the potential risk to human health posed by individual sites and facilities, based on a number of factors, such as the nature and extent of the contamination, potential pathways of human exposure and the size and potential susceptibility of the affected community. The assessment is also required to include an evaluation of the health risks posed by all sources of the contaminants in question, including known point or nonpoint sources other than the subject site or facility, and to use appropriate data available from the Administrator of EPA. The Senate amendment further states that the purpose of a health assessment is to aid in determining whether additional health studies and medical evaluations need be undertaken.

Under the Senate amendment, the Administrator of ATSDR is required, upon completion of a health assessment, to provide the Administrator of EPA and the State concerned with the results of the assessment, together with any recommendations for further action which may be necessary at the facility.

The Senate amendment provides that the costs of performing a health assessment may be recovered as a cost of response under section 107 of this Act, where the assessment discloses exposure of a population to a release of hazardous substances.

The Senate amendment further directs the Administrator of ATSDR to undertake pilot health effects studies and/or full-scale epidemiological studies where, in the judgment of the Administrator of ATSDR, such studies are appropriate based on the results of the health assessment or other study. In cases where a health assessment indicates a potential significant risk to human health, the Senate amendment also requires the Administrator of ATSDR to consider whether establishing a registry of exposed persons would be useful, taking into account such factors as the seriousness of identified diseases or the likelihood of population migration from the affected area.

The Senate amendment requires the Administrator of ATSDR to undertake a study and report to Congress on the usefulness of establishing a health surveillance program.

In the event that a health assessment or other study conducted under section 104(i) identifies a significant health risk to individuals exposed to hazardous substances, the Senate amendment requires the President to take whatever steps may be necessary to reduce the exposure and eliminate or substantially reduce the risk. Such steps may include providing alternate household water supplies or relocating a population.

All studies and results of research performed under the authority of this subsection (other than health assessments) are required by the Senate amendment to be peer reviewed prior to being reported or adopted. In addition, the Senate amendment authorizes the Administrator of ATSDR to establish a program for the education of physicians and other health professionals on methods of diagnosis and treatment of injury or disease related to exposure to hazardous substances. ATSDR is required to report to the Congress within 2 years after enactment on the implementation of the educational program.

House amendment—The House amendment repeals section 104(i) of current law, moving the health-related authorities already contained therein to a new section 116. The House amendment also adds several new health-related authorities and requirements in section 116.

The House amendment establishes the Agency for Toxic Substances and Disease Registry (ATSDR). ATSDR is required to establish a list of areas closed to the public or otherwise restricted due to contamination by hazardous substances, and, together with EPA, to prepare a list of the most commonly found hazardous substances at Superfund sites. Within 6 months after enactment, ATSDR must list at least 100 such substances. Within 24 months after enactment, ATSDR must list an additional 100 substances, and in each of the following three years, must add at least 25 more substances to the list. ATSDR is then required to prepare toxicological profiles on all the listed substances, according to guidelines developed jointly with the Administrator of EPA. The House amendment notes specifically the type of information which such profiles must at a minimum contain.

Where adequate information is not available for any hazardous substance, ATSDR must assure the initiation of a research program designed to determine the health effects of such substance(s). This research program is to be coordinated between EPA and ATSDR, and may be carried out using programs already established under TSCA and FIFRA.

The House amendment requires that ATSDR perform a health assessment for each facility on the National Priorities List (NPL) which meets specified criteria. In addition, a process whereby individuals may petition ATSDR to perform a health assessment is established. Petitions must include evidence adequate to demonstrate that there has been some exposure to a hazardous substance. Within 45 days after receipt of such a petition, ATSDR must exercise one of several options, including initiating a health assessment, issuing a determination that an assessment is not necessary, or requesting more information.

The House amendment defines "health assessment" as a determination of the potential individual and population health risks posed by a facility, and sets out certain factors upon which such a determination should be based, such as the nature and extent of the contamination, potential pathways of human exposure, and the size and potential susceptibility of the affected community. Where a health assessment identifies a significant excess of disease in a population, the assessment must include, to the maximum extent practicable, an assessment of attributable risk. The purpose of a health assessment is to aid in deciding what further actions, taken either by ATSDR under the authority of this section or by EPA under its authorities under this Act, are necessary.

The House amendment further requires that, upon completion of a health assessment, ATSDR must provide the Administrator of EPA and each affected State with the results of the assessment, including recommendations concerning the need to further reduce exposure to hazardous substances.

Under the House amendment, the costs of performing a health assessment may be recovered as a cost of response under the authority of section 107 of this Act, where the assessment discloses exposure of a population to a release of a hazardous substance from a facility.

The House amendment then directs the Administrator of ATSDR to perform pilot health effects studies or full-scale epidemiological studies where, in the judgment of the Administrator of ATSDR, such studies are appropriate based on the results of a health assessment of other study.

In any case where a health assessment or epidemiological study indicates a potential or observed significant risk to human health, the House amendment directs the Administrator of ATSDR to establish a registry of persons exposed to hazardous substances if, after evaluation, the Administrator of ATSDR determines that the registry could benefit its participants by prevention or early detection of serious adverse health effects, or by providing information not currently available on the human health effects of such exposure.

The House amendment further requires the ATSDR Administrator to establish a health surveillance program where the ATSDR Administrator has determined, based on a health assessment, epidemiological study, or exposure registry, that there exists a significant increased risk of adverse health effects in humans. The health surveillance program must include at a minimum periodic medical testing where appropriate and a mechanism to refer for treatment those individuals who test positive for diseases.

In addition, where a health assessment or other study identifies a significant risk to human health from exposure to hazardous substances, the House amendment requires the Administrator of EPA to take whatever steps may be necessary to abate the risk. Such steps may include providing alternate household water supplies or relocating the population. In cases of public health emergencies believed to be caused by exposure to hazardous substances, the House amendment directs the Administrator of ATSDR to arrange for medical care and testing to be provided to exposed individuals, and to offer assistance to any local and State health authorities providing such services.

All studies and results of research performed under the authority of this section (other than health assessments) are required by the House amendment to be peer reviewed prior to being reported or adopted. ATSDR is further required to assemble, develop where necessary, and distribute educational materials related to the human health effects of exposure to hazardous substances and methods of diagnosis and treatment of such health effects.

Finally, the House amendment makes it clear that the Administrator of ATSDR has the same authorities under this section with respect to facilities owned or operated by a department, agency or instrumentality of the United States as the Administrator of ATSDR has with respect to any nongovernmental entity.

Conference substitute—The conference substitute follows the format of the Senate amendment in amending section 104(i) of current law, rather than repealing section 104(i) and creating a new section.

Thus, there is no need to retain subsections 116 (a) and (b) of the House amendment, that establish the ATSDR, so these provisions were not included in the conference substitute, nor was section 116(c) of the House amendment, requiring the establishment of a list of restricted areas, because this requirement also exists in section 104(i) of current law.

The conference substitute adopts the House amendment requiring preparation of a list of substances found at Superfund sites for which toxicological profiles must be prepared, with one minor addition from the Senate provision. The conference substitute also adopts the House amendment requiring preparation of toxicological profiles, with two modifications. First, House section 116(e)(2)(C) regarding toxicological testing is deleted, and a new subparagraph ((C) is inserted. New subparagraph (C) requires that, where appropriate, toxicological profiles shall contain an identification of toxicological testing needed to identify the types or levels of exposure that may present significant risk of adverse health effects in humans. Second, a new sentence has been added stating that any toxicological profile or revision thereof shall reflect the Administrator of ATSDR's assessment of all relevant toxicological testing. It is within the discretion of the Administrator of ATSDR to determine what toxicological testing is relevant.

The conference substitute adopts the Senate amendment requiring establishment of a health effects research program, with the addition of one sentence from the House bill requiring the Administrator of ATSDR to consider recommendations of the Interagency Testing Committee established under the Toxic Substances Control Act prior to assuring the initiation of the health effects research program. The conference substitute also adopts the Senate amendment requiring coordination of the health effects research program with other such programs already established under TSCA and FIFRA. However, the conference substitute deletes the Senate provision which sets out the circumstances under which the costs associated with conducting the health effects research program may be recovered, and adopts instead new language requiring the Administrator of EPA to promulgate regulations to govern payment of such costs.

The conference substitute also adopts primarily the Senate amendment requiring the performance of health assessments, with minor and technical changes, except that the conference substitute does not include the phrase "release, threatened release, or" where it appears in the Senate language on performing health assessments at facilities

listed on the NPL. This phrase is deleted since facilities listed on the NPL always include releases or threatened releases of hazardous substances.

The conference substitute adopts the Senate amendment authorizing the Administrator of ATSDR to perform health assessments upon receipt of petitions from individuals or licensed physicians to perform such assessments.

The conference substitute also adopts the Senate amendment stating the definition of a health assessment, with minor changes. The conference substitute adopts the House language stating the purpose of health assessments, and adopts a combination of the House and Senate provisions requiring the Administrator of ATSDR to report results and recommendations upon completion of a health assessment.

A recommendation made by the Administrator of ATSDR or a State or local health official under this section does not diminish the responsibility of the Administrator of EPA to select a response action which complies with other requirements of this Act or the National Contingency Plan.

The conference substitute deletes the authority for recovery of costs associated with the performance of health assessments in both the House and Senate amendments, since that authority is covered in the conference substitute's amendments to section 107 of current law.

The conference substitute adopts the House amendment setting out circumstances under which pilot health effects studies and full-scale epidemiological studies should be performed, with the addition of one additional requirement for a letter of transmittal to accompany such study upon completion where the study has identified a significant excess of disease in a population.

The conference substitute adopts the Senate amendment establishing a registry of exposed persons, and adopts the House amendment requiring the initiation of health surveillance programs. Thus, under the conference substitute, the Administrator of ATSDR is required to establish a health surveillance program where the Administrator of ATSDR determines, based on a health assessment, epidemiological study, or exposure registry, that there exists a significant increased risk of adverse health effects in humans. In such a circumstance, the term "significant" increased risk is defined to include increased risks to individuals or the entire exposed community. Such increased risks would be determined through review of the whole body of data available to ATSDR, including any environmental or biological sampling data, as well as all available toxicologic information. To be considered a significant increased risk for adverse health effects, the health effect must be a medically (or biologically) plausible effect from exposure to the substance(s) in question.

It is important to note that the term "significant" does not necessarily mean statistically significant. In scientific terminology, the phrase "statistically significant" commonly refers to results that have a confidence value of 95 percent or better. There may well be instances where a health assessment, epidemiologic study or toxicological testing will not have shown statistical significance at the 95 percent confidence level, but that a health surveillance program should be initiated because the adverse health effects are so serious, or the whole body of literature strongly suggests a correlation between exposure and adverse health effects.

The conference substitute adopts a combination of the House and Senate amendments requiring the Administrator of EPA to take certain steps (such as providing alternate household water supplies or relocating a population) to abate a significant risk from exposure to hazardous substances. The conference substitute deletes the House amendment setting out the duties of the Administrator of ATSDR during public health emergencies caused by exposure to hazardous substances, consistent with adopting the Senate approach of amending section 104(i) of current law, since this provision is already contained therein.

The conference substitute adopts the Senate amendment requiring peer review of studies and results of research conducted under this section, with the addition of one House provision setting a target for completion of the peer review. The conference substitute adopts the House amendment that requires ATSDR to develop, where necessary, and distribute educational materials, and adds authority not explicitly contained in the House amendment for ATSDR to provide direct educational services through short courses.

Finally, the conference substitute adopts the House amendment clarifying and confirming that ATSDR has the same authorities with respect to facilities owned or operated by the Federal Government as it has with respect to any nongovernmental entity.

SECTION 111—USES OF THE FUND

SUBSECTION (a)—AMOUNT OF FUND

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—Subsection (a) of section 111 of the House amendment authorizes $1,830,000 for each of the five fiscal years, beginning after September 30, 1985. This amount is increased in any year by an amount equal to so much of the aggregate amount authorized to be appropriated as has not been appropriated before the beginning of the fiscal year involved.

Conference substitute—The conference substitute authorizes appropriations of $8.5 billion during a five-year period beginning on the date of enactment. This authorization also includes any funds that have been appropriated for the 1986 fiscal year pursuant to title II of Public Law 99-160.

SUBSECTION (b)—USES OF FUNDS SECTION 111(a)

Senate amendment—Section 138 of the Senate amendment authorizes the establishment of pilot programs for the removal or permanent treatment (e.g. decontamination) of lead-contaminated soil. These programs are to be conducted in one to three metropolitan areas where the threat to health due to lead contamination—particularly in children—has become acute. They are likely to be urban areas with older housing stock where an accumulation of lead exists in the soil surrounding residential dwellings or other structures with exterior, lead-based paint.

The pilot programs are designed to provide Federal and State governments with information that could serve as the basis for a future, more comprehensive response to hazardous concentrations of lead in the environment.

House amendment—Section 111(b) of the House amendment provides that the Fund may be used to make technical assistance grants under section 117(e) to groups of individuals that may be affected by releases from facilities on the National Priorities List.

Conference substitute—The conference substitute adopts both the House and Senate provisions. The Senate provision is broadened to include actions by the Administrator to remove, decontaminate or take other action with respect to soils that contain lead at the demonstration sites. The pilot projects are not limited as to time or expenditure amounts under section 104(c)(1), nor is cost-sharing from the State in which a site is located required.

SUBSECTION (c)—NATURAL RESOURCE DAMAGE CLAIMS

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—Section 111(f) of the House amendment limits payments from the Fund for natural resource claims to those for which the claimant has exhausted all administrative and judicial remedies to recover from potentially liable parties. The exhaustion requirement does not apply to claims for the costs of natural resource damage assessments. Natural resource claims filed after December 1, 1985, may be paid only if damage assessments have been carried out in accordance with regulations issued by the Secretary of the Interior. Claims pending as of December 1, 1985, may be paid, but the total paid for all such claims may not exceed 50 percent of the total amount claimed, as determined by the Administrator.

Conference substitute.—The conference substitute adopts the House amendment with modifications. Payments for claims filed before December 1, 1985, are not restricted. The specific requirement that claims filed after December 1, 1985, be limited to assessments carried out in accordance with Interior Department regulations is deleted. Where, with reasonable diligence, jurisdiction in the Federal courts cannot be obtained over a responsible party likely to be solvent at the time of judgment, a claimant has exhausted all administrative and judicial remedies.

SUBSECTION (d)—SUBSECTION (c) AMENDMENTS

Senate amendment—The Senate amendment to subsection (c)(4) adds references to subsection (n) and section 104(i), relating to the ATSDR, and incorporates laboratory studies and health assessments.

House amendment—The House amendment modifies section 111(c) to provide that the term "health assessment" as used in paragraph (4) has the same meaning as section 116(f)(7).

Furthermore, section 111(d) of the House amendment adds the following purposes or activities for which the Fund may be used:

Petitions: Costs incurred by the Administrator in evaluating facilities pursuant to petitions submitted by any person who is or may be affected by a release or threatened release of a hazardous substance or pollutant or contaminant.

Oversight: The costs of (1) appropriate Federal and State oversight of remedial activities at National Priorities List sites resulting from consent orders or settlement agreements where the responsible party or parties have been determined, but inadequate oversight assistance has been provided by such party or parties, and (2) costs of contracts under section 104(a)(1).

Real Estate Acquisition: Costs incurred by the Administrator in acquiring real estate or interests in real estate under authority provided in the House amendment.

Research and Development: The costs of carrying out research, development, and demonstration of alternative and innovative

treatment technologies, hazardous waste research, and research at university centers.

Local Emergency Measures: Reimbursements to local governments for temporary emergency measures and protection of drinking water supplies, with not to exceed 0.1 percent of the total amount appropriated from the Fund to be used for such purposes.

Worker Training: The cost of worker training and education grants to the extent that these costs do not exceed $10 million for each of the fiscal years 1986 through 1990.

Rewards: The costs of paying awards to individuals for information leading to arrest and conviction of any person subject to a criminal penalty under the Act.

Conference substitute—The conference substitute adopts the Senate amendment to subsection (c)(4) with modifications to provide that all costs under section 104(i) can be paid from the Fund. The conference substitute adopts the House amendment in section 111(d)(2) with the following modifications. The substitute (1) incorporates the term "arrangements" into section 111(c)(8) to parallel the provisions of section 104(a)(1) and drops the language relating to inadequate oversight assistance; (2) adopts a more general reference to section 311 in section 111(c)(10); and (3) adds a new paragraph (14) relating to the lead poisoning study authorized by section 118.

SUBSECTION (e)—LIMITATION ON CERTAIN CLAIMS

Senate amendment—Section 134(b) of the Senate amendment prohibits payments from the Fund for natural resource damages in any year for which the President determines that all of the fund is needed for response to threats to public health.

House amendment—Section 111(g) of the House amendment contains a technical amendment which provides that claims against the Fund shall not be valid or paid in excess of the total money in the Fund at any one time. The amendment limits the reference to claims to those for response costs "by any other person."

Conference substitute—The conference substitute adopts the Senate provision and deletes the House provision.

SUBSECTION (f)—WATER SUPPLIES BEYOND FEDERAL BOUNDARIES

Senate amendment—Section 140 of the Senate amendment amends section 111(e)(3) of the Act to provide that the Fund can be used to pay for alternative water supplies in cases involving federally-owned facilities, where groundwater contamination exists beyond the federal property boundary and the federally-owned facility is not the only potentially responsible party. This would include reimbursement of funds already spent by a municipality.

House amendment—The House amendment contains no comparable provision.

Conference substitute—The conference substitute adopts the Senate provision.

SUBSECTION (g)—INSPECTOR GENERAL AUDITS

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—Section 111(h) of the House amendment replaces the provisions in current law concerning audits by Inspectors General of the agencies charged with responsibility for implementing the Superfund program. The new provision requires annual audits and submission of an annual report to the Congress summarizing the audit's findings. Each such report must include: (1) an audit of all payments, obligations, reimbursements or other uses of the Hazardous Substance Response Trust Fund to assure that the Fund is being properly administered; (2) a report on the status of all remedial and enforcement actions undertaken during the prior fiscal year; and (3) an estimate of the amount of resources, including the numbers of work years of personnel, which will be necessary for the relevant agencies to fulfill their statutory mandates.

Conference substitute—The conference substitute adopts the House amendment with modifications. The annual status report on remedial and enforcement actions and the resource estimate that were specifically assigned to the Inspector General by the House amendment is incorporated at a later point in the substitute as a general requirement for EPA's annual report. The Inspector General is to review these items in the EPA annual report. The Inspector General is also required to comply with the provisions of the Single Audit Act when conducting audits and reviews of Superfund payments and obligations.

SUBSECTION (h)—NEW SUBSECTIONS

Subsection (h) adds three new subsections to section 111 of CERCLA. Each subsection is described separately below:

SUBSECTION (h)(1)—AGENCY FOR TOXIC SUBSTANCES AND DISEASE REGISTRY

Senate amendment—The Senate amendment provides that in each fiscal year beginning in 1986 not less than 5 percent of the funds appropriated from the Fund would be directly available to the Agency for Toxic Substances and Disease Registry (ATSDR) to carry out the responsibilities assigned to ATSDR by the Act.

House amendment—Section 111(j) of the House amendment provides that for fiscal year 1986 and each fiscal year thereafter, not less than $30 million should be directly available from the Fund to the ATSDR for carrying out health effects research and public health assessment and protection activities.

Conference substitute—The conference substitute provides that not less than $50,000,000 in fiscal year 1987 and 1988, not less than $55,000,000 in 1988 and 1989 and not less than $60,000,000 in 1990 and 1991 shall be directly available to ATSDR to carry out activities under subsection (c)(4) and section 104(i).

SUBSECTION (h)(2)—LIMITATIONS ON RESEARCH AND DEVELOPMENT

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—Section 111(k) of the House amendment establishes the following limitations on funding from the Fund for research and development programs:

No more than $20 million for each fiscal year 1986–90, for research, development and demonstration of innovative or alternative technologies under section 311(b);

For hazardous substance research, demonstration and training programs under section 311(a): 1986, $3 million; 1987, $10 million; 1988, $20 million; 1989, $30 million; and 1990, $35 million. No more than 10 percent of such amounts in each year may be used for training under section 311(a).

For each fiscal year 1986–90, no more than $5 million for university hazardous substance research centers under section 311(d).

Conference substitute—The conference substitute adopts the House amendment with modifications to years of authorization.

SUBSECTION (h)(3)—NOTIFICATION PROCEDURES

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—Section 111(c) of the House amendment modifies section 111(a)(2) of CERCLA to authorize the Administrator to require "preauthorization" of claims against the Fund. Section 111(c) of the House amendment also contains amendments to section 112 of CERCLA. Those amendments are discussed in conjunction with section 112 of the conference substitute, below. Finally, section 111(1) of the House amendment proposes a new section 111(p), titled "Notification Procedures for Limitations on Certain Payments," which requires the Administrator to notify State and local officials and other concerned persons of the limitations on payment of claims from the Fund as soon as a site is listed on the National Priorities List.

Conference substitute—The conference substitute adopts only that portion of the House amendment relating to notifying State and local officials of the limitations on paying claims against the Fund when a site is listed on the National Priorities List. This amendment does not relate to the issue of preauthorization.

The conference substitute deletes the House amendment to section 111(a)(2) of CERCLA. The conferees agree that current law is adequate as it relates to payment of claims for necessary response costs incurred by any other person as a result of carrying out the National Contingency Plan and that no amendments to section 111(a)(2) are necessary.

OTHER MONETARY AUTHORIZATIONS

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—Section 111(i) of the House amendment provides that there is authorized to be appropriated out of any money in the Treasury to the Hazardous Substance Superfund $250 million per year for fiscal years 1986 through 1990. This amount is available only to the extent that it exceeds amounts recovered on behalf of the Trust Fund for the prior fiscal year. In addition there is authorized to be appropriated to the Fund for each fiscal year an amount equal to so much of the aggregate amount authorized to be appropriated as has not been appropriated before the beginning of the fiscal year.

Conference substitute—The conference substitute authorizes to be appropriated $212.5 million per fiscal year for fiscal years 1987 through 1991.

SECTION 112—CLAIMS PROCEDURE

SUBSECTION (a)—CLAIMS AGAINST THE FUND FOR RESPONSE COSTS

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—Section 111(c)(2) of the House amendment amends section 112(a) of the Act, which contains a 60-day presentation requirement prior to the initiation of claims against the Fund, to specify that no claim against the Fund may be considered during the pendency of a civil action brought by the claimant to recover costs which are the subject of the claim.

Conference substitute—The conference substitute adopts section 111(c)(2) and (3) of the House amendment with the following modifications. First, the reference to section 111(a) in the new section 112(a) is corrected. Second, the proviso is modified to provide that no claim against the fund may be approved or certified during the pendency of

an action by the claimant in court to recover costs which are the subject of the claim.

Section 112(a) of current law contains a sixty-day presentation requirement relating to the initiation of claims against the Fund. Because of the absence of adequate guidance of the procedure for filing such claims, the failure of Federal or State natural resource trustees to comply with this requirement does not constitute a bar to the trustees from maintaining a claim against the Fund prior to December 11, 1983. The sixty-day presentation requirement has never applied to civil actions, nor is the selection of remedies authorized in section 112(a) irrevocable.

SUBSECTION (b)—PROCEDURES

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—Section 111(c)(3) of the House amendment proposes to raise the penalty for providing false information in a claim from $5,000 to $25,000 and strikes all of paragraphs (2), (3) and (4) of section 112(b), which contains settlement authorities and procedures for resolving disputed claims before a Board of Arbitrators. In lieu thereof, the House amendment proposes an administrative procedure by which claimants may challenge a decision of the President to reject all or part of a claim.

Conference substitute—The conference substitute adopts the House amendment to section 111(c)(3) with the following modifications. First, the modification to the penalty provision in section 112(b) is incorporated into section 109, pertaining to penalties. Finally, the conference substsitute provides that the amendments to section 112(a) shall not apply with respect to claims filed before the enactment of the subsection.

SUBSECTION (c)—STATUTE OF LIMITATIONS

Senate amendment—Section 142(b) of the Senate amendment adds a new section 113 to CERCLA which provides statute of limitations for both civil actions under the Act and claims against the Fund. This section of the conference report addresses claims against the Fund only; section 113 addresses, *inter alia*, statute of limitations for civil actions. The proposed section 113 specifies that no claim may be presented against the Fund for the costs of response unless the claim is presented within six years after the date of completion of the response action. Within the limitation period, a State or the United States may commence an action under this title for recovery of any costs at any time after such costs have been incurred. The Senate provision requires claims for natural resource damages to be initiated within six years after promulgation of regulation under section 301(c), or three years after the date of discovery of loss and its connection with the release in question, whichever is later.

House amendment—Section 112 of the House amendment proposes to amend section 112(d) of CERCLA to provide a six-year statute of limitations for claims for the recovery of costs referred to in section 107(a), running after the date of the completion of all response action. The provision also retains current law relating to the running of the statute of limitations against a minor or incompetent, as currently contained in section 112(c)(3). The House amendment does not contain a time limit for filing claims for natural resource damages.

Conference substitute—The conference substitute adopts the House amendment to section 112(d) of CERCLA with the following modification. The provision includes a new subsection (d)(2) relating to claims for the recovery of natural resources damages, which provides that no claim may be presented under this section for the recovery of damages referred to in section 107(a) unless the claim is presented within three years after the date of discovery of the loss and its connection with the release in question, or the date on which final regulations are promulgated under section 301(c), whichever is later.

SUBSECTION (d)—DOUBLE RECOVERY

Senate amendment—The Senate amendment contains no provision relating to this subject.

House amendment—The House amendment contains no comparable provision.

Conference substitute—The conference substitute provides for a new section (f) to section 112 providing that where the President has paid out of the Fund any response costs or any costs specified under section 111(c)(1) or (2), no other claim may be paid out of the Fund for the same costs. This amendment to section 112, as well as the amendment to section 107(f), assures that there is no double recovery for natural resources damages, including the costs of damages assessment, restoration, rehabilitation, or acquisition in the case of injury to natural resources. These amendments are not intended to prohibit different claims or actions for different damages stemming from the same injury to the same natural resource. Nor are the amendments intended to affect the abilities of trustees to initiate or participate as co-claimants or co-plaintiffs where otherwise authorized to do so.

SECTION 113—LITIGATION, JURISDICTION, AND VENUE

Senate amendment—The Senate amendment proposes a number of modifications to CERCLA. First, it adds a new section 113(e) to CERCLA to clarify and confirm that nationwide service of process is available for suits instituted under CERCLA.

The Senate amendment adds a new section to CERCLA to clarify and confirm that parties found liable under sections 104, 106, and 107 of CERCLA have a right of contribution which would allow them to sue other liable or potentially liable persons. The provision also explicitly provides that parties who reach a judicially approved good faith settlement with the government are not liable for the contribution claims of other liable parties.

As to claims and actions for natural resources damages, the Senate amendment requires that claims be presented or actions commenced within three years after the discovery of the loss and its connection with the release in question or the date of enactment of this Act or within six years after the date on which final natural resource damage regulations are promulgated, whichever is later.

For response costs, the Senate amendment requires that claims be presented or actions commenced within six years after the date of completion of the response action.

The Senate amendment contains a provision which explicitly preserves the rights of minors or incompetents to file actions until such time as they become legally competent.

The Senate amendment, set forth in proposed new 113(f), provides for judicial review of the response under only three circumstances:

(1) cost-recovery actions under section 107;

(2) suits for abatement under section 106(a); or,

(3) suits to recover penalties under section 106(b).

Judicial review is based on an administrative record developed by the President with full opportunity for potentially responsible parties and other citizens to provide comment.

Under the Senate amendment, the burden of proof is on the party challenging the response to establish that the response "was not reasonably justified under the criteria set forth in the NCP, including the cost effectiveness of such action, or that the decision was not otherwise in accordance with law." If a challenging party prevails under this standard of review it nevertheless remains accountable for the cost of that portion of the response that was reasonably justified.

Finally, the Senate amendment contains provisions on reimbursement, expedited judicial review of permitting, and selection of the circuit court of venue for actions under CERCLA.

House amendment—The House amendment contains many of the same elements as the Senate amendment. All of its provisions are added to existing section 113 of CERCLA.

The House amendment establishes a new section 113(e) regarding nationwide service of process. It also establishes a new section 113(f) for authority by settling parties to seek contribution from non-settlors. This section protects settling parties from actions for contribution by others whether the settlement is incorporated in a consent decree or an administrative order.

For natural resource damages, the House amendment in new section 113(g) of CERCLA requires that a civil action be commenced within three years after the date of the discovery of the loss or of the promulgation of natural resource damage regulations, whichever is later. It also sets forth new statutes of limitations for civil actions for the recovery of response costs.

The House amendment, set forth in new section 113(h) of CERCLA, establishes the identical three circumstances under which judicial review of the remedy is available as does the Senate amendment. In addition, it explicitly provides for five additional circumstances in which judicial review can be obtained prior to implementation of the response action.

The House amendment also contains provisions regarding intervention, judicial review and the standard thereof, the administrative record and contents thereof, and reimbursement.

Conference substitute—The conference substitute adopts the language of the House amendment with clarifications and modifications. It also incorporates specific provisions from the Senate amendment.

The conference substitute adopts the language related to nationwide service of process that was contained in the House amendment. This provision, designated new section 113(e) of CERCLA, clarifies and confirms that nationwide service of process is available for suits instituted by the United States under CERCLA. Nothing in this section diminishes any right of any other person to secure nationwide service of process under any other authority.

The conference substitute adopts new section 113(f) as contained in the House amendments, and thus provides contribution protection for those who enter into administrative settlement agreements with the

government, as well as those who enter into consent decrees for settlements. In addition, the substitute makes technical and clarifying changes to this section. Finally, the substitute deletes the reference to the circumstances under which settlements can be set aside under new section 113(f)(2). This issue is now covered in new section 122(m) which deals directly with settlements.

With respect to civil actions for natural resource damages, the conference substitute adopts new section 113(g) of CERCLA as set forth in the House amendment, with clarifications and modifications. One modification, based on the Senate amendment, requires that a civil action be commenced within three years after the later of (1) the date of the discovery of the loss and its connection with the release in question or (2) the date on which final natural resource damage regulations are promulgated. This section further requires that civil actions for damages to natural resources generally be delayed until completion of the RI/FS at NPL sites and at certain other sites where the President is diligently proceeding with the RI/FS. The phrase "the President is diligently proceeding with a remedial investigation and feasibility study" includes cases where a potentially responsible party is performing an RI/FS under supervision of the President.

The Conferees have adopted these amendments relating to the time limits for initiating actions for natural resource damages because the ability for Federal and State trustees to pursue such claims and actions has been impaired by the failure of the President to promulgate regulations governing procedures for filing claims and assessing damages to natural resources. These amendments are intended to revive causes of action for natural resource damages that may have been foreclosed by the running of the statute of limitations relating to such actions under current law. A corresponding set of amendments in section 112 pertaining to the time limits for filing claims against the fund for natural resource damages is also intended to revive claims that may have been foreclosed.

As to the statute of limitations for civil actions for the recovery of response costs, the conference substitute adopts new section 113(g)(2) of CERCLA from the House amendment, with clarifying changes. This provision distinguishes between remedial actions and removal actions. The conference substitute also provides, as did the House amendment, for the entry of a declaratory judgment, which is to have a binding effect in future claims for future response costs as to the vessel or facility in question. This is consistent with the overall structure of CERCLA, which contemplates that the President may bring a series of claims for response costs under section 107, injunctive relief under section 106, or actions for access under section 104 with regard to a particular site or facility. If the President brings an earlier action for such claims, he is not barred in a subsequent action from bringing other claims. The doctrine of collateral estoppel remains applicable in these actions.

The conference substitute also adopts section 113(g)(3) of the House amendment, which prohibits the commencement of any action for contribution more than three years after the date of judgment in any civil action under this Act for recovery of costs or damages or more than three years after the date of entry of administrative or judicially approved settlements. Actions for indemnification incurred pursuant to new section 119 of CERCLA must be commenced within three years of the date upon which such indemnification is paid.

The conference substitute also expressly preserves, as did both the Senate and House amendments, the rights of minors and other incompetents until such time as they become legally competent or a guardian ad litum is appointed.

The conference substitute clarifies the language of new section 113(h) of CERCLA, which covers the timing of access to judicial review. It adopts the first three exceptions of both the Senate and House amendments, the fourth exception of the House amendment and, with clarifications, the fifth exception of the House amendment.

In new section 113(h)(4) of the substitute, the phrase "removal or remedial action taken" is not intended to preclude judicial review until the total response action is finished if the response action proceeds in distinct and separate stages. Rather an action under section 310 would lie following completion of each distinct and separable phase of the cleanup. For example, a surface cleanup could be challenged as violating the standards or requirements of the Act once all the activities set forth in the Record of Decision for the surface cleanup phase have been completed. This is contemplated even though other separate and distinct phases of the cleanup, such as subsurface cleanup, remain to be undertaken as part of the total response action. Similarly, if a response action is being conducted at a complex site with many areas of contamination, a challenge could lie to a completed excavation or incineration response in one area, as defined in a Record of Decision, while a pumping and treating response activity was being implemented at another area of the facility. It should be the practice of the President to set forth each separate and distinct phase of a response action in a separate Record of Decision document. Any challenge under this provision to a completed stage of a response action shall not interfere with those stages of the response action which have not been completed.

New section 113(h) is not intended to affect in any way the rights of persons to bring nuisance actions under State law with respect to releases or threatened releases of hazardous substances, pollutants, or contaminants.

In new section 113(i) of CERCLA, the conference substitute adopts a modified version of the Senate provision that expressly provides for a right of intervention in actions commenced under the Solid Waste Disposal Act or CERCLA.

The conference substitute adopts new section 113(j) of the House amendment, which limits judicial review of the selection of a response action to the administrative record on which the selection was based. The substitute clarifies the language of the House amendment to provide that the otherwise applicable principles of administrative law will govern as to whether supplemental material may be considered by the court. The applicable standard of review is that of the House amendment, namely "arbitrary and capricious or otherwise not in accordance with law."

The conference substitute adopts new section 113(k) of the House amendment to require the President to promulgate regulations for the establishment of an administrative record, which is to form the basis for the selection of a response action. Until the promulgation of regulations under new section 113(k), the record shall consist of those materials developed under current procedures for selection of a response action. The record for a response action selected prior to implementation of these regulations shall consist of the record developed prior to such implementation. General principles of administrative law respecting such records are not affected by this provision. The conference substitute expressly provides for participation by potentially responsible parties and other citizens in the development of this record, as well as its public availability. In addition, the President is required to make reasonable efforts to identify and notify potentially responsible parties before selection of a response action, but neither this requirement nor other provisions of the paragraph in which it is contained are to be a defense to liability.

The conference substitute sets forth the agreement on reimbursement as section 106 of the substitute.

The conference substitute incorporates the provision of the Senate amendment which requires that whenever a suit is brought under CERCLA, notice of such suit must be provided to the Attorney General of the United States and the Administrator.

The conference substitute deletes the Senate provision regarding expedited judicial review of permitting, which was included in the Senate bill as new section 113(i) of the Act. Litigation regarding permits required under applicable Federal laws for facilities that are designed to treat or dispose of hazardous wastes, particularly those from the cleanup of Superfund sites, should be given priority treatment by the courts.

The conference substitute deletes the Senate provision which would have amended existing section 113(a) of CERCLA to provide for the selection of the circuit court of venue for actions under the Act.

SECTION 114—RELATIONSHIP TO OTHER LAW

STATE FINANCING

Senate amendment—The Senate amendment strikes subsection 114(c) which addresses the right of States to impose taxes for purposes already covered by CERCLA.

House amendment—The House amendment amends subsection 114(c) of CERCLA to allow States to require contribution to a fund whose purpose is to pay for costs of response or damage.

Conference substitute—The conference substitute adopts the Senate approach. The substitute clarifies that States are not preempted from imposing taxes for purposes already covered by CERCLA.

USED OIL

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment includes an amendment to the definition of "hazardous substance" to exclude used oil that is: listed as a hazardous waste under the Solid Waste Disposal Act; treated, managed, or recycled in such a way as to remove or render harmless the hazardous constituents contained in such oil; and, managed in compliance with standards promulgated by the Administrator, which shall include the authority for the Administrator to order corrective action necessary for any release of used oil.

Conference substitute—The conference substitute replaces the House amendment with a series of new provisions relating to used and recycled oil. The amendment to section 114 of CERCLA provides that service station dealers who (1) collect for recy-

cling, used oil that is not mixed with other hazardous substances, and (ii) manage the recycled oil in compliance with yet-to-be-promulgated management standards under the Solid Waste Disposal Act (SWDA or RCRA) and other applicable authorities such as State or local recycling programs, will be exempted from Superfund liability for releases that might occur after they have relinquished control of the recycled oil. Liability under other laws, such as RCRA, is not affected.

"Service station dealer" is defined as any person who (1) owns or operates a filling station, garage, or similar retail establishment engaged in the business of selling, repairing, or servicing motor vehicles, (2) derives a significant percentage of the establishment's gross revenue from the fueling, repairing, or servicing of motor vehicles, and (3) accepts for collection, accumulation, and delivery to an oil recycling facility, oil that has been removed from a light duty motor vehicle, such as a passenger car, van, or small, personal-use pickup truck, or household applicance, such as a lawnmower, by the owner of the vehicle or appliance. All of these conditions must be met.

The fact that in some situations, such as in certain rural settings, no oil is presented by do-it-yourselfers for collection, accumulation, and delivery will not preclude a particular dealer from qualifying under this amendment. However, if such oil is presented, the dealer must, as a general matter, accept it to qualify for the special treatment afforded by this amendment. The requirement is that a service station dealer "accept . . . oil . . . that is presented . . .". To qualify, a dealer must be willing to accept oil from do-it-yourselfers. Conversely, a dealer who qualifies under this definition may, if he has reason to believe that a specific batch of oil has been mixed with other hazardous substances, refuse to accept that specific batch without sacrificing the coverage of this amendment.

To prevent the creation and use of "service station dealerships" as a front for hazardous waste management firms or commercial generators of hazardous substances that want the benefit of this exemption from liability, a significant percentage of the business' gross revenue must be derived from the fueling, repairing, or servicing of motor vehicles. Business operations, such as large retail establishments or car and truck dealerships, that have a legitimate, commerical automotive service component are intended to be covered by this definition. However, a retail establishment that does not derive revenue from fueling, repairing, or servicing motor vehicles does not qualify under this definition. To the extent establishments that do not qualify under this definition produce large quantities of used oil, they are industrial generators and are to be treated like other generators. The President is directed to further define in regulations what constitutes a "significant percentage."

Some government agencies, in an attempt to encourage do-it-yourselfers to recycle their oil rather than dispose of it improperly, have established collection facilities to accept delivery of small quantities of used oil from individuals. Such facilities that are established solely for this purpose will qualify as a "service station" under this amendment.

Also included in the definition of "service station dealer" are owners or operators of refuse collection services who are compelled by State law to collect, accumulate, and deliver do-it-yourselfer oil to oil recycling facilities. Such "dealers" are included in the definition only with respect to the small quantities of used oil collected from individual do-it-yourselfers. The special treatment afforded by this amendment does not extend to the collection of commercial or industrially produced used oil.

This amendment becomes effective on the effective date of EPA's RCRA used oil regulations. Such regulations must include a requirement that owners or operators conduct corrective action to respond to releases of recycled oil. The Agency shall, in conjunction with this rulemaking, provide notice to service station dealers all across the country of this amendment and explain what each dealer must do to qualify for the special treatment afforded by this amendment.

As noted above, the Agency is in the process of developing management standards and regulations for used oil under section 3014 of RCRA. The Agency is reportedly considering a regulatory approach that would regulate all used and recycled oil but would not list "recycled oil" as a hazardous waste. If such an approach is selected, RCRA provisions regarding criminal penalties and the authority for EPA to delegate responsibility for the regulatory program to the States will not, under the terms of RCRA, extend to recycled oil. To avoid such a result, the conference substitute includes in section 205 (relating to underground tanks) an amendment to make RCRA's criminal penalty provisions applicable to persons who improperly manage used oil that is regulated but not listed as a hazardous waste under RCRA. Similarly, EPA is given the authority to delegate such a regulatory program to the States. These amendments do not indicate a Congressional preference for any particular regulatory approach. They are included here to correct potential deficiencies in the RCRA regulatory program. These amendments are not intended to influence or prejudge the outcome of the ongoing regulatory process under RCRA.

While the pressures to recycle waste oil for energy conservation and economic purposes have eased recently, the pressures to safely manage such used oil and to prevent environmental pollution are ever growing. America's used oil recycling system handles approximately 57 percent of the more than one billion gallons of used oil generated each year. The balance of the used oil is disposed of improperly—into sewers, backyards, or into the trash which eventually winds up in municipal landfills.

The current used oil recycling system in this country depends, in large measure, on volunteers. These include small business owners, such as service station dealers, who perform a community service by collecting used oil from do-it-yourself oil changers and delivering such oil to recyclers. The volume of waste involved and the connection with the problem of properly managing household hazardous waste are just two examples of the factors that make the subject of this amendment unique.

Used oil, when properly recycled and managed, is a valuable resource. However, a number of factors, such as lower prices for virgin oil and fear of liability under Superfund or the Solid Waste Disposal Act, have recently resulted in a reduced demand by commercial users of recycled oil. To the extent such a reduction in demand disrupts the entire chain of commerce in recycled oil and leaves numerous households with no safe outlet for the oil from do-it-yourself automobile oil changes, the Federal government can and should, as a consumer, help to rectify this problem.

As set forth in section 6002(c)(2) of the Solid Waste Disposal Act, Federal agencies that generate heat, mechanical, or electrical energy from fossil fuel in systems that have the technical capability of using energy or fuels derived from solid waste as a primary or supplementary fuel are required to use such capability to the maximum extent practicable. This includes recycled oil. The Administrator of EPA should work with these other agencies and, through the use of memoranda of understanding or other appropriate documents, assure that section 6002(c)(2) is being complied with, particularly with respect to the purchase and use of recycled oil.

This legislation includes an amendment to subtitle I of the Solid Waste Disposal Act which establishes a response program for leaks from underground storage tanks. Such tanks containing used oil which has not been mixed with other hazardous substances would generally fall within the meaning of petroleum tanks under the Subtitle I response program. In responding to releases from such underground tanks containing used oil which has not been mixed with hazardous substances, the EPA should use the authorities of Subtitle I rather than authorities under CERCLA or other corrective action authorities under Subtitle C of the Solid Waste Disposal Act. The presence of hazardous substances in used oil that result from the normal use of the oil (and not from mixing the oil with solvents or other hazardous substances) shall not be reason for EPA to disqualify a tank as eligible for response under the Subtitle I response program. In most cases, releases from tanks containing used oil would not rise to the priority level necessary to be listed on the National Priorities List for CERCLA response. The subtitle I response program, financed from a separate source of revenue and designed for response to petroleum releases, is intended to assure a rapid and effective response to releases from underground storage tanks, including tanks which store used oil.

SECTION 115—DELEGATION; REGULATIONS

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment authorizes the President and the Administrator of the EPA to delegate authorities in order to carry out the provisions of title I of CERCLA. The amendment also authorizes the Administrator of EPA to issue any regulations necessary to carry out the provisions of CERCLA.

Conference substitute—The conference substitute adopts no amendment to section 115 of CERCLA.

SECTION 116—SCHEDULES

Senate amendment—The Senate amendment contains no provision on schedules.

House amendment—Section 104(n) of the House amendment adds a new subsection 104(i) that establishes a mandatory schedule for response actions and other activities under CERCLA. The schedule contains target dates and objectives for completing remedial assessments, for listing facilities on the National Priorities List, for commencing remedial investigations and feasibility studies, for commencing remedial actions themselves, and for completing remedial actions at existing NPL facilities.

Conference substitute—The conference substitute provides for a new section 116 of CERCLA, titled "Schedules." Subsection (a)

establishes as a goal of the Act that, to the maximum extent practicable, the President shall complete preliminary assessments of all facilities that are contained at the date of enactment in the Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS). A preliminary assessment of those facilities is to include a statement as to whether a site inspection is necessary and by whom it should be carried out. The conference substitute also establishes as a goal of the Act that, not later than January 1, 1989, the President shall ensure the completion of site inspections at all facilities for which the President has stated a site inspection is necessary. Subsection (b) provides that within four years after enactment, each facility in CERCLIS shall be evaluated if the President determines that the evaluation is warranted on the basis of a site inspection or preliminary assessment. In a case of a facility listed in CERCLIS after enactment, the facility shall be evaluated within four years after the date of listing if the President determines that such evaluation is warranted on the basis of a site inspection or preliminary assessment. Based on information supplied by the Administrator of the Environmental Protection Agency, it is expected that the President will have added, or proposed to add, between 1,600 and 2,000 sites to the National Priorities List. To the maximum extent practicable, the President should undertake CERCLIS evaluations at an annual rate sufficient to achieve this goal by 1988.

Subsection (c) provides that, where any of the goals established by subsection (a) or (b) are not achieved, the President shall explain why such action was not completed by the specific date. Subsection (d) requires the President to assure that no fewer than 275 remedial investigations and feasibility studies are commenced for facilities listed on the NPL, in addition to those commenced prior to the date of enactment of this Act within 36 months after enactment. Where the President fails to meet the 275 RI/FS target, no fewer than an additional 175 RI/FSs shall be comenced within four years after enactment; an additional 200 RI/FSs within five years after enactment; and a total of 650 RI/FS within five years after enactment.

Subsection (e) requires the President to assure that substantial and continuous physical on-site remedial action commences at facilites on the NPL, in addition to those facilities on which remedial actions has commenced prior to the date of enactment of these amendments, according to the following schedule: 175 facilities during the first 36 months after enactment; and 200 additional facilities during the following 24 months.

SECTION 117— PUBLIC PARTICIPATION

Senate amendment—The Senate amendment requires that, before the United States or a State selects a remedial action or enters into a convenant not to sue or to forbear from suit or otherwise settle or dispose of a claim under the Act, several procedures must be followed to allow the public to participate prior to final selection or entry. The public must be given notice of such proposed action, opportunity for a public meeting in the affected area, and a reasonable opportunity to comment. Notice must be accompanied by a discussion and analysis sufficient to provide a reasonable explanation of the proposals considered.

The Senate provision also amends section 111(c) of CERCLA to include the costs of technical assistance grants under the purposes for which the President is authorized to use the money in the Fund. Payment of such costs is subject to amounts as are provided in appropriations acts and shall be in accordance with rules promulgated by the President. Such grants may be made to those potentially affected by a release or threatened release at any facility listed on the National Priorities List, and may not exceed $75,000 per grant. These grants may be used to obtain technical assistance in interpreting information about the nature of the hazard, remedial investigation and feasibility study, record of decision, remedial design, selection and construction of remedial action, operation and maintenance, or removal action at a facility.

House amendment—The House amendment requires either the Administrator or State, as appropriate, to take steps before adopting any remedial action plan. The first step is publishing a notice and brief analysis of the plan and making the plan available to the public. This notice and analysis must include sufficient information necessary to provide a reasonable explanation of the proposed plan. The second step is providing reasonable opportunity for submission of written and oral comments, and an opportunity for a public meeting at or near the facility in question, about the proposed plan and any waivers of requirements granted under section 121 of the House amendments relating to cleanup standards. The Administrator is required to keep a transcript of such a meeting and to make this transcript available to the public.

House amendment also requires that notice of the final remedial action plan be published and that the plan be made available to the public before commencing any remedial action. This final plan must be accompanied by a discussion of any significant changes in the proposed plan, and the reasons for such changes, as well as a response to each of the significant comments, criticisms, and new data submitted in oral or written presentations in accordance with the requirements described above.

After adoption of a final remedial action plan, if any remedial action is taken, if any section 106 enforcement action is taken, or if any settlement or consent decree under section 106 is entered into, and if such action, settlement or decree differs in any significant respects from the final plan, the Administrator is required to publish an explanation of the significant differences and the reasons such changes were made.

The term "publication" includes, at a minimum, publication in a major local newspaper of general circulation. In addition, the House amendment requires that each item developed, received, published, or made available to the public pursuant to this amendment must be available for public inspection and copying at or near the facility in question.

The House amendment authorizes the Administrator, in accordance with rules promulgated by the Administrator, to make technical assistance grants available to any group of persons that may be affected by a release or threatened release at any facility listed on the National Priorities List. The purpose of these grants is to enable the group to obtain technical assistance to review and assess data and information that has been prepared by the Administrator and that is required to be published under the previously described requirements of this amendment.

These grants may not exceed $25,000 for a single recipient, unless the Administrator waives this limit. The Administrator may waive this dollar limit in any case where such a waiver is necessary to carry out the purposes of this subsection on grants.

Conference substitute—The conference substitute adopts the House amendment's provisions on public participation, with some modifications. One such modification is the explicit statement that a State or the President is required to keep a transcript of the public meeting pursuant to section 117(a)(2) and to publish the explanation of significant differences between the final plan and any remedial action, settlement, or decree as required by section 117(c). In the House amendment, only the Administrator was explicitly made subject to these requirements.

The conference substitute adopts a combination of the House and Senate provisions establishing a technical assistance grants program for use at National Priorities List sites. This program is to be a regular part of the Superfund program, and the President shall not refuse to fund the technical assistance grants program, or any specific application for a grant, on the ground that there has been no specific line item appropriation. The conference substitute adopts the Senate amendment's statement that the grants may be used for technical assistance in interpreting information with regard to the nature of the hazard, remedial investigation and feasibility study, record of decision, remedial design, selection, and construction of remedial action, operation and maintenance, or removal action at such facility. Such grants are not intended to be used to underwrite legal actions. However, any information developed through grant assistance may be used in any legal action affecting the facility, including any legal action in a court of law.

The conference substitute states that the grant amount may not exceed $50,000 for a single grant recipient. As in the House amendment, however, the President may waive this dollar limitation. The conference substitute states that as a condition of the grant, each recipient must contribute at least 20 percent of the total costs of technical assistance for which the grant is made. This condition may be waived by the President if the grant recipient demonstrates financial need and that the waiver is necessary to facilitate public participation in the selection of remedial action at the facility.

The conference substitute states that not more than one grant under section 117(e) may be made with respect to a single facility, but the grant may be renewed to facilitate public participation at all stages of remedial action. A recipient therefore is eligible for multiple grant awards and can seek additional grants at each stage of activity for which grants may be made, including, but not limited to, such stages as remedial investigation and feasibility study, remedial design, or other appropriate stages.

SECTION 118—MISCELLANEOUS PROVISIONS

HIGH PRIORITY FOR DRINKING WATER SUPPLIES

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment adds a new section 118 to CERCLA that would require the Administrator to give high priority to facilities where the release has resulted in the closing of drinking water wells or has contaminated a sole or principal drinking water source designated under the Safe Drinking Water Act.

Conference substitute—The conference substitute adopts the House amendment

with a minor modification. The phrase "a sole or principal drinking water source under the Safe Drinking Water Act" has been replaced with the phrase "a principal drinking water supply" in order that the EPA Administrator not be constrained in implementing this provision to existing interpretations of "sole or principal drinking water sources" under the Safe Drinking Water Act.

RADON-CONTAMINATED SOIL

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment contains a provision directing the EPA Administrator to make a $7.5 million grant from Superfund at a 100 percent Federal share to the State of New Jersey for the transportation and temporary storage of radon contaminated soil.

Conference substitute—The conference substitute adopts the House provision. The conferees intend that no action be taken beyond temporary storage of these materials without full and complete opportunity for public notice and comment, including concerned persons in nearby States. Action under this section is subject to sections 117 and 121.

UNCONSOLIDATED QUATERNARY AQUIFER

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment contains a provision prohibiting any person from locating a landfill over the Unconsolidated Quaternary Aquifer, or placing solid waste in a landfill over such aquifer.

Conference substitute—The conference substitute adopts the House provision.

SKILLED PERSONNEL STUDY

Senate amendment—The Senate amendment contains no comparable provision.

House. amendment—The House amendment contains a provision directing the Comptroller General to conduct a study of the problem of shortages of skilled personnel in EPA to carry out response actions under CERCLA.

Conference substitute—The conference substitute adopts the House provision with minor modifications.

NONAPPLICABILITY OF STATE REQUIREMENTS

Senate amendment—The Senate amendment contains no comparable provison.

House amendment—The House amendment contains a provision limiting the applicability of State and local requirements to certain transfers.

Conference substitute—The conference substitute adopts the House provision with the clarification that the provision applies only to waste materials from the McColl Site in Fullerton, California.

LEAD POISONING STUDY

Senate amendment—Section 121 of the Senate amendment contains a provision directing the Administrator of the Agency for Toxic Substances and Disease Registry, in consultation with the EPA Administrator, to submit a report on the nature and extent of lead poisoning in children from environmental sources.

House amendment—The House amendment contains no comparable provision.

Conference substitute—The conference substitute adopts the Senate provision with minor modifications.

FEDERALLY LICENSED DAMS

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—Section 101 of the House amendment contains a provision which would effectively amend the definition of "Owner and operator" in CERCLA to exclude certain federally licensed dams.

Conference substitute—The conference substitute adopts the House provision with a clarification that the provision applies only to the Milltown Dam in the State of Montana.

COMMUNITY RELOCATION

Senate amendment—Section 105 of the Senate amendment contains a provision amending the CERCLA definition of the terms "remove" and "removal" to include certain costs with respect to community relocation.

House amendment—The House amendment contains no comparable provision.

Conference substitute—The conference substitute adopts the Senate provision with minor modifications, including a limitation expressly restricting the applicability of the provision to any dioxin site in Missouri at which a decision as to temporary or permanent relocation has been made or is under active consideration as of the date of enactment of the Superfund Amendments and Reauthorization Act of 1986. These sites include: Quail Run, Minker Stout/Romaine Creek, Piazza, Castlewood and Times Beach.

LIMITED WAIVERS

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—Section 121 of the House amendment contains a provision authorizing a State, if certain conditions are met, to waive any permit requirements under subtitle C of the Solid Waste Disposal Act which would otherwise be applicable in the case of remedial actions specifically involving mobile incinerator units.

Conference substitute—The conference substitute adopts the House provision with several modifications, including (1) a requirement that the EPA Administrator approve the waiver, and (2) a limitation expressly restricting the applicability of the provision to the State of Illinois.

JOINT USE OF TRUCKS

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—Section 216 of the House amendment contains a provision requiring the EPA Administrator, in consultation with the Secretary of Transportation, to conduct a study on trucks used for transportation of both hazardous and non-hazardous materials.

Conference substitute—The conference substitute adopts the House provision.

RADON ASSESSMENT AND MITIGATION

(For a discussion of the provisions relating to radon assessment and mitigation, see the portion of the Statement of Managers relating to title IV of the bill.)

GULF COAST HAZARDOUS SUBSTANCE RESEARCH, DEVELOPMENT, AND DEMONSTRATION CENTER

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment contains no comparable provision.

Conference substitute—The conference substitute contains a provision directing the EPA Administrator to establish a hazardous substance research, development, and demonstration center in Jefferson County, Texas, for the purpose of conducting research to aid in more effective hazardous substance response and management throughout the Gulf Coast. It is the intent and expectation of the Conferees that the Center be located at Lamar University in Beaumont, Texas. Funds under section 311 of CERCLA may be used to carry out this provision. In order to carry out the purposes of this Center, the Center can make grants, accept contributions, and enter into agreements with universities located in Texas, Louisiana, Mississippi, Alabama, and Florida. In carrying out its responsibilities, the Center is not limited to working with universities; it may also negotiate arrangements with Federal and State agencies and industry.

RADON PROTECTION

Senate amendment—Section 156 of the Senate amendment contains a provision expressing the sense of Congress that the President, in selecting response actions for facilities on the NPL, may use innovative and alternative methods which protect human health and the environment.

House amendment—The House amendment contains no comparable provision.

Conference substitute—The conference substitute adopts the Senate provision.

SPILL CONTROL TECHNOLOGY

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment contains no comparable provision.

Conference substitute—The conference substitute contains a provision authorizing the Department of Energy's Office of Fossil Energy to develop, implement and manage a research and development program, and a testing and evaluation of response technologies program related to hazardous substance spills. These programs are to use the Liquefied Gaseous Fuels Spill Test Facility at the Frenchman Flat site.

The Conferees took this action after learning of the unique capabilities and the strong support the Department of Energy has for this site. At the same time, the Conferees are concerned that this user-sponsored facility may be vastly under-utilized when there are no formal industry commitments to use the facility.

Because the site has the potential to assist other hazardous substance related research, testing and evaluation activities, the Conferees believe that the Department of Energy's Office of Fossil Energy should, to the extent practicable, coordinate with the U.S. Environmental Protection Agency's Office of Emergency and Remedial Response and the Department of Transportation. In addition, the Department of Energy is directed to enter into contracts and grants with a non-profit organization in Albany County, Wyoming. It is the intent and expectation of the Conferees that the Department of Energy enter into grants and contracts with the Western Research Institute to provide the necessary technical and analytical support.

PACIFIC NORTHWEST HAZARDOUS SUBSTANCE RESEARCH, DEVELOPMENT, AND DEMONSTRATION CENTER

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment contains no comparable provision.

Conference substitute—The conference substitute contains a provision directing the EPA Administrator to establish a hazardous substance research, development, and demonstration center for the purpose of conducting research to aid in more effective hazardous substance response in the Pacific Northwest. It is the intent and expectation of the Conferees that the Center be located at the Battelle Memorial Institute Laboratories in Benton County, Washington, and

Clallam County, Washington. In carrying out its responsibilities, the Center is not limited to working with universities; it may also negotiate arrangements with Federal and State agencies and industry. In addition, the EPA Administrator and the Secretary of Energy are authorized to enter into interagency agreements with one another for the purpose of providing research into alternative and innovative technologies to characterize and assess the nature and extent of hazardous waste (including radioactive mixed waste) contamination at the Hanford site in the State of Washington.

SILVER CREEK TAILINGS

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment contains no comparable provision.

Conference substitute—The conference substitute contains a provision which has the effect of removing the Silver Creek Tailing site in Utah from the list of sites recommended for inclusion on the NPL, unless the President determines, upon specific site data not used in the proposed listing of such site, that the site meets the requirements of the Hazard Ranking System or any revised Hazard Ranking System.

SECTION 119—RESPONSE-ACTION CONTRACTORS

Senate amendment—The Senate amendment contains two provisions directly related to the status of contractors who are engaged by Federal or State governments for the purpose of undertaking responses under CERCLA.

The first of these two provisions is section 104 of the Senate amendment, which proposes to amend the definition of "owner or operator" contained in section 101(20) of CERCLA. The definition would be modified to exclude response-action contractors from liability under CERCLA except to the extent that there is a release "primarily caused by the activities of such person."

The second provision is section 152 of the Senate amendments, which deals with the circumstances under which contractors would be indemnified for liability which might arise under State law or Federal laws other than CERCLA. Section 152 mandates indemnification against damages arising from the application of a strict liability standard and authorizes indemnification for damages arising based on a negligence standard.

The Second Senate amendment contains no provisions relating to contractor competition and does not preempt State law with respect to contractor liability.

House amendment—The House amendment contains provisions directly related to the liability and indemnification of response action contractors under both Federal and State laws, as well as one dealing with contractor competition. The term "response action contractor" as used in this section for both liability and indemnification purposes, covers any contractor who provides any "evaluation, planning, engineering, surveying and mapping, design, construction, equipment, or any ancillary services thereto for such facility".

Section 119 of the House amendment eliminates liability under any State or Federal law for damages resulting from the non-negligent actions of response action contractors. It also authorizes, in subsection (c), the indemnification of such contractors in the event they are held liable for negligence, provided certain enumerated requirements are met. Subsection (f), relating to competition among contractors, prohibits denial of the right to bid on response action contracts on the grounds of certain Federal requirements which might otherwise be applicable.

Conference substitute—The conference substitute adopts the House amendment with modifications.

The first modification to new subsection 119 provides that response action contractors shall not be liable except for their own negligence under CERCLA or any other Federal law for injuries, costs, damages, expenses, or other liability for any release or threatened release of a hazardous substance, pollutant or contaminant with respect to which it is a response action contractor. However, this section does not affect the liability of any person under any warranty under Federal, State, or common law.

For purposes of Federal law, and in recognition of the inability of contractors to obtain insurance in the current market as well as their essential role in responding to releases caused by others, the conference substitute provides a standard of liability based on negligence. Liability which might arise under non-Federal laws, however, is untouched by the conference substitute. The existing standard of liability for responsible parties under CERCLA is maintained. The conferees hope that this amendment will induce States to deal with the question of liability within their own borders. The conferees urge States to take note of the Federal standards and review their own standards of liability.

The President, under specific circumstances and subject to requirements as set forth in the House amendment, may enter into indemnification agreements with response action contractors for liability due to negligence. Indemnification may not be provided, however, for liability arising out of the application of a standard of strict liability. The President shall not set limits and deductibles for indemnification under this provision so that they are at such unreasonable levels so as to make the indemnification agreement worthless.

The costs of indemnification are costs of response for purposes of CERCLA, and thus are costs recoverable under CERCLA. Under subsection 119(d) a responsible party may not be considered a response action contractor with respect to a release for which it is potentially liable under section 107. This constraint applies to both liability and indemnification. Also, responsible parties are barred from raising the third-party defense contained in section 107(b)(3) in cases where the release resulted from the acts or omissions of a response action contractor.

As a general rule, the President shall not participate directly in the defense of response action contractors in actions for claims subject to indemnification under this provision. However, the President retains the right to control the defense and settlement actions subject to indemnification agreements. In deciding whether to participate in such defenses, the President shall avoid any situation which places the executive branch in a conflict of interest in defending such suits.

The selection of response action contractors is subject to the generic requirements of otherwise applicable Federal selection procedures when such contracts are negotiated by Federal agencies.

SECTION 120—FEDERAL FACILITIES

Senate amendment—The Senate amendment reaffirms that except for any requirements relating to bonding, insurance, or financial responsibility, all provisions of CERCLA applicable to private facilities are applicable to Federal agencies in the same manner and to the same extent.

The Senate amendment requires the Administrator to establish a special Federal Agency Hazardous Waste Compliance Docket containing all information submitted under Section 3016 of the Solid Waste Disposal Act and notice of each subsequent action taken under this Act with respect to the facility. Periodic updates of the Docket are required every three months by publication in the Federal Register.

The Administrator must assure that a preliminary assessment is conducted for each facility on the Docket within eighteen months after enactment. Where appropriate, following the preliminary assessment, the Administrator must complete the evaluation and listing of such facilities on the National Priorities List within twenty months after date of enactment.

Within six months after inclusion on the National Priorities List, each agency is to enter into an agreement with the Administrator and appropriate State authorities under which the agency will carry out a remedial investigation and feasibility study for the facility no later than six months after completion of the RIFS. The Administrator is required to enter into an agreement with each agency providing a schedule for the expeditious cleanup of the facility. The Senate amendment provides that substantial continuous physical on-site remedial action must be commenced at such facility which is the subject to an agreement within twelve months after completion of remedial design.

The Senate amendment also provides that unless the Administrator has entered into a memorandum of understanding with the head of a Federal agency, the concurrence of the Administrator shall be required for the selection of appropriate remedial action and the administrative order authorities of Section 106(a) are delegated to the Administrator.

Each agency is required to complete cleanup as expeditiously as practicable after the date of the interagency agreement and to include in its annual budget submission to the Congress a request for funding adequate to complete cleanup, and a review of alternative agency funding which could be used to provide the costs of cleanup.

The contents of each interagency agreement shall include a review of alternative remedial actions and selection of a remedial action plan by the Administrator, a schedule for completion, and arrangements for long-term operation and maintenance.

The Senate amendment requires that following approval of an agreement between the Administrator and another potentially responsible party to properly perform a remedial investigation and feasibility study or remedial action at the Federal facility within the prescribed deadlines, such agreement must be entered in the appropriate United States district court as a consent decree under Section 106 of this Act.

The Senate amendment explicitly provides for State and local participation in the planning, formulation and selection of the remedial action by the Administrator at Federal facilities.

The President may exempt any facility from compliance with guidelines, rules, regulations, or criteria if he determines it is in the paramount interest of the United States. No such exemption shall be granted

due to lack of appropriation unless the President shall have specifically requested such appropriation as part of the budgetary process and the Congress has failed to make available the requested appropriation.

The Senate amendment provides the authority for the head of each agency to compromise or settle any claim or demand under this Act arising out of activities of his agency, where such settlement is $25,000 or less.

House amendment—The House amendment provides that each Federal agency is subject to and must comply with this Act. It also provides that, except for financial responsibility requirements, all guidelines, rules, regulations and criteria applicable to preliminary assessments, to evaluations pursuant to the National Contingency Plan, to inclusion on the National Priorities List, and to remedial actions at facilities where hazardous substances are located shall also be applicable to facilities which are owned or operated by the Federal government. State laws concerning removal or remedial actions are made explicitly applicable to response actions undertaken at facilities owned or operated by the Federal government which are not on the National Priorities List.

The Administrator must establish a special Federal Agency Hazardous Waste Compliance Docket for each department, agency, or instrumentality of the United States. The Docket is required to contain information submitted by each Federal agency under Section 103 of this Act, Sections 3005 or 3010 of the Solid Waste Disposal Act, and the inventory required by Section 3016 of that Act, including information on off-site contamination. Periodic updates of the Docket are required every six months by publication in the Federal Register.

The Administrator is required to evaluate each facility included in the Docket not later than January 31, 1987, where such evaluation is warranted on the basis of a site inspection or preliminary assessment. Any State Governor can obtain an evaluation of any facility included in the Docket. Facilities meeting the criteria for inclusion on the National Priorities List must be included within twelve months after evaluation.

For any facility listed on the National Priorities List, a remedial investigation and feasibility study must be commenced by the Federal agency, in consultation with the Administrator, within six months. Thereafter, within 180 days of completion of the RIFS, the head of the Federal agency must enter into an interagency agreement with the Administrator for expeditious completion of all necessary remedial action. Commencement of substantial continuous physical on-site remedial action is mandated at each facility not later than fifteen months after completion of the investigation and study.

The contents of each interagency agreement shall include a review of alternate remedial actions and selection of a remedial action plan by the Administrator, a schedule for completion, and arrangements for long-term operations and maintenance.

The Administrator is required to publish regulations within eighteen months requiring notice of hazardous substance storage, release, or disposal activities on property transferred by the Federal government and deeds transferring real property owned by the United States must contain certain covenants and other information.

The House amendment affirms that the corrective action requirements of the Solid Waste Disposal Act apply to Federal facilities and nothing in this section affects the obligation of Federal agencies to comply with such requirements.

To protect the national security interests at a Department of Defense or Department of Energy facility, the President is authorized to grant an exemption from any requirement of certain titles of the Superfund Amendments and Reauthorization Act of 1986 which may not exceed one year per issuance. Notification must be provided to the Congress within thirty days of the President's issuance of an exemption order. Requirements of the Atomic Energy Act concerning the handling of restricted data and national security information are made applicable to the grant of access to classified information.

Certain Department of Energy facilities in the State of Missouri were provided a limited exemption from the requirements of Section 120 where a response action plan was under development.

Conference substitute—The conference substitute adopts provisions from both the House and Senate amendments.

The conference substitute adopts the House provision requiring the application of the Act to the Federal government with the modification that the subsection not apply to requirements pertaining to bonding, insurance, or financial responsibility.

This provision clarifies that all guidelines, rules, regulations and criteria promulgated pursuant to CERCLA must be complied with by all Federally-owned or operated facilities unless specifically exempted by this Act. Federal agencies must comply with all procedural and substantive provisions of the National Contingency Plan.

The conference substitute adopts the Senate amendment establishing the Federal Agency Hazardous Waste Compliance Docket modified by House language adding information submitted by each agency under Sections 3005 or 3010 of the Solid Waste Disposal Act and under Section 103 of this Act, as well as information on off-site contamination under Section 3016 of SWDA. Following notification under Section 103, where the EPA Administrator concurs that a response to source, special nuclear or by-product material (as defined by the Atomic Energy Act) is being conducted in accordance with the National Contingency Plan under other Federal statutues, docketing under subsection (c) is not required.

Periodic updates of the docket are required every six months as provided in the House amendment.

The conference substitute adopts the Senate amendment relating to assessment and evaluation modified to apply to the entire docket and substituting thirty months in lieu of twenty months as the time frame for completion of evaluation and listing. The provision requires placement of all qualifying Federal facilities on the National Priorities List no later than 30 months after the date of enactment. This deadline is intended to be an outside limit and to establish the latest date on which facilities can be listed. Federal agencies and departments, working in conjunction with EPA, should make every effort to propose and list facilities in installments as soon as possible during the 30-month period, as the facilities are evaluated under the Hazard Ranking System.

The conference substitute includes House language requiring the Administrator to conduct an evaluation of any facility included in the docket upon petition from the Governor of any State. The evaluation criteria for Federal facilities are to be applied in the same manner as for private facilities.

The conference substitute adopts the House provision, which mandates the commencement of a remedial investigation and feasibility study not later than six months after listing on the National Priorities List, modified to require consultation with appropriate State authorities. The conference substitute also adopts the House provision relating to commencement of remedial action requiring an interagency agreement within 180 days and mandates commencement of substantial continuous physical on-site remedial action at each facility not later than 15 months after completion of the remedial investigation and feasibility study. The Senate provision requiring completion of remedial action with conforming modifications is adopted.

The House and Senate provisions both contain language requiring that the contents of the interagency agreement include a review of alternative remedial actions and selection of a remedial action plan by the Administrator. This provision is modified by the conference substitute to provide for the joint selection of the remedial action by the head of a Federal agency and the Administrator, with the Administrator having the ultimate selection authority in case of disagreement.

Responsibility for selection of a remedial action is shared by the head of the relevant department, agency, or instrumentality and the Administrator. However, the Administrator has the additional responsibility to make an independent determination that the selected remedial action is consistent with the National Contingency Plan and is the most appropriate remedial action for the affected facility. The Administrator is required to select the remedial action where there is disagreement.

A site-specific Record of Decision (ROD) signed by the Administrator and the relevant Federal department or agency can be used to meet the requirements of this section regarding a site-specific interagency agreement (IAG) where such ROD incorporates a review of alternative remedial actions and selection of the remedial action, a schedule for completion of the remedial action, and provides for a long-term operation and maintenance of the facility. These elements of the ROD are identical to those required by subsection (e)(4), and such a ROD would serve as the interagency agreement.

The conference substitute adopts the Senate provision relating to State and local participation modified to clarify that Federal agencies are also subject to and must comply with the State participation requirements set forth in Section 121 (relating to cleanup standards). The conference substitute includes the Senate provision requiring settlements between the EPA Administrator and a private potentially responsible party for a Federal facility cleanup to be entered as a consent decree in the appropriate United States District Court. The interagency agreements between the Administrator of the Environmental Protection Agency and the heads of other Federal agencies are enforceable documents just as administrative orders under the Solid Waste Disposal Act and as such are subject to the citizen suit and penalties provisions of the Superfund Amendments and Reauthorization Act of 1986. Thus penalties can be assessed against Federal agencies for violating terms of agreements with the EPA Administrator.

This clarifies that CERCLA, together with RCRA, requires Federal facilities to comply with all Federal, State and local requirements, procedural and substantive, including fees and penalties, except as provided in section 121.

The House provision relating to property transferred by Federal agencies and obligations of Federal facilities under the Solid Waste Disposal Act is adopted by the conference substitute. In affirming the applicability of the corrective action requirements of the Solid Waste Disposal Act to Federal facilities, the conferees explicitly refer to the requirements of Section 3004(u) as set forth in the Environmental Protection Agency's recodification rule published on July 15, 1985, and the interpretation signed by the Administrator on February 11, 1986, and published in the Federal Register on March 5, 1986. Federal facilities are subject to corrective requirements to the same extent as any facility owned or operated by private parties and operate under the same property-wide definition of facility.

Further, the conference substitute adopts the House provision relating to site-specific national security exemptions conditioned by language in the Senate amendment relating to specific requests for appropriations by the President.

The national security waiver should be applied only on a site-specific and instance-specific basis, and with appropriate restraint. The waiver is intended to protect the legitimate national security interests of the United States. The waiver was included—as it has been in other major Federal environmental laws—because the Departments of Defense and Energy expressed concern that operation of their facilities, vital to national security, could be seriously interfered with, particularly in time of war and other national emergencies. The national security waiver is not intended to routinely exempt response actions at Federal facilities from the public health and environmental standards imposed under the Act. Furthermore, the duration of the national security waiver is not intended to continue beyond the time required to protect legitimate national security interests. Such response actions should be conducted in an expeditious and sound manner that provides protection of human health and the environment.

The conference substitute deletes the Senate provisions relating to Federal agency settlements and memorandums of understanding between the Administrator and the head of a Federal agency with regard to selection of remedial actions.

The conference substitute retains the limited grandfather provision in the House amendment for certain Department of Energy facilities, but the requirements of this Act, including Sections 120 and 121, apply to all Federally-owned or operated facilities, including those facilities for which a response action, remedial action plan or other type of cleanup plan, in whole or part, is currently under development.

All provisions of the Act relating to Federal facilities, including the terms of interagency agreements and records of decisions, are subject to the citizens suits provision.

The Administrator shall take into account the special ecological and environmental missions of certain Federal land managers, such as the Fish and Wildlife Service, when fulfilling the requirements of this section. The Administrator shall consider closely the plans for remedial actions recommended by these Federal officials to ensure that response actions undertaken pursuant to this Act are compatible with the ecological and environmental responsibilities of these other Federal agencies.

The costs and expenses of the Administrator of the Environmental Protection Agency in overseeing the response activities at Federal facilities are reasonably necessary for and incidental to the implementation of this Act and are payable under Section 111.

SECTION 121—CLEANUP STANDARDS

Senate amendment—The Senate bill amends section 104(c)(4) of CERCLA to require that the President must select remedial actions that, to the extent practicable, are in accordance with the NCP and that provide for cost-effective response, taking into account the total short- and long-term costs including operation and maintenance. Remedial actions under sections 104 or 106 must attain a degree of cleanup of hazardous substances, pollutants and contaminants from the environment and control of further release at a minimum that assures protection of human health and the environment. Remedial actions must be relevant and appropriate under the circumstances presented. Remedial actions involving permanent treatment are preferred over those not involving treatment, and off-site transport and disposal without treatment is the least favored alternative. No RCRA or Clean Water Act permit is required for the portion of any response action conducted entirely on-site, if done in compliance with this paragraph. The Fund-balancing provision of section 104(c)(4) is continued in new subparagraph (E). Under sections 114(a) and 302(d) of CERCLA, more stringent State standards and permit requirements apply to facilities that are the subject of remedial actions selected under these provisions.

House amendment—The House amendment adds a new section 121 to CERCLA governing the selection of remedial actions under sections 104 and 106. Under this new section, remedial actions must be cost-effective, in accordance with the NCP, and require that level or standard of control of each hazardous substance or pollutant or contaminant at the facility that is necessary to protect human health and the environment. The Administrator must, to the maximum extent practicable, select permanent solutions, and if such a permanent solution is not feasible, the facility must be placed in a separate category of the NPL and reviewed no less frequently than every 5 years to determine if a permanent solution has become available and whether the existing remedy continues to protect human health and the environment. If permanent solutions are not feasible for particular sites, the Administrator is to consider containment in above-ground engineered structures. The Administrator is required to assess the long-term effectiveness of various alternatives, including permanent solutions, taking into account specified factors, and remedial actions involving treatment are preferred.

For hazardous substances, pollutants and contaminants which remain on-site, the House amendment requires that remedial actions must require a level or standard of control which is at least equivalent to a legally applicable or relevant and appropriate standard under the Toxic Substances Control Act, the Safe Drinking Water Act, the Clean Air Act, the Clean Water Act, or the Solid Waste Disposal Act or water quality criteria under the Clean Water Act. The Administrator is also required to consider any tolerance level established under the Federal Food, Drug, and Cosmetic Act. More stringent State standards also must be met, in accordance with a specified procedure. Remedial action involving containment must comply with the standards applicable to facilities required to obtain permits under subtitle C of the Solid Waste Disposal Act.

Material transferred off-site must be transferred to a facility operating in physical compliance with a RCRA or TSCA permit, to be placed in a unit that is not releasing any hazardous waste or constituent thereof into groundwater or surface water, and where any releases at other units at the facility are being controlled by a corrective action program approved by the Administrator.

The House amendment authorizes the Administrator to waive requirements under other Federal and State laws applicable to remedial actions under section 121(g), in specified cases: an alternative remedial action will provide protection of human health and the environment substantially equivalent to the remedial action necessary to comply with such requirements; compliance with such requirements will result in greater risk to human health and the environment than alternative options; compliance with such requirements is technically impracticable from an engineering perspective; compliance will consume a disportionate share of the Fund (the Fund-balancing test of current law); or compliance will cost private parties substantially more than the Fund would pay if the Fund-balancing test were applied. Waivers cannot result in the violation of the Clean Water Act, the Marine Protection, Research, and Sanctuaries Act, the Clean Air Act, or the Safe Drinking Water Act.

On-site remedial actions do not require permits other than under the Clean Air Act, the Clean Water Act, the Safe Drinking Water Act, and State groundwater laws. Removal actions under emergency circumstances do not require permits.

The House amendment sets out a detailed procedure through which State permit requirements and State substantive standards will apply to remedial actions selected under this Act. Separate provisions deal with State concurrence or nonconcurrence at Fund-financed sites, Federal facilities, and sites involving action under section 106.

New section 121(k), added by the House amendment, requires remedial action involving treatment of dioxins or dibenzofurans to meet specified requirements. New subsection (l) requires the Administrator to use value engineering review in evaluating the cost effectiveness of a response action projected to cost more than $4,000,000. New subsection (m) authorizes a State to waive the permit requirements of RCRA for mobile incinerator units involved in onsite remedial actions.

Conference substitute—The conference substitute adds a new section 121 governing the selection of remedial actions under sections 104 and 106. Under this new section, remedial actions must assure protection of human health and the environment, and must be in accordance with this new section, in accordance with the NCP, to the extent practicable, and cost effective taking into account the short- and long-term costs including operation and maintenance.

The provision that actions under both sections 104 and 106 must be cost-effective is a recognition of EPA's existing policy as embodied in the National Contingency Plan.

The term "cost-effective" means that in determining the appropriate level of cleanup the President first determines the appropriate level of environmental and health protection to be achieved and then selects a cost-efficient means of achieving that goal. Only after the President determines, by the selection of applicable or relevant and appropriate requirements, that adequate protection of human health and the environment will be achieved, is it appropriate to consider cost-effectiveness.

Remedial actions involving permanent treatment are preferred over those not involving such treatment, and off-site transport and disposal without such treatment is the least favored alternative. The President must assess the long-term effectiveness of various alternatives, including permanent solutions and alternative treatment technologies, taking into account specified factors, and must select remedial actions that utilize permanent solutions and alternative treatment technologies to the maximum extent practicable. If the President does not select such a remedial action, the President must publish an explanation. The President may select a remedial action involving a permanent solution or alternative treatment technology whether or not such an action has been achieved in practice at any similar site.

Under new section 121(c), the President must review any facility at which any hazardous substance remains after a remedial action, no less often than every 5 years. If upon such review it is the judgment of the President that action is appropriate at the facility under such section 104 or 106, the President must take such action or require a responsible party to take such action. The President is required to report to the Congress on what facilities require such review and the results of such review.

New section 121(d) establishes the substantive standards that remedial actions under sections 104 and 106 must meet. The general standard is that remedial actions must attain a degree of cleanup of hazardous substances, pollutants and contaminants released into the environment and of control of further release at a minimum that assures protection of human health and the environment. For any material that will remain onsite, the remedial action must require a level or standard of control that at least attains any legally applicable or relevant and appropriate—

standard, requirement, criteria, or limitation under any Federal environmental law, including (but not limited to) the Toxic Substances Control Act, the Safe Drinking Water Act, the Clean Air Act, the Clean Water Act, the Marine Protection, Research, and Sanctuaries Act, or the Solid Waste Disposal Act;

more stringent promulgated standard, requirement, criteria, or limitation under a State environmental or facility siting law that has been identified to the President by the State in a timely manner.

A remedial action must require a level or standard of control that at least attains Maximum Contaminant Level Goals established under the Safe Drinking Water Act and water quality criteria established under section 303 or 304 of the Clean Water Act, where such goals or criteria are relevant and appropriate. In determining whether water quality criteria are relevant and appropriate, the President shall consider the designated or potential use of the surface or groundwater, the environmental media affected, the purposes for which the criteria were developed, and the latest information available.

The conference substitute restricts the use of any alternate concentration level process in the selection of remedial action. Under new section 121(d)(2)(B)(ii), an alternate concentration level process cannot be used to modify or establish legally applicable standards under this section (for example, a groundwater protection standard) if the process assumes a point of human exposure beyond the facility boundary. The only exception is in cases of a known or projected point of entry of groundwater to which such a standard would apply, into surface water which is a reasonable distance from the facility boundary. If at such points of entry, or at any point downstream where accumulations of constituents may occur, there will be no statistically significant increase of such constituents in the surface water from such groundwater, and there are enforceable measures that preclude human exposure at any point between the facility boundary and points of entry into surface water, an alternate concentration level process may assume such points of entry into surface water as the point of human exposure.

In developing projections that there will not be a statistically significant increase of constituents from such groundwater and surface water either at the point of entry or at any point where there is reason to believe accumulation of constituents may occur downstream, there must be sufficient background data developed, in conjunction with the conduct of the remedial investigation/feasibility study, for both the point of entry and at any point where there is reason to believe accumlation of constituents may occur downstream, to allow a determination of whether the projected increase is greater than the 95 percent confidence limit for concentrations in surface water. In making such determinations for potential accumulations downstream, the President shall take into account the ability of the constituents to degrade, and areas along shorelines, areas of standing water, and biota where such constituents may be expected to settle out or accumulate. Measurements and projections shall not be based solely on annual averages, but the following shall also be considered as appropriate: seasonal surface water conditions; natural cycles and ambient conditions; flow, stream width, and stream depth; and the surface to groundwater relationship.

This section, sanctioning the use of an alternate concentration limit process that assumes points of exposure beyond the facility boundary, is limited to cleanup under CERCLA in which surface water is a reasonable distance from the facility boundary. This section does not address the use of alternate concentration limit processes under other environmental laws.

Under the new section 121(d)(2)(C), a State standard, requirement, criteria, or limitation that could effectively result in the statewide prohibition of land disposal of hazardous substances will not apply, if certain conditions exist. First, the President must comply with subsection (b). Second, even after compliance with subsection (b), the President must have proposed a remedial action that does not involve permanent treatment and for which the proposed disposition of waste from the remedial action is land disposal within such State. In that case, the State standard will apply if it is of general applicability and formally adopted, based on hydrologic, geologic, or other relevant considerations (and not adopted for the purpose of precluding onsite remedial actions or other land disposal for reasons unrelated to protection of human health and the environment), and the State arranges for, and assures payment of the incremental costs of using, an alternative facility for disposition of such materials. Clause (iv) requires the President to conform the remedial action at the Picillo Pig Farm site, Rhode Island, to the State standard.

While the requirements of subparagraph (C) create circumstances under which State requirements may be avoided, it does not establish a system of preemption. Nor does the subparagraph restrict the right of a State to undertake a clean-up or to recover the costs of the clean-up under State law or CERCLA. If a State chooses to undertake a response action pursuant to a State standard, requirement, criteria, or limitation that would not apply to a remedial action proposed by the President as a result of subparagraph (C), such action by the State shall not be interpreted or construed to be inconsistent with the National Contingency Plan for the purpose of section 107 of this Act solely as a result of the provisions of subparagraph (C).

Under new section 121(d)(3), material transferred offsite must be transferred to a facility operating in physical compliance with RCRA (or where applicable, TSCA or other Federal law) and applicable State requirements, including permitting requirements, to be placed in a unit that the President determines is not releasing any hazardous waste or constituent thereof into groundwater or surface water or soil. In addition, the section requires that any releases at other units at the facility are being controlled by a corrective action program approved by the Administrator under subtitle C of RCRA. The President must notify owners or operators of facilities of any determination under this paragraph.

The response and remedial actions taken by EPA under this program must be designed and carefully monitored to ensure that the proposed solutions to today's problems do not create new, perhaps more serious problems tomorrow. This is an especially important responsibility when the waste material is removed to a land disposal facility that, if improperly operated in violation of RCRA requirements, could contaminate groundwater or surface water and thereby present threats to human health and the environment.

The Managers expect that EPA shall initiate rulemaking within 180 days to implement the notice requirements of this provision. The Managers further expect that the owner or operator of a facility will be provided with an opportunity to meet informally prior to a final determination of eligibility except with regard to emergency removal actions. The Administrator is expected to establish post-determination procedures for resolving disputes related to determinations made under subparagraphs (A) and (B). In implementing this provison, the Agency should give appropriate consideration to the significance of the violations, including Class I violations, as compared with minor paperwork violations. Until the conclusion of such rulemaking, the Administrator shall implement these provisions on the basis of the statutory terms.

The addition of "soil" to the requirements of (d)(3)(A) is intended to preclude the transfer or disposal of hazardous wastes or constituents thereof into unlined units and lined units with releases other than de minimis releases into soil.

New section 121(d)(4) authorizes the President to select remedial actions that do not attain a legally applicable or relevant and appropriate standard, requirements, criteria, or limitation, as required by section 121(d)(2), in six circumstances—

the remedial action selected is only part of a total remedial action that will comply when completed;

compliance would result in greater risk to human health or the environment than alternative options;

compliance is technically impracticable from an engineering perspective;

the remedial action selected will attain a standard of performance that is equivalent to that required under the otherwise applicable requirement, through use of another method or approach;

with respect to a State standard, requirement, criteria, or limitation, the State has not consistently applied it to other remedial actions; or

in the case of a remedial action that is solely Fund-financed, the proposed remedial action is inappropriate under the Fund-balancing test of previous section 104(c)(4).

The President must make and publish findings of such circumstances, before selecting a remedial action not in compliance with section 121(d)(2).

The conference substitute does not include as a circumstance in which the President may select a remedial action that does not conform to a State requirement, anything comparable to section 121(j)(4)(A) of the House amendment. Any State standard that has been waived by a responsible State official pursuant to State law is not a legally applicable or relevant and appropriate standard within the meaning of this section.

With respect to the provision regarding inconsistent application of State standards, this provision will apply both where the standard is not of general applicability or where the standard has not been applied consistently by the State.

Subsection (d)(4)(D) allows the selection of a remedial action that does not comply with a particular Federal or State standard or requirement of environmental law, where an alternative provides the same level of control as that standard or requirement through an alternative means of control. This allows flexibility in the choice of technology but does not allow any lesser standard or any other basis (such as a risk-based calculation) for determining the required level of control. However, an alternative standard may be risk-based if the original standard was risk-based.

New section 121(e) provides that no Federal, State, or local permit may be required for response action conducted entirely onsite, where such response action is selected and carried out in compliance with section 121. States are given the authority to enforce requirements of consent decrees to which the remedial action must conform, in Federal district court. Consent decrees are to contain dispute resolution and enforcement provisions, and may include administrative enforcement. Consent decrees must contain stipulated penalties for violations of the decree of $25,000 per day, enforceable by the President or the State.

New section 121(f) sets out the way in which States will be involved in the selection of remedial actions. Paragraph (1) requires regulations governing State participation, including notice to the State of negotiations with potentially responsible parties and the opportunity to participate in those negotiations and be a party to any settlement. This latter requirement applies even in advance of the promulgation of such regulations.

New paragraph (2) provides that the President must give a State at least 30 days notice if the President proposes to select a remedial action under section 106 that does not attain a legally applicable or relevant and appropriate Federal or State standard, requirement, criteria, or limitation under the authority of section 121(d)(4). The State may concur in such selection and become a signatory to the consent decree. If the State does not concur, the State shall intervene in the section 106 action before entry of the consent decree. If the State establishes, on the administrative record (to which it is entitled to contribute), that the finding of the President under section 121(d)(4) was not supported by substantial evidence, the court shall order the remedial action conformed to such standard, requirement, criteria, or limitation. If the court does not so modify the remedial action, the State may assure payment of the incremental costs of meeting such standard, requirement, criteria, or limitation, and the remedial action (and consent decree embodying it) will be so modified anyway.

The provisions of section 121(f)(3) apply to the selection of remedial action at Federal facilities. The President must give a State at least 30 days notice if the President proposes to select a remedial action for a Federal facility that does not attain a legally applicable or relevant and appropriate Federal or State standard, requirement, criteria, or limitation under the authority of section 121(d)(4). If the State concurs in such selection, or fails to act within 30 days, the remedial action may proceed. If the State does not concur, the State may bring an action in Federal district court for the purpose of determining whether the finding of the President under section 121(d)(4) is supported by substantial evidence. If the State establishes, on the administrative record, that the finding is not supported by substantial evidence, the remedial action must be conformed to such standard, requirement, criteria, or limitation. If the court determines that the State has failed to establish that the finding was not supported by substantial evidence, and the State within 60 days pays the incremental costs of meeting such standard, requirement, criteria, or limitation, the remedial action will be conformed to the State's wishes. If the State fails to pay within 60 days, the remedial action shall proceed.

Nothing in new section 121(f)(3) precludes the Federal agency from taking remedial action unrelated to or not inconsistent with the disputed standard, requirement, critera, or limitation, or gives a court authority to enjoin such remedial action.

If the President determines that a permanent solution is not to be utilized, the President may consider remedial actions in which hazardous substances and pollutants and contaminants are securely contained in above-ground structures.

In addition, with respect to any remedial action which involves treatment of chlorinated or halogenated dioxins or chlorinated or halogenated dibenzofurans, the President shall require, to the maximum extent practicable, treatment that provides each of the following:

(a) A destruction and removal efficiency meeting or exceeding 99.9999 percent.

(b) A treatment process which minimizes accidental emissions of chlorinated or halogenated dioxins, dibenzofurans, and other highly toxic materials to the environment.

(c) Protection against emissions of any hazardous substance or pollutant or contaminant into the air during normal operation and equivalent protection during non-steady operations including start-up, shut-down, and power failures.

(d) Protection against secondary formation of halogenated dioxins and dibenzofurans.

This requirement does not apply if the President determines that (1) an alternative method of treatment or disposal attains a standard of performance that is equivalent, or (2) there will be no human exposure to the hazardous substance or pollutant or contaminant containing chlorinated or halogenated dioxins or chlorinated or halogenated dibenzofurans.

SECTION 122—SETTLEMENTS

Senate amendment—The Senate amendment authorizes the President to enter into settlement agreements with potentially responsible parties for the payment or conduct of remedial action. This provision also requires, with enumerated exceptions, the President to provide a non-binding preliminary allocation of responsibility among all potentially responsible persons at a facility and authorizes the President to issue subpoenas for information needed to make allocations. If a responsible party or parties makes an offer to provide for payment or the undertaking of remedial action exceeding 50 percent of the total allocation and the offer was equal to or greater than the cumulative shares of the parties making the offer, a decision to reject such offer would be subject to judicial review. The provision authorizes the two mandatory covenants not to sue: for off-site transport in certain circumstances and for permanent treatment or destruction of hazardous substances. Finally, the provision authorizes settlements with *de minimis* contributors and provides for mixed funding.

House amendment—The House amendment confirms the authority of the Administrator of EPA to enter into settlement agreements with responsible parties regarding the clean-up of sites where hazardous substances have been or are threatened to be released. This provision also establishes a moratorium on action to clean up a site while negotiations are ongoing.

Additionally, the provision requires that settlements be incorporated in consent decrees which allow for public comment and judicial review, with a further authorization that settlements for performance of removal actions, for *de minimis* contributors, and for certain cost recovery under section 107 may be incorporated in administrative orders subject to a public comment period. The provision also authorizes the Administrator to grant covenants not to sue if such covenants are in the public interest. Finally, the provision authorizes the Administrator to reach early settlements with *de minimis* contributors and to agree to administrative settlements of cost recovery actions and authorizes mixed funding.

Conference substitute—The conference substitute adopts the House provision with several modifications. The substitute also incorporates specific elements of the Senate amendment.

As set forth in section 122(a) of the substitute, the decision of the President to undertake the settlement procedures set forth in this section is discretionary. Thus, the Conferees modified the language of section 122(a) to clarify this intent. The language used in this subsection is now identical to

the language of section 122(g) which authorizes settlements with de minimis contributors. In both contexts, the decision to undertake the procedures set forth is in the discretion of the President.

Section 122(a) is also modified to state that the decision to use these procedures is not subject to judicial review. The purposes of the settlement procedures set forth in section 122 are to expedite settlements and to assure the effective clean-up of Superfund sites. Nothing in this section diminishes the responsibility of or precludes the court from reviewing the lodged consent decree to determine whether relevant requirements of the Act have been met and whether entry of the decree is in the public interest.

Section 122(b)(1), which addresses mixed funding for site response actions, provides that the President, where appropriate and in the public interest, may reimburse parties for certain costs of actions under the agreement by using monies from the Fund on behalf of parties who are unknown, insolvent, similarly unavailable, or refuse to settle.

In cases of mixed funding, the President is to undertake actions to impose the costs of the Fund obligations on non-settlors. Such actions may be to seek reimbursement for expenditures already made or to determine liability in advance of the actual incurrence of costs. But in any case, the burdens of mixed funding should be shifted to non-settlors, whether through reliance on the authorities of this Act or other laws, unless it would be unreasonable to undertake such efforts.

Section 122(b)(4), regarding future obligations of the Fund, reflects a compromise between the House and Senate provisions. It was adopted as an additional incentive for the President to select permanent remedies and thus avoid the circumstance where the failure of a remedy would result in additional Fund expenditures. It should also serve as a settlement incentive for private parties in mixed funding cases, but the conferees strongly emphasize that every effort should be made by the President to recover the obligation from non-settlors. In actual practice, this provision is intended as a restraint and limit on the President's use of mixed-funding authority.

The obligation of the Fund for future liability is limited to the extent that subsequent remedial actions are necessary by reason of the failure of the original remedial action. The parameters of Government future liability at a facility are to be defined by the provisions of the consent decree which define the remedial action involved. The obligation of the Fund for subsequent remedial action applies only to that portion of the remedy which involved mixed funding in the first instance. For any portion of the remedy which did not involve mixed funding in the first instance there would be no obligation of the Fund for future remedial action under this provision.

Where in the course of the remedial action it becomes clear that the remedial selection was based on incorrect information, making the selection inappropriate, then the Government's portion of future liability will be recalibrated as part of a new remedial selection.

Section 122(e) is modified by the conference substitute in several ways. First, section 122(e) now requires the President, in certain circumstances, to provide notice and an opportunity for private parties to conduct the RI/FS when entering into negotiations under this section. The notice need not be accompanied by information on volume and nature of waste and ranking if this information is not available at the start of the RI/FS. A separate notice and information release should be provided for private parties who actually conduct the remedial action. Information on volume, nature and ranking of wastes should be made available routinely at this time. This section further provides that this disclosure provision is subject to the other privileges and protections of law, including attorney work product. However, such other privileges and protections of law do not apply to disclosure of information generated by the President to duly authorized Committees of Congress. At the same time, this provision does not extinguish or diminish disclosure requirements under other provisions of Federal or State Law.

Section 122(e)(2) is modified to preclude the President from conducting the remedial investigation and feasibility study (RI/FS), except as provided in section (e)(4), but not other studies or investigations under section 104(b), for 90 days. Nothing in this section precludes the President from initiating a remedial design during a moratorium for negotiations for private party action where an RI/FS has been completed.

Section 122(e)(3) is added by the conference substitute to require the President to develop guidelines for the preparation of non-binding preliminary allocations of responsibility. The President's decision to prepare or not prepare a non-binding preliminary allocation of responsibility (NBAR) at a facility is discretionary and therefore not subject to citizens suits or judicial review. The President has the discretion to allocate the total response costs among potentially responsible parties as the President deems appropriate, including parties for which the President is considering settlement agreements under subsections (b) and (g) of section 122.

Section 122(e)(3)(B), incorporated in the conference substitute from the Senate provision, authorizes the President to subpoena such information as the President deems necessary for performing an NBAR or to otherwise implement this section.

Section 122(e)(3)(C) prohibits the admission of NBARs in any proceedings, and section 122(e)(3)(D) requires that the costs of producing an NBAR be reimbursed by a potentially responsible party whose settlement offer is accepted by the President. If the offer is not accepted, such costs are considered costs of response for purposes of sections 111 and 107.

Section 122(e)(3)(E) provides that when the President has issued a non-binding preliminary allocation of responsibility, and a potentially responsible party has made a substantial offer for a response action which the president rejects, the President shall provide a written explanation of such rejection.

In implementing this provision, the President will establish threshold percentage criteria governing situations when the explanation needs to be provided. A substantial offer is one which represents a commitment by the potentially responsible parties to undertake or finance a predominant portion of the total remedial action. Any substantial offer must provide for response or costs of response for an amount equal to or greater than the cumulative total, under the NBAR, of the potentially responsible parties making the offer. For a substantial offer to exist, all other terms must be agreed to.

The President need provide not more than one explanation per facility. The explanation shall be provided by the Administrator of the Environmental Protection Agency, in consultation with the Assistant Attorney General for Land and Natural Resources, following headquarters review in Washington. Due to the enforcement-sensitive nature of NBARs, all such allocations must be prepared solely by Federal employees.

Section 122(e)(6) is included in the conference substitute to clarify that no potentially responsible party may undertake any remedial action at a facility unless such remedial action has been authorized by the President.

Section 122(f)(2)(A) incorporates from the Senate provision the requirement for a mandatory covenant not to sue in a settlement agreement where the President, in his sole discretion, has rejected an on-site remedy that meets the requirements of section 121 and the President has required that the hazardous substances be taken off-site. The Conferees adopted the provision concerning a covenant not to sue for off-site transport under certain circumstances, in the context of new section 121 of CERCLA, relating to cleanup standards. Section 121(b)(1) provides that off-site transport and disposal of hazardous substances or contaminated materials without treatment should be the least favored remedial action where practicable treatment technologies are available. Section 121(b)(1) also requires that the President select a remedial action that is protective of human health and the environment, that is cost-effective, and that utilizes permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable. The requirements of this section reflect the findings and objectives of the Solid Waste Disposal Act, which find that certain classes of land disposal facilities are not capable of assuring long-term containment of certain hazardous wastes. The special covenant not to sue described in section 121(f)(2)(A) applies to the hazardous substances which are transported to and disposed of under the terms of the consent decree at a Solid Waste Disposal Act facility that satisfies the specific requirements of the Solid Waste Disposal Act and has received a final permit pursuant to Section 3005 of the Solid Waste Disposal Act.

Section 122(f)(2)(B), adopted from the Senate provision, provides for mandatory covenants not to sue when the hazardous substance is permanently destroyed. For purposes of the section 122(f)(2)(B) special covenant not to sue, the term "such facility" means that portion of the facility where the remedial action involving the treatment of hazardous substances so as to destroy, eliminate, or permanently immobilize the hazardous constituents of such substances has occurred. When a covenant not to sue is issued under this subparagraph (B) on the basis of application of treatment technologies involving "permanent immobilization" of hazardous substances or constituents of such substances, such technologies must change the fundamental nature and character of such substances. Placing the substance in a permanent storage container or other containment method would not constitute a permanent immobilization technology covered by this subparagraph.

The conference substitute deletes the House provision regarding a potentially responsible party's ability to obtain a covenant not to sue without a "reopener" for unknown conditions if that responsible

party contributes to a "Groundwater and Surface Water Protection Fund" for any future problems at the facility. Instead, new section 122(f)(6)(B) is added to require, except in extraordinary circumstances, reopeners for unknown conditions. The provision now states that settlements shall not be granted without reopeners for unknown conditions, except in extraordinary circumstances where all other terms and conditions of the settlement agreement are sufficient to protect health and the environment from any future releases at or from the facility. This provision should be implemented in a manner consistent with the current application of the Administration settlement policy as to unknown conditions. In addition, section 122(f)(6)(C) was added, also consistent with current settlement policy, to state that "The President is authorized to include any provisions allowing future enforcement action under sections 106 or 107 that in the discretion of the President are necessary and appropriate to assure protection of the public health, welfare and the environment."

As set forth in the discussion relating to section 122(a), the decision of the President to use the de minimis settlement procedures under section 122(g) is discretionary.

Section 122(g) is further modified to clarify that the Attorney General must give prior approval for administrative orders for settlements where the total response costs at a facility are in excess of $500,000. A comparable clarification, limiting the applicability of the subsection to facilities where the total response action does not exceed $500,000, was made to section 122(h)(1) and (2), regarding cost recovery under section 107.

Section 122(m) is added to the conference substitute because there are inconsistent provisions in the House and Senate versions regarding the circumstances under which settlement agreements, including covenants not to sue, could be set aside for reasons such as fraud, misrepresentation, and mutual mistake of fact. All of these provisions are combined in a single provision to avoid confusion arising from the use of inconsistent language and to reflect the Conferees' understanding that the general principles of law regarding the setting aside or modification of consent decrees or other settlements will be applicable to all agreements and covenants not to sue under the Act.

Finally, new section 122(n), as set forth in the conference substitute, provides for the inclusion in section 308 of CERCLA of a separability provision. This provision states that if the provision regarding contribution protection for those whose settlements are incorporated in administrative orders rather than consent decrees is held unconstitutional, compensation for the amount of such contribution may not be obtained from the United States.

SECTION 123—REIMBURSEMENT TO LOCAL GOVERNMENTS

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment requires the Administrator to promulgate rules setting out procedures under which the Administrator will reimburse units of local government for expenses incurred in carrying out temporary emergency measures necessary to prevent or mitigate injury to public health or the environment associated with the release or threatened release of hazardous substances or pollutants or contaminants. The amount of any reimbursement may not exceed $25,000 for a single response. A cap for expenditures from the Superfund over a five-year period is included.

Conference substitute—The conference substitute includes a modified version of the House amendment. Reimbursement under this provision shall not include reimbursement for normal expenditures that are incurred in the course of providing what are traditionally local services and responsibilities, such as routine emergency firefighting.

SECTION 124—METHANE RECOVERY

Senate amendment—The Senate amendment amends the definition of "owner or operator" contained in CERCLA to exclude a person who owns or operates landfill gas recovery equipment from the definition of "owner or operator" under certain circumstances. In addition, the Senate amendment provides that, unless the Administrator promulgates regulations under subtitle C of the Solid Waste Disposal Act, the owner or operator of such equipment shall not be deemed to be managing, generating, transporting, storing or disposing of hazardous or liquid wastes under that subtitle. However, if the condensate or other waste material removed from the landfill meets the criteria of section 3001 of the Act, then it is deemed to be a hazardous waste and regulated accordingly.

House amendment—The House amendment exempts landfill gas operators from liability in actions under sections 106 or 107 and State law for specified items. The exemption does not apply where a release is caused by the negligence, gross negligence or intentional misconduct of the landfill gas operator. The House amendment contains provisions similar to the Senate amendment addressing the condensate that is produced with the recovery of gas.

Conference substitute—The conference substitute adopts the Senate amendment with modifications. It provides a conditional exemption from liability under the Act for persons who own or operate methane-recovery equipment. This exemption does not apply to any release or threatened release if either the release or threatened release was primarily caused by the activities of such owner or operator, or the owner or operator otherwise would be liable under Section 107 if such owner or operator were not the owner or operator of such equipment. The conference substitute adopts the Senate provision addressing the condensate that is produced with the recovery of gas.

SECTION 125—CERTAIN SPECIAL STUDY WASTES

Senate amendment—The Senate amendment to section 105 provides that, until the Hazard Ranking System is revised, special study waste sites described in section 3001(b)(2)(B) or (3)(A) of the Solid Waste Disposal Act may be listed on the National Priorities List only if the Administrator makes findings based on facility-specific data. Liability for costs, damages, or penalties may only be imposed if specific findings have been made and the Administrator supports those findings in court.

House amendment—The House amendment requires the Administrator to revise the Hazard Ranking System (HRS) as it applies to facilities that contain substantial volumes of fly-ash and other wastes discussed in section 3001(b)(3)(A)(i) of the Solid Waste Disposal Act that relate to the combustion of coal or other fossil fuels in a manner which assures appropriate consideration for site-specific characteristics of such facilities.

Prior to the completion of the required revision of the Hazard Ranking System, the Administrator may not add to the NPL any facility that contains waste described in section 3001(b)(3)(A)(i) of the Solid Waste Disposal Act on the basis of an evaluation relying principally on the volume of such waste and not on the actual concentrations of the hazardous constituents of such waste. Nothing in this section affects EPA's authority to list or take other actions under the Act at facilities based upon the presence of substances other than waste described in section 3001(b)(3)(A)(i).

Conference substitute—The conference substitute adopts the House amendment. Provisions dealing with other special study wastes are discussed under section 105, supra.

SECTION 126—WORKER PROTECTION STANDARDS

Senate amendment—The Senate amendment makes two changes to section 111(c)(6) of CERCLA, which authorizes an employee training and protection program. First, the amendment directs the Secretary of Labor to promulgate standards for health and safety protection of employees engaged in emergency response and hazardous waste operations. Second, the amendment provides that the cost of training such employees, in an amount up to $10,000,000 per year, is to be considered a permissible cost of the Section 111(c)(6) program.

House amendment—The House amendment adds a new section to CERCLA relating to worker protection standards. The Secretary of Labor is directed to issue standards for the health and safety protection of employees, including State and local government employees, engaged in hazardous waste operations. Such standards must include various general provisions to ensure worker protection. Specifically, the standards must require that general site workers receive at least 40 hours of initial instruction off the site and 3 days of actual field experience. In addition, the standards must require that supervisors directly responsible for the hazardous waste operations receive the same training as general site workers plus 8 additional hours of special training. The standards must also prohibit untrained and uncertified persons from engaging in hazardous waste operations. The House amendment further directs the Secretary of Labor to issue interim final rules. In addition, it authorizes the National Institute of Occupational Safety and Health to award grants to nonprofit organizations for training and educating workers who are or will be engaged in hazardous waste removal, containment, or emergency resonse operations; $10,000,000 million per year from FY 86 through FY 90 are authorized to be appropriated from the general fund of the Treasury for such grants.

Conference substitute—The conference substitute adopts the House amendment, redrafted as a free-standing provision of law rather than as an amendment to CERCLA, with changes.

The conference substitute deletes "including employees of State and local governments" from subsection (a), but adds a new subsection (f), requiring EPA to promulgate a standard identical to the OSHA standard, to be applied to State and local government employees in States without State OSHA programs. This substitute assures that States which have OSHA approved plans retain the authority to promulgate appropriate standards, while States without

OSHA approved plans follow EPA's promulgated standards. EPA must promulgate the standard within 90 days of final promulgation of the OSHA standard. The OSHA standard, not the EPA standard, would apply to any State that adopts a State OSHA program subsequent to enactment of the bill.

The conference substitute also makes changes to address the phasing-in of new regulatory requirements. The House amendment is modified to specify that interim regulations will remain in effect until one year after the promulgation of final regulations, at which time the final regulations will take effect. Interim final regulations will take effect within 60 days after this section's date of enactment. The conference substitute also uses the term "promulgation" for "issuance" in subsection (a) of the bill, "proposed standards" for "minimum general requirements" in subsection (b), and "regulations" for "rules" in subsection (d).

The conference substitute includes the addition of a new subsection addressing the extent to which final regulations must include minimum general requirements. In proposing regulations, the Secretary of Labor must include all of the requirements listed under Section 126(b) of the House bill. After notice and comment on the proposal, the Secretary must include all of these requirements in the final plan unless the Secretary determines that the evidence in the public record considered as a whole, does not substantiate inclusion of one or more of the requirements in the final rule. This approach is intended to give the Secretary needed flexibility in promulgating new standards. The Secretary's determination could be challenged under Section 6 of the OSHA Act, based on the "substantial evidence rule".

The conference substitute also modifies the training requirements contained in the House amendment. The House amendment is clarified to make training standards applicable to employees whose jobs cause them to work directly with hazardous substances. In addition, the conference substitute modifies the training requirements for general site workers, onsite managers and supervisors to specify that such persons must have either 40 hours of instruction or its equivalent. Equivalent training includes the training that existing employees might have already received from actual, onsite experience.

Funding for the grants program is also changed to reflect the Senate's approach under Section 111(c) of CERCLA. Thus, Section 126(b)(4) of the House amendment, which authorizes appropriations from the general fund of the Treasury, is deleted. Finally, the conference substitute requires the National Institute of Environmental Health Sciences, rather than the National Institute of Occupational Safety and Health, to administer the program.

SECTION 127—LIABILITY LIMITS FOR OCEAN INCINERATION VESSELS

Senate amendment—The term "incineration vessel" is defined under section 101 of CERCLA. Incineration vessel liability under section 107 of CERCLA is equated to liability of facilities under section 107 of CERCLA. Financial responsibility requirements under section 108 of CERCLA are revised to direct the President to require additional evidence of financial responsibility for incineration vessels to reflect different risks posed by incineration vessels. The Marine Protection, Research and Sanctuaries Act of 1972 is amended to revise provisions which had been interpreted as preempting other legal remedies for damages by the decision in *Middlesex County Sewerage Authority* v. *National Sea Clammers Association*. Section 107 of CERCLA is amended to clarify that a vessel owner would be liable in accordance with section 107 under maritime tort law and that physical damage to the proprietary interest of the claimant is not required as a condition of liability.

House amendment—The term "incineration vessel" is defined under section 101 of CERCLA. Incineration vessel liability under section 107 of CERCLA is equated to liability of facilities under section 107 of CERCLA. Financial responsibility requirements under section 108 of CERCLA are revised to allow the Administrator to require additional evidence of financial responsibility for incineration vessels to reflect different risks posed by incineration vessels.

Conference substitute—The conference substitute adopts the Senate amendments with regard to the definition of incineration vessel, liability under section 107 of CERCLA, and financial responsibility under section 108 of CERCLA. Regarding financial responsibility, the President shall require evidence of financial responsibility for ocean incineration under this section commensurate with the financial responsibility appropriate for activities with similar risks.

The conference substitute adopts a modification of the Senate amendment to the Marine Protection, Research, and Sanctuaries Act of 1972. This modification makes clear that the Marine Protection, Research and Sanctuaries Act of 1972 does not preempt any person's right (1) to seek damages or enforcement of any standard or limitation under State law, including State common law, or (2) to seek damages under other Federal law, including maritime tort law, resulting from noncompliance with any requirement or permit under the Marine Protection, Research and Sanctuaries Act of 1972.

The conference substitute adopts the Senate amendment with regard to liability under maritime tort law and the absence of physical damage to a claimant's proprietary interest.

Additionally, the Environmental Protection Agency has recently announced its decision to promulgate final regulations prior to issuing permits, including research permits, for incineration of wastes at sea. The Environmental Protection Agency should proceed promptly with its final regulations for all types of ocean incineration permits. These final regulations are expected to fully address all the comments received from the States and the public on the regulations proposed on February 28, 1985. The Administrator will promptly revise these final regulations, as appropriate, if required by subsequent research.

TITLE II—MISCELLANEOUS

SECTION 201—POST-CLOSURE

Senate amendment—The Senate amendment requires the Administrator of EPA to conduct a study and report to Congress on options for a program to finance the post-closure maintenance of RCRA-regulated hazardous waste treatment, storage and disposal facilities in a manner which complements the policies set forth in the Hazardous and Solid Waste Amendments of 1984 and assures the protection of human health and the environment. Provisions for the transfer of liability under section 107(k) of the original CERCLA are suspended until Congress receives the report and enacts subsequent legislation.

House amendment—The House amendment repeals the Post-closure Liability Trust Fund provisions of CERCLA that are in both the tax title and in section 107(k) of the original law. The amendment requires the Comptroller General to study and report to Congress on a program for the management of liabilities after the closure of hazardous waste disposal facilities that are regulated under the Solid Waste Disposal Act (SWDA or RCRA).

Conference substitute—Instead of repealing the Post-closure Liability Trust Fund provisions, the conference substitute includes a suspension of the liability transfer provisions. The Comptroller General is required to conduct a study and report to Congress on options for a program for the management of the liabilities after the closure of RCRA-regulated hazardous waste treatment, storage and disposal facilities in a manner which complements the policies set forth in the Hazardous and Solid Waste Amendments of 1984 and assures the protection of human health and the environment. Specific elements from both the House and Senate amendments are included in the description of the program, the options to be considered, and the assessments that are to be conducted as part of the study.

SECTION 202—HAZARDOUS MATERIALS TRANSPORTATION

Senate amendment—The Senate amendment requires that each hazardous substance designated under subsection 101(14) be listed and regulated under the Hazardous Materials Transportation Act by June 1, 1986, or at the time of such designation, whichever is later, and places certain liabilities on common or contract carriers for such listed and regulated substances.

House amendment—The House amendment requires that each hazardous substance designated under subsection 101(14) be listed and regulated under the Hazardous Materials Transportation Act within ninety days after the date of enactment of CERCLA or at the time of such designation, whichever is later, and places certain liabilities on common or contract carriers for such list and regulated substances.

Conference substitute—The conference substitute adopts the Senate provision but changes the date of regulation from June 1, 1986, to 30 days after the date of enactment.

SECTION 203—STATE PROCEDURAL REFORM

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment establishes new section 309 of CERCLA. This section provides for a Federal commencement date for State statutes of limitations which are applicable to harm which results from exposure to a hazardous substance. State statutes of limitations define the time in which an injured party may bring a lawsuit seeking compensation for his injuries against the party alleged to be responsible for those injuries. These statutes usually run from two to four years, depending on the State. In the case of a long-latency disease, such as cancer, a party may be barred from bringing his lawsuit if the statute of limitations begins to run at the time of the first injury—rather than from the time when the party "discovers" that his injury was caused by the hazardous substance or pollutant or contaminant concerned.

The study done pursuant to Section 301(e) of CERCLA by a distinguished panel of lawyers noted that certain State statutes deprive plaintiffs of their day in court. The

study noted that the problem centers around when the statute of limitations begins to run rather than the number of years it runs.

This section addresses the problem identified in the 301(e) study. While State law is generally applicable regarding actions brought under State law for personal injury, or property damage, which are caused or contributed to by exposure to any hazardous substances, or pollutant or contaminant, released into the environment from a facility, a Federally-required commencement date for the running of State statutes of limitations is established. This date is the date the plaintiff knew, or reasonably should have known, that the personal injury referred to above was caused or contributed to by the hazardous substance or pollutant or contaminant concerned. Special rules are noted for minors and incompetents.

Conference substitute—The conference substitute adopts the provision in the House amendment.

SECTION 204—CONFORMING AMENDMENT TO FUNDING PROVISIONS

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment changes the name of the "Hazardous Substance Response Trust Fund" to the "Hazardous Substances Superfund". The amendment further provides that money in the Hazardous Substance Response Trust Fund shall be available only for expenditure as provided in Section 111 of CERCLA as amended by the Superfund Amendments and Reauthorization Act of 1986.

Conference substitute—The conference substitute adopts the House provision.

SECTION 205—LEAKING UNDERGROUND STORAGE TANKS

Section 205 of the conference substitute amends Subtitle I of the Solid Waste Disposal Act by adding a new subsection 9003(h) to establish a response program with respect to leaks from underground tanks which contain petroleum. Other amendments to Subtitle I are also included in this section.

The response program created by the new subsection (h) relies on two mechanisms to assure that the financial resources necessary to pay for corrective actions are available. First, under amendments to section 9003(c) and (d) of Subtitle I, the owner or operator of each underground storage tank will be required to maintain evidence of financial responsibility for taking corrective action and compensating third parties for property damage and bodily injury. In most cases the evidence of financial responsibility maintained by the owner or operator of the tank to satisfy this requirement will be adequate to pay the entire cost of cleanup and response. At most sites response costs are comparatively small, because cleanup proceeds quickly. A rapid response should continue to be a high priority in the implementation of the response program created by these amendments.

Second, the amendments establish a $500 million Leaking Underground Storage Tank Trust Fund to be financed by taxes on motor fuels to pay for response costs in a limited set of circumstances. Before regulations are published under the existing Subtitle I, the Administrator or the State may use the Fund to pay for a corrective action whenever that action is necessary, in the judgment of the Administrator or the State, to protect human health and the environment. The Administrator can also issue an order requiring corrective action.

After the effective date of the regulations, subsection (h) provides for use of the Fund where the financial resources of the owner or operator (or guarantor) are not available. Specifically, the Fund could be used in the following circumstances: where there is no solvent owner or operator; where it is necessary to take immediate action to protect human health and the environment and only the Fund is available to provide the resources; where an owner or operator has refused to cooperate in a cleanup or comply with an order by the Administrator or the State; and where expenditures at locations apart from the facility are necessary to protect human health or the environment from petroleum that has migrated from the facility pursuant to the provisions of paragraph (11) of subsection (h).

In addition there will be a very limited number of cases for which there is an identifiable and solvent owner or operator who is willing to cooperate in the cleanup, but whose financial resources (including the methods of financial responsibility required by a section 9003(c)(6)) will not be adequate to pay the entire cost of a response. In those cases, the Administrator or a State is authorized to use the Fund to pay the costs that exceed the level of financial responsibility required of the owner or operator as established by the Administrator in regulations under subsections 9003(c) and (d).

The purpose of these amendments is to assure rapid and effective responses to releases from underground storage tanks. The first step in a response is a recognition that a leak is occurring and is typically made by the owner or operator when he or she reports the presence of a release. Releases are likely to be recognized and reported sooner, if the financial uncertainties associated with a corrective action which face the owner or operator with a leaking tank are reduced or removed. The combination of an insurance requirement and a Fund to pay the costs which exceed the amount of the insurance is intended to reduce the financial uncertainty and encourage early reporting of releases.

DEFINITION OF PETROLEUM

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The response program established by this subsection is available only for tanks containing petroleum substances. The House amendment contains an explicit definition of the term petroleum. The definition is a restatement of the meaning of the term as established by current law in section 9001(2) of the Solid Waste Disposal Act. The new definition does not add or remove from regulation any substance or underground tank subject to current law.

Conference substitute—The conference substitute adopts the House provision.

FINANCIAL RESPONSIBILITY

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment includes provisions that limit the liability of owners or operators for the costs and damages caused by releases.

Conference substitute—The conference substitute does not include any limitations on liability as provided in the House amendment, but it does require the Administrator to promulgate requirements for maintaining evidence of financial responsibility.

Section 9003(c) of Subtitle I as it exists in current law requires the Administrator of the EPA to promulgate release detection, prevention and correction regulations as may be necessary to protect human health and the environment. Regulations for petroleum tanks satisfying these provisions are by law due to be promulgated by May, 1987.

Under current law the Administrator need not require that underground tank owners and operators maintain evidence of financial responsibility.

Section 9003(c) and (d) of current law is amended by the conference substitute to define this new element of the underground storage tank regulatory program.

The amount of financial responsibility required shall be sufficient to take corrective action and to compensate third parties for bodily injury and property damage caused by either a sudden or nonsudden release at an underground storage tank. Corrective action means cleanup of a release and, as in existing law and other portions of the conference substitute, includes relocation of residents, providing alternative water supplies and conducting exposure assessments.

The Administrator in promulgating financial responsibility regulations is given the authority to establish various classes and categories of tanks. In setting the amount of financial responsibility necessary to satisfy the new requirement, the Administrator is authorized to vary the amount depending on the class or category to which the tank belongs. The conference substitute establishes a minimum amount which shall apply to all owners or operators unless the Administrator sets a lower amount by regulation. This minimum is $1 million per occurrence. The Administrator may also include in the regulations an aggregate amount per insurance policy.

The Administrator is authorized to set a minimum amount lower than $1 million per occurrence for some classes or categories of tanks. This authority can only be implemented by regulation and is intended to allow the Administrator to address the characteristics of tanks where the capacity of the tank is small and the volume moving through the tank is not large. The Administrator cannot set a minimum financial responsibility requirement of less than $1 million for tanks which are engaged in petroleum production, refining, or marketing, nor is the Administrator authorized to set a lower amount for tanks that dispense very large volumes, for instance, tanks at airports.

The Administrator has the authority to establish financial responsibility requirements in amounts which exceed $1 million for particular classes or categories of tank owners and operators.

The conference substitute provides the Administrator with the authority to suspend the financial responsibility requirement for a particular class or category or in a particular State. This suspension does not apply to a particular owner or operator who cannot get insurance. Rather the Administrator may suspend the requirement only after making a determination that no method of demonstrating financial responsibility is generally available to owners or operators in the class or category or the State. Before granting a suspension to the owners or operators in a particular class or category or State, the Administrator must also find that those owners or operators are taking steps to form a risk retention group or that the State is taking steps to form a fund for owners and operators in that State.

A suspension of the financial responsibility requirement for a class or category or in

a particular State may only last for a period of 180 days. At the end of that period, the Administrator must make a new set of determinations before the suspension can be extended for another 180-day period. The Administrator must again find that no method of financial responsibility in the amounts required by the regulation is available to the owners or operators in the class or category or in a particular State. To extend the suspension the Administrator must also find that substantial progress has been made in establishing a risk retention group or the State fund or that it is not possible to establish such a group or the State is unwilling or unable to establish such a fund. The suspension may be extended indefinitely in 180-day cycles, but only after the dual determination.

The authority for the Administrator to suspend the financial responsibility requirement under Subtitle I does not extend to the requirements of Subtitle C. Hazardous waste land disposal facilities that have lost interim status under section 3005(e)(2) of the Solid Waste Disposal Act as a result of failure or inability to comply with the financial responsibility requirements of Subtitle C shall not be affected by this provision.

RESPONSE PROGRAM BEFORE REGULATIONS

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—Because regulations have not yet been promulgated under Subtitle I of the Solid Waste Disposal Act, the response program established by the House amendments is subdivided into two parts, one providing authority to respond before such regulations are issued and one providing authority to respond consistent with the regulatory provisions after they are promulgated. For petroleum tanks the Subtitle I regulations are due by law to be promulgated by May 1987.

Conference substitute—The conference substitute adopts the House amendment with modifications. The House amendment provides that the corrective action required with respect to particular release should take into account the factors including the business characteristics of the owner or operator. In this section the subject matter is corrective action and the only appropriate considerations are the factors necessary to adequately protect human health and the environment.

RESPONSE PROGRAM AFTER REGULATIONS

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment provides authority for the Administrator (or a State) to use the resources of the Leaking Underground Storage Tank Trust Fund to undertake corrective action with respect to a release from an underground storage tank after the date on which the Subtitle I regulations are effective. Corrective actions undertaken by the Administrator pursuant to this paragraph will be required to meet the corrective action requirements established under the existing Subtitle I provisions. The requirement in that case is a corrective action as may be necessary to protect human health and the environment. The same requirements that the Administrator would apply to an owner or operator required to take corrective action would also apply to a corrective action undertaken by the Administrator or a State using the resources of the Fund.

The authority of the Administrator or a State to respond is limited by the House amendment to the following specific circumstances: (1) where no person can be found who is subject to the regulations and has the capacity to undertake a corrective action; (2) a situation where the Administrator must promptly respond to protect human health and the environment; and (3) where the owner or operator has refused to cooperate with an order by the Administrator to take corrective action.

Conference substitute—The conference substitute adopts the House amendment with two modifications. First, the conference substitute clarifies the authority of the Administrator to authorize States to undertake response actions with the resources of the Fund. Second, the conference substitute adds a fourth circumstance in which the Administrator or a State can use the resources of the Fund to undertake a response. Where the total costs of a corrective action exceed the financial responsibility requirement for a particular owner or operator and paying the costs above the insured amount would significantly impair the ability of the owner or operator to continue in business, the Fund may be used to pay all or a portion of the costs of the corrective action which exceed the amount of financial responsibility that the owner or operator has been required to maintain.

Paragraph (2)(C) of subsection (h) authorizes the use of the Fund to assure effective corrective actions. The term "effective" means that the corrective action is fully protective of human health and the environment and is implemented in a timely way so as to minimize the risk posed by the release. To assure effective actions, the Administrator or the State may implement the corrective action using the financial resources of the Fund and seek to recover the costs of such action under paragraph (6).

The costs of corrective action and the injury to persons and damage to property caused by releases from underground storage tanks is minimized when corrective action is taken quickly. The Fund should be used to facilitate quick response where such action is necessary to protect human health and the environment.

PRIORITY CORRECTIVE ACTIONS

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment instructs the Administrator to give highest priority in undertaking corrective actions with respect to releases from underground storage tanks to those releases which pose the greatest threat to human health and the environment.

Conference substitute—The conference substitute adopts the House amendment with a clarification that States shall be subject to the same priorities when they undertake corrective actions pursuant to this response program.

CORRECTIVE ACTION ORDERS

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment provides the Administrator authority to issue orders to the owners or operators of underground storage tanks to take corrective action with respect to a release from a petroleum tank prior to the time that regulations implementing the order authority under existing law are promulgated. The Administrator is also provided authority to issue orders for corrective action after such date, although the Administrator has such authority under current law.

Conference substitute—The conference substitute adopts the House amendment with modifications to clarify the authority of a State operating under a cooperative agreement with the Administrator to issue orders under this paragraph until such time as the State has a regulatory program approved pursuant to section 9004. After regulations are promulgated, orders under this paragraph shall conform with the corrective action requirements of section 9003(c)(4) and meet the standard of section 9003(a).

Paragraph (2)(D) of subsection (h) authorizes the Administrator to use the Fund to respond to a petroleum release at a facility in two circumstances: 1) if the owner or operator refuses to comply with a specific order to clean up a release issued by the Administrator under authority of subsection (h), and 2) if the owner or operator refuses to comply with an order to take corrective action issued by the Administrator under section 9006 of the Solid Waste Disposal Act. In each of the two cases, the authority to use the Fund to respond only arises after the owner or operator has refused to comply with an explicit order for response to a release at a facility. Paragraph (4) of subsection (h) makes reference to this same authority of the Administrator to issue orders to take corrective action under section 9006 of the Solid Waste Disposal Act. The phrase "to carry out regulations issued under subsection (c)(4)" is not a new authority but refers to the authority contained in current law.

ALLOWABLE CORRECTIVE ACTIONS

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment contains a provision which includes within the definition of corrective action the temporary or permanent relocation of residents and alternative water supplies. Also included in the allowable corrective action are studies to determine the health effects of a release from a petroleum tank. However, the cost of these studies cannot be recovered from owners or operators under the House amendment.

Conference substitute—The conference substitute adopts the House provision with modifications. Reference to studies of health effects are deleted. In addition to the temporary or permanent relocation of residents and the provision of alternative water supplied, the Administrator is authorized to conduct exposure assessments at the site of a release from an underground storage tank.

Paragraph (5) of subsection (h) provides the Administrator (or the State) with authority to conduct exposure assessments at the sites of underground storage tanks which have released petroleum. The Administrator is authorized to recover the costs of such assessments from the owner or operator of the tank under paragraph (6) and the term "exposure assessment" is defined in paragraph (10) of subsection (h).

The purpose of the assessments is to determine which individuals have been exposed to the released petroleum and to aid in the design of appropriate corrective actions. Included in the assessments might be actions such as: obtaining and analyzing air, water and soil samples; determining the levels of petroleum substances in tap or well water; determining the direction and spread of the substances through various pathways of exposure; monitoring homes and buildings in the area for vapors or other signs that the substance has migrated to a particular location; and comparing the data gathered at the site on the nature of the release and the resulting exposure to other in-

formation that is available on the effects of and risks posed by exposure to the released substances.

Paragraph (5) does not authorize a house-to-house survey to determine the health problems experienced by persons living or working in the surrounding community, nor does the language give the Administrator the authority to conduct epidemiological surveys or toxicological tests of the substances released. Although the Administrator may conduct health surveys and studies at the site under other authorities, nothing in this section authorizes the Administrator to pursue cost recovery for such studies from the owner or operator of the tank.

In determining whether to conduct an exposure assessment at a particular facility where petroleum has been released, the Administrator shall take into account the presence of buildings within the vicinity of the facility in which particularly susceptible individuals might work or reside, including schools, hospitals, nursing homes and clinics.

The legislation does not affect authority under other law to conduct health studies, health assessments, or health research.

RECOVERY OF COSTS

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment provides that the owners and operators of underground storage tanks shall be liable to the Administrator or a State for the costs of a corrective action undertaken pursuant to the authorities of this section. The standard of liability which obtains under this paragraph is the same standard of liability which would be applied pursuant to section 311 of the Federal Water Pollution Control Act.

Conference substitute—The conference substitute adopts the House amendment with modifications. The standard of liability is the same as the standard established by the House bill. The conference substitute adds a new paragraph (6)(B) relating to the equities of cost recovery which is to guide the decisions of the Administrator or a State in seeking recovery of costs. Paragraph (6)(B) is an instruction to the Administrator and the States with respect to the administration of the program and not a defense for an owner or operator facing a cost recovery action taken by the Administrator or a State.

Paragraph (6)(B) of subsection (h) gives the Administrator or the State the discretion to forego full-cost recovery from the owner or operator at some facilities where a release has occurred and the Fund has been used to pay for response actions. A full-cost recovery is not intended where the owner or operator has maintained financial responsibility as required by subsections (c) and (d) and the financial resources of the owner or operator (including the insurance or other methods of financial responsibility which was maintained) are not adequate to pay for the costs of a response without significantly impairing the ability of the owner or operator to continue in business. The "equities" in such a case would dictate that the Fund be used to pay the costs or portion of the costs of response which exceed the amount of financial responsibility that the owner or operator was required to maintain. The factors to be considered by the Administrator or the State in determining the equities are the same factors which the Administrator is to consider according to paragraph (5)(C)(iii) of section 9003(d) in establishing a minimum financial responsibility requirement for various classes and categories of underground storage tanks pursuant to subsection (d) of section 9003.

Paragraph (6) of subsection (h) provides for the recovery of costs of corrective action by both the Administrator and the States from owners and operators of tanks. To encourage aggressive cost recovery by the States, EPA may, in its discretion, make available additional funds for corrective action to those States that demonstrate an effective cost recovery program.

LIMITATIONS ON LIABILITY

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment contains a series of provisions limiting the liability of owners and operators for the costs incurred by EPA or a State when implementing the authorities of the response program established by this section.

Conference substitute—The conference substitute deletes the House amendment.

EFFECT ON LIABILITY

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment provides that no indemnification, hold harmless, or similar agreement or conveyance would be effective to transfer liability under subsection (h) from the owner or operator of any underground storage tank or from any person who may be liable for a release or threat of release to any other person. Nothing in the paragraph, however, bars any agreement to insure, hold harmless, or indemnify a party to an agreement for any liability under section 9003 of the Solid Waste Disposal Act.

Conference substitute—The conference substitute adopts the House provision.

STATE AUTHORITIES

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment provides that the response authorities assigned to the Administrator under the new subsection (h) could be delegated to States which are also delegated primary enforcement responsibility for the section 9003(c) provisions of Subtitle I. A State program is required to be substantially equivalent to the Federal program and the Administrator would make grants to the States from the Leaking Underground Storage Tank Trust Fund as necessary to undertake corrective actions with respect to releases of petroleum from underground storage tanks. The House amendment includes an allocation formula to distribute the revenue of the Fund among the States.

Conference substitute—The conference substitute does not follow the House amendment to establish a grant program, but rather allows a State to exercise the authorities of subsection (h)(1) and (2), if the Administrator determines that the State has the capability to run an effective program and the Administrator and the State enter into a cooperative agreement with respect to the actions to be taken by the State. These actions include issuing of orders to owners and operators to take corrective action, enforcing the orders, undertaking corrective action at sites where owners and operators will not or cannot respond, and recovering the costs of corrective actions paid for by the Fund. Pursuant to the conference substitute each State will be required to pay 10 percent of the cost of any corrective action undertaken either by the State or the Administrator using revenues from the Fund, after the effective date of the regulations promulgated under section 9003(c). Until such date, the full cost of such actions shall be paid for by the Fund. The Fund may also pay the full cost of a corrective action after the date of the regulations but only where the corrective action is necessary to respond to an imminent and substantial endangerment to human health and the State refuses to pay its share of the costs.

A State may issue orders or undertake corrective action with respect to a release of petroleum from an underground storage tank under paragraph (1) after the date on which the regulations are promulgated pursuant to section 9003(c) and until its program is approved under section 9004, but during this period all such actions or orders must be in compliance with the corrective action regulations promulgated by the Administrator pursuant to section 9003.

The Fund is not to be administered as a grant program with funds allocated to the States by some formula mechanism. Although the States are to be given maximum responsibility and flexibility to use the authorities of this section to assure early and effective responses, they will only receive disbursements from the Fund as necessary to respond to releases. Much of the detail of the program at the State level is not specified in the legislative language, but is to be developed and directed by the Administrator through the cooperative agreements. The fundamental provisions of each State program should be spelled out in a generic agreement between the State and the Administrator in advance, rather than negotiated on a site-specific basis in response to releases at a particular facility.

Subsection (h) authorizes the Administrator to use the Leaking Underground Storage Tank Trust Fund to pay Federal costs (and under a cooperative agreement, State costs) of corrective action, enforcement action, cost recovery and the reasonable and necessary administrative expenses directly related to those activities. The Fund is to be used to pay the costs associated with correcting a release of petroleum from a facility. The Fund is not intended as a source of funding to assist States in developing and implementing general technical capabilities or programs to support State legal offices in carrying out their general responsibilities.

FACILITIES WITHOUT FINANCIAL RESPONSIBILITY

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment contains no comparable provision.

Conference substitute—The Administrator or a State is precluded from using the Fund to undertake corrective action at a facility where the owner or operator has failed to maintain the evidence of financial responsibility required by regulations promulgated pursuant to section 9003 (c) and (d). The Fund is intended to stand behind the owner or operator who has obtained methods of financial responsibility to protect human health and the environment.

In all cases, corrective action with respect to a release from an underground tank containing petroleum is to be undertaken by the owner or operator pursuant to a corrective action order, if the owner and operator is identifiable, has the resources and capability to respond and will comply with the instructions of the Administrator or the State. Where these conditions are not present, the Administrator or the State is authorized to use the Fund to undertake

corrective action. In seeking to recover the costs of that corrective action, the Administrator or the State shall not take into account the equities described in subsection (h)(6)(B), if the owner or operator did not maintain the requisite level of financial responsibility.

Nothing, including the failure of an owner or operator to maintain financial responsibility, shall preclude an action by the Administrator or the State using the resources of the Fund to take corrective action outside the boundaries of the facility as authorized by subsection (h)(5) or as necessary to respond to a release or threat of a release which poses an imminent and substantial endangerment to human health or the environment.

METHODS OF FINANCIAL RESPONSIBILITY

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—Current law provides that financial responsibility for taking corrective action can be demonstrated through any of a series of specified instruments, including insurance, guarantees, surety bonds, letters of credit or qualification as a self-insurer. The House amendment allows the Administrator by regulation to establish other means which will be satisfactory to demonstrate financial responsibility.

Conference substitute—The conference substitute adopts the House provision with additional elements. The same modification made by the House amendment to section 9003(d) is included in the parallel provisions of section 9004 relating to financial responsibility demonstrations under authorized State programs. The Administrator can by regulation establish other methods of demonstrating financial responsibility which will be acceptable under authorized State programs.

In addition, the amendments made by the conference substitute strike a provision from current law. Current law provides that States can establish response funds that can be used by owners or operators of underground tanks to satisfy the financial responsibility requirements of Subtitle I. However, the language of section 9004(c)(1) would restrict such State-sponsored response funds to funds financed by fees on tanks. To assure that States have the maximum flexibility to create programs to be used to demonstrate financial responsibility for tank owners and operators within that State, the restriction on such funds as to revenue source is deleted from the current law by the conference substitute.

AUTHORITY TO ENTER FOR CORRECTIVE ACTIONS

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment contains no comparable provision.

Conference substitute—The conference substitute adds a provision to existing law authorizing officers of EPA or the State to enter property for the purpose of taking corrective action.

COORDINATION WITH OTHER LAWS

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment includes a savings clause providing that liability limits would have no affect on the liability of an owner or operator under any other law.

Conference substitute—The conference substitute includes an amendment to the existing "savings clause" of Subtitle I. Section 9008 of Subtitle I preserves the authority of States or their political subdivisions to impose regulations, standards or requirements on tank owners or operators which are more stringent than the regulations, standards or requirements imposed by the Federal government under Subtitle I. The conference substitute adds the phrase "or to impose any additional liability with respect to the release of regulated substances within such state or subdivision" to the Subtitle I provision. This substitute preserves the purpose of the House amendment which is to leave the liability of owners and operators for releases at underground storage tanks which is contained in other law, including State and local statutes and common law, unaffected by the new petroleum response program. Regulated substances include both petroleum and other hazardous substances.

POLLUTION LIABILITY INSURANCE STUDY

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—Under the House amendment the Comptroller General of the United States is to conduct a study of pollution liability insurance, leak insurance and contamination insurance available to the owners and operators of petroleum storage and distribution facilities.

Conference substitute—The conference substitute adopts the House provision with modifications. The report is directed to the Congress as a whole. The report is due 15 months after the date of enactment.

SECTION 206—CITIZENS SUITS

Senate amendment—The Senate amendment authorizes citizens suits under CERCLA against two categories of persons: (1) those alleged to be in violation of any requirement which is made effective pursuant to the Act; and (2) those Federal government officials who are alleged to have failed to perform nondiscretionary duties under the Act. It is substantially similar to the House amendment, except that it does not authorize suits under CERCLA to abate imminent and substantial endangerment to public health and the environment.

House amendment—The House amendment adds a comparable new section 310 to CERCLA. It authorizes, in addition to the two categories of suits authorized by the Senate amendment, a third category of persons against whom such suits may be brought: those responsible for the actual or threatened release from a hazardous waste disposal site of a hazardous substance which presents an imminent and substantial endangerment to public health or the environment.

Conference substitute—The conference substitute adopts the House provision with modifications.

First, the substitute deletes the House provision which authorizes suits for imminent and substantial endangerment. The deletion of section 310(a)(1)(B) pertaining to imminent and substantial endangerment actions does not affect in any manner the rights of any person to commence a civil action pursuant to section 7002 of the Solid Waste Disposal Act. Under the citizens suit provision of the Solid Waste Disposal Act, any person is authorized to seek relief, including abatement, where the past or present handling, storage, treatment, transportation or disposal of any solid or hazardous waste may present an imminent and substantial endangerment to health or the environment. The section being deleted from this citizens suits provision covered "a hazardous waste disposal site," and thus, its operative effect would have been to cover only locations already covered under the comparable citizens suits provision of the Solid Waste Disposal Act. In fact, the Solid Waste Disposal Act provision applies to a broader range of locations since it applies not only to hazardous waste disposal sites, but also to sites where solid waste disposal may present an imminent and substantial endangerment. Thus, because the Solid Waste Disposal Act provision applies to localities where disposal of solid or hazardous waste as well as hazardous substances has occurred, this overlapping provision was unnecessary. Further, the Conferee's action does not affect or otherwise impair the rights of any person under Federal, State or common law.

Further, the conference substitute provides that the President and any other officers of the United States, including the Administrator of EPA and the Administrator of ATSDR, are subject to civil actions for failure to perform a non-discretionary act or duty. In addition, a civil action may be brought against any person who is alleged to be in violation of any standard, condition, requirement, order or agreement which has become effective pursuant to this Act. These provisions specifically cover the terms of interagency agreements relating to Federal facilities.

Venue for actions under this section against persons allegedly in violation of standards, or other requirements of CERCLA, is solely in the district court where the violation occurs; similarly, actions for alleged failures to perform a nondiscretionary duty may be brought where the violation occurs, or in the United States District Court for the District of Columbia.

The intervention provision contained in both Senate and House amendments is deleted from this section because a similar amendment contained in section 113 is applicable.

In addition, the substitute also clarifies the terms of the citizens suits provision and limits the bar to bringing citizens suits to those matters where the President has commenced and is diligently pursuing a court action under this Act or under the Solid Waste Disposal Act. The House amendment, which had applied this bar when the President had commenced and was diligently pursuing an administrative order, has been deleted.

Finally, the conference substitute clarifies subsection 207(h) [which replaces subsection (g) of the House amendment and subsection (f) of the Senate amendment] to state that section 206 does not affect or otherwise impair the rights of any person under Federal, State, or common law, except with respect to the timing of judicial review of the selection of a response as provided in section 113(h) of this bill or as otherwise provided in section 309 of this bill regarding State procedural reform.

SECTION 207—INDIAN TRIBES

Senate amendment—The Senate amendment amends several sections of CERCLA to provide for the treatment of Indian tribes as States under the Superfund program. The amendments define "Indian Tribe" to mean any Indian tribe, band, nation, or other organized group or community, including any Alaska native village (but not including a regional or village corporation) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. An Indian tribe is excluded from the requirements of section

104(c)(3) regarding future maintenance and cost-sharing, and the assurance regarding availability of a hazardous waste disposal facility must be provided by the President. The President can enter into cooperative agreements with Indian tribes to carry out the Superfund program. For the purposes of sections 107(f) and 111, Indian tribes (or in certain cases, the United States acting on behalf of a tribe) are treated as trustees of natural resources belonging to, managed by, controlled by, or appertaining to such tribe, or held in trust for the benefit of such tribe, or belonging to a member of such tribe (if such resources are subject to a trust restriction on alienation). Indian tribes are generally afforded substantially the same treatment as a State under sections 103, 104, 105, and 107.

House amendment—The House amendment adds a new section to CERCLA to provide for the treatment of Indian tribes as States under the Superfund program. The amendment defines "Indian tribe" to mean any Indian tribe, band, nation, or other organized group or community, including any Alaska native village (but not including a regional or village corporation) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. An Indian tribe is excluded from the requirements of section 104(c)(3) regarding future maintenance and cost-sharing, and the assurance regarding availability of a hazardous waste disposal facility must be provided by the Secretary of the Interior. The Administrator can enter into cooperative agreements with Indian tribes to carry out the Superfund program. For the purposes of sections 107(f) and 111, Indian tribes (or in certain cases, the Secretary of the Interior acting on behalf of a tribe) are treated as trustees of natural resources belonging to, managed by, controlled by, or appertaining to such tribe, or held in trust for the benefit of such tribe, or belonging to a member of such tribe (if such resources are subject to a trust restriction on alienation). Indian tribes are generally afforded substantially the same treatment as a State under section 103, 104, 105, and 107. The Administrator is authorized to delegate authority to obligate money in the Fund or to settle claims to officials of a tribe operating under a cooperative agreement. The affected tribal government must concur in any permanent relocation of tribal members, and alternative land satisfactory to the tribe must be provided. The Administrator must conduct a survey on Indian lands and make recommendations on how tribal participation in the Superfund program can be maximized. This report must be submitted in early 1987. The statute of limitations for Indian tribes is extended until two years after the United States gives written notice to the tribe that it will not present a claim or commence an action on behalf of the tribe, or fails to do so within the time limitations specified in the Act.

Conference substitute—The conference substitute is the same as the Senate amendment, with the addition of the provisions of the House amendment regarding community relocation, the survey on Indian lands, and the extended statute of limitations.

SECTION 208—STUDIES RELATED TO RESEARCH AND DEVELOPMENT AND INSURANCE

Senate amendment—Research and Development: Section 153(d) of the Senate amendment requires the President to undertake a study (and report to the Congress within four years) of the effects of the standards of liability and financial responsibility requirements imposed by CERCLA on the cost of, and incentives for, developing and demonstrating alternative and innovative treatment technologies.

Insurance: The Senate amendment has no comparable provision.

House amendment—Research and Development: The House amendment has no comparable provision.

Insurance: Section 209 of the House amendment adds a new subsection (g) to section 301 of CERCLA, requiring the Comptroller General to appoint a designated study group. The study group is required to undertake a study of the insurability of liability imposed under CERCLA and other laws and is to evaluate, among other matters, specified listed matters. The report is to be submitted to Congress within 18 months.

Conference substitute—The conference substitute requires the Comptroller General to undertake a study of the insurability, and effect on standard of care, of liability imposed under CERCLA and other laws in consultation with representatives of specified groups. The study is to evaluate, among other matters, the effects of liability and financial responsibility requirements imposed under CERCLA on the cost of, and incentives for, the development of alternative and innovative treatment technologies. The report is to be submitted within 12 months of enactment.

SECTION 209—RESEARCH, DEVELOPMENT AND DEMONSTRATION

Senate amendment—Section 151 of the Senate amendment establishes as program for hazardous substance research and training. The section authorizes the Secretary of HHS (acting through appropriate agencies such as NIOSH and NIEHS) and the Administrator of EPA to each support, through grants, cooperative agreements and contracts, research and training concerning the health effects of hazardous substances. Accredited institutions of higher education, research institutions, a State or local health agency, or other appropriate entity may be eligible for awards, which are subject to peer review. HHS and EPA may separately or jointly appoint an Advisory Council to assist in the implementation of this section.

Section 153 of the Senate amendment establishes a program for alternative or innovative treatment technology research. The section authorizes the President to carry out a program of research, evaluation, testing, development and demonstration of alternative or innovative treatment technologies. At least 10 sites in whole or in part should be made available for this purpose, according to listed criteria. The President is required to enter into contracts and cooperative agreements with, and make grants to, any persons including public entities, accredited institutions of higher learning, and nonprofit entitites. Federal funding may be made available to assist in demonstration project. The President is authorized to conduct a technology transfer program, and to make information available to the public.

Sections 158 and 159 of the Senate amendment establish centers for the study of biological and genetic effects of wastes and materials found in the environment and centers for the study of biological and genetic effects on humans, animals and plants of materials found in the environment. These sections authorize the development and construction of regional centers at appropriately qualified universities, research and medical institutions for the study of the biological and genetic effects of wastes and material found in the environment.

House amendment—Subsection (a) of the House amendment establishes a program for hazardous substance research and training. The subsection authorizes the Secretary of HHS, acting through NIEHS, to fund basic research and training in the area of hazardous waste and its effects on human health and the environment. Research is funded through peer-reviewed grants, cooperative agreements or contracts made with accredited institutions of higher education. An Advisory Council is established to coordinate research and demonstration and training activities funded under this section.

Subsection (b) establishes a program for alternative or innovative treatment technology research and demonstration. This subsection authorizes and directs the Administrator of EPA to establish an Office of Technology Demonstration. Through this office the EPA may make available to approved applicants the use of sites and other assistance for the testing and evaluation of innovative technologies for treating hazardous waste. The section details the criteria and conditions under which a minimum of 10 projects will be selected annually for demonstration, and allows the use of Federal funds to assist in financing these demonstration projects. The EPA is required to maintain a central reference library, accessible by the public, of information relating to the utilization of alternative or innovative treatment technologies for remedial actions. The Office of Technology Demonstration is authorized and directed to carry out training of State and local personnel involved in the handling and removal of hazardous substances, and the management of hazardous substance facilities.

Subsection (c) establishes a program for hazardous waste research. This subsection authorizes the Administrator of EPA to conduct and support research into the effects on human health of hazardous substances and their detection in the environment.

Subsection (d) establishes university hazardous substance research centers. The subsection requires the Administrator of EPA to make at least 5 grants to institutions of higher learning to establish and operate 10 hazardous substance research centers. Recipients of grants shall be selected on the basis of criteria specifying location, available resources, and interdisciplinary needs.

Conference substitute—Subsection (a) of the conference substitute establishes the purposes of this section on Research, Development and Demonstration.

Subsection (b) establishes four new programs. One program is the hazardous substance research and training program. The provision is based on the House provision. The Conferees make some changes referring to training courses for State and local personnel, and clarifying the roles of NIEHS and NIOSH in training. The specifications of the composition of the Advisory Council were altered in line with the Senate provision. The requirements under this provision are not subject to citizen suits. Applicants receiving monies under this provision may contract with private sector companies.

Another program is the alternative or innovative treatment technology research and demonstration program. The provision is based on the House provision with a number of clarifying changes to the House language. Implementation of subsection (b)(8) is to be consistent with requirements under the Solid Waste Disposal Act.

Another program is the hazardous waste research program. The provision is based on House language but the word "waste" is changed to "substance". Language was added to ensure coordination of these activities with appropriate agencies.

Finally, a program for university hazardous substances research is established. The program is identical to the House provision. Applicants receiving monies under this provision may contract with private sector companies.

Sections 158 and 159 of the Senate amendment are deleted.

In all the programs established under this section, the Administrator is required to ensure, to the maximum extent practicable, that small businesses have an opportunity to participate in the programs.

SECTION 210—POLLUTION LIABILITY INSURANCE AND RISK RETENTION ACT

Senate amendment—The Senate amendment creates a new title of CERCLA, which provides exemptions from State insurance law (except with respect to designated law or regulation) for groups that meet the qualifications of a "risk retention group." The risk retention group must be formed under the law of at least one State, and the primary activity of the group must be assuming the pollution liability of its group members. The Senate amendment also provides purchasing groups with exemption from specified State laws and regulations.

House amendment—The House amendment is the same as the Senate amendment except that the Senate language includes (1) language clarifying that risk retention groups may provide coverage only for pollution liability and (2) a more restrictive definition of State.

Conference substitute—The conference substitute adopts the House provison with the addition of the Senate language clarifying that a risk retention group may provide coverage of only pollution liability. While this section defines "pollution liability" as liability for not only hazardous substances but also pollutants or contaminants, this section does not expand liability for either.

SECTION 211—DEPARTMENT OF DEFENSE ENVIRONMENTAL RESTORATION PROGRAM

Senate amendment—Section 162 of the Senate amendment is similar to the House provisions regarding the Defense Environmental Program. The primary differences are that section 162 does not provide for a DoD research, development, and demonstration program, or require DoD to provide the ATSDR with a list of hazardous substances. In addition, the transfer account provisions in the Senate amendment provide procedures for reprogramming funds into and from this account and permit funding to be used for the removal of unsafe buildings or debris at former DoD sites.

House amendment—The House amendment establishes an Environmental Restoration Program for the Department of Defense (DoD) to provide for centralized control of environmental activities in consultation with the Administrator of the Environmental Protection Agency (EPA). The Secretary has the basic responsibility for carrying out response actions subject to the requirements of, and in compliance with, CERCLA. In implementing these provisions, the Secretary must consult with and is subject to the oversight of the Administrator of the Environmental Protection Agency. The Secretary of Defense is also directed to carry out a program of research, development and demonstration to develop innovative and cost-effective cleanup technologies. In order to facilitate the funding for response actions, an Environmental Restoration Transfer account is established in this section. The transfer account aggregates all environmental restoration funding in a single budget account and provides for the allocation of funds from the transfer account to the relevant appropriation accounts (including military construction), to give the Secretary of Defense the flexibility to address environmental requirements in a timely fashion. Additionally, the section requires DoD to provide the Agency for Toxic Substances and Disease Registry (ATSDR) with a list of the 25 hazardous substances which are most widely used by DoD. The section also requires the Secretary of Defense to annually report to Congress on the status of the Environmental Restoration Program and the implementation of CERCLA statutory requirements. Finally, section 213, in conjunction with sections 117, 120 and 121 of CERCLA provides for greater public awareness and increased involvement by States, localities, and individuals in DoD environmental restoration efforts.

Conference substitute—The conference substitute accepts the Senate provisions for the establishment of the DoD Environmental Restoration Program, with certain modifications. The conference substitute requires that the "Defense Environmental Restoration Program" be carried out subject to, and in a manner consistent with CERCLA, including sections 117, 120 and 121. All response actions are to be carried out in accordance with CERCLA, including the requirement that the Administrator of the Environmental Protection Agency must jointly select the remedial action. The Conferees accept the House provisions concerning the establishment of a research, development, and demonstration program, and the requirement that DoD provide a listing of hazardous substances with the ATSDR. The conference substitute adopts the House language regarding the Environmental Transfer Account, but allows funding to be used for the removal of unsafe buildings or debris at DoD sites as provided for in the Senate amendment. The conference substitute also accepts the House provisions regarding DoD notification of environmental restoration activities; the requirement for an annual report to Congress on environmental activities; and procedures governing DoD military construction environmental response actions.

SECTION 212—REPORT AND OVERSIGHT REQUIREMENTS

Senate amendment—The Senate provision amends section 301 of CERCLA to require the EPA Administrator and the Attorney General to submit to Congress an annual report regarding certain matters related to enforcement actions and the settlement process.

House amendment—The House provision amends section 301 of CERCLA to require the EPA Administrator to submit to Congress an annual report on the progress achieved in implementing CERCLA. In addition, the House amendment requires the appropriate authorizing committees of Congress to conduct annual oversight hearings on the implementation of CERCLA.

Conference substitute—The conference substitute adopts the House provision with the following modifications: (1) the report is to be submitted on January 1 of each year and is to cover the preceding fiscal year; (2) the EPA Inspector General is to review the portion of each report that is related to EPA activities and submit the results of such review to the Congress as part of the report; (3) the report is to include information on the status of certain remedial and enforcement actions and an estimate of the resources necessary for other Federal agencies to implement the Act; and (4) certain other minor modifications are made.

SECTION 213—LOVE CANAL PROPERTY ACQUISITION

Senate amendment—The Senate amendment directs the Administrator of the Environmental Protection Agency to establish a high priority for the acquisition of all properties (including non-owner occupied residential, commercial, public, religious and vacant properties) in the area which, before May 22, 1980, the President determined an emergency to exist because of the release of hazardous substances and in which owner-occupied residences have been acquired pursuant to such determination.

House amendment—The House amendment states that the Congress finds that the area known as Love Canal in New York was the first toxic waste site to receive national attention, and that because Love Canal came to the Nation's attention prior to the Superfund program, special provisions are required to properly compensate the residents of the area. It amends Title III of CERCLA to add a new section, authorizing the Administrator of the EPA to make grants of up to $2.5 million for acquiring private property in the Love Canal Emergency Declaration Area, subject to specified conditions. The amendment requires the Administrator to conduct and publish a habitability and land-use study assessing the risks associated with inhabiting the Love Canal area. For the purposes of sections 111 and 221(c) of this Act, the expenditures authorized by this section shall be treated as a cost specified in 111(c). These provisions do not affect implementation of other response actions within the area that the Administrator has determined (before enactment of this section) to be necessary to protect the public health or welfare or the environment.

Conference substitute—The conference substitute adopts the House provision.

TITLE III—EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW

The Senate amendment and House amendment both establish programs to provide the public with important information on the hazardous chemicals in their communities, and to establish emergency planning and notification requirements which would protect the public in the event of a release of hazardous chemicals. The House amendment establishes the programs as a free-standing provision of law; the Senate amendment amends CERCLA to create the new programs. The conference substitute adopts the House approach with respect to establishing the programs as a free-standing provision of law and incorporates substantive provisions from both House and Senate amendments.

SECTION 300—SHORT TITLE

Senate amendment—Provisions on Community Right-to-Know and Emergency Planning are included in the Senate bill as amendments to CERCLA, and there is no short title.

House amendment—Provisions on Community Right-to-Know and Emergency Planning are included within the "Super-

fund Amendments of 1985" as a free-standing title, not amending CERCLA.

Conference substitute—The conference substitute adopts the House provision; establishes that the title be cited as the "Emergency Planning and Community Right-to-Know Act of 1986."

SUBTITLE A: EMERGENCY PLANNING AND NOTIFICATION

SECTION 301—ESTABLISHMENT OF STATE COMMISSIONS, PLANNING DISTRICTS, AND LOCAL COMMITTEES

Senate amendment—The Senate amendment provides that the Governor of each State designate emergency planning districts within 180 days of enactment and appoint members of an emergency planning committee for each such district within 210 days of enactment.

House amendment—The House amendment provides that the Governor of each State establish and appoint membership to a State emergency response commission within 6 months of enactment. If the Governor does not establish such a commission, the EPA Administrator is to operate as the State commission for that State. Not later than 6 months after a State commission is established, the State commission is required to designate local emergency response committees and appoint membership to those committees consistent with the requirements of the amendment.

Conference substitute—The conference substitute provides that the Governor of each State, within 6 months of enactment, designate and appoint a State emergency response commission, which may be one or more existing emergency response organizations that are State-sponsored or appointed. If no State commission is appointed, the Governor of the State is to serve as the commission and is responsible, therefore, for performing all of the duties assigned to the commission. This would include the public availability and information functions included in Section 324.

The section also provides that, within 9 months after the date of enactment, the State commission shall designate emergency planning districts. If affected States agree, these districts may be established across State lines. Within 30 days of establishing these districts, but no later than 10 months after enactment, the State commission should appoint members to the local emergency planning committee. At a minimum, membership must include those parties specified in the House amendment. However, existing local organizations or entities may be used as the local emergency planning committee provided that they include, or are augmented to include, those parties specified for membership on such committees.

Membership on these committees, and the designation of districts, may be revised as appropriate, and interested persons may petition a State emergency response commission to modify membership of a local committee.

Section 301 also requires that the local emergency response committee and State emergency response commission designate an official to serve as coordinator of information. Recognizing the importance of having an assured, available source of information for the reports required under this title, the officials designated to serve as the coordinator for information shall be government officials who will respond to requests for information from other State agencies, local officials, the public and other interested parties.

SECTION 302—SUBSTANCES AND FACILITIES COVERED AND NOTIFICATION

Senate amendment—The Senate amendment provides that any facility which has a substance listed on the list published by the Council of European Communities in its Council Directive of June 27, 1982, on the Major Accident Hazards of Certain Industrial Activities, Annex II, in excess of the quantities published with that list, is subject to the requirements of this subtitle. Such facilities are required to notify State commissions that they are covered within 90 days of the publication by EPA of the Council of European Communities list. In addition, the Governor of each State may designate additional facilities for emergency planning purposes.

House amendment—The House amendment contains no comparable provision.

Conference substitute—The conference substitute provides that the facilities covered by the bill's emergency planning requirements are those which have a substance on the list of substances published by EPA in November, 1985, in Appendix A of the "Chemical Emergency Preparedness Program Interim Guidelines," in excess of a threshold planning quantity published by EPA within 30 days of enactment, at which time EPA will republish that list. Such substances are designated "extremely hazardous substances." Facilities which have such substances in excess of the established thresholds must notify the Emergency Response Commission that they are subject to this subtitle. The conference substitute also requires a facility to notify the State emergency response commission that it is subject to the requirements of this subtitle if the list of substances is revised or the facility acquires a new chemical and, thereby, is subject to these requirements. However, since this is only a notification that a facility is covered and is not chemical-specific, if a facility has already given notice of its coverage with regard to another chemical, no such subsequent notice would be required.

Given the need to get this program under way in a timely fashion, EPA is directed to publish these thresholds as interim final regulations which will be binding until such time as they may be revised by a final rulemaking which will be initiated when the initial thresholds are published. If the EPA fails to publish the interim final rule as required, the threshold will be set at 2 pounds for each substance until such time as EPA publishes such thresholds as an interim final rule or as a final rule. The substitute also provides criteria to be considered by EPA in revising the list and thresholds.

The substitute provides that a Governor or State emergency response commission may designate additional facilities to be subject to emergency planning requirements. Such designation shall be made following public notice and an opportunity for comment. Any faciity designated in this fashion is, according to section 325(a), not subject to the civil penalties which otherwise apply to facilities subject to the emergency planning requirements.

This section also requires that the State emergency response commission notify EPA of facilities subject to the requirements of this section. The Administrator may specify the frequency and form of notification by States of facilities subject to the subtitle.

SECTION 303—COMPREHENSIVE EMERGENCY RESPONSE PLANS

Senate amendment—The Senate amendment establishes requirements for local emergency planning committees, within 2 years of enactment, to develop comprehensive emergency plans which include specified provisions. Facilities subject to emergency planning requirements are required to provide information to the local committees for the purpose of developing and implementing such plans. EPA is required to publish guidance documents to assist in this planning, and to review such plans upon the request of a local committee.

House amendment—The House amendment establishes similar requirements with regard to the development and content of local emergency plans and the requirement for facilities to provide information to local committees. Emergency plans are required to be submitted to the Governor for review, and EPA is required to provide technical assistance to localities in the development and implementation of emergency plans.

Conference substitute—The conference substitute adopts the Senate amendment, with modifications to conform to the House amendment. Planning is to be conducted through a public process, and the identity of those facilities subject to the emergency planning requirements is to be public. The conference substitute provides that the National Response Team issue guidance documents and that the regional response teams may assist localities in developing and implementing emergency plans. The regional response teams have discretion regarding how and whether to review and comment upon specific plans and assist each locality.

SECTION 304—EMERGENCY NOTIFICATION

Senate amendment—The Senate amendment requires that, in addition to any notice required to be provided to EPA, local emergency committees and the Governor of any affected State be notified in the event of a release which requires reporting under section 103 of CERCLA. The amendment specifies the nature of the notice and establishes a requirement for follow-up notification as appropriate.

House amendment—The House amendment applies the notice requirement to releases from a covered facility which constitute a "hazardous substance emergency." This includes accidental or abnormal releases of a hazardous substance, as defined in CERCLA, that constitute an imminent and substantial endangerment to the public health or the environment, or a release that is subject to reporting to EPA under section 103 of CERCLA which, according to EPA regulations to be promulgated, constitutes a substantial threat to public health and the environment. The House amendment includes provisions similar to the Senate bill regarding the content of the notice and the requirement to provide follow-up notice as appropriate.

Conference substitute—The conference substitute establishes the requirement that emergency notice in the event of a release be provided to local emergency committees and the State in three specific instances. First, notice is required where the release is of an extremely hazardous substance, as referred to in section 302, and the release requires notice to EPA under section 103(a) of CERCLA. Second, notice is required where it is a release of an extremely hazardous substance that is not subject to notice under CERCLA, but the release is (a) not Federally permitted, as defined in section 101(10) of CERCLA, (b) is in excess of an amount set by EPA (or, if no amount has been set, in excess of 1 pound), and (c) the release occurs in a manner which would require notice under section 103(a) of

CERCLA. This requires notification where there is a release of an extremely hazardous substance that would require notice under section 103(a) of CERCLA but for the fact that the substance is not specifically listed under CERCLA as requiring such notice. Third, the substitute requires notice in specificed instances where the substance released is not an extremely hazardous substance, as referred to in section 302, but the release must be reported to EPA under section 103(a) of CERCLA. In the case of such a release, notification under this section must be provided to local and State emergency response organizations if it exceeds a reportable quantity that has been established by EPA under section 102(a) of CERCLA or, if the release occurs after April 30, 1988, exceeds the fallback threshold under CERCLA of 1 pound. April 30, 1988, is the date by which EPA is required by amendments to CERCLA elsewhere in the conference substitute to publish reportable quantity thresholds for all substances listed under CERCLA. Prior to April 30, 1988, for a release reportable under CERCLA but for which no threshold has been set, the facility must give notice to the local emergency planning committee in the same form and at the same time as such notice is required by CERCLA to be provided to EPA.

The conference substitute provides that for a release to be reportable under this section it must extend beyond the site on which the facility is located. On-site releases that do not extend off-site are exempt from the requirements. In addition, releases which are continuous or frequently recurring and do not require reporting under CERCLA are not required to be reported under this section. Such release, if of an appropriate substance, would be reported under section 313.

The conference substitute includes a special provision for how notice is to be provided where there is a release with respect to transportation or storage incident to transportation, which under section 327 is exempt from all other provisions of this title. For such a release, the notice requirements of the section shall be fully satisfied by dialing 911, or in the absence of a 911 emergency telephone number, calling the operator and reporting the release.

The conference substitute adopts the Senate bill provisions regarding the content of an emergency notice and follow-up requirements, modified to incorporate provisions in the House amendment. The substitute requires that the notification indicate whether the substance is on the list of substances for which emergency planning is required, as provided in section 302(a). The specific chemical identity of the substance released must be provided on the notice, and is not provided trade secret protection under section 322.

SECTION 305—EMERGENCY TRAINING AND REVIEW OF EMERGENCY SYSTEMS

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment includes provisions authorizing the Federal Emergency Management Agency (FEMA) to carry out certain programs related to hazardous substances. This includes programs for the training of local emergency repsonse and other personnel, and grants of $5 million for each of years 1987 through 1990 in support of university-sponsored programs and programs of State and local governments designed to improve emergency planning and related capabilities.

The House amendment also includes a requirement that the EPA Administrator review and report to the Congress within 18 months of enactment on various emergency systems.

Conference substitute—The conference substitute adopts the House provision.

SUBTITLE B—REPORTING REQUIREMENTS

SECTION 311—MATERIAL SAFETY DATA SHEETS

Senate amendment—The Senate amendment directs, within 180 days of enactment, any facility at which a hazardous chemical is produced, used or stored to, to provide to the local emergency planning committee, the Governor of the State and to EPA a copy of a Material Safety Data Sheet (MSDS) for each hazardous chemical at that facility. In addition, a copy of such MSDS is to be provided within 90 days of any revision made to that form. EPA may set threshold amounts, with facilities which have less than that amount not covered by the requirements of the section for such chemicals.

House amendment—The House amendment requires an MSDS to be filed, for each hazardous chemical, with the local emergency response committee and such local and State officials designated to receive such form. Such forms are initially required within 12 months of enactment, with revised or new initial MSDS forms to be provided within 3 months of the time an MSDS form is revised or a new hazardous chemical is first brought onto a facility. The House amendment includes provisions requiring that an MSDS be provided to another facility when a hazardous chemical is first shipped to that facility. A facility owned who had not received an MSDS in this manner and who had made reasonable efforts to obtain such an MSDS would be exempt from the requirement to provide the MSDS to the specified local emergency committee and other persons.

Conference substitute—The conference substitute incorporates the basic requirement included in both the Senate and House amendments, but clarifies in the statute that the requirement to file an MSDS applies only to those facilities required to prepare or have available an MSDS under the Occupational Safety and Health Act of 1970 or regulation under that Act. MSDS forms must be provided to the appropriate local emergency planning committee, the State emergency response commission, and the fire department with jurisdiction over the facility. The forms must be provided at those times specified in the House amendment.

The conference substitute incorporates the definition of hazardous chemical used in both the Senate and House amendments, along with the exceptions included in that definition, modified in a manner so as to clarify the intent of both bodies. The term "hazardous chemical" has the meaning in 29 CFR 1910.1200(c) of the OSHA Hazard Communication Standard. The definition of the term "hazardous chemical" in section 311(e) defines the chemicals subject to the requirements of sections 311 and 312 of Title III.

Section 311(a)(3) of the conference substitute clarifies the treatment of mixtures. The OSHA Hazard Communication Standard defines a "hazardous chemical" as a "chemical which is a physical hazard or a health hazard." A "chemical" is defined as "any element, chemical compound or mixture of elements and/or compounds." According to OSHA, inclusion of mixtures in this definition has resulted in the creation of MSDSs for over 50,000 products.

To address this, section 311(a)(3) makes it clear that an owner or operator may meet the requirements of this section with respect to a hazardous chemical which is a mixture, by submitting an MSDS for each of the hazardous elements or compounds in the mixture. If the mixture if determined to be a "hazardous chemical" but contains no element or compounds which are hazardous chemicals, then an MSDS must be submitted for such mixture. Once an MSDS for a hazardous elements or compound is submitted for one mixture, an MSDS for the same element or compound contained in another mixture would not have to be submitted. For purposes of the list, only the elements or compounds need be listed, mixtures need not. Of course, owners or operators are free to submit an MSDS on the mixture itself, or list the mixture, totally at their discretion.

An example of how this may work can be taken from the fragrance industry. Fragrances are produced by combining large numbers of chemical raw materials. A fragrance manufacturer may use 20 chemical elements, some of which may be hazardous, to produce hundreds of mixtures. Under this provision, they need to list only the elements or compounds, or provide the MSDS for each of the elements and compounds. An MSDS on each mixture is not required. This is especially important in the fragrance area because, by their very nature, the specific composition of these chemical mixtures may constitute highly sensitive and valuable trade-secret information, the disclosure of which could result in serious business injury.

This approach may not, however, either be practical or possible for customers who may obtain from the seller an MSDS for a mixture they purchase which indicates that the mixture is a "hazardous chemical." In such instances, the customer may lack the data or it may not be practical to provide a separate MSDS for each hazardous chemical in that mixture. In that situtation the customer would list the mixture or provide an MSDS for the mixture to State and local authorities under section 311. Moreover, in such instances, the customer may not be told by the seller the identities of some or all of the ingredients in the mixture because they are claimed as trade secrets under the OSHA Standard. In that case, the customer is only required to provide to State and local authorities under section 311 the information known to it. Typically, this would be limited to a copy of the MSDS received from the seller.

In order to reduce the potential burden on local emergency response committees, the conference substitute provides that, at the option of the facility, the requirements of this section can be met by filing with those specified to receive the MSDS a list of hazardous chemicals present at the facility, grouped according to categories of health and physical hazards set forth in the OSHA Act and its regulations. Where a list is supplied in lieu of individual MSDSs, it must include, for each chemical, the chemical name or common name and any hazardous component of each chemical, as these were provided on the MSDS. Upon request of a local emergency response committee, the actual MSDS would be provided by the facility. A public request for the MSDS would be made through that local emergency planning committee, which would be required to obtain the MSDS from the facility and make it available.

Section 311(b) gives the Administrator authority to establish threshold quantities for hazardous chemicals below which no facility would be required to report under section 311. In establishing such quantities, the Administrator must take into account the total quantity of a hazardous chemical present at a site. For example, in the case of a manufacturer which produces or obtains benzene and formulates 200 mixtures with the benzene, the threshold would apply to the total benzene at the facility, regardless of whether it is still in bulk storage or has been formulated into mixtures. However, for persons who purchase mixtures which contain hazardous chemicals in concentrations which may not be known to the purchaser, the Administrator may establish thresholds based on the total quantity of the mixture, including nonhazardous chemicals.

Some companies voluntarily may prepare MSDSs for chemicals that are not a physical hazard or health hazard within the meaning of the OSHA standard. Because such a chemical is not a "hazardous chemical" within the meaning of 29 CFR section 1910.1200(c) (and since an MSDS is not required for such a chemical under the OSHA standard), such a chemical would not be subject to the requirements of section 311 and section 312 of this Act.

SECTION 312—EMERGENCY AND HAZARDOUS CHEMICAL INVENTORY FORMS

Senate amendment—The Senate amendment establishes an Emergency Inventory Form upon which, for all substances on which an MSDS is required, information is reported regarding the maximum amount of the hazardous chemical present at a facility during the preceding calendar year (in ranges), a description of the storage or use of the chemical, and its location. These reports would be filed with local emergency committees, the Governor of the relevant State and the EPA each year, or whenever a significant change occurs in the amount or presence of such a chemical. The first report would be filed within 6 months of enactment. EPA could set threshold amounts of the substances, below which a facility would not be required to report.

House amendment—The House amendment provides for an annual report containing similar information, as well as other information related to the substance and how it should be dealt with in an emergency situation. The reports are to be provided only to the local emergency response committee, with the first report due 18 months after enactment. EPA also has the authority to set reporting thresholds.

Under the House amendment this report has only to be filed for substances which EPA determines, due to specific factors, are likely to cause an imminent and substantial endangerment to public health or the environment. The House amendment also contains a provision for Superfund sites to provide these reports, and a study by the Office of Technology Assessment of the advisability of extending these reports to cover disposal sites regulated under RCRA.

Conference substitute—The conference substitute establishes a procedure to provide reporting of information on those chemicals subject to reporting under the Senate amendment. To minimize the burden of this reporting and to provide the information in a manner which is of maximum usefulness to government emergency response offices and personnel, other government officials with a need for the information, and to the public, a "2-tier" process for reporting is established. Under this approach, a summary of the information on the covered chemicals is provided in the form of an annual report, with information on specific chemicals available upon subsequent request made on a facility-by-facility basis. Further, to provide for the development of a manageable program, EPA is provided with the authority to establish reporting thresholds, including thresholds set by classes of chemicals or categories of facilities. In establishing quantity thresholds under section 312(b), the Administrator shall consider the degree to which the hazardous chemical, if released at the facility, would endanger the health of individuals in the community, including emergency response personnel.

Chemicals subject to reporting under subsection 312 are the same as those subject to subsection 311. As in section 311, the conference substitute clarifies the intent of the Congress in the area of mixtures. The OSHA Hazard Communication Standard defines a "hazardous chemical" as a "chemical which is a physical hazard or a health hazard." A "chemical" is defined as "any element, chemical compound or mixture of elements and/or compounds." Section 312 makes clear that an owner or operator may meet the requirements of this section with respect to a hazardous chemical which is a mixture, by submitting an inventory form for each of the hazardous elements or compounds in the mixture. If the mixture is determined to be a "hazardous chemical" but contains no elements or compounds which are hazardous chemicals, then an inventory form must be submitted for such mixture. Of course, owners or operators are free to submit an inventory form on the mixture itself, totally at their discretion. If the facility owner or operator elects to submit an inventory form for each hazardous element or compound in the mixture (rather than for the mixture itself), the amounts of the element or compound present in the pure state and in all mixtures at the facility may be aggregated and reported on a single inventory form as the aggregate amount of the element or compound present at the facility as a whole.

The inventory form required under this section and the MSDS information required under section 311 are intended to provide both quantitative and qualitative information about the hazards of covered chemicals. It is therefore important for MSDS information submitted under section 311 to correspond with inventory information submitted under this section. It is expected that a facility owner or operator who elects under section 311(a)(3) to report on mixtures by reporting on the elements or compounds of each mixture will also report on the elements or compounds of such mixtures under this section. Similarly, if a facility owner or operator elects under section 311(a)(3) to report on each mixture, it is expected that inventory forms will be provided for each such mixture.

The initial step in the 2-tier reporting provision is an annual report provided to the local and State emergency response organizations, and to the fire department with jurisdiction over the facility. The first report is to be provided on or before March 1, 1988, with annual reports thereafter, each reflecting the preceding calendar year.

The information contained in the "Tier I" report is an estimate (in ranges) of the aggregate maximum and aggregate average daily amounts (in ranges) and the general location, of each category of hazardous chemicals at the facility. In establishing the breadth of the ranges, the Administrator may consider the degree of precision with which these broad categories of hazardous chemical can be reported. The categories for these reports are to be the categories of health and physical hazards as set forth under the Occupational Safety and Health Act of 1970 and its regulations (i.e., carcinogens, corrosives, irritants). EPA is provided with the authority to modify the categories to group substances which present "similar hazards in an emergency" or to list "individual hazardous substances of special concern to emergency response personnel" for reporting purposes. Any modifications of categories for health or physical hazards shall correspond to any similar modifications made under the authority of section 311(a)(2)(A)(i).

The second stage of this information process involves reporting on specific chemicals. Such reports would be provided upon specific request for information from a particular facility. Therefore, under the authority of this statute, no person, including a government official, could establish as an annual reporting requirement the provision of these Tier II forms on specific chemicals.

The Tier II report on a specific chemical provided pursuant to a request would include the same information on the specific chemical that is provided for the aggregate chemicals on the Tier I report (although EPA could establish different ranges for each report), as well as a description of the manner of storage of the chemical and the location at the facility. In addition, the form would indicate whether the location information is to be kept confidential, consistent with section 324. The facility owner may always elect to keep Tier II location information from public disclosure.

Unlike the Tier I information, which relates to categories of hazardous chemicals, the Tier II information relates to individual chemicals. The quantity of a particular chemical that is used in a chemical manufacturing or processing operation may constitute valuable trade-secret information. For that reason, if precise quantities of the maximum and average daily amounts of the hazardous chemicals had to be provided, compliance with section 312(d)(2) might result in the compromise of valuable trade-secret information.

Sections 312(d)(2) (B) and (C) have been drafted to avoid unnecessary disclosure of trade-secret information, while at the same time, providing emergency response personnel, State and local officials, and members of the public the information needed to evaluate the nature and magnitude of potential public health hazards that might arise in the event of a hazardous substance emergency and to engage in effective emergency response planning. To that end, sections 312(d)(2)(B) and (C) contemplate that maximum and average daily inventory information will be provided in ranges.

In order to protect chemical process trade-secret information, the reporting ranges may need to be broad. At the same time, this is a community right-to-know provision, and the purpose of this report is to provide the public with information about chemicals at facilities. The reporting ranges should provide a reasonable accommodation between the disclosure necessary for community right-to-know and effective hazard evaluation and emergency response planning on the one hand, and protection of legitimate trade-secret information on the other, and not be broader than necessary to assure such trade-secret protection. EPA may want to look at the ranges used to de-

velop the 1977 inventory reporting under section 8(b) of the Toxic Substance Control Act for guidance.

As regards the process for obtaining Tier II information, the conference substitute establishes separate procedures for (1) the State emergency response commission and local emergency planning committees and fire departments; (2) other State and local officials; and (3) the public. Those in the first category can obtain Tier II information upon their own request. Those other State and local officials in the second category may have access to the information through the State commission or local committee, presumably through the information coordinators appointed under subsection 301 of this Act. The request, if made by such an official acting in his official capacity, may not be denied.

A process is established for public access to this information which also operates through the State commission and local committee. A person seeking information on a specific chemical must file a written request and indicate the specific facility for which information is requested. If the information has already been provided to a government official under the above procedure, the person will be given access to that information. This provision is designed to ensure that the public will have access to any Tier II information which has been provided to State and local officials acting in their official capacity, fire departments with jurisdiction over facilities, State emergency planning commissions or local emergency planning committees. It is intended that when forms are provided to government officials in accordance with this section, copies of such forms be retained in order to make them available to the public. The information procedures to be developed under section 301 should provide that this occur so that a facility need only provide Tier II information once each year for each chemical.

If the local Emergency Planning Committee or State Emergency Response Commission does not have the information in its possession, it is required to request information from the facility owner or operator regarding hazardous chemicals for which more than 10,000 lbs. were present at the facility at any time during the preceding calendar year. However, if less than 10,000 lbs. of the chemical were stored at the facility, the Committee or Commission would request the information if, in its discretion, it deemed such a request to be appropriate.

In order to assist the Committee or Commission in exercising this discretion, the member of the public seeking the information must include a statement explaining why the information is needed. Based on this statement, the Committee or Commission may or may not choose to make a request of the facility to provide the information. Although the conference substitute establishes a procedure for the public to have access to this information, and business establishments are certainly a part of "the public," this provision is not intended to provide a means for competitors to find out confidential business information about each other. State emergency response commissions and local emergency planning committees should exercise their discretion in light of this consideration. A State commission or local committee must respond to a request for Tier II information within 45 days of receiving that request.

The conference substitute also provides for access to the facilities by the fire department of relevant jurisdiction to conduct an on-site inspection of the facility. At such an inspection, the specific location information and volume information on hazardous chemicals would be provided.

Provisions contained in the House amendment related to the applicability of these requirements to Superfund sites and an OTA study regarding possible applicability to RCRA-regulated disposal sites are not included in the conference substitute.

SECTION 313—TOXIC CHEMICAL RELEASE FORMS

GENERAL

This section establishes requirements for annual reporting on releases of certain toxic chemicals to the environment. This reporting covers releases that occur as a result of normal business operations, as distinct from abnormal, emergency releases which must be reported under section 304.

FACILITIES COVERED

Senate amendment—The Senate amendment applies to facilities with ten or more employees that are in Standard Industrial Classification (SIC) Codes 20-39 (the manufacturing sector) and which manufacture or process more than 200,000 pounds per year of listed substances or which use more than 2,000 pounds per year of such substance for purposes other than manufacturing or processing. The President may apply the requirements of the bill to other particular facilities if the President determines that such action is warranted on the basis of proximity to other facilities that release the substance, history of releases at such facility, and other factors. This action may be taken by the President on his own motion or at the request of a Governor of a State, with respect to facilities within that State.

House amendment—The House amendment applies to any facility at which a listed extremely toxic substance is present during any applicable 12-month period in excess of a cumulative threshold amount established by the Administrator, and from which such substance is released to the environment.

Conference substitute—The conference substitute combines elements of the Senate and House amendments. Coverage of facilities is based on SIC Codes 20-39, except that the Administrator may add or delete SIC Codes to the extent necessary to achieve the purposes of this section. Additionally, the Administrator may apply these requirements to other particular facilities as provided in the Senate amendments.

Subparagraph 313 (b)(1)(B) of the conference substitute provides that the Administrator of EPA may add or delete SIC codes specified for coverage in the legislation. This authority is limited, however, to adding SIC codes for facilities which, like facilities within the manufacturing sector SIC codes 20 through 39, manufacture, process or use toxic chemicals in a manner such that reporting by these facilities is relevant to the purposes of this section. Similarly, the authority to delete SIC codes from within SIC codes 20 through 39 is limited to deleting SIC codes for facilities which, while within the manufacturing sector SIC codes, manufacture, process or use toxic chemicals in a manner more similar to facilities outside the manufacturing sector. For example, facilities within SIC code 2875 mix or blend for sale at the retail level various fertilizer products in response to specific customer needs. They may fall within SIC codes 20 through 39 because this activity may be classified as a "mixing or blending," which generally is a manufacturing activity. Yet, given the retail context and the nature of the blending and mixing done by these specific facilities, reporting by such facilities may not be appropriate. Subparagraph 313 (b)(1)(B) is intended to provide EPA the authority to address issues regarding the coverage of such facilities. It does not provide EPA the authority to change the overall scope of the reporting program for Toxic Chemical Release Forms.

TOXIC CHEMICALS COVERED

Senate amendment—The Senate amendment applies to releases to the environment of toxic chemical substances which, on the basis of available information and in the judgment of the President, are manufactured in or imported into the United States in aggregate quantities that exceed 500,000 pounds per year and, (i) based on epidemiological or other population studies, generally accepted laboratory tests, or structural analysis are known to cause or are suspected of causing in humans adverse acute health effects, cancer, birth defects, heritable genetic mutations, or other health effects such as reproductive dysfunction, neurological disorder, or behavioral abnormalities, or (ii) because of toxicity, persistence, or tendency to bioaccumulate in the environment, may cause adverse environmental effects. The President must publish a list of substances meeting these criteria by July 1, 1986. Unless and until this list is published, the reporting requirements apply to specific chemical substances identified in section 101 (14) of CERCLA. The President is required to review and revise the list of chemicals no less often than every two years. Any person may petition the President to add or delete a substance. The President also is authorized to modify the quantitative thresholds described above related to volume of chemical manufacture, processing or use, and aggregate chemical manufacture and importation.

House amendment—The House amendment requires the Administrator, within 24 months of enactment, to publish a list of extremely toxic substances to be subject to specified reporting requirements. These are to be hazardous substances and hazardous chemicals that are so acutely toxic that their release into the environment in any amount or form may present an imminent and substantial endangerment to human health and chemicals (such as vinyl chloride, benzene, asbestos, and poly chlorinated biphenyls) which are known to cause or are suspected of causing cancer, birth defects, heritable genetic mutations, or other chronic health effects in humans. If the Administrator fails to publish such list within such 24-month period, the list shall consist of the Acute Hazards List developed by the Administrator as part of its Federal Initiative for Responding to Accidental Releases of Air Toxics (described in the July 26, 1985, notice from the Office of Solid Waste and Emergency Response of the Environmental Protection Agency) until such list is published.

Conference substitute—Subsection (d) of the conference agreement requires reporting on listed toxic chemicals that cause, or reasonably can be anticipated to cause, significant adverse acute human health effects, various chronic human health effects, and significant adverse effects on the environment. A chemical should be listed if the Administrator determines, in the Administrator's judgment, that there is sufficient evidence to establish any one of the following:

1. Acute human health effects—The chemical is known to cause or can reasonably be anticipated to cause significant adverse acute human health effects at concentration levels that are reasonably likely to exist beyond facility site boundaries as a result of continuous, or frequently recurring, releases.

In making this determination, the Administrator is to consider individuals who are sensitive to a particular chemical. The determination that concentration levels capable of causing a significant acute adverse effect are reasonably likely to exist beyond facility site boundaries requires consideration of factors in addition to the chemical toxicity and other properties of a substance. For example, it is possible that a particular chemical, while it could cause a significant acute adverse effect at a high concentration level, would be very unlikely to reach that concentration level beyond the facility site boundary because of volume and pattern of use or release and other chemical-specific factors. To include a substance on the list on the basis of this criterion, the Administrator would determine that, within the United States, concentration levels that can cause the effects described above are reasonably likely to occur as a result of continuous or frequently recurring releases. The term "continuous or frequently recurring releases" is included only to distinguish routine releases that are a normal consequence of the operation of the facility from the episodic and accidental releases that are subject to section 304. There is no requirement to make any facility-specific finding, and it is not necessary actually to demonstrate these concentration levels or effects near any particular facility.

The phrase "beyond facility site boundaries" means any point outside the boundaries of the site on which the facility is located. With regard to some types of chemicals and patterns of discharge and dispersal, the highest concentration to which persons outside the site boundary may be exposed will occur adjacent to the boundary. In other cases, the highest concentration may occur some distance away, as when an air emissions plume cools and settles to the ground.

2. Chronic human health effects—The chemical is known to cause or can reasonably be anticipated to cause in humans—

(i) cancer or teratogenic effects, or

(ii) serious or irreversible—

(I) reproductive dysfunctions,

(II) neurological disorders,

(III) heritable genetic mutations, or

(IV) other chronic health effects.

The phrase "in humans" in subsection (d)(2)(B) clarifies that health effects are to be considered insofar as they are or reasonably can be anticipated to be manifested in human beings as distinct from other organisms. It does not limit the Administrator to considering only substances for which there are human data.

3. Adverse environmental effects—The chemical is known to cause or can reasonably be anticipated to cause, because of—

(i) its toxicity,

(ii) its toxicity and persistence in the environment, or—

(iii) its toxicity and tendency to bioaccumulate in the environment,

a significant adverse effect on the environment of sufficient seriousness, in the judgment of the Administrator, to warrant reporting under this section.

In determining what constitutes a significant adverse effect on the environment that would warrant reporting under this section, the Administrator should consider the extent to which the toxic chemical causes or reasonably can be anticipated to cause any of the following adverse reactions, even if restricted to the immediate vicinity adjacent to the site:

(1) Gradual or sudden changes in the composition of animal life or plant life, including fungal or microbial organisms in an area.

(2) Abnormal number of deaths of organisms (e.g. fish kills).

(3) Reduction of the reproductive success or the vigor of a species.

(4) Reduction in agricultural productivity, whether crops or livestock.

(5) Alterations in the behavior or distribution of a species.

(6) Long lasting or irreversible contamination of components of the physical environment, especially in the case of groundwater, and surface water and soil resources that have limited self-cleansing capability.

The use of the term "bioaccumulate" is not intended to distinguish between this term and other technical terms, such as "bioconcentrate" and "biomagnify" that sometimes are used interchangeably.

The number of toxic chemicals included on the list solely on the basis of adverse environmental effects as described above may not exceed 25 percent of the total number of listed chemicals.

In making a determination that a chemical meets any of the toxicity criteria under subsection (d)(2) the Administrator must consider generally accepted scientific principles of toxicity evaluation or, data from laboratory toxicity tests, or appropriately designed and conducted epidemiological and other studies of populations, available to the Administrator.

The Administrator, in determining to list a chemical under any of the above criteria, may, but is not required to, conduct new studies or risk assessments or perform site-specific analyses to establish actual ambient concentrations or to document adverse effects at any particular location.

Subsection (c) defines the list of toxic chemicals for which reports under this section will be required. This list will include chemicals designated in Senate Environment and Public Works Committee Print No. 99-169 including any revisions to such list made by the Administrator. The Administrator may add chemicals to the list or delete chemicals from the list at any time on the basis of the criteria set forth in section 313(d)(2). Any person may petition the Administrator to add a toxic chemical to the list on the basis of the acute or chronic human toxicity criteria. The Administrator must respond to such a petition within 180 days, either by initiating a rulemaking to add or delete the chemical to the list or publishing an explanation why the petition is denied.

A Governor of a State may petition the Administrator to add or delete a chemical from the list. In response to a Governor's petition to add (but not delete) a chemical to the list, the chemical automatically must be added to the list within 180 days after receipt of the petition unless the Administrator, within that time period, initiates a rulemaking to add the chemical to the list or publishes an explanation why the chemical does not meet any of the criteria for listing in section 313(d)(2). A chemical thus added to the list is subject to the same reporting requirements as all other chemicals on the list. This procedure would not, of course, shift the burden of proof in court from the Governor to EPA if EPA elects not to include a chemical proposed by a Governor on the list for reporting.

Subsection (d)(3) of the conference substitute provides that a chemical may be deleted from the list if there is not sufficient evidence to meet any of the criteria described in paragraph (2). A chemical need only meet one of the three criteria listed in subparagraphs (A), (B) or (C) of paragraph (2) to be listed. Similarly, a chemical will be deleted only if it fails to meet any of these three criteria.

In cases where the list of chemicals for which reporting is required refers to compounds of a "chemical" which is a group of related chemicals rather than a specific chemical with accompanying Chemical Abstracts Service (CAS) number, the person submitting the form may include aggregate data including all releases of those individual chemicals on one reporting form rather than listing data separately for each individual chemical in the group. Thus, for example, a single form can be submitted for "polybrominated biphenyls" as listed in Senate Environment and Public Works Committee Print No. 99-169 without identifying the individual polybrominated biphenyls being released or reporting release data separately for each one. This does not preclude the Administrator from requiring reporting on individual chemicals for which aggregate reporting otherwise would be required.

REPORTING THRESHOLDS

The conference substitute establishes certain threshold amounts for purposes of reporting toxic chemicals. For the reports required by July 1, 1988 on releases during calendar year 1987, reporting is required of persons who manufacture or process more than 75,000 pounds per year. This threshold decreases over the next two years to 50,000 pounds per year for the report due July 1, 1989, to 25,000 pounds per year for the report due July 1, 1990 and in subsequent years. Reporting is required of facilities that use more than 10,000 pounds per year of listed chemicals for purposes other than manufacturing or processing of the chemical. The Administrator may modify these threshold amounts for a particular chemical, provided the revised threshold results in reporting on a substantial majority of the aggregate releases of the chemical at facilities subject to this section, but it would not necessarily require reporting from each facility.

INFORMATION REQUIRED TO BE REPORTED

Senate amendment—The Senate amendment requires the Administrator to publish a form which will provide for the following information for each facility:

Name, location, and principal business activity.

Use or uses of each listed chemical.

Annual quantity of each chemical transported to the facility, produced at the facility, and transported from the facility as waste or product.

Annual quantity of each chemical entering each environmental wastestream.

For each wastestream the waste treatment methods employed and annual quantity of the substance remaining in the wastestream after treatment.

The Senate amendment allows facility owners to utilize readily available data required to be collected by other laws, or reasonable estimates where such data are not available. This section does not establish

monitoring requirements beyond those required by other laws. The President must require that data be submitted in consistent units.

Reporting by letter is required if the President has not published the required form.

Data submitted under these requirements are to be made available to the public, consistent with the trade secret provisions of these amendments and section 104(e) of CERCLA, as amended. In addition, the President is required to computerize the submitted data and make them available to any person by computer telecommunications on a cost-reimbursable user-fee basis.

The Senate amendment also provides criminal penalties for knowingly omitting material information or making false statements.

These information requirements do not preempt any state or local law.

House amendment—The House amendment requires annual submission to local emergency response committees of status sheets on extremely toxic substances listed under section 311(c). These status sheets include:

The total amount of a listed chemical released to the environment during the preceding 12 months

A summary of reportable quantity releases reported under section 102 of CERCLA during the preceding 12 months and

A summary of reports to the State or the EPA Administrator of discharges in excess of permits issued under the Clean Air Act, the Federal Water Pollution Control Act, or the Solid Waste Disposal Act.

Readily available data collected under requirements or other laws may be used for reporting requirements, and the House amendments do not require monitoring additional to that required under other laws. Data submitted are to be made available to the public, consistent with trade secret provisions in section 322 of the House amendments.

Conference substitute—The conference substitute requires the Administrator, no later than June 1, 1987, to publish a uniform toxic chemical release form that facilities will use to report annual releases to the environment. If the required form is not published, reports containing the required information must be made by letter. The form must provide for reporting of the following information:

Name, location, and principal business activities at the facility.

An appropriate certification regarding the accuracy and completeness of the report, signed by a senior official with management responsibility for the person or persons completing the report.

For each listed toxic chemical, whether the chemical is manufactured, processed or otherwise used, with the general category or categories of use;

an estimate of the maximum amounts (in ranges) of the toxic chemical present at the facility during the preceding calendar year;

for each wastestream, the methods of waste treatment or disposal employed, and an estimate of the treatment efficiency typically achieved by such methods for that wastestream; and,

the annual quantity of the toxic chemical entering each enviornmental medium.

The Administrator should include guidance regarding the certification required by subsection (g)(1)(B) in regulations published under this section. The purpose of the certification requirement is to assure that a senior management official reviews the report for accuracy and completeness.

The Administrator also should provide guidance regarding reporting of categories of use and ranges of amount of chemical present at the facility. The conference substitute provides for reporting categories of use and ranges of chemicals present because the exact use of an identified chemical at a facility or the exact amount present may disclose secret processes. In some circumstances, this information may need to be reported in terms of broad categories of use or amount ranges, similar to those utilized for the inventory of chemical substances in commerce required under section 8(b) of the Toxic Substances Control Act. However, consistent with the community right-to-know purposes of this program, the categories or ranges should be no broader than necessary to protect the trade secret.

The estimate of treatment efficiency required to be reported refers to the treatment efficiency typically achieved for each treated wastestream at that facility for the listed chemical as opposed to other components of the waste stream. It does not refer to the design efficiency or the optimum efficiency of the treatment system, unless such efficiency typically is achieved in practice.

Reporting on releases to each environmental medium under subsection (g)(1)(C)(iv) of the conference substitute shall include, at a minimum, releases to the air, water (surface water and groundwater), land (surface and subsurface), and waste treatment and storage facilities.

The purpose of this reporting requirement is to obtain available information about releases of listed toxic chemicals to the environment. To lessen the reporting burden, the conference substitute provides that readily available data (including monitoring data) collected pursuant to other provisions of law may be used for reporting under this section. Where data are not available reasonable estimates of amounts released may be used. The conference substitute does not require monitoring or measurement of toxic chemical releases beyond that required by other provisions of law. All monitoring or measurement data in the possession on the facility owner or operator must be reported.

The annual reporting forms are required to be submitted to the Administrator and to the State. The Administrator is required to establish and maintain in a computer database a national toxic chemical inventory based on data submitted under this section. These data are required to be made accessible to any person by computer telecommunication and other means on a cost reimburseable basis. In determining the costs of this database for purposes of reimbursement by users, the Administrator is to consider the cost of that portion of depreciable equipment devoted to this database as well as the cost of inputting the data, programming, searching, etc. However, the resulting fee schedule is not to be prohibitive with regard to public access, and the Administrator may reduce or waive otherwise applicable fees when, in the Administrator's judgment, such action is in the public interest and consistent with the purposes of this section.

The Administrator also must make the data available by means other than computer telecommunications, which may include responding to reasonable requests for printouts of data or analyses. Also, the Administrator may choose to publish the inventory or summaries of the data.

Subsection (h) describes the intended uses of the toxic chemical release forms required to be submitted by this section and expresses the purposes of this section. The information collected under this section is intended to inform the general public and the communities surrounding covered facilities about release of toxic chemicals, to assist research, to aid in the development of regulations, guidelines and standards, and for other similar purposes.

MODIFICATION IN REPORTING FREQUENCY

Senate amendment—The Senate amendment provides for three reports, each covering the preceding calendar year. The reports are due on June 30, 1987; June 30, 1990; and June 30, 1993.

House amendment—The House amendment requires that facilities report annually beginning 21 months after enactment or 9 months after becoming a covered facility for emissions of the preceding 12 months.

Conference substitute—Subsection (i) requires annual reports beginning in 1988 covering releases from the preceding calendar year. Beginning with the report due in 1994, the Administrator may alter the reporting frequency. The reporting period would continue to be calendar year releases for the previous calendar year. However, the Administrator could modify the reporting frequency either nationally or in a specific geogrpahic area for (1) all toxic chemical release forms under this section, (2) a class of toxic chemicals or a category of facilities, (3) a specific toxic chemical, or (4) a specific facility. These modifications may be different at different times. For some chemicals or facilities the reporting frequency might be lengthened to two years, or three years, or longer. For others it could remain annual. The frequency could be lengthened at one point in time and shortened at another. A decision could even be made to require no further reports.

To make any changes in reporting frequency the Administrator must determine that several conditions have been met. The Administrator must conclude that a modification is consistent with the objectives of this section as set out in subsection (h) based on experience from previously submitted forms and on a series of additional determinations. These determinations are (1) the extent to which the information has been used by the Administrator, other Federal agencies, States, local governments, health professionals, and the public; (2) the extent to which this information is readily available to potential users from other sources and provided to the Administrator under other programs; and (3) when shortening the reporting frequency, the extent to which this change imposes additional and unreasonable burdens on facilities submitting reports.

In making a determination to alter the reporting frequency of information under this section, if the Administrator determines that specific localities or states regularly use information reported under this section on an annual basis and that this information is not readily available from other sources as determined by the Administrator under section 313(i)(3), it is expected that the Administrator will modify the reporting frequency using specific geographic limitations so as to preserve the annual availability of this information to such specific localities and states.

Any determination must be made through a rulemaking procedure under the Administration Procedures Act, and must be sup-

ported by substantial evidence. The Administrator must notify Congress of an intention to initiate a rulemaking at least 12 months, but no more than 24 months, before a rulemaking.

Finally, any modification to change a reporting frequency must be reviewed at least once every 5 years to assure that the justification for the modification remains valid.

Subsection (k) requires that by June 30, 1991, the Comptroller General of the United States, in consultation with the Administrator and the States, submit to Congress a report on this information reporting program. The report will include a description of steps taken to implement the program, the extent of usage of the information collected, and options for modifying the requirements of this section.

MASS BALANCE STUDY

Senate amendment—The Toxic Chemicals Release Inventory Form submitted by each reporting facility would require the submission of information on the quantity of chemical substances transported to the facility, produced at the facility, and transported from the facility as wastes or products.

House amendment—No comparable provision.

Conference substitute—Subsection (1) requires the Administrator to arrange for a study to be conducted by the National Academy of Sciences to evaluate several concepts involving the use of mass balance information. The report on the study must be submitted to Congress within 5 years. The term "mass balance" is defined as the accumulation of annual quantities of chemicals transported to, produced at, consumed at, used at, accumulated at, released from, and transported from a facility as a waste or product. It is anticipated that these quantities will be determined by a variety of methods including direct measurements, engineering estimates, estimates derived from differences between measurements, and other methods. In carrying out its responsibilities under this section the National Academy of Sciences should include an assessment of the quality of these measurements and the effect of inaccuracies on the purposes of the study.

The Administrator is directed to acquire information from two sources. First, the Administrator must acquire available mass balance information from States currently conducting or, within the study period, initiating mass balance-oriented annual quantity toxic chemical release programs. Second, if these programs fail to provide an adequate representation of classes and categories of industry, the Administrator may acquire mass balance information from a representative number of facilities in other States.

For example, assuming existing State programs include several facilities which manufacture organic chemical products but only one facility manufactures inorganic chemicals, the Administrator could acquire the information from inorganic chemical manufacturing facilities in other States if the Administrator believed additional information was necessary for the study.

All information acquired under this section must be made available to the public except upon a showing satisfactory to the Administrator that the information is entitled to protection under confidential business information provisions of section 1905 of title 18, United States Code.

There are several purposes for conducting the study. First, it should assess the value of mass balance analysis in determining the accuracy of information on toxic chemical releases. Although other provisions of this section require reporting of emissions, questions remain regarding the accuracy of these estimates. At issue is whether mass balance analysis provides an effective method of assessing the accuracy of these estimates.

Second, the study should answer questions regarding the value of mass balance information or components of it, such as production rate, in determining the waste reduction efficiency of different facilities or categories of facilities, and the effectiveness of toxic chemical regulations. For example, can this information reasonably be used to compare different facilities in the same business to determine whether one is applying more rigorous environmental control than another, or delineate whether reduced releases of chemcials reflect improved control or limited operation?

Third, the study should assess the utility of such information for evaluating toxic chemical management practices. For example, can this information enhance assessments of whether facilities are altering their operations to reduce the presence or release of toxic chemicals?

Fourth, the study should evaluate the implications of implementing a mass balance program concept on a national scale. This assessment should evaluate the value of information generated by such a program to the public and to regulators and policymakers at the local, State and national level together with the financial and other resources needed by governments and facilities to implement such a program and possible trade secret concerns that may arise.

Subparagraph (1)(3)(D) gives the Administrator enforceable authority to require submission of information necessary for this study.

SUBTITLE C—GENERAL PROVISIONS

SECTION 321—RELATIONSHIP TO OTHER LAW

Senate amendment—The Senate amendment provides that nothing be construed to limit the ability of any State or locality to require submission of information related to hazardous substances, toxic chemical substances, pollutants or contaminants or other materials, or to require the submission or distribution of information related to hazardous substances.

House amendment—The House amendment provides that nothing be construed to limit the ability of any State or locality to require submission of information related to hazardous chemicals or to limit the authority of any State to preempt any local law relating to the submission of information related to hazardous chemicals. However, the House amendment establishes certain requirements insofar as any State or local law related to the submission of MSDS forms, or information supplemental to such forms.

Conference substitute—Reflecting the policy of the Senate amendment and House amendment, the conference substitute provides that this title does not preempt any State or local law or affect or modify the obligations or liabilities of any person under other Federal law. The conference substitute incorporates the specific House amendment provisions with regard to the MSDS forms.

SECTION 322—TRADE SECRETS

Senate amendment—The Senate amendment provides that no person may claim that submitted information is a trade secret unless such person shows at the time the claim is made that the claimant has not disclosed the information to persons not entitled or required to receive it, that the person has taken reasonable measures to protect the information, that the information could not reasonably be discovered by another person in the absence of disclosure, and that the information provides a competitive advantage and disclosure is likely to lead to substantial competitive harm.

Certain information, however, may not be claimed a trade secret. With respect to hazardous chemicals as defined by section 101(14) of CERCLA, no person can claim as a trade secret the chemical name, physical properties, health and environmental hazards, potential routes of human exposure, disposal location, wastestream identity and quantity monitoring data, or hydrogeologic, geologic or groundwater monitoring data. With respect to toxic chemicals subject to reporting on annual releases, no person can claim the identity of a chemical or the quantity and nature of release to be a trade secret.

House amendment—The House amendment allows any facility owner or operator submitting information to any person to withhold the identity of the chemical from the submittal, if the claim that the chemical identity is a trade secret can be supported by showing that the identity has not been disclosed to persons not entitled to receive it, that it is not required to be disclosed by other Federal or State law, and that knowledge of the information may give the submitter an opportunity to obtain an advantage over competitors.

The Administrator is required to publish trade secret regulations which are identical, consistent with the above provision, and except for certain procedural variations, with regulations issued by the Secretary of Labor in the Occupational Safety and Health Administration Hazard Communication Rule. These regulations will be published by the Secretary in accordance with the Federal court ruling in *United Steelworkers of America, AFL-CIO-CLE* v. *Thorne G. Auchter.*

In addition, the Administrator is required to establish a procedure for any affected citizen to petition the Administrator to review a trade secret claim.

Conference substitute—The Conference substitute combines elements of the House and Senate amendments. Like the House bill, the conference agreement allows only the specific chemical identity (including the chemical name and other specific identification) to be claimed as a trade secret. The term "other specific identification" refers to information other than the name of the chemical, such as the Chemical Abstract Services (CAS) number, which uniquely identifies the chemical. When the specific chemical identity is claimed as a trade secret, the generic class or category of the hazardous chemical, extremely hazardous substance or toxic chemical must be submitted. Trade secret protection under this section does not apply to extremely hazardous substances in a notification required under section 304.

The generic class or category of chemical may be defined as broadly as is needed to protect the specific chemical identity from disclosure, but, consistent with the purpose of this title to provide information to the community and the public, it should be defined no more broadly than necessary to afford such protection. The Administrator may give guidance for choosing such classes or categories in implementing regulations,

drawing upon experience under the Toxic Substances Control Act.

As explained below, any person entitled to withhold the specific chemical identity from a submission required by this title under sections 303(d)(2), 303(d)(3), 311, 312, and 313 must claim the identity is a trade secret on the basis of certain factors enumerated in the conference agreement, explain in the submittal the reasons why such information is claimed to be a trade secret, based on these factors, and submit the withheld identity to the Administrator together with a copy of the submittal.

Like the Senate bill, the conference substitute requires that a claim that the specific chemical identity is entitled to protection as a trade secret be documented at the time the claim is made. Consistent with the procedures in subsection (d), the claimant must support a claim of trade secrecy with assertions of fact concerning the criteria described below sufficient to show, if such assertions are true, that the specific identity is a trade secret based on those criteria.

The decision to claim that a specific chemical identity is a trade secret can be made by each facility based on the factors enumerated in section 322(b). In some cases a facility may purchase chemicals the identity of which are not considered to be trade secrets by the seller. However, the knowledge of their presence at the purchasing facility could effectively define for its competitors the process and/or products being made there. In such instances, these facilities may choose to claim these chemical identities as a trade secret. Such determinations would be subject to the trade secret claim limitations of this section.

No person may claim specific chemical identity as a trade secret unless the person shows each of the following with regard to the information withheld:

(1) That such person has not disclosed the information to any other person, other than a member of a local emergency planning committee, an officer or employee of the United States or a State or local government, an employee of such person, or a person who is bound by a confidentiality agreement, and such person has taken reasonable measures to protect the confidentiality of such information and intends to continue to take such measures.

(2) That the information is not required to be disclosed, or otherwise made available, to the public under any other Federal or State law.

(3) That disclosure of the information is likely to cause substantial harm to the competitive position of such person.

(4) That the chemical identity is not readily discoverable through reverse engineering.

The term "reverse engineering" is not defined by the conference substitute. It is taken from the opinion of the United States Court of Appeals for the Third Circuit in *United Steelworkers of America, AFL–CIO–CLC* v. *Thorne G. Auchter,* 763 F.2d 728. (3d Cir. 1985).

Regulations required to be published by the Administrator under this section of the conference substitute are to be equivalent, with respect to the reverse engineering factor, with comparable provisions of the OSHA Hazard Communication Standard as it is revised pursuant to the opinion described above. The requirement for equivalence applies only to the reverse engineering factor in subsection (b)(4). The regulations under this section are to be "equivalent" to comparable provisions of the OSHA regulations, rather then identical to them, because the two regulations address different types of reporting covering different forms of chemicals. The OSHA regulation applies to chemicals in the workplace and chemicals used in the manufacture of products, while this title applies also to toxic chemicals released to environmental media. Thus, the Administrator may consider the ability of persons to detect the presence of a specific chemical at a facility by reverse engineering applied to environmental media containing facility wastes as well as to chemical products.

Subsection (d) establishes procedures for review of claims that specific chemical identity is a trade secret. This review may be initiated by the Administrator or it may be in response to a petition. Any person may initiate such a petition.

If a petition for review of a trade secrecy claim is filed, the Administrator is required within 30 days to review the explanation for the claim filed by the claimant and determine whether the explanation presents assertions which, if true, are sufficient to justify the claim. The petitioner does not have the burden of demonstrating the inadequacy of an explanation submitted in support of a trade secret claim.

If the Administrator finds that these assertions are sufficient, the Administrator must notify the claimant that he has 30 days to supplement the explanation with detailed information to support the assertions. If, after review of the supplemental information, the Administrator determines that the assertions in the explanation are true and the specific chemical identity is a trade secret, the Administrator must notify the petitioner of this determination. The petitioner may seek judicial review of the determination. If the Administrator determines, after review of the supplemental information, that the assertions in the explanation are false and that the specific chemical identity is not a trade secret, then the Administrator must notify the claimant that the Administrator intends to release the specific chemical identity. The claimant then has 30 days to appeal the determination and may seek judicial review of the determination if the appeal is unsuccessful.

Subsection (d)(4) establishes procedures to follow if the Administrator, in response to a petition or at his own initiative, determines that the explanation that accompanied the claim of trade secrecy presents insufficient assertions to support a finding that the chemical identity is a trade secret. In this case the Administrator is required to notify the claimant of this determination, and the claimant has 30 days to appeal the Administrator's decision or, upon a showing of good cause, to amend the original explanation by providing supplementary assertions to support the trade secret claim.

The opportunity to supplement the record on the basis of "good cause" provides an opportunity to provide the Administrator with information that was not available at the time the initial explanation was submitted, information that was not called for under regulations and guidance in effect at the time, that information was mistakenly not provided by a claimant who otherwise has acted in good faith to comply with requirements of this section, or for other similar purposes. This opportunity should not be construed to diminish the obligation of the claimant to submit an initial explanation that complies with the requirements of this section and applicable regulations.

If the Administrator does not reverse his determination after an appeal or review of supplementary material, then the Administrator is required to notify the claimant, who may seek judicial review of the Administrator's determination. If the Administrator does reverse his determination, then the procedures described above related to review of detailed information in support of a claim shall be followed.

Nothing in this section or implementing regulations shall authorize any person to withhold information required to be submitted to health professionals under section 323.

Subsection (f) provides that the explanation that must accompany a trade secret claim and any supplemental information required to be submitted by the Administrator shall be available to the public unless any person shows, to the satisfaction of the Administrator, that such information is entitled to protection as a trade secret under section 1905 of Title 18 of the United States Code. In such cases, the information shall be considered confidential, except that it may be disclosed in whole or in part to other officers, employees, or authorized representatives of the United States concerned with carrying out this title.

Subsection (g) requires the Administrator to provide trade secret information to a State upon request of the Governor of the State. Access to information under this subsection is not limited to information pertaining to facilities within the State of the Governor making the request. The provisions of section 325(d)(2) apply to the Governor and State employees.

Subsection (h) requires that, when the specific chemical identity is withheld from the public because of a claim of trade secrecy, appropriate government officials will identify the appropriate adverse effects associated with the chemical and provide this information to any person requesting information about the chemical. In the case of hazardous chemicals and extremely hazardous substances, the local emergency response committee or the State emergency response commission must perform this function with regard to the adverse health effects associated with a hazardous chemical or extremely hazardous substance. In the case of toxic chemicals for which annual release reporting is required under section 313, the Administrator is to include health and enviromental effects information in the computer database required to be maintained by subsection 313(i). The adverse effects identified should be described in general terms so as not to provide a unique identifier of a particular trade secret chemical.

Subsection (i) provides that all information reported to or otherwise obtained by the Administrator or his representatives under this title shall be made available to a duly authorized committee of Congress upon written request of such committee.

Since the Administrator will have records of trade secret chemical identity information, such information could be subject to requests under the Freedom of Information Act (5 U.S.C. 552). That Act prescribes short time deadlines for responding to requests for records. Section 322 of the Conference substitute provides specific, more extensive procedures for making trade secret determinations for chemical identity information, including longer time limits for the Administrator to act, and provides separate authority for petitioners to seek judicial review of determinations that such information constitutes a trade secret. As described above, section 326(a)(1)(B)(vi) provides a mechanism for seeking judicial review of

the Administrator's failure to respond to a petition. Accordingly, with respect to requests for public access to specific chemical identity information claimed as trade secret under section 322, the provisions of the Conference substitute supersede the provisions of the Freedom of Information Act.

SECTION 323—PROVISION OF INFORMATION TO HEALTH PROFESSIONALS, DOCTORS AND NURSES

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment establishes provisions which allow access to trade-secret information by various health professionals who have a need for such information. It includes separate provisions related to access by treating physicians or other health professionals faced with a medical emergency, a physician or other health professional in instances where no medical emergency is present, and to State and local government health professionals. Except for medical emergencies, a statement of need is required when the information is requested and the person requesting the information must enter into a confidentiality agreement limiting that person's use and disclosure of the information.

Conference substitute—The conference substitute adopts the House amendment, with modification of the confidentiality agreements required in certain circumstances by the House amendment. In adopting provisions requiring a statement of need in specified instances, it is not expected that this will add a significant burden to those seeking access to the information. Nor is the confidentiality agreement any broader than that needed to protect as a trade secret the specific chemical identify, as determined under section 322.

The confidentiality agreement normally should not prevent consultation among health professionals or inhibit the normal dissemination of medical information, provided that the trade secret itself is not compromised. In most cases, it is the linkage of a specific chemical with a specific facility or company that constitutes the trade secret. In that case, the confidentiality agreement should not prevent a health professional from discussing in a public forum the relationship between a specifically identified chemical and a particular disease, for example, so long as the chemical can not be linked to the company that has claimed the specific chemical identity to be a trade secret.

SECTION 324—PUBLIC AVAILABILITY OF PLANS, DATA SHEETS, FORMS AND FOLLOWUP NOTICES

Senate amendment—The Senate amendment requires that toxic chemical release forms, MSDS and emergency and hazardous chemical inventory forms be publicly available.

House amendment—The House amendment requires that all such forms and reports be publicly available, and requires that public notice be made of the availability of such forms.

Conference substitute—The conference substitute adopts provisions for the public availability of such forms, and public notice of such availability. With respect to making the information from the toxic chemical release forms publicly available, it is understood that the Administrator may fulfill this requirement by satisfying the requirements of section 313(j).

SECTION 325—ENFORCEMENT

Senate amendment—Failure by an owner or operator of a facility to notify appropriate local emergency coordinators and governors of a hazardous substance release is subject to a civil penalty, to be assessed by the President, of not more than $10,000 for a first violation, $25,000 for a second, $50,000 for a third and $75,000 for a fourth and subsequent violations. Procedures for assessing and challenging the penalties are prescribed. Criminal penalties of $25,000 or two years' imprisonment or both, for a first conviction of failing to notify, and $50,000 or five years' imprisonment or both for second or subsequent convictions are also provided. (Section 109 of the Senate bill).

The President may order a facility owner or operator to comply with a requirement (1) to submit material safety data sheets or an emergency inventory form to appropriate local, State or Federal officials (section 111 of the Senate bill); or (2) to notify the Governor that the facility is subject to emergency planning requirements or provide the local planning Committee with specified information. (Section 127 of the Senate bill). Violation of, or failure to comply with, the President's order subjects the violator to a civil penalty of not more than $25,000 for each day of violation.

Any person who knowingly omits or falsifies or misrepresents information on the Toxic Chemical Release Inventory Form, upon conviction shall be fined up to $25,000 or imprisoned for up to one year, or both. (Section 110 of the Senate bill).

House amendment—Any facility owner or operator who violates the requirements relating to hazardous substances reports, extremely toxic substances status sheets, or notification of a hazardous substance emergency will be liable for a civil penalty up to $20,000 for each violation.

Any owner or operator violating the requirements relating to material safety data sheets, to providing information to health professionals during a medical emergency, or to providing the Administrator with trade secret information when requested, will be subject to a civil penalty of up to $10,000 for each violation.

Doctors or nurses who request and are refused trade secrets information during a medical emergency may bring an action in Federal district court to require disclosure of the information.

The Attorney General is directed to conduct a study of the need for, and appropriateness of, criminal penalties for violations of emergency planning and community right to know provisions of law.

Conference substitute—The conference substitute is a combination of House and Senate provisions. With respect to emergency planning, section 325(a) gives the Administrator authority to order an owner or operator to provide required notification to State or local authorities under sections 302(c) and 303(d). A civil penalty of up to $25,000 for each day of violation is provided.

Section 325(b) gives the Administrator authority to assess civil penalties of $25,000 for each violation of the emergency notification requirements of section 304. Provision is also made for administrative and judicial penalties of $25,000 per day for a first violation and $75,000 per day for a second or subsequent violation, for each day the violation continues.

Section 325(b)(1)(E)(4) establishes, in addition to civil penalties, criminal penalties for any person who knowingly fails to provide notice in accordance with section 304. Such criminal penalties, of course, would not be mandatory should EPA determine that a violation has occurred, and standard prosecutorial discretion would apply.

Section 325(c) provides for administrative and judicial civil penalties of up to $25,000 for each day a violation of the reporting requirements of sections 312 or 313 continues and up to $10,000 for each day a violation of sections 311, 322 (a) and (f), and 323(b) continues.

Section 325(d) provides for administrative and judicial civil penalties of up to $25,000 for assertion of a frivolous trade secret claim. A criminal penalty of up to $20,000 or imprisonment of not more than one year or both is provided for unlawful disclosure of trade secret information.

Section 325(e) allows a health professional to bring an action in a Federal district court to obtain information from an owner or operator that has been requested under section 323 when the request has not been complied with.

Section 325(f) establishes procedures for the review and collection of administrative civil penalties.

The Senate provision imposing criminal penalties for falsification or misrepresentation of information on a Toxic Chemical Release Inventory Form is deleted as unnecessary because of applicable criminal penalties already in law under section 1001 of title 18 of the United States Code.

SECTION 326—CIVIL ACTIONS

Senate amendment—Citizens are provided a right to sue in Federal court to enforce standards, regulations, conditions, requirements and orders under the notification, emergency planning and hazardous substance inventory provisions of the Act and to seek the performance of nondiscretionary duties under these provisions by the President or delegees of the President. Prior to bringing such suits in Federal district court, a citizen is required to give 90 days notice to the State and the Federal government, and, where appropriate, to the alleged violator. No action may be brought under this provision if the State or Federal government is diligently prosecuting an enforcement action for the same violation. Citizens are granted a limited right to intervene in such governmental enforcement actions brought in Federal courts. Conversely, the President or a delegee may intervene as a matter of right in any citizen action brought under this section. The court may award the costs of litigation, including attorney fees, to any substantially prevailing party. The court may order appropriate remedies for violations or failures to perform nondiscretionary duties, including the payment of any civil penalties provided under the Act for the violation.

House amendment—No comparable provision.

Conference substitute—The Senate provisions allowing any person to bring enforcement actions are adopted with respect to the following actions:

1. Against an owner or operator for failure to do any of the following:

(a) Submit a followup emergency notice under section 304(c).

(b) Submit a material safety data sheet or a list under section 311(a).

(c) Complete and submit an inventory form under section 312(a) containing tier I information as described in section 312(d)(1).

(d) Complete and submit a toxic chemical release form under section 313(a).

2. Against the Administrator for failure to do any of the following:

(a) Publish inventory forms under section 312(g).

(b) Respond to a petition to add or delete a chemical under section 313(e)(1) within 180 days after receipt of the petition.

(c) Publish a toxic chemical release form under 313(g).

(d) Establish a computer database in accordance with section 313(j).

(e) Promulgate trade secret regulations under section 322(c).

(f) Render a decision in response to a petition under section 322(d) within 9 months after receipt of the petition.

3. Against the Administrator, a State Governor, or a State emergency response commission, for failure to provide a mechanism for public availability of information in accordance with section 324(a).

4. Against a State Governor or a State emergency response commission for failure to respond to a request for tier II information under section 312(e)(3) within 120 days after the date of receipt of the request.

State or local governments may commence a civil action against an owner or operator who fails to do any of the following:

1. Provide notification to the emergency response commission in the State under section 302(c).

2. Submit a material safety data sheet or a list under section 311(a).

3. Make available information requested under section 311(c).

4. Prepare and submit an inventory form under section 312(a) containing tier I information.

Any State emergency response commission or local emergency planning committee and, in the case of section 312(e)(1), a fire department with jurisdiction over the facility, may commence a civil action against an owner or operator of a facility for failure to provide information under section 303(d) or section 312(e)(1).

Any State may commence a civil action against the Administrator for failure to provide information to the State under section 322(g).

Actions against an owner or operator must be brought in the district court for the district in which the alleged violation occurred, and any action against the Administrator may be brought in the Federal District Court for the District of Columbia.

Prior to bringing suits, a person must give 60 days notice to the Administrator, the appropriate State and local officials and the alleged violator. No action may be brought under this section if the Administrator is diligently prosecuting an enforcement action for the same violation.

The court may order appropriate remedies for violations or failures to perform nondiscretionary duties, including the payment of any civil penalties provided under the Act for the violation.

Citizens are granted a limited right to intervene in such governmental enforcement actions brought in Federal courts. Conversely, the Administrator or a delegee may intervene as a of right in any citizen action brought under this section. The court may award the costs of litigation, including attorney fees, to any substantially prevailing party.

SECTION 327—EXEMPTION

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment provides exemption from the requirements of this Title to the transportation, including the storage incidental to transportation, of any hazardous chemical or hazardous substance.

Conference substitute—The conference substitute adopts the House amendment, clarified to assure the exemption of the transportation and distribution of natural gas. Therefore, with the exception of the provisions relating to emergency notification, the provisions of Title III do not apply to transportation or storage incidental to such transportation. The exemption relating to storage is limited to the storage of materials which are still moving under active shipping papers and which have not reached the ultimate consignee. This is consistent with the manner in which storage facilities are treated under the Hazardous Materials Transportation Act. For example, storage of materials in rail cars or in motor carrier warehouses would be exempt from the requirements of Title III (other than emergency notification) if the materials were under active shipping papers. On the other hand, storage of materials in facilities on the site of the consignor or consignee, even if such facilities are primarily transporatation-related, are subject to the provisions of Title III, since the storage would occur either before or after actual transportation of the materials.

SECTION 328—REGULATIONS

Senate amendment—The Senate amendment establishes Emergency Planning and Community Right-to-Know provisions as a part of CERCLA; provides general rulemaking authority to the Administrator under section 115 of CERCLA.

House amendment—The House amendment establishes rulemaking authority for EPA on specific provisions, but includes no general rulemaking authority.

Conference substitute—The conference substitute establishes general rulemaking for EPA Administrator.

SECTION 329—DEFINITIONS

Senate amendment—The Senate amendment defines such terms as were used in the Act.

House amendment—The House amendment defines such terms as were used in the Act.

Conference substitute—The conference substitute defines the following terms, which are used in the Act: "Administrator", "environment", "extremely hazardous substance", "facility", "hazardous chemical", "hazardous substance emergency", "Material Safety Data Sheet", "person", "release", "State", and "toxic chemcial".

SECTION 330—AUTHORIZATION OF APPROPRIATIONS

Senate amendment—The Senate amendment, which enacts Emergency Planning and Community Right-to-Know provisions as part of CERCLA, provides funding for the program from the "Superfund."

House amendment—The House amendment enacts Emergency Planning and Community Right-to-Know as a free-standing title, with funds to be provided under the existing EPA authorization.

Conference substitute—The conference substitute authorizes the appropriation of such sums as may be necessary to carry out this title for fiscal years beginning after September 30, 1986.

TITLE IV—RANDON GAS AND INDOOR AIR QUALITY RESEARCH

Senate amendment—The Senate amendment creates a new program for indoor air quality research, including radon.

Section 502 includes findings of the Congress relating to radon and other indoor air pollutants. These include Congressional findings that radon poses a serious health threat; that various other indoor air pollutants may pose a health threat; that existing Federal programs for research of radon and other indoor air pollutants are fragmented and underfunded; and that an adequate information base concerning radon and other indoor air pollutants should be developed.

Section 503 provides the structure for the research program within the Environmental Protection Agency. Subsection (a) provides that the EPA is to gather data on all aspects of indoor air quality, coordinate Federal government and other research and development activities, and assess appropriate Federal actions to mitigate risks posed by radon and other pollutants.

Subsection (b) specifies that the research program must include pollutants monitoring, research of health effects, research of control technologies, demonstration of control measures, and dissemination of information to the public.

Subsection (c) provides for an advisory group representing Federal agencies and an advisory group representing States and other interested parties to assist the EPA Administrator in development of the research program.

Subsection (d) provides that the EPA is to submit an implementation plan for research under this section to the Congress within ninety days of enactment.

Subsection (e) provides for an interim report to Congress within one year, identifying locations and amounts of radon within structures throughout the United States and providing guidance and public information based on research findings to date.

Subsection (f) requires the Administrator to submit a report to Congress within two years of enactment. The report is to describe the state of knowledge concerning risks to human health of indoor air pollutants; the locations and amounts of indoor air pollutants in structures throughout the country; existing standards for indoor air pollutants suggested by Federal and State governments or scientific organizations and the risk to health associated with such standards; research needs and the relative priority of these needs; and the effectiveness of possible government actions to mitigate health risks associated with indoor air quality problems.

Subsection (g) states that nothing in the provision authorizes the Administrator to carry out any new regulatory program or other activity other than research, development, information dissemination and coordination activities.

Subsection (h) provides an authorization of $3,000,000 for Fiscal Years 1986 and 1987.

House amendment—The House amendment provides for a national assessment of radon gas and a demonstration program to test methods of reducing or eliminating the threat to human health of radon gas.

A national radon gas assessment program is to identify the locations in the United States where radon is collecting in residences and other structures and assess the relative levels of radon at different locations, to determine the threat to public health of various levels of radon at each tested location, and to determine methods for reducing radon levels. The Administrator is to submit a report to Congress within one year of enactment.

The EPA Administrator is also to conduct a demonstration program to test methods of reducing or eliminating radon where it poses a threat to public health. This demonstration program is to be conducted in the

Reading Prong area of Pennsylvania and New Jersey, and at such other sites the Administrator considers appropriate. The Administrator is to submit interim and final reports on the status of the demonstration program.

A total of $2,000,000 is authorized to be appropriated to carry out these provisions in Fiscal Years 1986, 1987, and 1988.

Conference substitute—The conference substitute includes the House and Senate provisions, modified.

The substitute establishes a program entitled "Radon Gas and Indoor Air Quality Research."

The substitute includes findings based on those of the Senate amendment concerning the health threat posed by radon and other indoor air pollutants and the need for better coordination of research and more complete information.

The substitute also includes provisions of the Senate amendment concerning research program design, program requirements, advisory committees, and implementation plan. The provision in the Senate amendment requiring interim reports was deleted in the conference substitute. Information that would have been provided in that report will instead be provided through reports required under the national assessment and demonstration program provisions from the House bill, which are included in the conference substitute.

The substitute includes the national assessment of radon gas and the radon mitigation demonstration program provided in the House bill. These provisions, however, are included in section 118 of the Act, rather than Title IV.

The national assessment of radon is to be provided to Congress within one year of the date of enactment of this Act. The assessment is to address each of the points in the House provision and is also to include guidance and public information materials based on findings of research. The EPA is to address each item specified for the assessment to the extent possible.

The conference substitute also adopts the radon mitigation demonstration program to test methods and technologies of reducing or eliminating radon gas and radon daughters where they pose a threat to human health. The substitute revises the reporting provision of this subsection to provide that annual reports of the status of the mitigation demonstration program are to be submitted to Congress not later than February 1 of each year, beginning February 1, 1987. In addition, a provision is added to this subsection specifying that liability, if any, for persons undertaking activities pursuant to the program under this section shall be determined under the principles of existing laws.

The Administrator shall take into consideration any demonstration program underway in the Reading Prong area of Pennsylvania, New Jersey, and New York and at other sites prior to enactment. The demonstration program under this section shall be conducted in the Reading Prong, and at such other sites as the Administrator considers appropriate.

The substitute requires the Administrator to submit a report to Congress within two years of enactment of this Act regarding activities under this Title and making such recommendations as appropriate. While the provisions regarding the content of the report from the Senate amendment are not included in the substitute, it is intended that the report provided an overall assessment of radon and indoor air quality issues and that each of the provisions regarding report content from the Senate amendment be addressed in the report called for in the substitute.

The substitute also includes the provision of the Senate amendment which limits authority to research, development, and related reporting, information, dissemination and coordination activities specified in this section.

The substitute provides a total authorization of $5,000,000 to carry out activities under this Title and section 118 relating to the national assessment of radon and the radon mitigation demonstration program. The authorization is for Fiscal Years 1987, 1988, and 1989. In addition, the substitute provides that, of such sums appropriated in Fiscal Years 1987 and 1988, two-fifths are to be reserved for implementation of the radon mitigation demonstration program.

Other Provisions

ABATEMENT ACTIONS

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment amends Section 106 of CERCLA, which authorizes the President, through the Attorney General and the appropriate Federal district court, to enjoin or order the abatement of actual or threatened releases of hazardous substances. Section 106 is amended to provide that these enforcement authorities do not apply with respect to any release or threatened release resulting from the normal application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Conference substitute—The Conferees have agreed not to include the amendment proposed by the House which would have prohibited the use of Section 106 abatement authority for the normal application of pesticide products registered under the Federal Insecticide, Fungicide, and Rodenticide Act. By agreeing to delete the House language, the Conferees do not intend to imply that the section 106 authority may or may not be used to require those who apply registered pesticides to undertake cleanup.

PESTICIDES

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment inserts "normal" prior to the phrase "application of a pesticide" in section 107(i).

Conference substitute—The conference substitute deletes the House provision.

COMMENCEMENT OF DRILLING FLUIDS, ETC., STUDY

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—Section 208 of the House amendment requires the Administrator of EPA to commence the study required under section 8002(m) of the Solid Waste Disposal Act within 6 months after the date of enactment of these amendments.

Conference substitute—The conference deletes the House provision. The study has already begun.

RELEASES ASSOCIATED WITH BRINE DISPOSAL

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—Section 211 of the House amendment requires the Administrator of EPA to conduct a review of State programs for protection of human health and the environment in States which permit annular injection of brines associated with oil and gas production. However, the review is to be conducted only in States where there are more than 2500 active wells which use annular injection. If the Administrator finds inadequate enforcement of such State programs, the Administrator shall enforce the program or order such corrective action as may be necessary to assure protection of human health and the environment from releases associated with annular injection or other brine disposal practices. Civil penalties are provided for violation of or failure to comply with any enforcement or corrective action taken or ordered by the Administrator.

Finally, the House amendment requires that the review be completed, and any appropriate enforcement or corrective action taken or ordered, by the Administrator within 18 months after enactment of this section.

Conference substitute—The conference substitute deletes the House amendment. A similar provision has already been enacted in the Safe Drinking Water Act Amendments of 1986, P.L. 99-339.

STATE MATCHING GRANTS

Senate amendment—Section 141 of the Senate amendment contains a provision setting up a state matching grant program. The Fund is made available to provide grants of up to $1 million per State, to be matched by the State, for cleanup of small sites—including sites where there are leaking underground storage tanks—that are now covered under the Superfund program.

House amendment—The House amendment contains no comparable provision.

Conference substitute—The conference substitute deletes the Senate provision.

ADMINISTRATIVE CONFERENCE

Senate amendment—Section 154 of the Senate amendment directs the Administrator of the Environmental Protection Agency to consider the 1984 recommendations of the Administrative Conference of the United States on alternatives to litigation in Superfund cases.

House amendment—The House amendment contains no comparable provision.

Conference substitute—The conference substitute deletes the Senate amendment.

RECOMMENDED MAXIMUM CONTAMINANT LEVELS

Senate amendment—The Senate amendment contains at section 157 a requirement that the Director of the Office of Management and Budget (OMB) complete review and release for publication a list of Recommended Maximum Containment Levels (RMCLs) proposed by the Administrator of the Environmental Protection Agency under authority of the Safe Drinking Water Act and transmitted to OMB for review pursuant to the provisions of Executive Order 12291. A directive from the Congress mandating release of the RMCLs is included in the Senate amendment because the OMB review had extended for an inordinate period of time without action or the promise of action in the near term.

House amendment—The House amendment contains no comparable provision.

Conference substitute—The conference substitute deletes the Senate provision. Subsequent to inclusion of this provision in the Senate amendment, the Office of Management and Budget did release the RMCLs, and they were published as proposed regulations in the *Federal Register* on November 14, 1985, thus removing the need for the provision in the conference agreement.

LEAD-FREE DRINKING WATER

Senate amendment—The Senate amendment contains a title III provision which would prohibit the use of any pipe, solder or flux in any public water supply system or plumbing use to provide drinking water, require public notification by community water systems to their consumers of the adverse affects of lead in drinking water supplies, provide for state enforcement of these provisions, ban the use of lead solder, pipe or flux in new construction guaranteed by the Department of Housing and Urban Development or the Veterans' Administration, and require labeling or lead solder sold commercially as a hazardous substance under the Federal Hazardous Substances Act.

House amendment—The House amendment contains no comparble provision.

Conference substitute—The conference substitute deletes the Senate amendment. Subsequent to Senate adoption of these provisions in the Superfund amendments, they were also included in the conference report on the Safe Drinking Water Act Amendments of 1986 which become P.L. 99-339.

COMPREHENSIVE OIL POLLUTION LIABILITY AND COMPENSATION ACT

Senate amendment—The Senate bill contained no provisions relating to comprehensive oil spill pollution liability and compensation.

House amendment—Title IV of the House bill contains the Comprehensive Oil Pollution Liability and Compensation Act of 1986. Title IV proposes major versions to Federal law governing liability and compensation for oil pollution.

Conference substitute—The conference substitute adopts the Senate proposal that current law relating to oil pollution should not be changed in the context of H.R. 2005. The Senate Conferees agree to act on oil pollution liability and compensation legislation separately before the end of the 99th Congress.

TITLE V. SUPERFUND FINANCING

A. HAZARDOUS SUBSTANCE RESPONSE TRUST FUND ("SUPERFUND")

1. TRUST FUND PROVISIONS

Prior and Present Law

Superfund financing sources

Amounts equivalent to excise taxes on petroleum and feedstock chemicals (described below) were deposited in the Hazardous Substance Response Trust Fund ("Superfund"). These taxes expired on September 30, 1985.

In addition to taxes, $44 million was authorized to be appropriated to the Superfund from general revenues for each of fiscal years 1981-85 (an aggregate of $220 million). Total tax and general revenue appropriations were intended to equal $1.6 billion over the five-year period.

The following additional amounts also are deposited in the Superfund:

(1) amounts recovered from parties responsible for hazardous substance releases;

(2) penalties assessed against responsible parties; and

(3) punitive damages for failure to provide removal or remedial action upon the order of the President.

Expenditure purposes

Amounts in the Superfund are available for expenditures incurred in connection with releases or threats of releases of hazardous substances into the environment.

Allowable costs include the following:

(1) Costs of responding to the presence of hazardous substances on land or in the water or air, including cleanup and removal of such substances and remedial action.

(2) Certain costs related to response, including epidemiologic studies and maintenance of emergency strike forces.

(3) Payment of assessment and damage claims for injury to, or destruction or loss of, natural resources belonging to or controlled by Federal or State governments. No more than 15 percent of Superfund revenues attributable to taxes and general revenue appropriations may be used for the payment of natural resource assessment and damage claims.

Administrative provisions

Claims against the Superfund may be paid only out of the fund. If claims against the Superfund exceed the balance available for payment of those claims, the claims are to be paid in full in the order in which they are finally determined.

The Superfund has authority to borrow from general Treasury funds for the purposes of paying response costs in connection with a catastrophic spill or paying natural resource damage claims. Outstanding advances at any time may not exceed estimated tax revenues for the following 12 months; advances for paying natural resource claims may not exceed 15 percent of such revenues. All advances were required to be repaid by September 30, 1985.

The Superfund was created as a trust fund in the Treasury under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), but is not included under the trust fund code of the Internal Revenue Code.

Repayable advances

The Superfund taxes expired on September 30, 1985. Since that time, repayable advances have been made to the Superfund from general revenues under P.L. 99-270 ($150 million advance), and P.L. 99-411 ($48 million advance). These advances are to be repaid with interest with revenues derived from future Superfund financing sources.

House Bill

Superfund financing sources

Under the House bill, amounts equivalent to excise taxes on petroleum, feedstock chemicals, a new tax on imported chemical derivatives, and a new waste management tax, are to be deposited in the Superfund for fiscal years 1986-1990. Additional excise taxes on gasoline, diesel, and special motor fuels are to be used to fund a separate trust fund for leaking underground storage tanks.

In addition to taxes, $316.6 million is authorized to be appropriated to the Superfund from general revenues for each of fiscal years 1986-1990 (an aggregate of $1.583 billion). Total tax and general revenue appropriations, together with interest and estimated recoveries, are estimated to equal $10.46 billion over the five-year reauthorization period.[1]

Other financing sources (including recoveries, penalties, and punitive damages) are the same as under present law.

Expenditure purposes

The House bill generally retains the present-law Superfund expenditure purposes. However, no further expenditures are allowed for natural resource assessment and damage claims. Superfund moneys are also to be available for a number of additional expenditure purposes added by Title I of the House bill.

Administrative provisions

The Superfund is established as a trust fund under the Internal Revenue Code. Administrative provisions generally are the same as under present law; however, the Superfund has authority to borrow for any authorized expenditure purpose, rather than only for certain emergency purposes as under present law. Advances are also not to be limited to estimated tax revenues for the following 12 months (as they are under present law).

Transfer of hazardous waste

Under the House bill, no Superfund moneys are to be available for transfer of any hazardous substance from a facility at which a release (or threatened release) has occurred to a facility for which a final permit is in effect under section 3005(a) of the Solid Waste Disposal Act, if (1) such permit was issued after January 1, 1983, and before November 1, 1984; (2) the transfer is carried out pursuant to a cooperative agreement between the EPA and the State; and (3) fund moneys could not be used for the transfer, except for a provision contained in Title I of the House bill.

Effective date

The Superfund trust fund provisions are effective November 1, 1985.

Senate Amendment

Superfund financing sources

Under the Senate amendment, amounts equivalent to excise taxes on petroleum, feedstock chemicals, and a new Superfund excise tax on manufacturers are to be deposited in the Superfund for fiscal years 1986-1990. Total Superfund revenues for the five-year reauthorization period (including interest, but not recoveries) are intended to total $7.4 billion.

Other financing sources (including recoveries, penalties, and punitive damages) are the same as under present law.

Expenditure purposes

The Senate amendment retains the present-law Superfund expenditure purposes (including resource assessment and damage claims).

In addition to these expenditure purposes, Superfund moneys are to be available for a number of additional expenditure purposes added by Title I of the Senate amendment, including costs of health assessments and toxicological profiles; technical assistance grants (not to exceed $75,000 per facility); matching grants to States for cleanup and stabilization of contaminated facilities (not to exceed $1 million per year per State); a $15 million pilot program for the removal of lead-contaminated soil; and research and training programs.

Administrative provisions

The Senate amendment generally follows the House bill. However, under the Senate amendment, outstanding advances to the Superfund are limited to estimated tax revenues for the following 12 months (as under present law), with all advances required to be repaid by December 31, 1990. The present-law 15-percent limit on borrowings to pay natural resource assessment and damage claims is also retained.

Transfer of hazardous waste

No provision.

Effective date

These provisions are effective on October 1, 1985.

[1] This figure includes amounts deposited in the Leaking Underground Storage Tank Trust Fund.

Conference Agreement

Superfund financing sources

Under the conference agreement, amounts equivalent to excise taxes on petroleum and feedstock chemicals, a new excise tax on imported chemical derivatives, and a new environmental income tax are to be deposited in the Superfund.

In addition to taxes, $250 million of general revenue appropriations are authorized for the Superfund for each of fiscal years 1987–1991, for an aggregate of $1.25 billion. Total tax and general revenue appropriations to the Superfund, together with interest and estimated recoveries, are intended to equal $8.5 billion over the five-year reauthorization period.[2]

Other financing sources (including recoveries, penalties, and punitive damages) are the same as under present law.

Expenditure purposes

The conference agreement follows the House bill in deleting natural resource damage and assessment claims as a Superfund expenditure purpose. Expenditures are permitted for the remaining present law expenditure purposes and other purposes added by Title I of the conference agreement. These include expenditures authorized under section 111(a)(1), (2), (4), (5), and (6) and section 111(c) (other than section 111(c)(1) and (2)) of CERCLA, as in effect on the date of enactment of the conference agreement. Expenditures also are permitted for purposes authorized by a later-enacted law which is consistent with the purposes of these provisions.

Administrative provisions

The conference agreement follows the House bill, except that advances to the Superfund (including advances in fiscal year 1986) may not exceed estimated tax revenues for the following 24 months. All advances must be repaid by December 31, 1991.

Transfer of hazardous waste

The conference agreement follows the House bill, with a clarifying amendment.

Effective date

The Superfund trust fund provisions are effective on January 1, 1987.

Regulations

A number of provisons of Title V of this conference agreement provide that the Secretary of the Treasury or his delegate is to prescribe regulations. Notwithstanding any of these references, the conferees intend that the Treasury may, prior to prescribing these regulations, issue guidance for taxpayers with respect to the provisions of the conference agreement by issuing Revenue Procedures, Revenue Rulings, forms and instructions to forms, announcements, or other publications or releases. The conferees expect that the Treasury will provide taxpayers with this guidance as soon as feasible.

2. PETROLEUM TAX

Prior Law

An excise tax of 0.79 cent per barrel was imposed on (1) crude oil received at a United States refinery; and (2) petroleum products (including crude oil, natural and refined gasoline, refined and residual oil, and certain other liquid hydrocarbon products) imported into the United States for consumption, use, or warehousing. Revenues equivalent to the tax were deposited in the Superfund.

A credit against the petroleum tax was allowed if tax had previously been imposed with respect to the same product. The petroleum tax expired on September 30, 1985.

House Bill

The petroleum tax is reimposed at a rate of 11.9 cents per barrel, and extended through September 30, 1990. The reimposition of the tax is effective on November 1, 1985.

Senate Amendment

The petroleum tax is extended at its prior-law rate.

The tax generally expires after September 30, 1990. The tax would terminate earlier than September 30, 1990, if cumulative Superfund receipts from taxes and interest during the 5-year period reach $7.5 billion. The tax also would be suspended or terminated under certain circumstances if the unobligated balance of the Superfund exceeds $2.225 billion on September 30, 1988, or $3 billion on September 30, 1989. The extension of the tax is effective on October 1, 1985.

Conference Agreement

Reimposition of petroleum tax

Under the conference agreement, the petroleum tax is reimposed at a rate of 8.2 cents per barrel for domestic crude oil, and 11.7 cents per barrel for imported petroleum products (including imported crude oil).[3] Revenues equivalent to the tax are to be deposited in the Superfund.

The petroleum tax generally expires on December 31, 1991. The tax would terminate earlier than that date if cumulative Superfund tax receipts during the reauthorization period equal or exceed $6.65 billion. Additionally, if (1) on December 31, 1989 or December 31, 1990, the unobligated balance of the Superfund exceeds $3.5 billion, and (2) the Secretary of the Treasury, in consultation with the EPA Administrator, determines that such unobligated balance will exceed $3.5 billion on December 31 of the next following calendar year if no Superfund taxes are imposed during the intervening calendar year, then no tax is to be imposed during the intervening calendar year.

Credit for oil returned to pipeline

The conference agreement directs the Treasury Department to provide rules allowing a credit against the petroleum tax if a refiner removes crude oil from a pipeline, and subsequently returns a portion of such crude oil into a stream of crude oil in the same pipeline. The amount of this credit is to equal the product of (1) the rate of tax imposed on the crude oil removed from the pipeline by the operator and (2) the number of barrels of crude oil returned to the pipeline by the operator. Petroleum for which a credit is received is treated as not having been subject to tax. This provision is intended to allow a credit in appropriate cases, without requiring the tracing of specific quantities of previously taxed crude oil which is mixed with other crude oil in the pipeline stream.

Effective date

These provisions are effective on January 1, 1987. The credit for certain crude oil returned to a pipeline is to apply to crude oil removed from a pipeline after that date.

3. TAX ON FEEDSTOCK CHEMICALS

Prior Law

Imposition of tax

An excise tax was imposed on the sale of 42 organic and inorganic substances ("feedstock chemicals") by a manufacturer, producer, or importer, at the rates listed in Appendix A (attached). The tax rates were set in 1980 and were limited to the lower of 2 percent of estimated wholesale prices or a cap equal to (1) $4.87 per ton for petrochemicals, and (2) $4.45 per ton for inorganic feedstocks. (Certain chemicals were taxed at lower rates.)

The feedstock chemicals tax applied to chemicals manufactured in the United States (as defined for purposes of the petroleum tax) or imported into the United States for consumption, use or warehousing. If a taxpayer used a taxable feedstock prior to sale, the tax was imposed on such use.

If one taxable chemical was used to produce a second, the tax on the first chemical was allowed as a credit against the second tax (to the extent of that second tax). The feedstock chemicals tax expired on September 30, 1985.

Exceptions to tax

Exceptions to the feedstock chemicals tax were provided for:

(1) butane or methane used as a fuel;

(2) nitric acid, sulfuric acid, ammonia, or methane used to produce ammonia, if used to produce fertilizer;

(3) sulfuric acid produce solely as a by-product of (and on the same site as) air pollution control equipment;

(4) any taxable feedstock to the extent derived from coal;

(5) petrochemicals used to manufacture or produce motor fuel, diesel fuel, aviation fuel, or jet fuel; and

(6) cupric sulfate, cupric oxide, cuprous oxide, zinc chloride, zinc sulfate, barium sulfide or lead oxide which exist in transitory form in the process of refining nontaxable metal ores or compounds into other (or purer) nontaxable compounds.

Treatment of exported feedstocks

No exemption was provided for exports of taxable feedstocks.

Tax treatment of xylene

The Treasury Department had taken the position that xylene includes separated isomers of xylene for purposes of the feedstocks tax. Thus, the production (or use) of such isomers constituted a taxable event.

Treatment of inventory exchanges

Under proposed Treasury regulations, exchanges of taxable chemicals were treated as sales of such chemicals.

House Bill

Reimposition of tax

The feedstock chemicals tax is reimposed subject to the modifications below, and extended through September 30, 1990.

Tax is imposed on prior-law feedstocks and, additionally, lead. The tax rates are set at the lower of 2.0 percent, of current estimated wholesale price or a cap equal to $6.25 for all chemicals (except xylene, discussed below), but not lower than the prior-law rate for any taxed chemical (see Appendix A).

Beginning in 1987, the tax rates are to be indexed annually for inflation, as measured by the average producer price index for organic or inorganic chemicals; however, tax rates are not to be reduced below the 1986 rates.

[2] This figure does not include amounts deposited in the Leaking Underground Storage Tank Trust Fund, described below.

[3] Imported crude oil, which is subsequently received at a United States refinery, is to be taxed at the higher import rate only.

Under a special rule, the tax on nitric acid used by the producer to produce nitrocellulose could not exceed 24 cents per ton. The reimposition of the tax is effective on November 1, 1985.

Exceptions to tax

The exception for coal-derived feedstocks is repealed; other prior-law exceptions are retained. A conforming amendment is made adding lead to the substances which are exempt from tax if they exist in transitory form as part of a refining process.

In addition to the prior-law exceptions, exceptions to the feedstocks tax are provided for the following substances:

(1) nitric acid, sulfuric acid, ammonia, or methane used to produce ammonia, if used (or sold for ultimate use) in the manufacture or production of animal feed; and

(2) domestically recycled nickel, chromium, cobalt, or lead. (This exception does not apply for a period during which a required corrective action under RCRA or CERCLA has not been completed by the taxpayer.)

Effective date.—These provisions are effective on November 1, 1985.

Treatment of exported feedstocks

Taxable feedstocks sold for export by the manufacturer or producer, or for resale by a second purchaser for export, are exempt from tax.

If tax is paid on a chemical, and the chemical is later exported, a credit or refund is allowed to the person who paid the tax.

Effective date.—This provision is effective on November 1, 1985.

Tax treatment of xylene

It is clarified that, except for imports and exports, xylene does not include separated isomers for purposes of the feedstock tax. Separation of xylene isomers constitutes use of a mixed stream of xylene and is treated as a taxable event.

Effective date.—This provision generally is effective November 1, 1985.

Taxes previously imposed on xylene (i.e., since April 1, 1981) are to be refunded or credited (with interest) to the taxpayers. To compensate for lost revenues, the tax rate on xylene is prospectively increased above the $6.25 per ton rate that otherwise would apply under the House bill (see Appendix A).

Treatment of inventory exchanges

Subject to registration and notification requirements, if inventories of taxable chemicals are exchanged, tax is imposed only upon the later sale or use of the chemical by the person receiving the chemical in the exchange. This rule does not apply if the receiving person would not be taxable on the sale of the chemical, unless such treatment would be as a result of the exemption for exported feedstocks (described above).

Effective date.—The amendment regarding inventory exchanges applies retroactively to the original effective date of the feedstocks tax. However, the amendment applies to any exchange before January 1, 1986, only if (1) the manufacturer, producer, or importer did not treat the exchange as a taxable sale, and (2) the recipient agrees to be treated as the taxable person for purposes of the tax.

The registration and notification requirements with respect to inventory exchanges apply to exchanges after December 31, 1985.

Senate Amendment

Extension of tax

Under the Senate amendment, the feedstocks tax is extended at its prior-law rates (see Appendix A).

The tax generally expires after September 30, 1990. Provisions are made for earlier suspension or termination of the tax under the same conditions as the petroleum tax (see A.2., above).

Effective date.—The extension of the tax is effective on October 1, 1985.

Exceptions to tax

The Senate amendment retains the prior-law exceptions to the feedstock tax, including the exception for coal-derived feedstocks.

As under the House bill, exceptions to the tax are added for:

(1) nitric acid, sulfuric acid, ammonia, or methane used to produce ammonia, if used (or sold for ultimate use) in the manufacture or production of animal feed; and

(2) domestically-recycled nickel, chromium, or cobalt. (Lead is not taxed under the Senate amendment.)

The exception for recycled substances does not apply for any period during which the taxpayer has been notified that it is a potentially responsible party for a site listed on the National Priorities List, unless the taxpayer is in compliance with all orders, notices, and judgments (under RCRA or CERCLA) with respect to the site.

Effective date.—This provision is effective on October 1, 1985.

Treatment of exported feedstocks

The Senate amendment is the same as the House bill.

Effective date.—This provision is effective on October 1, 1985.

Tax treatment of xylene

No provision.

Treatment of inventory exchanges

The Senate amendment is the same as the House bill but does not include the requirement that, for pre-1986 exchanges, the recipient must agree to be treated as the taxable person in order for the amendment to apply.

Conference Agreement

Reimposition of tax

The conference agreement follows the Senate amendment by reimposing the tax on feedstock chemicals at its prior law rates (except in the case of xylene, discussed below). No tax is imposed on lead or on any other chemical not taxed under prior law.

The tax on feedstock chemicals generally expires on December 31, 1991. The tax would be suspended or terminated earlier than that date under the same conditions as the petroleum tax.

Effective date.—The reimposition of the tax is effective on January 1, 1987.

Exceptions to tax

The conference agreement follows the Senate amendment by retaining the present law exception for coal-derived feedstocks. Other present law exceptions also are retained.

The conference agreement follows the House bill and the Senate amendment by providing additional exceptions for:

(1) nitric acid, sulfuric acid, ammonia, or methane used to produce ammonia, if such chemicals are used (or sold for ultimate use) in the manufacture or production of animal feed, and

(2) domestically recycled nickel, chromium, or cobalt.

As under the House bill, the recycling exception does not apply for any period during which a required corrective action under RCRA or CERCLA with respect to the recycling unit has not been completed by the taxpayer. Under a special rule, corrective actions (or the portions of corrective actions) relating to contamination of groundwater are to be treated as completed, for purposes of the recycling exception only, 10 years after the date on which the corrective action is required by the EPA Administrator (or a State acting pursuant to an authorized program). This special rule applies only if the taxpayer is in compliance with all orders, notices, and judgments under RCRA or CERCLA with respect to the site.

Effective date.—These provisions are effective on January 1, 1987.

Treatment of exported feedstocks

The conference agreement follows the House bill and the Senate amendment.

In addition to exempting exported feedstocks, the conference agreement allows a credit or refund (without interest) of taxes on feedstock chemicals which are used as materials in the manufacture or production of certain exported substances. The exported substances which trigger this credit or refund are to be the same as the substances taxed under the new tax on imported chemical derivatives (described in A.4 below). The credit or refund is to be made to the person who paid the feedstocks tax.[4]

Effective dates.—The exception for exported feedstocks is effective on January 1, 1987.

The allowance of a credit or refund for feedstocks used in the manufacture or production of certain exported substances is effective on January 1, 1989.

Tax treatment of xylene

The conference agreement follows the House bill.

Effective date.—This provision generally is effective on January 1, 1987.

Taxpayers who previously paid the tax imposed on xylene (i.e., from April 1, 1981, through September 30, 1985) may file claim for refund of the tax (with interest). The statute of limitations is extended to permit such refunds or credits. Such credits or refunds apply, under the conference agreement, only if the person who would otherwise be liable for the tax meets requirements similar to the general Code rules regarding credits or refunds of manufactures' or retailers' excise taxes (sec. 6416(a)).[5] However, if the manufacturer separately stated the tax and the purchaser did not pay the tax, then the refund or credit is allowable to the manufacturer. To compensate for lost revenues, the tax rate on xylene is temporarily increased, only for the duration of the five-year reauthorization period, from $4.87 to $10.13 per ton.

Treatment of inventory exchanges

The conference agreement follows the House bill.

Effective date.—The amendment regarding inventory exchanges applies retroactively to the original effective date of the feedstocks tax (April 1, 1981). However, the amendment applies to any exchange before

[4] As in the case of exported feedstocks, this person is required to repay the amount of tax to the exporter, or obtain the exporter's written consent to the credit or refund, in order to receive the credit or refund.

[5] In general, sec. 6416(a) allows a credit or refund only if the person who paid the tax establishes under regulations that he (1) has not included the tax in the price of the article and has not collected the amount of tax from the purchaser, or (2) has repaid the amount of tax to the ultimate purchaser of the article, or obtained his written consent to the purchase or refund.

January 1, 1987, only if (1) the manufacturer, producer, or importer did not treat the exchange as a taxable sale, and (2) the recipient agrees to be treated as the taxable person for purposes of the tax.

The registration and notification requirements with respect to inventory exchanges apply to exchanges after December 31, 1986.

Treatment of mixed hydrocarbon streams containing taxable feedstocks

Under the conference agreement, no tax is imposed on any organic taxable chemical while it is part of an intermediate hydrocarbon stream containing a mixture of different organic taxable chemicals. Instead, the isolation, extraction, or other removal of an organic taxable chemical from such a stream (or any other event causing the chemical to cease being part of the stream) is treated as a taxable use by the person causing such removal, and the tax is imposed on such person. This provision applies only if registration and certification requirements, similar to those imposed with respect to inventory exchanges, are satisfied. For purposes of this provision, organic taxable chemicals include any taxable feedstock chemical which is an organic substance.[6]

Effective date.—This provision applies retroactively to the original effective date of the feedstocks tax (April 1, 1981). As in the case of the rule regarding inventory exchanges, the provision applies to sales of any intermediate hydrocarbon stream before January 1, 1987, only if (1) the manufacturer, producer, or importer of the mixed hydrocarbon stream did not treat the sale of such stream as a taxable sale, and (2) the purchaser agrees to be treated as the taxable person for purposes of the tax.

The registration and notification requirements with respect to mixed hydrocarbon streams are effective on January 1, 1987.

4. TAX ON IMPORTED CHEMICAL DERIVATIVES

Prior Law

Crude oil, certain petroleum products, or taxable feedstock chemicals imported into the United States were subject to the petroleum or feedstocks tax (see A.2. and A.3., above). No tax was imposed on imports of products that are derived from these materials.

House Bill

Imposition of tax

A tax is imposed on the sale of any listed chemical derivative by the importer thereof. The initial list includes 47 chemical derivatives (see Appendix B).

The Secretary of the Treasury is to list any other imported substances determined to have more than 50 percent of their value derived from petroleum or taxable feedstock chemicals used as materials or process fuel. This determination is to be based on the predominant method of production. The Treasury may delist substances (including initially listed substances) as necessary to carry out the purposes of the tax.

Substances are taxable only if listed at the time of sale or use by the importer.

Amount of tax

The amount of tax is—

(1) the amount of tax which would have been imposed under the feedstocks tax on the taxable chemicals used as materials or process fuel, if such taxable chemicals had been sold in the United States for an equivalent use; or

(2) if the importer does not furnish sufficient information to determine the tax under (1) above, 5 percent of the appraised value of the imported substance at the time of import.

Procedure and definitions

The tax is imposed on the importer of a listed substance at the time such substance is sold or used. No tax is imposed on the same sale or use.

The United States includes Puerto Rico and specified U.S. possessions (as defined for purposes of the petroleum and feedstock taxes).

Revenues from the tax are not covered over to Puerto Rico or the Virgin Islands under section 7652 of the Code.

Termination date

The tax terminates on September 30, 1990.

Effective date

The tax on imported chemical derivatives is effective on January 1, 1987.

Senate Amendment

No provision.

Conference Agreement

The conference agreement generally follows the House bill with an amendment.

Under the conference agreement, the amount of tax imposed on a listed imported chemical derivative is the amount of tax which would have been imposed by the feedstocks tax on the taxable chemicals used as materials (and not process fuel) if such taxable chemicals had been sold in the United States for an equivalent use.

If the importer does not furnish sufficient information (at such time and manner as the Secretary may require) the amount of tax is 5 percent of the customs value of the imported chemical derivative.

Under the conference agreement, a chemical derivative must be listed by the Secretary of the Treasury in order to be subject to this tax.

An initial list of taxable substances is specified in the statute. This initial list includes the 47 chemical derivatives in the House bill, as well as acrylonitrile and methanol. The Secretary may delist substances (including statutorily listed substances) as necessary to carry out the purposes of the tax; however, acrylonitrile may not be delisted.

In addition, the Secretary is to add chemical derivatives to this list if taxable feedstocks (under sec. 4661) comprise over 50 percent of the molecular weight of the the raw materials used to produce the chemical derivative. The Secretary is to make this determination on the basis of the predominant method of production (with respect to imported derivatives) using stoichiometric material consumption assuming a 100-percent yield.

The Secretary may also add a chemical derivative to the list if taxable feedstocks comprise over 50 percent of the value of the raw materials used to produce the chemical derivative.

The provision is effective for imports of chemical derivatives on or after January 1, 1989.

The conference agreement also provides that the Secretary shall conduct a study of issues related to the implementation of the tax on imported chemical derivatives and the credit allowable for taxable feedstocks used in the production of exported chemical derivatives. This study is to be done after consultation with both the Administrator of the Environmental Protection Agency and the International Trade Commission. The report of the study is to be submitted to the House Committee on Ways and Means the Senate Committee on Finance no later than January 1, 1988.

5. WASTE MANAGEMENT TAX

Present Law

No provision. (A dry-weight tax on hazardous waste was imposed for purposes of funding the Post-closure Liability Trust Fund, discussed in A.7., below; the authority to collect this tax expired on September 30, 1985.)

House Bill

Imposition of tax

Under the House bill, an excise tax is imposed on the disposal, treatment or export of hazardous waste. A "back-up" tax, discussed below, is also imposed on hazardous waste that is not otherwise the subject of a taxable event within 270 days of generation, and that is not exempt from the waste management tax.

The tax is imposed on (1) the receipt of hazardous waste at a qualified hazardous waste management unit, (2) the receipt of hazardous waste for transport from the United States for the purpose of ocean disposal, and (3) the export of hazardous waste from the United States. A "qualified hazardous waste management unit" means the specified area of land or structure which isolates hazardous wastes within a qualified hazardous waste management facility, and which is subject to interim status or final permit requirements under subtitle C of the Solid Waste Disposal Act. A "qualified hazardous waste management facility" means any facility (as defined under subtitle C of the Solid Waste Disposal Act) which has received a permit or interim status under section 3005(c) of the Solid Waste Disposal Act or an authorized State program.

Hazardous waste is defined as any waste which is listed or identified under section 3001 of the Solid Waste Disposal Act as of the date on enactment, and which is not subsequently delisted. Thus, wastes the regulation of which has been suspended under present law (e.g., certain mining wastes) are not subject to the tax.

Tax rates

Under the House bill, the amount of tax imposed per ton of hazardous waste (on a wet-weight basis) is determined in accordance with the following table:

If the taxable event is:

	Land disposal (tax per ton)	Any other taxable event
For calendar year:		
1986	$37	4.15
1987	39	4.15
1988	42	4.15
1989	44	4.15
1990	47	4.15

The land disposal rate applies to hazardous waste received at a landfill, surface impoundment, waste pile, or land treatment unit, each as defined by EPA pursuant to sections 3004 and 3005 of the Solid Waste Disposal Act. The land disposal rate does not apply to surface impoundments which are part of waste water treatment systems or of deep well injection units.

The lower (i.e., $4.15 per ton) tax rate applies to all other taxable events, including (1) ocean disposal of hazardous waste, (2)

[6] Taxable organic chemicals include the first 11 listed substances in section 4661 of the Code (acetylene, benzene, butane, butylene, butadiene, ethylene, methane, naphthalene, propylene, toluene, and xylene).

export of hazardous waste, and (3) receipt of hazardous waste at other qualified hazardous management units (i.e., other than for land disposal) including deep well injection facilities. For this purpose, deep well injection facilities include any containers, tanks, or surface impoundments principally used to treat or store hazardous waste before underground injection.

Exemptions and credits

Waste water treatment.—Hazardous waste received at a waste water treatment unit is exempt from tax unless a corrective action order remains uncompleted with respect to the facility. A waste water treatment unit is any qualified hazardous waste management unit which is an integral and necessary part of a waste water treatment system, other than a unit which receives concentrated treatment residues for storage or final disposition.

The exemption for waste water treatment units is not allowed with respect to any activity conducted at a facility (or part thereof) while a required corrective action remains uncompleted with respect to such facility (or part of such facility). If a corrective action is uncompleted, tax is imposed at a rate of 15 cents per ton on waste received at the waste water treatment unit.

Incineration.—A credit or refund of tax (without interest) is provided for waste that is incinerated on land (or the equivalent of incineration on land) within 90 days after the date on which such waste is first received at a qualified hazardous waste management unit.

Qualified chemical fuels or solvents.—A credit or refund is provided (without interest) for tax imposed on waste used in the production of any qualified chemical fuel or solvent for use in any commercial or industrial application. A qualified chemical fuel or solvent is any chemical fuel or solvent determined by the Administration not to be hazardous.

Recycling of batteries.—A credit or refund (without interest) is provided for tax paid on the receipt of a battery at a qualified hazardous waste management unit if recycling of such battery commences within 90 days of receipt.

Corrective and remedial actions.—exemptions are provided in the following cases:

(1) receipt or export of hazardous waste pursuant to corrective actions required by an order or permit issued by the EPA Administrator under the Solid Waste Disposal Act (or by a State under an authorized program);

(2) receipt or export of hazardous waste pursuant to a proposed or final closure plan approved by the Administrator or an authorized State;

(3) receipt or export of hazardous waste pursuant to a removal or remedial action under CERCLA, if the response action has been selected or approved by the EPA Administrator; or

(4) receipt or export of hazardous waste pursuant to an action to correct an emergency situation arising from a product spill which is certified by the Administrator to the Secretary as carrying out the purposes of CERCLA.

Federally-owned facilities.—Hazardous waste received at a federally owned facility is not subject to the tax.

Payment of tax.—The waste management tax is payable by (1) the owner or operator of a qualified hazardous waste management unit; (2) in the case of ocean disposal, the owner or operator of the vessel or aircraft engaged in ocean disposal; or (3) in the case of export, the exporter of hazardous waste.

Termination date

The waste management tax generally expires on September 30, 1990.

Effective date.—The tax is effective with respect to hazardous waste received or exported after December 31, 1985.

"Backup" tax on generation and hazardous waste

A "backup" tax is imposed on hazardous waste which 270 days after generation has not been (1) received at a qualified hazardous waste management unit, (2) received for transport from the United States for the purpose of ocean disposal, or (3) exported from the United States. The generator of the waste is liable for the tax.

The backup tax is imposed at the rate applicable for land disposal. However, the Treasury Department may prescribe regulations which provide exemptions from the backup tax (or a reduced rate) as may be consistent with the purposes of the backup tax.

The backup tax does not apply to waste generated after September 30, 1990.

Effective date.—The backup tax is effective with respect to hazardous waste generated after December 31, 1985.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the Senate amendment.

6. ENVIRONMENTAL TAX

Present Law

Alternative minimum taxable income

Under the conference agreement on the Tax Reform Act of 1986 (H.R. 3838),[7] as passed by the House on September 25, 1986, and the Senate on September 27, 1986, an alternative minimum tax is imposed on corporations. The tax rate is 20 percent, and there is a $40,000 exemption amount (phased out at the rate of 25 cents on the dollar for alternative minimum taxable income in excess of $150,000).

The items of tax preference include accelerated depreciation in excess of the alternative depreciation system for property (other than transitional property) placed in service after 1986; intangible drilling costs (with an offset for 65 percent of net oil and gas income); percentage depletion (in excess of the adjusted basis of the property); bad debt reserve deductions for financial institutions; use of the completed contract method of accounting and of the installment method; capital construction funds for shipping companies; 60-month amortization of certified pollution control facilities; and mining exploration and development costs. Tax-exempt interest on newly issued private activity bonds (but not qualified 501(c)(3) bonds), and untaxed appreciation on charitable contributions of appreciated property, also are preference items.

For 1987 through 1989, one-half of the excess of pre-tax book income of the taxpayer (including members of a group filing a consolidated tax return for the year), over other alternative minimum taxable income, is a preference. After 1989, pre-tax book income is replaced for this purpose by adjusted current earnings.

These provisions apply generally to taxable years beginning after December 31, 1986. The treatment of interest on private activity bonds as a preference item applies to bonds issued after August 7, 1986, except that in the case of certain bonds treated as governmental under prior law, such treatment applies to bonds issued on or after September 1, 1986.

Manufacturer's excise tax

Present law imposes selective excise taxes on the sale by the manufacturer of tires, petroleum products, coal, and certain recreational equipment.

House Bill

No provision.

Senate Amendment

Imposition of tax

The Senate amendment imposes an excise tax on the sale, lease, or transfer of tangible personal property by the manufacturer of the property, in connection with a trade or business (Superfund Excise Tax). Revenues equivalent to the tax are to be deposited in the Superfund.

The tax is equal to 0.08 percent of the sales price of, or gross lease payments for, the property (i.e., $8 of tax per $10,000 of taxable amount). Tax is also imposed (at the same 0.08-percent rate) on importers of tangible personal property based on the customs value plus duties (or, if no customs value is available, the fair market value) of the imported property.

For purposes of the tax, "manufacturing" includes mining, raw material production, and the production of tangible personal property. manufacturing does not include services incidental to storage or transportation of property; preparation of food in a restaurant or other retail establishment; or incidental preparation of property by a wholesaler or retailer. "Tangible personal property" includes natural gas and other gaseous products and materials. Tangible personal property does not include electricity, unprocessed agricultural products, or unprocessed food products.

The tax is deductible from Federal income taxes.

Credit against tax

A credit equal to 0.08 percent of the taxpayer's qualified inventory costs is allowed against the tax.

"Qualified inventory costs" are amounts paid or incurred for purchases of tangible personal property and which are allocable to the inventory of a manufacturer using the full absorption accounting method (unless otherwise provided in regulations). Property manufactured for lease is treated in the same manner as property manufactured for sale.

In lieu of any allowance for depreciation or amortization, qualified inventory costs include amounts paid or incurred for depreciable or amortizable property (i.e., expensing treatment).

A taxpayer who includes the cost of tangible personal property in qualified inventory costs is treated as the manufacturer of the property if the property is subsequently sold or leased.

Credits may be carried forward to later taxable years, but may not be refunded.

Exemptions

Small manufacturers.—A manufacturer with $5 million or less of annual taxable receipts is effectively exempt from the tax, by means of a minimum $4,000 allowable credit. This minimum credit is not available to importers, is not refundable, and may not be carried over.

[7] See H. Rep. 99-841, September 18, 1986.

Small imports, exports, and tax-exempt entities.—Additional exemptions from the tax are provided for the following: (1) import shipments with an aggregate value of $10,000 or less; (2) exports from the United States, and (3) items sold or leased (but not imported) by governmental units or organizations exempt from taxation under section 501(a) (other than in unrelated trades or businesses).

Termination date

The tax terminates after December 31, 1990. The tax would be suspended or terminated earlier under similar conditions as the petroleum and feedstock chemical taxes (see A.2 and A.3, above).

Effective date

The tax is effective on January 1, 1986.

Conference Agreement

The conference agreement provides a new environmental tax generally based on corporate alternative minimum taxable income ("AMTI"). AMTI is defined in the same manner as in the Tax Reform Act of 1986 (H.R. 3838), which the conferees expect will be signed into law before the effective date of this provision.

The amount of tax is equal to 0.12 percent ($12 of tax per $10,000 of AMTI) of the excess of AMTI, without regard to net operating losses and the deduction for this tax, over $2 million. The $2 million exemption is aggregated for taxpayers that are component members of a controlled group of corporations (as defined in sec. 1563). The environmental tax is imposed whether or not the taxpayer is subject to the alternative minimum tax. The environmental tax is deductible from gross income. No credits are allowable against the environmental tax. In addition, the rules for estimated tax, penalties, and refunds that apply to the corporate income tax also apply to the environmental tax.

The environmental tax is effective for taxable years beginning after December 31, 1986. The environmental tax is not imposed if any taxable year beginning during a calendar year in which the petroleum and chemical feedstocks taxes are not imposed. Thus, the environmental tax is not imposed in taxable years beginning after December 31, 1991, and will be terminated (or suspended) sooner if the petroleum and chemical feedstocks taxes are terminated (or suspended) before this date. The effective date and termination provisions are designed to impose the environmental tax for the same number of taxable years, regardless of when a corporation's taxable year begins. Rules for the imposition of the environmental tax for taxable years of less than 12 months shall be prescribed by the Secretary.

7. LEAKING UNDERGROUND STORAGE TANK TRUST FUND AND TAX

Present Law

Petroleum releases and releases of natural or synthetic gases are not covered by the Superfund. (Some petroleum releases are specifically covered by other environmental laws.)

Excise taxes are imposed on gasoline and special motor fuels (9 cents per gallon), diesel fuel (15 cents per gallon), aviation gasoline (12 cents per gallon), aviation jet fuel (14 cents per gallon), and fuel used on inland waterways (10 cents per gallon). Revenues from these fuel taxes are dedicated to specific trust funds.

House Bill

Establishment of trust fund

A separate Leaking Underground Storage Tank Trust Fund is established, to be available for cleanup and related costs associated with leaking underground storage tanks containing petroleum products.

This Trust Fund generally is intended to be used to pay cleanup and releated costs involving tanks where no solvent owner can be found, or when the owner or operator refuses or is unable to comply with an urgent corrective order. This Trust Fund would also be available to provide grants to States carrying out these purposes.

Financing of trust fund

The Leaking Underground Storage Tank Trust Fund is to be funded by:

(1) An additional 0.2-cent per gallon tax on gasoline, diesel fuel, and special motor fuels sold by a producer or importer; liquid fuels (other than gasoline) used in motor vehicles, motor boats, and trains; liquid aviation fuels; and fuels used in commercial transportation on inland waterways. These additional taxes generally use the tax base and collection producers of the present-law excise taxes on these fuels (Code secs. 4041, 4042, and 4081).

(2) Interest on balances in this Trust Fund.

(3) Recoveries from responsible parties under section 9003(h) of the Solid Waste Disposal Act.

Termination of tax

The additional taxes expire on September 30, 1990. However, no further taxes are to be imposed if, before September 30, 1990, cumulative revenues from these taxes exceed $850 million.

Effective date

These provisions are effective on November 1, 1985.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill in establishing a Leaking Underground Storage Tank Trust Fund. The conference agreement also follows the House bill as to the financing of the Trust Fund, except that the tax is imposed at the rate of 0.1 cent per gallon. This tax is not imposed on liquified petroleum gas. A reducted rate of 0.05 cent per gallon is imposed on methanol.

This provision is effective on January 1, 1987. It expires on December 31, 1991. If, prior to the date, the net revenues from the taxes impose to fund the Leaking Underground Storage Tank Trust Fund exceed $500 million, than those taxes will expire on the last day of the month in which that occurs.

B. POST-CLOSURE LIABILITY TRUST FUND AND TAX

Present Law

A separate trust fund, the Post-Closure Liability Trust Fund, is to assume completely the liability of owners and operators of hazardous waste disposal facilities that have been granted permits and have been properly closed under Subtitle C of the Resource Conservation and Recovery Act. (RCRA). The Trust Fund also may be used to pay certain monitoring and maintenance costs.

Revenues from an excise tax on hazardous waste were deposited in the Trust Fund. The tax of $2.13 per dry weight ton expired on September 30, 1985.

House Bill

The House bill repeals the Post-Closure Liability Trust Fund and tax, effective October 1, 1983 (the original effective date of the tax). To effect this retroactive repeal, taxpayers who paid this tax may file claims for refunds of the tax, plus interest.

Senate Amendment

The Senate amendment repeals the Post Closure Liability Trust Fund and tax effective October 1, 1985, and transfers the unobligated balance in this Trust Fund to the Superfund. Amounts in the Trust Fund are to be refunded (proportionately to taxes paid, but without interest) effective March 1, 1989, unless by that date the Congress authorizes a transfer or assumption of post-closure liability in response to a study required to be made by EPA.

Conference Agreement

The conference agreement follows the House bill. The statute of limitations is extended so that taxpayers who paid this tax may file claims for refunds.

C. OIL SPILL LIABILITY TRUST FUND AND TAX

1. OIL SPILL LIABILITY TRUST FUND

Present Law

Funds relating to oil spill damages and cleanups have been created under various Federal statutes, including:

(1) section 311(k) of the Federal Water Pollution Control Act (Clean Water Act) ($35 million revolving fund for oil spill cleanups, supported by fines, penalties, and general revenue appropriations);

(2) the Trans-Alaska Pipeline Authorization Act ($100 million fund, financed primarily by a 5-cents-per-barrel fee on oil passing through the pipeline);

(3) the Deepwater Port Act of 1974 ("Deepwater Port Liability Fund") ($100 million fund, financed by a 2-cents-per-barrel fee on oil loaded at a deepwater port); and

(4) the Outer Continental Shelf Act Amendments of 1978 ("Offshore Oil Pollution Compensation Fund") ($200 million fund with respect to offshore oil spills, financed by a maximum 3-cents-per-barrel fee on owners of offshore oil).

There is no general oil spill liability and compensation trust fund.

House Bill[8]

In general

An Oil Spill Liability Trust Fund is established in the Treasury, to be funded in part by a 1.3-cents-per-barrel excise tax on domestic crude oil and imported petroleum products.

Amounts in the Oil Spill Fund are available for removal costs, certain damages sustained by U.S. claimants, and certain related costs associated with oil spills. Claimants generally would have the option of proceeding against the responsbile party or recovering against the Fund, which could then proceed against the responsible party. The legislation would constitute an exclusive remedy for claims covered by the Fund.

Liability of responsible parties is to be on a strict, joint, and several basis, with liability limits consistent with international agreements.

[8] Similar provisions are included in H.R. 5300, the Omnibus Budget Reconciliation Act of 1986, as reported by the House Committee on the Budget on July 31, 1985 (H. Rep. 99-727), and as passed by the House on September 24, 1986.

Excess amounts remaining in the fund created by section 311(k) of the Federal Water Pollution Control Act are transferred to the general fund of the Treasury.

Uses of fund

Amounts in the Oil Spill Fund are available only for the following purposes:

(1) Payment of costs incurred in cleaning up or preventing oil pollution from vessels or offshore facilities ("removal costs"), under the Federal Water Pollution Control Act, the Deepwater Port Act, and the Intervention on the High Seas Act.

(2) Claims for injury to, or destruction of, real or personal property.

(3) Claims for loss of subsistence use of natural resources.

(4) Payment of otherwise uncompensated economic loss sustained by any U.S. Claimant as a result of oil spills from vessels or offshore facilities. Compensable damages would include lost earnings and profits if: (a) the loss is 25 percent or more of the claimant's earnings; or (b) in the case of seasonal activities, 25 percent of seasonal earnings are derived from affected activities.

(5) Payment of contributions to the International Fund for Compensation for Oil Pollution Damage, if the conventions establishing this fund come into force with respect to the United States. Under regulations, contributions to the International Fund would be allowed only in proportion to the portion of such Fund used for purposes that are consistent with the uses of the domestic Oil Spill Fund.

(6) Administrative costs, but only to the extent necessary for an incidental to the implementation of the Comprehensive Oil Pollution Liability and Compensation Act.

Payments to any governmental unit, under any item above, are permitted only for removal costs and administrative expense related to removal costs.

The liability of the Oil Spill Fund could not exceed $200 million for any single incident. Additionally, no payment could be made (except for removal costs) to the extent that the payment would reduce the Fund balance below $30 million.

Claims against the Fund could be paid out of the Oil Spill Fund only. If the Fund is insufficient to pay all claims, claims are to be paid in full in the order in which finally determined.

Revenue sources

Under the House bill, the following amounts are to be deposited in the Oil Spill Fund:

(1) Amounts equivalent to a 1.3-cent-per-barrel excise tax on domestic crude oil and imported petroleum products, using the tax base for the Superfund petroleum tax (see C.2., above).

(2) Amounts recovered, collected, or received from responsible parties under the Comprehensive Oil Pollution Liability and Compensation Act. (Penalties with respect to payment of taxes would not be deposited in the Oil Spill Fund.)

(3) Amounts remaining in the Deepwater Port Liability Fund and the Offshore Oil Pollution Compensation Fund, as of the date of enactment.

(4) Interest earned on Oil Spill Fund investments.

(5) The proceeds of authorized borrowing by the Oil Spill Fund, not to exceed $300 million in outstanding indebtedness at any time.

(6) Penalties and recoveries under the Federal Water Pollution Control Act.

Administrative provisions

The Oil Spill Liability Trust Fund is established as a trust fund in the Internal Revenue Code.

The Trust Fund is authorized to borrow, as repayable advances, up to $300 million at any one time to carry out the purposes of the Fund.

Effective date

The Oil Spill Fund trust fund provisions are effective on January 1, 1986.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provision of the House bill.

2. OIL SPILL TAX

Present Law

No provision. (A tax on petroleum was imposed for deposit in the Superfund; see A.2., above.)

House Bill[9]

Imposition of tax

An excise tax of 1.3 cents per barrel is imposed on domestic crude oil and imported petroleum products, in addition to the 11.9-cents-per-barrel tax imposed on this base for the Superfund (see A.2., above). This tax uses the same tax base, and is subject to the same administrative provisions, as the Superfund petroleum tax.

A non-transferable credit against the oil spill tax is allowed (to the extent of prior contributions) for persons who contributed to the Deepwater Port Liability Fund or the Offshore Oil Pollution Compensation Fund. (The balance in these funds is to be transferred to the Oil Spill Fund.)

Termination of tax

This tax terminates after September 30, 1990.

Effective date

The tax is effective after December 31, 1985.

Senate Amendment

No provision. (The Senate amendment continues the prior-law Superfund petroleum tax.)

Conference Agreement

The conference agreement does not include the provision of the House bill.

D. TAX-EXEMPT BONDS FOR HAZARDOUS WASTE TREATMENT FACILITIES

Present Law

Tax-exempt industrial development bonds ("IDBs") may be issued to finance solid waste disposal facilities (sec. 103(b)(4)(E)). Facilities for the disposal of liquid or gaseous waste (including liquid and gaseous hazardous wastes) do not qualify for this financing.

Under the conference agreement on the Tax Reform Act of 1986 (H.R. 3838),[10] as passed by the House on September 25, 1986, and the Senate on September 27, 1986, tax-exempt private activity bonds may be issued to finance qualified hazardous waste facilities. These include facilities for the land incineration or the permanent entombment of hazardous waste, which facilities are subject to final permit requirements under subtitle C of Title II of the Solid Waste Disposal Act, as in effect on the date of enactment of the conference agreement. Tax-exempt financing is available under this provision only for facilities (or the portion of a facility) to be used by the general public, and is subject to certain limitations, including the volume and other limitations applicable to private activity bonds generally.

House Bill

No provision.

Senate Amendment

The Senate amendment allows tax-exempt IDBs to be issued to finance facilities for the treatment of hazardous waste, as these terms are defined under sec. 1004 of the Solid Waste Disposal Act (i.e., RCRA). This exemption is limited to facilities which are subject to final permit requirements under RCRA. Bonds issued under this provision would be subject to the volume and other restrictions applicable to solid waste IDBs under present law.

This provision is effective for bonds issued after the date of enactment.

Conference Agreement

The conference agreement does not include the provision of the Senate amendment.

E. HAZARDOUS WASTE REMOVAL COSTS TREATED AS QUALIFYING DISTRIBUTIONS BY PRIVATE FOUNDATIONS

Present Law

To avoid penalty excise taxes, a private foundation must annually make expenditures or grants for charitable purposes in an amount (the "distributable amount") equal to 5 percent of the fair market value of its investments (Code sec. 4942).

House Bill

No provision.

Senate Amendment

Subject to certain limitations, the distributable amount of a private foundation (under sec. 4942) is to be reduced by amounts paid or incurred or set aside by the foundation for removal or remedial action with respect to a hazardous substance release at a facility that was owned or operated by the foundation.

This provision is effective for taxable years beginning after December 31, 1982.

Conference Agreement

The conference agreement does not include the provision of the Senate amendment.

F. STUDIES

1. ALTERNATIVE FINANCING MECHANISMS

Present Law

Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), EPA prepared the following study: "The Feasibility and Desirability of Alternative Tax Systems for Superfund: CERCLA section 301(a)(1)(G) Study," United States Environmental Protection Agency (December 1984).

House Bill

No provision.

Senate Amendment

The General Accounting Office (GAO) is directed to report by January 1, 1988, its findings on various mechanisms for financing the Superfund, including a study on the effect of a tax on hazardous waste on the generation and disposal of such waste.

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[9] Similar provisions are included in H.R. 5300, the Omnibus Budget Reconciliation Act of 1986, as reported by the House Committee on the Budget, July 31, 1986, and as passed by the House on September 24, 1986.

[10] See H. Rep. 99-841, September 18, 1986.

Conference Agreement

The conference agreement does not include the provision in the House bill.

2. EFFECT OF WASTE MANAGEMENT TAX

Present Law

No provision.

House Bill

The Secretary of the Treasury is directed to study the effects of the waste management tax on the ability of domestic manufacturers to compete in international trade, and to report to Congress by July 1, 1986.

Senate Bill

No provision.

Conference Agreement

The conference agreement does not include the provision in the House bill

3. STUDY OF LEAD POISONING

Present Law

No provision.

House Bill

The House bill directs the Administrator of the Agency for Toxic Substances and Disease Registry to study the nature and extent of lead poisoning in children from environmental sources, and to report to Congress by March 1, 1986. The cost of this study is authorized to be paid out of the Superfund.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provision in the House bill.

G. APPENDICES

APPENDIX A.—EXCISE TAX RATES ON FEEDSTOCK CHEMICALS UNDER PRIOR LAW AND HOUSE BILL

Substance	Prior law rate	House bill proposed fiscal year 1986 rate [1]
Organic substances:		
Acetylene	4.87	6.25
Benzene [2]	4.87	6.25
Butadiene	4.87	6.25
Butane	4.87	5.54
Butylene	4.87	6.25
Ethylene	4.87	6.25
Methane	3.44	3.44
Naphthalene [2]	4.87	6.25
Propylene	4.87	6.25
Toluene [2]	4.87	6.25
Xylene [2]	4.87	[3] 11.19
Inorganic substances:		
Ammonia	2.64	4.20
Antimony	4.45	6.25
Antimony trioxide	3.75	6.25
Arsenic	4.45	6.25
Arsenic trioxide	3.41	6.25
Barium sulfide	2.30	6.25
Bromine	4.45	6.25
Cadmium	4.45	6.25
Chlorine	2.70	4.03
Chromite	1.52	1.52
Chromium	4.45	6.25
Cobalt	4.45	6.25
Cupric oxide	3.59	6.25
Cupric sulfate	1.87	6.25
Cuprous oxide	3.97	6.25
Hydrochloric acid	.29	1.24
Hydrogen fluoride	4.23	6.25
Lead	0	6.25
Lead oxide	4.14	6.25
Mercury	4.45	6.25
Nickel	4.45	6.25
Nitric acid	.24	3.90
Phosphorus	4.45	6.25
Potassium dichromate	1.69	6.25
Potassium hydroxide	.22	6.25
Sodium dichromate	1.87	6.25
Sodium hydroxide	.28	3.72
Stannic chloride	2.12	6.25
Stannous chloride	2.85	6.25
Sulfuric acid	.26	1.03
Zinc chloride	2.22	6.25
Zinc sulfate	1.90	6.25

[1] Proposed rates would be indexed for inflation, beginning in 1987, but would not be reduced below the rates stated in the table.

[2] Coal-derived benzene, naphthalene, toluene, and xylene are exempt under current law. These substances would be taxed at the indicated rates under the bill.

[3] Tax rate on xylene reflects increase to compensate for repeal of tax prior to 1986.

APPENDIX B: INITIAL LIST OF TAXABLE SUBSTANCES FOR PURPOSES OF IMPORTED DERIVATIVES TAX UNDER HOUSE BILL

Cumene; Styrene; Ammonium nitrate; Nickel oxide; Isopropyl alcohol; Ethylene glycol; Vinyl chloride; Polyethylene resins, total; Polybutadiene; Styrene-butadiene, latex; Styrene-butadiene, snpf; Synthetic rubber, not containing fillers; Urea; Ferronickel; Ferrochromium nov 3 pct; Ferrochrome ov 3 pct carbon; Unwrought nickel; and Nickel waste and scrap.

Wrought nickel rods and wire; Nickel powders; Phenolic resins; Polyvinylchloride resins; Polystyrene resins and copolymers; Ethyl alcohol for nonbeverage use; Methylene chloride; Polypropylene; Propylene glycol; Formaldehyde; Acetone; Propylene oxide; Polypropylene resins; Ethylene oxide; Ethylene dichloride; Cyclohexane; Isophthalic acid; and Maleic anhydride.

Phthalic anhydride; Ethyl methyl ketone; Chloroform; Carbon tetrachloride; Chromic acid; Hydrogen peroxide; Polystyrene homopolymer resins; Melamine; Acrylic and methacrylc acid resins; Vinyl resins; and Vinyl resins, NSPF.

ESTIMATED REVENUE EFFECTS OF H.R. 2005, AS APPROVED BY THE CONFERENCE COMMITTEE, FISCAL YEARS 1987–92

[In millions of dollars]

Tax provision	1987	1988	1989	1990	1991	1992	Total
Superfund taxes:							
Petroleum tax	379	547	551	554	557	171	2,759
Chemical feedstocks tax	91	280	291	299	309	95	1,365
Environmental tax	218	418	487	528	573	298	2,522
Tax on imported chemical derivatives			13	19	19	6	57
Total, Superfund tax receipts	688	1,245	1,342	1,400	1,458	570	6,703
Leaking underground storage tank trust fund tax on gasoline, other motor fuels (0.1 cents per gal.)	89	130	132	131	18		500
Total, tax revenues to trust funds	777	1,375	1,474	1,531	1,476	570	7,203
Net increase in budget receipts (after income tax offsets)	583	1,031	1,106	1,148	1,107	428	5,403

From the Committee on Energy and Commerce for consideration of titles I–III of the House amendment to the Senate amendment, and the entire Senate amendment, except for title II:

JOHN D. DINGELL,
JAMES J. FLORIO,
DENNIS E. ECKART,
RALPH M. HALL,
BILLY TAUZIN,
AL SWIFT,

From the Committee on Energy and Commerce:

Solely for sections 102, 103, 105, 111, 113, 115, 117, 120, 121, 122, 123, 124, and 127 of title I and title III of the House amendment to the Senate amendment, and modifications committed to conference including section 157 of the Senate amendment:

RON WYDEN,

Solely for sections 101, 104, 106, 107, 108, 109, 110, 112, 114, 116, 118, 119, 125, and 126 of title I and title II of the House amendment to the Senate amendment, and modifications committed to conference:

THOMAS J. TAUKE,
NORMAN F. LENT,
DON RITTER,

From the Committee on Energy and Commerce solely for sections 101, 104, 106, 107, 108, 109, 110, 112, 114, 116, 118, 119, 125, and 126 of title I and title II of the House amendment to the Senate amendment, and modifications committed to conference:

JACK FIELDS,

From the Committee on Public Works and Transportation for consideration of titles I, II (except for section 205) and IV of the House amendment to the Senate amendment, and title I of the Senate amendment, except for sections 110, 111, 127, 157, and 160 thereof:

JAMES J. HOWARD,
GLENN M. ANDERSON,
ROBERT A. ROE,
JOHN BREAUX,
NORMAN MINETA,
BOB EDGAR,
GENE SNYDER,

From the Committee on Public Works and Transportation for consideration of titles I, II (except for section 205) and IV of the House amendment to the Senate amendment, and title I of the Senate amendment, except for sections 110, 111, 127, 157, and 160 thereof:

ARLAN STANGELAND,
NEWT GINGRICH,

From the Committee on Public Works and Transportation for consideration of title III of the House amendment to the Senate amendment, and sections 110, 111, 127, and 160 of title I of the Senate amendment:

ROBERT A. ROE,
BOB EDGAR,
ARLAN STANGELAND,

From the Committee on Ways and Means for consideration of title V of the House amendment to the Senate amendment, and title II of the Senate amendment:

DAN ROSTENKOWSKI,
J.J. PICKLE,
C.B. RANGEL,
PETE STARK,
THOMAS J. DOWNEY,
MARTY RUSSO,
DONALD J. PEASE,

From the Committee on Ways and Means for consideration of title V of the House amendment to the Senate amendment, and title II of the Senate amendment:

GUY VANDER JAGT,
BILL FRENZEL,

From the Committee on Merchant Marine and Fisheries for consideration of sections 104, 107, 108, 111, 113, 116, 121, 122, and 127 of title I of the House amendment to the Senate amendment, and modifications committed to conference:

WALTER B. JONES,
MARIO BIAGGI,
GERRY E. STUDDS,
BOB DAVIS,

From the Committee on Merchant Marine and Fisheries for consideration of title IV of the House amendment to the Senate amendment, and modifications committed to conference:

WALTER B. JONES,
MARIO BIAGGI,
GERRY E. STUDDS,
BARBARA A. MIKULSKI,
MIKE LOWRY,
BILLY TAUZIN,

From the Committee on Merchant Marine and Fisheries for consideration of title IV of the House amendment to the Senate amendment, and modifications committed to conference:

BOB DAVIS,

NORMAN F. LENT,

From the Committee on the Judiciary for consideration of sections 107, 113, 117, 119, and 122 of title I and sections 203 and 206 of title II of the House amendment to the Senate amendment, and modifications committed to conference:

PETER W. RODINO,
DAN GLICKMAN,
HAMILTON FISH, Jr.,
THOMAS N. KINDNESS,

From the Committee on Armed Services for consideration of section 213 of title II of the House amendment to the Senate amendment, and section 162 of title I of the Senate amendment:

DAVE MCCURDY,
DAVID O'B. MARTIN,
Managers on the part of the House.

From the Committee on Environment and Public Works for the purpose of considering all matter other than that contained in title II of the Senate amendments, and section 463 of title IV and title V of the House amendments:

ROBERT T. STAFFORD,
JOHN H. CHAFEE,
ALAN K. SIMPSON,
GORDON J. HUMPHREY,
PETE V. DOMENICI,
DAVID DURENBERGER,
LLOYD BENTSEN,

From the Committee on Environment and Public Works for the purpose of considering all matter other than that contained in title II of the Senate amendments, and section 463 of title IV and title V of the House amendments:

DANIEL PATRICK MOYNIHAN,
GEORGE MITCHELL,
MAX BAUCUS,
FRANK R. LAUTENBERG,

From the Committee on Finance for the purpose of considering section 463 of title IV and title V of the House amendments, and title II of the Senate amendments:

BOB PACKWOOD,
BOB DOLE,
WILLIAM V. ROTH, Jr.,
RUSSELL B. LONG,
LLOYD BENTSEN,

From the Committee on the Judiciary for the purpose of joining in the consideration of sections 135, 143, 144, and to the extent it may affect the Federal courts or relate to claims against the United States, section 150, together with such amendments related directly thereto as may have been adopted by the House:

STROM THURMOND,
ARLEN SPECTER,
EDWARD M. KENNEDY,
Managers on the part of the Senate.

HUGH DE LACY: FRIEND AND COLLEAGUE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California [Mr. PANETTA] is recognized for 5 minutes.

Mr. PANETTA. Mr. Speaker, I am writing to inform you of the death on August 19 of a former Member of Congress, Hugh De Lacy. Hugh died at the age of 76 in Santa Cruz, CA, in my congressional district, where he resided in his latter years. He represented the Seattle area in the House from 1945 to 1947.

In addition to his congressional service, Hugh De Lacy was a member of the Seattle City Council from 1937 to 1940. Throughout his life, he was an organizer on behalf of labor and on behalf of the causes in which he believed very deeply—social justice, progressive politics, and peace. He was a union carpenter and contractor, which he also continued to do nearly until the end of his life. He remained an activist and a hard worker until his final days, and the Santa Cruz community where he resided already misses him a great deal.

Attached is a tribute to Hugh that was distributed at a memorial service that was held in his honor on September 6 in Santa Cruz. Although most of us did not have the honor of serving here with Hugh, I hope this tribute gives you some idea of the kind of man he was.

The article follows:

HUGH DE LACY: 1910–86

Former Congressman Hugh De Lacy, who first rose to prominence as a Depression-era city council member in Seattle, and later helped found the national Progressive Party, died on August 19 in Dominican Hospital, Santa Cruz, California, after a four-year battle with cancer. He was 76 years old.

An intellectual who rejoiced in skilled physical labor as much as in the political battles that brought him renown. Hugh also was a longtime trade unionist. He helped build the Seattle-area teachers' union in the early 1930s, acting as that organization's delegate to the Seattle Central Labor Council. A graduate and subsequently instructor of English at the University of Washington, Hugh was a union machinist in Seattle's shipyards when elected to Congress in 1944. He took pride in his reputation as a forceful advocate of the economic and social causes of working people, minorities, and the unemployed. He was elected to the Seattle City Council in 1937 on that basis, and served on the Council until 1940. Concurrently, from 1937 until his election to Congress, he was President of the Washington Commonwealth Federation, an organization that sought to mobilize labor and other politically progressive forces in that state in the interests of legislative improvements in social welfare.

Hugh also took pride in his Irish heritage. He confounded his royal ancestor, Sir High De Lacy (who helped England's Edward II conquer Ireland), by his strong support for the Irish Republican cause.

He loved a good song, cold beer, sharp tools, and a good laugh. He also relished freewheeling discussion of politics or philosophy.

Hugh De Lacy's life story reads like a romance of the American political left. He was born to schoolteacher children of pioneer settlers. His early life on a small farm outside Seattle taught him both skill with tools and the importance of education. Big for his age, he shipped out in his teens on the steamers that plied the Alaska route. He alternated his university studies with work on Seattle's docks, in factories, in shops, on ships, in construction.

His talent for stump speaking, his commanding physical presence, and his love of teamwork brought him always into leadership positions. His sense of justice and the style with which he expressed it brought him renown. When the homeless unemployed of the Great Depression established a protest camp across from City Hall in Seattle, Hugh De Lacy was the only Council Member willing to encourage them. He did so from a balcony. He helped generate Seattle's first public housing program, and personally intervened to stop prejudice-based police raids on Filipino dances.

In Congress, Hugh's principles and enthusiasm aligned him with a highly visible left-wing group including California's Helen Gahagan Douglas, and New York's Vito Marcantonio and Adam Clayton Powell.

Hugh lost his congressional seat in the postwar Republican sweep of 1946. He then became a national organizer and subsequently Ohio State Director for the Progressive Party he had helped to form, promoting the 1948 presidential candidacy of Henry Wallace. To support his political work, he became a union carpenter and subsequently a contractor—a pattern of combined activism and skilled labor he continued until the last months of his life.

In 1960, Hugh relocated to Los Angeles, where he met and married political organizer Dorothy Baskin Forest. Subsequently moving to Soquel, near Santa Cruz, Hugh and Dorothy De Lacy became a redoubtable force in the political ferment in Santa Cruz County that has generated progressive majorities on the City Council and the Board of Supervisors. "I'm a good one for expounding principles, but Dorothy's judgment on tactics is superior to mine, so we're a pretty good combination," Mr. DeLacy told a reporter.

Hugh was a charter member and strong supporter of the Santa Cruz Action Network (SCAN). He helped conceive and establish SCAN-PAC. He was a formidable fundraiser for progressive political campaigns, and a confidant and advisor to many of the candidates.

In 1983, Congressman Leon Panetta inserted a tribute in the Congressional Record which celebrated Hugh and Dorothy De Lacy as "Lifelong Activists For Social Justice." Said Panetta, "The causes to which they have dedicated their lives—peace, jobs, and end to race and sex discrimination, a halt to the costly and dangerous arms race—are causes for which we are still working today."

Santa Cruz County Board of Supervisors Chair Gary Patton said, "I knew Hugh De Lacy as a warm, caring and immensely generous person. He was a fighter for justice his whole life and was the best example I know of what it means to be a public citizen. He was deeply involved in the life of this community. He knew that one person—and people acting together—can make a difference, and he made a difference. He was much loved and will be much missed."

Mike Rotkin, Santa Cruz; Socialist-Feminist Mayor, said, "Hugh De Lacy will be remembered for his unswerving dedication to his fellow human beings. As a brilliant political strategist and untiring activist, he served as a mentor, colleague and friend to several generations of progressive activists across the United States. He will be profoundly missed by thousands in the city of Santa Cruz."

Hugh De Lacy is survived by his wife Dorothy, by daughters Margaret De Lacy of Soquel, CA, Rosanne Jefferies of Rochester, Ind., Marian Guy of Benicia, CA, and Eleanor Potocin of Mentor, Ohio. He also leaves a large group of friends and political admirers whose numbers challenge the impersonality of his own epitaph, spoken to a reporter in 1983:

"I believe in immortality," said Hugh, "but I believe that immortality is human effort to improve the lives of people. If they'll stand up and be unified and fight against the conditions that make their lives evil, the people will win. I worked in that

fight. People don't have to remember my name. Who knows the name of a cell over in that pine tree? I will live in the continuance of the Movement."

IN TRIBUTE AND HONOR OF N.J. FORD

The SPEAKER pro tempore. Under previous order of the House, the gentleman from Tennessee [Mr. SUNDQUIST] is recognized for 60 minutes.

GENERAL LEAVE

Mr. SUNDQUIST. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and to include extraneous matter on the subject of my special order.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Tennessee?

There was no objection.

Mr. SUNDQUIST. Mr. Speaker, I appreciate this time for special orders, and today several of us are going to pay tribute and honor to Mr. N.J. Ford of Memphis, TN.

Mr. Speaker, recently the city of Memphis mourned the passing of a long-time, civic, community, church, and business leader, Mr. N.J. Ford. Mr. Ford was the father of my good friend and colleague.

My heartfelt sympathy goes out to HAROLD, his mother, and the entire Ford family as they recover from this tragedy.

N.J. Ford was committed to high standards of achievement and a man committed to education. This is clearly evidenced by the fact that all 12 of his children are college graduates and have all entered into successful careers.

His involvement in community and public affairs inspired his sons to pursue political careers. HAROLD was elected to the State legislature in 1970, and elected to the U.S. House of Representatives in 1974. John N. Ford was elected as a member of the Memphis City Council in 1972 and as a State Senator in 1974; Emmitt H. Ford was elected to the State legislature in 1974; and Dr. James W. Ford was elected as member of the Memphis City Council in 1980 and today is chairman of this city board.

Mr. Ford understood the importance of youth and will not only be remembered for the guidance and love he gave his own children, but also the countless hours he spent with the Boy Scouts.

Mr. Speaker, N.J. Ford's life is truly an inspiration for us all. We can all be thankful that his visions and standards of excellence will be carried on by his wonderful family for years and years to come.

So to you HAROLD, your mother, and you family, my prayers and thoughts will continue to be with you.

Mr. Speaker, I would like to quote from Rev. Dr. Benjamin Hooks. Reverend Hooks spoke eloquently of the living witness Brother Ford gave "that life is a gift from God, an opportunity to help somebody along the way, a perpetual influence, and an undying reality." Reverend Hooks recognized "the chair will be vacant at the fireside, the voice and counsel of N.J. Ford will not normally be heard in life, and yet he will live on as long as he lives in our memories." Reverend Hooks noted, "He lived to see his son in the Congress, another in the Senate, another in the House, another in the city council, and himself a delegate to the constitutional convention. He went from the back side of southwest Shelby County to the peak and pinnacles of offices because there was something in him."

I would also like to quote from the Memphis Commercial-Appeal:

He was a member and former president of Bluff City Funeral Directors and a former chairman of the Tennessee State Funeral Directors Association. He was also affiliated with the National Funeral Directors Association, of which he was named "Man of the Year" in 1978. Mr. Ford was former chairman of the Southwest District Chickasaw Council of Boy Scouts and received the Boy Scouts' Silver Beaver Award. In a 1976 interview, Mr. Ford and his wife, Vera D. Ford, said ambitions for their children crystallized the minute their first child was born. "It was in the 1930s, hard times, when we were making do with a little money and a lot of determination but we said they're all going to college, no matter how many." All of the Fords' children are graduates of Tennessee State University in Nashville. The Ford children, who range in age from 30 to 50, are in a variety of professions.

They are Mrs. Barbara F. Branch, 50, of Piermont, N.Y., lawyer; Melvin D. Ford, 48, of West Covina, Calif., contractor; Lewis G. Ford, 47, of Pasadena, Calif., businessman; Mrs. Joyce F. Miller, 46, of Memphis, counselor; John Ford, 44; Emmitt Ford, 42, businessman and funeral director; Harold Ford, 41; Mrs. Vera F. Walker, 38, of Detroit, social worker; James W. Ford, 36, minister, physician and politician; Mrs. Ophelia Ford, 35, with Blue Cross & Blue Shield of Memphis; Joseph S. Ford, 32, of Memphis, funeral director; and Edmund Ford, 30, of Memphis, funeral director.

He also is survived by 40 grandchildren and a great-grandchild.

Mr. Speaker, I would like to insert several articles at this point in the RECORD.

The texts of the articles is as follows:

[From the Memphis Silver Star News Service, Sept. 11-17, 1986]

MEMORIES OF BROTHER N.J. FORD

"He's somebody you never pictured leaving. You just think that he would always be here," said Billne Miller, the granddaughter of Brother N.J. Ford and daughter of Joyce Ford Miller. Billne could even envision her dream wedding with a gown she herself had designed. An important part of that wedding would have been to have her grandfather and his beloved wife, Vera D. Ford, present. Billne, 18 years old, remembers her granddad fondly and enthusiastically. "He would always ask me what I wanted to do. I'd say be a fashion designer. He would say, 'Explain that to me. What do they do?' I would. Then he'd say, 'You should go into the funeral director's business.'"

Billne might not know it yet, but in much the same way, the patriarch of the Ford family, Brother N.J. Ford was incredibly perceptive about the careers of all of his children. Barbara Branch, the eldest of the Ford children, says, "Daddy was encouraging me to be a lawyer. I came up in the '50s and as a woman first that was unheard of. There were no women or black role models. I was the eldest of twelve children and I didn't know how we'd do it. Still Daddy said, "I can see you being a lawyer." I became a teacher. It was the thing to do. Any young woman out of college became a nurse or a teacher. It was not til midlife I decided to go to college and become a lawyer. I'm sure Dad had a lot to do with that."

Vera Ford Walker, another daughter named after her mother, recalled similar experiences. "I majored in social work. Daddy used to stay on me and tell me that was the worst thing I'd ever done. He said that there was no future in it. He was right," Vera continued in retrospect. "I'm now assistant general manager of the Civic Center in downtown Detroit."

City Council Chairman James Ford remembers his Dad's involvement in his own career choices. "My Daddy was a great lover of the church and he loved good preaching. When I first started college and wanted to go to medical school, Daddy just couldn't understand it. I told him I wanted to be a physician and a missionary too. He said, 'You just need to go out there and preach.' When I opened my church in the chapel here 2½ years ago, he rejoiced in that. He wanted me to succeed. We're going into a new church in October. He was very involved in the plans for that."

State Senator John Ford recalls additional aspects of his Dad's influence. "He knew the importance of politics and economics and knew how one leveraged the other. He taught us how to do things well and how to be the best at what you do." Senator Ford attributes his father's keen awareness to his upbringing. "His granddad was the first black squire in the early 1900s. He had significant power. Daddy had seen things go from then through the civil rights movement to the present. He had been in business through the good times and the bad."

Brother N.J. Ford was also a great model to his family and the community as a hard worker. Senator Ford says, "I don't know if he ever had a day off except when he went to a convention. He liked the business. He liked the work. He liked the people and was always trying to do better." Lewie Ford, another son adds, "He didn't like to miss anything. I grew up in the business. I started helping when I was about twelve years old. I learned to work hard. Dad would say, 'It's not going to come by just sitting there and looking at the wall.' He had the drive to get up and do more." Lewie is now the owner/manager of L.G. Ford Tire & Service in Pasadena, California. Rev. Dr. James Ford continued, "He was definitely a provider. Many times he couldn't do what he wanted to. He still helps his family and his community. If he could ever help, he'd do it." Ophelia Ford, the youngest sister says, "Daddy's always been a first class guy. Second best was never never enough. Everybody tries to do just like Daddy does. Daddy showed us all how." Brother Ford had been

in the funeral business for 54 years. He followed in his father's footsteps.

Brother N.J. Ford not only worked hard, was perceptive, and a skilled businessman, he was also very clear about the best things to do and how to do them. "Daddy was very opinionated," says Vera Walker and Barbara Branch. "Later in life just what he said proved to be true. He did not hesitate to tell us. He was very direct and straight forward." Billne echoes their words from her generation's perspective. "He didn't want us to do this and that. He had his own chair. He'd tell us 'You don't sit in my chair. You wouldn't want me to come to your house and sit in *your* chair!' " She recalled other times, too. "Grandmother likes candy. Granddad didn't want her to have any. We'd try to get candy past him. He'd say, 'What's in the bag? Let's see what's in your pockets.' You couldn't hide anything from him.

Rev. Dr. James Ford remembers another aspect of his Dad's insistence on proper conduct. "The schools never had any trouble with the Ford children. He didn't have to tell you to do right. We just knew better. My parents didn't allow any trouble." With a twinkle in his eye Rev. Dr. James Ford said, "Dad never had to hit me except once when I hit Harold with a candelabra." The message of behaving well definitely hit home. Lewie says, "He was a real strict father. I thought he was too rough at the time, but he was right. I couldn't go and stay out late. I couldn't just come in anytime of the night. There was a certain time you had to be in."

Mostly Brother N.J. Ford believed in education for all of his children, responsibility and training for youth, hard work and a double dose of caring involvement in his children's and grandchildren's lives. This extended to the community. Council Chairman James Ford says, "He was just so involved. He had an intense love for people. At certain points he wanted to be even more involved, but couldn't due to the demands of his business. He rejoiced in seeing his sons involved in politics." Rev. C.S. Towner, a friend of Brother N.J. Ford's since their youth, says "He believed in helping people." While N.J. Ford was a member of Ford Chapel AME Zion Church founded by his grandfather, Rev. Towner adds, "He helped no matter what church. He's going to be missed." His daughter Vera continues, "Daddy has always been active in community service. He was very involved with the Boy Scouts. People all over called him 'Brother'. He received the Silver Beaver Award from the Boy Scouts. He spent over thirty years or more in that organization. Also, people who knew him would come to him for assistance." Ophelia adds, "He was always very involved. He liked to be on time and to make a perfect presentation."

Brother N.J. Ford was also a romantic. He met his wife when they both worked at the Peabody. In 1983 they planned a very special 50th Anniversary. Brother Ford proposed again. His wife accepted, of course, and they planned to renew their vows at the Peabody in 1984. A harsh stroke at the end of 1983 changed their plans. Mrs. Ford was still in the hospital from the stroke. She was allowed to leave for one day to go to the chapel at the funeral home to join her husband for the intimate renewal of their wedding vows. Brother Ford was deeply devoted to his wife. He called her "his pink lady" Billne and Ophelia explain. He'd often tease her and say, "Who's that lady with all the silk on her head." Then he'd say, "Ah, that's my wife." Ophelia says "I'll miss all the attention he gave Mom. He never did anything without seeing what Mom wanted to do. He took special care of her ever since she had a stroke."

In fact Ophelia says, "He had been up all night Friday with business til about 5:30 am. Then he got back up Saturday to fix breakfast. He loved to fix breakfast."

[From the Memphis Commercial-Appeal, Sept. 14, 1986]

N.J. FORD, MORTICIAN, DIES AT 72

Newton J. Ford, a longtime Memphis funeral director who reared 12 children, including three prominent Memphis politicians, died of a heart attack at 2:25 p.m. yesterday at Baptist Hospital. He was 72.

Mr. Ford, father of U.S. Rep. Harold Ford, state Sen. John Ford, and Dr. James W. Ford, chairman of the Memphis City Council, went into the funeral business in 1932, following in the footsteps of his father, Lewis C. Ford, a funeral business owner.

Mr. Ford also had an interest in politics. In 1977 he was a delegate to the State Constitutional Convention. He made an unsuccessful bid in 1965 for the state legislature.

He was a member and former president of Bluff City Funeral Directors and a former chairman of the Tennessee State Funeral Directors Association. He was also affiliated with the National Funeral Directors Association, of which he was named "Man of the Year" in 1978.

Mr. Ford was former chairman of the Southwest District Chickasaw Council of Boy Scouts and received the Boy Scouts' Silver Beaver Award.

In a 1976 interview, Mr. Ford and his wife, Vera D. Ford, said ambitions for their children crystallized the minute their first child was born.

"It was in the '30s," Mrs. Ford said, "hard times, when we were making do with a little money and a lot of determination. But we said, 'They're all going to college, no matter how many,' "

All the Fords' children are graduates of Tennessee State University in Nashville.

The Ford children, who range in age from 30 to 50, are in a variety of professions.

They are Mrs. Barbara F. Branch, 50, of Piermont, N.Y., lawyer; Melvin D. Ford, 48, of West Covina, Calif., contractor; Lewis G. Ford, 47, of Pasadena, Calif., businessman; Mrs. Joyce F. Miller, 46, of Memphis, counselor; John Ford, 44; Emmitt Ford, 42, businessman and funeral director; Harold Ford 41; Mrs. Vera F. Walker, 38, of Detroit, social worker; James W. Ford, 36, minister, physician and politician; Mrs. Ophelia Ford, 35, with Blue Cross & Blue Shield of Memphis; Joseph S. Ford, 32, of Memphis, funeral director; and Edmund Ford, 30, of Memphis, funeral director.

He also is survived by 40 grandchildren and a great-grandchild.

Mr. Ford was a member of Ford Chapel AME Zion Church, which was founded by his grandfather, Squire Ford. Funeral services are incomplete. N.J. Ford and Sons Funeral Parlor has charge.

MEMPHIANS MOURN DEATH OF N.J. FORD

The City of Memphis is mourning the loss of a long-time civic leader Newton Jackson Ford, who was the founder of N.J. Ford & Sons Funeral Parlor. He passed away last Saturday after suffering a heart attack. He was 72 years old and will always be remembered as a man devoted to his family and his community.

Funeral services will be held at 1:30 p.m. Thursday at Pentecostal Temple Church of God in Christ, 229 Danny Thomas Boulevard. Interment will be at Ford's Chapel AME Zion Church, 212 Mitchell Rd. West following the services.

Born on June 13, 1914 in Memphis to a family that had deep roots in Shelby County, Ford followed in the footsteps of his parents and grandparents who were civic and community leaders. He was the son of Lewie C. Ford and Ophelia Edna Geeter Ford. His paternal grandparents were the late Mr. and Mrs. Jackson Geeter, from who Geeter High School was named.

He attended elementary school in Shelby County, and graduated from Manassas High School. After graduation, he was employed for a short time as a bus boy and keeper of the legendary . . . at the Peabody Hotel.

During his employment at the Peabody Hotel, he met his wife, Vera David Ford, to whom he was married for 53 years. They were blessed with fifteen children, twelve of whom survive. Their first born, Newton Jackson Ford, Jr., died at the age of two.

With his father's support, he established N.J. Ford Funeral Home in 1932, which he later renamed N.J. Ford and Sons Funeral Parlor, in recognition of his sons' interest in the business.

His involvement in community and public affairs inspired his sons to pursue political careers. Harold E. Ford was elected to the State Legislature in 1970, and elected to the U.S. House of Representatives in 1974; John Newton Ford was elected as a member of the Memphis City Council in 1972 and as a State Senator in 1974; Emmitt H. Ford was elected to the State Legislature in 1974; and Dr. James W. Ford was elected as a member of the Memphis City Council in 1980.

Congressman Harold Ford described his father as "a champion, one who knew to live with pain and not show it, but at the same time move right ahead and offered strength to his family. He fought to make changes and he set an example and encouraged his family to fight for what is right. Even though my father was not a politician, he offered us political wisdom. He will be missed."

A licensed funeral director and mortician, he was a former president of the Bluff City Funeral Directors and Morticians Association, a former chairman of the Tennessee State Funeral Directors and Morticians Association, and a former assistant executive secretary of the National Funeral Directors and Morticians Association. In 1978, he received the National Association's "Man of the Year" award. He was also a member of the Memphis Chamber of Commerce.

Long active in politics and other community activities, he made an unsuccessful bid for the Tennessee State Legislature in 1965. In 1977, he was elected as a delegate to the State Constitutional Convention.

State Senator John Ford said his father was an inspiration and he "worked all of his life to make sure that all of his childen were educated. He worked hard all of his life and he will never be forgotten."

For more than twenty years, Ford was a member of the Southwest District Chickasaw Council of the Boy Scouts of America, serving as Chairman of the council for a number of years. In 1979, he received the distinguished Silver Beaver Award for his outstanding service to the Boy Scouts. He held a life membership in the National Association for the Advancement of Colored People and was the recipient of numerous

awards and honors from local and national institutions and organizations.

N.J. Ford's youngest son, Ed, said his father will always be remembered as "a great man, a hard worker who loved people. Everyone was his friend. He supported the religious community by contributing to hundreds of churches and he received numerous awards and plaques."

He was a member of Ford's Chapel A.M.E. Zion Church, which was founded by his grandfather, Newton F. Ford.

He leaves his wife, Vera D. Ford, and twelve children: Barbara F. Branch of Peirmont, New York; Melvin D. Ford of West Corvina, California; Lewie G. Ford of Pasadena, California; Joyce F. Miller; Senator John Ford; Emmitt H. Ford; Congressman Harold E. Ford; Vera Ford-Walker of Detroit, Michigan; Dr. James W. Ford; Ophelia E. Ford; Joseph S. Ford, and Edmund H. Ford. In addition, he is survived by 40 grandchildren, one of whom is Newton Jackson Ford, II, the four month old son of Joseph, a great granddaughter and two first cousins, James N. Ford of Memphis and Jessie Liggins of Chicago, Illinois.

[From the Memphis Silver Star News Service, Sept. 18-Sept. 24, 1986]

FROM THE PUBLISHER

(By J. Delnoah Williams)

While many people today look out for number one first, while families are divided, while generations seek their own age groups, and unity is rare, the Ford family lives as an example to us all. Brother N.J. Ford and his wife, Mrs. Vera Ford created a home and business environment where caring, sharing, hard work, self improvement, and striving to do your best were treasured by each and all of the family. Brother Ford was honest with his children about their strengths, their weaknesses, their goals and their conduct. Yet, he was wise enough to let them learn from their own experiences. He usually supported his children in what they did, even when his perceptions differed from theirs. He valued education and encouraged each child to pursue knowledge. The respect the children and grandchildren have had for his wisdom and vision reflect the time he took to understand each one.

While their lives have not been without troubles, the family has faced those problems squarely. Their strength, courage, compassion, unity and involvement are models for our own families. The life of Brother N.J. Ford lives on in his family. Our sympathies extend to the family. Our thanks seem meager compared to his lifetime of giving. Brother Ford, we will miss you. Your memory will stay with us forever.

Brother N.J. Ford was at work as his family knew he would be when his last earthly moments came. He had a massive heart attack.

The family will miss Brother N.J. Ford's support, his zest for life, his wit and his great example. The memories of his lifetime, his dedicated service, his amazing support for his children and his tender caring will long endure. Brother N.J. Ford lay in state Tuesday from 5-8 pm at Ford Chapel AME Zion Church and Wednesday at the N.J. Ford & Sons Funeral Home., A steady flow of those touched by his life have visited the family since his passing Saturday. The funeral is being handled "as Daddy would have wanted it," by N.J. Ford & Sons Funeral Home. Services are at 1:30 pm (today) Thursday at the Pentecostal Church of God In Christ at Danny Thomas and Linden to allow enough space for the national and local guests. Rev. Ben Hooks will give the eulogy. Brother Ford was a member and former president of Bluff City Funeral Directors and a former chairman of the Tennessee State Funeral Director's Association. He was proclaimed "Man of the year-1978" for the National Funeral Director's Association. These groups have requested to be involved specially in the Thursday service.

Brother Ford leaves his wife, Mrs. Vera D. Ford, his children: Mrs. Barbara Branch of New York, Melvin Ford of West Covina, California, Lewie G. Ford of Pasadena, California, Mrs. Joyce F. Miller, John Ford, Emmitt Ford, Harold Ford all of Memphis, Mrs. Vera F. Walker of Detroit, Michigan, James W. Ford, Mrs. Ophelia Ford, Joseph Ford and Edmund Ford all of Memphis; 40 grandchildren and one great grandchild. He also leaves an entire community in his debt for his dedicated service, his family's devoted efforts to their communities and his exemplary model to youth, adults and families everywhere.

As many pastors visited the family Congressman Harold Ford had each share words of prayer with them. They spoke of Brother N.J. Ford's great strength, courage, and compassion. They extended solace as God's will has been done in His wisdom. Brother N.J. Ford would be pleased. "He loved to *hear good preaching.*"

[From the Memphis Silver Star News, Sept. 25, 1985]

DR. HOOKS SPOKE OF A GREAT MAN

"You never saw the storms of segregation make him full of hate. You never saw him bend to the wind of prejudice nor bow to the reins of hate. His optimism remained unquenchable, and he could love everybody even when they did not love him." Rev. Ben Hooks spoke of the strength, courage and love of Brother N.J. Ford last Thursday as thousands packed Pentecostal Temple to pay their last respects to Brother Ford.

"He went to a segregated school and many might call it a second rate school, but it produced, thank God, a first rate mind. Would that many of us who are PhD's have the mind that N.J. Ford had." Rev. Hooks reminded that Brother Ford "would not see handicaps, but always saw stepping stones."

Rev. Hooks eloquently spoke of the living witness Brother Ford gave, "that life is a gift from God, an opportunity to help somebody along the way, a perpetual influence and an undying reality." While Rev. Hooks recognized, "The chair will be vacant at the fireside, the voice and counsel of N.J. Ford will not normally be heard in life and yet he will live on as long as he lives in our memories."

Many ministers, of various denominations, added their own words of solace and remembrances to those of Rev. Hooks, Rev. Samuel Billy Kyles, Rev. Alvin O. Jackson, Rev. Melvin C. Smith, Dr. W. Herbert Brewster, Rev. Alfred D. Hill, Rev. Amanda Ballard, and Bishop J.O. Patterson, Sr., brought comfort to the family and friends as they reflected on the remarkable inspirational life of Brother Ford.

Wednesday evening the Bluff City Funeral Directors and Morticians Association, the Tennessee State Funeral Directors and Morticians Association and the National Funeral Directors and Mortcians Association held a special memorial service. The officers and members all remarked on the courtesy, hospitality, and personal attention Brother and Mrs. N.J. Ford offered them. They spoke highly of his business skills and community concern. Surrounding the chapel were beautiful, fragrant floral wreaths expressing the enduring esteem family and friends have for Brother N.J. Ford. The family has requested memorial gifts be sent to the Chickasaw Council, Boy Scouts of America, 171 South Hollywood. Brother N.J. Ford devoted over thirty years to the Boy Scouts.

The sons of Brother Ford, Melvin, Lewie, Senator John, former State Representative Emmitt, Congressman Harold, City Council Chairman James, Joseph, and Edmund Ford, all carried their father to his final place of rest. He is also survived by his wife, Mrs. Vera D. Ford; daughters, Barbara Branch, Joyce Miller, Vera Ford Walker, and Ophelia Ford; forty grandchildren, a greatgranddaughter and two first cousins, James N. Ford and Jessie Liggins.

As Rev. Hooks noted, "He lived to see a son in the Congress, another in the Senate, another in the House, another in the City Council and himself a delegate to the Constitutional Convention. He went from the backside of Southwest Shelby County to the peak and pinnacles of offices because there was something in him."

Dr. W.H. Brewster and the East Trigg Baptist Church dedicated Sunday morning service to memories of Brother N.J. Ford.

Mr. Speaker, I yield to the gentleman from Texas.

Mr. GONZALEZ. I thank the gentleman for yielding to me, and I thank him for requesting this moment in order to pause in our deliberations to offer our condolences to our colleague, Mr. FORD from Tennessee. I am sure that the gentleman is very much being thanked by the Ford family also.

Those of us who happen to know Mr. FORD and have met some members of his family know that it is indeed a real loss, and I wish to offer my, and I am sure I speak for the rest of our colleagues who have gotten to know Mr. FORD, that we wish him the strength and fortitude necessary whenever one of our parents passes, that he may meet and overcome his grief.

I thank the gentleman again for yielding and for taking the time to ask for this special order to evoke the memory of Mr. Ford.

Mr. SUNDQUIST. I thank the gentleman from Texas for his very articulate remarks.

Mr. Speaker, I yield to my colleague from Tennessee.

Mr. JONES of Tennessee. I thank the gentleman for yielding.

I want to thank the gentleman very much for taking this time to bring these statements regarding the N.J. Ford family and, of course, our colleague, one of his sons, HAROLD. The gentleman in the well and I were with HAROLD on the day immediately following his father's passing in Memphis. We know the family quite well. The N.J. Ford family is a very prominent family in Memphis.

Earlier in one of these sessions I had some remarks to make and filed in the CONGRESSIONAL RECORD regarding the family, and I certainly appreciate my

dear friend and colleague from the Seventh District of Tennessee for doing this today.

Mr. SUNDQUIST. I thank my good friend and colleague for his remarks.

Mr. RANGEL. Mr. Speaker, I rise to pay respect to a very great man, Mr. Newton Jackson Ford, the father of our colleague, Congressman HAROLD FORD of Tennessee. I would also like to commend DON SUNDQUIST for calling this very timely special order.

Mr. Speaker, it is fitting that we honor HAROLD FORD's father today. Newton Jackson—"N.J." those who knew him—was a fine man. He was a reknowned member of the community who was recognized as a role model for young people. He was not only an achiever, but he was also a significant inspiration to his son.

N.J. raised 12 children, one of whom became a U.S. Representative, and another who is chairman of the Memphis City Council. As the director of a funeral home since 1932, he was a respected community man. He was active in local affairs, receiving awards for his commitment to the Boy Scouts. It is a mark of his strong emphasis on achievement that all of his children graduated from college.

Let us remember Newton Jackson Ford for the man he was, Mr. Speaker. He was of that rare breed which gathers respect from those who knew him. I encourage my colleagues to reflect upon Newton Jackson's life, and to remember him fondly.

MY ADVICE TO THE PRIVILEGED ORDERS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas [Mr. GONZALEZ] is recognized for 60 minutes.

Mr. GONZALEZ. Mr. Speaker, for some time I have been one of the biggest recipients of this great privilege that the House in its wisdom in past years saw fit to provide for those Members who felt that because of the limitation of time during debate, and of course in a numerous body that is understandable, that they would have to expand on their thinking, on their contributions in the way of advice or suggestions as to the nature of the content, the direction that the flow of legislation and the forging of national policy should take.

Those of us who have also been very fortunate to belong to less numerous bodies, for example, city councils, local legislative bodies in our communities, which I had the great privilege 33 years ago or 33½ years ago to have been elected to, and then subsequently to the great senate of the State of Texas, I think the most privileged election I have received from my fellow citizens in Texas and the county of Bexar for the senatorial district then known as the 26th Senatorial District from Bexar County.

□ 1025

I do not think I could ever have received, or any citizen for that matter, a higher honor than to have been a member of that great, great body, the Texas Senate. That is the body that originated, as I said, the birthplace of the unlimited debate rule. But there are, and have been for some time, 31 members of the Texas State Senate. So it is obvious that in a body of that nature, it is a lot easier, even under the rules, to join at any moment in the flow of things.

This morning, among other things, I wish at the very outset to bring up the question that I believe is of tremendous national urgency, but which, unfortunately, has also been very much bandied around, particularly in an election year. And being that the distinguished gentleman from California [Mr. ROYBAL] is present, and one of those who has been outspoken, and has been a leader in this area of legislation, from the time that he was elected to this body in 1962, and even before then, he was the first Californian of Mexican descent freely elected to any sizable body, being the city council of the city of Los Angeles before his election to the Congress This is the question of immigration and naturalization reform or amendments.

In 1965, we had what was then called the hallmark of immigration legislation, the basic codification of the immigration laws that had been encrusted in our corpus of statutory legislation since the last century. Our country has witnessed everything from indentured servitude, which we must remind our colleagues was very much in existence not much over 100 years ago. As a matter of fact, if one examines the records in Shelby County, TN; Shelby County, KY; in West Virginia; in Virginia; in Alabama and Mississippi, one will find about 130 years, 140 years ago, in these deed records the sheriffs of those respective counties coming back to file a writ that they had been unable to serve. And the writ was to bring in an indentured servant that had jumped his indenture.

Now we must remember that in that day and time, there was no such thing as universal manhood suffrage. The only Americans who could vote were male, property owners; women were prohibited from voting. In fact, in Texas, women could not vote until 1919. We forget this history. And we must remember that these indentured slaves usually were young men and ladies who came from poor families and were indentured out or contracted out to more affluent families or tradesmen who, in exchange for food and lodging, were prescribed to work for these particular individuals or families.

So when the sheriff was asked to go out and bring in these Americans that had jumped their indenture and he could not find them, you will still see in the records today in these counties in Tennessee, Alabama, Mississippi, Virgina, and West Virginia the notation "GTT," Gone to Texas. They jumped their indenture and, of course, went to the frontier, at that time Texas being the attractive part of the frontier.

So in the post-Civil War period we began to have an expansion in our manufacturing and our industrial production, and cheap labor was desired, and it came to us in the form of middle-Europeans, the Slavs as they had been called, the Croatians, the Bohemians, the Bulgarians, the Mediterranean people, that were considered, and in fact to this day in some areas are still considered, as sort of unassimilated Americans. Somehow or other, they did not fit into the mold of what we conceive an American to be.

In the Southwest, however, we have the only and the unique area of the United States, unique because the people who are direct lineal descendants of those who had developed, who had inhabited, who had civilized that area found themselves after the war with Mexico not being in what they would have called their homeland, but rather strangers. And then with the introduction of other systems of law, language, customs, culture, they soon found themselves divested of every single acre of substantial landholding that they had. All we have to do is look at the deed records in my county of Bexar, which 100 or so years ago was Bexar Territory. It was known as that territory that extended from what is today Bexar County in the south clear up to Laramie, WY. So today we still have Bexar County, one of the most, if not the most, historic counties in the entire Southwest United States, if not the whole of the United States.

We have these lineal descendants who are certainly Americans, but who find themselves even today looked upon as foreigners. So when the Congresses legislated after the financial crisis of 1895, then immigration laws became the custom to try to stem and limit the inflow of this laboring class from middle Europe and from Mediterranean Europe.

Before that, we had the Irish who, because of the famine in Ireland in the forties, came to America. I am the descendant of one of two brothers who left Ireland in about 1850 and came to Pennsylvania. But they did not like the looks of things in the United States. They did not want to get drafted in any kind of war they did not understand. So in 1859, they went south and ended up in the State of Durango and set up the first textile mill in northern Mexico.

So this rather pluralistic setting, this most intricate history, on top of the yet to be learned history of the

Republic immediately south of us which, in turn, has one of the most interesting cosmopolitan pluralistic histories you can find of any country.

When we use the word Mexican here, it is an entirely different context from what the word is used in Mexico. When you say a Mexican in Mexico, you can talk about a 6-foot, blonde-headed, blue-eyed, white-skinned, tutonic individual who speaks nothing but Spanish. Yet it would be inconceivable in my part of the country for anybody to call that individual a Mexican.

So that when the Congress has legislated, because by the turn of the century, the big question came: How could you control those orientals that have come when cheaper labor was desired to build the Transcontinental Railroad? Well, they soon got scared of the "yellow menace." So then came the enactment of the 1924 immigration law.

For example, in 1911, in February, my parents, my father, actually fleeing for his life because he had been put up against a wall and was about to get shot and was saved by a woman, a woman revolutionary, the only mounted revolutionary force in that part of Durango.

□ 1035

She saved my father because he had saved her husband and her son just a few years before from getting shot by the Federales in that city of Montenedurango. But having been imprisoned and forced to walk all the way to the State capital in Durango, the family had to flee to the city of Torreon in the adjacent State of Coahuila. While there, the city of Torreon was laid seige to and the family which consisted of my mother, her sister, her two sisters, my two oldest brothers who were 3 and 1 years old, respectively, had to huddle in a hotel room while machinegun fire and bullets were hitting the walls. They would have to put the mattresses up against the door and windows for fear.

Finally, they were able to leave. Finally, my father was able to make contact with Mexico City, get some money, bribe the prison officials and they met in Monterrey, just about the time Poncho Villa was laying seige to the city of Monterrey. So they came to the United States the only way the poor could at the time, and that was on the main railroad line through Central Mexico into Laredo and Nuevo Laredo.

They met in Monterrey, got on that train, got to Laredo, did not like Laredo, but when they crossed that bridge, there was not any immigration official, there was not any custom official; all they had to do was pay 5 cents for a toll for each one, because that was what the bridge, privately owned, charged in order to use it. The bridge that then existed between Laredo and Nuevo Laredo.

So they stayed on the train until they got to San Antonio, and then, of course, the rest is a very interesting but personal history; it has no relevance.

I say this because we still have citizens who have been in the United States for more than 80 years but who cannot prove the fact that they are here legally. At no time has the Congress ever legislated on immigration matters except out of fear. The present fear is, "We have got to regain control of our borders," as if we ever had it. Who are the ones that are saying this? The ones who are looking at it from a racial standpoint. If you examine further, their positions and their utterances on related issues.

So that today, as well as in 1965 when a very enlightened President, President Johnson, certainly enlightened in these matters, thought that the bill he fought for and finally the Congress got, which in his eyes was that the racial or national origin quotas had been eliminated. But lo and behold on the floor of the House during the deliberation of that bill the Congressman from Minnesota gets up and offers an amendment that had been rejected in the committee, and which the chairman of the full Judiciary Committee then had assured me would not be accepted.

This amendment was that for the first time it would place fixed, rigid quotas on Western Hemisphere countries including, including the only two nations that are adjacent to the United States; Canada and Mexico.

The record will show I was the only one that got up and challenged that colleague and when he answered me this way to my question, I said, well, then you mean that you want to put the only two countries that destiny has fated will be adjacent to us on the same footing as Iceland? Where, incidentally, the President is going this next week. He said, "Yes." When he said that, there was no use arguing.

Lo and behold, the chairman of the committee did not object to that and it was accepted, and I could not get a recorded vote. But I predicted, and the record will show, that that inflexibility, that ignorance of the history of the constant flow and ebb between these countries, whether it is Canada or whether it is Mexico, that the pride had been that the only countries in the world that shared these long borders without soldiers on either side were these three countries, will soon, if things continue this way, and if we continue to succumb to these fears, will soon be a faded, faded pride and boast.

This is because in that bill, which President Johnson took to the foot of the Statue of Liberty to sign, he was so proud of it, I sent him a telegram and said, "Mr. President, veto it." Of course, I was kind of laughed at and everything else, but I did send him that telegram because I felt that the good in it was being undone by this one amendment. I predicted that it would not be 10 years before the folly of this inflexibility would be seen because I said if you are going to amend it, provide for this, then do not give fixed, magic numbers, but leave it up to the executive judgment and the flexibility of the executive will to give and take as conditions will change as all human existence calls for.

Mr. Speaker, at this point I wish to recognize the gentleman from California [Mr. ROYBAL] because we have been very limited. The other day, when we were arguing on a corollary matter, a rule, and this issue was injected, the gentleman from California was barely given 3 minutes and I took about a minute of that time. So I am honored and delighted that I can have this opportunity to recognize the gentleman from California and give us the benefit of his views, his experience, and what is that we stand for in this matter of immigration and naturalization reform.

Mr. ROYBAL. I thank the gentleman for yielding.

Mr. Speaker, I wish to compliment the gentleman for bringing to the House a brief history of immigration in the United States. I am sorry that more Members will not be able to even read the remarks of the gentleman from Texas. I wish that they had that opportunity, and I am going to recommend to them that they do so. So that they will learn some of the background and some of the things that happened prior to the time that we came to the Congress of the United States.

I think it is important also that we start reviewing the things that are taking place now, in this House. The things that are taking place at this very moment.

I would like to review for the gentleman the fact, first of all, that the Immigration bill is not something that just started this year. It has been a period of almost 15 years or more that we have had a so-called immigration reform bill before the House of Representatives. It has always been called immigration reform, but in each instance, it does not deal with immigration reform. It dealt primarily with the constant supply of cheap labor into the United States.

In the bill that has now been presented to the House, we find again that there is very little reform, but a great deal to do with the supply of free labor. Even going to the extent of exempting the farmer and the grower from so-called sanctions which, in the past, had been recommended to legislators as the only thing that could be

used to secure or regain control of the borders.

I think we must examine that just a little bit more closely. If it is true that sanctions is the only way of gaining control of the borders, why then, is it necessary to exempt the growers and the farmers?

□ 1045

Why is it, then, also necessary to make available, or make possible, an amendment that is called the Beverly Hills amendment? It is simply an amendment that exempts anyone from the provisions of sanctions that would hire four or less employees.

Of course, the people in Beverly Hills and people with great wealth must have their chauffeurs, they must have their gardeners, they must have their maids, and they, of course, under this provision, will be able to hire those who come here illegally and hire them at the cheapest possible rate that they can get away with.

This is an inconsistency in the law. If they really want to do something about sanctions, I think that they should make or propose a law that includes all.

I do not think that sanctions is the way to go. I think that sanctions will actually result in discrimination against those of us who have been in the United States for decades and could possibly trace our ancestry back to the times before the Pilgrims landed on Plymouth Rock.

But discrimination will result from sanctions. But that is only part of the bill that is being opposed. We oppose that bill for the simple reason that it is not immigration reform.

We want immigration reform. We want to see the Department of Immigration become an immigration service of the United States. It is called the Immigration Service, but there is no service in that department. That department is the most discourteous department in the Federal bureaucracy, and if there is anyone who does not believe that, just call them. If you tell them you are a Member of Congress, it is even worse.

Mr. GONZALEZ. I think that the gentleman is touching on something that the average Member of this House, in fact, the overwhelming preponderance of Members of this House are totally unaware, but for years and years and years, back in the harsh brutal days before World War II in the 1930's and 1920's, it was the, as the people of Mexican descent got to calling them, La Migra, that they feared the most.

They were actually committing just as bad atrocities as Hitler's stormtroopers. No worse; no less. It would go out of its way in my area to even dissuade and do everything possible to keep people who would be interested in perfecting their citizenship from doing it.

They offered, as the gentleman says, absolutely no service. If they offered anything, it was a discouraging note to keep out because, as it was even reported in the 1930's, when the depression crunch came in 1934 in my city of San Antonio, for example, what history does not note, I have not seen anybody at the University of Texas have a Ph.D. on this, nor does San Antonio itself record the history of this epoch.

We had a country in a city. We had thousands of people who had fled Mexico because of the revolutions, counterrevolutions, and these were intellectuals; these were businessmen, and in 1934, two things happened: One, the acuteness of the depression; the other was the amnesty proclamation of President Lazaro Cardenas.

With that, in 1934 alone, 22,000 people left the city of San Antonio to go back to Mexico. They repatriated themselves. Why do I know this? Because my father was in what roughly would be called a managing editor position, what have you, of the only Spanish-language daily newspaper published in the United States for 44 years.

Actually, those 22,000 were subscribers they lost, and the paper eventually faded. The downturn started that year.

But in the San Antonio papers, you have prominent officials of the San Antonio Chamber of Commerce advocating the forcible return of these elements because they were taxing the resources of the city.

Mr. ROYBAL. Mr. Speaker, will the gentleman yield?

Mr. GONZALEZ. I yield to the gentleman from California.

Mr. ROYBAL. Mr. Speaker, at that particular time, or course, they called it one thing, but today it is called voluntary departure.

Mr. GONZALEZ. Voluntary departure. Let me tell the gentleman that just less than 2 months ago, and this did not involve a Mexican-American type; it involved actually an individual from Germany. This was a couple.

I had introduced a private bill for the wife 2 years ago in order that she would not be deported summarily by the Immigration. They antagonized the local immigration officials. And, incidentally, to really muddy up the affairs more, the District Director is the first Mexican-American District Director of Immigration we have had, so you cannot blame that.

But they waited until this woman was caught in between this hiatus. She moved from my district to the adjacent congressional district, so just less than 2 months ago, the Immigration officials, like Gestapo, traced her, while she got in the car with her two young sons, they halted her on the street, arrested her, left the car with her 2 young sons there, took her to the airport by force, put her on an airplane to Mexico City so that she could get back to Germany the best way she could.

This is in America in 1986. Incidentally, it is not a Mexican alien.

So that when you sanction and when you allow tactics of discrimination, of prejudice, of injustice, when they are directed at some segment, what we are saying is, sooner or later, we are all going to be the subject of that injustice.

Mr. ROYBAL. If the gentleman will yield, I would like to tell the gentleman about a particular instance in my district. A roundup took place in the textile section of my district, and, incidently, all the textile in California is actually, I believe, in the district that I represent, but this raid took place. Women were taken to jail and put on a bus and taken to Tiajuna, with the exception of eight of them. Eight women they left behind. The put them in the same cells that they put the prostitutes in every night. They kept them incommunicado from Monday until Friday morning. I got into the city on Thursday. It was Friday morning before they were released.

But among those eight women were two who were raised right in the Boyle Heights area, born in Boyle Heights, raised in Boyle Heights. They did not even ask them where they were born, just simply because they were of Mexican descent, they worked at the same place where others were working, they rounded them up and they put them in jail under those conditions.

Their husbands looked for them, could not find them. Finally they contacted my office and we were able to locate them.

That is not the purpose of the Department of Immigration. I think that when any department of the Federal Government takes it unto themselves to conduct such a roundup and then put people in jail for those days incommunicado, I think that that is a disgraceful way in which any department can proceed.

In this particular instance, there was not even an apology to the two women who were American citizens, not even an apology.

That continues to take place time after time, time after time. But a situation like that can be corrected if, in the legislation that has been presented to us, it does just those things that will continue to perpetuate that situation.

What it does when they protect the farmer, when they make it sure that under that piece of legislation there is a steady flow of cheap labor to the farmer and the grower, they exempt the farmer from sanctions and then, at the same time, they wanted to give

instant legalization to those who work on the farms for 60 days.

□ 1055

Now, what about all those other people who come in and are working elsewhere, and what about the people who can adjust to status, and there are thousands and thousands of them who can that are unable to do that because the Department of Immigration does not provide the necessary personnel to have that done?

In the city of Los Angeles every Monday one can find a line of people that surrounds that building trying to get their status adjusted, and when they reach the desk, there are only two clerks taking care of these thousands of people who can adjust their status but are unable to do so because there is no service in the Immigration Service of the United States.

What we need in this country is immigration reform. We are for immigration reform.

Mr. GONZALEZ. That is right.

Mr. ROYBAL. We have already met in the past with the various Hispanic organizations in this country and we have drafted that piece of legislation that is immigration reform. It has been introduced for the last 10 years. I have introduced it for the last 10 years and no one has even looked at it.

We are going to make another attempt in this coming year. We will meet again with these organizations. We will redraft again immigration reform. We will leave out of that immigration reform anything that relates to the importation of cheap labor, but we will confine our entire legislation to reforming the Immigration Service of this country and reforming the immigration laws of the United States. That is what we want to do, but no one seems to give us an opportunity.

I think the gentleman knows that last night there was a meeting that took place, and one will take place this afternoon, where they are going to do everything they possibly can to bring again this immigration bill to the floor after it has been defeated twice.

Now, how many times does this House have to defeat a bill before those who want to pass it realize that it is not acceptable?

What I do not like about the situation is that those of us who really know something about the problems of inmigration and how it affects thousands of people, particularly the Spanish-speaking people of the United States, were not even invited to this particular meeting.

Mr. GONZALEZ. If the gentleman will permit me on this particular point, I know the gentleman is modest and in his modesty has not noted what I think the record ought to show, and that is that the gentleman from California [Mr. ROYBAL] is the national president of NALAMEO, or the National Association of Latin American Elected Officials. It is a nationwide organization. It is on the basis of the gentleman's experience as having been the founder and the national president of this organization that enabled him to forge the suggested legislation to which I subscribed by name, I think, in two Congresses, if I am not mistaken.

Mr. ROYBAL. That is right.

Mr. GONZALEZ. I know that in the previous Congress, the 98th, the gentleman did introduce it, and I subscribed to it and I certainly do now, because it is based on the distilled wisdom and experience of these officials who are at the cutting edge of our society with respect to this problem.

I think the record ought to show that this is the gentleman's role and this is why he speaks the way he does, and certainly not out of any presumptuousness, and speaking for myself as well, any false sense of national origin or undue pride or arrogance on that point, but merely the fact that the gentleman has this experience and has this knowledge, and the gentleman is right. At no time has any Member that has indicated an intense interest and concern been invited to these deliberations.

The gentleman and I know, as the gentleman says, yesterday and today this select group is needed in order to see how they can—do what? Cram through some last minute maneuvering in these dying days of the Congress some kind of legislation down our throats.

We hear all this bleeding and crying about how one party does this and the other does not; but I think what we ought to note is that the gentleman here has offered constructive, creative legislative proposals that certainly should have deserved the consideration of the subcommittee and the committees involved in these processes.

Mr. ROYBAL. Mr. Speaker, will the gentleman yield further?

Mr. GONZALEZ. Certainly, I yield to the gentleman from California.

Mr. ROYBAL. The gentleman probably will remember that the first time the farm labor bill was brought in and called immigration reform, that it came in with an open rule, which meant that we could debate the bill extensively.

Mr. GONZALEZ. That is right.

Mr. ROYBAL. Then the second time they cut that rule to 10 hours of debate. Well, in 10 hours I suppose we should be able to debate a bill.

This year there were 2 hours of debate, and in the introduction of the rule itself we were not given even a single minute to express our position with regard to the rule.

Mr. GONZALEZ. That is right.

Mr. ROYBAL. We were also not given an opportunity to debate the bill, with the exception of 3 minutes, while those who were in favor of the bill got the remaining time, which was 1 hour and 57 minutes, against 3 minutes for an opposite view.

I do not think that is the democratic way of doing things. If they really want to shove something down the throats of the Congress, I think they should at least be able to give us the time to voice some objection, but to try to muzzle the congressional dissent is not the democratic way of doing things. If they really want that kind of legislation to be presented and to pass, but primarily to be presented, it seems to me they should just give some semblance of fairness, even if it is a fake semblance of fairness, and provide enough time for the opposition to express its concern.

Our concern, again repeating, is the fact that this is not immigration reform, that this is a bill that simply provides a free flow, a continuous flow of cheap labor to the growers and the farmers of the United States. It has nothing to do with immigration. It is something that should be set-aside and brought in as a separate bill. That is the way that should be done, and immigration reform should be dealt with intelligently with enough discussion.

I think we in this House can all agree on a good immigration reform bill that does in fact bring reform to the system itself.

Mr. GONZALEZ. May I ask the gentleman a question. If we were to have adopted in toto, completely word for word, every single proposition that has been offered to the Congress in the last 10 years by the Judiciary Committee, would it have reduced the inflow of illegal entry into our country by one individual?

Mr. ROYBAL. In my opinion, it would not, and regardless of what is done I do not believe that the flow of illegals into the United States would be reduced.

Those who advocate sealing the borders by placing the military there with machineguns could not stop the flow of the man who is hungry and who is seeking food for his family. He will cross any machinegun line to get food for his family. If the food is on this side and as long as he is starving on that other side, that man will find a way to come across.

Now, I think that a great deal has to be done by this country to bring about a change in this hemisphere. Instead of sending guns and ammunition to Central America or anyplace else in this hemisphere, I think we ought to develop a system—and I have said this before and I will repeat it again—a system similar to that which was established when, after bombing Europe

and destroying Europe, we rebuilt it under the Marshall plan. We bombed Japan, you know, twice. Now they are bombing us with Toyotas and Datsuns and our balance of trade is unfavorable.

Mr. GONZALEZ. Plus the statements recently, if the gentleman will allow me, of one of the high-ranking Japanese officials, Mr. Nakasone, having to do with minorities in the United States, you know, a horrendous statement.

The gentleman is absolutely correct and it brings to mind a letter and a couple telephone messages that I received in my San Antonio office just over the last 10 days. One letter was from a citizen, not in my district, saying:

> Are you an American or not? What are you worried about with these aliens? What we ought to do is perform a vasectomy on every single alien and then brand them.

The other:

> What are you worried about? Shoot them as they try to cross the border.

Now, all this kind of thinking does, all this shouting and periodic exacerbation of fears about the invasion of the hordes of aliens coming across and these reports that various commissioners have issued from time to time when they want legislation about how the number has geometrically increased, if not exponentially, all it does is bring up these xenophobic feelings and fears that have always plagued our Nation all through our history.

Mr. ROYBAL. Mr. Speaker, if the gentleman will yield on that one point, it is quite interesting, because if guns were placed at the border, and when we are talking about the border we are always talking about the southern border, we never make reference to the northern border.

Mr. GONZALEZ. Exactly.

Mr. ROYBAL. The truth of the matter is that there are thousands of people who cross into the United States from Canada everyday to take jobs away from Americans and go back to Canada at night, thousands every day, and they do not have a green card.

Now, if they placed machineguns at the northern border, what a slaughter that would be on a daily basis.

Mr. GONZALEZ. Well, on that point, it reminds me also that not more than 60 percent, actually a little bit less of the illegal entry into our country, is from the southern border. Over 40 percent is from other areas. In the Pacific, for instance, you have a high rate of Asiatic and Philippine illegal entries. Nobody talks about that.

You have a high rate on the eastern and on the Canadian border. Nobody talks about that.

Everybody thinks that 100 percent of the illegal flow is coming from the Mexican border and that it must be Mexican illegals, when the truth is that because of the direct result of some of our policies in such Central American countries as El Salvador, I will tell the gentleman that in my city of San Antonio and in the city of Houston you have more illegal peasants from El Salvador than you have from Mexico.

I just wanted to interject that fact, because the gentleman has brought up some very important points.

I cannot thank the gentleman enough for all he has done. He has taken the leadership. I think in all justice we ought to note that he singlehandedly fought just about 2 years and enabled some of us who were absorbed with other chores in other areas to finally come around and join; but I think the record ought to show that the gentleman from California has been in the forefront. The gentleman has not only been somebody against something, he has been creative. He has been seminole in his thinking with respect to this issue, and it is very important to this country.

Probably because it is a symptom, it is not a cause of what it is we and the leadership in our country has not done with facing reality south of the border.

□ 1110

Of course until we address the cause, we can hardly find a solution through ill-advised restrictive and coercive purely domestic measures.

I have introduced several suggestions for years. I have always maintained that unless we have a binational approach that we are not going to solve it unilaterally, either on the part of our country or on the part of the Republic of Mexico, and that until we have a binational get-together. And also the source, which is economic.

Mr. ROYBAL. Mr. Speaker, will the gentleman yield?

Mr. GONZALEZ. I yield to the gentleman from California.

Mr. ROYBAL. That is the key word, economics. If we were able to help the underdeveloped countries of this hemisphere develop their own economies, they would not be coming to the United States because they are hungry; they would be working in their own country.

Mr. GONZALEZ. That is right.

Mr. ROYBAL. I do not know, for example, of any Japanese national that is in the United States because he is starving in Japan. He comes here for other reasons. But I do know of many thousands that are starving in their own country and come here seeking some opportunity to live in dignity.

Mr. GONZALEZ. No question of that.

Mr. ROYBAL. I would like to thank the gentleman for this opportunity to at least have a little dialog back and forth with regard to this immigration bill. We want to make it understood that the opposition, at least my opposition, and I know the opposition of the gentleman from Texas, is based on the fact that the immigration bill is not directed toward solving the problems of the illegal, nor is it directed in an effort to try to solve the problem of immigration as a whole.

I will be happy to work with the gentleman from Texas in bringing in a bill that deals only with immigration reform, that we use an intelligence approach, and we will do everything that we possibly can to see to it that the various organizations, Hispanic organizations, in this country take a part in the drafting of that bill, so that that becomes an acceptable bill.

I only hope that it will be an acceptable procedure for the chairman of various committees that will handle that particular bill. That is the only obstacle that I see in the way of finally passing an immigration bill that makes sense.

Mr. GONZALEZ. I agree with the gentleman.

Mr. DANNEMEYER. Mr. Speaker, will the gentleman yield?

Mr. GONZALEZ. I am glad to yield to the gentleman from California.

Mr. DANNEMEYER. Mr. Speaker, I have been listening to the dialog between my two colleagues on this issue.

Mr. GONZALEZ. We thank the gentleman for that. Greater love hath no colleague than to listen to somebody else's speech.

Mr. DANNEMEYER. I think that it needs to be said for the sake of perspective that some things are not being said in this exchange that need saying in order to give the perspective that House Members would like to hear and see. This House, by a majority today, would approve a comprehensive immigration reform law for the country but for one very significant fact: The Democratic leadership which controls it, and the gentleman from New Jersey [Mr. RODINO], the chairman of the Committee on the Judiciary which has jurisdiction over it, adamantly refuse to permit any bill on immigration reform to come to the floor that includes a guest-worker program—adamantly refuse.

Mr. RODINO has said publicly that he will not take a bill to conference with the other body that contains a guest-worker program. One of the strange things about this whole issue is that—I will say it again—this House last week disapproved a rule for consideration of the immigration bill that did not contain a guest-worker program.

It is politics, but I think that the party that is producing that result should be accountable to the American people for the frustration that we all feel.

Another thing that the gentleman mentioned was about the matter of

these people coming here for economic reasons. I accept that totally. I do not favor building a fence across our southern border, because, frankly, we are not going to keep the people out. If any of us were raised in Central America or Mexico today under the conditions that exist, I think that we would vote with our feet and come north, just because there is a chance here—and thank God that there is a place in the world where there is a chance.

Let us reflect a little on what happens in southern California in the area that I represent when we fail to enact a law that gives those who come here illegally some status. This is not unique to Santa Ana or Fullerton or Anaheim or Garden Grove. It happens in Boyle Heights, where my mother grew up. The people are without status and they are victims of vicious crimes because there are hoods in any culture, and the victims of these crimes who just want to go about their business of earning a living are afraid to go to authorities to report that they are a victim of a crime, because they know when they do that that they will come into contact with law enforcement and probably be sent back from whence they came.

When we fail to adopt a comprehensive reform law, we are relegating these people to the jungle living right in California today, and we are all responsible for that, because we all serve in this body. But we had better wake up to the fact that we Californians—now the gentleman is from Texas, but I suspect that he has a few illegal aliens in Texas. I know that we in California have them.

I thank the gentleman for permitting me to share these thoughts with him.

Mr. GONZALEZ. I thank the gentleman for participating, and I am sure that I do not want the gentleman to feel that we are interpreting his remarks as saying that all the geese are over on this side of the House, and all the swans are over there on that side of the House. I do not think that that is so.

What I am going to do, I will defer to my colleague from California, because the gentleman referred to southern California, and my understanding is that the gentleman is from southern California. I would like to also refer to a very, very significant part of the basic issue, which has to do with under what circumstances do we recognize the introduction of labor into our country, into any sector, whether it is the agriculture or the industrial sector.

Mr. ROYBAL. Mr. Speaker, will the gentleman yield?

Mr. GONZALEZ. I yield to the gentleman from California.

Mr. ROYBAL. Mr. Speaker, I somewhat agree with some of the remarks the gentleman made, but I disagree with placing the blame on the committee or on this side of the aisle, when the truth of the matter is that the result of last week's vote actually came from the effort on his side of the aisle.

Let us not place blame anyplace. Let us look at this thing from the standpoint of what is best for the country. My position is that neither the bracero bill nor the guest-worker program of any kind has any room and should not be included in an immigration bill. That should be separate and apart from immigration reform. Those who want the type of program that the gentleman has suggested should bring in legislation to that effect, but separate and apart from immigration reform, because it is not immigration reform. Any program that brings in people from anywhere else outside of the United States into this country only perpetuates, in my opinion, the illegal status of that person that is brought in because he remains in the United States without legalization.

The Wilson amendment on the other side said nothing about legalization. The bracero program of yesteryear did not have legalization in it. Again, that is something that should be handled separate and apart from immigration reform. We are talking about reforming the immigration laws of the United States, and regardless of where it originates, on the gentleman's side of the aisle or on mine, it should be done in an intelligent manner, but dealing only with the problems of immigration. Leave out this guest-worker program, and all this other attempt to supply the growers and the farmers with a steady supply of cheap labor in an immigration bill. If that has to be done, do it by treaty, or do it any other way, any other way you wish to do that, but not in an immigration bill, because it is not immigration reform when that is done. That I think is the difference between the positions that we have taken. We want immigration reform, but immigration reform only, and nothing else.

Mr. GONZALEZ. Interestingly enough, the President's economic advisers in the President's Economic Report say that the illegal presence in the United States is beneficial to the American economy. I do not know if the gentleman has read the President's Economic Report, but that is what it says. I just wanted to bring that out because of the complexity of the interpretation of even the economic factors.

Mr. DANNEMEYER. Mr. Speaker, will the gentleman yield?

Mr. GONZALEZ. I yield to the gentleman from California.

□ 1120

Mr. DANNEMEYER. I thank my colleague for yielding.

Let me say that your side controls the Rules Committee, right?

Mr. GONZALEZ. Excuse me for interrupting, but some parts of our side. Certainly I cannot be accused of that.

Mr. DANNEMEYER. Well, the Democrats run this House. They have for the last 34 years continuously.

Mr. GONZALEZ. Excuse me, but the gentleman knows our party structure and our party discipline and the American parliamentary tradition is very loose. It does not have that stern discipline that you have in the British system, in the Mother Parliament.

Mr. DANNEMEYER. I disagree, sir. But will the gentleman yield further?

Mr. GONZALEZ. I certainly do.

Mr. DANNEMEYER. My point is this, and I respect my colleague, the gentleman from California [Mr. ROYBAL] from Los Angeles County. We have a difference of opinion as to whether the guest-worker program belongs in immigration reform or not. I respect that.

But my suggestion would be this: You are running this House, you control the agenda. Bring the immigration reform bill to the floor of the House. Let us offer the amendment that we have in mind for a guest-worker program and let the sense of the House decide whether we want to have it as a part of the bill. That is the democratic process.

Mr. ROYBAL. Mr. Speaker, will the gentleman yield?

Mr. GONZALEZ. Certainly I yield to the gentleman from California.

Mr. ROYBAL. Mr. Speaker, the gentleman knows very well he has had that opportunity over the last 8 years. We have had an immigration bill here that is called immigration reform that had the exact provision that the gentleman is talking about, only it was called at that time the Panetta amendment. Now it is called the Wilson amendment. But it is the same thing that we have had before. And during those years it has failed time and time again. Just last week it failed twice.

The only thing we are asking is let us try a new system, a new way. Let us separate the two. Let us deal with immigration reform and immigration reform only, and then if you wish to bring in the Wilson amendment or the Panetta amendment or anything else that you want, bring it in in separate legislation. Then we will vote it up or down.

Mr. DANNEMEYER. I can just respond that I think the point has been made that we are prepared to vote it up or down as a part of the immigration bill. Let the sense of the House prevail, and then we will interface with the other body in conference, and hopefully we will come to a conclusion.

There are so many crosscurrents in this immigration bill, and I mean this

in the best sense, there are just conflicting points of view. It is the classic example of whether we will ever get a solution that will form itself into a legislative conclusion in the form of a bill because of all of those crosscurrents.

I am not condemning anybody. There is enough blame to go around. But I think when we establish accountablility in this House by letting the sense of the Congress work its will on an amendment that I believe the sense of the House desires, that to me is the democratic process, and that process today is being frustrated by a leadership in this House that refuses to let the matter come to a vote, and that is not right.

The SPEAKER pro tempore (Mr. ABERCROMBIE). The time of the gentleman from Texas [Mr. GONZALEZ] has expired.

TAKING THE NO TAX INCREASE PLEDGE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Pennsylvania [Mr. WALKER] is recognized for 60 minutes.

Mr. WALKER. Mr. Speaker, we are faced with a truly difficult issue in this Congress and in this country. It is the issue of how do you go about dealing with the massive deficits that congressional spending over the last 30 years have brought to this country. It is an issue that we must face because future generations depend upon our courage in facing that issue.

You cannot look at what is going on in Government today and suggest that you cannot move to eliminate the deficit. I think that broadly across this body, Democrats and Republicans, conservatives and liberals, have come to the realization that you cannot continue to mount up uncontrolled deficits into our future, that it is the height of selfishness for this generation to spend the money and then impose the bills on our children and our grandchildren, to continue to mount up the kinds of deficits that could bring us to the point that every dollar collected in income tax could go to just pay interest on the debt we have accumulated.

I think it becomes clear to all people of good will, be they Republicans or Democrats, be they conservatives or liberals, becomes clear that we have to deal with the deficit. The question then becomes, and it is the important question facing Congress, facing the country, how do you deal with the deficits?

Again, people of good will, and looking at that come to the conclusion that you have got to deal with it, but they may well come to the conclusion that you deal with it in different ways. Some say that you ought to deal with the deficit by raising taxes. Others say that you ought to deal with the deficit by cutting spending. That is the real division in this country.

I sincerely believe that there is nobody in a responsible political position in this country that does not want to do something about the deficit, that the issue facing our times is how do you deal with the deficit. Do you deal with it with tax increases or do you deal with it with spending cuts.

As for me, and as for a number of people in a bipartisan effort now gaining momentum in this country, we believe that you deal with it by cutting spending, not by raising taxes. As a matter of fact, we think it is important that we now commit this Congress to take action toward committing the next Congress to no tax increases.

We have just come through heated debate over a period of months about a tax reform bill. One of the major ingredients of that tax bill, one of the only driving forces behind the tax bill was the elimination of some deductions for people so that we can, in fact, lower their tax rates, because there are many of us who believe that over the long haul lower tax rates for working families is, in fact, the best kind of economic policy.

So what we did was we brought forward a bill that pegs tax rates at 15 percent at the low end, after eliminating many millions of people from the tax rolls altogether, and 28 percent for upper income people and 34 percent tax rate on corporations with the idea that there would be stable tax rates at relatively low levels that spur on economic development.

But having gone through that exercise, we can ill afford to have people in this country making economic judgments, whether they be working families, or whether they be companies looking at creating jobs for our future, we can ill afford to have any of them saying that Congress may come along and raise our taxes, because as soon as they begin to say that they decide not to buy that new car or that new refrigerator or that new house, or they decide not to make that investment that creates that job that therefore leads to reduced unemployment, that therefore leads to economic growth. Those decisions could be disastrous for this country.

□ 1130

The only way that we can stop people from having the fear that we may eliminate the tax reduction with increased taxes in the future is for politicans in this country to take the pledge, the pledge of no tax increases.

The pledge to stick with the rates that we have now developed. A pledge not to raise those rates in the future. A pledge not to bring down deficits by increasing taxes. A pledge to spur on economic growth by keeping tax rates low.

That is what we have out here today; and as we have had out here for the last couple of days as we have discussed this issue on the floor. You have two different pledges that we are saying to politicians, that you've got to come down on one side or the other.

One in the no tax pledge. What that says is, "We will not raise taxes." As of last evening when we first began to have people sign on to that tax pledge, we have steadily built a record of people coming to this floor and signing on to the no tax pledge.

On that tax pledge at the present time are more than a dozen Members who have taken that particular pledge, come to this floor and signed the no tax pledge.

On the other side is the Walter Mondale truth in taxing pledge. We all remember the former Vice President, who was the Presidential candidate of the Democratic Party in 1984 when he told the country that he was going to tell them the truth, that both President Reagan and he were going to raise taxes.

Well he was wrong about President Reagan, but he defined completely what it was that he was all about. He was for raising taxes. We have heard from democratic leaders in this House over a period of months now, over the last 12 months or so, their intention to raise taxes.

There are numerous statements on the public record from democratic leaders saying that ultimately what we will have to do in order to lower deficits is to raise taxes.

So it seems to us that those people who sincerely believe that might want to sign another kind of pledge, the Walter Mondale truth in taxing pledge. We do not have any signatories on that yet, but it seems to me that it is the kind of thing that people who really want to be honest about their position might want to do.

The fact is that there are politicians who today are coming forward and taking the no tax pledge, because they do sincerely believe that the way to economic growth in the future is to have lower tax rates and keep them down.

It is important to recognize that we are not talking in some esoteric sense here. We are already seeing the taxes piled on. Within a few days, we may well have out here on the floor a bill designed to do a good thing: To raise money to clean up toxic waste in this country under the Superfund Program.

When the Reagan administration first sent that program to the Hill, they asked for something more than $5 billion, a major expansion of the program, in order to clean up those toxic waste sites, and they said that the taxes ought to come out of those industries that had contributed most

to the toxic waste problem, namely, the petrochemical industries. That was their proposal. Congress in the next few days is likely to bring to the floor a bill that has drastically changed that, that adds among other things an oil import tax which in my section of the country is a major tax increase for the American people.

Why? Because our industries are dependent upon oil imports to run those industries, and so it is aimed at those basic industries in our country that have already been hard hit by the foreign imports; and now we are going to impose an additinal fee on them for energy.

It is aimed at those people who drive in this country, who drive their automobiles because they indeed will pay higher gasoline taxes as a result of the bill, as a result of the oil import fee and some other things that are done in the bill.

It will cause, right as the winter approaches, higher home heating bills for people throughout the Northeast who will be paying this tax indirectly as they heat their homes. It is not an esoteric argument. The real issue here is raising taxes.

Now this particular pledge does not even deal with that kind of tax; the oil import tax would not be dealt with in this particular pledge because it is aimed at individual tax rates, but I point out the issue simply because we are going to have Congress consistently now coming forward with ideas for raising taxes rather than cutting spending.

It seems to this gentleman that before we start talking about raising taxes to the American people, that our main goal ought to be to cut spending. Do the American people agree with that? By overwhelming numbers they agree with that.

The polling data suggests that the American people want something done about the deficit; and by overwhelming numbers they say that what they want done about the deficit is they want us to decide spending priorities in Washington in a way that gets the deficit down by reducing spending.

What we consistently say in this body and what we have had some Members come to the floor and say within the last couple of days is, "We can't do it. We simply can't muster enough courage here to cut spending."

I would suggest that there are some Members of Congress who are willing to do the tough job of cutting spending, and have records to show it. A number of groups recently have come out with data to show that there are Members of Congress who are willing to stand up and vote against spending.

The gentleman from California [Mr. DANNEMEYER] who is one of the signers of this pledge, who signed the pledge today, is here on the floor this evening. Mr. DANNEMEYER is one of the people who has the courage of his convictions. He comes to this floor; he not only votes to reduce spending, he offers amendments to cut spending. He does the kind of work out here that assures that the American people have a chance to see who voted to keep spending as is or raise it.

That takes some courage, but there are people willing to do it. What I would suggest is that this election year may be all about those people versus the people who want to tell you that we cannot do it. Those people who say, no new taxes because we are willing to cut spending; and those people who are saying, we want to go on spending so we want to increase your taxes.

That really is the dividing line. How do the American people know who is who? Well, the one way they can tell who is who is find out who took the pledge. Who said that they were not going to raise taxes? Because they are making a commitment to you. They are not saying that they are not for reducing the deficit; in fact, they are making the point that they are for reducing deficits but not with tax increases.

Let us reduce the deficit by cutting spending.

Mr. DANNEMEYER. Mr. Speaker, will the gentleman yield?

Mr. WALKER. I yield to the gentleman from California.

Mr. DANNEMEYER. Mr. Speaker, I notice that the chart there to my right, to your left, the Mondale Truth in Taxing Pledge contains no signatures. I am curious, my friend from Pennsylvania [Mr. WALKER], have you asked anybody, any Member of the House, to sign that Truth in Taxing Pledge; they promise to raise our taxes here in the House?

Mr. WALKER. I would say to the gentleman, we are trying to communicate to our colleagues. The gentleman from Georgia [Mr. GINGRICH] came to the well in the 1 minute and suggested to people that if they came to the floor to debate this issue with us, we would be very glad to yield time, and that we would have these pledges here, and that anybody who sincerely believes that we ought to reduce deficits by raising revenues, ought to come out to the floor and sign this pledge.

So the invitation has been issued. I must say, though, that we have had a decided lack of enthusiasm of people coming to the floor to tell it like it really is. They will hint at it. They will come to the floor and they will talk about the need to maybe find a way to raise revenues or they will say that the responsible thing is to have a balanced program, of cutting spending and raising revenues; or they will say that no responsible person looking at the deficit could ever think that we cannot do it without raising revenues.

They will hint at it all the time, but when it comes to making a decision, they do not sign either one.

Now it seems to me that the choices are obvious. You are either for taxes—Mr. Mondale, or you are against taxes, and you ought to choose one or the other and you ought to let the American people know it is simply, it seems to me, in the best political traditions of this country to allow the voters to know up front, "Where do you stand on this crucial issue."

Mr. DANNEMEYER. If the gentleman will yield further, I want to commend my colleague from Pennsylvania [Mr. WALKER] for taking this special order, and bringing this to the attention of the Members of the House. I suspect that we will be here through next week, concluding the work of the 99th Congress.

By the way, we all know the 99th Congress has earned its place in infamy as the Congress which created the highest deficit in the history of the Republic. The published deficit, as the gentleman knows, is $230 billion. The actual general fund deficit is about $295 billion because we are crediting against the reduction of the general fund budget deficit $65 billion of Social Security revenue that truly cannot be used for general fund spending; it has to go into the Social Security Trust Fund.

I would say that I commend the position the gentleman has taken; this is a choice that Members of Congress, those of us seeking reelection are going to have to address, whether we are going to say to the people of our country and I can say to my friend that earlier this year, in my district in southern California, I conducted a survey, like many Members do, and one of the questions related to this very question:

How do the constituents of the district that I represent in southern California want this deficit problem solved; by raising taxes or cutting spending?

□ 1140

And the percentage of those resisting tax increases and favoring spending cuts is so overwhelming, it is between 75 and 80 percent in the 39th District of southern California.

Mr. WALKER. I thank the gentleman because I have had similar results out of my district, the 16th District of Pennsylvania. When we have asked people how they want to reduce the deficit, it is overwhelmingly in favor of cutting it out of the spending that we are doing. The American people believe that there are many places within Federal spending that we could find to cut if we would truly have the courage to do it. Do you know something? I think they are right. I think the gentleman from California would

agree with me that they are right. The American people on this issue are smarter than the politicians because the American people have taken a look at what goes on in this Government, and they have decided there are a number of places that this Government could find the money to reduce the deficit. We also know that if we could inspire the economic growth that comes from lower taxes, what we can do is have revenues coming to the Federal Government as a result of that growth. If instead of spending away those growth revenues we would apply those against the deficit, we could in fact use that money to also collapse it without doing major cuts in areas of the budget. So there are alternatives open to us other than raising taxes, alternatives that we too often do not want to take.

The gentleman also mentioned, and I think it is an important point to ponder, that this Congress not only has run up the biggest deficit in history but we have also managed, the other day, to pass the largest single spending measure in the history of the world, in the history of all mankind. At no place in recorded history has there ever been more money spent that what we decided to do on the floor the other day by one vote. By a vote of 201 to 200, this House decided the other day to spend more money than has ever been spent in the recorded history of man. That is the reason why the American people know there is something wrong, know that there is something that can be done, because if you take the largest single spending measure in the history of mankind, they have a feeling that somewhere in there we can find some savings, savings enough to begin to reduce the deficit, savings enough to ultimately find a balanced budget by the early part of the next decade. And they are right, they are certainly right.

Well, I think the point is clear: the choice for the American people is between those who would tax you and those who would reduce your taxes; those who want economic growth and those who want more revenues for the Federal Government.

The people who are coming to this floor taking the pledge are the people who want economic growth and no new taxes.

As I conclude here with this special order, I do want to note the people who have already signed the no-tax pledge. The no-tax pledge says, "I pledge to oppose any effort to increase tax rates from the 15 and 28 percent rates for individuals and the 34 percent top rate for businesses and to oppose any further reduction or elimination of deductions and credits unless matched dollar for dollar further reducing tax rates."

That is the no-tax pledge.

Already just the last few hours that we have had this chart available on the floor, these people have signed that no-tax pledge: DUNCAN HUNTER of California, CONNIE MACK of Florida, myself from Pennsylvania, TOM DELAY from Texas, NEWT GINGRICH from Georgia, LARRY CRAIG from Idaho, BOB MCEWEN from Ohio, MIKE STRANG from Colorado, GERRY SOLOMON from New York, JOE BARTON from Texas, PHIL CRANE from Illinois, BILL DANNEMEYER from California, DON SUNDQUIST of Tennessee, JIM SENSENBRENNER of Wisconsin; a group of people spread across this country.

I will tell you that there are more who are coming into this battle because I have introduced a resolution that contains the wording of that pledge. Already 90 Members of Congress bipartisanly, Democrats and Republicans, have signed on to a resolution that will take this pledge to send on to the 100th Congress our concept that this pledge ought to be the pledge of the 100th Congress. Ninety Members of Congress bipartisanly are saying no new taxes.

Members are coming to the floor and signing this pledge.

I would say that it is something that the American people can now focus on.

The American people may want to tell their own Congressman, may want to call their own Congressman's office, may want to take whatever steps are necessary to ensure their Congressman tells them one way or the other what they plan to do. Do they plan to sign the no-tax pledge or the Walter Mondale truth-in-taxing pldege?

I would hope they would pick the no-tax pledge. I would hope as the day goes on and as we finish out the session—as the gentleman from California indicated we will probably be here next week—but throughout that time next week we will be asking people to take the pledge, take the no-tax pledge.

Mr. Speaker, I yield back the balance of my time.

PORNOGRAPHY: THE MEESE COMMISSION REPORT AND THE EFFORTS TO DISCREDIT IT

The SPEAKER pro tempore (Mr. ABERCROMBIE). Under a previous order of the House, the gentleman from California [Mr. DANNEMEYER] is recognized for 30 minutes.

Mr. DANNEMEYER. Mr. Speaker, I take this special order today for the purpose of talking to the Members a little bit about the work product of the U.S. Attorney General's Commission on Pornography and what has transpired since the Commission issued its report earlier this year.

The Members may recall what the recommendations were, but I have a summary of them here, and I would like to read them, to put the report of the Commission before us, and then make some comments with respect to them:

The Commission divided pornography into four classifications and then analyzed each classification according to three tiers as set forth below:

I. SEXUALLY VIOLENT MATERIALS

A. Social Science Evidence—Negative effects were found to have been demonstrated.

B. Totality of Evidence—Harm found in all sub-tiers. 1. Acceptance of Rape Myths. 2. Degradation of the Class/Status of Women. 3. Modeling Effect. 4. Family. 5. Society.

C. Moral, Ethical and Cultural—Harm found.

In this category the Commission was unanimous in believing that such material should not enjoy circulation in our society.

The second category was:

II. SEXUAL ACTIVITY WITHOUT VIOLENCE BUT WITH DEGRADATION, SUBMISSION, DOMINATION OR HUMILIATION

A. Social Science Evidence—Negative effects were found to have been demonstrated.

B. Totality of Evidence—Harm found in all sub-tiers. 1. Acceptance of Rape Myths. 2. Degradation of the Class/Status of Women. 3. Modeling Effect. 4. Family. 5. Society.

C. Moral, Ethical and Cultural—Harm found.

In this category the decision of the Commission was unanimous that this class of materials should not enjoy circulation in our society.

The third classification:

III. SEXUAL ACTIVITY WITHOUT VIOLENCE, DEGRADATION, SUBMISSION, DOMINATION OR HUMILIATION

All Commissioners agreed that some materials in this classification may be harmful, some Commissioners agreed that not all materials in this classification are not harmful. It was determined that this classification is a very small percentage of the total universe of pornographic materials.

In other words, the Commission was split in their decision as to whether or not publications in this category, the third category, should be permitted to be circulated in our society.

The fourth category was:

IV. NUDITY WITHOUT FORCE, COERCION, SEXUAL ACTIVITY OR DEGRADATION

All Commissioners agreed that some materials in this classification may be harmful, some Commissioners agreed that not all materials in this classification are not harmful. See text for further discussion.

In other words, the Commission was split on whether or not publication of materials within this category should enjoy circulation in our society.

One of the members of this Commission lives and has his business in California, Dr. Dobson. He has a radio program called "Focus on the Family." It is nationally heard. Some of the Mem-

bers may have heard Dr. Dobson on the air.

He issues a publication. A constituent came to my office yesterday, which prompted my taking out this special order to bring this matter to my colleagues' attention today.

I will read a portion of this recent publication of Dr. Dobson because I think it illustrates to the Members what we are about to receive in terms of Representatives of the people of this Nation on the work product of the Commission itself. In other words, what this letter says, in effect, is that a very large public relations firm here in Washington has been hired to discredit the work product of the Commission, and I would like to read some of the comments that Dr. Dobson made relating to it.

We are engaged in an awesome struggle with a pornography industry that degrades and humiliates women, destroys children, corrupts the morals of our youth and devastates our families. This $8-billion industry, which is controlled almost exclusively by organized crime, has operated virtually without governmental interference for more than 16 years. But now, the producers of porn are gravely concerned. Their lucrative empire is threatened by the Meese Commission report which could reduce profits and awaken the American people to the debauchery of their trade. Consequently, they are wounded, they are angry, and not surprisingly, they are striking back.

For openers, it is our understanding that Penthouse magazine will soon release a book entitled, The United States of America Against Sex: How the Meese Commission Lied About Pornography. That should be edifying. More disturbing, however, is news of a $900,000 contract awarded by opponents of the Attorney General's Commission to the public relations firm of Gray and Company, in Washington, D.C. This is one of the most influential establishments in the nation's Capital, with many friends and associates in high places. Clearly, they intend to use all their resources in this propagandistic effort. According to an inside document provided to us by someone within his organization, Gray will seek ways to ridicule the pornography report and each of us who served as Commissioners. This will take the form of a highly personal campaign of negative publicity throughout the rest of 1986 and early 1987. You can expect to read about us in your local newspapers or see us on the evening televised news during this period.

The plan, submitted confidentially by Gray and Company to the pornographers, contained the following quotations:

"We at Gray and Company believe we can assist the Coalition deal with the short-term challenge presented by the Commission on Pornography and the long-term challenge presented by the religious fundamentalists. This letter will set forth strategy recommendations for dealing with both these challenges.

"In the short term, we propose a strategy designed to further discredit the Commission on Pornography, the manner in which its members were chosen, the way in which it has conducted its deliberations, the highly political and biased way in which it has organized its findings and recommendations, and the deeper motives of those who have been its most enthusiastic proponents.

"Quiet efforts should be undertaken to persuade the Attorney General, the White House and the leaders of both political parties that the forthcoming report of work of the Commission is so flawed, so controversial, so contested and so biased that they should shy away from publicly endorsing the document. The more doubts that can be created about the objectivity and validity of the Commission's findings and recommendations, the more difficult it will be for anti-pornography crusaders to use the report as an effective tool for achieving their objectives.

"A way must be found of discrediting the organizations and individuals who have begun to seriously disrupt the legitimate business activities of publishers, distributors and sellers of legal, non-obscene books and magazines.

"As the largest public affairs firm in Washington, Gray and Company is well qualified to assist the Media Coalition in designing and implementing short- and long-term strategies to defeat efforts by the Commission on Pornography and a small, unrepresentative group of religious fundamentalists to undermine the First Amendment.

"Our Public Relations Division is headed by Frank Mankiewicz, a noted author, columnist and commentator who served as press secretary to the late Robert F. Kennedy and as president of National Public Radio.

"Our Government Relations Division is headed by Gary Hymel, former top aide to House Speaker Thomas P. ("Tip") O'Neill. Mr. Hymel's staff includes former legislative assistants, staff directors, White House and Cabinet officials, all with knowledge of and access to the legislative and administrative decision-making process. Our Government Relations professionals have strong contacts at the state and local level as well, and are accustomed to working with our Public Relations staff in orchestrating national grassroots campaigns on behalf of our clients.

"Given the magnitude of the task at hand, you should be prepared to incur charges—at least initially—in the range of $50,000-$75,000 per month. Thus, the total cost of this effort could range from $600,000 to $900,000 during the first year.

"Mr. Mankiewicz, Mr. Argyle and I are prepared to meet again with you and your colleagues to discuss the details of our proposed program.

"We look forward to hearing from you."

Well, Gray & Co. has the contract today. I do not mean to suggest to my colleagues that they are not entitled to take on this client, but I think we serving in the House of Representatives should be aware of their reasons for what they are doing. It is one thing to have influence on Members of Congress, it is something else to engage in the arrogance of this letter from Gray & Co., to engage in a process, in effect, of disinformation so as to discredit the commissioners who served as volunteers, one of whom was Dr. Dobson.

□ 1155

Mr. Dobson also shared in this same document something else that I think should come to the Members' attention.

He says:

Let me share another exciting bit of news that, incredibly, you did not read in your newspaper or see on television. On July 25, 1986, one of the most historic meetings or religious leaders ever to occur was held in New York City. Present were high ranking officials from denominations and faiths that have never cooperated on anything. They included three Roman Catholic Cardinals; the Archbishop of the Greek Orthodox Archdiocese of North and South America; three rabbis from the Synagogue Council of America and the American Jewish Committee; leaders from the United Methodist Church; the Southern Baptist Convention; the Episcopal Diocese of Colorado; the Lutheran Council—Missouri Synod; the Church of the Nazarene; the Free Methodist Church of North America; the Assemblies of God; the Church of God—Anderson, Indiana; the Presbyterian Church in the USA; the Church of Jesus Christ of Latter Day Saints; and executives from the National Council of Churches and the National Association of Evangelicals. Father Bruce Ritter and I, as members of the Pornography Commission, were invited to speak and serve as consultants.

In all, 32 leaders were there representing 150 million Americans (although they came as individuals and did not attempt to speak for their organizations). We met throughout the day at the home of John Cardinal O'Connor at St. Patrick's Cathedral in Manhattan. Amazingly, these religious leaders convened for the sole purpose of verbalizing their opposition to hard-core obscenity and child pornography! There was not a single dissenter among the participants!

During the lunch hour, we gathered on the steps of St. Patrick's Cathedral to address approximately 30 members of the press and 250 citizens who had joined us there on Fifth Avenue. It could not have been a more public affair, as traffic swirled around us and passers-by stopped to listen. Representatives of seven denominations and faiths each spoke of their concern: Catholic, Episcopal, Mormon, Jewish, Nazarene (representing the National Association of Evangelicals), Greek Orthodox and United Presbyterian. It was a dramatic moment in the history of religious expression. But would you believe that the press ignored us?! Not one word about the meeting appeared on the evening televised news, despite the presence of numerous network television cameras. Executives at NBC could almost hear us from the offices in their headquarters building across the street. We were later told by a reporter with one of the three networks that the anchorman, whose name you would recognize, personally killed the story that was being prepared for airing on his show that night. (In the next Focus on the Family magazine, we will print a photograph showing many news personnel who attended the press conference but who remained silent in the days following it.)

But, we are hardly discouraged. Thanks to the coordinating efforts of Dr. Jerry Kirk of the National Coalition Against Pornography, these religious leaders are planning to meet again, but next time it will be with President Reagan at the White House. Perhaps 250 heads of denominations will be present on that occasion, asking the President to implement the Commission's recommendations. We'll see if network news editors can keep that meeting from the American people. (Incidentally, I would like to thank Mike McManus and Cal Thomas, two reporters with the secular press who have consistently conveyed the truth about por-

nography in their columns. We are deeply appreciative for the courage they have shown in bucking the tide within their profession.)

A sad commentary, my colleagues, on the unwillingness of the working press to report a meeting of this magnitude on this subject in New York City within a stone's throw of the major media of this country, and they do not say anything about the event at all.

Dr. Dobson went on to say in a work product that he distributes something about his work on the Commission. During the time of the balance of this special order, I would like to share with my colleagues some of his comments with respect to the work of the Commission, because I think it illustrates and serves to give us an idea of the enormity of the task before us:

COMBATTING THE DARKNESS—AN EXCLUSIVE INTERVIEW WITH DR. JAMES DOBSON

(Focus on the Family; President Dr. James Dobson spent 14 difficult months serving on the U.S. Attorney General's Commission on Pornography. In this interview, Dr. Dobson talks about the dangers of poronography to American families and what can be done to eradicate this blot on the American landscape.)

Why was the Attorney General's Commission on Pornography created?

It was done at the request of President Ronald Reagan who expressed concern over the explosion of pornography that had occurred since the first Commission on Pornography brought out its report in 1970. He asked that a second commission be established to study again the effects of pornography on individuals, on families, and on society at large. I was there at the White House that day as he made this proposal, not knowing that I would be asked to participate in this effort. One year later, Attorney General Edwin Meese responded to the President's mandate by appointing an 11-member commission. My name was on the list.

Why was the second commission necessary?

For two reasons. First, the pornography industry today bears little resemblance to what it was in 1967 when the first commission launched its investigation. Sexually explicit materials that were illegal then and only available under the counter are not even published today. They are so tame that there is no market for them. Therefore, the study that was begun 19 years ago is obsolete today. Secondly the findings of that initial commission had been thoroughly discredited. It was appointed by President Lyndon Johnson who assembled an extremely liberal commission with a member of the American Civil Liberties Union (ACLU) as its chairperson. Their report represented such a whitewash that it was immediately rejected by President Nixon and by Congress. It is even less respected today. For these reasons, a new investigation was called for.

What were the conclusions of that first commission?

Essentially, it said that pornography had a beneficial impact on society. It saw porn as a marital aid and as a source of information about sex. It also believed that pornography would have a so-called "cathartic effect" on the sexual tension evident in the culture. That is, by allowing people to have free access to sexually explicit material, their passions would be reduced and the desire to commit acts of sexual violence would be lessened. It was anticipated that incidences of rape and molestation of children would be reduced by removing governmental restraint on pornography. Unfortunately, the commission was wrong. Dead wrong!

What is the scope of pornography and who is producing it?

Eighty percent of all pornography sold in the U.S. is produced in Los Angeles County and is then shipped illegally to the rest of the country. Eighty-five percent of this multi-billion-dollar industry is controlled by organized crime (the Mafia). Those who try to barge in on their business are either killed or mutilated. One persistent distributor was tied against a wall and a truck was driven into his legs. The Mob simply does not tolerate competition!

How did the new commission go about the task of assessing the problem of pornography?

We conducted a rigorous, year-long investigation that left us exhausted and emotionally depleted. Serving on this commission was the most difficult and unpleasant responsibility I have undertaken in my adult life. We held lengthy hearings in six U.S. cities during which we heard testimony from victims of pornography, police officers, FBI agents, social scientists, and even from the producers of hard-core materials. So many people wanted to testify that the hearings sometimes lasted as long as 12 hours a day with minimal breaks. Hundreds of pounds of documents and reports were sent for our consideration between meetings, which intensified as we approached the final report. But by far the most distressing assignment was the material we were asked to review. Some of it was so shocking that members of the public fled from the auditoriums when it was displayed. Obviously, this has been a *very* long year for me.

Within the limits of propriety, would you describe the nature of the pornography industry today?

It is extremely important for Christians to know what is being sold by the pornographers today, although I can't adequately describe it in a family magazine like this. If our people understood the debauchery of this business, they would be far more motivated to work for its control. You see, most people believe that mainstream pornography is represented by the centerfolds in today's men's magazines. In fact, that is precisely what the ACLU and the sex industry want us to think. But if one were to go into the sex shops on Times Square or in most other large cities in the country, he would find very little so-called normal heterosexual activity. Instead, he would encounter a heavy emphasis on violent homosexual and lesbian activity, on excrement, mutilation, sadomasochism, urination, defacation, cutting of the genitals, enemas, oral and anal sex, instrumentation for the torture of women and depictions of sex between humans and animals. Amazingly, there is a hugh market for materials of this nature.

How did you handle the pressures associated with this responsibility?

I have a very steady personality, but at times during this assignment I hung on to my emotions pretty tightly. Having been a faculty member at a large medical school and serving on the attending staff at a major children's hospital for 17 years, I thought I had seen and heard just about everything. I have stood in an operating room while a team of surgeons massaged a woman's heart for hours after her husband blasted her at point-blank range with a shotgun. She never regained consciousness. I've seen children with pitiful deformities that tore at my heart. I've witnessed cancer in its final stages and all other tragedies that arrive in hospital emergency facilities on busy weekends. Like other professionals, I learned to control my emotions and continued to function. Nevertheless, nothing in my training or experience fully prepared me for the confrontation with pornography that was to come. I learned that purchasers of this material, like vultures, prefer their meat rancid and raw.

Do you regret accepting this responsibility?

No, agreeing to serve was my duty to God and to my country. But I'm glad that it is finished, even though my fellow commissioners and I still have to face a $30-million-dollar lawsuit brought by Playboy, Penthouse, et al. Unfortunately, serving on a governmental commission offers no insurance coverage, and we are personally liable for any judgments against us.

What aspect of what you saw was most troubling to you, personally?

The child pornography distressed me more than anything I've witnessed in my years. Though categorically illegal since 1983, a thriving cottage industry still exists in this country. Fathers, stepfathers, uncles, teachers and neighbors find ways to secure photographs of children in their care. Then they sell or trade the pictures to fellow pedophiles. Those pictures are often sold eventually to publishers in Holland, who print them in slick magazines and export them back to America. I will never forget a particular set of photographs shown to us at our hearing in Washington, D.C., which I mentioned briefly in our new film series. These pictures were taken of a cute, nine-year-old boy who had fallen into the hands of a molester. In the first photo, the blond lad was fully clothed and smiling at the camera. But in the second, he was nude, dead and had a butcher knife protruding from his chest. My knees buckled and tears came to my eyes as hundreds of other photographs of children were presented.

Would you address some of the criticisms that have been expressed by the ACLU and the press, among others? They have claimed repeatedly that this commission was biased and had its conclusions drawn before hearing any testimony.

That is absolutely untrue. A quick analysis of our proceedings will reveal the painstaking process by which our conclusions were reached. If the deck were stacked, we would not have invested such long, arduous hours in debate and compromise. Serving on the Commission were three attorneys, two psychologists, one psychiatrist, one social worker, one city council member, one Catholic priest, one federal judge and one magazine editor. Some were Christians, some Jewish and some atheists. Some were Democrats and some Republicans. All were independent, conscientious citizens who took their responsibilities very seriously. Our diversity was also evident on strategic issues about which society itself is divided. Our voting on these more troublesome matters often split 6-5, being decided by a swing member or two. Some whitewash! So the characterization of this seven-man, four-woman panel as an ultraconservative "hit

squad" is simply poppycock. Read the transcripts. You will see.

You have been very critical of the way the press has reported this news story, blaming it for censorship. Explain that.

There was not a single secular publisher in America who would print the Commission's report, nor would network television report the facts. CBS sent correspondent Bob Schieffer to my office to videotape a 45-minute interview for use during Dan Rather's evening news program. When edited, I was seen for exactly six seconds of irrelevancy between two full statements of objections by Hugh Hefner. Similar interviews with *Time* magazine, the *Washington Post* and *USA Today* went unreported. *People* magazine also requested an interview. The reporter and I spoke for an hour after she assured me that my time would not be wasted. The following week, *People* carried a lengthy cover story on the subject of pornography, but not a single comment of mine was included!

Why do you think your remarks were ignored?

Because what I had to say was in direct confrontation to the distorted picture they are portraying to the public. Their conscious effort has been to make the American people think that our Commission damaged the First Amendment by attacking soft-core publications like *Playboy* and *Penthouse*. In truth, all of our recommendations dealt with material that is clearly illegal. You see, they apparently want to perpetuate the myth that pornography is limited to relatively mild material in men's magazines . . . surrounded by good literature and fashion features. They wave the banner of censorship and accuse the Commission of sexual repression, while carefully editing the information given to the American people.

What effect does pornography have on society at large?

So-called adult bookstores are often centers of disease and homosexual activity. Again, the average citizen is not aware that the primary source of revenue in adult bookstores is derived from video and film booths. Patrons enter these 3-by-3-foot cubicles and deposit a coin in the slot. They are then treated to about 90 seconds of a pornographic movie. If they want to see more, they must continue to pump coins (usually quarters) into the machine. The booths I witnessed in New York's Time Square were even more graphic, involving live sex acts on stage. These booths are also used for private or homosexual gratification and become filthy beyond imagination. Given the current concern about sexually transmitted disease and especially AIDS, it is incredible that local health departments have not attempted to regulate such businesses. States that will not allow restaurant owners, hairdressers, counselors or acupuncturists to operate without licenses have permitted these wretched cesspool to escape governmental scrutiny. To every public health officer in the country I would ask: "Why?"

What about the children who stumbled onto their parents' sexually explicit materials? How common is that, and what effect does it have when it occurs?

It would be extremely naive for us to assume that the river of obscenity which has inundated the American landscape has not invaded the world of children. There are more stores selling pornographic videos than there are McDonald's restaurants. Latchkey kids by the millions are watching porn on cable TV and reading their parents' adult magazines. For 25 cents, they can purchase their own pornographic newspapers from vendor machines on the street. At an age when elementary kids should be reading Tom Sawyer and viewing traditional entertainment in the spirit of Walt Disney, they are learning perverted facts which neither their minds nor their bodies are equipped to handle.

Talk briefly about pornography and the family. What is its impact?

Raising healthy children is the primary occupation of families, and anything which invades the childhood and twists the minds of boys and girls must be seen as abhorrent to the mothers and fathers who gave them birth. Furthermore, what is at stake here is the future of the family itself. We are sexual creatures, and the physical attraction between males and females provides the basis for every dimension of marriage and parenthood. Thus, anything that interjects itself into that relationship must be embraced with great caution. Until we know that pornography is not addictive and progressive . . . until we are certain that the passion of fantasy does not destroy the passion of reality . . . until we are sure that obsessive use of obscene materials will not lead to perversions and conflict between husbands and wives . . . then we dare not adorn them with the crown of respectability. Society has an absolute obligation to protect itself from material which crosses the line established objectively by its legislators and court system. That is not sexual repression. That is self-preservation.

Given the grave implications of obscenity on our society, why are the criminal laws to control it not being enforced?

Good question! The refusal of federal and local officials to check the rising tide of obscenity is a disgrace and an outrage! It is said that the production and distribution of pornography is the only unregulated industry remaining in America today. Indeed, the salient finding emerging from months of testimony before our Commission reflected this utter paralysis of government in response to the pornographic plague. As citizens of a democratic society, we have surrendered our right to protect ourselves in return for protection by the state. Thus, our governmental representatives have a constitutional mandate to shield us from harm and criminal activity . . . including that associated with obscenity. It is time our leaders were held accountable for their obvious malfeasance.

Do you think the Reagan Administration will implement the recommendations of your commission's report?

I don't know. Its record is terrible to this point. During the last three years of the Carter Administration (which was lenient toward pornography), there were 66 indictments brought at the federal level. In the first six years of the Reagan Administration, there have been 34! Attorney General Edwin Meese, who has courageously supported other unpopular causes, has been reluctant to tackle this one for some reason. He is reportedly awaiting the final report from the Commission before mobilizing the Department of Justice. We will see what happens now. But his predecessors have no such excuse for their dismal record. Under Attorney General William French Smith, there was not a single indictment brought against the producers of adult pornography in 1983. None! There were only six in 1982, but four of those were advanced by one motivated prosecutor. In 1981, there were two. Of the 93 U.S. Attorneys, only seven have devoted *any* effort to the prosecution of obscenity. Obviously, the multi-billion-dollar porn industry is under no serious presssure from federal prosecutors.

What is the bottom line? What do you believe the solutions are to this glut of pornography that you have described?

I believe the suggestions offered in the Commission's final report will provide an effective guide toward that end. We not only attempted to assess the problem; we have offered a proposed resolution. The testimony on which it is based makes it clear that we are engaged in a winnable war! America could rid itself of hard-core pornography in 18 months if the recommendations offered in the report are implemented. We have provided a road map for fine-tuning federal and state legislation and for the mobilization of law enforcement efforts around the country.

If our readers wish to add their voices to those who demand immediate action, they might want to make four specific contacts with the government: Write and call President Reagan, and write and call Attorney General Meese. Insist that Mr. Meese establish a strike force to oversee implementation of the Commission's recommendations, and that he supervise it personally. If he delegates the assignment to the do-nothing bureaucrats who failed us in the past, their same apathy will recur.

Do you want to make any final statement to the Christians who have read this interview?

I want to express my deepest appreication to the men and women who prayed for me during this term of public service. I felt the support of their prayers throughout the difficult deliberations when everything I believed in seemed to hang in the balance. During the hearings in Chicago, for example, we met on the 24th floor of a government building which overshadowed a smaller structure in the process of demolition. I stood at the window and watched the wrecking ball do its destructive work. I thought to myself as the ball crashed into the remaining walls on the roof, "That is what the pornographers are doing to my country. They are hammering down the supporting columns and blasting away at the foundations. We must stop the devastation before the entire superstructure crashes to the earth!" With all the diligent prayers and personal involvement of God-fearing people, we can save the great edifice called America. But there is not a minute to lose. I can only hope that millions of our citizens will join me in that crusade.

But each one is tempted when he carried away and enticed by his own lust. Then when lust is conceived, it gives birth to sin; and when sin is accomplished, it brings forth death.—James 1:14-16 (NAS).

□ 1215

In conclusion, let me say to my colleagues that in the event any of us are contacted by that distinguished gentleman, Frank Mankiewicz, press secretary to the late Robert F. Kennedy, and former president of National Public Radio; and/or Gary Hymel, former top aid to House Speaker, THOMAS P. "TIP" O'NEILL, about the disinformation program Gary & Co. says they will pursue, I hope we will keep Dr. Dobson's comments in perspective and let those who seek to discredit this report of this commission

of the Attorney General of the United States be unsuccessful in that quest to discreditation.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. DAUB) to revise and extend their remarks and include extraneous material:)

Mr. DANNEMEYER, for 30 minutes, today.

(The following Members (at the request of Mr. GONZALEZ) to revise and extend their remarks and include extraneous material:)

Mr. PANETTA, for 5 minutes, today.

Mr. ANNUNZIO, for 5 minutes, today.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Members (at the request of Mr. DAUB) and to include extraneous matter:)

Mr. KEMP.

(The following Members (at the request of Mr. GONZALEZ) and to include extraneous matter:)

Mr. SKELTON.

Mr. MONTGOMERY.

Mr. OBERSTAR.

Mr. SOLARZ.

Mr. BORSKI in two instances.

BILLS PRESENTED TO THE PRESIDENT

Mr. ANNUNZIO, from the Committee on House Administration, reported that that committee did on the following day present to the President, for his approval, bills of the House of the following title:

On October 2, 1986:

H.R. 2183. An act to amend title 28 of the United States Code to make certain changes with respect to the participation of judges of the Court of International Trade in judicial conferences and for other purposes;

H.R. 2721. An act to amend title 13, United States Code, to require the collection of statistics on domestic apparel and textile industries;

H.R. 2971. An act granting consent of the Congress to the amendments to the Susquehanna River Basin Compact;

H.R. 4217. An act to provide for the settlement of certain claims of the Papago Tribe of Arizona arising from the construction of Tat Momolikot Dam, and for other purposes;

H.R. 4588. An act to authorize appropriations for the Administrative Conference of the United States, and for other purposes; and

H.R. 5480. An act to extend the expiration date of the Defense Production Act of 1950 and to authorize appropriations for purposes of such act.

ADJOURNMENT

Mr. DANNEMEYER. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 12 o'clock and 18 minutes p.m.), under its previous order, the House adjourned until Monday, October 6, 1986 at noon.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

4297. A letter from the Director, Defense Security Assistance Agency, transmitting a copy of the Department of the Navy's proposed lease of defense articles to Korea (Transmittal No. 1-87), pursuant to 22 U.S.C. 2796(a); to the Committee on Foreign Affairs.

4298. A letter from the Secretary of Transportation, transmitting the annual report on the status of the public ports of the United States for the year ending December 31, 1985, pursuant to 49 U.S.C. 308(c); jointly, to the Committees on Merchant Marine and Fisheries and Public Works and Transportation,

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. BROOKS: Committee on Government Operations. Report on access to the Nixon Presidential Materials should be governed by NARA regulations, not OMB or DOJ actions (Rept. 99-961). Referred to the Committee of the Whole House on the State of the Union.

Mr. DINGELL: Committee of conference. Conference report on H.R. 2005 (Rept. 99-962). Ordered to be printed.

Mr. RODINO: Committee on the Judiciary. H.R. 700. A bill to restore the broad scope of coverage and to clarify the application of title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and title VI of the Civil Rights Act of 1964; with an amendment (Rept. 99-963, Pt. 1). Ordered to be printed.

Mr. BROOKS: Committee on Government Operations. H.R. 4783. A bill to strengthen the prohibition of kickbacks relating to subcontracts under Federal Government contracts: with an amendment (Rept. 99-964, pt. 1). Ordered to be printed.

Mr. BROOKS: Committee on Government Operations. Report on the adequacy of Federal efforts to identify and remove contaminated imported wines (Rept. 99-965). Referred to the Committee of the Whole House on the State of the Union.

Mr. DE LA GARZA: Committee on Agriculture. H.R. 5215. A bill to authorize the construction by the Secretary of Agriculture of a salinity laboratory at Riverside, CA. (Rept. 99-966). Referred to the Committee of the Whole House on the State of the Union.

Mr. DE LA GARZA: Committee on Agriculture. H.R. 5635. A bill to amend the Farm Credit Act of 1971 regarding interest rates charged by Farm Credit System institutions and financial operations of such institutions; with an amendment (Rept. 99-967). Referred to the Committee of the Whole House on the State of the Union.

SUBSEQUENT ACTION ON REPORTED BILLS SEQUENTIALLY REFERRED

Under clause 5 of Rule X the following action was taken by the Speaker:

H.R. 5192. The Committee on Energy and Commerce discharged from further consideration of H.R. 5192: H.R. 5192 referred to the Committee of the Whole House on the State of the Union.

S. 2880. The Committee on Merchant Marine and Fisheries discharged from further consideration of S. 2880: S. 2880 referred to the Committee of the Whole House on the State of the Union.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. DORGAN of North Dakota:

H.R. 5647. A bill to require the Administrator of the Health Care Financing Administration and the Prospective Payment Assessment Commission to research and develop a method for taking into account complications and morbidity variations among discharges in making payments for inpatient hospital services under the medicare DRG-payment system; to the Committee on Ways and Means.

By Mr. HARTNETT (for himself, Mr. CAMPBELL, Mr. SPENCE, Mr. DERRICK, Mr. SPRATT, and Mr. TALLON):

H.R. 5648. A bill to provide for a waiver of certain requirements of title XIX of the Social Security Act with respect to care and services provided by the Medical University of South Carolina; to the Committee on Energy and Commerce.

MEMORIALS

Under clause 4 of rule XXII,

481. The SPEAKER presented a memorial of the Legislature of the State of Texas, relative to the passage of H.R. 5021; to the Committee on the Judiciary.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 1519: Mr. KINDNESS and Mr. DEWINE.

H.R. 1668: Mr. WEISS and Mr. GLICKMAN.

H.R. 2097: Mr. BUSTAMANTE, Mr. ROE, Mrs. HOLT, Mr. LAGOMARSINO, Mr. FROST, Mr. MARTINEZ, Mrs. BOXER, Ms. OAKAR, Mr. LEVIN of Michigan, Mr. MONSON, and Mr. WEISS.

H.R. 2656: Mr. BEREUTER.

H.R. 4495: Mr. PARRIS, Mr. COBEY, Mr. BLAZ, Mr. RUDD, Mr. KEMP, Mr. DORNAN of California, Mr. HYDE, Mr. NIELSON of Utah, Mrs. VUCANOVICH, and Mr. LAFALCE.

H.R. 4558: Mr. GALLO.

H.R. 4579: Ms. KAPTUR.

H.R. 5100: Mr. LEWIS of Florida, Mr. YOUNG of Florida, Mr. MARLENEE, Mr. EMERSON, and Mr. FAWELL.

H.R. 5402: Mr. FISH, Mr. SHUMWAY, and Mr. FOGLIETTA.

H.R. 5425: Mr. SCHEUER.

H.R. 5627: Mr. BIAGGI, Mr. CARNEY, Mr. MANTON, Mrs. BENTLEY, Mr. FEIGHAN, Mr. MCKINNEY, Mr. BUSTAMANTE, Mr. KANJORSKI, Mr. MARTINEZ, Mr. TRAFICANT, Mr. DIOGUARDI, and Mr. GARCIA.

H.R. 5635: Mr. LEHMAN of California, Mr. SOLOMON, Mr. TRAFICANT, and Mr. MARTIN of New York.

H.J. Res. 90: Mr. SCHEUER, Mrs. COLLINS, Mr. MCCLOSKEY, and Mr. RUSSO.

H.J. Res. 524: Mr. LUNGREN, Mr. GARCIA, Mr. KOLBE, Mr. RAHALL, Mr. SCHULZE, and Mr. CAMPBELL.

H.J. Res. 594: Mr. SIKORSKI.

H.J. Res. 716: Ms. SNOWE, Mr. RANGEL, Mr. LAGOMARSINO, Mrs. HOLT, Mr. OWENS, and Mr. LEVINE of California.

H. Con. Res. 393: Mr. FAZIO, Mr. OLIN, Mr. BUSTAMANTE, Mr. BATES, Mr. LEVINE of California, Mrs. KENNELLY, Mr. RANGEL, Mr. HUGHES, Mr. ACKERMAN, and Mr. GREEN.

H. Res. 566: Mr. HAYES, Mr. DOWNEY of New York, Mr. UDALL, Mr. DYMALLY, Mr. DELLUMS, Mr. OWENS, Mr. FORD of Tennessee, Mr. TOWNS, Mr. MORRISON of Connecticut, Mr. FRANK, Mr. CROCKETT, Mr. BRYANT, Mr. LELAND, Mr. MANTON, Mr. MITCHELL, Mr. GRAY of Pennsylvania, Mr. CLAY, Mr. FAUNTROY, Mr. ACKERMAN, Mr. BERMAN, Mr. RANGEL, Mr. BUSTAMANTE, and Mr. EDWARDS of California.

PETITIONS, ETC.

Under clause 1 of rule XXII,

490. The SPEAKER presented a petition of the executive committee of the Lvov Regional Soviet of People's Deputies, Lvov, U.S.S.R., relative to war criminals; which was referred to the Committee on Foreign Affairs.

SENATE—*Friday, October 3, 1986*

(Legislative day of Wednesday, September 24, 1986)

The Senate met at 9:30 a.m., on the expiration of the recess, and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray.

Speak unto the children of Israel, saying, "in the seventh month, in the first day of the month, ye shall have a sabbath, memorial of blowing of trumpets, a Holy convocation."—Leviticus 23:34.

Baruch Ha Shem—praise the Lord! God of Abraham, Isaac, and Israel, this evening candles will be lit in devout homes all over the world celebrating Rosh Hashanah—10 days of solemn remembrance for the Jewish community. We thank You, Mighty God, for the model of Godly leadership and deliverance Moses gave history—and for the legacy left us by Your Old Testament giving universal hope for redemption by a god of justice, love and truth. Bless Your people, as they spend these days in solemn penitence, anticipating Yom Kippur—the day of atonement. Praise the Lord!

And, God of perpetual renewal, energize tired bodies here today, renew weary minds, calm raw nerves, and enable Your servants to get done everything they possibly can. Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The able and distinguished acting majority leader, Senator PAULA HAWKINS, of Florida, is recognized.

SCHEDULE

Mrs. HAWKINS. I thank the distinguished President pro tempore for the example he sets for us by opening our sessions every day. I know that our bodies are tired.

Mr. President, the majority and minority leaders have standing orders this morning of 10 minutes each. We will have routine morning business not to extend beyond the hour of 9:45, with Members permitted to speak therein for not more than 2 minutes each.

At 9:45, the Senate will resume consideration of House Joint Resolution 738, the continuing resolution. Votes can be expected throughout the day in relation to this measure.

Also, it is the intention of the majority leader, if time permits, to turn to any of the following items: S. 2792, FIFRA. One vote is expected on that.

S. 2045, the FTC. Hopefully, that will be by unanimous consent.

Conference reports on intelligence authorization, bankruptcy, Export-Import Bank, technology transfer, and the handicapped bill.

For Senators listening, or their staffs, votes can be expected to occur throughout the day. It is the majority leader's hope to recess the Senate by 6 p.m.

DRUG EDUCATION AND COCAINE

Mrs. HAWKINS. Mr. President, it has been said, rather wisely I think, that an ounce of prevention is worth a pound of cure. That is one of the reasons that I am such an enthusiastic supporter of drug education as a weapon in fighting the drug threat. It is far cheaper, and more effective, to provide drug education and treatment—and to work on prevention—that it is to build jails to confine drug users and drug dealers.

As part of an education campaign, we need to focus more attention on cocaine, regarded by many experts as the most addictive and most destructive drug to date. People on cocaine resort to all kinds of tricks to acquire the drug. They are not beyond lying, cheating, or stealing to get the money to buy drugs. They are devious and scheming, with little regard for those who may be hurt in the process. Cocaine destroys the moral fiber of the user.

While cocaine is at the forefront of the drug invasion, there are now more drugs of higher quality being sold at lower prices on American streets than ever before. These drugs are more dangerous than ever because their potency is higher than anytime previously. Once upon a time it took a whole marijuana joint to produce a drowsy euphoria.

Now marijuana contains three times the active ingredient it did 10 years ago. Cocaine was once only 20-percent pure. Today it is 80 percent. And crack, a smokeable form of cocaine, delivers 10 times the punch of snorting the powder.

One of my constituents, Robert Ingram, is familiar with "free basing"—reducing cocaine to a smokeable form—and its effects. He was both a cocaine user and dealer. He spent 26 months in Federal prison in Florida and then was sent to a drug treatment center for rehabilitation. Mr. Ingram talks about "free basing" parties—what goes on there and the aftermath. "Free basing"—he relates—creates a false feeling of grandeur, illusions of wisdom, sexual prowess and infinite power. These sensations can be followed by anxiety, paranoia and hallucinations. Once the drug has been consumed, the user is left in a depressed state, crawling on the floor in a desperate search for one last crumb of cocaine for a final hit. Just one more hit. One hit is too many and a thousand are not enough.

A "free-basing" party begins usually with one gram of cocaine, which may cost $100. The party ends when all the cocaine has been consumed, the users have expended all their cash to buy more and all credit has been exhausted. A "free basing" cocaine party may start on a Monday and run through Friday or the weekend. A party of that length may cost several thousand dollars. Nothing, Mr. Ingram continues, is more depressing than the depression of the "free base" user when all the cocaine is gone and there is no more money.

At this point, nothing is sacred. Chicanery, deception and crime are all within the boundaries of finding money to buy more cocaine. "Free basers" will continue this cycle until their assets are gone and they are in the gutter. In this process, homes have been lost, careers fallen by the wayside, families broken up, and health wrecked. Life is the pits. Mr. Ingram should know—he's been there. And now he's on the long road back.

Cocaine shows no favorites. Counted among its victims are the illiterate, the famous and the unknown. Cocaine is an equal opportunity drug. It destroys all who use it without discrimination as to sex, color or national origin.

RECOGNITION OF THE ACTING MINORITY LEADER

The PRESIDENT pro tempore. The able and distinguished acting Democractic leader, Senator JOHN STENNIS, of Mississippi, is recognized.

Mr. STENNIS. I thank the Chair.

Mr. President, we have with us the distinguished Senator from Wisconsin [Mr. PROXMIRE]. I ask that he be recognized by the Chair at this time for a presentation he has to make which will consume no more than 5 minutes.

The PRESIDENT pro tempore. The Senator from Wisconsin is recognized.

SAY GOODBY TO STAR WARS AS A PROTECTOR OF THE WHOLE NATION

Mr. PROXMIRE. Mr. President, there has been consistent and widespread skepticism in the scientific community that the strategic defense initiative or star wars could ever work. There has been almost universal conviction that it could not work as President Reagan conceives it and advances it with the American public. The President has sold SDI as a system that would defend our country including our urban population from nuclear attack by the Soviet Union. A recent article in the New York Times by Philip Boffey documents in detail a technical obstacle that puts the final coup-de-grace on the President's vision of an SDI that would effectively protect our cities. The Boffey article finds the limitations of computer software as the achilles heel of any comprehensive national star wars defense. Boffey contends that "the software problem is the first technical roadblock serious enough to force a major realignment in the original aspirations for strategic defenses." In the judgment of computer experts this will not only make the difficult technical problem even more difficult. It will force the star wars system to sharply limit its objectives. In effect, realists will forget any comprehensive American defense of our cities. If they still support star wars at all, they will support it as a system that might be useful in protecting missile sites and command centers. To the extent it advanced that purpose it would strengthen the credibility of the United States deterrent. In doing so, however, it would not significantly threaten the Soviet deterrent.

One reason for the gloom overhanging the President's vision of an astrodome to protect American cities is the fact that while researchers have made some breakthroughs in developing the hardware for star wars, the software for the essential computer coordination and direction of a comprehensive star wars system is progressing very slowly. What is worse, the outlook for faster progress is bleak. In fact, the Defense Department and its major defense contractors lag behind nonmilitary leaders in their software. The only solace is that the Soviet Union is literally decades behind the United States.

Why is this problem of developing a computer software system that can coordinate a comprehensive antimissile defense so very difficult? One answer, Mr. President, is that software does not depend on solving a particular problem in perfecting or increasing the velocity of a laser beam or increasing the accuracy and speed of a mechanical response to a speeding missile. Software requires the day-after-day decision of human beings who are confronted with a dazzling array of variables that require adjustment, rapid-fire change on a series of different fronts. It is the kind of challenge that requires constant testing under realistic conditions. For instance, in a much simpler and easier problem, software failed in the first shuttle flight, although it has been tested for 30,000 hours. Software must be tested repeatedly. How can we make this kind of comprehensive test of star wars under anything like realistic conditions and make it over and over again? The only kind of test that would have any significance for a truly comprehensive star wars defense of this country's major cities would be an all out nuclear attack. Mr. President there will be only one such test. And star wars would have to work perfectly or nearly perfectly the first time. After all, the National Academy of Science has told us that if only 1 percent of the Russian nuclear arsenal should strike American cities, there would instantly be between 35 and 55 million dead Americans. We would be devastated as an organized society.

Mr. President, in all fairness star wars officials recognize this problem. They have acted on it. Last year they called in a group of computer experts to review their problem. The panel of experts decided that the model the star wars people had been working on up to that point would demand too much sophistication and would prevent adequate testing. So what did they recommend?

They told the star wars officials to forget the single, tightly controlled, closely related system that would protect the entire country. Instead they proposed that star wars proceed with a number of loosely combined, largely independent, and separate operations. The benefits were that the software could be written in smaller units. It would be less complex. It could be independently tested. But there was a price. Senators could not exchange information about targets and decoys. This would put more emphasis than ever on individual weapons and sensors because they would have to function on their own. And, of course, a comprehensive protection of the entire Nation was gone.

To its credit, the star wars officials have accepted this advice. They are pushing the SDI Program ahead now on the basis of the computer experts advice. In a sense, star wars has been transformed. It will now be virtually impossible for it to provide anything like comprehensive national protection for the entire country or its cities. Philip Boffey, who wrote this article for the New York Times, has described a true revolution in star wars, that almost no one in the public and very few Members of the Congress have caught up with. There is still a chance that this system may become a useful way of helping protect command centers and missile sites. But there now seems to be no prospect that it can ever provide anything remotely like SDI as the protector of our Nation that President Reagan has sold to much of the American people.

Mr. President, I ask unanimous consent that the article to which I referred in the New York Times edition of September 16 be printed at this point in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

SOFTWARE SEEN AS OBSTACLE IN DEVELOPING "STAR WARS"

(By Philip M. Boffey)

WASHINGTON, September 15.—President Reagan's proposed strategic defense against ballistic missiles has encountered a technical obstacle that will almost certainly limit its shape and performance—the prodigious difficulty of developing computer software to manage the course of a battle.

While most of the technical debate over the feasibility of the President's program has focused on its exotic weapons and sensors, it is now becoming clear, computer experts say, that any large-scale cluster of weapons and sensors will have to be organized and shaped in accordance with the limitations of computer software.

As a result, strategic defense officials are being forced to abandon their original expectations for a tightly coordinated defense and are moving instead toward a concept of loosely coupled clusters of battle stations that will operate with considerable autonomy.

The change will inevitably produce a less efficient defense, computer experts say, and will increase the demands imposed on the system's sensors and weapons, making an already difficult technical challenge even more difficult. The software problem is the first technical roadblock serious enough to force a major realignment in the original aspirations for strategic defenses.

Some experts contend that even the realignment will not solve the software problem.

By "software" the experts mean the huge array of programs, or instructions, that will operate the computers running the whole system, officially called the Strategic Defense Initiative and popularly known as "Star Wars."

The nightmare envisioned by some experts is that undetected flaws, or "bugs," in the software might cause all or part of the system to malfunction in a crisis. Just as the first launching of the space shuttle was halted in 1981 because problems in the software programs caused its computers to fall out of synchronization, these experts warn, so might a strategic defense shut down unexpectedly when first called upon to block thousands of Soviet missiles streaking toward America's oil.

Others worry that flaws in the software might cause a highly automated Star Wars system to fire by mistake at a harmless target, perhaps triggering a crisis that could escalate to nuclear holocaust. There is also the fear that the computer programs would be vulnerable to sabotage, espionage and even hostile takeovers by Soviet master-

minds, who might penetrate the software electronically, take control of it and turn the system to their own uses.

The software problem has forced a virtual revolution in high-level thinking about how to build a defensive system in space. Moreover, it has invalidated the initial plans proposed by 10 industrial teams, and has stimulated a sharp increase in funding for the battle management aspects of the program, from roughly $90 million in the fiscal year ending Sept. 30 to perhaps double that projected for the coming year.

"I think it's the biggest technical problem for the entire program," said Lieut. Col. David R. Audley of the Air Force, assistant director of battle management for the Strategic Defense Initiative Organization, which manages the research program.

Although technologists are hoping for major breakthroughs in developing other components of the defensive system, such as new sensors and weapons, the prospects for major advances in software development are deemed negligible.

The field as a whole is progressing very slowly and, to make matters worse, the Defense Department and its major aerospace contractors are decades behind leaders in the field, according to the Pentagon's own consultants. The only solace, many experts say, is that the Soviet Union lags far behind the West in computer expertise. That may be one reason Soviet officials appear so anxious about the American strategic defense program, some experts suspect.

The software issue has sparked an acrimonious and rapidly widening debate among computer experts.

Those who believe the job is feasible or at least worth further study include Frederick P. Brooks Jr., professor of computer science at the University of North Carolina, who built the software for the IBM 360 family of computers; Victor Vyssotsky, executive director for information sciences research at A.T.&T. Bell Laboratories, who has helped develop large software programs for the telephone system and for a previous missile defense; Solomon J. Buchsbaum, executive vice president of Bell Labs, who is a key Government adviser on technical issues; John McCarthy, professor of computer science at Stanford University, who developed LISP, a major programming language for artificial intelligence research; and two panels of computer experts convened by the Defense Department.

The panelists included such experts as Danny Cohen, director of the systems division at the University of Southern California's Information Sciences Institute; Charles A. Seitz, professor of computer science at the California Institute of Technology; and Richard Lipton, professor of computer science at Princeton University.

"I don't think there's any question that it can be done," said Dr. Seitz.

However, those who believe the likelihood of success is very small include Herbert Simon, the only computer scientist to win a Nobel Prize; John Backus, the inventor of FORTRAN, a major computer programming language; David L. Parnas, who was called in by the Defense Department to review the software problem because he was considered one of the world's leading authorities; several experts working for the Digital Equipment Corp., a major computer manufacturer, including James J. Horning, Greg Nelson and David Redell, who have issued lengthy critiques; and Robert Taylor head of Digital's systems research center who formerly headed computer research programs for the Defense Advanced Research Projects Agency, the Pentagon's chief supporter of breakthrough computer research.

"I think it's pretty clear that it can't be done," Mr. Taylor said. "The goals of the S.D.I. put demands on software that are just absurd in terms of the state of our knowledge."

The critics generally argue not only that all large software programs contain undetected "bugs" or flaws that could cause catastrophic failure but also, and perhaps most important, that it will be impossible to test and "debug" the Star Wars software thoroughly short of nuclear war.

But the optimists retort that the computing job can be broken up into do-able parts and that the software for these various parts can be tested thoroughly enough to provide reasonable confidence that the entire system would work.

The two sides in the Star Wars debate often appear to be talking past each other. Those who say that the software cannot be developed are usually talking about the software needed to provide a near-perfect defense for the entire population. Those who say that the software may be feasible are often thinking about a less comprehensive defense that could tolerate more software errors.

The skeptics appear to outnumber the optimists, in part because critics of the Star Wars program have been more vigorous in enlisting allies than have supporters of the program. Some 14 computer specialists at A.T.&T. facilities have signed a letter warning that the Star Wars system might contain 10,000 errors to its software, some of which might cripple the system.

Some 30 other computer experts, including 14 who chair university computer departments and several who have won top computer awards, have signed a petition calling Star Wars technically infeasible in this century "with known or anticipated techniques," no matter how much money is spent on it.

Regardless of how it is organized, computers and the software programs to run them would be needed at virtually all stages of the Star Wars program, including space platforms, weapons, sensors, ground stations and airplane units. These would not, for the most part, be giant "mainframe computers," but rather arrays of tiny electronic chips wired together to perform high-speed calculations where needed in the system.

Such computers would aim the sensors in the general direction from which an attack might emerge. They would process the enormous flood of data generated by these sensors, pouring in at the rate of millions of data elements per second, to look for evidence of missiles in flight against a background of normal signals. They would try to distinguish actual missiles from decoys, and would calculate the trajectories for enemy missiles that must be destroyed. They would aim defensive weapons, such as laser beams or chemical rockets, at the oncoming missiles, assess which missiles have been destroyed and re-aim the weapons at new targets. Finally, they would pass on needed information so that the next layers or battle groups in the defense could challenge the surviving missiles.

The computers would also scan the sensor data for signs of attack on the Star Wars system itself, firing off weapons to beat back any attack on itself. Some battle stations would have to respond within minutes; the whole engagement would last perhaps a half hour.

The computer "hardware" needed to perform these feats, the tiny chips and arrays capable of performing the high-speed calculations, is not yet in hand, but most experts expect that it will be. Their optimism is based on incredible advances in hardware development that have produced generation after generation of smaller, faster and cheaper computers.

The software to operate the whole system, however, is a far more daunting problem. Large software programs are typically written by thousands of designers and engineers who first try to determine what situations the software must respond to, then write detailed instructions in computer language to specify what calculations should be performed and what orders issued by the computers under various circumstances. Such programs are repeatedly tested in a process that may take years and even decades. But even after years of operation, undetected flaws sometimes emerge to cause the computer system to fail or perform in unanticipated ways. The software whose failure forced postponement of the first shuttle flight had been tested for more than 30,000 hours.

The chief difficulty in writing the software for Star Wars, most experts agree, is the inability of the human mind to foresee precisely what sort of attack a strategic defense might have to cope with years from now. The world has never experienced an all-out nuclear attack, yet the designers of the software must anticipate the weapons and decoys that will be fired, the tactics that will be used and what effect an all-out nuclear attack would have on the sensors and weapons of the Star Wars system itself.

"If it's not in the software, it's not in the implementation of the system," said Colonel Audley. "That's what makes the software so hard."

The size and complexity of the proposed strategic defense make the software task especially difficult. The Navy's new Aegis air defense system for ships, for example, is only designed to track several hundred targets at a time and is experiencing difficulties doing that. Star Wars might have to handle 30,000 to 300,000 missiles and decoys, according to official estimates.

The task will require enormous software programs, containing 6 million to 25 million lines of code or computer instructions, according to official estimates, or up to even 100 million lines, according to a widely cited conjecture. These estimates are not so far beyond all previous experience that the task can be judged impossible. The nation's telecommunications network, for example, uses over 40 million lines of software code, of which about 1.3 million run the electronic switching system that routes calls, according to officials of A.T.&T.

But the sheer size of the software would greatly increase the chances of error, computer experts say, because large programs have more places for bugs to lurk undetected, and more opportunity for one part of the software to work in opposition to another.

The likelihood of error would be further increased because the software would have to be updated continually, to provide defenses against new Soviet weapons of tactics and to incorporate new American weapons or sensors as they are developed. Any time that a change is made in complicated software experts say, there is a risk that it will introduce new errors.

The traditional way to determine whether software will perform reliably is to test it in

action, something that is clearly impossible for Star Wars. So the software designers will be forced to rely on partial tests and on computer simulations of an all-out attack.

Experts on both sides agree that the strategic defense would not require software that is flawless or error-free, a feat that all agree is impossible in such a large program. But the system would need software that contains no catastrophic errors and that can recover from errors and continue to function.

The software problem has forced a drastic reversal of the whole approach to determining an "architecture" for the Star Wars system, from an initial concept that a system could be tightly organized under centralized computer management to a current realization that a looser coupling of more independent components is more feasible.

The first close look at the software issues was made as part of the Defensive technologies Study, headed by Dr. James C. Fletcher, now head of the National Aeronautics and Space Administration, which was set up to assess the technical prospects for carrying out the President's plan. The battle management panel of that study asserted in 1984 that developing and maintaining the software would be a far more complex task than had ever been accomplished "in the production of civil or military software systems."

The only way to perform the job effectively, it warned, would be to design the software as an integral part of the whole system from the start, not as something to be added on at the end, after all the sensors and weapons have been developed, the usual approach of Pentagon contractors.

The report implied that components would have to be linked so that they could help each other identify targets and inform one another which missiles were still on the way and which has been destroyed. The report envisioned a master track file, under computer control, that would provide "birth to death" tracking of all potentially threatening objects.

That idealized model soon became an unofficial guide for 10 manufacturing teams that later submitted proposals to the Government on structuring a Star Wars defense. The teams generally produced tightly coordinated systems that called for close integration of all the weapons and sensors under computer command. But they paid scant attention to how the computers might do the job.

Last year the strategic defense office called in another group of computer experts to review the problem again. That nine-member panel, headed by Dr. Cohen, concluded in a report last December that the computing capabilities could be developed, but only if there was a revolution in the way that the Defense Department and its contractors went about their business.

The panel judged that the model described in the Fletcher report and initially proposed by the aerospace companies would demand too much sophistication from the software and would prevent adequate testing.

The key advice of the panel was that developers should give up the notion of a tightly coupled "monolithic" system capable of coordinated action on a grand scale and should think instead of loosely coupled battle groups, each operating with substantial autonomy, independent of the rest of the system. That way, the software could be written in smaller units that would be less complex and more easily tested.

Such an arrangement would offer fewer chances for sensors and weapons to exchange information about targets and decoys and would probably eliminate "birth to death" tracking of targets. As a result, the individual weapons and sensors would have to be even more effective than previously expected, because they would have to perform more of the calculations on their own.

The panel's advice has been taken to heart by Star Wars officials. Lieut. General James A. Abrahamson, director of the strategic defense program, promptly endorsed "the spirit and content of the report" and called for its "rapid implementation." Similarly, Colonel Audley said the development of software "without a doubt" should be the driving force in shaping the architecture of the whole system.

But Colonel Audley acknowledged that such a turnabout would not be easy. "We have so little successful history of having done the software right first and letting the hardware follow behind," he said. "And every time you turn around in this program someone has a hardware solution. You've got to keep chasing them off."

□ 0940

Mr. JOHNSTON. Will the Senator yield?

Mr. PROXMIRE. I am happy to yield.

Mr. JOHNSTON. Mr. President, I simply would like to commend the Senator for his excellent speech on this subject and many other subjects. I think the fund of knowledge of the Nation and certainly of the Senate is enriched by the good work of the Senator from Wisconsin. I think he has helped to bring light to this subject of star wars through the remarks he has made over the past many months.

Mr. PROXMIRE. Mr. President, I thank my good friend from Louisiana. Nobody has been so alert and sensitive and informative on this subject as he has been. He has been our leader. He has taken charge and done, I think, an outstanding job.

MYTH OF THE DAY: MEDICARE'S PARTICIPATING PHYSICIAN PROGRAM DOESN'T WORK

Mr. PROXMIRE. Mr. President, the myth of the day is that Medicare's Participating Physician Program is not working in Wisconsin. The truth is that a record number of Wisconsin physicians have signed contracts with Medicare under the Participating Physician Program.

In fact, Wisconsin now ranks 10th in the Nation in the number of physicians who have signed contracts with Medicare. And that is good news for Wisconsin's senior citizens, because it translates into lower out-of-pocket costs for health care.

It has always been in the financial interest of the elderly to seek out physicians who would accept assignment under Medicare. When a physician accepts assignment, he or she does not require the senior citizen to pay the full charge for the services they have received. Instead, the physician accepts Medicare's determination of the amount which constitutes a reasonable charge for these services. Medicare then pays 80 percent of that reasonable charge and the senior citizen is only responsible for their 20 percent copayment requirement.

For the elderly, this is clearly a better deal than being forced to pay the full charge of the physician. But in the past, it has been very difficult for the elderly to determine whether a physician would accept assignment on the cost of the care they received.

The Participating Physician Program, created by the Congress 3 years ago, offered a simple alternative. Physicians were provided an opportunity to sign contracts with Medicare by which they agreed to accept assignment on all Medicare claims for a full year. This eliminated the guesswork for the elderly. By choosing a participating physician in their community whom they trusted, they had a guarantee that the physician would accept assignment on the claim.

While there have been many skeptics regarding the value of the Participating Physician Program to physicians, it is clear that in Wisconsin more physicians than ever are joining the program. And it is important that these physicians be given the recognition they deserve for the financial sacrifice they are making on behalf of our senior citizens. It has become all too easy to blame physicians for their contributions to escalating health care costs and not give them credit for the contributions they have made.

Wisconsin's physicians deserve credit for making Wisconsin 10th in the Nation in its percentage of participating physicians. They are proving that the Participating Physician Program can work, and is working, in many areas of this country.

OPENING NEW JOB CLASSIFICATIONS FOR WOMEN IN UNIFORM

Mr. PROXMIRE. Mr. President, I have spoken about the need to broaden the assignment opportunities for women in the military. Today, the distinguished Senator from Maine and I are introducing a bill designed to do just that. I am very pleased to be introducing this bill with Senator COHEN, who, as a member of the Armed Services Subcommittee on Manpower and Personnel, is an expert on our military assignment policies and who has has a long-standing interest in the assignment of our female soldiers. Senator COHEN gave an excellent speech before this body on May 2 of last year, which outlines some of the cumbersome and conflicting as-

signment policies we are trying to eliminate with this legislation.

This bill speaks to each branch of the armed services, allowing each to expand the assignment of women in combat support positions. The Air Force and, more recently, the Army have made good progress in opening up positions for female soldiers. At the same time, all the services have tended to play it safe by staying within a narrow interpretation of combat restriction laws, and regulations. With this bill we would send a signal to military policy makers that they can loosen the complex and arbitrary constraints on the assignment of women and still conform with the combat restriction laws.

With regard to the Army, this bill would provide for the permanent assignment of women to all units which have as their mission the direct support of combat units. In the Navy, it would open up the ships of the Mobile Logistic Support Force, and in the Air Force, it would make more reconnaissance, training, transport, and tanker aircraft suitable for the assignment of women.

Women make up 10 percent of our All-Volunteer Force. There are well over 1 million female veterans and over 300,000 women now serving in the Active and Reserve Forces. A recent Department of Defense publication states that, "As officers and enlisted personnel filling traditional and nontraditional roles, women serve in a wide variety of jobs with professional skill, unswerving dedication and well-deserved pride." In fact, the DOD has listed women as capable of holding 88 percent of military positions, yet only 63 percent are open to them. We are wasting a valuable personnel resource. It is time for our assignment policies to reflect the excellent contributions of our female soldiers.

Mr. President, I ask unanimous consent to have the bill printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2906

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ASSIGNMENT OF FEMALE MEMBERS OF THE ARMY TO COMBAT SUPPORT UNITS.

(a) IN GENERAL.—Chapter 343 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 3549. Female members: assignment to combat service support units and combat support units

"The Secretary of the Army shall provide for the more efficient utilization of female members of the Army by providing for the permanent assignment of such members to all units of the Army which have as their mission the direct support of combat units.".

(b) CONFORMING AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"3549. Female members: assignment to combat service support units and combat support units.".

SEC. 2. CLARIFICATION OF TYPES OF VESSELS ON WHICH WOMEN MAY BE ASSIGNED TO DUTY

The last sentence of section 6015 of title 10, United States Code, is amended by striking out "and vessels of a similar classification not expected to be assigned combat missions" and inserting in lieu thereof "combat support vessels (including mobile logistic support-force vessels), and vessels of a similar classification".

SEC. 3. AIRCRAFT TO WHICH WOMEN MAY BE ASSIGNED

The text of section 8549 of title 10, United States Code, is amended to read as follows:

"(a) Female members of the Air Force may not be assigned to duty in aircraft engaged in combat missions.

"(b) The prohibition in subsection (a) does not apply to female members of the Air Force designated under section 8067 of this title (or appointed with a view to designation under that section) or to female members assigned to duty in reconnaissance, training, transport, or tanker aircraft.".

Mr. COHEN. Mr. President, today I am very pleased to join my colleague, Senator PROXMIRE, in introducing legislation to encourage the greater utilization of women in our military services by expanding the opportunities for women to serve in combat support and combat service support positions. Let me emphasize that the bill does not repeal or modify the combat exclusion laws.

Today, in every service branch, opportunities for career development, promotion and access to education and training are all, in some manner, denied to women exclusively on the basis of gender. Despite the progress which has been made, artificial barriers continue to confront women seeking military careers.

What we need to see is more women promoted and given the opportunity to serve in decisionmaking roles. We need to disprove the view that all military positions are appropriate for men, but that only some are appropriate for women.

Every position should be available to every individual who possesses the necessary experience, skills, qualifications, and motivation, regardless of gender. Women and men who have chosen to devote their lives to serving their country deserve their Nation's commitment to ensure them equal opportunity and consideration.

The legislation Senator PROXMIRE and I are introducing today is an important step in that direction. While military women in all branches currently serve in certain combat support or combat service support positions, there is little consistency among the services regarding the ways in which women are allowed to participate. Moreover, many of these support positions remain closed to women.

The role of women in the military and our obligation to increase the opportunities available to them is much too important to ignore. While many of the barriers obstructing women's advancement in the military have recently been broken down, other barricades remain in place. This legislation is intended to tear down many of those barricades. I urge my colleagues to join us in supporting this important legislation.

Mr. President, I yield the floor.

CONCLUSION OF MORNING BUSINESS

The PRESIDENT pro tempore. Is there further morning business? If not, morning business is closed.

CONTINUING APPROPRIATIONS, FISCAL YEAR 1987

The PRESIDENT pro tempore. The clerk will state the pending business.

The legislative clerk read as follows:

A joint resolution (H.J. Res. 738) making continuing appropriations for the fiscal year 1987, and for other purposes.

The Senate resumed consideration of the joint resolution.

Mr. HATFIELD. Mr. President, I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. STENNIS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDENT pro tempore. Without objection, it is so ordered.

AMENDMENT NO. 3164

Mr. STENNIS. Mr. President, I have here something like 20 amendments that have been cleared and ready for action. I send an amendment to the desk for Senator NUNN of Georgia. I ask for its immediate consideration.

The PRESIDENT pro tempore. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Mississippi [Mr. STENNIS], for Mr. NUNN, proposes an amendment numbered 3164.

Mr. STENNIS. I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

Section 301 of title 23, add the following: "*Provided*, That certain demonstration projects, as approved by the Secretary, specified in section 129 may have tolls applied".

Section 129 of title 23, add the following paragraphs:

"(j) Notwithstanding section 301 of this title the Secretary shall permit Federal participation in not more than four projects in the States of Florida and Georgia to demonstrate the feasibility and practicality of construction of toll highways to meet capacity needs in high growth areas: *Provided*, That

Federal participation in any toll highway project under this subsection shall not exceed 35 percent of total project cost and further provided that Federal aid funds used in a toll highway project under this subsection may be from any Federal aid system other than the interstate system funded under section 104(b)(5)A": *Provided further,* That this provision shall apply only to non-interstate highways for new highway facilities or for projects that expand capacity on existing facilities and the revenues raised by such tolls may only be used for the construction, reconstruction, maintenance, and operation of the tolled-facility.

Mr. STENNIS. Mr. President, I have here a very limited explanation and description of this amendment.

It is a very limited toll amendment permitting demonstration of four projects in only two States—Florida and Georgia (Georgia 400).

It would permit the combination of toll financing with regularly apportioned Federal highway funds. There would be no increase in Federal highway funding available to any State because of this amendment. It would only permit the use of existing funds with revenues raised by tolls.

It would apply only to construction, operation, and maintenance of new, noninterstate or existing highways that expand capacity.

Federal funds would be limited to 35 percent of the project's cost.

It is supported by administration and several highway user groups.

It has been cleared by Senators STAFFORD, chairman, and BENTSEN, ranking member of Environment and Public Works Committee.

It conforms to Chairman HATFIELD's criteria established for introduction of amendments to the continuing resolution; it does not change national highway policy nor increase spending.

It is cosponsored by Senator CHILES.

Budgetary constraints on the Federal-aid Highway Program make it necessary for States to explore new financing mechanisms that provide flexibility to address traffic congestion problems and meet demand for new highway capacity.

Mr. STENNIS. Mr. President, this amendment has been cleared for passage.

Mr. HATFIELD. Mr. President, this amendment has been cleared on this side of the aisle. I move its adoption.

The PRESIDENT pro tempore. The question is on agreeing to the amendment.

The amendment (No. 3164) was agreed to.

Mr. STENNIS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HATFIELD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3165

(Purpose: Require FTC to make two reports in fiscal 1987 on predatory pricing)

Mr. STENNIS. I have another amendment. This is on predatory pricing, by the Senator from South Carolina [Mr. HOLLINGS]. I send it to the desk.

The PRESIDENT pro tempore. The clerk will report.

Mr. STENNIS. It is in order, and I ask for its immediate consideration.

The legislative clerk read as follows:

The Senator from Mississippi [Mr. STENNIS], for Mr. HOLLINGS, Mr. FORD, and Mr. KASTEN proposes an amendment numbered 3165.

Mr. STENNIS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in the joint resolution, insert:

SEC. . REPORT ON PREDATORY PRICING PRACTICES.

The Federal Trade Commission shall submit to the Committee on Commerce, Science, and Transportation of the Senate and to the Committee on Energy and Commerce of the House of Representatives the information specified in subsection (b) of this section every 6 months during fiscal year 1987. A report containing such information shall be sumitted when the Commission submits its annual report to the Congress during such fiscal year, and such report may be included in the annual report. A separate report containing such information shall be submitted 6 months after the date of submission of any such annual report. Each such report shall contain such information for the period since the last submission under this section.

(b) Each such report shall list and describe, with respect to instances in which predatory pricing practices have been suspected or alleged—

(1) each complaint made, orally or in writing, to the offices of the Commission;

(2) each preliminary investigation opened or closed at the Commission;

(3) each formal investigation opened or closed at the Commission;

(4) each recommendation for the issuance of a complaint forwarded by the staff to the Commission;

(5) each complaint issued by the Commission;

(6) each opinion and order entered by the Commission;

(7) each consent agreement accepted provisionally or finally by the Commission;

(8) each request for modification of an outstanding Commission order filed with the Commission;

(9) each recommendation by staff pertaining to a request for modification of an outstanding Commission order; and

(10) each disposition by the Commission of a request for modification of an outstanding Commission order.

Such report shall include copies of all such consent agreements and complaints executed by the Commission referred to in such report. Where a matter has been closed or terminated, the report shall include a statement of the reasons for that disposition. The descriptions required under this subsection shall be as complete as possible but shall not reveal the identity of persons or companies complained about or those subject to investigation that have not otherwise been made public. The report shall include any evaluation by the Commission of the potential impacts of predatory pricing upon businesses (including small businesses).

Mr. HOLLINGS. Mr. President, this amendment requires the Federal Trade Commission [FTC] to make two reports on predatory pricing during fiscal year 1987. The distinguished senior Senator from Kentucky [Mr. FORD] added a similar amendment to the FTC Authorization Act when the bill was before the Senate on July 25, 1985. Similar provision was made in the version of bill approved by the House of Representatives. In addition, the conference committee adopted this provision during its negotiations on March 5, 1986, but that conference now appears hopelessly deadlocked.

Mr. President, predatory pricing is an issue which affects small business deeply and has been chosen as a priority issue by the Small Business Legislative Council consisting of 88 small business trade associations, as well as the National Association of Retail Druggists and the National Grocers Association.

This amendment is simply to require a periodic FTC report to Congress on the FTC response to predatory pricing complaints. These reports will assist Congress in its oversight function. It has been reported to us in testimony submitted for the FTC hearing record that the National Grocers Association is engaged in a struggle to insure that antitrust law enforcement promotes fair and effective competition. An FTC periodic report will further inform us about this situation.

Mr. STENNIS. I move adoption of the amendment.

Mr. HATFIELD. Mr. President, the amendment has been cleared on this side of the aisle and I move its adoption.

The PRESIDENT pro tempore. The question is on agreeing to the amendment.

The amendment (No. 3165) was agreed to.

Mr. STENNIS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HATFIELD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3166

(Purpose: To provide for a transfer of funds to the Institute of American Indian and Alaska Native Culture and Arts Development, and for other purposes)

Mr. STENNIS. Mr. President, I have another amendment here, this one offered by Senator MELCHER. This relates to American Indian arts. I send

the amendment to the desk and ask for its immediate consideration.

The PRESIDENT pro tempore. The clerk will report.

The legislative clerk read as follows:

The Senator from Mississippi [Mr. STENNIS], for Mr. MELCHER and Mr. BRADLEY, proposes an amendment numbered 3166.

Mr. STENNIS. Mr. President, I move we dispense with further presentation of the amendment at this time.

The PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

At the end of the joint resolution, add the following:

SEC. . Notwithstanding any provision of the American Indian, Alaska Native, and Native Hawaiian Culture and Art Development Act, the amounts appropriated for fiscal year 1987 for the Bureau of Indian Affairs for the Institute of American Indian Arts shall be available for use under part A of that Act and—

(1) that Act shall be implemented in a reasonable period of time and shall be fully implemented by no later than October 1, 1987,

(2) until the earlier of—

(A) October 1, 1987, or

(B) the appointment and confirmation of a majority of the members of the Board of trustees of the Institute of American Indian and Alaska Native Culture and Arts Development under section 1505(a)(1)(A) of that Act,

the Secretary of the Interior shall have the authority conferred upon such members under that Act, and

(3) until the earlier of—

(A) October 1, 1987, or

(B) the appointment of a President of such Institute under section 1508 of the Act,

the Secretary of the Interior shall have the authority conferred upon the President of such Institute under that Act.

Mr. MELCHER. Mr. President, this amendment is necessary to correct a problem in the Native American Art and Culture Act which is now before the President as an amendment to the Higher Education Act. Since the effective date of the Art and Culture Act is October 1, 1986, and since the board members and President of the new Institute have yet to be appointed by the President and confirmed by the Senate, there is a gap in authority to operate the Institute.

The amendment would allow the Secretary to serve both the functions of the board and the President up to 1 year or until these appointments are made, whichever is earlier. The amendment also clarifies that funds appropriated for fiscal year 1987 for the Institute of American Indian Art shall be used to fund the Art and Culture Development Institute.

I understand that the amendment is acceptable to the managers of the continuing resolution.

Mr. STENNIS. I move adoption of the amendment, Mr. President.

Mr. HATFIELD. Mr. President, it has been cleared on this side and I move its adoption

The PRESIDENT pro tempore. The question is on agreeing to the amendment.

The amendment (No. 3166) was agreed to.

Mr. STENNIS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HATFIELD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3167

Mr. STENNIS. Mr. President, I present for consideration now an amendment—it has been cleared—by Senator LEAHY regarding Superfund. I send the amendment to the desk for presentation to the Senate.

The PRESIDENT pro tempore. The clerk will report.

The legislative clerk read as follows:

The Senator from Mississippi [Mr. STENNIS], for Mr. LEAHY, proposes an amendment numbered 3167.

Mr. STENNIS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in the joint resolution, insert the following new section:

SEC. . Notwithstanding any other provision of this joint resolution, for an additional amount for, "Environmental Protection Agency, Hazardous substance response trust fund", $600,000,000, for necessary expenses to carry out the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, including sections 111 (c)(3), (c)(5), (c)(6), and (e)(4) (42 U.S.C. 9611), to be derived from the Hazardous Substance Response Trust Fund, to remain available until expended: *Provided*, That funds appropriated under this account may be allocated to other Federal agencies in accordance with section 111(a) of Public Law 96-510: *Provided Further*, That of the amounts appropriated under this heading in Public Law 99-160, $600,000,000 are rescinded.

Mr. LEAHY. Mr. President, Senator LAUTENBERG and I have introduced an amendment to the continuing resolution. This is a technical amendment, but is is also a very important amendment.

In last year's HUD-independent agencies appropriation bill, we appropriated $900 million for the Superfund Program. We fenced those funds. That is, we provided that they could not be spent unless Superfund was amended. Since Superfund had never been amended, this provision meant that these funds could not be spent until the Superfund reauthorization was enacted. We included these provisions at the request of the authorizing committees which feared that if all of the Superfund funding were immediately available, the urgency to resolve the Superfund legislation would dissipate.

It took longer than expected to reauthorize the Superfund Program. As a consequence, twice during this year we have had to release funds to keep the program operating; $600 million of the funds appropriated have not been released. There are experts within the administration and the GAO who believe that since these funds are derived from a trust fund which has no funds in it the authority will lapse on September 30, 1986.

There are serious questions about the correctness of this understanding of trust fund law. However, in order to ensure that these funds are made available, we are proposing in this legislation to rescind $600 million of 1986 funds and appropriate an additional $600 million for Superfund in 1987. From a budget point of view, this action is a wash. However, without this amendment $600 million of funds to clear up hazardous sites would be lost.

Six hundred million dollars is more than the Agency has ever spent in a single year to clean up hazardous waste sites.

Thus these funds are critical to a vital effective Superfund Program.

I urge the adoption of the amendment.

Mr. LAUTENBERG. Mr. President, I rise to join Senator LEAHY in offering this amendment. It simply assures that the money appropriated in fiscal year 1986 for Superfund is not lost to the program. It does not release this sum, but simply preserves it. Due to the delay in reauthorizing the program, only a small portion of the fiscal year 1986 appropriation was ever made available for obligation, and $600 million remains. Unless Congress takes appropriate action at this point, these remaining funds will lapse.

This amendment ensures that these funds do not lapse, and I strongly support it.

Mr. President, with over 900 sites on the national priority list and 99 of these sites in New Jersey, we cannot afford to lose these funds. What this amendment does is, first, rescind the $600 million carryover for fiscal year 1987 purposes, and then, second, reappropriate the $600 million in fiscal year 1987. This assures availability of these funds for the Superfund Program. Without action on the fiscal year 1986 carryover by September 30, all remaining fiscal year 1986 funding will be lost to the program.

The amendment should in no way remove pressure on Congress and the President to enact the Superfund reauthorization. The measure simply ensures that the appropriation does not expire. But in doing so, the amendment does not release for obligation any of the $600 million. The amendment does not, for example, put any funds into the Superfund trust fund either directly or through borrowing authority.

This approach preserves the $600 million appropriation, but keeps the pressure on the Congress to complete its work on the conference report, and on the President to sign a reauthorizing bill.

Mr. President, today's agreement by the tax conferees on the Superfund conference report marks what can be the beginning of a new era of environmental protection.

Now the way is clear for the House and Senate to consider and approve this landmark legislation, after considerable delay and debate.

At this point, attention shifts to the White House. The fate of this bill, now, is in the hands of the President. Will he veto it, or pocket veto it, not even giving the Congress a chance to respond?

The administration has consistently maintained that it will veto any bill with revenues exceeding $5.3 billion in revenues. Further, it has expressed opposition to a broad-based tax, or an oil tax. This agreement announced today contains all three measures. Top administration officials have warned me and others that the veto drums are beating loudly. I have been told that the Treasury Department has issued a statement saying the Department will recommend that the President veto the bill. I have not been able to confirm that.

Before the President takes such action, he should think carefully about the ramifications of a veto. A veto would starve this program and possibly kill it. It would stop work at over 100 Superfund sites by the end of this month. A veto says "no" to new tough cleanup standards. It says "no" to community right to know. It says "no" to radon mitigation, "no" to a leading underground tanks program, "no" to citizen suits, and "no" to many other programs vital to cleaning up our toxic waste sites.

These provisions were the result of almost 3 years of consideration by Congress. What we have today is the potential for a historic step forward. To New Jersey, with its 99 Superfund sites, it means at least $500 million of funding to clean up our abandoned toxic waste sites.

Citizens of New Jersey and other States need to let the President know that he should sign the Superfund bill. The message should be clear. Both Houses of Congress approved Superfund by overwhelming margins. If there is a veto, the President is out of step with the country.

I will be circulating a letter to the President, among my colleagues, asking him not to veto this bill.

Mr. President, the Superfund Program has suffered enough disruption and delay. It has been operating on a series of interim funding measures since the taxing authority expired last September 30. It has been funded at reduced levels. And, it will soon be out of money. Action on this bill must be concluded before we adjourn for the year.

Last March, we passed a $150 million interim funding bill to prevent a shutdown of the program. On August 15, we passed another stopgap interim funding measure designed to avert the crisis for another month, hoping the tax conferees would complete action on the bill. Now we are courting the same crisis in funding for the program. According to a September 22, 1986, letter from EPA Administrator Lee Thomas, work at 114 remedial projects will stop on October 31, 1986, including 16 projects in my home State of New Jersey. And as the Administrator predicted, contract termination notices were sent out on October 1.

It is urgent that we enact the Superfund reauthorization bill. We must act, and we must act swiftly. In the meantime, adopting this amendment is important to assure that the $600 million remaining from fiscal year 1986 appropriations not be lost to the program.

Mr. HATFIELD. Mr. President, the amendment has been cleared on this side of the aisle. I move its adoption.

The PRESIDENT pro tempore. The question is on agreeing to the amendment.

The amendment (No. 3167) was agreed to.

Mr. STENNIS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HATFIELD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3168

(Purpose: To establish the Aviation Safety Commission)

Mr. STENNIS. Mr. President, I have another amendment—it has been cleared—by the Senator from West Virginia [Mr. BYRD] regarding aviation safety. I send that amendment to the desk for presentation to the body.

The PRESIDENT pro tempore. The clerk will report.

The legislative clerk read as follows:

The Senator from Mississippi [Mr. STENNIS], for Mr. BYRD, proposes an amendment numbered 3168.

Mr. STENNIS. Mr. President, I ask unanimous consent that further presentation of the amendment be dispensed with.

The PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

At the end of the joint resolution, add the following new title:

TITLE .—AVIATION SAFETY

SHORT TITLE

SEC. This title may be cited as the "Aviation Safety Commission Act of 1986".

COMMISSION ESTABLISHED

SEC. . (a) There is established a commission to be known as the Aviation Safety Commission (hereinafter referred to as the "Commission").

(b) (1) The Commission shall be composed of seven members appointed by the President no later than 30 days after the date of enactment of this Act.

(2) Appointees to the Commission shall possess extensive experience and expertise at the highest executive levels of public or corporate management.

(3) No member of the Commission shall, at the time of such member's appointment, be an employee or officer of the Federal Government, nor shall any member have been an employee of the Federal Government for at least 3 years before such member's appointment to the Commission.

(4)(A) At least four members of the Commission, including the Chairman, shall not have performed any service or have been involved in any way in any business concern in air commerce or any aviation-related industry for at least 3 years before their appointment to the Commission.

(B) For the purposes of this paragraph, the term "air commerce" has the meaning given to such term in section 101(4) of the Federal Aviation Act of 1958 (49 App. U.S.C. 1301(4)).

(c) The President shall appoint one of the members to serve as Chairman of the Commission.

(d) Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner in which the original appointment was made.

(e) Four members of the Commission shall constitute a quorum, but a lesser number may hold hearings.

(f)(1) The Commission shall hold its first meeting within 30 days after the appointment of all members.

(2) The Commission shall meet at the call of the Chairman or a majority of the members.

(g) Members of the Commission shall serve until the expiration of the Commission pursuant to section 3(f) of this Act.

FUNCTIONS OF THE COMMISSION

SEC. .(a) The Commission shall make a complete study of the organization and functions of the Federal Aviation Administration (hereinafter referred to as the "Administration") and the means by which the Administration may most efficiently and effectively perform the responsibilities assigned to it by law and increase aviation safety.

(b) In conducting such study, the Commission shall consider whether—

(1) the Administration has been provided adequate resources and has adequately utilized the resources provided to ensure aviation safety;

(2) the dual responsibilities of the Administration of promoting commercial aviation and ensuring aviation safety are in conflict, and whether such conflict impedes the effective maintenance and enhancement of aviation safety;

(3) the Administration should be reorganized as an independent Federal agency with the promotion, maintenance, and enhancement of aviation safety as the sole responsibility of such agency;

(4) the promotion of commercial aviation should be assigned as a responsibility to another agency of the Federal Government;

(5) airline deregulation has an adverse effect on the margin of aviation safety, in-

cluding a review of whether the practice of airline self-compliance with respect to aviation maintenance standards is an outmoded approach in an environment designed to maximize cost-savings; and

(6) it is feasible to make mandatory certain or all of the safety recommendations issued by the National Transportation Safety Board.

(c) The study conducted under this section shall include findings and recommendations, including any recommendations for legislative action, regarding—

(1) the most appropriate and effective organizational approach to ensuring aviation safety; and

(2) measures to improve the enforcement of Federal regulations relating to aviation safety.

(d) In conducting such study, the Commission shall consult with the National Transportation Safety Board and a broad spectrum of representatives of the aviation industry, including—

(1) air traffic controllers;

(2) representatives of the commercial aviation industry;

(3) representatives of airways facilities technicians;

(4) independent experts on aviation safety;

(5) former Administrators of the Administration; and

(6) representatives of civil aviation.

(e) Within 9 months after the date of enactment of this Act, the Commission shall submit a report on the study conducted pursuant to this section to the President and to each House of Congress. Such report shall contain a detailed statement of the findings and conclusions of the Commission, together with recommendations for legislative and administrative actions.

(f) The Commission shall cease to exist 9 months after the date of enactment of this Act.

POWERS AND ADMINISTRATIVE PROVISIONS

SEC. . (a) The Commission may, for the purpose of carrying out the provisions of this Act, hold such hearings, sit and act at such times and places, take such testimony, receive such evidence, and publish such reports as the Commission considers appropriate.

(b)(1) Subject to such rules as may be adopted by the Commission, the Chairman, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 of such title relating to classification or chapter 53 of such title relating to General Schedule pay rates, may—

(A) appoint and fix the compensation of such staff personnel as the Chairman considers necessary, including an executive director who may be compensated at a rate not in excess of that provided for level V of the Executive Schedule in title 5, United States Code; and

(B) procure the services for experts and consultants in accordance with section 3109 of title 5, United States Code.

(2) Any person appointed as executive director pursuant to paragraph (1)(A) of this subsection shall meet the same qualifications required of members pursuant to section (b) of this Act.

(c) Each department, agency, and instrumentality of the executive branch of the Federal Government, including independent agencies, shall furnish to the Commission, upon request made by the Chairman, such information as the Commission considers necessary to carry out its functions.

(d) Upon request of the Commission, the head of any Federal agency may detail, on a reimbursable basis, any of the personnel of such agency to the Commission to assist the Commission in carrying out its duties.

(e) The Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

(f) The Commission may use the United States mail in the same manner and under the same conditions as other departments and agencies of the United States.

(g) Any member or agent of the Commission may, if so authorized by the Commission, take any action which the Commission may take under this section.

COMPENSATION OF MEMBERS

SEC. . Members of the Commission shall serve without compensation, but shall be reimbursed for travel or transportation expenses under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business and engaged in the actual performance of duties of the Commission.

APPROPRIATIONS

SEC. . There is hereby appropriated for fiscal year 1987, $2,000,000 to carry out the provisions of this Act.

THE AVIATION SAFETY COMMISSION

Mr. BYRD. Mr. President, the amendment I am offering is based on legislation, S. 2417, the Aviation Safety Commission Act, which I introduced in May, and which the Senate passed on September 11.

The need for this legislation was underscored on Sunday, August 31, 1986, by the collision in the skies over Los Angeles of Aeromexico flight 498, carrying 58 passengers and 6 crew members, with a single engine piper Cherokee. Both aircraft plunged to the ground killing everyone on board. To compound the tragedy, the Aeromexico DC-9 crashed into a Los Angeles suburb, damaging or destroying 11 homes, and, according to preliminary estimates, killing as many as 22 residents.

Mr. President, as a consequence of the Aeromexico tragedy, the House has included a provision, section 139, in House Joint Resolution 738 that directs the FAA to initiate rulemaking action to consider the question of requiring the installation and carriage of operating transponders with automatic altitude reporting capabilities in all aircraft operating in terminal airspace. My amendment is directed to a similar concern for aviation safety.

The Aeromexico tragedy is further evidence of the declining margin of aviation safety the Nation has experienced over the past several years. Since 1975, reports of aviation safety incidents—such as near midair collisions, surface operational errors, and crashes—have been occurring more frequently.

For example, in 1975 one aviation safety incident was reported for every 12,805 aircraft departures. By 1980, an incident was reported for every 7,377 departures, a 42-percent increase in the frequency of incidents during the period 1975–80.

Despite a temporary improvement in the margin of safety during the period 1980–82, perhaps reflecting the FAA's restrictions on air traffic at the busiest airports in response to the air traffic controllers' strike in 1981, the margin of safety continued to decline.

Between 1982 and 1985, the frequency of incidents increased from 1 per 12,031 departures in 1982, to 1 per 5,323 departures in 1985, a 55-percent increase over the period.

Simply stated, the problem is that the skies have become more crowded over the past few years. For example, the number of commercial passenger airlines has increased from 29 in 1978, to 307 in 1986. The number of commercial passenger aircraft operated has increased from 2,145 in 1978 to 3,824 in 1984. And, in light of the Aeromexico incident, one must not neglect to mention that the number of general aviation aircraft in operation has increased from 177,964 in 1978, to 220,940 in 1984.

The Federal Aviation Administration has been overwhelmed by the increased number of commercial flights, aircraft, and airlines. In the face of the dramatic growth in the commercial airline industry, the FAA this year has not yet recovered from the 1981 air traffic controllers strike. Indeed, there are 4,344 fewer experienced air traffic controllers employed by the FAA this year than there were in 1981 before the strike.

In addition, there are serious shortcomings in the FAA's system to ensure compliance with Federal safety regulations relating to aircraft maintenance and operations. For example, in fiscal year 1986 there are 30 percent fewer FAA inspectors to ensure such compliance than there were in 1978.

The problem is not just a question of money. Congress has been more than willing to provide the FAA with the resources necessary to ensure aviation safety. Indeed, Congress has consistently appropriated more funds than requested by the FAA for its operating budget. In each of fiscal years 1985 and 1986, the FAA requested $2.7 billion for FAA operations, and, each year, the Congress appropriated $2.8 billion.

Central to the difficulties facing the FAA is a policy conflict between the agency's statutory duties to promote commercial aviation and ensure its safety. This conflict may adversely affect the margin of aviation safety. Indeed, there are indications that the FAA provides assistance to the very carriers it shuts down for safety-related violations. For example, the FAA played a major role in helping Provincetown-Boston Airlines get back into

business after the carrier's operating license was lifted by the FAA. Subsequent to its reopening, with FAA assistance, a Provincetown-Boston flight crashed near Jacksonville, FL, on December 6, 1984, killing 13 persons.

Mr. President, in view of the recent Aeromexico tragedy, and the concerns regarding the FAA's ability to meet the challenges brought by the dramatic growth of the airline industry, it is time for an independent reexamination of the FAA, the Nation's aviation safety policy, and the impact of airline deregulation on aviation safety.

S. 2417, the Aviation Safety Commission Act, is a response to those concerns. On August 7, the Senate Committee on Commerce, Science, and Transportation reported the bill after hearings which were held on July 17 by the Subcommittee on Aviation. The bill was supported by the Air Transport Association, the Airline Pilots' Association, the National Air Traffic Controllers Association, the Professional Airways Systems Specialists, and the Aviation Safety Institution. On September 11, the Senate passed S. 2417.

The bill has 16 cosponsors, including Senators HOLLINGS, EXON, FORD, ROCKEFELLER, PROXMIRE, ANDREWS, CHILES, LONG, MATSUNAGA, KASSEBAUM, GOLDWATER, KASTEN, LAUTENBERG, SIMON, RIEGLE, and GORTON.

S. 2417 directs the President to appoint a seven-member, blue ribbon Aviation Safety Commission to make a complete study of the organization and functions of the FAA and the means by which the FAA may most effectively enhance aviation safety.

The duties of the Commission include consideration of whether the dual responsibilities of the FAA—promotion and regulation—are in conflict, thus impeding safety; and whether the FAA should be reorganized as an independent Federal agency with aviation safety as its sole responsibility.

Nine months from the date of enactment, the Commission is to submit a report to the President and the Congress containing the Commission's findings and recommendations, including any recommendations for legislation.

The work of the Commission will make a valuable contribution to congressional efforts to restore the margin of aviation safety. Until this essential goal is achieved, it is premature to declare that the Nation's skies are as safe as they can be.

Mr. President, time is running out on the 99th Congress. We should not leave this place without having set into motion a process to give us a reliable and authoritative judgment on what we should do with the FAA to assure that it can and will fulfill the vital responsibilities that have been assigned to it. The adoption of this amendment to this continuing resolution will move us one major step forward in this effort, and toward the goal of insuring aviation safety. I urge my colleagues to support my amendment.

Mr. STENNIS. I move adoption of the amendment.

The PRESIDENT pro tempore. The question is on agreeing to the amendment.

The amendment (No. 3169) was agreed to.

Mr. STENNIS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HATFIELD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3169

(Purpose: To make a technical correction in provisions of the Food Security Act of 1985)

Mr. STENNIS. The next amendment we have that has been cleared, Mr. President, is an amendment by Senator DOMENICI. I send that amendment to the desk and ask for its presentation to the body by the clerk.

The PRESIDENT pro tempore. The clerk will report.

The legislative clerk read as follows:

The Senator from Mississippi [Mr. STENNIS], for Mr. DOMENICI, proposes an amendment numbered 3169.

Mr. STENNIS. Mr. President, I ask unanimous consent that further presentation of the amendment be dispensed with.

The PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

At an appropriate place in the bill insert the following new section:

SEC. . In section 108B(4)(A) of the Agricultural Act of 1949, as added by section 705 of the Food Security Act of 1985, insert the following after "additional peanuts": "(other than net gain on additional peanuts in separate type pools established under paragraph (3)(B)(i) for Valencia peanuts produced in New Mexico)".

Mr. DOMENICI. Mr. President, this amendment is a technical amendment that corrects a drafting omission in the 1985 farm bill.

The amendment is supported by Senator HELMS, the administration, and the peanut industry.

In addition, 13 other Senators from peanut-producing States cosigned a letter to Secretary Lyng which alerted the Department to this technical problem in the 1985 farm bill.

New Mexico valencias are expressly excluded from area-to-area profit and loss offsetting in the 1985 farm bill.

Congress intended for New Mexico valencias to be excluded from within area profit and loss offsetting as well.

New Mexico valencias are only a tiny fraction of the entire U.S. peanut industry.

There is bipartisan support among Senators from peanut-producing States and I know of no substantive reason why this amendment should not be accepted.

Mr. STENNIS. This amendment has been cleared on both sides, Mr. President, for consideration. I move its adoption.

The PRESIDENT pro tempore. The question is on agreeing to the amendment.

The amendment (No. 3169) was agreed to.

Mr. STENNIS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HATFIELD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3170

(Purpose: To provide that certain expenses of a private foundation in removing hazardous substances shall be treated as qualifying distributions for purposes of section 4942 of the Internal Revenue Code of 1954)

Mr. STENNIS. Mr. President, I have an amendment by Senator FORD of Kentucky, that has been cleared regarding the Brown Foundation. I send that amendment to the desk for presentation to the body.

The PRESIDENT pro tempore. The clerk will report.

The legislative clerk read as follows:

The Senator from Mississippi [Mr. STENNIS], for Mr. FORD, proposes an amendment numbered 3170.

Mr. STENNIS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

At the end of the joint resolution add the following new section:

SEC. . CERTAIN COSTS OF PRIVATE FOUNDATION IN REMOVING HAZARDOUS SUBSTANCES TREATED AS QUALIFYING DISTRIBUTIONS.

(a) IN GENERAL.—In the case of any taxable year beginning after December 31, 1982, the distributable amount of a private foundation for such taxable year for purposes of section 4942 of the Internal Revenue Code of 1954 shall be reduced by any amount paid or incurred (or set aside) by such private foundation for the investigatory costs and direct costs of removal or taking remedial action with respect to a hazardous substance released at a facility which was owned or operated by such private foundation.

(b) LIMITATIONS.—Subsection (a) shall apply only to costs—

(1) incurred with respect to hazardous substances disposed of at a facility owned or operated by the private foundation but only if—

(A) such facility was transferred to such foundation by bequest before December 11, 1980, and

(B) the active operation of such facility by such foundation was terminated before December 12, 1980, and

(2) which were not incurred pursuant to a pending order issued to the private foundation unilaterally by the President or the

President's assignee under section 106 of the Comprehensive Environmental Response, Compensation and Liability Act, or pursuant to a judgment against the private foundation issued in a governmental cost recovery action under section 107 of such Act.

(c) HAZARDOUS SUBSTANCE.—For purposes of this section, the term "hazardous substance" has the meaning given such term by section 9601(14) of the Comprehensive Environmental Response, Compensation and Liability Act.

Mr. FORD. Mr. President, this amendment has been adopted twice before by the Senate. It has great merit and will allow a charitable foundation in Kentucky to continue to support worthwhile projects in my State. This amendment was adopted before by the Senate, once on S. 51, the Superfund bill, and then again on H.R. 3838, the Tax Reform Act of 1986. Unfortunately, the Superfund bill is stalled in conference and this provision was not included in the conference report to the tax bill. Because this foundation is so vital to Kentucky, I am grateful to my colleagues for their willingness to accept it.

This amendment would allow the James Graham Brown Foundation of Louisville, KY, to allocate certain expenses related to the removal of hazardous substances to the 5-percent of assets disbursement rule under section 4942 of the Internal Revenue Code.

The ability of the Brown Foundation to continue to finance many charitable and worthwhile projects and organizations in Kentucky is jeopardized without this amendment. Since its founding in 1954, the Brown Foundation has disbursed over $68 million to hospitals, schools, universities, and organizations for the handicapped. Over 85 percent of these funds, or a total of $58 million, have remained in Kentucky, financing such causes as the Boy Scouts, the Cerebral Palsy School, drug abuse centers, the Kentucky Heart Fund, hospices, the Kentucky Society of Crippled Children, Recording for the Blind, and hundreds of other equally needy and worthy concerns. Without the relief provided by our amendment, these and many other organizations will lose a prime source of funding.

The founder of the Brown Foundation bequeathed to it his stock in a company which operated several wood treating plants. By 1980, the Brown Foundation dissolved this company and liquidated its assets. In 1983, it was advised by EPA that one of the plants may have been responsible for the discharge of hazardous substances. As a responsible organization, the Brown Foundation entered a voluntary consent order with EPA to investigate the site, and fully intends to contribute its fair share of whatever cleanup costs may arise. However, to do so, the foundation will be forced to seriously deplete its corpus if it is unable to apply those costs to the disbursement requirements under section 4942 of the Internal Revenue Code.

The Brown Foundation does not seek to avoid any of its responsibility for cleanup costs; nor is it attempting to circumvent the intent of section 4942 by seeking to qualify what may be tremendous cleanup costs as qualifying disbursements. The Brown Foundation merely wishes to remain in the business of helping Kentuckians reach their goals by providing a continuing source of charitable giving in the Commonwealth. The loss of these funds would have a devastating impact on Kentucky.

I am pleased that the distinguished chairman of the Appropriations Committee, Senator HATFIELD, and my distinguished colleagues Senator STENNIS and Senator JOHNSTON, have agreed to accept this amendment.

Mr. STENNIS. I move adoption of the amendment.

The PRESIDENT pro tempore. The question is on agreeing to the amendment.

The amendment (No. 3170) was agreed to.

Mr. STENNIS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HATFIELD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3171

(Purpose: To authorize a two-year demonstration project on I-75 sections in Northern Kentucky)

Mr. STENNIS. The next one, Mr. President, has also been cleared for presentation for the Senator from Kentucky, Mr. FORD. This relates to Interstate 75. I ask the amendment be presented to the body by the clerk.

The PRESIDENT pro tempore. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Mississippi [Mr. STENNIS], for Mr. FORD, proposes an amendment numbered 3171.

Mr. STENNIS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

In the appropriate section of the bill, add the following section:

SEC. . Notwithstanding any other provisions of title 23, the Secretary of Transportation shall carry out the following project:

I-75 corridor in Kenton County, Kentucky, to examine the feasibility of unmanned radar units for safety purposes

Mr. FORD. Mr. President, there is a portion of I-75 in Kenton County, KY, commonly referred to as "Death Hill." The number of fatal accidents on this portion of the major highway entering into Cincinnati from northern Kentucky has caused State and local officials to try extraordinary measures to slow down traffic.

One of the actions taken by the State of Kentucky was to install unmanned radar units. The FCC recently informed the State that the rules of the FCC do not permit such units to be unmanned. What we need is a little time. The FCC will allow such units if they perform another function such as counting traffic. The manufacturer will have to make the modifications and have them approved by the FCC Labs. Until this takes place State and local police would like to continue to use the equipment. This amendment will establish a demonstration project so that for safety reasons the unmanned radar units will be continued to be used on the steep incline which goes down to the bridge which crosses the Ohio River.

Mr. President, just to give the Senate some kind of idea of the problem in less than a week the Kentucky State Police issued over 1,000 traffic tickets on I-75. We have to use every measure possible to slow traffic and save lives on this portion of I-75.

The PRESIDENT pro tempore. The question is in agreeing to the amendment.

The amendment (No. 3171) was agreed to.

Mr. STENNIS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HATFIELD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3172

(Purpose: To establish the National Commission to Prevent Infant Mortality)

Mr. STENNIS. The next cleared amendment we have is Senator CHILES from Florida, involving the Infant Mortality Commission. I send that amendment to the desk, Mr. President, and ask for its consideration.

The PRESIDENT pro tempore. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Mississippi [Mr. STENNIS] for Mr. CHILES, proposes an amendment 3172.

Mr. STENNIS. I move that further reading of the amendment be dispensed with, Mr. President.

The PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Commission to Prevent Infant Mortality".

FINDINGS AND PURPOSE

SEC. 2. The Congress finds and declares that:

(1) The United States ranked seventeenth in the world in 1982 with an infant mortality rate of eleven and two-tenths deaths per

thousand live births, a higher rate than many developed nations of the world.

(2) The infant mortality rate in some areas of the United States is twice the national rate.

(3) The main cause of a high infant mortality rate is low birthweight. Some 6.7 per centum of all infants born in the United States are of low birthweight.

(4) Inadequate prenatal care is associated with an increased risk of low birthweight. Some twenty-five percent of all pregnant women in the United States do not begin prenatal care until after the first three months of pregnancy, if at all.

(5) In certain areas throughout the United States, there exist barriers to medical services, nutritional support, educational opportunities, and financial support for adequate health care for pregnant mothers and infants. The absence of needed support services during prenatal care, labor and delivery, and post-partum care through the age of one year contributes substantially to a high national infant mortality rate.

(6) Our Nation, which benefits from many diverse governmental and private resources, has a patchwork, uncoordinated, and little understood approach to the delivery of services associated with preventing infant mortality.

(7) The Congress and the President can act to prevent infant mortality and the incidence of low birthweight infants by establishing a commission by law, whose purpose shall be to address respective governmental and private roles in the delivery of services associated with preventing infant mortality, and to recommend actions designed to change and improve the Nation's comprehensive approach to this national problem.

DEFINITION

SEC. 3. For the purposes of this Act, the term "infant mortality" refers to the number of infants born alive but who die before their first birthday.

ESTABLISHMENT OF A NATIONAL COMMISSION

SEC. 4. (a) To accomplish the purpose set forth in section 2 of this Act there is established the National Commission to Prevent Infant Mortality (hereinafter referred to as the "Commission").

(b) The Commission shall be composed of fifteen members, as follows:

(1) Two members of the Senate, one to be selected by the majority leader of the Senate, the other to be selected by the minority leader of the Senate.

(2) Two members of the House, one to be selected by the Speaker of the House, the other to be selected by the minority leader of the House.

(3) Three members from representatives of State and local government; to be selected by the President and no more than two of whom shall be members of the same political party. One shall be a Governor; one shall be a State legislator; and one shall be a representative of local government.

(4) The Secretary of Health and Human Services shall be a member.

(5) The Comptroller General of the United States shall be a member.

(6) Six at large members, with demonstrated expertise in maternal and child health, shall be jointly selected by the majority leader of the Senate and the Speaker of the House.

(c) The Commission shall select a Chairperson and Vice Chairperson from among its members.

(d) Eight members of the Commission shall constitute a quorum, but a lesser number may hold hearings.

(e) The Commission shall meet at the call of the Chairperson.

(f) Members shall be appointed for the life of the Commission. Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the original appointment.

DUTIES OF THE COMMISSION

SEC. 5. (a) The Commission shall:

(1) Identify and examine comprehensively Federal, State, local, and private resources which impact infant mortality, including but not limited to—

(A) the effectiveness and adequacy of programs such as the Supplemental Feeding Program for Women, Infants, and Children; the Maternity and Infant Care Program; the Improved Pregnancy Outcome Program; the Maternal and Child Health Block Grant; Community Health Centers; prepregnancy services and other programs that increase access to prenatal and postnatal education, care, and nutrition;

(B) the effectiveness of current Federal and State policies under the Medicaid Program to ensure adequate access to prenatal and post- natal care for low-income pregnant women and mothers;

(C) the role of income maintenance and other programs that impact infant mortality such as Aid to Families with Dependent Children and Federal housing subsidies; and

(D) the adequacy of current Federal and State efforts to enable an appropriate distribution of properly trained health care professionals to provide comprehensive maternal and child health services.

(2) Identify current financial, intergovernmental, and within the Federal Government, interagency barriers to the health care needed to prevent high infant mortality.

(3) Review recommendations made in recent regional and national reports that promote the health status of childbearing women and their infants and carry forward such recommendations as deemed appropriate.

(b) The Commission shall—

(1) recommend a national policy designed to change and improve the current approach to preventing infant mortality, including recommendations concerning appropriate roles for the Federal Government, States, local governments, and private institutions;

(2) recommend to the Congress and the President what specific changes are needed within Federal laws and Federal programs to achieve an effective Federal role in preventing infant mortality; and

(3) present such recommendations to the President, the Speaker of the House, and the majority leader of the Senate no later than one year after enactment of this Act.

POWERS OF THE COMMISSION

SEC. 7. (a) The Commission, or at its discretion, any subcommittee or member thereof, may for the purpose of carrying out the provisions of this Act, hold such hearings, sit and act at such times and places, take such testimony, receive such evidence and administer such oaths, as the Commission or such subcommittee or member may deem advisable. Any member of the Commission may administer oaths or affirmations to witnesses appearing before the Commission, subcommittee, or member thereof.

(b) The Commission may secure directly from any Federal department or agency such information as may be necessary to enable the Commission to carry out this Act. Upon request of the Chairman of the Commission, the head of such department or agency shall furnish such information to the Commission.

(c) To carry out this Act, the Commission may enter into such contracts and other arrangements to such extent or in such amounts as are provided in appropriation Acts, and without regard to the provisions of section 3709 of the Revised Statutes (41 U.S.C. 5). Contracts and other arrangements may be entered into under this subsection with or without consideration or bond.

(d) The provisions of the Federal Advisory Committee Act shall not apply to the Commission.

COMMISSION STAFF

SEC. 8. (a) The Chairperson and Vice Chairperson of the Commission shall appoint an executive director. The employment of such executive director shall be subject to confirmation by the Commission.

(b) The Commission may appoint and terminate the executive director selected under subsection (a) and such other personnel as it considers appropriate to assist in the performance of its duties under this Act, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may pay such executive director and other personnel without regard to the provisions of chapter 51 and subchapter 111 of chapter 53 of such title relating to classification and General Schedule pay rates, except that the rate of pay for such executive director and other personnel may not exceed the rate payable for GS-18 of the General Schedule under section 5332 of such title.

(c) Service of an individual as a member of the Commission or employment of an individual by the Commission on a part-time or full-time basis and with or without compensation shall not be considered as service or employment bringing such individual within the provisions of any Federal law relating to conflicts of interest or otherwise imposing restrictions, requirements, or penalties in relation to the employment of persons, the performance of services, or the payment or receipt of compensation in connection with claims, proceedings, or matters involving the United States. Service as a member of the Commission or as an employee of the Commission, shall not be considered service in an appointive or elective position in the Government for purposes of section 8344 of title 5, United States Code, or comparable provisions of Federal law.

(d) Subject to such rules as may be prescribed by the Commission, the Chairman of the Commission may procure temporary and intermittent services under section 3109 of title 5, United States Code, at rates for individuals not to exceed the daily rate payable for GS-18 of the General Schedule under section 5332 of such title.

SUNSHINE PROVISION

SEC. 9. The Commission shall establish procedures to ensure its proceedings are open to the public and the maximum extent practicable.

TERMINATION OF THE COMMISSION

SEC. 10. Ninety days after the Commission submits its recommendations as required by section 5(b)(3) the Commission shall terminate.

AUTHORIZATION OF APPROPRIATIONS

SEC. 11. There are authorized to be appropriated to the Commission $1,000,000. Amounts appropriated under this section shall remain available until the day on

which the Commission terminates under section 10.

Mr. CHILES. Mr. President, I am pleased today to offer to the continuing resolution an amendment to establish a national commission with the clear mandate to vigorously attack the problem of infant mortality in this country.

In my home State of Florida 1,120 children are added to the population every single day. Of these 1,120 children, 12 will die before their first birthday.

Here in the United States, despite the fact that we are one of the wealthiest and most advanced countries in the world, our infant mortality rate, as reported in the 1985 State of the World's Children Report, was higher then 15 other countries. Here in our Nation's Capital we lose nearly 20 of every 1,000 children born. That statistic is comparable to those experienced in some Third World countries, Mr. President.

The main cause of high infant mortality is low birthweight. Some 6.7 percent of all infants born in the United States are under 5½ pounds. Those who are lucky enough to survive their first day often must spend many days, months and even years with costly and burdensome handicaps.

Too many children are meeting untimely deaths and enduring preventable handicaps. Too many parents are asking that painful question, "Is there any greater suffering."

Further, Mr. President, the monetary costs of high infant mortality and low birthweight rates are significant. The annual cost of neonatal intensive care in this country is over $1.15 billion. Preventive care has been shown to be at least 3 times cheaper than providing neonatal intensive care.

We cannot ignore these numbers, these lost lives. We cannot continue to let our children fall victim to inadequate health care and treatment.

Fortunately, Mr. President, with a small investment in prenatal and postnatal care, we can significantly reduce the number of low birthweight babies and lower our infant mortality rate as well. If we can reduce the barriers to medical services, nutritional support, and health care for pregnant mothers and infants, then we can see some positive changes in the state of our country's children.

There are a number of very fine institutions and people working aggressively on these issues, Mr. President, and this bill has no intention of simply retracing the progress that has already been made. Instead, S. 1209 would coordinate and focus the efforts of the many governmental and private agencies that have been working this vineyard for years.

The commission would recommend an action strategy to change the Nation's approach to this critical problem. It would provide the comprehensive gameplan we need to coordinate Federal and State policies and services that affect access to prenatal care. It would address the gaps in our service delivery and reimbursement systems. Most of all, commission findings would heighten public awareness and force national consensus in the issue.

During 3 days of hearings, I heard from close to 70 witnesses on this bill, and only one group opposed the bill, that was the set of witnesses from the administration. They said the bill was too costly. It's an argument that is worth considering. Everybody likes to recount the words of the late Senator Everett Dirksen, "A billion here, a billion there, and pretty soon you're talking about real money."

A million dollars for this Commission is real money, Mr. President. It comes from the hard-earned tax dollars of American taxpayers. But I believe it will be money well spent if we can prevent or reduce our infant mortality rate in Florida, Minnesota, Tennessee, Delaware, the District, and throughout our country. There's a television ad about the value of preventive maintenance on an automobile where the mechanic says, "You can pay me now or you can pay me later." We're in that same situation on infant mortality and the cost later will be higher.

Mr. President, 27 of our colleagues in the Senate have shown their support for this Commission by becoming cosponsors of S. 1209. In addition, the proposed Commission has the support of the Southern Governors' Association, the National Governors' Association, the Institute of Medicine, the March of Dimes, the National Academy of Pediatricians, the National Association of Public Health Policy, and the National Perinatal Network. Most importantly, this bill has the strong support of many, many parents from around the country.

Mr. President, it is time for the Congress of this great country to address one of the most costly, embarrassing, and tragic problems it faces. We must take care of the infants and children who are dependent on us for their health and well-being. We have the knowledge and capability to help them. We need only to reach out and this Commission will enable us to take this important step.

Mr. STENNIS. Mr. President, I ask unanimous consent that a factsheet on this amendment be printed in the RECORD.

There being no objection, the factsheet was ordered to be printed in the RECORD, as follows:

FACT-SHEET ON CHILES AMENDMENT ON INFANT MORTALITY

The Commission: Cost of establishing the Commission—$1 million one time cost. Life of the Commission would be 1 year to coordinate funding from all sources—Federal, State and local.

Commission Membership—15:

Two Senators selected by Majority and Minority Leader of the Senate.

Two House members selected by the Speaker and Minority Leader of the House.

Three Presidential appointees from State and local government. (One governor, one state legislator, and one local official).

One Secretary of HHS.

One Comptroller General (GAO).

Six at large (Speaker of the House & Majority Leader, jointly).

The Problem:

Infant Mortality is the number of babies who are born alive but die before their first birthdays. It is measured by the number of deaths per 1000 live births.

The main cause of IM is low birthweight (under 5½ lbs.); babies born too small are 40 times more likely to die within the first month of life than babies of the proper weight.

The provisional IM figure for the first 3 months of 1985 is 11.0 per 1000 births, up from the previous year.

9 of 11 states with the highest IMR are in the South. Florida has the 10th worst IMR in the nation, with 1,816 babies dying before their first birthdays.

Cities have a higher Infant Mortality Rate than most other areas. IMR also varies within communities, depending on affluency of neighborhoods.

Monetary Costs of High Infant Mortality:

The annual cost of neonatal intensive care in this country is over $1.5 billion.

Average cost to graduate an infant from a neonatal intensive care unit is between $80,000 and $100,000 per infant.

The PRESIDENT pro tempore. The question is on agreeing to the amendment.

The amendment (No. 3172) was agreed to.

Mr. STENNIS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HATFIELD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

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AMENDMENT NO. 3173

(Purpose: To amend the Community Economic Development Act of 1981 to correct legislative oversight when program was transferred from the Department of Health and Human Services to the Department of Agriculture)

Mr. STENNIS. Mr. President, I send an amendment to the desk on behalf of Mr. HATCH.

The PRESIDENT pro tempore. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Mississippi [Mr. STENNIS], for Mr. HATCH, proposes an amendment numbered 3173.

Mr. STENNIS. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

RURAL DEVELOPMENT FUND LOANS

Insert at the end thereof:

Section 623B(b)(2) of the Community Economic Development Act of 1981 is amended by adding at the end thereof the following new sentence: "Notwithstanding any other provision of law, any Utah or Ohio local public body to which a loan was made after December 31, 1982, from the Rural Development Loan Fund may, at the discretion of such local public body and with this approval of the Secretary of Health and Human Services, transfer such loan to a nonprofit corporation designated by such body to serve as an intermediate borrower and to carry out the purposes of the loan."

RURAL DEVELOPMENT FUND LOAN AMENDMENT

Mr. HATCH. Mr. President, I rise to offer this technical amendment. Earlier this year we passed legislation which transferred the Rural Development Fund Loan Program from the Department of Health and Human Services to the Department of Agriculture. Unfortunately, when we did that, there were two counties in this country, one in Utah and one in Ohio, which had received money from the Federal Government but needed some paperwork before they could spend it.

When we transferred the program to the Department of Agriculture, the Department of Health and Human Services said that they were ready to approve the paperwork but were unable and the Department of Agriculture said that they didn't know enough about it to approve it and the two counties would have to start over in the approval process.

Mr. President, this amendment simply enables those two counties to do what the Department of Health and Human Services was going to approve. It passed the Senate Labor and Human Resources Committee without objection earlier this year as part of S. 2793. It has no budgetary impact because, as I said before, the two counties already have the money. They just can't spend it.

I ask that this amendment be adopted.

Mr. STENNIS. Mr. President, this amendment has been cleared on both sides.

Mr. HATCH. Mr. President, earlier this year we passed legislation which transferred the Rural Development Fund Loan Program from the Department of Health and Human Services to the Department of Agriculture. Unfortunately, when we did that, there were two counties in this country, one in Utah and one in Ohio, which had received money from the Federal Government but needed some paperwork before they could spend it.

When we transferred the program to the Department of Agriculture, the Department of Health and Human Services said that they were ready to approve the paperwork but were unable and the Department of Agriculture said that they didn't know enough about it to approve it and the two counties would have to start over in the approval process.

Mr. President, this amendment simply enables those two counties to do what the Department of Health and Human Services was going to approve. It passed the Senate Labor and Human Resources Committee without objection earlier this year as part of S. 2793. It has no budgetary impact because, as I said before, the two counties already have the money. They just can't spend it.

I ask unanimous consent to have printed in the RECORD the CBO estimate for S. 2793.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 16, 1986.

Hon. ORRIN G. HATCH,
Chairman, Committee on Labor and Human Resources, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 2793, the Public Health Service Technical Amendments of 1986, as ordered reported by the Senate Committee on Labor and Human Resources on August 6, 1986. It is expected that enactment of this legislation would result in no additional cost to the federal government. However, some discretionary federal spending for the National Hansen's Disease Center would be covered under the bill by Medicare or Medicaid. This would create new direct spending authority, estimated to be less than $11 million each year. The total federal deficit would remain unchanged.

The bill would make the Gillis W. Long Hansen's Disease Center eligible for Medicare and Medicaid reimbursement for covered services provided to the Center's eligible patients. The federal government would continue to fund any costs not covered by Medicare or Medicaid on a discretionary basis. The Center currently spends about $11 million each year for inpatient and outpatient care. Some portion of this could now be covered by Medicare or Medicaid, but the exact amount is unknown.

The bill would also change current law regarding breach of contract under the National Health Service Corps Scholarship program. Loan obligations would no longer be forgiven for scholarship recipients filing for bankruptcy. This provision could result in additional receipts to the federal government since it would now be able to collect loan obligations from those who are granted bankruptcy. The amount of receipts cannot be estimated, but it is likely to be small for the next few years. Since 1981, between 3 and 8 scholarship recipients each year have filed for bankruptcy and had it approved by the courts. The amount of their loan obligations that was forgiven is unknown. Using an estimate for average indebtedness, the federal government could have legal claim to about $2 million in scholarship obligations each year if a similar number of bankruptcy claims are granted. However, the federal government can only expect to collect a very small portion of this in each year as payments by scholarship recipients would most likely be made over time.

Provisions of the bill relating to Community Health Centers, the National Institutes of Health, geriatric training, and the nurse practitioner program would result in no additional cost to the federal government. Modifications of health insurance coverage for certain employees involve non-federal employees and would result in no additional cost to the federal government. The section of the bill concerning the Rural Development Loan Fund would also have no cost.

With best wishes,

Sincerely,

EDWARD GRAMLICH,
(For Rudolph G. Penner).

The PRESIDENT pro tempore. The question is on agreeing to the amendment.

The amendment (No. 3173) was agreed to.

Mr. STENNIS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HATFIELD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3174

Mr. STENNIS. Mr. President, I send to the desk, on behalf of Senator DOMENICI, an amendment which has been cleared by both sides.

The PRESIDING OFFICER (Mr. GORTON). The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Mississippi [Mr. DOMENICI] proposes an amendment numbered 3174.

Mr. STENNIS. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

H.J. Res. is amended by inserting in the appropriate place in the resolution the following new section:

SEC. . Section 535 of S. 2824 as reported by the Senate Committee on Appropriations on September 16, 1986, is amended by inserting before the period at the end thereof the following: "as amended by section 2011 of H.R. 5484 as passed by the Senate on September 30, 1986".

Mr. DOMENICI. Mr. President, the foreign assistance title of the CR, which was passed by the Appropriations Committee before the omnibus narcotics bill, incorporates existing authorization restrictions on aid to Bolivia; that is, section 611, International Security and Development Cooperation Act of 1985, (Public Law 99-83).

My amendment simply adds the more current Bolivia provision that the Senate passed Tuesday in the drug bill, final passage of which is more in doubt tonight.

Aid restrictions in my amendment: First half withheld until Bolivia conducts major interdiction operations; second half withheld until Bolivia has met existing crop eradication targets or makes substantial progress on a new eradication plan we agree to; and President Reagan must certify both of these to Congress; that is, two sepa-

rate Presidential certifications are required by my amendment.

The amendment takes notice of antinarcotics policies of President Paz Estenssoro and the recent positive steps by the Government of Bolivia but significant restrictions are still imposed because Congress must address the serious problem posed to the United States by coca production in Bolivia.

Recent positive steps by Government of Bolivia:

Invited in United States military for massive interdiction effort; that is, Operation Blast Furnace—a great political risk for any sovereign government to take;

Operation caused dramatic reduction in coca trade, and decreased prices for coca producers by 90 percent; and

Operation disrupted one crop cycle.

It misses the point to suggest that my amendment eases current restrictions on United States assistance to Bolivia. The real point is that my amendment—which is, again, language passed by the Senate Tuesday—is more effective than current law in reducing the amount of Bolivian cocaine coming into the United States.

Paz is antinarcotics; if we weaken him through a total aid cutoff, more narcotics will enter the United States.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3174) was agreed to.

Mr. STENNIS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HATFIELD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3175

(Purpose to provide for a waiver of certain requirements under title XVIII of the Social Security Act with respect to the Connecticut Hospice)

Mr. STENNIS. Mr. President, I send to the desk, on behalf of Senators WEICKER and DODD, an amendment which has been cleared by both sides.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Mississippi [Mr. STENNIS], for Mr. WEICKER and Mr. DODD, proposes an amendment numbered 3175.

Mr. STENNIS. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place, add the following new section:

SEC. . CONNECTICUT HOSPICE WAIVER.

Section 122(j) of the Tax Equity and Fiscal Responsibility Act of 1982 (relating to waivers for certain hospices) is amended—

(1) by inserting "(1)" after the subsection designation, and

(2) by adding at the end thereof the following new paragraph:

"(2) The Secretary of Health and Human Services shall grant a waiver of the limitation imposed by section 1861(dd)(2)(A)(iii) of the Social Security Act (relating to the aggregate limit on the number of days of inpatient care) to any institution that was granted a waiver under paragraph (1). Such waiver shall provide for the application of such section to the institution by substituting "50" for "20", shall apply only to beds in services as of July 1, 1986, and shall become effective October 1, 1986.".

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3175) was agreed to.

Mr. STENNIS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HATFIELD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3176

Mr. STENNIS. Mr. President, I send to the desk, on behalf of the Senator from South Carolina [Mr. THURMOND], an amendment which has been cleared.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Mississippi [Mr. STENNIS], for Mr. THURMOND, proposes an amendment numbered 3176.

Mr. STENNIS. I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place insert:

That, to provide for a security buffer zone for the United States Department of Energy's Savannah River Plant near Aiken, South Carolina, title, control, and custody to six thousand twenty-one acres, more or less, of United States Department of Agriculture, Forest Service, lands shown on a map entitled "Forest Service Property Transfer, Savannah River Plant, Aiken, South Carolina", dated June 1984, are transferred without cost or reimbursement to the United States Department of Energy. The map and legal description of the boundaries of these lands shall be on file and available for public inspection in the Office of the Chief of the Forest Service, Department of Agriculture, the Director of Real Property and Facilities Management, United States Department of Energy, and appropriate field offices of those agencies.

SEC. 2. This Act does not affect valid existing rights, or interests in existing land use authorizations, except that any right or authorization shall be administered by the Department of Energy after the enactment of this Act. Reissuance of any authorization shall be in accordance with applicable law and the regulations of the Department of Energy, except that the change of administrative jurisdiction shall not in itself constitute a ground to deny the renewal or reissuance of any authorization.

Mr. THURMOND. Mr. President, I rise for the purpose of entering into a colloquy with the distinguished chairman of the Senate Committee on Agriculture, Nutrition, and Forestry.

Senator HELMS, on August 1, 1985, I introduced S. 1577, a bill which would transfer control of certain forest lands near the Savannah River Plant from the U.S. Forest Service in the U.S. Department of Agriculture [USDA] to the Department of Energy [DOE]. The 6,021 acres of land to be transferred from the USDA to the control of the DOE has traditionally provided a variety of outdoor recreation opportunities for the residents of Aiken, SC, and other nearby communities. The three tracts of land that comprise this transfer have many game species including deer, wild hogs, wild turkey, small game, and waterfowl. Good fishing is also available in two lakes within this acreage.

It is my understanding that upon the transfer of this property to DOE that these lands should continue to be available for outdoor recreation, such as hunting and fishing. I ask the Senator from North Carolina, is my understanding correct?

Mr. HELMS. Yes. It is my intent that such recreational use would be continued. This land exchange would facilitate improved security for the Savannah River Plant. However, security and recreation are not mutually exclusive objectives. Accordingly, I fully expect the Department of Energy to do everything reasonable to continue public recreation on these lands.

Mr. THURMOND. Over the years the South Carolina Wildlife and Marine Resources Department has invested considerable time and effort in these lands. Would it be reasonable to expect that they could continue to participate in the management of these lands for their wildlife and recreation opportunities?

Mr. HELMS. It is my understanding that DOE intends to have a close working relationship with the South Carolina Wildlife and Marine Resources Department for the management of these lands for recreational opportunities.

Mr. THURMOND. The Department of Energy has expressed in writing their intent to continue to permit the recreational use of this land. I ask unanimous consent that a letter to me from Secretary Herrington of the Department of Energy concerning this matter be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

THE SECRETARY OF ENERGY,
Washington, DC, May 16, 1986.

Hon. STROM THURMOND,
U.S. Senate,
Washington, DC

DEAR SENATOR THURMOND: Thank you for your letter of March 25, 1986, concerning

proposed Federal legislation to return control of U.S. Forest Service lands to the Department of Energy (DOE).

This legislation (S. 1577) will greatly improve the security posture at the Savannah River Plant (SRP), and is consistent with similar actions recently taken by DOE, such as proposed airspace restrictions and improved control on South Carolina Highway 125. Controlling public access onto SRP in response to an increasing threat of international and domestic terrorism has been a primary goal of DOE over the past few years. In particular, we have evaluated security implications of uncontrolled public access on the three parcels of land which we formerly controlled, and have concluded that their transfer back to DOE would greatly enhance SRP security.

While it is true that the Savannah River can provide a means of access to SRP, a river, being a natural barrier, does not facilitate access to a geographic site in the same way that a land mass does. On the contrary, rivers have historically served as impediments to access.

Regarding the access to SRP afforded by the land on the Georgia side of the river that is under private ownership, it would be impossible for DOE to acquire all the land in the vicinity of SRP that represents a means of access to SRP. Additionally, acquisition of privately-owned land would result in displacing the owners.

Your constituent also expressed concern regarding the decline in recreation opportunities resulting from transfer of the land back to DOE. It is true that no security incidents have occurred at SRP during the past 2 years; however, as the incidence of terrorism increases, so must the measures to counteract terrorism. Additional land buffers form an integral part of the site integrity equation. On the other hand, we recognize our responsibility to be good stewards of the land, and with respect to recreational use, we intend to incorporate the land into our deer hunt program. These are public hunts conducted annually in the fall, as necessary, to reduce the incidence of deer/vehicle collisions. During 1985, we conducted 18 hunts which accommodated 3,312 hunters. The hunts are completely controlled by SRP operating and security forces, including providing transportation to and from the hunt sites. This control is necessary for evacuation purposes, to protect the health and safety of hunters in the unlikely event of a plant emergency.

We appreciate the opportunity to provide our views on this very sensitive subject. I trust this information will be responsive to your request.

Yours truly,

JOHN S. HERRINGTON.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3176) was agreed to.

Mr. STENNIS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HATFIELD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3177

(Purpose: To make amendment regarding limitation of funds for use of the Consumer Product Safety Commission)

Mr. STENNIS. Mr. President, I send to the desk, on behalf of the Senator from Missouri [Mr. DANFORTH], an amendment which has been cleared on both sides.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Mississippi [Mr. STENNIS], for Mr. DANFORTH, proposes an amendment numbered 3177.

Mr. STENNIS. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 5, line 3, insert the following immediately before the period: ", other than the provisions regarding use of funds for personnel compensation and benefits for Commissioners of the Consumer Product Safety Commission contained in H.R. 5313".

Mr. DANFORTH. Mr. President, I rise to introduce an amendment to House Joint Resolution 738, the continuing resolution. Included in the HUD-independent agencies appropriations bill, H.R. 5313, approved by the Senate Appropriations Committee on September 25, is language that would limit the Consumer Product Safety Commission to three commissioners during the coming fiscal year. The amendment I have sent to the desk would nullify this language.

Mr. President, by statute the CPSC is to consist of five commissioners. The HUD-independent agencies appropriations language contravenes the CPSC statute. Its language mandating a change in the number of CPSC commissioners should be considered by the authorization committees with jurisdiction over the CPSC, after public hearings. No such consideration has occurred.

The motive for this restrictive language is obscure. The Appropriations Committee cannot claim any cost savings as the result of its proposed restriction on the number of CPSC commissioners. Instead of reducing the CPSC budget, the committee has only reallocated the funds. By nullifying the restriction, my amendment will not require additional funding for the CPSC.

The report of the Appropriations Committee claims that restricting the CPSC to three commissioners "should produce a more harmonious Commission." The fact is that since the first week in August the CPSC has operated with three commissioners and the results have been anything but harmonious. Internal disputes over management of the agency have increased and Commission meetings have been canceled because a quorum was not present.

Though there has been criticism of the CPSC in the past, this reduction in the number of commissioners at the CPSC is premature and may not answer the criticisms. During the next Congress, I expect that the CPSC will be extensively reviewed by the appropriate Senate and House authorizing committees.

The CPSC has contributed significantly to consumer safety in this country, and it would be foolish to undercut this agency before the facts have been ascertained. I urge my colleagues to support my amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3177) was agreed to.

Mr. STENNIS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HATFIELD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3178

Mr. STENNIS. Mr. President, I send to the desk, on behalf of Senator GRASSLEY and Senator HARKIN, an amendment which has been cleared on both sides.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Mississippi [Mr. STENNIS], for Mr. GRASSLEY and Mr. HARKIN, proposes an amendment numbered 3178.

Mr. STENNIS. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place insert:

NONPROFIT NATIONAL RURAL DEVELOPMENT AND FINANCE CORPORATION

Section 1323(a)(1) of the Food Security Act of 1985 is amended by striking out "September 30, 1986." and inserting in lieu thereof "September 30, 1987,", and

Section 1323(a) is further amended by adding at the end thereof a new subsection:

"(5) Notwithstanding any provision to the contrary of subsection (4) above, the $20,000,000 which was available pursuant to Subsection (4) shall continue to be available and shall be sued by the Secretary prior to September 30, 1987 to guarantee loans for the national rural development and finance program and shall remain available until expended.", and,

Section 1323(b)(1) of such Act is amended by striking out "September 30, 1986," and inserting in lieu thereof "September 30, 1987,", and inserting the words "made or to be" after the word "guarantees", *Provided further*, That such grant funds may be used by such corporation to provide technical assistance and financial assistance, including capitalizing revolving loan programs, pursuant to the Act.

Mr. GRASSLEY. Mr. President, I rise today to offer an amendment to the continuing resolution, unfortunately out of necessity, and not by preference.

Last year Congress passed legislation I offered to initiate a Rural Economic Development Loan Program. Federal involvement in this program was scheduled to last only until the end of this fiscal year, after which State and local interests would carry on.

This program was designed to plant a "seed" in our rural areas hit so hard by farm problems of the past few years.

We had hoped that a program would be in place so it would have allowed us to make low-interest loans to start off-farm jobs for those farmers needing additional income to keep their farms, or for new jobs for those that have lost their farms and need a new profession, at the same time trying to maintain our rural communities that are so important to the continued vitality of the rural areas of our States.

We saw this as a pilot program that would help from 5 to 15 States which would take the lead and develop a program on a State level to be approved and administered by the Governors of those States.

A State is to match the Federal money in this program, which should insure the followthrough on the States' part as well as make certain their investment was a sound business decision. As a further incentive we felt it would be wise for the program to allow a State, or its designee, to use its grant to offer loans to developers, similar to the Urban Development Action Grant Program. In this case, the grant is made to a State to then be loaned out at a very low interest rate or no interest, but paid back to the States' designated group so they could then reloan the money to others needing help.

The Department of Agriculture missed this point completely and left this out of their rules, so we are here today to correct this problem. We do not and have not intended this grant money to go directly to a developer. In fact during the review of this program that concern came up during discussions with Senator HELMS' staff. We indicated we difinitely did not see this grant section of the program as one that gave money to developers. Instead it provides money for a State or its designee to set up a revolving loan program administered and run by a State or its designee, with that State's Governor responsibile for the program.

This program should be designed so there is little involvement on the Federal Government's part. Let us send the administration of this program back to the States. That is where we wanted it, not at the Department of Agriculture whose staff seems to want otherwise.

If the Department of Agriculture hears my message this time then they will understand that we do not want them permanently in this program. It is only a 1-year program for them. Then they get out and let the States run it.

This amendment does not add one dollar to the appropriations side of this bill. It only requires the use of the money already authorized in Congress, but stalled by the Department for close to a year.

Our rural areas in this country are in trouble. We in Iowa alone have lost over 5,000 farmers this last year, some of whom might have been helped if the Department of Agriculture had done their jobs and tried to get this program underway instead of trying to kill it. To ignore Congress the way this Department has is unbelievable and they should not be allowed to get away with it.

I urge my fellow Senators to support this amendment and send a definite message to the Department of Agriculture that we expect them to comply with intent in a timely and in responsive way.

Mr. HARKIN. Mr. President, this amendment provides that the Department of Agriculture may use 1986 loan guarantee funds designated for the National Rural Development and Finance Corporation in fiscal year 1987.

This program, provided for in the farm bill, was supposed to be funded by the Department of Agriculture in fiscal year 1986. Unfortunately, for a variety of reasons, the Department has not met the deadline. However, they do expect to be able to obligate loan guarantees in the very beginning of fiscal year 1987.

The program provides for loan guarantees and funds that had been appropriated but have been unobligated under the Community Economic Development Act to a national corporation which will then be distributed to applying States. The program will stimulate the creation of off-farm rural economic and business development through the leveraging of below market rate loans in rural areas and small towns to those who will start businesses. This program will not simply provide some cash, the Corporation will continue to work with the business to maximize their chances for survival.

Rural areas of our country have been devastated by low farm prices. It is not only the farmers who are taking a beating; the entire rural economic infrastructure is suffering. In many small communities in my State, a quarter or even a third of the stores on Main Street stand empty. That must be turned around. And, this program is an extremely efficient method to spur rural development which is so badly needed.

It builds on the individual project efforts of the private, nonprofit National Rural Development and Finance Corporation. In these projects, a high degree of leveraging was achieved. A permanent new job was created for every $8,000 loaned by the Corporation.

The legislature of my State of Iowa has already provided matching funding for the program from its lottery profits. A $640,000 allocation from the State lottery was provided in fiscal year 1986 and there will be continued additional funding in each year of this century. This is not a short-term quick fix. It is a well thought out, long-term piece of an economic development package that must be put into place.

The amendment also contains language making it clear that the grants may be placed into a revolving fund.

I urge that my colleagues support the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3178) was agreed to.

Mr. STENNIS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HATFIELD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3179

(Purpose: To express the sense of the Senate with respect to shared broadcast transmissions between Canada and the United States)

Mr. STENNIS. I send to the desk, on behalf of Senator LEAHY and Senator MATHIAS, an amendment which has been cleared on both sides.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Mississippi [Mr. STENNIS], for Mr. LEAHY and Mr. MATHIAS, proposes an amendment numbered 3179.

Mr. STENNIS. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the resolution add the following:

Since Canada and the United States have demonstrated interest in sharing the benefits of transborder broadcast transmissions;

Since sharing broadcast transmissions originating in Canada and the United States is in the interest of international comity;

Since it is a recognized principle that authors of literary and artistic works should have the exclusive right of authorizing the broadcasting of their works and receive equitable remuneration for use of their creative products;

Since the United States copyright law, section 111 of title 17, United States Code,

provides compensation to Canada program owners for the retransmission of their copyrighted broadcast programs in the United States, and in some cases, exclusive rights and full copyright control for the use of such programs, Canadian law permits the unauthorized and uncompensated retransmission of United States programs in Canada;

Since the Government of Canada has expressed its intention to meet the challenge of creating an appropriate and balanced copyright environment through recognition of a general retransmission right in proposed revisions of Canada's 1924 Copyright Act; and

Since 1983, while the Government of Canada has discussed the possibility of introducing new copyright legislation, the unauthorized and uncompensated retransmission of United States origin television programming has been permitted to expand throughout Canada; Now, therefore, be it

Declared, That it is the sense of the Senate that—

(1) unauthorized and uncompensated retransmission of United States origin television programming included in United States broadcast signals should not be permitted to expand further in Canada,

(2) this longstanding issue of Canada's unauthorized and uncompensated retransmission of United States broadcast signals should receive speedy and efficient resolution, and

(3) the Senate, recognizing the significant potential for aiding the international free flow of information through the medium of television, and affirming the universal principle of fairness and equity through remuneration for use of television programming, should support the efforts of the United States Senior Interagency Group on International Communication and Information Policy, co-chaired by the Departments of State and Commerce, and its working group on Copyright and Intellectual Property, chaired by the National Telecommunications and Information Administration, to achieve an immediate settlement of the retransmission issue with the Government of Canada.

Mr. LEAHY. Mr. President, since 1983, the Government of Canada has expressed its intention to revise its 1924 Copyright Act with respect to the retransmission of broadcast signals by cable systems.

Briefly, Mr. President, the issue is one of fairness. Currently, United States program owners are not compensated by Canadian cable systems for the retransmission of their copyrighted broadcast programs. However, United States copyright law does provide this compensation to Canadian program owners for retransmission of their copyrighted broadcast programs in the United States.

The situation seems to be getting worse instead of better. CANCOM, a Canadian corporation, has been authorized by the Canadian Radio and Television Commission to intercept United States broadcast signals and retransmit those signals to Canadian cable systems via a Canadian communications satellite. CANCOM is expanding its services within Canada.

To put it bluntly, this expansion involves pirating off-air broadcast signals of U.S. network affiliates. Independent Canadian cable companies increasingly are pirating United States superstation signals off United States domestic satellites.

Our two countries have been meeting to resolve differences in United States and Canadian copyright law in order to promote fair policies and practices. Unfortunately, the Niagara IV consultations in March of this year, and an ad hoc meeting in May between an expert group from Canada and a United States interagency group chaired by the National Telecommunications and Information Administration, met with little success.

Secretary Baldrige has asked the Canadian Minister of Communications, Flora MacDonald, for an interim accord on copyright compensation for cable retransmission while the Canadian Government is continuing its copyright law revision process.

It is very disappointing that Secretary Baldrige's proposal has been turned down. There is substantial concern that the Canadian Government simply is not doing all it can to expedite a satisfactory end to this continuing problem.

In the last Congress, I introduced the international copyright fairness bill to redress the imbalance in copyright protections afforded materials retrainsmitted by foreign cable systems. My bill was designed to restore the balance between United States and Canadian trade practices in the most important of all commodities—words and ideas. It would have accomplished this goal by giving Canadian copyright owners only those benefits which Americans receive for the use of their copyrighted works in Canada.

I did not reintroduce this bill in the 99th Congress, Mr. President, because the Canadian Government had given us assurances that it would move quickly to resolve the unfairness in its copyright laws. But, unfortunately, we are still waiting.

So, we will come to the latest in a series of meetings between our respective countries, to be held later this month in Ottawa, to work out differences.

Accordingly, Senator MATHIAS and I are today introducing a sense-of-the-Senate resolution to support the speedy and efficient resolution of this problem. The resolution states that:

Unauthorized and uncompensated retransmission of United States' broadcast signals should not be permitted to expand further in Canada;

This unauthorized and uncompensated retransmission of U.S. broadcast signals should receive speedy and efficient resolution; and

The Senate supports the efforts of the U.S. Senior Interagency Group on International Communication and Information Policy, cochaired by the Departments of State and Commerce, and its Working Group on Copyright and Intellectual Property, chaired by the National Telecommunications and Information Administration, to achieve an immediate settlement of the retransmission issue with the Government of Canada.

The Canadian Government must know that the United States Congress is serious, that we are committed to a resolution of this problem, and that we expect results.

To do less would be to undermine the important creative products of our citizens. To do less would be to undermine the technological advances evolving from satellite capabilities which unite our countries across the longest open border in the world.

I ask unanimous consent that an exchange of correspondence between Secretary Baldrige and the Canadian Minister of Communications be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

THE SECRETARY OF COMMERCE,
Washington, DC, May 21, 1986.

His Excellency MARCEL MASSE,
Minister of Communications, Department of Communications, Government of Canada, Ottawa, Ontario, Canada.

DEAR MR. MINISTER: This year, during the proposed revision of the 1924 Canadian Copyright Act, it is appropriate that the United States and Canada should be equally interested in the technological advances evolving from satellite capabilities, which unite them across the longest open border in the world. The need to share these technological advances leads directly to the discussion of an issue separating the United States and Canada—the problem created by unauthorized and uncompensated retransmission of U.S. origin broadcasts by Canadian cable systems.

This long-standing issue has been the subject of a number of U.S. diplomatic expressions of concern, and most recently was discussed by representatives of our two countries at the Niagara IV consultations on March 24 and 25, 1986. However, despite our repeated expressions of concern, the issue remains unresolved. This problem should be resolved in the short term and not left to the trade agreement negotiations.

As you know, there will be a meeting of a U.S. interagency group chaired by the National Telecommunications and Information Administration on May 27 in Washington to discuss this issue with an expert group from Canada. This meeting offers a good opportunity for our two countries to make progress toward resolution of the retransmission issue. In view of Prime Minister Mulroney's pledge to President Reagan at the Quebec Summit in March, 1985, that "best efforts would be made to accommodate U.S. concerns on the protection of programming retransmitted by cable or satellite," I hope that resolution of this issue is at hand.

Sincerely,

MALCOLM BALDRIGE,
Secretary of Commerce.

MINISTRE DES COMMUNICATIONS,
Ottawa K1A0C8.

Hon. MALCOLM BALDRIGE,
Secretary of Commerce,
Department of Commerce,
Washington, DC.

DEAR MR. BALDRIGE: It is my pleasure to reply to your letter of May 21, 1986 addressed to my predecessor, the Honourable Marcel Masse, in which you refer to the ongoing revision of the Canadian Copyright Act and more precisely to the implementation in Canada of a retransmission rights regime that would apply to television programming of U.S. origin carried by Canadian cable systems.

The Canadian Government is proceeding with the development of new copyright legislation as quickly as circumstances and the legislative process allow. As you noted in your letter, at the Quebec Summit meeting between the Prime Minister and President Reagan in 1985, the Prime Minister "undertook best efforts to accommodate U.S. concerns on the protection of programming retransmitted by cable and satellite when the Government develops legislative proposals". Several steps have been taken honouring that undertaking: a parliamentary sub-committee on copyright has reviewed the question and recommended the recognition of retransmission rights; the Government accepted that recommendation in February 1986 of this year and, as a result, new copyright legislation currently is being drafted.

I trust that the May 27 meeting in Washington provided a good opportunity for officials from both our countries to review U.S. concerns and to learn of the U.S. experience in implementing its own retransmission rights regime. I am informed that another meeting is scheduled for this September or October which should permit further clarification of some aspects of the U.S. approach to this question, including current initiatives within the U.S. industry and government to adapt your system to meet today's needs.

In light of American experience you will appreciate that the modalities of implementing a new copyright regime for retransmission rights in Canada will require careful consideration. As was noted at the May 27 meeting, existing Canadian copyright legislation does not offer a legal basis for interim copyright protection measures for retransmitted signals. Even were that not the case, it is unclear that any measures could be introduced that would not prejudge new copyright legislation and thereby undermine the parliamentary process. Thus, interim copyright protection measures for retransmitted signals is not an option. That said, please rest assured that U.S. concerns play an important part in our determination to complete the legislative process for the revision of the Copyright Act as expeditiously as possible.

Yours sincerely,

FLORA MACDONALD.

THE SECRETARY OF COMMERCE,
Washington, DC, July 18, 1986.

Hon. FLORA MACDONALD,
Minister of Communications, Department of Communications, Government of Canada, Ottawa, Ontario, Canada.

DEAR MADAME: Congratulations on your recent appointment as Minister of Communications. You bring experience and expertise to a position which oversees matters of great interest to both Canada and the United States.

There is an important outstanding issue which has been discussed recently in bilateral meetings between our two countries. During the Niagara IV consultations in March and an ad hoc meeting in May, U.S. and Canadian delegations discussed Canadian cable retransmission of U.S. television signals, a problem which needs to be resolved as expeditiously as possible.

Compensation to copyright holders for commercial use of U.S. television programs is a right to which I think U.S. citizens are entitled without further delay. Since it now appears that the Canadian Government favors the recognition of a broad, new retransmission right in the revised version of the copyright act, I propose that the United States and Canada reach an interim accord on copyright compensation for cable retransmission while the revision process is continuing.

I am pleased that an invitation has been extended by the Canadian Government to the U.S. delegation chaired by the National Telecommunications and Information Administration for additional talks in Ottawa in September. It is my hope that in your new position as Minister of Communications, it will be possible to achieve an expeditious resolution of this longstanding problem.

Sincerely,

MALCOLM BALDRIGE,
Secretary of Commerce.

MINISTRE DES COMMUNICATIONS,
Ottawa K1A0C8.

Hon. MALCOLM BALDRIGE,
Secretary of Commerce, Department of Commerce, Washington, DC.

DEAR MR. BALDRIGE: Thank you for your letter of July 18, 1986 and your kind words of congratulations on my appointment as Minister of Communications.

You will have received my letter of July 17, which addressed the question of the implementation in Canada of a retransmission rights regime that would apply to television programming of U.S. origin carried by Canadian cable systems. For the reasons stated in my previous letter, interim copyright protection measures cannot be viewed as an option. Nevertheless, we remain committed to completing the legislative process for the revision of our Copyright Act as expeditiously as possible. The meeting between officials scheduled for this autumn will no doubt provide a further opportunity to clarify our respective approaches to this question.

Yours sincerely,

FLORA MACDONALD.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3179) was agreed to.

Mr. STENNIS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HATFIELD. I move to lay the motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3180

Mr. STENNIS. Mr. President, I send to the desk, on behalf of Senator ZORINSKY, an amendment which has been cleared.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Mississippi [Mr. STENNIS], for Mr. ZORINSKY, proposes an amendment numbered 3180.

Mr. STENNIS. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 2, line 12, strike out the period and insert in lieu thereof a colon and the following: *Provided*, That, during fiscal year 1987, the Commodity Credit Corporation shall use $1,000,000 worth of surplus agricultural commodities owned by the Corporation in establishing and carrying out a research and development program on external combustion engines under section 4(m) of the Commodity Credit Corporation Charter Act. In addition to any sales required under any other Act, the Secretary of Agriculture, under such terms as the Secretary may prescribe, shall sell notes and other obligations held in the Rural Development Insurance Fund established under section 309A of the Consolidated Farm and Rural Development Act in such amounts as to realize net proceeds to the Government of not less than $1,000,000.".

Mr. ZORINSKY. Mr. President, this amendment to the continuing resolution provides funds that will help fund research and development of external combustion engines. This is an area which holds great promise and potential for America's future energy independence, and could be an enormous boon in providing small-scale power sources to farmers and rural communities across the country.

Mr. President, my amendment provides $1 million in surplus commodities owned by the Commodity Credit Corporation to be used to fund private sector research and development of external combustion engines during fiscal year 1987. While funding would be under the appropriations bill for the U.S. Department of Agriculture, there is ample precedent for Federal assistance for similar projects. The Department of Energy has provided some $140 million in research and development financing over the past several years on a prototype automotive external combustion engine. Unfortunately, production of an engine small enough to be incorporated into a car design has not proved feasible. It should be noted, however, that this research has served to underscore rather than diminish the potential benefits of external combustion engines in other applications.

In reviewing the many potential advantages of this kind of engine, Mr. President, two are particularly noteworthy. First, the engine is highly adaptable to alternative fuel sources. It can run on coal in areas where that fuel is plentiful and inexpensive. In areas where forestry is a major industry, it can use wood chips and other byproducts which have no other eco-

nomic value. It can also burn any biomass material and convert the resulting energy into a rotary action transfer to the desired end use.

The second primary advantage of these engines, Mr. President, is the array of uses to which the engine can be applied. Basically, any stationary task requiring limited energy output could be filled by this technology. Uses could include such things as grain drying, alternative heating and electrical generation for commercial and residential buildings, and power for central pivot irrigation systems. The benefits would be particularly important in rural areas where conventional power systems are either more costly, not available, or too expensive to install.

An additional argument for developing the external combustion engine, Mr. President, is the contribution it would make to this Nation's ongoing quest for energy independence. The current relative surplus in world oil production has, to some extent, lulled the United States into mild complacency about our past dependence on foreign oil. We should use this time to ensure that energy contingencies are available the next time the oil faucet in the Middle East is turned off.

Our country's reserves of petroleum are basically proven and finite. Even a return of $1 or even higher gas prices could not draw enough new production out of the ground to meet demand. However, we do have a nearly inexhaustible supply of coal in the United States, as well as abundant renewable energy resources in our forests and fields.

The external combustion engine may not be the answer to every energy requirement, Mr. President. But it would fill an important role in certain key applications, particularly in rural America. As an innovative technology that will help to reduce U.S. dependence on imported foreign oil, the limited funding provided by the amendment is clearly justified, and would be looked back on as money well spent.

I urge my colleagues to support the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3180) was agreed to.

Mr. STENNIS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HATFIELD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3181

(Purpose: To extend for one year the authority to operate WIN Demonstration programs fulfilling the AFDC work program; and to permit State applications to participate in WIN Demonstration)

Mr. STENNIS. Mr. President, I send to the desk, on behalf of Senator MOYNIHAN, an amendment which has been cleared on both sides.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Mississippi [Mr. STENNIS], for Mr. MOYNIHAN, Mr. KERRY, Mr. KENNEDY, Mr. BOREN, and Mr. MITCHELL, proposes an amendment numbered 3181.

□ 1010

Mr. STENNIS. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the joint resolution, add the following:

SEC. . Section 445(b)(1) of the Social Security Act is amended by striking out "June 30, 1985," and inserting in lieu thereof "June 30, 1987,".

Section 445(d) of such Act is amended by striking out "June 30, 1984," and inserting in lieu thereof "June 30, 1987," and by striking out "June 30, 1987" and inserting in lieu thereof "June 30, 1988".

Mr. STENNIS. Mr. President, I move that the amendment be adopted.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3181) was agreed to.

Mr. STENNIS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HATFIELD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3182

(Purpose: To authorize wiretapping by state law enforcement officials in hostage taking situations)

Mr. STENNIS. Mr. President, I have another cleared amendment here by the Senator from South Carolina [Mr. THURMOND] on the subject of wiretapping, which I send to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Mississippi [Mr. STENNIS], for Mr. THURMOND, proposes an amendment numbered 3182.

Mr. STENNIS. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place insert; Add at the end of 18 U.S.C. 2516(2):

"Nothing in this chapter shall be deemed to prohibit a law enforcement officer, in a state that does not have a statute authorizing or approving the interception of wire, electronic or oral communications or a statute forbidding such interception, from intercepting a wire, electronic or oral communication in the course of investigating an ongoing hostage taking situation. If a suspect in the hostage taking situation is reasonably believed to be a participant in the communication, under circumstances in which it is impractical to obtain a court order authorizing such interception and, reasonable to assure the implied consent of the hostage to the interception of such communication."

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3182) was agreed to.

Mr. STENNIS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HATFIELD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3183

(Purpose: To prohibit the use of appropriated funds for the implementation of uranium enrichment criteria submitted to the Congress on July 24, 1986 pursuant to the provisions of section 161v of the Atomic Energy Act of 1954)

Mr. STENNIS. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Mississippi [Mr. STENNIS], for Mr. DOMENICI, proposes an amendment numbered 3183.

Mr. STENNIS. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At an appropriate place in the joint resolution insert the following new section:

SEC. . None of the funds provided in this Act may be used to implement the uranium enrichment criteria submitted to Congress on July 24, 1986, pursuant to section 161v of the Atomic Energy Act of 1954.

Mr. STENNIS. Mr. President, this amendment which I have submitted on behalf of Mr. DOMENICI regarding the uranium-enrichment criteria, has been cleared by both sides.

I move that the amendment be approved.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3183) was agreed to.

Mr. STENNIS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HATFIELD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. STENNIS. That is all I have, Mr. President.

Mr. HATFIELD. Mr. President, does the Senator from Louisiana [Mr. JOHNSTON] have any amendments here that have been cleared?

Mr. JOHNSTON. No.

Mr. HATFIELD. Mr. President, that is all that have been cleared for action now.

AMENDMENT NO. 3184

(Purpose: To amend the Internal Revenue Code of 1954 to deny status as a tax-exempt organization, and as a charitable contribution recipient, for organizations which perform, finance, or provide facilities for abortions)

Mr. HATFIELD. Mr. President, I send an amendment to the desk and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Oregon [Mr. HATFIELD] for Mr. HUMPHREY, Mr. ARMSTRONG, Mr. PROXMIRE, Mr. HELMS, Mr. MCCLURE, Mr. GRAMM, Mr. DENTON, and Mr. LAXALT proposes an amendment numbered 3184.

Mr. HATFIELD. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in the bill, insert the following new section:

SEC. . DENIAL OF TAX BENEFITS FOR ORGANIZATIONS WHICH PERFORM, FINANCE, OR PROVIDE FACILITIES FOR ABORTIONS.

(a) DENIAL OF TAX-EXEMPT STATUS.—Section 501 (relating to exemption from tax on corporations, certain trusts, etc.) is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

"(m) DENIAL OF EXEMPTION FOR ORGANIZATIONS WHICH PERFORM, FINANCE, OR PROVIDE FACILITIES FOR ABORTIONS.—An organization shall not be treated as described in subsection (a) if such organization performs, finances, or provides facilities for any abortion, except where the life of the mother would be endangered if the fetus were carried to term."

(b) DENIAL OF ELIGIBILITY FOR CHARITABLE CONTRIBUTION.—

(1) INCOME TAX.—Section 170(c) (defining charitable contribution) is amended by adding at the end thereof the following: "For purposes of this section, such term does not include a contribution or gift to or for the use of any organization which performs, finances, or provides facilities for any abortion (within the meaning of section 501(m))."

(2) ESTATE TAX.—

(A) IN GENERAL.—Section 2055 (relating to transfers for public, charitable, and religious uses), as amended by section 717, is amended by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following new subsection:

"(g) DENIAL OF DEDUCTION FOR CONTRIBUTIONS TO ORGANIZATIONS WHICH PERFORM, FINANCE, OR PROVIDE FACILITIES FOR ABORTIONS.—No deduction shall be allowed under this section for a transfer to or for the use of any organization which performs, finances, or provides facilities for any abortion (within the meaning of section 501(m))."

(B) TECHNICAL AMENDMENTS.—

(i) Subparagraph (E) of section 2106(a)(2) (relating to transfers for public, charitable, and religious uses from taxable estates of nonresidents not citizens) is amended by striking out "section 2055(e)" and inserting in lieu thereof "subsections (e) and (g) of section 2055".

(ii) Subparagraph (F)(ii) of section 2106(a)(2), as amended by section 717, is amended by striking out "section 2055(g)" and inserting in lieu thereof "section 2055(h)".

(3) GIFT TAX.—Section 2522 (relating to charitable and similar gifts), as amended by section 717, is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (f) the following new subsection:

"(e) DENIAL OF DEDUCTION FOR CONTRIBUTIONS TO ORGANIZATIONS WHICH PERFORM, FINANCE, OR PROVIDE FACILITIES FOR ABORTIONS.—No deduction shall be allowed under this section for a gift to or for the use of any organization which performs, finances, or provides facilities for any abortion (within the meaning of section 501(m))."

(c) EFFECTIVE DATES.—

(1) ABORTIONS AFTER DATE OF ENACTMENT.—The amendments made by this section shall take into account only abortions (within the meaning of section 501(m) of the Internal Revenue Code of 1954 as added by this section) performed after the date of the enactment of this Act.

(2) SUBSECTION (a).—The amendment made by subsection (a) shall take effect on September 30, 1986.

(3) SUBSECTION (b).—The amendments made by subsection (b) shall apply to estates of decedents dying, and transfers, after September 29, 1986.

The PRESIDING OFFICER. The amendment having been stated, is there debate on the amendment?

The Senator from New Hampshire.

Mr. HUMPHREY. Mr. President, here we are with most of us having only 3 hours of sleep since we departed the Chamber where the world's greatest deliberative body meets, and I thought I felt rather poorly this morning until I heard the chairman of the Appropriations Committee, I regret that he is feeling so poorly, but I must say I admire, as I am sure all our colleagues do, his fidelity and his determination.

Mr. President, I want to say at the outset that the amendment now before the body is cosponsored by Senators ARMSTRONG, PROXMIRE, HELMS, MCCLURE, GRAMM, DENTON, and LAXALT.

The amendment arises out of legislation introduced earlier this year, S. 2382. In fact, the amendment before us is identical to that legislation with the change of two words.

I want to say also for the record at the outset that S. 2382, the parent of this amendment, if you will, is supported by the Reagan administration.

I ask unanimous consent at this point to print in the RECORD a statement of the administration policy which makes it clear the President supports this effort, along with other additional material.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

STATEMENT OF ADMINISTRATION POLICY

September 29, 1986.

S. 2382, TAX EXEMPTION EQUITY ACT OF 1986, AS AMENDED (SENATOR HUMPHREY, NEW HAMPSHIRE)

The Administration supports S. 2382, Tax Exemption Equity Act, as amended on June 9, 1986 by Senator Humphrey.

The legislative language now proposes to deny a tax exemption to any organization which performs, finances or provides facilities for abortions.

NORTHWESTERN UNIVERSITY
SCHOOL OF LAW,
Chicago, IL.

ANALYSIS OF SENATOR HUMPHREY'S TAX EXEMPT STATUS AMENDMENT

Having had the privilege to argue in favor of the "Hyde Amendment" before the Supreme Court in *Harris* v. *McRae* and *Williams* v. *Zbaraz*, it is my considered judgment that doctrines and reasoning similar to those that supported the constitutionality of the Hyde Amendment apply to Senator Humphrey's proposal which would eliminate tax exempt and tax deductible status to organizations which perform, finance, or provide facilities for abortion.

Needless to say, these views are my own and should not in any way be taken to constitute positions of my University or its faculty.

Although it is established constitutional doctrine that a Congressional penalty on constitutionally protected acts is not sustainable, the Justices in the Harris and Williams cases concluded that refusal to fund or subsidize abortions did not constitute such a penalty. Congressional refusal to allow a tax exemption for private contributions that fund abortions warrants the same judicial conclusion.

The applicable tax cases seem to me entirely compatible with this view. Tax exemptions have been treated as subsidies, not as penalties, in those cases; and the discretion of Congress in formulating tax policy has, if anything, been deemed greater than in formulating other legislative policies. For example, in *Regan* v. *Taxation with Representation*, 103 S.Ct. 1997 (1983), the Justices stated explicitly that "Legislatures have especially broad latitude in creating classifications and distinctions in tax statutes . . . We have held in several contexts that a legislature's decision not to subsidize the exercise of a fundamental right does not infringe the right, and thus is not subject to strict scrutiny." (103 S.Ct. 1997, at 2002, 3.) Quoting from an earlier case, the Justices described tax exemptions as "a matter of grace that Congress can, of course, disallow . . . as it chooses." *Id*, at 2003.

In *Bob Jones University* v. *United States*, 103 S.Ct. 2017 (1983), the Court reiterated the primacy of Congressional choice in the determination and application of tax policy. The powers that "Congress has seen fit to vest" have provided the keys to judicial interpretation. "Since Congress cannot be expected to anticipate every conceivable problem that can arise or to carry out day-to-day oversight, it relies on the legislative will." (103 S.Ct. 2017, at 2031). What directs judi-

cial interpretation of tax policy is clearly "the legislative will."

I believe, in short, that Senator Humphrey's proposal to refuse federal subsidization through tax exemption to the funding of abortions can pass constitutional scrutiny pursuant to the criteria and doctrines applied by the Justices.

Best regards,

VICTOR G. ROSENBLUM,
Professor of Law.

AMERICANS UNITED FOR LIFE,
LEGAL DEFENSE FUND,
Chicago, IL, September 15, 1986.

Re H.R. 2897.

Senator GORDON HUMPHREY,
Senate Hart Building, Washington, DC.

DEAR SENATOR HUMPHREY: You have asked this office to review the constitutionality of your bill (H.R. 2897), in light of the recent claim by Professor Laurence H. Tribe of Harvard Law School that the bill would be unconstitutional under the Due Process Clause of the Fifth Amendment. Having reviewed only the issue of the constitutionality of H.R. 2897, we offer the following analysis and conclusions. In sum, we find H.R. 2897 to be constitutional under relevant Supreme Court precedent.

The version of H.R. 2897 that we have analyzed would, first, amend § 501 of the Internal Revenue Code (IRC) and add a new subsection (m), which would provide that an "organization" would not be exempt from taxation under § 501 "if such organization performs, finances, or provides facilities for any abortion, except where the life of the mother would be endangered if the fetus were carried to term." Second, H.R. 2897 would amend § 170(c) of the IRC by adding new language, which provides that the term "charitable contribution" "does not include a contribution or gift to or for the use of any organization which performs, finances, or provides facilities for any abortion. . . ." Third, H.R. 2897 would expressly deny any tax deduction for any contribution to "any organization which performs, finances, or provides facilities for any abortion. . . ."

In a July 29, 1986 message, entitled "An Open Letter to All Senator", Professor Tribe suggests that a bill along the lines of H.R. 2897 "would, in all likelihood, violate the Due Process Clause of the Fifth Amendment" by establishing "a congressional penalty on constitutionally protected abortion choices—no less so than if Congress were to withhold food stamps or other benefits from families any of whose members had chosen abortions." In support of this conclusion, Professor Tribe cites *Federal Communications Commission* v. *League of Women Voters*, 104 S.Ct. 3106 (1984), *Regan* v. *Taxation With Representation*, 461 U.S. 540 (1983), and *Harris* v. *McRae*, 448 U.S. 297 (1980). Our review of these cases, as well as *Perry* v. *Sindermann*, 408 U.S. 593 (1972), *Cammarano* v. *United States*, 358 U.S. 498 (1959), *Speiser* v. *Randall*, 357 U.S. 513 (1958) leads us to conclude with confidence that H.R. 2897, as presently drafted, is entirely constitutional.

We start from the fundamental principle, which the Supreme Court has repeatedly reaffirmed, that "The broad discretion as to classification possessed by a legislature in the field of taxation has long been recognized. . . [T]he passage of time has only served to underscore the wisdom of that recognition of the large area of discretion which is needed by a legislature in formulating sound tax policies. "*Regan*, 461 U.S. at 547, citing *Madden* v. *Kentucky*, 309 U.S. 83, 87–88 (1940).

The second fundamental principle is that "[b]oth tax exemptions and tax deductability are a form of subsidy that is administered through the tax system." *Regan*, 461 U.S. at 544. "A tax exemption has much the same effect as a cash grant to the organization of the amount of tax it would have to pay on its income. Deductible contributions are similar to cash grants of the amount of a portion of the individual's contributions." Id. at 545.

The third fundamental principle is that "a legislature's decision not to subsidize the exercise of a fundamental right does not infringe the right, and thus is not subject to strict scrutiny. "*Regan*, 461 U.S. at 549, *Harris* v. *McRae*, 448 U.S. 297, 322 (1980), *Buckley* v. *Valeo*, 424 U.S. 1 (1976). As a result, a statutory classification which is created by the legislature to justify its refusal to subsidize the exercise of a fundamental right is valid if it bears "a rational relation to a legitimate governmental purpose." *Regan*, 461 U.S. at 547.

These fundamental principles fully apply to H.R. 2897 and establish its constitutionality.

In Regan, Taxation With Representation (TWR) contended that Congress violated the First Amendment by denying tax exempt status under § 501(c)(3) of the IRC for organizations the "substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation." 26 U.S.C. § 501(c)(3) (1982). The Supreme Court held that Congress' refusal to subsidize lobbying activity by allowing tax exempt status for such activity under § 501(c)(3) did not infringe any First Amendment rights. 461 U.S. at 544–46.

TWR made the same argument offered by Professor Tribe that "government may not deny a benefit to a person because he exercises a constitutional right." This proposition was established by *Speiser* v. *Randall* and *Perry* v. *Sindermann* (the Speiser-Perry model). Although this proposition is generally true, the Court in Regan distinguished Congress' denial of tax exempt status from such a penalty.

The Code does not deny TWR the right to receive deductible contributions to support its non-lobbying activity, nor does it deny TWR any independent benefit on account of its intention to lobby, Congress has merely refused to pay for the lobbying out of public moneys.

In Regan, TWR also contended that Congress violated the Equal Protection Component of the Fifth Amendment by denying tax exemption to organizations which engage in substantial lobbying. The Court held that the denial of tax exemption did not violate Equal Protection because no suspect classification was involved, strict scrutiny was therefore not applicable, and the denial of exemption for lobbying activity bore a rational relation to a legitimate governmental purpose. Id. at 546–550.

H.R. 2897 does not attempt to regulate speech or "the expression of particular views" and therefore its constitutionality cannot be challenged under Regan, Speiser, or Perry. Rather, H.R. 2897 expressly is limited to organizations which "perform, finance, or provide facilities for abortions." H.R. 2897 does not apply to speech which advocates, encourages, or constitutes referral for abortions. We note that Professor Tribe does not contend that H.R. 2897 affects free speech or violates the First Amendment. It should be emphasized that Speiser and Perry were limited to the exercise of free speech.

H.R. 2897 does not affect a suspect classification. The Supreme Court has previously held that even indigent women desiring abortions are not members of any suspect class. *Harris*, 448 U.S. at 232, citing *Maher* v. *Roe*, 432 U.S. 464, 470–71 (1977). If women desiring abortions are not members of a suspect class, neither are organizations which "perform, finance, or provide facilities for abortions." The abortion right is solely the woman's, not that of anyone else. *Whalen* v. *Roe*, 429 U.S. 589, 604–605 n.33 (1977). Thus, H.R. 2897 is constitutional as long as it bears a rational relationship to a legitimate governmental objective. Certainly, the same legitimate governmental objective which underlay the Hyde Amendment and was upheld in *Harris* v. *McRae* also supports H.R. 2897.

The reasoning of the Court in Regan, distinguishing a penalty from the denial of tax exempt status for particular activity, is directly applicable here. H.R. 2897 does not deny any organization the right to receive tax deductible contributions to support non-abortion activity nor does H.R. 2897 deny any independent benefit on account of an organization's intention to promote or perform abortion. 461 U.S. at 545.

The reasoning of the Court in Regan with respect to TWR's alternatives under § 501(c)(4) is also directly applicable here. Any organization which performs, finances, or provides facilities for abortion could still qualify for a tax exemption under 501(c)(4). It could also obtain tax-deductible contributions for non-abortion activity by creating a dual structure, "with a § 501(c)(3) organization for [non-abortion] activities and a § 501(c)(4) organization for [abortion activity]." Id. at 544. The organization would simply "have to ensure that the § 501(c)(3) organization did not subsidize the § 501(c)(4) organization." Id.

The essential flaw in Professor Tribe's reasoning is that his reference to the withholding of food stamps or other benefits from persons who choose abortion is simply not analogous to H.R. 2897. H.R. 2897's scope, which is similar to the scope of the constraints on lobbying under § 501(c)(3) approved by the Court in Regan, distinguishes it from such a broad withholding of benefits. H.R. 2897 does not withdraw all tax exempt status for non-abortion activity of organizations which perform, finance, or provide facilities for abortion; it simply denies exemption for that particular abortion activity. Nor does it deny deductability to individuals for all deductions simply because they contribute to an organization which "performs, finances, or provides facilities for abortion"; it simply denies deductability for that particular deduction.

Finally, Professor Tribe argues that H.R. 2897 does not simply refuse to subsidize abortion activity but goes farther by totally denying any exemption for any activity by an organization which "performs, finances, or provides facilities for abortion." First, although this may be the fair import of the language of H.R. 2897, the language of § 501(c)(3) in Regan with respect to organizations which engage in lobbying activity was just as broad. In other words, the denial of exemption in both § 501(c)(3), with respect to organizations that lobby, and in H.R. 2897, with respect to organizations that "perform, finance, or provide facilities for abortions", extends to the organization itself and not just to discrete activities within the organization. The Court in

Regan did not find this constitutionally objectionable and upheld the effective requirement of the creation of separate organizations. Second, the three justices who concurred in Regan, Justices Blackmun, Brennan, and Marshall, acknowledged Professor Tribe's argument, but emphasized the alternatives available in § 501(c)(4). 461 U.S. at 552. The opinion of Justice Blackmun suggested that if § 501(c)(4) did not exist, the denial of exemption under § 501(c)(3) would result in a denial of exemption even for non-lobbying activity and therefore result in an unconstitutional penalty on the exercise of free speech. But, because § 501(c)(4) exists, an organization need only create an affiliate to separate its non-lobbying activity from its lobbying activity. The conclusion that § 501(c)(4) in this way saves any constitutional defect in § 501(c)(3) is especially true with respect to H.R. 2897, which does not affect speech. Thus, Professor Tribe's objection was rejected by all nine justices in Regan.

The important constitutional distinction is between penalizing a person for the exercise of a right and denying a subsidy of the exercise of the right. Insofar as H.R. 2897 amounts only to a denial of a subsidy for abortion activity, it is entirely constitutional under Supreme Court precedent.

Very truly yours,

EDWARD R. GRANT,
Executive Director/General Counsel.
CLARKE D. FORSYTHE,
Staff Counsel.

AMERICANS UNITED FOR LIFE,
LEGAL DEFENSE FUND,
Chicago, IL, September 16, 1986.

Re H.R. 2897.

Senator GORDON HUMPHREY,
Senate Hart Building, Washington, DC.

DEAR SENATOR HUMPHREY: You asked this office to review the constitutionality of your bill (H.R. 2897), which would cut off tax exemption under both § 501(c)(3) and § 501(c)(4) of the Internal Revenue Code (IRC) for organizations which "perform, finance or provide facilities for any abortion." In our previous letter to you of 15 September 1986, we analyzed the constitutionality of such a cutoff of tax exemption under only § 501(c)(3) for any organization which engages in such activity. We concluded that a denial of exemption under § 501(c)(3) would be constitutional under *Regan* v. *Taxation With Representation.* 461 U.S. 540 (1983).

The latest draft of your bill (H.R. 2897) would cutoff tax exemption under both § 501(c)(3) (C3) and § 501(c)(4) (C4) and you have now asked us to analyze the constitutionality of a denial of exemption under both sections. The denial of tax exemption under § 501(c)(3) (and § 501(c)(4) is not constitutionally distinct from the denial of tax exemption under § 501(c)(3) alone. We provide the following analysis and conclude that a denial of exemption under both sections would be as constitutional as the denial of exemption under § 501(c)(3) alone.

In Regan, the Supreme Court held that Congress could constitutionally deny tax exempt status under § 501(c)(3) of the IRC for an organization where a sustantial part of its activity is the attempt to influence legislation. In a 9-0 decision, with three justices concurring, the Court, in an opinion written by Justice Rehnquist held that "both tax exemptions and tax deductability are a form of subsidy that is administered through the tax system", 461 U.S. at 544, and that Congress need not subsidize lobbying activity in any way.

The Court reasoned that the denial of exemption for lobbying activity, a form of free speech, did not violate the First Amendment by enacting an unconstitutional penalty because "the Code does not deny TWR the right to receive deductible contributions to support its non-lobbying activity, nor does it deny TWR any independent benefit on account of its intention to lobby. Congress has merely refused to pay for the lobbying out of public moneys. This Court has never held that the Court must grant a benefit such as TWR claims here to a person who wishes to exercise a constitutional right." Id. at 545.

The Court also held that the denial of exemption to TWR did not violate the Equal Protection component of the Fifth Amendment. Id. at 546-550. The Court reasoned that, since no fundamental right was infringed by the denial of subsidization, strict scrutiny need not be applied, and the denial of exemption was rationally related to a legitimate governmental interest. Id. at 549-550.

The reasoning of the Court in Regan directly applies to the denial of exemption under both § 501(c)(3) and § 501(c)(4) to abortion organizations and upholds such denial. Indeed, the Court in Regan implicitly foreshadowed a review of H.B. 2897 by citing the Court's decisions in *Harris* v. *McRae,* 448 U.S. 297 (1980) and *Maher* v. *Roe,* 432 U.S. 464 (1977) for the propositions that legislatures need not subsidize abortions. "We declined to strict scrutiny and rejected equal protection challenges to [those] statues." Id. at 549.

The reasoning of the Court in Regan indicates that the Court would treat the denial of exemption under C3 and C4 in the same manner that it treated the Hyde Amendment which denied funding for abortion. In other words, just as Congress may constitutionally decide not to fund abortion through appropriations, it may constitutionally decide not to subsidize abortion through tax exemptions or deductions. The Court in Regan said, "[f]or the purposes of these cases appropriations are comparable to tax exemptions and deductions, which are also 'a matter of grace that Congress can, of course, disallow . . . as it chooses." Id. at 549. Likewise, if Congress can constitutionally decide not to subsidize abortion activity under C3, it may also decide not to subsidize abortion under C4. Such a decision not to subsidize abortion activity leaves the door open for organizations to obtain tax exemption for non-abortion activity under C3 or C4.

Three justices who concurred in Regan argued that there was a "constitutional defect" under the First Amendment in C3 that was cured by a continued exemption for lobbying activity under C4. Id. at 552. This concurrence, however, was limited to First Amendment grounds. The justices otherwise concurred in the Court's opinion on Equal Protection grounds. Since H.R. 2897 does not affect speech but only performing, financing, or providing facilities for abortion, it would not be subject to a First Amendment challenge. In addition, even if those who concurred considered abortion as important as free speech, there were only three such justices.

Under your bill, organizations which perform, finance or provide facilities for any abortion would still be free to obtain tax exemption for any affiliate engaged in non-abortion activity. Professor Laurence Tribe, and Justice Blackmun in the footnote to his concurrence in Regan, make a distinction between the denial of welfare benefits for abortion, which is constitutional, and the denial of any welfare benefits if one has an abortion, which they suggest to be unconstitutional. Even conceding such a proposition, H.R. 2897 does not create such an effect. H.R. 2897 would not cut off tax exemption for non abortion activity.

Finally, H.R. 2897 cuts off tax exemption for the entire organization which engages in such abortion activity and does not distinguish between abortion activity and non-abortion activity within an organization. The effect thus is to require separate organizations or affiliations for abortion activity and non-abortion activity. Although Professor Tribe contends that this renders H.R. 2897 unconstitutional, similar language was reviewed in Regan with respect to lobbying activity and was upheld. We thus conclude that H.R. 2897 would withstand scrutiny.

Should you have any further questions or comments, please do not hesitate to contact us.

Very truly yours,

EDWARD R. GRANT,
Executive Director/General Counsel.
CLARKE D. FORSYTHE,
Staff Counsel.

Mr. HUMPHREY. Mr. President, I recognize that few Senators are in the Chamber and probably rather few are listening even at this hour since we did not leave here until 5:30 this morning. Therefore, I will appeal to staff to be especially acute in their listening this morning because I want to make this point that this is an amendment, however controversial it might have sounded last night, this is an amendment which a majority of Senators in this body can support consistent with their votes on the Hyde amendment over and over again in recent years.

The amendment before us, Mr. President, addresses the other side of the coin, the other side of the public funding of abortion coin. The Hyde amendment, as we all know by now, because we dealt with it for many years time after time and the Senate has time after time adopted Hyde amendment language which closes off Federal subsidy of abortion by means of cash outlays, we no longer lay out cash as a subsidy to the performance of abortion under Medicaid, under the DOD bill, the Peace Corps, Indian Health Services, and so forth. We restrict the Legal Services Corporation from engaging in litigation on the matter of abortion.

The point is we have now effectively closed out cash outlays as a subsidy for abortion and it is well that we have, and we are fully within our rights and fully within the Constitution to have done that. Indeed there have been suits challenging the authority and the constitutionality of the Hyde amendment and they have failed. The Supreme Court has upheld the right of Congress, the authority of Congress to refuse to subsidize abortion through cash outlays.

But a public subsidy still exists and that is the whole purpose of this amendment. Public subsidies still exist. They exist in the Tax Code. Organizations that perform abortions or finance abortions, many of them enjoy certain tax breaks under the Tax Code. They are tax exempt. Any revenue they come by in excess of costs are tax exempt and the continuance of these provisions in the Tax Code, the existence of these provisions in the Tax Code constitutes a subsidy in very much the same way, practically speaking, in the very same way that cash outlays constitute a subsidy of abortion.

Mr. President, Congress is well within its rights and within good judgment, I believe, to have cut off cash outlays for abortion. To cut off subsidies does not constitute an attack upon the exercise of a right. That is well established in law, well established in the Supreme Court cases.

We all have the rights under the Constitution. But the existence of those rights does not obligate our fellow citizens to subsidize the exercise of those rights.

We all have the right to free speech. For example, there are probably millions of Americans who like to write books. There may be even millions of unpublished manuscripts, surely hundreds of thousands, but there is no obligation on the part of Congress to subsidize the publication of those manuscripts.

Although I know that is not a realistic example, it makes the case, I think because Congress does not provide subsidies for publication of manuscripts does not constitute an attack upon the right to free speech nor does the refusal of Congress to subsidize abortions constitute in any way an attack upon the exercise of the right which the Supreme Court found in 1973, the right of a women to abortion. The refusal of Congress to subsidize abortion does not in any way constitute an attack upon the exercise of that right. That is well established, and that is the fundamental underpinning, the fundamental thinking of Congress in refusing to subsidize abortions through cash outlays.

That is why we adopted the Hyde amendment language. That is why the Court has upheld the Hyde amendment language. That is the critical central point of this whole debate, if I may say so.

It is that the refusal of Congress to subsidize a right does not constitute an infringement upon the exercise of that right. Nothing in this amendment seeks to strike the Supreme Court's 1973 Roe versus Wade decision. This is not an attack upon the right, although I would certainly admit as is well known I am an outspoken opponent of abortion, and hope some day to see that decision overturned and confident it will some day. That is not the point today. This is not an effort to overturn the Supreme Court decision. It is not an effort to infringe upon a woman's right as stated by the Supreme Court to abortion.

This addresses the matter of subsidizing public subsidies of abortion. This addresses the matter of whether Congress, this addresses the matter of whether each Senator in this body is going to require all of the citizens of the country through the Tax Code to subsidize abortion.

It seems to me it would be inconsistent for us to vote down this proposal when we have repeatedly upheld Hyde amendment legislation, not only in the Senate but in Congress and over and over again. It is well established now, well accepted. That is why I said at the outset that this is an amendment which a majority of Senators can support because a majority of Senators have supported Hyde amendment language.

If you are against subsidies for abortion, then it is perfectly consistent to be as much opposed to tax subsidies of abortion as it is to be opposed to subsidies which are cash outlays.

□ 1020

Mr. President, this amendment, if enacted, would affect providers of abortion, would affect those who provide facilities for the performance of abortion, and it would affect those who finance abortion.

Let me say whom it would not affect. First of all, the mechanism by which the subsidies would be affected is simply to withdraw the tax exempt status and the tax deductible status of abortion providers and financiers.

Who is not affected? First of all, for-profit institutions which perform abortions or make available facilities for abortions. They are not affected because for-profit institutions are not tax exempt. Furthermore, facilities of this kind that are owned by governmental entities are not affected by this amendment because governmental entities are not taxable at the Federal level and, therefore, there is no way you can withdraw their tax exempt status because they do not pay taxes and they are not liable to pay taxes to the Federal Government in the first place.

So this brings us down to a much smaller group. It brings us down to a group of abortion providers and financiers who are nongovernment and nonprofit.

Mr. President, all of this does address the fundamental issue of abortion. I want to conclude this part of my contribution to the debate by addressing the fundamental issue of abortion just briefly.

It is easy to view abortion as an abstract matter in all of these legalistic arguments, but let us remember that abortion is a concrete matter. As a fundamental matter, abortion involves the taking of human life. The offspring of human beings, after all, are human beings. That is a scientific and biological fact. The offspring of human beings are human beings. There is no doubt about it. It may be necessary, in a relatively few number of cases, in my opinion, it is necessary in a relatively small number of cases to permit abortion to save the life of the mother. But I think we all know and appreciate the fact that the vast majority of abortions in this country today, probably in the upper 90 percent, are purely for convenience and have nothing to do truly with the life of the mother or, in any significant way, her health.

But the Supreme Court says, in Roe versus Wade and the children of that decision, that a woman is entitled to an abortion if she wants to and that an abortion can be had if it affects her health in any way, including her mental health, which means, for all practical purposes, a woman can get an abortion any time she wants throughout her 9 months of pregnancy if she can find two doctors who will certify that she needs it for reasons of health, including her mental health.

That means, Mr. President, as a practical, concrete matter, not as an abstract matter, that millions of human beings have been destroyed by abortion. What a great violation of human rights. What a great degradation to the traditions of this country which rest upon that expression of Jefferson that all men are created equal and endowed by their Creator—not by Congress and not by the Constitution, but by their Creator—with certain inalienable rights, among which is the right to life, and that it is the purpose of government to secure that right and protect that right.

I hope that Senators will take a moment to reflect upon that truth, as I see it, and will not consider this to be an abstract matter.

Again, I remind Senators this is not an effort on this occasion to overturn the Supreme Court's decision. If enacted into law, this amendment will not in any way restrict the exercise of the rights the Supreme Court has found for abortion. All this amendment proposes to do is to end the taxpayers' subsidy of abortion.

We subsidize certain things in this society, certain things that we consider virtuous, like education, like churches and religious institutions.

Are we asked to tell the American people that killing unborn human beings is somehow to be equated with educating Americans and with lifting them up and maintaining them spiritually? What a ridiculous argument. This is not charity. Killing unborn human beings is not charity.

This activity does not qualify for a subsidy and Congress is perfectly within its rights to say so today and to end that subsidy, that tax subsidy, just as we have ended the subsidy which is cash outlays.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ARMSTRONG. Mr. President, I rise to support the Humphrey amendment and to ask my colleagues to consider this amendment with the seriousness and gravity which it deserves and also to compliment my friend from New Hampshire for a very thoughtful and persuasive statement.

It would be very easy at this particular moment to just sort of say, "Well, it is the end of the session. We will be back to this another time. Let's handle this in some other way."

But, ladies and gentleman of the Senate, this is one of the most important votes that we shall cast this year or any year.

Mr. President, the Senator from New Hampshire has explained the underlying principle of law involved here, so I am not going to dwell on it. Obviously, the issue is easy to explain. It is simply whether or not we should continue to grant organizations which provide facilities or financing for abortions the privileged tax status—that is, the tax-exempt status—which is traditionally granted to organizations which perform charitable functions in this country.

It is a basic principle of taxation that there are certain kinds of activities we want to encourage in this country and we have given them a special status. Things like churches, synagogues, universities, scientific research, feeding the poor, missionary work, that kind of activity has been deemed broadly beneficial to society as a whole and deserving, therefore, of a very special privilege under our Tax Code. And I stress that, from a legal standpoint, it is a privilege. It is not a matter of right.

The Humphrey amendment would simply withdraw that privileged status and, in doing so, Mr. President, it would restore the status quo, so to speak, because at the time these tax laws were drafted and enacted by Congress there was no contemplation whatsoever on the part of any Senator or any Member of the other body that tax-exempt status would be afforded for performing or financing abortions. And I say that with great confidence because, at the time the statutes were granted and the theory of tax-exempt organizations were put into law, abortions were illegal throughout most of the country.

So we are not talking about a drastic departure, but really a return to the situation that obtained prior to the decision of the Supreme Court in the case of Roe versus Wade.

Mr. President, I happen to believe that abortion is morally wrong under most circumstances. But I want to stress for my colleagues and others who may be following this debate that it is not necessary to hold that view to understand the logic of the Humphrey amendment and to approve of its intent. On the ground of tax justice, it seems to me that the Humphrey amendment is well justified. And I hope there will be Senators who are just as disposed to think that this loophole had gotten too large and, as the Senator has pointed out, that since there are many lawful activities which we do not subsidize in this way, that this would be a good place to draw the line, for many reasons, not the least of which is having a tax-exempt status for performing or financing abortions, we are going contrary to the expressed view of a heavy majority of the people of this country.

Mr. STEVENS. Will the Senator yield right there for a minute?

Mr. ARMSTRONG. Mr. President, I am happy to yield briefly for a question.

Mr. STEVENS. Would the Senator apply the same justice to those who oppose the institutions and organizations who perform abortions or assist in abortions? In other words, if it is to be tax justice, should the Right to Life Committee and all those churches and others who oppose abortions similarly be denied their tax-exempt status?

Mr. ARMSTRONG. Mr. President, I am grateful to the Senator from Alaska for raising a very thoughtful question, because the Humphrey amendment has been carefully crafted, let me say to my friend, not to go to the question of advocating abortion. You can advocate abortion 24 hours a day, 7 days a week without losing your tax-exempt status. And, in exactly the same way, people who are against abortions enjoy a tax-exempt status in some cases; not in every case, but in some cases they do.

We are not running afoul here of the first amendment, nor are we running afoul of some idea of fair play, either.

What Senator Humphrey's amendment seeks to do is to withdraw the privileged tax status only for the performing of abortions or the financing or providing facilities.

□ 1030

Organizations which conscientiously wish to advocate this, if they qualify as tax-exempt organizations on other grounds, are permitted to do so. But let me shift gears because while I think tax considerations alone are sufficient to justify a vote for the Humphrey amendment, we all know that is not the underlying issue. The underlying issue is the sanctity of life.

I want to speak primarily this morning to those Members of the Senate who have come through thought and study, through considerations of the heart, and of scientific evidence to the recognition that sanctity of life is the issue, that these are unborn children whose lives are at stake, and that there is a great human tragedy taking place in this country. I judge that to be well over a majority of the Members of the Senate because on many occasions the Senate has seen fit to adopt the Hyde amendment. It is primarily to those Senators that I want to speak this morning, and to appeal to their conscience not to turn their back on this issue today.

I want to ask the Senators who recognize, who have come to a belief and on conviction, as I have, that these are human lives at stake, not to set that concern aside because we are all tired. There is a very heavy burden of fatigue on the Senate this morning.

But my dear friends, while we cannot hear the cries of these unborn children, we cannot turn our backs on them and say, well, we were too tired to take that issue up on Friday morning in October when we had a hard night. If you believe as I do that the issue is life, then that is more important then fatigue.

I also appeal to the conscience of those who have come to that conviction, that realization to lay aside the notion that somehow this is not the time and place. I anticipate that argument is going to be made that this is a continuing resolution, that after all we are just funding the Government for a limited period of time. This is not the moment to take up a bunch of policy issues. There is a certain appeal to that logic I would admit. But, Mr. President, that is a consideration which has been honored in the breach, not in the observance during the days in which this continuing resolution has been debated.

We have thought this was the time and place to take up flood control, airline mergers, national defense policy issues, farm issues and airlines, and many, many other unrelated matters which by no reasonable stretch of the imagination can be called co-opting appropriations.

So it would really be a breach of intellectual faith I think for somebody to say, well, I am for the principle but I am not for it right here and now because this is not the right place to do it. Let me say by the way the reasons why the Senator from New Hampshire offers this amendment here this morning, this day, on this bill is precisely because it was the will of an overwhelming majority of Members of this body that it not be offered on legislation to which it was both technically and conceptually germane; that is, to say the tax reform bill.

Senators may remember that when we were taking up the great tax

reform, there was an appeal to all Members to forego offering of amendments, even amendments which clearly were right in the spirit of the tax reform bill, in order to expedite that process. The President of the United States—who by the way supports the Humphrey amendment, and we have his written statement to that effect—said to Senator HUMPHREY and those who are backing the amendment, "Please do not offer it on this bill. We would be glad to support at another time, but for tactical reasons, it is important we get this rolling." That is why it is on this bill this morning. Having taken the step of adopting amendments on many, many other legislative subjects, it would really be a copout to say, well, we cannot stretch it to cover this.

Mr. President, I urge those who are concerned about the sanctity of life to lay aside their natural fear about the criticism they will receive for voting for this amendment. Make no mistake about it. Anybody who votes for this amendment is going to get a certain amount of criticism. They just are. I judge that criticism is likely with the passage of time to become more strident because, as public support for abortion continues to decline, and it is very clearly declining in this country, there is a certain hard edge beginning to present itself in the discussion of this issue and of public figures who oppose abortion by those who support it.

I just say to my colleagues in the words of former Member of this body, "There are just times when you got to do what you got to do." This is one of the things that, if you believe that the issue is life, the sanctity of life, "you got to do." You know, all of us in public life are going to get criticized for something. I think most of us would rather be criticized for something that is important, that is really a large matter of principle than to be criticized over something petty.

So I would not worry about that too much I would say to my colleagues. I hope Senators will lay aside concerns about whether or not this is going to be inconvenient even for some worthy organizations at home. There are going to be some organizations who are going to be inconvenienced when the Humphrey amendment is adopted because it is going to be adopted in my judgment at some point in time. I do not know whether that is going to be this morning. I hope it is. I do not know whether it is. But it is going to be adopted sometime because it is fair, because it is just, and because it is in accord with the beliefs of a heavy majority of people in this country in my opinion.

When it happens it is going to be inconvenient for some hospitals, and for some clinics who are going to have to stop performing abortions and many of them at least from what they tell me would like to do that, would like to have a good solid reason to say this is something we are not going to do any more. But there are some who are going to have to do a little reorganizing, who are going to have to make some decisions, are going to have to decide what their purpose really is, whether it is delivering babies and saving babies, treating disease, illness and broken limbs or whether it is to perform abortions. Probably some will decide one way and others will decide another. But it will be inconvenient.

But, ladies and gentlemen, we are talking about the loss of human life on a scale which is so much greater than any such consideration which is greater than the carnage on the highways, which is greater than the loss of life in the great wars in which our country has been involved, which is on a scale which just puts to rest any concern about how somebody might have to reorganize their corporations, or might have to make changes in their methods of operation.

Mr. President, I hope that Senators will lay aside the legal arguments that may be raised. Somebody is going to say, "Look, this doesn't sound like it is constitutional." It may not sound like it. But, Mr. President, I am advised by legal counsel that it will meet every test of constitutionality. The Supreme Court has ruled in *Lilly* v. *Commissioner*, 343 U.S. 90 (1952) that a Federal income tax deduction or exemption may be denied where the allowance of that deduction or exemption would frustrate a national or State policy. The Supreme Court also has ruled *Commissioner* v. *Sullivan*, 356 U.S. 27, (1958) that tax deductions and exemptions are a "matter of grace that Congress can, of course, disallow . . . as it chooses." Congress has already made the policy decision. We have decided that it is not the policy of Congress to subsidize abortion. We have adopted the so-called Hyde amendment, which restricts the use of Federal funds to finance abortions. Passage of legislation denying charitable tax-exempt status to organizations performing abortions is the logical extension of this Federal policy.

I note just for the Record that the Supreme Court has also ruled in the case of *Harris* v. *McRae* 448 U.S. 297, 1980, that the Hyde amendment now in law is constitutional.

So if somebody comes around and says this is going to run astray of the Constitution, I do not think they are on sound ground as a matter of law. One of the arguments that is going to be heard about this amendment may not be heard in the public debate, but I predict it will be heard in the well as Senators come to vote, is that by gosh, if this gets put on here, we are liable to be tied up for a couple of days. That is right. It could very well happen. I know there are Senators who are very determined that this matter would be discussed at great length, that it will be the subject of a filibuster.

And I just say to Senators, I am addressing myself now to those who think the issue is life, who have voted that way on previous occasions, who have stood up to be counted on the Hyde amendment. I say to them that if the issue is life, if we are talking about a million and a half unborn children, whose lives are at stake, if we are talking about the intellectual and moral integrity of a national policy that approves by granting tax-exempt status to organizations that perform such abortions, then the convenience of Senators, even if we are tied up for a little while for an extended period of time or a very long period of time, indeed is not very important.

Mr. President, a number of years ago a perceptive and wise journalist wrote that leaders are the custodians of the Nation's ideals, of its dreams, of its permanent beliefs, of the hopes it cherishes, of the things that make a nation out of a mere aggregation of individuals. We are the leaders. Today we are going to speak on whether or not sanctity of life is an important concern of ours as we vote on this amendment.

I hope Senators will vote life. I hope Senators will vote for the Humphrey amendment.

Mr. PACKWOOD addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. PACKWOOD. Mr. President, my distinguished colleague from Colorado just made reference to the fact that there is a hard edge growing in this debate. That those who had stood for life, as he described it, are finding the attacks upon them bitter, mean, perhaps mean spirited. Indeed, he is right about the hard edge, although it is not all one sided. As someone who, for almost 20 years, has stood on the side of pro choice in favor of a woman's right to have an abortion if she wants to have one, I am familiar with the hard edge.

I am familiar with walking through picket lines and having picketers throw their signs at me to see if they could hit me. I am familiar with walking to a function one night with my wife and having a picketer spit on my wife.

□ 1040

So when he speaks of the hard edges, I am familiar with them. I find that as you go through life and as you go through politics, those on the extreme side of an issue are convinced that God speaks to them and only to them. And, that if you disagree, you are not on God's side. There is no possibility that honest men and women

can disagree and both be in good conscience.

We hear the reference to sanctity for life as if to say those who are on the pro choice side have no respect for sanctity for life. As if to say the Disciples of Christ Church, the Episcopalian Church, the Congregationalists, the Methodists and the Union of Hebrew Congregations, all of whom support a woman's right to decide for herself whether or not she wants to have an abortion, have no respect for sanctity for life.

We do not have to go back too many years to the Vietnam war era to remember the charges that those who voted for money for the war had no respect for sanctity of life. As I recall, we had amendments offered in this Senate which would have allowed people to deduct from their income tax a certain portion of the money that would otherwise go to the Defense Department because they did not want their money going to destroy sanctity for life.

Mr. President, this is a very diverse country. The safety in this country of our civil liberties is not to stand on the floor of the Senate and attempt to deny to others who hold a view in equally as good conscience as those who propose this amendment that they have no right to have a charitable contribution deducted from their income tax, or their organization has no right to have a tax-exempt status because they happen to believe in a woman's right to make a choice on abortion. They have no right.

I am not going to argue here whether or not the amendment is constitutional. I do not know if it is constitutional. I am sure it would be tested if it passed. The Court might find it constitutional and they might find it unconstitutional. I hope that is not the issue upon which the vote is pinioned here today.

I would like to think we would have a decent respect for each other's honestly held beliefs, so that the proponents of this amendment would be willing to say to those of us who disagree: "You do have a privilege—not calling it a right—to contribute to Planned Parenthood or others. Part of that contribution may be used to fund an abortion and you may still have a deduction because in a plural society of great diversity those honestly held views ought to be respected."

I want you to understand the amendment of the Senator from New Hampshire very carefully. There are two parts to it.

One, you lose your tax-exempt status if your organization performs, finances, or provides facilities for any abortion except where the life of the mother would be in danger, and so forth.

Then the second part: "You are denied a tax deduction for contributions to organizations which perform, finance or provide facilities for abortion," and so on.

Does that mean that the St. Luke's Hospital, a religious hospital, in San Francisco which performs abortions, will lose its tax-exempt status if it performs an abortion?

Does it mean that if you give to the religious organization that helps finance St. Luke's Hospital you lose your tax deduction as a contributor because you give to the church which gives part of this money to the hospital which performs abortions or refers other women to abortion services provided at an abortion clinic?

Or if you are from the University of Illinois which has a medical hospital that performs abortions, do you, as an alumni of the University of Illinois, lose your tax deduction for your contribution because you give it to the University of Illinois in an unrestricted manner and part of that might be used to fund abortions?

My hunch is yes, under the terms of this amendment, although we do not know. There has never been a hearing on this amendment. There has never been a request for a hearing on this amendment. We have never given any of the organizations that have grave reservations about this amendment an opportunity to come and testify. Let me read just some of those that have grave reservations: The Methodist Church, the American Hospital Association, the Association of American Medical Colleges, the American Hebrew Congregation, the Association of American Universities, the National Association of State Universities and Land Grant Colleges, to mention only a few.

Mr. President, I think those organizations do have a decent respect for sanctity for life. I think it is unfair to cast them into some kind of darkness, to say they have no respect for life because they are opposed to this amendment. They would like to have a chance to come and testify at hearings as to why they are opposed.

The Senator from Colorado was clearly correct in saying there will probably be a challenge on germaneness on this. This is clearly not germane. Here we are going to make a major change in tax policy. We are going to say to the perfectly well-intentioned contributor to any of our land grant colleges that have medical schools, "You will lose your right to tax exemption status."

That is a major substantive provision that does not belong in this bill.

However, I am willing to argue it on the same basis as my friend from Colorado. I am saying that liberty is protected in this country by diversity and respect for diversity. It is not protected by one group that feels so strongly about a subject that they want to deny to another group that holds contrary views in equally good conscience the same rights and privileges that the proponents of this amendment demand for themselves.

I ask unanimous consent that the following letters from a variety of organizations in opposition to the Humphrey amendment be printed in the CONGRESSIONAL RECORD immediately following my prior remarks.

There being no objection, the letters were ordered to be printed in the RECORD, as follow:

AMERICAN COUNCIL ON EDUCATION,
Washington, DC, September 22, 1986.

DEAR SENATOR: On behalf of the American Council on Education, an association representing over 1,400 colleges, universities, and organizations in higher education, and the associations listed below, I strongly urge you to oppose an amendment which will be offered by Senators Armstrong and Humphrey. It is our understanding that the proposed amendment would deny tax-exempt status to any organization that performs, finances, or provides facilities for any abortion except when required to save the life of the mother.

This amendment could jeopardize the tax-exempt status of most major public and private universities that operate teaching hospitals, and the tax deductibility of charitable contributions to these institutions. These universities are accorded tax-exempt status and tax-deductibility to provide education, research, and training in all fields, including health. It would be inappropriate to deny tax-exempt status to these public purpose organizations because they offer a lawful medical service to their community.

Many nonprofit employers, like employers in the for-profit sector, provide pregnancy termination benefits under their health plans. Under the proposed amendment, all such nonprofit organizations could lose their tax-exempt status by providing such coverage. This would constitute a back-door revocation of the tax-exempt status of many nonprofit entities including colleges and universities, museums, hospitals, etc.

We urge you to reject this proposed amendment.

Sincerely,

ROBERT H. ATWELL.

The following associations join ACE in this statement:

American Association of Community and Junior Colleges.

American Association of State Colleges and Universities.

Association of American Universities.

National Association of State Universities and Land-Grant Colleges.

UNITED CHURCH OF CHRIST,
OFFICE FOR CHURCH IN SOCIETY,
Washington, DC, July 18, 1986.

DEAR SENATOR: It is our understanding that Senators Humphrey and Armstrong intend to attach the Humphrey amendment to some piece of "must-pass" legislation in the near future. The amendment would deny tax-exempt status and status as a charitable contribution recipient to organizations which perform, finance or provide facilities for abortions.

We wish to express our opposition to this amendment. This is an extremely mischievous piece of legislation posing a direct threat to our denomination and to similar denominations. We greatly resent this attack upon our church.

Our denomination has, on many occasions, reaffirmed its position of supporting freedom of choice. Our denomination has also founded several hospitals and still relates to these many health and welfare institutions.

It is unclear from the amendment whether our entire denomination would lose its tax exempt status, whether specific local churches who have pregnancy counseling programs or services would lose their tax exempt status, etc. It is certainly clear that our UCC related hospitals and health services would lose their tax exempt status, unless they chose to reject the United Church of Christ position on this religious issue and conform to this new legislation. This, in turn, will cause a crisis in relations between churches and their health and welfare institutions.

These are just some of the problems this legislation poses for our church. We certainly consider it a violation of the First Amendment. We cannot accept the State's directives as to what we must believe.

Further, this amendment will play major havoc with health care provision in this country, which we have already spelled out in a letter we co-signed with many other denominations.

We urge you to vote a strong NO on the Humphrey Amendment.

Sincerely yours,

JAY LINTNER,
Director, Washington Office.

PRINTON, KANE & CO.,
Short Hills, NJ, June 12, 1986.

Sen. BILL BRADLEY,
U.S. Senate,
Washington, DC.

DEAR SENATOR BRADLEY: On behalf of my firm, Printon, Kane & Co., a primary underwriter and secondary dealer of State and local municipal bonds, I wish to object to Senator Humphrey's proposed amendment to the tax bill.

Although I personally am strongly opposed to elective abortion on moral gounds and therefore its public funding, I don't believe his proposed solution is a viable one. Instead, the ability to restrict federal funding for hospitals on the analysis of elective or emergency abortion throws the basis for economic support on our health institutions into the courts. While the end result may be a noble one and one with which I agree, the financial chaos in the existing funding mechanism would be an economic disaster.

The capital programs for not only New Jersey hospitals but most other states is dependent upon municipal tax exempt financing. Since this function is clearly public purpose, that segment of the market has functioned better, i.e., lower rates, than others which have had their tax exempt status questioned such as I.D.B., certain housing bonds and power bonds. If the tax exempt eligibility of health care institutions is questioned along Senator Humphey's lines, then yet another area of the muncipal bond market will break down. Once the durability of the tax exempt status is left open to judgment or ex post facto analysis, then the cost of obtaining (legal opinion) becomes prohibited at best. The market will react efficiently, there will be a tiering effect on outstanding issues and new issues will have to carve out institutions which perform emergency procedures, i.e. abortions, from those serving other health care needs. This to me seems to be a very impractical financial solution to a complex moral question. Issuers, underwriters, bond counsels and the municipal bond market will react quickly and negatively. From past experience, once doubt is introduced into the municipal market, that segment pays the price for a long, long time.

Very truly yours,

THOMAS F. KANE,
Managing Partner.

ASSOCIATION OF AMERICAN MEDICAL COLLEGES,
Washington, DC, July 15, 1986.

Hon. BOB PACKWOOD,
U.S. Senate,
Washington, DC.

DEAR SENATOR PACKWOOD: On behalf of the Association of American Medical Colleges, which represents this nation's 127 medical schools, more than 450 teaching hospitals, and 83 professional academic societies, I strongly urge you to oppose the efforts of Senators Armstrong and Humphrey to introduce an amendment that would revoke the tax-exempt status of any not-for-profit organization that performs, finances, or provides facilities for any abortion, except those required to save the life of the mother. The amendment also would rescind the deductability of charitable contributions made to any organization, public or private, that performs, finances, or provides facilities for abortion.

Clearly, this provision would have major implications for the practice of medicine and for medical education and would reach beyond those immediately involved in the provision of this medical service to threaten the tax-exempt status of entire private universities and the charitable contributions made to public and private hospitals and universities involved in medical care.

This amendment would:

Force hospitals to choose between retaining their tax-exempt status and providing a legal medical service desired and used by members of the communities they serve;

Virtually preclude medical school faculty and teaching hospitals from training medical students and residents to safely and effectively care for pregnant women who have chosen to terminate their pregnancies.

Disproportionately curtail low-income patients' access to abortion services since not-for-profit and public hospitals provide the majority of medical services received by low-income patients.

Teaching hospitals and universities that have medical schools provide a wide variety of public services. Their status as non-taxable institutions and their ability to generate tax deductible contributions permits them to provide services to individuals and to support programs which otherwise they would be unable to offer.

On behalf of the nation's medical schools, universities, and teaching hospitals, I urge you to oppose any efforts by Senators Humphrey and Armstrong to attach this amendment to legislation.

Sincerely,

JOHN A.D. COOPER, M.D.

KAISER PERMANENTE,
Portland, OR, July 14, 1986

Hon. BOB PACKWOOD,
U.S. Senate, Russell Senate Office Building,
Washington, DC.

DEAR SENATOR PACKWOOD: We understand that Senator Gordon Humphrey plans to propose an amendment in the Senate that would revoke the tax-exempt status of any organization that directly or indirectly performs, finances or provides for any abortion. We are strongly opposed to this threat to our tax-exempt status and urge you to vote against it.

Kaiser Foundation Health Plan, Inc. and Kaiser Foundation Hospitals are part of a non-profit health care delivery system that provides comprehensive health services on a prepaid direct service basis to almost 5 million members in 16 states. More than 290,000 Oregonians are Health Plan members, served by more than 4,000 employees and the more than 340 physicians of Northwest Permanente, P.C.

We believe the Humphrey amendment would establish a dangerous precedent under which the Congress and the Internal Revenue Service could be pressured to apply equally inappropriate criteria to tax exemption determinations. The possibilities for carrying this principle forward to other medical practices and other litmus tests are endless.

We hope we can count on you to oppose the Humphrey Amendment.

Sincerely,

MICHAEL H. KATCHER,
Sr. Vice President, and Regional Manager.
FRED M. NOMURA, M.D.,
Regional Medical Director.

[Letter sent to all Members of the Senate]

AMERICAN MEDICAL ASSOCIATION,
Chicago IL, September 19, 1986.

Re: Humphrey Amendment on Abortion.

DEAR SENATOR: The American Medical Association understands that Senator Humphrey intends to offer an amendment to a "must-pass" bill that would deny tax exempt status to organizations which directly or indirectly perform, finance, or provide facilities for abortions (except to prevent the death of the mother). The Humphrey amendment would also deny the affected health care organizations' eligibility to receive tax-deductible contributions.

This amendment is guaranteed to achieve only one thing—the disruption of health care in our nation. This amendment would inappropriately affect non-profit hospitals, health maintenance organizations, health centers, many Blue Cross and Blue Shield plans, and major philanthropic organizations.

The issues of abortion and taxes each deserve to be considered separately and on their own merits. We urge you to oppose the Humphrey amendment.

Sincerely,

JAMES H. SAMMONS, M.D.

HFMA,
Washington, DC, July 25, 1986.

DEAR SENATOR: The Healthcare Financial Management Association (HFMA) opposes an amendment that Senator Gordon Humphrey has indicated he will offer on a "must pass" piece of legislation. The amendment would deny tax-exempt status to any organization that performs, finances, or provides abortion facilities. Also, contributions to these organizations would not be tax deductible and they would be ineligible for tax-exempt financing.

HFMA is a professional membership society composed of more than 25,000 individual members. These members share an interest in the financial management of institutional healthcare providers. Changes in the tax status of these organizations is of great interest of HFMA members.

HFMA opposes this amendment because of its serious adverse financial impact on

nonprofit hospitals in every state. More than 900 hospitals would lose their tax-exempt status under this proposal. Also, if the amendment is narrowly interpreted, over 3,000 hospitals would be denied tax exemption.

The basic rationale for providing tax-exempt status to hospitals was to recognize that hospitals serve an essential public purpose of providing health care. The proposed amendment would reverse the intent of prior law without reexamining the original purpose of the tax exemption. Denying tax-exempt status would eliminate the two most important sources of capital for these organizations—philanthropy and tax-exempt bonds. In addition, these organizations would be subject to income tax. No hearings have been held on issues raised by the amendment. Accordingly, it has not been subject to the scrutiny essential for such a far-reaching proposal. The proposal conflicts with court rulings which require hospitals to provide facilities and staff for the performance of elective abortions.

The essential public purpose which tax exemption of hospitals facilitates, access to capital for these organizations, the lack of public hearings, and the conflict with court decisions must be examined before a measure such as the Humphrey amendment is enacted. For the reasons enumerated, and because the amendment process is not an appropriate focus for debate on this subject, we strongly urge you to oppose Senator Humphrey's amendment.

Sincerely,

R.R. KOVENER,
Vice President.

AMERICAN HOSPITAL ASSOCIATION,
Washington, DC, July 22, 1986.

Hon. BOB PACKWOOD,
U.S. Senate,
Washington, DC.

DEAR SENATOR PACKWOOD: On behalf of the American Hospital Association's 5,600 health care institutions I am writing to oppose an amendment that may be offered by Senator Humphrey to deny status as a tax-exempt organization, and as a charitable contribution recipient, for organizations that perform, finance, or provide facilities for abortion.

AHA opposes the Humphrey amendment because it would have a serious financial impact on needed community, nonprofit hospitals in every state. More than 900 community, nonprofit hospitals could lose their tax exemption if the Humphrey amendment were narrowly interpreted; under a broader interpretation, every community, nonprofit hospital—over 3,300 in all—would be denied tax-exempt status.

These hospitals also would lose access to their two most important sources of capital: philanthropy and tax-exempt bonds. These institutions serve an important public purpose; they are created, supported, and directed by communities to support the public hospital system that has the basic responsibility for ensuring public health.

Furthermore, AHA believes the proposed amendment has implications well beyond the sponsor's stated intention. No hearings have been held on issues raised by the amendment; it has not been subject to the scrutiny demanded by such a far-reaching proposition.

The amendment also would put health care institutions at odds with their present responsibilities in these cases. For example, the New Jersey Supreme Court has ruled that nonsectarian, nonprofit hospitals are under legal duty to provide facilities and staff for the performance of elective abortion [*Doe* v. *Bridgeton Hospital Association, et al.*, 71 NJ 478 (1976), cert. denied 433 U.S. 914 (1977)].

The AHA urges you to oppose the Humphrey amendment to deny tax-exempt status to organizations that fund or provide facilities for abortions.

Sincerely,

JACK OWEN,
Executive Vice President.

AMERICAN CIVIL LIBERTIES UNION,
Washington, DC, July 21, 1986.

Hon. ROBERT PACKWOOD,
Russell Office Building,
Washington, DC.

DEAR SENATOR PACKWOOD: We understand that Senators William Armstrong and Gordon Humphrey are planning to offer an amendment to the Debt Ceiling or some other "must pass" legislation later this month that would deny tax-exempt status to any hospital or institution that performs, finances, or provides facilities for any abortion . . ." It would further disallow tax deductions for charitable contributions made to such institutions.

We strongly oppose this amendment and urge its defeat. We believe the amendment is an unconstitutional infringement on the right of choice. The effect of such a broad denial of tax-exempt status would be to dramatically reduce the availability of abortion services to pregnant women choosing to exercise their constitutionally protected right to choice. The "Humphrey" Amendment would, therefore, impose a significant government-created barrier to the right to abortion.

Moreover, the proposed amendment would exact a substantial and unconstitutional penalty on the private funding of a wide range of organizations which choose to provide or finance abortion related services. We believe that the Congress may not use its taxing power to punish those who engage in constitutionally protected activity.

Finally, we believe that the "Humphrey" amendment is unwise as a matter of public policy. It would set a disturbing precedent that would expose private charities to the shifting sands of public sentiment, and embroil Congress in divisive debates over the "charitable" nature of a variety of constitutionally protected activities.

We applaud your leadership in seeing that this amendment and any similar amendments are defeated.

Sincerely,

MORTON H. HALPERIN,
Director, Washington Office.
LESLIE HARRIS,
Legislative Counsel.

AMERICAN PROTESTANT HEALTH ASSOCIATION,
Schaumburg, IL, July 17, 1986.

OPPOSITION TO HUMPHREY AMENDMENT

DEAR SENATOR: The American Protestant Health Association, representing over 300 hospitals and associated facilities nationwide, opposes an amendment that may be offered by Senator Humphrey on the Senate floor that would deny eligibility as a charitable organization to institutions that perform, finance or provide facilities for abortions.

While the Association's membership includes hospitals with differing positions on abortion, with each member hospital setting its own policies on this matter, the Association strongly believes that no hospital should have its 501(c)(3) status decided on the basis of its position with regard to this particular issue, or any other issue that does not represent a valid test of whether the institution's purpose is charitable.

The American Protestant Health Association asks that you oppose the amendment, on the basis that its reach is so broad, that it will evitably disrupt the ability of our hospitals to perform their mission of providing health care to the people of this nation.

Thank you for your consideration of our position.

Sincerely yours,

CHARLES D. PHILLIPS, ED.D.,
President.

HARVARD UNIVERSITY LAW SCHOOL,
Cambridge, MA, July 29, 1986.

An open letter to all Senators:

I understand that Senator Humphrey plans to propose an Internal Revenue Code amendment that would deny tax benefits (exempt status and contribution deductions) to hospitals and other institutions otherwise tax exempt if they perform, finance, or provide facilities for abortion. Quite apart from the tax neutrality arguments against such an amendment, Senators should be aware that the amendment would, in all likelihood, violate the Due Process Clause of the Fifth Amendment to the United States Constitution. Although Congress is free to withhold federal subsidy from the exercise of fundamental rights such as the right to terminate a pregnancy, see *Harris v. McRae*, 448 U.S. 297 (1980), and accordingly may act to prevent institutions from using tax-deductable contributions to fund such exercise, see *Regan v. Taxation With Representation*, 461 U.S. 540 (1983), it is equally well settled that "the government may not deny a benefit to a person because he exercises a constitutional right," *id.* 545, see *FCC v. League of Women Voters*, 104 S.Ct. 3106 (1984). Unlike the decision of Congress to withhold tax benefits from otherwise eligible organizations that engage in substantial lobbying activities—a decision upheld in *Taxation With Representation*—the Humphrey amendment would not contain a proviso permitting hospitals and other institutions to retain tax benefits for their other activities so long as they confine the ineligible activities (i.e., performing or financing abortions) to controlled but distinct affiliate entities. The upshot is that what Senator Humphrey proposes would go beyond a congressional refusal to subsidize abortions and would amount, in effect, to a congressional penalty on constitutionally protected abortion choices—no less so than if Congress were to withhold food stamps or other benefits from families any of whose members had chosen abortions.

Sincerely,

LAURENCE H. TRIBE,
Tyler Professor of Constitutional Law.

AMERICAN COUNCIL ON EDUCATION,
OFFICE OF THE PRESIDENT,
Washington, DC, July 23, 1986.

DEAR SENATOR: On behalf of the American Council on Education, an association representing over 1,400 colleges, universities, and organizations in higher education, and the associations listed below, I strongly urge you to oppose an amendment which may be offered by Senators Armstrong and Humphrey. It is our understanding that the proposed amendment would deny tax-exempt status to any organization that performs, fi-

nances, or provides facilities for any abortion except when required to save the life of the mother.

This amendment could jeopardize the tax-exempt status of most major public and private universities that operate teaching hospitals, and the tax deductibility of charitable contributions to these institutions. These universities are accorded tax-exempt status and tax-deductibility to provide education, research, and training in all fields, including health. It would be inappropriate to deny tax-exempt status to these public purpose organizations because they offer a lawful medical service to their community.

Many nonprofit employers, like employers in the for-profit sector, provide pregnancy termination benefits under their health plans. It would seem that under the proposed amendment, all such nonprofit organizations would lose their tax-exempt status by providing such coverage. This would constitute a back-door revocation of the tax-exempt status of many nonprofit entities including colleges and universities, museums, hospitals, etc.

We urge you to reject this proposed amendment.

Sincerely,

ROBERT H. ATWELL.

The following associations join ACE in this statement:

American Association of Community and Junior Colleges,

Association of American Universities,

National Association of State Universities and Land-Grant Colleges.

GENERAL BOARD OF CHURCH AND SOCIETY, THE UNITED METHODIST CHURCH,

Washington, DC, July 23, 1986.

Hon. BOB PACKWOOD,

U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR PACKWOOD: We are writing to express our opposition to the Humphrey amendment, which Senators Humphrey and Armstrong intend to attach to some piece of "must-pass" legislation in the coming days or weeks. The amendment would deny tax-exempt status and status as a charitable contribution recipient to organizations which perform, finance or provide facilities for abortions.

The amendment would place nonprofit hospitals and other organizations in the untenable position of choosing between their economic solvency and providing legal medical services. The amendment would even force hospitals in states which are under court order to provide abortion services to lose their tax-exempt status.

We are opposed to this amendment because it would have a devastating effect on the provision of health care services in the United States, as well as on the social service agencies and philanthropic organizations which support them. Under the proposed amendment, organizations that could lose their tax-exempt status include: nonprofit community hospitals, freestanding health clinics, health maintenance organizations, tax-exempt health insurance plans, medical schools and their affiliated universities, foundations and other philanthropic organizations, and social service agencies. Even agencies which provide only nondirective pregnancy counseling and referrals—which are required by standards of medical practice and protected by the constitutional guarantees of freedom of speech—would be threatened with the loss of their tax-exempt status.

If interpreted broadly, the Humphrey amendment would even threaten the tax-exempt status of mainline Protestant, and Jewish faith groups and religious organizations with policies that support freedom of choice in reproductive health care. It would also deny tax-exempt status to religiously affiliated hospitals and individual congregations where clergy provide problem pregnancy counseling.

Furthermore, we have serious doubts about the constitutionality of the Humphrey amendment. It is not a simple extension of the Hyde amendment, as its supporters claim, because it does not seek to prohibit the use of Federal funds for abortion services. Rather, it is intended to impose sanctions against nonprofit organizations and individual taxpayers who choose to provide or support abortion services, in spite of the fact that the Supreme Court has ruled that the right to abortion is protected by the Constitution.

The Supreme Court has held that the government may not place undue obstacles in the path of women choosing to exercise their constitutional rights, and we believe that the Humphrey amendment does place such obstacles in the way of the right to privacy and vital First Amendment rights.

We believe that the amendment would have a disastrous effect on our nation's health care system, and severely restrict the ability of nonprofit community hospitals, health and community service agencies, charities and foundations, and even religious organizations, to carry out the vital role they play in providing health care services. We therefore urge you to vote against the Humphrey amendment when it is offered. Thank you for your consideration.

Sincerely yours,

Rev. Donna Morton-Stout, Esq., Associate General Secretary, Issue Development and Advocacy, General Board of Church and Society, The United Methodist Church.

Rabbi Alexander Schindler, President, Union of American Hebrew Congregations.

Isaac Asimov, President, American Humanist Association.

Theodore R. Mann, President, American Jewish Congress.

Irma Gertler, President, B'nai B'rith Women.

Carol Cole Flanagan, President, Episcopal Women's Caucus.

Barbara A. Nandel, National President, National Council of Jewish Women.

Rev. Kenneth C. Senft, Executive Director, Lutheran Church in America, Division for Mission in North America.

Dr. John M. Swomley, Jr., President, Americans for Religious Liberty.

Dolores Wilkenfeld, President, National Federation of Temple Sisterhoods.

Rev. James A. Hamilton, Director, Washington Office, National Council of Churches of Christ.

Rev. Jay Lintner, Director, Washington Office, Office for Church in Society, United Church of Christ.

Rev. George Chauncey, Mary Jane Patterson, Directors, Washington Office, Presbyterian Church (U.S.A.).

Rev. Robert W. Tiller, Director, Office of Governmental Relations, American Baptist Churches, U.S.A.

Rev. Leland Wilson, Director, Washington Office, Church of the Brethren.

Burton Citak, Co-Chairman, Commission on Social Policy, United Synagogue of America.

Mary Kercherval Short, Secretary of Women's Concerns, Christian Social Relations, Women's Division, General Board of Global Ministries, the United Methodist Church.

Faith A. Johnson, Secretary, Human Development: Family, Children, and Sexuality, United Church Board of Homeland Ministries, United Church of Christ.

Sr. Deborah J. Barrett, SFCC, Esq., Executive Director, Catholic Women for Reproductive Rights.

Robert Z. Alpern, Director, Washington Office, Unitarian Universalist Association of Congregations in North America.

Hyman W. Bookbinder, Washington Representative, American Jewish Committee.

Carole Goodspeed, Director, Committee on Women's Concerns, Presbyterian Church (U.S.A.).

Helen Parolla, Director of Public Policy and Public Affairs, YWCA National Board.

Dr. Elizabeth H. Verdesi, Associate for Council on Women and the Church, Presbyterian Church (U.S.A.).

National Coalition of American Nuns.

JULY 22, 1986.

DEAR SENATOR: Senator Humphrey, we understand, will propose an Internal Revenue Code amendment to deny tax benefits (exempt status and contribution deductions) to various hospitals and other institutions, otherwise tax exempt, that perform, finance or provide facilities for abortion. We write to urge the defeat of this proposal.

We write as tax professionals. All of us are lawyers or law professors who practice or teach in the field of federal taxation. A number of us chaired the tax sections of various bar associations. A number served in positions of responsibility in the Treasury Department, the Internal Revenue Service, the Department of Justice, and on Capitol Hill, some in Republican administrations and others in Democratic administrations. All of us hold a keen interest in better, more rational federal tax law; for that reason, all of us applaud the current Congressional effort to achieve genuine tax reform.

Senator Humphrey's proposal, to use tax provisions to promote controversial social policy, runs directly counter to the salutary concept of tax neutrality that fuels the current Congressional tax reform endeavor.

Departing from wise and settled Congressional practice, the proposed amendment would embroil the tax law and the Internal Revenue Service in matters that properly are not the business of neither, and would thus provoke disrespect for both.

Our strong view that the amendment should be rejected does not proceed from any unanimous position on the social policy it is intended to promote. Some of us favor free access to abortion, others would substantially restrict that opportunity. Still others regard this divisive issue as one that should be resolved, not by federal dictation, but state by state, through the local political process. Whatever our respective views on abortion, we are clear that federal regulatory intervention through the Internal Revenue Code would be bad for the tax system and contrary to the national interest.

Sincerely,

IRS: Mortimer M. Caplin, N. Jerold Cohen, Sheldon S. Cohen, Kenneth W. Gideon, Frederick Goldberg, Crane C. Hauser, Jerome Kurtz, Stuart E. Seigel, Randolph W. Thrower.

Capitol Hill: Edward J. Hawkins, Mark L. McConaghy, Bernard M. Shapiro.

Other: M. Bernard Aidinoff, Hugh Calkins, Richard G. Cohen, Thomas F.

Field, Martin D. Ginsburg, Vester T. Hughes, Jr., James B. Lewis, Johannes R. Krahmer, Thomas A. Troyer, Bernard Wolfman.

Treasury: John E. Chapoton, Edwin S. Cohen, David G. Glickman, Daniel I. Halperin, Frederic W. Hickman, Donald C. Lubick, John S. Nolan, Ronald A. Pearlman.

Justice: M. Carr Ferguson, Jr., Erwin N. Griswold, John B. Jones, Jr., Jack S. Levin.

UNITED CHURCH OF CHRIST,
OFFICE FOR CHURCH IN SOCIETY,
Washington, DC, July 18, 1986.

Hon. GORDON J. HUMPHREY,
U.S. Senate, Washington, DC.

DEAR SENATOR HUMPHREY: Attached is a copy of a letter we have sent to the Senate.

In this letter we raise a number of concerns. Perhaps you can provide some answers, at least from your perspective.

Since our tax-exempt status as a denomination grants blanket federal income tax exemption to local churches, national Instrumentalities, Health and Welfare Institutions related to the United Church of Christ, etc. under group exemption 1665, does this mean that the passage of your amendment will take away the tax exempt status of our entire denomination? Would your amendment require our churches and institutions to refrain from communicating our church's teachings on this issue?

Is it your intent to take away tax exempt status of local churches whose clergy provide counseling or who provide other services related to abortion counseling?

It appears your amendment would require hospitals and clinics related to our church to choose between federal policy and the teachings of our church. How do you propose that this dilemma be resolved?

We have other questions about this unfortunate legislation, but these are paramount.

Sincerely yours,

JAY LINTNER,
Director, Washington Office.

NATIONAL FAMILY PLANNING AND REPRODUCTIVE HEALTH ASSOCIATION, INC.,
Washington, DC, July 15, 1986.

DEAR SENATOR: During the Senate's recent debate over tax reform legislation, Senator Gordon Humphrey proposed an amendment which would have denied tax-exempt status to any organization which performs, finances, or provides facilities for abortion. Senator Humphrey eventually withdrew the amendment, but promised to raise the issue again in the next few weeks in conjunction with a piece of "must-pass" legislation. On behalf of the National Family Planning and Reproductive Health Association and the family planning providers and consumers it represents, I urge you to oppose the Humphrey amendment when it comes before the Senate again this summer.

We are particularly concerned about the Humphrey amendment's effect on family planning providers. No hearings have ever been held on the amendment and its full scope is not yet known. However, we believe that the Humphrey amendment, if interpreted broadly, would deny tax-exempt status to family planning agencies that simply counsel and refer for abortion, even if they do not perform abortion procedures themselves. Medical ethics and state laws require family planning professionals discuss all legal medical options with their patients facing unintended pregnancies. Thus, Mr. Humphrey's amendment could force all competent not-for-profit family planning agencies to close their doors, thereby denying access to high quality primary health care services to millions of low-income women and adolescents.

Moreover, the Humphrey amendment would set a dangerous precedent for tax policy. For the first time, benefits under the tax code would be denied to individuals and agencies simply because they engage in controversial, yet constitutionally-protected and legal activities. Under such a precedent, Congress is susceptible to pressures to deny a host of tax benefits to any individual, agency or group that does not meet with universal acclaim, including, for example, religious sects, publishers of controversial literature, educational institutions or health care providers.

In short, the Humphrey amendment has serious implications for thousands of nonprofit, charitable and tax-exempt institutions, and has not been adequately examined. We believe that the amendment would severely restrict the availability of all reproductive health services, not just abortion procedures. We urge you to oppose the Humphrey amendment.

Sincerely,

SCOTT R. SWIRLING,
Executive Director.

BLUE CROSS AND BLUE SHIELD ASSOCIATION,
Washington, DC, July 21, 1986.

Hon. BOB PACKWOOD,
Chairman, Committee on Finance, U.S. Senate, Dirksen Senate Office Building, Washington, DC. 20510

DEAR SENATOR PACKWOOD: On behalf of the Blue Cross and Blue Shield Association and its member Plans, I am writing to oppose efforts such as S. 2382 that would deny tax-exempt status to organizations that finance abortions. Should an action of this nature become law, Blue Cross and Blue Shield Plans would likely lose their tax exemption.

The added burden of federal taxes would unavoidably increase premiums for many of our subscribers and force Plans to be more selective in the risks they are willing to accept. Both of these outcomes would seriously reduce access to protection against the cost of health care.

The carte blanche denial of tax exemption to organizations that finance a recognized medical procedure would not in any way address the moral questions surrounding the issue of abortion. It would, however, raise the cost of health care protection and, in many cases, eliminate the only protection currently available to the higher risk segments of our populations. This is not sound public policy.

We applaud your efforts to reject changes in the tax code that would have unintended, but very serious, consequences for millions of Americans.

Sincerely,

MARY NELL LEHNHARD.

UNION OF AMERICAN HEBREW CONGREGATIONS,
New York, N.Y., September 23, 1986.

DEAR SENATOR: The Union of American Hebrew Congregations, representing 1.3 million Jews in the United States and Canada, strongly opposes the anti-abortion amendment to the Continuing Resolution which Senator Humphrey is expected to offer this week. The amendment could deny nonprofit tax status to organizations providing abortion-related services.

This amendment could well threaten the financial status of hospitals, social service agencies, philanthropic organizations and individual health care providers. Because its provisions are ill-defined, a broad interpretation of the amendment could jeopardize religious organizations and political advocacy groups. Tax-exempt status could even be denied to individual congregations whose clergy counsel on problem pregnancy options in the privileged context of clergy-congregant communications.

The Jewish community has generally opposed all attempts to restrict a woman's right of reproductive freedom, not because we are pro-abortion but because we strongly believe that this is an improper intrusion of government into the private life of an individual. Jewish tradition does not offer blanket support or prohibition of abortion. There are circumstances in which abortion is not only permitted but mandated. Any legislation in this sensitive area encroaches upon the religious freedom of all Americans to conduct their lives according to the teachings of their faith.

The proposed amendment is another attempt by the legislature to restrict women's constitutional rights and religious freedom which have been upheld by the Supreme Court's affirmation of a woman's right to choose abortion.

We urge you to vote against this amendment and to reject all other amendments that would weaken international or domestic family planning by limiting a woman's right of choice.

Sincerely,

RABBI ALEXANDER SCHINDLER,
President.

BEAR STEARNS,
June 11, 1986.

Senator BILL BRADLEY,
U.S. Senate,
Washington, DC.

DEAR SENATOR BRADLEY: You have requested our views on the proposal recently made by Senator Humphrey of New Hampshire to amend section 501 of the Internal Revenue Code to eliminate tax-exempt status from any organization which "performs, finances or provides facilities for any abortions except where the life of the mother would be endangered if the fetus were carried to term."

Exempt status under section 501 is a prerequisite for a hospital which desires to undertake a tax-exempt financing. Public tax-exempt financing is the primary source of funding for non-profit health care providers. This form of financing gives these providers increased access to capital to modernize and expand health care facilities and to make major equipment purchases. It also enables providers to advance refund high interest debt and thereby reduce interest and ultimately health care costs. Finally, pooled financings, that were responsible for a significant portion of tax-exempt financing for 501(c)(3) health care institutions last year, permit many health care providers over a wide geographic area to finance economically their needs, as well as permit smaller and less credit-worthy health care institutions, which would not otherwise be able, to raise capital and to access public markets.

The Bond Buyer, the major trade publication for the tax-exempt bond market, has reported that last year, tax-exempt health care organizations raised a record $31.24 billion in the public tax-exempt market. How-

ever, tax-exempt financings for health care organizations plummetted in the first quarter of 1986 to 12 issues totaling $99.4 million. * * *

We believe that the uncertainties which would be created by the proposed amendment to section 501 of the Internal Revenue Code would have a further negative impact on the tax-exempt health care bond market. For instance, litigation in which it was asserted that a particular institution performed an abortion which was not "life-preserving" (regardless of whether or not this assertion was ultimately proven correct) could actively thwart for years that institution's ability to raise funds in the tax-exempt bond market. Further, the tax-exempt status of bonds currently outstanding for that institution would be open to question, potentially causing prices to plummet. Of course, outstanding litigation of any sort always adds a degree of uncertainly to an issuer's ability to finance its activities; however, this uncertainty is compounded on a daily basis by the difficulty in determining whether a particular abortion was performed where the life of the mother was endangered without the abortion.

This uncertainty would also attach to state and local agencies that issue tax-exempt bonds to provide funds to health care providers, including institutions which do not perform abortions (e.g. nursing homes, hospices and certain hospitals). Under the proposed amendment, the tax-exempt status of these agencies would be called into question each time one of the hospitals which they fund performed an abortion. Furthermore, if this proposal were to be enacted, bondholders of bonds issued for health care pooled financings could find that the tax-exempt status of their bonds has been eliminated. Because of the larger member of hospital participants in these pools, they become more vulnerable.

It should be noted that a large number of tax-exempt health care institutions provide abortion services. Thus, more than 900 community, non-profit hospitals would lose their tax exemption if the Humphrey proposal were narrowly interpreted, and several thousand community, non-profit hospitals would be denied tax-exempt status under a broader interpretation.

We believe that the proposed amendment to section 501 of the Internal Revenue Code would severely impact the ability of all health care issuers, including those which do not perform abortions, to raise funds in the public tax-exempt markets.

Sincerely,

JOSEPH M. GIGLIO,
Managing Director.

VOLUNTEER TRUSTEES OF
NOT-FOR-PROFIT HOSPITALS,
July 15, 1986.

Hon. ROBERT PACKWOOD,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR PACKWOOD: We are writing to urge defeat of the impending "Humphrey Amendment" which would deny tax exempt status to health care institutions providing abortions. As trustees of not-for-profit hospitals across the country, we are alarmed by the use of the 501(c)(3) tax status as the vehicle for the debate of this important social issue.

As a society, we grant tax exemption to voluntary hospitals because they perform a public service that would otherwise fall to government. Their assets belong to the community; their profits accrue to the community; and, their services are determined by community demand in accordance with the laws of the land.

Tax-exempt status is not a handle for social change. As long as it is seen as a short-term expedient that can be wielded like a weapon over the heads of our communities, it is a constant threat to our voluntary health care system. Even abortion, an issue that challenges our deepest values and morality, should not be allowed to undermine the mission of that system.

Voluntary hospitals are community-owned, and community-run. The span of services they provide is vast and all-encompassing, from meals-on-wheels to heart-lung transplants to hospice. It is the home of private sector clinical research, medical education, care for the poor, technological development, tertiary care and chronic care. It is the training ground for our medical professionals and the underpinning of our nation's medical excellence. In some cases it is the provider of abortions.

Tax status must not become Congress' whipping boy in the battle for social change. Abortion can and should be debated on its own merits. It is not a tax issue; nor should it be cast as a hospital issue. No coherent health care policy objective is achieved by forcing abortion into the for-profit and public sectors alone. If abortion is the social issue then let us address it.

We need to put to rest the perception that 501(c)(3) hospitals are the ever-available vehicles of reform for all of our social problems. Let them remain instead the ever-available providers of community health care services as they were designed by law to be.

Sincerely,

BENJAMIN R. STURGES,
Chairman of the Board.

American Psychological Association,
Washington, DC, July 22, 1986.

Hon. BOB PACKWOOD,
Russell Senate Office Building,
U.S. Senate, Washington, DC.

DEAR SENATOR PACKWOOD: I am writing on behalf of the 87,000 members of the American Psychological Association to express our concerns with respect to the amendment which Senator Humphrey intends to offer which would revoke the tax-exempt status of organizations that perform, finance, or provide facilities for abortions not necessary to save the life of a pregnant woman. This amendment represents a clear attempt to circumvent recent Supreme Court decisions and deny many women their constitutionally protected right to terminate a pregnancy.

This issue is of considerable concerns to the members of the American Psychological Association. As practitioners and researchers, psychologists understand that unwanted childbearing had severe health, social, and psychological consequences. Health problems include increased risk for illness or death for both mother and child. In addition, unwanted childbearing has been linked with a variety of social problems, including divorce, poverty, child abuse, and juvenile delinquency. Studies have found that unwanted children are less likely to have a secure family life. As adults, they are more likely to engage in criminal behavior, be on public assistance, and receive mental health services.

The adverse consequences of teenagers' inability to control their childbearing are particularly severe. Aside from the well-known health risks associated with being the child of a child, research has established that their social and psychological problems persist, largely due to the lack of education and poor employment prospects of their teenage mothers. Children born to teenagers are more likely to have lower intelligence and achievement test scores and poorer school adjustment. The problems are particularly severe for the more han 80 percent of these children of teens who are unwanted.

Access to abortion continues to play an important role in the prevention of unwanted births. Research has found that when abortion is denied, the resulting children are more likely to have a variety of social and psychological problems, even when they are born to healthy adult women with intact marriage and adequate economic resources. Such children have poorer grades in school, are less liked by other children, and are regarded by teachers and parents as more irritable and anger prone. Their poorer school performance increases with age, becoming highly significant by adolescence.

It is important to recognize that these adverse effects are not shared equally by all segments of our society, but fall more heavily on those who are poor, black, or young, the very groups of persons who receive services from those organizations targeted by the Humphrey amendment. Yet, the evidence suggests that even in advantageous social and economic circumstances, when a pregnancy is unwanted and the woman requests an abortion, to deny it forces her to bear a child at risk for psychological problems that are long lasting. In this context, the watchword of the family planning movement—"Every Child a Wanted Child"—has particular meaning for psychologists.

For these reasons, the American Psychological Association opposes the Humphrey amendment. We greatly appreciate the leadership you have shown over the years on this issue, and urge you and other members of the Senate to defeat this attempt to restrict the availability of a constitutionally protected medical procedure.

Sincerely,

LEONARD D. GOODSTEIN, Ph.D.,
Executive Officer.

VOLUNTEER TRUSTEES OF
NOT-FOR-PROFIT HOSPITALS,
Washington, DC, July 15, 1986.

Hon. ROBERT PACKWOOD,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR PACKWOOD: We are writing to urge defeat of the impending "Humphrey Amendment" which would deny tax exempt status to health care institutions providing abortions. As trustees of not-for-profit hospitals across the country, we are alarmed by the use of the 501(c)(3) tax status as the vehicle for the debate of this important social issue.

As a society, we grant tax exemption to voluntary hospitals because they perform a public service that would otherwise fall to government. Their assets belong to the community; their profits accrue to the community; and, their services are determined by community demand in accordance with the laws of the land.

Tax-exempt status is not a handle for social change. As long as it is seen as a short-term expedient that can be wielded like a weapon over the heads of our communities, it is a constant threat to our voluntary health care system. Even abortion, an issue that challenges our deepest values and

morality, should not be allowed to undermine the mission of that system.

Voluntary hospitals are community-owned, and community-run. The span of services they provide is vast and all-encompassing, from meals-on-wheels to heart-lung transplants to hospice. It is the home of private sector clinical research, medical education, care for the poor, technological development, tertiary care and chronic care. It is the training ground for our medical professionals and the underpinning of our nation's medical excellence. In some cases it is the provider of abortions.

Tax status must not become Congress' whipping boy in the battle for social change. Abortion can and should be debated on its own merits. It is not a tax issue; nor should it be cast as a hospital issue. No coherent health care policy objective is achieved by forcing abortion into the for-profit and public sectors alone. If abortion is the social issue then let us address it.

We need to put to rest the perception that 501(c)(3) hospitals are the ever-available vehicles of reform for all of our social problems. Let them remain instead the ever-available providers of community health care services as they were designed by law to be.

Sincerely,

BENJAMIN R. STURGES,
Chairman of the Board.

LEAGUE OF WOMEN VOTERS
OF THE UNITED STATES,
August 11, 1986.

Hon. BOB PACKWOOD,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR PACKWOOD: An amendment sponsored by Senator Humphrey (R-NH) may be offered at any time before the end of this congressinal session to a "must-pass" piece of legislation. The Humphrey amendment would revoke the tax-exempt status of any organization that performs, finances or provides facilities for any abortion not necessary to save the life of a pregnant woman. The amendment would also make contributions to any such organization taxable, whether or not the contributions are used to provide abortion services. The League of Women Voters of the United States is strongly opposed to the Humphrey amendment.

The clear intent of the amendment's sponsor is to circumvent the 1973 Supreme Court decision in *Roe* v. *Wade* in which the Supreme Court interpreted the constitutional right of privacy to include, within specified limits, protection of the individual's freedom to decide whether or not to terminate a pregnancy, a right reaffirmed recently by the Supreme Court. The League of Women Voters believes that public policy in a pluralistic society must affirm the constitutional right of privacy of the individual to make reproductive choices.

The Humphrey amendment is another attempt to restrict the range of reproductive choices by those who would circumvent the Supreme Court's decision. In addition, the Humphrey amendment would jeopardize the financial stability of virtually every not-for-profit provider of health and social services in the United States, including most of the nation's hospitals, many Blue Cross/Blue Shield plans and a variety of philanthropic organizations. By denying tax-exempt status to the not-for-profit health care community, the Humphrey amendment would decrease the health care generally available to low-income individuals and increase the cost of health care throughout the country.

This amendment is not bad social policy, but also bad tax policy. The amendment's sponsor seeks to use the federal income tax code to discourage an activity that the Supreme Court has ruled to be constitutionally protected. Also, by limiting access to a legal medical procedure by means of the tax code, Congress is setting itself up as the ultimate medical authority, determining which legal medical procedures will be accessible and which will not.

Finally, by decreasing the number of facilities providing abortion services as well as raising the cost of the procedure, Congress would be creating a new barrier on women seeking abortion services that did not exist before. For this reason, we question whether the amendment could sustain a constitutional challenge.

Again, we strongly oppose the Humphrey amendment and are committed to working with you to defeat this amendment when it comes to the Senate floor.

Sincerely,

NANCY M. NEUMAN,
President.

AMERICAN PSYCHOLOGICAL ASSOCIATION,
July 22, 1986.

Hon. BOB PACKWOOD,
Russell Senate Office Building, U.S. Senate, Washington, DC.

DEAR SENATOR PACKWOOD: I am writing on behalf of the 87,000 members of the American Psychological Association to express our concerns with respect to the amendment which Senator Humphrey intends to offer which would revoke the tax-exempt status of organizations that perform, finance, or provide facilities for abortions not necessary to save the life of a pregnant woman. This amendment represents a clear attempt to circumvent recent Supreme Court decisions and deny many women their constitutionally protected right to terminate a pregnancy.

This issue is of considerable concern to the members of the American Psychological Association. As practitioners and researchers, psychologists understand that unwanted childbearing has severe health, social, and psychological consequences. Health problems include increased risk for illness or death for both mother and child. In addition, unwanted childbearing has been linked with a variety of social problems, including divorce, poverty, child abuse, and juvenile delinquency. Studies have found that unwanted children are less likely to have a secure family life. As adults, they are more likely to engage in criminal behavior, be on public assistance, and receive mental health services.

The adverse consequences of teenagers' inability to control their childbearing are particularly severe. Aside from the well-known health risks associated with being the child of a child, research has established that their social and psychological problems persist, largely due to the lack of education and poor employment prospects of their teenage mothers. Children born to teenagers are more likely to have lower intelligence and achievement test scores and poorer school adjustment. The problems are particularly severe for the more than 80 percent of these children of teens who are unwanted.

Access to abortion continues to play an important role in the prevention of unwanted births. Research has found that when abortion is denied, the resulting children are more likely to have a variety of social and psychological problems, even when they are born to healthy adult women with intact marriages and adequate economic resources. Such children have poorer grades in school, are less liked by other children, and are regarded by teachers and parents as more irritable and anger prone. Their poorer school performance increases with age, becoming highly significant by adolescence.

It is important to recognize that these adverse effects are not shared equally by all segments of our society, but fall more heavily on those who are poor, black, or young, the very groups of persons who receive services from those organizations targeted by the Humphrey amendment. Yet, the evidence suggests that even in advantageous social and economic circumstances, when a pregnancy is unwanted and the woman requests an abortion, to deny it forces her to bear a child at risk for psychological problems that are long lasting. In this context, the watchword of the family planning movement—"Every Child a Wanted Child"—has particular meaning for psychologists.

For these reasons, the American Psychological Association opposes the Humphrey amendment. We greatly appreciate the leadership you have shown over the years on this issue, and urge you and other members of the Senate to defeat this attempt to restrict the availability of a constitutionally protected medical procedure.

Sincerely,

LEONARD D. GOODSTEIN, PH.D.,
Executive Officer.

BLUE CROSS AND
BLUE SHIELD ASSOCIATION,
Washington, DC, July 21, 1986.

Hon. BOB PACKWOOD,
Chairman Committee on Finance, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR PACKWOOD: On behalf of the Blue Cross and Blue Shield Association and its member Plans, I am writing to oppose efforts such as S.2382 that would deny tax-exempt status to organizations that finance abortions. Should an action of this nature become law, Blue Cross and Blue Shield Plans would likely lose their tax exemption.

The added burden of federal taxes would unavoidably increase premiums for many of our subscribers and force Plans to be more selective in the risks they are willing to accept. Both of these outcomes would seriously reduce access to protection against the costs of health care.

The carte blanche denial of tax exemption to organizations that finance a recognized medical procedure would not in any way address the moral questions surrounding the issue of abortion. It would, however, raise the cost of health care protection and, in many cases, eliminate the only protection currently available to the higher risk segments of our population. This is not sound public policy.

We applaud your efforts to reject changes in the tax code that would have unintended, but very serious, consequences for millions of Americans.

Sincerely,

MARY NELL LEHNHARD.

THE AMERICAN COLLEGE OF OBSTETRICIANS AND GYNECOLOGISTS,
July 21, 1986.

Hon. BOB PACKWOOD,
Russell Building, Washington, DC.

DEAR SENATOR PACKWOOD: On behalf of The American College of Obstetricians and Gynecologists (ACOG), an organization representing more than 25,000 physicians specializing in the delivery of women's health care, I urge you to oppose the Armstrong-Humphrey amendment. This amendment would deny tax-exempt status to any organization which performs, finances, or provides abortions. It would also eliminate the tax-deductible status of charitable contributions by donors to such organizations. Senators Armstrong and Humphrey have announced their intention to offer this amendment on the Senate floor, but have not identified which legislation will be used as the vehicle.

This language is extremely broad and has far-reaching implications. It would deny tax-exempt status to many philanthropic organizations, teaching hospitals, health maintenance organizations, and most, if not all, nonprofit hospitals which are not run by a governmental agency. For example, United Way would lose its tax-exempt status if any of its funds were given to an organization which provided abortion services, whether or not the funds were actually used for abortions. A tax-exempt hospital would lose such status if any abortions were performed regardless of how many other health care services were provided. It could be argued that an employer whose activities are legitimately tax-exempt would lose such status if its employee health plan covered services.

Not only would this amendment require affected organizations to pay taxes, it would also significantly reduce their ability to raise funds by denying donors the ability to deduct donations to such organizations as charitable contributions. Again, this restriction is not limited to funds contributed for purposes relating to abortions but to all donations to such organizations.

The Supreme Court in *Roe* v. *Wade* stated that up to the point of viability "the abortion decision is inherently, and primarily, a medical decision . . ." and found that the government cannot deny a patient the right to obtain an abortion. If this amendment were successful, the availability of abortion services would be significantly reduced, and the government would effectuate through indirect means exactly what the Supreme Court found it could not do directly.

Finally, we believe it is inappropriate for the federal government to define which medical procedures are of sufficient benefit to society to constitute a charitable act. Never before has the government attempted to do so and it should not begin now.

For these reasons, The American College of Obstetricians and Gynecologists urges you to oppose the Armstrong-Humphrey amendment.

Sincerely,
HAROLD A. KAMINETZKY, M.D., FACOG,
Director of Practice Activities.

RABBI ALEXANDER M. SCHINDLER,
UNION OF AMERICAN HEBREW CONGREGATIONS,
New York, NY, September 23, 1986.

DEAR SENATOR: The Union of American Hebrew Congregations, representing 1.3 million Jews in the United States and Canada, strongly opposes the anti-abortion amendment to the Continuing Resolution which Senator Humphrey is expected to offer this week. The amendment could deny nonprofit tax status to organizations providing abortion-related services.

This amendment could well threaten the financial status of hospitals, social service agencies, philanthropic organizations and individual health care providers. Because its provisions are ill-defined, a broad interpretation of the amendment could jeopardize religious organizations and political advocacy groups. Tax-exempt status could even be denied to individual congregations whose clergy counsel on problem pregnancy options in the privileged context of clergy-congregant communications.

The Jewish community has generally opposed all attempts to restrict a woman's right of reproductive freedom, not because we are pro-abortion but because we strongly believe that this is an improper intrusion of government into the private life of an individual. Jewish tradition does not offer blanket support or prohibition of abortion. There are circumstances in which abortion is not only permitted but mandated. Any legislation in this sensitive area encroaches upon the religious freedom of all Americans to conduct their lives according to the teachings of their faith.

The proposed amendment is another attempt by the legislature to restrict women's constitutional rights and religious freedom which have been upheld by the Supreme Court's affirmation of a woman's right to choose abortion.

We urge you to vote against this amendment and to reject all other amendments that would weaken international or domestic family planning by limiting a woman's right of choice.

Sincerely,
RABBI ALEXANDER SCHINDLER,
President.

Mr. ARMSTRONG. Mr. President, though I have reached an entirely different conclusion, both about this amendment and about the underlying issue of abortion than my friend from Oregon, I really would not want to let the moment pass without complimenting him on his statement and responding briefly to it.

Every Senator knows that the Senator from Oregon is a thoughtful and indeed extraordinarily skillful legislator. There is a time in the debate when skillful legislators sometimes raise strong points. He has erected two which I want to identify.

The first is whether or not there is something about the Humphrey amendment which somehow denies other Senators or other people the right to hold an opinion which is different than that of the Senator from New Hampshire, the Senator from Colorado, or, for that matter, 60 percent of the American public who in polls say they disapprove of abortions.

There is nothing, I would submit, which I have said or others have said which denies to anyone the right to that opinion.

In fact, in my remarks I made it a point to address myself to two groups of people.

First, briefly, those who do not share my own conviction about the sanctity of life. There are people, and I have said this on many occasions and acknowledge it this morning, there are men and women of good conscience who do not believe that the unborn fetus is in fact a living human being.

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I have met many of them who have looked at the evidence who have simply not reached the conclusion that I have. I would have to say to the Senator and to my colleagues that I have yet to meet even one person—there may be one—who was willing to say, yes, I think that is a human being, that it is a child, that it is a baby, who also held a permissive view toward abortion. The dividing line invariably in my experience—there may be some exception to it; perhaps there is an exception within this body—but invariably within my experience, the dividing line is what you think is going on inside the mother's womb. If you think that is tissue, it is something other than a real, live, human being, then it seems to me it is impossible to justify the invasion of privacy, the infringement on the right of choice which is inherent in taking an anti-abortion position. Such an invasion of privacy, such an extraordinary exercise to deny or discourage a surgical procedure is only justified if you first believe that we are talking about a human life or that we are talking about a million and a half human lives a year or we are talking about 15 or 20 million human lives in the last 20 years.

I have looked at the scientific evidence. I am persuaded by scientific evidence and by evidence of the heart that those are human babies we are talking about. But I recognize that others come to a different position. So in my opening remarks, I addressed myself briefly and I hope persuasively to those who do not believe in our position on the sanctity of life.

Then I shifted gears, let me remind the Senator from Oregon, and addressed myself specifically to those Senators who have reached the same conclusion I have. I believe that is a majority in the Chamber, because a majority has on previous occasions supported the Hyde amendment. I may be wrong. There may not be a majority this morning.

But I pointed out that if they believe as I do, that we are talking about human life, then they should vote their conscience on that issue, not denying the right of conscience to everybody else; but they should not be discouraged by the fact that it is inconvenient, that we are all tired, that it may cause a hardship on the organizations mentioned, that it may tie us up for a few days with the Senator from Oregon filibustering on the issue. But if it is a human life, and there may be a majority in this body who believe

that, then these other considerations of convenience and timing and fatigue and whatnot are just less important.

Second, let me conclude as I began, that there are differences of opinion among thoughtful people. If there were something which I said which in any way tended to cast into outer darkness—I think that was the phrase used by the Senator from Oregon—Senators or organizations of the kind he mentioned, it is not my desire. I think it was not my intent. I do not think any person who heard my remarks would interpret them in that way.

This is a major national policy issue. It deserves to be debated in a thoughtful, dispassionate manner. If fact, I am personally convinced that emotional debate on this particular issue does not enhance the dignity of this body, it does not add to the thought life of the country. In fact, when people engage in the kind of tactics which I describe as being strident and hard-edged and which the Senator from Oregon described in much more specific, precise, and honest terms, I think they demean the process. I think they abuse the kind of debate for which our country is justifiably proud.

Mr. President, finally, I want to respond to a substantive issue the Senator raised. He said what about these hospitals and other organizations who might lose their tax-exempt status? Again, it is just a question of what you think the issue is. If you think we are talking about life, babies, then it is important enough to inconvenience them or make them change their ways.

If, for example, those same great institutions which the Senator mentioned were practicing racial discrimination, there is no question they would lose their tax-exempt status. They would. That has been litigated in the court. There is probably not one Member of the Senate or of the House or anybody I can think of who would say, yes, you can go ahead and practice race discrimination and not lose your tax-exempt status.

We do not say you cannot hold that view. In fact, you can even be a charitable foundation and advocate a different point of view, but you cannot practice it and keep your tax-exempt status.

But if you believe, and I think a majority of Senators do and a majority of people in this country do, that abortion is an even more awful act, an even more awful habit of mind than is race discrimination, than you have no trouble in saying that anybody who practices it should either change their ways or lose their tax-exempt status.

I thank the Chair and I thank my friend from Oregon for listening because my desire is not to be personal, it is not for a millisecond to deny anyone else the legitimacy of their views but only to state my own and hopefully to encourage support from others.

Mr. HATFIELD. Mr. President, once again prolife Senators find themselves split and divided by an amendment offered as a rider to an appropriations bill, an amendment which is at best well-intentioned and at worst is the legislative equivalent of a suicide car bombing mission.

I think the prolife movement ought to seriously consider adopting a new strategy to combat the evil of abortion. We should face up to the sobering truth that the current approach—the approach which says "push any amendment, no matter how overbroad or ill-timed, for a vote," is not succeeding. Mr. President, the scorecard for abortion opponents, and I am glad to number myself among them, the scorecard is shameful.

Of the last 24 votes on abortion-related amendments, we have lost two-thirds of those votes. That is a 33-percent success rate, which is a failure rate in every sense.

Now, if these votes involved clear-cut questions, then they would be worthwhile just on the basis of principle. But they never are. And the amendment before the Senate is a perfect example. Here is an amendment which makes no attempt, no attempt whatsoever, to narrow itself to the question as to whether abortion should be lawful and whether any Federal funds should be obligated to pay for such abortions. It's not bad enough that we are swinging wide open the doors to 501(c)(3) charitable deduction status. It's not bad enough that we are bypassing the entire normal legislative process. But then we add insult to this injury to the process and to the very groups we purport to protect, by not even carving a small exception for teaching hospitals. Not even hospitals which teach doctors how to perform an abortion in cases where the life of the mother is endangered, are exempted.

I submit that such an amending strategy reveals a "death wish" quality to the prolife movement. Can anyone believe that such a split within the ranks is helpful? Can anyone argue that such beatings on the floor, as most assuredly we shall see on this amendment, are worthwhile? I believe that we are discrediting the cause against abortion when we bring up such overbroad, poorly timed, ill-fated proposals as the pending measure before the Senate reflects.

Quite honestly, I would not be surprised to see an amendment come before the Senate which denies Federal highways assistance moneys to all States whose roads are used by women driving to have abortions. But as I have indicated, overbreadth is not the only problem here. The pending amendment does not even touch half of the abortion providers in the United States. So one does not have to stretch reason or intellect to far to find good cause to oppose this amendment. When you weigh the benefits of this amendment with the enormous costs, you come up with a "no" vote. What about the hospitals which provide health care to the poor and the mentally handicapped but which also perform one or two abortions per year? Can we not find some way to get at the abortions performed without shutting down the hospitals that provide services to so many in need? Do we have to toy with tax exemption status when such a dangerous experiment could help proponents of this amendment today but hurt them tomorrow?

And so I regret that I must oppose my friend from New Hampshire. This regret is intensified by my disappointment with the death-wish character now fairly ascribed to the prolife movement. According to a 1985 CBS/N.Y. Times poll, the majority of Americans believe that abortion is the same as murdering a child. Unfortunately, the U.S. Senate has not been able to channel this consensus among the public toward eradicating the evil of abortion on demand. This amendment, in my opinion, moves us further from that goal, not closer.

Mrs. KASSEBAUM. Mr. President, I rise in opposition to the amendment. I believe it is important to stress just how broad this amendment is.

The amendment is not merely the reverse side of the coin of the Hyde amendment. The Hyde amendment deal with specific limitations on the use of Federal dollars for abortion. The Hyde amendment does not cut off all Medicaid, Medicare, and other Federal funding to a health care institution if that institution offers abortion services. Rather, it states that those dollars may not be used for abortion unless the life of the mother is endangered.

In contrast, the amendment before us today would eliminate in one fell swoop the entire tax-exempt status of any health care organization that performs, finances, or provides facilities for abortion. Nonprofit hospitals, clinics, insurance companies, health maintenance organizations, and medical schools all fall within the purview of this amendment. The amendment goes even further in stating that anyone who makes a contribution to these organizations may not take it as a charitable deduction.

Clearly, the loss of an organization's tax-exempt status is a severe penalty. One would think such a penalty would be reserved for punishment of egregious violations of the law. But, in fact, this amendment is designed to penalize the health care community for providing a legal medical service.

Enactment of this amendment would place health care professionals and institutions in an untenable position. Moreover, once we start down this path, I'm not sure where we stop. In all likelihood, any nonprofit organization conducts some activity that does not meet the approval of some Member of the Senate.

How many times on the continuing resolution or any other appropriations bill have we heard amendments prefaced with, "None of the funds in this act shall be used to . . . ?" This type of amendment is troublesome in its own way, but it is nothing compared with a threat to pull an organization's entire tax-exempt status. I just don't think we need another weapon in our arsenal of techniques for accomplishing indirectly what cannot be achieved directly though normal legislative channels.

I urge my colleagues to join in opposing this amendment.

Mr. MITCHELL. Mr. President, I will not support the amendment of the Senator from New Hampshire.

I sympathize with the goal. I agree that we ought not provide a governmental subsidy for a purpose that many of our citizens find morally repugnant. I have repeatedly voted against funding abortions except to preserve maternal life, because I believe Government ought not encourage abortion.

But the amendment before us does not deal with a direct subsidy such as is found in the Medicaid Program. It is not, contrary to the claims made, a reverse form of the Hyde amendment, which denies tax dollars for abortion.

It is instead a potentially far-reaching, underexamined change in our tax laws that deserves more careful consideration than it has received.

The amendment would condition the receipt of a general and broad governmental benefit—in this case, a tax exemption—on the curtailment of a constitutionally protected activity.

The claimed intent of the amendment is to prevent an indirect Government subsidy going to the performance of abortions by denying tax-exempt status to organizations which finance or facilitate abortions.

But the language on the face of it raises as many questions as it seeks to answer.

Abortions for therapeutic reasons falling short of life-threatening circumstances are performed by hospitals as well as freestanding clinics.

Foundations devoted to dealing with the tragic problem of birth defects must advise their clients of all legal options open to a couple facing the prospect of a baby born with a condition such as Tay-Sachs, which inevitably causes death within 2 or 3 years.

And because there is absolutely no way to predict whether the amendment's intent is broad or narrow, it would throw into doubt the tax-exempt status of a substantial number of community-based-nonprofit hospitals which operate pre- and post-natal clinics, as well as potentially affecting universities affiliated with teaching hospitals.

The American College of Obstetrics and Gynecology, the American Hospital Association, the Association of American Medical Colleges, the American Protestant Health Association—indeed, a wide range of nonprofit health-related groups—opposes this amendment.

Obviously, if this language were to become law, the tax status of various institutions would be immediately under challenge. And the statute itself would be challenged.

And contrary to the claims made here on the Senate floor, it would not then be the Congress of the United States determining the limits of the tax exemption in law. It would be the courts.

In the courts, the rules of statutory construction, under which tax liability is examined, includes a requirement that constructions which avoid constitutional problems are to be preferred.

The rules of statutory construction also require that when the purpose of a statute is to affect conduct rather than to raise revenues, courts should primarily be concerned to effectuate the regulatory purpose of the statute.

Because the amendment would amend section 501 of the Internal Revenue Code, which defines and delimits tax exemption, it would reach other referenced sections of the Tax Code, such as section 103, for example, which defines the tax exemption of interest on bonds with references to "exempt persons."

Similarly, because on the face of it the language does not specify how the prohibition is triggered, it is unclear if an abortion performed without the consent of a hospital, or for a "life-threatening" purpose which turned out not to have been life-threatening would jeopardize an institution's tax exemption.

According to an analysis by the American Law Division of the Library of Congress, a narrow construction of the language of the amendment could curtail the tax-exempt status of 3,591 nonprofit hospitals nationwide, about 75 percent of all HMO's, the 90 Blue Cross/Blue Shield plans, and potentially many other health insurance plans provided by nonprofit organizations.

If the language is given a somewhat broader interpretation, it would affect the tax-exempt status of bonds used to finance the majority of health care facilities around the country: $31 billion was raised for health facilities by tax-exempt bonds last year. Constant changes in tax law have already thrown this bond market into some disarray. Passage of this amendment could cause further confusion.

Even if State-run hospitals and universities affiliated with hospitals, and broad charities such as United Way or Community Chest were not ultimately found to be within the scope of this amendment, the degree of uncertainty that such institutions would suffer before the issue was finally resolved would be substantial.

The goal of limiting abortion is a goal that all of us share, those who are pro-life and those who are pro-choice. There is nobody in the Senate who affirmatively supports abortion. But in the zeal to deal with each and every possible way in which this controversial issue may impinge on our society, we have to take into account, as well, the other issues that are involved in our society.

And there is no evading the fact that in our system, the grant of a tax exemption to nonprofit institutions which provide health care services and support health care institutions plays a major role in the structure that makes it possible for our people to have access to quality health care throughout the Nation.

Dramatic and apparently straightforward legislation of this kind has an obvious appeal to those who want to curtail abortion.

But we have to take into account as well the structure of our tax exempt system and make certain we are not creating more problems than we think we may be solving.

States enjoy tax exemption in part because of intergovernmental immunity, but this does not reach all State actions. In 1946—New York versus United States—the Supreme Court upheld a Federal sales tax on mineral waters bottled and sold by New York State. The test suggested by that case allowed Congress to tax a "source of revenue by whomsoever earned and not uniquely capable of being earned only by a State" even where the tax "falls also on a State."

Under this test, universities affiliated with hospitals may be reached by the language as well.

And although the proponents claim that there is no constitutional bar to the passage of this proposal, that is an assertion resting on a very fragile basis.

The constitutional issues hinge on the degree to which this language, by curtailing the overall availability of abortion services, would raise a governmental erected barrier to the exercise of a constitutionally protected right.

Harris versus McRae, the 1980 case which upheld denial of Medicaid funding for therapeutic abortions, said:

"Abortion is inherently different from other medical procedures because no other

procedure involves the purposeful termination of potential life."

But in the very same decision, the Harris court also said:

"The guarantee of equal protection * * * is * * * a right to be free from invidious discrimination in statutory classifications and other governmental activity. It is well settled that where a statutory classification does not itself impinge on a right or liberty protected by the Constitution, the validity of classification must be sustained * * *".

Numerous subsequent rulings have held that abortion is a currently protected right to whose exercise coercive governmental obstacles are not permitted.

The condition of tax exemption for constitutionally protected rights is not as clear cut as either proponents or opponents would like it to be.

A number of cases—Walz versus Tax Commission, Regan versus Taxation with Representation—have found that the denial of a tax exemption does not constitute an unconstitutional burden or condition on the face of it.

But the Court has also invalidated restrictions based on the tax exemption.

Thus, in Regan, it upheld the denial of exempt status to funds used for lobbying, while in FCC versus League of Women Voters, a restriction on editorializing by public radio stations was struck down.

There is no clear-cut case which either supports or refutes the contention that this amendment would be facially unconstitutional.

As recently as this past term, the Supreme Court reaffirmed that Government may not impose burdens on a woman's exercise of her personal decision about abortion. The amendment before us would have potentially far-reaching effects on the availability of abortion.

If by this amendment that availability is curtailed, it would constitute an additional, Government-created, and arguably burdensome condition, such as the Court has repeatedly struck down in a string of cases.

The argument that individuals who morally oppose abortion ought not be required to subsidize by a grant of tax exemption those organizations which perform abortion would, of course, totally undermine the basis on which tax-exempt status is granted in our Nation.

Nobody is required to contribute to organizations which perform abortion. Congress has already insulated the tax dollars of everyone—those who oppose abortion as well as the tax dollars of those who do not—from a use to which the former objects.

But if we are going to condition tax-exempt status on the basis of the fact that some of our taxpayers oppose some of the goals of some organizations which enjoy that status, then the overwhelming majority of tax-exempt organizations would find their status at risk.

We grant tax-exempt status to a broad range of groups. Over 100,000 groups applied for it last year. They run the gamut from organizations which support arms control to those which support the buildup of American military power. Indeed, legislation has been proposed for several years in an effort to allow individuals who are morally opposed to war to dedicate their tax dollars to other purposes.

In a diverse nation, we cannot and have never sought to condition a broad status—such as tax exemption—on a controversial issue of this nature.

No reliable information exists as to how many hospitals would be potentially affected. Virtually nothing is known at all of their likely response.

It is unclear if hospitals affiliated with religious denominations would be affected. Congress has explicitly provided that the tax-exempt status and Government-derived financing of religiously affiliated institutions would not be conditioned on their refusal to perform abortions.

But all religious denominations do not view abortion in the same way, and some religiously affiliated hospitals provide abortions, if not on demand, then on therapeutic grounds that fall short of being life-threatening.

Would this amendment have the effect of retroactively creating a prohibited form of "preference" for some religious beliefs over others? This should be reviewed.

We have no idea of the practical impact on secular hospitals. Would community hospitals choose to eliminate abortion procedures? Would they establish separate entities to perform abortions? And if so, how could they assure the degree of separability from their nonprofit gynecological services which the IRS could demand?

We are being asked to make a judgment of potentially far-reaching magnitude without the benefit of any reliable information whatsoever.

As a practical matter, the liability insurance crisis has already forced some hospitals to curtail the services they are willing to provide. I am informed that 10 Maine hospitals no longer provide delivery services at all, so women living in the areas served by those hospitals face potentially serious problems in access to basic health care.

If the passage of this amendment compounds this kind of problem by persuading hospitals that it is safest and easiest to simply not provide a range of related services, such as gynecological services, that possibility should be reviewed before Congress acts rather than discovered after the fact.

The Finance Committee held several months of hearings on the entire range of issues related to tax reform. Yet no testimony was offered on the subject of this amendment. No request was made to testify by any of its proponents. No amendment was offered in committee. And since its introduction as a Senate bill in late April, the only data available has been speculative and unreliable.

Congress ought never legislate without the benefit of adequate information. But that is particularly true when we are asked to deal with matters of such potentially far-reaching effect.

The grant of tax exemption which Congress has extended to this extremely broad and diverse community of nonprofit organizations and institutions rests as much on the principle of encouraging diversity as it does on traditional common-law principles of charitable service.

The blanket denial of that status for one highly controversial matter, the provision of abortion services, constitutes a radical departure from the extension of tax-exempt status that has hitherto guided Congress.

It is a policy departure that deserves more careful examination, both on factual and policy grounds, than we are able to give it in the process of this brief debate. For that reason, I will oppose the amendment.

Mr. KERRY. Mr. President, I rise today to join my colleagues in expressing my opposition to the amendment proposed by Senator HUMPHREY.

First, this amendment has far-reaching implications that have not been adequately studied, and the action today represents legislating on an appropriations bill. The Senator from New Hampshire's legislation was introduced barely 6 months ago, no hearings have been requested, and to the best of my knowledge this is the first time that this issue has been raised in a tax context. Despite the many tax reform hearings on both the House and Senate side during this Congress, no attempt was ever made to raise this issue.

Now, sponsors of this amendment have made it clear that their intent is to deny tax-exempt status to reproductive health care clinics, but the amendment would in fact have significant impact far more than that—on nonprofit hospitals, universities, community health centers, health maintenance organizations, and philanthropic foundations. It is even likely that many protestant and Jewish faith groups and agencies could lose their tax-exempt status because of their support for abortion rights and services that often include clergy counseling on abortion.

The types of organizations we know will be at risk are:

The Nation's 3,591 nongovernmental, not-for-profit hospitals;

Nearly three-fourths of all health maintenance organizations [HMO's];

Thirty-one percent of the Nation's abortion clinics;

Many of the 90 Blue Cross and Blue Shield plans;

State-run medical colleges and universities; and

Any voluntary employees' beneficiary societies [VEBA] or labor orgnizations that provide sickness benefits, and so forth.

In addition, Mr. President, the tax-exempt bond market would also fall victim to the amendment's broad impact. Tax-exempt financing through municipal bonds is the primary source of funding for nonprofit health care providers. Insurers and investors would be left in a quandary with regard to the future status of these bonds while the many questions and uncertainties surrounding the Humphrey amendment remain unanswered in the traditional congressional deliberative process. For example, in the first quarter of 1986 the tax-exempt financings for health care organizations plummeted, dropping to the lowest quarterly number since 1974.

The financial community attributes this substantial decline in health care financings to tax reform proposals and the uncertainty in the bond market for tax-exempt health care institutions. The position of the bond market is clear on the Humphrey amendment, as indicated by a recent Bear, Stearns & Co., statement on the issue: "The proposed amendment to section 501 of the Internal Revenue Code would severely impact the ability of all health care issuers, including those which do not perform abortions, to raise funds in the public tax-exempt markets."

Mr. President, this amendment also raises serious questions about its constitutionality. It penalizes an organization for providing a service which is protected by the Constitution, in spite of the fact that the Supreme Court has ruled that the right to abortion is protected by the Constitution—*Roe* v. *Wade*. The Humphrey amendment would force nonprofit hospitals and other organizations to choose between economic solvency and providing a legal medical service. In some situations, the amendment would force hospitals in States such as New Jersey, which are under court order to provide abortion services, to lose their tax-exempt status.

The Supreme Court has been very clear on the issues this amendment would attempt to raise. In *Speiser* v. *Randall and FCC* ve. *League of Women Voters*, the Court held that the Government may not penalize, either through denials of tax benefits or denials of direct assistance, the exercise of a constitutional right.

I think this amendment would wreak havoc on our Nation's health care system by severely restricting nonprofit hospitals and clinics from providing health care services that are necessary and vital. These facilities play pivotal roles in the provision of care to our Nation's elderly, poor, and handicapped. The Supreme Court in *Roe* v. *Wade* stated that up to the point of viability "the abortion decision is inherently, and primarily, a medical decision * * *" and found that the Government cannot deny a patient the right to obtain an abortion. And yet, Mr. President, if this amendment were successful, it would do exactly that. According to the American Medical Association, "This amendment is guaranteed to achieve only one thing—the disruption of health care in the Nation." The American Hospital Association believes the amendment would restrict public hospitals from "the basic responsibility for ensuring public health."

Mr. President, the issues of abortion, access to health care, and the continuing appropriations each deserve to be considered separately and on their own merits. This is neither the time nor the place for the careful deliberation these questions and issues should receive, and I repeat my earlier assertion that the amendment offered today represents legislating on an appropriations bill. I intend to vote against this amendment and I urge my colleagues to do so as well.

Mr. STEVENS addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Mr. President, we have had three statements now, two in support of this measure and one opposed. It is the position of the committee that this amendment is not germane. This bill deals with the appropriation of funds after they have already come to the Treasury. The proposed amendment deals with tax policy with regard to the payment of taxes. It is not germane to this bill that is before us. On behalf of the committee, I raise the point of order under rule XVI that the amendment is not germane.

The PRESIDING OFFICER. Under rule XVI——

Mr. EXON. Mr. President, a point of order.

Mr. HUMPHREY. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second for the yeas and nays? There is sufficient second.

The yeas and nays were ordered.

Mr. EXON. Mr. President, a point of order.

The PRESIDING OFFICER. The Senator will state it.

Mr. EXON. The Senator from Nebraska has been on the floor early and I waited patiently. Would my colleagues be good enough and kind enough, certainly the majority leader knows, that I might continue for 1 minute notwithstanding the point of order made by the Senator from Alaska.

The PRESIDING OFFICER. Is there objection?

Mr. HUMPHREY. Reserving the right to object, Mr. President, and I do not really wish to object, but I did not want to be put in a bind. If the Senator from Nebraska——

Mr. EXON. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. STEVENS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

Mr. EXON. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

The assistant legislative clerk resumed the call of the roll.

Mr. STEVENS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. STEVENS. Mr. President, I withdraw my point of order for the time being in order that I may have a dialog with my friend from Nebraska for just a moment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STEVENS. I would like to maintain the floor at the same time.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STEVENS. Mr. President, if the Senator from Nebraska and the Senator from New Hampshire would give this Senator some idea of what they consider a reasonable time, we do still have some 17 amendments to deal with. I have been asked by the chairman of the committee to raise this point of order. Would the Senator from Nebraska like a couple of minutes?

Mr. EXON. That is more than adequate.

Mr. STEVENS. And the Senator from New Hampshire?

Mr. HUMPHREY. Equal time. I may not use it all.

Mr. BRADLEY. Mr. President, will the Senator yield?

Mr. STEVENS. I yield to the Senator from New Jersey.

Mr. BRADLEY. Mr. President, I would be prepared to forgo a statement but I do have a lengthy statement I would like to make at some point, depending on how the question of germaneness comes out. I shall make the statement if the amendment is determined to be germane.

□ 1100

Mr. STEVENS. Mr. President, I assure the Senator from New Jersey that there are several Senators with

long statements, and I am sure, as the Senator from Colorado says, the issue will be before the Senate at the proper time at a later date, not necessarily this year but sometime and I look forward to the Senator's comments.

I ask unanimous consent that the Senator from Nebraska have 2 minutes and the Senator from New Hampshire have 2 minutes and then the Senator from Alaska as the manager of the bill temporarily be rerecognized.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The Senator from Nebraska is recognized.

Mr. EXON. I thank the Chair and I thank my friend and colleague from Alaska. I also thank my colleague from New Hampshire for offering this amendment. He and I have stood together, along with Senator ARMSTRONG and others, in support of the position in this amendment. Those two Senators also know that I have frequently stood on the floor of the Senate and said that I support the concept but I believe that promptly reportable rape or incest should be included. That is my fundamental belief, it always has been, and as far as I know it always will be. Therefore, I will support the amendment that is being offered with regard to the germaneness question that has been raised. But I would advise the Senate that if the germaneness question prevails in favor of the Senator from New Hampshire, then this Senator will seek recognition to offer an amendment that would add rape and incest exclusions to the amendment that I otherwise agree with. I thank all for their consideration. I yield the floor.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. HUMPHREY. Mr. President, this has been a civil, respectable debate with no hard feelings, no sign of extreme position or feeling. I think it has been constructive. If we do not succeed today, we will be back. It is an important principle. The question which each Senator must now decide, indirectly, because we have the question of germaneness, is do we want to subsidize the performance and the financing of abortion? We have said no, we do not want to subsidize it with cash outlays. That is why we have repeatedly adopted the Hyde amendment language to bills over the years. Now the question is, Do we want to eliminate tax subsidies? I suggest to you that it is perfectly consistent for Senators—and they are the majority—who supported Hyde should also support this amendment that would eliminate the tax subsidies for abortion.

Let me just say as a practical matter, Mr. President, what would happen if this became law is that abortion clinics and other institutions would incorporate their abortion services separately so that all of their other services, which in many comprise the bulk of their services, such as services offered by universities for example. They would incorporate their abortion services separately and everything else would retain its tax exemption and tax deductible status for contributions. That would be the practical effect. So it is not as draconian as some would have you believe. I thank the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Mr. President, I thank the two Senators for their contribution and on behalf of the committee I once again raise a point of order that under rule XVI the amendment of the Senator from New Hampshire is not germane.

The PRESIDING OFFICER. Under rule XVI, the question of germaneness is submitted to the Senate without debate. Is there a request for the yeas and nays?

Mr. STEVENS. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Alabama [Mr. DENTON], and the Senator from Utah [Mr. GARN] are necessarily absent.

The PRESIDING OFFICER (Mr. MCCONNELL). Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 34, nays 64, as follows:

[Rollcall Vote No. 323 Leg.]

YEAS—34

Abdnor	Grassley	Melcher
Andrews	Hatch	Murkowski
Armstrong	Hawkins	Nickles
Boschwitz	Hecht	Pressler
D'Amato	Helms	Proxmire
Danforth	Humphrey	Symms
DeConcini	Johnston	Thurmond
Dole	Kasten	Trible
Durenberger	Laxalt	Wallop
Exon	Mattingly	Zorinsky
Ford	McClure	
Gramm	McConnell	

NAYS—64

Baucus	Gore	Nunn
Bentsen	Gorton	Packwood
Biden	Harkin	Pell
Bingaman	Hart	Pryor
Boren	Hatfield	Quayle
Bradley	Heflin	Riegle
Broyhill	Heinz	Rockefeller
Bumpers	Hollings	Roth
Burdick	Inouye	Rudman
Byrd	Kassebaum	Sarbanes
Chafee	Kennedy	Sasser
Chiles	Kerry	Simon
Cochran	Lautenberg	Simpson
Cohen	Leahy	Specter
Cranston	Levin	Stafford
Dixon	Long	Stennis
Dodd	Lugar	Stevens
Domenici	Mathias	Warner
Eagleton	Matsunaga	Weicker
Evans	Metzenbaum	Wilson
Glenn	Mitchell	
Goldwater	Moynihan	

NOT VOTING—2

Denton Garn

□ 1130

The PRESIDING OFFICER. The amendment is not germane.

Mr. STENNIS. Mr. President, I move to reconsider the vote by which the amendment was declared not germane.

Mr. HATFIELD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Oregon.

□ 1130

Mr. HATFIELD. Mr. President, we have a list here that has been agreed upon and there are about three of them that we are working on that could possibly be resolved and not have to be brought to a vote.

Mr. President, I am wondering if we could accommodate everyone by having this printed list that everyone has a copy of and getting an agreement that we will go in sequence of this list. In that way, everybody knows precisely when their amendment would be up and ready to consider.

I think it would also help expedite and to keep the business moving on the floor. If an amendment were to be in the process of being resolved, we could accept that situation by unanimous consent or lay the amendment aside to take up another amendment.

I will not propound that request at this moment, but I would like to suggest that the leaders be informed on both sides of the aisle that if we could propound at some point later such a unanimous-consent request to take these amendments up in sequence, I believe it would aid a great deal in disposing of these amendments.

Mr. President, we are now in a position to take an amendment that is on this list. We have amendments by Senator HELMS; Senator KENNEDY; Senator BENTSEN; Senator HATCH; Senator THURMOND; Senator PRESSLER; Senator EVANS; Senator BUMPERS; Senators WARNER and TRIBLE; Senator KASSEBAUM; an amendment by me; Senator FORD; Senator KENNEDY; Senator KASTEN; Senator MELCHER; Senator METZENBAUM; Senator KENNEDY; and Senator HELMS.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. WARNER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 3185

Mr. WARNER. Mr. President, I have spoken with the managers of the bill and at this time it is appropriate for

Mr. TRIBLE and myself to send to the desk an amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Virginia [Mr. WARNER], for himself and Mr. TRIBLE, proposes an amendment numbered 3185.

Mr. WARNER. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The text of the amendment appears later in today's RECORD under "Amendments Submitted."

Mr. WARNER. Mr. President, this is a piece of legislation that is a bill that has already been addressed by the House. The principal sponsor, Mr. TRIBLE, and I have discussed it a number of times here on the floor and the Senate has adopted the basic framework of the legislation that is proposed in this amendment.

In offering this amendment, it effectuates a long-term lease of Washington National and Dulles Airports from the Federal Government to a regional authority. The amendment, as other amendments have done, embodies legislation previously passed by the Senate. Mr. TRIBLE and I offer it to give the House of Representatives a second opportunity to view this proposed legislation.

We have every reason to believe that the House is prepared to accept it in the present form for this bill incorporates modifications that are of great importance to the House.

Mr. President, at this time I yield the floor.

Mr. SARBANES addressed the Chair.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Mr. President, the proposal now before us has the Senate once again considering legislation to transfer ownership of two of the three major airports serving this region—National and Dulles—from the Federal Government to an authority dominated by the State of Virginia.

In previous debate on this floor, I have outlined in careful detail my reasons for opposing this legislation and I continue to have most of those concerns. The version of the airport transfer bill now offered by the Senators from Virginia—and I want to be very candid with my colleagues—is now supported by the State of Maryland. In my own view, I cannot share this judgment about the amendment before us, a bill developed in the House, since I believe that it will have an adverse impact over time, particularly looking ahead and anticipating what is to come, an adverse impact on both residents of the area and on the region's third major airport, Baltimore-Washington International Airport.

□ 1140

What the proposal before us does, the amendment, is structure an unfair and inequitable competitive situation between the new authority which will have both National and Dulles under its aegis, with the ability to cross-subsidize between the two airports. It will structure an unfair competitive situation between that authority, those two airports, and Baltimore-Washington International.

By continuing to focus on National and Dulles as a single unit this bill establishes an unfair competitive situation for BWI which over time may well jeopardize BWI's ability to provide high level service to the entire region.

This legislation fails to recognize in any significant way that all three airports serve the National Capital area, and that a fair competitive airport policy will result in better air service.

We are not objecting to a competitive situation amongst these airports. In fact, we think that will contribute to a higher level of service. But what I am objecting to is structuring an inequitable and unfair competitive situation.

This proposal will create a potent combine of National and Dulles, and I do not believe this has been offset in such a way that BWI will be able to compete in a fair and equitable fashion.

Finally, by granting to the airport authority the power to alter the existing nighttime noise standards, the proposal clearly raises the prospect of increased nighttime use and noise at National Airport.

I am very much opposed to this aspect of the legislation. It may have a devastating effect on communities beneath the flight paths along the Potomac River.

For these reasons, and for others which I have enunciated on previous consideration of this legislation, I will oppose the passage of the amendment that is now before us.

Mr. TRIBLE addressed the Chair.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. TRIBLE. In April, Mr. President, after 9 days of debate, the Senate decisively approved legislation to transfer Washington National and Dulles Airports to a regional authority so that these important facilities could be modernized and enhanced.

Similar legislation was subsequently approved by the House Aviation Subcommittee. However, that bill has not advanced further largely because of the controversy about two extraneous issues—the perimeter rule and the buying and selling of slots.

This amendment is an attempt to give the House of Representatives a second chance to say yes. The amendment embodies the best provisions of the airports transfer legislation passed by the Senate and the House Aviation Subcommittee and has been stripped of extraneous and controversial matters.

This is not the time for further debate of the merits. That has been more than adequately done. Simply let me point out that on two occasions a majority of Senators present and voting have supported this legislation and it is my hope that my colleagues will again say yes.

Mr. HATFIELD addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. HATFIELD. Mr. President, I rise to make a point of order.

Mr. HOLLINGS addressed the Chair.

Mr. HATFIELD. I withhold that.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. I sympathize with the distinguished chairman of our Appropriations Committee. He has fought like a tiger. I agree with his procedure. It is the only way.

It is only in that spirit that I get up here and perhaps in a sense—I do not want to sound arrogant about a vote, but let me explain the reason why at this time I will let this matter be brought to a vote.

No. 1, Mr. President, the reference about a regional authority is totally off base. These are national facilities. The name of one of them is Dulles International Airport. They were built by taxpayers' money from the State of Virginia, and State of South Carolina, the State of California, and down the line.

And necessarily speaking, I never could agree with the Secretary of Transportation on her interpretation of the law, that it was improper to use moneys from the airport and airways trust fund for improvements for airport facilities. Right to that particular point, in trying to abbreviate as much as I possibly can my remarks and my opposition, the distinguished Secretary of Transportation categorically says that it would be on the one hand illegal, on the other hand improper. Well, in this Senator's view of it, it would be very, very proper from the airport and airway trust fund, and very, very legal. Her interpretation comes from the idea that there would be a conflict of interest if the Department of Transportation, as the trustee of the particular funds, were to use these moneys for National and Dulles Airports. She says that somehow that would be a conflict of interest.

On the contrary, that is in the public interest and would fulfill the trust. This particular Department of Transportation represents all the

people of the United States, and these facilities belong to all the people of the United States. They are not regional.

On that particular score, I have had quite a frustration. I experienced it earlier with the texitle trade bill. Everyone is vitally, vitally interested in international trade and how we, as a Congress, set a standard of living on the one hand with respect to clean air, clean water, minimum wage, Social Security, unemployment compensation, safe working place, and, on the other hand, not giving protection to the productive capacity of the United States.

I had a bill, and it is still in the Finance Committee, because this majority crowd in the U.S. Senate knows how to operate the majority. You cannot even get the bill out of the subcommittee, much less the full committee. You cannot get a fair hearing unless you force it to a fair hearing, which I had to do with respect to textiles, and the reconciliation bill.

In a similar fashion I have had to force, what has been termed in the news as a filibuster, to be heard on this particular score. I did this because I had an alternative. I introduced S. 1110 asking for the use of the funds from the Airport and Airways Trust Fund in order to move forward with the development and the improvements of National and Dulles Airports in Washington.

We all agree that there has been excellent management and administration of the airports. There is no inefficiency or incompetence. It has just been a lack of money. The Secretary of Transportation and I both agree that what we really need is money, and how to get the money is the question. And her position is to try to take national facilities, turn them into Virginia facilities, and in turn, let them issue the bonds with their incomes.

I for 4 years signed bond issues as Governor of South Carolina. I am fully aware of the handling costs, attorney's fees and everything else. I am fully aware of the tax expenditure nature of the expending of public funds with respect to the issuance of bonds. And to bring that to a head, Mr. President, I then communicated with the Congressional Budget Office in order to determine what it would cost the taxpayers in order to obtain $250 million for the improvements. CBO told me that would cost $712 million to get that $250 million in construction.

Now the Secretary says we now need $680 million. In order to get that $680 million, we can state categorically based on the CBO estimate, that this will cost the taxpayers and air travels some $2 billion, perhaps much more.

So I thought that this body ought to stop, look, and listen and find out where deficits really start. They start right here in this Chamber by taking the political cop-out, putting up the facade that it is illegal or improper, and then not even given a hearing if you please, a fair hearing, to the matter of the use of the particular funds.

The majority on the Commerce, Science, and Transportation Committee, of which this Member is the ranking member, knows full well you cannot get that kind of hearing. They just fit it in, vote you down.

We all have respect for the majority leader—make that tremendous political respect for the majority leader. He has to go home at night, if we don't stay here all night, and stay with the Secretary of Transportation. They are more interested in getting along with the majority leader than they are in transportation costs of Government.

So I have been facing this block, where I cannot get a fair hearing. I have had to use this particular method of talking in time of a crunch on a continuing resolution to bring these things out to the membership.

□ 1150

I did fairly briefly the other evening, and now once again I express that opposition. Why do I not then offer a bunch of amendments?

Quite to that particular point, it goes to a news article I read that HOLLINGS does not like to lose. The question is, What is winning? What winning is, quite frankly, is to get these facilities improved.

The Secretary of Transportation wants to do that. I want to do it. The Senator from Maryland wants to do it. Everybody wants to do it in the National Congress. Yes, we can be like Sampson and just pull down the temple walls and just let the improvements go for another year or 2 years.

Otherwise, if we want to get something done, I think the best thing to do is to step aside and work with those on the House side and see about getting the use of funds from the trust fund. I have discussed that with them and we will bring it up in conference.

If we see we can bring a lawsuit under the equal protection clause—is it not wonderful history that I am going to use the 14th amendment, the equal protection clause to free up this money? Everybody says that the trust fund money can be used for airports except for the Washington airports?

I know under the equal protection clause, if I cannot get it set aside, I can go into the court and come back next year. I want a fair hearing from Gramm-Rudman-Hollings. I have a list I carry around in my pocket, which includes everything from the fairness doctrine, to the Conrail bill, and it goes right down. Somehow I have been interposed in all of these particular issues.

There is one thing that we seem to try to skirt that keeps us here, and that is to now pay the bills. This U.S. Senate has come up with this, and we have responded to Gramm-Rudman-Hollings. We will have it on the permanent debt limit, and on the temporary debt limit. You run out of so much credit in the bank. I am running out of credit in the bank with my colleagues. We are all getting a little impatient with each other and the long debates on issues we have heard. I hope I am speaking of issues we have not heard.

I know on the particular matter of Gramm-Rudman-Hollings that what we want to do is to really be heard on that one, to continue to maintain the discipline and try to get a fair vote on the House side.

We can bring up the amendment concerning the use of the land at Dulles, but they have changed the target around here. All of a sudden now they say they must buy more land. I hope the Board of Review will watch that closely.

We started off this debate with some 2,000 acres at Dulles available for commercial development. Now we are running out just for the use of the airport, itself, and want to buy more.

So we have a lot of things to concern ourselves about.

The bottom line is that in order to obtain a fair hearing on my principal concern, I must step aside in that light with respect to this particular issue and otherwise try to move forward. We will all be gone out of this national Congress before we get to use the airport. The money is there, the need is there, and everything else is there. Maybe they will momentarily start on some bonds, but I hope before they start to issue too many bonds I can pour the money to them from the airways and airport trust fund which has presently $8.5 billion in it.

Mr. President, I ask unanimous consent that this particular Treasury Department document on the balance of the airport and airway trust fund as of July 31, 1986, be printed in the RECORD at this point.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

AIRPORT AND AIRWAY TRUST FUND

[Status as of July 31, 1986]

	Current month	Fiscal year to date
I. Balance—Beginning of period	$8,443,248,163.79	$7,425,506,743.43
II. Receipts:		
A. Excise taxes (Transferred from General Fund):		
Any liquid fuel except gas	5,900,000.00	56,712,000.00
Tires used on aircraft	0.00	0.00
Tubes used on aircraft	0.00	0.00
Gasoline		
1. Commercial 9 cents tax	232,000.00	2,257,000.00
2. Noncommercial 9 cents tax	1,937,000.00	30,035,000.00
3. Noncommercial 3 cents tax	616,000.00	9,748,000.00
4. Transp by air, seats, berths, etc.	231,788,000.00	2,001,019,000.00
Use of international trav fac	8,146,000.00	72,462,000.00
Transp of property and cargo	12,832,000.00	112,592,000.00

AIRPORT AND AIRWAY TRUST FUND—Continued

[Status as of July 31, 1986]

	Current month	Fiscal year to date
Total tax receipts	261,451,000.00	2,284,825,000.00
B. Less Reimbursement to General Fund Refund of Taxes and Estimated Tax Credits:		
1. Civil aircraft	0.00	−1,014.00
2. Any liquid fuel except gas	0.00	−6,846,996.00
3. Gasoline—Retailer's tax	0.00	−582,790.00
4. Gasoline—Manufac. tax	0.00	−44,987.00
Total reimburse for tax refunds	0.00	−7,475,787.00
Net tax receipts	261,451,000.00	2,277,349,213.00
C. Interest on Investments	532,585.23	828,282,319.37
Net receipts	261,983,585.23	3,105,631,532.37
III. Expenditures:		
A Federal Aviation Administration:		
1. Operations	−10.00	428,346,635.34
2. Grants-in-aid for airports	77,888, 848.77	703,478,797.93
3. Facilities and equipment	64,135,778.46	604,910,594.080
4. Research engineering and development	33,726,581.13	243,922,412.79
B. NOAA weather services	0.00	20,998,350.00
C. Interest on refund of taxes	0.00	935.00
Total expenditures	175,751,198.36	2,001,657,725.14
IV. Balance—end of period	8,529,480,550.66	8,529,480,550.66

STATEMENT OF FINANCIAL CONDITION

	Assets
Undisbursed balances:	
Airport and airway trust fund	$191.49
Operations	−4,635.34
Grants-in-aid for airports	3,670,329.83
Facilities and equipment	−59,591,309.72
Research engineering and development	88,120,325.40
NOAA weather services	0.00
Total	32,204,900.66
Investments:	
U.S. Treasury certificates of indebtedness:	
9½ percent maturing June 30, 1987	73,543,000.00
9¾ percent maturing June 30, 1987	8,423,731,000.00
Total	8,497,274,000.00
Total assets	8,529,478,900.66
Liabilities:	
Equity: Excess of assets over liabilities	8,529,478,900.66
Total liabilities and equity	8,529,478,900.66

Mr. HOLLINGS. Mr. President, we have been putting out billions and billions for all of everyone's airports. We take and spend some $2.5 billion annually but bring in $3.1 billion from the users. I strongly resist and reject the idea that the users of National and the users of Dulles somehow illegally and improperly cannot benefit from the airport and airways trust fund.

I am opposed to the bill. I am not going to go into a seriatim of amendments at this time, but I definitely hope that my colleagues will hold up, if they see fit, so that in the early part of next year, we can begin to move one way or the other toward using the airport and airways trust fund to go ahead and expedite the improvements in both facilities.

I yield the floor.

Mr. WARNER. Mr. President, momentarily we will be joined by the distinguished senior Senator from Maryland, Senator MATHIAS.

In the interim, I would like to express my appreciation to the managers of the bill and to our colleagues from Maryland, Senator SARBANES and Senator MATHIAS, and our colleague from South Carolina, Senator HOLLINGS. While they have spoken in opposition, indeed they have done so in a straightforward manner. We have covered it well from both sides on this particular issue.

I started out as a member of the Holt Commission and I have followed it ever since. Mr. TRIBLE, my distinguished colleague, was a member of the Commerce Committee and shepherded through that committee the basic legislation that we are now presenting to the Senate.

Let me express my appreciation to him. It has been a pleasure to work with him as a partner on this matter.

Mr. President, we know of no desire to have a record vote.

I see our distinguished colleague from Maryland [Mr. MATHIAS] has arrived in the Chamber. I yield the floor at this time.

Mr. MATHIAS addressed the Chair.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. MATHIAS. Mr. President, I will not detain the Senate long.

Mr. President, I rise in opposition to the amendment offered by my colleagues from Virginia to transfer National and Dulles International Airports to a regional authority. The measure before us today, for all intents and purposes, is the same flawed bill that I voted against earlier this year. This proposal clearly does not serve the public interest. The public in question—and I think it is very important that we define them when speaking of them—is the local, national, and international constituency of the three airports serving the Washington metropolitan area.

We still have not eliminated the basic flaw in the bill—that is, the isolation of one of the three airport serving the Washington metropolitan area, Baltimore-Washington International Airport.

The bill does not provide a balanced approach to all three airports serving the Washington metropolitan area. Instead of promoting harmony among the three airports, as it should, the bill threatens to promote a disquieting discord.

By serving to codify the isolation of BWI, the bill still gives Dulles a competitive advantage over BWI. National would be used as a "cash cow" to underwrite the user fee structure at Dulles. Our hopes of addressing that problem unfortunately were dashed when the Senate rejected my amendment to prevent cross-subsidization between the two airports when S. 1017 was considered earlier this year.

The Board, composed of representatives of Maryland, Virginia, the District of Columbia, and the Federal Government, will have difficulty functioning with BWI isolated from the scheduling of flights and other operational decisions at National and Dulles. Voting blocs are almost certain to develop in ways that will reduce effectiveness.

Beyond the equity problem, the bill is defective from the standpoint of the local community. It unravels the carefully crafted Washington metropolitan area national airports policy by eliminating the passenger cap and freezing the number of airline slots, and leaving open the possibility that the nighttime noise restriction may fall by the wayside.

I would be remiss if I did not recognize one concern of mine that has been addressed in this version of the airports bill. There has been an increase in the lease payments for the two airports, but unfortunately the difference in real dollars from the price established in S. 1017 is microscopic. Instead of requiring the regional authority to pay the Federal Government $44 million over a 35-year lease at 4.9 percent interest—which works out to $2.7 million annually—under this amendment, the authority is required to pay $150 million over a 50-year period with no interest—which translates into $3 million annually. So, in reality what you have is an increase in the price of $300,000 annually for highly valuable property.

The public needs a safe and convenient air travel system. Flight schedules at the three airports should be complementary. Competition should exist between air carriers, not between airports. The large demand today will grow steadily as we near the year 2000, and must be anticipated. We need to plan for the coordinated operation we need. This proposal falls short of accomplishing that goal. I urge my colleagues to vote against the amendment proposed by my colleagues from Virginia.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. HATFIELD. Mr. President, I make the point of order that the amendment is not germane.

The PRESIDING OFFICER. The question is, Is the amendment germane.

All in favor, say aye; opposed, say no.

Mr. SARBANES. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. The Senator from Maryland asks for the yeas and nays. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Utah [Mr. GARN] and the Senator from Arizona [Mr. GOLDWATER] are necessarily absent.

The PRESIDING OFFICER (Mr. DENTON). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 63, nays 35—as follows:

[Rollcall Vote No. 324 Leg.]

YEAS—63

Abdnor	Gore	Moynihan
Andrews	Gorton	Murkowski
Armstrong	Gramm	Nickles
Bentsen	Grassley	Nunn
Biden	Hatch	Packwood
Boren	Hawkins	Pell
Boschwitz	Hecht	Pressler
Broyhill	Heflin	Pryor
Chafee	Heinz	Quayle
Cochran	Helms	Rockefeller
Cohen	Inouye	Roth
D'Amato	Johnston	Rudman
Danforth	Kassebaum	Sasser
Denton	Kasten	Simpson
Dixon	Kerry	Specter
Dodd	Lautenberg	Symms
Dole	Laxalt	Thurmond
Domenici	Lugar	Trible
Durenberger	Matsunaga	Wallop
Evans	McConnell	Warner
Exon	Metzenbaum	Wilson

NAYS—35

Baucus	Harkin	Melcher
Bingaman	Hart	Mitchell
Bradley	Hatfield	Proxmire
Bumpers	Hollings	Riegle
Burdick	Humphrey	Sarbanes
Byrd	Kennedy	Simon
Chiles	Leahy	Stafford
Cranston	Levin	Stennis
DeConcini	Long	Stevens
Eagleton	Mathias	Weicker
Ford	Mattingly	Zorinsky
Glenn	McClure	

NOT VOTING—2

Garn	Goldwater

The PRESIDING OFFICER. The amendment is germane.

Mr. WARNER. Mr. President, I move to reconsider the vote by which the amendment was declared germane.

Mr. TRIBLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

□ 1220

Mr. TRIBLE. Mr. President, I just want to say a word of thanks to my colleagues. I want to thank the Senate for its patience and its thoughtful consideration of this matter for many, many days.

I want to acknowledge the leadership of the chairman of the Appropriations Committee and my colleagues on both sides of the aisle, on the Commerce Committee and my distinguished friend, colleague, and partner from Virginia, Senator WARNER.

I also want to acknowledge the role played by the Senators from Maryland and the Senators from South Carolina in permitting us to have this final and, we hope, decisive vote. I promise my colleagues that this is the last time this issue will be raised in the 99th Congress in the Senate and trust that the amendment can now be adopted by voice vote.

Mr. WARNER. Mr. President, I join in the remarks of my distinguished colleague from Virginia, with whom I have had the pleasure of working for many months on this issue, and I express appreciation to all in the Senate for their support.

Mr. President, the Chair having acted on the question of germaneness, I move the amendment.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment.

The amendment (No. 3185) was agreed to.

Mr. WARNER. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. TRIBLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HATFIELD. Mr. President, the Senate is not in order.

The PRESIDING OFFICER. The Senator from Oregon is correct. He is entitled to be heard. His voice has been weakened because of activity on the floor. We should afford him special consideration. The Senator from Oregon is having difficulty being heard.

The staff in back is still conversing, in spite of the request.

The Senator from Oregon.

Mr. HATFIELD. Mr. President, I yield to the Senator from Mississippi.

AMENDMENT NO. 3186

Mr. STENNIS. Mr. President, several amendments were received before the deadline last night which have not been cleared. I should like to proceed to four additional amendments that now are cleared on both sides.

I send to the desk an amendment on behalf of the Senators from California [Mr. CRANSTON and Mr. WILSON], on refugee assistance.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Mississippi [Mr. STENNIS], for Mr. WILSON and Mr. CRANSTON, proposes an amendment numbered 3186.

Mr. STENNIS. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 8 line 12 strike the following, "except that no activity authorized by such Acts shall be funded beyond September 30, 1987."

Mr. WILSON. Mr. President, one of the most important components of refugee assistance is the delayed funding technique which allows appropriated funds to be obligated and carried forward into the following fiscal year. Because in the past there has been disagreement with continued funding of these important programs—targeted assistance, education assistance for children, and social services—State and local authorities developed the technique of obligating funds before the end of the fiscal year. Currently, these obligated funds can be carried over into the succeeding fiscal year. In this fashion, State and local refugee assistance programs have been able to assure continued funding for vital refugee services.

Mr. President, this issue was not addressed by our colleagues in the House. Furthermore, the Senate draft prohibits any forward funding through to the next fiscal year. For this reason, it appears that this issue will be a conferenceable item.

However, herein lies my concern: because the present language expressly prohibits the traditional technique of forward funding, it is, therefore, necessary to strike it to allow for the continuation of appropriations for these vital services at the end of fiscal year 1987.

Mr. CRANSTON. Mr. President, I'd like to express my appreciation to my colleagues, Senators HATFIELD, WEICKER and JOHNSTON, for their cooperation in striking language which would have caused a hardship to a highly deserving refugee population in my home State of California.

This slight change in the language will allow one of the most critical components of refugee assistance—targeted assistance—to continue to be allocated beyond September 30, 1987.

Targeted assistance funds enable refugees to receive valuable training and social service programs which are crucial to their integration into the American economy. Again, my thanks for adoption of this simple, yet critical amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3186) was agreed to.

Mr. STENNIS. Mr. President, I move to reconsider the vote by which the amendment was agreed to, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3187

(Purpose: To extend the period for the commencement of construction under the rental rehabilitation and development program)

Mr. STENNIS. Mr. President, on behalf of the Senator from South Carolina [Mr. THURMOND], I send an amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Mississippi [Mr. STENNIS], for Mr. THURMOND, proposes an amendment numbered 3187.

Mr. STENNIS. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in the joint resolution, insert the following:

SEC. . Section 17(d)(4)(G) of the United States Housing Act of 1937 is amended by inserting before the semicolon the following: "(36 months after notice in the case of projects for which funding notices were issued prior to July 23, 1985)".

Mr. THURMOND. Mr. President, the amendment I offer today is a simple one. It would provide communities that were early recipients of Housing Development Action Grants [HoDAG's] 1 additional year to begin construction on their projects. Current law requires that HoDAG projects begin within 2 years of notice of the award. If this requirement is not met, the recipient community will lose its grant money and thus, the additional rental property which the HoDAG Program was to make possible. Due to difficulties in interpreting and meeting the new HoDAG Program requirements, some localities have experienced delays in beginning work, which may cause them to miss the 24-month deadline. In addition, because of the uncertain nature of tax-exempt financing and other tax provisions which affect real estate investments, some communities have run into complications in structuring bond financing and ensuring the participation of private developers.

Mr. President, when H.R. 1, the Housing Act of 1986, was considered on the floor of the House of Representatives recently, an amendment was adopted which would extend the start of construction deadline for all HoDAG's by 1 year. My amendment is similar in that it would allow any community that received notice of its HoDAG award prior to July 23, 1985, one additional year to get started. This would increase the likelihood that many much-needed projects across our Nation will indeed become reality. I urge my colleagues to support the swift adoption of this important amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3187) was agreed to.

Mr. STENNIS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HATFIELD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

□ 1230

AMENDMENT NO. 3188

Mr. STENNIS. Mr. President, I send an amendment to the desk in behalf of Senator LEAHY and Senator MOYNIHAN and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Mississippi [Mr. STENNIS], for Mr. LEAHY and Mr. MOYNIHAN, proposes an amendment numbered 3188.

Mr. STENNIS. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 5 line 3, at the appropriate place in the bill, add the following language:

"The method of calculation, the preliminary fee, and the percentage established for administrative fees paid to a public housing agency administering a contract under this subsection shall be the method of calculation, the preliminary fee, and the percentage established by the Secretary as of September 30, 1986."

Mr. STENNIS. Mr. President, this amendment relates to the freezing of administrative fees paid to public housing agencies.

Mr. STENNIS. Mr. President, if there is no further debate on this matter, I move the adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3188) was agreed to.

Mr. STENNIS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HATFIELD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3189

(Purpose: To provide for a waiver of certain requirements of title XIX of the Social Security Act with respect to care and services provided by the Medical University of South Carolina)

Mr. STENNIS. Mr. President, I send an amendment to the desk on behalf of Senator THURMOND, and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Mississippi [Mr. STENNIS], for Mr. THURMOND, proposes an amendment numbered 3189.

Mr. STENNIS. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place, add the following new section:

SEC. . WAIVER OF CERTAIN MEDICAID REQUIREMENTS

Notwithstanding the three-month limitation set forth in sections 1902(a)(34) and 1905(a) of the Social Security Act, payment may be made under title XIX of such Act with respect to care and services provided by the Medical University of South Carolina, after September 30, 1984 and before July 1, 1985, to individuals—

(1) who are not described in section 1902(a)(10)(A) of such Act.

(2) who, upon application, would have been eligible as individuals under the age of 18 or pregnant women, for medical assistance under the State plan approved under such title at the time such care and services were provided, and

(3) who, not later than six months after the date of the enactment of this section, are determined by the State agency administering or supervising the administration of such plan to have been so eligible.

Mr. STENNIS. Mr. President, this amendment proposed by the Senator from South Carolina [Mr. THURMOND] provides a waiver of certain requirements to the Social Security Act with respect to care and services provided by the Medical University of South Carolina.

Mr. THURMOND. Mr. President, on September 12, 1986, the Senate Finance Committee favorably considered H.R. 1868, the Medicare and Medicaid Patient Protection Act of 1986. Included in that legislation were provisions which would give the Medical University of South Carolina an opportunity to gain equitable reimbursement for health care services provided to certain Medicaid-eligible patients. Because of the importance of this legislation, its bipartisan support in the Finance Committee, the limited time available in this Congress, I am offering the same previously approved provisions as an amendment to the continuing resolution.

In October 1984, South Carolina implemented a medically needy program to provide for the cost of health care to pregnant women and children under the age of 18. Federal participation and cost sharing in this program was authorized under Medicaid.

At the time of program implementation, the South Carolina Health and Human Services Finance Commission and the South Carolina Department of Social Services made a concerted effort to insure that health care providers and potential recipients were

aware of the existence of the program by conducting health care provider workshops and public service announcements.

Based on the expanded eligibility criteria of this program, the Medical University of South Carolina provided services to 1,345 inpatients between October 1, 1984, through June 30, 1985.

Because many rules under this new program were new and different from other health care programs for the indigent, and a large number of recipients were involved, the application process was very slow and ineffective during the first 6 to 9 months of program implementation. Individuals who may have been eligible were not covered because of these delays.

Due to these delays, the Medical University was unable to obtain reimbursement from the Federal Health Care Financing Administration [HCFA]. HCFA is prohibited by the Social Security Act from providing reimbursement beyond a 3-month period before the date an application is filed by a potential program beneficiary.

In sum, health care services for the indigent have been provided to those who would have been eligible under the new program. However, delays in determining eligibility prevented certain health care providers from receiving equitable reimbursement for those services. The State authorities merely seek another opportunity to establish eligibility under the program for those who were provided these necessary services between October 1, 1984, and June 30, 1985. In order to obtain Federal reimbursement the State would have to establish eligibility within 6 months after the date of enactment of this legislation.

This legislation was previously included in H.R. 1868, the Medicare and Medicaid Patient Protection Act of 1986, which was favorably considered by the Senate Finance Committee on September 12, 1986. Because of the importance of this matter, I strongly urge my colleagues to support this amendment.

Mr. STENNIS. Mr. President, if there be no further debate, I move adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3189) was agreed to.

Mr. STENNIS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HATFIELD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. STENNIS. Those are all the amendments I have.

Mr. RUDMAN. Mr. President, I am going to pose a unanimous-consent request, and if I might have the attention of the managers of the bill, I want to state what would happen. Here last evening there was an attempt to have an amendment to the legal services portion of the bill. It was well known to many people. It was originally put on the list. Senator HOLLINGS has cleared it. It has been cleared on our side.

It is something that changes one of the restrictions we had that has been cleared all the way around.

I ask unanimous consent that I might offer this amendment considering that the list was at least in theory closed off last night.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. RUDMAN. I thank the Chair and the distinguished managers.

AMENDMENT NO. 3190

(Purpose: To modify the conditions relating to the appropriations for the Legal Services Corporation.)

Mr. RUDMAN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from New Hampshire [Mr. RUDMAN] proposes an amendment numbered 3190.

Mr. RUDMAN. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 2, line 24, strike "." and insert the following: ", except that, for purposes of this joint resolution, the paragraph under the heading 'Legal Services Corporation' shall be amended by striking the last proviso and inserting in lieu thereof the following: 'Provided further, that if funds become available because a national support center has been defunded or denied refund pursuant to section 1011(2) of the Legal Services Corporation Act, as amended by this Act, such funds may be transferred to basic field programs, to be distributed in the manner specified by this paragraph, if the Appropriations Committees of both Houses of Congress have been notified pursuant to section 607 of this Act: Provided further, that none of the funds appropriated by this Act may be used to implement or enforce the regulations issued by the Legal Services Corporation regarding legislative and administrative advocacy (45 CFR Part 1612) printed for final publication in the "Federal Register" on May 31, 1984, (49 FR 22651) and on August 1, 1986 (51 FR 27539)'."

Mr. RUDMAN. Mr. President, this amendment permits the Legal Services Corporation to transfer funds under existing committee reprogramming statutes from the national support earmark if conditions described in the statute have been met such as reprogramming would not be permitted under the bill as it presently lies before the Senate.

Second, the amendment permits the corporation to attempt to write a new regulation relating to lobbying which meets criteria set forth by statute. As reported by the committee the corporation would not have that authority.

Mr. President, this amendment alters the provision in the Commerce-Justice-State appropriations bill relating to the Legal Services Corporation in two respects. First, LSC's authority to attempt to write regulations regarding legislative and administrative advocacy is restored. Second, LSC is permitted to reprogram funds from national support to basic field programs under certain conditions if, and only if, the reprogramming procedures applicable to the Commerce-Justice-State bill are complied with.

In agreeing to this amendment, Mr. President, I would like to stress one point. Although the Legal Services Corporation represents only about 2.5 percent of the Commerce-Justice-State appropriations bill, the committee has had more difficulty with reprogramming from LSC than from all other agencies in the bill combined. The committee action on LSC reflects that difficulty. If there are future problems with LSC relating to reprogramming, next year's LSC appropriation may be so specific as to even specify the number of paper clips and telephones to be funded.

In 1983, an agreement vas reached in the Senate and enacted into law relating to the future direction of the Legal Services Program in a number of areas. This compromise was a product in the truest sense of the term. While most Members of the Senate had problems with one or more provisions of the compromise, a substantial majority of the Senate would vote against any effort to deviate from it, whether in a more liberal or in a more conservative direction.

Unfortunately, LSC management in the last year has failed to absorb that clear message and tried to stray from the reservation, to use an old colloquialism. The Appropriations Committee responded to this and tried to force LSC compliance with congressional intent by restricting LSC's authority in a number of ways. In my view, an overwhelming majority of the Senate, certainly no less than 65 Members, would have voted against any effort to amend the committee's provision.

However, the Senator from Utah, Mr. HATCH, through sheer perseverance and force of argument has managed to persuade this Senator and others that the committee overreacted in some respects. This amendment addresses those issues. It has been cleared by the Senator from Utah, the Senator from South Carolina—the ranking member of the subcommittee—and the floor managers. I urge its adoption.

Mr. President, I believe this has been cleared on

both sides by the managers on both sides.

I yield the floor.

Mr. HELMS. I wonder if the Senator from New Hampshire, the chairman of the Commerce-Justice-State Appropriations Subcommittee, would be willing to answer a few questions regarding the provisions relating to the Legal Services Corporation.

Mr. RUDMAN. Certainly.

Mr. HELMS. Am I correct in my understanding that the agreement that has been worked out regarding the LSC still prohibits the Corporation from enforcing its lobbying regulation?

Mr. RUDMAN. The Senator is correct. The Appropriations Committee adopted language which, in effect, nullified the regulation recently promulgated by LSC because it did not comply with the statutory requirements, and that is retained. However, the language recommended by the committee which prevented LSC from drafting a replacement regulation has been deleted. It should be noted that the appropriations rider on lobbying is quite detailed and LSC can quite easily police improper lobbying by enforcing the statute directly.

Mr. HELMS. Does the Senator object to a limitation on grassroots lobbying.

Mr. RUDMAN. No. In fact, I have consistently supported an absolute prohibition on grassroots lobbying and I believe that the appropriations rider, of which I was one of the primary authors and which is now entering its fourth year, does just that.

Mr. HELMS. Does the Senator object to a restriction on solicitation of clients for legislative advocacy?

Mr. RUDMAN. Although the appropriations rider on lobbying does not address this issue, the LSC Act specifically prohibits the solicitation of clients in violation of an attorney's professional responsibilities and also prohibits LSC-funded attorneys from engaging in any activity in violation of the ABA's Code of Ethics, which includes provisions relating to solicitation of clients. In addition, LSC-funded attorneys are bound by the canons of whichever State bar association they belong to. Thus, there are restrictions in place. Whether additional restrictions are necessary would depend on what kind of evidence there is regarding ongoing abuses or improper, if not illegal, activities.

Mr. HELMS. Does the Senator object to a prohibition on maintaining full-time lobbying offices in Washington or State capitals.

Mr. RUDMAN. My answer to that, without trying in any way to be facetious, is that it depends on what kind of activities fall under the Senator's definition of lobbying. If by lobbying the Senator is referring to efforts to influence the actions of a legislative body, then I believe that the restrictions on lobbying embodied in this bill are so great that it would be difficult or impossible for a program to justify such a full-time office.

It should be noted that the appropriations rider prohibits LSC funds from being used to pay for any administrative or related costs in connection with prohibited legislative or administrative representation. No evidence has been presented to the committee which would indicate that this provision is inadequate in its current form.

Mr. HELMS. It is my understanding that many legal services lawyers believe these types of lobbying activities are currently permissible and that the LSC regulation prohibits them. Why would the Senator oppose such a regulation? If these activities are prohibited by the appropriations rider but are occurring anyway, it appears that a regulation is desperately needed.

Mr. RUDMAN. The Appropriations Committee opposed the lobbying regulation because, in a number of areas, it clearly conflicts with the statutory appropriations rider. Prime examples include the application of the appropriations rider to non-Federal funds, the imposition of a 100-percent timekeeping requirement on certain LSC attorneys, and the decision to define certain types of administrative advocacy as legislative advocacy. To use an analogy, if the New Hampshire Legislature were to pass a statute stating that the maximum speed limit in the State was to be 50 miles per hour, the Department of Transportation could not adopt a regulation setting it at either 45 or 55.

In response to the Senator's other question, I would note that the Appropriations Committee has been presented with no evidence by the Corporation or anyone else regarding violations of the appropriations rider. It is my belief that the rider has, in fact, successfully stopped the improper political activism which occurred all too frequently prior to 1982. If violations are occurring, LSC has the means to and should take appropriate disciplinary action. If evidence is presented which shows the current rider is inadequate, I would certainly be willing to consider changes.

Mr. HELMS. Does this agreement allow LSC to transfer all $15 million of funds from national and State support centers, which offer no direct services to the poor, to direct service programs so that those grantees can freely choose how this $15 million should be spent?

Mr. RUDMAN. If a national support center is defunded or denied refunding pursuant to the LSC Act and this bill, the funds thus made available could be transferred to basic field programs if the reprogramming requirements are met. The total amount provided in the bill for national support is $7.5 million. It should be noted that the Corporation cannot simply transfer funds away from national support centers or any other grantee; rather, there are a number of statutory due process requirements which are unchanged by this bill.

With regard to the $7.8 million earmarked for State support, those funds must be spent on State support activities unless a statutory provision authorizing the transfer of funds is agreed to. Incidentally, most of the recipients of State support funds are basic field programs.

Mr. HELMS. So this agreement, in these tough budget times, mandates that these research centers must be funded at present levels and the Corporation cannot move that money as a budget line into direct services in local legal services offices?

Mr. RUDMAN. This bill provides national and State support with 4.3 percent less money in fiscal year 1985 and about 10 percent less than in fiscal year 1981. I am talking about actual dollars; if one were to take into account inflation, the reduction would be much greater. Increasing the funds available to the local programs has been and will continue to be a priority of mine. I believe the record will show that basic field programs are getting a higher percentage of the legal services dollars than they ever have before. However, it must be noted that the implications in the Senator's last two questions—that support centers do not provide direct and other important legal services—is less than universally accepted.

Mr. HELMS. Is the Senator aware that LSC has recently completed monitoring of the 17 national support centers and that the first two programs they reviewed were discovered to have grossly misused their grant moneys. Does the Senator intend for this language to protect these wasteful grantees?

Mr. RUDMAN. I am aware that LSC has complete monitoring visits on at least 16 of the national support centers. I do not know if one has been done on the National Center for Medically Dependent Children in Indiana. If one has not be done for that, I hope it will be soon.

I do not know how many of the reports from those site visits have been completed or what they show. I am aware that, based on those reports, defunding procedures have been initiated against two programs. It may be that the other 14 passed with flying colors, or the opposite may be true. The language in this bill is not intended to and does not protect wasteful grantees. I cannot say whether LSC's charges regarding the two programs, charges soon to undergo administrative hearings, are accurate.

Mr. HELMS. Am I correct in my understanding that the more than 50-percent reduction to LSC's oversight funding will be corrected in conference?

Mr. RUDMAN. The committee did not reduce funding for LSC's management and administration, only a portion of which is for oversight, by more than 50 percent as have been charged. The committee attempted to provide LSC with $10.7 million for management and administration, the same amount it appropriated last year before sequestration, with a combination of $5.7 million in new budget authority and $5 million in unobligated funds carried over from fiscal year 1986. This was, admittedly, less than the $13.1 million requested by LSC.

Based on information provided by LSC last week, it now appears that the committee may have overestimated the amount available in carryover funds by as much as $1.7 million. To the extent the committee overestimated carryover funds, it is my intention to secure an agreement in conference to increase the $5.7 million in new budget authority provided for management and administration so as to provide total funding of $10.7 million.

Mr. HELMS. How will these reduced funds be restored? There is monitoring activity, for example, going on in North Carolina now. Will there be sufficient funds to complete that monitoring?

Mr. RUDMAN. I cannot answer the first question with certainty, although I am confident the conferees can find an appropriate offset. The answer to the second question is yes.

Mr. HELMS. I thank the able Senator.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3190) was agreed to.

Mr. RUDMAN. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HATFIELD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3191

(Purpose: Relating to the terms and conditions upon which assistance is provided for Africa)

Mrs. KASSEBAUM. Mr. President, I send to the desk an amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Kansas [Mrs. KASSEBAUM] proposes an amendment numbered 3191.

Mrs. KASSEBAUM. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 4, line 16, insert before the period a colon and the following: *"Provided,* That the provisions in such bill under the heading 'Assistance for Africa' shall not apply."

Mrs. KASSEBAUM. Mr. President, my amendment addresses a problem that was raised last night by Senator EVANS and Senator DANFORTH, and others, authorizing in an appropriations bill. This problem occurs in several sections of the foreign operations appropriations bill.

I am particularly concerned about the section entitled assistance to Africa which my amendment would strike. This amendment essentially makes law S. 2208 which provides authority to dramatically restructure aid to Africa.

There may be considerable merit and I think there is in the recommendations made in this section. They may be recommendations that we want to apply to our approach to other regions of the world.

But, Mr. President, this is not the way to enact legislation. There have been no hearings by the authorizing committee, no examination of any sort of the implications of the bill and no recommendation by the authorizing committee.

Inclusion of this section in the continuing resolution circumvents the entire process. We should not be providing 1 year authority to restructure foreign assistance in the appropriations bill.

I not only recognize but I share the concerns of Senator KASTEN and Senator KENNEDY, who are authors of this legislation who I think have done a very good job in raising a very important issue and I look forward to working closely with them on this issue as we approach an even tougher budget cycle next session.

I happen to believe the restructuring of our foreign aid assistance is very important and the right time will be next year when the reauthorizing legislation will be before us. But this is not the time nor the place.

Mr. KASTEN. Mr. President, the Senator from Kansas is correct. The provisions she refers to in her amendment is authorization legislation.

The committee recommended the assistance for Africa in fiscal year 1987 be made available in accordance with the provisions of legislation introduced by myself, Senators KENNEDY, INOUYE, SIMON, ANDREWS, KERRY, MATSUNAGA, DANFORTH, GORE, LEAHY, BINGAMAN, METZENBAUM, and D'AMATO.

S. 2208, entitled the "African Famine Relief and Recovery Act," is followup legislation which we believe is required for long-term development assistance in drought stricken subsaharan Africa.

The provisions of that legislation in general provide the type of flexibility required for programs in Africa by establishing a permanent fund for long-term assistance, strengthening, and expanding current authorization language by making its implementation more flexible than aid programs elsewhere.

It emphasizes the role of voluntary agencies and international organizations, mandates policy reform, especially in the agricultural area, and requires steps to achieve better international cooperation and coordination of African aid programs.

Mr. President, legislation along these lines is very badly needed. The committee did not enact S. 2208 but provided that its authorities could be utilized for 1 year while comprehensive legislation was being developed by the authorizing committees.

Mr. President, the sponsors of this legislation and the Appropriations Committee want the full cooperation and frankly the support of the authorizing committee in this very important endeavor.

In view of the concerns and the sentiments expressed, particularly by the Senator from Kansas, I would therefore be willing to——

Mr. DODD. Mr. President, will the Senator yield before making that motion?

Mr. KASTEN. I am pleased to yield.

Mr. DODD. I thank my colleague from Wisconsin for yielding.

I commend him for the action I think he is about to take on this. I want to associate my remarks with those of the Senator from Kansas. It really is, if I may say briefly to my friend from Wisconsin, it really is tragic that we go through this every year in one area or another where we find we are not conforming the authorizing legislation.

Senator EVANS last night expressed this same issue in a peripheral way. But it seems to me we really got to get ourselves better coordinated on these issues. If we do not, there really is not much point in having authorizing committees to examine the policy questions.

The distinguished Senator from Kansas spends countless hours listening to virtually dozens and dozens and dozens of witnesses who come before our committee to talk about these issues and try and explain how they best work.

□ 1240

If we are going to go through that process and then find, in the final analysis, that the advice and the counsel of the authorizing committee, in this case the Foreign Relations Committee, is not going to be heeded, then we really are wasting our colleagues'

time and the taxpayers' time, if you will.

So I appreciate the fact that this is being pulled down, but I would really hope, and I realize that this process has become tremendously complicated, but nonetheless it is one that we have really got to change or we are going to find ourselves running into each other every year in this same manner.

I thank my good friend from Wisconsin for yielding.

Mr. KASTEN. I thank the Senator. I would say that the amendment is not being pulled down. The amendment is going to be accepted, and the reason it is going to be accepted is, it is in the interest of working with the authorizing committee.

I might remind the Senator that 2 years ago I was asked to put the entire foreign relations bill into my bill and carried it into the conference, kept it in the conference, and finally it was dropped because it was not accepted by the Democrats. And it is not right.

But, in this bill we have got other authorization language, not just in the foreign relations area. But specifically in the foreign relations area, we have a child survival fund section, a narcotics section, African Development Foundation, decisions that were made that are in coordination with the committee.

But we just have to work together. And that is what we are doing in the proceedings right now.

What I would like to do is recommend the committee accept this amendment, provided that we can be assured of consideration on this or similar legislation early next year in your normal hearing process. I wonder if you cannot only speak for yourself, as chairman of the subcommittee, but also for the chairman of the committee and ranking member, in terms of the fact you would be willing to work with us and to accept a number of these kinds of recommendations in your normal legislative process.

Mrs. KASSEBAUM. Mr. President, I can assure the Senator from Wisconsin that we will look forward to, as a committee, working with you and the other cosponsors of the legislation. As I said, I think it is an important initiative, an important piece of legislation.

I would also like to thank the Senator from Connecticut, because it is a concern. As a matter of fact, I think it is a mistake for us to have some other parts of the foreign aid which should be authorization that we have just added to appropriations. Again, it is not the best way to do it. But I think that those are different circumstances.

I very much appreciate your acceptance of this amendment and look forward to giving this a major effort at the time of reauthorization the first of the year.

Mr. KASTEN. Mr. President, I thank the Senator.

Mr. President, I will yield the floor, but I just want to state to the chairman and ranking member I would recommend we accept this amendment under the circumstances and conditions just described.

Mr. KENNEDY. Mr. President, I thank the Senator from Wisconsin [Mr. KASTEN], and I was pleased to join him in introducing earlier this year the African Famine Recovery and Development Fund.

As he indicated, I believe the provisions of our bill are urgently needed to provide greater flexibility to our programs of assistance in Africa—particularly in those areas which have been hit hardest by drought. If Africa is ever to achieve self-sufficiency in food it will need the kind of assistance, the kind of reforms, that our bill would promote.

But given the assurances, and the obvious concern of the Senator from Kansas—and her leadership of the Subcommittee on Africa of the Foreign Relations Committee—I will join with the Senator from Wisconsin in support of her amendment.

I do believe there is an urgent need to act, and I am delighted the Senator from Kansas has indicated a willingness to do so. I should also note that our colleague in the House of Representatives, the distinguished chairman of the House Committee on Foreign Affairs, Mr. FASCELL, has also introduced similar legislation and has promised action early next year in the context of the renewed authorization of the Foreign Assistance Act.

Again, I thank the Senator.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Maryland sought recognition first.

Mr. SARBANES. Mr. President, I want to commend the Senator from Kansas for offering the amendment and for the position she has taken. I think over the years we have tried very hard to develop comity between the Foreign Relations Committee and the Foreign Operations Subcommittee of the Appropriations Committee and I think, generally speaking, with some success.

But this way of doing business obviously leads to a breakdown in the process. I mean, here we are with every appropriations bill in one big package and difficult problems for the authorizing committees. I simply share the sentiments expressed by my two colleagues on the Foreign Relations Committee, the Senator from Kansas and the Senator from Connecticut.

I also want to commend the Senator from Kansas for the very keen interest she has taken with respect to the problems of development assistance for Africa. She has been a very strong leader in that regard and reflected, I think, a great deal of wisdom and sensitivity on that issue and it is, of course, reflected once again here on the floor of the Senate.

Mr. DODD. Mr. President, will my colleague yield?

Mr. SARBANES. Certainly.

Mr. DODD. I just want to correct something. I misspoke when I talked about pulling the amendment down. The Senator from Wisconsin properly corrected me. I was assuming the amendment was coming from another area. I want to correct that statement.

Mr. President, the Senator from Maryland is absolutely correct. This is the amendment of the Senator from Kansas.

The Senator from Wisconsin is right. There have been years when we have not been able to get our authorizing work done and we were faced with that. That is our problem. We deserved to be criticized when the committee was unable to get a bill to the floor or get it passed on the floor or get the House language done in those years. Something had to be done, obviously, and you have been very gracious, along with the Senator from Hawaii, to accommodate us in that regard.

This year, however, we got our work done. We have authorizing bill under the leadership of the distinguished Senator from Indiana, Senator LUGAR. It has taken a lot of hard work to get to that point.

Finally, I want to commend the Senator from Kansas for what she is doing and second the remarks of my colleague from Maryland. She has taken probably the strongest leadership in this area in my 6 years in the Senate of the United States. An awful lot of times people talk about Africa, but people do not get out and do the hard work on it. I commend her for it.

Mr. SARBANES. Mr. President, I simply want to add, there has generally been good cooperation between the authorizing committee, the Senate Foreign Relations Committee, and the Foreign Operations Subcommittee of the Appropriations Committee.

I do not think that this present discussion ought to be interpreted as reflecting any conflict or tension between the members of those respective committees. It really reflects sort of the system not working. It is not that the people trying to make the system work have in any deliberate way tried to create problems, at least as I perceive it. In fact, in the past, as the Senator from Connecticut has pointed out, there has been close consultation. There was a time back when we had a little difficulty and that was all smoothed out. And I think that this simply reflects the fact that the system is not working very well and we need to address how we can improve it in order to have the proper relation-

ship, timewise, between the authorizing and the Appropriations Committee.

Mr. PELL. Mr. President, I am pleased to join my distinguished colleague on the Foreign Relations Committee, the Senator from Kansas, in cosponsoring an amendment which would strike the section entitled "Assistance to Africa."

As the ranking Democratic member of the authorizing committee it is my firm belief—expressed many times in the past 5 years in this body—that regular process must be adhered to. First, there ought to be an authorization which sets policy and ceilings for foreign aid spending, and then there ought to be an appropriation which allocates funds within those ceilings and those policy guidelines. All too often in the past, this process has been violated—often to the detriment of a sound, well-considered public policy. It is time, particularly when we face massive and mounting deficits in the Federal budget, that we return to the regular process and insist that those ceilings established in law by the authorization legislation—which was carefully developed by the committee and overwhelmingly approved by this Congress just last year—be honored.

Mr. President, 2 years ago, I stood on this floor and listened to colleagues on both sides of the aisle inveigh against a proposal propounded by the then chairman of the Foreign Relations Committee, Senator PERCY, which would have provided an authorization for the foreign aid appropriations proposed in the continuing resolution for fiscal year 1985. The arguments which ultimately prevailed were that the chairman was advocating circumvention of the normal legislative process in pressing for inclusion in the continuing resolution of a bill that had only passed the House, and although reported out favorably by the Foreign Relations Committee, had never been passed by the Senate. Well, Mr. President, those same voices have been silent this year, with this new continuing resolution. This time, it is proposed that we enact into law, purely by reference, S. 2208—a bill which has never even had a hearing, has been formally approved by no committee, and has been passed by neither the House of Representatives nor the Senate.

Mr. President, the bill contains an egregious example of circumvention of congressional legislative process if ever there was one. If this provision of the foreign assistance appropriations bill, a section entitled "Assistance for Africa," is permitted to stand, it would permit the transfer of all development assistance for Africa in any fashion the administration deems appropriate. That means that all of the development aid now planned for Africa, some $340 million, including the 12-year effort in the Sahel, could be transferred to favored nations whose economic and/or political policies are compatible with our own. It could also mean that all funding for health or family planning in Africa would be terminated and the bilateral assistance targeted exclusively at agriculture, or at private sector activities.

These may be worthy goals, but they deserve a careful scrutiny before we embark on this massive overhaul of our bilateral development program in a continent that has so recently experienced severe drought, crop failure and actual famine and starvation. To trust that the provisions of S. 2208, the Africa Famine, Recovery and Development Fund Act of 1986, are the correct way to address Africa's burgeoning development needs without a single hearing on its merits is to make a mockery of the Congress' very legislative process itself.

Mr. President, for these reasons I join with my colleague on the Foreign Relations Committee in moving to delete this provision in the continuing resolution and urge my fellow Senators to support our amendment.

Mrs. KASSEBAUM. Mr. President, I very much appreciate the consideration of the Senator from Wisconsin. I think some good points have been raised. I know that in this area we have a good working relationship and I think it will benefit the process next year.

I appreciate the comments of the Senators from Connecticut and Maryland and move the adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Kansas [Mrs. KASSEBAUM].

The amendment (No. 3191) was agreed to.

Mrs. KASSEBAUM. I move to reconsider the vote by which the amendment was agreed to.

Mr. JOHNSTON. I move to lay that motion on the table.

The motion to lay on the table was ageed to.

Mr. JOHNSTON. Mr. President, let me say that we are making tremendous progress on this bill and, with a little restraint, a little forebearance, a little cooperation, I believe we can finish the bill today. Many of these difficult amendments have either gone away or are in the process of going away and many of the other amendments which are eligible are what we would call sort of placeholder amendments, protection amendments that will not come about.

So, Mr. President, I would ask Senators, if they have amendments on the contested list, those that are eligible for rollcall votes, to please be ready to move on those because, with some luck, we could be out of here so that those who have 4 o'clock planes to catch might be able to do so.

Mr. President, one of our more difficult amendments is that relative to food assistance eligibility to be offered by the distinguished Senator from Montana, Mr. MELCHER.

Mr. President, he has offered, in return for our agreeing not to raise germaneness under rule XVI and to allow him 30 minutes of debate before a tabling motion is agreed to, that he would, in effect, hold his statement to 30 minutes or 30 minutes total on his side.

I do not make that unanimous-consent request at this time, but wish to make Senators aware of the possibility of that request later. Frankly, I believe we should go along with that request because it would limit the total consideration of that amendment to probably a little more than 30 minutes and would allow us to expedite the consideration of what remains the most difficult amendment.

□ 1250

I thank the Senator from Ohio for yielding to me.

AMENDMENT NO. 3192

(Purpose: To amend title 11, United States Code, the Bankruptcy Code, regarding benefits of retired former employees)

Mr. METZENBAUM. Mr. President, on behalf of myself, Senator THURMOND, Senator HEINZ, Senator GLENN, Senator SPECTER, Senator DENTON, Senator DURENBERGER, Senator SIMON, Senator LEVIN, Senator BYRD and, Senator QUAYLE, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Ohio [Mr. METZENBAUM], for himself, Mr. THURMOND, Mr. HEINZ, Mr. SPECTER, Mr. GLENN, Mr. DENTON, Mr. DURENBERGER, Mr. SIMON, Mr. LEVIN, Mr. BYRD and, Mr. QUAYLE proposes an amendment numbered 3192.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in the resolution, insert the following:

SEC. . (a) Notwithstanding any provision of chapter 11 of title 11, United States Code, the trustee shall pay benefits until May 15, 1987 to retired former employees under a plan, fund, or program maintained or established by the debtor prior to filing a petition (through the purchase of insurance or otherwise) for the purpose of providing medical, surgical, or hospital care benefits, or benefits in the event of sickness, accident, disability, or death.

(b) This section is effective with respect to cases commenced under chapter 11, of title 11, United States Code, in which a plan for

reorganization has not been confirmed by the court and in which any such benefit is still being paid on October 2, 1986, and in cases that become subject to chapter 11, title 11, U.S. Code, after October 2, 1986.

(c) This section shall not apply during any period in which a case is subject to chapter 7, title 11, United States Code.

Mr. METZENBAUM. Mr. President, this amendment is intended to protect the life, health and disability benefits of retirees.

It is a response to the action of LTV which unilaterally ceased paying these benefits upon filing for bankruptcy.

This amendment prevents LTV or any other company from terminating these benefits until May 15, 1987. By that time Congress will have had an opportunity to study the bankruptcy laws and determine what if any change is necessary to protect retirees.

I commend the chairman of the Judiciary Committee for working out this measure.

It is an amendment that has been cleared on both sides. There has been a lot of negotiation in connection with it.

I believe we are ready for the vote.

Mr. THURMOND. Mr. President, this amendment creates a new provision in the Bankruptcy Code which will protect the health and life insurance benefits of retirees when their former employers file for bankruptcy. This provision will provide this protection until May 15, 1987, in order to give Congress time to act on the broader question of how retiree benefits are to be treated under the Bankruptcy Code, and especially under section 1113.

This new provision is not to be read or interpreted as affecting the interpretation of section 1113 of the code. I have participated in drafting this amendment with that purpose clearly in mind, and I know that that is the intent of both Senator METZENBAUM and Senator HEINZ, who worked with me in the drafting of this amendment It was only with this understanding that I have consented to allow the Senate to consider this amendment in the closing days of the session.

Mr. President, I want to make it completely clear, as Senators HEINZ and METZENBAUM understand, that this amendment does not affect the interpretation of section 1113 in any way.

Mr. HEINZ. Mr. President, I am pleased that Senator METZENBAUM and I were able to reach an agreement with Senator THURMOND on an amendment to protect the health benefits of retirees of companies entering into bankruptcy.

On July 17, the LTV Corp. filed for bankruptcy under chapter 11 and unilaterally terminated its retiree health plan, stopping the payment of health benefits for 78,000 retirees. The fact that a company not only could terminate retiree health benefits at will, but would also argue that it was required to under the bankruptcy law, was a surprise as well as a deep concern for many of us in the Congress.

Senator METZENBAUM and I introduced legislation on July 25 directing LTV to reinstate health and life benefits for its retirees until the Bankruptcy Court ordered their cessation. It was certainly our view at the time that LTV could not unilaterally terminate benefits under a collective bargaining agreement, and it was our intent to force a review by the court before these benefits could be stopped. The Senate passed this bill by voice vote, and LTV immediately petitioned the Bankruptcy Court to permit it to reinstate benefits. Although health benefits are currently being paid for LTV's retirees, other creditors have now appealed to have these benefits terminated—and they could well be terminated in the next few months.

On September 10, Senator METZENBAUM and I introduced another bill—this time to clarify our view that retiree health benefits included in a collective bargaining agreement are covered under the procedures of section 1113 of the Bankruptcy Code governing termination of collectively bargained benefits. I have believed all along that the company could not legally reject health benefits included in the collective bargaining agreement without negotiating with the union as provided for under section 1113. Our bill was intended only to restate our view of current law.

Unfortunately, it is not possible for us to fully resolve this issue, as we would like. We have discussed the issue with Senator THURMOND, and this is a clarification that we will have to take up again in the Senate next year. Instead, we are willing today to simply clarify that LTV, and indeed any other company in bankruptcy, must continue to pay its health benefits to all retirees until May 15, 1987. This will ensure that LTV retirees and retirees of other companies in bankruptcy will continue to receive their health benefits until we can return in the next Congress and resolve the broader issue. Let me say, Mr. President, that I fully intend to seek such a resolution next year.

In the meantime, I am willing to agree with Senator THURMOND that this statement about the obligations of companies in bankruptcy over the next several months is not intended to reflect one way or the other on the question of what is and is not protected under section 1113. In other words, we do not intend to affect the interpretation of section 1113 by making a statement here today about any company's obligations to pay benefits.

Mr. President, this is intended to be a stopgap measure only—but one that will provide real protection for retirees across this country for the next several months. I want to thank the distinguished chairman of the Judiciary Committee, the Senator from South Carolina, for his efforts over the last few days to help us find a way to protect retirees of companies in bankruptcy.

Mr. GLENN. Mr. President, I am a cosponsor of this amendment to the Bankruptcy Code which would require the trustee for companies filing for reorganization under chapter 11 of the Federal Bankruptcy Code to continue paying benefits to all retired former employees. I believe this amendment is necessary in order to protect retirees whose benefits are important to their livelihood.

This legislation would require a trustee to continue paying until July 7, 1987, the life and health insurance benefits of all retired former employees. This amendment along with the House-passed bill would ensure that all retirees receive the life and health benefits they earned and deserve.

Mr. President, Congress did not intend to leave retirees out in the cold when it enacted chapter 11 of the Bankruptcy Code. This is evidenced by the statutory language, legislative history, and prior Federal court decisons. This amendment is necessary to further clarify this intent.

Termination of life and health insurance benefits creates an intolerable situation for retirees and puts at risk the very men and women who spent their lives working to make the company strong. Since many retirees are under 65 and consequently not yet eligible for Medicare, they are heavily dependent upon their insurance benefits.

Since we do not know the financial situation of every company filing for chapter 11 reorganization, we do not know how much of a burden this bill would impose. That was for the courts to decide prior to this amendment and shall continue to be so once this amendment is enacted.

I believe it is imperative that we enact this legislation to clarify this issue and to protect our retired workers both now and in the future. Thank you.

Mr. JOHNSTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. JOHNSTON. Mr. President, the amendment has been cleared on this side.

Mr. HATFIELD. Mr. President, the amendment has been cleared on this side.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from Ohio.

The amendment (No. 3192) was agreed to.

Mr. METZENBAUM. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. JOHNSTON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. JOHNSTON addressed the Chair.

The PRESIDING OFFICER. Does the Senator from Louisiana seek recognition?

Mr. JOHNSTON. Mr. President, as soon as the Senator from Montana is present in the Chamber, we will make the unanimous-consent request with respect to his amendment.

We are now eligible to bring up any of the other amendments. I hope we would quickly do so because people have planes to catch, and we are getting to the very end of this continuing resolution.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

□ 1300

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JOHNSTON. Mr. President, if I may have the attention of the majority leader, some 30 minutes ago Senator HATFIELD and I proposed that we would propound a unanimous-consent request to cover the Melcher amendment. With the consent of the majority leader, I would now like to propound that request.

Mr. President, I ask unanimous consent that the distinguished Senator from Montana [Mr. MELCHER] be recognized to bring up an amendment on food assistance; that he be allocated 30 minutes on his side for debate under his control; that at the conclusion of 30 minutes of debate on his side, and whatever debate would be given in addition to that on the other side, that the matter be eligible for a motion to table; that the motion to raise germaneness under rule XVI be waived, and that after the tabling motion is complete that all rights not otherwise waived under the earlier part of the unanimous-consent request would be preserved.

Mr. President, if I may explain briefly, what we propose here is that Senator MELCHER have 30 minutes for debate. We would not raise the issue of germaneness. After whatever debate we propose on this side, we would then propose, or raise, a tabling motion. Of course, if the tabling motion succeeds, that would be the end of the matter. If it does not, then the matter would be open for further debate or further amendment.

Mr. President, I ask unanimous consent as previously stated.

Mr. DOLE. It is 30 minutes on each side?

Mr. JOHNSTON. Thirty minutes for Senator MELCHER under his control and no limit on the other side.

Mr. DOLE. I see.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request?

Mr. MELCHER. Reserving the right to object, and I hope I do not have to object, basically what I asked was for the Senator from Louisiana to prepare this. But there is the question of second-degree amendments. I do not think we would want them to be eligible. The tabling motion is fine with me and if it is tabled we have had our vote. If it is not tabled, I think, if I heard correctly, germaneness could still be raised.

Mr. JOHNSTON. If the Senator would yield, the defense of germaneness under rule XVI would be waived both before and after the tabling motion.

Mr. MELCHER. Would it be all right to have second-degree amendments?

Mr. JOHNSTON. I think it would be best if the Senator would keep the right to keep second-degree on both sides. If it is not tabled, it may have to be modified in some way to make it suitable for acceptance.

Mr. MELCHER. And if it is not tabled, I guess there would not be a time agreement.

Mr. JOHNSTON. The Senator is correct.

Mr. MELCHER. I think it is a very fair, decent and honorable request. I thank the Senator.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

AMENDMENT NO. 3193

(Purpose: To express the sense of the Senate that the Secretary of Agriculture should use existing stocks of wheat and corn to increase domestic commodity assistance; to dispose of surplus agricultural commodities to the Philippines, certain African nations, India, and Bangladesh, and for other purposes)

Mr. MELCHER. Mr. President, I send the amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Montana [Mr. MELCHER] proposes amendment No. 3193.

Mr. MELCHER. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in the resolution, add the following new sections:

SEC. . It is the sense of the Senate that the Secretary of Agriculture should make available not less than $10,000,000 worth of flour and cornmeal using the wheat and corn stocks of the Commodity Credit Corporation. Such flour and cornmeal shall be in addition to the traditional level of assistance made available under section 1114 of the Agriculture and Food Act of 1981, section 416(a) of the Agricultural Act of 1949, section 4 of the Agriculture and Consumer Protection Act of 1973, and any other provision of law administered by the Secretary.

SEC. . (a) During the three-year period beginning with the fiscal year ending September 30, 1987, through the fiscal year ending September 30, 1989, the Secretary of Agriculture shall make available to the Republic of the Philippines at least 35 million bushels of wheat, 40 million bushels of soybeans, and 100 million pounds of dairy products under paragraph (11)(B) of section 416(b) of the Agricultural Act of 1949, notwithstanding any other requirement of such section except the requirements of paragraph (b)(3)(A) and except as provided for therein.

(b) Of the amount of dairy products available under this section, at least 30 million pounds shall be non-fat dry milk, 45 million pounds shall be cheese, and 25 million pounds shall be butter.

(c) Commodities made available under this section during any fiscal year shall be subject to the agreement of the Republic of the Philippines—

(1) to acquire through commercial arrangements agricultural commodities directly or by private purchases during the fiscal year in an amount equal to the amount of such agricultural commodities acquired through commercial arrangements during the preceding fiscal year;

(2) to sell any commodities furnished under this section in the Republic of the Philippines and to use the local currency generated from such sales (A) to carry out programs of assistance in the Republic of the Philippines and (B) to reimburse the United States for costs under paragraph (3) to the extent that such currencies are converted to dollars for such purposes or can be used to pay expenses of the United States as provided for in such paragraph; and

(3) to reimburse the United States for costs incurred in furnishing such commodities, including transportation and processing, during the same fiscal year in which such costs were incurred. Reimbursements under this paragraph may be made in local currencies generated from the sale of the commodities under paragraph (2) if they are used to pay expenses of the United States in the Philippines.

(d) To the extent practicable, commodities made available under this section shall be furnished in equal quantities during each of the three fiscal years.

SEC. . (a) During the three-year period beginning with the fiscal year ending September 30, 1987, through the fiscal year ending September 30, 1989, the Secretary of Agriculture shall make available to the Philippines and friendly countries of Africa, under paragraph (b)(11)(A) of section 416 of the Agricultural Act of 1949, at least 25 million bushels of wheat and 90 million pounds of dairy products (of which at least 40 million pounds shall be nonfat dried milk, 30 million pounds shall be cheese, and 20 million pounds shall be butter), notwithstanding any other requirement of such section except the requirements of paragraph (b)(3)(A) and except as provided for therein.

(b) Commodities made available to a nation under this section during any fiscal year shall be subject to the agreement of the nation—

(1) to acquire through commercial arrangements agricultural commodities directly or by private purchases during the fiscal year in an amount equal to the amount of such agricultural commodities acquired through commercial arrangements during the preceding fiscal year;

(2) to sell any commodities furnished under this section within the nation and to use the local currencies generated from such sales to (A) establish and carry out a rural lending program in such nations in the manner provided for in section 108 of the Agricultural Trade Development and Assistance Act of 1954 and (B) reimburse the United States for costs under paragraph (3) to the extent that such currencies are converted to dollars for such purpose or can be used to pay expenses of the United States as provided for in such paragraph; and

(3) to reimburse the United States for costs incurred in furnishing such commodities, including transportation and processing, in the same fiscal year in which such costs were incurred. Reimbursements under this paragraph may be made in local currencies generated from the sale of the commodities under paragraph (2) if they are used to pay expenses of the United States in the recipient nation.

(c) To the extent practicable, commodities made available under this section shall be furnished in equal quantities during each of the three fiscal years.

(d) For purposes of this section, the term "friendly countries" shall have the same meaning as that term has under the Agricultural Trade Development and Assistance Act of 1954.

SEC. . (a) During the three-year period beginning with the fiscal year ending September 30, 1987, through the fiscal year ending September 30, 1989, the Secretary of Agriculture shall make available to—

(1) Nigeria, 50 million bushels of wheat, 165 million pounds of dairy products, and 40 million bushels of soybeans;

(2) friendly countries in Africa, other than Nigeria, 80 million bushels of wheat;

(3) India, 7 million bushels of wheat, 40 million bushels of soybeans and 80 million pounds of dairy products; and

(4) Bangladesh, 7 million bushels of wheat and 20 million pounds of dairy products under paragraph (11)(B) of section 416(b) of the Agricultural Act of 1949, notwithstanding any other requirement of such section except the requirements of paragraph (b)(3)(A) and except as provided for therein

(b) Commodities made available to a nation under this section during any fiscal year shall be subject to the agreement of the nation—

(1) to acquire through commercial arrangements agricultural commodities directly or by private purchases during the fiscal year in an amount equal to the amount of such agricultural commodities acquired through commercial arrangements during the preceding fiscal year;

(2) to sell any commodities furnished under this section within the nation and to use the local currencies generated from such sales (A) to carry out programs of assistance in the country and (B) to reimburse the United States for costs under paragraph (3) to the extent that such currencies are converted to dollars for such purpose or can be used to pay expenses of the United States as provided for in such paragraph;

(3) to reimburse the United States for costs incurred in furnishing such commodities, including transportation and processing, in the same fiscal year in which such costs were incurred. Reimbursements under this paragraph may be made in local currencies generated from the sale of the commodities under paragraph (2) if they are used to pay expenses of the United States in the recipient nation.

(c) To the extent practicable, commodities made available under this section shall be furnished in equal quantities during each of the three fiscal years.

(d) For purposes of this section, the term "friendly countries" shall have the same meaning as that term has under the Agricultural Trade Development and Assistance Act of 1954.

Mr. MELCHER. Mr. President, this is an amendment which has been in the making for several months. The amendment has two parts to it. I will briefly describe the first part.

It is a sense-of-the-Senate resolution that in the case of our programs here for our own domestic feeding for the poor, that the Secretary of Agriculture shall attempt, out of any funds available, to augment the processing of these commodities; namely, wheat for flour and corn for cornmeal.

That is for the obvious purpose of permitting those two commodities to be available now and during the rest of this fiscal year for the various types of feeding programs that we have for the poor, whether it is in the senior citizen centers which are eligible, whether it is in the Salvation Army dining halls which are eligible, or whether it is a distribution of the 5-pound flour bags or cornmeal bags to the poor in commodity distribution.

I believe we could all agree that when we run out of flour for this type of distribution, it is too bad, because we have so much wheat in Federal ownership that some of it is piled on the ground for lack of storage space. The same could be said of corn. When we start to harvest this year's crop of corn, it is contemplated that there will not be enough corn storage.

It seems to be all wrong if there is so much of a commodity available that we cannot even store it, that we cannot convert part of it, the wheat into flour and the corn into cornmeal, for adequate distribution through these programs.

In my own State of Montana, we find that there is no flour available right now for distribution. There has not been for a couple of months, and we do not think there will be any available for another 2 months. I think those may be the circumstances in several other States. I think that is deplorable.

So that is the first part of the amendment.

□ 1310

The second part deals with agricultural exports through the 416 Program, section 416 and section 108. It has taken a long time to draft this amendment in this form because we wanted to overcome any objection, any point of order on the question of budget. What you have before you meets that test.

It does meet the budget requirements. Section 416 is a program that is available under current law. This would broaden section 416 for a series of countries. Those countries are the Philippines, Nigeria specifically in Africa, all other friendly countries in Africa, India, and Bangladesh.

Section 416 is a government-to-government program or it can be from our Government to a private voluntary organization. It can be either way. In many of the government-to-government programs, when it gets to that part of the country where it is tested, it then becomes part of the private voluntary organizations efforts in that particular country.

It has been said that this is perhaps too much. It is on that point that I want to be very specific. The amounts that we list here country by country, in the case of Africa other than Nigeria, friendly countries in Africa, are those amounts that seem reasonable to me and to many others over a 3-year period. It is important to remember that. When you read these figures in this amendment, it is for 3 years because the 416 Program is set up for 3 years.

How many commodities are available in the United States? In current stocks right now, we have almost 2 billion pounds of dairy products. In current stocks under CCC ownership and under loan, which will be taken over by CCC if they still remain there after the loan period is out, almost 500 million bushels of soybeans. By the same token, under wheat, if you count what will come into CCC within a month or so, we have about 1½ billion bushels of wheat. It keeps going up.

Those are the three commodities that are involved here: wheat, soybeans, and dairy products. These amounts specified over 3 years are within the limits—well within the limits—of what we have available. They are, in most instances, just a tiny fraction of those three commodities. So in my view, I wish it could be larger, but for those who say perhaps it is too much for those countries to absorb, the amendment carries with it two limiting factors. One is that while the commodities themselves are owned by the U.S. Government, are in Federal ownership in Federal storage, and can be shipped under 416 to friendly countries as a donation, that is off budget. We have paid for it once. This becomes a donation to that particular friendly country which makes application for it.

So, although the amendment states that these commodities will be avail-

able in these amounts, staggered over the 3-year period, there are two criteria that must be met for any of these countries. The first is that the country involved must agree to pay the transportation charges and the processing charges. That is number one.

They pay it to the U.S. Government and that amount of money will then be spent in that country. In other words, we are not running into an exchange question, where you have a developing country's currency that simply cannot be converted into dollars readily, and therefore, how much is it worth, soft money. We avoid that situation and it is a limiting factor on the donation that can be made, because it must be either converted into dollars or be able to be utilized for programs that the United States has in that country. In other words, the soft currency issue is resolved. It is not soft currency.

The second point, and it is equally important, is the question, Is this additionality? Briefly, Mr. President, that term means, is this something that will be too much and therefore, in that particular country will displace what would otherwise be a commercial sale?

On that point, we raise this matter: There can be none of these donations unless the recipient government agrees that whatever they have purchased in that particular commodity during the preceding year from commercial sources must be purchased also in the year they are going to receive the donation through this program. I hope I have made that clear.

The two points that make this acceptable from a budget standpoint are that the question of who is going to pay for the transportation and processing costs is met by the provision that the government receiving the donation will pay for it. Second, the question, will this be displacement of what would otherwise be commercial sales, is met by establishing that a country applying for it must agree to purchase the same amount of this particular commodity that they are applying for in this donation—purchase the same amount commercially as they had heretofore. So I believe we have resolved those two points.

Briefly, Mr. President, what does this do for the United States? With the large agricultural surplus commodities that we now have in storage and with the amounts going up, it is very apparent that we must make every effort to utilize the programs we have available under our statute to broaden out those exports.

Let me be more specific on that. We are seeing the export figures decline year after year. Indeed, we are seeing them decline month by month.

□ 1320

We have had very startling circumstances develop this past May, June, and July where the United States actually imported more agricultural commodities than it exported. It is not so much that we are importing that much more in the way of food products from abroad. It is really a question of our exports continually sliding down.

Last year we had $32 billion, between $31 billion and $32 billion in agricultural exports from this country. It was projected by the Department of Agriculture that that would slip to $27 billion this year. In other words, about a 15-percent decline. It is now projected it will be even much worse than that; that we will probably slip another 6 or 7 percent beyond that and we are going to be looking at a 20- to 25-percent decline in this year's agricultural exports.

This is very damaging to the economy of the United States. First of all, as the surplus is overhanging the market, we find that commodity prices continue to go down. That gives us more Treasury exposure for our farm program costs. It gives us a real jolt so far as how much commodities are worth, and farmers' land value, the whole economy of rural America keeps going down.

The question is whether or not we can reach a stabilizing figure, where we start to increase agricultural exports so that commodity prices do not continually slide downward. This has been a neglected area. The type of program I am describing in this amendment and will be available for our use has been part of the decline. We simply have not been utilizing these types of programs, whether it is Public Law 480, or section 416 or section 108 which is covered in this amendment. We simply have not been utilizing them enough. It is not just enough that a few on the Senate floor or a few in the House or a few in the voluntary organizations say that. It is what agribusiness, particularly those involved in agricultural exports, have been documenting all summer long, all year long but specifically since July.

The leading export people involved with wheat, with corn, with soybeans, with rice, and with dairy products, have been meeting once a month to see if, collectively, they cannot be convincing enough to Congress and the White House to shift, to make a turn. This amendment, my colleagues, to attempt to begin to make that turn, is probably the last opportunity we have in this Congress to establish by congressional policy that we would like to make the turnaround, to establish that we must have the turnaround in the situation that now exists.

This amendment is designed to resolve some of the stumbling blocks that have held up this type of donation. I think perhaps we have not given enough credibility to the important part that Public Law 480 and related programs have played in stimulating U.S. agricultural exports.

Pools have been of great advantage to us. They have been widely used since their inception, going back into the East. We have never needed them more than we need them today. Yet, I am ashamed to say, I am very alarmed to say that the usual allocation process for Public Law 480, the Food-for-Peace Program, which is to be made by the administration by October 1, has not been made. To the extent that we can resolve some of their problems and some of the interagency fumbling regarding who makes the decision on what is acceptable and when do we actually increase our exports through these types of programs, this amendment would be helpful. To the extent that the farmers and ranchers in the United States are looking to Congress to see whether we will not move to enhance exports, this amendment is very encouraging. It will say the same thing for agribusiness. As of September 25–26, this agribusiness group, which meets regularly, some 29 of them, has signed a letter and sent it to the White House suggesting to the President two things: Number 1, that they be allowed to have a meeting with the President to describe the urgency of moving more aggressively and expertly. They say, in the letter to the President, which is a very brief letter, they would like to explain the seriousness of the situation so he understands it and hopefully will take a more active part in making sure that both the State Department and the Agriculture Department are more aggressive in this field.

They also point out that the broad array of the export programs which are available have not been used.

This amendment responds directly to that point on two programs, two very important programs, section 416 and section 108.

I believe, Mr. President, that an affirmative vote for this amendment will be a strong signal that, yes, we are going to make a turn in agricultural exports; yes, we are going to prudently and wisely use the food abundance we have to our own advantage and the advantage of these friendly countries; yes, we are going to use it as we know it works to develop long-lasting trade, that is beneficial both to the United States and to the friendly countries. I think it is most important that we have this amendment agreed to by the Senate so we can take those very meritorious and very urgently needed steps today.

Mr. President, I reserve the remainder of my time.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. DOLE. In accordance with the agreement, there will be a motion to

table but that motion to table cannot be made until the Senator from Montana either uses or yields back his time.

Mr. MELCHER. Will the majority leader yield?

Mr. DOLE. I will be happy to yield.

Mr. MELCHER. We have had a couple requests, and I will ask the cloakroom to make sure those Senators know they can speak.

□ 1330

Mr. President, there may be a desire on the part of other Senators to speak. While we are waiting for them, I should like to take this time to describe what we are talking about for the 3-year period concerning the parts of the bill that deal with exports to friendly countries.

We are talking about a total, over the 3 years, of 8 million metric tons of commodities that are surplus. That is made up of wheat, soybeans, and dairy products.

If we are going to divide that by three for these countries, because it is 3 years, we are talking about approximately 3 million metric tons per year.

Each of these commodities is in surplus and in such quantities that we fear how great a surplus we are going to have next year and the year after, as compared to right now. The surplus is too high, it depresses the price, and is very damaging to the economy of the United States.

However, let me also point out that each of these has storage costs to the extent that we would reduce these surplus commodities over this 3-year period by these amounts, assuming—we cannot be sure, but just assuming—that the countries would meet the eligibility requirements on their application. We cannot be sure of that, but assuming that they would, what would it save? It would save $40 million for those 3 years, and that $40 million is a question just on part.

If all of them were eligible, which I am afraid will not be the case, for the maximum amount, because there are limiting factors that I described earlier—but if all of them were eligible, we would be talking about a saving, over 3 years, of more than $200 million in storage costs alone.

Mr. President, we are unwise, very unwise, to have huge surplus commodities in storage if there is a need for them, either by our own people here, through our own Commodity Distribution Program, or by friendly countries abroad. It seems almost immoral, almost unbusinesslike, almost self-defeating to watch the surpluses mount, without having plans to dispose of those supplies.

There are two things involved that change the aspect for the American agricultural economy if we adopt the amendment. One is that we start to turn the corner on agricultural exports. The other is that by doing so, we reduce the surplus to the extent that the programs are utilized. But there is a bonus, and that bonus appears when we consider the reduction in storage costs.

On all these aspects, I believe that the amendment is meritorious and is vitally needed at this time.

Mr. President, I am anxious to proceed with the vote; I am anxious to proceed with the bill. After allowing 5 minutes for anybody who wanted to speak, I am ready to yield back the remainder of my time, if the managers of the bill on the other side have no use for any more time.

Mr. HATFIELD. Mr. President, I move to table the amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to table the amendment. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The bill clerk called the roll.

□ 1340

Mr. SIMPSON. I announce that the Senator from Utah [Mr. GARN] and the Senator from Maryland [Mr. MATHIAS] are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 46, nays 52, as follows:

[Rollcall Vote No. 325 Leg.]

YEAS—46

Armstrong	Hatfield	Roth
Boschwitz	Hawkins	Rudman
Broyhill	Hecht	Simpson
Chafee	Heinz	Specter
Cochran	Helms	Stafford
Cohen	Humphrey	Stennis
D'Amato	Kassebaum	Stevens
Denton	Laxalt	Symms
Domenici	Long	Thurmond
Durenberger	Lugar	Trible
Evans	Mattingly	Wallop
Goldwater	McClure	Warner
Gorton	McConnell	Weicker
Gramm	Murkowski	Wilson
Grassley	Packwood	
Hatch	Quayle	

NAYS—52

Abdnor	Eagleton	Melcher
Andrews	Exon	Metzenbaum
Baucus	Ford	Mitchell
Bentsen	Glenn	Moynihan
Biden	Gore	Nickles
Bingaman	Harkin	Nunn
Boren	Hart	Pell
Bradley	Heflin	Pressler
Bumpers	Hollings	Proxmire
Burdick	Inouye	Pryor
Byrd	Johnston	Riegle
Chiles	Kasten	Rockefeller
Cranston	Kennedy	Sarbanes
Danforth	Kerry	Sasser
DeConcini	Lautenberg	Simon
Dixon	Leahy	Zorinsky
Dodd	Levin	
Dole	Matsunaga	

NOT VOTING—2

Garn	Mathias

So the motion to lay on the table was rejected.

□ 1400

Mr. DOLE. Mr. President, I move to reconsider the vote by which the motion to table was rejected, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. DOLE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

□ 1410

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JOHNSTON. Mr. President, we have——

The PRESIDING OFFICER. The motion to reconsider is the pending business and it is not debatable.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the pending matter be temporarily laid aside and that we proceed to consider the Kennedy health planning amendment under a time agreement of 10 minutes equally divided, the time to be under the control of Senator KENNEDY and the distinguished Senator from Oregon. I think we have already provided a unanimous-consent request to second-degree amendments.

I make that request.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The Senator from Massachusetts.

AMENDMENT NO. 3194

(Purpose: To appropriate funds for public health planning)

Mr. KENNEDY. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Massachusetts [Mr. KENNEDY] for himself, Mr. GORE, and Mr. KERRY, proposes an amendment numbered 3194.

Mr. KENNEDY. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The amendment is as follows:

At the appropriate place in the joint resolution, insert the following new section:

SEC. . (a) Notwithstanding any other provision of this joint resolution, there are appropriated $29,000,000 for carrying out sections 1516(a), 1525(a), and 1534(a) of the Public Health Service Act.

(b) Notwithstanding any other provision of this joint resolution, the amount appro-

priated by section 101(i) of this joint resolution for each program, project, and activity administered by the Public Health Service shall be reduced by an equal percentage in order to achieve a reduction of $29,000,000 from the total amount appropriated by such section for all such programs, projects, and activities.

Mr. KENNEDY. Mr. President, I yield myself such time as I might use.

Mr. President, I rise to offer an amendment to provide 6 months of funding for the health planning program—a total of $29 million. Without this funding, the program will die in just a few weeks.

Health planning is an essential component of our national effort to control health care costs and improve the quality of health care. Its elimination would be a cogent example of an action that is penny wise and pound foolish. A recent report by the Department of Health and Human Services reported that the program saves the Nation $6.6 billion annually. Approximately 40 percent of these savings go directly to reducing the budget deficit in the form of reduced expenditures for the Medicare Program.

Where States have chosen to drop health planning, the increase in costly and unnecessary health-care construction has been explosive—and provides a vivid illustration of what will happen to the Nation as a whole if my amendment is defeated. In Arizona, for example, the program was discontinued in 1982. In the last year of the program, there was only $8 million in hospital construction approved in the State. Last year, by contrast, there was $217 million in hospital construction actually underway, and the hospital occupancy rate has dropped from 62 percent to 54 percent.

It is because health planning is so essential in controlling health-care costs that continuation of the program is supported by both of the two large health insurance groups—Blue Cross-Blue Shield and the Health Insurance Association of America—as well as the Washington Business Group on Health, the AFL-CIO, and the AARP.

There are some who argue that the institution of prospective payment for capital under the Medicare Program will make health planning unnecessary. I do not believe this to be the case, but even if it is true, Medicare prospective payment for capital has now been postponed at least until fiscal year 1988.

Beyond its contribution to controlling health-care costs, health planning has other essential functions. Most important, it provides the data necessary to identify unmet health-care needs in our communities. When those needs are met, health planning provides a strong voice on behalf of those who might otherwise be left out by health-care provider decisions made solely on market grounds. The 37 million Americans without any health insurance need health planning to represent their interests in the day-to-day decisions made by health-care providers in every community in the country.

The only reason there is no money in this appropriations bill is the failure of the Congress to enact a new authorization. An authorization bill was reported out of the Labor Committee without opposition, but it has been blocked in coming to the Senate floor. The Senate deserves the chance to vote this program up or down. Enactment of this amendment will give the new Congress a chance to act one way or the other on a new authorization.

The cost of this modest amendment will be paid by a tiny percentage reduction in other public health service programs. The percentage reduction involved is so small that it will not be missed. But the Nation will certainly miss the health planning program if it is not reauthorized.

I urge enactment of this amendment.

Mr. WEICKER addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. WEICKER. Mr. President, will the Senator yield to me?

Mr. HATFIELD. I yield to the Senator from Connecticut 3 minutes.

Mr. WEICKER. My question to the distinguished Senator from Massachusetts is, Is this program authorized?

Mr. KENNEDY. The answer is no, it is not authorized, but it was authorized by a unanimous Labor Committee. It is on the calendar but there has been a hold on the measure and we have not been able to get it before the Senate.

Mr. WEICKER. I gather the answer of the Senator from Massachusetts is that it is not authorized.

No. 2, I think I should point out to my colleagues that the funds for this amendment—I find myself in a strange position of opposing both the Senator and the White House, who tried to do the same thing with the drug program as the Senator from Massachusetts is now trying to do for health planning, taking the money out of maternal and child health care, out of NIH, out of Alcohol, Drug Abuse, and Mental Health, and all the rest of the programs to fund an unauthorized program.

I think clearly, when we tried to craft the budget, consideration was given to the very meager funds allotted to this aspect of our national priorities. Quite frankly, as an unauthorized program, this had to wait its place in line.

I am sure the distinguished Senator from Oregon will have more to say about that later, but in any event, I think I should point out to my colleague that this money is coming out of direct help to those who are suffering from various afflictions and diseases that are treated in those very institutes from which the money comes.

Mr. KERRY. Mr. President, I wish to join my colleague from Massachusetts in supporting a 1-year extension for the health planning program.

I firmly believe that as the largest purchaser of health care, the Federal Government has a health planning role in the areas of cost control, access to adequate health care for all, health data collection, and the education and training for consumers, as well as business. Today's health planning agencies are the only existing vehicle's for bringing together consumers, providers of health care services and purchasers of health insurance, around issues that affect them all. They represent a broad spectrum of community interests with board members that include business people, physicians, elected officials, hospital administrators, nurses, and representatives of labor, insurance companies, and consumer groups.

Today's health planners have responded to past criticisms that they were too often concerned with cost and not concerned enough with ensuring quality and access to care. They have increased their activities to address access and quality of care issues, while also developing an impressive data collection service that responds to both State and local health needs. Although their strategies vary, they also are addressing problems like balancing the need for hospital services against the demands of an ever-growing elderly population for long-term care.

The Senate Labor and Human Resources Committee has already made a strong statement on this issue. On November 19, the Labor Committee reported favorably, without objection, S. 1855, the Health Planning and Resources Allocation Act of 1985. S. 1855 would extend the health planning program through fiscal year 1988, but unfortunately it has not been scheduled for floor consideration.

The authorizing committee has given its wholehearted support, now it is time to give the full Senate an opportunity to work its will on the continuation of health planning. I, therefore, urge my colleagues to support this amendment so that we will be better able to confront the health care challenges in the next Congress.

Mr. HEINZ. Mr. President, as a longtime supporter of health planning I regret that I cannot support the amendment of the Senator from Massachusetts. This amendment, which would redirect $29 million from the Public Health Service to fund Federal health planning for an additional 6 months, comes at too high a price. Federal health planning is a very valuable program, but I do not think that

this is the time or the legislation on which to resolve its status.

Since 1974, health planning agencies have helped to curb the distribution of expensive high-technology medical equipment in this country. America has picked up the pace in its discovery of sophisticated medical technology for the diagnosis and treatment of disease. Often with this growing diversity in the tools of modern medicine, comes the duplication of services and technology within communities. Health planning agencies have worked to ensure that our Federal investment in health care technology is used wisely, and with the best interests of local health care delivery at heart.

Unfortunately, this amendment would fund planning by reducing funds for biomedical research and the other important functions of the National Institutes of Health, and the Public Health Service. I simply cannot in good conscience support any cutback in NIH efforts to find cures for devastating health problems such as Alzheimer's disease, heart disease, osteoporosis, cancer, and the hundreds of other diseases that debilitate and destroy the health of Americans.

Mr. President, I would be willing to work with the Senator from Massachusetts to find another vehicle to ensure the continued viability of the Federal Health Planning Program.

Mr. GLENN. Mr. President, I would like to take this opportunity to explain my opposition to Senator KENNEDY's amendment to divert $29 million from the Public Health Service to fund the Health Planning Program for an additional 6 months. I have decided to oppose this amendment because $18 million of the $28 million transfer would be taken from the National Institutes of Health [NIH].

As a long-time supporter of both the Health Planning Program and important biomedical research taking place at the NIH, I find this vote to be very difficult. I am well aware of the value and successes of Federal health planning programs. I believe that providing individual States the opportunity to mold their health programs to fit the unique needs of their populations has proven to be very effective, particularly in my home State of Ohio.

Over the years, I have supported reauthorization of the Health Planning Program. Unfortunately, it has become painfully obvious that the majority of the Congress does not share my support and will not reauthorize health planning. Therefore, rather than extend the impending death of the program and strip the NIH of important biomedical research funding, I have reluctantly decided to vote against this amendment.

Mr. HATCH. Mr. President, will the Senator yield to me?

Mr. HATFIELD. I yield 1 minute.

Mr. HATCH. Mr. President, I think it would be useful for the Members of this body to hear a brief summary of efforts that have been made to reauthorize this program.

First, let me point out that the most recent authorization for the Federal Health Planning Program expired at the end of fiscal year 1982. Since that time the program has been funded under a continuing resolution despite the fact that it has not been authorized. I believe that outlays for a Federal program without appropriate authorizing legislation is an abdication of Congress' responsibility. When an authorization expires, Congress should evaluate the respective program and either give it renewed direction and funding or drop it from the books. This has not been done with the Federal Health Planning Program.

In November of last year, compromise bill S. 1855 to revise and reauthorize the health planning program was reported out of the Senate Labor and Human Resources Committee. In my view this bill was not perfect but it was a compromise I felt I could support under the circumstances that existed at that time. Those circumstances assumed House support for continuation of the Health Planning Program. However, since then the House of Representatives has voted by an overwhelming majority—the vote was 390 to 3—to sunset the program as of September 30, 1986.

Given the overwhelming interest in sunsetting the program demonstrated by the House and the administration's full support for their bill, I felt it made no sense to take S. 1855 to the floor.

Since that time, no other Senator has approached me about S. 1855 and expressed any interest in seeing this program reauthorized. I would also point out that in the report accompanying the fiscal year 1987 Labor/HHS appropriations bill, the Appropriations Committee stated that absent authorizing legislation, no funding for this program would be provided.

For this reason, I urge my colleagues to join me in tabling this amendment. Over the past 5 years, every opportunity has been present to reauthorize this program. Given Congress' refusal to do so, it is totally inappropriate to continue funding for an unauthorized program for yet another year, particularly given the fiscal constraints we are operating under. I hardly need remind my colleagues of the concerns Senator WEICKER and Senator HATFIELD expressed on Saturday night over our ability to pay for our Nation's urgently needed war on drugs. Given the urgency of that problem, I believe it makes little sense to continue funding for a program Congress has been unwilling to renew.

Mr. President, it is true this money has not been reauthorized since 1981. This bill was sunset by an overwhelming House vote in 1981. The White House supports that.

The distinguished Senator from Connecticut is exactly right: The fact of the matter is that there will be $18 million taken out of the NIH budget, something we fought hard for, several million taken out of the ADAMHA budget, from which we can barely afford to lose anything. It takes many millions from the nursing education, medical education, teenage pregnancy programs, and we could go on and on. A total of at least $29 million will be taken out of very, very important programs in order to fund something that literally has not been reauthorized.

I urge my colleagues to defeat this amendment because frankly, this is not the thing to do. We should have authorizing legislation. I think we would all consider not having authorizing legislation even if we wanted to, under the circumstances.

Mr. QUAYLE. Mr. President, will the manager yield?

Mr. HATCH. With that, I yield the floor to my distinguished colleague from Indiana.

Mr. HATFIELD. I yield the Senator from Indiana 1 minute.

Mr. QUAYLE. Mr. President, I rise in opposition to this amendment to add funds for the health planning program. Before we proceed on this matter, I think it would be useful for the Members of this body to hear a brief summary of efforts that have been made to reauthorize this program.

First, let me point out that the most recent authorization for the Federal Health Planning Program expired at the end of fiscal year 1982. Since that time the program has been funded under a continuing resolution despite the fact that it has not been reauthorized. I believe that outlays for a Federal program without appropriate authorizing legislation is an abdication of Congress' responsibility. When an authorization expires, Congress should evaluate the respective program and either give it renewed direction and funding or drop it from the books. This has not been done with the Federal Health Planning Program.

In November of last year, Mr. WEICKER and I worked together to develop a compromise bill, S. 1855, to reauthorize the Health Planning Program which we were successful in reporting out of the Senate Labor and Human Resources Committee. In my view this bill was not perfect but it was a compromise I felt I could support under the circumstances that existed at that time. Those circumstances assumed House support for continuation of the Health Planning Program. However, since then the House of Representatives has voted by an overwhelming majority—the vote

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I would also point out that in the report accompanying the fiscal year 1987 Labor/HHS appropriations bill, the Appropriations Committee stated that absent authorizing legislation, no funding for this program would be provided.

For these reason, I urge my colleagues to join me in opposing this amendment. Over the past 5 years, every opportunity has been present to reauthorize this program. Given Congress' refusal to do so, it is totally inappropriate to continue funding for an unauthorized program for yet another year, particularly given the fiscal constraints we are operating under.

Mr. President, the Senator from Massachusetts referred to a bill that passed unanimously in the Labor and Human Resources Committee. That bill is my bill and that of the Senator from Connecticut that did in fact pass. We are going to oppose the Kennedy amendment. The reason that bill has not been called up is primarily because the House of Representatives, on a vote of 390 to 3, eliminated the health planning system. If we vote to put this money back in, we are basically voting to put back money in a program that began and is still working on the problems of the 1960's. We are in the 1980's. This is going backward.

We have to go through a process and that is an authorization process and an appropriations process. The reason we do not have an authorization process here is that there has not been a consensus. I daresay, if we go and just appropriate money on an authorizing bill that has not been dealt with since the 1960's, not dealt with since 1982 specifically, we are doing the wrong thing. The time is up and if we are going to have a health planning system, we are going to have to get serious about it. This is certainly not the place.

The Senators made reference to our bill. I want to point out that it is our bill and we are opposing the Kennedy amendment.

Mr. KENNEDY. How much time remains, Mr. President?

The PRESIDING OFFICER. The Senator from Massachusetts has 2 minutes remaining.

Mr. KENNEDY. I point out to the Senator from Connecticut and to the others that this program has not been authorized since 1981 or 1982 and the Appropriations Committee has continued to fund it. The reason they funded that is because it saved billions of dollars in unnecessary and wasteful health expenditures. These pious arguments—that those who support this program are somehow less interested in NIH and child care—are baloney. If we abolish this program, we are going to see $6 billion of our health service dollars wasted next year. Let us hear how the members of the Appropriations Committee are going to come up with $6 billion more to pay for that waste and still maintain essential services.

You are going to have hundreds of millions of dollars out of NIH, out of drug care, out of community health centers and out of maternal and child health, $6.6 billion is this administration's estimate of the savings in this program—$6.6 billion.

Abolishing this program is pennywise and dollar foolish, Mr. President. I yield to no one in terms of supporting the various programs that have been outlined here, we are taking only three-tenths of 1 percent out of $9 billion in Public Health Service Program dollars. That is $29 million for 6 months to let the Senate of the United States decide whether to reauthorize this program or to sink it; $29 million to save $6 billion. That is the question.

Mr. President, I do not think I have any time left.

Mr. HATFIELD. Mr. President, I make a point of order under rule XVI, paragraph 1, that this amendment provides a new item of appropriations and therefore is not in order.

The PRESIDING OFFICER. The point of order has been made. The amendment provides a new item of appropriation not authorized, in violation of rule XVI, paragraph 1. The point of order is sustained.

Mr. KENNEDY. Mr. President, I appeal the ruling of the Chair and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is, Shall the decision of the Chair stand as the judgment of the Senate? The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

□ 1430

Mr. SIMPSON. I announce that the Senator from Utah [Mr. GARN] and the Senator from Maryland [Mr. MATHIAS], are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 75, nays 23, as follows:

[Rollcall Vote No. 326 Leg.]

YEAS—75

Abdnor	Bradley	Cochran
Andrews	Broyhill	Cohen
Armstrong	Bumpers	D'Amato
Bentsen	Burdick	Danforth
Boren	Byrd	DeConcini
Boschwitz	Chafee	Denton
Dixon	Helms	Proxmire
Dodd	Humphrey	Pryor
Dole	Inouye	Quayle
Domenici	Kassebaum	Roth
Durenberger	Kasten	Rudman
Evans	Laxalt	Sasser
Exon	Long	Simpson
Ford	Lugar	Specter
Glenn	Matsunaga	Stafford
Goldwater	Mattingly	Stennis
Gorton	McClure	Stevens
Gramm	McConnell	Symms
Grassley	Melcher	Thurmond
Hatch	Mitchell	Trible
Hatfield	Moynihan	Wallop
Hawkins	Murkowski	Warner
Hecht	Nickles	Weicker
Heflin	Packwood	Wilson
Heinz	Pressler	Zorinsky

NAYS—23

Baucus	Hart	Metzenbaum
Biden	Hollings	Nunn
Bingaman	Johnston	Pell
Chiles	Kennedy	Riegle
Cranston	Kerry	Rockefeller
Eagleton	Lautenberg	Sarbanes
Gore	Leahy	Simon
Harkin	Levin	

NOT VOTING—2

Garn	Mathias

□ 1450

The PRESIDING OFFICER. The yeas are 75. The nays are 23. The decision of the Chair stands as the judgment of the Senate.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that we temporarily lay aside the pending motion to reconsider and that we turn to the Bumpers amendment on the National Endowment for Democracy under a time limit of 5 minutes, a total of 2½ minutes per side.

Mr. DOLE. Mr. President, let me indicate to my colleagues we are going to start shutting off the votes around here at 15 minutes. The last vote we held an additional 8 minutes and the one before that about 8 minutes.

For a number of our Members I think we ought to make a special effort so they can leave here at a reasonable hour.

I hope my colleagues will come to the floor at the sound of the first bell so we can wrap this up in the next hour and a half.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request?

Without objection, it is so ordered.

The Senator from Arkansas.

AMENDMENT NO. 3195

(Purpose: To eliminate funding for the National Endowment for Democracy)

Mr. BUMPERS. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Arkansas [Mr. BUMPERS] proposes an amendment numbered 3195.

Mr. BUMPERS. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place, insert the following:

"SEC. . Notwithstanding any other provision of this act, no funds shall be available for grants made by the United States Information Agency to the National Endowment for Democracy as authorized by the National Endowment for Democracy Act.

Mr. BUMPERS. Mr. President, I yield myself 2 minutes.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. BUMPERS. Mr. President, this amendment is very simple. It will reduce the deficit by $15 million. Nobody will ever know the difference except we will have saved $15 million.

What the amendment does is take away $15 million that has been appropriated for the National Endowment for Democracy.

This organization sets its own agenda. NED does little to monitor and evaluate its own programs, and taxpayers never really know if funds appropriated to NED are properly used and accounted for.

NED essentially doles money out to the AFL-CIO, the chamber of commerce, and the Democratic and Republican Parties, and they turn around and give the money to their favorite organizations in countries all across the world. We see no tangible results from hundreds of the funded projects, and some of the projects do more to undermine democracy than to promote it. I heartily applaud NED's assistance to La Prensa, but that same assistance could be offered through other Government agencies and we could save millions of dollars wasted by the NED bureaucracy.

If you read the 1984 GAO report on NED or the May 1986 testimony on NED's administration of its grant program presented by GAO, you will be appalled and you will vote for this amendment.

I want to remind you again of who gets the money. Believe it or not, this money goes to the Democratic Party, the Republican Party, the AFL-CIO, and the chamber of commerce.

There is no coordination between them. There is no coordination as to whether two or three groups are giving grants to organizations in Nicaragua or Argentina or France, or whether they're giving grants to competing organizations in a country.

In one instance NED gave money to an organization trying to overthrow the Mitterrand government in France. How do you think we would feel if Mitterand sent money to this country to a group to help overthrow the U.S. Government?

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. BUMPERS. Mr. President, I want to save my last 30 seconds.

The PRESIDING OFFICER. Who yields time?

Mr. RUDMAN. Mr. President, how much time is remaining to the Senator from Arkansas?

The PRESIDING OFFICER. Thirty seconds to the Senator from Arkansas; 1 minutes 24 seconds to your side.

Mr. RUDMAN. I thank the Chair.

Mr. President, a year ago I might have supported this amendment. The fact is that the National Endowment for Democracy has made great strides in what it is doing. It is supported by many groups in this country of every political stripe. The National Endowment for Democracy in my view, has its most effective program through the Free Trade Union Institute of the AFL-CIO, working with labor movements around the world, it works to assure they are free from Communist influence. They support the best democratic principles of the American labor movement.

In addition, dissidents in countries like Afghanistan, Poland, and South Africa have been heavily supported by the NED.

It is interesting to note that 1 year ago I was on the same side of this issue as the Senator from Arkansas. I have come to the conclusion that I was wrong.

I think the recommendation of the Senator from Arkansas is ill advised today and I would point this out. There is one thing he said I do agree with.

I agree that the national political parties ought to get nothing from this endowment. I submitted that amendment last year, and I lost predominantly because that side of the aisle did not supply any votes to help me with my amendment.

Mr. GRASSLEY. Mr. President, I would like to take this opportunity to rise in support of the National Endowment for Democracy.

I must admit that when the endowment was first established, I was not its biggest fan, however, since that time I have had a chance to experience the NED's work first hand and have become a strong supporter.

Before the National Endowment for Democracy was created, the United States was limited in its ability to help promote democracy, for the Government is simply not the appropriate instrument for aiding private groups abroad. I have seen the endowment fill a real need, a fact that is best attested to by those at the cutting edge of democratic change who need our support. The inescapable reality of nuclear stalemate enhances the importance of political competition and underlines the need for an institution like the endowment.

The question of the endowment's existence is not only a question of resources—which are, of course, indispensable to its activities—but also a question of the open commitment of the American people to the cause of freedom and democracy in the world. To abandon the field of political competition to our adversaries would do more than harm our national interests, it would send the wrong signal to democrats around the world who have been greatly encouraged by the establishment of the endowment.

In addition, the endowment represents an important new means by which the United States can influence opinion around the world on behalf of democracy. Ideas have taken on a special importance with the worldwide communications revolution. We must be engaged in the effort to influence and persuade—our opponents already are. If we succeed with persuasion, we will find it less necessary to resort to force to defend basic democratic values.

The endowment's efforts to this end deserve to be strengthened and supported. Its programs are clearly giving valuable assistance to groups struggling for freedom and democracy around the world. The endowment has demonstrated that it is capable of finding creative ways to do so, even under the most difficult of circumstances. For example, one such group the endowment has supported is the International Parliamentary Group for Human Rights in the Soviet Union (IPG).

The IPG is a planning and coordinating body of 700 parliamentarians in the United States, including 80 Senators, Canada, Western Europe, and other countries who are committed to increasing public awareness of the human rights situation in the U.S.S.R. The purpose of IPG is to establish a multinational system to monitor Soviet human rights performance and respond immediately to human rights abuses.

The Vienna Review Conference on Security and Cooperation in Europe is rapidly approaching and the IPG will be playing a prominent role in ensuring that our members' views are communicated to the delegates at that conference.

NED helps in that effort. It responds to urgent appeals from valiant democrats who are struggling for freedom against authoritarian and totalitarian governments.

These Democrats know the risks involved in asking for and receiving such support. We should support them in their moment of need and not destroy the one means we have to give them concrete assistance. NED deserves the full support of the U.S. Congress.

IN SUPPORT OF THE NATIONAL ENDOWMENT FOR DEMOCRACY

Mr. RIEGLE. Mr. President, 2 years ago during Senate debate over funding for the National Endowment for Democracy, I argued that with proper

guidance and oversight, the Endowment could greatly enhance the understanding and appreciation of democratic systems and values around the globe.

I believe that today, after 3 years in existence, this program continues to deserve our support.

I therefore oppose the pending amendment to strike funding for the NED. While I support the worthwhile activities of the Fulbright-Hays scholarship program, I do not believe the the National Endowment should be gutted in order to increase the Fulbright budget by 10 percent.

NED was created out of the realization that our Nation wasn't doing enough to encourage and promote democratic institutions abroad. Since 1983, programs sponsored by the Endowment have encouraged free and democratic institutions throughout the world.

In Poland, NED is assisting the outlawed free trade union movement, Solidarity, and is monitoring and disseminating information on the status of human rights and workers' rights in that country. The Endowment is the only U.S. agency supporting exiled families of jailed Solidarity activists.

In South Africa, NED helped South Africa's unions focus the public spotlight on the evils of apartheid and the repression of the workers by the white minority government there.

In Latin America, NED has helped fund La Prensa, Nicaragua's anti-Sandinista newspaper.

To the fledgling democracies of Haiti, Guatemala, and Grenada, the Endowment is a main source of voter education and political training.

In Chile, NED has 15 programs helping various groups pave the way back toward democracy.

In Asia, NED is helping the anti-Soviet resistance in Afghanistan reestablish schools, and print textbooks.

In the Philippines, NED supported the successful democratic elections and transition.

In Northern Ireland, NED is helping moderate political forces find a peaceful, democratic solution to the ongoing communal conflict.

In a recent letter to me, Aloysius Mazewski, president of the Polish American Congress, Inc., commented on the Endowment's activities in Poland:

> The Endowment became the only source of financial support for the nonviolent massive opposition movement Solidarity in Poland. Particularly important is the NED assistance to independent cultural and educational activities of underground Solidarity, such as: flying university, publishing houses, lending libraries, uncensored press and similar programs, which flourish in today's Poland in spite of arrests and persecutions.
>
> Elimination of NED would deal a fatal blow to this nonviolent democratic resistance movement. It would be a tragedy if Solidarity, which survived 5 years of repressive measures of a police state, should die as a result of action taken by the U.S. Congress.

Commenting on another Endowment program operating in Asia, Sam Fishman, president of the Michigan State AFL-CIO, wrote of his recent trip to Korea and the Philippines, which he took at the invitation of the AFL-CIO's Asian-American Free Labor Institute [AAFLI]:

> AAFLI is the foreign service arm of the American labor movement. In each country, we visited AAFLI projects, met with trade union leaders and government officials, and held discussions with the U.S. Ambassador.
>
> Each member of the team was impressed by the quality of AAFLI's work and by the high regard in which the institute and its representatives are held, by both trade unionists and the top officials of the U.S. Embassies. Independent, democratic trade union movements are crucial components in any truly pluralistic society. The work of AAFLI and the other institutes of the AFL-CIO in Europe, Latin America, and Africa certainly plays an important role in the protection of democracy in the world today.
>
> Unfortunately, that work is threatened today by cuts in foreign assistance, and more particularly, by the continuing efforts of some in Congress to destroy the National Endowment for Democracy, which provides funding to AAFLI through the AFL-CIO's Free Trade Union Institute.
>
> One result of these attacks has been a 70-percent reduction in AAFLI's Philippine program, which funds programs in support of the Independent Trade Union Congress of the Philippines [TUCP]. The TUCP's work during the recent elections in support of free and fair electoral process, both independently and through the National Movement for Free Elections [NAMFREL], was second only to the Roman Catholic Church in its scope and effectiveness. Its innovative programs for workers—both union and nonunion members—have won praise in the Philippines and are widely imitated.
>
> It is impossible to describe in a letter such as this the courage and dedication of these men and women of the TUCP. As a trade unionist and an American, I am proud that the AFL-CIO has been able to provide vital assistance to them at this time of crisis in the Philippines. It would be a tragedy, indeed, if this support could not continue.

Mr. President, no one would argue that NED has been problem-free. However, its board of directors has taken corrective measures to ensure thorough monitoring of the endowment's activities. The overt nature of the National Endowment, and its required compliance with the Freedom of Information Act means that all of its programs are subject to necessary and important public scrutiny.

Over the past 5 years, we have invested over $1 trillion to build up our defense capability. While we must maintain a strong defense, we must not ignore the other efforts underway which advance our national security interests—such as the low-level, relatively inexpensive programs promoted by the Endowment.

Today there is a growing need to counter antidemocratic propaganda around the world. According to news accounts, the CIA estimates that the Soviet Union spends between $60 and $80 million a year on efforts to promote its ideological line overtly, and $50 million more covertly aiding Communist parties around the world. This investment is in addition to the activities of the KGB, Soviet satellite governments and all the official organs of East bloc propaganda, diplomacy, and cultural exchange.

An editorial in the October 6, 1986, edition of the New Republic argued that:

> Some agency needs to give immediate help to fledgling democratic movements, and the job shouldn't be left to the CIA.

I agree, and urge my colleagues to support the efforts of the National Endowment for Democracy by defeating this amendment.

Mr. KENNEDY. Mr. President, I rise in opposition to this amendment. The Senate has already voted down this amendment last December by a vote of 57 to 32 and I urge my colleagues to once again vote to defeat it.

The concept of the National Endowment for Democracy was articulated 40 years ago by Franklin D. Roosevelt's intimate adviser, Harry Hopkins, who argued that our country "should not be diffident and apologetic and unimaginative about promoting the democratic process througout the world." Yet of all the Western democracies, the United States was among the last to share its political heritage with the underdeveloped and developing nations.

I have followed closely the work of the National Democratic Institute, one of the four "core grantees" of the Endowment. It has played a major role in providing practical assistance to democratic parties and institutions in Chile, Haiti, South Korea, Ireland, Argentina, and Brazil. NDI's role this year in organizing the international observer team to the Philippine election alone is a sound reason to continue the National Endowment for Democracy.

These are not wasteful programs. Foreign leaders, State Department officials, Members of Congress, and those parties leaders who have requested and received assistance can all attest to the accomplishments of NDI's nonpartisan work.

I am personally familiar with one of NDI's most successful programs. In Northern Ireland, the National Democratic Institute has developed an ongoing program to strengthen the democratic process as envisioned by the recent Anglo-Irish accord. By providing technical assistance to the social democratic and labor party, NDI has helped the SDLP establish a viable alternative to extremism and terrorism. I am extremely impressed with its professionalism and its commitment to end the violence and terrorism and

bring peace and justice to that troubled part of Ireland. NDI has become an integral part of the endowment. Their work should be expanded, not eliminated.

Mr. President, if we allow this amendment to pass, we will be making a grave mistake. It would be a decision we will come to regret in the months and years ahead. Our inactivity in the field of democratic development will only create a vacuum that our adversaries will surely seek to fill. I am grateful for the work of the Endowment and the National Democratic Institute. It has served the highest interests of this country—an abiding respect for human dignity and human freedom. It was Franklin Roosevelt who, in a fireside chat, called upon the United States to be the "great arsenal of democracy." I urge my colleagues to support this noble endeavor and reject this amendment.

Mr. PELL. Mr. President I oppose this amendment.

The National Endowment for Democracy is a new program. It is an experiment. Like any experiment, it has had some rough periods. For example, I find it totally unacceptable that NED should have supported opposition groups in France, an established democracy and NATO ally. I am, however, confident that the NED board under the leadership of John Richardson and Carl Gershman—two sincere and very thoughtful men—will make sure that these mistakes are not repeated.

The National Endowment for Democracy is doing innovative and constructive work. In Poland, NED has helped sustain the spirit of Solidarity. In South Africa, it is working on behalf of democracy and majority rule in that troubled land. In Chile, the National Endowment for Democracy is working with the opposition parties—at their request—to help replace the Pinochet dictatorship with a democratic government. It would be a tragedy to drop this effort.

I would particularly like to commend the work of the National Democratic Institute for International Affairs. Under the leadership of Brian Atwood, NDI is playing a key role in the process of reconciliation in Northern Ireland. NDI has developed a close relationship with the SDLP, the democratic alternative to the IRA in the Province's Catholic community. By helping the SDLP enhance its organizational and political skills, NDI is strengthening the one element that can effectively work to negotiate a settlement in that troubled province. NDI and its republican counterpart played a very useful role as election observers in the Philippines and thus helped insure that Ferdinand Marcos did not get away with stealing the elections. NDI is now working with Argentina's Congress and will soon undertake a study mission to Pakistan.

I believe the NED experiment is producing results and should be continued.

Mr. BRADLEY. Mr. President, I would like to speak in strong support of the National Endowment for Democracy—a private agency dedicated to promoting democratic movements throughout the world. The Endowment works in practical, grassroot ways to strengthen democratic institutions and build pluralistic political systems.

When the Endowment was established in 1983, I was among those who were skeptical about its utility. But since then, to its credit, it has demonstrated true seriousness of purpose. Its track record has grown more impressive every year.

The Endowment has worked for democratic elections in the Philippines through sponsoring observer groups to monitor the fairness of elections.

It has supported moderate political forces seeking a peaceful, negotiated solution to the conflict in Northern Ireland.

It has funded a project for Afghan resistance to teach new generations of Afghan children who are under Soviet occupation. It is helping Afghans help themselves by reestablishing schools, printing textbooks, and training Afghans to use minicameras so that they can provide more vivid and compelling images of the terrible war that is ravaging the Afghan people and which has already claimed over 1 million Afghan lives.

It has supported democratic opponents of apartheid in South Africa, by funding programs in legal aid, squatter resettlement and education which seek to eliminate apartheid peacefully rather than through violence.

It has provided legal assistance to jailed Solidarity activists and support services for Poland.

In Haiti, it supports those seeking to consolidate democracy through voter education and political training programs.

The list could go on.

The National Endowment for Democracy is an important way to keep America actively engaged in spreading democratic values. It is a key complement to government-to-government programs on the one hand, and international exchange programs for individuals on the other. The Endowment focuses on the private organizations that enable individuals to join forces to promote pluralistic political systems. The programs and projects it supports can make a difference now, as well as build for the future.

But there is more at stake here than ideas. American workers have a direct and immediate interest in seeing democratic institutions flourish in the Third World. Stable democratic governments attract the investment that is essential for growth. Growth in developing countries means larger markets for American goods and services. Growing markets mean more jobs for U.S. workers. Democratic institutions also help prevent exploitation of local labor forces. This means improved conditions and higher wages for Third World workers. It also lessens the problem of foreign competitors undercutting our markets because they can get away with outrageously low wages. So we have a real interest in supporting the Endowment's activities in these areas.

We must also be realistic about the extent to which our adversaries exploit ideology for political ends. By supporting programs to strengthen democratic values and institutions around the world, we will be promoting our strategic interests as well as our ideals.

The Endowment has bipartisan support. Its track record demonstrates that its commitment to democracy is across the board, without double standards and that it is involved in practical programs. Supporting the National Endowment offers us an opportunity to make our support for democracy concrete. I urge you to join me in voting against eliminating the National Endowment for Democracy.

Mr. EAGLETON. Mr. President, I strongly oppose the Bumpers amendment.

This amendment will obliterate the fledgling National Endowment for Democracy. It is, Mr. President, an extraordinarily shortsighted amendment.

In the less than 3 short years since the birth of the National Endowment for Democracy, it has created an impressive record.

In the Philippines, the Endowment's Free Trade Union Institute provided massive assistance to rural and urban democratic unions against the combined assaults of the antidemocratic right and left; the Endowment's two party institutes sponsored a major international observer delegation which contributed to assuring respect for the Filipino people's will during the recent Presidential elections.

In Northern Ireland, the Endowment's National Democratic Institute for International Affairs, working with the Social Democratic and Labour Party of Northern Ireland, has developed a program to strengthen the SDLP by helping it create an institute for party-building and education development activities.

In Poland, the National Endowment for Democracy is providing aid to Solidarity and for a wide range of independent intellectual and cultural activities.

In Nicaragua, timely endowment assistance has enabled La Prensa, that

country's only independent newspaper, to survive.

In South Africa, the endowment is giving support to lawyers working for human rights and for the peaceful dismantling of apartheid.

In Haiti, the Endowment for Democracy has given support to an emerging free trade union movement and for the establishment of a center to promote research, civic education, and democratic cooperation for the consolidation of Haiti's democracy in the post-Duvalier era.

What better tool in public diplomacy than providing financial and moral support to proponents of freedom and democracy around the world? That is precisely what the National Endowment for Democracy does in Guatemala, Granada, Panama, Nicaragua, the Dominican Republic, Chile, Argentina, Peru, Poland, Northern Ireland, Portugal, Afghanistan, the Philippines, China, South Africa, Southern Africa, and a host of other countries around the world.

The National Endowment for Democracy embodies the U.S. commitment to democracy to leaders and future leaders in every corner of the globe. Having achieved a remarkable degree of success in making new friends for the United States and for the democratic process, we must not now eliminate the opportunity to strengthen those relationships and foster new ones among the people of the world community who are struggling to keep freedom and democracy alive.

I urge my colleagues to vote against the Bumpers amendment.

Mr. MOYNIHAN. Mr. President, never has the case for continuing funding for the National Endowment for Democracy been stronger. In the Philippines, Haiti, Northern Ireland, and elsewhere around the world, important progress is being made in fostering democracy—progress that must continue.

In each of these countries, the National Endowment for Democracy is working to fulfill the mandate given to it on November 1983, when Congress passed the enabling law for the Endowment (Public Law 97-164).

As stated in that law, the purpose of the Endowment is to—

> Encourage free and democratic institutions throughout the world • • • to encourage the establishment and growth of democratic development in a manner consistent both with the broader concerns of the United States national interests and with the specific requirements of the democratic groups in other countries.

The program, although created only 3 years ago, is not new to the American spirit. Indeed, it derives from the American spirit. The Endowment builds on a model well-established by the American labor movement.

Since its organization in 1881, the Federation of Organized Trade and Labor Unions, predecessor to the AFL-CIO, has been devoted to the enhancement of human rights and democratic liberties in other countries.

The first convention in 1881 called attention to what it considered to be the unjust imprisonment of

> Hundreds of Ireland's honest spirits • • • in consequence of their heroic attempts to ameliorate the condition of her oppressed people.

The resolution resolved to:

> Extend to these champions battling in the cause of human Liberty our hearty sympathy, and that we also extend to the oppressed of all nations struggling for liberty and right, the same encouragement and words of sympathy.

In 1918, Samuel Gompers, at the request of Woodrow Wilson, chaired the commission which founded the International Labor Organization—reflecting the interest of American workers in promoting worker's rights and democracy abroad.

In the aftermath of World War II, the American labor movement did much to promote such rights and liberties in Europe, rebuilding German trade unions and fighting to keep Communists from seizing power in France and Italy. And since that time, the labor movement has continued striving to build democracy abroad. In El Salvador, for example, three representatives of the AFL-CIO were the first Americans to have died during the last 10 years—working to strengthen free trade unions and democratic rights.

The Endowment also draws upon the experience and commitment of the chamber of commerce to promoting American principles abroad.

Moreover, the Endowment capitalizes on the strengths of our country's political parties. The Democratic Party is the oldest existing political party in the world. And together, the Democratic and Republican Parties possess vast experience in making democracy work, experience that nascent democracies abroad can draw upon in building their own institutions.

As I stated on March 29, 1985:

> If we think elections are a good and responsible thing, and that parties can be instrumental for the articulation of responsible opposition programs and oversight of sitting governments, then ought we not permit—encourage—our parties to work with parties in countries where they are not as well established?

The National Endowment for Democracy has already done much to promote such democratic principles and institutions, in a very few years and with exceedingly modest resources. Democracy takes root slowly. No democracy in existence today was created in 3 years; it took decades for the democratic system in Western Europe to evolve into what they are today.

Yet in just 3 years, the Endowment has already begun to reveal what can be done to build democracy around the world. In Latin America, programs supported by the Endowment serve as the main source of voter education and political training in the nascent democracies of Grenada, Haiti, and Guatemala. The Endowment helped fund La Prensa, the opposition newspaper in Nicaragua, and is supporting that country's embattled democratic union federations. Free trade unions in Chile, Bolivia, Colombia, and other Latin American countries also benefit from programs supported by Endowment funding.

The Endowment has been particularly active in the Philippines. The Endowment provided funding for the international group that monitored the 1986 Presidential election, and for logistical support for more than 10,000 local poll watchers. Endowment resources are also supporting programs for organizing rural cooperatives, trade union education, and health care. And the Endowment is active elsewhere in Asia, including Afghanistan, where it is assisting the Afghan resistance movement in rebuilding schools and printing textbooks.

In Africa, the Endowment is supporting lawyers working for human rights and for the peaceful dismantling of apartheid. The Endowment is also providing funds for education, squatter resettlement and democratic organizing programs.

The Endowment conducts programs in Eastern Europe as well. The Endowment has provided legal assistance to jailed Solidarity activists in Poland and support for their families. Endowment funds also support magazines promoting democracy in Hungary, Czechoslovakia, and Poland.

And in Northern Ireland, Endowment funds are being used to bolster democracy in ways that could assist the search for a just and lasting peace in that troubled land. Since January 1985, the National Democratic Institute has worked with the Social Democratic and Labor Party [SDLP] to develop a program to strengthen the party's capacity to contribute to democratic development in Northern Ireland.

Mr. President, to eliminate funding for the National Endowment for Democracy in the midst of such progress would be a grave error. Events in the Philippines, in Haiti, in Latin America, and elsewhere suggest an encouraging trend toward democracy in the world. These trends ought not be ignored. To reverse ourselves after such a short period of time will make people wonder whether we truly are committed to fostering democratic institutions in the world.

Mr. DURENBERGER. Mr. President, I rise to oppose the Bumper's amendment to transfer the National Endowment for Democracy's appropriation to the Fulbright Scholarship Program. I think this effort is well-intentioned, but it is wrong-headed. I believe that abolishing the NED would send precisely the wrong message to both our democratic friends throughout the world as well as to both our authoritarian totalitorian and adversaries. I am increasingly convinced that the efforts of the NED and its institutes for labor, business, and the political parties are beginning to show positive results in countries as diverse as Haiti, Chile, Afghanistan, Poland, and the Philippines.

Through the investment of a comparatively small amount, this Nation can potentially reap substantial dividends through the extension of the international democratic revolution. I believe that the Endowment represents an important new means by which the United States can influence opinion around the world on behalf of democracy. Ideas have taken on a special importance with the worldwide communications revolution. We must be engaged in the effort to influence and persuade others of the merits of democracy—our adversaries have financed vast programs to establish and entrench dictatorial regimes and will undoubtedly continue to do so in the future. If we and other democratic allies succeed with persuasion, we will find it less necessary to resort to force to defend basic democratic values.

There is much evidence in recent political history to support this view. Perhaps most striking is the surge of democracy in the Americas in the past 10 years. It is indeed heartening to see the development and the expansion of democracy in such diverse countries as Argentina, Haiti, Guatemala, Peru, and Uruguay. Equally, we must recognize that democracy remains fragile in many of the countries of this hemisphere due to economic and political instability. U.S. policies must reflect a greater sensitivity to the vulnerabilities of these newly democratized societies. At the same time, we can and should do more, in concert with our democratic allies in Europe and Latin America, to assist like-minded trade unionists, politicians, businessmen, youth and women's leaders, educators, human rights activists, and journalists. Support for democratic leaders struggling against dictatorships of the left and of the right strengthens this Nation's claim as the world's premier advocate of freedom and democracy.

The policy failures of the past 25 years in Vietnam, Iran, and Nicaragua teach us many lessons. One of them is the need to avoid the unpalatable choice between a military regime and a Communist-oriented insurgency. Perhaps if this Nation had done more to encourage democratic elements in those three now-hostile societies, a popular and democratic alternative might have developed to Somoza and the Sandinistas in Nicaragua, to the Shah and Khomeini in Iran, and to Thieu and the Communists in Vietnam.

One increasingly important case in point is the developing situation in Chile. The Reagan administration and many Members of Congress, including this Senator, view the struggle between Gen. Augusto Pinochet and the well-armed and well-financed guerrillas of the Communist Manuel Rodriguez Patriotic Front [FPMR] with growing concern. Unlike the crises in Vietnam, Nicaragua, and Iran, there is a democratic alternative in Chile. It is called the "National Accord for a Transition to Full Democracy" and reflects the diverse perspectives of democratic thought and action within Chile—Christian democrats, conservatives, liberals, and democratic socialists, businessmen, trade unionists, and journalists. These are the men and women within Chile who share the democratic perspective of their neighbors in Argentina, Uruguay, Venezuela, Costa Rica, and the United States. These are the groups and the individuals whom we should support.

I am pleased to report that the endowment and its institutes are working with a wide spectrum of democratic organizations in Chile in a concerted, bipartisan program that respects Chilean sensitivities about foreign intervention. For example, the endowment is providing support to three major academic institutes which reflect the major democratic political tendencies within Chile. These institutes will be responsible for developing a joint political and economic program to continue the work of the national accord. Assistance is being given for leadership training and education to the Central Democratico de Trabajadores [CDT], Chile's embattled democratic trade union federation. Other initiatives are aimed at rebuilding Chile's democratic cooperative movement, educating youth leaders in democratic values, publishing books and articles by Chilean democratic leaders, and training political leaders in party organization and development.

The Endowment is a new and relatively small organization, yet its work is meeting with success in Eastern Europe, Afghanistan, Latin America, Africa, and the Far East. I therefore strongly urge the rejection of the Bumpers' amendment.

Mr. President, I ask unanimous consent that two articles of the future of democracy, one by Morton Kondracke and the other by Jean-Francois Lisee, be printed in the RECORD.

[From the New York Times, Sept. 22, 1986]

DON'T SELL DEMOCRACY SHORT

(By Morton Kondracke)

WASHINGTON.—There will be an effort in the Senate this week to kill off the National Endowment for Democracy, the private agency that administers this country's modest efforts to promote democratic movements around the world. This should not be allowed to happen.

The effort comes at a time when, according to Central Intelligence Agency estimates, the Soviet Union spends between $60 million and $80 million a year on 13 worldwide front groups that promote its ideological line and $50 million more covertly aiding Communist parties around the world. This is all separate from the activities of the K.G.B., Soviet satellite governments and all the official organs of East bloc propaganda, diplomacy and cultural exchange.

The most active nation on our side is West Germany, which gives $210 million a year to its four political party foundations, which help parties around the world that share their Christian Democrat, Socialist, conservative or liberal world view. The foundations also help trade unions, newspapers, voter education projects and other nonpartisan democratic movements, some of them under attack from totalitarian governments of the left and right.

Shouldn't we do the same? From the 1940's to the early 60's we did so covertly through the C.I.A., causing great embarrassment to recipients when the funding was exposed in the post-Vietnam era. The United States resumed help for democratic movements only three years ago, but even now we devote only $15 million a year to the cause.

With these funds, the National Endowment for Democracy is undertaking fascinating experiments in democracy-building and doing so openly. In Asia, N.E.D. is helping the anti-Soviet resistance in Afghanistan re-establish schools, print textbooks and train people to use minicameras to give the world a video record of the war. It funded the international group that monitored the Philippine elections. It finances a Chinese-language newspaper that provides a forum on issues of democracy and economics for mainland Chinese and Taiwanese students in the United States and Canada. And it gives training in democratic theory and practice in South Korea, Turkey and India.

In Latin America, N.E.D. has helped fund La Prensa, Nicaragua's anti-Sandinista newspaper, and serves as the main source of voter education and political training in the fledging democracies of Haiti, Guatemala and Grenada. It has 15 programs in Chile, helping various groups pave the way back toward democracy.

In Africa, the National Endowment has approved eight new legal aid, squatter resettlement, education and democratic organizing programs in South Africa, and has union, women's and youth projects going in Zimbabwe, Senegal, Gambia, Botswana and French-speaking nations.

In Eastern Europe, N.E.D. has provided legal assistance to jailed Solidarity activists in Poland and support services for their families. It helps publish magazines promoting democracy in Poland, Czechoslovakia and Hungary, and is preparing videotaped discussions on democracy for distribution in the Soviet Union.

Out of some 260 projects over the past three years, three have become controversial: aid to a pro-military political party in

Panama, funding of a conservative student youth group in France and backing for a United States group that lobbied for aid to the contras in Nicaragua. On inspection, only the Panamanian intervention seems to have been truly unacceptable, and that led to tighter internal controls.

Some liberals say that the N.E.D. is too Reaganite (for aiding critics of the Sandinistas). Some conservatives think it's mischievous for backing democrats in South Africa, South Korea and Chile. Others believe we have no business getting involved in any country's internal affairs.

This week, Senator Dale Bumpers, Democrat of Arkansas, will move to transfer the National Endowment's appropriation to the Fulbright scholarship program in the belief that having foreigners visit our country is a better way to foster democracy than sending money abroad. But the $15 million will add only 10 percent more to the Fulbright budget and will wipe out the Endowment. We will then have no agency helping struggling democrats around the world—unless, of course, we want to bring back the C.I.A.

[From the New York Times, Sept. 26, 1986]

REAGAN'S HISTORIC OPPORTUNITY

(By Jean-Francois Lisée)

WASHINGTON.—President Reagan is worried about his place in history. He has one eye on Geneva and another on Managua as places where he might leave his mark, but he and his advisers are missing an angle—an important opportunity to propel his reputation into the next millennium.

The angle sweeps from Santiago, Chile, to the capitals of Western Europe. It is an opening that could give the West a dramatic ideological edge and do more to hurt Communism than a million contras or other "freedom fighters."

Part of the new opportunity lies in Western Europe. The rupture, in early 1984, of the French "Union de la Gauche" ended a century of cooperation between the democratic left and its totalitarian cousins—in this case, between the socialists and the Communist Party. Similar changes have taken place on the left in Spain and Portugal and may soon be repeated in England and Italy. This means that a large and active segment of the Western European "democratic left" simply will no longer compromise its democratic beliefs. It is also increasingly interested in finding new allies on the international scene.

Europeans do not, however, see much that recommends itself in President Reagan's foreign policies. True, America played a role in ousting dictators from the Philippines and Haiti, but Washington's conduct in both cases looked like so much damage control. From Europe, Grenada looked like a standard imperialist crackdown, and the promotion of democracy in El Salvador still seems tactically motivated. To many Europeans, it seems that Washington is still pursuing the same old policy toward the third world, no matter what the local dictator looks like.

Mr. Reagan has been sitting on this fence for some time now, apparently unaware that the makings of a political realignment lie waiting in Europe. He ought to see that Europeans are ripe for a signal from Washington.

Gen. Augusto Pinochet is the most brutal dictator the Americas have had in a long time. Washington surely had a hand in helping install him in 1973—and that, together with the general's 13 years of repressive rule, has given Moscow one of its best propaganda tools. The State Department is well aware of this. A former Assistant Secretary of State for Inter-American Affairs, Langhorne A. Motley, said of his meeting with General Pinochet in February 1985: "I told him that if he were writing the script for the Communists, he couldn't write it better than he was doing." The situation in Chile today offers an opportunity to take that script away from the Communists.

How? Options are few. Not only is the general willing to extend his control of the country—personally or by proxy—to the turn of the century, but many observers say that he would be able to do so, thanks to a divided, if vocal, opposition. The Reagan Administration is increasingly annoyed by the dictator's brutality, and it has dug into its bag of pressure tactics. But the Chilean economy has not proved quite weak enough, or the army quite divided enough, and it is unlikely the United States will get the general to leave voluntarily.

Yet surely there are other possibilities. The United States has been propping up General Pinochet for 13 years. Why not now remove some of those props? The Reagan Administration could make it known that it would not oppose his replacement by a pro-American military junta. Such a transitional government would be expected to bar local Marxist parties from running in the first election, giving the democratic right and left time to gain precious ground.

With such steps, the United States would clearly implicate itself in the removal of another dictator in its own backyard. This would also put other Reagan initiatives in a new light: Grenada, the Philippines, Haiti and El Salvador would appear to be so many dominoes falling on the way to Santiago. And it would lay the foundations for a new alliance between Western European and American opinion.

The surge of Marxism—and its attraction for democrats, particularly in Europe—has been the major ideological event of this century. President Reagan has the opportunity to bring this chapter to an end and open a new one, while insuring that his name gets good play in the history books.

Mr. HATFIELD. Mr. President, I yield 1½ minutes to the Senator from Utah.

Mr. HATCH. Mr. President, year after year with the hundreds of programs that work for the National Endowment for Democracy we have to fight this battle every year.

Let me mention one program. Senator RUDMAN is right. He mentioned a number of programs. In South Africa the Free Trade Movement Program has benefited; the enterprise system has benefited in Afghanistan; in Poland Solidarity was aided indirectly. I could go on and on.

Let me mention one program. Because of this National Endowment for Democracy, Armando Valadares, 22 years a political prisoner in Cuba, wrote a book, "Against All Hope." It is transforming the whole world's understanding of the difference between true effective democracy and what is happening in Cuba because of the oppressions of political prisoners down in Cuba.

The whole world has come to the attention of Armando Valadares' book, and it is one of the smaller projects.

It is not just La Prensa or the free press throughout the world. It is all kinds of programs that are working.

We spend $18 million to counteract $3 billion in disinformation that the Russians are spreading over the world.

With $18 million we are kicking the living daylights out of them all over the world and it is time this body starts to realize that.

□ 1500

The PRESIDING OFFICER. The Senator's time has expired.

Mr. BUMPERS. Mr. President, has all time for the opponents expired?

The PRESIDING OFFICER. Yes.

The Senator from Arkansas has 30 seconds.

Mr. BUMPERS. Mr. President, I want to point out that there are a number of existing agencies that can support the few worthwhile projects financed by NED. And we can certainly do without a bureaucracy that funds an organization that tried to prop up the Marcos regime.

Do you know how they divided that money between those four organizations? They sit around a table and decide "You take $5 million, you get $3 million." They decide for themselves.

I wish I had time to offer a backup amendment. It would be to throw this $15 million off the top of the Washington Monument. We could at least draw a crowd of poor people and somebody would get some benefit from it.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. HATFIELD. Mr. President, I move to table the amendment and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Oregon [Mr. HATFIELD] to table the amendment of the Senator from Arkansas [Mr. BUMPERS]. The yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Utah [Mr. GARN] and the Senator from Maryland [Mr. MATHIAS] are necessarily absent.

The PRESIDING OFFICER (Mr. TRIBLE). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 79, nays 19, as follows:

[Rollcall Vote No. 327 Leg.]

YEAS—79

Abdnor	Chiles	Dodd
Andrews	Cochran	Dole
Armstrong	Cohen	Domenici
Bentsen	Cranston	Durenberger
Biden	D'Amato	Eagleton
Bingaman	Danforth	Evans
Boschwitz	DeConcini	Ford
Bradley	Denton	Glenn
Chafee	Dixon	Goldwater

Gore	Leahy	Roth
Gorton	Levin	Rudman
Grassley	Long	Sarbanes
Harkin	Lugar	Sasser
Hatch	Matsunaga	Simon
Hatfield	McClure	Simpson
Hawkins	McConnell	Specter
Hecht	Metzenbaum	Stafford
Heinz	Mitchell	Stennis
Humphrey	Moynihan	Stevens
Inouye	Murkowski	Symms
Johnston	Nunn	Thurmond
Kassebaum	Packwood	Trible
Kasten	Pell	Wallop
Kennedy	Pressler	Warner
Kerry	Quayle	Wilson
Lautenberg	Riegle	
Laxalt	Rockefeller	

NAYS—19

Baucus	Gramm	Nickles
Boren	Hart	Proxmire
Broyhill	Heflin	Pryor
Bumpers	Helms	Weicker
Burdick	Hollings	Zorinsky
Byrd	Mattingly	
Exon	Melcher	

NOT VOTING—2

Garn	Mathias

So the motion to lay on the table amendment No. 3195 was agreed to.

□ 1520

Mr. DOLE. Mr. President, I move to reconsider the vote by which the motion to lay on the table was agreed to.

Mr. JOHNSTON. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the pending motion to reconsider the tabling motion on the Melcher amendment be temporarily laid aside in order that I may offer the amendment which I now send to the desk on behalf of Senator PRESSLER.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 3196

(Purpose: To provide that certain telephones shall be hearing aid compatible)

Mr. JOHNSTON. Mr. President, I send the amendment to the desk on behalf of Mr. PRESSLER and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Louisiana [Mr. JOHNSTON], for Mr. PRESSLER, proposes an amendment numbered 3196.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in the joint resolution, insert the following new section:

SEC. . (a) Subject to the provisions of subsection (b), all telephones sold, rented, or distributed by any other means in the United States after July 1, 1987, shall be hearing aid compatible, as defined in regulations promulgated by the Federal Communications Commission.

(b) The provisions of subsection (a) shall not apply to any telephone—

(1) that is manufactured before July 1, 1987; or

(2) which is not required to be registered under 47 C.F.R. 68.

HEARING-AID COMPATIBLE TELEPHONES

Mr. PRESSLER. Mr. President, I rise today on behalf of myself and Senators MATHIAS, MELCHER, HAWKINS, GORE, HATCH, MITCHELL, INOUYE, HECHT, SIMON, and HEINZ to urge passage of an amendment requiring that all new telephones manufactured after July 1, 1987, and which are sold, rented, or otherwise distributed in the United States shall be hearing-aid compatible. This important measure would afford hearing impaired individuals the same access to telephone communications as those who do not have any hearing loss. The amendment is a scaled down version of S. 402, a bill I introduced on behalf of myself and 28 cosponsors earlier this Congress. The key difference between this amendment and S. 402 is that this amendment does not require local telephone companies to provide specialized equipment for hearing impaired customers.

Passage of this amendment will greatly benefit the more than 2 million hearing aid users who can use only hearing-aid compatible telephones. Many of these people are members of our elderly population.

As the third ranking member of the Senate Special Committee on Aging, I am very familiar with the problems of the elderly. Hearing impairment has been identified as one of the most serious of those problems. A recent report by the Office of Technology Assessment, "Hearing Impairment and Elderly People," indicated that "the telephone plays an important role in maintaining the safety, independence, and quality of life of elderly people." The report goes on to state that hearing-aid compatible telephones can allow many hearing impaired elderly people to use the telephone, and "Federal legislation and regulations that increase the availability of these technologies would help many elderly people." Any step that the Senate can take to improve the quality of life of the elderly or other hearing impaired people is a step worthy of careful consideration.

Several years ago we began to move toward equal telephone access for the hearing impaired with passage of Public Law 97-410, the Telecommunications for the Disabled Act. This legislation required that the Federal Communications Commission [FCC] promulgate rules providing that all telephones installed in essential locations be hearing-aid compatible. Many people think that this step was adequate to provide the hearing impaired with equal access to telephone communication.

Unfortunately, the actual result of these rules was creation of a second class of citizens; namely, those persons who are able to use only essential telephones. I am sure my colleagues would agree that we did not intend to establish such restrictions against the hearing impaired. Nevertheless, those restrictions do exist. I, for one, cannot think of a single reason why one segment of our society—through no fault or choice of its own—should be able to use only specific telephones.

Mr. President, allow me to take a moment to illustrate the effect of the FCC regulations. One provision of those rules requires that when an employer installs a new telephone at the work station of a hearing impaired employee, that telephone must be hearing-aid compatible if that employee will use it in the course of work duties. At face value, that sounds like a positive development. But if the only compatible phone is at that employee's desk, how could he take an important call in another area of the office? How could that employee answer a page elsewhere in the office? A hearing impaired employee could not do either under this rule. With adoption of my amendment, there will be a day when all employees, regardless of their ability to hear, would be treated equally and would have equal access to the telephone.

Another type of workplace problem occurs when the employee does not have one specific work station. Take the case of Dr. F.E. Logan, an emergency room physician at a hospital in Carthage, MO. The hospital Dr. Logan worked at changed its telephone system to one that was not hearing-aid compatible, making it impossible for Dr. Logan to communicate with the various departments in the hospital. He was forced to retire from that hospital. If the telephone system that was installed in that hospital were hearing-aid compatible, Dr. Logan would still be working there today. With adoption of my amendment the Dr. Logans of this country would be able to keep their jobs.

The purpose of my amendment is very clear. After July 1, 1987, all new telephones distributed in this country would be hearing-aid compatible. This would not require the removal of any existing telephones. The amendment imposes no new budgetary burdens on the Federal Government. And it would not impose additional costs on consumers. The Undersecretary for International Trade has indicated that hearing-aid compatible telephones are "not necessarily any more expensive to produce, or sell at retail, than sets which are not hearing-aid compatible." Let me stress that point. This amendment will not increase either the cost of producing telephones or the ultimate price paid by the con-

sumer. Several of the largest manufacturers such as AT&T and ITT—who already manufacture hearing-aid compatible telephones—indicate that they do not charge a premium for hearing-aid compatible telephones.

Obviously, the problem does not lie with these companies. Almost all of AT&T's telephones are already hearing-aid compatible. Unfortunately, many of the other imported telephones are not compatible. The purpose of this amendment is to ensure that these telephones are hearing aid compatible in the future. It is prospective only. This amendment will bring those imports into line with the standard already established by these domestic firms.

Mr. President, I would like to indicate that the amendment now before us is the end product of a great deal of modification and compromise. As written, the amendment applies to wireline and cordless telephones only. It does not apply to land mobile or cellular phones. Similarly, we addressed the concern of the disposition of stocks which will be on the shelf or in the warehouse on July 1, 1987. The amendment has been fashioned in such a way that only those new telephones manufactured after that date need to be compatible. There will be no need to retrofit any existing telephone. These modifications have addressed the concerns of a number of firms and groups. For example, both the Motorola Corp. and Southwestern Bell have indicated that they do not have a problem with this measure. I think we have addressed the concerns of those who raised legitimate concerns about the language I distributed along with a dear colleague letter which I circulated on Monday of this week.

Finally, this amendment will bring an end to the discrimination that continues to exist for the hearing impaired. With passage of this measure we will take the crucial step toward ensuring that in the future the hearing impaired will enjoy the freedom of communication that the rest of our society already enjoys. I urge my colleagues to support this important amendment. It has broad support among groups which represent the hearing impaired and the elderly. Let me just read the following list of organizations which support hearing-aid compatible telephones:

American Association of Retired Persons.
Alexander Graham Bell Association for the Deaf.
National Center for Law and the Deaf.
National Association for Hearing and Speech Action.
National Association of Regulatory Utility Commissioners.
American Academy of Otolaryngology, Head and Neck Surgery.
Helen Bee Aural School.
Massachusetts Office of Handicapped Affairs.
Institute of Logopedics.
Virginia Department for the Deaf and Hearing Impaired.
Berks County Association for the Hearing Impaired.
Boston Guild for the Hearing Impaired.
Palmetto Industries.
Public Advocate of Maine.
Hearing Impaired Services of Northwestern Ohio.
Pike's Peak Center on Deafness.
Organizaton for the Use of the Telephone.
American Society for Deaf Children.
Consumers' Organization for the Hearing Impaired.
Commonwealth of Massachusetts Office of Handicapped Affairs.
Gallaudet College.
Hearing Impaired Services of Northwestern Ohio.
Maryland Office of People's Counsel.
National Association for the Deaf.
National Hearing Aid Society.
Northwestern University Program in Audiology and Hearing Impairment.
Suzanne Pathy Speak Up Institute.
United Church of Christ.
Voters' Interest League.
Washington Area Group for the Hard of Hearing.

Mr. President, let me conclude by once again urging my colleagues to support this amendment. Our hearing impaired citizens deserve equality.

Mr. DOLE. Mr. President, I would like to ask the distinguished Senator from South Dakota a question about the amendment that he has just offered to the continuing resolution. Clearly there is no Member in this body more concerned about the participation of persons with disabilities in all facets of American life than this Member. There is, however, a concern expressed by some that by requiring hearing-aid compatibility of all new telephones manufactured after July 1, 1987, and sold, rented, or distributed in the United States we will be adding on burdensome costs to all consumers.

Mr. PRESSLER. Mr. President, in response to the majority leader's question, let me say that the Under Secretary of Commerce for International Affairs indicates that hearing-aid compatible phones are not necessarily more expensive to produce or sell than noncompatible phones. Further, several of our largest telephone manufacturers indicate that they charge the same price for their compatible and noncompatible telephones. I must also add that I find it puzzling that in the many years that this issue has been discussed in and around Congress, the opponents of universal compatibility have never produced information which indicates that compatible phones are any more expensive to produce than noncompatible models.

Mr. DOLE. I thank my colleague for this information and applaud his efforts to improve the quality of life for those individuals with special sensory needs. This provision will ensure that an additional 2 million members of our society will be able to enjoy the freedom of telephone communication which all of us take so much for granted. They will be able to work, travel, and move throughout this great country of ours knowing that telephone communication is as available to them as it is to their able-bodied brothers. I am pleased to add my support for this important measure.

Mr. PRESSLER. I thank my colleague for his support and commend him on his eloquent statement in support of my amendment.

Mr. SIMON. I rise to support the amendment offered by my colleague from South Dakota and applaud his constant effort to bring quality telephone service to the Nation's hearing impaired.

Over my years in Congress, through my work on legislation to aid our handicapped, I have come to understand that while we have passed a number of laws guaranteeing the rights of our handicapped citizens, we often overlook more practical problems that could be addressed through Federal policy. The issue of telephone compatibility is one of those more parochial issues. While the hearing impaired do have access to many public telephones, there are those which are not yet equipped with necessary devices. This amendment would ensure that all new phones would be accessible for the hearing impaired.

As one who has worked with the hearing impaired, and as one who has recently begun wearing a hearing aid myself, I thank my colleague for his persistence on this issue and hope the amendment will be adopted.

I would like to ask my colleague from South Dakota to clarify exactly what equipment will be covered by this amendment—existing equipment, new equipment produced after a certain date?

Mr. PRESSLER. I thank the Senator from Illinois for his kind words of support. In answer to my colleague's question, let me indicate that this amendment applies only to those new telephones manufactured after July 1, 1987 which are sold, rented, or distributed in the United States. This would not apply to equipment in service prior to July 1, 1987, or to equipment that is pulled out of service and refurbished or reconditioned, provided that such equipment was manufactured prior to July 1, 1987. In addition, the amendment would only apply to equipment which must be registered under 47 C.F.R. 68. At present, wireline telephones and cordless phones must be registered under these regulations. Cellular telephones and land mobile phones would not be the subject to the requirements of this amendment.

Mr. SIMON. I thank my colleague for clarifying this matter.

Mr. MATHIAS. Mr. President, in 1876 Alexander Graham Bell patented

the telephone, a byproduct of his search for a device to help hearing impaired people. In 1982, with the cooperation of the senior Senator from Arizona, Congress enacted the Telecommunications for the Disabled Act, also to help hearing impaired people.

In compliance with the Disabled Act, the Federal Communications Commission has categorized certain telephones as "essential," and these must be hearing-aid compatible. Essential telephones include coin-operated telephones and telephones provided for emergency use, such as those in elevators, along highways, tunnels, and bridges. The FCC also requires that a portion of new telephones installed in hotel and motel rooms, hospitals and nursing homes, and public parts of offices and businesses be hearing-aid compatible.

Today all new domestically manufactured telephones are hearing-aid compatible. All operating Western Electric/AT&T/Bell System telephones are compatible; all telephones on Capitol Hill are compatible. About half of the imports are compatible. According to both the industry and the Commerce Department, compatible telephones are not more expensive to produce or in retail price than telephones which are not compatible. The General Services Administration, for example, procures only compatible telephones.

The advocates of this amendment don't find fault with the Disabled Act or with the FCC's enforcement and application of the act. Both have done a lot to help people who rely on hearing aids. They have given hearing aid users a taste of what it is like to use the telephone. Now we want to expand their access to cover all new telephones.

If the FCC is studying the act to gauge its effectiveness, that's just fine. It is effective, but it covers only telephones categorized as "essential." Most of us could not carry on in our homes, at our jobs, or anywhere else for as much as 1 day without using a telephone. Using the telephone has become an indispensable part of modern life. It is essential to find a job and keep a job; it is essential to maintain normal contact with other people; it is essential for mobility.

Adoption of this amendment would make the telephone an instrument of opportunity for hearing impaired Americans instead of a handicap to effective communication and participation in everyday life.

Mr. JOHNSTON. Mr. President, this is an amendment which was not on the list. It has been worked out and agreed to on both sides of the aisle, particularly Senator HOLLINGS and Senator METZENBAUM. It provides that the telephones be hearing-aid compatible. With that explanation, I yield to the Senator from Oregon.

Mr. HATFIELD. We will accept the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3196) was agreed to.

Mr. JOHNSTON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HATFIELD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

GOLDEN GAVEL AWARDED TO SENATOR DENTON

Mr. DOLE. Mr. President, I wanted to indicate that as of 3:11 p.m. today, Friday, October 3, 1986, the distinguished occupant of the chair, Senator JEREMIAH DENTON of Alabama, has now presided over the Senate for 100 hours and he will be awarded the Golden Gavel Award for his time and dedication in presiding over the Senate.

I extend my congratulations, as I know all Members do, to the distinguished Senator from Alabama.

[Applause.]

CONTINUING APPROPRIATIONS, FISCAL YEAR 1987

The Senate continued with the consideration of the joint resolution.

Mr. JOHNSTON. Mr. President, I ask unanimous consent to temporarily lay aside the pending motion to reconsider the Melcher amendment in order that I may offer an amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 3197

Mr. JOHNSTON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Louisiana [Mr. JOHNSTON] proposes an amendment numbered 3197.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place, in the joint resolution insert the following:

SEC. — (a). Notwithstanding any other provision of law, the Administrator of General Services is authorized during fiscal year 1987 to accept periodic reimbursements from the Senate for the cost of any equipment purchased for the Senate with funds from the General Supply Fund established under section 109 of the Federal Property and Administrative Services Act of 1949. The amount of each such periodic reimbursement shall be computed by amortizing the total cost of each item of equipment over the useful life of the equipment, as determined by the Administrator, in consultation with the Sergeant at Arms of the Senate.

(b) Subsection (a) applies to reimbursements to the General Supply Fund for any equipment purchased for the Senate before, on, or after the date of enactment of this section.

Mr. JOHNSTON. Mr. President, this amendment has been cleared on both sides. It is offered on behalf of the Sergeant at Arms to continue for 1 year the established practice of incrementally reimbursing the General Services Administration for furniture and other equipment purchases they have made and will be making for Senate offices.

Mr. HATFIELD. Mr. President, we are offering this amendment as a committee amendment on behalf of the Sergeant at Arms to continue for 1 year the established practice of incrementally reimbursing the General Services Administration for furniture and other equipment purchases they have made and will be making for Senate offices. It is necessary because of a General Accounting Office opinion which would otherwise require a conforming change in our method of payment as of October 1, 1986.

For essentially the past 35 years, our arrangement with GSA has been to request the provision of whatever furniture items are needed and to pay for them on a "life of the equipment" amortization basis. Now, however, GAO has determined that that is inconsistent with the underlying statute and that not only should our reimbursement for such purchases be made in full within 45 days but also that we should work out a lump-sum settlement of our account for furniture already in inventory.

Confusion over the implementation of this policy redirection, including the question of who would have responsibility for maintenance and who would have ownership and when, has persisted right up to the most recent GAO clarifying letter of September 17, 1986. As a result, the Sergeant at Arms has not requested—and the Appropriations Committee has not yet considered—the additional funding it would take to meet the Senate's equipment needs under the new system. This amendment would give us time to address the matter and decide on a response to the changeover proposal.

Mr. President, I believe this amendment can be characterized as internal administrative in nature and is acceptable on both sides. Accordingly, I move its adoption.

Mr. METZENBAUM. Mr. President, is that one of the amendments that was cleared last night or is this something new which has developed?

Mr. JOHNSTON. It is something new. It is a request by the Sergeant at Arms.

Mr. METZENBAUM. It is a Sergeant at Arms request?

Mr. JOHNSTON. Yes; it involves the purchase of furniture. They wish to be able to reimburse the General Services Administration.

Mr. METZENBAUM. I just want to be certain that we are not letting down the bars for a host of new amendments.

Mr. JOHNSTON. No; this is purely a technical in-house arrangement.

Mr. METZENBAUM. I have no objection.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3197) was agreed to.

Mr. JOHNSTON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HATFIELD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that I may proceed for 1 minute, temporarily laying aside the pending matter.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JOHNSTON. Mr. President, we are waiting for the Kennedy amendment which I believe we are going to be able to clear with a second-degree amendment by Senator HELMS, which we will also clear. I will announce that we are ready for those at this time, if Senator KENNEDY is within sound of my voice.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. Does the Senator yield?

Mr. DOMENICI. Will the Senator yield 30 seconds?

Mr. JOHNSTON. Mr. President, if I have time left from my 1 minute, I yield 30 seconds.

Mr. DOMENICI. I did not know the Senator was that limited. I will get some other time.

AMENDMENT NO. 3198

(Purpose: To authorize the Secretary of Health and Human Services to make grants for demonstration projects for networks for services relating to acquired immune deficiency syndrome, and for other purposes)

Mr. JOHNSTON. Mr. President, I now have in hand the Kennedy amendment. I ask unanimous consent that the pending motion to reconsider the motion to table the Melcher amendment be temporarily laid aside in order that I may offer, on behalf of Senator KENNEDY, the amendment which I send to the desk.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The bill clerk read as follows:

The Senator from Louisiana [Mr. JOHNSTON], for Mr. KENNEDY, proposes an amendment numbered 3198.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the joint resolution, add the following new title:

TITLE II—ACQUIRED IMMUNE DEFICIENCY SYNDROME

SEC. 201. This title may be cited as the "Acquired Immune Deficiency Syndrome Service Coordination Act of 1986".

SEC. 202. The Congress finds that:

(1) Acquired immune deficiency syndrome is a catastrophic disease and public health problem with consequences which pose significant challenges to American society. It has been declared the Nation's "number one public health priority".

(2) As of June 1986, over 21,500 cases of acquired immune deficiency syndrome have been reported. According to estimates by the Public Health Service, by 1991 there may be 196,000 cases of acquired immune deficiency syndrome and 125,000 deaths from acquired immune deficiency syndrome. The number of Americans who are infected with the AIDS virus is currently estimated to be between 1,000,000 and 1,500,000 individuals.

(3) The Public Health Service estimates that by 1991, the direct costs to provide health care for individuals with acquired immune deficiency syndrome will be between $8,000,000,000 and $16,000,000,000. In 1986, it is estimated the United States will spend between $870,000,000 and $1,300,000,000 for health care for individuals with acquired immune deficiency syndrome.

(4) The costs of caring for individuals with acquired immune deficiency syndrome are disproportionately paid for in certain urban centers. As of June 1986, there are 23 cities in which there are at least 100 cases of acquired immune deficiency syndrome and 1,000 cases of acquired immune deficiency syndrome related complex. Careful coordination of health services has significantly reduced the cost of providing health care in some urban centers.

SEC. 203. Title III of the Public Health Service Act is amended by adding at the end thereof the following new part:

"PART J—ACQUIRED IMMUNE DEFICIENCY SYNDROME

"DEMONSTRATION PROJECTS FOR ACQUIRED IMMUNE DEFICIENCY SYNDROME

"SEC. 391. (a) The Secretary may make grants to public and nonprofit private entities for demonstration projects for the development, establishment, or expansion in service areas of coordinating networks for the provision of comprehensive and cost-effective health and support systems for eligible individuals. Services to be provided through each such network shall include—

"(1) comprehensive ambulatory care services specific to the diagnosis and treatment of acquired immune deficiency syndrome;

"(2) home health care services, hospice services, and respite care services;

"(3) counseling and mental health services;

"(4) case management services; and

"(5) education for health personnel concerning acquired immune deficiency syndrome and concerning infection with the AIDS virus.

"(b) A grant made under this section shall not be used for—

"(1) the construction or major renovation of facilities;

"(2) the payment or reduction of deficits of an entity which resulted from obligations which were incurred by the entity prior to the date on which the entity receives payment under a grant under this section;

"(3) payment for items and services for which payment may be made under title XVIII of the Social Security Act or under a State plan approved under title XIX of such Act; or

"(4) payment for inpatient hospital services.

"(c) No grant may be made under this section for a demonstration project unless an application therefor is submitted to the Secretary in such form and at such time as the Secretary may prescribe. Each such application shall contain—

"(1) information demonstrating—

"(A) that existing resources in the service area to be served by the demonstration project are insufficient to meet the needs of such service area for care and treatment of eligible individuals; and

"(B) that the entity applying for the grant has a successful record of managing projects which provide a variety of health services;

"(2) assurances that appropriate local health care providers and voluntary organizations have been consulted in development of the application for the grant;

"(3) evidence of coordination with, and support for the application for such grant by, local public health authorities;

"(4) assurances that the network to be supported by the grant will have appropriate relationships with an academic health center;

"(5) assurances that such network will make every reasonable effort to collect appropriate reimbursement for health services provided by or through such network to persons who are entitled to insurance benefits under title XVIII of the Social Security Act, to medical assistance under a State plan approved under title XIX of such Act, or to assistance for medical expenses under any other public assistance program or private health insurance program;

"(6) assurances that Federal funds made available under this section for any period will be used to supplement and increase the level of State, local, and other non-Federal funds that would in the absence of such Federal funds be made available for the services for which funds are provided under this section and will in no event supplant such State, local, and other non-Federal funds;

"(7) a description of the manner in which the entity applying for a grant under this section will evaluate the services and activities provided by or through the network to be developed, established, or expanded with such grant; and

"(8) such other information as the Secretary may prescribe.

"(d) In making grants under this section, the Secretary shall give special consideration to applicants from service areas with current or projected high incidences of eligible individuals, including service areas with current or projected high incidences of eligible individuals who are children or who are intravenous drug abusers.

"(e) The Secretary may not make a grant under this section in any fiscal year to any

entity which receives or has received a grant under section 301 of this Act pursuant to the provisions of Public Law 99-178 for a project demonstrating the delivery of health care services to victims of acquired immune deficiency syndrome.

"(f) No grant under this section for any fiscal year may exceed $1,000,000.

"(g) For purposes of this section—

"(1) the term 'eligible individual' means any individual who has acquired immune deficiency syndrome or any individual who is infected with the AIDS virus;

"(2) the term 'nonprofit private entity' means an organization which is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1954 (other than a private foundation as defined in section 509(a) of such Code); and

"(3) the term 'service area' means a metropolitan area which has a significant incidence of acquired immune deficiency syndrome, as determined by the Secretary.

(h) To carry out this section, there are authorized to be appropriated $40,000,000 for fiscal year 1988. Amounts appropriated under this section shall remain available for obligation or expenditure until September 30, 1989.".

SEC. 204. The Secretary of Health and Human Services shall conduct, or shall provide for the conduct of, a survey to determine—

(1) the total number of children in the United States with acquired immune deficiency syndrome who have been abandoned by their parents and are living in hospital environments;

(2) the total number of children in the United States with acquired immune deficiency syndrome who have been placed in foster care;

(3) the problems encountered by social service agencies in placing children with acquired immune deficiency syndrome in foster care; and

(4) recommendations for improving the care of children with acquired immune deficiency syndrome who lack ongoing parental involvement and support.

Mr. HATCH. Mr. President, I rise in support of this amendment. This legislation was introduced on April 21, 1986, by my friend and colleague from Massachusetts [Senator KENNEDY], after the Committee on Labor and Human Resources held a hearing on "AIDS: Oversight of an Epidemic."

After the bill was introduced, the Senator from Massachusetts [Senator KENNEDY], the Senator from Indiana [Senator QUAYLE] and I worked together to revise the original bill. We bring to the Senate an amended piece of legislation which we believe has strong bipartisan support and will address some of the problems the Nation must face related to the AIDS epidemic. As a measure of its bipartisan support, the Committee unanimously moved to favorably report this legislation on June 25, 1986.

Briefly, this amendment provides seed money to facilitate development of innovative methods for delivering high quality, cost-effective health care to individuals with AIDS and to encourage dissemination of up-to-date information about AIDS to health care personnel.

It is important to recognize what this amendment is not. It is not an entitlement or a new categorical grant program. Rather, it is a one time expenditure to encourage and nurture local solutions to the AIDS problem.

This legislation encourages those population centers with a growing number of individuals infected with the AIDS virus to establish coordinating networks of comprehensive health services which will provide, in a humane, high-quality, and cost-effective manner, the full range of services required by individuals with AIDS. While most of the demonstration projects will go to regions where AIDS is prevalent, an appropriate number of grants will go to areas of lower AIDS incidence.

This legislation encourages the development of outpatient services for individuals infected with the AIDS virus instead of relying extensively on more expensive inpatient hospital services.

Last, this legislation ensures the provision of current information for health personnel involved in the care of individuals with AIDS.

In conclusion, Mr. President, I urge my colleagues to support this legislation. This is the right bill at the right time. By 1991, the Public Health Service estimates that 196,000 cases of AIDS will have developed in our country. AIDS coordinating centers authorized by this legislation will be in place to handle the expected flood of cases. These centers will help prevent spread of this disease and insure appropriate and affordable care for persons with AIDS.

Mr. KENNEDY. Mr. President, I would like to introduce an amendment. Mr. President, since 1981 over 25,000 cases of AIDS have been reported to the Centers for Disease Control. For every known case of AIDS there are between 50 and 100 people thought to be infected with the AIDS virus. This means that there are currently between 1 and 2 million Americans infected with the virus, many of whom will develop the disease in the near future.

Mr. President, the Public Health Service recently announced its 5 year projections for the AIDS problem. They revealed some staggering statistics. By the end of 1991, a cumulative total of 270,000 AIDS cases will have been diagnosed and approximately 5 million Americans will have been infected with the disease. For 1986 the annual direct costs of providing health care to individuals afflicted with AIDS is projected to be near $1.3 billion. By 1991, the costs may be more than 10 times as high, $16 billion.

The economic burden of caring for individuals with AIDS is currently borne and will continue to be borne in the future disproportionately by certain urban centers. There are currently 23 cities with more than 100 cases of AIDS. Since the ratio of identified cases to infected individuals is at least 50 to 1, this means that each of these 23 cities has at least 5,000 people infected with the AIDS virus. I would like to read the names of the cities with over 100 cases of AIDS. They are New York, San Francisco, Los Angeles, Washington, DC, Miami, Houston, Newark, Chicago, Philadelphia, Dallas, Boston, Atlanta, Jersey City, NJ, Fort Lauderdale, San Diego, Seattle, New Orleans, West Palm Beach, Anaheim, Baltimore, Denver, San Juan, PR. Mr. President, until a cure or vaccine for AIDS becomes available, it will be necessary to foster development of high quality, cost-effective means of caring for large numbers of individuals.

This amendment aims to facilitate development of methods for delivering high quality, cost-effective health care to individuals with AIDS and to encourage the dissemination of information about AIDS to health care providers. This amendment would establish a demonstration program of networks of comprehensive services for patients with AIDS in populations centers which have a high or rapidly rising incidence of this disease. Each of these networks would include: comprehensive outpatient services specific to the diagnosis and treatment of AIDS, home health care services, hospice services and respite care services, counseling and mental health and psychosocial support services, case management services, and education for health personnel concerning AIDS and infection with the AIDS virus. These networks will provide cost-effective services to AIDS patients by encouraging outpatient treatment for individuals infected with the AIDS virus wherever possible instead of relying on more expensive inpatient hospital services.

Mr. President, in a hearing before our committee on AIDS, all of us who were present were very moved by testimony we heard about children with AIDS who have been abandoned by their parents. Accordingly, where appropriate these networks will provide special services for children with AIDS. Furthermore, this legislation directs the Centers for Disease Control to conduct a study of these perplexing problems of children with AIDS who have been abandoned and to make recommendations about how to handle them.

Mr. President, this bill has received the unanimous, bipartisan support from my colleagues on the Labor and Human Resources Committee from which it was reported out without objection, and I am joined by Senators on both sides of the aisle as cosponsors. I would particularly like to mention the cosponsorship of the following Senators: Senator DANIEL MOYNI-

HAN, Senator PAUL SARBANES, Senator JOHN HEINZ, Senator ORRIN HATCH, Senator PETE WILSON, Senator ALFONSE D'AMATO, Senator HOWARD METZENBAUM, Senator CHRIS DODD, Senator PAUL SIMON, Senator DANIEL INOUYE, Senator JOHN KERRY, and Senator SPARK MATSUNAGA. This bill is a sound approach to public policy. I hope my colleagues will recognize its strengths and join me in voting for its speedy passage.

Mr. JOHNSTON. Mr. President, this is the amendment previously described, to which the Senator from North Carolina will offer a second-degree amendment, which has also been cleared.

AMENDMENT NO. 3199 TO AMENDMENT NO. 3198

(Purpose: To void D.C. Law 6-170)

Mr. HELMS. Mr. President, will the Senator yield?

Mr. JOHNSTON. I yield.

Mr. HELMS. Mr. President, I have an amendment at the desk, a second-degree amendment. I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from North Carolina [Mr. HELMS] proposes an amendment numbered 3199 to amendment No. 3198.

Mr. HELMS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the pending amendment, add the following:

SEC. . DISAPPROVAL OF ACTION OF THE DISTRICT OF COLUMBIA COUNCIL.

The Congress disapproves of the action of the District of Columbia Council described as follows: The Prohibition of Discrimination in the Provision of Insurance Act of 1986 (D.C. Law 6-170); and, notwithstanding any other provision of law, D.C. Law 6-170 shall be null and void effective from June 6, 1986.

Mr. HELMS. Mr. President, the amendment pending at the desk is simple and straightforward. It would disapprove the D.C. aids law, D.C. law 6-170.

As Senators will recall, D.C. law 6-170 prohibits health, disability, and life insurers in the District of Columbia from all testing for acquired immune deficiency syndrome [AIDS]; AIDS related complex [ARC]; and the HTLV-III infection and from using any test to deny, amend, cancel or refuse to renew a policy. For 5 years under this D.C. law, insurers are prohibited from raising the rates of those who test positive for the presence of any probable causative agent for AIDS, ARC, or the HTLV-III infection. Unless the physician has been diagnosed by a licensed physician as having AIDS or the applicant displays other symptoms to show that the applicant has developed AIDS, the insured cannot conduct any AIDS test to determine insurance or to set premiums.

On August 1, by a 53-41 vote, this Senate adopted an amendment to the debt limit extension bill (H.J. Res. 668) to void this D.C. AIDS law. I commend this Senate for its wisdom. Members understand how the D.C. AIDS law is special interest legislation; how it will force insurers out of the D.C. market and how, eventually, it will threaten the availability of insurance for thousands of D.C. residents.

Unfortunately, the House has yet to act on the long-term debt limit bill. On August 15, the House sent over a 30-day debt limit extension, and it is likely that another short-term debt limit will be sent over again, forcing the long-term debt limit into the adjournment squeeze where it is probable, if not certain, that a number of Senate amendments will be stripped out of the bill.

Mr. President, as insurance companies continue to stop writing health and life insurance in the District, this Senator believes it is imperative for this Senate to force the House of Representatives to act now to overturn this unjust and unwise law.

Mr. President, I ask unanimous consent that the following be inserted into the RECORD: Washington Post article entitled, "Some Insurers Stop Writing Health, Life Policies in D.C.", of August 16, 1986, which lists insurance companies pulling out of the District of Columbia; and four letters from insurance companies to me stating their concerns over the D.C. AIDS law and that they have discontinued writing health and/or life insurance in the District of Columbia as of August 1, 1986.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SOME INSURERS STOP WRITING HEALTH, LIFE POLICIES IN D.C.

(By Sandra Evans)

An increasing number of large insurance companies have told their agents here to stop writing individual health and life insurance policies for District residents as a result of a new city law that prohibits insurers from testing prospective clients for exposure to an AIDS virus.

Leslie Jackson, an official of the D.C. Life Underwriters Association, said he had been told this week of about 20 life insurance companies, some of them among the largest, that would no longer write individual policies here.

"This is serious business," Jackson said. "If they haven't made the decision to pull out, they sure as . . . are thinking about it."

The ultimate impact of these decisions on the cost and availability of insurance of city residents is still unclear, according to experts in the profession. Although other insurers may follow suit, some experts say it is possible that those continuing to sell individual policies will simply take up more of the market share, particularly since there are so many insurers.

"It's enough to pay attention to, certainly," said Margaret Gentry, a spokeswoman for D.C. Council member John Ray (D-At large), sponsor of the city law.

But, she added, other companies "may see a chance to pick up a larger share of the business. It's very competitive."

There are 618 companies licensed to sell life insurance in the District, of which about 80 percent actually do so, according to a spokesman for the D.C. superintendent of insurance, which regulates insurance companies in the city.

The top 20 insurers in the city have only 38 percent of the market share for all types of life insurance, according to the D.C. Department of Consumer and Regulatory Affairs.

The new law, which went into effect Aug. 7, prohibits insurers from denying coverage on the basis of a positive test for exposure to the acquired immune deficiency syndrome virus and prevents for five years the imposition of higher premiums for those who test positive.

Group life and health insurance plans, by which most individuals get their coverage, will not be affected by those insurance companies' decisions to stop writing policies for individuals. Generally, individuals are not tested for diseases when they enter a group plan.

Aetna Life Insurance Co. told its agents not to write any more individual life and health policies to District residents because of the restrictions under the new law, said Carolyn Harris-Burney, manager of corporate communications.

Mutual of Omaha is another large insurer that has stopped writing individual policies.

"We felt that this bill basically removed the right of insurance companies to properly evaluate risks, something inherent to the insurance business," said Mutual of Omaha spokesman Tom O'Connor.

That company and its life insurance affiliate, United of Omaha, write $28.4 million in insurance policies in the District, of which about $2 million is in individual policies, he said.

Prudential Insurance Co. of America has made no change in writing insurance in the District "as of today," said spokesman Richard Matthews.

"We are carefully monitoring the situation," he said.

Some companies may be waiting to see the result of a lawsuit filed by the Health and Life Insurance Association in an effort to overturn the bill, Jackson said.

Others cited efforts in Congress to repeal the legislation.

Blue Cross & Blue Shield, which has the largest market share of individual health insurance policies here, never has required tests for AIDS virus and continues to write individual policies, said Richard A. Cook, vice president and legal and legislative affairs.

Cook predicted that the impact of the legislation on costs to the company would not be great and probably would be spread out evenly among clients throughout the region.

PROVIDENT LIFE & ACCIDENT INSURANCE CO.

August 20, 1986.

DC Act 6-170; DC AIDS Testing Law.

Hon. JESSE HELMS, Jr.,

U.S. Senate, Washington, DC.

DEAR SENATOR HELMS: As you can imagine we are very much concerned about the bill passed in the District of Columbia placing severe restrictions on the underwriting of

new applications for insurance by prohibiting the testing of AIDS in determining insurability or in establishing premiums.

We were most pleased when you successfully, in the Senate, added an amendment to HJ Res 668, the public debt limit extension, to disapprove DC 6-170 making the legislation null and void.

Since a similar amendment was not passed by the House, your amendment to be enacted into law will, of course, have to be accepted by the House conferees when the debt limit extension is considered in joint conference.

I have written each member of the Tennessee delegation asking them to urge their colleagues who are conferees to support your amendment. So far the response has been favorable.

My purpose in writing this letter is not only to thank you for offering the amendment which was adopted by the Senate, but to also inform you that Provident is no longer accepting life insurance applications in the District of Columbia.

Again, thanks so much for your help in this important matter.

Sincerely yours,

BERNARD T. HURLEY, Jr.

MUTUAL OF OMAHA,
Washington, DC, August 8, 1986.

Hon. JESSE HELMS, Jr.,
U.S. Senate, Washington, DC.

DEAR SENATOR HELMS: Bill number 6-343 passed by the District of Columbia has the effect of removing the company's right to adequately underwrite certain life and health risks.

Therefore, the companies, Mutual of Omaha and United of Omaha, have decided to discontinue marketing all life and health products except annuities and Medicare supplements in the District of Columbia.

Sincerely,

JAMES E. BARRETT,
Executive Vice President.

GREAT-WEST LIFE,
Englewood, CO. September 5, 1986.

Hon JESSE HELMS,
U.S. Senate, Washington, DC.

Att: Ms. Julie Bullard.

DEAR SENATOR HELMS: The Great-West Life Assurance Company recently concluded that it could not continue to accept applications for individual life and disability insurance from residents of The District of Columbia.

While we regretted having to take this action we believe we had to in order to protect our participating policyholders and our shareholders.

Insurance is based on the simple concept of pooling comparable risks. Through the normal underwriting process we determine the degree of risk inherent in each life we underwrite. When we cannot pursue this underwriting process we cannot measure the risk we are undertaking.

Obviously, in life insurance, the applicant's present medical condition is a primary determinant of risk. Legislation such as Bill 6-343 that prohibits us from measuring this undermines the whole concept of pooling comparable risks.

To continue to do business on the terms required by the District's legislators would inevitably mean that our present policyholders would pay for increased mortality costs as risks that would not normally be insurable become covered due to our inability to properly underwrite them. To expose our current policyholders to this certainty is not sound management and not what they expect of us.

Everyone hopes that cures will be found for diseases that are presently terminal. Until cures are found, private insurance should not be used as a substitute for social security.

Sincerely,

WILLIAM T. MCCALLUM,
Senior Vice President, Individual.

AETNA,
LAW DEPARTMENT,
Hartford, CT, August 12, 1986.

Hon. JESSE HELMS,
U.S. Senate, Washington, DC.

DEAR SENATOR HELMS: Julie Bullard of your office requested information concerning Aetna's reaction to the "Prohibition of Discrimination in the Provision of Insurance Act of 1986." which became effective in the District of Columbia on August 7, 1986. The Act precludes insurers from properly identifying those individuals who are at risk for developing AIDS (acquired immune dificiency syndrome) and ARC (AIDS-related complex.) Under the new law, underwriting and rate-making decisions may not take into account the results of testing for the presence of antibodies to the HTLV-III virus, which has been associated with AIDS, or other evidence of immune deficiencies.

Aetna believes that the effect of this law will be to prohibit insurers from using appropriate medical information, thereby fundamentally compromising their ability to effectively and equitably underwrite and price business. For this reason, Aetna has instituted a moratorium on accepting new applications until further notice (unless contractually committed to do so) for individually underwritten life and health insurance policies in the District of Columbia.

Insurance is designed to provide protection against unforseen losses. If insurers are not permitted to identify individuals who are at demonstrably higher risk of contracting a serious illness, the insurance mechanism cannot operate and affordable insurance products cannot be made available. The expected claim costs for individuals who test positive for the presence of the HTLV-III virus are so much higher than for non-exposed insureds that the effect is a price spiral generated by the continuing addition of high risk individuals and the simultaneous loss of others who are priced out of the market. By restricting the insurance industry's use of sound underwriting principles, the new law would impose unfair economic burdens on the insurance-buying public in the District of Columbia and threaten the financial stability of the insurers to which the public looks for risk protection.

Aetna is strongly committed to doing business in the District of Columbia and supports responsible efforts to restore a positive insurance underwriting environment.

Sincerely,

MALCOLM O. CAMPBELL, Jr.

Mr. HELMS. Mr. President, I urge my colleagues to support my amendment.

The PRESIDING OFFICER. Is there further debate on the amendment?

If not, the question is on agreeing to the amendment to amendment No. 3199.

Amendment (No. 3199) to amendment No. 3198 was agreed to.

The PRESIDING OFFICER. Is there further debate on the amendment of the Senator from Massachusetts, as amended by the Senator from North Carolina? If not, the question is on agreeing to the amendment, as amended.

Amendment No. 3198, as amended, was agreed to.

Mr. JOHNSTON. Mr. President, I move to reconsider the vote by which the amendment, as amended, was agreed to.

Mr. HATFIELD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DOMENICI. Mr. President, I wonder if I might ask the distinguished appropriations chairman and the ranking member a question.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the pending motion to reconsider the motion to table the Melcher amendment be temporarily laid aside in order that we may enter into a colloquy with the Senator from New Mexico.

The PRESIDING OFFICER. Without objection, it is so ordered.

□ 1530

Mr. DOMENICI. Mr. President, I thank the Senator from Louisiana. I was just going to ask the managers something. I think they both recall when we were on the drug bill, the Senator from New Mexico, on behalf of many Senators, offered an amendment to clear a residence problem for the homeless. Under current law, they may not get their veterans checks because they do not have a home, they may not get food stamps because they do not have an address. It just came to my attention that we may not get a conference on the drug bill with those changes which permit the homeless to receive benefits which they are entitled to but would not receive because of residency requirements. I was wondering if the Senators might consider, if the body had no objection, accepting that amendment. I believe both Houses want to do it, and I did not clear it. But it came to me in the last couple of minutes that if that drug bill does not get a conference, we will never get that done.

Mr. JOHNSTON. Mr. President, if the Senator will yield, I think the first inquiry on this side ought to be with the authorizing committee.

Mr. DOMENICI. It had no objection from anyone before. If it goes through on both bills, it is fine with me.

Mr. BIDEN. If the Senator will yield, although it would not come to the Judiciary Committee, I would strongly urge that the suggestion of the Senator from New Mexico be entertained because we may, for a whole range of reasons, not end up with a bill. I strongly support the suggestion.

I know of no objection. It was strongly supported on this side of the aisle. I encourage my colleagues to accept it.

Mr. DOMENICI. I will bring it down, since it has just come to my attention. I am worried it will not get through and I will bring it down to you and clear it. I just wanted to bring it to your attention.

Mr. METZENBAUM. Mr. President, if the Senators will yield, I do not want to object, but I want to say to the managers that I will not object if I have some assurance from them that this is not the beginning of a pattern. We agreed we would only take those submitted there and those on the list. Once we start to open the door for exceptions, it becomes a very challenging responsibility to say no. I do not want to be on the floor saying no. If the managers will give us some assurance that this will not be the beginning of a pattern, I have no objection.

Mr. DOMENICI. I will not do it if it causes any concern, Mr. President.

Mr. JOHNSTON. Mr. President, the matter has not been cleared, of course. We shall consult with the Senator from Ohio, but I can assure him that not only will we consult with him on this particular matter, but we have no intention of opening up this matter.

I might say to my colleagues that we now have, as I judge it, three matters yet to be completed. One is the matter of the Philippines, as to which there are a number of reservations, I think at least four amendments that are reserved. I understand there will be a leadership amendment that will be accepted by agreement.

Second, there is the matter of the Melcher amendment, which I believe also will be settled by compromise. If I may ask the distinguished Senator from Mississippi, is it his understanding that the Melcher amendment has a good chance of being compromised?

Mr. COCHRAN. Mr. President, if the distinguished Senator will yield, I am advised that progress is being made in developing a proposal to submit to the distinguished Senator from Montana in an endeavor to work out this amendment so it can be agreed upon and included in the bill.

I am told that a counterproposal has been developed and is ready to be submitted to the Senator from Montana.

Mr. JOHNSTON. I thank the Senator.

Mr. President, the other matter yet to be disposed of is the bipartisan drug package, which I believe will be by agreement and should really not take any debate, but a very brief description.

If I am correct on all those matters, Mr. President, the amount of debate left is very little. There are some matters yet to be finally flanged up, but we are virtually at the end.

I understand that there are three other minor matters being cleared now. I think those would be very minor and will be cleared. So I think we are very close to going to third reading. I hope, at least, that we are.

AMENDMENT NO. 3200

(Purpose: To amend the Agricultural Act of 1949 to modify cross compliance requirements for producers of extra long staple cotton, and for other purposes)

Mr. COCHRAN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. Is there objection to setting aside the Melcher amendment? If not, the Melcher amendment is set aside.

The clerk will state the amendment of the Senator from Mississippi [Mr. COCHRAN].

The bill clerk read as follows:

The Senator from Mississippi [Mr. COCHRAN] proposes an amendment numbered 3200.

Mr. COCHRAN. I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

SEC. . CROSS COMPLIANCE FOR PRODUCERS OF EXTRA LONG STAPLE COTTON.

Paragraph (16) of section 103(h) of the Agricultural Act of 1949 (7 U.S.C. 1444(h)(16)) is amended to read as follows:

"(16)(A) Notwithstanding any other provision of law, except as provided in subparagraph (B), compliance on a farm with the terms and conditions of any other commodity program may not be required as a condition of eligibility for loans or payments under this subsection.

"(B) In the case of each of the 1989 and 1990 crops of extra long staple cotton, the Secretary may require that, as a condition of eligibility of producers for loans or payments under this subsection, the acreage planted for harvest on the farm to any other commodity for which an acreage limitation program is in effect shall not exceed the crop acreage base established for the farm for that commodity.

"(C) Notwithstanding any other provision of law, in the case of each of the 1987 and 1988 crops of extra long staple cotton, compliance with the terms and conditions of the program authorized by this subsection may be not be required as a condition of eligibility for loans, purchases, or payments under any other commodity program.".

SEC. . LOCAL AGRICULTURAL STABILIZATION AND CONSERVATION COMMITTEES.

The fifth paragraph of section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)) (as amended by section 3 of Public Law 99-253 (100 Stat. 36)) is amended—

(1) by inserting after the third sentence the following new sentence: "Notwithstanding the preceding sentence, there may be 1 local administrative area in any county for which there had been established less than 3 local administrative areas as of December 23, 1985."; and

(2) in the sixth sentence (as it existed before the amendment made by paragaph (1)), by striking out ": *Provided*," and all that follows through the period and inserting in lieu thereof a period.

AMENDMENT NO. 3201

Mr. COCHRAN. Mr. President, in behalf of the Senator from Oklahoma [Mr. BOREN], I send a second-degree amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will state the amendment without objection.

The legislative clerk read as follows:

The Senator from Mississippi [Mr. COCHRAN], for Mr. BOREN, proposes an amendment numbered 3201 to amendment No. 3200.

Mr. BOREN. I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of amendment 3200, insert the following new sections:

SEC. . BASIS FOR COMPUTATION OF EMERGENCY COMPENSATION UNDER THE 1986 WHEAT PROGRAM.

(a) Section 107D(c)(1)(E)(ii) of the Agricultural Act of 1949 is amended by striking out "marketing year for such crop" and inserting in lieu thereof "first 5 months of the marketing year for the 1986 crop and the marketing year for each of the 1987 through 1990 crops".

(b) The amendment made by this section shall not be applicable to any producer of 1986-crop wheat who (1) elects to have payments under section 107D(c)(1)(E)(ii) of the Agricultural Act of 1949 computed in accordance with the provisions of law in effect prior to the enactment of this Act and (2) so informs the Secretary of Agriculture in writing by December 1, 1986.

SEC. . ELIGIBILITY OF CERTAIN LAND UNDER THE CONSERVATION RESERVE PROGRAM.

Section 1231 of the Food Security Act of 1985 is amended by adding at the end thereof a new subsection (f) as follows:

"(f) For purposes of this subtitle, alfalfa and other multiyear grasses and legumes in rotation, as approved by the Secretary, shall be considered agricultural commodities.".

Mr. BOREN. I ask unanimous consent that the following Senators be added as cosponsors of the second-degree amendment: Senators DOLE, ZORINSKY, ANDREWS, EXON, NICKLES, MELCHER, ABDNOR, KASSEBAUM, and BURDICK.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. COCHRAN. Mr. President, I state by way of explanation that this is an amendment that had been reviewed yesterday by the committee that was designated to make an effort to clear items that could be cleared and were basically noncontroversial. This item had been offered earlier and was withdrawn because there was some difference of opinion about one provision. That has now been worked out, I am pleased to advise the Senate, and I am told the matter has now been cleared. It relates to cross-compliance provisions.

It is a matter which has been approved by the chairman of the Com-

mittee on Agriculture and the Democratic side of the Agriculture Committee. I am told it has been cleared by all the parties.

Mr. JOHNSTON. Mr. President, the Senator from Mississippi is correct. This is one of those matters that was pending last night, was covered by the unanimous-consent agreement last night. I believe the objection did come from the distinguished Senator from Oklahoma [Mr. BOREN] who has just indicated he is now agreeable to this. So it has been cleared and we accept the amendment.

Mr. BOREN. Mr. President, I thank my colleague from Louisiana. He is correct in what he has said. We have now worked through the second-degree amendment which has been offered on my behalf by the Senator from Mississippi. This deals with wheat deficiency payments, a matter already discussed several times on the floor. All modifications have been worked out to the satisfaction of all parties.

ADJUSTMENT OF BASIS OF DETERMINATION OF WHEAT DEFICIENCY PAYMENTS

Mr. President, this amendment is on behalf of Senators DOLE, ZORINSKY, ANDREWS, EXON, NICKLES, MELCHER, ABDNOR, KASSEBAUM, BURDICK, and myself. It will modify the basis for determination of a portion of wheat deficiency payments for the 1986 wheat crop.

This amendment is virtually identical to the one adopted on August 1 as part of the debt limit bill. We have made one modification which gives producers the option of receiving their final deficiency payment in the present calendar year or in calendar year 1987.

As I have stated before, this amendment will not cost the taxpayers 1 cent. According to CBO estimates, there is no cost associated with the amendment.

The Food Security Act of 1985 included a provision which requires a portion of the deficiency payment to be determined on the basis of the reduced loan rate or the average price received by farmers during the marketing year. In the past, the entire deficiency was based on the loan rate or the average price during the first 5 months of the marketing year. Under previous law, producers could get their entire deficiency payment 5 months after the beginning of the marketing year. For wheat, that meant producers received their deficiency payments in November. Under the farm bill enacted this past year, producers can get a portion of their deficiency payment in November, but must wait until June or July of the next year to receive the balance.

The 1985 farm bill provides for two deficiency payments, in essence. The regular deficiency payment is based on the difference between the target price and the statutory loan rate or the average market price during the first 5 months of the marketing year, whichever is higher. The Secretary has the authority under the law to reduce the loan rate by up to 20 percent. If the Secretary uses this authority, which he has for the 1986 wheat crop, the producer is then entitled to another deficiency payment. This payment is based on the difference between the statutory loan rate and the new loan rate or the average market price during the entire marketing year.

The 1986 program for wheat provides for a target price of $4.38 per bushel. The statutory loan rate is $3, providing for a maximum deficiency payment of $1.38. The Secretary did use his authority to drop the loan rate to $2.40 thereby providing for a second deficiency payment with a maximum rate of 60 cents. It is this deficiency payment which is determined by using the market price for the entire marketing year. As the law stands now, farmers must wait until June or July 1987 to receive this second payment on a crop that is harvested, in Oklahoma, in May 1986. For wheat, the marketing year ends in May the year after the crop is harvested. When this provision was included, obviously little thought was given as to the effect this would have on producers' income and their ability to pay their operating loans or their ability to cash-flow.

American farmers are having a very difficult time generating enough cash to meet their current expenses right now. If they cannot get all of their deficiency payment until the summer of 1987, many will be unable to raise enough cash to continue operating due to the fact that they will not be able to produce a financial statement which cash-flows this year. Farmers need to receive their payments in a prompt manner; they cannot afford to wait an entire year to be paid for their crop. Creditors will be hesitant to provide a farmer money for the 1987 crop if the farmer cannot pay off his loan for the 1986 crop.

Mr. President, this problem is very serious. There could be many producers forced out of business simply because of the provision contained in the 1985 Act.

It is true, we adopted the same provision in the farm bill for corn. However, corn producers are not faced with the problem encountered by wheat producers. A corn farmer's balance sheet and his ability to cash-flow will not be changed if he receives the balance of his deficiency payments 12 months after the marketing year begins or 5 months after. This is because the marketing year for corn begins on September 1 and ends on August 31. If the payment is based on the first 5 months of the marketing year, they get their payment in February. If the payment is based on the full 12 months of the marketing year, they get the payment 7 months later, in October of the same year. The corn farmer's cash-flow statement remains the same for that calendar year.

Wheat producers, on the other hand, are affected because the wheat marketing year begins on June 1 and ends on May 31. This means that if the payment is based on a 5-month average, the producer gets the money in November of this year. If the payment is based on a 12-month average, on the other hand, the producer will not get the payment until July of the next year. This creates a shortfall for the current year. For wheat producers, unlike corn producers, there is a cash-flow problem.

The amendment we are considering today will correct this problem by requiring that all deficiency payments be determined on the basis of the average market price received during the first 5 months of the marketing year instead of the entire marketing year, unless the producer chooses to receive the payment next year. This modification would only affect the 1986 wheat crop. The amendment does not modify the farm bill with respect to future crops.

As I stated earlier, this amendment will not cost the Federal Government 1 cent. Without its adoption, on the other hand, it will place a tremendous burden on the wheat farmers of our Nation.

At the suggestion of the ranking member of the Senate Agriculture Committee, I have modified my amendment to include a provision which would enable producers of alfalfa and other multiyear grasses and legumes to bid such planted acres into the Conservation Reserve Program.

Alfalfa and other similar multiyear grasses and legumes are not currently eligible for entry into the Conservation Reserve Program. Yet, at the same time, they are not exempt from the swampbuster and sodbuster provisions contained in the 1985 farm bill.

As many of my colleagues are aware, alfalfa is a perennial crop and it is therefore quite common for farmers who rotate their field crops with alfalfa to leave their ground in alfalfa for the productive life of the plant. This can be 5 years or longer.

Because of this, an alfalfa producer in a 5-year rotation with alfalfa planted in crop years 1981 through 1985 with the intention of planting field corps in the years thereafter, is ineligible to place his land into the Conservation Reserve Program. However, a farmer who produced a more highly erosive crop would be eligible.

This provision would enable alfalfa producers to bid their planted acres into the conservation reserve.

I understand that Senator ZORINSKY has discussed this provision with the Department of Agriculture and the Department has to object to its inclusion in this amendment.

Mr. President, both of these provisions are extremely important and I urge my colleagues to support this amendment.

WHEAT DEFICIENCY PAYMENTS

Mr. DOLE. Mr. President, I join the distinguished Senator from Oklahoma in introducing this amendment today. We are attempting to utilize a unique opportunity to help wheat farmers during this time of financial stress facing many in agriculture. This amendment will provide wheat farmers 60 cents per bushel this year by advancing the balance of their deficiency payment from the end of the marketing year, June 1987 to December 1987.

Traditionally farmers have been able to get their deficiency payments 5 months after the beginning of the marketing year, usually around November or December. The 1985 farm bill requires deficiency payments to be made based on the 12-month marketing year price if that price is higher than the effective loan rate. Previously, farmers received deficiency payments based on the average market price after the first 5 months of the marketing year.

The payment would be made during the same fiscal year and we have been advised by the Congressional Budget Office that there would be no costs involved.

The 1985 farm bill provides producers a regular deficiency payment calculated as the difference between the target price, $4.38, and the established loan rate, $3, or the market price, whichever is higher. The Secretary has the discretion to reduce the established loan rate 20 percent—the so-called Findley amendment—to make U.S. products more competitive in world markets.

Since the Secretary has used this discretion for the 1986 wheat program, creating an effective loan rate of $2.40, wheat producers are entitled to a second payment based on the difference between the statutory loan rate and the higher of either the discretionary loan rate or the average market price based on the 12-month marketing year. In this case, the difference between the statutory loan rate and the discretionary loan rate equals 60 cents per bushel.

Mr. President, we are able to advance the 60-cent payment in this fashion without cost because the season average price—based on the 12-month marketing year—and the estimated market price after the first 5 months of the marketing year are expected to be below the effective loan rate, meaning the effective loan rate will determine the maximum amount of this year's deficiency payment.

Mr. President, by providing farmers with their deficiency payment this year, instead of a full year after they harvest their crop, we will help many farmers overcome a major obstacle—generating sufficient cash-flow to continue their operations. We have made this at the producer option to ensure there are no adverse tax consequences. I would urge my colleagues to support this practical, budget neutral step toward ensuring the well-being of many family farmers.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment in the second degree.

The amendment in the second degree (No. 3201) was agreed to.

Mr. COCHRAN. I move to reconsider the vote by which the amendment was agreed to.

Mr. BOREN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Is there further debate on the amendment as amended? If not, the question is on agreeing to the amendment in the first degree.

The amendment (No. 3200), as amended, was agreed to.

Mr. COCHRAN. I move to reconsider the vote by which the amendment was agreed to.

Mr. BOREN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DOLE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that further proceedings under the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the pending matter be temporarily laid aside in order that I may propose an amendment on behalf of Senator THURMOND, which has been cleared.

The President pro tempore. Without objection, it is so ordered.

AMENDMENT NO. 3202

(Purpose: To waive, for fiscal year 1987, a provision in section 603 of H.R. 5294 in the case of Erna Avari Patrick of Columbia, SC)

Mr. JOHNSTON. Mr. President, I send an amendment to the desk on behalf of Senator THURMOND and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Louisiana [Mr. JOHNSTON], for Mr. THURMOND, proposes an amendment numbered 3202.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 7, line 18, immediately before the period, insert the following: ", except that in the administration of the provisions of section 603 of H.R. 5294, during fiscal year 1987, Erna Avari Patrick of Columbia, South Carolina shall be considered to have satisfied the requirement of clause (3) of such section".

Mr. THURMOND. Mr. President, I offer an amendment today to the continuing appropriations resolution that is of a private relief nature. In South Carolina, a recently graduated, young attorney who is a citizen of India has an opportunity for a 1-year clerkship with a Federal district court judge, but is unable to clerk because of the provision in the Treasury appropriations bill that does not allow funds to be paid to non-U.S. citizens.

This attorney is married to a U.S. citizen and has recently applied for her U.S. citizenship. She fully intends to become a citizen, but she cannot do so until a family probate matter in India is settled. I have received letters from two prominent judges in South Carolina vouching for her character and supporting this amendment.

My amendment would deem her to have satisfied this provision and would allow her to immediately begin her clerkship. This amendment is only necessary until the time that she is granted U.S. citizenship.

Mr. JOHNSTON. Mr. President, this amendment is being offered on behalf of Senator THURMOND. It provides private relief for a young attorney recently graduated who has the opportunity of a 1-year clerkship with a Federal district judge. The law provides that non-U.S. citizens cannot receive Treasury appropriations. The attorney is married to a U.S. citizen, has recently applied for her U.S. citizenship but pending that time Senator THURMOND feels, and we agree, there is no reason to not allow her to proceed to receive the clerkship, and this will make that possible.

The PRESIDING OFFICER. Is there further debate?

Mr. HATFIELD. It is clear on this side.

The PRESIDING OFFICER. There being no further debate, the question is on agreeing to the amendment of the Senator from South Carolina [Mr. THURMOND].

The amendment (No. 3202) was agreed to.

Mr. JOHNSTON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HATFIELD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. JOHNSTON. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll to ascertain the presence of a quorum.

The bill clerk proceeded to call the roll.

□ 1550

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. DOLE. Mr. President, a number of my colleagues have been asking about the schedule for the next 2 or 3 weeks, and I thought I would just take next week first.

On Monday, we will probably convene at 11 o'clock or noon. There are special orders. There are a number of items we will have before us.

There will be FIFRA, S. 2972. We expect only one vote on that measure. S. 2045, CFTC—we hope that can be done by unanimous consent.

We hope to dispose of the Superfund conference report today, which is a major piece of legislation. Many Members would like to vote on it today. I think it is important that we do vote on it today, so that the administration will understand how strong support for Superfund is, because I have heard that they might be thinking of other ways to do it.

There will be conference report on Monday on intelligence authorization. That will not require a vote.

Other measures are bankruptcy, Export-Import Bank, technology transfer, and the handicapped bill.

I doubt that items on the Executive Calendar will require rollcall votes.

So I think it is safe to say that on Monday we can be very productive and not be in late. We might have one, possibly two, rollcall votes. I have been asked that there be no rollcall votes before 2 o'clock, and I believe we can honor that request—that is, if we can dispose of Superfund today.

So far as the pending measure is concerned, we have only two items remaining. We are negotiating with Senator MELCHER.

We have the Philippines amendment, and we hope to have a bipartisan leadership amendment. We have a drug fund amendment, and final passage. We should be able to complete action on this bill before 5 o'clock.

I hope that Superfund can be disposed of with a minimum of debate and with statements put in the RECORD, and then have an almost immediate rollcall vote on the Superfund conference report. If we can do it today, it would be very helpful.

We should be able to complete all our business no later than 5:15 or 5:30, except for wrap-up. There will be no additional votes after that.

Mr. METZENBAUM. Mr. President, if the Senator will yield, I just want to say that we had thought we might get out by 4 o'clock. I do not have to leave, because my wife is here; but I know that a number of Members do have a problem. I would appreciate the cooperation of the leader, and hope he will try to expedite it so that we can get out at 5.

Mr. DOLE. Right now, there is a Democratic caucus on the Philippines, and as soon as that is completed, we will be ready.

Mr. BENTSEN. Mr. President, will the majority leader yield for a comment?

Mr. DOLE. I yield.

Mr. BENTSEN. It is my understanding that the majority leader had asked that we be prepared to proceed with Superfund—we are prepared on this side of the aisle—and that we would agree to 30 minutes, 15 minutes on a side. On this side, we are prepared to do that.

□ 1600

Mr. JOHNSTON. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE. Mr. President, in order to expedite the business for everyone—I know a number of people here are anxious to leave—I think it has been cleared on both sides to bring up the Superfund conference report. Is that all right?

Mr. BENTSEN. Yes.

I say to the distinguished majority leader that on our side it has been cleared for Superfund to be brought before us.

SUPERFUND AMENDMENT AND REAUTHORIZATION ACT—CONFERENCE REPORT

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate now proceed to the conference report to accompany H.R. 2005 Superfund, that it be considered under the following time limit: 30 minutes on the conference report to be equally divided—it does not all have to be used—between the chairman of the Committee on Environment and Public Works, Mr. STAFFORD, and the ranking minority member, Mr. BENTSEN, and in addition to the Senators from Oregon, Senator PACKWOOD, and the Senator from Louisiana, Mr. LONG, but the Senator from Texas and the Senator from Vermont would be in charge of the time; following conclusion or yielding on the debate itself, that the yeas and nays be ordered, and that the vote occur immediately following final passage of the continuing resolution.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE. Mr. President, I submit a report of the committee of conference on H.R. 2005 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2005) to amend title II of the Social Security Act and related provisions of law to make minor improvements and necessary technical changes, have met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report will be printed in the House proceedings of the RECORD of October 3, 1986.)

Mr. DOLE. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. DOLE. Mr. President, the vote will now occur on the Superfund conference report immediately following the vote on the continuing resolution.

The PRESIDING OFFICER. That is correct.

Mr. STAFFORD. Mr. President, as chairman of the Committee on Environment and Public Works, I can say that there were times in the long and difficult period when we were developing the Superfund legislation, which is now before us, there were times when we were getting it through the Senate and especially there were times in the long and difficult committee of conference between the House and the Senate that it seemed to me we might not achieve what we finally have.

So I am particularly gratified and in fact elated that we have finally brought a conference report signed as far as I know by all of the conferees for the Senate before this body this afternoon.

At this point I am very happy this is a good bill and will naturally expand our efforts to clean up hazardous waste sites around this country. It will not add to the national deficit or debt because it will be a self-sustaining fund for the most part.

AN EXPLANATION OF SOME PROVISIONS

Mr. President, I am gratified that the Senate is finally able to turn to

this legislation. At this point, we cannot be sure whether this or any other provision related to Superfund will become law during this Congress. For the sake of the hundreds who have worked on this legislation, and the millions who are to protected, I hope it will be enacted. But, in all honesty, that it is merely hope at this point.

Should this bill be taken up and become law, some of its provisions require further clarification. The purpose of this statement is to, at least hopefully, provide some of that clarification. While this Senator was only one member of the Conference Committee, he faithfully attended all of the Conference Committee meetings and all but one of the so-called subgroup meetings. I do not believe any other member of the conference can make this statement.

Based on my participation in all of those many meetings, accumulating untold hours, I would like to explain some of the bill's provisions.

SECTION 104(B) & (E)—REMOVALS

Under the current Superfund program, responses are divided into two separate categories: short-term removal actions and long-term, permanent remedial actions. The basic distinctions between the two categories are time and money. Removal actions under current law generally last less than 6 months or cost less than $1 million, unless the President finds that more of either is necessary to mitigate an emergency. Remedial actions, on the other hand, are taken at national priorities list sites and can involve years of work and tons of millions of dollars in cleanup costs.

During the reauthorization process, the administration requested that the limits on removal actions be relaxed from 6 to 12 and from $1 million to $2 million. This is to increase flexibility in conducting short-term responses because often they become more expensive then originally anticipated. The bill makes this change, and also adds a new criterion for exceeding these limits—that is whether "continued response action is otherwise appropriate and consistent with the remedial action to be taken."

There are two important ramifications of labeling a cleanup as a removal and not a remedial action. The standards and procedures of section 117—regarding public participation—and section 121—regarding cleanup standards—apply only to remedial actions. The rationale for this selective application is that short-term, relatively low-cost activities of great urgency should be free of the delays attendant to the requirements of sections 117 and 121.

In granting the flexibility to apply increased limits in structuring emergency removals, and granting exceptions even to those limits in unusual cases, we do not intend to encourage any shift in the focus of the program toward such activities. Removals should remain interim and relatively short-term and inexpensive actions or urgent responses which consume a small portion of Superfund resources. The new, more flexible authority is not to be abused to circumvent the more rigorous and explicit requirements regarding public participation and health standards. Finally, while the President is accorded greater flexibility in undertaking removals, the law's fundamental requirement that human health and the environment be protected must nonetheless be satisfied. The flexibility is merely procedural in nature, not substantive.

SECTION 105/SITE ID AND NATIONAL CONTINGENCY PLAN REVISION

The Comprehensive Environmental Response, Compensation and Liability Act of 1980 requires all past and present owners, as well as, operators and transporters of hazardous substance facilities to notify the Administrator of the Environmental Protection Agency [EPA] regarding the existence of such facilities. Penalties are imposed for failure to comply with these requirements. The administration enlisted the States to assist in the site identification effort. At the end of the first 5 years of the program, it was estimated that some 25,000 sites would be identified nationwide; about 20,000 sites were included on comprehensive environmental response, compensation and liability information system [CERCLIS], the computerized data base used to store information on all known hazardous substance facilities.

Although the CERCLIS list is asserted to represent a comprehensive inventory of all known sites, the General Accounting Office [GAO] has reported that the potential universe of Superfund sites in fact could be much larger then previously acknowledged, and could include some 378,000 facilities. The GAO report concluded that relatively little emphasis has been given to site discovery. Aside from the initial effort in 1982 which uncovered most of the sites on the current inventory, the Federal Government has relied primarily on local governments and the public to discover new sites. It has not conducted any other systematic discovery effort. According to the GAO report, the Environmental Protection Agency has acknowleged that a targeted, systematic discovery effort combined with a change in program emphasis toward cleaning up sites that have not yet received sufficient attention, could increase the number of sites well beyond the 25,000 figure. For example, the Environmental Protection Agency acknowledged in the report that there are some 34,000 to 52,000 municipal landfills and some 9,770 to 63,770 mining waste sites that have not yet been listed or evaluated under the Superfund Program.

The Congress places the highest priority on improvement of site identification efforts. No changes in current law are made by the legislation regarding the site identification effort because such changes are unnecessary. CERCLA contains both the authority and the mandate to improve efforts in this area. The conference report accompanying SARA expresses the congressional expectation that between 1,600 and 2,000 sites will be placed on the national priorities list by 1988. An improved site identification effort is the logical corollary to this goal.

This bill does allow for changes in the process for evaluating Superfund facilities once they are identified. These changes, contained in section 105 of the legislation, require EPA to reassess the hazard ranking system [HRS] in order to address several problems brought to the Congress's attention during the reauthorization process. These problems include:

The current HRS, known commonly as the "Mitre Model", does not include a factor evaluating potential or actual contamination of the human food chain by releases of hazardous substances. Such contamination can pose a greater threat to human health than virtually any other type of contamination, other than contamination of household water supplies. When revising the system to take such contamination into effect, EPA should also consider food chain contamination that has an adverse impact on other aspects of the environment, including contamination of wildlife food chains.

The current "Mitre Model" also contains an anomaly in its treatment of air emissions from Superfund sites. If and when actual measurements of such emissions exists, the model scores them as a threat to human health. but if no measurements happen to have been made of such emissions, the model ignores them in its ranking of the actual or potential hazards posed by the site. Any revisions are to address this problem.

The current model also fails to adequately address contamination of surface water by point and nonpoint sources. The legislation requires that the HRS must be revised to consider human health risks associated with actual or potential contamination of surface water used for recreation or potable water consumption from such sources. In undertaking this revision, the legislation explicitly directs the President to consider possible downstream contamination of drinking water supplies.

The revisions in the HRS required by the legislation reflect one major theme which will become increasingly important during the next 5 years of the program: How to define the pa-

rameters of a Superfund site geographically on the basis of suitably comprehensive information regarding the nature of actual or potential contamination at the facility.

During the first 5 years of the program, EPA has in some cases defined sites broadly, to cover large geographical areas, and in other cases defined sites narrowly, to exclude potential downstream on offsite contamination. The problem with defining sites too broadly is that data regarding the sources of contamination at such large facilities often become confused, leading to disputes over whether operating industrial plants are causing the contamination. The problem with defining sites too narrowly is that a subsequent cleanup could ignore contamination that has spread beyond the boundaries of the facility.

In grappling with these admittedly difficult issues, the President should err in the direction which assures all actual and potential hazards are addressed. Aggressive and complete use of Superfund enforcement authorities would ensure that the Federal fund does not subsidize cleanup costs created by viable industrial entities. Releases under media-specific laws—for example the Clean Water Act—are also subject to CERCLA requirements. If the imposition of civil or criminal penalties, issuance of section 106 orders, application of section 121 standards or utilization of any other CERCLA or SARA authority would make for better or faster cleanups, then such provisions should be used.

SECTION 110—HEALTH STUDIES

One of the most significant but, remarkably, least controversial of the provisions in this bill is an elaboration of the health authorities contained in section 104(i) of existing law.

In addition to making the authorities of existing law somewhat more precise, the bill imposes some explicit requirements on the Administrator for the Agency for Toxic Substances and Disease Registry [ATSDR]. To assure that all of these authorities, old as well as new, are implemented at least minimally, this bill requires the Agency to be provided directly with not less than $50 million per year. This funding is in addition to any sums required for site-specific responses and is to be provided directly to ATSDR. It is not to be submitted to or through the Environmental Protection Agency, nor is it subject to any controls whatsoever by that Agency or its officials. ATSDR is independent of and coequal to EPA. The Administrator of ATSDR may consult with the Administrator of EPA where, in the judgment of the former, such consultation is appropriate or required by law. But the minimum sum provided by this bill to ATSDR is for implementation of that Agency's own authorities under Superfund, which are different in character from those of EPA.

Direct funding is required because of the demonstrated hostility towards ATSDR which exists in the executive branch. Indeed, the Agency was created only after a law suit was filed to enforce the requirements of 104(i). Even after the Agency was created, budget requests were reduced time after time prior to submission to the Congress. In each year, the Congress was forced to increase the budget request and instructed that the appropriation be provided directly to ATSDR.

The most important of the nondiscretionary duties imposed on ATSDR—in consultation with the Environmental Protection Agency—are the requirements that toxicological profiles be prepared for the hazardous substances found most frequently at Superfund sites and that health assessment studies be conducted at all sites on the national priorities list. The legislation establishes deadlines for these requirements, and any failure to meet a deadline would be subject to immediate citizens' suits under section 310 of the act.

In preparing toxicological profiles and health assessments the agencies should accumulate as much information as possible within the mandated timeframes, issue the profile or assessment on schedule, and then update or revise it as necessary. Supplemental requirements of the legislation—for example, peer review—does not excuse delay or deadline noncompliance issuance of the information required within the timeframes required.

The elements of a health assessment include: first, information necessary to ascertain the magnitude, scope and duration of the exposure of individuals to the hazardous substance or substances at issue, including the source and degree of ground or surface water contamination, air emissions and food chain contamination; second, an identification of all those in the community who might be exposed to the release of hazardous substances; third, toxicological and epidemiological evaluations of the impact of the exposure on affected individuals; and fourth, any other necessary medical testing of individuals.

This is not an exhaustive or exclusive list and ATSDR and EPA should explore additional areas and gather more information where appropriate. The agencies retain the flexibility to exceed the basic requirements of the bill in developing useful and complete health assessments. However, compliance with the minimal requirements and deadlines is nondiscretionary and thus enforceable through the citizens' suits provisions.

If a health assessment indicates that there is a significant risk to human health, the President is required to take such steps as are necessary to eliminate or substantially mitigate such risk. The risks contemplated by this provision include both actual and potential, acute and chronic health effects. The steps which must be taken to eliminate or prevent such risks include, but are not limited to, the provision of alternative drinking water supplies or the temporary or permanent relocation of individuals. The President has the flexibility to take whatever action may be necessary to eliminate or prevent the risk as quickly as possible. In many instances, provision of alternative household water supplies may be the most effective solution, but in some circumstances, relocation may be the only effective alternative. In addition to the steps specified, other actions—such as the decontamination of soil—may prove most effective in fulfilling the primary goal of eliminating significant risk.

In the context of considering what steps to take to eliminate or prevent actual or potential adverse health effects, the legislation permits ATSDR to consider additional information on the risks to the potentially affected population from all sources of hazardous substances, including known point or nonpoint sources other than the facility in question. The purpose of this authority is to enable the Agency to fully evaluate the most effective steps to eliminate or prevent adverse health effects. If contamination arises from other sources, in addition to those studied in the assessment, ATSDR or EPA may need to take steps under other provisions of law to deal with such contamination. The provision does not require a comparative risk assessment nor it it a reason to preclude or delay action while any or all other sources of contamination are studied.

Similarly, the legislation requires that whenever ATSDR determines to conduct a full scale or other study of health effects for selected groups of affected individuals, the letter of transmittal of such study shall include as assessment of risk factors, other than the release, that may be associated with any disease discovered, if such risk factors were not taken into account in the design of the study. Again, this provision does not require a comparative risk assessment or the determination of all other possible risk factors before completion of the full-scale study. It permits observations regarding other potential causes of the adverse health effects in order to assist those responsible for providing medical treatment to the affected population.

SECTION 113 PREENFORCEMENT REVIEW

One of the most important and difficult issues resolved by the conferees regards the timing of citizens' suits challenging decisions. Such suits would involve allegations that the

President or other officials have violated the cleanup standards or other requirements of the law and that public health or the environment would be threatened if the proposed action were undertaken or continued.

A major goal of the Superfund Amendments and Reauthorization Act of 1986 is to establish specific, uniform national health standards that will apply to cleanup decisions at Superfund sites. The Congress has been compelled to develop such specific standards because the executive branch failed to do so during the first 4 years of the program and ultimately issued a series of revisions to the national contingency plan which left far too many important cleanup decisions to the ad hoc judgment of individual employees in the field. Because of their to subjective nature, such decisions are intrinsically difficult to review, much less measure against the law's standard requiring all cleanups to protect human health and the environment.

The standards contained in the bill establish a series of nondiscretionary, minimum requirements which all Superfund responses must meet in order to assure the protection of human health and the environment. While the conferees fully expect officials of the Environmental Protection Agency and others to adhere to these standards, past experience has demonstrated that enforcement of such legal requirements by affected citizens' groups—acting as private attorneys general—is an essential component in the implementation of any such detailed statutory mandate. For this reason, section 206 of the bill establishs an independent citizens' suit provision under any section 310 of the act.

It is crucial, if it is at all possible, to maintain citizens' rights to challenge response actions, or final cleanup plans, before such plans are implemented even in part because otherwise the response could proceed in violation of the law and waste millions of dollars of Superfund money before a court has considered the illegality. Delay also places courts in the undesirable position of deciding whether to order an expensive corrective action which the executive branch or responsible parties will, by definition, be attacking as either excessively costly or unnecessary because the violations are trivial.

Hypothetically, for example, the President might yield to the pleas of responsible parties and decide to ignore readily available permanent treatment technologies—for example incineration—in direct violation of the law's requirements, choosing instead to cap a site. Compelling a selection of the legally required remedy could, in a case like this, save time, money, and perhaps lives.

Concerns have been expressed throughout the reauthorization process that potentially responsible parties, in the guise of aggrieved citizens, might also take advantage of such opportunities for judicial review. If these fears were realized, such specious suits would slow cleanup and enable private parties to avoid or at least delay paying their fair share of cleanup costs.

To avoid such results, the courts must draw appropriate distinctions between dilatory or other unauthorized lawsuits by potentially responsible parties involving only monetary damages and legitimate citizens' suits complaining of irreparable injury that can be only addressed only if a claim is heard during or prior to response action.

When the essence of a lawsuit involves contesting the liability of the plaintiff for cleanup costs, the courts are to apply the provisions of section 113(h), delaying such challenges until the Government has filed a suit. Compliants should be examined to preclude efforts to present such cases as "citizens' suits" challenging illegal response action. The crucial distinction between these two types of suits is that plaintiffs concerned with the monetary consequences of a response can be made whole after the cleanup is completed by reducing the amount of the Government's recovery. But citizens asserting a true public health or environmental interest in the response cannot obtain adequate relief if an inadequate cleanup is allowed to proceed and, in effect, create a nuisance or a violation of this or other laws. Delay in the timing of suits seeking monetary damages does not diminish the court's ability to grant later and adequate relief. However, delay in the timing of suits seeking an equitable order modifying the proposed response action would undermine the court's ability, either legally or practically, to grant adequate and timely relief at a later date.

Mr. President, whenever major legislation is brought before the House or Senate, special interests seek to include in the floor statement of one Member or the other language which they can later use in lawsuits. Superfund seems to have been especially succeptible to this.

I ask unanimous consent to have printed in the RECORD at this point a case example of this. It is a letter from an officer of the Chemical Manufacturers Association to an official of the Department of Justice. It is self-explanatory.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

CHEMICAL MANUFACTURERS ASSOCIATION,

August 7, 1986.

NANCY FIRESTONE, ESQ.,
Department of Justice,
Land and Nature Resource Division,
Washington, DC.

Re: CERCLA Administrative Record Provision.

DEAR NANCY: In lieu of trading phone calls anymore, I am enclosing for your review a proposed colloquy on the applicability of the CERCLA administrative record provisions to pending litigation. We will be discussing this language with Jan Edelstein, Janet Potts and Diana Waterman. I would appreciate your comments at your earliest convenience.

Thank you for your cooperation.

Yours truly,

BARBARA A. HINDIN,
Assistant General Counsel.

DRAFT COLLOQUY ON RETROACTIVITY OF CHANGES TO JUDICIAL REVIEW PROVISIONS OF SECTION 113(j)(1) AND 113(k)(2)(C)

Question: I wish to clarify how the changes in the provisions of the law governing judicial review of cost recovery decisions are intended to apply to pending cases seeking judicial review of past EPA decisions. My concern is that we not prejudice parties currently seeking review, offend principles of due process or fail to pay proper attention to separation of powers limitations.

First, I ask my distinguished colleague to confirm that we intend that these judicial review provisions be applied consistent with principles of due process and that such principles are not in any way diminished by the failure to mention due process in section 113(j)(1) of the bill.

Answer: The gentleman is, of course, correct that principles of due process of law apply. The bill's reference to "otherwise applicable principles of administrative law" is not in any way intended to undermine the applicability of the guiding principles of fundamental fairness embodied in our due process guarantees.

Qustion: Among those due process principles, we include the doctrine of "manifest injustice," the recognized exception for not applying legislation retroactively to affect pending cases, do we not?

Answer: Again, the gentlemen is correct.

Question: So that, in circumstances where parties had acted and proceeded in reliance on prior law and procedures and their conduct would have been different if the present law had been known and the change in law foreseen, or where the new judicial review provisions would defeat the reasonable expectation of the parties, or where application of the new provisions to a pending proceeding would be unfair, a court may consider whether application of the judicial review sections of the bill to a pending case would itself be inequitable, arbitrary or capricious.

Answer: That is correct.

Question: Would the distinguished colleague also agree that "otherwise applicable principles of administrative law" include the principle that the record may be supplemented with new evidence not reasonably available when the administrative record was developed?

Answer: Again, I concur and assure the gentleman that all such principles of administrative law are intended to be considered by the courts. The particular principle he notes was also referred to in the report on this bill by the Committee on the Judiciary of the House. The slight change in language

in the Conference Report does not signal exclusion of these principles.

Question: So traditional concepts are intended to govern whether discovery during the review proceeding is needed in order for the reviewing court, among other things, to verify the completeness of the administrative record, to define the "whole record" compiled by the agency, to identify and examine oral communications not reflected in the written record.

Answer: That is right.

Question: And general administrative law principles are to control whether the court should receive supplementary material to explain or clarify the record, to help the court determine whether the agency considered all relevant factors, or to provide necessary background materials for the court so that it may understand complex issues in order for the court to be able to fulfil its review function.

Answer: That is also correct.

Question: Finally, I direct the manager's attention to a late addition in the Conference Report about which I am most concerned, section 113(k)(2)(C) of the bill. This language about what constitutes the administrative record until such time as the President promulgates regulations to govern proceedings on which to base selection of a response action cannot be meant to straitjacket courts in pending cases. If parties are already contesting the fairness and adequacy an EPA-selected response action on the basis of a fatally flawed administrative proceeding and record, then we should not, consistent with principles of due process and separation of powers, tell the court how to decide the issue. That language is intended to provide short-term, interim authorization to the President to proceed with no actions, rather than to shackle the courts' judicial determination of already pending review issues, is it not?

Answer: That is correct, we are not telling the courts how to decide any ongoing challenge but, instead, providing the President with express authority to make new decisions and develop administrative records without having to delay in order to promulgate comprehensive regulations first.

I thank my colleague for his cooperation.

Mr. STAFFORD. Mr. President, I do not wish to belabor this matter and, for that reason, will not dwell on the detailed points which this letter attempts to make on behalf of the chemical industry. I trust that if Members, or judges, encounter this language elsewhere they will know of its origin and take that into account. I am inserting this in the Record solely for such purposes and do not in any way, agree with or endorse its content.

I would, however, like to make one observation. A question which has been raised several times is whether a responsible party can hang back from the administrative proceeding because it wishes to avoid publicity or liability, trusting that another will adequately represent its point of view, then later intercede should that have failed to happen. The answer is no.

These companies and individuals have an obligation to come forward and present their best arguments and the evidence which best sustains those arguments. It a potentially responsible party chooses to avoid the risks associated with participating in the administrative proceeding, than it must bear the risks of having made the choice. If the record is inadequate with respect to that particular party or the decisions are somewhat unfair, that is a consequence of deliberate or negligent inaction. They can't have their cake and eat it too.

Indeed, a court should apply not merely principles of law, but equity as well. One guideline should be to view less favorably the arguments of those who failed to participate when they knew or should have known that they had an opportunity to do so. This is because in choosing to abstain from the administrative process such parties, through their own volition, prolonged and complicated a process intended to protect human health and the environment. Such conscious decisions to knowingly increase the risks associated with these poisonous chemicals, motivated by economic self interest or litigation strategy should cause a court to presume that the parties enter without clean hands.

Mr. President, I ask unanimous consent to have printed in the RECORD a colloquy on retroactivity of changes to judicial review provisions.

STATE NUISANCE LAW CHALLENGES TO EPA CHOICE OF RESPONSE ACTION

Mr. STAFFORD. Mr. President, I also would like to call the attention of the Senate to the interplay of two superficially unrelated provisions. They are section 113(c), which establishes a new 113(h), and 121(a), which adds a new section 121, subsection (d) of which is important to this discussion.

The time of review of judicial challenges to cleanups is governed by 113(h) for those suits to which it is applicable. It is not by any means applicable to all suits. For purposes of those based on State law, for example, 113(h) governs only those brought under State law which is applicable or relevant and appropriate as defined under section 121. In no case is State nuisance law, whether public or private nuisance, affected by 113(h). As the statement of managers makes clear—

New section 113(h) is not intended to affect in any way the rights of persons to bring nuisance actions under State law with respect to releases or threatened releases of hazardous substances, pollutants or contaminants.

It will no doubt present a challenge to courts to determine what "actions"—I observe that this is not limited only to suits—are based on a "nuisance" theory and which are not. As the member of the conference committee who insisted upon stating expressly what all had agreed was their intent, I would like to provide some insight into the purpose and meaning of the provisions in sections 113, 121, and, to a lesser degree, 115.

First, the fundamental purpose is to preserve rights under nuisance law as it is defined under the relevant State law. The question of whether any given law is or is not "nuisance" is determined by reference to the laws, decisions and definitions within that State. It may well be that what one State calls negligence or trespass, another will call nuisance. It may also be that some line of nuisance law has been either codified or otherwise defined by the legislature and thus embodied in a statute rather than case law. That is, for example, the situation with respect to some Vermont laws.

The special status conferred upon State nuisance actions, permitting filing at any time, is an essential feature of the bill. There is a crucial difference between the relief sought by one claiming that an EPA-proposed remedy would constitute a nuisance. The PRP plaintiff can in most cases be made whole by relief after the fact—in the form of contribution, indemnity, or dismissal of EPA's enforcement action. The nuisance plaintiff is in an altogether different situation: his injuries are likely to involve threats to health, or use and enjoyment of land, or other quality-of-life factors. When such a plaintiff has reason to oppose construction of, say, a toxic waste incinerator as part of site response, only a court order blocking construction can provide just relief. Only a before-the-fact remedy can do the job.

Numerous legal scholars have lamented the lack of any universally accepted definition of the nuisance concept. Moreover, some State laws create nuisance-type offenses without actually employing the word. See, for example Vt. Stat. Ann. tit. 10, 6610, 6610a—abatement of imminent and substantial threats to public health. In light of this confusion, Federal courts may have different notions of what State nuisance law includes than do State courts. Making State court rulings binding on Federal courts as to what constitutes State nuisance law under CERCLA will ensure, therefore, that the full range of injuries against which States desire nuisance protection is considered by those who select Superfund site responses. The burden of cleaning up the Nation's toxic waste sites should not be placed on the backs of the innocent people who happen to live near those sites.

It is expected, of course, that State courts will apply substantive State law in making their determination. Allowing the meaning of "State nuisance law" to be construed according to State law does not compromise the questions. There is nothing to prevent Congress from articulating a Federal rule, as we do here, that courts are to be bound by State law in interpreting a Federal statutory phrase. Indeed, there is precedent for this event at the

constitutional level. See Ruckelshaus versus Monsanto, 467 U.S. 986, 1001 (1984)—meaning of "property" in fifth amendment taking clause).

Nuisance law encompasses public nuisance as well as private nuisance. While the two causes of action are quite distinct, each concerned with interests of the innocent public that must be protected at Superfund cleanup sites. Historically, the essence of a private nuisance was an interference with the use and enjoyment of land. Courts have found actionable interferences with this interest to arise from a variety of circumstances that might come about through a CERCLA response. Professors Prosser and Keeton, for example, list nuisance decisions based on interference with the physical condition of the land itself, as by pollution of an underground water supply, or based on unpleasant odors, smoke or gas, loud noises, and the threat of future injury. Prosser and Keeton, The Law of Torts 619-620 (5th ed. 1984). Moreover, several decisions show that nuisance actions are maintainable even though no use is being made of the plaintiff's land at the time.

Some courts no longer adhere to the requirement that private nuisance be predicated on an interest in real property or view such property interests broadly in order to extend the protective sweep of the theory. This approach is consistent with the purpose here of preventing injuries from occurring, rather than attempting the difficult, sometimes impossible, task of making a plaintiff whole with money, after the fact of an injury.

As I said earlier, the selection of site response is also subject to public nuisance actions. Public nuisance has been defined as "the doing of or failure to do something that injuriously affects the safety, health or morals of the public, or works some substantial annoyance, inconvenience or injury to the public." *Commonwealth* v. *South Covington Railway Co.*, 181 Ky. 459, 463, 205 S.W. 581, 583 (1918). It is a much broader term than private nuisance and usually envisions but does not necessarily require enforcement by government rather than private individuals. It would indeed be anomolous if Congress were here to allow private nuisance suits, where injury is inflicted on only a few persons, but not public nuisance actions, where the injury affects the entire community. As with private nuisance, court decisions finding public nuisances include many that involve injuries of a kind not unlikely to occur from CERCLA site remediation. I refer to cases involving interferences with the public health, public safety, and public comfort.

The reference to nuisance law may well include statutory as well as common law. At one time almost entirely judge made, nuisance law today contains a large statutory component in every State of the country. This longstanding trend reflects the critical need of legislative clarification and predictability in an otherwise murky realm. There would be little logic or fairness, therefore, to allowing challenges to EPA's selection of a CERCLA response plan based solely on the common law side of State nuisance law.

Placing statutory nuisance actions under the umbrella of the nuisance law phrase is especially important in that a common type of nuisance statute takes the form of defining a particular act as a nuisance per se. These statutory definitions greatly alleviate the evidentiary burden on the aggrieved party, by dispensing with the need to prove the existence of a substantial and unreasonable interference with land, or an actual threat to the community health and comfort, in the particular case before the court. Such definitional provisions are found in every State—Prosser and Keeton, The Law of Torts 646 (5th ed. 1984)—and include definitions of acts as both public and private nuisances. Examples include Cal. Civil Code 841.4 (private nuisance), Pa. Stat. Ann. tit. 18, 6501(a)(1) (placing dangerous substance upon land of another defined as public nuisance); N.J. Stat. Ann. 2C:33-12 (public nuisance); and Cal. Pub. Res. Code 2558 (public nuisance).

State statutes also address other, nondefinitional aspects of nuisance. For example, statutes may permit private abatement of certain nuisances, upon proper notice. See, for example, Cal. Civil Code 3502-3503. And, of course, statutes are necessary to empower particular governmental agencies to bring prosecutions against public nuisances, and to specify particular monetary and injunctive remedies. See, for example, Pa. Stat. Ann. tit. 35, 6018.104.

Statutory nuisance laws in all the foregoing categories, as well as any others deemed appropriate by the State courts, are subsumed by the phrase "nuisance law."

A particularly instructive case of a State statute that embodies nuisance concepts, without express designation as such, occurs in my own State of Vermont. Vermont Acts 250, enacted in 1969, illustrates one kind of statute to be considered by courts as State nuisance law.

Vermont Acts 250 seeks to regulate large-scale land development with a view toward assuring, and I quote from the act, that "the lands and environment of the State * * * are devoted to uses which are not detrimental to the public welfare and interests." This statement of purposes might as well have been lifted from a hornbook chapter on nuisance law and the societal interests it protects.

More specifically, the Vermont law creates a State environmental board and district environmental commissions with power to regulate large-scale development under a comprehensive State land-use plan. In the absence of a permit, no person may sell an interest in any but the smallest subdivisions, or construct improvements occupying more than 10 acres or on mountaintop property of any acreage. Most important here, the statutory preconditions for permit issuance are an unmistakable echo of the findings often made by courts in nuisance suits. These include determinations by the board or commission that the proposed project will not: first, result in undue water or air pollution, second cause unreasonable soil erosion so that a dangerous condition results, or third, have an undue adverse effect on the scenic beauty of the area or on rare or irreplaceable natural areas.

Similar legislation governing the siting of large subdivisions and major development was enacted by the State of Maine. Site Location of Development Act, Maine Rev. Stat. Ann. tit. 38, 481-489. See generally Jackson, Development Legislation in Maine and Vermont, 23 Maine L. Rev. 315 (1971).

Mr. President, both the Vermont and Maine statutes were enacted to deal with adverse impacts on fragile natural resources due to development occurring where it should not. Such nuisance-type enactments, where applicable, can be used to challenge, before the harm is done, any ill-advised response actions chosen without full knowledge of local conditions.

In a sense, the codification by some States of their nuisance is unfortunate, because it may well complicate the task of courts in sorting those which are subject to 133(h) from those which are not. But the richness and diversity of these laws makes it impossible for the Congress to fashion a single definition which can be adequately describe every situation. Courts should be guided in their decisionmaking process by certain principles:

First, State laws, especially those which help prevent injuries from occurring rather than providing after-the-fact redress, should be accorded deference.

Second, more labels should not determine the outcome of any particular case. Courts should look behind the labels to the true interests sought to be protected, and to the complaints of the plaintiffs to determine what protection they are seeking.

Third, error should be on the side of preventing injury to innocent bystanders.

SECTION 119—RESPONSE ACTION CONTRACTORS

An important element of a successful Superfund Program is the develop-

ment of a private sector for cleanup services. Such services range from scientific and technical analysis of the problems at a site, through design and implementation of the appropriate remedy.

Over the past few years, the market for such services has developed relatively slowly. However, given the expansion of the program contemplated under the Superfund Amendments and Reauthorization Act of 1986 [SARA], there should be a rapid growth in both the number and size of the firms providing such services.

Unfortunately, as in any market where rapid expansion is spurred by a sudden and large infusion of funds, there may also be opportunities for abuse. The history of some Federal programs demonstrates the inflation of costs and diminution of quality that such circumstances can provoke. To minimize this possibility, it is essential to carefully weigh a variety of competing interests. The provisions of SARA regarding contractor liability and indemnification reflect such a delicate balancing.

At the outset of the reauthorization process, Members were confronted by predictions that the insurance for those engaged in the treatment, storage, disposal or cleanup of hazardous substances would disappear unless the Congress eliminated their liability under State or Federal law. However, no assurances were provided that such changes would necessarily result in either a reversal of the perceived insurance crisis, or the reinstatement of reasonable rates for readily accessible insurance policies. On the other hand, this Senator and others believed that changes in the State liability schemes would reduce contractors' incentives to exercise the greatest care and maintain quality, especially in a process influenced greatly by lowest cost bidding. There was powerful and adamant insistence, especially in the Senate, that the integrity of State laws, and the well-established Federal principle of preserving them, be maintained. This is particularly important in view of the premise of CERCLA, the Clean Water Act, the Resource Conservation and Recovery Act and other laws that those engaged in the business of handling toxic materials should do so at their own risk, knowing that they are subject to strict liability.

Section 119, as well as other provisons of the bill—for example, sections 208 and 210—reflects an effort to balance concerns about the actual or perceived insurance crisis against the need to maintain legal liability as an incentive to ensure high quality, safe work. It provides contractors with limited protection from liability under Superfund for nonnegligent misconduct. It also gives the President limited authority to indemnify contractors if all reasonable sources of private insurance are unavailable. The legislation does not affect in any manner liability imposed under State law, whether statutory or common, nor does it reflect a conclusion by the Congress that such laws should be changed to establish a rule of liability other than strict, joint, and several.

Indeed, the final issue resolved by the conferees was whether the statement of managers should include language expressing a congressional view that the appropriate liability standard at the State level is negligence, and urging States to amend their laws accordingly. The statement of managers contains no such suggestion, although I do not doubt that some persons may assert that there was an agreement to that effect. There was and is not any such agreement. Moreover, proposals to include manager's language urging the adoption of a negligence standard were expressly not agreed to by the conferees due to the deeply held conviction on the part of some that these matters should be left exclusively to the province of the States to decide, unswayed by congressional influence.

It is true that this bill reflects a change in the Federal liability under Superfund. But it is a change that was only reluctantly agreed to and then only after it had become clear that if, in fact, insurance were unavailable, all of the reauthorization efforts would have been for naught. It is a reality in the United States, unlike many other industrialized nations, that businesses refuse to expose themselves to what many would consider the ordinary risks of free enterprise. Businesses and their managers view liability insurance as a precondition to entering or remaining in markets including, unfortunately, Superfund responses. Thus, the Congress was in a sense held hostage by the threat that insurers would refuse to provide coverage. There really was no choice but to pay the ransom and change the Federal standard.

States, however, do have other choices. The insurance industry is regulated at the State level and therefore can be compelled to cooperate. It is possible to require assigned risk pools, regulate premiums, authorize new forms of self-insurance or otherwise respond to the insurance dilemma in some fashion other than altering liability. Of course, some legislatures may well conclude that a change in liability is itself an appropriate response, but they must then confront the equally difficult question of whether a victim should bear the costs of an injury caused by the contractor and, if so, why. The real issue in these cases is not whether it is fair for the contractor to bear the costs of injuring another during the course of a cleanup, but whether it is fairer for the contractor or the victim to do so. A victim's only connection with the poisonous chemical is that he or she was injured; the contractor, in contrast, chose voluntarily and for profit to hold itself out as competent to perform safety tasks that were classified in advance by the Federal Government as among the most difficult and dangerous in the Nation.

These questions of equity and liability are among the most intellectually and practically challenging that the Congress can ever encounter. The solution of one Congress can differ from that of another, just as the solution of a State legislature may differ from that of the Federal legislature. For that reason, it is inappropriate and unwise for a State to assume that the Congress is the fount of wisdom on this subject, to be followed blindly. I believed there are better solutions to this problem than those in this bill, and urge State legislatures to continue to search for them.

The provision applying liability under Superfund for negligent, reckless or intentional misconduct applies only to parties who have no connection to the facility other than as response action contractors. It does not affect liability for the activities of those otherwise liable under sections 106 or 107, even if such activities occur in the course of conducting a response action at a site.

The provisions authorizing indemnity for response action contractors are subject to the President's compliance with a series of threshold requirements. The legislation divides these requirements into two categories: first, those that must be met for every indemnification agreement signed under the act; and, second, those additional requirements that apply to indemnification agreements covering cleanup work done under contracts with private responsible parties, as opposed to Federal and State governments.

The general set of requirements applying to all indemnification agreements contains three components.

First, the President must determine that the liability covered by the indemnification agreement exceeds, or cannot be covered by private insurance available at a fair and reasonable price. The President must further determine that such insurance is not generally available to competitors of the contractor. Any individual firm's inability to find insurance therefore cannot justify use of the indemnification authority. Rather, the President has authority to grant indemnification only if insurance is not generally available to viable competitors of the contractor, on a marketwide basis, at a "fair and reasonable" price. Determinations of the fairness and reasonableness of the price of private insurance shall not be made on the basis that insurance costs are limiting profits that

might otherwise be achieved by the contractor. A price is to be judged unfair and unreasonale only if the costs of insurance are markedly disproportionate to the risk being assumed by the insurer. The comparative cost of insurance to other business expenses is irrelevant.

The President must also determine, prior to granting indemnification, that the contractor has made diligent efforts to obtain insurance coverage from non-Federal sources. This determination is closely related to the finding that insurance is not generally available to all those potentially capable of performing response action work; however, the "diligent efforts" showing imposes the burden of demonstrating such unavailability on the party seeking indemnification.

The third and final requirement is that, in the case of indemnification agreements covering more than one facility, the contractor must make a separate showing of diligent efforts to obtain non-Federal insurance coverage before it begins work at each individual facility.

The special requirements covering indemnification agreements at sites where the contractor is hired by potentially responsible parties include a determination by the President that the total net assets and resources of the potentially responsible parties are not adequate to provide indemnification. This requires a rigorous and comprehensive analysis of the financial status of such parties, and a determination that they are unable to provide all, or part, of the indemnification required. Complete Federal indemnification must be the only alternative.

Finally, before the Federal Government pays any claims under indemnification agreements at private sites, the contractor must have exhausted all administrative, judicial and common law remedies for covering indemnification claims against all other potentially responsible parties participating in the cleanup of the facility. The burden of proving that such remedies have been exhausted resides with the contractor.

Any indemnification agreement signed under the authority of Superfund must contain appropriate deductibles and limits on the Government's liability for claims, including both limitations on the dollar amounts to be paid and conditions affecting the obligation to pay claims such as compliance by the contractor with sound engineering practices.

Although the President has authority to enter into indemnification agreements for cleanup at federally owned or operated facilities, claims paid under such agreements can never be made out of the hazardous substance Superfund but must instead be paid by the agencies themselves, as required under sections 107(g) and 111(e)(3).

The primary purpose of Superfund is to minimize releases of toxic chemicals. This is achieved by establishing a standard of liability only marginally short of absolute based on the conviction, now confirmed by experience, that this will induce the highest standard of care. Erosion of liability, whether through indemnification or otherwise, increases the probability that care will be lessened proportionally. Therefore, the fund is to be used to provide indemnification only when no other option is available to achieve cleanup.

SECTION 120—FEDERAL FACILITIES

Since the original Superfund law was passed in 1980, Federal agencies and departments responsible for hazardous waste facilities have lagged behind the Environmental Protection Agency and the private sector in identifying and assessing dump sites in need of cleanup.

The General Accounting Office [GAO] estimated in April 1985 that there is an average of two to three potentially hazardous sites at each of 473 military bases across the country, for a total of some 800 to 1,400 military sites nationwide. These figures do not include sites operated by the Department of Energy [DOE], where radioactive and chemical wastes that were byproducts of the Nation's atomic weapons research and manufacturing programs are buried.

Although the 1980 Superfund law subjected Federal facilities to the same legal requirements as apply to private sites, the absence of aggressive enforcement by EPA and the Department of Justice [DOJ] have led to a Federal cleanup program that not only responds slowly and tentatively to the most notorious situations, but has yet to make a comprehensive effort to deal with other hazardous facilities.

The provisions included in section 120 of the Superfund Amendments and Reauthorization Act of 1986 are designed to institute fundamental reforms of the Federal facilities cleanup effort in three key areas.

First, the amendments make it clear that the Environmental Protection Agency has final authority over other Federal agencies' or departments' compliance with the law. By giving this authority to the agency currently responsible for implementing Federal environmental programs, we assure that the cleanup effort at Federal facilities is both adequate and consistent with parallel efforts at privately owned or operated sites.

Second, the amendments require a comprehensive nationwide effort to identify and assess all Federal hazardous waste sites that warrent attention. Using as a base the inventory required under the Hazardous and Solid Waste Act Amendments of 1984, the legislation requires EPA to assess such sites in the same manner that it assesses privately owned or operated facilities. The legislation further requires that any Federal facility that meets the criteria applied to private sites listed on the national priorities list [NPL] must be placed on the NPL. Although Superfund money cannot be spent to clean up such facilities, their placement on this list will help assure that compliance with the law's standards is achieved by the Federal Government in an effective and timely manner.

Third, the amendments set forth timetables both for the formulation of cleanup plans and for the initiation of cleanup at all Federal facilities qualifying for listing. The amendments reiterate existing law that all cleanup standards and other legal requirements—except as specified—apply to Federal facilities in the same manner as they apply to private sites. Timetables, standards and requirements are enforceable under the citizens' suits provisions of the legislation as nondiscretionary duties of the Federal Government.

The Superfund Amendments of 1986 establish special rules and procedures for the application of State environmental and health laws to facilities on the NPL, including Federal facilities. For all other Federal facilities the legislation does not diminish the application of State law nor does it preempt State law in any way. A State cannot, however, single out only Federal facilities by creating special rules for them that are not otherwise applicable to similar situations at private sites, and then expect these rules to be enforceable under Superfund. Such rules may, or course, be enforced under the State's own laws or, perhaps, other Federal laws, if this would otherwise be legal.

The hazardous waste compliance docket created by the legislation is to be a full and comprehensive inventory of all hazardous facilities in the country, including releases required to be reported under section 103 of the Comprehensive Environmental Response, Compensation and Liability Act [CERCLA].

The Administrator of EPA is responsible for conducting preliminary assessments and then evaluating all facilities included on the hazardous waste compliance docket. The costs of such assessments and evaluations are to be paid by the Federal agency or department responsible for the facility, as are the costs of preparing remedial investigations and feasibility studies, conducting other necessary studies and, ultimately, cleanup of the facility. In carrying out its responsibilities, EPA must be scrupulous in assuring that Federal facilities are treated the

same as private facilities and are not given any special treatment.

Following the listing of a Federal facility on the national priorities list, the legislation requires that the relevant Federal agency or department enter into an interagency agreement with the Administrator for the completion of remedial action at such facility. Such an agreement must reflect the mutual agreement of the responsible Federal agency or department and EPA regarding what remedial action is appropriate for the facility.

Because interagency negotiations have too often become stalemated when the responsible agency has refused to comply with EPA's conclusions regarding the remedy needed to protect human health and the environment, the legislation explicitly gives EPA final authority to select a remedy over the objections of the responsible agency when necessary. This authority does not diminish the legal obligations of the responsible agency for assuring the cleanup is carried out in a timely and effective manner and, should citizens' enforcement action at the facility be taken, the responsible agency should be a primary defendant from whom relief is sought.

Finally, the legislation recognizes the reality that, only in unusual cases, the national security may require issuance of circumscribed Executive orders exempting a Federal facility from the requirements of the Superfund Amendments and Reauthorization Act of 1986. In all such cases, Executive orders should adopt the method of protecting legitimate national security interests that maximizes compliance with the environmental and health requirements imposed by the legislation. For example, it may be appropriate to require that all EPA employees reviewing cleanup plans obtain a national security clearance, but it would not be appropriate to exempt such plans from national cleanup standards simply because EPA employees are assigned to ascertain what standards should apply to the cleanup.

Mr. President, I would like to observe that this is one area where it should not have been necessary for the Congress to write new amendments to the law. Hopefully, there will come a day when the law will be implemented as the Congress intended and these provisions will become unnecessary.

In 1980, the Congress went to great pains to assure that the U.S. Government was treated, in all respects, like any other responsible party. The law's definition of a "person" accords no special treatment for the United States, and two other provisions, 107(g) and 111(e)(3), expressly prohibit. But no loophole, it seems, is too small to be found by the Federal Government.

In the Executive order implementing the 1980 law, its authorities with respect to Federal facilities were delegated to the heads of the Federal agencies. In the judgment of this Senator, that provision of the Executive order is illegal, but to the best of my knowledge it has never been challenged. Perhaps someday it will be and a court will read the clear mandate of the law and set aside the Executive order. Or, perhaps a revised Executive order will someday be issued.

In the meantime, Mr. President, these amendments make no change in the provisions of the 1980 law which I have just cited. They do not in any way, expressly or impliedly, sanction the Executive order or the conduct of the executive branch. The agencies of the Federal Government remain strictly, jointly and severally liable, and otherwise subject to the law just as if they were nongovernmental persons. These amendments merely reflect an acceptance by the Congress of the reality that, however illegal the actions of the executive branch may be, compelling its officers to undertake and implement cleanups must be the first priority.

SECTION 122—SETTLEMENTS

This section of the legislation is intended to encourage the Environmental Protection Agency [EPA] and other agencies responsible for implementing the Superfund Program to increase their efforts to impose the burden and costs of cleanups on responsible parties through the use of settlement agreements. When the administration presented its Superfund reauthorization proposal to the Congress in February 1985, EPA Administrator Lee M. Thomas stated that EPA intended to ensure that private parties pay for and perform at least half of the cleanup work at Superfund sites. The funding level established by the Superfund Amendments and Reauthorization Act of 1986 [SARA]—$8.5 billion for basic site cleanup—reflects this assumption.

If half the responses are to be paid for directly by private responsible parties, the timing and magnitude of settlement and enforcement efforts becomes crucial. The Government's current enforcement program lags far behind the goal of private party cleanups at half of the Superfund sites, both in terms of the number and scope of the agreements that have been reached and in terms of the speed with which such agreements have been implemented.

Because of the weakness of the current enforcement program, section 122 clarifies and affirms the Government's enforcement authority by creating special procedures and timeframes for the negotiation of private party settlements. Section 122 contains these procedures, which are available to encourage more comprehensive, expeditious and adequate settlements. However, the use of the procedures is discretionary with the President—or a delegee—and a decision whether to invoke section 122 is not subject to judicial review. The additional litigation that would result if private responsible parties were allowed to challenge and litigate the decisions whether to use the procedures would serve only to further paralyze an already lagging enforcement effort.

The procedures contained in section 122 are premised on the current Superfund liability system, which imposes strict, joint and several liability on those found responsible under sections 106 or 107 of the Comprehensive Environmental Response, Compensation and Liability Act [CERCLA]. Earlier versions of the legislation, including the reauthorization bill (H.R. 5640) passed by the House of Representatives during the 2d session of the 98th Congress, contained explicit restatements of this underlying liability. Such provisions were deleted from SARA because they are unnecessary, given the clear and correct body of case law that has confirmed and developed the doctrine of strict, joint and several liability under Superfund and section 311 of the Clean Water Act.

The importance of placing the settlement procedures established under section 122 in the context of Superfund's liability scheme cannot be overstated. Settlements are an alternative to full prosecution of strictly, jointly and severally liable parties and must always be evaluated in relation to the relief the Government could have obtained by litigating the case. Because Superfund imposes liability without regard to fault, and requires that when the harm is indivisible each party be jointly and severally liable for the full costs of cleanup, settlements for only a portion of cleanup costs must be measured against a high standard. Under a liability scheme as rigorous as that of Superfund, recoveries of amounts less than full costs are disfavored and are justified by only extraordinary circumstances.

Perhaps the best illustration of congressional expectations regarding the operation of the new provisions in the context of so-called mixed funding agreements.

The legislation confirms the President's existing authority to enter into "mixed funding" agreements, whereby the funds contributed by potentially responsible parties are supplemented by Federal Superfund dollars. The legislation also permits the President, in his or her sole discretion, to prepare a nonbinding preliminary allocation of responsibility dividing costs amount the potentially responsible parties even though they are jointly and severally liable under the law. But such allocations are to be used for settle-

ment purposes only and are never, under any circumstances, admissible in any judicial or other proceeding.

Both of these provisions reflect the reality that the Government will sometimes settle for less than full cleanup costs from a group of potentially responsible parties and then seek to recover remaining costs from nonsettling parties. While this flexibility is desirable in a settlement program, strict, joint and several liability is an element of the law because it assures full, rather than partial, recoveries. Joint and several liability in particular, shifts the burden of pursuing recalcitrants from the Government to other potentially responsible parties. The theory underlying Superfund's liability scheme was, and is, that the Government should obtain the full costs of cleanup from those it targets for enforcement, and leave remaining costs to be recovered in private contribution actions between settling and nonsettling parties.

Therefore, the provisions ratifying EPA's authority to enter into "mixed funding" agreements and prepare nonbinding allocations should not be read as encouraging any departure from the full recovery policy established in the original Superfund law. Nor do these provisions to shift the burden of pursuing recalcitrants from private parties onto the Government.

To facilitate settlements, the legislation confirms the President's authority to improve such agreements from a private party's perspective. The two most important categories of so-called sweetener provisions are those authorizing agreements to freeze a responsible party's percentage share of future cleanup costs and covenants not to sue for future liability. While such provisions are useful tools that the President may use to assist settlements, they unfortunately could result in inadequate payments or recoveries of cleanup costs—particularly for unknown and unanticipated problems. Payment and recovery of full costs is the overriding goal of the program. Therefore, all such provisions must be narrowly and carefully focused and not based on inadequate information about the full extent of a private party's potential liability.

The President should exercise special caution in agreements which might freeze an individual party's percentage share of future cleanup costs. Such future costs could arise from two very different situations: Contamination might be discovered that was undetected at the time the agreement was first signed; or, the initial remedy might fail for unanticipated reasons. In each case, the cost of remedying the unanticipated problems could be substantial and the facts and equities of the unanticipated problems could justify a larger contribution from the responsible parties which signed the original agreement.

The bill also explicitly authorizes the Government to enter into covenants not to sue. This authority exists under current law, but the Government has been reluctant to exercise it, according to officials of the Environmental Protection Agency and the Department of Justice, because of the widespread adverse publicity surrounding several early settlements. The express confirmation contained in this bill is not an encouragement to enter into settlements where they are unwarranted or inappropriate. Nor is it an indication that the Congress is necessarily dissatisfied with the number or content of settlements which the Government has entered into. Rather, it is merely a formal acknowledgement that settlement authority exists and may be exercised, if that is appropriate.

The inappropriate use of settlement authority would have an implication for the integrity of the entire program and the credibility of its managers. Indeed, it was such inappropriate use that created the adverse publicity which subsequently chilled the Government's willingness to enter into negotiations, even where that was patently reasonable.

An abuse, real or perceived, of the settlement authorities confirmed by this bill would recreate a situation which was undesirable from the perspective of nearly all parties. This is especially true of the covenants not to sue, because they represent a permanent commitment on the part of the Government to admitted polluters to never again pursue them, even when the threats to public health or the environment might be extraordinary.

It is essential that even the appearance of impropriety be avoided, and that there never be any doubt in the mind of the public that it is being completely protected, both now and in the future. This will require narrow, careful, and thoughtful implementation of the law's authorities, especially in areas where the Congress utilized necessarily vague language, such as the "reasonable assurances" test of section 122(f).

Section 122(f) gives the President discretionary authority to grant covenants not to sue for future undetected contamination in extraordinary circumstances, if the agreement contains "reasonable assurances" that public health and the environment will be protected from any future release.

In determining whether an extraordinary circumstance exists, the President may consider—where applicable—the same factors—for example, volume and toxicity of waste, culpability of potentially responsible parties—as would be considered in a normal settlement because these factors cover all of the usual factual considerations presented by a Superfund case. However, the identification of extraordinary circumstances justifying a covenant not to sue for undetected contamination involves an independent judgment by the President that the factors involved in the specific case are both atypical of the usual enforcement matter and, also, warrant special treatment.

In the past the Government has deemed certain cases involving de minimis or bankrupt parties to represent extraordinary circumstances justifying the granting of a covenant not to sue for undetected contamination, the circumstances of the contamination and the cleanup, taken as a whole, should establish the basis for a conviction—not merely a belief—that such undetected releases will not occur and that other potentially responsible parties will be available to pay for all subsequent cleanup that might be necessary.

Even after extraordinary circumstances are identified, such convenants may be granted only when other terms and conditions of the agreement provide adequate protection against future releases. Under no circumstances would such terms and conditions include the general availability of the fund to pay for future cleanup. However, they could include a clause in the agreement specifying that the covenant becomes effective only after a certain time period. It must be sufficient to provide the Government with ample opportunity to discover whether unanticipated contamination exists.

Finally, the bill reaffirms the President's authority to preserve the ability to take enforcement actions under sections 106 and 107 of current law if any future problems develop at a site cleaned up under a consent decree.

Section 122(f) reflects EPA's settlement policy as applied through July 1986. Under this policy, covenants not to sue for undetected contamination at a site are included in consent decrees only under extremely rare circumstances. In over 200 cases settled under the Superfund Program, the Government has included such covenants in only two or three cases. The provision anticipates no increase in or expansion of this policy or its rate of application.

The bill eliminates prosecutorial discretion, by mandating that the President grant covenants not to sue, in two extremely limited circumstances: First, when the cleaned-up hazardous substances are moved offsite to a facility which has received a final permit under the Resource Conservation and Recovery Act [RCRA]; and, second, where such substances are treated in such a way as to destroy, eliminate, or permanently immobilize all hazardous constituents.

The first circumstance, involving offsite transport to a RCRA facility holding a final permit, can and will occur

only if and when the President rejects an alternative remedial action plan that does not involve offsite transport but otherwise meets the requirements of the national contingency plan. In other words, in order to qualify for a mandatory covenant not to sue, the settlement agreement must embody an offsite remedial action that was selected after full development of an onsite alternative that also complies with the law.

The second circumstance, involving permanent treatment of all hazardous substances covered by the covenant not to sue, must result in either the destruction of such substances or fundamental changes in their characteristics such that they no longer pose a hazard to human health or the environment. Long-term storage in above ground—or underground—engineered structures does not qualify as a permanent treatment technology covered by the second circumstance.

In either case, the release goes only to the materials at the site to which they were transported—in the first circumstance—or to their residues, ashes, or other remnants—in the second circumstance. In either event, the set of circumstances defined by the covenant should constitute a null set, in the absence of grave error.

EXTINGUISHING CONTRIBUTION RIGHTS BY ADMINISTRATIVE SETTLEMENT

Mr. President, I support fair settlements as an efficient alternative to litigation. Still, I must speak out against what I see as an unwise and arguably unconstitutional settlement provision in section 122 of the conference bill.

It is often argued that responsible parties may be unwilling to enter into settlements with the Government without assurance that further liability will not be incurred in contribution suits by nonsettling responsible parties. Such suits are anticipated in situations where the Government, following settlement with less than all the responsible parties at a site, obtains further cost recovery in a later enforcement action against the nonsettling responsible parties. As passed by the Senate, H.R. 2005 provided that when a potentially responsible party entered into a judicially approved settlement, that party was not liable for contribution claims regarding matters addressed in the settlement.

The contribution protection in the Senate bill, I stress, was limited to judicially approved settlements. The conferees, however, adopted the approach of the House bill, which gives contribution protection in the case of administrative as well as judicially approved settlements. It is this broadening of the Senate bill's proposal that causes me deep concern, for it is bad policy and very likely unconstitutional.

It is bad policy because it gives bureaucrats, often under pressure to produce settlements, the power to determine when legitimate claims of nonsettlors shall be cut off. I do not for a moment question either the motives or energy of executive branch employees. I simply point out that both the Congress and EPA management have sought to crank up the Government's enforcement machine, and that those in the Government responsible for negotiating settlements are understandably eager to conclude such agreements. Hence, it seems unwise to allow administrative settlements, negotiated in private and not subject to judicial scrutiny, to peremptorily extinguish any valid claims that might be made in later contribution suits. Persons seeking fair reimbursement after paying an excessive damage award are at least entitled to have their rights determined impartially. This is fundamental in our society, and in my view is realized only when a judge, not an administrative agency, has the final say on the terms of a settlement.

The extension of contribution protection to administrative settlements is also flawed on constitutional grounds. It is a truism that the due process requirement of a fair tribunal applies to administrative agencies as well as to courts. *Withrow* v. *Larkin*, 421 U.S. 35 (1975). I am troubled, again, by the ability of the executive branch settlement negotiating team to meet this unyielding constitutional standard. Consider, too, how fair a process can be that decides the fate of claims—future contribution suits—that are not even before it. Finally, the cutoff of contribution rights here cannot meet the stricture in *Yakus* v. *United States*, 321 U.S. 414 (1944), that summary action of an administrative agency resulting in a deprivation of rights must be subject to later judicial review.

A separation of powers issue is also evident here. To give the power to extinguish independent legal claims is to erode the structural separation of powers and the "carefully defined limits on the power of each branch." *INS* v. *Chadha*, 462 U.S. 919, 958 (1983). Of course, the branches of Government are not "hermetically" sealed from one another. *Buckley* v. *Valeo*, 424 U.S. 1, 121 (1976). Nonetheless the separation of powers principle requires that each branch maintain its separate identity. Id. at 120–124; *INS* v. *Chadha*, 462 U.S. at 951. Although this Senator supports the conference report as a whole, I must, as a matter of conscience express my opposition to this particular provision.

SECTION 127—LIABILITY LIMITS FOR OCEAN INCINERATION VESSELS

Mr. President, some mention should also be made of the interplay between these amendments and the Marine Protection, Research, and Sanctuaries Act [MPRSA], which they amend.

Section 127(d) of SARA amends section 106 (33 U.S.C. 1416) of MPRSA to eliminate any preemptive effect which it might have and, thus, make it consistent with the letter and spirit of CERCLA. This action is necessitated by the U.S. Supreme Court's decisions in Milwaukee versus Illinois and Seaclammers versus Middlesex County. These two decisions, taken together, construe the MPRSA to displace Federal common law, interfere with other remedies under State and Federal law, and potentially preempt State law as well. Their effect is to leave injured parties with no available remedy, which is an outcome never intended or contemplated by the Congress in enacting the MPRSA or the other environmental laws, such as the Clean Water Act.

This amendment overturns Seaclammers. It also does more.

New subsection (h) states affirmatively that the savings clause extends to the entire act, not just the section. Apparently this type of drafting precision is now necessary because of the rigidity of the construction which the Supreme Court places on the use of words such as "section." It would be simpler, and preferable, if the Court would construe such words as the Congress intended, as reflected in documents such as committee transcripts. But apparently, for the moment at least, every misstep by the Congress in this area is, according to the Supreme Court, to result in a plunge into an abyss. In that regard, Mr. President, I would like to have appended to my remarks a statement which was inserted in the RECORD previously on this subject. I hope that it might provide guidance to the courts on this general subject, as well as some encouragement to more reasonably construe congressional enactments.

In any event, subsection (h) is to express our intent as best we can, that State law is to be undisturbed by MPRSA. Similarly, in cases on noncompliance, other Federal laws, including maritime tort law or common law, are also undisturbed.

The bill also, by adding new language to section 107(h) of CERCLA, assures that physical damage to the property or some other proprietary interest of the claimant is not an essential element of a right of action. Individuals who suffer a loss have a right of action. That the injury which caused that loss was to the property of the public or to another is irrelevant. The test is whether or not the claimant experienced a loss.

Mr. President, it is my custom to avoid issues which are in litigation, not embrace them. But to every rule there are exceptions.

There is now pending before the Second Circuit Court of Appeals a review of the decision by the U.S. District Court for Vermont in the case of *Oulette* v. *International Paper*, 602 F. Supp. 264 (1985). One of the issues in that case is whether the enactment of the Federal Clean Water Act extinguished rights of action under other laws, including Vermont common and statutory law. Why the question should arise at all is a puzzle to this Senator since the language of the Clean Water Act is quite clear on the subject. Section 505 of the Clean Water Act establishes the right of a citizen to sue to enforce the provisions of the act, then states explicitly that other rights are undisturbed. Subsection (e) states that—

(e) Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any affluent standard or limitation or to seek any other relief (including relief against the Administrator or a State agency).

Despite this clear language, at least one court has held that the act extinguishes some State common law. That court is the Seventh Circuit Court of Appeals, which made such a finding in *Illinois* v. *City of Milwaukee*, 731 F. 2d 403 (1984).

My purpose here is not to review the details of these and other court decisions, but to make available some legislative history which I hope will be helpful in indicating just what was intended by the Congress. This legislative history includes transcripts from the markups during 1970 and 1971 of the Clean Air and Clean Water Act.

The citizen suit provision was first adopted in the Clean Air Act and then, about 1 year later, incorporated in the Clean Water Act. Therefore, to completely understand what the members of the Committee on Public Works and the Congress intended it is necessary to review transcripts and other documents relating to both laws.

The subject of preempting or displacing rights available under other laws arose for the first time on June 4, 1970, at a meeting of the Subcommittee on Air and Water Pollution. The subcommittee was meeting to mark up what was later to become the Clean Air Act. Included in the bill before the subcommittee was a proposal to authorize citizens to file suit to force compliance with pollution control requirements. As the subcommittee members were discussing this proposal, Senator Howard Baker offered an observation and expressed a fear as follows:

Senator BAKER. The only question is whether or not you have access to the Federal courts under one of the jurisdictional requirements for diversity or jurisdictional amount or one of the other specialities. So we aren't creating a brand new cause of action. We are, rather, modifying one that already exists.

I think that brings to mind something that we should make sure we fully understand; that is, that we don't limit and circumscribe the right of citizens individually and as a class to do what they can already do by spelling it out here in this statute. If we start spelling out each detail here, the court is going to hold that we have obliterated everything else that the common law created. (Transcript Roll 15, p. 1687.)

The discussion then moves on to other subjects, but a minute or two later, Senator Baker suggests that the bill be amended.

Senator BAKER. I think you could also put in a saving clause to the effect that:

"Nothing contained in this act shall abridge or abrogate any pre-existing right by statute or common law."

I think the courts would permit that. (Transcript Roll 15, p. 1692)

The transcript shows no direct response to Senator Baker's suggestion at this time, but on July 29, 1970, the subcommittee was meeting again to markup the proposed Clear Air Act. Senator Baker was absent, but there was a discussion of the meaning of the savings clauses:

Senator COOPER. If I may ask another question . . . what would be embraced in equitable relief? (Would it affect) any personal rights you may have as a person, for damages.

Mr. JORLING. The intention in the language, as I understand it, is to specifically avoid any damage provisions. It is strictly an equitable provision to abate, to halt, to prevent this violation from occurring, and does not address itself to either physical or monetary damages in any way. It is strictly an action to achieve this abatement, if found, of a violation of the schedule of compliance and emission stand (sic) or emission requirement.

It does not go to the issue of damages at all, and that comes out, I think, of the whole philosophy of the act, and that is, it is very difficult for anybody to prove personal or monetary damage resulting from the effects of air pollution.

Mr. BILLINGS. We have reserved the rights of citizens under other common law to seek damages for pollution, if such damages occur. (Transcript Roll 16, p. 0080–81.)

The two staff members responding to the questions from Senators Cooper and Spong were Leon G. Billings and Thomas Jorling. Mr. Billings, who was not a lawyer, was staff director of the Subcommittee on Air and Water Pollution and Senator Muskie's principal aide. Mr. Jorling, a lawyer, was minority counsel to the full committee and the principal aide to the Republican members.

The transcripts contain one further reference to the savings clause, which is a statement by Senator Spong of Senator Baker's original intent. The members were discussing whether citizens should be required to provide notice to administrative agencies as a precondition to filing suit. There had been earlier subcommittee discussions, and the members were attempting to refresh their recollections, with Senator Muskie observing at one point, "* * * we have gone through this once before. I forget just how we resolved it." (Transcript Roll 16, p. 0088.) Senator Spong recalls the following:

Senator SPONG. It is coming back to me now. Senator Baker's concern was that we could be taking a right away from a citizen . . . to go into court . . . . (Transcript Roll 16, p. 0090.)

Following subcommittee and committee markup, the bill was considered by the full Senate on September 21, 1970. As it had in the earlier stages of the legislative process, floor attention focused almost exclusively on the consequences of conferring on citizens an explicit right to sue to enforce pollution laws. Senator Philip Hart of Michigan defended the provision, which was by then section 304 of S. 4358, as "one of the most attractive features of the bill," adding that it would not result in a proliferation of litigation.

The bill makes no provision for damages to the individual. It therefore provides no incentives to suit other than to protect the health and welfare of those suing and others similarly situated. It will be the rare, rather than the ordinary, person, I suspect, who, with no hope of financial gain and the very real prospect of financial loss, will initiate court action under this bill.

(Legislative History of the Clean Air Act Amendments of 1970, Congressional Research Service, Library of Congress, Washington, D.C., Volume 1, p. 355.)

Senator Hart's remarks, together with the transcripts of the markups, make it clear that Senators believed that, in enacting the Clean Air Act, they were supplementing remedies available to injured parties, not supplanting them.

The House bill contained no comparable citizen suit provision. But with some changes in the Senate language, the House receded. The last sentence of the statement of managers on part of the House in explanation of the section 304, the citizens suit provision, was the following:

The right of persons (or class of persons) to seek enforcement or other relief under any statute or common law is not affected. (Id. at p. 206.)

During consideration of the Clean Water Act the following year, much less attention focused on the citizens suit provision. That is due, in part, to the fact that the version contained in the Clean Water Act was identical to what had been enacted in the Clean Air Act, except for changes required because of differences in terminology—for example, discharges of water pollution effluent vice emissions of air pollution).

At this time several bills were pending in the Congress to expand the rights of citizens to file class action suits. Therefore, some discussion concerned itself with the issue of whether the parenthetical phrase "or class of persons" might have the effect of expanding the then current law. On September 21, 1971, the Committee on

Public Works held a markup of the proposed Clean Water Act amendments which had been reported by the Subcommittee on Air and Water Pollution. During the review of the citizen suit provision, the following exchange took place:

Senator COOPER. Do you want to tell us against whom action may be brought and for what causes and then exceptions? Then on page 115, subsection e, you add, "Nothing shall restrict any right which any person (or class of persons) . . .". Is the right of a class of persons only available under the conditions set out in e, in other words, when they have a right under State statute of common law?

Mr. MEYER. Well, it is a parenthetical phrase.

Mr. JORLANG (sic). The intention is, as in the Air Bill, to avoid in this provision any of the complexities that are raised with cross-action (apparently class-action) suits on the basis that this is a provision that authorizes only equitable relief. There is no provision for the recovery of damages nor for requirement of showing of damages.

The provision, subsection (e), provides merely that this section, the authorization granted in this section, in no way affects any rights a person has, whether or not acting alone or as a class, under any other law, statutory or common, for relief against a pollutor (sic). This would normally mean that if there are some damages, standard common law damages, and a person would like to join with a class of people that suffered similar damage, this does not prevent them from doing so. (Transcript Roll 17, p. 1617-18.)

This understanding of the savings clause was also reflected in the committee report accompanying S. 2770, which explained what was to become section 505(e) as follows:

It should be noted, however, that the section would specifically preserve any rights or remedies under any other law. Thus, if damages could be shown, other remedies would remain available. Compliance with requirements under this act would not be a defense to a common law action for pollution damages. (Legislative History of the Water Pollution Control Act Amendments of 1972, Congressional Research Service, Library of Congress, Washington, D.C., p. 1499.)

The issue of what impact, if any, the enactment of the Clean Water Act would have on the availability of other statutory or commond law remedies was apparently not discussed further. However, it would seem that further discussion was unnecessary. From the first mention of the issue by Senator Baker during the subcommittee markups of the Clean Air Act to the last recorded mention of the subject in the Senate Public Works Committee report on the Clean Water Act the attitude and intent of the members was remarkably consistent. Not once was there ever any doubt as to what they intended or disagreement as to its correctness. In every discussion of the matter it was clear that all other rights—whether State or Federal, statutory or common law— were to be preserved.

The clarity of the repeated statements to this effect and the unanimity of agreement on the proposition made further discussion meaningless.

I might observe that this Senator was a Member of the other Chamber when the Clean Air Act amendments were adopted and a member of the Senate Committee on Public Works when the Clean Water Act amendments were considered and approved. Speaking only for himself, this Senator can recall no occasion on which it was ever suggested at the time of their consideration that the enactment of the Clean Water Act or the Clean Air Act would diminish the rights of injured parties. On the other hand, I can find a record replete with unequivocal statements by Members and staff that these rights were to be preserved, combined with clear indications of affirmation and agreement by other Senators and Representatives.

In the face of a record such as this, it seems impossible for any reasonable person to conclude that the Congress intended by the enactment of these laws to provide the public with less protection from personal injury than it had before. Such a conclusion is directly at odds with every statement made during the long and detailed consideration of these laws. Nevertheless, some persons apparently have reached such a conclusion in the past. I would hope that in light of the information I have just provided, they will reconsider and correct earlier decisions.

Mr. President, the complete transcript to which I have referred are available through the documents room of the Committee on Environment and Public Works should any person wish to review them.

TITLE III—COMMUNITY RIGHT TO KNOW

Mr. President, I would like to continue my commentary with a few remarks about the Community Right-to-Know provisions of this bill. I was privileged to serve with two of my colleagues, Senator BENTSEN and Senator LAUTENBERG, as Senate representatives to a subgroup of the Superfund Conference that developed the conference substitute language for this title.

These provisions were developed in large part as a result of the terrible disaster in Bhopal, India, at which deadly fumes of methyl isocyanate, a pesticide, intermediate, were released accidentally into a sleeping community, resulting in death or injury to thousands of people. A strong worker and community right-to-know movement already was developing in this country. The Bhopal disaster focused public attention on the fact that extremely dangerous chemicals are present at chemical manufacturing plants and other facilities in communities all across America. This title of the Superfund bill recognizes a basic fact: that citizens have a right to know about these chemicals—what they are, where they are, and how much of them is present.

But the bill goes beyond concern about accidental releases of these toxic and hazardous chemicals. It also recognizes that the public has a right to be informed about routine releases of these chemicals to the air and the water and the land. Just as the public has a right to know about releases that might happen as a result of an accident, the public also has a right to know about releases that do happen every hour and every day that some manufacturing facilities operate.

The Bhopal disaster also focused public attention on the inadequacy of disaster planning around facilities where large amounts of toxic and hazardous chemicals are used and stored. The bill deals with this issue by requiring the establishment of appropriate emergency plans in communities where certain dangerous chemicals are used or stored.

Mr. President, I would like to mention a few particular provisions of this title.

One of the most difficult issues that confronted the conferees was the question of trade secrets. There is no question that legitimate trade secrets exist in the chemical industry. Sometimes an advantage gained by use of a particular chemical compound in a complex fabrication process represents the competitive edge that company has over others.

But it is equally true that the primary purpose of a community right-to-know law is to inform the public about these chemicals. Any concessions made to trade secret concerns must be only as broad as necessary to protect a legitimate trade secret.

In that regard, one of the most important provisions of this bill is the requirement that any person who claims the specific identity of a chemical subject to reporting must substantiate that claim at the time the claim is made. This requirement for substantiation consistent with the Senate bill. The showings the claimant must make at the time the trade secrecy claim is submitted are set out clearly in the statute. The Environmental Protection Agency must determine whether the submitted justification for the claim, assuming its veracity, meets the substantiation requirements of section 319(b).

Procedures are set out for persons to petition the Agency to release trade secret information. These procedures do not shift the burden of proof to the petitioner. Instead, they provide a mechanism by which a citizen can require a trade secret claimant to document the legitimacy of the trade secret and the veracity of the claim with respect to the elements of substantiation discussed above. Thus, for

example, a claimant may support a trade secrecy claim, in part, by asserting as fact that the chemical is a secret catalyst that allows a certain incremental gain in production efficiency, and that disclosure that the chemical is present at the facility would reveal this fact and would "cause substantial harm to the competitive position" of the claimant. Upon challenge by the Administrator in response to a petition, the claimant must document these assertions with appropriate chemical engineering and market data. The bill contains appropriate penalties for false representations.

Of course, the Administrator is not required to wait for a petition in order to require documentation of the legitimacy of a claim.

The conference substitute also contains special provisions that assure disclosure of trade secret chemical identity to States and, on the basis of a confidentiality agreement, to health professionals. State health professionals do not have to execute confidentially agreements because of their position as employees of State government.

It is not intended that the confidentiality agreement create a significant burden for the health professional. The health professional is in the best position to judge whether knowledge of specific chemical identity is needed to fulfill his or her professional responsibility. the facility owner or operator should not substitute his or her judgment for that of the health professional.

Similarly, the confidentiality agreement must not limit unduly the use of the information by the health professionals. For example, health professionals routinely consult with one another about symptoms, medical findings, and the treatment of disease. A confidentiality agreement should not inhibit such consultation. Similarly, health professionals often present lectures or publish scientific papers about their research and clinical experience. In most cases, it should be possible to report medically important facts about a specifically identified chemical without disclosing a legitimate trade secret. For example, it is the presence of a particular chemical at a particular facility that is the trade secret, not the relationship between the chemical and any observed clinical effects. Therefore, health professionals should be free to report medical information about such a chemical while preserving the trade secret by not naming the facility at which the chemical is used.

Subsection 313(d) of the bill authorizes the Administrator to list chemicals for the purposes of reporting under that section on the basis of various health and environmental effects. With regard to chronic human health effects, chemicals may be listed if they cause or can reasonably be anticipated to cause certain "serious or irreversible" human health effects. Similarly, chemicals may be listed if they cause or can reasonably be anticipated to cause "significant" adverse acute effects. An effect does not have to be life-threatening or debilitating to be considered serious or significant, nor does it have to affect the general population. In particular, the Administrator is to consider adverse acute effects on sensitive individuals.

The Administrator should recognize that he or she is not regulating a chemical by listing it under this subsection. There is no requirement to perform risk assessments or to balance the benefits and costs of a decision to list. The purpose of this section of the bill is to inform the public which can be accomplished without very great burden on the reporting facility. Therefore, a decision to list a chemical for the purposes of reporting under this section can and should be made on the basis of less scientific evidence than would be needed to regulate its manufacture, use or disposal.

This section also requires the Administrator to computerize the data reported on the required forms and to make these data available to the public by various means. Successful implementation of this requirement is vital to the basic purpose of the program. The data should be managed in the computer in such a way as to allow a wide variety of analyses. For example, it should be possible to retrieve data not only about individual facilities, but also aggregate data organized by type of chemical, type of effect, geographic location, company name, etc., as well as combinations of these parameters.

Where the specific identity of a chemical is a trade secret, the Administrator must identify its adverse health and environmental effects in responding to requests for information. This linkage is needed because it is usually impossible to research the toxicological literature on the basis of a general class of category name. In order to make it easier for the lay public to understand, the Administrator also should identify the adverse effects of toxic chemicals for which specific chemical identity is not withheld. For purposes of listing chemicals and identifying adverse effects, the Agency may rely on structure-activity relationships as well as test data on individual chemicals.

In implementing this section, the Administrator should keep in mind that its primary purpose is to inform the public about routine releases of toxic chemicals. The computer database must be managed in such a way as to maximize its accessibility and utility to the public.

I pay particular tribute to my colleagues who were the conferees from the Senate and particularly my friend and colleague, Senator BENTSEN, all of the others, Senator MITCHELL was one of those, who worked long hours in the effort, and Senator LAUTENBERG, from New Jersey. There were others. I will do injustice to them by not naming them, I am afraid. But all of our conferees did a splendid job and it took us to the point where we could bring this conference report to the Senate.

I yield to my friend from Texas.

Mr. BENTSEN. I thank my distinguished chairman. In the allocation of time on this side I reserve 7 minutes to myself, 1 minute to the distinguished senior Senator from New Jersey and 5 minutes to the distinguished junior Senator from New Jersey.

Mr. President, this legislation as my chairman has stated has been the result of a long and very arduous task carried on by the Senate conferees and the House conferees. It was, I think, one of the most difficult and most meticulous and detailed conferences I have ever seen insofar as the programmatic parts of Superfund were concerned and in turn trying to get an equitable sharing of the burden of paying for the cleaning up of these sites by the conferees from the Finance Committee. I had the dubious distinction of serving as a conferee for two of the committees having jurisdiction in this regard. I think it was an education that took place as we proceeded in the development of the statement of the conferees.

Defining an appropriate taxing approach to fund the Superfund has been a compelling and critical task. Over the last 3 years, we've had a lot of ups and a lot of downs. We've had endless meetings, endless negotiations. We've learned an enormous amount in the process.

I think that the main lesson of the last 3 years is that Superfund is a societal problem. When the first Superfund Program was created 6 years ago, the prevailing belief in the Congress was that the chemical and oil industries were primarily to blame. Those industries were the dirty industries. The polluters. Those industries were endangering our health and our children's health, destroying the environment, and leaving a legacy of hazardous waste to generations to come. The Congress believed that it was easy to draw a nice, bright line between "good" industries and "bad" industries: the chemical and oil industries were bad, and all other industries were good. High-Tech industries were good; food companies were good; manufacturers were good; steel companies were good.

Unfortunately for those who seek simple answers, Mr. President, this reauthorization process has shown that it just isn't so. I would guess that by now many of my colleagues have seen

the lists of companies that have been identified as contributors to Superfunds sites. Take the Stringfellow site in California, one of the worst hazardous waste dumps. Let me read off some of the names for that site:

Alcoa;
American Electronics, Inc.;
Automation Industries;
Borg-Warner Corp.;
Briggs Manufacturing Co.;
Calif. Electroplating;
Calstrip Steel Corp.;
Carrier Corp.;
Firestone Tire and Rubber;
Ford Aerospace and Communications;
General Foods Corp.;
McDonnell Douglas Corp.;
Northrup Corp.;
Purex Corp.;
Teledyne; and
Bell Wire Co.

The list goes on and on. There are hundreds of names on the list. Every conceivable kind of company is on the list—computer companies, food companies, steel companies, service business, trucking companies agriculture companies, aerospace companies, electric companies, etc. etc. sure, there are some oil and chemical companies, but the overwhelming majority of companies on the list have nothing to do with producing oil or chemicals.

This tells us one simple thing, Mr. President: while chemical and oil companies may have produced many of the hazardous substances that have found their way into Superfund sites, industries of all types have been responsible for actually dumping the substances into the sites. The dumping may have been done by a plastic manufacturer using hydrocarbons in its manufacturing process. Or it may have been done by a computer chipmaker using solvents to etch the chips. Or it may have been done by a food processor manufacturing packaging for its food. Companies of all stripes have been responsible for dumping hazardous waste.

Information recently compiled shows that the chemical industry manages 99 percent of its waste on site. Let me repeat that Mr. President: 99 percent of chemical industry waste is managed on site. Hazardous wastes managed on site cannot become a Superfund site, and that's for a very basic reason: liability for the cleanup of such waste is not in dispute. This is a point often lost in the debate over how to pay for Superfund. The Superfund Program has nothing at all to do with Superfund sites for which liability can be pinned on a private party; that party has to pay. The Superfund Program only has to do with so-called orphan sites—sites that are not owned and managed by any one company and for which liability is unclear. And the chemical and oil industries have nothing more to do with orphan sites than any other industry.

What we have before us today is a tax title that recognizes the societal nature of the Superfund problem. Instead of loading the tax for the new, expanded program on the oil and chemical industries, we recognized the facts and adopted a broad-based tax to spread the burden throughout the economy. This new broad-based tax will be levied at a rate of 0.12 percent on corporate profits. To measure corporate profits, we have adopted the alternative minimum tax base contained in the tax reform bill. Small companies will be exempt from this tax, but other than that, there are no exceptions—all industries will pay.

We can quibble about the precise type of broad-based tax that would be best for the program. Last year this body overwhelmingly approved a broad manufacturers excise tax for the program. I authored that tax with Senator WALLOP, and I still think it is a fair solution, and one that bears a close relationship to the problem. But the House would not approve that approach, and so we sought another approach. The corporate profits tax that we have finally included in the package may not be perfect, but it serves the purpose of spreading the Superfund burden broadly through the economy, and I support it.

Besides the broad-based tax, the package also extends the tax on chemical feedstocks, at the old rates. I certainly would have preferred to drop the feedstock tax altogether—and I believe that that would have been the fair thing to do—but I also recognize reality. I was willing to go along with the extension of the tax if there were no rate increases. I might mention that this is a very major departure from the four-fold increase in the feedstock tax that the House passed 2 years ago, and also a major change from the $800 million increase the House passed last year. The unfortunate fact is that taxes on chemical feedstocks merely tend to push our chemical industry and their closest customers overseas. If you're a manufacturing company and you purchase large amounts of chemicals for your business, you'll think twice about setting up business in this country if you have to bear the burden of the feedstock tax. You'll set up abroad and purchase chemicals that aren't taxed. And you'll export your finished products to this country free of the feedstock tax. It would have been a step backward if the feedstock tax had been increased in the face of our country's ballooning trade deficits.

A major victory for the Senate in this package was the rejection of a so-called waste-end tax—a tax on the generation of hazardous waste. The House bill sought to raise $2 billion from such a tax. The tax would have been an administrative nightmare for the IRS, as well as an unreliable and declining revenue source. It probably would have proven to be a stimulus for midnight dumping, and a further drag on the competiveness of several U.S. industries, particularly the chemical industry. My colleagues and I on the conference flatly rejected the idea of a waste-tax, but the House negotiators persisted in promoting this tax until the last minute. They finally concluded the issue yesterday, and the overall package quickly came together.

Our tax package, Mr. President, also contains taxes on oil. Under our compromise, the rate will be 8.2 cents per barrel on domestic production and 11.7 cents on imported oil and imported petroleum products. Companies that import oil don't care for this compromise. I understand that, and I regret that. But we have protected domestic producers in the bargain. Although domestic producers will have to pay 8.2 cents per barrel to the Government, they should find their prices rising by that much or a few pennies more. I would not have been able to support a conference report that attempted to squeeze significant money out of the battered domestic oil industry, and I think we have put together a package that protects the industry.

All things considered, Mr. President, the tax package that we have put together is a good package deserving of the strong support of the Congress. I believe it deserves the support of the President of the United States. Although it still singles out the chemical and oil industries for some special treatment. It also establishes a broad-based tax, and that is the real achievement of this bill. This bill also is fair to the State I represent. It is estimated that companies in my State of Texas pay about 49 percent of the revenues collected by the feedstock tax. That means that my State, which has only 3 percent of the Superfund sites, shoulderly a hugely disproportionate share of the cost of the first 5-year cleanup program. Enactment of a waste-end tax as in the House bill would have exacerbated the problem since Texas companies would have paid about 46 percent of that tax. Under this conference report, however, Texas will pay its fair share of the costs of the program. But not more than its fair share. It will pay only its proportionate part of the broad-based tax. Although Texas companies will continue to be subject to the feedstock tax, that tax will represent only about 16 percent of the expanded fund. In addition, the tax on imported oil will actually represent a benefit for Texas oil producers.

Mr. President, in this bill we have firmly established the principle that hazardous waste is a societal problem. I don't harbor any illusions that we

will not be back on this floor in 1991 debating the Superfund again. At that time, however, I hope the debate will center on the level of the funding, rather than on whether to punish one or two industries.

What we are talking about is a revenue package of $8½ billion compared to the $1.6 billion that was originally passed compared to the little in excess of $5 billion that was talked about by the administration and some $11 billion by the House.

It is a good compromise. It is a good bill. I strongly urge its passage.

Mr. President, the provisions of this bill to alter the programmatic provisions of the Comprehensive Environmental Response, Compensation and Liability Act is the result of several years of activity by the members of the Committee on Environment and Public Works including a conference that lasted about 6 months. It is a tribute to the skill and endurance of my colleagues on this committee particularly the chairman, Senator STAFFORD, and Senator MITCHELL who was the pivotal negotiator of one of the most difficult provisions of the bill—clean up standards.

These amendments should strengthen the Superfund law. They should improve the Superfund law. I believe we are handing the Environment Protection Agency a better law, a law that will improve their ability to respond to hazardous waste sites, a law that should facilitate settlements between responsible parties in the Federal Government completing cleanup actions at the many almost 900 listed sites around the country. However, this is a complicated, very difficult area to judge the outcome of the difficult policy decisions that we had to make in this bill.

Six years ago, when we first enacted Superfund, we believed that we were putting in place a law that would allow the Federal Government to respond quickly and expeditiously to a wide variety of releases of hazardous substances and, in particular, to create a program which would clean up numerous abandoned hazardous waste sites around the country. We gave the President sweeping authority to respond to virtually any type of release of virtually any harmful substances whether it is released or only threatened to be released. We put in place a legal regime of strict liability which we believed would encourage responsible parties to rapidly resolve their responsibilities in order to avoid potentially enormous litigation costs, potentially large penalties associated with the failure to respond to site cleanup activities under a regime that largely is weighted toward the Federal Government. We supplied a superfund which was designed to be available to the President to instantly respond where necessary and to handle those situations where responsible parties were unavailable for cleanup action.

In the last 6 years we have learned that this process is not as easy as we thought it would be in 1980. While in my view and many others the program was not initiated in the most vigorous and effective way, it is equally true that it would have been a complicated program to initiate in any event. It was clear very quickly that responsible parties were not going to be easily placed in a position of settling on waste site cleanup responsibilities. The process of identifying waste sites was complicated. The process of determining which wastes were at sites was complicated. The process of trying to assign responsibility to various waste generators was complicated. And the threat that one or two or three large corporations would be held jointly and severally liable for costs far in excess of what their contribution to a waste site would be made it certain, in retrospect, that the attorneys for virtually every company that was involved in a waste site would try to assure that his company would be responsible for no more than what they could reasonably be expected to contribute to a site. If this meant bringing in large numbers of other responsible parties, of very small contributors, holding them in the litigation until the very end, this strategy would be followed.

At the same time, because of the serious questions that had been raised about the handling of the program at the Environmental Protection Agency in its early years, the Federal Government was faced with very difficult decisions about which cases it should settle and which cases it should take to court. On the one hand, if it settled a case, Congress was critical of the agreements that were made. On the other hand, the Federal Government attorneys did not want to take weak cases to court if they thought that they would be unable to prevail on critical legal issues associated with the case which would establish legal precedents with regard to all the other cases that they needed to pursue.

Consequently, this process has generated a seemingly endless litany of iterations between the threats of litigation and attempts to settle at waste sites while the actual cleanup activity has been delayed and delayed and delayed. Moreover, the judgments that had to be made about what types of remedial actions would be taken at various waste sites significantly influenced the speed with which cleanup actions could be taken and the resolution of the litigation. If the cleanup action was to be relatively quick and inexpensive, action could be taken more easily and agreements could be reached about who would pay the cost. As technologies got more complicated, it became clear that these costs would be harder to resolve. Everyone had a different view of what constituted a cost-effective cleanup. Everyone had a different view of what the remaining liabilities should be after agreements were reached on the technological solutions to various sites.

Citizen groups were concerned that their interests were not being well protected by the Federal Government. Citizen groups were concerned that the choice of remedy would be one which eliminated potential future risks. Potentially responsible parties were concerned that they would not be paying for a remedy which cost far more than was necessary to protect public health. The Federal Government was concerned that its liabilities in the future, if the remedy failed, would be borne by the responsible parties and not by the Federal Government. Given this inherent set of conflicts, it is no wonder that the Superfund Program was unable to respond as quickly to this problem as many who crafted this legislation in 1980 believed it should.

When we approached this conference, these were the problems that confronted us. We wanted to try to generate changes to the Superfund law which would make it work better, faster, and would make certain that it was equitable to everyone concerned. We found that these decisions were more difficult to make than we had anticipated. The bills were vastly different in many respects. To try to make the process workable, we had to separate the bills into many issue areas. We had to make difficult policy decisions in each of these areas. Many of these resulted in complicated new requirements. The cleanup standards provisions provide a typical example.

This section provides a comprehensive approach to remedy selection at Superfund sites. This provision accommodates our desire to develop more permanent, effective remedies at sites, while maintaining the EPA Administrator's flexibility to select the most appropriate remedy at a specific site. There are four basic requirements in selecting remedial actions. These actions must:

Protect human health and the environment;

Be cost effective;

Utilize permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable; and

Meet applicable and relevant or appropriate standards, requirements, criteria, or guidance under Federal or State environmental laws.

We intended to express a strong preference for the permanent reduction of the mobility, toxicity, or volume of hazardous substances through the use of treatment.

In making remedy selection decisions at a specific site, the Administra-

tor should, at a minimum, evaluate the various alternatives on the following factors: Cost, reliability, and long-term effectiveness, residual public health risk, implementability, and short-term implications.

This section establishes the baseline level of protection for all remedial action selected and approved under Superfund. Any standard, requirement, criteria, or limitation under Federal environmental statutes or any more stringent State standard, requirement, criteria, or limitation which was duly promulgated pursuant to State law, must be met at Superfund cleanups if such requirement is legally applicable or relevant and appropriate under the specific circumstances of the release. The Administrator may waive those requirements if certain limited, enumerated conditions are met.

Maximum contaminant level goals must be attained at the point of use of the drinking water where such goals are relevant and appropriate under the circumstances of the release. Where the ground water is contaminated, the appropriate ground water standard will be used to determine the level or standard of control. Remedial actions involving water which is not used, nor projected to be used, as a drinking water source need not consider these goals.

The section requires the Administrator to meet the requirements of State facility siting laws, except where they would effectively result in the statewide prohibition of land disposal. Any substantive objective criteria of State siting laws should be applied to Superfund cleanups in the context of the Remedial Investigation/Feasibility Study and does not require a siting board review or other administrative process.

The section also provides for the selection of more permanent remedies. It expresses a strong preference for remedial action in which a principal element is the permanent and significant reduction of the volume, toxicity, or mobility of the hazardous substances. It requires the utilization of permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable. These requirements are not to be taken lightly; in the future, remedies will be more permanent. However, this language should not be read to constrain the Administrator's flexibility in selecting a cost-effective remedy appropriate for the specific site.

This preference for remedies incorporating permanent solutions and alternative treatment technologies means that such remedies are presumed to be appropriate cost effective remedial actions and should be selected to the maximum extent practicable. In determining whether these remedies are practicable, the Administrator may take into account technical feasibility, cost, State and public acceptance of the remedy, and other appropriate criteria.

Given sufficient resources and implementation time, several technologies, independently or in combination, may achieve any level of protection or permanence. This section does not require the expenditure of huge sums of the limited Superfund moneys to treat each and every bit of contamination. Rather, we intend that the Administrator use permanent remedies and alternative treatment technologies as the reference point and evaluate all remedies in comparison to the protection and cost effectiveness provided. Where remedies involving permanent solutions and alternative treatment technologies are not practicable, another remedy which is cost effective and satisfies the other requirements of this section may be chosen. While this section sets forth strict requirements, it does not direct the selection of overly costly remedies where alternative cost effective remedies provide comprehensive protection of public health and the environment.

This lengthy section replaces a small paragraph of the current law. Virtually every word of the section was developed with great care and scrutiny. As I indicated earlier, Senator MITCHELL focused much of his excellent talent to the crafting of these provisions. Where we had to make choices, we made them with an understanding of policy choices that were available to us.

We would make all the same decisions again. These decisions were made for clear policy reasons.

It is my hope that as Congress conducts oversight on this legislation, it will recognize that this law has become far more complicated than it was, that it is not merely the will of the administration that will determine how expeditiously the program will return to full activity. This is a time for Congress and the administration to work together to get this much needed program going again. We have deliberated these questions long enough. We have made the tough choices that have to be made. Now we should work together—the Federal Government, the States, the industries, the citizens to get these sites cleaned up.

Mr. President, I reserve the balance of the time I allocated to myself. I yield 5 minutes to the distinguished Senator from New Jersey.

The PRESIDING OFFICER (Mr. GRASSLEY). The Senator from New Jersey has been yielded 5 minutes.

Mr. LAUTENBERG. Mr. President, I thank the ranking minority member of the Environment and Public Works Committee and, of course, the distinguished chairman of the Committee on Environment and Public Works.

Mr. President, I rise today with some emotion and a feeling of enormous gratification. Today, the Senate is finally turning to consideration of the conference report on the Superfund reauthorization bill. I hope it will mark the end of the debate on Superfund and the beginning of a new era of environmental protection.

Mr. President, I was privileged to join as a member of the Environment and Public Works Committee in the spring of 1984, when a succession of events resulted in the committee to temporarily be expanded during the 98th Congress. I immediately sought membership on the committee, because of the importance of its jurisdiction to New Jersey, and, indeed, the entire Nation. I was on the committee only a short time when we turned to the Superfund renewal bill. Since that time, enactment of an expanded and strengthened Superfund bill has been my top legislative priority.

Mr. President, this has been a long and hard process. Toxic waste clean up is a technologically complex challenge and a politically charged issue. In the aftermath of enacting the original Superfund Program in 1980, we have applied significant resources in locating abandoned toxic waste sites and devising remedial action plans adequate to the task before us.

The Environmental Protection Agency currently lists 900 sites on the national priority list for clean up under Superfund; 99 of these sites are in New Jersey. Projections by the Office of Technology Assessment and EPA indicate that this list will grow significantly as we proceed with this effort. Cleaning up these sites will be expensive. It will require assigning liability to the parties who contributed to the creation of these sites. And, it will require a financial contribution from a range of parties, some of whom may not have contributed directly to our toxic waste problems, but all of whom have benefited from the products produced by the chemical and petroleum industries.

As a conferee, I would like to take this opportunity to thank and commend the able chairman of the Environment and Public Works Committee, Senator STAFFORD, and the ranking minority member, Senator BENTSEN for their outstanding leadership and for making sure that this task was completed. I also want to thank the Senator from Maine, Senator MITCHELL, for his support and guidance. The leadership of the chairman and ranking minority member and their commitment to environmental protection made the difference in many tough negotiations and contentious issues.

On a more personal note, I want to acknowledge their consistent cooperation in accommodating my concerns about the Superfund Program. Sena-

tor STAFFORD made it possible for me to hold two field hearings on Superfund in New Jersey, one in 1984 on Federal-State issues, and one in 1985, after the Bhopal tragedy, on community-right-to-know issues and emergency response capabilities. These hearings resulted in the adoption, by the committee, of measures I sponsored in response to information gathered at these hearings. Their willingness to bring the committee to New Jersey gave our State a special voice in shaping a bill responsive to New Jersey's needs.

With the help and work of Senators STAFFORD and BENTSEN, and many other conferees, we bring before the Senate a conference report that represents a significant step forward in our Toxic Waste Cleanup Program. This is legislation with tough, new cleanup standards. Radon mitigation. A leaking underground tank program. Citizen suits.

The conference report also contains a community-right-to-know program, which I introduced in 1985, and to which I, personally, devoted much effort. In my State and others, it will be critical to communities—in alerting them to the dangerous chemicals present in their communities, and in laying the foundation for effective emergency response planning.

The right to know means public information about what hazardous substances are being stored and released into the environment in our communities. It means planning for emergency releases before they happen. It means that our citizens and our emergency response personnel will be safer and better prepared for the threats from chemical releases. It means that this Nation will not tolerate Bhopal- or Chernobyl-type tragedies.

Mr. President, this bill also establishes, for the first time, a comprehensive Indoor Air Research and Demonstration Program within EPA. This program, detailed in title IV, will focus on the problem of radon gas contamination in American homes.

EPA and the Centers for Disease Control have linked radon, a known carcinogen, to as many as 20,000 lung cancer deaths a year, placing it second only to cigarette smoking. The need to act on the problem of indoor radon is clear. The provisions in this bill, which I introduced with my colleague from Maine, Senator MITCHELL, set us on an effective course for dealing with this major public health threat.

Under the provisions in title IV, the EPA is directed to establish a radon program, and to serve as the lead agency in Federal efforts to address this problem; $15 million is authorized over the next 3 fiscal years for EPA's responsibilities under this title. EPA is directed to conduct a national assessment of radon contamination, and, in conjunction with other agencies, further research the health effects of radon contamination. Health guidelines are to be established, and guidance to States is to be provided. EPA will also work with the Department of Housing and Urban Development on model building codes, to prevent radon contamination from occurring in new homes and other buildings.

EPA is also directed to carry out a mitigation demonstration program. With funding that I was able to include in the EPA appropriations bill for fiscal years 1986 and 1987, EPA has begun this program. Its success will enable us to bring hazardous levels of radon under control, protect public health, and potentially save thousands of lives each year.

Mr. President, as these provisions demonstrate, this is a conference report that responds to the needs of this Nation. It enjoys overwhelming support in the Congress. I urge its swift adoption.

Mr. President, time is of the essence. This afternoon, I understand that the President will be meeting with his top advisers, many of whom will apparently urge him to veto or pocket veto this bill. Prior administration communications with the Congress suggest that the President's advisers will recommend a veto if the bill raised more than $5.3 billion in revenues, levied a tax on oil, or had a broad-based tax component. The bill contains all three of these components.

Mr. President, I hope the President will turn away from advice to veto this bill. I hope that the President will take into account the long deliberations which went into writing this bill, and the support it enjoys in a significant segment of the business community as well as the environmental community. I hope he will acknowledge the overwhelming margins by which the House and the Senate approved this legislation.

Mr. President, the public supports this bill. Recent public opinion polls make that clear. A recent national poll by NBC and the Wall Street Journal indicated that 67 percent of the American people view cleaning up toxic wastes as more important than tax reform. Another poll by CBS and the New York Times indicated that 67 percent of the American people agreed that requirements for cleaning up toxic wastes cannot be too stringent, regardless of the costs. That is quite a mandate for a strong, well-funded Superfund Program.

This is a clear message to the President from the American people and the Congress that the time has come to declare war on toxic wastes; to sign this conference report into law, and unleash a bold, new attack on the hazardous waste sites that threaten the environment and health of our people.

Mr. President, approval of this conference report is critical to New Jersey. New Jersey has 99 sites on the national priority list, the most of any State. The New Jersey Department of Environmental Protection estimates that at least $500 million over the next 5 years will be directed to New Jersey superfund efforts. However, if past trends hold, New Jersey could receive upward of 20 percent of funds allocable to States. In this case, New Jersey could gain at least $1 billion over the next 5 years.

In addition to the right to know and radon programs included in this bill, I authored numerous provisions in the Senate Superfund bill to address the serious problems New Jersey faces. I am very pleased that these provisions were retained by the conference. These provisions would:

Overturn the Supreme Court's Exxon versus Hunt decision, which preempted State taxing authority for State spill funds, such as New Jersey's. This provision is critical to New Jersey's plans for complementing the Federal Superfund Program with a State supported cleanup program.

Uphold the Boonton decision allowing municipalities to sue for cost recovery under the same Superfund provisions available to States, and to serve as trustees for natural resource damages. This provision permits communities to move ahead with cleanup plans on their own.

Require the replacement of household, not just drinking water, at sites with water contamination. In New Jersey, which is heavily dependent on ground water, this provision will assure that residents of communities with contaminated ground water will not be forced to absorb excessive costs to provide for their daily needs.

Require Federal facilities to submit annual reports to Congress on the hazards and cleanup progress at their sites. In New Jersey, we have had serious problems at some of our military bases. This provisions will alert communities to the status of toxic problems at Federal facilities, and keep Members of Congress informed about progress at these sites.

Allow States to receive Superfund funding for 10 years for operation and maintenance costs associated with cleaning up surface and ground water contaminated at Superfund sites. New Jersey is dotted with such sites, especially in the south, which is heavily dependent on ground water for drinking water supplies.

Provide for State credits for work done at Superfund sites. This will permit New Jersey to move ahead more quickly in cleaning up sites, without forgoing Federal assistance to which it is entitled under Superfund.

Clarify that States may transfer funds to EPA and any Federal agency acting pursuant to an agreement with EPA, such as the Army Corps of Engi-

neers, on an incremental basis for cleanups, and that States be credited with interest earned prior to actual application of the funds as the work progresses. I authored this section of the statement of managers provision clarifying that under section 104, the President acting through the EPA or any Federal agency pursuant to an agreement with the EPA—such as the Corps of Engineers—can fund multiyear remedial projects on an annual basis after obligating the entire cost of implementing the record of decision.

This report language is consistent with the authority of EPA to obligate the full amount of a multiyear project, but to pay contract costs over several years, including funds from future appropriations. This authority, known as contract authority, is available to other Federal agencies, such as the Corps of Engineers, which do large scale construciton projects. Such authority avoids full funding of contracts well in advance of the actual need for disbursements and the holding of large balances of unexpended appropriations for several years.

By permitting EPA to pay the costs of large projects from future appropriations, moneys are preserved for more immediate needs and more projects can be initiated. EPA would get such contract authority from the Appropriations Committees to permit it to enter into multiyear contracts subject to a monetary ceiling. In addition, EPA would request funds to cover contract payments to be made in that year.

Provide health programs, which include health assessments at all existing NPL sites by 1988.

Mr. President, in addition to these initiatives, this bill includes research and development provisions, which include grants for establishing University Hazardous Substance Research Centers. Under section 209(d)(7), these R&D grants can provide funds for renovation of existing buildings, such as those at EPA's Edison, New Jersey facility, if such facilities are used for joint research by EPA and the consortium of universities operating the National Science Foundation Industry/University Cooperative Center for Research in Hazardous and Toxic Substances. This consortium is headquartered at the New Jersey Institute of Technology.

The consortium is also eligible to receive and use such grant money for all other purposes indicated in section 209 of the conference report. Authorizations for research centers in section 118 of the conference report in no way affect the eligibility of the consortium for such section 209 grants. Selection criteria for grantees in section 209(d)(4) and the requirements of section 209(d)(1) operate independently or any section 118 authorizations. Thus, for example, the Administrator shall make grants to institutions of higher learning, such as the consortium, to operate not fewer than 5 hazardous substance research centers, and shall seek to have established 10 such centers, irrespective of section 118 authorizations.

Mr. President, these initiatives will do much to advance Superfund cleanups in New Jersey. It is critical that the Senate lend its full support to the conference report. While the administration has raised objections to the financing provisions, I believe that these provisions will provide a secure funding source for the program, and spread the burden of cleanup equitably. Mr. President, I have consistently opposed fees or taxes on oil imports in the past because they impose an unfair burden on oil dependent States like New Jersey. In this case, Mr. President, I will not oppose this segment of the financing package. In this case, Mr. President, we are not putting the burden of deficit reduction on oil dependent States—which prior proposals contemplated—but are agreeing to impose a marginal fee on domestic and imported oil and earmark these funds for toxic waste cleanup.

Mr. President, I strongly support passage of this bill. I again complement the leadership of the committee, and my colleagues on the ommittee, for sticking with this bill through dark and stormy days and nights. This day is the highlight of my days in the Senate. I urge the adoption of the conference report.

Mr. President, I yield back my time.

The PRESIDING OFFICER. Who yields time?

Mr. STAFFORD. Mr. President, I yield 5 minutes to the able Senator from Oregon.

The PRESIDING OFFICER. The Chair recognizes the Senator from Oregon for a period of 5 minutes.

Mr. PACKWOOD. Mr. President, it has been a good week for the Congress, certainly for the Finance Committee, with the tax bill passing last week and now the Superfund bill. Of course, the way we work in the Senate, the Environment and Public Works Committee had the obligation of determining how the money should be spent, how the program should work, and then it fell to the Finance Committee to find the money that the Environment and Public Works Committee decided was needed. And that was $8.5 billion.

Mr. President, the Finance Committee, in May 1985, 17 months ago, reported a Superfund bill, reported the financing of a Superfund bill which came to this floor and passed overwhelmingly, on this floor. From that time to this we have been engaged in the debate with the House and among the House and among different committees as to how we should conclude. We are now going to conclude and it has been a classic example of James Madison's "Conflict of Interest" and different groups not wanting to be touched or taxed; "Please tax them and don't tax me."

We have heard RUSSELL LONG, our distinguished Senator from Louisiana, say it over and over: "Don't tax you, don't tax me, tax the man behind the tree."

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Everyone wanted somebody else to be taxed. I think the Wall Street Journal summed it up as well as it could be summed up today in reporting the story when they said:

> The agreement ended a year-long battle primarily pitting the oil and chemical industries against a coalition of other businesses over the issue of who would pay for the cleanup program. Both sides promptly attacked the agreement.
>
> A spokesman of the American Petroleum Institute called the oil tax "totally unjustified and unfair."
>
> Jeffrey Nedelman, vice president for public affairs of the Grocery Manufacturers Association, said the broad-based tax "should be rejected by the Congress or vetoed by President Reagan."

Mr. President, if we have succeeded in having a tax that neither the American Petroleum Institute nor the Grocery Manufacturers Association likes, I think we have done well, and I would encourage this Senate to pass the conference report.

The PRESIDING OFFICER. Who yields time? The Senator from Texas, [Mr. BENTSEN].

Mr. BENTSEN. Mr. President, I yield 1 minute to the distinguished Senator from Maine, who made a very major contribution in a very difficult area involving differences with the House. We are grateful for the contribution he made.

The PRESIDING OFFICER. The Senator from Maine [Mr. MITCHELL] is recognized for 1 minute.

Mr. MITCHELL. I thank the distinguished ranking member.

Mr. President, the long and difficult process of reauthorizing Superfund has finally come to an end. Three years ago we began this process with hopes for revitalizing a program that had been abused by EPA and that was in need of more specific direction and increased funding.

Since Superfund was enacted 6 years ago, the problem of uncontrolled releases of hazardous substances has dramatically increased. Before enactment of Superfund, many hoped that Love Canal and Times Beach were exceptions to the way hazardous substances were handled.

Instead, we have learned that practically no State is without some hazardous waste problem, and thousands more are being evaluated for inclusion on the list of Superfund sites. A site contaminated with toxic materials,

once thought to be rare, is now known to be a common occurrence.

Due to this increased awareness of the problem, far greater sums of money are necessary to respond to this public health hazard. On this point we should be absolutely clear: Uncontrolled releases of hazardous substances presents a very real threat to the public health. Superfund is the way to clean up the contaminated water and soil so that our children do not become ill from toxic chemicals.

It has been rumored that the President will veto this bill because he objects to the broad-based tax included in the funding package for Superfund. I refuse to believe that the President would prefer to let American children be injured by contaminated water because of his opposition to a particular tax.

If the President pocket vetoes this bill, Congress would have no opportunity to override the veto and the Superfund Program would be dead for this year. The price of such an action is too high: We cannot permit people to drink contaminated water, to live in areas permeated with hazardous chemicals because of a debate over the appropriate taxing mechanism.

Instead, we need to move forward to implement these amendments as quickly as possible. During the year since the tax expired, activity at Superfund sites has slowed down and in some cases stopped altogether. We need this reauthorization in place immediately so a further slowdown of the program does not take place.

In Maine, for example, recently a potentially responsible party at the largest Superfund site in the State has refused to move forward on clean up, in part because EPA did not have enough money to do the cleanup on its own and then recover the costs from the responsible party. Reauthorization at this time will provide EPA with enough money to clean up the site. There are many more sites in the country, however, where cleanup has not begun because of the reauthorization delay and where clean up is needed to protect the public.

Cleanup activity at sites all across the country will accelerate as the increased funding levels authorized by this legislation become available. This is the only way we have to begin again the process of protecting the public.

There are several issues addressed in this legislation that I would like to clarify. Chief among these issues is section 121, the cleanup standards section which I had the opportunity to play a major role in writing.

In addition, the new section 122 on settlements provides a clearer framework in which EPA may settle cases, where appropriate. There are also issues of particular concern to Maine that should be addressed.

In section 121, the bill governs the selection of remedial action under sections 104 and 106 of CERCLA. Under this new section, remedial actions must assure protection of human health and the environment. Remedial actions must also be selected and carried out in accordance with section 121, and, to the extent practicable, with the National Contingency Plan [NCP]. The President is to select remedial actions that provide for cost effective response.

The provision that actions under both sections 104 and 106 must be cost effective is a recognition of EPA's existing policy under the NCP. An analysis of cost effectiveness begins only after a remedial action has been selected in compliance with the health and environmental protection requirements, permanent treatment requirements, and other standards, requirements, criteria or limitations imposed under the law. The cost effectiveness requirement here, as under current law, does not apply to the selection of a remedial action but rather applies to choosing the least costly alternative method of effectively implementing a remedial action once one has been selected. For example, the selection of a remedial action might involve a choice between various onsite containment alternatives and a permanent treatment technology. Under section 121(b), permanent treatment technologies must be chosen whenever they are feasible and achievable. Otherwise, containment remedies such as a cap over the site and a slurry wall to prevent further leakage might be selected.

Once the remedy has been selected, the cost-effectiveness requirement is applied to its implementation. Implementation of the remedy would involve choosing the least costly methods and contractors which will effectively carry out these alternatives. Criteria to be considered in determining cost-effectiveness include, in addition to the total cost of implementing the remedy projected by each potential contractor, the past record of performance of the persons or firms competing for the project; the relative merits of the various proposals submitted by such persons or firms; and, where permanent treatment technologies are not utilized, the degree to which expenditure of larger sums will enhance the durability of the remedy.

The legislation states that remedial actions selected by the President shall, to the extent practicable, comply with the national contingency plan [NCP]. This language is intended to assure that alleged failures to comply with the NCP shall not be available as a defense to any liability asserted in an enforcement proceeding brought under sections 106 or 107. The language is not intended to provide any authority to EPA or other agencies to fail to apply, to overlook, to ignore or to waive any standard, requirement, criteria, or limitation established under the law.

Section 121(b) establishes a statutory preference for the selection of remedial actions that involve application of "permanent treatment or alternative technologies." The legislation states that such technologies and "permanent solutions" shall be implemented to the maximum extent practicable. Where remedial actions can be broken into discrete units and treatment is feasible for some but not all units, permanent solutions must be chosen for those units where treatment is feasible.

"Permanent treatment or alternative technologies" means treatment methods that permanently and significantly reduce the volume, toxicity or mobility of the hazardous substances, pollutants, and contaminants. In addition to the quantitative reduction implied, significant reduction in this context means the minimization of volume, toxicity and mobility of such substances to the lowest levels achievable with available technologies. Such technologies change the fundamental nature and character of the substances at issue, either by destroying them; for example, incineration or neutralizing them; for example, application of chemical or bioengineered neutralization agents. Mere reductions in volume of toxic and mobile substances, by dewatering the substances, for example, would not constitute effective use of a permanent treatment or alternative technology. The purpose of requiring such technologies is to eliminate hazards to human health and the environment on a permanent basis. "Permanent solution" means the application of permanent treatment of solution" means the application of permanent treatment of alternative technologies to hazardous substances, pollutants and contaminants in a manner so that, when the remedial action has been completed, the release or threatened release, taken as a whole, no longer poses a hazard to human health or the environment, on a permanent basis.

It is a major purpose of this legislation to establish a statutory bias toward the implementation of permanent treatment technologies and permanent solutions in the selection of remedies, whenever they are feasible. To carry out the goal of implementing permanent technologies and permanent solutions whenever feasible, section 121(b) requires that whenever a remedial action is selected, such technologies and solutions must be assessed. Such assessments are, at a minimum, to take into account the following factors;

First, the long-term uncertainties associated with land disposal: Any land

disposal facility, even one employing the best available technology, is likely to leak. It is uncertain whether the institutional cleanup resources will be available when leakage occurs. There are uncertainties inherent in predicting the size and location of future populations.

Second, the goals, objectives and requirements of the Solid Waste Disposal Act: For example, that act bans most land disposal of hazardous wastes and creates incentives for the development of permanent treatment and resource recovery technologies whenever possible.

Third, the persistence, toxicity, mobility and propensity to bioaccumulate of such hazardous substances and their constituents: It is these characteristics which necessitate the use of permanent treatment technologies at Superfund sites rather than containment. Since all containment systems ultimately fail, it is important to assess the hazard timeframe of substances at a site when selecting a remedial action. For example, some substances become more toxic over time, such as those which biodegrade or are transformed to toxic byproducts.

Fourth, short- and long-term potential for adverse human health effects: The assessment should consider the hazards posed by each available remedial action to people who are or may be exposed to hazardous substances, pollutants and contaminants as a result of the remedy chosen. For example, the less permanent the remedy, the greater the potential for adverse health effects as a result of continued or renewed releases over the long term.

Fifth, long-term maintenance costs: Permanent solutions may cost more initially, but may involve little, if any, long-term maintenance costs.

Sixth, the potential for future remedial action costs if the alternative remedial action in question were to fail: Once again, the more permanent the initial remedial action that is implemented, the lower the costs of repairing any failures of the remedy.

Seventh, the potential threat to human health and the environment associated with excavation, transportation and redisposal, or containment: This factor is really a specific subset of the overall health effects consideration incorporated in the assessment and is designed to assure that the selection of remedy take into account possible risks associated with expanding the populations exposed to hazardous substances, pollutants or contaminants when such substances are moved offsite, comparing that risk to the risk posed by containment onsite. The legislation does not require a quantitative, comparative risk assessment, but rather contemplates an objective consideration of all of the factors affecting or potentially affecting human health.

Whenever a remedial action is selected that does not implement a permanent solution, or that does not implement a permanent or alternative treatment technology, the reasons for rejecting such a solution, or for failing to implement such technologies, must be explained. Such explanation must include a discussion of the permanent solutions examined and rejected, and an analysis supporting the proposed solution. The explanation is subject to public comment as part of the remedial investigation and feasibility study.

To encourage the development and implementation of innovative permanent treatment technologies, the legislation permits the President to select such technologies whether or not they have been achieved in practice at other similar sites or facilities. A technology still at the experimental phase could be deemed cost-effective under this provision, as this is a technology-forcing provision. The legislation further permits the President to take into consideration whether residents of the community around a site in general endorse implementation of an experimental technology.

Section 121(c) provides that whenever the remedial action at a site involves an onsite remedy that does not result in a permanent solution, so that hazardous substances, pollutants or contaminants are left at the site, there is a mandatory duty that the President conduct a periodic review of the continued effectiveness of such remedies and report the results to the Congress. Such reviews shall be conducted no less often than every 5 years beginning on the date that remedial action is first initiated. Under these reviews the President shall determine whether the remedial action is sufficient to protect human health and the environment and whether a permanent remedy is now available. If the results of the review are negative; that is, if the remedial action either has failed or appears likely to fail in the future, the President shall take action under section 104 or 106 to improve such remedy. Ordinarily, action under section 106 would be more appropriate if there is any responsible party.

In determining what actions to take as a result of a periodic review, the President shall consider whether permanent or alternative treatment technologies have been developed since the remedial action was first selected and shall implement such technologies wherever possible. The periodic review provision is intended to assure that Superfund cleanups keep pace with developing technologies and that remedial actions are upgraded to take advantage of such developing technologies. It is another technology-forcing provision. The ultimate goal of the Superfund Program must be to implement permanent solution at all national priorities list sites. One way to accomplish this goal is to require periodic review and to assure that sites are not removed from the ambit of the program until such permanent solutions have been implemented.

As noted earlier, section 121 requires that any remedial action selected under section 104 or required under section 106 must, at a minimum, assure protection of human health and the environment. The general standard of "protection of human health and the environment" is the same standard that applies under subtitle C of the Solid Waste Disposal Act. The legislation requires that this standard be the minimum standard met by any Superfund cleanup. The general standard applies to two aspects of a remedial action: First, the degree of cleanup of any hazardous substance, pollutant or contaminant already released into the environment, and second, control of further releases of such substances.

Section 121(d) requires that onsite remedial actions selected or required under sections 104 or 106 must comply with specific standards, requirements, criteria, or limitations established under the Federal laws and under State laws.

These specific standards, requirements, criteria, or limitations include those established by all Federal environmental legislation, including the Toxic Substances Control Act, the Safe Drinking Water Act, the Clean Air Act, the Clean Water Act, the Marine Protection, Research, and Sanctuaries Act, and the Solid Waste Disposal Act. The laws to be applied also include any State environmental or facility siting law requirement that is more stringent than a comparable Federal requirement, if the State identifies such law to the President in a timely fashion. This, of course, includes any State requirement where there is no comparable Federal requirement.

The list of Federal and State laws established by the legislation is intended to be a minimum and not an all inclusive list of sources for standards, requirements, criteria, or limitations that must be applied to Superfund remedial actions. If the President, or a State, or the courts determine that other, unlisted laws contain standards which are legally applicable, or relevant and appropriate, such standards shall apply to such remedial actions. Where two applicable or relevant and appropriate Federal or State standards, requirements, criteria, or limitations pertain to the same situation, or to the same hazardous substance, pollutant or contaminant, the more stringent one shall be used in selecting a remedial action. For example, a ground water residue guidance level

being proposed as an amendment to the Safe Drinking Water Act in the reauthorization of FIFRA, could not be used as a less stringent standard for a remedial action.

The Comprehensive Environmental Response, Compensation, and Liability Act [CERCLA] does not provide for preemption of any legally applicable requirement established under any other Federal or State law. For example, all requirements contained in subtitle C of the Solid Waste Disposal Act, commonly known as [RCRA], currently apply as a legal matter to onsite remedial actions conducted under CERCLA, in such situations as when the facility is a facility already covered by RCRA or hazardous wastes are exhumed and redeposited at the site. The legislation reiterates the effect of current law that the specific standards, requirements, criteria, or limitations already legally applicable to Superfund cleanups must be applied to remedial actions selected or required under sections 104 or 106 after the date of enactment. RCRA facilities must continue to meet RCRA standards, irrespective of other provisions in this law, even if the site is listed on the national priorities list.

Section 121(d) provides that standards, requirements, criteria, or limitations that are not legally applicable shall nevertheless be applied to Superfund cleanups if they are "relevant and appropriate". The first test of relevance and appropriateness is whether the standard, requirement, criteria, or limitation at issue was developed for the same environmental media as the media contaminated by the Superfund site. Standards developed under the Clean Water Act and the Safe Drinking Water Act would therefore be relevant both to contaminated ground and surface water at a Superfund cleanup, if not already legally applicable. Similarly, Clean Air Act ambient air standards would be relevant to air emissions of hazardous substances, pollutants, or contaminants released from a Superfund site.

The second test of relevance and appropriateness involves a determination of which environmental media serve as pathways for actual or potential human or environmental exposure to a hazardous substance, pollutant or contaminant. Once such pathways are determined, the purposes for which the standard, requirement, criteria, or limitation at issue was developed should be considered. Such standards should be applied whenever the purpose for which they were developed involve reduction of the contamination of such pathways to safe levels. For example, Safe Drinking Water Act standards used to protect public drinking water supplies may not be appropriate for application to a briney aquifer, which would never be fit for human consumption even if it was cleaned up. At the same time, aquifers which may have any potential future use as a source of water supply should be cleaned up to such standards whether or not they are currently used or considered for drinking water supplies.

It will be important to consider the purpose for which a standard was developed in determining its relevance to Superfund cleanups. The purpose of the standards developed under the Safe Drinking Water Act, for example, is to protect people from drinking contaminated water. That act applies these protections at the tap. Of course, many of these standards are made legally applicable to Superfund cleanups, as part of the ground water protection standards under RCRA. Even where not legally applicable, they may be relevant, and in order to effectively utilize these standards in selecting a remedial action at a Superfund site, they must be applied not only at the tap, but wherever the contaminated water is found so that the contamination can be reduced to safe levels once the cleanup is completed. Section 121(d) prohibits writing off potentially useful ground water supplies that have been contaminated by Superfund site. Such natural resources are both finite and irreplacable. The purpose of the Superfund program is to reclaim such contaminated resources wherever possible.

Finally, in determining the relevance and appropriateness of standards, requirements, criteria, or limitations, EPA should consider not only pathways exposure but also the impact on the environment of contamination from a Superfund site. Environmental contamination must be reduced to safe levels both to protect ecosystems and to prevent the public health threats of indirect exposure to hazardous substances, pollutants or contaminants. Perhaps the most obvious example of this latter phenomenon is contamination of the human food chain by releases from Superfund sites.

Section 121(d) specifically requires application of maximum contamination level goals (formerly known as recommended maximum contamination levels [RMCL's] developed under the Safe Drinking Water Act whenever they are relevant and appropriate. The Congress chose to apply RMCL's instead of relying only on the legally applicable maximum contamination levels [MCL's] because RMCL's are based solely on public health considerations. MCL's can reflect the modification—and loosening—of such health-based standards on the basis of cost considerations that should not be applied to Superfund cleanups. Use of MCL's for Superfund cleanups could result in cleanups that do not protect human health and the environment.

The legislation specifies the factors that are to be considered in determining whether water quality criteria developed under the Clean Water Act are relevant and appropriate. These factors are the designated or potential use of surface or ground water, the environmental media affected, the purposes for which such criteria were developed, and the latest information available. Water quality criteria are essential to a comprehensive system of Superfund cleanup standards because such criteria establish maximum exposure levels for some 140 chemicals found most frequently at Superfund sites, while all the analogous standards established under other major Federal environmental laws cover only some 20 to 30 such chemicals. Water quality criteria typically contain three different exposure levels (or numbers) depending on whether the water at issue will be (a) consumed by people; (2) consumed by people and used to support aquatic life, and (3) used only to support aquatic life.

In determining how to apply such criteria, EPA should select the specific exposure level which best fits the circumstances presented by the Superfund site. For example, ground water typically does not support aquatic life. If ground water used or potentially usable as a source of drinking water is contaminated by water quality criteria chemical, the contamination should be reduced to the exposure level set for water used for human consumption. The legislation specifically permits EPA to consider the purposes for which water quality criteria were developed in determining whether they are relevant and appropriate.

This provision affects the selection of the appropriate exposure level and does not mean that water quality criteria which were originally developed for surface water should not be applied in situations where ground water is contaminated by a water quality criteria chemical. Rather, the determining factor is whether the criteria were developed to protect people from drinking contaminated water. If the criteria apply to such situations, they should apply whether the drinking water source is surface or ground water.

In certain specified and limited circumstances, section 121 permits use of a regulatory process for setting alternate concentration levels [ACL's] which was developed by EPA under RCRA. As currently implemented by EPA, the ACL process allows the owner or operator of a RCRA facility to demonstrate that some alternative level of contamination other than background does not threaten human health and the environment. I do not believe this ACL process is sound policy under RCRA, nor in my opinion is it authorized by law. This bill does not specifically address the RCRA ACL process, however. Instead, this

bill provides the opportunity to demonstrate an ACL during the course of Superfund cleanup under specified conditions. The first such condition is that the ACL process should only be used when no other previously established standard or level of control—for example, water quality criteria or RMCL—applies to the hazardous substance, pollutant, or contaminant at issue. If any other standard or level of control is legally applicable, or relevant and appropriate, establishment of a separate ACL is both necessary and inappropriate.

A second condition on the use of ACL's is that they must be based on a point of human exposure that is not located beyond the boundary of the Superfund facility. The facility boundaries are in turn to be defined at the conclusion of the remedial investigation and feasibility study [RI/FS] performed for the site. "Facility" is defined under CERCLA as the place where hazardous substances, pollutants, or contaminants have come to be located. The major purpose of an RI/FS is to determine the nature and scope of all contamination caused by a Superfund site. At the end of an RI/FS, EPA shall define the precise area, or "facility," where hazardous substances, pollutants, or contaminants have come to be located. The remedial action called for in the RI/FS will then clean up the entire facility, and prevent future releases from such facility. Neutral or buffer zones which have not yet been contaminated therefore cannot constitute a "facility" at the completion of the RI/FS.

There is a narrow exception to the rule that the point of assumed human exposure use to establish and ACL cannot be beyond the facility boundary. Three conditions must be met before a different point of exposure may be used:

First. The first is that the contaminated ground water at the site is known to feed into a source of surface water, for example, a lake or stream, that is quite close to the facility. Eventual discharge into distant water bodies does not qualify.

Second. The second is that at the specific point where such ground water first enters the surface water, there is (or will be) no statistically significant increase in hazardous constituents, nor any accumulation of such constituents downstream. Such accumulation could occur downstream in either the water sediment or biota (due to bioaccumulation). This second condition can only be satisfied if the hazardous constituent in the ground water is not measureably increased at the first point where the ground water feeds into surface water.

Third. The third condition is that a legally enforceable measure must be in place to preclude human exposure to contamination at any place between the facility boundary and the point of entry of the ground water into surface water. Enforceable measures mean measures that will remain in place and cannot be reversed for as long as the waste remains hazardous.

Under the ground water protection standards of RCRA, in the absence of an MCL for a substance, the standard would be the background level. A ground water residue guidance level (if different than an MCL) is not a starting point for developing such standard.

Section 121(d) also incorporates and strengthens EPA's "offsite" policy. Whenever a remedial action involves the movement of hazardous substances, pollutants or contaminants offsite, they may only be transferred to a facility operating in compliance with sections 3004 and 3005 of the Solid Waste Disposal Act (or, where applicable, the Toxic Substances Control Act or other Federal law such as the Atomic Energy Act). Such substances may be transferred to a land disposal facility only if the President determines that two conditions are met: First, the unit receiving the substances is not leaking into ground or surface water or soil; and second, all releases from other units at the facility are being controlled by a corrective action program. Although this provision does not require that a land disposal facility have received a final RCRA permit before receiving Superfund wastes, it is intended to assure that only the most secure facilities are chosen so that the Superfund problem is not compounded. In this regard, such facilities can ordinarily only meet the second condition imposed by the legislation if the corrective action has already been performed in accordance with sections 3004 (u) and (v) and 3008(h) of the Solid Waste Disposal Act.

Section 121(d) provides that a remedial action which does not comply with a legally applicable or relevant and appropriate standard, requirement, criteria, or limitation may be selected only if the President makes one or more of six affirmative findings. Such findings must be made on a site-by-site basis and are subject to the public participation requirements of the legislation.

The first finding is that the remedial action selected is only a phase in a longer-term remedial action, when the longer-term remedial action will complete cleanup at the facility and will meet all applicable or relevant and appropriate standards, requirements, criteria, or limitations. This provision gives the President some leeway in conducting phases of cleanup, but should not be read to permit indefinite delays in final cleanup.

The second finding is that compliance with a requirement would result in greater risk to human health and the environment than alternative options. This finding should apply to a few, unique sites where application of available cleanup technologies would cause uncontrollable disruption and release of hazardous substances, pollutants or contaminants and would therefore pose a greater risk to human health and the environment than simply securing such substances where they are located. For example, the national priorities list contains a few sites that are major harbors or bays. Dredging such sites in an effort to remove accumulations of hazardous wastes may, in some circumstances, pose greater risks to human health and the environment than employing alternative containment options.

The third finding is that compliance with such requirements is technologically impracticable from an engineering perspective. Once again, this finding should apply to a small number of relatively unusual situations where no technologies for hazardous waste treatment, destruction, or disposal have been developed that would meet the requirements. In such cases, the periodic review provisions of the legislation should be employed to assure that as such technologies are developed, they are employed at the facility. Cost is not an appropriate consideration under this finding.

The fourth finding is that use of a method or approach other than one required under an otherwise applicable standard, requirement, criteria, or limitation will achieve an equivalent standard of performance. This provision is designed for situations where a new or alternative technology not contemplated under existing regulations would work as well as the established approach. For example, RCRA might require placement of double liners at the bottom of land disposal facilities, but the hazardous substances, pollutants, or contaminants at a Superfund site may be susceptible to a new treatment technology that solidifies or neutralizes them in place. If such alternative technologies, together with the locational characteristics of the site, will prevent migration of any hazardous constituents into ground or surface water near the site, an alternative technology may be used in lieu of a double liner.

The fifth finding is that, with respect to provisions of State law, the State has not consistently applied the standard, requirement, criteria, or limitation in similar circumstances at other remedial actions within the State.

The sixth finding reflects a recodification of the policy in current law commonly known as fund balancing. This is limited to cleanups completely funded by the Superfund under section 104. Under this provision, the President may—under limited circum-

stances and out of absolute necessity—select a remedial action that does not meet a specific Superfund cleanup standard if there will not be sufficient resources left in the fund to respond to sites posing more immediate and severe threats to public health and the environment. Fund balancing should be invoked with the utmost caution, and only where there is an irreconcilable conflict between the costs of a fully complying cleanup and the fund's ability to address sites posing much more serious hazards. Any such finding should be accompanied with a full analysis of the manner in which the President evaluated such relative hazards. It is important to note that where the money to pay for a remedial action is provided by both the Federal trust fund and a private responsible party or parties, the fund-balancing finding does not apply.

Section 121(e) provides that no Federal, State, or local permit shall be required for any portion of a remedial action that occurs onsite, provided that the remedial action is in complete compliance with the cleanup standards contained in section 121. The purpose of this provision is to streamline the cleanup process by exempting remedial actions from the procedural requirements of Federal, State, and local permit programs, while still preserving the applicability of the substantive health and environmental standards that are implemented by such programs. While EPA, private parties, or others conducting remedial actions do not have to obtain a formal permit, they are still required to meet whatever substantive standards the Federal Government and State and local governments apply in other contexts through the vehicle of permitting.

The legislation also clarifies the States' authority to enforce any Federal or State standard, requirement, criteria, or limitation applied under its provisions to remedial actions. The States' ability to enforce such standards safeguards their ability to insist, through enforcement actions in Federal district court, that the goals of their permitting programs are met, even if the technical requirement to obtain a permit is waived in the context of any given cleanup.

Under CERCLA there is no preemption of State standards that may apply to response actions. States are free to enforce such standards through court action. To further assure that all State standards, requirements, criteria, and limitations are met by remedial actions selected by the President, even though formal permits are not required, section 121(f) requires EPA to promulgate regulations providing an opportunity for meaningful State involvement in the formulation of remedial actions.

No funded financial remedial action can ever go forward without State agreement as to the cleanup standards, because of the ability of the State to withhold its share of the funding. In the context of remedial actions secured under section 106, or performed at facilities owned or operated by a Federal agency or department, the State must be given an opportunity to concur in the selection of the remedy at least 30 days prior to publication of the final remedial action plan.

If the State does not concur, and the remedial action plan is approved over its objections, the State may then intervene in a proceeding brought under section 106, or maintain an action against the Federal agency or department, to seek reversal of the final remedial action decision. The challenged decision shall be overturned unless it is supported by substantial evidence. This standard is different than the arbitrary and capricious standard that applies under section 122 of the amendments and is intended to subject the validity of the remedial action decision challenged by the State to more searching scrutiny by the court.

The effective date for section 121 of the amendment is the date of enactment, with two limited exceptions. EPA currently embodies final remedial action decisions in a document called a record of decision, or ROD. The amendments provide that the requirements of section 121 do not apply to remedial actions covered by ROD's signed prior to the date of enactment. Any remedial action decision not explicitly addressed in the ROD does not fall under this limited grandfather provision. Further, if any ROD is ever reopened after the date of enactment to reconsider, modify, supplement, or otherwise change in any manner the remedial action that was selected, the requirements of section 121 apply to the entire ROD, and not just the reopened portion. For ROD's signed between the date of enactment and 30 days following the date of enactment, the legislation requires the Administrator to certify that the remedial action selected conforms with section 121 to the maximum extent practicable. This requirement places a nondiscretionary duty on the Administrator, carrying out the responsibility of the President under section 121, to apply the requirements of section 121 in selecting remedial actions during the 30-day period following enactment.

The standards provision is clearly a major improvement over current law, which is silent on this issue. The inclusion of a specific standards section, however, creates the need for enforceability of the standards. The Senate bill barred any review of a response action before it was complete in order to prevent responsible parties from using litigation to delay cleanup. The conferees agreed to a much more detailed standards provision than had been included in the Senate bill.

The new provision gave rise to concerns that citizens would not be able to enforce the standards until the remedy was complete. In some cases, pumping and treating of ground water could take decades and thus citizens would be barred from suit until it was too late to effect an improved remedy as provided under section 121.

The conferees agreed that some preimplementation review would be provided so that citizens would not be disadvantaged by having to wait until cleanup was complete. Nuisance suits would, of course, be permitted at any time. A suit to compel compliance with the CERCLA standards would be permitted, under section 113(h) after each stage of cleanup is complete. In this way, an entire cleanup need not be complete before a citizen can sue. Similarly, responsible parties cannot halt cleanup because of concerns that the cleanup is excessive.

In considering whether citizens' suits should lie for cleanup, it is important to consider the equities of the situation. Citizens are suing to compel compliance with cleanup standards that are designed to protect the public health. Responsible parties, on the other hand, may be suing to halt cleanup because of concerns that the response action is too costly.

Clearly the risk to the public health is more of an irreparable injury than the momentary loss of money. If a response action is proven to be too expensive, responsible parties can be reimbursed by the fund for the excess cost. The public, however, has no recourse if their health has been impaired. For this reason, courts should carefully weigh the equities and give great weight to the public health risks involved.

Section 120 addresses cleanup of sites that are at Federal facilities. Many States have Superfund sites at Federal facilities, including Maine, Florida, California, and New York. Three Superfund sites in Maine—Portsmouth Naval Shipyard, Loring Air Force Base, and Brunswick Naval Air Station—are at such facilities. I am therefore particularly concerned that this section be implemented appropriately.

My primary concern about Federal facilities has been the difficulty States such as Maine have had in requiring Federal agencies to pay State fees and penalties as do other responsible parties. In Maine, there is currently pending litigation regarding the Portsmouth Naval Shipyard in which the State seeks penalties and fees owed by the Department of Defense to Maine.

These kinds of issues are clarified in section 120, which states in subsection (a)(1),

Each department agency, and instrumentality of the United States . . . shall be subject to, and comply with, this Act in the same manner and to the same extent, both procedurally and substantively, as any nongovernmental entity, . . .

As stated in the statement of managers agreed to by the Superfund conferees:

This clarifies that CERCLA, together with RCRA, requires Federal facilities to comply with all Federal, State and local requirements, procedural and substantive, including fees and penalties, except as provided in section 121.

Section 6001 of the Resource Conservation and Recovery Act [RCRA] clearly states that Federal agencies are to be "subject to, and comply with, all Federal, State, interstate, and local requirements, both substance and procedural." This section, together with section 120 of CERCLA, can leave no doubt that Federal facilities are subject to State laws, including State fees and penalties.

In addition, section 120 clarifies that sovereign immunity is broadly waived. By clarifying that Federal facilities are to be treated as nongovernmental entities, sovereign immunity is waived. Thus, Federal facilities are subject to all State administrative and court procedures and sanctions, including penalties and injunctions.

I am pleased that the conferees chose to clarify these points. It is essential that the Government elected by the people to protect them not to be excused from protecting the public health under a Federal statute such as Superfund. Such double standards are anathema to those of us who believe that the Federal Government's primary task is to protect the public, not to contaminate it.

Another area of personal interest to me is section 122, which addresses settlements between EPA and responsible parties. This section explicitly authorizes EPA to enter into settlement agreements with responsible parties in limited circumstances. This authority is discretionary, signifying a change from the Senate version which required EPA to explore the settlement option.

The question of whether EPA should settle cases with potentially responsible parties [PRP's] had a long history. As many will remember, it was sweetheart deals that EPA negotiated with PRP's several years ago that led to the resignation of Rita Lavelle and Anne Burford. This bill establishes the framework in which EPA can negotiate tough settlements with PRP's in the interest of cleaning up a site more quickly. The settlements provision is not a carte blanche for the agency to cease enforcement activity and to agree to any offers by PRP's.

Section 122, to the contrary, envisions an agency that uses all of its enforcement tools to persuade PRP's to clean up a site quickly and effectively so that people are no longer exposed to hazardous substances. The agency was involved in negotiations on this section, as well as other sections of the bill, and should have a firm grasp of the concerns I and other members of the conference committee expressed about the risks of future sweetheart agreements. I cannot stress too strongly my view that this section is designed only to provide settlement guidance to the agency. The purpose is to clarify the limited circumstances in which settlements are appropriate; the purpose is not to encourage EPA to settle as many cases as possible.

A court's authority to review consent decrees is not diminished or modified. There continues to be judicial review of these decrees as a check on the agency's exercise of its discretionary authority to enter into settlement agreements. The court can review the decree to determine whether the decree is in the public interest.

The settlement should only be undertaken if the President determines that the responsible party will properly undertake a response action, and if such a settlement is practicable and in the public interest. These kinds of requirements clarify that the President is to consider the quality of the arrangement. A responsible party may be agreeable to undertaking an approved response action, but due to lack of experience, financial resources, or the type of cleanup involved, settlement may be an inappropriate alternative.

A decision by the President not to settle a case should not be an unusual occurrence, nor should the President feel obligated to try to settle every case. Settlement should only occur if the President is satisfied that the site will be cleaned up more quickly and at least as completely as it would be if the fund were to perform the cleanup. Without doubt, settlement of cases is not an opportunity to avoid any of the cleanup requirements or procedures of the act.

Section 122 authorizes the President to enter into covenants not to sue. Such covenant is clearly reviewable by a court and should be carefully scrutinized, since a covenant not to sue may excuse responsible parties from some obligation. It is expected that such covenants will not be agreed to often, since any reduction in responsibility by the responsible party is a proportional increase in the Federal responsibility to pay for any future response costs.

Consistent with this view is the requirement under section 122(c) of CERCLA that more permanent remedies be granted more complete covenants not to sue. This is EPA's current policy, as presented to the conferees, and should be assiduously implemented.

Section 122(e) of the act sets forth the settlement procedure. None of the information described in paragraph (1) is to be provided if it is unavailable. For example, under section 122(e)(1)(B) and (C), the President is to provide PRP's with a ranking of substances contributed by each PRP at a site. This could be an onerous burden for the Agency unless it is limited to information that is reasonably at hand. Similarly a release of such information could place the President at a serious disadvantage when litigating cases. Settlement procedures should not be used to diminish the Government's ability to litigate.

The President is authorized under section 122(e)(3) to prepare nonbinding preliminary allocations of responsibility [non-PAR's]. Preparation of such a non-PAR is discretionary, and the costs of preparing the non-PAR shall be borne by the PRP's. If a PRP makes an offer based on the non-PAR, the President may reject the offer. This is a change from the Senate bill, which stated that a rejection by the President of an offer of more than 50 percent of the non-PAR would mean that the President would bear the burden of proof in court, should a PRP sue the President for such rejections.

The conferees agreed to drop this provision and left the entire process discretionary. In doing so, the conferees did not endorse the 50 percent requirement. The debate over the appropriate percentage was not resolved and so the reference was dropped. The President should not consider 50 percent offers to necessarily be offers worth considering or settling. Many conferees believes that a higher percentage should be the threshold for serious settlements.

Section 122(e)(6) clarifies that no PRP can undertake any remedial action at a facility without authorization by the President. This is to avoid situations in which the PRP begins work at a site that prejudges or may be inconsistent with what the final remedy should be or exacerbates the problem.

Section 122(f) addresses convenants not to sue. The President is authorized under paragraph 1 to provide such convenants where they are, in the public interest and would expedite response action consistent with the NPL, where the PRP is in full compliance with a section 106 consent decree, and the response action has been approved by the President.

Each of these elements must be present and should be carefully scrutinized by the President. These are requirements not easily met and the first of them, the requirement that the covenant not to sue be in the public interest, may be one of the most difficult tests to meet.

The President should be restrained primarily by protection of the public health and the environment. This is of particular concern in this context in which we know relatively little about future behavior of contaminants. Ground water that was believed to have been cleaned up 20 years from now may be discovered to be contaminated because a contaminated plume was missed in the monitoring. Similarly, technologies we rely upon today may tomorrow be found wanting and presenting new or greater risks to the public then we believe exist today.

In addition, whatever release is provided by the covenant not to sue is an obligation that the Federal Government may have to absorb. Any error by the President in granting the covenant not to sue will create greater problems and expense for the Federal Government later.

The rarest of all covenants not to sue should be the paragraph 2 special covenants. These covenants are to be granted where there is permanent treatment. Permanent treatment is narrowly defined and includes treatment that destroys, eliminates, or permanently immobilizes the hazardous constituents of a substance. It clearly does not include permanent storage in a vault or other container, since there is no permanent immobilization or change in the character of the hazardous substance. Permanent treatment means that no person would run any risk of being exposed to a hazardous substance after treatment. In the case of permanent storage, the nature of the hazardous substance remains the same, but the possibility of exposure is reduced. This is clearly insufficient to qualify as permanent treatment and a special covenant not to sue under this paragraph.

The President should grant such a covenant only in the most rare of circumstances, since the covenant is by nature broader than the paragraph 1 covenant and the future responsibility of the United States is proportionately greater. In any covenant not to sue, as clarified in paragraph 4, such a covenant cannot be agreed upon until the President determines that remedial action has been completed in accordance with the requirements of the act. None of the covenants can excuse compliance with CERCLA requirements.

If there is any question about the effectiveness of the treatment, the covenant should not be granted. In addition, if less major issues are in question, the President may include conditions in either paragraph 1 or paragraph 2 covenants. Conditions, like the decisions to enter into a covenant not to sue, are to be in the public interest and may be based on a variety of factors, including those listed in paragraph 4.

These factors highlight the need to be sure that the technology or treatment will perform as promised and that there is sufficient knowledge about the method chosen to assure such treatment or technology will be correctly implemented and achieved specified results.

In addition, it is important for the President to ask a basic question: Who will pay if there is a problem in the future? So little is known about much of the contamination at Superfund sites, that it is difficult to be sure that no future liability will occur. For example, the President may enter into a covenant not to sue with a PRP at an NPL site, and the responsible parties treats the soil and ground water and removes the contaminants in the agreed upon manner. Years later it may develop that the monitoring missed a major plume and the ground water serving a town of 10,000 people is contaminated. Who would pay to clean up the ground water and provide water to town residents? Such a covenant may on its face not be in the public interest as well, since such a population could have been at risk.

In any event, future enforcement action should be an option under the covenants to assure that the public health is protected. From the perspective of the public, if the President does not use every option at the President's disposal to protect the public health, then the public is placed at a severe disadvantage.

The final Superfund bill also includes the legislation I have developed over the past year concerning research of the health effects of exposure to radon gas. Radon is a naturally occurring gas which is found in Maine as well as other areas of the country. It can build up inside homes to levels which pose a health risk. The EPA estimates that between 5,000 and 20,000 people die each year of lung cancer caused by exposure to radon gas. This legislation directs the EPA to establish a research program addressing radon and other indoor pollutants.

EPA will also conduct a program to demonstrate a range of measures to reduce radon levels in homes in different parts of the country. This demonstration program will result in the kind of practical information on how to control radon which is badly needed by homeowners in Maine and other parts of the country.

Other provisions of the legislation provide for a national assessment of the extent and seriousness of the radon problem in the United States and an overall report to Congress on radon and related pollutants within 2 years.

This legislation benefited from the contributions of a number of people from Maine. I held a hearing on this issue in Augusta, ME, last year and heard testimony from radon experts from the University of Maine, the Maine Medical Center, several departments of the State government, and citizens who have discovered high levels of radon in their homes.

I will play an active role in overseeing the implementation of this important research and demonstration program over the next several years.

Too many citizens have already had to familiarize themselves with the alphabet soup of chemical names because they or their families were exposed to the hazardous substance. The purpose of CERCLA is to protect the public from such exposure and to assure that the Federal Government is an advocate of the public in assuring that Superfund sites are cleaned up and responsible parties are truly responsible.

I will take a few seconds to express my appreciation to the chairman of the committee, Senator STAFFORD, the ranking member, Senator BENTSEN, and all of the other members of the committee who worked so long and so hard over what seemed like an endless process to achieve this result; the chairman of the Finance Committee, as well; and I see Senator MOYNIHAN and of course the two Senators from New Jersey who perhaps have been foremost among all Members of Congress in calling attention to this problem, insisting on and helping to shape what I hope will be a far-reaching solution to the problem.

Senators BRADLEY and LAUTENBERG have done a great job. Senator LAUTENBERG is a member of the committee, the conference committee, and did a great deal. Without his efforts, there would not be a bill here today.

I thank you.

I yield back the remainder of my time.

Mr. STAFFORD addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. STAFFORD. I yield 2 minutes to the very able Senator from New York.

Mr. MOYNIHAN. I thank my friend, the distinguished chairman of the Environment and Public Works Committee, who has lead us in our efforts to respond to the hazards of abandoned toxic wastes. Claiming no pride of authority, he brought our initial efforts to fruition 6 years ago, in December of 1980, with the Comprehensive Environmental Response Compensation and Liability Act—the Superfund. Love Canal and Niagara Falls, NY, first brought the matter to our attention; it commands it still.

With the second round of Superfund authorization, we provide the institutional framework for the cleanups that will follow in the next half-decade; they merit the substantial fi-

nancing provisions contained in the bill.

Since Superfund's initial passage, the Solid Waste Disposal Act Amendments of 1984 have improved our ability to rid ourselves of these substances as we create them. We must continue to pursue that goal even more effectively in the years ahead as we work to clean up those that were not so carefully disposed of.

I also hope, Mr. President, that we will find time to obtain a true accounting of where the money we appropriate for cleanup is going from the Environmental Protection Agency.

It seems clear that far too much is going to litigation, and far too little is going to mitigation.

That is something that we have addressed to some extent in the current legislation, but it remains something the Committee on Environmental and Public Works should inquire into at some length, perhaps even at some leisure, in the years ahead.

With the long-delayed passage of the current bill, we make it clear that this body recognizes that the public cleanups, and that allowing this situation to continue is simply intolerable. At last, we can finally say to the EPA: "Here is the wherewithal, here are you instructions—now get on with it, and do it properly."

The problem of carelessly disposed of hazardous wastes did not arise overnight. In New York, we knew something was wrong in the early 1970's; on August 7, 1978, when President Carter declared a Federal emergency at a place called Love Canal, the entire country knew.

Throughout the 1930's and the 1940's, all manner of hazardous substances had been buried in what was once meant to be a canal for navigation and for power. In time, through an unfortunate sequence of events, it became the site for a school and for a neighborhood. And in the time since we discovered it for what it was, it has become through another unfortunate sequence of events, a symbol of how poorly both private industry and our Government have coped with the hazards of improperly disposed hazardous wastes.

In 1980, I was an original cosponsor of the Comprehensive Environmental Response, Compensation and Liability Act. We began the slow process of searching for other potential "Love Canals", and learning how to make them safe again. Little did we know in 1980 how many there would be, how long the cleanups would take, or how much they might cost.

The Environmental Protection Agency has had a slow start. Perhaps half a dozen of our most hazardous toxic waste dumps have been cleaned up, but the Agency has said that 541 more deserve places on the national priority list of the worst sites. EPA estimates that the number may grow to 1,500 or 2,500; the Office of Technology Assessment believes the number could reach 10,000. And these numbers do not include tens of thousands of lesser dumps that will ultimately be left to the States for cleanup. In New York alone, we have found over 1,400 candidate sites so far.

In 1980, we thought that $1.6 billion spent over 5 years would bring us well along the way to solving this problem; now we know better. If the EPA estimates are right, the final cleanup cost for only the most hazardous dumps could reach $22.7 billion, and their numbers are very optimistic. Probably unrealistic. One thing we have learned in 5 years is that making good on our commitment to protect the public health is going to cost a lot more money. The $9 billion provided in this legislation is by no means too much.

We also have learned that we cannot expect rapid results—it takes a long time to determine just what the problem is at each site, how big the problem is, and how best to solve it so as to protect the public. Six sites completed in as many years is far—very far—from good enough, but there are signs that the EPA now takes its responsibility to protect the public health more seriously than perhaps it once did. It is abundantly clear, however, that despite the improvements that have been made, the vast bulk of our toxic waste problem will remain with us for years to come.

But mostly, have learned how little we really knew about how best to rid ourselves of this mess. Six years after the Superfund Program began, and 8 years after the Emergency declaration at Love Canal, we still do not have good methods for cleaning up many of these hazardous sites—including the one at Love Canal.

Today, unlike 1980, there are a few things that we know we can do, to make the best of this situation.

First, we can act decisively to reauthorize this program before the existing program is altogether lost.

Second, we can provide a responsible sum of money for the next 5 years to keep these cleanup efforts proceeding. The package of taxes that the funding conferees have finally produced will allow this and is deserving of our support. Although there are portions of it I do not like, particularly the ill-advised oil import tariff, and would have preferred a "waste end" tax on the disposal of hazardous wastes this financing package is necessary and adequate to the task, and I urge all of my colleagues to support it.

Third, we can refine the program based on what we have learned over the last 5 years; this bill does so admirably. By giving further guidance to EPA, better defining the standards and procedures to be followed in remediation, and providing money at levels more realistic than those we specified in 1980, we go far to improve the prospects for our Nation's well-being.

And fourth, we can establish a program to help give us what we do not now have, new technologies that work in the field, to help us to do the job more effectively in the next 5 years. Mr. President, this bill includes a provision I authored, along with my colleague Mr. TORRICELLI in the House, to establish a program of applied research and development within Superfund to do exactly that. It will give us the tools to do the job properly.

This new program will advance our knowledge of how best to clean up hazardous waste sites. Primarily a field demonstration program, it gives EPA the authority to try promising new technologies at Superfund sites. With this amendment, they are directed to do so where it makes sense to do so.

Mr. Chairman, nothing makes more sense than Congress reauthorizing the Superfund Program with the solid, sensible legislation we have before us, and with dispatch. The citizens of Love Canal and communities across the country are still waiting.

Mr. STAFFORD. Mr. President, I now yield to the assistant majority leader, Mr. SIMPSON.

The PRESIDING OFFICER. The assistant majority leader, Senator SIMPSON, is recognized.

Mr. SIMPSON. Mr. President, it was my privilege to serve as a member of the conference committee on Superfund. I said "privilege"—for it was not always fun. In fact, it was kind of a grisly experience, actually. That is grisly with an "s" instead of a "z," and maybe it should be both.

But I want to commend our chairman, Senator STAFFORD, who was extremely patient, as we went through some pretty heavy water on that one. I have never seen a more remarkable bipartisan approach to a very tough issue. The conference started on a note in the House of a really crashing kind of activity. Chairman DINGELL was superb, fair, tough. I have learned to have great respect for that gentleman. He meets all of the attributes of the reputation we know of him. It was a treat to work with him.

I want to say that Senator BENTSEN was extraordinarily patient, along with Senator STAFFORD; GEORGE MITCHELL added a great deal to the effort. In fact, there were times with his remarkable ability to probe and zero in on things that he came up with solutions to things that we were just enmeshed in. I want to commend my friend from Maine. DENNIS ECKART, of Ohio, who was a splendid participant, and a very bright man that followed it, all so thoroughly; and Congressman DAN GLICKMAN; Congressman NORM LENT, from New York; and then, of

course, STROM THURMOND, our remarkable Judiciary chairman, because we had judiciary issues before us as well as environment and public works issues.

Senator LAUTENBERG, too, gave a great bit of assistance in his unique and spirited way. I have been in a lot of conferences. There have been a lot of conferences where you get in with the House and you get hammered around pretty heavily. This was an open, direct, and sometimes a confrontational conference, but it was all very worthwhile. This is good piece of legislation.

I hope this administration will not think in any way of vetoing this package. I do not say that as a threat. I say it as total reality. If we are going to mess around with this one, after what we have just been through yesterday on South Africa, we will never see anything like it again. It will not come again. The chemistry and the dynamics will not be there to get this kind of Superfund next year. Lots of things could change. I am not talking about parties. I am talking about the whole scheme.

My commendations also go to Senator PACKWOOD, and again that steady Senator has done his usual marvelous job. I think it would be a very bad mistake if the President of the United States were to veto this—may I be yielded an additional 30 seconds?

Mr. STAFFORD. I yield to the Senator an additional minute.

Mr. SIMPSON. I glean the excitement in the chairman as I refer to avoiding veto and I thank the chairman.

So in this additional minute I say honestly that there will be a great misreading of the intent of this body if there is any mention or the actuality of veto. The funding is there. It is not what we all like. But it does save some industries that have had to take the whole load before. I think it is balanced. I think it is fair. But the programmatic changes are what is going to bring about the cleanup—the cleanup we all ask for—and then good release language, de minimis language, and altogether a very proper scheme.

I just tell you again it was a great privilege for me to serve on that conference committee, and a great treat to see a bipartisan result such as we have before us. It is a good package.

I thank the chairman, and I thank the ranking member.

Mr. President, I am pleased to rise in support of S. 2840, the Superfund reauthorization bill which I have cosponsored, along with Senator STAFFORD and other members of the Environment and Public Works Committee.

This legislation is the result of a tortuous legislative process. The struggle for reauthorization began in 1984, and it became more pressing in late 1985, when the program's taxing authority expired. Now, nearly a year later, we are considering a complete reauthorization—the Senate Finance Committee and the House Ways and Means Committee have worked out their difference by crafting an intelligent Superfund taxation proposal.

The Environmental Protection Agency has been given an impossible task: To clean up the Nation's hazardous waste sites without clear congressional guidance on what the new statutory ground rules will be. This legislation, which is the result of more than 9 months of House-Senate conference activity, had a great deal of participation from the Administrator of EPA, Lee Thomas, who assures us that it is workable. While all of us, including Mr. Thomas, would have preferred different outcomes on various parts of the legislation, we came to a conclusion and we now should strive to let EPA do its work. When one considers that the program has been under a cloud since the public problems of its stewardship in 1983, and then was revamped by Lee Thomas in his role as Assistant Administrator for Solid Waste in 1983–84, and was then caught up in the congressional reauthorization maelstrom since that time, one can see that the troops over EPA should be given the time to put together the new program as soon as possible. Since this legislation includes many areas in which EPA will have to have management adjustments to meet new tasks, it is critical that we give them the tools to finish the job of making the Nation safe from the effects of past hazardous waste disposal practices.

I would like to bring attention to several provisions of this legislation that are of particular importance, beginning with the new provisions for health authorities.

As my colleagues may remember, I have had the challenging task over the years of working very hard on issues related to toxic torts and victims compensation in Superfund, as well as in the nuclear arena and in the agent orange debate. No set of questions is more important to me than these, because of the profound and direct implications our legislation can have on the public health and on the various mechanisms our society relies upon to compensate those in need—ranging from the tort system to various social insurance programs.

In 1985 I worked diligently with my friend and colleague Senator GEORGE MITCHELL, in the hope that we could come to agreement on a limited, trial program of victim assistance in lieu of a Federal cause-of-action in tort, as some had previously suggested might be appropriate in the Superfund context. Despite our best efforts, I eventually decided to oppose the inclusion of the program in Superfund, and I supported Senator ROTH's admirable and successful effort to delete the program from S. 51 on the Senate floor. Similarly, the House of Representatives rejected a floor amendment from my good friend from Massachusetts, Mr. BARNEY FRANK, which would have gone further and established a Federal cause-of-action in tort as part of Superfund, combined with changes in the Federal rules of evidence to make it easier for plaintiffs alleging injury from hazardous waste to offer information into evidence beyond what is now admissible or relevant.

I mention the background here because it is important in understanding congressional intent with respect to the various health studies which the Congress is directing EPA and the Centers for Disease Control to produce at Superfund sites in the future. I supported these provisions because they hold the promise of more knowledge in the future about the health effects of hazardous waste sites, and the relative contribution of such sites—when compared with other factors—to the various negative effects on public health generally. These provisions of the legislation do not change the Federal rules of evidence, nor will they provide information likely to establish legal causation in cases involving individuals alleging injuries from hazardous waste site exposure. The problems of multiple causation from various chemicals acting together, or combined with life-style or genetic factors, will continue to bedevil questions of toxic compensation.

I supported the new health authorities wholeheartedly as one means toward developing information on potential health effects from waste sites. I am most hopeful that they may begin to move us toward the first steps of better knowledge of potential associations between waste site exposure and potential group health effects, and I strongly emphasize our intent that they not be used in toxic tort cases alleging individual injury where such information would not be admissible or relevant under existing rules of evidence.

I would also like to briefly discuss the new provision on settlements that was agreed to in conference. As sponsor, along with Senators DOMENICI and BENTSEN, of the Senate settlement policy amendments which were unanimously supported by the Senate last year, I was naturally disappointed that not all of the provisions of the Senate bill made it into the final conference report. But I am very heartened by the improvements which the conference made in the settlement process, and I believe that the Congress has sent a strong signal to EPA and to the Department of Justice that we expect increased numbers of settlements with potentially responsible parties.

There is no doubt that the immense transaction costs generated under Superfund—meaning lawyers' fees and the many technical and scientific studies required in litigation—have come to symbolize the worst excesses of the American legal system. Senator DOMENICI quoted Dickens' "Bleak House" in describing it last year, and he was right. We simply must work to have more societal resources spent on necessary and effective cleanup of Superfund sites, and less on convoluted litigation which merely extends any public health threat that exists from these sites.

The new settlement provisions retain a great deal of discretion for the Government in Superfund cases, while moving EPA toward adjustments in its enforcement outlook. EPA is required to establish guidelines for the development of nonbinding preliminary allocations of responsibility designed to make settlement more likely by taking the all-important first step of providing a reliable context in which settlement negotiations can begin in earnest. In particular, we expect that such procedures will get all sides "off the dime" at the many multiparty sites remaining to be cleaned up.

Further, the Congress has provided that EPA develop a numerical target representing a substantial offer, so that potentially responsible parties will have a specific goal to aim for in seeking settlement. Further, where the Government rejects an offer meeting this criterion, we have provided for signoffs in Washington by officials at the EPA and the Department of Justice. This will help the Congress to provide effective oversight over the operations of the new process, and will also help the EPA and Department of Justice by providing continuing congressional guidance.

If EPA and the Department of Justice take full advantage of their congressional defined authorities—to provide mixed funding, to speed the cases of de minimis parties who can clog the system, to prepare allocations of responsibility, and to provide meaningful releases from future liability for potentially responsible parties generally who have acted in the public interest—then we shall have a dramatically improved Superfund Program. I am hopeful that under the strong leadership of Lee Thomas, who has assured me that he will utilize these authorities to the fullest extent, an example of strong and creative enforcement will be set which will serve us well long after the strident Superfund debates of today are muted and forgotten.

I do have one final comment regarding the amendment requiring EPA to utilize available information when considering mine waste sites for inclusion on the national priority list [NPL], available information means more than information that EPA has in its files. This term is intended to refer to any relevant and reliable data or information, whether generated by EPA, State or local governments, or by the private sector. The goal is to get, use, and weigh the best site-specific and waste-specific data to accurately assess relative risk posed by each site and release under review, insofar as possible.

In closing I would add that it was a distinct pleasure to work with BOB STAFFORD, our hardworking committee chairman, and with the very fine House Members, especially Chairman JOHN DINGELL whom I have the deepest admiration for and Congressman DENNIS ECKART who is one of the brightest and sharpest House Members around. I also enjoyed working together with LLOYD BENTSEN, PETE DOMENICI, GEORGE MITCHELL, DAVE DURENBERGER, JOHN CHAFEE, PAT MOYNIHAN, FRANK LAUTENBERG, and MAX BAUCUS. All of the Senate conferees devoted many, many hours to work on the difficult Superfund issues and all made significant contributions to conference meetings. Special recognition is due my dear friend, BOB STAFFORD, for his tireless efforts to get Superfund reauthorized and I commend him for his diligence and constant good nature in this long and arduous effort.

Mr. BENTSEN. Mr. President, I would like——

The PRESIDING OFFICER. The Senate will be in order.

The Senator from Texas.

Mr. BENTSEN. I would like to recognize the senior Senator from New Jersey, who represented not only his State but the Nation on his concerns.

The PRESIDING OFFICER. The Senator from New Jersey, Mr. BRADLEY.

Mr. BRADLEY. Mr. President, at long last we consider the conference report on the Superfund reauthorization bill. This is truly the most important and pressing environmental issue that we face this year. The reauthorization of Superfund is crucially important to New Jersey and the Nation. Once again, time is of the essence—the program is on hold due to lack of funds. There is no longer reason, however, for the stop-gap measures. This Superfund reauthorization bill ensures a substantial program for the next 5 years and I urge my colleagues to support it solidly. We must send a strong signal to the White House that the threats of a possible veto are inappropriate and will be ultimately ineffective.

In March 1983 I offered the first Superfund reauthorization bill to be introduced in the Senate. I was concerned that the mismanagement and abuse of the Superfund Program by the previous leadership of the Environmental Protection Agency had tarnished the perception of our commitment to continuing and completing the cleanup of hazardous waste sites that threaten the health of citizens around the Nation. I wanted to demonstrate to the People that their Government had not reneged on its commitment, made to them with the passage of Superfund in 1980. My concern remains. Today we have the chance to make good on that commitment.

The bill we are considering today is a good bill. The first part contains programmatic changes to the existing Superfund law that strengthen and improve the operation of the program. The bill has strong community right-to-know provisions and cleanup standards. It sets up a program for dealing with leaking oil storage tanks. Also included are provisions that I proposed with Senators MITCHELL and LAUTENBERG that deal with the threat imposed by indoor air pollution and, in particular, radon gas.

The second "half" of the bill is the revenue title and the financing committees faced a real challenge here. The original bill was funded at $1.6 billion. The reauthorization requires at least $8.5 billion.

The original law obtained most of its revenues from a tax on petroleum and chemical feedstocks and the remainder of the revenues from the Federal taxpayer. Neither the feedstock tax nor the Federal budget provided any room for increasing Superfund revenues. Many legislators backed a new tax—a tax on wastes as they are generated. Indeed, such a waste-end tax appeared to have merit—I included one version of the waste-end tax in the bill I introduced. The principal problem was that the waste-end tax was not capable of producing anywhere near the required revenues.

Last year, I offered the first broad-based tax to be introduced in the Congress. I proposed to tax all corporations making over $50 million per year at a rate of 0.08 percent (.0008) of their corporate net receipts. Conventional wisdom had it that it was politically risky to propose a new tax on businesses, but it seemed to me that no other alternative existed if Superfund were to be reauthorized at a level of funding sufficient to do the job over the next 5 years. As it turned out, the Superfund conferees agreed with me and not the conventional wisdom.

Mr. President, I would like to thank all members of both committees, the chairman, and the members of the conference. I would also like to offer special recognition to my colleague, Senator LAUTENBERG, for his effective hard work on the Environment and Public Works Committee and in conference.

We made a promise 6 years ago to clean up the thousands of hazardous waste sites that blight our land. The creation of the Superfund in 1980 told

the American people that the Government recognized a mammoth problem, a continuing threat to public health, and that it could take the necessary steps to address that problem.

For a while the American people were wondering what happened to that promise. They see only slow progress cleaning up the sites in their communities. They saw the first several years of the Superfund's existence wasted by an EPA willing to use the Superfund for political favors instead of for cleaning up hazardous waste. They saw the program limp along this past year on a series of temporary extensions, as we were unable to reconcile our differences of opinion. Can we blame them for their skepticism?

We must reaffirm that promise we made back in 1980. We have the chance to make good on it now. We cannot wait any longer.

Superfund taxing authority expired over a year ago and forced the EPA Administrator to halt all but emergency work on Superfund sites. This program is so vital to public health and confidence in Government cannot be allowed any longer to lapse.

□ 1730

Today, with this reauthorization, it will not lapse. We will keep our word to the people of New Jersey and the Nation. We will clean up toxic waste sites.

The PRESIDING OFFICER. The Senate is not in order. Senators are asked to take their seats. Senators wishing to engage in conversation are asked to retire to the cloakrooms on both sides of the aisle. Who yields time?

Mr. STAFFORD. Mr. President, I yield 2 minutes to the distinguished Senator from New Mexico.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. First, I want to thank the distinguished chairman for yielding me 2 minutes.

Mr. President, I would like to clear up some uncertainty concerning the Environmental Protection Agency's authority to obligate funds from the Superfund trust fund and other trust funds created by this legislation. Current law and this conference agreement on H.R. 2005 are vague on this point. To date, EPA only has expended funds from Superfund to the extent those expenditures have been made available through appropriations acts. I would like to ask the distinguished chairman of the Senate Environment and Public Works Committee a question. Is the spending authorized by current law and in the conference report on H.R. 2005 subject to annual appropriations action?

Mr. STAFFORD. Yes. Our intention is that the expenditures authorized by the conference report on H.R. 2005 be subject to annual appropriations action.

Mr. DOMENICI. I thank my friend.

Mr. President, I had the privilege of serving on this committee for 14 years. On the issue of Superfund I served for almost as long, and on the conference for a period of time it seemed almost as long. But 9 months ago I did not think we would be here. It is because this is a major American issue of high, high significance and many Senators were dedicated to resolving it and many House Members were. We were able to mold two very diverse bills, as complicated as any piece of legislation that will ever pass the U.S. Senate, into something that a number of Senators on both sides of the aisle and a number of House Members from both sides with different ideologies have put their signatures to.

I believe we will have problems with Superfund, but clearly we will have far worse problems if we do not get on with adopting this law. Hopefully the President will sign it and get our EPA Director to start the difficult, onerous, and tedious job of cleaning up about 50 years of very, very difficult environmental problems for our country. I hope in the years to come we will find success from this bill in one of the most serious environmental problems in our country. I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. STAFFORD. How much time remains?

The PRESIDING OFFICER. The Senator has 3 minutes and 12 seconds remaining.

Mr. CHAFEE. Mr. President, the drama that may become known as the perils of Superfund is about to enter the final scene. The long awaited conference report has been produced.

The days, weeks, and months—the years of work that have gone into this effort are almost over. As one of the conferees on this bill, I hope our work is done.

For too long, too many people have been playing politics with the health and welfare of our constituents. Superfund has become a political football. Lobbyists on both sides of the issue, the administration, and Members of Congress have engaged in a game of brinkmanship. Notwithstanding the considerable progress that has been made to date, this abhorrent game continues.

The final scene, the climax of this drama will come when the bill reaches the White House. Will the President sign this bill? I don't know. But I do know that he should sign it and will be making a serious mistake if he doesn't sign it.

The importance of getting the money flowing back into the field—back to where it can be put to work actually cleaning up the thousands of toxic waste sites that are riddled throughout the country—cannot be overstated. Short-term extensions of funding are not the answer. They are merely Band-Aids and Band-Aids will not help a program that is dying. Putting off resolution of our differences will not make our task any easier nor will it help those who live near these toxic dumps and need action today. We need a healthy, long-term infusion of money to get these sites cleaned up as soon as possible.

The officials representing this administration have consistently threatened a veto if we adopted a funding package they don't like. Well, Mr. President, I don't expect them to like this one. Indeed, there are elements of it that are seriously troubling to me. The differential tax rate on imported versus domestic oil, for example. My willingness to accept this portion of the bill is conditioned on an understanding that this is not a precedent. Accepting a differential of a few pennies per barrel is a far cry from the oil import fees that some Members of this body have advocated for other purposes. I will continue to oppose such fees.

The funding proposal before us today derives significant revenues from the petrochemical industry. This is consistent with the principle of Superfund: the principle that the polluter pays. Inclusion of a broad-based corporate tax and revenues from the General Treasury is not inconsistent with the polluter pays principle and reflects the fact that the problems of toxic pollution are societal problems. If this program works as it is supposed to, all polluters that can be identified will be forced to pay for the cleanup of sites containing their wastes. The enforcement program is the place to make sure that the polluter pays.

Mr. President, under the leadership of the chairman of the Committee on Environment and Public Works, Mr. STAFFORD, the conferees on the nontax portion of Superfund took two bills—bills that approached 1,000 pages when put side by side—and came to agreement on a substitute bill that represents the best features of both original bills.

Our chairman worked long and hard for this legislation. Despite innumerable obstacles, he never gave up hope or slackened in his tireless efforts to achieve the goal of a new, improved Superfund. For months and months, the conference meetings went on and on. At each and every meeting—small private sessions or large public meetings—he was there. Anyone who cares about this program is indebted to the senior Senator from Vermont, a gentleman in the truest sense of the word.

Approval of this legislation today will put into place a new, improved Superfund program. Assuming enactment of this bill, we will have a new

law that corrects many of the problems and weaknesses that have been discovered since Superfund was first created in 1980. For example, the conferees have agreed to add to the law and this legislation includes the following key provisions:

Funding: The program is extended for 5 years at a level of $8.5 billion—an increase of more than fivefold over the old law which provided only $1.6 billion for the first 5 years.

Underground tanks: A new program to clean up leaking underground storage tanks is established, funded at $500 million over 5 years. This program is designed to address problems such as those that plagued Canob Park in Rhode Island.

Community right to know: A new program requiring companies using more than 25,000 pounds of toxic chemicals to disclose and develop emergency plans for 400 such toxic chemicals is added.

Schedules: The EPA is required by law to begin at least 375 cleanups within 5 years.

Health: The Federal Government is required to conduct health studies at all Superfund sites and to conduct laboratory tests of at least 275 of the most dangerous chemicals found at sites.

Citizen suits: Citizens are given an express right to sue to force the Federal Government to perform mandatory duties imposed under the law.

Victims rights: Language is included which gives victims of toxic chemicals relief from restrictive State statute of limitation laws, many of which require an individual to initiate a lawsuit within a few years of exposure to a toxic substance even though the effects of exposure may not show up for decades. Under the new law, the statute of limitations will run from the time an individual discovers there is a cause of action for suit, rather than from the time of actual exposure.

Cleanup standards: Rigorous new environmental cleanup standards which will require the Environmental Protection Agency to comply with other Federal environmental standards in cleaning up toxic waste sites and which will, in many cases, require that EPA adhere to tougher State standards where a State has more stringent regulations are added by the bill. This deals with the issue of how clean is clean? In the context of this provision, EPA will be required to remove contaminated dirt at the Picillo dump site in Coventry. This provision was added at my insistence after the State of Rhode Island was forced by EPA to go to court last December in an effect to get EPA to remove the contaminated dirt.

Siting of hazardous waste facilities: A new provision that I sponsored will require each State to devise a plan within 3 years for the disposal or treatment of the toxic wastes generated within the State. The objective is to force States to provide safe and adequate facilities for toxic and hazardous waste. States will be allowed to pool their resources to provide joint disposal or treatment facilities. States failing to comply will lose the right to all but emergency cleanup funds from the Superfund.

These are tough, realistic provisions that make major improvements to the Superfund law. They are significant changes that will improve the Government's ability to respond to problems presented by toxics that are released or threatened to be released into the environment and will force the Government to upgrade the quality and permanent nature of its responses. This legislation will also provide citizens living near these sites with the tools needed to assure that these sites are being properly and adequately cleaned up. For example, EPA will no longer be able to argue that they can ignore Rhode Island's more stringent clean up standards at the Picillo site in Coventry. New cleanup standards designed to answer the question, "How clean is clean?" will force EPA to do more than simply install a fence around the site to keep people away and a cap over the site to keep rain off the site. Over the past 5 years, this capping has become EPA's standard method of cleanup, it has become the rule. It will now be the exception.

Important legislative history explaining the conference agreement and the statutory language of this legislation is contained in a statement of managers. To supplement that statement of managers, several key points need to be made.

SITING OF HAZARDOUS WASTE FACILITIES

A critical step in the implementation of a rational, safe hazardous waste program is the creation of new facilities employing the most advanced waste management technologies. But to establish newer, improved facilities, sites on which these facilities can operate must be found and made available. Although most States have enacted or have pending some form of siting legislation, few, if any, have developed policies and siting programs that will assure continued facility capacity in the long term. Recognizing that, as a general rule, States are not moving aggressively to avoid the creation of future Superfund sites, an amendment on siting of hazardous waste facilities was adopted by the committee.

This section of the bill provides that, effective 3 years after enactment, a State shall not receive Superfund money for remedial actions unless the State provides assurances that there will be adequate capacity and access to RCRA-approved facilities for the treatment or disposal of all of that State's hazardous waste (other than those wastes that will be recycled) for the next 20 years. Merely having a plan on paper is insufficient. There must be reason to believe that the assurances are real, that the plan will work.

Such assurances must be made to the President. The President is expected to delegate the Federal responsibilities under this amendment to the Administrator of the Environmental Protection Agency.

The availability of funds for "removal actions" is not affected. The short-term, emergency cleanup of, for example, a road side spill or a stack of drums that are about to explode could proceed. What will be withheld are funds for "remedial actions," the long-term, permanent cleanup of sites on the national priority list.

To avoid a cutoff of funds, each State is required to develop State policies and siting programs that will make the best use of existing facilities in the short term and will assure continued facility capacity in the long term. The details of the siting process will differ depending on the circumstances of each State.

A site in every State is not required. In some cases, multi-State efforts may be appropriate. Use of binding agreements through interstate compacts guaranteeing access to a facility is only one example of how a State may provide the requisite assurances. State or local ownership and operation of facilities or contracts with private facilities may also suffice.

The rational for this requirement is straightforward: Superfund money should not be spent in States that are taking insufficient steps to avoid the creation of future Superfund sites. Pressures from local citizens place the political system in an extremely vulnerable position. Local officials have to respond to the fears of local citizens. The broader social need for safe hazardous waste management facilities often has not been strongly represented in the siting process. A common result has been that facilities have not been sited, and there has been no significant increase in hazardous waste capacity over the past several years.

In 1976, the Resource Conservation and Recovery Act [RCRA] was passed, mandating the construction of needed hazardous waste facilities and placing the responsibility for siting the facilities with the States.

Unfortunately, when RCRA was first passed, Congress failed to anticipate the intensity of public opposition to new and expanded waste management facilities. While everyone wants hazardous waste managed safely, hardly anyone wishes it managed near them. This is the NIMBY syndrome [not in my backyard]. Yet if the RCRA and Superfund programs are to work—if public health and the envi-

ronment are to be protected—the necessary sites must be made available.

This is not a new issue. In 1976, RCRA directed the States to develop plans for the management of their wastes, including hazardous wastes. In 1980, EPA, the National Governors' Association and numerous other groups and institutions produced reports, handbooks, and resolutions on the siting issue.

Section 104 of Superfund already requires that each State assure the availability of a RCRA approved facility for management of materials removed from a site before remedial action can begin. Unfortunately, that condition has been largely ignored by EPA and the States.

Most States have enacted, or have pending some form of siting legislation. Some have chosen to establish siting approval boards; some have chosen to authorize preemption over local zoning laws; some have authorized State acquisition, operation and maintenance of sites through existing institutions or through quasi-public corporations. Merely having enacted such legislation, however, will not satisfy the requirement of this section. Each State must provide assurances that their legislative program can work and will be used.

There are a number of obstacles to siting new hazardous waste management facilities. These include:

First, lack of cooperation among interested parties who distrust one another's motives and doubt the willingness of the other parties to make any substantial concessions to alleviate their concerns. Use of compensation, mitigation or other measures such as land value guarantees or the posting of bonds to finance continued water supply testing and the like might help alleviate some of these problems.

Second, lack of reliable, objective information or criteria for evaluating proposals and sites and citizens' distrust of technical information provided by government or industry.

Third, insufficient public perception of the need for new treatment facilities.

Finally, the most distressing problem, leadership by Government officials at all levels is sorely lacking.

A successful siting program should recognize three key principles:

First, a complete technical analysis of all proposed sites is essential prior to the selection of a particular site. This analysis should take into account both environmental effects (for example, from the hydrology, geology, ecology, and so forth) as well as factors based on the proximity and relation of the facility to residences and institutions.

Second, site selection must be accompanied by full public participation. This involvement should start at the beginning of facility planning, and should continue through the site selection and approval process. It should be accompanied by a broad-scale public education effort, since the public needs to become a knowledgable partner in site selection decisions.

The opposition of the public stems in part from the fact that the procedures for citizen involvement have been neither well thought out nor carefully applied. Further, the standard mechanism for involving the public—the public hearing—routinely becomes a crowded, highly emotional exercise in mob psychology. In addition, the media often highlight the fears of the opponents, making rational decisions even more difficult to make.

Third, the process of site selection should find a way to transcend blanket local vetoes. No community should be able to remove itself from consideration on political grounds alone. Everyone must take responsibility for assuring that adequate sites are available.

CLEANUP STANDARDS

Cost effectiveness requirement: The legislation retains the "cost effectiveness" requirement of current law. An analysis of cost effectiveness begins only after a remedial action has been selected in compliance with the health, permanent treatment and other standards, requirements, criteria or limitations imposed by this new law. As under current law, the cost effectiveness requirement does not apply to the selection of a remedial action but rather applies to choosing the least costly alternative method of effectively implementing a remedial action once one has been selected. For example, the selection of a remedial action might involve a choice between various onsite containment alternatives and a permanent treatment technology Permanent treatment technologies must be chosen whenever they are feasible and achievable. That is a separate requirement that must be met before the cost effectiveness test is applied. Otherwise, remedies such as a cap over the site and a slurry wall to prevent further leakage would always be selected as a cheaper alternative. Such a result, and a decisionmaking process that produces such a result, would be contrary to the clear intent of Congress and illegal.

Once the remedy has been selected, the cost-effectiveness requirement is applied to its implementation. Implementation of a remedy includes choosing the least costly methods which, and contractors who, will effectively carry out the chosen remedy.

Criteria to be considered in determining cost-effectiveness includes—in addition to the total cost of implementing the remedy projected by each potential contractor—the past record of performance of the persons or firms competing for the project; the relative merits of the various proposals submitted by such persons or firms; and, where permanent treatment technologies are not utilized, the degree to which expenditure of larger sums today will enhance the durability of the remedy and reduce the need to spend additional sums in the future.

Compliance with the National Contingency Plan: The legislation states that remedial actions selected by the President shall, to the extent practicable, comply with the National Contingency Plan [NCP]. This language is intended to assure that alleged failures to comply with the NCP shall not be available as a defense to any liability in an enforcement proceeding brought under section 106 or 107. The language is not intended to provide any independent authority to EPA or other agencies to fail to apply, to overlook, ignore or waive any standard, requirement, criteria or limitation established under the law.

Permanent treatment: The legislation establishes a statutory preference for the selection of remedial actions that involve application of "permanent treatment or alternative technologies." The legislation states that such technologies and "permanent solutions" shall be implemented to the maximum extent practicable. Where remedial actions can be broken into discreet units and treatment is feasible for some but not all units, permanent solutions must be chosen for those units where treatment is feasible.

The extent to which a particular technology or solution is feasible or practicable is not a function of cost. A determination that a particular solution is not practicable because it is too expensive would be unlawful. Tough choices on the basis of cost must be made under the fund balancing test that is set forth elsewhere in this section of the bill, not under the guise of being not practicable.

"Permanent treatment or alternative technologies" mean treatment methods that permanently and significantly reduce the volume, toxicity or mobility of the hazardous substances, pollutants, and contaminants. Significant reduction is the minimization of volume, toxicity and mobility of such substances to the lowest levels achievable. Such technologies change the fundamental nature and character of the substances at issue, either by destroying them (for example incineration) or neutralizing them (for example application of chemical or bioengineered neutralization agents). Mere reductions in volume of toxic and mobile substances by, for example, dewatering the substances, would not, by itself, constitute effective use of permanent treatment or alternative technologies. Implementation of the technologies required by this amendment should, on a permanent basis,

minimize risk to human health and the environment.

"Permanent solution" means the application of permanent treatment or alternative technologies to hazardous substances, pollutants and contaminants in a manner so that, when the remedial action has been completed, the release or threatened release, taken as a whole, no longer poses a risk to human health or the environment on a permanent basis.

It is a major goal of the Superfund Amendments and Reauthorization Act of 1986 to establish a statutory bias toward the implementation of permanent treatment technologies and permanent solutions whenever they are feasible and achievable. The implementation of such solutions to sites cleaned up under the program is the only way to assure the successful completion of the cleanup effort.

To carry out the goal of implementing permanent technologies and permanent solutions wherever they are feasible and achievable, the legislation requires that whenever a remedial action is selected, such technologies and solutions must be assessed. Such assessments shall take into account—at a minimum—the following factors:

1. The long-term uncertainties associated with land disposal. Such uncertainties include the probability that any land disposal facility, even one employing the best available technology, will eventually leak; the institutional uncertainties associated with assuring that cleanup resources will be available when leakage occurs; and the uncertainties inherent in predicting the size and location of future populations.

2. The goals, objectives, and requirements of the Solid Waste Disposal Act. For example, that act provides that the land disposal of hazardous wastes is the least favored method of regulated waste management.

3. The persistence, toxicity, mobility and propensity to bioaccumulate of such hazardous substances and their constituents. It is these characteristics which necessitate the use of permanent treatment technologies at Superfund sites rather than containment. Since all containment systems are expected to ultimately fail, it is important to assess the hazard timeframe of substances at a site when selecting a remedial action and consider the fact that some substances are transformed to toxic byproducts and become more toxic over time.

4. Short- and long-term potential for adverse human health effects. The assessment should consider the hazard posed by each available remedial action to people who are or may be exposed to hazardous substances, pollutants and contaminants as a result of the remedy chosen. For example, the less permanent the remedy, the greater the potential for adverse health effects as a result of continued or renewed releases over the long-term.

5. Long-term maintenance costs. Permanent solutions may cost more initially, but will involve little, if any, long-term maintenance costs such as those associated with less than permanent solutions.

6. The potential for future remedial action costs if the alternative remedial action in question were to fail. Once again, if the initial remedial action that is implemented is a permanent solution, the costs of repairing failures associated with nonpermanent, containment remedies will be avoided.

7. The potential threat to human health and the environment associated with excavation, transportation and redisposal, or containment. This factor is really a specific subset of the overall health effects consideration incorporated in the assessment and is designed to assure that the selection of remedy take into account possible risks associated with expanding the populations exposed to hazardous substances, pollutants or contaminants when such substances are moved offsite as well as the risks to populations that result from nonpermanent, onsite solutions such as containment. The legislation does not require a quantitative, comparative risk assessment, but rather contemplates an objective consideration of all of the factors affecting or potentially affecting human health.

Whenever the President selects a remedial action that does not implement a permanent solution, or that does not implement a permanent or alternative treatment technology, he must explain his reasons for rejecting such a solution, or for failing to implement such technologies. Such explanation shall, at a minimum, include a discussion of the permanent solutions examined and rejected, and an analysis supporting the proposed solution. The explanation shall be subject to public comment as part of the remedial investigation and feasibility study. The public must know of the alternatives being considered before a decision is made. The Government is not allowed to operate in the dark. The issues of remedy selection and use of permanent solutions are central to this legislation and cannot be ignored.

To encourage the development and implementation of innovative permanent treatment technologies, the legislation permits the President to select such technologies whether or not they have been achieved in practice at other similar sites or facilities. A technology still at the experimental phase could, under this provision, be deemed cost-effective when compared with other permanent treatment technologies, as this is a technology-forcing provision. The legislation further permits the President to take into consideration whether residents of the community around a site endorse, in general, implementation of an experimental technology.

Periodic review: The legislation states that whenever the remedial action at a site involves an onsite remedy that does not result in a permanent solution so that hazardous substances, pollutants or contaminants are left at the site, there is a mandatory duty that the President shall conduct a periodic review of the continued effectiveness of such remedies and report the results to Congress.

In determining what actions to take as a result of a periodic review, the President shall consider whether permanent or alternative treatment technologies have been developed since the remedial action was first selected and shall implement such technologies wherever possible.

The periodic review provision is intended to assure that Superfund cleanups keep pace with developing technologies and that remedial actions are upgraded to take advantage of such developing technologies. It is a technology-forcing provision. The ultimate goal of the Superfund program must be to implement permanent solutions at all National Priorities List sites. The best way to accomplish this goal is to require periodic review and to assure that sites are not removed from the ambit of the program until such solutions have been implemented.

General Health Standard: The legislation states that any remedial action selected or required under sections 104 or 106 must—at a minimum—assure protection of human health and the environment. The general standard of "protection of human health and the environment" is modeled after the standard that applies under the Solid Waste Disposal Act. The legislation requires that this standard be the minimum standard met by any Superfund cleanup. Compliance with standards promulgated under the authority of other laws will not necessarily assure compliance with this general standard.

Identification of Specific Standards: The list of Federal and state laws included in the legislation is intended to be a minimum and not an all inclusive list of sources for standards, requirements, criteria or limitations that must be applied to Superfund remedial actions. If the President or the courts determine that other, unlisted laws contain standards which are legally applicable, or relevant and appropriate, such standards shall apply to such remedial actions.

Legal applicability: The Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) provides that legally applicable requirements established under any other Federal or State law are pre-

empted only where explicitly stated. For example, all requirements contained in substitle C of the Resource Conservation and Recovery Act (RCRA) currently apply as a legal matter to onsite remedial actions conducted under CERCLA, when for example, the facility is a facility already covered by RCRA or hazardous wastes are exhumed and stored, treated or redeposited at the site.

This legislation reiterates the intent of current law that, except as explicitly provided, the specific standards, requirements, criteria or limitations which are already legally applicable to Superfund sites and cleanups must be applied to remedial actions selected or required under sections 104 or 106 after the date of enactment. As such, RCRA facilities must meet RCRA standards, irrespective of other provisions in this law, even if the site is listed on the national priorities list.

Relevance and appropriateness: The legislation states that standards, requirements, criteria or limitations that are not legally applicable shall nevertheless be applied to Superfund cleanups if they are "relevant and appropriate."

The importance of the principle that the purpose for which a standard was developed should always be considered in determining its relevance to Superfund cleanups cannot be overemphasized. The purpose of the standards developed under the Safe Drinking Water Act, for example, are to protect people from drinking contaminated water. The act applies these protections at the tap. In order to effectively utilize these standards in selecting a remedial action at a Superfund site, they cannot be applied by the use of extrapolations that project the condition of water at some hypothetical tap, but must be applied wherever the contaminated water is found.

A central goal of the cleanup standards section of the legislation is to prohibit the "writing off" of potentially useful ground water supplies that have been contaminated by Superfund sites. Such natural resources are both finite and irreplaceable. The purpose of the Superfund Program is to reclaim such contaminated sources whereever possible.

Finally, in determining the relevance and appropriateness of standards, requirements, criteria or limitations, EPA should consider not only pathways of human exposure but the impact that contamination from a Superfund site has on the environment. Environmental contamination must be eliminated both to protect ecosystems and to prevent the public health threats that result from indirect exposure to hazardous substances, pollutants or contaminants. Perhaps the most obvious example of this latter phenomenon is contamination, by releases from Superfund sites, of habitat that is even remotely connected to the human food chain.

Water quality criteria: Water quality criteria typically contain three different exposure levels—or numbers—depending on whether the water at issue will be: First, consumed by people; second consumed by people and used to support aquatic life; or third, used only to support aquatic life.

In determining how to apply such criteria, EPA should select the specific exposure level which best fits the circumstances presented by the Superfund site. For example, ground water typically does not support aquatic life. If ground water used or potentially useable as a source of drinking water is contaminated by a water quality criteria chemical, the contamination should be reduced to the exposure level set for water used for human consumption.

The legislation specifically permits EPA to consider the purposes for which water quality criteria were developed in determining whether they are relevant and appropriate. This provision affects the selection of the appropriate exposure level and does no mean that water quality criteria which were originally developed for surface water should not be applied in situations where ground water is contaminated by a water quality criteria chemical. Rather, the determining factor is whether the criteria were developed to protect people from drinking contaminated water. If the criteria apply to such situations, they should apply whether the drinking water source is surface or ground water.

ALTERNATE CONCENTRATION LIMITS

This legislation sanctions, in certain circumstances, the use of a regulatory process for setting alternate concentration limits [ACL's]. As developed by EPA for use in the regulatory program under the Resource Conservation and Recovery Act [RCRA], the ACL process affords the owner or operator of a RCRA facility the opportunity to demonstrate that, in determining the level to which contaminated ground water must be corrected, some alternate level of contamination or cleanup, other than background, does not threaten human health and the environment. While such regulatory process remains in effect, this legislation would provide the same opportunity during the course of Superfund cleanups to potentially responsible parties or EPA under specified conditions. In theory, the ACL process may be used to show that a level of cleanup that is more stringent than either an existing standard or background is necessary to protect human health and the environment.

The first condition inserting the use of the ACL process in Superfund is that it should be used to relax a "background" standard of cleanup only when no other previously established standard or level of control; for example, water quality criteria or MCL, applies to the hazardous substance, pollutant or contaminant at issue. If any other standard or level of control is legally applicable, or relevent and appropriate, establishment of a separate, less stringent ACL is both unnecessary and improper.

A second condition limiting the use of ACL's is that they must be based on a point of human exposure that is located at the boundary of the Superfund facility, and no further. The facility boundaries are in turn to be defined at the conclusion of the remedial investigation and feasibility study [RI/FS] performed for the site.

"Facility" is defined under CERCLA as the place where hazardous substances, pollutants or contaminants have come to be located. The major purpose of an RI/FS is to determine the nature and scope of all contamination caused by a Superfund site. At the end of an RI/FS, EPA shall define the precise area, or "facility", where hazardous substances, pollutants or contaminants have come to be located. The remedial action called for in the RI/FS will then clean up the entire facility, and prevent future releases from such facility. Neutral or buffer zones which have not yet been contaminated therefore cannot constitute a "facility" at the completion of the RI/FS.

For the purposes of Superfund only, there is a narrow exception to the rule that the point of assumed human exposure used to establish an ACL cannot exceed the facility boundary. As discussed more fully below, the conferees recognized the unique circumstances surrounding Superfund cleanups and agreed to give Superfund special treatment that is not necessarily appropriate for RCRA corrective actions. The endorsement of ACL's to set cleanup levels less stringent than background is only for Superfund. The exception to the facility boundary exposure rule is similarly limited to Superfund. It is important to note that three conditions must be met before the exception from the "facility boundary rule" may be invoked.

First. The first is that the contaminated ground water at the site is known to feed into a source of surface water—that is, a lake or stream.

Second. The second is that, at the specific point where such ground water first enters the surface water, there is, or will be, no statistically significant increase in hazardous constituents, nor any accumulation of such constituents downstream. Such accumulation could occur downstream in either the water sediment or biota, due to bioaccumulation. This second condition can only be satisfied if there is sufficient attenuation of the contamination to provide for adequate di-

lution of the contamination in the ground water so that it cannot be measured at the first point where the ground water feeds into surface water and cannot be measured downstream from such point of entry.

Third. The third condition is that a legally enforceable measure must be in place to preclude human exposure to contamination at any place between the facility boundary and the point of entry of the ground water into surface water. Enforceable measures mean measures that will remain in place and cannot be reversed for as long as the waste remains hazardous.

As suggested earlier, the conditional Congressional endorsement of a regulatory ACL process to establish less stringent ground water cleanup levels is limited to Superfund. Superfund cleanups are a special case. Our action in this act must in no way be construed as an endorsement of the process in the context of RCRA. Indeed, several members of the conference committee clearly stated the fact that the ACL process in RCRA is of questionable legality and, in their view, is not legal.

ACL's are not in the RCRA statute. They are a creation of EPA. The 1984 congressional reauthorization and amendments to RCRA cannot be viewed or construed as an endorsement of the current RCRA ACL process. Even though the process was outlined in very general terms in regulations in effect at that time, the process had not been used. Congress was not aware of the details of the process because it had never been used and the guidance documents setting forth the details of how it is to be used in RCRA were not published at that time. In fact, they are still not in final form.

The legality of the current RCRA ACL process to set less stringent standards is in question, in part, because the mathematical models used by EPA to project exposure levels and, more importantly, the assumptions that go into use of those models are so unreliable that decisions based on them are likely to be arbitrary and capricious.

By conditionally sanctioning an ACL process for Superfund that assumes a point of exposure no further than the facility boundary, we have expressly rejected EPA's use, to set less stringent standards, under RCRA and Superfund, of hypothetical exposure points beyond the facility boundary.

FEDERAL FACILITIES

This provision is intended to make clear that all guidelines, rules, regulations and criteria promulgated pursuant to CERCLA must be complied with by all federally owned facilities unless specifically exempted by this act or in accordance with the procedure of this act. It is specifically intended that Federal agencies be required to comply with all procedural and substantive provisions of the national contingency plan [NCP]. This includes the mandatory development of a remedial investigation/feasibility study to assure the adequate consideration of all relevant factors in choosing and implementing a remedy in accordance with the NCP.

This new provision on Federal facilities applies to all federally owned facilities at which hazardous waste is located, including those Federal facilities for which a response action, remedial action plan, other type of cleanup plan, implementation of a partial remedy or other activity affecting the site is currently under development. To the extent that the specific procedural and substantive requirements of the national contingency plan and this section have not been followed, a Federal entity must modify such plan or activity to comply. The only exception to this requirement is the limited grandfather for certain Department of Energy facilities.

Section 120 of the new amendments is intended to complement the substantial new cleanup authorities provided to EPA and authorized States in the Hazardous and Solid Waste Amendment of 1984 [HSWA]. In HSWA, for example, we required that an owner/operator of a hazardous waste facility requiring an operating or postclosure permit must clean up releases from any solid waste managment unit within the property boundary of the facility as a condition of receiving the permit. This provision, codified as section 3004(u) of RCRA, applies to public and private facilities, including facilities owned and/or operated by Federal agencies. Similar cleanup authority applicable during interim status was codified as section 3008(h) of RCRA, and is also applicable to public and private facilities.

Some Federal facilities may be subject to section 120 and the corrective action provisions of HSWA because of RCRA related activity conducted at the facility. Section 120(i) reaffirms our intent that the HSWA corrective action provisions apply to Federal facilities in the same manner and to the same extent as private parties. In addition to the HSWA provisions, section 120 of the new amendments establish additional requirements for Federal facilities intended to quicken the pace of cleanup activities at these sites. These requirements include the establishment of minimum timeframes for delineated response activities. These timeframes may be shortened by EPA or an authorized State in the context of a permit compliance schedule or administrative order, pursuant to section 3004(u) or section 3008(h) of RCRA. EPA or the State may decide that such action is necessary to protect human health and the environment. Accordingly, where RCRA authorities are applicable, the listing of a site on the national priorities list or other response activities conducted pursuant to the new amendments does not and should not impair in any way the implementation of the corrective action authorities of RCRA. Similarly, the exemption from a requirement to obtain a permit for onsite response activity under section 121 of the new amendments shall not be used by RCRA facilities or EPA to circumvent the requirement of RCRA regarding permits for operation or closure of treatment, storage or disposal facilities and compliance with section 3004(u) of RCRA.

RECYCLED OIL

Section 114 of the final bill, relating to liability that attaches to the handling of recycled oil, was designed to deal with a largely speculative problem. A number of interests were concerned that, if EPA went through with a regulatory proposal to list recycled oil as a hazardous waste under RCRA, the problems of stigma and other perception problems that would result from the automatic trigger of Superfund liability that follows such a listing would effectively destory the oil recycling industry.

For the reasons set forth in the conference report, this amendment was adopted. However, it now appears that the Agency is about to abandon the RCRA approach and will choose to reply, instead, on Toxic Substances Control Act authorities. It should be noted that, by adopting this Superfund amendment, the Congress has neither endorsed nor encouraged such a regulatory approach. Moreover, if EPA fails to promulgate management standards for recycled oil under section 3014 of RCRA, this amendment to Superfund will not become effective. The failure of EPA to list such oil as a hazardous waste under RCRA will not solve the problem because Superfund liability may attach to the handling of oil that is a hazardous substance.

Nothing in this section shall affect or impair the authority of the President to take a response action pursuant to sections 104 or 106 of CERCLA with respect to any release or threatened release of used oil or recycled oil.

With respect to the amendment in this bill, it is recognized that some Government agencies have established collection facilities to accept delivery of small quantities of used oil from individuals. Such facilities that are established solely for this purpose will qualify as a "service station" under this agreement. However, these facilities may not be used to extend the amendment's special treatment to other Government facilities.

Finally, the conference report refers to the relationship between the corrective action requirements of RCRA subtities I and those of subtitle C for un-

derground storage tanks. Such tanks containing used oil which has not been mixed with other hazardous substances would generally fall within the meaning of petroleum tanks under the subtitle I response program. In responding to releases from such tanks, the EPA should use the authorities of subtitle I rather than authorities under Superfund or other corrective action authorities under subtitle C of RCRA. This formulation of the relationship between the various authorities is based on the current status of oil, used or otherwise, as a substance that is not listed as a hazardous waste. If, however, oil becomes subject to other rules of RCRA subtitle C as a hazardous waste, all of the provisions of subtitle C, including corrective action, would apply. Underground tanks containing such oil would have to meet the same requirements of subtitle C as other underground tanks containing hazardous waste, notwithstanding the separate regime under subtitle I.

Mr. THURMOND. The preenforcement review provision adopted by the conference is one of the most significant provisions developed during the reauthorization process. I would like to present my interpretation to the chairman so that he can confirm whether my interpretation conforms with the intention of the conferees.

It is my understanding that the provision confirms and builds upon existing case law. In particular, the timing of review section ensures that Government and private cleanup resources will be directed toward mitigation, not litigation. The section is designed to preclude piecemeal review and excessive delay of cleanup. Interested parties will be able to participate early in a more regularized administrative process instead of making premature challenges in court to remedy selection or liability.

By its terms, this section establishes the circumstances in which courts will have jurisdiction to review response actions. Thus, both citizen suits and the opportunities for review noted in the cleanup standards section must be utilized in a manner consistent with the timing of review provisions.

The timing of review section is intended to be comprehensive. It covers all lawsuits, under any authority, concerning the response actions that are performed by EPA and other Federal agencies, by States pursuant to a cooperative agreement, and by private parties pursuant to an agreement with the Federal Government. The section also covers all issues that could be construed as a challenge to the response, and limits those challenges to the opportunities specifically set forth in the section.

Thus, for example, while courts may be required to enforce an access order under section 104(e), there is no jurisdiction at that time to review any response action. In actions to compel access, the court may only review whether the Agency's conclusion that there is a release or threatened release of hazardous substances is arbitrary or capricious. The court may not review the response action to be performed. Similarly, there is no jurisdiction to review a response action through a citizen suit except as provided in the timing of review section. Citizens, including potentially responsible parties, cannot seek review of the response action or their potential liability for a response action—other than in an action for contribution—unless the suit falls within one of the categories provided in this section. The one opportunity for review that is not set forth in the timing of review provision is the express opportunity provided in section 121(f), (2) and (3), the cleanup standards provisions relating to remedial actions secured under section 106 and remedial actions at facilities owned or operated by a Federal agency. Under that section, a State may bring an action for the sole purpose of determining whether the finding of the President waiving a particular State standard is supported by substantial evidence. This opportunity does not exist for a fund-financed remedial action, since performance of the remedial action depends on the State's assurance of a share of the costs of cleanup; therefore, the State already has control over the application of State standards to fund financed remedial actions, and no additional process is needed.

The reference in the introductory language of the timing of review section to the general jurisdictional provision 28 U.S.C. 1332 is designed with the sole purpose of ensuring that actions in State court under State law can continue to be brought in Federal court if diversity jurisdiction exists. Actions within the scope of diversity jurisdiction may include, for example, a private nuisance suit against a person in another State who is not otherwise acting pursuant to an agreement with the Federal or State government. Thus, this reference to 28 U.S.C. 1332 does not create any additional rights or opportunities to obtain review of a Superfund response action.

Similarly, the reference to "Federal court" is simply to recognize existing section 113(b) of CERCLA, which provides that except for review of regulations, Federal district courts have exclusive jurisdiction over all controversies under CERCLA. Therefore, any controversy over a response action selected by the President, whether it arises under Federal law or State law, may be heard only in Federal court, and only under the circumstances provided in this section. Does the foregoing explanation adequately describe the intention of the conference committee in adopting this language?

Mr. SIMPSON. Yes, my friend, the gentleman from South Carolina has given me a very good explanation of one of the more complex provisions in this conference report. The explanation is certainly in conformity with the intention of the conferees on this bill. I recall that well.

Mr. THURMOND. I would also like to ask the chairman whether my interpretation of the phrase "taken or secured" in this same timing of review provision is the correct reading. It is my understanding that under the provision, no person may bring any lawsuit in Federal court regarding a federally approved removal or remedial action except when the removal action has been completed or when the remedial action has been taken or secured. "Taken or secured" means that all of the activities set forth in the record of decision which includes the challenged action have been completed. Moreover, there is to be no review of a removal action when there is to be a remedial action at the site. Thus, for example, review of the adequacy of a remedial investigation and feasibility study, which is a removal action, would not occur until the remedial action itself had been taken.

The section is designed to preclude lawsuits by any person concerning particular segments of the response action, as delineated by the records of decision, until those segments of the response have been constructed and given the chance to operate and demonstrate their effectiveness in meeting the requirements of the act. Completion of all of the work set out in a particular record of decision marks the first opportunity at which review of that portion of the response action can occur.

Mr. SIMPSON. The gentleman from South Carolina is quite correct. His interpretation of the meaning of the phrase "taken or secured" in context of the timing of review section is exactly the interpretation the conferees intended.

Mr. STAFFORD. Mr. President, we are going to have a rollcall vote, immediately following the rollcall vote concluding the handling of the continuing resolution, on the Superfund conference report. I hope that the Senate will unanimously adopt the conference report.

I heard what one of my colleagues said. I hope the President will sign this conference report when it comes to the White House. I think it is very important for the welfare of the American people that this program, designed to clean up hazardous waste sites, moves forward in this country, meeting the enormous task of cleaning up the hazardous waste sites that exist around the country.

Recently I visited one, and I can tell you that the people who are afflicted with the presence of one of these sites are truly desperate for help. We need to help them.

As the assistant majority leader said, the administration would greatly mistake the mood of this Senate and this Congress if it considered vetoing this bill. I think maybe even more important, it would greatly misconstrue the feelings of the American people who want this legislation, if the President is asked by some of his advisers to veto this bill.

So I very strongly hope that the bill will be signed by the President and become the law of this land. Again, I hope that when we reach the rollcall, we will unanimously, as Senators endorse this conference report.

Mr. BAUCUS. Mr. President, enactment of the Superfund Amendments and Reauthorization Act of 1986 will ensure that America's toxic chemical and hazardous waste cleanup program is finally on track. It has been a long struggle involving both this Congress and the previous Congress—a struggle actually predating the original enactment of Superfund. Today's action hopefully brings that struggle to a close in a way that will allow the American public to know that their Government is willing to protect the environment and, most importantly, force polluters to do the same. Our action today tells the American public that their Government will aggressively clean up and restore damages caused by our past hazardous waste disposal practices.

The 5-year $8.5 billion reauthorization, combined with the bill's other provisions, will ensure an adequate commitment of resources to get the job done.

A number of important provisions are added to Superfund: A realistic schedule to achieve cleanups is made part of the law; a new leaking underground storage tank cleanup program is enacted; citizen rights to judicial review are clarified; and settlement procedures are incorporated to deal with small contributors ranging from those who add but a single barrel to other de minimis parties such as a rural electric cooperative contributing one PCB-filled transformer. These and other provisions will strengthen current law.

Of special importance is section 121, which by establishing standards for cleanups will provide certainty to both public and responsible parties. Section 121 requires remedial actions that assure protection of human health and the environment, and which are cost effective. In determining whether remedial action is cost effective, the President is required to take into account both short- and long-term costs. Cost effectiveness is a consideration only after the President has determined the level of cleanup that assures protection of health and the environment.

In determining the minimum level of cleanup, section 121(d)(2)(B) authorizes the use of an alternate concentration limit [ACL] process, provided that, in a ground water situation, the assumed point of human exposure cannot extend beyond the facility boundary. In the case of ground water entering surface water, the conferees have made a limited exemption to such use of the ACL process. For this situation, in achieving a level of cleanup, there must be no point downstream where accumulation of hazardous consitutuents may occur which could lead to a statistically significant increase of such constitutents in the surface water, or organisms in such water, from such ground water. Although the use of ACL's may be appropriate in an extremely narrow set of circumstances, they must be narrowly circumscribed. The need for narrow interpretation and limited use is illustrated by the situation of Montana's Clark Fork River. The Silver Bow Creek site, along a headwater stream in the Clark Fork River drainage, has contributed to arsenic and other heavy metal pollution along at least 70 miles of stream. Contaminants are strewn the stream's length, possibly as far as Lake Pend Oreille in Idaho, as well as, concentrated in toxic hot spots in flood plains along an extensive stretch of the river. Although 121(d)(2)(B) expressly allows the use of ACL's, 121(b)(2)(ii) confines this use to an extremely limited set of extraordinary circumstances. Even the authorized use is confined to the purposes of this act, cleanups, and expressly prohibited for laws such as RCRA, which are intended to preclude any releases whatsoever. In addition to providing guidance on how clean is clean, the bill also clarifies the distinction between actions that constitute a restoration of natural resources and those that constitute remedial action.

There does not exist a hard-and-fast line between a remedial action and restoration of natural resources. Obviously, the more comprehensive a remedial action is, the less natural resource damage restoration is required. The difficulty of making this distinction is increased by the often subtle, difficult to detect nature of contamination by toxic chemicals.

Oil spills are visible. Hazardous substances and wastes often are not. But just as oil is to be completely removed under section 311 of the Clean Water Act, hazardous wastes are to be cleaned up under Superfund.

This bill, in section 111(c), created a new provision in 111(e)(2) under which the President is authorized to withhold payment of natural resource damage claims during any year that all of the Superfund moneys are needed for response actions. This provision does not in any way limit the viability or validity of these claims, either against the Fund or, under section 107, against responsible parties. Nor does it imply that congressional concern has lessened with respect to natural resource damages. Rather, the Congress has acknowledged that for the short term, the financial burden should be placed exclusively and immediately on the shoulders of responsible parties.

Trustees of natural resources continue to be responsible for the assessment of natural resource damages. Any determination of damages to natural resources made by either a Federal or State trustee in accordance with regulations promulgated under this act, has the benefit of a rebuttable presumption in any administrative or judicial proceeding. The trustees retain recovered funds for use without further appropriation and, specifically, may reimburse themselves for the costs of damage assessments.

The bill amends CERCLA to require that the President promulgate regulations for assessing damages to natural resources under section 301 not later than 6 months after enactment. Although a deadline for promulgation of these is already established by the court *New Jersey* v. *Ruckelshaus*, civil action No. 84-1668 (JWB) (DCNJ 1984), a later promulgation date was specifically set in SARA to allow additional time, if necessary, for reproposal of regulations required by section 301(c) in the event that the regulations submitted to the court are deemed inadequate. Because the Interior Department has ignored the intent of Congress and repeatedly erected barriers to the recovery of damages to natural resources, there is reason to believe this additional time may be necessary to the court. Certainly, the rules to date strongly discourage natural resource damage claims from ever being brought and would severely reduce recoverable damages in those few cases where they were sought.

These regulations also reduce the incentive on the part of industries to exercise care in order to avoid liability for natural resource damages. By thus failing to force these industries to internalize the true cost of their activities to society, the proposals issued to date are impediments to the restoration and replacement of resources, and incentives to careless, not careful, conduct.

Both CERCLA and the Clean Water Act establish natural resource replacement or restoration as the minimum measure of damage. The requirement in the DOI proposals that "the authorized official shall select the lesser of (i) restoration or replacement costs or (ii) diminution of use values as the

measure of damages" is an unreasonable construction of both the Clean Water Act and Superfund, with no basis in law.

The cost of restoration, replacement, or acquisition of equivalent resources—if restoration is impossible, plus any demonstrated additional lost use value, or other damage beyond such cost, is the correct measure of damages. If the restoration or replacement of resources is technically impossible, the lost use values and other damages—such as damages measured using the contingent value method or the willingness to accept method, plus the cost or acquiring equivalent resources, is the correct measure of damages.

The DOI rule also states, again improperly, that potentially responsible parties [PRP's] "under the direction and guidance of the authorized official may implement all or any part of the assessment plan finally approved by the authorized official." This would circumvent the intent of Congress and violate the law. Trustee's not PRO's, should do the assessment. PRP's may carry out ministerial duties in accordance with the trustee-developed protocols, but discretionary decisions of any consequence are to be made only by the trustees.

Involvement of PRP's, and of local citizens, environmental organizations, State and local officials, and any other interested persons, is crucial to the success of any natural resource damage assessment procedure. Interested persons should be provided the opportunity to participate in the assessment process, to the same extent that PRP's enjoy such an opportunity. This requirement is a matter of fundamental fairness as well as good public and environmental policy.

It is the intent of CERCLA that natural resource damage claims regulations facilitate natural resource damage claims, not block them. Nonduplicative State common law, or statutory remedies, are not preempted by CERCLA, even if certain federally cognizable damages for injuries to natural resources have been recovered under CERCLA.

There are very few types of potential private losses associated with natural resource damage that appropriately would not be subject to trustee recovery. However, losses are not intended to be subject to trustee recovery if they are subject to private recovery. Trustees should be barred from recovery of private losses only if it can be demonstrated that recovery under established applicable tort doctrine is available to a private individual who has suffered a loss.

The heavy reliance of the current regulations on market value is unjustified. While many resources such as wetlands may have a market price, it is far below the value of the resource to society because of the public uses and services provided by the resource. A land appraisal, while easily done, is a wholly inappropriate measure of the value of most public use resources. It is inconceivable that any reasonable person would suggest measuring the Grand Canyon or Yellowstone Park on the basis of a land appraisal. Indeed, most such resources were selected for governmental protection because of their unique or unusual character. Thus, by definition, it is impossible to measure their value by comparing them to the value of nearby, but ordinary, resources.

Trustees must have the option to use those market and nonmarket methods of valuation that, in the trustees' judgment, most accurately evaluate injury to natural resources and compensate the public for its losses. The unduly narrow definition of injury under Interior Department rules threatens present legal interpretation and might erode even common law. Interior's inordinately stringent acceptance criteria and proof requirements have resulted in the decision that many injuries to fish, wildlife, and other natural resources will be excluded in assessments. Trustees should be free to recover such injuries if they can show that it is more likely than not that the injury has been caused by the discharge or release, even if Interior's general rules do not recognize those injuries. The problems with the Interior Department's regulations extend to both type A rules and type B rules. Any model developed should be based upon restoration or replacement costs, plus any lost use value and other demonstrable damages.

Interior's type A rules are "applicable only to the assessment of damages to coastal and marine environments" (51 Federal Register at 16,636). The model excludes all freshwater rivers, streams, and lakes, including the Great Lakes, as well as all inland wetlands and lakes. This limitation is clearly not the intent of Congress. The majority of spills covered by CERCLA or section 311 of the Clean Water Act occur on areas not covered by type A rules or model. By Interior's own estimates, about two-thirds or even three-fourths of the liquid spills and 80 or 85 percent of solid releases occur in these exempted, nonmarine, nonestuarine areas. This limitation was clearly not intended by either CERCLA or section 311 of the Clean Water Act.

The proposed definition of "area affected" is unduly and unlawfully narrow. Requiring a minimum of 90 percent mortality of individuals, or at least 90 percent of the resident species, is an unreasonably high threshold. The law does not contemplate that natural resources in areas outside of this 90 percent/90 percent area are unworthy of detailed assessment. The rules and model improperly fail to consider subacute and chronic effects; for example, bioaccumulation and bioconcentration, impairment of reproductive success, neoplastic growths on fish, and certain other effects are intended to be included as injuries. It is not simply death that equals injury.

It is unreasonable to limit assessment to only one hazardous substance when multiple hazardous substances, or oil discharges, or releases, may be responsible for the injury. There should be no limitation on bird species so as to restrict assessment of injuries to only a limited number of birds.

The proposed rules appear to cover only sudden, accidental spills. This narrowing of the statute is unsupported by and directly contrary to the law. The law covers, and the rules should as well, all releases, nonsudden as well as sudden and nonaccidental as well as accidental. All minor releases or discharges also must be covered by these rules. The rules as drafted could exclude most or all NPL sites in the country, which is a comment on their inadequacy.

Any reasonably foreseeable damage done during a cleanup should be compensable under CERCLA. The rules should measure damages, based on replacement or restoration, or acquisition of equivalent resources—where restoration or replacement is technically impossible, plus any lost use value or other damages. The unjustifiable limitation on the rules and recovery would result in far less resource restoration, or replacement, than Congress had intended. I call these remarks to the attention of the distinguished floor manager and chairman of the Environment and Public Works Committee, Mr. STAFFORD. Does the floor manager concur with the remarks?

Mr. STAFFORD. The Senator raises a number of important points concerning the intention of Congress in addressing natural resource damages. I concur in those remarks, and agree with the statement he has just made.

Mr. BAUCUS. I thank the distinguished floor manager.

The amendments require the President to revise the national contingency plan, including the national hazardous substance response plan, within 18 months of enactment of these amendments. The President is to promulgate, by rule, amendments to the Hazard Ranking System [HRS] to ensure to the maximum extent feasible that the Hazard Ranking System accurately assesses the relative degree of risk to human health and the environment posed by sites and facilities subject to review. A substantive standard for the Hazard Ranking System is established that, to the degree feasible, it accurately assesses the relative risk to human health and the environment. It is important to recognize that the

Hazard Ranking System is not to be the equivalent of detailed risk assessment, quantitative or qualitative risk. These types of assessments are more appropriately included as part of remedial actions. Rather, the purpose of the provision is to require the Hazard Ranking System to rank sites as accurately as the agency believes is feasible, using information from preliminary assessments and site inspections, such as ground or surface water, or air monitoring data, or the equivalent information and identification of potentially and actually contaminated water supplies for sensitive environments.

Considerable concern has been raised that the current Hazard Ranking System does not adequately consider the toxicity concentration of hazardous constituents which are present in any release or threatened release.

The Hazard Ranking System review was included in these amendments in recognition of the unique problems posed by high volume, low toxicity sites, such as mine waste sites. Considerable concern has been raised that the current Hazard Ranking System unfairly ranks these types of sites.

In *Eagle-Picher Industries* v. *EPA*, 759 F.2d 905 (D.C. Cir. 1985), the U.S. Court of Appeals for the District of Columbia Circuit Court, upheld the Hazard Ranking System as an appropriate mechanism for placing sites on the national priorities list [NPL]. The court recognized that the NPL has a limited purpose—screening sites that might, after further study, warrant fund-financed remedial action.

While this act directs the agency to review the Hazard Ranking System in order to enable it to assess more accurately the relative risks presented by the sites considered, this provision is not intended to reverse or undermine the decision in Eagle-Picher. The Congress recognizes the Hazard Ranking System must continue to function as a screening tool that will allow the evaluation of a large number of sites in an expeditious manner. *Eagle-Picher*, supra, at 919–921.

To allow the Administrator to continue adding sites to the NPL while the HRS is reviewed, the act provides that the current HRS be applied until the effective date of the revised HRS.

During the interim period while the Hazard Ranking System is being reviewed, in determining whether to list mining waste sites, petroleum muds and brines, cement kiln waste sites or other special study waste sites—except fly ash sites, the President is to ensure that adequate consideration is given to onsite factors and to the specific nature of a site, prior to its inclusion on the national priorities list.

SUPERFUND PETROLEUM EXCLUSION

Mr. BENTSEN. I would like to ask a question with regard to the effects of this legislation. It is my understanding that these amendments would not diminish the scope of the present exclusion from liability for petroleum found in section 101(14) of the act. Is my understanding correct, Senator.

Mr. SIMPSON. Yes, the Senator from Texas is correct in his interpretation. This bill will not diminish the scope of the present petroleum exclusion. That provision, found in section 101(14) of the act, excludes from the definition of "hazardous substance" all types of petroleum, including crude oil, crude oil tank bottoms, refined fractions of crude oil, and tank bottoms of such which are not specifically listed or designated as a hazardous substance under the other subparagraph of that provision.

Mr. KENNEDY. Mr. President, today, the Senate has passed one of the most significant pieces of environmental legislation of our time—the Superfund Amendments and Reauthorization Act of 1986.

Citizens across our country who have despaired over the nightmare of toxic chemicals fouling their air and poisoning their drinking water can seek solace in the fact that, after months of discussion over this complicated legislation, Congress has agreed that further delay is intolerable.

The new superfund bill strengthens current law in its ability to clean up toxic wastesites and leaking underground storage tanks, and provides $9.0 billion to accomplish the task.

No piece of legislation is perfect and the Superfund bill is no exception. Indeed, I would have preferred to retain a number of provisions that were rejected by the conference members, including a Federal cause of action for victims of toxic waste and greater access for citizens to prevent an imminent and substantial endangerment to health or the environment. But I firmly believe that this Superfund bill is a legislative achievement worthy of its enactment.

We must look to the accomplishments of the bill. We have established a system of standards that will require that any cleanup at a site meet high levels of water and soil standards. We have also developed procedures to ensure that communities are aware of the extent of the contamination and potential threat to their health or environment. And we have provided $9 billion, a fivefold increase over the current level, to ensure that no site will fail to be cleaned up for lack of funds, when those parties responsible for the contamination are insolvent, unavailable, or refuse to meet their obligation to our society. No longer will our Government tolerate parties who balk by pursuing endless judicial remedies—the cleanup will continue while the Government imposes penalties on the irresponsible parties.

I am pleased that the bill includes an amendment that I sponsored to direct $15 million for pilot programs to remove lead contaminated soil in three metropolitan areas across our country. In the city of Boston alone, over 1,500 children have been stricken with the tragic effects of lead poisoning—and most of these children are from low-income families, who are ill-equipped to deal with the long-term medical costs associated with treating lead poisoning. This pilot program will provide EPA with valuable information to serve as the benchmark for a future, more comprehensive response to deadly concentrations of lead in the environment.

I sponsored other provisions contained in the bill which the people of this country have been demanding for years:

Increasing the level of funding from $15 million to $275 million for health studies for victims of toxic waste; and

Procedures to avoid delays, such as those that occurred at the resolve site in North Dartmouth, to ensure that any potential threat to the health of citizens or the environment can be resolved expeditiously, without the administrative delays that have traditionally plagued the program.

With the new Superfund bill, our Government has the weapons to stop the atrocities that have existed in communities across our Nation. In my own State of Massachusetts, residents of communities who live with the danger of a toxic wastesite have made repeated but fruitless calls to the Federal Government for assistance. During the past 6 years, since the enactment of the original Superfund law, not a single site in Massachusetts has been cleaned up, not a single threat to the public health has been entirely eliminated.

When I listened to the residents of these communities and visited the sites that they fear, I pledged that we would resolve this intolerable situation. Now, the Senate has responded by passing a strengthened Superfund bill.

I applaud the progress that has been accomplished and call upon the President for immediate approval of this legislation.

This investment in a clean environment and the health and safety of our citizens will reap innumerable rewards for present and future generations across our Nation.

Mr. WALLOP. Mr. President, I would like to express my concern for the direction in which the Superfund conference agreement takes us. I am pleased that the conferees were able to come to a well-reasoned conclusion regarding a waste end tax. Not only is such a tax administratively cumbersome but it raises grave equity questions when applied to the real world. Such a tax would create a pollution tax which would be applied with the

same rough justice approach of the Salem Witch Trials.

I cannot support the agreement wholeheartedly. First, the agreement substantially increases the tax on petroleum. The new tax of $2.75 billion is imposed at the worst possible time for this struggling industry—at a time that the industry is least able to pass the new tax along. Despite what many people argue when discussing an oil import fee, there is no "free market" in oil or any form of energy.

Second, the agreement does not reflect the societal nature of the problem. The cost of cleaning environmental problems should be based on the principle that the polluter should pay. The Environmental Protection Agency has identified more than 6,000 potentially responsible parties that have disposed of wastes at sites that are now abandoned—including virtually every U.S. manufacturing industry and many Government agencies, including the military. Petroleum companies make up only a very small percentage of that list. The broad-based tax introduced by Senator BENSTEN and me recognized that Superfund is designed to clean up a societal problem. That is, it is to resolve problems that cannot be traced to any industry or group. These problems were brought about as a result of activities that benefited all in our society, no matter how ignorant we might now deem those activities. I support the goals of Superfund. And believe that they should be carried out in the most expedient and cost-efficient way possible. But I cannot support a funding mechanism that unfairly places a huge burden on one particular industry. This package appears to be based on the principle of deep pockets, that the oil companies can afford it. We cannot continue to consider energy or the companies that produce it as the benefactor of America. American energy producers do not have endless funds, nor are there endless sources of energy. I'm afraid that Americans, as represented by this Congress, appear to insist on learning both lessons the hard way.

Third, the conference report like the recent tax reform bill appears to be a major concession to the House's position. The funding level is much higher than that of the Senate bill. Many of the problems which are the focus of Superfund cannot be solved by throwing money at them. We are providing almost twice as much as the EPA believes they can intelligently spend over the next 5 years. In addition, the form of taxation primarily reflects the House position. The conference agreement uses a petroleum tax as the major funding source, rather than the broad-based tax of the Senate bill. The conference agreement is substantially closer to the House bill than to the Senate position.

I cannot support the method of funding, because it is inherently unfair and does not reflect real world considerations.

Mr. BOREN. Mr. President, all of us want to take necessary action to clean up hazardous wastesites in this country. I strongly favor the goals and objectives of this bill. Unfortunately the method of financing this Superfund Program is flawed. This tax proposal now before us for consideration is based on three premises, each of which is false. Therefore, unless improved, its enactment will prove needlessly destructive to U.S. energy security.

First, the tax proposal assumes that U.S. oil companies are lightly taxed in general. Second, the tax proposal assumes that U.S. oil companies are principal contributors to abandoned hazardous wastes. Third, the proposal assumes that the petroleum sector of our economy can afford to pay billions of dollars more in Superfund taxes without damage to oil and natural gas exploration and production. But, the facts tell a much different story on each one of these points.

First, the petroleum sector of the U.S. economy is not lightly taxed but heavily taxed. During the 1980's the U.S. oil industry has paid Federal taxes at a rate considerably higher than nonoil companies. A study by the staff of the Congressional Joint Committee on Taxation, covering the years 1980 through 1983, shows that the petroleum industry paid taxes at an effective corporate income tax rate 28-percent higher than the average of other industries. Furthermore, that study did not include the large special Federal excise tax on oil production—the so-called windfall profits tax. When that tax is taken into consideration, the U.S. petroleum industry paid Federal taxes at a rate higher than that of all major industries covered by the study.

During 1985, 20 leading U.S. oil companies paid Federal income and windfall profit taxes at a rate of 36 percent of net income. That rate is 50 percent greater than that of 100 leading nonoil companies.

Furthermore, the tax reform bill passed by Congress and soon to be signed by the President, will add to the industry's heavier than average normal tax load. That tax bill will cost the petroleum industry a minimum of $10 billion in additional taxes over 5 years. The estimated total increase in corporate income taxes under the bill is $120 billion for that period. The petroleum industry's share of the total income of the national economy is 5 percent. Five percent of $120 billion is not $10 billion but $6 billion.

The Superfund tax proposal now before us would further imbalance the tax burden carried by the petroleum sector. It would require that oil companies pay one-third of the $8.5 billion package—as much as all other industries combined.

Imposing greater Superfund taxes on the industry could still be justified if, as the proposal presumes, these companies are major contributors to abandoned hazardous wastesites. Cleanup of these sites is the major purpose of the Superfund Program. But oil companies are not major contributors. The Environmental Protection Agency has identified more than 6,000 potentially responsible parties that have disposed of wastes at sites that are now abandoned—including virtually every U.S. manufacturing industry and many Government agencies, including the military. Petroleum companies make up a very small percentage of that list. Most petroleum industry waste is water that is treated and disposed of according to law and not disposed of in dumps that could become Superfund sites. Most other petroleum company wastes are either recycled or are incinerated, treated or otherwise disposed of on the facility's own property. If others dispose of petroleum products improperly, they should pay to clean them up.

A proponent of the Superfund tax proposal might still argue that, fairness aside, the petroleum industry is so rich and healthy that it can afford to pay a disproportionate share of the increase. But, the industry is not rich and healthy. The depressed conditions in the oilfields are well documented. The domestic drilling rig count is down from more than 4,000 in 1981 to 2,000 at the beginning of 1986 to some 700 today. Oil and natural gas well completions are running more than 40-percent below the 1981 level. Domestic consumption is rising. U.S. dependence on imported oil has climbed to 40 percent. In fact, the U.S. oil import level is now at its highest in 5 years. A greater percentage is now coming from OPEC nations than OPEC provided in 1973, the year of the Arab oil embargo.

I am pleased that Senator BENTSEN and others worked hard to establish a differential between domestic and foreign crude oil taxes in this bill. The Senator from Texas deserves credit for his fight to reduce the inequities in the bill. Given current market conditions however, I am afraid that domestic producers may still be faced with absorbing a large increase in tax burdens and that the differential will not have as much impact as it might have under other market conditions. Additional Superfund taxes, on top of the oil industry's already heavy tax burden, will—without a doubt—further reduce U.S. exploration and production, thus paving the way for still more rapid growth in our dependence on foreign oil.

We all agree that cleaning up abandoned hazardous wastes promptly is a vital objective. It should be done. It must be done. But, in reaching that objective Congress should enact a tax bill that is based squarely on the fact. The bill now being considered does not meet that test. Therefore, it should not be enacted in its current form.

Mr. BYRD. Mr. President, the conferees from the House and Senate, particularly Senators BENTSEN, STAFFORD, and LAUTENBERG, are to be commended for their efforts to reach an agreement on the reauthorization of the Nation's Superfund Program. They have worked long and hard to reach the agreement on the major programmatic differences between the two bills, and in the last few days, the conferees were able to agree on the appropriate mechanism for funding the $9 billion reauthorization.

Agreement on this major piece of environmental legislation is an important step toward the goal of cleaning up the Nation's abandoned toxic waste-sites. It means that the Environmental Protection Agency can begin the identification of new toxic waste-sites, and renew its efforts to clean up sites already on the national priority list.

It provides for a funding level of $9 billion through a combination of a broad-based fee, petroleum and feedstock taxes, general revenues, and miscellaneous receipts. The sources of hazardous wastes are diverse. Therefore, such a funding mechansim, as that adopted by the conferees, is a fair and equitable way to fund the cleanup of our abandoned hazardous waste-sites.

Basic West Virginia industries such as chemicals, steel, and oil and gas, are facing ever-increasing competition from foreign imports. This mechanism not only equitably distributes the cost burden, but it is also not detrimental to our trade situation. By maintaining the current level of feedstock fees paid by the petrochemical industry, the conference report recognizes the importance of maintaining that industry's ability to compete in the domestic and international marketplace.

Again, I applaud the efforts of all the conferees and I urge the adoption of this conference agreement.

Mr. CRANSTON. Mr. President, I'm pleased to support the conference report on the Superfund reauthorization bill. This is a measure of tremendous significance to California and the rest of the Nation and essential in moving forward with the critical task of cleaning up dangerous toxic sites.

The conference report includes important new provisions on cleanup standards, cleanup schedules, leaking underground storage tanks, citizens suits, and community right-to-know programs critical to alerting citizens of hazardous waste and emergency response planning. These programmatic changes should bring about significant improvements in the program and help accomplish our task of cleaning up hazardous waste.

The conference report also provides money essential to do the job—$8.5 billion—and an equitable sharing of the burden of financing the program.

We are going to need much much more in the future, but this legislation is vital in adressing the hazardous waste problem.

We cannot let this program so critical to the Nation's health and safety lapse.

I hope the Senate will unanimously approve this legislation and that the President will sign the bill.

Mr. ROTH. Mr. President, I am extremely pleased to be able to vote on this Superfund conference report today. We are considering legislation that was agreed to by the conferees on the programmatic portion of the Superfund conference after many months of tough and enormously complex negotiations. These negotiations were led by my distinguished colleague and very good friend from Vermont, Senator STAFFORD. It was because of his outstanding leadership on many of the controversial issues that the Superfund conferees were able to complete the important programmatic component of this extremely important piece of legislation.

In addition, Mr. President, I am extremely proud to have been a Senate conferee involved in the intricate final negotiations on the funding of Superfund. Under the able guidance of my good friends and distinguished colleagues from Oregon, Mr. PACKWOOD; from Kansas, Mr. DOLE; from Louisiana, Mr. LONG; and from Texas, Mr. BENTSEN; we were able to find a stable long-term funding solution to clean up our hazardous waste sites.

During our long and arduous negotiations we were able to achieve funding for a Superfund Program that is based on an equitable sharing of the funding burden. It is based on a broad-based tax, a petroleum tax, and a chemical feedstock tax. No waste end tax was included.

The bill authorizes $8.5 billion in Superfund spending during the next 5 years. This represents a fivefold increase from the $1.6 billion authorized for the program's initial 5 years. In addition, the bill authorizes another $500 million for the new underground petroleum tank cleanup program.

I have always been a strong supporter of this program, and I hope that we have arrived at a point in time that enables us to continue with our toxic waste cleanup program. I urge my fellow colleagues to support it and urge the President to sign it as soon as it reaches his desk.

Mr. RIEGLE. Mr. President, I am very pleased that Congress will pass the Superfund Program this year. This is a critical program for many people in my State, as it is for people across the Nation. It is essential that it be reauthorized so that we can get on with the important job of cleaning up toxic waste sites. I hope in doing so, we convey to President Reagan a strong message of support for this program.

The importance of this program cannot be overstated. Since the program was enacted in 1980, we have discovered many more abandoned and leaking hazardous waste sites in this country than had originally been predicted.

The Environmental Protection Agency now tells us that there are 17,000 possible abandoned sites across the country and that as many as 2,500 may require remedial action. In my State of Michigan alone over 1,000 dumpsites with the potential to contaminate ground water have been discovered. We have 66 sites on the national priority list for cleanup action.

There is no question that the cost of cleaning up these sites is very high. Long-term remedial action where no ground water contamination has occurred averages $4 to $6 million per site to complete the studies and remove contaminated soils. Where ground water is contaminated, cleanup costs can run $17 million or more. The Michigan Department of Natural Resources estimates that it would cost at least $2.9 billion to clean up 600 of the sites in my State alone.

The problem is huge, the cost is great, and progress to date in cleaning up sites has been slow. There are currently 888 proposed and final sites on the national priority list [NPL] for cleanup activity. While the EPA says that remedial investigations and feasibility studies are under way or have been completed at half of these sites, cleanup work is completed at only 11 NPL sites. We clearly have a long way to go to remove this threat to our national health.

Because the scope of the problem is so large, the measures that we have been considering to deal with it are equally large and, consequently, controversial. I would rather support another financing package if one were available. But in order to take care of the hazardous waste problem, we need to make an economic commitment.

I would urge the President to sign this bill into law. I believe hazardous waste cleanup activities need to be a top priority in this country. We need a strong Superfund package so that the people of this country will not have to live in fear. We have heard them ask for help. We should do everything we can to make sure that dangerous hazardous wastes are cleaned up as quickly, efficiently, and effectively as possible.

Mr. HEINZ. Mr. President, I commend the Senate conferees on the Superfund reauthorization, particularly my colleagues on the Senate Finance Committee, for their successful efforts. The conference report before the Senate will expedite cleanup at the 65 Pennsylvania sites now on the Superfund national priorities list, provide protection to our citizens and our communities, and raise revenues for Superfund in a responsible fashion.

Mr. President, it has been a long and hard road to reauthorization. Those who would hold Superfund hostage to unworkable taxing proposals have delayed reauthorization for nearly a year. A lot of time has been lost in the resulting slowdown, and I believe that when this agreement is approved—and I hope it will be approved—EPA will have to keep up the most ambitious cleanup schedule possible.

Remedial action must be commenced at no less than 375 Superfund in the next 5 years. The national priorities list contains 703 sites at this time, and that figure could more than double in the next few years. We have our work cut out for us. As good a package as this one is, still more will have to be done in the coming years.

I am particularly pleased that the conference report takes steps toward addressing the problem which leaking underground storage tanks pose to ground water. In addition, the right-to-know provisions would require certain manufacturers to report to emergency and environmental officials information on chemical inventories and harmful emissions to the environment. Reform of the State's statutes of limitations for harms inflicted by toxic waste is also a positive step. I applaud the conferees for their work to enhance the safeguards against toxic waste.

I join my colleagues in calling for the approval of the conference report, and express my strong desire to see the President enact it into law.

Mr. DURENBERGER. Mr. President, too much has been said about this bill already. And another blizzard of words on Superfund will drift across the pages of the RECORD today. Knowing that whatever I say will be disputed, refuted, confounded, and undone by at least a dozen, if not a score or more, of other statements, equally telling, will keep my comments brief.

Mr. President, Superfund reauthorization has been a travail. It has been a struggle. It has gone on too long. It has been too difficult. We all want Superfund. We have all given it our full support all the way through the process. But we are most thankful that the process will conclude with the adoption of the conference report today.

When the bill was before the Senate about 1 year ago, I came to the floor to express concern about the future of the Superfund Program. I have been an active participant in the conference over the last year. Much of what I, and the other members of the Committee on Environment and Public Works, worked so hard to achieve is contained in the conference report now before the Senate. There is much in this bill that I like. Nevertheless, today, even as we send a 5-year reauthorization to the President, I remain troubled about the future of the Superfund Program.

Let me express that concern this way. When it was adopted in 1980, Superfund was designed to assure that those who are responsible for the release of hazardous substances into the environment would also bear the responsibility of responding to the threats that those substances pose. That was the theory of Superfund.

The theory was incorporated into the law in two ways. First, the program imposed strict, joint, and several liability on those who manufacture, handle, and dispose of hazardous substances. Second, a tax was imposed on petrochemical feedstocks to finance a response trust fund that could be used to pay for cleanup where no responsible party could be found. That is the structure of the 1980 law, Mr. President.

As we began the reauthorization process in 1984, Superfund was under attack on both fronts. Members of the Congress from States where the petrochemical industry is an important part of the economy objected to the tax. They proposed the so-called broad-based tax as an alternative.

And on the liability side of the equation, the insurance industry, which was experiencing a downturn in profits as a result of falling interest rates, and other elements in the manufacturing sector of our economy urged that strict, joint, and several liability be diluted in a variety of ways.

All through the reauthorization process we have watched these twin attacks on the Superfund Program play out. I would like to think that I have been throughout this process firmly and steadfastly in the camp that was determined to defend the two fundamental elements of the 1980 statute. And as we wrap up the conference report today my view is that we have achieved at least a draw.

There is a broad-based tax. It is not as big as originally proposed. The feedstock and petrochemical taxes are continued. The program has been greatly expanded. New elements have been added. It was necessary to find additional revenue. And the burden for this program has been shifted away from the elements in our economy which generate hazardous substances and spread more uniformly across all sectors. So we have yielded to the broad-based tax.

But on the question of liability we have held firm. The rule is still strict, joint, and several liability. The liability scheme in Superfund is dented here and there by this conference report. But the fundamental principle is still intact. That is a major victory accomplished by the Senator from Vermont, the distinguished chairman of the Committee on Environment and Public Works. Senator STAFFORD'S steadfast adherence to this principle has been the one thing that everyone could count on from the very day this reauthorization process was begun.

Mr. President, we will over the next few days hear many in the administration suggest that this bill should be vetoed because it departs from the polluter pays theory adopted in 1980. They oppose the broad-based tax. But as my comments are intended to make clear, we have not experienced a complete defeat on the polluter pays question. We have preserved the full liability of the responsible party. And if the administration is sincere about polluter pay, they have a ready instrument to put the theory into practice. The President can enforce the Superfund law. The President can recover the costs of response from those who cause damage to the environment or threaten the health of our citizens. The President can recover every dollar of the broad-based tax imposed by this act by pursuing the polluters in cost recovery cases.

Whether we have preserved the polluter pays theory of the 1980 law, is a question yet to be answered. It will depend in great part on the way the program is implemented over the coming years. If EPA uses the full reach of the liability principle contained in this statute, the polluter will pay. If not, Superfund is destined, as I said here on the floor of the Senate about a year ago, to become just another public works program.

Mr. NICKLES. Mr. President, I rise today to express a sincere disappointment in the Superfund conference report.

In reauthorizing Superfund we are continuing a commitment to cleanup our environment, to remove the hazards that threaten our drinking water, our property, and our communities. I support that effort wholeheartedly. Unfortunately, we are trying to achieve that end by placing an inordinate tax burden on one industry, the petroleum industry.

The funding mechanism designed to fund this program increases taxes on crude oil by a factor of five. The net effect of this provision is to require that the oil industry pay over 50 percent of the entire program.

Now, some people say that we should tax the groups that are the most responsible for the waste that Superfund is designed to clean up, and as a matter of policy I agree with this. Unfortunately, people have been

hoodwinked into believing that the major cause of hazardous waste at our Superfund sites is the petroleum industry. The facts tell a much different story:

EPA has compiled a list of "potentially responsible parties" [PRP] at Superfund sites. This list includes companies from all over the country in almost every aspect of manufacturing. If we were to actually follow the policy that the "polluter pays," then the petroleum industry would really have to pay less than 20 percent of the total taxes for this program, as determined by the number of sites in which they have been directly identified as a polluter.

The conference report that we have before us presumes guilt on the part of the petroleum industry merely for producing and refining crude oil. What it says is that since the oil industry is the original source for many of the pollutants that we find in Superfund sites, they must be responsible for paying for the program—no matter the company which actually disposed of the waste, no matter the extent to which the polluter contributed to the overall societal problem which we face today.

We are facing a question of equity. This is not a "polluter pays" financing mechanism. We are forcing an industry that is already suffering immensely to shoulder a societal burden for which it is only partially responsible. What we are doing is kicking an industry while it is down on its back.

To give you an idea of the effect of these provisions, let me cite a few numbers. We are increasing the tax burden on the petroleum industry by over $3 billion. One company in my State, Conoco, will face a tax increase of around $11 million a year under this program. Phillips Petroleum will face an increase of about $20 million a year. These taxes, furthermore, have no relation to the profitability of the company. Right now most oil companies are cutting back; people are being laid off, budgets are being slashed, and the unemployed rolls in my State as well as others are swelling at frightening rates.

Mr. President, the hazardous waste dumps that dot the countryside present a dire problem to our whole society. In seeking solutions to that problem, we must include our whole society. We all must be responsible for ridding our landscape of this blight, and we should not be content to lay the burden on only one industry when the fault rests in all of us.

Mr. CHILES. Mr. President, the amendments to section 105 call for revision of the hazard ranking system and would apply the revision prospectively to new candidates for the national priorities list. This bill makes it clear that the Environmental Protection Agency is not obliged either to apply the revised hazard ranking system to sites already listed on the national priorities list or to rescore the sites.

I believe, however, that this should not preclude the Environmental Protection Agency from taking a second look at a currently listed site, where an error might have been made in the original scoring because of questions about whether or not two wells were in operation.

I am specifically referring to the Munisport site in the State of Florida. The city of North Miami acquired this site from the State in 1970 for a recreational complex. Before the complex could be built, fill was required. So, between 1976 and 1980, a municipal landfill was operated on designated portions of the site under county, State, and Corps of Engineer permits.

In 1983, the site was placed on the national priorities list where it occupies the 466th spot. The site scored 32.37; any score above 28.5 qualified a site for listing. One of the main reasons for this high score was the fact that the scorer recorded two well fields servicing the cities of North Miami Beach and North Miami within 3 miles of the site. However, the city of North Miami has stated that both well fields had permanently ceased operation because of saltwater intrusion, one 3 years before, the other 2 months before the site was proposed for listing in 1982.

Florida's environmental agency recalculated the score as 10.57, a full 18 points below the qualifying score for the national priorities list. EPA acknowledged in its 1984 remedial action master plan for the site that both well fields were closed. Both the State and the city have asked EPA to rescore the site, and remove it from the national priorities list.

I am a very strong supporter of the Superfund Program, but I believe that the EPA needs to take a closer look at why this site was put on the national priorities list. It's my understanding that the city of North Miami and the State of Florida are already conducting a $205,700 study in preparation for capping and closing the site in accordance with State law. I believe that the EPA needs to work with the city and review this data instead of requiring a more costly remedial investigation before the Agency will consider delisting.

Is it the position of the conference committee that a currently listed site can be rescored if the EPA concludes that there was a verifiable factual error? If the new score justifies it, can the site be removed from the national priorities list without a costly and time-consuming remedial investigation or cleanup effort?

Mr. STAFFORD. Without agreeing or disagreeing with any of the factual representations made by the Senator, the Environmental Protection Agency has the statutory authority to rescore a facility prior to a remedial investigation and feasibility study where the Administrator determines, in his discretion, that a significant factual error was made in the scoring of a facility and such error would cause the facility to be removed from the national priorities list.

Mr. WILSON. Mr. President, I rise with great pleasure to endorse the conference report agreement on the reauthorization of the Superfund Program. I applaud the fine work of the conferees in bringing this report to the floor. In my opinion, this conference report agreement represents the most significant work on important environmental legislation in this the 99th Congress, and I'm elated that work on this bill has finally been completed even at this late date.

Most of my colleagues are aware that California has much at stake in this bill. My home State lays claims to the unenviable distinction of containing some of the worst contaminated sites in the Nation. Without this program, cleanup at sites throughout California will languish or stop altogether, and the health hazards that they pose to the ground water sources that service literally millions of people will continue to multiply. Fortunately, with this conference agreement, we can be assured that critically needed cleanup will continue.

I am especially appreciative of the willingness of the committee members to include language at my request in this new Superfund Program that specifically addresses toxic waste problems at military installations. Having conducted hearings on this problem at four installations in California last summer, I have become well aware of the need to make a special provision in the law to address this serious matter. With this bill enacted into law, we will finally have a special program established at the Department of Defense that is exclusively dedicated to the proposition of environmental restoration.

My heartfelt congratulations to the Environment Committee for successfully completing action on this conference report, and I urge its adoption.

Mr. KERRY. Mr. President, today is a proud—albeit an overdue—day for the Senate. For today, we are set to reauthorize what is perhaps the most important environmental program that Congress has legislated in the last decade. I want to commend the bill's conferees for the dedication, diligence and creativity they have shown in pursuit of this reauthorization. They understood the challenge that faced them. They persisted over many months. Through periods in which it appeared that the Superfund Program would be allowed to whither away the

conferees determined that they would not let that happen. The result here today is a strong and responsible reauthorization of this vital program.

A recent event in Massachusetts is evoked today as we prepare to vote. It was only several weeks ago that several residents of the town of Woburn finally settled a case that had been pending for many years. In it they had alleged that a private company had been responsible for the leukemia that was highly prevalant in their area. They were on the verge of proving the causal link when the company settled out of court. I know that the events in Woburn had a great deal to do with my State's awareness of the problem of our toxic waste legacies. And I know that the Woburns and the Love Canals moved this issue to the top of the national agenda.

The 1981 debut of Superfund could have been better. The short shrift the administration gave it accentuated the flaws in the enacting legislation and the low level of funding did at times hamper our efforts to tackle cleanup problems. But we learned a great deal from those years of experience and I think that it allowed Congress to develop a reauthorization that will work more efficiently in the future.

I would have preferred more time to study the funding mechanism that the conferees have used. Completion of the conference report, only last night, makes careful study impossible. I know how difficult it is to determine who should shoulder the burden when it comes to funding Superfund. While I know that not everybody will be happy with this new tax arrangement, it is my impression that this formula represents shared responsibility.

Let us hope that we can look forward to the end of the uncertainty that has plagued the Superfund for the last few months and that we may soon be able to make toxic waste problems history. Again, let me commend my colleagues on their fruitful efforts.

Mrs. HAWKINS. Mr. President, I rise in strong support of the conference report on the Superfund reauthorization legislation. It is absolutely vital that we pass this bill in order to continue and accelerate the progress we have made thus far in cleaning up the thousands of toxic waste sites which poison our land, our air, and our water.

The State of Florida ranks sixth in the Nation with 35 sites on the National Priority List. Florida is built upon a network of aquifers—these toxic sites sit directly upon Florida's groundwater supply. Florida is one of the few States in the Nation which depends almost exclusively upon its ground water to provide its drinking water. Florida's aquifers lie perilously close to the surface, with a minimal layer of intervening rock or soil to filter out dangerous contaminants. Hundreds of wells have had to close in recent years due to toxic contamination.

Yet, EPA informs me that absent a Superfund reauthorization package in this Congress, the Agency will be forced to halt all work on all sites in Florida. Already, EPA has stopped work on four Superfund sites in the State.

The uncertainty which has plagued the program over the past year has slowed the cleanup effort to a dangerous pace. The longer we delay in providing the program adequate funds, the more we threaten the programs' future viability. We must pass this legislation now, if we do not we are placing public health at serious risk.

The package before us today contains many provisions which will provide better protection to the public. It sets up a framework which would: Ban disposal of hazardous waste at leaking landfills, encourage permanent waste treatment where it is feasible, repair the hundreds of thousands of leaking underground storage tanks, require review of cleaned sites every 5 years, and require chemical manufacturers to inform local authorities and the public of dangerous substances routinely released into the environment and the potential health effects of such emissions.

Mr. President, there are an estimated 22,000 hazardous waste sites across the Nation which need cleanup. This estimate may represent only the tip of the iceberg. The longer these sites remain untended, the greater the threat they will seep into our water supplies, contaminate land and threaten the health of millions of Americans. I urge the adoption of the Superfund conference report.

Mr. D'AMATO. Mr. President, I rise today in support of the Superfund conference report. As one who has contacted the conferees on several occasions to urge prompt action on this bill, I am glad to see that we have broken through the long delays and have reached the point where it looks like the full Senate will pass a strong, $8.5 billion 5-year reauthorization.

This long-awaited day is tempered, however, by threats of a Presidential veto. This would be devastating to New York, which has the third highest number of Superfund sites in the Nation, with 57 sites on the national priorities list, and another 8 which have been proposed for inclusion on the list.

The voters of New York soon will consider proposition 1, the Environmental Quality Bond Act of 1986. This is an act which demonstrates New York State's commitment to cleaning up these toxic wastes, but it is all part of an overall effort which depends on Federal Superfund money.

Mr. President, I think it is unfortunate that the clock is ticking, in light of the threat of a pocket veto. We could all stand here and bemoan the fact that this conference report has reached us at such a late hour. However, I think at this point the main priority is for each of us to urge President Reagan to sign this legislation and to let the cleanups continue. I am here today to do just that.

This conference report will provide a strong, $8.5 billion Superfund Program. This is a more than fivefold increase over the former program. Cleanups would have to meet standards and requirements of Federal and State environmental laws. This bill will bar disposal of Superfund waste at leaking landfills, will require permanent waste treatment when practicable, and will require review of cleaned sites every 5 years. EPA will be required to ensure that long-term cleanup work begins at no fewer than 375 Superfund sites over the next 5 years.

As the sponsor of S. 606, the Community Right-To-Know Act of 1985, I am especially pleased that this conference report contains right-to-know provisions which will require certain manufacturers to report to emergency and environmental officials information on chemical inventories and emissions to the environment. Under this bill, States will establish emergency planning districts for chemical leaks from facilities.

A research and demonstration program will be authorized to encourage development and use of new hazardous waste treatment technologies that could be used for permanent cleanup of Superfund sites.

Mr. President, I could go on detailing this conference report, but I think the bottom line is this: We simply cannot have any more delays. The health and safety of our citizenry is at stake. I urge prompt passage of this conference report, and I urge President Reagan to sign the bill so that these cleanups may begin.

Mr. KASTEN. Mr. President, I rise to express my support of the Superfund conference package offered today. Reauthorization and funding of the Superfund hazardous waste cleanup program is essential to the health of our citizens and to the preservation of our environment.

Although this package is not perfect, the conferees reached a compromise after difficult negotiations. The new legislation provides for $8.5 billion in Superfund spending during the next 5 years. Of that amount, $2.75 billion would come from taxes on petroleum; $1.4 billion from feedstock chemical taxes, $2.5 billion from broad-based tax on corporate income, $1.25 billion from general revenues, and $600 billion from interest on money from the fund itself. The funding mechanisms in the conference report are an improvement over the Senate adopted value-added tax. However, I am critical

of some of the tax provisions, particularly the broad-based tax. Nevertheless, I feel it is crucial that we all compromise and adopt this bipartisan effort to reauthorize and fund this vital program.

I believe that a strengthened Superfund is essential to protecting the health and safety of all Americans. We simply cannot tolerate further delay in strengthening this essential program to protect health and safety.

Mr. BENTSEN. Mr. President, let me conclude by saying how much I appreciate the leadership of the distinguished chairman of our committee. It is truly a bipartisan committee and we work together across party lines on what is best for our country. I want to congratulate the distinguished Senator LAUTENBERG, from New Jersey, who brought with him his experience and understanding of this issue. I must say that Senator SIMPSON, with his good humor and judgment, made a major contribution. I would also say that JOHN DINGELL, chairman on the House side, as Senator SIMPSON stated, had a firm hand and did a dedicated job. Without his help, I question there would be resolution on the House side.

Mr. President, what we have done here, I think, is a very major piece of legislation that will do much to protect the health of America and improve the environment. We have offered what we believe are some permanent solutions to the problem. I would strongly urge the President of the United States to recognize what has been done here to satisfy the concerns of the people of this country and sign this legislation.

Mr. STAFFORD. Mr. President, if there is any time remaining, I did want to express my gratitude to Senator BENTSEN for the splendid way in which he has helped to get this legislation before the Senate. It is always easy to be bipartisan when you have people as pleasant and cooperative to work with as Senator BENTSEN has always been.

One group that made it possible for us to achieve this conference report has not been mentioned. I want to express my personal appreciation and that of the committee to the staff of the Environment and Public Works Committee for all the difficult and long hours that they put in to make it possible for us to achieve agreement in the conference report I yield back the remainder of my time.

Mr. DOLE. Mr. President, I am pleased that we are finally ready to act on a comprehensive Superfund bill. This conference agreement really has been 2 years in the making, and ideally it should have been reached a long time ago. The conferees on both the program side and the funding side have put a lot of hard work into this agreement, and the result is a bill that should keep the Superfund operating at full capacity over the next 5 years.

The problem of abandoned hazardous wastes remains an urgent one, and it is something we have an obligation to deal with. In truth, no one has seriously disputed the magnitude of the hazardous waste problem, or the need for a strong Federal role in responding to that problem. The controversy that has delayed the reauthorization of Superfund has instead revolved around the nature of the Federal role, and on the best way to allocate the burden of funding a Federal response.

Mr. President, those have never been easy questions. I know that the distinguished chairman and ranking member of the Environment Committee, Senators STAFFORD and LAUTENBERG, had to make some tough decisions in negotiating with the House over the best way to use the Superfund. Similarly, the conferees on the tax title—of which I was one—had to swallow hard to reach agreement with the House. But we did reach agreement, and it seems to this Senator that we ought to wrap it up, given all the work that has gone into crafting this package.

CONCERNS ABOUT FUNDING

Mr. President, I agreed to sign the Superfund tax conference agreement because it is important we show solidarity in supporting this very delicate compromise. Nevertheless, I do have serious reservations about this funding package—many of which are shared by the President of the United States.

As in any successful compromise, we have made sure that everyone gives a little. Over the next 5 years chemical producers will continue to pay $1.4 billion in feedstock taxes, which is essentially what the original 1980 program called for. In addition, the general revenue contribution is raised to $1.25 billion—a significant increase, but only slightly higher as a percentage of the entire, $8.5 billion fund.

Other features are more controversial. We have raised the oil taxes in Superfund by more than a factor of 10: From $200 million to $2.75 billion over 5 years. That is a big hit on an industry that has serious problems in today's energy market. It is also far out of proportion to any reasonable estimate of the contribution oil makes to the hazardous waste problem.

Mr. President, we have no waste-end tax in this bill. No one likes the waste-end tax, because it can be complex and because it hits a lot of people who already are paying Superfund tax. But at least a waste tax is related to the problem at hand; the generation of wastes that are hazardous to the health and safety of our citizens. A waste-generation tax is preferred by President Reagan, and it is the approach I preferred in 1984 when I chaired the Finance Committee. I would still prefer it, despite all its drawbacks, rather than hit oil as hard as we do in this bill.

Finally, we have agreed to a new formulation of a broad-based tax. This time, we piggyback on the new corporate minimum tax included in the tax reform bill, and raise $2.5 billion over the next 5 years. This is not nearly as bad as the excise tax, really a vat, which we agreed to in the Senate bill. A corporate minimum tax doesn't create a whole new, hidden tax base, and it is more likely to be kept under control in the years ahead. But it has nothing to do with the idea of making polluters pay, and I continue to oppose it as a matter of principle.

Nevertheless, Mr. President, I have agreed to this funding scheme. I think it is a bad scheme, but it appears to be the best we can do for the foreseeable future. We do need to show our commitment to cleaning up hazardous wastes, and to providing the resources the Superfund needs to address the problem.

President Reagan prefers a $5.3 billion bill, with no broad-based tax. That is my view as well, and last year I opposed the Senate bill because it was too big and because it contained a vat. At this late date I think we need to get this bill behind us, and see what the President will do.

I certainly commend all parties. I have signed the conference report. I am a little concerned about the funding. We are making a big hit on a crippled industry, the oil industry. Also, other features are controversial. My own view is that we should have had a waste-end tax. We have agreed to a new formulation of a broad-based tax. This time we piggybacked the new corporate minimum tax in the tax reform bill and will raise about $2.5 billion in the next 5 years. It is not as bad as the excise tax which we agreed to in the Senate bill but I do suggest that it is controversial and may have some trouble at the White House. I hope the President and his advisers will study the bill carefully. I hope it will be signed, not vetoed.

ORDER OF PROCEDURE

Mr. METZENBAUM. Mr. President, is there any chance we could vote on this conference report immediately?

Mr. DOLE. We are prepared to go forward on the continuing resolution. We have reached an agreement on the Philippines amendment. It will be a bipartisan leadership amendment. There will be virtually no debate. There will be an immediate rollcall. Senator MELCHER has been taken care of in the language which will not require a rollcall. There will be a rollcall vote on final passage.

The PRESIDING OFFICER. The vote on this conference report will

occur after the rollcall vote on the continuing resolution.

□ 1640

Mr. DOLE. Mr. President, all we are waiting for is the staff on each side to complete some minor changes in drafting on the so-called Philippine resolution.

While we are waiting for copies, which will be here in just 1 minute, let me say this.

GOLDEN GAVEL AWARD

Mr. DOLE. Mr. President, at 4:45 p.m., in another 5 minutes, the designated occupant of the chair, Senator PAUL TRIBLE of Virginia, will have presided over the Senate for 100 hours. He will be awarded the Golden Gavel for his dedication in presiding over the Senate. I certainly want to extend my personal congratulations and to thank the distinguished Senator [Mr. TRIBLE] for his effort on behalf of all Senators.

[Applause.]

The PRESIDING OFFICER. The Senate will be in order.

Mr. BYRD. Mr. President, will the distinguished majority leader yield?

Mr. DOLE. Yes, Mr. President, I yield.

Mr. BYRD. Mr. President, I associate myself with the remarks of the distinguished majority leader anent the Golden Gavel Award. This is an award that has been presented for several years to Senators who, having sat in the chair and presided over the Senate for a total of 100 hours, qualified for that award. It should be made clear that the award is not actually made in gold. Nevertheless, the terminology, I think, is quite appropriate.

Let me add just one thing. I have personally watched Senators as they have presided over the Senate over the years. I want to say that I went to the distinguished Senator from Virginia today, and I told him that I thought he was, in my judgment, one of the better presiding officers in the Senate. I said that having noted his work carefully. I think I should say it publicly.

If it is any encouragement to him, I am happy about it. It will be an encouragement to others to know they are being watched by Senators as well as by political science students, by professors, by teachers, by jurists, and by State legislators among the populace out there, in TV and radioland. It is important that they see a Senate that is presided over with dignity and with care. I think that it reflects well on the Senate.

I thank the distinguished majority leader for yielding.

The PRESIDING OFFICER. The Presiding Officer, in his capacity as the Senator from Virginia, thanks both the distinguished majority leader and the distinguished minority leader for their very kind comments.

Mr. BYRD. May I say I do not have the occasion to make these compliments often enough.

Mr. DOLE. I thank the distinguished minority leader and again congratulate the distinguished Senator from Virginia.

CONTINUING APPROPRIATIONS, FISCAL YEAR 1987

The Senate continued with the consideration of the bill.

AMENDMENT NO. 3203

(Purpose: To provide $200 million in aid for the Philippines)

Mr. DOLE. Mr. President, I believe we have reached an agreement to offer one amendment on the Philippines that has broad bipartisan support. I am going to send it to the desk on behalf of myself and Senators BYRD, LUGAR, PELL, EVANS, KERRY, DODD, INOUYE, KENNEDY, BRADLEY, THURMOND, DOMENICI, CRANSTON, MOYNIHAN and KASSEBAUM. It will be available for others who wish to cosponsor the amendment. I ask for its immediate consideration.

The PRESIDING OFFICER. Without objection, the amendment of the Senator from Montana will be set aside. The clerk will state the amendment.

The bill clerk read as follows:

The Senator from Kansas [Mr. DOLE] for himself and Mr. BYRD, Mr. LUGAR, Mr. PELL, Mr. EVANS, Mr. KERRY, Mr. DODD, Mr. INOUYE, Mr. KENNEDY, Mr. BRADLEY, Mr. THURMOND, Mr. DOMENICI, Mr. CRANSTON, Mr. MOYNIHAN, Mrs. KASSEBAUM, Mr. METZENBAUM, Mr. DIXON, Mr. TRIBLE, Mr. MATSUNAGA, Mr. ROTH, and Mr. GORTON proposes an amendment numbered 3203.

Mr. DOLE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the joint resolution add the following new section:

SEC. . (a) notwithstanding any other provision of law, in addition to amounts otherwise made available by this joint resolution for the Philippines, the President shall make available $200,000,000 of funds appropriated by this joint resolution for economic assistance to the Philippines. Funds made available by this subsection shall be transferred from accounts contained within budget function 150.

(b) The amounts of funds transferred from any program, project or activity pursuant to subsection (a) shall not exceed 3% of the amounts appropriated or otherwise made available by this joint resolution for such program, project or activity.

(c) Funds transferred for purposes of subsection (a) may only be transferred: (1) from accounts within the jurisdiction of the same subcommittee of the Appropriations Committee of the Senate; and (2) to an account with an outlay rate no greater than the account from which the funds were transferred.

(d) Thirty days prior to the provision of any assistance under this section the President shall transmit to the Committee on Appropriations and the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs and the Committee on Appropriations of the House of Representatives a report setting forth the assistance to be provided, the specific accounts from which such assistance is to be provided and the amounts to be provided from each account.

Mr. DOLE. Mr. President, let me say very quickly because we are trying to cooperate with many of our colleagues here, I believe we have finally reached an agreement which most of us will be able to support on aid to the Philippines. I cite Senator EVAN's lead role on this side.

Basically, this package will give the President authorization to take $200 million from the so-called 150 account—the account covering state, aid, and related activities—but no more than 3 percent from any program, project, or activity.

It seems to me there are four benefits which we will get form this compromise and from the debate and votes which led up to it.

First, I have expressed my concerns, and a number of my colleagues have joined in, about the bases issue. It seems clear to me—more important, I hope it is clear in Manila—that our debate, and the two votes we have had rejecting the earlier packages, in important measure reflects the fact that the Senate places extremely high priority on the bases issue and is disturbed by some of the things we have seen and heard recently from the Philippine side. A warning shot has been fired across the bow. I trust it has been noted, and I hope it will be heeded.

Second, what we have done is light years ahead of what the House did on this issue in terms of responsibility and budget-consciousness. The House just wrote out a check against Uncle Sam's fiscal year 1986 account and tossed it onto the huge deficit pile—another IOU for our children and there children to take care of someday. We had a great deal of trouble finding the money for this aid, but finally we did, in a way that is not new spending and is not going to increase our deficit.

Third, by our debate and votes, we made a very useful record about what the Senate's priorities really are. We turned off attempts to scuttle Contra aid, in the guise of helping the Philippines. We made it crystal clear that for many of us—I think a majority—the aid we provide to Central America, where the people are struggling to build democracy and where a Moscow-inspired insurgency is trying to tear it down, is of just as high priority as the aid we provide the Philippines.

Finally, we did provide some aid, as a visible sign of our backing for President Aquino's efforts to build a democratic system in the Philippines. I might say that, having raised some questions about Philippine policies in recent days, I also do want to applaud the firmness the Aquino government is showing in the case of the Communist military commander recently captured there.

In sum, this is a pretty good package, a reasonable compromise and one which I hope will receive wide support.

What we suggested after some discussion may not satisfy the President, the executive branch, the Department of State, and some in this body, but we have been, in effect, jockeying around here all week trying to find a formula that would satisfy everyone. The result was that a couple of times, we did not satisfy anyone. I believe we have now been able to come up with a formula. I thank all Senators for their efforts.

There is no earmarking. This is up to 3 percent, not more than 3 percent of any function in 150. I believe it satisfies the concerns of many who have spoken on this floor. I hope they will indicate, as the distinguished minority leader said yesterday, that this is a bipartisan effort; we just had differences of opinion as to how we should fund this program.

I hope there will be a near unanimous-consent vote on this amendment.

Mr. BYRD. Mr. President, I ask unanimous consent that the names of Mr. INOUYE and Mr. KENNEDY be added as cosponsors.

Mr. DOLE. And Senator KASSEBAUM, too.

Mr. BYRD. And Mrs. KASSEBAUM.

The PRESIDING OFFICER. Without objection, it is so ordered.

AID TO THE PHILIPPINES

Mr. BYRD. Mr. President, I am pleased to join the distinguished majority leader, and the distinguished chairman and ranking Democrat of the Foreign Relations Committee, as well as the distinguished Senator from Massachusetts, [Mr. KERRY] and the distinguished Senator from Washington [Mr. EVANS] in this message of support from this body to the Government of the Philippines led by President Corazon Aquino.

This amendment puts our money where our resolutions of support are. It is very similar to the one that I offered on last Monday, to redirect $200 million in economic support to the Philippines from activities in budget function 150, international affairs.

I am pleased to be able to participate in this tangible support for the new democracy of the Philippines, which so brilliantly burst upon the world stage in February of this year. It is a fragile democracy, long in tradition, but today just reborn after a dark period. It will take our sustained support and attention for years, to nurture it, to build on this beginning, reforge our common alliance, and renew our bonds with the Filipino people.

I congratulate the other Senators who have worked long and hard over these last few days, to find a formulation which is within our severe budget constraints, but provides what is needed. The inspired leadership of President Aquino is to be commended, and today a positive, direct message of support will go from Washington to Manila—with our good wishes, our hopes and our promise to help.

I remind my colleagues that this is an investment in ourselves, our far-flung interests in the Pacific region, our national security. What is unique and what makes this action so gratifying is that, at the same time it strengthens the principles of democracy that we share with the Filipino people, and so it is a marriage of many positive factors.

I ask for the strong support of the Senate for this amendment.

Mr. DOLE. Mr. President, let me ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. DOLE. I thank the distinguished chairman of the Foreign Relations Committee, Mr. LUGAR and his staff and Senator EVANS and his staff and also the distinguished Senator from Maryland [Mr. SARBANES].

□ 1650

Mr. BYRD. I wish to also add my compliments to the chairman and ranking member of the Foreign Relations Committee.

Mr. DOLE. If we can expedite the process, it will be helpful.

Mr. EVANS addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington [Mr. EVANS].

Mr. President, I do extend my thanks to my colleagues who have all worked so hard and so carefully to find an appropriate solution to what is, indeed, a difficult problem. Let me only add that the account from which this money will come is desperately short. The foreign operations account has been hit harder under the current appropriations bill in front of us than any other account in Government.

American interests abroad require more than we are now giving. I hope that the administration, early next week if possible, sends us a supplemental appropriation for this funding. It would be most helpful if they could tell us if they have a better source for the $200 million, which would relieve some of the pressures on an already pretty-depleted account. If they would do that we would gain, first, by the passage of an alternative that might even be better than this one, but, if not, at least the conference committee would have available to it some ideas from the administration as to an account that might relieve the pressures on this very, very important piece of our appropriations bill.

I appreciate as much as any Senator here today the argument for fiscal responsibility which inevitably arises in any request for an amount as large as we are proposing for the Philippines. I am certainly and painfully aware of how woefully inadequate our foreign assistance budget is to meet the many demands placed upon it.

During the course of this week, we explored every conceivable source of additional funds for the Philippines. Senator LUGAR and others have spoken eloquently of their hesitation in taking funds from foreign assistance because these funds are so dreadfully low already. Any further reduction in these accounts runs the real danger of seriously undermining our security and foreign policy interests around the world.

Unfortunately, the recommendation of the Foreign Operations Appropriations Subcommittee reduces the foreign assistance accounts more drastically than any other appropriations bill in the continuing resolution. It is well below last year's postsequestration level and more than 27 percent below the President's request in outlays and some 16 percent under in budget authority. How many other appropriations accounts can claim such a contribution to reducing the deficit level? And, the levels on the House side are even more austere. This is why we have reluctantly sought funds from other sources.

This terrible dilemma has been addressed repeatedly and I need not repeat the arguments. I will say only that it is a dilemma which we will have to eventually solve if our global security interests are not to be eroded dangerously year after year. Failure to understand the ultimate result of continued slashing of foreign assistance will lead to political and strategic crises which will be infinitely more costly in both dollars and blood.

Whatever the sources for this additional assistance, I am convinced that the main argument in favor of this effort must rest upon the overriding importance of the American responsibility to assist Philippine democracy in its time of extreme need.

This proposal is in keeping with the fundamental political objective of demonstrating clearly the United States' intention to help the Philippines survive the present multitude of problems facing it. Let me put it bluntly: The survival of an economically viable, politically stable Philippines is in the national interest of the United States. If democracy were to perish in

the Philippines, not only would the Filipino people suffer, it would be a grievous blow to American strategic interests in Asia and the Pacific.

I do not advocate this grant of assistance as simply a gesture of courtesy to President Aquino for a "successful and charming" visit to the United States.

Yes, she proved herself a dynamic, forceful and attractive leader of her country.

Yes; she gained millions of American friends for a country with which the United States has the deepest and historically intertwined relationship of any country in Asia.

Yes; she made her case eloquently that the survival of Philippine democracy is at stake over the next months and years in that country.

But what is fundamentally at issue—and let me put this point clearly up front—is the national interest of the United States. If the United States wants to enhance its security interests in the Pacific, it should do everything possible to ensure the survival of Philippine democracy. If we want to have continued access to our military facilities, then we should do everything necessary to help the Philippine economy stabilize and prosper.

The surest way to have communism triumph in the Philippines is to engage in a wait-and-see attitude toward the heroic efforts of the new Aquino government, to wait until we are sure they will succeed. The Aquino government needs more help now.

As President Aquino stressed, communism cannot be defeated by sheer military power. The poverty must be alleviated if the cause of unrest and rebellion among the people of the Philippines is to be removed.

If the United States cannot help democracy survive in the Philippines where all conditions are favorable, how can we be expected to win a battle for democracy anywhere else in the world? Is there a better country to invest in democracy and freedom?

If there is one developing country in the world with which the United States has a deep kinship of shared values and historical experience, if there is one developing country where democracy should succeed, it is the Philippines. Let us stay the course in our close relationship with the Philippines.

Mr. KENNEDY. Mr. President, I am pleased to join in sponsoring this amendment appropriating $200 million in aid to the Philippines. I commend my colleagues for working together in a bipartisan fashion to find an acceptable way to provide this much-needed assistance to the world's newest democracy.

President Aquino has now returned to her country after an extraordinary 9-day visit to the United States. Never before in the history of this Nation have the American people demonstrated such an outpouring of support for a visiting foreign leader. Their enthusiasm was visible everywhere, in the large crowds, in the press, in the sea of yellow which broke out across this country and in the statements of our Nation's leaders.

At the conclusion of his meeting with President Aquino, President Reagan declared he was "bullish on the Philippines" and promised to "do all that we can" to make her government successful. After her moving and impressive speech before Congress, Speaker TIP O'NEILL declared, "That's the finest speech I've heard in my 34 years in Congress," and Majority Leader BOB DOLE declared President Aquino had "hit a home run." In her address to the Congress, President Aquino demonstrated that she is a tough, dedicated leader who clearly understands the complex and difficult issues facing her country. The House of Representatives has moved to support President Aquino and it is time the Senate did likewise.

The path of liberty is never easy. But the American and Philippine people have a long history of joint dedication to the cause of justice, freedom and democracy. Our two peoples fought side by side for our fundamental freedoms a generation ago in World War II—and we must not lose the fight for those freedoms in our own generation.

Millions—even billions—of peoples in other lands live under tyranny and repression in the world today—and they have never known the blessings of democracy. But the Philippine people have. They know what it means to vote in free elections, to live in freedom, to have a freely chosen government, to have a President who shares their cause.

We in America watched in awe as Cory Aquino took up the cause of freedom for which her husband Ninoy died and rallied her people against the tyranny and oppression of the Marcos regime. We watched with astonishment as those ripples of freedom in the Philippines spread from brother to brother, sister to sister, friend to friend, island to island. And we watched in admiration as the tide of people power swept Marcos from office and Cory to the Presidency.

But the time has come for the United States to act. The Philippines must now begin the long and difficult task of rebuilding a country ravaged for two decades by Marcos, Imelda, and their cronies. The Philippine economy is in shambles and still contracting. The heavy debt burden of $26 billion absorbs $2 billion a year in debt service alone—one half of the country's export revenues. The infighting within the government continues and a Moslem leader has declared a provisional government. The Communist insurgency remains a substantial threat to the security and stability of not only the Philippines but also the important United States bases in that country.

The United States is committed to preserving and promoting democracy throughout the world; President Aquino and the Philippine people have achieved an unprecedented, extraordinary democratic victory. They deserve our support, they need our support and it is in our interest to provide them support.

The American people gave President Aquino the warmest welcome ever provided a visiting head of state. I urge my colleagues to reflect their wishes and take action quickly to approve the aid package to the people of the Philippines.

Mr. MURKOWSKI. I'm pleased to cosponsor this amendment, to provide $200 million in economic aid to the Philippines from the foreign affairs budget.

This appropriation will give needed economic support to the new Aquino government.

As I noted when President Aquino visited the capital recently, the Philippines must overcome the serious economic, political, and security problems inherited from the Marcos regime.

This amendment is appropriate: The $200 million comes out of the right budget category: foreign affairs; the fiscal year 1987 budget for the foreign affairs function is about $13 billion—about $2 billion less than the administration requested, but the impact of the $200 million to the Philippines will be spread around. The amendment only permits $50 million to be taken from the economic support fund or ESF budget. As we debated the other day, we do not want to take ESF funds from our allies who are also struggling to maintain their economic and democratic foundations. This amendment will not unduly burden our friends because it requires that most of the Philippine aid be taken from other parts of the foreign affairs budget. Because the ESF budget is about $3.8 billion, I believe that giving $50 million of that to the Philippines is a reasonable approach. We'll pick up the other $150 million from other parts of the foreign affairs budget.

Mr. President, as chairman of the Far East Asian and Pacific Subcommittee of the Foreign Relations Committee, I am pleased to support this amendment. I went to the Philippines to witness the February 7 election. I saw firsthand the hopes of the Filipino people, the hope that democracy would return to that wonderful land. I saw the Filipino people express their hope for democracy by taking action—peaceful action that resulted in the Presidency of a remarkable Filipino, Corazon Aquino.

Now, Mr. President, we can continue our support of the Filipino people without unduly taking funds away from our other allies.

I urge my colleagues to support this amendment.

The PRESIDING OFFICER. The Senator from Massachusetts [Mr. KERRY].

Mr. KERRY. Mr. President, I will not make lengthy comments either.

Mr. President, the Senate has now twice defeated efforts to provide $200 million in additional economic assistance to the Philippines. Yet, these actions earlier this week are not indicative of the strong support the Government of President Corazon Aquino enjoys in the Senate of the United States, as we are about to demonstrate with this bipartisan compromise.

I think it is important to point out that this bipartisan compromise stipulates that $200 million in additional economic assistance will be made available to the Philippines during fiscal year 1987. Every account in function 150 will share an equal burden in providing these additional resources to the Philippines. By reaching this agreement, we are sending a signal that the Philippines is the single, most important foreign policy issue for the United States—so much so that everyone has been asked to give up something in order that we can send this signal to the Philippines.

Had we done otherwise, the Communist Party of the Philippines stood to be the only beneficiary of our failure to approve this assistance. We are now saying that Corazon Aquino and the future of democracy in the Philippines are indivisible. We are saying that we will stand shoulder to shoulder with the people of the Philippines in their hour of greatest need to insure that their aspirations are realized. Finally, we are saying that the security interest of the United States in the world are best served by allies which are stable democracies.

It is important to place in proper perspective the importance of the government of President Aquino to the United States. I would like to quote from a letter written September 25 of this year by Alex A. Esclamado, the publisher and editor-in-chief of the Philippines News, the largest Filipino-American newspaper in the United States. Mr. Esclamado pointed out the following:

> What is imperative now is to help President Aquino succeed in preserving democracy in the Philippines. The greatest threat to our military bases are the Communists, and the Communists will ultimately win in the Philippines if America will, once again, at this very crucial period, show lack of support for the forces of democracy now in place in the Philippines.
>
> The Communists will not accept a peaceful solution unless the U.S. shows its strong support of the Aquino government by giving her the financial support she urgently needs to make her program of democracy work.

Mr. President, this Chamber has been the scene for many divisive foreign policy debates throughout our great history as a nation. Oftentimes, these debates have been filled with emotion and recrimination as was the case with China and the Vietnam war. Who lost China and who lost Vietnam has reverberated around these four walls. Yet, never has history presented us with a choice so clear as in the case of the Philippines.

Rarely have we been confronted with a decision that is so clear in its implications. The peaceful, democratic revolution which occurred in the Philippines this past February represents an opportunity that history rarely affords a nation—the opportunity to start anew.

There isn't anybody in this Chamber who understands the stakes better than the chairman of my committee. Oftentimes, I find myself in disagreement with my chairman. But not on this issue. Senator LUGAR has devoted considerable time and energy to the Philippines issue. Our committee has worked strenously under his leadership to force a bipartisan consensus on one of the most critical foreign policy issues ever faced by the U.S. Congress. He not only deserves our admiration and credit for his commitment to democracy in the Philippines, he deserves the respect of our colleagues from both sides of the aisle. If he says this $200 million is critical to contributing to an outcome in the Philippines that is in the best interest of both our peoples then we should follow his lead. There should not be any question about his knowledge as to what is required to promote the interests of the United States in the Philippines.

I am also concerned over the distrust which has surfaced among some of my colleagues for the democratic processes in the Philippines. We have much ground to recoup from our 14-year support of the Marcos dictatorship—a dictatorship that crushed democratic institutions underfoot and which engaged in an unprecedented rape of the economy of that nation.

We have to understand the scars left by the tragic period in Filipino history and the role the United States played through our support of the Marcos period. In the September 16-30 publication of Philippine American News there appeared an editorial which noted that President Reagan was lucky that:

> The way things have been over 20 years of Marcos, a major political disaster seemed certain. We may not be so lucky next time.
>
> The defect in the relationship that has steadily sapped the reservoir of goodwill that Filipinos have for their former colonial masters and comrades-in-arms lies in the narrow and one-dimensional view on which the U.S. has based its Philippine policy. That sole overriding concern has been and continues to be the maintenance of its military bases.
>
> This outlook has led the U.S. into condoning actions that violated even basic American values such as respect for human life. Since the Marcos dictatorship was not seen as a threat to U.S. interests, but actually served to promote them, Washington decided to look the other way from the blatant corruption and unparalleled abuse.

The editorial writer then went on to offer some wise advice that I think is worth our heeding.

> The first step toward a desirable state of Philippine-American relations calls not so much for charity as it does consistency. The freedom that Americans practice at home, their government must learn to respect abroad. The U.S. must allow that the Philippine government has the capacity to determine the necessary measures that will enhance its national security and well-being. With particular regard to the military bases, this means that the U.S. must not engender a political atmosphere wherein Filipino leaders must compete as to who would promise to deliver the most acceptable level of comfort to the Americans. Such a situation is now being astutely exploited by the Defense Minister, which has served as a destabilizing influence that can be harmful to the long-term prospects of the relationship.

The editorial concluded with the following observation:

> The fact that both the Philippines and the U.S. got over the Marcos crisis in better shape than optimistic expectations makes this visit a unique chance to chart a new direction in what will continue to be a mutually important relationship. Both must be willing and equal partners. For the Philippines, nothing more is sought, but nothing less will suffice.

Mr. President, I think this editorial says it all. Democracies are indeed different from their adversaries on the right and left. We supposedly share common values which allow us to pursue common goals as equals—as partners if you will. To treat friends and allies as equals and with respect demonstrates our strength.

Let it be said that the only superpower which runs roughshod over its allies is the Soviet Union, not the United States. That is a sign of weakness. Let us not fear the democratic processes in the Philippines. Let us welcome it with open arms and give thanks that we have a second chance.

I join my colleague, the distinguished Senator from Washington, in his feelings about hoping that a better source of funding can be forthcoming, but I do thank the distinguished majority leader, the minority leader, the chairman and the ranking member of the Foreign Relations Committee and my colleagues, particularly the Senator from Washington for his and their continual efforts this week to find a source of funding. While we had two votes and while we had news media stories that characterized an unwillingness of the Senate to try to assist the Philippines, I am delighted that in a bipartisan fashion, as we always felt,

we are now moving to send the proper message. I think it is a good piece of work and an appropriate one by the Senate. I am delighted that we are joining in it.

The PRESIDING OFFICER. Is there further debate?

Mr. PELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island [Mr. PELL].

Mr. PELL. Mr. President, I wish to add my own words of congratulation to all those who participated in the amendment in a bipartisan way. We had very different viewpoints in the beginning, but we ended up with a common viewpoint.

Mr. SARBANES addressed the Chair.

The PRESIDING OFFICER. The Senator from Maryland [Mr. SARBANES]

Mr. SARBANES. Mr. President, we should not lose sight of the most important message this amendment sends, and that is the very strong bipartisan support which exists in the Senate of the United States for the democratic efforts now underway in the Philippines. It was brought about through the cooperative efforts of many people and those need to be recognized, but above it is the very clear message we are sending to the Philippines that the United States is standing beside them now in this moment of trial. We want this democratic regime in the Philippines to succeed, and this is a clear indication of that strong support.

The PRESIDING OFFICER. Is there further debate? If not, the question comes on the bipartisan amendment on the Philippines. The yeas and nays have been ordered. The clerk will call the roll.

The bill clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Utah [Mr. GARN], the Senator from Arizona [Mr. GOLDWATER], and the Senator from Maryland [Mr. MATHIAS] are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Delaware [Mr. BIDEN] is necessarily absent.

The PRESIDING OFFICER (Mr. COCHRAN). Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 82, nays 14, as follows:

[Rollcall Vote No. 328 Leg.]

YEAS—82

Andrews	Chafee	Domenici
Armstrong	Chiles	Durenberger
Baucus	Cochran	Eagleton
Bentsen	Cohen	Evans
Bingaman	Cranston	Exon
Boren	D'Amato	Ford
Bradley	Danforth	Glenn
Broyhill	Denton	Gore
Bumpers	Dixon	Gorton
Burdick	Dodd	Gramm
Byrd	Dole	Harkin
Hart	Long	Rockefeller
Hatch	Lugar	Roth
Hatfield	Matsunaga	Sarbanes
Hawkins	McClure	Sasser
Hecht	McConnell	Simon
Heinz	Melcher	Simpson
Hollings	Metzenbaum	Stafford
Inouye	Mitchell	Stennis
Johnston	Moynihan	Stevens
Kassebaum	Murkowski	Symms
Kasten	Nunn	Thurmond
Kennedy	Packwood	Trible
Kerry	Pell	Warner
Lautenberg	Proxmire	Weicker
Laxalt	Pryor	Wilson
Leahy	Quayle	
Levin	Riegle	

NAYS—14

Abdnor	Helms	Rudman
Boschwitz	Humphrey	Specter
DeConcini	Mattingly	Wallop
Grassley	Nickles	Zorinsky
Heflin	Pressler	

NOT VOTING—4

Biden	Goldwater
Garn	Mathias

So the amendment (No. 3203) was agreed to.

□ 1710

Mr. DOLE. Mr President, I move to reconsider the vote by which the amendment was agreed to.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question is on the motion to reconsider——

Mr. DOLE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. May we have order?

The PRESIDING OFFICER. Will the Senate please be in order? Senators please take their seats. The Senate will be in order.

The majority leader.

Mr. DOLE. Mr. President, I was asked by the distinguished minority leader about the program for the remainder of the day and also what we might expect the early part of next week.

Mr. BYRD. Mr. President, may we have order in the Senate because this is an important announcement to all Senators.

The PRESIDING OFFICER. The Senate will please be in order. Senators will please take their seats and cease conversation. The Senate will be in order.

The majority leader.

AGENDA

Mr. DOLE. Mr. President, first let me indicate that we are waiting for the amendment by Senator MELCHER to be modified if that can be done and that can be accepted. They are meeting now with the USDA officials right off the floor. It is my hope that will be finished momentarily and then there will be one final amendment on drug funding and then final passage, and then passage of the Superfund conference report.

But we would do in the wrapup the Export-Import Bank conference report, technology transfer, and the handicapped bill in wrapup.

On Monday, we will do S. 2702, come in about noon, FIFRA, there is one vote expected, S. 2045, CFTC, hopefully by unanimous consent, but if not there could be a vote on that.

We will dispose of Superfund. There will be additional conference reports on intelligence authorization and bankruptcy plus the Executive Calendar and any other matters that might come to us, conference reports.

On Tuesday morning at 9 o'clock we hope to begin the impeachment trial of Judge Claiborne. We hope to be at that for 4 hours on Tuesday, and then Tuesday afternoon we will do other Senate business, and then hopefully conclude the action on the Claiborne matter on Wednesday of next week. That should not take the entire day. Then hopefully the remainder of the day on Wednesday we would be waiting the CR conference report, the debt limit conference report, reconciliation, the highway bill conference report and maybe other conference reports and hopefully conclude our business no later than Thursday of next week.

Mr. BYRD. Mr. President, I thank the distinguished majority leader.

I believe it is very important that we all as Senators understand the importance of good attendance on the floor during the trial of the impeachment of Judge Claiborne.

I know there are some Senators who may be under the impressions that it will not be necessary for them to be in attendance.

I think at the very least we have to maintain a quorum on the floor at all times during the trial. We should be certain that the proceedings are not delayed or interrupted by quorum calls, thereby both detracting from the serious nature of the trial and delaying our sine die adjourment.

I will continue to emphasize this to my colleagues on this side of the aisle, and I urge all of our colleagues while we have good attendance here on the floor to attend this trial and be present on the floor.

It is a serious procedure. It is our constitutional responsibility as we all know, and for the reasons I have already stated I think it is imperative that we maintain a quorum here on this floor at all times during that trial.

Mr. BUMPERS. Mr. President, will the majority leader yield?

Mr. DOLE. First, let me indicate I certainly share the views just expressed by the distinguished minority leader. This is a serious matter. I am certain every Senator understands that and believes that and will demonstrate that over the next week.

So I would hope that when we begin our deliberations on Tuesday morning we will have a solid number of Senators here, well over a quorum, if possible.

Let me yield very quickly to the Senator from Arkansas.

□ 1720

Mr. BUMPERS. How many more rollcalls do you anticipate this evening?

Mr. DOLE. I anticipate, hopefully, only one on final passage and then one on the Superfund conference report.

Mr. ARMSTRONG. Will the Senator yield?

Mr. DOLE. I am happy to yield.

Mr. ARMSTRONG. I think I heard the leader refer to the Exim conference report. If that were to be called up tonight, it might lead to a rollcall. I am wondering if there is an urgency about it that it could not go over until Monday.

Mr. DOLE. I was advised by the Senator from Pennsylvania, Senator HEINZ, just a few minutes ago in my office that their authorization expires at midnight tonight. Otherwise, I had planned on bringing it up on Monday.

Mr. ARMSTRONG. Mr. President, I would urge the leader to do that. I have not had a chance to review it. It is not my desire to get an extra rollcall today, but there are matters that may be in that conference report that we have not had a chance to look at.

Mr. DOLE. Perhaps in the next few minutes we could discuss that with the Senator from Pennsylvania.

Mr. BYRD. Mr. President, would the distinguished majority leader consider going ahead with the vote on Superfund? There are some Senators who have plans to catch planes. Could we make that vote before they have to leave to catch a plane?

Mr. DOLE. If that is satisfactory with the manager of the bill. I need to check with Senator HATFIELD. I know they are still drafting on the Melcher amendment.

Mr. METZENBAUM. It is coming right in.

Mr. BYRD. That would save some time.

Mr. DOLE. Senator MELCHER is now here.

Mr. BYRD. You can go ahead with the Superfund and go ahead with the Superfund vote now.

Mr. DOLE. I understand that the manager has no problem as long as we understand that the Melcher amendment will be available immediately after the vote.

Mt. MELCHER. Immediately; and it is agreed to.

Mr. DOLE. Mr. President, I ask unanimous consent that, notwithstanding the previous order, we now vote on the Superfund conference report. The yeas and nays have been ordered.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. DOLE. Fifteen minutes, flat.

VOTE—CONFERENCE REPORT ON H.R. 2005

The PRESIDING OFFICER. The question is on agreeing to the conference report. The yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Utah [Mr. GARN], the Senator from Arizona [Mr. GOLDWATER], and the Senator from Maryland [Mr. MATHIAS] are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Delaware [Mr. BIDEN] is necessarily absent.

I further announce that, if present and voting, the Senator from Delaware [Mr. BIDEN] would vote "yea."

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 88, nays 8, as follows:

[Rollcall Vote No. 329 Leg.]

YEAS—88

Abdnor	Glenn	Metzenbaum
Andrews	Gore	Mitchell
Armstrong	Gorton	Moynihan
Baucus	Grassley	Murkowski
Bentsen	Harkin	Nunn
Bingaman	Hart	Packwood
Boschwitz	Hatch	Pell
Bradley	Hatfield	Pressler
Broyhill	Hawkins	Proxmire
Bumpers	Hecht	Pryor
Burdick	Heflin	Quayle
Byrd	Heinz	Riegle
Chafee	Hollings	Rockefeller
Chiles	Humphrey	Roth
Cochran	Inouye	Rudman
Cohen	Johnston	Sarbanes
Cranston	Kassebaum	Sasser
D'Amato	Kasten	Simon
Danforth	Kennedy	Simpson
DeConcini	Kerry	Specter
Denton	Lautenberg	Stafford
Dixon	Laxalt	Stennis
Dodd	Leahy	Stevens
Dole	Levin	Thurmond
Domenici	Long	Trible
Durenberger	Lugar	Warner
Eagleton	Matsunaga	Weicker
Evans	Mattingly	Wilson
Exon	McConnell	
Ford	Melcher	

NAYS—8

Boren	McClure	Wallop
Gramm	Nickles	Zorinsky
Helms	Symms	

NOT VOTING—4

Biden	Goldwater
Garn	Mathias

So the conference report on H.R. 2005 was agreed to.

□ 1740

Mr. DOLE. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

Mr. STAFFORD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DOLE. Mr. President, I ask unanimous consent that the yeas and nays ordered on the motion to reconsider be vitiated.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. DOLE. And that the motion to reconsider be withdrawn.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

CONTINUING APPROPRIATIONS, FISCAL YEAR 1987

AMENDMENT NO. 3193, AS MODIFIED

(Purpose: To express the sense of the Senate that the Secretary of Agriculture should use existing stocks of wheat and corn to increase domestic commodity assistance; to dispose of surplus agricultural commodities to the Philippines, certain African nations, India, and Bangladesh, and for other purposes)

Mr. MELCHER. Mr. President, I send a modification of my amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the modification.

The legislative clerk read as follows:

The Senator from Montana [Mr. MELCHER) proposes an amendment numbered 3193, as modified.

The PRESIDING OFFICER. The Senator from Montana.

Mr. MELCHER. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in the resolution, add the following new sections:

SEC. . It is the sense of the Senate that the Secretary of Agriculture should make available not less than $10,000,000 worth of flour and cornmeal using the wheat and corn stocks of the Commodity Credit Corporation. Such flour and cornmeal shall be in addition to the traditional level of assistance made available under section 1114 of the Agriculture and Food Act of 1981, section 416(a) of the Agricultural Act of 1949, section 4 of the Agriculture and Consumer Protection Act of 1973, and any other provision of law administered by the Secretary.

SEC. . (a) During the three-year period beginning with the fiscal year ending September 30, 1987, through the fiscal year ending September 30, 1989, the Secretary of Agriculture shall make available to PVO's and cooperatives operating in the Republic of the Philippines and to the Government of the Philippines a total of at least 500,000 metric tons of wheat, 500,000 metric tons of soybeans, and 50 million pounds of dairy

products under paragraph (11)(B) of section 416(b) of the Agricultural Act of 1949, notwithstanding any other requirement of such section except the requirements of paragraph (b)(3)(A) and except as provided for therein.

(c) Commodities made available under this section during any fiscal year shall be subject to the agreement of the Republic of the Philippines—

(1) to acquire through commercial arrangements agricultural commodities directly or by private purchases during the fiscal year in an amount equal to 105 percent of the average amount of such agricultural commodities acquired through commercial arrangements during the three preceding years.

(2) to permit the sale of commodities furnished under this section in the Republic of the Philippines and to use the local currency generated from such sales (A) by PVO's and cooperatives to carry out approved programs of assistance in the Republic of the Philippines (B) to operate lending programs in the manner provided for in section 108 of Public Law 480, and (C) to reimburse the United States in dollars for costs incurred in furnishing such commodities, including transportation and processing, during the same fiscal year in which such costs were incurred. Reimbursements under this paragraph may be made in local currencies generated from the sale of the commodities under this paragraph if they are used to pay expenses of the United States in the Philippines.

(d) To the extent practicable, commodities made available under this section shall be furnished in equal quantities during each of the three fiscal years.

SEC. . (a) During the three-year period beginning with the fiscal year ending September 30, 1987, through the fiscal year ending September 30, 1989, the Secretary of Agriculture shall make available to the Philippines and friendly countries of Africa, under paragraph (b)(11)(A) of section 416 of the Agricultural Act of 1949, at least 500,000 metric tons of wheat and 45 million pounds of dairy products (of which at least 40 million pounds shall be nonfat dried milk, 30 million pounds shall be cheese, and 20 million pounds shall be butter), notwithstanding any other requirement of such section except the requirements of paragraph (b)(3)(A) and except as provided for therein.

(b) Commodities made available to a nation under this section during any fiscal year shall be subject to the agreement of the nation—

(1) to acquire through commercial arrangements agricultural commodities directly or by private purchases during the fiscal year in an amount equal to 105 percent of the acreage amount of such agricultural commodities acquired through commercial arrangements during the preceding three years;

(2) to sell any commodities furnished under this section within the nation and to use local currencies generated from such sales to (A) establish and carry out lending programs in such nations in the manner provided for in section 108 of the Agricultural Trade Development and Assistance Act of 1953 and (B) reimburse the United States in dollars for cost incurred in furnishing such commodities, including transportation and processing, in the same fiscal year in which such costs were incurred. Reimbursements under this paragraph may be made in local currencies generated from the sale of the commodities under paragraph (2) if they are used to pay expenses of the United States in the recipient nation.

No greater than such amounts as is requested by such governments.

(c) To the extent practicable, commodities made available under this section shall be furnished in equal quantities during each of the three fiscal years.

(d) For purposes of this section, the term "friendly countries" shall have the same meaning as that term has under the Agriculture Trade Development and Assistance Act of 1954.

SEC. . (a) During the three-year period beginning with the fiscal year ending September 30, 1987, through the fiscal year ending September 30, 1989, the Secretary of Agriculture shall make available to—

(1) Nigeria, 400,000 metric tons of wheat, 80 million pounds of dairy products, and 150,000 metric tons of soybeans;

(2) friendly countries in Africa, other than Nigeria, 1 million metric tons of wheat;

(3) India, 30,000 metric tons of soybeans and 50 million pounds of dairy products; and

(4) Bangladesh, 60,000 metric tons of wheat and 20 million pounds of dairy products

under paragraph (11)(B) of section 416(b) of the Agricultural Act of 1949, notwithstanding any other requirement of such section except the requirements of paragraph (b)(3)(A) and except as provided for therein.

(b) Commodities be made available to a nation or PVO's and cooperatives operating in such nations under this section during any fiscal year shall be subject to the agreement of the nation—

(1) to acquire through commercial arrangements agricultural commodities directly or by private purchases during the fiscal year in an amount equal to 105 of the average amount of such agricultural commodities acquired through commercial arrangements during the preceding three years (in the case of Nigeria, in amount equal to the amount so acquired in the preceding year.

(2) to permit the sale of commodities furnished under this section within the nation and to use the local currencies generated from such sales (A) by PVO's and cooperatives to carry out approved programs of assistance in the country and (B) to operate lending programs in the manner provided for in section 108 of Public Law 480, and to reimburse the United States in dollars for costs incurred in furnishing such commodities, including transportation and processing, in the same fiscal year in which such costs were incurred. Reimbursements under this paragraph may be made in local currencies generated from the sale of the commodities under paragraph (2) if they are used to pay expenses of the United States in the recipient nation.

No greater than such amounts as is requested by such governments

(c) To the extent practicable, commodities made available under this section shall be furnished in equal quantities during each of the three fiscal years.

(d) For purposes of this section, the term "friendly countries" shall have the same meaning as that term has under the Agricultural Trade Development and Assistance Act of 1954.

Mr. MELCHER. Mr. President, the amendment is so modified now that it is acceptable to both sides. We have arrived at an agreement where in most instances, but not all, we have cut the amount of the available surplus commodities to foreign governments by about one-half. In one or two instances, it has been more than one-half, and in some instances it was less than one-half.

Mr. President, the part of the amendment that dealt with feeding programs, commodity programs, for the poor here in this country remains the same.

I hope the Senate will accept the modification, the amendment so modified, unanimously.

Mr. DOLE. Mr. President, so far as I know, there has been an agreement. I know there are still some differences. The Department of Agriculture has some differences. Perhaps they can be resolved to the satisfaction of both USDA and the Senator from Montana in conference.

We are prepared to accept the amendment.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment, as modified.

The amendment (No. 3193), as modified, was agreed to.

Mr. MELCHER. Mr. President, I move to reconsider the vote by which the amendment, as modified, was agreed to.

Mr. DOLE. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Are there any further amendments to the continuing resolution?

AMENDMENT NO. 3204

Mr. JOHNSTON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Louisiana [Mr. JOHNSTON], for himself, Mr. HATFIELD, Mr. STENNIS, Mr. STEVENS, Mr. BYRD, Mr. WEICKER, Mr. INOUYE, Mr. MCCLURE, Mr. HOLLINGS, Mr. LAXALT, Mr. COCHRAN, Mr. BURDICK, Mr. ANDREWS, Mr. LEAHY, Mr. ABDNOR, Mr. DECONCINI, Mr. KASTEN, Mr. BUMPERS, Mr. D'AMATO, Mr. LAUTENBERG, Mr. MATTINGLY, Mr. RUDMAN, Mr. SPECTER, Mr. DOMENICI, Mr. CHILES, Mr. SASSER, and Mr. HARKIN, proposes an amendment numbered 3204.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 74 after line 10, add the following:

TITLE II.—OMNIBUS DRUG SUPPLEMENTAL APPROPRIATIONS ACT OF 1987

CHAPTER I.—DEPARTMENT OF JUSTICE

LEGAL ACTIVITIES

SALARIES AND EXPENSES, UNITED STATES ATTORNEYS

For an additional amount for "Salaries and expenses, United States attorneys", $6,000,000.

SUPPORT OF UNITED STATES PRISONERS

For an additional amount for support of United States prisoners in non-Federal institutions, $2,000,000.

ASSETS FORFEITURE FUND

For expenses authorized by 28 U.S.C. 524, as amended by the Comprehensive Forfeiture Act of 1984 and the Anti-Drug Abuse Act of 1986, as passed in the Senate on September 30, 1986, such sums as may be necessary to be derived from the Department of Justice Assets Forfeiture Fund.

FEDERAL BUREAU OF INVESTIGATION

SALARIES AND EXPENSES

For an additional amount for "Salaries and expenses", $4,000,000.

DRUG ENFORCEMENT ADMINISTRATION

SALARIES AND EXPENSES

For an additional amount for "Salaries and expenses", $18,000,000.

FEDERAL PRISON SYSTEM

SALARIES AND EXPENSES

For an additional amount for "Salaries and expenses", $28,000,000.

BUILDINGS AND FACILITIES

For an additional amount for "Buildings and facilities", $50,000,000, to remain available until expended.

OFFICE OF JUSTICE PROGRAMS

JUSTICE ASSISTANCE

For an additional amount for "Justice assistance", $117,000,000, to remain available until expended, for grants for drug law enforcement programs, to be used only to carry out provisions of section 1302 (1), (2), (3), (5), and (6), of Title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended by H.R. 5484, as passed in the Senate on September 30, 1986: *Provided*, That $2,000,000 shall be available only to carry out a pilot prison capacity program.

THE JUDICIARY COURTS OF APPEALS, DISTRICT COURTS, AND OTHER JUDICIAL SERVICES

DEFENDER SERVICES

For an additional amount for "Defender services", $18,000,000, to remain available until expended.

FEES OF JURORS AND COMMISSIONERS

For an additional amount for "Fees of jurors and commissioners", $7,500,000, to remain available until expended.

RELATED AGENCY

UNITED STATES INFORMATION AGENCY

SALARIES AND EXPENSES

For an additional amount for "Salaries and expenses", $2,000,000, to be available only for drug education programs abroad authorized in H.R. 5484 as passed in the Senate on September 30, 1986.

CHAPTER II.—FOREIGN ASSISTANCE

BILATERAL ECONOMIC ASSISTANCE

FUNDS APPROPRIATED TO THE PRESIDENT

AGENCY FOR INTERNATIONAL DEVELOPMENT

Education and human resources development, Development Assistance:

For an additional amount to carry out chapter 1 of part I of the Foreign Assistance Act of 1961, $3,000,000: *Provided*, That these funds shall be used pursuant to section 126(b)(2) of the Foreign Assistance Act of 1961 for additional activities aimed at increasing awareness of the effects of production and trafficking of illicit narcotics on source and transit countries: *Provided further*, That funds made available by this paragraph shall be available through the regular notification procedures of the Committees on Appropriations.

DEPARTMENT OF STATE

INTERNATIONAL NARCOTICS CONTROL

For an additional amount to carry out the provisions of section 481 of the Foreign Assistance Act of 1961, $55,000,000: *Provided*, That of this amount $45,000,000 shall be made available only in accordance with the provisions of section 2001(2) of H.R. 5484, as passed in the Senate on September 30, 1986: *Provided further*, That funds made available by this paragraph shall be available through the regular notification procedures of the Committees on Appropriations.

CHAPTER III DEPARTMENT OF INTERIOR

BUREAU OF INDIAN AFFAIRS

OPERATION OF INDIAN PROGRAMS

For an additional amount for "Operation of Indian programs", $3,500,000: *Provided*, That funds made available to tribes and tribal organizations through grants or contracts authorized by the Indian Self-Determination and Education Assistance Act of 1975 (88 Stat. 2203; 25 U.S.C. 450 et seq.) shall remain available until September 30, 1988.

CONSTRUCTION

For an additional amount for "Construction", $15,000,000, to remain available until expended.

DEPARTMENT OF AGRICULTURE

FOREST SERVICE

NATIONAL FOREST SYSTEM

For an additional amount for "National forest system", $20,000,000, to remain available until expended.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

HEALTH SERVICES AND RESOURCES ADMINISTRATION

INDIAN HEALTH SERVICES

For an additional amount for "Indian health services", $16,200,000: *Provided*, That funds made available to tribes and tribal organizations through grants or contracts authorized by the Indian Self-Determination and Education Assistance Act of 1975 (88 Stat. 2203; 25 U.S.C. 450 et seq.) shall remain available until September 30, 1988.

INDIAN HEALTH FACILITIES

For an additional amount for "Indian health facilities", $9,000,000, to remain available until expended.

CHAPTER IV DEPARTMENT OF HEALTH AND HUMAN SERVICES

ALCOHOL, DRUG ABUSE, AND MENTAL HEALTH BLOCK GRANT

For an additional amount for drug abuse prevention and treatment activities as authorized by title XIX of the Public Health Service Act, as amended by the Anti-Drug Abuse Act of 1986, $236,000,000, of which $11,000,000 shall be transferred to the Administrator of Veterans Affairs to be used in accordance with section 1922 of the Anti-Drug Abuse Act of 1986, as passed in the Senate on September 30, 1986.

NATIONAL INSTITUTE FOR DRUG ABUSE

RESEARCH

For an additional amount for "Research", as authorized by title V of the Public Health Service Act, as amended by the Anti-Drug Abuse Act of 1986, as passed in the Senate on September 30, 1986, $27,000,000.

NATIONAL INSTITUTE FOR ALCOHOL ABUSE AND ALCOHOLISM

RESEARCH

For an additional amount for "Research", as authorized by title V of the Public Health Service Act, as amended by the Anti-Drug Abuse Act of 1986, as passed in the Senate on September 30, 1986, $3,000,000.

INFORMATION CLEARINGHOUSE AND EVALUATION STUDIES

For an additional amount for "Information clearinghouse and evaluation studies", $3,000,000.

DEPARTMENT OF EDUCATION

SPECIAL PROGRAMS

For an addditonal amount for "Special programs", $150,000,000, to remain available until September 30, 1988: *Provided*, That the remaining funds shall be distributed in accordance with subtitle B of the Anti-Drug Abuse Act of 1986.

RELATED AGENCY

ACTION

OPERATING EXPENSES

For an additional amount for public awareness and education as authorized by the Domestic Volunteer Service Act of 1973, part C of title I, as amended by the Anti-Drug Abuse Act of 1986, $3,000,000, of which $500,000 shall be available for administration, as authorized in title IV of the Domestic Volunteer Service Act of 1973, as amended.

CHAPTER V DEPARTMENT OF TRANSPORTATION

COAST GUARD

OPERATING EXPENSES

For an additional amount for "Operating expenses", $39,000,000.

ACQUISITION, CONSTRUCTION, AND IMPROVEMENTS

For an additional amount for "Acquisition, construction, and improvements", $119,000,000, to remain available until September 30, 1991, of which not to exceed $5,000,000, may be expended for design and engineering work in relation to construction of a docking facility in the Bahamas.

FEDERAL HIGHWAY ADMINISTRATION

MOTOR CARRIER SAFETY GRANTS

[Highway Trust Fund]

For an additional amount to carry out the provisions of section 402 of Public Law 97-424, $30,000,000, to be derived from the Highway Trust Fund, to remain available until September 30, 1989.

CHAPTER VI DEPARTMENT OF TREASURY

U.S. CUSTOMS SERVICE

SALARIES AND EXPENSES

For an additional amount for "Salaries and expenses", $65,900,000.

OPERATION AND MAINTENANCE, AIR INTERDICTION PROGRAM

For an additional amount for "Operation and maintenance, Air Interdiction program", $85,000,000, of which up to $10,000,000 is available for the U.S.-Bahamas Task Force and $25,000,000 is available

for establishment of command, control, communications, and intelligence (C-3I) centers, to remain available until expended.

U.S. SECRET SERVICE

SALARIES AND EXPENSES

For an additional amount for "Salaries and expenses", $5,000,000.

EXECUTIVE OFFICE OF THE PRESIDENT

WHITE HOUSE CONFERENCE ON DRUG ABUSE AND CONTROL

SALARIES AND EXPENSES

For necessary expenses of the White House Conference on Drug Abuse and Control, $2,000,000.

CHAPTER VII DEPARTMENT OF DEFENSE

OPERATION AND MAINTENANCE

OPERATION AND MAINTENANCE, AIR FORCE

For an additional amount for "Operation and maintenance, Air Force", $12,615,000.

OPERATION AND MAINTENANCE, DEFENSE AGENCIES

For an additional amount for "Operation and maintenance, Defense agencies", $27,000,000.

PROCUREMENT

AIRCRAFT PROCUREMENT, ARMY

For an additional amount for "Aircraft procurement, Army", $22,500,000.

AIRCRAFT PROCUREMENT, NAVY

For an additional amount for "Aircraft procurement, Navy", $183,000,000.

OTHER PROCUREMENT, AIR FORCE

For an additional amount for "Other procurement, Air Force", $117,000,000.

This title may be cited as the "Omnibus Drug Supplemental Appropriations Act of 1987".

Mr. JOHNSTON. Mr. President, this is the funding mechanism for the drug bill. It is a great disappointment, I am sure, to many of us, because the budget authority, $1.54 billion, and the outlays, $642 million, are not supported by any revenues but they are paid out of the deficit which one day this Congress may address, hopefully with the assistance and not the opposition of the President.

It is safe to say that for the time being that problem of the deficit is not being addressed, but we are at least, with this amendment, Mr. President, in a bipartisan way addressing the problem of drugs and providing funding for the problem of drugs.

So, Mr. President, I ask that the amendment be agreed to. I also ask unanimous consent that a statement be included in the RECORD at this point concerning title II, Omnibus Drug Supplemental Appropriations Act of 1987.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

[Title II.—Omnibus Drug Supplemental Appropriations Act of 1987]

CHAPTER I.—DEPARTMENT OF JUSTICE

LEGAL ACTIVITIES

United States Attorneys

Funding of $6,000,000 is provided for the United States Attorneys for fiscal year 1987 for an additional 80 Assistant United States Attorneys and 40 additional support personnel to prosecute the drug law enforcement cases that will be generated as a result of the additional Federal investigative resources provided in this title.

SUPPORT OF UNITED STATES PRISONERS

Funding of $2,000,000 is provided for the support of United States prisoners in non-Federal institutions to meet the substantial increase in Federal prisoners and detainees anticipated due to the additional Federal investigative and prosecutive resources provided in this title.

ASSETS FORFEITURE FUND

Such sums as necessary are provided from the Department of Justice Assets Forfeiture Fund. This is the additional amount which the Department of Justice estimates will be needed to carry out the provisions of the Anti Drug Abuse Act of 1986.

FEDERAL BUREAU OF INVESTIGATION

Salaries and Expenses

Funding of $4,000,000 is provided for equipment to continue the fieldwide installation of digital voice privacy radios.

DRUG ENFORCEMENT ADMINISTRATION

Salaries and Expenses

Funding of $18,000,000 is provided for Salaries and Expenses. Of this amount 218 positions (140 agents) and $8,000,000 are for domestic field staff to combat the cocaine problem in areas which have experienced significant increases in cocaine trafficking; 52 positions (30 agents) and $3,000,000 are to enhance law enforcement and intelligence gathering capability in primary drug-producing countries in Latin America; and $7,000,000 for helicopters for drug eradication efforts in Hawaii.

FEDERAL PRISON SYSTEM

Salaries and Expenses

Funding of $28,000,000 is provided for the salaries and expenses appropriation of the Federal Prison System. Of this amount, $4,600,000 is designated for 250 additional correctional officer positions to handle the substantial increase in the number of inmates in Federal prisons expected as a result of the additional investigative and prosecutive resources provided in this resolution. The remaining $23,400,000 is for the care and custody costs associated with the increase in the number of inmates in Federal penal institutions.

BUILDINGS AND FACILITIES

Funding of $50,000,000 is provided for design and construction of one new Federal prison to relieve the severe overcrowding that exists in the Federal Prison System.

OFFICE OF JUSTICE PROGRAMS

Justice Assistance

Funding of $117,000,000 is provided for the Justice Assistance appropriation for grants for drug law enforcement programs. Of this amount, $2,000,000 is earmarked to carry out a Pilot Prison Capacity Program.

THE JUDICIARY

Courts of Appeals, District Courts, and other Judicial Services

Defender Services

Funding of $18,000,000 is provided for the operation of the Federal public defender and community defender organizations and the compensation, reimbursement and expenses of attorneys appointed to represent persons under the Criminal Justice Act of 1964, as amended. These resources are provided in anticipation of increased demands which will be placed upon this appropriation as a result of stepped up Federal investigative and prosecutive efforts during fiscal year 1987.

Fees of Jurors and Commissioners

Funding of $7,500,000 is provided for fiscal year 1987 for the compensation of jury commissioners and for the fees and allowances of grand and petit jurors anticipated to be required as a result of the additional Federal investigative and prosecutive resources that are provided in this title.

RELATED AGENCY—UNITED STATES INFORMATION AGENCY

Salaries and Expenses

Funding of $2,000,000 is provided for the United States Information Agency for drug education abroad.

CHAPTER II.—FOREIGN ASSISTANCE

BILATERAL ECONOMIC ASSISTANCE

Funds Appropriated to the President

Chapter II of this title provides funding for programs under the jurisdiction of the Agency for International Development and the Bureau for International Narcotics Control of the Department of State.

AGENCY FOR INTERNATIONAL DEVELOPMENT

For the Agency for International Development, $3,000,000 is provided for education and human resources development, Development Assistance, which is to be used for activities aimed at increasing the awareness of the effects of production and trafficking of illicit narcotics on those countries which are either the source of such illicit narcotics or countries which are used to transit illicit narcotics.

INTERNATIONAL NARCOTICS CONTROL

An additional $55,000,000 is provided for the State Department's International Narcotics Control Program which funds a variety of programs in source countries, including enforcement assistance, production control, crop substitution, and eradication programs. Of the amount provided under this chapter for International Narcotics Control $45,000,000 is reserved only for activities pursuant to section 2001(2) of H.R. 5484, as passed in the Senate on September 30, 1986. That section requires that a detailed plan for these funds be submitted to Congress, and also that of the $45,000,000, not less than $10,000,000 is available to provide helicopters or other aircraft to countries which receive assistance under the International Narcotics Control Program.

CHAPTER III.—DEPARTMENT OF THE INTERIOR

BUREAU OF INDIAN AFFAIRS

Operation of Indian Programs

Funding of $3,000,000 is provided for training of law enforcement and tribal court officers and $500,000 is provided to the Papago Tribe control of illegal narcotics trafficking.

CONSTRUCTION

In the construction account, $5,000,000 is provided for the construction of youth shelters or half-way houses and $10,000,000 is provided for the renovation of juvenile detention facilities.

DEPARTMENT OF AGRICULTURE—FOREST SERVICE

National Forest System

Funding of $20,000,000 is provided for the Forest Service to hire additional law enforcement personnel.

DEPARTMENT OF HEALTH AND HUMAN SERVICES—HEALTH SERVICES AND RESOURCES ADMINISTRATION

Indian Health Services

Funding of $3,000,000 is provided for staffing of regional youth detoxification facilities; $9,000,000 for rehabilitation and follow-up services to Indian youth; $4,000,000 for community education and training; and $200,000 for an alcoholism rehabilitation program for adult Navajo Indians in Gallup, NM.

Indian Health Facilities

For Indian health facilities, $6,000,000 is provided for the construction of detoxification facilities for Indian youth and $3,000,000 is provided for renovation of Federally-owned structures for treatment of Indian youth.

CHAPTER IV.—DEPARTMENT OF HEALTH AND HUMAN SERVICES

ALCOHOL, DRUG ABUSE AND MENTAL HEALTH ADMINISTRATION

Funding of $75,000,000 is provided for the Alcohol Drug Abuse and Mental Health block grant to the States. In addition, $150,000,000 is provided to the Secretary for targeted grants to the States for purposes of expanding the treatment and rehabilitation programs in areas of high incidences of drug abuse. Funding of $11,000,000 has also been included to be transferred to the Administrator of Veterans Affairs.

National Institute for Drug Abuse Research

Funding of $27,000,000 is provided to the National Institute for Drug Abuse to bring it to its fully authorized level.

National Institute for Alcohol Abuse and Alcoholism Research

Funding of $3,000,000 is provided to the National Institute for Alcohol Abuse and Alcoholism to bring it to its fully authorized level.

Information Clearinghouse and Evaluation Studies

Funding of $3,000,000 is provided to the Administrator of the Alcohol, Drug Abuse, and Mental Health Administration to fund alcohol, drug abuse, and youth suicide informational clearinghouses and evaluation studies.

DEPARTMENT OF EDUCATION

Funding of $150,000,000 is provided for Drug Abuse Education and Prevention programs. These funds shall be distributed in accordance with the Anti-Drug Abuse Act of 1986.

RELATED AGENCY—ACTION

Operating Expenses

Funding of $2,500,000 is provided for public awareness and education activities relating to drug abuse prevention, funded under part C of title I of the Domestic Volunteer Service Act of 1973, as amended. An additional $500,000 for administration of the drug abuse prevention initiative is provided under title IV of the Domestic Volunteer Service Act of 1973, as amended.

CHAPTER V.—DEPARTMENT OF TRANSPORTATION

COAST GUARD

Operating Expenses

Funding of $39,000,000 is provided for Coast Guard "Operating expenses".

Acquisition, Construction, and Improvements

Funding of $119,000,000 is provided for "Acquisition, construction and improvements". Not to exceed $5,000,000 of this amount may be expended in relation to the Bahamian docking facility.

FEDERAL HIGHWAY ADMINISTRATION

Motor Carrier Safety Grants (Highway Trust Fund)

An additional $30,000,000 is provided for "Motor Carrier Safety Grants" to be derived from the Highway Trust Fund.

CHAPTER VI.—DEPARTMENT OF TREASURY

U.S. CUSTOMS SERVICE

Salaries and Expenses

Funding of $65,900,000 is provided for the U.S. Customs Service. The funds will provide for additional positions, as well as support equipment necessary to carry out enforcement responsibilities. The amendment also contains funds to enhance the Customs Service marine program.

Operations and Maintenance, Air Interdiction Program

Funding of $85,000,000 is to be dedicated to acquisition of aircraft, as well as, operation and maintenance of assets provided by the Department of Defense to remain available until expended. Funding is also included for establishment of a Command, Control, Communication, Intelligence Center (C3I) and funding to procure aircraft for the Bahamas Task Force.

U.S. SECRET SERVICE

Salaries and Expenses

Funding of $5,000,000 is provided for acquisition of voice privacy equipment.

CHAPTER VII.—DEPARTMENT OF DEFENSE

OPERATION AND MAINTENANCE

Operation and Maintenance, Air Force

Funding of $12,615,000 is to be available for the transfer of six Air Force helicopters to Davis-Monthan Air Force Base for use in carrying out the drug interdiction missions.

Operation and Maintenance, Defense Agencies

Funding of $27,000,000 is available to the Secretary of Defense. Of this amount, $12,000,000 shall be used to enhance intelligence collection activities concerning illegal importation into the United States of drugs originating in South America. The remaining $15,000,000 shall be transferred to the Coast Guard for the Tactical Law Enforcement Program.

Procurement

Aircraft Procurement, Army

Funding of $22,500,000 is provided for the purchase of five UH-60 Blackhawk helicopters. These aircraft shall be made available to the United States Customs Service for operation and maintenance.

Aircraft Procurement, Navy

Funding of $183,000,000 is provided for the purchase and modification of long-range surveillance aircraft equipped with 360-degree radar. The new aircraft shall be provided to the Navy to replace existing surveillance aircraft equipped with 360-degree radar to be refurbished and transferred to the appropriate government agencies.

Other Procurement, Air Force

Funding of $117,000,000 is provided for the procurement of seven aerostat radar systems, seven radar spares sets, and one radar spares set for the aerostat radar funded in the fiscal year 1986 Urgent Supplemental Appropriations Act. These radar systems shall be located pursuant to the authorization direction.

Mr. PROXMIRE. Mr. President, will the Senator yield for a question?

Mr. JOHNSTON. Mr. President, I yield to the distinguished Senator from Wisconsin.

Mr. PROXMIRE. Mr. President, may I ask my good friend, the distinguished Senator from Louisiana, a question? He says there will be outlays of $642 million and $1.54 billion in budget authority, for which there is no revenue, for which no compensating reductions in spending are made, which will increase the deficit. But, as I understand it, and I hope the Senator will correct me if I am wrong, this will be outside the Budget Act and, therefore, it will not play any part in the triggering of sequestration. Is that correct?

Mr. JOHNSTON. That is not correct, as I understand it.

I see the distinguished chairman of the Budget Committee on his feet. He is perhaps the most authoritative source to answer that question.

Mr. DOMENICI. Mr. President, I do not know that that is the case, but I would attempt to answer the question.

If the Senator will recall, when we passed the drug bill, the Senate adopted language that said there is an urgent need of funds to carry out the programs and activities authorized by the provisions of this act, the Anti-Drug Act.

This act is a result of a bipartisan effort to combat national drug abuse problems, and only the exceptional nature of the drug abuse problem warrants the expenditure of funds in excess of otherwise applicable budget limitations.

It is the sense of the Senate that the amounts authorized to carry out the preceding provisions of this act should be provided as new budget authority for fiscal year 1987. Such amount should not be provided through transfer or reductions in existing programs, but by such joint resolution for other programs, projects, or activities or reductions in any amount appropriated by such joint resolution for any other programs, projects, or activities.

The Senate adopted that. We just finished the continuing resolution. We adopted the drug bill with large votes. So what the distinguished chairman of the Appropriations Committee, the ranking member, Senator CHILES, and myself have done is we have submitted an amendment to the desk which funds the drug abuse bill which we overwhelmingly passed.

The appropriators spent every thing within the budget that they knew about and met every one of their totals in outlays, and by a long shot in budget authority.

At the end of this process, along comes this drug abuse program, which is now to be funded by that amendment which we sent to the desk, the

chairman of the appropriations, the ranking member, Senator CHILES and myself.

What we are now saying is that they will not be bound by the outlays in the budget, but, clearly, if this were to cause a sequester by causing us to breach the $154 billion, there is no waiver of that.

If the budget deficit exceeds the $154 billion prescribed by law because of this, after it goes through conference and the President puts his muscle behind cutting back the appropriations, when that event is finished we do not have any waiver against the sequester dollar limitation in anything we have done, and I do not believe anybody proposes any such thing here tonight. I do not. The appropriators do not.

All we are saying is you cannot fit them in the individual crosswalks for the 13 subcommittees as prescribed because you did not know about them and you want them funded, U.S. Senate. You voted in the bill, and now this is the funding for it.

Mr. PROXMIRE. What the Senator from New Mexico is telling us is that this $1.54 billion in authority and the $642 million in outlays is in all likelihood going to have to come out of spending that we have already appropriated and authorized. Is that correct?

Mr. DOMENICI. No.

□ 1750

Mr. DOMENICI. No, Mr. President.

Mr. PROXMIRE. Unless we are able to reduce the deficit to $254 billion or below—which I do not think anybody, any realist, really expects we can do in 1987.

Mr. DOMENICI. Mr. President, let me say that I think the Senator is in error. I think there is almost no chance, with the passage of this continuing resolution, and the reconciliation bill, anywhere from $8 billion to $10 billion, and it will probably be $12, the tax bill as passed—I think there is almost no chance that we will have a sequester. We will be below $254 billion and we will be below, in my opinion, by about $5 billion, maybe $6.

Mr. PROXMIRE. For the year 1987.

Mr. DOMENICI. For the year 1987 as measured on October 6, as required by the Budget Act that we are operating under.

Mr. PROXMIRE. My good friend from New Mexico is a marvelous optimist. I hope he is right, but I say I do not think there is the remotest chance. I think it will be $200 billion.

Mr. ARMSTRONG. Mr. President, I would like to have the attention of the Senator from Wisconsin because he is addressing a very important point. If the Senator from Wisconsin would remain in the discussion, I would like to make the point that there probably will not be a sequester because there is a tax increase built in for 1 year. But the point that has not been addressed as yet, and I address this first, at least as a question, to the chairman of the Budget Committee, is whether or not this amendment violates the Budget Act.

Mr. DOMENICI. Mr. President, let me respond to the Senator from Colorado. I would have indicated in opening remarks had I been permitted to give them, but dialog occurred, that I believe the amendment is subject to a point of order. But I believe the Senate agreed to that the other day when they said do it this way. So if somebody wants to make the point of order, I have told the appropriators I would have to waive because I think the Senate cannot have it both ways. They cannot pass a drug bill and then put on it that we tell them that they do not have to go back into their budgets which they have already complied with, and I think rather well, and cut again.

So, surely somebody could do that if they like and we could vote on it here and be here for another hour. But I think we understand we have added about $700 million.

Incidentally, we got no authority to break the budget because with budget authority, we are about $7 billion under. That is for one time, but that is true, nonetheless.

Mr. ARMSTRONG. Mr. President, I am very much in favor of the drug bill but I do not think we ought to be stampeded on the amendment without at least noting in passing the fact that it is violative of the Budget Act. We do not know whether we can find $7 billion or $1½ billion, or even $600 million, for this, whether or not we are going to ignore all the other places in the budget where we could have made the savings necessary to accommodate this.

We are going to spend about $1 trillion in 1987 and there are lots of places where we have low-priority programs, programs of national usefulness, that could have been curtailed and should have been curtailed in order to make room for this program of higher priority.

My original purpose in rising was to make the point of order under section 302(f) of the Budget Act. Clearly it violates that. But there is no particular point in my doing that.

My purpose is not to delay the Senate, but the point is having it established, because these chickens are going to be back to roost right after the first of the year. We are not going to have a sequester because we have a one-time tax increase built in. We are either going to have a mammoth, colossal sequester next year or we going to have a tax increase or have a stunning, unprecedented deficit. I regret that very much.

The PRESIDING OFFICER. Is there further debate?

Mr. WEICKER. Mr. President, I want to associate myself, unusually, with the comments of the distinguished Senator from Colorado and the distinguished Senator from Wisconsin.

I made an agreement the other night. It was in two parts. No. 1 was a sense of the Senate resolution which was read by the distinguished Senator from New Mexico. Second was that we would go ahead at the end of this bill and waive the Budget Act. Now, that is not going to happen, and we are going on by guess and by gosh here that hopefully, after all the conferences are over and everything else is done, the tax bill signed and so forth, there is going to be some money to pay for it.

But this is strictly guess work. I do not consider it responsive to the agreement which I made on this floor in order to avert extended debate on the drug bill.

So, like my distinguished friend from Colorado and my friend from Wisconsin, I shall not pursue the point any further. I suppose the point that should be asked, and it is a good question to leave this debate on, is what happens if such moneys are not available and indeed, we have not met the mark? What happens if?

To be continued.

Mr. DOMENICI. Mr. President, the amendment provides funding for the Anti-Drug Abuse Act of 1986 as it passed the Senate on Tuesday, September 30.

The amendment provides $1.5 billion in new budget authority to fund existing and new programs designed to combat the flow into and use of illegal drugs in the United States. The additional budget authority would increase the bill's outlays $724 million.

The new budget authority for this critical national need was not contemplated in the fiscal year 1987 concurrent budget resolution we adopted last spring, and I must be clear, it is subject to a budget act point of order when we look at the individual subcommittee's budget authority and outlay totals.

If the Senate were to follow the lead of the House in its funding of its drug bill initiative, a 0.34-percent cut in all discretionary budget authority in the bill would be required to keep the individual subcommittee's within their 302(b) outlay totals.

However, I must also note that overall the entire bill is $7.3 billion in budget authority below the total committee allocation.

I would like to revisit with my distinguished friend from Oregon a discussion we had when we passed the sense of the Senate amendment regarding the funding of the drug bill.

I believe the chairman of the Appropriations Committee is aware of the fact I stated earlier that, based on current scoring of this continuing resolution, CBO estimates indicate your total bill is $7.3 billion in budget authority below the budget resolution assumption.

Mr. HATFIELD. That is correct, based on our filing of section 302(b) allocations and my understanding of the CBO estimates.

Mr. DOMENICI. But, is it not also true that most individual subcommittee bills are slightly below—except for defense—or right at their outlay limits, and it was this latter fact, in most cases, that has led to the budget act point of order being raised and sustained repeatedly over the last week.

Mr. HATFIELD. Again, that is my understanding of the current CBO scoring.

Mr. DOMENICI. Under the Budget Act procedure, modified in the Gramm-Rudman-Hollings legislation last year, I believe the chairman is aware that a committee may report alterations in its allocations under section 302(e). Therefore, I ask the distinguished chairman if it is not a real possibility that based on the real likelihood of a conference agreement on this bill finding additional savings—among the various subcommittees—that the additional outlays for this drug amendment be accommodated within any final conference agreement.

Mr. HATFIELD. I believe that that possibility exists.

Mr. DOMENICI. And that if that were the final outcome, then the Appropriations Committee would report a revised 302(b) allocation to avoid the possible Budget Act point of order against the conference agreement.

Mr. HATFIELD. The committee would, as the distinguished Budget Committee chairman suggests, use our prerogative under section 302(e) of the Budget Act to report revised allocations to remain within the total budget resolution allocation.

Mr. DOMENICI. I thank the distinguished chairman for his response.

I, therefore, expect that the final conference agreement will remain within the overall budget resolution allocations, and I will, therefore, not raise the valid budget point of order on this amendment.

I do not want to suggest that by not raising the point of order I take this action lightly, and I remind my colleagues and compliment them on the fact that every Budget Act point of order raised on this bill has been sustained. But, I believe we have already acted on this issue and the Senate has overwhelmingly spoken in its 97 to 2 vote on the underlying authorization bill last Tuesday.

Surely, with a total bill of some $550 billion, the conference on this resolution will be able to find the required $1.5 billion budget authority and the $720 million in outlays sufficient to fund this amendment—funding for a critical national need that was not assumed at the time we passed the budget resolution.

Mr. President, I ask unanimous consent that certain materials relating to this amendment be printed in the RECORD.

There being no objection, the materials were ordered to be printed in the RECORD, as follows:

OMNIBUS DRUG SUPPLEMENTAL APPROPRIATIONS ACT OF 1987

[Fiscal Year 1987 and in million dollars]

Title	Senate-passed authorization	Continuing resolution appropriations amendment	Appropriation versus authorization
I. Commerce-State	305	298	−7.0
II. Foreign Ops	66	58	−8.0
III. Interior	73	64	−9.0
IV. Labor-HHS-ED	412	422	+10.0
V. Transportation	163	188	+25.0
VI. Treasury Postal	157	158	+1.0
VII. Defense	378	362	−16.0
Total:			
Budget authority	1,554	1,549	−5.0
Outlays	680	724	+43.0

HOUSE CONTINUING RESOLUTION ANTIDRUG VERSUS SENATE CONTINUING RESOLUTION ANTIDRUG—FISCAL YEAR 1987 (COMPARED TO SENATE APPROPRIATION LEVEL)

[Dollars in millions]

House continuing Resolution over (+) or under (−) Senate continuing Resolution	Budget authority	Outlays
COMMERCE, STATE, JUSTICE		
Drug Enforcement Administration	81	74
Federal Bureau of Investigation—Secure voice radios	−4	−3
Federal prison construction	84	27
Federal prison salaries and expenses	−48	−45
Judiciary—Court of Appeals, District Court, S & E	3	3
Judiciary—Defender Services	−20	−12
Judiciary—Fees of jurors and commissioners	−10	−9
Justice Programs, Office of—Pilot Program	−2	−1
Justice Statistics, Bureau of	51	17
Justice—Assets Forfeiture fund	−45	−38
Justice—Hawaii helicopter	0	0
Mandatory sentencing	0	0
State and local narcotics control assistance	545	137
U.S. attorneys	3	2
U.S. Information Agency	81	41
U.S. Marshals Service	5	5
U.S. prisoners Non-Federal	1	1
Total Commerce, State, Justice	725	198
DEFENSE		
360 radar on Coast Guard airplanes	0	0
Aerostat Radar System—3	0	0
Aerostat Radar—7	0	0
Aircraft configured W/AN/APS–138 radar—4	0	0
Blackhawk helicopters	0	0
Enhanced intelligence collection	0	0
Helicopter and 4 Aerostat Radar	0	0
Refurbish and replace E2C	0	0
Transfer 6 helicopters—operation and maintenance	0	0
Transfer to DOT for Coast Guard on ships	0	0
United States/-Bahamas Task Force	0	0
Air Force—Operations and maintenance	−13	−10
Defense Agencies—Operations and maintenance	−27	−23
Army—Aircraft procurement	−18	−3
Navy—Procuement	−183	−17
Air Force—Other procurment	−122	−57
Total Defense	−362	−110
FOREIGN ASSISTANCE		
Agency for International Development	−56	−37
Narcotics Foreign Assistance	−20	−7
Total Foreign Assistance	−76	−44
INTERIOR		
Forest Service	66	57
Indian Programs	56	37
Total Interior	122	84
Labor, Health and Human Services, and Education		
Action grants	−30	−20
Advisory Council on Education of Athletes	1	1
Alcohol, Drug abuse, and Mental Health Service Grant	46	32
Drug-Free Learning—State Grant Program	200	16
Information Clearinghouse	−3	0
Media Commission on Drug Abuse	0	0
National Institute on Alcohol Abuse and Alcoholism	−71	−71
National Institute on Drug Abuse	−143	−99
National Plan/Studies	0	0
Study of Drug Abuse at Workplaces	0	0
Substance Abuse Coverage Study	0	0
Transfer to Veteran's Medial Care	−11	−9
Youth Suicide Information	0	0
Total Labor, Health and Human Services	−11	−150
TRANSPORTATION		
Coast Guard—Aquisition, construction, and improvement	−210	−77
Coast Guard—Operating expenses	40	14
Coast Guard—Reserve training	3	2
Commercial Motor Vehicle Safety	−49	−39
Total Transportation	−216	−100
TREASURY, POSTAL, AND GENERAL GOVERNMENT		
Custom—Forfeiture fund	12	12
Customs—Operations and maintenance—Air interdiction	41	23
Customs—Salaries and expenses	22	20
Office of Personnel Management—Federal employees	0	0
Secret Service—Secure voice radios	−5	−4
Train, EQ, ED Grants—Puerto Rico, Virgin Islands	8	6
White House Conference on Drug Abuse and Control	3	3
Total Treasury, Postal, and General Government	82	60
Total increase	263	−63

Mr. BIDEN. I would like to make an inquiry to the floor manager of this bill in regard to the drug bill amendment to the continuing resolution.

Mr. RUDMAN. I would be happy to clarify any provision in this amendment for my colleague from Delaware [Mr. BIDEN].

Mr. BIDEN. My inquiry relates to the operation of the Department of Justice and Customs Service forfeiture funds, which have been significantly modified as part of the Senate-passed drug bill. As you know, at the end of each year, 90 percent of the unexpended and unobligated proceeds in the Justice and Customs forfeiture funds shall be transferred into a new special forfeiture fund. Proceeds in this special fund are to be used for drug control efforts at the Federal and State and local levels. In this way, seized and forfeited assets are to be used solely for drug enforcement and drug abuse efforts, so that, in effect, drug traffickers are subsidizing a major portion of the national drug control program.

Now as part of the drug bill funding amendment to the continuing resolution, one section appropriates such sums as are necessary from the Justice assets forfeiture fund to pay for ex-

penses pursuant to 28 U.S.C. 524. My interpretation is that this appropriation from the Justice assets forfeiture fund only would provide for the reimbursement of expenses detailed in 28 U.S.C. 524, as amended by the Anti-Drug Abuse Act of 1986, estimated for fiscal year 1987 to be approximately $75 million by the Congressional Budget Office and the Justice Department, and that 90 percent of the unexpended and unobligated proceeds remaining in the Justice assets forfeiture fund would be transferred to the special fund for uses detailed in the Senate passed drug bill.

Mr. RUDMAN. Simply put, the distinguished Senator from Delaware [Mr. BIDEN] is correct. The appropriation provided for in the drug bill amendment only relates to the availability of funds in 1987 for the specific expenses detailed in 28 U.S.C. 524. This amendment would affect the special forfeiture fund only in the sense that the level of expenses that are reimbursed from the Justice assets forfeiture fund determines the level of proceeds eventually transferred to the special fund.

Mr. BIDEN. And that the such sums appropriation in the drug bill amendment only provides moneys for expenses from the Justice assets forfeiture fund and does not directly affect the use of moneys in the special forfeiture fund.

Mr. RUDMAN. Once again, the Senator from Delaware [Mr. BIDEN] is correct. The provision in the drug bill amendment appropriating funds from the Justice assets forfeiture fund will not affect the use of moneys in the special forfeiture fund.

Mr. BIDEN. I thank my distinguished colleague from New Hampshire [Mr. RUDMAN] for this very helpful clarification.

CBO SCORING OF THE DRUG AMENDMENT

Mr. McCLURE. Mr. President, although the Congressional Budget Office has not finalized its scoring of the drug amendment, preliminary indications show that a large amount of the budget authority is being outlayed in fiscal year 1987.

I have not analyzed the scoring of all chapters of the drug amendment but I have taken a look at the scoring of the interior chapter. In the interior chapter, CBO assumes that $43 million of budget authority in the Bureau of Indian Affairs, Indian Health Services, and Indian Health Facilities will outlay at nearly 50 percent. A large part of this money, however, is construction money which we are appropriating in construction accounts. Normally those accounts spend out at about 30 to 35 percent. Since these agencies have not prepared any designs or even initiated any A and E work, I suspect that the spend out would be slower than 30 to 35 percent.

A good comparison would be the jobs bill funds that were appropriated in February 1983. The Bureau of Indian Affairs still have not spent all of those construction funds and I would estimate that the first year spend out was slightly above 10 percent.

A similar argument can be made for the training funds for additional enforcement personnel. I assume that agencies will not rush into further training programs without proper plans. Therefore, it is also unlikely that those funds will outlay at the 90-percent rate that CBO has preliminarily indicated.

I do not want to be unduly critical of the work the Congressional Budget Office does. It is extremely difficult to score an authorization bill and the corresponding appropriations language late in a congressional session when there are hundreds of other amendments that also need to be scored. However, I do feel that this is a different set of circumstances which requires a different set of assumptions.

Therefore, I would ask that before the Congressional Budget Office finalizes its scoring of this bill, it inquires of the affected agencies what they feel the proper scoring should be.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment.

The amendment (No. 3204) was agreed to.

Mr. JOHNSTON. I move to reconsider the vote by which the amendment was agreed to.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3205

AMENDMENT NO. 3206

(Purpose: To express the sense of the Congress that the President should propose new recommendations for amending the Foreign Assistance Act of 1961 or otherwise modifying the activities authorized under the Act)

AMENDMENT NO. 3207

(Purpose: To amend the District of Columbia Code to broaden the composition of the District of Columbia Commission on Mental Health)

AMENDMENT NO. 3208

AMENDMENT NO. 3209

AMENDMENT NO. 3210

(Purpose: To delay rulemaking for OSM until March 31, 1987)

Mr. JOHNSTON. Mr. President, I have one final quick package of amendments which, with the consent of the Senate, I shall send up and ask to have considered en bloc.

These amendments have been meticulously cleared: One by Mr. HECHT and Mr. METZENBAUM involving geothermal leasing; one by Senator KASSEBAUM and Mr. LUGAR, sense of the Senate stating that the President should undertake a comprehensive review of the activities authorized by the Foreign Assistance Act of 1961; one by Senator INOUYE relative to the composition of the District of Columbia Mental Health Commission to provide greater flexibility in its administration; one by Senator PRYOR relative to the Environmental Protection Agency and a particular plant he has in the State of Arkansas; one omnibus amendment which provides a New River Gorge administrative site, a memorial to women that have served in the Armed Forces, a bill to allow ranchers to perfect patents on desert lands, and a memorial to black American veterans of the Revolutionary War.

Mr. President, there is one final amendment that should be considered part of that. That is on behalf of Senator McCLURE that involves proposed rulemaking for the Office of Surface Mining and Reclamation. That was in the stack last night and has now been fully cleared.

Mr. President, I send these amendments to the desk and ask for their immediate consideration. I ask unanimous consent that they be considered en bloc.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered. The clerk will state the amendments en bloc.

The assistant legislative clerk read as follows:

The Senator from Louisiana [Mr. JOHNSTON], for himself, Mr. HECHT, Mr. METZENBAUM, Mr. INOUYE, Mr. PRYOR, Mr. McCLURE, Mr. PELL, Mr. ABDNOR, Mr. BYRD, Mr. ROCKEFELLER, Mr. GARN, Mr. KERRY, Mr. MURKOWSKI, Mrs. KASSEBAUM, and others, proposes amendments numbered 3205, 3206, 3207, 3208, 3209, and 3210.

The bill is amended by adding at the appropriate place two new sections as follows:

"SEC. —.

The primary term of any geothermal lease in effect as of July 27, 1984, issued pursuant to the Geothermal Act of 1970 (Public Law 91-581, 84 Stat. 1566, 30 U.S.C. 1001-1025) is hereby extended to December 31, 1988, if the Secretary of the Interior finds that—

(a) a bona fide sale of the geothermal resource, from a well capable of production, for delivery to or utilization by a facility or facilities, has not been completed (1) due to administrative delays by government entities, beyond the control of the lessee, or (2) such sale would be uneconomic;

(b) substantial investment in the development of or for the benefit of the lease has been made; and

(c) the lease would otherwise expire prior to December 31, 1988.

SEC. —. PROTECTION FOR UNITS OF THE NATIONAL PARK SYSTEM

(a) The Secretary of the Interior (hereinafter in this section referred to as the "Secretary") shall publish for public comment in the Federal Register within 120 days after the date of enactment of this section a proposed list of significant thermal features within the following units of the National Park System:

Mount Rainier National Park;

Lassen Volcanic National Park;

Yellowstone National Park;
Bering Land Bridge National Preserve;
Gates of the Arctic National Park and Preserve;
Yukon-Charley Rivers National Preserve;
Katmai National Park;
Aniakchak National Monument and Preserve;
Wrangell-St. Elias National Park and Preserve;
Glacier Bay National Park and Preserve;
Denali National Park and Preserve;
Lake Clark National Park and Preserve;
Hot Springs National Park;
Sequoia National Park;
Hawaii Volcanoes National Park;
Lake Mead National Recreation Area;
Big Bend National Park;
Olympic National Park;
Grand Teton National Park;
John D. Rockefeller, Jr. Memorial Parkway;
Haleakala National Park; and
Crater Lake National Park.

The Secretary shall include with such list the basis for his determination with respect to each thermal feature on the list. Based on public comment on such list, the Secretary is authorized to make additions to or deletions from the list. Not later than the 60th day from the date on which the proposed list was published in the Federal Register, the Secretary shall transmit the list to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives together with copies of all public comments which he has received and indicating any additions to or deletions from the list with a statement of the reasons therefor and the basis for inclusion of each thermal feature on the list. The Secretary shall consider the following criteria in determining the significance of thermal features:

(1) size, extent, and uniqueness;

(2) scientific and geologic significance;

(3) the extent to which such features remain in a natural, undisturbed condition; and

(4) significance of thermal features to the authorized purposes for which the National Park System unit was created.

The Secretary shall not issue any geothermal lease pursuant to the Geothermal Steam Act of 1970 (Pub. L. 91-581, 84 Stat. 1566), as amended, until such time as the Secretary has transmitted the list to the Committees of Congress as provided in this section.

(b) The Secretary shall maintain a monitoring program for those significant thermal features listed pursuant to subsection (a) of this section.

(c) Upon receipt of an application for a geothermal lease the Secretary shall determine on the basis of scientific evidence of exploration, development, or utilization of the lands subject to the geothermal lease application is reasonably likely to result in a significant adverse effect on a significant thermal feature listed pursuant to subsection (a) of this section. Such determination shall be subject to notice and public comment. If the Secretary determines on the basis of scientific evidence that the exploration, development, or utilization of the land subject to the geothermal lease application is reasonably likely to result in a significant adverse effect on a significant thermal feature listed pursuant to subsection (a) of this section, the Secretary shall not issue such geothermal lease. In addition, the Secretary shall withdraw from leasing under the Geothermal Steam Act of 1970, as amended, those lands, or portion thereof, subject to the application for geothermal lease, the exploration, development, or utilization of which is reasonably likely to result, based on the Secretary's determination, in a significant adverse effect on a significant thermal feature listed pursuant to subsection (a) of this section.

(d) With respect to all geothermal leases issued after the date of enactment of this section the Secretary shall include stipulations in lease necessary to protect significant thermal features listed pursuant to subsection (a) of this section where a determination is made based on scientific evidence that the exploration, development, or utilization of the funds subject to the lease is reasonably likely to adversely affect such significant thermal features. Such stipulations shall include, but are not limited to:

(1) requiring the lessee to reinject geothermal fluids into the rock formations from which they originate;

(2) requiring the lessee to report annually to the Secretary on its activities;

(3) requiring the lessee to continuously monitor geothermal production and injection wells; and

(4) requiring the lessee to suspend activity, temporarily or permanently, on the lease if the Secretary determines that ongoing exploration, development, or utilization activities are having a significant adverse effect on significant thermal features listed pursuant to subsection (a) of this section until such time as the significant adverse effect is eliminated.

(e) The Secretary of Agriculture shall consider the effects of significant thermal features of those units of the National Park System identified in susbsection (a) of this section in determining whether to consent to leasing under the Geothermal Steam Act of 1970, as amended, on national forest or other lands administered by the Department of Agriculture available for leasing under the Geothermal Steam Act of 1970, as amended, including public, withdrawn, and acquired lands.

(f) Nothing contained in this section shall affect the ban on leasing under the Geothermal Steam Act of 1970, as amended, with respect to the Island Park Known Geothermal Resources Area, provided for in Public Law 98-473 (98 Stat. 1837) and Public Law 99-190 (99 Stat. 1267).

(g) Except as provided herein, nothing contained in this action shall affect or modify the authorities or responsibilities of the Secretary under the Geothermal Steam Act of 1970, as amended, to any other provision of law.

(h) The provisions of this section shall remain in effect until Congress determines otherwise.

● Mr. METZENBAUM. Mr. President, this amendment contains a park protection section, which I introduced to provide enhanced protection for the geothermal features of our national parks.

There are 22 national parks and monuments with significant geothermal features. They contribute to some unique aspects of the parks:

The geysers of Yellowstone; the deep blue color of Crater Lake; the hot springs and geysers of Lassen National Park.

While commercial leasing and development takes place outside of the parks, the geothermal reserves are not well researched or understood. We cannot be certain that development outside the parks won't permanently alter or damage features within them.

The U.S. Geological Survey has produced some evidence which suggests that this could happen. If so, it could cause irreparable damage to some of the most unique features of our parks.

Yet , right now, there is leasing and development planned or under way near the borders of some of these parks. Development near other parks is sure to follow.

Unfortunately, the current leasing law does not provide the protections which are needed.

This amendment will add significant protection for these resources.

It requires the Secretary of the Interior to identify and list significant geothermal features in 22 parks, and establish a program to monitor the impacts of any lease development near them.

It also empowers the Secretary to administer the leases to protect the parks by putting stipulations in leases where development is likely to affect the parks, and to withdraw lands from leasing if development has significant adverse effects on the geothermal features of the parks.

Without these provisions we may lose some of the features which make our parks unique throughout the world.

Mr. President, this issue was first promoted by the late Senator Jackson, and I am pleased that we are carrying through on his initiative. It enables us to protect some of the beautiful features of our parks for the public and future generations.

Mr. President, I thank Senators McCLURE and HECHT for their cooperation on this issue.●

● Mr. HECHT. Mr. President, the amendment allows for a 2-year extension of geothermal leases that would otherwise expire at the end of this year. This amendment is necessary because the pressures of the last few weeks of this Congress did not allow the Committee on Energy and Natural Resources to bring to markup S. 1322, a bill I introduced to set up a system to allow diligent geothermal developers to have their geothermal leases extended for up to 15 years. I am gratified that a bipartisan group of 15 Senators agreed to cosponsor that legislation.

This amendment also includes a landmark compromise on protecting significant geothermal features of the National Park System.

I would like to congratulate all parties on their hard work on this issue. This amendment is not perfect, but it is fair, and it represents a compromise that we all can live with. It will protect the significant geothermal features of our Nation's national parks,

and will provide industry with the certainty necessary to make investments for America's energy future.

It will also, Mr. President, pave the way for the Energy Committee to rapidly handle comprehensive lease extension legislation in the next Congress. The park protection issue, which has been the main reason the Energy Committee has had such a difficult time with lease extension legislation, can be largely resolved if the Senate accepts this second degree amendment, and then follows through by adopting the first degree amendment.

Unless this amendment succeeds, Mr. President, companies that have, in several instances, spent millions of dollars in developing their leases, but that have been frustrated by administrative delays, or reluctant utilities, or a temporary energy glut in the local utility service area, will suddenly lose their leases, will lose their investments, will lose their chance to contribute to the Nation's energy economy.

The most regrettable thing about this situation is that these leases belong to the very same companies that were pioneers in the geothermal field. These are the companies that assumed the greatest economic risks, that struggled to develop a technology that was new and different and terribly expensive. These are the companies that had to develop new engineering techniques, and have expanded the wealth of human knowledge in geology and related sciences, as they worked to create this clean new energy technology for America.

If the Senate fails to adopt this amendment, that failure will be a severe body blow to the Nation's geothermal industry—an industry whose birthplace was the State of California, and is only now gradually blossoming as a valuable source of energy in other parts of the country.

The issue of geothermal lease extension is a difficult one, but we have made progress this year, and I believe the Energy Committee will be able to report authorizing legislation on this issue in the next Congress.

Mr. President, this amendment deserves the support of every Member in this body who is concerned about fostering alternative and renewable forms of energy.

This amendment deserves the support of every Senator who is concerned about the economic or national security aspects of energy independence.

This amendment deserves the support of every Senator who wishes to encourage the development of new technology, and who wishes to promote the sort of high-risk ventures that have allowed the American economic system to be the wonder of the world.

This amendment deserves the support of every Senator who is interested in encouraging a form of energy that generates little or no pollution.

And finally, Mr. President, this amendment deserves the support of every Member of this body who feels electric utility customers are best protected from rate shock by gradually adding electric production capacity in fairly small increments, rather than by adding electric generating capacity in large, expensive chunks.

The bottom line is this: we have made progress, the outlook for next year is hopeful. I would request that my colleagues leave the door open for a comprehensive solution to this issue, by supporting this amendment.●

AMENDMENT NO. 3206

At the appropriate place in the joint resolution, insert the following new section:

SEC. .(a) The Congress finds that the activities conducted under the authorities of the Foreign Assistance Act of 1961 have contributed greatly to the alleviation of human suffering and the promotion of economic development in the recipient countries. The Congress finds further that changing circumstances in the developing countries and changing availability of resources from the United States require that a comprehensive review of the activities under the Act be undertaken.

(b) It is, therefore, the sense of the Congress that the President should undertake a comprehensive review of the activities authorized by the Foreign Assistance Act of 1961 and should send to the Senate Foreign Relations Committee and the House Foreign Affairs Committe by February 1, 1987, his recommendations for amending the Act or otherwise modifying those activities.

AMENDMENT NO. 3207

Insert at the appropriate place:

SEC. . MEMBERSHIP OF HEALTH CARE PROFESSIONALS ON COMMISSION.

(a) Section 502(a) of title 21 of the District of Columbia Code is amended by striking out the last sentence and inserting in lieu thereof "Eight of the members of the Commission shall be health care professionals who are psychiatrists, or doctoral level psychologists, practicing in the District of Columbia who have had not less than five years' experience in the treatment of mental illnesses.".

SERVICE OF HEALTH CARE PROFESSIONALS

(b) Section 502(c) of title 21 of the District of Columbia Code is amended to read as follows:

"(c) Members of the Commission who are health care professionals shall serve on a part-time basis and shall be rotated by assignment of the Chief Judge of the court, so that at any one time the Commission shall consist of the chairman and two members who are health care professionals. Members of the Commission who are health care professionals may practice their profession during their tenure of office, but may not participate in the disposition of a case in which they have rendered professional service or advice.".

TRANSITION PROVISIONS

(c) The members of the District of Columbia Commission on Mental Health on the date of the enactment of this Act shall serve the unexpired portions of their terms as members of such commission.

EFFECTIVE DATE

(d) The provisions of this Act shall take effect on the date of enactment.

● Mr. INOUYE. Mr. President, the amendment which I am introducing today would amend the composition of the District of Columbia Mental Health Commission to provide greater administrative flexibility. My amendment would ensure that doctoral level psychologists will be eligible for appointment to the commission. This provision is consistent with the policy recommendations of the American Bar Association in its Criminal Justice Mental Health Standards and the entire Federal Criminal Code.

I am pleased that this recommendation was proposed by Mr. FAUNTROY in the U.S. House of Representatives in H.R. 2855.●

AMENDMENT NO. 3208

The Administrator of the Environmental Protection Agency shall enter into a cooperative enforcement agreement under section 28 and related sections of the Toxic Substances Control Act with the State of Arkansas. Such agreement shall include provisions providing for the presence of a state inspector on site during hours of operation to insure compliance with all applicable PCB regulations, including permit conditions, at the Ensco Incinerator in El Dorado, Arkansas.

AMENDMENT NO. 3209

At the appropriate place in H. Res. 738, insert the following new section:

SEC. .(a) Section 1102(a) of the National Parks and Recreation Act of 1978 (Public Law 95-625) is amended by inserting the following after the second sentence: "In addition, the Secretary may acquire by any of the foregoing methods not to exceed ten acres outside the boundaries of the national river for an administrative headquarters site, and funds appropriated for land acquisition shall be available for the acquisition of the administrative headquarters site.".

(b) Section 1112 of Public Law 95-625 is amended by striking "$500,000" and inserting "$3,000,000".

(c) the Congress finds that—

(1) certain developed and productive desert land entries in Idaho, identified in subsection (d) of this section, made pursuant to the Act entitled "An Act to provide for the sale of desert lands in certain States and Territories", approved March 3, 1877 (43 U.S.C. 321, et seq.), commonly known and hereinafter referred to as the "Desert Land Act", have been cancelled by the Secretary of the Interior pursuant to holding limitation regulation promulgated pursuant to section 7 of the Act (43 U.S.C. 329);

(2) such regulations were retroactively applied to such desert land entries several years after the entries were allowed and more than two years after final development, proof and final payment for such entries were made, without giving the entrymen any opportunity to comply with the new interpretation of such regulations;

(3) cancellation of such desert land entires was harsh and unfair, and resulted in forfeiture to the Government of the developed entries and the monies paid for the land;

(4) such entrymen have fulfilled the requirements of the Desert Land Act in all respects other than such holding limitation regulations; and

(5) such entrymen, or their heirs or devisees, should have the entries reinstated and qualify for issuance of patents to carry out the objectives of the Desert Land Act.

(d) The names of the entrymen, and the serial numbers of the desert land entries generally known as the "Sailor Creek Project", to which this Act applies, are as follows:

Bureau of Land Management

Entryman	*Serial Number*
G. Patrick Morris	Idaho 013820
John E. Roth	Idaho 013905
Elise L. Neeley	Idaho 013906
Lyle D. Roth	Idaho 013907
Vera M. Noble (Now Baltzor	Idaho 011426
Charlene S. Baltzor	Idaho 014128
George R. Baltzor	Idaho 014129
John E. Morris (deceased)	Idaho 014130
Juanita M. Morris	Idaho 014249
Nellie Mae Morris (decreased)	Idaho 014250
Milo Axelsen	Idaho 014251
Peggy Axelsen	Idaho 014252

(e)(1) The desert land entities identified in subsection (d) of this Act are hereby reinstated. The entrymen, or the heirs or devisees of any deceased entryman, may—

(A) rescind any agreement which is prohibited by the Secretary of the Interior pursuant to regulations under section 7 of the Act (43 U.S.C. 329) within six months after the date of enactment of this Act; and

(B) resubmit final proof of reclamation and cultivation of the land in accordance with the provisions of section 7 of the Act (43 U.S.C. 329) before December 31, 1988.

(2) The Secretary of the Interior shall issue patents to the entrymen named in subsection (d), or their heirs or devisees upon compliance with the provisions of subsection (e)(1) and the submission of satisfactory final proof.

(f) Notwithstanding any other provision of law, the property right prior to issuance of a patent to the land of any entryman identified in subsection (d) of this section, or the heirs or devisees of any such entryman whose entry is reinstated in accordance with subsection (c) of this section, shall be a personal right, inheritable but not assignable. Any such entry may be mortgaged in the manner permitted by regulations promulgated by the Secretary of the Interior for the purpose of securing repayment of monies borrowed for development of the entry or for farm operating or crop production expenses.

(g)(1) The woman in military service for America Memorial Foundation is authorized to establish a memorial on Federal land in the District of Columbia and its environs to honor women who have served in the Armed Forces of the United States. Such memorial shall be established in accordance with the provisions of H.R. 4378, as approved by the Senate on September 10, 1986 (S. Rpt. 99-421).

(2) The organization or organizations approved by the Secretary shall establish the memorial with non-Federal funds.

(h)(1) The Black Revolutionary War Patriots Foundation is authorized to establish a memorial on Federal land in the District of Columbia and its environs to honor the estimated five thousand courageous slaves and free black persons who served as soldiers and sailors or provided civilian assistance during the American Revolution and to honor the countless black men, women, and children who ran away from slavery or filed petitions with courts and legislatures seeking their freedom. Such memorial shall be established in accordance with the provisions of H.R. 4378, as approved by the House of Representatives on September 29, 1986.

(2) The Black Revolutionary War Patriots Foundation shall establish the memorial with non-Federal funds.

Mr. ROCKEFELLER. Mr. President, on behalf of myself and the minority leader, Senator BYRD, I am pleased to offer an amendment to House Joint Resolution 738, the continuing appropriations resolution. I understand this amendment has been cleared on both sides.

This amendment is identical to S. 2384, which I introduced with Senator BYRD, that cleared the Senate Energy and Natural Resources Committee by a unanimous vote and was reported on September 19. The Park Service also supports S. 2384.

The bill authorizes the acquisition of land for construction of the New River's administrative headquarters, as well as a visitors' center and maintenance facility.

Over a quarter of a million visitors come to the New River each year. For white water rafters, the New River is one of the best rafting rivers in this country. For anglers, the New River has long been a favorite fishing spot. For the local community, the river is an important source of jobs and economic activity in the southern part of my State that has severe economic problems.

Given the sheer volume of New River visitors, it's important that the river be well run and adequately maintained—and it needs the facilities to do that.

Presently, the administrative headquarters for the New River are temporarily located in three rented buildings in Oak Hill. To improve park operations, the National Park Service selected this 10 acre site in the historic coal town of Glen Jean. The Glen Jean headquarters will consolidate and vastly improve the Park Service's New River operation. It will ensure that information and services for park visitors will be located in a centrally located, accessible place. It will also be a great boost to the local economy.

Mr. President, I urge Congress to adopt this measure which makes it clear that funds appropriated for land acquisition within the New River may be used to acquire property for the Glen Jean headquarters site.

NEW RIVER GORGE NATIONAL RIVER

Mr. BYRD. Mr. President, Senator ROCKEFELLER and I are jointly sponsoring one of the en-bloc amendments. It is an amendment to authorize the construction of a park headquarters, maintenance facility and a small visitors' station just outside the authorized boundary of the New River Gorge National River.

Our amendment is identical to S. 2384, a bill which Senator ROCKEFELLER introduced on April 29, 1986, for both of us. This bill was reported favorably by the Senate Energy and Natural Resources Committee this past September 11.

Presently, the National Park Service administers operations for the 50-mile long park from temporary facilities located in three rental buildings in Oak Hill, WV. In February of this year, after studying at least 12 candidate locations, the Service selected a 10-acre site in Glen Jean on which to construct a new administrative site.

While Glen Jean is ideally located near the midpoint of the National River and is just off a major highway that parallels the river, the selected site is outside the park boundaries authorized by Public Law 95-625. The amendment which we are sponsoring would permit the Park Service to construct this necessary new facility in their preferred location.

There is no budgetary impact resulting from this authorization bill itself. This bill, however, should permit the Park Service to save money in future appropriations bills because the consolidated administrative facility proposed for Glen Jean has inherent efficiencies not present in many of the other candidate sites or in the three temporary buildings now in use.

This facility is needed now for effective administration of the park which is visited by 260,000 people each year. And, this need is magnified tremendously when one considers that visitation is expected to more than double in the next few years when Interstate Route 64 is completed through the southern portion of the park.

In conclusion, Mr. President, I hope that my colleagues will support our amendment. It will not increase the bill totals, it is noncontroversial, and it is needed now.

MEMORIAL TO HONOR BLACK REVOLUTIONARY WAR PATRIOTS AND WOMEN IN ARMED FORCES

● Mr. METZENBAUM. Mr. President, I rise in support of this amendment to establish a memorial on Federal land in the District of Columbia.

Similar measure has already passed the House and legislation introduced in the Senate by my distinguished collegue from Tennessee, Senator GORE.

Reported by the Committee on Energy and Natural Resources. Senate bill has at least 47 cosponsors.

This memorial would be established in honor of the estimated 5,000 courageous slaves and free black persons who served as soldiers and sailors or provided civilian assistance during the American Revolution and to honor the countless black men, women, and children who ran away from slavery or

filed petitions with courts and legislatures seeking their freedom.

Establishment of this memorial is long overdue.

For many years, little or no recognition has been given to the 5,000 black slaves and free persons who served side by side with whites in all major battles of the Revolutionary War.

The black soldiers were wounded, disabled, and captured, just as were the white patriots.

Senate Joint Resolution 143 authorizes the Black Revolutionary War Patriots Foundation to raise private funds for the establishment of the memorial—no Federal funds will be expended. The foundation is also authorized to prepare the design and plans for the memorial, subject to the approval of the Secretary of Interior, the Commission of Fine Arts, and the National Capital Planning Commission. Upon completion, the memorial will be maintained by the Park Service.

I commend my colleague from Tennessee for introducing this bill in the Senate.

I am very hopeful that we can give final congressional approval in this session of Congress to the establishment of an important and long overdue memorial.

The second memorial to be established by this amendment is in honor of women who have served in or with the Armed Forces of the United States, as authorized by House Joint Resolution 36 introduced in the House by Representative MARY ROSE OAKAR and passed by the full House; and Senate Joint Resolution 156, introduced in the Senate by Senator MURKOWSKI and reported by the Committee on Energy and Natural Resources.

This amendment authorizes the Women in Military Service for America Memorial Foundation to establish a memorial on Federal land in the District of Columbia or its environs to honor women who have served in or with the Armed Forces of the United States.

I believe that the time has come for this country to give proper recognition and honor to the hundreds of thousands of women who have served their country with the Armed Forces.

The women of this Nation have for many years contributed to our national defense.

Beginning with the Revolutionary War and continuing to the present, women have served with unrivaled dedication and courage during all wars in which our Nation has been engaged.

Women currently make up about 10 percent of the total military force, they graduate from the service academies, and they serve in many capacities. Today there are well over 1 million women veterans.

This memorial will also be established with private funds, and will subsequently be managed by the Park Service.

I am pleased that this Congress will finally take this long-awaited step giving due recognition and honor to the important contributions made by the women of this country to the Armed Forces in the defense of this Nation.●

AMENDMENT NO. 3210

Notwithstanding any legislative or judicial requirement, the Office of Surface Mining Reclamation and Enforcement may delay the finalization of the proposed rulemaking amending Parts 773 and 778 of the Code of Federal Regulations as published in the FEDERAL REGISTER on April 5, 1985 (50 FR13724) until March 31, 1987.

● Mr. WARNER. Mr. President, the amendment I am offering permits OSM to postpone a proposed rulemaking at the Office of Surface Mining and Reclamation and Enforcement [OSMRE] until March 31, 1987.

The proposed rule is the so-called Ownership and Control Rule which redefines the terms "ownership" and "control" as they relate to a coal company.

A primary component of implementing this rule is contingent upon the acquisition of the applicant-violator system [AVS]. It is not the intent of this Senator or the Interior Subcommittee to delay the AVS system but I feel a delay is necessary to determine what the costs of that expanded system are. As my colleagues know, computer systems like these are very costly and this amendment would allow OSM to incorporate this estimate in their fiscal year 1988 budget request before the proposed rule is finalized.

I know of no objection to the amendment and I urge its adoption.●

● Mr. METZENBAUM. Mr. President, I want to point out that this amendment is simply a permissive amendment. It allows OSM to take up to March 31, 1987, to finalize the proposed rulemaking, if the director feels he needs that much time to do a complete and thorough job.

However, I want to strees that this amendment does not require that the final rule be delayed until March 31. This amendment just makes a little more time available to OSM if the Director feels he needs all or some of it to do a more thorough job. Nothing in this amendment is meant to suggest that the Senate believes or does not believe additional time is necessary.●

The PRESIDING OFFICER. The question is on agreeing to the amendments en bloc.

The amendments (Nos. 3205, 3206, 3207, 3208, 3209 and 3210) were agreed to en bloc.

Mr. DOLE. I move to reconsider the vote by which the amendments were agreed to en bloc.

I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AGRICULTURAL EXTENSION SERVICE

Mr. PRESSLER. Mr. President, as the Senate considers the 1987 continuing resolution, I would like to express my strong support for agricultural research extension programs and for the funds provided for these programs. I would also like to salute the spirit of volunteerism found in these programs and the multitude of men and women who share their time, talent, and financial resources to further the program's causes.

I am pleased to see that the Senate Appropriations Committee has maintained funding for the extension program at previous levels. Last winter, the administration proposed drastic funding reductions for extension programs. This proposal was very untimely. With the current depressed rural economy, the extension service provides valuable services to help farmers and ranchers improve their management, develop new crops, or make other changes to help make a profit.

The funds provided for these agricultural research and extension programs will be Federal dollars well spent. I firmly believe that if we are to continue to increase agricultural productivity, great strides in agricultural research and a continued effective extension service is essential. This is especially important in these days of slowing rates of increases in farm productivity.

Having grown up on a small family farm, I know from personal experience that the Cooperative Extension Service has been very effective in increasing farm productivity. The Cooperative Extension Service has been an excellent example of cooperation among Federal, State, and local governments for more than 100 years.

4-H is the youth education program of the Cooperative Extension Service, an informal education program conducted by the U.S. Department of Agriculture and county governments. The program combines the work of extension staffs and volunteer leaders. The mission of the Cooperative Extension Service in conducting 4-H programs is to assist youth in acquiring knowledge, developing life skills, and forming attitudes that will enable them to become self-directing, productive, and contributing members of society.

I have personally had the opportunity to be involved with 4-H and other vocational education groups since I was a young boy. As a member of the local 4-H club, the Humboldt Hustlers, for 9 years, I enjoyed many great experiences. I was fortunate enough to attend two 4-H Club congresses in Chicago, the 1961 World Agricultural Fair in Cairo, Egypt, and I had the honor of giving the "National Report

to the President" to the late John F. Kennedy in the White House in March 1963.

While not all young people are as fortunate as I was in my 4-H involvement, these youth organizations are still extremely important in the lives of a great number of young people. In 1970, 4-H membership was 3 million, and presently 4-H has nearly 4.4 million members. 4-H serves far more than rural America. Of the over 4 million participants, 46.3 percent live in cities of populations over 10,000 and only 15.8 percent actually live on farms.

Many of the benefits young people receive from 4-H and other programs are the result of the dedication of volunteers. Volunteerism, integral to the American way of life, has been the key to success for all 4-H programs. Last year, over 600,000 4-H volunteer leaders worked directly and indirectly with youth, including 130,000 4-H junior and teen leaders. Passing along the knowledge, skills, and enthusiasm they have acquired through their own 4-H experiences, these young leaders serve as an inspiration to others.

Nine national and regional leader forums throughout the year improve the expertise of volunteers in specific subject areas and serve as a catalyst for innovative program development.

4-H volunteers, supported by the equivalent of 5,500 staff members, donate an average 220 hours per year in preparing for and teaching youth—thus for each hour a salaried staff member spends in 4-H, a volunteer spends 12 hours in 4-H. A study has shown that the average 4-H volunteer drives 300 to 400 miles for 4-H in a personally owned vehicle and spends $40 to $60 on teaching material. The estimated value of the total time volunteers devote to 4-H, plus their out-of-pocket expenses, is over $1 billion annually. This means the 4-H program is very dependent on the services of dedicated volunteers and thus is a very cost-effective program.

Federal expenditures on agricultural research and extension activities are dollars well spent. America gets a return of about 10 times the Federal outlay in the value of volunteer services and contributions that are stimulated by this investment. This does not take into account the future increases in productivity of agriculture and other areas that this research and training will create. This is especially important today because of the great importance of agricultural exports and the reduced rate of increase in farm productivity.

Mr. President, I commend the Cooperative Extension Service in its quest for excellence and salute the many volunteers who have made the 4-H program a tremendous success.

Mr. BURDICK. Mr. President, I want to call my colleagues' attention to certain aspects of the Agriculture, Rural Development, and Related Agencies Appropriations Act as it is contained in this resolution.

The President recommended severe cuts or total elimination of many important programs. The committee has rejected those cuts. One of the most important is for the Extension Service which the President proposed be cut by 60 percent. We restored the funding to $328 million—roughly the same as for this year.

With the work that the Extension Service does in disseminating information to the public, it has touched virtually every family in my State and surely around the country. It's one of the most effective, efficient education tools we have.

We have also restored funding for the Rural Electrification Administration. REA has been instrumental in the development of rural America. It continues to be crucial toward that development and maintenance of a high quality of life for our rural citizens. President Reagan proposed phasing out REA over the next 5 years, raise the interest rate, and assess user fees. Happily, we rejected all of these proposals.

I also want to direct your attention to the conservation programs—many of which the President proposed for complete elimination. He says that the new conservation reserve will take care of all our erosion problems. Well, that simply is not the case. We need to maintain conservation practices on the land that continues to be farmed and ranched. While much of this land is not now eligible for entrance into the conservation reserve, if we don't conserve it, the erosion will be so great that it will be eligible for entrance. This is a result that is not desired or planned for under the Conservation Reserve Program. Therefore, we desperately need these other conservation programs, and I am proud to say that we have restored them.

Mr. President, there is an aspect in this whole budget process that concerns me. It has to do with the sale of loan assets by Government agencies in order to produce savings. The President has proposed it in his budget, and Congress is on the verge of adopting it is some cases.

The Budget Reconciliation Act includes a provision requiring the Secretary of Agriculture to sell some of the notes—or assets—held in the Farmers Home Administration rural development insurance fund. The purpose of this sale will be to realize net proceeds to the Federal Government.

The pending Agriculture appropriations measure includes report language that I offered directing the administration to sell these assets only to purchasers fully capable and willing to service these loans. Adequate servicing of these loans includes the ability to extend additional credit.

About 12,000 loans have been made to rural communities through the rural development insurance fund. Many of these communities are small with few if any paid employees. As a result, these communities look to the Farmers Home Administration for technical assistance and to be a reliable and sympathetic lender interested in resolving any credit problems that may arise.

The Appropriations Committee shares my concern and the concern of many rural communities that the Farmers Home Administration assets may simply be sold—without regard to the needs of borrowers. Direction from Congress is needed to ensure that rural communities do not find themselves at the mercy of entities which purchased the asset because they were the highest bidder, and don't plan or cannot service the loan.

The report language accompanying this legislation directs the administration to require the purchaser of these assets to assume responsibilities beyond just making a profitable investment. Those responsibilities will include the obligation to service these loans—as Farmers Home currently does—and to extend additional credit as may be reasonably required.

The ability to extend additional credit is an essential point because most of the loans the Farmers Home Administration currently makes to finance water and waste disposal systems, for example, are subsequent loans. During 1985, the agency made a total of 783 water and waste disposal loans. Of that number, 440 loans were subsequent loans made to communities that already had received an initial loan from Farmers Home.

In theory, the rural communities whose notes are sold will be able to return to the Farmers Home Administration for additional credit or other assistance. However, in practice, once a community's loan is sold by the agency, the agency will be far less concerned about the financial affairs of the community. Further, if the community requires additional credit, its application for credit from the Farmers Home Administration will be added to the backlog that currently exists and be subject to the availability of limited funds.

Mr. President, many of my colleagues and I have grave concerns about the merits of selling these loan assets. To some extent, however, these concerns can be addressed by providing the Farmers Home Administration borrowers adequate safeguards with regard to loan servicing while assuring them of a reliable alternative source of credit.

The report language accompanying this bill is designed to achieve those objectives.

Mr. President, I appreciate my colleagues' consideration of these matters, and I hope they will support the agricultural section of this legislation.

Mr. INOUYE. Mr. President, I wish to submit for the chairman's consideration proposed language to be made part of the statement of the managers in the conference committee report on the continuing resolution bill, House Joint Resolution 738.

In an effort to provide maximum flexibility to the States while still retaining our strong commitment to the weatherization program, a State shall be permitted to allocate up to 10 percent of its share of the $110,000,000 provided for the weatherization program for administrative costs of the State Energy Conservation Program, the Energy Extension Service or the Institutional Conservation Program, if the following conditions have been met: (1) the weatherization program, when taking into account Exxon funds, is maintained at no less than the FY 1986 level; (2) the State's contribution for the administrative costs of the program to which funds are being diverted is no less than the State's contribution to the program in FY 1986; and (3) the administrative costs of the program to which funds are being diverted does not exceed 10 percent of the total program.

This language has been cleared with Senator McCLURE, chairman, and Senator BYRD, ranking member, of the Subcommittee on Interior of the Senate Appropriations Committee, and Senator RUDMAN. Senators D'AMATO, BUMPERS, and HOLLINGS are cosponsors of this report language.

This language is necessary to ensure that States have the flexibility to use weatherization funds for the administration of other State and local energy conservation programs. This is important to States such as Hawaii that are blessed with ideal weather conditions.

Since the State of Hawaii does not need to use all of its share of these funds for the Weatherization Program, this language allows the flexibility for the use of these funds to administer the other programs that have higher State priority.

Mr. HATFIELD. I understand and I will be most pleased to take this language into the conference of House Joint Resolution 738 and ask that it be included in the statement of the managers. You have my assurance of this.

Mr. MITCHELL. Mr. President, I do not believe it would be productive for the Senate to engage in the undoubtedly extended debate that would be provoked by the introduction of any amendment affecting the Energy Department's High-Level Nuclear Waste Disposal Program.

So I will not offer such an amendment today. I would like to make a brief comment at this time, however, on the funding for high-level nuclear waste disposal which is part of the energy and water development appropriations bill in this continuing resolution.

The fiscal year 1987 energy and water development appropriations bill, H.R. 5162, as passed by the House of Representatives, contains $677.6 million for high-level waste disposal activities, funded through the nuclear waste fund.

That represents a cut of $91.7 million from the level originally requested by the administration.

During debate on H.R. 5162, the House unequivocally rejected an amendment offered by Representative WEAVER which would have entirely deleted funding for site-specific first round activity. The vote was 68 to 351.

That House vote clearly demonstrates opposition to suspending the Department's site-specific activities for the first deep geologic repository. The House vote reflects the fact that the difficult decisions and choices that must be made to deal responsibly with high-level nuclear wastes cannot be continuously put off on one pretext or another.

The fact is that high-level nuclear waste remains a very real problem and its disposal remains a very real Government responsibility. That fact is not reason enough to forge ahead with an unsound program. But neither is it an adequate cause for piecemeal and hasty elimination of individual program elements.

When the Senate Appropriations Committee marked up the bill, it cut the administration's funding request for all Energy Department nuclear waste programs by about half, to a level of $380 million.

The report explaining that action, Senate Report 99-441, says in part that the reduction from the administration's request—

• • • is to be applied against the entire program effort including site-specific activities for the first and second waste repositories and site-specific work at a monitored retrievable storage facility which is neither authorized nor funded.

In other words, it is clearly the intention of the Senate committee that the cuts which must be made should be made across the board, not applied selectively to one or another element of the nuclear waste programs.

I read the committee's report and the statutory language of the law as leaving the Department enough latitude to continue its activities in the coming fiscal year to site and construct the one permanent waste repository authorized by the 1982 Nuclear Waste Policy Act, within the restrictions of an overall funding reduction.

The site-specific activities will, of course, share in the funding cuts required by the continuing resolution. But they are not terminated.

While I have misgivings about the wisdom of reducing the funds available to the Department to site and construct the deep geologic repository authorized by the Nuclear Waste Policy Act, this funding level will leave the Department's program in place during the period between the adjournment of the 99th Congress and the convening of the 100th Congress.

I anticipate a vigorous debate in the coming months and years over the Department's implementation of the Nuclear Waste Policy Act.

I intend to play a role in that debate. I represent a State intensely affected by the Department's program.

In addition, I am deeply concerned that the ultimate decision on locating a permanent high-level nuclear waste repository be made with as much care and foresight as lies within the capability of human beings.

The safest possible permanent disposal of this lethal material must be the one driving priority in this program. We owe that to future generations and we must make our decisions in light of that fact.

Mr. GORTON. I would like to make a request of the Senator from Alaska with respect to the DOD appropriations aspect of the bill. The House bill limits fiscal year 1987 expenditures for uniformed services treatment facilities [USTF's] to $114,000,000, which is $19,400,000 below the Senate number. I hope that the Senate will stay with the Senate number; these facilities are providing valuable services to DOD beneficiaries. I understand, however, that the Senator cannot commit to that at this point in the process.

I would like to request, however, that, to the extent the Senate makes an adjustment in the Senate number, it recognize the innovative and cost-effective flat-rate mechanism negotiated in 1984 by DOD and the Pacific Medical Center [PMC] in Seattle, WA. The House Appropriations Committee cited that agreement with approval in its discussion of the escalation of costs for USTF's. I hope that the conferees will recognize that PMC should not be penalized in any way by the imposition of limitation on funding for USTF's.

Additionally, DOD should be encouraged to work with facilities, particularly PMC, to develop payment mechanisms which will result in even greater savings to DOD. In this regard, I understand that PMC has developed an HMO-style capitation proposal which would result in even greater savings to DOD. Apparently, DOD has been reluctant to give this proposal serious consideration. I hope that the conferees will strongly encourage them to do so.

Mr. STEVENS. I understand the concern of the Senator from Washington. I remember his relentless work to facilitate the transfer of the Seattle Public Health Service Hospital, now PMC, to local control in 1981. He and

Senator Jackson spent many hours working with colleagues and the administration on the hospital's behalf. I understand also his obvious pride in the success of that facility as a local concern.

I believe the conferees would share his concern that PMC not be penalized because of the imposition of a spending limit. More importantly, I believe they would share his desire that DOD engage in serious discussions with the hospital with respect to other innovative payment mechanisms designed to result in a cost savings for DOD.

MARINE INTEGRATED FIRE AND AIR SUPPORT SYSTEM (MIFASS)

Mr. DODD. Mr. President, I would like to engage the distinguished manager, Senator STEVENS in a brief colloquy with regard to the Marine Integrated Fire and Air Support [MIFASS] program.

This program is a Marine Corps R&D item, included with other programs in Program Element 26626M. This line is subject to a $7.737M unallocated cut implemented by the Appropriations Committee. My concern centers on the question of how much of that cut will be allocated to the MIFASS program.

The first set of MIFASS equipment of over 230 pieces of hardware has recently been delivered to the Marine Corps and is ready for operational testing on the field. A forced delay in that testing caused by the lack of funds could seriously disrupt this important program. I seek my friend's and colleague's assistance to assure that adequate funds will be provided to carry through the operational testing of the MIFASS program.

Mr. STEVENS. I have reviewed this matter and, first of all, I want to assure the Senator that the figure we marked up for that R&D line was not established with any prejudice against the continuation of the MIFASS program.

I understand the assurance my friend from Connecticut is seeking and what I can tell him is that we will have a very close look at this issue in conference and will attempt to reach an accommodation that will indeed allow the MIFASS test to be completed.

RURAL REFERRAL CENTERS

Mr. D'AMATO. Through December 31, 1985, New York and Massachusetts operated under a waiver of Medicare's prospective payment system. The two States officially came onto PPS on January 1, 1986. As a result of this late entrance into the system, only 9 months of data are available to indicate the impact of the prospective payment system on hospitals in these States.

According to OMB guidelines, eligibility for Medicare reimbursement at rates applicable for rural referral centers is based on data for a full fiscal year. Clearly, data taken before January 1, 1986, is not relevant to the status of these hospitals as they now function under PPS. My provision would allow eligibility in these two States to be based solely on the 9 months that New York and Massachusetts have been participating in the prospective payment system. This technical adjustment is more equitable for hospitals in these two States.

This provision is budget neutral. It involves a slight shift of Medicare funding. At most, the proposal would affect six rural hospitals.

I bring this technical provision to the Appropriations Committee because I have tried every other vehicle possible. The Health Care Financing Administration was unable to correct the inequity, and, although the provision is in the Senate Finance fraud and abuse bill, I have no guarantee that that legislation will move.

The well-being of six rural hospitals should not be thwarted simply because of legislative roadblocks. These hospitals are not being treated equitably. We have an opportunity to correct this injustice.

APPROPRIATION FOR THE AOE—6 FAST COMBAT SUPPORT SHIP

Mr. SPECTER. Mr. President, the AOE-6 fast combat support ship is a Navy program of vital interest to our national security. During the Senate's consideration of the fiscal year 1987 Defense authorization bill, Senators HEINZ, COHEN, and I engaged in an important colloquy in which Senator COHEN indicated that the Seapower Subcommittee of the Senate Armed Services Committee, of which he is chairman, did not authorize the AOE-6 for purely budgetary reasons. Senator COHEN also indicated that if funding for the AOE-6 could be found in conference, he would gladly agree to authorize the ship.

Mr. President, I ask unanimous consent that this colloquy be printed in the RECORD. I also ask unanimous consent that a Department of Defense information paper and a chart that I have put together illustrating the dangerous shortfall in Navy logistical capabilities be inserted in the RECORD.

[Chart not reproducible for the RECORD.]

The need for new logistics ships, and specifically the AOE-6, for the Navy is desperate in light of the Navy's plans for 15 carrier battle groups, a plan that has been endorsed by the administration and Congress.

Before I yield to the distinguished senior Senator from Pennsylvania, Senator HEINZ, I would just urge my colleague the distinguished chairman of the Defense Subcommittee, Senator STEVENS, to fund this important program at the requested level.

Mr. HEINZ. Mr. President, I would once again thank my distinguished colleague from Pennsylvania, Senator SPECTER, for his leadership on securing funding for the AOE-6 in the fiscal year 1987 budget.

This ship is crucial to the operation of our Navy's carrier battle group and will ensure that the underway replenishment mission may once again be accomplished competently and effectively.

I join Senator SPECTER in calling on Chairman STEVENS to find funding in conference for this vital ship.

Mr. STEVENS. Mr. President, the AOE-6 is an important project for the Navy and I agree with both Senators from Pennsylvania that there is a great need for support ships for our carrier battle groups.

The decision not to appropriate funds for the AOE-6 was not based upon an assessment of need. It was based instead upon the fact that the Senate Armed Services Committee did not provide an authorization for this program in the fiscal year 1987 Defense Authorization Act. While the House Armed Services Committee did authorize this ship for fiscal year 1987, there has been no final result on the authorization from the conference committee.

The budget resolution requires a reduction of more that $25 billion from that portion of the President's budget request which is reviewed by the defense subcommittee. It is simply not possible to fund every program requested.

The House-passed continuing resolution includes $499.7 million for the AOE-6. I would say to my friends from Pennsylvania that if funding permits in the conference on the continuing resolution, I would support funding the AOE program.

Mr. SPECTER. Mr. President, I thank the distinguished Senator from Alaska for his support for the AOE-6 and for his agreement to support this project if funds can be found in conference.

Mr. HEINZ. Mr. President, I would also like to thank Senator STEVENS for his support for this ship. I am hopeful that funds for the AOE-6 will be authorized and appropriated.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the CONGRESSIONAL RECORD, Aug. 9, 1986]

AUTHORIZATION OF THE AOE-6 FAST COMBAT SUPPORT SHIP

Mr. SPECTER. Mr. President, I have decided not to propose an amendment to the fiscal year 1987 defense authorization bill to restore full funding for the AOE-6 fast combat support ship because of an understanding I have reached with Senator COHEN, chairman of the Subcommittee on Sea Power and Force Projection.

Mr. President, the amendment would have restored full funding for the AOE-6 which has been requested by the administration

and fully authorized by the House Armed Services Committee.

This logistics station ship is used to resupply the aircraft carrier battle group with fuel, stores, and ammunition. The need for the AOE is significant. While the importance of combatant ships and submarines is obvious, supply ships are often neglected with a resulting loss of logistical capability. Although we cannot fight a war without underway replenishment—for which the AOE-6 is designed—every few days.

Current station ships cannot meet this need because there are too few and they are too old and slow. The Navy currently has 11 station ships for its 13 carrier battle groups. With plans to expand the number of carrier battle groups to 15, the deficit of station ships will reach 4. In addition, 7 of the 11 station ships presently deployed, the AOR's can only cruise at 20 knots, whereas the carrier group routinely sustains speeds of 26 to 30 knots.

Moreover, the AOE-6 is extremely cost effective. According to the Navy and the Department of Defense, the estimated fiscal year 1987 price of the AOE-1 meeting the Navy's requirements as fully as the AOE-6 does should be $665 million. At $612.7 million, the AOE-6 is a modern station ship at a moderate price.

Mr. HEINZ. Mr. President, I would like to commend the distinguished Senator from Pennsylvania [Senator SPECTER] in his efforts to authorized funding for this important combat support ship. Senator SPECTER has already outlined the crucial role this ship must play with the aircraft carrier battle group and the dangerous situation we will face in the event of war with our naval logistics capabilities. I would urge my colleagues to review this program and support the full $612.7 million authorization for this ship.

Mr. COHEN. Mr. President, the AOE-6 is a worthwhile project and there is a significant need for station ships to support carrier battle groups.

Those of us on the Subcommittee on Sea Power and Force Projection of the Senate Armed Services Committee were faced with the unpleasant tasks of making signficant reductions in the Navy's shipbuilding and conversion account. The committee recommended against authorizing the AOE-6 ship to comply with budget constraints. Our decision resulted from an overall assessment of shipbuilding needs and war-fighting priorities.

I would like to provide an authorization for this important program. If funding permits in conference, then I would certainly support authorization for the AOE.

Mr. SPECTER. Mr. President, I thank the distinguished Senator from Maine for this agreement to support this project in conference if funds can be found.

Mr. HEINZ. Mr. President, I would also like to thank Senator COHEN for his support for the AOE-6. I am hopeful that sufficient funding can be found in conference.

Service/Agency: Navy,
Appropriation Account: SCN,
Budget Activity: BAS.

Subj: AOE cost information.

Question: What was the cost of construction of the AOE-1 class ships in both actual year costs and as adjusted for 87 dollars?

Answer: The original cost of the FY-1961 AOE-1 constructed at the Puget Sound Naval Shipyard was $63,382,984. This does not reflect two main propulsion steam-turbine units previously purchased for the battleship KENTUCKY and furnished as free-assets. Value of these units is not available.

The estimated FY-1987 price of a duplicate AOE-1 with updated electronics and ordnance suites is $570 million. This price however, does not reflect current Navy construction standards in habitability, environmental protection, surpression of airborne noise, performance margins and safety features. Nor does it include the Collective Protection System (CPS) priced in the AOE-6. Upgrading the AOE-1 estimate to reflect these items would raise the estimated price of a duplicate AOE-1 to $665 million.

Mr. SIMON. Senator MCCLURE, as chairman of the Senate Committee on Energy and Natural Resources I am sure you are aware that the *Central Illinois Light Company* v. *Panhandle Eastern Pipe Line Company* case (FERC docket No. RP82-105-000) has been pending before the Commission for more than 6 years.

Mr. MCCLURE. Yes, I am aware that this case has been pending before the Commission for that length of time.

Mr. SIMON. As I am also sure the chairman of the committee is also aware, it is important to Senator DIXON, Representative MADIGAN, Representative MICHEL, and other Illinois House Members as well as Senator DIXON, and myself and the gas consumers of Illinois that the Commission will soon reach a decision in this matter which has already been pending before the Commission far too long.

Mr. MCCLURE. Yes, I agree. It is appropriate for the Commission to review the pending matter, weigh the evidence and reach a conclusion in this case and issue their decision as quickly as possible in full accordance with the Commission's administrative procedures. Panhandle, CILCO, the other parties to the case and the gas consumers of Illinois deserve a decision by the Commission.

Mr. SIMON. I thank the chairman of the committee and would ask that a similar language be included in the statement of the managers on the conference report.

Mr. MCCLURE. I have no problem with the Senator's request and will do everything possible to include it as he has requested.

INJURY PREVENTION RESEARCH PROGRAM

Mr. GORTON. I rise today today to discuss an issue that has the potential of affecting each one of us in this Chamber, either directly or indirectly. The issue is trauma. Every day, hundreds of people across the country are directly affected by trauma. My State is privileged to have a superior trauma unit. In fact, it is Harborview Hospital, together with the Seattle Fire Department, that pioneered the Medic I Program. Emergency medical response teams, such as Medic I, now operate out of fire departments in many of our Nation's largest cities. The units have contributed greatly to the ability of our health care system to save the lives of many injured people.

The development of programs such as Medic I require extensive research in the development stage. The Center for Disease Control administers a grant program in the research of trauma prevention. At this time, many hospitals and medical schools across the country have submitted grant proposals to CDC for research projects in the field of trauma prevention. Such proposals include: The development of new and more effective ways of identifying prehospital factors and responses which are detrimental to injury recovery and the development of new techniques which will prove more effective in the resuscitation of injured patients, the identification of factors which contribute to the long-term disability of patients, and the development of an educational program to rigorously prepare new investigators in the field of injury research.

Research such as this has the potential to reap incredible benefits—benefits that may at some point benefit every person in this country.

The House, in marking up the Department of Transportation appropriation bill included $10 million for the CDC Injury Prevention Research Program, the Senate did not include any funds for this program. I would like to ask that the distinguished chairman keep my concerns and these points in mind when the two bodies meet in conference. I believe the $10 million this program costs, is a relatively small amount when one weighs the effect that it will have on our ability to save lives.

Mr. ANDREWS. I agree with the distinguished Senator from Washington that the CDC Injury Prevention Research Program has much merit. The House funding level of $10 million covers the second year of a 3-year project, which initially began in fiscal year 1986. This funding does compete with a number of other worthwhile projects and programs administered by the National Highway Traffic Administration. This funding level will be an issue for conference, and I will keep the concerns of the distinguished Senator from Washington in mind.

HANFORD RESERVATION

Mr. GORTON. Mr. President, I would like to engage the chairman in a colloquy about two projects that are important to environmental protection at the Hanford Reservation. Both projects are vital parts of the effort to cleanup Hanford's radioactive waste and protect the people of both Washington and Oregon.

The Appropriations Committee has provided $4 million for the construction design of the N reactor's liquid effluent treatment facility [LETF]. The purpose of the LETF is to remove radioactive materials from effluent

streams generated at the reactor. Currently, the N reactor's radioactive liquid discharge is dumped, untreated, in soil columns at a flow rate of 1,000 to 2,000 gallons per minute during reactor operation. Small amounts of radioactive elements from these soil columns seep into the Columbia River.

The LETF would treat the streams so effectively that demineralized water may be recycled and used in the reactor, radioactive liquid discharges to soil columns would be greatly reduced, and the Department of Energy requirements concerning replacement of disposal to the ground would be fulfilled. Due to the low level of funding requested by the administration for the LETF in fiscal year 1987, however, the facility will not be operational until approximately 1991. Because the Appropriations Committee provided no funding for activities that are designed to extend the operation of the N reactor beyond 1995, the Department is now seeking alternatives to the LETF which could be operational at an earlier date. Can the chairman give assurances that he will support a funding increase of at least $2 million for the LETF, or for an alternative facility if feasible, so the N reactor's contaminating radiocative waste can be handled in an environmentally safe manner as expeditiously as possible?

Mr. HATFIELD. I assure the Senator from Washington that I will work with other conferees to secure an adequate funding level for a treatment facility for the N reactor. I agree with the Senator that it is important to effectively and expeditiously treat the N reactor's waste. It is imperative that we ensure that the Columbia River and the citizens of Washington and Oregon are protected.

Mr. GORTON. Another important element of Hanford's cleanup is the Nuclear Waste Treatment Program [NWTP]. The NWTP is aimed at developing and testing technologies for immobilizing nuclear wastes, and has produced a liquid-fed ceramic melter that recently began waste glassification testing. The NWTP will answer vital questions about the vitrification of nuclear waste, and the ceramic melter is a crucial element in the development of Hanford's high level waste vitrification plant [HWVP]. The HWVP will convert Hanford's high level defense waste to a glass form for permanent disposal. Terminating the NWTP's ceramic melter would significantly delay the permanent disposal of Hanford's defense high level nuclear waste.

The House of Representatives has appropriated $5 million to continue the operation of the ceramic melter. Given the importance of the ceramic melter to the permanent safe disposal of Hanford's defense high level waste, will the chairman assure me that he supports funding this program at $5 million in fiscal year 1987?

Mr. HATFIELD. The House has earmarked $5 million from the Defense Waste Program for the ceramic melter. I assure the Senator from Washington that I will make every effort to continue funding for the ceramic melter within the Defense Waste Program without substantially reducing other important activities.

DOD PROFIT POLICY

Mr. ROTH. Mr. President, a reform I have long been interested in is contained in section 9101 of the fiscal year 1987 Department of Defense appropriations bill, now part of the continuing resolution, which affects the Defense Department's profit policy and procedures.

This section, among other things, reduces the percentage of progress payment from the current level of 80 to 70 percent and directs the use of an earlier set of procedures, Defense Acquisition Circular 76-3, until new profit policy procedures are available.

This section is of interest to me, Mr. President, because the recommendations in the section are primarily based on recommendations from a General Accounting Office [GAO] report I requested in 1984.

In 1984, I asked GAO to analyze DOD's defense financial and investment review [DFAIR]. DFAIR was a study of the Defense Department's profit policy as well as a comparison of profits between defense contractors and commercial manufacturers. DFAIR concluded that profits on defense business were very similar to those of commercial manufacturers except during 1980-83. GAO's analysis of the DFAIR data showed that defense contractors were 35 percent more profitable than commercial manufacturers during 1970-79 and 120 percent more profitable during 1980-83. In addition, GAO's analysis of publicly available data indicates that defense business was substantially more profitable than comparable nondefense firms during the period 1975-83.

DFAIR also concluded that the defense sector has become more capitalized in the last 9 years. GAO analysis shows that defense contractor investment has increased over the time period 1975-83. However, when growth in investment is compared to sales growth, defense contractors' rate of growth of investment lagged substantially behind the rate for nondefense firms. GAO's finding is consistent with the finding of the Logistics Management Institute—a consultant to DOD on the DFAIR.

Most important Mr. Chairman, the DFAIR found, and GAO confirmed, that the DOD's profit policy was yielding 0.5- to 1-percent more profits on DOD contracts than intended. After I received the GAO analysis on DFAIR, I sent a letter to the Secretary of Defense letting him know about the concerns GAO raised in their analysis. I particularly raised the issue of the 0.5- to 1-percent increased profit contractors were making on defense contracts. While I acknowledged that DFAIR admitted the increased profit was unintended, I also emphasized that something had to be done.

I recommended that pending a more detailed analysis of the changes suggested by the DFAIR report, action should be taken immediately to reduce the unintended profit resulting from current DOD profit policy, Defense Acquisition Circular [DAC] 76-23. I then suggested that two approaches would accomplish this reduction.

The first approach would be to rescind DAC 76-23 which would have the effect of causing the policy to revert to that implemented in 1976 by Defense Procurement Circular 76-3. This policy was in place and operated effectively for 4 years. An advantage to this approach would be moving to a policy well known to all elements of DOD and industry. A disadvantage is that it may reduce contractor investment incentives. The second approach would be to retain the current investment incentives but reduce the factors for profit based on cost.

Regardless of the approach, I underscored that it was imperative to stop the continual awarding of profits in excess of that intended while the problem is under study.

Mr. President, I ask unanimous consent that the full text of my letter to Secretary Weinberger be printed in the CONGRESSIONAL RECORD at this point:

U.S. SENATE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC, April 16, 1986.

Hon. CASPAR WEINBERGER,
The Secretary of Defense, Department of Defense, The Pentagon, Washington, DC.

DEAR CAP: I have asked the General Accounting Office (GAO) to review your recently released Defense Financial and Investment Review (DFAIR) study. Based upon its initial evaluation of the study GAO has communicated some preliminary concerns to me. These concerns relate to recommendations made by DFAIR regarding contract financing, return on assets calculations, and changes to the weighted guidelines procedures. The GAO review will be completed some time this summer. Because of the uncertainties and questions that have been raised, GAO believes that no action to change Department of Defense (DOD) policy based on the DFAIR study should be taken at this time. I agree with this recommendation and urge you to wait until these concerns are cleared up before making any DFAIR recommended profit policy changes.

There is another problem, however, that does appear to merit immediate attention. GAO pointed out that the DFAIR report states clearly that the net effect of the profit policy change made by Defense Acquisition Circular (DAC) 76-23 was to increase markup (profit) by .5 percent to 1 percent and that the increase was not ex-

pected. One of the report's recommendations is that a revised "Markup policy should yield results which are on average .5 to 1 point lower than results achieved under DAC 76-23." The report also recommends that R&D and service contracts no longer be considered as a separate category but should be included under the revised weighted guidelines for all contracts.

In a recent report on DOD profit policy, NSIAD 85-55 dated March 14, 1986, GAO concluded that from its preliminary analysis, it was unable to conclude, as DFAIR does, that implementation of any of the alternatives would achieve the goal of yielding markup results which are on average .5 to 1 point lower than the results achieved under DAC 76-23. The GAO report did concur with DFAIR's analysis that DAC 76-23 increased markups (profits) significantly. The .5 to 1 point increase as cited in the report is certaintly within the realm of possibility.

DAC 76-23 has been in effect since March 1980. The DOD annual summary of individual procurement action reports shows that prime contract awards totaled $129.1 billion in 1984. The procurement funds authorized in the DOD budget for 1985 was $131.4 billion and $138.3 billion for 1986. DFAIR concluded that the .5 to 1 percent increase caused by DAC 76-23 was unintended. Even a small percentage (.5 to 1 percent) of DOD's annual contract awards represents a significant amount of profit, more than intended, being awarded as long as DAC 76-23 stays in effect. The current level of DOD contract awards is well over $100 billion. Therefore, by its own report, DOD is annualy negotiating with contracts somewhere between $500 million and $1 billion more in profits than the DFAIR report concludes that it should.

Pending a more detailed analysis of the changes suggested by the DFAIR report, action should be taken immediately to reduce the unintended profit resulting from the implementation of DA 76-23. Two approaches would accomplish this reduction. One approach would be to rescind DAC 76-23 which would have the effect of causing the policy to revert to that implemented in 1976 by Defense Procurement Circular 76-3. This policy was in place and operated effectively for four years. An advantage to this approach would be moving to a policy well known to all elements of DOD and industry. A disadvantage is that it may reduce contractor investment incentives. Another approach would be to retain the current investment incentives but reduce the factors for profit based on cost. Either way it is imperative to stop the continual awarding of profits in excess of that intended while the problem is under study.

Sincerly yours.

WILLIAM V. ROTH, Jr.,
Chairman.

Mr. President, Secretary Weinberger responded to my letter saying that in April 1985, he reduced the customary progress payment rate for larger businesses from 90 to 80 percent. He further explained that this reduction would mean more financing would have to be provided by the contractor, and interest is not an allowable cost on defense contracts. It was for these reasons that he believed it was not necessary to take the actions I suggested in my earlier letter.

Mr. President, I ask unanimous consent that the letter to me from Secretary Weinberger be printed in the CONGRESSIONAL RECORD.

I asked GAO to study these decisions to see if they went as far as my recommendations to alter DOD's profit policy. GAO responded that the action to reduce progress payments to defense contractors from 90 to 80 percent was inadequate.

GAO testified in a congressional hearing that the mere act of reducing the progress payment rate by itself will not necessarily decrease contractor profits. As the profit policy stands currently, there is nothing in the regulations that would prevent contractors from passing this increased financing cost on to the Government by negotiating higher profits. This conclusion, GAO continued, is supported by the 1983 report of the Office of the Under Secretary of Defense for Research and Engineering which recognizes that although some short-term savings may result from a reduction in progress payments, price increases would cause outyear outlays to be substantially higher.

In order for a reduction in progress payments to reduce profits, a mechanism would have to be established in the profit policy to control negotiated profits when progress payments percentages are changed. Only if DOD's profit policy did not allow negotiated profits to rise, would the lowering of progress payment rates reduce contractor profits.

Mr. President, it is for these reasons given by GAO that I am pleased the Appropriations Committee put these recommendations in the bill. The recommendations will direct the DOD to use an earlier set of procedures for profit policy. The recommendations will reduce progress payment rates 10 percent from the current 80 percent for businesses of a certain size down to 70 percent starting in fiscal year 1987. And finally, the recommendations will require the DOD to follow procedures prescribed by Defense Production Circular 76-3 until new procedures are available.

Mr. President, through the successful implementation of these recommendations primarily based on the GAO report, the committee estimates that approximately $1 billion could be saved in fiscal year 1987 outlays.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

THE SECRETARY OF DEFENSE,
Washington, DC, May 7, 1986.

Hon. WILLIAM V. ROTH, Jr.,
Chairman, Committee on Governmental Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This is in response to your letter of April 16, 1986, on preliminary GAO findings presented to you on DoD's Defense Financial and Investment Review (DFAIR). The GAO observed that DFAIR had disclosed that the net effect of a DoD profit policy adopted in 1980 under Defense Acquisition Circular (DAC) 76-23 produced an unintended increase in contract mark-up of .5 to 1.0 percentage points. You were concerned with GAO's opinion that the profit policy revisions recommended by DFAIR would not have the effect of lowering profit by an equal amount. You, therefore, urged me to delay implementing DFAIR's recommendations until your concerns were cleared up, but you also proposed immediate action to rescind DAC 76-23 or offset its impact.

The GAO is correct in that DFAIR reported an unintended enhancement in contract mark-up of .5 to 1.0 percentage points due to DAC 76-23. However, GAO does not give full consideration to actions that have previously been taken by DoD to bring our policies more in line with intended results. In April 1985, I reduced the customary progress payment rate for large businesses from 90 percent to 80 percent. The DFAIR analysis demonstrated that this policy change would have the same impact on reducing contractor profits as eliminating DAC 76-23. This is because more financing would have to be provided by the contractor, and interest is not an allowable cost on defense contracts. For this reason, I do not believe it is necessary to take the immediate actions you suggested.

The DFAIR project, completed last May, contained several important reforms for better integrating our progress payment and profit policies. This included rescinding DAC 76-23, as you have suggested, and completely overhauling the method used by contracting officers to determine contract mark-up. We have already delayed implementing DFAIR's recommendations for almost a year while we awaited the results on our request to the Packard Commission to review the report. It now appears that they will not include it within the scope of their review. Therefore, we are now taking the appropriate steps to act on the DFAIR recommendations.

I sincerely welcome your active involvement in this important area. If you desire, members of my staff would be happy to brief you more fully on the DFAIR project and the various reforms that we plan to undertake.

Sincerely,

CAP.

Mr. CHILES. Mr. President, I planned to offer an amendment to the continuing resolution which would reauthorize funds for the Office of Information and Regulatory Affairs as well as provide amendments to the Paperwork Reduction Act of 1980.

In 1980, I sponsored the Paperwork Reduction Act. That law established procedural requirements within the executive agencies designed to increase the efficiency of managing information resources and insure the public that the Government periodically check the need for information requests. An Office of Information and Regulatory Affairs was created within OMB to review agency conformance to the standards of the act and to serve as a focal point for accountability to the Congress and the public.

The House, in their appropriations bill, has taken action to eliminate all funds for OIRA. It has included language in its bill which reads:

• • • that none of the funds made available by this act shall be available to fund activities of the Office of Information and Regulatory Affairs.

Given the provisions of the Paperwork Act, the inability of the Director to perform statutorily assigned responsibilities would have serious impacts on the operating programs and legal responsibilities of the agencies. In brief, if the House elimination of funding prevailed, there would be substantive effects not only upon the requirements of the Paperwork Act, but upon many other laws as well.

Consequently, Mr. President, my view is that the House has, in effect, legislated on their appropriations bill.

The Senate bill restores funding and strikes the related language. This difference will be an issue for the conference.

However, a reason given for the House action was that the authorization associated with OIRA's activities has expired and has not been reauthorized. In the 98th Congress, the House passed such a reauthorization bill. The Senate Committee on Governmental Affairs did likewise, but the full Senate did not. This Congress, the Senate Governmental Affairs Committee has passed and reported similar reauthorization language both as part of a larger bill—title VI of S. 2230, and as a separate bill—S. 2887.

The purpose of my amendment was to respond to the House language and concern that there should be no funding until there is an authorization. My intent was to take the Governmental Affairs Committee passed language and amend it to the bill before us.

My view was that the Senate's position in a potential conference disagreement would be strengthened if this language approved by the Senate Authorizing Committee and designed to make activities under the act more accountable to Congress, were coupled with the appropriations for OIRA. The chairman of the Governmental Affairs Committee is in agreement with and shares my desire to amend this act.

However, I agree my amendment would legislate on this bill. It is a response to the House which I feel has legislated on their bill.

I understand the distinguished floor manager's desire to move expeditiously. I also understand why he intends to raise points of order to move things along.

My understanding is that the present difference between the bills is grounds to permit the conference to deal with authorizing and amendatory language to the Paperwork Reduction Act.

I would like to ask the distinguished chairman of the Appropriations Committee and the distinguished chairman of the Subcommittee on Treasury, General Government, and Postal Services if their understanding of the situation is the same as mine?

Let me say that both I and the House Authorization Committee are presently working with the administration to come to an agreement on the issues which have surrounded the Office of Information and Regulatory Affairs. The intent is to bring this agreement to the conference on the language difference I have outlined.

Mr. ROTH. I want to voice my support for what Senator CHILES is trying to do.

I would support an attempt to amend the continuing resolution with the language of the bill reauthorizing OIRA and making certain other changes in the Paperwork Reduction Act that has twice passed my committee. I have previously indicated my support to the two distinguished Appropriations Committee chairmen—Senator HATFIELD and Senator ABDNOR.

I think this amendment would be an appropriate response to the House language in their bill. I will work with the committee to conference the differences which presently exist.

I want to reiterate what Senator CHILES said about the efforts that are presently going on to work out an agreement between the administration and the House Authorizing Committee. That effort is still going on and I hope agreed upon language reauthorizing OIRA and making the other Paperwork Act improvements in our bill can be brought to the conference on this continuing resolution.

I want to thank the Senators HATFIELD and ABDNOR for their support and cooperation in this effort.

Mr. HATFIELD. I understand what the Senator has said. I appeciate his interest to expedite the bill before us.

I believe his understanding is a reasonable one. If the Senate chairman of the Authorizing Committee and the chairman of the House Authorizing Committee also agree with the Senator's understanding, then his understanding becomes even more reasonable.

I will support the Senator from Florida's effort to achieve the stated objective in conference.

Mr. ABDNOR. Let me say I appreciate the Senator's willingness to move this bill.

I support what the Senator is trying to do. I think his expectation for the conference is reasonable.

I will work with him and the chairman of the Governmental Affairs Committee, Senator ROTH, to reauthorize funding for the Office of Information and Regulatory Affairs and amend the Paperwork Reduction Act.

CUSTOMS SERVICE FUNDING REGARDING ENFORCEMENT OF STEEL IMPORT STABILIZATION PROGRAM

Mr. GLENN. Mr. President, I wish to clarify the intent of the Appropriations Committee regarding funding for the U.S. Customs Service, and the impact that these funds will have on enforcement of the Steel Import Stabilization Act.

The President's budget proposed to reduce the Customs Service by 777 positions in fiscal year 1986 and an additional 770 positions in fiscal year 1987. Many of these reductions would be in the ranks of custom inspectors and import specialists—our first line of defense against illegal shipments of foreign steel into this country. Without these trained and capable public servants, the President's Steel Import Stabilization Program isn't worth the paper it is printed on.

Now let me take a few minutes to review the intent and purpose of the 1984 Steel Import Stabilization Act—because the Customs Service plays an essential role in implementing this program. The act was proposed by the President and passed by Congress, and recognized the inability of the domestic steel industry to be internationally competitive due to the Federal budget deficit, an overvalued dollar, and serious injury from imports of foreign steel. The import problem was aggravated by the use of subsidies, dumping, and other unfair and restrictive foreign trade practices. The act called for implementation of a national steel policy with the goal of limiting import penetration to 20.2 percent of the U.S. market. Pursuant to this 1984 act, the President negotiated bilateral arrangements for steel import restrictions with 17 countries and the European Community. These agreements cover approximately 80 percent of steel imports.

Since the program was implemented, steel imports have declined from 25.2 percent of the domestic market in 1985 to 23.2 percent so far in 1986. This is an improvement, but still far short of the goal set by the President and Congress. Foreign steel is still a serious problem, and strong enforcement of the voluntary restraint agreements is absolutely essential to ensure the success of our national program.

I am pleased to see that the Appropriations Committee rejected the budget proposals of the administration for the Customs Service, and has provided funding to restore the 1,547 positions. Will the distinguished chairman of the subcommittee explain how the $760 million committee recommendation will enhance the Customs operations?

Mr. ABDNOR. I am pleased to confirm this information for the distinguished Senator from Ohio. The committee recommendation of $760 million for Customs salaries and expenses makes several personnel enhancements for Customs operations possible. Included is funding for 314 new inspectors, and 108 new import specialist

positions to improve Customs commercial operations in key ports around the Nation, as well as other new positions to enhance drug interdiction efforts and other Customs law enforcement.

Mr. GLENN. I thank the Senator, and I assume that the additional inspectors and import specialists will help bolster our Nation's enforcement of the Steel Import Stabilization Program, as well as import programs for textiles and other goods?

Mr. ABDNOR. The Senator from Ohio is correct. The committee recognized the needs of the Steel Import Stabilization Program in deciding to restore positions in the inspection and import specialist areas.

Mr. GLENN. Thank you. I appreciate the committee's initiative in this area, because the import specialists and inspectors play a primary role in enforcing the voluntary restraint agreements on steel. And let me ask the subcommittee's distinguished ranking member, is it your understanding that if the drug bill is passed and funded, that this will free up additional inspector positions for use in fighting against customs fraud at key ports around the Nation?

Mr. DECONCINI. The Senator from Ohio is correct. The drug bill should free up resources for use in other high priority areas of Customs enforcement, including the Steel Import Stabilization Program and other commercial operations.

Mr. GLENN. I thank the Senators, and I appreciate their leadership on this issue in the Appropriations Committee.

Mr. METZENBAUM. I want to join my friend and colleague from Ohio in thanking the Appropriations Committee for their work on this issue, and in recognizing the importance of the Customs Service in enforcing our National Steel Import Stabilization Program.

As recognized by the committee, the U.S. Customs Service does not currently possess the size of staff necessary to effectively administer and enforce all of the important programs in its jurisdiction. Further cuts, as proposed by the administration's fiscal year 1986 budget, would seriously erode the Steel Import Stabilization Program as foreign producers exploit the absence of an effective enforcement mechanism.

There is already evidence of efforts by foreign producers to circumvent the voluntary restraint agreements, VRA, either through shifting the product mix away from products covered by the VRA's, by classifying certain finished steel products as semi-finished; or by misclassifying imports into tariff categories that are exempted from the Import Relief Program.

While the steel industry has notified Customs of instances where circumvention of this program has taken place, Customs has been unable to act on these complaints vigorously and completely due to manpower shortages.

Specialty steels are complex alloys and, therefore, the manpower problems at Customs are especially serious because skilled personnel are required at all major ports to analyze chemical composition and product form. Unfortunately, the administrration proposed some of its most substantial reductions with respect to these highly skilled personnel. If the proposed cuts were implemented, the enforcement of the steel program will be further weakened and it will signal to our trading partners that they can circumvent our import relief programs with impunity.

So I join the senior Senator from Ohio in commending the Appropriations Committee for restoring funds for the U.S. Customs Service. We need to get tough at the borders and enforce these steel agreements if we want to help preserve the steel industry and put our people back to work.

Mr. BYRD. Mr President, I want to associate myself with the remarks of my colleague from Ohio, and commend him on his leadership on this issue. On March 20, 1986, I wrote to the chairman of the Finance Committee, Senator PACKWOOD, to request that his committee hold hearings on the administration's proposed reduction of the Customs Service. Senator PACKWOOD graceously agreed to hearings, which were held on May 12.

Steel imports are—and remain—a serious problem. Imports in July alone captured 27 percent of the American market. If the President's program to limit steel imports to 20.2 percent of the U.S. market is to have any hope of success, the program must be policed by Customs officers with the experience and training required to identify the different types of steel and their origins. Administration cut-backs in the Customs Service are an open invitation to abuse of a program on which American jobs—and a vital defense industry—depend.

Senator GLENN has a solid record of concern and action on behalf of the steel industry. His efforts to make certain that the Customs Service has the expertise it needs are a natural outgrowth of that distinguished record. Again, I commend him for his initiative on this important issue.

ST. ALBANS REMOTE ADJUDICATION CENTER

Mr. LEAHY. When we were considering the continuing resolution, I was prepared to offer report language directing the General Services Administration to find either new or existing space for the proposed expansion of the Immigration and Naturalization Service's Eastern Remote Adjudication Center in Franklin County, VT.

I was assured by both the Chairman, Senator ABDNOR, and the ranking minority member, Senator DECONCINI, that this language would be accepted during the markup. However, during that mark-up, Senator HATFIELD made a very strong appeal that no amendments and no report language be offered.

He indicated that the language that had been agreed to would be included in the statement of the managers on the conference report.

The report language is as follows:

The Committee is aware that the Immigration and Naturalization Service's Eastern Remote Adjudication Center (RAC) located in St. Albans, Vermont, will be expanded this spring. The Immigration and Naturalization has directed the General Services Administration to locate either new or existing space for the expansion in Franklin County, Vermont. GSA began the search this summer and is now looking beyond Franklin County. The Committee is aware that existing space is available in Franklin County and that developers are willing to construct a facility. The Committee is also aware that because of unreasonable delays on the part of GSA, it is now impossible for construction to begin this fall.

Given the fact that Franklin County traditionally has high unemployment and that Franklin County workers at the RAC have proven to be both highly skilled and dedicated employees and given the fact that GSA has not given Franklin County a fair and equitable review, the Committee directs GSA to find either new or existing space for the RAC in Franklin County, Vermont.

With regard to this language, I would like to ask the chairman and the ranking member of the Treasury, Postal Service Subcommittee two questions.

First, will they make every effort to include this language in the statement of managers on the conference report on the continuing resolution?

Second, even though the language was not included in the committee report on the continuing resolution and even if it is not included in the statement of the managers on the conference on the continuing resolution, should the General Services Administration consider this language binding on it?

Mr. ABDNOR. The Senator from Vermont has stated the situation correctly. This language would have been accepted were it not for the extraordinary nature of the markup. I will make every effort to include this language in the statement of the managers on the conference report. Even if it proves to be impossible to include this language in that conference report, the General Services Administration should consider this colloquy the equivalent of report language.

Mr. DECONCINI. I agree with my colleague, the Senator from South Dakota and the chairman of the subcommittee. The committee directs that this facility not be moved from Franklin County, VT, for the reasons stated by the Senator from Vermont.

Mr. LEAHY. I want to thank the chairman and the ranking member of the Treasury, Postal Service Subcom-

mittee for their support on this matter. I have always appreciated their courtesy on matters such as these.

CONTINUATION OF THE INTERAGENCY COMMITTEE ON SECURITY EQUIPMENT

Mr. HOLLINGS. Mr. President, the State Department security bill authorized $4.2 billion for enhanced security of American embassies and other facilities overseas. The Urgent Supplemental Appropriation Act contained $13 million for enhanced security for Capitol Grounds. These actions clearly evidence the concern of the Congress that adequate security be provided for all American citizens at home as well as abroad.

In this context, I am concerned that the General Services Administration [GSA] has proposed eliminating funding on October 1, 1986, for the Interagency Advisory Committee on Security Equipment [IACSE], which provides oversight of the ongoing effort of 16-member agencies to ensure that economical, reliable, tested, and certified security equipment is purchased and used within the Federal Government.

The GSA is the agency charged with the responsibility of providing protective services for all Federal facilities under its control—and further, responsible for identifying for other departments and agencies those items that may be procured in accordance with the general Federal supply services schedule. In this regard, the GSA acts as sponsor for IACSE. This committee is specifically chartered to provide a forum for the exchange of information, data, issues, requirements, specifications, and problems related to the identification, procurement, test and supply of security equipments that provide common need in the operation of Federal Government facilities and activities.

Mr. President, I have conferred with the distinguished chairman, Senator ABDNOR, of the Treasury, Postal Service Subcommittee, as well as the ranking member, Senator DECONCINI. I found that they share my concerns and are agreed that GSA must continue its role as head of IACSE, that funding of $1.6 million still remains available, and that such funds are not to be utilized for other GSA purposes.

Mr. ABDNOR. Mr. President, I appreciate the distinguished junior Senator from South Carolina bringing this matter to my attention. If we would have been able to, his statement would have been in our report and I endorse it and expect GSA to maintain this vital committee.

Mr. DeCONCINI. Mr. President, I totally share the chairman's endorsement and fully expect GSA to continue IACSE.

Mr. BROYHILL. Mr. President, I rise to engage the Senator from South Dakota in a colloquy.

Mr. ABDNOR. I am pleased to oblige the Senator from North Carolina.

Mr. BROYHILL. I appreciate the chairman's indulgence and the opportunity to highlight areas of great interest to this body and the State of North Carolina in the Treasury, Postal Service, and General Government appropriations bill now embodied in House Joint Resolution 738, the continuing resolution for fiscal year 1987. Let me first commend the distinguished chairman and members of the subcommittee on their efforts to craft a bill that provides funding necessary to maintain the programs and activities of Federal departments and agencies within the jurisdiction of the subcommittee. This bill reflects a recognition of the need to exercise greater fiscal restraint and responsibility at a time of reduced resources and unlimited demand for them.

Mr. ABDNOR. I thank the Senator for his kind remarks.

Mr. BROYHILL. You and members of your subcommittee have restored funding to continue essential programs and operations for one of our Nation's oldest and most important Federal entities: The U.S. Customs Service. The administration has proposed to reduce the Customs Service personnel level by 1,547 positions below the number provided in 1986. This reduction would have impaired the ability of the Customs Service to carry out its mission in the areas of drug interdiction, border enforcement, processing of imports and duty assessment, detection of fraudulent activities. In addition, this would have severely impacted activities related to the control and regulation of carriers and movement of commodities between the United States and other nations, the exposure of illegal international trafficking in arms, munitions, and currency, and the protection of American consumers, industry and workers against unfair competition from foreign manufacturers.

In a recent series, the Washington Post described the problems facing the Customs Service. The series focused on the growth in workload at a time of reduced funding and calls for further reductions. The conclusion of this article: While Customs is continually being assigned more and more vital tasks by Congress and the administration and demand for its services increases, the impact of declining funding levels has weakened appreciably its ability to fulfill even its basic mission, to say nothing of its capacity for responding to new demands.

Mr. ABDNOR. I am aware of the article.

Mr. BROYHILL. Let me concentrate for a moment on one essential element of the Customs Service's mission: Protection of American consumers, industry, and workers against unfair competition from foreign manufacturers. North Carolina has a high concentration of the Nation's fiber, textile, and apparel production capacity. Taken together, this industry group is besieged by imports that threaten its survivability and place at risk the job security of over 2 million workers and the financial well-being of their families. These industries are being harmed by deceptive practices such as fraudulent labeling designed to disguise the true origin and make of foreign products or to avoid having them counted against existing quotas contribute to the further decline of these domestic industries.

The Customs Service plays a critical role in the enforcement of agreements imposing quotas or other trade restrictions. In my opinion, effective enforcement requires the assignment of manpower necessary to carry out the task. Beyond this requirement, it demands of our Customs personnel on the front-line constant vigilance, knowledge, and intuition as well as product familiarity. Our ability to ensure enforcement is only as good as our commitment to provide what is necessary to achieve it. Unless we are willing to provide the resources needed to effectively enforce our laws, then they are meaningless and useless to us. You understand this, Mr. Chairman, and I appreciate your recommending additional Customs personnel, some of whom will help expose and combat deceptive practices and ensure more vigorous enforcement of fiber, textile, and apparel quotas.

Mr. ABDNOR. I appreciate your support of the committee's recommendations.

Mr. BROYHILL. Let me dwell for a moment on the Customs Service's proposed plans for its district office in Wilmington, NC. Consistent with its plan for reductions in personnel and operations, the Customs Service has proposed to eliminate its district office in Wilmington. Under this plan, personnel and functions at this office would be consolidated with existing operations in other States. The Customs Service's justification for this proposed action hinges on its assertion that the Wilmington office has experienced a significant decrease in its workload as a result of a precipitous decline in the volume of imports and exports. Because of this alleged falloff in workload, Customs believes that it is no longer cost-effective to maintain the Wilmington office and that these resources should be merged with existing operations.

Mr. ABDNOR. This comports with my understanding of the Customs Service's justification for this proposed action.

Mr. BROYHILL. I would submit to this body that if the Customs Service purports to base its action on a decline

in imports and exports at the Port of Wilmington, then the facts suggest otherwise and force a different conclusion. For example, between 1982 and 1985, total gross tonnage of international cargo—imports and exports—at the Port of Wilmington increased by 8.68 percent. For the same period, the total dollar value of that cargo rose by 8.26 percent. Clearly, these facts do not support the Customs Service's contention that imports and exports have declined or that demand for its services has diminished.

Mr. ABDNOR. Your point is well made.

Mr. BROYHILL. The Port of Wilmington is fast becoming a hub of international trade and commerce. Ships from over 200 foreign countries call at this port and carry to our shores products of every color, shape, and size to meet every need and suit every taste. Similarly, North Carolinian industries bring to the port their products—agricultural products such as tobacco, food products, furniture, textile machinery, and textile products—for shipment to overseas destinations. U.S. exports like these help create new jobs. In fact, the International Trade Administration estimates that for every $1 billion in export sales 25,000 jobs are created or dependent. On overseas sales totaling $2.9 billion in 1982, 73,315 jobs were either created or dependent. In 1985, on exports sales of $3.1 billion, 79,375 jobs were created or relied. Between 1982 and 1985, over 6,000 new employees were added to the job rolls or kept their jobs. On the average, an 8-percent increase in the number of new jobs created or retained was noted for this same period.

Steady growth of exports and imports makes necessary the provision of adequate Federal resources to meet increasing workload demands in activities such as processing and inspection that contribute to enforcement. The growing economy of North Carolina depends on and requires the full range of available services and assistance the Wilmington office provides. I am most grateful to you, Mr. Chairman, for your help in keeping the Wilmington office open for business. I assure you that your efforts are noted with appreciation by affected businesses, the State, and its residents.

Mr. ABDNOR. I thank the gentleman.

Mr. STEVENS. Mr. President, will the distinguished chairman of the Appropriations Subcommittee on Commerce, Justice, and State, the Judiciary, and related agencies yield for a question?

Mr. RUDMAN. Mr. President, I yield to the distinguished senior Senator from Alaska for a question.

Mr. STEVENS. The committee did not agree with the administration's proposal to terminate new activity and transfer portfolio servicing functions of the National Marine Fisheries Service Financial Assistance Program to the Department of Commerce Office of Grants and Loans Administration, but did not restore $656,000 to fund these services in the NOAA budget. Is it the intent of the committee that NOAA continue these operations, but that the funds be absorbed within existing administrative funds?

Mr. RUDMAN. Yes, that is correct; funds for administration of the financial services programs are intended to come from NOAA's existing funds for executive direction and administration.

Mr. STEVENS. I thank the chairman for his answer.

PRODUCT QUALITY AND SAFETY ACCOUNT

Mr. KERRY. Mr. President, I want to take a moment to address a concern that I have about the product quality and safety account in the NOAA budget. As the manager of the bill knows, the committee has reduced the program's funding in this bill from a level of $5 million last year to $3 million for fiscal year 1987. I do not want to take up the matter of the reduction in funding, but instead I want to raise what I think might be an unintended byproduct of that cut.

As the chairman knows, the PQS account is the major source of funding for several regional National Marine Fisheries Service regional laboratories. One of those labs, serving the Northeastern States, is located in Gloucester, MA. I think it is important to emphasize the importance of this lab to the fishing industry in the entire Northeast region. The type of research done at the Gloucester Lab has resulted in more efficient harvesting, processing and marketing of fishery products. I believe that these facilities are necessary to realize the optimum utilization of our domestic fisheries resources.

Mr. RUDMAN. Mr. President, I share the Senator from Massachusetts' interest in continuing the important role of our regional labs. The Gloucester Lab, which as the Senator points out, functions as the research and development center for the entire Northeast, has been instrumental to the economic stability of our region's fishing industry.

Mr. KERRY. My concern is that the cut in funding might result in one of the regional labs taking an inordinate share of the burden of the shortfall. Can the chairman tell us how the managers of the bill would want to have that reduction made?

Mr. RUDMAN. Mr. President, it is the manager's intention that funds appropriated under the Product Quality and Safety Program should be distributed among facilities in proportions substantially the same as funds appropriated in fiscal year 1986 for that program, consistent with the direction of the committee in Senate Report No. 99-425.

Mr. KERRY. I thank the chairman for his consideration of this matter.

Mr. COHEN. Mr. President, it is my understanding that the Commerce, Justice, and State appropriations bill contains $1,000,000 in fiscal year 1987 funding for fish oil research at the National Marine Fisheries Service seafood laboratory in Charleston. These funds are to be used to continue the program to refine high quality fish oil as test materials for medical researchers investigating the dietary health benefits of fish oil and Omega-3 fatty acids contained in seafood.

The Maine sardine industry recently worked out an agreement with the Gloucester Laboratory of NMFS to perform an analysis of the Omega-3 content of fresh herring and canned sardines over the next year. Because of possible funding reductions facing the Gloucester Lab, the industry is concerned that this project may not be completed this year as agreed.

Mr. President, Omega-3's are a remarkable fatty acid compound found in marine fish oils from such species as herring and menhaden. Three studies published by the New England Journal of Medicine in May 1985, and other recent research have linked the consumption of Omega-3's in seafood to reductions in the amount of cholesterol in the blood and a reduced incidence of fatal heart disease.

The Maine sardine industry needs its omega-3 work to be done during the next year. This will enable it to better inform consumers of the health benefits of sardines. This will also permit the industry to begin to compile the research findings necessary to help it decide whether to pack its product in herring oil once the Food and Drug Administration has given the go-ahead to do so.

Can I be assured by the distinguished chairman of the subcommittee that if the fiscal year 1987 appropriations are insufficient to permit the Gloucester Lab to complete its oil project for the sardine industry, $50,000 to $100,000 of the Charleston Laboratory's fish oil research will be allocated to that project?

Mr. RUDMAN. Yes, if funding reductions prevent the Gloucester Laboratory from finishing the Maine sardine industry's project, it is the committee's intention that $50,000 to $100,000 of Charleston's fish oil research be devoted to the sardine project. Does the distinguished ranking majority member of the subcommittee agree?

Mr. HOLLINGS. I agree with your statement, Mr. Chairman.

Mr. COHEN. Thank you, Mr. President. I appreciate the committee's understanding of the importance of this work and of the potential benefits to

the consumers of Maine's versatile and delicious sardines and herring products.

NATIONAL BUREAU OF STANDARDS FUNDING IN CONTINUING RESOLUTION

Mr. GORTON. Mr. President, I would like to discuss the continuing resolution's assumptions about funding for the Department of Commerce's National Bureau of Standards. I am interested specifically in funding levels for the Bureau's Center for Fire Research, Center for Building Technology, Institute for Computer Science and Technology [ICST], and Cold Neutron Research Facility.

The administration's fiscal year 1987 budget request includes proposals to eliminate the fire and building centers, reduce by about half funding for ICST, and begin development of a Cold Neutron Research Facility at the Bureau. Last year, Mr. President, the same set of proposals was rejected by the Congress. I believe that the actions of the Congress were taken without prejudice to the cold neutron initiative; no Member has questioned the potential scientific value of the research facility. The cold neutron initiative was rejected because the administration's proposals to eliminate the fire and building centers and to cut ICST in half were unacceptable to the Congress. These programs are among the Bureau's most valuable and cost-effective programs, and the administration's arguments that the services could and should be assumed by the private sector, and in the case of the two centers, State and local governments, are not valid, as I have argued on many occasions on this floor, in hearings on the Bureau's budget, and in meetings with administration officials.

I was disappointed to learn that the administration's fiscal year 1987 request included this same set of proposals. I expressed to the Department of Commerce my concern that funding for the Cold Neutron Research Facility would not be provided by the Congress as long as the administration persisted in proposing to eliminate the fire and building centers and half of ICST. I introduced authorizing legislation (S. 2664) which restored funding for the centers and ICST and prohibited expenditures for the Cold Neutron Research Facility. S. 2664 was approved unanimously by the Commerce Committee.

Concurrently, Mr. President, I negotiated with the administration in an effort to resolve this situation. After several discussions, we reached an agreement, subject to the approval of the Congress. Simply stated, I agreed to accept small cuts to the two centers and ICST, along with small cuts to other Bureau programs, and to support the appropriation of $6.5 million for the Cold Neutron Research Facility in fiscal year 1987. In return, the administration has agreed not to propose further cuts to the centers or ICST in the 1988 or 1989 budget submissions. I have a letter stating the details of this agreement from the Office of Management and Budget that I will enter into the RECORD at the conclusion of this discussion. The agreement does not change the overall funding level for the Bureau.

The Senate Appropriations Committee's reports on the Commerce, Justice, State appropriations bill (H.R. 5161) and the continuing resolution assume full restoration of proposed cuts to the fire and building centers and ICST no funding for cold neutron. I intend to amend my authorization bill to reflect the agreement I have described, and I ask the distinguished chairman and ranking member of the Commerce, Justice, State Subcommittee if this agreement can be reflected in the continuing resolution.

Mr. RUDMAN. The continuing resolution provides $123,953,000 for the National Bureau of Standards. The House-passed resolution provides only $113,964,000. I can assure the Senator from Washington that, if the House agrees to the Senate's funding level for the Bureau, I will be happy to endorse the Senator's proposal as the position of the Senate in conference. If, however, the final funding level is below the Senate level, I am not certain that the specific levels for programs will be in accordance with the Senator's proposal, although I intend to support his proposal in conference.

I have been a strong supporter of Bureau programs as chairman of the Appropriations Subcommittee on Commerce, Justice, State, the Judiciary, and Related Agencies. I am pleased that an agreement has been reached to avoid dealing with the short-sighted reductions consistently proposed by the Office of Management and Budget, and I look forward to working with the Senator from Washington on these issues in the future.

Mr. GORTON. I thank the chairman. I would hope that, if the agreement is upheld in principal by the continuing resolution, the administration will uphold its end to the agreement.

Mr. HOLLINGS. I am pleased to add my support for the agreement described by the Senator from Washington. I am the ranking member on both the authorizing committee and the appropriations subcommittee for the Department of Commerce, and my staff has worked closely with the Senator's staff in negotiating this agreement. As I understand it, the agreement would result in the following fiscal year 1987 funding levels for the affected programs:

Cold Neutron Research Facility	$6,500,000
Center for Fire Research	5,402,000
Center for Building Technology	3,470,000
Computer Science and Technology	7,500,000
Technical Competence Fund	6,763,000

Mr. GORTON. The Senator from South Carolina is correct, and I thank him for his assistance in negotiating the agreement.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

OFFICE OF MANAGEMENT AND BUDGET,
Washington, DC.

Hon. SLADE GORTON,
U.S. Senate, Washington, DC.

DEAR SENATOR GORTON: This is to confirm recent staff discussions on the National Bureau of Standards (NBS) authorization and appropriation bills.

The Office of Management and Budget (OMB) and the Department of Commerce will support a total NBS budget authorization of $123,953,000 for FY 1987. This level will include $6.5 Million for initiation of the Cold Neutron Facility and reductions from the pre Gra:nm-Rudman-Hollings FY 1986 operating levels of $.5 Million for the Fire Program, $.5 Million for the Building Program and $2.5 Million for Computer Sciences and Technology. There will also be reductions of $1.5 Million in the Competence Program and $1.641 Million in the Post Doctoral Program. Neither the Department of Commerce nor OMB will propose further programmatic reductions in the Fire, Building, and Computer Sciences Programs in FY 1987, FY 1988 or FY 1989. In the case of across-the-board budget changes such as reductions the President must make to achieve Gramm-Rudman-Hollings deficit targets or a subsequent sequester, these programs will be treated the same as the other NBS programs.

Our commitment is, of course, contingent on successful implementation of this compromise in both the final authorization and appropriation for NBS in FY 1987.

Sincerely,

CAROL T. CRAWFORD,
Associate Director of Economics and Government.

Identical letters sent to Hon. Ernest Hollings, Hon. Doug Walgren, Hon. Sherwood Boehlert, Hon. John Danforth, Hon. Don Fuqua, Hon. Manuel Lujan and Hon. Donald Riegle, Jr.

Mr. PACKWOOD. Mr. President, I am deeply disturbed by the language that was added to the Commerce, Justice, and State portion of the continuing resolution requiring the Federal Communications Commission to prepare yet another report on the fairness doctrine and submit it to Congress by September 30, 1987.

As a member of the Communications Subcommittee and an advocate of full first amendment rights for the electronic media, I am disturbed by the manner in which this language was added to the appropriations bill. I was not notified of this language, nor was my distinguished colleague from Arizona, the chairman of the Communications Subcommittee. This is particularly disturbing because we have demonstrated to the Senate our deep concern with the efficacy and constitutionality of the fairness doctrine. We

have held six public hearings on the regulation of the electronic media in 1982 and 1984. We also introduced the Freedom of Expression Act, which would repeal the doctrine. Mr. President, although I am no longer chairman of the Commerce Committee, I am bound to suggest that this matter falls directly within the jurisdiction of the Commerce Committee, and that by adding this language to the appropriations bill the Appropriations Committee is intruding into an area that properly and traditionally has been the concern of the Commerce Committee.

Additionally, I point out to my colleagues that the FCC has already done exactly what this language would require it to do. In August 1985, the FCC concluded a lengthy study of the doctrine that it began in May 1984. There was wide participation in the FCC's inquiry; over 100 parties submitted comments. The Commission even held 2 days of open hearings to ensure the broadest possible public participation. After all this, the Commission adopted a 108-page report, which concluded that the doctrine was no longer in the public interest and that it was "constitutionally suspect."

The FCC then ordered that its inquiry be terminated and that its report be forwarded to the appropriate committees and subcommittees of the House and the Senate. This report was forwarded to the Senate Commerce Committee, its Communications Subcommittee and the House Energy and Commerce Committee and its Telecommunications Subcommittee.

Mr. President, Congress does not need another report on the fairness doctrine. The FCC's last report is as comprehensive an analysis of the fairness doctrine as can be found anywhere. I am certain that if my colleagues looked at this report, and at the time and effort that went into preparing it, they would realize that there is no reason for the Commission to duplicate this effort

In addition to requiring the FCC to duplicate its efforts, this language may disrupt the progress of a pending court case challenging the constitutionality of the fairness doctrine. The pleadings in Radio-Television News Directors Association versus the FCC were filed immediately after the FCC issued its report. The petitioners have asserted that the first amendment prohibits the FCC from enforcing the fairness doctrine if, as it found, the doctrine is constitutionally suspect and works against diversity in the marketplace of ideas. The case is now before the U.S. Court of Appeals for the District of Columbia Circuit.

My colleagues might wonder what this case has to do with the language in this appropriation bill. In addition to the arguments on the merits, the court will hear procedural arguments on whether the FCC's report is a final agency action. The FCC has already submitted its answer: the report constitutes final agency action. Absent outside interference, the court would most likely agree with the FCC, hear the case as scheduled, weigh the competing arguments, and issue a decision on the constitutionality of the doctrine. By requiring the FCC to submit another fairness doctrine report, this language could cause the court to rule that the August 1985 Fairness report is not a final agency action, and therefore not subject to review by the court.

It is time the courts assessed the constitutionality of the fairness doctrine based on the relevant data that has been collected over the last 4 years. It was the Supreme Court that upheld the doctrine in 1969. More recently, the Court announced in FCC versus the League of Women Voters of California that it would be willing to reinvestigate the constitutionality of the fairness doctrine if the FCC demonstrated that the doctrine had a chilling effect on the discussion of controversial issue or that the scarcity rationale was no longer valid. If the FCC's latest fairness doctrine report is a reviewable agency action, and absent this language it would be, then the Court may have the opportunity to update its 1969 decision in light of the existing facts and circumstances.

Mr. President, I oppose the language which was added to the Commerce, State, and Justice portion of this continuing resolution. The Senate has held hearings, the FCC has issued its report, and now it is time for the courts to begin their examination of this important constitutional question.

GSA-LEASED SPACE IN SAN FRANCISCO

Mr. WILSON. Mr. President, I wish to express my concern to the distinguished Senator from South Dakota regarding the urgent need for the General Services Administration to reduce its excessive reliance on costly leased office space in San Francisco. GSA now leases approximately 2 million square feet of space in the bay area, most of which is in San Francisco. More than 6,000 Federal employees of Federal agencies now occupy leased space in San Francisco, with many of their operations now scattered among multiple sites. Lease costs in San Francisco are among the most expensive in the country and are expected to remain high during the next 10 years. Worse yet, GSA reports that its rent costs in the bay area are expected to increase by nearly 40 percent in the next 5 years, as older leases expire and are replaced at the higher rates.

I want to commend both the Appropriations Committee and the Environment and Public Works Committee for their efforts in encouraging GSA to reverse the growing trend of housing Federal employees in leased space by increasing the amount of space under Government ownership. Converting from leased space to Government ownership can produce substantial savings in the long run. Now, as Congress struggles to find ways to reduce the Federal budget deficit, it is especially important that GSA pursue opportunities to place more Federal employees in less costly Government-owned buildings.

One step in the right direction has already been taken with last year's appropriation of funds for the design of a new Federal building to be constructed on land donated by the city of Oakland. That project, however, is expected to take 4 to 5 years before the building will be ready for occupancy and, even then will solve only part of the leased space problem in the bay area. Additional steps are clearly required in San Francisco to relocate the employees from leased space to Government-owned space as soon as possible. GSA's building purchase program offers a very attractive means of achieving Federal building ownership and has a far shorter leadtime.

The mayor of San Francisco, Dianne Feinstein, has recently advised me that GSA will have the opportunity in the very near future to acquire such buildings in that city, and I believe we should encourage GSA to take advantage of such available opportunities should these buildings meet Federal office building requirements. I would like to point out that I am not suggesting any additional funding at this time. Indeed, increasing Government ownership in San Francisco and elsewhere is a means of reducing Federal expenditures.

I am pleased that the administrator of the GSA, Mr. Terence Golden, in testimony delivered in April of this year, stated that San Francisco is one of the cities warranting high priority for the building purchase program because of the high percentage of the Federal work forces now in leased space and because his agency's analysis indicates that the return on investment would produce significant savings. As Mr. Golden has said, San Francisco is one of GSA's highest cost areas overall.

Mr. President, the Congress and the executive branch have been expressing the right sentiment; what is missing is sufficient action. Nearly half of the Federal work force is housed in leased space, in contrast to the situation 20 years ago when 84 percent of Federal employees occupied Government-owned office space. GSA should be taking advantage of every opportunity to reverse this trend. Such an opportunity may well exist in San Francisco. Therefore, I ask the distinguished Senator from South Dakota if he agrees that Congress should direct the General Services Administration,

under its existing authority and from the funds appropriated in this resolution, to conduct a study of the availability of existing buildings for purchase in San Francisco, and if that study shows that an available building meeting Federal office requirements offers a costly advantage over leased space, to commence the selection process of such a building?

Mr. ABDNOR. Mr. President, I concur in the remarks of the distinguished Senator from California. His statement expresses our intention as well. We have been trying for some time through the Appropriations and Environment and Public Works Committees, on which I serve, to have the General Services Administration more aggressively pursue such opportunities in order to decrease reliance on costly leased space. The Public Works Committee has been striving to reduce leased space, as well. The committee should, and I believe will, play a very important role in assisting the GSA in its effort to secure appropriate space. The purchase program is obviously the fastest means of achieving that important goal. Moreover, when we complete our action here and meeting conference with the House, I will certainly urge that the conference report contain language encouraging GSA to pursue just such an effort in fiscal year 1987.

LANGUAGE FOR CONFERENCE REPORT ON HOUSE JOINT RESOLUTION 738

The conferees direct the General Services Administration, under its Building Purchase Program authority, to use a portion of its funds to study the availability of existing buildings for purchase in San Francisco as an expeditious means of reducing its reliance upon high cost leasing of office space and, in the event that such a study demonstrates that an available building offers a cost advantage over leased space and otherwise meets Federal office building requirements, then commence the selection process of such building.

POPULATION CONTROL FUNDS AND RESTRICTIONS

Mr. HELMS. Mr. President, the continuing resolution before us, House Joint Resolution 738, appropriates funds for foreign operations, including funds for population control. The House version appropriates $239,250,000 for population control while the Senate Appropriations Committee version appropriates $230,000,000.

Both Senate and House versions contain the same restrictive language as to the use of population control funds. In part, that restrictive language is as follows:

Provided, That none of the funds made available in this Act nor any unobligated balances from prior appropriations may be made available to any organization or program which, as determined by the President of the United States, supports or participates in the management of a program of coercive abortion or involuntary sterilization.

Mr. President, the language I have just said is identical to the Kemp-Inouye-Helms amendment in Public Law 99-88, a supplemental appropriations bill, and in Public Law 99-190, the continuing resolution for fiscal year 1986. Although I believe that this language is clear and has been clear since its original enactment in August 1985, let me, as one of the original sponsors, state again the intent of this language.

The intent here is that no U.S. population funds may go to any organization or program which, as determined by the President, supports a program of coercive abortion or involuntary sterilization, or participates in the management of a program of coercive abortion or involuntary sterilization. For an organization or program to qualify under this restriction, it is not enough that it simply withdraws from the management of a program of coercive abortion or involuntary sterilization; it must cease even supporting, in any way, a program of coercive abortion or involuntary sterilization.

Mr. President, it now appears that the Administrator of the U.S. Agency for International Development understands this restrictive language in the same sense as I do. I am glad that he does, and I take his statement as a commitment to enforce vigorously this provision during fiscal year 1987.

The statement I refer to, Mr. President, came from Administrator M. Peter McPherson in response to a written question I put to him on April 24, 1986. His answer was received by me on July 16, 1986.

Mr. President, I ask unanimous consent that the question and answer previously referred to, which came in connection with hearings by the Foreign Relations Committee on AID oversight, be printed at this point in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

AID INTERPRETATION OF KEMP/INOUYE/HELMS AMENDMENT

Mr. HELMS. Congressman Kemp and I sponsored, in major part, the following restrictive language in current law on expenditures of population control funds:

"*Provided*, That none of the funds made available in this Act nor any unobligated balances from prior appropriations may be made available to any organization or program which, as determined by the President of the United States, supports or participates in the management of a program of coercive abortion or involuntary sterilization."

Both Congressman Kemp and I made statements on the purpose of this language which appeared in the Congressional Record. The gist of our statements was that no U.S. population control money can be used by any organization or program which, as determined by the President, supports a program of coercive abortion or involuntary sterilization or participates in the management of such a program. Do you have any reason to disagree in any way with our statements on this law?

ANSWER. The statements made by you and Congressman Kemp which are part of the legislative history of your amendment underscored the two facets of the provision, namely that no population assistance may be extended to any organization or program which (1) supports a program of coercive abortion or involuntary sterilization or (2) participates in the management of a program of coercive abortion or involuntary sterilization. AID will respect the full legislative history of the Kemp-Inouye-Helms amendment in its application of the provision.

IMPACT OF AN EDUCATION DEPARTMENT REGULATION ON MAINE INDIAN SCHOOLS

Mr. COHEN. Mr. President, I want to bring to the attention of the distinguished chairman of the Labor, HHS, and Education Appropriations Subcommittee new regulations, proposed by the Department of Education, that would cause three Maine Indian Reservation schools to lose vital Federal funds.

At issue is whether the three tribal schools in Maine—one Penobscot and two Passamaquoddy Reservations—should be eligible for impact aid money. The Department of Education has been troubled by specific arrangements in various States wherein an Indian tribal school receiving funds from the Bureau of Indian Affairs [BIA] will somehow affiliate with a non-Indian public school in order to receive impact aid. These arrangements involve an Indian school linking with a local education agency [LEA] to receive its impact aid moneys, but the Indian students do not attend the LEA schools. The abuse that the Department identified was that those LEA's count the Indian students for impact aid, but otherwise have no responsibility for their education. To address this problem, the Department of Education has proposed regulations that would deny impact aid funds to this group of schools. Unfortunately, however, the regulations are not carefully crafted and are overbroad.

I am concerned that the proposed regulations will harm the Indian schools in Maine, which have not committed this abuse at all. The Maine Indian schools are an LEA on their own. They are not affiliated with any other non-Indian public school in order to qualify for impact aid. Since they are not part of the problem, they should not suffer the cure by losing impact aid funds.

These schools are trying their best to comply with State standards and maintain their LEA status, and I am afraid that without these funds, they will suffer financially and, ultimately, academically.

The regulation which the Department of Education proposes—a regulation expected to be finalized and approved shortly—should not sweep so broadly so as to include our Maine

Indian schools, where we have an entirely distinguishable situation. In fact, I believe that the Maine schools are the only Indian schools in the country that are themselves designated as LEA's. In Maine, the three tribal schools are not only the LEA but also are the public school district for the Indian students living on the three reservations. Underscoring this point, if the students want to go to off-reservation schools, they must pay tuition. It is worth noting that the situation that the Department describes in its proposed regulations envisions students who attend BIA schools, but are counted by neighboring LEA schools even though they are not attending the LEA.

Mr. WEICKER. I am pleased that the Senator from Maine has brought this problem to my attention. I agree with him that the Department's regulations appear to be overbroad.

Mr. COHEN. I hope that the Senator will allow me to elaborate. If the policy of the Department of Education is to eliminate all schools which accept BIA funds from the Impact Aid Program, its regulations must state the purpose clearly. This regulation appears, on its face, to address a specific, identifiable group of schools committing specific, identifiable abuse. Yet, the Department of Education insists that the penalty of the regulation reaches every Indian school which accepts BIA moneys.

Mr. WEICKER. I believe that the Senator from Maine has made a convincing case that Maine Indian schools are not part of the limited problem the regulation identifies.

Mr. COHEN. I thank the distinguished Senator for his understanding of this problem. Would the Senator be willing to join me in writing to the Department of Education to urge the Department to remedy our concerns?

Mr. WEICKER. I would be happy to join the Senator from Maine in writing to the Department of Education. Furthermore, I am willing to focus on this specific problem when my subcommittee holds hearings early next year if your concerns are not resolved before that time.

Mr. COHEN. I thank the Senator.

Mr. MOYNIHAN. Mr. President, it has come to my attention that the new Social Security Administration Northeast Program Center now being completed in Jamaica Queens, NY, will not provide adequate parking for its employees or for the estimated 600 SSA clients it is expected to serve daily.

This million square foot Federal building will house approximately 3,000 employees but will have parking facilities for just 45 cars. Under New York City zoning requirements a private building of the same size would require over 700 parking spaces. We know from surveys of SSA work force that over 750 spaces will be needed for employees who intend to drive to work. Downtown Jamaica can accommodate about half that demand.

The Department of Health and Human Services does not contemplate taking any immediate action to deal with this serious problem. The Department does, incidentally, provide parking for employees and clients in other cities, and they do so, I understand, in a manner consistent with good traffic planning objectives and in the best interest of the neighborhoods in which they are located.

The Greater Jamaica Development Corporation [GJDC], which has labored some 15 years to achieve revitalization of the downtown Jamaica area, is very much concerned about the adverse traffic and land use impacts that are likely to occur if the above-noted parking needs are not met. It has produced an action plan which would provide an interim surface parking solution as well as a subsequent permanent solution by means of a parking structure of appropriate size and location. The solution would resolve potential traffic problems, provide facilities needed by employees and clients at a reasonable cost, and support development objectives of downtown Jamaica and would do so privately, efficiently, and expeditiously. The solution has been discussed with the General Services Administration [GSA], the Department of Health and Human Services [HHS] and the Social Security Administration [SSA]. HHS, so far, has failed to act to resolve the problem. The GJDC solution is an excellent one, in my opinion. I would hope that HHS would find it possible to give the proposed leasing agreement the attention it deserves and get on with resolving this problem in a timely manner. The building, by the way, is a year from completion.

Senator WEICKER, as chairman of the Labor, Health and Human Services, and Education Appropriations Subcommittee, I request your help in bringing this matter to the attention of the Secretary of HHS. I would appreciate your concurrence in calling for the Secretary of HHS to address this problem within the next 30 days by meeting with GJDC officials and appropriate representatives of GSA, SSA, and relevant congressional staff, to work out the details. This may seem an unusual time and place to make this request, but I feel very strongly the issue must be addressed now. I appreciate your willingness to consider this issue.

Mr. WEICKER. I do not think it unreasonable that the Secretary should be able to review this issue, and make a determination with findings within 30 to 60 days.

Mr. D'AMATO. Mr. President, I would like to express my full support to see that this problem is quickly and satisfactorily resolved. It is my expectation that the Secretary of HHS and the Director of the General Services Administration will expeditiously address this matter and report back to us in a timely manner. I commend the chairman for his interest in this situation and I look forward to a rapid solution to this problem.

Mr. MOYNIHAN. I thank the chairman for his cooperation on this matter.

Mr. FORD. Today the Senate has adopted an amendment that provides that "none of the funds provided by this act may be used to implement the uranium enrichment criteria submitted to Congress on July 24, 1986, pursuant to section 161(v) of the Atomic Energy Act of 1954." The phrase "this act" refers to the continuing resolution, House Joint Resolution 738.

My question is this: Is there any possible interpretation of this amendment indicating that the Senate assumes that these criteria have been or should be approved?

Mr. DOMENICI. No. In fact, the Senate has already acted in section 612 of House Joint Resolution 699, increasing the public debt limit, to disapprove these criteria. The only possible interpretation of the amendment we have adopted today is that the criteria are doubly rejected. Not only has the Senate disapproved the criteria themselves, but it has also "put another nail in the coffin," so to speak, by making sure that no funds will be available should the Department of Energy attempt to implement the criteria, notwithstanding section 612 of the debt limit legislation.

Mr. FORD. I thank the Senator.

I ask unanimous consent that these remarks be printed in the RECORD after adoption of the amendment to which the remarks refer.

USAID ASSISTANCE FOR FOREIGN AGRICULTURAL EXPORTS

Mr. BUMPERS. Mr. President, I am pleased that the continuing resolution references Senate Appropriations Committee reported foreign assistance appropriations bill, S. 2824, which contains an amendment in section 555 I offered to restrict U.S. assistance to foreign agricultural exports. That bill has been rolled into House Joint Resolution 738, the continuing resolution for fiscal year 1987. I would like to take this opportunity to thank the chairman of the Subcommittee on Foreign Operations, Senator KASTEN, and the ranking minority member, Senator INOUYE, for their help with the amendment in the Appropriations Committee.

This provision restricts U.S. foreign assistance from promoting the agricultural export capability of foreign countries with whom we directly compete on the world market. I secured passage of a similar provision in the fiscal year 1986 supplemental appro-

priation bill, P.L. 99-349, and the restriction needs to be continued.

This provision is especially important to American farmers. The farmers of this country need to know that their hard earned tax dollars are not going to assist foreign countries increase their ability to export when those same countries are beating us out on the world agricultural market. With the precipitous decline in U.S. agricultural exports, and the record-high deficit, we need to be especially sensitive to the domestic implications of U.S. foreign assistance. Agricultural exports have declined from a peak of $43.8 billion in 1981 to an estimated $30.2 billion this year, and nearly 2 out of 5 acres of land harvested in this country is for export.

The United States has a responsibility to provide assistance to less developed nations for food security and subsistence agriculture. In fact, the amendment would not prohibit activities designed to increase food security in developing countries where such activities have a negligible impact of the export of agricultural commodities of the United States, or research activities designed to benefit American producers.

But the United States should not provide assistance for countries to better their export capability and undercut the ability of U.S. farmers to compete effectively. Yet, in the past, the Agency for International Development has awarded grants for research and development of export crops from foreign countries with whom we directly compete for agricultural products.

When the Senate accepted the amendment I offered on the fiscal year 1986 supplemental appropriation bill, I cited three specific examples of U.S. AID grants that have had as their effect the promotion of a competing countries agricultural export capacity. Grants were made which had as their effect the promotion of soybean production in Brazil, cotton production in Paraguay, and rice production in Thailand—all top competitors with United States farmers for these very same commodities. These grants involved research in the United States, but had as their effect the betterment of our competitors agricultural export capacity.

I recently met with AID Administrator Peter McPherson on this subject, and he assured me that AID has not intentionally made such grants that had such consequences. If U.S. AID finds that a particular type of research or development project has as its effect the promotion of the export capacity of a competitor, it should be stopped.

Once again, I would like to thank my colleagues on the Foreign Operations Subcommittee for their cooperation on this amendment. I urge the conferees on the continuing resolution to adopt this provision.

ST. CHRISTOPHER'S HOSPITAL

Mr. SPECTER. Mr President, I want to address myself to the Senator from Oregon [Mr. HATFIELD] in his role as chairman fo the Appropriations Subcommittee on Energy and Water Development. As he knows, the House version of H.R. 5162 carries an earmarking which is very important to me and to the Pennsylvania, New Jersey, and Delaware Tri-State Region. That earmarking is of $14.8 million for the St. Christopher's Hospital for Children Energy Demonstration Project.

St. Christopher's is a pediatric medical center located in Philadelphia, PA. It is a premier medical institution and a leading center for education and research in pediatric health care. St. Christopher's plays a critical role in the health care of children in the Tri-State Region as well as functioning as the family doctor for the low-income children of Philadephia.

Because of the growing regional needs for and clinical trends in pediatric care, St. Christopher's plans to construct a State-of-the-art medical center that is easily accessible to the region, a model of design, cost-efficiency, and energy efficiency.

According to St. Christopher's and the American Hospital Association, hospitals today spend 25 percent more on energy than they did in 1980. If hospitals could reduce their energy consumption by a quarter, the American Hospital Association reports that this could reduce health-care cost by $1 billion annually.

Mr. President, the technologies to affect these savings are presently in the developmental stages and are available for demonstration in hospital facilities.

Mr. President, I know that the Senator from Oregon can see that this is an opportuntity to combine the dual national goals of advancing new energy saving technologies and reducing the costs of health care. I understand the need to preserve the prerogatives of the Senate in conference and therefore have not offered an amendment at this time, but would ask the Senator if he might be in a position to review this project and recede to the House when we go to conference on this resolution.

Mr. HATFIELD. Mr. President, I thank the Senator from Pennsylvania [Mr. SPECTER] for his description of the St. Christopher's project. This project does appear to address important national issues and we will make every attempt to include it in our final deliberations.

Mr. SPECTER. Mr. President, I thank the Senator for his remarks and look forward to working with him on this in conference.

Mr. President, I should also point out that this amount is but a portion of the total cost of construction. The majority of the funds will be provided by the Commonwealth of Pennsylvania and private sources.

HYDROELECTRIC GENERATING EQUIPMENT

Mr. MATTINGLY. Mr. President, I am certain that Chairman HATFIELD is aware I have previously expressed my concern over the policy of the Corps of Engineers with respect to the acquisition of hydroelectric generating equipment from foreign sources. With your cooperation and that of other committee members, it was agreed by the full committee that the Corps of Engineers be directed to report to the Appropriations Committees of the House and Senate at least 90 days in advance of the issuance of a request for proposal or competitive bid solicitation for hydroelectric generating equipment if the proposal or bid could result in the award of the contract to an overseas contractor. Is it the full committee's understanding that the use of the term "overseas" applies to manufacturers not located in North America and North American manufacturers or suppliers who intend to provide equipment of non-North American origin?

Mr. HATFIELD. That is the committee's understanding, and the committee also views such a reporting requirement as desirable.

Mr. MATTINGLY. In addition, is it the view of the committee that if foreign sources could and would be used, the Corps of Engineers is required to demonstrate on other than cost-savings grounds, why foreign source equipment is needed?

Mr. HATFIELD. Mr. President, it is the intent of the committee that cost differences alone will not be considered sufficient reason for such practice.

Mr. MATTINGLY. Lastly, I was motivated by the fact that basic fairness in foreign trade mandates the committee's action. Many potential foreign suppliers of hydroelectric generating equipment are located in countries that do not permit American manufacturers or other North American suppliers to bid on such equipment for their public sector projects. In addition, it is highly probable that equipment from a foreign source would be highly subsidized by the foreign government to underprice competitors and obtain a market. Thus, the potential for buying dumped goods with Federal moneys is quite high. Is that the chairman's understanding as well?

Mr. HATFIELD. Yes. We understand that some foreign countries may have adopted such policies.

PLANT COMPLEX CARBOHYDRATE RESEARCH CENTER UNIVERSITY OF GEORGIA

Mr. MATTINGLY. Mr. President, simple sugars in the form of complex

carbohydrates are increasingly being recognized as playing crucial roles as informational molecules in all types of biological recognition and regulatory phenomena. Recently, Prof. Peter Albersheim, world leader in the field of plant complex carbohydrate research, and his research team, made the revolutionary discovery that complex carbohydrates localized in the primary cell walls of plants are developmental messengers in plants. Thus, one complex carbohydrate induces plant cells to produce only roots; another complex carbohydrate induces the same plant cells to produce only flowers. These observations will produce major breakthroughs in future plant biology research and biotechnology over the next 20 years.

Mr. President, research on the biochemistry and biology of complex carbohydrates is expensive and has lagged behind other research areas in the biological sciences. Understanding this deficiency in American science, the biological sciences research division of the Department of Energy, is proposing to establish up to four centers for complex carbohydrate research in the United States. The four centers will individually emphasize research in different areas, that is, plant, animal, and microbial complex carbohydrates and complex carbohydrates as materials. These centers would serve as focal points to revitalize and stimulate the American research efforts on the biological roles of complex carbohydrates and to realize the potential of research on complex carbohydrates for providing major contributions to agricultural problems and health of our society.

Mr. President, I believe Congress should encourage and provide the necessary funds for the establishment of such centers. I would like to inquire of the distinguished chairman of the committee's interest in this area.

Mr. HATFIELD. Mr. President, I thank my colleague from Georgia for raising this important matter. The committee is indeed supportive of increased research on plant complex carbohydrates and has recommended an increase of $5 million in biological energy research so that funds will be available for increased plant complex carbohydrates research and other research activities.

Mr. MATTINGLY. Mr. President, the State of Georgia and the University of Georgia have already made a significant contribution to this important national need in biological and biotechnology research through the establishment and partial funding of a Center for Plant Complex Carbohydrates Research at the University of Georgia plus the hiring of Prof. Peter Albersheim. In order that full funding of this important project can be realized, $3 million should be provided in the fiscal year 1987 DOE budget for startup funds and support of the Center for Complex Carbohydrates Research at the University of Georgia. This center will focus primarily on plant complex carbohydrates research.

Mr. HATFIELD. Mr. President, the committee provides additional funds for intial work for research facilities on plant complex carbohydrates at the University of Georgia.

PHASE II OF THE BARBOURVILLE FLOOD CONTROL PROJECT

Mr. McCONNELL. Mr. President, in 1980 Congress authorized the Corps of Engineers to control flooding along the Tug Fork and Levisa Fork of the Big Sandy and Cumberland Rivers in West Virginia, Kentucky, and Virginia. This is an area of the country that has a long history of flooding and the frequency and severity of flooding is expected to worsen as the region becomes more developed. In fact, in 1977 alone over 100 million dollars' worth of damage was sustained in the Fifth District of Kentucky. Therefore, I believe it critical that the Corps of Engineers move forward as quickly as possible to avert future disasters which will take their toll in lives and property.

While I am pleased that the bill contains $3.6 million for the Harlan flood control project, I was disturbed to see that the appropriation fell $800,000 short to initiate phase II of the Barbourville project. Instead, $300,000 was included for more design work; the corps maintains that it is not capable of initiating construction in fiscal year 1987. Mr. President, I challenge that assertion and suggest that the corps could initiate construction shortly if it had the funds.

The corps has been working on the design of phase II of the Barbourville project since August 1984. By contrast, phase I was designed and a contract let for construction within 7 months. The corps will complete its design work on phase II in April of next year. The fact that the design work is not finished is no reason why construction can not begin soon. Is it not the understanding of the Appropriations Committee chairman that it is quite usual for the corps to proceed with a project before the design is 100-percent complete?

Mr. HATFIELD. Yes, I understand that it is not unusual for the corps to begin construction before design has been finalized.

Mr. McCONNELL. I thank the Senator. It makes perfect sense for the corps to initiate construction. The first steps in phase II will be to raise a bridge at Highway 459 and relocate some utilities. That design is complete. In fact by the time these steps are accomplished, the entire design of phase II will have been finished.

It is obvious to me that there is no justified reason for any further delay in starting construction on this project. Last year a major flood swept through the Barbourville area. Considerable damage was prevented and lives saved because the corps had just completed phase I of the project. Let us not be complacent and believe that one more year of delay cannot take its toll. It can. We have the ability of avoiding the losses associated with a larger disaster if we proceed deliberately and swiftly in funding the next stage of the project.

While I had planned to introduce an amendment to bring this bill in line with the House-passed level of funding for Barbourville, I recognize the chairman's difficulties in keeping his bill within the targets stipulated by the budget resolution. Instead, I am wondering if the chairman could support the higher level for the Barbourville project in conference, and hope and trust the Senate conferees will recede to the House level for Barbourville's critical flood control needs.

Mr. HATFIELD. As the Senator from Kentucky knows, the corps had requested only $300,000 for further design work on phase II of the Barbourville flood control project. But the Senator makes some good points, and he can be assured that I will do my best and try to accommodate his request for this item, if sufficient budgetary resources are available.

Mr McCONNELL. I thank the chairman for his support.

ST. LOUIS HARBOR

Mr. DANFORTH. Mr. President, H.J. Res. 738, the continuing resolution, would make appropriations for this Nation's energy and water development programs during fiscal year 1987. I would like to call one particular water resources development project, the St. Louis Harbor project, to the attention of the Appropriations Committee and its chairman, the distinguished Senator from Oregon.

The St. Louis Harbor project would bring lasting benefits to two States, Missouri and Illinois. By reducing silting, construction of a dike on the Missouri side of the Mississippi River would allow reliable access to municipal docks, and eliminate the need for periodic dredging. On the Illinois side of the river, bank excavation would create a much-needed barge fleeting area. Together, these efforts would constitute a structural improvement to the Mississippi River channel, and a wise investment in the Nation's water resources. Finally, the project would improve land on both sides of the river, complementing extensive economic development administration investments in the area.

The House and Senate both included authorization of the St. Louis Harbor project in omnibus water resources legislation, indicating its merit. Congress appropriated $600,000 for planning and engineering in fiscal year

1985, and $425,000 in fiscal year 1986. Less than $700,000 is needed to finalize preparations for construction.

Though the legislation now before the Senate would not authorize funding for St. Louis Harbor, the House version of H.J. Res. 738 includes $500,000 for the project. I strongly believe that this project is a wise and appropriate Federal investment, and I urge favorable consideration of the other body's provision in conference.

Mr. EAGLETON. Mr. President, I share my colleague's interest in this matter, and would like to associate myself with his remarks. I believe that the St. Louis Harbor project merits continued congressional support.

Mr. HATFIELD. I appreciate the comments of the Senators from Missouri on this matter.

Mr. SIMON. Mr. President, the junior Senator from Missouri has mentioned that the St. Louis Harbor project would benefit my State. I would also like to express support for the project, which would bolster commerce and economic development in Illinois. I hope that the managers will look favorably upon the House provision in this case.

Mr. DIXON. Mr. President, I join the Senators from Missouri and my colleague from Illinois in urging that the Senate continue to support the St. Louis Harbor project, and in requesting the consideration of the managers during conference.

Mr. HATFIELD. Mr. President, I thank the Senators from Missouri and Illinois for their interest in this matter. You can be sure that it will receive close attention in conference.

Mr. DANFORTH. I thank the Senator.

FALLS OF THE OHIO

Mr. McCONNELL. Mr. President, at the end of 1981 Congress passed legislation authorizing the falls of the Ohio National Wildlife Conservation Area located in my home town of Louisville. The area is famous for its 375-million-year-old Devonian coral fossils which are reputed to be the best in the world. Thousands of people visit the falls each year and it is particularly popular with local schools taking field trips to observe the fossil formations. In addition, it is well known for its unusual and abundant bird life which attracted such naturalists as John James Audubon.

Several years ago the Congress made an initial investment of $300,000 for land acquisition and planning; yet this has fallen dangerously short of the amount needed to preserve this natural resource.

Mr. President, I got in touch the with Louisville district of the Corps of Engineers to inquire about reports I had heard about garbage dumpers and fossil thieves at the falls of the Ohio. Unfortunately, these reports are true. Specifically, the corps has informed me by letter that:

Public access to the fossil bed area for bird watching, fossil viewing, and bank fishing is from the Indiana bank. Some of the more common problems faced are uncontrolled pedestrian and vehicular access to the Indiana bank which often results in the dumping of trash, driving of vehicles over portions of the fossil beds, building of campfires, chipping of the fossils by souvenir hunters, wildlife hunting and so forth. In order to control this unregulated and often detrimental use, the Indiana shoreline must be in federal ownership. Also, to provide for appropriate public use, the parking area, overlook, and interpretive media should be in place. When such lands are owned by the United States, regulations governing the use of the Wildlife Conservation Area may be posted.

Visitors wonder why Government is standing idly by and allowing this natural resource to become desecrated. They wonder why we can't appropriate a modest sum to finish the job we started. But we can finish the job, Mr. President, and we should do it now before the fossils and wildlife are further jeopardized. I know that this is a matter of concern to the Senators from Indiana, as well.

Mr. LUGAR. The falls of the Ohio National Wildlife Conservation Area is important both to the environment and to the economy of Indiana. This project should be completed in a timely fashion to avoid any degradation of the fossil beds and to protect wildlife. The project will also help to stimulate the local economy.

Mr. QUAYLE. Mr. President, in August 1985, I personally visited the impressive natural resource on which Senator LUGAR and McCONNELL have commented. I join them in stressing the importance of action in the near future to stop damage to the ancient fossil beds and provide facilities for those visitors who come to learn from them. The 375-million-year-old fossils exposed in the bed of the Ohio River are a national treasure that should be preserved for exploration and study. The area also draws visitors from all over the Midwest and will play a central role in stimulating economic development in the communities along the Indiana River bank. Support for the falls of the Ohio has been wide spread on both the Indiana and Kentucky sides of the river. As a member of the Budget Committee, I fully understand the spending restraint that must be exercised during consideration of this legislation. However, I encourage my colleagues who will be participating in the House-Senate conference to honor the modest appropriation proposed by the House of Representatives to complete this project.

Mr. McCONNELL. The House Energy and Water Appropriations bill contains $900,000 for the falls of the Ohio. This amount would finish the job, Mr. President and protect the falls for future generations. I ask if the distinguished chairman of the Appropriations Committee could give us some assurance that this issue will receive favorable consideration in conference?

Mr. HATFIELD. I say to the Senators from Kentucky and Indiana that I will look into this matter to see if we can accommodate an additional appropriation for the falls of the Ohio. While I know you recognize the constraints we are under in meeting our targets, I agree that it is a worthwhile project and a modest request.

Mr. McCONNELL. I thank the chairman for his consideration.

COLUMBIA RIVER FISH PASSAGE FACILITIES

Mr. EVANS. Mr. Chairman, I am concerned that the work on the study and installation of mechanical bypass facilities for juvenile salmon and steelhead at the mainstem Columbia River and Snake River projects has not proceeded as expeditiously as possible. I appreciate the attention that the chairman has paid over the years to the restoration of the salmon and steelhead resources in these river basins. In particular, I appreciate the inclusion of the report language on this issue on page 49 of Senate Report 99-141.

More precisely, however, I am advised that the Corps of Engineers could expedite the schedule for completion of mechanical bypass facilities at three critical Snake River projects: Little Goose, Ice Harbor, and Lower Monumental. At the Little Goose Dam, the allocation of $745,000 would accelerate a gate rise modification for improved bypass efficiency. At the Ice Harbor Dam, $1,150,000 could be used to expedite prototype screen tests, fish guidance efficiency tests, and spill effectivenes monitoring. At the Lower Monumental Dam, $1,020,000 could be allocated to expedite prototype screen tests, feasibility study, construction design, and spill effectiveness monitoring. The result of these accelerated activities would be to allow completion of the bypass facilities 1 year earlier that is currently achievable. The sooner the corps can complete these facilities, the sooner our region can begin to enjoy the myraid benefits of the improved returns of the badly depleted upriver salmon and steelhead.

Is it the committe's intent in including report language which provides additional funds in fiscal year 1987 for Columbia River fish passage facilities to expedite the schedule for installation of bypass facilities at these projects?

Mr. HATFIELD. I thank the Senator from Washington for his remarks. I want to assure him that the committee's position is for the corps to proceed as quickly as possible on this fish work. The three projects mentioned by the Senator should be accorded a high priority by the Corps of Engi-

neers and the opportunity to gain 1 year in the schedule for their completion should not be lost if it can be avoided.

As the Senator knows, however, the committee was faced with the problem of having to reduce the House-passed bill by $1 billion in order to comply with the Congressional Budget Act. But I believe this work is important and that the Corps of Engineers should take a close look at the funding needed in fiscal year 1987 so that the installation of fish facilities can move forward. The committee has recommended an increase in funding for operation and maintenance activities so the corps should have sufficient resources and flexibility to augment this work.

Mr. EVANS. I thank the chairman for his assurances of the committee's interest in the expedited development of these projects.

BONNEVILLE'S CONSERVATION BUDGET

I am concerned about the reduced funding for Bonneville's conservation programs in this bill. The bill as passed by the committee provides $276.1 million in borrowing authority. Of this, only $86.8 million will be made available for capitalized conservation programs. In contrast, the House bill provides for a spending level of $139.2 million for conservation programs, which is consistent with Bonneville's 1986 resource strategy.

I am fully aware of the need to reduce all program levels caused by declining sales of nonfirm power to the Pacific Southwest. But I believe that conservation has taken a disproportionate reduction in the initial reductions proposed by the Bonneville Administrator. I also believe that the Administrator should follow the current resource strategy developed in cooperation with the Northwest Power Planning Council in which conservation has been identified as the most cost-effective resource. Does the chairman agree the resource strategy should be the guiding document for the Administrator's request for conservation borrowing authority?

Mr. HATFIELD. I agree the resource strategy should be the guiding document. I also agree with the Senator from Washington that the conservation programs should be maintained at an adequate funding level. Yet I also understand the Administrator's need to reduce all program levels because of the dramatic decline in nonfirm power sales to California. I believe we should continue to provide the Administrator some latitude in the difficult decisions that he must make in reducing programs. Such reductions should be carefully implemented and not unfairly impact one particular program.

Mr. GORTON. I concur with the chairman that, while recognizing budgetary stringencies, such reductions should not unfairly impact one particular program. I agree with the chairman that these are difficult decisions that the Administrator must make in order to maintain stable rates for Bonneville in our region.

I would point out, however, that the reductions proposed for the residential weatherization program are dramatic. It has taken utilities several years to develop relations with subcontractors and ratepayers in order to implement an effective program. Bonneville's proposed 42-percent reduction in this program will cause major disruptions in utilities' residential weatherization programs. In addition, the proposed cuts call for reductions in certain commercial programs. I urge the chairman to ensure that these reductions are allocated equitably across all programs in his oversight responsibilities of Bonneville.

Mr. EVANS. Partial deferral of these conservation program reductions could be achieved through the savings from reducing the current preservation budgets for the WNP 1/3 plants. Studies are now underway to determine the potential termination of these plants and their current preservation costs. While those studies are underway, BPA's contribution to the conservation programs could be restored by about one-half, while the utilities could contribute about one-half. The rate impact would be minimal. Does the chairman agree that these conservation programs should not face a major disruption from fiscal year 1986 to fiscal year 1987?

Mr. HATFIELD. I agree with both Senators from Washington that the goal should be to minimize disruption in the conservation programs. The conservation resource is a decentralized resource that requires the participation of many players. Stability is a key requirement for its success. Conservation is also afforded the highest priority in the Pacific Northwest Power Planning and Conservation Act passed by the Congress in 1980. I am aware of the proposal to defer partially the proposed conservation cuts by the Administrator. I urge the Administrator to expedite the WNP 1/3 study and coordinate its completion and implementation, as much as possible, with the reductions in conservation activities. As the committee report indicates, the Administrator should submit promptly the program reductions in detail to the Committees on Appropriations.

Mr. EVANS. I thank the chairman for his explanation. I hope he will carefully review the final program reductions when they are submitted to the committee in order to ensure they are equitably allocated across all programs.

MAGNETIC FUSION BUDGET

I am concerned about the earmarking of funds in the Senate committee's report on the magnetic fusion budget, specifically page 105 of Senate Report 99-141. Coupled with the $25 million reduction in the total magnetic fusion budget that the Senate made under the House figure, this earmarking will sharply reduce funding for a new, innovative project in the field reversed configuration type of confinement. Specifically, the LSX project of Spectra Technology is one of the two new major device fabrications which were initiated in fiscal year 1986 as the focus of DOE's efforts in the area of advanced fusion concepts [AFC]. Funding for the LSX project was included in the President's fiscal year 1987 budget request at the level of $3.9 million. The construction of the project is scheduled to be completed in 1989 at a total estimated cost of $8 million. It is patently unfair to delay substantially the development of this new and innovative AFC project just as it is getting started. I strongly urge the chairman to do his utmost in the conference committee to delete any earmarking of projects so that funding for the LSX project, as included in the President's budget request, can go forward in fiscal year 1987.

Mr. GORTON. I strongly concur with the remarks of Senator EVANS. The LSX project is highly recommended by both DOE and the scientific community. The Magnetic Fusion Advisory Committee recommended in 1984 that the construction of the LSX project proceed as the highest priority for the Advanced Fusion Concept [AFC] program, even in the event of constrained fusion budgets. Construction for this project started in fiscal year 1986. The President provided further funding to meet the the 3-year construction schedule in the fiscal year 1987 budget request. I urge the conference committee to raise the level of funding for magnetic fusion above the Senate committee's mark of $333 million and to delete any earmarking of minimum funding levels for specific projects.

Mr HATFIELD. I am aware of the concern as stated by both Senators from the State of Washington. I will make every effort to address their concerns on earmarking and funding levels in the conference committee.

TECHNOLOGY TRANSFER COMPONENT IN DEPARTMENT OF ENERGY BUDGET JUSTIFICATIONS

Mr. DOMENICI. Mr. President, the Federal Government funds an extensive and successful research laboratory network, which employs more than 15 percent of our Nation's scientists and engineers, and will spend approximately $18 billion in Federal funds this year.

These labs have performed a major role in our Nation's development as a leader in technology, and have played an instrumental role in our Space Program and our Defense Program. While

a considerable amount of this technology has been transferred to the private sector, I believe we can do more in this regard.

Mr. President, the report accompanying the Senate version of H.R. 5162, the energy and water development appropriations bill for fiscal year 1987, includes language directing the Department of Energy to streamline, shorten, and improve the budget justification material it submits to the Congress. I inquire if the distinguished chairman of the Appropriations Committee would agree that it would be desirable to include a brief statement in the justification material identifying those projects in which the transfer of new or improved technology to the private sector is feasible?

Mr. HATFIELD. I thank the Senator from New Mexico for his observations. He correctly points out that a significant amount of federally funded research carried out by DOE is, and should be, available for development by the private sector. I believe the inclusion of a technology transfer component in each DOE program, project, or activity, where appropriate, would be invaluable. The Appropriations Committee staff will be working closely with DOE to design improved justification formats. I assure my esteemed colleague that we will recommend inclusion of a technology transfer description requirement in the new format.

Mr. DOMENICI. I thank my good friend from Oregon for his support. I believe that this identification and description requirement will enable the private sector to benefit from Federal research efforts. Such a transfer of technology will better enable us to develop a strong national economy, to improve the Nation's international competitiveness, and to provide a better life for our citizens.

DEPARTMENT OF ENERGY GEOTHERMAL RECOMMENDATION

Mr. DOMENICI. Mr. President, I would like to discuss the recommendations of the Appropriations Committee for the Department of Energy's Geothermal Program if the distinguished chairman of the committee would allow.

Mr. HATFIELD. I would be pleased to enter into a discussion on DOE's Geothermal Program with my good friend from New Mexico.

Mr. DOMENICI. I thank the chairman. First of all, I commend the committee for recommending $3 million more than the House for the DOE Geothermal Program. Out of the total $20.9 million provided by the Senate, I am pleased that a total of $8 million would be available for the hot dry rock project, which is nearing completion.

My concern comes when I review the recommendations of the House in addition to those of the Senate. When all the fences, or earmarks, are taken into account, most of the money is utilized, and the remaining geothermal activities, including those at Sandia National Laboratory in New Mexico, could be significantly scaled back. Could the distinguished chairman of the Appropriations Committee tell me if he believes the final conference outcome will jeopardize existing programs?

Mr. HATFIELD. I thank the Senator from New Mexico for raising this concern. As he knows, I believe that the number of items earmarked in an appropriations bill should be minimized to give executive agencies the maximum flexibility to effectively administer their programs. However, fences or earmarks are a fact of life, and the Senator is rightfully concerned about the earmarks in the geothermal account.

I can only say that I hope that we can address these earmarks in conference and ensure that the underlying programs, including the Sandia activities, will remain intact.

Mr. DOMENICI. I appreciate the comments of the chairman, and I stand ready to assist him in these efforts in the upcoming conference on the energy and water development appropriations bill.

Mr. McCLURE. Mr. President, the Senate Appropriations Energy and Water Development Subcommittee recommends $37,650,000 for space and defense power systems. This recommendation includes funds for the SP-100 program, the isotope power systems and the multimegawatt power systems. Is it the intent of the subcommittee that these funds will also provide for the continuation of the Multimegawatt Terrestrial Program [MTP]?

Mr. HATFIELD. Yes, that was the intent of the committee. As the Senator knows, the Department of Energy funding for the MTP, $3 million for fiscal year 1987, is to be equally matched by the Department of Defense.

Mr. McCLURE. I thank the chairman for clarifying this matter.

SPACE AND DEFENSE, POWER SYSTEMS RECOMMENDATION

Mr. DOMENICI. Mr. President, I am very concerned about the priorities that seem to be outlined for the space and defense power activities of the Department of Energy. If I may, I would like to seek a clarification about these recommendations from the distinguished chairman of the Appropriations Committee, Senator HATFIELD.

Mr. HATFIELD. I would be pleased to discuss the Appropriations Committee recommendation for the Space and Defense Power Programs with the senior Senator from New Mexico.

Mr. DOMENICI. I thank the chairman. First of all, I am concerned about the overall level of funding recommended for Space and Defense Power Programs. The Senate recommendation of $37.7 million for fiscal year 1987 is $21 million below the House level and $36 million below the President's request. I would like to inquire of the distinguished chairman how he proposes that this reduction in funding is distributed? Did the chairman intend the various space power activities to be reduced across-the-board? Or would it be more appropriate to identify a program that should not proceed?

I believe there are valid reasons to prioritize funding for programs in the space and defense power account. For example, the dynamic isotope power supply project, commonly known as DIPS, is a program to develop an alternative to solar power for the boost phase of space surveillance and tracking systems. This research effort needs an adequate supply of plutonium to be properly developed, and there isn't enough plutonium to do so.

Mr. HATFIELD. I thank my friend and colleague, the distinguished Senator from New Mexico, for his observations. He is correct that the Energy and Water Development Appropriations Subcommittee had significant budgetary constraints under which to develop its fiscal year 1987 bill. I believe it prudent for the Appropriations Committee to set priorities for funding whenever possible to ensure that Federal dollars are well spent.

The Senator's suggestion that we prioritize activities within the Space Nuclear Power Program is well founded. I believe we should forgo continued develoment of the dynamic Isotope Power Supply Program in fiscal year 1987 because of the lack of information presented to the committee on this project. Under the reduced funding levels in the Senate bill, the DOE should limit activities to a minimum of design and technology studies. My distinguished colleague is correct when he notes that there currently is a serious question about the sufficiency of plutonium supply in order to successfully pursue DIPS development.

Mr. DOMENICI. I greatly appreciate the assurances of the esteemed chairman that Federal research dollars for space power applications will be used in the most effective manner possible. While I remain deeply concerned that reduced funding for these activities may jeopardize the Nation's ability to maintain a robust research program for space power, I am hopeful that this exchange, and the report language I proposed to the defense appropriations bill to encourage a multiagency approach to establishing a national space nuclear power program, will promote viable research in this essential area.

MAGNETIC FUSION

Mr. LAUTENBERG. Mr. President, the recent announcement by the Department of Energy concerning major

achievements in fusion research was most exciting. The Tokamak fusion test reactor experiments at the Princeton Plasma Physics Laboratory have reached record plasma temperatures of 200 million degrees, corresponding to the full temperature requirements of a practical fusion reactor. The experiments have produced a high level of confidence in the technical success of the TFTR break-even demonstration and have enhanced the economic promise of the Tokamak concept.

Earlier this year, I discussed with my distinguished colleague, the chairman of the Appropriations Committee, the value of enhanced funding for the National Magnetic Fusion Program. The budget proposed by the President for fiscal year 1987 is $333 million, down by 15 percent from the pre-GRH fiscal year 1986 budget and down by 30 percent from fiscal year 1985. The Appropriations Committee in its markup provided the full President's request, but the pressures on the program at this level of funding are enormous.

I was dismayed to learn that, under the constraints of the $333 million budget, the fiscal year 1987 funding for the TFTR program at Princeton has been cut again requiring further postponement of the break-even experiment. I have also learned that the Tokamak machines in Europe and Japan are assured of budgets that are about 1½ to 2 times greater than the operating budget for TFTR. These competing foreign fusion projects will be able to profit from the recent results of the U.S. program at the same time that we are reducing our budgets.

Mr. HATFIELD. We are aware of these developments and want to be certain that the U.S. program is adequately funded.

Mr. LAUTENBERG. In considering the magnetic fusion budget, the House added an extra $25 million. With this extra funding, DOE's Office of Fusion Energy would be able to provide the support previously planned for the TFTR project. The break-even experiment—the goal of the program for the last 10 years—could be completed on time. Adequate funding would also be available to complete and operate the alternate concepts program devices which are of great interest to our colleagues from Tennessee and New Mexico and the MFTF-B project in California could proceed in an orderly fashion.

The DOE could continue to move forward as planned on the next major step in fusion research beyond TFTR. This new machine has been under discussion since passage of the Magnetic Fusion Engineering Act of 1980. Work on the Compact Ignition Tokamak [CIT] must begin now so that construction can start in the late 1980's.

In summary, the additional funds provided would help protect the position of the United States as the leader in world fusion research, both in the near term and in the future. Such strong support is needed to insure that we will be able to maintain our preeminent position in fusion research.

Mr. HATFIELD. I thank my distinguished colleague from New Jersey for raising the issue of adequate funding for magnetic fusion energy research. This program has been reduced substantially in recent years, but I believe that the break-even and CIT experiments should proceed expeditiously. Let me assure the Senator that we will make every effort to provide adequate funds in fiscal year 1987 to carry forward the planned fusion program within the severe budget constraints which we face in conference.

Mr. COCHRAN. Mr. President, the appropriations bill for agriculture, rural development, and related agencies (H.R. 5177), which is included in the continuing resolution by reference, provides funding for the Department of Agriculture—with the exception of the Forest Service—the Food and Drug Administration, and the Commodity Futures Trading Commission.

The programs in the Agriculture appropriations bill affect virtually every step in the food chain. These steps include conserving our soil and water resources as a basis for production; conducting research on the production of agricultural commodities and livestock; protection of those products from various pests and diseases; assuring the safe and sanitary processing of foods and commodities, along with the fair and successful marketing of those products; and finally, helping to purchase foodstuffs for those who are unable to buy a sufficient amount of food for themselves. In addition, Federal crop insurance is available to protect farmers from losses, and export promotion activities are conducted to assure markets for their products.

The rural development portion of the bill provides credit programs to rural America. Farmers who are unable to independently obtain financing from private lenders may come to the Farmers Home Administration for either a direct loan or a guarantee of a private loan. Low-income rural citizens may obtain a low-interest housing loan or may receive rental assistance from the Farmers Home Administration's rural housing insurance fund. Also available from Farmers Home are loans and grants to rural communities, primarily for water and waste disposal systems to assure that rural areas have safe drinking water. The Rural Electrification Administration provides loans to rural electric and telephone cooperatives which provide valuable services to rural America.

As reported by the Appropriations Committee, the Agriculture appropriations bill includes $30,486,017,000 in total budget authority for fiscal year 1987. Within that total, we have provided funding for most programs at or near their fiscal year 1986 postsequester levels.

AGRICULTURAL PROGRAMS

In the research and extension portion of our bill, we restored most of the special and competitive research grants to their 1986 levels. Formula funds for land-grant universities and the 1890 colleges will be frozen at their 1986 levels in both the Cooperative State Research Service and the Extension Service. For the Extension Service as a whole, we did not go along with the President's requested reduction. Level funding is provided for virtually all Extension programs, including the Expanded Food and Nutrition Education Program, and an increase is provided for financial management and counseling programs for distressed and dislocated farmers.

In the marketing and inspection section of the bill, the committee has provided an increase of $5.5 million for meat and poultry inspection by the Food Safety and Inspection Service, an increase of $1.3 million for enforcement of the Animal Welfare Act, an increase of $2.4 million for animal damage control, $6.7 million for grasshopper control, and increases of $5 million each for avian influenza and citrus canker. Otherwise, programs such as brucellosis eradication, boll weevil control and eradication, and imported fire ant control, as well as other programs of the Animal and Plant Health Inspection Service are funded at the 1986 levels.

CORPORATIONS

For the Commodity Credit Corporation [CCC], the committee is once again recommending a current, indefinite appropriation for net realized losses. This approach to funding this account should alleviate the need for any shutdown of CCC operations, which, in turn, will alleviate the need for CCC supplemental appropriations.

The extreme weather conditions over the past year—including drought and flooding in the same areas in the same year—have caused the Federal Crop Insurance Corporation to suffer extensive losses. For that reason, we have provided an increase to cover the necessary indemnity payments.

RURAL DEVELOPMENT ASSISTANCE

In the rural development title of the bill, we have funded at the 1986 level the Farmers Home Administration rural housing programs and rural development loans and grants. Also, programs of the Rural Electrification Administration will remain at the 1986 level for the electric and telephone loan programs.

For farm loans, the farm bill prescribed a total level of $4 billion, including $1.5 billion for direct loans and $2.5 billion for guaranteed loans. Because of the high demand for farm op-

erating loans, the committee is recommending that the full $1.5 billion for direct loans be appropriated to the operating loan program. The farm bill and the House bill had anticipated that a portion of that funding would be for ownership loans. We have, however, provided $325 million for guaranteed ownership loans. The Secretary of Agriculture has the authority, provided by the farm bill, to transfer up to 25 percent of this amount to direct loans. The committee has directed the Secretary to use that authority whenever necessary.

For soil and water conservation, we have provided the traditional level of support and funding, although the total appropriation for the Soil Conservation Service [SCS] is below the 1986 level, because the 1986 appropriations total included $82 million for emergency watershed protection made necessary by the flooding which occurred last year in West Virginia and the Western United States. We are also reallocating funds within the SCS to place emphasis on technical assistance for land which is required to come into compliance with the conservation provisions of the farm bill.

DOMESTIC FOOD PROGRAMS

In the domestic food programs title of the bill, we have provided full funding for child nutrition programs—which includes school lunch and school breakfast programs—and the Food Stamp Program. We have also provided an increase of $75 million over the 1986 levels in the feeding program for Women, Infants, and Children [WIC].

INTERNATIONAL PROGRAMS

In the international programs of our bill, we have rejected the reduction requested in the budget for the cooperator program of the Foreign Agricultural Service; thus, funds for export market development will continue to be utilized through the cooperator program.

The budget resolution assumed a reduction in all foreign assistance programs, which translated into a $303 million decrease in the Public Law 480 programs. We have reduced these programs by $260 million. This $43 million difference with the budget resolution assumptions is the largest of such differences in the bill.

FOOD AND DRUG ADMINISTRATION

In the related agencies title of the bill, we have provided an increase for the Food and Drug Administration [FDA] to maintain its activities at the 1986 level. Included in the increase is $4.6 million for AIDS and $1 million for the FDA contingency fund, both of which were requested by the administration on August 15 in an amended budget request.

Mr. President, the Appropriations Committee has produced a bill which, I hope will be viewed as a measure which deserves the support of the Senate. It is within its 302(b) allocation in both budget authority and outlays and contains fair and responsible levels of funding for balance of the programs in this bill.

Mr. DURENBERGER. Mr. President, during the Senate's consideration of House Joint Resolution 738, I had planned to offer an amendment that would have allowed the Minnesota State Legislature and other State legislative bodies the opportunity to review their civil rights restoration laws in light of the enactment of the Federal Firearms Owners' Protection Act (Public Law 99-308). However, after my discussions with the floor managers of the pending resolution and other Members of the Senate, I understand that the proposed amendment has been objected to and I will, therefore, not press the amendment in a losing case.

The Federal Firearms Owners' Protection Act changes the definition of "conviction" for purposes of disqualifying a person from owning a firearm under the Federal Gun Control Act of 1968 (Public Law 99-308). The new law states that:

> Any conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of this chapter, unless such pardon, enpungement or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

In the State of Minnesota, a convicted felon's civil rights are automatically restored when his sentence expires. Therefore, under the new Federal law, it will no longer be a violation of the Federal Gun Control Act of 1968 for a Minnesotan convicted of a felony to possess a firearm after his sentence has expired. The same will be true in each State which automatically restores a convicted felon's civil rights.

This creates a problem in my State. The ironic, unintended side effect of this "glitch in the gun law" is to turn a law intended to crack down on crime into a law that could abet crime unless Minnesota changes its law regarding civil rights of felons. I agree with the Minneapolis Star and Tribune's editorial today which urges that the glitch be corrected.

Under Minnesota law, individuals convicted of a crime of violence will still be prohibited from owning a handgun for up to 10 years after their sentences have expired.

Public Law 99-308 is scheduled to go into effect on November 15, 1986. My amendment would have delayed the effective date of the provision defining "conviction" until after the Minnesota Legislature—and the legislatures of similarly affected States—had no opportunity to review its civil rights restoration laws.

Since this new law is the first major revision of the 1968 Gun Control Act—which has served as a model for many State gun laws—I believe it is appropriate for all of the States to review, and possibly revise, their laws governing possession of firearms, especially those State statutes regulating possession of firearms by convicted felons.

Mr. President, I submit for the RECORD the text of my amendment and the editorial at this time, so that my colleagues who wish to review it will have the opportunity to do so.

THE GLITCH IN THE GUN LAW

When most members of the Minnesota congressional delegation voted for the McClure-Volkmer gun law this summer, none of them expected that the measure would put guns in the hands of convicted felons. But that will be the effect in Minnesota—unless an unintended glitch is removed.

The glitch exists because Minnesota, like a handful of other states, automatically restores the civil rights of felons who complete their prison time. Under the current federal gun law, all felons are prohibited from owning any kind of firearm—unless they get a governor's pardon or special permission from federal authorities. But the new law, scheduled to take effect Nov. 15, lifts the federal ban on gun ownership for all felons who have had their civil rights restored.

Most states that restore ex-convicts' civil rights have firm laws barring felons from owning guns. But Minnesota lacks such a comprehensive ban: It forbids only the possession of handguns—and even that ban expires 10 years after release. Nothing in state law prohibits criminals from owning long guns. After mid November, a felon just freed from a Minnesota prison could legally step into a gun shop and walk out with a lethal weapon.

Because the law effectively "decriminalizes" gun ownership by felons in Minnesota, federal law-enforcement officials also will no longer be able to claim the use of firarms by felons to justify participation in local and state "sting" operations. The result could be an increase not just in gun availability, but also in many kinds of crime.

Thus a law that the National Rifle Association insists would crack down on crime in fact would abet crime. Perhaps some classes of felons—reformed tax dodgers or embezzlers, for instance—shouldn't be forever denied the pleasure of owning a hunting rifle. But most Minnesotans would probably agree that people convicted of violent or property crimes shouldn't be allowed to own firarms of any sort.

Unfortunately, Sen. Dave Durenberger hasn't yet been able to persuade the NRA to accept that simple proposition. Without the gun lobby's help, Durenberger cannot hope to coax his Senate colleagues to embrace legislation to ease Minnesota's plight. Congress is likely to adjourn without repairing the law, leaving the 1987 Legislature to pass the needed restrictions. In the meantime, Minnesotans can thank the NRA for helping felons to acquire firearms and for frustrating federal efforts to aid state and local law enforcement.

At the appropriate place, add the following:

SEC. . (a) Section 921(a)(20) of title 18, United States Code, as such section was amended by the Firearms Owners' Protection Act, is amended by inserting before the

period at the end thereof the following: ", except that if a person is convicted, deprived of his civil rights by reason of such conviction, and is later discharged, and the law of the jurisdiction in which the proceedings were held provides that such person's civil rights are thereby restored as if such conviction had not taken place, such restoration shall not be considered a restoration of civil rights for purposes of this chapter".

(b) This section and the amendment made by this section shall become effective, as to States described in the amendment to section 921(a)(20) made by subsection (a), on the date 30 days after the date of the end of such State's first legislative session which began after the date of enactment of this section.

Mr. BINGAMAN. Mr. President, the bill before us today, the Continuing Appropriations Act for 1987, which makes continuing appropriations available from October 1, 1986, until September 30, 1987, is the largest spending bill in American history. It provides approximately $556 billion in funding for the entire Federal Government to continue its operations through the next fiscal year. This continuing appropriations bill is needed because not 1 of the 13 permanent appropriations bills has been passed by the Congress at this time. I intend to vote against this bill for a number of reasons.

I must vote against this bill for both substantive and procedural reasons. There are a number of provisions in this bill which I find extremely objectionable on policy grounds.

First, I am opposed to the $100 million provided in aid to the Contras in Nicaragua. This money is just a downpayment on an unwise and counterproductive military intrusion in Central America.

I am opposed to the cuts this bill makes in military readiness. Such cuts put us on a path toward a hollow, toothless military, despite the massive overall increase in military spending during the past 5 years. We simply haven't faced up in this bill to the need to deal with the real budget constraints facing the military in the years ahead.

I am also opposed to the provision in this bill added to the foreign assistance appropriations bill which gives the President the discretion to forgive loans made under the Foreign Military Sales [FMS] Program. It applies to unobligated funds appropriated by Congress for the FMS Program in 1985 and 1986, an amount totaling $3.5 billion. The effect of this section is to turn a program which Congress created as a loan program into a free grant program, to be used to give away U.S. arms. I opposed this provision, but my amendment to delete it was unfortunately defeated by the Senate.

I am also concerned with many of the domestic spending cuts carried out in this bill. It cuts important education, health, and other human spending programs—in many cases beyond the levels needed to sustain these important programs.

I believe there may be many other specific provisions in this bill which I might object to if I knew all the details in this bill, It is practically impossible to really know what is in this bill, since it incorporates the 13 individual appropriation measures by reference without listing the provisions of the individual bills. Furthermore, most of these bills have not even been considered by the Senate and there has been very little effort to explain what is in these individual bills.

The fact of the matter is that not only don't we know the detail of what is in this bill, but that very little consideration has been given to these bills. The bills that are incorporated by reference in the continuing bill were passed by the House with very little debate and most have not even reached the Senate floor. As a result, we are being asked to vote for bills which we don't fully comprehend.

There are other procedural problems with this bill besides its size and lack of consideration and the lack of knowledge of what is in it. The distinguished chairman of the Appropriations Committee has asked that no authorizing legislation be added to this measure, except that he failed to mention that the bill is full of authorizing language added by the Appropriations Committee, some of which I have already mentioned. As a result, much of this bill should also be ruled out of order for being legislation on an appropriations bill.

Mr. President, I think it is time we begin to examine our legislative practices in this body. It is time we begin to examine how we conduct our business. We must ask ourselves why we cannot pass any of our permanent appropriations bills and must ask ourselves why we have so much legislating on an appropriations bill. Most of all, however, we must ask ourselves the most difficult question of how can we begin to address these questions and start to improve our practices.

Until we at least begin to address these problems, I feel compelled to vote against this bill. It has provisions which I am aware of which are troubling to me, and I fear it has other provisions which I am not aware of which would also be objectionable. I also feel that the bill is the product of a flawed process which needs drastic overhaul.

I urge my colleagues to oppose this bill.

Mr. LAUTENBERG. Mr. President, in a few moments, the Senate is going to pass a continuing resolution (H.J. Res. 738) containing all 13 appropriations bills for fiscal year 1987. This means, in effect, that the funds for every Federal program financed by annual appropriations are included in this single measure.

The continuing resolution also provides supplemental funding of $1.4 billion for expanded programs in drug enforcement and drug abuse prevention authorized in legislation just approved by the Congress.

I want to commend the distinguished chairman of the Appropriations Committee, Senator HATFIELD, and our able ranking member, Senator STENNIS, for their leadership and hard work this year. The committee has faced an almost impossible task. The budget situation is more stringent than ever. Yet, many of the programs essential to our common future—programs important to our economic growth and international competitiveness, to the education of our children, to the stability and health of our society—are already extremely short of resources.

Under the leadership of Chairman HATFIELD and Senator STENNIS, the committee has met the challenge about as well as humanly possible. All of the bills reported from the committee this year and included in this continuing resolution are consistent with the limits established in the congressional budget resolution. In fact, the continuing resolution as reported is, according to Congressional Budget Office, $7.3 billion in budget authorities and $.2 billion in outlays below the committee's 302(b) allocation. At the same time, we have been able to avoid the draconian assault on education, environment, health, urban development, housing, transportation, school nutrition, and other programs, that the President's budget proposed.

The continuing resolution as reported contains a total of $556.1 billion in new budget authority. This is a lot of money, Mr. President, but it goes to support programs that are vital to our Nation's well-being and security. Over opne-half of the total amount, $285.2 billion or 51.3 percent to be exact, is for defense and military construction. Another $16.7 billion or 3 percent is for foreign assistance and international affairs.

The remaining $254.3 billion funds the Federal Government's domestic activities with the exception of Social Security and a few other trust funds. This makes up barely 25 percent of a total Federal budget of close to a trillion dollars. But the agencies and programs funded in this part of the budget have a very direct impact on the quality of life and the economic opportunity of our people.

Nowhere is this more true than in my own State of New Jersey, which is in many respects a microcosm of America. Let me give you a few examples of what we have been able to accomplish for New Jersey and the Nation in putting together this continuing resolution and the underlying bills it contains:

AMTRAK. The administration proposed to terminate AMTRAK. This continuing resolution would provide $591 million.

Mass transit. The administration's budget zeroed mass transit formula grants. We are providing $2 billion.

Northeast Corridor Improvement Program. The administration requested no funds. We are providing $16.9 million, $3.6 million of which will go for rehabilitation of the Warren Street Bridge in Trenton.

Interstate transfer grants—highways. The continuing resolution provides $650 million, $40 million of which goes to New Jersey. The administration recommended $500 million within a block grant including both highways and transit transfers.

Asbestos removal grants. The administration requested no funds. The continuing resolution provides $50 million.

Radon. The administration requested $4.6 million for EPA's radon program. The continuing resolution provides $8.4 million.

Industry-University Cooperative Center for Research in Hazardous and Toxic Substances at the New Jersey Institute of Technology. No funds were requested. We are providing $2 million.

Superfund. The administration requested $1.05 billion. The continuing resolution provides the request and assumes an additional $600 million in carryover funds from fiscal year 1986.

Advanced Communications technology satellite. The administration proposed terminating this program. We are providing $77 million.

Repair and rehabilitation of dams in Delaware Water Gap National Park. No funds were requested. We are providing the $450,000 necessary to avoid draining these valuable recreational resources.

Construction of jetty at Barnegat Inlet. The administration requested $6 million. We are providing the request.

Construction of seawall and levee at Liberty State Park. The request was $5 million. We provide the request.

Institute for Nuclear Medicine at New Jersey University of Medicine and Dentistry. No funds were requested. We are providing $3 million.

Urban development action grants. The administration would have terminated the program. We are providing $225 million.

Community development block grants. The administration requested $2.6 billion, a reduction of $366 million. We provide $3 billion.

These are just a few examples, Mr. President, of how the committee has been able to avoid destroying important economic programs, attend to the particular needs of my State and others, and stay within the constraints of the budget we have adopted. This is no small accomplishment; and Chairman HATFIELD, Senator STENNIS, and my colleagues on the Appropriations Committee deserve a lot of credit. Not everyone will agree with every priority embodied in this continuing resolution and the underlying bills. But, on the whole, I believe it represents a reasonable balance among many conflicting and legitimate objectives. I urge its adoption.

MIDGETMAN SMALL MOBILE ICBM PROGRAM

Mr. GORE. Mr. President, I wonder if my colleague, Senator STEVENS, would indulge several of us by engaging in a discussion about the Midgetman Program.

This appropriations bill cuts the small ICBM Program by the same amount as did the Senate version of the fiscal 1987 Defense authorizations bill. It is a heavy cut, of more than half the President's request, and the consequence of that will be to delay the program significantly, by at least 1 year and perhaps 2. But I am hopeful that, despite the enormous budgetary problems we face, the conference process will find resources sufficient to avoid this delay.

The Appropriation Committee's report language on the Midgetman asks a number of excellent questions about the program; questions which really do need to be addressed by the President before Congress makes irrevocable commitments to the production of the missile. I want to emphasize that it is not the questions that trouble me. On the contrary, it is high time that the administration decides what it wants to do about the missile's weight, warhead loading, basing locations, and force size.

What give me pause, is the sense I get when reading the report language that the answers to these questions are viewed as being a year or more away; that the committee reduced the program's budget out of concern that the Midgetman Program has not—for want of a better word—matured enough; that it needs a great deal more work to be ready for a transition to full scale engineering development.

As my colleague from Alaska knows, I have followed the Midgetman Program with great attention, because I believe that it offers us the solution to problems that have plagued both the modernization and arms control processes. And I would like to suggest that, to the best of my understanding, the administration is, even as we speak, in the last stages of assembling the kind of data required to answer the questions raised by the committee report.

As my colleague will recall, the President instructed the Department of Defense last winter to study a number of options having to do with ICBM modernization, and to be ready with their report in time for decision by November. Very intense work has been underway, and the President's timetable has been met.

It seems to me that the situation is as follows. In terms of engineering work, the Air Force has been brilliantly successful in carrying out existing instructions and priorities. If told to produce and deploy Midgetman at the original 30,000 pound weight, or at a weight of 37,000 pounds, by 1992, they can assuredly do it. At the same time, they have—especially over the summer—been investigating the actual performance of the mobile launcher under a great variety of circumstances, and pressing forward in their effort to understand precisely, the implications of variant proposals in terms of costs and of stability.

All this information is now in the process of being focused for the President's attention, thus even further demonstrating there is no need to delay this program and initiation of Midgetman full scale development.

Mr. BYRD. Mr. President, I commend my distinguished colleague from Tennessee [Mr. GORE] for his untiring efforts to ensure that the small mobile intercontinental ballistic missile system, known as "Midgetman," remains a high national priority.

The purpose of our colloquy today is to underscore the importance we believe many in the Senate place on maintaining a fully-funded program to develop the small mobile ICBM, with the goal of deployment as early as possible and no later than 1992.

As the Scowcroft Commission first recommended, deployment of Midgetman is important for increasing strategic stability and strengthening America's deterrent to nuclear attack or blackmail.

Mr. President, several of us are concerned about the tenor of the language regarding the small ICBM Program contained in the Appropriations Committee's report on the fiscal year 1987 Defense Appropriations Act, which is incorporated by reference into the continuing resolution now before the Senate.

In addition to Senator GORE, I am confident this concern is shared by members of the Appropriations Committee—certainly including myself, and Senators CHILES and BUMPERS—and by members of the Armed Services Committee—including Senators GLENN and COHEN.

This report language raises several important questions about aspects of the Midgetman Program. Congress should receive the answers to these questions as it evaluates funding for the small ICBM Program. However, several of us do not believe that the 1- to 2-year delay in the small ICBM Program suggested in the report is needed to obtain these answers. Indeed, I understand that additional, new information already exists which should address the chairman's concerns.

This new information from the Midgetman Advanced Development Program reinforces the conclusion that a small, mobile ICBM weighing more than 37,000 pounds would be subject to serious mobility limitations degrading its survivability.

This new evidence also indicates that deployment of fewer, heavier, multiple-warhead small ICBM's actually results in costs roughly comparable to deployment of the 37,000 pound missile. Apparently, the decreased costs of fewer missiles and transporters may be offset, partially, by increased costs to manufacture the heavier transporter or launchers needed to accommodate the larger missiles.

In addition, the Air Force has reported that the Midgetman Program is within budget, on schedule, and meeting all performance requirements, and is ready to support a decision in the near future to enter full scale development, and a 1922 IOC. Two weeks ago, the Air Force further reported it already has completed an independent cost analysis of the small ICBM Program. This assessment should address many of the cost issues raised by the committee's report language.

Finally, the President has directed the Department of Defense to provide him, by November, with a comprehensive assessment addressing specific Midgetman options. Thus, within a few short weeks, this assessment should provide additional information to resolve the chairman's concerns.

The Midgetman ICBM, with its potential to be more survivable against Soviet strategic forces, or to require the Soviets to allocate a larger number of warheads to destroy it ultimately, represents a militarily-wise investment. The small mobile ICBM's possible contributions to arms control and crisis stability also are well-documented.

Few weapons programs, especially a nuclear system, have enjoyed such solid and consistent bipartisan support as has Midgetman. There is no cogent evidence for this program to be delayed by 1 to 2 years.

I hope my distinguished colleague, and friend, from Alaska will consider all these arguments, especially the new information which just has become available, as he discusses Midgetman in the joint conference which is about to begin. I hope he will become convinced, as many of us already are in the Senate, that the full budget request for the small mobile ICBM should be provided in fiscal year 1987, so that no delays will occur in this important defense program.

Full funding for the small mobile ICBM in fiscal year 1987 will send a powerful and appropriate message to the Soviets, to our allies, and to the executive branch, that Congress is committed to maintaining and improving our strategic forces in a manner which contributes the most to strategic stability, military effectiveness and arms control leverage.

Mr. CHILES. The recommendation to delay full scale engineering development [FSED] of the small ICBM, while based on genuine concerns, is inadequately justified. While questions remain, an orderly process has been established to develop thoughtful answers to these questions. Furthermore, the implication that the program is not ready to enter FSED ignores the progress and success achieved to date and the 3-year program plan established by the "blue-ribbon" Schreiver Panel. The requirements, deadlines, and decision points established in this process have been met or exceeded and the program is ready to transition to FSED.

This aggressive and comprehensive research program has included successful firing of 18 small ICBM rocket motors, case burst testing 24 rocket motor stage cases, more than 9 months of mobility testing for two prototype mobility test vehicles simulating hard mobile launchers [HML], and more than 11,000 hours of guidance system testing.

The implication that the Air Force has not done enough in the area of cost reduction overlooks the significant gains already accomplished in this area. The acquisition strategy for the small ICBM maximized competition, which has resulted in significantly reduced costs. The recent multiyear contract awarded for assembly test and system support is a prime example. Original Air Force estimates for this requirement exceeded $1 billion, yet the final contract award agreement was for $500 million—a reduction in the estimate of from 50 to 75 percent.

Pre-full scale engineering development has been successfully completed for many key system components including the assembly, propulsion, guidance and control, weapons control, and the hard mobile launcher. Thus, there is absolutely no reason to delay or slow the positive technological progress that has been made thus far.

The debate on ICBM modernization has been long and divisive. The central issue in that debate has been survivability and its relationship with strategic stability. Furthermore, recent intelligence indicators of the all out Soviet push to detect our submarine based ballistic missile capability should tell us that all three legs must be made as survivable as possible. The Scowcroft Commission strongly stressed the significance of this.

Given the outstanding progress made to date, it would not be wise to prejudge this process and recommend an arbitrary delay in the program.

Mr. COHEN. If my colleague would yield, I would like to take a minute, as a member of the Armed Services Committee, to put this matter into the context of what has occurred over the past year, as well as the approach that the Armed Services Committee has taken.

Last year, some called for a delay in the small ICBM's schedule, arguing that the program was ill-conceived and that viable and less costly alternatives had not been explored. They called for a postponement of full scale engineering development until the administration reported to Congress on these issues, especially options for larger, MIRV'd missiles. In contrast, the Armed Services Committee chose to "commend the Air Force for a well conceived and executed advanced development program." To address these concerns, though, the committee directed that an independent review of the Small ICBM Program be conducted by the Defense Science Board [DSB].

The DSB conducted its review, and its report was sent to Congress in March. As the Armed Services Committee noted in its report on the fiscal year 1987 defense bill, the DSB review concluded that the 37,000 pound small ICBM deployed in hardened mobile launchers would not only be highly survivable against current Soviet threats, but would "remain highly survivable in the face of future Soviet developments and countermeasures." Accordingly, the DSB review concluded that it would be in the interests of the United States to deploy the small ICBM in hardened mobile launchers. Furthermore, it recommended that full scale engineering development begin in fiscal year 1987. This is consistent with the recommendations of the Scowcroft Commission, as well as those of the Schreiver Panel, which set forth the development plan for the small ICBM Program. Both the Scowcroft and Schreiver Panels called for full scale development to begin in fiscal year 1987.

These conclusions have been further bolstered by cost analyses and mobility tests that the Air Force has conducted this year to support a full scale development decision this fall. These mobility tests have demonstrated that the vehicle weight for larger missiles are far higher than previously thought. Accordingly, many of the mobility problems for these larger missiles are worse than previously thought. While these problems might be ameliorated by adopting a restricted view of the system's operational requirements, to do so would reduce the system's survivability. In short, a force of heavier missiles is indeed far less survivable than a force of 37,000 pound missiles. Moreover, the cost analyses indicate that the difference in life cycle cost for a force of 37,000-pound missiles versus a force of missiles weighing either 52,000 or 75,000

pounds is not significant—exploding the myth that some $20 billion could be saved by going to larger, MIRV'd missiles.

In short, there is no question that the small ICBM is ready to begin full-scale development. The testimony of administration and Air Force witnesses to the Armed Services Committee this year support this view. Calls for delays in the program in order to conduct yet more studies are merely echoes of concerns expressed last year—concerns that have been put to rest. To quote this year's Armed Services Committee report, "the Air Force has conducted a model advanced development effort for the small ICBM that has achieved impressive technical results through competition"—let me repeat that, "a model advanced development effort."

It should be noted that, during its markup of the defense authorization bill, our committee reduced funding for the Small ICBM Program below the level required to initiate full-scale development this year. However, committee members clearly indicated that this was done to create a negotiating lever with House conferees, who place a higher priority on the small ICBM than on other programs supported by the Senate. It appears that the defense authorization conference is moving toward a resolution in which the small ICBM will have sufficient funds to begin full-scale development in fiscal year 1987.

I would remind my colleagues that the President has called upon the Congress to restore bipartisan support for a program to restore the survivability and effectiveness of the U.S. ICBM Program. A vigorous Small ICBM Program is essential to this effort. In contrast to the divisiveness which has paralyzed ICBM modernization in recent years, the Small ICBM Program has produced a bipartisan consensus spanning the political spectrum.

If we cannot move forward with a program that has such broad support, it is hard to see how we can move forward with any program—the MX, the advanced tactical fighter, you name it—no matter how important.

Mr. BUMPERS. As a member of the Appropriations Committee, I have long been a supporter of the small ICMB, the so-called Midgetman, as an absolutely necessary step to assure the survivability of our land-based missile force and thus the viability of our triad of strategic forces. In this regard, I was disappointed in the language contained in the report on the defense appropriations bill that in essence encourages a slowdown in the Small ICBM Program.

The United States has endured over 10 years of uncertainty over how best to assure the survivability of our land-based ICMB's. In the last 3 years we have finally seen a long-term answer develop, and, equally as important, a consensus for that solution as well. I hope this disturbing report language does not signal a step back from that consensus, and thus a step toward continued uncertainty. That would be an unwise course to follow in terms of our national security.

It has been useful for people to take another look at the proper size for the small ICBM, and at the right warhead loading for the missile. I personally believe that these questions were given too little attention when the Scowcroft Commission made their initial recommendations in April 1983. But recent study has shown that the decisions made over the last several years on the small ICBM were the right ones. We must remenber that the key to the survival of the small IBMC is mobility. Any steps taken that result in a significant loss of mobility must be resisted, even if they appear to offer desirable features like more warheads per missile.

Mobility is indeed the key feature. That is why MX, which is technically a fine missile, fails the test as an essential strategic weapon: based in silos, it will be a sitting duck to Soviet attack. It is why the Trident II missile passes that same test: based in Trident submarines, it will be highly mobile and survivable.

The small ICBM, weighing 37,000 pounds, will be capable of on- and off-road operation when deployed on its transporter launcher. It now seems that heavier missiles, in the 52,000 to 80,000 pound category, would be unsuitable because they would be more cumbersome and require a larger transporter that would not be as mobile.

This does not mean that we must forever reject the option of MIRVing the small ICBM, since it could be fitted with two, and possibly more, smaller warheads at some point in the future if it were deemed desirable. Likewise, we must be sure to raise the issue of verification of small ICBM's with the Soviets, to ensure that we are not creating insuperable problems for arms control. I believe that these concerns can be resolved, as we apparently are able to cope today with the verification that would be required for the Soviets' mobile SS-20 IRBM's.

But we must move forward with the Small ICBM Program. To introduce further delay into this vital program is to consign us to continued vulnerability in our ICBM forces. We are assuring the survivability of our submarine missiles through the Trident Program. We are assuring the survivability of our bomber forces through Stealth technology, through both the Stealth bomber and Stealth cruise missiles. We must not cripple our ICBM forces through continued delay of the one program that will assure the survivability of our land based missiles.

I urge the conferees to ensure that the conference report language strongly support, and the bill itself properly fund, the vigorous and uninterrupted development of the small ICBM.

Mr. GLENN. Mr. President, I rise to join my colleagues on both sides of the aisle in voicing my concerns about the low funding level and report language regarding the small ICBM contained in this resolution.

Reducing the small ICBM funding by $700 million in fiscal year 1987, together with report language stating "it is premature to support the transition of the small ICBM to full-scale engineering development," may be tantamount to killing the small ICBM Program—a result I am confident is not intended by the committee and the distinguished chairman of the Defense Appropriations Subcommittee.

According to the Air Force, a reduction of this magnitude will result in at least an 18-month slip in the initial operational capability for the system. In addition, the reduction would result in contractor layoffs from pre-full-scale development levels and would not permit establishment of a minimum subcontractor base necessary to support integrated weapons systems design efforts.

The only effective way to reduce the vulnerability of our present ICBM's or of new ICBM's based in fixed locations, is to make our missiles mobile, so that Soviet planners will not know where to shoot. Not surprisingly, the Soviets fully recognize this principle and are now starting to deploy their own mobile ICBM's, the new SS-25; further, they continue to develop the mobile SS-24. The time has come to make America's ICBM force mobile as well.

About 3 years ago, the President and Congress agreed on a solution to a problem that had vexed this country for more than a decade—what to do about land-based missiles in our era of rapidly increasing missile accuracy. The small ICBM Program was a large part, and the most innovative part of the solution.

As Secretary of the Air Force Aldridge stated in a May 2, 1986, letter to Congressman LES ASPIN, chairman of the House Armed Services Committee: "The small ICBM is truly an Air Force success story. We have traveled the road from a paper system to testing hardware in 3 short years. Mobility, hardness, propulsion, and guidance have all been evaluated, and we are ready to enter full scale development in fiscal year 1987."

In sum, the small mobile ICBM is less vulnerable, more stabilizing, and more amenable to being dealt with in the arms control process and, in the long run, may be more cost effective than fixed-silo ICBM's carrying many independently-targetable warheads.

As a member of the Senate Armed Services Committee, I am hopeful that the ongoing DOD authorization conference will authorize adequate funds to allow the small ICBM to stay on schedule and enter full scale development in fiscal year 1987, and that the subsequent appropriations conference will agree to provide the same funding level.

Mr. GORE. Mr. President, as I think this colloquy has demonstrated, their is substantial information to support a decision to proceed to full scale development of the small, mobile ICBM in fiscal 1987, and without a 1- to 2-year delay.

I hope these statements have indicated to our distinguished colleague from Alaska that the Midgetman missile has earned a significant base of support within the Senate, and that the program merits full funding to permit a timely transition into full scale development in fiscal year 1987 and to maintain the system's 1992 initial operational capability date.

Therefore, I would hope the distinguished chairman of the Defense Appropriations Subcommittee would be willing to assist in framing an outcome for this session in which Congress remains fully supportive of the small mobile ICBM as a high national priority.

I also would like to ask the distinguished chairman whether, in view of the Midgetman Program's excellent performance record, the statements here today, and especially the new information which now is available, if he would be willing to reconsider the committee's position and to take a fresh look at the Midgetman funding question as he enters conference with the House?

Mr. STEVENS. I stand by the committee position. I am constrained to point out that the level of funding for the small ICBM in this continuing resolution is the exact same amount as approved by the Senate during its consideration of the defense authorization bill last August. I appreciate the statements made by my colleagues during this colloquy about the small ICBM Program, and the new information they have presented today. I will certainly be willing to consider their concerns and this new information as we consider the appropriate level of funding for the small ICBM during our conference with the House.

Mr. GORE. I thank my colleague from Alaska, and I yield the floor.

OKLAHOMA UNIVERSITY ENERGY CENTER

Mr. NICKLES. Mr. President, as you know, the recent downturn in oil prices has had a catastrophic effect on the oil and gas industry. Not only has exploration for additional oil and gas supplies come to almost a complete halt, but also private industry is conducting very little research and development on enhanced oil recovery and other methods needed to preserve our energy security.

For that reason, energy centers such as the one at the University of Oklahoma take on added significance. There, private industry and the Government can develop and perfect the scientific methods that will assuredly be needed in the future when energy becomes scarce and improved methods of extraction will be needed.

But the downturn in the energy industry as a whole has had a devastating effect on our $45 million energy center. This center will be used for research and development in hydrocarbons, geology, petroleum engineering, and chemical engineering.

What is needed is a grant of $9 million to match just a part of the $34 million already committed by State and private sources. This money would be used for construction and capital equipment for the energy research center at Oklahoma University.

I would ask that my good friend from Oregon give us his assistance in this matter to obtain such a one-time Federal contribution.

For last 5 years, the oil industry has paid over $77 billion in windfall profit taxes and hasn't received anything in return. Given the hard times in the industry, the situation at our energy center, and the state of the economy in Oklahoma, I believe it is appropriate that the Federal Government work with us to keep oil and gas technology alive at the energy center.

I deeply appreciate the support that the distinguished chairman of the Energys and Water Appropriations Subcommittee is giving us in this matter.

Mr. BOREN. Mr. President, I join my good friend and colleague from Oklahoma in the discussion of this most worthy project. The University of Oklahoma is in the final stages of completing their $45 million energy center. The center will be the primary research center for the independent sector of our domestic oil and gas industry. Fields of research will include among others geology, geophysics, petroleum engineering, as well as the next generation radar [NEXRAD] operational support facility with a $1 million Doppler radar.

Currently almost 75 percent of the world's proven oil and gas reserves are under the control of OPEC and Communist countries. Our imports of foreign oil have jumped from 27 percent to almost 40 percent in less than 10 months. With 86 percent of all of our domestic drilling rigs sitting idle it is only a matter of time until our level of imports reach historic and ultimately unsafe proportions. Given that over 50 percent of all of the oil that has been discovered in the United States is not recoverable with current technology, we feel a small investment in a state of the art research facility for enhanced oil and gas recovery is essential for our long-term national energy security.

Therefore, I would ask my good friend from Oregon to lend his able assistance by including report language in fiscal year 1987 that the Department of Energy to provide $9 million, as a one time Federal contribution, for construction and capital equipment for the energy research center at the University of Oklahoma.

Mr. HATFIELD. Mr. President, as chairman of the Energy and Water Appropriations Subcommittee, I am keenly aware of the problem to which my distinguished colleagues from Oklahoma refer. I am especially sensitive to the needs of university research, especially the potential of the energy center your State is building in Norman, and I will assist you in this goal.

Let me assure my friends from Oklahoma that I will cooperate with them and work toward a matching grant of $9 million in funds which the Department of Energy may use, in its discretion, to provide for construction and capital equipment for the energy research center at the University of Oklahoma. This will be the total Federal contribution to the $45 million center, the balance of which has been financed by private and State funds.

As my friends from Oklahoma know, however, the energy and water bill is right at its allocation. To add these funds we would need an increase in that allocation. I am working toward that goal and hope that we will be successful.

The Oklahoma University Energy Center will provide a multidisciplinary approach to a variety of energy research activities now done and planned to be done at this fine university. I am pleased to be a part of this effort.

Mr. McCLURE. I understand the concerns of my colleagues from Oklahoma and will do what I can to assist them.

STEAMTOWN RENOVATION

Mr. SPECTER. Mr. President, I would like to ask the chairman of the Interior Appropriations Subcommittee if he would be willing to engage in a brief colloquy on a small appropriation that is in the House bill and is of importance to Pennsylvania.

Mr. McCLURE. I would be happy to engage in a brief exchange concerning this issue.

Mr. SPECTER. I thank my distinguished colleague. The appropriation to which I have referred is $5 million for the renovation of a roundhouse at Steamtown USA, one of the world's largest collection of steam engines and railroad stock, located in Scranton, PA. I recently introduced legislation, S. 2870, which would authorize Steamtown's designation as a national his-

toric site and $35 million in funding for the area's renovation.

Realizing that the time is short before the conclusion of the 99th Congress, it is my hope that the Senate will accede to the House appropriation for Steamtown. This money will send a clear signal to the people of Scranton that their desire to obtain national recognition for Steamtown is being properly addressed, and that a more comprehensive look at authorizing legislation will be taken next year.

Mr. HEINZ. If my colleague from Pennsylvania will yield, I want to associate myself with his remarks. The Steamtown appropriation will provide an excellent opportunity to get this extremely worthwhile project underway.

Mr. McCLURE. I thank my colleagues and I am well aware of their concerns over this project. As they are no doubt aware, we are in a very difficult situation with respect to additional spending. This matter will be on the conference table, and I will certainly keep this request before me as we hash out our differences with the House.

Mr. LAXALT. Mr. President, some 1,260 acres within Hope Valley, CA, have become available to the Forest Service. The Forest Service has long sought to acquire this important scenic and recreational resource near Lake Tahoe; an area which offers outstanding hiking, camping, and fishing opportunities in summer, and skiing and snowmobiling in winter.

Some $434,000 remains from funds appropriated in fiscal year 1985 for purchase of inholdings within the Toiyabe Forest in Nevada. This remnant funding is apparently restricted by language limiting its use to acquisitions within the Toiyabe Forest, NV. This language proposes to remove that impediment and make the money available to purchased inholdings in the Toiyabe Forest, CA, as well as in Nevada. These funds are critical to the proposed acquisition which would include funding from the State of California State Department of Parks, and an exchange offer from the San Bernadino National Forest.

Would the subcommittee chairman agree that funds provided for land acquisition within the Toiyabe Forest, NV, in prior years may be used in the Toiyabe Forest, as well?

Mr. McCLURE. I agree with the characterization of the previous appropriations history and have no objection to the use of Toiyabe Forest appropriated funds in California as well as in Nevada.

BUREAU OF MINES CHROMIUM STUDY

Mr. MURKOWSKI. Chromium is an essential element in several basic industries in the United States, most notably in the production of stainless steel and nonferrous alloys. We have seen the percentage of the ferrochromium used in the United States that is actually processed within our borders decline from 96 percent in 1970 to 14 percent in 1983. The decline in the United States processing of this strategic mineral concerns me because it is accompanied by a lag in the United States' ability to develop commercially, or even keep up with, new chromite processing technologies. In 1985, 65 percent of our imported chromite ore and ferrochromium came from South Africa. Having such a large percentage of our needs dependent on a politically volatile country concerns me. While we have a 2- to 3-year supply of chromium in our national stockpile, I am concerned that we may lack adequate processing capability and technology to efficiently process the chromite should the need arise.

The continent's largest potential source of high-grade chromium ore lies in Alaska. However, dominance of South Africa supplies has provided little incentive for production of the resource, or for the development of more efficient processing technologies. Accordingly, the deposits remain relatively untapped. The University of Alaska and the Cook Inlet Region, Inc. have proposed to implement innovative technology to extract and process, on site, chromite from the Red Mountain deposit on the Kenai Peninsula. They propose to process the ore for direct consumption by steel producers through means of a coal fed rotary kiln. This process eliminates reliance on conventional high energy intensive methods to produce ferrochrome.

The Senate has appropriated more that $130 million in fiscal year 1987 to the Bureau of Mines. Senator McCLURE, I request that the Director of the Bureau of Mines be directed to report to Congress by March 1, 1987, on the status of the chromite extracting and ferrochromium processing technologies in commercial use in the United States in relation to the technologies used by our competitors, including South Africa, Japan, Sweden, Finland, and Germany. This study shall also evaluate and develop a plan to ensure the United States' ability to reliably meet our chromium and ferrochromium needs through domestic supplies and production should we lose a significant foreign source, such as South Africa. Such a study will evidence the need for a demonstration project such as the Red Mountain project proposed above in order to ensure that our domestic ferrochromium processing industry maintains its competitive posture with current technology.

Mr. McCLURE. As you are aware, I consistently have urged that our stockpile realistically and adequately provide us with the proper amount of resources needed in times of national emergency. Not only must we possess the resources, but we must encourage the maintenance of a level of technical expertise that allows us the ability to process the minerals efficiently. I have discussed this situation with the Bureau of Mines. They are familiar with the situation and are anxious to proceed with such a study. Senator MURKOWSKI, I share your concerns about our chromium reserves and the progress of our ferrochromium processing technology and I wholeheartedly support your request for a study of this industry, as you have outlined.

Mr. WARNER. Mr. President, the Senator from Virginia, Mr. TRIBLE and I rise to engage in a colloquy with the distinguished chairman of the Interior Appropriations Subcommittee, Mr, McCLURE.

Mr. Chairman, the National Park Service's fiscal year 1987 request includes $2.5 million to be earmarked for planning and design of the George Washington Memorial Parkway improvements. The appropriation would come from title 23 funding, earmarked for "roadway improvement and parkway development for the George Washington Memorial Parkway."

The National Park Service has released a final environmental impact statement for improvements to a 1.6 mile segment of the George Washington Memorial Parkway (between Spout Run and the Theodore Roosevelt Bridge) and Spout Run Parkway, as directed in the fiscal year 1984 Interior appropriations bill.

This project is critical to alleviating daily traffic congestion along the George Washington Parkway. These improvements will save lives and minimize accidents, while preserving the beauty of the George Washington Memorial Parkway—the first Federal parkway and gateway to our Nation's Capital.

Mr. TRIBLE. Mr. President, I rise in support of the remarks offered by my colleague from Virginia, Mr. WARNER, regarding the George Washington Parkway improvements project.

Of the four alternatives presented in the draft environmental impact statement, the Park Service supports plan B, which recommends improvements at key entrances and exists where accidents occur frequently, including a much needed acceleration lane for traffic entering the parkway from Spout Run. The plan does not include any additional lanes, and specifically provides that National Park Service standards for improvements and parkway development must be met.

Mr. McCLURE. Mr. President, the Senators from Virginia, Mr. WARNER and Mr. TRIBLE, are correct with respect to my support for the needed improvements for the George Washington Memorial Parkway.

It was only an unfortunate oversight that this project was not included in the Senate Interior appropriations

bill. It is the intention of the Senate Appropriations Committee to recede and accept the House recommendation of $2.5 million to be earmarked for planning and design of the George Washington Parkway improvements from title 23 funding.

Mr. WARNER. I thank the Senator.

Mr. McCLURE. Mr. President, Senator GARN has asked that I include some language in the discussion concerning the continuing resolution clarifying that microwave transmission facilities owned by Rural Electrification Act borrowers be exempt from paying rental fees for facilities located on Federal lands controlled by the Federal Lands Policy Management Act. The Bureau of Land Management is interpreting narrowly language that Senator GARN and I included in Public Law 98-300. This language would clarify our intent.

DRAFT REPORT LANGUAGE FOR FISCAL YEAR 1987 INTERIOR APPROPRIATIONS BILL

● Mr. GARN. Congress on May 25, 1984, passed Public Law 98-300, amending the Federal Land Policy Management Act [FLPMA] of 1976 to exempt owners of telephone and electric facilities financed under the Rural Electrification Act of 1936, as amended, from paying rental fees for facilities located on Federal lands controlled by FLPMA. It has come to our attention that in recent administrative decisions, the Bureau of Land Management has narrowly interpreted the provisions of Public Law 98-300 to exclude microwave (or other communication facilities) owned by Rural Electrification Act borrowers. The plain wording of Public Law 98-300 makes it clear that Congress intended that all facilities financed under the Rural Electrification Act of 1936, as amended, and any extensions thereto are exempt from the rental fees. Neither microwave nor any other facilities financed under the Rural Electrification Act of 1936, as amended, in order to accomplish the goals of the act, were intended to be excluded from this exemption. We advise the Department that administrative funds are not available to process rental fee charges for any REA-financed facilities or extensions thereto located on Federal lands controlled under FLPMA.●

Mr. ABDNOR. Mr. President. I have been working with the distinguished chairman and the ranking minority member of the Appropriations Subcommittee on Military Construction, Senators MATTINGLY and SASSER, in an effort to earmark military construction funding for the school district which serves children whose parents are stationed at the Ellsworth Air Force Base in South Dakota.

Mr. President, I am advised that the junior Senator from Ohio has indicated he will object to the language we worked out even though my amendment does not add to the funding levels in this bill. My amendment simply gives the Secretary of the Air Force the authority to provide up to $600,000 of the funds appropriated to the Air Force for planning and design to enable the Douglas School system to commence construction of much-needed educational facilities. The Air Force supports my amendment.

My proposal is similar to an amendment I offered to the fiscal year 1986 DOD authorization bill which, although approved by the Senate, did not survive the House-Senate conference committee. Subsequently, the House Committee on Appropriations has agreed to include the discretionary earmark—in language nearly identical to the initial Abdnor amendment to the fiscal year 1986 DOD bill—in House Joint Resolution 738. The amendment I planned to offer to this continuing resolution would restore the earmark in a manner the distinguished Senator from Tennessee finds preferable to the approach taken by the House.

The school district's enrollment has increased by more than 165 students in the last year, and as the phase-in of the B-1 Bomber Program continues, additional military families will be moving into the district.

Since the Air Force seems unable to give us reliable projections of the numbers of additional personnel required by the deployment of the B-1 Program at Ellsworth, we do not know how many additional classrooms may be needed over the next couple of years. I wish to note, however, that the number of additional personnel has been said to run as high as 2,000—of which about 1,500 would likely have families—by the end of fiscal year 1988. If that estimate proved accurate, the number of children attending the schools of the district could double. No matter what the figure, I am advised by school district officials there is currently a need for at least eight new classrooms for the next—1987-88—school year.

Mr. President, I understand my friend from Georgia will support, at a minimum, language in the Statement of Managers on the conference report on House Joint Resolution 738 directing the Secretary of the Air Force to ascertain the impact of the phase-in of the B-1 at Ellsworth on the Douglas School system by a date certain.

Mr. MATTINGLY. The Senator from South Dakota is correct. Further, if the Secretary determines existing educational facilities are not sufficient to accommodate military dependent students, we intend to direct him to submit a reprogramming request to the House and Senate Appropriations Committee. Our mutual objective is to enable the Douglas School system to begin work during this fiscal year on the facilities it needs to provide educational services to the military dependents at the Ellsworth Air Force Base.

Mr. ABDNOR. I thank the able Senator from Georgia for his attention to this important matter. I look forward to continuing to work with him to ensure necessary capital improvement funding for the Douglas School system.

THE MANDATE REIMBURSEMENT AMENDMENT OF 1986

Mr. DURENBERGER. Mr. President, over the past 20 years, the number of Federal regulations imposed on State and local governments has increased dramatically. Though there are no reliable estimates of the total costs imposed by Federal regulations, rough estimates indicate the costs to State and local governments total tens of billions of dollars a year. This tremendous burden on State and local governments will be made more difficult because of the termination of the General Revenue Sharing Program.

In this time of budgetary belt-tightening for all levels of Government, it is important for the Federal Government to accept fiscal responsibility for rules and regulations it imposes on State and local governments. Today, therefore, my colleagues and I are introducing the Mandate Reimbursement Amendment of 1986. The premise of the bill is simple: If Congress passes legislation to pursue a national purpose, the Federal Government should pay the costs of achieving it. Under our current system, Congress need not face the full costs of implementing legislation it passes, because it is able to shift a considerable amount of costs onto State and local governments through the regulatory process.

The Mandate Reimbursement Amendment of 1986 is simple in its design. It requires Federal reimbursement for all additional direct costs incurred by States and their local governments in complying with any new Federal rule or regulation. If such relief is not forthcoming, the amendment provides that no Federal agency or court shall enforce the unreimbursed regulation. However, where it is inappropriate for Congress to share the costs of regulatory implementation because fundamental rights or generally accepted goals are involved, this amendment permits Congress to exempt a national regulation from reimbursement upon a two-thirds vote of both Houses.

Mr. President, the Advisory Commission on Intergovernmental Relations found in a recent study that "although the specific programs imposing major fiscal and administrative costs vary greatly from one jurisdiction to another, most States, cities, and counties have been restrained by the combined weight of the new Federal inter-

governmental regulations taken as a whole." As an example, consider a recent Urban Institute study of six Federal regulatory programs in a sample of seven cities and counties. It concluded that the annual federally mandated costs of just these particular six programs ranged from a total of $6 to $50 per capita. For a State like Minnesota, this means the cost burden would run between $25 and $209 million annually for only six programs.

This, I suspect, is only the tip of the regulatory iceberg. ACIR identified more than 35 major Federal regulatory statutes, constituting thousands of pages of rules in the Federal Register, aimed at or implemented by State and local governments.

While the cost to State and local governments for implementation of Federal regulations has skyrocketed, the Reagan administration seeks curtailment or outright elimination of many Federal financing tools which in the past have helped offset growing cost burdens caused by enactment of Federal mandates. My staff at the Subcommittee on Intergovernmental Relations put together a table which depicts funding trends in selected major intergovernmental regulatory programs. This table shows that—with few exceptions—funding for these programs is down significantly, in some cases by as much as 20 percent.

Let me reiterate in the strongest possible terms that this amendment is not intended to undermine the goals of important protective regulations, such as those in environmental protection and occupational safety. I could not support it if it did. It is intended to promote the attainment of national goals. Study after study has found that many Federal regulations fail to achieve their aims because of inadequate resources available to State and local implementors. This legislation will translate empty promises into real achievements.

Mr. President, I have been made aware of the fact that the Committee on the Budget has a number of technical objections to this amendment which cannot be corrected prior to final passage this afternoon. I will therefore submit the amendment for the consideration of my colleagues and indicate I intend to press this matter early in the 100th Congress.

Mr. President, I had intended during the course of the consideration of the continuing resolution to present an amendment to the continuing resolution on behalf of myself and my colleagues, Senator WILSON from California, Senator ROCKEFELLER from West Virginia, and Senator MATTINGLY from Georgia, and perhaps others, the mandate reimbursement amendment of 1986.

The current occupant of the chair will appreciate over the period of time of his public service the role the Federal Government has played in the behavior and the performance of State and local government has grown immeasurably. In many cases in the early years of this cooperative federalism, the behavior in the performance on the part of the State and local partners in the innergovernmental system was brought about through categorical grants of Federal income tax.

But in the most recent years we have taken to attaching to the most miniscule of appropriations of Federal moneys and incredible of what we have come to call mandates on the behavior and the performance of State and local government.

Mr. President, the mandate reimbursement amendment of 1986 and the Intergovernmental Regulatory Relief Act of 1986 on which it was premised was designed with little honesty in mind and that is to suggest to our partners in the intergovernmental system that from now on Federal Government has enacted in the national interest regulations and mandates of behavior on the part of the State and local government would also send along the resources, the financial resources, needed by our partners to implement the mandates.

As I understand it, we had this amendment cleared all around the horn with one exception, and that is the Budget Committee which raised a variety of objections to its consideration, most of them at the last minute, and for that reason my partners and I in this endeavor were unable to present our amendment.

Mr. President, I would suggest that this is a matter whose time has come along with a lot of other initiatives. I heard the President of the United States speak as a President and reflecting on his time as a Governor of one of the largest States of this country, on the need to improve the partnership by pinning down the responsiblities of various levels of this government.

I know that you, the occupant of the chair at the present time, have a deep concern for the improvement of this partnership and have committed yourselves over the next 2 years toward perfecting this Union.

So I will say to my colleagues that while the mandate reimbursement amendment of 1986 is not part of the continuing resolution, it or a bill very similar to it will be a very serious part of our effort during 1987 and 1988 in the 100th Congress to improve the efficiency of this intergovernmental relationship.

I would say in the same tone, Mr. President, that it is disappointing to me at the end of the continuing resolution process to see the amendment for financing or so-called financing of the drug bill which we passed earlier this week in the form that it was in. I know again the present occupant of the chair has spoken forcefully during the consideration of this debate, as has our colleague from Connecticut, about the need for the Nation to finance the decisions that it takes to provide for the needs of its people. And I think that final amendment which said that we are going to waive the Budget Act in order to adopt the expenditure requirements of the drug abuse or antidrug abuse bill to the continuing resolution is another evidence of a nation which cannot learn to live within its means, a nation which is bent on solving its problems by sending the bills on to another generation.

So I hope, Mr. President, the comments that you made on the floor of the Senate over the past week in this regard, the comments that were just made by our colleague from Connecticut, Senator WEICKER, who has the appropriations responsibility for overseeing this process and legislation like the mandate reimbursement amendment of 1986, all sometime next year will come together as the tool that we may use as we celebrate the Bicentennial of the Constitution of the United States to help us define the national purposes which are supposed to be the work of this place.

Among those purposes is to learn to live within our means to take responsibilities as politicians for our actions on this floor and to send those very same signals to our colleagues in government at other levels.

Mr. President, I ask unanimous consent to have printed in the RECORD a copy of the intergovernmental regulatory relief provisions, an article entitled "Mandates Without Money," and various other attachments referred to in my statement.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

At the end of the joint resolution, add the following new title:

TITLE II—INTERGOVERNMENTAL REGULATORY RELIEF

PART A—GENERAL PROVISIONS

SEC. 201. This title may be cited as the "Intergovernmental Regulatory Mandate Relief Act of 1986".

SEC. 202. (a) The Congress finds and declares that—

(1) Federal regulation of State and local governments has become increasingly extensive and intrusive in recent years;

(2) such regulation has, in many instances, adversely affected the ability of State and local governments to achieve their independent responsibilities; and

(3) such excessive fiscal burdens also undermine the attainment of the goals of Federal regulations.

(b) Therefore, it is the purpose of this title to establish procedures to assure that the Federal Government pays the total amount of additional direct costs incurred by State and local governments in complying with any intergovernmental regulation

which takes effect on or after the date of enactment of this joint resolution.

SEC. 203. For purposes of this title, the term—

(1) "additional direct costs" means the amount of costs incurred by a State or local government solely in complying with an intergovernmental regulation promulgated pursuant to a Federal law concerning a particular activity which is in excess of the amount that such State or local government would be required to expend in carrying out such activity in the absence of such law, except that such term does not include any amount which a State or local government is required by law to contribute as a non-Federal share under a Federal assistance program;

(2) "Director" means the Director of the Congressional Budget Office;

(3) "Federal agency" has the meaning given to the term "executive agency" in section 6501(3) of title 31, United States Code;

(4) "Federal assistance" means any assistance provided by a Federal agency to State and local governments or other recipients, in the form of grants, loans, loan guarantees, property, cooperative agreements, or technical assistance, except that such term does not include direct cash assistance to individuals, contracts for the procurement of goods or services for the United States, or insurance;

(5) "intergovernmental regulation" means a regulation promulgated by a Federal agency that requires a State or local government to take certain actions or requires a State or local government to comply with certain specified conditions in order to receive or continue to receive Federal assistance and which requires the termination or reduction of such assistance if such government fails to comply with such conditions;

(6) "local government" has the same meaning as in section 6501(6) of title 31, United States Code;

(7) "significant law" means any Federal law which is likely, in the judgment of the Director, to result in total additional direct costs to all State and local governments of $25,000,000 or more in any fiscal year, or is likely to have exceptional fiscal consequences for a geographic region or a particular level of government; and

(8) "State" means each of the several States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

PART B—COMPENSATION OF STATE AND LOCAL GOVERNMENTS FOR ADDITIONAL DIRECT COSTS

SEC. 211. (a) Except as provided in subsection (b), a Federal agency or a court of the United States shall not require State governments or local governments to comply, in any fiscal year, with any intergovernmental regulation which—

(1) takes effect on or after the date of enactment of this joint resolution; and

(2) is promulgated pursuant to a significant law, unless provisions of law have been enacted which provide a sufficient amount of funds for such fiscal year to reimburse such governments for the total amount of additional direct costs that will be incurred by such governments in complying with such regulation during such fiscal year.

(b)(1) Notwithstanding subsection (a), a Federal agency or a court of the United States may require State and local governments to comply with an intergovernmental regulation to which subsection (a) applies and which will be in effect during a fiscal year if, with respect to such intergovernmental regulation and such fiscal year, a joint resolution described in paragraph (2) is enacted by a two-thirds vote of the Members of each House of Congress, duly chosen and sworn.

(2) A joint resolution referred to in paragraph (1) is a joint resolution which, with respect to an intergovernmental regulation that will be in effect during a fiscal year, waives the provisions of subsection (a) that require that provisions of law be enacted to provide a sufficient amount of funds for such fiscal year to reimburse State and local governments for the total amount of additional direct costs that will be incurred by such governments in complying with such regulation during such fiscal year.

(c) For purposes of this section, the total amount of additional direct costs that will be incurred by State governments and local governments in complying with an intergovernmental regulation in any fiscal year shall be the total amount of such costs for such regulation estimated by the Director for such fiscal year in the report required under section 212 for such fiscal year.

SEC. 212. (a) For each fiscal year in which an intergovernmental regulation promulgated pursuant to a significant law will be in effect, the Director shall prepare and transmit to the President and the Congress a report specifying, for each such intergovernmental regulation and with respect to such fiscal year and the fiscal year succeeding such fiscal year—

(1) an estimate of the total amount of additional direct costs that will be incurred by all State governments and local governments in complying with such intergovernmental regulation in each such fiscal year; and

(2) an estimate, for each such intergovernmental regulation, of—

(A) the total amount of additional direct costs that have been incurred or will be incurred in each such fiscal year by the government of each State and all local governments in such State in complying with such regulation in each such fiscal year; and

(B) the ratio (stated as a percentage) which the total amount of additional direct costs that have been incurred or will be incurred by all local governments in a State in complying with such regulation in each such fiscal year bears to the total amount of additional direct costs that have been incurred or will be incurred by the government of such State and all local governments in such State in complying with such regulation in such fiscal year.

(b) The Director shall transmit each report required by subsection (a) for a fiscal year to the President and the Congress by September 1 of the fiscal year preceding such fiscal year.

SEC. 213. (a) For each fiscal year in which an intergovernmental regulation promulgated pursuant to a significant law will be in effect, the chairman of the committees of the Senate and of the House of Representatives having legislative jurisdiction over such significant law shall propose, to an appropriate bill or resolution providing funds for such fiscal year, an amendment containing provisions to appropriate funds to reimburse State governments and local governments for the additional direct costs incurred in complying with such regulation. The amount of funds proposed to be appropriated by such amendment shall be equal to or in excess of the amount described in section 211(a).

(b) Subsection (a) does not apply with respect to an intergovernmental regulation which will be in effect during a fiscal year if, with respect to such intergovernmental regulation and such fiscal year, a joint resolution has been enacted in accordance with section 211(b).

SEC. 214. (a)(1) The head of each Federal agency which administers an intergovernmental regulation promulgated pursuant to a significant law shall pay to each State government in each fiscal year the amount determined pursuant to this section to reimburse the State government and local governments in the State for the additional direct costs incurred by such governments in complying with such regulation in such fiscal year.

(2) A State government which receives payments under this section for reimbursement for additional direct costs incurred in complying with an intergovernmental regulation in any fiscal year shall pay to each local government in the State the amount determined pursuant to this section to reimburse such local government for the additional direct costs incurred by such local government in complying with such regulation in such fiscal year.

(b) The total amount to be paid to a State to reimburse the government of the State and local governments in the State for additional direct costs incurred by such governments in complying with an intergovernmental regulation in any fiscal year shall be an amount which bears the same ratio to the total amount for reimbursement of additional direct costs for all State governments and local governments described in section 211(a) with respect to such regulation for such fiscal year as the total amount of additional direct costs with respect to such regulation specified under section 212(a)(2) for such State government and local governments in such State for such fiscal year in the report submitted by the Director under this part for such fiscal year bears to the total amount of additional direct costs with respect to such regulation which are specified under section 212(a)(1) in such report for all State governments and all local governments for such fiscal year.

(c)(1) The total amount to be paid by a State government to local governments in such State to reimburse such governments for additional direct costs incurred by such governments in complying with an intergovernmental regulation in any fiscal year shall be equal to the product of the amount paid to the State under subsection (b) for such fiscal year multiplied by the ratio specified by the Director for such State under section 212(a)(2)(B) with respect to such regulation for such fiscal year in the report submitted by the Director under this part for such fiscal year.

(2)(A) A State government which receives payments under this section to reimburse local governments in the State for the additional direct costs incurred by such governments in complying with an intergovernmental regulation in any fiscal year shall pay to each such local government an amount equal to the product of—

(i) the total amount determined under paragraph (1) with respect to such regulation for such fiscal year, multiplied by

(ii) the ratio (stated as a percentage and estimated by the State in accordance with subparagraph (B)) that the total amount of additional direct costs incurred by such local government in complying with such regulation in such fiscal year bears to the total amount of additional direct costs in-

curred by all local governments in such State in complying with such regulation in such fiscal year.

(B) Each State government which receives payments under this section for any fiscal year shall provide by law for the estimation of the amount of additional direct costs incurred by each local government in such State in complying with an intergovernmental regulation for which such payments are received. In providing for the estimation of such costs, the State shall establish procedures and methods for the estimation of such costs which are reasonably related to the actual additional direct costs incurred by such governments in complying with such regulation in such fiscal year.

(d) This section does not apply with respect to an intergovernmental regulation which will be in effect during a fiscal year if, with respect to such intergovernmental regulation and such fiscal year, a joint resolution has been enacted in accordance with section 211(b).

SEC. 215. No law enacted after the date of enactment of this joint resolution shall supersede the provisions of this subpart unless such law does so in specific terms, referring to this title, and declares that such law supersedes the provisions of this title.

PART C—MISCELLANEOUS

SEC. 221. Section 403(c) of the Congressional Budget Act of 1974 is amended by striking out "$200,000,000" and inserting in lieu thereof "$100,000,000".

[From the National Journal, Oct. 4, 1986]

MANDATES WITHOUT MONEY

(By W. John Moore)

In St. George, Utah, federalism has become a losing proposition. As the cost of complying with federal regulations skyrockets, city officials have discovered, the level of federal financing for those programs has nosedived.

St. George faces possible fines of up to $25,000 a day because of a violation of the permit for its sewage treatment plant. Efforts to build a new plant are behind schedule, and city officials fear that means the city will miss the Environmental Protection Agency's (EPA) July 1, 1988, deadline for meeting clean water standards. The city had hoped to receive some federal aid to build the plant, whose price tag is $13 million. Until several years ago, EPA paid 75 per cent of sewage plant construction costs to help cities meet national clean water goals. But Reagan Administration penny-pinchers want to phase out the costly grants. After spending $100,000 to qualify for aid, St. George officials doubt any money will be forthcoming.

"We've been chasing after EPA dollars for years," city public worked director Larry Bulloch said. "It's like a carrot on a string; we just never catch up with it."

Part of the city's frustration, as well as part of the high cost, can be blamed on the woundfin fish. The woundfin, about the size of a thumb, is covered by the federal Endangered Species Act, and protecting the woundfin could add as much as $2 million to the plant's price tag.

"Of course, it bothers people," Bulloch said. "But we're talking about the federal government. What can a community of 20,000 people do about it?"

Like other cities, counties and states, St. George faces a future stuffed with federal requirements but starved for the funds needed to meet those national standards. "While mandates remain, the federal funds to implement them become ever more scarce," the National Association of Counties (NACo) has warned Congress. "It's a shell game," complained J. Ron Fahs, director of intergovernmental relations in Florida's office of planning and budgeting.

Laudable as many of the federal requirements may be, state and local governments have resisted what they perceive as a fundamental shift in the rules of federalism. Romanced with billions of dollars in grant money, promised an enduring commitment based on a sharing of responsibilities, state and local governments now feel jilted by their federal partner. Like any domestic dispute, this one has degenerated into ugly recriminations over money.

"Finances are at the heart of this dispute. Who is going to pay? When are they going to pay? How are they going to pay?" said Joseph F. Zimmerman, a professor of political science at the Graduate School of Public Affairs at the State University of New York (Albany).

The impact of federal requirements on state and local budgets has become more pronounced as federal assistance has dwindled. For example, a 1985 study conducted by NACo on general revenue sharing said that 66 per cent of the counties used these federal funds to help meet a variety of federal mandates, including environmental, health care and criminal justice regulations as well as requirements for transporting and handicapped. Yet local governments face the imminent loss of $4.6 billion in revenue sharing money.

Federal aid for urban programs has been slashed by 60 per cent over the past five years, and tax reform is making it tougher for cities to raise capital. Local and state officials believe the federal government is trying to solve its own budget problems by dumping costs on the cities. "We are being placed in an untenable box that will mean financial crises for many cities before very long." said Cathy Reynolds, a Denver city council member and first vice president of the National League of Cities. "Federal mandates could prove to be the straws that break the backs of local governments," she said.

State and local governments say that the blame for their federalism problems doesn't rest on the shoulders only of Congress and the Reagan Administration. Federal courts are increasingly willing to endorse federal preemption of state and local laws. In a 1985 decision, the Supreme Court ruled that under the Constitution, no sphere of activity is specifically left to the states. However, the Court said, Congress may specifically restrict the federal government's authority.

"It's like an octopus. There are an awful lot of arms out there" putting the squeeze on state and local governments, said Scott Dix, a legislative assistant to Sen. Mack Mattingly, R-Ga.

The outcry over cuts in federal aid and boosts in federal requirements has prompted calls for new legislation and regulatory relief. A bill (S. 2387) introduced by Sen. Dave Durenberger, R-Minn., would require the federal government to reimburse state and local governments for the costs imposed by new regulations. The provision could be waived if two-thirds of the House and Senate approved the new rules. The bill also would require the Congressional Budget Office and the Office of Management and Budget (OMB) to prepare an annual report listing all existing intergovernmental regulations and estimating the cost of any new rules.

The Durenberger proposal "ties the pleasure of the mandate to the pain of fiscal accountability," said F. John Shannon, executive director of the Advisory Commission on Intergovernmental Relations (ACIR). Gwendolyn S. King, deputy assistant to the President for intergovernmental affairs, suggested that the Administration found much to admire in the bill. But OMB officials are wary of any efforts to shift costs to the federal government.

Despite complaints about the cumulative impact of federal requirements, no one has a precise estimate of the cost to state and local governments. "We say hundreds of mandates at a cost of millions of dollars," stated a NACo letter, but "it could be thousands of mandates costing billions of dollars."

Relying on a 1984 study by the ACIR, most local government organizations have pegged the cost at about $200 billion a year. A June 1986 study done for the National Conference of State Legislatures by Robert L. McCurley Jr. of the Alabama Law Institute listed 145 federal laws enacted since 1972 that require state action.

FEWER FISCAL LINKS

Almost six years ago, New York Mayor Edward I. Koch warned cities and states about what he dubbed "the mandate millstone." Legislation and regulations engendered by the social concerns of the 1960s and the environmental activism of the 1970s were colliding with renewed concern about fiscal restraint. "The result has been an ever-widening gulf separating the programmatic demands of an activist Congress from its concurrent fiscal conservatism," Koch wrote in the magazine *The Public Interest.*

The Reagan Administration took power in 1981 vowing to free state and local governments from the entanglements of the most burdensome federal mandates. Regulatory reform, especially as it applied to state and local governments, was expected to become a key Administration initiative. The Presidential Task Force on Regulatory Relief claimed victory in August 1983, estimating that 25 percent of its efforts benefited state and local governments.

Michael Fix, senior research associate at the Urban Institute and the co-author of a book on deregulation, emphasizes that state and local governments obtained major regulatory relief from the Administration in the early 1980s.

Nevertheless, an April 1984 study conducted by ACIR concluded that federal statutes and regulations continued to place financial and administrative burdens on states, cities and towns.

These mandates come in a variety of flavors. Some are imposed under federal laws requiring states to administer a variety of social programs, such as parts of medicaid and medicare. But most mandates are the result of state and local governments' unquenchable thirst for federal dollars. To qualify for federal grants, states, towns and cities have agreed to meet the conditions for the programs that were established by the federal government.

A Faustian bargain, some critics believe, but a pact that state and local governments were more than eager to make. For example, to continue receiving federal highway funds, states must agree to a 55-mile-per-hour speed limit. The Federal Aviation Administration has made expansion of airport ground facilities a condition of receiving federal aid for municipal airports. An estimated 59 regulations, so-called cross-cutting

requirements, include federal mandates for programs that do not directly receive federal money.

The most unpopular federal mandates simply order state and local governments to comply with certain national objectives or to administer federal statutes. The Supreme Court's 1985 ruling in *Garcia* v. *San Antonio Metropolitan Transportation Authority* said that state and local governments must comply with the 1974 Fair Labor Standards Act, including its overtime provisions.

Congress and the White House historically linked direct mandates to state and local governments with the carrot of federal aid. According to a 1985 study by Robert P. Inman of the University of Pennsylvania's Wharton School, federal aid to state and local governments grew from $66 per capita in 1960 to $192 per capita in 1980, and most of the aid imposed federal requirements on the recipients.

Yet state and local government officials fear the precepts of federalism will be sacrificed to meet federal budgetary concerns. Unwilling to spend federal dollars for national priorities, yet unable to abandon those goals, the federal government has discovered it can rely on unfinanced mandates to accomplish its purpose.

"The booming message coming out of the mandate field right now is the wide-spread fear on the part of state and local policy makers that Congress will now try to do with mandates what in the old days it did with grants, and force states to carry out national priorities," the ACIR's Shannon said. "With grants, at least the states were bribed. Now it would just be the flexing of regulatory muscle on the part of the federal government."

Federal aid to small local governments was reduced by 24 percent from fiscal 1980–85, and an additional cut, from $4 billion to $1.6 billion, was proposed in the Administration's 1987 budget, according to a recent study by the National Association of Towns and Townships. But Congress has not gone along with all those cuts. "It is an effort to fundamentally change the character of American federalism," the report said. "While national-local fiscal links are being sharply reduced, national-local policy and programmatic links remain," the report added.

Congress already has discovered that state and local governments offer a way to loosen the federal government's fiscal straitjacket. This year, Congress passed a bill mandating medicare coverage for state and local workers hired after April 1, 1986. The governments and the new employees must pay a tax equal to 1.45 per cent of the new worker's salary. The law will cost state and local governments an estimated $250 million over three years but allow the federal government to collect an extra $500 million. Critics of the law believe that the cities and states are bearing the brunt of efforts to ensure the financial soundness of medicare. But some medicare experts disagree, noting that state and local employees should be treated similarly to other workers.

A similar proposal being considered by a conference committee would mandate medicare coverage for all 3.5 million state and local employees, at a cost of $3 billion-$4 billion over three years. Proposals to mandate social security coverage for state and local employees are also expected soon.

Even the war on drugs, which is now virtually a crusade on Capitol Hill, sparked some conflicts over who should bear the cost of combat. Because the cities are the crucial battleground, mayors and local officials pressed for enough federal assistance to match the rhetoric coming out of Washington. Yet the House Judiciary Committee voted to cut grants for drug enforcement programs from $625 million to $100 million in 1987. After a full-court press by the mayors, the House approved $695 million.

A bill (HR 1309) approved by the House Education and Labor Committee would require employers to provide testing, evaluation and medical monitoring of current and former employees who are susceptible to a dangerous disease. Although the bill was drafted to protect workers exposed to hazardous materials, firefighters and police officers—because of stress and the physical demands of the job—would also be considered to be in a high-risk job.

SEWAGE TREATMENT

That many mandates have laudable goals only makes the issue more troublesome for city officials. "A very unfortunate aspect of all this is that we can't reasonably argue to remove the mandate," Charleston (S.C.) Mayor Joseph Riley said, because the federal government in many instances if properly acting to solve pressing national problems. Yet budgetary restraints on cities and towns make it almost impossible to accomplish these goals. The solution, Riley insisted, is more federal money to accompany the federal mandates.

Perhaps nothing demonstrates the problems and constraints better than the ongoing dispute over municipal wastewater treatment plants. Since 1972, EPA has ordered new city treatment plants to comply with the Clean Water Act. As an incentive, the federal government provided 75 per cent of the construction costs. From 1972–82, the government spent $56 billion on construction.

After several extensions, EPA now has established a July 1, 1988, deadline for compliance with the act. But more than 2,930 projects have yet to be financed, at a total estimated cost of $19.4 billion. Despite EPA's deadline, the Administration has requested sharp reductions in federal money for the program. The federal government's share was reduced from 75 to 55 per cent several years ago, resulting in $2.4 billion in federal aid annually. Because of a dispute over future construction grants, only $1.8 billion has been released in 1986.

EPA has estimated that cities must spend $108.9 billion on sewage treatment plant construction to meet the mandated requirements by the year 2000. But the Administration, which intends to phase out the construction grant program by fiscal 1990, wants to provide only $27.6 billion from now until 2000, about $80 billion less than the cities need.

"The gap between funding and the federal requirements will widen considerably," warned Roberta Savage, executive director of the Association of State and Interstate Water Pollution Control Administrators.

But EPA officials and some environmental activists blame recalcitrant cities for the predicament. Lawrence J. Jensen, EPA's assistant administrator for water, said that cities have made less progress than industry in meeting Clean Water Act requirements. Although the construction grants are a crucial part of the program, he said. Congress never linked compliance to the federal dollars. "Whenever there are federal dollars for assistance in a federal program," Jensen said, "the expectation grows that you can just wait for the money."

Daniel Weiss, a Washington representative of the Sierra Club, blames the cities for their shoddy compliance record. Some cities "squandered their money," he said. Just because the cities made poor management decisions, "there is no reason why we should delay environmental protection standards."

But meeting EPA's deadline with reduced federal aid is expected to pinch a number of cities. "Our needs far outstrip available funding," said Don A. Ostler, a manager in the engineering and construction grants section of Utah's Water Pollution Bureau. Utah cities will need about $800 million to meet wastewater treatment needs through the year 2000. The state, Ostler said, currently receives $12.9 million annually from EPA. At that aid level, about 18 of the state's 30 top priority treatment plants would meet EPA's deadline. With no federal money, few, and perhaps none, of the plants would comply with the statutory mandate, Ostler said. One solution is much higher user fees. The new tax reform package only adds to Utah's woes. Its limits on tax-free bonds, Ostler said, will hurt the state's ability to finance wastewater plants.

Minnesota officials predict an equally bleak scenario. EPA money under the construction grant program typically went to the state's largest cities. Now much of the money is gone, but 180 small municipalities still face the 1988 deadline. "The costs will be devastating if they have to meet them on their own." said Donald A. Slater, the executive director of the League of Minnesota Cities.

Slater hopes the state may provide some financial aid, but funds from a special cigarette tax (earmarked for sewage projects) have dropped from $24 million to $11 million, with much of the money having gone to projects in big cities. Slater said that EPA continues to insist on the 1990 deadline while federal aid is being slashed. "I can't believe the national fiscal situation is so bad" that the agreement to provide construction grant money must be violated." he said.

But the wastewater issue could soon be dwarfed by a growing dispute over stormwater runoffs. EPA estimates that there are one million stormwater sewers nationwide, and each has to have a permit. EPA sampling and testing requirements could cost cities $8.5 billion, with the federal government contributing no funds. Some city and state groups are mollified by a compromise worked out with EPA in August. The accord would sharply reduce the number of stormwater permits required. But Savage of the state water pollution administrators' group remains worried. "No matter what the resolution of this issue * * * it will be a tremendous drain on state and local resources," she said.

One purpose of the Durenberger bill is to cushion these fiscal blows. "In this time of budget belt-tightening for all levels of government, it is important for the federal government to accept fiscal responsibility for rules and regulations it imposes on state and local governments," Durenberger said in introducing the legislation in April.

At least part of Durenberger's approach was strongly endorsed by White House adviser King. If Congress passes a law that "requires a significant outlay by state and local governments . . . that the federal government ought indicate how they are going to appropriate money or how the states will be reimbursed," King said.

Despite the growing concern about mandates, some intergovernmental experts be-

lieve the current problems will solve itself. "As federal funding declines, you lose the political constituency and the rationale to make the mandates politically viable," said Timothy J. Conlan, legislative aide to the Senate Governmental Affairs Subcommittee on Intergovernmental Relations. But under another scenario, Conlan said, as new budgetary constraints take hold, and Congress discovers that the tax code is now useless to accomplish policy goals, "what you're left with" are regulations imposing costs on the states.

Localities Hold States Accountable

In 1979, Rhode Island enacted a statute requiring that local governments be reimbursed for costs imposed on them by state laws. "Mandated cost reimbursement has changed the way state government thinks in Rhode Island," Kenneth F. Payne, executive director of the Rhode Island League of Cities and Towns, told the Senate Governmental Affairs Subcommittee on Intergovernmental Relations last year. State legislators and state agency personnel now understand, he said, that "if we play, we pay."

Rhode Island is one of a growing number of states that have decided to foot the bill for laws and regulations that increase local governments' costs. Twelve states have incorporated the concept in their constitutions, including California, Massachusetts, Michigan, New Hampshire and New Mexico.

As a result of these changes, say state and local officials, states have become wary of enacting expensive legislation or of intruding into purely local affairs. In Rhode Island, Payne noted, total reimbursements to localities have yet to reach $100,000 annually.

"It prevents the birth of new legislative initiatives because the price tag is too high," added F. John Shannon, executive director of the Advisory Commission on Intergovernmental Relations.

Republican Gov. John H. Sununu believes New Hampshire's constitutional amendment has forced some additional fiscal restraints on the state. "It has made the legislature a little more sensitive to what it's doing, and in that respect, it is very, very good," he said.

Yet state constitutions have not always protected local governments from unwanted mandates or forced the states to repay cities and towns for the costs of the new statutes or regulations. According to the Michigan Municipal League, loopholes and exemptions in constitutional amendments can encourage state legislative actions. For example, the Michigan constitution allows the Legislature to impose mandates on local governments if the statute also applies to private industry.

Efforts made to recoup costs have not been uniformly successful. "Absent either legislative or judicial declaration, there tends to be confusion and uncertainty as to whether local officials should ignore a state mandate until an appropriation is made and disbursed, submit a claim to the state for reimbursement of the costs of complying or litigate the question," according to the Michigan league's statement before the Intergovernmental Relations Subcommittee.

In states such as Florida, which have yet to restrict state mandates, it becomes difficult even to determine the fiscal effects of new legislation on cities and towns. The Florida Advisory Council on Intergovernmental Relations, in its report on the state's 1985 legislative sessions, determined that 35 new mandates were imposed on local governments last year by the federal government. The known cost of the 1985 mandates was $20.5 million, according to the council, but there are hidden costs too. Many of the new laws imposed procedural demands on local governments. Others limited these localities' ability to generate revenues. Only a few established new program requirements and left the financing to the municipalities.

Nevertheless, the report concluded, the enactment "of mandates which impose largely unmeasured costs on local governments remains an issue of great concern to the council and is a source of continued contention between the state and local governments."

Sending a Message to Washington

Maybe it's the abundant rainfall, but Oregon has always produced a bumper crop of independent politicians. Feisty former Democratic Senator Wayne Morse opposed the Vietnam war. Former Republican Governor Tom McCall fought just as hard and even longer for land use restrictions and environmental laws. Less a maverick and more the pragmatist, Gov. Victor G. Atiyeh nevertheless dismayed some fellow Republicans in 1982 when he wrote President Reagan to say he was "greatly disturbed and saddened" by the Administration's economic policies and their impact on the state.

"When the economy cools off, Oregon gets pneumonia," Atiyeh wrote in a caustic letter to Dave Stockman then the director of the Office of Management and Budget.

Atiyeh is also the governor complaining the loudest about federal red tape. Not content with just griping about the costs and administrative burdens that have been foisted on the state by the federal government, Atiyeh ordered department heads to identify the most obnoxious federal requirements and to suggest possible changes. In April, Atiyeh wrote another letter to Reagan listing 28 specific changes that federal agencies should adopt to reduce costs. The changes, Atiyeh said, would "assist Oregon in its goals of supporting federal debt reduction, while maintaining high-quality services to its citizens."

The biggest complaint was about the federal government's excessive monitoring, reviewing and auditing of state programs. Also, he said, most federal bureaucrats fail to understand that state laws and regulations can be as effective as federal requirements. Another problem stems from the federal government's insistence that annual contracts, including data already furnished, be resubmitted each year, Atiyeh told Reagan.

What irks Atiyeh the most is the federal government's attitude toward the states, which receive a shrinking amount of federal largesse. Unlike foreign aid recipients, which are sent billions of dollars with no strings attached, Atiyeh said in an interview, the states are treated "as if we are crooks who must be watched like hawks.

"I have said repeatedly, give me a goal. Don't tell me how to do it, just see if I meet that goal. . . . But that is not a message that has been received very well in Washington, D.C.

The 28 recommendations were an attempt to go beyond generalities and identify specific regulations that the federal agencies could correct. The report hit a number of federal agencies. Administrative changes in the Labor Department's unemployment insurance programs could produce $10 million-$25 million in annual savings nationwide, the report contended. The state's health division contended that Oregon could save $200,000 annually if the Health and Human Services Department's Health Care Financing Administration (HCFA) accepted Oregon's licensing programs for medicaid and medicare as the basis for federal certification when state requirements meet or exceed federal standards.

The state's Human Resources Department said Oregon and the federal government could save money by placing more elderly patients in their own homes rather than nursing facilities, but HCFA has imposed tough requirements to otain the necessary waiver for home-based treatment. "We've been stymied just about every step of the way by these federal regulations," Dick Ladd, the administrator of Oregon's senior service division, said even though providing nursing home care is three times more costly than providing the same services at home.

Social Security Administration rules forcing states to investigate potential fraud in food stamp and welfare fraud programs don't make much sense, argue Oregon officials, who nevertheless pursue possible incidents of abuse because failure to meet specific aduit requirements in 75 per cent of child support cases, for instance, could cost the state more than $7 milion in penalties annually. Yet the federal government has cut back financing for enforcement, raised performance standards and increased penalties. Is this a better management system, asked Keith Putman, administrator of Oregon's adult and family services division, or does it "serve the purpose of fining the states for the betterment of the federal Treasury?"

Atiyeh acknowledged that he has not yet received a response from the White House. But Gwendolyn S. King, deputy assistant to the President for intergovernmental affairs, says the various federal departments are reviewing the governor's letter, "This is a thorough attempt by a state administrator to really respond to the kind of problem they face at the state level because of federal requirements," King said, "even if only a handful of his suggestions are ever worked out."

BUDGETS FOR SELECTED MAJOR INTERGOVERNMENTAL REGULATORY PROGRAMS INCLUDING DIRECT INTERGOVERNMENTAL AID

[In constant dollars (1980=100), fiscal years 1980–85]

	1980	1985	Percent change 1980–85
Bilingual education	166.9	105.8	−36.6
Clean air	290.1	183.5	−36.7
Clean water (total)	2,864.9	2,018.0	29.5
Direct assistance	2,591.9	1,874.4	−27.6
Handicapped education	874.5	862.7	−1.3
Occupational safety and health	166.0	167.2	+1.0
Resource recovery and conservation	109.8	127.1	+15.8
State administrative grants [1]	18.1	43.3	+39.2
Safe drinking water	79.3	77.7	−2.0
State administrative grants [1]	39.4	35.0	−11.0
Surface mining	180.0	250.8	+39.3
State administrative grants [1]	28.0	267.0	+787.0

[1] For any given year totals may vary due to change in the number of States administering programs.

Source: U.S. Budget. Constant dollar totals were computed using gross national product deflations based on calendar year 1972 prices as developed by the U.S. Department of Commerce, Bureau of Economic Analysis.

Answers to Common Question About Mandate Relief Amendment

"What is a mandate?"

A mandate is a provision of statute or a regulation promulgated pursuant to such a

statute which directs states or local governments to meet nationally-determined standards, without funding to meet the additional direct costs of implementation. A mandate is not a condition of aid either embedded in a statute or promulgated as a regulation pursuant to such a statute. These regulations are rightly considered part of a contract between the federal government and our partners in the federal system. These are the so-called strings the national government places on state and local governments as direct conditions of receiving a particular federal grant-in-aid.

"What effect will the mandate relief amendment on vital regulatory programs currently implemented by State and local governments?"

This amendment will make it easier—not harder—to accomplish national goals such as those for clean air and water, for handicapped education, and for civil rights. There are two reasons why:

My subcommittee on Intergovernmental Relations has held extensive hearings on Mandate Reimbursement over the past two years. The ACIR has published a 300 page report on Mandates. Countless experts have written books on why we so often fail to achieve important regulatory objectives. All of this research and hearings show that too many unfunded federal mandates undermine our best efforts to accomplish regulatory objectives because taken together they place too such stress on our partners in the federal system.

First, There is not enough money in the system to meet regulatory requirements. As state and local officials race to meet the demands imposed by hundreds and hundreds of these mandates, they lose opportunities to work on the truly important ones. For example, research conducted by the Water Pollution Control Federation concluded "The rate of cleaning up municipal water pollution depends almost completely on the availability of federal money." That's just one example; during the hearings I chaired I have heard dozens of similar conclusions for many other important programs.

The answer is not to spend more money at the federal level. We can't afford that. The answer is to set our priorities and to stop giving in to the urge to pass unfunded mandates for everything under the sun—as a freebie for every special interest group that walks into our offices. In short, this amendment helps us fend off these attacks by helping us to weed out pointless, unjustified mandates.

Second, weeding out unjustified mandates is critical because such mandates compete for scarce State and local resources. A small city spending money backfitting its entire fleet of buses with handicapped lifts when a para-transit system would cost less and work better, is prevented from spending that money on wastewater treatment. It's that simple.

At some point rational priorities have to be established. State experience with identical mandate reimbursement programs such as in California, Massachusetts, Rhode Island shows that such programs can help separate the wheat from the chaff. Let me quote the Comptroller for the State of California on this point. "The mere existence of the mandated cost program has forced the state legislature to be more cost conscious. With limited revenue sources, they now prioritize their needs much more carefully which has resulted in numerous proposals of less merit being dropped or cumbersome administrative requirements being simplified or deleted."

Let me quote from Massachusetts: "Intergovernmental relations are enhanced, thus facilitating implementation of state programs at the local level. The state mandated program is forcing the state government to consider the cost impact of proposals before they are passed. It is making us establish priorities and live within these priorities."

Or from Rhode Island, "It is good preventive medicine that is actually helping us to get the important jobs done."

So to those who rightly ask, "How will this amendment help us to get our drinking water supply free of pollution or our handicapped children the education they deserve, or our local police out from under paperwork and on to the streets to fight drugs?" The answer is this: "The best thing you can do to advance all of these important regulatory goals is to vote for—not against—my amendment."

"Won't mandate reimbursement cost too much?"

Both common sense and state experience with similar mandate reimbursement programs give the same clear answer to this question: "No!" This is true for two reasons. First, many mandates do not impose excessive costs overall, and these can easily be absorbed by the current federal budget. The problem here is that even relatively small regulations can pose insurmountable burdens for small, rural communities. Second, for those mandates that do impose extraordinary costs, this amendment will help Congress set clear priorities to focus resources on compelling national needs.

In the case of small communities, the problem of federal mandates often stems from the limited size of their revenue base. Such communities generally have small budgets and only a few permanent or part-time employees. For these governments, even regulations costing only a few thousand dollars can absorb a large percentage of the total budget.

In recent years, these inherent budgetary constraints have been exacerbated by federal aid reductions and depressed economic conditions. Small communities have been hardest hit by the termination of General Revenue Sharing. GRS comprised just 22% of total federal aid to all local governments, but 45% of total federal aid to small communities in agriculturally-dependent counties.

These small communities have also been the targets of other federal aid reductions. While federal aid levels to most local governments have remained virtually unchanged since the big cuts enacted in 1982, federal aid to rural communities fell an additional 18% between 1982 and 1985.

Finally, reductions in federal aid have been aggravated by declining economic conditions which have further eroded local revenue sources. In the farm belt, the disastrous declines in farm land values are undermining local property tax bases. In Minnesota, the price of farm land has fallen 50% since 1981, and property tax assessments have fallen 25%. Other farm states are experiencing similar declines, as are local governments in oil-producing states.

Thus, even modest mandates can pose major problems for small communities. Examples include:

OSHA requirements for volunteer fire departments: Across America, new OSHA requirements are forcing small towns and townships to buy expensive new fire-resistant suits for their volunteer fire fighters. Equipment that had been considered perfectly adequate is no longer acceptable.

For the small town of Underwood, Minnesota, this regulation may require disbanding the volunteer fire department altogether—giving up all fire protection for the community. The new suits cost $3,000 apiece. That's thirty thousand dollars for ten volunteers. Underwood simply doesn't have it. Property tax receipts are down. Delinquencies are up. The town had planned on using its small GRS allotment to help cover the cost, but now that has been eliminated. Underwood is out of luck, and so are many other small towns and townships nationwide.

Handicapped Access: In other small communities, the most costly mandate facing them are federal standards for handicapped access to public facilities. The problem is not one of providing the access to the handicapped. All Americans share this goal and most small towns have developed workable plans to acomplish it. The problem for small communities is excessively stringent federal standards.

For example, in one North Carolina county, the county seat was instructed to put an elevator in the county court house to provide improved access to the second floor. The county agreed and proceeded to contract for a $28,000 elevator to be built in the court house. $28,000 was a major expenditure for this small county, but county officials agreed it was the right thing to do.

After examining the county's plans, however, federal officials rejected this response and forced the county to purchase a larger elevator costing $100,000—more than three times the original amount!

So, for countless small requirements like these, the costs borne by the federal budget will not be large, but they will make all the difference to small communities.

For larger mandates which entail billions of dollars of added costs for state and local governments, this amendment will finally force the national government to set responsible regulatory priorities.

This has been the state experience in those states which operate mandate reimbursement programs. For example, in the state of California, officials of the state controller's office testified that the mandate reimbursement law has been successful by "making us establish priorities and live within those priorities." In Rhode Island, the law "has not resulted in the state forswearing its responsibilities." Instead, it has promoted "a more participatory process," where state and local officials come together to discuss and establish priorities.

The same process will occur at the federal level under the mandate relief amendment. The federal government already acknowledges the need to provide funds for many costly mandates, knowing that this is the only way to achieve regulatory goals. That is why the federal government has spent several billion dollars on wastewater treatment grants. It also explains why Congress is prepared to enact a new Superfund program for hazardous wastes.

The trouble arises with unfunded mandates, where states and localities are simply told: "You do it," and no funding is provided. This amendment will prevent such budgetary end runs and subject every new mandate to the discipline of the budget. Like all other programs in the budget, Congress will have to decide how important the goal is when allocating budgetary priorities.

How do we know this reimbursement program will work?

The Senate Intergovernmental Relations Subcommittee held two days of hearings in 1985 which examined state programs to reimburse local governments for the costs of

state-imposed mandates. The Subcommittee found state experience administering such programs was overwhelmingly positive. In California, the state controller concluded that "our state benefits from the program." In Massachusetts, the state auditor testified that "Our approach is time tested. It is very simple and very clearcut." The word from Rhode Island was: "This is a good rule."

The Subcommittee also found that state mandate reimbursement programs have not been inordinantly expensive. In Massachusetts, the state has actually saved money by weeding out unnecessary regulations. As the Massachusetts auditor testified, "The total cost of the mandates is just slightly in excess of $7 million. The savings to the state have been much higher."

In California, the state maintained its reimbursement program "even when the state was basically broke back in 1983, because we believe the benefits outweigh the costs."

RECENT EXAMPLES OF REGULATORY UNREASONABLENESS

INTERNAL REVENUE SERVICE

The IRS mandates that for every unmarked city vehicle that is used by a city employee while not on duty, the records must be kept by the employer and the employee. Here's how that plays out at the local level: In many small towns across this country, the director of public works doubles as the crew of public works. Now, that means—among other things—that the public works director is responsible for manning wastewater treatment lift systems. There is no 24 hour-a-day crew to respond to emergencies. The public works director is it: he's the crew. In an effort to save time in emergencies, the public works director drives the public works crew truck home—that makes sense since the lift stations are not located at city hall. But, the IRS has little incentive to be reasonable. IRS regulations say that the public works director has to keep a daily record of this, and what's more, every day he doesn't use the truck for an emergency in off hours he has to pay $3.00. It's not enough that the public works director keeps records, the city clerk is also required to keep records—duplicates. And, if these people don't, the IRS might slap them with a fine.

MUNICIPAL STORM SEWER DISCHARGE PERMITS

In the Clean Water Act, requires municipalities to obtain a permit similar to those issued to waste-treatment facilities and major industrial plants for storm-water collection systems and conduct separate sampling and testing for each discharge point. This provision is now being debated in the House-Senate Conference. Thus far, attempts to modify this statutory requirement by allowing municipalities to use a general permit or to exempt separate storm sewers except in those cases where the EPA identifies a specific pollution problem have been unsuccessful.

Now, how many storm sewers are there in an average city? In fact, there are more than 1 million separate storm-water discharge points in the nation's 366 major urban areas, alone. The cost of sampling and analysis is estimated at $8.5 billion—roughly double last year's GBS funding. $8.5 billion to meet the implementation costs of only one mandate. What is more, city officials that fail to comply are exposed to criminal penalties of up to three years in jail and civil fines of $25,000 per day.

City officials are desperately attempting to negotiate a compromise. They are asking us not to be unreasonable. In the words of Cathy Reynolds, Vice President of NLC and councilwoman from Denver: "Please recognize the incredible cost in manpower and physical plant required to implement the program and diversion of limited resources now earmarked for high-priority water pollution control problems."

LABOR DEPARTMENT FAIR LABOR STANDARDS

One of the problems with mandates, is that when they are passed or the regulations are written, there is no flexibility given to state and local governments to adapt the spirit of the mandate—its purpose—to fit local conditions. Consider the situation in Santa Clara, California. City officials wanted to help low-and moderate-income senior citizens to do minor rehabilitation and weatherization of their homes. And, the city wanted to use a summer jobs program to do it. Seems reasonable. Get the kids off the streets and help out the old folks. The city couldn't get an exemption from Labor Department rules governing prevailing wages on federally assisted projects, however. Now, the city council was sad to learn that the kids would have to be paid union-scale wages because that added up to a lot of money and a lot of trouble. In the end, it just didn't seem worth it, so the city abandoned the idea: no summer jobs for the kids and no help for the senior citizens. The idea was certainly reasonable. But, the regulation was clearly unreasonable.

Mr. WILSON. Mr. President, I wish to join my distinguished colleague from Minnesota, [Mr. DURENBERGER] in the introduction of this amendment to provide regulatory relief to State and local governments from new Federal regulations.

The legislation is designed to bring a greater measure of fairness to the entire process by which this Congress seeks to impose its will and its judgment upon the States and local governments of this Nation.

Mr. President, the specific intent of this amendment is to require Federal reimbursement for any additional costs incurred by State and local governments in complying with new Federal regulations.

This legislation is especially timely as budget deficits continue to require reductions in Federal funds to localities and New Federalism has brought shifting roles. While the costs of mandates to State and local governments continue to rise, Federal aid to State and local governments has been reduced dramatically—down 24 percent in constant dollars since 1980.

The loss of general revenue sharing is the most visible example of this trend. The elimination of revenue sharing will be felt even more deeply than other Federal aid cuts because, increasingly, revenue sharing funds have been used to meet the costs of unfunded mandates. As new federalism evolves and State and local governments continue to shoulder increasing responsibilities and costs, Congress must not continue to add to the local government burden through new unfunded Federal mandates.

Mr. President, this legislation, no doubt, will make great sense to those of my colleagues who have, in their experience, spent some time in State or local government. Many times, my capacity as a State legislator, and even more so as mayor of a large city, I have questioned the judgment of legislators at the Federal level. I must confess, that at times I resented their having imposed not only their judgment but the cost of their judgments upon local taxpayers.

The principle involved here is simply stated: The Federal Government bears some responsibility to fund duties and requirements it chooses to mandate upon State and local governments. This position has been strongly endorsed by many State and local government officials as well as numerous local organizations—the National Governors' Association, the National League of Cities, the National Association of Counties, and the National Association of Towns and Townships.

Unfortunately, I must add in all honesty that even State governments have been guilty of imitating the Federal level by imposing regulatory requirements upon local governments without the benefit of adequate funding. Some years ago, this practice of mandating costly regulations on local governments became intolerable in California. Finally, to cure its own sin, the State legislature enacted what was then called "Senate bill 90," which said very simply that the State shall no longer impose new duties and regulations upon local governments without providing the funds for the performance of those duites.

Mr. President, I can certainly understand why, at first glance, many of my colleagues might find this approach a bitter pill to swallow—particularly now when we are almost obsessed with discussions and policy aimed at reducing the deficit. However, this legislation does not add one penny to the Federal deficit, but simply will require the Congress to legislate more responsibly when contemplating the enactment of new regulations.

Let me say it simply: If, in our judgment, a particular responsibility to be discharged at the State and local level is important enough to merit the enactment of Federal legislation in order to require it, then, to this Senator, it seems only fair and right that such mandates should be accompanied by appropriate Federal funding.

In recent years, Congress has often responded to problems without providing the adequate funding to carry them out—present mandates are estimated to cost State and local governments billions of dollars each year. If we now require Federal reimbursement for all future Federal mandates, we shall reform our own lack of realism and work to slow down the prolif-

eration of regulatory requirements as well as bring relief, much deserved relief, to those who labor at the State and local level.

Mr. President, in this period of deficit reduction, such a measure would impose an obstacle to new regulatory requirements enacted by Congress. This amendment is not intended to undermine the goals of protective regulations and in those instances where it is deemed inappropriate for Congress to share in the costs of implementing regulations, a two-thirds vote in both Houses would waive the reimbursement requirement.

In 1981, the Advisory Commission on Intergovernmental Relations issued a report entitled, "Regulatory Federalism: Policy, Process, Impact, and Reform." I agreed with much of the report. It cites in detail, with many examples, precisely the kind of abuses which the Federal Government has been guilty with the best of good intentions. It may be helpful to close by quoting what the Commission has to say about its recommendations for full Federal reimbursement. I read from the report of the Commission on Intergovernmental Relations:

> The Commission strongly affirms the principle of Federal responsibility for mandated costs, but it has carefully tailored its recommendation to current budgetary realities and to the administrative difficulties posed by full reimbursement of all existing mandates. This recommendation is limited to costs imposed on State and local governments by future intergovernmental regulations. This restriction avoids excessive immediate demands on the deficit-ridden federal budget while simultaneously establishing an effective fiscal deterrent to future regulatory proliferation.

For all of these reasons, Mr. President, I am joining my colleague and friend, Mr. DURENBERGER, in sponsoring this amendment.

Mr. MATTINGLY. Mr. President, I rise in support of the amendment by the Senator from Minnesota. Over the past couple of decades, the number of Federal regulations imposed on State and local governments has skyrocketed. And I believe this is a serious problem.

Mr. President, there is a growing tendency in Congress to address desirable national policy objectives by imposing obligations on State and local Governments without providing offsetting Federal funds. Because of this, cities and counties are faced with the alternative of increasing revenues to fund these mandates or reducing an existing service in order to free funds to pay for the mandate.

Many of these legislative initiatives are sound Federal policy. However, in my view, it is irresponsible to impose new costs on local governments without careful analysis. Congress accomplishes very little when it refuses to provide funds for national objectives and then requires our constituents back home to pay the bill.

It is vitally important for the Federal Government to accept fiscal responsibility for these rules and regulations that are imposed upon these governments. This amendment will do just that. It will help to relieve this growing burden. And I think it's about time we did so.

I strongly believe it is unfair and unwise to reduce Federal aid to local governments without a corresponding reduction in costly bureaucratic redtape and requirements. It is time Congress reduced these financial burdens that are placed upon State and local governments. I urge my colleagues to join me in this effort and support this amendment.

Mr. ROCKEFELLER. Mr. President, I strongly support continuation of the General Revenue Sharing Program and believe this funding bill ought to have provided for it.

Local communities throughout the country depend on this assistance to support essential public services. Some healthy one can manage if the Federal payments are ended. But many local governments are in no position to raise the revenues that would be needed to make up the difference. Their only choice is to do without.

To give an example from my State of West Virginia: Smithers, in Fayette County, is a town of 1,600 people. Its unemployment rate is close to 20 percent. The area has lost population in recent years, and nearly one in every four residents is retired. This community does not have the option of raising taxes—its tax base is already strained to the limit. Without revenue sharing, Smithers would have to cut back—on police protection, road maintenance, trash pickups, services for the elderly. These aren't frills, Mr. President; they're functions of government no hard-pressed community should be forced to forgo.

I know that my distinguished colleague from Minnesota [Mr. DURENBERGER], a leading advocate of revenue sharing, would have offered an amendment to restore funding if he had thought it had a chance of succeeding. But that hope evaporated last week when the House Rules Committee refused to allow an amendment on revenue sharing. I respect the Senator's judgment that it serves no purpose to lose a vote now—that we should concentrate on laying the ground work for trying again next year.

The pending amendment recognizes that State and local governments face a burdensome revenue gap: that under the Reagan administration, responsibility for many Government programs has become increasingly decentralized while Federal aid has declined. Although the loss of general revenue sharing will certainly intensify these strains at the local level, this amendment gives some assurance to localities that they won't be forced by the Federal Government to assume new responsibilities unless the funding to carry out such activities is provided.

This may not offer much comfort to local areas facing layoffs of police and firefighters, closings of libraries and health clinics, and other cutbacks in public services as a result of the discontinuation of revenue sharing. In West Virginia this is truly a losing proposition: our communities cannot raise taxes enough to cover the loss of Federal aid, but they also cannot afford to let public services deteriorate. Our struggle to attract industry and jobs will be just that much harder if public facilities and services cannot be maintained.

But looking ahead, I would hope to join my colleague from Minnesota in an effort next year to develop a more targeted program of assistance to economically distressed areas of the country. In the meantime, I commend the Senator from Minnesota for this amendment and for seeking a means of limiting the damage to the fiscal condition of local communities.

FOREIGN AID REFORM

Mrs. KASSEBAUM. Mr. President, I offer an amendment, along with Senators LUGAR, PELL, KERRY, and ABDNOR to the continuing resolution which requests the President to undertake a comprehensive review of the activities authorized by the Foreign Assistance Act of 1961 and to send to the Senate Foreign Relations Committee and the House Foreign Affairs Committee by February 1, 1987, his recommendations for amending the act or otherwise modifying those activities.

The need for such a comprehensive review is clear. In view of the shrinking pool of foreign aid funds, there is a greater need than ever to clearly define the goals of the foreign aid program and to assure its efficient and effective administration. These are important issues even under ideal conditions. They become even more critical at a time where we now hear talk of the "crisis" is foreign aid.

In the absence of an organized review of the Foreign Assistance Act, we are witnessing piecemeal changes. The Foreign Relations Committee will be reviewing foreign aid authorizations next year even more intensely than usual in view of the acute budgetary shortages confronting the activities authorized under the Foreign Assistance Act. There is bipartisan support on the committee for working together on recommendations to improve the overall program.

We believe that this review would be enhanced and strengthened by the participation of the executive branch, and we are therefore asking, under this amendment, for their recommendations.

Mr. President, changing circumstances in the developing countries and the changing availability of resources from the United States require this comprehensive review. We ask the Senate's approval for requesting the administration's full cooperation and assistance in this important undertaking.

□ 1800

The PRESIDING OFFICER. The joint resolution is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment of the amendments and the third reading of the joint resolution.

The amendments were ordered to be engrossed and the joint resolution to be read a third time.

The joint resolution was read the third time.

The PRESIDING OFFICER. The joint resolution having been read the third time, the question is, Shall it pass?

Is there a request for the yeas and nays.

Mr. DOLE. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Utah [Mr. GARN], the Senator from Arizona [Mr. GOLDWATER], and the Senator from Maryland [Mr. MATHIAS] are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Delaware [Mr. BIDEN] and the Senator from Oklahoma [Mr. BOREN] are necessarily absent.

The result was announced—yeas 82, nays 13, as follows:

[Rollcall Vote No. 330 Leg.]

YEAS—82

Abdnor	Gramm	Murkowski
Andrews	Harkin	Nickles
Bentsen	Hart	Nunn
Boschwitz	Hatfield	Packwood
Bradley	Hawkins	Pell
Bumpers	Hecht	Pryor
Burdick	Heinz	Quayle
Byrd	Hollings	Riegle
Chafee	Inouye	Rockefeller
Chiles	Johnston	Rudman
Cochran	Kassebaum	Sarbanes
Cohen	Kasten	Sasser
Cranston	Kennedy	Simon
D'Amato	Kerry	Simpson
Danforth	Lautenberg	Specter
DeConcini	Laxalt	Stafford
Dixon	Leahy	Stennis
Dodd	Levin	Stevens
Dole	Long	Symms
Domenici	Lugar	Thurmond
Durenberger	Matsunaga	Trible
Eagleton	Mattingly	Wallop
Evans	McClure	Warner
Exon	McConnell	Weicker
Ford	Melcher	Wilson
Glenn	Metzenbaum	Zorinsky
Gore	Mitchell	
Gorton	Moynihan	

NAYS—13

Armstrong	Grassley	Pressler
Baucus	Hatch	Proxmire
Bingaman	Heflin	Roth
Broyhill	Helms	
Denton	Humphrey	

NOT VOTING—5

Biden	Garn	Mathias
Boren	Goldwater	

So the joint resolution (H.J. Res. 738), as amended, was passed.

Mr. McCLURE. Mr. President, I move to reconsider the vote by which the joint resolution was passed.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. STEVENS. Mr. President, I ask unanimous consent that the Senate insist on its amendments to House Joint Resolution 738, request a conference with the House on the disagreeing votes of the two Houses, and that the Chair be authorized to appoint conferees on the part of the Senate.

The motion was agreed to; and the Chair appointed the following conferees on the part of the Senate: Messrs. HATFIELD, STEVENS, WEICKER, McCLURE, LAXALT, NUNN, COCHRAN, ANDREWS, ABDNOR, KASTEN, D'AMATO, MATTINGLY, RUDMAN, SPECTER, DOMENICI, STENNIS, BYRD, PROXMIRE, INOUYE, HOLLINGS, CHILES, JOHNSTON, BURDICK, LEAHY, SASSER, DECONCINI, BUMPERS, LAUTENBERG, and HARKIN.

Mr. STEVENS. Mr. President, I have been asked to put in the RECORD what the actual statistics are for the Senate's consideration of House Joint Resolution 738. In doing so, I think we must give great credit to the chairman of the Appropriations Committee, the Senator from Oregon [Mr. HATFIELD].

This measure has been before the Senate 5 days. It has consumed, as of 6:24 p.m. today, 43½ hours. There were 27 rollcall votes. The Senate disposed of 111 motions and amendments—agreed to 87, rejected 1, tabled 4, withdrawn 3, found 14 were out of order on a point of order, did not act on 2 because they were in the second degree.

□ 1820

This is the largest appropriations bill in the history of the Republic, because it contains all 13 appropriations bills in one comprehensive continuing resolution.

I think the Senate deserves credit for handling this massive funding measure for the Government in a businesslike manner and as expeditiously as it could have been done.

Mr. DOLE. Mr. President, will the Senator from Alaska yield?

Mr. STEVENS. I yield.

Mr. DOLE. Let me underscore the credit due to the managers of the bill. The Senator from Oregon, Senator HATFIELD, came in strong and finished with a weak voice but a strong finish and because of his determination, we were able to complete this bill which is rather remarkable. When you think of the size and scope of this appropriations bill, the fact that we have done it in 5 days, really probably more if you count the hours, but in 1 week's time is remarkable.

I also thank the distinguished Senator from Mississippi, Senator STENNIS, and the distinguished Senator from Louisiana, Senator JOHNSTON, members of their staffs on both sides and all other Senators on the Appropriations Committees and subcommittees and others who are worked during the process on reviewing the amendments trying to expedite the process.

It has made it possible to complete action on a very important piece of legislation, and I believe made it possible for us to leave sine die hopefully no later than next Thursday.

Mr. STEVENS. Mr. President, I yield the floor; and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. STEVENS. Mr. President, I ask unanimous consent that the call of the roll be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE 1986 CONGRESSIONAL CALL TO CONSCIENCE

Mr. BAUCUS. Mr. President, I am pleased to join my colleagues in the 1986 Congressional Call to Conscience.

Recent events in the Soviet Union emphasize the repression and harassment that are part of the daily lives of many Soviet Jews.

These brave people are known as refuseniks. They are Soviet Jews who have been denied permission to emigrate, are harassed by the KGB, and are often dismissed from their work. They live in fear of arrest and imprisonment on trumped-up charges.

Gennady and Natalia Khassin of Moscow are one such refusenik family. Gennady Khassin graduated from Moscow State University in 1959, completed his thesis, Ph.D., in 1965, and now has 27 published works to his credit on projective and differential geometry. He worked and taught in various Soviet academic institutes and was associate professsor of mathematics in the Moscow Pedagogical Institute, but left this post in order to be able to emigrate. He worked as a teacher in a middle school from 1975 until 1977, but was nevertheless denied emigration on the alleged grounds of being a privy to secrets.

Gennady's wife Natasha worked as a computer programmer until 1968 and

organized and helped to run the kindergarten for refusenik children in Moscow. She was also one of the original 12 women who formed what was called the Women's Group in 1978. This group protested the constant refusals of emigration. The women felt that their protests would be less vulnerable to harassment and arrest than the male refuseniks.

The KGB had different ideas. Demonstrations by the group were constantly interrupted and the women were beaten, arrested, and taken to the Moscow suburbs, far from their homes, and dropped off.

The Khassin's home was searched and Gennedy was arrested and sentenced to 10 days imprisonment.

More recently the Khassin's have been offered a deal by the KGB: If Natalia admits her crimes in public, the family will get an exit visa. If she does not, they will not get a visa until the year 2000, or Natalia may be exchanged on the bridge as Anatoly Shcharansky was.

As always, the constant harassment continues.

The Khassin's story is not unusual. But today I am making a special appeal to the Soviet Government on behalf of the Khassins. I ask the Soviet leadership to give prompt attention to their case.

And I call on my colleagues to continue to bring the world's attention to these brave people.

CONGRESSIONAL CALL TO CONSCIENCE

INTERNATIONAL CANCER PATIENTS SOLIDARITY COMMITTEE

Mr. KENNEDY. Mr. President, the International Cancer Patients Solidarity Committee, unlike most organizations, hopes that it will disband soon. The committee consists of prominent cancer researchers and the families of five Soviet cancer victims. Its sole purpose is to bring five cancer patients from the Soviet Union to their relatives in the West.

The committee's first reward came on Monday, September 29, 1986, when Tatyana and Benjamin Bogomolny received their permission to leave the Soviet Union. Benjamin is the world's longest standing refusenik; he first applied for an exit visa in 1966. He and Tanya will join her father and sister in California which is particularly joyous for Tanya because she has had breast cancer since December 1985 and has no other relatives in the U.S.S.R.

While the exit visa is welcome news for the Bogomolny's, the remaining four cancer patients are still waiting. The plea of the International Cancer Patients Solidarity Committee is purely humanitarian. Their request is for these cancer victims to reunite with their relatives before their imminent death—during this difficult time of illness.

Rimma Bravve has advanced ovarian cancer. In February 1979 Rimma, her husband Vladimir, her sister and her parents applied for an exit visa. While they were waiting for a response, Rimma's father died of cancer. Although Rimma's mother and sister were given permission to leave, Rimma and Vladimir were refused because Vladimir's father had second-level security clearance before his retirement.

In February 1984 Rimma was diagnosed with metastatic cancer of the ovaries. She then had surgery and has been given chemotherapy and radiation treatments ever since. At this stage in her illness, it is especially important that Rimma be able to join her mother and sister in Rochester, NY.

Inna Meiman's health is also at a critical stage. Over the past 2 years, Inna has had four risky, painful operations to remove cancerous tissue on her neck. Her case has become increasingly desperate since Inna was diagnosed as having soft tissue sarcoma, a severely debilatating cancer. Soviet doctors have told Inna that they can provide no further treatment for her condition.

Inna's husband, Naum, is an internationally recognized authority in mathematics and elementary particles. Professor Meiman has been refused an exit visa on the pretext of being in possession of secret information. He joined the Moscow Helsinki Watch Group in February 1977 and was an active member until September 1982 when the group dissolved. Since 1983, Naum has been trying to bring his wife to the West for alternative treatment for her condition. He hopes for them to join his daughter, Olga, who now lives in Colorado.

Leah Mariasin discovered a growth on her head in 1980 that was diagnosed as a myeloma. She had an operation in September 1981 and now has a tumor on her back as well. She has been told that there is no further treatment available for her.

Leah, her husband Alexander, and their daughter Faina applied for an exit visa in 1972 in order to live with their eldest daughter Rita in Israel. Leah is particularly desperate to see her daughter before she dies.

Fourth, Dr. Benjamin Charny is hoping to join his brother Leon in Needham, MA. Dr. Charney is suffering from skin cancer and has had two recent heart attacks. He also recently developed a growth on his thyroid gland.

Dr. Charny is an ex-mathematician. His wife Yadviga and daughter Anna first applied for an exit visa in 1979. Their application was denied on the basis that Benjamin had done classified, high security work. However, he has not worked with classified information since 1971.

Leon Charney, Benjamin's brother in Massachusetts, is the official spokesperson for the International Cancer Patients Solidarity Committee. He is pleased that the Bogomolny family will reunite soon and hopes that the Bravve's, the Meiman's, the Mariasin's, and his own family will soon have the same good fortune. He stresses the need for these cancer victims to be allowed to come to the West for a second opinion and in some cases experimental treatment. Almost more importantly, these patients should be relieved of the stress that is caused by being so far from their immediate families.

The fight against cancer certainly transcends all political barriers. I wholeheartedly support the International Cancer Patients Solidarity Committee in their efforts to resolve the cases of these critically ill cancer patients.

TRIBUTE TO HARRY S. CARVER

Mr. WEICKER. Mr. President, I rise to pay tribute to Harry S. Carver, Comptroller of the Small Business Administration, who died suddenly on September 21. Harry was a superb public servant, who provided the committee with expert counsel.

Harry became Comptroller of SBA in 1980, shortly before I became chairman of the Senate Small Business Committee. Harry was much more than a "number cruncher". Harry Carver knew what SBA's lending, procurement and management programs meant to the small business community. Harry joined SBA in 1967 as a special assistant to the Assistant Administrator for Administration. His institutional knowledge of the agency's programs and its delivery system was invaluable as the committee sought to find ways to reduce SBA's expenditure without jeopardizing its statutory mission.

The last 2 years have been particularly difficult ones for those who worked for the agency. Harry Carver was a settling force during these tumultuous times. His sense of humor, his love of people, helped to keep a proper balance within the agency. Harry was able to walk the fine line of effectively advocating the President's budget, while ensuring the law was faithfully executed.

Harry's death was a severe loss to the agency. His life is an example for all those who wish to consider public service. Harry Carver made a significant contribution to this Nation. He will be missed by all those who worked to assist and promote the small business community.

MY heartfelt sympathy goes to Harry's wife, Betty and his three sons.

LITHOTRIPTER

Mr. HEFLIN. Mr. President, I wish to take this opportunity to commend the Department of Health and Human Services for its foresight and judgment in making available to our Medicare population a relatively new medical procedure which will not only reduce the cost to the program, but will spare untold thousands of our elderly the needless pain and suffering that accompanies major surgery. This laudable effect has been accomplished through the approval for reimbursement of a new major medical device, recently approved by the Food an Drug Administration, that offers a nonsurgical alternative to the traditional method of removal of kidney stones. While this alternative may not be available to every patient with kidney stone disease, former Secretary of Health and Human Services, Margaret Heckler, has hailed this device as an authentic modern miracle, which may keep 70 to 80 percent of all kidney stone patients from having to go under the knife for relief.

The machine is called a lithotripter and derives its name from the Greek words "lithos" meaning stone and "tripsis" meaning to crush. Instead of serious and dangerous surgery, patients recline in a tub of water and are subjected to carefully aimed shockwaves that shatter the stones into sandlike particles which can then be excreted in urine. What once could require up to 3 months or more of recovery from surgery can now be completed in as little as 3 days. The enormous potential for cost savings is obvious in a period where the Government and the private health care industry are looking closely at all aspects of health care in the hope of reducing expenditures. In addition to obviating the need for extended hospital stays during recovery, the Medicare Program will benefit due to the large number of Medicare patients who would require even more extensive medical services due to complications that would arise in a significant number of cases following surgery.

While I cannot overstate my praise for the Department of Health and Human Services' decision, I must express my shock and dismay at what appears to be the callous attitude of certain State Medicaid Programs. They have seen fit to exclude this cost and pain saving procedure from their indigent participants. This is discrimination since the indigent are generally not as educated as to the alternative medical treatment modes that could be made available and are forced to trust in the judgment of Medicaid officials. The decision of Medicaid agencies to subject the indigent population to the pain of surgery and the added risk of complication and death nearly amounts to a betrayal of the public trust. Unfortunately, the Veterans' Administration of our own Government has apparently not yet chosen to reimburse for this treatment of those who have given so much to our country. The kind of logic that allows the more affluent a less dangerous, less expensive, less painful procedure and shorter recovery period for this serious medical condition, while forcing veterans and the indigent to experience more risk, more pain, more taxpayer supported cost and longer recovery periods is not, and should not, be the proper method of health care delivery that this country endorses. The medical care of the helpless should not be callously rationed. I seriously hope the Veterans' Administration and State Medicaid agencies will reevaluate their priorities on this issue and not allow bureaucratic lethargy to cause needless waste and suffering.

TRIBUTE TO CHARLES RENTZ

Mr. HEFLIN. Mr. President, I was, indeed, saddened to learn of the recent death of Charles Rentz, of Linden, AL, who served in a truly outstanding capacity as the Marengo County circuit clerk for 30 years.

Any judge or lawyer will tell you of the importance of the office of circuit clerk. Because the judge does not always have time to keep track of every development in the cases before him or every motion which is filed, the circuit clerk will personally oversee much of this process. It is the duty of the clerk to maintain crucial files, documents, and briefs, to keep important records and to file reports at the county and State level regarding probations and indictments. Additionally, the clerk receives all moneys paid to the court in fines or bonds and attends all sessions of the court with the documents and files of the case in hand. After serving as both an attorney and as a judge, I can attest to the importance of this office, and Charles Rentz was one of the best. He did a tremendus job for the Marengo County Circuit Court. Through his long, loyal service he provided a continuity in the circuit that greatly helped all those involved in any case. His knowledge and experience was unparalleled and was a great asset to judges, lawyers, and to those involved in litigation.

Mr. Rentz was a remarkable man in every way. He was born without his hands. Yet, he did not allow this handicap to affect him or to impede his achievements or accomplishments. He fully participated in the beauty and fun of life. He enjoyed woodworking, he was a mechanic before he was elected as the circuit clerk. He liked to do things unassisted, not because he did not want help from friends, but because he kept his strength up by remaining active. He had a great determination and perseverance that enabled him to succeed when faced with any challenge.

Throughout his life, Charles Rentz distinguished himself in both his service to his community and to his State. He was involved both in the activities of his church and in many civic organizations of Linden. He also served as president of the Alabama Association of Clerks and Registers. I know that his family and many friends mourn his death, but they should be strengthened by the memory of his life and work. His example will serve as an inspiration to many.

Mr. President, I ask unanimous consent that an article which appeared in the Montgomery Advertiser be printed in the CONGRESSIONAL RECORD.

SERVICES SET FOR FORMER CIRCUIT CLERK

LINDEN.—Funeral services will be held Saturday morning for Charles Rentz, who served as Marengo County Circuit Clerk for 30 years.

Rentz, 80, died Wednesday night at a Selma hospital after a brief illness. He served as president of the Alabama Association of Clerks and Registers, was a Mason and in the Linden Lions Club.

Services are scheduled for 11 a.m. at Camp Ground United Methodist Church near Linden the Rev. John Vickers of Demopolis officiating.

Survivors include his wife, Wittle Rentz, of Linden; three daughters, Mrs. Herb McGee, Selma, Mrs. Don Meadows, Montgomery, and Mrs. Steve Hill of Birmingham; three brothers, W.G. Rentz, of Mobile, H.L. Rentz, and George E. Rentz, both of Sweetwater, one sister, Mrs. Rubye Lou Barkley, of Nashville, and seven grandchildren.

A HELPFUL SUGGESTION FOR SOUTH AFRICA

Mr. HEFLIN. Mr. President, in the recent past, people throughout the world have been both concerned and distressed by much that has taken place in South Africa. Members in both this body, and in the House of Representatives have considered and passed measures which will, hopefully, persuade the South African Government to forever end the unfair system of apartheid. However, while violence between blacks and whites has been increasing, the world has watched in horror.

I have received a number of letters from constituents in Alabama who have offered opinions and suggestions regarding the problem in South Africa. One such letter, from Dr. William Reid, a professor at Auburn University, offers some very interesting ideas. Mr. President, I would like to read a portion of this letter. He writes:

DEAR SENATOR HEFLIN: I, like many Americans, am distressed over the conflict in South Africa. An idea came to me that I would like to share with you. The main concern of white South Africans is that they will lose everything if they compromise with the black majority. They are afraid of a future that gives blacks power.

White southerners had the same fears in the 1950's and 1960's. Those fears never came true.

My idea: a group of southerners—citizens, preachers, perhaps a few Ph.D's in sociology—could visit South Africa and tell them what happened to us. The transition was peaceful. We are all better off for integration, voting rights, becoming more color blind. Our fears did not come true.

This delegation from the south could tour South Africa, speak to white audiences in churches, at public meetings, through the media. The delegation would not say, "This is what South Africa should do." It would say, "This is what happened to us."

Again, the whites are so afraid of what might happen to their way of life, they refuse to compromise. This will lead to their overthrow with the new government that may not be friendly to the United States. Until and unless those fears are calmed, no peaceful change could occur.

Mr. President, I strongly urge the appropriate committees and concerns to investigate this alternative. I would like to see the formation of such a delegation. Perhaps organizations and businesses which conduct operations in South Africa could take action to implement these suggestions. Like Dr. Reid, I would like to believe that the South African Government and the white ruling minority would be receptive to an approach that would demonstrate the harmony that exists between races in a free, undivided system.

I hope this idea becomes a reality. It is a constructive suggestion which holds much promise, for it provides for the interaction between two cultures which have at some time experienced the problems of prejudice and racism. The people of South Africa could learn from the experience of all those involved in the American civil rights movement. Hopefully, if implemented, this idea could allow South Africa to peacefully and quickly eliminate the unfair system of apartheid.

HUMAN RIGHTS ABUSES IN THE SOVIET UNION

Mr. GRASSLEY. Mr. President, as part of a coordinated initiative undertaken by the International Parliamentary Group for Human Rights in the Soviet Union [IPG], my colleagues and I have offered a number of recommendations to Secretary of State George Shultz for the Vienna Review Conference of the Conference on Security and Cooperation in Europe [CSCE], which opens November 4, 1986.

We offer these recommendations as a means of improving Soviet human rights performance and as a framework for a unified human rights policy among democratic nations. They are based upon proposals which were submitted by 17 democratic nations at the 1985-86 CSCE human rights experts meetings.

The Vienna Review Conference, in accordance with the Helsinki review process, will serve to examine the compliance of the Helsinki Final Act by its 35 signatory states as well as to consider new commitments the signatories may wish to undertake.

IPG is deeply concerned about the continuous displays of human rights abuses in the Soviet Union. Since 1979, Soviet human rights performance has deteriorated in all respects. Emigration of Soviet Jews and ethnic Germans is at an alltime low and the number of trials and imprisonments of religious activists has increased dramatically. Furthermore, the Soviet performance record in the area of free flow of information is abysmal. This was most recently exemplified in the arrest of American news correspondent Nicholas Daniloff.

There is no question that the Vienna Review Conference comes at a critical point in East-West relations. IPG members are convinced that, if these relations are to improve, we must insist upon balanced progress in all areas of the Helsinki Final Act. In other words, any new agreements made in the areas of military, security, and economic relations must be accompanied by similar agreements in the human rights area or at the very least, by the guarantee of performance under already existing agreements.

Mr. President, Soviet human rights performance must remain firmly on the bilateral and multilateral agendas of all democratic nations in their relations with the U.S.S.R.; democratic unity is an indispensable requirement for encouraging Soviet compliance with the Helsinki Final Act. To that end, my colleagues and I have submitted the following recommendations. I ask unanimous consent that they be entered into the RECORD.

There being no objection, the recommendations were ordered to be printed in the RECORD, as follows:

IPG RECOMMENDATIONS FOR THE VIENNA REVIEW CONFERENCE

I. Basket I, Principle VII—"Respect for human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief":

A. The participating States will take necessary action to remove legal and administrative measures so as to ensure in practice the right of all their citizens, individually or in groups, effectively to monitor implementation of these documents, and to express their views on any question concerning implementation.

B. The participating States will pay special attention to the elimination of discrimination against the individual believer wherever this occurs. They will create an atmosphere of tolerance and respect for all matters relating to freedom to profess and practice religion or belief, alone or in community with others, in public or in private.

C. The participating States will engage in consultations with the religious faiths, institutions and organizations, in order to reach a better understanding of the requirements of religious freedom and to take action to ensure their fulfillment. They will act to guarantee, *inter alia*,: the right to give and receive religious education individually, collectively or through religious organizations, including the freedom of parents to transmit their religion or belief to their children; the freedom of the individual believer or communities of believers to establish and maintain contact and hold assemblies in common with fellow believers, including those of other countries; to produce, acquire, receive, import and make full use of publications and other materials concerning the profession and practice of religion or belief, and to use the various media for religious purposes.

D. The participating States will, to the maximum extent possible, respond positively to requests to observe legal proceedings. They will admit observers or provide full explanations as to why observers may not be admitted.

E. The participating States will work toward the reduction in length of incommunicado detention to a minimum.

F. The participating States will improve and increase the opportunities for representatives of non-governmental humanitarian organizations to visit prisoners.

G. The participating States will ensure that individuals are protected from psychiatric practice which violate human rights and fundamental freedoms.

II. Basket III—"Cooperation in Humanitarian and other fields":

A. Cooperation and exchanges in the field of culture:

1. The participating States will remove legal and administrative measures, such as censorship, which constitute barriers to creation and dissemination in different fields of culture.

2. The participating States will remove restrictions on obtaining, possessing, reproducing, publishing and distributing materials related to the different fields of culture, including books, publications, films and videotapes, as well as use of typewriters, word processors and copying machines.

3. The participating States will permit unimpeded reception of broadcasts and place no restrictions on the right of individuals to choose freely their sources of broadcast information and culture.

4. The participating States will abstain from placing undue obstacles to access to direct broadcasting satellites transmitting radio and television programs, including those of a culture nature.

5. The participating States will: protect the unique identity of national minorities and foster the free exercise of cultural rights by persons belonging to them; ensure in practice unhindered opportunities for these persons idependently to maintain and develop their own culture in all its aspects, including religion, cultural monuments, historical artifacts, language, literature; and to ensure unhindered opportunities for them to give and receive, individually or collectively, instruction in their own culture, especially through the parental transmission of language, religion and cultural identity to their children.

B. Human Contacts:

1. The participating States will: deal favorably with applications from their citizens or nationals who are also recognized as citizens or nationals by another state to leave in order to visit that state or settle there; give special attention to requests for exit documents submitted to reunite minors with their parents; facilitate the exit of persons for the purposes of family reunification; simplify the application procedures for family reunification.

2. The participation States will: abolish, for their nationals, the requirements to obtain an exit visa in order to leave their country and issue exit visas for foreigners residing on their territory as expeditiously as possible; publish within one year all laws, regulations and procedures concerning decisions to permit their citizens to leave their country, and to help make the laws in force accessible to all strata of the population; remove legal and other obstacles restricting contacts on their own territory between their citizens and resident or visiting citizens of other states.

3. The participating States will: remove existing impediments which prevent individuals and the institutions and organizations which they have freely established and joined from maintaining contact, communication and organizational ties with similar organizations in other participating states without need of official sponsorship or approval; guarantee the freedom of transit for postal communication, thus ensuring the rapid and unhindered delivery of personal mail; ensure all the conditions necessary to carry on rapid and uninterrupted telephone calls, including the use and development of direct dialing systems wherever it is possible, and respect the privacy and integrity of all such communications.

HERSHEYPARK ARENA

Mr. SPECTER. Mr. President, the Hersheypark Arena in Hershey, PA, will hold its 50th anniversary celebration on October 22, 1986. I wish to call the attention of the Senate to the distinguished history of the arena as this important event draws near.

Actually founded on December 19, 1936, the arena is perhaps best known as the birthplace of the Ice Capades. The Ice Capades, which have since delighted so many millions of Americans, were the brainchild of a group of arena managers who met in Hershey in 1940. Among these managers was John Sollenberger, who was then president of Hershey Estates. In fact, the first performance of the Ice Capades took place in the Hersheypark Arena on Valentine's Day in 1941.

Over the years, many other notable performances have taken place at the arena. It continues to provide entertainment to Pennsylvanians, being used not only for Ice Capades performances but also for hockey games, basketball games, including some by the Harlem Globe Trotters, and other ice shows.

The enjoyment provided to Pennsylvanians and innumerable other Americans by the Hersheypark Arena can hardly be measured. I offer my congratulations to all those involved in the continuing success of the arena, both now and over the last five decades, and join all of them in looking forward to the next 50 years of the arena's service to the public.

THE PERILS OF ECONOMIC SANCTIONS

Mr. PRESSLER. Mr. President, I ask unanimous consent that the following articles on South Africa sanctions be inserted in the RECORD. The article, by Professors Phillip D. Grub and Rodney Eldridge of George Washington University and Anne Perry of American University, is entitled "Sanctions, Divestment and Divestiture: Treacherous Weapons," and I commend it to my colleagues.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

SANCTIONS, DIVESTMENT AND DIVESTITURE, TREACHEROUS WEAPONS

(By Phillip D. Grub, Aryamehr Professor of Multinational Management, George Washington University; Anne Perry, Assistant Professor of International Business, American University; Rodney Eldridge, Professor of International Finance, George Washington University)

INTRODUCTION

Once again the American Congress is resorting to sanctions that many in that august body know will not achieve their intended goal. Others, well intended, follow blindly like sheep over a cliff because they know little about international trade and investment and much less about international economic and political impacts of their actions. The result will be much like it has been in the past, when sanctions have been applied by the U.S., non-achievement of the intended objective and a disasterous impact on U.S. international competitiveness. Furthermore, congressional sanctions legislation will negate efforts made by U.S. multinationals to raise standards for their black employees and blacks in general in South Africa as well as calling a halt to virtually all U.S. trade and economic relations between the two nations.

The list of politically motivated economic sanctions that can be applied to a country considered to be engaging in some form of "deviant" behavior that must be corrected is as long as its history. Sanctions range from simple tariffs to outright embargoes. They are not limited to trade, but extend to foreign direct investment, and more subtle measures such as the denial of patent rights. Whatever form sanctions may take, their ultimate goal is always the modification of the behavior of the target country. Not only are sanctions rarely successful but they often have unintended consequences and can, in fact, inflict greater damage to innocent parties than to the target government. Nevertheless, for political reasons, countries feel they must resort to sanctions regardless of the outcome and ultimate cost. Since the controversy surrounding sanctions against the South African government is escalating at home and abroad, it is timely to re-examine the issues which cannot be disassociated from economic sanctions.

THE EFECTIVENESS OF SANCTIONS

Each case in which sanctions have been applied is unique since the issues, as well as the character, political context, and economic circumstances of the countries involved are very diverse. But it stands to reason that the effectiveness of sanctions is a function of (1) the means of resistance available to the target country, (2) the support given the sanctions by third parties, (3) the extent to which enforcement is possible, (4) resources available to the target country, (5) what the stakes are for the sanctioned party. Historically, in the long-term, countries to be punished by sanctions have been able to manipulate the above variables to their advantage. Faced with what they perceive to be an infringement of their sovereignty, they generally succeed in ultimately defeating economic sanctions, even when the latter have met with initial short-term success. Cuba's alternative to the U.S. trade embargo was and has remained the Soviet Union. The Soviets, when denied access to U.S. grain for their invasion of Afghanistan, simply took their business elsewhere—to the Argentinian farmer. The result of the two U.S. sanction efforts has been a strengthened Soviet position in the western hemisphere. Clearly, this was not the intended result of these sanction activities.

Economic sanctions are equivalent to an act of war, employing lesser means—economic rather than military—since their aim is to compel the target government to alter its actions and policies. The U.S. being in a permanent state of conflict with the Soviet Union is eager to impose on its various types of economic sanctions designed to lessen Soviet economic capabilities. However, as is obvious in the failure of the U.S. government to stop the construction of the Russian-European pipeline, economic sanctions are meaningless without the support of third parties. The U.S. failed because it was not able to extend its policy of extraterritoriality. European governments, concerned with unemployment, refused the U.S. the right to forbid the European subsidiaries of its multinationals to sell parts and equipment to be used in the construction of the pipeline.

Governments do foil each others plans. The embargo against the white government of Rhodesia was bound to fail since the government of South Africa came to its rescue. Besides, governments will limit the effectiveness of their own sanctions or their allies' by cheating. Individuals, in pursuit of their own personal profits rather than governments' ideologies, participate in limiting the effect of sanctions. Dummy corporations can be set up, goods can be shipped to forbidden destinations through legitimate intermediary points, or simply smuggled into the country. Failure to prevent equipment—"not-for-sale to the Russians"—from reaching the Soviet Union is an ongoing concern of the U.S. government.

The strongest, yet most misunderstood stumbling block to a successful outcome of economic sanctions is of a cultural and ideological nature. The U.S. applies to other countries its own cultural bias. It assumes that economic hardship is intolerable, therefore, should produce desired results. It fails to understand that economic hardship may be a preferable alternative to placing at risk a ruling party's power or its basic political values.

Totalitarian regimes lacking in legitimacy, but drawing their strength from a party that cannot be wrong, need to be seen by their own political constituency as unbending. Their resolve is all the stronger because the political system does not allow for political opposition that could bring pressures to ease sanctions. It should come as no surprise that seven years after the U.S. grain embargo was imposed, the Soviets are still in Afghanistan, and the embargo has since been lifted to satisfy domestic U.S. political/economic concerns. Intimidation in the form of revocation of the "most favored nation" trade status under the Jackson-Vanik amendment has not brought about any desirable results when this sanction was imposed. It has not led to an increase in emigration out of the Soviet Union—in fact,

just the reverse. Similar sanctions have not resulted in an early suspension of martial law in Poland. In the case of Poland, sanctions did increase its economic dependence on the Soviet Union, a result which certainly was not a goal of its authors.

THE CASE OF SOUTH AFRICA

Similarly, the government of South Africa feels threatened by both internal and external forces. Its legitimacy and sovereignty is being challenged. In that respect it perceives itself to be in a similar predicament as the Soviet Union, despite vast differences in the form of governments. Therefore, it may well be equally prepared to offer determined resistance. It would be well to remember that when the U.S. tried to stop the Japanese from pursuing their expansionary policy in Asia by using trade sanctions, it succeeded mostly in reinforcing the determination of Japanese radicals to proceed to ultimate action—eventually the bombing of Pearl Harbor. The South African Nationalist party has considerable resources with which to resist sanctions. It has already pointed out that it has not yet begun using the means available to its cause. For its size, much like Israel, South Africa is a powerful military country with a well developed economy. Should mobs get out of hand, the government could restore order by using its military forces against resistance instead of using civilian police. In case of serious economic hardship, the government could refuse to provide for the black population, keeping its scarce resources for the benefits of whites only.

In any case, the possibility of a lower standard of living brought about by economic sanctions would hardly frighten into submission the descendants of the Boers who fiercely resisted the British nearly a century ago. With no less than the preservation of their heritage at stake, it would seem a small price to pay. Besides, Pretoria would always find new suppliers anxious to make a sale and take over where former suppliers left off. The support U.S. sanctions against South Africa would actually receive remains to be seen. Europe, mindful of its own interests, and less inclined to link economics to politics, favors milder sanctions. The Japanese are also putting together their sanction package, but how committed are they to the resolution of Western disputes and civil right issues? How long would their ubiquitous trading companies pass up new trading opportunities? And would European and other Asian countries turn their back on this golden opportunity, particularly in view of the downturn in Middle East business activity? In short, economic sanctions appear unlikely to succeed in bending the will of the South African government.

THE COST OF SANCTIONS

Sanctions have a way of yielding unexpected and unwanted results as has been indicated. They can benefit those they intend to harm while harming those they were meant to help. When the British, by means of the Continental Blockade, cut France off from its sugar suppliers, France developed its own sugar-beet industry. The 1973 OPEC oil embargo led to energy conservation, stepped up research for alternate sources of energy, and encouraged the exploitation of North-Sea oil, as well as Mexican and West African. President John F. Kennedy placed an embargo on arms which resulted in South Africa building up an armament industry that exports weapons throughout the world. Consequently, if we embargo computer technology, as some advocate, South Africa will merely hire German, Israeli or Japanese engineers to fill the gap and a new competitor will be in the market place.

Foreign Minister Botha was quick to point out that U.S. interference in South African internal affairs is not in the best interest of the U.S. If sanctions are to be a tool of foreign policy, it stands to reason that U.S. interests should first be served. Those who oppose strong sanctions on these grounds argue that the U.S. cannot afford to sacrifice an ally which is vital not only to the interests of the U.S. but of the free world. South Africa is strategically located in the Southern half of a continent where there are no strong pro-Western governments left. As such, it has remained the only hope of those fighting Cubans in Angola. Presently, Western vessels ply friendly waters as they pass the Cape of Good Hope. Should the area fall into hostile hands and port facilities in this remote region were restricted, international trade would suffer.

Access to the mineral wealth of South Africa is a serious concern of the U.S. The U.S. relies on South Africa for strategic raw materials that are critical to its high technology and defense industries. Deprived of its Western supplier, would the U.S. have to turn to South Africa's major competitor—the Soviet Union, or would it be forced into developing much costlier alternatives? Many feel that the major argument against punitive sanctions for South Africa comes from the benefits the Soviet Union stands to reap. An economically weakened South Africa would surely be a major target for the Soviet Union as it seeks to extend its influence in this strategically located mineral-rich part of the world. If the Soviets were to succeed in this expansion, they would achieve a virtual monopoly in the world's supply of key stragetic materials.

But most tragic of all is the realization that the burden of economic sanctions would fall on those they were designed to protect, automatically causing losses of jobs for the black population. Ironically, it is the same U.S. multinationals that brought improved employment opportunities to blacks which are being targeted for divestment.

DIVESTMENT AND DIVESTITURE

There has been a strong campaign—both within and beyond the legislative context—to persuade U.S. companies to divest themselves of their South African business ventures and refuse to invest even a cent further in that country until the government has abandoned its apartheid policy. Furthermore, there has been pressure placed upon institutions, particularly universities and public employee pension funds, to divest themselves in any stock in companies that have investments in or are doing business with South Africa. Both divestiture and disinvestment are ineffective strategies. You never win a fight by running away from it; on the contrary, you have to be in there pitching to win the game.

What kind of a job are the American firms doing in Africa to improve the status of blacks? Of those companies operating there, the American firms are doing the most. Not only do black employees make up a significant number of their work forces, companies have also invested in education as a means to improve their skills and abilities which will provide for upward mobility. Such actions include language classes to build and improve their command of English; evening classes for workers; special educational grants for the children of workers to obtain schooling; financial support for technical training centers; scholarships for blacks to attend universities; contributions to libraries; company guarantees for housing loans for employees; improved community health care facilities; and contributions to recreation centers. There are in addition to in-house company training programs at all levels. In looking at European and Japanese investment, few, if any, of these fringe benefits exist.

Assuming that all American companies that have a financial interest in South Africa pulled out their investment, and all other American firms doing business with the public or private sectors would suddenly cease that activity, what would be the outcome? Would this pressure the government in such a fashion as to suddenly drop all biases? No! What would happen would be the following: Investment from countries including Israel, Germany, France, and Japan, and perhaps South Korea and Taiwan, would quickly fill the gap left by a U.S. departure. In the case of those who are trading with South Africa, alternative sources would soon be found. In fact, other countries would rejoice as their balance of payments were enhanced.

Finally, let us cite a real example of divestment. Pan American eliminated its New York to Johannesburg airline service last year. The result was that when South African Airlines announced its profits for 1985, they had made more money than ever before, and particularly because of the absence of competition from Pan American. Furthermore, it puts control of an industry fully in the hands of the white government supporters.

Caterpillar Tractor is one of the major investors in South Africa. Were it to pull out, it certainly could not take the plant and equipment with it. Nor would they destroy their plants to render them useless. On the contrary, they would probably have to sell their assets at fire-sale prices to a company like Komatsu, Caterpillar's primary world wide competitor—and the Japanese have a record of not interfering in domestic affairs where their affiliates are located.

There are other impacts of divestment as well. If all (or most) American firms pull out, the price for their investments in South Africa will drop because the buyers will know that the American companies have no choice but to sell. In short, the result will not be to enhance the status of blacks in South Africa, but rather cause worker displacement, loss of jobs, and less opportunity for workers. It will also hinder the social progess that has been made by U.S. companies, create losses on U.S investments, and lose an important market share to foreign competitors, thereby worsening the overall U.S. balance of payments.

Approximately the same situation occurs if institutions, such as universities following the lead of the California system are required to divest stock of companies that have investments in or are doing business with South Africa. Were this to happen all at once, the price of the stock would be depressed allowing other investors, Japanese and probably European pension funds and others with large sums of disposable cash, to buy up these stocks at a greatly reduced price. On the other hand, universities and other investors that have divested would then find that other stocks they seek to buy were grossly inflated by the resultant demand for "South African free" assets; yet they must invest if they are going to earn an income to support their institutions.

Although American firms, investors, and the nation's balance of payments would be hindered, were the U.S. to withdraw completely from the South African market place, the greatest losers would indeed be the blacks that proponents of sanctions, divestiture and divestment are supposedly seeking to help.

Further, potential consequences on neighboring countries cannot be overlooked. Migrant workers from economically depressed neighboring states will be sent home after their loss of employment in South Africa. Black nations will be paying for their support of punitive sanctions against Pretoria. Retaliatory countersanctions that have already been outlined by the South African government can bring about the total collapse of already fragile economies. Countries such as Mozambique, which may be in the process of rethinking their adherence to the Soviet economic model, would likely be driven back into the arms of their community trading partner.

MORAL AMBIGUITIES

Clearly the challenge should be to bring about an end of apartheid—not to destroy the economies of half a continent, nor to turn it over to the Soviet Union. Why then such disregard for compelling arguments against punitive sanctions? The answer is simple. At the heart of the controversy stands the explosive issue of political equality and civil rights. Even the strongest proponents of moderation recognize that in spite of its ineffectiveness and potential deleterious effects, the use of sanctions as an expression of this country's commitment to human rights must be contemplated. The cause of human rights is so morally weighted, and believed by Americans to have a universal application that they feel compelled to assert it. At least that is the theory, which it should be noted, can be opportunistic in its applications and differentiated between various human rights causes. Some are obviously more "noble" than others, in part because they carry greater payoffs in domestic politics. Civil rights for blacks is one of them, but the oppression of minorities in the Soviet empire, except for members of the Jewish faith and a few known dissidents, arouses little emotion.

This double-standard moral approach to punitive sanctions is further weakened by the claim made by the U.S. that it is in fact acting out of self-interest. It is seeking to position itself favorably for the future when black leaders have taken over. This opportunistic policy of non-alienation becomes valid—if not moral—only if the winning team has been correctly identified in advance, and provided the government South Africa has not swung so far to the left that it has cut off all ties with the West.

Moral rhetoric loses further appeal when it becomes evident that indeed self-interest has not been forgotten. The U.S. sanctions allow for "selected" loopholes. Minerals of greatest strategic importance to U.S. interests have conveniently been excluded from the latest absolute bans on U.S. imports. Prime Minister Thatcher, whose country needs agricultural products shows great reluctance in cutting agricultural imports, fearing the loss of black jobs. On the other hand, she has steadily refused to consider divestment which would directly and substantially affect British interests in South Africa. Curiously enough, according to her logic, the loss of higher paid manufacturing jobs by blacks is less important than the loss of lesser paid, dead-end agricultural jobs, because Britain has heavy unemployment in the manufacturing sector and this is popular politically.

CONCLUSION

While no self-respecting human being or government could ever condone apartheid, punitive economic sanctions are the wrong approach to dismantling apartheid. Sanctions, historically have at best been ineffective, and at worse catastrophic. While we cannot be blind to the suffering entailed by South African Blacks, valid moral arguments and self-righteous postures are fraught with emotional rhetoric, double standards, and opportunism. No one will deny that much remains to be done in South Africa, but progress has been achieved. It must not be allowed to lose momentum. It must be encouraged and promoted. This is why it is imperative that channels of communication and influence be kept open. We should use our economic leverage to press for a rational solution and not emotionally rush into punitive sanctions harmful to a strategic ally and to those we wish to help. We should support a summit meeting between South Africa and world leaders and participate in the drafting of a realistic plan to end apartheid.

In our arrogance to demand a quick solution to a complex problem from another sovereign nation, we seem to have forgotten that not so long ago our own country was torn apart by segregation. We have come a long way, but it took time. South Africa is on a different time table. Let us work together to improve the political and economic situation for the South African Black population and not destroy their future merely to "sop" the collective conscience of the American people.

HANK JAMESON: JOURNALIST, KANSAN AND FRIEND

Mr. DOLE. Mr. President, I was saddened to hear of the passing late Wednesday of Henry B. Jameson, longtime editor of the Abilene Reflector-Chronicle. He was one of the real stars in the "galaxy of Kansas journalists" that has brought national respect, and recognition, to my home state newspapers.

Hank was the essence of Kansas: warm and friendly; fiercely independent; and loaded with common sense. If you wanted to feel the "pulse of the plains"—to know the will of the people—you had only to call Hank. He only needed a few choice words to tell you exactly what was happening back home. And if you did not get the message, you would get it from one of his crack editorials

EYEWITNESS TO HISTORY

Mr. President, my friend from Abilene was in the middle of a lot of history; and always, his pen and typewriter brought those events alive for his readers in every corner of the world, from Asia to Abilene. Hank was a World War II correspondent who put his life on the line at Normandy to report the drama of D-day for the Associated Press. Although he was wounded during the invasion, he continued sending dispatches back to his ship off the embattled Normandy coast.

THE EISENHOWER STORY—UP CLOSE AND PERSONAL

Thanks to Abilene, Hank Jameson enjoyed an "up-close and personal" view of one of the great chapters in American history: the life and times of Dwight David Eisenhower. From Ike's humble family home in town, to the bloody battlefields of Europe, and all the way to the White House, Hank was an "eyewitness to the Eisenhower legend." When the world came to Abilene—as it often did during the Eisenhower years—more than a few high-powered officials, and heads of state, touched base with Hank Jameson. He earned their respect, and they cherished his wisdom. And believe me, the "Kansan in the Oval Office" never lost touch with Hank, either.

FAREWELL TO A FRIEND

But as much as our friends was tied to the Eisenhower saga, Hank was much more than just a "spectator to history." He was an involved and thoroughly active editor and publisher, who made his newspaper an important voice from the heartlands. He loved his community; worked everyday to improve it, and lived his life to the end in Abilene.

Mr. President, I am proud to call Hank Jameson my friend. The Senator from Kansas, and the Sunflower State, will miss this good man. Our prayers and thoughts go out to the Jameson family.

I ask unanimous consent that two articles relating to the death of Hank Jameson be printed in the RECORD.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

[From the Kansas Associated Press, Oct. 2, 1986]

KANSAS NEWSPAPER EDITOR, PUBLISHER DIES

ABILENE, KAN.—Henry B. Jameson, editor and publisher of the Abilene Reflector-Chronicle and a war correspondent for The Associated Press during World War II, died late Wednesday night of a heart attack. He was 73.

Mr. Jameson had served as editor and publisher of the central Kansas daily since 1955 after 12 years with the wire service. He was the second editor and publisher in the paper's history, following Charles M. Harger.

Active in the Republican Party, Mr. Jameson was a long-time personal friend of President. Dwight D. Eisenhower, whose boyhood home was in Abilene, and helped launch the "draft Ike" movement in 1951.

He was the author of several books, including "They still Call Him Ike."

Mr. Jameson also was considered the first American correspondent to be wounded in the D-Day invasion of Europe in 1944.

In an anniversary piece serveral years ago about the June 6 invasion, Mr. Jameson, who was hit by German artillery, wrote: "I have revisited the bloody Omaha Beach area of Normandy several times, never without choking up, shedding a tear and kneeling at the grave of one of my fallen co-workers. I left a little of my own flesh and blood

there, too, on the D-Day invasion of Europe in World War II."

He noted later that his first eyewitness story from the beach-head was dictated to another correspondent named Ernie Pyle, stationed offshore.

In a telephone interview from Santa Barbara, Calif., Wes Gallagher, a former AP president and the news service's chief European war correspondent, recalled Mr. Jameson as "a pretty good poker player," and a man who remained affable in the face of adversity.

Mr. Jameson also worked for the AP in Kansas City in 1935 before being assigned to St. Louis, Chicago and New York.

He was active in the Republican Party, serving as a member of the state committee and as a delegate to the 1964 National Convention. He was selected to be a presidential elector on two occasions.

Mr. Jameson was a past president of the Kansas Chamber of Commerce, the state Historical Society, the Kansas Press Association, the Kansas Tourist Council and the Abilene Chamber of Commerce. He had served as a member of the Kansas City Rights Commission.

"Henry was certainly one of the most respected editors in the state and a very personable fellow," said Murrel Bland, president of the Kansas Press Association and publisher of the Wyandotte West newspaper.

"Henry always had time for his community. He didn't believe in just writing editorials. He believed in, being a man of action. He'd go out and be a participant, too. He practiced what he preached."

Survivors include his wife, Bernice, and a son, Henry B. Jameson, Jr., of Dallas.

Funeral services were scheduled for 11 a.m. Saturday at the First Presbyterian Church in Abilene.

[From the Russell Daily News, Oct. 2, 1986]

HENRY JAMESON

Henry B. Jameson, Abilene newsman, died Wednesday at the age of 73. The victim of a heart attack is one of the members of the trade we've felt earned the title of newsman.

A life-long reporter, correspondent and publisher, Hank Jameson was one of the best in Kansas' recent years—and that's traveling in mighty fast company.

Hank Jameson is best known among contemporaries as the man who helped make Abilene what it is today, who ran a good newspaper, became a leader in his profession by setting an example—instead of being one.

We imagine Jameson would prefer to be known for his days in the ETO of WWII as a war correspondent. He worked near the desks of many who returned to set policy in the years following. He rubbed shoulders with the top echelon of high commands and had a front row seat in the biggest adventure a Kansas youth could imagine.

However, in Kansas, Hank Jameson is better known as the man who brought Dwight D. Eisenhower "home." When the general made the move to run for the presidency, he did it at home—in Abilene. When policy was being made, it was often cleared through Abilene. When a Presidential Library was planned it was planned in Abilene.

Ike and Mamie are buried in Abilene.

The telephone in Hank Jameson's office probably carried more conversations from top brass of Eisenhower's and following administrations than any other telephone in Kansas. Yet that office in the Reflector-Chronicle was always open.

Jameson believed in himself, his family, his country and his world. He had a knack of turning a good story and writing columns and editorials Kansas style. He used humor judiciously and often. Shooting down trial balloons, deflating pomposity and finding the practical and good when things seem darkest were strengths.

The Kansas Press lost a leader in Hank Jameson. There are few waiting in the wings these days to follow his act.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mrs. Emery, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

REPORT ON MINE SAFETY AND HEALTH ACTIVITIES—MESSAGE FROM THE PRESIDENT—PM 179

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Labor and Human Resources:

To the Congress of the United States:

In accordance with Section 511(a) of the Federal Mine Safety and Health Act of 1977, as amended (30 U.S.C. 958(a)), I transmit herewith the annual report for Fiscal Year 1985 on mine safety and health activities as submitted by the Secretary of Labor.

RONALD REAGAN.

THE WHITE HOUSE, *October 3, 1986.*

PRESIDENTIAL APPROVALS

A message from the President of the United States announced that on October 2, 1986, he had approved and signed the following enrolled bills and joint resolutions:

S. 2703. An act to amend the Federal Aviation Act of 1958 to provide that prohibitions of discrimination against handicapped individuals shall apply to air carriers.

S. 2759. An act relating to telephone services for Senators.

S.J. Res. 207. Joint resolution to designate November 15, 1986, as "National Philanthropy Day".

S.J. Res. 263. Joint resolution to designate September 1986 as "National Independent Retail Grocer Month."

S.J. Res. 402. Joint resolution designating July 2 and 3, 1987, as the "United States-Canada Days of Peace and Friendship".

MEASURES PLACED ON THE CALENDAR

The Committee on Energy and Natural Resources was discharged from the further consideration of the following bill, which was placed on the calendar:

H.R. 4162. An act to amend the Alaska Native Claims Settlement Act to provide Alaska Natives with certain options for the continued ownership of lands and corporate shares received pursuant to the Act, and for other purposes.

MEASURES HELD AT THE DESK

The following bill was ordered held at the desk by unanimous consent pending further disposition:

H.R. 5353. An act to provide for a land exchange in the State of Alaska.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. DURENBERGER, from the Select Committee on Intelligence:

Special Report entitled "Meeting the Espionage Challenge:

A Review of United States Counterintelligence and Security Programs" (Rept. No. 99-522).

By Mr. ROTH, from the Committee on Governmental Affairs, without amendment:

H.R. 2436. A bill to establish a coordinated National Nutrition Monitoring and Related Research Program, and a comprehensive plan for the assessment of the nutritional and dietary status of the United States population and the nutritional quality of the United States food supply, with provision for the conduct of scientific research and development in support of such program and plan (Rept. No. 99-521).

By Mr. THURMOND, from the Committee on the Judiciary, without amendment:

S. 334. A bill for the relief of Bobby Lochan (Rept. No. 99-523).

S. 521. A bill for the relief of Suzy Huf Hui Chang and Lee Lo Lin and Lee Juo Jui (Rept. No. 99-524).

S. 1076. A bill for the relief of Denise Glenn (Rept. No. 99-525).

S. 1212. A bill for the relief of Olga Sellares Barney and her children Christian Sellares Barney, Kevin Sellares Barney, and Charles Sellares Barney (Rept. No. 99-526).

H.R. 5016. A bill for the relief of Sueng Ho Jang and Sueng Il Jang (Rept. No. 99-527).

By Mr. ANDREWS, from the Select Committee on Indian Affairs, with amendments:

S. 1452. A bill to settle Indian land claims in the town of Gay Head, MA, and for other purposes (Rept. No. 99-528).

By Mr. THURMOND, from the Committee on the Judiciary, without amendment:

H.R. 1598. A bill for the relief of Steven McKenna.

H.R. 4745. A bill to amend title 18, United States Code, with respect to sexual abuse.

S. 1534. A bill for the relief of Masoyoshi Goda, his wife Nobuko Goda, and their children Maki Goda and Eri Goda.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. LUGAR, from the Committee on Foreign Relations:

James L. Malone, of Virginia, to be Ambassador Extraordinary and Plenipotentiary of the United States to Belize (Exec. Rept. 99-26):

Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.

Nominee: James L. Malone.

Post: Ambassador to Belize.

Contributions, amount, date, and donee:

1. Self, none.

2. Spouse, none.

3. Children and spouses names: James Lauren Knight, none; Adrienne Elizabeth, none; Frank L., none.

4. Parents names: R.K. Malone (father, deceased 1977), none. Byrdena L. Malone (mother, deceased 1981), none.

5. Grandparents names, (all deceased since 1955), none.

6. Brothers and spouses names, none.

7. Sisters and spouses names, none.

I have listed above the names of each member of my immediate family including their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

(The above nomination was reported with the recommendation that it be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. PROXMIRE:

S. 2906. A bill to amend title 10, United States Code, to increase the combat support assignments open to women in the Armed Forces; to the Committee on Armed Services.

By Mr. METZENBAUM:

S 2907. A bill to amend chapter 96 of title 18, United States Code; to the Committee on the Judiciary.

By Mr. SYMMS:

S. 2908. A bill to amend section 2254 of title 28, United States Code; to provide specific procedures for the consideration of writs of habeas corpus filed on behalf of individuals under a sentence of death; to the Committee on the Judiciary.

By Mr. D'AMATO:

S. 2909. A bill to provide for adherence with the MacBride Principles by United States persons doing business in Northern Ireland; to the Committee on Finance.

By Mr. KERRY:

S.J. Res. 423. A joint resolution to designate the week beginning January 19, 1987 as "Shays' Rebellion Week" and Sunday, January 25, 1987, as "Shays' Rebellion Day"; to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. PROXMIRE:

S. 2906. A bill to amend title 10, United States Code, to increase the combat support assignments open to women in the Armed Forces; to the Committee on Armed Services.

(The statement of Mr. PROXMIRE and the text of the legislation is printed earlier in today's RECORD.)

By Mr. METZENBAUM:

S. 2907. A bill to amend chapter 96 of title 18, United States Code; to the Committee on the Judiciary.

REFORM OF RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT

● Mr. METZENBAUM. Mr. President, today I am introducing legislation to reform the Racketeer Influenced and Corrupt Organizations Act, more commonly known as "RICO."

This law was enacted in 1970. Its purpose was to give a tool to the Government and to private citizens to fight organized crime and related efforts to injure and defraud persons through a pattern of ciminal activity. Congress enacted strong remedies for actions under RICO, including the right to treble damages and attorneys fees for successful plaintiffs.

There has been much controversy about this legislation. Frankly, some of the actions brought under RICO do not challenge egregious criminal conduct, but are in substance lawsuits over ordinary commercial disputes. Because of the generous remedies available under RICO, however, these disputes are brought under the act. On the other hand, RICO has also been a powerful tool to attack harmful illicit activity.

Some want to retain this act in close to its current form. They feel strongly that it should not be changed in any significant way. Others particularly those in the business community, feel that the law should be cut back drastically. In particular, proposals have been made to require proof of a criminal conviction before any private RICO action can be brought. The Justice Department, which testified on more than one occasion against such an approach, has now switched its position, and supports it.

The proposal to require proof of a criminal conviction before a RICO action is initiated would foreclose RICO cases in many instances where there has been extensive, harmful criminal conduct. Too many crimes in this country are simply never prosecuted because of the limited resources of our law enforcement officials. For this reason, I am convinced that this approach goes too far.

The legislation I am offering takes a sensible middle ground. It preserves RICO as a strong tool for fighting organized crime. It retains strong remedies for harm to individual consumers. And it reduces the incentives to use RICO for ordinary commercial disputes. In order to accomplish this objective, the bill divides RICO cases into three basic categories, each with different remedies.

First, in the case where the defendant has been convicted of criminal offenses, the current provisions for treble damages and attorneys fees to successful plaintiffs is retained. There is also no change in the case of civil or criminal actions by the Government.

Second, in the case where individual consumers have been harmed in the purchase or lease of a product, service or investment, including the purchase of real property and credit, for their own use, the remedy would be actual damages, attorney's fees, and discretionary damages up to twice the level of actual damages, depending on the seriousness of the conduct. This approach means that in the case of the most egregious conduct by a defendant, treble damages could still be awarded. However, in the case where the conduct is less egregious, punitive damages would be much less.

Finally, for cases in which commercial entities have been harmed, the remedy would only be actual damages plus attorney's fees. This last category of cases would include commercial disputes which now make up the great majority of RICO legislation. By reducing the remedy to actual damages, the incentive to use RICO would be greatly reduced.

I have engaged in extensive discussions over the past several weeks with various Members of the Senate and House and other interested parties in an effort to reach an acceptable compromise based on this approach. As a result of these discussions, I have modified my initial proposal in a number of respects to address legitimate concerns and questions. A number of provisions were adopted in a spirit of compromise in order to bring all sides closer to consensus. The product of these discussions is reflected in the bill I am introducing today.

I particularly appreciate the cooperation of Senator LEAHY, Congressman RODINO, chairman of the House Judiciary Committee, Congressman CONYERS, chairman of the House Judiciary Subcommittee with responsibility for this matter, Congressman BOUCHER who introduced legislation on this subject, and others who cooperated in these discussions. I understand that Chairman RODINO supports this basic proposal with minor modifications, and that the House of Representatives may act favorably on it very soon.

Although the time remaining for congressional action during the 99th Congress is limited, I am hopeful that there will be an opportunity for Con-

gress to enact this proposal before adjournment.●

By Mr. SYMMS:

S. 2908. A bill to amend section 2254 of title 28, United States Code, to provide specific procedures for the consideration of writs of habeas corpus filed on behalf of individuals under a sentence of death; to the Committee on the Judiciary.

PROCEDURES FOR CONSIDERATION OF WRITS OF HABEAS CORPUS FILED ON BEHALF OF INDIVIDUALS UNDER A SENTENCE OF DEATH

● Mr. SYMMS. Mr. President, today I have introduced legislation to expedite the review of death penalty appeals in Federal courts pursuant to a judgment of a State court.

Recently, I received a letter from Jim Jones, the attorney general for the State of Idaho, in which he indicated his disillusionment with the judicial system's handling of death penalty appeals.

Although I believe our judicial system is one of the best in the world, I understand the States problems in processing death penalties. Our laws allow every possible avenue to be explored in efforts to establish a person's innocence and ensure justice. However, these laws—particularly the writ of habeas corpus—are often abused and exploited by convicts who want to buy time rather than prove their innocence. In capital cases, Mr. President, the name of the game has become delay.

While we all agree with the Supreme Court that the writ of habeas corpus is important in assuring that consitutional rights are observed, I also agree that Federal courts are not forums to relitigate State trials, nor a means of postponing executions indefinitely.

In the attorney general's letter, he refers to a case that has persisted in Idaho for quite some time. Thomas Creech, who has been convicted of murder and sentenced to death, has received two stays of execution during the past several months. He has yet to establish substantial evidence to justify these stays, but because of the numerous transcripts that have accumulated over the years, it takes the court months to review the case in its entirety before a judgment can be made on the appeal. The court is thus forced to grant stays based on the amount of time it takes to review habeas corpus applications, rather than on any new evidence of innocence.

Mr. President, permit me to relate an egregious miscarriage of justice. In Seminole County, GA, several men broke into a mobile home, and during the process of robbery, they killed an entire family execution style. Moreover, the assailants learned that the mother of this family was expected back later in the evening. They waited for her return, and when she returned, took turns, raping her. Following these heinous acts, they took her into the outlying woods where they again raped her, and later killed her in the same manner they had the others. These murderers were caught, tried, convicted of murder, and sentenced to death. The trial proved overwhelmingly their guilt based on a variety of sources such as the defendant's fingerprints found in the home, an eye witness, and one other defendant turning State's evidence. Mr. President, all of this transpired in 1973 and 1974. In 1986, the convicted killers are still appealing their sentence on the basis that they did not receive a fair trial because of pretrial publicity. This is a ridiculous and cynical abuse of our legal system and rights of due process.

Mr. President, I am deeply concerned that Americans may lose faith in our judicial system. Time and time again, scheduled death sentences have been postponed because a convict has again won another stay of execution based on frivolous and irrelevant grounds. The public will no longer stand for such abuses, and Congress cannot and should not ignore the habeas corpus reform issue any longer. Today, we can take the first step in reforming our judicial system with regard to habeas corpus applications. And in that same step, we could return credibility to our legal system—credibility which it has unfortunately lost.

The bill I have introduced States that an application for a writ of habeas corpus on behalf of a person held in custody under the sentence of death, pursuant to a judgment of a State court, shall not be considered by any Federal court unless the applicant makes a credible showing of innocence by affidavit or other instrument taken upon oath or affirmation. An affirmation of innocence shall be deemed credible if:

Recanted testimony, confession or admission of another, or an alibi is supported by substantial evidence of its truthfulness; or it is shown that material evidence on which the applicant's conviction was based, was clearly false; or there exists competent, admissible evidence of the applicant's innocence that was not presented at the time of the applicant's trial.

Moreover, the limitations of a Federal review of a State conviction resulting in death sentences shall not apply if:

The State does not provide by law for a right to appeal convictions resulting in death sentences and appellate review of death sentences; or

The State provides a right to appeal capital convictions and appellate review of death sentences, but does not provide a procedure for collateral review of State proceedings resulting in sentences of death.

Also, Mr. President, nothing under this provision shall authorize a Federal court to review claims that have been procedurally forfeited in State courts.

This bill would grant an applicant a 60-day stay of execution for the purpose of showing any of the stated requirements, and allows an additional 60 days if there is reason to believe that a credible showing of innocence can be made in the extra time allotted.

I believe this is an important legislative proposal which would relieve the courts and the taxpayers of the substantial costs of litigation, the vast amounts of time spent in reviewing cases, and at the same time, strengthen the right of due process.

Mr. President, I again stress the fact that the American public has grown weary of condemned persons being granted stays of execution based on material that has no substantial merit to the conviction. In Lambert versus Barrett, the Supreme Court held that:

It is natural that counsel for the condemned in a capital case should lay hold of every ground which, in their judgment, might tend to the advantage of their client, but the administration of justice ought not to be interfered with on mere pretext.

In July 1983, the Supreme Court held that the proposal introduced in this bill is compatible with the Constitution. In Barefoot versus Estelle, the Court stated:

A court of appeals may adopt expedited procedures for resolving the merits of habeas corpus appeals, not withstanding the issuance of a certificate of probable cause, but local rules should be promulgated stating the manner in which such cases will be handled and informing counsel that the merits of the appeal may be decided on the motion for a stay. Where there are second or successive federal habeas corpus petitions, it is proper for the district court to expedite consideration of the petitions, even where it cannot be concluded that the petition should be dismissed under 28 U.S.C. sec. 2254 Rule 9(b) because it fails to allege new or different grounds for relief.

Mr. President, I urge my colleagues to review this legislation, and I encourage their support.●

By Mr. D'AMATO:

S. 2909. A bill to provide for adherence with the McBride principles by U.S. persons doing business in Northern Ireland; to the Committee on Finance.

NORTHERN IRELAND FAIR EMPLOYMENT PRACTICES ACT

Mr. D'AMATO. Mr. President, I rise today to introduce legislation to help correct a discriminatory injustice in another part of the world, Northern Ireland. Enactment of this legislation, entitled the "Northern Ireland Fair Employment Practices Act," will deter efforts to use the workplace as an arena of discrimination in Northern Ireland. Similar legislation has been offered in the House.

Yesterday, the Senate handed the President a rare foreign policy defeat by overriding his veto on legislation

applying additional sanctions on South Africa. Congress overwhelmingly decided to follow rhetoric with action by applying economic sanctions against a government that maintains a policy of rampant discrimination.

We have the same opportunity to fight discrimination in Northern Ireland. The Northern Ireland Fair Employment Practices Act incorporates the McBride principles, which are moodeled after the famous Sullivan principles, the incipient effort to apply United States pressure to change the system of apartheid in South Africa. The McBride principles are named in honor of Sean McBride, winner of the Nobel Peace Prize and cofounder of the Amnesty International.

This legislation does not call for disinvestment. It does, however, enlist the cooperation of United States companies active in Northern Ireland in the campaign to force the end of discrimination in the workplace. Specifically, this bill would incorporate the following principles:

First, eliminating religious discrimination in managerial, supervisory, administrative, clerical, and technical jobs and significantly increasing the representation in such jobs of individuals from underrepresented religious groups;

Second, providing adequate security for the protection of minority employees at the workplace;

Third, banning provocative sectarian and political emblems from the workplace;

Fourth, publicly advertising all job openings and undertaking special recruitment efforts to attract applicants from underrepresented religious groups and establishing procedures to identify and recruit minority individual with potential for further advancement, including managerial programs;

Fifth, establishing layoff, recall, and terminations procedures which do not favor particular religious groupings;

Sixth, abolishing job reservations, apprenticeship restriction, and differential employment criteria which discriminate on the basis of religious or ethnic origin;

Seventh, developing and expanding upon existing training and educational programs that will prepare substantial numbers of minority employees for managerial, supervisory, administrative, clerical, and technical jobs; and

Eighth, appointing a senior management staff member to oversee the U.S. company's compliance with the principles described above.

One of the most prominent and painful acts of discrimination is through employment. It is, however, one of the best ways to erase this awful legacy. The workplaces of Northern Ireland are particulary effective arenas to either foster or eliminate discrimination. The unemployment rate for the area is hovering around 20 percent, 50 percent in predominately Catholic neighborhoods. Improving the employment opportunities for those discriminated against will help factor out economic reasons for the current strife in Northern Ireland and, hopefully, will begin the process toward a peaceful resolution to the problems there.

The United States is Northern Ireland's largest single investor. There are over 20 United States companies operating in Northern Ireland, only 5 of which are in Catholic sections. Most of these United States companies now directly or indirectly support the systematic anti-Catholic discriminatory practices in Northern Ireland. My legislation will end this shameful record. It will not only enlist these companies in the effort to wipe out discrimination in the workplace in Northern Ireland, but will help enlighten other nations which do business in Northern Ireland.

Mr. President, I realize that this legislation has little chance of passing during this Congress, but I truly believe that this body must address important issues in the near future. I plan to reintroduce this bill in the next Congress and to push actively for its enactment.

Mr. President, I ask unanimous consent that the text of my bill be printed in its entirety in the RECORD at the conclusion of my remarks.

Thank you, Mr. President.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2909

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION. 1. SHORT TITLE.

This Act may be cited as the "Northern Ireland Fair Employment Practices Act".

SEC. 2. FINDINGS.

The Congress finds the following:

(1) Overall unemployment in Northern Ireland exceeds 20 percent.

(2) Unemployment in some neighborhoods of Northern Ireland comprised of religious minorities has exceeded 50 percent.

(3) In the past 10 years 27 percent of Northern Ireland's industrial jobs have disappeared.

(4) Economic conditions in Northern Ireland have contributed to the emigration in recent years of more than 7,000 people each year.

(5) The Industrial Development Organization for Northern Ireland lists 25 firms in Northern Ireland which are controlled by United States persons.

(6) Many of these firms have become de facto partners in discriminating against religions minorities in employment practices and conditions.

(7) A comprehensive study of the discriminatory practices of United States businesses in Northern Ireland by the Reverend Brain Brady, the former head of the religion department at Saint Joseph's College in Belfast, noted that in the average manufacturing company controlled by a United States person in Northern Ireland, 18.8 percent of the employees are Catholic and 73.2 percent are Protestant, a work force ratio that is disproportionate to the number of Catholics and Protestants in the general population of Northern Ireland, which is 38 percent Catholic and 62 percent Protestant.

(8) The religious minority population of Northern Ireland is frequently subject to discriminatory hiring practices by United States businesses which have resulted in a disproportionate number of minority individuals holding menial and low-paying jobs and alarmingly high layoffs of minority employees in times of recession.

(9) The MacBride Principles are a nine point set of guidelines for fair employment in Northern Ireland which establishes a corporate code of conduct to promote equal access to regional employment but does not require disinvestment or demand quotas on imports.

SEC. 3. RESTRICTION ON IMPORTS.

An article from Northern Ireland may not be entered, or withdrawn from warehouse for consumption, in the customs territory of the United States unless there is presented at the time of entry to the customs officer concerned documentation indicating that the enterprise which manufactured or assembled such article was in compliance at the time of manufacture with the principles described in section 5.

SEC. 4. COMPLIANCE WITH FAIR EMPLOYMENT PRINCIPLES.

(a) COMPLIANCE.—Any United States person who—

(1) has a branch or office in Northern Ireland, or

(2) controls a corporation, partnership, or other enterprise in Northern Ireland,

in which more than 20 people are employed shall take the necessary steps to insure that, in operating such branch, office corporation, partnership, or enterprise, those principles relating to employment practices set forth in section 5 are implemented and the Fair Employment Act of Northern Ireland is complied with.

(b) REPORT.—Each United States person referred to in subsection (a) shall submit to the Secretary—

(1) a detailed and fully documented annual report, signed under oath, on showing compliance with the provisions of this Act; and

(2) such other information as the Secretary determines is necessary.

SEC. 5. MACBRIDE PRINCIPLES.

The principles referred to in section 4, which are based on the MacBride Principles, are as follows:

(1) Eliminating religious discrimination in managerial, supervisory, administrative, clerical, and technical jobs and significantly increasing the representation in such jobs of individuals from underrepresented religious groups.

(2) Providing adequate security for the protection of minority employees at the workplace.

(3) Banning provocative sectarian and political emblems from the workplace.

(4) Advertising publicly all job openings and undertaking special recruitment efforts to attract applicants from underrepresented religious groups, including—

(A) establishing procedures to assess, identify, and actively recruit minority individuals with potential for further advancement; and

(B) identifying those minority individuals who have high management potential and

enrolling them in accelerated management programs.

(5) Establishing layoff, recall, and termination procedures which do not favor particular religious groupings.

(6) Providing equal employment for all employees, including implementing equal and nondiscriminatory terms and conditions of employment for all employees, and abolishing job reservations, apprenticeship restrictions, and differential employment criteria, which discriminate on the basis of religion or ethnic origin.

(7) Developing training programs that will prepare substantial numbers of minority employees for managerial, supervisory, administrative, clerical, and technical jobs, including—

(A) expanding existing programs and forming new programs to train, upgrade, and improve the skills of all categories of minority employees;

(B) creating on-the-job training programs and facilities to assist minority employees to advance to higher paying jobs requiring greater skills; and

(C) establishing and expanding programs to enable minority employees to further their education and skills at recognized education facilities.

(8) Appointing a senior management staff member to oversee the United States person's compliance with the principles described in this section.

SEC. 6. WAIVER OF PROVISIONS.

In any case in which the President determines that compliance by a United States person with the provisions of this Act would harm the national security of the United States, the President may waive those provisions with respect to that United States person. The President shall publish in the Federal Register each waiver granted under this section and shall submit to the Congress a justification for granting each such waiver. Any such waiver shall become effective at the end of 90 days after the date on which the justification is submitted to the Congress unless the Congress, within that 90-day period, adopts a joint resolution disapproving the waiver. In the computation of such 90-day period, there shall be excluded the days on which either House of Congress is not in session because of an adjournment of more than three days to a day certain or because of an adjournment of the Congress sine die.

(b) CONSIDERATION OF RESOLUTIONS.—

(1) Any resolution described in subsection (a) shall be considered in the Senate in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976.

(2) For the purpose of expediting the consideration and adoption of a resolution under subsection (a) in the House of Representatives, a motion to proceed to the consideration of such resolution after it has been reported by the appropriate committee shall be treated as highly privileged in the House of Representatives.

SEC. 7. DEFINITIONS AND PRESUMPTIONS.

(a) DEFINITIONS.—For the purposes of this Act—

(1) the term "United States person" means any United States resident or national and any domestic concern (including any permanent domestic establishment of any foreign concern);

(2) the term "Secretary" means the Secretary of Commerce;

(3) the term "Northern Ireland" includes the counties of Antrim, Armagh, Londonderry, Down, Tyrone, and Fermanagh; and

(b) PRESUMPTION.—A United States person shall be presumed to control a corporation, partnership, or other enterprise in Northern Ireland if—

(1) the United States person beneficially owns or controls (whether directly or indirectly) more than 50 percent of the outstanding voting securities of the corporation, partnership, or enterprise;

(2) the United States person beneficially owns or controls (whether directly or indirectly) 25 percent or more of the voting securities of the corporation, partnership, or enterprise, if no other person owns or controls (whether directly or indirectly) an equal or larger percentage;

(3) the corporation, partnership, or enterprise is operated by the United States person pursuant to the provisions of an exclusive management contract;

(4) a majority of the members of the board of directors of the corporation, partnership, or enterprise are also members of the comparable governing body of the United States person;

(5) the United States person has authority to appoint the majority of the members of the board of directors of the corporation, partnership, or enterprise; or

(6) the United States person has authority to appoint the chief operating officer of the corporation, partnership, or enterprise.

By Mr. KERRY:

S.J. Res. 423. Joint resolution to designate the week beginning January 19, 1987, as "Shays' Rebellion Week," and Sunday, January 25, 1987, as "Shays' Rebellion Day"; to the Committee on the Judiciary.

SHAYS' REBELLION WEEK AND SHAYS' REBELLION DAY

● Mr. KERRY. Mr. President, I am introducing today a joint resolution commemorating the bicentennial of an historic event in American history—Shays' Rebellion.

Shays' Rebellion was the result of citizens' discontent with the Government and the economy following the Revolutionary War. Unrest occurred in almost every State, but revolt took place in Massachusetts where the war had devastated its major industries. Exports fell, resulting in massive public indebtedness. The only accepted tender for a long while was cash, and its continuous fluctuation made meeting costs close to impossible. Debts were high and punishments were severe. Overall, a general distrust of the Government persisted because public grievances were not being addressed.

By 1786, feelings of unrest had spread across the Massachusetts Commonwealth. Daniel Shays and a group of farmers obstructed court proceedings, demanding that the court be attentive to their concerns. The unrest culminated on January 25, 1787, when Shays and 1,100 of his followers stormed an arsenal in Springfield. The uprising brought national attention to Shays and his followers. People in all States were alarmed by the revolutionary disorder and the underlying social and economic problems that had caused such a reaction.

Plagued by a weak and disorganized economy, and an unresponsive Government, the rebels in Massachusetts had voiced their dissatisfaction with the postwar crisis. The rebellion hastened special reforms in taxation and judicial procedure. In addition, it alerted leaders of America to the frailties of the Government under the Articles of Confederation and served as the impetus for the drafting of our Constitution.

The influence of Shays' Rebellion in the formation of our present Government deserves recognition by Congress and the people of the United States. I invite my colleagues to support a joint resolution celebrating the historical significance of this event. Please join me in designating January 19 through January 25, 1987 as Shays' Rebellion Week and Sunday, January 25 as Shays' Rebellion Day. An identical resolution (H.J. Res. 10) has been introduced in the House by Congressman CONTE, of Massachusetts, and has over 218 cosponsors.

Mr. President, Shays' Rebellion was more than just an uprising by a group of western Massachusetts farmers; it represents the spirit of the American way and the struggle of a people to perservere and combat injustice. We who have reaped the benefits of the seeds Daniel Shays and his rebels sowed owe them enthusiastic recognition. I believe this commemorative resolution is a step in that direction.●

ADDITIONAL COSPONSORS

S. 812

At the request of Mr. HEINZ, the names of the Senator from North Carolina [Mr. BROYHILL] and the Senator from Delaware [Mr. ROTH] were added as cosponsors of S. 812, a bill to amend the Export Administration Act of 1979 to authorize controls on the report of capital from the United States.

S. 1804

At the request of Mr. HATCH, the name of the Senator from Virginia [Mr. WARNER] was added as cosponsor of S. 1804, a bill to provide for Federal incentive grants to encourage State health care professional liability reform.

S. 2209

At the request of Mr. DOLE, the name of the Senator from California [Mr. CRANSTON] was added as cosponsor of S. 2209, a bill to make permanent and improve the provisions of section 1619 of the Social Security Act, which authorizes the continued payment of SSI benefits to individuals who work despite severe medical impairment; to amend such act to require concurrent notification of eligibility for SSI and Medicaid benefits and notification to certain disabled SSI recipients of their potential eligi-

bility for benefits under such section 1619; to provide for a GAO study of the effects of such section's work incentive provisions; and for other purposes.

S. 2651

At the request of Mr. DECONCINI, the names of the Senator from California [Mr. CRANSTON] and the Senator from Hawaii [Mr. MATSUNAGA] were added as cosponsors of S. 2651, a bill to reduce Federal liability for the relocation of certain Navajo Indians through the exchange of certain lands between the Hopi and Navajo Indian Tribes, and for other purposes.

S. 2770

At the request of Mr. COCHRAN, the name of the Senator from Louisiana [Mr. LONG] was added as cosponsor of S. 2770, a bill to amend the Farm Credit Act of 1971 to provide the opportunity for competitive interest rates for the farmer, rancher, and cooperative borrowers of the Farm Credit System, and for other purposes.

At the request of Mr. D'AMATO, his name was added as a cosponsor of S. 2770, supra.

SENATE JOINT RESOLUTION 352

At the request of Mr. METZENBAUM, the names of the Senator from Iowa [Mr. GRASSLEY], the Senator from Florida [Mrs. HAWKINS], the Senator from North Carolina [Mr. HELMS], the Senator from Nevada [Mr. HECHT], the Senator from North Dakota [Mr. ANDREWS], and the Senator from South Dakota [Mr. ABDNOR] were added as cosponsors of Senate Joint Resolution, a joint resolution to designate the week beginning September 7, 1986, as "Gaucher's Disease Awareness Week."

SENATE JOINT RESOLUTION 385

At the request of Mr. RIEGLE, the names of the Senator from Pennsylvania [Mr. SPECTER] and the Senator from Ohio [Mr. GLENN] were added as cosponsors of Senate Joint Resolution 385, a joint resolution to designate October 23, 1986 as "National Hungarian Freedom Fighters Day."

SENATE JOINT RESOLUTION 387

At the request of Mr. HECHT, the name of the Senator from South Dakota [Mr. PRESSLER] was added as a cosponsor of Senate Joint Resolution 387, a joint resolution to designate the week of October 19, 1986, through October 26, 1986, "National Housing Week."

SENATE JOINT RESOLUTION 388

At the request of Mr. LEVIN, the names of the Senator from Maine [Mr. COHEN] and the Senator from Pennsylvania [Mr. SPECTER] were added as cosponsors of Senate Joint Resolution 388, a joint resolution designating the week beginning January 4, 1987, as "National Bowling Week."

SENATE JOINT RESOLUTION 403

At the request of Mr. ROTH, the names of the Senator from Utah [Mr. HATCH] and the Senator from New York [Mr. D'AMATO] were added as cosponsors of Senate Joint Resolution 403, a joint resolution to designate 1988 as the "National Year of Friendship With Finland."

SENATE JOINT RESOLUTION 407

At the request of Mr. CHILES, the names of the Senator from Massachusetts [Mr. KENNEDY] and the Senator from Arkansas [Mr. BUMPERS] were added as cosponsors of Senate Joint Resolution 407, a joint resolution designating November 12, 1986, as "Salute to School Volunteers Day."

SENATE JOINT RESOLUTION 408

At the request of Mr. DOLE, the name of the Senator from New York [Mr. MOYNIHAN] was added as a cosponsor of Senate Joint Resolution 408, a joint resolution designating "American Physiologists Week."

SENATE JOINT RESOLUTION 417

At the request of Mr. NUNN, the names of the Senator from Alaska [Mr. MURKOWSKI] and the Senator from California [Mr. CRANSTON] were added as cosponsors of Senate Joint Resolution 417, a joint resolution designating the week of January 25 through January 31, 1987, as "National Productivity Improvement Week".

SENATE JOINT RESOLUTION 418

At the request of Mr. PACKWOOD, the names of the Senator from Wisconsin [Mr. KASTEN] and the Senator from New Mexico [Mr. DOMENICI] were added as cosponsors of Senate Joint Resolution 418, a joint resolution to designate February 4, 1987, as "National Women in Sports Day."

SENATE JOINT RESOLUTION 419

At the request of Mr. MOYNIHAN, the names of the Senator from California [Mr. CRANSTRON], the Senator from New Jersey [Mr. LAUTENBERG], the Senator from Hawaii [Mr. INOUYE], the Senator from Kansas [Mr. DOLE], and the Senator from Delaware [Mr. ROTH] were added as cosponsors of Senate Joint Resolution 419, a joint resolution to designate December 11, 1986, as "National SEEK and College Discovery Day."

SENATE JOINT RESOLUTION 420

At the request of Mr. GOLDWATER, the names of the Senator from Mississippi [Mr. COCHRAN] and the Senator from Alaska [Mr. MURKOWSKI] were added as cosponsors of Senate Joint Resolution 420, a joint resolution relating to the commemoration of January 28, 1987, as a "National Day of Excellence."

SENATE CONCURRENT RESOLUTION 154

At the request of Mr. D'AMATO, the name of the Senator from Connecticut [Mr. WEICKER] was added as a cosponsor of Senate Concurrent Resolution 154, a concurrent resolution concerning the Soviet Union's persecution of members of the Ukrainian and other public Helsinki Monitoring Groups.

SENATE RESOLUTION 454

At the request of Mr. RIEGLE, the names of the Senator from Illinois [Mr. SIMON], the Senator from New Jersey [Mr. LAUTENBERG], the Senator from Massachusetts [Mr. KERRY], the Senator from New York [Mr. MOYNIHAN], the Senator from Iowa [Mr. GRASSLEY], the Senator from Minnesota [Mr. BOSCHWITZ], and the Senator from North Dakota [Mr. BURDICK] were added as cosponsors of Senate Resolution 454, a resolution urging the full restoration in Eastern Europe of the Byzantine Rite Catholic Church and of freedom of religion for the people of all Captive Nations, and for other purposes.

AMENDMENT SUBMITTED

CONTINUING APPROPRIATIONS, FISCAL YEAR, 1987

NUNN AMENDMENT NO. 3164

Mr. STENNIS (for Mr. Nunn) proposed an amendment to the joint resolution (H.J. Res. 738), making continuing appropriations for the fiscal year 1987, and for other purposes; as follows:

Section 301, of title 23 add the following: "*Provided* that certain demonstration projects, as approved by the Secretary, specified in section 129 may have tolls applied". Section 129, of title 23 add the following subparagraphs:

"(j) notwithstanding Section 301 of this Title the Secretary shall permit Federal participation in not more than 4 projects in the States of Florida and Georgia to demonstrate the feasibility and practicality of construction of toll highways to meet capacity needs in high growth areas. *Provided*, That Federal participation in any toll highway project under this subsection shall not exceed 35% of total project cost and further provided that Federal aid funds used in a toll highway project under this subsection may be from any Federal aid system other than the interstate system funded under Section 104(b)(5)A". *Provided further*, that this provision shall apply only to non-interstate highways for new highway facilities or for projects that expand capacity on existing facilities, and the revenues raised by such tolls may only be used for the construction, reconstruction, maintenance, and operation of the tolled-facility.

HOLLINGS (AND OTHERS) AMENDMENT NO. 3165

Mr. STENNIS (for Mr. HOLLINGS, for himself, Mr. FORD, and Mr. KASTEN) proposed an amendment to the joint resolution (H.J. Res. 738), supra; as follows:

At the appropriate place in the Joint Resolution, insert:

SEC. . REPORT ON PREDATORY PRICING PRACTICES

The Federal Trade Commission shall submit to the Committee on Commerce, Science, and Transportation of the Senate and

to the Committee on Energy and Commerce of the House of Representatives the information specified in subsection (b) of this section every 6 months during fiscal year 1987. A report containing such information shall be submitted when the Commission submits its annual report to the Congress during such fiscal year, and such report may be included in the annual report. A separate report containing such information shall be submitted 6 months after the date of submission of any such annual report. Each such report shall contain such information for the period since the last submission under this section.

(b) Each such report shall list and describe, with respect to instances in which predatory pricing practices have been suspected or alleged—

(1) each complaint made, orally or in writing, to the offices of the Commission;

(2) each preliminary investigation opened or closed at the Commission;

(3) each formal investigation opened or closed at the Commission;

(4) each recommendation for the issuance of a complaint forwarded by the staff to the Commission;

(5) each complaint issued by the Commission;

(6) each opinion and order entered by the Commission;

(7) each consent agreement accepted provisionally or finally by the Commission;

(8) each request for modification of an outstanding Commission order filed with the Commission;

(9) each recommendation by staff pertaining to a request for modification of an outstanding Commission order; and

(10) each disposition by the Commission of a request for modification of an outstanding Commission order.

Such report shall include copies of all such consent agreements and complaints executed by the Commission referred to in such report. Where a matter has been closed or terminated, the report shall include a statement of the reasons for that disposition. The descriptions required under this subsection shall be as complete as possible but shall not reveal the identity of persons or companies complained about or those subject to investigation that have not otherwise been made public. The report shall include any evaluation by the Commission of the potential impacts of predatory pricing upon businesses (including small businesses).

MELCHER (AND BRADLEY) AMENDMENT NO. 3166

Mr. STENNIS (for Mr. MELCHER, for himself and Mr. BRADLEY) proposed an amendment to the joint resolution (H.J. Res. 738), supra; as follows:

At the end of the joint resolution, add the following:

Sec. . Notwithstanding any provision of the American Indian, Alaska Native, and Native Hawaiian Culture and Art Development Act, the amounts appropriated for fiscal year 1987 for the Bureau of Indian Affairs for the Institute of American Indian Arts shall be available for use under part A of the Act and —

(1) that Act shall be implemented in a reasonable period of time and shall be fully implemented by no later than October 1, 1987,

(2) until the earlier of—

(A) October 1, 1987, or—

(B) The appointment and confirmation of a majority of the members of the Board of Trustees of the Institute of American Indian and Alaska Native Culture and Arts Development under section 1505(a)(1)(A) of that Act,

the Secretary of the Interior shall have the authority conferred upon such members under that Act, and

(3) until the earlier of—

(A) October 1, 1987, or

(B) the appointment of a President of such Institute under section 1508 of the Act,

the Secretary of the Interior shall have the authority conferred upon the President of such Institute under that Act.

LEAHY AMENDMENT NO. 3167

Mr. STENNIS (for Mr. LEAHY) proposed an amendment to the joint resolution (H.J. Res 738), supra; as follows:

At the appropriate place in the joint resolution, insert the following new section:

Sec. . Notwithstanding any other provision of this joint resolution, for an additional amount for, "Environmental Protection Agency, Hazardous substance response trust fund", $600,000,000, for necessary expenses to carry out the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, including sections 111 (c)(3), (c)(5), (c)(6), and (e)(4) (42 U.S.C. (9611), to be derived from the Hazardous Substance Response Trust Fund, to remain available until expended: *Provided*, That funds appropriated under this account may be allocated to other Federal agencies in accordance with section 111(a) of Public Law 96-510: *Provided further*, That of the amounts appropriated under this heading in Public Law 99-160, $600,000,000 are rescinded.

BYRD AMENDMENT NO. 3168

Mr. STENNIS (for Mr. BYRD) proposed an amendment to the joint resolution (H.J. Res. 738), supra; as follows:

At the end of the joint resolution, add the following new title:

TITLE —AVIATION SAFETY

SHORT TITLE

Sec. . This title may be cited as the "Aviation Safety Commission Act of 1986".

COMMISSION ESTABLISHED

Sec. . (a) There is established a commission to be known as the Aviation Safety Commission (hereinafter referred to as the "commission").

(b)(1) The Commission shall be composed of seven members appointed by the President no later than 30 days after the date of enactment of this Act.

(2) Appointees to the Commission shall possess extensive experience and expertise at the highest executive levels of public or corporate management.

(3) No member of the Commission shall, at the time of such member's appointment, be an employee or officer of the Federal Government, nor shall any member have been an employee of the Federal Government for at least 3 years before such member's appointment to the Commission.

(4)(A) At least four members of the Commission, including the Chairman, shall not have performed any service or have been involved in any way in any business concern in air commerce or any aviation-related industry for at least 3 years before their appointment to the Commission.

(B) For the purposes of this paragraph, the term "air commerce" has the meaning given to such term in section 101(4) of the Federal Aviation Act of 1958 (49 App. U.S.C. 1301(4)).

(c) The President shall appoint one of the members to serve as Chairman of the Commission.

(d) Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner in which the original appointment was made.

(e) Four members of the Commission shall constitute a quorum, but a lesser number may hold hearings.

(f)(1) The Commission shall hold its first meeting within 30 days after the appointment of all members.

(2) The Commission shall meet at the call of the Chairman or a majority of the members.

(g) Members of the Commission shall serve until the expiration of the Commission pursuant to section 3(f) of this Act.

FUNCTIONS OF THE COMMISSION

Sec. . (a) The Commission shall make a complete study of the organization and functions of the Federal Aviation Administration (hereinafter referred to as the "Administration") and the means by which the Administration may most efficiently and effectively perform the responsibilities assigned to it by law and increase aviation safety.

(b) In conducting such study, the Commission shall consider whether—

(1) the Administration has been provided adequate resources and has adequately utilized the resources provided to ensure aviation safety;

(2) the dual responsibilities of the Administration of promoting commercial aviation and ensuring aviation safety are in conflict, and whether such conflict impedes the effective maintenance and enhancement of aviation safety;

(3) the Administration should be reorganized as an independent Federal agency with the promotion, maintenance, and enhancement of aviation safety as the sole responsibility of such agency;

(4) the promotion of commercial aviation should be assigned as a responsibility to another agency of the Federal Government;

(5) airline deregulation has an adverse effect on the margin of aviation safety, including a review of whether the practice of airline self-compliance with respect to aviation maintenance standards is an outmoded approach in an environment designed to maximize cost-savings; and

(6) it is feasible to make mandatory certain or all of the safety recommendations issued by the National Transportation Safety Board.

(c) The study conducted under this section shall include findings and recommendations, including any recommendations for legislative action, regarding—

(1) the most appropriate and effective organizational approach to ensuring aviation safety; and

(2) measures to improve the enforcement of Federal regulations relating to aviation safety.

(d) In conducting such study, the Commission shall consult with the National Transportation Safety Board and a broad spectrum of representatives of the aviation industry, including—

(1) air traffic controllers;

(2) representatives of the commercial aviation industry;

(3) representatives of airways facilities technicians;

(4) independent experts on aviation safety;

(5) former Administrators of the Administration; and

(6) representatives of civil aviation.

(e) Within 9 months after the date of enactment of this Act, the Commission shall submit a report on the study conducted pursuant to this section to the President and to each House of Congress. Such report shall contain a detailed statement of the findings and conclusions of the Commission, together with recommendations for legislative and administrative actions.

(f) The Commission shall cease to exist 9 months after the date of enactment of this Act.

POWERS AND ADMINISTRATIVE PROVISIONS

SEC. . (a) The Commission may, for the purpose of carrying out the provisions of this Act, hold such hearings, sit and act at such times and places, take such testimony, receive such evidence, and publish such reports as the Commission considers appropriate.

(b)(1) Subject to such rules as may be adopted by the Commission, the Chairman, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 of such title relating to classification or chapter 53 of such title relating to General Schedule pay rates, may—

(A) appoint and fix the compensation of such staff personnel as the Chairman considers necessary, including an executive director who may be compensated at a rate not in excess of that provided for level V of the Executive Schedule in title 5, United States Code; and

(B) procure the services of experts and consultants in accordance with section 3109 of title 5, United States Code.

(2) Any person appointed as executive director pursuant to paragraph (1)(A) of this subsection shall meet the same qualifications required of members pursuant to section (b) of this Act.

(c) Each department, agency, and instrumentality of the executive branch of the Federal Government, including independent agencies, shall furnish to the Commission, upon request made by the Chairman, such information as the Commission considers necessary to carry out its functions.

(d) Upon request of the Commission, the head of any Federal agency may detail, on a reimbursable basis, any of the personnel of such agency to the Commission to assist the Commission in carrying out its duties.

(e) The Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

(f) The Commission may use the United States mail in the same manner and under the same conditions as other departments and agencies of the United States.

(g) Any member or agent of the Commission may, if so authorized by the Commission, take any action which the Commission may take under this section.

COMPENSATION OF MEMBERS

SEC. . Members of the Commission shall serve without compensation, but shall be reimbursed for travel or transportation expenses under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business and engaged in the actual performance of duties of the Commission.

APPROPRIATIONS

SEC. . There is hereby appropriated for fiscal year 1987, $2,000,000 to carry out the provisions of this Act.

DOMENICI AMENDMENT NO. 3169

Mr. STENNIS (for Mr. DOMENICI) proposed an amendment to the joint resolution (H.J. Res. 738), supra; as follows:

At an appropriate place in the bill insert the following new section:

SEC. . In section 108B(4)(A) of the Agricultural Act of 1949, as added by section 705 of the Food Security Act of 1985, insert the following after "additional peanuts": "(other than net gain on additional peanuts in separate type pools established under paragraph(3)(B)(i) for Valencia peanuts produced in New Mexico)".

FORD AMENDMENT NOS. 3170 AND 3171

Mr. STENNIS (for Mr. FORD) proposed two amendments to the joint resolution (H.J. Res. 738), supra; as follows:

At the end of the joint resolution add the following new section:

SEC. CERTAIN COSTS OF PRIVATE FOUNDATIONS IN REMOVING HAZARDOUS SUBSTANCES TREATED AS QUALIFIED DISTRIBUTIONS.

(a) IN GENEREAL.—In the case of any taxable year beginning after December 31, 1982, the distributable amount of a private foundation for such txable year for purposes of section 4942 of the Internal Revenue Code of 1954 shall be reduced by any amount paid or incurred (or set aside) by such private foundation for the investigatory costs and direct costs of removal to taking remedial action with respect to a hazardous substance released at a facility which was owned or operated by such private foundation.

(b) LIMITATIONS.—Subsection (a) shall apply only to costs—

(1) Incurred with respect to hazardous substances disposed of at a facility owned or operated by the private foundation but only if—

(A) such facility was transferred to such foundation by bequest before December 11, 1980, and

(B) the active operation of such facility by such foundation was terminated before December 12, 1980, and

(2) which were not incurred pursuant to a pending order issued to the private foundation unilaterally by the President or the President's assignee under section 100 of the Comprehensive Environmental Response, Compensation and Liability Act, or pursuant to a judgment against the private foundation issued in a governmental cost recovery action under section 107 of such Act.

(c) HAZARDOUS SUBSTANCE.—For purposes of this section, the term "hazardous substance" has the meaning given such term by section 9601(14) of the Comprehensive Environmental Response Compensation and Liaiblity Act.

In the appropriate section of the bill, add the following section:

SEC. . Notwithstanding any other provisions of title 23, the Secretary of Transportation shall carry out the following project:

I-75 corridor in Kenton County, Kentucky, to examine the feasibility of unmanned radar units for safety purposes.

CHILES AMENDMENT NO. 3172

Mr. STENNIS (for Mr. CHILES) proposed an amendment to the joint resolution (H.J. Res. 738), supra; as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Commission to Prevent Infant Mortality".

FINDINGS AND PURPOSE

SEC. 2. The Congress finds and declares that:

(1) The United States ranked seventeenth in the world in 1982 with an infant mortality rate of eleven and two-tenths deaths per thousand live births, a higher rate than many developed nations of the world.

(2) The infant mortality rate in some areas of the United States is twice the national rate.

(3) The main cause of a high infant mortality rate is low birthweight. Some 6.7 per centum of all infants born in the United States are of low birthweight.

(4) Inadequate prenatal care is associated with an increased risk of low birthweight. Some twenty-five percent of all pregnant women in the United States do not begin prenatal care until after the first three months of pregnancy, if at all.

(5) In certain areas throughout the United States, there exist barriers to medical services, nutritional support, educational opportunities, and financial support for adequate health care for pregnant mothers and infants. The absence of needed support services during prenatal care, labor and delivery, and post-partum care through the age of one year contributes substantially to a high national infant mortality rate.

(6) Our Nation, which benefits from many diverse governmental and private resources, has a patchwork, uncoordinated, and little understood approach to the delivery of services associated with preventing infant mortality.

(7) The Congress and the President can act to prevent infant mortality and the incidence of low birthweight infants by establishing a commission by law, whose purpose shall be to address respective governmental and private roles in the delivery of services associated with preventing infant mortality, and to recommend actions designed to change and improve the Nation's comprehensive approach to this national problem.

DEFINITION

SEC. 3. For the purposes of this Act, the term "infant mortality" refers to the number of infants born alive but who die before their first birthday.

ESTABLISHMENT OF A NATIONAL COMMISSION

SEC. 4. (a) To accomplish the purpose set forth in section 2 of this Act there is established the National Commission to Prevent Infant Mortality (hereinafter referred to as the "Commission").

(b) The Commission shall be composed of fifteen members, as follows:

(1) Two members of the Senate, one to be selected by the majority leader of the Senate, the other to be selected by the minority leader of the Senate.

(2) Two members of the House, one to be selected by the Speaker of the House, the other to be selected by the minority leader of the House.

(3) Three members from representatives of State and local government; to be selected by the President and no more than two

of whom shall be members of the same political party. One shall be a Governor; one shall be a State legislator; and one shall be a representative of local government.

(4) The Secretary of Health and Human Services shall be a member.

(5) The Comptroller General of the United States shall be a member.

(6) Six at large members, with demonstrated expertise in maternal and child health, shall be jointly selected by the majority leader of the Senate and the Speaker of the House.

(c) The Commission shall select a Chairperson and Vice Chairperson from among its members.

(d) Eight members of the Commission shall constitute a quorum, but a lesser number may hold hearings.

(e) The Commission shall meet at the call of the Chairperson.

(f) Members shall be appointed for the life of the Commission. Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the original appointment.

DUTIES OF THE COMMISSION

SEC. 5. (a) The Commission shall:

(1) Identify and examine comprehensively Federal, State, local, and private resources which impact infant mortality, including but not limited to—

(A) the effectiveness and adequacy of programs such as the Supplemental Feeding Program for Women, Infants, and Children; the Maternity and Infant Care Program; the Improved Pregnancy Outcome Program; the Maternal and Child Health Block Grant; Community Health Centers; prepregnancy services and other programs that increase access to prenatal and postnatal education, care, and nutrition;

(B) the effectiveness of current Federal and State policies under the Medicaid Program to ensure adequate access to prenatal and postnatal care for low-income pregnant women and mothers;

(C) the role of income maintenance and other programs that impact infant mortality such as Aid to Families with Dependent Children and Federal housing subsidies; and

(D) the adequacy of current Federal and State efforts to enable an appropriate distribution of properly trained health care professionals to provide comprehensive maternal and child health services.

(2) Identify current financial, intergovernmental, and within the Federal Government, interagency barriers to the health care needed to prevent high infant mortality.

(3) Review recommendations made in recent regional and national reports that promote the health status of childbearing women and their infants and carry forward such recommendations as deemed appropriate.

(b) The Commission shall—

(1) recommend a national policy designed to change and improve the current approach to preventing infant mortality, including recommendations concerning appropriate roles for the Federal Government, States, local governments, and private institutions;

(2) recommend to the Congress and the President what specific changes are needed within Federal laws and Federal programs to achieve an effective Federal role in preventing infant mortality; and

(3) present such recommendations to the President, the Speaker of the House, and the majority leader of the Senate no later than one year after enactment of this Act.

POWERS OF THE COMMISSION

SEC. 7. (a) The Commission, or at its direction, any subcommittee or member thereof, may for the purpose of carrying out the provisions of this Act, hold such hearings, sit and act at such times and places, take such testimony, receive such evidence and administer such oaths, as the Commission or such subcommittee or member may deem advisable. Any member of the Commission may administer oaths or affirmations to witnesses appearing before the Commission, subcommittee, or member thereof.

(b) The Commission may secure directly from any Federal department or agency such information as may be necessary to enable the Commission to carry out this Act. Upon request of the Chairman of the Commission, the head of such department or agency shall furnish such information to the Commission.

(c) To carry out this Act, the Commission may enter into such contracts and other arrangements to such extent or in such amounts as are provided in appropriation Acts, and without regard to the provisions of section 3709 of the Revised Statutes (41 U.S.C. 5). Contracts and other arrangements may be entered into under this subsection with or without consideration or bond.

(d) The provisions of the Federal Advisory Committee Act shall not apply to the Commission.

COMMISSION STAFF

SEC. 8. (a) The Chairperson and Vice Chairperson of the Commission shall appoint an executive director. The employment of such executive director shall be subject to confirmation by the Commission.

(b) The Commission may appoint and terminate the executive director selected under subsection (a) and such other personnel as it considers appropriate to assist in the performance of its duties under this Act, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may pay such executive director and other personnel without regard to the provisions of Chapter 51 and subchapter 111 of chapter 53 of such title relating to classification and General Schedule pay rates, except that the rate of pay for such executive director and other personnel may not exceed the rate payable for GS-18 of the General Schedule under section 5332 of such title.

(c) Service of an individual as a member of the Commission or employment of an individual by the Commission on a part-time or full-time basis and with or without compensation shall not be considered as service or employment bringing such individual within the provisions of any Federal law relating to conflicts of interest or otherwise imposing restrictions, requirements, or penalties in relation to the employment of persons, the performance of services, or the payment or receipt of compensation in connection with claims, proceedings, or matters involving the United States. Service as a member of the Commision or as an employee of the Commission, shall not be considered service in any appointive or elective position in the Government for purposes of section 8344 of title 5, United States Code, or comparable provisions of Federal law.

(d) Subject to such rules as may be prescribed by the Commission, the Chairman of the Commission may procure temporary and intermittent services under section 3109 of title 5, United States Code, at rates for individuals not to exceed the daily rate payable for GS-18 of the General Schedule under section 5332 of such title.

SUNSHINE PROVISION

SEC. 9. The Commmission shall establish procedures to ensure its proceedings are open to the public to the maximum extent practicable.

TERMINATION OF THE COMMISSION

SEC. 10. Ninety days after the Commission submits its recommendations as required by section 5(b)(3) the Commission shall terminate.

AUTHORIZATION OF APPROPRIATIONS

SEC. 11. There are authorized to be appropriated to the Commission $1,000,000. Amount appropriated under this section shall remain available until the day on which the Commission terminates under section 10.

HATCH AMENDMENT NO. 3173

Mr. STENNIS (for Mr. HATCH) proposed an amendment to the joint resolution (H.J. Res. 738), supra; as follows:

Insert at the end thereof:

Section 623B(b)(2) of the Community Economic Development Act of 1981 is amended by adding at the end thereof the following new sentence: "Notwithstanding any other provision of law, any Utah or local public body to which a loan was made after December 31, 1982, from the Rural Development Loan Fund may, at the discretion of such local public body and with the approval of the Secretary of Health and Human Services, transfer such loan to a nonprofit corporation designated by such body to serve as an intermediate borrower and to carry out the purposes of the loan."

DOMENICI AMENDMENT NO. 3174

Mr. STENNIS (for Mr. DOMENICI) proposed an amendment to the joint resolution (H.J. Res. 738), supra; as follows:

H.J. Res. 738 is amended by inserting in the appropriate place in the resolution the following new section:

SEC. . Section 535 of S. 2824 as reported by the Senate Committee on Appropriations on September 16, 1986, is amended by inserting before the period at the end thereof the following: "as amended by section 2011 of H.R. 5484 as passed by the Senate on September 30, 1986".

WEICKER (AND DODD) AMENDMENT NO. 3175

Mr. STENNIS (for Mr. WEICKER, for himself and Mr. DODD) proposed an amendment to the joint resolution (H.J. Res. 738), supra; as follows:

At the appropriate place, add the following new section:

SEC. . CONNECTICUT HOSPICE WAIVER.

Section 122(j) of the Tax Equity and Fiscal Responsibility Act of 1982 (relating to waivers for certain hospices) is amended—

(1) by inserting "(1)" after the subsection designation, and

(2) by adding at the end thereof the following new paragraph:

"(2) The Secretary of Health and Human Services shall grant a waiver of the limitation imposed by section 1861(dd)(2)(A)(iii) of the Social Security Act (relating to the aggregate limit on the number of days of inpatient care) to any institution that was

granted a waiver under paragraph (1). Such waiver shall provide for the application of such section to the institution by substituting "50" for "20", shall apply only to beds in service as of July 1, 1986, and shall become effective October 1, 1986.".

THURMOND (AND HOLLINGS) AMENDMENT NO. 3176

Mr. STENNIS (for Mr. THURMOND, for himself and Mr. HOLLINGS) proposed an amendment to the joint resolution (H.J. Res. 738), supra; as follows:

At the appropriate place, insert:

That, to provide for a security buffer zone for the United States Department of Energy's Savannah River Plant near Aiken, South Carolina, title, control, and custody to six thousand twenty-one acres, more or less, of United States Department of Agriculture, Forest Service, lands shown on a map entitled "Forest Service Property Transfer, Savannah River Plant, Aiken, South Carolina", dated June 1984, are transferred without cost or reimbursement to the United States Department of Energy. The map and legal description of the boundaries of these lands shall be on file and available for public inspection in the Office of the Chief of the Forest Service, Department of Agriculture, the Director of Real Property and Facilities Management, United States Department of Energy, and appropriate field offices of those agencies.

SEC. 2. This Act does not affect valid existing rights, or interests in existing land use authorizations, except that any right or authorization shall be administered by the Department of Energy after the enactment of this Act. Reissuance of any authorization shall be in accordance with applicable law and the regulations of the Department of Energy, except that the change of administrative jurisdiction shall not in itself constitute a ground to deny the renewal or reissuance of any authorization.

DANFORTH AMENDMENT NO. 3177

Mr. STENNIS (for Mr. DANFORTH) proposed an amendment to the joint resolution (H.J. Res. 738), supra; as follows:

On page 5, line 3, insert the following immediately before the period: ", other than the provisions regarding use of funds for personnel compensation and benefits for Commissioners of the Consumer Product Safety Commission contained in H.R. 5313".

GRASSLEY (AND HARKIN) AMENDMENT NO. 3178

Mr. STENNIS (for Mr. GRASSLEY, for himself and Mr. HARKIN) proposed an amendment to the joint resolution (H.J. Res. 738), supra; as follows:

At the appropriate place, insert:

NON-PROFIT NATIONAL RURAL DEVELOPMENT AND FINANCE CORPORATION

Section 1323(a)(1) of the Food Security Act of 1985 is amended by striking out "September 30, 1986," and inserting in lieu thereof "September 30, 1987,", and

Section 1323(a) is further amended by adding at the end thereof a new Subsection

(5) Notwithstanding any provision to the contrary of Subsection (4) above, the $20,000,000 which was available pursuant to Subsection (4) shall continue to be available and shall be used by the Secretary prior to September 30, 1987 to guarantee loans for the national rural development and finance program and shall remain available until expended.

and,

Section 1323(b)(1) of such Act is amended by striking out "September 30, 1986,", and inserting the words "made or to be" after the word "guarantees",

Provided further, That such grant funds may be used by such corporation to provide technical assistance and financial assistance, including capitalizing revolving loan programs, pursuant to the Act.

LEAHY (AND MATHIAS) AMENDMENT NO. 3179

Mr. STENNIS (for Mr. LEAHY, for himself and Mr. MATHIAS) proposed an amendment to the joint resolution (H.J. Res. 738), supra; as follows:

At the end of the resolution add the following:

Since Canada and the United States have demonstrated interest in sharing the benefits of transborder broadcast transmissions;

Since sharing broadcast transmissions originating in Canada and the United States is in the interest of international comity;

Since it is a recognized principle that authors of literary and artistic works should have the exclusive right of authorizing the broadcasting of their works and receive equitable remuneration for use of their creative products;

Since the United States copyright law, section 111 of title 17, United States Code, provides compensation to Canadian program owners for the retransmission of their copyrighted broadcast programs in the United States, and in some cases, exclusive rights and full copyright control for the use of such programs, Canadian law permits the unauthorized and uncompensated retransmission of United States programs in Canada;

Since the Government of Canada has expressed its intention to meet the challenge of creating an appropriate and balanced copyright environment through recognition of a general retransmission right in proposed revisions of Canada's 1924 Copyright Act; and

Since 1983, while the Government of Canada has discussed the possibility of introducing new copyright legislation, the unauthorized and uncompensated retransmission of United States origin television programming has been permitted to expand throughout Canada: Now, therefore, be it declared. That it is the sense of the Senate that—

(1) unauthorized and uncompensated retransmission of United States origin television programming included in United States broadcast signals should not be permitted to expand further in Canada,

(2) this longstanding issue of Canada's unauthorized and uncompensated retransmission of United States broadcast signals should receive speedy and efficient resolution, and

(3) the Senate, recognizing the significant potential for aiding the international free flow of information through the medium of television, and affirming the universal principle of fairness and equity through remuneration for use of television programming, should support the efforts of the United States Senior Interagency Group on International Communication and Information Policy, co-chaired by the Departments of State and Commerce, and its working group on Copyright and Intellectual Property, chaired by the National Telecommunications and Information Administration, to achieve an immediate settlement of the retransmission issue with the Government of Canada.

STENNIS AMENDMENT NO. 3180

Mr. STENNIS proposed an amendment to the joint resolution (H.J. Res. 738), supra, as follows:

On page 2, line 12, strike out the period and insert in lieu thereof a colon and the following: "*Provided,* That, during fiscal year 1987, the Commodity Credit Corporation shall use $1,000,000 worth of surplus agricultural commodities owned by the Corporation in establishing and carrying out a research and development program on external combustion engines under section 4(m) of the Commodity Credit Corporation Charter Act. In addition to any sales required under any other Act, the Secretary of Agriculture, under such terms as the Secretary may prescribe, shall sell notes and other obligations held in the Rural Development Insurance Fund established under section 309A of the Consolidated Farm and Rural Development Act in such amounts as to realize net proceeds to the Government of not less than $1,000,000."

MOYNIHAN (AND OTHERS) AMENDMENT NO. 3181

Mr. STENNIS (for Mr. MOYNIHAN, for himself Mr. KERRY, Mr. KENNEDY, Mr. BOREN, and Mr. MITCHELL) proposed an amendment to the joint resolution (H.J. Res. 738) supra, as follows:

At the end of the joint resolution, add the following:

SEC. . Section 445(b)(1) of the Social Security Act is amended by striking out "June 30, 1985," and inserting in lieu thereof "June 30, 1987,".

Section 445(d) of such Act is amended by striking out "June 30, 1984," and inserting in lieu thereof "June 30, 1987," and by striking out "June 30, 1987" and inserting in lieu thereof "June 30, 1988".

THURMOND AMENDMENT NO. 3182

Mr. STENNIS (for Mr. THURMOND) proposed an amendment to the joint resolution (H.J. Res. 738), supra, as follows:

At the appropriate place, insert:

Add at the end of 18 U.S.C. 2516(2):

"Nothing in this chapter shall be deemed to prohibit a law enforcement officer, in a state that does not have a statute authorizing or approving the interception of wire, electronic or oral communications or a statute forbidding such interception, from intercepting a wire, electronic or oral communication in the course of investigating an ongoing hostage taking situation if a suspect in the hostage taking situation is reasonably believed to be a participant in the communication, under circumstances in which it is impractical to obtain a court order authorizing such interception and reasonable to

assume the implied consent of the hostage to the interception of such communication.

DOMENICI AMENDMENT NO. 3183

Mr. STENNIS (for Mr. DOMENICI) proposed an amendment to the joint resolution (H.J. Res. 738), supra, as follows:

At an appropriate place in the joint resolution insert the following new section:

SEC. . None of the funds provided in this Act may be used to implement the uranium enrichment criteria submitted to Congress on July 24, 1986, pursuant to section 161v of the Atomic Energy Act of 1954.

HUMPHREY (AND ARMSTRONG) AMENDMENT NO. 3184

Mr. HATFIELD (for Mr. HUMPHREY, for himself and Mr. ARMSTRONG) proposed an amendment to the joint resolution (H.J. Res. 738), supra, as follows:

At the appropriate place in the bill, insert the following new section:

SEC. . DENIAL OF TAX BENEFITS FOR ORGANIZATIONS WHICH PERFORM, FINANCE, OR PROVIDE FACILITIES FOR ABORTIONS.

(a) DENIAL OF TAX-EXEMPT STATUS.—Section 501 (relating to exemption from tax on corporations, certain trusts, etc.) is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

"(m) DENIAL OF EXEMPTION FOR ORGANIZATIONS WHICH PERFORM, FINANCE, OR PROVIDE FACILITIES FOR ABORTIONS.—An organization shall not be treated as described in subsection (a) if such organization performs, finances, or provides facilities for any abortion, except where the life of the mother would be endangered if the fetus were carried to term."

(b) DENIAL OF ELIGIBILITY FOR CHARITABLE CONTRIBUTION.—

(1) INCOME TAX.—Section 170(c) (defining charitable contribution) is amended by adding at the end thereof the following: "For purposes of this section, such term does not include a contribution or gift to or for the use of any organization which performs, finances, or provides facilities for any abortion (within the meaning of section 501(m)."

(2) ESTATE TAX.—

(A) IN GENERAL.—Section 2055 (relating to transfers for public, charitable, and religious uses), as amended by section 717, is amended by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following new subsection:

"(g) DENIAL OF DEDUCTION FOR CONTRIBUTION TO ORGANIZATIONS WHICH PERFORM, FINANCE, OR PROVIDE FACILITIES FOR ABORTIONS.—No deduction shall be allowed under this section for a transfer to or for the use of any organization which performs, finances, or provides facilities for any abortion (within the meaning of section 501(m))."

(B) TECHNICAL AMENDMENTS.—

(i) Subparagraph (E) of section 2106(a)(2) (relating to transfers for public, charitable, and religious uses from taxable estates of nonresidents not citizens) is amended by striking out "section 2055(e)" and inserting in lieu thereof "subsections (e) and (g) of section 2055".

(ii) Subparagraph (F)(ii) of section 2106(a)(2), as amended by section 717, is amended by striking out "section 2055(g)" and inserting in lieu thereof "section 2055(h)".

(3) GIFT TAX.—Section 2522 (relating to charitable and similar gifts), as amended by section 717, is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (f) the following new subsection:

"(e) DENIAL OF DEDUCTION FOR CONTRIBUTIONS TO ORGANIZATIONS WHICH PERFORM, FINANCE, OR PROVIDE FACILITIES FOR ABORTIONS.—No deduction shall be allowed under this section for a gift to or for the use of any organization which performs, finances, or provides facilities for any abortion (within the meaning of section 501(m))."

(c) EFFECTIVE DATES.—

(1) ABORTIONS AFTER DATE OF ENACTMENT.—The amendments made by this section shall take into account only abortions (within the meaning of section 501(m) of the Internal Revenue Code of 1954 as added by this section) performed after the date of the enactment of this Act.

(2) SUBSECTION (a).—The amendment made by subsection (a) shall take effect on September 30, 1986.

(3) SUBSECTION (b).—The amendments made by subsection (b) shall apply to estates of decedents dying, and transfers, after September 29, 1986.

WARNER (AND TRIBLE) AMENDMENT NO. 3185

Mr. WARNER (for himself and Mr. TRIBLE) proposed an amendment to the joint resolution (H.J. Res. 738), supra, as follows:

At the end of the bill, add the following:

TITLE VI—METROPOLITAN WASHINGTON AIRPORTS

SEC. 6001. SHORT TITLE.

This title may be cited as the "Metropolitan Washington Airports Act of 1986".

SEC. 6002. FINDINGS.

The Congress finds that—

(1) the two federally owned airports in the metropolitan area of Washington, District of Columbia, constitute an important and growing part of the commerce, transportation, and economic patterns of the Commonwealth of Virginia, the District of Columbia, and the surrounding region;

(2) Baltimore/Washington International Airport, owned and operated by the State of Maryland, is an air transportation facility that provides service to the greater Metropolitan Washington region together with the two federally owned airports, and timely Federal-aid grants to Baltimore/Washington International Airport will provide additional capacity to meet the growing air traffic needs and to compete with other airports on a fair basis;

(3) the Federal Government has a continuing but limited interest in the operation of the two federally owned airports, which serve the travel and cargo needs of the entire Metropolitan Washington region as well as the District of Columbia as the national seat of government;

(4) operation of the Metropolitan Washington Airports by an independent local agency will facilitate timely improvements at both airports to meet the growing demand of interstate air transportation occasioned by the Airline Deregulation Act of 1978 (Public Law 95-504; 92 Stat. 1705);

(5) all other major air carrier airports in the United States are operated by public entities at the State, regional, or local level;

(6) any change in status of the two airports must take into account the interest of nearby communities, the traveling public, air carriers, general aviation, airport employees, and other interested groups, as well as the interests of the Federal Government and State governments involved;

(7) in recognition of the limited need for a Federal role in the management of these airports and the growing local interest, the Secretary has recommended a transfer of authority from the Federal to the local/State level that is consistent with the management of major airports elsewhere in the Nation;

(8) an operating authority with representation from local jurisdictions, similar to authorities at all major airports in the United States, will improve communications with local officials and concerned residents regarding noise at the Metropolitan Washington Airports;

(9) a commission of congressional, State, and local officials and aviation representatives has recommended to the Secretary that transfer of the federally owned airports be as a unit to an independent authority to be created by the Commonwealth of Virginia and the District of Columbia; and

(10) the Federal interest in these airports can be provided through a lease mechanism which provides for local control and operation.

SEC. 6003. PURPOSE.

(a) IN GENERAL.—It is therefore declared to be the purpose of the Congress in this title to authorize the transfer of operating responsibility under long-term lease of the two metropolitan Washington Airport properties as a unit, including access highways and other related facilities, to a properly constituted independent airport authority created by the Commonwealth of Virginia and the District of Columbia, in order to achieve local control management, operation, and development of these important transportation assets.

(b) INCLUSION OF BWI NOT PRECLUDED.—Nothing in this title shall be construed to prohibit the Airports Authority and the State of Maryland from entering into an agreement whereby Baltimore/Washington International Airport may be made part of a regional airports authority, subject to terms and conditions agreed to by the Airports Authority, the Secretary, the Commonwealth of Virginia, the District of Columbia, and the State of Maryland.

SEC. 6004. DEFINITIONS.

In this title—

(1) ADMINISTRATOR.—The term "Administrator" means the Administrator of the Federal Aviation Administration.

(2) AIRPORTS AUTHORITY.—The term "Airports authority" means the Metropolitan Washington Airports Authority, a public body to be created by the Commonwealth of Virginia and the District of Columbia consistent with the requirements of section 6007.

(3) EMPLOYEES.—The term "employees" means all permanent Federal Aviation Administration personnel employed on the date the lease under section 6005 takes effect by the Metropolitan Washington Airports, an organization within the Federal Aviation Administration.

(4) METROPOLITAN WASHINGTON AIRPORTS.—The term "Metropolitan Washington Airports" means Washington National Airport and Washington Dulles International Airport.

(5) SECRETARY.—The term "Secretary" means the Secretary of Transportation.

(6) WASHINGTON DULLES INTERNATIONAL AIRPORT.—The term "Washington Dulles International Airport" means the airport constructed under the Act entitled "An Act to authorize the construction, protection, operation, and maintenance of a public airport in or in the vicinity of the District of Columbia", approved September 7, 1950 (64 Stat. 770), and includes the Dulles Airport Access Highway and Right-of-way, including the extension between the Interstate Routes I-495 and I-66.

(7) WASHINGTON NATIONAL AIRPORT.—The term "Washington National Airport" means the airport described in the Act entitled "An Act to provide for the administration of the Washington National Airport, and for other purposes", approved June 29, 1940 (54 Stat. 686).

SEC. 6005. LEASE OF METROPOLITAN WASHINGTON AIRPORTS.

(a) AUTHORITY TO ENTER INTO LEASE.—The Secretary is authorized to enter into a lease of the Metropolitan Washington Airports with the Airports Authority for a 50-year term and to enter into any related agreement necessary for the transfer of authority and property to the Airports Authority. Authority to enter into a lease and agreement under this section shall lapse two years after the date of the enactment of this title.

(b) Payments.—

(1) LEASE PAYMENTS.—The lease shall provide for the Airports Authority to pay to the general fund of the Treasury $150,000,000 over the term of the lease, in equal annual installments.

(2) RETIREMENT OBLIGATIONS.—

(A) DISCONTINUED SERVICE.—Not later than one year after the lease takes effect, the Airports Authority shall pay to the Treasury of the United States, to be deposited to the credit of the Civil Service Retirement and Disability Fund, an amount determined by the Office of Personnel Management to represent the actual added costs incurred by the Fund due to discontinued service retirement under section 8336(d)(1) of title 5, United States Code, of employees who elect not to transfer to the Airports Authority.

(B) UNFUNDED LIABILITY.—Not later than one year after the lease takes effect, the Airports Authority shall pay to the Treasury of the United States, to be deposited to the credit of the Civil Service Retirement and Disability Fund, an amount determined by the Office of Personnel Management to represent the present value of the difference between (i) the future cost of benefits payable from the Fund and due the employees covered under section 1008(e) of this title that are attributable to the period of employment following the date the lease takes effect, and (ii) the contributions made by the employees and the Airports Authority under section 1008(e). In determining the amount due, the Office of Personnel Management shall take into consideration the actual interest such amount can be expected to earn when invested in the Treasury of the United States.

(c) MINIMUM TERMS AND CONDITIONS.—The Airports Authority shall agree, at a minimum, to the following conditions and requirements in the lease:

(1) OPERATION OF AIRPORTS AS A UNIT.—The Airports Authority shall operate, maintain, protect, promote, and develop the Metropolitan Washington Airports as a unit and as primary airports serving the Metropolitan Washington area.

(2) AIRPORT PURPOSES.—The real property constituting the Metropolitan Washington Airports shall, during the period of the lease, be used only for airport purposes. For the purposes of this paragraph, the term "airport purposes" means a use of property interests (other than a sale) for aviation business or activities, or for activities necessary or appropriate to serve passengers or cargo in air commerce, or for nonprofit, public use facilities. If the Secretary determines that any portion of the real property leased to the Airports Authority pursuant to this Act is used for other than airport purposes, the Secretary shall (A) direct that appropriate measures be taken by the Airports Authority to bring the use of such portion of real property in conformity with airport purposes, and (B) retake possession of such portion of real property if the Airports Authority fails to bring the use of such portion into a conforming use within a reasonable period of time, as determined by the Secretary.

(3) AIP REQUIREMENTS.—The Airports Authority shall be subject to the requirements of section 511(a) of the Airport and Airway Improvement Act of 1982 and the assurances and conditions required of grant recipients under such Act as of the date the lease takes effect. Notwithstanding section 511(a)(12) of such Act, all revenues generated by the Metropolitan Washington Airports shall be expended for the capital and operating costs of such airports.

(4) CONTRACTS.—In acquiring by contract supplies or services for an amount estimated to be in excess of $200,000, or awarding concession contracts, the Airports Authority shall obtain, to the maximum extent practicable, full and open competition through the use of published competitive procedures. By a vote of seven members, the Airports Authority may grant exceptions to the requirements of this paragraph.

(5) CONTINUATION OF REGULATIONS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), all regulations of the Metropolitan Washington Airports (14 C.F.R. part 159) shall become regulations of the Airports Authority on the date the lease takes effect and shall remain in effect until modified or revoked by the Airports Authority in accordance with procedures of the Airports Authority.

(B) EXECPTIONS.—The following regulations shall cease to be in effect on the date the lease takes effect:

(i) section 159.59(a) of title 14, Code of Federal Regulations (relating to new-technology aircraft); and

(ii) section 159.191 of title 14, Code of Federal Regulations (relating to violations of Federal Aviation Administration regulations as Federal misdemeanors).

(C) OPERATIONS.—The Airports Authority may not increase or decrease the number of instrument flight rule takeoffs and landings authorized by the High Density Rule (14 C.F.R. 93.121 et seq.) at Washington National Airport on the date of the enactment of this Act and may not impose a limitation after the date the lease takes effect on the number of passengers taking off or landing at Washington National Airport.

(6) TRANSFER OF RIGHTS. LIABILITIES, AND OBLIGATIONS.—

(A) IN GENERAL.—Except as specified in subparagraph (B) of this paragraph, the Airports Authority shall assume all rights, liabilities, and obligations (tangible and incorporeal, present and executory) of the Metropolitan Washington Airports on the date the lease takes effect, including leases, permits, licenses, contracts, agreements, claims, tariffs, accounts receivable, accounts payable, and litigation relating to such rights and obligations, regardless whether judgment has been entered, damages awarded, or appeal taken. Before the date the lease takes effect, the Secretary shall also assure that the Airports Authority has agreed to cooperate in allowing representatives of the Attorney General and the Secretary adequate access to employees and records when needed for the performance of functions related to the period before the effectiveness of the lease. The Airports Authority shall assume responsibility for the Federal Aviation Administration's Master Plans for the Metropolitan Washington Airports.

(B) EXCEPTIONS.—The procedure for disputes resolution contained in any contract entered into on behalf of the United States before the date the lease takes effect shall continue to govern the performance of the contract unless otherwise agreed to by the parties to the contract. Claims for monetary damages founded in tort, by or against the United States as the owner and operator of the Metropolitan Washington Airports, arising before the date the lease takes effect shall be adjudicated as if the lease had not been entered into.

(C) PAYMENTS INTO EMPLOYEES' COMPENSATION FUND.—The Federal Aviation Administration shall remain responsible for reimbursing the Employees' Compensation Fund, pursuant to section 8147 of title 5, United States Code, for compensation paid or payable after the date the lease takes effect in accordance with chapter 81 of title 5, United States Code, with regard to any injury, disability, or death due to events arising before such date, whether or not a claim has been filed or is final on such date.

(D) COLLECTIVE BARGAINING RIGHTS.—The Airports Authority shall continue all collective bargaining rights enjoyed before the date the lease takes effect by employees of the Metropolitan Washington Airports.

(7) AUDITS.—The Comptroller General of the United States may conduct periodic audits of the activities and transactions of the Airports Authority in accordance with generally accepted management principles, and under such rules and regulations as may be prescribed by the Comptroller General. Any such audit shall be conducted at such place or places as the Comptroller General may deem appropriate. All books, accounts, records, reports, files, papers, and property of the Airports Authority shall remain in possession and custody of the Airports Authority.

(8) CODE OF ETHICS.—The Airports Authority shall develop a code of ethics and financial disclosure in order to assure the integrity of all decisions made by the board and its employees.

(9) RESTRICTION ON USE OF CERTAIN REVENUES.—Notwithstanding any other provision of law, no landing fee imposed for operating an aircraft or revenues derived from parking automobiles—

(A) at Washington Dulles International Airport may be used for maintenance of operating expenses (excluding debt service, depreciation, and amortization) at Washington National Airport; or

(B) at Washington National Airport may be used for maintenance of operating expenses (excluding debt service, depreciation, and amortization) at Washington Dulles International Airport.

(10) GENERAL AVIATION FEES.—The Airports Authority shall compute the fees and

charges for landing general aviation aircraft at the Metropolitan Washington Airports on the same basis as the landing fees for air carrier aircraft, except that the Airports Authority may require a minimum landing fee not in excess of the landing fee for aircraft weighing 12,500 pounds.

(11) OTHER TERMS.—The Secretary shall include such other terms and conditions applicable to the parties to the lease as are consistent with and carry out the provisions of this title.

(d) SUBMISSION TO CONGRESS.—The Secretary shall submit the lease entered into under this section to Congress. The lease may not take effect before the passage of (1) 30 days, or (2) 10 days in which either House of Congress is in session, whichever occurs later.

(e) ENFORCEMENT OF LEASE PROVISIONS.—The district courts of the United States shall have jurisdiction to compel the Airports Authority and its officers and employees to comply with the terms of the lease. An action may be brought on behalf of the United States by the Attorney General, or by any aggrieved party.

SEC. 6006. CAPITAL IMPROVEMENTS, CONSTRUCTION, AND REHABILITATION.

(a) IMPROVEMENTS.—It is the sense of the Congress that the Airports Authority should—

(1) pursue the improvement, construction, and rehabilitation of the facilities at Washington Dulles International Airport and Washington National Airport simultaneously; and

(2) to the extent practicable, cause the improvement, construction, and rehabilitation proposed by the Secretary to be completed at both of such Airports within 5 years after the earliest date on which the Airports Authority issues bonds under the authority required by section 6007 of this title for any such improvement, construction, or rehabilitation.

(b) SECRETARY'S ASSISTANCE.—The Secretary shall assist the three airports serving the Washington, D.C. metropolitan area in planning for operational and capital improvements at those airports for Federal financial assistance by whichever of the three airports is most in need of increasing airside capacity.

SEC. 6007. AIRPORTS AUTHORITY.

(a) POWER CONFERRED BY VIRGINIA AND THE DISTRICT OF COLUMBIA.—The Airports Authority shall be a public body corporate and politic, having the powers and jurisdiction as are conferred upon it jointly by the legislative authority of the Commonwealth of Virginia and the District of Columbia or by either of the jurisdictions and concurred in by the legislative authority of the other jurisdiction, but at a minimum meeting the requirements of this section.

(b) PURPOSE.—The Authority shall be—

(1) independent of the Commonwealth of Virginia and its local governments, the District of Columbia, and the Federal Government; and

(2) a political subdivision constituted solely to operate and improve both Metropolitan Washington Airports as primary airports serving the Metropolitan Washington area.

(c) GENERAL AUTHORITIES.—The Airports Authority shall be authorized—

(1) to acquire, maintain, improve, operate, protect, and promote the Metropolitan Washington Airports for public purposes;

(2) to issue bonds from time to time in its discretion for public purposes, including the purposes of paying all or any part of the cost of airport improvements, construction, and rehabilitation, and the acquisition of real and personal property, including operating equipment for the airports, which bonds—

(A) shall not constitute a debt of either jurisdiction or a political subdivision thereof; and

(B) may be secured by the Airports Authority's revenues generally, or exclusively from the income and revenues of certain designated projects whether or not they are financed in whole or part from the proceeds of such bonds;

(3) to acquire real and personal property by purchase, lease, transfer, or exchange, and to exercise such powers of eminent domain within the Commonwealth of Virginia as are conferred upon it by the Commonwealth of Virginia;

(4) to levy fees or other charges; and

(5) to make and maintain agreements with employee organizations to the extent that the Federal Aviation Administration is so authorized on the date of enactment of this title.

(d) CONFLICT-OF-INTEREST PROVISIONS.—The Airports Authority shall be subject to a conflict-of-interest provision providing that members of the board and their immediate familes may not be employed by or otherwise hold a substantial financial interest in any enterprise that has or is seeking a contract or agreement with the Airports Authority or is an aeronautical, aviation services, or airport services enterprise that otherwise has interests that can be directly affected by the Airports Authority. Exceptions to requirement of the preceding sentence may be made by the official appointing a member at the time the member is appointed, if the financial interest is fully disclosed and so long as the member does not participate in board decisions that directly affect such interest. The Airports Authority shall include in its code developed under section 6005(c)(8) of this title the standards by which members will determine what constitutes a substantial financial interest and the circumstances under which an exception may be granted.

(3) BOARD OF DIRECTORS.—

(1) APPOINTMENT.—The Airports Authority shall be governed by a board of directors of 11 members, as follows:

(A) 5 members shall be appointed by the Governor of Virginia;

(B) three members shall be appointed by the Mayor of the District of Columbia;

(C) two members shall be appointed by the Governor of Maryland; and

(D) one member shall be appointed by the President with the advice and consent of the Senate.

The Chairman shall be appointed from among the members by majority vote of the members and shall serve until replaced by majority vote of the members.

(2) RESTRICTIONS.—Members shall (A) not hold elective or appointive political office, (B) serve without compensation other than for reasonable expenses incident to board functions, and (C) reside within the Washington Standard Metropolitan Statistical Area, except that the member appointed by the President shall not be required to reside in that area.

(3) TERMS.—Members shall be appointed to the board for a term of 6 years, except that of members first appointed—

(A) by the Governor of Virginia, 2 shall be appointed for 4 years and 2 shall be appointed for 2 years;

(B) by the Mayor of the District of Columbia, 1 shall be appointed for 4 years and 1 shall be appointed for 2 years; and

(C) by the Governor of Maryland, 1 shall be appointed for for 4 years.

(4) REMOVAL OF PRESIDENTIAL APPOINTEES.—A member of the board appointed by the President shall be subject to removal by the President for cause.

(5) REQUIRED NUMBER OF VOTES.—Seven votes shall be required to approve bond issues and the annual budget.

(f) Board of Review.—

(1) COMPOSITION.—The board of directors shall be subject to review of its actions and to requests, in accordance with this subsection, by a board of directors. The Board of Review shall consist of the following, in their individual capacities, as representatives of users of the Metropolitan Washington Airports:

(A) 4 members of the House of Representatives from a list provided by the Speaker of the House;

(B) 4 members of the Senate from a list provided by the President pro tempore of the Senate; and

(C) one member chosen alternately from members of the House of Representatives and members of the Senate, from a list provided by the Speaker of the House or the President pro tempore of the Senate, respectively.

The members of the Board of Review shall elect a chairman. A member of the House of Representatives or the Senate from Maryland or Virginia and the Delegate from the District of Columbia may not serve on the Board of Review.

(2) TERMS.—Members of the Board of Review appointed under subparagraphs (A) and (B) of paragraph (1) shall be appointed for terms of 6 years, except that of the members first appointed one member under each of subparagraphs (A) and (B) shall be appointed for a term of two years and one member under each of subparagraphs (A) and (B) shall be appointed for a term of four years. Members of the Board of Review appointed under subparagraph (C) shall be appointed for terms of 2 years. A vacancy in the Board shall be filled in the same manner in which the original appointment was made. Any member appointed to fill a vacancy before the expiration of the term for which his or her predecessor was appointed shall be appointed only for the remainder of such term.

(3) PROCEDURES.—The Board of Review shall establish procedures for conducting its business. The procedures may include requirements for a quorum at meetings and for proxy voting. The Board shall meet at least once each year and shall meet at the call of the chairman or 3 members of the Board. Any decision of the Board of Review under paragraph (4) or (5) shall be by a vote of 5 members of the Board.

(4) DISAPPROVAL PROCEDURE.—

(A) SUBMISSION REQUIRED.—An action of the Airports Authority described in subparagraph (B) shall be submitted to the Board of Review at least 30 days (or at least 60 days in the case of the annual budget) before it is to become effective.

(B) ACTION AFFECTED.—The following are the actions referred to in subparagraph (A):

(i) the adoption of an annual budget;

(ii) the authorization for the issuance of bonds;

(iii) the adoption, amendment, or repeal of a regulation;

(iv) the adoption or revision of a master plan, including any proposal for land acquisition; and

(v) the appointment of the chief executive officer.

(C) 30-DAY DISAPPROVAL PERIOD.—If the Board of Review does not disapprove an action within 30 days of its submission under this paragraph, the action may take effect. If the Board of Review disapproves any such action, it shall notify the Airports Authority and shall give reasons for the disapproval.

(D) EFFECT OF DISAPPROVAL.—An action disapproved under this paragraph shall not take effect. Unless an annual budget for a fiscal year has taken effect in accordance with this paragraph, the Airports authority may not obligate or expend any money in such fiscal year, except for (i) debt service on previously authorized obligations, and (ii) obligations and expenditures for previously authorized capital expenditures and routine operating expenses.

(5) REQUEST FOR CONSIDERATION OF OTHER MATTERS.—The Board of Review may request the Airports Authority to consider and vote, or to report, on any matter related to the Metropolitan Washington Airports. Upon receipt of such a request the Airports Authority shall consider and vote, or report, on the matter as promptly as feasible.

(6) PARTICIPATION IN MEETINGS OF AIRPORTS AUTHORITY.—Members of the Board of Review may participate as nonvoting members in meetings of the board of the Airports Authority.

(7) STAFF.—The Board of Review may hire one staff person, to be paid by the Airports Authority. The Airports Authority shall provide such clerical and support staff as the Board may require.

(8) LIABILITY.—A member of the Board of Review shall not be liable in connection with any claim, action, suit, or proceeding arising from service on the Board.

(g) CERTAIN ACTIONS TO BE TAKEN BY REGULATION.—Any action of the Airports Authority changing, or having the effect of changing, the hours of operation of or the type of aircraft serving either of the Metropolitan Washington Airports may be taken only by regulation of the Airports Authority.

(h) LIMITATION ON AUTHORITY.—If the Board of Review established under subsection (f) is unable to carry out its functions under this title by reason of a judicial order, the Airports Authority shall have no authority to perform any of the actions that are required by subsection (f)(4) to be submitted to the Board of Review.

SEC. 6008. FEDERAL EMPLOYEES AT THE METROPOLITAN WASHINGTON AIRPORTS.

(a) EMPLOYEE PROTECTION.—Not later than the date the lease under section 6005 takes effect, the Secretary shall ensure that the Airports Authority has established arrangements to protect the employment interest of employees during the 5-year period beginning on such date. These arrangements shall include provisions—

(1) which ensure that the Airports Authority will adopt labor agreements in accordance with the provisions of subsection (b) of this section;

(2) for the transfer and retention of all employees who agree to transfer to the Airports Authority in their same positions for the 5-year period commencing on the date the lease under section 5 takes effect except in cases of reassignment, separation for cause, resignation, or retirement;

(3) for the payment by the Airports Authority of basic and premium pay to transferred employees, except in cases of separation for cause, resignation, or retirement, for 5 years commencing on the date the lease takes effect at or above the rates of pay in effect for such employees on such date;

(4) for credit during the 5-year period commencing on the date the lease takes effect for accrued annual and sick leave and seniority rights which have been accrued during the period of Federal employment by transferred employees retained by the Airports Authority; and

(5) for an offering of not less than one life insurance and three health insurance programs for transferred employees retained by the Airports Authority during the 5-year period beginning on the date the lease takes effect which are reasonably comparable with respect to employee premium cost and coverage to the Federal health and life insurance programs available to employees on the day before such date.

(b) LABOR AGREEMENTS.—

(1) ADOPTION.—The Airports Authority shall adopt all labor agreements which are in effect on the date the lease under section 6005 takes effect. Such agreements shall continue in effect for the 5-year period commencing on such date, unless the agreement provides for a shorter duration or the parties agree to the contrary before the expiration of that 5-year period. Such agreements shall be renegotiated during the 5-year period, unless the parties agree otherwise. Any labor-management negotiation impasse declared before the date the lease takes effect shall be settled in accordance with chapter 71 of title 5, United States Code.

(2) CONTINUATION.—The arrangements made pursuant to this section shall assure, during the 50-year lease term, the continuation of all collective bargaining rights enjoyed by transferred employees retained by the Airports Authority.

(c) RIGHTS OF TERMINATED EMPLOYEES.—Any transferred employee whose employment with the Airports Authority is terminated during the 5-year period beginning on the date the lease under section 6005 takes effect shall be entitled, as a condition of any lease entered into in accordance with section 6005 of this title, to rights and benefits to be provided by the Airports Authority that are similar to those such employee would have had under Federal law if termination had occurred immediately before such date.

(d) ANNUAL AND SICK LEAVE.—Any employee who transfers to the Airports Authority under this section shall not be entitled to lump-sum payment for unused annual leave under section 5551 of title 5, United States Code, but shall be credited by the Airports Authority with the unused annual leave balance on the date the lease under section 6005 takes effect, along with any unused sick leave balance on such date. During the 5-year period beginning on such date, annual and sick leave shall be earned at the same rates permitted on the day before such date, and observed official holidays shall be the same as those specified in section 6103 of title 5, United States Code.

(e) CIVIL SERVICE RETIREMENT.—Any Federal employee who transfers to the Airports Authority and who on the day before the date the lease under section 6005 takes effect is subject to subchapter III of chapter 83 of title 5, United States Code, or chapter 84 of such title shall, so long as continually employed by the Airports Authority without a break in service, continue to be subject to such subchapter or chapter, as the case may be. Employment by the Airports Authority without a break in continuity of service shall be considered to be employed by the United States Government for purposes of such subchapter and chapter. The Airports Authority shall be the employing agency for purposes of such subchapter and chapter and shall contribute to the Civil Service Retirement and Disability Fund such sums as are required by such subchapter and chapter.

(f) SEPARATED EMPLOYEES.—An employee who does not transfer to the Airports Authority and who does not otherwise remain a Federal employee shall be entitled to all of the rights and benefits available under Federal law for separated employees, except that severance pay shall not be payable to an employee who does not accept an offer of employment from the Airports Authority of work substantially similar to that performed for the Federal Government.

(g) ACCESS TO RECORDS.—The Airports Authority shall allow representatives of the Secretary adequate access to employees and employee records of the Airports Authority when needed for the performance of functions related to the period before the date the lease under section 6005 takes effect. The Secretary shall provide the Airports Authority access to employee records of transferring employees for appropriate purposes.

SEC. 6009. RELATIONSHIP TO AND EFFECT OF OTHER LAWS.

(a) OTHER LAWS.—In order to assure that the Airports Authority has the same proprietary powers and is subject to the same restrictions with respect to federal law as any other airport except as otherwise provided in this title, during the period that the lease authorized by section 6005 of this title is in effect—

(1) the Metropolitan Washington Airports shall be considered public airports for purposes of the Airport and Airway Improvement Act of 1982 (49 App. U.S.C. 2201 et seq.); and

(2) the Acts entitled "An Act to provide for the administration of the Washington National Airport, and for other purposes", approved June 29, 1940 (54 Stat. 686), "An Act to authorize the construction, protection, operation, and maintenance of a public airport in or in the vicinity of the District of Columbia", approved September 7, 1950 (64 Stat. 770), and "An Act making supplemental appropriations for the support of the Government for the fiscal year ending June 30, 1941, and for other purposes", approved October 9, 1940 (54 Stat. 1030), shall not apply to the operation of the Metropolitan Washington Airports, and the Secretary shall be relieved of all responsibility under those Acts.

(b) INAPPLICABILITY OF CERTAIN LAWS.—The Metropolitan Washington Airports and the Airports Authority shall not be subject to the requirements of any law solely by reason of the retention by the United States of fee simple title to such airports or by reason of the authority of the Board of Review under section 6007(f).

(c) POLICE POWER.—The Commonwealth of Virginia shall have concurrent police power authority over the Metropolitan Washington Airports, and the courts of the Commonwealth of Virginia may exercise jurisdiction over Washington National Airport.

(d) PLANNING.—

(1) IN GENERAL.—The authority of the National Capital Planning Commission under section 5 of the Act of June 6, 1924 (40 U.S.C. 71d) shall not apply to the Airports Authority.

(2) CONSULTATION.—The Airports Authority shall consult—

(A) with the National Capital Planning Commission and the Advisory Council on Historic Preservation before undertaking any major alterations to the exterior of the main terminal at Washington Dulles International Airport, and

(B) with the National Capital Planning Commission before undertaking development that would alter the skyline of Washington National Airport when viewed from the opposing shoreline of the Potomac River or from the George Washington Parkway.

(e) OPERATION LIMITATIONS.—

(1) HIGH DENSITY RULE.—The Administrator may not increase the number of instrument flight rule takeoffs and landings authorized for air carriers by the high Density Rule (14 C.F.R. 93.121 et seq.) at Washington National Airport on the date of the enactment of this title and may not decrease the number of such takeoffs and landings except for reasons of safety.

(2) ANNUAL PASSENGER LIMITATIONS.—The Federal Aviation Administration air traffic regulations entitled "Modification of Allocation: Washington National Airport" (14 C.F.R. 93.124) shall cease to be in effect on the date of the enactment of this title.

SEC. 6110. AUTHORITY TO NEGOTIATE EXTENSION OF LEASE.

The Secretary and the Airports Authority may at any time negotiate an extension of the lease entered into under section 1005(a).

SEC. 6011. SEPARABILITY.

Except as provided in section 6007(h), if any provision of this title or the application thereof to any person or circumstance is held invalid, the remainder of this title and the application of such provision to other persons or circumstances shall not be affected thereby.

SEC. 6012. NONSTOP FLIGHTS.

A person may not operate an aircraft nonstop in air transportation between Washington National Airport and another airport that is more than 1,000 statute miles away from Washington National Airport.

The table of contents of the bill is amended by adding at the end thereof the following:

TITLE VI—METROPOLITAN WASHINGTON AIRPORTS

Sec. 6001. Short title.
Sec. 6002. Findings.
Sec. 6003. Purpose.
Sec. 6004. Definitions.
Sec. 6005. Lease of Metropolitan Washington airports.
Sec. 6006. Capital improvements, construction, and rehabilitation.
Sec. 6007. Airports authority.
Sec. 6008. Federal employees at the Metropolitan Washington airports.
Sec. 6009. Relationship to and effect of other laws.
Sec. 6010. Authority to negotiate extension of lease.
Sec. 6011. Separability.
Sec. 6012. Nonstop flights.

WILSON (AND CRANSTON) AMENDMENT No. 3186

Mr. WILSON (for himself and Mr. CRANSTON) proposed an amendment to the joint resolution (H.J. Res. 738), supra; as follows:

On page 8 line 12 strike the following ," except that no activity authorized by such Acts shall be funded beyond September 30, 1987."

THURMOND AMENDMENT NO. 3187

Mr. STENNIS (for Mr. THURMOND) proposed an amendment to the joint resolution (H.J. Res. 738), supra; as follows:

At the appropriate place in the joint resolution, insert the following:

SEC. . Section 17(d)(4)(G) of the United States Housing Act of 1937 is amended by inserting before the semicolon the following: "(36 months after notice in the case of projects for which funding notices were issued prior to July 23, 1985)".

LEAHY (AND MOYNIHAN) AMENDMENT NO. 3188

Mr. STENNIS (for Mr. LEAHY and Mr. MOYNIHAN) proposed an amendment to the joint resolution (H.J. Res. 738), supra, as follows:

On page 5, line 3, in the bill, add the following language: "The method of calculation, the preliminary fee, and the percentage established for administrative fees paid to a public housing agency administering a contract under this subsection shall be the method of calculation, the preliminary fee, and the percentage established by the Secretary as of September 30, 1986.".

THURMOND AMENDMENT NO. 3189

Mr. STENNIS (for Mr. THURMOND) proposed an amendment to the joint resolution (H.J. Res. 738), supra, as follows:

At the appropriate place, add the following new section:

SEC. . WAIVER OF CERTAIN MEDICAID REQUIREMENTS.

Notwithstanding the three-month limitation set forth in sections 1902(a)(34) and 1905(a) of the Social Security Act, payment may be made under title XIX of such Act with respect to care and services provided by the Medical University of South Carolina, after September 30, 1984, and before July 1, 1985, to individuals—

(1) who are not described in section 1902(a)(10)(A) of such Act,

(2) who, upon application, would have been eligible as individuals under the age of 18 or pregnant women, for medical assistance under the State plan approved under such title at the time such care and services were provided, and

(3) who, not later than six months after the date of the enactment of this section, are determined by the state agency administering or supervising the administration of such plan to have been so eligible.

RUDMAN AMENDMENT NO. 3190

Mr. RUDMAN proposed an amendment to the joint resolution (H.J. Res. 738), supra, as follows:

On page 2, line 24, strike"." and insert the following: "except that, for purposes of this joint resolution, the paragraph under the heading 'Legal Services Corporation' shall be amended by striking the last proviso and inserting in lieu thereof the following: *'Provided further,* That if funds become available because a national support center has been defunded or denied refund pursuant to section 1011(2) of the Legal Services Corporation Act, as amended by this Act, such funds may be transferred to basic field programs, to be distributed in the manner specified by this paragraph, if the Appropiations Committees of both Houses of Congress have been notified pursuant to section 607 of this Act: *Provided further,* That none of the funds appropriated by this Act may be used to implement or enforce the regulations issued by the Legal Services Corporation regarding legislative and administrative advocacy (45 CFR Part 1612) printed for final publication in the "Federal Register" on May 31, 1984, (49 FR 22651) and on August 1, 1986 (51 FR 27539)'."

KASSEBAUM AMENDMENT NO. 3191

Mrs. KASSEBAUM proposed an amendment to the joint resolution (H.J. Res. 738), supra; as follows:

On page 4, line 16, insert before the period a colon and the following; "*Provided,* That the provisions in such bill under the heading 'Assistance for Africa' shall not apply."

METZENBAUM (AND OTHERS) AMENDMENT NO. 3192

Mr. METZENBAUM (for himself, Mr. THURMOND, Mr. HEINZ, Mr. GLENN, Mr. SPECTER, Mr. DENTON, Mr. SIMON, Mr. LEVIN, Mr. BYRD, Mr. LUGAR, Mr. BOSCHWITZ, and Mr. QUAYLE) proposed an amendment to the joint resolution (H.J. Res. 738), supra; as follows:

At the appropriate place in the resolution, insert the following:

SEC. . (a) Notwithstanding any provision of chapter 11 of title 11, United States Code, the trustee shall pay benefits until May 15, 1987 to retired former employees under a plan, fund, or program maintained or established by the debtor prior to filing a petition (through the purchase of insurance or otherwise) for the purpose of providing medical, surgical, or hospital care benefits, or benefits in the event of sickness, accident, disability, or death.

(b) This section is effective with respect to cases commenced under chapter 11, of title 11, United States Code, in which a plan for reorganization has not been confirmed by the court and in which any such benefit is still being paid on October 2, 1986, and in cases that become subject to chapter 11, title 11 U.S. Code, after October 2, 1986.

(c) This section shall not apply during any period in which a case is subject to chapter 7, title 11 United States Code.

MELCHER AMENDMENT NO. 3193

Mr. MELCHER proposed an amendment which was subsequently modified to the joint resolution (H.J. Res. 738), supra; as follows:

At the apporpriate place in the resolution, add the following new sections:

SEC. . It is the sense of the Senate that the Secretary of Agriculture should make available not less than $10,000,000 worth of flour and cornmeal using the wheat and corn stocks of the Commodity Credit Corpo-

ration. Such flour and cornmeal shall be in addition to the traditional level of assistance made available under section 1114 of the Agriculture and Food Act of 1981, section 416(a) of the Agricultural Act of 1949, section 4 of the Agriculture and Consumer Protection Act of 1973, and any other provision of law administered by the Secretary.

SEC. . (a) During the three-year period beginning with the fiscal year ending September 30, 1987, through the fiscal year ending September 30 1989, the Secretary of Agriculture shall make available to PVO's and Co-op's operating in the Republic of the Philippines and to the Government of the Philippines a total of at least 500,000 metric tons of wheat, 500,000 metric tons of soybeans, and 50 million pounds of dairy products under paragraph (11)(B) of section 416(b) of the Agricultural Act of 1949, notwithstanding any other requirement of such section except the requirements of paragraph (b)(3)(A) and except as provided for therein.

(c) Commodities made available under this section during any fiscal year shall be subject to the agreement of the Republic of the Philippines—

(1) to acquire through commercial arrangements agricultural commodities directly or by private purchases during the fiscal year in an amount equal to 105 percent of the average amount of such agricultural commodities acquired through commercial arrangements during the 3 preceding years.

(2) to permit the sale of commodities furnished under this section in the Republic of the Philippines and to use the local currency generated from such sales (A) by PVO's and Cooperatives to carry out approved programs of assistance in the Republic of the Philippines, (B) to operate lending programs in the manner provided for in section 108 of Public Law 480, and (C) to reimburse the United States in dollars for costs incurred in furnishing such commodities, including transportation and processing, during the same fiscal year in which such costs were incurred. Reimbursements under this paragraph may be made in local currencies generated from the sale of the commodities under this paragraph if they are used to pay expenses of the United States in the Philippines.

(d) To the extent practicable, commodities made available under this section shall be furnished in equal quantities during each of the three fiscal years.

SEC. . (a) During the three-year period beginning with the fiscal year ending September 30, 1987, through the fiscal year ending September 30, 1989, the Secretary of Agriculture shall make available to the Philippines and friendly countries of Africa, under paragraph (b)(11)(A) of section 416 of the Agricultural Act of 1949, at least 500,000 metric tons of wheat and 45 million pounds of dairy products (of which at least 40 million pounds shall be nonfat dried milk, 30 million pounds shall be cheese, and 20 million pounds shall be butter), notwithstanding any other requirement of such section except the requirements of paragraph (b)(3)(A) and except as provided for therein.

(b) Commodities made available to a nation under this section during any fiscal year shall be subject to the agreement of the nation—

(1) to acquire through commercial arrangements agricultural commodities directly or by private purchases during the fiscal year in an amount equal to 105 percent of the average amount of such agricultural commodities acquired through commercial arrangements during the preceding three years;

(2) to sell any commodities furnished under this section within the nation and to use the local currencies generated from such sales to (A) establish and carry out lending programs in such nations in the manner provided for in section 108 of the Agricultural Trade Development and Assistance Act of 1954 and (B) reimburse the United States in dollars for costs incurred in furnishing such commodities, including transportation and processing, in the same fiscal year in which such costs were incurred. Reimbursements under this paragraph may be made in local currencies generated from the sale of the commodities under paragraph (2) if they are used to pay expenses of the United States in the recipient nation.

(c) To the extent practicable, commodities made available under this section shall be furnished in equal quantities during each of the three fiscal years.

(d) For purposes of this section, the term "friendly countries" shall have the same meaning as that term has under the Agricultural Trade Development and Assistance Act of 1954.

SEC. . (a) During the three-year period beginning with the fiscal year ending September 30, 1987, through the fiscal year ending September 30, 1989, the Secretary of Agriculture shall make available to—

(1) Nigeria, 400,000 metric tons of wheat 80 million pounds of dairy products, and 150,000 metric ton of soybeans;

(2) friendly countries in Africa, other than Nigeria, 1 million metric tons of wheat;

(3) India, 30,000 metric tons of soybeans and 50 million pounds of dairy products; and

(4) Bangladesh, 60,000 metric tons of wheat and 20 million pounds of dairy products.

under paragraph (11)(B) of section 416(b) of the Agricultural Act of 1949, notwithstanding any other requirement of such section except the requirements of paragraph (b)(3)(A) and except as provided for therein.

(b) Commodities be made available to a nation or PVO's and cooperatives operating in such nations under this section during any fiscal year shall be subject to the agreement of the nation—

(1) to acquire through commercial arrangements agricultural commodities directly or by private purchases during the fiscal year in an amount equal to 105 percent of the average amount of such agricultural commodities acquired through commercial arrangements during the preceding three years. In the case of Nigeria, an amount equal to the amount so acquired in the proceeding year.

(2) to permit the sale of commodities furnished under this section within the nation and to use the local currencies generated from such sales (A) by PVO's and cooperatives to carry out approved programs of assistance in the country and (B) to operate lending programs in the manner provided for in section 108 of Pub. Law 480, and reimburse the United States in dollars for costs incurred in furnishing such commodities, including transportation and processing, in the same fiscal year in which such costs were incurred. Reimbursements under this paragraph may be made in local currencies generated from the sale of the commodities under paragraph (2) if they are used to pay expenses of the United States in the recipient nation.

(c) To the extent practicable, commodities made available under this section shall be furnished in equal quantities during each of the three fiscal years.

(d) For purposes of this section, the term "friendly countries" shall have the same meaning as that term has under the Agricultural Trade Development and Assistance Act of 1954.

KENNEDY (AND OTHERS) AMENDMENT NO. 3194

Mr. KENNEDY (for himself, Mr GORE, and Mr. KERRY) proposed an amendment to the joint resolution (H.J. Res. 738), supra, as follows:

At the appropriate place in the joint resolution, insert the following new section:

SEC. . (a) Notwithstanding any other provision of this joint resolution, there are appropriated $29,000,000 for carrying out section 1516(a), 1525(a), and 1534(a) of the Public Health Service Act.

(b) Notwithstanding any other provision of this joint resolution, the amount appropriated by section 101(i) of this joint resolution for each program, project, and activity administered by the Public Health Service shall be reduced by an equal percentage in order to achieve a reduction of $29,000,000 from the total amount appropriated by such section for all such programs, projects, and activities.

BUMPERS AMENDMENT NO. 3195

Mr. BUMPERS proposed an amendment to the joint resolution (H.J. Res. 738), supra, as follows:

At the appropriate place, insert the following:

"SEC. . Notwithstanding any other provision of this act, no funds shall be available for grants made by the United States Information Agency to the National Endowment for Democracy as authorized by the National Endowment for Democracy Act.

PRESSLER AMENDMENT NO. 3196

Mr. JOHNSTON (for Mr. PRESSLER) proposed an amendment to the joint resolution (H.J. Res. 738), supra, as follows:

At the appropriate place in the joint resolution, insert the following new section:

SEC. . (a) Subject to the provisions of subsection (b), all telephones sold, rented, or distributed by any other means in the United States after July 1, 1987, shall be hearing aid compatible, as defined in regulations promulgated by the Federal Communications Commission.

(b) The provisions of subsection (a) shall not apply to any telephone—

(1) that is manufactured before July 1, 1987; or

(2) which is not required to be registered under 47 C.F.R. 68.

JOHNSTON AMENDMENT NO. 3197

Mr. JOHNSTON proposed an amendment to the joint resolution (H.J. Res. 738), supra, as follows:

At the appropriate place in the joint resolution, insert the following:

SEC. . (a) Notwithstanding any other provision of law, the Administrator of Gen-

eral Services is authorized during fiscal year 1987 to accept periodic reimbursements from the Senate for the cost of any equipment purchased for the Senate with funds from the General Supply Fund established under section 109 of the Federal Property and Administrative Services Act of 1949. The amount of each such periodic reimbursement shall be computed by amortizing the total cost of each item of equipment over the useful life of the equipment, as determined by the Administrator, in consultation with the Sergeant at Arms of the Senate.

(b) Subsection (a) applies to reimbursements to the General Supply Fund for any equipment purchased for the Senate before, on, or after the date of enactment of this section.

KENNEDY AMENDMENT NO. 3198

Mr. JOHNSTON (for Mr. KENNEDY) proposed an amendment to the joint resolution (H.J. Res. 738), supra, as follows:

At the end of the joint resolution, add the following new title:

TITLE II—ACQUIRED IMMUNE DEFICIENCY SYNDROME

SEC. 201. This title may be cited as the "Acquired Immune Deficiency Syndrome Service Coordination Act of 1986".

SEC. 202. The Congress finds that:

(1) Acquired immune deficiency syndrome is a catastrophic disease and public health problem with consequences which pose significant challenges to American society. It has been declared the Nation's "number one public health priority".

(2) As of June 1986, over 21,500 cases of acquired immune deficiency syndrome have been reported. According to estimates by the Public Health Service, by 1991 there may be 196,000 cases of acquired immune deficiency syndrome and 125,000 deaths from acquired immune deficiency syndrome. The number of Americans who are infected with the AIDS virus is currently estimated to be between 1,000,000 and 1,500,000 individuals.

(3) The Public Health Service estimates that by 1991, the direct costs to provide health care for individuals with acquired immune deficiency syndrome will be between $8,000,000,000 and $16,000,000,000. In 1986, it is estimated the United States will spend between $870,000,000 and $1,300,000,000 for health care for individuals with acquired immune deficiency syndrome.

(4) The costs of caring for individuals with acquired immune deficiency syndrome are disproportionately paid for in certain urban centers. As of June 1986, there are 23 cities in which there are at least 100 cases of acquired immune deficiency syndrome and 1,000 cases of acquired immune deficiency syndrome related complex. Careful coordination of health services has significantly reduced the cost of providing health care in some urban centers.

SEC. 203. Title III of the Public Health Service Act is amended by adding at the end thereof the following new part:

"PART J—ACQUIRED IMMUNE DEFICIENCY SYNDROME

"DEMONSTRATION PROJECTS FOR ACQUIRED IMMUNE DEFICIENCY SYNDROME

"SEC. 391. (a) The Secretary may make grants to public and nonprofit private entities for demonstration projects for the development, establishment, or expansion in service areas of coordinating networks for the provision of comprehensive and cost-effective health and support systems for eligible individuals. Services to be provided through each such network shall include—

"(1) comprehensive ambulatory care services specific to the diagnosis and treatment of acquired immune deficiency syndrome;

"(2) home health care services, hospice services, and respite care services;

"(3) counseling and mental health services; and

"(4) case management services; and

"(5) education for health personnel concerning acquired immune deficiency syndrome and concerning infection with the AIDS virus.

"(b) A grant made under this section shall not be used for—

"(1) the construction or major renovation of facilities;

"(2) the payment or reduction of deficits of an entity which resulted from obligations which were incurred by the entity prior to the date on which the entity receives payment under a grant under this section;

"(3) payment for items and services for which payment may be made under title XVIII of the Social Security Act or under a State plan approved under title XIX of such Act; or

"(4) payment for inpatient hospital services.

"(c) No grant may be made under this section for a demonstration project unless an application therefor is submitted to the Secretary in such form and at such time as the Secretary may prescribe. Each such application shall contain—

"(1) information demonstrating—

"(A) that existing resources in the service area to be served by the demonstration project are insufficient to meet the needs of such service area for care and treatment of eligible individuals; and

"(B) that the entity applying for the grant has a successful record of managing projects which provide a variety of health services;

"(2) assurance that appropriate local health care providers and voluntary organizations have been consulted in development of the application for the grant;

"(3) evidence of coordination with, and support for the application for such grant by, loan public health authorities;

"(4) assurances that the network to be supported by the grant will have appropriate relationships with an academic health center;

"(5) assurances that such network will make every reasonable effort to collect appropriate reimbursement for health services provided by or through such network to persons who are entitled to insurance benefits under title XVIII of the Social Security Act, to medical assistance under a State plan approved under title XIX of such Act, or to assistance for medical expenses under any other public assistance program or private health insurance program;

"(6) assurances that Federal funds made available under this section for any period will be used to supplement and increase the level of State, local, and other non-Federal funds that would in the absence of such Federal funds be made available for the services for which funds are provided under this section and will in no event supplant such State, local, and other non-Federal funds;

"(7) a description of the manner in which the entity applying for a grant under this section will evaluate the services and activities provided by or through the network to be developed, established, or expanded with such grant; and

"(8) such other information as the Secretary may prescribe.

"(d) In making grants under this section, the Secretary shall give special consideration to applicants from service areas with current or projected high incidences of eligible individuals, including service areas with current or projected high incidences of eligible individuals who are children or who are intravenous drug abusers.

"(e) The Secretary may not make a grant under this section in any fiscal year to any entity which receives or has received a grant under section 301 of this Act pursuant to the provisions of Public Law 99-178 for a project demonstrating the delivery of health care services to victims of acquired immune deficiency syndrome.

"(f) No grant under this section for any fiscal year may exceed $1,000,000.

"(g) For purposes of this section—

"(1) the term 'eligible individual' means any individual who has acquired immune deficiency syndrome or any individual who is infected with AIDS virus;

"(2) the term 'nonprofit private entity' means an organization which is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1954 (other than a private foundation as defined in section 509(a) of such Code); and

"(3) the term 'service area' means a metropolitan area which has a significant incidence of acquired immune deficiency syndrome, as determined by the Secretary.

"(h) To carry out this section, there are authorized to be appropriated $40,000,000 for fiscal year 1988. Amounts appropriated under this section shall remain available for obligation or expenditure until September 30, 1989.".

SEC. 204. The Secretary of Health and Human Services shall conduct, or shall provide for the conduct of, a survey to determine—

(1) the total number of children in the United States with acquired immune deficiency syndrome who have been abandoned by their parents and are living in hospital environments;

(2) the total number of children in the United States with acquired immune deficiency syndrome who have been placed in foster care;

(3) the problems encountered by social service agencies in placing children with acquired immune deficiency syndrome in foster care; and

(4) recommendations for improving the care of children with acquired immune deficiency syndrome who lack ongoing parental involvement and support.

HELMS AMENDMENT NO. 3199

Mr. HELMS proposed an amendment to the joint resolution (H.J. Res. 738), supra, as follows:

At the end of the pending amendment, add the following:

SEC. . DISAPPROVAL OF ACTION OF THE DISTRICT OF COLUMBIA COUNCIL.

The Congress disapproves of the action of the District of Columbia Council described as follows: The Prohibition of Discrimination in the Provision of Insurance Act of 1986 (D.C. Law 6-170); and, notwithstanding any other provision of law, D.C. Law 6-170 shall be null and void effective from June 6, 1986.

COCHRAN AMENDMENT NO. 3200

Mr. COCHRAN proposed an amendment to the joint resolution (H.J. Res. 738), supra, as follows:

At the appropriate place, insert the following new sections:

SEC. . CROSS COMPLIANCE FOR PRODUCERS OF EXTRA LONG STAPLE COTTON.

Paragraph (16) of section 103(h) of the Agricultural Act of 1949 (7 U.S.C. 1444(h)(16)) is amended to read as follows:

"(16)(A) Notwithstanding any other provision of law, except as provided in subparagraph (B), compliance on a farm with the terms and conditions of any other commodity program may not be required as a condition of eligibility for loans or payments under this subsection.

"(B) In the case of each of the 1989 and 1990 crops of extra long staple cotton, the Secretary may require that, as a condition of eligibility of producers for loans or payments under this subsection, the acreage planted for harvest on the farm to any other commodity for which an acreage limitation program is in effect shall not exceed the crop acreage base established for the farm for that commodity.

"(C) Notwithstanding any other provision of law, in the case of each of the 1987 and 1988 crops of extra long staple cotton compliance with the terms and conditions of the program authorized by this subsection may not be required as a condition of eligibility for loans, purchases, or payments under any other commodity program.".

SEC. . LOCAL AGRICULTURAL STABILIZATION AND CONSERVATION COMMITTEES.

The fifth paragraph of section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C 590h(b)) (as amended by section 3 of Public Law 99-253 (100 Stat. 36)) is amended—

(1) by inserting after the third sentence the following new sentence: "Notwithstanding the preceding sentence, there may be 1 local administrative area in any county for which there had been established less than 3 local administrative areas as of December 23, 1985."; and

(2) in the sixth sentence (as it existed before the amendment made by pargaraph (1)), by striking out ": *Provided*," and all that follows through the period and inserting in lieu thereof a period.

BOREN (AND OTHERS) AMENDMENT NO. 3201

Mr. BOREN (for himself, Mr. DOLE Mr. ZORINSKY, Mr. ANDREWS, Mr. EXON, Mr. NICKLES, Mr. MELCHER, Mr. ABDNOR, Mrs. KASSEBAUM, and Mr. BURDICK) proposed an amendment to amendment No. 3200 proposed by Mr. COCHRAN to the joint resolution (H.J. Res. 738), supra, as follows:

At the end of amendment 3200, insert the following new sections:

SEC. . BASIS FOR COMPUTATION OF EMERGENCY COMPENSATION UNDER THE 1986 WHEAT PROGRAM.

(a) Section 107D(c)(1)(E)(ii) of the Agricultural Act of 1949 is amended by striking out "marketing year for such crop" and inserting in lieu thereof "first 5 months of the marketing year for the 1986 crop and the marketing year for each of the 1987 through 1990 crops".

(b) The amendment made by this section shall not be applicable to any producer of 1986-crop wheat who (1) elects to have payments under section 107D(c)(1)(E)(ii) of the Agricultural Act of 1949 computed in accordance with the provisions of law in effect prior to the enactment of this Act and (2) so informs the Secretary of Agriculture in writing by December 1, 1986.

SEC. .ELIGIBILITY OF CERTAIN LAND UNDER THE CONSERVATION RESERVE PROGRAM.

Section 1231 of the Food Security Act of 1985 is amended by adding at the end thereof a new subsection (f) as follows:

"(f) For purposes of this subtitle, alfalfa and other multi-year grasses and legumes in rotation, as approved by the Secretary, shall be considered agricultural commodities.".

THURMOND AMENDMENT NO. 3202

Mr. JOHNSTON (for Mr. THURMOND) proposed an amendment to the joint resolution, (H.J. Res. 738), supra, as follows:

On page 7, line 18, immediately before the period, insert the following: ", except that in the administration of the provisions of section 603 of H.R. 5294, during fiscal year 1987, Erna Avari Patrick of Columbia, South Carolina shall be considered to have satisfied the requirement of clause (3) of such section.".

DOLE (AND OTHERS) AMENDMENT NO. 3203

Mr. DOLE (for himself, Mr. BYRD, Mr. LUGAR, Mr. PELL, Mr. EVANS, Mr. KERRY, Mr. DODD, Mr. INOUYE, Mr. KENNEDY, Mr. BRADLEY, Mr. THURMOND, Mr. DOMENICI, Mr. CRANSTON, Mr. MOYNIHAN, Mrs. KASSEBAUM, Mr. METZENBAUM, Mr. DIXON, Mr. TRIBLE, Mr. MATSUNAGA, Mr. ROTH, and Mr. GORTON) proposed an amendment to the joint resolution (H.J. Res. 738), supra, as follows:

At the end of the joint resolution add the following new section.

SEC. . (a) Notwithstanding any other provision of law, in addition to amounts otherwise made available by this joint resolution for the Philippines, the President shall make available $200,000,000 of funds appropriated by this joint resolution for economic assistance to the Philippines. Funds made available by this subsection shall be transferred from accounts contained within budget function 150.

(b) The amounts of funds transferred from any program, project or activity pursuant to subsection (a) shall not exceed 3 percent of the amounts appropriated or otherwise made available by this joint resolution for such program, project or activity.

(c) Funds transferred for purposes of subsection (a) may only be transferred: (1) from accounts within the jurisdiction of the same subcommittee of the Appropriations Committee of the Senate; and (2) to an account with an outlay rate no greater than the account from which the funds were transferred.

(d) Thirty days prior to the provision of any assistance under this section the President shall transmit to the Committee on Appropriations and the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs and the Committee on Appropriations of the House of Representatives a report setting forth the assistance to be provided, the specific accounts from which such assistance is to be provided and the amounts to be provided from each account.

HATFIELD (AND OTHERS) AMENDMENT NO. 3204

Mr. JOHNSTON (for Mr. HATFIELD, for himself, Mr. STENNIS, Mr. STEVENS, Mr. BYRD, Mr. WEICKER, Mr. INOUYE, Mr. MCCLURE, Mr. HOLLINGS, Mr. LAXALT, Mr. JOHNSTON, Mr. COCHRAN, Mr. BURDICK, Mr. ANDREWS, Mr. LEAHY, Mr. ABDNOR, Mr. DECONCINI, Mr. KASTEN, Mr. BUMPERS, Mr. D'AMATO, Mr. LAUTENBERG, Mr. MATTINGLY, Mr. RUDMAN, Mr. SPECTER, Mr. DOMENICI, Mr. CHILES, Mr. SASSER, and Mr. HARKIN) proposed an amendment to the joint resolution (H.J. Res. 738), supra; as follows:

TITLE II

OMNIBUS DRUG SUPPLEMENTAL APPROPRIATIONS ACT OF 1987

CHAPTER I

DEPARTMENT OF JUSTICE

LEGAL ACTIVITIES

SALARIES AND EXPENSES, UNITED STATES ATTORNEYS

For an additional amount for "Salaries and expenses, United States attorneys", $6,000,000.

SUPPORT OF UNITED STATES PRISONERS

For an additional amount for support of United States prisoners in non-Federal institutions, $2,000,000.

ASSETS FORFEITURE FUND

For expenses authorized by 28 U.S.C. 524, as amended by the Comprehensive Forfeiture Act of 1984 and the Anti-Drug Abuse Act of 1986, as passed in the Senate on September 30, 1986, such sums as may be necessary to be derived from the Department of Justice Assets Forfeiture Fund.

FEDERAL BUREAU OF INVESTIGATION

SALARIES AND EXPENSES

For an additional amount for "Salaries and expenses", $4,000,000.

DRUG ENFORCEMENT ADMINISTRATION

SALARIES AND EXPENSES

For an additional amount for "Salaries and expenses", $18,000,000.

FEDERAL PRISON SYSTEM

SALARIES AND EXPENSES

For an additional amount for "Salaries and expenses", $28,000,000.

BUILDINGS AND FACILITIES

For an additional amount for "Buildings and facilities", $50,000,000, to remain available until expended.

OFFICE OF JUSTICE PROGRAMS

JUSTICE ASSISTANCE

For an additional amount for "Justice assistance", $117,000,000, to remain available until expended, for grants for drug law enforcement programs, to be used only to carry out provisions of section 1302 (1), (2), (3), (5), and (6), of Title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended by H.R. 5484, as passed in the Senate on September 30, 1986: *Provided*, That $2,000,000 shall be available only to carry out a pilot prison capacity program.

THE JUDICIARY

COURTS OF APPEALS, DISTRICT COURTS, AND OTHER JUDICIAL SERVICES

DEFENDER SERVICES

For an additional amount for "Defender services", $18,000,000, to remain available until expended.

FEES OF JURORS AND COMMISSIONERS

For an additional amount for "Fees of jurors and commissioners", $7,500,000, to remain available until expended.

RELATED AGENCY

UNITED STATES INFORMATION AGENCY

SALARIES AND EXPENSES

For an additional amount for "Salaries and expenses", $2,000,000, to be available only for drug education programs abroad authorized in H.R. 5484 as passed in the Senate on September 30, 1986.

CHAPTER II

FOREIGN ASSISTANCE

BILATERAL ECONOMIC ASSISTANCE

FUNDS APPROPRIATED TO THE PRESIDENT

AGENCY FOR INTERNATIONAL DEVELOPMENT

Education and human resources development, Development Assistance:

For an additional amount to carry out chapter 1 of part I of the Foreign Assistance Act of 1961, $3,000,000: *Provided*, That these funds shall be used pursuant to section 126(b)(2) of the Foreign Assistance Act of 1961 for additional activities aimed at increasing awareness of the effects of production and trafficking of illicit narcotics on source and transit countries: *Provided further*, That funds made available by this paragraph shall be available through the regular notification procedures of the Committees on Appropriations.

DEPARTMENT OF STATE

INTERNATIONAL NARCOTICS CONTROL

For an additional amount to carry out the provisions of section 481 of the Foreign Assistance Act of 1961, $55,000,000: *Provided*, That of this amount $45,000,000 shall be made available only in accordance with the provisions of section 2001(2) of H.R. 5484, as passed in the Senate on September 30, 1986: *Provided further*, That funds made available by this paragraph shall be available through the regular notification procedures of the Committees on Appropriations.

CHAPTER III

DEPARTMENT OF INTERIOR

BUREAU OF INDIAN AFFAIRS

OPERATION OF INDIAN PROGRAMS

For an additional amount for "Operation of Indian programs", $3,500,000: *Provided*, That funds made available to tribes and tribal organizations through grants or contracts authorized by the Indian Self-Determination and Education Assistance Act of 1975 (88 Stat. 2203; 25 U.S.C. 450 et seq.) shall remain available until September 30, 1988.

CONSTRUCTION

For an additional amount for "Construction", $15,000,000, to remain available until expended.

DEPARTMENT OF AGRICULTURE

FOREST SERVICE

NATIONAL FOREST SYSTEM

For an additional amount for "National forest system", $20,000,000, to remain available until expended.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

HEALTH SERVICES AND RESOURCES ADMINISTRATION

INDIAN HEALTH SERVICES

For an additional amount for "Indian health services," $16,200,000: *Provided*, That funds made available to tribes and tribal organizations through grants or contracts authorized by the Indian Self-Determination and Education Assistance Act of 1975 (88 Stat. 2203; 25 U.S.C. 450 et seq.) shall remain available until September 30, 1988.

INDIAN HEALTH FACILITIES

For an additional amount for "Indian health facilities", $9,000,000, to remain available until expended.

CHAPTER IV

DEPARTMENT OF HEALTH AND HUMAN SERVICES

ALCOHOL, DRUG ABUSE, AND MENTAL HEALTH ADMINISTRATION

ALCOHOL, DRUG ABUSE, AND MENTAL HEALTH BLOCK GRANT

For an additional amount for drug abuse prevention and treatment activities as authorized by title XIX of the Public Health Service Act, as amended by the Anti-Drug Abuse Act of 1986, $236,000,000, of which $11,000,000 shall be transferred to the Administrator of Veterans Affairs to be used in accordance with section 1922 of the Anti-Drug Abuse Act of 1986, as passed in the Senate on September 30, 1986.

NATIONAL INSTITUTE FOR DRUG ABUSE

RESEARCH

For an additional amount for "Research", as authorized by title V of the Public Health Service Act, as amended by the Anti-Drug Abuse Act of 1986, as passed in the Senate on September 30, 1986, $27,000,000.

NATIONAL INSTITUTE FOR ALCOHOL ABUSE AND ALCOHOLISM

RESEARCH

For an additional amount for "Research", as authorized by title V of the Public Health Service Act, as amended by the Anti-Drug Abuse Act of 1986, as passed in the Senate on September 30, 1986, $3,000,000.

INFORMATION CLEARINGHOUSE AND EVALUATION STUDIES

For an additional amount for "Information clearinghouse and evaluation studies", $3,000,000.

DEPARTMENT OF EDUCATION

SPECIAL PROGRAMS

For an additional amount for "Special programs", $150,000,000, to remain available until September 30, 1988: *Provided*, That the remaining funds shall be distributed in accordance with subtitle B of the Anti-Drug Abuse Act of 1986.

RELATED AGENCY

ACTION

OPERATING EXPENSES

For an additional amount for public awareness and education as authorized by the Domestic Volunteer Service Act of 1973, part C of title I, as amended by the Anti-Drug Abuse Act of 1986, $3,000,000, of which $500,000 shall be available for administration, as authorized in title IV of the Domestic Volunteer Service Act of 1973, as amended.

CHAPTER V

DEPARTMENT OF TRANSPORTATION

COAST GUARD

OPERATING EXPENSES

For an additional amount for "Operating expenses", $39,000,000.

ACQUISITION, CONSTRUCTION, AND IMPROVEMENTS

For an additional amount for "Acquisition, construction, and improvements", $119,000,000, to remain available until September 30, 1991, of which not to exceed $5,000,000, may be expended for design and engineering work in relation to construction of a docking facility in the Bahamas.

FEDERAL HIGHWAY ADMINISTRATION

MOTOR CARRIER SAFETY GRANTS

(HIGHWAY TRUST FUND)

For an additional amount to carry out the provisions of section 402 of Public Law 97-424, $30,000,000, to be derived from the Highway Trust Fund, to remain available until September 30, 1989.

CHAPTER VI

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

SALARIES AND EXPENSES

For an additional amount for "Salaries and expenses", $65,900,000.

OPERATION AND MAINTENANCE, AIR INTERDICTION PROGRAM

For an additional amount for "Operation and maintenance, Air Interdiction program", $85,000,000, of which up to $10,000,000 is available for the U.S.-Bahamas Task Force and $25,000,000 is available for establishment of command, control, communications, and intelligence (C-3I) centers, to remain available until expended.

U.S. SECRET SERVICE

SALARIES AND EXPENSES

For an additional amount for "Salaries and expenses", $5,000,000.

EXECUTIVE OFFICE OF THE PRESIDENT

WHITE HOUSE CONFERENCE ON DRUG ABUSE AND CONTROL

SALARIES AND EXPENSES

For necessary expenses of the White House Conference on Drug Abuse and Control, $2,000,000.

CHAPTER VII

DEPARTMENT OF DEFENSE

OPERATION AND MAINTENANCE

OPERATION AND MAINTENANCE, AIR FORCE

For an additional amount for "Operation and maintenance, Air Force", $12,615,000.

OPERATION AND MAINTENANCE, DEFENSE AGENCIES

For an additional amount for "Operation and maintenance, Defense agencies", $27,000,000.

PROCUREMENT

AIRCRAFT PROCUREMENT, ARMY

For an additional amount for "Aircraft procurement, Army", $22,500,000.

AIRCRAFT PROCUREMENT, NAVY

For an additional amount for "Aircraft procurement, Navy", $183,000,000.

OTHER PROCUREMENT, AIR FORCE

For an additional amount for "Other procurement, Air Force", $117,000,000.

This title may be cited as the "Omnibus Drug Supplemental Appropriations Act of 1987".

71-059 O-87-11 (Pt. 20)

HECHT (AND METZENBAUM) AMENDMENT NO. 3205

Mr. JOHNSTON (for Mr. HECHT, for himself and Mr. METZENBAUM) proposed an amendment to the joint resolution (H.J. Res. 738), supra, as follows:

The bill is amended by adding at the appropriate place two new sections as follows:

"SEC. .

The primary term of any geothermal lease in effect as of July 27, 1984, issued pursuant to the Geothermal Act of 1970 (Public Law 91-581, 84 Stat. 1566, 30 U.S.C. 1001-1025) is hereby extended to December 31, 1988, if the Secretary of the Interior finds that—

(a) a bona fide sale of the geothermal resource, from a well capable of production, for delivery to or utilization by a facility or facilities, has not been completed (1) due to administrative delays by government entities, beyond the control of the lessee, or (2) such sale would be uneconomic;

(b) substantial investment in the development of or for the benefit of the lease has been made; and

(c) the lease would otherwise expire prior to December 31, 1988.

SEC. . PROTECTION FOR UNITS OF THE NATIONAL PARK SYSTEM.

(a) The Secretary of the Interior (hereinafter in this section referred to as "the Secretary" shall publish for public comment in the Federal Register within 120 days after the date of enactment of this section a proposed list of significant thermal features within the following units of the National Park System:

Mount Rainier National Park;
Lassen Volcanic National Park;
Yellowstone National Park;
Bering Land Bridge National Preserve:
Gates of the Arctic National Park and Preserve;
Yukon-Charley Rivers National Preserve;
Katmai National Park;
Aniakchak National Monument and Preserve;
Wrangell-St. Elias National Park and Preserve;
Glacier Bay National Park and Preserve;
Denali National Park and Preserve;
Lake Clark National Park and Preserve;
Hot Springs National Park;
Sequoia National Park;
Hawaii Volcanoes National Park;
Lake Mead National Recreation Area;
Big Bend National Park;
Olympia National Park
Grand Teton National Park;
John. D. Rockefeller, Jr. Memorial Parkway;
Haleakala National Park; and
Crater Lake National Park;

The Secretary shall include with such list the basis for his determination with respect to each thermal feature on the list. Based on public comment on such list, the Secretary is authorized to make additions to or deletions from the list. Not later than the 60th day from the date on which the proposed list was published in the Federal Register, the Secretary shall transmit the list to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives together with copies of all public comments which he has received and indicating any additions to or deletions from the list with a statement of the reasons therefore and the basis for inclusion of each thermal feature on the list. The Secretary shall consider the following criteria in determining the significance of thermal features:

(1) size, extent, and uniqueness;

(2) scientific and geologic significance;

(3) the extent to which such features remain in a natural, undisturbed condition; and

(4) significance of thermal features to the authorized purposes for which the National Park System unit was created.

The Secretary shall not issue any geothermal lease pursuant to the Geothermal Steam Act of 1970 (Pub. L. 91-581, 84 Stat. 1566), as amended, until such time as the Secretary has transmitted the list to the Committees of Congress as provided in this section.

(b) The Secretary shall maintain a monitoring program for those significant thermal features listed pursuant to subsection (a) of this section.

(c) Upon receipt of an application for a geothermal lease the Secretary shall determine on the basis of scientific evidence if exploration, development, or utilization of the lands subject to the geothermal lease application is reasonably likely to result in a significant adverse effect on a significant thermal feature listed pursuant to subsection (a) of this section. Such determination shall be subject to notice and public comment. If the Secretary determines on the basis of scientific evidence that the exploration, development, or utilization of the land subject to the geothermal lease application is reasonably likely to result in a significant adverse effect on a significant thermal feature listed pursuant to subsection (a) of this section, the Secretary shall not issue such geothermal lease. In addition, the Secretary shall withdraw from leasing under the Geothermal Steam Act of 1970, as amended, those lands, or portion thereof, subject to the application for geothermal lease, the exploration, development, or utilization of which is reasonably likely to result, based on the Secretary's determination, in a significant adverse effect on a significant thermal feature listed pursuant to subsection (a) of this section.

(d) With respect to all geothermal leases issued after the date of enactment of this section the Secretary shall include stipulations in leases necessary to protect significant thermal features listed pursuant to subsection (a) of this section where a determination is made based on scientific evidence that the exploration, development, or utilization of the lands subject to the lease is reasonably likely to adversely affect such significant thermal features. Such stipulations shall include, but are not limited to:

(1) requiring the lessee to reinject geothermal fluids into the rock formations from which they originate;

(2) requiring the lessee to report annually to the Secretary on its activities;

(3) requiring the lessee to continuously monitor geothermal production and injection wells; and

(4) requiring the lessee to suspend activity, temporarily or permanently, on the lease if the Secretary determines that ongoing exploration, development, or utilization activities are having a significant adverse effect on significant thermal features listed pursuant to subsection (a) of this section until such time as the significant adverse effect is eliminted.

(e) The Secretary of Agriculture shall consider the effects on significant thermal features of those units of the National Park System identified in subsection (a) of this section in determining whether to consent to leasing under the Geothermal Steam Act of 1970, as amended, on national forest or other lands administered by the Department of Agriculture available for leasing under the Geothermal Steam Act of 1970, as amended, including public, withdrawn, and acquired lands.

(f) Nothing contained in this section shall affect the ban on leasing under the Geothermal Steam Act of 1970, as amended, with respect to the Island Park Known Geothermal Resources Area, as provided for in Public Law 98-473 (98 Stat. 1837) and Public Law 99-190 (99 Stat. 1267).

(g) Except as provided herein, nothing contained in this section shall affect or modify the authorities or responsibilities of the Secretary under the Geothermal Steam Act of 1970, as amended, by any other provision of law.

(h) The provisions of this section shall remain in effect until Congress detemines otherwise.

KASSEBAUM (AND OTHERS) AMENDMENT NO. 3206

Mr. JOHNSTON (for Mrs. KASSEBAUM, for herself, Mr. LUGAR, Mr. PELL, Mr. ABDNOR, and Mr. KERRY) proposed an amendment to the joint resolution (H.J. Res. 738), supra, as follows:

At the appropriate place in the joint resolution, insert the following new section:

SEC. . (a) The Congress finds that the activities conducted under the authorities of the Foreign Assistance Act of 1961 have contributed greatly to the alleviation of human suffering and the promotion of economic development in the recipient countries. The Congress finds further that changing circumstances in the developing countries and changing availability of resources from the United States require that a comprehensive review of the activities under that Act be undertaken.

(b) It is, therefore, the sense of the Congress that the President should undertake a comprehensive review of the activities authorized by the Foreign Assistance Act of 1961 and should send to the Senate Foreign Relations Committee and the House Foreign Affairs Committee by February 1, 1987, his recommendations for amending the Act or otherwise modifying those activities.

INOUYE AMENDMENT NO. 3207

Mr. JOHNSTON (for Mr. INOUYE) proposed an amendment to the joint resolution (H.J. Res. 738), supra, as follows:

Insert at the appropriate place:

SECTION . MEMBERSHIP OF HEALTH CARE PROFESSIONALS ON COMMISSION

(a) Section 502(a) of title 21 of the District of Columbia Code is amended by striking out the last sentence and inserting in lieu thereof "Eight of the members of the Commission shall be health care professionals who are psychiatrists, or doctoral level psychologists, practicing in the District of Columbia who have had not less than five years' experience in the treatment of mental illnesses.".

SERVICE OF HEALTH CARE PROFESSIONALS

(b) Section 502(c) of title 21 of the District of Columbia Code is amended to read as follows:

"(c) Members of the Commission who are health care professionals shall serve on a

part-time basis and shall be rotated by assignment of the Chief Judge of the court, so that at any one time the Commission shall consist of the chairman and two members who are health care professionals. Members of the Commission who are health care professionals may practice their profession during their tenure of office, but may not participate in the disposition of a case in which they have rendered professional service or advice.".

TRANSITION PROVISIONS

(c) The members of the District of Columbia Commission on Mental Health on the date of the enactment of this Act shall serve the unexpired portions of their terms as members of such commission.

EFFECTIVE DATE

(d) The provisions of this Act shall take effect on the date of enactment.

PRYOR AMENDMENT NO. 3208

Mr. JOHNSTON (for Mr. PRYOR) proposed an amendment to the joint resolution (H.J. Res. 738), supra, as follows:

Insert at the appropriate place: The Administrator of the Environmental Protection Agency shall enter into a cooperative enforcement agreement under section 28 and related sections of the Toxic Substances Control Act with the State of Arkansas. Such agreement shall include provisions providing for the presence of a state inspector on site during hours of operation to insure compliance with all applicable PCB regulations, including permit conditions, at the Ensco Incinerator in El Dorado, Arkansas.

McCLURE (AND OTHERS) AMENDMENTS NO. 3209

Mr. JOHNSTON (for Mr. MCCLURE, for himself, Mr. BYRD, Mr. METZENBAUM, Mr. ROCKEFELLER, Mr. GORE, and Mr. MURKOWSKI) proposed an amendment to the joint resolution (H.J. Res. 738), supra, as follows:

At the appropriate place in H. Res. 738, insert the following new section:

SECTION . (a) Section 1102(a) of the National Parks and Recreation Act of 1978 (Public Law 95-625) is amended by inserting the following after the second sentence: "In addition, the Secretary may acquire by any of the foregoing methods not to exceed ten acres outside the boundaries of the national river for an administrative headquarters site, and funds appropriated for land acquisition shall be available for the acquisition of the administrative headquarters site.".

(b) Section 1112 of Public Law 95-625 is amended by striking "$500,000" and inserting "$3,000,000".

(c) The Congress finds that—

(1) certain developed and productive desert land entries in Idaho, identified in subsection (d) of this section, made pursuant to the Act entitled "An Act to provide for the sale of desert lands in certain States and Territories", approved March 3, 1877 (43 U.S.C. 321, et seq.), commonly known and hereinafter referred to as the "Desert Land Act", have been cancelled by the Secretary of the Interior pursuant to holding limitation regulations promulgated pursuant to section 7 of the Act (43 U.S.C. 329);

(2) such regulations were retroactively applied to such desert land entries several years after the entries were allowed and more than two years after final development, proof and final payment for such entries were made, without giving the entrymen any opportunity to comply with the new interpretation of such regulations;

(3) cancellation of such desert land entries was harsh and unfair, and resulted in forfeiture to the Government of the developed entries and the monies paid for the land;

(4) such entrymen have fulfilled the requirements of the Desert Land Act in all respects other than such holding limitation regulations; and

(5) such entrymen, or their heirs or devisees, should have the entries reinstated and qualify for issuance of patents to carry out the objectives of the Desert Land Act.

(d) The names of the entrymen, and the serial numbers of the desert land entries generally known as the "Sailor Creek Project", to which this Act applies, are as follows:

Entryman	Bureau of Land Management Serial Number
G. Patrick Morris	Idaho 013820
John E. Roth	Idaho 013905
Elise L. Neeley	Idaho 013906
Lyle D. Roth	Idaho 013907
Vera M. Noble (Now Baltzor)	Idaho 014126
Charlene S. Baltzor	Idaho 014128
George R. Baltzor	Idaho 014129
John E. Morris (deceased)	Idaho 014130
Juanita M. Morris	Idaho 014249
Nellie Mae Morris (deceased)	Idaho 014250
Milo Axelsen	Idaho 014251
Peggy Axelsen	Idaho 014252

(e)(1) The desert land entries identified in subsection (d) of this Act are hereby reinstated. The entrymen, or the heirs or devisees of any deceased entryman, may—

(A) rescind any agreement which is prohibited by the Secretary of the Interior pursuant to regulations under section 7 of the Act (43 U.S.C. 329) within six months after the date of enactment of this Act; and

(B) resubmit final proof of reclamation and cultivation of the land in accordance with the provisions of section 7 of the Act (43 U.S.C. 329) before December 31, 1988.

(2) The Secretary of the Interior shall issue patents to the entrymen named in subsection (d), or their heirs or devisees upon compliance with the provisions of subsection (e)(1) and the submission of satisfactory final proof.

(f) Notwithstanding any other provisions of law, the property right prior to issuance of a patent to the land of any entryman identified in subsection (d) of this section, or the heirs or devisees of any such entryman whose entry is reinstated in accordance with subsection (e) of this section, shall be a personal right, inheritable but not assignable. Any such entry may be mortgaged in the manner permitted by regulations promulgated by the Secretary of the Interior for the purpose of securing repayment of monies borrowed for development of the entry or for farm operating or crop production expenses.

(g)(1) The Women in Military Service for America Memorial Foundation is authorized to establish a memorial on Federal land in the District of Columbia and its environs to honor women who have served in the Armed Forces of the United States. Such memorial shall be established in accordance with the provisions of H.R. 4378, as approved by the Senate on September 10, 1986 (S. Rept. 99-421).

(2) The organization or organizations approved by the Secretary shall establish the memorial with non-Federal funds.

(h)(1) The Black Revolutionary War Patriots Foundation is authorized to establish a memorial on Federal land in the District of Columbia and its environs to honor the estimated five thousand courageous slaves and free black persons who served as soldiers and sailors or provided civilian assistance during the American Revolution and to honor the countless black men, women, and children who ran away from slavery or filed petitions with courts and legislatures seeking their freedom. Such memorial shall be established in accordance with the provisions of H.R. 4378, as approved by the House of Representatives on September 29, 1986.

(2) The Black Revolutionary War Patriots Foundation shall establish the memorial with non-Federal funds.

McCLURE (AND OTHERS) AMENDMENT NO. 3210

Mr. JOHNSTON (for Mr. WARNER) (for himself, and Mr. BYRD) proposed an amendment to the joint resolution (H.J. Res. 738), supra, as follows:

Insert at the appropriate place:

Notwithstanding any legislative or judicial requirement, the Office of Surface Mining Reclamation and Enforcement may delay the finalization of the proposed rulemaking amending Parts 773 and 778 of the Code of Federal Regulations as published in the Federal Register on April 5, 1985 (50 FR13724) until March 31, 1987.

REJECTION OF COLLECTIVE BARGAINING AGREEMENTS

METZENBAUM (AND OTHERS) AMENDMENT NO. 3211

Mr. BYRD (for Mr. METZENBAUM, Mr. THURMOND, Mr. HEINZ, Mr. GLENN, Mr. SPECTER, Mr. DENTON, Mr. DURENBERGER, Mr. SIMON, Mr. LEVIN, Mr. ROCKEFELLER, and Mr. BOSCHWITZ) proposed an amendment to the bill (H.R. 5490) to amend title 11, United States Code, to clarify the current meaning of section 1113 relating to the rejection of collective-bargaining agreements by debtors in bankruptcy; as follows:

Strike everything after the enacting clause and insert in lieu thereof the following:

SEC. 1. Notwithstanding any provision of chapter 11 of title 11, United States Code, the trustee shall pay benefits until May 15, 1987, to retired former employees under a plan, fund, or program maintained or established by the debtor prior to filing a petition (through the purchase of insurance or otherwise) for the purpose of providing medical, surgical, or hospital care benefits, or benefits in the event of sickness, accident, disability, or death.

SEC. 2. This Act is effective with respect to cases commenced under chapter 11, of title 11, United States Code, in which a plan for reorganization has not been confirmed by the court and in which any such benefit is still being paid on October 2, 1986, and in cases under which an order for relief is en-

tered under chapter 11 of title 11, United States Code, after October 2, 1986, while such case is a case under chapter 11.

PROCESS PATENT AMENDMENTS ACT

MATHIAS AMENDMENT NO. 3212

Mr. STEVENS (for Mr. MATHIAS) proposed an amendment to the bill (H.R. 4899) to amend title 35, United States Code, with respect to patented processes and the patent cooperation treaty; as follows:

Strike out all of title I and insert in lieu thereof the following:

TITLE I—PATENTED PROCESSES

SEC. 101. This title may be cited as the "Process Patent Amendments Act of 1986".

SEC. 102. (a) Section 154 of title 35, United States Code, is amended by inserting after "United States," the following: "and, if the invention is a process, of the right to exclude others, to the extent provided in section 271(a)(2), from using or selling products produced thereby throughout the United States, or importing products produced thereby into the United States,".

(b) Section 271 of title 35, United States Code, is amended by—

(1) inserting "(1)" after "(a)";

(2) adding at the end of subsection (a), the following:

"(2) If the patented invention is a process, whoever without authority uses or sells within, or imports into, the United States during the term of the patent therefor a product produced by such process, infringes the patent. A product will no longer be considered to have been produced by a patented process once it has been materially changed by subsequent steps or processes.".

(c) Section 287 of title 35, United States Code, is amended by—

(1) striking out "Limitation on damages" in the section heading and inserting in lieu thereof "Limitation on damages and other remedies";

(2) inserting "(a)" before "Patentees,"; and

(3) adding at the end thereof the following new subsection:

"(b)(1) An infringer under section 271(a)(2) shall be subject to all of the provisions relating to damages and injunctions set forth in this title except to the extent that those remedies are limited by this subsection or section 3. The limitations on remedies set forth in this subsection shall not be available to any party who—

"(A) engaged in the actual practice of the patented process;

"(B) is owned or controlled by the party who engaged in the actual practice of the patented process;

"(C) owns or controls the party who engaged in the actual practice of the patented process;

"(D) having made a request for disclosure as provided in subsection (b)(5), fails to notify its supplier of patents identified in response to the request and to instruct its supplier to refrain from infringement of such patents; or

"(E) had knowledge prior to the infringement that a patented process was used to produce the product whose importation, use, or sale constituted the infringement.

"(2) No damages shall be recovered by the patentee unless the infringer had notice of the infringement and continued to infringe thereafter. Damages may be recovered only for infringement that occurred after notice of infringement.

"(3) No remedy may be obtained during the eighteen months after the date of notice for retail sales of a normal volume of products in inventory or on order at the time of notice, obtained from a party in the United States who did not use the patented process, provided the retailer discloses to the patentee, within 30 days from notice, the identity and location of the party from whom the products were purchased. Normal quantity of products in inventory and on order shall be determined by previous business practices, and could include units of a product ordered prior to notice and received within a period not to exceed eighteen months after notice.

"(4) The remedy for the importation, use, or sale of units of the infringing product ordered prior to notice and imported, used, or sold in a manner consistent with the normal business practices of the infringer during the six months after the date of notice shall be limited to a reasonable royalty. The limitation in this subparagraph shall not be available to any party who failed to make a request for disclosure, as defined in subparagraph (5), of the party asserting infringement or its licensee.

"(5)(A) For purposes of this paragraph, a 'request for disclosure' means a written request made to a party then engaged in the manufacture of a product to identify all process patents owned by or licensed to that party as of the time of the request that could reasonably be asserted to be infringed under section 271(a)(2) if that product were imported into, or sold or used in, the United States by an unauthorized party. A request for disclosure is further limited to a request—

"(i) made by a party regularly engaged in the sale of the same type of products as the party to whom the request is directed, or a request which includes facts showing that the requester plans to engage in the sale of such products; and

"(ii) made prior to such party's first importation, use, or sale of units of the product produced by an infringing process and prior to notice of infringement.

"(B) In any action where the infringer made a request for disclosure from the party asserting infringement and the infringed patent was not identified within 60 days, the remedy for the importation, use, or sale of units of the infringing product which are imported, used, or sold by the infringer in a manner consistent with the normal business practices of the infringer during the eighteen months after the date of notice shall be limited to a reasonable royalty.

"(C) For the purposes of the limitations on remedies in this subsection—

"(i) no party may make more than one request for disclosure of the same party for the identification of process patents for producing a particular product; and

"(ii) no party who has received the benefit of the limitations of this paragraph or paragraph (4) with respect to the infringement of one process patent shall be entitled to that benefit in the event of a subsequent infringement of any process patent for producing the same product owned by the same patentholder at the time of the first infringement.

"(6) For the purposes of the remedy limitations in subsection (b), notice of infringement means actual knowledge, or receipt of notification, that a product was produced by a patented process without authorization of the patentee. A notification shall constitute notice of infringement only if it is in writing and sets forth facts which are sufficient to establish that there is a substantial likelihood that the product was made by the infringing process. Filing an action for infringement shall constitute notice of infringement only if the pleadings or other papers filed in the action meet the requirements of a notification.".

(d) The table of sections for chapter 29 of title 35, United States Code, is amended by amending the item relating to section 287 to read as follows:

"287. Limitations on damages and other remedies; marking and notice.".

SEC. 103. (a) This title and the amendments made by this title shall apply only to products produced or imported after the date of enactment, and shall not abridge or affect the right of any persons or their successors in business to continue to use, sell or import any specific product already in substantial and continuous sale or use in the United States on July 1, 1986, or for which substantial preparation for such sale or use was made before such date, to the extent equitable for the protection of commercial investments made or business commenced in the United States before such date.

(b) This title and the amendments made by this title shall not deprive a patent owner of any other remedies available under section 271 of title 35, United States Code, section 337 of the Tariff Act of 1930, or any other provision of law.

SEC. 104. Beginning on the date one year after the date of enactment of this title and each year for 4 additional years thereafter, the Department of Commerce shall submit an annual report to the Congress on the effect of this title and the amendments made by this title, on the importation of ingredients to be used for manufacturing products in the United States in those domestic industries that submit formal complaints to the Department alleging that their legitimate sources of supply have been adversely affected.

SEC. 105. (a) Chapter 29 of title 35, United States Code, is amended by adding at the end thereof the following:

"§ 295. Presumption: product produced by patented process

"In actions alleging infringement of a process patent based on use, sale, or importation of a product produced by the patented process, if the court finds (1) that a substantial likelihood exists that the product was produced by the patented process and (2) that the claimant has made a reasonable effort to determine the process actually used in the production of the product and was unable so to determine, the product shall be presumed to have been so produced, and the burden of establishing that the product was not produced by the process shall be on the party asserting that it was not so produced.".

(b) The table of sections for chapter 29 of title 35, United States Code, is amended by adding after the item relating to section 294 the following:

"295. Presumption: product produced by patented process.".

COMPUTER FRAUD AND ABUSE ACT OF 1986

TRIBLE AMENDMENT NO. 3213

Mr. STEVENS (for Mr. TRIBLE) proposed an amendment to the bill (H.R. 4718) to amend title 18, United States Code, to provide additional penalties for fraud and related activities in connection with access devices and computers, and for other purposes, as follows:

Strike all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE

This Act may be cited as the "Computer Fraud and Abuse Act of 1986".

SEC. 2. SECTION 1030 AMENDMENTS.

(a) MODIFICATION OF DEFINITION OF FINANCIAL INSTITUTION.—Section 1030(a)(2) of title 18, United States Code, is amended—

(1) by striking out "knowingly" and inserting "intentionally" in lieu thereof;

(2) by striking out "as such terms are defined in the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 et seq.),";

(3) by striking out the term "or" where it appears at the end of section 1030(a)(2) of title 18; and

(4) by adding after the term "financial institution" the following: "or of a card issuer as defined in section 1602(n) of title 15,".

(b) MODIFICATION OF EXISTING GOVERNMENT COMPUTERS OFFENSE.—Section 1030(a)(3) of title 18, United States Code, is amended—

(1) to read as follows:

"(3) intentionally, without authorization to access any computer of a department or agency of the United States, access such a computer of that department or agency that is exclusively for the use of the Government of the United States or, in the case of a computer not exclusively for such use, is used by or for the Government of the United States and such conduct affects the use of the Government's operation of such computer;"; and

(2) by striking out the flush language after section 1030(a)(3) of title 18, United States Code, beginning with "It is not an offense" and all that follows through "use of the computer.".

(c) MODIFICATION OF AUTHORIZED ACCESS ASPECT OF OFFENSES.—Paragraph (1) and (2) of section 1030(a) of title 18, United States Code, are each amended by striking out ", or having accessed" and all that follows through "does not extend" and inserting "or exceeds authorized access" in lieu thereof.

(d) NEW OFFENSES.—Section 1030(a) of title 18, United States Code, is amended by inserting after paragraph (3) the following:

"(4) knowingly and with intent to defraud, accesses a Federal interest computer without authorization, or exceeds authorized access, and by means of such conduct furthers the intended fraud and obtains any thing of value, unless the object of the fraud and the thing obtained consists only of the use of the computer;

"(5) intentionally accesses a Federal interest computer without authorization, and by means of one or more instances of such conduct alters, damages, or destroys information in any such Federal interest computer, or prevents authorized use of any such computer or information, and thereby—

"(A) causes loss to one or more others of a value aggregating $1,000 or more during anyone year period; or

"(B) modifies or impairs, or potentially modifies or impairs. the medical examination, medical diagnosis, medical treatment, or medical care of one or more individual; or

"(6) knowingly and with intent to defraud traffics (as defined in section 1029) in any password or similar information through which a computer may be accessed without authorization, if—

"(A) such trafficking affects interstate or foreign commerce; or

"(B) such computer is used by or for the Government of the United States;".

(e) ELIMINATION OF SECTION SPECIFIC CONSPIRACY OFFENSE.—Section 1030(b) of title 18, United States Code, is amended—

(1) by striking out "(1)"; and

(2) by striking out paragraph (2).

(f) PENALTY AMENDMENTS.—Section 1030 of title 18, United States Code, is amended—

(1) by striking out "of not more than the greater of $10,000" in subsection (c)(1)(A) and inserting "under this title" in lieu thereof;

(2) by striking out "of not more than the greater of $10,000" and all that follows through "obtained by the offense" in subsection (c)(1)(B) and inserting "under this title" in lieu thereof;

(3) by striking out "or (a)(3)" each place it appears in subsection (c)(2) and inserting ", (a)(3) or (a)(6)" in lieu thereof;

(4) by striking out "of not more than the greater of $5,000" and all that follows through "created by the offense" in subsection (c)(2)(A) and inserting "under this title" in lieu thereof;

(5) by striking out "of not more than the greater of $10,000" and all that follows through "created by the offense" in subsection (c)(2)(B) and inserting "under this title" in lieu thereof;

(6) by striking out "not than" in subsection (c)(2)(B) and inserting "not more than" in lieu thereof;

(7) by striking out the period at the end of subsection (c)(2)(B) and inserting "; and" in lieu thereof;

(8) by adding at the end of subsection (c) the following:

"(3)(A) a fine under this title or imprisonment for not more than five years, or both, in the case of an offense under subsection (a)(4) or (a)(5) of this section which does not occur after a conviction for another offense under such subsection, or an attempt to commit an offense punishable under this subparagraph; and

"(B) a fine under this title or imprisonment for not more than ten years, or both, in the case of an offense under subsection (a)(4) or (a)(5) of this section which occurs after a conviction for another offense under such subsection, or an attempt to commit an offense punishable under this paragraph."; and

(9) by deleting the term "(b)(1)" where it appears in the first line of section 1030(c) of title 18 and inserting in lieu thereof the term "(b)".

(g) CONFORMING AMENDMENTS TO DEFINITIONS PROVISION.—Section1030(e) of title 18, United States Code, is amended—

(1) by striking out the comma after "As used in this section" and inserting a one-em dash in lieu thereof;

(2) by aligning the remaining portion of the subsection so that it is cut in two ems and begins as an indented paragraph, and inserting "(1)" before "the term";

(3) by striking out the period at the end and inserting a semicolon in lieu thereof; and

(4) by adding at the end thereof the following:

"(2) the term 'Federal interest computer' means a computer—

"(A) exclusively for the use of a financial institution or the United States Government, or, in the case of a computer not exclusively for such use, used by or for a financial institution or the United States Government and the conduct constituting the offense affects the use of the financial institution's operation or the Government's operation of such computer; or

"(B) which is one of two or more computers used in committing the offense, not all of which are located in the same State;

"(3) the term 'State' includes the District of Columbia, the Commonwealth of Puerto Rico, and any other possession or territory of the United States;

"(4) the term 'financial institution' means—

"(A) a bank with deposits insured by the Federal Deposit Insurance Corporation;

"(B) the Federal Reserve or a member of the Federal Reserve including any Federal Reserve Bank;

"(C) an institution with accounts insured by the Federal Savings and Loan Insurance Corporation;

"(D) a credit union with accounts insured by the National Credit Union Administration;

"(E) a member of the Federal home loan bank system and any home loan bank;

"(F) any institution of the Farm Credit System under the Farm Credit Act of 1971;

"(G) a broker-dealer registered with the Securities and Exchange Commission pursuant to section 15 of the Securities Exchange Act of 1934; and

"(H) the Securities Investor Protection Corporation;

"(5) the term 'financial record' means information derived from any record held by a financial institution pertaining to a customer's relationship with the financial institution;

"(6) the term 'exceeds authorized access' means to access a computer with authorization and to use such access to obtain or alter information in the computer that the accesser is not entitled so to obtain or alter; and

"(7) the term 'department of the United States' means the legislative or judicial branch of the Government or one of the executive departments enumerated in section 101 of title 5.".

(h) LAW ENFORCEMENT AND INTELLIGENCE ACTIVITY EXCEPTION.—Section 1030 of title 18, United States Code, is amended by adding at the end the following new subsection:

"(f) This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a political subdivision of a State, or of an intelligence agency of the United States.".

PENALTIES FOR FALSE CLAIMS

GRASSLEY AMENDMENT NO. 3214

Mr. STEVENS (for Mr. GRASSLEY) proposed an amendment to the bill (S. 1562) to amend the False Claims Act, and title 18 of the United States Code

regarding penalties for false claims, and for other purposes; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "False Claims Amendments Act of 1986".

SEC. 2. FALSE CLAIMS.

Section 3729 of title 31, United States Code, is amended—

(1) by striking the matter preceding paragraph (1) and inserting the following:

"(a) LIABILITY FOR CERTAIN ACTS.—Any person who—";

(2) in paragraph (1) by striking "Government or a member of an armed force" and inserting "United States Government or a member of the Armed Forces of the United States";

(3) in paragraph (2) by inserting "by the Government" after "approved";

(4) in paragraph (4)—

(A) by striking "public"; and

(B) by striking "in an armed force" and inserting "by the Government";

(5) in paragraph (5)—

(A) by striking "in an armed force" and inserting "by the Government"; and

(B) by striking "or" after the semicolon;

(6) in paragraph (6)—

(A) by striking "a member of an armed force" and inserting "an officer or employee of the Government, or a member of the Armed Forces,"; and

(B) by striking the period at the end of the paragraph and inserting "; or"; and

(7) by adding at the end of the subsection the following:

"(7) knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Government,

is liable to the United States Government for a civil penalty of not less than $5,000 and not more than $10,000, plus 3 times the amount of damages which the Government sustains because of the act of that person, except that if the court finds that—

"(A) the person committing the violation of this subsection furnished officials of the United States responsible for investigating false claims violations with all information known to such person about the violation within 30 days after the date on which the defendent first obtained the information;

"(B) such person fully cooperated with any Government investigation of such violation; and

"(C) at the time such person furnished the United States with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under this title with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into such violation;

the court may assess not less than 2 times the amount of damages which the Government sustains because of the act of the person. A person violating this subsection shall also be liable to the United States Government for the costs of a civil action brought to recover any such penalty of damages.

"(b) KNOWING AND KNOWINGLY DEFINED.—For purposes of this section, the terms 'knowing' and 'knowingly' mean that a person, with respect to information—

"(1) has actual knowledge of the information;

"(2) acts in deliberate ignorance of the truth or falsity of the information; or

"(3) acts in reckless disregard of the truth or falsity of the information,

and no proof of specific intent to defraud is required.

"(c) CLAIM DEFINED.—For purposes of this section, 'claim' includes any request or demand, whether under a contract or otherwise, for money or property which is made to a contractor, grantee, or other recipient if the United States Government provides any portion of the money or property which is requested or demanded, or if the Government will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded.

"(d) EXEMPTION FROM DISCLOSURE.—Any information furnished pursuant to subparagraphs (A) through (C) of subsection (a) shall be exempt from disclosure under section 552 of title 5.

"(e) EXCLUSION.—This section does not apply to claims, records, or statements made under the Internal Revenue Code of 1954.".

SEC. 3. CIVIL ACTIONS FOR FALSE CLAIMS.

Section 3730 of title 31, United States Code, is amended to read as follows:

"§ 3730. Civil actions for false claims

"(a) RESPONSIBILITIES OF THE ATTORNEY GENERAL.—The Attorney General diligently shall investigate a violation under section 3729. If the Attorney General finds that a person has violated or is violating section 3729, the Attorney General may bring a civil action under this section against the person.

"(b) ACTIONS BY PRIVATE PERSONS.—(1) A person may bring a civil action for a violation of section 3729 for the person and for the United States Government. The action shall be brought in the name of the Government. The action may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting.

"(2) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the Government pursuant to Rule 4(d)(4) of the Federal Rules of Civil Procedure. The complaint shall be filed in camera, shall remain under seal for at least 60 days, and shall not be served on the defendant until the court so orders. The Government may elect to intervene and proceed with the action within 60 days after it receives both the complaint and the material evidence and information.

"(3) The Government may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under paragraph (2). Any such motions may be supported by affidavits or other submissions in camera. The defendant shall not be required to respond to any complaint filed under this section until 20 days after the complaint is unsealed and served upon the defendant pursuant to Rule 4 of the Federal Rules of Civil Procedure.

"(4) Before the expiration of the 60-day period of any extensions obtained under paragraph (3), the Government shall—

"(A) proceed with the action, in which case the action shall be conducted by the Government; or

"(B) notify the court that it declines to take over the action, in which case the person bringing the action shall have the right to conduct the action.

"(5) When a person brings an action under this subsection, no person other than the Government may intervene or bring a related action based on the facts underlying the pending action.

"(c) RIGHTS OF THE PARTIES TO QUI TAM ACTIONS.—(1) If the Government proceeds with the action, it shall have the primary responsibility for prosecuting the action, and shall not be bound by an act of the person bringing the action. Such person shall have the right to continue as a party to the action, subject to the limitations set forth in paragraph (2).

"(2)(A) The Government may dismiss the action notwithstanding the objections of the person initiating the action if the person has been notified by the Government of the filing of the motion and the court has provided the person with an opportunity for a hearing on the motion.

"(B) The Government may settle the action with the defendant notwithstanding the objections of the person initiating the action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, such hearing may be held in camera.

"(C) Upon a showing by the Government that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the Government's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the person's participation, such as—

"(i) limiting the number of witnesses the person may call;

"(ii) limiting the length of the testimony of such witnesses;

"(iii) limiting the person's cross-examination of witnesses; or

"(iv) otherwise limiting the participation by the person in the litigation.

"(D) Upon a showing by the defendant that unrestricted participation during the course of the litigation by the person initiating the action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the person in the litigation.

"(3) If the Government elects not to proceed with the action, the person who initiated the action shall have the right to conduct the action. If the Government so requests, it shall be served with copies of all pleadings filed in the action and shall be supplied with copies of all deposition transcripts (at the Government's expense). When a person proceeds with the action, the court, without limiting the status and rights of the person initiating the action, may nevertheless permit the Government to intervene at a later date upon a showing of good cause.

"(4) Whether or not the Government proceeds with action, upon a showing by the Government that certain actions of discovery by the person initiating the action would interfere with the Government's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay such discovery for a period of not more than 60 days. Such a showing shall be conducted in camera. The court may extend the 60-day period upon a further showing in camera that the Government has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

"(5) Notwithstanding subsection (b), the Government may elect to pursue its claim

through any alternate remedy available to the Government, including any administrative proceeding to determine a civil money penalty. If any such alternate remedy is pursued in another proceeding, the person initiating the action shall have the same rights in such proceeding as such person would have had if the action had continued under this section. Any finding of fact or conclusion of law made in such other proceeding that has become final shall be conclusive on all parties to an action under this section. For purposes of the preceding sentence, a finding or conclusion is final if it has been finally determined on appeal to the appropriate court of the United States, if all time for filing such an appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

"(d) AWARD TO QUI TAM PLAINTIFF.—(1) If the Government proceeds with an action brought by a person under subsection (b), such person shall, subject to the second sentence of this paragraph, receive at least 15 percent but not more than 25 percent of the proceeds of the action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the action. Where the action is one which the court finds to be based primarily on disclosures of specific information (other than information provided by the person bringing the action) relating to allegations or transactions in a criminal, civil, or administrative hearing, in a congressional, administrative, or Government Accounting Office report, hearing, audit, or investigation, or from the news media, the court may award such sums as it considers appropriate, but in no case more than 10 percent of the proceeds, taking into account the significance of the information and the role of the person bringing the action in advancing the case to litigation. Any payment to a person under the first or second sentence of this paragraph shall be made from the proceeds. Any such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

"(2) If the Government does not proceed with an action under this section, the person bringing the action or settling the claim shall receive an amount which the court decides is reasonable for collecting the civil penalty and damages. The amount shall be not less than 25 percent and not more than 30 percent of the proceeds of the action or settlement and shall be paid out of such proceeds. Such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

"(3) If the Government does not proceed with the action and the person bringing the action conducts the action, the court may award to the defendant its reasonable attorneys' fees and expenses if the defendant prevails in the action and the court finds that the claim of the person bringing the action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

"(e) CERTAIN ACTIONS BARRED.—(1) No court shall have jurisdiction over an action brought by a former or present member of the armed forces under subsection (b) of this section against a member of the armed forces arising out of such person's service in the armed forces.

"(2)(A) No court shall have jurisdiction over an action brought under subsection (b) against a Member of Congress, a member of the judiciary, or a senior executive branch official if the action is based on evidence or information known to the Government when the action was brought.

"(B) For purposes of this paragraph, 'senior executive branch official' means any officer or employee listed in section 201(f) of the Ethics in Government Act of 1978 (5 U.S.C. App.)

"(3) In no event may a person bring an action under subsection (b) which is based upon allegations or transactions which are the subject of a civil suit or an administrative civil money penalty proceeding in which the Government is already a party.

"(4)(A) No court shall have jurisdiction over an action under this section based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a congressional, administrative, or Government Accounting Office report, hearing, audit, or investigation, or from the news media, unless the action is brought by the Attorney General or the person bringing the action is an original source of the information.

"(B) For purposes of this paragraph, 'original source' means an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the Government before filing an action under this section which is based on the information.

"(f) GOVERNMENT NOT LIABLE FOR CERTAIN EXPENSES.—The Government is not liable for expenses which a person incurs in bringing an action under this section.

"(g) FEES AND EXPENSES TO PREVAILING DEFENDANT.—In civil actions brought under this section by the United States, the provisions of section 2412(d) of title 28 shall apply.".

SEC. 4. ENTITLEMENT TO RELIEF FOR DISCRIMINATION BY EMPLOYERS AGAINST EMPLOYEES WHO REPORT VIOLATIONS.

Section 3730 of title 31, United States Code, as amended by section 3 of this Act, is further amended by adding at the end the following new subsection:

"(h) Any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by his or her employer because of lawful acts done by the employee on behalf of the employee or others in furtherance of an action under this section, including investigation for, initiation of, testimony for, or assistance in an aciton filed or to be filed under this section, shall be entitled to all relief necessary to make the employee whole. Such relief shall include reinstatement with the same seniority status such employee would have had but for the discrimination, 2 times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys fees. An employee may bring an action in the appropriate district court of the United States for the relief provided in this subsection.".

SEC. 5. FALSE CLAIMS PROCEDURE.

Section 3731 of title 31, United States Code, is amended by striking subsection (b) and inserting the following:

"(b) A civil action under section 3730 may not be brought—

"(1) more than 6 years after the date on which the violation of section 3729 is committed, or

"(2) more than 3 years after the date when facts material to the right of action are known or reasonably should have been known by the official of the United States charged with responsibility to act in the circumstances, but in no event more than 10 years after the date on which the violation is committed,

whichever occurs last.

"(c) In any action brought under section 3730, the United States shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

"(d) Notwithstanding any other provision of law, the Federal Rules of Criminal Procedure, or the Federal Rules of Evidence, a final judgment rendered in favor of the United States in any criminal proceeding charging fraud or false statements, whether upon a verdict after trial or upon a plea of guilty or nolo contendere, shall estop the defendant from denying the essential elements of the offense in any action which involves the same transaction as in the criminal proceeding and which is brought under subsection (a) or (b) of section 3730.".

SEC. 6. FALSE CLAIMS JURISDICTION; CIVIL INVESTIGATIVE DEMANDS.

(a) IN GENERAL.—Subchapter III of chapter 37 of title 31, United States Code, is amended by adding at the end the following new sections:

"§ 3732. False claims jurisdiction

"(a) ACTIONS UNDER SECTION 3730.—Any action under section 3730 may be brought in any judicial district in which the defendant or, in the case of multiple defendants, any one defendant can be found, resides, transacts business, or in which any act proscribed by section 3729 occurred. A summons as required by the Federal Rules of Civil Procedure shall be issued by the appropriate district court and served at any place within or outside the United States.

"(b) CLAIMS UNDER STATE LAW.—The district courts shall have jurisdiction over any action brought under the laws of any State for the recovery of funds paid by a State or local government if the action arises from the same transaction or occurrence as an action brought under section 3730.

"§ 3733. Civil investigative demands

"(a) IN GENERAL.—

"(1) ISSUANCE AND SERVICE.—Whenever the Attorney General has reason to believe that any person may be in possession, custody, or control of any documentary material or information relevant to a false claims law investigation, the Attorney General may, before commencing a civil proceeding under section 3730 or other false claims law, issue in writing and cause to be served upon such person, a civil investigative demand requiring such person—

"(A) to produce such documentary material for inspection and copying,

"(B) to answer in writing written interrogatories with respect to such documentary material or information,

"(C) to give oral testimony concerning such documentary material or information, or

"(D) to furnish any combination of such material, answers, or testimony.

The Attorney General may not delegate the authority to issue civil investigative demands under this subsection. Whenever a civil investigative demand is an express

demand for any product of discovery, the Attorney General, the Deputy Attorney General, or an Assistant Attorney General shall cause to be served, in any manner authorized by this section, a copy of such demand upon the person from whom the discovery was obtained and shall notify the person to whom such demand is issued of the date on which such copy was served.

"(2) CONTENTS AND DEADLINES.—

"(A) Each civil investigative demand issued under paragraph (1) shall state the nature of the conduct constituting the alleged violation of a false claims law which is under investigation, and the applicable provision of law alleged to be violated.

"(B) If such demand is for the production of documentary material, the demand shall—

"(i) describe each class of documentary material to be produced with such definiteness and certainty as to permit such material to be fairly identified;

"(ii) prescribe a return date for each such class which will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying; and

"(iii) identify the false claims law investigator to whom such material shall be made available.

"(C) If such demand is for answers to written interrogatories, the demand shall—

"(i) set forth with specificity the written interrogatories to be answered;

"(ii) prescribe dates at which time answers to written interrogatories shall be submitted; and

"(iii) identify the false claims law investigator to whom such answers shall be submitted.

"(D) If such demand is for the giving of oral testimony, the demand shall—

"(i) prescribe a date, time, and place at which oral testimony shall be commenced;

"(ii) identify a false claims law investigator who shall conduct the examination and the custodian to whom the transcript of such examination shall be submitted;

"(iii) specify that such attendance and testimony are necessary to the conduct of the investigation;

"(iv) notify the person receiving the demand of the right to be accompanied by an attorney and any other representative; and

"(v) describe the general purpose for which the demand is being issued and the general nature of the testimony, including the primary areas of inquiry, which will be taken pursuant to the demand.

"(E) Any civil investigative demand issued under this section which is an express demand for any product of discovery shall not be returned or returnable until 20 days after a copy of such demand has been served upon the person from whom the discovery was obtained.

"(F) The date prescribed for the commencement of oral testimony pursuant to a civil investigative demand issued under this section shall be a date which is not less than seven days after the date on which demand is received, unless the Attorney General or an Assistant Attorney General designated by the Attorney General determines that exceptional circumstances are present which warrant the commencement of such testimony within a lesser period of time.

"(G) The Attorney General shall not authorize the issuance under this section of more than one civil investigative demand for oral testimony by the same person unless the person requests otherwise or unless the Attorney General, after investigation, notifies that person in writing that an additional demand for oral testimony is necessary. The Attorney General may not, notwithstanding section 510 of title 28, authorize the performance, by any other officer, employee, or agency, of any function vested in the Attorney General under this subparagraph.

"(b) PROTECTED MATERIAL OR INFORMATION.—

"(1) IN GENERAL.—A civil investigative demand issued under subsection (a) may not require the production of any documentary material, the submission of any answers to written interrogatories, or the giving of any oral testimony if such material, answers, or testimony would be protected from disclosure under—

"(A) the standards applicable to subpoenas or subpoenas duces tecum issued by a court of the United States to aid in a grand jury investigation; or

"(B) the standards applicable to discovery requests under the Federal Rules of Civil Procedure, to the extent that the application of such standards to any such demand is appropriate and consistent with the provisions and purposes of this section.

"(2) EFFECT ON OTHER ORDERS, RULES, AND LAWS.—Any such demand which is an express demand for any product of discovery supersedes any inconsistent order, rule, or provision of law (other than this section) preventing or restraining disclosure of such product of discovery to any person. Disclosure of any product of discovery pursuant to any such express demand does not constitute a waiver of any right or privilege which the person making such disclosure may be entitled to invoke to resist discovery of trial preparation materials.

"(c) SERVICE; JURISDICTION.—

"(1) BY WHOM SERVED.—Any civil investigative demand issued under subsection (a) may be served by a false claims law investigator, or by a United States marshal or a deputy marshal, at any place within the territorial jurisdiction of any court of the United States.

"(2) SERVICE IN FOREIGN COUNTRIES.—Any such demand or any petition filed under subsection (j) may be served upon any person who is not found within the territorial jurisdiction of any court of the United States in such manner as the Federal Rules of Civil Procedure prescribe for service in a foreign country. To the extent that the courts of the United States can assert jurisdiction over any such person consistent with due process, the United States District Court for the District of Columbia shall have the same jurisdiction to take any action respecting compliance with this section by any such person that such court would have if such person were personally within the jurisdiction of such court.

"(d) SERVICE UPON LEGAL ENTITIES AND NATURAL PERSONS.—

"(1) LEGAL ENTITIES.—Service of any civil investigative demand issued under subsection (a) or of any petition filed under subsection (j) may be made upon a partnership, corporation, association, or other legal entity by—

"(A) delivering an executed copy of such demand or petition to any partner, executive officer, managing agent, or general agent of the partnership, corporation, association, or entity, or to any agent authorized by appointment or by law to receive service of process on behalf of such partnership, corporation, association, or entity;

"(B) delivering an executed copy of such demand or petition to the principal office or place of business of the partnership, corporation, association, or entity; or

"(C) depositing an executed copy of such demand or petition in the United States mails by registered or certified mail, with a return receipt requested, addressed to such partnership, corporation, association, or entity at its principal office or place of business.

"(2) NATURAL PERSONS.—Service of any such demand or petition may be made upon any natural person by—

"(A) delivering an executing copy of such demand or petition to the person; or

"(B) depositing an executed copy of such demand or petition in the United States mails by registered or certified mail, with a return receipt requested, addressed to the person at the person's residence or principal office or place of business.

"(e) PROOF OR SERVICE.—A verified return by the individual serving any civil investigative demand issued under subsection (a) or any petition filed under subsection (j) setting forth the manner of such service shall be proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand.

"(f) DOCUMENTARY MATERIAL—

"(1) SWORN CERTIFICATES.—The production of documentary material in response to a civil investigative demand served under this section shall be made under a sworn certificate, in such form as the demand designates, by—

"(A) in the case of a natural person, the person to whom the demand is directed, or

"(B) in the case of a person other than a natural person, a person having knowledge of the facts and circumstances relating to such production and authorized to act on behalf of such person.

The certificate shall state that all of the documentary material required by the demand and in the possession, custody, or control of the person to whom the demand is directed has been produced and made available to the false claims law investigator identified in the demand.

"(2) PRODUCTIVE OF MATERIALS.—Any person upon whom any civil investigative demand for the production of documentary material has been served under this section shall make such material available for inspection and copying to the false claims law investigator identified in such demand at the principal place of business of such person, or at such other place as the false claims law investigator and the person thereafter may agree and prescribe in writing, or as the court may direct under subsection (j)(1). Such material shall be made so available on the return date specified in such demand, or on such later date as the false claims law investigator may prescribe in writing. Such person may, upon written agreement between the person and the false claims law investigator, substitute copies for originals of all or any part of such material.

"(g) INTERROGATORIES.—Each interrogatory in a civil investigative demand served under this section shall be answered separately and fully in writing under oath and shall be submitted under a sworn certificate, in such form as the demand designates, by—

"(1) in the case of a natural person, the person to whom the demand is directed, or

"(2) in the case of a person other than a natural person, the person or person responsible for answering each interrogatory.

If any interrogatory is objected to, the reasons for the objection shall be stated in the certificate instead of an answer. The certificate shall state that all information required by the demand and in the possession, custody, control, or knowledge of the person to whom the demand is directed has been submitted. To the extent that any information is not furnished, the information shall be identified and reasons set forth with particularity regarding the reasons why the information was not furnished.

"(h) ORAL EXAMINATIONS.—

"(1) PROCEDURES.—The examination of any person pursuant to a civil investigative demand for oral testimony served under this section shall be taken before an officer authorized to administer oaths and affirmations by the laws of the United States or of the place where the examination is held. The officer before whom the testimony is to be taken shall put the witness on oath or affirmation and shall, personally or by someone acting under the direction of the officer and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically and shall be transcribed. When the testimony is fully transcribed, the officer before whom the testimony is taken shall promptly transmit a copy of the transcript of the testimony to the custodian. This subsection shall not preclude the taking of testimony by any means authorized by, and in a manner consistent with, the Federal Rules of Civil Procedure.

"(2) PERSONS PRESENT.—The false claims law investigator conducting the examination shall exclude from the place where the examination is held all persons except the person giving the testimony, the attorney for and any other representative of the person giving the testimony, the attorney for the Government, any person who may be agreed upon by the attorney for the Government and the person giving the testimony, the officer before whom the testimony is to be taken, and any stenographer taking such testimony.

"(3) WHERE TESTIMONY TAKEN.—The oral testimony of any person taken pursuant to a civil investigative demand served under this section shall be taken in the judicial district of the United States within which such person resides, is found, or transacts business, or in such other place as may be agreed upon by the false claims law investigator conducting the examination and such person.

"(4) TRANSCRIPT OF TESTIMONY.—When the testimony is fully transcribed, the false claims law investigator or the officer before whom the testimony is taken shall afford the witness, who may be accompanied by counsel, a reasonable opportunity to examine and read the transcript, unless such examination and reading are waived by the witness. Any changes in form or substance which the witness desires to make shall be entered and identified upon the transcript by the officer or the false claims law investigator, with a statement of the reasons given by the witness for making such changes. The transcript shall then be signed by the witness, unless the witness in writing waives the signing, is ill, cannot be found, or refuses to sign. If the transcript is not signed by the witness within 30 days after being afforded a reasonable opportunity to examine it, the officer or the false claims law investigator shall sign it and state on the record the fact of the waiver, illness, absence of the witness, or the refusal to sign, together with the reason, if any, given therefor.

"(5) CERTIFICATION AND DELIVERY TO CUSTODIAN.—The officer before whom the testimony is taken shall certify on the transcript that the witness was sworn by the officer and that the transcript is a true record of the testimony given by the witness, and the officer or false claims law investigator shall promptly deliver the transcript, or send the transcript by registered or certified mail, to the custodian.

"(6) FURNISHING OR INSPECTION OF TRANSCRIPT BY WITNESS.—Upon payment of reasonable charges therefor, the false claims law investigator shall furnish a copy of the transcript to the witness only, except that the Attorney General, the Deputy Attorney General, or an Assistant Attorney General may, for good cause, limit such witness to inspection of the official transcript of the witness's testimony.

"(7) CONDUCT OF ORAL TESTIMONY.—(A) Any person compelled to appear for oral testimony under a civil investigative demand issued under subsection (a) may be accompanied, represented, and advised by counsel. Counsel may advise such person, in confidence, with respect to any question asked of such person. Such person or counsel may object on the record to any question, in whole or in part, and shall briefly state for the record the reason for the objection. An objection may be made, received, and entered upon the record when it is claimed that such person is entitled to refuse to answer the question on the grounds of any constitutional or other legal right or privilege, including the privilege against self-incrimination. Such person may not otherwise object to or refuse to answer any question, and may not directly or through counsel otherwise interrupt the oral examination. If such person refuses to answer any question, a petition may be filed in the district court of the United States under subsection (j)(1) for an order compelling such person to answer such question.

"(B) If such person refuses to answer any question on the grounds of the privilege against self-incrimination, the testimony of such person may be compelled in accordance with the provisions of part V of title 18.

"(8) WITNESS FEES AND ALLOWANCES.—Any person appearing for oral testimony under a civil investigative demand issued under subsection (a) shall be entitled to the same fees and allowances which are paid to witnesses in the district courts of the United States.

"(i) CUSTODIANS OF DOCUMENTS, ANSWERS, AND TRANSCRIPTS.—

"(1) DESIGNATION—The Attorney General shall designate a false claims law investigator to serve as custodian of documentary material, answers to interrogatories, and transcrips of oral testimony received under this section, and shall designate such additional false claims law investigators as the Attorney General determines from time to time to be necessary to serve as deputies to the custodian.

"(2) RESPONSIBILITY FOR MATERIALS; DISCLOSURE.—(A) A false claims law investigator who receives any documentary material, answers to interrogatories, or transcripts of oral testimony under this section shall transmit them to the custodian. The custodian shall take physical possession of such material, answers, or transcripts and shall be responsible for the use made of them and for the return of documentary material under paragraph (4).

"(B) The custodian may cause the preparation of such copies of such documentary material, answers to interrogatories, or transcripts of oral testimony as may be required for official use by any false claims law investigator, or other officer or employee of the Department of Justice, who is authorized for such use under regulations which the Attorney General shall issue. Such material, answers, and transcripts may be used by any such authorized false claims law investigator or other officer or employee in connection with the taking of oral testimony under this section.

"(C) Except as otherwise provided in this subsection, no documentary material, answers to interrogatories, or transcripts of oral testimony, or copies thereof, while in the possession of the custodian, shall be available for examination by any individual other than a false claims law investigator or other officer or employee of the Department of Justice authorized under subparagraph (B). The prohibition in the preceding sentence on the availability of material, answers, or transcripts shall not apply if consent is given by the person who produced such material, answers, or transcripts, or, in the case of any product of discovery produced pursuant to an express demand for such material, consent is given by the person from whom the discovery was obtained. Nothing in this subparagraph is intended to prevent disclosure to the Congress, including any committee or subcommittee of the Congress, or to any other agency of the United States for use by such agency in furtherance of its statutory responsibilities. Disclosure of information to any such other agency shall be allowed only upon application, made by the Attorney General to a United States district court, showing substantial need for the use of the information by such agency in furtherance of its statutory responsibilities.

"(D) While in the possession of the custodian and under such reasonable terms and conditions as the Attorney General shall prescribe—

"(i) documentary material and answers to interrogatories shall be available for examination by the person who produced such material or answers, or by a representative of that person authorized by that person to examine such material and answers; and

"(ii) transcripts of oral testimony shall be available for examination by the person who produced such testimony, or by a representative of that person authorized by that person to examine such transcripts.

"(3) USE OF MATERIAL, ANSWERS, OR TRANSCRIPTS IN OTHER PROCEEDINGS.—Whenever any attorney of the Department of Justice has been designated to appear before any court, grand jury, or Federal agency in any case or proceeding, the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony received under this section may deliver to such attorney such material, answers, or transcripts for official use in connection with any such case of proceeding as such attorney determines to be required. Upon the completion of any such case or proceeding, such attorney shall return to the custodian any such material, answers, or transcripts so delivered which have not passed into the control of such court, grand jury, or agency through introduction into the record of such case or proceeding.

"(4) CONDITIONS FOR RETURN OF MATERIAL.—If any documentary material has been produced by any person in the course of any false claims law investigation pursuant to a civil investigative demand under this section, and—

"(A) any case or proceeding before any court or grand jury arising out of such investigation, or any proceeding before any

Federal agency involving such material, has been completed, or

"(B) no case or proceeding in which such material may be used has been commenced within a reasonable time after completion of the examination and analysis of all documentary material and other information assembled in the course of such investigation,

the custodian shall, upon written request of the person who produced such material, return to such person any such material (other than copies furnished to the false claims law investigator under subsection (f)(2) or made for the Department of Justice under paragraph (2)(B)) which has not passed into the control of any court, grand jury, or agency through introduction into the record of such case or proceeding.

"(5) APPOINTMENT OF SUCCESSOR CUSTODIANS.—In the event of the death, disability, or separation from service in the Department of Justice of the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony produced pursuant to a civil investigative demand under this section, or in the event of the official relief of such custodian, from responsibility for the custody and control of such material, answers, or transcripts, the Attorney General shall promptly—

"(A) designate another false claims law investigator to serve as custodian of such material, answers, or transcripts, and

"(B) transmit in writing to the person who produced such material, answers, or testimony notice of the identity and address of the successor so designated.

Any person who is designated to be a successor under this paragraph shall have, with regard to such material, answers, or transcripts, the same duties and responsibilities as were imposed by this section upon that person's predecessor in office, except that the successor shall not be held responsible for any default or dereliction which occurred before that designation.

"(j) JUDICIAL PROCEEDINGS.—

"(1) PETITION FOR ENFORCEMENT.—Whenever any person fails to comply with any civil investigative demand issued under subsection (a), or whenever satisfactory copying or reproduction of any material requested in such demand cannot be done and such person refuses to surrender such material, the Attorney General may file, in the district court of the United States for any judicial district in which such person resides, is found, or transacts business, and serve upon such person a petition for an order of such court for the enforcement of the civil investigative demand.

"(2) PETITION TO MODIFY OR SET ASIDE DEMAND.—(A) Any person who has received a civil investigative demand issued under subsection (a) may file, in the district court of the United States for the judicial district within which such person resides, is found, or transacts business, and serve upon the false claims law investigator identified in such demand a petition for an order of the court to modify or set aside such demand. In the case of a petition addressed to an express demand for any product of discovery, a petition to modify or set aside such demand may be brought only in the district court of the United States for the judicial district in which the proceeding in which such discovery was obtained is or was last pending. Any petition under this subparagraph must be filed—

"(i) within 20 days after the date of service of the civil investigative demand, or at any time before the return date specified in the demand, whichever date is earlier, or

"(ii) within such longer period as may be prescribed in writing by any false claims law investigator identified in the demand.

"(B) The petition shall specify each ground upon which the petitioner relies in seeking relief under subparagraph (A), and may be based upon any failure of the demand to comply with the provisions of this section or upon any constitutional or other legal right or privilege of such person. During the pendency of the petition in the court, the court may stay, as it deems proper, the running of the time allowed for compliance with the demand, in whole or in part, except that the person filing the petition shall comply with any portions of the demand not sought to be modified or set aside.

"(3) PETITION TO MODIFY OR SET ASIDE DEMAND FOR PRODUCT OF DISCOVERY.—(A) In the case of any civil investigative demand issued under subsection (a) which is an express demand for any product of discovery, the person from whom such discovery was obtained may file, in the district court of the United States for the judicial district in which the proceeding in which such discovery was obtained is or was last pending, and serve upon any false claims law investigator identified in the demand and upon the recipient of the demand, a petition for an order of such court to modify or set aside those portions of the demand requiring production of any such product of discovery. Any petition under this subparagraph must be filed—

"(i) within 20 days after the date of service of the civil investigative demand, or at any time before the return date specified in the demand, whichever date is earlier, or

"(ii) within such longer period as may be prescribed in writing by any false claims law investigator identified in the demand.

"(B) The petition shall specify each ground upon which the petitioner relies in seeking relief under subparagraph (A), and may be based upon any failure of the portions of the demand from which relief is sought to comply with the provisions of this section, or upon any constitutional or other legal right or privilege of the petitioner. During the pendency of the petition, the court may stay, as it deems proper, compliance with the demand and the running of the time allowed for compliance with the demand.

"(4) PETITION TO REQUIRE PERFORMANCE BY CUSTODIAN OF DUTIES.—At any time during which any custodian is in custody or control of any documentary material or answers to interrogatories produced, or transcripts of oral testimony given, by any person in compliance with any civil investigative demand issued under subsection (a), such person, and in the case of an express demand for any product of discovery, the person from whom such discovery was obtained, may file, in the district court within which the office of such custodian is situated, and serve upon such custodian, a petition for an order of such court to require the performance by the custodian of any duty imposed upon the custodian by this section.

"(5) JURISDICTION.—Whenever any petition is filed in any district court of the United States under this subsection, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry out the provisions of this section. Any final order so entered shall be subject to appeal under section 1291 of title 28. Any disobedience of any final order entered under this section by any court shall be punished as a contempt of the court.

"(6) APPLICABILITY OF FEDERAL RULES OF CIVIL PROCEDURE.—The Federal Rules of Civil Procedure shall apply to any petition under this subsection, to the extent that such rules are not inconsistent with the provisions of this section.

"(k) DISCLOSURE EXEMPTION.—Any documentary material, answers to written interrogatories, or oral testimony provided under any civil investigative demand issued under subsection (a) shall be exempt from disclosure under section 552 of title 5.

"(l) DEFINITIONS.—For purposes of this section—

"(1) the term 'false claims law' means—

"(A) this section and sections 3729 through 3732; and

"(B) any Act of Congress enacted after the date of the enactment of this section which prohibits, or makes available to the United States in any court of the United States any civil remedy with respect to any false claim against, bribery of, or corruption of any officer or employee of the United States;

"(2) the term 'false claims law investigation' means any inquiry conducted by any false claims law investigator for the purpose of ascertaining whether any person is or has been engaged in any violation of a false claims law;

"(3) the term 'false claims law investigator' means any attorney or investigator employed by the Department of Justice who is charged with the duty of enforcing or carrying into effect any false claims law, or any officer or employee of the United States acting under the direction and supervision of such attorney or investigator in connection with a false claims law investigation;

"(4) the term 'person' means any natural person, partnership, corporation, association, or other legal entity, including any State or political subdivision of a State;

"(5) the term 'documentary material' includes the original or any copy of any book, record, report, memorandum, paper, communication, tabulation, chart, or other document, or data compilations stored in or accessible through computer or other information retrieval systems, together with instructions and all other materials necessary to use or interpret such data compilations, and any product of discovery;

"(6) the term 'custodian' means the custodian, or any deputy custodian, designated by the Attorney General under subsection (i)(1); and

"(7) the term 'product of discovery' includes—

"(A) the original or duplicate of any deposition, interrogatory, document, thing, result of the inspection of land or other property, examination, or admission, which is obtained by any method of discovery in any judicial or administrative proceeding of an adversarial nature;

"(B) any digest, analysis, selection, compilation, or derivation of any item listed in subparagraph (A); and

"(C) any index or other manner of access to any item listed in subparagraph (A).".

(b) CLERICAL AMENDMENT.—The table of contents for chapter 37 of title 31, United States Code, is amended by adding after the item relating to section 3731 the following:

"3732. False claims jurisdiction.
"3733. Civil investigative demands.".

SEC. 7. CRIMINAL PENALTIES.

Section 287 of title 18, United States Code, is amended by striking "fined" and all that follows through "both" and inserting "imprisoned not more than five years and shall

be subject to a fine in the amount provided in this title".

DISTRICT OF COLUMBIA JUDICIAL SYSTEM ACT

MATHIAS AMENDMENT NO. 3215

Mr. STEVENS (for Mr. MATHIAS) proposed an amendment to the bill (H.R. 3578) to provide permanent authority for hearing commissioners in the District of Columbia courts, to modify certain procedures of the District of Columbia Judicial Nomination Commission and the District of Columbia Commission on Judicial Disabilities and Tenure, and for other purposes; as follows:

Section 1732(m)(1) of title 11 of the District of Columbia Code (as amended by section 2(a) of the committee substitute) is amended in the matter before clause (A) by inserting after "District of Columbia Bar" the following: ", the City Council of the District of Columbia,".

Section 1703(c) of title 11 of the District of Columbia Code (as added by section 3(3) of the committee substitute) is amended by striking "90 days" and inserting "180 days".

Section 14 of the committee substitute is amended to read as follows:

SEC. 14. SERVICES OF RETIRED JUDGES.

(a) SENIOR JUDGES.—The second sentence of section 1504(a)(1) of title 11, District of Columbia Code, is amended by striking "every two years" and inserting "every four years, unless the Senior Judge has reached his or her seventy-fourth birthday, whereupon review shall be at least every two years,".

(b) REQUEST FOR SENIOR JUDGESHIP.—Section 1504(a) of title 11, District of Columbia Code, is further amended by striking out paragraphs (2) and (3) and inserting after paragraph (1) the following new paragraph:

"(2) At any time prior to or not later than one year after retirement, a judge may request recommendation from the District of Columbia Commission on Judicial Disabilities and Tenure (hereinafter in this section referred to as the 'Commission') to be appointed as a senior judge in accordance with this section; except that any retired judge shall have not less than 180 days from the effective date of this Act to file a request for an initial recommendation from the Commission."

(c) SERVICE BY RETIRED JUDGES.—Section 1565 of title 11, District of Columbia Code, is amended to read as follows: "11-1565. Service by Retired Judges.

"Any retired judge performing judicial duties as a senior judge on the District of Columbia Court of Appeals or the Superior Court shall be entitled, during the period for which he or she serves, to receive the same daily rate of pay as a judge on the court in which he or she performs such duties. The cumulative daily earnings of a senior judge, in any single year, when added to the annual retirement salary, may not exceed the current annual salary of a judge of the court in which he or she performs such duties. No deduction shall be withheld for health benefits, Federal employee's life insurance, or retirement purposes from the salary paid to a judge during judicial service. The performance of such judicial service shall not create an additional retirement, change retirement, or create, or in any manner affect a survivor annuity.".

The committee substitute is amended by redesignating section 17 as section 18 and by adding after section 16 the following new section:

SEC. 17. CHIEF JUDGE OF THE DISTRICT OF COLUMBIA COURT OF APPEALS AS PRESIDING OFFICER OF THE PUBLIC DEFENDER SERVICE.

Section 330 of the District of Columbia Court Reform and Criminal Procedure Act of 1970 (Public Law 91-358; 1-2703, D.C. Code) is amended—

(1) by striking out clause (A) of subsection (b)(1) and redesignating clauses (B), (C), (D), and (E) as clauses (A), (B), (C), and (D), respectively; and

(2) in paragraph (2) of subsection (b) by striking out "Chief Judge of the United States Court of Appeals for the District of Columbia Circuit" and inserting in lieu thereof "Chief Judge of the District of Columbia Court of Appeals".

NATIONAL BUREAU OF STANDARDS AUTHORIZATION ACT

GORTON AMENDMENT NO. 3216

Mr. STEVENS (for Mr. GORTON) proposed an amendment to the bill (H.R. 4354) to authorize appropriations to the Secretary of Commerce for the programs of the National Bureau of Standards for fiscal year 1987, and for other purposes; as follows:

Strike all after the enacting clause and insert in lieu thereof the following:

That this Act may be cited as the "National Bureau of Standards Authorization Act for Fiscal Year 1987".

AUTHORIZATION FOR PROGRAM ACTIVITIES

SEC. 2. (a) There are authorized to be appropriated to the Secretary of Commerce (hereinafter referred to as the "Secretary") for fiscal year 1987, to carry out the activities performed by the National Bureau of Standards, the sums set forth in the following line items:

(1) Measurement Research and Standards, $36,582,000;

(2) Materials Science and Engineering, $21,228,000;

(3) Engineering Measurements and Standards, $35,875,000;

(4) Computer Science and Technology, $7,500,000; and

(5) Research Support Activities, $22,768,000.

(b) Notwithstanding any other provision of this or any other Act—

(1) of the amounts authorized under subsection (a), $1,900,000 is authorized only for steel technology;

(2) of the amount authorized under paragraph (3) of subsection (a), $3,470,000 is authorized only for the Center for Building Technology and $5,402,000 is authorized only for the Center for Fire Research;

(3) of the amount authorized under paragraph (4) of subsection (a), $1,000,000 is authorized only for Computer Security Activities;

(4) of the amount authorized under paragraph (5) of subsection (a), $6,763,000 is authorized only for the Technical Competence Fund; and

(5) of the amount authorized under paragraph (5) of subsection (a), $6,500,000 is authorized only for the design, equipment, and construction fo the Cold Neutron Research Facility.

(c)(1) Funds may be transferred among the line items listed in subsection (a) so long as the net funds transferred to or from any line item do not exceed 10 percent of the amount authorized for that line item in each subsection.

(2) In addition, the Secretary may propose transfers to or from any line item exceeding 10 percent of the amount authorized for that line item in subsection (a); but a full and complete explanation of any such proposed transfer and the reason therefor must be transmitted in writing to the Speaker of the House of Representatives, the President of the Senate, and the appropriate authorizing committees of the House of Representatives and the Senate, and the proposed transfer may be made only when thirty calendar days have passed after the transmission of such written explanation.

(d) The National Bureau of Standards shall seek reimbursements of not less than $500,000 from other Federal agencies to expand its efforts in support of basic scientific research on the atmospheric, climatic, and environmental consequences of nuclear explosions and nuclear exchanges.

OFFICE OF PRODUCTIVITY, TECHNOLOGY, AND INNOVATION

SEC. 3. In addition to the sums authorized by section 2, there is authorized to be appropriated to the Secretary for fiscal year 1987 the sum of $2,248,000 for the activities of the Office of Productivity, Technology, and Innovation.

NATIONAL TECHNICAL INFORMATION SERVICE

SEC. 4. In addition to the sums authorized by sections 2 and 3, there is authorized to be appropriated to the Secretary for fiscal year 1987 the sum of $500,000 for the patent licensing activities of the National Technical Information Service.

AVAILABILITY OF APPROPRIATIONS

SEC. 5. Appropriations made under the authority provided in this Act shall remain available for obligation, for expenditure, or for obligation and expenditure for periods specified in the Acts making such appropriations.

FINANCIAL ASSISTANCE TO CURRENT AND PROSPECTIVE EMPLOYEES

SEC. 6. (a) In order to secure the services of the broadest possible range of talent in carrying out the programs of the National Bureau of Standards, the Act of March 3, 1901 (15 U.S.C. 271-278h) is amended by redesignating section 18 as section 19 and by inserting after section 17 the following new section:

SEC. 18. The Director is authorized to expend up to 1 per centum of the funds appropriated for activities of the National Bureau of Standards in any fiscal year, as the Director may deem desirable, for awards of research fellowships and other forms of financial assistance to students at institutions of higher learning within the United States who show promise as present or future contributors to the mission of the Bureau. The selection of persons to receive such fellowships and assistance shall be made on the basis of ability and of the relevance of the proposed work to the mission and programs of the Bureau.".

(b) The amendments made by subsection (a) shall be effective October 1, 1986.

ASSESSMENT OF EMERGING TECHNOLOGIES REQUIRING RESEARCH IN METROLOGY

SEC. 7. The Board of Assessment of the National Bureau of Standards programs shall include, as part of its annual review, an assessment of emerging technologies which are expected to require research in metrology to keep the Bureau abreast of its mission, including (but not limited to) Process and Quality Control, Technology Transfer, Engineering Databases, High-Performance Composites, Advanced Ceramics, Fiber Optics, Microwave Metrology, Bioprocess Engineering, and Advanced Computing Concepts. Such review shall include estimates of the cost of the required effort, the required staffing level, and the period over which the research will be required.

POST-DOCTORAL FELLOWSHIP PROGRAM

SEC. 8. (a) The Act of March 3, 1901 (15 U.S.C. 271-271h), as amended by section 6 of this Act, is further amended by redesignating section 19 as section 20 and by inserting after section 18 the following new section:

"SEC. 19. The National Bureau of Standards, in conjunction with the National Academy of Sciences, shall establish and conduct a post-doctoral fellowship program which shall be organized and carried out in substantially the same manner as the National Academy of Sciences/National Research Council Post-Doctoral Research Associate Program that was in effect prior to 1986, and which shall include not less than twenty nor more than forty new fellows per fiscal year.".

(b) The amendments made by subsection (a) shall be effective October 1, 1987.

PROCESS AND QUALITY CONTROL AND CALIBRATION PROGRAMS

SEC. 9. (a) The Director of the National Bureau of Standards shall hold discussions with representatives of Federal agencies, including the Department of Defense, the Department of Energy, the National Aeronautics and Space Administration, the Federal Aviation Administration, the National Institutes of Health, the Nuclear Regulatory Commission, and the Federal Communications Commission, which use (or the contractors of which depend on) the process and quality control and calibration programs of the Bureau, and with companies, organizations, and major engineering societies from the private sector, in order to determine the extent of the demand for research and services under such programs, the appropriate methods of paying for research and services under such programs, and the willingness of Federal agencies and the private sector to pay for such research and services.

(b) Within six months after the date of the enactment of this Act, the Director shall submit to the Committee on Science and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report of the Director's findings based on the discussions held under subsection (a), together with recommendations for such legislative actions as may be needed to implement a comprehensive Federal process and quality control and calibration program.

DEMONSTRATION PROJECT RELATING TO PERSONNEL MANAGEMENT

SEC. 10. (a)(1) The Office of Personnel Management and the National Bureau of Standards shall jointly design a demonstration project which shall be conducted by the Director of the National Bureau of Standards.

(2) The demonstration project shall, except as otherwise provided in this section, be conducted in accordance with section 4703 of title 5, United States Code, and shall be counted as a single project for purposes of subsection (d)(2) of such section.

(3) Subject to subsections (f) and (g) of section 4703 of title 5, United States Code, the demonstration project shall cover any position within the National Bureau of Standards which would otherwise be subject to—

(A) subchapter III of chapter 53 of title 5, United States Code, relating to the General Schedule;

(B) subchapter VIII of chapter 53 of title 5, United States Code, relating to the Senior Executive Service; or

(C) chapter 54 of title 5, United States Code, relating to the Performance Management and Recognition System.

(b) Under the demonstration project, the Director of the National Bureau of Standards shall provide that—

(1) the rate of basic pay for a position may not be less than the minimum rate of basic pay, nor more than the maximum rate of basic pay, payable for the pay band (as referred to in paragraph 3)) within which such position has been placed;

(2) the minimum and maximum rates of basic pay for each pay band shall be adjusted at the times, and by the amounts, provided for under subsection (c);

(3) positions shall be classified under a system using pay bands which shall be established by combining or otherwise modifying the classes, grades, or other units which would otherwise be used in classifying the positions involved;

(4) employees shall be evaluated under a performance appraisal system which—

(A) uses peer comparison and ranking wherever appropriate; and

(B) affords appeal rights comparable to those afforded under chapter 43 of title 5, United States Code;

(5)(A) the rate of basic pay of each participating employee will be reviewed annually, and shall be adjusted on the basis of the appraised performance of the employee; and

(B) subject to subsection (c)(4)(A)(i), the adjustment under subparagraph (A) in any year in the case of any employee whose performance is rated at the fully successful level or higher shall be at least the percentage adjustment taking effect under subsection (c)(3) in such year;

(6) appropriate supervisory and managerial pay differentials (which shall be considered a part of basic pay) shall be provided;

(7) performance-recognition bonuses, and recruitment and retention allowances, shall be awarded in appropriate circumstances (but shall not be considered a part of basic pay);

(8) there shall be an employee development program which includes provisions under which employees may, in appropriate circumstances, be granted sabbaticals, the terms and conditions of which shall be consistent with those applicable for members of the Senior Executive Service under section 3396(c) of title 5, United States Code (excluding paragraph (2)(B) thereof);

(9) payment of travel expenses shall be provided for personnel to their first post of duty in the same manner as is authorized for members of the Senior Executive Service under section 5723 of title 5, United States Code, at the discretion of the Director; and

(10) the methods of establishing qualification requirements for, recruitment for, and appointment to positions shall, at the discretion of the Director, include methods involving direct examination and hiring.

(c)(1) For the purpose of this subsection, the term "compensation" means the total value of the various forms of compensation provided, including—

(A) basic pay;

(B) bonuses;

(C) allowances;

(D) retirement benefits;

(E) health insurance benefits;

(F) life insurance benefits; and

(G) leave benefits.

(2) The Director of the National Bureau of Standards shall, by contract or otherwise, provide for the preparation of reports which, based on appropriate surveys—

(A) shall include findings as to—

(i) the extent to which, as of the commencement of the demonstration project, the overall average level of compensation provided with respect to positions under the demonstration project is deficient in comparison to the overall average level of compensation generally provided with respect to positions involving the same types and levels of work in the private sector; and

(ii) with respect to each year thereafter, any net increase occurring during such year in the extent of the deficiency in the overall average level of compensation provided with respect to positions under the demonstration project, as compared to the overall average level of compensation generally provided with respect to positions involving the same types and levels of work in the private sector; and

(B) shall recommend a single percentage by which basic pay for all positions under the demonstration project must be increased so that, when considered in conjunction with the other forms of compensation generally provided, any net increase determined under subparagraph (A)(ii) will be eliminated.

(3) Whenever the Director of the National Bureau of Standards receives a recommendation under paragraph (2)(B), the Director—

(A) shall increase the minimum and maximum rates of basic pay for each such pay band by the lesser of—

(i) the percentage recommended; or

(ii) the overall average percentage of the adjustment in the rates of pay under the General Schedule under section 5305 of title 5, United States Code, for the period involved; and

(B) if and to the extent that funds are available for that purpose, may further increase those minimum and maximum rates—

(i) to make up for any part of the difference between the respective percentages under subparagraph (A), if the percentage under subparagraph (A)(ii) is the lesser; and

(ii) after making up for the entirety of any difference determined under clause (i) (including from any previous year), to eliminate any part of any remaining deficiency as originally determined under paragraph (2)(A)(i).

(4)(A) Notwithstanding any other provision of this section—

(i) the maximum rate of basic pay payable under any pay band may not exceed the rate of basic pay payable for level IV of the Executive Schedule; and

(ii) the amount of basic pay, bonuses, and allowances paid during any fiscal year to any employee participating in the demonstration project may not, in the aggregate,

exceed the annual rate of basic pay payable for level I of the Executive Schedule.

(B)(i) Any amount which is not paid to an employee during a fiscal year because of the limitation under subparagraph (A)(ii) shall be paid in a lump sum at the beginning of the following fiscal year.

(ii) Any amount paid under this subparagraph during a fiscal year shall be taken into account for purposes of applying the limitation under subparagraph (A)(ii) with respect to such fiscal year.

(5) Notwithstanding any other provision of this section, the demonstration project shall be conducted in such a way so that, with respect to the 12-month period beginning on October 1, 1986, the total cost to the Government relating to providing compensation to participating employees shall not exceed the total cost which would have resulted if this section had not been enacted.

(6) (A) If the minimum rate of basic pay for a pay band, after an increase under paragraph (3)(A), exceeds the rate of a basic pay payable to an employee whose position would otherwise be within such pay band, the employee's position may, notwithstanding subsection (b)(1), be placed in the next lower pay band.

(B) Placement of a position in a lower pay band under subparagraph (A) shall not be considered a reduction in grade or pay for purposes of subchapter II of chapter 75 of title 5, United States Code, or a comparable provision under the project.

(d)(1) The rate of basic pay for an employee serving in a position at the time it is converted to a position covered by the demonstration project may not be reduced by reason of the establishment of such project.

(2)(A) Each employee referred to in paragraph (1) shall be paid—

(i) in the case of an employee serving in a position under the General Schedule on the date the position becomes covered by the demonstration project, a lump-sum pro rata share of the equivalent of any within-grade increase which would have been due the employee under section 5335 of title 5, United States Code, computed as provided in subparagraph (B), and

(ii) in the case of an employee serving in a position subject to chapter 54 of title 5, United States Code, on such date, a lump-sum pro rata share of the equivalent of the employee's merit increase which would have been due under such chapter, computed as provided in subparagraph (B), taking into account the performance requirements applicable to such increase.

(B) for purposes of subparagraph (A), the pro rata share of an equivalent increase referred to in such subparagraph shall be computed through the day before the date referred to in such subparagraph.

(e)(1)(A) In carrying out section 4703(h) of title 5, United States Code, with respect to the demonstration project, the Office of Personnel Management shall provide that such project will be evaluated on an annual basis by a contractor. Such contractor shall be especially qualified to perform the evaluation based on its expertise in matters relating to personnel management and compensation.

(B) The contractor shall report its findings to the Office in writing. After considering the report, the Office shall transmit a copy of the report, together with any comments of the Office and any comments submitted by the National Bureau of Standards, to—

(i) the Committee on Post Office and Civil Service, and the Committee on Science and Technology, of the House of Representatives; and

(ii) the Committee on Governmental Affairs, and the Committee on Commerce, Science, and Transportation, of the Senate.

The Comptroller General shall, not later than 4 years after the date of which the demonstration project commences, submit to each of the committees referred to in paragraph (1)(B) a final report concerning such project. Such report shall include any recommendations for legislation or other action which the Comptroller General considers appropriate.

(f) The authority to enter into any contract under this section may be exercised only to such extent or in such amounts as are provided in advance in appropriation Acts.

(g) The demonstration project shall commence not later than January 1, 1988.

CONSERVATION PROGRAMS ON MILITARY RESERVATIONS

CHAFEE AMENDMENT NO. 3217

Mr. STEVENS (for Mr. CHAFEE, for himself, Mr. STAFFORD, and Mr. MITCHELL) proposed an amendment to the bill (S. 1352) to authorize appropriations to carry out conservation programs on military reservations and public lands during the fiscal years 1986, 1987, and 1988; as follows:

On page 2, after line 4 insert the following:

SEC. 2. NATURAL RESOURCES AND FISH AND WILDLIFE MANAGEMENT ON MILITARY RESERVATIONS; REPORT ON MILITARY EXPENDITURES FOR FISH AND WILDLIFE MANAGEMENT.

(a) NATURAL RESOURCES MANAGEMENT.—The Secretary of each military department shall manage the natural resources of each military reservation within the United States that is under the jurisdiction of the Secretary—

(1) so as to provide for sustained multipurpose uses of those resources; and

(2) to provide the public access that is necessary or appropriate for those uses;

to the extent that those uses and that access are not inconsistent with the military mission of the reservation.

(b) FISH AND WILDLIFE MANAGEMENT SERVICES.—The Secretary of each military department shall ensure, to the extent feasible, that the services necessary for the development, implementation, and enforcement of fish and wildlife management on each military reservation within the United States under the jurisdiction of the Secretary are provided by the Department of Defense personnel who have professional training in those services.

(c) FISH AND WILDLIFE MANAGEMENT REPORT.—The Secretary of each military department shall submit to each House of the Congress, before the close of the 180-day period occurring after the close of fiscal year 1986, a detailed report setting forth the amount and purpose of all expenditures made during fiscal year 1986 for fish and wildlife management on each military reservation in the United States under the jurisdiction of the Secretary.

(d) DEFINITIONS.—As used in this section—

(1) The term "military department" means the Department of the Army, the Department of the Navy, and the Department of the Air Force.

(2) The term "United States" means the States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

SEC. 3. SIKES ACT AMENDMENTS.

(a) COOPERATIVE PLANS.—(1) Section 101 of the Act of September 15, 1960 (commonly referred to as the "Sikes Act"; 16 U.S.C. 670a) is amended to read as follows:

"SEC. 101. (a) The Secretary of Defense is authorized to carry out a program of planning for, and the development, maintenance, and coordination of, wildlife, fish, and game conservation and rehabilitation in each military reservation in accordance with a cooperative plan mutually agreed upon by the Secretary of Defense, the Secretary of Interior, and the appropriate State agency designated by the State in which the reservation is located.

"(b) Each cooperative plan entered into under subsection (a)—

"(1) shall provide for—

"(A) fish and wildlife habitat improvements or modifications,

"(B) range rehablitation where necessary for support of wildlife,

"(C) control of off-road vehicle traffic, and

"(D) specific habitat improvement projects and related activities and adequate protection for species of fish, wildlife, and plants considered threatened or endangered;

"(2) must be reviewed as to operation and effect by the parties thereto on a regular basis, but not less often than every 5 years;

"(3) shall, if a multiuse natural resources management plan is applicable to the military reservation, be treated as the exclusive component of that management plan with respect to wildlife, fish, and game conservation and rehabilitation; and

"(4) may stipulate the issuance of special State hunting and fishing permits to individuals and require payment of nominal fees therefor, which fees shall be utilized for the protection, conservation, and management of fish and wildlife, including habitat improvement and related activities in accordance with the cooperative plan; except that—

"(A) the Commanding Officer of the reservation or persons designated by that Officer are authorized to enforce such special hunting and fishing permits and to collect the fees therefor, acting as agent or agents for the State if the cooperative plan so provides, and

"(B) the fees collected under this paragraph may not be expended with respect to other than the military reservation on which collected.

"(c) After a cooperative plan is agreed to under subsection (a)—

"(1) no sale of land, or forest products from land, that is within a military reservation covered by that plan may be made under section 2665 (a) or (b) of title 10, United States Code; and

"(2) no leasing of land that is within the reservation may be made under section 2667 of such title 10;

unless the effects of that sale or leasing are compatible with the purposes of the plan.

"(d) With regard to the implementation and enforcement of cooperative plans agreed to under subsection (a)—

"(1) neither Office of Management and Budget Circular A-76 nor any successor circular thereto applies to the procurement of services that are necessary for that implementation and enforcement; and

"(2) priority shall be given to the entering into of contracts for the procurement of such implementation and enforcement services with Federal and State agencies having responsibility for the conservation or management of fish or wildlife.

"(e) Cooperative plans agreed to under the authority of this section and section 102 shall not be deemed to be, nor treated as, cooperative agreements to which the Federal Grant and Cooperative Agreement Act of 1977 (41 U.S.C. 501 et seq.) applies.".

(2) Subsection (d)(1) of such section 101 (as added by paragraph (1)) shall not affect any contract entered into before the date of the enactment of this Act for the provision of services to implement or enforce a cooperative plan under this Act on any military installation; but shall apply to the renewal, after such date of enactment, of any such contract.

(b) FUNDS COLLECTED UNDER PLANS.—Subsection (a) of section 106 of the Sikes Act (16 U.S.C. 670f(a)) is amended by adding at the end thereof the following new sentence: "All funds that are so collected shall remain available until expended.".

SEC. 4. FOREST PRODUCTS ON MILITARY RESERVATIONS.

Section 2665 of title 10, United States Code, is amended as follows:

(1) Subsection (d) is amended—

(A) by striking out "available for operation and maintenance during a fiscal year";

(B) by striking out "expenses" and inserting in lieu thereof "costs"; and

(C) by striking out "during such fiscal year".

(2) Subsection (e)(1) is amended by striking out "for all expenses of production of forest products".

(3) Subsection (f) is amended—

(A) by striking out "expenses" in the matter preceding subparagraph (A) in paragraph (1) and inserting in lieu thereof "cost",

(B) by amending paragraph (1)(C) to read as follows:

"(C) for natural resources management that implements approved plans and agreements.", and

(C) by amending paragraphs (2) and (3) to read as follows:

"(2) There shall be deposited into the reserve account the total amount received by the United States as proceeds from the sale of forest products sold under subsections (a) and (b) less—

"(A) reimbursements of appropriations made under subsection (d), and

"(B) payments made to States under subsection (e).

"(3) The reserve account may not exceed $4,000,000 on December 31 of any calendar year. Unobligated balances exceeding $4,000,000 on that date shall be deposited into the United States Treasury.".

FEDERAL EMERGENCY MANAGEMENT AGENCY REGULATIONS ACT

STAFFORD AMENDMENT NO. 3218

Mr. STEVENS (for Mr. STAFFORD) proposed an amendment to the bill (H.R. 5488) to prohibit implementation of certain regulations of the Federal Emergency Management Agency relation to the declaration process, eligibility for assistance, and non-Federal responsibility for major disasters under the Disaster Relief Act of 1974, and for other purposes; as follows:

Strike all after the enacting clause and insert the following:

That this Act may be cited as the "Disaster Relief Act Amendments of 1986".

SEC. 2. The short title of the Disaster Relief Act of 1974 (Public Law 93-288) is hereby amended by deleting the words "Disaster Relief Act of 1974" and inserting in lieu thereof "Major Disaster Relief and Emergency Assistance Act".

SEC. 3. Section 102(1) of the Disaster Relief Act of 1974 (42 U.S.C. 5122(1)) is amended to read as follows:

"(1) 'Emergency' means any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property, public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.".

SEC. 4. Title VIII of the Public Works and Economic Development Act of 1965, as amended (Public Law 89-136; 42 U.S.C. 3231-3236) is hereby repealed, and title V of the Disaster Relief Act of 1974 (Public Law 93-288) is hereby amended to read as follows:

"TITLE V—FEDERAL EMERGENCY ASSISTANCE PROGRAMS

"PROCEDURES

"SEC. 501. (a) All requests for a determination by the President that an emergency exists shall be made by the Governor of the affected State. Such request shall be based upon the Governor's finding that the situation is of such severity and magnitude that effective response is beyond the capabilities of the State and the affected local governments and that Federal assistance is necessary. The Governor's request will furnish information describing State and local efforts and resources which have been or will be used to alleviate the emergency, and will define the type and exent of Federal aid required. As a part of this request, and as a prerequisite to emergency assistance under the Act, the Governor shall take appropriate action under State law and direct execution of the State's emergency plan. Based upon such Governor's request, the President may declare that an emergency exists.

"(b) The President may exercise any authority vested in him by section 502 and section 503 of this Act with respect to an emergency when he determines that an emergency exists for which the primary responsibility for response rests with the United States because the emergency involves a subject area for which, under the Constitution or laws of the United States, the United States exercises exclusive or preeminent responsibility and authority. The President may determine that such an emergency exists only after consultation with the Governor of the affected States, if practicable. The President's determination, however, may be made without regard to the provisions of section 501(a) of this Act.

"FEDERAL ASSISTANCE

"SEC. 502. In any emergency, the President may—

"(a) direct any Federal agency with or without reimbursement to utilize its authorities and the resources granted to it under other Acts, including but not limited to personnel, equipment, supplies, facilities, and managerial, technical and advisory services in support of State and local emergency assistance efforts to save lives and to protect property, public health and safety or to lessen or avert the threat of a catastrophe;

"(b) coordinate all Federal agencies and voluntary relief or disaster assistance organizations providing emergency assistance, and coordinate emergency assistance with State and local officials; and

"(c) provide technical and advisory assistance to affected State and local governments in the performance of essential community services, warning of risks of hazards, public information and assistance in health and safety measures, management and control, and reduction of immediate threats to public health and safety.

"EMERGENCY ASSISTANCE

"SEC. 503. (a) In an emergency, when the Federal assistance provided pursuant to section 502 of this title is inadequate, the President may provide assistance to save lives and protect property, public health and safety, or to lessen or avert the threat of a catastrophe. When debris removal assistance is appropriate under this section, it shall be provided in accordance with the terms and conditions of section 406 of this Act.

"(b) In any emergency and except as provided by subsection (c) of this section, the costs of providing emergency assistance under this section shall not exceed $5,000,000 of funds appropriated to carry out this Act.

"(c) The limitation of subsection (b) of this section may be exceeded when the President determines that continued emergency assistance is immediately required; that there is a continuing and immediate risk to lives, property, public health or safety; and that necessary assistance will not otherwise be provided on a timely basis. In the event that the limitation of subsection (b) is exceeded, the President shall report to Congress on the nature and extent of the emergency assistance requirements and propose additional legislation if necessary.".

SEC. 5. Section 102(2) of the Disaster Relief Act of 1974 (42 U.S.C. 5122(2)) is amended to read as follows—

"(2) 'Major disaster' means any natural catastrophe, including any hurricane, tornado, storm, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought, or any fire, flood, or explosion, regardless of cause, in any part of the United States which, in the determination of the President, causes damage of sufficient severity and magnitude to warrant major disaster assistance under this Act to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.".

SEC. 6. Title II of the Disaster Relief Act of 1974 (42 U.S.C. 5131-5132) is amended by—

(1) striking the words "(including the Defense Civil Preparedness Agency)" in section 201(a);

(2) adding the words "including evaluations of natural hazards and development of the programs and actions required to mitigate such hazards," between the words "plans" and "except" in section 201(d); and

(3) striking "$25,000" in section 201(d) and inserting in lieu thereof "$50,000".

SEC. 7. Title III of the Disaster Relief Act of 1974 (42 U.S.C. 5141-5158) is amended by—

(1) deleting sections 301, 305, and 306 and renumbering subsequent sections appropriately;

(2) deleting the caption "FEDERAL ASSISTANCE" of section 301, as redesignated by paragraph (1) of this section, and inserting in lieu thereof "RULES AND REGULATIONS";

(3) deleting the first and second sentences of subsection (a) of section 301, as redesignated by paragraph (1) of this section, and amending the final sentence thereof by adding ", with or without reimbursement," immediately before "through"; and

(4) deleting ", or economic status" in the second sentence of section 308(a) as redesignated by paragraph (1) of this section, and adding "or" before "age,".

SEC. 8. Section 302(a) of the Disaster Relief Act of 1974 (42 U.S.C. 5143(a)), as redesignated by section 7(1) of this Act, is amended by adding at the end thereof the following: "The Federal coordinating officer shall represent the President in coordinating the emergency or the major disaster response and recovery effort.".

SEC. 9. Section 311 of the Disaster Relief Act of 1974 (42 U.S.C. 5154), as redesignated by section 7(1) of this Act, is amended by redesignating subsections (a), (b), and (c) as (b), (c), and (d), respectively, and by adding at the beginning thereof a new subsection as follows:

"(a) As a condition of assistance, any public facility and private nonprofit facility which is:

"(1) located in a special flood hazard area as identified by the Director pursuant to the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001 et seq.);

"(2) damaged or destroyed by flooding; and

"(3) otherwise eligible for assistance under section 405 of this Act, must be covered, on the date of the flood damage, by reasonable and adequate flood insurance. Assistance under section 405 for any such facility not so covered shall be reduced by the maximum amount of benefits which could have been received had reasonable and adequate flood insurance been in force: *Provided, however,* That this reduction of assistance shall not apply to uninsured facilities where such communities have been identified for less than one year as having special flood hazard areas. The limitations of assistance required by this subsection shall not apply until final regulations are promulgated by the President. Such regulations shall define reasonable and adequate flood insurance.".

SEC. 10. Section 312 of the Disaster Relief Act of 1974 (42 U.S.C. 5155), as redesignated by section 7(1) of this Act, is amended to read as follows:

"DUPLICATION OF BENEFITS

"SEC. 312. (a) Agencies or other organizations providing Federal assistance for needs or losses resulting from a major disaster or emergency shall assure that no person, business concern, or other entity receives any such Federal assistance if said person, business concern, or entity receives or is entitled to receive benefits for the same purposes from insurance or any other Federal or non-Federal source: *Provided,* That nothing in this section shall prohibit the provision of Federal assistance to a person, business concern, or other entity who is or may be entitled to receive benefits for the same purposes from insurance or any other Federal or non-Federal source when any such applicant for Federal assistance has not received such other benefits by the time of application for Federal assistance, so long as the applicant for Federal assistance agrees as a condition of receipt of Federal assistance to repay duplicative assistance from insurance or any other Federal or non-Federal source to the agency or other organizations providing the Federal assistance. The President shall establish such procedures as are deemed necessary to insure uniformity in preventing such duplication of benefits. Receipt of partial benefits for a loss or need resulting from a major disaster or emergency does not preclude provision of additional Federal assistance for any part of such loss or need for which benefits have been provided.

"(b) A person, business concern, or other entity receiving Federal assistance for needs or losses resulting from a major disaster or emergency shall be liable to the United States to the extent that such Federal assistance has duplicated benefits available to the person, business concern, or other entity for the same purpose from insurance or any other Federal or non-Federal sources. The agency or other organization which provided the duplicative assistance shall collect such duplicative assistance from the recipient in accordance with the Claims Collection Act of 1966, as amended, when in the best interest of the Government. The repayment shall not exceed the amount of Federal assistance received.

"(c) Federal disaster assistance and comparable disaster assistance provided by States, local governments, and disaster assistance organizations to individuals and families shall not be considered as income or a resource when determining eligibility or benefit levels for federally funded income assistance or resource tested benefit programs.".

SEC. 11. (a) Title III of the Disaster Relief Act of 1974 (42 U.S.C. 5141-5158) is amended by adding at the end thereof four new sections as follows:

"PROTECTION OF ENVIRONMENT

"SEC. 315. No action taken or assistance provided pursuant to section 402, 403, 406, 502, or 503 of this Act, or any assistance provided pursuant to section 405 of this Act that has the effect of restoring facilities substantially as they existed prior to the disaster, shall be deemed a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (83 Stat. 852). Nothing in this section shall alter or affect the applicability of the National Environmental Policy Act of 1969 (83 Stat. 852) to other Federal actions taken under this Act or under any other provisions of law.

"RECOVERY OF FUNDS

"SEC. 316. The attorney General of the United States is authorized to institute actions in the United States District Court for the district in which an emergency or major disaster occurred, or in such district as otherwise provided by law, against any party whose acts or omissions may in any way have caused or contributed to the damage or hardship for which Federal assistance is provided pursuant to this Act. Upon the showing that an emergency or major disaster or the associated damage or hardship was caused in whole or in part by an act or omission of such party, then such party shall be liable to the United States for the full amount of Federal expenditures made to alleviate the suffering or damage attributable to such act or omission. The authority of this section shall also apply to the recovery of Federal funds expended under the authority of section 419 of this Act for fire suppression.

"AUDITS AND INVESTIGATIONS

"SEC. 317. (a) The President, when deemed necessary to assure compliance with any provision of this Act or related regulations, shall conduct audits and investigations and in connection therewith may enter such places and inspect such records and accounts and question such persons as deemed necessary to determine the facts relative thereto.

"(b) The President, when deemed necessary to assure compliance with any provision of this Act or related regulations, may require audits by State and local governments in connection with assistance provided under the Act.

"(c) The President and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access, for purposes of investigation, audit, and examination, to any books, documents, papers, and records of any person or entity relating to any activity or program undertaken or funded pursuant to this Act.

"CRIMINAL AND CIVIL PENALTIES

"SEC. 318. (a) Any person, organization, or other entity who knowingly makes a false statement or representation of a material fact, or who knowingly fails to disclose a material fact, in any application or other document in connection with a request for assistance under this Act, or who knowingly falsifies or withholds, conceals, or destroys any documents, books, records, reports, or statements upon which such request for assistance is based, shall be fined not more than $10,000 or imprisoned for not more than one year, or both, for each violation.

"(b) Any person, organization, or other entity who knowingly makes a false statement or representation of a material fact, or who knowingly fails to disclose a material fact, in any bill, invoice, claim, or other document requesting reimbursement for work or services performed in connection with assistance provided under this Act, or who knowingly falsifies or withholds, conceals, or destroys any documents, books, records, reports, or statements upon which such request for reimbursement is based, shall be fined not more than $10,000 or imprisoned for not more than one year, or both, for each violation.

"(c) Any person, organization, or other entity who knowingly misapplies the proceeds of a loan or other cash benefit obtained under any section of this Act shall be subject to a fine in an amount equal to one and one-half times the misapplied amount of the loan or cash benefit.

"(d) Whenever it appears that any person, organization, or other entity has violated or is about to violate any provision of this Act, including rules and regulations issued and civil penalties imposed, the Attorney General may bring a civil action for such relief as may be appropriate. Such action may be brought in the district court of the United States having jurisdiction where the violation occurred or, at the option of the parties, in the United States District Court for the District of Columbia.

"(e) The President, or the duly authorized representative of the President, shall expeditiously refer to the Attorney General of the United States for appropriate action such evidence developed in the performance of functions under this Act as may be found to warrant consideration for criminal prosecution under the provisions of this Act or other Federal law."

(b) Title III of the Disaster Relief Act of 1974 is amended by deleting subsections (a)

and (c) of section 314 (42 U.S.C. 5157), as redesignated by section 7(1) of this Act, and by renumbering "(b)" from the remaining subsection of section 314 as subsection "(f)" of section 318 as added by section 11(a) of this Act.

(c) Title IV of the Disaster Relief Act of 1974 is amended by deleting section 405 (42 U.S.C. 5175) and by renumbering subsequent sections appropriately.

(d) Section 315 of the Disaster Relief Act of 1974 (42 U.S.C. 5158), as redesignated by section 7(1) of this Act, is further redesignated as section 314.

Sec. 12. Title IV of the Disaster Relief Act of 1974 (42 U.S.C. 5171-5189) is amended by adding three new sections as follows and by renumbering subsequent sections appropriately:

"PROCEDURES

"Sec. 401. (a) All requests for a declaration by the President that a major disaster exists shall be made by the Governor of the affected State. Such Governor's request shall be based upon a finding that the disaster is of such severity and magnitude that effective response is beyond the capabilities of the State and the affected local governments and that Federal assistance is necessary. As a part of this request, and as a prerequisite to major disaster assistance under the Act, the Governor shall take appropriate action under State law and direct execution of the State's emergency plan. He shall furnish information on the extent and nature of State resources which have been or will be used to alleviate the conditions of the disaster, and shall certify that for the current disaster, State and local government obligations and expenditures (of which State commitments must be a significant proportion) will constitute the expenditure of a reasonable amount of the funds of such State and local governments for alleviating the damage, loss, hardship, or suffering resulting from such disaster, including, but not limited to, the cost-sharing provisions pursuant to sections 405, 406, 407, and 410 of this Act. Based upon such Governor's request, the President may declare that a major disaster exists.

"(b) In any case where an eligible applicant (or the State) is unable to assume its financial responsibility under the cost-sharing provisions of sections 405, 406, and 407 of this Act, the President is authorized to lend or advance to the State such 25 per centum share. For the purposes of section 405, such loan or advance shall be authorized only after the occurrence of concurrent, multiple major disasters in a given jurisdiction, or the extraordinary costs of a particular major disaster, and when the damages caused by such major disasters are so overwhelming and severe that it is not possible for the applicant or the State to assume their financial responsibility under this Act immediately. Except as provided by subsection (c) of this section, any such loan or advance is to be repaid to the United States; there shall be no deferral of the repayment of loans or advances authorized by this subsection or of accrued interest. Such obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current market yields on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the reimbursement period of the loan or advance.

"(c) The President may cancel all or any part of such loan or advance made regarding section 405 or section 406 for concurrent, multiple major disasters or a single catastrophic major disaster if a determination is made that following the three full fiscal years after the loan or advance is made, the applicant demonstrates substantial and continuing inability to repay all or part of the loan or advance.

"(d) The President shall issue regulations describing the terms and conditions under which any loans or advances authorized by this section may be made or canceled.

"FEDERAL ASSISTANCE

"Sec. 402. In any major disaster, the President may—

"(a) direct any Federal agency with or without reimbursement to utilize its authorities and the resources granted to it under other Acts including, but not limited to, personnel, equipment, supplies, facilities, and managerial, technical, and advisory services in support of State and local assistance efforts;

"(b) coordinate all Federal agencies and voluntary relief or disaster assistance organizations providing disaster assistance, and coordinate disaster assistance with State and local officials; and

"(c) provide technical and advisory assistance to affected State and local governments in the performance of essential community services, warning of risks and hazards, public information and assistance in health and safety measures, management and control, and reduction of immediate threats to public health and safety.

"COOPERATION OF FEDERAL AGENCIES IN RENDERING DISASTER ASSISTANCE"

"Sec. 403. (a) In any major disaster, Federal agencies are hereby authorized, on the direction of the President, to provide assistance by—

"(1) utilizing or lending, with or without compensation therefore, to States and local governments, their equipment, supplies, facilities, personnel, and other resources, other than the extension of credit under the authority of any Act;

"(2) distributing or rendering, through the American National Red Cross, the Salvation Army, the Mennonite Disaster Service, and other relief and disaster assistance organizations, or otherwise, medicine, food, and other consumable supplies, other services to disaster victims, or emergency assistance;

"(3) donating or lending equipment and supplies, including that determined in accordance with applicable laws to be surplus to the needs and responsibilities of the Federal Government, to State and local governments for use or distribution by them for the purposes of this Act; and

"(4) performing on public or private lands or waters any emergency work or services essential to save lives and to protect and preserve property, public health and safety, including, but not limited to: Search and rescue, emergency medical care, emergency mass care, emergency shelter, and provisions of food, water, medicine, and other essential needs, including movement of supplies or persons; construction of temporary bridges necessary to the performance of emergency tasks and essential community services; provision of temporary facilities for schools and other essential community services; warning of further risks and hazards; public information and assistance on health and safety measures; technical advice to State and local governments on disaster management and control; reduction of immediate threats to life, property, and public health and safety; and making contributions to State or local governments for the purpose of carrying out the provisions of this paragraph. Such contributions for emergency work under this section and section 402 of this Act shall not exceed 100 per centum of the net eligible cost, or for small projects 100 per centum of the Federal estimate of the net eligible cost, of such emergency work or services performed by State and local governments: *Provided*, That where debris removal assistance is appropriate under this section or section 402 of this Act it shall be provided in accordance with the terms and conditions of section 406 of this Act.".

Sec. 13. (a) Section 405 of the Disaster Relief Act of 1974 (42 U.S.C. 5172), as redesignated by section 12 of this Act, is amended to read as follows:

"(a) The President is authorized to make contributions to State or local governments, to help repair, restore, reconstruct, or replace public facilities belonging to such State or local government which were damaged or destroyed by a major disaster. Notwithstanding any other provision of law, such contribution shall be limited to 75 per centum of the net eligible cost, or for small projects 75 per centum of the Federal estimate of the net eligible cost, of repairing, restoring, reconstructing, or replacing any such facility estimated on the basis of the design of such facility as it existed immediately prior to such major disaster and in conformity with current applicable codes, specifications, and standards. For the purposes of this section, 'public facility' includes any publicly owned flood control, navigation, irrigation, reclamation, public power, sewage treatment and collection, water supply and distribution, watershed development, or airport facility, any non-Federal-aid street, road, or highway, any other public building, structure, or system including those used for educational or recreational purposes, and any park.

"(b) The President is authorized to make contributions to help repair, restore, reconstruct, or replace eligible private nonprofit facilities which were damaged or destroyed by a major disaster. Notwithstanding any other provision of law, such contributions shall be 75 per centum of the net eligible cost, or for small projects 75 per centum of the Federal estimate of the net eligible cost, of repairing, restoring, reconstructing, or replacing any such facility estimated on the basis of the design of such facility as it existed immediately prior to such major disaster and in conformity with current applicable codes, specifications, and standards. For the purposes of this section, 'eligible private nonprofit facility' means private nonprofit educational, utility, emergency, medical, and custodial care facilities, including those for the aged and disabled, and such private nonprofit facilities on Indian reservations, which were damaged or destroyed by a major disaster.

"(c) No authority under this section shall be exercised unless the affected State, local government, or eligible private nonprofit organization first agrees that such facility shall be repaired, restored, reconstructed, or replaced in compliance with flood plain management and hazard mitigation criteria required by the President, with the provisions of the Coastal Barrier Resources Act and other applicable Federal statutes, and in conformity with other applicable codes, specifications, and standards, except as otherwise provided in section 315 of this Act.

"(d) For those facilities eligible under this section which were in the process of construction when damaged or destroyed by a

major disaster, the contribution shall be 75 per centum of the net eligible costs of restoring such facilities substantially to their predisaster condition: *Provided,* That the term 'net eligible costs' shall not include cost which, under a contract, are the responsibility of a contractor.

"(c) In those cases, except for small projects, where a State or local government determines that public welfare would not be best served by repairing, restoring, reconstructing, or replacing particular public facilities owned or controlled by that State or that local government and which have been damaged or destroyed in a major disaster, it may elect to receive, in lieu of the contribution described in subsection (a) of this section, a contribution that shall be 50 per centum of the Federal estimate of the net eligible cost of repairing, restoring, reconstructing, or replacing such damaged facilities owned by it within its jurisdiction. The cost of repairing, restoring, reconstructing, or replacing damaged or destroyed public facilities shall be estimated on the basis of the design of each facility as it existed immediately prior to such disaster and in conformity with current applicable codes, specifications, and standards. Funds contributed under this subsection may be expended either to repair or restore certain selected damaged public facilities or to construct new public facilities which the State or local government determines to be necessary to meet its needs for governmental services and functions in the disaster-affected area."

(b) The Disaster Relief Act of 1974 is amended by deleting section 421 (42 U.S.C. 5189), as redesignated by sections 11(c) and 12 of this Act, and by striking "or 419" each place that this phrase appears in section 311 (42 U.S.C. 5154), as redesignated by section 7(1) of this Act.

(c) Section 406 of the Disaster Relief Act of 1974 (42 U.S.C. 5173), as redesignated by section 12 of this Act, is amended by adding at the end thereof the following:

"(c) Notwithstanding any other provision of law, whether carried out directly through Federal departments, agencies, or instrumentalities or through grants to State or local governments, Federal assistance provided under authority of this section shall be 75 per centum of the net eligible costs, or for small projects 75 per centum of the Federal estimate of the net eligible costs, of debris removal.".

SEC. 14. Section 407(a) of the Disaster Relief Act of 1974, as redesignated by section 12 of this Act, is amended to read as follows:

"(a) The President is authorized to provide, either by purchase or lease, temporary housing including, but not limited to, unoccupied habitable dwellings, suitable rental housing, mobile homes, or other readily fabricated dwellings for those who, as a result of a major disaster, require temporary housing. Whenever he determines it to be in the public interest, the President is authorized to provide temporary housing assistance by using Federal departments, agencies, or instrumentalities. In addition, the President is authorized to provide temporary housing assistance by contributing not to exceed 100 per centum (or 75 per centum for group site development pursuant to paragraph (2) of this subsection) of the costs of temporary housing assistance to a State or local government which provides such assistance to those who require it as a result of a major disaster. Federal financial and operational responsibilities for temporary housing assistance shall not exceed eighteen months from the date of the major disaster declaration by the President, unless he determines that due to extraordinary circumstances it would be in the public interest to extend the eighteen month period.

"(1) Temporary housing assistance pursuant to this subsection shall be provided only when adequate alternative housing is unavailable, unless there is compelling need to do so because of extreme hardship.

"(2) Any mobile home or other readily fabricated dwelling supplied pursuant to this subsection shall be placed on a site complete with utilities provided either by the State or local government, or by the owner or occupant of the site who was displaced by the major disaster. When the President determines such action to be in the public interest, he may authorize installation of essential utilities at Federal expense and he may elect to provide other more economical or accessible sites. However, in the event the President authorizes the development of a group site, that is, a site for two or more households, the Federal share shall be 75 per centum of the development costs, and the remainder shall be met by funds provided by the State or local government."

SEC. 15. Section 408 of the Disaster Relief Act of 1974 (42 U.S.C. 5176), as redesignated by sections 11(c) and 12 of this Act, is amended by adding "(a)" after "408." and by adding a new subsection "(b)" as follows:

"(b) The President is authorized to contribute up to 50 per centum of the cost of implementing hazard mitigation projects which he has determined would be cost effective and would substantially reduce the risk of future damage, hardship, loss, or suffering in the area affected by a major disaster. Such projects shall be identified following the evaluation of natural hazards provided for in subsection (a) of this section and shall be subject to approval by the President. The total of the contributions made under this subsection shall not exceed 10 per centum of the Federal estimate of grants made under the authority of section 405 of this Act for each major disaster.".

SEC. 16. Section 409(a) of the Disaster Relief Act of 1974 (42 U.S.C. 5177), as redesignated by sections 11(c) and 12 of this Act, is amended to read as follows: "The President is authorized to provide such disaster unemployment assistance as he deems appropriate to individuals who are unemployed as a result of a major disaster. Disaster unemployment assistance authorized by this section shall be available to an eligible individual for a period not to exceed fifty-two weeks after the week in which an eligible individual became unemployed as a result of a major disaster, and such period shall be regarded as the disaster assistance period for that individual for the purposes of this section. Disaster unemployment assistance shall not be payable with respect to any week for which an individual is entitled to unemployment compensation (as defined in section 85(c) of the Internal Revenue Code of 1954, as amended) or waiting week credit. The maximum amount of disaster unemployment assistance payable to any individual with respect to a major disaster shall not exceed twenty-six times the maximum weekly amount for which the individual establishes eligibility minus the amount of any unemployment compensation paid to the individual during the fifty-two week benefit period established pursuant to this section. Such assistance for a week of unemployment shall not exceed the maximum weekly amount authorized under the unemployment compensation law of the State in which the disaster occurred, and the amount of assistance under this section for a week of unemployment shall be reduced by any amount of private income protection insurance compensation available to such individual for such week of unemployment. The payment of unemployment compensation to an individual with respect to any week subsequent to the exhaustion of eligibility of such individual for disaster unemployment assistance and within the fifty-two week benefit period established pursuant to this section shall not be regarded as duplication of benefits under section 312 of this Act. The President is directed to provide disaster unemployment assistance through agreements with States which, in his judgment, have an adequate system for administering such assistance through existing State agencies.".

SEC. 17. (a) Section 410(b) of the Disaster Relief Act of 1974 (42 U.S.C. 5178), as redesignated by sections 11(c) and 12 of this Act, is amended by adding a period after the word "share" in the second sentence of that subsection and by deleting the following phrase from the second sentence of section 410(b): "and any such advance is to be repaid to the United States when such State is able to do so.".

(b) Section 410(b) of the Disaster Relief Act of 1974 (42 U.S.C. 5178), as redesignated by sections 11(c) and 12 of this Act, is further amended by adding the following sentence between the second and third sentences of this subsection: "Such advances shall bear interest from the date of the advance at a rate determined by the Secretary of the Treasury, taking into consideration the current market yields on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the reimbursement period of the loan or advance. Repayment of such advances and of interest which accrues on the advances may be deferred for no longer than two years from the date of the major disaster declaration.".

SEC. 18. Section 410(b) of the Disaster Relief Act of 1974 (42 U.S.C. 5178), as redesignated by sections 156(c) and 157 of this Act, is amended by striking "$5,000" in the last sentence and inserting in lieu thereof "$7,500".

SEC. 19. Section 415 of the Disaster Relief Act of 1974 (42 U.S.C. 5183), as redesignated by sections 11(c) and 12 of this Act, is amended by striking "(through the National Institute of Mental Health)".

SEC. 20. Section 420(d) of the Disaster Relief Act of 1974 (42 U.S.C. 5188), as redesignated by sections 11(c) and 12 of this Act, is deleted.

SEC. 21. The Disaster Relief Act of 1974 (42 U.S.C. 5121-5202) is amended by—

(1) striking paragraph (7) of section 101(b) (42 U.S.C. 5121), striking "; and" from paragraph (6) and adding in lieu thereof a period, and adding "and" at the end of paragraph (5);

(2) striking "the Canal Zone," in paragraphs (3) and (4) of section 102 (42 U.S.C. 5122);

(3) striking "DISASTER" in the caption of title III (42 U.S.C. 5141-5158) and inserting in lieu thereof "MAJOR DISASTER RELIEF AND EMERGENCY";

(4) striking "section 402 or 404 of" in section 308(b) (42 U.S.C. 5151), as redesignated by section 7(1) of this Act;

(5) adding "emergency or" before the word "major" each of two places that word

appears in section 307 (42 U.S.C. 5150), as redesignated by section 7(1) of this Act;

(6) striking in section 310(b) (42 U.S.C. 5153), as redesignated by section 7(1) of this Act, everything after the word "areas" and inserting in lieu thereof a period;

(7) striking "or section 803 of the Public Works and Economic Development Act of 1965," each place the phrase appears in section 311 (42 U.S.C. 5154), as redesignated by section 7(1) of this Act;

(8) striking "402" each place that number appears in section 311 (42 U.S.C. 5154), as redesignated by section 7(1) of this Act, and inserting in lieu thereof "405";

(9) adding "emergency and major" before the word "disaster" in section 313 (42 U.S.C. 5156), as redesignated by section 7(1) of this Act;

(10) adding the word "MAJOR" between the words "FEDERAL" and "DISASTER" in the caption to title IV (42 U.S.C. 5171-5189);

(11) stiking "in emergencies or in major disasters" in the third sentence of paragraph (2) by section 12 of this Act;

(12) striking "311" in section 407(d)(2) (42 U.S.C. 5174), as redesignated by section 12 of this Act, and inserting in lieu thereof "308";

(13) striking "an emergency or" in section 417 (42 U.S.C. 5185), as redesignated by sections 11(c) and 12 of this Act, and inserting in lieu thereof "a";

(14) striking "408" in section 605 (42 U.S.C. 5121) and inserting in lieu thereof "410";

(15) striking "301" in subtitle C of title I of the State and Local Fiscal Assistance Act of 1972 (Public Law 92-512; 86 Stat. 919) and inserting in lieu thereof "401";

(16) striking "President" each place that word appears in section 309(a), as redesignated by section 7(1) of this Act, and inserting in lieu thereof "Federal coordinating officer".

(17) striking "rent" in section 310(a)(2) (42 U.S.C. 5153), as redesignated by section 7(1) of this Act, and inserting in lieu thereof "income"; and

(18) striking paragraph (1) of section 310(a) (42 U.S.C. 5153), as redesignated by section 7(1) of this Act, and renumbering subsequent paragraphs appropriately.

SEC. 22. (a) Section 6(a)(6)(E) of the Coastal Barrier Resource Act, 16 U.S.C. 3505(a)(6)(E), is amended by striking out "pursuant to sections 305 and 306 of the Disaster Relief Act of 1974" and insering in lieu thereof "pursuant to sections 402, 403, 502, and 503 of the Major Disaster Relief and Emergency Assistance Act".

(b) Whenever any reference is made in any provision of law (other than this Act), regulation, rule, record, or document of the United States to provisions of the Disaster Relief Act of 1974 repealed by this Act or renumbered by this Act, such reference shall be deemed to be a reference to the appropriate provisions of the Major Disaster Relief and Emergency Assistance Act.

SEC. 23. (a) Except as provided in subsection (b), this Act and the amendments made by this Act shall take effect ninety days after the date of enactment of this Act or on the date on which the President, after consultation with State and local governments, publishes final rules and regulations relating to the definition of costs for which State and local governments may be reimbursed under the Disaster Relief Act of 1974 (as amended by this Act), whichever is later.

(b)(1) This Act and the amendments made by this Act shall not affect the administration of any assistance provided under the authority of the Disaster Relief Act of 1974, for any major disaster or emergency declared by the President prior to the effective date of this Act.

(2) Except with regard to section 409(a) of the Disaster Relief Act of 1974, as redesignated by section 11(c) and 12 of this Act (relating to disaster unemployment assistance)—

(A) rules and regulations issued under statutory provisions which are repealed, modified, or amended by this Act shall continue in effect as though issued under the authority of this Act until they are expressly abrogated, modified, or amended by the President; and

(B) provision of disaster assistance by statutory provisions repealed, modified, or amended by this Act or rules and regulations issued thereunder, or proceedings involving of statutory provisions repealed, modified, or amended by this Act or rules and regulations issued thereunder which are in process prior to the effective date of this Act, may be continued to conclusion as though the applicable statutory provisions had not been repealed, modified, or amended.

(3) Violations of statutory provisions or rules and regulations issued under the authority of statutory provisions repealed, modified, or amended by this Act or rules and regulations issued thereunder which are committed prior to the effective date of this Act may be proceeded against under the law in effect at the time of the specific violation.

(c) Title IV of the Disaster Relief Act of 1974 (42 U.S.C. 5171-5189) is amended by adding at the end thereof a new section as follows:

"Sec. 421. No State shall be ruled ineligible to receive assistance under this Act solelby by virtue of an arithmetic formula based on income or population."

PROMOTING IMMUNIZATION AND ORAL REHYDRATION

LUGAR AMENDMENT NO. 3219

Mr. STEVENS (for Mr. LUGAR) proposed an amendment to the amendment of the House to the bill (S. 1917) to amend the Foreign Assistance Act of 1961 to provide assistance to promote immunization and oral rehydration, and for other purposes; as follows:

In lieu of the matter proposed by the amendment of the House, insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Special Foreign Assistance Act of 1986".

TITLE I—PROMOTING IMMUNIZATION AND ORAL REHYDRATION IN DEVELOPING COUNTRIES

SEC. 101. FINDINGS.

The Congress finds that—

(1) the United Nations Children's Fund (UNICEF) reports that 3.5 million children die annually because they have not been immunized against the six major childhood diseases: polio, measles, whooping cough, diphtheria, tetanus, and tuberculosis;

(2) at present less than 20 percent of children in the developing world are fully immunized against these diseases;

(3) each year more than five million additional children are permanently disabled and suffer diminished capacities to contribute to the economic, social, and political development of their countries because they have not been immunized;

(4) ten million additional childhood deaths from immunizable and potentially immunizable diseases could be averted annually by the development of techniques in biotechnology for new and cost-effective vaccines;

(5) the World Health Assembly, the Executive Board of the United Nations Children's Fund, and the United Nations General Assembly are calling upon the nations of the world to commit the resources necessary to meet the challenge of universal access to childhood immunization by 1990;

(6) at the 1984 "Bellagio Conference" it was determined that the goal of universal childhood immunization by 1990 is indeed achievable; and

(7) the Congress has expressed its expectation that the Agency for International Development will set as a goal the immunization by 1990 of at least 80 percent of all the children in those countries in which the Agency has a program.

SEC. 102. UNITED STATES PARTICIPATION IN GLOBAL EFFORT.

(a) UNITED STATES GOVERNMENT SUPPORT.—The Congress calls upon the President to direct the Agency for International Development, working through the Centers for Disease Control and other appropriate Federal agencies, to work in a global effort to provide enhanced support toward achieving the goal of universal access to childhood immunization by 1990 by—

(1) assisting in the delivery, distribution, and use of vaccines, including—

(A) the building of locally sustainable systems and technical capacities in developing countries to reach, by the appropriate age, not less than 80 percent of their annually projected target population with the full schedule of required immunizations; and

(B) the development of a sufficient network of indigenous professionals and institutions with responsibility for developing, monitoring, and assessing immunization programs and continually adapting strategies to reach the goal of preventing immunizable diseases; and

(2) performing, supporting, and encouraging research and development activities, both in the public and private sector, that will be targeted at developing new vaccines and at modifying and improving existing vaccines to make them more appropriate for use in developing countries.

(b) PRIVATE SECTOR SUPPORT.—In support of this global effort, the President should appeal to the people of the United States and the United States private sector to support public and private efforts to provide the resources necessary to achieve universal access to childhood immunization by 1990.

SEC. 103. FUNDING LEVELS.

(a) EARMARKING.—Section 104(c)(3) of the Foreign Assistance Act of 1961 is amended by adding at the end thereof the following: "Of the aggregate amounts made available for fiscal year 1987 to carry out paragraph (2) of this subsection (relating to the Child Survival Fund) and to carry out subsection (c) (relating to development assistance for health), $50,000,000 shall be used to carry out this paragraph.".

(b) AUTHORIZATION LEVEL FOR CHILD SURVIVAL FUND.—Section 104(c)(2)(B) of that Act is amended by striking out "$25,000,000 for fiscal year 1987" and inserting in lieu thereof "$75,000,000 for fiscal year 1987".

TITLE II—PROMOTING DEMOCRACY IN HAITI

SEC. 201. FINDINGS CONCERNING HAITI.

The Congress finds that—

(1) the establishment of an interim government in Haiti committed to a restoration of democracy provides Haiti with an opportunity to build the political, social, and economic institutions necessary to promote Haiti's development, to provide a better future for the people of Haiti, and to provide the framework for more effective mutual cooperation with the United States, Haiti's neighbor in the Caribbean, and the other nations of the Hemisphere;

(2) the magnitude of the political, economic, and social tasks facing the people of Haiti will make the achievement of a better future a difficult task which will require a determined and sustained effort by the Haitian people over a long period of time and will require significant external assistance from the United States and other donors; and

(3) it is in the interest of the United States to provide appropriate support for the development of Haiti, a close neighbor which is one of the world's poorest nations and which is committed to the establishment of a democratic government.

SEC. 202. ECONOMIC ASSISTANCE FOR HAITI.

(a) EARMARKING OF FUNDS.—Not less than $108,000,000 of the aggregate amounts available for fiscal year 1987 to carry out sections 103 through 106 of the Foreign Assistance Act of 1961 (relating to development assistance), chapter 4 of part II of that Act (relating to the Economic Support Fund), and titles I and II of the Agricultural Trade Development and Assistance Act of 1954 (relating to the Food for Peace Program) shall be available only for Haiti.

(b) USE OF DEVELOPMENT ASSISTANCE.—Assistance under sections 103 through 106 of the Foreign Assistance Act of 1961 which is provided for Haiti pursuant to subsection (a) shall be used to support a transition to democracy in Haiti, emphasizing foreign investment, job creation (especially in the private sector), rural development, health care and sanitation, small-scale irrigation, reforestation and land conservation, and literacy education. Such assistance should reflect the need to distribute development assistance resources more equitably among the various regions in Haiti in order to support sustainable development in all of Haiti.

(c) REQUIREMENT FOR SEGREGATED ACCOUNT FOR ECONOMIC SUPPORT ASSISTANCE FUNDS PAID TO GOVERNMENT OF HAITI.—Funds under chapter 4 of part II of the Foreign Assistance Act of 1961 which are made available for Haiti pursuant to subsection (a) may be paid to the Government of Haiti only if the Government of Haiti will maintain those funds in a separate account and not commingle them with other funds.

(d) CONDITIONS ON ECONOMIC SUPPORT AND DEVELOPMENT ASSISTANCE.—Funds may be obligated for assistance for Haiti under sections 103 through 106 or chapter 4 of part II of the Foreign Assistance Act of 1961 pursuant to subsection (a) only if the President determines that the interim Government of Haiti—

(1) is improving the human rights situation in Haiti;

(2) is implementing its timetable for completion of a new constitution that promotes genuine democratic reforms and guarantees the fundamental principles of democracy;

(3) is establishing a framework for free and open elections leading to a democratically-elected civilian government, which would include free and functioning political parties and associations, free labor unions, and freedom of the press;

(4) is cooperating fully in implementing United States development, food, and other economic assistance programs in Haiti (including programs for prior fiscal years);

(5) is maintaining a system of fiscal accountability to ensure that all resources allocated to the development of Haiti are used in the most effective and efficient manner;

(6) is continuing its investigation of alleged human rights abuses and corruption by the Duvalier government and is prosecuting, in accordance with due process, those responsible for human rights abuses and corruption;

(7) is maintaining a free and independent judiciary system;

(8) is continuing to cooperate with the United States in halting illegal emigration to the United States from Haiti; and

(9) is encouraging private sector development.

(e) INTER-AMERICAN FOUNDATION.—Section 401(s)(2) of the Foreign Assistance Act of 1969 is amended by striking out "$11,969,000 for fiscal year 1987" and inserting in lieu thereof "$12,969,000 for fiscal year 1987 (not less than $1,000,000 of which shall be for Haiti)".

(f) ADDITIONAL ASSISTANCE FOR ECONOMIC DEVELOPMENT IN HAITI.—In order to assist economic development in Haiti, a Foreign Commercial Service officer should be assigned to the United States Embassy in Haiti.

SEC. 203. MILITARY TRAINING AND OTHER NON-LETHAL ASSISTANCE FOR HAITI.

(a) AUTHORIZATION OF ASSISTANCE.—Up to $4,000,000 of the aggregate amounts available for fiscal year 1987 to carry out chapter 2 of part II of the Foreign Assistance Act of 1961 (relating to grant military assistance), chapter 5 of part II of that Act (relating to international military education and training), and the Arms Export Control Act (relating to FMS assistance) may be made available for Haiti for education, training, and other nonlethal assistance (such as transportation equipment, communications equipment, and uniforms).

(b) CONDITIONS ON MILITARY ASSISTANCE.—Funds made available pursuant to subsection (a) may be obligated only if the President certifies to the Congress the following:

(1) The Government of Haiti has submitted a formal request to the United States specifying a comprehensive plan for the reform and reorganization of the mission, command, and control structures of the Haitian armed forces consistent with a transition to democracy, the rule of law, constitutional government, and an elected civilian government. Such a plan should include a publicly announced commitment by the armed forces of Haiti to abide by international human rights standards and adoption of a code of conduct to assure adherence to these standards.

(2) The Government of Haiti is making substantial efforts—

(A) to prevent the involvement of the Haitian armed forces in human rights abuses and corruption by removing from those forces and prosecuting, in accordance with due process, those military personnel responsible for the human rights abuses and corruption;

(B) to ensure that freedom of speech and assembly are respected;

(C) to conduct investigations into the killings of unarmed civilians in Gonaives, Martissant, and Fort Dimanche, to prosecute, in accordance with due process, those responsible for those killings, and to prevent any similar occurrences in the future;

(D) to provide education and training to the Haitian armed forces with respect to internationally recognized human rights and the civil and political rights essential to democracy, in order to enable those forces to function consistent with those rights; and

(E) to take steps to implement the policy of the Government of Haiti requiring former members of the Volunteers for National Security (VSN) to turn in their weapons and to take the necessary actions to enforce this requirement.

(c) REPORTS.—Not later than three months after the President submits his certification under subsection (b) and every three months thereafter, the President shall report to the Congress on the extent to which the actions of the Government of Haiti are consistent with each of objections specified in subsection (b). Half of the assistance provided pursuant to subsection (a) shall be withheld from delivery until the President submits the first such report.

(d) NOTIFICATION TO CONGRESS.—Funds made available pursuant to subsection (a) may be obligated only if the Committee on Appropriations and the Committee on Foreign Affairs of the House of Representatives and the Committee on Appropriations and the Committee on Foreign Relations of the Senate are notified fifteen days in advance.

(e) RELATION TO EXISTING PROVISION.—Assistance under subsection (a) may be provided notwithstanding the limitations contained in section 705(e) of the International Security and Development Cooperation Act of 1985 and is in addition to the assistance allowed under that section.

SEC. 204. RECOVERY BY HAITI OF ASSETS STOLEN BY DUVALIER REGIME.

(a) FINDINGS.—The Congress finds that—

(1) the Government of Haiti believes that former president-for-life Jean Claude Duvalier and other individuals associated with the Duvalier regime illegally diverted to their own use substantial amounts of the assets of the Government of Haiti;

(2) the Government of Haiti is attempting to locate and recover those assets through legal means;

(3) virtually every relevant jurisdiction, both in the United States and abroad, requires the posting of some form of security to secure the issuance of orders of attachment or other judicial seizures of property;

(4) the Government of Haiti is unable, without outside assistance, to post the necessary security because of its lack of assets;

(5) Haiti's economic situation could be significantly improved, and the need for external resources reduced, if the Government of Haiti is able to pursue its legal remedies against those who are in large part responsible for the economic crisis in Haiti; and

(6) the United States has a substantial foreign policy interest in helping the Government of Haiti recover any assets which were illegally diverted by those associated with the Duvalier regime.

(b) ACTIONS TO ASSIST HAITI.—The President shall exercise the authorities granted by section 203 of the International Emergency Economic Powers Act (50 U.S.C. app. 1702) to assist the Government of Haiti in its efforts to recover, through legal proceedings, assets which the Government of Haiti alleges were stolen by former president-for-life Jean Claude Duvalier and other individuals associated with the Duvalier regime.

This subsection shall be deemed to satisfy the requirements of section 202 of that Act.

TITLE III—PROTECTING TROPICAL FORESTS AND BIOLOGICAL DIVERSITY IN DEVELOPING COUNTRIES

SEC. 301. PROTECTING TROPICAL FORESTS.

Chapter 1 of part I of the Foreign Assistance Act of 1961 is amended—

(1) by redesignating section 118 as section 117;

(2) by striking out subsection (d) of that section; and

(3) by inserting after that section the following new section 118:

"SEC. 118. TROPICAL FORESTS.

"(a) IMPORTANCE OF FORESTS AND TREE COVER.—In enacting section 103(b)(3) of this Act the Congress recognized the importance of forests and tree cover to the developing countries. The Congress is particularly concerned about the continuing and accelerating alteration, destruction, and loss of tropical forests in developing countries, which pose a serious threat to development and the environment. Tropical forest destruction and loss—

"(1) result in shortages of wood, especially wood for fuel; loss of biologically productive wetlands; siltation of lakes, reservoirs, and irrigation systems; floods; destruction of indigenous peoples; extinction of plant and animal species; reduced capacity for food production; and loss of genetic resources; and

"(2) can result in desertification and destabilization of the earth's climate.

Properly managed tropical forests provide a sustained flow of resources essential to the economic growth of developing countries, as well as genetic resources of value to developed and developing countries alike.

"(b) PRIORITIES.—The concerns expressed in subsection (a) and the recommendations of the United States Interagency Task Force on Tropical Forests shall be given high priority by the President—

"(1) in formulating and carrying out programs and policies with respect to developing countries, including those relating to bilateral and multilateral assistance and those relating to private sector activities; and

"(2) in seeking opportunities to coordinate public and private development and investment activities which affect forests in developing countries.

"(c) ASSISTANCE TO DEVELOPING COUNTRIES.—In providing assistance to developing countries, the President shall do the following:

"(1) Place a high priority on conservation and sustainable management of tropical forests.

"(2) To the fullest extent feasible, engage in dialogues and exchanges of information with recipient countries—

"(A) which stress the importance of conserving and sustainably managing forest resources for the long-term economic benefit of those countries, as well as the irreversible losses associated with forest destruction, and

"(B) which identify and focus on policies of those countries which directly or indirectly contribute to deforestation.

"(3) To the fullest extent feasible, support projects and activities—

"(A) which offer employment and income alternatives to those who otherwise would cause destruction and loss of forests, and

"(B) which help developing countries identify and implement alternatives to colonizing forested areas.

"(4) To the fullest extent feasible, support training programs, educational efforts, and the establishment or strengthening of institutions which increase the capacity of developing countries to formulate forest policies, engage in relevant land-use planning, and otherwise improve the management of their forests.

"(5) To the fullest extent feasible, help end destructive slash-and-burn agriculture by supporting stable and productive farming practices in areas already cleared or degraded and on lands which inevitably will be settled, with special emphasis on demonstrating the feasibility of agroforestry and other techniques which use technologies and methods suited to the local environment and traditional agricultural techniques and feature close consultation with and involvement of local people.

"(6) To the fullest extent feasible, help conserve forests which have not yet been degraded, by helping to increase production on lands already cleared or degraded through support of reforestation, fuelwood, and other sustainable forestry projects and practices, making sure that local people are involved at all stages of project design and implementation.

"(7) To the fullest extent feasible, support projects and other activities to conserve forested watersheds and rehabilitate those which have been deforested, making sure that local people are involved at all stages or project design and implementation.

"(8) To the fullest extent feasible, support training, research, and other actions which lead to sustainable and more environmentally sound practices for timber harvesting, removal, and processing, including reforestation, soil conservation, and other activities to rehabilitate degraded forest lands.

"(9) To the fullest extent feasible, support research to expand knowledge of tropical forests and identify alternatives which will prevent forest destruction, loss, or degradation, including research in agroforestry, sustainable management of natural forests, small-scale farms and gardens, small-scale animal husbandry, wider application of adopted traditional practices, and suitable crops and crop combinations.

"(10) To the fullest extent feasible, conserve biological diversity in forest areas by—

"(A) supporting and cooperating with United States Government agencies, other donors (both bilateral and multilateral), and other appropriate governmental, intergovernmental, and nongovernmental organizations in efforts to identify, establish, and maintain a representative network of protected tropical forest ecosystems on a worldwide basis;

"(B) whenever appropriate, making the establishment of protected areas a condition of support for activities involving forest clearance or degradation; and

"(C) helping developing countries identify tropical forest ecosystems and species in need of protection and establish and maintain appropriate protected areas.

"(11) To the fullest extent feasible, engage in efforts to increase the awareness of United States Government agencies and other donors, both bilateral and multilateral, of the immediate and long-term value of tropical forests.

"(12) To the fullest extent feasible, utilize the resources and abilities of all relevant United Stated Government agencies.

"(13) Require that any program or project under this chapter significantly affecting tropical forests (including projects involving the planting of exotic plant species)—

"(A) be based upon careful analysis of the alternatives available to achieve the best sustainable use of the land, and

"(B) take full account of the environmental impacts of the proposed activities on biological diversity,

as provided for in the environmental procedures of the Agency for International Development.

"(14) Deny assistance under this chapter for—

"(A) the procurement or use of logging equipment, unless an environmental assessment indicates that all timber harvesting operations involved will be conducted in an environmentally sound manner which minimizes forest destruction and that the proposed activity will produce positive economic benefits and sustainable forest management systems; and

"(B) actions which significantly degrade national parks or similar protected areas which contain tropical forests or introduce exotic plants or animals into such areas.

"(15) Deny assistance under this chapter for the following activities unless an environmental assessment indicates that the proposed activity will contribute significantly and directly to improving the livelihood of the rural poor and will be conducted in an environmentally sound manner which supports sustainable development:

"(A) Activities which would result in the conversion of forest lands to the rearing of livestock.

"(B) The construction, upgrading, or maintenance of roads (including temporary haul roads for logging or other extractive industries) which pass through relatively undegraded forest lands.

"(C) The colonization of forest lands.

"(D) The construction of dams or other water control structures which flood relatively undegraded forest lands.

"(d) PVOs AND OTHER NONGOVERNMENTAL ORGANIZATIONS.—Whenever feasible, the President shall accomplish the objectives of this section through projects managed by private and voluntary organizations or international, regional, or national nongovernmental organizations which are active in the region or country where the project is located.

"(e) COUNTRY ANALYSIS REQUIREMENTS.—Each country development strategy statement or other country plan prepared by the Agency for International Development shall include an analysis of—

"(1) the actions necessary in that country to achieve conservation and sustainable management of tropical forests, and

"(2) the extent to which the actions proposed for support by the Agency meet the needs thus identified.

"(f) ANNUAL REPORT.—Each annual report required by section 634(a) of this Act shall include a report on the implementation of this section.".

SEC. 302. PROTECTING BIOLOGICAL DIVERSITY.

Section 119 of the Foreign Assistance Act of 1961 is amended by striking out subsections (c) and (d) and inserting in lieu thereof the following:

"(c) FUNDING LEVEL.—For fiscal year 1987, not less than $2,500,000 of the funds available to carry out this part (excluding funds made available to carry our section 104(c)(2), relating to the Child Survival Fund) shall be allocated for assistance pursuant to subsection (b) for activities which were not funded prior to fiscal year 1987. In addition, the Agency for International Development shall, to the fullest extent possible, continue and increase assistance pursuant to subsection (b) for activities for which

assistance was provided in fiscal years prior to fiscal year 1987.

"(d) COUNTRY ANALYSIS REQUIREMENTS.—Each country development strategy statement or other country plan prepared by the Agency for Inernational Development shall include an analysis of—

"(1) the actions necessary in that country to conserve biological diversity, and

"(2) the extent to which the actions proposed for support by the Agency meet the needs thus identified.

"(e) LOCAL INVOLVEMENT.—To the fullest extent possible, projects supported under this section shall include close consultation with and involvement of local people at all stages of design and implementation.

"(f) PVOs AND OTHER NONGOVERNMENTAL ORGANIZATIONS.—Whenever feasible, the objectives of this section shall be accomplished through projects managed by appropriate private and voluntary organizations, or international, regional, or national nongovernmental organizations, which are active in the region or country where the project is located.

"(g) ACTIONS BY AID.—The Administrator of the Agency for International Development shall—

"(1) cooperate with appropriate international organizations, both governmental and nongovernmental;

"(2) look to the World Conservation Strategy as an overall guide for actions to conserve biological diversity;

"(3) engage in dialogues and exchanges of information with recipient countries which stress the importance of conserving biological diversity for the long-term economic benefit of those countries and which identify and focus on policies of those countries which directly or indirectly contribute to loss of biological diversity;

"(4) support training and education efforts which improve the capacity of recipient countries to prevent loss of biological diversity;

"(5) whenever possible, enter into long-term agreements in which the recipient country agrees to protect ecosystems or other wildlife habitats recommended for protection by relevant governmental or nongovernmental organizations or as a result of activities undertaken pursuant to paragraph (6), and the United States agrees to provide, subject to obtaining the necessary appropriations, additional assistance necessary for the establishment and maintenance of such protected areas;

"(6) support, as necessary and in cooperation with the appropriate governmental and nongovernmental organizations, efforts to identify and survey ecosystems in recipient countries worthy of protection;

"(7) cooperate with and support the relevant efforts of other agencies of the United States Government, including the United States Fish and Wildlife Service, the National Park Service, the Forest Service, and the Peace Corps;

"(8) review the Agency's environmental regulations and revise them as necessary to ensure that ongoing and proposed actions by the Agency do not inadvertently endanger wildlife species or their critical habitats, harm protected areas, or have other adverse impacts on biological diversity (and shall report to the Congress within a year after the date of enactment of this paragraph on the actions taken pursuant to this paragraph);

"(9) ensure that environmental profiles sponsored by the Agency include information needed for conservation of biological diversity; and

"(10) deny any direct or indirect assistance under this chapter for actions which significantly degrade national parks or similar protected areas or introduce exotic plants or animals into such areas.

"(h) ANNUAL REPORTS.—Each annual report required by section 634(a) of this Act shall include, in a separate volume, a report on the implementation of this section.".

TITLE IV—MISCELLANEOUS PROVISIONS RELATING TO CERTAIN FOREIGN ASSISTANCE PROGRAMS

SEC. 401. INCREASE AUTHORIZATION FOR INTERNATIONAL NARCOTICS CONTROL PROGRAMS.

Section 482(a)(1) of the Foreign Assistance Act of 1961 is amended by striking out "$57,529,000 for the fiscal year 1987" and inserting in lieu thereof "$65,445,000 for the fiscal year 1987".

SEC. 402. AUTHORIZING A SEPARATE LINE ITEM APPROPRIATION FOR THE INSPECTOR GENERAL OF THE AGENCY FOR INTERNATIONAL DEVELOPMENT.

Section 667(a)(1) of the Foreign Assistance Act of 1961 is amended by inserting after "Act" the following: ", of which $21,750,000 for the fiscal year 1987 is authorized for the necessary operating expenses of the Office of the Inspector General of the Agency for International Development and the remaining amount for that fiscal year is authorized for other necessary operating expenses of that agency".

SEC. 403. ADDITIONAL PROVISIONS.

(a) BOARD OF THE INTER-AMERICAN FOUNDATION.—Section 401(g) of the Foreign Assistance Act of 1969 (22 U.S.C.290f.(g)) is amended by striking out "seven" in the first sentence and "Four" in the second sentence and inserting in lieu thereof "nine" and "Six", respectively.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect 120 days after the date of enactment of this Act.

SEC. 404. OFFSETTING REDUCTIONS IN CERTAIN FOREIGN ASSISTANCE PROGRAMS.

In order to provide the increased authorizations of appropriations contained in section 103(b), setion 202(e), and section 401 without increasing the overall amount authorized to be appropriated for foreign assistance programs for fiscal year 1987—

(1) section 104(g)(1)(B) of the Foreign Assistance Act of 1961 (relating to development assistance for health programs) is amended by striking out "$205,000,000 for fiscal year 1987" and inserting in lieu thereof "$180,000,000 for fiscal year 1987"; and

(2) section 302(a)(1) of that Act (relating to international organizations and programs) is amended by striking out "$270,000,000 for fiscal year 1987" and insert in lieu thereof "$236,084,000 for fiscal year 1987".

SEC. 405. CONFORMING AMENDMENT.

Paragraph (6) of section 413(a) of the Omnibus Diplomatic Security and Antiterrorism Act of 1986 (Public Law 99-399) is repealed; and the sentence of section 209(a)(1) of the Foreign Service Act of 1980 which was repealed by that paragraph is hereby re-enacted.

Mr. STEVENS. Mr. President, I move that the Senate concur in the amendment of the House to the title of the bill (S. 1917), to amend the Foreign Assistance Act of 1961 to provide assistance to promote immunization and oral rehydration, and for other purposes.

CONSERVATION OF MIGRATORY WATERFOWL

CHAFEE AMENDMENT NO. 3220

Mr. STEVENS (for Mr. CHAFEE, for himself and Mr. MITCHELL) proposed an amendment to the bill (S. 740) to extend until October 1, 1995, the authority for appropriations to promote the conservation of migratory waterfowl and to offset or prevent the serious loss of wetlands and other essential habitat, and for other purposes; as follows:

On page 43, after line 20, insert the following:

SEC. 502. BAYOU SAUVAGE URBAN NATIONAL WILDLIFE REFUGE.

(a) PURPOSES OF REFUGE.—The purposes of the Bayou Sauvage Urban National Wildlife Refuge are—

(1) to enhance the populations of migratory shore, and wading birds within the refuge;

(2) to encourage natural diversity of fish and wildlife species within the refuge;

(3) to protect the endangered and threatened species and otherwise to provide for the conservation and management of fish and wildlife within the refuge;

(4) to fulfill the international treaty obligations of the United States respecting fish and wildlife;

(5) to protect the archeological resources of the refuge;

(6) to provide opportunities for scientific research and environmental education, with emphasis being given to the ecological and othe values of wetlands; and

(7) to provide opportunities for fish and wildlife oriented public uses and recreation in an urban setting.

(b) ACQUISITION AND ESTABLISHMENT OF REFUGE.—

(1) ACQUISITION.—Within four years after the effective date of this section the Secretary of the Interior (hereinafter in this Act referred to as the "Secretary") shall acquire the approximately nineteen thousand acres of lands and waters, and interests therein, located in Orleans Parish, Louisiana, that are depicted on the map entitled "Bayou Sauvage Urban National Wildlife Refuge", dated September 15, 1986, and on file at the United States Fish and Wildlife Service, Department of the Interior. The lands and waters, and interests therein, acquired under this paragraph comprise the Bayou Sauvage Urban National Wildlife Refuge. The acquisition shall be made through donation, purchase with donated or appropriated funds, or exchange, or through any combination of the foregoing.

(2) ESTABLISHMENT.—At such time as sufficient lands and waters, and interests therein, have been acquired under paragraph (1) to constitute an initial area that can be administered to carry out the purposes set forth in subsection (a), the Secretary shall establish the Bayou Sauvage Urban National Wildlife Refuge by publication of notice to that effect in the Federal Register.

(3) BOUNDARY ADJUSTMENTS.—The Secretary may make such adjustments with respect to the boundary of the Bayou Sauvage Urban National Wildlife Refuge as may be necessary to facilitate the acquisition of lands and waters, and interests therein, for the refuge and to facilitate the administraton of the refuge.

(c) ADMINISTRATION OF REFUGE.—The Secretary shall administer all lands and waters, and interests therein, acquired under subsection (b) in accordance with the provisions of the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd-668ee) to carry out the purposes set forth in subsection (a). The Secretary may utilize such additional statutory authority as may be available to him for the conservation and development of wildlife and natural resources, the development of outdoor recreation opportunities, and interpretive environmental education as he considers appropriate to carry out such purposes. Within two years after the effective date of this section, the Secretary shall complete a master plan for the development of the Bayou Sauvage Urban National Wildlife Refuge.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Department of the Interior—

(1) from funds not otherwise appropriated from the Land and Water Conservation Fund, such sums as may be necessary for the acquisition of lands and waters, and interests therein, for the Bayou Sauvage Urban National Wildlife Refuge; and

(2) $5,000,000 for the development of the refuge. The moneys appropriated under subparagraphs (1) and (2) shall remain available until expended.

(e) EFFECTIVE DATE.—This section takes effect on the later of the date of enactment of this Act or October 1, 1986.

STEVENS AMENDMENT NO. 3221

Mr. STEVENS proposed an amendment to the bill (S. 740), supra; as follows:

S. 740, the Emergency Wetlands Resources Act of 1986, is amended by—

(a) inserting, on page 31 between lines 23 and 24, the following new paragraph:

"(5) A person may not be required to purchase an admission permit under subsection (a)(1) for entrance or admission to a unit of the National Wildlife Refuge System created, expanded, or modified by Public Law 96-487.";

(b) striking the period at the end of subparagraph (c)(A)(iii) of section 201 and inserting in lieu thereof ", except those units created, expanded, or modified by Public Law 96-487.".

McCLURE AMENDMENT NO. 3222

Mr. STEVENS (for Mr. MCCLURE) proposed an amendment to the bill (S. 740), supra; as follows:

On page 27, strike all of lines 1 through 4 and insert in lieu thereof: "(1) The term 'Committees' means the Committee on Merchant Marine and Fisheries and the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Environment and Public Works and the Committee on Energy and Natural Resources of the Senate.

On page 29, line 4, delete "and".

On page 29, line 6, delete "and" and after line 6 insert in lieu the following: "(iii) issue at no charge lifetime admission permits as authorized in section 4(a)(5) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-4-4601-11).".

On page 30, line 7, delete "or".

On page 30, line 9, strike "Act." and insert "Act; or".

On page 30, after line 9, insert the following: "(D) a valid lifetime admission permit as authorized in section 4(a)(5) of such Act.".

On page 30, line 12, delete "$7.50." and insert "$3.00 for individuals or $7.50 per vehicle.".

On page 31, strike all of lines 1 through 11.

On page 31, line 12, strike "(5)" and insert "(4)".

On page 38, on line 20, delete "sion and shall be eligible without regard to location." and insert "sion.".

WETLANDS LOAN ACT EXTENSION

CHAFEE AMENDMENT NO. 3223

Mr. STEVENS (for Mr. CHAFEE) proposed an amendment to the bill (H.R. 4531) to extend to Wetlands Loan Act, and for other purposes; as follows:

On page 3, after line 2, insert the following new section:

SEC. . CONVEYANCE OF FISH HATCHERY TO STATE OF NEW HAMPSHIRE.

Notwithstanding any other law, the Secretary of the Interior and the Secretary of Agriculture shall convey, without reimbursement, to the State of New Hampshire no later than December 31, 1986, all of the right, title, and interest including the water rights, of the United States in and to the fish hatchery property located in the northwest corner of Berlin township in the White Mountain National Forest, New Hampshire, and known as the Berlin National Fish Hatchery, consisting of 510 acres, more or less, of land together with any improvements and related personal property thereon. The property conveyed shall be used by the New Hampshire Fish and Game Department as a part of the New Hampshire fishery resources management program and if it is used for any other purpose, title to such property shall revert to the United States.

COMMISSION ON THE BICENTENNIAL OF THE CONSTITUTION

METZENBAUM AMENDMENT NO. 3224

Mr. BYRD (for Mr. METZENBAUM) proposed an amendment to the bill (H.R. 3559) to amend the act establishing a Commission on the Bicentennial of the Constitution of the United States to clarify the status of employees of the Commission, to raise the limits on private contributions, and for other purposes; as follows:

On page 3, at line 15, after the word "logo," insert the following language,

"Such rules and regulations shall provide, among other things, that all projects, goods, and services as to which use of the logo is authorized shall be educational or commemorative, and shall relate to the bicentennial of the United States Constitution, the establishment of the Federal Government, or the Bill of Rights, and none of such projects, goods or services shall exploit the United States Constitution or the Bill of Rights. The purpose of the Commission in authorizing use of the logo shall not be primarily or exclusively to raise funds."

GAUCHER'S DISEASE AWARENESS WEEK

METZENBAUM AMENDMENT NO. 3225

Mr. BYRD (for Mr. METZENBAUM) proposed an amendment to the joint resolution (S.J. Res. 352) to designate the week beginning September 7, 1986, as "Gaucher's Disease Awareness Week"; as follows:

Strike out "September 7, 1986" wherever it appears and insert in lieu thereof "October 19, 1986."

ADDITIONAL STATEMENTS

THE 100TH ANNIVERSARY OF AVON PRODUCTS, INC.

● Mr. D'AMATO. Mr. President, I rise today to call the attention of my colleagues to the world's leading manufacturer and distributor of cosmetics, fragrances, and fashion jewelry: Avon Products, Inc. This company, headquartered in my State of New York, is celebrating its 100th anniversary. It has provided an earning opportunity for many women.

Avon's support for women's endeavors in many other fields is worthy of commendation. It has sponsored Avon championship tennis and marathons for female runners throughout the world and other women's sports, as well as cultural and achievement programs such as a scholarship program for young women seeking careers in sales.

For 100 years Avon has offered millions of women the opportunity for personal and professional growth. It was natural then for Avon to serve as an official sponsor of the restoration of our country's most important symbol of opportunity: The Statue of Liberty. Also, in keeping with its commitment to women's professional development, Avon was honored to sponsor and train the official guides for Liberty Weekend, 250 outstanding college women from across the country.

Avon has sought to be a responsible corporate citizen, sharing its success and contributing to the well-being of society. Through the Avon Foundation it has supported minority programs, womens' organizations, hospitals, health agencies, and community groups with its financial and product donations. Avon has set an outstanding example of corporate good citizenship, both by general financial volunteer action awards and by a policy of strongly encouraging its employees to take part in community volunteer programs.

Mr. President, over the past 100 years Avon has grown from a company with one product and one representative to an effort reaching millions of

people throughout the world. Success and growth have graced Avon's history. I ask unanimous consent that a copy of a letter from the President, congratulating Avon for its past 100 years of providing people, especially women, the opportunity to grow personally and financially, as well as Avon's personal service to families across our Nation and around the world, be printed in the RECORD at the conclusion of my remarks.

I am certain that my colleagues join with me in commending Avon for its outstanding accomplishments and its commitment to its employees and consumers throughout the world and in congratulating Avon on its 100th anniversary.

The letter of the President follows:

THE WHITE HOUSE,
Washington, D.C.

Congratulations to the people of Avon on your Centennial Celebration. Throughout its 100 year history, Avon has given many people—particularly women—the opportunity to earn and grow, as they provided personal service to families across America and around the world.

Avon has also set an outstanding example of corporate good citizenship, both by generous financial Volunteer Action Awards, and by a policy of strongly encouraging its employees to take part in community volunteer programs. And you go further still by special recognition of outstanding volunteers.

I would also like to send special congratulations to the women and men who are Avon's top representatives. Many of you are successfully managing both family responsibilities and careers. As independent business people, you exemplify that American spirit has made our country great—a belief that you can meet any challenge through initiative, hard work, and dedication.

Nancy joins me in wishing everyone at Avon continued success as you move into your second century of helping make America beautiful.

With best wishes,

RONALD REAGAN.●

COSPONSORING S.J. RES. 403

● Mr. D'AMATO. Mr. President, I rise today as a cosponsor of Senate Joint Resolution 403, introduced by my distinguished colleague from Delaware which designates 1988 as the "National Year of Friendship with Finland."

Finns have been a part of American society since 1638 when they first settled in a Swedish colony along the Delaware River. As a result of the influx of more Finnish immigrants, new communities were established in New York, Delaware, Pennsylvania, New Jersey, and Maryland. Their population grew in size until the Finns became the third most represented culture in the original 13 Colonies during the 17th century.

Today, there are approximately 700,000 Americans of Finnish descent living in the United States. There contributions to American society have been as continuous as they have been plentiful. It is only fitting that we honor these people for their valuable contributions to American life for over 340 years. I urge the Senate to join in commemorating our long and prosperous relationship with the Finnish people.●

S. 2770—AMENDMENTS TO FARM CREDIT ACT OF 1971

● Mr. D'AMATO. Mr. President, I rise today as a cosponsor of S. 2770, amendments to the Farm Credit Act of 1971, introduced by the distinguished Senator from Mississippi.

The Farm Credit System is in trouble. Over the years it has faced increased competition from other savings and loan institutions. These competitors have taken full advantage of the relatively high interest rates—forced upon them by the Farm Credit Administration—charged by the farm credit banks. As a result, farmers are turning to banks outside the system for loans.

The Farm Credit Administration's refusal to lower their interest rates to match their competitors has worked toward their detriment. It is for this reason that Congress has taken an interest in the plight of the farm credit banks. Without Federal intervention, it is unlikely that the system will be able to continue to compete with banks offering lower interest rates on loans. The present system not only hurts the American farmer, it also impairs the ability of the Farm Credit System to maintain its market share and to manage properly its assets and liabilities.

S. 2770 would permit individual units of the Farm Credit System to set interest rates at levels which they determine to be competitive with other lenders in their immediate areas. As the system works now, any bank within the Farm Credit Administration must submit formal applications to its regulator before interest rates can be adjusted in any given part of the country. In a market where interest rates change rapidly, the present system is inflexible and inefficient. The Farm Credit System must have the flexibility to change its rates in response to daily changes in the marketplace in order to serve its borrowers and manage its business as a successful institution.

I commend Senator COCHRAN for introducing S. 2770. It has become obvious that the Farm Credit System is not allowing its individual units to compete with other banking institutions. Those who are most affected by the high interest rates are the farmers and the Farm Credit System itself. The marketplace remains the best determinant of price. Until the FCA realizes this, and begins to implement policies that allow for more flexibility of interest rates on loans, it is necessary for the Congress to take action. I urge the Senate to consider the merits of this bill and to vote for its passage.●

HONORING JOHN F. SYSTMA

● Mr. D'AMATO. Mr. President, on Wednesday, October 8, the New York Susquehanna & Western Railroad will be holding a testimonial dinner for one of their own, John F. Systma, in Cooperstown, NY. John is retiring after 46 years of active railroad service. During that entire time he was on the roster of the Susquehanna.

John Systma began his career at the age of 19 as a fireman on the railroad. During World War II he ran locomotives for the United States Army in the Philippines and Korea. Returning to the Susquehanna in 1946, he was promoted to engineer. In 1956, he moved into a union leadership role as general chairman of the Susquehanna. That same year John began work in the BLE grand office as chief clerk and office manager. In 1962 John was elected general secretary of the BLE. He was elected first vice president in 1974 and finally in 1976 John Systma was elected president of the Brotherhood of Locomotive Engineers.

John Systma guided the BLE through 10 turbulent years in the railroad industry. During his time of leadership the Nation saw many bankruptcies and massive railroad restructuring. Through it all his union remained strong and vibrant. John personally made many contributions to the policy concepts that resulted in the creation of Conrail and the deregulation of the railroad industry in 1980, and he saw to it that, first and foremost, the interests of the members of the Brotherhood of Locomotive Engineers were protected. He leaves a stronger railroad industry than the one he entered, and he leaves a legacy to a strong union that will long be remembered.

The Susquehanna Railroad is a small carrier, but in men like John Systma it has produced some giants. I will note here that a former Vice President of the United States, Garrett Hobarth, who served under William McKinley, was a director and executive of the Susquehanna Railroad. He was one of the strongest Vice Presidents in the history of the Nation, with the nickname "Assistant President." His death in 1899 created a vacancy which was filled by Teddy Roosevelt, 1 year before the McKinley assassination. Thus, we were denied President Hobarth of the Susquehanna. With men like Hobarth and Systma, we look forward to what the Susquehanna will produce next.

I am sure my fellow Senators join me in congratulating John Systma on an outstanding career.●

THE 100TH BIRTHDAY OF GEN. CHIANG KAI-SHEK

● Mr. D'AMATO. Mr. President, I rise today to join my distinguished colleague from Arizona in commemorating the 100th birthday of Gen. Chiang Kai-shek.

On the last day of October 1887, a boy was born who was destined to become one of the great leaders of China and of the modern world. This young peasant boy, who was known to his countrymen as Chiang Chungcheng, fulfilled his boyhood dream of becoming a soldier by attending a military academy in Japan in 1906.

It was in Japan that young Chiang became acquainted with Dr. Sun Yat-sen, the father of the Republic of China. The two joined together to implement Dr. Yat-sen's vision of China's future. Their combined efforts were successful until the untimely death of Sun Yat-sen in 1925.

Chiang Kai-shek then bore the burden of leadership alone and led the Chinese into an era of unprecedented progress known as "the Golden Decade" from 1927-37. The advancements achieved during Chiang Kai-shek's tenure came to an abrupt halt in 1937, however, when the Japanese began their invasion of China. For 4 embattled years, Chiang and his people fought bravely, but were no match for the modern and well-equipped Japanese.

Just as the Chinese were beginning to feel the pressure of the invasion, the Japanese bombed Pearl Harbor and drew the United States into World War II. The Japanese were then forced to turn much of their attention to the war raging in the Pacific. The allied powers embraced General Chiang into their company and designated him the supreme commander for the Allied powers in the Far East.

After World War II, the Chinese celebrated their victory over the Japanese, but this celebration was short-lived as the Chinese Communists challenged the nationalist government. Unable to withstand the Communist aggression, Chiang Kia-shek and his government withdrew to self-imposed exile on the island stronghold of Taiwan.

Today Taiwan exists as a showplace of freedom in the Far East. Chiang knew that human freedom was the foundation on which the modern state must be built. He wasted no time in implementing the same rehabilitation program that he had envisioned for mainland China. It included land reform, compulsory education for all children, a modernized, well-trained army, and universal suffrage. Millions of Chinese have defected to Taiwan from mainland China, which millions more hopefully await their release from the ugly grip of communism.

Chiang Kai-shek serves as a shining example for freedom fighters around the world. He fought communism longer and harder than any other free world statesman, past or present. President Franklin Roosevelt spoke of Chiang Kai-shek as a man of great courage and vision, with a remarkably keen understanding of the problems of today and tomorrow.

Today I take pride in honoring such a great man as we approach the 100th anniversary of his birthday. His philosophy and leadership are an inspiration to all of us who believe in the virtues of freedom and democracy.●

SETTLEMENT OF CERTAIN CLAIMS OF THE PAPAGO TRIBE ARISING FROM THE OPERATION OF PAINTED ROCK DAM

● Mr. GOLDWATER. Mr. President, H.R. 4216, will give new hope to the members of the Tohono O'odham Tribe (formerly Papago), living on the Gila Bend Indian Reservation in Arizona. Basically, the proposal provides $30 million to the Tribe for land acquisition and for economic and community development.

The history of this reservation goes back to 1882 when President Chester Arthur, by Executive order, created a 22,400-acre Gila Bend Reservation, through which the Gila River runs, in southwestern Arizona for the Tohono O'odham Tribe. In 1909 President Wilson decreased it to 10,297 acres. This remaining acreage is now of little economic use because of the combined effects of the Gillespie and other dams constructed upstream, and of flooding caused by the operation of the Painted Rock Dam downstream. Of the 800 members of the tribe at Gila Bend, 425 reside in 68 houses on 40 acres at San Lucy village, where per capita income is barely $1,000 a year. Most of the other tribal members live near the reservation in comparable conditions. Eighty percent of the work force is unemployed.

How this sad situation evolved merits our attention and corrective action. in 1950, Congress authorized construction of Painted Rock Dam on the Gila River 10 miles downstream from the Gila Bend Reservation. The dam was to provide flood protection to the Wellton-Mohawk and Yuma Mesa divisions of the Gila reclamation project and the city of Yuma, AZ. The Army Corps of Engineers in 1956 advised the tribe that it preferred to purchase only a flowage easement for 7,700 acres of the reservation.

An acre-for-acre exchange of reservation for other public lands was considered as was selling the reservation, but rejected by the tribe, in large part because they were told that their lands would be flooded so infrequently that they would be able to continue to farm within the flowage easement. The Indians would have to move from the lands within the flowage easement, but could continue to use the land for grazing and farming.

Construction of the Painted Rock Dam was completed in 1960. Because the corps and tribe were unable to come to an agreement on the land, the United States, in January 1961, filed in Federal district court a declaration of taking for a flowage easement in lands of the Gila Bend Reservation. In November 1964, the court granted the easement, giving the Federal Government the right to occasionally overflow, flood, and submerge 7,723.82 acres of the reservation, or 75 percent of the total acreage. The original Corps of Engineers' appraisal for a flowage easement in lands of the Gila Bend Reservation was $16.75 per acre, a few cents higher per acre than the appraisal for the flowage easement for 18,866 acres of non-Indian land. The non-Indians contested the appraisal and were awarded compensation based on a per-acre value more than three times that of the original appraisal. The non-Indians were paid accrued interest from the date of the declaration of taking, but the tribe was not. Compensation in the amount of $130,000 was paid to the Superintendent of the Sells Agency on behalf of the tribe.

As has been stated, expressed representations were made by the Army Corps of Engineers and the Bureau of Indian Affairs that the Indians would be able to continue to farm and graze the land within the flowage easement. The Army Corps of Engineers' October 1957 appraisal reports for the Painted Rock flood control project say:

> * * * or 4,208 (acres) is typical Gila River bottom land that has a variable soil that, if properly drained, would make good farmland with good irrigation practices. Poorly drained areas and alkali spots would develop, but it is reasonable to expect that 65 percent of it could be farmed upon comparing it with surrounding land. In other words, about 2,750 acres of this entire tract could be developed if irrigation water were made available.

The first flooding of the reservation occurred in 1978-79, and it took 11 months for the water to recede off most of the reservation. Since then, major floods occurred in 1981, 1983, and 1984 and each time a large standing body of water remained, it was many months before the water receded. Quite simply, the extent and duration of the flooding are far greater than was projected at the time the dam was authorized and constructed. The Indians' lands have been rendered useless.

In response to the situation at the Gila Bend Reservation, Congress, in Public Law 97-293, directed the Secretary of the Interior to conduct a study to determine which lands, if any, had been rendered unsuitable for agriculture by reason of the operation of

Painted Rock Dam. If the study determined that the lands had been rendered unsuitable for agriculture, then the Secretary is authorized to exchange such lands for an equivalent acreage of public lands of a quality equal to those diminished by the operation of the dam.

The BIA study, completed in 1983, concluded that the reservation's arable land of 5,962 acres had been rendered unsuitable for agriculture. The remaining 4,000 or so acres of the reservation was also unsuitable for the grazing of livestock because of repeated flooding, silt deposition and salt cedar infestation. Over $5 million would be required to clear just the arable land of the salt cedar and level it. And, since this land lies within the flowage easement, it is not unreasonable to think you would have to repeat this rehabilitation process.

Subsequent to the study, the Bureau of Indian Affairs contracted with the tribe to identify 5,962 acres of land suitable for exchange. The tribe studied lands within a 100-mile radius of the reservation, and in April 1986, it is concluded that there are no suitable lands within that area.

Mr. President, the bill before us would authorize payment of $30 million to the Tohono O'odham Tribe, to be paid over a 3-year period, to be used for land and water rights acquisition and economic and community development. This would allow the Tribe to purchase up to 9,880 acres of replacement lands for the Gila Bend Reservation which would be held in trust for the Indians. The lands may be acquired within Maricopa, Pinal, and Pima Counties, but outside the corporate limits of any city or town. In exchange, the tribe will assign to the United States all rights, title, and interests of the tribe in 9,880 acres of land within the Gila Bend Reservation. In addition, the tribe will execute a waiver and release of all claims which the tribe has against the United States for past injuries to land and water rights.

The $30 million figure seems high, but the tribe has a very good case to make it higher. If one goes by the Corps of Engineers' 1957 appraisal report, 2,750 acres at a minimum could be available for farming. Take that figure and multiply it by 5.4, the Bureau of Reclamation's standard duty of water, and then multiply that resulting sum by $2,000, which is the average cost of water acquisition per acre-foot in central Arizona. Your final figure is about $30 million and this is only for the water right. The tribe has foregone the cost of the land and damages. As I said, Mr. President, the figure could be higher since the 1983 Bureau of Indian Affairs study showed that the tribe actually lost 5,962 acres of arable land.

Though H.R. 4216 is different than the proposal which Senator DECONCINI and I introduced earlier in this session, I think this is a very fair bill. It will provide opportunity for a landless people and give the Indians a chance at developing an economic base.●

SETTLEMENT OF CERTAIN CLAIMS ARISING FROM THE CONSTRUCTION OF TAT MOMOLIK DAM

● Mr. GOLDWATER. Mr. President, H.R. 4217, is an amended version of legislation I introduced earlier in this session, with my colleague, Mr. DECONCINI. Its purpose is to settle claims of the Tohono O'odham Indian Tribe [Papago] against the United States arising from construction of Tat Momolik Dam and Reservoir on the tribe's reservation in south central Arizona.

In 1965, Congress authorized the construction of Tat Momolik Dam in the Flood Control Act of 1965. The dam was designed to be a multipurpose facility, providing water conservation, fish and wildlife, recreation, area development benefits, and flood control for the cities of Casa Grande, Stanfield, and Maricopa, and 46,000 acres of irrigated farmland north of the Sells Papago Reservation.

It was contemplated by the Army Corps of engineers that a flowage easement of 9,080.92 acres would be necessary and that the tribe would be compensated for such an easement. In addition, it was thought the tribe would donate 5,323.78 acres to the United States for the dam and conservation pool. The tribe did indeed consent to provide the flowage easement and the necessary additional land; however, this was conditioned on the United States providing water conservation storage, fish and wildlife and recreational facilities, and construction of a 1,640 acre irrigation system at Vaiva Vo, downstream of the dam.

The Corps of Engineers completed construction of the dam in 1974 and compensation for the flowage easement was agreed upon; however, the United States refuses to pay the tribe for the 9,080.92 acres of land, unless the tribe grants the appropriate rights for the dam, its appurtenances, and reservoir. The tribe, in turn, has refused to execute and deliver to the United States the easements it seeks and has refused payment for such because of the United States' failure to provide the tribe the promised benefits. The United States is still without appropriate lands rights for this large earthen dam.

Only 500 acres of the proposed 1,640 acres Vaiva Vo Irrigation Project have been constructed by the Bureau of Indian Affairs, though an additional 200 acres have been developed by the tribe prior to the dam's construction. In addition, the Interior Department acknowledges that the dam and its reservoir will never provide a dependable water supply for irrigation. As the Department testified before the Indian Affairs Committee in July of this year, "Despite some recharge from the reservoir, any remaining prospects for a successful operation of a full-scale agricultural enterprise at Viava Vo are already compromised by a depleting groundwater supply."

The Army Corps of Engineers and the Department of the Interior have acknowledged that the tribe has suffered inequities and have proposed that the tribe forego the irrigation project and accept a cash settlement for the value of the land and the flowage easement, with interest from 1972 to 1986. The tribe has agreed to a settlement which also provides fair compensation for the loss of the benefits associated with the irrigation project.

The legislation before us, Mr. President, will do just that. It provides for a one-time payment of $6 million in fiscal year 1988 to the tribe and the United States will receive appropriate rights to the dam site and a flowage easement. In addition, the Secretary of the Interior will be required to construct fences and cattle guards in the immediate vicinity of the dam and reservoir, as the muddy shoreline continues to be a sometimes fatal hazard to the livestock. Mr. President, H.R. 4217 provides a settlement in lieu of protracted litigation.●

HUMAN SERVICES REAUTHORIZATION ACT AMENDMENTS OF 1986

● Mr. GRASSLEY. Mr. President, President Reagan signed into law on September 30, 1986, the Human Services Reauthorization Act Amendments of 1986. Included in this act are provisions that authorize funding through 1990 for the Head Start Act, the Low-Income Home Energy Assistance Act, and the Community Services Block Grant Act. I had the opportunity as a member of the Senate Committee on Labor and Human Resources to participate in the hearings on this legislation, and to become deeply involved in the deliberative process. As an original cosponsor of this measure I am pleased at the enactment of what I believe to be vital and responsible legislation.

I am deeply committed to the Head Start Program because of its high degree of success in reaching low-income preschoolers and providing them with needed health, education, and general support services they need to get an even start with their peers in school. Moreover, Head Start stresses parental participation and involvement in the development and oper-

ation of the programs, and I remain firm in my belief that parental involvement is the major factor contributing to the high degree of the program's success. For every 15 youngsters enrolled in this program, 10 parents volunteer their services. In addition, teachers, business people, and other members of the community volunteer their time and energy to affect in a positive way the abilities of the less advantaged children in their neighborhoods. In my State of Iowa, volunteer labor and other noncash contributions to Community Action Programs represented 9.4 percent of cash financing in 1985, up from 3.8 percent in 1982.

The administration proposed in its fiscal year 1987 budget to eliminate funding for the Community Services Block Grant Program. The administration argued, for example, that CSBG-supported services duplicated those provided by local social service agencies. The findings of General accounting Office study which was reported in May 1986 concluded that not only did CSBG-supported services not duplicate those offered by local social service agencies, but actually complemented the long-term services offered by these agencies. In west central Iowa, farmers and farm families represent the fastest growing segment of those using the services of the Community Action agencies in that region. Through CSBG dollars, local Community Action agencies are able to provide short-term emergency assistance to low-income families including thousands of newly poor farm families.

The continuing crisis in the farm economy has resulted in displacement and unemployment of workers in many States. Families who have been self-sufficient in the past are turning to Community Action agencies for job placement, emergency food pantries, and information on other resources. I worked in the Budget Committee to ensure the continued funding of the CSBG Program, and I am particularly encouraged that the Senate-House conference committee on H.R. 4421 agreed to report language that directs the Secretary of Health and Human Services to promote job creation and enterprise development in distressed rural communities, and to promote coordination with other State and Federal efforts.

In conclusion, I would like to state that I am in favor of budget cuts, but believe that meritorious programs should be sufficiently funded. These programs work, and I commend my colleagues for working long and hard to see to it that the programs continue to receive the Federal support they need.●

A POOR EXAMPLE

● Mr. SIMON. Mr. President, there can never be enough said about the importance of human rights. As a nation, we have been striving to bring equality and protection from discrimination for all people around the world. Since the signing of the Helsinki accords in 1975, we have expected that all signators to the accords, including the Soviet Union, would abide by this pact. The sad truth is, however, that the Soviet Union has not upheld the human rights provisions of the Helsinki accords.

Naum and Inna Meiman, two elderly Soviet citizens, are very close friends of mine. They are being denied emigration privileges to the West. The Meimans are not allowed to practice their religion, their phone has been removed, and they have been followed on more than one occasion. Inna is deathly ill with a malignant carcinoma on her spine. After removing four previous tumors, the Soviet physicians feel there is nothing more they can do for her. Although there is experimental treatment available for Inna in the West, the Soviets still refuse to allow her to emigrate. These are blatant violations of the Helsinki accords.

I strongly urge the Soviet Union to allow Naum and Inna Meiman to emigrate to Israel.●

MED WEEK

● Mr. BUMPERS. Mr. President, October 5–9, 1986, is Minority Enterprise Development Week. I stand in celebration of MED Week and join in spirit with the several hundred people who gather tonight at the MED Week banquet in Little Rock, AR, in recognition of this special occasion.

Most minority businesses are small businesses, and small businesses created 100 percent of the net new jobs gained in the Nation in 1980, 1981, and 1982. As you know, I am a member and the ranking Democrat on the Senate Small Business Committee. The committee has fought for programs which assist and encourage small business development because small business creates jobs, is innovative, enhances the economy and often provides entry into the mainstream.

Last year, the committee produced an SBA reauthorization bill which passed the full Senate on July 16, 1985, and which was finally signed by the President on April 7, 1986. I coauthored that bill with Senator WEICKER. Although we drastically changed the structure of SBA's programs, we preserved two programs which are vital to the particular needs of minority business and have done much for the Arkansas economy. The 8(a) program provided over $11.1 million in contracts to minority firms in fiscal year 1985, and the Minority Enterprise Small Business Investment Company Program leveraged much needed venture capital for minority firms.

The development of minority businesses will enhance the economy and is an essential part of small business growth. We have made great strides in our work for small and minority business and these businesses have repaid our Nation with jobs. Still, there is much work to be done and I encourage you, Mr. President, and my colleagues to rededicate yourselves to this work. Together, I know we can do much.●

THE ANNUAL CONFERENCE OF THE ARKANSAS CHAPTER OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

● Mr. BUMPERS. Mr. President, the Arkansas Chapter of the National Association for the Advancement of Colored People holds its annual conference this weekend in Hope, AR. Today, 1 day after the Senate voted overwhelmingly to overturn the veto of the sanctions legislation to end apartheid in South Africa, I think it is appropriate to recognize the NAACP and remember that it was not long ago that our own Nation was caught up in a turbulent struggle for racial equality and social justice.

The need for sanctions to hasten the end to apartheid was clear. U.S. policy should be based on our own most fundamental values: liberty, justice, and equality. If we had failed to impose sanctions against South Africa to exert pressure for constructive change that country would certainly have spiraled deeper into violent, racial revolution like the world has never seen. The inequality of apartheid is the root of that revolution. The one true lesson of history is that man will forever yearn to be free. We must be on the side of those seeking liberty and the chance to be equal in their own country.

I believe most Arkansans support the sanctions because in our State we pride ourselves in doing what is right. The Senate, through a bipartisan effort, did what it felt was right. The 78 votes to overturn the veto, coincidentally, was the same number of votes that passed the Martin Luther King holiday bill on October 19, 1983. Mr. President, I was a proud cosponsor of that legislation.

The NAACP should be saluted for its many and successful efforts in promoting equal opportunity. The organization is alive and well in Arkansas. As a nation, we have made great strides, but there is still much to be done. In closing, I ask that we rededicate ourselves to the task at hand, to doing what is right and to improving race relations.●

ABORTION AND INFORMED CONSENT: KENTUCKY

● Mr. HUMPHREY. Mr. President, abortion is not safe physically or psychologically. I am troubled that this myth is perpetuated despite the contradicting evidence available to us. Gaye in Kentucky tells us about both of her problems concerning informed consent, and I believe my colleagues will learn much by reading her letter.

"He gave me drugs and took my baby from me." This is precisely the procedure women face when they seek assistance with a difficult pregnancy. Gaye obviously received little if any counseling about the abortion procedure or its aftereffects. The results of this lack of informed consent are predictable: Gaye was filled with guilt and remorse. I hope my colleagues will join me in cosponsoring S. 2791 so that we can end the silence and misinformation these women face when they seek help with an unplanned pregnancy.

I ask that Gaye Webster's letter be printed in the RECORD.

The letter follows:

COVINGTON, KY,
June 5, 1986.

SENATOR HUMPHREY: I wish to thank you for your support in the fight to stop abortion and to get to the floor of the Senate a bill to make them inform any woman of its effects.

I've had an abortion!

My husband was a drunk. I already had two children. I just couldn't think of having other babies.

I didn't know anything about abortion. My friend took me to a doctor. All I really knew is that I wanted to have my period.

He gave me drugs and took my baby from me. I started to bleed when I got home. I almost bled to death. I had no help, nowhere to turn. I did get through that, but my health was never good again.

This was not the worst. The psychological effects were the worst. There was guilt—I was suicidal when I lay down at night and I heard babies crying. I was full of anger and rage and had no self-esteem. Regret and remorse stayed with me.

Thank God for saving me. It breaks my heart to think of how many girls are suffering the way I did.

So please see to it that they are informed before the abortion procedure. I pray for all those girls each day. I pray they will get help.

GAYE WEBSTER.●

THE REPUBLIC FINANCIAL CORP. BANKRUPTCY

● Mr. BOREN. Mr. President, too many times in the course of our lives, rules and laws are set or interpreted in a way that evades any grasp of common sense or intent of the law. It is under such circumstances that we in public service must work to clarify the rules which govern us and see that innocent people are not punished for the mistakes of others.

Mr. President, I will ask that the following article by Mr. Tom Carter from the Sunday, September 28, 1986 edition of the Tulsa World be inserted in the RECORD regarding the financial experiences of one family who were so affected, Mr. and Mrs. Max Bird.

The Republic Financial Corp. of Tulsa, OK, filed for bankruptcy in September 1984. Many individuals and other depositors, who had invested in this company, lost millions of dollars in a case which is still being discussed and litigated in our courts.

The institution was not subject to regulation by the FDIC or any other deposit insurance agency—whether State or Federal. As an investment company of sorts, it was in the realm of State oversight and one company of the Republic network was in the purview of and, at one point, appropriately disciplined by, the Federal Reserve Board. Thus, when the companies reached the point of insolvency— due to a divestiture order—it had little alternative but to file chapter 11 bankruptcy.

Our Bankruptcy Code has been written to provide a fair and equitable system of procedures for those individuals and business concerns who have had or been associated with irreversible financial difficulty—whether through normal economic conditions or illegal activity. It seeks to remedy the loss bestowed on those innocent of wrongdoing in rebuilding their financial loss. It likewise was written to discipline those who have wrongfully helped cause such a financial crisis.

Mr. President, I do not at this point make any challenge to the effectiveness or lack thereof, on the part of the Federal Reserve or any State agency. Rather, in trying to remedy the loss experienced by people like the Bird's, we must look at the bankruptcy laws in our country and see how they are interpreted.

Over 2 months prior to the bankruptcy of the Republic companies, legislation to amend the Federal bankruptcy laws, which passed Congress, was signed by the President. These changes were not technically effective until October 10, 1984, 16 days after Republic's bankruptcy. One critical provision is one which stated that deposits withdrawn from a firm within 90 days of its filing bankruptcy were subject to recovery by the trustee, unless it was withdrawn in a normal business transaction.

Clearly, Mr. President, the Bird's, nor many of those who withdrew thrift certificates within 3 months prior to the bankruptcy, can be accused of any informed or intentional plot to take out their money from a failing investment firm.

I believe that to find otherwise is to violate the intent and spirit of the law. Mr. President, if those who did withdraw funds simply in the normal course of business are penalized for doing so in this bankruptcy proceeding, I intend to introduce legislation that will retroactively allow those depositors in the Republic case, to be exempt from any recovery action.

While this legislation will obviously have to be drafted for next year's session of Congress, I hope that it will encourage a fair, legal accommodation for these individuals within the discretion of the bankruptcy trustee and the courts. Even before the Federal legislation became effective on October 10, 1984, it was, in my opinion, not within the spirit of the law to penalize those who simply act in a normal prudent course of business.

I ask that the Tulsa World article be printed in the RECORD.

The article follows:

HIS MONEY NOT HIS, REPUBLIC DEPOSITOR DISCOVERS

(By Tom Carter)

The approximately 5,000 people who lost $60 million in the bankrupt Republic financial institutions are old news. But there were about 150 of the depositors who thought they had lucked out.

They withdrew their certificates of deposit, after the CDs had matured, and before Republic filed for bankruptcy.

Later, they were asked to give the money back. More recently, they were sued for it.

Max and Mable Bird are among those 150. Max is 57 years old, is suffering from the aftermath of polio, and had almost $50,000 at one time in the Republic financial institutions. On Sept. 5, 1984, Bird withdrew $17,997.45.

The withdrawal came 19 days before Republic closed. The withdrawal represented a matured CD, and money to which Bird was entitled.

Max worked 21 years to earn it. For six of those years, he worked a double shift.

He was an instructor for the Spartan School of Aeronautics where he received a retirement pension in a lump sum. It amounted to about $30,000, and he put that also in Republic. He never saw that money again.

Max used the $17,997.45 he recovered to pay medical bills for his wife, for a life insurance policy, for a pickup truck, and for central heating and air conditioning. The purchase, they thought, was worthwhile. The fan-blown air eased Mable's crippling arthritis.

But the money is gone, and Max can't afford the brace he needs to help with what polio did to his foot. He wants to get a job, but he is old in the labor market, and he has trouble getting around.

The crippling effects of polio keep him from getting a job that would enable him to ease the expenses his family must bear.

"Surely there isn't a judge or jury in the land that will make us give back the $17,000," Max says.

"But what if the court does rule against you?" Bird is asked.

"Well, I haven't got any money," he answers. "Maybe they could make me mortgage my house. And if they do that, I'd have to let the state buy my groceries for awhile. It's awful to work a lifetime and save your money and have somebody keep most of it. Then they give you a little bit, and then they sue you to get that part back."

Before Max was sued, he received a letter from a lawyer asking him to return his CD.

The letter said that if Bird didn't want to comply, he had better hire a lawyer himself.

Attorney R. Dobie Langenkamp is the trustee for bankrupt Republic Financial Corp. It's his job to salvage money for creditors.

He interprets bankruptcy laws to say that people who withdrew funds 90 days or less before Republic went under are not entitled to all their money, even though they did not know Republic was going to close, even though their CDs had matured.

His is the majority interpretation among lawyers familiar with the litigation. Bankruptcy Judge Mickey Wilson will have the final say this fall.

"There are some real hardship cases, but it's been blown out of proportion," says Langenkamp. "We're talking about 5,000 people here whose lives have been damaged. Those 150 people can't obscure me from getting their part of the $4 million or $5 million that was lost and from spreading it around among the other 4,850 people."

So until the court hearings, Langenkamp will continue to work on the lawsuits to get money from people who got it out of Republic in time.

And Max Bird will not work at all. That's because he's old and has been crippled by polio.●

THE RERTR PROGRAM

● Mr. SIMON. Mr. President, I would like to make a brief statement commending the Department of Energy for coming up with the funds to save a very important nonproliferation effort, the Reduced Enrichment for Research and Test Reactors [RERTR] Program. Although RERTR is technically in the budget for the Arms Control and Disarmament Agency, it has been administered and run by the Energy Department and two of its national laboratories—Argonne National Lab in Illinois and Oak Ridge National Lab in Tennessee.

Several months back a funding problem developed, but the Energy Department, realizing the international significance of the program, agreed to find the money to ensure timely completion of the project. RERTR seeks to convert the 126 research and test reactors around the world—86 reactors abroad in 34 countries, and 40 reactors in the United States—from using highly enriched uranium to using low enriched uranium. Once this is done, the reactor is no longer handling "weapons grade" fuel, or fuel capable of producing nuclear weapons.

Hundreds of kilograms of this weapons grade fuel are now being exported around the world. RERTR, already showing great success, will demonstrate the advantages of using low enriched uranium with their method. Efficiency will not be sacrificed, and we will gain a lot through closing off this route to nuclear weapons proliferation. I commend the Department of Energy for their fine work in this area, and for their wisdom in seeing through the RERTR Program.●

AN ENCOURAGING SIGN—NOT A SOLUTION

● Mr. SYMMS. Mr. President, the Canadians on Monday offered to increase stumpage rates on their public timber in order to sidetrack the countervailing duty petition initiated by the United States timber industry. The offer amounts to something less than a 10-percent increase in their stumpage. This translates to an increase of less than 5 percent in lumber costs.

Mr. President, I am sure that we all welcome this Canadian initiative. It is the first concrete sign we have seen that they believe that we are completely serious about demanding fair treatment for our producers. It is a good start but it is far from satisfactory. I am told that the Coalition for Fair Lumber Imports calculates that a 34 percent duty is required to level the playing field.

The Canadian offer, such as it is, would not have been made without constant pressure from several directions. Congressional action, in the form of legislation, including the tariff bill which I introduced, has forced the Canadians to recognize that the concept of fair trade has strong bipartisan support. The administration's commitment to free, fair trade, as evidenced by the meeting where the offer was made, was a major factor. The real turning point in this ongoing effort was the initiation of the counter-vailing duty petition by the Coalition for Fair Lumber Imports. I salute them for their initiative and persistence.

For the past several weeks, news items in the Canadian media have reflected an increasing awareness that their lumber export practices constitute unfair trade and that the United States would not tolerate the situation indefinitely. More and more evidence is surfacing that Canadian prices do not accurately reflect costs. When the preliminary results of the countervailing duty investigation are announced on about October 9, we will see the full extent of the deliberate Canadian price distortion. That should signal the start of fair competition for our domestic industry. It has been a long time coming and it is an event that we will all welcome.●

COLUMBUS DAY

● Mr. RIEGLE. Mr. President, October 13 will mark the 494th anniversary of the voyage to North America by Christopher Columbus. This event dramatically shaped the history of Western civilization, and ultimately led to the colonization of our great country.

Christopher Columbus, born in Genoa, Italy, in 1451, became skilled at chartmaking and sailing while living in Lisbon, Portugal. Through his study of navigational theory, he became convinced that the world was round. With a crew of 88, three ships, the Nina, the Pinta, and the Santa Maria, Columbus set sail for what he believed to be India.

After 2 grueling months at sea Columbus reached land, but he was a far cry from India. He had landed on what is known today at Watlings Island in the Bahamas. From there he went on to discover the North American and South American continents and many of their coastal island formations.

Because of his skill and courage, Christopher Columbus is considered one of the greatest explorers in history. His curiosity resulted in the linking of the Eastern and Western Hemispheres and has immortalized his name and Italian heritage for all time.

On this special day, it is only fitting that we acknowledge and honor Americans of Italian heritage.

In my home State of Michigan, the Italian American Cultural Society has over 275,000 members. Located in southeastern Michigan, the Italian Community and Cultural Center was founded by the Italian American Cultural Society and was designed to provide a place for the Italian community to meet and grow. Some of the services provided by the center include a senior citizen's program, a sports program, an art gallery, a Montessori nursery program, and an Italian language program. It is here that Italian Americans, as well as the community at large in southeast Michigan, can enjoy and learn about Italian culture and language.

The Italian American Cultural Society also sponsors 45 Italian clubs, organizes parades, dinners, and publishes a monthly newspaper. This organization serves as a prominent center for the Michigan Italian community. The people of Michigan are proud to have such a distinguished organization in our State.

Christopher Columbus exemplifies the qualities of courage and skill which have enabled our country to develop into the great Nation that we are today. It is an honor to pay tribute to him, to his Italian heritage, and to the important contributions of all Italian Americans to our society.●

INVESTMENT TAX CREDITS

● Mr. KENNEDY. Mr. President, last evening the distinguished Senator from Minnesota [Mr. BOSCHWITZ] indicated his concern about the possibility that language in the Tax Reform Act might inadvertently result in the denial of investment tax credits to property placed in service prior to the effective date of repeal. I commend Senator BOSCHWITZ for calling this question to our attention. I have communicated my own views on this matter to Assistant Secretary of the Treasury, Roger Mentz, and ask that a

copy of my letter to Mr. Mentz be printed in the RECORD.

The letter follows:

U.S. SENATE,
Washington, DC, October 3, 1986.

Hon. J. ROGER MENTZ,
Assistant Secretary, U.S. Treasury Department, Washington, DC.

DEAR MR. MENTZ: I am writing to express my concern that certain provisions of the Tax Reform Act of 1986 may inappropriately be seized upon as a basis for denial or restriction of the investment tax credit allowable on equipment purchased and placed in service prior to the effective dates for repeal.

In this regard a specific concern has been raised with respect to cargo containers. I believe that it was always the intent of the Congress, that the exception for cargo containers be interpreted in a manner similar to the treatment of U.S. flag vessels. The attached memorandum explores this question in more detail.

I commend the views expressed in the accompanying statement to the Treasury and to the Internal Revenue Service for guidance in formulation of policies, rules, and administrative practices for application of the investment tax credit, and look forward to hearing from you in this regard.

Sincerely,

EDWARD M. KENNEDY.●

RECOGNIZING THE OUTSTANDING LEADERSHIP OF RUTH DuBOIS: A VOICE FOR CHILD SURVIVAL WORLDWIDE

● Mr. SPECTER. Mr. President it is with great pride that I commend and congratulate an outstanding Pennsylvanian, Ms. Ruth DuBois, on her work with the Senate children's caucus.

As a private consultant working with the Children's Research and Education Institute of Rydal, PA, Ms. DuBois has traveled and studied the impact of the Child Survival Fund and other aid programs to Third World countries.

Ruth has seen firsthand what the allocated funding has done to improve both the health and education of Third World children, as well as the economies of the countries.

She advocates in her report entitled "Impact of the Child Survival Fund and Other Forms of Aid to Third World Countries," prepared for the Senate children's caucus, that four basic survival techniques need to be implemented through the aid received; growth monitoring, oral rehydration therapy, protection of breast feeding, and expanded immunization. I ask that the report be printed in the CONGRESSIONAL RECORD.

The success of these programs, she indicates in her report need to be supplemented by foreign governments providing the necessary technical and supervisory help, and their continued contributions to the appropriate funds. Also in promoting the success of these programs is the communities involvement to help and be helped.

On September 17, 1986, the New York Times reported on the impressive work of the Child Survival Fund. I ask that the article entitled "An Unsung Live-Aid Challenge," be printed in its entire in the RECORD.

Ruth DuBois should be highly commended for her work with the Senate's children's caucus and the programs that benefit from her expertise, deligence and dedication to children worldwide.

I extend to Ruth my best wishes for her continued success in working to improve the health and longevity of infants and children. As the cochairman of the Senate children's caucus be assured that I will continue to strongly support adequate funding for these special programs.

The material follows:

IMPACT OF THE CHILD SURVIVAL FUND AND OTHER FORMS OF AID TO THIRD WORLD COUNTRIES

INTRODUCTION

The following is a summary of a report on the importance of involvement in Third World countries through allocations to the Child Survival Fund, USAID, UNICEF, other funds and through activities of the Peace Corps. The report was prepared by Ruth DuBois, a consultant with The Children's Research and Education Institute, and is based on a trip to Burkina Faso in February, 1985. Full copies of the report are available through the office of Senator Arlen Specter or from the author.

In 1984 Congress appropriated $25 million of the Child Survival Fund to be used outside of the United States. American foreign aid can be categorized as either emergency aid or development aid; monies from the Child Survival Fund go primarily to the latter to improve both health and economy of various Third World countries. Although $25 million is a small amount comparatively, allocation of a few hundred thousand dollars is significant to small countries like Burkina Faso in West Africa.

Burkina Faso, formerly Upper Volta, contains 6.5 million people of various tribes living mostly in villages. There are a few cities and the capital, Ouagadougou, is the home base for agencies serving the entire sub Sahel region, e.g. USAID. Per caita income in Burkina is $210/year, the infant mortality rate is 157 deaths/1000 live births (12th highest) and the literacy rate is 10%. Clearly, Burkina is a needy recipient of our aid.

Burkina Faso is led by Captain Sankara who gained power in July, 1983, following a military coup. His primary goals are to wipe out corruption in the government and to improve the health and economy of the country through self-help and self-determination. He has instituted record keeping by government workers and teachers in every village and has issued edicts for reaching quotas in agriculture. Previously there was little motivation to work or to be accountable in between technical assistance visits from Peace Corps Volunteers (PCV's).

PRIMARY CARE

Financial aid is largely directed to primary care programs and health education and training needs as discussed in a 1985 UNICEF report on improving the health of Third World children. Specifically, four basic child survival techniques are advocated; growth monitoring, oral rehydration therapy, protection of breast feeding, and expanded immunization.

Growth monitoring entails keeping a chart on a child's monthly weight and overall health. Mothers are more disposed to obtain nutritional advice if they are made aware that their child's growth is retarded. An important U.S. contribution would be the development of an inexpensive, light, accurate weighing device for use by community health workers.

Oral rehydration therapy (ORT) is crucial in that it prevents dehydration from diarrheal infection (kills more than 4 million children a year). Child survival funding is partially used for ORT training, education and mass marketing, as well as to supply clinics with ORT packets to stabilize advanced cases of diarrhea. Unfortunately, implementation of these programs in Burkina has been hampered due to a severe cut in USAID funds and staff.

Breast feeding provides the best source of nutrition for infants as well as making them resistant to disease. It is hoped that mothers who are more confident that their children will survive will be more receptive to family planning education. USAID is developing a family planning program for the entire Sahel region. The President's opposition to the International Planned Parenthood Federation, a large provider of family planning services in Africa, will result in an estimated 625,000 unwanted births, an additional 100,000 abortions and at least 60,000 infant deaths from starvation and disease.

For $5.00, a child can be immunized against measles, tetanus, whooping cough, diptheria, poliomylitis, and tuberculosis. In 1984 less than 20% of the developing world's children were immunized for these diseases, resulting in 5 million deaths and 5 million others left mentally or physically disabled. In Burkina, an information campaign, "Operation Commando", using radio, skits, animated films, forums and role-playing, brought the importance of immunization to the people. The United Nations Children's Fund Program Director in Ouagadougou hopes to use some of the Child Survival funds to develop similar models of mass marketing for sanitation education and water filtration education.

While the above four key areas must receive concerted U.S. attention, we must also begin to deal with some of the underlying problems of the Third World such as the status of women. Women in Africa are poor and over worked in a male dominated society and it is no surprise that approximately half of all Third World women are anemic. It is difficult for them to find time and energy for childcare strategies. ORT requires that a mother learn how to mix a solution and to administer it slowly several times a day. Immunization requires several trips to vaccination centers and even where there are good rates of initial participation, drop out rates are very high. Breast feeding demands frequent stoppage of work and monthly weight checks require trips to the clinic. For progress to be made in promoting growth and health among children there must be progress in improving the lives of women. This necessitates a better distribution of the workload with males sharing more of the chores. Foreign governments should assist in providing technological advances, e.g. providing a mill to a village for grinding millet would save a women hours of work a day.

ORGANIZATIONAL DEVELOPMENT

Many improvements can be made on the organizational level of aid distribution. The success of projects appears to rely upon self-help and community development. Village leaders must be trained to act as role models and to educate organized cooperative groups in sanitation, family planning, etc. The government must continue their effort to place health agents in villages who can diagnose and treat 30-40 common diseases. Some get assistance from UNICEF to stock and operate a pharmacy. In unorganized communities the pharmacy fails when the initial stock runs out and the agent cannot replace it because he has "borrowed" from the till to support himself. Often he quits ("burn-out") because there is no reward system. When community development has taken place, incentives are offered to the agent, e.g. a portion of the village harvest and help with chores. Where available, a Peace Corps health extension volunteer can provide ongoing supervision. In Burkina, local midwives are also being trained and sent to villages throughout the country. However, they report that educating new mothers is unsuccessful without ongoing reinforcement within their village group.

The impact of community organizational development on self-help determination is evident in the Dori region of Burkina Faso. For the past 7 years Save the Children Fund has been working with 15 villages to instill the idea of self-help. Farms are planted by the use of extended family cooperation, i.e. all plant one farm and then move to the next. Although funds raised in the U.S. ask for private donations to sponsor a child, the money goes to community projects in that child's village. Funding is given on a credit basis after the villagers plan its use.

A Save the Children agriculture self-help project is the establishment of "cereal banks" whereby farmers can sell grain to banks at a fixed rate with, for instance, an 8% margin. Six months later when there is a shortage they can buy back the grain instead of succumbing to a merchant "scalper". Special training is given in math and book keeping. Peer pressure has kept credit payments at the 90% level. Village ownership is clearly the key.

In some "co-ops" women are attending sewing classes and making clothes for their children. Other organized women have entered into a for-profit weaving business that should expand during 1985. The women go to Ouagadougou to purchase bales of threads and supply it to male weavers whom they hire. (During the dry season men have no farming and take up weaving, wood carving, home repairs, furniture building, etc.) The blankets are sold at market. Currently, Oxfam is thinking of selling them in England and Save the Children is exploring the possibility of an export market in the U.S.

The projects focus on helping the village women earn money because women who have an income will usually spend it on their children. Traditionally, they are more conservative and focus will be on survival.

Save the Children is also assisting with school projects and adult literacy training. While Save the Children projects appear to be successful, they are probably selective in seeking out target areas that are already partially developed and have enough water.

The results appearing in the Dori region after 7 years of developmental aid and assistance serve as an example of the necessity of long term commitments to aid.

RECOMMENDATIONS AND CONCLUSION

The above examination of some of the needs and problems, successes and failure in Burkina Faso as they relate to other Third World countries suggests that the Senate Children's Caucus could play a role in promoting recommendations or policy changes that would enhance our programs abroad.

1. Technical and financial assistance clearly impacts on the lives, health and future of children in Third World countries. Members of the Caucus should continue to support funding to the United Nations Development Program (a relatively small amount—$150 million or 30% of the UNDP annual budget), UNICEF, WHO and the World Bank. Caucus members of the Senate Foreign Relations Committee should seriously consider the outcome of withdrawing funding to Planned Parenthood activities.

2. The Child Survival Fund plays an important supportive role in the implementation of UNICEF's primary care projects. Withdrawal of such funds would seriously affect the success of such programs.

3. USAID's regional efforts in the sub-Sahel will be cost effective if planning continues on a long term basis of at least a generation. By planning regional projects for the sub-Sahel countries, linkage to politics or coups of individual governments can be avoided. Given that community development and self-help determination is a very slow process, the proposed cuts to USAID in Burkina will be extremely damaging to the outcomes of present programs. Where, possible, the Caucus should consider promoting a policy for aid on a multi country/regional long term basis.

4. The Peace Corps deserves the fullest support from Caucus members. These volunteers provide an invaluable source of foreign public relations for the U.S. and are a positive influence on villagers wherever they are located. There are some suggestions for change or redirection that could be explored with Loret Ruppe:

(1) All PCV's living "en brousse" should receive training in basic skills—community organization, primary care, wood conservation, water filtration, sanitation, gardening and basics of the local language (for faster assimilation). In other words, because of their potential influence on family life, they should be generalists in addition to their specific or technical skills.

(2) The presence of English teachers in village schools as a PC activity should be questioned given that community development and health care appear to be more important needs (along with agriculture which is already being addressed). Several PCV's questioned the validity of teaching as many as 65 to 70 children in a class and suggestions for redirection were explored; (a) for Third World countries requesting English teachers, provide a smaller number to the local universities as part of a TOT program; (b) Where a Third World country insists on having English teachers for local schools, develop a curriculum that incorporates nutrition, health, family planning etc. into the English lessons. PCV's would welcome materials from PC in Washington on this.

(3) Consideration should be given to increasing the health extension program similar to the recent agriculture initiative. PCV's seeking funding for health extension projects should be made aware of the Child Survival Fund. In Burkina, the Fund administrator would entertain proposals that would target primary care training and education in small remote villages.

(4) There is little or no coordination of volunteer activities within regions or villages. The foreign volunteers in a community become good friends and it may be possible for the U.S. to somehow provide leadership in promoting cooperative planning, e.g., between French and English teachers in a school, between a German physician and a health extension PCV or between Dutch and American "well diggers".

In conclusion, funds appropriated by Congress to Third World countries and, in particular, the Child Survival Fund, are successfully being used to improve the health and longevity of infants and children. The Senate Children's Caucus should strongly support these efforts and promote policies which would allow ongoing development to occur.

AN UNSUNG LIVE-AID CHALLENGE

It isn't a multimedia event, and there aren't any rock singers to rouse the troops. But a parliamentary struggle in Congress may determine how many children in the poorest nations will be saved next year from their most insidious enemies: measles, tetanus, whooping cough, polio, diphtheria and tuberculosis. By contributing $75 million to a new Children's Survival Fund, Congress can hasten worldwide immunization against these killers—and save perhaps three million young lives next year.

The parliamentary problem is to find an extra $25 million to add to the $50 million already approved for the fund, half of it earmarked for immunizations. With the added money, the United States would fully meet its commitment to spur a campaign that has caught on in 62 poorer countries, which pay most expenses except for the cost of vaccines. Italy is pledging $100 million and Canada has committed $25 million, so the American share is scarcely excessive.

Getting the extra money while staying within budgetary limits means diverting from other programs, normally a dubious idea. But the fund's advocates maintain that $25 million could be transferred from the Export-Import Bank without causing havoc. There may be still better sources.

This much is plain. If nobody sings about foreign aid, it is because it is often disguised security assistance or siphoned to impersonal lending agencies. The Children's Survival Fund is different. Its good works are eminently singable. What once seemed impossible—total immunization against childhood killers—is thought attainable by 1990. Measles, which took two million lives last year, can be defeated with a vaccine costing six cents a shot. It should not be beyond Congressional wit to find the money already authorized.●

SUMMARY OF TASK FORCE ON EDUCATION AND LITERACY

● Mr. SYMMS. Mr. President, we have a plague in the United States that covers the length and breadth of our land; it afflicts more than 20 million Americans; it damages our Nation's productive capacity; it harms our competitive position in international trade; and it causes incalculable heartache and embarrassment to many thousands of families.

Unfortunately, it's not a high profile problem like drug abuse, or a "headline grabber" as are other social issues.

Mr. President, I refer to the problem of illiteracy—the inability to read or write so as to function in society. It's a problem about people—people who cannot read a newspaper, a grocery lable, or a driver's license manual; people who go through life making excuses, turning down promotions, and generally faking it as they try to hide their problem.

During the 2 years that I have chaired the Senate Republican Conference on Education and Literacy, I have become increasingly disturbed by the severity of illiteracy in America. In hearings held in rural Idaho, urban Rhode Island and here in Washington with our Federal Secretary of Education Dr. William Bennett, members of our task force have gained a greater understanding of the problem, heard education experts discuss potential solutions, listened to firsthand accounts of the hardships functionally illiterate individuals encounter daily, and have been thrilled by success stories of persons who have overcome their problem with the help of caring people.

Mr. President, The task force's first goal was to gather information to understand the extent of the problem. We were successful, although we were disturbed by what we found. Depending on whom you believe, there are from 17 million to almost double that number of Americans who cannot read a simple sentence. Many other adults are marginally literate; they barely get by in the most basic reading material. Perhaps as many as 3 out of 4 unemployed Americans are illiterate, and the overall dollar cost to our society may be in the tens of billions of dollars annually, not counting the loss in our gross national product.

Mr. President, another interesting finding is that increased amounts of money—the standard Government solution for all problems—has had little impact on illiteracy figures.

From 1950 to 1984 our Nation expanded total spending on education by $201.7 billion, an increase of 2,292 percent—and that is after adjusting for inflation. During the same time period, illiteracy skyrocketed while SAT test scores fell to new lows nearly every year.

Mr. President, our task force's second goal was to explore innovative solutions and programs that could help functionally illiterate persons overcome their handicap. We saw an effort in which undergraduate college students are given credit for going to jails, inner-city schools, migrant camps, and so forth, and teaching simply educational skills 6 hours per week; public libraries with innovative, structured programs to increase literacy and may I say parenthetically, Mr. President, that our Nation's libraries and the fine librarians who run them are an invaluable resource that we take for granted far too often; we visited a reading workshop where both youngsters and adults are taught phonetically in an exciting, fun program. In fact, its name is Funway Reading Workshop in Boise, ID, and its founder, 81-year-old Judy Yensen, recently won a Jefferson Award for her community service. We corresponded with regional and national groups and organizations about their programs and successes.

In all, I am impressed by the tremendous efforts being made in our private sector by the tens of thousands of concerned Americans; and by the excellent work being done by our adult basic education people, and by others in our local schools and colleges.

Mr. President, another goal of the task force was to bring the problem of illiteracy to the attention of the American public. We felt it was far too important an issue to remain in the closet. We found that functionally illiterate adults are ashamed of and embarrassed by their inability to read or write, and are reluctant to come forward for help lest they be found out. We worked in several areas; with supermarkets, publishing houses, State education departments, private foundations, and so forth.

Also, we cooperated in an effort that affected more people than any other single campaign: the ABC/PBS television work on adult illiteracy—Project Literacy U.S. [PLUS]. I hope all my colleagues saw the excellent ABC documentary "At a Loss for Words" which was recently shown. In addition, ABC has aired frequent public service spots on television and had many programs on radio. It is estimated that 40 million Americans learned about illiteracy as a result of these programs. In fact, during a 2-week period, the national literacy hotline handled more than 40,000 phone calls, more than in the entire previous year.

In a recent letter to me from John E. Harr. the vice president for communications who spearheaded this outstanding effort, he said that as a result of the outreach phase of PLUS, more than 340 community task forces have come into existence. ABC has not stopped there, later this month they will air a program aimed at high school age youngsters, as well as an "ABC After School Special."

Mr. President, I commend the American Broadcasting Co., as a great corporate citizen for their leadership in the battle against illiteracy, and I congratulate John Harr for his vision and hard work.

Mr. President, there is much left to do to help our illiterate and marginally literate citizens. Our task force is committed to continue its struggle. I am proud of the work we have done to date: We have made a difference. I invite all my colleagues in this body to join in this noble effort.●

THE CALENDAR

Mr. STEVENS. Mr. President, on behalf of the leadership, I would like to inquire of the distinguished minority leader if he is in a position to agree that we should pass the following calendar items, or any of them that I mention: Calender Nos. 884, 891, 985, 1016, 1020,1036, 1037, 1038, 1039, 1040, 1045, 1046, 1047, 1053, 1054, 1055, 1056, 1057, 1058, 1061, 1062, 1063, and 1070.

Mr. BYRD. Mr. President, all of the calendar items identified by the distinguished acting Republican leader have been cleared by all Members on this side of the aisle and we are ready to proceed.

Mr. STEVENS. I appreciate the agreement.

Mr. President, I ask unanimous consent that the calendar items I have identified be considered en block and adopted en bloc, and that all committee reports and preambles and title amendments be considered and agreed to en bloc.

The PRESIDING OFFICER. Without objection, it is so ordered.

CHILD INJURY PREVENTION ACT

The Senate proceeded to consider the bill (S. 2648) to improve the public health through the prevention of childhood injuries, which had been reported from the Committee on Labor and Human Resources, with amendments, as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets, and the parts of the bill intended to be inserted are shown in italics.)

S. 2648

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the **[**"Child Injury**]** *"Injury* Prevention Act of 1986".

FINDINGS AND PURPOSES

SEC. 2. (a) The Congress finds and declares that:

(1) Injury is one of the principal public health problems in America, and causes over 140,000 deaths per year.

(2) Injury rates are particularly high for **[**children.**]** *children and the elderly.*

(3) Injury causes 50 percent of all deaths for children over the age of one year and two-thirds of all deaths for children over the age of 15 **[**years.**]** *years, and is the leading cause of death for individuals under the age of 44 years. Individuals over the age of 65 years have the highest fatality rates for many injuries.*

[(4) Injuries resulting from consumer products are a particularly serious problem. In 1985, over 5,000,000 children suffered injuries resulting from consumer products which were serious enough to require visits to hospital emergency rooms.**]**

[(5)**]** *(4)* Injury control has not been given high priority in the United States, and the research being conducted on injury control and the number of personnel involved in injury control activities are not adequate.

(b) The purposes of this Act are—

(1) to promote research into the causes, [mechanics,] diagnosis, treatment, prevention, and control of injuries and rehabilitation from injuries;

(2) to promote cooperation between specialists in fields involved in injury research; and

(3) to promote coordination between Federal, State, and local governments and public and private entities in order to achieve a reduction in deaths from injuries.

PUBLIC HEALTH RESEARCH AND ACTIVITIES RELATING TO INJURY CONTROL

SEC. [2] *3.* Title III of the Public Health Service Act is amended by adding at the end thereof the following new part:

"PART J—INJURY CONTROL

"RESEARCH

"SEC. 391. (a) The Secretary, through the Director of the Centers for Disease Control, shall—

"(1) conduct, and give assistance to public and nonprofit private entities, scientific institutions, and individuals engaged in the conduct of, research relating to the causes, mechanisms, prevention, diagnosis, treatment of injuries, and rehabilitation from injuries; and

"(2) make grants to public and nonprofit private entities (including academic institutions, hospitals, and laboratories) and individuals for the conduct of such research.

"(b) The Secretary, through the Director of the Centers for Disease Control, shall collect and disseminate, through publications and other appropriate means, information concerning the practical applications of research conducted or assisted under subsection (a).

"CONTROL ACTIVITIES

"SEC. 392. (a) The Secretary, through the Director of the Centers for Disease Control, shall—

"(1) assist States and political subdivisions of States in activities for the prevention of injuries; and

"(2) encourage regional activities between States designed to reduce injury rates.

"(b) The Secretary, through the Director of the Centers for Disease Control, may—

"(1) enter into agreements between the Service and public and private community health agencies which provide for cooperative planning of activites to deal with problems relating to injuries and injury control; and

"(2) work in cooperation with Federal, State, and local agencies to promote injury control.

"STUDY

"SEC. 393. By January 1, [1988,] *1989,* the Secretary, through the Director of the Centers for Disease Control, shall prepare and transmit to the Congress a report analyzing the incidence and causes of childhood injuries in the United States and containing recommendations for such legislation with respect to injury control as the Secretary considers appropriate.

"AUTHORIZATIONS OF APPROPRIATIONS

"SEC. 394. (a) To carry out [section 391,] *sections 391 and 392,* there are authorized to be appropriated [$5,000,000] *$10,000,000* for each of the fiscal years [1987,] 1988, [and 1989.] *1989, and 1990.* Of the amounts appropriated under this [subsection] *section* for any fiscal year, not more than 20 percent may be used for Federal administrative expenses to carry out such section for such fiscal [year.] *year.*".

[(b) To carry out section 392, there are authorized to be appropriated $5,000,000 for each of the fiscal years 1987, 1988, and 1989. Of the amounts appropriated to under this subsection for any fiscal year, not more than 20 percent may be used for Federal administrative expenses to carry out such section for such fiscal year.".]

The PRESIDING OFFICER. The bill is before the Senate and open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill (S. 2648) was ordered to be engrossed for a third time, read the third time, and passed.

The title was amended so as to read "A bill to improve the public health through the prevention of injuries."

ENTRY OF NONIMMIGRANT ALIEN FISHING CREWS INTO GUAM

The bill (H.R. 2224) to amend the Immigration and Nationality Act to permit nonimmigrant alien crewmen on fishing vessels to stop temporarily at ports in Guam, was considered, ordered to a third reading, read the third time, and passed.

EXEMPTION OF CERTAIN ACTIVITIES FROM ANTITRUST LAWS

The Senate proceeded to consider the bill (S. 2323) to exempt certain activities from provisions of the antitrust laws, which had been reported from the Committee on the Judiciary, with an amendment to strike out all after the enacting clause, and insert the following:

That (a) actions specified in section 2 shall be exempt from certain provisions of the antitrust laws of the United States.

(b) For purposes of this Act—

(1) "antitrust laws" has the meaning given such term in the first section of the Clayton Act, and the Federal Trade Commission Act;

(2) "person in the television industry" means a person who is the chief executive officer of a television network or of an entity which produces programming for television distribution, including theatrical motion pictures, and the presidents of the National Cable Television Association, the Association of Independent Television Stations, Inc., the National Association of Broadcasters and the Motion Picture Association of America, or their designees; and

(3) "telecast" means any program broadcast by a broadcast station or transmitted by a cable system.

SEC. 2. The antitrust laws shall not apply to any joint discussion, consideration, review, action, or agreement by or among persons in the television industry pursuant to the development and dissemination of voluntary guidelines designed to alleviate the negative impact of violence in telecast material.

SEC. 3. (a) The exemption provided in section 2 shall not apply to any joint understanding, action, or agreement which results in a boycott of any other person in such industry.

(b) The exemption provided in section 2 shall terminate on the date 36 months after the date of enactment of this Act.

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

TENNESSEE WILDERNESS ACT

The bill (H.R. 5166) to designate certain lands in the Cherokee National Forest in the State of Tennessee as wilderness areas, and for other purposes, was considered.

Mr. SASSER. Mr. President, I would like to thank the leadership on both sides of the isle for allowing this important bill, H.R. 5166, to be brought up today.

H.R. 5166, the Tennessee Wilderness Act of 1986, is the House companion bill to S. 2685, which was introduced by myself and Senator GORE in July. With one technical exception, the two bills are identical. The one change made in the House bill relates to maintenance of the Appalachian Trail and its shelters in wilderness areas. In order to conform with similar wilderness legislation, language on management of the Appalachian Trail was deleted, and substituted with report language. The report language provides for the continued maintenance of the trail and the existing shelters.

Last week, the Committee on Agriculture, Nutrition, and Forestry held a hearingon S. 2685. Both I and my colleague, Senator GORE—the two sponsors of the bill—testified in support of this legislation. Testimony was also received from the U.S. Forest Service, the Wilderness Society, and the Tennessee chapter of the Sierra Club, all of whom voiced their strong support for the measure.

The Tennessee Wilderness Act of 1986 is indeed a consensus bill. It has bipartisan support, and was passed by the House on September 22 by voice vote. It ratifies the wilderness recommendations made by the Forest Service in the final plan for the Cherokee National Forest. It reflects years of hard work and dedication by many Tennesseans who care deeply about the use and future of their national forests. And it reflects tremendous effort on the part of the Forest Service, which is to be commended for developing such successful recommendations.

H.R. 5166 designates 33,735 acres of the Cherokee National Forest as wilderness. It will add six outstanding natural areas to the National Wilderness Preservation System, and will provide the northern portion of the Cherokee National Forest with its first designated wilderness. It will also provide the logical conclusion to the wilderness debate begun by myself and the former distinguished majority leader, Senator Baker, 2 years ago with the introduction and passage of the Tennessee Wilderness Act of 1984.

Protection of these wild lands will preserve a small portion of our vanishing eastern roadless areas. Preservation of these lands will allow wildlife and plant species dependent on undisturbed habitat the wilderness they require. It will ensure recreational solitude for those who seek it. And given that the Forest Service has found existing wilderness areas in the southern Appalachian region to be at or above their recreation-use capacity, I believe it is particularly important to add these lands to the wilderness system.

This bill also releases nonwilderness areas from further wilderness consideration for the life of the initial forest plan. It therefore permits multiple-use management of these lands, and assures the availability of adequate timber supplies for local industry. Yet, it permits consideration of wilderness designation in future planning cycles, thus leaving the option of future wilderness designation open to future generations of Cherokee Forest users.

In the report accompanying H.R. 5166, there are two additional matters of importance to east Tennesseans; one concerning a proposed road between the communities of Butler and Blue Spring, and the other concerning a possible land transfer between the Forest Service and Unicoi County. As I stated in my testimony to the Agriculture Committee, this report language was included to address the concerns of citizens in these communities, and I believe this noncontroversial language will allay the concerns of all parties involved.

Mr. President, enactment of this bill, H.R. 5166, will lay to rest an important component of the Cherokee final plan. By resolving the wilderness debate, we will provide a clearer path to resolution of the other issues at stake in the Cherokee Forest planning process. While there are other roadless areas in the Cherokee National Forest worthy of wilderness designation, I am hopeful that we can manage some of these other lands in a way which will not exclude their future consideration for wilderness designation.

Passage of this legislation in the 99th Congress will bring the planning process for the Cherokee National Forest one step closer to completion. It will also permanently protect 33,735 acres of preeminent wilderness in the Cherokee National Forest—not only for the enjoyment of ourselves and our children, but for the benefit of many generations of Americans to come. I urge my colleagues to support this important legislation.

Mr. GORE. Mr. President, I am extremely pleased that we have now reached the point of the final passage of legislation that my colleague, Senator SASSER, and I cosponsored in the Senate, the "Tennessee Wilderness Act of 1986" (H.R. 5166). This represents the culmination of years of work by many Tennesseans to secure permanent wilderness protection for the most deserving of the remaining roadless areas on the Cherokee National Forest. I congratulate all the individuals who have had a hand in this long process. I also commend the Forest Service for its role in developing an excellent package of wilderness recommendations through the forest planning process. The recommendations gained the support of a wide spectrum of environmental and conservation groups in Tennessee.

All these lands provide outstanding opportunities for solitude and recreation in a beautiful natural setting, and offer protection for rare plant and animal species. They help preserve an ecological diversity that becomes increasingly important as habitats on surrounding lands are fragmented or destroyed by development. Also, existing wilderness areas in the southern Appalachian region are reported by the Forest Service to be at or above their recreation-use capacity and that use continues to grow.

The Tennessee Wilderness Act of 1986 adds 33,735 acres of the Cherokee National Forest to the National Wilderness Preservation System. The bill designates the first wilderness areas in the northern portion of the Cherokee. The legislation brings the total amount of wilderness on the forest to nearly 67,000 acres, or about 11 percent of the forest's total area. At the same time, the bill makes other lands available for multiple use management. There will be sufficient timber supplies left outside of wilderness areas to meet the needs of local industry.

I ask my colleagues to give this bill their unanimous consent.

The bill was ordered to a third reading, read the third time, and passed.

CHARLES McC. MATHIAS, JR., NATIONAL STUDY CENTER FOR TRAUMA AND EMERGENCY MEDICAL SYSTEMS

The joint resolution (H.J. Res. 210) designating the Study Center for Trauma and Emergency Medical Systems at the Maryland Institute for Emergency Medical Services Systems at the University of Maryland as the "Charles McC. Mathias, Jr., National Study Center for Trauma and Emergency Medical Systems," was considered, ordered to a third reading, read the third time, and passed.

The preamble was agreed to.

AMERICAN FOLKLIFE CENTER AUTHORIZATION

The bill (H.R. 4545) to authorize appropriations for the American Folklife Center for fiscal years 1987, 1988, and 1989, and for other purposes, was considered, ordered to a third reading, read the third time, and passed.

AUTHORIZING THE PRINTING OF A REPORT AS A SENATE DOCUMENT

The resolution (S. Res. 482) authorizing the printing of the report entitled "Highway Bridge Replacement and Rehabilitation Program, Seventh Annual Report to Congress" as a Senate document, was considered, and agreed to; as follows:

S. RES. 482

Resolved, That the annual report of the Secretary of Transportation to the Congress of the United States in compliance with section 144(i) of title 23, United States Code entitled, "Highway Bridge Replacement and Rehabilitation Program, Seventh Annual Report to Congress" be printed as a Senate document.

SEC. 2. There shall be printed three hundred additional copies for the use of the Committee on Environment and Public Works.

GRATUITY TO EUGENE A. BUNDY

The resolution (S. Res. 496) to pay a gratuity to Eugene A. Bundy, was considered, and agreed to; as follows:

S. RES. 496

Resolved, That the Secretary of the Senate hereby is authorized and directed to pay, from the contingent fund of the Senate, to Eugene A. Bundy, widower of Carolyn E. Bundy, an employee of the Senate at the time of her death, a sum equal to seven months' compensation at the rate she was receiving by law at the time of her death, said sum to be considered inclusive of funeral expenses and all other allowances.

GRATUITY TO DAVID K. STOKELY

The resolution (S. Res. 497) to pay a gratuity to David K. Stokely, was considered, and agreed to; as follows:

S. RES. 497

Resolved, That the Secretary of the Senate hereby is authorized and directed to pay, from the contingent fund of the Senate, to David K. Stokely, son of Wilma K. Stokely, an employee of the Senate at the time of her death, a sum equal to eight months' compensation at the rate she was receiving by law at the time of her death, said sum to be considered inclusive of funeral expenses and all other allowances.

AMENDING RULE XXXV OF THE STANDING RULES OF THE SENATE

The resolution (S. Res. 498) to amend rule XXXV of the Standing Rules of the Senate, was considered, and agreed to; as follows:

S. RES. 498

Resolved, That the last sentence of paragraph 4(b) of rule XXXV of the Standing Rules of the Senate is amended by striking

out "Prior to the beginning of any such program, the" and inserting in lieu thereof "The".

REPEAL OF PUBLIC LAW 87-186

The bill (S. 2448) to repeal Public Law 87-186 relative to the National Armed Forces Museum Advisory Board of the Smithsonian Institution, was considered, ordered to be engrossed for a third reading, read the third time, and passed; as follows:

S. 2448

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Public Law 87-186, an Act to establish a National Armed Forces Museum Advisory Board of the Smithsonian Institution to authorize expansion of the Smithsonian Institution's facilities for portraying the contributions of the Armed Forces of the United States, and for other purposes, approved August 30, 1961, is hereby repealed.

REAPPOINTMENT OF MURRAY GELL-MANN AS A CITIZEN REGENT OF THE SMITHSONIAN INSTITUTION

The joint resolution (S.J. Res. 268) to provide for the reappointment of Murray Gell-Mann as a citizen regent of the Board of Regents of the Smithsonian Institution, was considered, ordered to be engrossed for a third reading, read the third time, and passed; as follows:

S.J. RES. 268

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the vacancy in the Board of Regents of the Smithsonian Institution, of the class other than Members of Congress, which will occur by the expiration of the term of Murray Gell-Mann of California on July 25, 1986, be filled by the reappointment of the present incumbent. The appointment is for a term of six years and shall take effect on the day after the current term expires.

GRATUITY TO MARJORIE A. PATTISON

The resolution (S. Res. 499) to pay a gratuity to Marjorie A. Pattison, was considered, and agreed to; as follows:

S. RES. 499

Resolved, That the Secretary of the Senate hereby is authorized and directed to pay, from the contingent fund of the Senate, to Marjorie A. Pattison, widow of Thomas R. Pattison, an employee of the Senate at the time of his death, a sum to equal one year's compensation at the position gross rate he was receiving by law at the time of his death, said sum to be considered inclusive of funeral expenses and all other allowances.

NATIONAL BURN AWARENESS WEEK

The joint resolution (S.J. Res. 410) to designate the period commencing February 9, 1987, and ending February 15, 1987, as "National Burn Awareness Week," was considered, ordered to be engrossed for a third reading, read the third time, and passed.

The preamble was agreed to.

The joint resolution, and the preamble, are as follows:

S.J. RES. 410

Whereas the burn problem in the United States is the worst of any industrialized nation in the world;

Whereas burn injuries are one of the leading causes of accidental death in the United States;

Whereas every year approximately two million people are victims of burn injury in the United States;

Whereas of these injuries, seventy thousand are hospitalized and account for nine million disability days annually;

Whereas approximately twelve thousand people die from burn injuries;

Whereas deaths resulting from burn injuries increased in 1985;

Whereas the rehabilitative and psychological impact of burns are devastating;

Whereas children, the elderly, and the disabled are most likely to suffer serious burns;

Whereas it is estimated that approximately 75 percent of all burns could be prevented by proper education of children and adults; and

Whereas there is a need for an effective national program that deals with all aspects of burn prevention: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the period commencing February 9, 1987, and ending February 15, 1987, is designated as "National Burn Awareness Week" and the President is authorized and requested to issue a proclamation calling upon the people of the United States and all Federal, State, and local government officials to observe such week with appropriate programs and activities.

FREEDOM OF INFORMATION DAY

The joint resolution (S.J. Res. 414) to designate March 16, 1987, as "Freedom of Information Day," was considered, ordered to be engrossed for a third reading, read the third time, and passed.

The preamble was agreed to.

The joint resolution, and the preamble, are as follows:

S.J. RES. 414

Whereas a fundamental principle of our Government is that a well-informed citizenry can reach the important decisions that determine the present and future of the Nation;

Whereas the freedoms we cherish as Americans are fostered by free access to information;

Whereas many Americans, because they have never known any other way of life, take for granted the guarantee of free access to information that derives from the First Amendment to the Constitution of the United States;

Whereas the guarantee of free access to information should be emphasized and celebrated annually; and

Whereas March 16 is the anniversary of the birth of James Madison, one of the Founding Fathers, who recognized and supported the need to guarantee individual rights through the Bill of Rights: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That March 16, is designated as "Freedom of Information Day", and the President is authorized and requested to issue a proclamation calling upon Federal, State, and local government agencies and the people of the United States to observe such day with appropriate programs, ceremonies, and activities.

NATIONAL PRODUCTIVITY IMPROVEMENT WEEK

The joint resolution (S.J. Res. 417) designating the week of January 25 through January 31, 1987 as "National Productivity Improvement Week," was considered, ordered to be engrossed for a third reading, read the third time, and passed.

The preamble was agreed to.

The joint resolution, and the preamble, are as follows:

S.J. RES. 417

Whereas the challenge of maintaining a sound economy needs continued diligence from the private and public sectors of our free society;

Whereas a principal force in driving a sound economy is a strong level of productivity in the output of both products and services;

Whereas the attainment of continually improved productivity as a conscientious objective throughout our economy will help protect and advance the quality of life of all American citizens;

Whereas the creation of productive ideas and the desire to excel are traits of the American workforce which sufficiently motivated can dramatically and favorably influence productivity; and

Whereas public awareness is a key element in increasing productivity consciousness and motivating its widespread development: Now, therefore, be it

Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled, That, for the purpose of spreading the message that productivity improvement should be a primary goal in business, industry and government, the week of January 25, 1987, is designated "National Productivity Improvement Week." The President is requested to issue a proclamation calling upon the people of the United States to observe such week with appropriate ceremonies and activities.

NATIONAL WOMEN IN SPORTS DAY

The joint resolution (S.J. Res. 418) to designate February 4, 1987, as "National Women in Sports Day," was considered, ordered to be engrossed for a third reading, read the third time, and passed.

The preamble was agreed to.

The joint resolution, and the preamble, are as follows:

S.J. RES. 418

Whereas women's athletics is one of the most effective avenues available through which women of America may develop self-

discipline, initiative, confidence, and leadership skills;

Whereas support and fitness activity contributes to emotional and physical well-being and women need strong bodies as well as strong minds;

Whereas the history of women in sports is rich and long, but there has been little national recognition of the significance of women's athletic achievements;

Whereas the number of women in leadership positions of coaches, officials, and administrators has declined drastically over the last decade and there is a need to restore women to these positions to ensure a fair representation of women's abilities and to provide role models for young female athletes;

Whereas the bonds built between women through athletics help to break down the social barriers of racism and prejudice;

Whereas the communication and cooperation skills learned through athletic experience play a key role in the athlete's contributions at home, at work, and to society;

Whereas women's athletics has produced such winners as Flo Hyman, whose spirit, talent, and accomplishments distinguished her above others and exhibited for all of us the true meaning of fairness, determination, and team play;

Whereas early motor-skill training and enjoyable experiences of physical activity strongly influence life-long habits of physical fitness;

Whereas the athletic opportunities for male students at the collegiate and high school level remain significantly greater than those for female students; and

Whereas the number of funded research projects focusing on the specific needs of women athletes is limited and the information provided by these projects is imperative to the health and performance of future women athletes; Now, therefore, be it

Resolved by the Senate and the House of Representatives of the United States of America in Congress assembled, That February 4, 1987, is hereby designated as "National Women in Sports Day", and the President is authorized and requested to issue a proclamation calling upon local and State jurisdictions, appropriate Federal agencies, and the people of the United States to observe the day with appropriate ceremonies and activities.

RECOGNITION OF VISIT TO NEUFCHATEL, SWITZERLAND, AS A GESTURE OF GOODWILL

The concurrent resolution (S. Con. Res. 130) to recognize the visit by the descendents of the original settlers of Purrysburg, SC, to Neufchatel, Switzerland, in October 1986 as an international gesture of good will, was considered, and agreed to.

The preamble was agreed to.

The concurrent resolution, and the preamble, are as follows:

S. CON. RES. 130

Whereas in 1732 Jean Pierre Purry, under the auspices of the British authorities, founded the town of Purrysburg in the lower south eastern portion of South Carolina, on the Savannah River;

Whereas Colonel Purry, a native of Neufchatel, Switzerland, had promoted the colonization of Carolina and gathered a group of settlers from among the industrious and diligent Swiss;

Whereas the town of Purrysburg, South Carolina, was originally chartered as Swiss Quarter and prospered during its early years, boasting strong commercial, civil, religious, and military activities;

Whereas during the Revoluntionary War, Purrysburg served as a headquarters for General Benjamin Lincoln;

Whereas President George Washington shared the Huguenot descent of the Purrysburg settlers and visited the town during a tour of the Southern States;

Whereas Purrysburg was abandoned after the Revolutionary War as the result of the growth of coastal cities such as Charleston; and

Whereas the descendents of the original settlers of Purrysburg, South Carolina, are visiting Neufchatel, Switzerland in October of 1986: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That the Congress recognizes the visit by the descendants of the original settlers of Purrysburg, South Carolina, to Neufchatel, Switzerland in October of 1986 as an international gesture of goodwill.

RECOGNIZING MR. EUGENE LANG FOR HIS CONTRIBUTIONS TO THE EDUCATION AND LIVES OF DISADVANTAGED YOUTH

The Senate proceeded to consider the resolution (S. Res. 435) to recognize Mr. Eugene Lang for his contributions to the education and the lives of disadvantaged young people, which had been reported from the Committee on the Judiciary with an amendment in the nature of a substitute.

The Senate proceeded to consider the resolution.

Mr. MOYNIHAN. Mr. President, I am pleased that the Senate has recognized the I Have a Dream Foundation for the important contributions it is making to the lives and the education of young people across the country. The foundation is providing technical assistance to individuals, businesses and community groups that wish to provide financial support to enable disadvantaged teenagers to attend college. This spirit of generosity and concern is most gratifying.

The I Have a Dream Foundation was founded by Mr. Eugene Lang, who in 1981 gave the graduation address to a class of sixth graders at his old elementary school in east Harlem. He promised them that if they would only graduate from high school, he would send them to college. As many as 50 of the 51 students will graduate next spring, in an area of Harlem where the dropout rate approaches 75 percent. Mr. Lang committed his money and his time, and the commitment has borne fruit.

Mr. Lang's idea has spread through New York City and is now crossing the country, with the foundation's help. Twenty other cities have organized programs or plan to. The foundation will bring an opportunity to thousands of school children, an opportunity to gain a college education and a better life than they might otherwise have. The work of the I Have a Dream Foundation will spread an idea that brings hope and education to disadvantaged young people. I commend Mr. Lang for the idea, and the foundation for nurturing it.

Mr. LEVIN. Mr. President, Eugene Lang is an extraordinary person. He has been a quiet and effective "doer" for decades. I came to know him because we were both graduated from Swarthmore College. Our paths crossed because of his activities as Swarthmore's greatest modern supporter. He gave and gave of himself, both his time and his money. That has been the case with so many causes as he, in an unassuming way, determined to make a difference in this world. His extraordinary gesture for which he is, in part, being honored here today is symbolic of the way he does things. His own exemplary act of generosity toward P.S. 121 in New York City has touched a responsive chord across the land and now a number of individuals and companies have decided to follow his lead. May it shine for a long, long time.

The PRESIDING OFFICER. The question is on agreeing to the amendment in the nature of a substitute.

The amendment in the nature of a substitute was agreed to.

The resolution, as amended, was agreed to.

The amendment to the preamble was agreed to.

The preamble, as amended, was agreed to.

The resolution (S. Res. 435), as amended, and the preamble, as amended, are as follows:

S. RES. 435

Whereas the number of young people who fail to graduate is unacceptable in many high schools, especially in urban areas; and

Whereas failure to graduate deprives these young people of many employment opportunities and further educational opportunities; and

Whereas many disadvantaged young people are never encouraged to pursue a college education and are unaware of scholarship opportunities; and

Whereas the I Have a Dream Foundation is assisting people across the country in utilizing Eugene Lang's idea of providing college tuitions to disadvantaged school children who agree to finish high school; and

Whereas the success of the program in New York City has inspired people in Baltimore, Chicago, Boston Jersey City, Washington, Cleveland, Detroit, Miami, Orlando, Atlanta, Birmingham, Grand Rapids, New Orleans, Denver, San Antonio, Phoenix, Los Angeles, San Francisco, Seattle, Dallas, and Portland to adopt it: Now, therefore, be it

Resolved, That it is the sense of the Senate that—

(1) The I Have a Dream Foundation is to be recognized for disseminating the assistance necessary to replicate an innovative and successful approach to keeping disad-

vantaged teen-agers in high school and enabling them to attend college.

(2) Americans are encouraged to use their time and resources to give disadvantaged young people educational opportunities they do not normally have.

The title was amended so as to read: "A resolution to recognize the I Have A Dream Foundation for its contributions to the education and the lives of disadvantaged young people."

NATIONAL DAY OF EXCELLENCE IN HONOR OF THE "CHALLENGER" SPACE SHUTTLE CREW

The joint resolution (H.J. Res. 588) commemorating January 28, 1987, as a National Day of Excellence in honor of the crew of the space shuttle *Challenger*, was considered, ordered to a third reading, read the third time, and passed.

The preamble was agreed to.

NATIONAL ADULT DAY CARE CENTER WEEK

The joint resolution (H.J. Res. 617) to designate the week beginning September 28, 1986, as "National Adult Day Care Center Week," was considered, ordered to a third reading, read the third time, and passed.

The preamble was agreed to.

CRACK/COCAINE AWARENESS MONTH

The joint resolution (H.J. Res. 678) to designate October 1986, as "Crack/Cocaine Awareness Month," was considered, ordered to a third reading, read the third time, and passed.

The preamble was agreed to.

NATIONAL FAMILY CAREGIVERS WEEK

The joint resolution (H.J. Res. 555) to designate the week beginning November 24, 1986, as "National Family Caregivers Week," was considered, ordered to a third reading, read the third time, and passed.

The preamble was agreed to.

Mr. STEVENS. Mr. President, I move to reconsider the votes by which the various measures were agreed to or passed.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. STEVENS. I say to my friend I do not have any statements for that group of bills.

Mr. BYRD. I thank the distinguished Senator.

TO AMEND TITLE 11, UNITED STATES CODE, THE BANKRUPTCY CODE—H.R. 5490

Mr. STEVENS. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of H.R. 5490 dealing with debtors in bankruptcy, and I ask for its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 5490), to clarify the current meaning of section 1113 relating to the rejection of collective bargaining agreements by debtors in bankruptcy.

The Senate proceeded to consider the bill.

□ 1910

AMENDMENT NO. 3211

Mr. BYRD. Mr. President, I send to the desk an amendment on behalf of Senator METZENBAUM, Senator THURMOND, and others.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from West Virginia [Mr. BYRD], for Mr. METZENBAUM, Mr. THURMOND, Mr. HEINZ, Mr. GLENN, Mr. SPECTER, Mr. DENTON, Mr. DURENBERGER, Mr. SIMON, Mr. LEVIN, Mr. ROCKEFELLER, Mr. BOSCHWITZ, and others, proposes an amendment numbered 3211.

Mr. BYRD. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike everything after the enacting clause and insert in lieu thereof the following:

SECTION 1. Notwithstanding any provision of chapter 11 of title 11, United States Code, the trustee shall pay benefits until May 15, 1987, to retired former employees under a plan, fund, or program maintained or established by the debtor prior to filing a petition (through the purchase of insurance or otherwise) for the purpose of providing medical, surgical, or hospital care benefits, or benefits in the event of sickness, accident, disability, or death.

SEC. 2. This Act is effective with respect to cases commenced under chapter 11, of title 11, United States Code, in which a plan for reorganization has not been confirmed by the court and in which any such benefit is still being paid on October 2, 1986, and in cases under which an order for relief is entered under chapter 11 of title 11, United States Code, after October 2, 1986, which such case is a case under chapter 11.

Mr. METZENBAUM. Mr. President, this amendment is identical to one adopted on the continuing resolution earlier today. It provides an additional protection to retirees of companies filing in bankruptcy.

This measure is not intended to address the issue of whether or not a pension plan is an executory contract.

I ask unanimous consent that a letter from Congressman CLAY be inserted at this point in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

COMMITTEE ON EDUCATION AND LABOR,
Washington, DC, September 30, 1986.

Hon. HOWARD M. METZENBAUM,
Russell Senate Office Building,
Washington, DC.

DEAR HOWARD: Yesterday the House of Representatives passed H.R. 5490, a bill that amends section 1113(f) of the Bankruptcy Code to clarify that retiree benefits (such as health and life insurance) set forth in collective bargaining agreements are treated as any other benefits set forth in collective bargaining agreements.

As you know, a few months ago Congress enacted the Single-Employer Pension Plan Amendments Act of 1985 (Title XI of the Consolidated Omnibus Budget Reconciliation Act of 1985, P.L. 99-272). As one of the Senate Labor and Human Resources conferees on that Act, you will recall that during the conference an issue arose as to whether the distress criteria for termination of a single-employer pension plan could be met by the contributing sponsors and members of their controlled groups filing reorganization in bankruptcy petitions under Chapter 11. Under the House bill, such a filing did not meet the criteria for a distress termination of a pension plan. Under the Senate amendment, if the Bankruptcy Court approved the plan termination, the filing of a Chapter 11 petition would have enabled a pension plan to qualify for a distress termination, provided certain other conditions were met. In the context of our conference discussion on this point, the question arose as to when or whether pension plans might be executory contracts subject to the provisions of section 1113(f) of the Bankruptcy Code. Since full and careful consideration of this question had never been undertaken the Conference Agreement specifically stated that, "The Conferees take no position on when or whether a pension plan is an executory contract." H. Rept. 99-453, December 19, 1985, at page 575.

The legislative history of H.R. 5490 indicates that the purpose of the bill is to assure that, in a Chapter 11 bankruptcy proceeding, retiree benefits, such as health and life insurance, under collective bargaining agreements are treated in the same procedural manner as other collectively bargained benefits. Of course, in passing this legislation amending the Bankruptcy Code to clarify the narrow issue of procedural treatment of retiree benefits, Congress did not intend to address the issue left open in the Single-Employer Pension Plan Amendments Act of 1985 as to when or whether employee benefit plans generally, and pension plans specifically, might be executory contracts.

As the author of the Senate companion measure to H.R. 5490, I wanted to bring this matter to your attention because I am certain that neither you, nor the other authors of this legislation, had any intention of creating legislative history that might be erroneously construed as impliedly contradicting the agreement reached by the conferees in the Single-Employer Pension Plan Amendments Act.

I congratulate you on your tireless efforts on behalf of retirees, especially those whose health and life insurance benefits are in

jeopardy as a result of employer bankruptcy.

Sincerely,

WILLIAM L. CLAY,
Chairman.

Mr. METZENBAUM. Mr. President, I concur with the position of the chairman of the Subcommittee on Labor Management Relations. The position taken by the conferees on the single-employer pension plan amendments is not contradicted by this measure.

I urge adoption of this amendment.

Mr. THURMOND. Mr. President, I rise to support the substitute amendment to H.R. 5490. This amendment is identical to the language which Senator METZENBAUM, Senator HEINZ, and I earlier added to the continuing resolution. My statement there fully explains the intent of this language which I have helped to draft. In the interest of time, let me say, this substitute amendment provides temporary protection for some retiree benefits. However, in no way is the language of this amendment intended, nor should it be construed, to affect the interpretation of section 1113 of the Bankruptcy Code.

The PRESIDING OFFICER. Is there further debate?

If not, the question is on agreeing to the amendment.

The amendment (No. 3211) was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment of the amendments and the third reading of the bill.

The amendments were to be engrossed and the bill to be read a third time.

The bill was read a third time and passed.

Mr. STEVENS. Mr. President, I move to reconsider that action.

Mr. BYRD. Mr. President, I move to table the motion to reconsider.

The motion to lay on the table was agreed to.

PATENTED PROCESSES AND THE PATENT COOPERATION TREATY

Mr. STEVENS. Mr. President, I ask unanimous consent the Senate now turn to the consideration of H.R. 4899, the process patents bill being held at the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 4899) to amend title 35, United States Code, with respect to patented processes and the patent cooperation treaty.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 3212

(Purpose: To protect patent owners from importation into the United States of goods made overseas by use of a United States patented process)

Mr. STEVENS. Mr. President, I send an amendment to the desk on behalf of the Senator from Maryland [Mr. MATHIAS] and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Alaska [Mr. STEVENS], for Mr. MATHIAS, proposes an amendment numbered 3212.

Mr. STEVENS. Mr. President, I ask unanimous consent that the amendment not be read.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike out all of title I and insert in lieu thereof the following:

TITLE I—PATENTED PROCESSES

SEC. 101. This title may be cited as the "Process Patent Amendments Act of 1986".

SEC. 102. (a) Section 154 of title 35, United States Code, is amended by inserting after "United States," the following: "and, if the invention is a process, of the right to exclude others, to the extent provided in section 271(a)(2), from using or selling products produced thereby throughout the United States, or importing products produced thereby into the United States,".

(b) Section 271 of title 35, United States Code, is amended by—

(1) inserting "(1)" after "(a)";

(2) adding at the end of subsection (a), the following:

"(2) If the patented invention is a process, whoever without authority uses or sells within, or imports into, the United States during the term of the patent therefor a product produced by such process, infringes the patent. A product will no longer be considered to have been produced by a patented process once it has been materially changed by subsequent steps or processes.".

(c) Section 287 of title 35, United States Code, is amended by—

(1) striking out "Limitation on damages" in the section heading and inserting in lieu thereof "Limitation on damages and other remedies";

(2) inserting "(a)" before "Patentees,"; and

(3) adding at the end thereof the following new subsection:

"(b)(1) An infringer under section 271(a)(2) shall be subject to all of the provisions relating to damages and injunctions set forth in this title except to the extent that those remedies are limited by this subsection or section 3. The limitations on remedies set forth in this subsection shall not be available to any party who—

"(A) engaged in the actual practice of the patented process;

"(B) is owned or controlled by the party who engaged in the actual practice of the patented process;

"(C) owns or controls the party who engaged in the actual practice of the patented process;

"(D) having made a request for disclosure as provided in subsection (b)(5), fails to notify its supplier of patents identified in response to the request and to instruct its supplier to refrain from infringement of such patents; or

"(E) had knowledge prior to the infringement that a patented process was used to produce the product whose importation, use, or sale constituted the infringement.

"(2) No damages shall be recovered by the patentee unless the infringer had notice of the infringement and continued to infringe thereafter. Damages may be recovered only for infringement that occurred after notice of infringement.

"(3) No remedy may be obtained during the eighteen months after the date of notice for retail sales of a normal volume of products in inventory or on order at the time of notice, obtained from a party in the United States who did not use the patented process, provided the retailer discloses to the patentee, within 30 days from notice, the identity and location of the party from whom the products were purchased. Normal quantity of products in inventory and on order shall be determined by previous business practices, and could include units of a product ordered prior to notice and received within a period not to exceed eighteen months after notice.

"(4) The remedy for the importation, use, or sale of units of the infringing product ordered prior to notice and imported, used, or sold in a manner consistent with the normal business practices of the infringer during the six months after the date of notice shall be limited to a reasonable royalty. The limitation in this subparagraph shall not be available to any party who failed to make a request for disclosure, as defined in subparagraph (5), of the party asserting infringement or its licensee.

"(5)(A) For purposes of this paragraph, a 'request for disclosure' means a written request made to a party then engaged in the manufacture of a product to identify all process patents owned by or licensed to that party as of the time of the request that could reasonably be asserted to be infringed under section 271(a)(2) if that product were imported into, or sold or used in, the United States by an unauthorized party. A request for disclosure is further limited to a request—

"(i) made by a party regularly engaged in the sale of the same type of products as the party to whom the request is directed, or a request which includes facts showing that the requester plans to engage in the sale of such products; and

"(ii) made prior to such party's first importation, use, or sale of units of the product produced by an infringing process and prior to notice of infringement.

"(B) In any action where the infringer made a request for disclosure from the party asserting infringement and the infringed patent was not identified within 60 days, the remedy for the importation, use, or sale of units of the infringing product which are imported, used, or sold by the infringer in a manner consistent with the normal business practices of the infringer during the eighteen months after the date of notice shall be limited to a reasonable royalty.

"(C) For the purposes of the limitations on remedies in this subsection—

"(i) no party may make more than one request for disclosure of the same party for the identification of process patents for producing a particular product; and

"(ii) no party who has received the benefit of the limitations of this paragraph or para-

graph (4) with respect to the infringement of one process patent shall be entitled to that benefit in the event of a subsequent infringement of any process patent for producing the same product owned by the same patentholder at the time of the first infringement.

"(6) For the purposes of the remedy limitations in subsection (b), notice or infringement means actual knowledge, or receipt of notification, that a product was produced by a patented process without authorization of the patentee. A notification shall constitute notice of infringement only if it is in writing and sets forth facts which are sufficient to establish that there is a substantial likelihood that the product was made by the infringing process. Filing an action for infringement shall constitute notice of infringement only if the pleadings or other papers filed in the action meet the requirements of a notification.".

(d) The table of sections for chapter 29 of title 35, United States Code, is amended by amending the item relating to section 287 to read as follows:

"287. Limitations on damages and other remedies; marking and notice.".

SEC. 103. (a) This title and the amendments made by this title shall apply only to products produced or imported after the date of enactment, and shall not abridge or affect the right of any persons or their successors in business to continue to use, sell or import any specific product already in substantial and continuous sale or use in the United States on July 1, 1986, or for which substantial preparation for such sale or use was made before such date, to the extent equitable for the protection of commercial investments made or business commenced in the United States before such date.

(b) This title and the amendments made by this title shall not deprive a patent owner of any other remedies available under section 271 of title 35, United States Code, section 337 of the Tariff Act of 1930, or any other provision of law.

SEC. 104. Beginning on the date one year after the date of enactment of this title and each year for 4 additional years thereafter, the Department of Commerce shall submit an annual report to the Congress on the effect of this title and the amendments made by this title, on the importation of ingredients to be used for manufacturing products in the United States in those domestic industries that submit formal complaints to the Department alleging that their legitimate sources of supply have been adversely affected.

SEC. 105. (a) Chapter 29 of title 35, United States Code, is amended by adding at the end thereof the following:

"§ 295. Presumption: product produced by patented process

"In actions alleging infringement of a process patent based on use, sale, or importation of a product produced by the patented process, if the court finds (1) that a substantial likelihood exists that the product was produced by the patented process and (2) that the claimant has made a reasonable effort to determine the process actually used in the production of the product and was unable so to determine, the product shall be presumed to have been so produced, and the burden of establishing that the product was not produced by the process shall be on the party asserting that it was not so produced.".

(b) The table of sections for chapter 29 of title 35, United States Code, is amended by adding after the item relating to section 294 the following:

"295. Presumption: product produced by patented process.".

Mr. MATHIAS. The Senate now has before it H.R. 4899, the Patent Equity Act, which passed the House last week and has been held at the desk here by unanimous consent.

The Patent Equity Act has two titles: The first would strengthen the U.S. patent laws protecting process patents, and the second would make changes in our patent law necessary for removing the U.S. reservation on chapter 2 of the Patent Cooperation Treaty, a step that will make it easier for U.S. inventors to obtain foreign patents and protect their inventions in other countries.

In accordance with the unanimous-consent request I made last week, I propose to substitute for title I of H.R. 4899 the text of S. 1543 as approved by the Senate Judiciary Committee on September 19, and to leave title II on the Patent Cooperation Treaty intact.

The purpose of the process patent legislation is to close a serious loophole in our patent laws. Current law prohibits unauthorized parties from using a patented process in the United States, but fails to protect against use of the process in another country followed by importation into and use or sale within the United States of the resulting products. Simply using the process in a foreign country where the U.S. inventor does not have a patent is perfectly legitimate; the measure we are considering prohibits only the subsequent importation, use and sale of the resulting products in this country, by declaring such acts to be an infringement of the U.S. patent on the process. The prohibition against importation, use or sale of such products applies not only to the foreign manufacturer who actually uses the process—and who may not be subject to the jurisdiction of the U.S. courts—but also to parties in the United States who purchase goods made by a patented process and import, use or sell them in this country. Under the bill, it will be incumbent on such purchasers to seek reliable, legitimate suppliers and to insist in their contracts that the supplier will come into the U.S. court if a process patent infringement action is brought, and prove that they made the goods by means of a noninfringing process. However, in order to protect purchasers in the United States who do not use the process, and who do not know the process by which the goods they purchase are made, the bill allows certain limitations on the remedies available against them under the patent law, provided they have acted in good faith in seeking to purchase legitimate, noninfringing goods.

Two classes of purchasers are eligible for these remedy limitations. Retailers who purchase from sources in the United States who do not use the patented process—so that the retailer is not in privity of contract with the party ultimately responsible for the infringement—are allowed a period of 18 months from the date of notice, during which they may sell inventory acquired or goods on order before notice with no liability for damages or injunctions. After this grace period, they would be fully liable for any acts of infringement under the bill. The second class of potential infringing purchasers consists of the importers, wholesalers, and distributors who deal directly or indirectly with the manufacturer who uses the patented process. Such purchasers are entitled under the bill to request a listing of process patents from manufacturers in the United States of a product the requester intends to purchase from a foreign source. The lists would then be passed on to a foreign manufacturer/supplier to ensure that it does not use a patented process in making the product. Having taken these precautions, if the importer/wholesaler/distributor subsequently is given notice by a patent holder who believes his process was used in making this product, then there would be a 6-month grace period following notice in which the damages would be limited to reasonable royalties and no injunction would be available. If the patent holder that brings the suit had failed to disclose the process patent in question in response to the request for disclosure, then the grace period is extended to 18 months. After the grace period, the defendant is again fully liable for acts of infringement. In either case, the purpose is to give the innocent infringing importer/wholesaler time to shift to a legitimate, noninfringing source without disrupting its business. The whole predisclosure and grace period mechanism is available only once for a given product. And again, these remedy limitations are available only for good-faith infringers who neither use the patented process nor know that they are purchasing goods made by a patented process. The grace periods should not be construed as a compulsory license, which implies an ongoing right of the licensee to do business without permission from the patent owner. Such a right has no place in U.S. patent law, and no such right is contemplated in the pending bill.

Other protections for innocent infringers include a more stringent standard of notice than is ordinarily required in product patent infringement cases, and a grandfather clause exempting business arrangements already entered into or subsequently prepared for as of July 1, 1986. With these protections, the two major opponents of earlier versions of the bill, the chain drug stores and the generic pharmaceutical industry, support the

version reported by the Senate Judiciary Committee.

Another important provision of the bill is the rebuttable presumption, shifting the burden of coming forward with evidence to the defendant if and when the plaintiff has made a reasonable but unsuccessful effort to ascertain the process used to make the product and has submitted adequate evidence to the court to establish a substantial likelihood that the product was made by his patented process.

This legislation is of enormous importance to American innovation and is supported by a wide range of American industries, including biotechnology, pharmaceuticals, industrial chemicals, and optical fibers. Let me mention here some of the Senators who deserve special credit for their efforts in developing the compromise that allowed us to move this legislation out of the Judiciary Committee: the chairman, Senator THURMOND; Senator LEAHY; Senator HATCH; and Senator DECONCINI. Let me also commend Senator LAUTENBERG, the original cosponsor of S. 1543, who testified in its favor before the committee last year, and who has contributed at every stage of our progress. Senator LAUTENBERG brings to our efforts the wisdom of firsthand experience with the complex problems we are trying to address in the process patent area.

There are some differences between the process patent legislation approved by the Senate Judiciary Committee and the version adopted by the House in H.R. 4899. Senate passage of this bill with my amendment will make it possible to work with the House to pass the best possible legislative approach to this serious shortcoming in our patent laws.

Title II of H.R. 4899 is the implementing legislation necessary for the withdrawal of our country's reservation on chapter 2 of the Patent Cooperation Treaty. The Senate version, S. 1230, of the same bill was reported by the Judiciary Committee last December; in the interests of moving expeditiously to a consensus with the House, I propose that we pass the House language today. The purpose of removing the reservation is to give U.S. patent holders more options and conveniences in pursuing patent applications in other countries. We are aware of no opposition to the bill.

The Patent Cooperation Treaty itself is an international patent agreement aimed at harmonizing the patent application procedures in member countries around the world. The treaty was ratified by the President with the advice and consent of the Senate in 1973 and eventually went into effect for our country in 1978.

At the time of the Senate's consideration of the treaty in 1973, we placed a reservation on chapter 2 owing to a belief that the procedures in that chapter would place an undue burden on our Patent and Trademark Office because of differences between the patent systems of the various countries that would participate in the treaty. Since that time, however, there has been tremendous progress, partly as a result of the treaty, in making those systems more compatible, and consequently we are now in a position to take advantage of the benefits of chapter 2.

Accordingly, the President has asked for the advice and consent of the Senate to withdraw the reservation on chapter 2. That request, Treaty Document 98-293, was recently ordered favorably reported by the Senate Foreign Relations Committee.

The substantive portions of the treaty, chapters 1 and 2, allow investors to file preliminary international patent applications prior to committing the money and technical resources necessary to formulate a formal patent application under these chapters, inventors are given more lead time and informal assessments of the prospect of obtaining a patent on their inventions in other countries.

Under chapter 1, an inventor receives an international search report citing all prior art that might have a bearing on the patentability of the invention, and also is allowed 20 months before having to decide whether to submit a formal, full-scale patent application.

If the inventor enters the chapter 2 procedures, the lead period is extended by 10 months, and the applicant is provided with an international preliminary examination report. Such reports are prepared by the patent office in one of the member countries, assessing whether the invention is novel, nonobvious and useful—the three standard criteria around the world for patentability. The preliminary examination report is also circulated to the patent offices in all the member countries, for their possible use if the inventor decides to proceed with a patent application in those countries.

There is a solid consensus that withdrawing our reservation and submitting to chapter 2 of the treaty is in the interests of promoting innovation in our country. As it stands, U.S. inventors have been the largest users by far of chapter 1 of the treaty. Furthermore, it is now universally agreed that entering chapter 2 would not place undue burdens on the U.S. Patent and Trademark Office. The European Patent Office has agreed to assist the U.S. Patent and Trademark Office during the transition period after we withdraw our reservation.

Mr. President, H.R. 4899 as amended will offer two responsible solutions to two troubling weaknesses in the existing patent system. I urge adoption of the amendment and of the bill as amended.

Mr. HATCH. Mr. President, I would like to commend the chairman of the Subcommittee on Patents, Copyrights and Trademarks, Senator MATHIAS, and each member of the subcommittee for their fine efforts in promoting process patent legislation over the past 4 years. We have all been concerned over the current lack of adequate protection against foreign process patent infringers. This bill closes that loophole.

The benefits from this bill will be immediate. By protecting our domestic process patent holders more jobs will be created and more exports will result. Equally as important, we gain credibility with our trading partners, whom we have urged to protect process patents, but without protecting our own.

This bill creates a new cause of action for process patent infringement by importation, use or sale of products resulting from a patented process. Current patent laws provide process patent protection only against unauthorized use of the process. The new protection would apply regardless of whether the unauthorized use of the process occurred domestically or abroad.

In creating this new protection against abuse of process patents, this bill does not, however, overlook the plight of an innocent domestic retailer. An innocent retailer would be a domestic importer who learns only after purchasing products from a foreign manufacturer that his supplier has infringed a patent. In such an instance, the innocent party is allowed to mitigate his damages and is allowed a grace period to dispose of the inventory acquired before notice of the violation. This bill strikes an appropriate balance between the need to protect process patents and the plight of innocent purchasers of infringing products.

In the past, differences among a diverse group have been difficult to reconcile. Many of those whose patents demanded protection were wedded to unrealistic principles. Conversely, many of those for whom a bill was unnecessary opposed legislation which could adversely affect their interests. I would like to commend the representatives of this diverse group—the unions, the textile industry, the biotech, high technology, chemical and traditional industrial groups, the generic and name brand drug companies and many others—I commend them all, for their foresight and courage to lay aside their selective interests and negotiate, early and long, and unite with the committee behind this compromise bill.

Mr. LAUTENBERG. Mr. President, I rise to support the amendment and the underlying bill. The amendment

embodies a revised version of S. 1543, the Process Patent Amendment of 1985, which I was pleased to develop and introduce with my colleague from Maryland [Mr. MATHIAS] last year.

The process patent amendments before the Senate will help protect American technology and spur investment in innovation. America's comparative advantage is its technology. We are leaders in the search for new ideals. But, we are not alone in that search.

To win the race for innovation, and to enjoy the fruits of victory, we must protect intellectual property, like patents. They reserve to the inventor, a chance to exploit his invention, to the exclusion of others. Without patent protection, people are free to steal an invention, avoid the risks of research and the frustrating failures that preceed success, but reap the harvest that the inventor sowed.

The legislation before us, would close a major gap in U.S. patent law dealing with patent of processes. Current law bars the unauthorized manufacture, use or sale of a patent in the United States. Where a product patent is at stake, and the product is copied abroad, infringement occurs when the product is actually used or sold in the United States. Where a process is at stake, and the U.S. process is copied abroad, there is no infringement of the process patent, even if the product made by the process is sold or used in the United States.

So, our current patent law does not reach the foreign pirating of our most innovative processes even when the products are shipped back to the United States. The bill before us would change that. It would make it a violation of U.S. patent law to import into, or to use or sell in the United States, a product made overseas using without permission, a U.S. patented process.

Japan, Britain, West Germany and France already have such protection for their inventors. Our legislation would bring American law in line.

Mr. President, my State is one of the Nation's centers for research and development. Billions of dollars are spent each year in the development of patented products and processes. Effective patent protection is critical to maintain that activity. It is important to the businesses that make the investments, and it is important to the people they employ. That's why both business and labor have called for process patent reform.

Mr. President, the pending amendment reflects a compromise between patent holders and those against whom these expanded rights would be enforced. Complaints were registered by retailers, importers, wholesalers, and distributors who would be infringers under the bill as we introduced it. They argued that their business would be impaired.

Retailers argued that they might innocently have purchased products, not knowing that they were made through the unauthorized use of a patented process. They argued that they should be able to sell off their inventory without penalty.

Importers of foreign ingredients used in U.S. manufacture, like generic drug manufacturers, argued that they would be in a poor position to ensure that their suppliers were not infringing. If their supplier were indeed infringing, they would need to find alternative suppliers and secure necessary regulatory approvals. All of that takes time.

Mr. President, the revised version of the bill addresses the concerns of these parties. It provides for the mitigation of damages, for prescribed periods. It provides a mechanism for parties to seek disclosure of patented processes, so that they might better avoid infringement.

Mr. President, I confess that I would have preferred the original version of our legislation. The compromise provides relief from damages that has no counterpart in our patent law. It is more accommodating than I think justified of parties, whether innocent or not, who are trading in stolen property, stolen intellectual property.

Nonetheless, on balance, the revised version still provides an important and significant expansion of rights to process patent holders. While I yet hold out hope that the bill may be improved further, the version before us would mark an important step in the enhancement of American intellectual property rights, the promotion of innovation and expansion of American jobs.

Mr. President, one final word. I would like to applaud the Senator from Maryland for his long and tireless efforts to move process patent reform. Senator MATHIAS will retire this year from the Senate and his post as chairman of the Subcommittee on Patents, Copyrights and Trademarks. The enactment of process patent legislation would be one of many tributes we could pay to the Senator.

I urge adoption of the amendment and passage of the bill.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3212) was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time and passed.

Mr. STEVENS. Mr. President, I move to reconsider that action.

Mr. BYRD. Mr. President, I move to table the motion to reconsider.

The motion to lay on the table was agreed to.

Mr. STEVENS. Mr. President, I move that the Senate insist on its amendments and request a conference with the House on the disagreeing votes of the two Houses, and that the Chair be authorized to appoint conferees on the part of the Senate.

The motion was agreed to, and the Presiding Officer [Mr. EVANS] appointed Mr. MATHIAS, Mr. THURMOND, Mr. HATCH, Mr. LEAHY, and Mr. METZENBAUM conferees on the part of the Senate.

Mr. STEVENS. Mr. President, I move to reconsider.

Mr. BYRD. Mr. President, I move to table the motion to reconsider.

The motion to lay on the table was agreed to.

COMPUTER FRAUD AND ABUSE ACT OF 1986

Mr. STEVENS. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of H.R. 4718, the Computer Fraud and Abuse Act, and I ask for its immediate consideration.

Mr. BYRD. Mr. President, there is no objection to discharge of the bill from the Judiciary Committee and there is no objection to its immediate consideration.

THE PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 4718) to amend title 18, U.S. Code, to provide additional penalties for fraud and related activities in connection with access devices and computers, and for other purposes.

The Senate proceeded to consider the bill.

AMENDMENT NO. 3213

Mr. STEVENS. Mr. President, I send an amendment to the desk on behalf of the Senator from Virginia [Mr. TRIBLE] and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Alaska [Mr. STEVENS], for Mr. TRIBLE, proposes an amendment numbered 3213.

H.R. 4718 is amended by striking all after the enacting clause and inserting in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Computer Fraud and Abuse Act of 1986".

SEC. 2. SECTION 1030 AMENDMENTS.

(a) MODIFICATION OF DEFINITION OF FINANCIAL INSTITUTION.—Section 1030(a)(2) of title 18, United States Code, is amended—

(1) by striking out "knowingly" and inserting "intentionally" in lieu thereof;

(2) by striking out "as such terms are defined in the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 et seq.),";

(3) by striking out the term "or" where it appears at the end of section 1030(a)(2) of title 18; and

(4) by adding after the term "financial institution" the following: "or of a card issuer as defined in section 1602(n) of title 15,".

(b) MODIFICATION OF EXISTING GOVERNMENT COMPUTERS OFFENSE.—Section 1030(a)(3) of title 18, United States Codes, is amended—

(1) to read as follows:

"(3) intentionally, without authorization to access any computer of a department or agency of the United States, accesses such a computer of that department or agency that is exclusively for the use of the Government of the United Sates or, in the case of a computer not exclusively for such use, is used by or for the Government of the United States and such conduct affects the use of the Government's operation of such computer;"; and

(2) by striking out the flush language after section 1030(a)(3) of title 18, United States Code, beginning with "It is not an offense" and all that follows through "use of the computer.".

(c) MODIFICATION OF AUTHORIZED ACCESS ASPECTS OF OFFENSES.—Paragraphs (1) and (2) of section 1030(a) of title 18, United States Code, are each amended by striking out ", or having accessed" and all that follows through "does not extend" and inserting "or exceeds authorized access" in lieu thereof.

(d) NEW OFFENSES.—Section 1030(a) of title 18, United States Code, is amended by inserting after paragraph (3) the following:

"(4) knowingly and with intent to defraud, accesses a Federal interest computer authorization, or exceeds authorized access, and by means of such conduct furthers the intended fraud and obtains anything of value, unless the object of the fraud and the thing obtained consists only of the use of the computer;

"(5) intentionally accesses a Federal interest computer without authorization, and by means of one or more instances of such conduct alters, damages, or destroys information in any such Federal interest computer, or prevents authorized use of any such computer or information, and thereby—

"(A) causes loss to one or more others of a value aggregating $1,000 or more during any one year period; or

"(B) modifies or impairs, or potentially modifies or impairs, the medical examination, medical diagnosis, medical treatment, or medical care of one or more individuals; or

"(6) knowingly and with intent to defraud traffics (as defined in section 1029) in any password or similar information through which a computer may be accessed without authorization, if—

"(A) such trafficking affects interstate or foreign commerce; or

"(B) such computer is used by or for the Government of the United States;".

(e) ELIMINATION OF SECTION SPECIFIC CONSPIRACY OFFENSE.—Section 1030(b) of title 18, United States Code, is amended—

(1) by striking out "(1)"; and

(2) by striking out paragraph (2).

(f) PENALTY AMENDMENTS.—Section 1030 of title 18, United States Code, is amended—

(1) by striking out "of not more than the greater of $10,000" and all that follows through "obtained by the offense" in subsection (c)(1)(A) and inserting "under this title" in lieu thereof;

(2) by striking out "of not more than the greater of $100,000" and all that follows through "obtained by the offense" in subsection (c)(1)(B) and and inserting "under this title" in lieu thereof;

(3) by striking out "or (a)(3)" each place it appears in subsection (c)(2) and inserting ", (a)(3) or (a)(6)" in lieu thereof;

(4) by striking out "of not more than the greater of $5,000" and all that follows through "created by the offense" in subsection (c)(2)(A) and inserting "under this title" in lieu thereof;

(5) by striking out "of not more than the greater of $10,000" and all that follows through "created by the offense" in subsection (c)(2)(B) and inserting "under this title" in lieu thereof;

(6) by striking out "not than" in subsection (c)(2)(B) and inserting "not more than" in lieu thereof;

(7) by striking out the period at the end of subsection (c)(2)(B) and inserting "; and" in lieu thereof;

(8) by adding at the end of subsection (c) the following:

"(3)(A) a fine under this title or imprisonment for not more than five years, or both, in the case of an offense under subsection (a)(4) or (a)(5) of this section which does not occur after a conviction for another offense under such subsection, or an attempt to commit an offense punishable under this subparagraph; and

"(B) a fine under this title or imprisonment for not more than ten years, or both, in the case of an offense under subsection (a)(4) or (a)(5) of this section which occurs after a conviction for another offense under such subsection, or an attempt to commit an offense punishable under this subparagraph."; and

(9) by deleting the term "(b)(1)" where it appears in the first line of section 1030(c) of title 18 and inserting in lieu thereof the term "(b)".

(g) CONFORMING AMENDMENTS TO DEFINITIONS PROVISION.—Section 1030(e) of title 18, United States Code, is amended—

(1) by striking out the comma after "As used in this section" and inserting a one-em dash in lieu thereof;

(2) by aligning the remaining portion of the subsection so that it is cut in two ems and begins as an indented paragraph, and inserting "(1)" before "the term";

(3) by striking out the period at the end and inserting a semicolon in lieu thereof; and

(4) by adding at the end thereof the following:

"(2) the term 'Federal interest computer' means a computer—

"(A) exclusively for the use of a financial institution or the United States Government, or, in the case of a computer not exclusively for such use, used by or for a financial institution or the United States Government and the conduct constituting the offense affects the use of the financial institution's operation or the Government's operation of such computer; or

"(B) which is one of two or more computers used in committing the offense, not all of which are located in the same State;

"(3) the term 'State' includes the District of Columbia, the Commonwealth of Puerto Rico, and any other possession or territory of the United States;

"(4) the term 'financial institution' means—

"(A) a bank with deposits insured by the Federal Deposit Insurance Corporation;

"(B) the Federal Reserve or a member of the Federal Reserve including any Federal Reserve Bank;

"(C) an institution with accounts insured by the Federal Savings and Loan Insurance Corporation;

"(D) a credit union with accounts insured by the National Credit Union Administration;

"(E) a member of the Federal home loan bank system and any home loan bank;

"(F) any institution of the Farm Credit System under the Farm Credit Act of 1971;

"(G) a broker-dealer registered with the Securities and Exchange Commission pursuant to section 15 of the Securities Exchange Act of 1934; and

"(H) the Securities Investor Protection Corporation;

"(5) the term 'financial record' means information derived from any record held by a financial institiution pertaining to a customer's relationship with the financial institution;

"(6) the term 'exceeds authorized access' means to access a computer with authorization and to use such access to obtain or alter information in the computer that the accesser is not entitled so to obtain or alter; and

"(7) the term 'department of the United States' means the legislative or judicial branch of the Government or one of the executive departments enumerated in section 101 of title 5.".

(h) LAW ENFORCEMENT AND INTELLIGENCE ACTIVITY EXCEPTION.—Section 1030 of title 18, United States Code, is amended by adding at the end the following new subsection:

"(f) This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a political subdivision of a State, or of an intelligence agency of the United States.".

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3213) was agreed to.

The amendment (No. 3213) was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment of the amendment and the third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time and passed.

Mr. STEVENS. Mr. President, I move to reconsider that action.

Mr. BYRD. Mr. President, I move to table the motion to reconsider.

The motion to lay on the table was agreed to.

DEVELOPMENTAL DISABILITIES AWARENESS MONTH

Mr. STEVENS. Mr. President, I ask unanimous consent the Senate now turn to the consideration of House Joint Resolution 741, a joint resolution pronouncing "Developmental Disabilities Awareness Month," which is now being held at the desk.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The assistant legislative clerk read as follows:

A joint resolution (H.J. Res. 741) to designate March 1987 as "Developmental Disabilities Awareness Month."

The Senate proceeded to consider the joint resolution.

Mr. STEVENS. Mr. President, I ask for adoption of the joint resolution.

The PRESIDING OFFICER. The question is on the third reading and passage of the joint resolution.

The joint resolution (H.J. Res. 741) was ordered to a third reading, was read the third time, and passed.

The preamble was agreed to.

Mr. STEVENS. Mr. President, I move to reconsider that action.

Mr. BYRD. Mr. President, I move to table the motion to reconsider.

The motion to lay on the table was agreed to.

NATIONAL YEAR OF THE TEACHER

Mr. STEVENS. Mr. President, I ask unanimous consent that the Senate turn to the consideration of House Joint Resolution 635, the "National Year of the Teacher."

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered. The clerk will report.

The assistant legislative clerk read as follows:

A joint resolution (H.J. Res. 635) to designate the school year of September 1986 through May 1987 as "National Year of the Teacher," and January 28, 1987, as "National Teacher Appreciation Day."

The PRESIDING OFFICER. The question is on the third reading and passage of the joint resolution.

The joint resolution (H.J. Res. 635) was ordered to a third reading, was read the third time, and passed.

The preamble was agreed to.

Mr. STEVENS. Mr. President, I move to reconsider that action.

Mr. BYRD. Mr. President, I move to table the motion to reconsider.

The motion to lay on the table was agreed to.

YEAR OF THE READER

Mr. STEVENS. Mr. President, I ask unanimous consent the Senate now turn to the consideration of House Joint Resolution 671, designating the "Year of the Reader," which is being held at the desk.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered. The clerk will report.

The assistant legislative clerk read as follows:

A joint resolution (H.J. Res. 671) designated 1987 as "Year of the Reader".

The PRESIDING OFFICER. The question is on the third reading and passage of the joint resolution.

The joint resolution (H.J. Res. 671) was ordered to a third reading, was read the third time, and passed.

The preamble was agreed to.

Mr. STEVENS. Mr. President, I move to reconsider that action

Mr. BYRD. Mr. President, I move to table the motion to reconsider.

The motion to lay on the table was agreed to.

FALSE CLAIMS AMENDMENTS ACT

Mr. STEVENS. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 1562.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 1562) entitled "An Act to amend the False Claims Act, and title 18 of the United States Code regarding penalties for false claims, and for other purposes", do pass with the following amendments:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "False Claims Amendments Act of 1986".

SEC. 2. FALSE CLAIMS.

Section 3729 of title 31, United States Code, is amended—

(1) by striking the matter preceding paragraph (1) and inserting the following:

"(a) LIABILITY FOR CERTAIN ACTS.—Any person who—";

(2) in paragraph (1) by striking "Government or a member of an armed force" and inserting "United States Government or a member of the armed forces";

(3) in paragraph (2) by inserting "by the Government" after "approved";

(4) in paragraph (4)—

(A) by striking "public"; and

(B) by striking "in an armed force" and inserting "by the Government";

(5) in paragraph (5)—

(A) by striking "in an armed force" and inserting "by the Government"; and

(B) by striking "or" after the semicolon;

(6) in paragraph (6)—

(A) by striking "a member of an armed force" and inserting "an officer or employee of the Government, or a member of the armed forces,"; and

(B) by striking the period at the end of the paragraph and inserting "; or"; and

(7) by adding at the end of the subsection the following:

"(7) knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Government,

is liable to the United States Government for a civil penalty of not less than $5,000 and not more than $10,000, for an amount equal to consequential damages as set forth in subsection (b)(1) plus 2 times the amount of damages (other than such consequential damages) which the Government sustains because of the act of that person, and for the costs of a civil action brought to recover any such penalty or damages.

"(b) CALCULATION OF DAMAGES.—(1) For purposes of this section, consequential damages include damages which the United States would not have sustained but for—

"(A) the commission of any of the acts prohibited by subsection (a); or

"(B) entering into or making any contract or grant as a result, in any material part, of any false statement, record, or claim.

"(2) Any credits to which the defendant establishes entitlement may be deducted from the amount payable under subsection (a) only after the damages sustained by the United States have been doubled as set forth in subsection (a).

"(3) If any portion of the damages sustained by the United States under paragraph (1) is considered reasonably unforeseeable by the court, the court may reduce the total amount of damages payable under paragraph (1).

"(c) KNOWING AND KNOWINGLY DEFINED.—For purposes of this section, the terms 'knowing' and 'knowingly' mean that a person, with respect to information—

"(1) has actual knowledge of the information;

"(2) acts in deliberate ignorance of the truth or falsity of the information; or

"(3) acts in reckless disregard of the truth or falsity of the information.

"(d) CLAIM DEFINED.—For purposes of this section, 'claim' includes any request or demand, whether under a contract or otherwise, for money or property which is made to a contractor, grantee, or other recipient if the United States Government provides any portion of the money or property which is requested or demanded, or if the Government will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded.

"(e) EXCLUSION.—This section does not apply to claims, records, or statements made under the Internal Revenue Code of 1954.".

SEC. 3. CIVIL ACTIONS FOR FALSE CLAIMS.

Section 3730 of title 31, United States Code, is amended to read as follows:

"§ 3730. Civil actions for false claims

"(a) RESPONSIBILITIES OF THE ATTORNEY GENERAL.—The Attorney General diligently shall investigate a violation under section 3729. If the Attorney General finds that a person has violated or is violating section 3729, the Attorney General may bring a civil action under this section against the person.

"(b) ACTIONS BY PRIVATE PERSONS.—(1) A person may bring a civil action for a violation of section 3729 for the person and for the United States Government. The action shall be brought in the name of the Government. Subject to paragraph (5), an action may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting.

"(2) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the Government pursuant to Rule 4(d)(4) of the Federal Rules of Civil Procedure. The complaint shall be filed in camera, shall remain under seal for at least

60 days, and shall not be served on the defendant until the court so orders. The Government may elect to intervene and proceed with the action within 60 days after it receives both the complaint and the material evidence and information.

"(3) The Government may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under paragraph (2). Any such motions may be supported by affidavits or other submissions in camera. The defendant shall not be required to respond to any complaint filed under this section until 20 days after the complaint is unsealed and served upon the defendant pursuant to Rule 4 of the Federal Rules of Civil Procedure.

"(4) Subject to paragraph (5), before the expiration of the 60-day period or any extensions obtained under paragraph (3), the Government shall—

"(A) proceed with the action, in which case the action shall be conducted by the Government; or

"(B) notify the court that it declines to take over the action, in which case the person bringing the action shall have the right to conduct the action.

"(5)(A) If the court finds that an action brought by a person under this subsection—

"(i) is based on specific evidence or specific information which the Government disclosed as a basis for allegations made in a prior administrative, civil, or criminal proceeding; or

"(ii) is based on specific information disclosed during the course of a congressional investigation or based on specific public information disseminated by any news media,

the court shall dismiss the action, unless subparagraph (B) applies.

"(B) The court shall not dismiss an action under subparagraph (A)—

"(i) if the Government proceeds with the action before the expiration of the 60-day period described in paragraph (2) or any extensions obtained under paragraph (3); or

"(ii) if the Government was aware of the evidence or information described in clause (i) or (ii) of subparagraph (A) for a period of at least 6 months before the person initiated the action, and the Government did not initiate a civil action on the matter involved within that 6-month period, or within such additional times as the court allows upon a showing of good cause.

"(C) The defendant must prove the facts warranting dismissal of a case to which this paragraph applies.

"(6) When a person brings an action under this subsection, no person other than the Government may intervene or bring a related action based on the facts underlying the pending action.

"(c) RIGHTS OF PARTIES TO QUI TAM ACTIONS.—(1) If the Government proceeds with the action, it shall have the primary responsibility for prosecuting the action. The person bringing the action shall have a right to continue in the action with the same rights as those of a person permitted to intervene in an action under Rule 24(b) of the Federal Rules of Civil Procedure. The Government is not bound by an act of the person bringing the action. A motion by the Government to dismiss the action may not be granted unless the person bringing the action has been notified by the Government of the filing of the motion and unless the court has provided the person with the opportunity for a hearing on the motion.

"(2) The Government may settle the action with the defendant notwithstanding the objections of the person initiating the action if the court determines after a hearing, including the opportunity for presentation of evidence, that the proposed settlement is fair, adequate, and reasonable under all the circumstances.

"(3) Upon a showing of the Government that certain actions of discovery by the person initiating the action would significantly interfere with the Government's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay such discovery for a period of not more than 60 days. Such a showing shall be conducted in camera. The court may extend the 60-day period upon a further showing in camera that the Government has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

"(4) If the Government elects not to proceed with the action, the person who initiated the action shall have the right to conduct the action. If the Government so requests, it shall be served with copies of all pleadings filed in the action and shall be supplied with copies of all deposition transcripts (at the Government's expense). When a person proceeds with the action, the court, without limiting the status and rights of the person initiating the action, may nevertheless permit the Government to intervene at a later date upon a showing of good cause.

"(5) Notwithstanding subsection (b), the Government may elect to pursue its claim through any alternate remedy available to the Government, including any administrative proceeding to determine a civil money penalty. If any such alternate remedy is pursued in another proceeding, the person initiating the action shall have the same rights in such proceeding as such person would have had if the action had continued under this section. Any finding of fact or conclusion of law made in such other proceeding that has become final shall be conclusive on all parties to an action under this section. For purposes of the preceding sentence, a finding or conclusion is final if it has been finally determined on appeal to the appropriate court of the United States, if all time for filing such an appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

"(d) AWARD TO QUI TAM PLAINTIFF.—(1) If the Government proceeds with an action under this section, and the person bringing the action discloses relevant evidence, or relevant information, which the Government did not have at the time the action was brought, such person shall receive at least 15 percent but not more than 25 percent of the proceeds of the action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the action. Where the action is one which the court finds, under subsection (b)(5)(A), to be based solely on evidence or information described in clause (i) or (ii) of that subsection, the court may award such sums as it considers appropriate, but in no case more than 10 percent of the proceeds, taking into account the significance of the evidence or information and the role of a person in advancing the case to litigation. Any payment under this paragraph shall be made from the proceeds. Such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

"(2) If the Government does not proceed with an action under this section, the person bringing the action or settling the claim shall receive an amount which the court decides is reasonable for collecting the civil penalty and damages. The amount shall be not less than 25 percent and not more than 30 percent of the proceeds of the action or settlement and shall be paid out of such proceeds. Such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

"(3) If the Government does not proceed with the action and the person bringing the action conducts the action, the court may award to the defendant its reasonable attorneys' fees and expenses if the defendant prevails in the action and the court finds that the claim of the person bringing the action was clearly frivolous, vexatious, or brought solely for purposes of harassment.

"(e) GOVERNMENT NOT LIABLE FOR CERTAIN EXPENSES.—The Government is not liable for expenses which a person incurs in bringing an action under this section.".

SEC. 4. ENTITLEMENT TO RELIEF FOR DISCRIMINATION BY EMPLOYERS AGAINST EMPLOYEES WHO REPORT VIOLATIONS.

Section 3730 of title 31, United States Code, as amended by section 3 of this Act, is further amended by adding at the end the following new subsection:

"(f) Any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by his or her employer in whole or in part because of lawful acts done by the employee on behalf of the employee or others in furtherance of an action under this section, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this section, shall be entitled to all relief necessary to make the employee whole. Such relief shall include reinstatement with the same seniority status such employee would have had but for the discrimination, 2 times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees. An employee may bring an action in the appropriate district court of the United States for the relief provided in this subsection.".

SEC. 5. FALSE CLAIMS PROCEDURE.

Section 3731 of title 31, United States Code, is amended by striking subsection (b) and inserting the following:

"(b) A civil action under section 3730 may not be brought—

"(1) more than 6 years after the date on which the violation of section 3729 is committed, or

"(2) more than 3 years after the date when facts material to the right of action are known or reasonably should have been known by the official of the United States charged with responsibility to act in the circumstances, but in no event more than 10 years after the date on which the violation is committed,

whichever occurs last.

"(c) In any action brought under section 3730, the United States shall be required to prove all essential elements of the cause of

action, including damages, by a preponderance of the evidence.

"(d) Notwithstanding any other provision of law, the Federal Rules of Criminal Procedure, or the Federal Rules of Evidence, a final judgment rendered in favor of the United States in any criminal proceeding charging fraud or false statements, whether upon a verdict after trial or upon a plea of guilty or nolo contendere, shall estop the defendant from denying the essential elements of the offense in any action which involves the same transaction as in the criminal proceeding and which is brought under subsection (a) or (b) of section 3730.".

SEC. 6. FALSE CLAIMS JURISDICTION; CIVIL INVESTIGATIVE DEMANDS.

(a) IN GENERAL.—Subchapter III of chapter 37 of title 31, United States Code, is amended by adding at the end the following new sections:

"§ 3732. False claims jurisdiction

"(a) ACTIONS UNDER SECTION 3730.—Any action under section 3730 may be brought in any judicial district in which the defendant or, in the case of multiple defendants, any one defendant can be found, resides, transacts business, or in which any act proscribed by section 3729 occurred. A summons as required by the Federal Rules of Civil Procedure shall be issued by the appropriate district court and served at any place within or outside the United States.

"(b) CLAIMS UNDER STATE LAW.—The district courts shall have jurisdiction over any action brought under the laws of any State for the recovery of funds paid by a State or local government if the action arises from the same transaction or occurrence as an action brought under section 3730.

"§ 3733. Civil investigative demands

"(a) IN GENERAL.—

"(1) ISSUANCE AND SERVICE.—Whenever the Attorney General has reason to believe that any person may be in possession, custody, or control of any documentary material or information relevant to a false claims law investigation, the Attorney General may, before commencing a civil proceeding under section 3730 or other false claims law, issue in writing and cause to be served upon such person, a civil investigative demand requiring such person—

"(A) to produce such documentary material for inspection and copying,

"(B) to answer in writing written interrogatories with respect to such documentary material or information,

"(C) to give oral testimony concerning such documentary material or information, or

"(D) to furnish any combination of such material, answers, or testimony.

The Attorney General may not delegate the authority to issue civil investigative demands under this subsection. Whenever a civil investigative demand is an express demand for any product of discovery, the Attorney General, the Deputy Attorney General, or an Assistant Attorney General shall cause to be served, in any manner authorized by this section, a copy of such demand upon the person from whom the discovery was obtained and shall notify the person to whom such demand is issued of the date on which such copy was served.

"(2) CONTENTS AND DEADLINES.—

"(A) Each civil investigative demand issued under paragraph (1) shall state the nature of the conduct constituting the alleged violation of a false claims law which is under investigation, and the applicable provision of law alleged to be violated.

"(B) If such demand is for the production of documentary material, the demand shall—

"(i) describe each class of documentary material to be produced with such definiteness and certainty as to permit such material to be fairly identified;

"(ii) prescribe a return date for each such class which will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying; and

"(iii) identify the false claims law investigator to whom such material shall be made available.

"(C) If such demand is for answers to written interrogatories, the demand shall—

"(i) set forth with specificity the written interrogatories to be answered;

"(ii) prescribe dates at which time answers to written interrogatories shall be submitted; and

"(iii) identify the false claims law investigator to whom such answers shall be submitted.

"(D) If such demand is for the giving of oral testimony, the demand shall—

"(i) prescribe a date, time, and place at which oral testimony shall be commenced; and

"(ii) identify a false claims law investigator who shall conduct the examination and the custodian to whom the transcript of such examination shall be submitted.

Any such demand which is an express demand for any product of discovery shall not be returned or returnable until 20 days after the date on which a copy of such demand has been served upon the person from whom the discovery was obtained.

"(b) PROTECTED MATERIAL OR INFORMATION.—

"(1) IN GENERAL.—A civil investigative demand issued under subsection (a) may not require the production of any documentary material, the submission of any answers to written interrogatories, or the giving of any oral testimony if such material, answers, or testimony would be protected from disclosure under—

"(A) the standards applicable to subpoenas or subpoenas duces tecum issued by a court of the United States to aid in a grand jury investigation; or

"(B) the standards applicable to discovery requests under the Federal Rules of Civil Procedure, to the extent that the application of such standards to any such demand is appropriate and consistent with the provisions and purposes of this section.

"(2) EFFECT ON OTHER ORDERS, RULES, AND LAWS.—Any such demand which is an express demand for any product of discovery supersedes any inconsistent order, rule, or provision of law (other than this section) preventing or restraining disclosure of such product of discovery to any person. Disclosure of any product of discovery pursuant to any such express demand does not constitute a waiver of any right or privilege which the person making such disclosure may be entitled to invoke to resist discovery of trial preparation materials.

"(c) SERVICE; JURISDICTION.—

"(1) BY WHOM SERVED.—Any civil investigative demand issued under subsection (a) may be served by a false claims law investigator, or by a United States marshal or a deputy marshal, at any place within the territorial jurisdiction of any court of the United States.

"(2) SERVICE IN FOREIGN COUNTRIES.—Any such demand or any petition filed under subsection (j) may be served upon any person who is not found within the territorial jurisdiction of any court of the United States in such manner as the Federal Rules of Civil Procedure prescribe for service in a foreign country. To the extent that the courts of the United States can assert jurisdiction over any such person consistent with due process, the United States District Court for the District of Columbia shall have the same jurisdiction to take any action respecting compliance with this section by any such person that such court would have if such person were personally within the jurisdiction of such court.

"(d) SERVICE UPON LEGAL ENTITIES AND NATURAL PERSONS.—

"(1) LEGAL ENTITIES.—Service of any civil investigative demand issued under subsection (a) or of any petition filed under subsection (j) may be made upon a partnership, corporation, association, or other legal entity by—

"(A) delivering an executed copy of such demand or petition to any partner, executive officer, managing agent, or general agent of the partnership, corporation, association, or entity, or to any agent authorized by appointment or by law to receive service of process on behalf of such partnership, corporation, association, or entity;

"(B) delivering an executed copy of such demand or petition to the principal office or place of business of the partnership, corporation, association, or entity; or

"(C) depositing an executed copy of such demand or petition in the United States mails by registered or certified mail, with a return receipt requested, addressed to such partnership, corporation, association, or entity at its principal office or place of business.

"(2) NATURAL PERSONS.—Service of any such demand or petition may be made upon any natural person by—

"(A) delivering an executed copy of such demand or petition to the person; or

"(B) depositing an executed copy of such demand or petition in the United States mails by registered or certified mail, with a return receipt requested, addressed to the person at the person's residence or principal office or place of business.

"(e) PROOF OF SERVICE.—A verified return by the individual serving any civil investigative demand issued under subsection (a) or any petition filed under subsection (j) setting forth the manner of such service shall be proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand.

"(f) DOCUMENTARY MATERIAL.—

"(1) SWORN CERTIFICATES.—The production of documentary material in response to a civil investigative demand served under this section shall be made under a sworn certificate, in such form as the demand designates, by—

"(A) in the case of a natural person, the person to whom the demand is directed, or

"(B) in the case of a person other than a natural person, a person having knowledge of the facts and circumstances relating to such production and authorized to act on behalf of such person.

The certificate shall state that all of the documentary material required by the demand and in the possession, custody, or control of the person to whom the demand is directed has been produced and made available to the false claims law investigator identified in the demand.

"(2) PRODUCTION OF MATERIALS.—Any person upon whom any civil investigative demand for the production of documentary material has been served under this section shall make such material available for inspection and copying to the false claims law investigator identified in such demand at the principal place of business of such person, or at such other place as the false claims law investigator and the person thereafter may agree and prescribe in writing, or as the court may direct under subsection (j)(1). Such material shall be made so available on the return date specified in such demand, or on such later date as the false claims law investigator may prescribe in writing. Such person may, upon written agreement between the person and the false claims law investigator, substitute copies for originals of all or any part of such material.

"(g) INTERROGATORIES.—Each interrogatory in a civil investigative demand served under this section shall be answered separately and fully in writing under oath and shall be submitted under a sworn certificate, in such form as the demand designates, by—

"(1) in the case of a natural person, the person to whom the demand is directed, or

"(2) in the case of a person other than a natural person, the person or persons responsible for answering each interrogatory.

If any interrogatory is objected to, the reasons for the objection shall be stated in the certificate instead of an answer. The certificate shall state that all information required by the demand and in the possession, custody, control, or knowledge of the person to whom the demand is directed has been submitted. To the extent that any information is not furnished, the information shall be identified and reasons set forth with particularity regarding the reasons why the information was not furnished.

"(h) ORAL EXAMINATIONS.—

"(1) PROCEDURES.—The examination of any person pursuant to a civil investigative demand for oral testimony served under this section shall be taken before an officer authorized to administer oaths and affirmations by the laws of the United States or of the place where the examination is held. The officer before whom the testimony is to be taken shall put the witness on oath or affirmation and shall, personally or by someone acting under the direction of the officer and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically and shall be transcribed. When the testimony is fully transcribed, the officer before whom the testimony is taken shall promptly transmit a copy of the transcript of the testimony to the custodian. This subsection shall not preclude the taking of testimony by any means authorized by, and in a manner consistent with, the Federal Rules of Civil Procedure.

"(2) PERSONS PRESENT.—The false claims law investigator conducting the examination shall exclude from the place where the examination is held all persons except the person being examined, the person's counsel, the officer before whom the testimony is to be taken, and any other stenographer taking such testimony.

"(3) WHERE TESTIMONY TAKEN.—The oral testimony of any person taken pursuant to a civil investigative demand served under this section shall be taken in the judicial district of the United States within which such person resides, is found, or transacts business, or in such other place as may be agreed upon by the false claims law investigator conducting the examination and such person.

"(4) TRANSCRIPT OF TESTIMONY.—When the testimony is fully transcribed, the false claims law investigator or the officer before whom the testimony is taken shall afford the witness, who may be accompanied by counsel, a reasonable opportunity to examine and read the transcript, unless such examination and reading are waived by the witness. Any changes in form or substance which the witness desires to make shall be entered and identified upon the transcript by the officer or the false claims law investigator, with a statement of the reasons given by the witness for making such changes. The transcript shall then be signed by the witness, unless the witness in writing waives the signing, is ill, cannot be found, or refuses to sign. If the transcript is not signed by the witness within 30 days after being afforded a reasonable opportunity to examine it, the officer or the false claims law investigator shall sign it and state on the record the fact of the waiver, illness, absence of the witness, or the refusal to sign, together with the reason, if any, given therefor.

"(5) CERTIFICATION AND DELIVERY TO CUSTODIAN.—The officer before whom the testimony is taken shall certify on the transcript that the witness was sworn by the officer and that the transcript is a true record of the testimony given by the witness, and the officer or false claims law investigator shall promptly deliver the transcript, or send the transcript by registered or certified mail, to the custodian.

"(6) FURNISHING OR INSPECTION OF TRANSCRIPT BY WITNESS.—Upon payment of reasonable charges therefor, the false claims law investigator shall furnish a copy of the transcript to the witness only, except that the Attorney General, the Deputy Attorney General, or an Assistant Attorney General may, for good cause, limit such witness to inspection of the official transcript of the witness's testimony.

"(7) CONDUCT OF ORAL TESTIMONY.—(A) Any person compelled to appear for oral testimony under a civil investigative demand issued under subsection (a) may be accompanied, represented, and advised by counsel. Counsel may advise such person, in confidence, with respect to any question asked of such person. Such person or counsel may object on the record to any question, in whole or in part, and shall briefly state for the record the reason for the objection. An objection may be made, received, and entered upon the record when it is claimed that such person is entitled to refuse to answer the question on the grounds of any constitutional or other legal right or privilege, including the privilege against self-incrimination. Such person may not otherwise object to or refuse to answer any question, and may not directly or through counsel otherwise interrupt the oral examination. If such person refuses to answer any question, a petition may be filed in the district court of the United States under subsection (j)(1) for an order compelling such person to answer such question.

"(B) If such person refuses to answer any question on the grounds of the privilege against self-incrimination, the testimony of such person may be compelled in accordance with the provisions of part V of title 18.

"(8) WITNESS FEES AND ALLOWANCES.—Any person appearing for oral testimony under a civil investigative demand issued under subsection (a) shall be entitled to the same fees and allowances which are paid to witnesses in the district courts of the United States.

"(i) CUSTODIANS OF DOCUMENTS, ANSWERS, AND TRANSCRIPTS.—

"(1) DESIGNATION.—The Attorney General shall designate a false claims law investigator to serve as custodian of documentary material, answers to interrogatories, and transcripts of oral testimony received under this section, and shall designate such additional false claims law investigators as the Attorney General determines from time to time to be necessary to serve as deputies to the custodian.

"(2) RESPONSIBILITY FOR MATERIALS; DISCLOSURE.—(A) A false claims law investigator who receives any documentary material, answers to interrogatories, or transcripts of oral testimony under this section shall transmit them to the custodian. The custodian shall take physical possession of such material, answers, or transcripts and shall be responsible for the use made of them and for the return of documentary material under paragraph (4).

"(B) The custodian may cause the preparation of such copies of such documentary material, answers to interrogatories, or transcripts of oral testimony as may be required for official use by any false claims law investigator, or other officer or employee of the Department of Justice, who is authorized for such use under regulations which the Attorney General shall issue. Such material, answers, and transcripts may be used by any such authorized false claims law investigator or other officer or employee in connection with the taking of oral testimony under this section.

"(C) Except as otherwise provided in this subsection, no documentary material, answers to interrogatories, or transcripts of oral testimony, or copies thereof, while in the possession of the custodian, shall be available for examination by any individual other than a false claims law investigator or other officer or employee of the Department of Justice authorized under subparagraph (B). The prohibition in the preceding sentence on the availability of material, answers, or transcripts shall not apply if consent is given by the person who produced such material, answers, or transcripts, or, in the case of any product of discovery produced pursuant to an express demand for such material, consent is given by the person from whom the discovery was obtained. Nothing in this subparagraph is intended to prevent disclosure to the Congress, including any committee or subcommittee of the Congress.

"(D) Notwithstanding subparagraph (C), documentary material, answers to interrogatories, or transcripts of oral testimony obtained under a civil investigative demand issued under this section shall be disclosed to an agency of the United States if—

"(i) that agency files, in a district court of the United States in which petitions under subsection (j) may be filed, and serves upon the person named in the civil investigative demand and, in the case of an express demand for any product of dicovery, the person from whom such discovery was obtained, a petition requesting such disclosure;

"(ii) any person so served has an opportunity to be heard on the petition;

"(iii) the court finds that disclosure of the information involved is relevant to an investigation by the agency which it is authorized by law to conduct; and

"(iv) the court issues an order requiring such disclosure.

The provisions of paragraphs (5) and (6) of subsection (j) (relating to jurisdiction and applicability of the Federal Rules of Civil

Procedure) apply to petitions under this subparagraph.

"(E) While in the possession of the custodian and under such reasonable terms and conditions as the Attorney General shall prescribe—

"(i) documentary material and answers to interrogatories shall be available for examination by the person who produced such material or answers, or by a representative of that person authorized by that person to examine such material and answers; and

"(ii) transcripts of oral testimony shall be available for examination by the person who produced such testimony, or by a representative of that person authorized by that person to examine such transcripts.

"(3) USE OF MATERIAL, ANSWERS, OR TRANSCRIPTS IN OTHER PROCEEDINGS.—Whenever any attorney of the Department of Justice has been designated to appear before any court, grand jury, or Federal agency in any case or proceeding, the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony received under this section may deliver to such attorney such material, answers, or transcripts for official use in connection with any such case or proceeding as such attorney determines to be required. Upon the completion of any such case or proceeding, such attorney shall return to the custodian any such material, answers, or transcripts so delivered which have not passed into the control of such court, grand jury, or agency through introduction into the record of such case or proceeding.

"(4) CONDITIONS FOR RETURN OF MATERIAL.—If any documentary material has been produced by any person in the course of any false claims law investigation pursuant to a civil investigative demand under this section, and—

"(A) any case or proceeding before any court or grand jury arising out of such investigation, or any proceeding before any Federal agency involving such material, has been completed, or

"(B) no case or proceeding in which such material may be used has been commenced within a reasonable time after completion of the examination and analysis of all documentary material and other information assembled in the course of such investigation,

the custodian shall, upon written request of the person who produced such material, return to such person any such material (other than copies furnished to the false claims law investigator under subsection (f)(2) or made by the Department of Justice under paragraph (2)(B)) which has not passed into the control of any court, grand jury, or agency through introduction into the record of such case or proceeding.

"(5) APPOINTMENT OF SUCCESSOR CUSTODIANS.—In the event of the death, disability, or separation from service in the Department of Justice of the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony produced pursuant to a civil investigative demand under this section, or in the event of the official relief of such custodian from responsibility for the custody and control of such material, answers, or transcripts, the Attorney General shall promptly—

"(A) designate another false claims law investigator to serve as custodian of such material, answers, or transcripts, and

"(B) transmit in writing to the person who produced such material, answers, or testimony notice of the identity and address of the successor so designated.

Any person who is designated to be a successor under this paragraph shall have, with regard to such material, answers, or transcripts, the same duties and responsibilities as were imposed by this section upon that person's predecessor in office, except that the successor shall not be held responsible for any default or dereliction which occurred before that designation.

"(j) JUDICIAL PROCEEDINGS.—

"(1) PETITION FOR ENFORCEMENT.—Whenever any person fails to comply with any civil investigative demand issued under subsection (a), or whenever satisfactory copying or reproduction of any material requested in such demand cannot be done and such person refuses to surrender such material, the Attorney General may file, in the district court of the United States for any judicial district in which such person resides, is found, or transacts business, and serve upon such person a petition for an order of such court for the enforcement of the civil investigative demand.

"(2) PETITION TO MODIFY OR SET ASIDE DEMAND.—(A) Any person who has received a civil investigative demand issued under subsection (a) may file, in the district court of the United States for the judicial district within which such person resides, is found, or transacts business, and serve upon the false claims law investigator identified in such demand a petition for an order of the court to modify or set aside such demand. In the case of a petition addressed to an express demand for any product of discovery, a petition to modify or set aside such demand may be brought only in the district court of the United States for the judicial district in which the proceeding in which such discovery was obtained is or was last pending. Any petition under this subparagraph must be filed—

"(i) within 20 days after the date of service of the civil investigative demand, or at any time before the return date specified in the demand, whichever date is earlier, or

"(ii) within such longer period as may be prescribed in writing by any false claims law investigator identified in the demand.

"(B) The petition shall specify each ground upon which the petitioner relies in seeking relief under subparagraph (A), and may be based upon any failure of the demand to comply with the provisions of this section or upon any constitutional or other legal right or privilege of such person. During the pendency of the petition in the court, the court may stay, as it deems proper, the running of the time allowed for compliance with the demand, in whole or in part, except that the person filing the petition shall comply with any portions of the demand not sought to be modified or set aside.

"(3) PETITION TO MODIFY OR SET ASIDE DEMAND FOR PRODUCT OF DISCOVERY.—(A) In the case of any civil investigative demand issued under subsection (a) which is an express demand for any product of discovery, the person from whom such discovery was obtained may file, in the district court of the United States for the judicial district in which the proceeding in which such discovery was obtained is or was last pending, and serve upon any false claims law investigator identified in the demand and upon the recipient of the demand, a petition for an order of such court to modify or set aside those portions of the demand requiring production of any such product of discovery. Any petition under this subparagraph must be filed—

"(i) within 20 days after the date of service of the civil investigative demand, or at any time before the return date specified in the demand, whichever date is earlier, or

"(ii) within such longer period as may be prescribed in writing by any false claims law investigator identified in the demand.

"(B) The petition shall specify each ground upon which the petitioner relies in seeking relief under subparagraph (A), and may be based upon any failure of the demand from which relief is sought to comply with the provisions of this section, or upon any constitutional or other legal right or privilege of the petitioner. During the pendency of the petition, the court may stay, as it deems proper, compliance with the demand and the running of the time allowed for compliance with the demand.

"(4) PETITION TO REQUIRE PERFORMANCE BY CUSTODIAN OF DUTIES.—At any time during which any custodian is in custody or control of any documentary material or answers to interrogatories produced, or transcripts of oral testimony given, by any person in compliance with any civil investigative demand issued under subsection (a), such person, and in the case of an express demand for any product of discovery, the person from whom such discovery was obtained, may file, in the district court of the United States for the judicial district within which the office of such custodian is situated, and serve upon such custodian, a petition for an order of such court to require the performance by the custodian of any duty imposed upon the custodian by this section.

"(5) JURISDICTION.—Whenever any petition is filed in any district court of the United States under this subsection, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry out the provisions of this section. Any final order so entered shall be subject to appeal under section 1291 of title 28. Any disobedience of any final order entered under this section by any court shall be punished as a contempt of the court.

"(6) APPLICABILITY OF FEDERAL RULES OF CIVIL PROCEDURE.—The Federal Rules of Civil Procedure shall apply to any petition under this subsection, to the extent that such rules are not inconsistent with the provisions of this section.

"(7) DISCLOSURE EXEMPTION.—Any documentary material, answers to written interrogatories, or oral testimony provided under any civil investigative demand issued under subsection (a) shall be exempt from disclosure under section 552 of title 5.

"(k) DEFINITIONS.—For purposes of this section—

"(1) the term 'false claims law' means—

"(A) this section and sections 3729 through 3732; and

"(B) any Act of Congress enacted after the date of the enactment of this section which prohibits, or makes available to the United States in any court of the United States any civil remedy with respect to, any false claim against, bribery of, or corruption of any officer or employee of the United States;

"(2) the term 'false claims law investigation' means any inquiry conducted by any false claims law investigator for the purpose of ascertaining whether any person is or has been engaged in any violation of a false claims law;

"(3) the term 'false claims law investigator' means any attorney or investigator employed by the Department of Justice who is charged with the duty of enforcing or carrying into effect any false claims law, or any officer or employee of the United States acting under the direction and supervision

of such attorney or investigator in connection with a false claims law investigation;

"(4) the term 'person' means any natural person, partnership, corporation, association, or other legal entity, including any State or political subdivision of a State;

"(5) the term 'documentary material' includes the original or any copy of any book, record, report, memorandum, paper, communication, tabulation, chart, or other document, or data compilations stored in or accessible through computer or other information retrieval systems, together with instructions and all other materials necessary to use or interpret such data compilations, and any product of discovery;

"(6) the term 'custodian' means the custodian, or any deputy custodian, designated by the Attorney General under subsection (i)(1); and

"(7) the term 'product of discovery' includes—

"(A) the original or duplicate of any deposition, interrogatory, document, thing, result of the inspection of land or other property, examination, or admission, which is obtained by any method of discovery in any judicial or administrative proceeding of an adversarial nature;

"(B) any digest, analysis, selection, compilation, or derivation of any item listed in subparagraph (A); and

"(C) any index or other manner of access to any item listed in subparagraph (A).".

(b) CLERICAL AMENDMENT.—The table of contents for chapter 37 of title 31, United States Code, is amended by adding after the item relating to section 3731 the following:

"3732. False claims jurisdiction.
"3733. Civil investigative demands.".

SEC. 7. CRIMINAL PENALTIES.

Section 287 of title 18, United States Code, is amended by striking "five" and inserting "ten".

Amend the title so as to read: "An Act to amend title 31, United States Code, with respect to the fradulent use of public property or money.".

AMENDMENT NO. 3214

Mr. STEVENS. Mr. President, I move that the Senate concur in the House amendment with an amendment which I send to the desk on behalf of Senator GRASSLEY of Iowa.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Alaska [Mr. STEVENS], for Mr. GRASSLEY, proposes an amendment numbered 3214.

Mr. STEVENS. I ask unanimous consent the amendment not be read.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE

This Act may be cited as the "False Claims Amendments Act of 1986".

SEC. 2. FALSE CLAIMS

Section 3729 of title 31, United States Code, is amended—

(1) by striking the matter preceding paragraph (1) and inserting the following:

"(a) LIABILITY FOR CERTAIN ACTS.—Any person who—";

(2) in paragraph (1) by striking "Government or a member of an armed force" and inserting "United States Government or a member of the Armed Forces of the United States";

(3) in paragraph (2) by inserting "by the Government" after "approved";

(4) in paragraph (4)—

(A) by striking "public"; and

(B) by striking "in an armed force" and inserting "by the Government";

(5) in paragraph (5)—

(A) by striking "in an armed force" and inserting "by the Government"; and

(B) by striking "or" after the semicolon;

(6) in paragraph (6)—

(A) by striking "a member of an armed force" and inserting "an officer or employee of the Government, or a member of the Armed Forces,"; and

(B) by striking the period at the end of the paragraph and inserting "; or"; and

(7) by adding at the end of the subsection the following:

"(7) knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Government,

is liable to the United States Government for a civil penalty of not less than $5,000 and not more than $10,000, plus 3 times the amount of damages which the Government sustains because of the act of that person, except that if the court finds that—

"(A) the person committing the violation of this subsection furnished officials of the United States responsible for investigating false claims violations with all information known to such person about the violation within 30 days after the date on which the defendant first obtained the information;

"(B) such person fully cooperated with any Government investigation of such violation; and

"(C) at the time such person furnished the United States with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under this title with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into such violation;

the court may assess not less than 2 times the amount of damages which the Government sustains because of the act of the person. A person violating this subsection shall also be liable to the United States Government for the costs of a civil action brought to recover any such penalty or damages.

"(b) KNOWING AND KNOWINGLY DEFINED.—For purposes of this section, the terms 'knowing' and 'knowingly' mean that a person, with respect to information—

"(1) has actual knowledge of the information;

"(2) acts in deliberate ignorance of the truth or falsity of the information; or

"(3) acts in reckless disregard of the truth or falsity of the information,

and no proof of specific intent to defraud is required.

"(c) CLAIM DEFINED.—For purposes of this section, 'claim' includes any request or demand, whether under a contract or otherwise, for money or property which is made to a contractor, grantee, or other recipient if the United States Government provides any portion of the money or property which is requested or demanded, or if the Government will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded.

"(d) EXEMPTION FROM DISCLOSURE.—Any information furnished pursuant to subparagraphs (A) and (C) of subsection (a) shall be exempt from disclosure under section 552 of title 5.

"(e) EXCLUSION.—This section does not apply to claims, records, or statements made under the Internal Revenue Code of 1954.".

SEC. 3. CIVIL ACTIONS FOR FALSE CLAIMS.

Section 3730 of title 31, United States Code, is amended to read as follows:

"§ 3730. Civil actions for false claims

"(a) RESPONSIBILITIES OF THE ATTORNEY GENERAL.—The Attorney General diligently shall investigate a violation under section 3729. If the Attorney General finds that a person has violated or is violating section 3729, the Attorney General may bring a civil action under this section against the person.

"(b) ACTIONS BY PRIVATE PERSONS.—(1) A person may bring a civil action for a violation of section 3729 for the person and for the United States Government. The action shall be brought in the name of the Government. The action may be dismissed only if the court and the Attorney General give written consent to th dismissal and their reasons for consenting.

"(2) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the Government pursuant to Rule 4(d)(4) of the Federal Rules of Civil Procedure. The complaint shall be filed in camera, shall remain under seal for at least 60 days, and shall not be served on the defendant until the court so orders. The Government may elect to intervene and proceed with the action within 60 days after it receives both the complaint and the material evidence and information.

"(3) The Government may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under paragraph (2). Any such motions may be supported by affidavits or other submissions in camera. The defendant shall not be required to respond to any complaint filed under this section until 20 days after the complaint is unsealed and served upon the defendant pursuant to Rule 4 of the Federal Rules of Civil Procedure.

"(4) Before the expiration of the 60-day period or any extensions obtained under paragraph (3), the Government shall—

"(A) proceed with the action, in which case the action shall be conducted by the Government; or

"(B) notify the court that it declines to take over the action, in which case the person bringing the action shall have the right to conduct the action.

"(5) When a person brings an action under this subsection, no person other than the Government may intervene or bring a related action based on the facts underlying the pending action.

"(c) RIGHTS OF THE PARTIES TO QUI TAM ACTIONS.—(1) If the Government proceeds with the action, it shall have the primary responsibility for prosecuting the action, and shall not be bound by an act of the person bringing the action. Such person shall have the right to continue as a party to the action, subject to the limitations set forth in paragraph (2).

"(2)(A) The Government may dismiss the action notwithstanding the objections of the person initiating the action if the person has been notified by the Government of the filing of the motion and the court has provided the person with an opportunity for a hearing on the motion.

"(B) The Govenrment may settle the action with the defendant notwithstanding the objections of the person initiating the action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, such hearing may be held in camera.

"(C) Upon a showing by the Government that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the Government's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the person's participation, such as—

"(i) limiting the number of witnesses the person may call;

"(ii) limiting the length of the testimony of such witnesses;

"(iii) limiting the person's cross-examination of witnesses; or

"(iv) otherwise limiting the participation by the person in the litigation.

"(D) Upon a showing by the defendant that unrestricted participation during the course of the litigation by the person initiating the action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the person in the litigation.

"(3) If the Government elects not to proceed with the action, the person who initiated the action shall have the right to conduct the action. If the Government so requests, it shall be served with copies of all pleadings filed in the action and shall be supplied with copies of all deposition transcripts (at the Government's expense). When a person proceeds with the action, the court, without limiting the status and rights of the person initiating the action, may nevertheless permit the Government to intervene at a later date upon a showing of good cause.

"(4) Whether or not the Government proceeds with action, upon a showing by the Government that certain actions of discovery by the person initiating the action would interfere with the Government's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay such discovery for a period of not more than 60 days. Such a showing shall be conducted in camera. The court may extend the 60-day period upon a further showing in camera that the Government has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

"(5) Notwithstanding subsection (b), the Government may elect to pursue its claim through any alternate remedy available to the Government, including any administrative proceeding to determine a civil money penalty. If any such alternate remedy is pursued in another proceeding, the person initiating the action shall have the same rights in such proceeding as such person would have had if the action had continued under this section. Any finding of fact or conclusion of law made in such other proceeding that has become final shall be conclusive on all parties to an action under this section. For purposes of the preceding sentence, a finding or conclusion is final if it has been finally determined on appeal to the appropriate court of the United States, if all time for filing such an appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

"(d) AWARD TO QUI TAM PLAINTIFF.—(1) If the Government proceeds with an action brought by a person under subsection (b), such person shall, subject to the second sentence of this paragraph, receive at least 15 percent but not more than 25 percent of the proceeds of the action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the action. Where the action is one which the court finds to be based primarily on disclosures of specific information (other than information provided by the person bringing the action relating to allegations or transactions in a criminal, civil, or administrative hearing, in a congressional, administrative, or Government Accounting Office report, hearing, audit, or investigation, or from the news media, the court may award such sums as it considers appropriate, but in no case more than 10 percent of the proceeds, taking into account the significance of the information and the role of the person bringing the action in advancing the case to litigation. Any payment to a person under the first or second sentence of this paragraph shall be made from the proceeds. Any such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

"(2) If the Government does not proceed with an action under this section, the person bringing the action or settling the claim shall receive an amount which the court decides is reasonable for collecting the civil penalty and damages. The amount shall be not less than 25 percent and not more than 30 percent of the proceeds of the action or settlement and shall be paid out of such proceeds. Such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

"(3) If the Government does not proceed with the action and the person bringing the action conducts the action, the court may award to the defendant its reasonable attorneys' fees and expenses if the defendant prevails in the action and the court finds that the claim of the person bringing the action was clearly frivolus, clearly vexatious, or brought primarily for purposes of harassment.

"(e) CERTAIN ACTIONS BARRED.—(1) No court shall have jurisdiction over an action brought by a former or present member of the armed forces under subsection (b) of this section against a member of the armed forces arising out of such person's service in the armed forces.

"(2)(A) No court shall have jurisdiction over an action brought under subsection (b) against a Member of Congress, a member of the judiciary, or a senior executive branch official if the action is based on evidence or information known to the Government when the action was brought.

"(B) For purposes of this paragraph, "senior executive branch official" means any officer or employee listed in section 201(f) of the Ethics in Government Act of 1978 (5 U.S.C. App.)

"(3) In no event may a person bring an action under subsection (b) which is based upon allegations or transactions which are the subject of a civil suit or an administrative civil money penalty proceeding in which the Government is already a party.

"(4)(A) No court shall have jurisdiction over an action under this section based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a congressional, administrative, or Government Accounting Office report, hearing, audit, or investigation, or from the news media, unless the action is brought by the Attorney General or the person bringing the action is an original source of the information.

"(B) For purposes of this paragraph, 'original source' means an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the Government before filing an action under this section which is based on the information.

"(f) GOVERNMENT NOT LIABLE FOR CERTAIN EXPENSES.—The Government is not liable for expenses which a person incurs in bringing an action under this section.

"(g) FEES AND EXPENSES TO PREVAILING DEFENDANT.—In civil actions brought under this section by the United States, the provisions of section 2412(d) of title 28 shall apply.".

SEC. 4. ENTITLEMENT TO RELIEF FOR DISCRIMINATION BY EMPLOYERS AGAINST EMPLOYEES WHO REPORT VIOLATIONS.

Section 3730 of title 31, United States Code, as amended by section 3 of this Act, is further amended by adding at the end the following new subsection:

"(h) Any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by his or her employer because of lawful acts done by the employee on behalf of the employee or others in furtherance of an action under this section, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this section, shall be entitled to all relief necessary to make the employee whole. Such relief shall include reinstatement with the same seniority status such employee would have had but for the discrimination, 2 times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees. An employee may bring an action in the appropriate district court of the United States for the relief provided in this subsection.".

SEC. 5. FALSE CLAIMS PROCEDURE.

Section 3731 of title 31, United States Code, is amended by striking subsection (b) and inserting the following:

"(b) A civil action under section 3730 may not be brought—

"(1) more than 6 years after the date on which the violation of section 3729 is committed, or

"(2) more than 3 years after the date when facts material to the right of action are known or reasonably should have been known by the official of the United States charged with responsibility to act in the circumstances, but in no event more than 10 years after the date on which the violation is committed,

whichever occurs last.

"(c) In any action brought under section 3730, the United States shall be required to prove all essential elements of the cause of

action, including damages, by a preponderance of the evidence.

"(d) Notwithstanding any other provision of law, the Federal Rules of Criminal Procedure, or the Federal Rules of Evidence, a final judgment rendered in favor of the United States in any criminal proceeding charging fraud or false statements, whether upon a verdict after trial or upon a plea of guilty or nolo contendere, shall estop the defendant from denying the essential elements of the offense in any action which involves the same transaction as in the criminal proceeding and which is brought under subsection (a) or (b) of section 3730.".

SEC. 6. FALSE CLAIMS JURISDICTION: CIVIL INVESTIGATIVE DEMANDS.

(a) IN GENERAL.—Subchapter III of chapter 37 of title 31, United States Code, is amended by adding at the end the following new sections:

"§ 3732. False claims jurisdiction

"(a) ACTIONS UNDER SECTION 3730.—Any action under section 3720 may be brought in any judicial district in which the defendant or, in the case of multiple defendants, any one defendant can be found, resides, transacts business, or in which any act proscribed by section 3729 occurred. A summons as required by the Federal Rules of Civil Procedure shall be issued by the appropriate district court and served at any place within or outside the United States.

"(b) CLAIMS UNDER STATE LAW.—The district courts shall have jurisdiction over any action brought under the laws of any State for the recovery of funds paid by a State or local government if the action arises from the same transaction or occurrence as an action brought under section 3720.

"§ 3733. Civil investigative demands

"(a) IN GENERAL.—

"(1) ISSUANCE AND SERVICE.—Whenever the Attorney General has reason to believe that any person may be in possession, custody, or control of any documentary material or information relevant to a false claims law investigation, the Attorney General may, before commencing a civil proceeding under section 3730 or other false claims law, issue in writing and cause to be served upon such person, a civil investigative demand requiring such person—

"(A) to produce such documentary material for inspection and copying,

"(B) to answer in writing written interrogatories with respect to such documentary material or information,

"(C) to give oral testimony concerning such documentary material or information, or

"(D) to furnish any combination of such material, answers, or testimony.

The Attorney General may not delegate the authority to issue civil investigative demands under this subsection. Whenever a civil investigative demand is an express demand for any product of discovery, the Attorney General, the Deputy Attorney General, or an Assistant Attorney General shall cause to be served, in any manner authorized by this section, a copy of such demand upon the person from whom the discovery was obtained and shall notify the person to whom such demand is issued for the date on which such copy was served.

"(2) CONTENTS AND DEADLINES.—

"(A) Each civil investigative demand issued under paragraph (1) shall state the nature of the conduct constituting the alleged violation of a false claims law which is under investigation, and the applicable provision of law alleged to be violated.

"(B) If such demand is for the production of documentary material, the demand shall—

"(i) describe each class of documentary material to be produced with such definiteness and certainty as to permit such material to be fairly identified;

"(ii) prescribe a return date for each such class which will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying; and

"(iii) identify the false claims law investigator to whom such material shall be made available.

"(C) If such demand is for answers to written interrogatories, the demand shall—

"(i) set forth with specificity the written interrogatories to be answered;

"(ii) prescribe dates at which time answers to written interrogatories shall be submitted; and

"(iii) identify the false claims law investigator to whom such answers shall be submitted.

"(D) If such demand is for the giving of oral testimony, the demand shall—

"(i) prescribe a date, time, and place at which oral testimony shall be commenced;

"(ii) identify a false claims law investigator who shall conduct the examination and the custodian to whom the transcript of such examination shall be submitted;

"(iii) specify that such attendance and testimony are necessary to the conduct of the investigation;

"(iv) notify the person receiving the demand of the right to be accompanied by an attorney and any other representative; and

"(v) describe the general purpose for which the demand is being issued and the general nature of the testimony, including the primary areas of inquiry, which will be taken pursuant to the demand.

"(E) Any civil investigative demand issued under this section which is an express demand for any product of discovery shall not be returned or returnable under 20 days after a copy of such demand has been served upon the person from whom the discovery was obtained.

"(F) The date prescribed for the commencement of oral testimony pursuant to a civil investigative demand issued under this section shall be a date which is not less than seven days after the date on which demand is received, unless the Attorney General or an Assistant Attorney General designated by the Attorney General determines that exceptional circumstances are present which warrant the commencement of such testimony within a lesser period of time.

"(G) The Attorney General shall not authorize the issuance under this section of more than one civil investigative demand for oral testimony by the same person unless the person requests otherwise or unless the Attorney General, after investigation, notifies that person in writing that an additional demand for oral testimony is necessary. The Attorney General may not, notwithstanding section 510 of title 28, authorize the performance, by any other officer, employee, or agency, of any function vested in the Attorney General under this subparagraph.

"(b) PROTECTED MATERIAL OR INFORMATION.—

"(1) IN GENERAL.—A civil investigative demand issued under subsection (a) may not require the production of any documentary material, the submission of any answers to written interrogatories, or the giving of any oral testimony if such material, answers, or testimony would be protected from disclosure under—

"(A) the standard applicable to subpoenas or subpoenas duces tecum issued by a court of the United States to aid in a grand jury investigation; or

"(B) the standards applicable to discovery requests under the Federal Rules of Civil Procedure, to the extent that the application of such standards to any such demand is appropriate and consistent with the provisions and purposes of this section.

"(2) EFFECT ON OTHER ORDERS, RULES, AND LAWS.—Any such demand which is an express demand for any product of discovery supercedes any inconsistent order, rule, or provision of law (other than this section) preventing or restraining disclosure of such product of discovery to any person. Disclosure of any product of discovery pursuant to any such express demand does not constitute a waiver of any right or privilege which the person making such disclosure may be entitled to invoke to resist discovery of trial preparation materials.

"(c) SERVICE; JURISDICTION.—

"(1) BY WHOM SERVED.—Any civil investigative demand issued under subsection (a) may be served by a false claims law investigator, or by a United States marshal or a deputy marshal, at any place within the territorial jurisdiction of any court of the United States.

"(2) SERVICE IN FOREIGN COUNTRIES.—Any such demand or any petition filed under subsection (j) may be served upon any person who is not found within the territorial jurisdiction of any court of the United States in such manner as the Federal Rules of Civil Procedure prescribe for service in a foreign country. To the extent that the courts of the United States can assert jurisdiction over any such person consistent with due process, the United States District Court for the District of Columbia shall have the same jurisdiction to take any action respecting compliance with this section by any such person that such court would have if such person were personally within the jurisdiction of such court.

"(d) SERVICE UPON LEGAL ENTITIES AND NATURAL PERSONS.—

"(1) LEGAL ENTITIES.—Service of any civil investigative demand issued under subsection (a) or of any petition filed under subsection (j) may be made upon a partnership corporation, association, or other legal entity by—

"(A) delivering an executed copy of such demand or petition to any partner, executive officer, managing agent, or general agent of the partnership, corporation, association, or entity, or to any agent authorized by appointment or by law to receive service of process on behalf of such partnership, corporation, association, or entity;

"(B) delivering an executed copy of such demand or petition to the principal office or place of business of the partnership, corporation, association, or entity; or

"(C) depositing an executed copy of such demand or petition in the United States mails by registered or certified mail, with a return receipt requested, addressed to such partnership, corporation, association, or entity at its principal office or place of business.

"(2) NATURAL PERSONS.—Service of any such demand or petition may be made upon any natural person by—

"(A) delivering and executed copy of such demand or petition to the person; or

"(B) depositing and executed copy of such demand or petition in the United States mails by registered or certified mail, with a return receipt requested, addressed to the person at the person's residence or principal office or place of business.

"(e) PROOF OF SERVICE.—A verified return by the individual serving any civil investigative demand issued under subsection (a) or any petition filed under subsection (j) setting forth the manner of such service shall be proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand.

"(f) DOCUMENTARY MATERIAL.—

"(1) SWORN CERTIFICATES.—The production of documentary material in response to a civil investigative demand served under this section shall be made under a sworn certificate, in such form as the demand designates, by—

"(A) in the case of a natural person, the person to whom the demand is directed, or

"(B) in the case of a person other than a natural person, a person having knowledge of the facts and circumstances relating to such production and authorized to act on behalf of such person.

The certificate shall state that all of the documentary material required by the demand and in the possession, custody, or control of the person to whom the demand is directed has been produced and made available to the false claims law investigator identified in the demand.

"(2) PRODUCTION OF MATERIALS.—Any person upon whom any civil investigative demand for the production of documentary material has been served under this section shall make such material available for inspection and copying to the false claims law investigator identified in such demand at the principal place of business of such person, or at such other place as the false claims law investigator and the person thereafter may agree and prescribe in writing, or as the court may direct under subsection (j)(1). Such material shall be made so available on the return date specified in such demand, or on such later date as the false claims law investigator may prescribe in writing. Such person may, upon written agreement between the person and the false claims law investigator, substitute copies for originals of all or any part of such material.

"(g) INTERROGATORIES..—Each interrogatory in a civil investigative demand served under this section shall be answered separately and fully in writing under oath and shall be submitted under a sworn certificate, in such form as the demand designates, by—

"(1) in the case of a natural person, the person to whom the demand is directed, or

"(2) in the case of a person other than a natural person, the person or persons responsible for answering each interrogatory.

If any interrogatory is objected to, the reasons for the objection shall be stated in the certificate instead of an answer. The certificate shall state that all information required by the demand and in the possession, custody, control, or knowledge of the person to whom the demand is directed has been submitted. To the extent that any information is not furnished, the information shall be identified and reasons set forth with particularity regarding the reasons why the information was not furnished.

"(h) ORAL EXAMINATIONS.—

"(1) PROCEDURES.—The examination of any person pursuant to a civil investigative demand for oral testimony served under this section shall be taken before an officer authorized to administer oaths and affirmations by the laws of the United States or of the place where the examination is held. The Officer before whom the testimony is to be taken shall put the witness on oath or affirmation and shall, pesonally or by someone acting under the direction of the officer and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically and shall be transcribed. When the testimony is fully transcribed, the officer before whom the testimomy is taken shall promptly trnasmit a copy of the transcript of the testimony to the custodian. This subsection shall not preclude the taking of testimony by any means authorized by, and in a manner consistent with, the Federal Rules of Civil Procedure.

"(2) PERSONS PRESENT.—The false claims law investigator conducting the examination shall exclude from the place where the examination is held all persons except the person giving the testimony, the attorney for and any other representative of the person giving the testimony, the attorney for the Government, any person who may be agreed upon by the attorney for the Government and the person giving the testimony, the officer before whom the testimony is to be taken, and any stenographer taking such testimony.

"(3) WHERE TESTIMONY TAKEN.—The oral testimony of any person taken pursuant to civil investigative demand served under this section shall be taken in the judicial district of the United States within which such person resides, is found, or transacts business, or in such other place as may be agreed upon by the false claims law investigator conducting the examination and such person.

"(4) TRANSCRIPT OF TESTIMONY.—When the testimony is fully transcribed, the false claims law investigator or the officer before whom the testimony is taken shall afford the witness, who may be accompanied by counsel, a reasonable opportunity to examine and read the transcript, unless such examination and reading are waived by the witness. Any changes in form or substance which the witness desires to make shall be entered and identified upon the transcript by the officer or the false claims law investigator, with a statement of the reasons given by the witness for making such changes. The transcript shall then be signed by the witness, unless the witness in writing waives the signing, is ill, cannot be found, or refuses to sign. If the transcript is not signed by the witness within 30 days after being afforded a reasonable opportunity to examine it, the officer or the false claims law investigator shall sign it and state on the record the fact of the waiver, illness, absence of the witness, or the refusal to sign, together with the reason, if any, given therefor.

(5) CERTIFICATION AND DELIVERY TO CUSTODIAN.—The officer before whom the testimony is taken shall certify on the transcript that the witness was sworn by the officer and that the transcript is a true record of the testimony given by the witness, and the officer or false claims law investigator shall promptly deliver the transcript, or send the transcript by registered or certified mail, to the custodian.

"(6) FURNISHING OR INSPECTION OF TRANSCRIPT BY WITNESS.—Upon payment of reasonable charges therefor, the false claims law investigator shall furnish a copy of the transcript to the witness only, except that the Attorney General, the Deputy Attorney General, or an Assistant Attorney General may, for good cause, limit such witness to inspection of the official transcript of the witness's testimony.

"(7) CONDUCT OF ORAL TESTIMONY.—(A) Any person compelled to appear for oral testimony under a civil investigative demand issued under subsection (a) may be accompanied, represented, and advised by counsel. Counsel may advise such person, in confidence, with respect to any question asked of such person. Such person or counsel may object on the record to any question, in whole or in part, and shall briefly state for the record the reason for the objection. An objection may be made, received, and entered upon the record when it is claimed that such person is entitled to refuse to answer the question on the grounds of any constitutional or other legal right or privilege, including the privilege against self-incrimination. Such person may not otherwise object to or refuse to answer any question, and may not directly or through counsel otherwise interrupt the oral examination. If such person refuses to answer any question, a petition may be filed in the district court of the United States under subsection (j)(1) for an order compelling such person to answer such question.

"(B) If such person refuses to answer any question on the grounds of the privilege against self-incrimination, the testimony of such person may be compelled in accordance with the provisions of part V of title 18.

"(8) WITNESS FEES AND ALLOWANCES.—Any person appearing for oral testimony under a civil investigative demand issued under subsection (a) shall be entitled to the same fees and allowances which are paid to witnesses in the district courts of the United States.

"(i) CUSTODIANS OF DOCUMENTS, ANSWERS, AND TRANSCRIPTS.—

"(1) DESIGNATION.—The Attorney General shall designate a false claims law investigator to serve as custodian of documentary material, answers to interrogatories, and transcripts of oral testimony received under this section, and shall designate such additional false claims law investigators as the Attorney General determines from time to time to be necessary to serve as deputies to the custodian.

"(2) RESPONSIBILITY FOR MATERIALS; DISCLOSURE.—(A) A false claims law investigator who receives any documentary material, answers to interrogatories, or transcripts of oral testimony under this section shall transmit them to the custodian. The custodian shall take physical possession of such material, answers, or transcripts and shall be responsible for the use made of them and for the return of documentary material under paragraph (4).

"(B) The custodian may cause the preparation of such copies of such documentary material, answers to interrogatories, or transcripts of oral testimony as may be required for official use by any false claims law investigator, or other officer or employee of the Department of Justice, who is authorized for such use under regulations which the Attorney General shall issue. Such material, answers, and transcripts may be used by any such authorized false claims law investigator or other officer or employee in connection with the taking of oral testimony under this section.

"(C) Except as otherwise provided in this subsection, no documentary material, answers to interrogatories, or transcripts of oral testimony, or copies thereof, while in the possession of the custodian, shall be available for examination by any individual

other than a false claims law investigator or other officer or employee of the Department of Justice authorized under subparagraph (B). The prohibition in the preceding sentence on the availability of material, answers, or transcripts shall not apply if consent is given by the person who produced such material, answers, or transcripts, or, in the case of any product of discovery produced pursuant to an express demand for such material, consent is given by the person from whom the discovery was obtained. Nothing in this subparagraph is intended to prevent disclosure to the Congress, including any committee or subcommittee of the Congress, or to any other agency of the United States for use by such agency in furtherance of its statutory responsibilities. Disclosure of information to any such other agency shall be allowed only upon application, made by the Attorney General to a United States district court, showing substantial need for the use of the information by such agency in furtherance of its statutory responsibilities.

"(D) While in the possession of the custodian and under such reasonable terms and conditions as the Attorney General shall prescribe—

"(i) documentary material and answer to interrogatories shall be available for examination by the person who produced such material or answers, or by a representative of that person authorized by that person to examine such material and answers; and

"(ii) transcripts of oral testimony shall be available for examination by the person who produced such testimony, or by a representative of that person authorized by the person to examine such transcripts.

"(3) USE OF MATERIAL, ANSWERS, OR TRANSCRIPTS IN OTHER PROCEEDINGS.—Whenever any attorney of the Department of Justice has been designated to appear before any court, grand jury, or Federal agency in any case or proceeding, the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony received under this section may deliver to such attorney such material, answers, or transcripts for official use in connection with any such case or proceeding as such attorney determines to be required. Upon the completion of any such case or proceeding, such attorney shall return to the custodian any such material, answers, or transcripts so delivered which have not passed into the control of such court, grand jury, or agency through introduction into the record of such case or proceeding.

"(4) CONDITIONS FOR RETURN OF MATERIAL.—If any documentary material has been produced by any person in the course of any false claims law investigation pursuant to a civil investigative demand under this section, and—

"(A) any case or proceeding before any court or grand jury arising out of such investigation, or any proceeding before any Federal agency involving such material, has been completed, or

"(B) no case or proceeding in which such material may be used has been commenced within a reasonable time after completion of the examination and analysis of all documentary material and other information assembled in the course of such investigatiion,

the custodian shall, upon written request of the person who produced such material, return to such person any such material (other than copies furnished to the false claims law investigator under subsection (f)(2) or made for the Department of Justice under paragraph (2)(B)) which has not passed into the control of any court, grand jury, or agency through introduction into the record of such case or proceeding.

"(5) APPOINTMENT OF SUCCESSOR CUSTODIANS.—In the event of the death, disability, or separation from service in the Department of Justice of the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony produced pursuant to a civil investigative demand under this section, or in the event of the official relief of such custodian from responsibility for the custody and control of such material, answers, or transcripts, the Attorney General shall promptly—

"(A) designate another false claims law investigator to serve as custodian of such material, answers, or transcripts, and

"(B) transmit in writing to the person who produced such material, answers, or testimony notice of the identity and address of the successor so designated.

Any person who is designated to be a successor under this paragraph shall have, with regard to such material, answers, or transcripts, the same duties and responsibilities as were imposed by this section upon that person's predecessor in office, except that the successor shall not be held responsible for any default or dereliction which occurred before that designation.

"(j) JUDICIAL PROCEEDINGS.—

"(1) PETITION FOR ENFORCEMENT.—Whenever any person fails to comply with any civil investigative demand issued under subsection (a), or whenever satisfactory copying or reproduction of any material requested in such demand cannot be done and such person refuses to surrender such material, the Attorney General may file, in the district court of the United States for any judicial district in which such person resides, is found, or transacts business, and serve upon such person a petition for an order of such court for the enforcement of the civil investigative demand.

"(2) PETITION TO MODIFY OR SET ASIDE DEMAND.—(A) Any person who has received a civil investigative demand issued under subsection (a) may file, in the district court of the United States for the judicial district within which such person resides, is found, or transacts business, and serve upon the false claims law investigator identified in such demand a petition for an order of the court to modify or set aside such demand. In the case of a petition addressed to an express demand for any product of discovery, a petition to modify or set aside such demand may be brought only in the district court of the United States for the judicial district in which the proceeding in which such discovery was obtained is or was last pending. Any petition under this subparagraph must be filed—

"(i) within 20 days after the date of service of the civil investigative demand, or at any time before the return date specified in the demand, whichever date is earlier, or

"(ii) within such longer period as may be prescribed in writing by any false claims law investigator identified in the demand.

"(B) The petition shall specify each ground upon which the petitioner relies in seeking relief under subparagraph (A), and may be based upon any failure of the demand to comply with the provisions of this section or upon any constitutional or other legal right or privilege of such person. During the pendency of the petition in the court, the court may stay, as it deems proper, the running of the time allowed for compliance with the demand, in whole or in part, except that the person filing the petition shall comply with any portions of the demand not sought to be modified or set aside.

"(3) PETITION TO MODIFY OR SET ASIDE DEMAND FOR PRODUCT OF DISCOVERY.—(A) In the case of any civil investigative demand issued under subsection (a) which is an express demand for any product of discovery, the person from whom such discovery was obtained may file, in the district court of the United States for the judicial district court of the United States for the judicial district in which the proceeding in which such discovery was obtained is or was last pending, and serve upon any false claims law investigator identified in the demand and upon the recipient of the demand, a petition for an order of such court to modify or set aside those portions of the demand requiring production of any such product of discovery. Any petition under this subparagraph must be filed.—

"(i) within 20 days after the date of service of the civil investigative demand, or at any time before the return date specified in the demand, whichever date is earlier, or

"(ii) within such longer period as may be prescribed in writing by any false claims law investigator identified in the demand.

"(B) The petition shall specify each ground upon which the petitioner relies in seeking relief under subparagraph (A), and may be based upon any failure of the portions of the demand from which relief is sought to comply with the provisions of this section, or upon any constitutional or other legal right or privilege of the constitutional or other legal right or privilege of the petitioner. During the pendency of the petition, the court may stay, as it deems proper, compliance with the demand and the running of the time allowed for compliance with the demand.

"(4) PETITION TO REQUIRE PERFORMANCE BY CUSTODIAN OF DUTIES.—At any time during which any custodian is in custody or control of any documentary material or answers to interrogatories produced, or transcripts of oral testimony given, by any person in compliance with any civil investigative demand issued under subsection (a), such person, and in the case of an express demand for any product of discovery, the person from whom such discovery was obtained, may file, in the district court of the United States for the judicial district within which the office of such custodian is situated, and serve upon such custodian, a petition for an order of such court to require the performance by the custodian of any duty imposed upon the custodian by this section.

"(5) JURISDICTION.—Whenever any petition is filed in any district court of the United States under this subsection, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry out the provisions of this section. Any final order so entered shall be subject to appeal under section 1291 of title 28. Any disobedience of any final order entered under this section to any court shall be punished as a contempt of the court.

"(6) APPLICABILITY OF FEDERAL RULES OF CIVIL PROCEDURE.—The Federal Rules of Civil Procedure shall apply to any petition under this subsection, to the extent that such rules are not inconsistent with the provisions of this section.

"(k) DISCLOSURE EXEMPTION.—Any documentary material, answers to written interrogatories, or oral testimony provided under any civil investigative demand issued under

subsection (a) shall be exempt from disclosure under section 552 of title 5.

"(1) DEFINITIONS.—For purposes of this section—

"(1) the term 'false claims law' means—

"(A) this section and sections 3729 through 3732; and

"(B) any Act of Congress enacted after the date of the enactment of this section which prohibits, or makes available to the United States in any court of the United States any civil remedy with respect to, any false claim against, bribery of, or corruption of any officer or employee of the United States;

"(2) the term 'false claims law investigation' means any inquiry conducted by any false claims law investigator for the purpose of ascertaining whether any person is or has been engaged in any violation of a false claims law;

"(3) the term 'false claims law investigator' means any attorney or investigator employed by the Department of Justice who is charged with the duty of enforcing or carrying into effect any false claims law, or any officer or employee of the United States acting under the direction and supervision of such attorney or investigator in connection with a false claims law investigation;

"(4) the term 'person' means any natural person, partnership, corporation, association, or other legal entity, including any State or political subdivision of a State;

"(5) the term 'documentary material' includes the original or any copy of any book, record, report, memorandum, paper, communication, tabulation, chart, or other document, or data compilations stored in or accessible through computer or other information retrieval systems, together with instructions and all other materials necessary to use or interpret such data compilations, and any product of discovery;

"(6) the term 'custodian' means the custodian, or any deputy custodian, designated by the Attorney General under subsection (i)(1); and

"(7) the term 'product of discovery' includes—

"(A) the original or duplicate of any deposition, interrogatory, document, thing, result of the inspection of land or other property, examination, or admission, which is obtained by any method of discovery in any judicial or administrative proceeding of an adversarial nature;

"(B) any digest, analysis, selection, compilation, or derivation of any item listed in subparagraph (A); and

"(C) any index or other manner of access to any item listed in subparagraph (A).".

(b) CLERICAL AMENDMENT.—The table of contents for chapter 37 of title 31, United States Code, is amended by adding after the item relating to section 3731 the following:

"3732. False claims jurisdiction.
"3733. Civil investigative demands.

SEC. 7. CRIMINAL PENALTIES.

Section 287 of title 18, United States Code, is amended by striking "fined" and all that follows through "both" and inserting "imprisoned not more than five years and shall be subject to a fine in the amount provided in this title".

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3214) was agreed to.

Mr. GRASSLEY. Mr. President, I introduced S. 1562, the False Claims Reform Act, on August 1, 1985, in the hope that my colleagues would join with me to produce a meaningful weapon against fraud. While persuading all of my colleagues throughout these past 14 months has not been an easy task, I am happy to say that within the next few days it is expected that both the House and the Senate will approve the most substantial reform of our fraud laws in more than 100 years.

S. 1562 from a realization that the Government needs help—lots of help—to adequately protect taxpayer funds from growing and increasingly sophisticated fraud. In the face of our current Federal debt crisis, it is more important than ever that we maintain an efficient, fair, and most of all, effective enforcement system to protect our Federal dollars from fraud and abuse.

This bill substantially rewrites a statute originally signed into law by President Abraham Lincoln and its provisions are intended to restore the overall intent of that Civil War-era tool against fraud. Primary in the original "Lincoln Law" as well as this legislation is the concept of private citizen assistance in guarding taxpayer dollars. The expanded qui tam provisions in this bill will serve to establish a solid partnership between public law enforcers and private taxpayers in the fight against fraud.

Many of my colleagues, including Senators DECONCINI, THURMOND, METZENBAUM, and HATCH, as well as their staffs, have devoted considerable time and effort to working toward a consensus on this bill. I want to thank them as well as my colleagues from the House of Representatives, Congressman GLICKMAN, Congressman BERMAN, Congressman KINDNESS, Congressman BROOKS, and their staffs, for working to advance this legislation so that it may be signed into law. I would also like to thank the attorneys in the Justice Department Civil Division for their assistance and expertise, the Center for Law in the Public Interest for its research and support, and Business Executives for National Security for its whole-hearted backing of this effort. I would also like to thank my own Judiciary subcommittee staff for devoting long hours toward making this legislation a reality.

Over the past few weeks, Senate and House negotiators have met and reconciled the differences between S. 1562 as passed by the Senate and S. 1562 as amended and passed by the House. A summary of the agreed upon changes from the Senate passed bill follows:

Forfeiture under the False Claims Act will be determined by the Court within the range of $5,000 to $10,000 and consequential damages will not be recoverable under the act. Criminal penalties under 18 U.S.C. 286 and 287 will conform with the uniform title 18 penalties.

Written interrogatories under the Civil Investigative Demand authority will be limited to questions relating to documents. And the statute of limitations will not extend past 10 years.

The role of the qui tam plaintiff is expanded to allow participation as a party to the action, but the court is granted greater discretion to impose limitations in certain circumstances on the participation of the qui tam plaintiff. The portion of awards allowed for such plaintiffs when the Government has entered the case is increased to 15-25 and 25-30 percent when the Government has not entered the action. When the qui tam plaintiff brings an action based on public information, meaning he is an "original source" within the definition under the act, but the action is based primarily on public information not originally provided by the qui tam plaintiff, he is limited to a recovery of not more than 10 percent. In other words a 10-percent cap is placed on those "original sources" who bring cases based on information already publicly disclosed where only an insignificant amount of that information stemmed from that original source.

Prevailing defendants may be awarded attorneys fees to be paid by the qui tam plaintiff when the action is found to be clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

Mr. President, I look foward to the adoption of this legislation and its favorable impact on the Federal budget.

Mr. THURMOND. I would like to inquire of the principal sponsor of S. 1562, the distinguished Senator from Iowa, Senator GRASSLEY, what role is contemplated for the qui tam relator when the Government chooses to proceed in a fraud action in an administrative setting? It is my understanding that S. 1562 has limited the role that the qui tam will play in an administrative proceeding? Is this the understanding of the principal sponsor?

Mr. GRASSLEY. The distinguished chairman of the Judiciary Committee is correct. In the event the Government chooses to proceed administratively, the qui tam relator retains the same rights available in the judicial action. Although the Senate compromised with the House concerning the qui tam relator's participation, both Houses of Congress clearly contemplated allowing for limitations on the qui tam's participation in judicial and administrative actions. The Senate and House agreed upon language which set out the limitations that a court could impose on a qui tam in civil actions when active participation by the qui tam could harm the proceeding.

Upon a showing by the Government that unrestricted participation during either an administrative or judicial

proceeding of a qui tam would interfere with or unduly delay the action, the court may, in its discretion, impose limitations on the qui tam's participation. Upon a showing by the defendant that the action would be for purposes of harassment or would cause undue burden or unnecessary expense, the court may similarly limit the qui tam's participation. Additionally, an administrative law judge has great discretion in an administrative proceeding to consider the cause of action in an expeditious fashion, and the legislation contemplates that administrative proceedings should be conducted with a minimum of undue delay or interference by qui tam relators.

Mr. THURMOND. I thank the distinguished Senator from Iowa.

Mr. HATCH. At this time I wish to commend the Senator from Iowa for his fine work in forwarding this important legislation and the Chairman of the Judiciary Committee, the Senator from South Carolina, for his role in working with Senator GRASSLEY and me in molding a fair and effective resolution of the issues involved with fraud against the Government. We are also grateful to the Members of the House of Representatives who participated in making this legislation possible. It is vitally important that we do something about the waste and lawlessness that fraud against our Government promotes. This bill substantially strengthens the tools to fight fraud but retains due process and fairness as to the accused.

I would like to point out that in providing fairness, the final bill gives the court flexibility in imposing damages and forfeiture. When there are mitigating circumstances present in the case, the court may impose a lesser forfeiture since a range of $5,000 to $10,000 per violation is provided in imposition of penalty or forfeiture upon a finding of fraud. Is this your understanding?

Mr. GRASSLEY. Yes, I agree with that statement. Therefore, if a small business has been found liable under the act, the court may consider the burden of the forfeiture to the business and impose a penalty on the lower end of the range. Similarly, a procedure is established for corporations to come forward when they discover fraud within their midst. When corporations follow these procedures in cooperating with the Government, the court may impose not only the lesser level of damages, but also a lesser level of penalty.

The motion was agreed to.

Mr. STEVENS. Mr. President, I move to reconsider that action.

Mr. BYRD. Mr. President, I move to table the motion to reconsider.

The motion to lay on the table was agreed to.

INSPECTION OF ASBESTOS

Mr. STEVENS. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on H.R. 5073.

The assistant legislative clerk laid before the Senate the amendment of the House of Representatives to the bill (H.R. 5073) to amend the Toxic Substances Control Act to require the Environmental Protection Agency to promulgate regulations requiring inspection for asbestos-containing material in the Nation's schools, development of asbestos management plans for such schools, response actions with respect to friable asbestos-containing material in such schools, and for other purposes."

(The amendment of the House is printed in the RECORD of October 1, 1986, beginning at page H8816.

Mr. STAFFORD. Mr. President, the bill before the Senate at this time is one of the most important public health measures that we have considered. It is aimed at reducing the risk of asbestos-related disease for an estimated 15 million schoolchildren and 1.4 million school employees.

Asbestos is a deadly substance. An Assistant Administrator of the Environment Protection Agency testified before the Committee on Environment and Public Works that it is one of the four or five most hazardous substances being regulated by the Agency. The American Cancer Society, reflecting prevailing scientific opinion, testified that there is no known safe level of asbestos exposure and that efforts should be made to avoid even low-level exposure. Other expert witnesses testified that children are especially at risk because of their high breathing rates, their growing lungs and other factors.

This bill enjoys the support of a wide variety of educational, public health, and governmental organizations. These include the Service Employees International Union of the AFL-CIO, the National Parent Teachers Association, the National Education Association, the American Federation of Teachers, the National Governor's Association, the National Association of Counties, and a host of others.

Mr. President, some of these groups have been active for some time in the struggle to protect schoolchildren and employees from asbestos exposure. In 1984, the Service Employees International Union [SEIU] brought suit against EPA to compel the agency to issue comprehensive regulations dealing with the asbestos problems in the Nation's schools. Information reviewed and developed during the lawsuit, *SEIU* v. *EPA*, No. 84-2790 (D.D.C.), demonstrated the inadequacies of the EPA's asbestos program and the need for legislation requiring the agency to issue adequate and appropriate regulations regarding asbestos in schools. This legislation provides the same relief sought in the lawsuit.

In our deliberations on both the need for and the scope of this legislation we have been assisted by several groups which have provided valuable information on the dangers posed by asbestos in the Nation's schools, and the types of regulations which are required to address those dangers. Specifically, I would note the contributions of the Service Employees International Union, the National Educational Association, the National Parent-Teacher Association, the American Federation of Teachers, and the National School Boards Association. SEIU was particularly helpful in that information which it obtained in its lawsuit against EPA to compel the Agency to issue asbestos regulations demonstrated the inadequacies of the EPA Asbestos Program, and the need for legislation obligating EPA to take appropriate regulatory action.

Mr. President, with the active support of these groups, similar versions of the present bill passed through the entire legislative process in both Houses of Congress without receiving a single dissenting vote. That is a remarkable achievement and it bespeaks plainly the priority that Congress places on this important issue.

Mr. President, I want to note that we have reached agreement between the two Houses of Congress without the need for a formal conference committee. We achieved this by informally negotiating with the authors of the House bill a substitute bill incorporating features of S. 2083 and H.R. 5073. It is that substitute that was passed by the House and is now before the Senate as H.R. 5073. I point this out, Mr. President, to draw attention to the floor statements being made today by Senators who were actively involved in negotiating the present bill. Because there will be no conference report on this substitute bill, these floor statements will serve as legislative history for purposes of discerning the intent of the authors of the substitute bill, along with similar statements made by our counterparts in the other body. In that regard, Mr. President, I have agreed with the principal authors from the House of Representatives to print in the record of this debate a statement concerning certain aspects of this bill. That statement is as follows:

STATEMENT

The legislation requires the Administrator to promulgate regulations which define what "response actions" must be taken in school buildings, using the least burdensome methods which protect human health and the environment.

The statutory standard of "protection of human health and the environment" is the same standard that applies under the Resource Conservation and Recovery Act [RCRA] and is different from the "unrea-

sonable risk" standard applicable under section 6 of the Toxic Substance Control Act [TSCA]. The "protection of human health and the environment" standard requires the agency to determine what actions will protect human health and the environment from actual or potential asbestos hazards. Such hazards include actual or potential exposure to releases of asbestos that may cause adverse effects on human health or the environment.

The "protect human health and the environment" standard does not require EPA to establish a quantitative relationship between the physical characteristics of the asbestos-containing materials (e.g., their condition or location) and the health risks which may be posed by exposure to airborne asbestos fibers. The legislation does not intend that the agency be either required to or prohibited from using such technologies as air monitoring in meeting the standard. It does not require or prohibit the agency, from developing a model relating physical characteristics of the material to ambient fiber levels. The legislation also does not require or prohibit the agency from conducting a quantitative risk assessment relating ambient fiber levels to a particular amount of actual or potential health risks.

The requirement that EPA use the "least burdensome methods" in defining appropriate response actions does not in any way affect the overriding health standard that applies to the regulations—i.e., "protection of human health and the environment." Any method, or response action, selected by the agency must meet this overriding health standard. Once EPA determines the set of response actions that will meet the standard, the agency should make a separate determination of what constitutes the "least burdensome" approach.

The legislation recognizes that local circumstances—including how a specific population of a specific school uses the building at issue, and the long and short-term costs posed by the various options in the context of the local situation—could affect EPA's selection of the "least burdensome" methods. The legislation does not in any way affect the prerogative of local educational agencies to go further or do more work, than the least burdensome methods selected by the EPA regulations.

The legislation establishes four categories of circumstances in which EPA must prescribe, by regulation, appropriate response actions for friable asbestos-containing material. The four circumstances are: (1) situations where friable asbestos-containing material is damaged, deteriorated or delaminated; (2) situations where friable asbestos-containing is "significantly" damaged, deteriorated or delaminated; (3) situations where there is a potential (i.e., "reasonable likelihood") that the material will become damaged, deteriorated or delaminated in specified areas of the school; and (4) situations where there is a potential that the material will become "significantly" damaged, deteriorated or delaminated in such areas.

The Administrator must describe appropriate response actions in "at least" these four circumstances. This language means that, at a minimum, the EPA regulations must cover these circumstances by requiring implementation of response actions described for each of these circumstances. This language is derived from the Senate bill (S. 2083) which required prescription of response action, "at a minimum" in such circumstances. The "at least" language in the final legislation carries out the same statutory intent.

For the first circumstance, where the asbestos has already become damaged, deteriorated or delaminated, "response actions" include methods identified in Chapters 3 and 5 of the EPA Guidance Document. In the second circumstance, where the asbestos has already become significantly damaged, deteriorated or delaminated, the only options for "response actions" include methods identified in Chapter 5 of the EPA Guidance Document. Chapter 3 sets forth operations and maintenance methods, including minor repair. Chapter 5 includes enclosure, encapsulation, removal and relatively major repairs. Chapter 3 methods can never be used when asbestos has become "significantly" damaged, deteriorated or delaminated, although such methods remain an option when the asbestos is only damaged, deteriorated or delaminated.

The legislation contemplates that new technologies may be developed that will expand the universe of methods contained in both Chapters 3 and 5. If such technologies do become available, EPA should include them in its regulations, so long as the new technologies—or methods—protect human health and the environment. By referencing Chapters 3 and 5, the legislation establishes a floor of appropriate response actions but does not freeze the development of new, more protective and more cost-effective technologies to accomplish the overall goal of meeting the health standard in the legislation.

For the third and fourth circumstances, where asbestos has not yet become damaged, deteriorated or delaminated, but where there is a "reasonable likelihood" it will become damaged, deteriorated or delaminated, the legislation requires that EPA prescribe "preventive" measures that will either prevent the likelihood of damaged, deterioration and delamination or will otherwise protect human health and the environment.

For example, a school gymnasium used for basketball practice contains a ceiling composed of friable asbestos-containing material. The ceiling is not yet damaged, deteriorated or delaminated, but there is a "reasonable likelihood" it will become so as the school year progresses and basketballs are constantly thrown against it. The school could "prevent" damage by a variety of methods, including covering the ceiling with a net to prevent the balls from striking it or using another facility for basketball practice. The EPA regulations should develop such preventive methods fully and prescribe them for all potential damage situations.

Once again, preventive measures can include either methods to prevent damage or methods (such as closing the room) which will prevent adverse health effects as a result of exposure to airborne asbestos fibers. If damage, deterioration, or delamination is prevented, the minimal circumstances established by the legislation are never created. If damage, deterioration or delamination cannot be prevented, but other measures will protect human health and the environment, such methods would meet the statutory standard.

Section 204 contains a standard following the completion of response actions other than operation and maintenance activities which must be met before areas that have undergone response actions can be reoccupied. The section mandates that only electron microscopy can be used to analyze air samples to ensure that the standard has been met. The section establishes that phase contrast microscopy should not be used because it is an inadequate tool in that it cannot distinguish asbestos from other materials nor can it detect the most microscopic fibers.

The Congress recognizes that transmission electron microscopy is superior to scanning electron microscopy. However, at this point, transmission microscopy is expensive and not readily available. But these problems with transmission microscopy will likely be eased as the market responds to the needs of contractors who must use electron microscopy to meet the reoccupancy standard.

The new Title II of TSCA is subject to the provisions of Sections 15, 16, 19 and 20 of TSCA, except where Title II specifically provides otherwise. These exceptions include reduced civil penalty limits for certain infractions by local education agencies, requirements for channeling certain penalty payments back to local education agencies, specific factors to be used in determining the amount of a civil penalty against local education agencies, and deletion of the 60-day notice requirement with respect to citizens' civil actions against the Administrator for failure to meet a statutory deadline in section 203. Except as specifically provided in Title II, the usual TSCA provisions related to administrative civil penalties, maximum penalties and citizens' suits remain unchanged and may be used with regard to actions required by Title II.

Mr. STAFFORD. Mr. President, I would like to continue my comments with a brief discussion of certain aspects of this bill.

I would like to begin by reiterating a point made in the above statement. This bill requires EPA to define "response actions" to be taken by a local education agency when asbestos-containing material is found in a school. A number of response actions exist, ranging from an operation and maintenance plan to various forms of abatement, including removal of the asbestos from the school. In determining what response actions are acceptable in different circumstances, EPA must apply the standard expressed in section 202(10) and elsewhere in this bill. Each response action must protect human health and the environment.

This standard is taken from the Resource Conservation and Recovery Act. It was selected with the express purpose of avoiding any implication that the usual TSCA standard of unreasonable risk would apply to this new title of TSCA. This matter received considerable discussion. The Agency is not to consider cost in determining whether a response action is sufficient to protect public health and the environment.

In applying this standard, it is not intended that EPA have to prove that a particular response action (as opposed to a lesser response action) is necessary to protect human health and the environment before it can require that action in a regulation. Rather, the Agency should assure that all response actions are sufficient to meet this standard. Doubt should be

resolved in favor of affording greater protection.

This distinction between necessity and sufficiency is an important one. Based on present technical capability, the regulations under sections 203 (c) and (d) are likely to be structured in terms of a required response to a set of physical circumstances involving such things as the condition of the asbestos and its location. At the present time, EPA is unlikely to be able to prove a quantitative relationship between the physical circumstances of asbestos-containing material and a particular level of risk to human health or the environment in order to establish the necessity of a particular response action. To do so arguably would require the use of quantitative models, that do not exist, monitoring of ambient air concentration of asbestos fibers, and quantitative risk assessments. The Agency is not prohibited from using these tools, but it should be noted that the authors considered and rejected suggestions that quantitative risk assessments and air monitoring be a necessary precedent to a response action involving abatement methods. For reasons described in hearings before the Committee on Environment and Public Works, both are fraught with technical difficulty at the present time.

This bill also introduces the concept that the EPA regulations should identify the least burdensome method of response in a school, given the circumstances that exist there. This concept is not part of the RCRA standard. Its purpose is to provide further guidance to local education agencies by defining, from among the response actions that will protect human health and the environment, the one that is least burdensome. Circumstances peculiar to a particular school building may affect a local education agency's decision about what action to take. For example, local school officials might determine that removal of the asbestos, through a greater near-term expense, is preferable to an abatement method that involves long-term expenses associated with operation and maintenance and periodic reinspections. This bill is not intended to prevent or discourage a local education agency from taking action beyond that required by the EPA regulations.

Section 203(b) of the bill requires inspection for all asbestos-containing material, not just friable material. This requirement goes beyond EPA's 1982 inspection rule, which was limited to friable asbestos. A school building can be excluded from this inspection requirement only if all portions of it were inspected previously for both friable and nonfriable asbestos, consistent with the new requirements of this title. An inspection pursuant to EPA's guidance document that went no further than the minimum requirement to inspect for friable asbestos is inadequate under this bill.

Subparagraphs 203(c)(1) (C) and (D) refer to areas regularly used by building occupants, including maintenance personnel, in the course of their normal activities. In interpreting these subparagraphs, EPA should keep in mind the overall intent of this legislation to protect human health, including the health of individual maintenance personnel. The areas described should include areas that maintenance workers are required to enter in conjunction with their normal responsibilities and duties.

Paragraphs (3) and (5) of section 203(d) define circumstances for which an abatement action as described in chapter 5 of EPA's guidance document must be taken. These actions include removal, encapsulation, enclosure, and some types of repair of damaged asbestos.

The requirement that methods for responsing include these abatement methods recognizes that other more effective abatement methods may be developed in the future. It does not mean that lesser response actions that do not involve abatement as described in chapter 5, such as operation and maintenance activities, are acceptable in the circumstances referred to in these paragraphs. Operations and maintenance activities are described in chapter 3 of the guidance document and are only acceptable response actions in circumstances referred to in paragraphs (2) and (4) of section 203(d).

Sections 203(i) and 204(d)(1)(C) of the bill require implementation of asbestos management plans in a timely fashion. An asbestos management plan will contain a variety of activities ranging from one-time actions, such as removal of asbestos, to long-term operations and maintenance and periodic reinspection commitments. For this reason, it was not feasible to establish in the bill a date by which implementation of the plan must be complete. This does not mean that response actions needed to protect the health of schoolchildren and employees should drag on and on. A response action does no good until it is implemented. In fact, timely implementation is inherent in the notion of a response action that protects human health and the environment. Although some response actions can be scheduled so as to minimize disruption, there undoubtedly will be circumstances in which an action to protect the health of children or employees must be taken promptly. On these occasions, cost should not be an excuse for continuing to expose people to health-threatening asbestos. In fact, the authors deleted a reference in section 205(c)(2)(C) of H.R. 5073 to resources available to the local education agency to avoid the suggestion that cost considerations could constrain a Governor from rejecting a management plan that he or she finds does not contain a response action schedule that is reasonable and timely, taking into account a variety of health-related factors.

Mr. President, one issue that received a great deal of attention during development of this legislation related to whether and how the bill or any standards established under it could be used in court in cases to recover from product manufacturers the cost of removing or otherwise abating asbestos-containing products. The result of that discussion was a determination, expressed in section 209, that this bill does not in any way affect the authority or discretion of courts to make decisions under otherwise applicable law.

Mr. President, at the same time as we are considering legislation to accelerate the abatement of hazardous asbestos in schools, EPA is moving forward on other fronts. Under the Toxic Substances Control Act, the EPA has proposed phasing out asbestos with a total ban occurring after 10 years. I want to applaud EPA for taking the regulatory initiative to deal with this significant environmental health problem responsibly. OSHA has some responsibility in this area as well, and I would urge the two agencies to work together in implementing their standards to avoid duplication.

As the EPA staff analyzes the comments generated by the proposal, I would make an additional point. I understand that great progress is being made finding substitutes for asbestos in original equipment friction materials used in automotive and truck braking systems. New model automobile and truck braking systems are being redesigned to be able to utilize nonasbestos friction materials to provide equivalent safety in braking applications.

However, I have been told that research has not been as successful in finding asbestos substitutes for friction materials sold in the aftermarket which can provide equivalent safety in their braking effectiveness. The aftermarket in this industry is for automotive parts sold to replace original equipment. Apparently, older cars simply cannot always be retrofitted without the danger of sacrificing the safety of the braking system itself. Eventually, of course, this market will disappear but probably not within a decade. I hope that as EPA moves forward to solve the health problems associated with asbestos use, it will take note of the aftermarket.

Mr. President, through a clerical oversight, Senator CHAFEE's name was not added to the list of cosponsors of S. 2083, a measure that has since been indefinitely postponed. For historical accuracy, I ask unanimous consent

that Senator CHAFEE be added as a cosponsor of S. 2083.

ASBESTOS HAZARD EMERGENCY RESPONSE ACT OF 1986

Mr. BAUCUS. Mr. President, I rise today to support final passage of H.R. 5073, the Asbestos Hazard Emergency Response Act of 1986. I commend Senator STAFFORD, and the other cosponsors for their hard work and dedication in developing this important legislation.

Asbestos is a known cause of cancer and serious lung disease. Unfortunately prior to 1970, asbestos was used extensively in thousands of school buildings across the United States.

It is well documented that when released into the air, asbestos fibers can cause lung cancer, asbestosis, pleural mesothelioma, and other debilitating lung diseases.

Up to now, the EPA has required schools to inspect for asbestos and publicize the results. However, EPA has not required schools to abate hazardous asbestos.

As a result, we still have a lot of schools with asbestos and we have the health of a lot of schoolchildren at risk.

This bill will turn EPA from a passive to an active player in the effort to abate the Nation's hazardous asbestos problem.

The bill requires EPA to set standards for the identification and abatement of hazardous asbestos. These new regulations will greatly improve the ability of schools to provide a safe environment for their students.

The bill also requires EPA to develop a model accreditation program for contractors and laboratories. This will ensure that all work involving asbestos is completed properly and in accordance with the highest standards.

Schools will be required to develop a management plan for abating hazardous asbestos and maintaining asbestos that has not become damaged.

In addition, this legislation will help ameliorate the problems contractors have faced in finding insurance, by establishing an abatement standard and accrediting contractors and laboratories.

Mr. President, it is important to note that agreement between the two Houses of Congress has been reached without the need for a formal conference committee. This was achieved by informally negotiating a substitute bill with the authors of the House bill. Since there will be no conference report on this substitute bill, this floor statement will serve as legislative history for purposes of discerning the intent of the authors of the substitute bill. The following paragraphs discuss in more detail particular sections of the legislation.

Section 203(d) requires the EPA to promulgate regulations describing a response action in a school building under the authority of a local education agency, using the least burdensome methods which protect human health and the environment. This requirement recognizes that, in a particular school building, there may be more than one response action that is adequate to protect human health and the environment. For example, in a particular situation a school might have a choice between enclosing damaged asbestos behind a protective barrier or removing it entirely. Enclosure probably would be less burdensome economically in the near term because it is a less expensive abatement option than removal. But enclosure almost always will cost more in the long run because the asbestos will have to be removed away at some future date. EPA regulations under the Clean Air Act require removal of asbestos before building renovation or demolition. Therefore, a local education agency will have to balance near-term lower cost against long-term higher cost in deciding which action is least burdensome. Mr. President, the EPA should not discourage a school from going ahead and eliminating their long-term asbestos problem if school officials should decide that is the best course of action.

EPA is expected to identify the method that generally will be least burdensome, but we recognize, Mr. President, that the decision about what actually is least burdensome in a particular school can only be made by local officials. The EPA regulations will not preclude a school from choosing an abatement alternative that is more expensive than the generally least burdensome one identified by EPA. Of course, the alternative chosen must be one that EPA has said is sufficient to protect human health and the environment.

Section 214 renders ineffective on the date of enactment any regulation under title I which is inconsistent with this title. However, it leaves in effect any regulation which is consistent with the regulations required under section 203. These consistent regulations can continue to be enforced, but they must be enforced using the provisions of title II. Of course, where an enforcement action already has been initiated, it can be continued under the law and regulations as they existed at the time. And EPA also can initiate an enforcement action related to rules in effect at the time a violation occurred.

In enforcing the previous rule requiring inspection of schools for asbestos, EPA developed a policy of reducing administrative civil penalties against a school in exchange for a commitment from the school to undertake actions beyond those actually required by the rule. Usually these are actions to abate an asbestos hazard. In these cases, only a token penalty payment is made to the Federal Government.

There is nothing in the present bill that would prohibit EPA from continuing that practice, though of course, the scope of activities beyond the requirements of the rules now will be less. Where the civil penalty is established by a court, however, the statute is explicit. It requires the court to order that any civil penalty collected be used by the local education agency for purposes of complying with this title. The funds represented by the penalty payment can, of course, be used in any school under the jurisdiction of the local education agency, and it can be used to accelerate abatement actions otherwise required by this law. Where the court establishes a penalty in excess of that needed for compliance, the excess amount shall be deposited into the asbestos trust fund established by section 5 of this bill.

Mr. President, this legislation has gained widespread support. Organizations like the American Cancer Society, the National Education Association, the National PTA, the National School Boards Association, the Service Employees International Union, and others support this bill. Additionally, both Houses of Congress passed similar versions of this bill unanimously.

In closing, I would like once again to commend the Chairman, Mr. STAFFORD for his tremendous effort, as well as the important contributions of Mr. BURDICK, Mr. HUMPHREY, Mr. LAUTENBERG, Mr. MITCHELL, and Mr. MOYNIHAN. Finally, I would like to acknowledge the efforts of Ron Outen of the Committee on Environment and Public Works, whose creativity and technical skills have been critical to the development of this important legislation.

I urge my colleagues to support this legislation.

Mr. CHAFEE. Mr. President, the problem of asbestos in our Nation's schools is a well-known issue. I am pleased to see that the Senate is about to pass legislation that originated in our Committee on Environment and Public Works. The bill before us is a compromise with our colleagues in the other body. It takes the best of their bill and of the Senate bill, which I cosponsored.

Although many school districts are attempting to cope with the problem of asbestos in their buildings, these efforts are being hampered by the lack of uniform, enforceable standards. Without regulatory guidance from EPA on whether certain actions are necessary, or adequate, or safe, some schools have undertaken expensive abatement projects that were either not needed or inadequate. Some hazards may have been made worse due to the lack of national standards.

Equally serious is the fact that some schools have taken no action at all.

A few States, like Rhode Island, have active, aggressive programs that will, nonetheless, benefit from new Federal standards. However, recognizing some States are on a faster track than the program called for in this bill, this bill will not interfere with the progress being made in those few States. Similarly, if a State takes adequate action before EPA regulations are established, we do not force that State to revise their entire program. The agency is required to issue criteria for making determinations regarding the adequacy of various portions of a State program. States such as Rhode Island, with a program that is widely regarded as a model of protection, will not have to reinvent the wheel.

I am pleased to see that the final version of this legislation includes an amendment that I successfully added in the committee to protect the integrity of such State programs. The amendment is designed to encourage these progressive States to go forward and to continue their work during the time it will take EPA to develop the necessary regulations and standards.

Mr. President, the chairman of our committee, Mr. STAFFORD, should be congratulated for his leadership on this issue. In recognition of his role as chief architect of this legislation I would like to discuss one important aspect of it with him.

Mr. CHAFEE. With respect to the inclusion of a statutory standard by which to test the adequacy of regulations, the original Senate bill was silent while the House bill included a standard derived from the Resource Conservation and Recovery Act, namely a requirement that regulations be adequate to "protect human health and the environment." I note that this bill includes such a standard. Is that correct?

Mr. STAFFORD. The Senator from Rhode Island is correct. We have included a slightly modified version of, for example, the House provision defining a "response action." The modification was agreed to so as to render significant portions of the legislative history from the consideration of H.R. 5073 in the House inapplicable to this bill. Several portions of the House report and some statements on the floor of the House incorrectly describe the standard as incorporated in this version of the bill.

Mr. CHAFEE. If I may suggest a specific example of the crucial point just made by the Senator from Vermont. On page 21 of House Report 99-763, it says, in relevant part:

> The . . . standard requires the agency to determine what actions *are necessary* to protect human health and the environment. . . . The agency must establish the levels of protection that *are necessary* to protect human health and the environment and the response actions that *are necessary* to achieve such levels. (emphasis added)

Use of the term "necessary" to qualify measures designed to meet the standard is a mistake. It may be viewed as a limitation on the authority of the agency to impose requirements. Although such a formulation is not a limitation in the context of RCRA, we have seen some regulated parties argue that the agency cannot impose a requirement unless the agency can prove such requirement is necessary. That is not the intent of RCRA nor of this bill.

To avoid confusion, what we have done here is, in effect, rewrite the House legislative history. Using the same example, that passage would now read:

> The . . . standard requires the agency to determine what actions shall be required to protect . . . The agency must establish the levels of protection that will protect human health and the environment and the response actions that will achieve such levels.

Mr. STAFFORD. The Senator has cited an excellent example of the problem as well as the solution that has been adopted by both Chambers. Similar modifications to other portions of the legislative history shall be deemed an integral part of our agreement to include the statutory standard.

Mr. CHAFEE. It is also important to note that, although the House has characterized the statutory standard as that found in RCRA, the inclusion of a requirement that the agency select "the least burdensome methods" is a significant departure from the rule of RCRA and, as set forth in the conference report on the 1984 amendments to RCRA (H. Rept. 98-1133 at 102-103), such a requirement is not a part of the RCRA standard.

Mr. STAFFORD. Again, the Senator has correctly stated the understanding between the two Chambers. Such an understanding was one of the key preconditions to inclusion of the requirement referred to by the Senator.

Mr. MOYNIHAN. Mr. President, I rise to speak on behalf of an important and necessary bill, S. 2083, the Asbestos Hazard Emergency Response Act of 1986. It will help us to protect the most vital members of the American public, our children, from the dangers of asbestos.

As my colleagues will remember, this issue is one that has concerned me for some time. I was the chief Democratic sponsor of the Asbestos School Hazard Abatement Act of 1984, under the authority of which the Federal Government has distributed some $50 million in grants and loans to our Nation's school systems to help them look for asbestos. Another $50 million is included in the most recent continuing resolution for this purpose.

Now, if there is any more pervasive hazardous substance than asbestos, I do not know of it. The term "asbestos" refers to several different fibrous minerals that have seen wide use in this country as cheap and effective reinforcing and insulating materials. During the 20th century some 30 million metric tons of asbestos have been used for floor tiles and asbestos-cement pipes, or sprayed or troweled on walls and ceilings. We used 800,000 metric tons of asbestos in this country in 1973, the peak year. We still use asbestos in certain applications. Asbestos is found in public water supplies and private automobiles. Most public buildings—including schools—have some. It is present in thousands of buildings in my home State of New York, and in the office buildings of the U.S. Senate.

That asbestos can be hazardous is beyond doubt. Asbestos fibers are released into the air as the materials that contain them decay over time or are damaged. The fibers are quite small and easily inhaled; they have no immediate effect. The natural motions of breathing bury the sharp fibers deep in the lungs; the body cannot remove them, and there they remain.

Numerous animal studies have shown that asbestos can cause cancer in humans, but there also is the long and tragic experience with occupational exposure to asbestos to clinch the argument. Thousands of former shipyard workers have asbestosis, a debilitating lung disease; many others have cancers of the lung, stomach, and colon. And some are afflicted with mesothelioma, a rare and fatal form of abdominal cancer, for which there is no known cause other than exposure to asbestos.

The long latency period of cancer and the fact that asbestos can remain in the lung for years means that children exposed to asbestos at school are at particularly high risk. It also places a particular obligation on us to be sure that children, above all others, are properly protected from the hazards of airborne asbestos.

The EPA has long acknowledged that regulations to limit the widespread use of asbestos are needed. As long ago as October 17, 1979, the agency issued an advance notice of proposed rulemaking [ANPR] addressing commercial and industrial use of asbestos—44 Federal Register 60061—and announced publicly that it was considering banning certain uses of asbestos. But nothing beyond identification and notification of possible asbestos hazards has been required of school officials by EPA. And there has not been enough information available to the schools to tell them how to do even that.

Asbestos "abatement" does not mean removing all the asbestos, willy-nilly. Either removal or encapsulation may be best for asbestos that is ex-

posed or disintegrating. But for materials that are not releasing asbestos fibers into the air, it is sometimes better to leave them in place rather than disturb them and risk asbestos release. All manner of problems have arisen, however, because responsible officials have often not known what to do.

It is not surprising that as concern over asbestos has grown, ad hoc local efforts have been mounted to remove potentially deadly asbestos materials. People with only the best of intentions have responded to great pressure and public outcry, but oftimes without the necessary expertise to carry out safe, effective remedial programs. There have been proper and effective efforts, but there have also been all too many horror stories of untrained shop teachers or school custodians tearing out asbestos insulation over a weekend with students as their helpers. It simply is not acceptable for Congress to allow fear and inexperience to add to the danger that already exists.

This bill requires the EPA to provide the solid technical information that the schools need. And it requires that school systems develop and adopt plans that spell out how they will determine where the threat is and where it is not, and what must be done about it.

Although local school systems have long been responsible for the health and safety of their students, this bill recognizes the need for Federal assistance and authorizes an additional $100 million—above and beyond the ASHA moneys already available—to help financially strapped schools develop effective programs to fulfill this responsibility. It is essential that we make all of our Federal expertise available to help ensure that our schoolchildren are protected from the dangers of asbestos.

EPA's failure to produce proper standards and regulations to date for asbestos in schools is beyond excuse; the schools have not had the tools they need to address asbestos hazards.

If this legislation is enacted they shall have them. And then, at long last, those who care for our children will be able to tell us that they have looked—carefully—and that they have fixed any problems properly.

Mr. President, I commend Senator STAFFORD for his leadership on this issue, and all of the Members of both Houses with whom I have worked on this issue for some years. I urge the adoption of this measure.

Mr. HUMPHREY. Mr. President, as a cosponsor of the Asbestos Emergency Response Act, I believe that H.R. 5073 is an effective means by which to ensure the protection of those children and adults who learn and work in our Nation's schools from exposure to hazardous asbestos particles. Currently, the Environmental Protection Agency has no standards for asbestos identification, management, and abatement. Under H.R. 5073, EPA must establish regulations requiring local education agencies to perform proper inspections of schools for asbestos-containing materials and to develop safe and appropriate asbestos management plans. All regulations promulgated by EPA under this act must protect human health and the environment.

One important aspect of H.R. 5073 requires that regulations for the development of an asbestos management plan include all asbestos-containing materials. Nonfriable asbestos will be identified under a management plan which will include surveillance and periodic reinspection of all asbestos-containing materials. In addition, asbestos regulations will require, at a minimum, response actions for all friable asbestos-containing material which is damaged, deteriorated, or delaminated and for all friable asbestos-containing materials which are in an area regularly used by building occupants where there is a reasonable likelihood that the material will become damaged, deteriorated, or delaminated. Response actions will include the repair, enclosure, encapsulation, and removal of hazardous asbestos-containing material.

Under H.R. 5073, EPA shall promulgate regulations describing response actions using "the least burdensome methods which adequately protect against the adverse effects of asbestos." It is important to note that the term "least burdensome" does not imply a cost-benefit analysis. When building use plans, long- and short-term costs and other unique factors are taken into account, the least burdensome response action may not always be the most inexpensive option. All response actions must be protective of human health and the environment. EPA will determine the least burdensome response action which best meets the local needs specific to a school building.

Children are at increased risk of developing diseases which result from the inhalation of asbestos fibers. Therefore, safe schools are at the heart of any program to protect the health and welfare of our children. It is imperative that proper asbestos management plans be developed and implemented at all of our Nation's schools. Mr. President, I am pleased to have participated in the negotiations and hard work which have resulted in the Asbestos Hazard Emergency Response Act of 1986. I believe that this act will ensure that our children are adequately protected from exposure to hazardous asbestos.

Mr. BURDICK. Mr. President, I rise today to support final passage of H.R. 5073, the Asbestos Hazard Emergency Response Act of 1986. I commend Senator STAFFORD for his tremendous effort in this matter. He and his staff have done a fine job in developing this important legislation. I am a cosponsor of the bill, and have worked closely with the chairman to insure the development of sound policy.

Asbestos is a known human carcinogen. When certain types of airborne asbestos fibers are inhaled, various kinds of cancer can develop. This form of asbestos, known as friable, poses a serious health threat to some 15 million of our Nation's schoolchildren and 1.4 million school employees, for it exists in approximately 31,000 school buildings across the country.

Existing law to control the threat of hazardous asbestos in schools has proven to be insufficient. This legislation will assure the safe and timely abatement of all friable asbestos and the careful and periodic surveillance of all nonfriable asbestos remaining in our Nation's school buildings.

The bill requires the Environmental Protection Agency [EPA] to set standards for the identification and abatement of hazardous asbestos in schools and requires abatement in accordance with those standards. At a minimum, these standards, to protect human health and the environment, will define when abatement measures, such as encapsulation, enclosure or removal, are necessary or perhaps the simple implementation of an operations and maintenance plan.

The bill also requires EPA to develop a model contractor accreditation program and requires States to develop a similar program. This will assure the availability of competent contractors. In addition, the legislation requires local school districts that have not done so to inspect their facilities and to develop appropriate management plans when either friable or nonfriable asbestos is found. For schools that have already inspected for asbestos, they will be excused from conducting a reinspection only as long as their previous inspection was consistent with the procedures and requirements under this bill. If not, they too will be required to inspect for asbestos-containing material. The State will be responsible for the plans and the enforcement of the program.

H.R. 5073 deserves the support of the entire Senate. Its aim is to protect our Nation's schoolchildren and school employees from the serious threat posed by the presence of hazardous asbestos. I am proud to support this legislation and encourage my colleagues to do the same.

Mr. ABDNOR. Mr. President, I am pleased we have the opportunity today to consider the Asbestos Hazard Emergency Response Act of 1986.

On September 10, the Senate approved S. 2083—this body's companion to the version of H.R. 5073 approved

August 12 by the House. The text of the bill before us today is the result of negotiations between the sponsors of S. 2083 and the initial version of H.R. 5073—outside a formal conference between the two Houses. A great deal of time and effort—by Members and staff from both the House and Senate, together with vital input from an array of interest groups, including the National PTA, NEA [National Education Association], AASA [American Association of School Administrators], NSBA [National School Boards Association], AFT [American Federation of Teachers], and SEIU [Service Employees International Union]—has been devoted to this legislation. All those involved have worked in earnest to develop a sound approach to assisting schools in mitigating potential asbestos hazards.

The mere mention of asbestos provokes panic amongst parents. Asbestos, after all, is a known cause of serious lung disease: including asbestosis and mesothelioma. Children are believed to be at greater risk of contracting asbestos-related diseases due to the earlier period of life at which they are exposed, high respiration rates and other factors. This legislation is needed to adequately protect our Nation's 15 million schoolchildren and 1.4 million school employees from asbestos hazards.

The distinguished chairman of the Committee on Environment and Public Works, Senator STAFFORD, the author of S. 2083, has done an outstanding job of moving this important legislation through the Senate. He has made every effort to address my concerns—I take this opportunity to express my thanks to my friend from Vermont and his able staff. Ron Outen, who has done a yeoman's job with the legislation under circumstances which would try the most patient among us, is deserving of special thanks.

As Senator STAFFORD pointed out, the statements made by Senators who were instrumental in negotiating the bill before us must serve in place of a conference report on this final text. Since I wholeheartedly concur with the way in which the senior Senator from Vermont has characterized the intent of the authors of the substitute bill, I will concentrate on another key element of the asbestos-in-schools problem.

Throughout the process of developing this bill, I have continued to emphasize the need for continued financial support for asbestos abatement projects in our Nation's public and private schools. As the author of the Asbestos School Hazard Abatement Act of 1984 [ASHAA], which provides grants and no-interest loans to financially needy school districts for necessary asbestos abatement activities, I am hopeful the House will be persuaded to agree to the $50 million fiscal year 1987 appropriation included in the continuing resolution before the Senate. This is certainly not the time to zero out asbestos abatement funds and dismantle the technical support system EPA has established largely through ASHAA.

This new initiative calls for the identification of asbestos problems which heretofore have not been identified or adequately addressed. The bill includes a 10 percent set-aside of the funds appropriated for ASHAA in fiscal year 1988 and fiscal year 1989 to assist LEAs [local educational agencies]—both public and private—in complying with the bill's requirements for inspection and identification of asbestos-containing materials in their buildings and development of O&M [operations and maintenance] plans.

Since these requirements will most certainly lead to an increased demand for asbestos abatement funds, we must make certain our schools have the assistance they need to cope with asbestos hazards safely and effectively—we must continue to provide Federal financial support through ASHAA.

Mr. President, I am pleased to have played a part in bringing this vital legislation before the full Senate. I am hopeful the Asbestos Hazard Emergency Response Act will be received as enthusiastically by the administration as it has by both Houses of Congress.

ASBESTOS HAZARD EMERGENCY RESPONSE ACT OF 1986

Mr. MITCHELL. Mr. President, I am very pleased that we are able to take final action today on legislation to encourage the identification and abatement of asbestos containing materials in our Nation's schools.

I would like to congratulate Senator STAFFORD for his leadership in developing this badly needed legislation. Without his determined efforts, it is unlikely that this final bill would be before us today.

It is difficult to overestimate the seriousness of the health threat exposure to asbestos poses to school children around the country. The EPA estimates that 31,000 schools contain friable asbestos. Some 15 million students and 1.4 million school employees occupy these buildings.

Exposure to even small amounts of asbestos can result in serious, life threatening diseases, including lung cancer, asbestosis, and mesothelioma. Other forms of cancer are also correlated with asbestos exposures.

While anyone exposed to asbestos runs a substantial health risk, children are at an even greater risk. Children are generally more sensitive to asbestos exposures because of higher respiration rates and a longer remaining lifetime in which disease may develop.

I am confident that the bill before us today will improve substantially the level and quality of asbestos abatement actions in schools around the country.

One of the key provisions of the bill directs the EPA to promulgate regulations describing the circumstances in which action is needed to abate asbestos. Several circumstances are identified and defined in the bill in section 203(c). Appropriate response actions for each circumstance are identified in section 203(d).

It is important to note that the definitions stated for each circumstance identified in section 203(c) of the bill are minimum conditions. EPA is to use the stated definitions as a starting point in developing regulations provided for under this legislation and definitions in the regulations are to be "at least" as stringent as definitions included in the legislation.

EPA is free to define each identified circumstance as broadly and stringently as it finds appropriate, but may not use a definition any narrower than the definition in the bill. EPA has the discretion, for example, to make any of the definitions more stringent by expanding it to include any asbestos-containing material, rather than simply "friable" asbestos-containing material.

The policy that the EPA is to develop regulations as appropriate and that the stated definitions in the bill are minimum definitions of each circumstance has been included in the bill since it was first introduced. I hope that the EPA will make active use of this authority to assure the highest degree of human health protection appropriate in each circumstance.

A second important aspect of the bill provides for the inspection of school buildings for asbestos containing materials. The bill requires both the inspection of school buildings and the reinspection of buildings which were not adequately inspected in the past.

The bill provides that a building or portion of the buildings does not need to be reinspected if the original inspection was conducted according to procedures and requirements which are at least as stringent as those included in the regulations under this legislation.

This provision is intended to assure that all portions of every school building are adequately inspected by trained personnel. Effective inspection is an essential first step in assuring the safety of school buildings and I hope that the EPA will use the authority of this provision to assure that every school building has an effective and thorough inspection.

I believe this legislation provides a sound legislative framework for the abatement of asbestos in our schools. I am confident that private contractors, schools, States and the EPA will each do their part to make the process work.

Mr. STEVENS. Mr. President, I move the Senate concur in the House amendment.

The motion was agreed to.

Mr. STEVENS. Mr. President, I move to reconsider that action.

Mr. BYRD. Mr. President, I move to table the motion to reconsider.

The motion to lay on the table was agreed to.

DISTRICT OF COLUMBIA JUDICIAL EFFICIENCY AND IMPROVEMENT ACT

Mr. STEVENS. Mr. President, I ask unanimous consent that the Senate now turn to the consideration of Calendar No. 968, which is H.R. 3578, dealing with local courts in the District of Columbia.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 3578) to provide permanent authority for Hearing Commissioners in the District of Columbia courts, and so forth, and for other purposes, reported with an amendment.

The Senate proceeded to consider the bill (H.R. 3578) to provide permanent authority for hearing commissioners in the District of Columbia courts, to modify certain procedures of the District of Columbia Judicial Nomination Commission and the District of Columbia Commission on Judicial Disabilities and Tenure, and for other purposes, which had been reported from the Committee on Governmental Affairs, with an amendment to strike out all after the enacting clause, and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "District of Columbia Judicial Efficiency and Improvement Act of 1986".

SEC. 2. HEARING COMMISSIONERS.

(a) Section 1732 of title 11 of the District of Columbia Code is amended to read as follows:

"§ 11-1732. Hearing commissioners.

"(a) With the approval of a majority of the judges of the Superior Court of the District of Columbia in active service and subject to standards and procedures established by the rules of the Superior Court, the chief judge of the Superior Court may appoint Hearing Commissioners, who shall serve in the Superior Court and perform the duties enumerated in subsection (j) of this section and such other functions incidental to these duties as are consistent with the rules of the Superior Court and the Constitution and laws of the United States and of the District of Columbia.

"(b) Hearing commissioners shall be selected pursuant to standards and procedures adopted by the Board of Judges. Such procedures shall contain provisions for public notice of all vacancies in hearing commissioner positions and for the establishment by the Court of an advisory merit selection panel, composed of lawyer and nonlawyer residents of the District of Columbia who are not employees of the District of Columbia Courts, to assist the Board of Judges in identifying and recommending persons who are best qualified to fill such positions.

"(c) No individual shall be appointed as a hearing commissioner unless that individual—

"(1) is a citizen of the United States;

"(2) is an active member of the unified District of Columbia Bar and has been engaged in the active practice of law in the District for the five years immediately preceding the appointment or for such five years has been on the faculty of a law school in the District, or has been employed as a lawyer by the United States or District government; and

"(3) is a bona fide resident of the District of Columbia and has maintained an actual place of abode in the District for at least ninety days immediately prior to appointment, and retains such residency during service as a hearing commissioner, except that Hearing Commissioners appointed prior to the effective date of this section shall not be required to be residents of the District to be eligible to be appointed to one of the initial terms under this section or to be reappointed.

"(d) Hearing commissioners shall be appointed for terms of four years and may be reappointed for terms of four years. Those individuals serving as hearing commissioners on the effective date of this Act shall be automatically appointed for a four year term.

"(e) Upon the expiration of a hearing commissioner's term, the hearing commissioner may continue to perform the duties of office until a successor is appointed, or for 90 days after the date of the expiration of the hearing commissioner's term, whichever is earlier.

"(f) No individual may serve as a hearing commissioner under this section after having attained the age of seventy-four.

"(g) The Board of Judges may suspend, involuntarily retire, or remove a hearing commissioner, during the term for which the hearing commissioner is appointed, only for incompetence, misconduct, neglect of duty, or physical or mental disability. Suspension, involuntary retirement, or removal requires the concurrence of a majority of the judges in active service. Before any order of suspension, involuntary retirement, or removal shall be entered, a full specification of the charges and the opportunity to be heard shall be furnished to the hearing commissioner pursuant to procedures established by rules of the Superior Court.

"(h) If the Board of Judges determines that a hearing commissioner position is not needed, the Board of Judges may terminate the position.

"(i)(1) Hearing commissioners may not engage in the practice of law, or in any other business, occupation, or employment inconsistent with the expeditious, proper, and impartial performance of their duties as officers of the court.

"(2) Hearing commissioners shall abide by the Canons of Judicial Ethics.

"(j) A hearing commissioner, when specifically designated by the chief judge of the Superior Court, and subject to the rules of the Superior Court and the right of review under subsection (k), may perform the following functions:

"(1) Administer oaths and affirmations and take acknowledgements;

"(2) Determine conditions of release pursuant to the provisions of title 23 of the District of Columbia Code (relating to criminal procedure);

"(3) Conduct preliminary examinations and initial probation revocation hearings in all criminal cases to determine if there is probable cause to believe that an offense has been committed and that the accused committed it;

"(4)(A) In any case brought under sections 11-1101(1), (3), (10), or (11) of the District of Columbia Code involving the establishment or enforcement of Child Support, or in any case seeking to modify an existing child support order, where a hearing commissioner in the Family Division of the Superior Court finds that there is an existing duty of support, the hearing commissioner shall conduct a hearing on support, make findings, and enter judgment as provided by law, and in accordance with guidelines established by rule of the Superior Court, which judgment shall constitute a final order of the Superior Court.

"(B) If in a case under subparagraph (A), the hearing commissioner finds that a duty of support exists and makes a finding that the case involves complex issues requiring judicial resolution, the hearing commissioner shall establish a temporary support obligation and refer unresolved issues to a judge of the Superior Court.

"(C) In cases under subparagraphs (A) and (B) in which the hearing commissioner finds that there is a duty of support and the individual owing that duty has been served or given notice of the proceeding under any applicable statute or court rule, if that individual fails to appear or otherwise respond, the hearing commissioner shall enter a default order, which shall constitute a final order of the Superior Court;

"(5) Subject to the rules of the Superior Court and with the consent of the parties involved, make findings and enter final orders or judgments in other uncontested or contested proceedings, in the Civil, Criminal, and Family Divisions of the Superior Court, excluding jury trials and trials of felony cases.

(k) With respect to proceedings and hearings under paragraphs (2), (3), (4), and (5) of subsection (j), a review of the hearing commissioner's order or judgment, in whole or in part, may be made by a judge of the appropriate division sua sponte and must be made upon a motion of one of the parties made pursuant to procedures established by rules of the Superior Court. The reviewing judge shall conduct such proceedings as required by the rules of the Superior Court. An appeal to the District of Columbia Court of Appeals may be made only after a judge of the Superior Court has reviewed the order or judgment.

"(1) The Superior Court shall ensure that all hearing commissioners receive training to enable them to fulfill their responsibilities.

"(m)(1) The chief judge of the Superior Court, in consultation with the District of Columbia Bar and other interested parties, shall within one year of the effective date of this section, make a careful study of conditions in the Superior Court to determine—

"(A) the number of appointments required to provide for the effective administration of justice;

"(B) the divisions in which hearing commissioners shall serve;

"(C) the appropriate functions of hearing commissioners; and

"(D) the compensation of, and other personnel matters pertaining to, hearing commissioners.

Upon completion of the study, the chief judge shall report the findings of such study to the appropriate committees of the Congress.

"(2) After the study required by paragraph (1), the chief judge shall, from time to time, make such studies as the Board of Judges shall deem expedient, giving consideration to suggestions of the District of Columbia Bar and other interested parties.

"(n) With the concurrence of the District of Columbia Court of Appeals, the Board of Judges of the Superior Court may, promulgate rules, not inconsistent with the terms of this section, which are necessary for the fair and effective utilization of hearing commissioners in the Superior Court.

"(o) For purposes of this section, the term "Board of Judges" means the judges of the Superior Court of the District of Columbia. Any action by the Board of Judges shall require a majority vote of the sitting judges.".

SEC. 3. APPOINTMENT OF EXECUTIVE OFFICER OF THE DISTRICT OF COLUMBIA COURTS.

Section 1703 of title 11 of the District of Columbia Code is amended—

(1) by striking out subsection (b);

(2) by redesignating subsection (c) as subsection (d); and

(3) by inserting after subsection (a) the following new subsections:

"(b) The Executive Officer shall be appointed, and subject to removal, by the Joint Committee on Judicial Administration with the approval of the chief judges of the District of Columbia Courts. In making such appointment the Joint Committee shall consider experience and special training in administrative and executive positions and familiarity with court procedures.

"(c) The Executive Officer shall be a bona fide resident of the District of Columbia or become a resident not more than 90 days after the date of appointment except that the Executive Officer in office at the effective date of this Act shall not be required to be or to become a resident of the District of Columbia.".

SEC. 4. MANDATORY RETIREMENT AGE OF JUDGES.

Section 431(c) of the District of Columbia Self-Government and Governmental Reorganization Act is amended by striking out "seventy" and inserting in lieu thereof "seventy-four".

SEC. 5. REORGANIZATION OF AUDIT RESPONSIBILITY.

(a) AUDITOR-MASTER.—Section 11-1724 of title 11 of the District of Columbia Code is amended—

(1) by striking out "(1) audit and state fiduciary accounts,"; and

(2) by respectively designating clauses (2) and (3) as clauses "(1)" and "(2)".

(b) REGISTER OF WILLS.—Section 11-2104(a) of title 11 of the District of Columbia Code is amended—

(1) in paragraph (2) by striking out "and" after the semicolon;

(2) in paragraph (3) by striking out the period and inserting in lieu thereof "; and"; and

(3) by inserting at the end thereof the following new paragraph:

"(4) audit and state fiduciary accounts.".

SEC. 6. ELIMINATION OF DUPLICATE JUDICIAL FINANCIAL REPORTING REQUIREMENT.

(a) TERMINATION OF FEDERAL DISCLOSURE REQUIREMENTS.—Section 303 of the Ethics in Government Act of 1978 (28 U.S.C. App. 301) is amended by inserting at the end thereof the following new subsection:

"(h) The provisions of this Act shall not apply to any judicial officer or employee of the Superior Court of the District of Columbia or the District of Columbia Court of Appeals or any other employee of the District of Columbia court system.".

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 308(9) of such Act (28 U.S.C. App. 308(9)) is amended by striking out "courts of the District of Columbia".

SEC. 7. CERTIFICATION OF QUESTIONS OF LAW.

Subchapter II of Chapter 7, title 11, District of Columbia Code, is amended by inserting after section 11-722 the following new section:

"§ 11-723. Certification of Questions of Law

"(a) The District of Columbia Court of Appeals may answer questions of law certified to it by the Supreme Court of the United States, a Court of Appeals of the United States, or the highest appellate court of any State, if there are involved in any proceeding before any such certifying court questions of law of the District of Columbia which may be determinative of the cause pending in such certifying court and as to which it appears to the certifyng court there is no controling precedent in the decisions of the District Columbia Court of Appeals.

"(b) This section may be invoked by an order of any of the courts referred to in subsection (a) upon the court's motion or upon motion of any party to the cause.

"(c) A certification order shall set forth (1) the question of law to be answered; and (2) a statement of all facts relevant to the questions certified and the nature of the controversy in which the questions arose.

"(d) A certification order shall be prepared by the certifying court and forwarded to the District of Columbia Court of Appels. The District of Columbia Court of Appeals may require the original or copies of all or such portion of the record before the certifying court as are considered necessary to a determination of the questions certified to it.

"(e) Fees and costs costs shall be the same as in appeals docketed before the District of Columbia Court of Appeals and shall be equally divided between the parties unless precluded by statute or by order of the certifying court.

"(f) The District of Columbia Court of Appeals may prescribe the rules of procedure concerning the answering and certification of questions of law under this section.

"(g) The written opinion of the District of Columbia Court of Appeals stating the law governing any questions certified under subsection (a) shall be sent by the clerk to the certifying court and to the parties.

"(h)(1) The District of Columbia Court of Appeals, on its own motion or the motion of any party, may order certification of questions of law to the highest court of any State under the conditions described in subsection (a).

"(2) The procedures for certification from the District of Columbia to a State shall be those provided in the laws of that State.".

SEC. 8. PUBLIC ACCESS TO MATERIALS OF JUDICIAL NOMINATION COMMISSION.

Section 434(c)(3) of the District of Columbia Self-Government and Governmental Reorganization Act is amended by striking out the last sentence and inserting in lieu thereof: "Information, records, and other materials furnished to or developed by the Commission in the performance of its duties under this section shall be privileged and confidential. Section 552 of title 5, United States Code, (known as the Freedom of Information Act) shall not apply to any such materials.".

SEC. 9. MEETINGS OF THE JUDICIAL NOMINATION COMMISSION.

Section 434(c)(1) of the District of Columbia Self-Government and Governmental Reorganization Act is amended by inserting at the end thereof "Meetings of the Commission may be closed to the public. Section 742 of this Act shall not apply to meetings of the Commission.".

SEC. 10. PUBLIC ANNOUNCEMENT OF JUDICIAL RECOMMENDATIONS.

Section 434(d) of the District of Columbia Self-Government and Governmental Reorganization Act is amended by inserting at the end thereof the following new paragraph:

"(4) Upon submission to the President, the name of any individual recommended under this subsection shall be made public by the Judicial Nomination Commission.".

SEC. 11. DISCLOSURE OF CERTAIN INFORMATION TO THE JUDICIAL NOMINATION COMMISSION.

Section 11-1528 of title 11, District of Columbia Code, is amended by striking out all of subsection (a) and inserting in lieu thereof the following:

"(a)(1) Subject to paragraph (2), the filing of papers with, and the giving of testimony before, the Commission shall be privileged. Subject to paragraph (2), hearings before the Commission, the record thereof, and materials and papers filed in connection with such hearings shall be confidential.

"(2)(A) The judge whose conduct or health is the subject of any proceedngs under this subchapter may disclose or authorize the disclosure of any information under paragraph (1).

"(B) With respect to a prosecution of a witness for perjury or on review of a decision of the Commission, the record of hearings before the Commission and all papers filed in connection with such hearing shall be disclosed to the extent required for such prosecution or review.

"(C) Upon request, the Commission shall disclose, on a privileged and confidential basis, to the District of Columbia Judicial Nomination Commission any information under paragraph (1) concerning any judge being considered by such nomination commission for elevation to the District of Columbia Court of Appeals or for chief judge of a District of Columbia court.".

SEC. 12. REAPPOINTMENT TO JUDICIAL OFFICE.

Section 433(c) of the District of Columbia Self-Government and Governmental Reorganization Act is amended—

(1) in the first sentence by striking out "three months" and inserting in lieu thereof "six months"; and

(2) in the second sentence, by striking out "thirty" and inserting in lieu thereof "sixty".

SEC. 13. MODIFICATION OF JUDICIAL REAPPOINTMENT EVALUATION CATEGORIES.

Section 433(c) of the District of Columbia Self-Government and Governmental Reorganization Act is amended in the third sentence by striking out "exceptionally well-qualified or".

SEC. 14. SERVICES OF RETIRED JUDGES.

Section 11-1504(a) of title 11, District of Columbia Code, is amended by striking out paragraphs (2) and (3) and inserting after paragraph (1) the following new paragraph:

"(2) At any time prior to or not later than one year after retirement, a judge may request recommendation from the District of Columbia Commission on Judicial Disabilities and Tenure (hereinafter in this section referred to as the "Commission") to be ap-

pointed as a senior judge in accordance with this section.".

SEC. 15. EXTENSION OF PERIOD FOR SUBMITTING JUDICIAL NOMINATIONS.

Section 434(d)(1) of the District of Columbia Self-Government and Governmental Reorganization Act is amended by striking out "thirty days" each place it appears and inserting in lieu thereof "sixty days".

SEC. 16. JUDICIAL COMPENSATION.

(a) COURT OF APPEALS.—Section 703(b) of title 11 of the District of Columbia Code is amended by striking out "90 per centum of".

(b) SUPERIOR COURT.—Section 904(b) of title 11 of the District of Columbia Code is amended by striking out "90 per centum of".

SEC. 17. EFFECTIVE DATE.

The amendments made by this Act shall take effect on the date of the enactment of this Act.

The amendment was agreed to.

The amendment was ordered to be engrossed, the bill was read the third time, and passed.

AMENDMENT NO. 3215

(Purpose: To make certain technical and clarifying amendments in the committee substitute)

Mr. STEVENS. Mr. President, I send to the desk an amendment to the committee substitute on behalf of Senator MATHIAS.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Alaska [Mr. STEVENS], for Mr. MATHIAS, proposes an amendment numbered 3215.

Mr. STEVENS. Mr. President, I ask unanimous consent the amendment not be read.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Section 1732(m)(1) of title 11 of the District of Columbia Code (as amended by section 2(a) of the committee substitute) is amended in the matter before clause (A) by inserting after "District of Columbia Bar" the following: ", the City Council of the District of Columbia,".

Section 1703(c) of title 11 of the District of Columbia Code (as added by section 3(3) of the committee substitute) is amended by striking "90 days" and inserting "180 days".

Section 14 of the committee substitute is amended to read as follows:

SEC. 14. SERVICES OF RETIRED JUDGES.

(a) SENIOR JUDGES.—The second sentence of section 1504(a)(1) of title 11, District of Columbia Code, is amended by striking "every two years" and inserting "every four years, unless the Senior Judge has reached his or her seventy-fourth birthday, whereupon review shall be at least every two years,".

(b) REQUEST FOR SENIOR JUDGESHIP.—Section 1504(a) of title 11, District of Columbia Code, is further amended by striking out paragraphs (2) and (3) and inserting after paragraph (1) the following new paragraph:

"(2) At any time prior to or not later than one year after retirement, a judge may request recommendation from the District of Columbia Commission on Judical Disabilities and Tenure (hereinafter in this section referred to as the 'Commission') to be appointed as a senior judge in accordance with this section; except that any retired judge shall have not less than 180 days from the effective date of this Act to file a request for an initial recommendation from the Commission."

(c) SERVICE BY RETIRED JUDGES.—Section 1565 of title 11, District of Columbia Code, is amended to read as follows:

"11-1565. Service by Retired Judges.

"Any retired judge performing judicial duties as a senior judge on the District of Columbia Court of Appeals or the Superior Court shall be entitled, during the period for which he or she serves, to receive the same daily rate of pay as a judge on the court in which he or she performs such duties. The cumulative daily earnings of a senior judge, in any single year, when added to the annual retirement salary, may not exceed the current annual salary of a judge of the court in which he or she performs such duties. No deduction shall be withheld for health benefits, Federal employee's life insurance, or retirement purposes from the salary paid to a judge during judicial service. The performance of such judicial service shall not create an additional retirement, change retirement, or create, or in any manner affect a survivor annuity.".

The committee substitute is amended by redesignating section 17 as section 18 and by adding after section 16 the following new section:

SEC. 17. CHIEF JUDGE OF THE DISTRICT OF COLUMBIA COURT OF APPEALS AS PRESIDING OFFICER OF THE PUBLIC DEFENDER SERVICE.

Section 330 of the District of Columbia Court Reform and Criminal Procedure Act of 1970 (Public Law 91-358; 1-2703, D.C. Code) is amended—

(1) by striking out clause (A) of subsection (b)(1) and redesignating clauses (B), (C), (D), and (E) as clauses (A), (B), (C), and (D), respectively; and

(2) in paragraph (2) of subsection (b) by striking out "Chief Judge of the United States Court of Appeals for the District of Columbia Circuit" and inserting in lieu thereof "Chief Judge of the District of Columbia Court of Appeals".

The PRESIDING OFFICER. Is there further discussion? If not, the question is on agreeing to the amendment.

The amendment (No. 3215) was agreed to.

Mr. MATHIAS. Mr. President, I am pleased to bring before the Senate two bills which will greatly enhance the ability of the local courts in the District of Columbia to provide justice in the face of an ever burgeoning caseload. These bills are the culmination of a great deal of work by many members of the local bar, the courts, and the Congress.

The first bill, H.R. 2946, the District of Columbia Jury System Act, will allow the Superior Court of the District of Columbia to establish an independent jury system for that local trial court. Under current law, the Federal district court for the District of Columbia is charged with running a single jury selection system for both the local and the Federal courts. This bill would cut the tie that binds the local court to the Federal court, and would allow the superior court to implement a one day/one trial system which it successfully tested recently. The bill has the strong support of the local courts, the local bar, and the administration.

The second piece of legislation before the Senate is the District of Columbia Judicial Efficiency Act of 1986, H.R. 3578. This bill is a package of proposals to reform the operations of both the superior court and the District of Columbia Court of Appeals. It will permanently authorize the use of hearing commissioners in the superior court, and establishes the procedures under which commissioners are to be selected and disciplined. It requires the court to study the hearing commissioner system over the next year, and will bring the District of Columbia into compliance with the Child Support Enforcement Amendments of 1984—Public Law 98-378—which requires the establishment of an expedited process for dealing with child support orders. It addresses some housekeeping issues identified by the D.C. Bar Court Study Committee in 1983, including reorganization of the court's audit responsibilities, authorizing the court of appeals to entertain certified questions of law from State courts of apeals, and amending certain procedures of the Judicial Nomination Commission and the Judicial Disabilities and Tenure Commission. In addition, H.R. 3578 removes the limitation in current law on judicial salaries in the District of Columbia courts.

Mr. President, the amendment which I propose to H.R. 3578 is the result of consultation with the House District Committee from where the bill originated. When it is adopted by the Senate, the bill will be in a form that is supported by the House, and I have the assurance of members of the House District Committee that they will move the amended bill in an expeditious manner.

My amendment does several things. First, it will require that the chief judge of the District of Columbia Superior Court consult with the Council of the District of Columbia in its study of the court's hearing commissioner system which is mandated in section 2 of the bill. Second, it would amend section 3 by increasing the time during which a future executive officer of the courts will have to become a resident of the District following appointment from 90 days to a more reasonable 180 days.

Third, my amendment reworks the provisions of the bill which govern the service of retired judges as senior judges of both the superior court and court of appeals. The amendment is the result of the negotiations between the judges of the courts and the Judicial Disabilities and Tenure Commission which current law requires to review the suitability of a retired judge to serve as a senior judge. The

amendment would require senior judges to be reviewed every 4 years, except that a judge who has reached his 74th birthday is to be reviewed every 2 years. In addition, it requires a retiring judge to notify the Judicial Disabilities and Tenure Commission of his or her desire to be certified for senior judge status within 1 year after retirement. Currently retired judges are grandfathered for 180 days from the date of enactment of this section. Finally, the amendment guarantees that senior judges are compensated at the same daily rate as active judges, with an overall cap of the salary of an active judge by allowing what is in effect a bookkeeping change. This provision will ensure that each senior judge is paid at the same rate for the same amount of work, but maintains the cap which is contained in the current law.

The final change made by my amendment would remove the chief judge of the Court of Appeals for the District of Columbia Circuit from the panel which selects the Board of Trustees of the Public Defenders Service. In addition, the amendment would designate the chief judge of the District of Columbia Court of Appeals as the presiding officer of that panel. This provision is being included at the insistence of the House District Committee. The involvement of a Federal court in the selection process for the PDS Board of Trustees is very appropriate, and the chief judge of the District of Columbia District Court will remain on that panel. I would be most reluctant to accede to this provision if the Federal district court representation were not to continue. As the Director of the PDS stated in a letter to the Subcommittee on Governmental Efficiency and the District of Columbia, "Federal judges are exposed to a broader range of members of the bar beyond merely those attorneys who practice in the local court system * * *" and provide "valuable insights into the mission of the agency. * * *" And finally, it is imperative that the action taken by the Congress not be interpreted as an attempt to in any way diminish the independence of the PDS.

Mr. President, H.R. 3578 and H.R. 2946 are important and vital pieces of legislation which will greatly enhance the operations of the superior court and the court of appeals in the District of Columbia. I urge my colleagues to join me in supporting both of these bills.

The committee substitute, as amended, was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment of the amendments and the third reading of the bill.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time and passed.

Mr. STEVENS. Mr. President, I move to reconsider that action.

Mr. BYRD. Mr. President, I move to table the motion to reconsider.

The motion to lay on the table was agreed to.

□ 1920

KLAMATH RIVER BASIN

Mr. STEVENS. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of H.R. 4712.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 4712) to provide for the restoration of the fishery resources in the Klamath River Basin, and for other purposes.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

The PRESIDING OFFICER. The bill is open to amendment. If there be no amendment to be proposed, the question is on the third reading of the bill.

The bill was ordered to be read a third time, read the third time, and passed.

Mr. STEVENS. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

GILA RIVER PIMA-MARICOPA INDIAN COMMUNITY JUDGMENT DISTRIBUTION PLAN

Mr. STEVENS. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of H.R. 5430.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 5430) to amend the Gila River Pima-Maricopa Indian Community judgment distribution plan.

The PRESIDING OFFICER. The bill is open to amendment, if there be no amendment, the question is on the third reading of the bill.

The bill was ordered to a third reading, was read the third time, and passed.

Mr. STEVENS. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

SUPPLEMENT OF CERTAIN INDIAN CLAIMS

Mr. STEVENS. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 965, H.R. 3526.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 3526) to provide for the settlement of certain claims respecting the San Carlos Apache Tribe of Arizona.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Select Committee on Indian Affairs, with an amendment.

Mr. STEVENS. I ask that the committee amendment be withdrawn.

The committee amendment was withdrawn.

The bill was read the third time, and passed.

Mr. STEVENS. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ALASKA NATIVE LAND CLAIMS SETTLEMENT ACT

Mr. STEVENS. Mr. President, I say to my good friend from West Virginia that it is my hope we will be able to ask for consideration of my bill, H.R. 4162. I understand that there is some delay in this matter on the side of the distinguished minority leader. I hope we will be able to get to that bill next week. It is very timely.

I have been involved with this matter for some 15 years now. I urge his kindness and usual consideration of that problem in Alaska. I understand that he has a problem.

I ask the Senator from West Virginia if it would be agreeable at this time to ask unanimous consent that the Energy Committee be discharged from further consideration of that bill and that the bill be placed on the calendar.

Mr. BYRD. Mr. President, I will take the liberty, without having cleared this particular request, to accede to discharging the committee of the measure and putting it on the calendar. I do this to accommodate my good friend, the Senator from Alaska [Mr. STEVENS].

Mr. STEVENS. I am grateful.

I do make that request, that the committee be discharged and that the bill be placed on the calendar.

The PRESIDING OFFICER. Without objection, it is so ordered.

BANKRUPTCY JUDGES, UNITED STATES TRUSTEES, AND FARMER BANKRUPTCY ACT—CONFERENCE REPORT

Mr. STEVENS. Mr. President, I submit a report of the committee of conference on H.R. 5316 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 5316) to amend title 28 of the United States Code to provide for the appointment of additional bankruptcy judges, to provide for the appointment of U.S. trustees to serve in bankruptcy cases in judicial districts throughout the United States, to make certain changes with respect to the role of U.S. trustees in such cases, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by all of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of October 2, 1986.)

Mr. THURMOND. Mr. President, I am pleased that the Senate is considering today the conference report on H.R. 5316, the "Bankruptcy Judges, United States Trustees, and Family Bankruptcy Act of 1986." A great deal of work has gone into this report by House and Senate conferees and I congratulate all who have played a part in moving this important legislation forward.

Mr. President, as my colleagues are aware, many Federal judicial district have been swamped by the significant increases in bankruptcy filings and have sought needed relief. The legislation before the Senate will provide that relief by establishing 52 new bankruptcy judgeships.

This legislation will also provide relief by making the U.S. trustee system a nationwide, permanent program. The U.S. trustee system was enacted as a pilot program in 1978. By most accounts, this pilot program has been a resounding success—contributing greatly to the orderly and efficient administration of the bankruptcy system in the districts where it has been established.

Mr. President, I am also pleased that the conference report on H.R. 5316 includes initiatives to address the increasing economic problems that have confronted family farmers. I especially want to commend my distinguished colleague from Iowa (Mr. GRASSLEY,) for his fine leadership in the development of the family farm provisions of this bill. Those provisions represent an innovative approach to a crisis which has reached serious proportions.

This legislation creates new and expanded protections for a majority of American farmers in the bankruptcy courts. It is important, however, that we remember that the family farm provisions of this bill are an extraordinary response to what is, hopefully, a temporary crisis.

This legislation modifies the provisions of adequate protection by eliminating lost opportunity cost and the "indubitable equivalent" language of 11 U.S.C. 361 (3). In essence, this is an experimental approach to address the concerns of some farmers who can not be financially restructured under current law. To address the experimental nature of this legislation the Senate insisted upon a sunset provision. The Senate preferred a 5-year authorization, however, the conferees agreed upon a 7-year period in which to use chapter 12. I am strongly supportive of the "sunset" provision in the family farm program and I strongly disagree with those who favor making the program permanent. In fact, I would have preferred a shorter "sunset" period than the 7-year period which was finally included in the report.

The legislation is meant to assist those farmers who have the true potential to reorganize and to allow them relief from heavy debt burden, and yet allow farmers to pay creditors what is reasonable under today's difficult economic situation. The conferees intended to maintain the balance in farm communities between suppliers, creditors, and farmers.

It is recognized that creditors should not shoulder all the burden of the current farm crisis and that creditors are at risk as well. When administering this chapter 12, the courts should strive to preserve this equity balance between creditors' and debtors' rights. They should appreciate the possibility of harsh consequences to secured and unsecured creditors in providing financial relief to farmers. Attempting to balance the conflicting objectives of farmer debtors and agricultural creditors has been a monumental task at best. We have insisted on a number of provisions which are supported by the creditors. We believe these improvements enhance the balance and equity of this legislation. I am informed that because of these improvements the Farm Home Administration and the American Bankers' Association no longer oppose this legislation.

I believe it will be necessary for Congress to monitor this program very carefully and to be prepared to act quickly to resolve any unintended consequences of its enactment. Perhaps the conditions which have led the Congress to enact the program will ease, making repeal of the program desirable before the 7-year sunset. We must recognize that a novel program such as this may be in need of further refinement. So I favor enactment of the family farm provisions, and urge careful and continuing analysis by the Congress to ensure the balance between the various parties involved in the agricultural sector.

Mr. President, I want to take this opportunity to commend my colleagues who have worked so hard on this legislation. I mentioned Senator GRASSLEY and his fine work on the family farm provisions, Senators HATCH, DECONCINI, and HEFLIN have also played major roles in the refinement of this bill.

I also want to commend the House members who contributed greatly to this report—especially House Judiciary Committee Chairman PETER RODINO and Congressman MIKE SYNAR.

Mr. President, I also want to commend the staff members who have worked long hours to prepare this conference report. Of my staff, Diana Waterman and Joe Buzhardt; on Senator HATCH's staff, Randy Rader and Bob Friedlander; on Senator GRASSLEY's staff, Sam Gerdano; on Senator DECONCINI's staff, Bob Feidler; and on Senator HEFLIN's staff, Karen Kremer.

Mr. President, these staff members have done a fine job in preparing this bill for passage, and I commend them for their efforts.

I ask unanimous consent to have a letter in connection with this matter printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

AMERICAN BANKERS ASSOCIATION,
Washington, DC, October 3, 1986.

Hon. STROM THURMOND,
Chairman, Senate Judiciary Committee, U.S. Senate, Washington, DC.

DEAR CHAIRMAN THURMOND: On behalf of the American Bankers Association, I wish to express our appreciation to you, Mr. Chairman, to your entire group of Senate Conferees, and especially Senator DeConcini, and your staff for the excellent work you have done on H.R. 5316, the U.S. Trustees/Banruptcy Judges bill.

As you know, earlier in this Congress, we testified in opposition to proposed farm bankruptcy legislation. Under your leadership, a number of key conference improvements were made to the legislation which we believe improves the balance between the concerns of agricultural creditors and farm debtors. Specifically, we strongly support the 52 additional bankruptcy judges, limitations to 90 days for debtors filing a plan, and the 7 year sunset of farm bankruptcy section.

Because of your assurances and that of Senator Grassley and Senator DeConcini to monitor closely the effects of this experimental legislation and assurances that you will address any major inequities in the next Congress, I wish to inform you that ABA does not oppose this legislation.

Again, we greatly appreciate the time and effort you and your excellent staff have devoted to the farm bankruptcy issue.

Sincerely,

EDWARD L. YINGLING.

FARM BANKRUPTCY SUBTITLE

Mr. GRASSLEY. Mr. President, I would like to briefly address myself to the farm bankruptcy subtitle of the conference report.

I am sure I need not remind the Members of this Chamber of the plight of our Nation's family farmers. The numbers of farms in financial trouble or on the brink of foreclosure is well known. But the measure of the crisis in agriculture isn't measured by cold numbers on a page. Instead, I measure it in terms of the human tragedy, the disruption of lives, and the despair of being a middle-aged farmer suddenly told to find another livelihood to support a family.

I hear it and I see it when I go back home every weekend. I know my colleagues have seen it too. We simply must stop the displacement. We must stop the bleeding on the farm.

Mr. President, I harbor no illusions about the ability of the Federal Bankruptcy Code to redress farmers' grievances. I know as well as anyone that the economic causes of the crisis in agriculture lie well beyond the realm of bankruptcy.

But hearings in the House and Senate led to the unmistakable conclusion that the Bankruptcy Code doesn't work for farmers.

The conference report subtitle on family farmer reorganization, approved by the conferees last Friday, is the culmination of more than 1½ years of effort by the House and Senate Judiciary Committees. The final product reconciles the unique attributes of farming into an existing bankruptcy framework, currently used by other small businesses and sole proprietors.

The subtitle creates an experimental, separate, chapter modeled after existing chapter 13, solely for use by family farmers with up to $1.5 million in debts.

Though the purpose is to give family farmers a fighting chance to reorganize their debts, the provisions ensure that only family farmers—not tax shelters or large corporate entities—will benefit.

Importantly, the new subtitle ensures that the bankruptcy system will not be abused. Earlier versions of this new chapter allowed a farm-debtor 240 days to file a plan. During this time, collateral could deteriorate without the promise of a confirmable reorganization plan. To address this problem, the exclusive period has been reduced to 90 days in the conference approved bill.

If time limits are not met, the case will be dismissed and cannot be refiled. This will be a powerful incentive to get these cases moving, rather than languishing in the courts. If fraud is found, the case will be dismissed or converted to chapter 7. This encourages good faith, and honest dealing by the debtor throughout the case.

The subtitle also contains a 7-year sunset, ensuring that Congress will reevaluate its effectiveness in allowing farmers to rehabilitate themselves. Let me add that I'd be the first to be willing to rethink provisions of this bill, if it proves to be unworkable. But I sincerely believe this will not be the case. It's a good, balanced product. It deserves a chance to work.

Mr. President, before leaving this bill, I would like to add my thanks and appreciation to those conferees who worked with me on this issue. First, I must thank the chairman of the Senate Judiciary Committee, Senator THURMOND, for his leadership and cooperation throughout this process. Diana Waterman, his general counsel, was of immeasurable assistance in the development of this final product. I would also like to thank Joe Buzhardt, counsel to the chairman, for his help. I would also thank Senator DECONCINI, a cosponsor of my original chapter 12 bill, and his chief counsel, Bob Fiedler. I would also specifically thank Senator HEFLIN, who I know cares deeply about the application of our bankruptcy laws to farmers, and his chief counsel, Karen Kremer.

I cannot leave this list of "thank you's" without recognition of Bankruptcy Judges A. Thomas Small and Thomas Moore of the Eastern District of North Carolina. Their collective wisdom and experience have been critical to enactment of this legislation.

Finally Mr. President, I ask unanimous consent that a law review article by John C. Anderson, an attorney from Baton Rouge, LA, be printed in the RECORD at the conclusion of my statement. This article contains a detailed analysis of existing bankruptcy laws, and persuasively argues that these laws are inadequate for family farmers. I am confident that we have here taken a step to remedy this inadequacy.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

AN ANALYSIS OF PENDING BILLS TO PROVIDE FAMILY FARM DEBTOR RELIEF UNDER THE BANKRUPTCY CODE

(By John C. Anderson*)

("The business of farming has always been subject to unpredictable financial problems, especially since the farmer's crops may be endangered by weather, insects, and natural disasters. Additionally, farmers face the normal problems of all business men, which may be increased by unusual changes in the economy. All businesses have suffered recently from increases in interest rates, fuel shortages, declines in prices offered for goods, inflation, and other general economic problems, and the farmer is no exception. In fact, the farmer's prospects have become even more bleak over the past two years, and his present and future financial problems are becoming a topic of national concern." [1])

I. INTRODUCTION

In 1982, this writer predicted that the financial problems and economies of the farming industry would rise to a level of national concern and that the exist-provisions of the Bankruptcy Code [2] were not adequate to deal with the problems of farmers and to reorganize them financially.[3] These predictions have come true, and the farming industry has virtually collapsed. The income derived by farmers from their crops has not been sufficient to keep up with the costs of operation, after taking into consideration the capital necessary to conduct the business and the natural disasters attendant with the business of farming.[4]

Because these dire predictions have become true, there is legislative movement in Congress to remedy the farmers' plight through amendments to the Bankruptcy Code which would give farmers financial relief.[5] This article will analyze the problems unique to farmers (creating their need for relief), pending family farm relief bills and legislation before Congress, and the provisions of the competing bills which should be adopted by Congress.

II. FINANCIAL PROBLEMS UNIQUE TO FARMERS AND NEED FOR RELIEF

All businesses are vulnerable to over-all economic problems, such as inflationary spirals, increases in interest rates, competition

Footnotes at end of article.

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for loans, depressed economic markets, and similar problems. In addition to this, farmers must deal with special problems beyond their control, such as natural catastrophies. For example, inclement weather, insect infestation, and similar problems may cause farmers to lose all or part of their crop. Such natural disasters may further alter soil make-up and cause erosion to farms. All of these create unique, unpredictable financial problems for farmers.

Until recent years, many farmers were able to generate internally sufficient profits to provide their own working capital. However, the downturn in prices for crops in comparison to the increase in costs of production have diminished net profits, and recent natural disasters have caused farmers to produce low crop yields. The decrease in profits and yields has precluded the creation of internally-generated working capital to provide an ongoing base of financial operations. Further, the decrease in profitability has caused normal commercial lenders to be inhibited to make loans to farmers. This situation has caused the following results.

First, the low profitability of farmers has curtailed normal borrowing sources. Many banks and normal commercial lenders have ceased making crop loans or other working-capital loans secured by farms and farm equipment. This has precluded normal sources of working capital for farmers.

Second, to offset this situation, the federal government has instituted programs over recent years to provide loans to farmers at low interest rates, but these superficially attractive programs have had their own disadvantages. This borrowing has provided needed working capital, but it has encouraged borrowing by farmers and has thus caused many farmers to become over-leveraged, that is, top-heavy with debt. Further, such federal agencies normally require secured interests in virtually all of the farmer's assets, thereby leaving the farmer with little flexibility or collateral for other borrowing. Many farmers have utilized these programs and become heavily burdened with debts. Thus, many farmers are entering 1986 heavily in debt to federal agencies as well as to commercial lenders.

Third, as mentioned above, farmers are particularly subject to problems with weather. Even though these changes in weather can be predicted to some degree, there is no safeguard for the farmer against extremely wet conditions (which may inhibit cultivation or preclude harvest of crops), and only farmers with irrigation systems can be protected from droughts. Both droughts and rain can prevent germination of a crop, can inhibit crop growth, and can cause destruction of some or all of the crop. Further, excessive rain may prevent harvesting and thereby cause the loss of an entire crop that has matured. Such weather problems only serve to increase the crisis facing over-leveraged farmers.

Fourth, farmers affected by the federal government's domestic and foreign policies concerning purchase and sale of crops. Federal agencies have traditionally purchased commodities for storage as specific support prices. Further, these agencies have paid farmers not to plant crops and have extended emergency loans for losses caused by natural disasters. Thus, our federal government has played a substantial role in determining the aggregate productivity (e.g., crop yield) of the American farmer, as well as the prices received for farm products. Because of these federal policies and over-production created by them, the prices of commodities are at a very low amount in relating to the capital costs of (a) acquiring farms and farm equipment and (b) running a farm operation. In other words, the return to the farmers for their crops, in relation to their capital investment, is minimal at best. The programs of the federal government have inhibited the ability of the American farmer to work in a free enterprise system and gain a sufficient reward (through profits) for the risk (relative to capital investment) of his operation.

A farmer can never predict his net income from his crops until they are sold and funds actually received, and when the crop proceeds are actually received, they are cyclically received (usually on an annual basis)[6] and often less than needed.

Many farmers are in a precarious position and the value of much farm property has depreciated to a fraction of its prior worth and initial cost. The lack of profitability has further prevented many farmers from paying their obligations as they mature. This has created an unprecedented collapse in the farming community and farm-related businesses. In turn, a collective default in farm-related obligations has triggered an unprecedented number of foreclosures. Ultimately, the forced liquidation of farms which are over-burdened with debt may create a tremendous loss of equity or value in farms for both farmers and their lenders by flooding the market with foreclosed farms for sale.

III. PRIOR LEGISLATION UNDER THE OLD BANKRUPTCY ACT

A. A Historical Overview

Reorganization cases have the purpose of rehabilitating businesses and businessmen, and these proceedings normally envision the readjustment of the debt/capital structure of an enterprise and its continuation in business, as opposed to the liquidation and dismantling of the enterprise.[7] Forced liquidations of business enterprises may cause unnecessary losses in propety values.

The first three federal bankruptcy acts[8] were designed entirely for liquidation and contained no provisions for the rehabilitation of the debtor and preservation of his business.[9] An amendment to the third bankruptcy act providing rehabilitative relief was short-lived.[10] The fourth act, passed in 1898 (the old Bankruptcy Act),[11] was also inadequate in this regard, since the composition device offered under section 12 of the old Act[12] provided only limited relief for small debtors.[13] Section 12 was insufficient for rehabilitating either large corporate entities or farmers.[14]

Hence, there were no adequate rehabilitation statutes available for either businesses or farmers until 1933, when Congress enacted certain statutory rehabilitation provisions.[15] Remington [16] has explained this historical event as follows:

"Section 75 was added to the Bankruptcy Act March 3, 1933 in the midst of the Great Depression. It formed a part of a new Chapter numbered VIII and entitled "Provisions for the Relief of Debtors." Three forms of relief were established. Section 74, now Chapters XI and XII, dealt with Arrangements. Section 75 provided Relief for Farmers. Section 77 established Railroad Reorganization. On June 7, 1934, § 77B has become Chapter X. All of these Relief Sections or Chapters had a common purpose—to facilitate recovery from the depression." [17]

The initial reorganization statutes, which were contained in sections 74, 75, 77,[18] and 77B [19] were passed during the Depression for the purpose of correcting the defective receivership procedure and replacing it with a comprehensive, statutory method of effecting rehabilitations.[20] There was some argument that these sections were strictly emergency legislation, were passed to provide immediate statutory relief, and were poorly drafted because of the haste in their preparation and enactment.[21] Whether this argument is accurate is beyond the scope of this article; however, the reader should note that the legislative movement to enact a more appropriate statutory system for rehabilitation of financially troubled entities continued until 1938, when the Chandler Act was passed.[22] This Act repealed sections 74 and 77B.

However, the Chandler Act did not repeal section 75, which was the primary statutory vehicle for the rehabilitation of farmers both before and after enactment of the Chandler Act.[23] Rather, this section was maintained in force until March of 1949 and was not made a permanent part of the Bankruptcy Act of 1898 for various reasons.[24] In other words, section 75 was maintained as a separate rehabilitative device and was extended through March 1, 1949, when it expired because it was not renewed by Congress.[25]

Section 75 will be explained in greater detail later, but it should be noted that no relief was expressly provided by Congress for farmers until their problems became particularly acute during the Depression. The elixir for the farmers' dilemma was initially the creation of section 75 and subsequently its amendments. The same farmer problems appear to be reoccurring presently.

Rehabilitation for farmers was also available, and especially after the expiration of section 75, through Chapter XII[26] of the Bankruptcy Act. However, Chapter XII was rarely used by farmers or other debtors to gain relief and rehabilitation,[27] and only one reported case[28] of any importance has been found by this writer where Chapter XII was used as the vehicle for rehabilitation of a farmer's finances. Hence, after the Depression and World War II, the primary statute for rehabilitation of farmers terminated, and Congress has not since then created a statutory vehicle expressly to alleviate agriculture's peculiar hardships.

In particular, there are no statutory provisions in the new Bankruptcy Code oriented to rehabilitation of farmers. The relief available for farmers is the same as accorded businesses and businessmen in general under Chapter 11 of the new Bankruptcy Code.[29] This is unfortunate because farmers are presently experiencing especially great financial problems because of weather, inflation, and a general downturn in the economy, thereby causing a special need for relief. The old statutory means for farmers rehabilitation under section 75 are no longer available to farmers, and the new relief available to farmers under the new Bankruptcy Code is inadequate to solve many problems unique to farmers. However, it would be appropriate to contrast the old rehabilitative provisions with existing, available means for financial relief for farmers. This analysis will also make certain observations on the alternatives not presently available to farmers for rehabilitation of their financial affairs and what special provisions oriented to specific farmer problems might be needed.

B. Legislative Movement Causing Enactment of Section 75 and the Frazier-Lemke Act

On March 3, 1933, section 75 was added to the Bankruptcy Act for the purpose of permitting compositions and extensions for the benefit of farmers, similar to those provided for in section 74 for the benefit of individuals and partnerships.[30] Upon the filing of the farmer's petition under section 75, he and his property were brought under the exclusive jurisdiction of the Bankruptcy Court, regardless of the property's location, and all proceedings against him or his property were automatically stayed.[31]

The chief purpose of the provision was to make relief available for farmers whose affairs did not warrant or require liquidation.[32] Section 75 provided initially for composition or extension agreements that could be requested by the debtor and agreed to by a sufficient number of creditors.[33]

Much of the commentary regarding the legislative history of section 75 indicates that this legislation was passed over the strenuous objection of various lenders.[34] Creditor-oriented interest groups argued that the legislation was a menace to the national credit structure, that it would afford no real relief to debtors for whose benefit it was intended, that the provisions were ambiguous, that the legislation was unworkable, and that statutory relief was destructive of creditors' rights.[35] Notwithstanding these arguments, other commentary during this era suggested (a) that relief was necessary due to a steady decline in farm prices before the Depression (which was accelerated thereafter), due to a deflation in land values and due to the constantly increasing burden of taxes; and (b) that the fears of the credit industry proved to be unfounded, because the implementation of section 75, as initially enacted, proved to be so cumbersome that any alleged harmful effects were negated by the inability of farmers to use the statue.[36] As initially drafted, section 75 was largely ineffectual as a vehicle to rehabilitate farmers; therefore, Congress moved to amend it one year after its enactrment.

Criticism and irritation over the passage of section 75 in 1933 was heightened when Congress subsequently added subsection (s) to section 75 on June 28, 1934, to create what is commonly referred to as the first "Frazier-Lemke Act." [37] This amendment to section 75 significantly enhanced the relief available to farmers by impairing the rights of secured creditors to foreclosure upon farm land.[38] Prior to the Frazier-Lemke Act, the farmer could only propose compositions and extensions; if these were not approved by the creditors and the court, he was forced to dismiss his proceeding or be adjudicated into straight bankruptcy.[39] The Frazier-Lemke provisions gave the farmer increased rights in the event that the creditors and court did not approve any proposed composition or extension. Specifically, if the composition/extension was not approved, the farmers was adjudged a bankrupt, but was given a moratorium of five to six years within which to buy back his property from the court and his creditors.

Upon adjudication the farmer could request that all of his property, whether pledged, encumbered, or unencumbered, be appraised and that his exemptions be set aside, subject to liens thereon.[40] The farmer then had two options by which he could redeem all or part of his property. Under one option, with the consent of those holding liens on the property redeemed, the farmer would pay the appraised value in an installment plan over a period of six years while retaining possession of his property. This repayment over six years was conditioned upon acceptance of such redemption or buy-back by the secured creditor affected; [41] and if the secured creditor objected to this partial-payment plan of purchase by the farmer, a second course of action was available.

Under the second option the court would stay all proceedings for a period of five years, allowing the farmer to retain possession of his property upon payment of only a reasonable rental and allowing the farmer to buy his property at the end of the five-year period by paying its appraised or reappraised value.[42] Therefore, under either option, the Frazier-Lemke Act had the "controlling purpose of . . . [preserving] to the mortgagor the ownership and enjoyment of the farm property . . . and the avowed object . . . to take from the mortgagee rights in the specific property held as security; and . . . 'scale down the indebtedness' to the present value of the property." [43]

Secured creditors could retain their liens up to, but not exceeding, the appraised value until paid. Unsecured creditors were given a general lien subordinate to prior liens, but in no case could creditors thereafter assert, either against the farmer or his property, claims for an amount in excess of the appraised value of the property at the time of the filing of the petition. Therefore, the usual avenues available to secured creditors for realizing on their collateral were closed upon the filing of the farmer's petition, and both secured and unsecured claims were scaled down to the appraised value of the collateral retained by the farmer, and the excess unsecured (*e.g.*, undersecured) portions were discharged.[44]

Prior to the enactment of section 75 in 1933 and the Frazier-Lemke Act in 1934, bankruptcy proceedings did not generally affect secured creditors at all, and the bankruptcy trustee took only such interest as the bankrupt might have transferred.[45] However, the Frazier-Lemke Act had the express purpose of impinging upon the rights of secured creditors, since its main premise was to provide a moratorium for farmers to relieve them from overburdening mortgage indebtedness and the harshness resulting from a loss of their farms through foreclosure in a period of unprecedented depression.[46]

As Remington pointed out, forced liquidations of a debtor's estate, as in ordinary bankruptcy, have generally caused unnecessary losses,[47] and where these losses have prevented farmers from cultivating their land and producing crops, the entire national economy has been affected.[48] Moreover, after the depression had abated, the strain placed upon our economy by subsequent world-wide hostilities [49] caused section 75 to be continued and extended as emergency legislation until 1949.[50]

Therefore, in placing the enactment and amendment of section 75 in historical context, the reader must bear in mind that (a) the difficulties of farmers in the midst of the Depression were extraordinarily severe, (b) the Populist sentiment was "anti-big business," (c) lenders were viewed with suspicion,[51] and (d) the worldwide problems of war caused the statute to remain in force until after World War II.

C. Supreme Court Cases

The farm relief provided by Congress, especially under the Frazier-Lemke Act, created some of the most significant decisions regarding the authority of Congress under the bankruptcy power of the Constitution to impinge upon the rights of secured creditors. The history surrounding the invalidation of the initial Frazier-Lemke Act in 1935, and its subsequent reenactment and validation, can be traced through a trilogy [52] of significant and unprecedented Supreme Court decisions, beginning with *Louisville Joint Stock Land Bank v. Radford.*[53]

In Radford, the debtor (Mr. Radford) filed for relief under section 75 in 1933 after defaulting on his loans to the Louisville Joint Stock Land Bank. Under the original foreclosure by the bank preceding the bankruptcy filing, a receiver had taken control of the mortgaged property. The debtor's petition was approved and a meeting of creditors was held, but the debtor failed to obtain the acceptance of the requisite majority in number and amount to the proposed composition. The bank offered to accept the deed of the mortgaged property in satisfaction of its debt and to assume the unpaid taxes, but the debtor refused to execute the deed.

Meanwhile, section 75 was amended by the Frazier-Lemke Act, and Mr. Radford filed amended petitions for relief under the new Act. This relief was attacked by the bank but was upheld by both the United States District Court for the Western District of Kentucky [54] and the Court of Appeals for the Sixth Circuit.[55] Finally, the United States Supreme Court invalidated the amendment to section 75 known as the Frazier-Lemke Act and the relief that it made available to farmers.[56]

In essence, in the Radford case the bank refused the composition and extension proposal offered by the debtor, and after the debtor elected under the Frazier-Lemke Act to be adjudged a bankrupt, the bank declined to consent to the proposed sale to the debtor at the appraised value under option one of the Act (which provided deferred payments over six years). The debtor was thereby relegated to option two, which provided for an appraisal of property, a five-year moratorium, and the right of debtor to buy the property at the appraised (or reappraised) value during the five-year period.

In striking down section 75, the Supreme Court noted seven critical points.

First, the debtor was allowed to redeem the property during the five-year moratorium for an amount less than the full mortgage debt. This was contrary to the general rule that a debtor could redeem his property free and clear of a mortgage debt only by paying the entire mortgage debt.[57]

Second, the sale to the debtor during the five-year period did not provide for or allow the mortgagee to bid his claim in against the property. Therefore, the act effected an exclusive sale to the farmer free of liens when the amount of the encumbrance exceeded the property. This ran contrary to the normal bankruptcy rule that a court should not authorize a sale at a price less than that which the lien creditor offered to pay for the property.[58]

Third, the Frazier-Lemke Act effected a fundamental change in the scope of the normal bankruptcy powers and impinged directly on the rights of secured creditors. In fact, the Supreme Court stated that the Act was the first step in a congressional attempt through the bankruptcy powers to abridge the substantive rights of a mortgagee in property held as collateral solely for the benefit of a mortgagor.[59]

Fourth, the Court held that the bankruptcy powers granted to Congress in the Constitution were subject to the prohibitions of the fifth amendment, forbidding the taking

of property without due process of law;[60] noting that the powers to regulate war, taxes, commerce, and aliens were also subject to the fifth amendment, the Supreme Court reasoned that secured creditors were given too little protection for their property rights under the Frazier-Lemke Act."[61]

Fifth, the Court determined that the Frazier-Lemke Act had the express and avowed purpose to take from the mortgagee various rights in specific property and that the cumulative effect of the Frazier-Lemke Act was the abridgement of sufficient rights to constitute a taking of property in violation of the fifth amendment.[62] The Court found that, under Kentucky law, the following property rights were taken from the bank.

1. The right to retain the lien until the indebtedness thereby secured is paid.

2. The right to realize upon the security by a judicial public sale.

3. The right to determine when such sale shall be held, subject only to the discretion of the court.

4. The right to protect its interest in the property by bidding at such sale whenever held, and thus to assure having the mortgaged property devoted primarily to the satisfaction of the debt, either through receipt of the proceeds of a fair competitive sale or by taking the property itself.

5. The right to control meanwhile the property during the period of default, subject only to the discretion of the court, and to have the rents and profits collected by a receiver for the satisfaction of the debt.[63]

The court found that the "taking" of these rights under the Frazier-Lemke Act contravened the fifth amendment.[64]

Sixth, the Court noted that the only apparent right under the mortgage left to the bank was to retain its lien until sometime within the five-year period the mortgagor chose to release the lien by payment of the appraised value of the property.[65] Rejecting the argument that the dispossession of property during the five-year period was not injurious to the bank and that there was protection for the rights of the lender, the Court stated that there were fundamental differences in the delays and procedures under the Frazier-Lemke Act and the delays and procedures under prior bankruptcy legislation.[66]

Finally, the court declined to determine whether the substantial changes created by the Frazier-Lemke Act were arbitrary or unreasonable as being part of permissible public policy, reasoning that the central issue was whether the Act, as applied, took from the bank without just compensation (and gave to Radford) rights in specific property that were of substantial value.[67]

Based upon all of the above, the Court held that the Frazier-Lemke Act was unconstitutional. Significantly, the Radford case did not hold that the deprivation of a mortgagee by bankruptcy provisions of any one of the five property rights enumerated in that case would necessarily render the legislation unconstitutional.[68] Also, the entirety of section 75 was not nullified but only the provisions added by the Frazier-Lemke Act that were subsections.[69]

Thus, promptly after the Supreme Court's decision in Radford, Congress passed the second Frazier-Lemke Act in 1935 to correct the faults in the first Act.[70] Remington briefly summarizes the changes effected in the second Frazier-Lemke Act as follows:

"The Second Frazier-Lemke Act gives bankruptcy courts the power after the adjudication of the farmer to grant possession of all property and a three-year stay on payment of rental to be fixed by the court plus payments on principal if within the farmer's ability with the privilege of redeeming the property at the end of the three years or prior thereto at appraised or reappraised value. Secured creditors subject to the farmer's right of redemption were given the right to a sale at public auction. If the farmer defaulted during the stay or failed to redeem at the end thereof the court was authorized to appoint a trustee and proceed in ordinary bankruptcy".[71]

The new legislation prompted a new round of Supreme Court cases concerning challenges to the constitutionality of the new Frazier-Lemke Act. In *Wright* v. *Vinton Branch of the Mountain Trust Bank*[72] (Wright I) and *Wright* v. *Union Central Life Insurance Co.*[73] (Wright II), the Supreme Court upheld the new amendments.

Both Wright I and Wright II involved the same farmer-debtor and the same 200 acre tract of land located in Virginia. These cases reflect the changing attitude of the Supreme Court regarding the policies underlying the legislation (and especially the seriousness of the farmer's plight), the statutory relief necessary to rehabilitate farmers, and the breadth of the constitutional powers granted to Congress under the bankruptcy clause to provide the needed relief.

In Wright I, the Virginia farmer had given a deed of trust (i.e., a mortgage) to secure a debt held by the Vinton Branch of the Mountain Trust Bank. The debt secured by the deed of trust was in default and the property had been advertised for sale pursuant to the deed of trust and the provisions of Virginia law. To prevent the pending foreclosure of the farm land, Mr. Wright filed a petition under section 75 of the Bankruptcy Act. The foreclosure was stayed, and the debtor made a proposal for a composition that was unacceptable to the bank. Subsequently, Mr. Wright filed an amended petition under the new Frazier-Lemke Act and asked that he be adjudicated a bankrupt and receive the benefits of the recently amended Act. Thereafter, on appeal the district court held the new Act to be unconstitutional. This ruling was affirmed by the court of appeals, but the Supreme Court reversed.

The tenor of the Supreme Court's rationale in Wright I was strikingly different from that in Radford. It is submitted that the opinion rendered in Wright I reflected a clear shift in the Supreme Court's view of public policy, indicating a more liberal balancing of the need for farmer relief against the need for protection of the rights of secured creditors, with the balance clearly turned in favor of farmer relief. The Court began its decision with the proposition that Radford did not question the power of Congress to offer aid to distressed farmers by the means of a rehabilitation under the Bankruptcy Act; rather, the Court reasoned that the first Frazier-Lemke Act was declared unconstitutional "solely on the ground that the bankruptcy power of Congress, like its other great powers, is subject to the fifth amendment; and that, as applied to mortgages given before its enactment, the statute violated that Amendment, since it effected a substantial impairment of the mortgagee's security."[74] Thus, the decision centered more on the degree to which Congress exercised its power under the initial Act, rather than on its authority to exercise this power vel non.

The Court went on to state that its prior decision in Radford did not hold that the deprivation of any one of the enumerated (five) important substantive property rights would render the bankruptcy provisions invalid; rather, the effect of the prior statute was to deprive the mortgagor of the entirety of the five rights enumerated in the decision. The decision then discussed the changes that Congress had made in the Frazier-Lemke Act to preserve the mortgagee's rights.

First, there was congressional movement to leave the lien wholly unimpaired.[75] Creditors were allowed to retain their lien up to the actual value of the property, as fixed by appraisals, and the new statute provided for a public sale in the discretion of the Court upon request of the secured creditor under appropriate circumstances.[76]

Second, the legislative intent was clear that the mortgagee was allowed the right to protect its interest in the property by bidding its lien claim at such sale, if held.[77]

Third, the Court rejected the proposition that the mortgagee should have the absolute right to determine what a sale should be made within the new three-year moratorium.[78] The Court reasoned that the three-year period of rehabilitation provided under the statute was not unreasonable, nor absolute, since a court might terminate the stay and order a sale at an earlier date. Further, the debtor's right to retain the property was conditioned upon his compliance with the orders of the court, which would include the right of the court to require reasonable rental payments from the debtor semiannually and to apply the payments to claims held by secured or unsecured creditors. Also, the possession of the debtor, rather than the mortgagee, was conditioned upon the existence of an emergency in each locality within which the Act would be implemented, and upon the cessation of any emergency, the court could shorten the stay proceedings provided and immediately proceed to liquidate the estate.[79]

Fourth, the right of the mortgagee to control the property during default and have the rents and profits collected by a receiver for the satisfaction of its debt was rejected.[80] The Court reasoned that possession by the debtor, rather than a receiver, was reasonable and that the provision for the payment of rental by the debtor were also reasonable.

Fifth, and finally, the Court rejected the contention that the delay in enforcement of the mortgage for an approximate three-year period was unreasonable, and the Court held that the other modifications of creditors' rights were reasonable.[81] Essentially, the court held that the new Act did not modify secured creditors' rights, whether remedial or substantive, to such a degree as to deny the due process of law guaranteed by the fifth amendment. Hence, it held the new Act to be valid and constitutional.[82]

Approximately three years later, Mr. Wright again appeared before the Supreme Court in the Wright II decision.[83] In the second case Mr. Wright had experienced problems in gaining the relief necessary for his rehabilitation. Apparently, Mr. Wright had been granted the three-year moratorium under the second Frazier-Lemke Act, which embodied the rights to have his property appraised and to redeem it from the Court during the three-year moratorium. However, the facts of the decision indicate that shortly after being adjudged a bankrupt and being given the three-year period of redemption, a creditor, Union Central Life Insurance Co., had challenged the right of redemption by filing a petition praying that the proceeding be dismissed or, alterna-

tively, that an immediate public sale be held. The debtor opposed the petition and filed a cross petition in which he sought to have the land appraised, to be allowed to redeem it at the appraised value, and to be discharged of any liability created through a deficiency in the sales price.

The narrow issue presented to the Supreme Court was whether Mr. Wright should be accorded the exclusive opportunity, on his request, to redeem the property at either a reappraised value or value fixed by the Court prior to the lower court's ordering a public sale at which creditors and third parties could bid for the debtor's farm. The lower courts had denied him this right, holding that Mr. Wright had no hope of rehabilitation, had disobeyed orders of the court, and was not entitled to a reappraisal and redemption of the property.

The argument focused upon whether the debtor should have the right (to be exercised solely by him) to redeem the property at the value fixed by the court under the first proviso of section 75(s)(3), before denying him this exclusive right and offering the property via public sale to any other party under the second proviso of section 75(s)(3). In other words, if the court had granted the debtor's cross-petition, he would have been entitled to the sole right to have a reasonable time, fixed by the court, within which to redeem the property at its value and have it turned over to him free and clear of encumbrances, with his discharge being granted as part of the rehabilitation program. Only in the event the debtor failed to redeem within the fixed period of time (or disobeyed court orders) would the court authorize the public auction at which the secured creditor could bid its claim in as part of the auction price.[84]

The Court rejected the argument that there was a conflict between the provisions, holding that the Act must be liberally construed to give full relief to farmer-debtors. Thus, the rights of the debtor under the first proviso were held to override the rights of the creditor under the second proviso.[85]

The Court rejected the argument that giving the debtor the exclusive right to purchase the property at the appraised value, rather than allowing the mortgage holder to bid his mortgage claim at a public auction and purchase the property at the full value of the secured claim, was unconstitutional. The only constitutional right given to the mortgagee, the Court held, was to realize the full amount of the fair market value of his collateral and that he had no constitutional right to bid on his collateral or receive more than its appraised value.[86]

Moreover, the Court reasoned that Congress had not empowered it to deprive the farmer-debtor of his express and fundamental statutory right to redeem his property at the reappraised value, and if a court held otherwise, this "would be to imply a power of forfeiture wholly incompatible with the broad design of the Act to aid and protect farmer-debtors who were victims of the general economic depression." [87] Therefore, the Court ultimately reasoned that Congress had the right, under the bankruptcy power, to take away certain property interests of creditors within constitutional limits in order to provide a comprehensive rehabilitation program for farmers during widespread conditions of economic depression. Such remedial and rehabilitative rights were held to be proper and not to be denied due to suggestion of a contrary legislative intent.

The majority opinion clearly stated that there was no impropriety in denying the creditor the right to utilize all of his indebtedness in bidding for its collateral at a public sale, while granting the debtor the prior exclusive right to redeem the property from the Court at only its appraised value, which could be significantly less than the debtors owed to the objecting mortgage holder.[88]

D. Analysis and Conclusions for Section 75

It is submitted that there are several propositions that might be extracted from this trilogy of decisions. First, and most obviously, the bankruptcy powers of Congress were apparently held by the Supreme Court to be limited by the prohibitions of the fifth amendment; any legislation completely and retrocatively abrogating the fundamental rights of secured creditors might pass the bounds of constitutionality.[89]

Secondly, and within these initial broad generalizations, it is equally clear that Congress has been given the constitutional power to enact comprehensive legislation, if it so desires, expressly designed to (a) enable the farmer to keep his farm land and (b) allow him to rehabilitate himself through his labor and efforts in the face of depressed economic conditions. Specifically, the ultimate thrust of the second Frazier-Lemke Act was to permit financially distressed farmers to retain their land over a minimum of three years, to be granted a moratorium in paying creditors, to be required to pay only a reasonable rental set by the court, to be allowed to work their land in an attempt to gain refinancing or other financial help, and to be required to pay only the appraised value of their property redeem it, rather than the full amount of any burdensome mortgage debt. This last factor is especially important, since the Depression appeared to create a deflation in the fair market value of farm land. The deflation in farm values, when coupled with the overburdening farm debt existing prior to and during the Depression, put the farmer in a straitjacket: he was simply not able to produce enough from the sale or refinancing of his farm, especially in a forced liquidation, to pay off the entire mortgage indebtedness, including accrued interest. Since farmers are experiencing the same economic and financial crisis today, this same basic farmer relief is probably necessary in order for farmers in today's economy to rehabilitate fully their finances. Thus, the concepts underlying section 75 are persuasive guides to the legislative proposals presently pending before Congress.

E. Farmer Debtor Relief Available After Expiration of Section 75

Section 75 of the Old Bankruptcy Act, as has been noted, was not made a permanent portion of the Act, and it expired on its own terms after 1949.[90] By 1950 and thereafter, the emergency situation created by the Depression and World War II had ended. Thus, the rehabilitation of individual farmers and farms owned by partnerships was provided under Chapter XII of the old Act,[91] and individual farmers and corporate farmers might find some rehabilitative relief under Chapter XI under the old Act.[92] However, since secured debts could not be altered under a Chapter XI arrangement plan,[93] the obvious vehicle for restructuring the farmer's finances was Chapter XII of the Act, which allowed an arrangement plan to alter both secured and unsecured debts.[94].

Fortunately, since World War II, America's economy has substantially prospered, and there were very few petitions filed by farmers or any other debtors under Chapter XII of the old Act, until the real estate recession of 1974–1975.[95] Thus, Chapter XII was seldom used as a vehicle for rehabilitation by any entities until 1974. However, during the early 1970's there was a "boom" in real estate and its financing; and overbuilding, inflation, and spiralling interest rates caused a severe recession in the years of 1974–1975, which precipated an unprecedented increase in filings of real property arrangements.[96]

The increase in filings of real property arrangements during 1975–1978 was caused more by the building boom in apartment projects, hotels, and similar real estate projects, than by economic problems peculiar to the farming industry. After the 1974–1975 recession, however, there was a short upswing in the nation's economy and then a downturn, beginning at the end of 1978. Our nation has since been faced with a severe recession that has lasted several years and that has resulted in depressing segments of the economy and experiencing unprecedented financial difficulties for reasons stated previously.

The relief that was available to farmers prior to the enactment of the new Bankruptcy Code in 1978 can be appreciated by comparing the relief available under section 75 in "emergency" conditions (created by the Depression and World War II) existing between 1933–1949 to the relief available under Chapter XII in "non-emergency" situations existing between 1950–1979.

A recapitulation of the relief available under section 75 is as follows:

(1) The farmer-debtor could petition for relief, propose a composition or extension, and attempt to gain acceptance and approval of it by his creditors and confirmation by the court.

(2) If the creditors refused the composition or extension offered, the farmer-debtor could be adjudged a bankrupt and have one of two options to repurchase his farm. Under either option, the farmer-debtor would have his property appraised and his exemptions set aside to him.

(4) Under the first option, the farmer-debtor would be required to pay interestate of one per cent of the appraised value of the property that he desired to retain during the first year; he would then have a graduated repayment schedule by which he could purchase the property that he retained at the full appraised value, but with little interest, over a total period of six years. This option required the consent of those holding liens on the property retained by the farmer.

(5) If the lienholders failed to consent to the first option, or if the farmer desired the second option, he was allowed a second option, consisting of a three-year moratorium, during which time he would retain possession of his property, farm his land, pay a reasonable value to be set by the court (the rental would be allocated in payment among his creditors), and have the exclusive right to buy his property from the court at its appraised value, so long as he complied with the orders of the court. The appraised value was the amount fixed by the court upon adjudication, unless there was a subsequent reappraisal at or before the redemption of the property.[97]

(6) Under section 75, as amended by the Frazier-Lemke Act, there was an express grant to the farmer-debtor of the exclusive right to buy his property (presumably comprising principally his farm land) at a price equalling only its appraised value and with-

out regard to the total encumbrances on the property. This grant had the ultimate net effect of "scaling down" the amount to which the secured creditors were entitled to realize from the farm, and to reduce the "scaled down" liens to an in rem status.[98]

In contrast with the above, Chapter XII of the Bankruptcy Act afforded a multiplicity of solutions for restructuring debts secured by real estate to allow its retention by the debtor.[99] Obviously, by restructuring the obligations secured by a debtor's real estate, the debtor gained more "breathing room" within which these obligations might be satisfied. Under Chapter XII certain principles emerged regarding the permissible metes and bounds within which the debts encumbering real estate projects might be restructured and reorganized.

(1) The terms of the mortgage debt could be extended.[100]

(2) The interest rate of a mortgage debt could be adjusted to current market rates.[101]

(3) Payments required for the mortgaged debt of either principal or interest could be deferred and postponed.[102]

(4) Deferred or reduced payment of principal or interest could be added to the mortgage balance.[103]

(5) However, if there was equity in the property above the mortgage debt, there could be no reduction in the principal of the mortgage.[104]

(6) Also, the secured creditor was entitled to adequate protection of his collateral but only to the extent and value of (or equity in) his collateral.[105]

(7) Also, if a creditor was partially (inadequately) secured, he was entitled only to protection for the value of (or equity in) his security and could have the deficiency in his secured claim satisfied in a manner similar to that provided for unsecured creditors.[106]

(8) Further, if a creditor was inadequately secured, the deficiency of his claim, as against his collateral, could be extinguished under the plan.[107]

(9) More importantly, if there was no value (or equity) in the real estate securing the claim of a mortgage holder, his claim could be relegated to the status of an unsecured claim, dealt with as such, and erased as an inscription in the mortgage records.[108]

(10) Unsecured creditors in Chapter XII proceedings were only entitled to receive what would be available in the event of a bankruptcy liquidation and to receive adequate protection for this liquidation value.[109]

(11) In regard to disposition of assets in the Chapter XII proceeding, a purchaser or the debtor was required only to pay the appraised value of the assets to those holding mortgages on it, in the event the asset was sold or retained by the debtor.[110]

(12) Further, if an item of collateral was abandoned, the debt that it secured was imputed to the appraised value of the abandoned collateral and thereby satisfied in an amount equal to the value of the abandoned collateral.[111]

As explained above, in Chapter XII proceedings restructurings of mortgaged debts aided in the rehabilitation of debtors and their real estate projects, so that they could realize the greatest possible value from their assets, and especially their real property. The means for achieving this benefit, in addition to the restructuring of the debts secured by real estate, were usually derived from, or enhanced by, a number of financial decisions or transactions concerning the retention or disposition of the property, including:

(1) The debtor could sell his assets as a "going concern" or in an "orderly liquidation" so as to achieve the greatest price.[112]

(2) The debtor might be able to "syndicate" his assets, which envisioned the procuring of funds and capital from a syndicate of investors who might receive economic or tax benefits from the assets that were the subject of the "syndication."[113]

(3) The debtor could merge his assets or business with more successful related entities to enhance the resuscitation of his finances.[114]

(4) The debtor could choose to retain his assets and use the assets to produce future earnings. Through the Chapter XII plan, he could then attempt to achieve either a settlement of his debts in an amount less than their face value (commonly known as a "composition"), extend the period of time for the repayment of his debts from future earnings (commonly known as an "extension"), or request both a composition of his debts and an extention of the time within which to repay them from future earnings.[115]

(5) The debtor could propose that his creditors exchange their claims for stock, property, or partnership interests in his assets in satisfaction of the claims against the assets. Court approval had the result of allowing the creditors to exchange their debt position for an equity, investment, or partnership position.[116]

(6) In addition, the debtor could choose to abandon unprofitable or unproductive assets, thereby extinguishing that portion of liabilities secured by any encumbrances on the abandoned assets, and the debtor could retain his more productive and profitable assets so as to produce future earnings to pay creditors and reform his finances.[117]

F. Cases Under Chapter XII

The only significant farmer case which this writer could find reported under the old Bankruptcy Act, after the expiration of section 75, was In re Benson.[118] In Benson, the debtor owned a farm which was valued in excess of the one mortgage debt against it, owed to a bank, in the amount of $179,093.28. The debtor owed $529,299.39 in debts secured by other (personal) property and $168,047.05 in unsecured debts. In addition to farming, the debtor also operated a retail store. The debtor's plan was not clear as to its treatment of chattel mortgage holders and unsecured creditors, but since the opinion stated that these classes of creditors accepted the plan, the treatment of these claims is not important for purpose of this analysis. What is important was the restructuring of the claim owed to a sole creditor secured by the debtor's farm.

At filing, the mortgage loan was fully due and payable in its entire amount. The debtor's plan provided that this creditor's claim, to the extent fixed and allowed, would be paid in full over 20 years, with interest thereon at an adjusted rate. An initial installment would be paid one year after confirmation of the plan, and the balance due on the claim would be deferred and paid in 19 consecutive equal annual installments. The plan would be funded by income from both the debtor's retail store and farm operations.

The secured creditor strenuously objected to the restructuring of its mortgage debt, arguing that it did not make long-term real estate mortgage loans and that, if it were to make such a loan, it would charge a higher interest rate (i.e., 15%) than the interest rate to be provided under the amended plan (i.e., 11%). However, the court rejected these arguments and exercised its "cram down" power because it determined that the creditor, although not consenting to the plan, was (1) receiving adequate protection for the realization of the value of its debt as called for under section 461(11) of Chapter XII,[119] (2) receiving completely (although not immediately) compensatory treatment as envisioned by In re Murel Holding Corp.,[120] and (3) receiving "fair and equitable" treatment of its claim under generally accepted principles of reorganization law. The court rejected the secured creditor's argument that adequate protection, a cram down requirement under Chapter XII of the old Act,[121] was not being provided under the plan. The court required that, for confirmation, the plan be amended to adjust the prefiling interest rate (9%) to the bank's cost of money (assumed by the court to be 11%), but otherwise found that the bank was adequately secured and properly dealt with (i.e., repaid and protected during the repayment period) under the plan.

The Benson case is clear authority for the proposition that, under Chapter XII, farmers could file plans embodying extensions of time for the repayment of their farm debt, using reamortizations or deferments of debt as their primary mode of financial restructuring, and have such plans confirmed. In fact, numerous cases were confirmed under Chapter XII whereby secured debt was reamortized and extended in payment; and the primary issues for such plans were whether the restructuring was "fair and equitable," that is, whether the deferred payments adequately protected the secured creditor by giving completely compensatory treatment for the value of the underlying security to the claimant, and whether such plans of extension were feasible so that creditors would receive the treatment promised under the plan.[122]

Further, it is clear that mortgage debts could be scaled down to the value of the underlying collateral and that this "scaled down" mortgage debt could be repaid over an extended period of time. Even though there were no Chapter XII farmer cases achieving this result, such a restructuring was approved in In re KRO Assocs.[123] In the KRO case, the court held that a first mortgage debt secured by real property could be reduced to the value of the realty and that the debtor could pay this reduced debt over a reasonable number of years, if the plan provided a reasonable interest rate for the deferred payments, and if the debtor provided evidence of (or guaranteed providing) the willingness to fulfill the repayment schedule proposed under the plan.[124] Various decisions held that mortgage debts could be reduced to the value of the underlying collateral and repaid as restructured by the Chapter XII plan.[125]

Chapter XII, under the evolving trend of cases, could have provided farmers with substantial relief from their problems, since it did allow a "scale down" of mortgage debts and an extended time over which to repay the reduced debts (assuming the feasibility of a plan could be demonstrated). In fact, under the evolving jurisprudence, as illustrated by the Benson and KRO decisions, farmers may have received as much, or more, relief under Chapter XII than under section 75. However, the enactment of the new Bankruptcy Code (and corresponding repeal of Chapter XII) substantially precluded any real relief to farmers via reorganizations. Under the new reorganization concepts of the Bankruptcy Code, this writer has found it very difficult to obtain

confirmation of a plan of reorganization for farmers providing any meaningful relief from the top-heavy debt which many farmers face today. Legislation enacted in recent years has liberalized the farmer's ability to borrow under government programs and thereby encouraged the farmer to become over-leveraged. These policies now clash with the provisions of the Bankruptcy Code inhibiting a "scale down" of mortgage debts and a discharge of excessive unsecured liabilities.

G. Farmer/Debtor Relief Available Under The New Bankruptcy Code

The means for achieving rehabilitation under Chapter XII was both the ability to restructure mortgage encumbering a debtor's assets and the subsequent leeway to make appropriate decisions concerning their retention of disposition. These dual decisions were the principal modus operandi for achieving rehabilitation. These vehicles have been substantially carried forward and reenacted in the new Bankruptcy Code. The new Code has consolidated the provisions for reorganization formerly contained in Chapters X, XI, and XII of the old Act into one new chapter, which is Chapter 11 of the new Code.[126] The substantive law of these chapters under the old Act has been, to a large extent, integrated into Chapter 11 of the new Code.[127] It is submitted that the principal limitations in the rehabilitation, reorganization, restructuring, and "cram down" process for farmers under the new Code, as compared to Chapter XII and section 75 of the old Act, are as follows:

(1) A secured creditor may elect under section 1111(b)[128] of the new Code to have his claim allowed at its face amount and not scaled down (reduced) to the value of the security with a deficiency claim treated as an unsecured debt.[129]

(2) Similarly, under section 1111(b) of the new Code, a secured creditor cannot be forced against his will to receive shortly after confirmation only the value of his collateral; rather, he may elect to have his claim treated as though he had recourse against the debtor for the entirety of his claim (and thereby not be relegated entirely to his collateral and the value thereof).[130]

(3) Likewise, under section 1111(b) of the new Code, a secured creditor may elect to retain his lien against the collateral for the face amount of his debt and not have his lien fully or partially eradicated, even if there is marginal equity in his collateral.[131]

(4) But even if the secured creditor elects under section 1111(b) to retain his full lien, the debtor is required only to make future payments equal to the value of the collateral, rather than the face amount of the mortgage debt.[132] It is submitted that section 1111(b) primarily inhibits farmer relief where the farmer-debtor desires to sell or refinance his mortgaged farm land shortly after confirmation, since the election under section 1111(b) primarily precludes the secured creditor's having his lien "scaled down" to the appraised value of his collateral at confirmation and then being "cashed out" shortly thereafter through a sale or refinancing by the debtor.[133] Conversely, if the farmer desires to keep his land, not refinance it, pay the lienor(s) from an income stream provided by future earnings, and have the payments geared to the appraised value of the farm (rather than the mortgage debts encumbering it), this writer suggests that this result is expressly permitted under section 1129(b)(2)(A) of the Code. Thus, the new Code has the practical result, if not the intent, of "scaling down" secured claims (but not the liens securing them) because the income stream needed to satisfy the secured debt(s) need have only a "current value equal to the value of the collateral" [134] and not the amount or value of the debt(s).

(5) The new Bankruptcy Code precludes a debtor from obtaining a discharge of excessive liabilities without the creditors consent, because the "cram down" standards in Chapter 11 reorganizations incorporate the rule of absolute priority.[135] Therefore, any dissenting impaired class of creditors is entitled to full compensation before any junior ownership interests may retain anything of value (e.g., continued ownership of stock or property of the debtor),[136] unless the holders of the valueless ownership interests contribute new capital necessary for ongoing business operations or funding of the plan (in which case the holders of ownership interests may be allowed to retain their financial stake in the reorganized business entity).[137]

This rule (of absolute priority) causes substantial difficulties for overleveraged farmers to gain rehabilitation under Chapter 11 of the Code, since it is very difficult to negotiate and confirm plans of reorganization requesting or requiring creditors to take less than full payment. Assuming the debtor can confirm a plan over the dissent of an impaired class of creditors in order to keep his farm, he must still, in cramming down on this class, pay it in full. This creates many situations where farmers come out of reorganization highly leveraged (after going into the reorganization case with too much debt), causing them to fail to consummate and fully complete their plans, because they cannot force a composition (and corresponding discharge of excess debts) on creditors via a cram down under Chapter 11 of the Code. Therefore, the rule of absolute priority, applied in farmer reorganization cases under Chapter 11, often perpetuates the initial problem, that is, heavy indebtedness that cannot be repaid because of the diminished sales prices for crops created by overproduction. Further, farmer plans which are required by the rule of absolute priority to repay substantial debts under any fixed repayment schedule will always be subject to the issue of whether they are feasible, that is, whether the debtor will be able to meet these fixed repayment schedules in the future, especially in the face of the fluctuations in the farm economy and the possibility of crop loss due to natural forces beyond the debtor's control (e.g., inclement weather, insect infestation, etc.).[138]

Therefore, the present provisions of Chapter 11 are inadequate for the rehabilitation of financially distressed farmers who have excessive liabilities, since it is virtually impossible to confirm a plan of discharging the excess debts (which is the primary relief needed by such farmers) unless all impaired classes of creditors consent to the composition offered (which is an improbable result in most cases).

In conclusion, and in contrast to section 75 and Chapter XII of the old Act, the new Code precludes (a) the "scaling down" of the face amount of mortgage debts to the value of the underlying collateral, (b) the "cashing out" of the "scaled down" debt by the debtor shortly after confirmation, if the creditor opts for special treatment, and (c) the ability of the debtor to keep ownership of his property unless all creditors are paid in full (including interest).[139] Under section 75 the express purposes of the statute were to "scale down" the mortgaged debt(s) on farms to the fair market value of the farm, as fixed by appraisal, and to allow the farmer to have a three-year period of time within which to redeem his property from the bankruptcy court and "cash out" his mortgage creditors for the appraised value.[140] This right of redemption for less than the amount of the mortgaged debt was (and still is) an important right where the value of farm land is decreasing due to economic forces beyond the farmer's control; but the new Code appears to permit this result only by allowing the debtor's future payments to be made over an extended period and to be geared to the value of the farm and only if all creditors are fully paid (or vote by appropriate majorities to accept less than payment in full of their claims).

Similarly, under Chapter XII of the old Act, it seems clear that the debtor had the right to retain and buy back his property from the court and crditors for its appraised value, with the unsecured (undersecured) portion of the debt treated as unsecured debt or extinguished (in the event the obligation was in rem to the property).[141] Therefore, the farmer-debtor had the clear right to relieve himself of oppressive and cumbersome mortgage debts under the format of redeeming his property at its fair market value. Further, it was equally clear that under Chapter XII the farmer-debtor could restructure immediate pressing obligations over a twenty-year period, thereby gaining a significant extension of time within which to pay the debts against his farm.[142] Under the old Act bankruptcy courts had the authority to require mortgage holders to accept the payment of this reduced debt from the farmer over a reasonable period of time.[143] Under section 75 the farmer was given three years within which to redeem his property, and although there are few specific cases so holding, it is submitted that under the "cram-down" powers of Chapter XII, a bankruptcy court could have required an even longer period of time for the debtor to redeem his farm at the reduced appraised amount under appropriate factual circumstances.[144] Because of (a) the limitations created under section 1111(b) inhibiting the right of the debtor to "scale down" and reduce mortgage debts, and (b) the rule of absolute priority (requiring dissenting impaired classes of claims to be fully paid under any "cram down" allowing the farmer to retain his farm), a farmer is accorded limited flexibility to restructure his mortgage debts under Chapter 11 of the new Bankruptcy Code and thereby retain his farm land and pay his creditors from the future earnings derived from the crop reduction of his farm.

H. Cases Under the New Bankruptcy Code

Extensions and Moratoria. Some principles for rehabilitation existing under Chapter XII of the old Act were carried over and reenacted in Chapter 11 of the new Code. One of the most significant principles carried forward is derived from the farmer rehabilitation case under the old Act, In re Benson,[145] discussed earlier,[145a] and it is still good precedent for farmer reorganization cases under the new Code. Benson held that a debtor's plan which provided that the primary secured creditor's claim would be paid in full over twenty years, with interest thereon at prevailing rates, could be confirmed.

This case established the proposition that a farmer should have the right to retain his land, restructure his mortgage debts over a reasonable time, and pay the mortgage

debts out of future earnings. This philosophy has been reenacted in section 1129(b)(2)(A) of the new Bankruptcy Code, which gives the court the power to confirm a plan of reorganization over an objecting secured creditor's dissent, where the objecting creditor will be paid in full, together with an appropriate interest rate, under the reorganization plan.[146] This proposition is expressly supported by the case of In re Hollanger,[147] where a bankruptcy court exercised its "cram down" powers under the new Bankruptcy Code to allow two farmer-debtors to restructure various mortgage debts secured by farm land over the dissents of various mortgage creditors.

In the Hollanger case, a farmer and his wholly-owned farming corporation, engaged in consolidated farm operations, filed for reorganizations. The court found that the value of the farms in question greatly exceeded the amount of the debts secured by the land. Further, the court found that the debtors' plan were feasible, since there was presented a seven-year analysis, including a budget and income projection, for the debtors' farming operations, all of which illustrated the debtors' ability to cultivate their farm land and satisfy their obligations. Therefore, the court confirmed the corresponding, compatible plans, both of which provided that the debtors would retain farm land and repay their debts from future earnings.

The most significant restructuring of the mortgage debt through the plans was to provide that all mortgage payments due and owing at both filing and confirmation would be deferred and extended for seven years, at which time they would "balloon" and become fully due and payable. Further, the plan provided that normal annual installments owed on mortgage debts secured by the farm, with the exception of arrearages, would be reduced by approximately 15%, with the new payments to be made in the mid-spring of each subsequent year. This allowed the long-term mortgage debts on the farm land to be paid at a slightly reduced amortization, except for arrearages. Since a plan was confirmed in the middle of a crop season, the debtors were allowed to continue to cultivate and harvest their crops in order to produce sufficient monies to meet their new installments. Thus, the debtors gained an eighteen-month moratorium after filing. In addition, the plans provided that any debts bearing installment repayment schedules of less than seven years would be restructured to be paid in equal annual installments over seven years. Therefore, the essence of the plans was (a) to allow the debtors a seven-year period of rehabilitation, (b) to relieve them from immediately pressing arrearages, and (c) to defer the due dates of various obligations which they owed as part of the rehabilitation program.

Following the logic of In re Benson,[148] the court held that the Hollanger plan provided creditors the indubitable equivalent of their claims within the meaning of In re Murel Holding Corporation.[149] Hence, the court found that the plans provided completely (yet not immediately) compensatory treatment for all creditors, coupled with adequate protection for their claims, which allowed the confirmation of the debtors' plans over the objections of various secured claimants.[150]

An unreported case furnished another illustration of the possible rehabilitation results under the new Bankruptcy Code. The case of In re Upshaw[151] held that, if a farmer is unable to retain his land and use the earnings derived from it to pay creditors in the future, the court can allow the debtor to restructure the obligations secured by the farm in the manner most likely to produce the greatest sale price. The debtor's plan in Upshaw provided a format similar to that in Hollanger. The major asset was a farm, embracing approximately 217 acres, valued at approximately $45,000, which secured a first mortgaged debt to a life insurance company in the approximate amount of $225,000 and a second mortgage debt in favor of the Farmer's Home Administration (FmHA) in the approximate of $155,000, which totalled approximately $338,000. The court found that the value of the farm exceeded the amount of these debts and furnished an "equity cushion" for the satisfaction of these claims. The plan provided that the present annual payments and arrearages on these two secured claims would be deferred and "balloon" approximately three years after confirmation. The deferring of arrearages was similar to the restructuring provided under the Hollanger case.[152] The plan was one of orderly liquidation and provided that the two secured claims would be reduced to in rem basis and the property would be sold subject to these two secured claims, as restructured.[153] Under this liquidation plan, a new purchaser could buy the property subject to the in rem indebtedness and have approximately one year berfore being required to make mortgage payments. Therefore, the restructuring of the debt would allow the purchaser to have some "breathing room" within which to make annual payments after purchase, and the purchaser would not have to assume and become personally liable for the underlying mortgage debts. These two favorable factors were found to enhance the debtor's ability to receive the highest possible price for his farm land thereby receiving the greatest possible recovery of equity in the land for himself and his creditors.

The unreported Upshaw case was followed in a reported case, *In re Iverson*,[154] which embodied some of the same restructuring concepts as were found in *Upshaw*. In Iverson, one of the restructurings provided under the plan was that the mortgage debts against the farms was reduced to an in rem status, arrearages were deferred five years, and the underlying principal owed on the farm debt was reamortized over twenty years, similar to the Benson plan. This restructuring format also enhanced the debtor's ability to retain or sell the farm.

The precept that farmers should be granted extensions and moratoria as a form of relief from debt has existed under the rehabilitative provisions of section 75, Chapter XII, and Chapter 11; and it should be continued under any new family farmer reorganization act.

Exchanges of Liens and Marshaling of Assets. Another unreported case furnishes an illustration of the restructuring on the farm land to enhance the farmer's ability to continue farming operations, refinance this land, or sell his farm. In the case of In re Adcock,[155] a father and two sons owned approximately 718 acres of farm land valued at approximately $1,250,000. The debtors had engaged in farming operations for several years. Because of continued losses and borrowings to meet working capital needs, the debtors had placed the following liens upon their property and farming equipment:

1. First Mortgage (insurance company)	$419,000
2. Second Mortgage (FmHA)	480,000
3. Third Mortgage (local bank)	140,000
4. Fourth Mortgage (FmHA)	280,000
Total	1,319,000

The total debt encumbering the land was approximately $1,319,000. The debts of the local bank and the FmHA were also secured in various banks and priorities against farm equipment. Finally, the bank held mortgages on personal collateral belonging to the debtors.

The farmer-debtors' particular problem in this case was that they had more than enough collateral to secure their creditors, but the collateral was intermingled and interwoven between junior and senior liens in favor of the bank and the FmHA to such a degree that it was difficult to determine what collateral position was enjoyed by each secured lender. The FmHA was reluctant to agree or consent to any restructuring of its obligations.

The plan of reorganization proposed a substitution and exchange of the collateral held by the FmHA secured by equipment (which lien was valued at approximately $50,000) for the collateral of the bank which was secured by its third lien position (and in front of the FmHA's fourth lien position) on the farm, which lien was valued at approximately $140,000. The debtor's plan essentially proposed to erase the FmHA's lien on its movable collateral and to erase the bank's lien on the farm land. Thus, the plan proposed to relegate the farm to the FmHA for satisfaction of its entire lien, since its enhanced collateral position of approximately $140,000 against the farm exceeded the collateral position of approximately $50,000 given up against the farm equipment. Conversely, the plan sought to move the lien of the bank from the farm so that it would be secured only by farm equipment and other personal property of the debtors. The bank finally consented to the plan, but the FmHA voiced objection.

The court confirmed the plan based on the following logic. First, sections 361 and 1129(b)(2)(A)[156] envision that a secured creditor should have its collateral position protected throughout the proceeding for the value of the collateral; so long as this protection was provided, together with completely compensatory satisfaction of the secured creditor's claim, the creditor was being statutorily protected. It had no constitutional right to more than it was receiving.[156a] Under the Adcock plan, the FmHA was beign adequately protected in the exchange of collateral position with the bank.

Second, the quality of the collateral given to the FmHA under the plan was superior to that which it was forced to release. Its lien position against the farm was increased by the deletion of the third mortgage in favor of the bank, which was superior to the FmHA's fourth mortgage position, and the FmHA was releasing its lien on equipment. The court found that the equipment was subject to deterioration and depreciation, whereas the farm would probably appreciate in value. Thus, both the quality of the new lien position on the farm given to the FmHA under the plan as well as the quantity (i.e., the value of collateral given up versus value of collateral received) were enhanced.

Third, the plan achieved a reasonable compromise which would prevent expensive and time-consuming litigation between the bank and the FmHA regarding their respective ranks and lien positions on the various

items of chattels. This compromise fostered confirmation of a plan providing rehabilitation for the debtor and more complete recovery for all creditors.

Fourth and finally, the compromise allowed the debtors to have certain collateral released to them to be liquidated. The proceeds from the liquidation furnished them with working capital needed for future farming operations.

The unreported Adcock case was followed by the reported Iverson case,[157] which embodied a similar exchange of liens and marshalling theory as Adcock. In Iverson, there was also an exchange of competing liens. On one farm, the Morehouse farm, an insurance company held a first mortgage, the FmHA held a second mortgage and a fourth mortgage, and a local bank held an intervening third mortgage. On a second farm, the Ouachita farm, an insurance company held a first mortgage, the local bank held the second mortgage, and the FmHA held the third mortgage. The plan provided that the local bank would cancel its third mortgage against the Morehouse farm and that the FmHA would cancel its third mortgage against the Ouachita farm. This had the effect of simplifying the debt structures on both farms and breaking any "cross-collateralization" problems with respect to each farm. Although both the local bank and the FmHA held multiple liens against various items of collateral, the liens were only securing one primary obligation to each creditor. Therefore, the erasure of competing liens did not really diminish the claim of either the bank or the FmHA, but rather relegated the bank to the Ouachita farm for its primary source of collateral and relegated the FmHA to the Morehouse farm as its primary source of collateral. By this process, the FmHA had a clear second mortgage on the Morehouse farm, and the local bank had a clear second mortgage on the Ouachita farm. The simplification of this debt structure enhanced the potential of the debtor to sell the property and clarified the competing mortgage positions among the secured claimants, thereby simplifying their recovery position without diminishing any real equity in their collateral for their recovery.

This form of restructure should be made available to farmers under the provisions of any family farmer reorganization act.

Transfers of Property to Satisfy Claims. One alternative which farmers have to satisfy creditors under a plan is the transfer of property in satisfaction of claims. For example, in the case of In re Weiberg,[158] the debtor's plan attempted to satisfy his major secured creditor by transferring three farms and $10,000.00 cash in satisfaction of a secured claim of $2,782,175.16. As a result of the transfers of land and property, the debtors would retain a 640 acre farm free and clear of the lien against it held by the major secured creditor. The debtor argued that the land and money had a value of $3,714,678.00, which was substantially in excess of the secured claim, but the creditor argued that the value of the property was $2,358,000.00, which was substantially less than the claim. The court found the value of all the property and money proposed to be transferred by the debtor to be $2,477,902.34, which was approximately $304,273.00 less than the value of the secured claim.

Therefore, the court found that the secured creditor was not receiving full value under the plan and that the undersecured (deficiency) claim which it would hold after receiving the property transfer would not be paid under the plan; and hence, the court concluded that the plan could not be confirmed because it unfairly discriminated against this creditor.[159] Since all other unsecured/undersecured creditors were being fully satisfied, the court deemed the failure to satisfy the entirety of the objecting creditor's claim constituted an improper form of discrimination, thereby forcing the court to deny confirmation of the plan.

If sufficient values had been found by the court, it appears that confirmation of the plan would have been clearly proper. The Court of Appeals for the Fifth Circuit has recently held that a plan providing (a) a transfer of property to an oversecured claimant (which property was a portion of the creditor's collateral package) in full satisfaction of his claim and (b) that the debtor could retain a portion (the excess part) of the collateral free and clear of the prefiling lien could be confirmed over the creditor's objection.[160] However, the property values in *Wieberg* were simply insufficient to satisfy the secured claim.

In conclusion, the transfer of property (i.e., by abandonment of collateral) to satisfy claims should be reenacted as part of the provisions of any family farmer reorganization act.

Scaling Down Secured Claims to the Value of the Collateral. The ability to reduce secured claims to the value of their collateral under a plan has been substantially eroded by the enactment of section 1111(b) as part of our new reorganization concepts in Chapter 11.[161] Most of the decisions reported under section 1111(b) seem to have involved farmers and have impaired their ability to gain financial rehabilitation. For example, in one case, *In re Griffiths*,[162] a bankruptcy court denied confirmation of a farmer's Chapter 11 plan proposing (a) a return of a portion of an undersecured bank creditor's collateral and (b) a payment to the bank of a lump sum equal to the value of the remaining collateral. The bank made an election under section 1111(b)(2), and the court held that the plan sought an improper "cash out" of a portion of the undersecured claim and that the election made by the bank prevented this result.

In essence, the plan provided that the debtors would return part of the bank's collateral and pay a "lump sum equal to the value of the remaining collateral in total satisfaction of [the bank's] . . . claim."[163] The thrust of section 1111(b) is to prevent a debtor from appraising a secured creditors collateral and "cashing out" the secured claim by the payment of cash after confirmation of a plan, and section 1111(b) gives the secured creditor the right to elect to maintain the full amount of its lien against the collateral after confirmation.[164] Therefore, applying these rules to the farmer's plan in *Griffiths*, the court felt compelled to deny confirmation, because part of the treatment of the bank's secured claim included a prohibited "cash out" of a portion of its collateral.

Similarly, in the case of *In re Hallum*,[165] a plan of reorganization was denied confirmation because of section 1111(b). In *Hallum*, the debtors were in the plant nursery business and owed the FmHA (Farmer's Home Administration) the sum of $3,000,000.00. The FmHA claim was secured by liens on most of the debtor's property. The plan provided that the FmHA would be paid the value of its collateral, which was the sum of $1,400,000.00. This would create and unsecured claim for the FmHA of $1,600,000.00. Since unsecured creditors would not receive full satisfaction, the FmHA made an election under section 1111(b) to maintain its entire lien against the collateral and have no unsecured claim. The plan is unclear as to whether the $1,400,000.00 would be paid in cash after confirmation or deferred payments in the future equal to $1,400,000.00. If the $1,400,000.00 was not one lump sum (i.e., a prohibited "cash out"), but rather a total of deferred payments made after confirmation, the plan could have been confirmed.[166] Since the decision does not discuss this issue, it is possible to determine whether it was correctly decided, but it is illustrative of the difficulty for a farmer to scale down secured debt to the value of collateral and pay the reduced debt under a plan in face of a section 1111(b) election.

It is arguable that, notwithstanding the problems illustrated in the *Griffiths* and *Hallum* cases to confirmation of plans by farmers, they properly interpreted the interplay between sections 506(a), 1111(b), and 1129(b). However, the subsequent decision of *In re Elijah*,[167] clearly misapplied section 1111(b). As in *Griffiths*, the debtor's plan provided for a return of certain collateral to several secured creditors, but importantly, the creditors in *Elijah* were oversecured. The court held that this surrender and transfer of property in kind could not be crammed down on the creditors over their objections.

Elijah failed to recognize that, under the cram down provisions of section 1129(b), "abandonment of the collateral to the creditor would clearly satisfy the indubitable equivalence" necessary to satisfy a dissenting secured class and thereby gain confirmation.[168] In *Elijah*, fully secured creditors were being given a portion of their collateral in full satisfaction of their claims, with the debtor retaining a part of the collateral. The transfer of property (collateral) to satisfy secured claims has recently been held to be a permissible means of satisfying oversecured creditors through a reorganization plan.[169] This rule should not prevent the abandonment or transfer of collateral to a creditor to satisfy his claim. In such situations, there is no prohibited "cash out." Moreover, where the creditor is oversecured, there is no need for the protection afforded by such under section 1111(b). Finally, in view of the legislative history quoted in the text above, section 1111(b) should not preclude abandonment or transfer of property or collateral to a secured creditor in lieu of the payment of cash as part of the consideration given to satisfy the creditor. However, in *Elijah*, the Court lost sight of these points.

Section 1111(b) has thus been misinterpreted, and in some cases misapplied, to inhibit rehabilitations of farmers. This concept should be deleted from any family farmer reorganization act.

I. Suggestions for Legislative Changes

There are several practical suggestions for legislative changes to aid in a farmer's rehabilitation based upon problems presently existing in the application of Chapter 11 reorganization provisions to farmer problems. First, the continued use of the proceeds from a farmer's crop may form the nucleus to finance future farming operations. Parenthetically, if farmers are going to plant and cultivate their crops in the spring and summer of a year, they will first obtain a loan from an agricultural lender secured by the crop to be grown and its proceeds. The proceeds of this loan (commonly known as a "crop loan") will provide the monies re-

quired for financing the planting, cultivation, and harvesting of a crop. After the harvesting, the crop loan may be repaid from the proceeds derived from its sale.

In many instances, a farmer will file for reorganization in the middle of a crop year (i.e., prior to the harvest and sale of crops). If this occurs, there may be no prospect for future financing of the planting, cultivation, and harvesting of crops due to the lack of a new crop loan or of continued funding under an existing crop loan. The reorganization will have a "chilling effect" on any lender's willingness to advance monies to produce crops. The only available "financing" for a crop loan may be for the farmer to retain the proceeds derived from his present or past crops after they are sold and to use these proceeds to finance future farming operations. The necessary result is to withhold payments of the proceeds to existing crop lenders. Thus, the crop lender will be forced to retain a "revolving" ("roll over") lien on any crops produced in future years until paid in full.

Adequate provision can be made to protect the crop lender by placing the proceeds derived from the crop in some form of supervised account and ensuring that the use of the proceeds from the account will be directly applied to the production of crops in future years. Therefore, the "adequate protection" mandated by section 361 for the existing crop lender will be the continued tracing of a crop lien to the proceeds, product, offspring, profits, etc., of the present collateral (crop).[170] The proceeds derived from the crop will be, in effect, old collateral in a new form. The plan can provide that the secured crop lender will be able to follow his collateral proceeds indefinitely from liquid funds, to a tangible crop, to the harvested crop, to the proceeds derived from the crop, and so on.[171]

One key to farmer rehabilitations may be to require a present crop lenders to allow the farmer to use proceeds of a crop sale to produce crops in future years and so long as the lender can trace the collateral through various forms of crops and proceeds until the creditor is fully paid. Additional or replacement security (other than the old or new crop) may also be required under section 361 to provide adequate protection.[172]

This issue has spurred substantial litigation under Chapter 11 of the new Code. For example in the case of *In re Nikolaisen*,[173] the debtors proposed to sell grain stored on their farm which was derived from their 1983 crops, to use the proceeds to fund the planning of the 1984 crops and to grant a first lien upon 1984 crops to the secured creditor which held a lien on the stored grain. Further, in the event of crop failure, the debtors would receive a guaranteed minimum payment under their federal crop insurance, and the secured creditor would receive an assignment of these federal crop insurance proceeds. Thus, the debtors would sell the 1983 crops, use the cash collateral, and convert it into new property in the form of 1984 crops. This would effect a "roll over" of the cash collateral (and lien thereon) to, in essence, a new crop loan with the secured creditor retaining a security interest therein. Rejecting the arguments that the secured creditor (the Commodity Credit Corporation, a governmental agency) was not in the lending business (and thus should not be forced to relend under this "roll over" format) and that the offer of protection was not adequate, the court found that the use of cash collateral was necessary to the farmers to continue their efforts in reorganizing their farm operation and that the debtors would be unable to obtain financing of their spring farming operations from any other source than the proposed cash collateral; thus, the court granted the debtor the "roll over" relief requested.[174]

In another case, *In re Sheehan*,[175] the debtors filed a motion for an expedited hearing (on 72 hours' notice) to use cash collateral comprised of the prior years' (1983) crop and its proceeds for their upcoming (1984) farming and ranching operations. The objecting secured creditors argued that they were not being offered adequate protection, viz: that the expectancy of the 1984 crop was not the equivalent of their lien on the 1983 crop (which could be readily sold and reduced to cash), that the lien on the 1984 crop would not provide an adequate "replacement lien," [176] that the debtor's proposal was nothing more than an involuntary unsecured (undersecured?) loan which was not permitted under the Bankruptcy Code, and that there was jeopardy to them because of inadequate budget projections, inadequate farm machinery, and other similar inadequacies bearing upon the feasibility of the debtors' proposal. Further, the objecting creditors argued that the emergency nature of the hearing did not give them reasonable opportunity to prepare for the hearing on this issue.

The court rejected these arguments, holdings that the notice and hearing was appropriate based upon the particular circumstances of the case, the needs of the debtor, and the exegencies of this case. Since the ongoing farming operations would serve to maintain the collateral of these creditors, and since the planting of crops and continuation of ongoing operations were needed immediately and would maintain the value of the objecting creditors' collateral, any harm allegedly suffered by the objecting creditors was mitigated. Further, the court found that the production of the 1984 crop was more than a mere "expectancy." In light of these findings, the court granted the debtors' motion.

Similarly, in the case of *In re Berens*,[177] the court granted the debtors' motion to use cash collateral derived from the prior years' (1983) farming and livestock operations to fund their upcoming (1984) farming operations, but limited the use of such cash collateral for farming operations on *rented* land, since this might jeopardize the replacement lien granted under the order to the objecting secured creditors.

On the other hand, the farmer-debtors did not fare so well in the case of *In re Frank*.[178] In *Frank*, the debtors moved to sell their 1982 crops and use the proceeds to fund ongoing (1983) crop and cattle operations. Specifically, the crop (soybean) proceeds would be used to purchase cattle, and the court found that the proposed investment was too speculative for approval. Although not rejecting the concept, the court found that the record was inadequate to carry the debtors' burden of proof that the cattle operation would produce reasonable profits, while not jeopardizing unduly the secured creditors' new replacement liens.

Similar to *Frank*, the district court overturned a bankruptcy court's ruling authorizing the use of cash collateral and replacement through a "roll over" lien in the case of *In re Berg*.[179] The court held in *Berg* that the debtors' offer of a lien in a contemplated crop yet to be grown, plus an assignment of federal crop insurance proceeds, was not adequate protection. Notwithstanding the findings of fact of the lower court, the district court, citing only legislative history [180] as precedent, the court held that the property in which a replacement lien was granted was not the indubitable equivalent of the lien in the stored grain. The court stated that the "debtors have provided a promise of collateral which may exist in the future. This is, in effect, an offer of no collateral at all." [181]

This case held that a "roll over" lien can never be permitted as a matter of law. However, this holding was reversed by the Court of Appeals for the Eighth Circuit in *In re Martin*.[182] The *Martin* case held that the "roll over" (replacement) lien could be granted, citing *In re Sheehan*.[183] However the Court of Appeals held that the bankruptcy court had failed to establish the value of the security interest held by the objecting secured creditors and had also failed to adequately identify the risk to this value associated with the planting and harvesting of a crop not yet in existence. Thus, the appellate court remanded for determination of these issues, stating:

"The concerns we express as not insurmountable. On the contrary, we believe they are in accordance with the policy of balancing the competing interest of a debtor who proposes to use secured property to contribute to the reorganization plan on one hand and the creditor who wishes to obtain the value and safety of its security interest on the other. After considering the value of the secured creditor's interest and the risk associated with the debtor's proposal, the bankruptcy court must ultimately decide whether the debtor's adequate protection proposal provides protection to the creditor consistent with the concept of indubitable equivalence. Indubitable equivalence requires 'such relief as will result in the realization of value." *See In re Sheehan*, 38 B.R. 859, 864 (D.S.D. 1984). If the debtor's proposal provides adequate protection, the request for use of cash collateral should be granted by the bankruptcy court. If the debtor's proposal can be modified to provide for adequate protection while still remaining useful to the debtor, the debtor's request should be granted under the modified plan. If adequate protection cannot be afforded under any circumstances, the debtor's request for use of cash collateral should be denied by then bankruptcy court." [184]

The balancing test of *Martin* does not appear facially improper in its reasoning and is certainly more appropriate in its rationale than *Berg*, but it still presents substantial difficulties for farmer-debtors. Most farmers go into reorganization in the spring of any year. They have just harvested their last years' crop in the fall and winter of the preceding year and often have the harvested crop in storage. Their debts normally come due in the early spring, and they can judge their ability to pay their normal annual obligations which are due against the value of their crop in storage. If the crop is not sufficient to meet normal obligations coming due in the spring, and if a crop loan for the new farming season appears unavailable, their only recourse may be to file for reorganization and use a portion of the cash derived from the stored crops to pay claims against the crops and use a portion to fund the upcoming crop. This places the crop lender holding a security interest in the stored crops to become an involuntary crop lender on the upcoming crop; and the "roll over" lien issue becomes the key factor dictating whether the farmer can continue operations and reorganize. If the "roll over" lien is granted, there is a possibility to reor-

ganize; and if the lien is not granted, the farmer is faced with inevitable liquidation.

The problem here is that these issues occur on emergency bases on many occasions. Both the objecting secured creditor and the debtor are faced with little time to investigate the pertinent facts and prepare for the hearing on whether the "roll over" replacement lien should be granted. From the farmer's viewpoint it is often very difficult to convince a bankruptcy court on short notice and timetables that it is more probable than not that he will be able to furnish the objecting crop lender with adequate protection via the new crop for his prior lien in what is normally cash collateral (the proceeds derived from the sale of the stored crop).

This problem would not be unduly unreasonable, except for a growing trend of cases interpreting the legislative history of the Code to require a more stringent standard of indubitable equivalence than this writer believes is consistent with the spirit of reorganization concepts. For example, the Court of Appeals for the Ninth Circuit has held that an undersecured creditor was entitled to adequate protection for its delay in enforcing its rights against its collateral in *Crocker National Bank* v. *American Mariner Industries* (*In re American Mariner*).[185] From a farmer's perspective, the cyclical and protracted nature of his cash flow makes it difficult, if not impossible, to prevent delay in protecting secured creditors holding liens against farm collateral; and farmers in jurisdictions applying the *American Mariner* rule may find it impossible to reorganize if they must compensate undersecured creditors for their delay in realizing upon their collateral. When the farmer files for relief (normally in the spring of the year), there is no ongoing cash flow from operations until harvest and sale of his crop (normally in the winter of the year), and no adequate protection in form of periodic payments can normally be furnished on a monthly or frequent basis. The farmer can only propose protection in the form of payments annually. Hence, delay in payments to secured creditors is inherent in every farmer reorganization case. Moreover, since most of a farmer's assets are heavily encumbered (because of financial and economic problems discussed previously herein), there is normally little unencumbered property (or encumbered property with equity) which can be offered to a secured creditor as replacement collateral. Thus, if farmers are held to unrealistic (in light of their cash flow) standards of adequate protection under *American Mariner*, it is arguable that they will not be able to provide adequate protection under existing (per *American Mariner*) reorganization concepts; and since the *Martin* case quoted *American Mariner* as providing an appropriate decision in viewing the balancing of debtor relief against the rights of secured creditors for their alleged "bargained for" [186] rights, it may be unduly difficult for farmer-debtors to convince bankruptcy courts that a "roll over" lien is a satisfactory form of replacement lien.[186a]

It is clear to this writer that (a) Congress should consider permitting the granting of "roll over" replacement liens in balancing the policies behind any family farmer-debtor relief statute and (b) *American Mariner* must be rejected as being any persuasive guide in determining whether secured creditors are entitled to adequate protection for their secured claims (or whether they should receive the benefits of any purported "bargained for" rights).[187]

Another practical suggestion for farmer rehabilitations is derived from the premise that, if incumbrances on a farm exceed the farm's fair market value, the farmer should be allowed to redeem and buy back his farm over a reasonable period for the fair market value of the farm, as appraised, when such redemption is feasible. Under the old Act, the cases allowed a farmer-debtor to repay his creditors over a protracted period of time for the full amount of the debt.[187] If the full amount of the debt secured by the farm exceeded its fair market value, the debtor was allowed to have the property appraised to "cash out" the secured creditor under either Chapter XII of the old Act[188] or under section 75.[189] For example, in the case of *In re KRO Associates*,[190] a Chapter XII debtor was allowed to "scale down" the first mortgage indebtedness on an office building to the value of the underlying building, retain the building, and pay off the reduced first mortgage debt over an extended period of years.[191]

In applying these concepts under the new Code, it does appear that debtors are precluded from appraising their farm lands and "cashing out" the underlying mortgage holders through sales or refinancing very shortly after confirmation.[192] The policy of the Code appears to restrict this practice in general in Chapter 11 reorganizations, arguably because it might result in a windfall in favor of the debtor in the event the property values appreciate rapidly after confirmation.[193] This Chapter 11 policy should not apply in family farmer cases.

Conversely, if the farmer-debtor desires to retain his land and repay it over a protracted period of time, however, he need pay only the fair market value of the property as defined under section 506(a) of the Code.[194] The basic premise here is that, regardless of whether a creditor makes an election to be fully secured for the entire amount of his debt pursuant to section 1111(b), he is entitled only to receive future payments having a present value equal to the underlying collateral, rather than the amount of the mortgage debt.[195] In other words, the debtor should not be required to pay more than the fair market value of his collateral (presumably his farm) in order to retain it and give mortgage holders secured by it fair and equitable treatment.

The normal problem with this approach is that the creditor undersecured by a farm will have an unsecured status for the undersecured portion of his claim and may object to a plan allowing a farmer's retention of his farm. For purposes of illustration, the following hypothetical example will suffice.[196]

Assume the debtor owns a farm worth $1,200,000 which is subject to the following encumbrances:

1. First mortgage	$700,000
2. Second mortgage	900,000
3. Third mortgage	210,000
Total	1,810,000

Assume further that the debtor proposes to keep his farm and pay its fair market value ($1,200,000) over ten years, but proposes to pay only a small amount to unsecured creditors (i.e., much less than the full amount of the unsecured claims). Then, assume that each lienor is a separate class of creditors under the plan, that the first lienor accepts the plan, and that the junior two classes vote against the plan. Can the court confirm the plan and allow the farmer to retain it by paying its fair market value?

Properly posed, the question is whether section 1129(b)(2)(B) will operate to preclude a farmer from retaining, redeeming, or purchasing his farm under an ongoing or a liquidating plan or reorganization in the event that undersecured lienors value their collateral, are declared unsecured creditors, and (as unsecured creditors) vote against the plan.[197] A facial reading of the Code indicates that, if an unsecured class of creditors does not vote for the farmer-debtor's plan (which may include the undersecured portion of the second and third mortgages encumbering the debtor's farm under the above hypothetical example), one may argue that he may not be able to "cram down" the plan on any dissenting classes and keep his farm.[197a] The Code provides that all nonconsenting unsecured classes must be fully satisfied (i.e., receive or retain property equal to their claims) before the debtor may receive any benefits.[198] A facial reading of the Code appears to mandate that the holders of claims or interests junior (e.g., the farmer-debtor) to any dissenting class "will not receive or retain on account of such junior claim or interest any property." [199] This is a codification of the rule of absolute priority developed under prior reorganization law, which required that each superior class receive completely compensatory treatment before the next descending class may receive any benefits under a reorganization plan.[200]

Since the second mortgage debt exceeds the value of the farm by $400,000, and since there is no equity or value in the farm for the third mortgage debt, the farmer-debtor will have one secured debt for $700,000 held by the first mortgagee; one partially unsecured debt held by the second mortgagee totalling $900,000 (of which $400,000 is the undersecured portion of the second mortgage debt and of which $500,000 is the fully secured portion of the second mortgage debt);[201] and one completely unsecured (undersecured) debt held by the third mortgagee in the amount of $200,000. Thus, unless the second mortgage holder elects under section 1111(b) to have all of his debt treated as fully secured, the unsecured claims will be $610,000.[202] Therefore, if the farmer-debtor proposes to buy back his farm in the amount of $1,200,000 (which is its appraised fair market value) over a period of time and with an appropriate discount or interest rate, the question is whether such a plan can be confirmed if the undersecured creditors are not paid in full under the proposed plan, vote against such a plan and block the farmer-debtor from repurchasing his farm under an ongoing or a liquidating plan of reorganization.

There is an absence of commentary arguing that this may be an appropriate result under the new Code, and recent cases under the Bankruptcy Code hold that the farmer cannot keep his farm under these hypothetical facts.[203] However, the traditional right of the farmer to repurchase his farm at fair market value appears to be one which is absolutely necessary for a reorganization of his finances.[204] Furthermore, one might argue that this plan is simply one of liquidation and that the farmer should not be denied his exclusive right to repurchase his own farm land for its fair market value.

Conversely, creditors will argue that, to the extent the debtor is given the exclusive right of redemption or purchase, they are being denied the right to potential full recovery and that the farmer-debtor is obtaining the possibility of a windfall in the event of significant appreciation in the value of

the farm after confirmation. Naturally, the farmer-debtor can reply that any appreciation in value in the future will be more probably caused by his future personal work efforts rather than the economic climate or any intrinsic value in the farm. Furthermore, unless the mortgage holders involved are prepared to farm the property and produce crops, one may argue that the nation's economy may suffer unless the farmer-debtor retains his farm and continues to produce commodities.

It seems clear to this writer that any farmer relief statute will have to omit the rule of absolute priority and allow the farmer-debtor to "scale down" secured debts against his farm and gain a discharge of excessive liabilities, similar to the relief available to farmers under section 75 and Chapter XII of the old Bankruptcy Code.

Moreover, under the present reorganization statute, a plan may not be confirmed unless there is at least one noninsider class accepts a plan, or all classes are unimpaired.[205] The basic framework of reorganizations under Chapter 11 is to encourage consentual, negotiated plan of reorganization.[206] In farmer cases, there are often few unsecured creditors, and much of the farmers debt is often represented by substantial secured claims. Further, in order for farmers to gain any substantial relief, both secured and unsecured claims must be reduced—and excessive unsecured claims must be discharged and excessive secured claims must be "scaled down" to the value of the collateral. It is very unlikely for creditors in farmer plans to consent to such treatment. Thus, the present reorganization policy oriented towards consentual plans flies in the face of the relief needed by most farmers and the practicalities of gaining such relief through a negotiation and voting process (*i.e.*, where substantial favorable votes are a prerequisite to confirmation). The present rule requiring the affirmative vote of at least one impaired class has precluded farmers from gaining plan confirmation under Chapter 11.[207] A practical suggestion would be to delete voting requirements in farmer-debtor cases under the new proposed legislation, creating a Chapter 13 format under which voting is not required.[208] This writer believes that the Chapter 13 approach (no voting and no rule of absolute priority), rather than the Chapter 11 approach, must govern family farmer reorganizations under any new act.

A final suggested consideration concerns the issue of whether creditors should be allowed to file plans in farmer cases. For example, in the case of *In re Jasik*,[209] the Court of Appeals for the Fifth Circuit upheld confirmation of a plan filed by a trustee and creditors' committee seeking to liquidate all the debtor's property. Since a farmer cannot be forced involuntarily into a liquidation proceeding under Chapter 7,[210] or converted without his consent from Chapter 11 to Chapter 7,[210a] the debtor argued that the result of the liquidation plan ran contrary to the legislative policy against farmers being placed involuntarily into liquidation proceedings. The Court of Appeals rejected this argument and upheld the confirmation of the liquidation plan.

The Eighth Circuit followed the Fifth Circuit in the case of *In re Button Hook Cattle Co., Inc.*,[211] holding that a liquidation plan filed by a creditor could be confirmed.[212] However, there is a split of authorities on this issue,[213] with various bankruptcy courts holding that a bankruptcy court may not confirm a liquidation plan over the objection of a farmer-debtor, since a creditor cannot compel a farmer's liquidation under Chapter 7, or a conversion of a farmer-debtor's reorganization case under Chapter 11 to a liquidation case under Chapter 7.[214]

Congress will have to give due consideration to this policy issue of whether creditors may file farmer plans, whether farmers may be liquidated without their consent, or whether farmers should be given the exclusive right to propose reorganization plans. From this writer's perspective, the only plan practically available, if filed by creditors, is one of liquidation. Since the other provisions of the Bankruptcy Code prohibit involuntary liquidations of farmers as a matter of bankruptcy policy, the only consistent position would be to give farmers the *exclusive* right to file a plan. This position would also preclude either involuntary petitions against farmers under any new farmer relief statute or the conversion of a farmer reorganization case to a Chapter 7 liquidation without the farmer's consent.

IV. STATUS OF FARMER RELIEF BILLS AND LEGISLATIVE PROPOSALS

The finances of many farmers are in jeopardy and close to ruination, which has caused Congress to study legislative proposals to amend the Bankruptcy Code. Although these proposals do not, in this writer's opinion, address and resolve the *actual* problems underlying farmer finances, they do seek to alleviate the *result* of the problems (e.g., farm foreclosures) by giving farmers relief from their inability to pay their debts as they mature.

This situation is very similar to that in the Great Depression occurring in the 1930's. In 1933, Congress moved to aid farmers by passing an emergency farm relief bill which amended the old Bankruptcy Act by adding Section 75.[215] In similar fashion, the House of Representatives has already hastily passed bill H.R. 2211 (hereinafter referred to as the "House Bill") to amend the Bankruptcy Code and to provide relief for family farmers. This bill is awaiting the action of the Senate. The Senate is considering several proposals. One bill has been prepared by Bankruptcy Judges Thomas Small and Thomas Moore (hereinafter referred to as the "Small-Moore Bill") and was introduced in the Senate on March 26, 1986, as S. 2249. Further, the National Bankruptcy Conference (hereinafter the "Conference") has drafted a proposed bill (hereinafter referred to as the "Conference Bill").

The House Bill attempts essentially to incorporate family farmers within the provision of Chapter 13 of the Bankruptcy Code,[216] which this writer believes to be an impractical way in which to handle this problem in terms of statutory amendments.[217] In comparison, the Small-Moore Bill creates a separate chapter for farmers. Chapter 12; and adopts many Chapter 11 reorganization concepts. The Conference Bill also creates a separate chapter for farmers, Chapter 12, and is an amalgamation of both Chapter 11 and Chapter 13 concepts (but leaning more towards Chapter 13). However, there are numerous provisions in these bills which are substantially at variance with each other. The following portion of this article will analyze the provisions and underlying policies of each bill and recommend which provision and policies are more appropriate.

FOOTNOTES

[1] Anderson & Rainach, "Farmer Reorganizations Under the New Bankruptcy Code," 28 *Loyola L. Rev.* 439, 439-40 (1982) (this article explores the historical legislative approach to giving reorganization relief to farmers and explains why the existing bankruptcy reorganization provisions of the Bankruptcy Code are presently inadequate to give any real relief to farmers).

[2] The Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, 92 Stat. 2549 [codified as amended at 11 U.S.C.A. §§ 1-151326 (West 1979 & Supp. 1986)], enacted the substantive law of bankruptcy and reorganization in title 11 of the United States Code (hereinafter referred to as the "Code") and repealed the prior Bankruptcy Act of July 1, 1898, ch. 541, 30 Stat. 544 [codified as amended at 11 U.S.C. §§ 1-1255 (1976 & Supp. V. 1981) (repealed 1979), hereinafter cited as the "Act"]. All references to the prior Bankruptcy Act will be to the sections of the Act. Citations of the Code will refer only to the present sections of title 11 of the United States Code, as amended by the Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, 98 Stat. 333.

[3] *See* Anderson & Rainach, *supra* note 1.

[4] *Id.*

[5] This writer believes that the financial problems of the farmer are actually related to legislation and economic causes which are beyond the realm of the Bankruptcy Code. This will be discussed more fully in the text following this footnote. However, the reader should be aware of the fact that many economic factors, such as over-production of crops and agricultural legislation promoting such over-production, cause a lack of adequate prices for crops; and these underlying problems have created the farmer crisis. This crisis is enhanced by legislation providing farmers access to borrowings not available to other businessmen, which has encouraged farmers to become over-leveraged. A symptom of this crisis is the failure of the farmer to meet his obligations as they mature, because he cannot get adequate prices for his crops due to overproduction. Because the farmer is encouraged by legislation to borrow money to meet the shortfall in his cash flow created by this over-production, many farmers have become over-leveraged. From this writer's viewpoint, amendments to the Bankruptcy Code can give relief only to the symptoms of the farmer problems, and this action does not rectify the causes underlying farmer financial failures. Until and unless Congress addresses legislation to cure these underlying problems, amendments to the Bankruptcy Code will furnish no real relief to problems inherent in any farming operation.

[6] Most farmers plant their primary crops in the spring, cultivate their crops during the summer, and harvest their crops during the fall and winter (although some farmers are able to engage in double-cropping, that is, to plant and harvest two crops a year), and therefore, the farmer will generate cash earnings only at the end of the crop year (usually winter) when the crops are sold. Most farmers must rely upon borrowings during the year (if necessary) to provide additional monies. For this reason, farmers are often unable to meet obligations coming due, unless the repayment is scheduled on an annual basis at a time after the farmer receives the sales proceeds from his crops.

[7] *See generally* Blum, "The Law and Lanaguage of Corporate Reorganization," 17 *U. Chi. L. Rev.* 565 (1950); J. Anderson, *Chapter 11 Reorganizations*, §§ 1.01-1.10 (1983).

[8] Act of April 4, 1800, ch. 19, 2 Stat. 19 (repealed 1803); Act of August 19, 1841, ch. 9, 5 Stat. 440 (repealed 1843); Act of March 2, 1867, ch. 176, 14 Stat. 517 (repealed 1878).

[9] V Countryman, *Equity Receivership and Bankruptcy Reorganization* 1. This work is not officially published, but is found in the teaching materials of Professor Countryman in his reorganization course at Harvard Law School.

For a historical discussion and perspective of the evolution of reorganization from equity receiverships through the Chandler Act, see 6 W. Collier, *Collier on Bankruptcy* ¶¶ 0.01-.10 (14th ed. 1979). The reader should note that the citation of this treatise is a reference to the fourteenth edition, which discusses bankruptcy law under the old Act; a discussion of the new Bankruptcy Code is contained in the fifteenth edition, first published in 1980, cited *infra* note 194.

[10] *See, e.g., In re* Reiman, 20 F. Cas. 500 (C.C.S.D.N.Y. 1875) (No. 11, 675).

[11] Act of July 1, 1898, ch. 541, 30 Stat. 544, 11 U.S.C. §§ 1-1255 (1976 & Supp. II 1978) (repealed 1979). The old Bankruptcy Act, as amended, will hereafter be referred to as the old Act or the Act,

and all references to the old Act will be to the original sections of that Act.

[12] *Id.* § 12, 30 Stat. at 549-50.

[13] *See* the authorities cited *supra* note 9. Specifically, among other problems, secured creditors could not be bound under a plan confirmed under § 12. See also the discussion and authorities contained *infra* note 30. For the meaning of "composition," *see infra* text accompanying note 115.

[14] *See* the authorities cited *supra* note 9.

[15] Act of March 3, 1933, ch. 204, 47 Stat. 1467.

[16] 10 H. Remington, "A Treatise on the Bankruptcy Law" (1947). Harold Remington authored a comprehensive treatise on bankruptcy until his death, and The Lawyers Co-Operative Publishing Company continued this publication until the old Bankruptcy Act was repealed in 1979. Volume 10 of this treatise contains a comprehensive analysis of § 75 of the old Act.

[17] *Id.* at 5.

[18] Act of March 3, 1933, ch. 204, 47 Stat. 1467.

[19] Act of June 7, 1934, ch. 424, 48 Stat. 911, 912-22.

[20] *See* the authorities cited *supra* 9.

[21] *Id.*

[22] The Chandler Act, ch. 575, 52 Stat. 840 (1938).

[23] *See* 10 H. Remington, *supra* note 16, § 4002.

[24] *Id.* § 4004. Remington points to the report of the House Committee on the Judiciary No. 1127, February 15, 1944, for a historical discussion and commentary on the subject of the temporary nature of § 75. Specifically, it appears that farmers were granted broader discharges than in ordinary bankruptcy proceedings. These broader discharge provisions appeared to make § 75 inconsistent with the permanent provisions of the old Bankruptcy Act, which contained more restrictions of the discharge of debts. *But cf.* the complete discharge of all debts for wage-earners under Chapter 13 of the New Bankruptcy Code. 11 U.S.C. §§ 1328(b) (1986).

[25] 10 H. Remington, *supra* note 16, § 4002. The emergency situation for farmers, created initially by the Great Depression and extended subsequently by World War II, appears to have subsided and ended by 1949.

[26] The Chandler Act, ch. 575, §§ 401-526, 52 Stat. 840, 916-30 (1938).

[27] For a discussion of Chapter XII generally, *see* Anderson & Ziegler, "Real Property Arrangements Under the Old and New Bankruptcy Acts," 25 *Loy. L. Rev.* 713 (1979); W. Norton, "Real Property Arrangements: Chapter XII, Federal Bankruptcy Act" (1977).

[28] *In re* Benson, 9 Bankr. 854 (N.D. Ill. 1981). A second reported decision, *In re* Dick, 296 F. 2d 912 (7th Cir. 1961), was found, but it gives no real insight as to the farmer relief provided.

[29] *See generally* Anderson & Rainach, *supra* note 1; Anderson, *supra* note 7; King, "Chapter 11 of the 1978 Bankruptcy Code," *53 Am. Bankr. L.J.* 107 (1979); Moller, "Chapter 11 of the 1978 Bankruptcy Code, or Whatever Happened to Good Old Chapter XI?" 11 *St. Mary's L.J.* 437 (1979). *See also* the authorities cited at note 126, *infra*. Any meaningful relief that might be provided farmers under Chapter 13 (which is primarily oriented to "wage-earners") is eroded because of the debt limitations and other restrictions imposed. *See generally* Looney, "The Bankruptcy Reform Act of 1978 and the Farmer: A Survey of Applicable Provisions," 25 *S.D.L. Rev.* 509 (1980); Anderson & Rainach, *supra* note 1.

[30] *See generally* 10 H. Remington, *Supra* note 16, §§ 4001-4131; Hanna, "Agriculture and the Bankruptcy Act," 19 *Minn. L. rev.* 1 (1934); Roberts, "Property, Mortgaged Land, and the Frazier-Lemke Act," 13 *N.C.L. Rev.* 291 (1934); Comment, "A Survey of Sections 74 and 75 of the Bankruptcy Act in Actual Operation," 43 *Yale J.J.* 1285 (1934). Prior to enactment of § 75, any meaningful rehabilitory relief for farmers was virtually unavailable under the Bankruptcy Act or any other statutes. *Id.*

[31] 10 H. Remington, *supra* note 16, §§ 4001-4027.

[32] "Forced liquidation of debtors' estates as in ordinary bankruptcy generally causes unnecessary losses." *Id.* §§ 4001-4027.

[33] *See generally id.;* Hanna, *supra* note 30, at 5. As Remington notes, under § 12 of the old Act, power was conferred upon bankruptcy courts to confirm compositions if agreed to by a majority in number and amount of unsecured claims. Confirmation could be ordered without the necessity of ajudicating the debtor a bankrupt. The debtor took back his estate free from old claims and subject only to the new claims which he had agreed to pay. The consideration paid under the debtor's plan was distributed on account of old claims. 10 H. Remington, *supra* note 16, § 4005.

In comparison, § 75 enabled bankruptcy courts to confirm compositions or extensions of a farmer's secured and unsecured debts "if agreed to by a majority in number and amount of secured and unsecured creditors." *Id.* This new feature differed from § 12 by extending the bankruptcy court's power to bind secured debts. Section 75 thus appeared to be constitutional as initially drafted in 1933 and without the initial Frazier-Lemke Act (which will be discussed in detail later herein). *Id.*

[34] *See* 10 H. Remington, *spura* note 16; Hanna, *spura* 30; and Comment, *spura* note 30.

[35] *Id.*

[36] *Id. See infra* note 39 and accompanying text.

[37] Ch. 869, 48 Stat. 1289 (1934).

[38] One commentator argued that, even if the Frazier-Lemke Act was held to be constitutional, it was "unfair, both in its harshness to creditors and in the implicit discrimination between the protection offered to farmers and other individual creditors." Hanna, *supra* note 30, at 32.

[39] One commentator observed that, prior to enactment of the Frazier-Lemke Act, "[s]ection 75 was a hastily concocted statute dragooned into the [Bankruptcy] Act," and that the "section as drafted proved almost wholly worthless." Hanna, *supra* note 30, at 5. Thus, without the marked relief afforded under the Frazier-Lemke Act, § 75 was not very useful or beneficial for farmers. *Id.*

[40] *See generally* the authorities cited *supra* at note 30.

[41] The first option was described by the Supreme Court in Louisville Joint Stock Land Bank v. Radford, 295 U.S. 555, 592 n.21 (1935), as follows:

"The prescribed payment (interest) for the first year is 1 per cent, on the appraised value. The prescribed payment for the second year is 3½ per cent. thereof (1 per cent. for interest, 2½ per cent. on account of principal). The prescribed payment for the third year is 2½ per cent. of the principal and as interest 1 per cent. on 97½ per cent. of the principal. The prescribed payment for the fourth year is 5 per cent. on account of the principal and as interest, 1 per cent. on 95 per cent. of the principal. The prescribed payment for the fifth year is 5 per cent. on account of principal, and as interest, 1 per cent. on 90 per cent. of the principal. The prescribed payment at the end of the sixth year if 85 per cent. of the prinicpal, and as interest 1 per cent. of 85 per cent. of the principal. The present value calculated on a 6 per cent. basis, of all deferred payments (principal and interest) would be only 76.6 per cent. of the appraised value. In other words, the agreement to sell if assented to by the mortgagee would require him to relinquish his security not for its appraised value in cash, but for deferred payments which, if met, would yield (on a 6 per cent. basis) only 76.6 per cent. of the appraised value."

[42] *Id.* at 592-93.

[43] *Id.* at 594.

[44] *See* Roberts, *supra* note 30, at 291-92; Louisville Joint Stock Land Bank v. Radford, 295 U.S. 555, (1935).

[45] *See* Roberts, *supra* note 30, at 292; Louisville Joint Stock Land Bank v. Radford, 295 U.S. 555, 586-91 (1935).

[46] Roberts, *supra* note 30, at 292.

[47] 10 H. Remington, *supra* note 16, § 4004, at 10.

[48] *Id.*; *In re* Kalb, 54 F. Supp. 535 (E.D. Wis. 1944).

[49] As stated in *In re* Kalb, 54 F. Supp. 535, 537 (E.D. Wis. 1944): "When this section of the act was extended to March 4, 1944, our country was awakening to the need of a great defense effort. Many of the great nations of the world were then engaged in war. As was said by our Supreme Court in Fable v. United States, 320 U.S. 549, decided January 3, 1944, 'The danger of attack by our present enemies, if not imminent, was real, as subsequent events have grimly demonstrated'. Congress realized that if war came our economy would be under great strain and there would of necessity be many dislocations, difficulties, and restrictions. We knew that agriculture would be called upon to expand greatly, for increased production would be essential to victory. Congress likewise bore in mind that upon the cessation of hostilities in World War I it was agriculture which first felt the chill breath of the great depression which all agree was an aftermath of that disrupting struggle. It must be assumed that Congress had sufficient justification to enact the original legislation.'"

[50] 10 H. Remington, *supra* note 16, § 4004.

[51] As a sign of the times, the following statement of Congressman Charles U. Truax in support of the Frazier-Lemke Act may be found at Hanna, *supra* note 30, at 8 n.8:

"On June 18, 1934, the Congress of the United States passed H.R. 9865, a new declaration of independence for the American farmer. When this law becomes effective I can but wonder what will become of the ruthless money lender when the breath of Gold leaves his feculent body and a financial death stops the rattling of his grasping brain, for he is unfit for the higher realm of life and too foul for the one below. He cannot be buried in the earth, lest he provoke a pestilence; nor in the sea, lest he poison the fish; nor swing in space like Mahomet's coffin, lest the circling worlds in trying to avoid contamination, crash together, wreck the universe, and bring again the noisome reign of chaos and Satan."

[52] The trilogy of cases is Wright v. Union Cent. Life Ins. Co., 311 U.S. 273 (1940); Wright v. Vinton Branch of the Mountain Trust Bank, 300 U.S. 440 (1937); Louisville Joint Stock Land Bank v. Radford, 295 U.S. 555 (1935).

[53] 295 U.S. 555 (1935).

[54] *In re* Radford, 8 F.Supp. 489 (W.D. Ky. 1934).

[55] Louisville Joint Stock Land Bank v. Radford, 74 F.2d 576 (6th Cir. 1935).

[56] Louisville Joint Stock Land Bank v. Radford, 295 U.S. 555 (1935).

[57] *Id.* at 579 n.7.

[58] *Id.* at 581-86.

[59] *Id.* at 586-89.

[60] *Id.* at 589-93; *but cf.* Rogers, "The Impairment of Secured Creditors' Rights in Reorganization: A Study of the Relationship Between the Fifth Amendment and the Bankruptcy Clause, 96 *Harvard L. Rev.* 973 (1983) (this article argues contrary to this proposition, which appears to be the basis of the *Radford* decision); *see also* Countryman, "Treatment of Secured Claims in Chapter Cases," 82 *Com.L.J.* 349 (1977).

[61] *Id.* at 589-90.

[62] *Id.* at 954-95.

[63] *Id.* at 594-95.

[64] Actually, the decision is unclear as to (a) whether the "taking" of the rights in question was improper *per se*, or (b) whether the "taking" was proper, but not achieved with sufficient "due process" of law, or (c) whether both the "taking" and "due process" prohibitions of the fifth amendment were contravened. *See* Rogers, *supra* note 60; Countryman, *supra* note 60.

[65] 295 U.S. at 596.

[66] *Id.* at 596-97.

[67] *Id.* at 598-602.

[68] 10 H. Remington, *supra* note 16, § 4005.

[69] *Id.*

[70] Ch. 792, 49 Stat. 942 (1935).

[71] 10 H. Remington, *supra* note 16, § 4005, at 12; for a comparison of the changes in the second Act, *see* Wright v. Vinton Branch of the Mountain Trust Bank, 300 U.S. 440, 464-66 n.9 (1937).

[72] 300 U.S. 440 (1937).

[73] 311 U.S. 273 (1940).

[74] 300 U.S. at 456-57.

[75] *Id.* at 458 n.2. *See Wright I,* 300 U.S. at 465-66 n.9, for a comparison of the first and second Frazier-Lemke Acts.

[76] *Id. But see Wright II,* 311 U.S. 273, for an interpretation of when a public auction was appropriate.

[77] 300 U.S. at 458-61.

[78] *Id.* at 460-64.

[79] *Id.*

[80] *Id.* at 465-68.

[81] *Id.* at 468-70.

[82] *Id.*

[83] 311 U.S. 273 (1940).

[84] *Id.*

[85] As the Court stated: "This Act provided a procedure to effectuate a broad program of rehabilitation of distressed farmers faced with the disaster of forced sales and an oppressive burden of debt. Safeguards were provided to protect the rights of secured creditors, throughout the proceeding, to the extent of the value of the property. There is no constitutional claim of the creditor to more than that. And so long as that right is protected the creditor certainly is in no position to insist that doubts or ambiguities in the Act be resolved in its favor and against the debtor. Rather, the Act must be liberally construed to give the debtor the full measure of the relief afforded by Congress . . . lest its benefits be frittered away by narrow formalistic interpretations which disregard the spirit and the letter of the Act."

Id. at 278-79 (citations omitted).

[86] *Id.* at 278–82; *see infra* note 88 and accompanying text.

[87] *Id.* at 280–81, where the Court stated:

"To hold that they empowered the court to deprive the debtor of his express and fundamental statutory right to redeem at the reappraised value or at the value fixed by the court would be to imply a power of forfeiture wholly incompatible with the broad design of the Act to aid and protect farmer-debtors who were victims of the general economic depression."

[88] The facts of *Wright II* indicate that the complaining creditor was owed approximately $16,000 and that the appraised value of the farm was only approximately $6,000. *Id.* at 276. Thus, under the redemptive powers granted to the farmer, Mr. Wright could buy back his farm for less than one-half of the mortgage debt encumbering the property. *Id.*

[89] This precept was recently reaffirmed in the case of United States v. Security Industrial Bank, 103 S. Ct. 407 (1982); *but see* Rogers, *supra* note 61, for criticism of this precept. Rogers reasons that "the subsequent Frazier-Lemke Act cases [Wright I and Wright II] . . . overrule or substantially undercut the vitality of *Radford*," *id.* at 981, but that "in light of *Security Industrial Bank*, it appears that the Supreme Court will continue to accept at the least the general principle for which Radford stands—that the fifth amendment may impose some limitations on the retroactive application of bankruptcy legislation—although the Court's reasons for so doing are not entirely clear." *Id.* at 1018. *See also* Countryman, *supra* note 60.

[90] *See supra* notes 23–25 and accompanying text.

[91] The Chandler Act, ch. 575, §§ 401–526, 52 Stat. 840, 916–30 (1938).

[92] *Id.* §§ 301–399, 52 Stat. at 905–16.

[93] *See generally* Anderson, "Partially Secured Creditors: Their Rights and Remedies under Chapter XI of the Bankruptcy Act," *La. L. Rev.* 1003 (1977); Andersen, "Secured Creditors: Their Right and Remedies under Chapter XI of the Bankruptcy Act," 36 *La. L. Rev. 1* (1975).

[94] *See generally* the authorities cited *infra* note 95.

[95] *See generally* Anderson & Rainach, *supra* note 1; Anderson & Ziegler, *supra* note 27. Commentary on Chapter XII had been virtually nonexistent from the time of its enactment in 1938 as part of the Chandler Act until 1975. However, since 1975, several articles have been written analyzing Chapter XII, and at least one book has been written on the subject. *See, e.g.*, W. Norton, *Real Property Arrangements: Chapter XII, Federal Bankruptcy Act* (1977); Anderson & Ziegler, *supra* note 27; Dole, "The Chapter XII Cram-down Provisions, 82 *Com. L.J.* 197 (1977); Fine, "Unjamming the 'Cram-down', 52 *Am. Bankr. L.J.* 321 91978); Gilbert & Massari, "Chapter XII 'Cram-down'—Bad Medicine or Just Desserts?," 52 *Am. Bankr. L.J.* 99 (1978); Merrick & Crames, "Chapter XII Comes of Age: Recent Developments," 51 *Am. Bankr. L.J.* 291 (1977); Comment, "Consitutional Limitation on the Bankruptcy Power: Chapter XII Real Property Arrangements," *N.Y.U. L. Rev.* 362 (1977).

[96] Prior to the real estate recession in 1974–1975, there were only seven reported cases concerning confirmation of Chapter XII plans. Sumida v. Yumen, 409 F.2d 654 (9th Cir. 1969); Rader v. Boyd, 267 F.2d 911 (10th Cir. 1959); Meyer v. Rowen, 195 F.2d 263 (10th Cir. 1952); *In re* Herweg, 119 F.2d 941 (7th Cir. 1941); Kyser v. MacAdam, 117 F.2d 232 (2d Cir. 1941); *In re* Hamburger, 117 F.2d 932 (6th Cir. 1941), Kunze v. Prudential Ins. Co. of America, 106 F.2d 917 (5th Cir. 1939).

After 1974 there was a tremendous increase in reported Chapter XII cases analyzing confirmation of plans and many other aspects of Chapter XII proceedings. Bizzell Pharmacy, Inc. v. Hemingway, 12 Collier Bankr. Cas. 2d 270 (4th Cir. 1977); *In re* Pembroke Manor Apts., 547 F.2d 805 (4th Cir. 1977); *In re* Benson, 9 Bankr. 854 (Bankr., N.D. Ill. 1981); *In re* Castle Village Co., 4 Bankr. Ct. Dec. (CRR) 730 (Bankr., S.D.N.Y. 1978); *In re* Walker, 4 Bankr. Ct. Dec. (CRR) 698 (Bankr., M.D. Fla. 1978); *In re* Bell Tower Plaza, 4 Bankr. Ct. Dec. (CRR) 678 (Bankr., C.D. Cal. 1978); *In re* KRO Assocs., 4 Bankr. Ct. Dec. (CRR) 462 (Bankr., S.D.N.Y. 1978); *In re* LaMarche and Cerino, 4 Bankr. Ct. Dec. (CRR) 443 (Bankr., M.D. Fla. 1978); *In re* Stillbar Constr. Co., 4 Bankr. Ct. Dec. (CRR) 452 (Bankr., N.D. Ga. 1978); *In re* Bergman, 3 Bankr. Ct. Dec. (CRR) 1313 (Bankr., S.D.N.Y. 1978); *In re* Pickett, Gardner, Landers & Assocs., 3 Bankr. Ct. Dec. (CRR) 727 (Bankr., N.D. Ga. 1977); *In re* Hobson Pike Assocs., 15 Collier Bankr. Cas. 346 (Bankr., N.D. Ga. 1977); *In re* Fierman & Fierman, 3 Bankr. Ct. Dec. 1006 (CRR) (Bankr., E.D. Pa. 1977); *In re* Bergman, 14 Collier Bankr. Cas. 2d 222 (Bankr., S.D.N.Y. 1977); *In re* Bekare Realty Assocs., 14 Collier Bankr. Cas. 2d 202 (Bankr., E.D. Pa. 1977); *In re* Brookhollow Assocs., 14 Collier Bankr. Cas. 2d 251 (Bankr., D. Mass. 1977); *In re* Nevada Towers Assocs., 14 Collier Bankr. Cas. 2d 146 (Bankr., S.D.N.Y. 1977); *In re* Romano & Romano, 12 Collier Bankr. Cas. 2d 513 (Bankr., N.D. Ill. 1977); *In re* Tucker, 13 Collier Bankr. Cas. 2d 148 (Bankr., D. Conn. 1977); *In re* Marietta Cobb Apts., Co., 3 Bankr. Ct. Dec. (CRR) 720 (Bankr., S.D.N.Y. 1977); *In re* Country Green Ltd. Partnership, 3 Bankr. Ct. Dec. (CRR) 427 (Bankr., W.D. Va. 1977); *In re* Pine Gate Assocs., 3 Bankr. Ct. Dec. (CRR) 301 (Bankr., N.D. Ga. 1977); *In re* Triangle Inn Assocs., 3 Bankr. Ct. Dec. (CRR) 716 (Bankr., E.D. Va. 1977); *In re* Hartsdale Assocs., 3 Bankr. Ct. Dec.(CRR) 460 (Bankr., S.D.N.Y 1977); *In re* Hartsdale Assocs., 13 Collier Bankr. Cas. 2d 692 (Bankr., S.D.N.Y. 1977); *In re* St. Simon's Properties, 2 Bankr. Ct. Dec. (CRR) 1400 (Bankr., N.D. Ga 1976); *In re* Nob Hill Apts., 2 Bankr. Ct. Dec. (CRR) 1463 (Bankr., N.D. Ga. 1976); *In re* Pine Gate Assocs., 2 Bankr. Ct. Dec. (CRR) 1478 (Bankr., N.D. Ga. 1976); *In re* Pine Gate Assocs., 3 Bankr. Ct. Dec. (CRR) 141 (Bankr., N.D. Ga. 1976); *In re* Pine Gate Assocs., 3 Bankr. Ct. Dec. (CRR) 137 (Bankr., N.D. Ga. 1976); *In re* Hartsdale Assocs., 13 Collier Bankr. Cas. 2d 1275 (Bankr., S.D.N.Y. 1976); *In re* Huntley Square Assocs., 2 Bankr. Ct. Dec. (CRR) 1417 (Bankr., D. Md. 1976); *In re* Sixth Ave. Inv. & Dev. Co., 2 Bankr. Ct. Dec. (CRR) 1222 (Bankr., S.D. Cal. 1976); Darvilla Housing Corp. v. Accousti, 2 Bankr. Ct. Dec. (CRR) 1093 (Bankr., D. Conn. 1976); *In re* Hall Assocs., 2 Bankr. Ct. Dec. (CRR) 432 (Bankr., E.D. Pa. 1976); *In re* Helmwood Apts., 2 Bankr. Ct. Dec. (CRR) 1151 (Bankr., N.D. Ga 1976); *In re* Bearden, 2 Bankr. Ct. Dec. (CRR) 1180 (Bankr., N.D. Ga. 1975); *In re* Consol. Motor Inns, 1 Bankr. Ct. Dec. (CRR) 1526 (Bankr., N.D. Ga. 1975).

[97] *See* the authorities cited *supra* notes 71–88 and accompanying text. The farmer-debtor was discharged of any personal liabilities, which had the ultimate effect of reducing the "scaled down" lien(s) on the farm to an *in rem* status. *See supra* note 44 and accompanying text.

[98] *See* the authorities cited *supra* notes 71–88 and accompanying text.

[99] *See* the authorities cited *supra* notes 95 & 96 and accompanying text.

[100] Wachovia Bank & Trust Co. v. Harris. 455 F.2d 841 (4th Cir.), *cert. denies*, 409 U.S. 844 (1972) (a Chapter X case, where the secured debt was reamortized over 20 years); *In re* Benson, 9 Bankr. 854 (Bankr., N.D. Ill. 1981) (a Chapter XII case, where the interest rate was reduced to the lender's cost of money and where the mortgage debt reamortized over 20 years); *In re* Castle Village Co., 4 Bankr. Ct. Dec. (CRR) 730 (Bankr., S.D.N.Y. 1978); *In re* KRO Assocs., 4 Bankr. Ct. Dec. (CRR) 462 (Bankr., S.D.N.Y. 1978); *In re* Triangle Inn Assocs., 3 Bankr. Ct. Dec. (CRR) 716 (Bankr., E.D. Va. 1977).

[101] *See* the cases cited *supra* note 100.

[102] *See* the cases cited *supra* note 100.

[103] *See* the cases cited *supra* note 100.

[104] Rader v. Boyd, 267 F.2d 911 (10th Cir. 1959); Kyser v. MacAdam, 117 F.2d 232, 238 (2d Cir. 1941); *In re* Pine Gate Assocs., 2 Bankr. Ct. Dec. (CRR) 1478 (Bankr., N.D. Ga. 1976); W. Norton, *supra* note 27, pts. 24 & 25, at 80–118.

[105] *In re* Benson, 9 Bankr. 854 (Bankr., N,D, Ill. 1981); *In re* KRO Assocs., 4 Bankr. Ct. Dec. (CRR) 462 (Bankr., S.D.N.Y. 1978); *In re* Hartsdale Assocs., 3 Bankr. Ct. Dec. (CRR), 462 (Bankr., S.D.N.Y. 1977); *In re* Pine Gate Assocs., 2 Bankr. Ct. Dec. (CRR) 1478, 1491 (Bankr., N.D. Ga. 1976); *In re* Accousti, 2 Bankr. Ct. Dec. (CRR) 1093 (Bankr., D. Conn. 1976); W. Norton, *supra* note 27, pts. 24 & 25, at 80–118; *See also In re* 620 Church St. Bldg., Corp., 299 U.S. 24 (1936); Anderson, "Partially Secured Creditors: Their Rights and Remedies Under Chapter XI of the Bankruptcy Act," 37 *La. L. Rev.* 1003 (1977).

[106] *See* the authorities cited *supra* note 105.

[107] *See* the authorities cited *supra* note 105.

[108] *See* the authorities cited *supra* note 105.

[109] *See* Comment, *supra* note 95.

[110] *In re* Pine Gate Assocs., 2 Bankr. Ct. Dec. (CRR) 1478, 1482 (Bankr., N.D. Ga. 1976); W. Norton, *supra* note 27, pts. 24 & 25, at 80–118; *see generally* the authorities cited *supra* note 105.

[111] Act of July 1, 1898, ch. 541, § 57h, 30 Stat. 544, 560. For a general discussion of this proposition, *see* Anderson, *supra* note 105.

[112] *See generally* Anderson & Ziegler, *supra* note 27.

[113] *Id.*

[114] *Id.*

[115] *Id.*

[116] *Id.*

[117] *Id.*

[118] 9 Bankr. 854 (Bankr., N.D., Ill., 1981). A second reported case, *In re* Dick, 296 F.2d 912 (7th Cir. 1961), was found, but it gives no real insight as to the farmer relief provided.

[119] The Chandler Act, ch. 575, § 461(11), 52 Stat. 840, 922 (1938).

[120] 75 F.2d 941 (2d Cir. 1935). The court in *Benson* cited Wachovia Bank & Trust Co. v. Harris, 455 F.2d 841 (4th Cir.), *cert. denied*, 409 U.S. 844 (1972) (a real estate reorganization case under Chater X of the old Act, where an interim construction loan on real estate was reamortized under a plan over 20 years) for the proposition that the plan did not have to provide payment, nor adequate protection, to a secured creditor that was *immediately* (and completely) compensatory.

[121] A Chapter XII plan was required to provide a secured creditor, in order to be "crammed down," with "adequate protection for the realization by [the creditor] of the value of [its] debt." § 461(11), old Bankruptcy Act, formerly 11 U.S.C. § 861(11).

[122] For examples of extension plans which were confirmed under these standards, *see In re* Benson, 9 Bankr. 854 (Bankr. N.D. Ill. 1981); *In re* Triangle Inn Assocs., 3 Bankr. Ct. Dec. (CRR) 716 (Bankr., E.D. Va. 1977); *In re* Hobson Pike Assocs., 15 Collier Bankr. Cas. 346 (Bankr., N.D. Ga. 1977); *In re* Walker, 4 Bankr. Ct. Dec. (CRR) 698 (Bankr., M.D. Fla. 1978); *see generally* Anderson & Ziegler, *supra* note 27; *see also* Wachovia Bank & Trust Co. v. Harris, 455 F.2d 841 (4th Cir.), *cert. denied*, 409 U.S. 844 (1972) (a Chapter X case achieving a 20-year restructuring of an interim loan secured by real estate).

[123] 4 Bankr. Ct. Dec. (CRR) 462 (Bankr., S.D.N.Y. 1978).

[124] *Id.* at 465.

[125] *See, e.g., In re* Pine Gate Assoc., 2 Bankr. Ct. Dec. (CRR) 1478 (Bankr., N.D. Ga. 1976); *In re* Castle Village Co., 4 Bankr. Ct. Dec. (CRR) 730 (Bankr., S.D.N.Y. 1978).

[126] *Id.* Anderson, *supra* note 7; *U. Ill. L.F.* 251, (1980); Klee, "All You Ever Wanted to Know About Cram Down Under the New Bankruptcy Code," 53 *Am. Bankr. L.J.* 133 (1979); Comment, "From Debtor's Shield to Creditor's Sword: Cram Down Under the Chandler Act and the Bankruptcy Reform Act," 55 *Chi.-Kent L. Rev.* 713 (1979); *see also* the authorities cited at note 29, *supra*.

[127] *See generally* the authorities cited *supra* notes 29 and 126.

[128] 11 U.S.C. § 1111(b) (1986).

[129] *Id. See generally* Klee, *supra*, note 126, at 150–56; Eisenberg, "the Undersecured Creditor in Reorganizations and the Nature of Security," 389 Vand. L. Rev. 931 (1985); *In re* Griffiths, 10 Bankr. Ct. Dec. (CRR) 173 (Bankr. D. Kan. 1983); *In re* Hallam; 10 Bankr. Ct. Dec. (CRR) 535 (Bankr., E.D. Tenn. 1983); *In re* Elijah, 41 Bankr. 348 (Bankr., W.D. Mo. 1984); Anderson, *supra* note 7, § 10.10.

[130] *See* the authorities cited *supra* note 129.

[131] *See* the authorities cited *supra* note 129. However, if the creditor's lien is worthless or of little value, he is not eligible to make an election under § 1111(b) of the new Code. *See* Klee, *supra* note 126, at 153.

[132] 11 U.S.C. § 1129(b)(2)(A) (1986); *In re* Southern Missouri Towing Service, Inc., 35 Bankr. 313 (Bankr., W.D. MO. 1983); *see* Klee, *supra* note 126, at 153.

[133] As one commentator has opined, §§ 1111(b)(2), 1129(a)(7)(B), and 1129(b)(2) appear to preclude proponents of a plan from "appraising a creditor's collateral and buying him out." Klee, "The New Bankruptcy Act of 1978," 64 *A.B.A. J.* 1865 (1978). *See also* the authorities cited *supra* note 129.

[134] U.S.C § 1129(b)(2)(a)(i) (1986).

[135] The main precepts of the rule of absolute priority are contained in various Supreme Court decisions. Reconstruction Fin. Corp. v. Denver R.G.W.R. Co., 328 U.S. 495 (1946); Group of Investors v. Milwaukee R.R., 318 U.S.C 523 (1943); Consolidated Rock Prods. Co. v. DuBois, 312 U.S. 510 (1941); Case v. Los Angeles Lumber Prods. Co., 308 U.S. 106 (1939). For an expanded discussion of how the rule of absolute priority has been modified under the present Bankruptcy Code, *see* Klee, "All You Ever Wanted to Know about Cram Down Under the New Bankruptcy Code," 53 *Am. Bankr.*

L.J. 133 (1979). The rule of absolute priority provides that each senior class in a reorganization must be satisfied in full before the next descending (or any) junior class can receive anything. *See generally* J. Anderson, *supra* note 7, §§12.29–12.38.

[136] *In re* Tamarack Trail Co., 23 Bankr. 3 (Bankr., S.D. Ohio 1982); *In re* Landau Boat Co., 8 Bankr. 436 (Bankr., W.D. Mo. 1981); *In re* Sullivan, 7 Collier Bankr. Cas. 2d 513, 26 Bankr. 677 (Bankr., W.D.N.Y. 1982); *In re* Tomlin, 22 Bankr. 876 (Bankr., M.D. Ala. 1982); *In re* Pine Lake Village Apartment Co., 19 Bankr. 819 (Bankr., S.D.N.Y. 1982). Farmers are subject to this rule of reorganization law. *See In re* Butler, 42 Bankr. 777 (Bankr., E.D. Ark. 1984); *In re* Fursman Ranch, 36 Bankr. 907 (Bankr., W.D. Mo. 1984); *In re* Tomlin, 22 Bankr. 876 (Bankr., M.D. Ala. 1982).

[137] *In re* Potter Material Service, 781 F.2d 99 (7th Cir. 1986); *In re* U.S. Truck Co., Inc., 47 Bankr. 932, 12 Bankr. Ct. Dec. (CRR) 1088 (E.D. Mich. 1985); *In re* Jartan, Inc., 44 Bankr. 331, 379 (Bankr., N.D. Ill. 1984); *In re* Landau Boat Co., 8 Bankr. 436 (Bankr., W.D. Mo. 1981); *In re* Marston Enters., Inc., 13 Bankr. 514 (Bankr., E.D.N.Y. 1981); *cf. In re* Pine Lake Village Apartment Co., 19 Bankr. 819 (Bankr., S.D.N.Y. 1982).

[138] 11 U.S.C. § 1129(a)(11), provides: "Confirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan." Because of their cyclical cash flow and because of natural forces beyond their control (*e.g.*, weather, insects, etc.), farmers often have difficult problems in proving the feasibility of their plans. *See, e.g., In re* Clarkson, 767 F.2d 417 (8th Cir. 1985); *In re* Deile, 50 Bankr. 217 (Bankr., D. N.D. 1985); *In re* Hoff, 54 Bankr. 746 (Bankr., D.N.D. 1985); *In re* Hoffman, 52 Bankr. 212 (Bankr., D.N.D. 1985); *In re* Cothran, 45 Bankr. 836 (S.D.Ga. 1984); *In re* Stoffel, 41 Bankr. 390, 12 Bankr. Ct. Dec. (CRR) 79 (Bankr., E.D. Va 1984); *In re* White, 36 Bankr. 199 (Bankr., D.Kan. 1983).

[139] *See* authorities cited *supra* notes 126 & 129.

[140] *See* authorities cited *supra* notes 71–88 and accompanying text.

[141] *See* authorities cited *supra* notes 95 to 96.

[142] *In re* Benson, 9 Bankr. 854 (Bankr., N.D. Ill. 1981).

[143] *In re* KRO Assocs., 4 Bankr. Ct. Dec. (CRR) 462 (Bankr., S.D.N.Y. 1978). In the *KRO* case, the court held that a first mortgage debt could be reduced to the value of the real property and that the debtor could pay the "scaled down" mortgage debt over a reasonable number of years, if there was provided a reasonable interest rate for the deferred payments, and if the debtor would provide evidence of (or a guaranty providing) a willingness to fulfill the repayment schedule proposed under the plan. *Id.* at 465.

[144] *Id.*

[145] 9 Bankr. 854 (Bankr., N.D. Ill. 1981).

[145a] Cited at note 118 *supra*.

[146] *See* authorities cited *supra* note 126 & 129; *but cf.* the cases cited at note 138, *supra*, which highlight the feasibility problems inherent in farmer "extension" plans.

[147] 15 Bankr. 35, 8 Bankr. Ct. Dec. (CRR) 365, 5 Collier Bankr. Cas. 2d 386 (Bankr., W.D. La. 1981); *see also In re* Iverson, 24 Bankr. 227 (Bankr., W.D. La. 1982).

[148] 9 Bankr. 854 (Bankr., N.D. Ill. 1981).

[149] 75 F.2d 941 (2d Cir. 1935).

[150] *In re* Hollanger, 15 Bankr. 35 (Bankr., W.D. La. 1981), where the court stated, at 46–47:

". . . The dissenting secured claimaint will be receiving the 'indubitable equivalent' . . . Stated another way, where a dissenting claimant is receiving payment in full over a reasonable period of time, with an appropriate interest or discount factor being paid, that creditor is receiving all the law requires, that is, . . . full payment over a reasonable period of time." *Accord: In re* Pikes Peak Water Co., 779 F.2d 1456, 1461 (10th Cir. 1985); *In re* Iverson, 24 Bankr. 227 (Bankr., W.D. La. 1982).

[151] *In re* Upshaw, No. 589-01026-M (Bankr., W.D. La. Aug. 11, 1981).

[152] *See supra* notes 147–50.

[153] The reduction of the mortgages debts to an *in rem* basis is consistent with the personal discharge from indebtedness granted to the Chapter 11 debtor upon confirmation. *See* 11 U.S.C. § 1141 (1986).

[154] 24 Bankr. 227 (Bankr., W.D. La. 1982).

[155] *In re* Adcock, No. 581-00577-M (Bankr., W.D. La. Dec. 28, 1981).

[156] 11 U.S.C. §§ 361, 1129(b)(2)(A) (1986).

[156a] Wright v. Union Cent. Life Ins. Co., 311 U.S. 273 (1940).

[157] 24 Bankr. 227 (Bankr., W.D. La. 1982).

[158] 31 Bankr. 782 (Bankr., E.D. Mo. 1983).

[159] *See* 11 U.S.C. § 1129(b)(1) (1986), which prohibits unfair discrimination.

[160] *In re* Sun Country Dev., Inc., 764 F.2d 406 (5th Cir. 1985). This treatment of secured claims is supported by the legislative history of the Code, where it is stated that "abandonment [e.g., transfer] of the collateral to the [secured] creditor would clearly satisfy the indubitable equivalence" necessary for a cram down. 124 Cong. Rec. H.11, 103, at 104 (daily ed. Sept. 28, 1978). *See also In re* Fursman Ranch, 38 Bankr. 907 (Bankr., W.D. Mo. 1984), where the court confirmed a farmer-debtor's plan which satisfied certain secured creditors by returning a portion of their collateral and paying the balance of their claims through deferred cash payments. The decision correctly states "there is no statutory bar in the Code to the plan proposed here to return part of the collateral and pay for the balance." *Id* at 909. *But cf. In re* Elijah, 41 Bankr. 348 (Bankr., W.D. Mo. 1984), where a farmer plan proposed the transfer of a portion of collateral to an oversecured creditor in full satisfaction of its claim, and the bankruptcy court committed error in denying confirmation of the plan because the creditor made an election under Section 1111(b). The court misinterpreted the section, holding that the election precluded a transfer of property in satisfaction of the claim. *And see In re* Griffiths, 7 Bankr. 873, 10 Bankr. Ct. Dec. (CRR) 173 (Bankr., D. Kan. 1983) (holding no partial return of collateral, plus cash, could satisfy an undersecured creditor making a § 1111(b) election).

[161] *See* notes 128–138, *supra*, and the accompanying text.

[162] 27 Bankr. 873, 10 Bankr. Ct. Dec. (CRR) 173 (Bankr., D. Kan. 1983).

[163] 10 Bankr. Ct. Dec. (CRR) at 174.

[164] *See generally* J. Anderson, *supra* note 7, at § 10.10; Klee, *supra* note 126. This section precludes the result obtained by a Chapter XII debtor in the case of *In re* Pine Gate Assocs., 2 Bankr. Ct. Dec. (CRR) 1478 (Bankr., N.D. Ga. 1976). Whatever policies underlie § 1111(b) (which policies are unknown or uncertain because of a lack of legislative history explaining the rationale behind this particular section of the Code), one may argue that statutory provisions restricting owners of tax shelter vehicles from cashing out *in rem* mortgages to gain a form of financial windfall (as apparently or arguably occurred in the *Pine Gate* case) should not apply to a family farmer (who will normally have no financial resources to even consider a "cash out") so as to restrict or prevent relief from an oppressive debt structure.

[165] 29 Bankr. 343, 10 Bankr. Ct. Dec. (CRR) 535 (Bankr., E.D. Tenn. 1983).

[166] *In re* Southern Missouri Towing Service, Inc., 35 Bankr. 313 (Bankr., W.D. Mo. 1983).

[167] 41 Bankr. 348 (Bankr., W.D. Mo. 1984).

[168] 124 Cong. Rec. H.11, 103, at 104 (daily ed. Sept. 28, 1978).

[169] In re Sun Country Dev., Inc., 764 F.2d 406 (5th Cir. 1985). *See also In re* Weiberg, 31 Bankr. 782 (Bankr., E.D. Mo. 1983), where the court, although denying confirmation, expressed no reservation in its opinion that the transfer of property in satisfaction of claims (and particularly secured claims *via* receipt of the underlying collateral) could form the basis of a farmer reorganization plan; and *In re* Fursman Ranch, 38 Bankr. 907 (Bankr., W.D. Mo. 1984), where the court confirmed a farmer-debtor's plan which satisfied certain secured creditors by returning a portion of their collateral and paying the balance of their claims through deferred cash payments. *See generally* notes 158–160, *supra*, and the accompanying text.

The court in *Elijah* seemed to have reservations that the property would be transferred to the secured creditors, that the value of such property would be set by *appraisal* and that the appraised value might prove less than the value obtained by such creditors upon susequent resale. Apparently, the court felt that the satisfaction of claims through appraisal, rather than cash values, ran contrary to reorganization principles. However, this position is untenable in light of traditional reorganization principles. Appraisals are a necessary and integral part of fixing the rights of parties in reorganization cases. *See* Blum, *supra* note 7. For example, the appraisal (and valuation) of the property and business of a debtor on a going concern basis is the hallmark towards valuing any securities issued under a plan in satisfaction of claims and fixing the rights of parties in a reorganized entity. Protective Committee for Independent Stockholders, Inc. v. Anderson, 390 U.S. 414 (1968). Further, valuation of real estate has traditionally been used to determine which real estate liens against property are "under water" and without value. *See* the authorities cited at note 105, *supra*. Thus, appraisals *per se* and as part of a plan's treatment of creditors should not make the plan treatment defective and preclude confirmation. If plans of reorganization can issue stock, debentures, or any other form of security to satisfy claims based on the appraisal or valuation of the securities issued (transferred) under the plan, *a fortiori* a plan should be able to transfer real property to satisfy claims based upon the appraised value of the real estate.

[170] *See generally* Coogan, "The New Bankrupcty Code: The Death of Security Interest?" 14 *Ga. L. Rev.* 153 (1980); Orr & Klee, "Secured Creditor Under the New Bankruptcy Code," 11 *U.C.C.L.J.* 312 (1979).

[171] *See* The authorities cited *supra* note 170. Essentially, the debtor may propose that the crop proceeds and new crops grown subsequently will constitute collateral upon which the secured crop lender may be given a "replacement lien." *See* 11 U.S.C. § 361(a) (1986).

[172] 11 U.S.C. § 361(a) (1986).

[173] 38 Bankr. 267, 11 Bankr. Ct. Dec. (CRR) 977 (Bankr., D.N.D. 1984).

[174] However, this decision was initially reversed on appeal by the district court. *In re* Berg, 42 Bankr. 335 (D.N.D. 1984), discussed at notes 179–81 *infra*, and the accompanying text; but the district court's decision was then reversed and remanded by the Court of Appeals. *In re* Martin, 761 F. 2d 472 (8th Cir. 1985), discussed at notes 182–184, *infra*, and the accompanying text.

[175] 38 Bankr. 859, 11 Bankr. Ct. Dec. (CRR) 835 (Bankr., D.S.D. 1984).

[176] *See* 11 U.S.C. §361(1) (1986).

[177] 41 Bankr. 524 (Bankr., D. Minn. 1984).

[178] 27 Bankr. 748 (Bankr. S.D. Ohio 1983).

[179] 42 Bankr. 335 (D.N.D. 1984). This decision also reversed the holding of *In re* Nikolaisen, 38 Bankr. 267, 11 Bankr. Ct. Dec. (CRR) 977 (Bankr., D.N.D. 1984). *See* notes 173–4, *supra*, and the accompanying text. *In re* Berg was then itself reversed and remanded. *In re* Martin, 761 F. 2d 472 (8th Cir. 1985).

[180] "[T]hough the creditor might not be able to retain his lien upon the specific collateral held at the time of filing, the purpose of the action [11 U.S.C. §361] is to insure that the secured creditors receives the value for which he bargained." 42 Bankr. at 338, *quoting* HR Doc. No. 545, 95th Cong., 1st Sess. 39 (1977).

[181] 42 Bankr. at 338. "It should also be noted that weather, fire, explosions or other disasters could partially or totally destroy the 1984 crop. Thus, a lien on crops not yet in existence and that are purely speculative in nature as well as being subject to the uncertainties of weather and other natural phenomena is not the indubitable equivalent of a lien on already existing commodities in storage." *Id.*

[182] 761 F. 2d 472 (8th Cir. 1985).

[183] 38 Bankr. 859, 11 Bankr. Ct. Dec. (CRR) 835 (Bankr., D.S.D. 1984).

[184] 761 F. 2d. at 477–8.

[185] 734 F.2d. 426 (9th Cir. 1984).

[186] *Id.* at 435.

[186a] *See, e.g., In re* Polzin, 49 Bankr. 370 (Bankr., D. Minn. 1985).

[187] The reader should note that this writer believes that *American Mariner* was incorrectly decided. In essence, *American Mariner* held that an inadequately secured creditor in a Chapter 11 case, who is not entitled to relief from the automatic stay under section 363(d)(2) because its collateral was necessary to an effective reorganization, could not be denied relief from the stay under section 362(d)(1) where the debtor only offered periodic cash payments equal to the *depreciation* in the collateral pursuant to section 361(1). Rather, the Court held that the undersecured creditor must receive the "indubitable equivalent" of its entire bargain under section 361(3), which was erroneously construed by the Court of Appeals for the Ninth Circuit to include the present value of the creditor's state law rights to foreclose its collateral (and liquidate it) and reinvest the proceeds. This holding requires essentially that monthly interest payments on the liquidation value of the collateral must be paid to the undersecured creditor, starting

from the point of time in which the creditor could have foreclosed and sold the collateral (and continuing until the confirmation of a plan).

The Committee on Stays, Executory Contracts, and Property of the Estate for the National Bankruptcy Conference took issue initially with the *American Mariner* decision, arguing that the decision: (1) ignores the language of section 361 in general and section 361(3) in particular, which speaks of "adequate protection" of and the "indubitable equivalent" of the secured creditor's interest *in its collateral*; (2) misreads the House and Senate Reports, which make no reference (as admitted by the Court) to the "secured creditor's legal right to take possession of and sell the collateral" or its "equitable right to reinvest the proceeds of the sale," 734 F.2d at 430-1, which were written before the *indubitable equivalent* language was incorporated in section 361(3); (3) erroneously equates "indubitable equivalent" of the secured creditor's interest *in the collateral* in section 361(3) to "indubitable equivalent" of *the secured claim* in section 1129(b)(2)(A)(iii), where the latter phrase appears as an alternative to the discounted present value "as of the effective date of the plan" of deferred cash payments under the plan; (4) ignores the statutory scheme, which is that adequate protection under section 361 [with the back-up of super priority under section 507(b)] was designed to preserve only the value of the secured creditor's interest *in the collateral* in order to fix the amount of the secured claim, which must then be fully compensated by present value under the plan, whether the plan is confirmed under section 1129(a)(7) or under section 1129(b)(2)(A); (5) allows an undersecured creditor to obtain, early in the proceeding, the full value of its claim on the encumbered collateral, although the value of the unsecured creditors' claims on unencumbered collateral remains at risk throughout the case; and, at the same time, gives the undersecured creditor postpetition interest on the secured part of its claim by way of adequate protection, although section 506(b) does not allow any postpetition interest as part of the secured portion of the undersecured claim; (6) will jeopardize many reorganizations by enabling secured creditors to obtain, early in the Chapter 11 case, the full value of their claims, whereas the statutory scheme requires that they receive that value only on confirmation of a plan. This committee's recommendations are subject to further analysis before the National Bankruptcy Conference takes an official position for or against the committee's recommendations and arguments. However, this writer believes that the arguments of the committee are correct and highlight the errors in the rationale of the *American Mariner* decision. Further, the Court of Appeals for the Eighth Circuit has rejected the holding of *American Mariner*. *In re* Briggs Transp. Co., 780 F.2d 1339 (8th Cir. 1985); *but cf.* Grundy Nat. Bank v. Tandem Mining Corp., 754 F.2d 1436 (4th Cir. 1985) (wherein the Fourth Circuit adopted *American Mariner*).

It is highly doubtful that secured creditors "bargain for" any rights other than the liquidation value of their collateral, and so long as this primary right is reasonably maintained under any family farmer reorganization bill, there will be maintained an appropriate balance of policies (*i.e.*, a balancing which will arguably be more favorable to secured creditors than the Frazier-Lemke Act).

[187] *See supra* notes 71-88, 118-25 and accompanying text.

[188] *See supra* notes 90-117 and accompanying text.

[189] *See supra* notes 71-88 and accompanying text.

[190] 4 Bankr. Ct. Dec. (CRR) 462 (Bankr., S.D.N.Y. 1978). The holding of *KRO* was conditioned upon the debtor's amending its plan to provide some covenant or guaranty evincing a willingness to fulfill the repayment proposal contained on the debtor's plan. *See supra* note 143 and accompanying text.

[191] *See also* the authorities cited *supra* at notes 71-88 regarding cases under § 75 of the old Act. The result should be the same, if a farm was involved, rather than an office building.

[192] *See* Klee, *supra* notes 126 & 133, and accompanying text; *see also* the cases cited at note 136, *supra*.

[193] *See* the authorities cited *supra* note 126.

[194] 11 U.S.C. §§ 361(3), 506(a) (1986). When read together, §§ 506 and 361 operate to reinforce the existing *long-standing "rule to the effect the valueless junior secured positions or unsecured deficiency claims will not be entitled to adequate protection.* 2 W. Collier, *Collier on Bankruptcy ¶¶ 361-01 to -13 (15th ed. 1986); the reader should note that this treatise is the fifteenth edition and discusses bankruptcy law under the new Code; a discussion of the old Act is contained in the fourteenth edition, which is cited supra* note 9. *See* also the authorities cited *supra* note 105.

"The evidence before the District Court is not presented by the record. And as the Court of Appeals, if the appeal had been allowed, could have revised the ruling of the court below only in matter of law, it necessarily follows—and was conceded at the bar—that petitioners are bound by the findings of fact. Petitioners insist that their consent to the plan of reorganization was necessary or that their claims should have been accorded 'adequate protection.' But the adequate protection to which the statute refers is 'for the realization of the value of the interests, claims or liens' affected. Here the controlling finding is not only that there was no equity in the property above the first mortgage but that petitioners' claims were appraised by the court as having 'no value.' There was no value to be protected. This finding embraces whatever interests petitions may have as junior lienors under the Illinois law and, in the same aspect, the constitutional argument is unavailing as petitioners have not shown injury."

In re 620 Church St. Bldg. Corp., 299 U.S. 24, 27 (1936).

[195] 11 U.S.C. §§ 1129(b)(2)(A) (1986). *In re* Southern Missouri Towing Service, Inc., 35 Bankr. 313 (Bankr. W.D. Mo. 1983

[196] This hypothetical example is extracted from Anderson, *supra* note 1, which advanced a proposition similar to the one in the text accompanying this footnote.

[197] 11 U.S.C. § 1129(b)(2)(B) (1986). In the cases of the *In re* Pine Lake Village Apartment Co., 19 Bankr. 819 (Bankr., S.D.N.Y. 1982) and *In re* Marston Enters., Inc., 13 Bankr. 514 (Bankr., E.D.N.Y. 1981), debtors' plans were denied confirmation which attempted to allow the debtors to retain their real property and only pay secured creditors the fair market value of the property.

[197a] *Id.; see* the cases cited at note 136, *supra*.

[198] *See* the authorities cited at note 136, *supra*.

[199] *Id.*

[200] Reconstruction Finance Corp. v. Denver & R.G.W.R., 328 U.S. 498 (1946); Group of Inst. Investors v. Milwaukee R., 318 U.S. 523 (1943); Consolidated Rock Prods. Co. v. DuBois, 312 U.S. 510 (1941); Case v. Los Angeles Lumber Prods. Co., 308 U.S. 106 (1939); for an expanded discussion *see* Blum, *supra* note 7; and for a discussion of how the rule of absolute priority has been modified under the new Code, *see* Klee, *supra* note 126; Anderson, *supra* note 7, § 12.24.

[201] *Accord*, Klee, *supra* note 126, at 150-56; Anderson, *supra* note 7, § 12.08.

[202] *Id.*

[203] See the authorities cited at note 136, *supra*.

[204] *See* authorities cited *supra* notes 71-88 and accompanying text.

[205] 11 U.S.C. § 1129(a)(10); *In re* Pine Lake Village Apartment Co., 19 Bankr. 819 (Bankr., S.D.N.Y. 1982); *In re* Marston Enters., Inc., 13 Bankr. 514 (Bankr., E.D.N.Y. 1981).

[206] *See* the authorities cited at notes 29 & 126, *supra*.

[207] *See, e.g., In re* Russell, 44 Bankr. 452 (Bankr., E.D.N.C. 1984); *In re* Lloyd, 31 Bankr. 283 (Bankr., W.D. Ky. 1983).

[208] 11 U.S.C. § 1325 (1986).

[209] 727 F.2d. 1379 (5th Cir. 1984).

[210] 11 U.S.C. § 303(a) provides that an involuntary case cannot be commenced against a farmer.

[210a] 11 U.S.C. § 1112(c) (1986).

[211] 747 F.2d 483 (8th Cir. 1984).

[212] *See, also, In re* Cassidy Land and Cattle Co., Inc., 747 F.2d (8th Cir. 1984) (liquidation plan may be confirmed over farmer-debtor's objection); *In re* J. F. Toner & Son, Inc., 40 Bankr. 461 (Bankr., W.D. Va. 1984) (same holding); *In re* Tinsley, 36 Bankr. 807 (Bankr., W.D. Ky. 1984) (same holding).

[213] *Compare, In re* Lange, 39 Bankr. 483 (Bankr., D. Kan. 1984) (liquidation plan can only be confirmed with the consent of the farmer-debtor); and *In re* Blanton Smith Corp., 7 Bankr. 410 (Bankr., M.D. Tenn. 1980) (same holding), *with* the cases cited at notes 209, 211 and 212, *supra*.

[214] 11 U.S.C. § 1112(c) (1986).

[215] Act of March 3, 1933, ch. 204 § 75, 47 Stat. 1467, 1470-73. This writer believes that the present legislative proposals to amend the Bankruptcy Code are not far removed in many respects from the legislation created under Section 75 of the old Bankruptcy Act.

[216] 11 U.S.C. §§ 1301, *et seq.*

[217] This writer believes that the House Bill, like Section 75, the farm relief provision of the old Bankruptcy Act, was enacted without sufficient study and analysis and that its approach to the problem (incorporation of farmer relief provisions into Chapter 13 is ill-advised. The existing Act does not have sufficient flexibility to meet the needs of farmer relief. Moreover, the farmer relief provisions should contain a "sunset" provision, causing the legislation to expire by its own terms after the farmer emergency situation passes.

Section 75 was enacted in 1933 and was not repealed by the Chandler Act of 1938, ch. 575, 52 Stat. 840 (1980). Rather, Section 75 was maintained in force until March, 1949, and was not made a permanent part of the Bankruptcy Act. 10 H. Remington, *A Treatise on the Bankruptcy Law* § 4002 (1947). The report of the House Committee on the Judiciary No. 1127, February 15, 1944, provides a historical discussion and commentary on the subject of the temporary nature of Section 75. Similarly, this writer believes that the unique problems of farmers cause a need for bankruptcy provisions different than Chapters 11 and 13 of the Bankruptcy Code, and for this reason, a separate chapter is needed for farmers. Since the proposed family farmer legislation attempts to rectify what may be only a temporary emergency situation, there appears to be good reason to have the proposed bills expire at some point in the future after the present emegency ends, unless extended by Congress in the future.

Mr. DENTON. Mr. President, I am pleased that the conference report on H.R. 5316, the Bankruptcy Judges and United States Trustees Act of 1986, maintains a provision which I introduced (originally as S. 1889) which amends the Bankruptcy Code to prevent the discharge of administratively ordered support obligations. The provision would amend the bankruptcy amendments contained in Public Law 98-353, and would fill a gap that currently permits discharge of certain spouse and child support debts through a bankruptcy declaration.

Mr. President, we enacted the Bankruptcy Amendments and Federal Judgeship Act, Public Law 98-353, in 1984. Section 454(b) of the act clarifies section 523(a)(5) of title 11, United States Code, to eliminate loopholes that formerly had allowed the discharge of spousal or child support debts through a judgment of bankruptcy.

Before the enactment of Public Law 98-353, only support debts created in separations, divorce decrees, or property settlements were protected from discharge by bankruptcy. The bankruptcy amendment extended the protection to debts established in other orders of a court of record, thereby preventing discharge in cases where a marriage has never taken place, (e.g. support awarded as a result of a court paternity determination).

Through inadvertence, however, the bankruptcy amendment did not contain a provision to protect support obligations established in State administrative proceedings.

Administrative proceedings are used by approximately 16 States to determine paternity suits and establish and enforce support obligations. Administrative proceedings have proved to be an effective and efficient procedure

for resolving those disputes. It would be unfortunate if we were to prevent the States from using these procedures by denying protection from discharge by bankruptcy for administrative support judgments.

The efficient adjudication of paternity and support suits, and the enforcement of legally established support judgments, are or crucial importance to the economic health of our Nation. This provision was drawn to protect State administrative support judgments from discharge by bankruptcy, and thereby to encourage the States to resolve those suits as quickly as possible through efficient administrative forums.

In reviewing the provision, the House and Senate Conferees agreed to certain technical changes that do not restrict coverage in any way but rather ensure that support determinations made in accordance with State or territorial law (by a governmental unit as defined in 11 U.S.C. 101 (24)) are fully encompassed within the statutory language.

Mr. President, this provision will expand the exception to discharge in 11 U.S.C. 523(a)(5) to embrace support determinations involving various types of processes or procedures (e.g. administrative, expedited judicial) and various forms of determinations (e.g. rules, orders). Such determinations may be made by hearing officers or commissioners of agencies, subagencies, departments or courts of counties, municipalities or States—to cite some examples only.

I thank the conferees for supporting this provision and I urge my remaining colleagues to adopt it.

Mr. DECONCINI. Mr. President, I have been an interested and active participant in the development of much of the legislation that is contained in the conference report that is now being presented for final passage. I support the overall package, but I do have reservations about some parts of the package. For the record, I would like to state my position on some aspects of the bill.

Title I of the bill creates 52 new bankruptcy judgeships. I have always been a strong supporter of the needs of the judicial branch and I have had a long, respectful, and satisfactory relationship with the bankruptcy judges of the Nation. I have often felt they have not received the treatment that their position and magnitude of their jobs deserves. By the same token, I was not convinced during the committee process that the caseload and workload of the bankruptcy judges demonstrated a need for more than 50 new bankruptcy judges. I would have supported a number closer to 30. The report that accompanied the Judiciary Committee action on the bankruptcy judgeship bill spells out in greater detail my reasoning and that of the committee. I hope that is the future the judicial conference will review the report and respond in an appropriate manner. With judgeships running more than a quarter of a million dollars a year to maintain, we cannot engage in the luxury of having surplus judges. I urge the judicial conference to limit their judgeship request to those that are essential and to also review existing judicial position to see if they need to be maintained.

Subtitle B of title I, and title II of the bill deal with the extension and expansion of the U.S. Trustee Program. I have been a strong supporter of the U.S. Trustees, and am pleased that the provisions of this bill as they apply to the Trustees came out as they did. I regret, however, that the concept of "opt-out" as contained in the bill as it passed the Senate was not continued in a greater form. The bill provides that 88 of the judicial districts of the country will permanently go into the Trustee Program and that six districts, all located in Alabama and North Carolina, will be in a separate program much as exists presently, for 6 years. I believe that the theories of bankruptcy administration would have been better served had there been an opportunity for more districts to "opt-out" of the Trustee system and to participate in a program where a Bankruptcy Administrator within the judicial branch would have been responsible for bankruptcy case administration. As the bill stands, I don't believe the concepts of bankruptcy estate administration as advanced by the judicial conference will have a full and fair opportunity to prove themselves.

At this point I certainly want to compliment all the personnel of the U.S. Trustee Program for the outstanding job they have done in all district. They have a record of success, but with the added powers and authority contained in this bill, the need will be even greater for the Attorney General to closely monitor the Trustee activities to ensure that abuses of that power do not occur. Finally, I want to compliment the fine staff of various components of the Department of Justice for all their dedication and work on this bill. Names of people who have been especially important in the process incldue the Attorney General; the Deputy, Mr. Burn; Tom Stanton, Vince Lobisco and Barbara O'Conner of the executive office of U.S. trustees; and Jean FitzSimon, John Bolton and Tom Boyd from other sections of the Department of Justice. They are tireless proponents of the program and able technicians whose assistance was most appreciated.

Finally, Mr. President, I want to comment for a moment on section 255 of the bill which creates a new chapter 12 of the bankruptcy code especially designed to accommodate the family farmer. This chapter is in response to the tremendous hardship that has afflicted many segments of the farm community with the large resulting number of bankruptcies. It was concluded that the present structure of the bankruptcy code simply didn't fit the special economic circumstances that attend the family farmer. I was proud to support the original Grassley bill on this subject in the Senate and I do feel that there is some merit in attempting to address the needs of the farmer through a separate chapter to the bankruptcy code. However, I am troubled by some provisions of the new chapter 12 which I fear might inadvertently cause substantial economic dislocation and bring about an unfair result.

I am very worried that the extremely debtor oriented provisions of this chapter may force our farm lender to write off hundreds of millions of dollars of farm debt with no hope of recovering this debt when the farm crisis ends. Can our credit community afford this? Can our rural banks, teetering now, take another hit? Can the Farmer Credit System take yet another significant economic reversal? Is it fair to ask the creditor to absorb the huge losses that can reasonably be expected to result from this bill? Will there be credit available for farmers in the future, or will this bill result in shutdown of credit in the agricultural area?

These are serious and far reaching questions to which I do not have the answer, but I fear we have tilted the pendulum too far in the direction of the financially troubled farmer. The result may well be that domino effect will occur that in the long run will prove detrimental to the farm sector.

The provision of this bill that troubles me the most is the provision that will permit a family farmer to go into bankruptcy, write down the secured debt to the current value of the land, and then begin to pay the creditor based on what amounts to a new mortgage based on the value of the farm. The thought that a person cannot pay their debt and yet may retain their property and only continue payments based on the value of the property as the filing of the bankruptcy is entirely new—and dangerous. Why won't every farmer with a substantially undercollateralized loan against his farm declare bankruptcy?

Let me put the theory into numbers. Let us assume that in the State of Iowa in 1980, a farmer purchased a piece of land for $1.2 million and took out a $1 million mortgage on the property. In the past 6 years, on the average, there has been a 60-percent decrease in land values in Iowa. In rough terms then, the farm purchased for $1.2 million is now worth $500,000. Another way to look at it is that the se-

cured creditor now has a secured loan for $500,000 and an undercollateralized, unsecured loan for $500,000. Now what will happen under this bill? If the farmer declares bankruptcy under the new chapter 12, the farmer will (1) wipe out for all intents and purposes the $500,000 unsecured portion of the loan; (2) the farmer will only have to make payments on the new, depressed value of the farm—$500,000; and (3) the farmer keeps the farm! Why won't any farmer who finds himself in a situation like the above, where the farmer has a large debt service on property that has substantially depreciated, go into bankruptcy? I fear that we have created a legal atmosphere that may well encourage farm bankruptcies and that farmers who can now manage to work things out with their creditors in some satisfactory manner to both will no longer have that incentive to reach mutual agreement.

Figures on the amount of undercollateralized debt are hard to come by but I will throw out just a few by way of example of the potential magnitude of the problem. My best estimate is that about 40 percent of all farm debt held by institutional investors is undercollateralized. In dollar amounts, the figure exceeds $20 billion. Ninety percent of all debt is held by farmers whose debt is less than $1.5 million, the ceiling under this bill for farmers to take advantage of this chapter. In other words, almost all farmers will be eligible for this chapter. The Farm Credit System lists $2.1 billion in substantially undercollateralized debt. Who knows how much debt that is undercollateralized is held by the Farmers Home Administration—clearly a figure in the billions.

Mr. President, I don't want to be a "pollyanna" crying "wolf" needlessly, but it is my most sincere fear that we may regret our actions tonight. The farm title has substantially revised long held doctrines of the bankruptcy code such as the absolute priority rule and the theories of adequate protection. This bill by not including the doctrines embraced by 1111(b) of the bankruptcy code has precluded a creditor from any hope of participating in an upswing in the value of its collateral. In many other ways, our actions tonight are based on the utmost in good intent—but with no real knowledge of the implications. I urge the proponents of this new farm chapter, Senator GRASSLEY and Congressman SYNAR, to monitor the ramifications of this chapter closely and to resolve to redress inequities that may result in a prompt fashion. I greatly admire both of these gentlemen, and I fervently hope that my judgment is misplaced and that their judgment is fully rewarded.

In closing, I want to thank again the distinguished chairman of the Judiciary Committee, Senator THURMOND, and Senator HEFLIN for all their efforts on behalf of this bill. I also congratulate and thank Chairman RODINO on the House side for his yeoman efforts on behalf of this bill. Also in line for great praise for the roles they have played as "think tanks" on behalf of bankruptcy are all the members of the American Bankruptcy Institute and the National Bankruptcy Conference. Time and again we call upon these volunteer organizations for assistance and they respond with donations of their time and talent. Particularly to be commended are individuals such as Harry Dixon, Ken Klee, Rich Levin, Lawrence King, Robert Zinman, and William Perlstein. Finally, I would like to thank Bob Feidler of my staff for his many efforts on this bill and in the bankruptcy area.

Mr. HATCH. Mr. President, I rise in support of the Bankruptcy Judges and United States Trustees Act of 1986 (H.R. 5316). Despite the pessimists and the naysayers, and despite those who predicted that a satisfactory Bankruptcy Act could never meet the different perspectives and perferences of the varying regions of the country, we have developed a sound and solid conference bill. It is good bill. It establishes 52 much needed judgeships. It establishes 21 Federal judicial districts for the bankruptcy courts. It has refined and extended the bankruptcy trusteeship program, setting out in some detail the duties of the U.S. trustees, but also allowing some flexibility to the Attorney General to enlarge upon those duties if the occasion should rise.

This bill also allows a bankruptcy court to take any action on its own, or to make any necessary determination to prevent an abuse of process and to help expedite a case in a proper and justified manner. If necessary, a U.S. trustee can be designated to serve in one other region than his own, and a U.S. trustee can, in an emergency situation, serve as a case trustee after certification by the U.S. trustee that a disinterested person could not be found to fill the position of case trustee. This, helps to expedite matters and serves the interests of justice.

I have already indicated my concern over the precise wording of section 707(b) of the Bankruptcy Code. Several courts, primarily in Ohio, have taken the position that the bankruptcy trustee is technically "a party in interest" and may not bring evidence of abuse to the attention of the court. This was not the result we intended to achieve in the 1984 Bankruptcy Act. As a result of this conference bill, the U.S. trustee will have the opportunity to inform the court of fraud or abuse. This explicit authority will go a long way toward improving the current confusion and clarifying the real intent of the 1984 legislation.

The new provisions for the family farmer will aid in the preservation of the family farm while maintain at the same time the integrity of the bankruptcy system and meeting the needs of bona fide farm creditors. It also enables a family farm in trouble to undergo a reorganization without going under financially. That is for the good of all of us. I commend my colleague Senator GRASSLEY for this efforts in this regard. He has helped to improve a difficult situation for farmers and nonfarmers alike. The electronic case management demonstration project is an interesting means of evaluating by a cost benefit analysis the enormous caseload problem and the effectiveness of electronic case management remedy.

This is a bill that improves the law. It is a bill that improves the system. It is a bill which will assist creditors and debtors alike. I strongly support its passage, and I urge my colleagues to do the same. This will serve the interests of all parties, and by so doing, will serve the interests of the country.

UTAH BANKRUPTCY JUDGE

Mr. President, I commend the chairman of the Judiciary Committee, Senator STROM THURMOND, for his leadership in setting the bankruptcy courts of the United States on a firm constitutional footing. The adoption of the Landmark Bankruptcy Act in 1984 inaugurated a period of renewed commitment to sound judicial administration of our article I insolvency courts. This sound judicial administration, however, is jeopardized in some districts by inadequate resources to meet the needs. Accordingly, I once again commend the chairman for undertaking the important task of reviewing the need for additional judgeships to keep our bankruptcy system working smoothly.

In this connection, I introduced in March 1985 S. 618, a bill to provide for the appointment of an additional bankruptcy judge for the district of Utah. The need for enactment of this measure has been recently confirmed by the Administrative Office of the U.S. Courts which also requested creation of a new Utah bankruptcy judgeship to prevent disruption of the administration of justice in that part of the tenth circuit.

In making that request, the Administrative Office presented some alarming statistics regarding the massive caseload of the bankruptcy court of the State of Utah. Among the most reliable statistics in assessing the caseload of bankruptcy courts is the number of chapter 11 filings. Chapter 11 cases generally require extensive contested court hearings and adversary proceedings, while chapter 7 and 13 proceedings are generally very administrative and handled out of court. In 1981, the first year that applicable

statistics were available, the total number of chapter 11 bankruptcy filings per judgeship in the State of Utah were 139—a figure many times in excess of the national average of 35. By 1985, the number of chapter 11 filings per judge has risen astronomically to 213—a figure still far above the national average of 92 per judge.

When compared with the national average of filings per bankruptcy judgeship in other categories. Utah's Bankruptcy Court must still be considered blatantly overburdened. For instance, the average number of petitions filed per judgeship in the Nation during 1985 was 1,586, while in Utah, the number stood at 1,979.

A clear indication that Utah's two bankruptcy judges are overworked is that they terminate an average of 77 of the complicated chapter 11 cases yearly, while national average for bankruptcy judges is 30—less than half the Utah totals.

This rigorous caseload clearly disrupts the administration of justice in this vital area of law. Utah bankruptcy judges must spend very long hours on the bench. Utah must often rely on visiting judges. And most distressing, Utah citizens and businesses must occasionally endure costly delays in seeking resolution of their claims.

In article L, section 8 of the U.S. Constitution we find that Congress has been empowered to create uniform bankruptcy laws. The efficiency of uniform bankruptcy laws, however, is imperiled when article I bankruptcy courts are presented with enormous caseloads. In fact, when compared with other districts in the tenth circuit. Utah falls even further behind in the acquisition of necessary bankruptcy adjudicatory resources.

Judge Ralph R. Maybey, a former Utah bankruptcy court judge with a national reputation, has often mentioned Utah's troubled position in the tenth circuit. The Utah district, in 1984, was dealing with almost four times the number of chapter 11 filings, more than two times the number of chapter 13 filings, and just under three times the number of adversary filings per judgeship as compared with other districts in the tenth circuit. Mr. Maybey, referring to the previous statistics, said, "Utah's problem is by far the worst of any in the circuit—and I dare say as bad as anywhere."

The Honorable Aldon J. Anderson, former chief judge of the U.S. District Court, district of Utah, prior to his recent resignation, repeatedly requested a third bankruptcy judgeship position in Utah. His pleas became increasingly emphatic as he saw the "trial calendars * * * backlogged approximately 2 years." He affirmed that the delay of appointment has not only been an inconvenience to the two presently overburdened judges, but also, the delay "has worked in justice on litigants."

This situation is certainly worthy of congressional attention. If our court systems are to maintain the respect they require to dispense impartial and efficient justice, they must not fall into the dilemma currently facing the Utah bankruptcy bench. Accordingly, I urge my colleagues to join me in correcting this Utah situation and the same problems that have arisen in other districts that warrant this corrective legislation.

Mr. THURMOND. Mr. President, I would like to comment on one important provision in this conference report. Last May, when the Senate acted on this bill, I voiced my strong support for a provision sponsored by my distinguished colleague from Utah, Senator HATCH, to clarify the ability of the bankruptcy trustee to bring to the attention of the court information relating to substantial abuse of chapter 7 procedures. I am pleased to inform my colleagues that a similar provision is contained in the conference report. This provision explicitly allows the U.S. trustee not only to bring such information to the court's attention, but also to allow the U.S. trustee to move to dismiss the case on the grounds of substantial abuse. Obviously, the panel trustee will also be involved in this process, since he has important access to information concerning fraud and abuse. In order to further facilitate our intent and our goal in this area—protecting the integrity of the process by ensuring that the court receives all relevant information from objective sources—we expect the panel trustee to advise the U.S. trustee of all such pertinent information. The panel trustee would appear on behalf of any motion filed in this regard.

Mr. HATCH. If I might comment on the excellent presentation of the distinguished chairman of the Judiciary Committee, Senator THURMOND, I would like to add that it is our expectation that the Executive Office for U.S. Trustees will take all appropriate steps to facilitate close cooperation between the U.S. trustees and the panel trustees in these matters. This cooperation will thereby ensure the ability of the U.S. trustee to carry out his statutory responsibilities under section 707(b). In other words, Mr. President, this provision will enable the panel trustee and the U.S. trustee to work closely when dealing with any information or evidence relating to fraud or abuse. The conferees anticipate that the Executive Office for U.S. Trustees will issue uniform guidelines to both the U.S. trustees and the panel trustees for identifying cases of substantial abuse. This will serve to ensure the integrity of the bankruptcy system.

Mr. THURMOND. Mr. President, this legislation authorizes creation of 52 new bankruptcy judgeships, a nationwide U.S. Trustee Program and significant reform in the area of farm bankruptcy. After close scrutiny and careful searching we have come to the conclusion that there are simply no new funds available for the 52 judgeships. Accordingly, we are now only authorizing the positions. The appointment of the new judgeships will not be made until funds are made available.

It is my understanding that efforts will be made to fund all 52 positions in a fiscal year 1987 supplemental and in fiscal year 1988 appropriations.

I ask my distinguished colleagues from New Mexico and Florida to be sure to include the funds for this authorization.

Mr. DOMENICI. I fully expect that in preparing the fiscal year 1988 budget resolution for function 750 including the Judiciary, the Senate Budget Committee will include the annualized fiscal year 1987 level including the impact of this bankruptcy authorization.

Mr. CHILES. I join Chairman DOMENICI in doing what we can to ensure a realistic fiscal year 1988 budget providing for the amount necessitated by this authorization.

Mr. THURMOND. I thank my colleagues for their kind assistance in this matter.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The conference report was agreed to.

CORRECTION OF TECHNICAL ERRORS IN H. CON. RES. 401

Mr. STEVENS. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of House Concurrent Resolution 401.

The PRESIDING OFFICER. The concurrent resolution will be stated by title.

The assistant legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 401) to correct technical errors in the enrollment of the bill S. 2069.

The PRESIDING OFFICER. Is there objection to the present consideration of the concurrent resolution?

Mr. BYRD. Mr. President, there is no objection on this side to the immediate consideration of the concurrent resolution.

The Senate proceeded to consider the concurrent resolution.

The PRESIDING OFFICER. The question is on agreeing to the concurrent resolution.

The concurrent resolution was agreed to.

Mr. STEVENS. Mr. President, I move to reconsider the vote by which the concurrent resolution was agreed to.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

NATIONAL BUREAU OF STANDARDS AUTHORIZATION ACT

Mr. STEVENS. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 847, H.R. 4354.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 4354) to authorize appropriations to the Secretary of Commerce for the programs of the National Bureau of Standards for fiscal year 1987, and for other purposes.

AMENDMENT NO. 3216

Mr. STEVENS. Mr. President, I send to the desk an amendment on behalf of the Senator from Washington [Mr. GORTON].

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Alaska [Mr. STEVENS], for Mr. GORTON, proposes an amendment numbered 3216.

Mr. STEVENS. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike all after the enacting clause and insert in lieu thereof the following:

That this Act may be cited as the "National Bureau of Standards Authorization Act for Fiscal Year 1987".

AUTHORIZATION FOR PROGRAM ACTIVITIES

SEC. 2. (a) There are authorized to be appropriated to the Secretary of Commerce (hereinafter referred to as the "Secretary") for fiscal year 1987, to carry out the activities performed by the National Bureau of Standards, the sums set forth in the following line items:

(1) Measurement Research and Standards, $36,582,000;

(2) Materials Science and Engineering, $21,228,000;

(3) Engineering Measurement and Standards, $35,875,000;

(4) Computer Science and Technology, $7,500,000; and

(5) Research Support Activities, $22,768,000.

(b) Notwithstanding any other provision of this or any other Act—

(1) of the amounts authorized under subsection (a), $1,900,000 is authorized only for steel technology;

(2) of the amount authorized under paragraph (3) of subsection (a), $3,470,000 is authorized only for the Center for Building Technology and $5,402,000 is authorized only for the Center for Fire Research;

(3) of the amount authorized under paragraph (4) of subsection (a), $1,000,000 is authorized only for Computer Security Activities;

(4) of the amount authorized under paragraph (5) of subsection (a), $6,763,000 is authorized only for the Technical Competence Fund; and

(5) of the amount authorized under paragraph (5) of subsection (a), $6,500,000 is authorized only for the design, equipment, and construction of the Cold Neutron Research Facility.

(c)(1) Funds may be transferred among the line items listed in subsection (a) so long as the net funds transferred to or from any line item do not exceed 10 percent of the amount authorized for that line item in each subsection.

(2) In addition, the Secretary may propose transfers to or from any line item exceeding 10 percent of the amount authorized for that line item in subsection (a); but a full and complete explanation of any such proposed transfer and the reason therefor must be transmitted in writing to the Speaker of the House of Representatives, the President of the Senate, and the appropriate authorizing committees of the House of Representatives and the Senate, and the proposed transfer may be made only when thirty calendar days have passed after the transmission of such written explanation.

(d) The National Bureau of Standards shall seek reimbursements of not less than $500,000 from other Federal agencies to expand its efforts in support of basic scientific research on the atmospheric, climatic, and environmental consequences of nuclear explosions and nuclear exchanges.

OFFICE OF PRODUCTIVITY, TECHNOLOGY, AND INNOVATION

SEC. 3. In addition to the sums authorized by section 2, there is authorized to be appropriated to the Secretary for fiscal year 1987 the sum of $2,248,000 for the activities of the Office of Productivity, Technology, and Innovation.

NATIONAL TECHNICAL INFORMATION SERVICE

SEC. 4. In addition to the sums authorized by sections 2 and 3, there is authorized to be appropriated to the Secretary for fiscal year 1987 the sum of $500,000 for the patent licensing activities of the National Technical Information Service.

AVAILABILITY OF APPROPRIATIONS

SEC. 5. Appropriations made under the authority provided in this Act shall remain available for obligation, for expenditure, or for obligation and expenditure for periods specified in the Acts making such appropriations.

FINANCIAL ASSISTANCE TO CURRENT AND PROSPECTIVE EMPLOYEES

SEC. 6. (a) In order to secure the services of the broadest possible range of talent in carrying out the programs of the National Bureau of Standards, the Act of March 3, 1901 (15 U.S.C. 271-278h) is amended by redesignating section 18 as section 19 and by inserting after section 17 the following new section:

"SEC. 18. The Director is authorized to expend up to 1 per centum of the funds appropriated for activities of the National Bureau of Standards in any fiscal year, as the Director may deem desirable, for awards of research fellowships and other forms of financial assistance to students at institutions of higher learning within the United States who show promise as present or future contributors to the mission of the Bureau. The selection of persons to receive such fellowships and assistance shall be made on the basis of ability and of the relevance of the proposed work to the mission and programs of the Bureau.".

(b) The amendments made by subsection (a) shall be effective October 1, 1986.

ASSESSMENT OF EMERGING TECHNOLOGIES REQUIRING RESEARCH IN METROLOGY

SEC. 7. The Board of Assessment of the National Bureau of Standards programs shall include, as part of its annual review, an assessment of emerging technologies which are expected to require research in metrology to keep the Bureau abreast of its mission, including (but not limited to) Process and Quality Control, Technology Transfer, Engineering Databases, High-Performance Composites, Advanced Ceramics, Fiber Optics, Microwave Metrology, Bioprocess Engineering, and Advanced Computing Concepts. Such review shall include estimates of the cost of the required effort, the required staffing level, and the period over which the research will be required.

POST-DOCTORAL FELLOWSHIP PROGRAM

SEC. 8. (a) The Act of March 3, 1901 (15 U.S.C. 271-271h), as amended by section 6 of this Act, is further amended by redesignating section 19 as section 20 and by inserting after section 18 the following new section:

"SEC. 19. The National Bureau of Standards, in conjunction with the National Academy of Sciences, shall establish and conduct a post-doctoral fellowship program which shall be organized and carried out in substantially the same manner as the National Academy of Sciences/National Research Council Post-Doctoral Research Associate Program that was in effect prior to 1986, and which shall include not less than twenty nor more than forty new fellows per fiscal year.".

(b) The amendments made by subsection (a) shall be effective October 1, 1987.

PROCESS AND QUALITY CONTROL AND CALIBRATION PROGRAMS

SEC. 9. (a) The Director of the National Bureau of Standards shall hold discussions with representatives of Federal agencies, including the Department of Defense, the Department of Energy, the National Aeronautics and Space Administration, the Federal Aviation Administration, the National Institutes of Health, the Nuclear Regulatory Commission, and the Federal Communications Commission, which use (or the contractors of which depend on) the process and quality control and calibration programs of the Bureau, and with companies, organizations, and major engineering societies from the private sector, in order to determine the extent of the demand for research and services under such programs, the appropriate methods of paying for research and services under such programs, and the willingness of Federal agencies and the private sector to pay for such research and services.

(b) Within six months after the date of the enactment of this Act, the Director shall submit to the Committee on Science and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report of the Director's findings based on the discussions held under subsections (a), together with recommendations for such legislative actions as may be needed to implement a comprehensive Federal process and quality control and calibration program.

DEMONSTRATION PROJECT RELATING TO PERSONNEL MANAGEMENT

SEC. 10. (a)(1) The Office of Personnel Management and the National Bureau of Standards shall jointly design a demonstration project which shall be conducted by

the Director of the National Bureau of Standards.

(2) The demonstration project shall, except as otherwise provided in this section, be conducted in accordance with section 4703 of title 5, United States Code, and shall be counted as a single project for purposes of subsection (d)(2) of such section.

(3) Subject to subsections (f) and (g) of section 4703 of title 5, United States Code, the demonstration project shall cover any position within the National Bureau of Standards which would otherwise be subject to—

(A) subchapter III of chapter 53 of title 5, United States Code, relating to the General Schedule;

(B) subchapter VIII of chapter 53 of title 5, United States Code, relating to the Senior Executive Service; or

(C) chapter 54 of title 5, United States Code, relating to the Performance Management and Recognition System.

(b) Under the demonstration project, the Director of the National Bureau of Standards shall provide that—

(1) the rate of basic pay for a position may not be less than the minimum rate of basic pay, nor more than the maximum rate of basic pay, payable for the pay band (as referred to in paragraph 3)) within which such position has been placed;

(2) the minimum and maximum rates of basic pay for each pay band shall be adjusted at the times, and by the amounts, provided for under subsection (c);

(3) positions shall be classified under a system using pay bands which shall be established by combining or otherwise modifying the classes, grades, or other units which would otherwise be used in classifying the positions involved;

(4) employees shall be evaluated under a performance appraisal system which—

(A) uses peer comparison and ranking wherever appropriate; and

(B) affords appeal rights comparable to those afforded under chapter 43 of title 5, United States Code;

(5)(A) the rate of basic pay of each participating employee will be reviewed annually, and shall be adjusted on the basis of the appraised performance of the employee; and

(B) subject to subsection (c)(4)(A)(i), the adjustment under subparagraph (A) in any year in the case of any employee whose performance is rated at the fully successful level or higher shall be at least the percentage adjustment taking effect under subsection (c)(3) in such year;

(6) appropriate supervisory and managerial pay differentials (which shall be considered a part of basic pay) shall be provided;

(7) performance-recognition bonuses, and recruitment and retention allowances, shall be awarded in appropriate circumstances (but shall not be considered a part of basic pay);

(8) there shall be an employee development program which includes provisions under which employees may, in appropriate circumstances, be granted sabbaticals, the terms and conditions of which shall be consistent with those applicable for members of the Senior Executive Service under section 3396(c) of title 5, United States Code (excluding paragraph (2)(B) thereof);

(9) payment of travel expenses shall be provided for personnel to their first post of duty in the same manner as is authorized for members of the Senior Executive Service under section 5723 of title 5, United States Code, at the discretion of the Director; and

(10) the methods of establishing qualification requirements for, recruitment for, and appointment to positions shall, at the discretion of the Director, include methods involving direct examination and hiring.

(c)(1) For the purpose of this subsection, the term "compensation" means the total value of the various forms of compensation provided, including—

(A) basic pay;

(B) bonuses;

(C) allowances;

(D) retirement benefits;

(E) health insurance benefits;

(F) life insurance benefits; and

(G) leave benefits.

(2) The Director of the National Bureau of Standards shall, by contract or otherwise, provide for the preparation of reports which, based on appropriate surveys—

(A) shall include findings as to—

(i) the extent to which, as of the commencement of the demonstration project, the overall average level of compensation provided with respect to positions under the demonstration project is deficient in comparison to the overall average level of compensation generally provided with respect positions involving the same types and levels of work in the private sector; and

(ii) with respect to each year thereafter, any net increase occurring during such year in the extent of the deficiency in the overall average level of compensation provided with respect to positions under the demonstration project, as compared to the overall average level of compensation generally provided with respect to positions involving the same types and levels of work in the private sector; and

(B) shall recommend a single percentage by which basic pay for all positions under the demonstration project must be increased so that, when considered in conjunction with the other forms of compensation generally provided, any net increase determined under subparagraph (A)(ii) will be eliminated.

(3) Whenever the Director of the National Bureau of Standards receives a recommendation under paragraph (2)(B), the Director—

(A) shall increase the minimum and maximum rates of basic pay for each such pay band by the lesser of—

(i) the percentage recommended; or

(ii) the overall average percentage of the adjustment in the rates of pay under the General Schedule under section 5305 of title 5, United States Code, for the period involved; and

(B) if and to the extent that funds are available for that purpose, may further increase those minimum and maximum rates—

(i) to make up for any part of the difference between the respective percentages under subparagraph (A), if the percentage under subparagraph (A)(ii) is the lesser; and

(ii) after making up for the entirety of any difference determined under clause (i) (including from any pervious year), to eliminate any part of any remaining deficiency as originally determined under paragraph (2)(A)(i).

(4)(A) Notwithstanding any other provision of this section—

(i) the maximum rate of basic pay payable under any pay band may not exceed the rate of basic pay payable for level IV of the Executive Schedule; and

(ii) the amount of basic pay, bonuses, and allowances paid during any fiscal year to any employee participating in the demonstration project may not, in the aggregate, exceed the annual rate of basic pay payable for level I of the Executive Schedule.

(B)(i) Any amount which is not paid to an employee during a fiscal year because of the limitation under subparagraph (A)(ii) shall be paid in a lump at the beginning of the following fiscal year.

(ii) Any amount paid under this subparagraph during a fiscal year shall be taken into acocunt for purposes of applying the limitation under subparagraph (A)(ii) with respect to such fiscal year.

(5) Notwithstanding any other provision of this section, the demonstration project shall be conducted in such a way so that, with respect to the 12-month period beginnig on October 12, 1986, the total cost to the Government relating to providing compensation to participating employees shall not exceed the total cost which would have resulted if this section had not been enacted.

(6)(A) If the minimum rate of basic pay for a pay band, after an increase under paragraph (3)(A), exceeds the rate of basic pay payable to an employee whose position would otherwise be within such pay band, the employee's position may, notwithstanding subsection (b)(1), be placed in the next lower pay band.

(B) Placement of a position in a lower pay band under subparagraph (A) shall not be considered a reduction in grade or pay for purposes of subchapter II of chapter 75 of title 5, United States Code, or a comparable provision under the project.

(d)(1) The rate of basic pay for an employee serving in a position at the time it is converted to a position covered by the demonstration project may not be reduced by reason of the establishment of such project.

(2)(A) Each employee referred to in paragraph (1) shall be paid—

(i) in the case of an employee serving in a position under the General Schedule on the date the position becomes covered by the demonstration project, a lump-sum pro rata share of the equivalent of any within-grade increase which would have been due the employee under section 5335 of title 5, United States Code, computed as provided in subparagraph (B), and

(ii) in the case of an employee serving in a position subject to chapter 54 of title 5, United States Code, on such date, a lump-sum pro rata share of the equivalent of the employee's merit increase which would have been due under such chapter, computed as provided in subparagraph (B), taking into account the performance requirements applicable to such increase.

(B) For purposes of subparagraph (A), the pro rata share of an equivalent increase referred to in such subparagraph shall be computed through the day before the date referred to in such subparagraph.

(e)(1)(A) In carrying out section 4703(h) of title 5, United States Code, with respect to the demonstration project, the Office of Personnel Management shall provide that such project will be evaluated on an annual basis by a contractor. Such contractor shall be especially qualified to perform the evaluation based on its expertise in matters relating to personnel management and compensation.

(B) The contractor shall report its findings to the Office in writing. After considering the report, the Office shall transmit a copy of the report, together with any comments of the Office and any comments submitted by the National Bureau of Standards, to—

(i) the Committee on Post Office and Civil Service, and the Committee on Science and Technology, of the House of Representatives; and

(ii) the Committee on Governmental Affairs, and the Committee on Commerce, Science, and Transportation, of the Senate.

(2) The Comptroller General shall, not later than 4 years after the date on which the demonstration project commences, submit to each of the committees referred to in paragraph (1)(B) a final report concerning such project. Such report shall include any recommendations for legislation or other action which the Comptroller General considers appropriate.

(f) The authority to enter into any contract under this section may be exercised only to such extent or in such amounts as are provided in advance in appropriation Acts.

(g) The demonstration project shall commence not later than January 1, 1988.

Mr. GORTON. Mr. President, I am pleased to bring before the Senate a substitute version of H.R. 4354, the fiscal year 1987 authorization bill for the National Bureau of Standards. The Bureau is one of our most important national laboratories, with the specific mission of serving the needs of U.S. science and industry. The Bureau's development of standards and measurements contributes to compatibility of products and quality control, and the Bureau's research in emerging high-technology fields, such as fiber optics and advanced ceramics, is important to the international competitiveness of U.S. industry.

I am especially pleased that this bill provides for the long-term stability of the Bureau's Center for Fire Research (CFR) and Center for Building Technology (CBT). CFR studies the properties of fire and the dynamics of fire within structures, and develops model for fire safety programs. CBT studies the properties of building materials and structural techniques, and provides technical support for international building standards. Both centers are cost-effective, provide services which are unavailable elsewhere, and make contributions to public safety which cannot be measured in dollars. I hope that my colleagues will join me in supporting adequate funding for the centers.

H.R. 4354 authorizes appropriations for the Bureau and for the Office of Productivity, Technology, and Innovation (OPTI) and the National Technical Information Service of the Department of Commerce. The Senate Commerce Committee's Subcommittee on Science, Technology, and Space, which I chair, held a hearing on funding for the Bureau, OPTI, and NTIS on April 10, 1986. I introduced S. 2664, the companion to H.R. 4354, on July 21, 1986. S. 2664 was ordered reported without objection by the Commerce Committee and was reported on August 13, 1986. The House passed H.R. 4354 on August 12, 1986.

This substitute bill is the result of negotiations between the Senate Commerce Committee and the House Science and Technology Committee. I intend for this bill to be the final fiscal year 1987 authorization bill for these agencies and also to guide the allocation of funds provided in the continuing resolution. The bill tracks the aggregate funding levels provided by the Senate Appropriations Committee, and I have asked the committee to use the specific levels in this bill as the Senate's position in conference on the continuing resolution.

Mr. President, this bill resolves a conflict between the legislative and executive branches of Government overspending priorities for the National Bureau of Standards. The administration has sought funding for development of a cold neutron research facility at the Bureau, and has proposed to offset the cold neutron initiative by eliminating the Center for Fire Research and Center for Building Technology and by reducing by half funding for the Bureau's Institute for Computer Science and Technology (ICST). The Congress has a high regard for the value of the fire and building centers and ICST, and has rejected the proposed cuts; consequently, no funding has been provided for the cold neutron research facility, which has unquestioned scientific value.

I was disappointed when the fiscal year 1987 budget submission for the Bureau included, for the second straight year, proposals to eliminate the centers and cut ICST to offset the proposed cold neutron initiative. I indicated to the administration that the cold neutron research facility would not be funded as long as the administration proposed these cuts, and I introduced S. 2664 in a form which restored funding for the fire and building centers and ICST and prohibited expenditures for cold neutron. Concurrently, I negotiated with the administration in an effort to find a mutually acceptable Bureau budget.

This substitute bill reflects an agreement which, subject to the approval of Congress, will provide for development of the cold neutron research facility without eliminating the fire and building centers or making a 50-percent cut to ICST. The bill includes small cuts to the two centers and to ICST, reductions to the Bureau's Postdoctoral Research Associate Program and Technical Competence Fund, and an authorization of $6.5 million for the cold neutron research facility. The total authorization for the Bureau is $123,953,000, which is the level contained in the Senate Commerce, Justice, State appropriations bill and the Senate Continuing Resolution.

If the Congress approves this budget for the Bureau, the administration has agreed not to propose further cuts to the centers and ICST in fiscal years 1988 or 1989. This agreement is acceptable to the Senate and House authorizing committees and to the leadership of the Senate Appropriations Subcommittee on Commerce, Justice, and State. I urge my colleagues to approve this agreement by passing this bill and providing adequate funding for these important Bureau programs, and I ask unanimous consent that a letter from the Office of Management and Budget describing the details of the agreement be entered into the RECORD at this point.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

OFFICE OF MANAGEMENT AND BUDGET,
Washington, DC.

HON. SLADE GORTON,
U.S. Senate,
Washington, DC.

DEAR SENATOR GORTON: This is to confirm recent staff discussions on the National Bureau of Standards (NBS) authorization and appropriation bills.

The Office of Management and Budget (OMB) and the Department of Commerce will support a total NBS budget authorization of $123,953,000 for FY 1987. This level will include $6.5 Million for initiation of the Cold Neutron Facility and reductions from the pre-Gramm-Rudman-Hollings FY 1986 operating levels of $.5 Million for the Fire Program, $.5 Million for the Building Program and $2.5 Million for Computer Sciences and Technology. There will also be reductions of $1.5 Million in the Competence Program and $1.641 Million in the Post Doctoral Program. Neither the Department of Commerce nor OMB will propose further programmatic reductions in the Fire, Building, and Computer Sciences Programs in FY 1987, FY 1988 or FY 1989. In the case of across-the-board budget changes such as reductions the President must make to achieve Gramm-Rudman-Hollings deficit targets or a subsequent sequester, these programs will be treated the same as the other NBS programs.

Our commitment is, of course, contingent on successful implementation of this compromise in both the final authorization and appropriation for NBS in FY 1987.

Sincerely,

CAROL T. CRAWFORD,
Associate Director for Economics and Government.

Mr. GORTON. Mr. President, this bill also provides an authorization of $2,748,000 for OPTI, of which $500,000 is earmarked for the patent licensing activities of OPTI's National Technical Information Service. This funding level for OPTI is consistent with the continuing resolution and sufficient to maintain current OPTI services in fiscal year 1987.

The bill includes a significant provision passed by the House which was not part of S. 2664, the Senate companion. The provision—section 10 in the substitute bill—creates a National Bureau of Standards demonstration project relating to personnel compensation and management.

The demonstration project enhances the Bureau's ability to recruit and retain capable employees by giving the Bureau flexibility in setting salaries competitive with those available outside the Government and in adjusting compensation on the basis of merit. The project addresses the Government's problem attracting and keeping qualified personnel, especially in high-technology fields.

Successful experiments with alternate personnel compensation systems, notably the Navy's demonstration project at the China Lake Laboratory, have led to an administration proposal to implement a permanent, Government-wide personnel policy based on pay band flexibility and adjustment based on performance. The Governmental Affairs Committee has not considered the administration's proposal, and I understand that the committee believes that further experimentation is needed before a Government-wide policy can be considered. The Governmental Affairs Committee supports the demonstration project at the Bureau created by this bill.

Mr. President, I urge my colleagues to support this bill and send it back to the House for final passage.

Mr. HOLLINGS. Mr. President, the Senate is now considering a compromise proposal regarding the National Bureau of Standards [NBS]. I support the compromise, although not without some reservations.

This compromise reflects not only an agreement between the Senate and the House but also an agreement between the Congress and the Office of Management and Budget. For several years, OMB has proposed eliminating the fire and building centers at the Bureau and cutting its computer institute in half. For as many years, Congress has categorically rejected these proposals. OMB has never offered one shread of hard evidence to show that private industry or the States could or would assume the vital services performed by these NBS groups.

This year we have a compromise. In return for three congressional concessions—accepting small cuts in these three programs, accepting additional cuts in two NBS support programs, and allowing the so-called cold neutron facility to proceed—OMB has agreed in writing not to propose further reductions in the three programs in future Reagan administration budget requests.

I do not like the idea of further cuts in the fire, building, and computer programs. I particularly worry about the Center for Fire Research. It remains the premier American center for developing flame-resistant materials and improved safety systems. Given that the United States still has the highest fire death rate in the industrialized world, it would be negligent in the extreme to eliminate this center. I am reluctant to support even modest additional cuts in its funding.

I will support the proposed compromise, however. I believe that the morale and effectiveness of the fire, building, and computer programs will improve sharply if we can remove the threat of further cuts. OMB has made that commitment. In my mind, the benefits of the agreement narrowly outweigh the disadvantages. For that reason, I support the agreement and urge my colleagues to so, as well.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3216) was agreed to.

Mr. STEVENS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. STEVENS. Mr. President, I ask unanimous consent that Calendar No. 836, which is S. 2664, the Senate companion bill, be indefinitely postponed.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill is open to further amendment. If there be no further amendments, the question is on the engrossment of the amendment and the third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read the third time.

The bill was read the third time, and passed.

Mr. STEVENS. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AUTHORIZATION FOR CONSERVATION PROGRAMS ON MILITARY RESERVATIONS AND PUBLIC LANDS

Mr. STEVENS. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 201, S. 1352.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 1352) to authorize appropriations to carry out conservation programs on military reservations and public lands during the fiscal years 1986, 1987, and 1988.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection the Senate proceeded to consider the bill.

AMENDMENT NO. 3217

Mr. STEVENS. Mr. President, I send to the desk an amendment on behalf of Senators CHAFEE, STAFFORD, and MITCHELL.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Alaska [Mr. STEVENS], for Mr. CHAFEE, Mr. STAFFORD, and Mr. MITCHELL, proposes an amendment numbered 3217.

Mr. STEVENS. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 2, after line 4 insert the following:

SEC. 2. NATURAL RESOURCES AND FISH AND WILDLIFE MANAGEMENT ON MILITARY RESERVATIONS; REPORT ON MILITARY EXPENDITURES FOR FISH AND WILDLIFE MANAGEMENT.

(a) NATURAL RESOURCES MANAGEMENT.—The Secretary of each military department shall manage the natural resources of each military reservation within the United States that is under the jurisdiction of the Secretary—

(1) so as to provide for sustained multipurpose uses of those resources; and

(2) to provide the public access that is necessary or appropriate for those uses;

to the extent that those uses and that access are not inconsistent with the military mission of the reservation.

(b) FISH AND WILDLIFE MANAGEMENT SERVICES.—The Secretary of each military department shall ensure, to the extent feasible, that the services necessary for the development, implementation, and enforcement of fish and wildlife management on each military reservation within the United States under the jurisdiction of the Secretary are provided by the Department of Defense personnel who have professional training in those services.

(c) FISH AND WILDLIFE MANAGEMENT REPORT.—The Secretary of each military department shall submit to each House of the Congress, before the close of the 180-day period occurring after the close of fiscal year 1986, a detailed report setting forth the amount and purpose of all expenditures made during fiscal year 1986 for fish and wildlife management on each military reservation in the United States under the jurisdiction of the Secretary.

(d) DEFINITIONS.—As used in this section—

(1) The term "military department" means the Department of the Army, the Department of the Navy, and the Department of the Air Force.

(2) The term "United States" means the States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possession of Puerto Rico, and the territories and possession of the United States.

SEC. 3. SIKES ACT AMENDMENTS.

(1) COOPERATIVE PLANS.—(1) Section 101 of the Act of September 15, 1960 (commonly referred to as the "Sikes Act"; 16 U.S.C. 670a) is amended to read as follows:

"SEC. 101. (a) The Secretary of Defense is authorized to carry out a program of planning for, and the development, maintenance, and coordination of, wildlife, fish, and game conservation and rehabilitation in each military reservation in accordance with a cooperative plan mutually agreed upon by

the Secretary of Defense, the Secretary of Interior, and the appropriate State agency designated by the State in which the reservation is located.

"(b) Each cooperative plan entered into under subsection (a)—

"(1) shall provide for—

"(A) fish and wildlife habitat improvements or modifications,

"(B) range rehabilitation where necessary for support of wildlife,

"(C) control of off-road vehicle traffic, and

"(D) specific habitat improvement projects and related activities and adequate protection for species of fish, wildlife, and plants considered threatened or endangered;

"(2) must be reviewed as to operation and effect by the parties thereto on a regular basis, but not less often than every 5 years;

"(3) shall, if a multiuse natural resources management plan is applicable to the military reservation, be treated as the exclusive component of that management plan with respect to wildlife, fish, and game conservation and rehabilitation; and

"(4) may stipulate the issuance of special State hunting and fishing permits to individuals and require payment of nominal fees therefor, which fees shall be utilized for the protection, conservation, and management of fish and wildlife, including habitat improvement and related activities in accordance with the cooperative plan; except that—

"(A) the Commanding Officer of the reservation or persons designated by that Officer are authorized to enforce such special hunting and fishing permits and to collect the fees therefor, acting as agent or agents for the State if the cooperative plan so provides, and

"(B) the fees collected under this paragraph may not be expended with respect to other than the military reservation on which collected.

"(c) After a cooperative plan is agreed to under subsection (a)—

"(1) no sale of land, or forest products from land, that is within a military reservation covered by that plan may be made under section 2665 (a) or (b) of title 10, United States Code; and

"(2) no leasing of land that is within the reservation may be made under section 2667 of such title 10;

unless the effects of that sale or leasing are compatible with the purpose of the plan.

"(d) With regard to the implementation and enforcement of cooperative plans agreed to under subsection (a)—

"(1) neither Office of Management and Budget Circular A-76 nor any successor circular thereto applies to the procurement of services that are necessary for that implementation and enforcement; and

"(2) priority shall be given to the entering into of contracts for the procurement of such implementation and enforcement services with Federal and State agencies having responsibility for the conservation or management of fish or wildlife.

"(e) Cooperative plans agreed to under the authority of this section and section 102 shall not be deemed to be, nor treated as, cooperative agreements to which the Federal Grant and Cooperative Agreement Act of 1977 (41 U.S.C. 501 et seq.) applies.".

(2) Subsection (d)(1) of such section 101 (as added by paragraph (1)) shall not affect any contract entered into before the date of the enactment of this Act for the provision of services to implement or enforce a cooperative plan under this Act on any military installation; but shall apply to the renewal, after such date of enactment, or any such contract.

(b) FUNDS COLLECTED UNDER PLANS.—Subsection (a) of section 106 of the Sikes Act (16 U.S.C. 670f(a)) is amended by adding at the end thereof the following new sentence: "All funds that are so collected shall remain available until expended.".

SEC. 4. FOREST PRODUCTS ON MILITARY RESERVATIONS.

Section 2665 of title 10, United States Code, is amended as follows:

(1) Subsection (d) is amended—

(A) by striking out "available for operation and maintenance during a fiscal year";

(B) by striking out "expenses" and inserting in lieu thereof "costs"; and

(C) by striking out "during such fiscal year".

(2) Subsection (e)(1) is amended by striking out "for all expenses of production of forest products".

(3) Subsection (f) is amended—

(A) by striking out "expenses" in the matter preceding subparagraph (A) in paragraph (1) and inserting in lieu thereof "costs",

(B) by amending paragraph (1)(C) to read as follows:

"(C) for natural resources management that implements approved plans and agreements.", and

(C) by amending paragraphs (2) and (3) to read as follows:

"(2) There shall be deposited into the reserve account the total amount received by the United States as proceeds from the sale of forest products sold under subsections (a) and (b) less—

"(A) reimbursements of appropriations made under subsection (d), and

"(B) payments made to States under subsection (e).

"(3) The reserve account may not exceed $4,000,000 on December 31 of any calendar year. Unobligated balances exceeding $4,000,000 on that date shall be deposited into the United States Treasury.".

Amend the title so as to read: "A bill to enhance the carrying out of fish and wildlife conservation and natural resource management programs on military reservations, and for other purposes".

Mr. CHAFEE. Mr. President, this amendment to S. 1352 on behalf of Senators STAFFORD, MITCHELL, and myself, will enhance the carrying out of fish and wildlife conservation and natural resource management programs on military reservations. Mr. President, this amendment combines legislation, H.R. 1202, passed by the House with changes recommended by the Senate Armed Services Committee. And I understand that it has the support of that committee and the Merchant Marine and Fisheries Committee of the House of Representatives.

Mr. President, in April 1984, the U.S. Army invited a three-member review team to assess the status of natural resource management programs carried out on U.S. Army lands and to formulate recommendations for improving these programs. Many of these recommended changes, which involve improved planning and coordination for multipurpose use, have been incorporated into this amendment.

The Environment and Public Works Committee's Subcommittee on Environmental Pollution conducted a hearing on September 17, 1986, to examine the issues raised by the House bill and the changes recommended by the Senate Armed Services Committee. One issue addressed at that hearing was the effect implementation of the Office of Management and Budget [OMB] Circular A-76 has had on fish and wildlife conservation activities on military lands under the Sikes Act. The OMB circular, first issued in 1955, was revised in August 1983, and again in March 1984. The circular is intended to provide for review of Federal activities and to promote private sector contracting for these activities where feasible.

Testimony was submitted at the hearing that many fish and wildlife conservation-related activities were being contracted out. While no specific problems with contracting activities were identified at the hearing, we are concerned that contracting out of fish and wildlife activities based upon fiscal consideration alone may not be in the best interest of the conservation resource. While certain labor-intensive activities can be performed effectively by the private sector, fish and wildlife management and policy-related activities are inherently governmental responsibilities which we believe are best handled by qualified individuals within the Department of Defense, the Department of the Interior, or appropriate State agencies. Our amendment would ensure that this would be the case.

Testimony during the hearing revealed that, on some military bases, the fish and wildlife cooperative plans, once completed, are not updated or periodically reviewed with sufficient frequency. Additionally, the impacts of forestry and agricultural activities on fish and wildlife need are not always considered in a comprehensive fashion. Consequently, our amendment would make these cooperative plans the governing component for the management of fish and wildlife in the overall base multiuse natural resource management plans. Further, the amendment would require the fish and wildlife plan to be reviewed on a regular basis to assure that it is up to date and is addressing current needs.

In the Military Construction Authorization Act of 1985, Congress created a timber reserve account, which is to be administered by the Secretary of Defense, to be used for improvements on forest lands. One-half of the total amount of money collected from the sale of timber products, minus reimbursement for forestry expenses and State revenue sharing, is deposited into the timber reserve account. At no time is this account permitted to exceed $4 million.

However, a strong relationship exists between forest-land uses on military reservations and the multiple use management of these lands for all natural resources purposes, including fish and wildlife management. Effective planning and coordination on these lands is one of the fundamental objectives of the Sikes Act and any improvements to forest lands should also give consideration to other aspects of natural resource management. Our amendment, then, would allow this reserve account to be used not only for forest management but also for conservation of fish and wildlife and other natural resources.

Mr. President, let me describe our amendment in more detail for my colleagues. Section 2 would require that the Secretary of each military department, including the Army, Navy, and Air Force, to manage the natural resources of each military reservation under his jurisdiction within the United States for sustained multiple use. No one disputes that the military mission must be of paramount importance of these reservations, however, the lands are held as a public trust and should be managed on a multiple use basis when compatible with military purposes. Public access appropriate and necessary for those multiple uses also is provided, to the extent that such access is consistent with the military mission of the reservation.

Section 2 also would mandate that the development, implementation, and enforcement of fish and wildlife management activities on U.S. military reservations be provided by Department of Defense personnel with professional training in those activities. This provision is intended to insure that fish and wildlife management on military lands is recognized as a legitimate, in-house responsibility of the Department of Defense and that management activities in this regard are carried out by professional, fish and wildlife management-trained personnel.

Lastly, section 2 would require the Secretary of each military department to prepare and submit to Congress a detailed report of all fish and wildlife management related expenditures on U.S. military reservations under the jurisdiction of that military department. This report should be submitted to the Committees on Armed Services and on Environment and Public Works of the Senate and on Merchant Marine and Fisheries and on Armed Services of the House of Representatives. This report must be submitted within 180 days after the close of fiscal year 1986.

Section 3(a)(1) would continue to authorize the development and implementation of fish and wildlife conservation plans cooperatively agreed to by the Secretaries of Defense and the Interior and the appropriate State fish and wildlife agency. This section would require that these plans be reviewed by the participating parties at least every 5 years. The cooperative fish and wildlife plan under the amendment would be treated as the exclusive component of that plan for managing wildlife, fish and game conservation and rehabilitation in the development and review of multiuse natural resource management plans for the appropriate military reservation. This provision is intended to ensure that the goals and objectives of the fish and wildlife management plan receive adequate consideration in relation to timber harvest, agriculture, and other natural resource uses on military lands. In no way does this language prohibit or require the termination of existing fish and wildlife enhancement, management, or restoration that is being done on military reservations though not identified in the fish and wildlife cooperative plan. This section also clarifies that the proceeds from fees for special State hunting and fishing permits for military lands may only be expended at the military reservation on which the fees were collected.

Section 3(a)(1) further requires that, after the parties have agreed to a cooperative fish and wildlife plan, no sale or leasing of land or sale of forest products from land within a military reservation covered by the cooperative plan is permitted unless the effects of the sale or leasing are compatible with the purposes of the cooperative plan. This provision is intended to ensure that natural resource management on military lands is truly multiuse and that fish and wildlife resources receive equal consideration with other resource uses.

Section 3(a)(1) exempts activities and services associated with implementation and enforcement of cooperative fish and wildlife plans from provisions of Circular A-76 of the Office of Management and Budget or any successor circular. This is not intended to restrict the authority of the Department of Defense to enter into contracts for these services, but only to obviate the need for mandatory review and contracting under this circular or any successor directive. In the event that the Department of Defense elects to provide these services through contract, the U.S. Fish and Wildlife Service or the appropriate State fish and wildlife agency should receive priority consideration for award of these contracts.

Section 3(a)(2) clarifies that any existing contract for services to implement or enforce provisions pursuant to a cooperative agreement is not affected by the exemption from provisions of OMB Circular A-76 for the duration of such contract. However, new contracts or renewals of existing contracts are, after the date of enactment, subject to this exemption provision.

Section 3(b) amends the Sikes Act to provide that any funds collected in accordance with the cooperative plans shall remain available until expended. This provision would allow installations to accumulate funds from year to year for use on larger projects at the installation. This is intended to streamline administrative and accounting procedures to facilitate use of these funds during years other than the year the funds were collected.

Section 4 amends provisions of the Military code (10 U.S.C. 2665) relating to reimbursement for all costs of production of forest products. Under existing law, proceeds from the sale of forest products harvested on lands under the jurisdiction of the Secretary may be used to reimburse expenses for production costs associated with those timber products. There has been some question as to whether only operations and maintenance expenses could be reimbursed from receipts of the commercial forestry program or whether all costs associated with operating that program could be reimbursed. This provision of the amendment, then, clarifies the authority of the Department of Defense to use receipts of the commercial forestry program to fund all costs of operating that program.

Our amendment will allow some portion of the total receipts available in the commercial forestry reserve account (approximately $1.2 million) to be used for fish and wildlife programs on military reservations. There are more than sufficient funds for this purpose. Annual expenditures from this account have never approached the maximum available. The Department of Defense should ensure that no escalation of equipment and other purchases takes place which would deplete the reserve account and prevent adequate funding for fish and wildlife management.

Section 4 also amends the military code (10 U.S.C. 2665(f)) relating to a reserve account maintained by the Treasury for specified uses related to forest lands under the jurisdiction of the Secretary of Defense. Under current law, after reimbursement for production costs, 40 percent of the balance for each installation is allocated to the State in which the facility is located. The remaining balance is divided equally between the General Treasury and the reserve account mentioned above. The reserve account is available to the Secretary for improvement of forest lands on military installations to meet unexpected contingencies in forest administration on these lands for which other funds are not available, and to provide continuity of production from one fiscal year to the next.

Our amendment would expend the purposes of the reserve account to allow it to be used for natural re-

sources management activities which implement approved plans and agreements. Thus, fish and wildlife conservation programs pursuant to the Sikes Act cooperative plans would be eligible for funding from the reserve account. Forestry activities on military lands result in significant impacts on fish and wildlife resources and, therefore, efforts to restore these resources pursuant to a cooperative plan should be eligible for funding from the reserve account.

Additionally, section 4 would stipulate that all funds from the sale of forest products which are available after payment to the States and from reimbursement of costs of production are to be deposited into the reserve account, rather than one-half of these funds as under current law. Finally, the reserve account would not be allowed to exceed $4 million on December 31 of any calendar year. Any balance in excess of this amount on this date would be required to be deposited in the General Treasury. Under existing law, the reserve fund may not exceed $4 million at any time.

Thank you, Mr. President.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3217) was agreed to.

Mr. CHAFEE. Mr. President, S. 1352 authorizes appropriations to carry out conservation programs on military reservations and public lands under the Sikes Act during fiscal years 1986, 1987, and 1988. The Sikes Act was enacted by Congress in 1960 and amended in 1968, 1974, 1978, and 1982. The act originally authorized the Secretary of Defense to carry out a program of planning, development, maintenance, and coordination of fish and wildlife conservation on military reservations. These installations encompass over 25 million acres. The programs were to be in accordance with a cooperative plan mutually agreed upon by the Secretary of the Defense, the Secretary of the Interior, and the appropriate agency in the State in which the installation is located. Department of Defense regulations require that fish and wildlife management plans be executed for all military installations which contain land and water areas suitable for the conservation and management of fish and wildlife resources. Suitability is determined after consultation with the U.S. Fish and Wildlife Service and the director of the State fish and wildlife agency in which the installation is located. To date, more than 19 million acres of fish and wildlife habitat have been covered by these cooperative plans.

In 1968, Congress amended the Sikes Act to include public outdoor recreation programs on military reservations and, for the first time, authorized appropriations to the Secretaries of Defense and Interior to carry out the purposes of the act.

In 1974, Congress amended the act to require that the cooperative wildlife plans provide for fish and wildlife habitat management, range rehabilitation, and the control of off-road vehicle traffic.

These 1974 amendments also established title II of the act, which directed the Secretaries of the Interior and Agriculture, in cooperation with the appropriate State agencies, to plan, develop, maintain, and coordinate programs for the conservation and rehabilitation of lands under their jurisdiction (Bureau of Land Management and Forest Service lands) and lands under the jurisdiction of the Atomic Energy Commission [AEC], now the Department of Energy, and the National Aeronautics and Space Administration [NASA].

Title II of the Sikes Act also provides that any State agency may agree with the Secretaries of the Interior and Agriculture that no individual will be permitted to hunt, trap, or fish on any Interior or Agriculture lands covered by the act unless the individual possesses a valid public land management area stamp. This stamp would be in addition to regular State hunting, fishing, and trapping permit or licenses. Any fees collected from the sale of this stamp must be utilized solely to carry out conservation and rehabilitation programs on the lands subject to the agreement and to defray the expenses associated with printing and issuing the stamp.

In 1978, Congress reauthorized the Sikes Act, raising the authorization level under title I from $2 million to $3 million for the Secretary of the Interior and, under title II, increasing the authorization for the Secretary of Agriculture from $10 million to $12 million. The Secretary of Defense's authorization of $1.5 million under title I and the Secretary of the Interior's authorization of $10 million under title II remained constant.

In 1982, Congress once again amended the Sikes Act by extending the authorization levels through 1985. Titles I and II were amended to provide adequate protection for endangered or threatened species of fish, wildlife, and plants. The nature of the cooperative agreements referred to in the Sikes Act was clarified by noting that these documents are the vehicle through which the Federal and State agencies mutually agree in principle on fish and wildlife programs rather than the legal instruments defined under the Federal Grant and Cooperative Agreement Act. In addition, title II was amended to allow the Secretary of Agriculture to make purchases and contracts for property and services from, and provide assistance to, the State agencies without going through the advertising and competitive bidding requirements under the Federal Property and Administrative Services Act.

As reported by the Committee on Environment and Public Works on June 25, 1985, S. 1352 extends the existing authorization levels for each of fiscal years 1986, 1987, and 1988. These authorization levels are $1.5 million annually to the Secretary of Defense and $3 million annually to the Secretary of the Interior to carry out the purposes of the Sikes Act on military lands. Also authorized are $10 million annually to the Secretary of the Interior and $12 million annually to the Secretary of Agriculture to carry out the purposes of the Sikes Act on other public lands, including U.S. Forest Service, Bureau of Land Management, National Aeronautics and Space Administration, and Department of Energy lands.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed.

Mr. STEVENS. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

□ 1910

REHABILITATION ACT AMENDMENTS—CONFERENCE REPORT

Mr. STEVENS. Mr. President, I submit a report of the committee of conference on H.R. 4021 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment to the bill (H.R. 4021) to extend and improve the Rehabilitation Act of 1973 having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by all of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of October 2, 1986.)

Mr. WEICKER. Mr. President, I rise to urge the passage of the conference report on H.R. 4021, the Rehabilitation Act Amendments of 1986.

The agreement reached by the conferees on this legislation both ensures that the programs currently author-

ized by the Rehabilitation Act will continue to serve the Nation's disabled individuals, and makes significant improvements to the act to reflect the state of the art with respect to the provision of vocational rehabilitation services.

An important component of the Senate bill, which I am pleased that the House accepted in its entirety, authorizes grants for States to develop supported employment services for severely disabled individuals. We know that severely disabled individuals can work, given appropriate support. The new supported employment program authorized in this bill will require State agencies to develop supported employment services in order to expand existing rehabilitation services to many severely disabled individuals who have been underserved or unserved by these agencies. States will be expected to organize their supported employment services in a flexible manner, in order to respond to the individual needs of persons eligible for services under this program. While the bill calls for traditionally time-limited postemployment services under the supported employment program, I want to make it clear that it is the individual needs of clients that should guide the delivery of services, and any arbitrary time limitations placed on these services are inappropriate.

Another provision contained in the Senate bill and adopted by the conferees relates to the intent of Congress concerning violations of section 504 and other Federal statutes prohibiting discrimination. The conference agreement provides that States shall not be immune under the 11th amendment from suit in Federal court for violations of section 504 and other statutes. This provision will ensure that individuals will be able to enforce their rights in Federal court when State or State agency actions are at issue.

The Rehabilitation Act amendments also include an increased emphasis on rehabilitation engineering as it relates to employment, an increased role for the National Council on the Handicapped as a policy advisory body on issues of national scope affecting disabled individuals, and important refinements in projects with industry and independent living programs.

The Federal Government has long recognized its responsibility to assist disabled citizens live independently as tax-paying citizens. I believe the Rehabilitation Act Amendments of 1986 represent a significant contribution toward the realization of that goal. In these times of fiscal constraint, the investment in the future of disabled individuals through rehabilitation programs is one of the most prudent investments we make—with an $11 return to the economy for every dollar spent.

Further, I am particularly pleased that the conferees have addressed the issue of how to calculate the entitlement amount under the basic State grant. An amendment included by the conferees to the authorization of funds for the State grant provision will ensure that the State grant program will be guaranteed, at the very least, a cost-of-living increase over the previous year's funding level. This is essential when we know there are waiting lists in virtually every State for rehabilitation services, and that on average, only 1 in 20 eligible individuals are currently getting the services they need.

Finally, I want to thank all the conferees on the Senate side for their perseverance in arriving at the agreement—which was unanimously adopted by all conferees—and also Representatives WILLIAMS, HAWKINS, and JEFFORDS on the House side for their support of the final conference agreement on this important legislation.

Mr. STAFFORD. Mr. President, I rise to give my support to the conference report on the Rehabilitation Act Amendments of 1986. This represents the most far-reaching and encompassing legislation in this area since Congress passed the 1978 Rehabilitation Act Amendments. Not one portion of this act was left untouched and the conference agreement reauthorizes it for another 5 years. These changes reflect state of the art as well as the changes technology and medicine have made in the lives of the disabled individuals of this Nation.

There are several portions of this conference agreement that I would like to note. First is the reaffirmation of our commitment to, and the value of, the basic State grant program for the provision of rehabilitation services. The basic State grant program has been the foundation of this act and has been in existence for over 65 years. Millions of handicapped individuals have received the services they needed in order to become a part of this Nation's workforce. For each person that is rehabilitated, the cost of services received is paid back to the Federal Government within 4 years from the income taxes paid by the disabled person. More than any other social services program, the basic State grant program provides us with an investment in America's future, by providing this country with trained, well qualified handicapped workers.

Second, the conference agreement requires the Director of the National Institute on Disability and Rehabilitation Research to conduct a study of health insurance practices and policies affecting disabled persons. To many of these in this Chamber this is an insignificant portion of the legislation. However, the majority of this Nation's disabled individuals are unable to attain health insurance due to the fact that their pre-existing medical condition prohibits it. This inability to obtain health insurance acts as a disincentive to becoming employed. I personally look forward to reviewing the results of this study when it comes to us.

Third, the conference agreement places an emphasis on the need for rehabilitation engineering services. These types of services assist disabled individuals to become more independent by utilizing the devices and modifications made for their home and work environments.

Fourth, the new supported employment State grant program both emphases and reenforces the concept that individuals with the most severe handicaps can be trained and are therefore able to compete in the work force. This concept is not a new one. Supported employment training programs have existed for many years in Vermont and my State has the distinction of being only one of two States which has a documented 5-year track record in providing these types of services. During this time period over 180 severe handicapped Vermonters have received training and have been placed in the competitive labor market. I am proud to say that this program enjoys an 85-percent success rate. In order for this program to be successful, Vermont utilizes the cooperation of many of the State agencies from vocational rehabilitation to mental health, special education and developmental disabilities. Just recently, the Vermont Department of Employment and Training contributed $60,000 to establish the newest supported employment project. Cooperation of this type is what has made this program such a success in Vermont and is an example I hope other States will follow.

Finally, I would like to comment on title VII of the act which authorizes independent living services. Since its inception in 1978, the independent living program has had a dramatic impact on the lives of disabled individuals, many of whom manage the part B program—Centers for Independent Living. The conference agreement requires that each independent living center have a board which is composed of a majority of handicapped individuals, requires the evaluation of independent living centers based on standards and provides for the establishment of new centers. The two centers in Vermont provide a variety of needed serices to all physically and mentally handicapped individuals and these new provisions will assist them in maintaining their continuity.

In 1921 the original legislation establishing the rehabilitation program was enacted. It received strong bipartisan support then and continues to do so today. I urge my colleagues to join in

giving their support to this very important piece of legislation.

Mr. HATCH. Mr. President, I am pleased to speak in support of the conference agreement on the Rehabilitation Act Amendments of 1986. This act, as conferenced with the House, incorporated virtually all of the provisions that were unanimously passed by the Senate on September 8, 1986.

This legislation demonstrates again the fine commitment to handicapped programs by my friend and colleague Senator WEICKER, chairman of the Senate Subcommittee on the Handicapped. I am pleased to join his leadership in helping over 35 million citizens in our country who are disabled. This bill strengthens America's rehabilitation programs while modifying them only where appropriate to better meet the vocational needs of individuals with handicaps.

The most significant new program in the act is the supported employment provisions designed to provide vocational assistance to many seriously handicapped individuals who have not been considered employable under other rehabilitation provisions. This program will go a long way toward assisting seriously handicapped individuals achieve independence through employment opportunities.

We have also strengthened the State commitment to these programs by increasing the State match for excess contributions. The intent is not to penalize States, like my own, that are having economic and financial difficulties. This provision will only apply to future increases in the Federal portion of the rehabilitation program. The advantage of this provision is that it will add money to the rehabilitation pool of funds, thus permitting more people to be served.

Further, the conference agreement rejects the provision to move the appointment and responsibility of the Commissioners of RSA and NIHR under the Secretary of Education. This provision would have diminished the status of these two important positions and take them out from under senatorial confirmation.

In the bill, the National Institute on Handicapped Research has been renamed the National Institute on Disability and Rehabilitation Research. This National Institute is a premier institute and is very important to the overall research efforts to improve services to handicapped individuals. Within this context, I am particularly pleased to report that the Senate provision providing for the accessibility of electronic equipment for handicapped individuals was accepted in the conference agreement. The guidelines to be developed will help ensure that new electronic technology will be designed to be accessible to handicapped individuals.

Another very important provision is the demonstration program to provide incentives for "orphan" technological devices. This will benefit handicapped citizens throughout the world. Utah has been an international leader in technology advancements. The May 5 issue of Business Week referred to Utah as "Bionic Valley" and called attention to the many prosthetic and assistive devices that Utah has developed during the past years. Most of us have heard about the "Utah Arm"; "Phoresor," a drug delivery system; the "Utah Ear," a cochlear implant; and of course the Jarvik Heart. Stimulating further development of not only "high tech" but other devices holds great promise in circumventing many of the disabilities which handicap people through the world.

Finally, the conference agreement authorizes demonstration projects for statewide transitional planning services. These model projects, of which one is targeted for my home State in Utah, address the complications faced by handicapped students in the process of transition from school programs into adult services.

I want to express my thanks to Senator WEICKER, members of his subcommittee, Senate colleagues, and House Members who worked on perfecting the provisions of this act. I also want to give special recognition to Sue Ellen Walbridge, who works for Senator STAFFORD. While waiting for surgery and during recuperation, Sue Ellen put many hours into compiling the conference documents so that consideration of this legislation could be completed before adjournment.

Mr. President, it is my hope that all my Senate colleagues will vote to accept the bill before us today. This legislation is a bill we can all proudly support.

Mr. KERRY. Mr. President, first of all, I would like to congratulate my distinguished colleague from Connecticut for his diligent leadership in developing a commendable conference agreement that will benefit countless disabled Americans. I also want to thank all of the staff for their tireless efforts throughout this process.

Mr. President, I rise in strong support of the pending conference report on H.R. 4021, the reauthorization of the Rehabilitation Act Amendments of 1986. The conference agreement culminates many months of hard work that have resulted in several new initiatives being added to the Rehabilitation Act that I believe will improve the lives and employment potential of many disabled individuals.

Historically, the Rehabilitation Act has provided essential comprehensive vocational services to mentally and physically challenged individuals across our Nation. Last year over 930,000 handicapped persons received services under the Rehabilitation Act, and over 225,000 disabled citizens were successfully rehabilitated. These numbers represent the fact that individuals with disabilities when given the opportunity can be trained to attain competetive employment and become contributing members of our society. The conference report that we are considering today will further this commitment by the American people and in my opinion will work to increase the number of handicapped persons entering the work force.

One new initiative in the act that the Congress should be particularly proud of is the new supported employment program that will be available to severely handicapped persons. Demonstration projects in this area have shown that supported employment services work and that they offer severely handicapped individuals an opportunity to better the quality of their lives through competitive employment.

The conference report also demonstrates our commitment to both Independent Living Centers and Projects With Industry. The amendments offer core funding to both these programs contingent upon programs meeting newly revised standards by the National Council on the Handicapped. Because the existing programs in both of these areas have been so successful in helping disabled persons achieve more independent lives, the conference report provides for funding of new centers and projects. It achieves this by implementing a matching formula where the programs over a period of time will match the Federal dollars by as much as 20 percent, and in some cases with the Indepedent Living Centers anywhere from 0 to 20 percent contingent upon economic circumstances.

In addition, the package includes demonstration projects in the area of transition for severely handicapped youth exiting the educational system. Experience has shown that severely disabled students having received state-of-the-art educational services often leave school with significant vocational needs and a confusing array of agencies to contact for appropriate services. To avoid confusion and loss of valuable services this legislation includes demonstration grants in this essential area of transition. Other initiatives that the legislation has focused on include improved services for the chronically mentally ill, a new priority on serving native Americans, and greater emphasis is placed on rehabilitation engineering.

The conference report before us today represents many months of detailed review and study not to mention an impressive effort on behalf of all the Members involved with this legislation to accomodate one another through a series of compromises

which I believe strengthen the existing law significantly.

In closing I would like to note that funding for the new initiatives have been included in the appropriations bill. Citizens with disabilities can look forward to a stronger rehabilitation service system that will further benefit their abilities to achieve more independent and active lives through successful employment training and employment opportunities. I urge my colleagues to join me today in adopting the pending conference report.

Mr. SIMON. Mr. President, the Senate is about to pass a significant piece of legislation affecting individuals with handicaps. The amendments agreed to in S. 2515 and H.R. 4021 and included in the conference agreement represent both the continuation of the overwhelmingly successful programs under the Rehabilitaion Act and an authorization of new intitiative. It includes administrative provisions that should substantially improve the quality of the peer review, monitoring, evaluation and technical assistance carried out by the Rehabilitation Services Administration. I commend Senator WEICKER and all of the members of the Senate Subcommittee on the Handicapped and the House Subcommittee on Select Education for their hard work in putting together this important legislation.

For 66 years Congress has been recognizing the importance of the Federal role in rehabilitating and bringing into our Nations' work force persons with disabilities. A program that was begun with motives of offering a helping hand to those who needed it, has long ago also been recognized as a major benefit to the Nation. Since the beginning of this State/Federal partnership, more than 5.5 million individuals with physical or mental disabilities have been placed into meaningful, productive jobs. The legislation before us builds upon the successes of the past, gives assurance of continued Federal commitment to our partnership of service with the States, provides for both the stability and growth of the comprehensive services funded through this act, and reaffirms our commitment to the civil rights of individuals with handicaps.

Because these amendments affect every title of the act, and there were many differences between the House and Senate versions, the process of reauthorization has been lengthy. It has come to our attention that because of the timing of passage of this reauthorization measure, State agencies as well as other recipients of moneys under this act may be in jeopardy of major delays in receipt of funds appropriated under the authority of this new legislation. It is clearly our intent that the Department of Education release grant moneys in good faith to these State agencies and recipients while appropriate assurances, documents, and regulations are being developed to administer this new law. States are presently in need of their first quarter funds under the act in order to continue services to handicapped clients. It would be directly counter to our intent in this reauthorization to delay the release of funds that are for the benefit of individuals with handicaps.

SUPPORTED EMPLOYMENT SERVICES

The relatively new service model known as supported employment, which enables some severely handicapped persons who have not traditionally been employed in regular work settings to do so, receives substantial new funding and new emphasis in this legislation. I strongly support these inititatives. The term supported employment is, for the first time, defined in the statute and State agencies are provided the option of using their title I State grant funds to provide services leading to supported employment. States are also provided grant funds under title VI of the act to conduct a program of services leading to supported employment.

Because a supported employment client may need a variety of ongoing support services on an indefinite basis, this service model is unlike traditional rehabilitation services. Great attention was given, therefore, during the authorization process to assure that the inclusion of supported employment in the Rehabilitation Act would be accomplished in a way that would permit such services to be provided to severely handicapped clients without changing the time-limited nature of rehabilitation services that allows State agencies to serve as many as possible of the large number of handicapped persons from all disability groups who are in need of services.

Federal-State rehabilitation services are traditionally time-limited, and it is the clear intent of this new initiative in the Rehabilitation Act that services provided for supported employment clients also be time-limited. The combination of services provided by the rehabilitation agency for these clients may include a wide variety of approaches designed to meet the individual needs of the client; whether those services are termed training, follow-up, post-employment or are known by another term, however, the entire combination of services must be understood to be time-limited. It is the expectation that other State agencies and organizations will be responsible for the long-term services associated with this approach.

IMPARTIAL HEARING OFFICER

The conference agreement includes provisions related to the procedures for the review of determinations made by the rehabilitation counselor or coordinator. These provisions represent a compromise between the House bill, which maintained the State director's role in making final determinations, and the Senate bill, which substituted the decision of an impartial hearing officer for that of the State director. The conference agreement provides for a review and decision by an impartial hearing officer, with final review and decision by the director. The responsibility for assuring that services are delivered to all clients consistent with sound vocational rehabilitation principles and in accordance with the policies and procedures of the State agency remains with the director of the agency. It is the intent of this conference agreement that the State director treat the decision of the hearing officer as a recommendation to assure that such principles, policies and procedures are carried out in the provision of services to individual clients, and that the director take such action as the director deems appropriate after a review of the decision.

As an advocate of the rights of individuals with handicaps and of fair hearing processes, I nevertheless am concerned that this new provision may impose a bureaucratic rigidity on State agencies and a focus on compliance rather than service that will not be in the best interests of rehabilitation clients. One of the strengths of the program has been flexibility that has allowed services, within the context of State policies, to be tailored to individual needs. There has been no evidence presented to the Congress that indicates State rehabilitation agencies have not been addressing complaints in a fair and equitable manner. I am hopeful that the directors of rehabilitation agencies will continue to make every effort to have disagreements resolved through the pragmatic, commonsense approach that has, in fact, been highly successful and has resolved most complaints at the counselor level.

STATE GRANT ENTITLEMENTS

Mr. President, I am pleased that a misunderstanding of intent for the funding of the entitlement for State grants is being remedied in this legislation. For close to 8 years, as a member of the House subcommittee and now the Senate subcommittee with jurisdiction over this program, it has been my understanding that the entitlement for the State grant program included, for each year beyond the first year of a new reauthorization, a cost of living increase based upon the amount actually received by the States through appropriations for the previous fiscal year.

This year, for the first time, the administration calculated the amount of the authorized entitlement by adding accumulated cost of living increases only to the amount authorized for the first year of the last reauthorization, which was fiscal year 1984. The result of that calculation was a ridiculously

low figure. The result of the administration's assumption would be authorization levels for this vital program that would not even ensure current services levels of funding in the future.

We know that we are not coming close to meeting the needs of all disabled persons who need services through this program. Clearly, it would be irresponsible for the Congress to impose the types of new demands we are making on vocational rehabilitation agencies if we were not willing to ensure a continued growth in this program. We would be unfair to those who depend on these services and unfair to those who are working so hard to provide them.

The correction in the interpretation for calculating the entitlement is a critically important part of this legislation and I thank my colleagues for their support of it. In particular, Jack Duncan, the staff director for Congressman John Brademas during the many years he chaired the House Subcommittee on Select Education, deserves credit for his work in explaining the importance of this provision and helping to ensure its adoption. Over the next several years, this amendment will assure services to thousands of disabled persons who might otherwise not be served.

PROJECTS WITH INDUSTRY AND INDEPENDENT LIVING

I am pleased that provisions of this legislation will provide stability and growth in the programs authorized under the Projects with Industry and Independent Living sections of the act. The amendments are intended to ensure the survival of high quality projects and at the same time to guarantee that funds will be available for new projects in the future. I have met and talked with many of the people involved in these projects and they are some of the most resourceful and highly motivated of Americans.

I am proud of the efforts being made by American labor unions such as the International Association of Machinists and Aerospace Workers through their IAM CARES project and the AFL-CIO through its Human Resources Development Institute. These projects place both union and nonunion disabled individuals into jobs which are high paying and have the benefits that American labor has gained through its united efforts.

In Illinois we are particularly proud of our independent living centers. Marca Bristo, who runs Access Living in Chicago, could probably run a major corporation, but she gives her skills to making independent living work for people with disabilities.

There are many others like Marca, in State agencies as well as in all of the many organizations and programs funded through this act, who are devoting their lives—through research, the administering of programs or through providing services directly—to the challenging and rewarding work of bringing people with disabilities into the mainstream of American life. We can write legislation, but we have to depend on these well-motivated people to carry it out. This is why I listened to their advice while this legislation was being developed and why I support this final conference agreement. It should help them do their jobs, and through this achieve the results for individuals with disabilities that all of us intend.

Let me add my appreciation to Judy Wagner of my staff who has been supurb in her good work and her dedication to help those less fortunate. I am proud to be associated with her good work.

I support this conference agreement and urge my colleagues to do so as well.

Mr. CRANSTON. Mr. President, I am delighted to rise in support of the conference report on H.R. 4021, the proposed Rehabilitation Act Amendments of 1986, legislation to extent the authorization of appropriations for programs under the Rehabilitation Act of 1973.

Enactment of the Rehabilitation Act of 1973 marked a new era in this Nation's effort to provide disabled Americans with the vocational rehabilitation needed to help them regain employment. In the last year alone, vocational rehabilitation services under the act were extended to more than 900,000 disabled Americans, serving 63,000 men and women in the State of California alone.

Throughout my service in the U.S. Senate, I have been closely involved with the vocational rehabilitation program and the other vital programs established by the Rehabilitation Act. As a member for 7 years of the Committee on Labor and Human Resources' Subcommittee on the Handicapped, I had the pleasure and privilege of authoring much of the legislation relating to these programs.

CIVIL RIGHTS REMEDIES EQUALIZATION

Mr. President, although each and every one of the programs authorized by the Rehabilitation Act is vitally important, it is the provisions that I authored in section 504—providing disabled individuals for the first time with the enforceable right to be free from discrimination in federally funded programs and activities—that I count among my most significant efforts.

I am thus delighed by provisions included in the conference report, which I authored, to overturn the recent Supreme Court decision in the case of Atascadero Hospital versus Scanlon which substantially damaged the scope of protections provided to persons with disabilities under section 504. As a result of that decision, handed down on June 25, 1986, disabled individuals have been denied access to Federal courts for damages to remedy State agency violations of section 504.

In response to the Supreme Court's decision in the Atascadero case, on August 1, 1985, I introduced the proposed "Civil Rights Remedies Equalization Act", legislation to nullify that ruling. The provisions in the conference report are based on that legislation. Joining me as cosponsors of that legislation are Senator STAFFORD, a coauthor with me of section 504 and the chairman of the Subcommittee on Education of the Labor and Human Resources Committee; Senator KENNEDY, the ranking minority member of the Labor and Human Resources Committee; Senator WEICKER, chairman of that Committee's Subcommittee on the Handicapped; Senator KERRY, the ranking minority member of that subcommittee; and Senator RIEGLE, with whom I have worked closely over the years to improve opportunities for disabled persons, as well as Senator SIMON, Senator BURDICK, and Senator METZENBAUM—whose support for this legislation was very helpful.

This legislation would clarify congressional intent that remedies for violations of section 504 of the Rehabilitation Act of 1973 are available against the States to the same extent as they are available against Federal agencies and against local government and private recipients of Federal funds. This legislation is necessary for the purpose of implementing section 504 because of the Supreme Court ruling in the Atascadero case that, even though the statute authorizes an aggrieved party to bring suit in Federal court against a category of entities that literally includes the States, the States may not be sued in Federal court unless the law expressly makes the States answerable in Federal court.

These provisions would, in the same manner, ensure equalization of the remedies for violations of the prohibition in title IX of the Education Amendments of 1972 against sex-based discrimination in education, and the prohibition in the Age Discrimination Act of 1975 against discrimination based on age, the prohibition in title VI of the Civil Rights Act of 1964 against discrimination based on race, creed, color, or national origin, and the prohibition in any other Federal law against discrimination of recipients of Federal funds.

The only substantive change made in the legislation as introduced—establishing that the change in law would be effective only as to violations that occur in whole or in part after the date of enactment—was necessary, after extensive negotiations, in order to gain the support of the administration, for which I am most grateful.

BACKGROUND

Section 504 of the Rehabilitation Act of 1973, of which I was a principal author, prohibits Federal agencies and federally assisted programs from subjecting qualified handicapped individuals to discrimination. As the courts have acknowledged, Congress created a right of action in Federal or State court to remedy violations of section 504—with no exception in the law either from the States or for any particular type of remedy, such as monetary damages.

Nevertheless, on June 28, 1985, in the case of Atascadero State Hospital versus Scanlon, the Supreme Court held—in a 5-4 decision—that the Congress, in enacting section 504, had not exercised its authority to waive the States' general immunity under the 11th amendment to suits for damages in the Federal courts. I had joined with Senators STAFFORD and WEICKER and Representatives MARIO BIAGGI, DON EDWARDS, WILLIAM FORD, JAMES JEFFORDS, and GEORGE MILLER, in submitting an amicus brief urging the Court not to reach that result.

In this case, an individual suffering from diabetes and the loss of sight in one eye claimed that the State had violated section 504 by denying him employment in a State hospital as a graduate student assistant recreational therapist. The Supreme Court reversing the ninth circuit court of appeals, held that the individual's claim for compensatory damages against the State or a State agency could not be heard in Federal court.

The same holding also applies to injunctions, but it is well established that the 11th amendment does not bar Federal courts from issuing injunctions against named State officials, as distinguished from the State itself, even though the effect is exactly the same as an injunction against the State. Therefore, as the result of Atascadero, injunctive relief is now the only relief available in Federal court against a State agency for a violation of section 504 or any other civil rights statute grounded on the receipt of Federal financial assistance.

As a result of the Court's decision, a disabled individual who has suffered unfair discrimination at the hands of a State agency has two choices—a suit in State court for damages or injunctive relief, or both, or Federal suit for an injunction against individual State officials. Those choices are not adequate. As to the limit on Federal remedies, litigation involving a claim of discrimination often takes years to resolve. Thus, where the disabled person is seeking employment or is trying to pursue an education or to participate in a project having only a 2- or 3-year life, an injunction may come too late to be a value in remedying the harm done through the unlawful discrimination. In a very real sense, the availability of only injunctive relief postpones the effective date of the antidiscrimination law, with respect to a State agency, to the date on which the court issues an injunction because there is no remedy available for violations occurring before that date.

This result is especially devastating in the context of employment discrimination against disabled persons because they—unlike women and members of race and national origin minorities—are not protected by the Civil Rights Act Title VII prohibition against employment discrimination, which is enforceable in Federal court through suits for damages.

The availability of a remedy for damages in State court is not adequate principally for three main reasons. First, State courts—because of a variety of factors including the greater likelihood of State judges being deferential to State officials and laws—are not as likely to be as sympathetic to aggrieved parties in interpreting Federal statutes and applying them to State officials as are the Federal courts.

Second, State judges generally lack the familiarity with and the expertise in interpreting and applying Federal laws that Federal judges typically have.

Third, State courts often have backlogs far greater than those in the Federal courts in the same geographical areas.

Perhaps the best indication of the inadequacies of State courts in this regard is that, according to advice I have received from civil rights lawyers, the overwhelming majority of persons bringing suit based on claims that their rights under Federal laws have been violated by State agencies file their cases in Federal court.

These provisions would reverse the holding in Atascadero by providing that, unless otherwise expressly provided in Federal statute, the remedies available to enforce the four major Federal civil rights laws noted above, and any other Federal civil rights law grounded on receipt of Federal financial assistance, against public or private entities other than States shall also be available against the States. Thus, as a result of this legislation, if a Federal suit for damages were generally available to enforce a civil rights law against a recipient of Federal funds—and nothing in that law were to exempt the States from such a suit—a Federal suit for damages would now be available against a State or a State agency.

In this way, this legislation would eliminate the court-made barrier to effectuating congressional intent that the holding in the Atascadero case so unwisely has raised. Under this legislation, a statute that is, on its face, equally as applicable to and enforceable against a State agency as it is against other entities, will be enforceable by the same means against State and non-State entities alike.

CONCLUSION

Mr. President, I believe the provisions in the conference report to overturn the Atascadero decision reflect the views of an overwhelming majority of my colleagues that civil rights laws prohibiting discrimination on the part of Federal agencies and the recipients of Federal financial assistance should be enforceable against the States to the same extent that they are enforceable against cities, counties, other units of local government municipal bodies, private schools, businesses, and other entities—and the Federal Government itself. The provisions in this legislation will provide for that result and, thus, make clear that the States may be held accountable in Federal court for injuries they inflict on disabled persons, women, members of minority groups, and older person through violations of such statutes.

This has not been much of a Congress for civil rights legislation, and I'm truly delighted that we will be able to enact at least this one signficiant civil rights bill at this time.

Mr. President, I want to express my deep gratitude to the Senator from Connecticut [Mr. WEICKER], the chairman of the Handicapped Subcommittee, and to the Senator from Massachusetts [Mr. KERRY], the ranking minority member of that subcommittee, the Senator from Vermont [Mr. STAFFORD], and the Senator from Illinois [Mr. SIMON] for their support for this legislation. The House of Representatives unaimously passed this conference report, and I sincerely strongly urge Senate passage today.

Mr. President, I ask unanimous consent that the Justice Department's official report, dated July 13, 1986, on this legislation be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AND,
INTERGOVERNMENTAL AFFAIRS,
Washington, DC, July 13, 1986.

Hon. ORRIN G. HATCH,
Chairman, Committee on Labor and Human Resources, U.S. Senate, Washington, DC.

DEAR SENATOR HATCH: This letter presents the views of the Department of Justice on a proposed amendment in the nature of a substitute for S. 1579, a bill to "clarify that the remedies available for the enforcement of certain civil rights statutes are applicable to the States." We understand that this amendment will be offered during the Committee's mark-up of S. 1579. The amendment seeks to abrogate the sovereign immunity of the States under the eleventh amendment to the Constitution of the United States for certain civil rights statutes. Specifically, the amendment provides that States are not immune from suit in Federal courts for violations of section 504 of the Rehabilitation Act of 1973, as amend-

ed, 29 U.S.C. 794, title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d to 2000d-4, title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681-1686, the Age Discrimination Act of 1975, 42 U.S.C. 6101-6107, and the provisions of other Federal statutes that prohibit discrimination by recipients of Federal financial assistance. The amendment to S. 1579 states that remedies now available, at law or at equity, under these civil rights statutes against any public or private entity other than a State will be available to the same extent against a State. Unlike earlier versions of S. 1579, this bill does not apply retroactively, i.e., the bill would apply only to violations of the civil rights laws that occurred in whole or in part after the date of enactment of S. 1579.

The proposed amendment to S. 1579 is a legislative response to the Supreme Court's decision in *Atascadero State Hospital* versus *Scanlon*, 105 S. Ct. 3142 (1985). In the *Atascadero* case, the Supreme Court held that suits seeking retroactive monetary relief from States under section 504 are proscribed by the eleventh amendment to the U.S. Constitution. The Court stated that Congress may provide for suits against the States to enforce the fourteenth amendment or may, under the spending power, condition receipt of Federal funds by states upon their consent to be sued. The Court noted, however, that the exercises of these congressional powers may not be left to implication. Congress must explicitly set forth in the statute its intent either to abrogate the States' sovereign immunity or to make waiver of sovereign immunity a condition of accepting Federal funds. After examining section 504 and the 1978 amendment to section 504, the Court concluded that Congress had not explicitly exercised either of these powers when it enacted section 504.

The Department believes that this Supreme Court decision was correctly and rationally decided. In fact, the Department had filed a brief amicus curiae stating that section 504 did not abrogate the eleventh amendment immunity of a state because Congress had not evinced a clear and explicit expression to waive the eleventh amendment in enacting section 504. However, Atascadero provides the blueprint for Congressional action to waive the eleventh amendment's ban to suit in Federal court under the fourteenth amendment and the spending power. The proposed amendment to S. 1579 fulfills the requirements that the Supreme Court laid out in Atascadero. Thus, to the extent that the proposed amendment is grounded on congressional powers under section five of the fourteenth amendment, S. 1579 makes Congress' intention "unmistakably clear in the language of the statute" to subject States to the jurisdiction of Federal courts. 105 S. Ct. at 3147. See Fitzpatrick versus Bitzer, 427 U.S. 445 (1976). To the extent that the proposed amendment is grounded on congressional spending powers, S. 1579 makes it clear to states that their receipt of Federal funds constitutes a waiver of their eleventh amendment immunity.

Because the proposed amendment to S. 1579 falls within the parameters of congressional authority that the Supreme Court has established in this area, the Department of Justice has no objection to S. 1579 if so revised. The Administration would not support versions of this bill that would provide remedies retroactively before the date of enactment of S. 1579. To do so would be unconstitutional under Atascadero and under Pennhurst State School and Hospital versus Halderman, 451 U.S. 1 (1981). Retroactive application of this bill would not be supported either by the spending power or by the fourteenth amendment. The amendment in the nature of a substitute, however, contains neither of these failings. It merely provides a Federal forum for remedies against States for violations of Federal statutory rights. It does no damage to the fundamental constitutional guarantee of state sovereignty that underlies our Federal system.

For these reasons, if amended as discussed above, the Department of Justice is not opposed to enactment of S. 1579.

The Office of Management and Budget has advised the Department that there is no objection to the submission of this bill report from the standpoint of this Administration's programs.

Sincerely,

JOHN R. BOLTON,
Assistant Attorney General.

Mr. STEVENS. Mr. President, I ask for the adoption of the conference report.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The conference report was agreed to.

Mr. STEVENS. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

CORRECTING THE ENROLLMENT OF H.R. 4021

Mr. STEVENS. Mr. President, I ask unanimous consent that the Senate now turn to the consideration of House Concurrent Resolution 400 correcting the enrollment of H.R. 4021.

The PRESIDING OFFICER. The concurrent resolution will be stated by title.

The assistant legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 400) to direct the Clerk of the House of Representatives to make corrections.

There being no objection, the Senate proceeded to consider the concurrent resolution.

The PRESIDING OFFICER. The question is on agreeing to the concurrent resolution.

The concurrent resolution (H. Con. Res. 400) was agreed to.

Mr. STEVENS. Mr. President, I move to reconsider the vote by which the concurrent resolution was agreed to.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ELECTRIC CONSUMERS PROTECTION ACT OF 1986—CONFERENCE REPORT

Mr. STEVENS. Mr. President, I submit a report of the committee of conference on S. 426 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 426) to amend the Federal Power Act to provide for more protection to electric consumers, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by all of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of September 30, 1986.)

Mr. JOHNSTON. Mr. President, today I believe that we are at the end of a long, hard journey. After more than 3 years of constant debate, negotiation and compromise in this and the previous Congress, we are finally ready to enact S. 426, a bill that will clarify and improve the process under which hydroelectric projects are relicensed by the Federal Energy Regulatory Commission.

At the outset I congratulate the conferees from both Houses for their patience and dedication to a difficult task. The conference easily could have dissolved in acrimony. It did not, and that is a tribute to the spirit of cooperation that emerged in the face of a number of contentious and complex issues.

Chairman JOHN DINGELL of the House Committee on Energy and Commerce deserves our thanks for the leadership he provided on the House side, as does Chairman ED MARKEY of the Subcommittee on Energy Conservation and Power. I am also grateful to Congressman RICHARD SHELBY of Alabama, the original sponsor of the relicensing bill in the House, and to Congressman CARLOS MOORHEAD, the ranking minority member of the House Subcommittee, for their helpful insights throughout the conference.

On the Senate side, I commend the excellent job done by Senator MCCLURE as chairman of the conference. Without his unflagging patience and leadership, we might never have gotten to this point at all. I also salute the contributions of Senator EVANS, Senator METZENBAUM, Senator FORD, Senator MELCHER, and the original sponsor of S. 426, Senator WALLOP. Their support, good judgment, and fairness were critical to success of our efforts.

Finally, I thank the staff of both Houses for their many long hours of work on S. 426 and their creativity in helping to solve the difficult problems raised in conference.

For many, the subject of hydroelectric relicensing is obscure, but that does not alter its importance. Licensed hydroelectric projects currently provide a significant percentage of our nation's electrical generation capacity at a fraction of the cost of other alternatives and without creating any pollution. The benefits of this power resource flow to millions of customers throughout the country.

Mr. President, when the Committee on Energy and Natural Resources began the effort on this bill it had two main objectives. First, the committee wanted to clarify that no preference exists for publicly owned utilities over investor-owned utilities in the competitive relicensing of hydroelectric projects. We made that choice on the basis of fairness to electric consumers as a whole. Our decision was based on the following considerations:

First, publicly owned utilities already have significantly lower average rates than investor-owned utilities;

Second, for all practical purposes, investor-owned utilities pass on the full low cost benefit of hydropower to their customers; and

Third, investor-owned utilities serve many more customers than publicly owned utilities.

In short, the existence of a preference for publicly owned utilties in relicensing would have created nothing less than a taking from the many for the benefit of an already-advantaged few. I am happy to say that the conference report on S. 426 makes it absolutely clear that there is no public preference in relicensing.

The second objective of the committee was to ensure that consumers who presently benefit from licensed hydroelectric projects do not lose those projects unless it would clearly be in the public interest for the projects to transfer to another licensee. In effect, we recognized that continuity in ownership and management of these projects is worthwhile and that, unless a good reason exists, consumers should not suffer the disruptions and economic dislocations that would invariably be associated with a license transfer. The price to these customers of not correcting the problems in present law would be measured in billions of dollars. That amount is hardly inconsequential. With good reason, therefore, S. 426 has been entitled "The Electric Consumers Protection Act of 1986."

I should note that our desire was to protect the customers of existing licensees, whether those licenses are publicly or privately owned. Again, I am pleased to say that the conference report to S. 426 fully accomplishes the committee's original objective.

Mr. President, successful enactment of this bill has not been won without all sides paying a price in terms of compromise. At this point, I wish to address a few of the more troublesome issues raised in conference and the reasons I am able to accept the resolutions we have arrived at in the conference report.

Certainly, one of the most sensitive issues the conferees considered was the treatment of the recommendations of fish and wildlife agencies in the licensing of hydroelectric projects. The Senate conferees had grave reservations about the approach contained in the House-passed version of S. 426. However, out of deference to the strong and persuasive views of Chairman JOHN DINGELL of the House Committee on Energy and Commerce, we did accept the House fish and wildlife provision, but only after a small but critical amendment. That was the substitution of the phrase "equal consideration" for "equitable treatment" in amended section 4(e) of the Federal Power Act. By doing this we made it clear that FERC must consider fish and wildlife needs equally with the development purposes for which licenses are issued. However, the amendment to section 4(e) also makes clear that while full and genuine consideration of fish and wildlife is required, equal treatment is not. Instead, the reconciliation of power and other development needs with fish and wildlife needs in cases of conflict is ultimately left to the public interest judgment of the Federal Energy Regulatory Commission.

In the statement of the managers, the conferees provided important guidance to the Commission on making this public interest judgment. Fortuitously, as we wrote the statement, we were presented with a real life situation in Nebraska that, at least on the surface, pits the power and development needs of two projects against those of fish and wildlife. The statement of the managers contains a section dealing with the concerns of the distinguished Senators from Nebraska with respect to these projects. I wish to make it very clear that the language in the statement of managers which addresses the Nebraska situation was also intended by the conferees to provide general guidance to the Commission concerning its implementation of the fish and wildlife provisions of S. 426.

One important issue that was resolved by the conferees in an entirely satisfactory manner was the consideration of the economic impacts of project transfer upon the customers of competing applicants. The conferees realized that consideration of economic impacts is conceptually subsumed within the consideration of need for power from a project. Consequently, the Senate conferees agreed to drop economic impacts as a separate relicensing criterion in return for an explicit expansion of the need for power criterion. The need for power criterion adopted by the conferees requires the Commission to compare, among other things, the aggregate benefit to the customers of a nonlicensee applicant of receiving a project with the aggregate cost to the customers of an existing licensee of losing a project. This inquiry should examine total costs and benefits on either side and not count the number of customers served in either case.

The conferees agreed to the Senate position of not increasing beyond existing law the compensation to be paid to existing licensees upon project transfer. I strongly support this decision of the conferees because I believe that to have done otherwise would only have diluted the protection to existing licensees otherwise afforded by S. 426. Clearly, the compensation provision contained in the House bill could not and was not intended to make an existing licensee whole. As such, its inclusion in the conference report could only have had one effect, and that would have been to make it more likely that the Commission would transfer projects in relicensing. That is a result that I have never been willing to accept unless there is a clear and independent reason for transfering the project in the public interest.

Finally, I am very troubled by the adoption in conference of a provision to compensate those competing with existing licensees in pending cases. As a matter of public policy, grandfather provisions such as this one should only be included when there has been justified reliance upon the provisions of existing law. However, in my opinion, there cannot have been any such reliance under the facts of the pending cases. Thus, I take some solace from the fact that in order for a competing applicant to recover anything more than a nominal amount from an existing licensee, the conference report in my opinion requires the applicant to make a threshold showing of detrimental reliance.

Mr. McCLURE. Mr. President, I rise in support of S. 426, the Electric Consumers Protection Act of 1986. As chairman of the conference committee and the Senate authorizing committee, I believe it is important that I make a few remarks as part of the legislative history of this act.

The conference agreement accomplishes the central objectives of both the Senate and the House versions. I am pleased to report to the Senate that in all significant respects the substance of the provisions of the Senate-passed version have been preserved, and in many respects reinforced by the agreement.

Before providing an overview of the agreement, I would like to acknowledge the contributions of my colleagues who participated in the conference. Senator WALLOP originally introduced S. 426, and deserves consider-

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able credit for bringing this issue to the attention of the Senate and initiating the process. Senator JOHNSTON also introduced legislation and his efforts helped shape the form and content of the legislation. As chairman of the Energy and Natural Resources Committee, I was happy to work with both of them to fashion the product which we brought to the Senate floor earlier this year. I would also like to acknowledge the contributions made by Senator HATFIELD, Senator MURKOWSKI, Senator EVANS, Senator FORD, Senator MELCHER, and Senator METZENBAUM. Each has made significant contributions and I think that the conference agreement fairly and carefully reflects and protects their concerns. In managing this measure on the Senate floor and then while serving as chairman of the conference, I have endeavored to preserve the position of the committee and the Senate, and I think that in many ways, the conference agreement improves on the objectives set forth by the Senate.

I would like to start by focusing on the central reason for this legislation, and that was to clarify what the public policy should be on relicensing. This legislation originated from the uncertainty engendered by the conflicting decisions by FERC in the Bountiful and Merwin cases as to whether a municipal preference should apply in relicensing proceedings. As incongruous and contrary to stability as such an interpretation would be, FERC so held in the Bountiful decision. FERC reversed that interpretation in the Merwin decision, prompting a series of court interpretations. The determination of public policy, however, should not be left to the varying interpretations of agencies, and certainly not the courts. The results of a municipal preference in encouraging raiding and potentially massive disruptions of service would be unconscionable. Both the Senate and House agreed.

The Senate started from a position that the existing licensee should retain the license unless a competing applicant produced a better adapted plan. The House attempted to provide unbiased competition, but also attempted to discourage competing applications by increasing the compensation owed to the existing licensee. In conference, the House agreed to delete their provision on compensation for the same reason which led the Energy Committee to delete it earlier. That reason was a concern that increasing compensation might actually encourage license transfers.

The House quite correctly pointed out that while the Senate appeared to have a preference for the existing licensee, there was no standard as to what constituted a better adapted plan. There was the potential in the Senate bill that FERC could transfer a license for only a minor difference. In addition, the House shared concern with the Senate that there was the potential for goldplating applications. Given the value of the hydro resource, we also shared the concern that applicants would be encouraged to throw money at applications.

The conferees agreed that FERC's conditioning authority should be improved and that those elements which are covered under sections 10 (h) and (j) would not be the subject of competition. We agreed on that approach since the appropriate terms and conditions depend on the project, not on the applicant. Whatever conditions are appropriate would apply no matter who obtained the license. In addition, the conferees made the implicit incumbent preference contained in the Senate approach explicit by directing FERC to ensure that insignificant differences between applications are not determinative and do not result in the transfer of a license. This is a significant improvement on the Senate version. A competing applicant must now have a clearly superior application. The combination of the parameters set by the section 10 conditions on whether proposals are material or goldplating will focus FERC's review on the criteria set forth in section 15. Those criteria deal with the ability of the applicant to comply with the terms and conditions of the license, each applicant's relative need for the project power, and the economic impact of the loss of a license. The Senate version of S. 426 set out economic impact as a separate criterion, but at the request of the House conferees, the concerns which led to the inclusion of the economic impact criterion were folded into an expanded criterion of need for power as originally included in the House version.

I want to take a few moments to discuss one aspect of the need for power criterion which is critical to an understanding of how FERC is expected to act. In evaluating an existing licensee's need for power and evaluating the availability of alternatives, FERC is expected to rely on the licensee's evaluation of the reasonably available alternatives.

The Senate provisions on "economic impact" were not specifically adopted. Instead, the conference agreement includes a "need for power" criterion that is much broader than in either the Senate or House bill and incorporates the substance of the original Senate provisions. The conference agreement would require the Commission to evaluate the relative need for power of each applicant for the project to serve its customers over the short and long term, including consideration of the reasonable costs and the reasonable availability of alternative sources of power. This is a recognition on the part of the conferees of the real world need to look at the availability of alternative sources over the entire term of the license.

The availability of alternative power for a short period of time relative to the term of a license, cannot and should not be determinative in selecting between competing license applications. Indeed, an important element in the Electric Consumers Protection Act of 1986 is to provide the consumer with stability and reliability for the future. For the FERC to base its licensing decisions solely on short-term projections of the availability of alternative power sources would be contrary to the act and the intent of the Congress.

One needs only to look to my own Pacific Northwest as an example. Presently, the Pacific Northwest, as a whole, has a surplus of electrical power. Projections indicate that this surplus could continue for the next decade. On the face of it, this would seem to be a readily available alternative source of power, but it is not. First, the surplus is predicted to last, at best, only the equivalent of one-third the length of a license term. Second, the Pacific Northwest is hydro based and therefore subject to the vagaries of rainfall and snowpack. A water short year could turn surplus into deficit with inexorable results. And third, economic growth and renewed vitality in the region could rapidly absorb the present surplus.

Such a volatile short-term surplus situation should not be the sole basis upon which the FERC determines between competing applicants. It would not be in the public interest. It goes without saying that the availability of supply does not provide the same reliability of supply that an applicant would have from power supplied from a dam which it held under license from FERC.

In many instances, the differences between the Senate and the House were simply matters of form and not substance. A good example is the House language which we agreed to with some modifications on consideration of fish and wildlife values. When we considered this legislation in the Senate, we sought to ensure that fish and wildlife considerations were fully and deliberately reviewed by FERC in setting conditions on a license. The House had the same concern. Neither body considered giving the fish and wildlife agencies the same type of mandatory conditioning authority which they have under section 30(c) for exemptions. Neither did either body want in any way to interfere with the role of FERC in balancing competing values. The Senate had taken an approach of requiring FERC to set forth the reasons why it did not adopt a recommendation. The House preferred a separate procedure under which FERC would make a finding of

inconsistency with the purposes or requirements of the act or other provisions of law. The conferees agreed that the House provision was a preferable format because it included a specific benchmark for FERC to reject or modify recommendations. The conferees agreed to change the word "treatment" in the House provision to "consideration" to avoid any possible implication that the new section 10(j) imposed a substantive standard for actual conditions rather than a procedural requirement for review of recommendations. "Equal consideration" is the standard for review in both sections 10(j) and 4(e). While having these values considered is now a "cost of doing business" as stated in the statement of managers, the consideration by FERC must be one of weighing the elements of public interest in a reasonable manner.

Both the Senate and House conferees agreed that in the past fish and wildlife considerations had not been given the full and thoughtful consideration which they should have received. Both sides agreed that FERC has improved its procedures, but we did believe that we should ensure that there would be no backsliding. To some extent, what we are doing is redundant since we assure that all Federal agencies take their responsibilities seriously and perform their missions with deliberation and in good faith. FERC is required currently to consider fish and wildlife agency recommendations which they receive in a timely fashion. Section 10(j) continues and emphasizes this process as a statutory matter. FERC is also required to consider under section 10(a), recreation, flood control, irrigation, and a whole variety of other issues involved in the best use of a water resource. We expect that FERC will give each of these values the same deep and thoughtful consideration which it gives to power and developmental purposes. Consideration, however, only provides an information base for FERC to use in setting conditions. Consideration does not dictate results. One important benefit of the House approach in 10(j) is that it would prevent any implication that fish and wildlife agency recommendations would dominate the power and other development purposes for which a license is issued. The statement of managers is quite explicit on this point. "Under new section 10(j), FERC is empowered to decide license terms and conditions, but there is a guarantee that the recommendations of the agencies can not be lightly dismissed. FERC is not required to adopt recommendations that are inconsistent with any other purpose of the Federal Power Act as expressed in section 4(e)."

I do not want to suggest that the discretion expressed in that phrase means that FERC should seek reasons to reject recommendations. They are only required to consider recommendations which are timely, not to adopt them. We expect that FERC, where it finds that a recommendation is inconsistent with one or more purposes, such as irrigation, will see whether there is an alternative way of accomplishing the objective of the recommendation which would minimize the effect on other project objectives. The objective of the section is to provide FERC with the necessary information with which to fashion conditions for fish and wildlife which will be consistent with the power and other development purposes.

I would also note the conference agreement provisions on the applicability of PURPA benefits to small hydroelectric projects. I am pleased to report that those applications which are "in the mill" have been adequately protected. Existing applicants are subjected to three different levels of applicability of the new law depending upon how far along in the process they are. Those who have made "substantial investment" are protected. While the "substantial investment" category has no assurance that it will be free from all of the new requirements, if unsuccessful in their petitions, they are out from under the moratorium provided in the House provisions.

The Senate adopted the House moratorium provisions related to PURPA benefits without change. However, I believe it is important to bring to the attention of the Senate, two specific provisions which I believe are unclear. The House bill and the conference agreement provide for a moratorium on new applications for PURPA benefits until a study is conducted and submitted to Congress. While the Senate conferees agreed with this study we note that the House provision requiring the study to be in accordance with section 102(2)(c) of the National Environmental Policy Act of 1969, [NEPA] is surplusage in that current law does not require a report or study submitted to Congress to be subject to an environmental assessment or environmental impact statement under 102(2)(c). I would also note that in that the study is for a report to Congress, it cannot be construed as a final agency action within the meaning of NEPA, or requiring a order by FERC. Thus the requirement of section 8(d)(5) of the conference report regarding judicial review is illusory in that FERC's study and report to Congress, including any "determinations" or "findings" which they make, are totally within their discretion. They are not intended by the Senate conferees to require any formal proceedings.

As a final comment, I will note that the effective date of the conference agreement applies certain sections of the new law, such as 10(j) as amended and the enforcement provision, to existing applicants, licensee, and so forth. While I do not have any disagreement with this result, I do wish to emphasize that this is not a mandate to FERC to start anew in all pending applications. For example, where the fish and wildlife consultation and condition process has been completed or nearly so, FERC should take into consideration the degree to which the recommendations by the National Marine Fisheries Service have been taken into account through the recommendations of the Fish and Wildlife Service. FERC should build on the established record and expeditiously take into account the additional requirements of this law. The Senate conferees did not intend for an extended delay in processing to result by virtue of this new law.

I wish to emphasize at this point that I strongly agree with the statement of managers. As such it is neither the Senate or House reports on this legislation, but a new statement of combined agreement. I support this statement because it includes by reference, all the relevant case law applicable to FERC on environmental conditioning and need for power extant prior to enactment. It also clarifies the Senate bills provisions which were not intended to affect the current operation of the Fish and Wildife Coordination Act. It also retains the Senate provision on the antitrust law which neither expands nor diminishes FERC authority in this regard.

PENDING NONCOMPETING RELICENSING APPLICATIONS

Mr. EVANS. I believe the chairman knows of my concern for several uncontested hydroelectric projects in my State which are currently pending before FERC and operating on yearly licenses. I refer specifically to the Skagit River dams of Seattle City Light, the Cushman project of Tacoma City Light, and the Rock Island project of Chelan County PUD. I want to make certain that the passage of this act does not overly complicate the pending applications and previous negotiations which these utilities have carried out with FERC and the interested Federal and State agencies. The various provisions of the conference agreement do affect these projects, although the savings clause in section 17(a)(6) specifically precludes the filing of a competing application where the time for filing has expired. But I want to make certain that these provisions will not cause the existing licensees to retrace steps in the administrative process which the utilities have already taken pursuant to existing FERC regulations for relicensing.

Does the chairman agree that this act is not intended to cause existing li-

censees to reprocess their current relicensing applications or resubmit, rework, or renumber their already submitted exhibits for which they have made good faith efforts to follow the applicable FERC regulations?

Mr. McCLURE. That is my understanding.

Mr. EVANS. Is it the chairman's further understanding that FERC should not use the new requirements imposed by this act to restart the application process from the beginning?

Mr. McCLURE. The Senator is correct. FERC should use the existing record which has been created to date for each of these applications and build upon it. To the extent additional actions are required of the applicant pursuant to this act, FERC should establish procedures which will allow for those actions to be completed expeditiously.

PUBLIC LAW 278 EXEMPTING REPORTING REQUIREMENTS FOR PUBLIC UTILITIES

Mr. EVANS. Mr. Chairman, the 83d Congress passed in 1953 Public Law No. 278 which made certain requirements of the Federal Power Act (FPA) inapplicable to States and municipalities in order to facilitate the financing of dam construction. These requirements, pertaining to Federal recapture of any project upon license expiration according to section 14, exempted certain recordkeeping and accounting procedures otherwise required under sections 301 and 302 of the FPA. Furthermore, the filing of a statement of original cost under section 4(b) of FPA was made inapplicable to any project licensed to a public utility. These requirements were exempted for municipal projects in order to assist the sale of bonds for financing the development and improvement of such projects.

These objectives remain important today. Municipal preference in section 7(a) continues to apply in original licensing proceedings and there are many publicly operated projects proceeding on the basis of Public Law No. 278. Does the Chairman agree that the conference agreement does not repeal or otherwise alter the provision of Public Law No. 278?

Mr. McCLURE. Yes; the conferees do not intend to alter or amend Public Law No. 278 in any way.

Mr. HATFIELD. Would the Senator yield for an exchange regarding the meaning of the conference report's "need for power" criterion?

Mr. McCLURE. I would be pleased to respond to any questions the Senator from Oregon may have.

Mr. HATFIELD. As I understand the Senate bill's "economic impact" criterion, it was intended as a codification of the Federal Energy Regulatory Commission's existing practice of applying economic impacts analysis in relicensing proceedings. Under this practice, the Commission, in determining which application is best adapted to the public interest, considers the relative alternative sources of power for each applicant. If consumer cost inequalities would be occasioned by a license transfer, the Commission has found the application of the existing licensee superior to that of the competing applicant.

Mr. McCLURE. That is correct.

Mr. HATFIELD. The Joint Explanatory Statement of the Conference Committee states that the need for power criterion adopted by the conferees "is much broader" than the Senate bill. It further states that the conferees contemplate that the Commission will "evaluate the relative need of each applicant for the project to serve its customers over the short and long term, including consideration of the reasonable costs and the reasonable availability of alternative sources of power * * *" Since this is essentially the same analysis as that currently employed by the Commission in relicensing proceedings, I simply seek to clarify that the need for power criterion contained in the conference report contemplates such an analysis in future relicensing proceedings.

Mr. McCLURE. That is correct. The need for power criterion contained in the conference report was an attempt to subsume the Senate bill's economic impact test into the need for power criterion in such a way as to address a number of economic factors relevant to the license applicants's comparative need for the project, including the reasonable costs and availability of alternative sources of power, the effect on each applicant's operating and load characteristics, and the effect on the communities served by the project. Therefore, a relative economic impacts analysis such as that currently employed by the Commission in relicensing proceedings is envisioned by the need for power criterion.

Mr. HATFIELD. I thank the Senator for this clarification.

Mr. EVANS. One of the factors that is discussed as part .of the "need for power" test requires FERC to consider "the effect on the provider, including its customers, of the alternative source of power * * *." As I understand the intent of the conferees on this point, it would require FERC to consider, for example, the effect on the Bonneville Power Administration, including all of BPA's customers, for which there is a legal obligation to serve, if a recipient of power from Bonneville were an unsuccessful applicant. Does the Chairman agree with my understanding of the conferees' intent?

Mr. McCLURE. Yes.

HYDROELECTRIC RELICENSING

Mr. EVANS. Mr. President, let me express my appreciation to the Chairman of the conference committee, Senator McCLURE. He managed this difficult conference with considerable skill and patience, and graciously accommodated many of my concerns. In addition, Senator JOHNSTON played a crucial role in the successful resolution of this conference.

This bill will be of great importance to the State of Washington over the next several decades. Our region's economic infrastructure has been built, to a large extent, on the abundant hydropower resources of the Pacific Northwest. Many of the dams are federally owned and operated; but many are non-Federal dams operated by public or private utilities that are subject to FERC jurisdiction and the provisions of this bill.

More broadly, however, this bill will be of crucial importance to our Nation in the future since it sets priorities for the use of an increasingly valuable resource—water. When this bill was first debated in the Congress, the issue was which group of users, public or private, would enjoy the use of the water for hydroelectric power generation. But, as we considered and amended the original bill in the Senate, I think all of us began to see that the bill has broader implications than merely the allocation of hydropower benefits.

Mr. President, water and navigable rivers are basic public resources over which the Federal Government has authority. Our society has conflicting goals and needs which must be carefully considered to determine which use is in the broad public interest. Part I of the Federal Power Act [FPA] was enacted in recognition of that fact in May 1920 after extensive debate in the Congress for over a decade. The important concern was the balancing of the multiplicity of uses of the water resource, as non-Federal utilities received the right to license hydroelectric dams on our Nation's waterways.

The focus of my concern in this legislation has been to ensure that FERC will better address the broad public interest standard provided in section 10(a) in its relicensing proceedings. FERC's record thus far in providing equal consideration to nonpower purposes and in defining the optimal use of the water resources has not been good. In our hearings on S. 426, we received considerable testimony stating that FERC is not giving sufficient consideration to the plans of States and other agencies having responsibilities for the use of the water resource. Also, FERC's lack of attention to the protection, mitigation, and enhancement of fish and wildlife resources associated with the water resource is well-documented.

The bill from the conference committee, along with the statement of managers, however, has brought the pendulum from the power development extreme more toward the middle of the broad public interest test. It should go a long way toward assuring

that resources such as fish and wildlife, as well as irrigation, flood control, recreation, and other uses, will receive the equal consideration that they deserve in relicensing proceedings. FERC should immediately recognize the heightened importance that Congress is providing such nonpower values included in this bill and modify its practices and regulations for relicensing proceedings.

I believe strongly that each successive generation in the future will accord different values to our valuable water resources. For that reason, I insisted in our Senate amendments that we shorten the statutory license term from 50 to 30 years, unless legitimate financial considerations support a longer term. Section 5 of the conference agreement modified my amendment slightly by providing a license term of 30 to 50 years, leaving the Commission to determine what term is in the public interest. Therefore, there is no change in existing law's maximum duration for a license term of 50 years, section 6 of the FPA. It is my understanding that the conference agreement's language in section 5 conforms with current FERC practices that new licenses—or relicenses—are issued for a 30-year period unless the Commission finds a reason to issue the license for a longer period.

I believe that section 5, considered along with the other provisions of the conference agreement, clearly puts the burden of proof on the applicant who desires a term longer than 30 years. A license term of 30 years gives each generation of Americans the chance to reassess the comprehensive development of our river basins in the context of the values on which it places a high priority. Such a license term also allows for the chance to take a new look at needs and technologies which will undoubtedly emerge during the period of the license. The shorter license tenure for relicensing reflects, in general, that the initial costs of financing the construction of the dam have been fully repaid and amortized, and that the financing needs of the licensee for the project—which has a useful life from 80 to 100 years—are less significant.

The conference agreement also further clarifies the roles and responsibilities of the Commission and resource agencies in the licensing process. It requires that equal consideration be given to energy conservation, fish and wildlife, recreation and other environmental quality values along with water development values. Section 10(j) also defines a process for resolving any differences which may arise specifically with recommendations for fish and wildlife protection and mitigation. The emphasis is on FERC to cooperate with the relevant agencies and tribes to resolve any inconsistencies in recommendations for terms and conditions of the license. The conference agreement stresses equal seats at the table and a cooperative approach among the agencies and tribes—not confrontation and litigation. In my role as the first chairman of the Northwest Power Planning Council, I worked closely with the State and Federal agencies and Indian tribes to develop a cooperative approach for the protection and enhancement of fishery resources in the Columbia River basin. Each was an equal partner in developing the fish and wildlife plan. We were able to avoid a great deal of costly litigation and public confrontation. FERC should follow a similar approach.

At the same time, FERC must give adequate consideration to the power development purposes of the license when considering the nonpower purposes. The Commission must balance considerations of the supply of electric power against the needs of environmental and other improvements in the relicensing. I would have preferred bill language similar to that of the Pacific Northwest Power Act requiring an "adequate, efficient, economical, and reliable power supply" for the Pacific Northwest region. But I believe that addition of the phrase "equal consideration" in section 4(e) will have a similar result in requiring a balancing of power and nonpower values.

The conference agreement is clear, however, that setting the terms of the license for fish and wildlife resources should be done pursuant to section 10, not pursuant to the relicensing provisions in section 15. Competing for the new license through excessive bidding for fish and wildlife resources, irrespective of economic costs—goldplating—should not be allowed under section 15. I insisted on an amendment accepted in the conference committee that precludes the comparative evaluation of fish and wildlife mitigation recommendations in relicensing, section 15(g).

The conference agreement suggests in the statement of managers that "no one expects FERC to require an applicant to tear down an existing project." While I would not disagree with the assertion that the vast majority of projects in this country will not be removed in accordance with this new bill, I don't believe this legislation restricts the Commission's authority to consider removal as an option where the public interest so dictates. The conferees agreed that section 10 already requires the Commission to take into account "existing structures and facilities" during relicensing. Removal of the dam may not be a feasible option that meets the public interest test. But we should not explicitly preclude dam removal as an option for possible reasons of public safety, navigational improvements, restoration of valuable anadromous fishery resources, or general comprehensive development purposes during relicensing. In certain instances, the Commission should be able to consider removal as one option during a formal relicensing proceeding in order to receive complete data on the various options.

Finally, I should note that the conference agreement does not modify or diminish the right of the United States to recapture the project at the termination of the license under section 14 of the Federal Power Act. While this right has not yet been exercised by the United States, nothing in the conference agreement changes the Federal Government's fundamental stewardship role of our water resources. As President Theodore Roosevelt stated in 1908 after vetoing the Rainy River bill:

> Every permit to construct a dam on a navigable stream should specifically recognize the right of the Government to fix a term for its duration and to impose such charge or charges as may be deemed necessary to protect the present and future interests of the United States . . .
>
> Fifth. Provision should be made for the termination of the grant or privilege at a definite time, leaving to future generations the power or authority to renew or extend the concession in accordance with the conditions which may prevail at the time.

The original Federal Power Act, in sections 4 and 7, provided the Commission with broad authority to "develop, conserve, and utilize the water resources of the region" in which the project is located. Section 10(a) required the applicant to submit an application for the project that is "best adapted to a comprehensive plan" for the development of the waterway. In the future, any Federal agency conceivably could conclude that none of the non-Federal applications would be the optimal plans for the comprehensive development of the waterway in a region, and that Federal recapture should be exercised. In such a case, FERC would have authority to recommend such an option to the Congress pursuant to section 7(c) of FPA, after public hearing and comment. Even if FERC does not agree with such a recommendation of a Federal agency, it must order a stay of the license for 2 years while Congress determines whether Federal recapture is the appropriate option.

Mr. MURKOWSKI. Mr. President, I rise in strong support of the conference committee's agreement on S. 426, the Electric Consumers Protection Act of 1986. The efforts of the chairman of the conference committee, the distinguished senior Senator from Idaho, Mr. McCLURE, and those of the junior Senator from Louisiana, Mr. JOHNSTON, were extraordinary in reaching agreement with the House. They most ably and pursuasively defended the position of the Senate, as did all of the Senate conferees, but what is of great-

er importance, they spoke on the behalf of the electric consumer. During the long hours when the conferees met, the Senate Members never lost sight of the real intent of this legislation, the protection of the consumer and the public interest.

I believe that the agreement proposed by the conferees retains that protection and provides for the electric consumer an assurance that they will continue to receive the benefits of reliable and economic sources of hydroelectric power while at the same time recognizing the benefits that accrue to the Nation at large as a result of the development of our hydroelectric resources and appurtenant values. The scope of the measure reflects the complexity of the issues involved and the directions given to the Federal Energy Regulatory Commission, as well as the statutory changes made to the Federal Power Act, will serve the public interest in guiding the development of our hydroelectric resources for years to come.

As chairman of the Subcommittee on Water and Power, it is my privilege to chair the Senate hearings held on the Electric Consumers Protection Act of 1986. I would like to reflect for a moment on some of the information gathered by the subcommittee, thereby providing some additional guidance as to the interpretation of the conference report.

I recall that in my opening remarks when I called the hearing to order on Tuesday, June 11, 1985, that there were three fundmental questions which needed to be addressed by the Congress. Will the proposed legislation promote the development of our Nation's water resources? Will the legislation serve to encourage reliable electric service to the consumer? Will the legislation not impose an undue burden on the ratepayer?

As passed by the Senate on April 17, 1986, S. 426 provided an affirmative response to each of these questions and I am pleased to note that through the efforts of the Senate conferees, the agreement of the conference committee retains that needed response.

This measure is acceptable to me and I would urge immediate adoption by the Senate. It is the product of a long and hard process and I am proud of the part my subcommittee played in bringing this measure to the Senate and the Nation.

Mr. President, this is a good agreement. However, before the Senate approves the conference report, as I am sure that my colleagues will, I would like to address some comments to the distinguished chairman of both the conference committee and the Senate Committee on Energy and Natural Resources, the senior Senator from the State of Idaho.

As the chairman will recall, grave concern was expressed by non-utility license holders, and here I am speaking of any license holder who is not engaged in the generation of hydroelectricity primarily for sale to another party, that their unique circumstances be recognized in this legislation. I am speaking of those individuals or companies who struck out on their own to develop a hydropower resource to serve their own domestic, commercial, or industrial needs.

As the chairman knows, this concern is addressed in both the legislative language and the statement of the managers. The amendments made to section 15 of the Federal Power Act by S. 426 specifically charge the Federal Energy Regulatory Commission to take into consideration the "applicant's own industrial facility and related operations, the effect on the operation of such facility or related operations, its workers, and the related community" in the context of the "need of the power" criteria in relicensing proceedings. The statement of the managers goes on to state that: "It is not intented that the term 'industrial' exclude domestic uses by the licensee." Does the chairman agree that this language directs the FERC to take into account during any relicensing proceeding involving a non-utility licensee, the particular circumstances surrounding that licensee?

Mr. McCLURE. Mr. President, if I may respond to the chairman of the Subcommittee on Water and Power.

His interpretation is correct. The language does mandate the FERC to consider the unique circumstances surrounding non-utility license holders.

I know that in my own State of Idaho, and I am aware that the situation is the same in my colleague's home State of Alaska as well as other States, that there are licensed projects that have been developed by non-utility licensees. The projects may serve facilities such as a paper or lumber mill, a factory or assembly plant, a commercial enterprise such as a dude ranch or hunting lodge, or the domestic needs of a farmer or rancher or family living in a remote area. In the case of industrial facilities, the FERC must consider the consequences of the loss of a project for an industrial facility including the impact on the community. And here I would note that domestic uses by the licensee are included within the scope of industrial uses in the statement of the managers in order to assuredly protect the diverse range of non-utility licensees. The recommendations of the conferees ensure that the needs of the non-utility license holder will be accommodated in any relicensing procedure.

Mr. MURKOWSKI. I thank the chairman for his assurance.

On another point, I note that the statement of the managers addresses concerns raised by the Metlakatla Indian Community of the Annette Island Indian Reservation in Alaska. The statement notes that: "The Federal Energy Regulatory Commission has previously ruled that the Metlakatla Indian Community is not required to be licensed pursuant to the Federal Power Act to use the lands within the Annette Island Indian Reservation, AK, for hydroelectric power development. Based on this understanding, it is the intent of the conferees that nothing in this act alters or affects that ruling."

Would the distinguished chairman have any further comment on the language in the report?

Mr. McCLURE. I think that the statement of the managers is without doubt a clear and concise direction that the act does not alter or affect the FERC's previous ruling.

Mr. MURKOWSKI. I thank the chairman for his observation.

As the chairman will recall from my remarks during the Senate's consideration of S. 426 and the meetings of the conferees, concern was expressed regarding the possible conditioning of a license by the Federal Energy Regulatory Commission to require the licensee to introduce new and exotic species into waterways that did not support those species. Many of the streams in Alaska with potential for hydroelectric development do not support naturally occurring fish populations. This is a result of the inhospitable habitat. I believe that it would be inappropriate for the FERC to require the introduction of fish in such streams as a condition of a license.

Mr. McCLURE. I wholeheartedly agree with the subcommittee chairman. As the conference report notes: "The conferees understand that there are areas in Alaska where there are no fish and have never been any. It is not the intent of the conferees that the amendments made by this act require the Federal Energy Regulatory Commission to condition licenses so as to introduce new and exotic species in such areas." This reasonable expression on the part of the conferees extends to similar circumstances in other States.

Mr. MURKOWSKI. I thank the distinguished chairman. The intent of the conferees is clear and my concerns have been addressed.

I would again compliment the distinguished chairman and ranking minority Member of the Committee on Energy and Natural Resources for their efforts in the committee, on the floor or the Senate when S. 426 was passed, in the conference committee, and once again, here on the floor of the Senate. Through each crucial step, they have exhibited the patience and knowledge so necessary in the compilation of such complex and far reaching legislation. They deserve the

thanks of the Senate and the gratitude of the consumer.

Mr. EVANS. It is my understanding that a savings clause has been added in section 17(a)(4) which assures that the authority of the Federal power marketing agencies to regulate access to transmission facilities owned by the Federal Government is left unaffected. This authority has recently been upheld against court challenges, and it is not the intent of this legislation to alter or diminish that authority in any fashion. Does the chairman agree with my understanding of the conferees' intent?

Mr. McCLURE. Yes.

Mr. EVANS. I would like to emphasize my understanding that these amendments, specifically section 10(a)(2), reflect the principle of cooperative management between Indian tribes, State and Federal regulators. These amendments grant the tribes a seat at the decisionmaking table, from which they will be able to protect their important jurisdictional interest in fishery and other natural resources issues. We have learned in the Pacific Northwest through the implementation of the Pacific Northwest Electric Power Planning and Conservation Act and the Pacific Salmon Treaty Act that the tribes are prepared to provide responsible and businesslike representation and contribute to rational and comprehensive decisionmaking.

Mr. McCLURE. I agree entirely with the remarks of the Senator from Washington and would like to state my strong belief that full and fair inclusion of Indian tribes in the discussion of matters that affect tribal resources is much to be preferred. It is my conviction that FERC should be responsive to recommendations it receives pursuant to section 10(a)(2). Section 10(a) is not intended to eliminate FERC's obligations to respond to appropriate recommendations.

Mr. EVANS. I appreciate the assurances from the distinguished Senator from Idaho. It is my further understanding that, with respect to section 10 of the conference agreement, Indian tribes that have submitted fish and wildlife recommendations would be permitted to participate in the process to resolve disputes between fish and wildlife agencies, the applicant, and FERC.

Mr. McCLURE. That is correct. The Commission's consideration of tribal views should be full and complete. Obviously, it is important that fish and wildlife dispute resolutions should be conducted in good faith among all parties to ameliorate the concerns of those interests directly affected by a project. The expensive litigation and other disruptions that now hinder licensing decisions can be reduced by allowing tribal representation and respecting tribal interests at the beginning and throughout the decision process.

Mr. STEVENS. Mr. President, I ask for adoption of the conference report.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The conference report was agreed to.

Mr. STEVENS. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

FEDERAL EMERGENCY MANAGEMENT ACT

Mr. STEVENS. Mr. President, I ask unanimous consent that the Senate turn to the consideration of H.R. 5488, which deals with the Federal Emergency Management Act being held at the desk.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 5488) to prohibit implementation of certain regulations of the Federal Emergency Management Agency relating to the declaration process, eligibility for assistance, and non-Federal responsibility for major disasters under the Disaster Relief Act of 1974, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 3218

(Purpose: To amend the Disaster Relief Act of 1974)

Mr. STEVENS. Mr. President, I send an amendment to the desk on behalf of Senator STAFFORD, the chairman of the full committee, and Senator LAUTENBERG.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Alaska [Mr. STEVENS] for Mr. STAFFORD and Mr. LAUTENBERG proposes an amendment numbered 3218.

Mr. STEVENS. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

That this Act may be cited as the "Disaster Relief Act Amendments of 1986".

SEC. 2. The short title of the Disaster Relief Act of 1974 (Public Law 93-288) is hereby amended by deleting the words "Disaster Relief Act of 1974" and inserting in lieu thereof "Major Disaster Relief and Emergency Assistance Act".

SEC. 3. Section 102(1) of the Disaster Relief Act of 1974 (42 U.S.C. 5122(1)) is amended to read as follows:

"(1) 'Emergency' means any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and Local efforts and capabilities to save lives and to protect property, public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.".

SEC. 4. Title VIII of the Public Works and Economic Development Act of 1965, as amended (Public Law 89-136; 42 U.S.C. 3231-3236) is hereby repealed, and title V of the Disaster Relief Act of 1974 (Public Law 93-288) is hereby amended to read as follows:

"TITLE V—FEDERAL EMERGENCY ASSISTANCE PROGRAMS

"PROCEDURES

"SEC. 501. (a) All requests for a determination by the President that an emergency exists shall be made by the Governor of the affected State. Such request shall be based upon the Governor's finding that the situation is of such severity and magnitude that effective response is beyond the capabilities of the State and the affected local governments and that Federal assistance is necessary. The Governor's request will furnish information describing State and local efforts and resources which have been or will be used to alleviate the emergency, and will define the type and exent of Federal aid required. As a part of this request, and as a prerequisite to emergency assistance under the Act, the Governor shall take appropriate action under State law and direct execution of the State's emergency plan. Based upon such Governor's request, the President may declare that an emergency exists.

"(b) The President may exercise any authority vested in him by section 502 and section 503 of this Act with respect to an emergency when he determines that an emergency exists for which the primary responsibility for response rests with the United States because the emergency involves a subject area for which, under the Constitution or laws of the United States, the United States exercises exclusive or preeminent responsibility and authority. The President may determine that such an emergency exists only after consultation with the Governor of the affected States, if practicable. The President's determination, however, may be made without regard to the provisions of section 501(a) of this Act.

"FEDERAL ASSISTANCE

"SEC. 502. In any emergency, the President may—

"(a) direct any Federal agency with or without reimbursement to utilize its authorities and the resources granted to it under other Acts, including but not limited to personnel, equipment, supplies, facilities, and managerial, technical and advisory services in support of State and local emergency assistance efforts to save lives and to protect property, public health and safety or to lessen or avert the threat of a catastrophe;

"(b) coordinate all Federal agencies and voluntary relief or disaster assistance organizations providing emergency assistance, and coordinate emergency assistance with State and local officials; and

"(c) provide technical and advisory assistance to affected State and local governments in the performance of essential community services, warning of risks of hazards, public information and assistance in health and safety measures, management and control, and reduction of immediate threats to public health and safety.

"EMERGENCY ASSISTANCE

"SEC. 503. (a) In an emergency, when the Federal assistance provided pursuant to section 502 of this title is inadequate, the President may provide assistance to save lives

and protect property, public health and safety, or to lessen or avert the threat of a catastrophe. When debris removal assistance is appropriate under this section, it shall be provided in accordance with the terms and conditions of section 406 of this Act.

"(b) In any emergency and except as provided by subsection (c) of this section, the costs of providing emergency assistance under this section shall not exceed $5,000,000 of funds appropriated to carry out this Act.

"(c) The limitation of subsection (b) of this section may be exceeded when the President determines that continued emergency assistance is immediately required; that there is a continuing and immediate risk to lives, property, public health or safety; and that necessary assistance will not otherwise be provided on a timely basis. In the event that the limitation of subsection (b) is exceeded, the President shall report to Congress on the nature and extent of the emergency assistance requirements and propose additional legislation if necessary.".

SEC. 5. Section 102(2) of the Disaster Relief Act of 1974 (42 U.S.C. 5122(2)) is amended to read as follows—

"(2) 'Major disaster' means any natural catastrophe, including any hurricane, tornado, storm, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought, or any fire, flood, or explosion, regardless of cause, in any part of the United States which, in the determination of the President, causes damage of sufficient severity and magnitude to warrant major disaster assistance under this Act to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.".

SEC. 6. Title II of the Disaster Relief Act of 1974 (42 U.S.C. 5131-5132) is amended by—

(1) striking the words "(including the Defense Civil Preparedness Agency)" in section 201(a);

(2) adding the words "including evaluations of natural hazards and development of the programs and actions required to mitigate such hazards," between the words "plans" and "except" in section 201(d); and

(3) striking "$25,000" in section 201(d) and inserting in lieu thereof "$50,000".

SEC. 7. Title III of the Disaster Relief Act of 1974 (42 U.S.C. 5141-5158) is amended by—

(1) deleting sections 301, 305, and 306 and renumbering subsequent sections appropriately;

(2) deleting the caption "FEDERAL ASSISTANCE" of section 301, as redesignated by paragraph (1) of this section, and inserting in lieu thereof "RULES AND REGULATIONS";

(3) deleting the first and second sentences of subsection (a) of section 301, as redesignated by paragraph (1) of this section, and amending the final sentence thereof by adding ", with or without reimbursement," immediately before "through"; and

(4) deleting ", or economic status" in the second sentence of section 308(a) as redesignated by paragraph (1) of this section, and adding "or" before "age,".

SEC. 8. Section 302(a) of the Disaster Relief Act of 1974 (42 U.S.C. 5143(a)), as redesignated by section 7(1) of this Act, is amended by adding at the end thereof the following: "The Federal coordinating officer shall represent the President in coordinating the emergency or the major disaster response and recovery effort.".

SEC. 9. Section 311 of the Disaster Relief Act of 1974 (42 U.S.C. 5154), as redesignated by section 7(1) of this Act, is amended by redesignating subsections (a), (b), and (c) as (b), (c), and (d), respectively, and by adding at the beginning thereof a new subsection as follows:

"(a) As a condition of assistance, any public facility and private nonprofit facility which is:

"(1) located in a special flood hazard area as identified by the Director pursuant to the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001 et seq.);

"(2) damaged or destroyed by flooding; and

"(3) otherwise eligible for assistance under section 405 of this Act, must be covered, on the date of the flood damage, by reasonable and adequate flood insurance. Assistance under section 405 for any such facility not so covered shall be reduced by the maximum amount of benefits which could have been received had reasonable and adequate flood insurance been in force: *Provided, however,* That this reduction of assistance shall not apply to uninsured facilities where such communities have been identified for less than one year as having special flood hazard areas. The limitations of assistance required by this subsection shall not apply until final regulations are promulgated by the President. Such regulations shall define reasonable and adequate flood insurance.".

SEC. 10. Section 312 of the Disaster Relief Act of 1974 (42 U.S.C. 5155), as redesignated by section 7(1) of this Act, is amended to read as follows:

"DUPLICATION OF BENEFITS

"SEC. 312. (a) Agencies or other organizations providing Federal assistance for needs or losses resulting from a major disaster or emergency shall assure that no person, business concern, or other entity receives any such Federal assistnace if said person, business concern, or entity receives or is entitled to receive benefits for the same purposes from insurance or any other Federal or non-Federal source: *Provided,* That nothing in this section shall prohibit the provision of Federal assistance to a person, business concern, or other entity who is or may be entitled to receive benefits for the same purposes from insurance or any other Federal or non-Federal source when any such applicant for Federal assistance has not received such other benefits by the time of application for Federal assistance, so long as the applicant for Federal assistance agrees as a condition of receipt of Federal assistance to repay duplicative assistance from insurance or any other Federal or non-Federal source to the agency or other organizations providing the Federal assistance. The President shall establish such procedures as are deemed necessary to insure uniformity in preventing such duplication of benefits. Receipt of partial benefits for a loss or need resulting from a major disaster or emergency does not preclude provision of additional Federal assistance for any part of such loss or need for which benefits have been provided.

"(b) A person, business concern, or other entity receiving Federal assistance for needs or losses resulting from a major disaster or emergency shall be liable to the United States to the extent that such Federal assistance has duplicated benefits available to the person, business concern, or other entity for the same purpose from insurance or any other Federal or non-Federal sources. The agency or other organization which provided the duplicative assistance shall collect such duplicative assistance from the recipient in accordance with the Claims Collection Act of 1966, as amended, when in the best interest of the Government. The repayment shall not exceed the amount of Federal assistance received.

"(c) Federal disaster assistance and comparable disaster assistance provided by States, local governments, and disaster assistance organizations to individuals and families shall not be considered as income or a resource when determining eligibility or benefit levels for federally funded income assistance or resource tested benefit programs.".

SEC. 11. (a) Title III of the Disaster Relief Act of 1974 (42 U.S.C. 5141-5158) is amended by adding at the end thereof four new sections as follows:

"PROTECTION OF ENVIRONMENT

"SEC. 315. No action taken or assistance provided pursuant to section 402, 403, 406, 502, or 503 of this Act, or any assistance provided pursuant to section 405 of this Act that has the effect of restoring facilities substantially as they existed prior to the disaster, shall be deemed a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (83 Stat. 852). Nothing in this section shall alter or affect the applicability of the National Environmental Policy Act of 1969 (83 Stat. 852) to other Federal actions taken under this Act or under any other provisions of law.

"RECOVERY OF FUNDS

"Sec. 316. The attorney General of the United States is authorized to institute actions in the United States District Court for the district in which an emergency or major disaster occurred, or in such district as otherwise provided by law, against any party whose acts or omissions may in any way have caused or contributed to the damage or hardship for which Federal assistance is provided pursuant to this Act. Upon the showing that an emergency or major disaster or the associated damage or hardship was caused in whole or in part by an act or omission of such party, then such party shall be liable to the United States for the full amount of Federal expenditures made to alleviate the suffering or damage attributable to such act or omission. The authority of this section shall also apply to the recovery of Federal funds expended under the authority of section 419 of this Act for fire suppression.

"AUDITS AND INVESTIGATIONS

"SEC. 317. (a) The President, when deemed necessary to assure compliance with any provision of this Act or related regulations, shall conduct audits and investigations and in connection therewith may enter such places and inspect such records and accounts and question such persons as deemed necessary to determine the facts relative thereto.

"(b) The President, when deemed necessary to assure compliance with any provision of this Act or related regulations, may require audits by State and local governments in connection with assistance provided under the Act.

"(c) The President and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access, for purposes of investigation, audit, and examination, to any books, docu-

ments, papers, and records of any person or entity relating to any activity or program undertaken or funded pursuant to this Act.

"CRIMINAL AND CIVIL PENALTIES

"SEC. 318. (a) Any person, organization, or other entity who knowingly makes a false statement or representation of a material fact, or who knowingly fails to disclose a material fact, in any application or other document in connection with a request for assistance under this Act, or who knowingly falsifies or withholds, conceals, or destroys any documents, books, records, reports, or statements upon which such request for assistance is based, shall be fined not more than $10,000 or imprisoned for not more than one year, or both, for each violation.

"(b) Any person, organization, or other entity who knowingly makes a false statement or representation of a material fact, or who knowingly fails to disclose a material fact, in any bill, invoice, claim, or other document requesting reimbursement for work or services performed in connection with assistance provided under this Act, or who knowingly falsifies or withholds, conceals, or destroys any documents, books, records, reports, or statements upon which such request for reimbursement is based, shall be fined not more than $10,000 or imprisoned for not more than one year, or both, for each violation.

"(c) Any person, organization, or other entity who knowingly misapplies the proceeds of a loan or other cash benefit obtained under any section of this Act shall be subject to a fine in an amount equal to one and one-half times the misapplied amount of the loan or cash benefit.

"(d) Whenever it appears that any person, organization, or other entity has violated or is about to violate any provision of this Act, including rules and regulations issued and civil penalties imposed, the Attorney General may bring a civil action for such relief as may be appropriate. Such action may be brought in the district court of the United States having jurisdiction where the violation occurred or, at the option of the parties, in the United States District Court for the District of Columbia.

"(e) The President, or the duly authorized representative of the President, shall expeditiously refer to the Attorney General of the United States for appropriate action such evidence developed in the performance of functions under this Act as may be found to warrant consideration for criminal prosecution under the provisions of this Act or other Federal law."

(b) Title III of the Disaster Relief Act of 1974 is amended by deleting subsections (a) and (c) of section 314 (42 U.S.C. 5157), as redesignated by section 7(1) of this Act, and by renumbering "(b)" from the remaining subsection of section 314 as subsection "(f)" of section 318 as added by section 11(a) of this Act.

(c) Title IV of the Disaster Relief Act of 1974 is amended by deleting section 405 (42 U.S.C. 5175) and by renumbering subsequent sections appropriately.

(d) Section 315 of the Disaster Relief Act of 1974 (42 U.S.C. 5158), as redesignated by section 7(1) of this Act, is further redesignated as section 314.

SEC. 12. Title IV of the Disaster Relief Act of 1974 (42 U.S.C. 5171-5189) is amended by adding three new sections as follows and by renumbering subsequent sections appropriately:

"PROCEDURES

"Sec. 401. (a) All requests for a declaration by the President that a major disaster exists shall be made by the Governor of the affected State. Such Governor's request shall be based upon a finding that the disaster is of such severity and magnitude that effective response is beyond the capabilities of the State and the affected local governments and that Federal assistance is necessary. As a part of this request, and as a prerequisite to major disaster assistance under the Act, the Governor shall take appropriate action under State law and direct execution of the State's emergency plan. He shall furnish information on the extent and nature of State resources which have been or will be used to alleviate the conditions of the disaster, and shall certify that for the current disaster, State and local government obligations and expenditures (of which State commitments must be a significant proportion) will constitute the expenditure of a reasonable amount of the funds of such State and local governments for alleviating the damage, loss, hardship, or suffering resulting from such disaster, including, but not limited to, the cost-sharing provisions pursuant to sections 405, 406, 407, and 410 of this Act. Based upon such Governor's request, the President may declare that a major disaster exists.

"(b) In any case where an eligible applicant (or the State) is unable to assume its financial responsibility under the cost-sharing provisions of sections 405, 406, and 407 of this Act, the President is authorized to lend or advance to the State such 25 per centum share. For the purposes of section 405, such loan or advance shall be authorized only after the occurrence of concurrent, multiple major disasters in a given jurisdiction, or the extraordinary costs of a particular major disaster, and when the damages caused by such major disasters are so overwhelming and severe that it is not possible for the applicant or the State to assume their financial responsibility under this Act immediately. Except as provided by subsection (c) of this section, any such loan or advance is to be repaid to the United States; there shall be no deferral of the repayment of loans or advances authorized by this subsection or of accrued interest. Such obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current market yields on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the reimbursement period of the loan or advance.

"(c) The President may cancel all or any part of such loan or advance made regarding section 405 or section 406 for concurrent, multiple major disasters or a single catastrophic major disaster if a determination is made that following the three full fiscal years after the loan or advance is made, the applicant demonstrates substantial and continuing inability to repay all or part of the loan or advance.

"(d) The President shall issue regulations describing the terms and conditions under which any loans or advances authorized by this section may be made or canceled.

"FEDERAL ASSISTANCE

"Sec. 402. In any major disaster, the President may—

"(a) direct any Federal agency with or without reimbursement to utilize its authorities and the resources granted to it under other Acts including, but not limited to, personnel, equipment, supplies, facilities, and managerial, technical, and advisory services in support of State and local assistance efforts;

"(b) coordinate all Federal agencies and voluntary relief or disaster assistance organizations providing disaster assistance, and coordinate disaster assistance with State and local officials; and

"(c) provide technical and advisory assistance to affected State and local governments in the performance of essential community services, warning of risks and hazards, public information and assistance in health and safety measures, management and control, and reduction of immediate threats to public health and safety.

"COOPERATION OF FEDERAL AGENCIES IN RENDERING DISASTER ASSISTANCE"

"Sec. 403. (a) In any major disaster, Federal agencies are hereby authorized, on the direction of the President, to provide assistance by—

"(1) utilizing or lending, with or without compensation therefore, to States and local governments, their equipment, supplies, facilities, personnel, and other resources, other than the extension of credit under the authority of any Act;

"(2) distributing or rendering, through the American National Red Cross, the Salvation Army, the Mennonite Disaster Service, and other relief and disaster assistance organizations, or otherwise, medicine, food, and other consumable supplies, other services to disaster victims, or emergency assistance;

"(3) donating or lending equipment and supplies, including that determined in accordance with applicable laws to be surplus to the needs and responsibilities of the Federal Government, to State and local governments for use or distribution by them for the purposes of this Act; and

"(4) performing on public or private lands or waters any emergency work or services essential to save lives and to protect and preserve property, public health and safety, including, but not limited to: Search and rescue, emergency medical care, emergency mass care, emergency shelter, and provisions of food, water, medicine, and other essential needs, including movement of supplies or persons; construction of temporary bridges necessary to the performance of emergency tasks and essential community services; provision of temporary facilities for schools and other essential community services; warning of further risks and hazards; public information and assistance on health and safety measures; technical advice to State and local governments on disaster management and control; reduction of immediate threats to life, property, and public health and safety; and making contributions to State or local governments for the purpose of carrying out the provisions of this paragraph. Such contributions for emergency work under this section and section 402 of this Act shall not exceed 100 per centum of the net eligible cost, or for small projects 100 per centum of the Federal estimate of the net eligible cost, of such emergency work or services performed by State and local governments: *Provided*, That where debris removal assistance is appropriate under this section or section 402 of this Act it shall be provided in accordance with the terms and conditions of section 406 of this Act.".

SEC. 13. (a) Section 405 of the Disaster Relief Act of 1974 (42 U.S.C. 5172), as redesignated by section 12 of this Act, is amended to read as follows:

"(a) The President is authorized to make contributions to State or local governments, to help repair, restore, reconstruct, or replace public facilities belonging to such

State or local government which were damaged or destroyed by a major disaster. Notwithstanding any other provision of law, such contribution shall be limited to 75 per centum of the net eligible cost, or for small projects 75 per centum of the Federal estimate of the net eligible cost, of repairing, restoring, reconstructing, or replacing any such facility estimated on the basis of the design of such facility as it existed immediately prior to such major disaster and in conformity with current applicable codes, specifications, and standards. For the purposes of this section, 'public facility' includes any publicly owned flood control, navigation, irrigation, reclamation, public power, sewage treatment and collection, water supply and distribution, watershed development, or airport facility, any non-Federal-aid street, road, or highway, any other public building, structure, or system including those used for educational or recreational purposes, and any park.

"(b) The President is authorized to make contributions to help repair, restore, reconstruct, or replace eligible private nonprofit facilities which were damaged or destroyed by a major disaster. Notwithstanding any other provision of law, such contributions shall be 75 per centum of the net eligible cost, or for small projects 75 per centum of the Federal estimate of the net eligible cost, of repairing, restoring, reconstructing, or replacing any such facility estimated on the basis of the design of such facility as it existed immediately prior to such major disaster and in conformity with current applicable codes, specifications, and standards. For the purposes of this section, 'eligible private nonprofit facility' means private non profit educational, utility, emergency, medical, and custodial care facilities, including those for the aged and disabled, and such private nonprofit facilities on Indian reservations, which were damaged or destroyed by a major disaster.

"(c) No authority under this section shall be exercised unless the affected State, local government, or eligible private nonprofit organization first agrees that such facility shall be repaired, restored, reconstructed, or replaced in compliance with flood plain management and hazard mitigation criteria required by the President, with the provisions of the Coastal Barrier Resources Act and other applicable Federal statutes, and in conformity with other applicable codes, specifications, and standards, except as otherwise provided in section 315 of this Act.

"(d) For those facilities eligible under this section which were in the process of construction when damaged or destroyed by a major disaster, the contribution shall be 75 per centum of the net eligible costs of restoring such facilities substantially to their predisaster condition: *Provided,* That the term 'net eligible costs' shall not include cost which, under a contract, are the responsibility of a contractor.

"(e) In those cases, except for small projects, where a State or local government determines that public welfare would not be best served by repairing, restoring, reconstructing, or replacing particular public facilities owned or controlled by that State or that local government and which have been damaged or destroyed in a major disaster, it may elect to receive, in lieu of the contribution described in subsection (a) of this section, a contribution that shall be 50 per centum of the Federal estimate of the net eligible cost of repairing, restoring, reconstructing, or replacing such damaged facilities owned by it within its jurisdiction. The cost of repairing, restoring, reconstructing, or replacing damaged or destroyed public facilities shall be estimated on the basis of the design of each facility as it existed immediately prior to such disaster and in conformity with current applicable codes, specifications, and standards. Funds contributed under this subsection may be expended either to repair or restore certain selected damaged public facilities or to construct new public facilities which the State or local government determines to be necessary to meet its needs for governmental services and functions in the disaster-affected area."

(b) The Disaster Relief Act of 1974 is amended by deleting section 421 (42 U.S.C. 5189), as redesignated by sections 11(c) and 12 of this Act, and by striking "or 419" each place that this phrase appears in section 311 (42 U.S.C. 5154), as redesignated by section 7(1) of this Act.

(c) Section 406 of the Disaster Relief Act of 1974 (42 U.S.C. 5173), as redesignated by section 12 of this Act, is amended by adding at the end thereof the following:

"(c) Notwithstanding any other provision of law, whether carried out directly through Federal departments, agencies, or instrumentalities or through grants to State or local governments, Federal assistance provided under authority of this section shall be 75 per centum of the net eligible costs, or for small projects 75 per centum of the Federal estimate of the net eligible costs, of debris removal.".

SEC. 14. Section 407(a) of the Disaster Relief Act of 1974, as redesignated by section 12 of this Act, is amended to read as follows:

"(a) The President is authorized to provide, either by purchase or lease, temporary housing including, but not limited to, unoccupied habitable dwellings, suitable rental housing, mobile homes, or other readily fabricated dwellings for those who, as a result of a major disaster, require temporary housing. Whenever he determines it to be in the public interest, the President is authorized to provide temporary housing assistance by using Federal departments, agencies, or instrumentalities. In addition, the President is authorized to provide temporary housing assistance by contributing not to exceed 100 per centum (or 75 per centum for group site development pursuant to paragraph (2) of this subsection) of the costs of temporary housing assistance to a State or local government which provides such assistance to those who require it as a result of a major disaster. Federal financial and operational responsibilities for temporary housing assistance shall not exceed eighteen months from the date of the major disaster declaration by the President, unless he determines that due to extraordinary circumstances it would be in the public interest to extend the eighteen month period.

"(1) Temporary housing assistance pursuant to this subsection shall be provided only when adequate alternative housing is unavailable, unless there is compelling need to do so because of extreme hardship.

"(2) Any mobile home or other readily fabricated dwelling supplied pursuant to this subsection shall be placed on a site complete with utilities provided either by the State or local government, or by the owner or occupant of the site who was displaced by the major disaster. When the President determines such action to be in the public interest, he may authorize installation of essential utilities at Federal expense and he may elect to provide other more economical or accessible sites. However, in the event the President authorizes the development of a group site, that is, a site for two or more households, the Federal share shall be 75 per centum of the development costs, and the remainder shall be met by funds provided by the State or local government."

SEC. 15. Section 408 of the Disaster Relief Act of 1974 (42 U.S.C. 5176), as redesignated by sections 11(c) and 12 of this Act, is amended by adding "(a)" after "408." and by adding a new subsection "(b)" as follows:

"(b) The President is authorized to contribute up to 50 per centum of the cost of implementing hazard mitigation projects which he has determined would be cost effective and would substantially reduce the risk of future damage, hardship, loss, or suffering in the area affected by a major disaster. Such projects shall be identified following the evaluation of natural hazards provided for in subsection (a) of this section and shall be subject to approval by the President. The total of the contributions made under this subsection shall not exceed 10 per centum of the Federal estimate of grants made under the authority of section 405 of this Act for each major disaster.".

SEC. 16. Section 409(a) of the Disaster Relief Act of 1974 (42 U.S.C. 5177), as redesignated by sections 11(c) and 12 of this Act, is amended to read as follows: "The President is authorized to provide such disaster unemployment assistance as he deems appropriate to individuals who are unemployed as a result of a major disaster. Disaster unemployment assistance authorized by this section shall be available to an eligible individual for a period not to exceed fifty-two weeks after the week in which an eligible individual became unemployed as a result of a major disaster, and such period shall be regarded as the disaster assistance period for that individual for the purposes of this section. Disaster unemployment assistance shall not be payable with respect to any week for which an individual is entitled to unemployment compensation (as defined in section 85(c) of the Internal Revenue Code of 1954, as amended) or waiting week credit. The maximum amount of disaster unemployment assistance payable to any individual with respect to a major disaster shall not exceed twenty-six times the maximum weekly amount for which the individual establishes eligibility minus the amount of any unemployment compensation paid to the individual during the fifty-two week benefit period established pursuant to this section. Such assistance for a week of unemployment shall not exceed the maximum weekly amount authorized under the unemployment compensation law of the State in which the disaster occurred, and the amount of assistance under this section for a week of unemployment shall be reduced by any amount of private income protection insurance compensation available to such individual for such week of unemployment. The payment of unemployment compensation to an individual with respect to any week subsequent to the exhaustion of eligibility of such individual for disaster unemployment assistance and within the fifty-two week benefit period established pursuant to this section shall not be regarded as duplication of benefits under section 312 of this Act. The President is directed to provide disaster unemployment assistance through agreements with States which, in his judgment, have an adequate system for administering such assistance through existing State agencies.".

SEC. 17. (a) Section 410(b) of the Disaster Relief Act of 1974 (42 U.S.C. 5178), as redesignated by sections 11(c) and 12 of this Act, is amended by adding a period after the word "share" in the second sentence of that subsection and by deleting the following phrase from the second sentence of section 410(b): "and any such advance is to be repaid to the United States when such State is able to do so.".

(b) Section 410(b) of the Disaster Relief Act of 1974 (42 U.S.C. 5178), as redesignated by sections 11(c) and 12 of this Act, is further amended by adding the following sentence between the second and third sentences of this subsection: "Such advances shall bear interest from the date of the advance at a rate determined by the Secretary of the Treasury, taking into consideration the current market yields on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the reimbursement period of the loan or advance. Repayment of such advances and of interest which accrues on the advances may be deferred for no longer than two years from the date of the major disaster declaration.".

SEC. 18. Section 410(b) of the Disaster Relief Act of 1974 (42 U.S.C. 5178), as redesignated by sections 156(c) and 157 of this Act, is amended by striking "$5,000" in the last sentence and inserting in lieu thereof "$7,500".

SEC. 19. Section 415 of the Disaster Relief Act of 1974 (42 U.S.C. 5183), as redesignated by sections 11(c) and 12 of this Act, is amended by striking "(through the National Institute of Mental Health)".

SEC. 20. Section 420(d) of the Disaster Relief Act of 1974 (42 U.S.C. 5188), as redesignated by sections 11(c) and 12 of this Act, is deleted.

SEC. 21. The Disaster Relief Act of 1974 (42 U.S.C. 5121-5202) is amended by—

(1) striking paragraph (7) of section 101(b) (42 U.S.C. 5121), striking "; and" from paragraph (6) and adding in lieu thereof a period, and adding "and" at the end of paragraph (5);

(2) striking "the Canal Zone," in paragraphs (3) and (4) of section 102 (42 U.S.C. 5122);

(3) striking "DISASTER" in the caption of title III (42 U.S.C. 5141-5158) and inserting in lieu thereof "major disaster relief and emergency";

(4) striking "section 402 or 404 of" in section 308(b) (42 U.S.C. 5151), as redesignated by section 7(1) of this Act;

(5) adding "emergency or" before the word "major" each of two places that word appears in section 307 (42 U.S.C. 5150), as redesignated by section 7(1) of this Act;

(6) striking in section 310(b) (42 U.S.C. 5153), as redesignated by section 7(1) of this Act, everything after the word "areas" and inserting in lieu thereof a period;

(7) striking "or section 803 of the Public Works and Economic Development Act of 1965," each place the phrase appears in section 311 (42 U.S.C. 5154), as redesignated by section 7(1) of this Act;

(8) striking "402" each place that number appears in section 311 (42 U.S.C. 5154), as redesignated by section 7(1) of this Act, and inserting in lieu thereof "405";

(9) adding "emergency and major" before the word "disaster" in section 313 (42 U.S.C. 5156), as redesignated by section 7(1) of this Act;

(10) adding the word "MAJOR" between the words "FEDERAL" and "DISASTER" in the caption to title IV (42 U.S.C. 5171-5189);

(11) stiking "in emergencies or in major disasters" in the third sentence of paragraph (2) by section 12 of this Act;

(12) striking "311" in section 407(d)(2) (42 U.S.C. 5174), as redesignated by section 12 of this Act, and inserting in lieu thereof "308";

(13) striking "an emergency or" in section 417 (42 U.S.C. 5185), as redesignated by sections 11(c) and 12 of this Act, and inserting in lieu thereof "a";

(14) striking "408" in section 605 (42 U.S.C. 5121) and inserting in lieu thereof "410";

(15) striking "301" in subtitle C of title I of the State and Local Fiscal Assistance Act of 1972 (Public Law 92-512; 86 Stat. 919) and inserting in lieu thereof "401";

(16) striking "President" each place that word appears in section 309(a), as redesignated by section 7(1) of this Act, and inserting in lieu thereof "Federal coordinating officer".

(17) striking "rent" in section 310(a)(2) (42 U.S.C. 5153), as redesignated by section 7(1) of this Act, and inserting in lieu thereof "income"; and

(18) striking paragraph (1) of section 310(a) (42 U.S.C. 5153), as redesignated by section 7(1) of this Act, and renumbering subsequent paragraphs appropriately.

SEC. 22. (a) Section 6(a)(6)(E) of the Coastal Barrier Resource Act, 16 U.S.C. 3505(a)(6)(E), is amended by striking out "pursuant to sections 305 and 306 of the Disaster Relief Act of 1974" and inserting in lieu thereof "pursuant to sections 402, 403, 502, and 503 of the Major Disaster Relief and Emergency Assistance Act".

(b) Whenever any reference is made in any provision of law (other than this Act), regulation, rule, record, or document of the United States to provisions of the Disaster Relief Act of 1974 repealed by this Act or renumbered by this Act, such reference shall be deemed to be a reference to the appropriate provisions of the Major Disaster Relief and Emergency Assistance Act.

SEC. 23. (a) Except as provided in subsection (b), this Act and the amendments made by this Act shall take effect ninety days after the date of enactment of this Act or on the date on which the President, after consultation with State and local governments, publishes final rules and regulations relating to the definition of costs for which State and local governments may be reimbursed under the Disaster Relief Act of 1974 (as amended by this Act), whichever is later.

(b)(1) This Act and the amendments made by this Act shall not affect the administration of any assistance provided under the authority of the Disaster Relief Act of 1974, for any major disaster or emergency declared by the President prior to the effective date of this Act.

(2) Except with regard to section 409(a) of the Disaster Relief Act of 1974, as redesignated by section 11(c) and 12 of this Act (relating to disaster unemployment assistance)—

(A) rules and regulations issued under statutory provisions which are repealed, modified, or amended by this Act shall continue in effect as though issued under the authority of this Act until they are expressly abrogated, modified, or amended by the President; and

(B) provision of disaster assistance by statutory provisions repealed, modified, or amended by this Act or rules and regulations issued thereunder, or proceedings involving of statutory provisions repealed, modified, or amended by this Act or rules and regulations issued thereunder which are in process prior to the effective date of this Act, may be continued to conclusion as though the applicable statutory provisions had not been repealed, modified, or amended.

(3) Violations of statutory provisions or rules and regulations issued under the authority of statutory provisions repealed, modified, or amended by this Act or rules and regulations issued thereunder which are committed prior to the effective date of this Act may be proceeded against under the law in effect at the time of the specific violation.

(c) Title IV of the Disaster Relief Act of 1974 (42 U.S.C. 5171-5189) is amended by adding at the end thereof a new section as follows:

"SEC. 421. No State shall be ruled ineligible to receive assistance under this Act solely by virtue of an arithmetic formula based on income or population."

Mr. STEVENS. I ask for the adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3218) was agreed to.

Mr. LAUTENBERG. Mr. President, I rise in support of the request by the Senator from Vermont, the chairman of the Committee on Environment and Public Works, to amend H.R. 5488, as adopted by the House and substitute the Senate-passed legislation regarding disaster relief.

In April, the Federal Emergency Management Agency proposed regulations to drastically change the way States and localities are assisted in the aftermath of a natural disaster. For a number of years, the disaster relief program has been operated without congressional direction, because the Congress has not been able to agree on authorizing legislation. In the face of demands by the Office of Management and Budget to decrease costs, FEMA moved, by regulation, to alter the disaster relief rules.

FEMA proposed rules which would have, had they been in effect, led to the denial of Federal assistance in 61 of the last 111 declared disasters. FEMA proposed an arbitrary per capita ability-to-pay threshold for each State, below which no Federal assistance would be provided. In addition, FEMA proposed that localities pay 50 percent of the cost of recovery from a natural disaster instead of the current 25 percent.

Mr. President, the Congress has firmly rejected these regulations. Recently, I offered an amendment to the Federal-aid highway bill to reject these FEMA proposals. That amendment was accepted without objection.

We have the opportunity this year to lay to rest the questions of what is or is not Congress' intent in the operation of our Nation's disaster relief program. We can do that by passing a comprehensive disaster relief authorization. By doing that, we would give

stability to the program, flexibility to State and local governments and an end to a regulatory process which threatens to undermine the very purposes of the Federal Disaster Relief Program.

Mr. President, we are sending to the House a bill which accomplishes the comprehensive rewrite of the disaster relief program that is called for at this time. The bill we are sending to the House has the same basic purpose as the bill passed by the House. The bill does away with the FEMA regulations. The bill says that the administration may not rule States ineligible for assistance solely on the basis of per capita income. The bill says that FEMA may not drastically raise the cost-sharing of local government.

The bill which we will send to the House, which is identical to the amendment I offered on the highway bill, does more than reject the actions of FEMA. The bill makes a number of needed reforms in the Disaster Relief Program. Unlike the House bill, we do not just set the cost-sharing at 75 percent for public facility repair and debris removal. We allow, if a disaster has been particularly severe, for that assistance to be greater than 75 percent on behalf of the Federal Government.

This bill will authorize a hazard mitigation program through which local governments can receive assistance to buffer their communities from the hazards posed by future hurricanes, coastal storms and floods. This provision of the Senate bill is of particular interest to State and local governments including New Jersey.

Mr. President, the principal difference between the House and Senate approaches on this issue is the reimbursement of costs incurred by local governments. The House bill reimburses local governments for 75 percent of actual costs, while the Senate covers net costs. Legislation which I sponsored along with Senator HEINZ earlier this year conformed with the House approach. It was the Environment and Public Works Committee's position that the coverage of actual costs exposed the Federal Government to uncertain liabilities. In the interest of moving this legislation forward, I agreed to offer the committee's cost-sharing position as an amendment to the highway bill.

Mr. President, the House and Senate are not far apart in their basic interest of regaining congressional control over this program. I urge adoption of the amendment and hope that we can reach agreement on this matter before the Congress adjourns.

The PRESIDING OFFICER. If there be no further amendment to be proposed, the question is on the engrossment of the amendment and the third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read a third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

So the bill (H.R. 5488), as amended, was passed.

Mr. STEVENS. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

MEASURE HELD AT THE DESK

Mr. STEVENS. Mr. President, I ask unanimous consent that once it is received from the House of Representatives, H.R. 5353, which deals with a land exchange in my State of Alaska, be held at the desk pending further disposition.

The PRESIDING OFFICER. Without objection, it is so ordered.

SPECIAL FOREIGN ASSISTANCE ACT

Mr. STEVENS. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 1917.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 1917) entitled "An Act to amend the Foreign Assistance Act of 1961 to provide assistance to promote immunization and oral rehydration, and for other purposes," do pass with the following amendments:

Strike out all after the enacting clause, and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Special Foreign Assistance Act of 1986".

TITLE I—PROMOTING IMMUNIZATION AND ORAL REHYDRATION IN DEVELOPING COUNTRIES

SEC. 101. FINDINGS.

The Congress finds that—

(1) the United Nations Children's Fund [UNICEF] reports that 3.5 million children die annually because they have not been immunized against the six major childhood diseases: polio, measles, whooping cough, diphtheria, tetanus, and tuberculosis;

(2) at present less than 20 percent of children in the developing world are fully immunized against these diseases;

(3) each year more than five million additional children are permanently disabled and suffer diminished capacities to contribute to the economic, social, and political development of their countries because they have not been immunized;

(4) ten million additional childhood deaths from immunizable and potentially immunizabled diseases could be averted annually by the development of techniques in biotechnology for new and cost-effective vaccines;

(5) the World Health Assembly, the Executive Board of the United Nations Children's Fund, and the United Nations General Assembly are calling upon the nations of the world to commit the resources necessary to meet the challenge of universal access to childhood immunization by 1990;

(6) at the 1984 "Bellagio Conference" it was determined that the goal of universal childhood immunization by 1990 is indeed achievable; and

(7) the Congress has expressed its expectation that the Agency for International Development will set as a goal the immunization by 1990 of at least 80 percent of all the children in those countries in which the Agency has a program.

SEC. 102. UNITED STATES PARTICIPATION IN GLOBAL EFFORT.

(a) UNITED STATES GOVERNMENT SUPPORT.—The Congress calls upon the President to direct the Agency for International Development, working through the Centers for Disease Control and other appropriate Federal agencies, to work in a global effort to provide enhanced support toward achieving the goal of universal access to childhood immunization by 1990 by—

(1) assisting in the delivery, distribution, and use of vaccines, including—

(A) the building of locally sustainable systems and technical capacities in developing countries to reach, by the appropriate age, not less than 80 percent of their annually projected target population with the full schedule of required immunizations; and

(B) the development of a sufficient network of indigenous professionals and institutions with responsibility for developing, monitoring, and assessing immunization programs and continually adapting strategies to reach the goal of preventing immunizable diseases; and

(2) performing, supporting, and encouraging research and development activities, both in the public and private sector, that will be targeted at developing new vaccines and at modifying and improving existing vaccines to make them more appropriate for use in developing countries.

(b) PRIVATE SECTOR SUPPORT.—In support of this global effort, the President should appeal to the people of the United States and the United States private sector to support public and private efforts to provide the resources necessary to achieve universal access to childhood immunization by 1990.

SEC. 103. FUNDING LEVELS.

(a) EARMARKING.—Section 104(c)(3) of the Foreign Assistance Act of 1961 is amended by adding at the end thereof the following: "Of the aggregate amounts made available for fiscal year 1987 to carry out paragraph (2) of this subsection (relating to the Child Survival Fund) and to carry out subsection (c) (relating to development assistance for health), $50,000,000 shall be used to carry out this paragraph.".

(b) AUTHORIZATION LEVEL FOR CHILD SURVIVAL FUND.—Section 104(c)(2)(B) of that Act is amended by striking out "$25,000,000 for fiscal year 1987" and inserting in lieu thereof "$75,000,000 for fiscal year 1987".

TITLE II—PROMOTING DEMOCRACY IN HAITI

SEC. 201. FINDINGS CONCERNING HAITI.

The Congress finds that—

(1) the establishment of an interim government in Haiti committed a restoration of democracy provides Haiti with an opportunity to build the political, social, and economic institutions necesary to promote Haiti's development, to provide a better future for the people of Haiti, and to provide the framework for more effective mutual cooperation with the United States,

Haiti's neighbor in the Caribbean, and the other nations of the Hemisphere;

(2) the magnitude of the political, economic, and social tasks facing the people of Haiti will make the achievement of a better future a difficult task which will require a determined and sustained effort by the Haitian people over a long period of time and will require significant external assistance from the United States and other donors; and

(3) it is in the interest of the United States to provide appropriate support for the development of Haiti, a close neighbor which is one of the world's poorest nations and which is committed to the establishment of a democratic government.

SEC. 202. ECONOMIC ASSISTANCE FOR HAITI.

(a) EARMARKING OF FUNDS.—Not less than $108,000,000 of the aggregate amounts available for fiscal year 1987 to carry out sections 103 through 106 of the Foreign Assistance Act of 1961 (relating to development assistance), chapter 4 of part II of that Act (relating to the Economic Support Fund), and titles I and II of the Agricultural Trade Development and Assistance Act of 1954 (relating to the Food for Peace Program) shall be available only for Haiti.

(b) USE OF DEVELOPMENT ASSISTANCE.—Assistance under sections 103 through 106 of the Foreign Assistance Act of 1961 which is provided for Haiti pursuant to subsection (a) shall be used to support a transition to democracy in Haiti, emphasizing job creation, rural development, health care and sanitation, small-scale irrigation, reforestation and land conservation, and literacy education. Such assistance should reflect the need to distribute development assistance resources more equitably among the various regions in Haiti in order to support sustainable development in all of Haiti.

(c) REQUIREMENT FOR SEGREGATED ACCOUNT FOR ECONOMIC SUPPORT ASSISTANCE FUNDS PAID TO GOVERMENT OF HAITI.—Funds under chapter 4 of part II of the Foreign Assistance Act of 1961 which are made available for Haiti pursuant to subsection (a) may be paid to the Government of Haiti only if the Government of Haiti will maintain those funds in a separate account and not commingle them with other funds.

(d) CONDITIONS ON ECONOMIC SUPPORT AND DEVELOPMENT ASSISTANCE.—Funds may be obligated for assistance for Haiti under sections 103 through 106 or chapter 4 of part II of the Foreign Assistance Act of 1961 pursuant to subsection (a) only if the President determines that the interim Government of Haiti—

(1) is improving the human rights situation in Haiti;

(2) is implementing its timetable for completion of a new constitution that promotes genuine democratic reforms and guarantees the fundamental principles of democracy;

(3) is establishing a framework for free and open elections leading to a democratically-elected civilian government, which would include free and functioning political parties and associations, free labor unions, and freedom of the press;

(4) is cooperating fully in implementing United States development, food, and other economic assistance programs in Haiti (including programs for prior fiscal years);

(5) is maintaining a system of fiscal accountability to ensure that all resources allocated to the development of Haiti are used in the most effective and efficient manner;

(6) is continuing its investigation of alleged human rights abuses and corruption by the Duvalier government and is prosecuting, in accordance with due process, those responsible for human rights abuses and corruption;

(7) is maintaining a free and independent judiciary system; and

(8) is continuing to cooperate with the United States in halting illegal emigration to the United States from Haiti.

(e) INTER-AMERICAN FOUNDATION.—Section 401(s)(2) of the Foreign Assistance Act of 1969 is amended by striking out "$11,969,000 for fiscal year 1987" and inserting in lieu thereof "$12,969,000 for fiscal year 1987 (not less than $1,000,000 of which shall be for Haiti)".

(f) ADDITIONAL ASSISTANCE FOR ECONOMIC DEVELOPMENT IN HAITI.—In order to assist economic development in Haiti, a Foreign Commercial Service officer should be assigned to the United States Embassy in Haiti.

SEC. 203. MILITARY TRAINING AND OTHER NON-LETHAL ASSISTANCE FOR HAITI.

(a) AUTHORIZATION OF ASSISTANCE.—Up to $4,000,000 of the aggregate amounts available for fiscal year 1987 to carry out chapter 2 of part II of the Foreign Assistance Act of 1961 (relating to grant military assistance), chapter 5 of part II of that Act (relating to international military education and training), and the Arms Export Control Act (relating to FMS assistance) may be made available for Haiti for education, training, and other nonlethal assistance (such as transportation equipment, communications equipment, and uniforms).

(b) CONDITIONS ON MILITARY ASSISTANCE.—Funds made available pursuant to subsection (a) may be obligated only if the President certifies to the Congress the following:

(1) The Government of Haiti has submitted a formal request to the United States specifying a comprehensive plan for the reform and reorganization of the mission, command, and control structures of the Haitian armed forces consistent with a transition to democracy, the rule of law, constitutional government, and an elected civilian government. Such a plan should include a publicly announced commitment by the armed forces of Haiti to abide by international human rights standards and adoption of a code of conduct to assure adherence to these standards.

(2) The Government of Haiti is making substantial efforts—

(A) to prevent the involvement of the Haitian armed forces in human rights abuses and corruption by removing from those forces and prosecuting, in accordance with due process, those military personnel responsible for the human rights abuses and corruption;

(B) to ensure that freedom of speech and assembly are respected;

(C) to conduct investigations into the killings of unarmed civilians in Gonaives, Martissant, and Fort Dimanche, to prosecute, in accordance with due process, those responsible for those killings, and to prevent any similar occurrences in the future;

(D) to provide education and training to the Haitian armed forces with respect to internationally recognized human rights and the civil and political rights essential to democracy, in order to enable those forces to function consistent with those rights; and

(E) to take steps to implement the policy of the Government of Haiti requiring former members of the Volunteers for National Security (VSN) to turn in their weapons and to take the necessary actions to enforce this requirement.

(c) REPORTS.—Not later than three months after the President submits his certification under subsection (b) and every three months thereafter, the President shall report to the Congress on the extent to which the actions of the Government of Haiti are consistent with each of objectives specified in subsection (b). Half of the assistance provided pursuant to subsection (a) shall be withheld from delivery until the President submits the first such report.

(d) NOTIFICATION TO CONGRESS.—Funds made available pursuant to subsection (a) may be obligated only if the Committee on Appropriations and the Committee on Foreign Affairs of the House of Representatives and the Committee on Appropriations and the Committee on Foreign Relations of the Senate are notified fifteen days in advance.

(e) RELATION TO EXISTING PROVISION.—Assistance under subsection (a) may be provided notwithstanding the limitations contained in section 705(e) of the International Security and Development Cooperation Act of 1985 and is in addition to the assistance allowed under that section.

SEC. 204. RECOVERY BY HAITI OF ASSETS STOLEN BY DUVALIER REGIME.

(a) FINDINGS.—The Congress finds that—

(1) the Government of Haiti believes that former president-for-life Jean Claude Duvalier and other individuals associated with the Duvalier regime illegally diverted to their own use substantial amounts of the assets of the Government of Haiti;

(2) the Government of Haiti is attempting to locate and recover those assets through legal means;

(3) virtually every relevant jurisdiction, both in the United States and abroad, requires the posting of some form of security to secure the issuance of orders of attachment or other judicial seizures of property;

(4) the Government of Haiti is unable, without outside assistance, to post the necessary security because of its lack of assets;

(5) Haiti's economic situation could be significantly improved, and the need for external resources reduced, if the Government of Haiti is able to pursue its legal remedies against those who are in large part responsible for the economic crisis in Haiti; and

(6) the United States has a substantial foreign policy interest in helping the Government of Haiti recover any assets which were illegally diverted by those associated with the Duvalier regime.

(b) ACTIONS TO ASSIST HAITI.—The President shall exercise the authorities granted by section 203 of the International Emergency Economic Powers Act (50 U.S.C. app. 1702) to assist the Government of Haiti in its efforts to recover, through legal proceedings, assets which the Government of Haiti alleges were stolen by former president-for-life Jean Claude Duvalier and other individuals associated with the Duvalier regime. This subsection shall be deemed to satisfy the requirements of section 202 of that act.

TITLE III—PROTECTING TROPICAL FORESTS AND BIOLOGICAL DIVERSITY IN DEVELOPING COUNTRIES

SEC. 301. PROTECTING TROPICAL FORESTS.

Chapter 1 of part I of the Foreign Assistance Act of 1961 is amended—

(1) by redesignating section 118 as section 117;

(2) by striking out subsection (d) of that section; and

(3) by inserting after that section the following new section 118:

"SEC. 118. TROPICAL FORESTS.

"(a) IMPORTANCE OF FORESTS AND TREE COVER.—In enacting section 103(b)(3) of this Act the Congress recognized the importance of forests and tree cover to the developing countries. The Congress is particularly concerned about the continuing and accelerating alteration, destruction, and loss of tropical forests in developing countries, which pose a serious threat to development and the environment. Tropical forest destruction and loss—

"(1) result in shortages of wood, especially wood for fuel; loss of biologically productive wetlands; siltation of lakes, reservoirs, and irrigation systems; floods; destruction of indigenous peoples; extinction of plant and animal species; reduced capacity for food production; and loss of genetic resources; and

"(2) can result in desertification and destabilization of the earth's climate.

Properly managed tropical forests provide a sustained flow of resources essential to the economic growth of developing countries, as well as genetic resources of value to developed and developing countries alike.

"(b) PRIORITIES.—The concerns expressed in subsection (a) and the recommendations of the United States Interagency Task Force on Tropical Forests shall be given high priority by the President—

"(1) in formulating and carrying out programs and policies with respect to developing countries, incuding those relating to bilateral and multilateral assistance and those relating to private sector activities; and

"(2) in seeking opportunities to coordinate public and private development and investment activities which affect forests in developing countries.

"(c) ASSISTANCE TO DEVELOPING COUNTRIES.—In providing assistance to developing countries, the President shall do the following:

"(1) Place a high priority on conservation and sustainable management of tropical forests.

"(2) To the fullest extent feasible, engage in dialogues and exchanges of information with recipient countries—

"(A) which stress the importance of conserving and sustainably managing forest resources for the long-term economic benefit of those countries, as well as the irreversible losses associated with forest destruction, and

"(B) which identify and focus on policies of those countries which directly or indirectly contribute to deforestation.

"(3) To the fullest extent feasible, support projects and activities—

"(A) which offer employment and income alternatives to those who otherwise would cause destruction and loss of forests, and

"(B) which help developing countries identify and implement alternatives to colonizing forested areas.

"(4) To the fullest extent feasible, support training programs, educational efforts, and the establishment or strengthening of institutions which increase the capacity of developing countries to formulate forest policies, engage in relevant land-use planning, and otherwise improve the management of their forests.

"(5) To the fullest extent feasible, help end destructive slash-and-burn agriculture by supporting stable and productive farming practices in areas already cleared or degraded and on lands which inevitably will be settled with special emphasis on demonstrating the feasibility of agroforestry and other techniques which use technologies and methods suited to the local environment and traditional agricultural techniques and feature close consultation with and involvement of local people.

"(6) To the fullest extent feasible, help conserve forests which have not yet been degraded, by helping to increase production on lands already cleared or degraded through support of reforestation, fuelwood, and other sustainable forestry projects and practices making sure that local people are involved at all stages of project design and implementation.

"(7) To the fullest extent feasible, support projects and other activities to conserve forested watersheds and rehabilitate those which have been deforested, making sure that local people are involved at all stages of project design and implementation.

"(8) To the fullest extent feasible, support training, research, and other actions which lead to sustainable and more environmentally sound practices for timber harvesting, removal, and processing, including reforestation, soil conservation, and other activities to rehabilitate degraded forest lands.

"(9) To the fullest extent feasible, support research to expand knowledge of tropical forests and identify alternatives which will prevent forest destruction, loss, or degradation, including research in agroforestry, sustainable management of natural forests, small-scale farms and gardens, small-scale animal husbandry, wider application of adopted traditional practices, and suitable crops and crop combinations.

"(10) To the fullest extent feasible, conserve biological diversity in forest areas by—

"(A) supporting and cooperating with United States Government agencies, other donors (both bilateral and multilateral), and other appropriate governmental, intergovernmental, and nongovernmental organizations in efforts to identify, establish, and maintain a representative network of protected tropical forest ecosystems on a worldwide basis;

"(B) whenever appropriate, making the establishment of protected areas a condition for support for activities involving forest clearance or degradation; and

"(C) helping developing countries identify tropical forest ecosystems and species in need of proection and establish and maintain appropriate protected areas.

"(11) To the fullest extent feasible, engage in efforts to increase the awareness of United States Government agencies and other donors, both bilateral and multilateral, of the immediate and long-term value of tropical forests.

"(12) To the fullest extent feasible, utilize the resources and abilities of all relevant United States Government agencies.

"(13) Require that any program or project under this chapter significantly affecting tropical forests (including projects involving the planting of exotic plant species)—

"(A) be based upon careful analysis of the alternatives available to achieve the best sustainable use of the land, and

"(B) take full account of the environmental impacts of the proposed activities on biological diversity.

as provided for in the environmental procedures of the Agency for International Development.

"(14) Deny assistance under this chapter for—

"(A) the procurement or use of logging equipment, unless an environmental assessment indicates that all timber harvesting operations involved will be conducted in an environmentally sound manner which minimizes forest destruction and that the proposed activity will produce positive economic benefits and sustainable forest management systems; and

"(B) actions which significantly degrade national parks or similar protected areas which contain tropical forests or introduce exotic plants or animals into such areas.

"(15) Deny assistance under this chapter for the following activities unless an environmental assessment indicates that the proposed activity will contribute significantly and directly to improving the livelihood of the rural poor and will be conducted in an environmentally sound manner which supports sustainable development:

"(A) Activities which would result in the conversion of forest lands to the rearin of livestock.

"(B) The construction, upgrading, or maintenance of roads (including temporary haul roads for logging or other extractive industries) which pass through relatively undegraded forest lands.

"(C) The colonization of forest lands.

"(D) The construction of dams or other water control structures which flood relatively undegraded forest lands.

"(d) OVOs AND OTHER NONGOVERNMENTAL ORGANIZATIONS.—Whenever feasible, the President shall accomplish the objectives of this section through projects managed by private and voluntary organizations or international, regional, or national nongovernmental organizations which are active in the region or country where the project is located.

"(e) COUNTRY ANALYSIS REQUIREMENTS.—Each country development strategy statement or other country plan prepared by the Agency for International Development shall include an analysis of—

"(1) the actions necessary in that country to achieve conservation and sustainable management of tropical forests, and

"(2) the extent to which the actions proposed for support by the Agency meet the needs thus identified.

"(f) ANNUAL REPORT.—Each annual report required by section 634(a) of this Act shall include a report on the implementation of this section.".

SEC. 302. PROTECTING BIOLOGICAL DIVERSITY.

Section 119 of the Foreign Assistance Act of 1961 is amended by striking out subsections (c) and (d) and inserting in lieu thereof the following:

"(c) FUNDING LEVEL.—For fiscal year 1987, not less than $2,500,000 of the funds available to carry out this part (excluding funds made available to carry out section 104(c)(2), relating to the Child Survival Fund) shall be allocated for assistance pursuant to subsection (b) for activities which were not funded prior to fiscal year 1987. In addition, the Agency for International Development shall, to the fullest extent possible, continue and increase assistance pursuant to subsection (b) for activities for which assistance was provided in fiscal years prior to fiscal year 1987.

"(d) COUNTRY ANALYSIS REQUIREMENTS.—Each country development strategy statement or other country plan prepared by the Agency for International Development shall include an analysis of—

"(1) the actions necessary in that country to conserve biological diversity, and

"(2) the extent to which the actions proposed for support by the Agency meet the needs thus identified.

"(e) LOCAL INVOLVEMENT.—To the fullest extent possible, projects supported under

this section shall include close consultation with and involvement of local people at all stages of design and implementation.

"(f) PVOs AND OTHER NONGOVERNMENTAL ORGANIZATIONS.—whenever feasible, the objectives of this section shall be accomplished through projects managed by appropriate private and voluntary organizations, or international, regional, or national nongovernmental organizations, which are active in the region or country where the project is located.

"(g) ACTIONS BY AID.—The Administrator of the Agency for International Development shall—

"(1) cooperate with appropriate international organizations, both governmental and nongovernmental;

"(2) look to the World Conservation Strategy as an overall guide for actions to conserve biological diversity;

"(3) engage in dialogues and exchanges of information with recipient countries which stress the importance of conserving biological diversity for the long-term economic benefit of those countries and which identify and focus on policies of those countries which directly or indirectly contribute to loss of biological diversity;

"(4) support training and education efforts which improve the capacity of recipient countries to prevent loss of biological diversity;

"(5) whenever possible, enter into long-term agreements in which the recipient country agrees to protect ecosystems or other wildlife habitats recommended for protection by relevant governmental or nongovernmental organizations or as a result of activities undertaken pursuant to paragraph (6), and the United States agrees to provide additional assistance necessary for the establishment and maintenance of such protected areas;

"(6) support, as necessary and in cooperation with the appropriate governmental and nongovernmental organizations, efforts to identify and survey ecosystems in recipient countries worthy of protection;

(7) cooperate with and support the relevant efforts of other agencies of the United States Government, including the United States Fish and Wildlife Service, the National Park Service, the Forest Service, and the Peace Corps;

"(8) review the Agency's environmental regulations and revise them as necessary to ensure that ongoing and proposed actions by the Agency do not inadvertently endanger wildlife species or their critical habitats, harm protected areas, or have other adverse impacts on biological diversity (and shall report to the Congress within a year after the date of enactment of this paragraph on the actions taken pursuant to this paragraph);

"(9) ensure that environmental profiles sponsored by the Agency include information needed for conservation of biological diversity; and

"(10) deny any direct or indirect assistance under this chapter for actions which significantly degrade national parks or similar protected areas or introduce exotic plants or animals into such areas."(h) ANNUAL REPORTS.—Each annual report required by section 634(a) of this Act shall include, in a separate volume, a report on the implementation of this section.".

TITLE IV—MISCELLANEOUS PROVISIONS RELATING TO CERTAIN FOREIGN ASSISTANCE PROGRAMS

SEC. 401. INCREASE AUTHORIZATION FOR INTERNATIONAL NARCOTICS CONTROL PROGRAMS.

Section 482(a)(1) of the Foreign Assistance Act of 1961 is amended by striking out "$57,529,000 for the fiscal year 1987" and inserting in lieu thereof "$65,445,000 for the fiscal year 1987".

SEC. 402. AUTHORIZING A SEPARATE LINE ITEM APPROPRIATION FOR THE INSPECTOR GENERAL OF THE AGENCY FOR INTERNATIONAL DEVELOPMENT.

Section 667(a)(1) of the Foreign Assistance Act of 1961 is amended by inserting after "Act" the following: ", of which $18,189,000 for the fiscal year 1987 is authorized for the necessary operating expenses of the Office of the Inspector General of the Agency for International Development and the remaining amount for that fiscal year is authorized for other necessary operating expenses of that agency".

SEC. 403. ADDITIONAL PROVISIONS.

The provisions contained in section H.R. 5577, as introduced in the House of Representatives on September 23, 1986, are hereby enacted.

SEC. 404. OFFSETTING REDUCTIONS IN CERTAIN FOREIGN ASSISTANCE PROGRAMS.

In order to provide the increased authorizations of appropriations contained in section 103(b), section 202(e), and section 401 without increasing the overall amount authorized to be appropriated for foreign assistance programs for fiscal year 1987—

(1) Section 104(g)(1)(B) of the Foreign Assistance Act of 1961 (relating to development assistance for health programs) is amended by striking out "$205,000,000 for fiscal year 1987" and inserting in lieu thereof "$180,000,000 for fiscal year 1987"; and

(2) section 302(a)(1) of the Act (relating to international organizations and programs) is amended by striking out "$270,000,000 for fiscal year 1987" and insert in lieu thereof "$236,084,000 for fiscal year 1987".

SEC. 405. CONFORMING AMENDMENT.

Paragraph (6) of section 413(a) of the Omnibus Diplomatic Security and Antiterrorism Act of 1986 (Public Law 99-399) is repealed; and the sentence of section 209(a)(1) of the Foreign Service Act of 1980 which was repealed by that paragraph is hereby re-enacted.

Amend the title of the bill to read as follows: "An Act to promote immunization and oral rehydration in developing countries, to promote democracy in Haiti, to protect tropical forests and biological diversity in developing countries, to authorize increased funding for the Child Survival Fund and for international narcotics control assistance, and for other purposes.".

AMENDMENT NO. 3219

Mr. STEVENS. Mr. President, I move that the Senate concur in the House amendments with a further Senate amendment, and I send that amendment to the desk on behalf of Senator LUGAR.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Alaska [Mr. STEVENS], for Mr. LUGAR, proposes an amendment numbered 3219.

Mr. STEVENS. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STEVENS. Mr. President, I ask for the adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3219) was agreed to.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Special Foreign Assistance Act of 1986".

TITLE I—PROMOTING IMMUNIZATION AND ORAL REHYDRATION IN DEVELOPING COUNTRIES

SEC. 101. FINDINGS.

The Congress finds that—

(1) the United Nations Children's Fund (UNICEF) reports that 3.5 million children die annually because they have not been immunized against the six major childhood diseases: polio, measles, whooping cough, diptheria, tetanus, and tuberculosis;

(2) at present less than 20 percent of children in the developing world are fully immunized against these diseases;

(3) each year more than five million additional children are permanently disabled and suffer diminished capacities to contribute to the economic, social, and political development of their countries because they have not been immunized;

(4) ten million additional childhood deaths from immunizable and potentially immunizable diseases could be averted annually by the development of techniques in biotechnology for new and cost-effective vaccines;

(5) the World Health Assembly, the Executive Board of the United Nations Children's Fund, and the United Nations General Assembly are calling upon the nations of the world to commit the resources necessary to meet the challenge of universal access to childhood immunization by 1990;

(6) at the 1984 "Bellagio Conference" it was determined that the goal of universal childhood immunization by 1990 is indeed achievable; and

(7) the Congress has expressed its expectation that the Agency for International Development will set as a goal the immunization by 1990 of at least 80 percent of all the children in those countries in which the Agency has a program.

SEC. 102. UNITED STATES PARTICIPATION IN GLOBAL EFFORT.

(a) UNITED STATES GOVERNMENT SUPPORT.—The Congress calls upon the President to direct the Agency for International Development, working through the Centers for Disease Control and other appropriate Federal agencies, to work in a global effort to provide enhanced support toward achieving the goal of universal access to childhood immunization by 1990 by—

(1) assisting in the delivery, distribution, and use of vaccines, including—

(A) the building of locally sustainable systems and technical capacities in developing countries to reach, by the appropriate age, not less than 80 percent of their annually projected target population with the full schedule of required immunizations; and

(B) the development of a sufficient network of indigenous professionals and institutions with responsibility for developing, monitoring, and assessing immunization

programs and continually adapting strategies to reach the goal of preventing immunizable diseases; and

(2) performing, supporting, and encouraging research and development activities, both in the public and private sector, that will be targeted at developing new vaccines and at modifying and improving existing vaccines to make them more appropriate for use in developing countries.

(b) PRIVATE SECTOR SUPPORT.—In support of this global effort, the President should appeal to the people of the United States and the United States private sector to support public and private efforts to provide the resources necessary to achieve universal access to childhood immunization by 1990.

SEC. 103. FUNDING LEVELS.

(a) EARMARKING.—Section 104(c)(3) of the Foreign Assistance Act of 1961 is amended by adding at the end thereof the following: "Of the aggregate amounts made available for fiscal year 1987 to carry out paragraph (2) of this subsection (relating to the Child Survival Fund) and to carry out subsection (c) (relating to development assistance for health), $50,000,000 shall be used to carry out this paragraph.".

(b) AUTHORIZATION LEVEL FOR CHILD SURVIVAL FUND.—Section 104(c)(2)(B) of that Act is amended by striking out "$25,000,000 for fiscal year 1987" and inserting in lieu thereof "$75,000,000 for fiscal year 1987".

TITLE II—PROMOTING DEMOCRACY IN HAITI

SEC. 201. FINDINGS CONCERNING HAITI.

The Congress finds that—

(1) the establishment of an interim government in Haiti committed to a restoration of democracy provides Haiti with an opportunity to build the political, social, and economic institutions necessary to promote Haiti's development, to provide a better future for the people of Haiti, and to provide the framework for more effective mutual cooperation with the United States, Haiti's neighbor in the Caribbean, and the other nations of the Hemisphere;

(2) the magnitude of the political, economic, and social tasks facing the people of Haiti will make the achievement of a better future a difficult task which will require a determined and sustained effort by the Haitian people over a long period of time and will require significant external assistance from the United States and other donors; and

(3) it is in the interest of the United States to provide appropriate support for the development of Haiti, a close neighbor which is one of the world's poorest nations and which is committed to the establishment of a democratic government.

SEC. 202. ECONOMIC ASSISTANCE FOR HAITI.

(a) EARMARKING OF FUNDS.—Not less than $100,000,000 of the aggregate amounts available for fiscal year 1987 to carry out sections 103 through 106 of the Foreign Assistance Act of 1961 (relating to development assistance), chapter 4 of part II of that Act (relating to the Economic Support Fund), and titles I and II of the Agricultural Trade Development and Assistance Act of 1954 (relating to the Food for Peace Program) shall be available only for Haiti.

(b) USE OF DEVELOPMENT ASSISTANCE.—Assistance under sections 103 through 106 of the Foreign Assistance Act of 1961 which is provided for Haiti pursuant to subsection (a) shall be used to support a transition to democracy in Haiti, emphasizing foreign investment, job creation (especially in the private sector), rural development, health care and sanitation, small-scale irrigation, reforestation and land conservation, and literacy education. Such assistance should reflect the need to distribute development assistance resources more equitably among the various regions in Haiti in order to support sustainable development in all of Haiti.

(c) REQUIREMENT FOR SEGREGATED ACCOUNT FOR ECONOMIC SUPPORT ASSISTANCE FUNDS PAID TO GOVERNMENT OF HAITI.—Funds under chapter 4 of part II of the Foreign Assistance Act of 1961 which are made available for Haiti pursuant to subsection (a) may be paid to the Government of Haiti only if the Government of Haiti will maintain those funds in a separate account and not commingle them with other funds.

(d) CONDITIONS ON ECONOMIC SUPPORT AND DEVELOPMENT ASSISTANCE.—Funds may be obligated for assistance for Haiti under sections 103 through 106 or chapter 4 of part II of the Foreign Assistance Act of 1961 pursuant to subsection (a) only if the President determines that the interim Government of Haiti—

(1) is improving the human rights situation in Haiti;

(2) is implementing its timetable for completion of a new constitution that promotes genuine democratic reforms and guarantees the fundamental principles of democracy;

(3) is establishing a framework for free and open elections leading to a democratically-elected civilian government, which would include free and functioning political parties and associations, free labor unions, and freedom of the press;

(4) is cooperating fully in implementing United States development, food, and other economic assistance programs in Haiti (including programs for prior fiscal years);

(5) is maintaining a system of fiscal accountability to ensure that all resources allocated to the development of Haiti are used in the most effective and efficient manner;

(6) is continuing its investigation of alleged human rights abuses and corruption by the Duvalier government and is prosecuting, in accordance with due process, those responsible for human rights abuses and corruption;

(7) is maintaining a free and independent judiciary system;

(8) is continuing to cooperate with the United States in halting illegal emigration to the United States from Haiti; and

(9) is encouraging private sector development.

(e) INTER-AMERICAN FOUNDATION.—Section 401(s)(2) of the Foreign Assistance Act of 1969 is amended by striking out "$11,969,000 for fiscal year 1987" and inserting in lieu thereof "$12,969,000 for fiscal year 1987 (not less than $1,000,000 of which shall be for Haiti)".

(f) ADDITIONAL ASSISTANCE FOR ECONOMIC DEVELOPMENT IN HAITI.—In order to assist economic development in Haiti, a Foreign Commercial Service officer should be assigned to the United States Embassy in Haiti.

SEC. 203. MILITARY TRAINING AND OTHER NONLETHAL ASSISTANCE FOR HAITI.

(a) AUTHORIZATION OF ASSISTANCE.—Up to $4,000,000 of the aggregate amounts available for fiscal year 1987 to carry out chapter 2 of part II of the Foreign Assistance Act of 1961 (relating to grant military assistance), chapter 5 of part II of that Act (relating to international military education and training), and the Arms Export Control Act (relating to FMS assistance) may be made available for Haiti for education, training, and other nonlethal assistance (such as transportation equipment, communications equipment, and uniforms).

(b) CONDITIONS ON MILITARY ASSISTANCE.—Funds made available pursuant to subsection (a) may be obligated only if the President certifies to the Congress the following:

(1) The Government of Haiti has submitted a formal request to the United States specifying a comprehensive plan for the reform and reorganization of the mission, command, and control structures of the Haitian armed forces consistent with a transition to democracy, the rule of law, constitutional government, and an elected civilian government. Such a plan should include a publicly announced commitment by the armed forces of Haiti to abide by international human rights standards and adoption of a code of conduct to assure adherence to these standards.

(2) The Government of Haiti is making substantial efforts—

(A) to prevent the involvement of the Haitian armed forces in human rights abuses and corruption by removing from those forces and prosecuting, in accordance with due process, those military personnel responsible for the human rights abuses and corruption;

(B) to ensure that freedom of speech and assembly are respected;

(C) to conduct investigations into the killings of unarmed civilians in Gonaives, Martissant, and Fort Dimanche, to prosecute, in accordance with due process, those responsible for those killings, and to prevent any similar occurrences in the future;

(D) to provide education and training to the Haitian armed forces with respect to internationally recognized human rights and the civil and political rights essential to democracy, in order to enable those forces to function consistent with these rights; and

(E) to take steps to implement the policy of the Government of Haiti requiring former members of the Volunteers for National Security (VSN) to turn in their weapons and to take the necessary actions to enforce this requirement.

(c) REPORTS.—Not later than three months after the President submits his certification under subsection (b) and every three months thereafter, the President shall report to the Congress on the extent to which the actions of the Government of Haiti are consistent with each of objectives specified in subsection (b). Half of the assistance provided pursuant to subsection (a) shall be withheld from delivery until the President submits the first such report.

(d) NOTIFICATION TO CONGRESS.—Funds made available pursuant to subsection (a) may be obligated only if the Committee on Appropriations and the Committee on Foreign Affairs of the House of Representatives and the Committee on Appropriations and the Committee on Foreign Relations of the Senate are notified fifteen days in advance.

(e) RELATION TO EXISTING PROVISION.—Assistance under subsection (a) may be provided notwithstanding the limitations contained in section 705(e) of the International Security and Development Cooperation Act of 1985 and is in addition to the assistance allowed under that section.

SEC. 204. RECOVERY BY HAITI OF ASSETS STOLEN BY DUVALIER REGIME.

(a) FINDINGS.—The Congress finds that—

(1) the Government of Haiti believes that former president-for-life Jean Claude Duvalier and other individuals associated with the Duvalier regime illegally diverted to

their own use substantial amounts of the assets of the Government of Haiti;

(2) the Government of Haiti is attempting to locate and recover those assets through legal means;

(3) virtually every relevant jurisdiction, both in the United States and abroad, requires the posting of some form of security to secure the issuance of orders of attachment or other judicial seizures of property;

(4) the Government of Haiti is unable, without outside assistance, to post the necessary security because of its lack of assets;

(5) Haiti's economic situation could be significantly improved, and the need for external resources reduced, if the Government of Haiti is able to pursue its legal remedies against those who are in large part responsible for the economic crisis in Haiti; and

(5) the United States has a substantial foreign policy interest in helping the Government of Haiti recover any assets which were illegally diverted by those associated with the Duvalier regime.

(b) ACTIONS TO ASSIST HAITI.—The President shall exercise the authorities granted by section 203 of the International Emergency Economic Powers Act (50 U.S.C. app. 1702) to assist the Government of Haiti in its efforts to recover, through legal proceedings, assets which the Government of Haiti alleges were stolen by former president-for-life Jean Claude Duvalier and other individuals associated with the Duvalier regime. This subsection shall be deemed to satisfy the requirements of section 202 of that Act.

TITLE III—PROTECTING TROPICAL FORESTS AND BIOLOGICAL DIVERSITY IN DEVELOPING COUNTRIES

SEC. 301. PROTECTING TROPICAL FORESTS.

Chapter 1 of part I of the Foreign Assistance Act of 1961 is amended—

(1) by redesignating section 118 as section 117;

(2) by striking out subsection (d) of that section; and

(3) by inserting after that section the following new section 118:

"SEC. 118. TROPICAL FORESTS.

"(a) IMPORTANCE OF FORESTS AND TREE COVER.—In enacting section 103(b)(3) of this Act the Congress recognized the importance of forests and tree cover to the developing countries. The Congress is particularly concerned about the continuing and accelerating alteration, destruction, and loss of tropical forests in developing countries, which pose a serious threat to development and the environment. Tropical forest destruction and loss—

"(1) result in shortages of wood, especially wood for fuel; loss of biologically productive wetlands; siltation of lakes, reservoirs, and irrigation systems; floods; destruction of indigenous peoples; extinction of plant and animal species; reduced capacity for food production; and loss of genetic resources; and

"(2) can result in desertification and destabilization of the earth's climate.

Properly managed tropical forests provide a sustained flow of resources essential to the economic growth of developing countries, as well as genetic resources of value to developed and developing countries alike.

"(b) PRIORITIES.—The concerns expressed in subsection (a) and the recommendations of the United States Interagency Task Force on Tropical Forests shall be given high priority by the President—

"(1) in formulating and carrying out programs and policies with respect to developing countries, including those relating to bilateral and multilateral assistance and those relating to private sector activities; and

"(2) in seeking opportunities to coordinate public and private development and investment activities which affect forests in developing countries.

"(c) ASSISTANCE TO DEVELOPING COUNTRIES.—In providing assistance to developing countries, the President shall do the following:

"(1) Place a high priority on conservation and sustainable management of tropical forests.

"(2) To the fullest extent feasible, engage in dialogues and exchanges of information with recipient countries—

"(A) which stress the importance of conserving and sustainably managing forest resources for the long-term economic benefit of those countries, as well as the irreversible losses associated with forest destruction, and

"(B) which identify and focus on policies of those countries which directly or indirectly contribute to deforestation.

"(3) To the fullest extent feasible, support projects and activities—

"(A) which offer employment and income alternatives to those who otherwise would cause destruction and loss of forests, and

"(B) which help developing countries identify and implement alternatives to colonizing forested areas.

"(4) To the fullest extent feasible, support training programs, educational efforts, and the establishment or strengthening of institutions which increase the capacity of developing countries to formulate forest policies, engage in relevant land-use planning, and otherwise improve the management of their forests.

"(5) To the fullest extent feasible, help end destructive slash-and-burn agriculture by supporting stable and productive farming practices in areas already cleared or degraded and on lands which inevitably will be settled, with special emphasis on demonstrating the feasibility of agroforestry and other techniques which use technologies and methods suited to the local environment and traditional agricultural techniques and feature close consultation with and involvement of local people.

"(6) To the fullest extent feasible, help conserve forests which have not yet been degraded, by helping to increase production on lands already cleared or degraded through support of reforestation, fuelwood, and other sustainable forestry projects and practices, making sure that local people are involved at all stages of project design and implementation.

"(7) To the fullest extent feasible, support projects and other activities to conserve forested watersheds and rehabilitate those which have been deforested, making sure that local people are involved at all stages of project design and implementation.

"(8) To the fullest extent feasible, support training, research, and other actions which lead to sustainable and more environmentally sound practices for timber harvesting, removal, and processing, including reforestation, soil conservation, and other activities to rehabilitate degraded forest lands.

"(9) To the fullest extent feasible, support research to expand knowledge of tropical forests and identify alternatives which will prevent forest destruction, loss, or degradation, including research in agroforestry, sustainable management of natural forests, small-scale farms and gardens, small-scale animal husbandry, wider application of adopted traditional practices, and suitable crops and crop combinations.

"(10) To the fullest extent feasible, conserve biological diversity in forest areas by—

"(A) supporting and cooperating with United States Government agencies, other donors (both bilateral and multilateral), and other appropriate governmental, intergovernmental, and nongovernmental organizations in efforts to identify, establish, and maintain a representative network of protected tropical forest ecosystems on a worldwide basis;

"(B) whenever appropriate, making the establishment of protected areas a condition of support for activities involving forest clearance or degradation; and

"(C) helping developing countries identify tropical forest ecosystems and species in need of protection and establish and maintain appropriate protected areas.

"(11) To the fullest extent feasible, engage in efforts to increase the awareness of United States Government agencies and other donors, both bilateral and multilateral, of the immediate and long-term value of tropical forests.

"(12) To the fullest extent feasible, utilize the resources and abilities of all relevant United States Government agencies.

"(13) Require that any program or project under this chapter significantly affecting tropical forests (including projects involving the planting of exotic plant species)—

"(A) be based upon careful analysis of the alternatives available to achieve the best sustainable use of the land, and

"(B) take full account of the environmental impacts of the proposed activities on biological diversity,

as provided for in the environmental procedures of the Agency for International Development.

"(14) Deny assistance under this chapter for—

"(A) the procurement or use of logging equipment, unless an environmental assessment indicates that all timber harvesting operations involved will be conducted in an environmentally sound manner which minimizes forest destruction and that the proposed activity will produce positive economic benefits and sustainable forest management systems; and

"(B) actions which significantly degrade national parks or similar protected areas which contain tropical forests or introduce exotic plants or animals into such areas.

"(15) Deny assistance under this chapter for the following activities unless an environmental assessment indicates that the proposed activity will contribute significantly and directly to improving the livelihood of the rural poor and will be conducted in an environmentally sound manner which supports sustainable development.

"(A) Activities which would result in the conversion of forest lands to the rearing of livestock.

"(B) The construction, upgrading, or maintenance of roads (including temporary haul roads for logging or other extractive industries) which pass through relatively undegraded forest lands.

"(C) The colonization of forest lands.

"(D) The construction of dams or other water control structures which flood relatively undegraded forest lands.

"(d) PVOs AND OTHER NONGOVERNMENTAL ORGANIZATIONS.—Whenever feasible, the President shall accomplish the objectives of this section through projects managed by private and voluntary organizations or international, regional, or national nongovernmental organizations which are active in

the region or country where the project is located.

"(e) COUNTRY ANALYSIS REQUIREMENTS.—Each country development strategy statement or other country plan prepared by the Agency for International Development shall include an analysis of—

"(1) the actions necessary in that country to achieve conservation and sustainable management of tropical forests, and

"(2) the extent to which the actions proposed for support by the Agency meet the needs thus identified.

"(f) ANNUAL REPORT.—Each annual report required by section 634(a) of this Act shall include a report on the implementation of this section.".

SEC. 302. PROTECTING BIOLOGICAL DIVERSITY.

Section 119 of the Foreign Assistance Act of 1961 is amended by striking out subsections (c) and (d) and inserting in lieu thereof the following:

"(c) FUNDING LEVEL.—For fiscal year 1987, not less than $2,500,000 of the funds available to carry out this part (excluding funds made available to carry out section 104(c)(2), relating to the Child Survival Fund) shall be allocated for assistance pursuant to subsection (b) for activities which were not funded prior to fiscal year 1987. In addition, the Agency for International Development shall, to the fullest extent possible, continue and increase assistance pursuant to subsection (b) for activities for which assistance was provided in fiscal years prior to fiscal year 1987.

"(d) COUNTRY ANALYSIS REQUIREMENTS.—Each country development strategy statement or other country plan prepared by the Agency for International Development shall include an analysis of—

"(1) the actions necessary in that country to conserve biological diversity, and

"(2) the extent to which the actions proposed for support by the Agency meet the needs thus identified.

"(e) LOCAL INVOLVEMENT.—To the fullest extent possible, projects supported under this section shall include close consultation with and involvement of local people at all stages of design and implementation.

"(f) PVOs AND OTHER NONGOVERNMENTAL ORGANIZATIONS.—Whenever feasible, the objectives of this section shall be accomplished through projects managed by appropriate private and voluntary organizations, or international, regional, or national nongovernmental organizations, which are active in the region or country where the project is located.

"(g) ACTIONS BY AID.—The Administrator of the Agency for International Development shall—

"(1) cooperate with appropriate international organizations, both governmental and nongovermental;

"(2) look to the World Conservation Strategy as an overall guide for actions to conserve biological diversity;

"(3) engage in dialogues and exchanges of information with recipient countries which stress the importance of conserving biological diversity for the long-term economic benefit of those countries and which identify and focus on policies of those countries which directly or indirectly contribute to loss of biological diversity;

"(4) support training and education efforts which improve the capacity of recipient countries to prevent loss of biological diversity;

"(5) whenever possible, enter into long-term agreements in which the recipient country agrees to protect ecosystems or other wildlife habitats recommended for protection by relevant governmental or nongovernmental organizations or as a result of activities undertaken pursuant to paragraph (6), and the United States agrees to provide, subject to obtaining the necessary appropriations, additional assistance necessary for the establishment and maintenance of such protected areas;

"(6) support, as necessary and in cooperation with the appropriate governmental and nongovernmental organizations, efforts to identify and survey ecosystems in recipient countries worthy of protection;

"(7) cooperate with and support the relevant efforts of other agencies of the United States Government, including the United States Fish and Wildlife Service, the National Park Service, the Forest Service, and the Peace Corps;

"(8) review the Agency's environmental regulations and revise them as necessary to ensure that ongoing and proposed actions by the Agency do not inadvertently endanger wildlife species or their critical habitats, harm protected areas, or have other adverse impacts on biological diversity (and shall report to the Congress within a year after the date of enactment of this paragraph on the actions taken pursuant to this paragraph);

"(9) ensure that environmental profiles sponsored by the Agency include information needed for conservation of biological diversity; and

"(10) deny any direct or indirect assistance under this chapter for actions which significantly degrade national parks or similar protected areas or introduce exotic plants or animals into such areas.

"(h) ANNUAL REPORTS.—Each annual report required by section 634(a) of this Act shall include, in a separate volume, a report on the implementation of this section.".

TITLE IV—MISCELLANEOUS PROVISIONS RELATING TO CERTAIN FOREIGN ASSISTANCE PROGRAMS

SEC. 401. INCREASE AUTHORIZATION FOR INTERNATIONAL NARCOTICS CONTROL PROGRAMS.

Section 482(a)(1) of the Foreign Assistance Act of 1961 is amended by striking out "$57,529,000 for the fiscal year 1987" and inserting in lieu thereof "$65,445,000 for the fiscal year 1987".

SEC. 402. AUTHORIZING A SEPARATE LINE ITEM APPROPRIATION FOR THE INSPECTOR GENERAL OF THE AGENCY FOR INTERNATIONAL DEVELOPMENT.

Section 667(a)(1) of the Foreign Assistance Act of 1961 is amended by inserting after "Act" the following: ", of which $21,750,000 for the fiscal year 1987 is authorized for the necessary operating expenses of the Office of the Inspector General of the Agency for International Development and the remaining amount for that fiscal year is authorized for other necessary operating expenses of that agency".

SEC. 403. ADDITIONAL PROVISIONS.

(a) BOARD OF THE INTER-AMERICAN FOUNDATION.—Section 401(g) of the Foreign Assistance Act of 1969 (22 U.S.C. 290f.(g)) is amended by striking out "seven" in the first sentence and "Four" in the second sentence and inserting in lieu thereof "nine" and "Six", respectively.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect 120 days after the date of enactment of this Act.

SEC. 404. OFFSETTING REDUCTIONS IN CERTAIN FOREIGN ASSISTANCE PROGRAMS.

In order to provide the increased authorizations of appropriations contained in section 103(b), section 202(e), and section 401 without increasing the overall amount authorized to be appropriated for foreign assistance programs for fiscal year 1987—

(1) section 104(g)(1)(B) of the Foreign Assistance Act of 1961 (relating to development assistance for health programs) is amended by striking out "$205,000,000 for fiscal year 1987" and inserting in lieu thereof "$180,000,000 for fiscal year 1987"; and

(2) section 302(a)(1) of that Act (relating to international organizations and programs) is amended by striking out "$270,000,000 for fiscal year 1987" and insert in lieu thereof "$236,084,000 for fiscal year 1987".

SEC. 405. CONFORMING AMENDMENT.

Paragraph (6) of section 413(a) of the Omnibus Diplomatic Security and Antiterrorism Act of 1986 (Public Law 99-399) is repealed; and the sentence of section 209(a)(1) of the Foreign Service Act of 1980 which was repealed by that paragraph is hereby re-enacted.

Mr. President, I move that the Senate concur in the amendment of the House to the title of the bill (S. 1917), to amend the Foreign Assistance Act of 1961 to provide assistance to promote immunization and oral rehydration, and for other purposes.

Mr. STEVENS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. STEVENS. Mr. President, I move the Senate concur in the amendment of the House to the title.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Alaska.

The motion was agreed to.

EMERGENCY WETLANDS RESOURCES ACT OF 1986

Mr. STEVENS. Mr. President, I ask unanimous consent that the Senate turn to Calendar Order No. 994, S. 740, the Emergency Wetlands Resources Act.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 740) to extend until October 1, 1995, the authority for appropriations to promote the conservation of migratory waterfowl and to offset or prevent the serious loss of wetlands and other essential habitat, and for other purposes.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Alaska.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Energy and Natural Resources without amendment; and from the Committee on Environment and Public Works with an amendment to stirke out all after the enacting clause, and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Emergency Wetlands Resources Act of 1986".

SEC. 2. FINDINGS AND STATEMENT OF PURPOSE.

(a) FINDINGS.—The Congress finds that—

(1) wetlands play an integral role in maintaining the quality of life through material contributions to our national economy, food supply, water supply and quality, flood control, and fish, wildlife, and plant resources, and thus to the health, safety, recreation, and economic well-being of all our citizens of the Nation;

(2) wetlands provide habitat essential for the breeding, spawning, nesting, migration, wintering and ultimate survival of a major portion of the migratory and resident fish and wildlife of the Nation; including migratory birds, endangered species, commercially and recreationally important finfish, shellfish and other aquatic organisms, and contain many unique species and communities of wild plants;

(3) the migratory bird treaty obligations of the Nation with Canada, Mexico, Japan, the Union of Soviet Socialist Republics, and with various countries in the Western Hemisphere require Federal protection of wetlands that are used by migratory birds for breeding, wintering or migration and needed to achieve and to maintain optimum population levels, distributions, and patterns of migration;

(4) wetlands, and the fish, wildlife, and plants dependent on wetlands, provide significant recreational and commercial benefits, including—

(A) contributions to a commercial marine harvest valued at over $10,000,000,000 annually;

(B) support for a major portion of the Nation's multimillion dollar annual fur and hide harvest; and

(C) fishing, hunting, birdwatching, nature observation and other wetland-related recreational activities that generate billions of dollars annually;

(5) wetlands enhance the water quality and water supply of the Nation by serving as groundwater recharge areas, nutrient traps, and chemical sinks;

(6) wetlands provide a natural means of flood and erosion control by retaining water during periods of high runoff, thereby protecting against loss of life and property;

(7) wetlands constitute only a small percentage of the land area of the United States, are estimated to have been reduced by half in the contiguous States since the founding of our Nation, and continue to disappear by hundreds of thousands of acres each year;

(8) certain activities of the Federal Government have inappropriately altered or assisted in the alteration of wetlands, thereby unnecessarily stimulating and accelerating the loss of these valuable resources and the environmental and economic benefits that they provide; and

(9) the existing Federal, State, and private cooperation in wetlands conservation should be strengthened in order to minimize further losses of these valuable areas and to assure their management in the public interest for this and future generations.

(b) PURPOSE.—It is the purpose of this Act to promote, in concert with other Federal and State statutes and programs, the conservation of the wetlands of the Nation in order to maintain the public benefits they provide and to help fulfill international obligations contained in various migratory bird treaties and conventions with Canada, Mexico, Japan, the Union of Soviet Socialist Republics, and with various countries in the Western Hemisphere by—

(1) intensifying cooperative efforts among private interests and local, State, and Federal governments for the management and conservation of wetlands; and

(2) intensifying efforts to protect the wetlands of the Nation through acquisition in fee, easements or other interests and methods by local, State, and Federal governments and the private sector.

SEC. 3. DEFINITIONS.

For the purpose of this Act:

(1) The term "committees" means the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Environment and Public Works of the Senate.

(2) The term "designated unit" means a unit of the National Wildlife Refuge System designated by the Secretary under section 201(a)(2).

(3) The term "hydric soil" means soil that, in its undrained condition, is saturated, flooded, or ponded long enough during a growing season to develop an anaerobic condition that supports the growth and regeneration of hydrophytic vegetation.

(4) The term "hydrophytic vegetation" means a plant growing in—

(A) water; or

(B) a substrate that is at least periodically deficient in oxygen during a growing season as a result of excessive water content.

(5) The term "wetland" means land that has a predominance of hydric soils and that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.

TITLE I—EXTENSION OF WETLANDS LOAN ACT

SEC. 101. EXTENSION OF WETLANDS LOAN ACT.

(a) AVAILABILITY OF APPROPRIATIONS.—The first section of the Act entitled "An Act to promote the conservation of migratory waterfowl by the acquisition of wetlands, and for other essential waterfowl habitat, and for other purposes", approved October 4, 1961 (16 U.S.C. 715k-3), is amended by striking out "September 30, 1986" and inserting in lieu thereof "September 30, 1988".

(b) REPAYMENT PROVISIONS.—Section 3 of such Act (16 U.S.C. 715k-5) is amended by striking out the first three sentences.

TITLE II—REVENUES FOR REFUGE OPERATIONS AND THE MIGRATORY BIRD CONSERVATION FUND

SEC. 201. SALE OF ADMISSION PERMIT AT CERTAIN REFUGE UNITS.

(a) SALE OF ADMISSION PERMITS.—(1) Notwithstanding the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-4 et seq.), in order to provide additional revenues for the conservation of wetland resources of the Nation and for the operation and maintenance of refuges—

(A) the Secretary of the Interior may, at units of the National Wildlife Refuge System designated by the Secretary under paragraph (2)—

(i) charge fees for admission permits; and

(ii) sell Golden Eagle passports and Golden Age passports; and

(B) the amounts collected by the Secretary as a result of the activities described in subparagraph (A) shall be distributed as provided in subsection (c).

(2) The Secretary shall designate a unit of the National Wildlife Refuge System for purposes of this Act if the Secretary determines, with respect to such unit, that—

(A) The level of visitation for recreational purposes is high enough to justify the collection of fees for admission permits for economic reasons.

(B) There is a practical mechanism in existence for implementing and operating a system of collecting fees for admission permits.

(C) Imposition of a fee for admission permits is not likely to result in undue economic hardship for a significant number of visitors to the unit.

(b) EXCEPTIONS.—(1) The Secretary may not require an admission permit under subsection (a)(1) for entry by a person into a designated unit if such person is the holder of—

(A) a valid migratory bird hunting and conservation stamp issued under section 2 of the Act of March 16, 1934 (16 U.S.C. 718b) (commonly known as the Duck Stamp Act);

(B) a valid Golden Eagle Passport issued under section 4(a)(1) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-6a(a)(1)); or

(C) a valid Golden Age Passport issued under section 4(a)(4) of such Act.

(2) Permits for a single visit to any designated unit shall be made available by the Secretary of the Interior for a reasonable fee, but not to exceed $7.50. For purposes of this subsection, the term "single visit" means a more or less continuous stay within a designated unit by a person or group described in subsection (d). Payment of a single visit fee and issuance of a single visit permit shall authorize exits from and re-entries to a single designated unit for a period of from one to fifteen days. Such period shall be defined for each designated unit by the Secretary based upon a determination of the period of time reasonably and ordinarily necessary for such a single visit.

(3) Special admission permits for uses such as group activities may be issued in accordance with procedures and at fees established by the Secretary.

(4)(A) The Secretary of the Interior shall establish procedures providing for the issuance of a lifetime admission permit to any citizen of, or person domiciled in, the United States, who is blind or permanently disabled if—

(i) such citizen or person applies for such permit; and

(ii) has been medically determined to be blind or permanently disabled for purposes of receiving benefits under Federal law.

(B) A permit under subparagraph (A) shall be issued without charge.

(5) A person may not be required to purchase an admission permit under subsection (a)(1) in order to travel by private noncommercial vehicle over any road or highway—

(A)(i) established as part of the National Federal Aid System (as defined in section 101 of title 23, United States Code); and

(ii) commonly used by the public as a means of travel between two places which are outside the designated unit; or

(B) to any land in which such person has a properly interest if such land is within any designated unit.

(c) DISTRIBUTION OF AMOUNTS COLLECTED.—Amounts collected from the sale of admission permits under this section and from fees collected at any unit of the National Wildlife Refuge System under subsections (b) and (c) of section 4 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-6a(b), (c)) shall be distributed as follows:

(A) Thirty per centum shall be available to the Secretary of the Interior until expended. The Secretary shall use such amount—

(i) first, to defray the cost of collection;

(ii) next, for operation and maintenance of the collecting unit; and

(iii) next, for operation and maintenance of all units within the National Wildlife Refuge System.

(B) Seventy percent shall be deposited into the migratory bird conservation fund established under section 4 of the Act of March 16, 1934 (16 U.S.C. 718d).

(d) PERSONS ACCOMPANYING PERMITTEES.—A person who holds a stamp, passport, or permit described in subsection (b) shall be entitled to general entrance into any designated unit, along with—

(1) any persons accompanying such person in a single, private, noncommercial vehicle; or

(2) where entry to the area is by any means other than single, private, noncommercial vehicle, the person and any accompanying spouse, children, or parents.

(e) RESTRICTIONS.—A permit issued under this section is nontransferable. Such a permit may not authorize any uses for which fees are charged under the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-4 et seq.).

(f) ESTABLISHMENT OF FEES; POSTING OF NOTICES.—(1) All fees established pursuant to this section shall be fair and equitable. In establishing such fees, the Secretary shall consider the following:

(A) The direct and indirect cost to the Government.

(B) The benefits to the permit holder.

(C) The public policy or interest served.

(D) The comparable fees charged by non-Federal public agencies.

(E) The economic and administrative feasibility of fee collection and other pertinent factors.

(2) The Secretary shall require that notice that a fee has been established under this section—

(A) be prominently posted at each designated unit and at appropriate locations in each such unit; and

(B) to the extent practicable, be included in publications distributed at such units.

(g) VOLUNTEERS.—The Director of the United States Fish and Wildlife Service may accept services of volunteers to sell admission permits under this section or to sell Golden Eagle and Golden Age Passports or Migratory Bird Hunting and Conservation Stamps. The Director may use funds appropriated or otherwise made available to the Service to cover the cost of any surety bond that may be required of a volunteer performing the services authorized under this subsection.

SEC. 202. PRICE OF MIGRATORY BIRD HUNTING AND CONSERVATION STAMP.

Section 2(b) of the Act of March 16, 1934 (16 U.S.C. 718(b)), is amended in the first sentence—

(1) by striking out "$7.50" and inserting in lieu thereof "$10.00";

(2) by striking out "any hunting year" and inserting in lieu thereof "hunting years 1987 and 1988, $12.50 for hunting years 1989 and 1990, and $15.00 for each hunting year thereafter,"; and

(3) by inserting "available for obligation and" before "attributable".

SEC. 203. TRANSFERS TO MIGRATORY BIRD CONSERVATION FUND.

Notwithstanding any other provision of law, an amount equal to the amount of all import duties collected on arms and ammunition, as specified in subpart A of part 5 of schedule 7 of the Tariff Schedules of the United States, shall, beginning with the next fiscal year quarter after the date of enactment of this Act, be paid quarterly into the migratory bird conservation fund established under section 4 of the Act of March 16, 1934 (16 U.S.C. 718d).

TITLE III—STATE AND FEDERAL WETLAND ACQUISITION

SEC. 301. NATIONAL WETLANDS PRIORITY CONSERVATION PLAN.

(a) IN GENERAL.—The Secretary shall establish, and periodically review and revise, a national wetlands priority conservation plan which shall specify, on a region-by-region basis or other basis considered appropriate by the Secretary, the types of wetlands and interests in wetlands which should be given priority with respect to Federal and State acquisition.

(b) CONSULTATION.—The Secretary shall establish the plan required by subsection (a) after consultation with—

(1) the Administrator of the Environmental Protection Agency;

(2) the Secretary of Commerce;

(3) the Secretary of Agriculture; and

(4) [the chief executive officer of] each State.

(c) FACTORS TO BE CONSIDERED.—The Secretary, in establishing the plan required by subsection (a), shall consider—

(1) the estimated proportion remaining of the respective types of wetlands which existed at the time of European settlement.

(2) the estimated current rate of loss and the threat of future losses of the respective types of wetlands; and

(3) the contributions of the respective types of wetlands to—

(A) wildlife, including endangered and threatened species, migratory birds, and resident species;

(B) commercial and sport fisheries;

(C) surface and ground water quality and quantity, and flood control;

(D) outdoor recreation; and

(E) other areas or concerns the Secretary considers appropriate.

SEC. 302. REMOVAL OF RESTRICTION ON ACQUISITION.

Section 7(a)(1) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-9(a)(1)) is amended by striking out "national wildlife refuge areas under section 7(a)(5) of the Fish and Wildlife Act of 1956 (16 U.S.C. 742f(5)) except migratory waterfowl areas which are authorized to be acquired by the Migratory Bird Conservation Act of 1929, as amended (16 U.S.C. 715-715s)" and inserting in lieu thereof "national wildlife refuge areas under section 7(a)(4) of the Fish and Wildlife Act of 1956 (16 U.S.C. 742(f)(a)(4)) and wetlands acquired under section 304 of the Emergency Wetlands Resources Act of 1986".

SEC. 303. INCLUSION OF WETLANDS IN COMPREHENSIVE STATEWIDE OUTDOOR RECREATION PLANS.

Section 6 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-8) is amended—

(1) In subsection (d), by adding at the end thereof the following new paragraph:

"For fiscal year 1988 and thereafter each comprehensive statewide outdoor recreation plan shall specifically address wetlands within that State as an important outdoor recreation resource as a prerequisite to approval, except that a revised comprehensive statewide outdoor recreation plan shall not be required by the Secretary, if a State submits, and the Secretary, acting through the Director of the National Park Service, approves, as a part of and as an addendum to the existing comprehensive statewide outdoor recreation plan, a wetlands priority plan developed in consultation with the State agency with responsibility for fish and wildlife resources and consistent with the national wetlands priority conservation plan developed under section 301 of the Emergency Wetlands Resources Act or, if such national plan has not been completed, consistent with the provisions of that section";

(2) in subsection (e)(1), by inserting, in the first sentence thereof, after "For the acquisition of land, waters, or interests in land or waters" the following: ", or wetland areas and interests therein as identified in the wetlands provisions of the comprehensive plan"; and

(3) in subsection(f)(3), by adding at the end thereof the following: ": Provided, That wetland areas and interests therein as identified in the wetlands provisions of the comprehensive plan and proposed to be acquired as suitable replacement property within that same State that is otherwise acceptable to the Secretary, acting through the Director of the National Park Service, shall be considered to be of reasonably equivalent usefulness with the property proposed for conversion and shall be eligible without regard to location.".

SEC. 304. FEDERAL ACQUISITION.

The Secretary is authorized to purchase wetlands or interests in wetlands, which are not acquired under the authority of the Migratory Bird Conservation Act of 1929 (16 U.S.C. 715-715s), consistent with the wetlands priority conservation plan established under section 301.

SEC. 305. RESTRICTION ON USE OF EMINENT DOMAIN IN ACQUISITIONS.

The powers of condemnation or eminent domain shall not be used in the acquisition of wetlands under any provision of this Act where such wetlands have been constructed for the purpose of farming or ranching, or result from conservation activities associated with farming or ranching.

TITLE IV—WETLANDS INVENTORY AND TREND ANALYSIS

SEC. 401. NATIONAL WETLANDS INVENTORY PROJECT.

(a) IN GENERAL.—The Secretary, acting through the Director of the United States Fish and Wildlife Service, shall continue the National Wetlands Inventory Project and shall—

(1) produce, by September 30, 1988, National Wetlands Inventory maps for the areas that have been identified by the Service as top priorities for mapping, including—

(A) the entire coastal zone of the United States;

(B) floodplains of major rivers; and

(C) the Prairie Pothole region;

(2) produce, by September 30, 1998, National Wetlands Inventory maps for those portions of the contiguous United States for which final maps have not been produced earlier;

(3) produce, as soon as practicable, National Wetlands Inventory maps for Alaska and other noncontiguous portions of the United States; and

(4) produce, by September 30, 1990, and at ten-year intervals thereafter, reports to update and improve the information contained in the report dated September 1982 and entitled "Status and Trends of Wet-

lands and Deepwater Habitat in the Coterminous United States, 1950's to 1970's".

(b) NOTICE.—The Secretary shall notify the appropriate State and local units of government at such time as he proposes to begin map preparation under subsection (a) in an area. Such notice shall include, but is not limited to, the identification of the area to be mapped, the proposed schedule for completion, and the identification of a source for further information.

SEC. 402. REPORTS TO CONGRESS.

(a) IN GENERAL.—The Secretary, in consultation and cooperation with the Secretary of Agriculture, shall prepare and submit to the committees—

(1) by March 30, 1987, a report regarding the status, condition, and trends of wetlands in the lower Mississippi alluvial plain and the prairie pothole regions of the United States; and

(2) by September 30, 1987, a report regarding trends of wetlands in all other areas of the United States.

(b) CONTENTS OF REPORTS.—The reports required under subsection (a) shall contain—

(1) an analysis of the factors responsible for wetlands destruction, degradation, protection and enhancement;

(2) a compilation and analysis of Federal statutory and regulatory mechanisms, including expenditures, financial assistance, and tax provisions which—

(A) induce wetlands destruction or degradation; or

(B) protect or enhance wetlands;

(3) a compilation and analysis of Federal expenditures resulting from wetlands destruction, degradation, protection or enhancement;

(4) an analysis of public and private patterns of ownership of wetlands;

(5) an analysis of the environmental and economic impact of eliminating or restricting future Federal expenditures and financial assistance, whether direct or indirect, which have the effect of encouraging the destruction, degradation, protection or enhancement of wetlands, including—

(A) public works expenditures;

(B) assistance programs such as price support programs, commodity loans and purchase programs and disaster assistance programs;

(C) soil conservation programs; and

(D) certain income tax provisions;

(6) an analysis of the environmental and economic impact of failure to restrict future Federal expenditures, financial assistance, and tax provisions which have the effect of encouraging the destruction, degradation, protection or enhancement of wetlands, including—

(A) assistance for normal silviculture activity (such as plowing, seeding, planting, cultivating, minor drainage, or harvesting for the production of fiber or forest products);

(B) Federal expenditures required incident to studies, evaluations, design, construction, operation, maintenance, or rehabilitation of Federal water resource development activities, including channel improvements;

(C) the commodity loans and purchases program and cotton, feed grain, wheat, and rice production stabilization programs administered by the Department of Agriculture; and

(D) Federal expenditures for the construction of publicly owned or publicly operated highways, roads, structures, or facilities that are essential links in a larger network or system; and

(7) recommendations for the conservation of wetlands resources based on an evaluation and comparison of all management alternatives, and combinations of management alternatives, such as State and local actions, Federal actions, and initiatives by private organizations and individuals.

TITLE V—MISCELLANEOUS PROVISIONS

SEC. 501. MIGRATORY BIRD TREATY ACT.

Section 6(b) of the Act of July 3, 1918 (16 U.S.C. 707(b)) is amended by deleting "shall" the first place it appears therein and by inserting in lieu thereof "shall knowingly".

AMENDMENT NO. 3220

(Purpose: To establish the Bayou Sauvage Urban National Wildlife Refuge in the State of Louisiana)

Mr. STEVENS. Mr. President, on behalf of Senators CHAFEE and MITCHELL, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Alaska [Mr. STEVENS], on behalf of Mr. CHAFEE and Mr. MITCHELL, proposes an amendment numbered 3220.

Mr. STEVENS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment reads as follows:

On page 43, after line 20, insert the following:

SEC. 502. BAYOU SAUVAGE URBAN NATIONAL WILDLIFE REFUGE.

(a) PURPOSES OF REFUGE.—The purposes of the Bayou Sauvage Urban National Wildlife Refuge are—

(1) to enhance the populations of migratory, shore, and wading birds within the refuge;

(2) to encourage natural diversity of fish and wildlife species within the refuge;

(3) to protect the endangered and threatened species and otherwise to provide for the conservation and management of fish and wildlife within the refuge;

(4) to fulfill the international treaty obligations of the United States respecting fish and wildlife;

(5) to protect the archeological resources of the refuge;

(6) to provide opportunities for scientific research and environmental education, with emphasis being given to the ecological and other values of wetlands; and

(7) to provide opportunities for fish and wildlife oriented public uses and recreation in an urban setting. (b) Acquisition and Establishment of Refuge.—

(1) ACQUISITION.—Within four years after the effective date of this section the Secretary of the Interior (hereinafter in this Act referred to as the "Secretary") shall acquire the approximately nineteen thousand acres of lands and waters, and interests therein, located in Orleans Parish, Louisiana, that are depicted on the map entitled "Bayou Sauvage Urban National Wildlife Refuge", dated September 15, 1986, and on file at the United States Fish and Wildlife Service, Department of the Interior. The lands and waters, and interests therein, acquired under this paragraph comprise the Bayou Sauvage Urban National Wildlife Refuge. The acquisition shall be made through donation, purchase with donated or appropriated funds, or exchange, or through any combination of the foregoing.

(2) ESTABLISHMENT.—At such time as sufficient lands and waters, and interests therein, have been acquired under paragraph (1) to constitute an initial area that can be administered to carry out the purposes set forth in subsection (a), the Secretary shall establish the Bayou Sauvage Urban National Wildlife Refuge by publication of notice to that effect in the Federal Register.

(3) BOUNDARY ADJUSTMENTS.—The Secretary may make such adjustments with respect to the boundary of the Bayou Sauvage Urban National Wildlife Refuge as may be necessary to facilitate the acquisition of lands and waters, and interests therein, for the refuge and to facilitate the administration of the refuge.

(c) ADMINISTRATION OF REFUGE.—The Secretary shall administer all lands and waters, and interests therein, acquired under subsection (b) in accordance with the provisions of the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd-668ee) to carry out the purposes set forth in subsection (a). The Secretary may utilize such additional statutory authority as may be available to him for the conservation and development of wildlife and natural resources, the development of outdoor recreation opportunities, and interpretive environmental education as he considers appropriate to carry out such purposes. Within two years after the effective date of this section, the Secretary shall complete a master plan for the development of the Bayou Sauvage Urban National Wildlife Refuge.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Department of the Interior—

(1) from funds not otherwise appropriated from the Land and Water Conservation Fund, such sums as may be necessary for the acquisition of lands and waters, and interests therein, for the Bayou Sauvage Urban National Wildlife Refuge; and

(2) $5,000,000 for the development of the refuge.

The moneys appropriated under subparagraphs (1) and (2) shall remain available until expended.

(e) EFFECTIVE DATE.—This section takes effect on the later of the date of enactment of this Act or October 1, 1986.

BAYOU SAUVAGE URBAN NATIONAL WILDLIFE REFUGE

Mr. CHAFEE. Mr. President, this amendment is identical to S. 2741, which was introduced last month by Senators JOHNSTON and LONG. It would authorize the acquisition and establishment of an approximately 19,000-acre national wildlife refuge on the eastern edge of New Orleans. The purposes of this refuge would be to maintain and enhance the fish and wildlife values of the area, to protect the area's archeological resources, and to provide opportunities for scientific research, environmental education, and fish and wildlife-oriented public uses.

The area identified for protection under this amendment is a wetland system that encompasses a rich diversity of natural communities and native species which deserve rigorous protection. The proposed refuge site includes coastal live-oak woodlands, fresh, in-

termediate, and brackish marshes, and bottomland hardwoods. The area also includes two of the three known locations in Louisiana of a rare aquatic plant, potamogeton perfloiatus.

Additionally, the area has been identified as among the best remaining habitat for waterfowl in southeast Louisiana. The area's freshwater marshes may host up to 40,000 ducks, geese, and other migratory birds during the winter months. Up to 340 species of shorebirds, wading birds, waterbirds, raptors and perching birds can be found within the area's wide variety of habitats. Alligator, muskrat, and mink numbers also are very high in the area. The endangered bald eagle and peregrine falcon are occasional visitors.

This refuge also will provide protection from hurricanes for the city of New Orleans, pollution control for Lake Ponchatrain, and nurseries for many species of marine life, such as fish, crabs, and shrimp.

The proposed refuge lies within the boundaries of the city of New Orleans. This proximity to an urban center of more than 1 million people will enable the refuge to become a major outdoor classroom for environmental education. The refuge's location also promises new recreation opportunities for residents and visitors in the New Orleans area.

The 19,000 acres authorized for inclusion in the National Wildlife Refuge System represents fully 1 percent of Louisiana's coastal marshland. These extremely fragile and highly productive wetlands are being lost at the rate of 35,000 acres per year. Establishment of the proposed refuge, then, will help stem the pace of this wetlands destruction and offset the huge resulting economic and ecological losses.

The land in question is currently owned by South Point, Inc., a subsidiary of Merrill Lynch. Merrill Lynch planned to develop the property or sell it to a developer. Environmentalists expressed concerns that the wetlands should be preserved. Representatives of Merrill Lynch met on several occasions with Government officials and members of the environmental community, and the result of these negotiations was the proposal for a bargain purchase of the 19,000 acres to establish the Bayou Sauvage Urban National Wildlife Refuge.

Another 4,700 acres of land owned by South Point would be given to the Conservation Fund, an offspring of the Nature Conservancy, for the purpose of development. The development of these adjacent lands would be undertaken in a way that would preserve the natural resources of the area as much as possible. The proceeds from the development would be applied to management of the refuge and to an education program for the schoolchildren of New Orleans.

The administration, although acknowledging the significant wildlife and other benefits of the proposed refuge, opposed this measure at a hearing before the Subcommittee on Environmental Pollution due to budgetary constraints and because the Bayou Sauvage proposal has not undergone a review by the Fish and Wildlife Service to ascertain the relative importance of this wetland area as compared with other lands available for incorporation into the National Wildlife Refuge System. However, the Nature Conservancy has called the protection of the Bayou Sauvage area "a prudent step in wise resource conservation." The National Audubon Society and National Wildlife Federation also have testified in support of establishing this refuge.

Mr. President, I urge my colleagues to join Senators JOHNSTON, LONG, MITCHELL, and myself in supporting this amendment. In doing so you will be helping to protect a vital part of our coastal environment in a place where a great number of people will be able to appreciate and learn from its preservation.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3220) was agreed to.

Mr. LONG. Mr. President, the Senate has just taken action which is a positive step toward the development of an urban national wildlife refuge in east New Orleans. In adopting the Chafee amendment to S. 740, the Emergency Wetlands Resource Act, the Senate has indicated its support for the establishment of an urban national wildlife refuge.

Mr. President, as an original cosponsor of S. 2741, which is the text of the amendment offered by my colleague, Senator CHAFEE, I am excited about the prospects of this urban wildlife refuge becoming a reality. The House of Representatives has given its consent to the establishment of the Bayou Sauvage Urban National Wildlife Refuge.

The proposed refuge will consist of approximately 19,000 acres of land in the eastern part of the city of New Orleans. The establishment of the refuge will offer a unique opportunity to preserve an extensive area of high value wetlands within a large and growing urban area.

The present owners of this land, South Point, Inc., a subsidiary of Merrill Lynch, planned a major development in this area. However, the development proposal was widely opposed by the conservation community at both the local and national levels.

In view of the opposition to the development proposal, the owners of the property began discussions with local officials and the conservation community about the development of an urban wildlife refuge. The legislation I cosponsored with my friend and colleague from Louisiana, BENNETT JOHNSTON, is the culmination of these discussions and agreements.

Mr. President, the Bayou Sauvage area is truly unique in having such a diversity of fish, wildlife, and habitat in close proximity of New Orleans.

This area is home to more than 40,000 wintering waterfowl annually and to thousands of wading and shore birds year-round. It is home to a sizable deer herd, otters, raccoons, other fur bearers, and thousands of alligators. In addition, it serves as an important nursery and growth area for shrimp, crabs and many species of fish.

The establishment of the Bayou Sauvage Urban National Wildlife Refuge will be a welcome addition to the National Wildlife Refuge System, even if it were not located within the boundaries of a major urban center.

Being within minutes of downtown New Orleans gives this refuge the potential to become a model urban national wildlife refuge, and as such one of the most important refuges in the national system.

It will not only be a refuge for fish and wildlife but a place for people to enjoy a pristine and natural heritage. Mr. President, this Nation is beginning to realize the importance and values of wetlands such as the Bayou Sauvage area to the local and national economy and as an important entity for a quality of life for people.

In conclusion, Mr. President, this tract of land represents a large area of coastal Louisiana's wetlands which are being lost in Louisiana alone at a rate of 55 square miles or 35,200 acres per year. This represents an economic loss of $14 million per year and immeasurable loss of fish and wildlife.

Future generations who will enjoy both the continued esthetic and economic benefits of such a refuge will consider us to have been people of vision. Let me again say how pleased I am that we have acted positively in enacting legislation to establish the Bayou Sauvage Urban National Wildlife Refuge. I would like to thank my colleagues who were so helpful in this endeavor.

AMENDMENT NO. 3221

(Purpose: To amend S. 740, the Emergency Wetlands Resources Act of 1986)

Mr. STEVENS. Mr. President, I send an amendment to the desk on behalf of myself and my colleague from Alaska, Senator MURKOWSKI, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Alaska [Mr. STEVENS], for himself and Mr. MURKOWSKI, proposes an amendment numbered 3221.

Mr. STEVENS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment reads as follows:

S. 740, the Emergency Wetlands Resources Act of 1986, is amended by—

(a) inserting, on page 31 between lines 23 and 24, the following new paragraph:

"(5) A person may not be required to purchase an admission permit under subsection (a)(1) for entrance or admission to a unit of the National Wildlife Refuge System created, expanded, or modified by Public Law 96-487.";

(b) striking the period at the end of subparagraph (c)(A)(iii) of section 201 and inserting in lieu thereof ", except those units created, expanded, or modified by Public Law 96-487.".

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3221) was agreed to.

AMENDMENT NO. 3222

Mr. STEVENS. Mr. President, I send to the desk an amendment on behalf of Senator MCCLURE to the Environmental Committee substitute.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Alaska [Mr. STEVENS], on behalf of Mr. MCCLURE, proposes an amendment numbered 3222.

Mr. STEVENS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment reads as follows:

1. On page 27, strike all of lines 1 through 4 and insert in lieu thereof: "(1) The term 'Committees' means the Committee on Merchant Marine and Fisheries and the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Environment and Public Works and the Committee on Energy and Natural Resources of the Senate.

2. On page 29, Line 4, delete "and".

3. On page 29, line 6, delete "and" and after line 6 insert in lieu the following: "(iii) issue at no charge lifetime admission permits as authorized in section 4(a)(5) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-4-4601-11).".

4. On page 30, line 7, delete "or".

5. On page 30, line 9, strike "Act." and insert "Act; or".

6. On page 30, after line 9, insert the following: "(D) a valid lifetime admission permits as authorized in section 4(a)(5) of such Act.".

7. On page 30, line 12, delete "$7.50." and insert "$3.00 for individuals or $7.50 per vehicle.".

8. On page 31, strike all of lines 1 through 11.

9. On page 31, line 12, strike "(5)" and insert (4)".

10. On page 38, line 20, delete "sion and shall be eligible without regard to location." and insert "sion.".

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3222) was agreed to.

Mr. CHAFEE. Mr. President, the Emergency Wetlands Resources Act of 1986 provides four approaches to increase the acquisition and protection of wetlands. This bill: First, extends the Wetlands Loan Act and forgives repayment of the advances made to the migratory bird conservation "duck stamp" fund; second, raises additional revenues for deposit in the duck stamp fund; third, allows the land and water conservation fund to be used specifically for purchasing wetlands; and fourth, requires study and inventory of the Nation's wetlands.

Mr. President, this landmark legislation is the product of 4 years of work by members of the Environment and Public Works and Energy and Natural Resources Committees, the House Merchant Marine and Fisheries and Interior and Insular Affairs Committees, the administration, the States, and an extremely broad coalition of conservation organizations. I want to particularly thank Senators MCCLURE, WALLOP, JOHNSTON, and BUMPERS, and their staff for their extremely quick sequential review of S. 740 in the Energy and Natural Resources Committee, which allowed this bill to come to the floor before adjournment.

Our distinguished colleagues on the Energy and Natural Resources Committee recognize as do many of the rest of us that we can afford to delay no longer in our efforts to increase wetlands protection. Already, more than one-half of the 215 million acres of wetlands that once existed in the coterminous United States have been converted to upland areas. Estimates indicate that there was a net loss of 9 million acres of wetlands between the mid-1950's and mid-1970's. The greatest losses during that period occurred in Louisiana, Mississippi, Arkansas, North Carolina, North Dakota, South Dakota, Nebraska, Florida, and Texas. Unfortunately, the rate of wetland loss does not appear to have diminished over the last decade. The U.S. Fish and Wildlife Service estimates that "we are continuing to lose wetlands at the annual pace of nearly one-half million acres, an area approximately 12 times the size of the District of Columbia."

The Nation's wetlands provide valuable goods and services for the American people. The Department of the Interior has stated that it is "well established that the loss of wetlands is one of the most serious environmental problems facing the Nation today, with far-reaching implications not only for fish and wildlife resources but also for outdoor recreation, business, agriculture, and flood control."

Recognition of the need for wetlands conservation first became widespread because of international concern for migratory birds which depend upon wetlands for survival. As far back as 1916, the United States and Great Britain—acting for Canada—negotiated the "Convention for the Protection of Migratory Birds." This Convention was the first of five treaties that established an international, cooperative effort to conserve migratory birds and their habitats. These treaties provide the foundation for national laws that grant the Federal Government the authority and responsibility to manage migratory birds and their habitats. In 1983, the U.S. Supreme Court confirmed that "[t]he protection of migratory birds has long been recognized as a national interest of very nearly the first magnitude. * * *" *North Dakota* v. *United States*, No. 81-773 (Mar. 7, 1983).

A Federal role in the acquisition of wetland habitats for migratory birds has been recognized by Congress for many years. The enactment of the Migratory Bird Conservation Act in 1929 and the Migratory Bird Hunting and Conservation Stamp Act in 1934 established the foundation of our present Wetlands Acquisition Program.

The Migratory Bird Conservation Act improved our ability to meet our treaty obligations and provided authority for the acquisition of migratory bird habitat. Funding for this acquisition is provided by section 4 of the Migratory Bird Hunting and Conservation Stamp Act in the form of the permanent appropriation from the migratory bird conservation fund, which contains moneys generated from the sale of these so-called duck stamps and certain surplus federal property. Areas acquired are incorporated into the National Wildlife Refuge System.

In the quarter century following enactment of these two pivotal laws, wetland acquisition increased dramatically. Nevertheless, in 1959 the U.S. Fish and Wildlife Service and the State fish and wildlife agencies jointly determined that protection and management of 12.5 million acres of waterfowl habitat in the coterminous United States was necessary to maintain existing waterfowl populations. To achieve this goal, the Fish and Wildlife Service needed to acquire an additional 3.8 million acres and the States an additional 2.5 million acres.

In 1961 Congress passed the Wetlands Loan Act to accelerate Federal Acquisition of migratory waterfowl habitat. This law, as amended, authorizes the appropriation of $200 million as a loan against future revenues from the sale of duck stamps. At the present cost of $7.50 per stamp, revenues are approximately $14.4 million

per year. The authorization, of which about $190 million has been appropriated, expires on September 30, 1986, and, beginning October 1, 1986, 75 percent of the revenues raised from the sale of duck stamps must be used to repay the loan. Only about $3.5 million would then remain available on an annual basis to purchase the necessary wetlands. The legislation before us today, therefore, is needed in order to avoid a decrease of this magnitude in a vital Wetlands Acquisition Program.

Using duck stamp funds and funds advanced against future stamp sales under the Wetlands Loan Act, the Fish and Wildlife Service purchased in fee title or easement approximately 1.9 million acres toward their goal from 1959 to 1977. Acquisition of the remaining 1.9 million wetland acres for conservation of migratory birds was to be completed during the 10-year period between fiscal year 1977 and fiscal year 1986. Over the past decade, however, the Fish and Wildlife Service will have acquired less than 25 percent of the 1.9 million acres of waterfowl habitat identified for Federal acquisition. Similarly the States have acquired only about 20 percent of the 2.5 million acres identified for State acquisition.

In May 1986 the United States and Canada signed the "North American Waterfowl Management Plan," which describes the actions and size of the task now believed necessary to achieve waterfowl population goals that will satisfy current public demand. The plan calls for the acquisition, protection, or improvement of approximately 1.9 million acres in the United States and 3.7 million acres in Canada. Protection and improvement of more than 1 million acres of mallard and pintail breeding habitat is needed in the pothole area of the northcentral United States at an estimated cost of $237 million. In the lower Mississippi River-gulf coast region, the plan estimates that 686,000 acres of wintering habitat are needed, and roughly 80,000 acres of additional wintering habitat are needed in the Central Valley of California. The cost to achieve these wintering habitat protection and improvement goals would probably exceed $217 million. Finally, black ducks need an additional 50,000 acres of migration and wintering habitat along the east coast of the United States and 10,000 acres in the Great Lakes-St. Lawrence lowlands in the United States, at an estimated cost of $23 million.

Thus, the total cost for habitat protection in the United States identified by the North American Waterfowl Management Plan approaches $500 million. The required waterfowl habitat protection and improvement in Canada may reach $1 billion. The cost of providing this habitat protection will have to be shared by governmental and nongovernmental entities in the United States and Canada. Federal and State spending alone won't do the job.

The Emergency Wetlands Resources Act of 1986 will, however, provide a guarantee of approximately $40 million per year for Federal acquisition of wetlands. Of this approximately $30 million will be raised from user fees and $10 million will come from the current duties paid on imported arms and ammunition. Two years ago Congress took a similar approach by putting the duties paid on fishing and boating equipment into the Wallop-Breaux Fund for sport fisheries managment. The Wetlands Act also provides authority for Congress to appropriate additional State and Federal wetland acquisition moneys from the land and water conservation fund, which presently authorizes $900 million each year, primarily from offshore oil and gas revenues, for park and refuge purchases.

The increased authority for Federal acquisition of wetlands under the Land and Water Conservation Fund Act provided by this bill should not force the existing appropriations for land acquisition to be divided further. Annual spending from the fund historically has been far less than the authorized $900 million. Rather than forcing reductions in the amount spent for parks, refuges, forests, and endangered species, this bill should serve to underline the tremendous need for increased appropriations from the land and water fund.

Mr. BENTSEN. Mr. President, it has been my pleasure to cosponsor, along with Senators CHAFEE, STAFFORD, and MITCHELL, this bipartisan substitute for S. 740, the emergency wetlands resources bill, which we introduced on March 26, 1985. This comprehensive proposal addresses the Nation's serious problem of wetlands depletion in several ways and is the result of over 1 year of extensive negotiation among Members of Congress, administration officials, and outside interest groups.

According to the Department of the Interior's own estimates, Texas is among those States which experienced the most significant loss in wetlands habitat from the 1950's to 1970's. Therefore, I have been happy to support legislation designed to halt this decline in a fair and equitable way.

A few months after the introduction of S. 740, serious concerns were raised that certain provisions in the bill might give the Federal Government too much control over the use and disposition of privately owned lands. Refinements were made to the measure, and agreement was reached regarding language to be included in the committee's report on the bill. I appreciate very much the efforts of Senators CHAFEE and MITCHELL in negotiating the compromises in the measure before us today.

As originally introduced, S. 740 provided that $75 million be transferred annually from the land and water conservation fund to be used specifically for wetlands acquisition by the States and the Federal Government. Due to budgetary concerns, the administration objected to the annual transfer of a specific amount of money from the LWCF for wetlands acquisition; and that provision, along with its establishment of a new wetlands conservation fund, has been dropped from the legislation.

The substitute provides substantial new improvements for an accelerated program of wetlands acquisition. These include removing the prohibition against land and water conservation fund moneys being used for the purchase of migratory bird habitat, increasing revenues into the migratory bird conservation fund by raising the price of duck stamps to $15 by 1991, paying into the fund an amount equal to the import duties collected on arms and ammunition during each fiscal year, and authorizing the Secretary of the Interior to establish entrance fees at suitable national wildlife refuges.

Some interested parties expressed concern that Federal or State governments might use the powers of condemnation or eminent domain to take lands from unwilling sellers. Therefore, this bill includes language not found in current law stating that the powers of condemnation and eminent domain will not be used to acquire any wetlands constructed for the purposes of farming or ranching. The committee's report on S. 740 directs the Interior Department to continue its present policy of using condemnation proceedings only in unusual cases when damages to wetlands resources cannot otherwise be prevented, or in cases where necessary to clear title from a willing seller.

Concerns were also expressed regarding the definition of the term "wetlands" that appeared in the original version of S. 740. The substitute's definition of the term is more precise and is identical to that contained in the "swampbuster" provisions of the 1985 farm bill.

The bill calls for an accelerated completion of the national wetlands inventory. Some objections have been raised to this provision on the grounds that the service is using erroneous procedures in its classification of wetlands. However, the inventory will be completed regardless of whether or not S. 740 is enacted into law. If the methodology used in compiling the maps is flawed, the problem must be addressed; I welcome the opinions of interested parties on how the inventory might be improved. In its report on this measure, the Senate Committee

on Environment and Public Works directs the Secretary of the Interior to consult with other Federal agencies regarding proposed designations of wetlands and to make draft inventory maps available for public inspection in local Federal Government offices.

The substitute retains the provision in the original S. 740 calling for the Secretary of the Interior to report to Congress on the status of wetlands and to examine factors, such as Federal policies, contributing to their decline. However, this section has been modified to require the Secretary of the Interior to consult and cooperate with the Secretary of Agriculture in making this report and to take into consideration factors responsible for wetlands protection and enhancement. This was done in order to assure a balanced approach to the Federal study and report.

This measure provides a balanced, responsible approach to address the critical problem of wetlands loss. I hope that before this Congress adjourns we will be able to present to the President a comprehensive proposal that demonstrates the commitment of both Houses and both parties to protect this valuable resource. I urge my colleagues to vote in favor of this important legislation.

Mr. MITCHELL. Mr. President, I am pleased to join Senator CHAFEE as a sponsor of the Emergency Wetlands Conservation Act. This measure will contribute substantially to the acquisition and protection of one of our Nation's important resources—wetlands.

Few Americans would disagree that wetlands are of national importance. Waterfowl and other water birds are extremely dependent on wetlands throughout their life cycles, as are many fur-bearing animals. It is estimated that nearly two-thirds of the fish caught by American commercial fishermen are dependent on estuarine areas and their associated wetlands. These areas also buffer the effects of storms, purify water, aid in ground water recharge and provide substantial flood control.

The State of Maine benefits enormously from its wetlands. Fish and wildlife nurtured by wetlands provide recreational hunting, fishing and trapping opportunities. These activities make an important contribution to the State's economy.

Wetlands are also vital to the commercial fish and shellfish industry in Maine. Wetland tidal flats represent 48 percent of the intertidal habitats of Maine. Fisheries of the tidal flats rely heavily on organic material from adjacent coastal, estuarine, riverine, and salt marsh habitats. As a result, many of Maine's commercial fish species, including herring, mackerel, smelt, hake, scup, menhaden, flounder, cod, haddock, and perch are dependent upon wetlands for various stages in their life cycles.

The rate of destruction of wetland areas is truly alarming. Each day this Nation loses almost 1,000 acres of wetlands to dredging, filling, draining and impoundment. We are losing wetlands at a rate of 458,000 acres a year. More than 100 million acres—nearly half of the wetlands once found in the lower 48 States—are now gone. We must as a nation renew our efforts to save these precious resources.

The Emergency Wetlands Conservation Act would assist the Federal Government and the States in meeting wetland acquisition goals. The bill would authorize the Secretary of the Interior to charge entrance fees at certain units of the National Wildlife Refuge System. (Holders of migratory bird hunting and conservation stamps—"duck stamps"—would be exempt from the entrance fee. This fee, though nominal, would provide nonhunters who enjoy wildlife, such as birdwatchers and nature photographers, an opportunity to assist in acquiring wildlife habitat. The fee would raise from $3.5 to $5 million with which to acquire wetlands.

In addition, the bill would gradually, over 6 years, increase the price of duck stamps from $7.50 to $15. Hunters, since 1934, have purchased migratory bird hunting and conservation stamps—or duck stamps. The sale of these stamps has raised more than $225 million for the acquisition of over 3 million acres of waterflow habitat. Hunters have always been willing to pay their share for wildlife management and conservation and have indicated a willingness to pay more to increase wetland acquisition as long as others are also willing to contribute. The increase in the duck stamp would raise an additional $14.5 million annually.

The legislation would direct that duties on imported arms and ammunitions be used for wetland acquisition, as well. This provision would raise $9.5 million annually.

I am very pleased that the bill would also establish the Bayou Sauvage Urban National Wildlife Refuge in New Orleans, LA.

Bayou Sauvage is unique among wetland areas in both the richness of its natural beauty and its accessibility to the public. Encompassing approximately 19,000 acres, the Bayou Sauvage area will protect thousands of species of waterfowl, fur-bearers, alligators and shell-fish. Because Bayou Sauvage is only minutes from downtown New Orleans, it will also provide unprecedented public access. Bayou Sauvage has the opportunity to become a model wetland refuge by both conserving an invaluable resource and providing infinite educational and other uses to residents and visitors of southeastern Louisiana.

I commend my colleagues Mr. JOHNSTON and Mr. LONG for their efforts to establish Bayou Sauvage and give this provision my complete support; it is an important addition to the Emergency Wetlands Conservation Act.

Mr. President, for too long this country has neglected the value of its wetland resources. The Emergency Wetlands Conservation Act represents an important step in the prevention of the disappearance of American wetlands. I urge my colleagues to give it their support.

Mr. STEVENS. Mr. President, I want to make it clear that the amendments were all to the substitute.

The PRESIDING OFFICER. If there be no further amendment to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and the third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed.

The title was amended so as to read "A bill to promote the conservation of migratory waterfowl and to offset or prevent the serious loss of wetlands by the acquisition of wetlands and other essential habitat, and for other purposes."

Mr. STEVENS. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

WETLANDS LOAN ACT EXTENSION

Mr. STEVENS. Mr. President, I ask unanimous consent that the Senate now turn to Calendar order No. 966, which is the Wetlands Loan Act extension, H.R. 4531.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 4531) to extend the Wetlands Loan Act, and for other purposes.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Alaska?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 3223

(Purpose: To provide for the conveyance of the Berlin National Fish Hatchery to the State of New Hampshire)

Mr. STEVENS. Mr. President, on behalf of Senator CHAFEE, of Rhode Island, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Alaska [Mr. STEVENS], on behalf of Mr. CHAFEE and Mr. HUMPHREY, proposes an amendment numbered 3223.

Mr. STEVENS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment reads as follows:

On page 3, after line 2, insert the following new section:

SEC. . CONVEYANCE OF FISH HATCHERY TO STATE OF NEW HAMPSHIRE.

Notwithstanding any other law, the Secretary of the Interior and the Secretary of Agriculture shall convey, without reimbursement, to the State of New Hampshire no later than December 31, 1986, all of the right, title, and interest including the water rights, of the United States in and to the fish hatchery property located in the northwest corner of Berlin township in the White Mountain National Forest, New Hampshire, and known as the Berlin National Fish Hatchery, consisting of 510 acres, more or less, of land together with any improvements and related personal property thereon. The property conveyed shall be used by the New Hampshire Fish and Game Department as a part of the New Hampshire fishery resources management program and if it is used for any other purpose, title to such property shall revert to the United States.

Mr. CHAFEE. Mr. President, this amendment is offered on behalf of Senator HUMPHREY and myself. This amendment to H.R. 4531 would transfer the Berlin National Fish Hatchery from the U.S. Fish and Wildlife Service to the State of New Hampshire. If the property conveyed to New Hampshire for use by the New Hampshire Fish and Game Department as a part of the New Hampshire fishery resources management program is ever used for any other purpose, then the title to the property reverts to the United States. I understand that this arrangement is acceptable to the U.S. Fish and Wildlife Service and the State of New Hampshire.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3223) was agreed to.

Mr. CHAFEE. Mr. President, H.R. 4531 extends the Wetlands Loan Act through fiscal year 1988; allows for additional appropriations to complete acquisition of Atchafalaya National Wildlife Refuge, LA; and clarifies the language of the Migratory Bird Hunting and Conservation Stamp Act relative to the Balanced Budget and Emergency Deficit Control Act of 1985.

Extension of the Wetlands Loan Act under section 1 of the bill is a pressing national priority. We passed the Wetlands Loan Act in 1961 to accelerate Federal acquisition of migratory waterfowl habitat. This law, as amended, authorizes the appropriation of $200 million as a loan against future revenues from the sale of duck stamps. At the present cost of $7.50 per stamp, revenues are approximately $14.4 million per year. However, the act's authorization, of which about $190 million has been appropriated, expired on September 30, 1986, and, beginning October 1, 1986, 75 percent of the revenues raised from the sale of duck stamps must be used to repay the loan. Only about $3.5 million would then remain available on an annual basis to purchase the necessary wetlands. This bill, H.R. 4531, therefore, is urgently needed in order to avoid a near shutdown of the Nation's wetlands acquisition efforts.

Using duck stamp funds and funds advanced against future stamp sales under the Wetlands Loan Act, the Fish and Wildlife Service purchased in fee title or easement approximately 1.9 million acres toward their goal from 1959 to 1977. Acquisition of another 1.9 million wetland acres for conservation of migratory birds was to be completed during the 10-year period between fiscal year 1977 and fiscal year 1986. Over the past decade, however, the Fish and Wildlife Service will have acquired less than 25 percent of the 1.9 million acres of waterfowl habitat identified for Federal acquisition. Similarly the States have acquired only about 20 percent of the 2.5 million acres identified for State acquisition. Clearly, we need to do a better job of meeting our goals.

In May 1986 the United States and Canada signed the "North American waterfowl management plan," which describes the actions and size of the task now believed necessary to achieve waterfowl population levels that will satisfy current public demand. The plan calls for the acquisition, protection, or improvement of approximately 1.9 million acres in the United States and 3.7 million acres in Canada. The total cost for habitat protection in the United States identified by the plan approaches $500 million. The required waterfowl habitat protection and improvement in Canada may reach $1 billion. The cost of providing this habitat protection will have to be shared by governmental and nongovernmental entities in the United States and Canada. Section 1 of H.R. 4531 at least will allow 100 percent of the duck stamp receipts—approximately $14 million—to continue to be used toward achievement of the goals of the plan.

Section 2 of H.R. 4531 makes technical changes in Public Law 98-458, which authorized establishment of the Atchafalaya National Wildlife Refuge, to facilitate acquisition of the refuge. The changes allow the Fish and Wildlife Service to alter the proposed boundaries of the refuge to incorporate those habitat areas that have been made available for acquisition and to use all funds provided under appropriations acts for acquisition of the refuge for that purpose.

The Atchafalaya National Wildlife Refuge legislation authorized the Secretary of the Interior to designate, with the concurrence of the State of Louisiana, lands and waters considered appropriate for a national wildlife refuge within the Atchafalaya basin. The lands were to be purchased with funds provided under Public Law 98-396, a supplemental appropriations bill for fiscal year 1984.

Since enactment of the refuge authorization legislation, the U.S. Fish and Wildlife Service has been negotiating with landowners in the Atchafalaya basin. The Service recently reached an agreement with a large landholding company which would provide for the acquisition of over 15,000 acres of wildlife habitat within the basin for approximately $12.4 million. Because some of the acreage to be purchased under this agreement falls outside the original area designated for acquisition and because additional funds are required to purchase the acreage, the legislation before us today is needed to clarify and facilitate establishment of the refuge.

Finally, section 3 of H.R. 4531 addresses potential technical problems relating to the Migratory Bird Hunting and Conservation Stamp Act, which were raised by passage of Gramm-Rudman-Hollings.

The technical change made by this bill in the Migratory Bird Hunting and Conservation ("Duck") Stamp Act specifies that the U.S. Fish and Wildlife Service is required to obligate only those duck stamp fund receipts which are available and that failure to obligate funds sequestered under Gramm-Rudman-Hollings does not require reduction in the price of the stamp. Under current law, 100 percent of the duck stamp receipts and Wetland Loan Act appropriations from a given year must be obligated by February 1 of the following year. Otherwise, the price of the duck stamp reverts to $5 from its current price of $7.50.

The fear is that the sequestration of some funds in the Migratory Bird Conservation Fund under the Gramm-Rudman-Hollings law could be characterized as a failure to obligate all available funds for that year and thereby require a reduction in the price of the stamp. Consequently, section 3 of H.R. 4531 clarifies the language of the Duck Stamp Act to leave no doubt that the Fish and Wildlife Service is required to obligate only those funds which are available and that failure to obligate sequestered funds does not require such a price reduction. Funds in the migratory bird conservation fund which are sequestered in any given fiscal year become available, in any

case, for obligation in subsequent fiscal years.

The PRESIDING OFFICER. The question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed, and the bill was read a third time, and passed.

Mr. STEVENS. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

STATUS OF EMPLOYEES AND LIMITS ON CONTRIBUTIONS TO THE COMMISSION ON THE BICENTENNIAL OF THE CONSTITUTION OF THE UNITED STATES

Mr. STEVENS. Mr. President, I ask that the Senate now turn to the consideration of Calendar Order No. 354, S. 1779, which is my bill dealing with the Commission on the Bicentennial of the Constitution.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1779) to amend the Act establishing a Commission on the Bicentennial of the Constitution of the United States to clarify the status of employees of the Commission, to raise the limits on private contributions, and for other purposes.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Alaska?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 3234

(Purpose: To restrict licensing of the Commission logo to appropriate purposes)

Mr. BYRD. Mr. President, on behalf of Mr. METZENBAUM, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from West Virginia [Mr. BYRD] for Mr. METZENBAUM proposes an amendment numbered 3234.

Mr. BYRD. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment reads as follows:

On page 3, at line 15, after the word "logo," insert the following language:

"Such rules and regulations shall provide, among other things, that all projects, goods, and services as to which use of the logo is authorized shall be educational or commemorative, and shall relate to the bicentennial of the United States Constitution, the establishment of the Federal Government, or the Bill of Rights, and none of such projects, goods or services shall exploit the United States Constitution or the Bill of Rights. The purpose of the Commission in authorizing use of the logo shall not be primarily or exclusively to raise funds."

Mr. METZENBAUM. Mr. President, this amendment ensures that there will be no unseemly commercialization of the logo of the Bicentennial Commission. The bill under consideration authorizes the Bicentennial Commission to license the use of its logo. However, there is no guidance to the Commission as to what type of licensing is permissible. I believe it is appropriate to place reasonable limitations on the circumstances in which the logo can be licensed. In particular, it is important to prevent exploitation of the Bicentennial Commission logo for commercial ventures unrelated to the purpose and goals of the Commission.

This amendment ensures that all projects, goods, and services for which the bicentennial logo is authorized must have an educational or commemorative purpose and must relate to the bicentennial of the U.S. Constitution, the establishment of the Federal Government, or the Bill of Rights, and must not exploit the U.S. Constitution or the Bill of Rights. Any licensing of the logo must be done under circumstances in which the principal purpose is to recognize and encourage worthy projects which advance the goals of the Commission. While it is reasonable to expect that private parties who derive some commercial benefit from use of the logo should pay royalties to the Commission, the amendment makes clear that the purpose of Congress in empowering the Commission to license the logo is not to give it a means of raising revenue.

The Bicentennial Commission will undoubtedly promote a heightened appreciation of the Constitution and the remarkable series of events that led to its creation. This task is an important one for the Nation. I am certain the Commission will perform its responsibilities with skill and dedication.

The PRESIDING OFFICER. The question is on agreeing to the amendment. The amendment (No. 3234) was agreed to.

Mr. STEVENS. Mr. President, I ask for third reading.

The PRESIDING OFFICER. If there be no further amendment to be proposed, the question is on the engrossment and the third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

Mr. STEVENS. Mr. President, I ask unanimous consent that the Senate now turn to the consideration of Calendar Order No. 701, which is H.R. 3559, the House companion bill.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 3559) to amend the Act establishing a Commission on the Bicentennial of the Constitution of the United States to clarify the status of employees of the Commission, to raise the limits on private contributions, and for other purposes.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Alaska.

There being no objection, the Senate proceeded to consider the bill.

Mr. THURMOND. Mr. President, I strongly support H.R. 3559, legislation before the Senate which would enhance the effectiveness of the Commission on the Bicentennial of the U.S. Constitution. This legislation is very similar to S. 1779, which I introduced along with Senators STEVENS, KENNEDY, and HATCH.

In 1983, the Congress and the President, by enactment of Public Law 98-101, established the Bicentennial Commission to coordinate and encourage the celebration of the 200th anniversary of our great Constitution. Unfortunately, the Commission was not assembled as early as anticipated in that law, and was unable to meet for the first time until the summer of 1985.

Mr. President, it is now less than a year until we celebrate the Bicentennial. As one who is privileged to be a member of the Bicentennial Commission, I am aware of the enormous task which faces us in preparing for a meaningful celebration. At early meetings of the Commission, several proposed changes to Public Law 98-101 were discussed and endorsed by the membership. These changes would enable the Commission to more quickly and more ably prepare for the Bicentennial. The pending legislation contains most of those changes. Its major provisions would:

Allow the Commission to authorize the manufacture, reproduction, use, sale, or distribution of the official emblem of the Bicentennial, and to prescribe penalties for its unauthorized use.

Exempt from civil service regulations Commission staff paid from privately donated funds.

Raise the ceiling on the amount an individual can contribute to $250,000 per annum, and on the amount a corporation, partnership, or other business organization can contribute to $1 million per annum.

Extend the life of the Commission for 2 years, from 1989 to 1991.

Mr. President, I believe that the changes proposed in this legislation are important, especially given the shortness of time with which the Bicentennial Commission has to work. I hope that the Congress will enact this legislation to assist the Commission in its effort to make the Bicentennial a

momentous occasion in our Nation's history.

Mr. President, the amendment proposed by the distinguished Senator from Ohio, Senator METZENBAUM, is consistent with the intention of this legislation, as introduced. My colleagues on the Commission on the Bicentennial of the Constitution and I are in full agreement with Senator METZENBAUM that the logo of the Commission should be used only on educational or commemorative projects, goods, or services.

We also agree enthusiastically with the concern of Senator METZENBAUM that the bicentennial logo should not be used in any manner which would exploit the U.S. Constitution or the Bill of Rights.

We, therefore, are pleased to accept the amendment offered by Senator METZENBAUM.

Mr. STEVENS. Mr. President, I move to strike all after the enacting clause of the House bill and insert in lieu thereof the text of S. 1779.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. STEVENS. Mr. President, I ask for the adoption of the bill.

The PRESIDING OFFICER. If there be no amendment to be offered, the question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read the third time.

The amendment was engrossed and the bill was read the third time.

The bill (H.R. 3559), as amended, was passed.

Mr. STEVENS. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. STEVENS. Mr. President, I ask unanimous consent that S. 1779 be indefinitely postponed.

The PRESIDING OFFICER. Without objection, it is so ordered.

NEBRASKA WILDERNESS ACT

Mr. STEVENS. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 816.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 816) entitled "An Act to establish the Pine Ridge Wilderness and Soldier Creek Wilderness in the Nebraska National Forest in the State of Nebraska, and for other purposes", do pass with the following amendments:

Strike out all after the enacting clause, and insert:

SECTION 1. That this Act may be cited as the "Nebraska Wilderness Act of 1985".

TITLE I—WILDERNESS

SEC. 101. In furtherance of the purposes of the Wilderness Act of 1964, certain lands in the Nebraska National Forest, which comprise approximately eight thousand one hundred acres, as generally depicted on a map entitled "Soldier Creek Wilderness—Proposed", dated February 1985, are hereby designated wilderness and, therefore, as a component of the National Wilderness Preservation System, and shall be known as the Soldier Creek Wilderness.

ADMINISTRATION OF WILDERNESS

SEC. 102. (a) Subject to valid existing rights and the provisions of subsection (b), the wilderness area designated under section 101 shall be administered by the Secretary of Agriculture (hereinafter in this Act referred to as the "Sec- "Secretary") in accordance with the provisions of the Wilderness Act governing areas designated by that Act as wilderness except that any reference in such provisions to the effective date of the Wilderness Act shall be deemed to be a reference to the effective date of this Act.

(b) In the administration of the wilderness in the State of Nebraska—

(1) grazing of livestock in wilderness areas established by this Act, if established prior to the date of the enactment of this Act, shall be administered in accordance with section 4(d)(4) of the Wilderness Act and section 108 of Public Law 96-560; and

(2) the Secretary is directed to review all policies, practices, and regulations of the Department of Agriculture regarding livestock grazing in national forest wilderness areas in Nebraska in order to insure that such policies, practices, and regulations fully conform with and implement the intent of Congress regarding grazing in such areas, as such intent is expressed in this Act.

MAPS AND DESCRIPTIONS

SEC. 103. As soon as practicable after the date of the enactment of this Act, the Secretary shall submit a map and legal description of the wilderness area designated by section 101 to the Committee on Energy and Natural Resources of the Senate and the Committee on Agriculture and the Committee on Interior and Insular Affairs of the House of Representatives. Such map and legal description shall have the same force and effect as if included in this Act, except that any clerical or typographical error in such map or legal description may be corrected. The Secretary shall place such map and legal description on file, and make them available for public inspection, in the office of the Chief of the Forest Service, Department of Agriculture.

WILDERNESS REVIEW CONCERNS

SEC. 104. (a) The Congress finds that—

(1) the Department of Agriculture has completed the second roadless area review and evaluation program (RARE II); and

(2) the Congress has made its own review and examination of National Forest system roadless areas in the State of Nebraska and of the environmental impacts associated with alternative allocations of such areas.

(b) On the basis of such review, the Congress hereby determines and directs that—

(1) without passing on the question of the legal and factual sufficiency of the RARE II final environmental statement (dated January 1979) with respect to National Forest System lands in States other than Nebraska, such statement shall not be subject to judicial review with respect to National Forest System lands in the State of Nebraska;

(2) with respect to the National Forest System lands in the State of Nebraska, which were reviewed by the Department of Agriculture in the second roadless area review and evaluation (RARE II), that review and evaluation shall be deemed for the purposes of the initial land management plans required for such lands by the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976, to be an adequate consideration of the suitability of such lands for inclusion in the National Wilderness Preservation System and the Department of Agriculture shall not be required to review the wilderness option prior to the revisions of the plans, but shall review the wilderness option when the plans are revised, which revisions will ordinarily occur on a ten-year cycle, or at least every fifteen years, unless, prior to such time the Secretary of Agriculture finds that conditions in a unit have significantly changed;

(3) areas in the State of Nebraska reviewed in such final environmental statement and not designated wilderness upon enactment of this Act shall be managed for multiple use in accordance with land management plans pursuant to section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976: Provided, That such areas need not be managed for the purpose of protecting their suitability for wilderness designation prior to or during revision of the initial land management plans;

(4) in the event that revised land management plans in the State of Nebraska are implemented pursuant to section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976, and other applicable law, areas not recommended for wilderness designation need not be managed for the purpose of protecting their suitability for wilderness designation prior to or during revision of such plans, and areas recommended for wilderness designation shall be managed for the purpose of protecting their suitability for wilderness designation as may be required by the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976, and other applicable law; and

(5) unless expressly authorized by Congress, the Department of Agriculture shall not conduct any further statewide roadless area review and evaluation of National Forest System lands in the State of Nebraska for the purpose of determining their suitability for inclusion in the National Wilderness Preservation System.

(c) As used in this section, and as provided in section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976, the term "revision" shall not include an "amendment" to a plan.

TITLE II—PINE RIDGE NATIONAL RECREATION AREA

DESIGNATION OF PINE RIDGE NATIONAL RECREATION AREA

SEC. 201. Certain lands in the Nebraska National Forest, Nebraska, which comprise approximately six thousand six hundred acres, as generally depicted on a map entitled "Pine Ridge National Recreation Area—Proposed", dated September 1986, are

hereby designated as the Pine Ridge National Recreation Area.

MAP AND DESCRIPTION

SEC. 202. As soon as practicable after enactment of this Act, the Secretary of Agriculture shall file a map and legal description of the national recreation area designated by this title with the Committee on Interior and Insular Affairs and the Committee on Agriculture of the United States House of Representatives and with the Committee on Energy and Natural Resources of the United States Senate. Such map and description shall have the same force and effect as if included in this title, except that correction of clerical and typographical errors in such map and description may be made by the Secretary. Such map and description shall be on file and available for public inspection in the Office of the Chief of the Forest Service, Department of Agriculture.

ADMINISTRATION OF THE NATIONAL RECREATION AREA

SEC. 203. (a) Subject to valid existing rights, the Pine Ridge National Recreation Area designated by this title shall be administered by the Secretary of Agriculture in accordance with the laws, rules, and regulations applicable to the national forests in a manner compatible with the following objectives:

(1) the continuation of existing primitive and semiprimitive recreational use in a natural environment;

(2) preservation and protection of forests, aquatic and grassland habitat;

(3) protection and conservation of special areas having uncommon or outstanding wilderness, biological, geological, recreational, cultural, historical or archeological, and scientific, or other values contributing to the public benefit;

(4) the continuation of existing livestock grazing uses;

(5) the control of noxious weeds and insects and prevention of their spreading onto the nearby private and Federal lands; and

(6) the control of fires and prevention of their spreading onto nearby private and Federal lands.

(b) The Secretary shall enter into a Memorandum of Agreement with local and state fire fighting agencies and individuals to assure the best utilization of the firefighting resources available in the nearby communities for control of fire in the national recreation area.

(c) The Secretary shall permit hunting, fishing, and trapping on lands and waters under the Secretary's jurisdiction within the boundaries of the national recreation area designated by this title in accordance with applicable laws of the United States and the State of Nebraska.

(d) Subject to valid existing rights, all Federal lands within the national recreation area are hereby withdrawn from location, entry, and patent under the United States mining laws, and from disposition under all laws pertaining to mineral and geothermal leasing and all amendments thereto.

(e) Nothing in this Act shall be construed as affecting the jurisdiction or responsibilities of the State of Nebraska with respect to wildlife and fish in the national recreation area.

(f) Within eighteen months after the date of enactment of this Act, the Secretary shall develop and submit to the Committee on Interior and Insular Affairs and the Committee on Agriculture of the United States House of Representatives and to the Committee on Energy and Natural Resources of the United States Senate a comprehensive management plan for the national recreation area designated by this title.

(g) In conducting the reviews and preparing the comprehensive management plan required by subsection (d), the Secretary shall provide for full public participation, and shall consider the views of all interested agencies, organizations, and individuals.

Amend the title so as to read: "An Act to establish the Pine Ridge National Recreation Area and Soldier Creek Wilderness in the State of Nebraska, and for other purposes.".

Mr. EXON. Mr. President, it is the greatest pleasure and pride that I rise in support of the Nebraska Wilderness Act.

I introduced this legislation in the U.S. Senate on March 28, 1985. In its original form, which passed the Senate without dissent on August 1, 1985, both the Soldier Creek and Pine Ridge areas of the Nebraska National Forest would be designated as national wilderness areas. It was supported by Senator ED ZORINSKY, Gov. Bob Kerrey, the Nebraska Game and Parks Commission, State Senator Sandra Scotfield, the local Chambers of Commerce and many other Nebraskans. The Reagan administration also supported my original bill for two wilderness areas.

The House of Representatives' Public Lands Subcommittee, under the chairmanship of Representative JOHN SEIBERLING of Ohio, held a field inspection and hearing at Chadron, NE last July. This action was followed by another House hearing in Washington, DC, last August, where certain objections were raised by Members of the Nebraska House Delegation.

Following consultations several weeks ago, I agreed to the changes included in the version of the bill which passed the House on September 23. Today, the Senate will pass those changes and send this important legislation to the President for signature into law. This new bill makes one change from the original version. Instead of both the Soldier Creek and Pine Ridge areas being designated as wilderness, the 8,100-acre Soldier Creek tract retains that designation while the 6,600-acre Pine Ridge tract will become a national recreation area. The difference between a wilderness area and a national recreation area is, in this case, mostly one in name only.

A wilderness area falls under the general laws and guidelines of the Wilderness Act of 1964. A national recreation area falls under no such general law and represents whatever Congress writes into the law for that particular area. In this case, I have ensured that the bill and report language of the national recreation area in the House-passed version closely mirror the guidelines of the Soldier Creek Wilderness Area.

Mr. President, my original legislation and the compromise we are considering now both contain safeguards to ensure prompt firefighting in and around these areas. There are also important provisions for the control of noxious weeds and insects and the continuation of cattle grazing. Hunting, fishing, and trapping rights are also protected.

For the Pine Ridge National Recreation Area, a comprehensive management plan will be formulated following consultations and full public participation. The recreation area will be managed in a manner compatible with "the continuation of existing primitive and semi-primitive recreational use in a natural environment." It is this Senator's intent, and that of the Senate, that the management plan closely follows this new language in the law and that it be strictly enforced. This means, for example, that no significant expansion of vehicular use within the national recreation area should be allowed. In this way, the "forest, aquatic and grassland habitat" to be protected by this designation will indeed be protected adequately as called for in this legislation.

This Nebraska Wilderness Act containing the Soldier Creek Wilderness and the Pine Ridge National Recreation Area will provide compatible and very similar management of both areas. It makes no sense to have these two nearby areas managed in a significantly different manner. The intent and letter of this new law support that objective.

While I would have preferred both areas being designated as wilderness, this compromise is acceptable in the interest of obtaining final passage in an expeditious fashion.

Mr. President, this legislation had many strong supporters on its way to becoming law. Vince Rotherham, the superintendent of the Fort Robinson State Park in Nebraska, comes first to mind. Also very helpful has been Ted Hoffman of Chadron, NE. In addition, Mr. Ron Ellermeier and Ms. Beth Spaugh of the Nebraska Sierra Club and Mr. Ron Klataske of the National Audubon Society worked hard for the passage of this legislation.

Finally, a big thank you is due to Representative JOHN SEIBERLING of Ohio, who shepherded this bill through the House of Representatives. He is a giant who will be sorely missed as a result of his well-deserved retirement at the end of this session of Congress. It is indeed fitting that the Nebraska Wilderness Act is one of the last additions to his long honor roll of accomplishments aimed at protecting America's most beautiful areas for generations to come.

Mr. President, as we prepare to move into the 21st century, it is important to remember that the best of God's

gifts to our wonderful country must be preserved. Once lost or exploited, they can never be reclaimed. The Nebraska Wilderness Act is an effort to be responsible and true to both our heritage and those who follow us on this Earth. To set aside this small part of Nebraska for our children, grandchildren, and generations who follow, to enjoy in solitude away from the rigors and commotion of everyday life, reflects well on all Nebraskans.

Our wisdom in approving this legislation today will pay a big dividend each time a man, women, or child enters the wilderness and finds the peace which will now always be there.

Mr. STEVENS. Mr. President, I move that the Senate concur in the House amendments.

The PRESIDING OFFICER. Without objection, the motion is agreed to.

Mr. STEVENS. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

GAUCHER'S DISEASE AWARENESS WEEK

Mr. STEVENS. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of Senate Joint Resolution 352, "Gaucher's Disease Awareness Week," and I ask for its immediate consideration.

Mr. BYRD. Mr. President, there is no objection to the requests of the distinguished Senator.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report.

The assistant legislative clerk read as follows:

A joint resolution (S. J. Res. 352) to designate the week of September 7, 1986 as "Gaucher's Disease Awareness Week."

AMENDMENT NO. 3225

(Purpose: To change the date provided in the bill)

Mr. BYRD. Mr. President, I send to the desk on behalf of Mr. METZENBAUM an amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from West Virginia [Mr. BYRD], for Mr. METZENBUAM, proposes an amendment numbered 3225.

Strike out "September 7, 1986" wherever it appears and insert in lieu thereof "October 19, 1986."

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from Ohio.

The amendment (No. 3225) was agreed to.

The PRESIDING OFFICER. The joint resolution is open to further amendment. If there be no further amendments to be proposed, the question is on the engrossment and third reading of the joint resolution.

The joint resolution was ordered to be engrossed for a third reading, was read the third time, and passed.

The preamble was agreed to.

The PRESIDING OFFICER. The Chair notes that without objection the title of Senate Joint Resolution 352 is appropriately amended.

Mr. STEVENS. Mr. President, I move to reconsider the vote by which the joint resolution, as amended, was passed.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

EXECUTIVE CALENDAR

Mr. STEVENS. Mr. President, I would like to inquire of the minority leader if he is in a position to confirm any of the following Executive Calendar Nominations:

Calendar No. 1040, Martha O. Hesse;

Calendar No. 1041, James Allen Wampler;

Calendar No. 1077, Thomas John Josefiak;

Calendar No. 1078, Scott E. Thomas; and all nominations placed on the Secretary's desk with the exception of Edwin G. Corr.

Mr. BYRD. Mr. President, all the nominations including that of Martha O. Hesse, in particular, have been cleared on this side of the aisle. And we are ready to proceed with the confirmation of the nominations.

EXECUTIVE SESSION

Mr. STEVENS. Mr. President, I ask unanimous consent that the Senate go into executive session to consider the nominations just identified, and that the nominations be considered en bloc and confirmed en bloc.

There being no objection, the Senate proceeded to the consideration of executive business.

The PRESIDING OFFICER. Without objection, the nominations are considered and confirmed en bloc.

The nominations considered and confirmed are as follows:

DEPARTMENT OF ENERGY

Martha O. Hesse, of Illinois, to be a member of the Federal Energy Regulatory Commission for the remainder of the term expiring October 20, 1987.

James Allen Wampler, of Illinois, to be an Assistant Secretary of Energy (Fossil Energy).

FEDERAL ELECTION COMMISSION

Thomas John Josefiak, of Virginia, to be a member of the Federal Election Commission for a term expiring April 30, 1991, to which position he was appointed during the last recess of the Senate.

Scott E. Thomas, of the District of Columbia, to be a member of the Federal Election Commission for a term expiring April 30, 1991.

NOMINATIONS PLACED ON THE SECRETARY'S DESK IN THE SENIOR FOREIGN SERVICE

Senior Foreign Service nominations beginning Harry E. Bergold, Jr., and ending Stanley J. Wolfe, M.D., which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of September 11, 1986.

NOMINATIONS OF MARTHA O. HESSE AND J. ALLEN WAMPLER

Mr. McCLURE. Mr. President, on September 9, 1986, the Committee on Energy and Natural Resources held a hearing on the nominations of Martha O. Hesse to be a member of the Federal Energy Regulatory Commission, and J. Allen Wampler to be Assistant Secretary of Energy for Fossil Energy. Each nominee has fully complied with the committee's rules requiring submittal of a financial disclosure report and a detailed information statement.

On September 17, 1986, the Committee on Energy and Natural Resources ordered favorably reported each of the two nominations by voice vote.

Ms. Hesse has served as Assistant Secretary for Management and Administration at the Department of Energy since 1982. Before joining DOE, she was Executive Director of the President's Task Force on Management Reform. From February 1981 until her White House assignment, she was Associate Deputy Secretary of Commerce. Ms. Hesse's Government service was preceded by 15 years of management experience in the private sector. She is the cofounder of a successful data processing consulting company in Chicago, and she served as its director and chief operating officer from 1969 to 1980. She attended the University of Iowa and Northwestern University, and she received her MBA from the University of Chicago.

Ms. Hesse, upon her confirmation, will be designated by the President to serve as Chairman of the Commission. In this capacity, she will be responsible for general supervision of Commission personnel, as well as all other aspects of the Commission's administrative operations.

As Chairman of the Commission, she would be the chief administrative officer of an agency that has very broad and highly complex regulatory responsibilities, including setting wholesale rates for natural gas and electric energy, assessing the environmental impacts of hydroelectric projects and other energy facilities under its jurisdiction, and insuring the reliability of our Nation's electric energy supplies.

During her testimony before the committee, Ms. Hesse stressed the importance of energy as a critical component of our national security. She stated:

The decisions of the Federal Energy Regulatory Commission have long-term implications for our nation's energy security. Although the short-term outlook for energy supplies in the country appears good, consideration must be given to long-term supply security. Particularly, the long-term reliability of the national electric grid and the generating capacity available to supply that grid must be a concern. In addition, the Commission must consider the impact of falling oil and gas prices on the future adequacy of natural gas supply. We must take care to avoid a recurrence of the energy shortages of the 1970s.

J. Allen Wampler has been nominated for the position of Assistant Secretary for Fossil Energy. He is currently vice chancellor of administration at Illinois Eastern Community Colleges, and he previously served for 2 years as dean of Mining at Wabash Valley College in Illinois. During 1979 and 1980 Mr. Wampler was Deputy Director of Labor Management Relations for the President's Commission on Coal. He has also held various positions within the coal industry, and has taught in the West Virginia public school system.

As Assistant Secretary, Mr. Wampler will be responsible for formulating and directing a comprehensive national program to develop and demonstrate coal, oil, natural gas and shale technologies, as well as managing the naval petroleum reserve and the strategic petroleum reserve. He will also serve as the principal DOE spokesman on U.S. fossil energy policy and programs.

At his nomination hearing Mr. Wampler outlined the goals that he would bring to the Office of the Assistant Secretary for Fossil Energy. He stated that he would continue and strengthen the solid partnerships between his office, the private sector, academia, and other Federal agencies and the Congress. In addition, he would strive to improve the lines of communication necessary to insure that usable information produced by research and development is transferred in an understandable form, on a formalized periodic basis, to the private sector. An effort would be made to constantly evaluate the long-term fossil energy research efforts from the standpoint of continuing applicability and direction. He would also strive to ensure sound management of our Nation's petroleum reserves. Mr. Wampler's final goal would be to increase public awareness and understanding of the necessity for a diversified, balanced energy mix and the assets and liabilities of each ingredient of that mix.

Mr. President, on behalf of the Committee on Energy and Natural Resources, I am pleased that the Senate has approved these nominations.

Mr. STEVENS. Mr. President, I move to reconsider the vote by which the nominations were confirmed.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. STEVENS. Mr. President, I ask unanimous consent that the President be immediately notified that the Senate has given its consent to these nominations.

The PRESIDING OFFICER. Without objection, it is so ordered.

LEGISLATIVE SESSION

Mr. STEVENS. Mr. President, I ask unanimous consent that the Senate resume legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

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Mr. STEVENS. Mr. President, I make the statement that it has not been a long day but a short night.

CONTINUING APPROPRIATIONS, FISCAL YEAR 1987—A FINE JOB WELL DONE

Mr. BYRD. Mr. President, would the distinguished acting Republican leader allow me? I inadvertently overlooked making a brief statement complimenting the distinguished chairman of the Committee on Appropriations, Mr. HATFIELD, and the distinguished ranking member of the Appropriations Committee, Mr. STENNIS, on their expert handling of the continuing resolution. Over a period of several days, those two Senators sat on the floor and patiently listened to other Senators debate amendments and handled the bill with expertise and great care. I think that each Senator had good reason to marvel at the forbearance and the equanimity that was shown by both of those Senators in the face of very stressful and trying circumstances.

I also wanted to express my compliments to Senator JOHNSTON, who worked with equal skill in managing that bill. He also showed consideration and characteristic understanding and courtesy to all Senators on both sides of the aisle as they presented their amendments.

There were scores of amendments offered to the continuing resolution. I am sure that the long, arduous action on that bill tried the patience of Senator HATFIELD, Senator STENNIS, and all Senators, and the distinguished majority leader as well.

I thank them and express appreciation in my own behalf and in behalf of Senators on this side of the aisle in particular, This was a good performance of resolute purpose and dedication to duty and the Senate is in their debt.

Mr. THURMOND. Mr. President, will the distinguished Senator yield?

Mr. BYRD. I am happy to yield.

Mr. THURMOND. Mr. President, I wish to be associated with the remarks that have just been made about the handling of the continuing resolution. I do not think I have seen any bill in the years that I have been in the Senate that was handled in any more efficient and skillful manner than this bill was. The able chairman of the Appropriations Committee, Mr. HATFIELD, handled it in a masterful manner and so did Senator JOHNSTON and Senator STENNIS, who worked on the other side of the aisle. They were most gracious and helpful. I think we all owe these gentleman a great debt of gratitude for the efficient way in which they handled this measure.

Mr. BYRD. I thank the distinguished Senator from South Carolina, the President pro tempore and I think all three Senators will appreciate the gracious remarks made by Senator THURMOND.

Mr. THURMOND. Also, Mr. President, I commend the able majority leader and the able Democratic leader for the fine cooperation they gave in handling this matter. It could not have been handled as efficiently as it was if this had not been done with their help.

Mr. BYRD. If I may take 30 seconds more, Mr. President, I want to call attention also to the fact that the distinguished majority leader has been laboring under the stressful conditions of a bad cold. I guess all colds are bad, but this one was particularly so because the majority leader has had it for 10 days or 2 weeks.

I might also say the same thing for Senator HATFIELD, who came in today with laryngitis. It is not always easy to manage a bill under those conditions.

Mr. STEVENS. Having stood at this desk for a while, I hope it is not catching.

ORDERS FOR MONDAY, OCTOBER 6, 1986

Mr. STEVENS. Mr. President, I ask unanimous consent that when the Senate convenes on Monday, October 6, 1986, the reading of the Journal be dispensed with; that no resolutions come over under the rule; that the call of the calendar be dispensed with; and that following the recognition of the two leaders under the standing order, there be special orders in favor of Senators WILSON, DANFORTH and PROXMIRE, for not to exceed 5 minutes each; to be followed by a period for the transaction of routine morning business not to extend beyond the hour of 1 p.m., with Senators permitted to speak therein for not more than 5 minutes each; and provided further that the morning hour be deemed to have expired.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Will the distinguished acting Republican leader include in the list of special orders one for the Senator from Montana [Mr. BAUCUS]?

Mr. STEVENS. I amend my request to reflect that, Mr. President.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. STEVENS. To recap, the Senate will convene on Monday, October 6, at 12 noon. We will be in adjournment over the weekend. The two leaders will be recognized at that time under the standing order for 10 minutes each. There will then be special orders in favor of Senators WILSON, PROXMIRE, DANFORTH, and BAUCUS, for not to exceed 5 minutes each.

There will be a period for routine morning business not to extend beyond the hour of 1 p.m., with Senators permitted to speak therein for not more than 5 minutes each. Following morning business, it is the intention of the majority leader to turn to any of the following items: S. 2792, which is the FIFRA bill and there is one vote expected, I am informed; or S. 2045, which is CFTC that we hope will be cleared for action by unanimous consent.

There will be conference reports presented, we believe, on intelligence authorization, Export-Import Bank, the handicapped bill, and the leadership has the intention to deal with other executive or legislative items that have been cleared for action at that time.

Votes can be expected on Monday; at least one is expected for certain.

Mr. BYRD. Is it the distinguished acting Republican leader's understanding that one vote which will occur on Monday will occur not prior to 2 p.m. that day?

Mr. STEVENS. Let me confirm that.

The PRESIDING OFFICER. The Chair advises that he remembers the majority leader did state that earlier in the day.

Mr. STEVENS. I thank the Chair. I was not here at that time and I have confirmation from our colleague who has stayed with us through this very routine business, handling very important documents.

CONFERENCE REPORT—H.R. 3773

Mr. STEVENS. Mr. President, I am told there is one additional item we could turn to with my good friend's agreement. That is consideration of the conference report to accompany H.R. 3773, the Federal Technology Transfer Act. That conference report is here now.

FEDERAL TECHNOLOGY TRANSFER ACT—CONFERENCE REPORT

Mr. STEVENS. Mr. President, I submit a report of the committee of conference on H.R. 3773 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 3773) to amend the Stevenson-Wydler Technology Innovation Act of 1980 to promote technology transfer by authorizing Government-operated laboratories to enter into cooperative research agreements and by establishing a Federal Laboratory Consortium for Technology Transfer within the National Science Foundation, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by all of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report will be printed in the House proceedings of the RECORD.)

Mr. HOLLINGS. Mr. President, the conference report now before the Senate is a truly historic piece of legislation. At a time when the U.S. economy faces unprecedented foreign competition, the Federal Technology Transfer Act will help government, industry, and academia work together to maintain America's technological leadership.

The Federal Government spends tens of billions of dollars annually on research and development. Federal laboratories alone spend some $18 billion and employ one-sixth of the Nation's scientists and engineers. Of course, the Federal Government makes this huge investment to serve public needs, particularly in the areas of defense, health, and space. But in the process, laboratory scientists and other federally supported researchers create a wealth of unclassified inventions and ideas which, if properly used, could be of enormous help to State governments and American industry. Yet, historically, legal barriers and lack of communication have prevented the private sector and the States from taking full advantage of this important national resource. With international competition so strong, we can no longer afford to ignore this technology.

The Federal Technology Transfer Act is the latest in a series of bipartisan initiatives to reduce these barriers. In 1980, the Stevenson-Wydler Technology Innovation Act directed Federal laboratories to create offices to assist in the transfer of Federal inventions and expertise. That same year, the landmark Bayh-Dole patent amendments gave small businesses and nonprofit organizations, including universities, the right to own and develop inventions that result from federally funded research. Until those amendments, most Federal inventions sat on the shelf, never used by American companies or universities. In 1984, these patent rights were extended to those nonprofit organizations that manage federally supported national laboratories. Already, these new laws are resulting in new products that help industry and benefit the American public.

The bill before us today is an important series of amendments to the original Stevenson-Wydler Act. This bill gives Federal agencies the authority to let their "Government-operated" laboratories—that is, laboratories operated by civil service personnel—enter into cooperative R&D work with industry, State government, universities, and others. For the first time, the Nation's almost 700 Government-operated laboratories will have clear authority to work side-by-side with industry and the States to better utilize unclassified Federal inventions and ideas. The agencies and laboratories will decide for themselves how much, and what kinds, of cooperative work to undertake.

This bill in no way reduces national security controls on classified Federal technology. Nor will it cost the taxpayers an additional dime. Any funds for cooperative research will be provided by the non-Federal partner. In fact, this new law will make money for the Government. When a Federal laboratory licenses an existing or new invention to a company, the laboratory may negotiate royalties. Even today the Government receives about $1.6 million per year in royalties from licensing inventions such as the new AIDS blood test. Royalties to the Government should increase under the new legislation.

Besides allowing Government-operated laboratories to work with non-Federal partners, the bill also has several other valuable provisions. It provides modest, stable funding for the existing network of laboratory technology transfer officers. This Federal laboratory consortium allows a businessman or State official to call their nearest Federal laboratory and, through the network, find out which Federal laboratories throughout the United States have expertise in a given area of technology. The FLC's modest funding is provided not through new expenditures but rather through a small set-aside from the Federal research agencies whose laboratories benefit from the network. The National Bureau of Standards will provide administrative support to the consortium.

The bill also provides that agencies will share some of the royalties earned

from Federal inventions with the scientists and engineers who created them. This provision is designed both to reward important work and to provide an incentive for scientists to report patentable ideas which may benefit the country. Agencies are allowed great flexibility in designing their royalty-sharing programs.

Finally, the bill contains various conforming and miscellaneous amendments to the Stevenson-Wydler Act.

Mr. President, this conference report results from a remarkable bipartisan effort. The House version of H.R. 3773 passed that body unanimously; its prime sponsors were a Democratic committee chairman and the House Republican leader. A bipartisan group of Senators introduced our version, which later passed this body unanimously. Both the Senate and House have benefited greatly from the work done by the Commerce Department's Office of Productivity, Technology, and Innovation.

Mr. President, all of us who have worked on this legislation see it as a vital step toward better utilizing our national R&D resources in an era of intense foreign economic competition. I am pleased to be an original cosponsor of the Federal Technology Transfer Act, and I urge my colleagues to support this conference report.

Mr. RIEGLE. Mr. President, I am delighted that we and our House colleagues have reached agreement on a conference report for H.R. 3773, the Federal Technology Transfer Act. This important legislation will allow our Federal laboratories to contribute more fully to American industrial innovation and State economic development. At a time when many other countries are challenging our technological leadership, we no longer can afford to ignore the great amount of technology created by the Nation's 700 Federal laboratories.

Federal laboratories exist, of course, to do research in support of Government missions in areas as diverse as agriculture, space, health, and defense. But in the process of serving the Government, Federal scientists and engineers also create a great deal of unclassified technology that could benefit American industry and State development efforts. Over the years, however, less than 5 percent of the almost 30,000 patents granted to personnel in Federal laboratories have been developed into commercial products.

We on the Commerce Committee's Subcommittee on Science, Technology, and Space have long supported efforts to transfer more Federal technology to the private sectors and States. Work on this particular bill began 2 years ago, when it became clear that many Government-operated laboratories—that is laboratories operated by Federal civil service personnel—lacked clear legal authority to enter into cooperative research projects with companies, State agencies, universities, and others. Yet never before have we seen such interest in working with Federal laboratories to commercialize new inventions, to undertake joint research, and to utilize the great expertise of Federal scientists and engineers. Clearly, we needed to reduce the legal barriers that prevent such cooperation.

The conference report before us today is the result of that work. It provides clear authority to Federal agencies to allow their Government-operated laboratories to enter into cooperative research and development agreements with non-Federal partners. It will, in my opinion, open up an entirely new era of American research—one in which Government, industry, and the States work together instead of in isolation of each other.

This bill has several notable features. It gives agencies and laboratories greater flexibility in deciding when to enter into cooperative research ventures, while stating Congress' view that preference should go to ventures which benefit both small business and companies that manufacture within the United States. The bill continues all existing protections for classified information while encouraging our laboratories to share unclassified technology.

This bill will not increase Federal expenditures. The cost of these joint research projects will be borne by the non-Federal partners. In fact, this bill could generate money for the Government by making it easier for Federal agencies to collect royalties on the inventions they license to industry. The legislation also provides rewards to Federal inventors whose ideas result in commercially successful products.

Mr. President, this is an important step toward the better utilization of the taxpayer's investment in Federal technology. The bill enjoys broad bipartisan support, and I urge our colleagues to vote for the conference report.

Mr. BAUCUS. Mr. President, I congratulate the Senate conferees for bringing this conference report to the floor. It is an extremely important bill, because it will do a lot to increase U.S. international competitiveness.

Each year the Federal Government spends $18 billion on research and development conducted at over 700 Federal laboratories. We employ one-sixth of our Nation's scientists in this effort. Yet, 95 percent of the work product of their efforts is unavailable for commercial development.

The Federal Technology Transfer Act of 1986 implements one of the recommendations of the Young Commission Report on Industrial Competitiveness by making it easier to transfer technology out of the Federal labs and into the marketplace.

This bill grants blanket authority to all Federal laboratories to set up cooperative research-and-development agreements with businesses. As Timothy Smith reported in the Wall Street Journal on October 1, 1986, "It will provide money to expand a communications system linking Federal labs, and giving businesses centralized access to a smorgasbord of government research."

Most importantly, the bill will create incentives for Federal researchers to stay on the job by requiring agencies to share at least 15 percent of the royalties received from their patents.

Mr. President, in his book "The Zero Sum Solution," economist Lester Thurow stated that the essence of comparative advantage is not static relative factor endowments or natural resources, but the creation of dynamic technological or efficiency advantages.

Comparative advantage is not something inherited. It's created—as the Japanese are doing now, and as America has done in the past.

The United States used to have the technological edge. It no longer does. While countries like Japan and West Germany coordinate ressearch and development between the public and private sectors and then share the information with their businesses, American policy is to bottle it up and fail to coordinate its use.

The Federal Technology Transfer Act is a major step toward strategic coordination of our research and development that will improve our industries' performance in world markets. I urge my colleagues to support this bill.

Mr. ROCKEFELLER. Mr. President, I am pleased to join my colleagues from the Commerce Committee in urging final passage of H.R. 3773, the Federal Technology Transfer Act.

This measure is about technological innovation, and about the process of turning inventions into marketable products and services. It recognizes that Federal laboratories represent a promising resource and provides a way to strengthen the links between government scientists and researchers in the private sector.

The Stevenson-Wydler Technology Innovation Act of 1980, which this bill amends, attempted to focus national attention on the issue of technology transfer. Regrettably, it was never fully implemented. But despite the administration's opposition to the act's central feature, a network of government-industry research centers, progress was made within individual agencies to encourage commercial applications of technology developed under their auspices.

Building on this fledgling effort, H.R. 3773 would facilitate cooperative research projects by Federal laborato-

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ries and private companies. The Government invests approximately $18 billion on research by Federal laboratories, and much of this work leads to patentable inventions. Yet only a small fraction of these Federal patents are licensed by private industry for commercial use.

In contrast, other countries—particularly Japan—are blazing the trail in the area of technology transfer. They encourage cooperative government-industry research efforts, and actively look for ways to translate the results of promising lines of research into commercially viable products. Japan has been exceptionally adept at identifying technology with commercial potential. And the inventions with commercial promise—the raw material of this process—often comes from us.

This country should be concerned about the implications of a one-way flow of technological information. The current imbalance in the international flow of knowledge is a real threat to our competitive position in a wide range of industries. America's comparative advantage has always been superior technology—our ability to innovate and invent. But we are no longer self-sufficient in technology: without access to technology developed elsewhere, major advances will pass us by.

I am very pleased that the final version of H.R. 3773 incorporates a Senate amendment, which I jointly sponsored with the distinguished majority leader, to improve U.S. access to technology developed with the help of foreign governments. Under the bill, foreign applicants will have opportunities to acquire technology developed in our laboratories—and we think our companies and researchers should get equivalent treatment by other countries in return.

Federal laboratory directors are empowered by this legislation to approve cooperative R&D arrangements and licensing agreements with private industry. Where applications to enter into these agreements come from foreign parties, our provision would permit the laboratory directors to take into account whether or not the countries involved permit U.S. agencies, companies, or other parties to participate in similar arrangements. It would apply to U.S. subsidiaries of foreign companies, as well as to other persons and organizations subject to the control of a foreign government.

We hope, by giving this discretion to our Federal laboratories, to open doors for our corporations and researchers to the work in foreign government-supported laboratories. By making reciprocal access a consideration, we should increase our leverage with foreign research organizations—and gain access to much valuable technical information. If foreign scientists, engineers, and other researchers can have relatively unrestricted access to path-breaking research at NIH or NASA, it's only right to expect comparable opportunities for our researchers in exchange.

In closing, I consider this legislation an important element of what should be a comprehensive, determined effort to improve the competitiveness of our industries. It will encourage industry to draw on the impressive technological resources and expertise of our Federal laboratories. It will strengthen our national investment in R&D—and help this country gain access to pioneering research and technology developed elsewhere. I'm proud to have worked on this measure and hope it will encourage us to address other aspects of our competitiveness problems with the same imagination and vigor.

Mr. STEVENS. Mr. President, I ask the Senate to adopt the conference report.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The conference report was agreed to.

Mr. STEVENS. I move to reconsider the vote by which the conference report was agreed to.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ORDER OF BUSINESS

Mr. STEVENS. I inquire if there is anything further to come before the Senate at this time?

Mr. BYRD. I answer my distinguished friend first by saying that I thank him for his diligent handling of the business so late in this long, long day. I thank him for his usual courtesy. I have no further business.

Mr. STEVENS. I thank my good friend. It is a pleasure to be with him again.

ADJOURNMENT UNTIL MONDAY, OCTOBER 6, 1986

Mr. STEVENS. Mr. President, I ask unanimous consent that the Senate stand in adjournment, in accordance with the previous order, until Monday, October 6, 1986, at noon.

There being no objection, the Senate at 7:37 p.m., adjourned until Monday, October 6, 1986, at 12 noon.

NOMINATIONS

Executive nominations received by the Senate October 3, 1986:

Department of State

Stephen R. Lyne, of Maryland, a career member of the senior Foreign Service, class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Ghana.

Department of Defense

Robert B. Costello, of Michigan, to be an Assistant Secretary of Defense, vice James Paul Wade, Jr.

The Judiciary

Reena Raggi, of New York, to be U.S. district judge for the eastern district of New York vice Frank X. Altimari, elevated.

Department of Justice

Eugene H. Davis, of Utah, to be U.S. Marshal for the district of Utah for the term of 4 years, reappointment.

Department of the Interior

James W. Ziglar, of Maryland, to be an Assistant Secretary of the Interior, vice Robert N. Broadbent, resigned.

Department of Agriculture

Peter C. Myers, of Missouri, to be a Member of the Board of Directors of the Commodity Credit Corporation, vice John R. Norton III, resigned.

Corporation for Public Broadcasting

Sheila Tate, of Virginia, to be a member of the Board of Directors of the Corporation for Public Broadcasting for a term expiring March 26, 1991, vice Lillie E. Herndon, term expired.

National Science Foundation

Howard A. Schneiderman, of Missouri, to be a member of the National Science Board, National Science Foundation, for a term expiring May 10, 1992, vice Mary Jane Osborn, term expired.

U.S. Postal Service

Norma Pace, of Connecticut, to be a Governor of the U.S. Postal Service for the term expiring December 8, 1994, vice George Watson Camp, term expired.

Securities Investor Protection Corporation

James G. Stearns, of Nevada, to be a member of the Board of Directors of the Securities Investor Protection Corporation for a term expiring December 31, 1988 reappointment.

In the Marine Corps

The following-named officer of the Marine Corps for permanent appointment to the grade of lieutenant colonel, under title 10 United States Code, section 624:

Peter J. Burner, 8615

The following-named officers of the Marine Corps for permanent appointment to the grade of major, under title 10 United States Code, section 624:

Alfred B. Legear, xxx-...

Bruce H. Norton, xxx-...

In the Navy

The following-named U.S. Naval Reserve officers, to be appointed permanent commander in the line of the U.S. Navy, pursuant to title 10, United States Code, section 531:

Neel, David L.

The following-named U.S. Naval Reserve officers, to be appointed permanent lieutenant commander in the line of the U.S. Navy, pursuant to title 10, United States Code, section 531:

Ade, Edward Kenneth
Bachman, Stephen D.
Battle, Joseph Ceasar,
Bradley, Stephen Craig
Bricker, Martin P.
Buesser, Frederick M.
Caille, Gary W.
Case, Duane D.
Deeble, Kenneth M.

Driskill, Clifford Dale
Egan, Richard Thoma
Goddard, Paul Earnest
Graham, Bruce Alan
Green, Ronald Timothy
Keeley, Thomas Francis
Lusted, Roderick M.
McCarthy, Karen Patricia
McMahon, Christine Marie
Morel, David
Morganelli, Patrick Daniel
Morin, John Patrick
Palmer, Thomas R.
Parsons, David Lee
Pierce, Charles James., Jr.
Podenak, Gary Lawrence
Roberts, John Alan
Rynda, Douglas Charles
Saunders, Stanley L.
Selberg, John J.
Thomas, William Franklin
Upchurch, Robert Burton
Webb, Michael Anthony
Wenceslao, Daniel Lathrop
Wilbur, Thomas George
Wright, Robert Paul

The following-named U.S. Naval Reserve officers, to be appointed permanent captain in the medical corps of the U.S. Navy, pursuant to title 10, United States Code section 531:

Arnold, Robert Evans
Bartlett, John Donnington
Carlisle, James Henry, IV
Gambone, Joseph C.
Mitas, John Albert II
Ragland, Jerry John
Rainey, Thomas Gilman
Thomas, William Joseph, Jr.

The following-named U.S. Naval Reserve officers, to be appointed permanent commander in the medical corps of the U.S. Navy, pursuant to title 10, United States Code section 531:

Adams, David B.
Anderson, Mary Alice
Andersonprotzel, Cris Jana
Babcock, Nolan C.
Baer, Karl Guther
Batten, George B.
Batten, Kristine W.
Bergfield, Thomas G.
Boice, Douglas Brittin
Boston, Edward G.
Brower, Richard A.
Bundens, Warner Perry
Calebaugh, Donald L.
Carson, John Frederick, II
Chobanian, Sarkis J.
Clement, Patrick A.
Clemons, Peter Michael
Coleman, Claude Leroy
Congleton, Michael W.
Corrall, Carmen J.
Cueva, Mary Carolina
Davee, Thomas Southerland
Davenport, Nicholas Antony
Ducatman, Alan M.
Eastman, Thomas Wayne
Eaton, Peter Wesley
Elledge, Elliott Frederick
Ferry, Philip J. III
Foote, Norman Noel
Galdi, Albert Peter
Gilson, Kim Fricke
Goldstein, Richard S.
Gonzalez, Xavier L.
Goodman, Floyd Keith
Greif, Jon Meredith
Hamelberg, Kim S.
Hansen, Harold Wayne
Harvey, Joan
Haviel, Jay Duncan
Hayes, Francis M., Jr.
Hickey, Therese Marie
Hoffman, Stephen Lev
Hoskins, Iffat Abbasi
Howard, Richard Karl
Howell, Harold Blane
Hynd, Robert F.
Jaindl, Jeffrey J.
Johnson, Wayne T.
Jones, Edgar T.
Khan, Anjum
Larosa, John Joseph
Liston, William A.
Luhn, Roderick F.
Lundgrin, Daryl Brent
Martin, Lawrence K., Jr.
Mathis, William F.
Mayo, Joseph F., Jr.
Mciver, Ronald Allen
Miller, Stephen A.
Miller, William Farrington
Moore, Thomas R.
Nanfro, John J.
Newcomer, John Allen
Olafson, Raymond Paul
Opoliner, Lawrence Harvey
Paleologo, Fred Peter
Pon, Eugene
Prophete, Robert Y.
Ray, Joel W.
Rice, Linda J.
Scherokman, Barbara Jeanne
Scotti, Frank A.
Shea, William Michael
Simpkins, Cuthbert Ormond II
Smyth, Lawrence T., Jr.
Tanksley, Radford D.
Terbush, James Wayne
Turner, James Angus
Turner, Sibley N.
Warren, Tony E.
White, John M., Jr.
Whitman, Monroe Calvin III
Wilson, George Charles
Wilson, Terence Scott
Wittgrove Allan Craig
Yunan, Evelina
Zaloga, Gary P.

The following-named U.S. Naval Reserve officer, to be appointed permanent lieutenant commander in the medical corps of the U.S. Navy, pursuant to title 10, United States Code, section 531:

Herip, Donald S.

The following-named U.S. Naval Reserve officer, to be appointed permanent lieutenant commander in the supply corps of the U.S. Navy, pursuant to title 10, United States Code, section 531:

Davison, Dexter Oneal
Halloran, Michael D.

The following-named U.S. Naval Reserve officers, to be appointed permanent commander in the chaplain corps of the U.S. Navy, pursuant to title 10, United States Code, section 531:

Foster, Raymond Orville
Kurilec, Robert Edward
Pucciarelli, George W.

The following-named U.S. Naval Reserve officer, to be appointed permanent lieutenant commander in the judge advocate general's corps of the U.S. Navy, pursuant to title 10, United States Code, section 531:

McPherson, James E.

The following-named U.S. Naval Reserve officer, to be appointed permanent commander in the dental corps of the U.S. Navy, pursuant to title 10, United States Code, section 531:

Bookwalter, Charles

The following-named U.S. Naval Reserve officer, to be appointed permanent lieutenant commander in the dental corps of the U.S. Navy, pursuant to title 10, United States Code, section 531:

Conway, Richard

The following-named U.S. Naval Reserve officers, to be appointed permanent lieutenant commander in the medical service corps of the U.S. Navy, pursuant to title 10, United States Code, section 531:

Boenecke, Clayton A.
Crisman, Ronald Paul
Hannah, Ken Evan
Heller, Randal George
Kersbergen, John J.
Lacy, Nathan
Reibling, John S.
Roth, Faye A.
Sandoval, Paul R.
Schuyler, Christopher
Sebbio, Anthony A.

The following-named U.S. Naval Reserve officer, to be appointed permanent commander in the nurse corps of the U.S. Navy, pursuant to title 10, United States Code, section 531:

Kraper, Mary Julie

The following-named U.S. Naval Reserve officers, to be appointed permanent lieutenant commander in the nurse corps of the U.S. Navy, pursuant to title 10, United States Code, section 531:

Brennan, Rama F.
Elliott, Karen G.
Moos, Magdalene A.
Romine, Carol A.
Twomey, John G.

CONFIRMATION

Executive nomination confirmed by the Senate October 3, 1986:

IN THE ARMY

The following-named officer to be placed on the retired list in grade indicated under the provisions of title 10, United States Code, section 1370:

To be general

Gen. Fred K. Mahaffey, xxx-xx-xxxx, age 52, U.S. Army.

DEPARTMENT OF ENERGY

Martha O. Hesse, of Illinois, to be a member of the Federal Energy, Regulatory Commission for the remainder of the term expiring October 20, 1987.

James Allen Wampler, of Illinois, to be an Assistant Secretary of Energy (Fossil Energy).

FEDERAL ELECTION COMMISSION

Thomas John Josefiak, of Virginia, to be a member of the Federal Election Commission for a term expiring April 30, 1991.

Scott E. Thomas, of the District of Columbia, to be a member of the Federal Election Commission for a term expiring April 30, 1991.

The above nominations were approved subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

SENIOR FOREIGN SERVICE

Senior Foreign Service nominations beginning Harry E. Bergold, Jr., and ending Stanley J. Wolfe, M.D., which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on September 11, 1986.

EXTENSIONS OF REMARKS

ST. AGATHA ELEMENTARY SCHOOL

HON. CHALMERS P. WYLIE

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 2, 1986

Mr. WYLIE. Mr. Speaker, St. Agatha Elementary School in my congressional district was selected recently to receive an elite and distinguished honor from the Secretary of Education, the Honorable William J. Bennett.

May I congratulate St. Agatha Elementary School, its faculty and students on receiving the Excellence in Education Award attesting to their superlative efforts and extraordinary achievement. Only 60 private schools were so honored nationwide, so it is indeed a source of great pride for me to represent this fine school.

The awards were based primarily on how well the schools used resources at their disposal and how well they met the needs of achievement in reading and mathematics, and on the school's record of overcoming obstacles and sustaining progress.

Among the criteria utilized in selecting the schools were:

School organization, including its mission, goals and philosophy;

The instructional program, including curriculum and the character ethical development;

Instruction, including teacher evaluation and staff development;

School climate;

Efforts to make improvements and maintain high quality programs;

School-community relations; and

Student achievement.

I think Secretary Bennett said it best when announcing the award winners:

These fine public and private schools are as diverse as America itself, but they share a common attribute: they're good schools. They provide their young students with a solid foundation for later life. They have helped their students develop a strong core of skills and knowledge, good values and habits, and an enthusiastic attitude toward learning.

Naturally, St. Agatha Elementary School was quite pleased to receive this prestigious recognition of its educational efforts. St. Agatha Elementary School was presented with a special flag symbolizing outstanding educational achievement. In addition to the flag, ceremonies will be held to present a plaque to the school.

This year, which has been proclaimed by Congress and the President as the Year of the Elementary School, marks the first time that elementary schools have been awarded this honor. Public secondary schools have received comparable awards the past 3 years and private secondary schools have received comparable awards the past 2 years.

It has become quite clear that American education has no more precious resource than a first-rate elementary school. That is why it is so gratifying that St. Agatha Elementary School, one of the 60 finest examples nationwide, is in my congressional district. I salute the principal, Sister Julienne Guy, and wish for your school the very best in educational achievement during the coming year and the years to follow.

PITTSBURGH AREA STUDENT LEADS UNITED STATES TO INTERNATIONAL MATH VICTORY

HON. DOUG WALGREN

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 2, 1986

Mr. WALGREN. Mr. Speaker, I want to salute a young man in my congressional district who this summer led a team of American high school students to a first place tie with students from the Soviet Union at the International Mathematics Olympiad in Warsaw, Poland.

Joseph Keane of O'Hara Township, PA, is an outstanding 17-year-old student who has honored his family, his community, and his country by his prize-winning work in mathematics problem-solving under the pressure of international competition. Joe, a recent graduate of Fox Chapel Area High School, scored the most points of the six American students competing in the international contest which included 192 students from 37 countries. "He seems to have a flair for cutting to the very heart of a problem," the director of the American Mathematical Association says of Joe Keane.

On Monday, October 13, Joe will be honored by the Fox Chapel Area School District for his achievement. Mr. Speaker, I want to join with them, and his family and friends, in congratulating Joseph Keane for his accomplishment.

As chairman of the Subcommittee on Science, Research, and Technology and as someone who has tried to put special focus on the need for a strong math and science program in our schools, I am particularly pleased that Joe comes from my congressional district. I wish him the very best as he seeks to develop and use his special skill for the benefit of all of us.

I urge my colleagues to read the short article reproduced below from the Pittsburgh Press about this young man who considers math and chemistry books his favorite bedtime reading.

FOX CHAPEL MATH WHIZ GETS SPECIAL WORLD PRIZE

(By Eleanor Chute)

A Fox Chapel Area student, who considers math and chemistry books his favorite bedtime reading, has been rewarded for his study with a special prize at an international contest.

Joseph Keane, 17, of O'Hara, led the U.S. high school team to a first place tie with the Soviet Union in the International Mathematics Olympiad in Warsaw, Poland.

Keane received a special jury prize in the annual competition for his solution to one problem.

The competition was held last week and the awards were announced yesterday. Keane's mother, Kathryn, said her son's interest in math dates to childhood.

"Other kids would go to bed reading fiction books. His favorite would be to read a math book or a chemistry book . . . He just kept reading and reading . . . ," she said.

Keane, who graduated from Fox Chapel this year, plans to study electrical engineering and computer science at the University of Pittsburgh.

The last math course he took at Fox Chapel was calculus—in seventh grade. Since then, he has taken some computer science courses and studied independently. He also took a couple of courses at Pitt.

Thomas Anewalt, sponsor of the math club at Fox Chapel Area High School, said the victory was "super."

"Joe seems to see math in a global way, seeing the overall picture and the interrelationship between problems," Anewalt said.

Keane was among more than 300,000 students who competed nationwide for one of six berths on the U.S. team.

The international competition included 192 students from 37 countries who tackled six problems during the two-day event.

Three Americans—including Keane—won gold medals, and three won silver medals. Of the six Americans, Keane scored the most points.

The team was selected after three exams and a four-week training session in Annapolis, MD.

About 20 finalists attended the session, including Karl Westerberg, a senior at Allderdice High School who did not compete in Warsaw.

For Keane, this was the third time he has attended the summer program and the second time he has been a member of the U.S. team. Last summer, he competed in Helsinki, Finland, where the U.S. team placed second.

"I was a bit nervous last year. This year, I think the exam was a bit easier, and I was more confident," Keane said yesterday in Warsaw.

"He seems to have a flair for cutting to the very heart of a problem, which enabled him to come up with a particularly elegant solution to a problem," said Alfred Willcox, executive director of the Mathematical Association of America.

In math talk, "elegant" means a solution is efficient, dealing with just the essential parts of the problem.

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

"Elegant" is the word used to describe the solution that won Keane the special jury prize in Warsaw, the only such award given this year.

Cecil Rousseau, the U.S. team director, said Keane had a "particularly original and elegant solution" to a problem on algorithms, or repetitive calculations.

Although this was the 27th international competition, the United States did not start participating until 1974.

Wilcox said "lots of people felt the products of the American egalitarian high school system would not be able to compete on the same playing fields with the top students of the European, highly elitist school systems . . . We felt if we tried to assemble a team, they would be plowed under, particularly by the Eastern European hotshots.

"We were wrong. We came in second the first time. We've been in the top three almost every year."

The fact the Americans this year tied for first place, Wilcox said, "means the best of our high school youth are as good as any in the world."

PRAY FOR DEATH

HON. RONALD D. COLEMAN

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 2, 1986

Mr. COLEMAN of Texas. Mr. Speaker, it is a sad fact that religious intolerance is once again creeping into American politics. The respected nonpartisan organization, People for the American Way, has prepared some observations on the rise of religious intolerance, which I would like to bring to the attention of my colleagues:

PRAY FOR DEATH

The first half of 1986 has seen the emergence of the ultimate form of religious intolerance—Religious Right leaders have been praying for the death of Supreme Court justices and political officials with whom they disagree. Pat Robertson stopped just short of doing this when he told the National Right to Life Committee meeting in Denver that abortion opponents could look to "the wonderful process of the mortality tables" to change the make-up of the court and bring about a new decision on abortion in the same speech in which he called court members "despots."

Another television evangelist, Jimmy Swaggart, has declared: "I pray that God will remove those men (the Supreme Court) and give us men with righteousness that will abide by the laws of God and get on their knees and ask God's counsel and guidance when they make the laws of this nation."

For the first time, a major party congressional candidate has joined the pray-for-death movement. The Rev. Joe Morecraft, a fundamentalist pastor, John Birch Society member and Republican nominee for the 7th District seat in Georgia, said on a local radio program that he prays for God to remove Supreme Court Justices who support legal abortion "in any way He sees fit." Morecraft said "I've prayed God would remove the Supreme Court justices of the United States Supreme Court who have consistently voted for the legalization of abortion on demand several times and I'll do it in the future, but I'll leave it to God to determine how he wants to do it." (Marietta Daily Journal, July 3, 1986).

There are other examples:

The Rev. Robert Hymers of the Fundamentalist Baptist Church in downtown Los Angeles hired an airplane to carry a banner saying "Pray for death: baby-killer Brennan" as Supreme Court Justice William Brennan, who in 1973 voted with the majority to legalize most abortions, was to deliver the commencement address at Loyola Marymount University. Hymers first released a press release saying his congregation would pray for Brennan's death, but after deciding that would sound like "a lunatic fringe," Hymers merely prayed for Brennen's removal from the court.

But two weeks later, after the court upheld the right of a couple to withhold medical treatment from their handicapped daughter, Hymers prayed for the five justices in the majority—Marshall, Stevens, Blackmun, Powell and Burger—to repent, retire or die for their votes. "We will pray that God take the lives of these Hitler-like men from the face of the Earth," Hymers said.

A group called Americans for Biblical Government, based in Hyattsville, Md., urged in its newsletter that members offer prayers "For the Supreme Court—that either their minds be changed or that God would remove them and replace them with men who fear Him."

The Rev. Tim LaHaye, head of the American Coalition for Traditional Values, a national coalition of the Religious Right, said that he was launching a national prayer campaign "for the removal (by any means God sees fit) of at least three of the Supreme Court members while Ronald Reagan is president." This was reported in the October, 1985, issue of the magazine Church and State.

The Rev. Greg Dixon, Indiana Moral Majority leader and pastor of an 8,000-member church in Indianapolis, has a "Prayer Hit list" of public officials condemned by his "Court of Divine Justice" in which he prays for the death of public officials he believes have violated religious liberty. In Austin, he prayed for the removal from office of Texas Attorney General Jim Mattox "by whatever method, whether it be illness or whether it be death, whatever pleases God." Mattox says he has been harassed by late-night phone calls and has found a dead cat in front of his house.

The major danger of the "pray for death" movement was expressed succinctly by Rev. Hymers himself when he backed off of his prayer for the death of Justice Brennan—"we don't want to put into someone's mind that they should go out and kill him." But that is exactly what Hymers and others have done. By using the same kind of inflammatory rhetoric some in the Religious Right used before the outbreak of bombings at abortion clinics, they run the risk of inciting an unbalanced follower to attempt to do what they think is God's will by trying to kill a public official with whom they disagree.

AN OLD-FASHIONED RELIGIOUS TEST

In the primary to determine the Republican nominee for a vacant seat in Texas' 21st congressional district, Van Archer attempted to use a religious test against his opponent, Lamar Smith, a Christian Scientist. Archer said he "would think" that Smith's religion would be an issue; he said that if Smith were elected to Congress and legislation involving health treatment arose, he would have to choose between being a good congressman and a good Christian Scientist. Christian Scientists believe that prayer and understanding will cure sickness and avoid medical treatment for themselves, but do not impose their views on others.

Smith said he had not faced such a conflict as a state representative or as a county commissioner. He said "I believe in the best medical attention for those who want it"—and, in fact, he was endorsed by the American Medical Association. Smith said "Attacking an individual's religion is an attack on one of our most sacred institutions—freedom of religion. It has no place in American society." Smith won the nomination, but Archer got 46 percent of the vote.

LYNDON LAROUCHE

The major upset of the 1986 political season occurred in Illinois on March 18 when two followers of extremist Lyndon LaRouche defeated regular party candidates for the Democratic nominations for Lieutenant Governor (Mark Fairchild) and Secretary of State (Janice Hart).

LaRouche and his followers call themselves the National Democratic Policy Committee to create the false impression that they are associated with the official Democratic Party. They claim to have fielded candidates in 14 Senate races, 149 congressional races and 7 governor's races and a total of 780 candidates nationwide in 29 states.

LaRouche is a former Leninist who has moved to the extreme right. Conservatives say he is really a leftist, and liberals say he is really a right-winger, but LaRouche operates in an area in which the extreme left and extreme right meet. He is best-known for his bizarre conspiracy theories in which the Queen of England is a drug dealer and Henry Kissinger and Walter Mondale are Soviet agents.

But a key part of LaRouche's agenda consists of classic religious bigotry. He has had friendly contacts with both the anti-Semitic Liberty Lobby and the Ku Klux Klan; his tone became more anti-Semitic after making those contacts around 1974. LaRouche once sued the Anti-Defamation League for libel, because it called him anti-Semitic; in October, 1980, a New York State Supreme Court Justice dismissed the suit and said calling LaRouche anti-Semitic was "fair comment" and that the facts in the case "reasonably give rise" to the ADL characterization.

LaRouche believes that there is an international Jewish conspiracy to control the world; it involves Jewish bankers and the drug lobby; prominent Jews installed Hitler; the Holocaust was a Jewish hoax because the Nazis killed "only . . . about a million-and-a-half" Jews. He has called the ADL "a treasonous conspiracy" against the United States and said it "today resurrects the tradition of the Jews who demanded the crucifixion of Jesus Christ." LaRouche has said that there is "a hard kernel of truth" in the "Protocols of the Elders of Zion", an anti-Semitic forgery first published in the turn of the century and purporting to reveal a Jewish plot for world domination.

LaRouche believes that the Catholic Church is controlled by the "Anglo-Jesuit penetration" using Georgetown University as a base as part of the international Zionist conspiracy; that British intelligence controls the World Council of Churches, which in turn controls the National Council of Churches, which in turn control U.S. Protestant church bodies. According to Insight, published by The Washington Times, LaRouche believes that the Women's Christian Temperance Union was "a violent cult of ax-wielding lesbians."

Although LaRouche has been defeated in 85 of 85 contested races, five LaRouche candidates have won uncontested races for Democratic Congressional nominations:

Dominick Jeffrey in the 13th District in Illinois.

Clem Cratty in the 4th District in Ohio.

Joylyn Blackwell in the 21st District of Pennsylvania.

Harry Knissen in the 7th District of Texas.

Susan Director in the 22nd District in Texas.

In addition, for a time Robert A. Patton, a LaRouche candidate, was the only announced candidate for the Democratic nomination for the Senate seat now held by Republican Warren Rudman. Three others, including a Libertarian Party candidate, a perennial candidate and former Massachusetts Gov. Endicott Peabody have joined the race.

LaRouche backers had a major non-electoral victory in California. They gathered enough signatures to place an initiative on the California ballot in November that would redefine AIDS as an infectious disease—like measles or turberculosis—and pressure public health officials to quarantine AIDS victims and those suspected of carrying the virus. Medical officials and politicians across the state have organized a group called Stop LaRouche to fight the initiative, which opponents say has no justifiable public purpose. LaRouche backers gathered 683,576 signatures, nearly twice the number necessary to qualify the initiative for the ballot, but many of the signatures were collected by LaRouche workers carrying signs that said only "Sign here to help stop AIDS."

STATE-BY-STATE ACTIVITY

Following is a state-by-state summary of Religious Right activity so far this year. It should be noted that some of these incidents are conventional political activity while others are apparently instances of intolerant or deceptive tactics.

ALASKA

State Sen. Edna DeVries, a candidate for the Republican nomination for Lieutenant Governor, says she is running because God told her to run. She told The Anchorage Times: "Some would say, 'Edna, you have a safe senate seat, why are you doing this?' When God speaks, one needs to be obedient. I want to look back on 1986 and be able to say, 'God, I have done what you asked me to do, gone where you told me to go, and said what you wanted me to say.'" Her husband Noel said in a fund-raising letter, "Edna is running for Lt. Governor simply because she believes God is directing her to run."

According to the magazine Church and State, she believes the United States is a Christian country and that those who disagree "have a right to do what they want, but they shouldn't live in the United States. Maybe they should live in some other country. If they don't honor the United States as a Christian nation and they don't want to be a Christian, then there are many other countries that are not Christian."

ARIZONA

Former Rep. John Conlan, head of the Religious Right organization, FaithAmerica Foundation, is running to recapture the 4th District House seat he gave up in an unsuccessful run for the Senate in 1976; that year, he was accused of using anti-Semitism in his primary contest against Rep. Sam Steiger, who is Jewish.

CALIFORNIA

In the 27th District, Republican candidate Rob Scribner picked up where he left off in 1984 in his unsuccessful effort to unseat Rep. Mel Levine. Here are excerpts from a letter he sent to pastors in his district in 1985: "A year ago, God did a rather unique thing—he called on me to run for Congress in California's 27th District . . . When God requires a thing of you, you must obey. . . . Encourage your congregation to vote . . . teach them to vote based on the relationship of the issues and the Word of God. Teach them not to vote according to party or personality, but according to the candidates' integrity before God. . . . I am committed to the vision God is pointing me toward. . . . Mr. Levine . . . is diametrically opposed to nearly everything the Lord's Church stands for in this nation. . . . I hope you will agree to link arms with us as we literally 'take territory' for our Lord Jesus Christ."

COLORADO

Robertson endorsed Rep. Ken Kramer in the primary for the Senate seat being vacated by Gary Hart. Kramer won top listing at the state convention for the Aug. 12 primary.

A DENTIST WHO LIKES TO BE BUSY

HON. TONY COELHO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 2, 1986

Mr. COELHO. Mr. Speaker, I would like to take this opportunity to share with you an article about a constituent of mine, Dr. Tony Cusenza of Modesto, which appeared in the Modesto Bee. A dentist by trade, Dr. Cusenza is the president of the California Dental Association, the chief policysetting group for dentistry in the State. Dr. Cusenza is hard-working and dedicated to his work and certainly serves as an example to us all that work can be fun.

[From the Modesto (CA) Bee, June 18, 1986]

A DENTIST WHO LIKES TO BE BUSY

(By Carol Trujillo)

Scanning a menu at Lyon's Restaurant, Anthony Cusenza hesitates as he gives the waitress his order.

"It's not a home-fries day," he tells her, patting his stomach. But he orders them anyway.

Whether its indulging in a favorite snack or volunteering on one of the many service and professional organizations that fill his three-page resume, the 56-year-old dentist rarely says no.

But he's trying.

"I gotta learn to say no . . . I'm doing it now becauwe I don't want to belong to anything unless I can give it the proper time," he says. "I've never joined an organization that I can't produce for."

The newest demands on Cusenza's time are the responsibilities of his new position as president-elect of the California Dental Association, the profession's chief policysetting group in the state. With 14,000 members, it is the largest of its kind in the country.

As president-elect, Cusenza will travel to each of 32 local groups that make up the state association, familiarizing himself with local leadership and presenting his own agenda.

Cusenza's overriding objective during his one-year term is to make sure dentists provide quality service throughout the state.

"The biggest percentage of my time is to promote a single standard of care so that we're not fragmented," he explains. Dentists, hygienists and denturists have to "work together as a team."

Under California law, a hygienists may practice in specific settings, such as nursing homes or prisons, only after a dentist has seen the patient. Over the last few years this legislation has been challenged.

He frowns on what he calls "unsupervised dentistry." Denturists and hygienists who branch out on their own to cut out the middle man shortcut the patient's care, he says, because the lack the scientific background to diagnose a serious problem or handle an emergency. "It's a team approach. We don't really want to see them splintered. We strive for a single standard of care as we work together."

Cusenza doesn't expect his stand to be popular with some of the state's hygienists and denturists. Nor does he think his opposition to advertising—professionals may advertise their services as long as the ads are not false or misleading, according to the Federal Trade Commission—will settle well with some dentists, especially those who are just starting out.

Because of false or misleading advertising could confuse the patient, Cusenza would like to eliminate the option. "I'm not supposed to say those things—the Federal Trade Commission says you're not supposed to say these things. But I still think about the huckster that's trying to sell things on the street corner, the old Painless Parker. We've grown out of that era; we're respected members of the professional community . . . In order for us to gain that respect, let's keep it. Let's not belittle it by trying to tell patients, 'Come see me and not him because I'm better' . . . Prove it, prove that you're better. And you can prove that you're better by treating people right."

Cusenza tells newcomers to the profession to persevere.

"The neophyte has to watch his Ps and Qs . . . All too often some of these young folks come out of school and they think, 'Yeah, I'm Dr. So-and-So now and I've got to buy my Prorsche. If I don't buy my Prosche, I'm no going to fit," he says. "I've heard of $60,000 to $80,000 going into an office practice and you haven't got Patient One yet. That's scary."

Cusenza opened his office—a second-floor walk-up in downtown Modesto—in 1958 without a sports car or state-of-the-art equipment. Just out of the Air Force, where he served as a dentist, he went door-to-door to introduce himself to other dentists and worked seven days a week to build up his clientele.

Now Cusenza worries when his association responsibilities take him away from his patients. He anticipates being out of the office 60 to 70 days during his term as president-elect.

"I hope those absences will be spread out over to a day or two a week," he says. "I don't want in any way to disrupt the delivery of their care in any way. They're important to me."

Before he became so involved in dentistry, Cusenza spent his free time hunting and fishing. His office and association duties leave little time for vacations with his wife,

Phyllis. Now, he says, "I guess my hobby is my profession."

"I tell you I'm happy in my field. I wouldn't want to do anything else. People ask me, 'Hey Doc, when are you going to retire?' I don't want to retire. As long as I can provide a service, I'd like to do it."

His work isn't always easy, he concedes. Exposure to diseases such as AIDS or hepatitis is a health risk. And dentists can often feel a lot of pressure to perform.

"Our work is so precise, and our work lives on and on and on . . . Your reputation is out there, literally, on your shirt sleeve all the time. You're striving for 100 percent perfection. Come on, only the good Lord can do 100 percent perfection.

Cusenza tries to be upbeat in his work, even if his patients often aren't. "If a patient comes in and says, "Now, Doc, no hard feelings, but I don't like dentists,' Thanks a lot . . . I want people to like me. If people don't like me, I hurt."

Cusenza has been enthralled with dentistry since he was a kid growing up in Monterey. "In those days you went to the dentist when you had to lose a tooth," he explains. He was taken with the mounted game birds and Outdoor Life and Field and Stream magazines the dentist had in his office, "just the goodies I liked."

"He took out my tooth, and I never felt a thing," Cusenza says. "And in fact I remember telling him, 'Take 'em all out.' And he said, 'We can't do that.' "

By the time Cusenza entered Modesto Junior College after graduating from Ceres High School and working for a year at Lucky Stores, he was considering becoming a soldier or a barber. "Why barbering? Well, I love sports, and the barbers always had the ball games on and were always talking sports."

Cusenza went on to the University of California at Berkeley and the Loyola University School of Dentistry. He credits his accomplishments to the schools and people who educated him.

"I think my arriving at this position, for whatever it's worth, is a product of my teachers at Ceres and my professors at Modesto Junior College. One of my biggest thrills is to come home—and this is home—and to practice in Modesto and become the dentist of my former instructors. It's just a good feeling."

"Education has done wonders for me," he says. "Hey, I come from the south side of the tracks in Ceres. My parents were immigrants from Italy. And Dad always stressed, 'Go to college, go to college' . . . If I can make it anyone can make it. I really feel that whatever this amounts to is an accumulation of the efforts of a lot of different people, especially my wife."

Scanning his resume, Cusenza looks over the clubs he has belonged to and the boards he has serve on: president of the Stanislaus State University Advisory Board, president of the Modesto Junior College Alumni Association, member of Modesto Rotary International, to name a few. After next year, when he'll be president of the dental association, he's looking forward to pouring some of his free time back into the community.

"I think if you're going to live in a community or you're going to live in a profession, that community, that profession is going to do something for you. You owe it to them to do something in return.

"The community has been good to me, and I'd like to come back and take part in it, pull the rope like everybody else when something needs to be done."

In the meantime, Cusenza is going to practice saying no—starting with the little things, like french fries.

BARRINGTON ELEMENTARY SCHOOL

HON. CHALMERS P. WYLIE

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 2, 1986

Mr. WYLIE. Mr. Speaker, Barrington Elementary School in my congressional district was selected recently to receive an elite and distinguished honor from the Secretary of Education, the Honorable William J. Bennett.

May I congratulate Barrington Elementary School, its faculty and students on receiving the Excellence in Education Award attesting to their superlative efforts and extraordinary achievement. Only 210 public schools were so honored nationwide, so it is indeed a source of great pride for me to represent this fine school.

The awards were based primarily on how well the schools used resources at their disposal and how well they met the needs of achievement in reading and mathematics, and on the schools's record of overcoming obstacles and sustaining progress.

Among the criteria utilized in selecting the schools were:

School organization, including its mission, goals and philosophy;

The instructional program, including curriculum and the character ethical development;

Instruction, including teacher evaluation and staff development;

School climate;

Efforts to make improvements and maintain high quality programs;

School-community relations; and

Student achievement.

I think Secretary Bennett said it best when announcing the award winners:

These fine public and private schools are as diverse as America itself, but they share a common attribute: they're good schools. They provide their young students with a solid foundation for later life. They have helped their students develop a strong core of skills and knowledge, good values and habits, and an enthusiastic attitude toward learning.

Naturally, Barrington Elementary School was quite pleased to receive this prestigious recognition of its educational efforts. Barrington Elementary School was presented with a special flag symbolizing outstanding educational achievement. In addition to the flag, ceremonies will be held to present a plaque to the school.

This year, which has been proclaimed by Congress and the President as the Year of the Elementary School, marks the first time that elementary schools have been awarded this honor. Public secondary schools have received comparable awards the past 3 years and private secondary schools have received comparable awards the past 2 years.

It has become quite clear that American education has no more precious resource than a first-rate elementary school. That is why it is so gratifying that Barrington Elementary School, one of the 210 finest examples nationwide, is in my congressional district. I salute the principal, Dr. Hugh T. Oakley, and wish for your school the very best in educational achievement during the coming year and the years to follow.

ROSH HASHANA

HON. WILLIAM F. CLINGER, JR.

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 2, 1986

Mr. CLINGER. Mr. Speaker, beginning at sundown tomorrow, October 3, my Jewish constituents and Jews throughout the United States and the world will celebrate Rosh Hashana and begin the New Year, 5747. This period begins a time in which Jews will reflect upon their past actions and solemnly review areas whereupon they must strive to become more worthy of themselves in the eyes of G - d. Through prayer, self-reflection, and acts of charity, they will seek to be included in the Book of Life for a good year.

This past year saw the release of "Natan ben Sharon" Shcharansky and other members of his family. We pray that in this new year we will see the release of many more Jews from the shackles of communism so that they might be able to emigrate to Israel and share in the celebration of Rosh Hashana. I would like to extend best wishes to all of my Jewish constitutents and friends. "May you be included in the Book of Life for a good year, L'Shannah Tovah Tikatevo" and we pray that this new year will bring peace to the Middle East and to Soviet Jews.

PERSONAL EXPLANATION

HON. BILL SCHUETTE

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 2, 1986

Mr. SCHUETTE. Mr. Speaker, on September 12, 1986, after rollcall 381, I was unavoidably absent due to unprecedented flooding in the 10th Congressional District of Michigan which hastened my return. With loss of life and unknown property damage and destruction, I felt it necessary to miss the subsequent rollcall votes which occurred that day and return to the district.

Had I been present on rollcall 382, I would have voted "nay".

Had I been present on rollcall 383, I would have voted "yea".

PUBLIC COMMENDATION FOR SERVICE TO THE COMMUNITY

HON. JACK FIELDS

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 2, 1986

Mr. FIELDS. Mr. Speaker, we often go about our business in Washington concerned with issues and events that have national and

international focus, overlooking events taking place on the local level in our States and districts. Yet, it is often events and actions at the local level that affect the lives and quality of life of our constituents far more than those in Washington. At the local level there are men and women, in both private and public service, whose dedication and concerned efforts improve the lives and protect the property of our citizens on a daily basis. These are people who rarely receive the appropriate public commendations. President Reagan has set a good example of publically recognizing some of our "daily heroes."

In imitation of the President's example, I am pleased to place in the RECORD a story from the Gainesville Daily Register, and also include for public commendation the names of those citizens, public and private, who labored diligently and swiftly in behalf of a citizen and a community victimized by crime.

Mr. Speaker, I invite my colleagues to join me in the public commendation of the following for service to the citizens of Cooke County, TX: Sheriff John Aston and Investigator J.D. Dutton; Jim Westfall and Kent McKee; Sanger Police Department members Benny Erwin, Sergeant Earheart and Ron Parker; civilians Travis Toups and Bobby Hanks; Ranger Weldon Lucas, Charles Barber and Sgt. Robert Ferrell; and Don King of the DA's office.

JURY INDICTS THREE

(By Paul Brown)

In its regular meeting Thursday, the Cooke County Grand Jury returned a passel of indictments that will enter the record books for one reason or another.

Last week's indictments include the longest ever returned in the county and three indictments for the largest county burglary in the last three years.

One Gainesville man and two Sanger men were indicted for the June 19 burglary of the home of Thomas Edwin Bass, Route 6, Gainesville, Sheriff John Aston said Monday.

Steve Edward Lance, 21, and Charles Wayne Tuttle, 21, both of Sanger, were arrested on burglary charges Sept. 11 and held in the Cooke County Jail in lieu of $30,000 bond each.

George Ray Cox, 48, of Gainesville, was arrested last Friday on charges that he masterminded the alleged burglary that netted over $58,000 in rifles, shotguns, handguns, jewelry, food, liquor, household appliances and farm equipment. During the burglary, the house received almost $12,000 damage, Aston said.

All three men were released on bond Friday afternoon. Lance and Tuttle's bonds were reduced to $5,000 each, while Cox's bond was set at $25,000, Aston said.

"This was a very big case for the department and I'd like to give J.D. Dutton a good slap on the back for a job well done. This was his first big case since becoming chief investigator and he pursued the leads very persistently and used some very modern investigative techniques to solve the case," Aston said.

So far almost $29,000 worth of items have been recovered, mostly rifles and shotguns and some of the equipment, Aston said.

"None of the handguns or jewelry have been found yet, but we are still investigating and trying to track them down," he said.

Cox, a life-time resident of Cooke County and a self-employed fabricator of awnings, is a suspect in several other burglary cases still under investigation, Aston said.

A TRIBUTE TO REVEREND HERBERT G. NAHAS

HON. PAUL E. KANJORSKI

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 2, 1986

Mr. KANJORSKI. Mr. Speaker, I take great pleasure in paying tribute to a man who has contributed a great deal to his community, Rev. Herbert G. Nahas. This week Father Herbert will be honored for his 35 years of dedicated service to St. Mary's Antiochan Orthodox Church, and I am pleased to take this opportunity to join his many friends and admirers in showing our appreciation for his sincere devotion to our area of the Wyoming Valley.

The son of Rev. George H. Nahas and Elizabeth Kassab Nahas of Pawtucket, RI, Herbert George Nahas developed an early interest in theology. After graduating from Brown University, he served his country in military intelligence during World War II and participated in the invasion of North Africa. Later he was assigned to the Allied Force Staff Headquarters of General Eisenhower in Algiers and Naples.

Following his military career, he studied with Father Michael G. Simon of Paterson, New Jersey and Father Wakeem Dalack, Dean of the Brooklyn Cathedral. In 1949, Archbishop Anthony Bashir ordained Rev. Herbert G. Nahas into the ministry. He first served 3 years in the Church of St. George in Danbury, Connecticut before coming to St. Mary's Syrian Orthodox Church of Wilkes-Barre on October 1, 1951.

Reverend Nahas has served on the boards of directors of the local United Fund and Heart Association. He has spoken to more than a hundred civic and religious organizations in the area and has brought greater recognition to St. Mary's Church. In 1961, Father Nahas was elevated to the rank of Archpriest with the title "Exarch" by Metropolitan Archbishop Anthony. He led the fund drive for the new church building, which was completed in June 1969.

Mr. Speaker, Reverend Nahas has contributed greatly to the Wyoming Valley through his spiritual and civic leadership, and I am proud to take this opportunity to honor his 35 years of devoted service to our area.

OLDE SAWMILL ELEMENTARY SCHOOL

HON. CHALMERS P. WYLIE

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 2, 1986

Mr. WYLIE. Mr. Speaker, Olde Sawmill Elementary School in my congressional district was selected recently to receive an elite and distinguished honor from the Secretary of Education, the Honorable William J. Bennett.

May I congratulate Olde Sawmill Elementary School, its faculty and students on receiving the Excellence in Education Award attesting to their superlative efforts and extraordinary achievement. Only 210 public schools were so honored nationwide, so it is indeed a source of great pride for me to represent this fine school.

The awards were based primarily on how well the schools used resources at their disposal and how well they met the needs of achievement in reading and mathematics, and on the school's record of overcoming obstacles and sustaining progress.

Among the criteria utilized in selecting the schools were:

School organization, including its mission, goals and philosophy;

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Student achievement.

I think Secretary Bennett said it best when announcing the award winners:

These fine public and private schools are as diverse as America itself, but they share a common attribute; they're good schools. They provide their young students with a solid foundation for later life. They have helped their students develop a strong core of skills and knowledge, good values and habits, and an enthusiastic attitude toward learning.

Naturally, Olde Sawmill Elementary School was quite pleased to receive this prestigious recognition of its educational efforts. Olde Sawmill Elementary School was presented with a special flag symbolizing outstanding educational achievement. In addition to the flag, ceremonies will be held to present a plaque to the school.

This year, which has been proclaimed by Congress and the President as the Year of the Elementary School, marks the first time that elementary schools have been awarded this honor. Public secondary schools have received comparable awards the past 3 years and private secondary schools have received comparable awards the past 2 years.

It has become quite clear that American education has no more precious resource than a first-rate elementary school. That is why it is so gratifying that Olde Sawmill Elementary School, one of the 210 finest examples nationwide, is in my congressional district. I salute the principal, Mrs. Jean Russell, and wish for your school the very best in educational achievement during the coming year and the years to follow.

ST. CASIMIR'S CHURCH CELEBRATES CENTENNIAL

HON. PAUL E. KANJORSKI

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 2, 1986

Mr. KANJORSKI. Mr. Speaker, it is a great pleasure for me to take this opportunity to congratulate St. Casimir's Church of Freeland, PA, on the occasion of its centennial.

In 1885 the Rev. Michael J. Falihee, pastor of St. Ann's Church of Woodside requested land from coal baron Eckley B. Coxe in order to build a new church for Slavic-speaking immigrants. On March 4, 1986, the cornerstone was laid for St. Casimir's Church on South Ridge Street in Freeland. The church was formally dedicated on September 21, 1890.

St. Casimir's has undergone two major renovations and has been rededicated on both of these occasions. On September 10, 1961, St. Casimir's celebrated its 75th anniversary with a special Mass conducted by the Most Reverand Jerome Hannan, Bishop of Scranton. The occasion also marked the 25th anniversary in the priesthood of St. Casimir's pastor, Rev. Stanislaus Gorski.

Last year St. Casimir's centennial celebration began with monthly activities centered on the theme "God's love was and is among us." The 100th anniversary will culminate in a centennial Mass celebrated by the Most Reverand James C. Timlin, Bishop of Scranton, on October 12. Rev. Joseph Greskiewicz, pastor of St. Casimir's, will host a centennial banquet later in the day.

Religious faith has played an important role in the development of our Nation, and the 100-year history of St. Casimir's Church is testament to the continuing importance religion has in the lives of Americans. Mr. Speaker, I am honored to commemorate the distinguished history of St. Casimir's Church before my colleagues in the House of Representatives.

EAST TIMOR: CAUSE FOR CONTINUING CONCERN

HON. MATTHEW F. McHUGH

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 2, 1986

Mr. McHUGH. Mr. Speaker, last April, before President Reagan's visit to Indonesia, I was 1 of 124 Members of this House to sign a letter circulated by the gentleman from Ohio [Mr. HALL] regarding the situation in East Timor, a largely Roman Catholic territory invaded by Indonesia in 1975.

In responding to that letter, the State Department informed us that Secretary of State Shultz had "discussed the issue of alleged human rights violations in East Timor" with the Indonesian Foreign Minister during the course of the President's trip. The Secretary deserves credit for doing so.

The Department's response also went on to note that our Embassy in Jakarta would continue "to maintain a dialog with the Indonesian Government on this important issue."

Mr. Speaker, I believe the Embassy's attention should be directed toward a recent account of the brutal beating of a Roman Catholic priest by Indonesian soldiers on June 27. In addition, the arrest earlier this month of three students from East Timor would also seem to be a cause for concern for our Government. Amnesty International is particularly concerned that the students, two of whom are pursuing legal studies, may be subject to torture.

That the Congress remains concerned about the situation on East Timor should be clear to the Indonesian Government. For example, 135 Members of the House have cosponsored a resolution by the gentleman from Ohio [Mr. HALL] regarding the situation on that island.

In addition, the House Foreign Operations Subcommittee, on which I serve, highlighted its own concerns regarding the human rights situation in East Timor in our recent report on the foreign aid bill:

[From House Report 99-747]

EAST TIMOR, HUMAN RIGHTS

The Committee is concerned about continuing reports of human rights violations by the Indonesian Armed Forces on East Timor. The Committee believes that the Administration should take all appropriate measures to ensure that the Government of Indonesia takes actions to bring these abuses under control such as maintaining and expanding access to and guaranteeing freedom of movement in East Timor for humanitarian organizations so that such organizations can carry out their humanitarian operations to the fullest extent feasible; and guaranteeing full freedom of expression for an end to intimidation of the Roman Catholic Church in East Timor.

The Committee is also concerned about reports that a population control program has been imposed on East Timor by the occupying authorities, despite the severe depopulation of the island since the Indonesian invasion in 1975. It is the Committee expectation that population programs should be entirely voluntary, that adequate education is provided the participants and that the religious values of the East Timorese are respected.

One would hope that these bipartisan expressions of concern will lead to effective protection for the clergy and citizens of East Timor, and for the specific individuals whose cases I have cited in this statement.

THE INAUGURAL ADDRESS OF WILBERT JOHN LeMELLE

HON. BENJAMIN A. GILMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 2, 1986

Mr. GILMAN. Mr. Speaker, all of us in this Chamber have embraced and extolled the virtues of knowledge through institutions of higher learning. We are profoundly influenced by the knowledge we gather and exercise, as we enrich the community and the world in which we live, leaving behind a spirit of growth and challenge. It is within this framework that Wilbert J. LeMelle, the recently inaugurated president of Mercy College in the 22nd District of New York, which I represent has worked with passion and dedication, and with an eye toward meeting the challenge of providing access to quality higher education with conviction.

Mr. LeMelle has been a shining beacon upon the oft-muddied waters of institutional controversy, and his goals of access and quality of education in an increasingly globally interdependent world have been exercised with resolve and sensitivity.

During a time when the future of higher education seems to hang in the balance, Mr. LeMelle has provided the educational community and all individuals concerned with the intellectual growth of our Nation, with a humanitarian framework as he seeks to expand civil consciousness, passion, and action. At a time in which the fissure between those graced with intellectual prowess and financial resources, and those with barely a scintilla of these things becomes more pronounced, I found his inaugural remarks to be timely, as well as inspirational.

I would like to share his poignant views and convictions regarding higher education with our colleagues by inserting them into the CONGRESSIONAL RECORD at this point:

INAUGURAL ADDRESS, WILBERT JOHN LeMELLE, MERCY COLLEGE, NEW YORK, APRIL 27, 1986

Mr. Chairman, Ladies and Gentlemen, Friends and Colleagues.

All of the important things that are fitting for this occasion have just about been said and done. We at Mercy College have also added in the process a special luster to our history by including in the role of alumni the distinguished citizens we have just had the privilege of honoring for their outstanding contributions to us and to the world. It remains to me only to confirm my willing acceptance of the important responsibility that has been passed to me and to bring these ceremonies to a happy conclusion. To the members of the Board of Trustees, students, faculty. administrators and friends of Mercy College, I do indeed wish to make known my intention to try as best I can to fulfill the high hopes we share in common for the future of Mercy College.

Although we formally begin our work today it is already several months that I have had the privilege of being at Mercy College. This has been a bit of good fortune for me because this brief period has enabled me to already begin to understand and share in the deep attachment that characterizes the feelings of so many who have come to know our institution and the goals we have set for ourselves. The warm sentiments we bear are equally for what Mercy has already achieved as for what it hopes to become. For although we are a young institution in years, we are quite established in purpose and in the clearness with which we regard the mission we are pursuing. Mercy College emerged out of the idealism that inspired the followers of Catherine McAuley. That same vision inspires us today. Although Mercy's status has changed over the years its idealism has remained undaunted.

As we look towards the future and examine the prospects for the next phase of growth and development at Mercy we cannot avoid noting that we are happily beginning this process at a time when the country is in the midst of a stirring debate on the status of higher education. Over the past three years successive reports have counseled us to reclaim our cultural heritage through a return to the humanities, to restore excellence and integrity to the undergraduate curriculum in order to fully realize the potential of the American spirit, and to return to the basics in the liberal arts and sciences while still incorporating the goals of diversity and opportunity that characterize our American educational tradition. Similarly, the several calls for reform of teacher education have more recently been followed by the Holmes' Group recommendation for a radical shift in the way we prepare teachers for our elementary and secondary schools. The currency of discussion on the relationship of the humanities

to business and the role of the liberal arts in an era of increased technology is added evidence that higher education is in search of a new accommodation to the public attitudes that are looking more towards the uncertainties of the 1990s and beyond, than to the now failing order of the post war era.

The response of the higher education community to these concerns must obviously be as varied as our roles are different. Surely our major research universities must continue to maintain their preeminence as centers of serious scholarship and magnets for the ablest scholars at home and from around the world. At the same time our colleges, in keeping with their tradition, must equally seek to take up those challenges that relate to their special purposes. What seems to be the basic public demand of higher education in the country today is a new covenant; a new compact guaranteeing that the academy will fulfill its historic trust of intellectual leadership and service to society. The idea of a covenant aptly symbolizes the fundamental nature of the obligation we share in confronting with vigor and imagination the problems of educational renewal facing the country today.

If there is trouble in the land and a perceived decline in education, it is in no small measure attributable to a certain confusion and uncertainty among us who share in the responsibility for the delivery of education in society. For surely it must be clear to all who worry about the current crises in confidence in American eduction that, although we must continue to experiment with novel methodologies on how to acquire and transmit new knowledge, the mastery of basic learning skills and the discipline required in the learning process can have no substitutes. It is equally apparent that we face a crisis of goals in education in our country when evidence begins to mount that the awareness of a sensitive citizenry to real threats to our civic and social ideals seem to be fading. The inability to see or willingness to tolerate glaring inequities in our society, from real hunger and widening poverty to shrinking access to economic mobility for a growing segment of Americans, point to a dangerous numbing of a basic civic sensibility. The fall off of popular interest and public support for the continuing struggle against poverty, ignorance and disease overseas in the less developed areas of the world is another disturbing sign of the weakening commitment to the ideals of a caring society which our educational traditions have sought to promote and sustain.

At Mercy there are two issues, among the many that must be addressed, that have attracted our interest and are focusing our energies. The first is the matter of access and quality in education and the second concerns the implication a changed world community has for the college student looking towards the future. Our commitment to making access and quality a reality at Mercy derives first of all from the simple proposition that everyone should have access to a quality education and there is no inherent contradiction between these two goals. Access to excellence in education is not a privilege it is a right and it is our obligation to make it the norm. In a fundamental way it derives from the potential for intellectual growth and development that is shared equally by all women and men. That a right exists, however, is no guarantee that it will be extended or exercised.

This is particularly true of those rights that can be fulfilled only if adequate resources are available to support them. Higher education fits in this category and the university is the historical guarantor of its extension to all who would seriously work to obtain it. Moreover, the nature of the problem of access and quality is such that it must be seriously taken up if we are to faithfully fulfill the mission we have embraced. As a young institution, like older institutions before us, we have the flexibility to take on the pressing challenges of the historic moment. This is the real source of character and variety that have so enriched American higher education. Recognizing this truth the faculty at Mercy College has already demonstrated its interest in this challenge and our plans are to strongly support this commitment. This has been made abundantly clear by the Trustees of the College who have wisely encouraged and pointed us in this direction of high purpose and professional dedication.

Underlying all of this, however, is a shared sense at Mercy that our equal commitment to access and quality in education is not only a practical duty, but a moral responsibility, befitting an institution of higher learning that must be about the business of education in all its complexity and whatever its challenges. This is why we enthusiastically embrace our mission at Mercy and look to the future with confidence, knowing that achieving it is merely the fulfillment of our sacred institutional trust.

Greater access to higher education today is a response to social and political evolution. It is a reality which cannot be avoided. It is a social responsibility to which institutions of higher learning cannot be indifferent. Transmitting knowledge to whoever would seriously seek it is, after all, our business. Educating is that form of human enterprise for which we have the expertise and the job which colleges and universities have historically done for society.

We have developed considerable knowledge and experience at our college and at other institutions around the country which now afford us a better understanding of the learning needs of the varied college student population of today. In my view there is no incompatibility between access and quality in education. Our challenge is to find the formula, as colleges and universities have always succeeded in doing, for delivering that quality experience. Together with the Trustees, faculty, administration and students, we will chart our course and pursue our vision of Mercy College as an institution where quality professionally-oriented liberal learning is available to all who will work for it.

At the same time we have no illusion about the quality we seek or the large task we must undertake to achieve it. The closer we have looked the more we have become convinced that what we are seeking can best be found in a reaffirmation of the central importance of the liberal arts in our basic college curriculum. In brief the quality we are seeking is the intellectual experience that will produce the thinking, feeling and caring citizens whose measure of success in life will be the continuous pursuit of self-development and the common good. John Henry Newman long ago described exactly what this liberal educational experience consisted of:

"It is the education which gives man a clear view of his own opinions and judgments, a truth in developing them, an eloquence in expressing them, and a force in urging them. It teaches him to see things as they are, to go right to the point, to disengage a skein of thought, to detect what is sophisticated, and to discard what is irrelevant. It prepares him to fill any post with credit, and to master any subject with facility. It shows him how to accommodate himself to others, how to throw himself into their state of mind, how to bring before them his own, how to influence them, how to come to an understanding with them, how to hear with them. He is at home in any society, he has common ground with any class; he knows when to speak and when to be silent; he can ask a question pertinently, and gain a lesson reasonably, when he has nothing to impart himself; he is ever ready, and yet never in the way; he is a pleasant companion, and a comrade you can depend upon; he knows when to be serious and when to trifle, and he has sure tact which enables him to trifle with gracefulness and to be serious with effect.

"He has the repose of a mind that lives in itself, while it lives in the world, and which has resources for its happiness at home when it cannot go abroad. He has a gift which serves him in public and supports him in retirement,"

The excitement that surrounds our effort at Mercy to make access and quality a reality extends equally to the prospect that the educational experience that we provide may more and more broaden the appreciation of our students for the new internationalism that has transformed our world community. It is an oft repeated phrase but one well worth restating: The world is becoming smaller and the community of nation-states is gradually being transformed into a true world community. More and more we are being drawn into a world in which the myths of nationalism and sovereignty have less and less meaning and we need to be prepared to accept and function in the new reality of global interdependence. Our students, like students everywhere must be prepared to understand, communicate and work with people of different societies and cultures.

In the newly configured international community, in which global issues such as world environment, world economy and the management of world resources transcend traditional national concerns, new attitudes and our understanding of the new world order will be essential for the achievement of personal security and our collective survival. We will commit ourselves at Mercy to providing this understanding to our students and the wider community we serve.

And now, as I bring my brief remarks on the bright and exciting future of Mercy College to an end, I would like to note the source from which I have confidently drawn my optimism. First one could not expect a stronger commitment or wiser counsel than I have received from the Trustees of Mercy for the course on which the College has embarked. The same must be said about the enthusiastic support and professional dedication of the administrators and staff at the College. I am most appreciative of this confidence and will do everything possible to justify it in the months and years to come.

The faculty is central to the success and development of any institution and we at Mercy are particularly favored as we approach the future with a faculty that is distinguished in teaching and research as well as in its well-known caring attitude for our students. To you our faculty I pledge all available support that you might achieve your goals of excellence in teaching and distinction in research and honor to our institution. To the alumni and friends of Mercy

College I affirm a faithfulness to the Mercy tradition you have come to love and a commitment to make Mercy more and more an institution deserving of your loyalty and support. You should be interested in knowing that during the past few months we have had an opportunity to begin serious consideration of some important issues at the College such as enrollment management, to inaugurate a major revision of our curriculum, to set in process the development of a ten year mastere academic plan, to outline a major facilities construction program and to begin planning our first capital fund campaign.

Finally there is yet another source of encouragement that I have tapped in most everything I have done, but particularly in coming to Mercy, that I feel compelled to share with you, and that is, the essential influence my parents, Therese and Eloi LeMelle, had in developing my conviction on the importance of education and why it must be extended to all who would seriously pursue it. For both, their belief in education was second only to their faith, but held with no less conviction. Mom is 91 years young and decided to stay home today and I know it would be embarrassing to her for me to dwell on her role at any length, but it might be interesting to note that a measure of her conviction on the need for self-development compelled her to pursue formal education in her later years since it had been legally denied and unavailable to her during her growing years. The example and inspiration of Eloi, who I am sure is with us in spirit today, were overpowering.

Born in southwest Louisiana during reconstruction, without the legal right or fair chance at schooling during his youthful years, he educated himself through self-instruction during his maturing years. A mastery of spoken French, though his maternal language was Creole and his second language English, and an encyclopedic knowledge of U.S. political history were inspiring accomplishments for one denied access to schooling and the right to formal personal self-development. For me looking back today, the important lesson and the one I know he would want me to recall today is that every one can and should have a right to self-development, to access to a quality education. This goal I pledge to all of you we are committed to fulfilling at Mercy College.

PRESERVING THE FAMILY DAIRY FARM THROUGH THE ESTABLISHMENT OF A DAIRY TARGET PRICE PROGRAM

HON. STEVE GUNDERSON

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 2, 1986

Mr. GUNDERSON. Mr. Speaker, considerable study of the future course of Federal dairy policy will occur over the next 6 months both inside and outside the government.

First of all, the National Milk Producers Federation, the umbrella organization that represents about 70 percent of the milk marketed in the United States, has created a study committee to consider the future of the current dairy price support purchase program and whether it should be continued or replaced by an alternate program. I commend NMPF for this initiative and, specifically, for its open mind toward alternatives to the current purchase program.

At the governmental level, the National Dairy Policy Commission was just appointed by the Secretary. Its charge is to consider the present dairy program as well as other alternatives and recommend to Congress and the Secretary that program which, in its opinion, will best preserve the family farm structure of dairy agriculture while preventing large surpluses from building up. Clearly, the 18 dairy producers from around the country who will serve on this Commission will have their work cut out for them.

For their consideration and the consideration of other individuals and groups who are concerned with the future of Federal dairy policy, I am introducing the Dairy Target Price Act today. As its name suggests, this legislation targets the limited Federal dollars available for dairy price supports to the small and midsized family farmers who are the backbone of the American dairy industry. At the same time, it creates additional sales of dairy products while promoting the orderly marketing of those products.

TARGET PRICE PROGRAM

The Dairy Target Price Act establishes a target price for milk at $12.10 per hundredweight of 3.67 butterfat milk. A dairy producer will receive a direct deficiency payment from the Federal Government equal to the amount by which the target price exceeds the greater of the M–W series price for milk in a particular month and the recourse loan rate—$10.10 per hundredweight—available to plants and processors.

Direct deficiency payments to producers would be made on a quarterly basis. Further, deficiency payments would be limited to $20,000 per producer.

RECOURSE LOAN PROGRAM

Since the Dairy Target Price Act would replace the purchase program with a direct payment program to producers, a recourse loan program for plants and processors is created to provide for the orderly marketing of manufactured dairy products.

If a plant or processor cannot market a dairy product because of market conditions, a loan from the Federal Government in the amount of $10.10 per hundredweight of 3.67 butterfat milk equivalent in that product will be made available to the plant or processor to facilitate the storage of that product until market conditions improve.

These Federal loans would be made on a recourse basis and would bear interest at the rate of 12 percent per annum. Loans would have to be repaid within 9 months (270 days).

ADVANTAGES

A move to a target price and recourse loan program should present several advantages over the current dairy price support purchase program.

First of all, it is more equitable. At a time when greater limitations are being placed on Federal spending, it is simply unfair to provide the same level of Federal support—or, in the case of deficit reduction, the same reduction in the level of support—to family farmers and mammoth factories. By switching to a direct target price/deficiency payment program and capping annual benefits at $20,000—an approximate herd size of 75–80 cows, assuming average per-cow production levels—we can ensure that our limited Federal dollars are targeted to those in the dairy industry who need them most—small and midsized family dairy farmers.

Second, it is better for consumers. By establishing a direct payment program rather than artificially intervening in the market, the cost of dairy products to consumers will go down. Dr. Bob Cropp of the University of Wisconsin Extension estimates that this will result in up to an additional 2 billion pounds of sales of dairy products annually. That, in turn, will help close the gap between supply and demand for dairy products in our economy.

Third, the cost of the dairy program would be reduced. Again, Dr. Bob Cropp estimates that the cost of this dairy target price program should be $1.5 billion or less annually. This compares favorably to the average annual cost of the purchase program of $2.1 billion over the last 6 years. Additionally, there would no longer be any Government storage charges—such as are presently incurred by the 237 million pounds of butter, 717 million pounds of cheese, and the 913 million pounds of nonfat dry milk currently in Government storage.

In short, Mr. Speaker, I commend the attention of the various study groups and commissions as well as anyone else who is interested in the future of the American dairy industry and Federal dairy policy to the Dairy Target Price Act. It is the most positive approach to preserving the family dairy farm and promoting greater consumption of wholesome dairy products that has been proposed to date.

PRIVATE LONG-TERM CARE INSURANCE: NEW EFFORT UNDER WAY TO INCREASE AVAILABILITY

HON. RON WYDEN

OF OREGON

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 2, 1986

Mr. WYDEN. Mr. Speaker, last week Dr. Otis Bowen, Secretary of Health and Human Services, convened a special task force charged with developing recommendations for increasing the availability of affordable, high quality private long term care insurance. The task force was created by passage of legislation I introduced last year.

In the next 9 months, the task force will develop recommendations for State regulatory action to stimulate the long term care market. HHS will report back to Congress on the implementation of these recommendations by the States.

The job in front of the tack force can be summed up simply: Congress wants an action to stimulate the long term care market. HHS will report back to Congress on the implementation of these recommendations by the States.

The job in front of the task force can be summed up simply: Congress wants an action plan for making long term care insurance available to the American people.

We don't need more studies to tell us what we already know—that private insurance pays only 1 percent of the long term care bill, that seniors are interested in long term care insurance if there is a good product, and that we need to be sensitive to consumer protections.

Fresh, new recommendations on how to address these problems are what the States and Congress are looking for. I'm hopeful the task force will look at a variety of models. Certainly, it makes sense to look at the possibility of adding private long term care insurance to existing benefit packages. Clearly, we need to look at ways to encourage our citizens to set aside funds for such coverage before the need is acute. Finally, perhaps a new quasi-public corporation—in partnership with the private sector—could assist in the financing of long term care.

As the task force makes its recommendations for State regulation of long term care insurance, twin goals should be kept in mind. First, the States must give the insurers adequate flexibility to get the product on the market. Second, consumers must be protected even as flexibility in regulation is attained. Advertising guidelines to protect consumers from marketing and agent abuse are also critical.

I'm convinced the key to the task force's success is a willingness to examine more than the traditional ideas of how to encourage socially valuable business initiatives. After last weeks vote on the tax bill, it is clear that the Congress wishes to see more economic decisions made for economic reasons—and hence, will be less likely to make tax incentives available.

I believe the task force can help make more quality, affordable long term care insurance available to the American people. After all, the insurance industry is a business. Like any other business, if there is demand for a product, and a good one is produced, consumers will buy it.

Finding solutions to the long term care insurance problem won't be easy. And, the task force is going to have to work quickly. The legislation creating the task force was signed in April and allowed 18 months for task force meetings. Unfortunately, the first meeting was not held until September, leaving only 12 months for development of its recommendations. However, I have met several times with Dennis DeWitt, the executive director of the task force, and Dan Bourque, its chairman, and I'm very much impressed with their commitment to produce real results.

Over the next 12 months, I am looking forward to working closely with the task force and sharing their recommendations with my colleagues.

The following are members of the task force:

TASK FORCE ON LONG TERM HEALTH CARE POLICIES MEMBERS

Daniel P. Bourque, president, National Committee for Quality Health Care, Washington, D.C.; task force chairman.

Linda Aiken, R.N., vice president, Robert Wood Johnson Foundation, Princeton, N.J.

Bedford H. Berrey, M.D., medical director, National Alliance of Senior Citizens, Midlothian, Va.

Virginia Lee Boyack, Ph.D., president, Virginia Boyack & Assoc., Los Angeles, Calif.

D. Earl Brown, M.D., associate deputy chief medical director, Veterans Administration, Reston, Va.

Burton E. Burton, president, employees benefits division, Aetna Life and Casualty, West Hartford, Conn.

S. David Childers, insurance commissioner, state of Arizona, Scottsdale, Ariz.

Gregory L. Coler, director, Illinois Department of Public Aid, Springfield, Ill.

Josephine M. Driscoll, insurance commissioner, state of Oregon, Salem, Ore.

Wilda M. Ferguson, commissioner of Virginia Department on Aging, Richmond, Va.

Stephen F. Gibbens, retired, former director, division of long term care, state of California, Montecito, Calif.

F. Peter Libassi, senior vice president, The Travelers Companies, West Hartford, Conn.

Anthony M. Marlon, M.D., president, Sierra Health Services, Las Vegas, Nev.

Robert B. Maxwell, retired, vice president, American Association of Retired Persons, Crossville, Tenn.

Nancy E. Rehkamp, executive director, Sister Kenny Institute, Oakdale, Minn.

Malcolm, O. Scamahorn, M.D., family practitioner, Pittsboro, Ind.

Dale Thompson, administrator, Cambridge Health Care Center, Cambridge, Minn.

Paul S. Wise, retired, formerly chief executive officer, Alliance of American Insurers, Carefree, Ariz.

FREE ENTERPRISE SPIRIT IS ALIVE IN SMALL TOWN AMERICA

HON. GENE TAYLOR

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 2, 1986

Mr. TAYLOR. Mr. Speaker, I think it is important to remember during these tough economic times for rural and small town America that the long-time spirit of free enterprise in small business ownership remains intact. No better evidence of this can be found than in Bill and Sandy Jones of Bolivar, MO, whose store, Hacker's Dress Shop, recently celebrated its 50th anniversary in business.

When this proud tradition of providing service to the people of Polk County was celebrated this summer, the Bolivar Herald-Free Press reported on the event. I commend that article, which follows, to my colleagues' attention.

GOLDEN ANNIVERSARY

HACKER'S KEEPS BUSINESS IN THE FAMILY FOR 50 YEARS

Saturday was a double anniversary for Bill Jones, owner (along with wife Sandy and daughter Jill) of Hacker's Dress Shop on the northwest corner of the Bolivar square.

First, it was the 50th anniversary of the store itself, which his mother, Carrie Hacker Jones, opened in 1936. And second, it was the 18th anniversary of the day that Jones started full-time with the business.

"I had no idea I'd ever end up in Bolivar," Jones said Saturday. "When I was growing up I didn't think I wanted to be a part of the store. I was working for a real estate corporation in St. Louis and Mother wanted me to come back and help her." He did, and then he met Sandy, and his perspective on small-town life changed.

"I found out I liked the business, and I wanted to stay in Bolivar to raise a family," he said.

Bill and Sandy bought the store from his mother 11 years ago.

"I do stuff now I never dreamed I could do," said Sandy, who was a speech and drama major in college, "such as dressing the windows. I had never had a business course and knew nothing about owning a dress shop."

Hacker's began 50 years ago after Carrie Hacker Jones' identical twin sister, Clara King, had opened a store under the name of King's in Stockton. She talked Carrie into managing a similar store in Bolivar.

"She liked it so well she ended up buying it," Jones said. Clara sold out the Stockton store many years ago, but the business has come full circle: The Joneses opened a second Hacker's in Stockton in 1982.

Several present and former employees of Hacker's were on hand Saturday for the festivities associated with the 50th anniversary.

Marcine Reed worked at the store on a part-time basis from 1937-39 and remembers that she got paid a dollar a day, plus one percent commission.

"On a good day you could make $1.10," she said, laughing. "And that was a fair wage. I always felt that Carrie paid very well. She was always good to me." Mrs. Reed moved away from Bolivar in 1940 following her marriage, and after living in California and Illinois, among other places, she and her husband David have recently moved back to Bolivar.

"Carrie always had excellent taste and business sense," Mrs. Reed said. "The fashions were lovely, and she catered to everyone."

Marie Redd, who has worked at Hacker's for more than 30 years, said she has seen a lot of fashion changes through the years.

"I've seen the short, the long and the middle," she said. "It's been a wonderful place to work. I've met some wonderful people. I wouldn't move away from here for anything."

Betsy Maas' first job for the Joneses was babysitting Jill, who is now 15. She later started working part-time at the store, and worked summers and Christmas vacations after she started to college.

Helen Breshears said she was working at the Betty Gay shop in Springfield when Carrie asked her to come and work for her 40 years ago.

"We were friends as well. We always had a good time together," she said.

The store was crowded Saturday as well-wishers dropped in, flowers were delivered, and customers took advantage of the anniversary sale.

Wayne Glenn, "The Old Record Collector" on KTXR, did a live broadcast from the store, and Mary Alice Leary of KOZK was on hand to do a taped feature which will be broadcast at 7:30 p.m. July 16 on "Ozarks Magazine" on Channel 21.

"You don't realize what a big thing a golden anniversary is until you think how few businesses reach 50 years," Jones said.

SOVIET PERSECUTION OF CHRISTIANS

HON. JAMES J. FLORIO

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 2, 1986

Mr. FLORIO. Mr. Speaker, one of the more important functions of the United States Congress is to speak out in opposition to abuses of human rights in foreign nations. As a member of the Congressional Human Rights Caucus, I have been able to play a part in this.

One area of concern that we do not often hear of is repression of the practice of Christianity in the Soviet Union. The caucus recently held a briefing on this subject, featuring a Soviet emigre who spoke freely about the conditions in the Soviet Union.

The plight of that emigre was described in a memorandum written for me by one of the talented volunteer interns in my office this semester, Panayotis Lambrakopoulos. A senior at Georgetown University, Mr. Lambrakopoulos has described this issue in a concise but poignant manner.

The memo follows:

SEPTEMBER 23, 1986

Re Visit Of Lydia Staskevich.

To: James J. Florio.

From: Panayotis Lambrakopoulos, Intern.

I recently attended a Human Rights Caucus briefing with an individual who had recently emigrated from the Soviet Union and who discussed the persecution she faced as she attempted to preserve her religious convictions. I thought you would be interested in a summary of the briefing.

During her visit to Congress, accompanied by members of the Congressional Human Rights Caucus, Lydia Staskevich described the unrelenting persecution that she, her family, and thousands of other Soviet citizens face daily in their attempts to worship in the Christian faith. Allowed to emigrate only recently following intense pressure from Congress and human rights organizations, Mrs. Staskevich detailed her plight and that of her fellow countrymen. Harassed for the mere crime of educating their children in their religious traditions, denied the basic human rights of free speech, prevented from attending their churches with peace of mind, these victims of Soviet persecution are threatened with imprisonment and internal exile in the cold wastelands of Siberia.

Echoing the concerns of the Soviet Jewish community, which you visited several months ago, the Christian community in the Soviet Union is not allowed to worship freely. Worship of any sort is regulated through the registration of individual churches, and attendance is closely watched by agents of the KGB. In many cases, the persecution takes the form of heavy fines, such as the imposition of a punitive fifty rubles for each performance of the mass by a priest.

Mrs. Staskevich reminded us of the uncertainty of her life. When visited by Congressman Benjamin Gilman in her Moscow home, she had packed a small suitcase filled with her possessions. In response to an anxious question, she replied that she had not packed her bags in anticipation of emigrating to the United States. Rather, she was waiting in fearful anticipation for the KGB to imprison her in a gulag.

The dilemma of the Christian community in the Soviet Union is a poignant one. Torn between love for their country and love of their God, they must choose their allegiance; in so doing, they give up what they do not choose. If they choose their country, they must submit themselves to a rigidly controlled system of churches. The state schedules any prayer meetings and prohibits parents from teaching their children in the ways of their religion. In their churches, they pray alongside watchful KGB agents who are always ready to accuse them of treason against the State. But if they choose their God, they give up basic freedoms and rights, such as the freedom to associate, the freedom to move about their homes, and even the right to bring up their children in their own homes. The mere possession of the Bible brings down the accusation of espionage and subversion. Teaching their children results in the placement of the children in state-run foster homes.

Yet Christians such as Mrs. Staskevich have chosen to emigrate, going through an arduous and uncertain process. Forced to leave the country that they love, their friends, and their families, still they choose the inalienable freedoms that they hope to find in the United States.

Mrs. Staskevich and members of the Human Rights Caucus urged us to be active in the programs offered by the Caucus. To effect change, they urged us to adopt Christian families in the Soviet Union and to work on their behalf so that they may at least come to a country where the state will respect and not denigrate their religion and their rights. In the past, publicity has worked. In the future, publicizing the Soviet violations of the Geneva and the United Nations resolutions on human rights can indeed result in individual successes for the beleaguered Christians and Jews in the Soviet Union.

WINDERMERE ELEMENTARY SCHOOL

HON. CHALMERS P. WYLIE

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 2, 1986

Mr. WYLIE. Mr. Speaker, Windermere Elementary School in my congressional district was selected recently to receive an elite and distinguished honor from the Secretary of Education, the Honorable William J. Bennett.

May I congratulate Windermere Elementary School, its faculty and students on receiving the Excellence in Education award attesting to their superlative efforts and extraordinary achievement. Only 210 public schools were so honored nationwide, so it is indeed a source of great pride for me to represent this fine school.

The awards were based primarily on how well the schools used resources at their disposal and how well they met the needs of achievement in reading and mathematics, and on the school's record of overcoming obstacles and sustaining progress.

Among the criteria utilized in selecting the schools were:

School organization, including its mission, goals and philosophy;

The instructional programs, including curriculum and the character ethical development;

Instruction, including teacher evaluation and staff development;

School climate;

Efforts to make improvements and maintain high quality programs;

School-community relations; and

Student achievement.

I think Secretary Bennett said it best when announcing the award winners:

These fine public and private schools are as diverse as America itself, but they share a common attribute: they're good schools. They provide their young students with a solid foundation for later life. They have helped their students develop a strong core of skills and knowledge, good values and habits, and an enthusiastic attitude toward learning.

Naturally, Windermere Elementary School was quite pleased to receive this prestigious recognition of its educational efforts. Windermere Elementary School was presented with a special flag symbolizing outstanding educational achievement. In addition to the flag, ceremonies will be held to present a plaque to the school.

This year, which has been proclaimed by Congress and the President as the Year of the Elementary School, marks the first time that elementary schools have been awarded this honor. Public secondary schools have received comparable awards the past 3 years and private secondary schools have received comparable awards the past 2 years.

It has become quite clear that American education has no more precious resource than a first-rate elementary school. That is why it is so gratifying that Windermere Elementary School, one of the 210 finest examples nationwide, is in my congressional district. I salute the principal, Dr. Alan J. Yarletts, and wish for your school the very best in educational achievement during the coming year and the years to follow.

TRIBUTE TO HON. JOHN FLYNN—A NEW YORK STATESMAN OF DISTINCTION

HON. MARIO BIAGGI

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 2, 1986

Mr. BIAGGI. Mr. Speaker, I rise today to pay tribute to an extraordinary public servant and gentleman, State Senator John Flynn of the 35th Senatorial District of New York. John Flynn has few peers, but many who admire and respect him for his outstanding commitment to public service.

"Chippie" Flynn, a lifelong resident of the city of Yonkers, which I am proud to represent in the House, has elected to retire at the end of this term of the New York State Legislature. He has served the people of Yonkers in the State senate with unique distinction and great effectiveness for the past 20 years. This followed an equally distinguished tenure as mayor of the city of Yonkers between 1961 and 1965.

As mayor, Chippie Flynn had many accomplishments. Among these are the creation of the Yonkers Parking Authority, the Yonkers

Youth Board, the human rights commission, the police cadet corps, and the development of the first senior citizen center in Yonkers.

As State senator, he amassed a legislative record of accomplishments as few others have in that same period of time. He, as a senator, has been responsible for seeing approximately 650 bills become law. These include the Flynn Act of 1974, preventing discrimination of the disabled; tax exemption for those over 62 years of age with an income of less than $10,250; nondriver ID cards, binding arbitration for police and firemen; the first legislation on acupuncture, and the OSHA Safety of Workers bill.

During Senator Flynn's State service, he has been appointed Chairman of Cities—which includes New York City—chairman of the Select Committee on the Disabled and he has served as chairman of civil service and pensions. In addition, he has served as a member of the Committee on Banks, Health, Labor, Finance, Housing and Rules.

There is one special area where Senator Flynn and I have a combined interest. Chippie served as the first chairman of the State Senate Committee on Aging in Albany.

I have had the pleasure of serving as an original member of the House Select Committee on Aging since its inception. Together, Senator Flynn and I have worked on a number of important legislative initiatives combining State and Federal resources to aid our senior citizens. He has been a leader in the effort to lower out-of-pocket costs for prescription drugs for New York State's senior citizens. Senator Flynn helped to champion the Community Services for the Elderly Act in New York which served to complement many of the programs and activities found in the Older Americans Act out of Washington. Finally, he should be commended for his leadership on behalf of the supplemental nutrition program in New York which is so closely related to the nutrition programs under the Older Americans Act.

There is no question that John Flynn leaves a sterling legacy of legislative accomplishments. Yet, his constituents will best remember Chippie as a man of the people. Chippie has been the type of State senator who seems to know everyone in his constituency. This was for good reason, since he has lived in Yonkers his entire life. Yet, Chippie extended himself beyond being a mere resident and attended every conceivable function he could in his district. It was not unusual to find him at 10 to 15 events in the same day. Yet, it was that accessibility, that commitment, that love for his constituents that best characterizes John Flynn.

I will miss John Flynn in the State senate. We have worked together on many endeavors. And, just as important has been the wise counsel he would so often provide to me. But, there is one thing that is absolutely certain about John Flynn—he will remain active and involved and working for the good of his people—his neighbors, his friends—no matter where he is. He is that type of man—dedicated, devoted, and committed.

John Flynn has made us proud and I wish to salute him upon his retirement. I also wish to pay special tribute to John's family, his wife Ruth, whose involvement in the community almost equals her husband's in enthusiasm and commitment, and to their four lovely daughters. I thank them for letting the city of Yonkers share in John's life.

THE EMPLOYEE DRUG TESTING PROTECTION ACT

HON. CHARLES E. SCHUMER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 2, 1986

Mr. SCHUMER. Mr. Speaker, recently I introduced H.R. 5530, the Employee Drug Testing Protection Act, which mandates cautious guidelines for the use of drug testing in the public and private sectors. The bill was drafted after a great deal of research and thought, and I would like to share with my colleagues a detailed explanation of my views on this important issue.

In the search for answers to the terrible problem of drug abuse, many in our society have been urging the adoption of a widespread mandatory drug testing program. Although these advocates are surely motivated by the desire to help eliminate the scourge of drug abuse, they seem not to understand that huge routine testing programs would create more problems than they would solve.

The tests have the potential to be alarmingly inaccurate as will be detailed below. They can falsely find drugs in innocent people, labeling them abusers and forcing on them the difficult burden of proving their innocence. The tests also frequently failed to detect drugs in users, so that employers can spend millions of dollars on drug tests only to be left with a continuing uncertainty about the level of drug use in their firms.

In addition, testing would be fatally destructive of the trust that must exist between the people and their leaders and between employers and their employees for our open society to flourish. Last, random drug testing without probable cause is contrary to the constitutional protections that Americans count on to secure and maintain their individual liberty. The loss of these precious rights is too high a price to pay for an idea that even without these problems has many practical shortcomings.

At the same time, however, it is not in the interests of the country to eliminate drug testing completely. When the problems of drug testing are balanced against the potential harm to innocent people that might be caused by an employee high on drugs, it becomes clear that drug testing, in some circumstances, makes sense.

Accordingly, I have introduced legislation that lays out the following guidelines for drug testing:

First. Testing would be limited to employees in positions which involve public health or safety or national security, or to employees who exhibit signs of drug abuse,

Second. For employees who are tested, every initial positive result would be confirmed by the more accurate gas chromatography/mass spectrometry technology, and

Third. Employees would be guaranteed access to a detailed report on any urine tests, including exact lab results.

Even if drug testing were completely reliable, random drug testing of Federal employees would destroy the trust between the Government and the governed that must exist in a free society. It requires citizens to submit to a test to prove that they have not committed an act they may not even be suspected of committing. Put simply, it requires individuals to prove that they have been behaving lawfully. Such a program hardly differs from random searches of our homes for drugs, yet it is unlikely that anyone would suggest such a tactic in the war on drugs. We cannot function as a democracy if the Government sanctions programs that treat every citizen as a suspected lawbreaker until they can can prove their innocence.

Random drug testing of Government employees also raises serious constitutional questions. The Federal courts have interpreted the fourth amendment to the Constitution to mean that in general a warrant based on probable cause is required before an individual's home or body can be searched. This probable cause requirement has also been held to apply to the extraction of bodily fluids, including urine. With respect to drug testing, the courts have found that in general probable cause is required before the Government can require an individual to submit to such tests.

The seeming willingness by some to ignore these constitutional protections is surely stimulated by the understandable frustration with more traditional strategies to fight drug abuse. Drug testing advocates believe that if we test millions of people for drugs we will discover a significant quantity of drug abusers and will thus be making progress. Unfortunately, this progress will be very small and will be achieved at great cost to the individual rights of the people involved.

While relations between private employers and their employees are not governed by the same constitutional requirements that protect individuals from intrusions by Government, random drug testing should still be resisted. The problems that are inherent in administering a fair drug testing program, problems discussed below, should be reason enough to prohibit drug testing in the private sector. Unfortunately, many private employers have taken advantage of the lack of restrictions and imposed mandatory drug testing programs on their employees. More than 90 percent of the drug testing in the United States is now conducted in the private sector.

To their credit, some large companies, Hewlett-Packard for one, have already debated the merits of testing programs and have decided that unless there is probable cause or a valid security justification drug testing violates individual privacy and is unwarranted. However, the trend appears to be in the opposite direction. Such giant corporations as IBM and General Electric have announced that they will begin drug testing programs.

Privacy and constitutional problems inherent in massive drug testing programs are exacerbated by the fact that tests are unreliable and costly. In fact, the more reliable the tests become, the more expensive they are. Thus,

an unacceptable tradeoff between cost and accuracy becomes an issue. These are important considerations especially when advocates of testing envision imposing severe sanctions for those who test positive and who advocate testing on a major scale.

Drug tests are not 100 percent accurate. There are both "false positive" and "false negative" test results. A false positive result is one in which the test indicates the individual has used drugs when in fact he has not. A false negative means that the person did use drugs but the test did not detect it. False positives and false negatives may be produced for a variety of reasons. First, these results are inherent in the design of the tests. In virtually all clinical laboratory tests there is a tradeoff between false positives and false negatives. By trying to eliminate false positives the incidence of false negatives is increased and vice versa. Test manufacturers try to strike an appropriate balance. This means, however, that a certain percentage of both false positives and false negatives are tolerated.

A second cause of false positive results is that substances other than illicit drugs can produce positive results. Over-the-counter medications and legitimate prescription drugs can affect test results. In fact, consumption of certain foods, such as coffee and poppy seeds, can trigger a positive result.

A third cause of false positive and false negative results is poor technique by the testing lab. The tests are only as good as the personnel who use them. Unfortunately, human error and sloppiness is an all too frequent occurrence. Several studies have demonstrated significant shortcomings in producing accurate test results. In one study, conducted by scientists at the Centers for Disease Control [CDC], 13 labs were sent 100 urine samples to be tested for various drugs of abuse. Some of the sample were spiked with the drug to be tested for and others were free of drugs. The labs did not know that the samples came from the CDC and that the lab was being tested.

This blind study found that labs can falsely conclude someone has used drugs from 6 to 66 percent of the time. The figures also show that labs can fail to detect the presence of drugs as frequently as 100 percent of the time.

Following is a summary of the CDC study:

OVERALL DRUG TESTING ACCURACY: RESULTS OF A BLIND STUDY OF 13 MAJOR DRUG-TESTING LABS

[In percent]

Drug	Average correct response rate	Range of correct response rates[2]
Percentage of drug-spiked samples correctly identified as positive:		
Cocaine	36	0–100
Amphetamines	31	0–81
Methadone	88	67–100
Codeine	45	0–100
Morphine	38	0–95
Barbiturates	41	6–89
Percentage of drug-free samples correctly identified as negative:		
Cocaine	99	94–100
Amphetamines	97	63–100
Methadone	88	34–100
Codeine	99	93–100
Morphine	98	90–100
Barbiturates	100	94–100

[1] Average correct response rate: Measures the overall frequency of correct testing at the 13 labs in the survey. That is, a 36-percent correct response rate for cocaine in the 1st chart means that the labs detected cocaine in only 36 of every 100 samples actually containing cocaine.

[2] Range of correct response rates: Lists the best and worst lab performances. That is, the 34 percent to 100 percent range for methadone in the 2d chart means that the least accurate lab correctly detected the absence of methadone only 34 percent of the time while the best lab correctly found no methadone 100 percent of the time.

Source: "Journal of the American Medical Association," Apr. 26, 1985, vol. 253, No. 16, pp 2382–2387. The article lists the result of a blind study conducted by the Centers for Disease Control in conjunction with the National Institute for Drug Abuse in 1981. Although the original study was performed 5 years ago, experts confirm that a wide discrepancy in proficiency persists. As one put it: "Forty percent of the labs out there are useless."

In addition to these cases of incorrect test results there is also the possibility of mislabeling or mishandling of samples, as well as a plethora of other glitches that can occur between the bathroom and the lab.

The seriousness of an improper test result cannot be overemphasized. An individual who is labeled a drug abuser will have a difficult time proving that he did not use drugs. Since it is virtually impossible to prove a negative the consequences of being labeled a drug user, possibly including the loss of a job, may be unavoidable.

There is also the administrative nightmare of coping with large numbers of incorrect test results. For example, the Army has already been forced to notify more than 70,000 soldiers that disciplinary action taken against them as a result of false test results would be rescinded. The scope of the problem created by such results would be intolerable in any meaningful program.

In order to avoid these problems, a drug testing program must be carefully designed and administered. This means that with only limited exceptions testing should be restricted to those individuals the employer has probable cause to suspect is a drug user. Few would argue that testing would be unreasonable for an employee showing outward signs of physical infirmity or impairment that could reasonably be caused by drug use.

In addition, individuals who are engaged in certain occupations, those in which drug impairment might endanger the public, might also be appropriate candidates for testing. As with other issues concerning individual rights, a scale must be employed. The problems of drug testing must be balanced against the potential harm to innocent people. In some cases, as with airline pilots, clearly the problems with drug testing are outweighed.

Random mandatory drug testing will do nothing to help win the war on drugs. It will not only divert scarce resources but will also divert our attention from the truly effective ways to fight drug abuse. First, we must reduce the supply of drugs into this country, by beefing up interdiction programs and border patrols. Second, because it is impossible to completely eliminate the flow of drugs into this country, we must reduce the demand for drugs here at home, by educating all Americans to the hard fact of drug abuse. Third, we must guarantee that every drug abuser that requests treatment can get it immediately. Each day hundreds of drug abusers are turned away from treatment programs that are stretched to the limits of their capacity. It simply makes no sense to spend millions of dollars on a fishing expedition for drug users when admitted drug abusers cannot be treated.

Widespread drug testing is an ill-conceived, panicky response to the drug crisis. Our time and money should be spent on more serious proposals to reduce the supply of drugs into this country and the demand for those drugs.

FARM CREDIT ACT AMENDMENTS OF 1986

HON. ED JONES

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 2, 1986

Mr. JONES of Tennessee. Mr. Speaker, today I am introducing H.R. 5635, the Farm Credit Act Amendments of 1986, and I am pleased to note that 62 of my colleagues are joining me in this initiative.

The legislation I offer today includes several provisions that were originally contained in H.R. 5497, the Farm Credit System Borrower Interest Rate Relief Act of 1986, which I previously introduced on September 10, 1986. H.R. 5497 now has 138 cosponsors.

In sections identical to amendments in my previous bill, this new bill would repeal provisions in existing law that give the System's regulator, the Farm Credit Administration [FCA], the explicit authority to set interest rates which institutions in the System must charge their farmer, rancher and cooperative borrowers.

However, in addition to addressing the question of who should have the power of interest rate setting—the Federal regulator or the member-elected boards of directors of the Farm Credit banks—my new bill also includes:

A provision under which Farm Credit System banks could, subject to approval by the FCA, reduce the cost of their borrowed money by steps including refinancing long-term debt on which they are currently paying high interest rates or capitalizing their excess interest costs. The costs involved could be amortized by System banks and paid over a period of up to 20 years, and

A provision under which Farm Credit System institutions could, subject to FCA approval, amortize over a period of up to 20 years the unusual loan losses they have suffered in recent years due to a combination of factors including the depression in farm income and farm asset values.

This bill is by no means a solution to the basic and overriding problem which ravages American agriculture today: lack of profitability.

Too many agriculture producers are losing money and cannot pay or meet their financial obligations, including their loan payments. Farmland values across the Nation have constantly deteriorated over the past 5 years, and in some areas farm real estate is worth less than one-half its value at the beginning of the decade.

Farmers and ranchers are in serious trouble, and so are their lenders. The Farm Credit System, by law, is 100 percent dedicated to agriculture, and it holds nearly one-third of the outstanding farm debt today. For almost 70 years the Farm Credit System has been the cornerstone of finance in rural America. It has been a steady, reliable and affordable source of agriculture credit in good times and in bad times. Unfortunately, this is not as true today as it used to be.

If it were my choice alone, there are a number of different approaches I would prefer to take in trying to cope with the problems that have convinced me to introduce this bill today. However, sometimes we have to be realistic and accept what is practical instead of what may be preferable.

This legislation embodies that concept. It buys time at a critical period. It gives the Farm Credit System and its Federal regulator, the FCA, the tools to deal with a potentially explosive situation. At best, this bill is a short-term solution aimed at relieving the pressure until a more permanent answer can be found, and it does so without any cost to the taxpayer.

It is my hope that action can be scheduled on this bill promptly because I believe it is absolutely imperative that legislation be enacted to address the financial problems of the System and its borrowers before adjournment of the 99th Congress. We cannot go home in good conscience without having done something to help prevent a financial crisis in the Farm Credit System. Our Nation's agriculture and rural communities deserve better than neglect. They deserve our best efforts.

Following is a section-by-section explanation of the legislation I am introducing today, along with the text of the bill:

SECTION-BY-SECTION ANALYSIS OF THE FARM CREDIT ACT AMENDMENTS OF 1986—H.R. 5635

Section 1—Short Title

Section 1 provides that the bill may be cited as the "Farm Credit Act Amendments of 1986".

Section 2—Policy

Section 2 will add to the "Policy and Objectives" statement in section 1.1 of the Farm Credit Act of 1971 an expression of the policy of Congress (1) that the credit needs of farmers, ranchers, and their cooperatives are best served if the institutions of the Farm Credit System provide equitable and competitive interest rates to eligible borrowers, taking into consideration the creditworthiness and access to alternative sources of credit for borrowers, the cost of funds, including any costs of defeasance (see the analysis of section 4 below), operating costs of the institutions, including the costs of any loan loss amortization (see the description of section 7 below), the cost of servicing loans, the need to retain earnings to protect borrower's stock, and the volume of net new borrowing, and (2) that Farm Credit System institutions take action in accordance with the bill in such manner that borrowers from the institutions derive the greatest benefit practicable from it (except that in no case would any borrower be charged a rate that is below competitive market rates for similar loans from private lenders to borrowers of equivalent creditworthiness and access to alternative credit).

Section 3—Termination of Farm Credit Administration approval of interest rates charged by System institutions

Section 3 will delete from the Farm Credit Act the provisions found in sections 1.7, 2.4, and 3.10(a) that subject, to Farm Credit Administration approval, the loan interest rates established by the Federal land banks, the Federal intermediate credit banks, and the banks for cooperatives.

Section 4—Certain transactions with respect to System obligations

Section 4 will add to section 4.8 of the Farm Credit Act provisions that authorize each bank of the Farm Credit System, through December 31, 1988 (and with the approval of, and subject to conditions established by, the regulator—the Farm Credit Administration) to take measures that will permit the bank to reduce the costs of its borrowings. Each bank would be authorized to take one or more of the following actions—

(1) contracting with a third party, or with a System service organization that is established under the Farm Credit Act for the limited purposes of the bill and that is not to be included in the combined financial statements of other System institutions, with respect to payment of interest on the obligations of the bank and other System banks incurred before January 1, 1985, in consideration of the payment of market interest rates on such obligations, plus a premium;

(2) for the period July 1, 1986 through December 31, 1988, capitalizing interest costs on obligations incurred before January 1, 1985, in excess of the estimated prevailing market rates on Farm Credit obligations of similar maturities as of the date of the enactment of the bill; or

(3) other similar action.

Each bank also would be authorized, again with approval of and subject to conditions established by the Farm Credit Administration, to amortize, over a period of not to exceed 20 years, the capitalization of the premium, capitalization of interest expense, or like costs of any action taken under the provisions explained above.

While the Farm Credit Act presently authorizes System banks to purchase their own obligations and to make investments, section 4 will make clear that System banks may use measures that will permit (1) the payment of interest on debt incurred before January 1, 1985 (debt bearing interest much higher than the market rate on System obligations now being issued), through the payment of market rates on debt, plus a premium, or (2) during the designated period of July 1, 1986, through December 31, 1986, capitalization of the interest cost on such debt that exceeds the prevailing market rate on system obligations of similar maturities as of the date of enactment, or (3) taking other similar action. Also, it will permit the banks to amortize capitalization of the premium or the capitalized interest expense over a period not to exceed 20 years.

Section 5—Determination of interest rates

Section 5 contains amendments to the Farm Credit Act that conform sections 4.17 and 5.17(a)(5)(A) of the Act with the other interest rate amendments to the Act. References to FCA approval of interest rates would be removed from the Act while language preempting the application of State usury-type laws to loans of System institutions would be preserved. The amendment will have the result of making clear that interest rates on loans made by production credit associations are not subject to FCA approval.

Section 6—Termination of Farm Credit Administration approval of interest rates charged on direct and discounted loans.

Section 6 will delete from section 5.17(a)(5) of the Farm Credit Act a reference to FCA approval of interest on loans made or discounted by System institutions.

Section 7—Accounting

Section 7 will revise the provision of section 5.19(b) of the Farm Credit Act that requires that financial statements of system institutions be prepared in accordance with generally accepted accounting principles ("GAAP"). It will except from GAAP actions taken by System banks under section 4.8 of the Act, as amended by the conference substitute. It also states that, notwithstanding any other provisions of the Act (including the GAAP accounting requirement) and with the approval of and subject to conditions established by the FCA, System institutions, during the period of July 1, 1986, through December 31, 1988, could capitalize their provision for losses that exceeds one half of one percent of loans outstanding (which has customarily been the standard of System provision for losses) and amortize the capitalized amounts over a period of not to exceed 20 years.

This would allow System institutions to capitalize the extraordinary portion of their losses incurred in the recent past. Those losses, therefore, would continue on the System books, but they would be repayable from earnings in future years.

H.R. 5635

A bill to amend the Farm Credit Act of 1971 regarding interest rates charged by Farm Credit System institutions and financial operations of such institutions

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This subtitle may be cited as the "Farm Credit Act Amendments of 1986".

SEC. 2. POLICY.

Section 1.1 of the Farm Credit Act of 1971 (12 U.S.C. 2001) is amended by adding at the end thereof the following new subsection:

"(c) It is declared to be the policy of Congress that the credit needs of farmers, ranchers, and their cooperatives are best served if the institutions of the Farm Credit System provide equitable and competitive interest rates to eligible borrowers, taking into consideration the creditworthiness and access to alternative sources of credit for borrowers, the cost of funds, including any costs of defeasance under section 4.8(b), the operating costs of the institution, including the costs of any loan loss amortization under section 5.19(b), the cost of servicing loans, the need to retain earnings to protect borrowers' stock, and the volume of net new borrowing. Further, it is declared to be the policy of Congress that Farm Credit System institutions take action in accordance with the Farm Credit Act Amendments of 1986 in such manner that borrowers from the institutions derive the greatest benefit practicable from that Act: *Provided*, That in no case is any borrower to be charged a rate that is below competitive market rates for similar loans from private lenders to borrowers of equivalent creditworthiness and access to alternative credit.".

SEC. 3. TERMINATION OF FARM CREDIT ADMINISTRATION APPROVAL OF INTEREST RATES CHARGED BY SYSTEM INSTITUTIONS.

(a) FEDERAL LAND BANKS.—The first sentence of section 1.7 of the Farm Credit Act of 1971 (12 U.S.C. 2015) is amended by striking out ", with the approval of the Farm Credit Administration as provided in section 4.17 of this Act".

(b) FEDERAL INTERMEDIATE CREDIT BANKS.—The second sentence of section 2.4 of the Farm Credit Act of 1971 (12 U.S.C. 2075) is amended by striking out "with the approval of the Farm Credit Administration as provided in section 4.17 of this Act".

(c) BANKS FOR COOPERATIVES.—The first sentence of section 3.10(a) of the Farm Credit Act of 1971 (12 U.S.C. 2131(a)) is amended by striking out ", with the approval of the Farm Credit Administration as provided in section 4.17 of this Act".

SEC. 4. CERTAIN TRANSACTIONS WITH RESPECT TO SYSTEM OBLIGATIONS.

Section 4.8 of the Farm Credit Act of 1971 (12 U.S.C. 2159) is amended by—

(1) inserting the designation "(a)" after the heading; and

(2) adding at the end thereof the following:

"(b) Through December 31, 1988, each bank of the System, in addition to purchasing obligations as authorized by this Act, with the prior approval of the Farm Credit Administration and subject to such conditions as it may establish, may (1) reduce the cost of its borrowings by doing one or more of the following: (A) contracting with a third party, or an entity that is established as a limited purpose System institution under section 4.25 and that is not to be included in the combined financial statements of other System institutions, with respect to the payment of interest on the bank's obligations and the obligations of other banks incurred before January 1, 1985, in consideration of the payment of market interest rates on such obligations, plus a premium, or (B) for the period July 1, 1986, through December 31, 1988, capitalizing interest costs on obligations incurred before January 1, 1985, in excess of the estimated prevailing market rates on Farm Credit obligations of similar maturities as of the date of the enactment of this subsection, or (C) taking similar action; and (2) amortize, over a period of not to exceed 20 years, the capitalization of the premium, capitalization of interest expense, or like costs of any action taken under clause (1).".

SEC. 5. DETERMINATION OF INTEREST RATES.

Section 4.17 of the Farm Credit Act of 1971 (12 U.S.C. 2205) is amended by striking out the first sentence and inserting in lieu thereof the following: "Interest rates on loans from institutions of the Farm Credit System shall not be subject to any interest rate limitation imposed by any State constitution or statute or other laws. Such limitation is preempted for purposes of this Act.".

SEC. 6. TERMINATION OF FARM CREDIT ADMINISTRATION APPROVAL OF INTEREST RATES CHARGED ON DIRECT AND DISCOUNTED LOANS.

Section 5.17(a)(5)(A) of the Farm Credit Act of 1971 (12 U.S.C. 2252(a)(5)(A)) is amended by striking out "and on loans made or discounted by such institutions".

SEC. 7. ACCOUNTING.

Section 5.19(b) of the Farm Credit Act of 1971 (12 U.S.C. 2254(b)) is amended by striking out the second sentence and inserting in lieu thereof the following:

"Each such report shall contain financial statements prepared in accordance with generally accepted accounting principles, except with respect to any actions taken by any banks of the System under section 4.8(b), and contain such additional information as the Farm Credit Administration by regulation may require. Notwithstanding the provisions of the preceding sentence and any other provision of this Act, for the period July 1, 1986, through December 31, 1988, the institutions of the Farm Credit System, on the approval of the Farm Credit Administration and subject to such conditions as it may establish, may capitalize annually their provision for losses that is in excess of one-half of one percent of loans outstanding and may amortize such capitalized amounts over a period not to exceed 20 years.".

ORIGINAL COSPONSORS FARM CREDIT AMENDMENTS ACT OF 1986—OCTOBER 2, 1986

Mr. de la Garza, Mr. Madigan, Mr. Coleman of Missouri, Mr. Bedell, Mr. Brown of California, Mr. Bruce, Mr. Coelho, Mr. Combest, Mr. Emerson, Mr. Evans of Illinois.

Mr. Franklin, Mr. Glickman, Mr. Gunderson, Mr. Hatcher, Mr. Huckaby, Mr. Jeffords, Mr. Jones of North Carolina, Mr. Morrison of Washington, Mr. Staggers, Mr. Stallings.

Mr. Stangeland, Mr. Stenholm, Mr. Tallon, Mr. Thomas of Georgia, Mr. Akaka, Mr. Alexander, Mr. Anthony, Mr. Barnard, Mr. Bateman, Mr. Bevill.

Mr. Boehlert, Mr. Boner, Mr. Breaux, Mrs. Byron, Mr. Cooper, Mr. Dardin, Mr. Derrick, Mr. Dowdy, Mr. Durbin, Mr. Dyson.

Mr. Edgar, Mr. Flippo, Mr. Ford of Tennessee, Mr. Gaydos, Mr. Gilman, Mr. Gordon, Ms. Kaptur, Mr. Kolter, Mrs. Lloyd, Ms. Mikulski, Mr. Moakley.

Mr. Mollohan, Mr. Perkins, Mr. Rahall, Mr. Reid, Mr. Rowland, Mr. Shelby, Mr. Sundquist, Mr. Taylor, Mr. Valentine, Mr. Watkins, Mr. Weaver.

TREMONT ELEMENTARY SCHOOL

HON. CHALMERS P. WYLIE

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 2, 1986

Mr. WYLIE. Mr. Speaker, Tremont Elementary School in my congressional district was selected recently to receive an elite and distinguished honor from the Secretary of Education, the Honorable William J. Bennett.

May I congratulate Tremont Elementary School, its faculty and students on receiving the Excellence in Education Award attesting to their superlative efforts and extraordinary achievement. Only 210 public schools were so honored nationwide, so it is indeed a source of great pride for me to represent this fine school.

The awards were based primarily on how well the schools used resources at their disposal and how well they met the needs of achievement in reading and mathematics, and on the school's record of overcoming obstacles and sustaining progress.

Among the criteria utilized in selecting the schools were:

School organization, including its mission, goals, and philosophy;

The instructional program, including curriculum and the character ethical development; instruction, including teacher evaluation, and staff development;

School climate;

Efforts to make improvements and maintain high quality programs;

School-community relations; and,

Student achievement.

I think Secretary Bennett said it best when announcing the award winners.

These fine public and private schools are as diverse as America itself, but they share a common attribute: they're good schools. They provide their young students with a solid foundation for later life. They have helped their students develop a strong core of skills and knowledge, good values and habits, and an enthusiastic attitude toward learning.

Naturally, Tremont Elementary School was quite pleased to receive this prestigious recognition of its edfucational efforts. Tremont Elementary School was presented with a special flag symbolizing outstanding educational achievement. In addition to the flag, ceremonies will be held to present a plaque to the school.

This year, which has been proclaimed by Congress and the President as the Year of the Elementary School, marks the first time that elementary schools have been awarded this honor. Public secondary schools have received comparable awards the past 3 years and private secondary schools have received comparable awards the past 2 years.

It has become quite clear that American education has no more precious resource than a first-rate elementary school. That is why it is so gratifying that Tremont Elementary School, one of the 210 finest examples nationwide, is in my congessional district. I salute the principal, Dr. Phoebe A. Wienke, and wish for your school the very best in eduational achievement during the coming year and the years to follow.

TAIWAN'S PROGRESSIVE DEMOCRATIC PARTY

HON. STEPHEN J. SOLARZ

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 2, 1986

Mr. SOLARZ. Mr. Speaker, last weekend on Taiwan the groups and leaders of the island's peaceful democratic opposition resolved to form the Progressive Democratic Party. This is a significant step in the political life of the island of Taiwan, and bears watching by the Government and people of the United States.

On the surface, the formation of a political party in a foreign nation might not seem to be a terribly important occurrence. Indeed, in democratic countries it may happen at any time. On Taiwan, however, the Kuomintang regime uses the fiction of a wartime emergency to deny the people any meaningful political voice or role. Thirty-seven years after it was instituted, martial law is still in place. In accordance with martial law and other emergency provisions, the organization of a political party is technically illegal.

Yet most objective observers of the Taiwan scene believe that martial law has little to do with military security and everything to do with the Kuomintang's desire to maintain its monopoly of political power. If the Kuomintang is truly interested in enhancing the security and stability of the island, as it says it is, it should allow the Progressive Democratic Party to participate freely in the political system, to serve as a loyal opposition, and to contest elections for key leadership positions. If the KMT uses the instruments of state power at its disposal to prohibit the new party, people on Taiwan may come to the regrettable conclusion that

peaceful change is impossible and that radical violence is the only way out.

What should be the attitude of the U.S. Government to the formation of the Progressive Democratic Party? The people of the United States have a longstanding and beneficial relationship with the people of Taiwan, and hope that they will have a future marked by peace and prosperity. In addition, the United States also has a strong interest in the emergence of a democratic system on the island of Taiwan. Accelerated progress toward pluralism will both fortify the American public's concern for Taiwan's well-being and help mute growing tensions in the economic sphere.

I therefore call on the Reagan administration to take a positive view of recent developments, and to encourage the Kuomintang regime to permit the Progressive Democratic Party to conduct political activities. Such a policy is both good for all the people on Taiwan and consistent with our country's most cherished and fundamental political values.

It is not the place of the United States to support either the Kuomintang or the Progressive Democratic Party. But we should definitely stand for the emergence of a fully democratic system on Taiwan, including the essential right of the island's citizens to organize political parties. The Taiwan Relations Act states, "The preservation and enhancement of the human rights of all the people on Taiwan are hereby reaffirmed as objectives of the United States." If ever was a time for our Government to act in support of those objectives, it is now.

ALTERNATE CARE FACILITIES ASSISTANCE ACT OF 1986

HON. HENRY B. GONZALEZ

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 2, 1986

Mr. GONZALEZ. Mr. Speaker, today I am introducing a bill to address a serious and growing problem of the elderly and handicapped citizens of our Nation. Millions of elderly people in this Nation as well as many of the handicapped who are not so impaired as to require nursing home care but cannot manage independently in their own home without supportive assistance. These are people who are falling through cracks in the system. They often end up in nursing homes at a cost in dollar terms that is much higher than if they resided in their own home but received daily care and services in an intermediate facility. Such facilities would be responsible for seeing to it that medication, meals, grooming, therapy, and other necessary services are provided to the elderly or handicapped person in addition to providing a dignified social setting for them to pass the day. The savings from such facilities are reported to be half, or less, than nursing home costs.

A few alternate care facilities are operating in many States. I recently visited one in Hazleton, PA, which is located in my colleague, PAUL KANJORSKI's district. It is privately operated and is more or less experimental. It is located close to an elderly housing facility and serves some of the residents of that facility as well as other elderly and handicapped from the surrounding neighborhoods. It permitted several elderly people to continue to live at home or with their families and still obtain the care they required during the day. I believe that the Department of Housing and Urban Development should finance the construction of such facilities throughout the Nation. Such financing should include the cost of furnishing and equipping the facility. These facilities will be relatively simple, should be small, and need not be costly. Appropriate public or private agencies would operate these alternate care facilities from their own funding sources.

SARGENT SHRIVER AWARDEES ANNOUNCED DURING PEACE CORPS' 25TH ANNIVERSARY WEEKEND

HON. JIM MOODY

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 2, 1986

Mr. MOODY. Mr. Speaker, between September 18–22 up to 5,000 returned Peace Corps volunteers and staff celebrated the 25th anniversary of the Peace Corps. Beginning with a crowded congressional reception and ending with a luncheon on the Hill, the long weekend of events and activities included a moving speech by Philippine President Corazon Aquino on Friday morning, September 19, a rousing speech by R. Sargent Shriver, the first Peace Corps Director, on Saturday, September 20, a mile-long march across Memorial Bridge on Sunday, September 21, followed by a quiet and respectful wreath-laying ceremony at John F. Kennedy's gravesite and an emotional memorial service for 199 Peace Corps volunteers who died in service.

The weekend was a time for old friends to be reunited and for many old memories and dreams to be rekindled.

One of the most memorable events of the weekend was the unveiling of a new annual awards program called the Sargent Shriver Awards for Distinguished Humanitarian Service and the naming of this year's awardees: Timothy Carroll of Eye Care, Inc.; Katrina Clark of Fair Haven Community Health Clinic; Stephen and Douglas Hellinger of Development GAP [Group for Alternative Policies]; Paul Thompson of Intertect; and former U.S. Representative and Senator Paul Tsongas.

Mr. Speaker, this new award program is designed to honor former Peace Corps volunteers for making sustained and exemplary contributions in the field of humanitarian service in developing countries and here at home.

The awards also remind us of the critical role that Sargent Shriver played in creating a viable Peace Corps Program and of the strong commitment that Sarge has always demonstrated to the ethic of service and compassion.

Reprinted below for the benefit of my colleagues are the citations read at the ceremony for this year's Sargent Shriver awardees. May the example of these individuals inspire us all to work as hard as we can in furthering the great cause of humanitarian service to others. I applaud the achievements and the commitment of these awardees and I also commend all returned Peace Corps volunteers—especially the returned Peace Corps volunteers fo Washington, DC—for initiating and supporting the Sargent Shriver Awards for Distinguished Humanitarian Service. Two individuals who deserve special credit for bringing this award program into being are: Matthew Cossolotto, a staffer here on the Hill, and Roger Landrum, who works on community service programs in a Washington, DC, organization called Service America.

The citations for the Sargent Shriver awardees follow:

WINNERS OF THE 1986 SARGENT SHRIVER AWARDS FOR DISTINGUISHED HUMANITARIAN SERVICE

TIMOTHY CARROLL

Timothy Carroll, who served in Nigeria, has been a Returned Peace Corps Volunteer for 20 years. In 1977, he left his job as Associate Dean for International Studies at Antioch College to co-found Eye Care Inc. He has served as its executive director ever since.

For many years, the poor citizens of the island nation of Haiti have suffered by the thousands from serious eye diseases. Eye Care Inc., has a simple mission: to save their eyes. Under Timothy's nine years of imaginative and forceful leadership, Eye Care has:

Built, staffed, and equipped four rural eye hospitals and three urban eye centers across Haiti.

Trained hundreds of Haitians selected by community leaders as outreach technicians, and hired successful graduates to staff local eye clinics.

Built and equipped the first laser room for glaucoma control in the Caribbean.

Established Eye Care Haiti, with its own board of directors to totally Haitianize the operations, and turned over all assets and management decisions.

Started a Handicapped Women's Employment Program and helped market their handicrafts.

Started a Child Survival Program in the mountain district of Mirebalais that has sharply reduced infant mortality, and raised $400,000 to establish a Child Survival Program for the entire northwest district of Haiti.

Today, 117 trained Haitians staff Eye Care. Only two Americans are involved. Timothy continues to raise over a half million dollars a year entirely from private sources to support Eye Care operations.

For his exemplary work in saving the eyes of countless Haitians, for creating a stable national program run by host country nationals, Peace Corps alumni proudly honor Timothy Carroll with a Sargent Shriver Award.

KATRINA CLARK

Katrina Clark, who served in La Palmita, Colombia, has been a Returned Peace Corps Volunteer for 17 years. In 1971, she came home and completed a Masters Degree Program at Yale's School of Public Health. In 1973 she was named director of the Fair Haven Community Health Clinic in New Haven, Connecticut.

This clinic serves one of the nation's poorest urban centers, a population 99% low-income and 50% Hispanic. Over 13 years, Katrina has been the moving force behind

the impressive growth and development of this health clinic. It has grown during this time from serving 500 persons annually to serving 10,000. Its annual budget has expanded from $30,000 to a million dollars. Katrina has also created two satellite health clinic operations, one targeted for elderly persons and another for teenagers from the local high school.

In the midst of her administrative burdens, Katrina still takes time to answer patients' phone inquiries and greet them when they arrive. She has made the best possible uses of her Peace Corps language and cross-cultural skills.

Katrina's solid achievements and good reputation in Fair Haven's Hispanic community and among her professional colleagues have illuminated the field of community health services far beyond the Fair Haven Clinic.

For all she has done for the citizens of Fair Haven, for the shining example of her life's work, Peace Corps alumni present Katrina Clark with the Sargent Shriver Award.

STEPHEN AND DOUGLAS HELLINGER

Stephen and Douglas Hellinger have been Returned Peace Corps Volunteers for 14 years. Steve served in northwest Brazil. Doug served in both Nicaragua and Venezuela.

As you can see, the Hellingers are identical twins. They were born together, and together they have given birth to a remarkable range of development concepts and propects. In 1977, with their colleague Fred O'Regan, they co-founded The Development Gap—Development Group for Alternative Policies. They have served as its co-directors ever since.

From their Peace Corps experience in three different countries, Steve and Doug could see that much development aid is misdirected and unintentionally widens the gap between the poorest and better-off citizens. Their organization is devoted to attempts to bridge this gap with better programs and better policies.

Steve and Doug are well known and formidable figures in the mazes of Congressional Committees, A.I.D., the World Bank, and other American and international development assistance agencies. They have worked tirelessly in shaping constructive alternative policies in the field of foreign development assistance. They stand apart in their determination to work for and with and through the world's poorest citizens. They stand apart in paying themselves extremely modest salaries because of their belief that those who purport to serve the poor should themselves live frugally.

They have created alternative credit programs in Mexico, Nicaragua, Colombia, Bolivia and Chile.

They have designed small-scale enterprise programs in Ecuador, Bolivia, and Brazil.

They have produced employment and income-generating programs in Kenya, Egypt, and Zimbabwe.

They were instrumental in the founding of the African Development Foundation. They helped define its grass roots philosophy of grant making. They have fought against all efforts to eliminate its funding and to politicize its staffing.

Through research and writing, speaking, lobbying, networking, and through their philosophy and life styles, the Hellingers have influenced the entire field of international development for the better.

For their remarkable devotion to foreign assistance in a context of social justice, for their exemplary loyalty to the highest ideals of the Peace Corps, we proudly present the Sargent Shriver Award to Steve and Doug Hellinger.

PAUL THOMPSON

Paul Thompson, who served in Chile after completing a Masters Degree in architecture, has been a Returned Peace Corps Volunteer for 15 years.

In 1977, Paul joined a small consulting firm called Intertect, where he and his colleagues devote their talents to the field of disaster management, working mainly to help Third World communities rebuild after a disaster.

To cite a few examples, Paul has worked on community reconstruction after earthquakes in Guatemala, on flood damage mitigation in Bolivia, on reconstruction following hurricanes in the Dominican Republic, on developing refugee camps in Somalia, on building safety in Kenya, and on cyclone housing reconstruction in Madagascar.

Paul has demonstrated cultural sensitivity and professional imagination in working with disaster victims when they are in desperate need of help, involving them in the design of public works, and providing them with training and jobs.

Paul and his Intertect colleagues take great care to rebuild structures that will be more resistant to future disasters.

Paul has prepared a course and text book for Peace Corps Volunteers and staff serving in disaster prone regions.

He teaches courses on pre-disaster planning at the University of Wisconsin, spreading his philosophy to an expanding pool of young professionals.

In all that he does, Paul has concentrated with remarkable determination and professional excellence on assisting people to deal with long-term, sustainable, beneficial change in their lives.

The Wisconsin RPCV organization that nominated Paul wrote: "he is not getting rich from other peoples' misery, he is happy in his work, and he is excellent, well-loved company at our meetings."

For the humanitarian values he exemplifies in his chosen profession, for his courage and energy, Peace Corps alumni present the Sargent Shriver Award to Paul Thompson.

PAUL TSONGAS

The four previous awards we've just handed out are cause for great joy. This final award is filled with a mixture of joy and sadness.

Senator Paul Tsongas is one of the most beloved members of the Peace Corps alumni community. He served in Ethiopia between 1962 and 1964.

In his political career, Paul rose all the way to the United States Senate. Despite all his public success and fame, Paul has always remained loyal to the Peace Corps and its ideals. He once told a reporter: "You can always be a Senator, I suppose, by title, but in terms of what made you what you are emotionally and psychologically, clearly the Peace Corps was that experience."

Many of you know that Paul Tsongas has cancer. He is now in a Boston hospital recovering from a bone marrow transplant.

By means of this award, Peace Corps alumni across the country give special recognition to Paul Tsongas for championing throughout his distinguished public career the causes of human rights abroad and civil rights here at home, for his exemplary leadership in supporting arms control between the superpowers, adequate foreign assistance to developing countries, and strengthened international education programs in America's schools and colleges.

As the first Returned Peace Corps Volunteer to win election to the U.S. Senate, Paul Tsongas serves as a trailblazing inspiration to others seeking to translate their Peace Corp experience into public careers based on deeply-help principles of humanitarian service to others and concern for the less fortunate among us.

With profound respect, esteem, and love, Peace Corps alumni present Paul Tsongas with the Sargent Shriver Award. Accepting the award for Paul is his uncle, Mr. Telis Sismanidis.

These are our 1986 Sargent Shriver Awardees for distinguished humanitarian service. Godspeed to them.

COUNCIL OF CATHOLIC WOMEN CELEBRATE JUBILEE

HON. PAUL E. KANJORSKI

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 2, 1986

Mr. KANJORSKI. Mr. Speaker, next week the Council of Catholic Women of St. Mary of Czestochowa Church of Nanticoke, PA, celebrates its 15th anniversary, and I am pleased to take this opportunity to draw attention to this fine organization.

Realizing the need for a social and service organization within the parish, seven young women organized the council in 1936. The first officers were Helen Wintergrass as president; Anna Wadzinski, vice president; Jean Piasecki, recording secretary; Helen Sajewski, treasurer; and Stella Domin, financial secretary. Monthly meetings attracted new members and the council grew rapidly.

During World War II, the women of the council worked with the American Red Cross in caring for the returned soldiers and consoling families who had lost men in battle. During this time of national hardship, the Council of Catholic Women offered their services to the many needy at home.

The Council of Catholic Women has contributed greatly to the parish of St. Mary of Czestochowa Church and to the community. Borne of a desire to give, the council has endured by the continuing need of its members to serve. During the past 50 years the following women have provided their leadership as president of the council: Helen Wintergrass, Clara Kowalski, Helen Sajewski, Sarah Gajewski, Lillian Budzinski, Stephania Pienta, Catherine Shipkowski, Helen Gust, Helen Warakomski, Mary Baran, Mary Valance, Helen Schneikart, Louise Zakszewski, Alice Cyganowski, Mary Kowalski, Grace Zawatski, Helen Tutak, Johanna Locke, Theresa Czahor, and Florence Mizdail.

Mr. Speaker, the strength of our communities across the Nation depend upon the unselfish dedication of organizations such as the Council of Catholic Women of St. Mary of Czestochowa Church, and I am pleased to join in their jubilee celebration.

HONORING THE 1986 EL RANCHO UNIFIED SCHOOL DISTRICT HALL OF FAME

HON. ESTEBAN EDWARD TORRES

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 2, 1986

Mr. TORRES. Mr. Speaker, on Saturday, November 8, 1986, five El Rancho High School graduates will be inducted into the El Rancho Unified School District's Hall of Fame.

The alumni to be inducted are John P. Hill, Ph.D., class of 1954; John Michael Di Gregorio, class of 1956; Bill Nelsen, class of 1958; Paul Jesilow, Ph.D., class of 1968; and Estela Andujo, Ph.D., class of 1969.

JOHN P. HILL, PH.D., CLASS OF 1954

Educational background: Stanford, AB, 1958 with great distinction; Harvard, PhD, 1964 (clinical psychology).

Honors: Phi Beta Kappa; Psi Chi; Delta Sigma Rho; Stanford University Honors Scholarships; Fellow, American Psychological Association, 1976; Who's Who in America, 1978; Honorary Alumnus, Michigan State University, 1980; Named as Outstanding Researcher in Early Adolescence by Center for Early Adolescence, University of North Carolina, 1982.

At present Dr. Hill is a Professor, Department of Psychology, Virginia Commonwealth University. He has taught courses in Social Development, Theories of Development, Parent-Child Relations, Adolescent Development, and Personality. He has presented over 61 papers at meetings and written over 55 publications on the subjects listed above.

Research in progress: Social relations in early adolescence, *Adolescence* (Book).

He is Consulting Editor, Journal of Early Adolescence and on the Editorial Board, Journal of Youth and Adolescence. He is also the 1986-87 President of the Society for Adolescence Research.

JOHN MICHAEL DI GREGORIO, PH.D., CLASS OF 1956

Educational background: BA, MA, PhD., Whittier College; Whittier College, Copenhagen branch; Claremont University.

Special training and honors: IPGS Seminars, Claremont Graduate School; University of Belgrade, Faculty of Law; University of Zagreb, Faculty of Economics; NDEA Doctoral Fellowship; Rockefeller Foundation Grant, Jarvenpaa, Finland for Town and City Management Seminars; Rotary International Overseas Fellowship; Grant Advertising Seminars in International Marketing and Advertising, University of Michigan; United States Department of State Officers' Training Course; United States Department of State Communications and Propaganda Course; United States Department of State Personnel Management Course; United States Government Foreign Service Institute: Italian, Malay and Indonesian language courses; Danish International Students' Committee, under auspices of Whittier College in Copenhagen; Co-Chairman Asian Int'l Marketing Conference, Manila; Member of Pico Rivera, California City Council Co-ordinating Committee; President of California Association of Student Councils; Cobal Training Programme in Computer Programming; FORTAN Computer Language Course under the auspices of the Department of State.

BILL NELSEN, CLASS OF 1958

Educational background: Cerritos Junior College, University of Southern California, BS and Graduate Study.

Nelsen was the most successful athlete to ever perform for the Dons. He was all San Gabriel Valley league in football, baseball and basketball. Athlete of the year and was most valuable player in football and basketball and earned six varsity letters.

He quarterbacked Cerritos College to a league championship and was selected an all league quarterback and to the Cerritos College Athletic Hall of Fame.

At USC he became the starting quarterback on a Pac 10 championship team which defeated Wisconsin in the Rose Bowl and was selected as National Football College champions.

Nelsen played for the Pittsburgh Steelers and the Cleveland Browns. At Cleveland, Bill became one of the outstanding quarterbacks in the National Football League, winning several titles and playing for the National Football League title on two occasions. During these years in Cleveland, Bill was selected to the all pro-team and played in the Pro-bowl.

Several knee injuries forced him to retire. He continued in professional football coaching at New England, Atlanta, Tampa and Detroit.

He has been active in public service serving in Cleveland as Chairman of the Jerry Lewis Muscular Dystrophy Telethon and Chairman of March of Dimes.

Married, has two sons and a daughter. Parents reside in Pico Rivera.

PAUL JESILOW, CLASS OF 1968

Educational background: BA—Sociology and Political Science, School of Social Science, University of California, Irvine; MA—Program in Social Ecology, University of California, Irvine; PhD—Program in Social Ecology, University of California, Irvine.

Awards: Academy of Criminal Justice Sciences "Outstanding Book of the Year," 1985-86, *Myths That Cause Crime* (with Harold Pepinsky).

At present Dr. Jesilow is an Assistant Professor, Department of Criminal Justice, Indiana University, Bloomington.

Research Experience: Co-Principal Investigator, "Identifying Fraudulent Health Care Providers"; Principal Investigator, "The Effects of Sanctions: The Case of Health Care Providers"; Co-Principal Investigator, "Practitioner Fraud and Abuse in Government Funded Medical Benefit Programs"; Principal Investigator, "Practitioner Fraud and Abuse"; Project Direct, "Deterring Automobile Repair Fraud: A Field Experiment".

Publications: Dr. Jesilow has authored many publications, writings and papers on this research.

His mother resides in Pico Rivera.

ESTELA ANDUJO, PH.D., 1969

Educational background: BA, Cal State Fullerton; MA UCLA in Social work; PhD, USC.

Achievements and awards: Western Interstate Commission on Higher Education; Council on Social Work Education Fellowship; Bancroft Award; Faculty Development Awards (3), and Affirmative Action Faculty Development Educational Equity Award.

At present Dr. Andujo is a Psychotherapist Clinical Consultant, Los Angles Child Guidance Clinic; Clinical Consultant, Los Angeles Unified School District—Norwood School and Assistant Professor, CSULB.

Her research interests are in the areas of clinical and psychological mental health, delivery of clinical services, and Cross-Cultural issues. In particular, she has received recognition for her research on Transethnic adoption, a study of the development of ethnic identity in Hispanic children adopted by parents who were not of Hispanic descent.

Currently, she is completing the collection of data on a research project entitled: "Hispanic University Students: Factors related to Attrition and Retention," at the University. Dr. Andujo is also involved in another research project exploring Post-Traumatic stress disorders in Central American children.

Dr. Andujo and her parents are residents of Pico Rivera.

TROUT UNLIMITED'S 10 MOST WANTED LIST

HON. FRED J. ECKERT

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 2, 1986

Mr. ECKERT of New York. Mr. Speaker, I rise today to call attention to a resolution passed at the August 7 meeting in Olympia, WA, of the National Board of Trout Unlimited. Trout Unlimited is one of our Nation's leading conservation and sporting organizations. This fine organization, founded in 1959, is made up of over 50,000 members who belong to over 350 local chapters. I had the pleasure of working with this organization's members when I served as chairman of the New York Senate's Committee on Environmental Conservation. They were a major force behind my legislation, the 1982 Conservation Fund Act, the bill which saved New York's wildlife management programs.

Earlier in this Congress I was proud to work with this group by cosponsoring the House resolution which opposed the Office of Management and Budget's proposal to divert money from the Wallop-Breaux fund. This is one of Trout Unlimited's top priorities.

Trout Unlimited's top priority is also one of my top legislative priorities, the control of acid rain. Acid rain is a serious environmental problem that is harmful to the fish and wildlife in New York and other areas of the country that are recipients of it. H.R. 4567, the Acid Deposition Control Act of 1986, has gone farther in the House of Representatives in this Congress than any previous acid rain control legislation. With the continued support of organizations such as Trout Unlimited, I am convinced that passage of an effective acid rain control bill is not far off.

In conclusion, I submit as part of the RECORD, Trout Unlimited's 10 Most Wanted List.

TEN MOST WANTED LIST

Whereas, Trout Unlimited's primary goal is to positively impact the coldwater resources of our world by a program of preserving, protecting, restoring, and enhancing these resources; and

Whereas, Trout Unlimited has over the years passed many resolutions to support its primary goal; therefore be it

Resolved, that Trout Unlimited, assembled at Olympia, Washington, August 7, 1986, hereby articulates its Ten Most Wanted List to reflect its evaluation of negative impacts on the coldwater resources and actions needed to solve or mitigate those impacts; and be it further

Resolved, that Trout Unlimited's Ten Most Wanted List in order of priority is as follows:

1. Improvement of air quality, especially to the control of acid precipitation (strengthening of Clean Air Act).
2. The continued strengthening of the Federal Water Pollution Control Act, particularly Section 404 of that Act.
3. Continue annual direct appropriations of the Dingell-Johnson Act and the Wallop-Breaux Act and assure all funding intended by these Acts.
4. Preserve, protect, enhance, and promote restoration of Great Lakes, West Coast, and East Coast salmonid stocks.
5. Support timbering practices and policies that ensure that self-sustaining trout and salmon populations are not adversely impacted over long periods of time.
6. Support grazing practices and policies ensuring that self-sustaining trout and salmon populations are not adversely impacted over long periods of time.
7. Control pesticide, herbicide, and toxicant releases into the environment to prevent long-term harmful effects on the natural biota.
8. Maintain minimum flows of salmonid streams to support healthy populations of trout and salmon.
9. Support legislation to improve the Fish and Wildlife Coordination Act.
10. Strongly support systems of wastewater treatment that eliminate adverse impacts on trout and salmon resources, and particularly the elimination of chlorine-type compounds as a disinfectant in treatment system effluent.

IMPACT OF USER FEES

HON. MATTHEW G. MARTINEZ

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 2, 1986

Mr. MARTINEZ. Mr. Speaker, today I am introducing a bill that would create a pilot program to evaluate the impact of user fees to help pay for establishment, maintenance, and rehabilitation of recreation facilities in our national forests.

FROM RECREATION TO "WRECK-REATION"

We have been going from recreation to wreck-reation in our national forests. The numbers are dramatic. Use of our national forests remains high—at the same time, dollars going to maintain, rehabilitate, and improve facilities in our national forests have tumbled. In current dollars, funding has gone from $89.4 million in 1981 to $102.1 million in 1986. When inflation is taken into account, this represents a 4-percent decline in total funding for the Forest Service and an 8-percent real decline in funding for recreational use. This is having consequences. The Forest Service reports that the number of open facilities maintained to standard has fallen from 78 percent in 1978 to only 29 percent in 1985. Deferred maintenance has more than doubled from $134 million in 1978 to $297 million in 1985. The ability of the Forest Service to raise funds from alternative sources is limited: All Forest Service facilities that meet the criteria in the Land and Water Conservation Fund Act of 1965 are now in the fee system. There is little that the Forest Service can do: Fees have already been applied where possible, and the ability to use volunteers, et cetera, is limited.

If you've gone camping, fishing, hiking, swimming, or otherwise enjoyed our national forests recently—or if you've talked to your constitutents about it—it is clear that we have a problem at many sites. In the words of the report of the Forest Service for fiscal 1985: "When a facility is operated and maintained at the standard service level, it is expected to last its designed project life. When operated at a less-than-standard level, facilities usually depreciate faster and must be totally replaced sooner." And: "Since 1981 recreational use on National Forest Service lands has declined 4.3 percent * * *. Reasons for this decline have not been fully determined, however many feel that site deterioration and closures are a factor, as they affect the quality of the outdoor experience."

THE NEED FOR A VARIETY OF FUNDING MECHANISMS

We all know that tax dollars to support public recreation are shrinking. Like it or not, to even keep what we have we must figure out how to support it.

I think that it is reasonable to subsidize some public recreational areas with general tax revenues, especially areas such as wilderness. Various studies that we have all heard about indicate that at least 60 percent of the population is willing to be taxed to support wilderness. Another reason for subsidy is stewardship—to preserve the option of enjoying wilderness areas for future Americans. Another reason is a question of equity, to make these resources available to those who are not in a financial position to procure them on their own. Another reason for public subsidy is the spillover benefits, similar to those attributed to the arts, libraries, and public schools. There is a sentiment in our society, and among our taxpayers, that the availability of recreation improves our society.

I also think that it is sensible to rely on voluntary contributions and efforts for many activities. Volunteer groups have been very active in helping to monitor the forests, in helping to develop paths, and other activities. Voluntary contributions have, in some areas, gone a long way toward helping pay for campground maintenance, providing search and rescue services, and so on. Volunteers will remain essential.

But there are many activities such as repairing picnic tables, hauling garbage, and cleaning toilets which are neither glamorous nor make the daily news, but which are essential. There is an important distinction between the cost of having a wilderness area and the cost of having recreation in that wilderness area. While fees could be used for a variety of purposes, the one which I think is most appropriate, and which I believe most of us will support is charging fees to cover incremental costs—that is the costs that are sensitive to the amount of use. There are three components to this: operation and maintenance, ecological damage, and congestion. One additional cost to consider is the expense involved in collecting fees.

THE ROLE OF SERVICE FEES

Service fees will help fill the gap between what the Government is able to provide in subsidies and what needs to be spent for back-country opportunities. It is probably unrealistic to expect user fees to cover capital expenditures. Purchases of public land should be thought of as a permanent investment and one that has its own sources of funding, such as the Land and Water Conservation Fund. Many of the States have funds to support land acquisition and capital improvements.

It is more reasonable for us to focus on the possibility of service fees to cover ongoing management costs, or at least a portion of them. The year-to-year costs are more clearly attached to visitor services. Closely tied to this is the conviction that the use of fees should be related to the activity or service for which they were collected. I oppose an elaborate, unfocused fee system. There is a real risk that moneys from such a program would be used to support the program with the most political clout rather than the best program. And I am not interested in having a fee program for the sake of proving a philosophical point of view.

My next point is that fee systems must be flexible. Even though I know how much our bureaucrats love uniformity. I think we must recognize that what works in a national forest just outside Los Angeles may not work in the Maine woods, along the Minnesota rivers, or in the Arizona deserts. Social, economic, legal, and physical situations are just too diverse. I think that user fees must be tailored to individual situations.

America has long relied on user fees to help finance our country's commitment to the great outdoors. User fees were first introduced in 1908 at Mount Rainer National Park. More recently the Dingell-Johnson Program and the Pittman Robertson Program have relied on fees charged our hunters and fishermen to protect and enhance these natural resources.

THE NEED FOR A PILOT PROGRAM

Surveys and user fee studies have regularly found clear majorities support the use of reasonable fees to maintain and enhance the recreation and wilderness experience. Users want to see revenues ploughed back into the recreation system in the form either of acquisition capital or for operation and maintenance. Although there is clear public support for reasonable fees and although our country has long used selective fees, we need to get a clearer picture of how fees would affect use of our national forests. The whole area needs some better followup studies. There is a lot of information in the literature about hypothetical changes in prices, but I don't think that there is much that compares people before and after. We don't have a very clear idea of the impact of service-based fees in national forests proximate to urban centers.

The approach in this proposed legislation is pragmatic. What I am proposing is a study, an evaluation, and it has nothing to do with the enactment of a tax. It will be up to Congress to weigh the evidence and recommendations that emerge from this pilot study. The bill builds on the criterion of a close relationship

between payer and beneficiary. The bill builds on the need of flexibility to allow charging of costs to be tailored to individual situations. And it holds that a sign should be put up to explain where the money goes—the money will go directly into maintaining and upgrading recreation facilitieis.

CONCLUSION

Most Americans believe that those people who are fortunate enough to be able to take the time to use and enjoy these national recreation areas ought to be willing to help, to some reasonable degree, to defray the cost of providing them with these opportunities. No one wants to price anyone out of these outdoor areas, but neither do they want to unduly burden those who never visit such areas—either for economic or other reasons—with the costs of making these areas and their related facilities available.

Unless some means is found to supplement appropriated management budgets in this time of towering governmental deficits, public recreation opportunities will be lost. Surveys and experience with State, local, and Federal programs demonstrate that recreation users are willing to accept pricing as an acceptable step toward keeping recreation opportunities. I urge you to join me in supporting this pilot project to identify pragmatic solutions to a serious problem.

Proposed legislation follows:

H.R. —

A bill to establish a five-year pilot program to collect recreational use fees for facilities and services provided by the Angeles National Forest, California, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. PURPOSES.

The purposes of this Act are—

(1) to facilitate the management of the Angeles National Forest in the State of California for recreation and other purposes;

(2) to require that persons using the Angeles National Forest for recreation pay an appropriate share of the Federal costs of providing recreation facilities and services;

(3) to provide funding for the establishment and maintenance of recreation facilities and services in the Angeles National Forest; and

(4) to implement a pilot program on the Angeles National Forest to determine the feasibility of establishing a permanent fee system.

SEC. 2. RECREATION USE FEE.

(a) DESIGNATION OF FEE SITES.—Effective for the calendar years 1987 through 1991, the Secretary shall designate for the purpose of charging a recreation use fee for the Angeles National Forest, specialized recreation sites, facilities, equipment, or services, including improved camp and picnic grounds, swimming sites, and visitor centers which offer specialized services or programs. The Secretary shall provide for collection of such fees at the place of use or any reasonably convenient location. No fee may be charged by the Secretary where specific services are not provided, not singly for the use of drinking water, wayside exhibits, general purpose roads, overlook sites, toilet facilities, unimproved boat ramps, or general visitor information. Any Golden Age or Golden Access Passport permittee shall be entitled upon presentation of such permit to utilize such recreation facilities or services at a rate of 50 percent of the established use fee.

(b) FEE.—With respect to the Angeles National Forest, the Secretary shall prescribe and adjust from time to time fees that are fair and equitable for all categories of recreation use taking into consideration—

(1) the Federal costs of providing recreation;

(2) the benefits to the recipient;

(3) the public policy or interests served;

(4) the comparable fees charged by the private sector or by non-Federal public agencies;

(5) the economic and administrative feasibility of fee collection; and

(6) other pertinent factors.

SEC. 3. SPECIAL FUND FOR RECREATION USE FEE RECEIPTS.

(A) ESTABLISHMENT.—Notwithstanding any other provision of law, all recreation receipts shall be deposited into a special fund established in the Treasury and shall remain available until expended, without futher appropriation, to the Secretary for operation, maintenance, rehabilitation, reconstruction, replacement, and management of recreation facilities, equipment, sites, trails, and areas within the Angeles National Forest.

(2) SPECIAL RULE FOR PAYMENTS TO STATES FOR COUNTIES.—Recreation receipts shall be considered as moneys received or net revenues for the purposes of the Act of May 23, 1908 (16 U.S.C. 500), the Act of March 1, 1911 (16 U.S.C. 500), and the Act of July 22, 1937 (7 U.S.C. 1012).

(3) EXEMPTION FROM ROAD AND TRAILS EARMARK.—Recreation receipts shall not be subject to the provisions of the Act of March 4, 1913 (16 U.S.C. 501).

SEC. 4. PERMITS.

(a) CONCESSIONAIRES.—The Secretary may authorize individuals, organizations, or businesses to sell permits and other authorizations for recreation uses of the Angeles National Forest and authorize them to collect fees and other payments therefor subject to such terms and conditions as the Secretary may prescribe, including provisions for the deduction by the authorized individual or entity of reasonable commissions, fees, and expenses incurred from the amount charged the public for providing such services and to remit the net proceeds thereform to the Secretary.

(b) VOLUNTEERS.—The Secretary is authorized to allow persons who are designated volunteers under the Volunteers in the National Forests Act of 1972 (16 U.S.C. 558a et seq.) to sell permits and other authorizations to use National Forest System lands and to collect fees and other payments subject to such terms and conditions as the Secretary may prescribe. The Secretary is further authorized to cover the costs of surety bonds which may be required of persons rendering such volunteer service if the Secretary determines it to be in the best interest of the United States. Such costs shall be paid from amounts available in the fund established under section 3(a).

SEC. 5. DEFINITIONS.

For the purposes of this Act—

(1) the term "recreation receipts" means all fees collected for recreational uses of the Angeles National Forest pursuant to section 2 and all fees for recreation special use of the Angeles National Forest;

(2) the term "recreation special use" means an activity permitted of any individual, entity, or organization by the Secretary for the purpose of developing or operating a recreation-oriented business, conducting a recreation activity, or contructing a recreation facility on the Angeles National Forest and authorized by the Act of June 4, 1897 (30 Stat. 11, as amended), the Act of March 4, 1915 (16 U.S.C. 497), and all other special use authorities for recreation purposes applicable to National Forest System lands. Recreation special uses include resorts, marinas, winter sports sites, recreation residences, organization camps, and outfitter and guide activities; and

(3) the term "Secretary" means the Secretary of Agriculture.

THE RURAL RENTAL HOUSING PRESERVATION ACT OF 1986

HON. HENRY B. GONZALEZ

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 2, 1986

Mr. GONZALEZ. Mr. Speaker, I am introducing a bill to remedy a most sad and unfortunate situation affecting thousands of low income and elderly rural persons now residing in federally assisted rental housing under the Farmers Home Administration sections 514 and 515 programs. Because of the unavailability of decent, affordable alternative housing, these families face being thrown in the street when owners of projects under these programs convert to condominium or market rental housing.

Unfortunately because of a virtual catch-22 situation when sections 514 and 515 projects could only be developed and owned by nonprofit entities the loan documents permitted prepayment of such loans. This practice was carried over from the single family section 502 homeownership program. Prepayment made sense under the section 502 program to encourage borrowers to seek market financing when they could afford it. However, it makes no sense at all under the privately owned rental housing program. Already, hundreds of families have been displaced from FmHA section 515 projects owned by individuals and partnerships that prepaid their subsidized loan much before the term of maturity. The reasons for prepaying are largely because the lucrative tax benefits spunoff from these projects are exhausted. Lately, however, especially in California, several owners have accelerated prepayment because of the uncertainty of their tax preference position due federal Tax Code revisions. In any event, it is a fact that because the tenants in these projects could not afford the higher rent after prepayment and because no other subsidized housing was available they were thrown in the street.

Testimony received by my subcommittee earlier this week was shocking. Infirmed elderly people were evicted with no place to go—evicted with the approval of the Farmers Home Administration, an agency of the U.S. Government. Other legislation before this body would temporarily stop these prepayments—I urge it is adopted. However, a long-term solution is necessary. For this reason I am introducing this bill. First, it would prohibit from future participation in the section 515

program owners who have participated in the program but who have prepaid their loans and actually caused substantial displacements. Second, it would prevent the Secretary of Agriculture from accepting an offer to prepay a loan that had received a commitment prior to December 21, 1979, unless the residents that might be displaced were provided decent affordable housing. And, third, this bill would provide that any rental assistance payment [RAP] funds remaining available as a result of a project being prepaid would be recaptured and set-aside for use in assisting the displaced families in other housing, publicly assisted or private.

We simply cannot stand by and allow the displacement of families. Displacement is virtually inevitable when these owners prepay their federally subsidized loans because of the lack of alternative private rental housing and the shortage of publicly assisted housing especially in rural America.

ON BEHALF OF THE PALM BEACH HISTORICAL COMMISSION

HON. DAN MICA

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 2, 1986

Mr. MICA. Mr. Speaker, I would like to share this resolution with my colleagues and urge support for the "Lake Worth, Intracoastal, Heritage Corridor."

Whereas, the Historical Commission of Palm Beach County has resolved to create the "Lake Worth, Intracoastal, Heritage Corridor," and

Whereas, the purpose of the "Lake Worth, Intracoastal Heritage Corridor" is to serve as a vehicle to coordinate various historical society activities, to promote each society, to coordinate efforts and to promote a countywide effort to recognize the heritage and potential of the area, and

Whereas, the "Lake Worth, Intracoastal, Heritage Corridor" extends from the Indian and Loxahatchee River estuaries to the north, south to Lake Worth and Lake Boca Raton to the Hillsborough Canal, connected by the Intracoastal Waterway, and

Whereas, the United States Congress has passed and President Ronald Reagan has signed legislation creating the Illinios and Michigan Canal, National Heritage Corridor which has revived a recreational and historic landmark, and

Whereas, this federal legislation was the inspiration for the Palm Beach County Historical Commission to create the "Lake Worth, Intracoastal, Heritage Corridor," Now, therefore,

Be it resolved by the Legislature of the State of Florida: That the Congress of the United States is requested to take appropriate action to recognize the "Lake Worth, Intracoastal, Heritage Corridor,"

Be it further resolved, That copies of this memorial be dispatched to the President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, and to each member of the Florida delegation to the United States Congress.

TRIBUTE TO DON FUQUA

SPEECH OF

HON. RALPH REGULA

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Monday, September 29, 1986

Mr. REGULA. Mr. Speaker, America and the world have thrilled to the achievement of our space program.

We are all indebted to our colleague, DON FUQUA, for visionary leadership in the challenging years of making the miracles of space travel seem to be everyday occurrences.

On a personal note, one of the pleasures of congressional service is associations with quality people such as DON and Nancy. They have served the constituents of Florida's Second District with distinction—and compassion.

Mary joins me in wishing them the best as they move on to new opportunities.

NIXON CORRESPONDENCE

HON. ANDREW JACOBS, JR.

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 2, 1986

Mr. JACOBS. Mr. Speaker, President Nixon's assistant, John H. Taylor, and I agree that in fairness the following correspondence should be part of the CONGRESSIONAL RECORD:

OFFICE OF RICHARD NIXON,
New York, NY, August 26, 1986.

Hon. ANDY JACOBS, Jr.,
U.S. House of Representatives, Washington, DC.

DEAR CONGRESSMAN JACOBS: In a letter dated July 31st, 1986, and sent to your colleagues in the House, you made two incorrect assertions about President Nixon that I would like to take this opportunity to correct.

(1) "Each one of the former Presidents has been getting about a third of a million dollars a year [in office expenses]."

In FY 1986 President Nixon's office budget was $235,000, not quite a quarter of a million dollars. By the end of the year we will have spent about 7 percent less than that, or $219,000.

In addition to the across-the-board Gramm-Rudman cuts our office and all other Federal agencies have made, we have realized additional savings by voluntarily giving up some office space, cutting travel expenses (when President Nixon visited the Soviet Union last month, he paid his two aides' expenses from his own funds), and spending less on salaries (each of President Nixon's three staff members has taken a voluntary 5 percent-a-year pay cut; the former President is making up the difference from his own funds).

The significance of these cuts, and of the issue of office budgets in general, pales in comparison to the action President Nixon took last year when he voluntarily gave up his Secret Service protection. In early 1985 a Secret Service official told him that the annual cost of protecting former Presidents and those wives and widows of Presidents who still had protective details has grown to $26 million, of which $3 million went for President Nixon's. Accordingly, he decided it would be more appropriate for him to pay for his security from his own funds.

This one action by President Nixon has saved the taxpayers over three times as much money annually as would your proposed amendment.

(2) Former Presidents use their office allocations "to handle bookings for their $25,000-per-speech gold mines." President Nixon has not accepted a fee or an honorium for a speech in over a quarter-century. I cannot emphasize this point more strongly. You have made similar assertions about President Nixon in the past, on the floor of the House and elsewhere. If you continue to state or imply, as you do in this letter, that he uses his office allocation "to pay the overhead on the commercial aspects of the former Presidency," you will be doing him a grave injustice.

President Nixon has no corporate or commercial affiliations of any kind. He has used his own funds to pay for the research assistance he has used on the five books he has written since leaving office.

President Nixon's longstanding policy has been to avoid taking any position on whether these office allocations should be reduced or eliminated. That continues to be his policy. If you or your staff publicly construes this letter as being an expression of opposition to your amendment, you will once again be misrepresenting him. This letter is intended solely to correct the errors you made in your letter.

Sincerely,

JOHN H. TAYLOR,
Assistant to President Nixon.

CONGRESS OF THE
UNITED STATES OF AMERICA,
September 10, 1986.

Mr. JOHN H. TAYLOR,
Assistant to President Nixon, Federal Plaza, New York, NY.

DEAR MR. TAYLOR: Lincoln said, "If I have ever made an assertion not warranted by fact and it is pointed out to me, I shall withdraw it cheerfully."

So I apologize to President Nixon and to you for any errors in statements I have made in support of my proposal to discontinue so-called office expenses for former Presidents who have been out of office for more than four years.

In the case of my assertion that the three former Presidents receive "about a third of a million dollars each" in the expense accounts, I was referring to the pending bill which slated $383,000 for Mr. Nixon's pension and office expenses.

Of much greater concern to me is my error in lumping all three former chiefs in the commercial speech category. On reflection, while I believe I have seen the same error in print, only in the case of President Ford have I seen specific figures.

Not only do I "withdraw the assertion," but I also commend Mr. Nixon for refraining from the practice of speeches for hire. It sets a good example of dignity in presidential retirement.

A good example for other federal employees is exactly what I had in mind when I proposed elimination of the expense account for former Presidents who, whether they personally finance the production of their publications or not, never the less have reaped huge royalties, not because they are Shakespeares, but because they are distinguished essentially by the enormous privilege accorded them by the American people. With such economic benefit as a direct and proximate result of serving in the

Presidency, the ex-Presidents should be able to pay their own office expenses.

I have no wish to do President Nixon or anyone else an injustice. He and my father served in the House together, and to this day my father speaks of him in the fondest terms.

There's nothing personal in my proposal. I am one of the few House members who cast votes against tax paid office expenses for the former Speaker, John McCormack, whom I loved as though he were my Uncle.

If you will send me your permission, I shall be happy to place both your letter and this response in the Congressional Record.

Sincerely,

ANDREW JACOBS, Jr.

REINSTATING FAVORABLE TREATMENT OF CAPITAL GAINS: KEEPING THE LIFEBLOOD OF THE U.S. ECONOMY FLOWING

HON. PHILIP M. CRANE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 2, 1986

Mr. CRANE. Mr. Speaker, I am introducing legislation today that will correct one of the most harmful and potentially far-reaching aspects of the tax reform bill that we have so recently passed—the repeal of preferential treatment for capital gains. The issue of the taxation of capital gains is undoubtedly one of the most controversial issues in public finance, and yet, based on recent experience, I can see no logical reason for this issue to be a controversial one.

Capital gains are those that result from the sale of capital assets, such as stocks and bonds. Until passage of this tax reform bill, long-term capital gain—long-term gain is that resulting from the sale of a capital asset held for longer than 6 months—was entitled to preferential tax treatment. In general, 60 percent of a long-term capital gain was excluded from tax. The highest effective tax rate on a long-term capital gain was, therefore, 20 percent—40 percent of the long-term gain subject to tax times the highest marginal tax rate, 50 percent.

As many of you will recall, in the early 1970's, Congress doubled the maximum tax rate on capital gains from 25 percent to 49 percent. The motivation for this dramatic increase was ostensibly to increase tax revenues, but these high capital gains tax rates caused those years to be some of the most unproductive in recent history in terms of capital investment and small business growth. Many businessmen and high technology innovators still refer to those years as the "dog days of the entrepreneur." The venture or risk capital needed to begin and finance the growth of new corporations virtually disappeared. A period of economic stagnation ensued, and many corporations went under, went deeply into debt, or in the case of many new high technology companies, were forced to sell or license their products to foreign corporations.

Then, in 1978, behind the leadership of the late Congressman Bill Steiger, Congress acted to reduce the capital gains tax rates from 49 percent to 28 percent. The results were astonishing, even to those who had proposed the reduction: Within a mere 18 months, more than $1 billion of new venture capital poured into funds for investment in new and growing companies. With a further reduction to 20 percent in 1981, the United States experienced a virtual explosion of investment and capital formation. This explosion has resulted in over 1 million new jobs since 1978, and contrary to the predictions of many, has actually increased capital gains tax revenues. In 1979, the first year of the Steiger tax cut, the Treasury Department collected $11.7 billion in capital gains tax revenues, up from $8.1 billion collected in 1977 and $9.3 billion collected in 1978. So much for the expected decline in revenues.

Despite these lessons, the tax reform bill which we have recently passed completely repeals the capital gains deduction, which is far worse than just raising the capital gains tax rate. Why have we failed to note such recent history, whose lessons are crystal clear? At a time when incentives for growth and investment are so critical, especially given increasing foreign competition, it makes absolutely no sense to decrease incentives that serve to directly benefit the formation of capital, the very substance of what is needed to create new jobs and keep American industries competitive with those of foreign countries. Without new investment capital, the entire nation suffers from factories that are not built, jobs that are not created, and goods that are not produced.

Most experts agree that this provision will have devastating effects on the formation of capital and will undoubtedly result in a marked capital gains tax revenue loss over the next few years. Capital will become more expensive and our productivity, innovation and economic growth will therefore be reduced. There will follow a concomitant reduction of Federal tax revenues.

Furthermore, this provision will have the effect of dramatically increasing the capital gains taxation for lower and middle income taxpayers who were never subject to a maximum capital gains rate of 20 percent, even under the law in effect before this reform. Take, for example, a retired individual who holds stock as a portion of his security for his retirement. This individual must often sell his stock holdings to provide income to live on. Under the law in effect prior to passage of this tax reform, the tax rate on such gain would have been 20 percent at most, but for a lower income taxpayer certainly less. Under this tax reform, however, the entire amount of the gain realized on the sale of these capital assets will be subject to taxation as ordinary income. For a person on a fixed income, struggling to make ends meet, the difference between these two amounts can be critical.

Because I believe that we should not repeat the blunders of a decade ago by discouraging venture capital formation and investing, I am introducing legislation today to restore preferential capital gains tax treatment to a maximum rate of 10 percent. My legislation will be known as the William Steiger bill, in memory of the man who led the fight to reduce the capital gains tax rate back in 1978. By enacting this legislation we can avert a disastrous period of economic stagnation and malaise. New jobs will continue to be created, and the innovation that has characterized American industry for so long will be permitted to flourish. I strongly urge my colleagues to join me in this effort to keep the lifeblood of the U.S. economy—venture capital—flowing as strongly as it has since 1981.

RELIGIOUS FREEDOM IN THE SOVIET UNION

HON. JACK F. KEMP

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 2, 1986

Mr. KEMP. Mr. Speaker, as part of a coordinated initiative undertaken by the International Parliamentary Group for Human Rights in the Soviet Union (IPG), I rise to address the issue of religious freedom in the Soviet Union. My IPG colleagues in the Parliaments of Canada, France, the United States, Italy, the Federal Republic of Germany, the United Kingdom, Austria and other countries will be addressing major issues in Soviet human rights performance prior to the Vienna Review Conference of the Conference on Security and Cooperation in Europe (CSCE), which opens November 4, 1986.

The Vienna CSCE Review Conference will review compliance with all aspects of the Helsinki Final Act by the 35 signatory states—i.e. the United States, Canada, the Soviet Union and all of Eastern and Western Europe with the exception of Albania. Further, the Vienna Review Conference will consider possible new commitments the signatory states may wish to undertake.

Under Basket I, Principle VII of the Helsinki Final Act, the Soviet Union pledged to "recognize and respect the freedom of the individual to profess and practice, alone or in community with others, religion or belief acting in accordance with the dictates of his own conscience." In reality, the U.S.S.R. attempts to control all facets of religious life and to discourage religious belief among its citizens.

There are approximately 100 million religious believers in the Soviet Union, representing major world religions. There are 52 million Christains, 45 million Moslems and 2.5 million Jews in the U.S.S.R.

All religious denominations face major handicaps in the Soviet Union. The only religious activity officially recognized by the Soviet Constitution is the freedom to conduct religious ceremonies in officially registered churches. The constitutionally guaranteed separation of church and state is interpreted to mean that the church has no say in state matters. The state, however, retains total control over religious life through the Council for Religious Affairs, a government watchdog body.

With officials at all levels, the state maintains control over places of worship by enforcing registration requirements. Only communities of 20 or more are eligible to register, and often applications are denied without explanation. All religious leaders and literature must be approved by the state, and the state strictly limits access to seminaries. In addition, there is an absolute ban on religious educa-

tion and charitable and relief work by religious communities.

There is widespread discrimination against believers in education, employment and housing. Moreover, whole denominations, such as the Uniate or Ukrainian Catholic Church and Jehovah's Witnesses, are outlawed.

Individuals who are tried and imprisoned for their religious activity are charged under articles of the criminal code, for example, anti-Soviet agitation and propaganda or slandering the Soviet state. This allows Soviet officials to claim that no one in the Soviet Union is imprisoned for religious beliefs. Recently, new legislation was introduced which makes it possible to rearrest prisoners just prior to the date of their release, thus "legally" extending their sentences. In 1986, prisoners such as Sergei Khodorovich and Nikolai Baturin were rearrested just prior to the date of their release; Baturin is now serving his third consecutive sentence in a labor camp.

The number of people imprisoned for their religious activity has nearly doubled since 1979. Currently there are approximately 400 religious prisoners of conscience incarcerated in prisons, labor camps, and psychiatric hospitals in the U.S.S.R.

My colleagues in IPG and I believe that religious freedom and other issues in Soviet human rights performance must remain squarely on the agenda at the Vienna Review Conference. The democratic signatories to the Helsinki Final Act must strengthen their support for human rights in the Soviet Union. Further, the democracies must insist that there be balanced progress in all areas of the Final Act if East-West relations are to improve. Thus, any new agreements in the areas of military, security, and economic relations reached in Vienna must be accompanied by similar accords in human rights, and by guarantees of performance under existing agreements.

TRIBUTE TO E. EARL BRYANT

HON. CARROLL HUBBARD, JR.

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 2, 1986

Mr. HUBBARD. Mr. Speaker, I would like to pay tribute to E. Earl Bryant, of Route 1, Rumsey, McLean County, KY, who died Sunday, September 28, 1986, at Owensboro, KY, at the age of 65.

For many years I considered it a privilege to call Earl Bryant a dear friend of mine. I realize Earl Bryant was a treasured friend of many others in western Kentucky as well.

I shall always remember Earl Bryant as a man of honesty who was ingrained with a sense of responsibility and, at the same time, a sense of humor.

Earl Bryant and his attractive, personable wife, Katie Wood Bryant, have been lifelong McLean Countians and are very well known in western Kentucky and are extremely popular among the thousands who are their friends.

Earl Bryant was a lifelong farmer, an active member of Calhoun (KY) Baptist Church and a retired member of the McLean County Volunteer Fire Department (central division). He was very proud of his wife Katie, who has served for 42 years at the McLean County courthouse in Calhoun, with 12 of those years (1969–81) as the elected property valuation administrator of McLean County.

Kentucky Gov. Martha Layne Collins remembers Earl and Katie Bryant as two of her most important western Kentucky supporters during her three statewide races in 1975, 1979, and 1983.

During each of my campaigns to be elected and reelected as U.S. representative of the First Congressional District of Kentucky I have always depended upon Earl and Katie Bryant as two of my leaders.

In 1980 I formed a First Congressional District Agricultural Task Force and immediately named farmer Earl Bryant and his wife Katie to the committee.

On this past July 19 my wife Carol and I were hosts at a dinner party in Owensboro, KY. Earl and Katie Bryant were 2 of the 20 guests. The next day Earl and Katie attended church, then drove again to Owensboro to enjoy a birthday luncheon because July 20, 1986, was Earl's 65th birthday.

Survivors of Earl Bryant include his wife of 48 years, whose name is spelled Katie but is referred to by all as Kate; two sons, Dr. Earl W. Bryant of Greenville, SC, and Dr. Donald W. Bryant of Owensboro; four grandchildren; and a brother, Allen Rowe Bryant of Route 1, Island, Kentucky.

Last Sunday, September 28, my wife Carol and I were in Calhoun, KY, for an annual picnic at St. Sebastian Catholic Church. I spoke at about 2:30 p.m. at the picnic and part of my remarks were in praise of Earl Bryant, who was very seriously ill at that with terminal cancer. Earl Bryant died at 3:15 p.m. that same day.

Carol and I extend to the Bryant family our thoughts, our prayers, our sympathy.

TRIBUTE TO BUD HILLIS

SPEECH OF

HON. BILL EMERSON

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 1, 1986

Mr. EMERSON. Mr. Speaker, it is with mixed emotions that I add my voice to those bidding goodbye to our friend and colleague from Illinois, BUD HILLIS. On one hand, BUD has more than earned a rest from the rigors of serving in this body. On the other hand, his quiet, commonsense leadership will be missed on our side of the aisle and I suspect on the other side as well.

BUD has never been one to "blow his own horn," and, as a result, people who don't watch this body closely may not be aware of the tremendous contribution he has made to it. In his work on the Armed Services Committee, he has worked hard to reverse the threatening trend toward military weakness of the 1970's. And veterans in this country know of BUD's dedication and diligence on their behalf working to see that the Federal Government does not forget its obligations and commitments to them.

BUD has always cared more about representing his constituents in the Fifth District of Indiana than he has about getting his name in the Washington Post, and his constituents obviously appreciate that. He has been here since 1971, and has never had a really close race in all of those years. Bud has served as a good role model for those of us who joined this body after him, and we can only hope that the freshman class of the 100th Congress will be filled with more like him. He leaves the House with my respect and admiration as a truly model Congressman.

A TRIBUTE TO THOMAS J. MACKELL

HON. THOMAS J. MANTON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 2, 1986

Mr. MANTON. Mr. Speaker, on Sunday, November 2, 1986, the Catholic Guardian Society of Brooklyn and Queens will bestow its George A. Cincotta Humanitarian Award for Service to Children and Families on Thomas J. Mackell. Currently a participating partner in the law firm of Mackell and Robertson, Mr. Mackell has enjoyed a long career of public and community service. In 1954 he was elected to his first of six consecutive terms as a State senator from Queens. In 1966, Thomas Mackell was elected district attorney of Queens County, serving in that capacity until 1973. As Queens DA, he was one of the first law enforcement officials to express deep concern over the spread of drug abuse and attack the problem from a multiple perspective.

Mr. Mackell has been a participant in and member of many community and nonprofit organizations over the years. Presently, he is a member of the Ancient Order of Hibernians, the Douglaston Civic Club and the Catholic Lawyers Guild among others. He has also been a friend to many voluntary organizations, helping to fund raise for such diverse groups as CYO, the Light House for the Blind, and the United Jewish Appeal. Mr. Mackell resides with his wife Dorothea in Douglaston, Queens. They have two sons, Thomas, Jr. and Terrence, one daughter, Patricia Robertson, and five grandchildren.

Mr. Speaker, it is with great pleasure that I extend my sincere congratulations to Thomas J. Mackell on the occasion of the Catholic Guardian Society's Eighth Annual Awards luncheon and his receipt of the 1986 Humanitarian Award.

FIFRA

HON. PHILIP M. CRANE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 2, 1986

Mr. CRANE. Mr. Speaker, recently the House of Representatives passed a bill, H.R. 2482, that overhauls the law for controlling pesticides and speeds up testing of their effect on human health. The bill reauthorizes

and amends the landmark Federal Insecticide, Fungicide and Rodenticide Act of 1972 [FIFRA], under which all pesticides are regulated.

I commend my colleagues, the National Agricultural Chemicals Association—made up of 92 chemical companies—and the Campaign for Pesticide Reform—an array of 41 environmental, consumer, public health, and labor organization—for their efforts to find a compromise solution to the many problems that H.R. 2482 addresses. However, while I recognize the importance of reforming current law I did not favor final passage of H.R. 2482.

I question the greatly expanded version of FIFRA, which lists in minute detail many regulations and sets forth some 1,100 deadlines for EPA to meet. Given the inefficiency of many Federal Government programs, I am hesitant to expand the role and scope given the EPA, as well as the increasing role of the Federal Government in general.

Our distinguished colleague from Montana, Mr. MARLENEE made some excellent arguments against passage of H.R. 2482 on the House floor on September 19, 1986. To quote, Mr. MARLENEE:

This bill sets up the impossible task of meeting 1,100 deadlines. It then handicaps EPA by saying we are going to short you $50 million. Then, in shortsightedness, the bill exacerbates the problem by allowing that if they do not meet the deadlines, we are going to allow nonprofit groups and individuals to bring lawsuits against EPA, and EPA will use your funds that you could have used to meet further deadlines, use those funds to pay their attorney fees, pay the fees of anyone who wants to sue EPA if they have not met a deadline.

I share Congressman MARLENEE's concern that this bill fails to establish "sound economic footing" necessary for implementation of the many new regulations and deadlines. While the bill authorizes lawsuits to enforce these deadlines, it has been estimated that the moneys will fall at least $48 million short. This represents at least 25 percent of the entire program, and until the financial problem is cured—either by appropriating additional funds or refining the program's focus—EPA can be expected to miss deadlines. In fact, EPA has already stated it cannot meet the deadlines. Consequently, lawsuits to force the agency to act can be expected. In recent years, deadline lawsuits have been popular, but in actuality they have accomplished very little. The result is that the taxpayer picks up the tab for attorneys' fees, which can be substantial.

The diversion of EPA funds to award attorneys' fees for deadline suits is wrong, especially in the reregistration program where registrants must pay fees to have EPA review and reregister their products. The bill places specific deadlines on EPA for reregistration of about 600 active pesticide ingredients and to help the agency to accomplish this goal, provides a user fee of $150,000 to help pay for the costs. This bill enables EPA to review data—$150,000 per registrant—while simultaneously creating a litigation system to pass millions of taxpayer dollars through EPA's budget into the hands of outside interest groups in the form of attorneys' fees. The bill establishes deadlines to increase EPA accountability, but that accountability should be pursued and required through congressional oversight and by providing enough resources to the agency, not through litigation.

While, I did not favor final passage of H.R. 2482, I did vote in favor of the Roberts-Stenholm uniform tolerance amendment which was passed. The need for this amendment can be illustrated by the EDB issue of several years ago. In this case, several States took it upon themselves to establish tolerances that were different from the Federal tolerance. That created a burden on interstate commerce for the farmer and all of those who were involved in marketing our national food products, as well as the consumer. You had the situation where flour, pancake mixes, and so forth, were legal in one State and not in another State.

The basic question is whether or not we can have 50 individual interpretations of this law without infringing and completely destroying interstate commerce under the Constitution of the United States. The question is uniformity. The Roberts-Stenholm amendment provides for three opportunities for a State to petition the EPA for a pestiticide residue tolerance. It does not preclude States from having a say-so in what is in fact a health hazard for an individual State or community. First, following a State's determination of an imminent hazard, it allows that State to recognize that and to petition the EPA for action. Second, it requires an exemption from a Federal tolerance because of compelling local circumstances. The third opportunity provided to our States is that the amendment provides the opportunity to request that an existing or proposed State requirement be adopted as a Federal requirement. As a strong State rights proponent, I supported this amendment because it establishes uniform standards and at the same time recognizes the importance of the Federal Government to listen and work with our States.

In conclusion, I did not favor passage of H.R. 2482, because Congress should be in the business of writing laws that give general direction to the executive branch, not spelling out in minute detail how the executive branch is to carry out that law. This legislation may well come back to haunt us to the detriment of all concerned. The executive branch must be given flexibility in carrying out such statutes.

CHESS OLYMPIAD AT DUBAI

HON. BILL GREEN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 2, 1986

Mr. GREEN. Mr. Speaker, next month the United States Chess Federation will be sending a delegation to the 1986 Chess Olympiad in Dubai, United Arab Emirates. This would not be extraordinary except that the Israeli Chess Federation has been excluded from participating in the Olympiad by the United Arab Emirates, and yet the United States Chess Federation has decided to go anyway.

This exclusion is strongly reminiscent of the exclusion exactly 50 years ago by Nazi Germany of Jewish sportspeople from the 1936 Olympics. This is not an anniversary we should celebrate or emulate. The decision by the United States Chess Federation, a controversial decision which has divided the membership of the federation, flies in the face of United States foreign policy which has always been to stand by our ally Israel.

The United States, the beacon of democracy and fairness in the world, must not allow bigotry and prejudice to be propagated. The Netherlands, Norway, Sweden, and several other countries have reportedly declared that they will boycott Dubai. The two top finishers in last year's United States men's championship and the United States women's champion, among others, have decided to boycott Dubai in solidarity with Israel.

This hijacking of an international sports event by the United Arab Emirates adds to the tensions and rifts in the Middle East. For the United States Congress to remain silent is inappropriate and I therefore ask my colleagues to join in cosponsoring the resolution—condemning the exclusion of Israel and urging the United States Chess Federation not to send a team—which I am introducing today.

BUD BOSTWICK—RECOGNIZED FOR OUTSTANDING COMMUNITY SERVICE

HON. TOM LANTOS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 2, 1986

Mr. LANTOS. Mr. Speaker, in these historic halls, we frequently speak with great respect of the father of our country. Today, however, I would like to honor the father of the father of our country. I am referring, of course, to Bud Bostwick—the father of Barry Bostwick, the outstanding actor who portrayed George Washington in the two recent television miniseries about the founding of our Nation.

While Bud Bostwick is justly proud of his son's accomplishments, Mr. Speaker, it is Bud whom I wish to honor today. Later this month the San Mateo County Center for Independence of the Disabled will honor Bud Bostwick for outstanding community service.

I can think of no one who is more deserving of this high recognition. Bud has long been active in San Mateo County and the Bay Area—first during World War II when he was here with the U.S. Maritime Commission and later with his own public relations, advertising, and marketing firm.

In 1955 Bud was asked by local business leaders to assist in the formation of the San Mateo County Development Association, a private, non-profit economic/industrial development organization. Bud has been the guiding light for this association throughout its three decades of existence. Since 1955, San Mateo County has gained 6,000 new plants and expansions of existing operations, representing a capital investment of approximately $7.8 billion dollars.

The outstanding accomplishments of Bud Bostwick are also well known beyond our peninsula. He has been active in the work of the American Economic Development Council,

and is the past president of this 61-year-old association of 1,200 economics and industrial development professionals in North America.

Bud's activities for the betterment of San Mateo County have not been limited to the economic sphere. He has been an exemplary leader in community service as a member of the Community Advisory Board of Seaton Medical Center in Daly City, the advisory committee of the San Mateo County Council of the Boy Scouts of America, the board of the Peninsula Family YMCA, the Peninsula Memorial Blood Bank, and Mercy High School.

Mr. Speaker, I invite my colleagues in the House to join with me in recognizing the outstanding community service that Bud Bostwick has given to San Mateo County for many, many years.

A TRIBUTE TO THE SOUTHERN CALIFORNIA AEROSPACE INDUSTRY/EDUCATION COUNCIL

HON. MEL LEVINE

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 2, 1986

Mr. LEVINE of California. Mr. Speaker, we rise today to bring to the attention of our colleagues the Southern California Aerospace Industry Education Council, a successful program in southern California which was established to form a partnership between academic and vocational education.

The United States faces a massive shortage of skilled technicians. Because of this shortage, manufacturers have been forced to recruit from one another. This raises labor costs and therefore the price of the product. In addition, many companies are recruiting from out-of-State and even from out-of-country. The needs of the aerospace and other high technology industries are just one example of our Nation's critical need for skilled personnel.

Although our universities are graduating more engineering students than ever before, for the first time more foreign students than American students are graduating with engineering degrees. This situation cannot be allowed to continue.

Industry has not sat idly by. Many partnerships have been formed between business and education groups to address this critical national issue and find a solution to the lack of adequate vocational education.

One successful partnership is the Southern California Aerospace Industry Educational Council. This council was established 2 years ago for the specific purpose of developing appropriate curricula, providing necessary resources, transfer technology, and developing joint marketing strategies.

A curriculum guidelines was developed with the assistance of State funding and is designed to be hierarchical and articulated among the high schools, community colleges, and degree granting colleges and universities. Thus students may move sequentially from high school occupational programs to advanced occupational programs at the community college level, leading directly to technical level employment. Carefully written transfer courses will enable the manufacturing technologiests to enhance employment upgrade opportunity by taking additional course work at the degree granting colleges and universities.

What is required today are programs and experiences that bridge the gap between the so-called academic and vocational courses. With the assistance of the industry-education partnerships, more attention is being paid to the problem of lack of vocational education.

The Southern California Aerospace Education Industry Council has had two significant accomplishments this year: First, the development of the curriculum guideline for manufacturing technologist and second, the retraining of instructors through a State internship program.

The role of vocational education can no longer be just creation of service jobs, it has to take a primary role in the recycling of the American work force not solely to provide job skills, but to help keep Americans in the international marketplace. The manufacturing industry will continue to need production people. The work force is changing with a rush of new technology and increased automation and will continue to do so beyond the 1980's. Foreign competition will require most industries to concentrate on high quality and high productivity. A more competent work force will be critical. The successful worker of tomorrow must have flexibility. Vocational education has a prominent role in developing this work force.

It's a pleasure to share the accomplishments of the Southern California Aerospace Industry Educational Council with our colleagues in the U.S. House of Representatives. There is a critical need for such a program and we wish the council continued success in this important endeavor.

AIDS: FROM COMPLACENCY TO ACTION

HON. WILLIAM E. DANNEMEYER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 2, 1986

Mr. DANNEMEYER. Mr. Speaker, we are experiencing a health catastrophe of historic proportions and a moral crisis of equal magnitude. At present 24,085 persons have been diagnosed with acquired immune deficiency syndrome [AIDS]. Of that number 13,442 are already dead and the remaining number are expected to die within 5 years. A recent report by the Centers for Disease Control [CDC] projects that by 1991 the cumulative number of AIDS case will total more than 270,000 and the number of deaths will exceed 179,000. In addition, it is estimated that between 1 million and 1½ million persons are infected with the AIDS virus and are capable of communicating the disease. Until recently it was hoped that only 25 to 30 percent of those infected would fall victim to full-blown AIDS. However, recent evidence indicates that more than one-third of those exposed will progress to the fatal stages of the disease and all of those exposed will experience some substantial impairment of their immune system. If this scenario fails to illustrate the severity of the health crisis at hand, there is more.

Perhaps the most devastating part of this bleak projection is that individuals who suspect they may be infectious and those who know they are infectious continue to enage in high-risk activities proven to spread this disease. Despite the authority of public health officials to halt this type of behavior, they have declined to intervene saying that isolation orders or restrictions on sexual activities infringe on the civil rights of AIDS victims. The issue at hand is not the civil rights of any victims nor of any potential victim, it is finding a way of stopping any and all activities that may spread this 100 percent fatal disease. The AIDS virus does not have rights, and the rights of individuals who persist in engaging in certain activities are outweighed by the rights of those unsuspecting persons whose lives are placed at risk. It is a blantly selfish action for an individual to reject or ignore knowledge which would assist him in preventing the death of another. Yet we are faced with the unfortunate facts that many victims of AIDS refuse to acknowledge that any transfer of body fluids could result in the death of another. Persons who suspect they may have been exposed are refusing to get tested because they are afraid of losing their jobs, their friends and the support of their families. While denial and disbelief are understandable reactions, AIDS victims must be forced to acknowledge the severity of their illness and take responsibility for the consequences of their actions and inactions.

For these reasons I am introducing today two bills which attempt to deal with the problem in a realistic manner and take into account the facts at hand. The first bill will make it a crime for Federal employees and those in Federal buildings to knowingly transfer body fluids. The penalty for engaging in conduct known to communicate the AIDS virus will be enforced isolation for a period of 5 years under the supervision of a public health officer or until a cure is found. It is anticipated that this legislation will be difficult to enforce and will be used only in those rare circumstances where transmission of the virus is purposeful, knowing or where the actor evidences extreme recklessness. In attempting to prosecute an offense pursuant to this legislation, it would be necessary to prove that a particular person was the source of contagion and that the individual possessed the requisite degree of intent necessary to prove culpability.

Although criminal prosecution for transmission of the AIDS virus could be accomplished in most jurisdictions under theories of homicide, manslaughter, attempted murder, and criminal assault, this legislation is designed to spell out a Federal policy of deterrence and to put the Federal Government on record in opposition to any high risk conduct known to transmit AIDS. It is good public policy for the Federal Government to state outright that such behavior is unacceptable to society.

Several jurisdictions currently address venereal diseases specifically and recognize a violation of public health orders as a misdemeanor. The California Health and Safety Code Section 3198 makes it a misdemeanor to "expose any person to, or infect any person with any venereal disease" and to "marry or have sexual intercourse" if the individual is in-

fected with venereal disease and knows of such condition. In addition, section 3354 of the California Health and Safety Code makes it a misdemeanor to violate any public health order dealing with communicable disease and assesses a fine of $25 to $500 imprisonment for not more than 90 days, or both.

The purpose of this bill is to deter future high-risk conduct and to encourage recognition that high-risk activities known to spread AIDS are criminal under current law and should be treated as such. No cry for civil rights can overcome the fact that knowingly passing on a fatal disease is ethically and morally wrong. Society cannot and must not condone different standards of conduct for AIDS victims because they are fatally ill. We must show compassion while taking the preventive steps necessary to control proliferation of this terrifying disease. In my judgment this bill will encourage such action.

The second legislative effort I introduce today is a resolution expressing the sense of Congress that States should enact the following laws in an attempt to deal with the AIDS problem: Legislation which would require that the blood testing required before a couple may be married include a negative test result from a test for AIDS or a test to determine if an individual is a carrier of the virus; legislation that would require that tracing of individuals with venereal disease include individuals with AIDS, or those determined to be carriers of the virus, and that upon notification of the positive result of such test, the individual at risk be counseled respecting the potential for spreading the disease; legislation that would encourage designated hospitals to offer blood transfusions which are made directly between the blood donor and the person receiving the transfusion; legislation that would require individuals seeking a license to practice medicine, nursing, or any other health care profession to have a negative test result from a test for AIDS, or a test to determine if an individual is a carrier of the virus; and legislation that would outlaw sodomy.

I introduce this bill with the hope that States will enact this legislation and will take these and other prudent steps to curtail the spread of AIDS. Some claim that the States are the only ones with jurisidiction over the health threat of AIDS. While I concur with the assessment that the States should retain jurisdiction, I do not agree with the assessment of those that indicate that States are solely responsible. An overwhelming Federal interest has been created in this issue based on the magnitude of the burden created by the health care costs of the present victims of AIDS and the potential burden of the 270,000 victims estimated to exist by 1991. The disabling effects of this debilitating disease dictate that AIDS victims cannot care for themselves in the final stages of illness. In most instances the States and the Federal Government are the only entities able to shoulder the cost burden of adequate medical care. In this instance the realities of the massive burden imposed on the Federal Government raises what is generally considered a State issue to the level of mandated Federal involvement.

It is urgent that we shift from complacency to action in preventing future cases of AIDS. In my judgment, the best way to accomplish this is to discard the naive assumptions and simplistic solutions which have hampered our progress to date. We have avoided these and other options out of fear of being labeled discriminatory. It is time to explore any and all options which may lessen the burdens of this appalling disease.

ROBERT BIERSCHBACH RECEIVES AWARD

HON. JERRY LEWIS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 2, 1986

Mr. LEWIS of California. Mr. Speaker, I would like to take this time to pay tribute to a most remarkable man, Mr. Robert J. Bierschbach. He is the 1986 recipient of the John B. Surr Award which is the highest honor awarded by the San Bernardino County Bar Association. Mr. Bierschbach will be honored by the bar association on October 10 of this year.

This highly esteemed award was established in 1978 in memory of John B. Surr (1906–1971), a distinguished San Bernardino County lawyer. It is presented to "the member of the legal community who has best exemplified the high standards of the profession and the administration of justice." Recipients are selected by the San Bernardino County Bar Association board of directors.

Robert Bierschbach is the first practicing attorney to receive this honor. During the many years of his career, he has earned the overwhelming respect of the bench, the bar and his community, and his selection received the unanimous approval of the board of directors.

Bob is a native Californian, born in Glendora, CA, March 28, 1921. Married to Margaret Bierschbach for 44 years, he is the proud father of their son Barry, and their daughter Nancy who has given them two grandchildren.

He received his B.A. from the University of Redlands in 1943, and his LL.B from University of Southern California in 1949. He was admitted to the practice of law in 1949 and has been active in his profession since that date. He is a partner in the law firm of Reid and Hellyer and served as president of the County Bar Association in 1965–66.

In addition to these many accomplishments, Bob served as president of Inland Action for 2 years, from 1984–86. He has also been active on the Redlands Community Hospital board and the board of the YMCA.

A colleague once described Bob as "the most prominent lawyer in town, who truly has everyone's respect." It is clearly evident that he is a most deserving recipient of the John B. Surr Award. I salute him for his achievements in both his profession and his community, and congratulate him on being awarded such an esteemed honor. Mr. Speaker, I am most impressed by and am pleased to recognize my friend, Mr. Robert J. Bierschbach.

MILITARY SPENDING OUR COUNTRY NEEDS

HON. W.G. (BILL) HEFNER

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 2, 1986

Mr. HEFNER. Mr. Speaker, on October 5, 1986, I will participate in the dedication ceremony for the new armory of the new 263d Combat Communications Squadron-North Carolina Air National Guard in Badin, NC.

The dedication ceremony is the culmination of commitment, interest and a lot of hard work on the part of many people.

I am personally honored that the people of the Eighth Congressional District have allowed me to represent them in Congress, and by doing so put me in a position to help make the facility a reality.

This facility is a perfect example of the kind of military spending our country needs. It provides training, equipment maintenance, troop morale, and military readiness.

While it is impressive and certainly important for the guard to have a new facility, it means nothing without the dedicated men and women who serve here and elsewhere in our military.

This is particularly true with the 263d Combat Communications Squadron-North Carolina Air National Guard-Badin. I believe this unit has been the recipient of about every important award that can be given. It was named the most outstanding communications unit of the Air National Guard in the Nation. You cannot do better than that.

The awards and citations received by this unit do not come undeservedly. They result from commitment and hard work. There is one member of this unit who has exemplified commitment and hard work, one who has always gone beyond the call of duty. I speak of M. Sgt. Bennie S. Frick.

Master Sergeant Frick is the best of the best. Those who have been priviledged to serve with her know first hand of her many accomplishments.

Since enlisting on May 5, 1974, she has compiled a most impressive record of achievements. Time will not permit me to list them all. However, I do want to mention just a few.

First female master sergeant in the North Carolina Air National Guard.

Distinguished graduate from the Air National Guard Non-Commissioned Officers Academy.

Twice won the National Guard Burlaw Personnel Technician of the Year Award.

A recipient of the Meritorious Service Medal, The Air Force Commendation Medal, and the North Carolina Commendation Medal.

As a full-time personnel technician, her innovative work streamline the operations of this unit.

She has truly brought great credit to herself, the U.S. Air Force and the Air National Guard.

As Master Sergeant Frick's Representative to the U.S. Congress, I take great pleasure in recognizing these outstanding accomplishments. I look forward to paying a special tribute to this remarkable woman who exemplifies

the best in service to her family, to her community, to her Guard unit, and to her country.

It will also be my privilege to present her with a U.S. flag which I have had flown over the Capitol especially to honor this gallant lady whose dedication to God and country is unsurpassed.

THE 55 MPH SPEED LIMIT

HON. PHILIP M. CRANE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 2, 1986

Mr. CRANE. Mr. Speaker, while I commend Senator STEVE SYMMS, Republican, Idaho, for securing passage of his amendment to permit States to raise their speed limits to 65 mph on the vast majority of interstate highways, I don't feel it goes far enough.

Interstate highways were built for significantly higher, safe speeds. And when Congress lowered speeds on the interstates from 70 to 55, it did not do so for safety reasons. The objective was to conserve energy, which at the time did not have to be dictated to free people at a time pump prices were soaring.

But the most offensive aspect of this dictation by the national Government is that it is one more arrogant assertation by politicians and bureaucrats in Washington that we know better than ignorant yahoos at the State level what is in their best interest.

If we insist upon dictation, let it be confined to the interstates and then let the States do what they please with regard to the regulation of their own internal roadways. And as far as the interstates are concerned, Senator SYMMS' amendment is a move in the right direction, but interstate speeds should be restored to 70 mph.

IN HONOR OF MONTY BASGALL

HON. MEL LEVINE

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 2, 1986

Mr. LEVINE of California. Mr. Speaker, on Sunday Monty Basgall will end his distinguished 14-year career as a coach with the Los Angeles Dodgers and his superb 27-year career with the Dodger organization.

During his service with the Dodgers Monty has served as a scout, minor league manager, and major league coach.

For almost a decade and a half Monty has been a key ingredient in the Dodgers efforts to build one of the most successful and admired organizations in baseball. He is known as one of the finest teachers in the game. His star pupils have included Steve Garvey, Ron Cey, Bill Russell, Davey Lopes, Jim Lefebvre, and Ted Sizemore.

In addition to his impressive accomplishments as a coach, Monty had a distinguished playing career as a second baseman in Pittsburgh Pirate and Dodger organizations. I remember watching Monty when he was a second baseman with the Hollywood Stars. I have been checking for him since I was 8 years old.

Mr. Speaker, Monty Basgall is a man I am proud to call my friend. He is a remarkable man and a recognized leader in his profession.

I ask my colleagues to join with me in paying tribute to Monty Basgall and wish him and his beautiful wife, Nita, well in their retirement and future endeavors.

JUST SAY NO TO DRUGS

HON. BUTLER DERRICK

OF SOUTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 2, 1986

Mr. DERRICK. Mr. Speaker, as part of the congressionally sponsored Crusade Against Drug Abuse, I recently sponsored an essay competition for all sixth grade students in South Carolina's Third Congressional District.

Seventeen schools held competitions to choose a winning entry, with students writing about the topic "What I Would Do If Offered Drugs."

Today, I'm proud to share with my colleagues the best of those essays.

The district's winning essay:

If I were in a situation where I was offered drugs, I would say a simple word, NO! It's that easy. Drugs might make you feel good at first, but your feeling of fun will eventually go away, and important parts of your body will be damaged. Drugs can also ruin your future and hurt the ones you love. So just say NO!—Karen MaWhinney, Forest Acres Elementary School, Easley, SC, Teacher—Ms. Carolyn Freeman.

Runners-up:

If offered drugs I would say "NO!" I wish peope would stop using drugs. They should know drugs are bad for them, downright deadly, I say. They can cause cancer, brain damage, convulsions, nervous breakdowns and even death. That's why I never have, nor will, experiment with drugs.—Eric Holloway, East End Intermediate School, Greenwood, SC, Teacher—Mrs. Jane Walker.

If I were offered drugs I would say no. The reason I would say no is because drugs can be harmful to you and your health. It could make you feel very ill, and that may lead to death. A lot or people have died recently because of drugs. If people called me chicken just because I didn't want to take drugs, I would still say no.—Christy Lynn Bogart, Antreville Elementary School, Abbeville, SC, Teacher—D. H. Gamble.

If I were offered drugs, I would tell them that I don't need drugs to make me happy or to take away worries. I have my own healthy way of living. If they tried to force them on me then I would run home or to a good friend's house nearby.—Chris Wimpey, Pickens Elementary School, Pickens, SC, Teacher—Mrs. Coble.

If someone came up to me and said, "Hey, do you want to buy some pot?" I would say "NO, I don't do drugs." And then if they called me a chicken, I would say, "I'd rather be a live chicken than a dead one."—Lori Gillespie, West End Elementary School, Easley, SC, Teacher—Ms. Elaine Bassett.

LEGISLATION TO AMEND FEDERAL MINE SAFETY AND HEALTH ACT OF 1977

HON. NORMAN D. SHUMWAY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 2, 1986

Mr. SHUMWAY. Mr. Speaker, today I am introducing legislation to amend the Federal Mine Safety and Health Act of 1977 [MSHA]. If enacted, this legislation would exempt those mines that are owned by five or less working partners and that do not employ any individuals who do not have an ownership interest in the subject mine from the onerous regulations included in the act.

The original intent of the Federal Mine Safety and Health Act [MSHA] was to address a variety of legitimate safety and health concerns which were largely associated with the coal mining industry. The measure was rewritten to include the phrase, "and other mines," although the underlying motive of the legislation was to protect the health and safety of coal miners.

I represent the "Mother Lode" region of California. In this region of California there are scores of individuals mining for gold and other precious ores or minerals on small claims located on both private and Federal lands. Most of these individuals work by themselves or with a small number of partners on these claims. In searching for minerals, the small miner will often drive short prospecting tunnels which span only several feet in length.

During the consideration of MSHA, Congress did not properly take into account the unique circumstances of the small gold miner. Due to this oversight, the individual mine operator must adhere—when forced by Federal mine inspectors—to all the provisions included in MSHA. The practical effect of subjecting small miners to MSHA requirements is to put them out of business. Under no reasonable circumstances can a small mine operator, with extremely limited resources available, comply with rules and regulations which were designed for large operations that employ mine workers.

With this inequitability associated with MSHA as presently formulated in mind, I urge my colleagues to join me in support of this simple, straightforward legislation to alleviate this undue hardship on small mine operators.

TRIBUTE TO ANDREW YARACS, JR.

HON. JOE KOLTER

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 2, 1986

Mr. KOLTER. Mr. Speaker, I rise today to salute—before the U.S. House of Representatives—Andrew Yaracs, Jr. of Lyndora, PA, in my Fourth Congressional District.

Mr. Yaracs' contributions to the community are great. Born of immigrant parents, he, at age 16, was director and manager of Lyndora All-Girls Drum and Bugle Corps, and has been

active in the Heart Fund, Cancer Crusade, and March of Dimes.

Mr. Yaracs received a life membership to the Lyndora Volunteer Fire Co. for his many years of service, and has also been awarded a life membership to the Butler Musical Society. He has raised funds for Children's Hospital in Pittsburgh and received the Butler Jaycees Distinguished Service Award in 1976.

A chairman for numerous years and founder of the Spirit of Christmas Parade, he was head of the Chicora Kiwanis Club for 4 years and supervised all of their fundraisers at that time. Mr. Yaracs served on the mental health board and was instrumental in obtaining a new post office in Lyndora, and he was one of the businessmen of Lyndora who went to Citizens National Bank and proposed that a branch office be built in Lyndora, which it was.

Mr. Yaracs organized the first Salvation Army canteen project and was a committee person on the Lyndora-High field Little League Field Committee.

Active in organizing community days, Mr. Yaracs also taught accordian and had his own band, which entertained numerous times at the Butler VA Hospital and Sunnyview with their own songs and the songs of their friends.

On Feb. 14, 1966, Mr. Yaracs organized the General Butler Vagabonds Drum and Bugle Corps for boys ages 13 to 21. Later, girls were also enrolled.

In 1969, he organized the General Butler Vagabonds Cadets, which is a feeder corps for the Vagabonds, available for boys and girls ages 8 to 13. The purpose of these groups is to educate boys and girls in the joy of music plus keep them off the streets and active in good community service. The Vagabonds have traveled throughout the United States and Canada, winning the United States Open Class A Championship the years between 1969 and 1972. The cadets have also traveled throughout the tri-State area and have won the VFW State championship 4 years in a row. This year they won the 1986 American Legion Championship.

In 1974, Mr. Yaracs organized the American International Open Commission, which brought 4,000 young people into Butler for a national competition of drum and bugle corps. This became an annual event.

In May 1976, Mr. Yaracs dream came true when the Vagabond Community Center was dedicated. All nonprofit organizations in Butler have profited in some way by this building, which was only built because of his unselfish dedication.

Every year, Mr. Yaracs takes his cadet corps to participate in the VA ceremonies on Memorial Day and on Veterans Day.

Mr. Yaracs organized and provided free bus service for everyone in the Butler and Butler Township area twice a week for 2 years while the area was without bus service. Because of his unselfishness, 6 tons of food was donated to the needy and unemployed by area citizens and, also, a collection continues for the Cabot Church, which is helping the needy in the area.

In 1982 and 1983, Mr. Yaracs was on the American Legion State Parade Committee and he was committeeman for the Sunnyview Christmas fund, raising an average of $1,500 to buy Christmas gifts for each patient at Sunnyview for the last 5 years.

Mr. Speaker, colleagues on both sides of the aisle, it is apparent why I honor and congratulate Mr. Yaracs before the House today.

Men like Mr. Yaracs make the world a better place. I salute him.

TRIBUTE TO DON FUQUA

SPEECH OF

HON. BILL CHAPPELL, JR.

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 29, 1986

Mr. CHAPPELL. Mr. Speaker, I rise today to pay tribute to my colleague and friend DON FUQUA who is about to leave this illustrious gathering after 24 years of service.

We have heard over the past 2 days the deep respect and friendship that Members of this body have for my fellow Floridian. As chairman of the Science and Technology Committee he helped maintain the Nation's interest in and commitment to our final frontier. He quietly but firmly ensured adequate funding for initiatives that will keep America at the cutting edge of space exploration while also pushing for advanced technology projects on Earth. In short he made us all look beyond the horizon to what could be. In so doing he has left a legacy that our children and grandchildren will benefit from.

For 24 years DON FUQUA has served his constituents and his Nation here in the Congress. Before coming to Washington, he served in the Florida House of Representatives starting in 1958 at the tender age of 25. In essence, our colleague has spent his adult life to date serving others.

I will miss DON FUQUA, his advice, his easy smile, and his always gracious manner. I am glad he and Nancy will not be far away, but I regret that the Halls of this House have lost such an able and devoted public servant.

TRIBUTE TO RICHARD D. ARNOLD

HON. ROY DYSON

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 2, 1986

Mr. DYSON. Mr. Speaker, I rise today with great regrets to honor the memory of a friend and neighbor, but most of all, a dedicated public servant, Mr. Richard D. Arnold of St. Mary's County, MD.

At the time of his passing, Dick Arnold was county commissioner of St. Mary's County, a position that he held since 1979. He spent the greater part of his adult life involved in politics yet, he was one of the very few elected officials who never had an enemy. He was known for his sense of humor as much as for his ability to get a job done.

All of his friends will testify that he had a heart of pure gold. Dick spent as much time as possible working with the Special Olympics and the handicapped children of St. Mary's County. He was really at home working with these young people.

A Maryland Department of Transportation employee for 30 years, Mr. Arnold brought an insight and working knowledge into his position as county commissioner. It is unknown how much time, energy, and money was saved by St. Mary's County because Dick Arnold was in charge. There was no task too difficult or challenge too great. Work was his pleasure.

No matter where Dick Arnold went, he left smiling faces behind. Those of us, whose lives he touched, will miss him greatly, but we will always remember him with a smile.

NEAL ANNOUNCES FINALIST OF FIFTH DISTRICT ANTIDRUG ESSAY CONTEST

HON. STEPHEN L. NEAL

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 2, 1986

Mr. NEAL. Mr. Speaker, I am delighted to be able to recognize a young man and his teacher from my district who participated in the antidrug essay contest sponsored by the National Conference of State Societies. Daniel Mabe, a student at Ashley Middle School in Winston-Salem, NC, has been selected as the Fifth District finalist. The contest was targeted at students on the sixth-grade level. Each student was asked to respond to the following statements: "What I Would Do If Offered Drugs" and "As A Good Citizen, How Can I Help My Community." Daniel's essay will represent my district in the competition for the national prize.

I have special praise for Daniel's teacher, Mrs. Winafred Campbell, as well as all the other teachers who participated in this essay contest. An effective method of combating drug abuse is encouraging drug education at an early age. By initiating informative classroom discussion, teachers can show students that abusing drugs will only lead to broken lives and tragedy.

Too often, young people only hear about the glamorous side of drugs from their fellow students. We are told that a majority of junior high school students today have already experimented with drugs. That is why it is so important to reach our children as early as possible. A strong education program is needed to show the other side of drug abuse: the physical and psychological damage, as well as the crippling addiction that can leave them permanently disabled or dead. Armed with this knowledge, our young people will be better prepared to resist peer pressure and the temptation to experiment with drugs.

I am excited about the potential of this essay contest and other similar efforts to fight drug abuse. I am proud to publish Daniel's essay in the CONGRESSIONAL RECORD. It follows:

I

Drugs, the awful killers of America. They drain your mind and pollute your body. It's awful that so many people use and are addicted to drugs. If I were offered any kind of drugs that are illegal or could harm me, I would say "No" immediately, and try to talk the people who offered it to me out of using

drugs, or recommend them for a local anti-drug program. Hopefully they are smart enough to try and quit using drugs. But still, my answer would be a definite "No."

II

Birds singing, children playing, cars roaring, and basketballs bouncing. These are just a few of the cheerful sounds around our community. I have some ideas that might help to improve our community. We could start a community sports center for the people around our neighborhood. We could also have a clean-up week and then at the end of one week, see who has the cleanest community. These are just a couple of ideas that might help our community, and I hope that in the future, the world will be a better place in which to live.

ABA RECOMMENDATION ON YOUTH DRUG AND ALCOHOL POLICY

HON. GEORGE MILLER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 2, 1986

Mr. MILLER of California. Mr. Speaker, the American Bar Association has recently released a report entitled, "Policy Recommendation on Youth Alcohol and Drug Problems." The report is the result of extensive work by the ABA Advisory Commission on Youth Alcohol and Drug Problems, a Commission on which I am proud to serve.

The report is comprehensive, addressing prevention, treatment, law reform, and funding strategies. It identifies 20 specific areas for State and Federal legislative action, as well as areas for education and public awareness efforts.

Mr. Speaker, the American Bar Association has sponsored and adopted not only an excellent report on youth substance abuse, but an important policy guide for the Nation. The ABA is a prestigious professional association. Its members are leaders in our society and exercise significant influence. Many serve in the Congress. When an organization of the stature of the ABA states that, "Alcohol and other drug abuse has become the modern plague of our youth and our society," and that its membership must engage in "* * * the search for solutions to our serious national crisis," we should all take careful note and intensify our efforts to address the problem.

I believe there is no more serious issue today than drug and alcohol use among our youth. The Select Committee on Children, Youth, and Families documented the widespread, and serious nature of the alcohol and drug abuse problem during our first year of hearings. As we conducted our assessment of current conditions among children, youth, and families, alcohol abuse in particular kept recurring in connection with nearly every serious family related problem.

When we looked at prenatal care concerns, and healthy beginnings for infants, alcohol abuse was connected to low birth weight and fetal alcohol syndrome. When we looked at the impact of unemployment on children and families, alcohol and drug abuse were frequent consequences. The same was true when we looked at spouse abuse, child abuse and neglect. When we investigated the problems of teenagers in crises, those who ran away, or contemplated suicide, or were engaging in prostitution, alcohol and drug use played an important role in their problems, or their parents' problems.

Substance abuse was such an unanticipated and strong theme that the committee held two hearings last year to look more closely at the problem. What we learned echoed the findings of the ABA Advisory Commission on Youth Alcohol and Drug Problems.

One out of every eight Americans are children of problem drinkers; nearly 7 million are children under age 18. Alcohol and drug abuse are connected to some of the most serious problems facing families: 40 percent of all family court problems involve alcoholism; 50 percent of the cases of spouse abuse involve alcoholism; studies repeatedly connect substance abuse with child abuse and neglect. Finally, 45 percent of all fatal single vehicle fatal accidents involve alcohol, and motor vehicle accidents are the leading cause of death for persons aged 15 to 24.

In short, we found, as did the ABA Commission, that alcohol and drug use is epidemic among youth, as are the life-threatening problems they cause.

In response to the widespread and serious nature of youth substance abuse, the Advisory Commission recommendations are appropriately broad-based. I will review some of the key areas, but urge my colleagues in the Congress to acquaint themselves, thoroughly, with the entire recommendation, as well as the accompanying report.

Several points in the recommendation direct activity at the State level. These include issues such as enactment of dram shop and host liability statutes, increasing penalties for those convicted of selling alcohol or other drugs to minors, and enactment of legislation providing for surcharge fines on those convicted of substance violations. Funds would be used to enhance prevention and treatment programs, as well as research on ways to prevent youth alcohol and drug abuse.

Other points are directed at judicial activities, and at education and training of the legal profession regarding the problems related to youth substance abuse. I am particularly pleased with the Commission's strategies in these areas. The select committee heard excellent testimony from two juvenile court judges who had exercised leadership in their courtrooms, and in their communities, to reduce the incidence of substance abuse by youth, and their parents. The ABA recommends that when a judge has reason to believe alcohol or other drug abuse may be a problem for any juvenile offender appearing before him, for any parent seeking custody of a child in a divorce proceeding, or for any parent found guilty of child abuse and/or neglect, that evaluation and treatment for the suspected problem should be ordered.

To enhance judicial awareness of the prevalence of substance abuse, the recommendation includes a section on legal training. ABA local bar associations are directed to provide continuing education programs that include extensive curricula on alcohol and drug abuse education. They are also directed to, "encourage the training and education of appropriate justice system personnel, including lawyers, regarding the contributory effect that alcohol and other drug abuse often has upon many offenders and their families in situations involving delinquent conduct or status offenses." Finally, local bar associations are asked to provide resources to increase the awareness among judges and lawyers of the role that substance abuse often plays in domestic cases, and to serve as a resource to help replicate successful programs within juvenile and family courts.

Areas that involve Federal law include enactment of legislation that would prohibit transportation or shipment of drug paraphernalia to minors by U.S. Postal Service mail, or interstate commerce. The recommendation proposes a continuation of existing legislation, which provides incentives for States to adopt 21 years as the minimum legal drinking age. In addition, a significant portion of the revenues produced by both State and Federal civil and criminal forfeiture provisions should be earmarked for alcohol and other drug enforcement, prevention, treatment, and research activities directed at minors.

Two of the ABA's recommendations would be especially useful in helping to prevent drug and alcohol abuse among youth. Once again, these points echo testimony received by the Select Committee on Children, Youth, and Families. Our witnesses stressed that school programs which educate children and youth about the dangers of substance abuse, while important, are not enough to counteract the strong and persuasive prodrinking advertising efforts in our society. The ABA recommendation states unequivocally that, "Advertising of alcohol which is directed at youth should be opposed." In addition, alcohol marketing strategies for college campuses that promote use should be opposed and government activity encouraged, where necessary, to ensure effective opposition.

One final area addresses the issue of insurance coverage for treatment of alcohol and drug problems in both in-patient and out-patient programs, especially those for youth. The ABA recommends that States enact legislation authorizing minors to consent to noncustodial, and noninvasive treatment. Minors should also be authorized to voluntarily consent to custodial or invasive treatment, in the absence of parental consent, provided there is specified judicial review and provision of counsel.

Testimony received at the Select Committee on Children, Youth, and Families would generally support these recommendations. However, they also raise some concerns.

The committee's hearing last year, "Emerging Trends in Mental Health Care for Adolescents," looked at the increasing numbers of juveniles who are being admitted to in-patient psychiatric settings, or facilities for treatment of substance abuse. The committee learned that this trend is fueled in part by increased insurance coverage for mental health and substance abuse treatment. Other contributing factors are the increased numbers of status offenders who are no longer incarcerated in juvenile or adult criminal facilities but for whom appropriate community-based programs are unavailable, and the financial pressure

medical hosptials are under to fill growing numbers of empty beds.

The committee heard graphic testimony about the inappropriate hospital admissions of adolescents that can occur under these circumstances. But the committee also learned that while the substance abuse and mental health problems of children and youth are growing, an appropriate range of treatment approaches, especially out-patient and community-based services, are growing more scarce. The ABA's recommendation for increased insurance coverage of both in-patient and out-patient treatment, in both public and private freestanding, as well as hospital-based facilities, addresses the concerns heard by the committee. Given the current climate, however, it may be particularly important to stress broadened coverage of out-patient and community-based treatment approaches.

Authorizing minors to consent to noncustodial and noninvasive treatment would support the testimony the committee heard from a 16-year-old witness, who said she did not use a local mental health clinic to obtain help for herself because, in part, parental consent would have been required. The witness had been sexually abused by her alcoholic father.

Authorizing minors' consent to treatment for inpatient, or invasive treatment may, for a similar reason, be important. However, the protections that the ABA includes in its recommendation should be stressed, given the testimony the committee heard about abuses of juveniles in in-patient settings. The recommendation notes that a minor should be permitted to obtain voluntary in-patient, or invasive treatment, at a State licensed facility, if the parents fail to provide consent, "* * * provided that in the absence of such consent, within 48 hours: qualified counsel is appointed for the juvenile; parents have the right to participate; an appropriate alcohol or other drug treatment professional promptly evaluates the juvenile and the proposed plan of treatment; and an appropriate judicial body reviews the treatment plan for the juvenile."

These are some of the key provisions in the ABA's policy recommendation on youth alcohol and other drug abuse. I have not reviewed all 20 areas addressed, but again, urge my colleagues to review, for themselves, this excellent policy guide for members of the legal profession, as well as public policymakers at all levels of government.

I commend the American Bar Association for this important contribution on behalf of our Nation's children and youth. We need everyone to join in this fight, or we will continue to lose too many of our youth and the families they live in to alcohol and drugs.

LEW LEHRMAN ON GOALS FOR THE NEXT CENTURY

HON. JIM COURTER

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 2, 1986

Mr. COURTER. Mr. Speaker, Lewis Lehrman, chairman of Citizens for America, recently delivered a thoughtful and eloquent speech at the American Political Science Association which I would like to share with you.

If you detect a Lincolnesque tone to this speech, it is not by accident. The political problems we face in our time and must overcome originate in widespread confusion about the principles on which our regime is based. Equality and liberty are the basic political ideas of liberal democracy, finding their ground in the natural rights all human beings have from birth. No government gives people their natural rights; no government can take them away. Any government that tries to do so—as the Declaration of Independence tells us—destroys the only justification for its existence and thereby invites popular revolution.

Next year as we celebrate the bicentennial of the U.S. Constitution, we can do no better than to seriously reconsider the only moral philosophy which makes sense of our fundamental legal document. Lew Lehrman's article demonstrates how that timeless moral philosophy—described in the Declaration and articulated so eloquently by Lincoln—applies not just to the 18th and 19th century, but to the political and social problems of our own time:

GOALS FOR OUR NEXT CENTURY

(By Lewis Lehrman)

Today, America is engaged in a great civil war—an intellectual civil war, testing what kind of nation we shall choose to be in our third century.

The issue is whether we can make and keep a free America No. 1. This is not only the issue; it must also be the goal of every true American patriot. Not only for reasons of self-interest, but more important, because America is the pre-eminent standard-bearer of the sacred code of Judeo-Christian civilization. And let no one doubt that it was this sacred code which lifted up 13 impoverished colonies by the sea to the most bountiful nation the earth has ever known.

American prosperity, won by the work of human hands, is no accident. We know this because the Founders had a coherent economic philosophy, designed to make us free and self-sufficient. In the realm of commerce, those who built America held that government created the conditions and some of the incentives which lead, not to welfare, but to hard work; not to hoarding, but to risk-taking; not to indulgent consumption, but to investment for the future; not to austerity, but to growth, not to the dole, but to full employment.

Thus we see that the Founders guided themselves by the cardinal American economic principle—which stemmed from their faith. And it was this: economic justice must mean that before any able-bodied citizen should make a demand on society, he must first make a supply.

It is this first principle of a free economy which completely alters human conduct. For we know that to supply is to produce, to give; but to receive is to consume, to take. Thus, it is rightly said: freely do we give; then we receive.

With this rule of faith and work the Founders had drawn a blueprint of free enterprise, not only for individual and family success; but, in fact, they had established the revolutionary principles for national and global prosperity—global because the American Revolution burst brightly upon the face of the earth in the universal and sacred truth of the Declaration of Independence—proclaiming that all mankind, not just Americans, but all men are created equal, that they are endowed by their Creator with the inalienable right to life, to liberty, and to the pursuit of happiness.

These are not only the fundamental rights of American citizens, but they are authorized for all mankind, as Thomas Jefferson wrote in the declaration, "By the laws of nature and of nature's God."

Thus from the Declaration of Independence itself, we know that true religion and politics were indissolubly joined in our fundamental act of union at the birth of the American Republic. The irony would amuse me if it were not a public scandal—but today, critics of American religious tradition suggest by their words, their thoughts, their deeds that our Founding Fathers, in their care to separate an established church from the state, meant to remove almost every trace of the living God from our public and educational life. This doctrine is not only pernicious; it is false law.

The constitutional debates show that the Founding Fathers sought to prevent the legal establishment of a government-owned church—such as the Anglican Church in England. And as the decisive witness to this fact, I bring forward President Washington himself—first in war, first in peace, first in the hearts of his countrymen—who declared in his farewell address that religion, virtue, and morality are necessary support of popular government, of, that is, American government. This is what the father of our country said, and this is what he meant.

It is a fact of American history that the First Amendment was never, until recently, a license for government to suppress religious practices in public places; nor was it a pornographic license to destroy the faith, the future, and the mind of a child; neither was it a warrant for the Supreme Court to prohibit prayer in public schools.

First, hear Jefferson, who said, "To consider [Supreme Court] judges as the ultimate arbiters of all constitutional questions [is] a very dangerous doctrine indeed and one which would place us under the despotism of an oligarchy." Moreover, he continued, "The Constitution has erected no such single tribunal."

So said the author of the title deeds of American democracy. A generation later, President Jackson nullified the Supreme Court decision in favor of the National Bank. Based on the full authority of the president's sworn oath of office—"To preserve, protect, and defend the Constitution"—Mr. Jackson ignored the Supreme Court's interpretation declaring "The opinion of [Supreme Court] judges has no more authority over Congress than the opinion of Congress has over the judges."

And now, let us consider Abraham Lincoln, the true founder of the Republican Party, who in the agony of obedience, did defer briefly to the Supreme Court's proslavery Dred Scott decision: which, nevertheless, he rejected as a permanent rule of political action.

Rendered for the majority of Supreme Court justices by Chief Justice Roger B. Taney in 1857, the Dred Scott decision declared that a black man could under the Constitution, never be an American citizen. Moreover, wrote Chief Justice Taney, the black man was a mere article of merchandise, and further, that the black man had no rights which the white man was bound to respect.

And therefore, as Sen. Stephen Douglas argued against private citizen Lincoln in the immortal debates in 1858, the earthly fate of the black man had been fitted neatly into the property clause of the American Constitution, where, instead of a child of God, the black man had become, under the Supreme

Court ruling, a mere chattel, forever a forsaken slave—a living mockery of the inalienable right to liberty.

Thus did the Taney Supreme Court decide in 1857.

Only 11 years later; the Congressional Statute of 1862, the 13th and the 14th Amendments had overthrown slavery, the Dred Scott Supreme Court, and its opinion—forever. Thus also did Lincoln argue, decisively, in his first inaugural, "If supports of popular government, of, that is, American government. This is what the father of our country said, and this is what he meant.

It is a fact of American history that the First Amendment was never, until recently, a license for government to suppress religious practices in public places; nor was it a pornographic license to destroy the faith, the future, and the mind of a child; neither was it a warrant for the Supreme Court to prohibit prayer in public schools.

If, as a nation under God, our faith has made us mighty and free, so too did we wax prosperous by exalting the family, a way of life grounded in the Bible . . . and, if I dwell on these wellsprings of our word greatness—faith, family, and free enterprise—it is only because I believe that, cut off from the foundation head of first principles, the deep river of our national life must eventually run dry—and with it the hope of the world.

And so, we must work ceaselessly and confidently toward the day when Americans will again pray in public places as they please; when racial quotas will be no more; when abortion shall be abolished; when the child tax exemption shall be raised to $5,000 and the tax code shall become an unapologetic social institution; when the budget will be balanced by constitutional amendment without raising taxes; when real money, a constitutional dollar as good as gold, shall be the honest standard of economic value.

And to safeguard America, the hope of the world, we must restore to primacy a principle purpose of our national government, in the service of which all officers of the land swear an irrevocable oath—the defense of the territory and the people of the United States.

And to that end, we must permanently put aside the suicidal strategy of Mutual Assured Destruction, now holding hostage all innocent Americans to the threat of offensive nuclear weapons—and annihilation. And we must put in the place of MAD a just military doctrine, a strategy of self-defense, a new shield of the Republic—the Strategic Defense Initiative.

Our opponents, fellow Americans of goodwill, but different opinions, ask us to compromise, to withdraw from the field, to grow quiet on rising controversial issues—such as prayer, pornography, abortion—holding sincerely, as they do, that these issues lead to divisive national debates.

But, I ask you, who or what was the provocative agent which dug up the domestic debate in the first place? No historian can deny that it was in fact the Supreme Court of the United States itself which overthrew, in one ruling after the other, the objective moral order enshrined by the Founding Fathers in our organic law—and with these rulings destroyed a century-and-a-half of settled common law and constitutional principles.

Some of our opponents say, yes, you conservatives are right about that; but, alas, the Supreme Court has ruled against you; and its rulings are the supreme law of the land, you must obey, and in the interest of harmony, you must be quiet.

We answer with respect for the court—obey for the time, yes; but be quiet about first principles, no, never. And furthermore, we deny that the Supreme Court can by itself, permanently decide the supreme law of the land in matters of fundamental constitutional principles. And, as authority for this opinion, we put forward as our preceptors President Thomas Jefferson and President Andrew Jackson—the very founders of the Democratic Party.

Thus did the Taney Supreme Court decide in 1857.

Only 11 years later, the Congressional Statute of 1862, the 13th and the 14th Amendments had overthrown slavery, the Dred Scott Supreme Court, and its opinion—forever. Thus also did Lincoln argue, decisively, in his first inaugural, "If the policy of the [National] government . . . is to be irrevocably fixed by decisions of the Supreme Court . . . the people will have ceased to be their own rulers."

Therefore, as I reflect on our first Republican president, I ask: who now laments the overthrow, by the American people, of the Dred Scott opinion? Who now holds up the memory of Chief Justice Taney for the honor of the ages? Who now mourns the death of the acceptable Supreme Court decision that the Negro was not truly a person? But who today can ever forget what he, Lincoln, borne up by his faith in a just God, against all odds and conventional opinion, did?—that all men might be free and equal on this hallowed ground.

Thus, we Americans must believe, we must know; it is Lincoln's example we must follow. He is the true founder of the party of free men, free soil, and free labor. It is he who shows us that America must always be governed by first principles—that without faith, family, and the moral law, free enterprise cannot long endure. It is Lincoln who inspires our nation to be more than a mere instrument for prosperity, personal influence, patronage, or self-centered success.

It is Lincoln we follow when we say; if we abandon the Declaration of Independence, which illuminates the governing principles of the Constitution and secures the inalienable right to life—of the child-about-to-beborn—then we shall also abandon the true ground of the Free Market.

In the light of the law, as we Americans must interpret it, and in full awareness of our ancient faith, as we, heirs and co-heirs of the Founding Fathers must understand it, can we ever yield to our sincere opponents, or to our dissenting friends, wherever and whomsoever they may be—when they counsel us to compromise on these fundamental principles of the American founding; when they urge us to withdraw from the only field of battle where the inalienable right to life and liberty will be settled? To this question there can be only one true American answer, as it rolls out like thunder across the Lincoln Memorial:

"If our opponents were right, and we wrong, all they ask of us, we should give them; and then we should silence ourselves—and conform. But if our adversaries are wrong, as we believe, and we are right, surely they cannot justly ask us to do as they do. For, if they ask, we must answer, holding our standards to be true, as we do—can it ever be right to do wrong?

I have no doubt about the ultimate victory of the American way of life—the original faith of the Founders—living still. But if we desire not merely success for ourselves, but victory, victory for all Americans who stand for life, liberty, American honor—freedom and equal rights for all members of the family of man on earth, we must be bold; so that for all time to come, this American dream of freedom shall not perish from the earth.

NORTHAMPTON'S LAMENT

HON. SILVIO O. CONTE

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 2, 1986

Mr. CONTE. Mr. Speaker, I rise today to pay tribute to President Calvin Coolidge. As I am sure my colleagues know, prior to becoming President, Calvin Coolidge was a public servant in my home State of Massachusetts. He served as mayor of Northampton, in the State legislature, and as Governor. His life and service made a big impact on the people of Northampton. I think the following poem written by Luke Ryan on the day of Calvin Coolidge's death January 9, 1933, portrays the feelings of many people toward Calvin Coolidge.

NORTHAMPTON'S LAMENT

From out the rock-ribbed hills he came to me
A modest youth whose honest, cheerful face
Reflected everything New Englandry
Can give its sons. His stern and frugal race
Renowned for courage, strength, and grace
Of mind, marched with him as he tramped my clay
It was a joy to see him, without trace
Of fear or vice, set out to win his way
Through life. With honest men he took his place
And with them served his country well, until today
Today, he died, and I alone can tell
How great my loss shall be now that he's gone
He was a man who, though the funeral bell
Rings out his death, can never leave alone
His country-men. For, as the Pole-star shone
And guided straight and true across the sea,
His forbears' ships, when they renounced the Crown
Because they loved the Truth, so shall he be
To you: a bright, unfailing guide to true felicity.
For all of you his spirit has a voice
Of counsel in the dire adversities
Which humans seldom fail to meet. His choice,
The course of honor and humility.
His subsequent reward of dignity,
Conspire to give the weakened heart new strength
To fight the fight against malignity
And trumpet through the breadth and through the length
Of this great land. "An honest man is his own strength."
So farewell, Calvin Coolidge, man who had
No fear of evil, wrong, or sin; but who
With quiet steadfast heart, fought what was bad
And helped the good with all the power he knew
God grant you peace and joy. Now you are through
With life; may He reward your virile fight.
And may He give us many men like you

To serve and lead our country toward the Right.
And give our youth the spirit of your might!

HONORING THE NATIONAL MINORITY DEVELOPMENT COUNCIL

HON. ESTEBAN EDWARD TORRES

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 2, 1986

Mr. TORRES. Mr. Speaker, I would like to call to your attention a unique conference being held in southern California October 14–16, 1986, at the Century Plaza Hotel. This conference will be the 13th Annual Conference conducted by the National Minority Supplier Development Council, [NMSDC]. Nearly 1,000 representatives from major corporations and minority businesses are expected to attend.

The NMSDC is a nonprofit corporation, that was chartered in 1972 to expand business opportunities for minority-owned companies. The organization's national network consists of 50 affiliate regional minority supplier development councils, located in metropolitan areas throughout the United States. NMSDC's membership is comprised of 3,600 major corporations which pay annual dues and provide in-kind services in support of this national network.

Councils within the NMSDC network conduct numerous opportunity trade fairs, seminars, and workshops to promote the products and services of NMSDC's registered minority-owned firms to corporate members. Since 1972, the purchases from minority-owned businesses by member corporations has increased from $86 million to over $7 billion.

The host for NMSDC's 1986 annual conference is the Southern California Regional Purchasing Council and its affiliates, the Orange County Purchasing Council, the Inland Empire Purchasing Council, and the Pacific Tri-Counties Purchasing Council.

The theme selected for the conference, which is being held on the west coast for the first time, is "Meeting New Expectations." This theme is significant because each conference participant, whether corporate representative or minority entrepreneur, comes from a different background, a different set of business activities, as well as from different cities and cultural persuasions. What better setting for such a conference than Southern California, a location steeped in the rich tradition of ethnic diversity and capability within its minority business community. In fact, statistics reveal that close to 25 percent of all ethnic minority business in the United States are headquartered within the Southern California basin.

At the conference, every participant will have the opportunity to enhance his or her expectations. Corporate representatives will hear presentations developed to expand their existing minority purchasing programs. Concurrently, minority businessowners in attendance will participate in plenary sessions, innovative workshops, and open forums—all structured to assist them in developing more effective marketing techniques, exploring new methods of financing, and developing new business opportunities.

I ask my colleagues in the House of Representatives to join with me in saluting the National Minority Supplier Development Council for its outstanding successes, in encouraging mutually beneficial economic links between minority suppliers and the public and private sectors, and in helping to build a stronger, more equitable society by supporting and promoting minority business development.

CONGRESSIONAL SALUTE TO HON. WILLIAM F. SHERSHIN OF CLIFTON, NJ; ESTEEMED EDUCATOR, COMMUNITY LEADER, AND GREAT AMERICAN

HON. ROBERT A. ROE

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 2, 1986

Mr. ROE. Mr. Speaker, on Friday, November 21 the residents of the city of Clifton, my congressional district and State of New Jersey will join together at a testimonial dinner honoring an esteemed educator, outstanding school administrator, and good friend, Hon. William F. Shershin of Clifton, NJ, who is retiring from his high office of public trust as superintendent of schools for the Clifton, NJ School District. I know that you and our colleagues here in the Congress will want to join with me in extending our deepest of appreciation to Superintendent Shershin and share the pride of his good wife, Teresa, their son, William F. Shershin, Jr., and daughter, Elizabeth Ann Hardy upon this milestone of achievement in their family endeavors.

Mr. Speaker, when you reflect upon the fact that the cultural, historical, and economic achievements—even the basic health, well-being, and longevity—of a State and Nation depend in large measure upon how well we educate each generation charged with the trust of carrying out its responsibilities and traditions, we can indeed be proud of William Shershin's outstanding contribution to the quality of life and way of life for all of our people.

Mr. Shershin has indeed earned the highest respect and esteem of all of us who have had the good fortune to know him. As we commemorate his retirement as superintendent of schools for the Clifton, NJ School District, we applaud his lifetime of exemplary service to our people, and particularly his over 35 years of professional expertise in the mainstream of our Nation's school administrators.

Mr. Speaker, we are proud to boast that William Shershin was born and raised in Clifton, NJ. He attended local schools and is a graduate of Clifton High School. He has a bachelor of science degree in education, a master's degree in education, and was a doctoral candidate in education—all attained at Rutgers, the State university. With your permission, Mr. Speaker, I would like to insert at this point in our historic journal of Congress an excerpt from the Clifton High School yearbook written by the senior class which most eloquently captures the richness of wisdom, sincerity of purpose, and quality of leadership that Superintendent Shershin has so abundantly and willingly given over the past three and a half decades to all of our people in administering to the educational needs of the students of the Clifton School District which is comprised of 13 elementary schools, 2 middle schools, and 1 high school. The senior class tribute to Superintendent Shershin is, as follows:

DEDICATION

MR. WILLIAM F. SHERSHIN

The Senior Class of Clifton High School proudly dedicates the 1986 edition of the "Rotunda" to Mr. William F. Shershin, a life-long resident of Clifton, who served as Superintendent of Schools for over 35 years, from 1950 until his leave on November 1, 1985, and retirement as of December, 1986.

Unfortuately in a district the size of Clifton's, students do not have the privilege of personally knowing district-level administrators as well as the administration at the school level. However, Mr. Shershin's record of accomplishments is testimony to his ability and our recognition is acknowledged with this yearbook dedication.

Mr. Shershin was the "dean" of superintendents in New Jersey, serving as superintendent longer than any current Chief School Administrator. Throughout his professional career he was an educator with a vision and dedication to excellence that has brought the Clifton Public Schools to the position of prominence it enjoys today. During his long career of public service he organized the district from a K–8, 9–12 to K–6, 7–9, 10–12 system and just this year, to a K–5, 6–8, 9–12 format giving Clifton its first four-year high school in one building. During this time the school population changed from almost 13,000 pupils in the early 1960's to approximately 7,000 pupils today.

Construction of four new schools with major additions on others was accomplished during his administration, including the present Clifton High School. Almost the entire staff of teachers and administrators came to Clifton during the years he served as Superintendent.

His contributions to Clifton extend beyond his experiences as a teacher and administrator. He also had careers as a newspaper reporter and the Clifton Superintendent of Recreation. A director of the recreation program, much of the land used for the present park system was acquired under Mr. Shershin's leadership. He is responsible for transforming a former dumping area into a show place of recreation in what is now called, Nash Park.

We, the Class of 1986, graduate from Clifton High School knowing that the finest educational opportunities in both facilities and programs were made available to us. We respect the contributions Mr. Shershin made so that these opportunities were possible and as a class wish him many years of healthy retirement in grateful appreciation for the many contributions he made to generations of Clifton's youth.

Mr. Speaker, William Shershin has truly inspired and enriched the lives of many of our people in his educational endeavors of vital importance to the dynamics of our destiny and the quality of life for all of us. I am pleased to seek this national recognition of his dynamic dedication and personal commitment in ever

seeking the highest standards of excellence on behalf of the youth of America.

We do indeed salute a beloved teacher, community leader, and great American—Hon. William F. Shershin of Clifton, NJ.

ANOTHER ALLY IN THE WAR ON DRUGS

HON. CHARLES B. RANGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 2, 1986

Mr. RANGEL. Mr. Speaker, I rise today to welcome another ally to the ranks of those who are actively fighting against the spread of drugs.

The House of Representatives recently passed an omnibus narcotics control bill. We have been joined by many local and State governments which recognize the need for a coordinated antidrug effort. This is indeed a new phase in the war on drugs.

The support we have also received by community organizations is also very encouraging. I recently received a strong endorsement by the Baptist Ministers' Conference of Greater New York and Vicinity. They have expressed their strong support for the National Association of State Alcohol and Drug Abuse study on the problems of crack, as well as for the omnibus drug bill.

I would like to commend them for their continued contribution to the welfare of the New York community. I would hope that my colleagues would encourage their local religious leaders to follow the lead of the Baptist Ministers' Conference. I have submitted their crack resolution for insertion in the CONGRESSIONAL RECORD.

Whereas, the pervasion of drugs in our society has reached levels which have stirred the concern and anger of the public, and

Whereas, the House of Representatives has passed a comprehensive antidrug bill, and President Reagan has offered his own program, and

Whereas, the time is critical for the Congress and the President to agree on a far-reaching, effective package if we are to seize this opportune moment to do something about the drug crisis that we face.

Now, therefore, be it resolved, the Baptist Ministers' Conference of Greater New York and Vicinity fully endorses the National Association of State Alcohol and Drug Abuse Study for an all-out attack on CRACK.

Recommended by Rev. Dr. David N. Licorish, Editor-Publisher, the Baptist, September 22, 1986.

DRUGS WAR MUST BE WON

HON. ROBERT J. LAGOMARSINO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 2, 1986

Mr. LAGOMARSINO. Mr. Speaker, I place in the RECORD a copy of an Oxnard Press-Courier editorial which comments not only on the President's efforts to stop our Nation's outrageous drug problem, but also expresses the need for unified support for an effective and broadly based program that will cure one of American society's most dangerous problems.

[From the Oxnard Press-Courier, Sept. 20, 1986]

DRUGS WAR MUST BE WON

The United States is losing the war on drugs because law enforcement alone cannot stem the flow of illegal narcotics that is inundating this country. Thus, the nation should welcome President Reagan's pledge to use the full power of his office to combat this pernicious enemy that costs Americans $60 billion per year and causes incalculable pain and suffering.

The president's broadly based program, which was sent to Capitol Hill this week, is an improvement over the measure that was approved last week in the House. The House bill would appropriate an additional $2 billion to finance the federal war on drugs. Although President Reagan would earmark $894 million more in federal expenditures, the money would be transferred from other areas. This, in turn, would enable the government to zero in on the drug problem without increasing the record deficit that is clearly out of control.

Under the program, approximately $500 million would be set aside for law enforcement, with most of the money going to interdict illicit drugs coming across the U.S.-Mexican border. Reagan wisely resists the House plan to mobilize the U.S. military along the border to stem the drug flow. Although the military will continue to provide valuable logistical support in the anti-drug campaign, it would be a mistake—for the moment, at least—to use American troops to seal the nation's borders.

The president's proposal does, however, support the House in calling for life imprisonment or the death penalty for drug smugglers and dealers who cause death, and for revising the rules of evidence that would permit prosecutors greater latitude in presenting their cases. Any effective anti-drug campaign must come down hard on these merchants of death and despair.

Another $56 million is proposed to be used to test current and prospective federal employees in sensitive positions involving public safety or national security. Under the president's plan, department heads would have wide discretion to determine who would be tested. His recommendation is hardly unprecedented. After all, numerous members of the CIA, FBI, National Security Agency, Customs Service, as well as the military are already subject to periodic drug tests.

The President's plan would also provide $100 million to deter the use of drugs in the public schools. Some of the money could be put to good use in health-education classes. The most effective deterrent, however, is for the schools to set a strong example by vigorously enforcing their regulations against drug use on campus.

The education effort could also be augmented by television and radio spots. Powerful public-service announcements, perhaps in the form of music videos, could stigmatize drug use just as similar messages have discouraged cigarette smoking among teenagers. Moreover, the use of such role models as prominent athletes and rock stars speaking out against drugs could have a salutary effect on impressionable young minds.

Finally, the Reagan administration should accelerate its efforts to eradicate drugs at the source. An estimated 90 percent of the cocaine in this country comes from Bolivia and Peru. Last July, U.S. troops, along with members of a special Bolivian police unit, began a coordinated assault against cocaine producers in the South American country. To date, the operation has shut down nearly 100 laboratories and driven many drug processors underground.

If it is to be won, President Reagan's war against drugs must be waged on several fronts. Most important, his crusade must enlist widespread community support to assist law-enforcement agencies in attacking the unprecedented plague of narcotics that threatens the very fabric of this nation.

THE GOVERNMENT OF INDIA SHOULD ALLOW FOREIGN JOURNALISTS INTO THE PUNJAB

HON. VIC FAZIO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 2, 1986

Mr. FAZIO. Mr. Speaker, it is time for the Government of India to lift the ban on foreign press access to the Punjab and allow foreign reporters and human rights committees access to the state to provide the world with an objective, fair assessment of the conditions under which the Sikh people now live in Punjab.

Since the Indian Army attacked the "Darbar Sahib," the holiest place of Sikh worship known as the Golden Temple, in June of 1984, the Sikh community of Punjab has lived under an information blackout. Reports filtering out of Punjab tell of religious and cultural persecution, of arbitrary arrest and detainment and murder. But those reports conflict sharply with official statements regarding the treatment of Sikhs.

I think there is no one in this body who feels more strongly about the basic validity of the democratic institutions that are the firm foundation of the State of India, but I do believe that it is important for people throughout the world to express their concerns about human rights violations when they occur against obvious religious and ethnic minorities in the world. The so-called black laws, for example, which have given the military and civilian police nearly unrestricted arrest and detainment authorities since 1984, must be removed. Further, all religious and political prisoners should be released.

There are 16 million Sikhs in India, Mr. Speaker, most of whom reside in the Northern State of Punjab. But Sikhs make up only 2 percent of India's 750 million population. Sikhs are a hardworking, deeply religious people who contribute a significant amount to India's economy. For example, Sikhs produce 60 percent of the total Indian wheat reserve and 26 percent of the gross national product of India.

A solution must be found. All parties, including the Sikhs and the Indian Government, should recommit themselves to restrain and condemn all acts of violence and terrorism wherever they occur. Violence and terrorism have no legitimate role in the settlement of the issues of sectarian, religious, and political difference which divide these two great peoples.

The rights of the Sikh minority must be protected. And one of the most positive steps that the Hindu majority can take, as a symbol of its commitment to preserving the civil liberties of all the citizens of India, is to lift the current information blackout on the Punjab and allow outside journalists and observers into the region to fairly judge the conditions under which the Sikh minority now lives.

A CONGRESSIONAL SALUTE TO JOHN ZOGBY

HON. AUSTIN J. MURPHY

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 2, 1986

Mr. MURPHY. Mr. Speaker, it is with great pleasure that I rise today to pay tribute to Mr. John Zogby, one of Pennsylvania's finest citizens who has served with dedication and resolve to improve public safety and transportation in my state.

Mr. Zogby's service to the public and outstanding achievements have also earned him the recognition of the American Lebanese Syrian Association. This organization will be honoring him at their 15th annual banquet on October 12, 1986.

John Zogby is truly a credit to his Syrian heritage. He is the first of Syrian descent to serve as deputy secretary for safety administration in the Pennsylvania Department of Transportation and also serves as the Governor's highway safety representative.

Mr. Zogby holds a bachelor of science degree in economics from Villanova University, a master's degree in public administration from the Pennsylvania State University and he is currently a doctoral candidate in political science. Presently, he is also serving on several State and National safety boards.

Mr. Speaker, on behalf of the State of Pennsylvania and my colleagues in the U.S. Congress, I extend my heartfelt congratulations and best wishes to Mr. John Zogby for his many accomplishments and continued success.

TRIBUTE TO JANE BOECKMANN

HON. HOWARD L. BERMAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 2, 1986

Mr. BERMAN. Mr. Speaker, I rise today to pay tribute to a truly outstanding individual, Jane Boeckmann. I ask my colleagues to join me in honoring this exceptional member of my community. Ms. Boeckmann is this year's recipient of the coveted Fernando Award. This award is presented each year to a local business person of the San Fernando community who best exemplifies the characteristics of "strength, courage, dedication and leadership." It will be presented to Jane in November.

Fernando is the name given a fictional American Indian brave by San Fernando Valley businessman some 30 years ago when this award first started. Fernando was created to exemplify the traits thought to reside in the valley's first residents, the Indian tribes.

Jane Boeckmann symbolizes the spirit, energy and future of the San Fernando Valley. Her leadership has led to great success in the business world as well as success in her countless hours of volunteer work for charitable causes.

Some years ago Jane became concerned with a trend in the media where deserving San Fernando Valley events, fundraisers, and other important activities were receiving little or no coverage and support.

This concern coupled with a belief that the valley is such an important entity that it deserved its own publication focusing exclusively on the valley, led Jane to establish Valley magazine. By no means was this a safe or simple venture. Others had attempted magazines in the Valley and failed. But Jane fought hard and has made Valley magazine a definitive success.

Jane serves as editor-in-chief and publisher of Valley magazine and Let's Talk magazine. She is a working publisher and personally directs the many aspects of her business. She has also authorized tens of thousands of dollars worth of public service advertising for worthy nonprofit groups at no cost to them.

It is my pleasure and honor to join with my colleagues and the Chambers of Commerce of the San Fernando Valley and Fernando Awards Inc. to pay tribute to Jane Boeckmann, a successful businesswoman and outstanding member of her community.

A CONGRESSIONAL SALUTE TO THE THIRD WARD DEMOCRATIC ASSOCIATION

HON. GUS YATRON

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 2, 1986

Mr. YATRON. Mr. Speaker, I rise today to pay tribute to the Third Ward Democratic Association of Reading, PA. On October 25, 1986, the association will be celebrating its 50th anniversary. This important occasion will be recognized with a dinner and celebration for the members and their guests.

The Third Ward Democratic Association was duly incorporated as the Third Ward Democratic Club on October 29, 1936. The Association is open to any registered Democrat who resides in the city of Reading and it serves to improve the well-being of the Party and to promote its ideals and principles.

The association was originally quite successful, but had been dormant for the 15 years. Fortunately, the association was recently reactivated through the hard work and commitment of a number of dedicated individuals, including State Representative Thomas R. Caltagirone, Kenneth Mock, Dorothy Robinson and many others.

Under the current leadership, the association has grown and flourished. Fifty active members meet on a monthly basis to discuss issues of local, State and national importance. They are active in voter registration drives and have contributed to significant additions in Reading's voting rolls. In keeping with their strong commitment to assisting the surrounding community, the members are actively involved in the Reading Crime Watch, clean-up campaigns and general efforts toward neighborhood improvement. They have also provided financial support to worthwhile students and organizations throughout America. In short, the members of the association are good neighbors and fine citizens.

I commend the Third Ward Democratic Association on its 50th anniversary. For many years, the membership has played an invaluable role in improving the lives of people in the Reading area. Their dedication and commitment to public service are certainly worthy of praise. I know that my colleagues will join me in honoring the members their Fiftieth Anniversary and in wishing them continued success and good fortune in the years to come.

EAST TENNESSEE STATE UNIVERSITY'S 75TH ANNIVERSARY OBSERVED

HON. JAMES H. (JIMMY) QUILLEN

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 2, 1986

Mr. QUILLEN. Mr. Speaker, I wish to bring to the attention of members the 75th Anniversary of one of the Nation's finest institutions of learning, East Tennessee State University located in Johnson City, TN, which is in my district.

This modern and progressive university began on October 2, 1911, as a 2-year normal school to train educators for the public schools. It has now evolved into a leading multipurpose educational facility with a strong emphasis on preserving the educational heritage needed for the world of tomorrow.

The university takes great pride in its role for the future, offering educational opportunities in the humanities, business, technology, education, sciences and health sciences, including the Quillen-Dishner College of Medicine established in conjunction with the Veterans' Administration Hospital in Johnson City.

It is both fitting and pleasing that East Tennessee State University is observing its 75th anniversary in conjunction with Tennessee Homecoming 1986 which is now being observed in our fine State.

The educational tradition exemplified by ETSU makes us all proud, and I wish to join all of those involved in the growth and progress of the university in wishing it the very best for generations to come.

IN HONOR OF THE JOPPA MAGNOLIA VOLUNTEER FIRE COMPANY

HON. HELEN DELICH BENTLEY

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 2, 1986

Mrs. BENTLEY. Mr. Speaker, today I pay tribute to the celebration of the 35th Anniversary of the Joppa Magnolia Volunteer Fire Company located in my home district, the

Second Congressional District of Maryland. It is indeed a privilege to represent citizens who take seriously their call of duty to contribute to the safety of their community by offering talents and time in the service of others.

Countless lives and property have been saved and preserved as a direct result of this association. The Maryland State Ambulance and Rescue Association, which I serve as president, has awarded this volunteer organization as an outstanding establishment deserving of honor for the contributions the fire company has made over the past 35 years.

As the ambulance transportation officer for the MSARA, I commend the fire company for their tireless response to thousands of calls over the years. Their service has not gone unnoticed. In 1973, Joppa Fire Company became the world champions in the IRECA Competition at Virginia Beach, VA. Robert Hutson, Charles Morkowsky, Edward Kimmel, Anthony Blacer, William Kimmel, George Hall, and Walter Anthony were all members who successfully placed first in the competition.

And again in 1974, the volunteer fire company was ranked among the world's top winning fourth place in the world championship. We in Maryland were very proud, and knew Joppa would come back to first place championship in the future.

Indeed this was the case. In September 1976, Joppa Magnolia Volunteer Fire Company took the World Championship. Tony Kehringm, "Bunky" Morkosky, George Hall, and team coaches, Bill Kimmel, and Bob Hutson won the world competition and were awarded for their achievements.

The people of Joppa have the assurance to feel confident that their property and lives are well protected because the Joppa Volunteer Fire Company will always be champions in Maryland.

Under the leadership of the present administration, it has been the policy of President Reagan to reduce large domestic Government programs and promote private initiative. In circumstances where Government-owned and operated programs can be replaced with private citizens joining together such as the local volunteer fire company, the Reagan policy is successfully at work.

It is because of contributions of men and women such as members of the Joppa Magnolia Volunteer Fire Company who have made this country strong. The spirit of voluntarism is alive and well in America. Americans are indeed concerned with the well being of their neighbor.

TAX REFORM ACT OF 1986

HON. DON BONKER

OF WASHINGTON

IN THE HOUSE OF REPRESENTATIVES

Friday, October 3, 1986

Mr. BONKER. Mr. Speaker, as I contemplate the most significant domestic policy vote in my 12-year career in the House, it has become apparent that, despite my deep-rooted commitment to tax reform, the issue is anything but easy or clearcut.

Like most of my colleagues, I aspire a tax system that is just. That the present Tax Code is appallingly flawed is no longer doubted. It blantantly invites abuse, particularly by the wealthy; its notorious loopholes and tax shelters legitimatize cheating; the fact that Fortune 500 corporations and many of the Nation's super-rich pay no taxes is an insult to those who pay their fair share.

Over the years, Congress has loaded up the Tax Code with a variety of preferences and shelters. It is time to remove them and put fairness back into the system. That is why the tax reform bill was so appealing. Among other things, the bill removes 6 million working poor from the tax rolls. Many of the special preferences for individuals and corporations will be eliminated, and speculation would no longer influence business and investment decisions. A tough minimum tax rate would be added for corporations whose attorneys have managed to pare their share of the tax burden down from 40 percent in 1950 to only 8 percent today.

For individuals, the bill increases the standard deduction and nearly doubles the personal exemption, further easing the burden on lower- and middle-income taxpayers. These are major reforms that address the most egregious problems in the present code and go a long way toward restoring fairness. Any legislation that contains these provisions is worthy of serious consideration.

But the legislation unfortunately includes provisions that give disproportionate benefits to the wealthy and could imperil our Nation's fragile economy.

By narrowing the tax schedule to two rates, we lose the progressivity that has characterized our tax system over the years. At one time the very wealthy paid over 90 percent on their income. Then the maximum rate was cut to 50 percent in 1981, and now it will be 28 percent. Under the new law, the average tax cut for individuals who earn over $200,000 per year will be $3,385 compared with an average cut of only $225 for individuals who earn between $20,000 and $30,000.

The corporate tax rate will be dropped to 34 percent, down from the current 40 percent rate. While removal of the investment tax credit and other preferences will offset the lowest rate, there is no guarantee that these firms will pay more, as the bill's sponsors promise. One corporate attorney told me, "We have a neutral position on the bill: We pay no taxes under the current system and we don't intend to under the new system."

I am also troubled by what an overhaul of the Tax Code will do to an already shaky economy. And despite the assurances of its sponsors, there is no guarantee that the tax bill will be revenue neutral.

Because the legislation is comprehensive and complex—in the end it was written by the two committee chairmen with their staffs behind closed doors—it is very difficult to reach a decisive position. Many of my colleagues were tentative and uncertain as to how they would vote, and some were changing their minds up to the last minute of voting.

Not was there much guidance from my constituents. Despite ample coverage by the print media, I received less than 100 letters, and in my meetings and appearances around the district the issue was seldom raised. People, by and large, did not have a position or lacked the knowledge to urge me to vote one way or another. People favor reform and want lower taxes, but they also want budget deficits to come down and admit to some fear about the uncertainties that accompany a bill of this magnitude.

That is why, ultimately, I had to rely on gut instinct as to what is right for the people of my district and is in the best interest of the Nation.

Here are what I can best describe as the major fault lines in the Tax Reform Act of 1986 which prompted me to vote against it in the House of Representatives.

From a national economic perspective, this bill possibly will reduce Federal tax receipts, increase the deficit, and intensify the pressure upon Congress to slash important programs which have already been cut to the bone over the past 5 years. The bill provides some $120 billion in tax reductions over the next 6 years, but will that amount be offset by higher taxes on corporations? At a time when we have a $200 billion Federal deficit, I am skeptical that the bill will remain revenue neutral, given the plethora of attorneys and accountants whose sophisticated bookkeeping methods enable large corporations and the wealthy to avoid taxes. A downturn in the economy or a small percentage error in the estimates will affect revenues, and in turn threaten many important Federal programs.

Furthermore, this tax package could damage U.S. competitiveness at a time when skyrocketing trade deficits threaten our economic well-being. With a fragile domestic recovery that is sustained by an enormous external debt, this is not the time to be overhauling our Tax Code and posing uncertainties for the future. How will the new tax affect our competitive position in the world economy and the escalating trade deficit? What kind of message are we sending to investment planners, businesses, and the suppliers of venture capital? Will consumer spending of the extra disposable income go to purchasing more imports, thus adding to the trade deficit?

The bill also does nothing to improve our Nation's savings. In fact, it wipes out existing provisions designed to promote savings, investment, and capital formation. Our savings rate is the lowest in the industrialized world—one-half or one-third of the savings rate in West Germany and Japan—and this bill may result in continued stagnant savings and investment, increased consumer spending, higher debt, and a corresponding increase in interest rates. In the end, we must rely on more foreign capital and an ever-mounting external debt to finance U.S. growth as well as our escalating public and private debts.

Lastly, the bill clearly gives unfavorable treatment to the Northwest. The area has been suffering through a difficult economic transition over the past few years. Our traditional resource-based industries are going through severe economic dislocations. Plant closures and job displacement are all too common in the district I represent, and many of those that are operating are doing so with wage and benefit reductions. The State of Washington has struggled to meet the fundamental needs of its residents and provide essential services, education, and training, but it

will be a while before the economy is fully restored. While some businesses will benefit from the tax bill, most of the labor-intensive industries will be hurt.

The elimination of the deduction of State sales taxes while retaining the deduction for State income taxes is simply unacceptable. States like Washington, that rely heavily on a sales tax for revenues, are clearly being penalized as the Federal Government assumes a position of using tax incentives to dictate the most appropriate revenue raising measure to the State.

The bill also eliminates capital gains treatment for timber, and changes several incentives for the housing industry which drives the timber economy in Washington. When you consider the lengthy time required to grow marketable timber or even Christmas trees, the loss of capital gains incentives will result in the loss of hundreds of jobs, and an inadequate supply of wood fiber for our Nation's future.

Mr. Speaker, I have followed this particular legislation during its many lives over the past 2 years and want to commend those on the various committees who have labored long and hard to bring this bill to fruition. They were able to win many long-overdue reforms and make the Tax Code more fair in many areas. On balance, however, after considering the effects of this bill upon our Nation's competitiveness and growth, its potential impact upon the deficit and Federal programs, and the severe problems it posed for my own State, I had to reluctantly cast my vote against this measure.

IN SUPPORT OF PENNSYLVANIA'S ADULT CONTINUING EDUCATION

HON. ROBERT A. BORSKI

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 3, 1986

Mr. BORSKI. Mr. Speaker, I rise to ask my colleagues to join me in recognizing the contributions of the Pennsylvania Association for Adult Continuing Education. For 50 years Pennsylvania has had a statewide organization dedicated to the continuing education of adults.

The problem of illiteracy among adults in the United States continues to be a serious problem. Estimates show that 27 million American adults cannot function in our society because they are illiterate. These individuals cannot fill out a job application, cannot maintain a checkbook, or understand a warning label.

The Pennsylvania Association for Adult Continuing Education [PAACE] has been working to address this problem. PAACE assists in the research and development of programs for training and retraining, life enrichment learning, community development education, human resource development education, and rehabilitative counseling.

I would like to offer my support for these important programs which demonstrate Pennsylvania's dedication to the expansion of adult education and the elimination of illiteracy. I ask my colleagues to join me in recognition of this agency for its efforts in adult education in the State of Pennsylvania and its example for the expansion of adult education all over the United States.

TOO LITTLE HELP FOR TODAY'S WORKING PARENTS

HON. PATRICIA SCHROEDER

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Friday, October 3, 1986

Mrs. SCHROEDER. Mr. Speaker, I would like to share with my colleagues an article from the October 6 issue of Business Week about the tremendous changes taking place in today's work place and what a few pace setting companies are doing to help families manage both work and family. Unfortunately, these companies are the exception to the rule: Most families today are the victims of ad hoc programs and policies that produce uneven opportunities for parents needing to take leave to care for their children.

Mr. CLAY and I introduced legislation, the Family and Medical Leave Act, that would provide a minimum amount of protection for all working parents. This article underscores the need for a national policy now.

BUSINESS STARTS TAILORING ITSELF TO SUIT WORKING WOMEN

(By Aaron Bernstein]

A few years ago, when the number of women at Merck & Co. approached one-third of all employees the company decided to update its personnel policies. In 1980 the drugmaker helped to open a child-care center near its Rahway (N.J.) headquarters. In 1981 it began letting employees start work at any point from 7 a.m. to 9:30 a.m.—to give parents more flexibility. Two years later it started allowing some parents to work part-time or at home after maternity leave. In 1984, Merck funded a major study on how employees balance work and family life. And last year it created workshops and a counseling program to help parents cope with the double strain of job and family.

"Merck has recognized that lifestyles and family patterns have changed significantly over recent years," says Arthur F. Strohmer, executive director for human resources. "We believe the corporation can benefit from helping employees balance the demands of the family and the demands of the workplace."

PACESETTERS

It's a nascent movement, but the feminization of the work force is starting to transform the way employers treat employees. Companies are realizing that nearly half of all workers today are women, up from 33 percent only 20 years ago. It's also obvious that these female employees—80 percent of whom earn less than $19,000 a year, mainly in service jobs—have different needs than do male workers. Pacesetting companies such as American Telephone & Telegraph Co. and BankAmerica Corp. are tackling day-care shortages, putting in new or extended maternity and parental leave, and revamping fringe benefits. New promotion systems make it easier for women to raise children without ruining their careers. More companies pay women the same as men for so-called comparable jobs. Others are twisting the 40-hour workweek into multiple configurations. Nearly every change affects men, too, both husbands and fellow workers.

Like most major social changes, the reorientation of the workplace to women's needs is happening with distressing slowness: It may take decades for the majority of employers to change their view of women as second-class workers. But the explanations companies give for the newest experiments indicate that, ultimately, most employers will have little choice but to adapt. Adding to pressures from unions and women's groups is the primary motivation: self-interest. Two-thirds of the 15 million new entrants into the job market through 1995 will be women, according to the Bureau of Labor Statistics (charts), and in terms of sheer numbers, they will have more influence than ever before.

If labor shortages occur in the 1990s, as some economists predict, women will be in high demand, and only companies with the best policies will get the best workers. "What's driving companies is competition in the labor market," says Robert L. Shaughnessy, vice-president for personnel at AT&R. "As companies sell themselves to prospective employees, women will look at employers in a better light if they meet their needs."

Perhaps the most pressing problem for women workers is the acute shortage of day care (page 52). Experts say that most parents who work must piece together two or three separate arrangements for child care. Although companies have barely touched the overall situation, they're beginning to try. The Conference Board estimates that 2,500 companies provided some form of childcare aid in 1985, up from 600 in 1982. About 150 have on-site centers.

Campbell Soup Co. started an on-site center at its Camden (N.J.) headquarters in 1983. "It's convenient and includes breakfast, so I don't have to cook in the morning," says Lisa A. Mooney, a credit specialist in Campbell's accounts-receivable department, who has a three-year-old girl and a two-year-old boy. "As much as I'd rather be home with them myself, I didn't have much choice. If we wanted to eat, I had to keep working." The center costs only about $40 a week per child. But there's room for only 130 kids, and 80 more are waiting to get in.

TRIAL RUN

Because on-site centers are costly and raise questions about a company's legal liability, most employers think it's better to stimulate the community supply of day care. In 1984, BofA put up $100,000 and gathered 23 participants, including other employers and foundations, that spent $700,000 on a pilot program in California to create 1,000 new day-care slots by recruiting and training individuals to be child-care providers. BofA expects the project to continue in 1987 on a $1.1 million budget. Similarly, AT&T says it will start several experiments this year, from on-site centers to giving employees a building in which they can start their own facility.

International Business Machines Corp. went even further. In 1984 it spent $1 million to set up what may be the first nationwide corporate service for referring employees to community child care. With a budget estimated by outsiders to be $2 million a year, the service has referred 16,000 children. IBM also has given money to a nonprofit group that has trained 5,000 new providers to care for 13,000 children. "The [rising] number of women among our em-

ployees is leading us to consider things that didn't seem important before," says Jack Carter, IBM's director of employee services.

Employers also are starting to look at problems that day care doesn't always handle. In 1985 companies such as Dayton Hudson Corp. and First Bank System Inc. in Minneapolis began contributing to a company called Chicken Soup, which cares for ill children so that their parents can work rather than stay at home. A nurse and a teacher are on duty from 6 a.m. to 6 p.m. In 1983, 3M Co. gave money to a Minneapolis YMCA so it could expand the hours of a summer center for school children. Says Cheryl Ann Smith, a secretary at 3M: "I dropped off my 11-year-old daughter in the morning. My husband picked her up at five, and we didn't have to worry all day. It made life so much easier and cost half the price of private day care."

Maternity leave is another issue where some movement is visible. No more than 40 percent of working women have any form of maternity leave—including those who use sick and vacation leave. Although most large corporations provide some sort of leave, many don't guarantee that a woman will get her job back if she's off more than six to eight weeks. But according to Catalyst, a New York women's organization, about 35 percent of 400 major companies it surveyed have increased the length of paid maternity leave in the past five years.

DEMOGRAPHICS

There's no common approach. Lotus Development Corp. in 1985 began offering up to four weeks of paid time off to adoptive parents—men or women. Three years ago, BofA began to reimburse some adoption expenses up to $2,000. In 1981, Hewlett-Packard Co. said employees could combine sick leave and annual leave and use it for maternity leave. "I left July 1 on the regular maternity leave," says Gorete Araujo, a production worker in HP's Cupertino (Calif.) plant. "After that was used up, I took about two more weeks of sick leave and vacation leave I had saved."

Business is fighting proposed federal legislation requiring up to 18 weeks of unpaid maternity leave for both men and women, but blue-ribbon panels supported by big companies are calling for even better benefits. One group, which includes top executives from International Paper Co. and Warner Communications Inc., is proposing six months of unpaid leave. The pressure is demographics: By 1995, 80 percent of women aged 25 to 44 will be working, up from 50 percent in 1970. And 90 percent of them will be mothers.

Besides trying to make life easier for women workers, companies are concerned with the productivity lost when employees deal with family problems at work. A recent study by John P. Fernandez, a manager of personnel services at AT&T, found that 77 percent of women and 73 percent of men handle family issues on the job. One tactic for preventing this is to give parents more flexibility. A 1979 pilot program that let federal workers vary their hours was made permanent last year. Employees can pick their starting and quitting times within a range of two hours. Or they can work longer hours one day and shorter hours the next. Up to 500,000 employees do this each year.

Companies have been trying similar experiments: Smith Kline Beckman Corp. and Transamerica Occidental Life Insurance Co. have had flexible work schedules since the mid-1970s. IBM and Merck started programs in 1981 that require employees to be at work during core business hours—usually 10 a.m. to 3 p.m.—but permit flexibility during the rest of the day.

In 1983, Shaklee Corp. began to let employees negotiate with their supervisor to reduce their workweek—with a commensurate cut in pay—while retaining seniority status and most benefits. A written agreement spells out how many hours per week the employee will work and how long the arrangement will last. In recent years, Control Data, Merck, and Continental Illinois National Bank have put computer terminals in some employees' homes so they can work while caring for their kids. This year, First Bank in Minneapolis began letting some employees use sick leave to stay home with an ill child.

But flexibility is often granted grudgingly—and there are usually drawbacks. Flexible work provisions in a new contract reached in July between the state of Massachusetts and the Service Employees International Union let Rhonda L. Black, a state social worker in Boston, share her job with another mother. "I wanted to spend time at home with my daughter after she was born," Black says. But she adds: "I'm only getting $11,000, and we [she and the other worker] share medical and dental benefits. They also made it clear they were going out of their way for me."

Because maternity leave often disrupts women's careers, some employers are beginning to change seniority and promotion systems. Most career ladders are designed for people who don't take time off, so women who leave to bear children lose their places in the promotion track and lose seniority needed for advancement. This often makes it tough to move up from pink-collar jobs.

PROTECTING INVESTMENT

Around 1980, when BofA saw that too few women were being promoted from teller, it took a close look at the roadblocks between entry-level and mid-level positions. After this review, the company began to base seniority on cumulative service rather than consecutive employment. This means that women, who comprise 72 percent of the bank's work force, can have children and still advance. "We invest so much in training, and we wanted to reduce the turnover of women to protect our investment," says Robert N. Beck, BofA's executive vice-president for human resources. In 1980, 7.2 percent of the bank's vice-presidents were women; today 22 percent of them are.

But even the most active employers have only scratched the surface. Most new female employees still land jobs such as secretary, teacher, nurse, or clerk. Although some have scored highly visible advances in law and medicine, this movement has been limited primarily to higher-paid professions that are out of reach for most female workers. Almost half of all women still work in job categories that are 80 percent or more female. And 70 percent of all men still hold jobs in fields that are at least 80 percent male.

Many women's groups believe that it is as important to raise the pay of traditionally female jobs as it is to get women into "male" jobs. This is beginning to happen: Northwestern Bell Telephone Co. recently devised a job evaluation system with the Communications Workers of America that reflects comparable worth—the idea that women should be paid the same as men for comparable jobs as well as for the same jobs (BW—Apr. 28). Control Data and IBM have quietly been raising the pay of some women who in statistical studies looked as if they were earning less than company norms. And in the past several years a few cities and 12 states have begun to implement comparable-worth programs.

FLEXIBILITY

But it's unclear when women as a group will start to make real progress on pay. Although the average female worker has 12.65 years of schooling, while males have 12.57, women's pay for full-time work averages only $15,600 a year—compared with $24,200 for men. Many economists believe labor shortages will force companies to push up women's wages faster than men's. But some predict the wage spread will actually increase: "More low-paid women entering the economy will keep the gap from closing in the next 10 years," says George P. Sape of Organization Resources Counselors, a management consultant firm. "It may even widen in the next five."

In the meantime, employers are tailoring health, life, and retirement insurance to the changing work force. Instead of offering the same benefits to everybody, an increasing number of companies are offering flexible packages that let employees choose what they need. A single mother might pick child care and high medical coverage, while an older man might choose to rely on his spouse's medical plan and boost his take-home pay. More than 500 companies have such plans, compared with less than 100 in 1983. New England Medical Center's new system permits workers to pick a mix of benefits. They can even take extra health insurance as wages.

For all that's beginning to happen, it may be years before women enjoy a role equal to that of men in the economy. Overcoming the tradition that a woman's primary place is at home with the kids is made more complicated by the cost and extra effort employers must exert to do it. But leading companies have started the process—and the work place may never be the same.

ROBERT I. MILLONZI AN ACCOMPLISHED MAN

HON. HENRY J. NOWAK

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, October 3, 1986

Mr. NOWAK. Mr. Speaker, among every nation's treasures are its special leaders, those talented citizens for all seasons whose careers are marked by multiple successes in the private and public sectors and multiple contributions to society-at-large and the common good.

Such a treasured leader was Robert I. Millonzi of my hometown of Buffalo, NY, an accomplished attorney, public servant, and patron of the arts, who suffered a fatal heart attack last weekend.

Bob Millonzi was a man who achieved enormous success in his private career but at the same time devoted tremendous resources and energies to a host of public service tasks and community and cultural affairs.

He was a citizen for all seasons, whose talent and wise counsel were sought for intermittent government service spanning the three decades between the Truman administration in Washington to the Cuomo administration in Albany, NY,

These assignments ranged from the Securities and Exchange Commission and Reconstruction Finance Corporation in Washington to New York State panels dealing with complex and diverse issues like judicial reform and the allocation of hydroelectric power.

A man of great intellect and integrity, Bob Millonzi distinguished himself beyond his accomplishments in private law practice and periodic government service. For more than a decade, he served as a trustee of the John F. Kennedy Center for the Performing Arts in Washington and helped guide the then fledgling national institution toward excellence and the goal of broadening public exposure to and appreciation of the arts.

In Buffalo, he devoted similar energies to the preservation and development of the Buffalo Philharmonic Orchestra into one of Nation's most highly respected symphonic groups.

The following article from the Buffalo News on September 28, 1986, which I would like to insert at this point in the RECORD, traces the breadth and depth of the remarkable career and achievements of this accomplished man:

ROBERT MILLONZI, LEADING FIGURE IN WNY COMMUNITY, DIES AT 76

(By Tom Buckham)

Robert I. Millonzi, a Buffalo attorney and community leader who was sought out by governors and presidents for his knowledge of public and cultural affairs, died Saturday (Sept. 27, 1986) at age 76.

He suffered an apparent heart attack while playing in a golf tournament at the Buffalo Country Club and was rushed to Millard Fillmore Suburban Hospital in Amherst, where he was pronounced dead.

During a career that spanned more than half a century, the Buffalo-born Millonzi became a force in banking and corporate law, a role that led to his 1951 appointment as a member of the Securities and Exchange Commission, and to later service as a consultant to the federal Reconstruction Finance Corp. during the administration of President Harry S Truman.

It has been said he might easily have risen to the presidency of the New York Stock Exchange, or become a U.S. ambassador, had he chosen to expand his presence on the national and international levels. But he preferred to stay close to his law practice and his hometown.

"I always want to be where I can come back to my office and practice law in Buffalo," Millonzi said in a 1967 interview.

The city and many of its institutions benefited profoundly from his loyalty and expertise.

Foremost among the latter has been the Buffalo Philharmonic Orchestra Society, of which Millonzi, son of a classical musician, was a principial leader and patron for more than three decades. On May 19, he and his wife, Eleanor, were honored with Franz and Katherine Stone at a Kleinhans Music Hall dinner that was a high point of the orchestra's 50th anniversary celebration.

For his longtime support of the arts and "tireless" service to the Philharmonic, Millonzi in 1975 was cited as an Outstanding Citizen by The Buffalo News.

Millionzi spend his childhood on Hudson Street on the city's West Side, not far from the site on which Kleinhans later was built. His interest in music was nurtured by his Italian-born father, Philip, who has studied at the Rome Conservatory and played bass with the Buffalo Symphony, the Philharmonic's Predecessor.

The son studied piano, but eventually realized, as he noted in the 1967 interview, that he "enjoyed listening to music more than playing it."

Millonzi went to the University of Buffalo and graduated with honors in 1932. After finishing UB Law School in 1935, he went to work in the family firm of fellow law student, Charles R. Diebold.

His work in a civil case involving the marketing of milk led to a job as legal counsel to the state Agriculture Department in Buffalo in the early 1940s, but he returned to corporate and banking law with the Diebold firm in 1947, when Charles R. Diebold became president of Western Savings Bank and Millonzi was named the bank's general counsel.

Millonzi was a senior partner in the law firm, which became Diebold & Millonzi, from then until 1981, when it was merged into Damon & Morey. At the time of his death he was special coursel to the merged firm.

In 1951, the lifelong Democrat was appointed to the Securities and exchange commission by Truman. When he begged off reappointment a year later, to return to his Buffalo law practice, Truman reluctantly let him go, writing that Millonzi had done "a first-class job."

The presidential praise earned the attorney subsequent appointments as counsel to the Reconstruction Finance Corp., member of a 1967 U.S. delegation to the Economic and social Council of the United Nations and trustee of the John F. Kennedy Center for the Performing Arts in Washington.

Millonzi's abilities also were valued by President Jimmy Carter, who in 1979 named him co-chairman of the Kennedy Center Advisory Committee on the Arts; by Gov. Hugh Carey, who named him a trustee of the State Power Authority and a member of task forces on the arts and judicial reform, and by Gov. Cuomo, who in 1983 called on him to head the blue-ribbon Millonzi Commission on the statewide allocation of inexpensive hydroelectric power generated at Niagara Falls, and in 1985 named him to the New York State Council on the Arts.

Among the many other business, civic and governmental positions Millonzi held during his diverse career were the following:

Counsel, First Empire State Corp. and Western New York Savings Bank; director and Executive Committee member, M&T Bank; president, Buffalo Philharmonic Orchestra Society (1956-59); chairman, Buffalo Foundation Governing Committee; director, Buffalo Council on World Affairs, Buffalo chamber Music Society and Community Music School, and chairman, State University of Buffalo Council and Judicial Nominating Committee for the Fourth Department.

Millonzi was the recipient of numerous awards, including the State University of New York's Chancellor's Medal, presented in 1983; UB's 1981 Distinguished Alumnus Award; UB Law School's 1974 Distinguished Alumnus Award; the university's 1979 Samuel P. Capen Alumni Award; its 1975 President's Distinguished Service Award; the Buffalo Council on World Affairs 1968 Annual Citation, and the 1981 Annual Award of the Association of Campus-Related Foundations.

Survivors include his wife, the former Eleanor Verduin, and two daughters, Mary M. "Molly" Raiser of Washington and Elizabeth M. Levinson of Concord, Mass.

A Memorial Mass will be offered at 4 p.m. Tuesday in Blessed Sacrament Catholic Church, Delaware Avenue near West Utica Street. Burial will be in Forest Lawn.

TURKISH AMBASSADOR CONDEMNS TERRORIST ATTACK ON ISTANBUL SYNAGOGUE

HON. STEPHEN J. SOLARZ

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, October 3, 1986

Mr. SOLARZ. Mr. Speaker, on September 6 of this year, 21 Turkish Jews were brutally murdered in a cowardly terrorist attack on the Neva Shalom Synagogue in Istanbul. This heinous act has been condemned by governments around the world, but nowhere more strongly than by the Government of Turkey.

I would like to bring to the attention of my colleagues the text of a speech that Turkey's Ambassador to the United States, the Honorable Sukru Elekdag, delivered at a memorial service for the victims of this barbaric attack at the Adas Israel Synagogue in Washington. In this speech, Ambassador Elekdag reconfirmed his Government's commitment to protect the Jewish community in Turkey from further attacks, and to bring to justice all those involved in this wanton attack.

I would also like to make available to my colleagues a copy of a letter sent by Theodore Ellenoff, the president of the American Jewish Committee, to Ambassador Elekdag, in which he expresses his appreciation for the forthright statements of Prime Minister Turgut Ozal condemning this terrorist act.

AMERICAN JEWISH COMMITTEE,
New York, NY, September 8, 1986.

His Excellency Dr. Sukru Elekdag,
Ambassador of Turkey to the United States,
Embassy of Turkey, Washington, DC.

DEAR AMBASSADOR ELEKDAG: In behalf of the American Jewish Committee and its nationwide membership, I wish to express to you the feelings of outrage we share with you over the violation of the national sovereignty of Turkey by this small group of terrorists who have brutally murdered some 22 Turkish citizens who are our Jewish co-religionists.

That these criminals could cold-bloodedly enter a sacred house of worship during Sabbath morning services and wreak their violence and hatred on innocent civilians is a revelation of the depth of barbarism to which they and their like have sunk.

We express to you our appreciation of the forthright statements of moral condemnation of those heinous acts issued by your Prime Minister Dr. Turgut Ozal, as well as by yourself.

Over the past five centuries, Turkey has often been a nation of haven for Jewish refugees from persecution and bigotry and we trust that that tradition of providing security and safety for Jews and other citizens will continue.

May we also use this occasion to acknowledge the importance of the Turkish Government's recent decision to upgrade its diplomatic representation to the State of Israel. We are confident that such acts in time will contribute to the eventual peace and stability in the Middle East that all people of reason and good-will devoutly seek.

We would be grateful if you would communicate these sentiments of the American Jewish Committee to your Prime Minister.

Respectfully yours,

THEODORE ELLENOFF,
President.

SPEECH BY AMBASSADOR ELEKDAG

We are here today to pay tribute to 21 Turkish citizens of the Jewish faith who lost their lives in a barbaric and despicable terrorist attack on the worshippers gathered at the Neva Shalom Synagogue of Istanbul on September 6, 1986.

With profound grief and sympathy to the families of those who lost their lives as a result of this heinous act in a place of worship, I, on behalf of the Turkish Government, vehemently condemn this dastardly act.

All Turkish citizens, irrespective of their religion, language or ethnic background, are under the protection of the State. The Turkish Government does not tolerate acts menacing the rights of its citizens. As a matter of fact, people of the Jewish faith, fleeing persecution and oppression elsewhere, have for the last five centuries found a haven of welcome and tolerance in Turkey. During the darkest periods of Jewish history in both the 15th and 20th centuries, Turks have opened their arms to Jews, irrespective of their place of origin, when doors elsewhere were closed to them.

Turkish Jews, no less than Turks of any other faith, are integral members of the Turkish nation. Indeed, reports from cities throughout Turkey demonstrate that this cowardly attack on Turkish Jews has saddened and outraged the Turkish nation as a whole.

I should like to assure you that the Turkish Government, for its part, has vowed to take all necessary measures to apprehend and punish those who were involved in this wanton attack. The terrorists should know that all citizens of Turkey are determined to bring them to justice.

However, the recent incident in Pakistan which ended with numerous deaths and the murderous attack which occurred in Turkey last Saturday demonstrate beyond any doubt the necessity that all countries act, united as one body, against international terrorism. These incidents should prompt soul-searching by, and serve as yet another warning to, those who have not so far comprehended this reality.

A concerted effort to bring an end to the increasing nightmare of violence and death perpetrated by the agents of international terrorism must be placed on top of the agenda of all civilized peoples. To struggle against death is a law of life.

We share the grief and pain of all the families of our fellow citizens who lost their lives because of this odious assault, and express our deepest sympathy to them and speedy recovery to the wounded.

EQUAL OPPORTUNITY IN BROADCASTING

HON. MICKEY LELAND

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Friday, October 3, 1986

Mr. LELAND. Mr. Speaker, today, I am introducing legislation codifying the Federal Communication Commission's existing policies promoting ownership opportunities in the broadcasting industry for minorities and women.

Recently the Commission in a brief filed with the Circuit Court for the District of Columbia circuit, questioned the nexus between diversity of ownership and diversity of information. For decades, the FCC recently repeatedly has recognized the importance of, and the nexus between, the diversity of media ownership and diversity of programming sources.

Presently, the Commission awards preferences to minority and women applicants in comparative hearings for broadcast licenses; grants tax certificates, pursuant to section 1071(a) of the Internal Revenue Code, providing for nonrecognition treatment in the case of sales of media properties to minorities; and has adopted a distress sale policy aimed at increasing minority ownership of media properties.

Congress also has endorsed the principle of encouraging diverse media ownership. Twice in the past 5 years Congress has enacted statutes that provides preferences to minority applicants for media properties. As a direct result of these policies, ownership by women and minorities has increased in recent years. But progress has been slow in coming. Women currently own less than 9 percent of all broadcasting properties in the United States. Minorities—all minorities, blacks, Hispanics, Native Americans, and Asians—in the aggregate own only 2 percent of the broadcast properties in the United States. In other words, minorities own approximately 200 of the more than 10,000 broadcast stations presently operating. Still, these numbers do represent progress over the situation just 15 years ago and the FCC's current policies are the principle reason for this progress.

Yet, the present Federal Communication Commission seeks to reverse even this limited progress. It is my intent with this legislation to reaffirm congressional support for the Commission's policies promoting ownership by women and minorities.

In a recent editorial in the Washington Post, Tyrone Brown, a former Commissioner at the FCC, articulately discussed the importance of the minority and women's preferences to all Americans. I commend the article to my colleagues attention.

THE FCC'S NEW THREAT TO MINORITY PREFERENCES

The decision of the Federal Communications Commission to repudiate its longstanding support for increased minority involvement in broadcasting is at best an unwitting insult to the aspirations of minority Americans. The commission is trying to hide that fact under a cloak of constitutional arguments.

In terms of direct consequences, the agency's action, announced in a brief to the U.S. Court of Appeals, is relatively minor. It takes the form of a simple suggestion to the court that the Constitution forbids the agency from continuing to grant modest preferences to minority applicants who compete with others for broadcast licenses. In terms of its implications, however, the commission's announcement portends much more.

FCC concerns about minority participation in broadcasting grew directly out of the 1968 Kerner Commission Report on the causes of the civil disorders that were a particularly distressing phenomenon of that period. Among other matters, the Kerner Report roundly criticized television's portrayal of this society as "almost totally white in both appearance and attitude." In response, a Republican-controlled FCC beginning in 1969, and every succeeding commission, took limited actions to encourage the broadcast industry to broaden the image it projects to and about America.

These actions have been endorsed uniformly by the courts including the Supreme Court, by the Congress through legislation, and by four administrations. Anyone who honestly examines events in the broadcast industry over the past two decades cannot help concluding that "The Cosby Show," to cite the richest and most successful example, is a direct progeny of events that preceded, and agency action that followed, publication of the Kerner Report.

The current FCC's attempt to negate all of this is less than straightforward. Many of the FCC's actions in furtherance of minority participation over the years, though not the policy implicated in the court of appeals case, were adopted under the agency's discretionary authority to regulate broadcasting in the public interest. The commissioners, if they are so inclined, can employ that broad discretion to dismantle much of the minority initiative without appealing to the courts. The agency's decision not to exercise that discretion is filled with unspoken messages about its view of the evolving constitutional/political process:

This surprise repudiation is unprecedented in that it is so gratuitous. The only issue before the court in the case of *Steele* v. *FCC* involves an asserted female preference in a comparative broadcast licensing proceeding, not a minority preference. Thus, it is quite possible that injecting the minority ownership issue into this particular case will be treated by the court as improper. Perhaps that is why the agency's general counsel went out of his way to state in the brief that he addressed both minority and female ownership issues because the commissioners expressly directed him to do so.

By taking its argument to the court, the commission is recognizing that Congress probably would not react positively to an FCC attempt to dismantle minority preferences. The commission has in fact taken a stance that is in flagrant disregard of congressional directives.

The FCC seems to be anticipating a radical judicial reinterpretation of the Constitution, which would drastically curtail the ability of the legislative and executive branches of government to ameliorate major societal ills. The agency's arguments against the constitutionality—not merely the wisdom—of the minority ownership program would support evisceration of *Brown* v. *Board of Education* as well as congressional enactments that put an end to discrimination in public accommodations and employment.

In its brief to the court of appeals, the FCC decries the preference for minority ownership reflected in its existing comparative licensing policies. The sad fact is that, despite this and other so-called preferences, minority entrepreneurs today hold about 1.8 percent of the 12,000 or so broadcast licenses that the FCC has issured over the past 50 years. In the fact of these statistics, if the Constitution does not permit a modest tilt in favor of minority ownership, then our society is in very serious trouble.

Against this reality, the FCC's brief asserts that "there is no evidence of past dis-

crimination in licensing by the FCC." The statement completely misses the point. This rationalization would be tantamount to Congress' having adopted the position in the 1960s that it was powerless to enact legislation against widespread racial and sexual discrimination in the work place because it did not mandate that discrimination.

By volunteering that the minority ownership preference is invalid under the Constitution, the FCC avoided making a current statement about the status of its support for other elements of its program to encourage minority participation. These include continuing surveillance of industry employment practices and its "tax certificate." policy, under which existing owners receive a substantial tax break when they sell a television or radio station to a minority firm.

More important, the FCC's commitment to minority participation always has had a greater significance than is indicated by the current level of minority ownership. That significance is illustrated by the comments of a very successful minority programmer who has never been a direct beneficiary of the agency's minority initiatives but is convinced nonetheless that "the very existence of the FCC's commitment has opened doors in the private sector that otherwise would have been closed to me." In its action last week, the commission sent the message that its continuing commitment is doubtful.

A final, and perhaps the saddest, message is the one being delivered to those of us—liberals, moderates and conservatives alike—who have broader visions for our society. It is that we have failed to impress upon the emerging generation of national leaders the point that while the best government may be no government, there cannot be a good government that does not strive continually to eliminate barriers to full paticipation for all its citizens. For this failure, we may pay a very heavy price.

(The writer, a communication lawyer, was a Federal Communications Commissioner from 1977 to 1981.)

GOYA FOODS: 50 YEARS OF SERVICE

HON. ROBERT GARCIA

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, October 3, 1986

Mr. GARCIA. Mr. Speaker, I rise today in tribute to Goya Foods, Inc., of Secaucus, NJ, which is celebrating its 50th anniversary on October 18. Founded in 1936 by Prudencio Unanue, Goya Foods is now one of the United States' largest Hispanic-owned businesses with sales in 1985 of $250 million.

Beginning in the New York City area, Goya Foods now provides Spanish food products to the Hispanic community on the east coast and Puerto Rico. The company plans to expand to other regions and other communities and in the near future, and I believe it will reach its goal of making rice and beans as much a staple of the American diet as pizza, croissants, and tacos.

Despite its phenomenal growth in recent years, Goya Foods is still a family business that has maintained its ties to its community and whose core is still the "bodega," the mom and pop grocery stores you find on every street corner in cities with large Hispanic communities. I extend my warmest congratulations to Joseph Unanue, president of Goya Foods, and the rest of the Unanue family on their anniversary and wish them many more years of success. I would also like to share with my colleagues an article that appeared in the New York Daily News chronicling the history of Goya Foods:

[From the Daily News, Jan. 25, 1984]

GOYA: IT'S MORE THAN JUST A HILL OF BEANS

(By Suzanne Hamlin)

Do you have to speak Spanish to love Goya?

Yes, no, maybe, it's changing. . . . Listen to Joseph Unanue, the patriarch of the family that owns the multimillion-dollar, 49-year-old company:

"We've changed the advertising focus because it's time everyone got to know Goya."

Few New Yorkers who have access to television have failed to notice the new Goya commercials, in which the beguiling Zohra Lampert looks directly into the camera and tells you how you can zip up your meals with Goya beans "but, you have to have 'em to add 'em . . ."

Beans may be the bridge on which many New Yorkers cross permanently over into Goya territory—a vast land composed of so many products that even the owners differ on the exact count. Until relatively recently the 700 plus products (about 800, if different sizes of the same item are counted separately) were products that only Hispanics knew for sure—canned, bottled, bagged and boxed foods with a distinct Latin taste produced specifically for Puerto Rico and for greater New York Hispanic households.

"But you don't have to explain beans to anyone," says Unanue, referreing to the new, all English advertising campaign.

Unanue, at 58, is the president of Goya Foods, begun by his father Prudencio Unanue, who died in 1976, having established the largest Hispanic-owned company in the country. Prudencio's sons, their wives and children still own the company completely. To a man and woman, their patience at explaining that the family name is pronounced "you-NAN-oo-way" appears unfaltering.

Headquarters for Unanue are in Secaucus, N.J., at the major Goya warehouse (there are several throughout the country), a huge complex built on four city blocks. Joseph's younger brother, Frank, is manager of Goya de Puerto Rico in Puerto Rico, where much of the food that the company sells is processed and packed. Other foods are contracted out to processors in the states who use Goya's formulas.

From the warehouse in New Jersey, company trucks ship the entire line of Goya products up and down the Eastern seaboard and in smaller quantities, to major cities across the country. No longer just sold in bodegas, Goya products are now found in major supermarket chains, stacked in sections of Goya foods.

Consumers who have always wondered why Goya is isolated in separate sections get a direct answer from Unanue:

"Hispanics do not like to hunt around in a store or ask a lot of questions. If they don't find foods they recognize, they don't feel welcome."

The Unanue family have made sure that the foods are recognizable by constantly asking through their salesmen: What do people eat? What do they want?

The answer is for sale: cornmeal, dried and canned beans, six different kinds of rice, corn oil, vegetable oil, olive oil, crackers, cracker meal, stuffed olives, jumbo olives, pitted olives, plain olives, capers, pimientos, pickles, vinegar, pig's ears and hog's maws, lard, cooking wine, blood pudding, barbecue sauce, sofrito, octopus in olive oil, marine style and in garlic sauce, anchovies, artichokes, salted codfish, cling peaches, crabmeat, gumbos, tropical syrups, apple juice, 15 different tropical nectars, caramel custard, cream of coconut. . . . The product list, which goes into some sort of gastronomic infinity, began with sardines.

Prudencio Unanue took the Goya name from the brand of sardines that he imported from Spain in the 1930s. A Spaniard from the Basque region, Unanue had immigrated to Puerto Rico as a young man, and then to New York where he studied business before becoming a small food broker, importing olive oil, olives and sardines from Spain. When the Spanish Civil War cut off his supplies, he bought in 1936 a small packing plant on Duane St., in Manhattan, for $700 and began packing foods, distributing the products to New York's Spanish community.

After World War II, Unanue set up a packing plant in Puerto Rico and then, in 1958, a plant in Brooklyn, which was until the recent move to New Jersey, the main headquarters of Goya.

The bilingual company, which now employs over 800 people, is still very much involved with its customers: new products are the result of tastings and evaluations by family members and employees. Much of Goya's success can be attributed, they say, to their attention to quality—a can of beans is a full can of beans, not half water. And to their concern for, and involvement with, the small mom and pop bodegas which gave them their start.

Goya was not able to break into supermarkets until 1954 (a Safeway store on E. 116th St. was the first to allow "these foreign goods" on their shelves) and the company has not forgotten the little groceries that gave them their start. From the beginning, Goya extended credit to bodegas, a policy that continues today. Distribution is still personal. Unlike many large companies, who use food brokers to distribute their line, Goya products are delivered by their salesmen, who speak the language and listen to requests. And, in an unusual merchandizing procedure, bodegas are given the same wholesale prices as the major supermarket chains.

Goya has not done badly by sticking with the little man. The company's profits have risen rapidly. In 1950, total sales for the company were $750,000. Last year sales for the company totaled $180 million and Goya projects a 17% increase this year, a rise that in many ways reflects the changing ethnic populations of the country.

"Every time there is an upheaval in Latin America, we see it reflected here," says Joseph Unanue.

In 1950, New York had an Hispanic population of a half million. Today almost 3 million Hispanics live in the greater New York area, defined as the city and a 50-mile radius around it.

"We've kept adding different foods as different groups have come here," says Unanue. "For example, right now we are developing a line of Mexican foods. And every Hispanic group eats differently. Puerto Ricans eat kidney or pink beans and medium grain rice. Dominicans prefer Roman beans. Colombians eat black beans and corn products. Cubans eat black beans and long grain rice."

And all of us will be eating all of those things soon, Goya hopes. In the same way pizza, tortellini and croissants have become part of our everyday culinary language, perhaps Moros y Christianos (black beans and rice) will become this year's street food. The irony that New York's largest ethnic population is least reflected in its food is not lost on Goya.

In an attempt to meet aspiring gourmets on their own terms. Goya has introduced a series of print ads that concentrate on "the elegant Goyas" extra virgin olive oil, stuffed Spanish olives and Alcaparrado.

And there are the wonderfully subliminal television ads. Zohra Lampert, who appears on screen, is not from Madrid, Havana or San Juan. She could be Greek, or Italian, or possibly a nice Jewish girl from Brooklyn. No matter. She really knows and loves her Goya beans.

It is probably safe to say that no human being has ever seen all of Goya's products together in one place. Joseph Unanue, president of the company, says that the Goya label is on some 700 to 800 products—uncooked products and prepared foods, everything from salt to *sofrito*. On each can, jar or bottle, the Goya label is printed in both Spanish and English, and the products are placed in markets depending on the ethnic makeup of the neighborhood. Dominican specialties may be well-stocked in certain markets for example, but you may never see them if you don't live on the upper West Side.

ASIA MAY GET NORTH SLOPE OIL YET

HON. DON BONKER

OF WASHINGTON

IN THE HOUSE OF REPRESENTATIVES

Friday, October 3, 1986

Mr. BONKER. Mr. Speaker, once again, efforts are underway to circumvent statutory restrictions that limit the export of Alaskan North Slope [ANS] crude oil. A September 5, 1986, Journal of Commerce article headline reads: "Asia May Get North Slope Oil Yet." The story describes a pending proposal to construct a refinery at the terminus of the trans-Alaska pipeline [TAPS] to process 100,000 barrels of crude per day for export. By converting crude into refined products, the refiners believe they can exploit a loophole in section 7(d) of the Export Administration Act of 1979, as amended.

As my colleagues are aware, section 7(d) restricts exports of ANS crude unless specific criteria are met and the Congress agrees affirmatively through enactment of legislation. Earlier this year, this House agreed to expand the scope of section 7(d) to cover all domestically produced crude oil. If enacted, that modification would have provided for congressional review of the administration's proposal to export a "limited" amount of Cook Inlet crude, which is not presently covered under section 7(d). Unfortunately, this legislation has not become law as a result of Senate inaction on a trade bill. Perhaps not surprisingly, the Commerce Department last week gave the go ahead to Arco to export 600,000 barrels of Cook Inlet crude over the next 12 months.

As chairman of the Foreign Affairs Subcommittee on International Economic Policy and Trade, which has jurisdiction over the Export Administration Act, I remain deeply concerned that the administration and others will continue to promote "limited" exports of crude oil. Such initiatives are not only contrary to the national interest and exempt at this time from formal congressional review, but clearly an attempt to evade congressional intent as expressed in section 7(d). When the Congress returns to the trade issue again next spring, if not before then, we will look once more at this provision to determine what changes are necessary to close any remaining loopholes. We must ensure that such natural resource export initiatives receive adequate congressional scrutiny and occur only when they are truly in the national interest.

BRUNO MAZUREK: POLONIA'S MAN OF THE YEAR FOR 1986

HON. ROBERT A. BORSKI

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 3, 1986

Mr. BORSKI. Mr. Speaker, I rise to recognize Mr. Bruno Mazurek of Philadelphia, who has been named "Polonia's Man of the Year for 1986." The Polish Eagle Sports Club will be honoring Mr. Mazurek with a special banquet in his honor on October 18, and I would like to join them in commending Mr. Mazurek's lifetime dedication and service to people in Philadelphia and around the world.

Born in Wilmington, DE, Bruno returned to Poland with his family to the village of Jastrzembiec where he spent his adolescent years. After returning to the United States, Bruno served in the U.S. Army in the 82d Airborne Division and has been distinguished with an individual Presidential Citation, the Silver Star, and the Purple Heart with Clusters for his outstanding and extraordinary heroic military service.

In Philadelphia, he has been active in numerous civic, patriotic, political, and charitable organizations, including the Polish American Citizens League, the Polish National Alliance Council, the Polish American Congress, and the Polish Eagles Sportsmen's Club. Recognition of his community service has been vast, as he has been honored with a Gold Cross Medal from the Polish Army Veterans S.W.A.P.; the Silver Medal from the Polish Army Veterans S.P.K.; lifetime membership in the Polish Eagles Sportsmen's Club, and the Knights of Columbus Goodness Award.

Bruno was also active in sponsoring more than 50 Polish families to immigrate to the United States. He provided housing, food, and employment for these individuals to enable them to enter the United States. Now, many of these individuals serve further tribute to Bruno because they have become concerned and involved U.S. citizens.

Mr. Speaker, I ask my colleagues to join me as I salute Bruno Mazurek for his humanitarian activities, undying concern for immigrants and the Polish human rights movement, and his outstanding years of service to Philadelphia.

PULASKI DAY

HON. JAMES A. TRAFICANT, JR.

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Friday, October 3, 1986

Mr. TRAFICANT. Mr. Speaker, October 11, marks the celebration of Pulaski Day, which honors that great Polish war hero of the American Revolution, Count Casimir Pulaski. At this time, Mr. Speaker, I would like to pay recognition to the celebration of Pulaski Day and pay tribute to a truly heroic figure in American history.

Casimir Pulaski was born in Warka, Poland, about 1748. He got an early start as a freedom fighter, for at the age of 19, Casimir Pulaski joined the fight to preserve Polish freedom against invading armies from Prussia, Russia, and Austria. He fought valiantly for several years, but in 1772, his native Poland succumed to the awesome fire power of its adversaries and was partitioned by the three countries. Pulaski was forced to seek refuge in Turkey, where for 3 years he tried, unsuccessfully, to persuade Turkey to attack Russia. In 1775 Pulaski went to Paris, where he met Benjamin Franklin and Silas Deane—Ambassadors for the fledgling American colonist fighting British rule.

The Americans were impressed by Pulaski's military background and asked him to help the American's cause in fighting the British in America. With a letter of introduction from Franklin to George Washington, Commander in Chief of the Continental Army, the Polish count sailed from France for America in June of 1777. In September of 1777, Pulaski was appointed to the rank of brigadier general in the Continental Army and given command of some newly formed cavalry units. Pulaski fought bravely in several battles, but, unable to speak English and subordinate to superiors he was unhappy with his role. Following his resignation from the army in March of 1778, Pulaski got permission from the Continental Congress to form an independent cavalry corps. Pulaski unit suffered several defeats at the hands of the British—but Pulaski still continued to fight for the patriot cause.

On October 9, 1779, he led a gallant frontal cavalry assault on British defense around Savannah, GA. He was mortally wounded in this heroic attack and died on October 11, 1779. Pulaski Day now honors this great war hero on the anniversary of his tragic death.

Observation of Pulaski Day first originated in 1915 by the Military Order of Pulaski. Groups such as the Polish National Alliance and the Polish Army Veterans Association lend much support to these celebrations. On October 12, of this year, I will have the pleasure and honor of addressing a Pulaski Day celebration in Youngstown at Krakusky Hall. This is part of a month of activities honoring Polish American heritage month.

I am pleased to have the opportunity to participate in this celebration. Polish Americans have added so much to the rich ethnic heritage of our Nation. The heroic exploits of Count Casimir Pulaski are emblematic of the many contributions Polish Americans have made to the progress and development of

America. All across this great Nation of ours, Americans will be observing Pulaski Day in honor of a great American who gave his life for the cause of freedom.

HONORING WILLIAM T. BENNEY, ROBERT RUIZ, AND GERRY ROSALES

HON. ESTEBAN EDWARD TORRES

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 3, 1986

Mr. TORRES. Mr. Speaker, I rise today in recognition of several dedicated people: Mr. William T. Benney, Mr. Robert Ruiz, and Mrs. Gerry Rosales. Mr. Benney is a sixth-grade teacher at Valinda Elementary School in La Puente, CA, and the current president of the East San Gabriel Valley Task Force on Drug and Alcohol Abuse. Mr. Ruiz and Mrs. Rosales are dedicated members of the task force. These individuals have developed an antidrug program called, "Friend to Friend."

Approximately 75 high school students have been chosen to participate in the program, which began with a conference in Pico Rivera, CA. The conference was the kickoff for a year of activities in which the participants first developed solid, positive friendships with one another and then go out to spread the antidrug message to their peers. These students will also spread the message to elementary schoolchildren through a student-operated speaker's bureau.

The task force is an outgrowth of a Chemical People Program presented last year under the auspices of Nancy Reagan, in which communities were urged to implement local antisubstance abuse programs. The program promotes positive peer pressure so other youths will choose a drug-free lifestyle.

Mr. Speaker, I ask my colleagues to join me in applauding Mr. Benney, Mr. Ruiz, and Mrs. Rosales for taking a stand against drug abuse and actively participating in a program that will give the youth of today the ability to make the right choice about drug use.

TRIBUTE TO ED MURPHY

HON. IKE SKELTON

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Friday, October 3, 1986

Mr. SKELTON. Mr. Speaker, recently, I learned of the death of a friend and colleague from my days as a practicing attorney in Missouri. Ed Murphy was a truly outstanding jurist and a trusted friend. The esteem in which he was held is exemplified in the record of the circuit court in the session following his death. Judge William J. Roberts offered the following tribute:

This court is informed that attorney Edward J. Murphy died on August 18, 1986. Mr. Murphy established his law practice in Butler in 1955.

He was a past president of the Missouri Trial Lawyers Association and a member of the American Trial Lawyers Association.

Mr. Murphy was a tenacious advocate for his clients, and a recognized champion of the rights and causes of the injured and oppressed. In those capacities he will not easily be replaced, if ever.

He freely and willingly gave of himself to aid and encourage the betterment of the members of his profession, both young and old. Though sometimes controversial, his wise counsel was often sought by the bar, bench, legislators and private citizens. He will be sadly missed by all.

He loved his profession. When at his best, Ed exemplified the highest qualities of a trial lawyer. As a young practitioner I often thought I'd never met a lawyer until I met Ed Murphy. The same thought holds true today.

The Court pauses this day to honor this man and his memory.

It is Ordered that these proceedings be spread upon the record of the Court.

It is an honor to pay tribute to this outstanding representative of the legal profession before my colleagues in the U.S. House of Representatives.

1986 NATIONAL 4-H WEEK

HON. WILLIAM H. NATCHER

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Friday, October 3, 1986

Mr. NATCHER. Mr. Speaker, it is a pleasure for me to join with the members of 4-H as they celebrate National 4-H Week with the theme "4-H for Youth for America."

4-H is the largest informal coeducational program for young people in the world. Participation is open to all interested youth between the ages of 9 and 19. The primary focus of the program is developing life skills. By selecting from over 100 project areas, 4-H'ers not only learn practical skills, but also develop sound judgment, a sense of responsibility and individual motive for future career choices or later educational pursuits.

Individual 4-H members enroll in one or more organized projects each year. Last year, 4,337,480 4-H'ers enrolled in 8,422,013 projects and in Kentucky 224,300 young people completed 468,505 projects and activities.

4-H is administered by the Cooperative Extension Service of the Department of Agriculture. Public funding for 4-H is provided by the U.S. Congress, State legislatures, and local governments. The private sector donates approximately $41 million annually to support 4-H at the national, State, and local levels.

Volunteers are essential to the 4-H Program and over 500,000 well-trained volunteers help make 4-H one of the most cost effective publicly supported programs in the 1980's. Nearly 30,000 teens and adults in Kentucky gave of their time and talents last year.

Kentucky 4-H received a national award from the U.S. Department of Agriculture for outstanding pioneering work in developing a nationwide computer project. The award recognized Kentucky 4-H's leadership in initiating and directing a State and national project that resulted in an innovative approach to teaching youth through the use of microcomputers.

I am proud of Kentucky 4-H and especially, the success of the computer project. I am pleased to report that progress is continuing on construction of the new Kentucky leadership training center. The 4-H clubs/units in the Second District of Kentucky, which I have the privilege of representing in the U.S. Congress, continue to increase in membership and strive to strengthen their programs.

I would like to commend all of the 4-H members and volunteers for their dedication and efforts in the past years and wish them success in all their future endeavors.

HONORING BELLA ABRAMOWITZ-FISHER OF BAYSIDE, NY

HON. GARY L. ACKERMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, October 3, 1986

Mr. ACKERMAN. Mr. Speaker, I rise today in honor of Bella Abramowitz-Fisher of Bayside, NY, who stands in this centennial year of Lady Liberty as a proud example of the contributions that immigrants have made to our great Nation.

Mr. Speaker, Bella Fisher arrived at Ellis Island from her native Poland on July 4, 1921. She, her mother, a sister, and two brothers joined her father in America soon after that day. They were fortunate indeed to have reached these shores—every family member but one who remained in Poland died at the hands of the Nazis.

But Bella Fisher has paid back her adopted country many times over during her 65 years here. As a physical therapist, she served heroically in the Army during World War II, and she has developed a unique therapeutic approach that has helped countless numbers of men and women.

At the bloody battle of Okinawa during the Second World War, Bella Fisher was the only physical therapist on the island. With no possibility of relief, she worked well over 12 hours a day for almost 2 months. Although she sustained a back injury that has never truly healed to this day, her heroic actions showed how one person, working alone, can make a difference.

After leaving the Army, Bella Fisher continued to be a leader in therapy. She has introduced a group treatment called holistic neuromuscular fasilitation that combines psychology, emotions, music, and dance, in a whole-body approach to physical therapy. She has successfully used this method at three New York City hospitals: Jacobi Hospital, Van Etten Hospital, and Coney Island Hospital. She has also donated her talents to the North Shore University Hospital Stroke Club for over 7 years, and to the Organization of People Undaunted by Stroke for 11 years; she serves as vice president for the latter group, and continues as a member of the Disabled American Veterans.

Mr. Speaker, Bella Fisher has not only served her Nation as an outstanding professional, but she has also been involved in her community as house manager and as a member of the board of directors of the North Queens Youth Theater for 22 years.

Mr. Speaker, as we celebrate the 100th birthday of the Statue of Liberty later this month, it is only appropriate to recognize and

honor those who have freely chosen to adopt this Nation, and who in turn have given so much to their new country. Too many of us who are native to this favored land take its advantages for granted. It sometimes takes the contributions of a naturalized citizen such as Bella Fisher to remind us that our freedoms and advantages rest on every American's participation in the American dream.

Mr. Speaker, I call now on all of my colleagues in the U.S. House of Representatives to join me in tribute to Bella Fisher of Bayside, NY, in this year of Liberty, in congratulating her for her many accomplishments, and in sending her our best wishes for the future.

NATIONAL SCIENCE FOUNDATION AWARD FOR GEORGE M. RADCLIFFE, JR.

HON. ROY DYSON

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Friday, October 3, 1986

Mr. DYSON. Mr. Speaker, I rise today to extend my congratulations to Mr. George M. Radcliffe, Jr., of Cambridge, MD. Mr. Radcliffe was selected by the national Science Foundation as a recipient of a 1986 Presidential Award for Excellence in Science Education.

Mr. Radcliffe was one of 106 nationwide winners. The National Science Foundation selects one outstanding teacher per State in each of two categories, science and mathematics. Maryland had 95 science nominees. A total of 11 semifinalists were considered and 3 finalists were considered by the National Association of Science Teachers and the National Science Foundation. To even be considered for such an award is quite an honor.

George Radcliffe is one person who did not seek this honor. He has a different agenda. He was recognized for his unending devotion to the study and preservation of the environment along with imparting knowledge and the love of science to his students, fellow teachers, and the surrounding community. He utilized the total school site and outdoor environmental education facility, hiking trails, a freshwater pond for study and observation and led three planting activities in the Dorchester soil conservation district.

The adult community has also benefited from George Radcliffe's devotion to his profession. He is the founder of REACH [Reach for Environmental Awareness of the Chesapeake], an organization whose goals are the cleanup and the preservation of the bay. As one who has worked to pass legislation to revitalize the bay, I more than appreciate the efforts of George Radcliffe.

Let me conclude by quoting his school superintendent Mr. William J. Cotton, in his nomination letter to the Maryland State Department of Education, "George Radcliffe is synonymous with a better Dorchester; a better bay environment. He lives his mission 24 hours a day."

GERALD E. ALBERT EARNS VA'S OLIN E. TEAGUE AWARD FOR WORK WITH DISABLED VETERANS

HON. G.V. (SONNY) MONTGOMERY

OF MISSISSIPPI

IN THE HOUSE OF REPRESENTATIVES

Friday, October 3, 1986

Mr. MONTGOMERY. Mr. Speaker, in a ceremony today at the central office of the Veterans' Administration here in Washington, Gerald E. Albert, a vocational rehabilitation and counseling officer for the Agency, was awarded the eighth annual Olin E. Teague Award for his efforts on behalf of disabled veterans.

The Olin E. Teague Award is presented annually to a VA employee, or employees working as a team, whose achievements have been of special benefit to veterans with service-connected injuries.

Albert, who works in the VA's San Francisco regional office, is being cited for his role in bringing about a change in the San Franciso City and County Civil Service charter which now allows direct and noncompetitive job appointments of qualified disabled persons. Albert was instrumental in getting a proposition on the November 1985 ballot that resulted in the new law and has followed through by making veterans aware of it. Because of his efforts, disabled veterans in San Francisco now have even greater opportunities for employment.

Albert has been a counseling psychologist with the VA for more than 22 years. He earned a B.S. degree from Florida State University in 1961 and a master of rehabilitation counseling degree from the University of Florida in 1963. As an officer in the San Francisco vocational rehabilitation and counseling division, his job is to assist eligible veterans in overcoming service-connected disabilities through vocational training, independent living services and other rehabilitation counseling, plus employment assistance. Obviously, he has done his job exceptionally well.

Mr. Speaker, there is no greater record of service to the Nation's veterans than that of the late Olin E. (Tiger) Teague, for whom the award is named. Tiger Teague served on the Veterans' Affairs Committee for 32 years, 18 as its chairman. No one before and no one since has had a greater understanding of veterans' concerns and needs nor has done more to address them. He set the standards by which we can best serve all veterans.

I know my colleagues will want to join me in offering our deep appreciation to Gerald Albert for his concern, for his dedication, and for his innovation in meeting the special rehabilitation needs of our disabled veterans. We congratulate him for the excellence of his work and for the distinguished award he received today.

PRESIDENT'S TRIP TO ICELAND COULD HELP BRING BACK USE OF AMERICAN DISTRICT HEATING TESTIMONY

HON. JAMES L. OBERSTAR

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 3, 1986

Mr. OBERSTAR. Mr. Speaker, while most Americans look to the upcoming summit meeting between President Reagan and Soviet leader Mikhail Gorbachev as a way to hopefully cool the arms race, the issue of how cities heat themselves could become a key factor in determining whether the Soviet Union or the United States will win the race for world economic supremacy.

What does city heating have to do with superpower economics? Simply this: An American invention, called "District Heating and Cooling" which permits communities to use nonscarce fuels to heat their cities, is being put to use throughout Europe, the Orient, and the Soviet Union, as a way to conserve energy. In the process, these countries are making the best use of their domestic fuels, and are limiting their balance of payments by reducing the need to import oil.

While in Reykjavik, Iceland, one of the features the Presidential party may notice is that there are no chimneys on the newer buildings. This is because there are no boilers in each building. In Reykjavik, each building is connected to a series of insulated district heating pipes located in the streets which circulate hot water throughout the city. The individual building simply plugs into the district heating pipes and extracts the hot water needed to heat the building and to warm the domestic water for bathing and dishwashing purposes.

While this country is called Iceland, the fact is that under the ground volcanic action has heated the ground water to a point where it can be extracted from wells and pumped through the district heating piping system in the city streets to heat the entire city. Experts in the United States, at the North American District Heating and Cooling Institute in Washington, DC, point out that similar hot water formations exist under most of the States of Washington, Idaho, Utah, Colorado, Oregon, and California.

The nice thing about this technology is that once the district heating piping network is established, heat from any source can be fed into that piping for use in the city. And that is what most of the countries of Europe and the Soviet Union are doing. For example, whereas, at the end of the Second World War, virtually no district heating existed in countries such as Denmark, today almost half of the Danish population is served by such systems. And more district heating systems exist in the Soviet Union today than in any other country in the world. This is allowing the Soviets to utilize otherwise wasted heat. As a result, the Soviets are able to export oil and gas, rather than having to use it themselves.

One of the big potential sources of "waste heat" is the heat that is left over in the process of making electricity. Roughly two-thirds of the thermal energy produced by any electric

plant is currently thrown away by venting it to the atmosphere through cooling towers, or dumping this "waste heat" into the district heating piping network. Further, the central plants can be designed to burn domestic fuels, such as coal, peat, wood waste, and municipal refuse. By using now wasted heat and domestic fuels to heat their cities, our European allies and the Soviets are building their own economies and cutting their need to import oil.

Ironically, district heating was invented in the United States in the late 1800's, and today the White House and the U.S. Capitol are among over 200 Government buildings in downtown Washington, DC, which are served by Government owned, coal-fired, district heating plants. However, neither the Congress nor the administration has taken the major steps needed to help unsnarl the planning processes required to extend this heating concept citywide. Thus, most U.S. cities do not enjoy the use of the same sources cheap heat currently made available to their European counterparts. If this concept were extended citywide in the United States it would lead to a significant reduction in the need to import foreign oil.

Perhaps as President Reagan enters and exits the buildings in Reykjavik, where he will be meeting with Soviet Party Chairman Gorbachev, he will look up and notice the lack of chimneys on the buildings. And just maybe, if he asks his staff some questions, and they ask some questions, then the United States will come back from this preparatory summit with more than an agenda for the big summit to follow. Perhaps they will return home with a renewed awareness of an American idea which has been borrowed and successfully implemented by the Eastern and Western Europeans. And if they bring this American invention back home and put it to use, it will cut our oil imports, increase our energy independence, and increase our competitiveness in the world economy.

HOUSE OF REPRESENTATIVES—*Monday, October 6, 1986*

The House met at 12 noon and was called to order by the Speaker pro tempore [Mr. WRIGHT].

DESIGNATION OF SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, DC,
October 2, 1986.

I hereby designate the Honorable JIM WRIGHT to act as Speaker pro tempore on Monday, October 6, 1986.

THOMAS P. O'NEILL, Jr.,
Speaker of the House of Representatives.

PRAYER

The Reverend Dr. Ronald Christian, assistant to the bishop, American Lutheran Church, Fairfax, VA, offered the following prayer:

Almighty God, on this first Monday of October in the year of our Lord, 1986, we pray Your benediction on the courts and magistrates of our land.

Give them the wisdom of Solomon in discerning right from wrong, the endurance of Job in hearing the troubles of Your people, the courage of Esther in facing authorities, and the compassion of Joseph in rendering judgment.

Grant that we may all learn justice from Your ways, mercy from Your truth, and love from Your examples.

Bless the Lord, O my soul and forget not all His benefits. Amen.

THE JOURNAL

The SPEAKER pro tempore. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Hallen, one of its clerks, announced that the Senate had passed without amendment bills, joint resolutions, and concurrent resolutions of the House of the following titles:

H.R. 2224. An act to amend the Immigration and Nationality Act to permit nonimmigrant alien crewmen on fishing vessels to stop temporarily at ports in Guam;

H.R. 3526. An act to provide for the settlement of certain claims respecting the San Carlos Apache Tribe of Arizona;

H.R. 4545. An act to authorize appropriations for the American Folklife Center for fiscal years 1987, 1988, and 1989, and for other purposes;

H.R. 4712. An act to provide for the restoration of the fishery resources in the Klamath River Basin, and for other purposes;

H.R. 5166. An act to designate certain lands in the Cherokee National Forest in the State of Tennessee as wilderness areas, and for other purposes;

H.R. 5430. An act to amend the Gila River Pima-Maricopa Indian Community judgment distribution plan;

H.J. Res. 210. Joint resolution designating the Study Center for Trauma and Emergency Medical Systems at the Maryland Institute for Emergency Medical Services Systems at the University of Maryland as the "Charles McC. Mathias, Jr., National Study Center for Trauma and Emergency Medical Systems";

H.J. Res. 555. Joint resolution to designate the week beginning November 24, 1986, as "National Family Caregivers Week";

H.J. Res. 588. Joint resolution commemorating January 28, 1987, as a National Day of Excellence in honor of the crew of the space shuttle *Challenger;*

H.J. Res. 617. Joint resolution to designate the week beginning September 21, 1986, as "National Adult Day Care Center Week";

H.J. Res 635. Joint resolution to designate the school year of September 1986 through May 1987 as "National Year of the Teacher" and January 28, 1987, as "National Teacher Appreciation Day";

H.J. Res 671. Joint resolution designating 1987 as the "Year of the Reader";

H.J. Res 678. Joint resolution to designate October 1986 as "Crack/Cocaine Awareness Month";

H.J. Res 741. Joint resolution to designate March 1987, as "Developmental Disabilities Awareness Month";

H. Con. Res. 400. Concurrent resolution to direct the Clerk of the House of Representatives to make corrections; and

H. Con. Res. 401. Concurrent resolution to correct technical errors in the enrollment of the bill S. 2069.

The message also announced that the Senate had passed with amendments in which the concurrence of the House is requested, bills and a joint resolution of the House of the following titles:

H.R. 3578. An act to provide permanent authority for hearing commissioners in the District of Columbia courts, to modify certain procedures of the District of Columbia Judicial Nomination Commission and the District of Columbia Commission on Judicial Disabilities and Tenure, and for other purposes;

H.R. 4354. An act to authorize appropriations to the Secretary of Commerce for the programs of the National Bureau of Standards for fiscal year 1987, and for other purposes;

H.R. 4531. An act to extend the Wetlands Loan Act, and for other purposes.

H.R. 4718. An act to amend title 18, United States Code, to provide additional penalties for fraud and related activities in connection with access devices and computers, and for other purposes;

H.R. 4899. An act to amend title 35, United States Code, with respect to patented processes and the patent cooperation treaty;

H.R. 5313. An act making appropriations for the Department of Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 1987, and for other purposes;

H.R. 5484. An act to strengthen Federal efforts to encourage foreign cooperation in eradicating illicit drug crops and in halting international drug traffic, to improve enforcement of Federal drug laws and enhance interdiction of illicit drug shipments, to provide strong Federal leadership in establishing effective drug abuse prevention and education programs, to expand Federal support for drug abuse treatment and rehabilitation efforts, and for other purposes;

H.R. 5488. An act to prohibit implementation of certain regulations of the Federal Emergency Management Agency relating to the declaration process, eligibility for assistance and non-Federal responsibility for major disasters under the Disaster Relief Act of 1974, and for other purposes;

H.R. 5490. An act to amend title 11 of the United States code to clarify the current meaning of section 1113 relating to the rejection of collective bargaining agreements by debtors in bankruptcy; and

H.J. Res. 738. Joint resolution making continuing appropriations for the fiscal year 1987, and for other purposes.

The message also announced that the Senate agrees to the amendment of the House to the amendment of the Senate to the bill (H.R. 5073) "An act to amend the Toxic Substances Control Act to require the Environmental Protection Agency to promulgate regulations requiring inspection for asbestos-containing material in the Nation's schools, development of asbestos management plans for such schools, response actions with respect to friable asbestos-containing material in such schools, and for other purposes."

The message also announced that the Senate agrees to the amendments of the House to the bill (S. 1562) entitled "An act to amend the False Claims Act, and title 18 of the United States Code regarding penalties for false claims, and for other purposes," with an amendment.

The message also announced that the Senate insists upon its amendment to the bill (H.R. 5313) "An act making appropriations for the Department of Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 1987, and for other purposes," requests a conference with the

House on the disagreeing votes of the two Houses thereon, and appoints Mr. HATFIELD, Mr. GARN, Mr. WEICKER, Mr. LAXALT, Mr. D'AMATO, Mr. ABDNOR, Mr. DOMENICI, Mr. LEAHY, Mr. STENNIS, Mr. PROXMIRE, Mr. JOHNSTON, and Mr. LAUTENBERG, to be the conferees on the part of the Senate.

The message also announced that the Senate insists upon its amendment to the bill (H.R. 5484) "An act to strengthen Federal efforts to encourage foreign cooperation in eradicating illicit drug crops and in halting international drug traffic, to improve enforcement of Federal drug laws and enhance interdiction of illicit drug shipments, to provide strong Federal leadership in establishing effective drug abuse prevention and education programs, to expand Federal support for drug abuse treatment and rehabilitation efforts, and for other purposes," requests a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mrs. HAWKINS, Mr. HATCH, Mr. DANFORTH, Mr. D'AMATO, Mr. MATTINGLY, Mr. LUGAR, Mr. WARNER, Mr. DOLE, Mr. THURMOND, Mr. BIDEN, Mr. CHILES, Mr. DECONCINI, Mr. ROCKEFELLER, Mr. NUNN, Mr. DODD, and Mr. BYRD, to be the conferees on the part of the Senate.

The message also announced that the Senate insists upon its amendments to the joint resolution (H.J. Res. 738) "Joint resolution making continuing appropriations for the fiscal year 1987, and for other purposes," requests a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mr. HATFIELD, Mr. STEVENS, Mr. WEICKER, Mr. MCCLURE, Mr. LAXALT, Mr. GARN, Mr. COCHRAN, Mr. ANDREWS, Mr. ABDNOR, Mr. KASTEN, Mr. D'AMATO, Mr. MATTINGLY, Mr. RUDMAN, Mr. SPECTER, Mr. DOMENICI, Mr. STENNIS, Mr. BYRD, Mr. PROXMIRE, Mr. INOUYE, Mr. HOLLINGS, Mr. CHILES, Mr. JOHNSTON, Mr. BURDICK, Mr. LEAHY, Mr. SASSER, Mr. DECONCINI, Mr. BUMPERS, Mr. LAUTENBERG, and Mr. HARKIN to be the conferees on the part of the Senate.

The message also announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 5316) "An act to amend title 28 of the United States Code to provide for the appointment of additional bankruptcy judges, to provide for the appointment of United States Trustees to serve in bankruptcy cases in judicial districts throughout the United States, to make certain changes with respect to the role of United States Trustees in such cases, and for other purposes."

The message also announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 3773) "An act to amend the Stevenson-Wydler Technology Innovation Act of 1980 to promote technology transfer by authorizing Government-operated laboratories to enter into cooperative research agreements and by establishing a Federal Laboratory Consortium for Technology Transfer within the National Science Foundation, and for other purposes."

The message also announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 426) entitled "An act to amend the Federal Power Act to provide for more protection to electric consumers."

The message also announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4021) "An act to extend and improve the Rehabilitation Act of 1973."

The message also announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 2005) "An act to amend title II of the Social Security Act and related provisions of law to make minor improvements and necessary technical changes."

The message also announced that the Senate agrees to the amendments of the House of Representatives to the bill (S. 1917) entitled "An act to amend the Foreign Assistance Act of 1961 to provide assistance to promote immunization and oral rehydration, and for other purposes," with an amendment.

The message also announced that the Senate had passed bills, joint resolutions, and concurrent resolution of the following titles, in which the concurrence of the House is requested:

S. 740. An act to promote the conservation of migratory waterfowl and to offset or prevent the serious loss of wetlands by the acquisition of wetlands and other essential habitat, and for other purposes;

S. 1352. An act to enhance the carrying out of fish and wildlife conservation and natural resource management programs on military reservations, and for other purposes;

S. 2323. An act to exempt certain activities from provisions of the antitrust laws;

S. 2448. An act to repeal Public Law 87-186 relating to the National Armed Forces Museum Advisory Board of the Smithsonian Institution;

S. 2648. An act to improve the public health through the prevention of injuries;

S.J. Res. 268. Joint resolution to provide for the reappointment of Murray Gell-Mann as a citizen regent of the Board of Regents of the Smithsonian Institution;

S.J. Res. 352. Joint resolution to designate the week beginning October 19, 1986, as "Gaucher's Disease Awareness Week";

S.J. Res. 410. Joint resolution to designate the period commencing February 9, 1987, and ending February 15, 1987, as "National Burn Awareness Week";

S.J. Res. 414. Joint resolution to designate March 16, 1987, as "Freedom of Information Day";

S.J. Res. 417. Joint resolution designating the week of January 25 through January 31, 1987, as "National Productivity Improvement Week";

S.J. Res. 418. Joint resolution to designate February 4, 1987, as "National Women in Sports Day"; and

S. Con. Res. 130. Concurrent resolution to recognize the visit by the descendants of the original settlers of Purrysburg, SC, to Neufchatel, Switzerland, in October of 1986 as an international gesture of good will.

PERMISSION TO POSTPONE DEBATE AND VOTE ON MOTION TO INSTRUCT CONFEREES WITH RESPECT TO HOUSE JOINT RESOLUTION 738, CONTINUING APPROPRIATIONS, 1987

Mr. WHITTEN. Mr. Speaker, I ask unanimous consent that if the House agrees to send House Joint Resolution 738 to conference today, the debate and vote on a motion to instruct which may be offered today shall be postponed until tomorrow, October 7, 1986, and that the Speaker may appoint conferees today notwithstanding the pendency of such a motion.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Mississippi?

Mr. SENSENBRENNER. Reserving the right to object, Mr. Speaker, I would like to propound a parliamentary inquiry.

PARLIAMENTARY INQUIRY

The SPEAKER pro tempore. The gentleman will state his parliamentary inquiry.

Mr. SENSENBRENNER. Mr. Speaker, I have before me rule I, clause 5(b)(1) of the Rules of the House of Representatives, which enumerates those questions which may be postponed and limits that to the question of passage of bills, adoption of resolutions, ordering the previous question on rules, agreeing to conference reports and the question of agreeing to motions to suspend the rules.

Mr. Speaker, I do not see any listing in here of postponing of motions to instruct conferees. I am asking the Chair to rule whether this would be in order if the unanimous consent request would be agreed to.

The SPEAKER pro tempore. The unanimous consent request, the Chair would advise the gentleman from Wisconsin, would clearly be in order. It is for the very reason that the gentleman enumerates, the fact that this is not one of those things which may at the will of the Speaker be postponed; therefore a unanimous-consent re-

quest is required in order to postpone it.

The Chair would like to observe that having announced to the Members that votes would be postponed today, it would be accommodative if Members would permit the unanimous-consent request and the Chair would guarantee the gentleman from Wisconsin that such a motion to instruct will be debated and voted upon tomorroe if offered today.

Mr. SENSENBRENNER. Further reserving the right to object, I see that we are once again bending the rules of the House to accommodate long campaign weekends rather than getting the CR out of here so we can adjourn sine die.

I certainly do not wish to delay the conference beginning on the CR.

Therefore, Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Mississippi?

There was no objection.

APPOINTMENT OF CONFEREES ON HOUSE JOINT RESOLUTION 738, CONTINUING APPROPRIATIONS, 1987

Mr. WHITTEN. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the joint resolution (H.J. Res. 738) making continuing appropriations for fiscal year 1987, and for other purposes, with Senate amendments thereto, disagree to the Senate amendments, and agree to the conference asked by the Senate.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Mississippi? The Chair hears none and, without objection, appoints the following conferees:

For the entire resolution and Senate amendments: Messrs. WHITTEN, BOLAND, NATCHER, SMITH of Iowa, YATES, OBEY, ROYBAL, BEVILL, CHAPPELL, LEHMAN of Florida, DIXON, FAZIO, HEFNER, CONTE, MCDADE, MYERS of Indiana, MILLER of Ohio, COUGHLIN, YOUNG of Florida, KEMP, and REGULA.

As additional conferees:

Solely for consideration of Senate amendments within the jurisdiction of the Subcommittee on Agriculture, Rural Development, and Related Agencies, and modifications committed to conference: Messrs. TRAXLER, MCHUGH, AKAKA, WATKINS, and DURBIN, Mrs. SMITH of Nebraska, Mr. ROGERS, and Mr. SKEEN.

Solely for consideration of Senate amendments within the jurisdiction of the Subcommittee on the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies, and modifications committed to conference: Messrs. ALEXANDER, EARLY, DWYER of New Jersey, CARR, MOLLOHAN, ROGERS, and MICHEL.

Solely for consideration of Senate amendments within the jurisdiction of the Subcommittee on the Departments of Defense, and modifications committed to conference: Messrs. MURTHA, DICKS, WILSON, AUCOIN, SABO, MILLER of Ohio, and LIVINGSTON.

Solely for consideration of Senate amendments within the jurisdiction of the Subcommittee on the District of Columbia, and modifications committed to conference: Messrs. STOKES, WILSON, SABO, HOYER, GREEN, and WOLF.

Solely for consideration of Senate amendments within the jurisdiction of the Subcommittee on Energy and Water Development, and modifications committed to conference: Mrs. BOGGS, Mr. WATKINS, Mr. BONER of Tennessee, Mrs. SMITH of Nebraska, and Mr. RUDD.

Solely for consideration of Senate amendments within the jurisdiction of the Subcommittee on Foreign Operations, and modifications committed to conference: Messrs. MCHUGH, WILSON, GRAY of Pennsylvania, MRAZEK, EDWARDS of Oklahoma, LEWIS of California, and PORTER.

Solely for consideration of Senate amendments within the jurisdiction of the Subcommittee on the Department of Housing and Urban Development-Independent Agencies, and modifications committed to conference: Mr. TRAXLER, Mr. STOKES, Mrs. BOGGS, and Messrs. BONER of Tennessee, MOLLOHAN, GREEN, and LEWIS of California.

Solely for consideration of Senate amendments within the jurisdiction of the Subcommittee on the Department of the Interior and Related Agencies, and modifications committed to conference: Messrs. MURTHA, DICKS, AUCOIN, and LOEFFLER.

Solely for consideration of Senate amendments under the jurisdiction of the Subcommittee on Military Construction, and modifications committed to conference: Messrs. ALEXANDER, COLEMAN of Texas, EARLY, DICKS, EDWARDS of Oklahoma, LOEFFLER, RUDD, and LOWERY of California.

Solely for consideration of Senate amendments under the jurisdiction of the Subcommittee on the Department of Transportation and Related Agencies, and modifications committed to conference: Messrs. GRAY of Pennsylvania, CARR, DURBIN, MRAZEK, SABO, PURSELL, and WOLF.

Solely for consideration of Senate amendments under the jurisdiction of the Subcommittee on Treasury, Postal Service, and General Government, and modifications committed to conference: Messrs. AKAKA, HOYER, COLEMAN of Texas, SKEEN, LOWERY of California, and WOLF.

There was no objection.

APPOINTMENT OF CONFEREES ON H.R. 5313, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT-INDEPENDENT AGENCIES APPROPRIATIONS ACT, 1987

Mr. BOLAND. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 5313), making appropriations for the Department of Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations and offices for the fiscal year ending September 30, 1987, and for other purposes, with Senate amendments thereto, disagree to the Senate amendments, and agree to the conference asked by the Senate.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Massachusetts? The Chair hears none and, without objection, appoints the following conferees: Messrs. BOLAND, TRAXLER, and STOKES, Mrs. BOGGS, and Messrs. BONER of Tennessee, MOLLOHAN, WHITTEN, GREEN, COUGHLIN, LEWIS of California, and CONTE.

There was no objection.

CONSENT CALENDAR

The SPEAKER pro tempore. This is the day for the call of the Consent Calendar. The Clerk will call the first bill on the Consent Calendar.

GENE SNYDER U.S. COURTHOUSE AND CUSTOMHOUSE

The Clerk called the bill (H.R. 5570) to designate the U.S. Courthouse and Customhouse at 601 West Broadway, Louisville, KY, as the "Gene Snyder United States Courthouse and Customhouse."

There being no objection, the Clerk read the bill, as follows:

H.R. 5570

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION OF BUILDING.

The United States Courthouse and Customhouse at 601 West Broadway, Louisville, Kentucky, shall be known and designated as the "Gene Snyder United States Courthouse and Customhouse".

SEC. 2. LEGAL REFERENCES.

Each reference in a law, map, regulation, document, record, or other paper of the United States to such building shall be deemed to be a reference to the "Gene Snyder United States Courthouse and Customhouse".

SEC. 3. EFFECTIVE DATE.

This Act shall take effect on January 4, 1987.

Mr. YOUNG of Missouri. Mr. Speaker, H.R. 5570 would designate the U.S. Courthouse and Customhouse in Louisville, KY, as the "Gene Snyder United States Courthouse and Customhouse."

As my colleagues are aware, GENE has served admirably in the House of Representatives for a total of 22 years and will be leaving us at the end of this session.

I urge enactment of H.R. 5570.

Mr. HOWARD. Mr. Speaker, I rise in support of H.R. 5570, a bill to designate the U.S. Courthouse and Customhouse at 601 West Broadway, Louisville, KY, as the "Gene Snyder United States Courthouse and Customhouse."

GENE SNYDER was born in Louisville, KY, on January 26, 1928. He attended the public schools of Louisville, pursued prelaw studies at the University of Louisville and graduated cum laude from the Jefferson School of Law, now part of the University of Louisville.

Congressman SNYDER began his political career in 1956 when he was elected to the first of two terms as magistrate of Jefferson County's first district. In November 1962, he was elected to the U.S. House of Representatives from the Third District of Kentucky. In November 1966, he was elected to the 90th Congress from the Fourth District of Kentucky and has served in each succeeding Congress until his announced retirement at the end of the 99th Congress.

For 22 years, Congressman SNYDER has served his constituents, his State and his Nation faithfully and well. Known for his quick wit, and bulldog determination, he has been widely recognized as 1 of the 12 most effective Members of Congress. Congressman SNYDER put that effectiveness to work in his 20 years as a member of the Committee on Public Works and Transportation, where he played a key role in the development of programs aimed at developing, repairing and maintaining our Nation's infrastructure and transportation systems.

Congressman SNYDER's dedication to progress has won the respect of his colleagues on both sides of the aisle. Through his efforts, great strides have been made in the past two decades in our highway, air, and waterway programs.

Because of his many contributions in the area of public works it is only fitting that this public works project—this public building, the Customhouse and Courthouse in Louisville, KY, be named in his honor.

Mr. Speaker, I urge enactment of H.R. 5570.

Mr. SHAW. Mr. Speaker, I rise in strong support of this bill which would designate the U.S. courthouse and customhouse in Louisville, KY, after our distinguished colleague GENE SNYDER.

It has been a special honor to have served in Congress with this great Kentuckian and great American.

This marks his last year of service in this body, and we will all be poorer for his departure.

The Fourth District of Kentucky could not have asked for better representation than that which they have received in the past 22 years from Congressman SNYDER.

Having both an airport and a freeway bear his name seems to me a fair indication of the respect, admiration, and true affection GENE SNYDER enjoys among his fellow Kentuckians.

Of course, his contributions during a long career of dedicated public service extend well beyond the boundaries of this district.

The users of our Nation's highways, airways, and waterways can be thankful that GENE SNYDER has been a fixture on the Public Works and Transportation Committee for the past two decades and ranking minority member for the last 4 years.

He has provided important leadership in shaping the major highway, aviation, water resource development, and conservation and economic development legislation drafted by the committee.

The American taxpayers as a whole can be thankful as well, because GENE SNYDER has always insisted that Federal money be spent on programs that are both workable and affordable.

A fiscal conservative who speaks his mind and does so with great eloquence and authority, GENE SNYDER has demonstrated his considerable influence and persuasiveness in support of his position on the broad range of issue with which this body must deal.

He came to Congress well equipped to do that, having been a successful attorney, realtor, and insurance agent, and also a two-term magistrate in his native Jefferson County, KY.

Like so many of my colleagues, I have enjoyed my share of GENE's ample supply of stories and anecdotes.

We will all be hard pressed to replace that famous SNYDER wit when GENE departs the Halls of Congress.

Mr. Speaker, naming the U.S. Courthouse and Customshouse in Louisville is but one small way in which we can pay tribute to our distinguished colleague, and I would urge the Members to support the passage of this bill.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

THADDEUS J. DULSKI FEDERAL BUILDING

The Clerk called the bill (H.R. 5180) to designate the Federal Building at 111 W. Huron Street, Buffalo, NY, as the "Thaddeus J. Dulski Federal Building."

There being no objection, the Clerk read the bill as follows:

H.R. 5180

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION. 1. DESIGNATION OF BUILDING.

The Federal building located at 111 W. Huron Street, Buffalo, New York, shall be known and designated as the "Thaddeus J. Dulski Federal Building".

SEC. 2. LEGAL REFERENCES.

Each reference in a law, map, regulation, document, record, or other paper of the United States to such building shall be deemed to be a reference to the "Thaddeus J. Dulski Federal Building".

Mr. YOUNG of Missouri. Mr. Speaker, H.R. 5180 would designate the Federal building at 111 West Huron Street, Buffalo, NY, as the "Thaddeus J. Dulski Federal Building."

Thaddeus Dulski was elected to the 86th Congress on November 4, 1958, reelected to the 87th, 88th, 89th, 90th, 91st, and 92d Congresses.

I urge enactment of H.R. 5180.

Mr. HOWARD. Mr. Speaker, I rise in support of H.R. 5180, a bill to designate the Federal building at 111 W. Huron Street, Buffalo, NY, as the "Thaddeus J. Dulski Federal Building."

Thaddeus J. Dulski was born on September 27, 1915. After a career as an accountant, an employee of the Bureau of Internal Revenue, and as a special agent in the Price Stabilization Administration, in 1953 he was elected Walden district councilman for two terms and in 1957 elected councilman-at-large of the city of Buffalo for a 4-year term, serving as a member of the finance council committee and chairman of the taxation council committee and wage classification council committee.

The Honorable Thaddeus Dulski was elected to the 86th Congress on November 4, 1958, and reelected to the 87th, 88th, 89th, 90th, 91st and 92d Congresses. As chairman of the House Committee on Post Office and Civil Service, he was in the forefront of Postal reorganization. During his tenure in the Congress, he also served as a member of the House Committee on Veterans' Affairs and worked for improvements in veteran programs and benefits.

Congressman Dulski recognized the need for new Federal office space in Buffalo early in his congressional career, and persevered through setbacks and obstacles for 9 years until a contract was let for construction. His efforts continued through four administrations before the building was completed, and while he enlisted many people to help, Thad Dulski's leadership and tenacity essentially produced this building.

I urge enactment of H.R. 5180.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

MARTIN LUTHER KING, JR. FEDERAL BUILDING AND U.S. COURTHOUSE

The Clerk called the bill (H.R. 4156) to designate the Federal Building and U.S. Courthouse to be constructed and located in Newark, NJ, as the "Martin Luther King, Jr. Federal Building and United States Courthouse."

There being no objection, the Clerk read the bill, as follows:

H.R. 4156

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Federal building and United States Courthouse to be constructed and located at Walnut and Orchard Streets in Newark, New Jersey, shall be known and designated as the "Martin Luther King, Jr. Federal Building and United States Courthouse". Any reference in any law, regulation, document, record, map, or other paper of the United States to such building and courthouse is deemed to be a reference to the "Martin Luther King, Jr. Federal Building and United States Courthouse".

Mr. YOUNG of Missouri. Mr. Speaker, H.R. 4156 would designate the building and U.S.

courthouse to be constructed in Newark, NJ, as the "Martin Luther King, Jr. Federal Building and United States Courthouse."

As my colleagues are aware, Martin Luther King was a respected civil rights leader who was assassinated on April 4, 1968.

I urge enactment of H.R. 4156.

Mr. HOWARD. Mr. Speaker, I rise in support of H.R. 4156, a bill to designate the Federal building and U.S. courthouse to be constructed and located in Newark, NJ, as the "Martin Luther King, Jr. Federal Building and United States Courthouse."

The Committee on Public Works and Transportation, to whom was referred the bill (H.R. 4156) to designate the Federal building and U.S. courthouse to be constructed and located in Newark, NJ, as the "Martin Luther King, Jr. Federal Building and United States Courthouse," having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

Mr. Speaker, I urge enactment of H.R. 4156.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

Mr. GORDON. Mr. Speaker, I ask unanimous consent for the immediate consideration of the Senate bill (S. 2062) to designate the Federal building and U.S. courthouse to be constructed and located in Newark, NJ, as the "Martin Luther King, Jr., Federal Building and United States Courthouse."

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Tennessee?

There was no objection.

The Clerk read the Senate bill as follows:

S. 2062

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Federal Building and United States Courthouse to be constructed and located at Walnut and Orchard Streets in Newark, New Jersey, shall be known and designated as the "Martin Luther King, Jr. Federal Building and United States Courthouse". Any reference in any law, regulation, document, record, map, or other paper of the United States to such building and courthouse is deemed to be a reference to the "Martin Luther King, Jr. Federal Building and United States Courthouse".

The Senate bill was ordered to be read as third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

A similar House bill (H.R. 4156) was laid on the table.

CHARLES E. CHAMBERLAIN FEDERAL BUILDING AND U.S. POST OFFICE

The Clerk called the bill (H.R. 5446) to designate the Federal building and U.S. Post Office located at 315 West Allegan Street in Lansing, MI, as the "Charles E. Chamberlain Federal Building and United States Post Office."

There being no objection, the Clerk read the bill, as follows:

H.R. 5446

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION OF BUILDING.

The Federal Building and United States Post Office located at 315 West Allegan Street in Lansing, Michigan, shall hereafter be known and designated as the "Charles E. Chamberlain Federal Building and United States Post Office".

SEC. 2. LEGAL REFERENCES TO BUILDING.

Any reference in any law, regulation, document, record, map, or other paper of the United States to the building referred to in section 1 is deemed to be a reference to the "Charles E. Chamberlain Federal Building and United States Post Office".

Mr. YOUNG of Missouri. Mr. Speaker, H.R. 5446 would designate the Federal building and U.S. Post Office located at 315 West Allegan Street in Lansing, MI, as the "Charles E. Chamberlain Federal Building and United States Post Office."

Charles Chamberlain is a former Member of Congress who represented this area from 1957 to 1974.

I urge enactment of H.R. 5446.

Mr. HOWARD. Mr. Speaker, I rise in support of H.R. 5446, a bill to designate the Federal building and U.S. Post Office located at 315 West Allegan Street in Lansing, MI, as the "Charles E. Chamberlain Federal Building and United States Post Office."

The purpose of this legislation is to pay tribute to Charles E. Chamberlain, a former Representative from the State of Michigan by designating the building in Lansing, MI, in his honor. Charles E. Chamberlain was born on a farm in Locke Township, MI, on July 22, 1917. He attended public school in Michigan and went on to graduate from the University of Virginia in Charlottesville in 1941 and from law school at the same university in 1949. That same year he was admitted to both the Virginia and Michigan bars.

During World War II, he served as apprentice seaman in the U.S. Coast Guard where he attained the rank of lieutenant commander. After his service in the Coast Guard, he went on to work for the Treasury Department in 1946 and 1947. From the period of 1950 and 1956, he served in a number of legal capacities including city attorney of East Lansing, legal counsel to the Michigan Senate Judiciary Committee, and prosecuting attorney of Ingham County.

Congressman Chamberlain was elected to the 85th Congress and to the eight succeeding Congresses serving in the House from January 1957 to January 1974.

During his years in the Congress he served on the House Administration Committee, the House Armed Services Committee, and from 1969 to 1974, the House Ways and Means Committee. He also represented the House as a member of the NATO Parliamentarian Conferences from 1963 to 1968, and again in 1974. Through his hard work and diligence, Mr. Chamberlain brought honor to this House and to the ideal of the public servant with his attentive care of the concerns of the people of the then, Sixth Congressional District of Michigan.

In view of his outstanding record of public service, it is more fitting and appropriate to name the Federal building and U.S. Post Office in Lansing, MI, as the "Charles E. Chamberlain Federal and United States Post Office Building."

Mr. Speaker, I urge enactment of H.R. 5446.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

ALBERT V. BRYAN FEDERAL COURTHOUSE

The Clerk called the bill (H.R. 5470) to designate the Federal courthouse for the Eastern District of Virginia in Alexandria, VA, as the "Albert V. Bryan Federal Courthouse."

There being no objection, the Clerk read the bill, as follows:

H.R. 5470

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Federal Courthouse for the Eastern District of Virginia, located on South Washington Street in Alexandria, Virginia, shall hereafter be known and designated as the "Albert V. Bryan Federal Courthouse". Each reference to such building in a law, map, regulation, document, record, or other paper of the United States shall be deemed to be a reference to the "Albert V. Bryan Federal Courthouse".

COMMITTEE AMENDMENT IN THE NATURE OF A SUBSTITUTE

The SPEAKER pro tempore (Mr. WRIGHT). The Clerk will report the committee amendment in the nature of a substitute.

The Clerk read as follows:

Committee amendment in the nature of a substitute: Strike all after the enacting clause and insert:

That the United States Courthouse for the Eastern District of Virginia, located on South Washington Street in Alexandria, Virginia, shall hereafter be known and designated as the "Albert V. Bryan United States Courthouse". Each reference to such building in a law, map, regulation, document, record, or other paper of the United States shall be deemed to be a reference to the "Albert V. Bryan United States Courthouse".

The committee amendment in the nature of a substitute was agreed to.

Mr. YOUNG of Missouri. Mr. Speaker, H.R. 5470 would designate the Federal courthouse for the Eastern District of Virginia in Alexandria, VA, as the "Albert V. Bryan United States Courthouse."

In 1947, President Truman appointed Judge Albert Bryan to be a U.S. district judge for the Eastern District of Virginia. He was elevated to chief judge in 1959, and appointed to the Court of Appeals for the Fourth Circuit in 1961.

I urge enactment of H.R. 5470.

Mr. HOWARD. Mr. Speaker, I rise in support of H.R. 5470, a bill to designate the Federal courthouse for the Eastern District of Virginia in Alexandria, VA, as the "Albert V. Bryan Federal Courthouse."

The purpose of this legislation is to honor Judge Albert V. Bryan, a lifelong Virginia resident, born in Alexandria, VA, in 1899. He was a man who dedicated his life to public service. He served in the U.S. Army during World War I, and after returning he was appointed the city attorney of Alexandria from 1925 to 1928.

After serving as the Commonwealth's attorney in Alexandria from 1928 until 1947, he was appointed by President Truman as judge of the U.S. District Court for the Eastern District of Virginia. He was elevated to chief judge in 1959, and served as chief judge until 1961, when he was appointed to the Court of Appeals for the Fourth Circuit. He served this court from 1961 until his death on March 13, 1984. In all, he was an outstanding judge for 37 years, to the age of 84.

Judge Bryan was devoted to his family—he had seven children—and was very active as a senior warden and vestryman in Christ Episcopal Church, where George Washington and other forefathers of our country have worshipped. He was also one of three trustees of the Christ Church Foundation. One of the accomplishments of which he was most proud was serving as rector for the University of Virginia from 1960 through 1964. In addition, he was a member of the UVA Board of Visitors for the 4 preceding years. One of his sons, Albert Bryan, Jr., serves as a U.S. district judge for the Eastern District of Virginia, in the courthouse which H.R. 5470 seeks to have named for his father.

In view of his outstanding record of public service, it is most fitting and appropriate to name the U.S. Federal courthouse in Alexandria, VA, as the "Albert V. Bryan Federal Courthouse."

Mr. Speaker, I urge enactment of H.R. 5470.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed.

The title of the bill was amended so as to read: "A bill to designate the United States Courthouse for the Eastern District of Virginia in Alexandria, Virginia, as the 'Albert V. Bryan United States Courthouse'."

A motion to reconsider was laid on the table.

MICHAEL J. DILLON MEMORIAL U.S. COURTHOUSE

The Clerk called the bill (H.R. 5181) to designate the U.S. courthouse at 68 Court Street, Buffalo, NY, as the "Michael J. Dillon Memorial United States Courthouse."

There being no objection, the Clerk read the bill, as follows:

H.R. 5181

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION OF BULIDING.

The United States Courthouse located at 68 Court Street, Buffalo, New York, shall be known and designated as the "Michael J. Dillon Memorial United States Courthouse".

SEC. 2. LEGAL REFERENCES.

Each reference in a law, map, regulation, document, record, or other paper of the United States to such building shall be deemed to be a reference to the "Michael J. Dillon Memorial United States Courthouse".

Mr. YOUNG of Missouri. Mr. Speaker, H.R. 5181 would designate the U.S. courthouse at 68 Court Street, Buffalo, NY, as the "Michael J. Dillon Memorial United States Courthouse."

Michael Dillon, an Internal Revenue Service agent for nearly 20 years was shot to death while on official business on September 23, 1983.

I urge enactment of H.R. 5181.

Mr. HOWARD. Mr. Speaker, I rise in support of H.R. 5181, to designate the U.S. courthouse at 68 Court Street, Buffalo, NY, as the "Michael J. Dillon Memorial United States Courthouse."

This legislation would honor the memory of Michael J. Dillon, an Internal Revenue Service agent for nearly 20 years, who was shot to death while on official business on September 23, 1983. This legislation was requested by Mr. Dillion's coworkers and is supported by his widow, Evelyn. It appears Mr. Dillion was the first Buffalo district Internal Revenue Service employee to have been killed while trying to carry out the responsibilities of his job.

In addition, the Internal Revenue Service District Director in Buffalo, NY, Mr. Gary H. Matthews, has stated this legislation would be a fitting tribute to a man and family who have made the ultimate sacrifice in furtherance of a vital function of a government in a free society.

In view of his long and distinguished career with the Internal Revenue Service, it is fitting that the U.S. courthouse at 68 Court Street, Buffalo, NY, be known and designated as the "Michael J. Dillon Memorial United States Courthouse."

Mr. Speaker, I urge enactment of H.R. 5181

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

HAROLD D. DONOHUE FEDERAL BUILDING

The Clerk called the bill (H.R. 4118) to designate the building commonly known as the Old Post Office in Worcester, MA, as the "Harold D. Donohue Federal Building."

There being no objection, the Clerk read the bill, as follows:

H.R. 4118

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the General Services Administration building commonly known as the Old Post Office, located at 595 Main Street, Worcester, Massachusetts, shall hereafter be known and designated as the "Harold D. Donohue Federal Building". Any reference in any law, map, regulation, document, record, or other paper of the United States to such building shall be deemed to be reference to the "Harold D. Donohue Federal Building".

Mr. YOUNG of Missouri. Mr. Speaker, H.R. 4118 would designate the building commonly known as the Old Post Office in Worcester, MA, as the "Harold D. Donohue Federal Building."

Harold Donohue served in the House of Representatives for 28 consecutive years. He was elected to the 80th Congress in November 1946 and ably served his constituents until his retirement at the close of the 93d Congress in 1974.

I urge enactment of H.R. 4118.

Mr. HOWARD. Mr. Speaker, I rise in support of H.R. 4118 to designate the building commonly known as the Old Post Office in Worcester, MA, as the "Harold D. Donohue Federal Building."

Harold Donohue served in the House of Representatives for 28 consecutive years. He was elected to the 80th Congress in November 1946, and ably served his constituents until his retirement at the close of the 93d Congress in 1974. While in Congress he was a dedicated member of the Judiciary Committee and the Government Operations Committee. Harold Donohue never lost sight of his constitutents' philosophy and needs, and remained closely tied to the residents of Worcester and the surrounding cities and towns throughout his tenure in Congress.

Prior to his election to Congress he served in the U.S. Navy from December 1942 until December 1945, when he was separated from the service with the rank of lieutenant commander. From January 1927 through December 1935 he represented the citizens of Worcester as councilman and alderman. Mr. Donohue was born in Worcester on June 18, 1901, and lived his entire life there until his death in December 1984. He attended the public schools in Worcester and practiced law in the city after being admitted to the Massachusetts Bar in 1927. He was a dedicated, compassionate, and accomplished public servant who devoted his talents to improving the lives of the people he served and enhancing the communities in which they lived.

Mr. Speaker, I urge enactment of H.R. 4118.

The bill was ordered to be engrossed and read a third time, was read a third time, and passed, and a motion to reconsider was laid on the table.

WARD R. BURKE FEDERAL COURT BUILDING

The Clerk called the bill (H.R. 3951) to designate the building which will house the Federal court for the Eastern District of Texas in Lufkin, TX, as the "Ward R. Burke Federal Court Building."

There being no objection, the Clerk read the bill, as follows:

H.R. 3951

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the building which will house the Federal court for the Eastern District at Third Street and Lufkin Avenue in Lufkin, Texas shall hereafter be known and designated as the "Ward

R. Burke Federal Court Building". Any reference in any law, map, regulation, document, record, or other paper of the United States to such building shall be deemed to be a reference to the "Ward R. Burke Federal Court Building".

COMMITTEE AMENDMENT IN THE NATURE OF A SUBSTITUTE

The SPEAKER pro tempore. The Clerk will report the committee amendment in the nature of a substitute.

The Clerk read as follows:

Committee amendment in the nature of a substitute: Strike all after the enacting clause and insert:

That the building which will house the United States District Court for the Eastern District of Texas at Third Street and Lufkin Avenue in Lufkin, Texas, shall hereafter be known and designated as the "Ward R. Burke United States Courthouse". Any reference in any law, map, regulation, document, record, or other paper of the United States to such building shall be deemed to be a reference to the "Ward R. Burke United States Courthouse".

The committee amendment in the nature of a substitute was agreed to.

Mr. YOUNG of Missouri. Mr. Speaker, H.R. 3951 would designate the building which will house the Federal court for the Eastern District of Texas in Lufkin, TX, as the "Ward R. Burke United States Courthouse."

Ward Burke is a respected community leader having served on the chamber of commerce, the school board, and was president of the Association of Retarded Citizens of Angelina County which represents just a few of his accomplishments.

I urge enactment of H.R. 3951.

Mr. HOWARD. Mr. Speaker, I rise in support of H.R. 3951, a bill to designate the building which will house the Federal court for the Eastern District of Texas in Lufkin, TX, as the "Ward R. Burke Federal Court Building".

Ward Burke earned his doctor of law degree from the law school of the University of Texas in 1939 and has practiced law in Lufkin since that time, except for the period during World War II when he served as a major in the U.S. Marine Corps from 1942–46, 26 months of which was in the Pacific theater of operations.

Ward Burke has served as president and director, Angelina County Chamber of Commerce; board member and president of Lufkin Independent School District; member, cofounder and president of the Association for Retarded Citizens of Angelina County; member of the board of directors for the Association for Retarded Citizens of Texas; member of the board of Texas State Hospitals and Special Schools; on the board of managers of Woodland Heights General Hospital in Lufkin, chairman of the Board on Mental Health and Mental Retardation of the State of Texas; chairman of the administrative board for the First Methodist Church in Lufkin; member of the board and cofounder of the Lufkin Workshop and Opportunity Center, Inc.; coorganizer and on the board of the Deep East Texas Regional Mental Health-Mental Retardation Services; coorganizer and president of the Texas Council of Community MH/MR Centers, Inc.; cofounder and president of the Citizens for Human Development; member of the Texas Mental Advisory Council for Developmental Disabilities.

Honoring Ward R. Burke, a dedicated public servant, by naming the U.S. courthouse in Lufkin, TX, as the Ward R. Burke United States Courthouse is most fitting and appropriate.

Mr. Speaker, I urge enactment of H.R. 3951.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed.

The title of the bill was amended so as to read: "A bill to designate the building which will house the U.S. District Court for the Eastern District of Texas in Lufkin, Texas, as the 'Ward R. Burke United States Courthouse'."

SILVIO JAMES MOLLO FEDERAL BUILDING

The Clerk called the bill (H.R. 4576) to designate the U.S. Attorney's Building for the Southern District of New York as the "Silvio James Mollo Federal Building."

There being no objection, the Clerk read the bill, as follows:

H.R. 4576

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the building known as the United States Attorney's Building for the Southern District of New York, located at One St. Andrew's Plaza, New York, New York, shall hereafter be known and designated as the "Silvio James Mollo Federal Building". Any reference in any law, map, regulation, document, record, or other paper of the United States to such building shall be deemed to be a reference to the "Silvio James Mollo Federal Building".

Mr. YOUNG of Missouri. Mr. Speaker, H.R. 4576 would designate the U.S. Attorney's Building for the Southern District of New York as the "Silvio James Mollo Federal Building."

Silvio James Mollo, who is deceased, was an assistant U.S. attorney from 1939 to 1975.

I urge enactment of H.R. 4576.

Mr. HOWARD. Mr. Speaker, I rise in support of H.R. 4576, a bill to designate the U.S. Attorney's Building for the Sourthern District of New York as the "Silvio James Mollo Federal Building."

Silvio James Mollo was an extraordinary public servant. He served with special distinction as an assistant U.S. attorney for the Southern District of New York for over 30 years. During that time he established a reputation of being a skilled prosecutor with great integrity.

Mr. Mollo is best remembered for having trained a veritable generation of future lawyers. This legislation was requested by the district attorney for Manhattan, Hon. Robert J. Morganthau, as a tribute to this exemplary individual. Silvio J. Mollo was a man who earned great respect and admiration by all those he worked with. It is appropriate that the U.S. Attorney's Building for the Sourthern District of New York, where Silvio Mollo contributed so much for his country, be named in his honor and memory, as the "Silvio James Mollo Federal Building."

Mr. Speaker, I urge enactment of H.R. 4576.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

JACOB WEINBERGER FEDERAL BUILDING

The Clerk called the bill (H.R. 5397) to designate the Federal building located in San Diego, CA, as the "Jacob Weinberger Federal Building."

There being no objection, the Clerk read the bill, as follows:

H.R. 5397

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION OF BUILDING.

The Federal building located at 325 F Street in San Diego, in the State of California, commonly known as the Old Federal Courthouse, shall hereafter be known and designated as the "Jacob Weinberger Federal Building".

SEC. 2. LEGAL REFERECES TO BUILDING.

Any reference in any law, regulation, document, record, map, or other paper of the United States to the Federal Building referred to in section 1 is hereby deemed to be a reference to the "Jacob Weinberger Federal Building".

Mr. YOUNG of Missouri. Mr. Speaker, H.R. 5397 would designate the Federal building located in San Diego, CA, as the "Jacob Weinberger Federal Building."

Mr. Weinberger, an immigrant from Hungary, was appointed to the Federal bench by President Truman in 1946. He achieved the status of senior judge in 1958 and died in 1974.

I urge enactment of H.R. 5397.

Mr. HOWARD. Mr. Speaker, I rise in support of H.R. 5397, a bill to designate the Federal building located in San Diego, CA, as the "Jacob Weinberger Federal Building."

Jacob Weinberger was born in Hungary in 1882 and traveled with his family through Ellis Island in 1889. He became a lawyer and, in 1910, was the youngest delegate to the constitutional convention making Arizona a State.

Arriving in San Diego as a young attorney in 1911, Mr. Weinberger served as city attorney in 1941 before being assigned to the bench as a superior court judge. In 1946 he was appointed to the Federal bench by President Truman. He achieved the status of senior judge in 1958 and died in 1974.

Judge Weinberger devoted his life to his adopted country. As a senior judge, Jacob Weinberger presided over the swearing-in of thousands of new citizens, taking particular pleasure in administering a privilege which he experienced himself. By all accounts, Judge Weinberger was an outstanding jurist. In short, Judge Weinberger spent his entire career as a magistrate in the Old Federal Courthouse.

Naming the Federal building located in San Diego, CA, as the Jacob Weinberger Federal Building is most fitting and appropriate in view of his exemplary service to the ideals of truth, justice, and integrity.

Mr. Speaker, I urge enactment of H.R. 5397.

Mr. LOWERY of California. Mr. Speaker, as the sponsor of H.R. 5397, I rise in strong support of this bill which renames the Old Federal Courthouse in San Diego, CA, as the "Jacob Weinberger Federal Building."

Mr. Speaker, I would like to take this opportunity to thank the chairman of the full committee, Mr. HOWARD, and the ranking minority member, Mr. SNYDER, for sheparding this bill through the committee and bringing it to the floor today.

In addition, I would like to express my appreciation for the efforts of the subcommittee chairman, Mr. YOUNG, and the ranking member, Mr. SHAW, for moving H.R. 5397 expeditiously through the Subcommittee on Public Buildings. Last, I would like to thank my colleague from San Diego, RON PACKARD, for his supportive words on behalf of H.R. 5397.

Mr. Weinberger was born in Hungary in 1882 and traveled with his family through Ellis Island in 1889. Arriving in San Diego as a young attorney in 1911, Mr. Weinberger served as city attorney in 1941 before being assigned to the bench as a superior court judge. In 1946 he was appointed to the Federal bench by President Truman. He achieved the status of senior judge in 1958 and died in 1974.

Judge Weinberger devoted his life to his adopted country. As a senior judge, Jacob Weinberger presided over the swearing-in of thousands of new citizens, taking particular pleasure in administering a privilege which he experienced himself. Judge Richard Chambers of Tucson, a good friend of Jake Weinberger, recalls that he delivered eloquent and emotionally moving speeches at these citizenship swearings-in, revealing to the newest Americans what privileges and responsibilities are associated with American citizenship.

By all accounts, Judge Weinberger was a devoted and outstanding jurist. The day of his death, Judge Weinberger was working on the bench. He retained his mental clarity to the end, despite his declining physical health. In short, Judge Weinberger spent his entire career as a magistrate in the Old Federal Courthouse. It is fitting that the building bear his name.

Mr. Speaker, I appreciate the efforts of my colleagues who have helped move H.R. 5397 to this point in the legislative process and urge adoption of this bill.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

Mr. GORDON. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 2788) to designate the Federal building located in San Diego, CA, as the "Jacob Weinberger Federal Building," and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Tennessee?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 2788

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION OF BUILDING.

The Federal building located at 325 F Street in San Diego, in the State of California, commonly known as the Old Federal Courthouse, shall hereafter be known and designated as the "Jacob Weinberger Federal Building".

SEC. 2. LEGAL REFERENCES TO BUILDING.

Any reference in any law, regulation, document, record, map, or other paper of the United States to the Federal Building referred to in section 1 is hereby deemed to be a reference to the "Jacob Weinberger Federal Building".

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

A similar House bill (H.R. 5397) was laid on the table.

CHARLES E. SIMONS, JR., FEDERAL COURTHOUSE

The Clerk called the bill (H.R. 5415) to designate the U.S. courthouse in Aiken, SC, as the "Charles E. Simons, Jr., Federal Courthouse."

There being no objection, the Clerk read the bill, as follows:

H.R. 5415

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the United States Courthouse located at 223 Park Avenue Southwest in Aiken, South Carolina, shall be known and designated as the "Charles E. Simons, Jr., Federal Courthouse". Any reference in any law, regulation, document, record, map, or other paper of the United States to such courthouse is deemed to be a reference to the "Charles E. Simons, Jr., Federal Courthouse".

COMMITTEE AMENDMENT IN THE NATURE OF A SUBSTITUTE

The SPEAKER pro tempore. The Clerk will report the committee amendment in the nature of a substitute.

The Clerk read as follows:

Committee amendment in the nature of a substitute: Strike all after the enacting clause and insert:

That the United States Courthouse located at 223 Park Avenue Southwest in Aiken, South Carolina, shall be known and designated as the "Charles E. Simons, Jr., United States Courthouse". Any reference in any law, regulation, document, record, map, or other paper of the United States to such courthouse is deemed to be a reference to the "Charles E. Simons, Jr., United States Courthouse."

The committee amendment in the nature of a substitute was agreed to.

Mr. YOUNG of Missouri. Mr. Speaker, H.R. 5415 would designate the U.S. courthouse in Aiken, SC, as the "Charles E. Simons, Jr., United States Courthouse."

In 1964, President Johnson appointed Judge Simons to be a U.S. district judge. He became chief judge of the U.S. District Court for the District of South Carolina in 1980.

I urge enactment of H.R. 5415.

Mr. HOWARD. Mr. Speaker, I rise in support of H.R. 5415, a bill to designate the U.S. courthouse in Aiken, SC, as the "Charles E. Simons, Jr., Federal Courthouse."

Judge Charles E. Simons a distinguished jurist, served on the Federal bench in South Carolina. He was born in Edgefield County 70 years ago this month. A Phi Beta Kappa graduate of the University of South Carolina, Judge Simons served nobly in the Navy during World War II and in the South Carolina General Assembly.

In 1964, President Johnson appointed Judge Simons to be a U.S. district judge. He became chief judge of the U.S. District Court for the District of South Carolina in 1980. In addition, he has been active in the U.S. Judicial Conference and has always found time to devote himself to church, civic, and community service.

In view of Judge Simons' outstanding record of public service, it is most fitting and appropriate to name the Federal building in Aiken, SC, as the "Charles E. Simons, Jr., Federal Courthouse."

Mr. Speaker, I urge enactment of H.R. 5415.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed.

This title of the bill was amended so as to read: "A bill to designate the U.S. Courthouse in Aiken, SC, as the 'Charles E. Simons, Jr. United States Courthouse'."

A motion to reconsider was laid on the table.

The SPEAKER pro tempore. This concludes the call of the Consent Calendar.

GENERAL LEAVE

Mr. GORDON. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to extend their remarks on the several bills just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Tennessee?

There was no objection.

THE SUPERFUND CONFERENCE REPORT

(Mr. FLORIO asked and was given permission to address the House for 1 minute.)

Mr. FLORIO. Mr. Speaker, reports have surfaced that the President intends to veto the Superfund conference report that so many of us have worked so hard to bring to completion.

This would demonstrate monumental insensitivity to the public's concerns about the environmental issue of the decade, the ability to clean up toxic wastes.

This agreement that we have worked in a bipartisan way to put together

has such widespread support that the Senate passed the conference last week by a vote of 88 to 8.

Mr. Thomas at EPA has detailed the catastrophic results that will occur if Superfund is not reauthorized. I would hope the President would rethink through any predispositon he has to veto this bill and not veto it. We should, however, be prepared to override that veto even if it entails staying in session until we have that opportunity.

THE UNITED STATES IS A FREE COUNTRY—LET US NOT FORGET THAT

(Mr. FRANK asked and was given permission to address the House for 1 minute and to include extraneous matter.)

Mr. FRANK. Mr. Speaker, I am very proud to live in a very free country, and I wish immigration law was not the occasional blemish on our record of freedom.

We have a very dumb law on the books that passed over Harry Truman's veto 30-some odd years ago which gives the Immigration Service the right to censor people whose political beliefs they do not like when they try to come here. But while it gives them the right, it does not mandate that they do it. We ought to repeal that stupid law, but there is no need for them to be excessive in enforcing it while it is on the books.

Recently a Belgian reporter named Tom Ronse who works for the newspaper run by the major opposition party in Belgium tried to come into America. He was frisked at Newark Airport.

As an officer of the INS said, we found "some typewritten stuff in English which espouses Communist doctrine. Once we decide on the literature that he had, then we'll make a decision to admit him or exclude him."

Mr. Speaker, we ought to keep out people who intend to commit crimes or who have serious illnesses, but for us to begin to censor people who are trying to come to this country because some Government official does not like their political ideas is wrong. It is none of the business of the Government of the United States what kind of ideas and political debate American citizens are exposed to. I hope we will repeal that law and vindicate Harry Truman's sensible veto. Until then, I would ask the INS to please stop embarrassing us. This is a free country, and let us not forget that.

Mr. Speaker, I am including an article from the Washington Post entitled "Unacceptable Thoughts."

The article follows:

UNACCEPTABLE THOUGHTS

A few days before Nicholas Daniloff departed the Soviet Union, another journalist was detained by the authorities—not in Russia, but here in the United States. There was no great outcry, and in truth the incident was not on a par with locking someone up in Lefortovo Prison. It was, though, an embarrassment to this country, of a sort that recurs with depressing regularity.

The McCarran-Walter Act of 1952 gives the government power to pry into the political beliefs of visitors to these shores and to exclude them if they don't meet whatever the current standard seems to be. Last Thursday Tom Ronse, a correspondent for a newspaper that represents the views of Belgium's Socialist Party (that country's main opposition party), was held at Newark International Airport after immigration officials found some left-wing literature in his luggage.

Mr. Ronse was duly interrogated and released on Friday, but his status in the United States where he has spent six years as a correspondent, remains uncertain. The government is still examining the socialist bacilli in his luggage, including a booklet entitled "Revolutionary Perspective Journal of the CWO [Communist Worker's Organization]." "There was also," said an official of the Immigration and Naturalization Service, "some typewritten stuff in English which espouses communist doctrine. Once we decide on the literature that he had, then we'll make a decision to admit him or exclude him."

The INS official adds that he doesn't think it likely Mr. Ronse will be excluded, judging from what he's seen of the suspect material. Mr. Ronse says it's all a misunderstanding: "These were just regular publications that can be found in book stores around the United States. It was more like theoretical reviews, academic stuff."

That's usually the case when some lecturer, poet, film maker or political dissident has his political views examined to determine whether it's safe to let him into the United States: the works at issue are freely available in this country, the ideas freely debated (or widely ignored). But anyone who attempts to bring such material in must undergo scrutiny of a kind that is rare elsewhere in the Free World.

Legislation was introduced in both houses of Congress this year to amend the McCarran-Walter Act so it can't be used to exclude aliens simply because there is evidence they espouse the wrong ideas. Congress had other priorities, but the amendments will likely be reintroduced next year, and eventually, we hope, legislators will come to the conclusion that this sort of thought-policing is unworthy of a free country.

THE ILLEGAL IMPRISONMENT OF PJETER IVEZAJ (PETER EVEZAI): THE 11TH HOUR FOR JUSTICE IN YUGOSLAVIA

(Mr. BROOMFIELD asked and was given permission to address the House for 1 minute.)

Mr. BROOMFIELD. Mr. Speaker, the fate of a young American, illegally imprisoned in Yugoslavia, will soon be determined. I trust that Yugoslavian officials will let justice prevail. I hope that Mr. Ivezaj (Evezai) will be freed. Unless this problem is resolved it will be difficult to get on with the business of building better relations with Yugoslavia.

As many of you know, a young Michigan resident was illegally imprisoned in Yugoslavia since July. Until a few days ago, he was denied access to U.S. consular officials. There are reports that he may have been beaten while in jail.

Today I talked to our Embassy officials in Belgrade and I understand that the court verdict will be announced this Wednesday.

Over the years, I have seen our relations with that country improve and I would like to see continued progress in that area. Cases as this one, however, do not help those of us in Congress who have tried to help Yugoslavia.

The jailing of Mr. Ivezaj has put obstacles in the path to bettering our ties with that country. That illegal act has raised questions about Yugoslavia's commitment to justice and fairness. The tragic story of Mr. Ivezaj has caught the attention of the press, the public, and this Congress.

In the past, cases involving Americans detained in Yugoslavia were quietly resolved. Mr. Ivezaj doesn't deserve a harsh sentence. Let's not let this issue cloud U.S. relations with that country. I trust that Mr. Ivezaj will be freed so that he can return home with his family.

A TRIBUTE TO ROBERT R. NORRIS

(Mr. COMBEST asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. COMBEST. Mr. Speaker, I rise today to pay homage to a fine man, a man who gave tirelessly and endlessly of himself both in his work with the Lubbock Avalanche-Journal and in his community.

Robert R. Norris died Friday night in Lubbock, TX. He was 59.

A dedicated newspaperman, Bob Norris devoted the past 14 years of his life to operating a truly first-class newspaper. As general manager of the Lubbock Avalanche-Journal and vice president of the Southwestern Newspapers Corp., Bob built an outstanding organization—a fine team of men and women who work to uphold truth, accuracy, and a commitment to excellence.

His expertise in the newspaper industry was firmly rooted in a long and rewarding career that began in Columbus, GA, at the Ledger-Inquirer newspaper. Rising up the ranks through old-fashioned hard work, Bob served as general manager of the Morris Communications' newspaper in Augusta, GA, before moving to Lubbock in 1972.

Bob Norris not only gave of himself in his profession, he worked diligently to make Lubbock and the south plains a better place to live for today and beyond. Whether he was serving on such various organizations as the Lubbock Chamber of Commerce, the Pan-

handle South Plains Fair, the Lubbock Symphony Guild, or lending a hand to Texas Tech University, Lubbock Christian College, Texas Boys Ranch, or Methodist Hospital, Bob could always be counted on to get the job done.

A man true to his word, Bob knew firsthand the meaning of hard work and sacrifice. He sacrified his time, his money, and his energies for the good of the city and its citizens. For that we thank you, Mr. Norris.

Bob Norris you bring new meaning to the words professionalism, dedication, commitment, and friendship. You will be missed, but never forgotten.

□ 1225

THE DANGEROUS, EXTREMIST LAROUCHE MOVEMENT

(Mr. RICHARDSON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. RICHARDSON. Mr. Speaker, there are reports that our law enforcement officials are raiding the Larouche national headquarters trying to uncover a number of alleged illegal campaign activities and practices. In our system of justice, Mr. Speaker, one is innocent until proven guilty. It is my hope, however, that this incursion uncovers the Larouche movement for what it is: A dangerous, extremist movement which preaches hate, lies, racism, and practices questionable activities.

Anyone who frequents airports has often been accosted by individuals who yell such absurdities as "Queen Elizabeth is a drug pusher," or other inanities.

Mr. Speaker, hopefully, after this raid we will see less of the Larouche movement in American politics. Now that Larouche candidates have been rejected at the polls, hopefully this raid will put this sorry movement out of business altogether.

IT IS NOT TOO LATE TO SAVE OUR DOLLAR

(Mr. DANNEMEYER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DANNEMEYER. Mr. Speaker, that our dollar is gravely ill should be clear from the confusion among the monetary doctors at the bedside: they prescribe blood letting to cure its pernicious anemia.

The malady has been artificially induced in 1971 when the disease fighting gold corpuscles were withdrawn from the monetary bloodstream. It is these gold corpuscles which are to keep money, credit and debt within limits. When they are removed, bloating occurs and the immune system of the economy breaks down. The patient becomes open to all attacks from all corners, from petty speculation in the commodity market to the massive runs in the bond market and in the foreign exchange market.

Monetary AIDS, this plague of irredeemable paper currencies, is not unlike human AIDS. It has an exceptionally long incubation period, and a 100-percent fatality rate if untreated.

But unlike for human AIDS, there is a cure for the AIDS ailing the dollar. It is not blood letting: That might kill the patient. The cure is blood transfusion, returning the gold corpuscles into the monetary bloodstream, thereby restoring the immune system of the economy.

CIA PLANE CRASHES WITH NO FAA INVESTIGATION

(Mr. GONZALEZ asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GONZALEZ. Mr. Speaker, last Thursday I got up here and under a reservation to object I asked the gentleman from the Authorization Committee on the Intelligence Agencies a few questions which he said he could not answer, and apparently, no Congressman could answer.

The day before yesterday at 2:30 in the morning a Hercules cargo airplane crashed at Kelly Air Force Base which is in my district, and miraculously it missed a barracks where we had some trainees at the basic Air Force training camp, and it was a CIA plane. Actually contracted for, really owned, by a company based in Florida picking up materiel containing undetermined explosives that fortunately did not catch on fire and did not cause any more serious things than the three deaths of the unfortunate crewmen.

The CIA is doing things with moneys that it has not received from the Congress because the $100 million that is being used in advance through administrative contortions is the basic reason why we have these unfortunate accidents. It makes our armed services, such as the Department of the Air Force, victimized by airlines that do not even have FAA inspection regulations in force because it is a CIA plane and, by golly, it is all powerful; it is unaccountable; it does not account to Congress, and you in Congress that appropriated the $100 million for the Contras and the CIA do not want to know what they are doing with that money.

RESOLUTION TO BE INTRODUCED SUPPORTING PRESIDENT IN THE UPCOMING SUMMIT WITH THE SOVIET UNION

(Mr. GEKAS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GEKAS. Mr. Speaker, tomorrow I intend to introduce a resolution and ask for its immediate consideration demonstrating the support of the Congress of the United States and the American people for the forthcoming summit for the President of the United States.

This, you know, will be the second summit that will be held between the United States and the Soviets in Iceland. There was one in 1972 between Bobby Fischer, the U.S. grand master in chess and his counterpart from the Soviet Union, Boris Spassky. Then we had an international tournament in chess where sparkling and dynamic moves were made across the chessboard. The whole world hopes that this summit that now will occur, this chess match, in this coming weekend will result in a draw with progress.

I hope that we in the Congress of the United States will not be acting as an unwitting pawn for the Soviet Union by allowing to remain in our legislation certain conditions that will have our grand master, Ronald Reagan, already defeated before he starts. I ask the Congress to resolve itself into removing those obstacles from the current legislation.

WE ARE NOT WILLING TO ABANDON OUR STRONGLY HELD POSITION ON ARMS CONTROL PROVISIONS

(Mr. DICKS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DICKS. Mr. Speaker, I rise today to take issue with the President's asserting this weekend in his radio address that the actions taken by the House on issues relating to arms control somehow undermine prospects for agreement with the Soviet Union.

I firmly believe that contrary to the President's hardline rhetoric, these positions can improve the atmosphere of superpower relations, and thus help foster the kind of agreement we all hope can be achieved.

Our effort is to steer a moderate course that avoids the confrontational approach advocated by hardliners within the administration. The House seeks to maintain the only limits on offensive strategic nuclear forces that are in place today until the administration can achieve a better agreement.

We seek to foster negotiations on the issues of nuclear testing and antisatellite weapons by limiting, but not prohibiting, developments in these areas. Both Chambers of the Congress have approved substantial reductions in funding for SDI based on budgetary

priorities. House conferees hope that a compromise can be reached on these arms control issues with the other body and the administration prior to the President's meeting with Mr. Gorbachev in Iceland this weekend. This would truly strengthen the President's hand by presenting a united front to the Soviets.

We are not willing to abandon our strongly held positions on the importance of these arms control provisions without some meeting of the mindS with the other body and the administration.

LET US NOT STAND STILL ON SUPERFUND CLEANUP OF HAZARDOUS WASTE SITES

(Mr. ECKART of Ohio asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ECKART of Ohio. Mr. Speaker, last week the other body approved the Superfund conference report, an overwhelming vote of confidence for this broad, bipartisan bill designed to move this Nation's cleanup of hazardous waste dumps forward.

The SPEAKER pro tempore (Mr. LUKEN). The Chair would admonish the gentleman from Ohio not to refer to specific votes in the other body.

Mr. ECKART of Ohio. Mr. Speaker, this is a bill designed to move this legislation forward and not to stand still. Now we are advised by the President that in fact he intends to veto it. He said a veto would have us stand still but, in fact, it would be a retreat. It would be a retreat from mandatory cleanup schedules which do not exist in current law and which our new program would require.

It would be a retreat from cleanup standards which now would enforce the most appropriate and vigorous State and local standards necessary. It would be a retreat not standing still on cleaning up Federal facilities. It would be a retreat not standing still for cleaning up leaking underground storage tanks, tens of thousands of which litter this Nation's backyard.

It would be a retreat from giving the public the right to know what is taking place in their own backyards. It would be a retreat not standing still for those who have caused this pollution and created the problems to begin with.

Mr. Speaker, I urge a strong, bipartisan vote on adoption of the conference report. Send a message to the White House: We are not interested in simply standing still; we have no interest in retreating. We want to go forward with cleaning up the Nation's hazardous waste, Superfund cleanup sites.

□ 1235

AN OIL IMPORT FEE

(Mr. DAUB asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DAUB. Mr. Speaker, I want to ask my colleagues, as did the last gentleman in the well, to focus on the Superfund vote, which we may very well get an opportunity to have on Wednesday or Thursday of this week.

I presume that because the conference report is replete with items in it that did not find themselves in either the House or the other body's version, we will find ourselves of necessity before the Committee on Rules. Some of you may be interested in being sure that you are on the Committee on Rules' agenda in the event they want to bring a rule to the floor that would waive a number of the items that are not in scope in the conference report.

The one that I would like to call to the attention of my colleagues to begin with would be a vote that would include an oil import fee, a very interesting, somewhat convoluted method of looking at a differentiation between a higher tax on a refined barrel of imported crude and a lower amount of tax on a domestic barrel, once refined.

That some 3½-cent differential amounts to an oil import fee and I would think, particularly the Northeast, would be most incensed.

I ask my colleagues to think carefuly before they vote for the tax provisions contained in the Superfund bill that may be before us this week.

PRESIDENT REAGAN SHOULD BE IN A STRONG NEGOTIATING POSITION

(Mr. WALKER asked and was given permission to address the House for 1 minute.)

Mr. WALKER. Mr. Speaker, it is sometimes interesting to be on the floor and listen to the way issues that we are going to be facing before this House are described on this floor.

We heard the Superfund bill described as the only way we are going to get the toxic waste cleanup.

This gentleman, along with many Members in this House, agrees that you have to have a Superfund bill. The question that remains is, How do you pay for it?

What this House has decided to do is pay for it with an oil import fee. What does that mean to people in the Northeast? It means our heating oil bills are going to go up for this winter. It means that gasoline prices are going to go up across the country. It means that the American people are going to pay additional taxes that they would not have had to pay if we had stuck with the President's position on this issue.

Second, we hear the arms talks described out here as being something which is moderate. Let us understand, what this House has done with the votes we have taken is that we have unilaterally adopted major portions of the Soviet negotiating position.

What some of us feel is that when the President is going to negotiate with Mr. Gromyko and with the new head of the Soviet Union, the General Secretary of the Soviet Union, we think that what he ought to have is a strong position. He ought not go into meetings with the General Secretary in a position of weakness because this House has endorsed major portions of the Soviet negotiating position.

I think when Gorbachev meets with President Reagan, President Reagan ought to be in a strong position, not in a weak position.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. LUKEN]. Pursuant to the provisions of clause 5 of rule I, the Chair announces that he will postpone further proceedings today on each motion to suspend the rules on which a recorded vote or the yeas and nays are ordered, or on which the vote is objected to under clause 4, rule XV.

Such rollcall votes, if postponed, will be taken on Tuesday, October 7, 1986.

FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT AMENDMENTS OF 1986

Mr. KASTENMEIER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5536) to amend title 35 of the United States Code to extend the term of patents for agricultural and chemical products for the period during which they underwent regulatory review, as amended.

The Clerk read as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1986".

(b) TABLE OF CONTENTS.—The table of contents is as follows:

Sec. 1. Short title and table of contents.
Sec. 2. References to the Federal Insecticide, Fungicide, and Rodenticide Act.

TITLE I—REGISTRATION

Sec. 101. Preregistration access to data.
Sec. 102. Criminal penalties for disclosure of information.
Sec. 103. Conditional registration.
Sec. 104. Definition of outstanding data requirement.
Sec. 105. Reregistration of registered pesticides.
Sec. 106. Neurotoxicological and behavioral effects testing.

Sec. 107. Administrator's authority to require data on inert ingredients.
Sec. 108. Definition of ingredient statement.
Sec. 109. Disclosure of inert ingredients.
Sec. 110. Compensation for data on inert ingredients.

TITLE II—INFORMATION DISCLOSURE

Sec. 201. Public right to know.
Sec. 202. Data disclosure to States.
Sec. 203. Notice for stored, cancelled or suspended pesticides.

TITLE III—REVIEW AND CANCELLATION

Sec. 301. Public interim administrative review.
Sec. 302. Proceedings under section 6.
Sec. 303. Cancellation and change in classification or labels.
Sec. 304. Public hearings and scientific review.
Sec. 305. Administrative changes.
Sec. 306. Cancellation of registration based on false or invalid data.

TITLE IV—RECORDS AND INSPECTIONS

Sec. 401. Records.
Sec. 402. Inspections.

TITLE V—EXPORTS

Sec. 501. Definition of misbranded.
Sec. 502. Definition of importing country.
Sec. 503. Pesticides and devices intended for export.
Sec. 504. Cancellation notices furnished to foreign governments.

TITLE VI—CERTIFICATION AND TRAINING

Sec. 601. Certification, training, and recordkeeping for pesticide applicators.

TITLE VII—DATA COMPENSATION

Sec. 701. Defensive data.
Sec. 702. Data compensation and arbitration.

TITLE VIII—GENERAL

Subtitle A—Amendments to the Federal Insecticide, Fungicide, and Rodenticide Act

Sec. 801. State registrations.
Sec. 802. Definitions.
Sec. 803. Information requested.
Sec. 804. Cooperative agreements.
Sec. 805. Scientific Advisory Panel.
Sec. 806. Authority for EPA action.
Sec. 807. Expiration of State primary enforcement responsibility.
Sec. 808. Unlawful acts.
Sec. 809. Penalties and subpoenas.
Sec. 810. Congressional review.
Sec. 811. Review of regulations.
Sec. 812. Delegation and cooperation.
Sec. 813. Indemnity report by EPA.
Sec. 814. Groundwater authority.
Sec. 815. Worker health and safety.
Sec. 816. Antimicrobial standards.
Sec. 817. Authorization for appropriations.

Subtitle B—Other Provisions

Sec. 821. Liability for lawful application.
Sec. 822. Evaluation by the Comptroller General.
Sec. 823. IR4 program.
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TITLE IX—CLARIFYING AND TECHNICAL AMENDMENTS

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SEC. 2. REFERENCES TO THE FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT.

Whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.).

TITLE I—REGISTRATION

SEC. 101. PREREGISTRATION ACCESS TO DATA.

(a) IN GENERAL.—Section 3(c) (7 U.S.C. 136a(c)) is amended by adding at the end thereof the following new paragraph:

"(9) PREREGISTRATION ACCESS TO DATA.—

"(A) If an application for—

"(i) a registration of a pesticide containing a new active ingredient, or

"(ii) a registration of a pesticide to authorize the initial food use of a pesticide active ingredient,

is submitted to the Administrator, the Administrator, before acting on such application, shall provide, in accordance with this paragraph, public access to health, safety, and environmental data that are submitted or cited in support of such application.

"(B) To obtain access to the data referred to in subparagraph (A), a person shall send by certified mail—

"(i) not later than 30 days after the publication under paragraph (4) of a notice of the application referred to in subparagraph (A), and

"(ii) simultaneously to the Administrator and to the applicant for the registration of the pesticide,

a request for such access and the affirmation required by subparagraph (D).

"(C)(i) Unless within 15 days after the Administrator's receipt of a request for access to such data and of an affirmation complying with subparagraph (D) the applicant submits to the Administrator an objection to the request asserting that the affirmation is inaccurate and the reasons for the objection, the Administrator shall grant the request. If an objection to a request is submitted to the Administrator within such 15-day period, the Administrator shall determine whether to grant the request within 5 days after the receipt of the objection. If the Administrator determines to grant the request, access shall not be permitted until 5 days after the applicant making the objection has been notified that access has been granted.

"(ii) If access to data is denied under clause (i), comments on the application for which such data were submitted or cited shall be filed within 60 days after the decision of the Administrator denying access.

"(D)(i) Data referred to in subparagraph (A) may be made available only to a person who provides an affirmation (and such supporting evidence as the Administrator considers necessary) containing the information prescribed by clause (ii).

"(ii) The affirmation required under clause (i) shall—

"(I) state that the person is not engaged in, and is neither employed by nor acting (directly or indirectly) on behalf of any other person or affiliate thereof engaged in, the production, sale, or distribution of a pesticide,

"(II) identify any business, employer, or other person, if any, on whose behalf the person is requesting access to the data, and

"(III) state that the person will not intentionally or recklessly violate this paragraph. For purposes of this clause, an affiliate of a person is a person who directly or indirectly, through one or more intermediates, controls or is controlled by or is under common control with the other person.

"(iii) Section 1001 of title 18, United States Code, shall apply to an affirmation made under this subparagraph.

"(E)(i) Data supporting an application may be made available under subparagraph (A) to a person only for the purpose of permitting the person to comment to the Administrator on such application. Such comments may reasonably quote data submitted to the Administrator. No person, including the Administrator, may make such comments public before the decision of the Administrator on the application for the registration of the pesticide for which such data were submitted or after such decision if the application for registration is denied.

"(ii) Except as provided in clause (iii), a person who obtains data under subparagraph (A) (directly or indirectly) may not—

"(I) publish, copy, or transfer the data to any other person to obtain approval to sell, manufacture, or distribute a pesticide anywhere in the world, or

"(II) use the data for any purpose in any court or agency of the United States or any State or political subdivision thereof before the decision of the Administrator on the application for the registration of the pesticide for which such data were submitted or after such decision if the application for registration is denied.

"(iii) Such data and comments may be disclosed consistent with section 10 after registration of the pesticide for which such data were submitted.

"(F)(i) Data made available under this paragraph may be examined at an office of the Environmental Protection Agency or an appropriate State agency under the conditions prescribed by this paragraph and may not be removed from such office.

"(ii) The Administrator shall maintain a record of the persons who inspect data. A copy of such record shall be sent to the data submitter on request.

"(G) Once access to data respecting an application is granted, the data may be examined and notes may be taken for use in developing comments on the application. Such comments on the application shall be filed within 60 days after the decision of the Administrator granting access, unless the comment period is extended by the Administrator for an additional 30 days for good cause.".

(b) NOTICE OF APPLICATION.—Section 3(c)(4) (7 U.S.C. 136a(c)(4)) is amended—

(1) in the first sentence, by striking out "promptly" and inserting in lieu thereof "not later than 30 days", and

(2) in the second sentence—

(A) by striking out "The notice" and inserting in lieu thereof "Except as provided in paragraph (9), the notice", and

(B) by striking out "30" and inserting in lieu thereof "60".

SEC. 102. CRIMINAL PENALTIES FOR DISCLOSURE OF INFORMATION.

Paragraph (3) of section 14(b) (7 U.S.C. 1361(b)(3)) is amended to read as follows:

"(3) DISCLOSURE OF INFORMATION.—

"(A) Any person who, with intent to defraud, uses or reveals information relative to the formula of a product acquired under section 3 shall be fined not more than $25,000, or imprisoned for not more than 3 years, or both.

"(B) Any person, including any officer, contractor, or employee of the United States or a State, who—

"(i) is granted access to data under section 3(c)(9), and

"(ii) in furtherance of a commercial purpose involving the production, registration, distribution, or sale of a pesticide—

"(I) knowingly violates such section, or

"(II) knowingly allows data to be made available in violation of such section,

shall be fined not more than $100,000, or imprisoned for not more than 3 years, or both.".

SEC. 103. CONDITIONAL REGISTRATION.

Subparagraphs (B) and (C) of section 3(c)(7) (7 U.S.C. 136a(c)(7)) are amended to read as follows:

"(B)(i) The Administrator may conditionally amend the registration of a pesticide under this subparagraph to permit additional uses of such pesticide notwithstanding the fact that data concerning the pesticide may be insufficient to support an unconditional amendment, if the Administrator determines that—

"(I) the applicant has submitted or cited the additional data that the Administrator may require solely for the proposed additional use,

"(II) amending the registration in the manner proposed by the applicant would not materially increase the risk of any unreasonable adverse effect on the environment, and

"(III) the additional use is in the public interest.

"(ii)(I) Except as provided in subclause (II), if the Administrator has issued a notice stating that a pesticide, or any ingredient thereof, meets or exceeds risk criteria associated in whole or in part with human dietary exposure and specified in regulations issued under paragraph (8), no registration of the pesticide may be amended under clause (i) to add any food or feed use during the pendency of any evaluation by the Administrator initiated by such notice.

"(II) If the Administrator has issued a notice stating that a pesticide, or any ingredient thereof, meets or exceeds risk criteria associated in whole or in part with human dietary exposure and specified in regulations issued under paragraph (8), the Administrator may amend the registration of the pesticide under clause (i) to add a minor food or feed use if the Administrator determines, with the concurrence of the Secretary of Agriculture, that there is not available an effective alternative pesticide that does not meet or exceed such risk criteria.

"(iii) An applicant seeking an amended registration of a pesticide under this subparagraph shall submit or cite to the Administrator such data as would be required to obtain a registration of a similar pesticide under paragraph (5). Except as provided in clause (iv), if the applicant is unable to submit or cite an item of such data because it has not yet been generated, the Administrator may amend the registration of the pesticide under such conditions as will require the submission or citation of such data not later than the time such data are required to be submitted for the maintenance of a registration of the similar pesticide under this section.

"(iv) If data concerning chronic dosing, oncogenicity, reproductive effects, mutagenicity, neurotoxicity, or teratogenicity are required to support the registration of a pesticide and if a period reasonably sufficient for the generation and submission of such data has elapsed since the Administrator first imposed the data requirement, a conditional amendment to permit an additional use of the pesticide for other than a minor use shall not be granted under clause (i) unless such data have been submitted.

"(C)(i) The Administrator may conditionally register a pesticide under this subparagraph containing an active ingredient not contained in any registered pesticide for a period reasonably sufficient for generation and submission of required data that have not been submitted because a period reasonably sufficient for generation of the data has not elapsed since the Administrator first imposed the data requirement (I) on the conditions that by the end of such period the Administrator receives such data and that the data that the Administrator receives do not meet or exceed risk criteria enumerated in regulations issued under paragraph (8), and (II) on such other conditions as the Administrator may prescribe.

"(ii) A conditional registration under this subparagraph shall be granted only if the Administrator determines that—

"(I) use of the pesticide during the period referred to in clause (i) will not cause any unreasonable adverse effect on the environment, and

"(II) use of the pesticide is in the public interest.

"(iii) The Administrator shall not conditionally register a pesticide under this subparagraph if data concerning chronic dosing, oncogenicity, reproductive effects, mutagenicity, neurotoxicity, or teratogenicity would be required for registration of such a pesticide under paragraph (5), a period reasonably sufficient for generation of such data has elapsed since the Administrator first imposed the data requirement, and such data have not been submitted to the Administrator.".

SEC. 104. DEFINITION OF OUTSTANDING DATA REQUIREMENT.

Section 2 (7 U.S.C. 136) is amended by adding at the end the following new subsection:

"(ff) OUTSTANDING DATA REQUIREMENT.—

"(1) IN GENERAL.—The term 'outstanding data requirement' means a requirement for any study, information, or data which is necessary to make a determination under section 3(c)(5) and which study, information, or data—

"(A) has not been submitted to the Administrator, or

"(B) if submitted to the Administrator, the Administrator has determined must be resubmitted because it is not valid, complete, or adequate to make a determination under section 3(c)(5) and the regulations and guidelines issued thereunder, as determined by the Administrator.

"(2) FACTORS.—In making a determination under paragraph (1)(B) respecting a study, the Administrator shall examine, at a minimum, relevant protocols, documentation of the conduct and analysis of the study, and the results of the study to determine whether the study and the results of the study fulfill the data requirement for which the study was submitted to the Administrator.".

SEC. 105. REREGISTRATION OF REGISTERED PESTICIDES.

(a) AMENDMENT.—The Act is amended by inserting after section 3 (7 U.S.C. 136a) the following new section:

"SEC. 3A. REREGISTRATION OF REGISTERED PESTICIDES.

"(a) GENERAL RULE.—The Administrator shall reregister, in accordance with this section, each registered pesticide containing any active ingredient contained in any pesticide first registered before November 1, 1984, except for any pesticide as to which the Administrator has determined, after November 1, 1984, and before the effective date of this section, that—

"(1) there are no outstanding data requirements, and

"(2) the requirements of section 3(c)(5) have been satisfied.

"(b) SPECIAL AUTHORITIES OF ADMINISTRATOR.—

"(1) GUIDELINES.—Not later than one year after the date of enactment of the Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1986, the Administrator, by order, shall issue guidelines to be followed by registrants in—

"(A) summarizing studies,

"(B) reformatting studies,

"(C) identifying adverse information, and

"(D) identifying studies that have been submitted previously that may not meet the requirements of section 3 or regulations issued under such section,

in accordance with subsection (f)(1). Guidelines issued under this paragraph shall not be subject to judicial review.

"(2) MONITORING.—The Administrator shall monitor the progress of registrants in acquiring and submitting the data required under this section.

"(3) SUSPENSIONS AND PENALTIES.—

"(A) The Administrator shall issue a notice of intent to suspend the registration of a pesticide in accordance with the procedures prescribed by section 3(c)(2)(B)(iv) if—

"(i) the Administrator determines that progress is insufficient to ensure the submission of the data required for such pesticide under a commitment made under subsection (e)(3)(B) or (f)(1)(H) within the time period prescribed by subsection (e)(4)(B) or (f)(2)(B) or the registrant has not submitted such data to the Administrator within such time period,

"(ii) the Administrator determines that tests necessary to fill an outstanding data requirement for such pesticide have not been initiated within 1 year after the issuance of a notice under subsection (g)(1)(B),

"(iii) the Administrator determines that progress is insufficient to ensure submission of the data referred to in clause (ii) within the time period prescribed by subsection (g)(2)(B) or the required data have not been submitted to the Administrator within such time period, or

"(iv) a registrant fails to comply with clause (ii) or (iii) of section 3(c)(2)(B).

"(B) A registrant who submits a certification under subsection (f)(1)(G) that is false shall be considered to have violated this Act and shall be subject to the penalties prescribed by section 14.

"(c) REREGISTRATION PHASES.—Reregistrations of pesticides under this section shall be carried out in the following phases:

"(1) The first phase shall include the listing under subsection (d) of the active ingredients of the pesticides that will be reregistered.

"(2) The second phase shall include the submission to the Administrator under subsection (e) of notices by registrants respecting their intention to seek reregistration, identification by registrants of missing and inadequate data for such pesticides, and commitments by registrants to replace such missing or inadequate data within the applicable time period.

"(3) The third phase shall include submission to the Administrator by registrants of the information required under subsection (f).

"(4) The fourth phase shall include an independent, initial review by the Administrator under subsection (g) of submissions under phases two and three, identification of outstanding data requirements, and the issuance, as necessary, of requests for additional data.

"(5) The fifth phase shall include the review by the Administrator under subsection (h) of data submitted for reregistration and appropriate regulatory action by the Administrator.

"(d) PHASE ONE.—

"(1) PRIORITY FOR REREGISTRATION.—For purposes of the reregistration of the pesticides described in subsection (a), the Administrator shall list the active ingredients of pesticides and shall give priority to, among others, active ingredients (other than active ingredients for which registration standards have been issued before the date of enactment of the Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1986) that—

"(A) are in use on or in food or feed and may result in postharvest residues,

"(B) may result in residues of potential toxicological concern in potable groundwater, edible fish, or shellfish,

"(C) have been determined by the Administrator before the date of enactment of the Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1986 to have significant outstanding data requirements, or

"(D) are used on crops, including in greenhouses and nurseries, where worker exposure is most likely to occur.

"(2) REREGISTRATION LISTS.—For purposes of reregistration under this section, the Administrator shall by order—

"(A) not later than 70 days after the date of enactment of the Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1986, list pesticide active ingredients for which registration standards have been issued before such date,

"(B) not later than 4 months after the date of enactment of the Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1986, list the first 150 pesticide active ingredients, as determined under paragraph (1),

"(C) not later than 7 months after the date of enactment of the Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1986, list the second 150 pesticide active ingredients, as determined under paragraph (1), and

"(D) not later than 10 months after the date of enactment of the Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1986, list the remainder of the pesticide active ingredients, as determined under paragraph (1).

Each list shall be published in the Federal Register.

"(3) JUDICIAL REVIEW.—The content of a list issued by the Administrator under paragraph (2) shall not be subject to judicial review.

"(4) NOTICE TO REGISTRANTS.—On the publication of a list of pesticide active ingredients under paragraph (2), the Administrator shall send by certified mail to the registrants of the pesticides containing such active ingredients a notice of the time by which the registrants are to notify the Administrator under subsection (e) whether they intend to seek or not to seek reregistration of such pesticides.

"(e) PHASE TWO.—

"(1) IN GENERAL.—The registrant of a pesticide that contains an active ingredient listed under subparagraph (B), (C), or (D) of subsection (d)(2) shall submit to the Administrator, within the time period prescribed by paragraph (4), the notice described in paragraph (2) and any information, commitment, or offer described in paragraph (3).

"(2) NOTICE OF INTENT TO SEEK OR NOT TO SEEK REREGISTRATION.—

"(A) The registrant of a pesticide containing an active ingredient listed under subparagraph (B), (C), or (D) of subsection (d)(2) shall notify the Administrator by certified mail whether the registrant intends to seek or does not intend to seek reregistration of the pesticide.

"(B) If a registrant submits a notice under subparagraph (A) of an intention not to seek reregistration of a pesticide, the Administrator shall publish a notice in the Federal Register stating that such a notice has been submitted.

"(3) MISSING OR INADEQUATE DATA.—Each registrant of a pesticide that contains an active ingredient listed under subparagraph (B), (C), or (D) of subsection (d)(2) and for which the registrant submitted a notice under paragraph (2) of an intention to seek reregistration of such pesticide shall submit to the Administrator—

"(A) in accordance with regulations issued by the Administrator under section 3, an identification of—

"(i) all data that are required by regulation to support the registration of the pesticide with respect to such active ingredient,

"(ii) data that were submitted by the registrant previously in support of the registration of the pesticide that are inadequate to meet such regulations, and

"(iii) data identified under clause (i) that have not been submitted to the Administrator, and

"(B) either—

"(i) a commitment to replace the data identified under subparagraph (A)(ii) and submit the data identified under subparagraph (A)(iii) within the applicable time period prescribed by paragraph (4)(B), or

"(ii) an offer to share in the cost to be incurred by a person who has made a commitment under clause (i) to replace or submit the data and an offer to submit to arbitration as described by section 3(c)(2)(B) with regard to such cost sharing.

For purposes of a submission by a registrant under subparagraph (A)(ii), data are inadequate if the data are derived from a study with respect to which the registrant is unable to make the certification prescribed by subsection (f)(1)(G) that the registrant possesses or has access to the raw data used in or generated by such study. For purposes of a submission by a registrant under such subparagraph, data shall be considered to be inadequate if the data are derived from a study submitted before January 1, 1970, unless it is demonstrated to the satisfaction of the Administrator that such data should be considered to support the registration of the pesticide that is to be reregistered.

"(4) TIME PERIODS.—

"(A) A submission under paragraph (2) or (3) shall be made—

"(i) in the case of a pesticide containing an active ingredient listed under subsection (d)(2)(B), not later than 3 months after the date of publication of the listing of such active ingredient,

"(ii) in the case of a pesticide containing an active ingredient listed under subsection (d)(2)(C), not later than 3 months after the date of publication of the listing of such active ingredient, and

"(iii) in the case of a pesticide containing an active ingredient listed under subsection (d)(2)(D), not later than 3 months after the date of publication of the listing of such active ingredient.

On application, the Administrator may extend a time period prescribed by this subparagraph if the Administrator determines that factors beyond the control of the registrant prevent the registrant from complying with such period.

"(B) A registrant shall submit data in accordance with a commitment entered into under paragraph (3)(B) within a reasonable period of time, as determined by the Administrator, but not more than 48 months after the date the registrant submitted the commitment. The Administrator, on application of a registrant, may extend the period prescribed by the preceding sentence by no more than 2 years if extraordinary circumstances beyond the control of the registrant prevent the registrant from submitting data within such prescribed period.

"(5) CANCELLATION AND REMOVAL.—

"(A) If the registrant of a pesticide does not submit a notice under paragraph (2) or (3) within the time prescribed by paragraph (4)(A), the Administrator shall issue a notice of intent to cancel the registration of such registrant for such pesticide and shall publish the notice in the Federal Register and allow 60 days for the submission of comments on the notice. On expiration of such 60 days, the Administrator, by order and without a hearing, may cancel the registration or take such other action, including extension of applicable time periods, as may be necessary to enable reregistration of such pesticide by another person.

"(B) If no registrant of a pesticide containing an active ingredient listed under subsection (d)(2) notifies the Administrator under paragraph (2) that the registrant intends to seek reregistration of any pesticide containing that active ingredient, if no such registrant complies with paragraph (3)(A), or if no such registrant makes a commitment under paragraph (3)(B) to replace or submit all data described in clauses (ii) and (iii) of paragraph (3)(A), or if the fee prescribed by subsection (j)(1) has not been paid with regard to the active ingredient, the Administrator shall publish in the Federal Register a notice of intent to remove the active ingredient from the list established under subsection (d)(2) and a notice of intent to cancel the registrations of all pesticides containing such active ingredient and shall provide 60 days for comment on such notice. After the 60-day period has expired, the Administrator, by order, may cancel any such registration without hearing, except that the Administrator shall not cancel a registration under this subparagraph if—

"(i) during the comment period a person acquires the registrant's rights in that registration,

"(ii) during the comment period that person furnishes a notice of intent to reregister the pesticide in accordance with paragraph (2), and

"(iii) not later than 120 days after the publication of the notice under this subparagraph, that person has complied with paragraph (3) and the fee prescribed by subsection (j)(1) has been paid.

"(f) PHASE THREE.—

"(1) INFORMATION ABOUT STUDIES.—Each registrant of a pesticide that contains an active ingredient listed under subparagraph (B), (C), or (D) of subsection (d)(2) who has submitted a notice under subsection (e)(2) of an intent to seek the reregistration of such pesticide shall submit, in accordance with the guidelines issued under subsection (b)(1), to the Administrator—

"(A) a summary of each study concerning the active ingredient previously submitted by the registrant in support of the registration of a pesticide containing such active ingredient and considered by the registrant to be adequate to meet the requirements of section 3 and the regulations issued under such section,

"(B) a summary of each study concerning the active ingredient previously submitted by the registrant in support of the registration of a pesticide containing such active ingredient that may not comply with the requirements of section 3 and the regulations issued under such section but which the registrant asserts should be deemed to comply with such requirements and regulations,

"(C) a reformat of the data from each study summarized under subparagraph (A) or (B) by the registrant concerning chronic dosing, oncogenicity, reproductive effects, mutagenicity, neurotoxicity, teratogenicity, or residue chemistry of the active ingredient that were submitted to the Administrator before January 1, 1982,

"(D) where data described in subparagraph (C) are not required for the active ingredient by regulations issued under section 3, a reformat of acute and subchronic dosing data submitted by the registrant to the Administrator before January 1, 1982, that the registrant considers to be adequate to meet the requirements of section 3 and the regulations issued under such section,

"(E) an identification of data that are required to be submitted to the Administrator under section 6(g)(4) indicating an adverse effect of the pesticide,

"(F) an identification of any other information available that in the registrant's view supports the registration,

"(G) a certification that the registrant or the Administrator possesses or has access to the raw data used in or generated by the studies that the registrant summarized under subparagraph (A) or (B),

"(H) either—

"(i) a commitment to submit data to fill each outstanding data requirement identified by the registrant, or

"(ii) an offer to share in the cost of developing such data to be incurred by a person who has made a commitment under clause (i) to submit such data, and an offer to submit to arbitration as described by section 3(c)(2)(B) with regard to such cost sharing, and

"(I) evidence of compliance with section 3(c)(1)(D)(ii) and regulations issued thereunder with regard to previously submitted data as if the registrant were now seeking the original registration of the pesticide.

"(2) TIME PERIODS.—

"(A) The information required by paragraph (1) shall be submitted to the Administrator—

"(i) in the case of a pesticide containing an active ingredient listed under subsection (d)(2)(B), not later than 12 months after the date of publication of the listing of such active ingredient,

"(ii) in the case of a pesticide containing an active ingredient listed under subsection (d)(2)(C), not later than 12 months after the date of publication of the listing of such active ingredient, and

"(iii) in the case of a pesticide containing an active ingredient listed under subsection (d)(2)(D), not later than 12 months after the date of publication of the listing of such active ingredient.

"(B) A registrant shall submit data in accordance with a commitment entered into under paragraph (1)(H) within a reasonable period of time, as determined by the Administrator, but not more than 48 months after the date the registrant submitted the commitment under such paragraph. The Administrator, upon application of a registrant, may extend the period prescribed by the preceding sentence by no more than 2 years if extraordinary circumstances beyond the control of the registrant prevent the registrant from submitting data within such prescribed period.

"(3) CANCELLATION.—

"(A) If the registrant of a pesticide fails to submit the information required by paragraph (1) within the time prescribed by paragraph (2), the Administrator, by order and without hearing, shall cancel the registration of such pesticide.

"(B)(i) If the registrant of a pesticide submits the information required by paragraph (1) within the time prescribed by paragraph (2) and such information does not conform to the guidelines for submissions established by the Administrator, the Administrator shall determine whether the registrant made a good faith attempt to conform its submission to such guidelines.

"(ii) If the Administrator determines that the registrant made a good faith attempt to conform its submission to such guidelines, the Administrator shall provide the registrant a reasonable period of time to make any necessary changes or corrections.

"(iii) If the Administrator determines that the registrant did not make a good faith attempt to conform its submission to such guidelines, the Administrator may issue a notice of intent to cancel the registration. Such a notice shall be sent to the registrant by certified mail. The registration shall be cancelled without a hearing or further notice at the end of 30 days after receipt by the registrant of the notice unless during that time a request for a hearing is made by the registrant. If a hearing is requested, a hearing shall be conducted under section 6(d), except that the only matter for resolution at the hearing shall be whether the registrant made a good faith attempt to conform its submission to such guidelines. The hearing shall be held and a determination made within 75 days after receipt of a request for hearing.

"(g) PHASE FOUR.—

"(1) INDEPENDENT REVIEW AND IDENTIFICATION OF OUTSTANDING DATA REQUIREMENTS.—

"(A) The Administrator shall review the submissions of all registrants of pesticides containing a particular active ingredient under subsections (e)(3) and (f)(1) to determine if such submissions identified all the data that are missing or inadequate for such active ingredient. To assist the Administrator's review under this section, the Administrator may require a registrant seeking reregistration to submit complete copies of studies summarized under subsection (f)(1).

"(B) The Administrator shall independently identify and publish in the Federal Register the outstanding data requirements for each active ingredient that is listed under subparagraph (B), (C), or (D) of subsection (d)(2) and that is contained in a pesticide to be reregistered under this section. The Administrator, at the same time, shall issue a notice under section 3(c)(2)(B) for the submission of the additional data that are required to meet such requirements.

"(2) TIME PERIODS.—

"(A) The Administrator shall take the action required by paragraph (1)—

"(i) in the case of a pesticide containing an active ingredient listed under subsection (d)(2)(B), not later than 18 months after the date of the listing of such active ingredient,

"(ii) in the case of a pesticide containing an active ingredient listed under subsection (d)(2)(C), not later than 24 months after the date of the listing of such active ingredient, and

"(iii) in the case of a pesticide containing an active ingredient listed under subsection (d)(2)(D), not later than 33 months after the date of the listing of such active ingredient.

"(B) If the Administrator issues a notice to a registrant under paragraph (1)(B) for the submission of additional data, the registrant shall submit such data within a reasonable period of time, as determined by the Administrator, but not to exceed 48 months after the issuance of such notice. The Administrator, on application of a registrant, may extend the period prescribed by the preceding sentence by no more than 2 years if extraordinary circumstances beyond the control of the registrant prevent the registrant from submitting data within such prescribed period.

"(h) PHASE FIVE.—

"(1) DATA REVIEW.—The Administrator shall conduct a thorough examination of all data submitted under this section concerning an active ingredient listed under subsection (d)(2) and of all other available data found by the Administrator to be relevant.

"(2) REREGISTRATION AND OTHER ACTIONS.—

"(A) ELIGIBILITY FOR REREGISTRATION.—Within 1 year after the submission of all data concerning an active ingredient of a pesticide under subsection (g), the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration. For extraordinary circumstances, the Administrator may extend such period for not more than 1 additional year.

"(B) PRODUCT-SPECIFIC DATA.—Before reregistering a pesticide, the Administrator shall obtain any needed product-specific data regarding the pesticide by use of section 3(c)(2)(B) and shall review such data within 90 days after its submission. The Administrator shall require that data under this subparagraph be submitted to the Administrator not later than 8 months after a determination of eligibility under subparagraph (A) has been made for each active ingredient of the pesticide, unless the Administrator determines that a longer period is required for the generation of the data.

"(C) REREGISTRATION.—After conducting the review required by paragraph (1) for each active ingredient of a pesticide and the review required by subparagraph (B) of this

paragraph, the Administrator shall determine whether to reregister a pesticide by determining whether such pesticide meets the requirements of section 3(c)(5). If the Administrator determines that a pesticide is eligible to be reregistered, the Administrator shall reregister such pesticide within 6 months after the submission of the data concerning such pesticide under subparagraph (B).

"(D) OTHER ACTION.—If after conducting a review under paragraph (1) or subparagraph (B) of this paragraph the Administrator determines that a pesticide should not be reregistered, the Administrator shall take appropriate regulatory action.

"(i) COMPENSATION OF DATA SUBMITTER.—If data that are submitted by a registrant under subsection (e), (f), (g), or (h) are used to support the application of another person under section 3, the registrant who submitted such data shall be entitled to compensation for the use of such data as prescribed by section 3(c)(1)(D). In determining the amount of such compensation, the fees paid by the registrant under this section shall be taken into account.

"(j) FEES.—

"(1) INITIAL FEE FOR FOOD OR FEED PESTICIDE ACTIVE INGREDIENTS.—The registrants of pesticides that contain an active ingredient that is listed under subparagraph (B), (C), or (D) of subsection (d)(2) and that is an active ingredient of any pesticide registered for a major use on food or feed shall collectively pay a fee of $50,000 on submission of information under paragraphs (2) and (3) of subsection (e) forsuch ingredient.

"(2) FINAL FEE FOR FOOD OR FEED PESTICIDE ACTIVE INGREDIENTS.—

"(A) The registrants of pesticides that contain an active ingredient that is listed under subparagraph (B), (C), or (D) of subsection (d)(2) and that is an active ingredient of any pesticide registered for a major use on food or feed shall collectively pay a fee of $100,000 (i) on submission of information for such ingredient under subsection (f)(1) if data are reformatted under subsection (f)(1)(C), or (ii) on submission of data for such ingredient under subsection (f)(2)(B) if data are not reformatted under subsection (f)(1)(C).

"(B) The registrants of pesticides that contain an active ingredient that is listed under subparagraph (A) of subsection (d)(2) and that is an active ingredient of any pesticide registered for a major use on food or feed shall collectively pay a fee of $150,000 at such time as the Administrator shall prescribe.

"(3) FEES FOR OTHER PESTICIDE ACTIVE INGREDIENTS.—

"(A) The registrants of pesticides that contain an active ingredient that is listed under subparagraph (B), (C), or (D) of subsection (d)(2) and that is not an active ingredient of any pesticide registered for a major use on food or feed shall collectively pay fees in amounts determined by the Administrator. Such fees may not be less than one-half of, nor greater than, the fees required by paragraphs (1) and (2). A registrant shall pay such fees at the times corresponding to the times fees prescribed by paragraphs (1) and (2) are to be paid.

"(B) The registrants of pesticides that contain an active ingredient that is listed under subparagraph (A) of subsection (d)(2) and that is not an active ingredient of any pesticide that is registered for a major use on food or feed shall collectively pay a fee of not more than $100,000 and not less than $50,000 at such time as the Administrator shall prescribe.

"(4) REDUCTION OR WAIVER OF FEES FOR MINOR USE AND OTHER PESTICIDES.—

"(A) In the case of an active ingredient of a pesticide that is registered solely for an agricultural or nonagricultural minor use or in the case of a pesticide the value or volume of use of which is small, the Administrator, upon application and in the sole discretion of the Administrator, may reduce or waive the fees prescribed by paragraph (3).

"(B) In the case of an antimicrobial active ingredient for which the production level does not exceed 1,000,000 pounds per year, the Administrator, upon application and in the sole discretion of the Administrator, may reduce or waive the fees prescribed by paragraph (3).

"(C)(i) Notwithstanding any other provision of this subsection, in the case of a small business registrant of a pesticide, the registrant shall pay a fee for the reregistration of each active ingredient of the pesticide that does not exceed an amount determined in accordance with this subparagraph.

"(ii) If during the 3-year period prior to reregistration the average annual gross revenue of the registrant from pesticides containing such active ingredient is—

"(I) less than $5,000,000, the registrant shall pay 0.5 percent of such revenue;

"(II) $5,000,000 or more but less than $10,000,000, the registrant shall pay 1 percent of such revenue; or

"(III) $10,000,000 or more, the registrant small pay 1.5 percent of such revenue, but not more than $150,000.

"(iii) For the purpose of this subparagraph, a small business registrant is a corporation, partnership, or unincorporated business that—

"(I) has 150 or fewer employees; and

"(II) during the 3-year period prior to reregistration, had an average annual gross revenue from pesticides that did not exceed $40,000,000.

"(5) OTHER FEES.—On payment of fees for the reregistration of a pesticide in accordance with paragraph (1), (2), (3), or (4), the Administrator may not levy any other fees for the reregistration with respect to that active ingredient.

"(6) APPORTIONMENT.—If two or more registrants are required to pay any fee prescribed by this subsection with respect to a particular active ingredient, the fees for such active ingredient shall be apportioned among such registrants on the basis of the market share in United States sales of the active ingredient for the three calendar years preceding the date of payment of such fee. The Administrator, by order, may require such registrants to submit such reports as the Administrator determines to be necessary to allow the Administrator to apportion fees under this paragraph. If any such report is not submitted by a registrant after receiving notice of such report requirement, or if any fee prescribed by this subsection for an active ingredient is not paid by a registrant to the Administrator by the time prescribed under paragraph (1), (2), or (3)(B), the Administrator, by order and without hearing, may cancel each registration held by such registrant of a pesticide containing the active ingredient with respect to which the fee is imposed. The Administrator then shall reapportion the fee among the remaining registrants and notify such registrants that they are required to pay to the Administrator any unpaid balance of the fee within 30 days after receipt of such notice.

"(k) EXEMPTION OF CERTAIN REGISTRANTS.—The requirements of subsections (e), (f), (g), and (j) regarding data concerning an active ingredient and fees for review of such data shall not apply to any person who is the registrant of a pesticide to the extent that, under section 3(c)(2)(D), the person would not be required to submit or cite such data to obtain an initial registration of such pesticide.

"(l) REREGISTRATION FUND.—

"(1) There shall be established in the Treasury of the United States a reregistration fund.

"(2) All fees collected by the Administrator under subsection (j) shall be deposited into the fund and shall be available to the Administrator, without fiscal year limitation, to carry out this section.

"(3) Money in the fund not currently needed to carry out this section shall be—

"(A) maintained on hand or on deposit,

"(B) invested in obligations of the United States or guaranteed thereby, or

"(C) invested in obligations, participations, or other instruments that are lawful investments for fiduciary, trust, or public funds.

"(4) The Administrator shall—

"(A) provide an annual accounting of the fees collected and disbursed from the fund, and

"(B) take all steps necessary to ensure that expenditures of such funds are used only to carry out this section.

"(m) JUDICIAL REVIEW.—Any failure of the Administrator to take any action required by this section shall be subject to judicial review under the procedures prescribed by section 16(b).".

(b) TECHNICAL AMENDMENT.—Subsection (g) of section 3 (7 U.S.C. 136a(g)) is repealed.

(c) DEFINITION.—

(1) Section 2 (7 U.S.C. 136) (as amended by section 104) is amended by adding at the end the following:

"(gg) ANTIMICROBIAL.—The term 'antimicrobial' means any active ingredient that is contained only in pesticides that are not registered for any food or feed use and that are—

"(1) sanitizers intended to reduce the number of living bacteria or viable virus particles on inanimate surfaces or in water or air,

"(2) bacteriostats intended to inhibit the growth of bacteria in the presence of moisture,

"(3) disinfectants intended to destroy or irreversibly inactivate bacteria, fungi, or viruses on surfaces or inanimate objects, or

"(4) sterilizers intended to destroy viruses and all living bacteria, fungi, and their spores on inanimate surfaces.".

(2) Section 2(u) (7 U.S.C. 136(u) is amended by striking out "and" immediately before the first clause (2) and by adding after "dessicant" a comma and the following: "and (3) any substance or mixture of substances intended for purposes described in subsection (gg)".

SEC. 106. NEUROTOXICOLOGICAL AND BEHAVIORAL EFFECTS TESTING.

Section 3 (7 U.S.C. 136a) is amended by adding a new subsection (h) as follows:

"(h) The Administrator shall develop methods for testing to accurately detect neurotoxic and behavioral effects of pesticides, and their ingredients, and shall, as such methods are developed, require to the extent appropriate and necessary, that data from such testing be submitted by persons seeking to obtain or maintain pesticide registrations.".

SEC. 107. ADMINISTRATOR'S AUTHORITY TO REQUIRE DATA ON INERT INGREDIENTS.

(a) SECTION 3(c)(2)(A).—Subsection (c)(2)(A) of section 3 (7 U.S.C. 136a(c)(2)(A)) is amended by inserting after "any additional kind of information under subparagraph (B) of this paragraph" the following: "including information regarding an inert ingredient in a pesticide".

(b) PRIORITY LIST AND DATA REQUIREMENTS.—Section 3 (7 U.S.C. 136a) is amended by adding at the end thereof the following new subsection:

"(g) PRIORITY LIST AND DATA REQUIREMENTS FOR INERT INGREDIENTS.—

"(1) ESTABLISHMENT OF LIST.—Subject to paragraph (4), the Administrator shall establish a priority list of inert ingredients consisting of—

"(A) inert ingredients that appear to cause a pesticide to meet or exceed a criterion for initiating a public interim administrative review under subsection (c)(8),

"(B) inert ingredients (i) for which additional data are reasonably necessary to assess the risk that the inert ingredient may result in a pesticide causing an unreasonable adverse effect on the environment, (ii) that are similar in molecular structure to a chemical that is oncogenic, mutagenic, or teratogenic or causes another similarly significant adverse effect, and (iii) that have significant use in pesticides or to which there is significant exposure from pesticides, and

"(C) inert ingredients for which additional data are reasonably necessary to assess the risk that the inert ingredient may result in a pesticide causing an unreasonable adverse effect on the environment and to which there is significant exposure from pesticides.

"(2) PUBLICATION OF LIST.—Not later than 90 days after the effective date of the Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1986, the Administrator shall publish the priority list required under paragraph (1). The Administrator shall publish revisions to such list at least annually.

"(3) JUDICIAL REVIEW.—The priority list under paragraph (1), the inclusion or exclusion of an ingredient on or from the priority list, and any revision of the priority list shall not be subject to judicial review.

"(4) NUMBER OF INGREDIENTS.—The priority list under paragraph (1) shall consist of not less than 50 inert ingredients unless the Administrator determines that there is not a sufficient number of inert ingredients meeting the requirements for listing under paragraph (1) to reach such minimum number. Such list may not exceed 75 inert ingredients.

"(5) ADDITIONAL DATA.—

"(A) The Administrator shall determine whether additional data are required for an inert ingredient in a registered pesticide not later than 1 year after the inert ingredient is placed on the priority list under paragraph (1). The Administrator shall require submission of such data from each registrant of such pesticide under this Act or from manufacturers and processors of the inert ingredient under the Toxic Substances Control Act. Such data shall be submitted within a reasonable time but not later than 4 years after the date of the request. The Administrator may extend the period for the submission of data by not more than 2 years if extraordinary circumstances beyond the control of the registrant or producer prevent the submission of the necessary data.

"(B) Data requirements imposed under subparagraph (A) or a decision not to require data for an inert ingredient shall be subject to judicial review under section 16(b).

"(6) EVALUATION.—Within 1 year after the receipt of additional data under paragraph (5) for an inert ingredient, the Administrator shall evaluate the data and take such steps as are appropriate to prevent unreasonable adverse effects on the environment caused by pesticides containing such inert ingredient. Under exceptional circumstances, the Administrator may extend the period for evaluation by not more than 1 year.

"(7) CONSTRUCTION.—This subsection shall not be construed to affect the authority of the Administrator—

"(A) to regulate under this Act impurities, contaminants, degradants, or other ingredients of pesticides that have not been deliberately added to the pesticides,

"(B) to regulate under this Act any deliberately added inert ingredient that has not previously been used in a pesticide or a significant new use in a pesticide of a deliberately added inert ingredient,

"(C) to require the submission of short-term, environmental fate, or residue studies for deliberately added inert ingredients, or

"(D) to require the submission of revised formula statements under subsection (c)(2)(B).".

(c) DATA COMPENSATION.—Section 3(c)(1)(D)(ii) (7 U.S.C. 136a(c)(1)(D)(ii)) is amended—

(1) by striking out "or for reregistration" and inserting in lieu thereof "for reregistration, or to support the safety of an inert ingredient", and

(2) by inserting "or in support of the safety of an inert ingredient" before "by any other person".

SEC. 108. DEFINITION OF INGREDIENT STATEMENT.

Subsection (n) of section 2 (7 U.S.C. 136(n)) is amended to read as follows:

"(n) INGREDIENT STATEMENT.—The term 'ingredient statement' means a statement that contains—

"(1) the name and percentage of each active ingredient, and the total percentage of all inert ingredients, in a pesticide,

"(2) the name of each inert ingredient in the pesticide that the Administrator determines must appear in the ingredient statement because of the hazard that the Administrator has determined may be posed by the use pattern and concentration level of the inert ingredient in the pesticide,

"(3) if the pesticide contains arsenic in any form, a statement of the percentages of total and water soluble arsenic, calculated as elementary arsenic,

"(4) any other information concerning the chemical composition or identity of any active ingredient of the pesticide, including information on chemical equivalency, that the Administrator requires to appear in the ingredient statement so that the nature of the active ingredient is accurately represented, and

"(5) the name of any inert ingredient for which the Administrator has required additional data under section 3(g)(5) because such ingredient is listed under section 3(g)(1)(A) as appearing to cause a pesticide to meet or exceed a criterion for initiating a public interim administrative review under subsection (c)(8).".

SEC. 109. DISCLOSURE OF INERT INGREDIENTS.

Section 10(d) (7 U.S.C. 136h(d)) is amended in the first sentence of paragraph (3) by striking out "If" and inserting in lieu thereof "Except with respect to disclosure of information on inert ingredients in ingredient statements in accordance with section 2(n), if".

SEC. 110. COMPENSATION FOR DATA ON INERT INGREDIENTS.

Subparagraph (D) of section 3(c)(2) (7 U.S.C. 136a(c)(2)) is amended to read as follows:

"(D) EXEMPTION.—

"(i) No applicant for registration or amended registration of a pesticide who proposes to purchase a registered pesticide from another producer to formulate such purchased pesticide into the pesticide that is the subject of the application shall be required to—

"(I) submit or cite data pertaining to such purchased pesticide, or

"(II) offer to pay reasonable compensation otherwise required by paragraph (1)(D) for the use of any such data.

"(ii) No applicant for registration or amended registration of a pesticide who proposes to purchase an inert ingredient from another person to formulate the pesticide shall be required to offer to pay reasonable compensation otherwise required by paragraph (1)(D) for a study concerning such ingredient if any portion of the cost of the study will be or could be included in the price of the purchased ingredient.".

TITLE II—INFORMATION DISCLOSURE

SEC. 201. PUBLIC RIGHT TO KNOW.

(a) FACT SHEETS AND REPORTS.—Section 7 (7 U.S.C. 136e) is amended by adding at the end thereof the following new subsection:

"(e) PUBLIC RIGHT TO KNOW.—

"(1) Any producer operating an establishment in any State shall prepare or obtain a fact sheet complying with this subsection for each active ingredient manufactured or used at the establishment. The producer shall maintain copies of the fact sheet at the establishment and shall furnish a copy to any person on request.

"(2) Each fact sheet for an ingredient required under paragraph (1) shall—

"(A) contain the chemical name, each common name, and any trade name of the ingredient and a summary of relevant health, safety, and environmental data concerning the ingredient, and

"(B) be revised as often as is necessary to reflect current information about the ingredient.

The Administrator may require a fact sheet to be amended to provide accurate and clear information to the public.

"(3) Each producer to whom this subsection applies shall furnish to the Administrator annually, in accordance with regulations published by the Administrator, a report that includes—

"(A) for each establishment operated by the producer in any State, the name of each ingredient for which a fact sheet is required that is manufactured or used at that establishment, and

"(B) for each ingredient for which a fact sheet is required, the location of each establishment where such ingredient is manufactured or used by the producer, and

"(C) a current copy of each required fact sheet.

"(4) The fact sheets required by paragraph (1) and the annual reports required by paragraph (3) shall be available to the public.".

(b) CONFIDENTIAL INFORMATION.—Section 7(d) (7 U.S.C. 136e(d)) is amended by inserting "and production locations" after "names".

SEC. 202. DATA DISCLOSURE TO STATES.

(a) STATES.—Section 10 (7 U.S.C. 136h) is amended by adding at the end thereof the following new subsection:

"(h) DATA DISCLOSURE TO STATES.—

"(1) IN GENERAL.—The Administrator may disclose to a State any data or information acquired under this Act if the State assures the Administrator, and the Administrator determines, that the submitter of the data or information will receive no less protection with respect to the disclosure and use of the data or information by the State than is provided by section 3 and this section.

"(2) ACTION FOR JUST COMPENSATION.—For the purpose of any action that may lie against the United States for just compensation under section 1491 of title 28, United States Code—

"(A) the disclosure or use of data or information provided by the Administrator under paragraph (1) to a State in a manner inconsistent with this section or section 3 shall be considered a taking of property, and

"(B) the act of a State with respect to such data or information shall be considered an act of the United States.

"(3) REQUIRED DISCLOSURE.—The Administrator shall disclose to a State any data or information acquired under this Act if the State assures the Administrator, and the Administrator determines, that—

"(A) the submitter of the data or information will receive no less protection with respect to the disclosure and use of the data or information by the State than is provided by section 3 and this section, and

"(B) the law of the State allows the submitter of the data or information to recover just compensation in a civil action against the State for losses resulting from the disclosure or use of the data or information by the State or its employees or agents in a manner inconsistent with section 3 or this section.".

(b) DATA SYSTEM.—Section 31 (7 U.S.C. 136y) is redesignated as section 33 and the following new section is inserted after section 30:

"SEC. 31. COLLECTION, DISSEMINATION, AND USE OF DATA.

"(a) DATA SYSTEMS.—The Administrator shall establish, administer, and be responsible for the continuing activities of a committee within the Environmental Protection Agency that shall design, establish, and coordinate an efficient system, within such agency, for the collection, dissemination to other Federal departments and agencies or States, and use of the data submitted to the Administrator under this Act. The Administrator shall ensure the completion, within 36 months after the effective date of the Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1986, of the design and implementation of the system and procedures required by this subsection. The agency committee so established shall solicit advice from data users outside the Federal Government through means of a permanent advisory committee that shall consist of representatives from private groups, State governments and organizations, and industry, and other representatives as may be appropriate.

"(b) DATA RETRIEVAL.—The Administrator, in consultation and cooperation with the Secretary of Agriculture and other heads of appropriate Federal and State departments and agencies, shall design, establish, and coordinate an efficient and effective system for the retrieval of pesticidal, toxicological, and other scientific data that could be useful to the Administrator in carrying out this Act. Systematized retrieval shall be developed for use by all Federal and State departments and agencies with responsibilities in the area of regulation or study of pesticides and their effect on man and the environment.

"(c) INDEX.—In designing and implementing the systems required by subsections (a) and (b), the Administrator shall index information by pesticide name, Chemical Abstracts Service registry number, establishment site, and submitter so that information can be retrieved in a timely and useful manner.

"(d) REPORT.—The Administrator, within 24 months after the effective date of the Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1986, shall submit a report to Congress on the progress made in designing and implementing the systems for information management required by this section. The report shall address the handling of information submitted before the effective date of the Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1986 as well as the procedures established to ensure that collection of information after such date will comply with this section.

"(e) CONFIDENTIALITY.—Dissemination of information and data collected under this section to any State shall be subject to section 10.

"(f) AUTHORIZATION.—There are authorized to be appropriated for fiscal years 1987, 1988, 1989, 1990, and 1991 such sums as may be necessary to carry out this section.".

SEC. 203. NOTICE FOR STORED CANCELLED OR SUSPENDED PESTICIDES.

(a) NOTICE.—Section 6 (7 U.S.C. 136d) is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following:

"(f) NOTICE.—Any producer or exporter of pesticides, registrant of a pesticide, applicant for registration of a pesticide, applicant for or holder of an experimental use permit, pesticide testing facility, commercial applicator, or any person who distributes or sells any pesticide which has in its possession any pesticide which has had its registration cancelled or suspended under this section shall notify the Administrator and appropriate State and local officials of—

"(1) such possession,

"(2) the quantity of such pesticide in its possession, and

"(3) the place at which such pesticide is stored.

The Administrator shall transmit a copy of each notice submitted under this subsection to the regional office of the Environmental Protection Agency which has jurisdiction over the place of pesticide storage identified in the notice.".

(b) ENFORCEMENT.—Subparagraph (K) of section 12(a)(2) (7 U.S.C. 136j) is amended to read as follows:

"(K) except as provided in section 6(a)(1), to violate any cancellation of a registration of a pesticide under section 6 or to fail to submit a notice in accordance with section 6(f);".

TITLE III—REVIEW AND CANCELLATION

SEC. 301. PUBLIC INTERIM ADMINISTRATIVE REVIEW.

(a) SECTION 3(c)(8).—Paragraph (8) of section 3(c) (7 U.S.C. 136a(c)(8)) is amended to read as follows:

"(8) PUBLIC INTERIM ADMINISTRATIVE REVIEW PROCEEDINGS.—

"(A) IN GENERAL.—A public interim administrative review process to determine whether the use of a pesticide (including a category of pesticides) may cause unreasonable adverse effects on the environment shall be conducted in accordance with this paragraph.

"(B) CRITERIA FOR INITIATING A PUBLIC INTERIM ADMINISTRATIVE REVIEW.—

"(i) Criteria for initiating a public interim administrative review of a pesticide shall be set forth in regulations published by the Administrator.

"(ii) Such criteria shall be established on the basis of levels of risk and may include consideration of currently available exposure data.

"(iii) Absence of exposure data shall not delay or preclude initiation of a public interim administrative review. The Administrator may decline to initiate a public interim administrative review solely on the basis of exposure only if adequate data on all relevant means of exposure have been considered.

"(C) REVIEW REQUIREMENT.—The Administrator may not initiate a public interim administrative review process to develop a risk-benefit evaluation of the ingredients of a pesticide or any of its uses before initiating a formal action to cancel, suspend, or deny the registration of such pesticide required under this Act unless such public interim administrative review process is based on a validated test or other significant evidence raising prudent concerns of unreasonable adverse risk to man or to the environment.

"(D) PREREVIEW NOTICE PROCEDURES.—

"(i) On receipt of information respecting a pesticide demonstrating that the criteria for initiating a public interim administrative review established under subparagraph (B) have been met, the Administrator shall immediately notify all registrants of such pesticide and provide the registrants with appropriate information and an explanation of the manner in which the criteria have been met.

"(ii) Not later than 30 days after receipt of a notice provided under clause (i), a registrant may respond to such notice.

"(iii) Not later than 60 days after the Administrator provided a notice under clause (i) concerning a pesticide, the Administrator shall determine whether a public interim administrative review of the pesticide shall be initiated.

"(E) NOTICE.—If the Administrator intends to initiate a public interim administrative review of a pesticide that is registered for agricultural uses, the Administrator shall notify the Secretary of Agriculture of the intention to initiate such review and the reasons therefor.

"(F) REVIEW PROCEDURE.—

"(i) Any public interim administrative review proceeding shall be initiated and conducted in accordance with regulations published by the Administrator. Such regulations shall provide that a public interim administrative review shall include—

"(I) a notice of initiation of the public interim administrative review and opportunity for public comment on such notice,

"(II) a notice of a preliminary determination and opportunity for public comment on such notice, and

"(III) a notice of a final determination,

except that such regulations may authorize the Administrator to combine or forgo any such notice.

"(ii) Any proposed determination of the Administrator shall be submitted to the Sci-

entific Advisory Panel established under section 25(d) at its next scheduled meeting for comment solely on relevant scientific issues. The public may submit comments to the Scientific Advisory Panel concerning such issues.

"(iii) The notice of the initiation of a public interim administrative review or the notice of a preliminary determination shall state the basis for such review or determination and include a request for any additional data needed and a bibliography of all scientific data and studies and expert analyses concerning the risks or benefits of the pesticide that are under review. Information in the bibliography shall be made available to the public consistent with the requirements of section 10. The Administrator shall determine, to the extent feasible, before the initiation of the public interim administrative review which data in the bibliography may be disclosed to the public under section 10(d)(1). If the Administrator receives additional data concerning such risks or benefits, the Administrator, within 30 days after receiving the additional data, shall revise the bibliography to reflect such data and make the revised bibliography available to the public.

"(iv) Not later than 90 days after the publication of a notice of the initiation of a public interim administrative review or a notice of a preliminary determination, comments may be submitted on such review or determination. Any person who submits comments shall disclose to the Administrator all scientific data and studies and expert analyses in such person's possession concerning the risks or benefits of the pesticide that are under review that were not included in the bibliography included in such notice. If such person receives additional scientific data or studies or expert analyses of such data or studies that were not included in such bibliography, the person shall disclose such scientific data, studies, and expert analysis to the Administrator within 30 days after receipt.

"(v) Not later than 18 months after the initiation of a review, the Administrator shall decide which regulatory action (if any) to take regarding the pesticide that is the subject of the review and shall publish the decision.

"(vi) The time limits specified in this subparagraph may not be extended, except in exceptional circumstances in which—

"(I) additional data critical to a fair and accurate determination of risks posed by the pesticide subject to review are required,

"(II) the extension is for a period limited to the time required to obtain such data on an expedited basis and in no event to exceed 1 year, and

"(III) the Administrator acted to obtain the additional data at the time the public interim administrative review was initiated unless the Administrator could not have reasonably known of the need for such data at such time.

"(G) JUDICIAL REVIEW.—Any person may seek judicial review under section 16(a) of the failure of the Administrator to act within the time period prescribed under this paragraph.".

(b) SCIENTIFIC ADVISORY PANEL.—The first sentence of section 25(d) (7 U.S.C. 136w(d)) is amended by striking out "The" and inserting in lieu thereof "Except with respect to a referral under section 3(c)(8)(F), the".

(c) APPLICATION OF AMENDMENTS.—The amendments made by this section shall apply to public interim administrative reviews under section 3(c)(8) of the Federal Insecticide, Fungicide, and Rodenticide Act initiated after January 1, 1987.

SEC. 302. PROCEEDINGS UNDER SECTION 6.

Section 6 (7 U.S.C 136d) is amended by redesignating subsection (f) as subsection (i) and by inserting after subsection (e) the following:

"(f) HEARING PROCEDURES AFTER PUBLIC INTERIM ADMINISTRATIVE REVIEW.—

"(1) GENERAL RULE.—Subsection (d), as modified by the special rules of paragraphs (2) and (3) of this subsection, shall govern any hearing under subsection (d) that results from the Administrator's final determination in a public interim administrative review proceeding under section 3(c)(8) that is initiated after January 1, 1987, that includes an opportunity for comment on a notice of preliminary determination issued in connection with such review, and for which the time between the first public notice for such review under section 3(c)(8)(F) and the close of the last comment period provided for such review is not less than 180 days.

"(2) REQUEST FOR HEARING.—Any person who is adversely affected by a decision of the Administrator respecting a pesticide (including a person without an economic interest in such pesticide) following a public interim administrative review described by paragraph (1) may request, or intervene in, a hearing in the manner provided by subsection (b)(2)(B) within 30 days after such decision. A person may request a hearing, or intervene in a hearing, only if that person submitted comments during the public interim administrative review proceeding and otherwise complied with section 3(c)(8)(F).

"(3) PROCEDURES.—

"(A) At the request of a party, the administrative law judge conducting the hearing may receive into evidence portions of the public interim administrative review record and other evidence if the party demonstrates that such portions of the record and other evidence are relevant and material to the disputed issues and are not unduly repetitious and a competent witness is made available to be cross-examined on all matters relating to such evidence. Direct testimony of witnesses concerning scientific data or studies that were not, but could have been, obtained and submitted in the public interim administrative review proceeding by the exercise of due diligence by the offering party shall not be admissible.

"(B) The right of other parties to confront and cross-examine witnesses with respect to such evidence shall be preserved with respect to material issues of adjudicative fact, so long as such cross-examination is not unduly repetitious.

"(C)(i) Not later than 120 days after the administrative law judge is appointed, prehearing matters shall be completed and the hearing shall commence.

"(ii) The administrative law judge may establish a schedule for prehearing matters, including discovery and motions, and shall ensure that the hearing schedule is met. The administrative law judge shall issue such orders as are appropriate for the purpose of simplifying and clarifying issues, specifying the order of presentation of witnesses, and allocating the time for cross-examination, briefing, and decision.

"(iii) Discovery shall be permitted after the expiration of 120 days after the appointment of the administrative law judge on a determination by the administrative law judge that (I) such discovery shall not in any way unreasonably delay the proceeding, (II) the information to be obtained is not otherwise obtainable, and (III) such information has significant probative value and is necessary to obtain relevant evidence needed to resolve a material issue in dispute.

"(D) Any challenge to—

"(i) the authority to issue, or

"(ii) the procedural correctness of the issuance of,

any notice of intent to cancel or change classification or to any request for a hearing or motion to intervene shall be filed with the administrative law judge not later than 30 days before the commencement of the evidentiary phase of the hearing.

"(E) Not later than 30 days before the hearing commences, each party shall make available to the other parties the names of the expert and other witnesses the party expects to call, together with a brief narrative summary of their expected testimony and a list of all documents and exhibits that the party expects to introduce into evidence. Thereafter, witnesses, documents, or exhibits may be added and narrative summaries of expected testimony amended on motion by a party.

"(F) If new studies become available that were not available during the public interim administrative review, the administrative law judge, on request of any party and when in the judgment of the administrative law judge it is necessary, may submit such studies to the Scientific Advisory Panel established under section 25(d) for supplemental comment on an expedited basis under such time limits as may be established by the administrative law judge.

"(G) The administrative law judge shall schedule the presentation and examination of witnesses so that the presentation of evidence is completed within 60 days after the commencement of the hearing, except that the schedule shall not prejudice the right of a party to present evidence. The person who requested a hearing on an issue shall have the burden of going forward to present an affirmative case and shall have the burden of proof as to that issue.

"(H) A hearing conducted in accordance with this subsection shall be completed and the Administrator shall make a final decision within 300 days after the issuance of the notice that gave rise to the hearing. The time limit imposed by this subparagraph may not be extended, except in exceptional circumstances in which such extension is essential for a fair and accurate determination of pivotal facts central to the proceeding. In no event may such time limit be extended more than 180 days. Any other time limit imposed by this paragraph may be extended for good cause.

"(I) Failure to complete a hearing and make a final decision within the time period prescribed by subparagraph (H) shall be grounds for a civil action in a district court of the United States seeking an order to establish a schedule requiring the prompt completion of the hearing, but shall not be grounds for termination of the hearing or for making a final decision respecting the pesticide that is the subject of the hearing.".

SEC. 303. CANCELLATION AND CHANGE IN CLASSIFICATION OR LABELS.

Subsection (b) of section 6 (7 U.S.C. 136d(b)) is amended to read as follows:

"(b) CANCELLATION AND CHANGE IN CLASSIFICATION OR LABELS.—

"(1) NOTICE OF CANCELLATION OR CHANGE IN CLASSIFICATION.—

"(A) If it appears to the Administrator that a pesticide or its labeling or other ma-

terial required to be submitted does not comply with this Act or, when used in accordance with widespread and commonly recognized practice, generally causes unreasonable adverse effects on the environment, the Administrator may issue a notice of intent—

"(i) to cancel its registration or to change its classification together with the reasons (including the factual basis) for the action of the Administrator, or

"(ii) to hold a hearing to determine whether or not its registration should be canceled or its classification changed.

"(B) A notice issued under subparagraph (A) shall be sent to each registrant of the pesticide with respect to which the notice is issued and shall be made public.

"(C) In determining whether to issue a notice under subparagraph (A), the Administrator shall include among those factors to be taken into account the impact of the action proposed in such notice on production and prices of agricultural commodities, retail food prices, and otherwise on the agricultural economy.

"(D)(i) Not later than 60 days before sending a notice to a registrant or making public such notice under subparagraph (B), whichever occurs first, the Administrator shall provide the Secretary of Agriculture with a copy of the proposed notice under subparagraph (A) and an analysis of the impact of the proposed action on the agricultural economy. The Secretary of Agriculture shall provide comments on such notice and analysis to the Administrator within 30 days after receiving the copy of such notice.

"(ii)(I) If the Secretary of Agriculture provides such comments in writing within 30 days after receiving the copy of such notice, the Administrator shall publish in the Federal Register (with the notice) the comments of the Secretary and the response of the Administrator with regard to the comments of the Secretary.

"(II) If the Secretary of Agriculture does not provide such comments in writing within 30 days after receiving the copy of such notice, the Administrator may notify the registrant and make public the notice at any time after such 30-day period.

"(iii) The time requirements imposed by this subparagraph may be waived or modified to the extent agreed on by the Administrator and the Secretary of Agriculture.

"(E) If the Administrator finds that suspension of a pesticide registration is necessary to prevent an imminent hazard to human health, the Administrator may waive the requirements of notice to the Secretary of Agriculture prescribed by subparagraph (D) and submission to the Scientific Advisory Panel under section 25(d) and proceed in accordance with subsection (c).

"(2) HEARING.—

"(A) The action proposed in a notice issued under paragraph (1)(A) shall become final and effective at the end of 30 days after receipt by the registrant or publication of a notice issued under paragraph (1)(B), whichever occurs later, unless within that time—

"(i) the registrant makes the necessary corrections, if possible, or

"(ii) a request for a hearing is made by a person adversely affected by the notice.

"(B) Whenever a request for a hearing is made, the request shall—

"(i) identify with particularity the findings and conclusions of the decision of the Administrator that are disputed, and

"(ii) include a complete statement of the reasons and factual basis that support the request for a hearing.

"(C) Any party to the proceeding may identify findings and conclusions in dispute.

"(D) If a hearing is held pursuant to such a request or the determination of the Administrator under paragraph (1)(A)(ii), a decision pertaining to registration or classification issued after completion of such hearing shall be final.

"(E) On receipt of a request for a hearing from a person without an economic interest in the pesticide with respect to which the hearing is requested, the Administrator shall convene such hearing if the request presents a substantial issue of fact, as determined by the Administrator, pertaining to whether such pesticide poses an unreasonable risk to man or the environment.

"(3) FACTORS.—In taking any action under paragraph (1), the Administrator shall—

"(A) consider restricting a use or uses of a pesticide as an alternative to cancellation and fully explain the reasons for such restriction, and

"(B) consider the impact of such action on production and prices of agricultural commodities, retail food prices, and otherwise on the agricultural economy, and publish in the Federal Register an analysis of such impact.

"(4) LABEL CHANGES.—

"(A) The Administrator may notify the registrant of a pesticide of a label change proposed by the Administrator that may be made by rulemaking under subparagraph (B) and provide that the registrant may submit comments to the Administrator on such proposed change in the 30-day period beginning on the date of the receipt of such notice. If a registrant who is notified by the Administrator of a proposed label change notifies the Administrator that the registrant does not object to such change, such change shall take effect as prescribed by the Administrator. If a registrant who is notified by the Administrator of a proposed label change does not submit comments to the Administrator in such 30-day period, the Administrator shall send such registrant a second notice stating that, if such registrant does not submit any comments to the Administrator in the 30-day period beginning on the date the registrant receives the second notice, the registration of such registrant shall be cancelled without a hearing or further notice. The registration of a registrant who does not submit comments on a second notice within such 30-day period shall be cancelled without a hearing or further notice. If in response to a notice under this subparagraph a registrant submits comments to the Administrator objecting to a proposed label change, the Administrator may proceed under subparagraph (B).

"(B) The Administrator may require changes to the label of a pesticide by informal rulemaking under this paragraph unless the changes—

"(i) are equivalent to a cancellation of a use,

"(ii) render the pesticide unmarketable, or

"(iii) otherwise have a major economic impact on persons affected by such changes. If the Administrator may not require changes to the label of a pesticide by informal rulemaking under this paragraph because of clause (i), (ii), or (iii), the Administrator may only require such changes by a proceeding authorized by other provisions of this Act.

"(C) After the promulgation of a regulation under subparagraph (B), the Administrator shall notify each registrant of the pesticide subject to the regulation of the label change required by the regulation and provide a 30-day period for each registrant to apply to the Administrator for an amendment to the registration to comply with the regulation. If a registrant does not apply for such an amendment within such period, the Administrator shall issue a notice of intent to cancel the registration of such registrant in accordance with paragraph (2). For purposes of paragraph (2), such notice shall be deemed to have been issued under paragraph (1).

"(D) A registrant or user of a pesticide subject to a regulation issued under subparagraph (B) may request a hearing under subsection (d) on such regulation in accordance with paragraph (2). The scope of the hearing shall be limited to—

"(i) whether the pesticide complies with the regulation,

"(ii) whether the regulation by its terms is applicable to such pesticide, and

"(iii) whether, because of significant information that was not (and could not reasonably have been) presented in the proceeding wherein the regulation was promulgated, it would be unreasonable to require such pesticide to comply with the regulation.

"(E)(i) Except as provided in clause (ii), in an action under 16(e) for review of a regulation issued under subparagraph (B), the court, on request, shall postpone the effective date of the regulation until completion of the review action if the petitioner shows—

"(I) a likelihood of success on the merits in such action, and

"(II) that the implementation of the regulation before completion of the action would cause a risk of substantial harm to the petitioner.

"(ii) A court in a review action under section 16(e) shall not postpone the effective date of a regulation issued under subparagraph (B) if the Administrator shows that failure to implement the regulation before completion of the action would cause a risk of substantial harm to health or the environment.".

SEC. 304. PUBLIC HEARINGS AND SCIENTIFIC REVIEW.

Section 6(d) (7 U.S.C. 136d(d)) is amended—

(1) by striking out the fifth through ninth sentences,

(2) in the tenth sentence—

(A) by striking out "(including the report of the Academy)", and

(B) by striking out "90 days thereafter" and inserting in lieu thereof "18 months after issuance of the notice that gave rise to the hearing",

(3) by inserting before the last sentence the following: "The time period prescribed by the preceding sentence may be extended by the Administrator under extraordinary circumstances for not more than one year.", and

(4) in the heading, by striking out "AND SCIENTIFIC REVIEW".

SEC. 305. ADMINISTRATIVE CHANGES.

(a) AMENDMENT TO SECTION 6.—Section 6 (7 U.S.C. 136d) is amended by inserting the following new subsection after subsection (f) (as added by section 302):

"(g) GENERAL PROVISIONS.—

"(1) VOLUNTARY CANCELLATION.—A registrant at any time may request that any of its pesticide registrations be cancelled or be amended to delete one or more uses. Before acting on any such request, the Administrator shall publish in the Federal Register a notice of the receipt of the request. There-

after the Administrator may approve such a request.

"(2) PUBLICATION OF NOTICE.—A notice of denial of registration, intent to cancel, suspension, or intent to suspend issued under this Act, a notice issued under subsection (d)(4) or (e)(5)(A) of section 3A, or a notice issued under the third sentence of subsection (b)(4)(A) shall be published in the Federal Register and shall be sent by certified mail, return receipt requested, to the registrant's or applicant's address of record on file with the Administrator. If the mailed notice is returned to the Administrator as undeliverable at that address, if delivery is refused, or if the Administrator otherwise is unable to accomplish delivery of the notice to the registrant or applicant after making reasonable efforts to do so, the notice shall be deemed to have been received by the registrant or applicant on the date the notice was published in the Federal Register.

"(3) EXISTING STOCKS.—The Administrator may permit the continued use, the continued distribution or sale, or both, of existing stocks of a pesticide whose registration is cancelled under any provision of this Act to such extent, under such conditions, during such periods, and for such uses as the Administrator may specify if the Administrator determines that such distribution, sale, or use is not inconsistent with the purposes of this Act and will not cause unreasonable adverse effects on the environment.

"(4) ADDITIONAL INFORMATION.—If at any time after the registration of a pesticide the registrant has additional information regarding unreasonable adverse effects on the environment of the pesticide, the registrant shall submit such information to the Administrator. For purposes of this paragraph, the term 'information' includes factual information and expert opinion regarding risks or benefits.".

(b) CONFORMING AMENDMENTS.—

(1) SECTION 3(c)(6).—Section 3(c)(6) (7 U.S.C. 136a(c)(6)) is amended by striking out the period at the end and inserting in lieu thereof the following: "except as otherwise provided in this paragraph. A request for a hearing under section 6 shall be made within 30 days after the receipt of such notification. The Administrator may issue regulations governing the right to a hearing under section 6 with regard to the denial of any application for the registration of a pesticide containing an ingredient that was cancelled under section 6. Under such regulations, due weight shall be given to the desirability of finality of prior proceedings and determinations and the extent that the applicant had an opportunity to participate in earlier proceedings. Section 6(g)(2) applies with respect to the publication of a notice of a denial of a registration.".

(2) SECTION 6(a)(2).—Section 6(a) (7 U.S.C. 136d(a)) is amended—

(A) by striking out paragraph (2), and

(B) by striking out "(1) PROCEDURE.—', by striking out ": *Provided*" and all that follows in the first sentence and inserting in lieu thereof a period, and inserting the matter in paragraph (1) after the subsection heading so that it is flush with the full left-hand margin of the section.

(3) SECTION 6(e).—Paragraph (1) of section 6(e) (7 U.S.C. 136d(e)) is amended by striking out ": *Provided*" and all that follows in that paragraph and inserting in lieu thereof a period.

SEC. 306. CANCELLATION OF REGISTRATION BASED ON FALSE OR INVALID DATA.

Section 6 (7 U.S.C. 136d) is amended by inserting the following new subsection after subsection (g) (as added by section 305(a)):

"(h) SUSPENSION AND CANCELLATION OF REGISTRATION BASED ON FALSE OR INVALID DATA.—

"(1) NOTICE.—The Administrator shall immediately issue an order of suspension and a notice of intent to cancel the registration of a pesticide if—

"(A) before the effective date of the Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1986, the Administrator has previously determined in the Industrial Biotest validation process conducted by the Administrator that data submitted by the registrant of the pesticide to the Administrator in support of such registration were invalid,

"(B) the data referred to in subparagraph (A)—

"(i) have not been replaced as of the effective date of such Act, or

"(ii) are in the process of being replaced on the effective date of such Act but are not submitted to the Administrator by April 1, 1988, and

"(C) such data are material to the registration.

"(2) INVALID DATA.—If, after the effective date of the Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1986, the Administrator determines that invalid data are submitted by a registrant to the Administrator in support of a registration of a pesticide, the Administrator may—

"(A) require the registrant to submit valid replacement studies or data on an expedited schedule and to submit interim progress reports, or

"(B) issue a notice of intent to cancel such registration if the Administrator determines that such action would be in the public interest, taking into account the scope of the invalid data and the need to use the data to determine whether the pesticide may cause unreasonable adverse effects on the environment.

"(3) FALSE DATA.—If a registrant willfully submits material data known to be false in support of the registration of a pesticide, the Administrator shall immediately issue notices of intent to suspend and cancel such registration.

"(4) HEARING.—

"(A) Any suspension or cancellation under this subsection shall become final and effective at the end of the 30-day period beginning on the date of receipt by the registrant of a notice issued under this subsection unless during such period a request for a hearing is made by a person adversely affected.

"(B) A hearing under this paragraph shall be conducted in accordance with the procedures prescribed by subsection (c) or (d), as appropriate.

"(C) In the case of a hearing held with respect to action proposed to be taken under paragraph (1), the only matters for resolution shall be whether—

"(i) in response to a notice of the Administrator issued under section 3(c)(2)(B) or other formal notice, data previously determined by the Administrator to be invalid—

"(I) have not been replaced as of the effective date of the Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1986, or

"(II) are in the process of being replaced on the effective date of such Act but are not submitted to the Administrator by April 1, 1988, and

"(ii) the data are material to the registration.

"(D) In the case of a hearing held with respect to action proposed to be taken under paragraph (2), the only matters for resolution shall be whether data are invalid, material, and necessary to adequately determine whether a pesticide may cause unreasonable adverse effects on the environment.

"(E) In the case of a hearing held with respect to action proposed to be taken under paragraph (3), the only matters for resolution shall be whether a registrant willfully submitted material data known to be false.

"(F) A decision after completion of a hearing conducted under this paragraph shall be final.

"(G) Notwithstanding any other provision of this Act, a hearing shall be held, and a determination made, under this subsection within 75 days after the receipt of a request for such hearing.".

TITLE IV—RECORDS AND INSPECTIONS

SEC. 401. RECORDS.

(a) SECTION 8.—Section 8 (7 U.S.C. 136f) is amended to read as follows:

"SEC. 8. RECORDS.

"(a) AUTHORITY TO REQUIRE RECORDS.—The Administrator, by regulation, may require any producer or exporter of pesticides, registrant, applicant for registration, applicant for or holder of an experimental use permit, pesticide testing facility, or commercial applicator, or any person who distributes or sells any pesticide—

"(1) to prepare, and to maintain for reasonable periods of time, such records as the Administrator finds to be necessary for the effective implementation or enforcement of this Act,

"(2) to furnish to the Administrator reports stating the location where the records are maintained, and

"(3) to furnish a copy of any such record to the Administrator on written request.

Except as provided in subsections (c), (d), and (e), the Administrator may not require any person who distributes or sells at retail a registered pesticide that is not subject to a restricted use classification under section 3 to prepare, maintain, or furnish any record under this subsection with respect to such pesticide.

"(b) LIMITATIONS.—The Administrator may not, under the authority of subsection (a), require any person to maintain records of—

"(1) financial data, sales data, or pricing data,

"(2) personnel data, except for data concerning exposure of employees to pesticides or ingredients of pesticides, or concerning health effects on employees that could reasonably be attributable to such exposure, or

"(3) research or test data (other than data relating to registered pesticide, data relating to any pesticide for which an application for registration or for an experimental use permit has been filed, or data relating to testing at a pesticide testing facility).".

(b) DEFINITION.—Section 2 (7 U.S.C. 136) (as amended by section 105(c)) is amended by adding at the end the following:

"(hh) PESTICIDE TESTING FACILITY.—The term 'pesticide testing facility' means any person that conducts any test, study, survey, or investigation of the properties, effects, or behavior of any pesticide (or any ingredient, metabolite, or degradation product thereof) on its own behalf or on behalf of any registrant, applicant for registration, or other person who sells or distributes the

pesticide (or contemplates selling or distributing it). The term does not include any person solely on account of such person's participation as a cooperator in field testing of a pesticide in compliance with an experimental use permit under section 5.".

(c) CONFORMING AMENDMENTS.—The second sentence of section 26(c) (7 U.S.C. 136w-1(c)) is amended—

(1) by striking out "8(b) of this Act" and inserting in lieu thereof "9",

(2) by striking out "9(a) of this Act" and inserting in lieu thereof "9", and

(3) by striking out "Not withstanding the provisions of section 2(e)(1) of this Act" and inserting in lieu thereof "Notwithstanding section 2(kk)".

SEC. 402. INSPECTIONS.

(a) SECTION 9(a).—Section 9(a) (7 U.S.C. 136g(a)) is amended to read as follows:

"(a) AUTHORITY TO ENTER, INSPECT, AND COPY.—Officers or employees of the United States or of any State, duly designated by the Administrator, are authorized at reasonable times, as provided by this section—

"(1) to enter any place where any pesticide, active ingredient, or device is distributed or sold, to inspect and obtain samples of any pesticide, active ingredient, or device being distributed or sold at such place or of any packaging or labeling of any such pesticide, active ingredient, or device, and to enter any place where a pesticide which has had its registration cancelled or suspended under section 6 is stored,

"(2) to enter any place where there are located any records required under this Act or any place reported under section 8(a) as a location where such records are maintained, to inspect and obtain copies of such records,

"(3) to enter any pesticide testing facility, to inspect the facility and the testing being conducted at the facility and to inspect and obtain copies of any records required by or under the authority of this Act to be maintained by the pesticide testing facility, and

"(4) to enter any place where such officer or employee has reason to believe that the Act has been or is being violated by any person other than a person acting in the capacity of a private applicator, to inspect such place to obtain evidence of such violation.".

(b) SECTION 9(b).—Section 9(b) (7 U.S.C. 136g(b)) is amended to read as follows:

"(b) WARRANTS.—Officers or employees of the United States or of any State, duly designated by the Administrator, are empowered to obtain and execute warrants authorizing—

"(1) entry for the purposes of this section,

"(2) inspection and copying of all records required under this Act, and

"(3) seizure of any pesticide or device that is in violation of this Act.".

(c) PROCEDURE AND COORDINATION.—Section 9 (7 U.S.C. 136g) is further amended by adding at the end the following:

"(d) PROCEDURE.—Before any entry or inspection of any premises not open to the general public is made under this section, the person conducting the inspection shall present to the person in charge of the premises appropriate credentials, and a written statement of the reason for the entry or inspection and whether a violation of this Act is suspected. Each entry or inspection shall be commenced and completed with reasonable promptness. If the person conducting the entry or inspection obtains any samples of pesticides or devices, before leaving the premises such person shall give to the person in charge of the premises a receipt describing the samples and, if requested and practicable, a portion of each such sample equal in volume or weight to the portion retained. If an analysis of any such sample is made, a copy of the results of such analysis shall be furnished on request to the person in charge of the premises.

"(e) COORDINATION.—The Administrator shall coordinate actions taken under this section with actions taken under other Federal laws for the purpose of avoiding duplication of inspections.".

TITLE V—EXPORTS

SEC. 501. DEFINITION OF MISBRANDED.

Section 2(q)(1) (7 U.S.C. 136(q)(1)) is amended—

(1) by striking out "or" at the end of subparagraph (G),

(2) by striking out the period at the end of subparagraph (H) and inserting after the close quotation marks "; or", and

(3) by adding at the end thereof the following new subparagraph:

"(I) in the case of a pesticide intended for export that is substantially similar in composition and use pattern to a pesticide registered under section 3, the label is not written in an appropriate language as required by section 17(a)(4)(A) or does not contain the same health, safety, and hazard precautions as the pesticide registered under section 3, unless such precautions on the label are in conflict with the law of the importing country.".

SEC. 502. DEFINITION OF IMPORTING COUNTRY.

Section 2 (7 U.S.C. 136) (as amended by section 401(b) of this Act) is amended by adding at the end thereof the following new subsection:

"(ii) IMPORTING COUNTRY.—The term 'importing country' means the first country to which a pesticide, device, or active ingredient, subject to the notification requirements of section 17(a), is exported from the United States.".

SEC. 503. PESTICIDES AND DEVICES INTENDED FOR EXPORT.

(a) IN GENERAL.—Subsection (a) of section 17 (7 U.S.C. 136o(a)) is amended to read as follows:

"(a) PESTICIDES AND DEVICES INTENDED FOR EXPORT.—

"(1) VIOLATIONS.—Notwithstanding any other provision of this Act, no pesticide or device, or active ingredient used in producing a pesticide, intended solely for export to any foreign country shall be considered in violation of this Act when prepared or packed according to the specifications or directions of the foreign purchaser, except that producers of such pesticides and devices and active ingredients used in producing pesticides shall be subject to section 2(p), subparagraphs (A), (C), (D), (E), (G), (H), and (I) of section 2(q)(1), subparagraphs (A), (B), (C)(i), (C)(iii), and (D) of section 2(q)(2), sections 7 and 8, and paragraphs (2), (3), and (4) of this subsection.

"(2) RESTRICTED USE OR UNREGISTERED PESTICIDES.—

"(A) This paragraph applies to a pesticide, device, or active ingredient—

"(i) for which a restricted use classification has become effective under section 3,

"(ii) for which a cancellation or suspension has become effective under section 6,

"(iii) the registration of which has been voluntarily withdrawn by the registrant, if such withdrawal is associated with concern over potential adverse public health or environmental effects, or

"(iv) that is not registered under section 3 for any use.

"(B) No pesticide, device, or active ingredient described in subparagraph (A) may be exported to any foreign country by any person unless, at least 30 days before the first shipment each year of such pesticides, devices, or active ingredients to such country, such person has—

"(i) notified, under paragraph (3), the person importing the pesticide, device, or active ingredient and the appropriate government regulatory office in the importing country,

"(ii) received written evidence that the notification was delivered to the appropriate government regulatory office, and

"(iii) submitted a copy of the notification (in English) and evidence of delivery to the Administrator.

"(C) Documents referred to in subparagraph (B) shall be made available to the public, on request.

"(3) NOTIFICATION SPECIFICATIONS.—The notification required under paragraph (2) shall be made in an appropriate language and shall contain the following information—

"(A) the name of the pesticide and the common and chemical names of each active ingredient,

"(B) the name and address of the person exporting the pesticide, device, or active ingredient,

"(C) the name and address of the person importing the pesticide, device, or active ingredient,

"(D) the name and address of the appropriate government regulatory office in the importing country,

"(E) a statement of the reasons why the registration of the pesticide was cancelled, suspended, voluntarily withdrawn, or the pesticide is not registered in the United States or is classified for restricted use, and the list of restrictions, and

"(F) the name and address of the office of the United States Environmental Protection Agency that, on request by the importer or official of the importing country, can provide additional information on the pesticide, device, or active ingredient.

"(4) LABELS.—

"(A) The label of a pesticide intended for export from the United States shall be written in an appropriate language.

"(B) Except as provided in section 2(q)(1)(H), such label may not refer to compliance with the laws of the United States unless the label also contains or is accompanied by a description of the relevant requirements of such laws.

"(5) RECORDS.—The Administrator, by regulation, may require any person subject to this subsection to prepare, maintain, and submit such records as may be necessary to carry out this subsection.".

(b) EFFECTIVE DATES AND IMPLEMENTATION.—

(1) Section 17(a)(2) and (3) of the Federal Insecticide, Rodenticide, and Fungicide Act (as amended by subsection (a) of this section) shall become effective 90 days after the date of enactment of this Act.

(2) Not later than 30 days after the date of enactment of this Act, the Administrator of the Environmental Protection Agency shall publish in the Federal Register a list of the names, addresses, and international telecommunications codes of appropriate regulatory offices required to receive notices under section 17(a)(2)(B) of the Federal Insecticide, Rodenticide, and Fungicide Act, as amended by subsection (a).

(3) Not later than 180 days after the date of enactment of this Act, and annually thereafter, the Administrator shall revise the list required under paragraph (2).

(4) Not later than 90 days after the date of enactment of this Act, the Administrator shall publish in the Federal Register preliminary guidelines regarding—

(A) the form of the notification required under section 17(a) of the Federal Insecticide, Rodenticide, and Fungicide Act, as amended by subsection (a),

(B) translation of the notification and labels required under such section 17(a) into the appropriate language,

(C) preparation and retention of records under such section 17(a), and

(D) procedures for public access to documents submitted by exporters under such section.

SEC. 504. CANCELLATION NOTICES FURNISHED TO FOREIGN GOVERNMENTS.

Subsection (b) of section 17 (7 U.S.C. 136o(b)) is amended to read as follows:

"(b) NOTICES OF REGULATORY ACTION FURNISHED TO FOREIGN GOVERNMENTS.—

"(1) ISSUANCE.—Whenever—

"(A) a registration, or a cancellation or suspension of the registration, of a pesticide becomes effective or ceases to be effective, or

"(B) a pesticide is classified for restricted use,

the Administrator shall promptly transmit through the Secretary of State a notice, at such time and annually thereafter, to the appropriate governmental regulatory offices of other countries and to appropriate international agencies.

"(2) CONTENTS.—A notice under paragraph (1) shall include—

"(A) the reasons for the regulatory action taken,

"(B) for canceled or suspended registrations, information concerning other pesticides that are registered under section 3 and that could be used in lieu of such pesticide, and

"(C) the name and address of the office of the United States Environmental Protection Agency that, on request, can provide additional information on the pesticide.".

TITLE VI—CERTIFICATION AND TRAINING

SEC. 601. CERTIFICATION, TRAINING, AND RECORD-KEEPING FOR PESTICIDE APPLICATORS.

(a) DEFINITIONS.—

(1) Section 2(e) (7 U.S.C. 136(e)) is amended to read as follows:

"(e) APPLICATOR.—

"(1) COMMERCIAL APPLICATOR.—

"(A) Except as provided in subparagraph (B), the term 'commercial applicator' means a person (whether or not the person is a private applicator with respect to some uses) who—

"(i) uses or supervises the use, for any purpose or on any property, of any pesticide that is classified for restricted use,

"(ii) uses or supervises the use of any pesticide for hire as the principal part of the person's business or work, or

"(iii) as an employee of a person described in clause (ii), uses or supervises the use of any pesticide.

"(B) The term does not include a person who uses or supervises the use of a pesticide as described in paragraph (2).

"(2) PRIVATE APPLICATOR.—The term 'private applicator' means a person who uses or supervises the use of any pesticide that is classified for restricted use for purposes of producing any agricultural commodity—

"(A) on property owned or rented by such person or such person's employer, or

"(B) on other property if applied without compensation (other than trading of personal services between producers of agricultural commodities).

"(3) CERTIFIED APPLICATOR.—The term 'certified applicator' means a commercial or private applicator who is certified under section 4.

"(4) UNDER THE DIRECT SUPERVISION OF A CERTIFIED APPLICATOR.—Unless otherwise prescribed by its labeling, a pesticide shall be considered to be applied under the direct supervision of a certified applicator if it is applied by a person acting under the direct supervision and the instructions and control of a certified applicator who is available if and when needed, even though such certified applicator is not physically present at the time and place the pesticide is used.".

(2) Section 2 (as amended by section 502) is amended by adding at the end the following:

"(jj) PESTICIDE DEALER.—

"(1) Except as provided in paragraph (2), the term 'pesticide dealer' means any person who, in the ordinary course of business, distributes or sells any pesticide that is classified for restricted use or designated under section 8(d)(2).

"(2) Such term does not include a person who only distributes or sells pesticides that are classified for general use and that are not designated under section 8(d)(2).".

(b) SECTION 4.—

(1) Section 4 (7 U.S.C. 136b) is amended by adding at the end the following:

"(d) PROVISIONS REGARDING COMMERCIAL APPLICATORS.—

"(1) It shall be a violation of this Act for any person to use any pesticide as a commercial applicator unless such person is—

"(A) a certified commercial applicator, or

"(B) a registered commercial applicator under the direct supervision of a certified applicator who is a certified commercial applicator.

"(2) To be considered to be a certified commercial applicator, a person, at a minimum, shall—

"(A) have met the standards prescribed under subsection (a) and have received training—

"(i) prescribed by the State agency, including training in the material referred to in subsection (g),

"(ii) conducted by a trainer who has met the requirements prescribed under subsection (h), and

"(iii) that satisfies the minimum standards for training programs prescribed under subsection (h),

"(B) have had field, institutional, or industrial experience in pesticide use and application,

"(C) have passed an examination prescribed by such State agency, and

"(D) possess a valid commercial applicator certification issued by such State agency.

"(3) To be considered to be a registered commercial applicator, a person, at a minimum, shall—

"(A) have received training—

"(i) prescribed by the State agency, including training in the material referred to in subsection (g), and

"(ii) conducted by a trainer who has met the requirements prescribed under subsection (h), and

"(B) possess a valid registration issued by such State agency.

A person may obtain a registration by providing to the State agency a report, signed and dated by the trainer and by the person who received the training, stating that the prescribed minimum training has been provided and received.

"(e) PROVISIONS REGARDING PRIVATE APPLICATORS.—

"(1) A restricted use pesticide shall be considered to have been applied by, or under the direct supervision of, a certified private applicator only if it is applied by a person who is either—

"(A) a certified private applicator, or

"(B) a supervised private applicator who uses the pesticide under the direct supervision of a certified private applicator.

"(2) To be considered to be a certified private applicator, a person, at a minimum, shall—

"(A) have met the standards prescribed under subsection (a) and have received training—

"(i) prescribed by the State agency, including training in the material described in subsection (g),

"(ii) conducted by a trainer who has met the requirements prescribed under subsection (h), and

"(iii) that satisfies the minimum standards for training prescribed under subsection (h), and

"(B) possess a valid private applicator certification issued by such State agency.

"(3) To be considered to be a supervised private applicator, a person, at a minimum, shall have received basic instruction—

"(A) prescribed by the State agency or based on material prescribed by such State agency, including basic instruction material concerning the use of appropriate pesticide application and safety procedures, appropriate clothing and protective equipment for pesticide applications, the detection of common symptoms of pesticide poisoning, the means of obtaining emergency medical treatment, hazards posed by pesticides to workers, the public health, and the environment, and the requirements of applicable laws, regulations, and labeling, and

"(B) given by a certified private applicator, a commercial applicator who is certified in the pest control category appropriate for the instruction being provided, or a trainer who has met the requirements prescribed under subsection (h).

The State agency may require the employer of a supervised private applicator to confirm that the basic instruction described in subparagraph (A) has been received.

"(f) RECERTIFICATION AND REREGISTRATION.—Each certified applicator and each registered commercial applicator within a State shall undergo refresher training and be recertified or reregistered within a period established by the State agency of such State. Such period may not be more than 5 years. The refresher training shall be prescribed by the State agency and shall include training in the materials referred to in subsection (g) and in the relevant requirements of other subsections of this section and sections 3(d), 12, and 14. To be recertified, an applicator, at a minimum, shall meet the requirements of paragraphs (2)(A), (2)(B), and (2)(D) of subsection (d) or the requirements of paragraphs (1) and (2) of subsection (e). To be reregistered, a commercial applicator, at a minimum, shall meet the requirements of subsection (d)(3).

"(g) TRAINING MATERIAL.—The Administrator, in consultation with the Secretary of Agriculture, shall develop training material on the use of appropriate procedures for the application of pesticides, safety procedures for pesticide application, clothing and protective equipment for pesticide application, the detection of common symptoms of pesticide poisoning, the means of obtaining emergency medical treatment, hazards

posed by pesticides to workers, the public health, and the environment, specific commercial application categories, and the requirements of applicable laws, regulations, and labeling. Within 12 months after the effective date of the Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1986, the Administrator, in consultation with the Secretary of Agriculture, shall revise and make current such material and thereafter shall update such material as needed.

"(h) MINIMUM STANDARDS FOR TRAINERS AND TRAINING PROGRAMS.—

"(1)(A) The Administrator shall establish within one year after the effective date of the Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1986—

"(i) minimum standards of competency, and experience or expertise, for trainers referred to in subsection (d), and

"(ii) minimum standards for the training programs referred to in subsection (d).

"(B) Training programs prescribed by any State under subsection (d) shall comply with the minimum standards established by the Administrator under subparagraph (A) not later than 2 years after the effective date of such standards. If on the expiration of such 2-year period a State's training program fails to meet such minimum standards, or if a State fails to prescribe such a program, the Administrator shall notify the State of such failure. After receipt of a notice, a State shall have 90 days to bring its training program into compliance with such standards. If on expiration of such 90-day period, the State's training program does not meet such standards, the Administrator shall prescribe such training programs referred to in subsection (d) for use in such State.

"(2)(A) The Administrator shall establish within 2 years after the effective date of the Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1986—

"(i) minimum standards of competency, and experience or expertise, for trainers referred to in subsection (e), and

"(ii) minimum standards for the training programs referred to in subsection (e).

"(B) Training programs prescribed by any State under subsection (e) shall comply with the minimum standards established by the Administrator under subparagraph (A) not later than 2 years after the effective date of such standards. If on the expiration of such 2-year period a State's training program fails to meet such minimum standards, or if a State fails to prescribe such a program, the Administrator shall notify the State of such failure. After receipt of a notice, a State shall have 90 days to bring its training program into compliance with such standards. If on expiration of such 90-day period the State's training program does not meet such standards, the Administrator shall prescribe the training programs referred to in subsection (e) for use in such State.

"(i) PRIVATELY ADMINISTERED TRAINING PROGRAMS.—A State agency may approve any privately administered training program that it determines meets—

"(1) the requirements established under this section, or

"(2) requirements established by the State agency,

whichever are more stringent.

"(j) ENFORCEMENT OFFICER TRAINING.—Federal and State field personnel responsible for on-site observations and inspections of pesticide use shall have training that, as a minimum, includes training covering materials specified in subsection (g) for the commercial application categories for which they are assigned enforcement responsibility.

"(k) SEPARATE STANDARDS.—In establishing standards under this section applicable to applicators, the Administrator shall establish separate standards for commercial applicators and private applicators.

"(l) STATE AGENCY DEFINED.—For purposes of this section, the term 'State agency' means the agency of a State that is designated under subsection (a)(2)(A) if the State has primary enforcement responsibility for pesticide use violations, as provided for by section 26. In the case of a State that does not have such primary enforcement responsibility or that does not have an agency designated under subsection (a)(2)(A), a reference to a State agency shall be considered a reference to the Administrator.".

(2)(A)(i) Except as provided in clauses (ii) and (iii), subsection (d) of section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act (as added by paragraph (1)) shall take effect in a State on the expiration of the period prescribed by subsection (h) of such section within which training programs of such State under subsection (d) are to be in compliance with minimum standards prescribed by the Administrator of the Environmental Protection Agency under subsection (h).

(ii) If an applicator in a State is certified as a commercial applicator under subsection (a) of section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act before the effective date prescribed by clause (i) and the Administrator has determined that the previous certification or recertification requirements in that State do not conform to the requirements of subsection (d) of such section, such applicator shall be recertified—

(I) within 2 years after the date the training programs of such State under subsection (d) comply with such minimum standards of the Administrator, or

(II) within such earlier time as the State may prescribe.

(iii) The requirements of subsection (d) of section 4 for registered commercial applicators shall take effect 1 year after the expiration of the period prescribed by subsection (h) of such section within which training programs of such State under subsection (d) are to be in compliance with minimum standards prescribed by the Administrator of the Environmental Protection Agency under subsection (h).

(B)(i) Except as provided in clauses (ii) and (iii), subsection (e) of section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act (as added by paragraph (1)) shall take effect in a State on the expiration of the period prescribed by subsection (h) of such section within which training programs of such State under subsection (e) are to be in compliance with minimum standards prescribed by the Administrator of the Environmental Protection Agency under subsection (h).

(ii) If an applicator in a State is certified as a private applicator under subsection (a) of section 4 before the effective date prescribed by clause (i) and the Administrator has determined that the previous certification or recertification requirements in that State do not conform to the requirements of subsection (d) of such section, such applicator shall be recertified—

(I) within 2 years after the date the training programs of such State under subsection (e) comply with such minimum standards of the Administrator, or

(II) within such earlier time as the State may prescribe.

(iii) The requirements of subsection (e) of section 4 for supervised private applicators shall take effect 1 year after the expiration of the period prescribed by subsection (h) of such section within which training programs of such State under subsection (e) are to be in compliance with minimum standards prescribed by the Administrator of the Environmental Protection Agency under such subsection.

(C) The requirements of subsection (j) of section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act (as added by paragraph (1)) shall take effect 1 year after the Administrator issues the training materials specified in subsection (g) of such section.

(c) SECTION 8.—

(1) Section 8 (7 U.S.C. 136f) (as amended by section 401) is amended by adding at the end the following:

"(c) RECORDS OF APPLICATORS.—

"(1) COMMERCIAL APPLICATORS.—The Administrator shall require each commercial applicator to maintain records of each pesticide application, including the identity and amount of pesticide applied and the date and location of such application, for a period of 2 years after each such application.

"(2) PRIVATE APPLICATORS.—No regulations issued by the Administrator to carry out this Act may require any private applicator to maintain any records or file any reports or other documents.

"(d) RECORDS OF PESTICIDE DEALERS.—The Administrator, by regulation, shall require each pesticide dealer to maintain a record of each sale or distribution of—

"(1) a pesticide classified for restricted use, and

"(2) any other pesticide designated for purposes of this subsection by the Administrator by regulation because the pesticide may cause significant adverse effects on health or the environment.

Such records shall include the identity of the pesticide sold or distributed, the identity of the person to whom the pesticide was distributed or sold, the date of the distribution or sale, and the amount of the pesticide distributed or sold. A pesticide dealer shall maintain the records required under this subsection for 3 years after the date of the distribution or sale.

"(e) ACCESS.—

"(1)(A) Any pesticide dealer or commercial applicator shall afford to any employee or former employee of such dealer or applicator access to records required to be kept under subsections (c) and (d) that directly relate to the employee's employment duties.

"(B) Any pesticide dealer or commercial applicator shall afford to any customer of such dealer or applicator access to the records that directly relate to any pesticide that the customer purchased from the dealer or that relate to any pesticide application made by such an applicator at the request of the customer or under a contract with a customer.

"(C) Each State enforcement agency, as part of an investigation or enforcement action in response to a formal complaint, shall make available reports of the findings of such investigation or action to the complainant. On the request of a complainant, such agency shall provide in a timely manner a progress report or interim report that contains, at a minimum, the records required to be kept under subsections (c) and

(d) and obtained in the investigation or action.

"(D) The records for which access is provided under subparagraph (A), (B), or (C) shall be accessible within 30 days after a request made under such subparagraph, except that if necessary to protect the public health or in a medical emergency, such records shall be provided as soon as possible, but no later than 24 hours after the request is made.

"(2) A copy of any record to be required to be maintained under subsection (c) or (d) shall be submitted to a State agency that has primary enforcement authority under section 26 on request by such State agency to the commercial applicator or dealer required to maintain such records.

"(f) INFORMATION FOR EMPLOYEES.—An employer who uses or supervises the use of a pesticide shall know or have access to the brand name and common or chemical name of the pesticide and to the safety, first aid, and antidote information listed on the labeling of the pesticide and shall be responsible for promptly making such information available, on request, to any employee exposed to the pesticide and to treating medical personnel.".

(2) Section 11 (7 U.S.C. 136i) is repealed.

(d) SECTION 12.—Section 12(a)(2) (7 U.S.C. 136j(a)(2)) is amended by striking out "or" at the end of subparagraph (O), by striking out the period at the end of subparagraph (P) and inserting in lieu thereof a semicolon, and by adding after subparagraph (P) the following:

"(Q) to obtain and use records acquired under section 8(e) in furtherance of a commercial purpose;".

TITLE VII—DATA COMPENSATION

SEC. 701. DEFENSIVE DATA.

(a) AMENDMENTS.—

(1) Section 3(c)(2)(B)(ii) (7 U.S.C. 136a(c)(2)(B)(ii)) is amended to read as follows:

"(ii)(I) Each registrant of a pesticide for which a notice is issued under clause (i) shall provide evidence within 90 days after receipt of such notification that it is taking appropriate steps to secure the additional data that are required under such notice.

"(II) Each registrant of a pesticide that contains an active ingredient that is only used for application in the production of food, feed, or fiber shall, by the ninetieth day after notification, agree to develop jointly the additional data concerning that active ingredient that are required under such notice or to share in the cost of developing such data and advise the Administrator of their intent. Any such registrant who agrees to develop jointly, or to share in the cost of producing, the data shall be entitled to examine and rely upon such data in support of maintenance of such registration.

"(III) In the case of any other pesticide, two or more registrants of such pesticides may agree to develop jointly, or to share in the cost of developing, such data if they agree and advise the Administrator of their intent within 90 days after notification. Any such registrant who agrees to develop jointly, or to share in the cost of producing, the data shall be entitled to examine and rely upon such data in support of maintenance of such registration.

"(IV) If a pesticide contains active ingredients that are used for application in the production of food, feed, or fiber and for other purposes, the registrants of the pesticide who are subject to a requirement to submit additional data shall be subject to subclause (II) or (III), whichever the majority of the registrants of the pesticide shall agree to.".

(2) The first sentence of section 3(c)(2)(B)(iv) (7 U.S.C. 136a(c)(2)(B)(iv)) is amended by inserting after "under this subparagraph" the following: "or if the Administrator determines that a registrant has failed to take the action required by clause (ii)(II)".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect with respect to notices issued under section 3(c)(2)(B) of the Federal Insecticide, Fungicide, and Rodenticide Act after the effective date of the Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1986.

SEC. 702. DATA COMPENSATION AND ARBITRATION.

Section 3(c)(1)(D)(ii) (7 U.S.C. 136a(c)(1)(D)(ii)) is amended by inserting "(I)" after "(ii)" and by adding at the end the following:

"(II) If the term of a patent for a pesticide registered under this section is extended after the date of enactment of the Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1986 under an Act of Congress that amends title 35, United States Code, to authorize an extension of the term of a patent for a pesticide that had not expired before the date of enactment of such Act of Congress irrespective of the date the pesticide completed a regulatory review period as defined in such title, the amount of compensation to be paid under arbitration under subclause (I) for the use of data submitted to the Administrator for such pesticide shall be a fair share of the cost of producing the data plus a value premium not to exceed that share, as determined in the arbitration process.

"(III) In the case of a pesticide the term of the patent for which has expired, the terms and amount of compensation, for data that was submitted for such pesticide, to be paid by a person who intends to file an application for registration of a pesticide that cites such data may be fixed before the submission of such application by arbitration under subclause (I) initiated by such person. The arbitration shall be binding on the original data submitter and shall be binding on such person after the date such person's application is submitted. Each party to the first arbitration under this subclause to determine the terms and amount of compensation for the use of particular data shall share equally in the payment of the fees and expenses of the arbitrators and shall each pay its own attorney's fees. In all subsequent arbitrations under this subclause to determine the terms and amount of compensation for the use of such data, the party to such subsequent arbitration who seeks to cite the data of the original data submitter shall pay the fees and expenses of the arbitrators and the attorney's fees of the original data submitter. The provisions of subclause (I) apply to arbitrations under this clause, except as otherwise provided in this subclause.".

TITLE VIII—GENERAL

Subtitle A—Amendments to the Federal Insecticide, Fungicide, and Rodenticide Act

SEC. 801. STATE REGISTRATIONS.

Section 24(c) (7 U.S.C. 136v(c)) is amended—

(1) by striking out the period at the end of paragraph (1) and inserting in lieu thereof a comma and the following: "and such registration shall expire and be of no further effect, without further action by the Administrator—

"(A) at the end of the period, if any, provided as the duration of the registration by the State that approved it, or

"(B) 10 days after the date the Administrator publishes in the Federal Register a notice stating that the State that issued the registration has informed the Administrator that the State no longer desires the registration to continue in effect.", and

(2) by adding at the end of paragraph (2) the following: "The Administrator shall establish criteria that define the conditions under which a special local needs registration may be disapproved, taking into account geographic patterns of use.".

SEC. 802. DEFINITIONS.

(a) AMENDMENTS.—

(1) SECTION 2(bb).—Section 2(bb) (7 U.S.C. 136(bb)) is amended by adding at the end the following: "For purposes of this subsection, the term 'man' includes unborn human beings from the moment of conception.".

(2) SECTION 2(ee).—Section 2(ee) (7 U.S.C. 136(ee)) is amended—

(A) by inserting before the comma at the end of clause (1) "unless the labeling specifically prohibits deviation from the specified dosage, concentration, or frequency", and

(B) in clause (3), by inserting after "labeling" the following: "unless the labeling specifically states that the product may be applied only by the methods specified on the labeling".

(3) NEW DEFINITION.—Section 2 (as amended by section 601(a)(2)) is amended by adding at the end the following:

"(kk) TO DISTRIBUTE OR SELL.—The term 'to distribute or sell' means to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, release for shipment, or receive and (having so received) deliver or offer to deliver. The term does not include the holding or application of registered pesticides or use dilutions thereof by any applicator who provides a service of controlling pests without delivering any unapplied pesticide to any person so served.".

(b) CONFORMING AMENDMENTS.—

(1) Section 3(a) (7 U.S.C. 136a(a)) is amended to read as follows:

"(a) REQUIREMENT OF REGISTRATION.—Except as provided by this Act, no person in any State may distribute or sell to any person any pesticide that is not registered under this Act.".

(2) Section 12(a) (7 U.S.C. 136j(a)) is amended—

(A) in paragraph (1) by striking out "distribute, sell, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person—" and inserting in lieu thereof "distribute or sell to any person—", and

(B) in paragraph (2)(F) by striking out "to make" and inserting in lieu thereof "to distribute or sell, or to make".

SEC. 803. INFORMATION REQUESTED.

Section 7 (7 U.S.C. 136e) (as amended by section 201) is amended by adding at the end the following:

"(f) INFORMATION REQUESTED.—Consistent with section 3507(a)(1) of title 44, United States Code, the Administrator shall catalogue and retrieve data in such manner as to eliminate or reduce burdensome requests to registrants for submission of information, particularly those requests that require the submission of duplicate confidential data.".

SEC. 804. COOPERATIVE AGREEMENTS.

Section 23(a) (7 U.S.C. 136u(a)) is amended to read as follows:

"(a) COOPERATIVE AGREEMENTS.—The Administrator may enter into cooperative agreements with States and Indian Tribes for the following:

"(1) To delegate to any State or Indian Tribe the authority to cooperate in the enforcement of this Act through the use of its personnel or facilities, to train personnel of the State or Indian Tribe to cooperate in the enforcement of this Act, and to assist States and Indian Tribes in implementing cooperative enforcement programs through grants.

"(2) To provide an amount equal to 50 percent of the anticipated cost of each State or Indian tribe, as agreed under such cooperative agreements, of conducting training programs for certification of applicators. Funds shall be distributed among States and Indian tribes on a formula basis, as developed cooperatively between the Secretary of Agriculture and the Administrator.

"(3) To provide an amount equal to 50 percent of the anticipated cost to each State or Indian tribe, as agreed under such cooperative agreements, of conducting pesticide certification and licensing programs, and in the case of a State, for administering the State plan of each State approved under section 4(a)(2). Funds shall be distributed among the States and Indian tribes on a formula basis as specified by the Administrator.

There are authorized to be appropriated such sums as may be necessary for cooperative agreements and grants under this subsection.".

SEC. 805. SCIENTIFIC ADVISORY PANEL.

Section 25(d) (7 U.S.C. 136w(d)) is amended—

(1) by striking out "consist of 7 members" and inserting in lieu thereof "be permanent and consist of 9 members", and

(2) by striking out the sentence beginning "The advisory panel established".

SEC. 806. AUTHORITY FOR EPA ACTION.

The second sentence of section 27(a) (7 U.S.C. 136w-2(a)) is amended to read as follows: "If a State—

"(1) does not promptly initiate appropriate investigative action after receiving such referral, or

"(2) does not initiate appropriate enforcement action within 90 days after receipt of such referral,

the Administrator may act on such complaint or information in accordance with this Act.".

SEC. 807. EXPIRATION OF STATE PRIMARY ENFORCEMENT RESPONSIBILITY.

Section 26 (7 U.S.C. 136w-1) is amended by adding at the end the following:

"(d) EXPIRATION.—Notwithstanding subsections (a) and (b), the primary enforcement responsibility of a State under this section for pesticide use violations shall expire on January 1, 1989, unless the Administrator determines that the State has the authority to impose civil and criminal penalties at least equal to those provided in section 14.".

SEC. 808. UNLAWFUL ACTS.

(a) SECTION 12(a).—Section 12(a) (7 U.S.C. 136j(a)) (as amended by section 601(d)) is amended—

(1) by amending paragraph (1)(A) to read as follows:

"(A) any pesticide that is not registered under section 3 or whose registration has been cancelled or suspended, except to the extent that distribution or sale otherwise has been authorized by the Administrator under this Act;",

(2) by amending paragraph (2)(B) to read as follows:

"(B) to refuse to (i) prepare, maintain, or submit any records required by or under this Act, (ii) submit any reports required by or under this Act, or (iii) allow any entry, inspection, copying of records, or sampling authorized by this Act;",

(3) by amending paragraph (2)(J) to read as follows:

"(J) to violate any suspension order issued under section 3(c)(2)(B), 3A, or 6;",

(4) by amending paragraph (2)(K) to read as follows:

"(K) to violate any cancellation order issued under this Act;",

(5) in paragraph (2)(M), by striking out "section 8" and inserting in lieu thereof "this Act", and

(6) by adding at the end paragraph (2) the following:

"(R) to willfully falsify all or part of any information relating to the testing of any pesticide (or any ingredient, metabolite, or degradation product thereof), including the nature of any protocol, procedure, substance, organism, or equipment used, observation made, or conclusion or opinion formed, submitted to the Administrator, or that the person knows will be furnished to the Administrator or will become a part of any records required to be maintained by this Act;

"(S) to willfully submit to the Administrator data known to be false in support of a registration;

"(T) to violate any regulation issued under section 3(a), 19(a), 25(c)(3), or 25(f) of this Act.".

(b) ACTS OF OFFICERS, AGENTS, ETC.—

(1) Section 12 (7 U.S.C. 136j) is amended by adding at the end the following:

"(c) ACTS OF OFFICERS, AGENTS, ETC.—When construing and enforcing the provisions of this Act, the act, omission, or failure of any officer, employee, agent, or other person acting for or employed by any person shall be deemed to be the act, omission, or failure of such person as well as that of the person employed.".

(2) Paragraph (4) of section 14(b) (7 U.S.C. 1361(b)) is repealed.

SEC. 809. PENALTIES AND SUBPOENAS.

(a) SECTION 14(a).—Section 14(a) (7 U.S.C. 1361(a)) is amended—

(1) by amending paragraph (1) to read as follows:

"(1) IN GENERAL.—

"(A) Any registrant, applicant for a registration, producer, or pesticide testing facility that violates any provision of this Act may be assessed a civil penalty by the Administrator of not more than $25,000 for each offense. If a registrant, applicant for a registration, producer, or pesticide testing facility violates any provision of this Act after violating the same or similar provision of this Act, the Administrator may assess a civil penalty of not more than $50,000 for such subsequent violation.

"(B) Any—

"(i) commercial applicator of restricted use pesticides, or

"(ii) any other person not described in subparagraph (A) who distributes or sells pesticides or devices,

that violates any provision of this Act may be assessed a civil penalty by the Administrator of not more than $10,000 for each offense. If such person violates any provision of this Act after violating the same or similar provision of this Act, the Administrator may assess a civil penalty of not more than $20,000 for such subsequent violation.",

(2) by amending paragraph (2) to read as follows:

"(2) PRIVATE APPLICATOR.—Any private applicator who violates any provision of this Act subsequent to receiving a written warning from the Administrator or following a citation for a prior violation, and any other person not included in paragraph (1) that violates any provision of this Act, may be assessed a civil penalty by the Administrator of not more than $1,000 for each offense. If such person violates any provision of this Act after violating the same or similar provision of this Act, the Administrator may assess a civil penalty of not more than $2,000 for such subsequent violation. The Administrator may waive the requirement for a warning or citation for a first offense by a private applicator if the Administrator determines that the violation was intentional or caused significant harm to health or the environment.",

(3) by adding at the end of paragraph (3) the following: "If the person neither resides nor has its principal place of business in the United States, the Administrator may designate a site for the hearing in the United States that is reasonably convenient for the parties.", and

(4) in the first sentence of paragraph (4), by inserting "the economic benefit (if any) resulting from the violation," after "to continue in business,".

(b) SECTION 14(b).—

(1) Section 14(b)(1) (7 U.S.C. 1361(b)(1)) is amended to read as follows:

"(1) IN GENERAL.—

"(A) Any registrant, applicant for a registration, producer, or pesticide testing facility that knowingly violates any provision of this Act shall be fined not more than $50,000 or imprisoned for not more than one year, or both.

"(B) Any commercial applicator of a restricted use pesticide, or any other person not described in subparagraph (A) who distributes or sells pesticides or devices, that knowingly violates any provision of this Act shall be fined not more than $25,000 or imprisoned for not more than one year, or both.".

(2) Section 14(b)(2) (7 U.S.C. 136l(b)(2)) is amended (A) by striking out "$1,000" and inserting in lieu thereof "$2,000", and (B) by striking out "30" and inserting in lieu thereof "60".

(c) SUBPOENAS.—Section 14(a) (7 U.S.C. 136l(a)) is amended by adding at the end the following:

"(6) SUBPOENAS.—The Administrator, in connection with administrative proceedings under this subsection, may issue subpoenas compelling the attendance and testimony of witnesses and subpoenas duces tecum and may request the Attorney General to bring an action to enforce any subpoena issued under this paragraph. The district courts of the United States shall have jurisdiction to enforce such subpoenas and impose sanctions.".

SEC. 810. CONGRESSIONAL REVIEW.

Section 25(a)(4) (7 U.S.C. 136w(a)(4)) is amended to read as follows:

"(4) CONGRESSIONAL REVIEW OF REGULATIONS.—Simultaneously with the promulgation of any rule or regulation under this Act, the Administrator shall transmit a copy thereof to the Secretary of the Senate and the Clerk of the House of Representatives. The rule or regulation shall not become effective until the passage of 60 calendar days after the rule or regulation is so transmitted.".

SEC. 811. REVIEW OF REGULATIONS.

Section 16 (7 U.S.C. 136n) is amended by adding at the end thereof the following:

"(e) REVIEW OF REGULATIONS.—

"(1)(A) Any regulation issued under this Act and first published in the Federal Register in final form after the effective date of the Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1986 shall be reviewable only as provided by this subsection. Any person may obtain judicial review of the regulation by filing a petition for review in the United States court of appeals for the circuit wherein the person resides or has its principal place of business or in the United States Court of Appeals for the District of Columbia Circuit. Any petition under this paragraph for review of a regulation shall be filed within 120 days after the date of promulgation of the regulation as designated by the Administrator in the Federal Register.

"(B) Any refusal by the Administrator of a petition to modify or rescind a regulation issued under this Act shall be reviewable only as provided by this subsection. Any person may obtain judicial review of the refusal by filing a petition for review in the United States court of appeals for the circuit wherein the person resides or has its principal place of business or in the United States Court of Appeals for the District of Columbia Circuit. Any such petition for review of a refusal to modify or rescind a regulation shall be filed within 120 days after such refusal.

"(C) The scope of review under subparagraph (A) or (B) shall be as specified in section 706 of title 5, United States Code. The commencement of a proceeding under subparagraph (A) or (B), unless specifically ordered by the court to the contrary, shall not operate as a stay of the regulation.

"(2) A regulation issued by the Administrator or a refusal by the Administrator of a petition to modify or rescind a regulation issued under this Act shall not be subject to judicial review—

"(A) in any suspension, cancellation, or denial proceeding under this Act or in any appeal therefrom, or

"(B) in any proceeding under section 13 or 14(a), or subsection (c), or in any appeal therefrom except on request of a person who, as an agricultural producer, is adversely affected by such action.

"(3) If a person who is a party to a proceeding described in subparagraph (A) or (B) of paragraph (2) that is based on a regulation issued under this Act petitions the Administrator to modify or rescind such regulation, the application of such regulation in the proceeding shall be stayed until the Administrator issues a final decision on the petition.

"(4) As used in this subsection, the term 'agricultural producer' means a nongovernmental producer of agricultural commodities who (A) uses or supervises the use of any pesticide for the production of such commodities on property owned or rented by the producer or the producer's employer, or (B) without compensation other than the trading of personal services, assists another agricultural producer with the application of pesticides on such producer's land.".

SEC. 812. DELEGATION AND COOPERATION.

Section 22 (7 U.S.C. 136t) is amended by adding at the end the following:

"(c) EFFECT ON CERTAIN OTHER LAWS.—The Administrator, in exercising any authority under this Act, shall not, for the purposes of section 4(b)(1) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653(b)(1)), be deemed to be exercising statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health to the extent that the Administrator and the Secretary of Labor by agreement specify that such exercise of authority by the Administrator under this Act is not to be considered an exercise of statutory authority for purposes of section 4(b)(1). To ensure the safety and health of workers, the Administrator and the Secretary of Labor shall seek to reach such agreements and to coordinate the exercise of their statutory authority.".

SEC. 813. INDEMNITY REPORT BY EPA.

Section 15 (7 U.S.C. 136m) is amended by adding at the end the following:

"(c) REPORT.—If the Administrator takes an action that under subsection (a) requires the payment of indemnification, the Administrator shall report to the Committee on Agriculture of the House of Representatives, the Committee on Agriculture, Nutrition, and Forestry of the Senate, and the Committees on Appropriations of the House of Representatives and the Senate—

"(1) the action taken that requires the payment of indemnification,

"(2) the reasons for taking such action,

"(3) the estimated cost of the payment,

"(4) the effect such payment would have on the budget of the Administrator to implement this Act without a specific additional appropriation for the payment, and

"(5) a request for the appropriation of funds for such payment.".

SEC. 814. GROUNDWATER AUTHORITY.

(a) DEFINITIONS.—Section 2 (7 U.S.C. 136) (as amended by section 802) is amended by adding at the end the following:

"(ll) GROUNDWATER.—The term 'groundwater' means water below the land surface in a zone of saturation.

"(mm) RELIABLE ANALYTICAL DATA.—The term 'reliable analytical data' means scientific information that verifies the presence of a pesticide in a groundwater sample and that is of a reliable scientific quality according to generally recognized standards and good laboratory practices for sampling and analysis of pesticides in groundwater.

"(nn) POTENTIAL SOURCES OF DRINKING WATER.—The term 'potential sources of drinking water' means the portion of an aquifer or aquifer system that contains sufficient quantity and is of sufficient quality to supply potable water to a drinking water well, taking into account (1) geographic considerations and depth to drinking water, (2) any State criteria or guidelines for siting new wells established under section 1428 of the Public Health Service Act or other State authority, and (3) shallow groundwater that is not potential drinking water.

"(oo) DRINKING WATER WELL.—The term 'drinking water well' means a well or spring currently supplying water for human consumption.

"(pp) GROUNDWATER SAMPLING POINT.—The term 'groundwater sampling point' means a public or community water supply, a private water supply, a spring, or a monitoring well or other groundwater source if the well or source is reasonably designed and of adequate depth to permit the collection of representative groundwater samples.

"(qq) GROUNDWATER RESIDUE GUIDANCE LEVEL.—The term 'groundwater residue guidance level' means a groundwater residue guidance level established under section 1412(f) of the Public Health Service Act.".

(b) AUTHORITY.—The Act (as amended by section 202) is amended by adding after section 31 the following:

"SEC. 32. PROTECTION OF GROUNDWATER.

(a) "NOTIFICATION.—

"(1) REQUIREMENT.—When a registrant of a pesticide obtains or learns of reliable analytical data that a pesticide has—

"(A) been detected at any groundwater sampling point and no groundwater residue guidance level has been issued for the pesticide under subsection (e),

"(B) has been detected at a groundwater sampling point at a concentration higher than known previously to have been reported to the Administrator at such groundwater sampling point, or

"(C) has been detected at any groundwater sampling point at a concentration at or greater than 20 percent of the groundwater residue guidance level issued for the pesticide under subsection (e),

the registrant shall file a report containing such information within 15 working days with both the Administrator, the State in which the groundwater sampling point is located, and the owner of the property in which the groundwater sampling point is located, if known.

"(2) CONTENT OF REPORT.—A report required by paragraph (1) for detection of a pesticide shall contain information known to the registrant of the pesticide on the level of detection of the pesticide, the frequency of detection of the pesticide, location (including depth) where the pesticide was detected, date of the pesticide detection, well construction if the pesticide was detected in a well, soil type where the pesticide was detected, and analytical method used to make the pesticide detection, including information on the precision, accuracy, and limits of the method of detection and any quality assurance and control procedures used in the pesticide detection.

"(b) REVIEW FOR FURTHER ACTION.—Upon receiving information of a detection of a pesticide at any groundwater sampling point, the Administrator shall promptly review the information to determine the reliability of the detection and to determine whether further action should be taken to protect groundwater.

"(c) MONITORING.—

"(1) CONFIRMATION OF DETECTIONS.—If the Administrator receives reliable, analytical data indicating that—

"(A) a pesticide has been detected in a drinking water well,

"(B) the concentration of the pesticide equals or exceeds any groundwater residue guidance level issued under subsection (d) for that pesticide, and

"(C) the presence of the pesticide in the drinking water well may be the result of use of the pesticide in accordance with the labeling on the pesticide or widespread and commonly recognized practices involving the pesticide,

the Administrator may require the registrant of the pesticide detected to conduct such analysis of samples of groundwater from the drinking water well involved as is necessary to determine whether the pesticide is present at a concentration that equals or exceeds such groundwater residue guidance level. A monitoring requirement imposed under this paragraph shall be completed within 90 days of notice to the registrant. The procedures of section 3(c)(2)(B) shall govern any monitoring requirement imposed under this paragraph.

"(2) REQUIREMENT FOR MONITORING.—If the Administrator determines that additional data on the presence of a pesticide in groundwater are required to maintain in

effect an existing registration of the pesticide, the Administrator may, under section 3(c)(2)(B), require the registrant of the pesticide to conduct groundwater monitoring. The Administrator shall consult with the Secretary of Agriculture, the heads of other appropriate Federal agencies, and the States concerning the design and scope of monitoring requirements imposed under this paragraph. The design and the scope of the monitoring requirement should take into account all relevant information, including the magnitude and frequency of the detection of the pesticide involved, pattern of pesticide use and soil types involved in the detection, physical and chemical properties of the pesticide, rainfall patterns, well construction if the pesticide was detected in a well, rates of degradation, reliability and analytical accuracy of the detection, and results of State or other sponsored monitoring. To the extent feasible, monitoring should be at representative geographical and hydrogeological areas associated with locations and conditions of concern as determined by the Administrator.

"(3) JUDICIAL REVIEW.—Monitoring requirements imposed under paragraph (2) shall be subject to judicial review under section 16.

"(d) RESPONSE TO GROUNDWATER CONTAMINATION.—

"(1) REQUIREMENT.—If the Administrator determines that a pesticide is present in a drinking water well at a concentration that exceeds the final groundwater residue guidance level applicable to the pesticide and that the presence of the pesticide in the drinking water well may be the result of use of the pesticide in accordance with the labeling on the pesticide or as a result of widespread and commonly recognized practice involving the pesticide, the Administrator shall notify the State in which the drinking water well is located of the Administrator's determination and shall provide it with all information relevant to the determination. Such State shall take action within 90 days of such notification to prevent potential adverse effects on human health and the environment from such pesticide. In taking such action, the State shall take appropriate action regarding the sale or use of the pesticide detected at such drinking water well to bring and retain concentrations of the pesticide at such drinking water well at or below the final groundwater residue guidance level applicable to the pesticide.

"(2) ACTION BY THE ADMINISTRATOR.—

"(A) If a State does not have the authority to take the action required by paragraph (1) with respect to a pesticide detected in a drinking water well or fails to take such action within the time period prescribed by such paragraph, the Administrator shall take appropriate action under this Act to bring and retain the concentration of the pesticide detected at such drinking water well at or below the final groundwater residue guidance level applicable to the pesticide and may take such other action under this Act as the Administrator deems necessary to prevent potential adverse effects on human health and the environment from the pesticide. If the Administrator takes such action, the Administrator shall publish notice of the action in the Federal Register and take appropriate steps to inform the registrant of the pesticide involved, potentially affected persons, and interested members of the public. Such notice shall specify the findings and conclusions upon which such action was based.

"(B) Any person adversely affected by action taken under subparagraph (A) or the failure of the Administrator to take such action may request an expedited hearing, under the procedures in section 6(c)(2), to determine whether the action was taken in accordance with subparagraph (A) or whether the Administrator was required to take action. Such a hearing shall be held and a determination made within 75 days from the date of the receipt of the request for the hearing.

"(C) The Administrator shall provide reasonable procedures for petitions to modify or terminate an action taken under subparagraph (A) when the drinking water well involved no longer has the pesticide in a concentration that exceeds the applicable groundwater residue guidance level and will likely remain below such level.

"(3) JUDICIAL REVIEW.—Judicial review of actions taken under this subsection shall be governed by section 16.

"(e) REGISTRATION AMENDMENTS.—

"(1) REQUIREMENT.—

"(A)(i) After reviewing reliable analytical data, the Administrator shall determine whether there is a reasonable likelihood that the groundwater residue guidance level for a pesticide will be exceeded in drinking water wells in different localities. If the Administrator determines that there is a reasonable likelihood that the groundwater residue guidance level for a pesticide will be exceeded in drinking water wells in different localities, the Administrator shall promptly require amendments to the registration of the pesticide with respect to which the finding was made that are reasonably necessary to ensure that use of the pesticide in accordance with the amended registration will not cause the final groundwater residue guidance level involved in the finding to be exceeded in drinking water wells. The Administrator shall make any such determination public.

"(ii) If the Administrator proposes to require registration amendments under clause (i) for a pesticide, the Administrator shall notify the registrant of the pesticide of such amendments and shall publish notice of such proposal in the Federal Register. Such notice shall include the Administrator's determination whether the presence of the pesticide in drinking water wells appears to have been the result of the use of the pesticide in accordance with its labeling or the result of widespread and generally recognized practice.

"(B) After reviewing reliable analytical data, the Administrator shall determine whether there is a reasonable likelihood that the groundwater residue guidance level for a pesticide will be exceeded in potential drinking water in different localities. If the Administrator determines that there is a reasonable likelihood that the groundwater residue guidance level for a pesticide will be exceeded in potential drinking water in different localities, the Administrator shall promptly require amendments to the registration of the pesticide with respect to which the finding was made that are reasonably necessary to ensure that use of the pesticide in accordance with the amended registration will not cause the final groundwater residue guidance level involved in the finding to be exceeded in potential drinking water. If the Administrator proposes to require registration amendments under this subparagraph for a pesticide, the Administrator shall notify the registrant of the pesticide of such amendments. In establishing such amendments, the Administrator shall—

"(i) meet the procedural requirements of subparagraph (A)(ii),

"(ii) take into account information submitted by States on land or groundwater use classification or other governmental actions that could affect when groundwater may be used for drinking water, and

"(iii) consider the views of the Secretary of Agriculture, the heads of other appropriate Federal agencies, and States as required in paragraph (2).

"(2) CONSULTATION WITH STATES.—In taking action under paragraph (1), the Administrator shall consult with the Secretary of Agriculture and the State where the pesticide involved has been detected in any groundwater sampling point and each other State in which there is significant use of the pesticide. The Administrator shall notify such State of the Administrator's determination that there is a reasonable likelihood that a groundwater residue guidance level will be exceeded and shall, in accordance with section 10(h), provide the State with all information relevant to this determination. Each State that is notified under this paragraph shall promptly provide the Administrator with information that is relevant to taking action under paragraph (1) and shall make recommendations with respect to any proposed registration amendments.

"(3) SCOPE OF AMENDMENTS.—

"(A) Amendments to the registration of a pesticide under paragraph (1) may include—

"(i) limitations on the purposes for and locations at which the pesticide may be used, considering factors such as environmentally sensitive areas and conditions,

"(ii) limitations on the rate at which the pesticide is applied,

"(iii) limitations on the time or frequency of pesticide use,

"(iv) limitations on the method of pesticide application, storage, handling, or disposal,

"(v) reporting or other requirements, including label changes or changes in classification,

"(vi) requirements for the training or certification of pesticide applicators or other persons using the pesticide,

"(vii) required site specific responses, or

"(viii) any other requirement to ensure that the applicable groundwater residue guidance level will not be exceeded.

"(B) Amendments to the registration of a pesticide under paragraph (1) should, to the extent feasible, be directed to the same or similar use of the pesticide, same or similar geographical and hydrogeological areas, and other similar conditions that led to the determination under subparagraph (A) or (B) of paragraph (1).

"(C) In taking regulatory action under paragraph (1), the Administrator may use recommendations made by a State under paragraph (2).

"(D) In requiring amendments to the registration of a pesticide under paragraph (1), the Administrator shall consider the effect of any voluntary actions by registrants or other persons, including actions by a State, to prevent the groundwater residue guidance level involved from being exceeded and to comply with other environmental laws.

"(4) PROCEDURE.—Registration amendments under paragraph (1) shall be imposed in accordance with the procedural requirements of this Act.

"(f) INFORMATION ON PESTICIDES IN GROUNDWATER.—The Administrator may collect and make available through a public information file information concerning the detection of pesticides in any groundwater sampling point. The file may, among other

things, summarize for each pesticide that has been detected in groundwater, based on reliable analytical data, whether the pesticide has been detected at a concentration that exceeds the applicable groundwater residue guidance level and whether the presence of the pesticide in groundwater appears to have been caused by the use of the pesticide in compliance with this Act.

"(g) TECHNICAL ASSISTANCE TO STATES.—The Administrator shall provide technical information to States to assist in implementing this section. Subject to section 10(h), the technical information provided respecting a pesticide shall include data on the toxicity, environmental fate, or physical or chemical characteristics of the pesticide, predictive modeling, exposure and other relevant subjects. In addition, the Administrator shall provide information, to the extent reasonably available, on alternative methods of pest control and on agricultural or other management practices that could minimize the presence of pesticides in groundwater.

"(h) SPECIAL REVIEW.—Upon receiving reliable analytical data that a pesticide has been detected above the applicable groundwater residue guidance level but not in a drinking water well or potential drinking water, the Administrator may initiate a public interim administrative review under section 3(c)(8) to determine whether the pesticide may cause unreasonable adverse effects on the environment from such use.

"(i) EFFECT ON OTHER PROVISIONS.—Nothing in this section shall limit the authority of the Administrator or of any State under other provisions of this Act or under any other law.".

(c) GROUNDWATER RESIDUE GUIDANCE LEVEL.—Section 1412 of the Public Health Service Act is amended by adding at the end the following:

"(f)(1) The Administrator, on the Administrator's own initiative, may issue a groundwater residue guidance level for a pesticide registered under the Federal Insecticide, Fungicide, and Rodenticide Act. The Administrator shall issue a groundwater residue guidance level for a pesticide whenever the Administrator registers or reregisters a pesticide under such Act if the Administrator determines that the pesticide has the potential to leach into groundwater. In addition, the Administrator shall issue a groundwater residue guidance level for a pesticide if—

"(A) based on reliable analytical data, the pesticide has been detected at groundwater sampling points in 3 different geographical areas,

"(B) based on reliable analytical data, the pesticide has been detected in a drinking water well or wellfield that serves a population of over 500 people, or

"(C) a Federal agency or a State petitions the Administrator to set a groundwater residue guidance level for the pesticide.

"(2)(A) If the Administrator has promulgated or promulgates a maximum contaminant level under subsection (b)(3) that applies to a pesticide, the groundwater residue guidance level required under paragraph (1) for the pesticide shall be set at such level within 30 days of being required under such subsection.

"(B) If a maximum contaminant level that would be applicable to a pesticide for which a groundwater residue guidance level is required by paragraph (1) has not been established under subsection (b)(3), the Administrator, in the Administrator's discretion, may use a health advisory level established under this Act in establishing such groundwater residue guidance level. The groundwater residue guidance level established by the Administrator for such pesticide shall reflect the level of the pesticide in drinking water at which no known or anticipated adverse effects on the health of persons occur, the need for an adequate margin of safety, the nature of the toxic effects caused by the pesticide, and the validity, completeness, and adequacy of data about the pesticide. If all required chronic, oncogenicity, reproduction, or teratogenicity data are absent or invalid for the pesticide, the groundwater residue guidance level for the pesticide shall be at the limit of detection. If any required chronic, oncogenicity, reproduction, or teratogenicity data are absent or invalid for the pesticide, the groundwater residue guidance level for the pesticide shall include an additional margin of safety that takes into account the absence of such data.

"(3)(A) Before issuing a final groundwater residue guidance level for a pesticide, the Administrator shall publish an interim groundwater residue guidance level for the pesticide in the Federal Register and allow public comment for at least 30 days. During the public comment period, the Administrator shall invite comment on the level involved from the Secretary of Agriculture and States.

"(B) If the Administrator is required under paragraph (1) to issue a groundwater residue guidance level for a pesticide and the groundwater residue guidance level is to be issued under paragraph (2)(B), the Administrator shall issue an interim groundwater residue guidance level for the pesticide within 30 days after the requirement to issue the groundwater residue guidance level takes effect.

"(C) Within 3 months after establishing an interim groundwater residue guidance level, the Administrator shall establish a final groundwater residue guidance level. Until a final groundwater residue guidance level is established under paragraph (1) for a pesticide, an interim groundwater residue guidance level established for the pesticide shall remain in effect.

"(4) The Administrator may revise a groundwater residue guidance level for a pesticide. The Administrator shall allow at least 30 days for public comment on any proposed revision.

"(5) An interim groundwater residue guidance level shall not be subject to judicial review before the expiration of 3 months after its issuance. Judicial review of any final groundwater residue guidance level or failure to establish an interim or final groundwater residue guidance level shall be governed by section 1448. A groundwater residue guidance level established under paragraph (2)(A) shall not be subject to judicial review.".

SEC. 815. WORKER HEALTH AND SAFETY.

Section 25 (7 U.S.C. 136w) is amended by adding at the end the following:

"(f) WORKER HEALTH AND SAFETY.—

"(1)(A) The Administrator, as soon as practicable, shall promulgate regulations that require the protection, as appropriate and necessary, of employees who mix, load, or apply pesticides and agricultural employees who work in pesticide-treated areas.

"(B) The Administrator shall promulgate regulations that provide for the training, as appropriate and necessary, of employees who mix, load, or apply pesticides. Any training requirement that may be established by the Administrator under this subparagraph shall not apply to any person who is required to receive the training described in subsection (d) or (e) of section 4.

"(C) For purposes of subparagraphs (A) and (B), the term 'employees' does not include employees occupationally exposed to pesticides or pesticide residues as a result of the use of pesticides on livestock or other animals.

"(2)(A) The Administrator shall promulgate regulations under paragraph (1) for employees not described in subparagraph (B) not later than 3 years after the date of enactment of the Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1986.

"(B) The Administrator shall provide a period of at least 6 months for comments on proposed regulations issued under paragraph (1) that apply to agricultural employees who mix, load, or apply pesticides or who work in pesticide-treated areas. Such regulations shall be promulgated not later than 2 years after the date of enactment of the Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1986.

"(3) Not later than 6 months after the date of the publication of the notice of proposed rulemaking issued for the regulations for employees described in paragraph (2)(B) to be promulgated under paragraph (1), the Secretary of Agriculture shall submit to the Administrator a report on the impact, cost, and effectiveness of such regulations on the agricultural community. The Secretary shall submit a copy of such report to Congress.

"(4) Simultaneously with the promulgation of regulations under paragraph (1), the Administrator shall transmit a copy of such regulations to the Secretary of the Senate and the Clerk of the House of Representatives. Such regulations may not become effective until the expiration of 120 days after the date such regulations are so transmitted.".

SECTION 816. ANTIMICROBIAL STANDARDS.

(a) GENERAL.—Section 3 (7 U.S.C. 136a) is amended by adding at the end thereof the following new subsection:

"(h) ANTIMICROBIAL STANDARDS.—

"(1) STANDARDS.—The Administrator shall—

"(A) establish efficacy standards for antimicrobial control agents (including disinfectants) used to control pest microorganisms that pose a threat to human health, including standards for disinfectants used in hospitals and other health care facilities,

"(B) conduct representative monitoring (including testing) of the compliance of the agents with the standards, and

"(C) implement an enforcement program under which the agents must comply with the standards or be prohibited from sale or distribution as an antimicrobial agent.

"(2) DEFINITION.—As used in paragraph (1), the term 'efficacy' means the capacity of an antimicrobial control agent (including a disinfectant) to produce the desired effect or the effectiveness of such an agent.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect 60 days after the date of enactment of this Act.

SEC. 817. AUTHORIZATION FOR APPROPRIATIONS.

Effective October 1, 1986, section 33 (7 U.S.C. 136y) (as redesignated by section 202(b)) is amended to read as follows:

"SEC. 33. AUTHORIZATION FOR APPROPRIATIONS.

"There is authorized to be appropriated to carry out this Act (other than sections 23(a) and 31) $78,363,500 for fiscal year 1987, of which not more than $13,735,500 shall be available for research under this Act,

$87,414,200 for fiscal year 1988, of which not more than $14,343,600 shall be available for research under this Act, $91,673,400 for fiscal year 1989, of which not more than $14,978,200 shall be available for research under this Act, $98,305,800 for fiscal year 1990, of which not more than $15,625,900 shall be available for research under this Act, and $106,808,700 for fiscal year 1991, of which not more than $16,300,100 shall be available for research under this Act.".

Subtitle B—Other Provisions

SEC. 821. LIABILITY FOR LAWFUL APPLICATION.

(a) PESTICIDE USE AND NO PRIVATE RIGHT OF ACTION.—(1) Liability under Federal environmental statutes for the costs of response to, or damage incurred with respect to, a release or threatened release into the environment of a pesticide shall, in any case where the application was in compliance with label instructions and applicable law, be imposed on the registrant or other responsible party and not on the agricultural producer unless the agricultural producer has acted negligently, recklessly, or with the intent to misuse such pesticide. There shall be a rebuttable presumption that the application of the pesticide was in compliance with label instructions and otherwise lawful. For purposes of the preceding sentence, the terms "damages", "response", "release", and "environment" shall have the meanings assigned them by the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and the term "Federal environmental statutes" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, the Clean Water Act, the Resource Conservation and Recovery Act, title XIV of the Public Health Service Act, and this Act. Neither this section nor any other provision of this Act shall be construed, interpreted or applied to preempt or, except as provided in this paragraph, displace liability under other Federal or State laws, whether statutory or common.

(2) Paragraph (1) shall not be construed as conferring a private right of action on any person for the purposes of this Act or any other Federal law.

(b) FIFRA PENALTIES.—An agricultural producer shall not be held liable in an action brought under section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act for civil penalties for a violation of section 12(a)(2)(G) of such Act unless the producer used the pesticide in a manner inconsistent with its labeling. Proof that the pesticide was used in a manner consistent with its label instructions shall create a rebuttable presumption that the agricultural producer did not violate such subsection.

(c) DEFINITION.—As used in this section, the term "agricultural producer" means a nongovernmental producer of agricultural commodities who (1) uses or supervises the use of any pesticide for the production of such commodities on property owned or rented by the producer or the producer's employer, or (2) without compensation other than the trading of personal services, assists another agricultural producer with the application of pesticides on such producer's land.

SEC. 822. EVALUATION BY THE COMPTROLLER GENERAL.

(a) EVALUATION.—The Comptroller General of the United States shall conduct an evaluation of the programs and activities authorized by the amendments to the Federal Insecticide, Fungicide, and Rodenticide Act made by this Act and shall make a final report of such evaluation to Congress no later than December 31, 1988. The Comptroller General shall include in such evaluation the effect that the Federal Insecticide, Fungicide, and Rodenticide Act, as amended by this Act, is having on the cost and availability of pesticides to farmers as well as other producers of food and fiber. Such evaluation shall include an analysis of the reregistration program under such Act and any program conducted by the Administrator of the Environmental Protection Agency under such Act relating to groundwater.

(b) RECORDS.—For the purpose of conducting program evaluations required under subsection (a), the Comptroller General, or the duly authorized representatives of the Comptroller General, shall have access to and the right to examine all documents, papers, records, data, pesticide study documentation, or other recorded information within the possession or control of the Administrator of the Environmental Protection Agency or within the possession or control of pesticide registrants subject to regulation under the Federal Insecticide, Fungicide, and Rodenticide Act. The Comptroller General and the representatives of the Comptroller General shall be subject to the same restrictions regarding the disclosure of trade secret information as are the employees of the Environmental Protection Agency.

SEC. 823. IR4 PROGRAM.

Section 2(c) of the Act of August 4, 1965 (7 U.S.C. 450i(c)), is amended by inserting before the first sentence after paragraph (2) the following: "The Secretary in making grants under paragraph (2)(B) shall provide support for the interregional project number 4 program (commonly referred to as the 'IR4 program').".

SEC. 824. PESTICIDE RISK RATING.

(a) STUDY.—Subject to subsection (b), the Administrator of the Environmental Protection Agency shall contract with the National Academy of Sciences to conduct a study to determine the feasibility of establishing an environmental risk rating for pesticides used in the production of agricultural commodities. Such risk rating shall take into consideration methods of application, chronic and acute toxicity, and anticipated losses to and persistence in the environment. In conducting the study, the National Academy of Sciences shall seek information and advice from recognized public and private sector scientists and provide opportunity for public comment on the preliminary findings relating to the development of a risk rating. The National Academy of Sciences shall report the findings of such study to the Administrator and to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate within 18 months after the date of the enactment of this Act.

(b) LIMITATION.—The study required by subsection (a) shall be conducted at such cost as the Administrator, in consultation with the National Academy of Sciences, may establish.

(c) CONTRACT AUTHORITY.—The authority of the Administrator to enter into contracts under this section shall be effective only to such extent or in such amounts as are provided in advance in appropriation Acts.

SEC. 825. STUDY OF NONAGRICULTURAL PESTICIDES.

The Administrator of the Environmental Protection Agency shall study and report to Congress within one year after the date of the enactment of this Act on the pesticide volume, use sites, and target insects for nonagricultural pesticides.

SEC. 826. DIOXIN STUDY.

The Administrator of the Environmental Protection Agency shall collect and analyze samples of human breast milk for residues of isomers of chlorinated dioxins and dibenzofurans. Not later than 2 years after the date of the enactment of this Act, the Administrator shall report to Congress the findings from the analysis of such samples.

SEC. 827. PESTICIDE DRIFT.

The Administrator of the Environmental Protection Agency, within 2 years after the date of enactment of this Act, shall report to the Committee on Agriculture of the House of Representatives and to the Committee on Agriculture, Nutrition, and Forestry of the Senate on the incidence and potential adverse effects on human health and the environment of the drift of pesticides from the site of application at the time of application.

SEC. 828. SURVEY OF NATURALLY OCCURRING AGENTS THAT ACT AS PESTICIDES.

The Administrator of the Environmental Protection Agency shall conduct a survey to determine what research has been, or is being, conducted to establish the extent to which agents that act as pesticides are manufactured by plants and thereby exist naturally in fruits, vegetables, grains, legumes, and oilseeds commonly consumed by persons in the United States. The Administrator shall provide a report on the findings of the survey to the Committee on Agriculture of the House of Representatives and to the Committee on Agriculture, Nutrition, and Forestry of the Senate not later than December 31, 1987, and shall release such findings to the public. The report shall include information on the extent to which such naturally occurring agents have been identified, the nature of such agents, and the extent to which such agents have been shown to be toxic, carcinogenic, or mutagenic.

SEC. 829. PESTICIDE RESISTANCE MANAGEMENT PROGRAM.

(a) PROGRAM.—The Administrator of the Environmental Protection Agency shall establish a Pesticide Resistance Management Program—

(1) to conduct research on pesticide resistance and pesticide resistance management techniques to control or reduce the development of pesticide resistance,

(2) to develop and demonstrate such management techniques, and

(3) in cooperation with the Secretary of Agriculture, to disseminate information obtained from the Program to appropriate entities, including growers and their organizations, manufacturers, pesticide advisors, pesticide applicators, State agriculture officials, and cooperative State extension services.

In establishing and conducting the Program the Administrator may, as appropriate, consult with the Science Advisory Panel established under section 25(d) of the Federal Insecticide, Fungicide, and Rodenticide Act.

(b) TRAINING REQUIREMENTS.—The Administrator may include training in pesticide resistance and pesticide resistance management techniques as part of the minimum standards established for commercial pesticide applicators by the Administrator under section 4(h) of the Federal Insecticide, Fungicide, and Rodenticide Act.

SEC. 830. STUDY.

The Administrator of the Environmental Protection Agency, in cooperation with the Commissioner of the Food and Drug Administration, shall conduct a thorough evaluation of the health effects of DDT and other

contamination of fish in Santa Monica Bay, California and in surrounding waters. The evaluation shall include an assessment of—

(1) the level of contamination of edible fish caught in the Bay and surrounding waters,

(2) the rate of consumption of contaminated fish from the Bay and surrounding waters by residents of Santa Monica and Los Angeles, California, and surrounding communities, and

(3) the health risks associated with the consumption of such contaminated fish.

The Administrator shall complete the evaluation within 6 months of the date of the enactment of this Act and shall report the results of the evaluation to the Congress.

TITLE IX—CLARIFYING AND TECHNICAL AMENDMENTS

SEC. 901. CLARIFYING AMENDMENTS.

(a) SECTION 3.—

(1) Section 3(a) (7 U.S.C. 136a(a)) (as amended by section 802(b)) is amended by adding at the end the following: "To the extent necessary to prevent unreasonable adverse effects on the environment, the Administrator may by regulation limit the distribution, sale, or use in any State of any pesticide that is not registered under this Act and that is not the subject of an experimental use permit under section 5 or an emergency exemption under section 18.".

(2) Section 3(d) (7 U.S.C. 136a(d)) is amended—

(A) in paragraph (1)(A), by striking out "on the initial classification", and

(B) in paragraph (1)(C), by striking out the colon preceding clause (i) and inserting in lieu thereof a period, by striking out clause (i), by striking out "(ii)", and by running in the material after "restricted use." so that the margin is the same as the margin of paragraph (1)(C).

(3) Section 3(c)(7)(A) (7 U.S.C. 136a(c)(7)(A)) is amended—

(A) by striking out "submit" each place it occurs and inserting in lieu thereof "submit or cite",

(B) by striking out "submission" and inserting in lieu thereof "submission or citation", and

(C) by striking out "submitted" and inserting in lieu thereof "submitted or cited".

(b) SECTION 4.—The last sentence of section 4(a)(1) (7 U.S.C. 136b(a)(1)) is amended by inserting "by regulation" after "may".

(c) SECTION 7.—Section 7(c) (7 U.S.C. 136e(c)) is amended—

(1) by striking out "shall inform the Administrator" and inserting in lieu thereof "shall, in accordance with regulations promulgated by the Administrator, submit to the Administrator a report",

(2) by striking out "of the" and inserting in lieu thereof "describing", and

(3) by striking out "information" and inserting in lieu thereof "report".

(d) SECTION 25.—Section 25(c) (7 U.S.C. 136w(c)) is amended—

(1) by inserting "or by regulation" after "hearing", and

(2) in paragraph (5), by striking out "prescribe regulations requiring" and inserting in lieu thereof "require".

SEC. 902. TECHNICAL AMENDMENTS.

(a) SECTION 2.—Section 2 (7 U.S.C. 136) is amended—

(1) in subsection (c), by striking out "if:" and inserting in lieu thereof "if—",

(2) in subsections (p)(2) and (u), by striking out "Health, Education, and Welfare" and inserting in lieu thereof "Health and Human Services",

(3) in subsection (q)(2)(A), by striking out "if:" and inserting in lieu thereof "if—",

(4) in subsection (q)(2)(C)(iii), by striking out ": Provided, That" and inserting in lieu thereof ", except that",

(5) by striking out in subsection (u) ": *Provided*, That" and inserting in lieu thereof ", except that", by striking out "(1)(a)", by striking out "or (b)", by striking out "(2) that" and inserting in lieu thereof "that", and by striking out "an article covered by clause (1) of this proviso" and inserting in lieu thereof "a new animal drug", and

(6) by striking out in subsection (ee) ": *Provided*, That the term" and inserting in lieu thereof ", except that the term", by striking out "or" before clause (4), by striking out ": *Provided further*, That the term also shall not include" and inserting in lieu thereof ", (5)", by striking out "or any use" and inserting in lieu thereof "or (6) any use", and by striking out ": *And provided further*, That after" and inserting in lieu thereof a period and "After".

(b) SECTION 3.—Section 3 (7 U.S.C. 136a) is amended—

(1) by striking out ": *Provided*, That such" in subsection (c)(1)(D)(i) and inserting in lieu thereof a period and "Such",

(2) by striking out the semicolons at the end of clauses (i), (ii), and (iii) of subsection (c)(1)(D) and inserting in lieu thereof a period, by striking out "except as" in subsection (c)(1)(D)(ii) and inserting in lieu thereof "Except as", and by striking out "after expiration" in subsection (c)(1)(D)(iii) and inserting in lieu thereof "After expiration",

(3) in subsection (c)(1)(D), by striking out "subsection (c)(2)(D) of this section" and inserting in lieu thereof "paragraph (2)(D)",

(4) in subsection (c)(1)(D)(ii), by striking out "subparagraph (D)(i) of this paragraph" and inserting in lieu thereof "clause (i)",

(5) in subsection (c)(1)(D)(iii), by striking out "subparagraphs (D)(i) and (D)(ii) of this paragraph" and inserting in lieu thereof "clauses (i) and (ii)",

(6) by striking out ": *Provided*, That the" in subsection (c)(2)(B)(iv) and inserting in lieu thereof a period and "The",

(7) in subsection (c)(2)(B)(v), by striking out "subsection (c)(1)(D) of this section" and inserting in lieu thereof "paragraph (1)(D) of this subsection",

(8) by striking out "subsection (c)(5) of this section" in subsection (c)(7) each place it occurs and inserting in lieu thereof "paragraph (5)" and by striking out ": *Provided*, That if" in subsection (c)(7)(A) and inserting in lieu thereof a period and "If",

(9) by striking out ", provided that if" in subsection (d)(1)(A) and inserting in lieu thereof a period and "If" and by striking out ": *Provided, however*, That the" in such subsection and inserting in lieu thereof a period and "The",

(10) in subsection (d)(1)(C)(ii), by amending the last sentence to read as follows: "Any such regulation shall be reviewable in accordance with section 16(e).", and

(11) by striking out ": *Provided*, That as" in subsection (f)(2) and inserting in lieu thereof a period and "As".

(c) SECTION 4.—Section 4 (7 U.S.C. 136b) is amended—

(1) in subsection (a)(1), by striking out ": *Provided, however*, That the" and inserting in lieu thereof a period and "The", and

(2) by striking out ": *Provided*, That such" in subsection (c) and inserting in lieu thereof a period and "Such".

(d) SECTION 5.—Section 5(g) (7 U.S.C. 136c(g)) is amended by striking out ": *Provided*, That such" and inserting in lieu thereof a period and "Such".

(e) SECTION 6.—Section 6 (7 U.S.C. 136d) is amended—

(1) in subsection (c), by striking out "Agency" each place it occurs and inserting in lieu thereof "Administrator",

(2) in subsection (c)(1), by running into the second sentence the undesignated paragraph in that subsection,

(3) in subsection (c)(3), by striking out "(i)" and inserting in lieu thereof "(A)" and by striking out "(ii)" and inserting in lieu thereof "(B)", and

(4) in subsection (e)(2), by striking out ": *Provided*, That the" and inserting in lieu thereof a period and "The".

(f) SECTION 10.—Section 10 (7 U.S.C. 136h) is amended—

(1) by striking out ": *Provided*, That the" in subsection (d)(1) and inserting in lieu thereof a period and "The",

(2) by striking out ": *Provided further*, That this" in subsection (d)(1) and inserting in lieu thereof a period and "This", and

(3) by striking out ": *Provided*, That where" in subsection (d)(3) and inserting in lieu thereof a period and "Where".

(g) SECTION 12.—Section 12(a)(2)(F) is amended by striking out ": *Provided*, That it" and inserting in lieu thereof a period and "It".

(h) SECTION 13.—Section 13 (7 U.S.C. 136k) is amended—

(1) in subsection (b), by taking the last sentence in paragraph (3) and inserting it after such paragraph as a full measure sentence, and

(2) in subsection (c), by striking out ": *Provided*, That upon" and inserting in lieu thereof a period and "On".

(i) SECTION 15.—Section 15(a) (7 U.S.C. 136m(a)) is amended by striking out "(i)" and "(ii)".

(j) SECTION 16.—Subsection (a) of section 16 (7 U.S.C. 136n) is amended to read as follows:

"(a) DISTRICT COURT REVIEW.—Except as otherwise provided in this Act, the refusal of the Administrator to cancel or suspend a registration or to change a classification not following a hearing and other final actions of the Administrator not committed to agency discretion by law are judicially reviewable by the district courts of the United States.".

(k) SECTION 17.—Section 17 (7 U.S.C. 136o) is amended—

(1) by striking out ": *Provided*, That the" in subsection (c) and inserting in lieu thereof a period and "The", and

(2) by striking out ": *And provided further*, That all" in subsection (c) and inserting in lieu thereof a period and "All".

(l) SECTION 18.—The heading for section 18 (7 U.S.C. 136p) is amended by inserting "AND STATE" after "FEDERAL" and by running in the second sentence after the first sentence.

(m) SECTION 19.—Section 19(a) (7 U.S.C. 136q(a)) is amended by striking out "canceled under section 6(c)" and inserting in lieu thereof "suspended under section 6(c) and canceled".

(n) SECTION 21.—Section 21 (7 U.S.C. 136s) is amended—

(1) by inserting "SECRETARY OF AGRICULTURE.—" before "The" in subsection (a),

(2) by inserting "VIEWS.—" after "(b)", and

(3) by inserting "NOTICE.—" after "(c)".

(o) SECTION 24.—Section 24 (7 U.S.C. 136v) is amended—

(1) by inserting "STATE REGULATION.—" after "(a)".

(2) by inserting "UNIFORMITY.—" after "(b)", and

(3) by inserting "ADDITIONAL USES.—" after "(c)".

(p) SECTION 25.—Section 25 (7 U.S.C. 136w) is amended—

(1) in subsection (a)(3), by striking out "Committee on Agriculture and Forestry" and inserting in lieu thereof "Committee on Agriculture, Nutrition, and Forestry", and

(2) in subsection (e), by striking out ": *Provided*, That whenever" and inserting in lieu thereof a period and "Whenever".

(q) SECTION 26.—Section 26 (7 U.S.C. 136w-1) is amended—

(1) by inserting "IN GENERAL.—" after "(a)" in subsection (a),

(2) by inserting "SPECIAL RULES.—" after "(b)" in subsection (b),

(3) by inserting "ADMINISTRATOR.—" after "(c)", and

(4) in subsection (a)(1), by striking out "; *Provided*, That the" and inserting in lieu thereof ", except that the".

(r) SECTION 27.—Section 27 (7 U.S.C. 136w-2) is amended—

(1) by inserting "REFERRAL.—" after "(a)",

(2) by inserting "NOTICE.—" after "(b)", and

(3) by inserting "CONSTRUCTION.—" after "(c)".

SEC. 903. TABLE OF CONTENTS AMENDMENTS.

The table of contents contained in section 1(b) (7 U.S.C. prec. 121) is amended—

(1) by striking out the item relating to section 2(e) and inserting in lieu thereof the following:

"(e) Applicator.
"(1) Commercial applicator.
"(2) Private applicator.
"(3) Certified applicator.
"(4) Under the direct supervision of a certified applicator.";

(2) by adding at the end of the items relating to section 2 the following:

"(ff) Outstanding data requirement.
"(1) In general.
"(2) Factors.
"(gg) Antimicrobial.
"(hh) Pesticide testing facility.
"(ii) Importing country.
"(jj) Pesticide dealer.
"(kk) To distribute or sell.";

(3) by striking out the item relating to section 3(a) and inserting in lieu thereof the following:

"(a) Requirement of registration.";

(4) by striking out the item relating to section 3(c)(8) and inserting in lieu thereof the following:

"(8) Public interim administrative review.
"(A) In general.
"(B) Criteria for initiating a public interim administrative review.
"(C) Review requirement.
"(D) Prereview notice procedures.
"(E) Notice.
"(F) Review procedure.
"(G) Judicial review.";

(5) by adding at the end of the items relating to section 3(c) the following:

"(9) Preregistration access to data.";

(6) by amending the item relating to section 3(g) to read as follows:

"(g) Priority list and data requirements for inert ingredients.
"(1) Establishment of list.
"(2) Publication of list.
"(3) Judicial review.
"(4) Number of ingredients.
"(5) Additional data.
"(6) Evaluation.
"(7) Construction.";

(7) by inserting at the end of the items relating to section 3 the following:

"(h) Antimicrobial standards.
"(1) Definition.
"(2) Standards.".
"Sec. 3A. Reregistration of registered pesticides.
"(a) General rule.
"(b) Special authorities of Administrator.
"(1) Guidelines.
"(2) Monitoring.
"(3) Suspensions and penalties.
"(c) Reregistration phases.
"(d) Phase one.
"(1) Priority for reregistration.
"(2) Reregistration lists.
"(3) Judicial review.
"(4) Notice to registrants.
"(e) Phase two.
"(1) In general.
"(2) Notice of intent to seek or not to seek reregistration.
"(3) Missing or inadequate data.
"(4) Time periods.
"(5) Cancellation and removal.
"(f) Phase three.
"(1) Information about studies.
"(2) Time periods.
"(3) Cancellation.
"(g) Phase four.
"(1) Independent review and identification of outstanding data requirements.
"(2) Time periods.
"(h) Phase five.
"(1) Data review.
"(2) Reregistration and other actions.
"(i) Compensation of data submitter.
"(j) Fees.
"(1) Initial fee for food or feed pesticide active ingredients.
"(2) Final fee for food or feed pesticide active ingredients.
"(3) Fees for other pesticide active ingredients.
"(4) Reduction or waiver of fees for minor use and other pesticides.
"(5) Other fees.
"(6) Apportionment.
"(k) Exemption of certain registrants.
"(l) Reregistration fund.
"(m) Judicial review.";

(8) by adding at the end of the items relating to section 4 the following:

"(d) Provisions regarding commercial applicators.
"(e) Provisions regarding private applicators.
"(f) Recertification and reregistration.
"(g) Training material.
"(h) Minimum standards for trainers and training programs.
"(i) Privately administered training programs.
"(j) Enforcement officer training.
"(k) Separate standards.
"(l) State agency defined.";

(9) by striking out the items relating to section 6(a)(1) and 6(a)(2);

(10) by striking out the item relating to section 6(b) and inserting in lieu thereof the following:

"(b) Cancellation and change in classification or labeling.
"(1) Notice of cancellation or change in classification.
"(2) Hearing.
"(3) Factors.
"(4) Label changes.";

(11) by amending the item relating to section 6(d) to read as follows:

"(d) Public hearings.";

(12) by striking out the item relating to section 6(f) and inserting in lieu thereof the following:

"(f) Hearing procedures after public interim administrative review.
"(1) General rule.
"(2) Request for hearing.
"(3) Procedures.
"(g) General provisions.
"(1) Voluntary cancellation
"(2) Publication of notice.
"(3) Existing stocks.
"(4) Additional information.
"(h) Suspension and cancellation of registration based on false or invalid data.
"(1) Notice.
"(2) Invalid data.
"(3) False data.
"(4) Hearing.
"(i) Judicial review.";

(13) by adding at the end of the items relating to section 7 the following:

"(e) Public right to know.
"(f) Information requests.";

(14) by striking out the items relating to section 8 and inserting in lieu thereof the following:

"Sec. 8. Records.
"(a) Authority to require records.
"(b) Limitations.
"(c) Records of applicators.
"(d) Records of pesticide dealers.
"(e) Access.
"(f) Information for employees.";

(15)(A) by amending the item relating to section 9(a) to read as follows:

"(a) Authority to enter, inspect, and copy.";

and

(B) by adding at the end of the items relating to section 9 the following:

"(d) Procedure.
"(e) Coordination.";

(16) by adding at the end of the items relating to section 10 the following:

"(h) Data disclosure to States.
"(1) In general.
"(2) Action for just compensation.
"(3) Required disclosure.";

(17) by striking out the items relating to section 11;

(18) by adding at the end of the items relating to section 12 the following:

"(c) Acts of officers, agents, etc.";

(19) by adding at the end of the items relating to section 14(a) the following:

"(6) Subpoenas.";

(20) by striking out the item relating to section 14(b)(4);

(21) by adding at the end of the items relating to section 15 the following:

"(c) Report.";

(22) by adding at the end of the items relating to section 16 the following:

"(e) Review of regulations.";

(23) by striking out the items relating to subsections (a) and (b) of section 17 and inserting in lieu thereof the following:

"(a) Pesticides and devices intended for export.
"(1) Violations.
"(2) Restricted use or unregistered pesticides.
"(3) Notification specifications.
"(4) Labels.
"(5) Records.
"(b) Notices of regulatory action furnished to foreign governments.
"(1) Issuance.
"(2) Contents.";

(24) by amending the item relating to section 18 to read as follows:

"Sec. 18. Exemption of Federal and State agencies.";

(25) by adding below the item relating to section 21 the following:

"(a) Secretary of Agriculture.
"(b) Views.
"(c) Notice.";
(26) by adding at the end of the items relating to section 22 the following:
"(c) Effect on certain other laws.";
(27) by adding below the item relating to section 24 the following:
"(a) State regulation.
"(b) Uniformity.
"(c) Additional uses.";
(28) by adding at the end of the items relating to section 25(a) the following:
"(4) Congressional review of regulations.";
(29) by adding at the end of the items relating to section 25 the following:
"(e) Peer review.
"(f) Worker health and safety.";
(30) by adding below the item relating to section 26 the following:
"(a) In general.
"(b) Special rules.
"(c) Administrator.";
(31) by adding below the item relating to section 27 the following:
"(a) Referral.
"(b) Notice.
"(c) Construction.";
and
(32) by striking out the item relating to section 31 and inserting in lieu thereof the following:
"Sec. 31. Collection, dissemination, and use of data.
"(a) Data systems.
"(b) Data retrieval.
"(c) Index.
"(d) Report.
"(e) Confidentiality.
"(f) Authorization.
"Sec. 32. Groundwater authority.
"(a) In general.
"(b) Use of other authorities.
"(c) Consultation with States.
"(d) Consultation with Secretary of Agriculture.
"Sec. 33. Authorization for appropriations.".

TITLE X—EFFECTIVE DATE

SEC. 1001. EFFECTIVE DATE.

Except as otherwise provided in this Act, the amendments made by this Act shall take effect upon the expiration of 60 days after the date of enactment of this Act.

TITLE XI—TOLERANCES AND INTERNATIONAL COOPERATION

SEC. 1101. TOLERANCES FOR AGRICULTURAL COMMODITIES.

(a) REVOCATIONS AND SUSPENSIONS.—Section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a) is amended by adding at the end the following:
"(p)(1)(A) If the registration of each pesticide containing a specific active or inert ingredient registered for use on a particular raw agricultural commodity—
"(i) has been cancelled by the Administrator under the Federal Insecticide, Fungicide, and Rodenticide Act,
"(ii) has voluntarily been cancelled under such Act, or
"(iii) has voluntarily been withdrawn under such Act,
due in whole or in part to risks to humans, the Administrator, not later than 60 days after the effective date of such cancellation or after receipt of information of such withdrawal, shall revoke any tolerance established under subsection (b) for residues of such pesticide chemical in or on such commodity or any exemption from the need for such tolerance established under subsection (c). In revoking a tolerance or an exemption from a tolerance, the procedures required under section 553 of title 5, United States Code, shall be used.
"(B) The effective date of a revocation under subparagraph (A) may be delayed to permit distribution in commerce of food that bears residues of the active or inert ingredient as the result of—
"(i) the use of the cancelled pesticide before the date of its cancellation,
"(ii) the use of existing stocks of such pesticide as authorized under the order cancelling the registration of the pesticide, or
"(iii) unavoidable residual environmental contamination.
"(2) If the registration of each pesticide containing a specific active or inert ingredient registered for use on a particular raw agricultural commodity has been suspended by the Administrator under the Federal Insecticide, Fungicide, and Rodenticide Act due in whole or in part to risks to humans, the Administrator, not later than 60 days after the effective date of such suspension, shall suspend any tolerance established under subsection (b) for residues of such pesticide chemical in or on such commodity or any exemption from the need for such tolerance established under subsection (c). The effective date of such suspension may be delayed to permit distribution in commerce of food that bears residues of the active or inert ingredient as the result of—
"(A) the use of the suspended pesticide before the date of its suspension,
"(B) the use of existing stocks of such pesticide as authorized under the order suspending the registration of the pesticide, or
"(C) unavoidable residual environmental contamination.
In suspending a tolerance or an exemption from a tolerance, the procedures required under section 553 of title 5, United States Code, shall be used. The suspension of a tolerance or an exemption from a tolerance for a pesticide chemical shall be effective as long as the registration of the pesticide to which the tolerance or exemption is applicable is suspended under the Federal Insecticide, Fungicide, and Rodenticide Act. If the registration of the pesticide ceases to be suspended and is not cancelled under such Act, the Administrator shall rescind any such suspension of a tolerance or exemption.
"(3) At the time the Administrator makes a determination under section 3A(h)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act regarding an ingredient of a pesticide, any tolerance established under subsection (b) for residues of a pesticide chemical that is or contains such ingredient or any exemption from the need for such a tolerance established under subsection (c) shall be reassessed and such tolerance or exemption shall be established, amended, or revoked as necessary.".
(b) PROCEDURE.—Section 408(m) of such Act (21 U.S.C. 346a(m)) is amended by striking out "The" and inserting in lieu thereof "Except as provided in subsection (p), the".
(c) NATIONAL UNIFORMITY.—The Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) is amended by adding after section 412 the following new section 413:

"FOOD PRODUCTION AND MARKETING UNIFORMITY

"SEC. 413. (a) INTENT.—It is the intent of Congress to assure a safe and reasonably priced food supply for consumers. In order to achieve this goal, it is declared to be the express intent of Congress to require national uniformity in the regulation of the levels of residues of pesticides in or on food in order to permit national marketing of all food products without jurisdictional barriers.
"(b) NATIONAL UNIFORMITY.—(1) Except as provided in subsections (e) and (h), no State or political subdivision thereof may establish, continue in effect, or enforce any requirement or prohibition that—
"(A) directly or indirectly establishes a permissible level for a residue of a pesticide in or on food, if such a level has been established under a Federal law or a regulation or other enforcement requirement issued thereunder, and
"(B) is not identical with the requirements or prohibitions of such Federal law and of the regulations and enforcement requirements issued thereunder if the use of the pesticide resulting in the residue is registered with the Administrator of the Environmental Protection Agency on the basis of data meeting the requirements of paragraph (2) of this subsection or if the use of the pesticide resulting in the residue has not been registered with the Administrator, or has been registered with the Administrator on the basis of data meeting the requirements of paragraph (2) of this subsection and later cancelled or suspended, and the permissible level for the residue has been established or reaffirmed by the responsible Federal official on or after the date of enactment of this subsection.
"(2) For purposes of this subsection, a pesticide shall be deemed to be registered with the Administrator of the Environmental Protection Agency with respect to a use on the basis of data meeting the requirements of this paragraph if—
"(A) the initial registration or reregistration of the pesticide for that use was approved under section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act on or after April 25, 1985, or
"(B) the initial registration or reregistration of the pesticide for that use was approved under section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act prior to April 25, 1985, on the basis of data determined by the Administrator of the Environmental Protection Agency to meet the requirements of the provisions in 40 CFR part 158 that became effective on April 25, 1985.
"(c) CONCURRENT JURISDICTION.—(1) Any State or political subdivision thereof may exercise concurrent jurisdiction over the levels of residues of pesticides in or on food for the purpose of enforcing requirements or prohibitions identical with those established in such Federal law and in the regulations and interpretations issued thereunder.
"(2) For purposes of paragraph (1), the Federal official responsible for the implementation of any Federal law referred to in subsection (b)(1) shall—
"(A) cooperate with and provide relevant information to State and local officials engaged in the regulation of the levels of residues of pesticides in or on food; and
"(B) provide training and enter into contracts with such officials to facilitate more effective uniform national regulation of the levels of residues of pesticides in or on food, except that the authority to enter into contracts under this paragraph shall be to such extent or in such amounts as are provided in appropriations acts.
"(d) PETITION.—(1) Any State may petition the Federal official responsible for the implementation of a Federal law referred to in subsection (b)(1) to adopt by regulation as a Federal requirement or prohibition an existing or proposed state requirement or

prohibition relating to the levels of residues of pesticides in or on food.

"(2) Within 180 days after receipt of any such petition, such Federal official shall, after receiving comments from the Scientific Advisory Panel established under section 25(d) of the Federal Insecticide, Fungicide, and Rodenticide Act containing an evaluation of relevant data and risk to human health—

"(A) respond specifying the substantive action that is being taken on such petition; and

"(B) if such action includes the adoption of a new Federal requirement or prohibition, initiate the appropriate administrative proceeding to implement such action.

"(3)(A) If such Federal official fails to respond or to initiate any appropriate action within the 180 days specified in paragraph (2) of this subsection, the State which submitted the petition may, notwithstanding the provisions of subsection (b), establish and enforce within its own jurisdiction the requirement or prohibition which was the subject of the petition, as an interim requirement or prohibition.

"(B) Such an interim requirement or prohibition may be contested by any person under the declaratory judgment provisions of section 2201 of title 28, United States Code, on the ground that the interim requirement or prohibition does not meet the standards established in paragraphs (1) and (2) of subsection (e). In any such action, the State shall bear the burden of proving that such interim requirement or prohibition meets such standards.

"(C) Such an interim requirement or prohibition may remain in effect until—

"(i) the Federal official takes action on the petition and initiates any appropriate administrative proceeding pursuant to paragraph (2) of this subsection and such action rejects the interim requirement or prohibition, or

"(ii) a court determines that the interim requirement or prohibition has not been shown by the State to meet the standards established in paragraphs (1) and (2) of subsection (e),

whichever occurs earlier.

"(e) EXEMPTIONS.—Upon petition of a state the Federal official responsible for the implementation of a Federal law referred to in subsection (b)(1) may, after receiving comments from the Scientific Advisory Panel established under Section 25(d) of the Federal Insecticide, Fungicide, and Rodenticide Act containing an evaluation of relevant data and risk to human health, by regulation promulgated after notice and opportunity for an oral hearing, exempt from subsection (b), under such conditions as may be prescribed in such regulation, a requirement or prohibition of such State relating to the levels of residues of pesticides in or on food in that State if such requirement—

"(1)(A) is justified by compelling local conditions, or

"(B) is justified because the subject matter regulated by such requirement or prohibition is primarily local in nature and the Federal official responsible for the implementation of such Federal law is not exercising jurisdiction over the subject matter regulated by such requirement or prohibition, and

"(2)(A) protects an important public interest that would otherwise be unprotected,

"(B) would not cause any food to be in violation of any applicable requirement or prohibition under Federal law, and

"(C) would not unduly burden interstate commerce.

"(f) ADVISORY COMMITTEE.—For purposes of assuring effective and uniform implementation of all laws regulating the levels of residues of pesticides in or on food, the Federal officials responsible for implementation of such Federal laws shall establish an advisory committee comprised of eleven State and local officials engaged in the regulation of the levels of residues of pesticides in or on food.

"(g) RESPONSIBLE FEDERAL OFFICIAL.—A petition submitted under subsection (d) or (e) shall be acted upon by the highest Federal official responsible for the implementation of the Federal law involved, which authority shall not be delegated. The advice of the advisory committe established under subsection (f) shall be obtained before action is taken upon any such petition unless the petition relates to an imminent hazard determination under subsection (h).

"(h) IMMINENT HAZARD.—(1) Notwithstanding the provisions of subsection (b), a State may establish and enforce within its own jurisdiction any requirement or prohibition which directly or indirectly establishes a permissible level for a residue of a pesticide in or on food if—

"(A) after an opportunity for written comment and a public hearing, it has been demonstrated that—

"(I) the permissible level for a residue of that pesticide in or on food established under a Federal law or a regulation or interpretation issued thereunder constitutes an imminent hazard to public health in that State because it presents a substantial risk of serious harm to human health, and

"(II) the additional protection provided by such requirement or prohibition is necessary to prevent such imminent hazard, and

"(B) within ten days after the State announces that it is promulgating the requirement or prohibition, the State has submitted a petition under subsection (d) or (e).

"(2) Any requirement or prohibition established or enforced under paragraph (1) may be contested by any person under the declaratory judgment provisions of section 2201 of title 28, United States Code, on the ground that such requirement or prohibition does not meet the standards established in subparagraphs (A) and (B) of paragraph (1). In any such action, the State shall bear the burden of proving that such requirement or prohibition meets such standards.

"(3) Any requirement or prohibition established or enforced under paragraph (1) may remain in effect until—

"(A) the Federal official takes action on the petition submitted under subsection (d) or (e) and such action rejects such requirement or prohibition or

"(B) a court determines that the requirement or prohibition has not been shown by the State to meet the standards established in subparagraphs (A) and (B) of paragraph (1),

whichever occurs earlier.".

SEC. 1102. COOPERATION IN INTERNATIONAL EFFORTS.

Subsection (d) of section 17 (7 U.S.C. 136o(d)) is amended to read as follows:

"(d) COOPERATION IN INTERNATIONAL EFFORTS.—The Administrator shall—

"(1) in cooperation with the Secretary of State, other appropriate Federal agencies, and nongovernmental and international organizations, actively participate in international efforts to develop improved pesticide research and regulatory programs,

"(2) provide foreign countries with technical assistance to develop comprehensive pesticide regulatory programs,

"(3) within 1 year after the effective date of the Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1986, and every 3 years thereafter, conduct and publish a survey of all countries that import pesticides from United States exporters or from which the United States imports agricultural commodities, to ascertain what procedures are in place in each country—

"(A) regarding registration, labeling, and training to ensure safe handling, transportation, application, and disposal of pesticides, and

"(B) to control residues on foods to meet tolerances established under United States law, and

"(4) report to Congress annually on the activities conducted under this subsection and the results thereof.".

TITLE XII—AGRICULTURAL PATENT REFORM

SECTION 1201. SHORT TITLE.

This title may be cited as the "Agricultural Patent Reform Act".

SEC. 1202. AMENDMENTS TO TITLE 35.

(a) NEW SECTION.—Chapter 14 of title 35 of the United States Code is amended by adding at the end the following new section:

"§ 158. Restoration of patent term for certain agricultural and chemical products

"(a) The term of a patent which claims a product subject to a regulatory review period, a method for using such a product, or a method for manufacturing such a product shall be extended, in accordance with this section, from the original expiration date of the patent if—

"(1) the owner of record of the patent or its agent notifies the Commissioner in compliance with subsection (d),

"(2) the product has been subject to a regulatory review period before its commercial marketing or use,

"(3) the term of the patent has never been extended under this section,

"(4) the term of the patent has not expired before the Commissioner is notified under subsection (d), and

"(5)(A) except as provided in subparagraph (B), the permission for the commercial marketing or use of the product after such regulatory review period is the first permitted commercial marketing or use of the product under the provision of law under which such regulatory review period occurred, or

"(B) in the case of a patent which claims a method of manufacturing the product which primarily uses recombinant DNA or hybridoma technology in the manufacture of the product, the permission for the commercial marketing or use of the product after such regulatory review period is the first permitted commercial marketing or use of a product manufactured under the process claimed in the patent.

"(b) The rights derived from any patent the term of which is extended under this section shall during the period during which the patent is extended—

"(1) in the case of any patent which claims a product, be limited to any use approved for the product before the expiration of the term of the patent under the provision of law under which the applicable regulatory review occurred,

"(2) in the case of a patent which claims a method of using a product, be limited to any use claimed by the patent and approved for

the product before the expiration of the term of the patent under the provision of law under which the applicable regulatory review occurred,

"(3) in the case of a patent which claims a method of manufacturing a product, be limited to the method of manufacturing as used to make the product.

"(c)(1) Subject to paragraph (2), the term of a patent shall be extended by the time equal to the regulatory review period which occurred after such patent was granted, except that—

"(A) the term of any patent may not be extended for more than 5 years,

"(B) no term of any extended patent may exceed 17 years from the date the product for which the patent was issued was first permitted to be commercially marketed or used,

"(C) if the regulatory review period for a product began before the date of enactment of this section and if on such date the regulatory review period had not ended, the period of extension for the patent shall not exceed 3 years, and

"(D) if the regulatory review period for a product began before the date of enactment of this section and if on such date the regulatory review period had been completed, there shall be no extension of the patent.

"(2) In determining a regulatory review period for purposes of paragraph (1)—

"(A) if an application or notice described in subparagraph (A)(ii), (B), or (C) of paragraph (4) of subsection (g) was rejected because of insufficiency of data or other required information, the period beginning on the date the application or notice was rejected for insufficiency of data and ending on the date the application or notice was subsequently accepted shall be excluded, except that if during such period the product sponsor conducts a major health or environmental effects test, the period during which such test is conducted shall not be excluded, and

"(B) the regulatory review period shall be reduced by any period determined under subsection (e) during which the product sponsor did not act with due diligence.

"(3) In no event shall more than one patent be extended for the same regulatory review period for any product.

"(4) In the case of a pesticide, all formulations of such pesticide containing the identical active ingredient shall be considered the same pesticide and no pesticide may be the subject of more than one patent extension.

"(d) To obtain an extension of the term of a patent under subsection (a), the owner of record of the patent or its agent shall notify the Commissioner, within 60 days after the termination of the regulatory review period for the product to which the patent relates, that the regulatory review period has ended. Such notification shall be in writing and shall—

"(1) identify the Federal statute under which regulatory review occurred,

"(2) state the dates on which the regulatory review period commenced and ended and identify the event which caused such period to begin,

"(3) identify the product for which regulatory review was required,

"(4) state that the requirements of the statute under which the regulatory review referred to in subsection (a)(2) occurred have been satisfied and commercial marketing or use of the product is not prohibited under the Federal statute identified under paragraph (1),

"(5) identify the patent and any claim thereof to which the extension is applicable, identify any uses previously authorized, and state that the term of the patent has never been extended under this section and that no other patent has been extended for the regulatory review period for the product, and

"(6) include such patent or other information as the Commissioner may require.

"(e)(1) Within 60 days of the submittal of the extension notification under subsection (d), the Commissioner shall notify—

"(A) the Secretary of Agriculture if the patent claims a plant or plant product or a method of using or manufacturing a plant or plant product, and

"(B) the Administrator of the Environmental Protection Agency if the patent claims a pesticide subject to the Federal Insecticide, Fungicide, and Rodenticide Act, a chemical substance or mixture subject to the Toxic Substances Control Act, or a method of using or manufacturing such a pesticide, substance, or mixture,

of the extension notification and shall submit to the Secretary or Administrator who is so notified a copy of the extension notification. Not later than 30 days after the receipt of the extension notification from the Commissioner, the Secretary or Administrator receiving the extension notice shall review the dates contained in such notification and determine the applicable regulatory review period, shall notify the Commissioner of the determination, and shall publish in the Federal Register a notice of such determination.

"(2)(A) If a petition is submitted to the Secretary or Administrator making the determination under paragraph (1) not later than 180 days after the publication of a determination under paragraph (1) upon which it may reasonably be determined that a product sponsor did not act with due diligence during an applicable regulatory review period, the Secretary or Administrator making the determination shall, in accordance with regulations promulgated by the such Secretary or Administrator, determine if the product sponsor acted with due diligence during the applicable regulatory review period. The Secretary or Administrator shall make such determination not later than 90 days after the receipt of a petition. The Administrator may not delegate the authority to make such determination to an office below the Assistant Administrator for Pesticides and Toxic Substances.

"(B) The Secretary or Administrator making a determination under subparagraph (A) shall notify the Commissioner of the determination and shall publish in the Federal Register a notice of such determination, together with the factual and legal basis for such determination. Any interested person may request, within the 60-day period beginning on the publication of a determination, the Secretary or Administrator making the determination to hold a hearing on the determination. Such a hearing shall be an informal hearing which is not subject to section 554, 556, or 557 of title 5, United States Code. If such a request is made within such period, the such Secretary or Administrator shall hold such hearing not later than 30 days after the date of the request, or at the request of the person making the request, not later than 60 days after such date. The Secretary or Administrator who is holding the hearing shall provide notice of the hearing to the product sponsor and to any interested person and provide the product sponsor and any interested person an opportunity to participate in the hearing. Within 30 days after the completion of the hearing, such Secretary or Administrator shall affirm or revise the determination which was the subject of the hearing and notify the Commissioner of such affirmation or any revision of the determination and shall publish such affirmation or revision in the Federal Register.

"(C) Failure of a product sponsor to act with due diligence during a regulatory review period shall not be a defense in any action involving the infringement of a patent.

"(D) In a proceeding under this paragraph, the Secretary or Administrator may take into consideration the failure of a product sponsor to submit data which the product sponsor knew or reasonably should have known was necessary to support an application or notice described in paragraph (4) of subsection (g).

"(E) For purposes of this paragraph, the term 'due diligence' means that degree of attention, sustained directed effort, and timeliness as may reasonably be expected from, and are ordinarily exercised by, a person during a regulatory review period.

"(f)(1) The Commissioner shall determine that a patent is eligible for extension under subsection (a) and that the requirements of subsection (d) have been complied with. A determination that a patent is eligible for extension may be made by the Commissioner solely on the basis of the representations contained in the notification under subsection (d). If the Commissioner determines that the patent is eligible for extension and upon receipt of a determination of the applicable regulatory review period under subsection (e), the Commissioner shall issue to the owner of record of the patent a certificate of extension, under seal, for the period prescribed by subsection (c). Such certificate shall be recorded in the official file of the patent and shall be considered as part of the original patent. The Commissioner shall publish in the Official Gazette of the Patent and Trademark Office a notice of such extension.

"(2) If the term of a patent for which a notification has been submitted under subsection (d) would expire before a certificate of extension is issued or denied under paragraph (1), the Commissioner shall extend, until such determination is made, the term of the patent for periods of up to one year if the Commissioner determines that the patent is eligible for extension. Such periods of extension shall not exceed the regulatory review period calculated from the information provided in the notification submitted under subsection (d).

"(g) As used in this section:

"(1) The term 'product' means:

"(A) Any pesticide subject to regulation under the Federal Insecticide, Fungicide, and Rodenticide Act.

"(B) Any chemical substance or mixture subject to regulation under the Toxic Substances Control Act.

"(C) Any plant or plant product that (i) is genetically altered, (ii) is defined as a plant pest or potential plant pest by *under* the Federal Plant Pest Act (7 U.S.C. 150aa-150jj), and (iii) is subject to regulation under that Act.

"(2) The term 'major health or environmental effects test' means an experiment or study to determine or evaluate health or environmental effects which requires at least six months to conduct, not including any period for analysis or conclusions, and the data from which is submitted to receive permission for commercial marketing or use.

"(3) The term 'product sponsor' means any person who, with the consent of the patent owner, initiates testing or investigations, claims an exemption, or submits an application or notice described in paragraph (4) of this subsection.

"(4) The term 'regulatory review period' has the following meaning:

"(A) With respect to a product which is a pesticide, the term means the sum of—

"(i) the period beginning on the earlier of the date the product sponsor (I) initiates a major health or environmental effects test on such pesticide, or (II) requests, in accordance with regulations issued by the Administrator, the grant of an experimental use permit for the pesticide under section 5 of the Federal Insecticide, Fungicide, and Rodenticide Act, and ending on the date an application is submitted for registration of such pesticide pursuant to section 3 of such Act, and

"(ii) the period beginning on the date an application is submitted, in accordance with regulations issued by the Administrator, for registration of such pesticide pursuant to section 3 of such Act and ending on the date such pesticide is first registered, either conditionally or fully, under such section.

"(B) With respect to a product which is a chemical substance for which notice is required under section 5 of the Toxic Substances Control Act or which is a mixture which contains a substance for which such notice is required and—

"(i) which is subject to a rule requiring testing under section 4(a) of such Act, the term means a period commencing on the date the product sponsor has initiated the testing required in such rule and ending on the expiration of the notice period for such chemical substance or mixture under section 5 of such Act, or if an order or injunction is issued under section 5(e) or 5(f) of such Act, the date on which such order or injunction is dissolved or set aside, or

"(ii) which is not subject to a testing rule under section 4 of such Act, the term means a period commencing on the earlier of the date the product sponsor—

"(I) submits, in accordance with regulations issued by the Administrator, a notice under section 5 of such Act, or

"(II) initiates a major health or environmental effects test on such chemical substance or mixture,

and ending on the expiration of the notice period for such substance under section 5 of such Act or if an order or injunction is issued under section 5(e) or 5(f) of such Act, the date on which such order or such injunction is dissolved or set aside.

"(C) With respect to a product which is a plant or plant product, the term means the period beginning on the date an application is submitted under section 103 of the Federal Plant Pest Act for permission to move the plant or plant product in interstate commerce and ending on the date such application is approved.

"(h) If information submitted by a product sponsor during a regulatory review period is considered a trade secret or confidential commercial or financial information under the law under which such regulatory review occurred, such information may only be disclosed under this section in accordance with such law. This subsection does not prohibit the Commissioner or the Administrator from identifying the patent owner, the product sponsor, the product, the patent, and any other information necessary to identify, describe, and calculate the regulatory review period in any notification, publication, or public record required by this section.

"(i) The Commissioner, the Administrator, and the Secretary of Agriculture may establish such fees as appropriate to cover the costs of carrying out their respective duties and functions under this section.".

(b) CONFORMING AMENDMENT.—The last sentence of section 282 of title 35, United States Code, is amended by inserting "or 157(e)" after "(2)".

(c) ANALYSIS.—The analysis for chapter 14 of title 35 of the United States Code is amended by adding after the item relating to section 156 157 the following:

"157 158. Restoration of patent term for certain agricultural and chemical products.".

(d) SECTION 271.—Section 271(e) of title 35, United States Code, is amended by adding at the end the following:

"(5)(A) Except as provided in subparagraph (B), during the last 2 years of the term of a patent relating to a pesticide (including a patent which claims a pesticide, a method for using a pesticide, or a method of manufacturing a pesticide) which is or has been registered under the Federal Insecticide, Fungicide, and Rodenticide Act or which is marketed with the permission of the holder of such patent, it shall not be an act of infringement of such patent to make, use, or sell such pesticide solely for testing reasonably related to the development and submission of data—

"(i) to meet regulatory requirements under the Federal Insecticide, Fungicide, and Rodenticide Act,

"(ii) to obtain a tolerance or an exemption from a tolerance under section 408 of the Federal Food, Drug, and Cosmetic Act, or

"(iii) to obtain a food additive regulation or an exemption from a food additive regulation under section 409 of the Federal Food, Drug, and Cosmetic Act.

"(B)(i) Subparagraph (A) applies only to the first patent issued for a pesticide, a method of using a pesticide, or a method of manufacturing a pesticide which makes the unlicensed manufacture, use, or sale of the pesticide a patent infringement.

"(ii) Subparagraph (A) does not apply to a patent which claims a method of manufacturing a pesticide which uses recombinant DNA or hybridoma technology in the manufacture of the pesticide.

"(C) It shall be an act of infringement for any person to submit any application under the Federal Insecticide, Fungicide, and Rodenticide Act or section 408 or 409 of the Federal Food, Drug, and Cosmetic Act for a pesticide covered by the first composition of matter patent, method of use patent, or method of manufacturing patent issued for the pesticide if such application is submitted before the expiration of the term of such first patent unless such person is the holder of such patent or a licensee of the holder.

"(D) For purposes of this paragraph, all formulations of a pesticide containing the identical active ingredient shall be considered the same pesticide.".

The SPEAKER pro tempore. Is a second demanded?

Mr. DEWINE. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Wisconsin [Mr. KASTENMEIER] will be recognized for 20 minutes and the gentleman from Ohio [Mr. DEWINE] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Wisconsin [Mr. KASTENMEIER].

Mr. KASTENMEIER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, today the House is considering the Agricultural Patent Reform Act, H.R. 5536, introduced by our colleague from Virginia, Mr. BOUCHER, a member of my subcommittee.

This legislation is the result of more than 6 years of legislative work. The Carter administration first proposed patent term restorated as a way to stimulate investment in research and development and to compensate for lost patent life due to Federal regulatory delay. Ater several legislative attempts at enacting patent term legislation, an Office of Technology Assessment study justifying the need for legislation, Congress finally acted in 1984 to create a patent term statute. Unfortunately, for a variety of reasons agricultural chemicals, toxic substances and genetically altered plants were excluded from that legislation. This bill is an attempt to redress that omission.

The bill permit patent owners or their agents to apply for an extension of patent term when their product has been prevented from being commercially marketed or used because of a regulatory review period imposed by Federal law. Patent term extension under this bill is authorized for three different types of substances: agricultural chemicals; toxic substances; and genetically altered plant and plant products. These three types of products are required to undergo substantial health and safety testing before they can be commercially marketed or used. To compensate for this testing—while under patent but not on the market—the bill provides that an extension can be granted for a period of up to 5 years.

The bill also assists generic pesticide producers by permitting them to use the patented substances during the last 2 years of patent life to conduct health and safety testing. This will permit the more rapid approval of generic substitutes.

Finally, the bill provides procedures to guard against potential abuses for the patent term extension system. The bill compensates only for tests conducted with due diligence and excludes time spent by agencies reviewing insufficient data. Challenge procedures are also specified for parties adversely affected by the extension process when they believe that the patent holder has acted without due diligence.

It seems beyond dispute that once Congress has enacted a set of rules which afford patent term extension to

a certain type of products, such as human drugs, which already compensate for regulatory delay, that other similarly situated substances should be granted similar benefits. To do so is a matter of simple consistency.

The National Agricultural Chemical Association [NACA] has compiled statistics on the effective patent life of agricultural chemicals. That data shows an average life of 15.5 years for the top 20 chemicals, but the more recent chemicals have an effective life of only 10½ years. These troubling statistics lead me to conclude that patent term restoration for time lost due to Federal regulatory delay is a matter of fairness and equity. Fairness in that the existence of valid and useful health and safety tests which delay market entry should not punish the owner of intellectual property. Equity in that agricultural chemicals and products should not be treated worse than their human drug counterparts.

The Committee on the Judiciary concluded that patent term extension was appropriate as a means of encouraging increased expenditures on research and development. As the patent owners showed the costs of getting a new pesticide to the market have increased dramatically over recent years. In order to recoup this investment, a more complete patent life may be necessary. Thus, in the view of the committee, this bill serves to stimulate innovation.

I would like to thank Congressmen BOUCHER, MOORHEAD, DEWINE, GLICKMAN, and SYNAR for their leadership on this issue. Moreover, the willingess of the industry to negotiate and agree with public interest and environmental groups on FIFRA reform is commendable. These negotiations were the definitive step that brought us this far. Perhaps by acting today we can encourage such negotiations on other issues.

I urge my colleagues to support this bill.

Mr. BEDELL. Mr. Speaker, will the gentleman yield?

Mr. KASTENMEIR. I yield to the gentleman from Iowa.

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Mr. BEDELL. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I want to point out to the House that the amendment that is added to this bill is exactly the same bill as a different bill that passed this House by a vote of 326 to 4. Those bills and these two issues have always been linked.

I appreciated very much the cooperation of the gentleman and the committee in doing so at this time.

Mr. KASTENMEIER. Mr. Speaker, I thank the gentleman for his explanation.

The gentleman is correct. That is added as an amendment in the nature of a substitute and the two subjects are inextricably linked together and should be treated together by the Congress.

Mr. DEWINE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, let me first congratulate and thank my subcommittee chairman, the gentleman from Wisconsin [Mr. KASTENMEIER], and the gentleman from Virginia [Mr. BOUCHER] who has worked on this bill for the last I guess 3½ years with me. We have worked together on it, as well as the gentleman from California [Mr. MOORHEAD], who has also been very instrumental in bringing this bill to the floor today.

Patent law was designed originally to encourage the research and development of new products and technologies. By rewarding those who put forward the initiative, the time and the capital investment necessary to develop new products, we assure our position as a world leader in new technologies. Because today this research and development is very expensive, patent protection is critical in spurring economic risk taking and the development of new products.

Since 1861, patent protection for these products has been set at 17 years. In recent years the regulatory review process has become an important and necessary part of the process to assure the safety of these products. Unfortunately, this necessary regulatory review can take up to 7 or 8 years and sometimes 10 or 11 years and it has become a disincentive to new research and development.

Throughout the regulatory review, the patent clock is still ticking away. Very quickly a 17-year patent may have an effective life of 10 years or maybe even less.

This bill strikes a needed balance between these two policies. We will continue to demand tough standards for the approval of new agricultural products, as we should, but we will recognize and reward the innovation of the producers of these important products. By doing this, we will insure the safest and fastest possible marketing of new agricultural chemicals.

It is also, Mr. Speaker, important to note that all the major farming groups in this country support the bill. They are the real consumers of these products. They understand the need for patent protection and the need for this legislation.

Mr. Speaker, I think it is important for us to pause just for a moment to look at the reason we have patent protection in this country. This patent protection that we have in this country is frankly one of the reasons that we have been competitive, we have been innovative and that we have been able to encourage productivity and encourage research; but it is not just for the producer that patent law exists. In fact, historically the real reason that we have good patent laws in this country is to benefit the consumer.

Our Founding Fathers recognized and realized that if we were going to encourage people to take risks, to spend money to do the research that was necessary, we had to give them an incentive, and the incentive we gave them was this protection, the protection that since 1861 has been set at 17 years.

What this bill simply does is restore some of that time, restore some of that incentive to these producers.

Mr. Speaker, this bill will enable us to be more competitive in the world market, both in the agrichemical industry and also in the agricultural industry.

It is a profarmer bill. It is a proconsumer bill.

Mr. ROBERTS. Mr. Speaker, will the gentleman yield?

Mr. DEWINE. I am happy to yield to my colleague, the gentleman from Kansas.

Mr. ROBERTS. Mr. Speaker, I thank my friend and colleague for yielding.

I want to share in the remarks in regard to thanking my colleague from Wisconsin, the subcommittee chairman, and I want to thank the gentleman from Ohio in regards to his leadership.

Mr. Speaker, I rise in support of H.R. 5536, the Patent Reform Act, and wish to associate myself with the remarks made by my friend and colleague, the gentleman from Iowa.

We are adding an amendment to this bill, which is the same FIFRA bill that has already passed the House. This is a package now that is extremely important, not only in regard to the FIFRA reform bill, but also in regard to what the gentleman has just pointed out, and I thank the gentleman for yielding.

Mr. BROWN of California. Mr. Speaker, will the gentleman yield?

Mr. DEWINE. I yield to my colleague, the gentleman from California.

Mr. BROWN of California. Mr. Speaker, I appreciate the gentleman yielding.

Mr. Speaker, I want to rise to compliment the gentleman for his part in seeing this legislation brought to the stage that we have here today. It looks as if we may be able to pass this legislation in a relatively smooth and noncontroversial way as a result of the work that has gone into the development of this bill.

I was struck by this lack of controversy as I recall the debate, sometimes acrimonious, that has occurred in committee over this bill for the last several years.

The action we are taking today actually puts into place the last link necessary to provide a satisfactory resolu-

tion of many of the problems involving agricultural chemicals and the extension of FIFRA, which has been dormant now for a number of years. We have been unable to pass an extension of this very important legislation.

So I feel compelled to rise to compliment the gentleman for the role that he has played in bringing this last link together with the remainder of the legislation so that we could continue with a program, which as the gentleman has indicated, is good for both farmers, consumers, and for the innovators in the chemical industry.

Mr. KASTENMEIER. Mr. Speaker, I yield 5 minutes to the gentleman from Virginia [Mr. BOUCHER], the author of the bill.

Mr. BOUCHER. Mr. Speaker, I thank the gentleman from Wisconsin for yielding this time and also for his leadership on this very significant issue.

As the gentleman noted in his opening remarks and as the gentleman from Ohio [Mr. DEWINE] noted as well, we have worked very closely with all the interested parties to draft the bill that is under consideration of the House today.

The principal goal of this legislation is simply equity. The inventors of agricultural products should receive the same protection under the Federal patent law that is received by the inventors of other kinds of products; but as a result of federally required health and safety testing and certification and review procedures, the inventors of pesticides, fertilizers and agricultural chemicals are today receiving only a fraction of the patent protection that the inventors of other kinds of products are currently receiving.

Now, that fact works as a disincentive to the making of substantial and significant investments oftentimes totally as much as $5 million per product to bring new pesticides and fertilizers onto the market. That is a fact which is hurting not only the agricultural-chemical industry, but is hurting America's farm community as well.

The goal of our legislation is to correct that inequity and to make sure that the patent law no longer serves as a disincentive to the making of those investments and to the marketing of products that are helpful both to their originators and to the farm community.

With that goal in mind, the bill contains a couple salient points. It restores up to 5 years of patent life for products that are under the jurisdiction of FIFRA, TSCA, and the Federal Plant Pest Act.

The amount of time in this legislation that is subject to restoration is the time that is spent on health and safety testing, the regulatory review process and the time required for the approval of a commercial marketing application. No restoration is provided for products that are on the market at the time the legislation becomes effective or for products whose patents have already expired. Restoration is limited to one patent per product and that may be a patent for the product itself, a patent for the use of the product or a process patent for the manufacturer of the product. A 3-year cap is placed on restoration for products that are undergoing regulatory review at the time the legislation becomes effective.

Since animal pharmaceuticals are being considered separately in legislation that is presently pending before the House Energy and Commerce Committee, this legislation is silent on that subject and does not extend patent term restoration to animal drugs. It does, however, include patent term restoration for genetically altered plants and plant parts that are subject to the jurisdiction of the U.S. Department of Agriculture.

Very significantly, the legislation contains a partial repeal of the Roche versus Bolar decision, the effect of which will be to permit the commencement of long-term health and safety testing by generic manufacturers within 2 years of the expiration of the patent term.

Mr. Speaker, I would suggest that this legislation is fair. It is balanced. It will serve the needs of the agricultural products manufacturers and it will help America's farm community that deserves the very best technology that we can make available.

Mr. Speaker, I thank the gentleman from Wisconsin for yielding.

Mr. FISH. Mr. Speaker, this is important legislation and I would like to commend the Subcommittee on Courts, Civil Liberties and the Administration of Justice for its hard work on this bill and the leadership of Mr. BOUCHER and Mr. DEWINE on this issue.

Support for this legislation can be justified on a number of grounds but I believe that justification can be summed-up in three words: equity, fairness, and innovation.

Agricultural chemical patent holders do not receive the full 17 years of patent life to which they are entitled under our patent law which has been in effect in this Nation for almost 200 years. The issue is simply one of restoring to those inventors the equity that the patent law provides to all other patent holders.

Elemental fairness requires that this imbalance be redressed. Why should this industry and no other, be accorded less than equal treatment under the patent law? The need for this redress is magnified by the well-known problems American agriculture faces today. Crop protection chemicals are necessities to our farmers, not luxuries. By unfairly penalizing those industries that produce these essential chemicals, we penalize the farmer and ultimately the consumer.

The most important result of this legislation is that it will spur and maintain innovation in this highly scientific, capital intensive industry. New agricultural chemicals do not just happen. They are the result of a lengthy, expensive process that is fraught with considerable financial risk to the companies and individuals involved.

As an original consponsor of this important legislation I urge my colleagues' support for H.R. 5536.

Mr. MOORHEAD. Mr. Speaker, I rise in strong support of H.R. 5536, the Agricultural Patent Reform Act and I would like to congratulate Messrs. BOUCHER and DEWINE for their hard work on this bill. Their interest and persistence has been responsible for keeping this legislation moving.

Patent law was designed to encourage the research and development of new products and technologies. By rewarding those who put forth the initiative, time, and capital investment necessary to develop new products, we assure our position as a world leader in new technologies. And because today this research and development is very expensive, patent protection is critical in spurring economic risk taking and the development of new products.

Since 1861, patent protection for these products has been set at 17 years. In recent years, a regulatory review process has become an important and necessary part of the process to assure the safety of these products. Unfortunately, this necessary regulatory review can take up to 7 years or more, it has become a disincentive to new research and development. Throughout the regulatory review the patent clock is ticking away. Very quickly a 17-year patent has an effective life of 10 years or less. At the same time, R&D expenditures for new chemicals have dramatically increased. R&D expenditures for new chemicals climbed from $80 million in 1974 to $553 million in 1985.

Mr. Speaker, H.R. 5536 provides that the time of the patent extension shall be equal to the regulatory review period which is the time spent testing the product and the time EPA spent reviewing the data. However, in no case may an extension exceed 5 years. The extension provided for under H.R. 5536 applies to agricultural chemicals regulated under FIFRA, industrial chemicals regulated by TSCA, and plants regulated by the Federal Plant Pest Act.

By addressing the current imbalance that confronts agricultural chemical patent holders, I believe that this legislation will help to restore incentives for agricultural research and development in a manner which will benefit the American farmer and, ultimately the American consumer. I urge the passage of H.R. 5536.

Mr. PANETTA. Mr. Speaker, I rise in support of H.R. 5536, the agricultural patent reform bill, but also to urge the committee to consider similar action for plant patents in the next Congress.

The bill before us today extends up to 5 years of patent life for agricultural related chemicals and genetically altered plants which may otherwise be lost as a result of federally mandated health and safety testing. This bill reaffirms the need for comprehensive testing requirements to protect public health, but at the same time, makes every effort to compensate manufacturers of these products for lost

patent life resulting from these regulatory requirements.

Plant breeders experience similar problems in the loss of patent life as do manufacturers of agricultural related chemicals and genetically altered plants. There are two basic causes for this problem:

First, quarantine requirements eat into the life of patents for new plant varieties imported into the United States.

New plant varieties that are brought into the United States from other countries are subject to quarantine and inspection by the USDA, under the Federal Quarantine Act and Plant Pest Act. Quarantines can last anywhere from 6 months or up to four growing seasons—or until USDA determines that the plant is free of diseases or injurious insects. During this period, the plant cannot be marketed.

Businesses generally obtain a plant patent in order to protect their investment in the new variety—even though they are unable to market this product during the quarantine period. Thus, plant breeders are losing patent life as a result of federally mandated quarantine requirements, just as agricultural chemical and drug manufacturers are losing patent life due to federally mandated health and safety testing.

Second, the life of a plant patent is also shortened as a result of the long period of time that it takes to propagate enough plants to market commercially.

Again, most businesses seek to protect their investment by securing a plant patent early on. But, this patent life ticks away during the period of time that businesses are "bulking-up" to commercial quantities—even though they have insufficient quantities to market commercially.

For these reasons, I am urging my colleagues to consider action in the next Congress that exends plant patent terms—for the benefit of American Businesses—in an effort to address the problems resulting from quarantine requirements and the length of time that it takes to commercially propagate plant stock.

I urge support for H.R. 5536.

Mr. DeWINE. Mr. Speaker, I yield back the balance of my time.

Mr. KASTENMEIER. Mr. Speaker, I have no further request for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. LUKEN). The question is on the motion offered by the gentleman from Wisconsin [Mr. KASTENMEIER] that the House suspend the rules and pass the bill, H.R. 5536, as amended.

The question was taken; and (two-thirds having voted in favor there of) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. KASTENMEIER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

CONGRESSMAN CONYERS DEEPLY HURT AT HANDLING OF H.R. 5445, CIVIL RICO BILL

(Mr. CONYERS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. CONYERS. Mr. Speaker, I apologize for interrupting the business on the floor but I must rise to inform the membership that the civil RICO bill H.R. 5445, one that should emanate from my subcommittee, is a bill that I have never seen in my life.

Sadly I must also report that it breaks an agreement that existed between my chairman and dear friend, the Honorable PETER RODINO. It has left me in a state of disbelief because I still cannot believe that instead of bringing this to the full committee, the chairman without any notice whatsoever brought forward an entirely different product and has already scheduled it for the Suspension Calendar.

This civil RICO bill which seriously weakens consumer antifraud protection, has never been before my subcommittee and as a matter of fact has never been before any committee. Other of my colleagues who have been attempting to negotiate a compromise have also been kept totally uninformed about this matter. Mr. EDWARDS and Mr. BERMAN from California, the gentleman from Massachusetts, Mr. FRANK, and members of the Congressional Black Caucus have had no notice that this new form of civil RICO was to be brought up today.

Had it not been for an alert staffer, I would not have even been in Washington today as no recorded votes were anticipated. The way this matter is being handled hurts me deeply and raises many questions.

But the thing that keeps going through my mind is that the chairman didn't tell me what he planned to do. What have I done after two decades to have lost the chairman's confidence?

The present civil RICO provision is needed even more today than when it was passed more than a decade or a half ago. White collar crime and consumer fraud is getting worse. To weaken the law by in effect eliminating treble damages for consumers means that we are gutting one of the few tools that effectively deter white collar criminals and occasionally affect some modest restitution for victims. This is a roll back of enormous proportions and I only hope that my colleagues in Congress will help me at least get the opportunity to state their case.

TO PERMIT TRAPPING IN THE OZARK NATIONAL SCENIC RIVERWAYS AREA

Mr. VENTO. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 103) to require the Secretary of the Interior to permit trapping in the Ozark National Scenic Riverways area, as amended.

The Clerk read as follows:

H.R. 103

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION. 1. TRAPPING IN THE OZARK NATIONAL SCENIC RIVERWAYS.

Section 5 of the Act entitled "An Act to provide for the establishment of the Ozark National Scenic Riverways in the State of Missouri, and for other purposes", approved August 27, 1964 (16 U.S.C. 460m-4(b)), is amended by adding the following at the end thereof:

"(c)(1) During the 5-year period beginning on the enactment of this subsection, the Secretary shall permit trapping on lands and waters under his jurisdiction within the Ozark National Scenic Riverways area in accordance with applicable Federal and State laws. During such 5-year period, after consultation with the Conservation Commission of the State of Missouri, the Secretary may promulgate regulations designating zones where, and establishing periods when, no trapping shall be permitted in such area for reasons of public safety, administration, or public use and enjoyment. In addition, during such 5-year period, the Secretary shall prohibit trapping of any species of animal whenever data gathered pursuant to paragraph (2) indicates that the population of that species is below a healthy level. Any prohibition established under the preceding sentence shall remain in effect until the Secretary determines that the population of the species concerned exceeds a healthy level.

"(2) For purposes of the State of Missouri, a research and monitoring program under this paragraph, the Secretary shall enter into a contract with an appropriate university with adequate interdisciplinary expertise, including wildlife biologists, ecologists, and mammalogists. The program shall be designed to provide data on each species of animal which is trapped on lands and waters under his jurisdiction within the Ozark National Scenic Riverways area.

"(3) The contract referred to in paragraph (2) shall require the preparation of a report regarding the results of the research and monitoring carried out pursuant to the contract. The report shall also contain a scientific evaluation of the effects of trapping within the Ozark National Scenic Riverways area on the population levels of the species of animals affected and shall include information as to the gross and net income derived by those persons trapping within the boundary of the Ozark National Scenic Riverways area. The report shall be submitted to the Secretary after independent scientific peer review. The Secretary shall submit such report to the Congress within 3 years after the enactment of this Act.".

Mr. SPEAKER pro tempore. Is a second demanded?

Mr. EMERSON. Mr. Speaker, I demand a second.

Mr. SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

Mr. SPEAKER pro tempore. The gentleman from Minnesota [Mr. VENTO] will be recognized for 20 minutes and the gentleman from Missouri [Mr. EMERSON] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Minnesota [Mr. VENTO].

Mr. VENTO. Mr. Speaker, I yield myself such time as I might consume.

Mr. Speaker, H.R. 103 to permit trapping at the Ozark National Scenic Riverways was introduced by our friend and colleague, BILL EMERSON. A hearing was held by the Subcommittee on National Parks and Recreation on September 11, 1986. The Committee on Interior and Insular Affairs adopted an amendment in the nature of a substitute which was adopted by voice vote on October 1, 1986.

The Ozark National Scenic Riverways consisting of 134 miles of the Current and Jacks Fork Rivers in southeastern Missouri was authorized in 1964 (Public Law 88-492) and contained language that was interpreted to permit trapping within the area. Trapping has been permitted in this unit of the National Park System since authorization.

The National Park Service reassessed its regulations which had permitted trapping in this and other units of the system based upon the 1970 General Authorization Act, as amended, and ruled trapping was no longer permitted unless specifically authorized by the Congress.

In a subsequent lawsuit the ruling of the National Park Service was upheld and trapping within the Ozark National Scenic Riverways will no longer be permitted.

The National Park Service reports that about 134 trappers have historically trapped within the boundary of the riverways.

H.R. 103, as amended, would permit trapping within the Ozark National Scenic Riverways for a period of 5 years. During that time the Secretary of the Interior would be required to conduct a scientific study of the effects of trapping on the resources of the riverways and the economic return because of trapping. The study is to be submitted to Congress within 3 years.

Mr. Speaker, the Congress has, in the past, been very judicious about specifically permitting trapping in national park units. I share that historic view and believe that all of the resources, including wildlife should be protected within national park units, unless, after careful deliberation, we find clear and compelling reasons to allow trapping. During the hearings on H.R. 103, considerable testimony was presented lending some credibility to the argument that trapping in this area has continued for generations and has been carried out by members of most families in the area. Such arguments attempt to demonstrate that trapping is uniquely a part of the history and culture of the area and, in spite of my opposition to trapping in units of the National Park System, was swayed to permit this research and the extension of trapping by such arguments.

In addition, BILL EMERSON has been persuasive in pointing other reasons to believe that the Ozark National Scenic Riverways is a unique case and that we should consider authorizing trapping in this unit because of these points.

For these reasons I am here today to support enactment of H.R. 103. However, it should be clearly understood that I, and I believe most of my colleagues on the Interior and Insular Affairs Committee, oppose trapping in all units of the National Park System and that this action should not be viewed by anyone to be a precedent of any kind.

Mr. Speaker, I urge my colleagues to approve H.R. 103.

□ 1300

Mr. EMERSON. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the bill before us would simply allow trapping—an activity occurring in this area for over 200 years—to continue for 5 years within the boundaries of the Ozark National Scenic Riverways, which is a unit of the National Park System within the Eighth District of Missouri, which I represent. This bill only affects the Ozark Riverways and requires the National Park Service, in cooperation with the Missouri Conservation Commission, to set up a research and monitoring program to ensure that healthy population levels of the species trapped are maintained. Whenever data indicates that any species drops below a "healthy" level, trapping of that species will cease until it again reaches a "healthy" level. Moreover, a report on the ecological impact of trapping in the riverways—reviewed by an impartial third party—must be submitted to Congress after 3 years. Congress will then have 2 years in which to act on the results of that study.

I believe this bill adequately addresses all of our concerns and it will allow the time needed for us to gain concrete and accurate information on the effects—positive or negative—of trapping practices on the riverways.

Trapping in the Ozark Riverways is a unique, historically significant activity that has always been permitted. The Ozark National Scenic Riverways was the first scenic riverways in our National Park System. The legislation was extremely controversial at that time and I have no doubt that the local area would not have accepted the idea for a "Riverways" had there not been the assurances that hunting, fishing, and trapping, as an aspect of hunting, would continue. In establishing the riverways in 1964, the Federal Government made a commitment to the local people that activities dear to them would be permissible—that they could keep hunting, fishing, and trapping within the riverways in accordance with State regulations. The local people see only the facts. They know Congress passed a law to set up the riverways. They also realize that they have been allowed to trap in the riverways since its establishment. They know that no new law to ban trapping has been passed by Congress. An evolutionary interpretation has caused trapping to end and the local people don't understand that. Now, only those activities that are specifically authorized for a unit of the park system are permissible, and thus, without H.R. 103, the Federal commitment will be broken and only hunting and fishing will be permitted.

I don't believe that any action taken by Congress since 1964 has been intended to ban trapping in the Ozark National Scenic Riverways. I believe the record is clear that trapping has been and should continue to be an allowable activity in the Ozark Riverways area. H.R. 103 would ensure that the intent of Congress is adhered to, as well as have the added benefit of a concrete study that will give us—in the 3 years—the scientific, wildlife, and ecological data needed to adequately evaluate the effects of trapping.

The Subcommittee on National Parks and Recreation has conducted a public hearing on this bill that was very helpful in bringing to light the uniqueness of the area and in providing valuable insight into the historical and cultural significance of trapping activities in the Ozark National Scenic Riverways—an area where trapping has indeed been going on for hundreds of years and is an integral part of Ozarkians' culture and heritage. I want to commend and extend my sincere thanks and appreciation to the distinguished gentleman from Minnesota, the subcommittee chairman, and the gentleman from Arizona, the committee chairman, for being very considerate in allowing the concerns of Missouri's Eighth District and the unique problems of the Ozark Riverways to be the subject of committee action. The committee's willingness to listen to and respect Missouri's interest is something my constituents truly appreciate and gives them confidence that they do matter and that they have a voice that can and will be heard.

Trapping has been a traditional part of life on the Current and Jack Porks Rivers since long before the Federal Government discovered that the area was scenic. The Ozark Riverways area

is a unique unit of the park system and should be treated as such. It was the understanding of the sponsor of the Ozark Riverways at the time of its creation, and it has been the understanding in Missouri ever since that the term hunting is inclusive of trapping—and for that reason the specific mention of trapping as a permissible activity was not included in the original 1964 act. I believe H.R. 103 would simply recognize our Ozark heritage and maintain the status quo, while giving us an opportunity to truly assess the impact of this longstanding practice.

Mr. Speaker, H.R. 103 is a very reasonable approach to balancing the concerns of the local people with the overall objectives of our National Park System. The bill has broad support in Missouri—including the Governor, the Missouri Conservation Commission, and the Conservation Federation of Missouri. I urge my colleagues to vote for H.R. 103.

Mr. BROWN of California. Mr. Speaker, will the gentleman yield?

Mr. EMERSON. I yield to the gentleman from California.

Mr. BROWN of California. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I would like to be able to tell the gentleman that I support this legislation, and that I think that it is a reasonable compromise. However, it has nevertheless disturbed some of my constituents who are concerned about the prevalence of trapping, what it does to the ecological balance, and the methods of trapping as well. There is strong objection to methods of trapping which might be cruel and inhumane, and I am sure that the gentleman knows that there is a very strong community of people in this country opposed to inhumane treatment of animals.

I was somewhat reassured by the gentleman's statement that this trapping is a longstanding historical activity, and that steps will be taken to maintain the ecological balance.

I wonder if the gentleman could say anything about the method of trapping used in this particular area.

Mr. EMERSON. Mr. Speaker, I would say to the gentleman that, trapping or no trapping in this area, the law would say that the laws of Missouri as they relate to trapping would apply. That has been the practice for the past 200 years, and certainly since the scenic riverways has been included in the National Park System. Until recently it has been understood that trapping would be permitted, but it is always subject to the State law, so what is permitted under State law would be permitted wherever trapping is permitted in accordance with the enabling legislation.

Mr. BROWN of California. If the gentleman would yield further, the gentleman obviously is very familiar with this area. Is the gentleman himself assured that the native population here is surviving and is being protected so that there will be no danger that we will lose valuable and irreplaceable species?

Mr. EMERSON. Let me say to my friend from California that I personally am. There was a study conducted by the Park Service which many of our colleagues feel was inadequate, which is why we have provided for a further study in this bill, but the study done by the Park Service indicated that if trapping is not permitted, the only ecological effect would be that there would be an overpopulation of beaver.

Now what the bill here provides for is a study to be conducted by the Park Service in cooperation with the Missouri Conservation Commission, which has an outstanding reputation among conservation groups and interests all over the country, to determine in a more precise way than the National Park Service has the ecological effect.

I for one believe that probably the results will concur with what the Park Service has already indicated, but that is pure speculation. But yes, I believe that the ecological balance will be maintained, and that it will not cause an adverse effect.

Mr. BROWN of California. Mr. Speaker, I thank the gentleman very much for his explanation. I feel considerably better about it.

Mr. EMERSON. I thank the gentleman for his interest in this matter.

Mr. VENTO. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I just want to point out again that generally I oppose trapping in units of the national parks. In this instance, when the law was passed in 1964 there was a misunderstanding concerning that. Further legislation that was passed and court decisions have indicated that trapping would not be permitted. Trapping of course has gone on in this unit for some 22 years. The fact is that there are a number of other units of course in which there was not the type of misunderstanding concerning this issue.

Really what we hope here to do is to provide some indepth knowledge with regard to research on the effects that trapping would have in this area within a 3-year period, objective information that I think would be useful to the Congress and would put us in a position where I think we can make a final decision on the effect and impact of trapping in this unit.

The historic nature of trapping in this area was also pointed out. In other words, I think as we look at our earliest history in terms of the settlement of the Midwest, certainly in Minnesota and Missouri and other places, trapping and fur trade played a very active part.

I have been assured and encouraged that the trapping activities and the interpretation of the park would indeed and could indeed include this as one of its aspects.

I think that this permits us a compromise where we can look ahead and look at the impact in depth. In fact, of course, there are a variety of different species that are trapped here, but there are safeguards in this legislation to prevent any undue stress on the populations and species that are trapped, and of course I am confident that the Missouri game and fish laws will serve as a continued guidance.

We are not talking here about an extensive amount of trapping. In other words, I would say under any definition it would probably be described as modest, and obviously we are looking down the road and will be making decisions with information and knowledge rather than in the absence of that and really on the basis of other factors.

Mr. LAGOMARSINO. Mr. Speaker, I rise in strong support of H.R. 103, sponsored by my good friend and colleague, the gentleman from Missouri [Mr. EMERSON].

As you know, this legislation would allow trapping to continue for an additional 5 years in the Ozark National Scenic Riverways. During this time period, the National Park Service, in cooperation with the Missouri Conservation Commission, will conduct a research and monitoring program for the trapping activities in the riverways. Should the research data indicate that population of a species is below a healthy level as a result of trapping, the Secretary shall prohibit trapping of that species until the population level has returned to normal.

Mr. Speaker, the amended version of H.R. 103 before us today represents a significant compromise on this issue. I want to commend the gentleman from Missouri [Mr. EMERSON] and the subcommittee chairman [Mr. VENTO] for their diligent efforts and cooperation to resolve the differences on this bill. They have both worked extremely hard and their negotiations have resulted in a fine piece of legislation.

Unlike other park system areas, trapping is a traditional activity in the Ozark riverways which dates to presettlement times. It is a very important part of the unique local culture of this area. In addition, it plays a major role in the economy of the Ozark area by serving as the sole income in the winter months for many of the local residents. The National Park Service recently conducted a study of the trapping activities in the Ozark Scenic Riverways which concluded that "there are no known adverse ecological impacts on the Ozark riverways resources related to trapping nor any substantial benefits to these resources should trapping be eliminated." Furthermore, it found that trapping did not present a public safety hazard since such activities occur primarily in the winter months when visitation to the Ozarks is low. Thus, the administration supports continued trapping in this area.

For these reasons, I believe this locally important commercial activity should be allowed to continue in the Ozarks. Although congressional intent on this issue is not completely clear, by authorizing hunting in the Ozark National Scenic Riverways when it was established in 1964, it appears that Congress intended to allow trapping activities to continue in this area as well.

Therefore, I urge all of my colleagues to support H.R. 103.

□ 1310

Mr. EMERSON. Mr. Speaker, I yield back the balance of my time.

Mr. VENTO. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. LUKEN). The question is on the motion offered by the gentleman from Minnesota [Mr. VENTO] that the House suspend the rules and pass the bill, H.R. 103, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. VENTO. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to extend their remarks on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

DESIGNATING MAURICE AND MANUMUSKIN RIVERS IN NEW JERSEY AS STUDY RIVERS FOR INCLUSION IN NATIONAL WILD AND SCENIC RIVERS SYSTEM

Mr. VENTO. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5343) to designate certain segments of the Maurice and the Manumuskin Rivers in New Jersey as study rivers for inclusion in the National Wild and Scenic Rivers System, as amended.

The Clerk read as follows:

H.R. 5343

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SEC. 1.

Section 5(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1276(a) is amended by adding at the end thereof the following:

"(92) MAURICE, NEW JERSEY.—The segment from Shell Pile to the point three miles north of Laurel Lake.

"(93) MANUMUSKIN, NEW JERSEY.—The segment from its confluence with the Maurice River to the crossing of State Route 49.

"(94) MENANTICO CREEK, NEW JERSEY.—The segment from its confluence with the Maurice River to its source."

SEC. 2. For the purpose of conducting the studies of the rivers named in section 1 there are authorized to be appropriated such sums as necessary.

The SPEAKER pro tempore. Is a second demanded?

Mr. EMERSON. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Minnesota [Mr. VENTO] will be recognized for 20 minutes and the gentleman from Missouri [Mr. EMERSON] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Minnesota [Mr. VENTO].

GENERAL LEAVE

Mr. VENTO. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days to extend their remarks on the bill presently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

Mr. VENTO. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 5343 to study the Maurice and Manumuskin Rivers for possible addition to the Wild and Scenic Rivers System was introduced by my friend and colleague from New Jersey, BILL HUGHES, on August 6. The Subcommittee on National Parks and Recreation held a hearing on September 30, 1986. The bill was considered by the Committee on Interior and Insular Affairs on October 1, 1986, and favorably reported with an amendment in the nature of a substitute.

The Maurice River and its tributaries the Manumuskin River and Menantico Creek are important for their scenic, natural, cultural, fish, wildlife, botanic, and recreational values. These rivers are located in a sparsely developed portion of southern New Jersey and flow into the Delaware Bay.

The undeveloped portions of the river area have a diversity of plants and animals. Two threatened and endangered plant species of the Pinelands have been documented in the lower Maurice River area as well as 23 important species of reptiles and amphibians. Threatened and endangered animals include the tiger salamander, corn and pine snakes.

The values of the Manumuskin River and Menantico Creek are also diverse. They encompass freshwater wetlands, swamp forest and upland forests. The area is one of the most lovely canoeing areas in southern New Jersey.

H.R. 5343, as amended, authorizes a study of the Maurice and Manumuskin Rivers and Menantico Creek in New Jersey for possible designation as a component of the National Wild and Scenic Rivers System.

Mr. Speaker, during our hearing on this bill I was very impressed by the local officials appearing before the subcommittee who were so knowledgeable and dedicated to protecting the outstanding resources of these beautiful rivers. I want to commend public servants from this area of New Jersey especially John Feltes, Edward Salmon, Patrick Slavin, and Donald Fauerbach for their farsighted understanding of the need to protect the natural values of Maurice Township. Indeed it was a pleasure to have local officials supporting and working with the National Government rather than a narrow view of environmental concerns resulting in opposition rather than cooperation.

Mr. Speaker, I urge my colleagues to support H.R. 5343.

Mr. EMERSON. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise to comment briefly on H.R. 5343. As the subcommittee chairman has explained, this bill would amend the Wild and Scenic Rivers Act to require a study of segments of the Maurice, Manumuskin and Menantico Rivers in New Jersey for potential designation as wild and scenic rivers. The study would encompass a 14-mile stretch of the Maurice River, a 3½-mile segment of the Manumuskin River and 7 miles of the Menantico River. The study will be conducted by the National Park Service and should be completed within 1 year.

The testimony at the recent subcommittee hearing indicated that these rivers are important for their scenic cultural, fish, wildlife, and recreational values. Their corridors are primarily undeveloped and support a wide variety of plants and animals, including several threatened and endangered species. In addition, portions of two of the rivers form the western boundary of the Pinelands National Reserve, an affiliated area of the National Park System. The Maurice and Manumuskin Rivers were both listed on the nationwide rivers inventory in 1981, indicating their eligibility for further study as potential wild and scenic rivers.

Although a State designation of these rivers may be more appropriate, particularly due to the private land involved, I have no objection to allowing a study of these rivers to go forward at this time. Such a study will assist Congress in making a determination with regard to wild and scenic designation for these rivers should such designation be requested in the future.

Mr. Speaker, I reserve the balance of my time.

Mr. VENTO. Mr. Speaker, I yield 3 minutes to the gentleman from New Jersey [Mr. HUGHES] the sponsor of

this measure. I commend the gentleman for his work in terms of bringing this measure to the floor today. Without his help in terms of testimony and working with the witnesses and the other local officials, we certainly would not be here today. He has done a great job, and I want to commend him publicly for it.

Mr. HUGHES. Mr. Speaker, I thank the gentleman for those comments and want to also thank the distinguished chairman of the subcommittee for his outstanding efforts in first of all moving this along very expeditiously, as well as the ranking Republican, who has been extremely cooperative in moving an extremely important measure through to fruition in this session of Congress.

Mr. Speaker, I rise in support of H.R. 5343, and urge my colleagues to support this legislation which provides for the Department of the Interior to study the Maurice, Manumuskin, and Menantico Rivers in southern New Jersey for inclusion in the National Wild and Scenic Rivers System.

The Maurice, Manumuskin, and Menantico Rivers form an integral part of New Jersey's pinelands environment. The area through which these rivers meander, and the adjacent Pinelands National Reserve, has received worldwide recognition due to its unique habitat and natural resource values.

The three rivers are home to a diverse group of plants and animals, including 23 important species of reptiles and amphibians. Their waters support valuable recreational and commercials species of fish, including alewives, herring, shad, and striped bass. The adjacent wetlands provide critical habitat to many endangered and threatened animals, including bald and golden eagles, ospreys and least terns, wild turkeys, pine and corn snakes, tiger salamanders, southern gray treefrogs, and snapping turtles.

The area is also well known for its unique vegetation. Ninety percent of the world's remaining population of the endangered joint vetch lives along the Manumuskin. The largest single strand of wildrice in New Jersey, which attracts thousands of migrating waterfowl, rail birds, and bobolink in the fall, lies within the Menantico and Manumuskin watersheds.

The region also has a rich cultural history. In the early 1800's, the rivers served as an important transportation corridor for Delaware Bay schooners carrying bog ore and iron between the Cumberland furnace and nearby ports. A number of archeological finds, including pottery and stone artifacts, and an abandoned Revolutionary War era glassworks, can be found along the rivers. The area was once the center of a thriving oyster harvesting and processing industry and contains numerous buildings and physical remnants which chronicle the rich history of this important Delaware Bay fishery.

The environments through which these rivers flow are diverse, encompassing freshwater wetlands, swamp forests, upland pines and oaks, and a unique coastal landscape along the tidal reaches of the Delaware Bay. Wildflowers and mushrooms line rambling trails that run near the water. The rivers are breathtakingly beautiful and are among the loveliest canoeing areas in the country.

The scenic, natural, cultural, wildlife, and recreational values of the Maurice, Manumuskin, and Menantico Rivers are a tremendous resource to the people of New Jersey and the Nation. These important resource values are critical to maintaining the essential character and integrity of the Pinelands environment which is being threatened by development pressure from all sides. There is little doubt that the three rivers, and their watersheds, possess outstanding and remarkable resource values which make them eligible for further study.

Mr. Speaker, H.R. 5343 provides a unique opportunity for a cooperative planning effort utilizing local, State, and Federal resources to help to mitigate impacts from future development. Enactment of the legislation will ensure comprehensive and rational decisionmaking in a diverse region encompassing both the Pinelands and the State's coastal zone.

Senators BRADLEY and LAUTENBERG have introduced companion legislation providing for a study of these three rivers. I urge my colleagues to join with us in support of the citizens of South Jersey who are asking that these rivers be studied for inclusion in the Wild and Scenic Rivers System. They are truly scenic and environmental treasures worthy of preservation.

□ 1320

Mr. Speaker, a lot of people see New Jersey from the turnpike, but we have so many beautiful areas in New Jersey, and this is certainly one area that is rich in cultural heritage and environmental features, and I urge my colleagues to support what I think is an important initiative to study these rivers for inclusion in the Wild and Scenic Rivers System.

Mr. Speaker, I thank my colleagues on the subcommittee for their outstanding initiative.

Mr. EMERSON. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. VENTO. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Minnesota [Mr. VENTO] that the House suspend the rules and pass the bill, H.R. 5343, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

GREAT BASIN NATIONAL PARK ACT OF 1986

Mr. VENTO. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 2506) to establish a Great Basin National Park in the State of Nevada, and for other purposes as amended.

The Clerk read as follows:

S. 2506

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION. 1. This Act may be known as the "Great Basin National Park Act of 1986".

ESTABLISHMENT

SEC. 2. (a) In order to preserve for the benefit and inspiration of the people a representative segment of the Great Basin of the Western United States possessing outstanding resources and significant geological and scenic values, there is hereby established the Great Basin National Park (hereinafter in this Act referred to as the "park").

(b) The park shall consist of approximately seventy-six thousand acres, as depicted on the map entitled "Boundary Map, Great Basin National Park, Nevada," numbered NA-GB 20,017, and dated October 1986. The map shall be on file and available for public inspection in the offices of the National Park Service, Department of the Interior, and the Office of the Superintendent, Great Basin National Park, Nevada.

(c) Within 6 months after the enactment of this Act, the Secretary of the Interior (hereinafter in this Act referred to as the "Secretary") shall file a legal description of the park designated under this section with the Committee on Interior and Insular Affairs of the United States House of Representatives and with the Committee on Energy and Natural Resources of the United States Senate. Such legal description shall have the same force and effect as if included in this Act, except that the Secretary may correct clerical and typographical errors in such legal description and in the map referred to as in subsection (a). The legal description shall be on file and available for public inspection in the offices of the National Park Service, Department of the Interior.

(d)(1) The Lehman Caves National Monument, designated on January 24, 1922, by Presidential proclamation under the authority contained in the Act of June 8, 1906 (34 Stat. 225) is hereby abolished and the lands incorporated within the Great Basin National Park. Any reference in any law, map, regulation, document, record, or other paper of the United States to such national monument shall be deemed to be a reference to Great Basin National Park.

(2) Any funds available for purposes of the national monument shall be available for purposes of the park.

ADMINISTRATION

SEC. 3. (a) The Secretary shall administer the park in accordance with this Act and with the provisions of law generally applica-

ble to units of the national park system, including the Act entitled "An Act to establish a National Park Service, and for other purposes," approved August 26, 1916 (39 Stat. 535; 16 U.S.C. 1-4). The Secretary shall protect, manage, and administer the park in such manner as to conserve and protect the scenery, the natural, geologic, historic, and archaeological resources of the park, including fish and wildlife and to provide for the public use and enjoyment of the same in such a manner as to perpetuate these qualities for future generations.

(b) The Secretary shall permit fishing on lands and water under his jurisdiction within the park in accordance with the applicable laws of the United States and the State of Nevada, except that he may designate zones where, and periods when, no fishing may be permitted for reasons of public safety. Except in emergencies, any regulations prescribing such restrictions relating to fishing, shall be put into effect only after consultation with the appropriate State agency having jurisdiction over fishing activities.

(c) After notice and opportunity for public hearing, the Secretary shall prepare a management plan for the park. The Secretary shall submit such plan to the Committee on Interior and Insular Affairs of the United States House of Representatives and with the Committee on Energy and Natural Resources of the United States Senate within three years after the enactment of this Act. Such plan may be amended from time to time. The plan shall include, but not be limited to, provisions related to grazing within the park to the extent permitted under subsection (e) and provisions providing for the appropriate management of fish and wildlife and fishing within the park in accordance with subsection (b). Such provisions shall be adopted only after consultation with the appropriate State agency having jurisdiction over fish and wildlife.

(d) Subject to valid existing rights, Federal lands and interests therein, within the park, are withdrawn from disposition under the public lands laws and from entry or appropriation under the mining laws of the United States, from the operation of the mineral leasing laws of the United States, and from operation of the Geothermal Steam Act of 1970, as amended.

(e) Subject to such limitations, conditions, or regulations as he may prescribe, the Secretary shall permit grazing on lands within the park to the same extent as was permitted on such lands as of July 1, 1985. Grazing within the park shall be administered by the National Park Service.

(f) At the request of the permittee, or at the initiative of the Secretary, negotiations may take place at any time with holders of valid existing grazing permits on land within the park, for an exchange of all or part of their grazing allotments for allotments outside the park. No such exchange shall take place if, in the opinion of the affected Federal land management agency, the exchange would result in overgrazing of Federal lands.

(g) Existing water-related range improvements inside the park may be maintained by the Secretary or the persons benefitting from them, subject reasonable regulation by the Secretary.

(h) Nothing in this Act shall be construed to establish a new express or implied reservation to the United States of any water or water-related right with respect to the land described in section 2 of this Act: *Provided*, That the United States shall be entitled to only that express or implied reserved water right which may have been associated with the initial establishment and withdrawal of Humboldt National Forest and the Lehman Caves National Monument from the public domain with respect to the land described in section 2 of this Act. No provision of this Act shall be construed as authorizing the appropriation of water, except in accordance with the substantive and procedural law of the State of Nevada.

(i) In order to encourage unified and cost-effective interpretation of the Great Basin physiographic region, the Secretary is authorized and encouraged to enter into cooperative agreements with other Federal, State, and local public departments and agencies providing for the interpretation of the Great Basin physiographic region. Such agreements shall include, but not be limited to, authority for the Secretary to develop and operate interpretive facilities and programs on lands and waters outside of the boundaries of such park, with the concurrence of the owner or administrator thereof.

ACQUISITION OF LAND

SEC. 4. (a) The Secretary may acquire land or interests in land within the boundaries of the park by donation, purchase with donated or appropriated funds, or exchange, but no such lands or interests therein may be acquired without the consent of the owner thereof. Lands owned by the State of Nevada or any political subdivision thereof may be acquired only by donation or exchange.

(b) Lands and waters, and interests therein, within the boundaries of the park which were administered by the Forest Service, United States Department of Agriculture prior to the date of enactment of this Act are hereby transferred to the administrative jurisdiction of the Secretary to be administered in accordance with this Act. The boundaries of the Humboldt National Forest shall be adjusted accordingly.

AUTHORIZATION OF APPROPRIATIONS

SEC. 5. (a) Not more than $800,000 are authorized to be appropriated for development of the park.

(b) Not more than $200,000 are authorized to be appropriated for acquisition of lands and interests in land within the park.

The SPEAKER pro tempore. Is a second demanded?

Mrs. VUCANOVICH. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Minnesota [Mr. VENTO] will be recognized for 20 minutes and the gentlewoman from Nevada [Mrs. VUCANOVICH] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Minnesota [Mr. VENTO].

GENERAL LEAVE

Mr. VENTO. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days to extend their remarks on S. 2506, the Senate bill presently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

Mr. VENTO. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the House passed H.R. 3302 on April 30, 1986, which contained a designation of a 174,000 acre Great Basin National Park and Preserve. The boundary of this park was drawn to incorporate 16 to 25 of the primary features found throughout the Great Basin region.

Any proposal for a national park should be considered within the context of features that are a sufficient quality to be included within a national park. The elimination of such features from the park area reduce its viability as a national park in direct relation to the number of features being eliminated. I believe the original House proposal to have been an excellent one, properly incorporating the features of the great basin physiographic region and establishing boundaries that were both manageable and so drawn to include only a minimum of private land. Out of 174,000 acres all the land is federally owned except 915 acres.

However, the other body chose to send us a new bill, S. 2506. S. 2506 calls for a 44,000-acre national park which in my view reduced the number and quality of features within the boundary to the extent that national park designation would no longer have been possible.

I have been working with Congresswoman VUCANOVICH and Congressman REID in an attempt to achieve some reasonable compromise on a boundary for the Great Basin National Park, and I'm pleased to report to this House and Members that I believe we have now achieved the goal of agreeing on a smaller park that, while not ideal, reflects most of the features that are integral to the Great Basin area.

Mr. Speaker, over the past 60 years, several studies have been done that found that the Great Basin area qualified for national park status. The Great Basin physiographic region consists of a multitude of valleys separated by a series of long, parallel, north-south mountain ranges. The basin is immense, and includes most of Nevada, half of Utah, and portions of Idaho and California. Representation of this large geographic and ecological region of the West is conspicuously lacking in the National Park System.

The proposed Great Basin National Park would include about 76,000 acres of Forest Service administered land in the Humboldt National Forest known as the South Snake Range and would incorporate Lehman Caves National Monument, located on Wheeler Peak in the South Snake Range.

I would prefer to designate a larger Great Basin National Park. However, 60 years is far too long for us to debate the merits of this important addition

to the National Park System and I am pleased that we have been able to agree to a compromise that will finally allow for the establishment of a national park that the people of Nevada and the Nation can take pride in.

Mr. Speaker, we would not be here today if it were not for the dedication and hard work of Congressman HARRY REID. He was among the first to support the idea of designating the Wheeler Peak area as a national park rather than wilderness and since then has worked tirelessly to achieve that goal. He has overcome formidable opposition from groups within Nevada and argued successfully in the Halls of the Congress for the designation of the Great Basin National Park. I commend his foresight and his diligence and am pleased to call such an able legislator my friend.

As in any controversial legislation, compromise is necessary. The grueling process of reaching an agreement on a complex, emotional issue requires the best qualities of tenacity, knowledge and grace. I have had the pleasure of working on this compromise with BARBARA VUCANOVICH and must say she has exhibited all of these qualities. She has defended her position and that of her constituents with great ability and I wish to commend her as the best of opponents.

Mr. Speaker, I urge our colleagues to support this measure and further urge the other body to act expeditiously to gain immediate enactment of this legislation.

Mr. Speaker, I reserve the balance of my time.

Mrs. VUCANOVICH. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of S. 2506, as amended. S. 2506 creates the Great Basin National Park—Nevada's first national park. This park is of special interest to me as it is located entirely in my district. I would like to thank my colleague from Minnesota, Mr. VENTO, for his cooperation and willingness to address the needs and wishes of the people of Nevada and I believe we have done that.

The area proposed for the Great Basin National Park is in the eastern most part of the State, near Ely in White Pine County. It covers most of the Wheeler Peak scenic area in the lower Snake division and encompasses such scenic landmarks as Wheeler Peak, the Lehman Caves National Monument, Mount Washington, the ancient bristlecone pine forests, Lincoln Peak and Granite Peak, to name a few.

As you know, there has been a certain amount of controversy surrounding the creation of the Great Basin National Park. It has never been a question of whether or not there should be a park; the issue has been size and boundaries. The boundaries I suggested were finally accepted after long hours and extensive negotiations with the gentleman from Minnesota. I believe the agreement we have reached, which is approximately 76,000 acres, is good for the people of Nevada.

We have come a long way from the 44,000-acre park originally proposed in S. 2506 by Nevada's two Senators. However, I believe this bill reflects a compromise that accomplishes what is important to me and the people I represent; it contains no private land and protects the miners and ranchers.

Mr. Speaker, this is a good piece of legislation. It is important to the people of Nevada and will enhance the economy of the State. The Great Basin is a beautiful part of our country and I am proud to have it in my district.

I again would like to recognize the gentleman from Minnesota and thank him for his leadership. I urge passage of S. 2506 so that we may pass it to the other body and give them the opportunity to act favorably. It is our goal that the Great Basin National Park may become a realty during this Congress.

□ 1330

Mr. Speaker, I reserve the balance of my time.

Mr. VENTO. Mr. Speaker, I yield such time as he may consume to the gentleman from Arizona [Mr. UDALL], the chairman of the Committee on Interior and Insular Affairs.

Mr. UDALL. Mr. Speaker, one of the great ideas of the country we love is the idea of having national parks. Over 100 years ago beginning with Grand Canyon, Yosemite, and Yellowstone and some of the other national parks, we have gradually built up an inventory of park treasures that is the envy of other nations. As I say, this whole idea of having a National Park System was an American idea, and it is one of the very best. I have always been surprised at the number of national parks in the West, in the different States, and it sometimes varies a great deal.

Utah, the neighboring State of Nevada, has, as I recall, eight or nine national parks. Nevada, which has spectacular scenery and good people, a great congressional delegation, has had none. I have always wondered about that anomaly and regretted it because there are several areas of national park quality in the State of Nevada.

Due to the common sense and good judgment and willingness to negotiate and consider other points of view, we are here today with what looks like a pretty good settlement that has the approval of the Nevada delegation, and I think most of the people of that great State.

So it is important we not lose this opportunity here today. It is important that this bill pass. It will be a great addition to the National Park System. I commend all of those whose names have been mentioned here already for the role that they have played, and I look forward to seeing the Presidential signature on this bill, which is long overdue.

I thank the gentleman for yielding.

Mr. VENTO. Mr. Speaker, I yield such time as he may consume to the gentleman from Ohio [Mr. SEIBERLING].

Mr. SEIBERLING. I thank the chairman for yielding this time.

Mr. Speaker, I really commend the chairman of the Subcommittee on National Parks and the chairman of the Committee on Interior and Insular Affairs for going ahead and bringing up this piece of legislation. Even though I feel that the Great Basin National Park ought to be larger than the area that would be incorporated in this bill, that is.

Last year the Subcommittee on Public Lands went to Nevada in connection with the consideration of the Nevada wilderness legislation. At that time in the bill that had been introduced in the House the Wheeler Peak area, which is the area dealt with by this bill, was proposed for wilderness, national forest wilderness but not for national park status.

I was so impressed when I visited Wheeler Peak with the absolutely stunning beauty and uniqueness of that area that I immediately reacted upon seeing it and thought this really ought to be made a national park, not that there are not marvelous areas in the national forest of superb natural quality and unique qualities but that this is such a truly sweeping and spectacular piece of scenery and piece of landscape that it ranks with our greatest national parks in the lower 48, certainly.

So I agree with the gentleman from Minnesota [Mr. VENTO] when he offered an amendment to our wilderness bill to designate the Wheeler Peak area a national park. The designation would have put 174,000 acres into the National Park System, 40,000 of which would have been a national park preserve where hunting could continue, and the other 134,000 would have been a pure national park.

This bill falls considerably short by about 100,000 acres, almost, of what we had originally thought was appropriate. However, the gentleman from Nevada [Mr. REID], and the gentleman from Minnesota have urged that we go ahead with this as being an opportunity to protect and recognize the first national park in Nevada.

It certainly is a respectable effort. The acreage, while not as great as I would have liked, does bring most of

the themes into the proposed park, and there is, of course, always the opportunity in some future Congress to add more if it becomes appropriate.

So on that basis I am going to support this legislation, and with the understanding that the Nevada delegation does support it also. And I commend our colleague, Mrs. VUCANOVICH, and other Members as well as Mr. REID.

Mr. VENTO. Mr. Speaker, will the gentleman yield?

Mr. SEIBERLING. I yield to the gentleman from Minnesota.

Mr. VENTO. I thank the gentleman for his support. I think in the last weeks of Congress here we are, doing a very important thing, giving birth to a new national park. That has not happened often enough in the last decades. We expanded Channel Islands Monument to a national park. Our colleague, the gentleman from California [Mr. LAGOMARSINO] is not here today—I might say parenthetically we want to give credit to him for his positive role during the times we had some bitter struggles over the wilderness legislation, the size of this park. He persisted in terms of keeping the waters somewhat calm. He accompanied me to Ely, NV, along with the gentlewoman. We listened to a lot of witnesses, gave everyone their say with regard to this issue. But the fact is that we have not designated enough national parks in recent years, and I hope we can move forward.

This is truly obviously a change from a monument to a park as Channel Islands was, but I think in this case we are going to increase it some 77 or 76 times its size. I think that probably indicates that the last national park we actually created of any of this magnitude other than Channel Islands change was, of course, in the Voyageurs National Park in Minnesota, some 342,000 acres except, of course, for Alaska, where the gentleman was the main sponsor and responsible for tremendous additions to the park system. But we need these types of institutions. I want to give credit to the Chamber of Commerce of Ely, NV, and certainly to the Vucanovich-Reid compromise that was accomplished.

You know, the point here is, sure we had a 174,000-acre park, but we had only one Member of the delegation willing to support that. Now I think we have a much-reduced one or one that is cut down to 76,000, but we have support. That is what we need. We have to reconcile these differences and come up with a product. Nothing, I think, discourages the people we represent more than when we labor and stick to, necessarily, some sort of view, only to see it go down in flames at the end of the session.

This, I think, is a good achievement, and I think we live to debate ahead other features that could be added in a reasonable manner, and hopefully we will win and build the type of support with the people of Nevada who have sustained this, who have come out and supported this measure and be able to add to it as justified and necessary, and win further support.

Mr. SEIBERLING. Let me simply say one other thing: Of course, the bill that passed the House with the 174,000-acre park unit also has about almost 700,000 acres of wilderness in the national forest in Nevada. Anyone who has visited those stunning mountain ranges will come back with a completely different impression of Nevada than the average visitor has.

The average person that goes there thinks it is all desert. I happen to think the desert is wonderful, too. But the mountains in Nevada are truly marvelous areas that are equal to any natural areas in California or Oregon or any of the other States we associate with magnificent outdoor recreation opportunities.

I hope that even though the national park issue will be dealt with in this legislation, that the next Congress will also come back and deal with the wilderness issue in Nevada because the Nevada wilderness areas, the proposed wilderness areas in the national forest, are truly worthy of recognition and will do a great thing for the State in terms of added interest from the tourism standpoint.

Mr. VENTO. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I want to mention that all of the features that distinguish the Great Basin, or many of them are, of course, included in this park, the magnificent bristlecone pine, the mountain mahogany, the geologic features so dominant in that area in terms of caves, and other features that clearly are present.

I think it is a tremendously good core for the park, and I think it will serve the goals of that area.

Mr. Speaker, I would be remiss if I did not pay a salute to the staff of the House which has worked so hard on this; my chief of staff, Dale Crane, the staff of the gentlewoman, Mrs. VUCANOVICH, and others who have taken an active part. They have worked on this for many years.

I am pleased to see that finally the fruit of their labor is going to result in the designation and this accomplishment.

I think that is really where we have to go with the other designations. We have a great deal of work to do in Nevada with regard to wilderness designation both from the standpoint of the Forest Service and the Bureau of Land Management.

I hope this begins to set a tone and a pattern for achieving agreement on these other areas. This will be the first national park in Nevada, a State with such magnificent natural and physical resources, and we certainly hope that it bodes well for dealing with the other Federal lands which are so important to the people of this State.

When we look at the Western States and the amount of land that is in Federal ownership, we have indeed a unique responsibility to deal effectively and fairly with the people of Nevada and other States that have such significant components of Federal land.

Mr. Speaker, I have no further requests for time.

Mrs. VUCANOVICH. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I just would like to close my remarks again by thanking the chairman, the gentleman from Minnesota [Mr. VENTO] and also the gentleman from Arizona [Mr. UDALL] and the gentleman from Ohio [Mr. SEIBERLING] all of whom made this possible for us. It never would have been able to be done if we did not have the cooperation of the full committee and the Members who were as closely involved as they were.

I thank the gentlemen very much.

Mr. Speaker, I yield back the balance of my time.

Mr. LAGOMARSINO. Mr. Speaker, I rise in support of the amended version of S. 2506 before us today. As the subcommittee chairman has explained, this bill would establish the Great Basin National Park in Nevada.

Great Basin will be the first new national park in the United States since the Channel Islands National Park was created in my congressional district in 1980. Encompassing approximately 76,000 acres, the park will include such unique natural features as ancient bristlecone pine, aspen forest, a rock glacier, and 13,013 foot Wheeler Peak. The park will also include the 640-acre Lehman Caves National Monument, which was established as a unit of the National Park System in 1922 and is known for its numerous caverns of gray and white marble.

The amended version of S. 2506 which we are considering today represents a significant compromise between the original House-passed bill which proposed a 129,000-acre national park and a 45,000-acre national preserve, and the Senate-passed bill which proposed to designate 44,000 acres as a national park. I want to commend my good friend and colleague on the Interior Committee, the gentlelady from Nevada, Mrs. VUCANOVICH, and the subcommittee chairman, Mr. VENTO, for their diligent efforts and spirit of cooperation in resolving the difficult issues associated with this legislation. Mrs. VUCANOVICH, whose congressional district includes the proposed park, has worked extremely hard on this compromise and has, in my opinion, done an excellent job in representing her constituents on this issue.

The area where the new park is proposed, has been managed for multiple use for many years, including grazing, hunting, mining and recreation. Although not all of these uses will be allowed in the national park, recreation use

will be encouraged and grazing will be permitted to continue at recent levels. In addition, the bill contains exchange authority for grazing allotments. The legislation also prohibits condemnation of private lands within the park and preserves existing water rights as well as clarifying that no new Federal water rights will be established through creation of the park.

I believe that many months of negotiation on this legislation have resulted in an excellent compromise which, through creation of the Great Basin National Park, provides for the protection of the area's unique natural resources, as well as allowing many of the current multiple uses to continue. Therefore, I urge all of my colleagues to support and vote for the amended version of S. 2506.

Mr. REID. Mr. Speaker, I rise in support of S. 2506, to establish the Great Basin National Park in Nevada.

A brief description of the proposed Great Basin National Park is warranted, although it will not do justice to this spectacular area located in eastern Nevada. The Snake Range is one of Nevada's most spectacular mountain ranges, exhibiting many unique characteristics. Its diverse terrain include the 13,013-foot summit of Wheeler Peak, the highest mountain lying solely in Nevada; forests of aspen; the world's largest mountain mahogany; and ancient bristlecone pine. Lehman Caves National Monument, one of the largest limestone solution caves in the West, is located within the Snake Division. Aside from the spectacular geology, the South Snake Range is known for its diversity of life, including herds of bighorn sheep and mule deer.

On April 30, the House of Representatives approved H.R. 4642, the Nevada Wilderness Protection Act of 1986. H.R. 4642, a compromise measure which I introduced, establishes 11 wilderness areas totaling 592,000 acres and the 174,000-acre "Great Basin National Park and Preserve." On September 30, the other body passed S. 2506 to establish a 44,000-acre Great Basin National Park in White Pine County, NV. The legislation before us today is a compromise proposal to create Nevada's first national park.

Currently the 200,000-square-mile area known as the Great Basin is not represented in our National Park System. Aside from protecting the unique physical attributes of the area, a park would help boost and diversify the economy of White Pine County and the State of Nevada.

There is strong support back home for establishing the Great Basin National Park. The Governor of Nevada, the Nevada Legislature's Committee on Public Lands, the White Pine Chamber of Commerce, as well as the Secretary of the Interior, are among the many groups and individuals endorsing the Great Basin National Park. A recent statewide telephone survey of 2,000 randomly selected Navadans from every county and virtually every community in the State indicates that 84 percent favor the establishment of the Great Basin National Park.

Mr. Speaker, I commend my distinguished colleague from Nevada for her willingness and serious efforts to create the Great Basin National Park. I also applaud Chairman VENTO's diligence in seeing the establishment of Nevada's first national park. This legislation is long overdue.

Nevada is the only Western State without a national park or portion of a park within its borders. A national park would also enhance Nevada's image and show that the State is more than a place to test nuclear weapons and dispose of nuclear waste.

More than 60 years ago, Senator Key Pittman introduced a bill to create an 8,000-acre Lehman Caves-Wheeler Peak National Park. In 1961, legislation passed the Senate calling for a 124,500-acre Great Basin National Park. Numerous studies conducted by the National Park Service found the area suitable for preservation as a national park. Therefore, I urge my colleagues to support S. 2506. Thank you.

Mr. VENTO. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. LUKEN). The question is on the motion offered by the gentleman from Minnesota [Mr. VENTO] that the House suspend the rules and pass the Senate bill, S. 2506, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill, as amended, was passed.

A motion to reconsider was laid on the table.

STEAMTOWN NATIONAL HISTORIC SITE

Mr. SEIBERLING. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5555) to designate certain property located in Scranton, PA, as the "Steamtown National Historic Site," as amended.

The Clerk read as follows:

H.R. 5555

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION AS NATIONAL HISTORIC SITE.

The property known as Steamtown, consisting of the land, historic roundhouse, switchyard, and associated buildings, track and equipment, and located on approximately 40 acres in Scranton, Pennsylvania, is hereby designated as the Steamtown National Historic Site (hereafter in this Act referred to as "the Site"). The Site is generally depicted on the map entitled "Steamtown National Historic Site", numbered STTO-80,000 and dated September 1986. A copy of the map shall be on file and available for inspection in the offices of the National Park Service in Washington, D.C., and in appropriate regional and local offices.

SEC. 2. MANAGEMENT OF SITE.

(a) PREPARATION OF MANAGEMENT PLAN.—The Secretary of the Interior (hereafter in this Act referred to as the "Secretary") shall prepare a comprehensive management plan for the Site, which may include a feasibility study of making the Site a unit of the National Park System. Such management plan shall include all of the elements required for general management plans under section 12 of the Act entitled "An Act to improve the administration of the national park system by the Secretary of the Interior, and to clarify the authorities applicable to the system, and for other purposes" approved August 18, 1970 (U.S.C. 1a-7), and shall be submitted to the Congress no later than September 30, 1987.

(b) ADMINISTRATION OF SITE.—(1) During the period when the management plan required under subsection (a) is being prepared or until the Congress directs otherwise, the Secretary shall administer the Site through cooperative agreements and grant agreements, as appropriate, with the owner or owners of the property. The Secretary may provide financial and technical assistance in planning, interpretation, maintenance, preservation, and appropriate public use of the Site and associated rolling stock in order to further public understanding and appreciation of the development of steam locomotives in the region.

(2) Beginning on the earlier of the date of the submission of the management plan to the Congress under subsection (a) or September 30, 1987, the Secretary may acquire the Site, and all or part of the associated rolling stock, by donation or with donated funds. Upon acquisition pursuant to this paragraph, the Site and any acquired associated rolling stock shall thereafter be administered by the Secretary in accordance with the provisions of law generally applicable to units of the national park system, including the Act entitled "An Act to establish a National Park Service, and for other purposes", approved August 25, 1916 (16 U.S.C. 1 et seq.), and the Act entitled "An Act to provide for the preservation of historic American sites, buildings, objects and antiquities of national significance, and for other purposes" approved August 21, 1935 (16 U.S.C. 461 et seq.).

SEC. 3. ADVISORY COMMITTEE.

The Secretary is authorized to establish a Steamtown Advisory Committee and appoint up to 10 members who shall serve at no cost to the United States.

SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated $35,000,000 for the administration of the Steamtown National Historic Site and for assistance to the owner thereof pursuant to the agreements referred to in section 2(b).

The SPEAKER pro tempore. Is a second demanded?

Mr. MARLENEE. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Ohio [Mr. SEIBERLING] will be recognized for 20 minutes and the gentleman from Montana [Mr. MARLENEE] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Ohio [Mr. SEIBERLING].

GENERAL LEAVE

Mr. SEIBERLING. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

Mr. SEIBERLING. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 5555 would designate a 40-acre area in Scranton, PA, as the Steamtown National Historic Site to be administered by the Secretary of the Interior as a unit of the National Park System.

Steamtown is a museum and living exhibit containing one of the world's largest collections of steam-era locomotives and other memorabilia. The collection includes approximately 40 steam locomotives and 100 assorted pieces of other railroad rolling stock. The biggest steam locomotive ever built, Union Pacific's 1.2 million pound Big Boy, is part of the collection.

One of the Nation's centers for coal, iron, and railroading, Scranton is within easy access to residents of New York, Pennsylvania, and New Jersey. Steamtown is located at the 43-acre, Civil War-era Lackawanna Railroad freight yards in the heart of downtown Scranton. It was here that the first steel t-rails in America were produced, a railroad was begun and the development of locomotives and other railroad equipment was promoted.

A planned museum complex to display this memorial to the Age of Steam centers around a historic roadhouse, locomotive and erecting shops, and the rail yards. The former Lackawanna train station has already been renovated into a hotel. Steamtown also offers living exhibit excursions aboard steampowered locomotives to give the visitors a first-hand experience with steam age transportation.

Steamtown has already attracted over 215,000 visitors from throughout the Nation. The State of Pennsylvania is providing $1 million over the next 2 years. Private contributions are also financing Steamtown; the business people and other citizens of the community have helped by raising $1.6 million. The railroads have also contributed to this effort. However, the backing of the Federal Government is essential to ensure the continued success and expansion of this historic resource. H.R. 5555 would recognize the national significance of Steamtown and allow the National Park Service to develop and operate it through a cooperative agreement with the nonprofit Steamtown Foundation. In this way, the history of the railroad in the United States can be preserved and interpreted for present and future generations.

The Subcommittee on Public Lands held a hearing on the legislation on September 30, 1986 and favorably referred an amended version of it to the committee, which ordered it favorably reported to the House on October 1 with the recommendation that it pass.

To summarize the bill as amended by the committee, H.R. 5555 would designate Steamtown as the Steamtown National Historic Site—referred to in the act as "the Site." The site would consist of the historic roundhouse, switchyard, and associated buildings, track, and equipment—but not the rolling stock—located on approximately 40 acres in Scranton, PA. The Secretary is directed to prepare within 1 year a management plan for the site and to administer the site through cooperative agreements with the owners during prepartion of the plan or until Congress directed otherwise. When the plan is completed, or on or after September 30, 1987—whichever comes first—the Secretary would be authorized to acquire the site and all or part of the associated rolling stock by donation or with donated funds; when acquired, it would be administered as a unit of the National Park System in accordance with the applicable laws governing such units. The Secretary would be authorized to establish a 10-member advisory committee who would serve at no cost to the United States. The bill would authorize $35 million for the administration of the site and assistance to the owner.

Mr. Speaker, I want to commend our colleague from Pennsylvania, Mr. MCDADE, for his outstanding efforts on behalf of this legislation. His vision for the future of Steamtown and his persistence and enthusiasm have been inspiring. I particularly appreciate his willingness to help work out the details of the legislation to accommodate concerns which had been raised. I also want to thank Mr. VENTO, chairman of the Subcommittee on National Parks, for graciously allowing me to handle the legislation, which normally would have come under his subcommittee's jurisdiction since it involved establishment of a unit of the National Park System.

I would also like to note the excellent help we received from staff, including Deborah Weatherly of Mr. MCDADE's staff, and Loretta Neumann and Nancy Gilstrap of the majority staff of the Public Lands Subcommittee and Jean Toohey of the minority staff.

In conclusion, I think this bill is a good one and I hope all Members will support it.

□ 1345

Mr. Speaker, I reserve the balance of my time.

Mr. MARLENEE. Mr. Speaker, I yield myself such time as I may consume.

Mr. MARLENEE. Mr. Speaker, I rise in support of H.R. 5555. H.R. 5555 is a bill to designate the property known as Steamtown in Scranton, PA, as a national historic site to be administered as a unit of the National Park System.

As the chairman has said, Steamtown is a unique site. Park Director William Mott has referred to it as a national treasure. It is also a tribute to a city and congressional delegation, particularly the gentleman from Pennsylvania [Mr. MCDADE], who came up with the bold idea to bring tourism and revenue to a depressed community.

Mr. Speaker, I yield such time as he may consume to the gentleman from Pennsylvania [Mr. MCDADE].

Mr. MCDADE. Mr. Speaker, the legislation we have before us today is important because it will ensure that a glorious part of our Nation's history, American railroading and the steam age, will be kept alive for the education and enjoyment of future generations.

H.R. 5555 is bipartisan legislation sponsored by all 23 members of the Pennsylvania delegation. Public Lands Subcommittee Chairman JOHN SEIBERLING, who has my eternal gratitude, and the ranking Republican on the Interior subcommittee, DON YOUNG of Alaska, are also original sponsors. Identical legislation has been introduced in the Senate by Senators JOHN HEINZ and ARLEN SPECTER.

I want to thank my colleagues very deeply, JOHN SEIBERLING whose presence will be missed in the House, the chairman of the committee, Mr. UDALL, my dear friend DON YOUNG of Alaska, the ranking member, and my colleague, Mr. MARLENEE, for their support and leadership in the Public Lands Subcommittee and in the Interior Committee in moving the bill to the floor.

I, of course, want to thank the professional staff who worked so hard to make today come about.

I want to also pay tribute to my administrative assistant, Debbie Weatherly, who worked tirelessly to bring the legislation here.

As has been said by my able colleague, the gentleman from Ohio, originally Steamtown will be administered by the Department of the Interior as a unit of the National Park System through cooperative agreements with the city and nonprofit Steamtown board. After a comprehensive plan is complete they would administer it as owners in fact.

It is correct, as my colleague, Mr. MARLENEE, has said, that this area, this treasure, was called a national historic treasure by Park Director William Mott.

Mr. Speaker, passage of the legislation will ensure Steamtown's preservation and protection. The legislation will enable the National Park Service to interpret and commemorate the hardships, the blood, the sweat and the tears of the people who built the railroads of our great Nation. As we do that, all of us can then celebrate the glory of their magnificent triumph.

Mr. Speaker, the national significance of this legislation was pointed out last week in hearings before the Public Lands Subcommittee. W. Russell Preston, a member of the Steamtown Board of Trustees, said:

With the assistance of the National Park System, the Steamtown National Historic Site will preserve for all time both a site and collection which fully tells the story of railroading in this country and the role it played in our development.

Scranton newspaperman and local historian, Edwin Rogers, who is also a member of the board, noted at the hearing:

Steamtown is not a collection of locomotives indigenous to Scranton, to Pennsylvania or to the East. It is, according to Director William Penn Mott of the National Park Service, a national treasure.

A couple of weeks ago, I had the pleasure of giving Mr. Mott a tour of Steamtown, and I joined him on a ride aboard one of Steamtown's historic locomotives. I know he shares my enthusiasm for Steamtown U.S.A. as an ideal location for telling the story of railroading and the American Steam Age.

The Steamtown Board of Trustees is committed to preserving Steamtown in as authentic an atmosphere as one can find anywhere in this great country. Scranton is an ideal site for keeping alive this part of our Nation's history. John Luciani, a Steamtown board member, put it very well in his testimony before the subcommittee:

There is no more fitting location for a National Historic Site dedicated to America's railroads and railroaders than Scranton, for it was in this corner of Northeastern Pennsylvania that much of it began. Steamtown U.S.A. is the Nation's premier collection of steam locomotive and railroad memorabilia. It is a veritable time machine capable of turning back the clock to the beginning of the century.

Austin Burke, president of the Scranton Chamber of Commerce, quoted Prof. Burton Folsom, in his Johns Hopkins Unversity Press volume Urban Capitalists:

In fact, America's Industrial revolution in coal and iron began in Pennsylvania—at Scranton, in the Lackawanna Valley. There American ingenuity combined the available coal and iron to challenge England's world dominance in manufacturing * * *. The story of the Lackawanna region tells us much about America.

Steamtown enjoys the full support of the Scranton community. Mayor David Wenzel and chamber president Austin Burke told the subcommittee of Scranton's successful fund-raising effort where over $1.6 million was raised by businesses and individuals including school children who contributed their nickels and dimes to keep a part of our history alive.

Mayor Wenzel said:

We have an opportunity with Steamtown USA to set up a historic site that will afford all Americans the opportunity not only to investigate and to learn what railroading was all about, but also to experience the thrill of riding the rails pulled by a steam locomotive.

Mr. Speaker, I urge the adoption of this legislation.

Mr. MARLENEE. Mr. Speaker, will the gentleman yield?

Mr. McDADE. I yield to the gentleman from Montana.

Mr. MARLENEE. Mr. Speaker, there was some concern expressed that money might be spent on property which the government does not own. But I understand that Scranton has solved that problem, that they have agreed to donate.

Mr. McDADE. That is absolutely correct. The very able mayor of the city of Scranton, the Honorable David Wenzel, acting on behalf of the city which owned and paid over a million dollars for the site, has donated that land to the Federal Government.

It is important to note, too, that the collection was brought there at a cost of $1.7 million raised by the people of the community, and I mean men, women, and children who put their bubble gum money on the table to move the rolling stock from New England, where it was deteriorating, down to my community. All of that was given as a grant to the Federal Government, and we are grateful for the opportunity to do so.

Mr. MARLENEE. Mr. Speaker, if the gentleman will yield further, the collection I understand is further owned by a private foundation, but this legislation would allow the donation of that collection.

Mr. McDADE. That is correct. It is a nonprofit, community-owned private foundation. The members of the board were down testifying, at their expense I might add, on behalf of the legislation, and they have agreed to do exactly that.

Mr. MARLENEE. It appears to me that this was a supreme effort by the delegation and the community, and I again commend my colleague from Pennsylvania [Mr. McDADE].

I would urge my colleagues to support this legislation.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. SEIBERLING. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. LUKEN). The question is on the motion offered by the gentleman from Ohio [Mr. SEIBERLING] that the House suspend the rules and pass the bill, H.R. 5555, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

TRANSFER OF LAND IN WAYNESBORO, MS

Mr. SEIBERLING. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5151) to provide for the consideration under the Color of Title Act of a certain parcel of land in Waynesboro, MS, as amended.

The Clerk read as follows:

H.R. 5151

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. PARCEL OF LAND IN WAYNESBORO, MISSISSIPPI.

(a) CONSIDERATION OF APPLICATION UNDER COLOR OF TITLE ACT.—Not later than 45 days after the date of enactment of this Act, the Secretary of the Interior shall receive, consider, and act on the application of Mr. and Mrs. J.W. Wells of Waynesboro, Mississippi, for a patent for the land described in subsection (c) of this section under the Act entitled "An Act to authorize the Secretary of the Interior to issue patents for lands held under color of title" approved December 22, 1928 (43 U.S.C. 1068 et seq.), notwithstanding the requirement of that Act that a tract of public land be held in good faith and in peaceful, adverse, possession by a claimant, his ancestors or grantors, under claim or color of title for the period commencing not later than January 1, 1901, to the date of application during which time they have paid taxes levied on the land by State and local governmental units.

(b) MINERAL INTERESTS.—Any patent issued pursuant to subsection (a) shall be without any mineral reservation to the United States, and all mineral interests of the United States in and to the land described in subsection (c) shall be transferred to Mr. and Mrs. J.W. Wells without consideration.

(c) LAND DESCRIPTION.—The land referred to in this section, comprising approximately 160 acres, is the NW¼ of Section 21, T. 10 N., R. 8 W., St. Stephens Meridian.

SEC. 2. (a) Notwithstanding any provision of law or order based thereon, the Secretary of the Interior, at the request of the Secretary of Agriculture, is authorized to take such actions (including but not limited to the revocation of withdrawals and the issuance of patents) as may be necessary to facilitate and consummate a land exchange in Idaho known as the Mesa Falls Exchange, as described in a Land Exchange Notice by the Department of Agriculture published in the Post-Register newspaper published in Idaho Falls, Idaho on November 12, 1985 (p. B-5), if the Secretary of Agriculture decides to proceed with such exchange.

(b) Notwithstanding any other provision of law, the Secretary of the Interior, if he determines it necessary and appropriate for the purpose of consummating an exchange of lands or interests therein under applicable law, is hereby authorized and directed to:

(1) revoke the Small Tracts Act Classification S.T. 049794 in Clark County, Nevada; and

(2) revoke the withdrawal under the First Form by Order of the Secretary of the Interior dated December 14, 1904, and as interpreted by Order of Interpretation of the Secretary of the Interior dated May 19, 1964, insofar as said withdrawal applies to Section 31 (Lots 1, 2, 3, W½ E½ E½ NW¼

SE¼ SE¼) T.5 N., R 7 E., Gila and Salt River Meridian, Arizona.

SEC. 3. YOSEMITE NATIONAL PARK.

Notwithstanding any other provision of law, no Federal lands may be used for the expansion of the capacity of any reservoir which is located within the boundaries of Yosemite National Park, unless Congress enacts specific statutory authorization after the date of the enactment of this Act for such expansion.

The SPEAKER pro tempore. Is a second demanded?

Mr. MARLENEE. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Ohio [Mr. SEIBERLING] will be recognized for 20 minutes and the gentleman from Montana [Mr. MARLENEE] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Ohio [Mr. SEIBERLING].

GENERAL LEAVE

Mr. SEIBERLING. Mr. Speaker, I ask unanimous consent that all Members have 5 legislative days within which to revise and extend their remarks on the bill now being considered.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

Mr. SEIBERLING. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 5151 was introduced by the gentleman from Mississippi [Mr. LOTT]. It would require the Secretary of the Interior to receive, consider, and act on the application of Mr. and Mrs. J.W. Wells of Waynesboro, MS, for a patent to lands described in the bill, under the Color of Title Act. The bill would require that there be no mineral reservation in the patent and that all mineral interests be transferred to Mr. and Mrs. Wells without consideration.

At our hearing, there was testimony that Mr. and Mrs. Wells have been occupying the land in question under two "tax deeds," one issued in 1932 which was declared invalid on a technicality, and the second in 1955 which was apparently acquired in order to overcome the deficiency in the 1932 tax deed. These tax sales create a break in the claim so that the Wells cannot relate their claim to the entry made on the land in 1817. The bill will enable them to clear their title to the lands.

The bill as reported also addresses some other Federal land matters. It would authorize the Secretary of the Interior to take steps necessary to facilitate the Mesa Falls land exchange, involving National Forest lands in Idaho.

It would also give the Secretary authority to revoke a Small Tracts Act classification in Clark County, NV, and a reclamation withdrawal in Maricopa County, AZ, in order to allow two separate and unrelated land exchanges to be completed. All these land exchanges are endorsed and proposed for consummation by the relevant land-managing agencies. All necessary paperwork, environmental studies, and so forth, have been completed by the agencies and the exchanges are ready to go, except that the administration because of a pending lawsuit, which does not specifically involve these lands, raised questions as to BLM's current authority to complete these required preliminary steps. This would make it clear that BLM has the requisite authority, if the agencies desire to go forward.

Finally, the bill includes language, already passed by the House as part of another bill, prohibiting use of Federal lands for expansion of any reservoir within Yosemite National Park in the absence of specific congressional approval.

Mr. Speaker, this is a somewhat technical bill, but a good one that will solve some problems of importance to the people and the areas directly affected. I urge its passage.

□ 1355

Mr. Speaker, I reserve the balance of my time.

Mr. MARLENEE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 5151. The bill, as introduced, was a simple private bill for an elderly couple, Mr. and Mrs. J.W. Wells. The Wells are seeking to obtain a patent to 160 acres of land which they believe they have rightfully owned since 1938. The legislation allows them to apply for a patent under the Color of Title Act despite some minor flaws which technically disqualify them. For example, there was a break in the title due to a tax sale during the Great Depression. The committee found, however, that the Wells meet the intent of the act and equity is clearly on their side.

Three additional provisions were added to the bill in the Public Lands Subcommittee which involve land exchanges in Nevada, Arizona, and Idaho. Congressional action on them is necessary because of the great litigation organization, the National Wildlife Federation, lawsuit. My colleagues have heard me say before that the lausuit itself is unjustified and overzealous and should be dropped. In the meantime, however, I see no reason to hold up worthwhile exchanges which all parties agree on.

An additional item involving the Hetch-Hetchy Dam in California was added in full committee. A similar provision passed the House as part of H.R. 4089 and was not controversial at that time.

It is that time of year when meritorious bills seem to attract riders. We have been assured that these additional provisions are supported by the agencies involved and the delegations. If opposition arises, the provisions should fall off and not hold up the basic legislation. With this understanding, I urge my colleagues to support H.R. 5151.

Mr. LOTT. Mr. Speaker, I rise in support of H.R. 5151, a bill I introduced to provide for the consideration under the Color of Title Act of a certain parcel of land in Waynesboro, MS. I rise also to commend and thank the leadership of the chairman of the subcommittee, the gentleman from Ohio, and the gentleman from Montana, for their assistance with and support of H.R. 5151.

The first thing I want to say today, and to underscore, is that H.R. 5151 has been introduced to fulfill the spirit of the Color of Title Act as it appears in section 1068–1068b of the United States Code.

The subjects of H.R. 5151 are Mr. and Mrs. J.W. Wells, a couple in their seventies, from Waynesboro, MS. The Wells have for nearly 50 years personally held, and reasonably thought they owned, the 160-acre tract of land that is now under consideration. Since 1939, the Wells have paid taxes on this land. Land that they purchased under what, even to trained officials of Wayne County and the State of Mississippi, appeared to be a valid deed. In fact, a title search on the property shows what reasonably appears to be a chain of title outside the hands of the Federal Government since 1817.

However, in 1984 it was discovered that there might be some problem with the original land patent. Specifically, records were insufficient to show that the man who originally bought the land from the Federal Government in 1817, ever completed paying the purchase price of $320. It should be noted at this point that many pertinent land records were destroyed by two fires that struck the Wayne County Courthouse in the 1800's.

Of course, one cannot adversely possess against the Federal Government, and failure to complete payment of the purchase price would mean that, although for over 1¾ of a century people thought otherwise, the land never technically left the hands of the Federal Government.

Needless to say, the elderly Wells couple was shocked to find that the land they had purchased in their early twenties and treated as their own—was now not theirs at all, but belonged to the Federal Government. Quickly, the Wells moved to reinstate the original entry. Shortly after the defect was discovered, the Wells contacted me and inquired about possible relief under the Color of Title Act—an Act that I strongly believe was designed by Congress to provide relief for people just like the Wells.

Mr. Speaker, I would like to take a moment and look at the substance of why the Wells clearly deserve surface title under the Color of Title Act, and why they equitably deserve title

to the mineral rights under the spirit and intent of the act.

Section 1068 provides, and I quote:

The Secretary of the Interior (a) shall, whenever it shall be shown to his satisfaction that a tract of public land has been held in good faith and in peaceful, adverse possession by a claimant, his ancestors or grantors, under claim or color of title for more than twenty years, and that valuable improvements have been placed on such land or some part thereof has been reduced to cultivation, * * * issue a patent for not to exceed one hundred and sixty acres of such land upon payment of not less than $1.25 per acre * * *.

Clearly the Wells meet the statutory time requirement with plenty of time to spare. They and their grantors held the land for well over a century and during the Wells' ownership a road was constructed, a fence built, and land cleared. Certainly, valuable improvements were added to the land. Mr. Speaker, clearly the Wells deserve surface title to the land in question under both the spirit and the letter of the Color of Title Act.

The enactment of H.R. 5151 is necessary to also grant the Wells mineral rights—which are very important on the tract of land in question. To gain mineral rights, one must show, under section 1068B of the act, that he, his ancestors, or grantors peacefully possessed the land under color of title since 1901 and paid taxes on the land during that time.

Mr. Speaker, this is certainly the case for the Wells except for the fact that during one period, for 7 years, the State of Mississippi held color of title due to failure to pay taxes. This period was from 1931–38, precisely during the height of the Great Depression. A period when many if not most rural families had trouble paying their taxes. Despite the interruption, all the back taxes were paid by the Wells in 1939.

With out question, Mr. Speaker, the Great Depression was a time of national economic hardship of a magnitude then unprecedented and to date unduplicated. The unique and extreme qualities of this one era in American history were recognized in laws enacted by the State of Mississippi that provided special dispensations for those citizens who lost their property due to inability to pay their taxes. In fact, section 11, chapter 383 of the General Laws of the State of Mississippi even anticipated that many citizens would be unable to meet tax burdens during the Depression, and took steps to extend property redemption periods in advance. Interestingly, this particular law was passed in what was entitled the extraordinary session of 1932, a session specially called by the Governor to cope with the unique hardships of the Depression.

Mr. Speaker, the Wells are the type people for whom the Color of Title Act was designed and I urge my colleagues support for H.R. 5151.

Mr. MARLENEE. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. SEIBERLING. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Ohio [Mr. SEIBERLING] that the House suspend the rules and pass the bill H.R. 5151, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The title of the bill was amended so as to read: "A bill to provide for the consideration under the Color of Title Act of a certain parcel of land in Waynesboro, MI, and for other purposes."

A motion to reconsider was laid on the table.

EXTENSION OF INTERSTATE TRANSFER DEADLINE

Mr. HOWARD. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 2880) to provide a temporary extension of the interstate transfer deadline for the H–3, as amended.

The Clerk read as follows:

S. 2880

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. APPROVAL OF WITHDRAWAL OF CERTAIN INTERSTATE ROUTES.

Section 103(e)(4) of title 23, United States Code, is amended by inserting after the third sentence the following new sentence: "With respect to any route which on the date of the enactment of the Federal-Aid Highway Act of 1978 was under judicial injunction prohibiting its construction, the Secretary may approve the withdrawal of such route until ten days after the final legislative day of the 99th Congress of the United States.".

SEC. 2. DEER ISLAND TREATMENT PLANT, MASSACHUSETTS.

(a) EMERGENCY IMPROVEMENTS.—The Administrator of the Environmental Protection Agency is authorized and directed to make grants to the Metropolitan District Commission, Massachusetts, for a project to undertake emergency improvements at the Deer Island Waste Water Treatment Plant in Boston, Massachusetts. The Federal share of such project shall not exceed 75 percent of the cost of carrying out such improvements.

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $10,000,000 per fiscal year of each of fiscal years 1987, 1988, and 1989.

SEC. 3. BOSTON HARBOR AND ADJACENT WATERS.

(a) GRANTS.—The Administrator of the Environmental Protection Agency shall make grants to the Massachusetts Water Resource Authority for purposes of—

(1) assessing the principal factors having an adverse effect on the environmental quality of Boston Harbor and its adjacent waters;

(2) developing and implementing a management program to improve the water quality of such Harbor and waters; and

(3) constructing necessary waste water treatment works for providing secondary treatment for the areas served by such authority.

(b) FEDERAL SHARE.—The Federal share of projects described in subsection (a) shall not exceed 75 percent of the cost of construction thereof.

(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $20,000,000 per fiscal year of each of fiscal years 1987, 1988, 1989, 1990, and 1991. Such sums shall be in addition to and not in lieu of any other amounts authorized to be appropriated under title II of the Federal Water Pollution Control Act.

SEC. 4 SPECIAL PROVISIONS REGARDING CERTAIN DUMPING SITES.

(a) FINDING.—The Congress finds that the New York Bight Apex is no longer a suitable location for the ocean dumping of municipal sludge.

(b) GENERAL RULE.—Title I of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1401 et seq.) is further amended by inserting after section 104 the following new section:

"SPECIAL PROVISIONS REGARDING CERTAIN DUMPING SITES

"SEC. 104A. (a) NEW YORK BIGHT APEX.—(1) For purposes of this subsection:

"(A) The term 'Apex' means the New York Bight Apex consisting of the ocean waters of the Atlantic Ocean westward of 73 degrees 30 minutes west longitude and northward of 40 degrees 10 minutes north latitude.

"(B) The term 'Apex site' means that site within the Apex at which the dumping of municipal sludge occurred before October 1, 1983.

"(C) The term 'eligible authority' means any sewerage authority or other unit of State or local government that on November 2, 1983, was authorized under court order to dump municipal sludge at the Apex site.

"(2) No person may apply for a permit under this title in relation to the dumping of, or the transportation for purposes of dumping, municipal sludge within the Apex unless that person in an eligible authority.

"(3) The Administrator may not issue, or renew, any permit under this title that authorizes the dumping of, or the transportation for purposes of dumping, municipal sludge within the Apex after the earlier of—

"(A) December 15, 1987; or

"(B) the day determined by the Administrator to be the first day on which municipal sludge generated by eligible authorities can reasonably be dumped at a site designated under such 102 other than a site within the Apex.

"(b) RESTRICTION ON USE OF THE 106-MILE SITE.—The Administrator may not issue or renew any permit under this title which authorizes any person, other than a person that is an eligible authority within the meaning of subsection (a)(1)(C), to dump, or to transport for the purposes of dumping, municipal sludge within the site designated under section 102(c) by the Administrator and known as the '106-Mile Ocean Waste Dump Site' (as described in 49 F.R. 19005).".

The SPEAKER pro tempore. Is a second demanded?

Mr. SHAW. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from New Jersey [Mr. HOWARD] will be recognized for 20 minutes and the gentleman from Flor-

ida [Mr. SHAW] will be recognized for 20 minutes.

The Chair recognizes the gentleman from New Jersey [Mr. HOWARD].

Mr. HOWARD. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the items in this legislation are items which this House has passed overwhelmingly with one, small addition. What this legislation would do would be to extend the deadline time for the State of Hawaii should it desire to trade in Interstate H-3 in that State and be permitted to utilize those funds for other transportation needs within the State.

There is opposition to this highway in the State of Hawaii. Our committee in this Congress has voted already to be very fair with both sides in this dispute. The situation now, however, with September 30 of this year having passed, is that there is no longer an opportunity for the State, should it decide not to build the interstate, to be able to put in for a transfer and it would thereby lose those funds.

So with the inclusion of the provision to extend that deadline to 10 days after the sine die adjournment of this Congress, both sides will still have the opportunity to get what it may desire. The State may continue with the interstate or it may decide to transfer those funds to other streets and roads.

Otherwise, should the interstate, for one reason or another, given court decisions, possibly not be able to be built, the State would lose all of those funds to which it is entitled. Also, our committee last week amended this legislation with two other provisions, both of which have passed in our clean water and water resource bills, both of which are presently in conference. We hope to have that legislation before the House before we adjourn this Congress.

One of these has to do with a provision of setting an ocean dumping provision for the New York Bight from the present area for its sludge which is 20 miles offshore in shallow water out to a 106-mile limit which would be off the Continental Shelf and would be a much more environmentally sound place for this to be dumped even though that is considered to be temporary.

It also has a provision which has passed overwhelmingly in this body that only those communities which are now presently dumping at the inshore site would be permitted to use the new site. A further provision has to do with the cleanup of the Boston Harbor which is in a very difficult situation; providing funds for that cleanup. Also funds for the emergency improvements for the treatment plant at Deer Island in the Commonwealth of Massachusetts.

All of these, as I said before, have been in various bills. We believe that passing this bill will not only permit a fair situation in the State of Hawaii for its highway but also might take out some contentious items which then could speed the final work on the conference reports on both the clean water bill and the water resource bill.

So we hope that the House will pass these bills. I believe that a good portion of this has already passed in the other body.

Mr. Speaker, I yield 3 minutes to the gentleman from Hawaii [Mr. ABERCROMBIE].

Mr. ABERCROMBIE. I thank the gentleman for yielding me this time.

Mr. Speaker, I rise in support of S. 2880. As the distinguished gentleman from New Jersey, the chairman of the Public Works and Transportation Committee, has indicated, I was recently elected to represent Hawaii in Congress and was not here for the passage of the surface transportation bill (H.R. 3129), which contains a provision that seeks to exempt the construction of Interstate Route H-3 from the requirements of section 4(f) of the Department of Transportation Act and section 138 of Title 23, United States Code. Nonetheless, I am grateful to the chairman of the committee for permitting me to offer some observations on the subject.

There has, of course as the chairman noted, been considerable discussion of the merits of H-3 and the section 4(f) exemption. I believe the chairman would agree that for all intents and purposes that issue has already been decided and settled in this Congress. At this juncture, as the chairman also noted, however, it is of paramount importance to Hawaii that the State's share of the highway funds be preserved.

Over the past several years, H-3 opponents have gone to court many times. And they have prevailed on each and every occasion. The opponents of H-3 have advised us that, even if the continuing resolution or the surface transportation bill passes with a section 4(f) exemption, they will continue to challenge the project in the courts. This prospect, given their record of success, raises the possibility that the State of Hawaii may find itself enjoined from continuing H-3 long after the deadline has passed for transferring the funds to other projects.

It is only prudent to anticipate this development and to make the provisions necessary to enable the State to transfer the H-3 funds to other projects should these court challenges succeed. In order to protect Hawaii from a possible loss of H-3 funds after the expiration of any transfer deadline set by the 99th Congress, I respectfully requested that consideration be given to including in the conference report on the surface transportation bill or the continuing resolution a provision which would permit the State of Hawaii to transfer H-3 funds to other highway and mass transit projects up to 10 days after the final adjudication of any legal challenge to the project.

I'm very grateful to the chairman for granting this consideration. Due to the nature of the legal challenges to H-3, it has already been granted special consideration by Congress. In making this request I seek to give the State of Hawaii such flexibility as may be needed to preserve the funding and, at the same time, maximize the options which the State can exercise should the legal challenges to H-3 succeed.

To do anything less is to literally gamble with the transportation destiny of Hawaii. We would leave Hawaii in an all-or-nothing situation in respect to the exemption, without recourse to alternatives.

To grant an exemption without an extension provision puts Hawaii in harm's way. This was recognized in the committee's action on October 1, 1986 on S. 2880. Thus my request is entirely consistent with all congressional decisions on H-3 made to date.

The $700 million-plus grant involved in the H-3 appropriation does not involve a penny of new money. All I am seeking is assurance that the exemption does not sentence us in Hawaii to a legal dead-end with H-3 existing only on the map, as it has for so many years, with all possibility of transportation alternatives and the jobs that go with them cast adrift and beyond retrieval. It would be a tragedy for Hawaii to win an empty legislative battle and lose our transportation war.

Your consideration is deeply appreciated. The people of Hawaii will be the direct beneficiaries of it.

□ 1405

Mr. HOWARD. Mr. Speaker, in order to show that this legislation is truly supported by both sides of this issue in the State of Hawaii, I yield such time as he may consume to our other colleague, the gentleman from Hawaii [Mr. AKAKA].

Mr. AKAKA. Mr. Speaker, I rise in support of S. 2880, which contains a provision to extend the deadline for the approval of withdrawal of Interstate Route H-3 until 10 days after the sine die adjournment of the 99th Congress.

For the sake of clarification, allow me to give you a brief overview of the unique predicament the State of Hawaii faces. The Ninth Circuit Court had enjoined all design and construction of the H-3 highway due to its interpretation of section 4(f). Section 4(f) of the Department of Transportation Act is designed to protect publicly owned parkland. However, no land from the park involved (Ho'omaluhia Park) has been, nor will be, taken or

used by the highway. Congress concurred that section 4(f) has been misapplied and was never intended to block the construction of a highway, the design of which was specifically tailored to afford such special protection for parklands. Legislation directing the Secretary to complete construction of this project was approved in the surface transportation bills of both Houses and is also contained in both versions of the continuing resolution.

Now many of you may ask, "Then what is the problem?" The problem is that under the Federal-Aid Highway Act of 1978, the State of Hawaii had until September 30, 1986, to withdraw the Interstate Route H-3 for substitute projects. The Governor of the State of Hawaii was dealt a difficult hand to play—should we stick with the H-3 highway, knowing that it has the approval of Congress to proceed, or should we opt for transfer since we can't have public law by September 30. My colleagues are fully aware that even though the exemption has been passed in both Houses and that a favorable conference is likely, public law cannot be guaranteed.

This extension will give the Governor a fair shake. The State of Hawaii is the only State whose option to commence construction of its highway is dependent on what Congress does in its last days before adjournment. I only ask that we relieve that State from being cornered into playing a game of chance on its highway funds. I only ask that the State at least be given the right to see if public law can be achieved by the end of the 99th Congress without closing the door.

The administration has no objections in granting this short-term extension; and I thank Chairman HOWARD for his understanding and support. I hope that my colleagues will agree that passage of this legislation is only fair to the State of Hawaii.

Mr. HOWARD. Mr. Speaker, I reserve the balance of my time.

Mr. SHAW. Mr Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would like to compliment the gentleman from Hawaii for his endless effort in bringing about this solution to a very difficult situation that I know has existed in his State with regard to the transfer of funds and the possible loss of funds.

We run into some very difficult situations when we are trying to balance the progress with the environmental consideration. I think that the gentleman is certainly to be complimented.

I would also like to compliment the gentleman from New Jersey [Mr. HOWARD], the chairman, who has worked so hard in the area of ocean dumping and trying to find some solutions for some problems that the gentleman has seen along the upper east coast of our Nation.

I think what we have here is a good bill. It is bringing in quite a few items under one heading, under suspension; however, I think that it deserves our favorable consideration. I support it.

Mr. Speaker, I rise in support of S. 2880, to provide a temporary extension of the interstate transfer deadline for H-3.

The H-3 interstate construction project has been the subject of considerable controversy over the past several years, primarily due to environmental concerns. The project is now halted due to a ninth circuit court decision which found that plans for the highway violated parkland protection laws and directed the Hawaii officials to explore other locations for a portion of the highway.

In the past, States with controversial interstate projects were permitted to "trade-in" those projects and apply the funds to other highway and mass transit projects in the same geographic area. There was a statutory deadline of September 30, 1983, for this trade-in program. Projects, such as H-3, which were under court injunction when the deadline was established were given an extension until September 30, 1986.

The officials of Hawaii have been faced with a dilemma. The State officials wish to build H-3. The Honolulu city officials wish to trade in H-3. The State officials have been pursuing legislative remedies in the Senate and House highway bills that would exempt H-3 from parkland protection laws. While they have pursued this exemption, the deadline for trading in the interstate segment has passed. Unless the law is changed, Hawaii has lost its chance to transfer the funds to other highway and mass transit projects if the H-3 project continues to be blocked.

This bill will give Hawaii a temporary extension of time on the withdrawal deadline. This will allow the Hawaii officials to see the outcome of the highway legislation this year before they must decide if they wish to trade in H-3. If the deadline is not extended and the efforts to exempt H-3 from parkland protection are unsuccessful, Hawaii will lose over $700 million in highway funds.

Both the State and city officials in Hawaii, as well as environmental groups, support this extension of time. Without it, a substantial source of funding for Hawaii's transportation improvement program will be lost.

Sections 2 and 3 of the bill provide critically needed assistance to Boston's Deer Island Treatment Plant and to Boston Harbor and its adjacent waters. The Administrator of EPA is authorized and directed to make grants of up to $30 million for emergency improvements at the Deer Island Waste Water Treatment Plant in Boston. The Federal share of costs for this crucial project may not exceed 75 percent. The Administrator is also directed to make grants of $20 million per year for 5 years with a Federal share of up to 75 percent to the Massachusetts Water Resource Authority for managing and improving the harbor's water quality. The city discharges its sludge from two antiquated primary treatment plants into Boston Harbor. As a result, the harbor is increasingly becoming polluted. In January 1986, a Federal district court judge issued a lengthy schedule of steps to be taken over the next 4 years to clean up the harbor. The timely funding provided in section 3 should significantly help the city meet its needs.

Section 4, which amends title I of the Marine Protection, Research, and Sanctuaries Act of 1972, contains farsighted provisions addressing ocean dumping at the New York bight apex and what has become known as the 106-mile site. The apex is one of the most severely degraded open coastal areas in the world. As a result of dozens of hearings and years of legal battles over dumping in the apex, section 4 specifically finds that the apex is no longer a suitable location for ocean dumping of municipal sludge. Similar language has been included in each of the last four House bills reauthorizing the Ocean Dumping Act.

This bill, like H.R. 1957 which passed the House earlier, limits applicants seeking to dump in the apex to those municipalities authorized under a 1983 court order to dump at the site. In addition, EPA is prohibited from issuing or renewing permits that authorize sludge dumping within the apex after December 15, 1987, or after the first day EPA determines sludge can reasonably be dumped at a designated site outside the apex, whichever occurs first.

Finally, section 4 prohibits any parties from using the 106-mile site who are not already permitted to do so. This is consistent with the national policy of banning, or at least phasing out, ocean dumping. In October 1985, the Massachusetts Water Resources Authority—the agency now responsible for managing the Boston Harbor cleanup effort—formally applied to EPA for an ocean dumping permit to dump Boston's sludge at the 106-mile site. This bill prohibits Boston or any other new applicant from using the site. At the same time, the funding provided in section 3 of the bill will help Boston clean up its harbor without resorting to ocean dumping at the 106-mile site.

Mr. Speaker, I urge all my colleagues to support this legislation.

Mr. Speaker, I yield such time as he may consume to the gentleman from Pennsylvania [Mr. WALKER].

Mr. WALKER. Mr. Speaker, I rise in opposition to the bill.

I am told that the administration will oppose this bill and would probably recommend a veto of the bill, should it be approved by the Congress.

Their problem has nothing to do with the highway in Hawaii. It does have to do with the sludge and waste treatment facility at Deer Island in Boston Harbor. That is a $130 million item that is down in this bill in the State of Massachusetts, and that is $130 million above the formula allocation share that the State would receive under the Clean Water Act.

Such preferential treatment of special-interest projects which do not rank high enough on the State priority list to receive funding through normal grant allocations is inequitable and contrary to the method of fairly distributing Clean Water Act project money by formula.

That is the main reason for the opposition here. In other words, we have $130 million here that is being set aside for a project, that is, $130 million that comes out of the regular formula; that means that is $130 million that, for projects in the other 434 districts around this country, will not be available.

What you have here is a special treatment of a project. The administration feels that that is wrong and ought not be included in this legislation.

As I said, the administration would probably recommend a veto of it should it be passed.

Mr. Speaker, I think that this legislation should be opposed and I would hope that the House would vote to oppose it.

Mr. SHAW. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. HOWARD. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in strong support of House passage of S. 2880 which was reported on October 3, 1986, by the Committee on Public Works and Transportation without objection.

In reporting the bill, the committee added a provision that is very important to me and to the New Jersey shore. That provision was also contained in H.R. 1957, the Ocean Dumping Act amendments which were passed by this House without objection on December 10, 1985. Unfortunately, for the third consecutive Congress, the other body has not seen fit to act on the Ocean Dumping Act amendments that we have sent them.

This specific provision would prohibit any new entrants from disposing of sewage sludge at the 106-mile site in the New York Bight. Only those entities that are now permitted to dispose of sludge in the bight would be permitted to use that site.

The provision effectively limits the use of the bight for sludge disposal to New York City, Westchester and Nassau Counties in New York and six regional sewage authorities in North Jersey. These entities have been using the existing 12-mile sludge dumpsite and are in the process of transferring their operations to the 106-mile site. The legislation before us today would codify the closing date for the 12-mile site that has been agreed to by all the parties involved, including the Environmental Protection Agency.

Most importantly, this bill would prohibit new dumping in the New York Bight. The Massachusetts Water Resources Authority has already filed an application once to use the 106-mile site. The authority did withdraw the application but is poised to refile. There is no question that a successful application from Massachusetts could lead to applications from all over the east coast to use the site for sewage sludge disposal.

That result would be counter to a decade long congressional effort to end the ocean disposal of sewage sludge. We have been successful in having other dumpers seek alternatives to ocean disposal but approval of the Massachusetts application would be a giant step backward in our efforts to protect the environment.

However, in an effort to continue the process of cleaning up Boston Harbor, this bill authorizes $20 million annually for 5 years over and above the regular construction grant allotment for construction of a sewage treatment plant in Boston. It also authorizes $10 million annually for 3 years for emergency work to the Deer Island treatment plant.

Finally, the legislation includes a brief extension of time for the possible trade-in of H-3 in Hawaii. It would allow the deadline to be extended until 10 days after Congress adjourns, rather than the existing September 30, 1986, deadline. I believe this is a fair proposal. It would allow State officials to consider all the options available to them without forcing a decision on a specific option.

Mr. Speaker, all of the provisions of this legislation are worthy of passage. I urge my colleagues to vote for passage of S. 2880.

Mr. JONES of North Carolina. Mr. Speaker, in its original form, this bill dealt solely with an interstate highway in Hawaii. During its markup, the Public Works and Transportation Committee added provisions dealing with ocean dumping. As a result, the bill was sequentially referred to the Merchant Marine and Fisheries Committee, since our committee has jurisdiction over the Marine Protection, Research, and Sanctuaries Act—commonly known as the Ocean Dumping Act.

The ocean dumping provisions in S. 2880 are essentially the same as certain portions contained in H.R. 1957, the Ocean Dumping Amendments of 1985, a bill approved by the House on December 10, 1985. Therefore, the Merchant Marine and Fisheries Committee chose not to hold a markup on S. 2880, and I endorse House passage of this bill.

The Merchant Marine and Fisheries Committee will continue to assert its jurisdictional rights regarding ocean dumping whenever appropriate. If S. 2880 goes to conference, I will ask that Merchant Marine and Fisheries Committee members be appointed as conferees for the ocean dumping provisions.

Mr. HOWARD. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New Jersey [Mr. HOWARD] that the House suspend the rules and pass the Senate bill, S. 2880, as amended.

The question was taken.

Mr. WALKER. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to the provisions of clause 5, rule I, and the Chair's prior announcement, further proceedings on this motion will be postponed.

GENERAL LEAVE

Mr. HOWARD. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks, and to include extraneous matter, on the Senate bill just considered.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

WARREN E. BURGER FEDERAL BUILDING AND U.S. COURTHOUSE

Mr. YOUNG of Missouri. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5617) to designate the Federal Building and U.S. Courthouse at 316 North Robert Street, St. Paul, MN, as the "Warren E. Burger Federal Building and United States Courthouse," as amended.

The Clerk read as follows:

H.R. 5617

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. WARREN E. BURGER FEDERAL BUILDING AND UNITED STATES COURTHOUSE.

The Federal Building and United States Courthouse located at 316 North Robert Street, St. Paul, Minnesota, shall be known and designated as the "Warren E. Burger Federal Building and United States Courthouse". Each reference to such building in a law, map, regulation, document, record, or other paper of the United States shall be deemed to be a reference to the "Warren E. Burger Federal Building and United States Courthouse".

SEC. 2. BENJAMIN S. ROSENTHAL POST OFFICE BUILDING.

(a) DESIGNATION.—The United States Post Office Building located at 41-65 Main Street, Flushing, New York, shall be known and designated as the "Benjamin S. Rosen-

thal Post Office Building". Each reference to such building in a law, map, regulation, document, record, or other paper of the United States shall be deemed to be a reference to the "Benjamin S. Rosenthal Post Office Building".

(b) INSTALLATION OF PLAQUE.—As soon as practicable after the date of the enactment of this Act, the Postmaster General shall install in such post office, in a place in open view to the public, an appropriate plaque indicating the designation of such post office as the "Benjamin S. Rosenthal Post Office Building".

SEC. 3. CHARLES E. SIMONS, JR., UNITED STATES COURTHOUSE.

The United States Courthouse located at 223 Park Avenue Southwest in Aiken, South Carolina, shall be known and designated as the "Charles E. Simons, Jr., United States Courthouse". Each reference to such courthouse in a law, map, regulation, document, record, or other paper of the United States shall be deemed to be a reference to the "Charles E. Simons, Jr., United States Courthouse".

SEC. 4. CHARLES E. CHAMBERLAIN FEDERAL BUILDING AND UNITED STATES POST OFFICE.

The Federal Building and United States Post Office located at 315 West Allegan Street in Lansing, Michigan, shall be known and designated as the "Charles E. Chamberlain Federal Building and United States Post Office". Each reference to such building in a law, map, regulation, document, record, or other paper of the United States shall be deemed to be a reference to the "Charles E. Chamberlain Federal Building and United States Post Office".

SEC. 5. ALBERT V. BRYAN UNITED STATES COURTHOUSE.

The United States Courthouse for the Eastern District of Virginia, located on South Washington Street in Alexandria, Virginia, shall be known and designated as the "Albert V. Bryan United States Courthouse". Each reference to such building in a law, map, regulation, document, record, or other paper of the United States shall be deemed to be a reference to the "Albert V. Bryan United States Courthouse".

SEC. 6. SILVIO JAMES MOLLO FEDERAL BUILDING.

The building known as the United States Attorney's Building for the Southern District of New York, located at One St. Andrew's Plaza, New York, New York, shall be known and designated as the "Silvio James Mollo Federal Building". Each reference to such building in a law, map, regulation, document, record, or other paper of the United States shall be deemed to be a reference to the "Silvio James Mollo Federal Building".

SEC. 7. THADDEUS J. DULSKI FEDERAL BUILDING.

The Federal Building located at 111 W. Huron Street, Buffalo, New York, shall be known and designated as the "Thaddeus J. Dulski Federal Building". Each reference to such building in a law, map, regulation, document, record, or other paper of the United States shall be deemed to be a reference to the "Thaddeus J. Dulski Federal Building".

SEC. 8. MICHAEL J. DILLON MEMORIAL UNITED STATES COURTHOUSE.

The United States Courthouse located at 68 Court Street, Buffalo, New York, shall be known and designated as the "Michael J. Dillon Memorial United States Courthouse". Each reference to such building in a law, map, regulation, document, record, or other paper of the United States shall be deemed to be a reference to the "Michael J. Dillon Memorial United States Courthouse".

SEC. 9. WARD R. BURKE UNITED STATES COURTHOUSE.

The building which will house the United States District Court for the Eastern District of Texas at Third Street and Lufkin Avenue in Lufkin, Texas, shall be known and designated as the "Ward R. Burke United States Courthouse". Each reference to such building in a law, map, regulation, document, record, or other paper of the United States shall be deemed to be a reference to the "Ward R. Burke United States Courthouse".

SEC. 10. HAROLD D. DONOHUE FEDERAL BUILDING.

The General Services Administration building commonly known as the Old Post Office, located at 595 Main Street, Worcester, Massachusetts, shall be known and designated as the "Harold D. Donohue Federal Building". Each reference to such building in a law, map, regulation document, record, or other paper of the United States shall be deemed to be a reference to the "Harold D. Donohue Federal Building".

SEC. 11. EMMETT SANDERS LOCK AND DAM.

Lock and dam numbered 4 on the Arkansas River, Arkansas, constructed as part of the project for navigation on the Arkansas River and tributaries, shall be known and designated as the "Emmett Sanders Lock and Dam". Each reference to such lock and dam in a law, map, regulation, document, record, or other paper of the United States shall be deemed to be a reference to the "Emmett Sanders Lock and Dam".

SEC. 12. JOE HARDIN LOCK AND DAM.

Lock and dam numbered 3 on the Arkansas River, Arkansas, constructed as part of the project for navigation on the Arkansas River and tributaries, shall be known and designated as the "Joe Hardin Lock and Dam". Each reference to such lock and dam in a law, map, regulation, document, record, or other paper of the United States shall be deemed to be a reference to the "Joe Hardin Lock and Dam".

SEC. 13. ELVIS STAHR HARBOR, PORT OF HICKMAN.

The harbor of the Port of Hickman on the Mississippi River at Hickman, Kentucky, shall be known and designated as the "Elvis Stahr Harbor, Port of Hickman". Each reference to such harbor in a law, map, regulation, document, record, or other paper of the United States shall be deemed to be a reference to the "Elvis Stahr Harbor, Port of Hickman".

SEC. 14. JACK D. MALTESTER CHANNEL.

The main channel of the project for San Leandro Marina, California, authorized by section 201 of the Flood Control Act of 1965 and approved by resolution adopted by the Committee on Public Works of the House of Reprsentatives on June 22, 1971, and by the Committee on Public Works of the Senate on December 15, 1970, shall be known and designated as the "Jack D. Maltester Channel". Each reference to such channel in a law, map, regulation, document, record, or other paper of the United States shall be deemed to be a reference to the "Jack D. Maltester Channel".

SEC. 15. PEYTON S. HAWES VISITOR CENTER.

The visitor center at the powerhouse at the Richard B. Russell Dam and Lake project, South Carolina and Georgia, shall be known and designated as the "Peyton S. Hawes Visitor Center". Each reference to such visitor center in a law, map, regulation, document, record, or other paper of the United States shall be deemed to be a reference to the "Peyton S. Hawes Visitor Center".

SEC. 16. TOM BEVILL LOCK AND DAM.

The lock and dam on the Tombigbee River in Pickensville, Alabama, commonly known as the Alicevillel Lock and Dam, and the visitor center to be constructed for the Tennessee-Tombigbee waterway in Pickensville, Alabama, shall be known as the "Tom Bevill Lock and Dam" and the "Tom Bevill Visitor Center", respectively. Each reference to such lock and dam or to such visitor center in a law, map, regulation, document, record or other paper of the United States shall be deemed to be a reference to the "Tom Bevill Lock and Dam" or the "Tom Bevill Visitor Center", respectively.

SEC. 17. J.E. CARNAHAN VISITOR CENTER.

(a) The visitor center described in subsection (b) shall be known and designated as the "J.E. Carnahan Visitor Center". Each reference to such visitor center in a law, map, regulation, document, record or other paper of the United States shall be deemed to be a reference to the "J.E. Carnahan Visitor Center".

(b) The visitor center referred to in subsection (a) is the visitor center that—

(1) is located on State Road 73 at Caesar Creek Lake in the State of Ohio; and

(2) was constructed and is maintained under the general authorization of section 4 of the Act entitled "An Act authorizing the construction of certain public works on rivers and harbors for flood control, and for other purposes", approved June 28, 1938 (52 Stat. 1216).

SEC. 18. VANCE HARTKE RESERVOIR.

The Patoka Reservoir, Wabash River, Indiana, authorized by the Flood Control Act of 1965 shall be known and designated as the "Vance Hartke Reservoir". Each reference to such reservoir in a law, map, regulation, document, record or other paper of the United States shall be deemed to be a reference to the "Vance Hartke Reservoir".

SEC. 19. LEWIS M. PARAMORE DIVERSION UNIT.

The Soldier Creek Division Unit, Topeka, Kansas, shall be known and designated as the "Lewis M. Paramore Diversion Unit". Each reference to such lock and dam or to such visitor center in a law, map, regulation, document, record or other paper of the United States shall be deemed to be a reference to the "Lewis M. Paramore Diversion Unit".

The SPEAKER pro tempore. Is a second demanded?

Mr. SHAW. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Missouri [Mr. YOUNG] will be recognized for 20 minutes and the gentleman from Florida [Mr. SHAW] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Missouri [Mr. YOUNG].

Mr. YOUNG of Missouri. Mr Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 5671 as amended simply removes from the bill the provision naming the Federal building in Newark, NJ, as the Martin Luther King Federal Building and the provision naming the Jacob Weinberger in

San Diego, CA. Bills containing those provisions were just enacted by the House during reading of the Consent Calendar and are being sent to the White House for signature by the President.

Accordingly, Mr. Speaker, H.R. 5671, as amended is a bill which designates that various Federal facilities be named after distinguished individuals around the country.

Briefly, Mr. Speaker, section 1 designates that the Federal building and U.S. courthouse located in St. Paul, MN, be known as the Warren E. Burger Federal Building and United States Courthouse.

Section 2 designates that the U.S. Post Office Building located in Flushing, NY, be known as the Benjamin S. Rosenthal Post Office Building.

Section 3 designates that the U.S. courthouse located in Aiken, SC, be known as the Charles E. Simons, Jr., United States Courthouse.

Section 4 designates that the Federal building and U.S. Post Office located in Lansing, MI, be known as the Charles E. Chamberlain Federal Building and United States Post Office.

Section 5 designates that the U.S. courthouse in Alexandria, VA, be known as the Albert V. Bryan United States Courthouse.

Section 6 designates that the building known as the U.S. Attorney's Building for the Southern District of New York, in New York, NY, be known as the Silvio James Mollo Federal Building.

Section 7 designates that the Federal building located in Buffalo, NY, be known as the Thaddeus J. Dulski Federal Building.

Section 8 designates that the U.S. courthouse in Buffalo, NY, be known as the Michael J. Dillon Memorial United States Courthouse.

Section 9 designates that the building which will house the U.S. District Court for the Eastern District of Texas in Lufkin, TX, be known as the Ward R. Burke United States Courthouse.

Section 10 designates that the General Services Administration Building commonly known as the old post office in Worcester, MA, be known as the Harold D. Donohue Federal Building.

Section 11 designates that lock and dam numbered 4 on the Arkansas River, AR, be known and designated as the "Emmett Sanders Lock and Dam."

Section 12 designates that lock and dam numbered 3 on the Arkansas River, AR, be known and designated as the "Joe Hardin Lock and Dam."

Section 13 designates that the Harbor of the Port of Hickman on the Mississippi River at Hickman, KY, be known as the Elvis Stahr Harbor, Port of Hickman.

Section 14 designates that the main channel of the project for San Leandro Marina, CA, be known and designated as the "Jack D. Maltester Channel."

Section 15 designates that the visitor center and the powerhouse at the Richard B. Russell Dam and Lake project, South Carolina and Georgia, be known as the Peyton S. Hawes Visitor Center.

Section 16 designates that the lock and dam on the Tombigee River in Pickensville, AL, and the visitor center to be constructed for the Tennessee-Tombigbee Waterway in Pickensville, AL, be known as the Tom Bevill Visitor Center, respectively.

Section 17 designates that the visitor center located on State Road 73 at Caesar Creek Lake in the State of Ohio be known as the J.E. Carnahan Visitor Center.

Section 18 designates that the Patoka Reservoir, Wabash River, IN, be known as the Vance Hartke Reservoir.

Section 19 designates that the Soldier Creek Diversion Unit, Topeka KS, be known as Lewis M. Paramore Diversion Unit.

Mr. Speaker, the House Committee on Public Works and Transportation thoroughly reviewed the merits of this legislation and strongly recommends enactment by the House.

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Mr. SHAW. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of this legislation which would designate the Federal building in St. Paul, MN, after the former distinguished Chief Justice of the Supreme Court, the Honorable. Warren E. Burger.

It is an honor to be able to pay tribute by naming this facility after him for his many years of distinguished service as Chief Justice of our Nation's Highest Court.

During committee consideration of H.R. 5617, the bill was amended, with language from other legislation considered in the House, to name 18 other Federal facilities after distinguised individuals.

Mr. Speaker, I urge the members to support the passage of this legislation.

Mr. YOUNG of Missouri. Mr. Speaker, I yield whatever time he may use to the gentleman from Minnesota [Mr. VENTO].

Mr. VENTO. Mr. Speaker, I rise in support of this measure, H.R. 5617.

This legislation, which I introduced just last week, has bipartisan support. In fact, the entire Minnesota House delegation has cosponsored this measure, which would designate the "Warren Burger Federal Building and United States Courthouse" in St. Paul MN, on the banks of the mighty Mississippi.

Mr. Speaker, the era of the Warren Burger Court has just ended. Clearly, this Court has left its mark in our history. Chief Justice Burger has served our Nation with distinction for 17 years. He has the longest tenure of any Chief Justice in the 20th century. Only Chief Justices Marshall, Taney, and Fuller have served longer.

Naming the St. Paul Federal Building and U.S. Courthouse in honor of Chief Justice Warren Burger is indeed an appropriate recognition. This building symbolizes the essence of Chief Justice Burger's distinguished career first as an attorney, and then as Assistant Attorney General, Federal judge, and Superme Court Chief Justice. Chief Justice Burger was born and raised in St. Paul, completed his education there, and initiated his spectacular political and legal career in Minnesota's capital city.

As with so many other distinguished public officials, Chief Justice Burger's commitment to public service can be traced to his roots in Minnesota. His education at St. Paul's Van Buren Elementary and Johnson High School as well as the University of Minnesota and the current William Mitchell Law School instilled the ideals of public service. It was this philosophy that has been the hallmark of Burger's career. From his early law practice on behalf of farmers and workers hit hard by the Great Depression, to his activism in the St. Paul community and Minnesota's political scene, Warren Burger displayed a sense of earnestness and dedicated service.

Chief Justice Burger has never forgotten where he came from. He has initiated a scholarship at St. Paul Johnson Public High School in honor of Edna Moore, his beloved high school teacher. He has been a regular visitor to the William Mitchell Law School where he studied for his law degree. Warren Burger has his roots in Minnesota. We Minnesotans will not forget him.

Mr. Speaker, the debate may continue on the Burger Court's place in history. However, I hope that this body will agree that the designation of the St. Paul Federal Building and U.S. Courthouse as the Warren E. Burger Federal Building and U.S. Courthouse is a well-deserved recognition of this illustrious Minnesotan's career of service to our Nation.

Mr. Speaker, I want to personally thank Chairman JAMES HOWARD and Subcommittee Chairman ROBERT YOUNG, as well as his counterpart, the gentleman from Florida, Mr. CLAY SHAW, for their part and that of their good staffs for their cooperation and support for this measure. Indeed, without such prompt action, we could not have moved on this issue in the 99th Congress. I thank them and urge my colleagues to support this measure.

Mr. YOUNG of Missouri. Mr. Speaker, I yield such time as he may use to the distinguished gentleman from Minnesota [Mr. FRENZEL].

Mr. FRENZEL. Mr. Speaker, I thank this distinguished gentleman for yielding.

Mr. Speaker, I rise to associate myself with the remarks of the distinguished gentleman from Minnesota [Mr. FRENZEL], who was thoughtful enough to promote and pursue this bill through to completion to honor the retiring Chief Justice of the U.S. Supreme Court, Warren Burger.

The gentleman from Minnesota has detailed some of the highlights of Chief Justice Burger's brilliant and successful judicial career, and I cannot add to that.

We all know as the leader of the highest court in this country what he has done for judicial precedent and we know of the stable and steady course that he has helped that court chart during the period of his leadership; however, Chief Justice Burger's career extends well beyond that of his judicial life. Many Members probably have forgotten that Chief Justice Burger led the Minnesota delegation to the 1952 Republican Presidential nomination convention when Dwight David Eisenhower was nominated on the first ballot, because the State of Minnesota changed its vote from Harold Stassen to Dwight David Eisenhower. That was Warren Burger participating in partisan politics in its finest sense.

I do not want to prolong my statement because Justice Burger has been eulogized by all and sundry. I merely want to say how grateful I am to the gentleman from Minnesota [Mr. VENTO] in whose district Warren Burger grew up and practiced his early law and to the committee for helping the gentleman bring the bill forward.

Mr. SHAW. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. YOUNG of Missouri. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Missouri [Mr. YOUNG] that the House suspend the rules and pass the bill, H.R. 5617, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The title of the bill was amended so as to read: "A bill to designate the Warren E. Burger Federal Building and United States Courthouse in St. Paul, MN, to name various other Federal buildings and facilities, and for other purposes."

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. YOUNG of Missouri. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks, and to include extraneous material, on the bill just passed.

The SPEAKER pro tempore (Mr. LUKEN). Is there objection to the request of the gentleman from Missouri?

There was no objection.

AUTHORIZING GSA ADMINISTRATOR TO ISSUE OBLIGATIONS TO FINANCE BUILDING CONSTRUCTION

Mr. YOUNG of Missouri. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5602) to amend the Public Buildings Act of 1959 to authorize the Administrator of General Services to issue obligations to finance the acquisition and construction of public buildings, as amended.

The Clerk read as follows:

H.R. 5602

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. TIME FINANCING.

Section 7 of the Public Buildings Act of 1959 (40 U.S.C. 606) is further amended by adding at the end thereof the following new subsection:

"(e) TIME FINANCING.—

"(1) ISSUANCE OF OBLIGATIONS.—Whenever the Administrator determines that the best interest of the United States will be served, the Administrator is authorized to issue obligations for purchase by the Secretary of the Treasury, to the extent authorized in annual appropriation Acts, in amounts necessary to finance the acquisition or construction of any public building.

"(2) TERMS AND CONDITIONS.—Obligations issued under this subsection shall be upon such terms and conditions as may be prescribed by the Secretary of the Treasury, taking into account that repayments shall not begin until the building is ready for occupancy and shall not extend beyond the useful life of the building but in no case for more than 30 years from the date of the initial repayment.

"(3) INTEREST RATE.—Obligations under this subsection shall bear interest at a rate determined by the Secretary taking into consideration the average market yield on outstanding marketable obligations of the United States of comparable maturity.

"(4) LIMITATIONS.—

"(A) PROSPECTUS APPROVAL REQUIREMENT.—No authorization shall be made in an appropriation Act for the issuance of obligations under this subsection to finance the acquisition or construction of any public building for which a prospectus is required under this section, unless such acquisition or construction has been approved under this section.

"(B) OBLIGATION OF FUNDS.—Obligation of funds under this subsection shall be limited to those necessary to pay the obligations for the current fiscal year for which such payments are due, without regard to section 1341(a)(1)(B) of title 31, United States Code.

"(5) BUDGETARY AND ACCOUNTING TREATMENT.—Notwithstanding any other provision of law, for budgetary and accounting purposes—

"(A) obligations authorized to be issued under this subsection in a fiscal year shall be treated as budget authority in such fiscal year only to the extent that such obligations are issued in such fiscal year; and

"(B) obligations being liquidated under this subsection shall be treated as outlays in a fiscal year only to the extent that such obligations are liquidated in such fiscal year.".

The SPEAKER pro tempore. Is a second demanded?

Mr. SHAW. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Missouri [Mr. YOUNG] will be recognized for 20 minutes and the gentleman from Florida [Mr. SHAW] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Missouri [Mr. YOUNG].

Mr. YOUNG of Missouri. Mr. Speaker, I yield myself such time as I many consume.

Mr. Speaker, it is with pleasure that I call before the House today the bill, H.R. 5602, which amends the Public Buildings Act of 1959 to authorize the Administrator of the General Services Administration to issue obligations to finance the acquisition and construction of public buildings.

Mr. Speaker, legislation affecting public buildings has consisted of various measures going back to 1902 when the first general act was passed. A significant accomplishment affecting the acquisition and construction of Federal buildings was put in place by passage of the Public Buildings Act of 1959, whereby the Administrator of the General Services Administration was authorized to acquire public buildings by purchase, condemnation, donation, or exchange. At the time, direct Federal construction and acquisition was determined to be the most efficient and economical means of meeting Government space needs. The Federal Property and Administrative Services Act of 1949 remained intact; this authorizes the Administrator of GSA to lease, for a period up to 20 years, existing buildings or buildings to be erected for Government use by private or public lessors.

The futility of seeking funds for direct Federal construction projects in competition with other spending priorities brought about the Public Buildings Amendments of 1972. Among other things, the 1972 amendments set up a 3-year Purchase Contract Program designated to eliminate a backlog of authorized projects which had not been funded. This authority was a stop-gap measure, an attempt to reconcile the urgent need for new Federal facilities with lagging annual appro-

priations for construction. Under the 1972 Purchase Contract Program, a total of 68 public buildings throughout the country were completed providing 15 million square feet of occupiable space at an estimated construction cost of $1.26 billion. Funds necessary for the program were borrowed from private sources, the sale of participation certificates and, last, through the Federal financing bank for a period not to exceed 30 years. Annual payments are made to liquidate the debt and title reverts to the Federal Government at the end of the term. During the purchase term GSA was directed to pay local real estate taxes.

The 1972 amendments also established the Federal buildings fund which began operations in fiscal year 1975. Briefly, collections for rents charged to Federal agencies occupying GSA space are deposited in the funds and made available to GSA for operations, maintenance, and acquisition of real property. Although GSA officials testified in 1972 that an estimated $225 million a year would be available from the fund for direct Federal construction of facilities, the reality of the situation soon became clear. Local real estate taxes over the purchase contract term place a substantial drain on the funds resources. Real estate taxes of $1.3 billion represent about 30 percent of the funds liability for purchase contract payments.

Since 1975, the fund has provided only about $75 million a year for meeting construction needs. In February 1979, GSA officials reported a backlog of approved or pending construction projects totaling $281 million—that figure has now escalated to approximately $1 billion as a result of insufficient construction funds. GSA has relied increasingly on leasing rather than Government ownership in meeting space requirements. During hearings before the committee, GSA stated they would continue to rely on leasing unless relief was granted in some other fashion.

Due to the fact that it has been some 14 years since passage of the Public Buildings Act of 1972, the need to review past policies and propose new solutions to the problem of how to provide space for Federal agencies in the most efficient and effective manner was clear. A key concern to the committee is the considerable expansion in the leasing program of GSA; therefore, it became necessary to look at the resources of GSA and ensure the economic use of space by tenant agencies and attempt to facilitate an orderly and economical approach to meeting long range facility requirements.

Expenditures for leased space have increased from $364 million in 1975 to the current level approximately $1 billion in fiscal year 1986, and it should be noted that the $1 billion requested in fiscal year 1986 represents only a partial payment since the gross commitment of all GSA outstanding leases currently total approximately $2.8 billion. The omission of lease commitments for all future years by the executive branch in submitting prospectuses to the Congress grossly understates leasing costs. It skews the decision away from the least costly method of construction and acquisition, namely Federal construction, and introduces a bias in favor of leasing since costs are only justified on an annual basis. Further, at the end of the lease term the taxpayer only has rent receipts.

Passage of H.R. 5602 will help to address these problems and reverse current trends by facilitating the methods by which GSA can acquire space. Since construction projects carry a low priority during times of budgetary restraint, application of the full funding concept for construction of Federal facilities has proven impractical. Thus, the time financing mechanism embodied in H.R. 5602 offers several benefits making it a useful financing alternative. Financing by direct loans from the Treasury will avoid the need for large single year appropriations to fund construction costs.

H.R. 5602, as reported, authorizes the administrator of the General Service Administration to issue obligations for purchase by the Secretary of the Treasury but only to the extent authorized in annual appropriation acts, in amounts necessary to finance the acquisition or construction of public buildings. Legislative safeguards are further built into the bill by prohibiting the construction or acquisition of a public building utilizing the time financing method of payment unless a prospectus has been approved by resolutions adopted by the House Committee on Public Works and Transportation and the Senate Committee on Environment and Public Works. The obligations can take advantage of interest rates available to the Treasury Department and the repayment of the obligations incurred by GSA will begin when the building is ready for occupancy, but shall not extend beyond 30 years. The buildings will not remain on the local tax rolls, which heretofore have placed an extreme burden on the Federal buildings fund. The mechanism employed in this legislation is similar to a mortgage on a home: GSA would pay back principal plus interest over a period of years, taking advantage of interest rates available to the Treasury Department.

In a report to the committee from the General Accounting Office they stated direct Federal construction is the most advantageous alternative for financing space acquisition; however, since only limited funds are available time financing is preferrable to leasing.

H.R. 5602 is not a reinstitution of the previously authorized purchase contract programs within GSA. Rather, it provides a realistic financing mechanism necessary to provide for additional Federal space needs. The authority contained in this bill will be made available to GSA indefinitely to finance building acquisition. The immediate approval of numerous time financing projects is not anticipated, but rather, GSA is directed to pursue a blend of direct Federal construction, time financing construction, acquisition of existing buildings, and leasing. Passage of H.R. 5602 will substantially decrease the accelerating lease payments of GSA and assist in increasing the Federal ownership of space.

Mr. Speaker, I urge enactment of H.R. 5602.

Mr. SHAW. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in strong support of this legislation which would permit the Federal Government to time finance the acquisition or construction of new public buildings.

For too many years now, the chairman and I have sat frustrated as we have watched lease after lease be submitted by the General Services Administration to house Federal employees.

Why are we renovating space—because GSA doesn't have the money to buy or build any new public buildings.

In fiscal year 1987, GSA will pay almost a billion dollars, or nearly half its budget, to lease space throughout the country.

This lease space accounts for nearly 50 percent of all space under GSA's control.

Right now, GSA's outstanding obligation on those leases totals nearly $3 billion.

Do we see that $3 billion reflected anywhere in the budget?

You can bet your buttons we don't.

We tell GSA that they can go out and commit the Federal Government to $3 billion in leases and all they have to bring back and record is what it's going to cost us next year—don't bother to tell us what the full cost of all those leases will be.

On the other hand, if GSA wants to construct or purchase a building they can't even begin to proceed unless they have the full amount in hand; even though we will be using the building for a longer period and at a fraction of the long-term cost of any of the leases they have signed.

The decision to lease is not made because the economic analysis shows that it is cheaper to lease, the decision is a budgetary decision—the real true cost doesn't show up in the deficit.

The General Accounting Office made this fact quite clear when they testified on this issue before the Sub-

committee on Public Buildings and Grounds.

GAO even went further by saying that the only reason for the analysis is to "lend some justification" to the decision to lease.

The bill we have before us now is designed to correct this situation. It would allow GSA to construct or purchase a building, and then pay the construction or purchase cost annually over a time period not to exceed 30 years.

Most of us call such a radical proposal as this a mortgage.

It is kind of hard to believe, a financing tool used everyday by homeowners and businessmen which is just now finding acceptance within the Federal Government.

I would like to point out, that not too long ago we did allow the Corps of Engineers to use such a financing tool for a building they needed in Louisiana.

To my knowledge, things have worked out just fine and we are saving a considerable sum of money.

Many might argue that providing this type of authority to GSA, this is nothing more than a ploy by Congress to have a Federal building constructed in every city.

If this were to happen and if it would save the taxpayers money then I say, "What harm is being done."

Nothing could be further from the truth.

Our goal, or at least I think it's been our goal, has been to cut spending, save money, and reduce the deficit.

If this will do it, then why not use it.

Perhaps to the dismay of some, though, we will not have a new Federal building in every city because this legislation continues the existing requirements now found in the Public Building Act of 1959.

For any public building project financed using this authority, either construction or purchase, a prospectus or similar document for the project would have to be submitted by GSA, considered and a committee resolution approved by the authorizing committees and the appropriate authorizations and appropriations made available through an appropriation act.

Time financing is an issue which has been discussed, decried, praised, cursed and feared for far too long.

We now have an opportunity to enact the necessary authority for GSA to increase Government ownership of space occupied by Federal agencies, save the taxpayers money, and to do so without adding to the deficit.

This legislation would also save us money on space which is leased since those lessors will know that we have a viable and cost effective means by which to provide this space ourselves.

Mr. Speaker, this is a good bill, and I would urge my colleagues to support its passage.

Mr. HOWARD. Mr. Speaker, I rise in support of H.R. 5602 and at this time would like to commend the distinguished chairman of the Subcommittee on Public Buildings and Grounds, the gentleman from Missouri, the Honorable ROBERT YOUNG, and the distinguished ranking minority member of the subcommittee, the gentleman from Florida, the honorable E. CLAY SHAW, for their fine work in bringing this legislation before the House today.

Mr. Speaker, briefly, H.R. 5602 authorizes the Administrator of the General Services Administration to issue obligations to the Treasury Department for a period not to exceed 30 years for funds necessary to provide for the acquisition or construction of federally owned facilities. Although the committee has repeatedly asserted its insistence upon the direct Federal construction of public buildings pursuant to the Public Buildings Act of 1959, present economic conditions coupled with the need for additional Federal space, makes clear that the best course is to grant GSA the necessary authority to bring about the direct Federal construction or acquisition of Federal facilities and bring about the reduction of leased facilities by borrowing the necessary funds from the Department of the Treasury for a period not to exceed 30 years.

Thus, H.R. 5602, will permit GSA to borrow capital to finance the construction or acquisition of new buildings throughout the country and repay such funds borrowed from receipts in the Federal building fund. This mechanism will permit GSA to meet pressing space needs, add flexibility to its space acquisition methods, reverse long-term trends toward leasing, and gain tangible benefits for payments made, in lieu of rent receipts. H.R. 5602 will allow Congress to continue to control the size and direction of GSA's time financing program by limiting GSA's obligations to the Department of the Treasury to those amounts of money authorized in annual appropriation acts. In addition, I want to emphasize that passage of this legislation contemplates no change in the present requirement that the House and Senate Public Works Committees approve building prospectuses. Thus, the Congress would continue to approve construction or acquisition of Federal facilities on a building-by-building basis, and to impose spending limitations.

It is the committee's intent that obligations entered into be treated in the same manner as GSA currently obligates funds for other GSA leases entered into under the authority of the Federal Property Act. Specifically, obligations should be entered into the GSA's accounts and scored for budget purposes on the basis of payments to be made in the current fiscal year only and not for the entire term of the contract. This language will place, for the first time, the trade-off between owning versus leasing facilities on an equal budgetary basis.

The considerable expansion of the leasing program within the General Services Administration is based primarily on the fact that the budgetary impact only is identified on an annual basis concerns the committee.

It should be noted that it is not the intention of the committee that the program authorized by this legislation shall constitute a substitute for, or replacement of, any program for the construction or acquisition by the United States of such structure as may be required by the Federal Government; but rather only provide another permanent financing mechanism by which the General Services Administration can acquire such Federal space. It is clear that Federal buildings are constructed to specifications which provide longer useful life and have special facilities and requirements not found in private leased buildings.

Mr. Speaker, I urge enactment of H.R. 5602.

□ 1430

Mr. SHAW. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. YOUNG of Missouri. Mr. Speaker, I want to thank the gentleman from Florida [Mr. SHAW] for all the work that he has done on this legislation, and also our fine staff.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. LUKEN). The question is on the motion offered by the gentleman from Missouri [Mr. YOUNG] that the House suspend the rules and pass the bill, H.R. 5602, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. YOUNG of Missouri. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks, and include extraneous matter, on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Missouri?

There was no objection.

COMPETITIVE STATUS TO MILITARY RESERVE TECHNICIANS

Mrs. SCHROEDER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5218) to amend title 5, United States Code, to provide that certain individuals be accorded competitive status for purposes of transferring to the competitive service, as amended.

The Clerk read as follows:

H.R. 5218

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 3304 of title 5, United States Code, is amended by redesignating subsection (d) as subsection (e), and by inserting after subsection (c) the following:

"(d)(1) For the purpose of this subsection, the term 'technician' has the meaning given such term by section 8337(h)(1) of this title.

"(2) Notwithstanding a contrary provision of this title or of the rules and regulations

prescribed under this title for the administration of the competitive service, an individual who served for at least 3 years as a technician acquires a competitive status for transfer to the competitive service if such individual—

"(A) is involuntarily separated from service as a technician other than by removal for cause on charges of misconduct or delinquency;

"(B) passes a suitable noncompetitive examination; and

"(C) transfers to the competitive service within 1 year after separating from service as a technician.".

The SPEAKER pro tempore. Is a second demanded?

Mr. TAYLOR. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentlewoman from Colorado [Mrs. SCHROEDER] will be recognized for 20 minutes and the gentleman from Missouri [Mr. TAYLOR] will be recognized for 20 minutes.

The Chair recognizes the gentlewoman from Colorado [Mrs. SCHROEDER].

Mrs. SCHROEDER. Mr. Speaker, I yield myself such time as I may consume.

(Mrs. SCHROEDER asked and was given permission to revise and extend her remarks.)

Mrs. SCHROEDER. Mr. Speaker, the bill before us today is a testament to the hard work and skillful legislating of the gentlewoman from Louisiana, Representative CATHY LONG. She learned of the problem of National Guard technicians losing their jobs as a result of loss of military status, she figured out a sensible, no cost, way to fix the problem, her bill won the support of the administration, and here we are today. The House of Representatives will be poorer next year without CATHY LONG.

The bill provides that National Guard technicians who are involuntarily separated from service will be granted competitive civil service status for the purpose of transferring to Federal jobs in the competitive service.

There are 50,000 National Guard technicians. They hold excepted service jobs in the civil service and are required to hold a military grade as a condition of employment. If they lose their military status for any reason, they also lose their civilian job.

For example, a technician with high blood pressure may be perfectly capable of performing a civil service job but cannot meet military medical standards. Such an individual would be separated as a technician. Approximately 500 technicians are involuntarily separated from Federal service each year.

H.R. 5218 would give former National Guard technicians, who have served at least 3 years, competitive civil service status to assist them in applying for competitive civil service jobs. These former technicians would have to apply for the competitive service position within 1 year of separation from their technician position. The bill specifically does not apply to technicians who are separated for misconduct or delinquency. It also does not apply to those who voluntarily separate from service as technicians.

The bill will allow the Government to retain skilled and productive individuals and it will help technicians who are separated because of loss of military status find another job.

The Subcommittee on Civil Service had hearings on this bill on September 30 and reported out the legislation on October 1. I urge its adoption.

Mr. TAYLOR. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I want to thank my friend, the gentlewoman from Louisiana, Mrs. CATHY LONG, for introducing H.R. 5218, which will allow National Guard technicians who must involuntarily leave their jobs, for reasons other than performance, to transfer into the competitive civil service system.

National Guard technicians are not only civil servants, but they also must be members of the National Guard as a condition of employment and are expected to mobilize with their units in time of war. Because of this dual status of military and civil service, they are not part of the vast majority of civil servants who are in the competitive service. They are in a special class known as excepted service. They are also subject to involuntary separation from their jobs if they are unable to meet certain military requirements, such as remaining physically fit and below a certain weight, maintaining flight status, and holding a driver's license.

If a technican is separated from the National Guard and wants to work for the Federal Government, he or she must apply to the Office of Personnel Management. After he is certified by OPM and placed on a register he must compete not only against other Federal employees, but against other applicants from outside the civil service. Federal employees in the competitive service only compete against each other. The result is that it is very difficult for former National Guard technicians to continue to work for the Federal Government.

It is important to note that employees removed from their jobs because of insubordination and poor performance will not be affected by this legislation. Only those "excepted service" employees who must leave their jobs for nonwork-related reasons will be affected.

Mr. Speaker, H.R. 5218 has been amended by the Civil Service Subcommittee to make it acceptable to OPM and the National Guard Bureau. It is sound managment to retain employees who are proven performers. One beneficiary would be the National Guard itself, which could bring to Washington qualified technicians who have worked throughout the country and who would normally be forced to leave Government employment. Their knowledge of the Guard and their experience in the field makes them valuable assets. I urge my colleagues to vote for the bill.

□ 1440

Mr. Speaker, I reserve the balance of my time.

Mrs. SCHROEDER. Mr. Speaker, I yield 5 minutes to the gentlewoman from Louisiana [Mrs. LONG].

Mrs. LONG. Mr. Speaker, I thank our chairwoman, the gentlewoman from Colorado, [Mrs. SCHROEDER], and the gentleman from Missouri [Mr. TAYLOR] as well as the other members of the Civil Service Subcommittee for taking up consideration of H.R. 5218. In addition, I thank all of the cosponsors of this legislation for their support. H.R. 5218 addresses a matter of great importance to National Guard technicians in my district and across the United States. This legislation has the approval of all of the Federal employee unions as well as the National Guard Bureau and the Office of Personnel Management.

H.R. 5218 would grant certain National Guard technicians competitive status for the purpose of transferring to the competitive civil service. National Guard technicians have dual status, meaning they presently hold their regular Federal civilian jobs on the condition that they maintain membership in the part-time National Guard. Due to their Guard membership requirement, for purposes of the civil service laws the technicians are categorized as excepted rather than competitive civil service employees. As excepted Federal employees, in order to obtain employment in the regular competitive civil service, the technicians must apply to the Office of Personnel Management, be certified and placed on a public register with applicants from outside the Federal service. By contrast, Federal employees already classified as competitive need only compete with other Federal employees for positions in the competitive civil service.

One unfortunate consequence of the technicians' dual status is that they must give up their technican jobs if they lose their membership in the part-time National Guard. Since the law currently requires automatic separation from the Guard through adverse action, reduction in force, disability or failure to achieve promotion, it is possible for technicians to lose their Guard membership, and hence

their Federal civilian jobs, for reasons unrelated to performance on their civilian jobs. For example, technicians may be separated from the National Guard due to medical disability, failure to meet weight or physical requirements, failure to fulfill military education requirements, loss of flight status or driver's license. Thus, in order to retain National Guard membership and their Federal civilian jobs, technicians must comply with requirements much more stringent than those required of most other Federal employees.

Mr. Speaker, the legislation before the House, would grant National Guard technicians with 3 years of service as technicians, the opportunity for noncompetitive entry into the regular competitive civil service if they lose their military status for reasons other than misconduct or delinquency and thus have to leave their civilian jobs involuntarily.

Under the bill, such technicians would have to compete only with other Federal employees for positions and would acquire competitive status if they pass a suitable noncompetitive exam and transfer within 1 year after separating from service as technicians.

Because the National Guard technicians civilian employment depends on maintaining military status, the technicians are in an unusual position. Overall, they give much more than the ordinary Federal employee. This force of roughly 50,000 work their normal 40-hour week, but they also spend one weekend a month and several weeks in the summer performing their part-time National Guard duties. The technicians are the backbone of the National Guard and maintain the aircraft, tanks, and other military equipment of the Guard. They prepare training programs, keep the necessary records, recruit new Guard members, and provide continuity between weekend training sessions and perform many other duties.

In return for this extraordinary commitment and their Federal employment experience, it seems equitable and wise to grant them special consideration for transfer into the competitive civil service when they lose their military status and consequently their Federal civilian jobs, for reasons unrelated to their civilian performance. At a time when this Congress is searching for ways to reduce Government spending, it simply does not make sense to lose these highly trained individuals to the private sector when they wish to continue their careers in the public service. Experience on the job and a satisfactory record of performance are valuable assets to the Government, and should be accorded great weight in hiring for the competitive civil service. I urge my colleagues to support this legislation.

Mrs. SCHROEDER. Mr. Speaker, I yield such time as she may consume to the gentlewoman from Ohio [Ms. OAKAR].

Ms. OAKAR. Mr. Speaker, I thank the gentlewoman for yielding me this time. I want to compliment my colleague and friend, the gentlewoman from Colorado [Mrs. SCHROEDER] and the distinguished minority leader, who is the minority member of the subcommittee.

But I really wanted to rise not only about the merits of this legislation, but along with my colleague, the cochair of our women's issues caucus. We in a very special way have been extraordinarily proud of the gentlewoman from Louisiana, CATHY LONG. She has been here only a short time, came here under her own right, but due to a tragedy in her life and a tragedy really for all of us, succeeded here magnificant, wonderful husband, Gillis Long. But CATHY in her own right has been an extraordinary legislator, and the people in her district and indeed the country should be very, very proud.

Many times it takes a great number of years to have a piece of legislation pass under your own sponsorship. Although CATHY has not been a Member of Congress for that long a period of time, it is extraordinary that this piece of legislation, which will mean so much to so many people, is going to pass with, of course, CATHY being the original sponsor.

So I just wanted to rise and join my colleague, the gentlewoman from Colorado [Mrs. SCHROEDER] and indeed I am sure the whole body in saying how proud we are of CATHY. The quality of her work has been just outstanding. I know the people in her district are proud that they sent her, even though it was for only a short time.

Mr. TAYLOR. Mr. Speaker, I yield myself such time as I may consume to join in the remarks of my distinguished colleague, the gentlewoman from Ohio, [Ms. OAKAR] in paying tribute to the gentlewoman from Louisiana, CATHY LONG, for this legislation which is something that has been needed to be addressed for a long time dealing with the inequities that prevail among the National Guard civilian employees. I commend her for her attention to this and for her diligence in bringing this legislation to the floor. I urge the passage of the legislation.

Mr. Speaker, I yield back the balance of my time.

Mrs. SCHROEDER. Mr. Speaker, I yield such time as he may consume to the gentleman from Mississippi [Mr. MONTGOMERY], the distinguished chairman of the Veterans' Affairs Committee.

Mr. MONTGOMERY. Mr. Speaker, I thank the gentlewoman for yielding me this time.

I also rise in support of H.R. 5218, I want to thank the gentlewoman from Colorado for giving me this time to also thank the gentlewoman from Louisiana [Mrs. LONG] for bringing this legislation to the floor.

I have been involved both directly and indirectly working with the National Guard and with the National Guard technicians. As I understand this legislation, it will certainly be fair to the technicians and give them some advantages, some help that they should have had years ago.

I say to CATHY LONG we will miss her, and we thank her for offering the leadership on this National Guard technician bill.

□ 1450

Mrs. SCHROEDER. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. GILMAN. Mr. Speaker, I rise in support of H.R. 5218, legislation to provide competitive civil service status to former National Guard technicians who are involuntarily separated for reasons other than misconduct or delinquency.

H.R. 5218 would grant competitive civil service status to a National Guard technician who has served for at least 3 years as a technician and is involuntarily separated from technician service for reasons other than misconduct or delinquency. In order to be eligible for the competitive status, the technician must pass a noncompetitive examination and transfer to the competitive service within 1 year after separating from technician service.

H.R. 5218 is surely needed because approximately 95 percent of the nearly 50,000 National Guard technicians are required to hold a military grade as a condition of their civilian employment. If these individuals lose their military status for whatever reason, they also lose their civilian jobs. Approximately 500 to 600 technicians are involuntarily separated from the Federal service each year. By granting competitive civil service status to these technicians, the bill would enable skilled and productive workers to continue to work for our Federal Government.

Accordingly, I urge my colleagues to vote for H.R. 5218.

The SPEAKER pro tempore. The question is on the motion offered by the gentlewoman from Colorado [Mrs. SCHROEDER] that the House suspended the rules and pass the bill, H.R. 5218, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mrs. SCHROEDER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their re-

marks, and include extraneous matter, on H.R. 5218, the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Colorado?

There was no objection.

FEDERAL EMPLOYEES' RETIREMENT SYSTEM TECHNICAL CORRECTIONS ACT OF 1986

Ms. OAKAR. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5626) to make technical corrections in the Federal Employees' Retirement System Act of 1986, and for other purposes, as amended.

The Clerk read as follows:

H.R. 5626

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Federal Employees' Retirement System Technical Corrections Act of 1986".

TITLE I—PROVISIONS RELATING TO TITLE I OF THE FEDERAL EMPLOYEES' RETIREMENT SYSTEM ACT OF 1986

SEC. 101. REFERENCES.

Except as otherwise expressly provided, whenever in this title an amendment is expressed in terms of an amendment to a section or other provision, the reference shall be considered to be made to a section or other provision of chapter 84 of title 5, United States Code, as added by section 101 of the Federal Employees' Retirement System Act of 1986 (Public Law 99-335; 100 Stat. 516).

SEC. 102. OPM AUDIT AUTHORITY.

Section 8461(m)(2) is amended by striking out ", and from the Thrift Savings Fund,".

SEC. 103. DEPOSIT FOR CERTAIN SERVICE.

Section 8411 is amended—

(1) in subsection (b)(2), by inserting "except as provided in subsection (f)," before "service"; and

(2) in subsection (f)(1), by inserting "(b)(2) or" before "(b)(3)".

SEC. 104. CLARIFICATION RELATING TO THE MINIMUM AMOUNT OF A DISABILITY ANNUITY.

Section 8452(d) is amended by inserting "(after the reduction under subsection (a)(2), if applicable, has been made)" after "this section".

SEC. 105. ELECTION TO DEFER ANNUITY COMMENCEMENT DATE.

(a) IN GENERAL.—Subsection (g) of section 8412 is amended—

(1) by redesignating such subsection as subsection (g)(1); and

(2) by adding at the end thereof the following:

"(2) An employee or Member entitled to an annuity under this subsection may defer the commencement of such annuity by written election. The date to which the commencement of the annuity is deferred may not precede the 31st day after the date of filing the election, and must precede the date on which the employee or Member becomes 62 years of age.

"(3) The Office shall prescribe regulations under which an election under paragraph (2) shall be made.".

(b) CONFORMING AMENDMENTS.—(1) Section 8413(b)(1) is amended—

(A) in the first sentence, by inserting "but before attaining the applicable minimum retirement age under section 8412(h)" before "is entitled"; and

(B) in the second sentence, by striking out "the applicable minimum retirement age under section 8412(h)" and inserting in lieu thereof "such minimum retirement age".

(2) Subparagraphs (A) and (B) of section 8415(f)(2) are amended by inserting "8412(g) or" before "8413(b)".

SEC. 106. AMENDMENT TO SECTION 8452.

The second sentence of section 8452(b)(3) is amended by striking out "(a)(1)(A)," and inserting in lieu thereof "(a)(1)(A)(i),".

SEC. 107. LUMP-SUM CREDIT.

Section 8401(19) is amended—

(1) in subparagraph (B), by striking out "and";

(2) by redesignating subparagraph (C) as subparagraph (D); and

(3) by inserting after subparagraph (B) the following:

"(C) amounts deposited by an employee, Member, or survivor under section 8411(f); and".

SEC. 108. CLARIFICATION RELATING TO FIDUCIARIES.

Section 8478(a)(1) is amended by striking out "(other" and all that follows thereafter through "member)".

SEC. 109. DEFINITION OF A "LOSS".

Section 8401(18) is amended to read as follows:

"(18) the term 'loss', as used with respect to the Thrift Savings Fund, includes the amount of any loss resulting from the investment of sums in such Fund, or from the breach of any responsibility, duty, or obligation under section 8477.".

SEC. 110. INVESTIGATIVE AUTHORITY.

(a) IN GENERAL.—Title 5, United States Code, is amended by inserting after section 8478 the following:

"§ 8478a. Investigative authority

"Any authority available to the Secretary of Labor under section 504 of the Employee Retirement Income Security Act of 1974 is hereby made available to the Secretary of Labor, and any officer designated by the Secretary of Labor, to determine whether any person has violated, or is about to violate, any provision of section 8477 or 8478.".

(b) CHAPTER ANALYSIS.—The analysis for chapter 84 is amended by inserting after the item relating to section 8478 the following:

"8478a. Investigative authority.".

SEC. 111. INTERIM EXEMPTION PROCEDURES.

(a) IN GENERAL.—Subject to subsection (b), until such time as final regulations under subparagraph (A) of section 8477(c)(3) of title 5, United States Code, become effective, the Secretary of Labor may, in accordance with procedures under section 408(a) of the Employee Retirement Income Security Act of 1974, grant any exemption allowable under such section 8477(c)(3).

(b) TERMINATION OF INTERIM AUTHORITY.—The authority to grant an exemption under section 8477(c)(3) of title 5, United States Code, using the procedures under section 408(a) of the Employee Retirement Income Security Act of 1974 shall expire not later than December 31, 1988.

SEC. 112. ADOPTION OF ERISA ADMINISTRATIVE EXEMPTIONS.

Section 8477(c)(3) is amended by adding at the end thereof the following:

"(E) Notwithstanding subparagraph (D), the Secretary of Labor may determine that an exemption granted for any class of fiduciaries or transactions under section 408(a) of the Employee Retirement Income Security Act of 1974 shall, upon publication of notice in the Federal Register under this subparagraph, constitute an exemption for purposes of the provisions of paragraph (2).".

SEC. 113. INTERIM BONDING REGULATIONS.

(a) IN GENERAL.—Subject to subsection (b), until such time as the Secretary of Labor promulgates final regulations under section 8478 of title 5, United States Code, the Secretary of Labor may, with respect to the Thrift Savings Fund, apply the temporary regulations under section 412 of the Employee Retirement Income Security Act of 1974 that are set forth in section 2550.412-1, and subchapter I of chapter XXV, of title 29 of the Code of Federal Regulations, as in effect on September 23, 1986.

(b) TERMINATION OF INTERIM AUTHORITY.—The authority to apply the temporary regulations referred to in subsection (a) with respect to the Thrift Savings Fund shall expire not later than December 31, 1989.

SEC. 114. ALLOCATION OF FIDUCIARY RESPONSIBILITIES.

(a) INTERIM PROCEDURES.—(1) Subject to paragraph (2), until such time as final regulations under subparagraph (E) of section 8477(e)(1) of title 5, United States Code, become effective, a fiduciary (as defined by section 8477(a)(3) of title 5, United States Code) may, in accordance with procedures established by the Federal Retirement Thrift Investment Board, make any allocation of fiduciary responsibilities.

(2) The authority to make any allocation under section 8477(e)(1)(E) using the procedures referred to in paragraph (1), and any allocation so made using such procedures, shall expire not later than December 31, 1988.

(b) CONFORMING AMENDMENT.—Section 8477(e) (1)(E)(i) is amended by striking "Board" and inserting "Secretary of Labor (or the Board under section 114 of the Federal Employees' Retirement System Technical Corrections Act of 1986)".

SEC. 115. SURETY CORPORATIONS.

Section 8478(c)(2) is amended by striking out "sections 6 through 13 of title 6" and inserting in lieu thereof "sections 9304 through 9308 of title 31".

SEC. 116. AUTHORITY TO EXCLUDE CERTAIN EMPLOYEES SERVING ON A TEMPORARY OR INTERMITTENT BASIS.

Section 8402(c) is amended by adding at the end thereof the following:

"(5) The Clerk of the House of Representatives and the Secretary of the Senate each may exclude from the operation of this chapter a Congressional employee—

"(A) whose employment is temporary or intermittent; and

"(B) who is paid by such Clerk or Secretary, as the case may be.

"(6) The Director of the Office of Technology Assessment may exclude from the operation of this chapter an employee under the Office of Technology Assessment whose employment is temporary or intermittent.".

SEC. 117. CLARIFICATIONS RELATING TO COMPUTATION OF SURVIVOR'S BENEFITS FOR A CHILD.

(a) AMOUNT REFLECTS CSRS ADJUSTMENTS.—Section 8443(a)(2) is amended by inserting "(including any adjustment based on section 8340)" after "83".

(b) AMOUNT DOES NOT REFLECT FERS ADJUSTMENTS.—Section 8462(b)(3) is amended by adding at the end thereof the following: "Nothing in the preceding sentence shall affect the computation of any amount under section 8443(a)(2).".

SEC. 118. AMENDMENT RELATING TO SECTION 8457.

Section 8457(a) is amended by striking out "subsection (c)" each place it appears and inserting in lieu thereof "subsection (b)".

SEC. 119. AMENDMENT RELATING TO SECTION 8401(11).

Section 8401(11) is amended by striking out "any of" each place it appears.

SEC. 120. COMMENCEMENT DATE OF ANNUITY FOR THE WIDOW OR WIDOWER OF AN EMPLOYEE OR MEMBER WHO DIES ENTITLED TO A DEFERRED ANNUITY.

Section 8442(c)(2)(b)(i)(I) is amended to read as follows:

"(I) on the day after the date on which the former employee or Member would have attained age 62 (or, if applicable, either age 60 if the former employee or Member completed at least 20 years of service, or the applicable minimum retirement age (under section 8412(h)) if the former employee or Member completed at least 30 years of service); or".

SEC. 121. REDUCTIONS BASED ON EARNINGS TO TERMINATE AFTER ENTITLEMENT TO ANNUITY SUPPLEMENT ENDS.

Section 8421a is amended by striking out subsection (c), and redesignating subsection (d) as subsection (c).

TITLE II—AMENDMENTS RELATING TO TITLE II OF THE FEDERAL EMPLOYEES' RETIREMENT SYSTEM ACT OF 1986

SEC. 201. EMPLOYEES OF THE GOVERNMENT OF THE DISTRICT OF COLUMBIA.

Subsection (c) of section 207 of the Federal Employees' Retirement System Act of 1986 is amended—

(1) by redesignating such subsection as subsection (c)(1); and

(2) by adding at the end thereof the following:

"(2) The amendment made by paragraph (1) shall not result in the coverage, under subchapter I of chapter 63 of title 5, United States Code, of any individual (or class of individuals) employed by the government of the District of Columbia who would not have been covered under such subchapter if such amendment had not been made.".

SEC. 202. AMENDMENT RELATING TO RETIREMENT COUNSELING.

Section 8350(c)(1) of title 5, United States Code, as added by section 205 of the Federal Employees' Retirement System Act of 1986 (Public Law 99-335; 100 Stat. 592), is amended by striking out "(b)(1)" and inserting in lieu thereof "(b)".

TITLE III—AMENDMENTS RELATING TO TITLE III OF THE FEDERAL EMPLOYEES' RETIREMENT SYSTEM ACT OF 1986

SEC. 301. ELECTIONS FOR CERTAIN INDIVIDUALS NOT COVERED AS OF DECEMBER 31, 1986.

Section 301(b)(3) of the Federal Employees' Retirement System Act of 1986 (Public Law 99-335; 100 Stat. 599) is amended to read as follows:

"(3)(A) If, as of December 31, 1986, the individual is not subject to subchapter III of chapter 83 of title 5, United States Code, such individual may, during the 6-month period described in subsection (a)(1)(B)—

"(i) elect to become subject to chapter 84 of such title; or

"(ii) if such individual has not since made an election described in subparagraph (B), elect to become subject to subchapter III of chapter 83 of such title under the same terms and conditions as apply in the case of an individual described in section 8402(b)(2) of such title who is subject to such subchapter.

"(B) Nothing in this paragraph shall be considered to preclude the individual from electing to become subject to subchapter III of chapter 83 of such title pursuant to notification under section 8331(2) of such title—

"(i) during the period after December 31, 1986, and before July 1, 1987; or

"(ii) after December 31, 1987, if such individual has not since become subject to subchapter III of chapter 83, or chapter 84, of such title.

"(C) Any individual who becomes subject to subchapter III of chapter 83 of such title pursuant to notification under section 8331(2) of such title after December 31, 1986, shall become subject to such subchapter under the same terms and conditions as apply in the case of an individual described in section 8402(b)(2) of such title who is subject to such subchapter.".

SEC. 302. INTEREST ON REFUNDS.

(a) REFUND BASED ON AN ELECTION TO BECOME SUBJECT TO THE FEDERAL EMPLOYEES' RETIREMENT SYSTEM.—Subparagraph (A) of section 302(c)(2) of the Federal Employees' Retirement System Act of 1986 (Public Law 99-335; 100 Stat. 605) is amended to read as follows:

"(A) shall be payable with interest, computed in accordance with paragraphs (2) and (3) of section 8334(e) of title 5, United States Code, and regulations prescribed by the Office of Personnel Management.".

(b) REFUND BASED ON AN ELECTION UNDER SECTION 301(B)(1)(A) OF FERSA.—Section 303(a) of the Federal Employees' Retirement System Act of 1986 (Public Law 99-335; 100 Stat. 605) is amended by adding at the end thereof the following:

"A refund under this subsection shall be computed with interest in accordance with paragraphs (2) and (3) of section 8334(e) of title 5, United States Code, and regulations prescribed by the Office of Personnel Management.".

TITLE IV—FOREIGN SERVICE RETIREMENT

SEC. 401. REFERENCES.

Except as otherwise expressly provided, whenever in this title an amendment is expressed in terms of an amendment to a section or other provision, the reference shall be considered to be made to a section or other provision of chapter 8 of the Foreign Service Act of 1980 (22 U.S.C. 4041 et seq.).

SEC. 402. ANNUITY OFFSET BY AMOUNT OF SOCIAL SECURITY BENEFITS.

Subsection (m) of section 806 (22 U.S.C. 4046) is amended to read as follows:

"(m) The retirement, disability, or survivor annuity payable to any person based on the service of an individual subject to section 805(h) beginning with the first day of the month for which such person first becomes—

"(1) eligible for an annuity under this subchapter based on the service of such individual, and

"(2) entitled, or would, upon proper application, be entitled to old age, disability, or survivor benefits under title II of the Social Security Act based on the service of such individual under this subchapter,

shall be computed as if section 8349 of title 5, United States Code, were applicable.".

SEC. 403. INCREASE IN CEILING ON ANNUAL RATE OF PAY FOR REEMPLOYED ANNUITANTS.

Paragraph (3) of section 824(b) (22 U.S.C. 4064(b)) is amended to read as follows:

"(3)(A) The sum of—

"(i) the total annuity payable under this chapter to an annuitant making an election under paragraph (1), and

"(ii) the annual rate of pay payable to the annuitant during the part-time, intermittent, or temporary employment referred to in paragraph (1),

may not exceed, in any calendar year, the amount described in subparagraph (B).

"(B) The amount referred to in subparagraph (A) is the greater of—

"(i) the highest annual rate of basic pay which is payable during such year for full-time employment in the position in which the annuitant is employed, or

"(ii) the basic pay the annuitant was entitled to receive under this Act on the date of retirement from the Service.

"(C) For purposes of this section, the term 'annuity' means the annuity earned by the reemployed member based on his or her service irrespective of whether or not the amount payable is reduced by the amount of an annuity payable under section 814 or 820(b).".

SEC. 404. THRIFT SAVINGS FUND PARTICIPATION BY FSRDS PARTICIPANTS.

(a) PARTICIPATION BY FSRDS PARTICIPANTS.—Subchapter I of chapter 8 is amended by adding after section 828 the following new section:

"SEC. 829. THRIFT SAVINGS FUND PARTICIPATION.—Participants in this System shall be deemed to be employees for the purposes of section 8351 of title 5, United States Code. Any reference in such section 8351 or in subchapter III of chapter 84 of such title 5 to retirement or separation under subchapter III of chapter 83 or chapter 84 of such title 5 shall be deemed to be references to retirement or separation under subchapter I or II of this chapter with similar benefits or entitlements with respect to participants under such subchapter I or II, respectively.".

(b) CONFORMING AMENDMENT TO TABLE OF CONTENTS.—The table of contents in section 2 of such Act is amended by inserting after the item relating to section 828 the following:

"Sec. 829. Thrift Savings Fund participation.".

SEC. 405. CREDITABLE SERVICE.

(a) TREATMENT OF CONTRIBUTION FOR PRIOR SERVICE.—Subsection (d) of section 854 (22 U.S.C. 4071c) is amended by striking out "which would have been deducted from pay under section 854(a) had the individual been a participant" and inserting in lieu thereof "which was deducted and withheld from the individual's basic pay under the other retirement system".

(b) EMPLOYEE OF A MEMBER OR OFFICE OF THE CONGRESS.—Section 854 (22 U.S.C. 4071c) is amended by adding at the end thereof the following new subsection:

"(e) A participant who, while on approved leave without pay, serves as a full-time paid employee of a Member or office of the Congress shall continue to make contributions to the Fund based upon the Foreign Service salary rate that would be in effect if the participant were in a pay status. The participant's employing Member or office in the Congress shall make a matching contribution (from the appropriation or fund which is used for payment of the salary of the participant) to the Treasury of the United States to the credit of the Fund. All periods of service for which full contributions to the Fund are made under this subsection shall be counted as creditable service for purposes of this subchapter and shall not, unless all retirement credit is transferred, be counted as creditable service under any other Government retirement system.".

SEC. 406. ENTITLEMENT TO ANNUITY.

(a) SERVICE AS A NONCAREER MEMBER OF THE FOREIGN SERVICE.—Paragraph (1) of section 855(b) (22 U.S.C. 4071d) is amended by striking out "of service subject to this chapter" and inserting in lieu thereof "as a member of the Foreign Service".

(b) CLARIFICATION OF RATES APPLICABLE TO ANNUITY COMPUTATION.—Paragraph (2) of section 855(b) (22 U.S.C. 4071d(b)) is amended by striking out subparagraphs (A), (B), and (C) and inserting in lieu thereof the following:

"(A) in accordance with section 8415(d)(1) of title 5, United States Code, for all service while a participant in this System and for prior service creditable under this subchapter not otherwise counted as—

"(i) a member of the Service,

"(ii) an employee of the Central Intelligence Agency entitled to retirement credit under title II of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees or under section 302(a) or 303(b) of that Act, or

"(iii) a participant as a Member of Congress, a congressional employee, law enforcement officer, firefighter, or air traffic controller in the Civil Service Retirement System under subchapter III of chapter 83, title 5, United States Code, or in the Federal Employees' Retirement System under chapter 84 of title 5, United States Code; and

"(B) at the rate stated in section 8415(a) of title 5, United States Code, for all other service creditable under this System including service in excess of 20 years otherwise creditable under paragraph (A).".

(c) CLARIFICATION OF OTHER ANNUITY COMPUTATIONS RELATING TO INVOLUNTARY SEPARATION, DISABILITY, DEFERRED ANNUITY, AND SURVIVOR ANNUITY.—Subsection (b) of section 855 (22 U.S.C. 4071d) is amended by adding at the end thereof the following:

"(3) Any participant who is involuntarily retired or separated under section 607, 608, or 610 and who would if a participant under subchapter I, become eligible for a refund of contributions or a deferred annuity under subchapter I, shall, in lieu thereof, receive benefits for an involuntary separation under this subchapter.

"(4) A disability annuity under this subchapter required to be redetermined under section 8452(b) of title 5, United States Code, or computed under section 8452 (c) or (d) of such title 5, shall be recomputed or computed using the formula in subsection (b)(2)(A) of this section rather than section 8415 of such title 5 (as stated in section 8452(b)(2)(A) and 8452 (c) and (d) of such title). Such annuity shall also be computed in accordance with the preceding sentence if, as of the day on which such annuity commences or is restored, the annuitant satisfies the age and service requirements for entitlement to an immediate annuity under section 811 of this Act.

"(5) A former participant entitled to a deferred annuity under section 8413(b) of title 5, United States Code, shall not be subject to section 8415(f)(1) of such title 5 if the former participant has 20 years of service creditable under this subchapter and is at least 50 years of age as of the date on which the annuity is to commence.

"(6)(A) The amount of a survivor annuity for a widow or widower of a participant or former participant shall be 50 percent of an annuity computed for the deceased under this subchapter rather than under section 8415 of such title 5 (as stated in sections 8442(a)(1), (b)(1)(B), and (c)(2) of such title).

"(B) Any calculation for a widow or widower of a participant or former participant under section 8442(f)(2)(A) shall be based on an 'assumed FSRDS annuity' rather than an 'assumed CSRS annuity' as stated in such section. For the purpose of this subparagraph, the term 'assumed FSRDS annuity' means the amount of the survivor annuity to which the widow or widower would be entitled under subchapter I based on the service of the deceased annuitant determined under section 8442(f)(5) of such title 5.".

SEC. 407. CLARIFICATION OF DISQUALIFICATION OF FORMER SPOUSES FOR SURVIVOR BENEFIT IF REMARRIAGE BEFORE AGE 55.

Subsection (b) of section 861 (22 U.S.C. 4071j) is amended by adding at the end thereof the following:

"(3) A former spouse shall not be qualified for any benefit under this subsection if, before the commencement of any benefit, the former spouse remarries before becoming 55 years of age.".

SEC. 408. EFFECTIVE DATE.

This title and the amendments made by this title shall take effect on January 1, 1987. The amendment made by section 403 shall apply to any individual in a reemployed status on or after January 1, 1987.

TITLE V—MISCELLANEOUS PROVISIONS

SEC. 501. TECHNICAL AMENDMENTS TO PUBLIC LAW 98-615.

(a) AMENDMENTS.—(1) Subsections (a)(4)(B), (a)(5)(B)(iii), and (f) of section 4 of Public Law 98-615 (98 Stat. 3204), as amended by section 201 of Public Law 99-251 (100 Stat. 20), are amended by striking out "Federal Employees Benefits Improvement Act of 1985" and inserting in lieu thereof "Federal Employees Benefits Improvement Act of 1986".

(2) Section 4(a)(5)(A) of Public Law 98-615, as so amended, is amended—

(A) by striking out "Paragraphs (2)," and inserting in lieu thereof "Paragraphs"; and

(B) by adding at the end thereof the following: "The paragraphs referred to in the preceding sentence shall so apply only insofar as they relate to an election to provide a survivor annuity for a former spouse.".

(b) EFFECTIVE DATE.—The amendments made by this section shall be effective as of May 7, 1985.

SEC. 502. CREDITABILITY OF CERTAIN MILITARY SERVICE IN COMPUTING AN ANNUITY FOR THE SURVIVOR OF AN EMPLOYEE OR MEMBER WHO DIES IN SERVICE.

(a) CIVIL SERVICE RETIREMENT SYSTEM.—Section 8332(c) of title 5, United States Code, is amended by adding at the end thereof the following:

"(3)(A) Notwithstanding paragraph (2) of this subsection, for purposes of computing a survivor annuity for a survivor of an employee or Member—

"(i) who was awarded retired pay based on any period of military service, and

"(ii) whose death occurs before separation from the service,

creditable service of the deceased employee or Member shall include each period of military service includable under subparagraph (A) or (B) of paragraph (1) of this subsection, as applicable. In carrying out this subparagraph, any amount deposited under section 8334(h) of this title shall be taken into account.

"(B) A survivor annuity computed based on an amount which, under authority of subparagraph (A), takes into consideration any period of military service shall be reduced by the amount of any survivor's benefits—

"(i) payable to a survivor (other than a child) under a retirement system for members of the uniformed services;

"(ii) if, or to the extent that, such benefits are based on such period of military service.

"(C) The Office of Personnel Management shall prescribe regulations to carry out this paragraph, including regulations under which—

"(i) a survivor may elect not to be covered by this paragraph; and

"(ii) this paragraph shall be carried out in any case which involves a former spouse.".

(b) FEDERAL EMPLOYEES' RETIREMENT SYSTEM.—Section 8411(c) of title 5, United States Code, is amended by adding at the end thereof the following:

"(4)(A) Notwithstanding paragraph (2), for purposes of computing a survivor annuity for a survivor of an employee or Member—

"(i) who was awarded retired pay based on any period of military service, and

"(ii) whose death occurs before separation from the service,

creditable service of the deceased employee or Member shall include each period of military service includable under subparagraph (A) or (B) of paragraph (1) or under paragraph (3). In carrying out this subparagraph, any amount deposited under subsection (f)(4) shall be taken into account.

"(B) A survivor annuity computed based on an amount which, under authority of subparagraph (A), takes into consideration any period of military service shall be reduced by the amount of any survivor's benefits—

"(i) payable to a survivor (other than a child) under a retirement system for members of the uniformed services;

"(ii) if, or to the extent that, such benefits are based on such period of military service.

"(C) The Office of Personnel Management shall prescribe regulations to carry out this paragraph, including regulations under which—

"(i) a survivor may elect not to be covered by this paragraph; and

"(ii) this paragraph shall be carried out in any case which involves a former spouse.".

(c) APPLICABILITY.—(1) The amendments made by this section shall apply to a survivor of an employee or Member who dies on or after the 180th day after the date of the enactment of this Act.

(2) Upon application to the Office of Personnel Management, such amendments shall also apply to a survivor of an employee or Member whose date of death precedes such 180th day, except that any resulting recomputation shall not be effective for any period beginning before the 60th day after the date on which the application is received.

SEC. 503. CLARIFICATION RELATING TO ELIGIBILITY OF CERTAIN SURVIVOR ANNUITANTS TO PARTICIPATE IN FEHBP.

Section 8901(3)(B) of title 5, United States Code, is amended by inserting after "of an employee" the following: "(including a family member entitled to an amount under section 8442(b)(1)(A), whether or not such family member is entitled to an annuity under section 8442(b)(1)(B))".

SEC. 504. MANDATORY SEPARATION PROVISION NOT TO BE APPLIED RETROACTIVITY.

(a) IN GENERAL.—Section 8335(a) of title 5, United States Code, shall not apply to any air traffic controller appointed before January 1, 1987.

(b) DEFINITION.—For purposes of this section, the term "air traffic controller" means any individual who—

(1) is an air traffic controller within the meaning of section 2109(1) of title 5, United States Code, as in effect on January 1, 1987; but

(2) is not an air traffic controller within the meaning of section 2109(1) of title 5, United States Code, as in effect on December 31, 1986.

SEC. 505. COORDINATION WITH PAY PERIODS.

Under regulations prescribed by the Office of Personnel Management, any reference to a specific date in section 302, 303, 305, or 702(a) of the Federal Employees' Retirement System Act of 1986 (Public Law 99-335; 100 Stat. 514) shall, for purposes of individual contributions (including deductions from basic pay), Government contributions, and refunds, be deemed to be a reference to the first day of the first applicable pay period beginning on or after such date, or to the day before such first day, as appropriate.

The SPEAKER pro tempore. Is a second demanded?

Mr. TAYLOR. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentlewoman from Ohio [Ms. OAKAR] will be recognized for 20 minutes and the gentleman from Missouri [Mr. TAYLOR] will be recognized for 20 minutes.

The Chair recognizes the gentlewoman from Ohio [Ms. OAKAR].

Ms. OAKAR. Mr. Speaker, the Federal Employees' Retirement System Act of 1986 establishes a new retirement system for those Federal employees covered by Social Security.

The new system goes into effect January 1, 1987. Since its enactment last June, we have discovered various technical errors and inconsistencies which really should be corrected.

H.R. 5626 makes these corrections. The bill is supported by the administration and will result in no significant cost to the Government and should result in administrative savings as a result of more efficient administration of the new retirement system.

Mr. Speaker, I ask unanimous consent that a summary of H.R. 5626, as amended, be inserted in the RECORD at this point.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Ohio?

There was no objection.

The summary follows:

SUMMARY OF THE FEDERAL EMPLOYEES' RETIREMENT SYSTEM TECHNICAL CORRECTIONS ACT OF 1986, OCTOBER 3, 1986

Changes in law made by the bill are summarized below.

Section 102 strikes language conferring authority on the Office of Personnel Management (OPM) by 5 U.S.C. 8461(m)(2) to audit certain disbursements from the Thrift Savings Fund since the OPM has no authority or responsibility with respect to the Thrift Savings Fund.

Section 103 provides authority for an employee, who (1) performed interim service (i.e., service between December 31, 1983, and January 1, 1987) for which retirement contributions were made and (2) received a refund of those contributions, to redeposit those refunded contributions so that the interim service may be credited for retirement purposes.

Section 104 clarifies 5 U.S.C. 8452(d) concerning the guaranteed minimum disability annuity.

Section 105 conforms provisions relating to immediated retirement after 10 years of service and attainment of the applicable minimum retirement age (MRA) to similar provisions relating to deferred retirement. The conforming change permits employees separating after 10 years of service and attainment of the MRA to defer commencement of annuity payments in order to avoid the five percent per year reduction. Now under the Federal Employees' Retirement System (FERS), individuals eligible for deferred rrtirement may defer the commencement of annuity payments, but individuals eligible for immediate retirement may not.

Section 106 corrects an erroneous cross-reference in 5 U.S.C. 8452(b)(3).

Section 107 amends the definition of "lump-sum credit" (5 U.S.C. 8401(19)) to include as part of the credit redeposits of previously refunded employee retirement contributions.

Section 108 strikes language in 5 U.S.C. 8478(a)(1) which raises an incorrect inference that members of the Employee Thrift Advisory Council are fiduciaries. This inference is contrary to the definition of fiduciary (5 U.S.C. 8477(a)(3)) which does not include such members.

Section 109 clarifies the definition of "loss" (5 U.S.C. 8401(18)) by providing the "loss" includes any loss resulting from the breach of any fiduciary responsibility, duty, or obligation.

Section 110 provides authority for the Secretary of Labor to investigate possible violations of the fiduciary responsibility provisions of 5 U.S.C. 8477 and 8478.

Section 111 permits the Secretary of Labor to use procedures promulgated under the Employment Retirement Income Security Act of 1974 (ERISA) for determining whether exemptions from certain fiduciary responsibilities are necessary and appropriate. The authority to use the ERISA procedures is granted only until December 31, 1988, by which time the Secretary is expected to have promulgated similar procedures under the FERS.

Section 112 permits the Secretary of Labor, upon publication of notice in the Federal Register, to extend to the FERS certain exemptions for any class of fiduciaries or transactions granted under the ERISA.

Section 113 permits the Secretary of Labor to use temporary bonding regulations promulgated under the ERISA until December 31, 1989, by which time the Secretary is expected to have promulgated similar procedures under the FERS.

Section 114 permits fiduciaries to allocate fiduciary responsibilities in accordance with procedures established by the Federal Retirement Thrift Investment Board. This authority expires on December 31, 1988, by which time the Secretary of Labor is expected to have promulgated regulations governing allocation of fiduciary responsibility under 5 U.S.C. 8479(e)(1).

Section 115 corrects an incorrect citation in 5 U.S.C. 8478(c)(2).

Section 116 provides authority to the Clerk of the House, the Secretary of the Senate, and the Director of the Office of Technology Assessment to exclude temporary or intermittent employees from coverage under the FERS.

Section 117 amends 5 U.S.C. 8443(a)(2) and 8462(b)(3) to clarify that a child's survivor annuity is subject to periodic adjustment to reflect changes in the cost of living.

Section 118 corrects erroneous cross-references in 5 U.S.C. 8457.

Section 119 makes technical amendments to the definition of employee set forth in 5 U.S.C. 8401(11).

Section 120 makes technical amendments to 5 U.S.C. 8442(c) concerning the commencement date of an annuity for the widow or widower of an employee who dies with title to a deferred survivor annuity.

Section 121 strikes a provision in 5 U.S.C. 8421a to ensure that reductions in an annuity supplement required as a result of application of the earnings test will not be made after the annuity supplement ceases to be paid.

Section 201 amends section 207(c) of the FERS to clarify that the amendment to 5 U.S.C. 6301(2)(B) made by such section shall not subject any individual employed by the Government of the District of Columbia and previously excluded from coverage under the Federal Government's annual and sick leave program to coverage under such program.

Section 202 corrects an erroneous cross-reference in 5 U.S.C. 8350(c).

Section 301 corrects section 301(b)(3) of the FERS. That section inadvertently precluded some individuals from electing into the new Federal Employees' Retirement System or the Civil Service Retirement System offset arrangement during the "open season" to be held beginning July 1, 1987.

Section 302 restores a provision inadvertently omitted from section 303(a) of the FERS which permits interest to be paid on refunds of excess contributions paid by those who elect into the FERS or the CSRS offset system. It also amends section 302(c)(2) of the FERS to conform interest paid under that section for similar refunds of excess contributions.

Section 402 amends subsection (m) of section 806 of the Foreign Service Act to conform with current Civil Service law. It provides that the annuity offset by the amount of Social Security benefits for certain employees shall be computed as if section 8349 of title 5, U.S.C., were applicable.

Section 403 amends section 824 of the Foreign Service Act to establish the rate of pay for reemployed annuitants. Such reemployed annuitants may be compensated at either the current rate of pay of the position to be occupied, or the annual salary rate of the annuitant at retirement, whichever is higher.

Section 404 adds a new section 829 to the Foreign Service Act of 1980 to authorize participants in the Foreign Service Retirement and Disability System to make contributions to the Thrift Savings Fund under 5 U.S.C. 8351.

Section 405 provides that the rate of contribution for prior civilian service should be calculated at the rate in effect for the retirement system under which service was performed, rather than at the Foreign Service contribution rate. It also makes service in a Congressional office by a member of

the Foreign Service on leave without pay creditable under subchapter I, unless all retirement credit is transferred.

Section 406 enables a noncareer chief of mission, who has completed 20 years of service in that capacity, to transfer from the Federal Employees' Retirement System to the Foreign Service Personnel System. It also clarifies annuity computations relating to involuntary separation, disability, deferred annuity, and survivor annuity.

Section 407 clarifies that a former spouse is not eligible to a pro rata share of a survivor annuity if the former spouse remarries before becoming 55 years of age.

Section 408 provides for an effective date of January 1, 1987 for this title. The amendment made by section 403 shall apply to any individual in a reemployed status on or after January 1, 1987.

Section 501 corrects various technical errors in the Federal Employees Benefits Improvement Act of 1986. The amendments correct erroneous references to the "Federal Employees Benefits Improvement Act of 1985", and correct an erroneous reference in section 4(a)(5)(A) of Public Law 98-615 and clarify the application of that section.

Section 502 amends 5 U.S.C. 8332(c) to provide that the military service of a military retiree who dies while employed as a civil servant may be used for purposes of computing the annuity benefit of a survivor of the decedent. As the result of a ruling by the Comptroller General, such military service may be used to compute the benefit in the case of an individual who has retired from the civil service but not in the case of one who dies while employed in the civil service. A similar amendment is made to 5 U.S.C. 8411(c), relating to service creditable under the new Federal Employees' Retirement System.

Section 503 clarifies 5 U.S.C. 8901(3)(B) to ensure that widows or widowers of employees who die in service will be eligible for continued health insurance coverage under the Federal Employees Health Benefits Program.

Section 504 "grandfathers" flight service station specialists hired before January 1, 1987, from application of the mandatory retirement provisions applicable to air traffic controllers. As of January 1, 1987, from application of the mandatory retirement provisions applicable to air traffic controllers. As of January 1, 1987, service as a flight service station specialist, whether performed before, on, or after January 1, 1987, is creditable as air traffic controller service.

Section 505 coordinates certain effective dates in the Federal Employees' Retirement System Act of 1986 with commencement of pay periods to ease the administration of the new retirement system.

Ms. OAKAR. Mr. Speaker, I urge adoption of H.R. 5626, and on behalf of my chairman, Congressman FORD, who was unable to be here, I know he would like me to compliment the distinguished minority leader.

It is not unusual that a new retirement system has a few technicalities that have to be straightened out, but the fact is we are both very proud of this retirement system, and it will be a fair system to so many people.

At this point, Mr. Speaker, I reserve the balance of my time.

Mr. TAYLOR. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, these technical efforts represent a bipartisan effort to fine tune the retirement legislation Congress passed last May. The Committee on Post Office and Civil Service, together with its counterpart from the other body, painstakingly developed and drafted a new retirement system for newly hired Federal employees. These technical amendments should tie up any loose ends the omnibus legislation contained and aid in the implementation of the new retirement system when it becomes effective at the beginning of next year.

In addition, H.R. 5626 will help clear up ambiguities created by a ruling by the Comptroller General regarding retirement credit for military service. This bill provides that military service of a military retiree may be used for the purpose of computing the annuity benefit for a surviving spouse. The bill further ensures that widows or widowers of employees who die in service will be eligible for continued health insurance coverage under the Federal Employees Health Benefits Program.

Mr. Speaker, Federal employees deserve a well run retirement system which is free of ambiguities and technical question. These amendments will facilitate this goal. I urge all my colleagues to support this legislation.

Mr. Speaker, I have no further requests for time and I yield back the balance of my time.

Ms. OAKER. Mr. Speaker, I have no further requests for time and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentlewoman from Ohio [Ms. OAKAR] that the House suspend the rules and pass the bill, H.R. 5626, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Ms. OAKAR. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks, and include extraneous matter, on H.R. 5626, the bill just passed.

The SPEAKER pro tempore (Mr. MONTGOMERY). Is there objection to the request of the gentlewoman from Ohio?

There was no objection.

RETIREMENT CREDIT FOR TIME SPENT IN CADET NURSE CORPS IN WORLD WAR II

Ms. OAKAR. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 2663) to amend title 5, United States Code, to credit time spent in the Cadet Nurse Corps during World War II as creditable for civil service retirement, as amended.

The Clerk read as follows:

H.R. 2663

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) service described in subsection (b) shall be considered creditable civilian service for purposes of subchapter III of chapter 83, or chapter 84, of title 5, United States Code, as applicable, in the case of any individual who meets the requirements of subsection (c).

(b) This section relates to any period of training as a student or graduate nurse under a plan approved under section 2 of the Act of June 15, 1943 (57 Stat. 153), if the total period of training under such plan was at least 2 years.

(c)(1) An individual may not receive credit for service pursuant to this Act unless—

(A) within 14 months after the date of the enactment of this Act, and in accordance with regulations under subsection (d), the individual files appropriate written application with the Office of Personnel Management;

(B) at the time of filing the application under subparagraph (A), the individual is employed by the Government and subject to subchapter III of chapter 83 of title 5, United States Code (other than section 8344 of such title), or chapter 84 of such title (other than section 8468 of such title);

(C) before the date of the separation on which is based the individual's entitlement to an annuity under subchapter III of chapter 83 of title 5, United States Code, or chapter 84 of such title, as applicable, such individual deposits into the Civil Service Retirement and Disability Fund the amount required under paragraph (2) with respect to the period of training involved.

(2) The amount to be deposited shall be determined by the Office of Personnel Management in a manner consistent with applicable provisions of subchapter III of chapter 83 of title 5, United States Code, chapter 84 of such title, or title III of the Federal Employees' Retirement System Act of 1986, as the case may by, relating to deposits for earlier periods of civilian service for which deductions from basic pay have not been made.

(d) The Office of Personnel Management shall, not later than 2 months after the date of the enactment of this Act, prescribe regulations to carry out this Act.

The SPEAKER pro tempore. Is a second demanded?

Mr. TAYLOR. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentlewoman from Ohio [Ms. OAKAR] will be recognized for 20 minutes and the gentleman from Missouri [Mr. TAYLOR] will be recognized for 20 minutes.

The Chair recognizes the gentlewoman from Ohio [Ms. OAKAR].

Ms. OAKAR. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the House will consider the bill, H.R. 2663, legislation that was introduced by Congressman SLATTERY

of Kansas to extend Civil Service Retirement credit for service in the Cadet Nurse Corps during World War II.

This legislation was unanimously approved with one amendment in the nature of a substitute by the Subcommittee on Compensation and Employee Benefits on September 30, 1986.

This legislation does affect a number of individuals and with the concurrence of my distinguished minority leader, I would like to pay special tribute to the major sponsor of the bill who was absolutely patient, but very forceful in encouraging all of us to not only have a hearing where he brought down many of his own constituents, these very dedicated women, to testify; but also very, very helpful in seeing this day, getting this bill to the floor today.

Mr. Speaker, out of respect for his hard work, I yield such time as he may consume to the gentleman from Kansas [Mr. SLATTERY] for an explanation of the bill.

Mr. SLATTERY. Mr. Speaker, I would like to pay special tribute to the chairwoman of the subcommittee, the gentlewoman from Ohio [Ms. OAKAR] for her generosity and help and hard work in moving this legislation; and the same is true of the distinguished ranking minority member, my friend from the State of Missouri [Mr. TAYLOR], for his help in moving this legislation also.

Mr. Speaker, I am here today to speak about an issue that is very important to a small group of women who answered the call of duty for their country some 43 years ago.

They are forgotten veterans, but I hope we can bring these loyal Americans back to mind today to correct a serious injustice.

H.R. 2663, also known as the Cadet Nurse bill would amend title 5 of the United States Code, to credit time spent in the Cadet Nurse Corps during World War II as creditable for civil service retirement.

The U.S. Cadet Nurse Corps was established by Congress on June 15, 1943. The Cadet Nurse Program was an emergency program initiated by the Federal Government to fill the tremendous need for nursing services during World War II. Because of the appalling shortage of nurses, a major recruitment effort was made by the Government to encourage young women to enlist in the Cadet Nurse Corps.

From July 1943, to October 1945, over 100,000 young women were sworn in as corps members in over 1,000 school of nursing hospitals, which were funded by Federal grants. The Federal Government reimbused all reasonable tuition, fees, and other training costs. And the cadets were provided with a distinct uniform and small monthly stipend.

In return for their education and nursing service, the cadets signed a pledge promising to engage in essential military or civilian nursing as long as the war lasted.

Members of the U.S. Cadet Nurse Corps were subject, either directly or through the training institution, to the supervision of the U.S. Public Health Service, in regard to course of study, hours of service, compensation, and uniforms.

Four decades have passed since that time, when it seemed that everyone contributed in some small way to our Nation's war effort. Where there were once over 100,000 cadet nurses providing two-thirds of the nursing work force in hospitals during World War II; now there are only about 500 left in service. Of these, the majority are employed at veterans' hospitals. These women are still in service to their country.

The reason for the cadet nurse bill is to allow those women who served at least 2 years in the Cadet Nurse Corps and who would otherwise be eligible for civil service retirement, to credit time spent in service in the corps toward civil service retirement.

The U.S. Office of Personnel Management states that their membership in the Cadet Nurse Corps is not Federal employment, primarily because the cadets were not "officially" appointed into the Federal civil service.

Well, Mr. Speaker, the fact is that these young women courageously provided a drastically needed Government service during a time of national emergency in many military and civilian hospitals and other facilities and were on the Federal payroll.

A technicality should not stand in the way of fairness. These women do not want anything to be given to them. They merely ask to be credited for something they have already earned.

As a member of the Budget Committee, I am aware of the tremendous financial strain that our Government faces in light of the Federal budget deficit. The Congressional Budget Office has run a formal estimate on the bill and it estimates a zero budgetary impact for fiscal year 1987 and a cost averaging approximately $500,000 a year over the next 5 years.

The cost of this bill is truly insignificant when we think about the gross inequity that would occur if the time and effort of these women is simply ignored.

We should not forget that in a nation depleted of registered nurses during a time of war—these women filled the gap and picked up the slack—they cared for our country's sick and for our many soldiers who returned home to heal.

When our country was weakened by an ugly war this now small group of women was there to help make it strong.

When called by their country to serve in a time of need, these women did not hesitate to answer that call with service, commitment, and compassion. These women came forward to help their Nation through a difficult time.

Now they call upon their country to correct an oversight, an injustice. For whatever reason, these women were overlooked. We have an opportunity today to correct that oversight. I urge my colleages to vote in favor of H.R. 2663, the cadet nurse bill.

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Ms. OAKAR. Mr. Speaker, if the gentleman will yield, I would like my colleagues to know that the whip notice erroneously says that the bill will cost $2.6 million. We know that is a typographical error, but just so my colleagues know, it certainly is not that amount at all.

Mr. SLATTERY. I thank the gentlewoman for pointing that out, she is absolutely correct. The cost of this bill is truly insignificant.

Ms. OAKAR. Mr. Speaker, I reserve the balance of my time.

Mr. TAYLOR. Mr. Speaker, I yield myself such time as I may consume.

Mr. TAYLOR. Mr. Speaker, I support passage of the bill, but I believe it is important that we recognize a distinction between the cadet nurses and a number of other groups who are seeking civil service retirement credit for various types of non-Federal service.

These cadet nurses were part of the war effort during World War II, and were one of a number of groups that, while not strictly Federal employees, were essentially working as a part of the Government during the national mobilization at that time.

Based on available information, it appears some 500 current Federal employees would be eligible to receive civil service credit for approximately 3 years of service during World War II. They would be required to make a deposit to the civil service retirement and disability fund of an amount equal to what would have been withheld from salary if the service originally had been creditable.

Over the years a number of groups have been granted civil service retirement credit. This bill would simply provide equitable treatment for the former cadet nurses.

This is quite different from providing civil service retirement credit for ongoing groups of individuals for service which is clearly and unarguably non-Federal.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Ms. OAKAR. I yield myself such time as I may consume.

I would like to take this opportunity, since this may be the last time our committee brings forth legislation, for me to thank the chairman of the committee, Mr. FORD of Michigan, and the minority member, Mr. TAYLOR. They are more like a team. It is really an absolute pleasure to serve with them on this committee.

I would thank my ranking minority member, Mr. MYERS of Indiana, who is also very responsible for this bill.

We have several bills. We have done such a vast number of bills, but there is the retirement bill, which I do not think there could have been a bigger issue for our committee to work on over the last 3 or 4 years, and we do have a couple of bills that passed expeditiously out of the House. The direct access bill that would allow health providers to be reimbursed, a variety of them, and the pay study bill which means so much to women who serve in the Federal Government, and minorities, along with the men who are part of their families.

So I am hoping the Senate will see to it that these two bills are acted on. They still have time to do it. It would be an absolute tragedy if they just languished over there and they sat on these bills as they have in the past. I am hoping they will have enough good sense to do that.

Thousands of people who served this Government, about 3 million who are currently employed and the same number of retirees really depend on this kind of legislation.

Finally, I would like to thank our staff. I think we have about the hardest working staff of any one, both the majority and the minority members. I would like to also say that recently I acquired a new staff director who was a member of the committee's staff in the past but had to really play catchup ball and has done a fabulous job. I want to thank my staff director and all the members of my own staff on the committee for all their hard work in particular.

Ms. OAKAR. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentlewoman from Ohio [Ms. OAKAR] that the House suspend the rules and pass the bill, H.R. 2663, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended, and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Ms. OAKAR. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks, and include extraneous matter, on H.R. 2663, the bill just passed.

The SPEAKER pro tempore (Mr. MONTGOMERY). Is there objection to the request of the gentlewoman from Ohio?

There was no objection.

FARM CREDIT ACT AMENDMENTS OF 1986

Mr. DE LA GARZA. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5635) to amend the Farm Credit Act of 1971 regarding interest rates charged by Farm Credit System institutions and financial operations of such institutions, as amended.

The Clerk read as follows:

H.R. 5635

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Farm Credit Amendments of 1986".

SEC. 2. POLICY.

Section 1.1 of the Farm Credit Act of 1971 (12 U.S.C. 2001) is amended by adding at the end thereof the following new subsection:

"(c) It is declared to be the policy of Congress that the credit needs of farmers, ranchers, and their cooperatives are best served if the institutions of the Farm Credit System provide equitable and competitive interest rates to eligible borrowers, taking into consideration the creditworthiness and access to alternative sources of credit for borrowers, the cost of funds, including any costs of defeasance under section 4.8(b), the operating costs of the institution, including the costs of any loan loss amortization under section 5.19(b), the cost of servicing loans, the need to retain earnings to protect borrower stock, and the volume of net new borrowing. Further, it is declared to be the policy of Congress that Farm Credit System institutions take action in accordance with the Farm Credit Act Amendments of 1986 in such manner that borrowers from the institutions derive the greatest benefit practicable from that Act: *Provided*, That in no case is any borrower to be charged a rate of interest that is below competitive market rates for similar loans made by private lenders to borrowers of equivalent creditworthiness and access to alternative credit.".

SEC. 3. TERMINATION OF FARM CREDIT ADMINISTRATION APPROVAL OF INTEREST RATES CHARGED BY SYSTEM INSTITUTIONS.

(a) FEDERAL LAND BANKS.—The first sentence of section 1.7 of the Farm Credit Act of 1971 (12 U.S.C. 2015) is amended by striking out ", with the approval of the Farm Credit Administration as provided in section 4.17 of this Act".

(b) FEDERAL INTERMEDIATE CREDIT BANKS.—The second sentence of section 2.4 of the Farm Credit Act of 1971 (12 U.S.C. 2075) is amended by striking out "with the approval of the Farm Credit Administration as provided in section 4.17 of this Act".

(c) BANKS FOR COOPERATIVES.—The first sentence of section 3.10(a) of the Farm Credit Act of 1971 (12 U.S.C. 2131(a)) is amended by striking out ", with the approval of the Farm Credit Administration as provided in section 4.17 of this Act".

SEC. 4. CERTAIN TRANSACTIONS WITH RESPECT TO SYSTEM OBLIGATIONS.

Section 4.8 of the Farm Credit Act of 1971 (12 U.S.C. 2159) is amended by—

(1) inserting the designation "(a)" after the heading; and

(2) adding at the end thereof the following:

"(b) Through December 31, 1988, each bank of the System, in addition to purchasing obligations as authorized by this Act, may, with the prior approval of the Farm Credit Administration and subject to such conditions as it may establish, (1) reduce the cost of its borrowings by doing one or more of the following: (A) contracting with a third party, or an entity that is established as a limited purpose System institution under section 4.25 and that is not to be included in the combined financial statements of other System institutions, with respect to the payment of interest on the bank's obligations and the obligations of other System banks incurred before January 1, 1985, in consideration of the payment of market interest rates on such obligations, plus a premium, or (B) for the period July 1, 1986, through December 31, 1988, capitalizing interest costs on obligations incurred before January 1, 1985, in excess of the estimated interest costs on an equivalent amount of Farm Credit obligations at prevailing market rates of interest on Farm Credit obligations of similar maturities as of the date of the enactment of this subsection, or (C) taking other similar action; and (2) amortize, over a period of not to exceed 20 years, the capitalization of the premium, capitalization of interest expense, or like costs of any action taken under clause (1).".

SEC. 5 DETERMINATION OF INTEREST RATES.

Section 4.17 of the Farm Credit Act of 1971 (12 U.S.C. 2205) is amended by striking out the first sentence and inserting in lieu thereof the following: "Interest rates on loans from institutions of the Farm Credit System shall not be subject to any interest rate limitation imposed by any State constitution or statute or other laws. Such limitations are preempted for purposes of this Act.".

SEC. 6. TERMINATION OF FARM CREDIT ADMINISTRATION APPROVAL OF INTEREST RATES CHARGED ON DIRECT AND DISCOUNTED LOANS.

Section 5.17(a)(5)(A) of the Farm Credit Act of 1971 (12 U.S.C. 2252(a)(5)(A)) is amended by striking out "and on loans made or discounted by such institutions".

SEC. 7. ACCOUNTING.

Section 5.19(b) of the Farm Credit Act of 1971 (12 U.S.C. 2254(b)) is amended by striking out the second sentence and inserting in lieu thereof the following: "Each such report shall contain financial statements prepared in accordance with generally accepted accounting principles, except with respect to any actions taken by any banks of the System under section 4.8(b), and contain such additional information as the Farm Credit Administration by regulation may require. Notwithstanding the provisions of the preceding sentence and any other provision of this Act, for the period July 1, 1986, through December 31, 1988, the institutions of the Farm Credit System may, on the prior approval of the Farm Credit Administration and subject to such conditions as it may establish, capitalize annually their provision for losses that is in excess of one-half of one percent of loans outstanding and amortize such capitalized

amounts over a period not to exceed 20 years.".

The SPEAKER pro tempore. Is a second demanded?

Mr. COLEMAN of Missouri. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Texas [Mr. DE LA GARZA] will be recognized for 20 minutes and the gentleman from Missouri [Mr. COLEMAN] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Texas [Mr. DE LA GARZA].

Mr. DE LA GARZA. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker and my colleagues, at the outset, let me say that this, in effect, is emergency legislation to assist the institutions of the Farm Credit System.

It is legislation that I would truthfully prefer we did not have to pass. Unfortunately, we do. I know of no other route that we might take to address the current problems facing the Farm Credit System, with the exception of going to the Treasury for assistance, which I doubt that we could do at this time under the budget constraints we find ourselves.

This bill is a way by which we are able to assist the System, at least in a temporary way, subject to approval and under conditions set forth by the Government regulatory agency, that is the Farm Credit Administration.

With this bill, we will allow the System institutions to provide for bookkeeping changes and to, in effect, extend the length over which they can repay their debt or repay the losses which they have accumulated. Also, the bill will provide the System institutions with flexibility in setting interest rates they charge their former customers.

That, Mr. Speaker, is basically the intent of the legislation. It is compromise legislation, bipartisan legislation.

We have worked to get a compromise with the administration, with Treasury, and with the regulatory agency, and everyone concerned. I can report that, as to all directly interested parties, either they are in accord or they are not objecting to the legislation, taking a hands-off attitude.

I would hope that our colleagues would see fit to assist us with this legislation because it is a very necessary step that needs to be taken promptly before we conclude this session of the Congress.

Mr. Speaker, I reserve the balance of my time.

Mr. COLEMAN of Missouri. Mr. Speaker, I yield myself 5 minutes.

Mr. Speaker, I rise in support of this legislation, H.R. 5635, the Farm Credit Act Amendments of 1986. I think what we are doing here today is providing the tools for the Farm Credit System to continue to operate, very frankly, into early next year.

The fear is that there may be some problems develop in the System if we do not act on this emergency legislation, and that is why we are bringing it to the floor this afternoon. It does enjoy the bipartisan support of both the Agriculture Committee Democrats and Republicans, the chairman and the ranking member of the full committee and of the subcommittees involved.

I would like to point out that it has three major provisions. The first one is to provide a mechanism for the Farm Credit System to reduce its cost of borrowed money without affecting the people who already own those bonds, by refinancing long-term debt upon which the system is currently paying very high interest rates.

The cost involved with lowering the cost of borrowed money may also be amortized over 20 years subject to the approval of the Farm Credit Administration, the regulatory agency that has supervisory powers over the system.

That is very important, Mr. Speaker, because the fact is that interest rates have gone down, and if the System can go out and borrow money at lower interest rates it can in fact provide some savings to the System and to its borrowers.

The second provision of this legislation allows the system to amortize over 20 years the unusual loan losses it has suffered in recent years.

As the Speaker remembers, last year when we passed the Farm Credit Act Amendments of 1985, one of the reasons was because of the large losses being sustained by the System. Even still, with the passage of that legislation, we still see the System losing money. In order to accomplish again, I think, more or less of a holding pattern until we can confront this issue head-on next year, we are allowing them under this bill to provide a 20-year amortization of those losses instead of taking them all each year that they are being sustained.

I also would point out that the Farm Credit Administration must give its approval to deviate from the generally accepted accounting principles that we have in the law, and that this particular deviation will have to be agreed to by the Farm Credit Administration, and we are giving them the power to do so. The third provision of the bill eliminates the Farm Credit Administration's authority to preapprove interest rates for Federal land banks, Federal Intermediate Credit Banks, and the Banks for Cooperatives.

□ 1515

However, I think it also should be pointed out that this does not give the System and its banks total free rein to randomly lower interest rates without concern for the safety and soundness of any bank. That power, I think, and I think the intent should show, still lies with the Farm Credit Administration, the safety and soundness. We do not want to put any of these banks into a position of losing their safety and soundness. That role and authority still resides with the Farm Credit Administration.

Mr. Speaker, this bill originally was introduced in order to lower interest rates to borrowers in the Farm Credit System. These are the farmers, our constituents. I hope that that will come about. Some of the savings should be passed on to the borrowers, our farmers. But to be very honest with everybody, some of this also is going to have to be put back into the System to make sure that the System continues its viability. It is a farm cooperative, and I think we have to recognize it as such. That means it is owned by farmers and the policies are set by farmers, and the savings that come through what we hope we are accomplishing today should also help make the System a healthier System and improve its own financial condition.

Mr. Speaker, we have had additional incentives to pass this legislation because of some court cases that were filed very recently, restraining orders obtained against the Capital Corporations' ability to assess System-wide institutions and to help them basically to bring money in from institutions that are making money in the System to those that are losing money. That tool which we had in the 1985 act is not being utilized today and, as a result, it has added more emphasis on passing this legislation here this afternoon.

The authority that we are giving to the System's regulator to implement regulatory accounting principles will provide the emergency tools necessary to prevent the System from facing a possible crisis, and especially so if and when we might be out of session. So I think it is very important that we recognize that.

This legislation should not send a signal to the System that Congress is excusing it from using its own surpluses. In writing the Farm Credit Act last year, Congress intended for the System to help itself before asking for Federal assistance. We expect the System to stand united as a system, rather than standing as 12 separate individual districts or banks and production credit associations.

Finally, Mr. Speaker, the System must continue to work with borrowers to restructure their loans instead of

foreclosing on them and to get its nonperforming loans in better condition.

Mr. Speaker, because of the recent changes in events, I feel it is important for us to pass this legislation this afternoon. But I do not want to mislead any of my colleagues to think that this is going to be the cure-all for the Farm Credit System. Unfortunately, it is not. We will revisit this issue next year. This bill attempts to be able to hold off that until Congress comes back into session next year. I would say that we are preventing a crisis from happening in the near future by passing this legislation. And I also might point out, at no cost to the taxpayers.

It is my understanding the administration does not oppose this bill. I urge my colleagues to join with me in supporting H.R. 5635.

Mr. Speaker, I reserve the balance of my time.

Mr. DE LA GARZA. Mr. Speaker, I yield such time as he may consume to the gentleman from Tennessee [Mr. JONES].

Mr. JONES of Tennessee. Mr. Speaker, I rise in support of H.R. 5635, the bill now under consideration.

Mr. Speaker, H.R. 5635 is an effort to address a combination of serious problems which are continuing to afflict the Farm Credit System. These problems are growing worse every day and must be dealt with before this Congress adjourns.

Last year, the Farm Credit System lost $2.7 billion and in the first 6 months of this year it lost nearly $1 billion more. By the end of this year, total losses for 1986 are projected to be anywhere between $1.7 and $2.9 billion.

In addition to these record-setting losses, the Farm Credit System also holds over $12 billion in nonaccrual and problem loans out of a total loan portfolio of about $61 billion. Due to a number of reasons, the System's total amount of outstanding loans has been steadily dropping since 1983 when it reached a peak of $85 billion.

As if record loan losses and a 30-percent decline in business were not enough, the System is also burdened with an extraordinary amount of high-interest debt which it must continue to service when its bonds come due on Wall Street. Even though the current bond rate is hovering around 6 percent, the System is still obligated for over $30 billion in outstanding bonds which bear interest rates of 9 percent or higher.

The legislation we are considering today will alleviate all three of these serious problems in a responsible manner without involving taxpayer costs in the solution.

First, the bill removes the the existing explicit statutory authority for the System's Federal regulator to set interest rates which the System must charge its farmer and cooperative borrowers. At the present time, the Farm Credit Administration is forcing production credit associations and Federal land banks to charge interest rates that are well above competitive market rates. In large measure this has contributed to borrower flight because the Farm Credit System is unable to hold on to its most creditworthy customers who are abandoning the System for more favorable interest rates offered by other commercial lenders.

No other financial regulator has the power to set interest rates for the institutions it regulates, and neither should the FCA. This is not to say that the FCA should not continue to have the necessary enforcement powers to ensure safe and sound operation of the System, and nothing in this bill strips the agency of its authorities in this regard. It is also important that we not mislead Farm Credit System borrowers by any false promises of across-the-board and dramatic interest rate relief. There is no magic in this bill, but at least the System will be in a better position to try to stay competitive with other lenders in the area of interest rates.

The second major element of this bill addresses the System's high cost of its own debt. H.R. 5635 contains a provision under which Farm Credit Banks could, subject to the prior approval by the Farm Credit Administration, reduce the cost of their borrowed money by refinancing long-term debt on which they are currently paying high-interest rates or capitalizing their excess interest costs. The costs involved could be amortized by System banks and paid over a period of up to 20 years.

The third key provision of this legislation would permit Farm Credit System institutions, subject to prior approval by the FCA, to amortize over a period of up to 20 years the unusual loan losses they have suffered in recent years.

There is no question that these provisions which could allow the System to amortize its high-debt costs and excessive loan losses are not in accordance with generally accepted accounting principles. However, any such deferred loss accounting treatment will be subject to prior approval by the Farm Credit Administration and subject to the conditions it sets under regulatory accounting principles.

Finally, Mr. Speaker, I want to address what I suspect is on the minds of many Members who may criticize the approach the Agriculture Committee has taken in this bill. Some critics have suggested that we are doing nothing in this bill to help farmers and that we may even be adding to the Farm Credit System's problems by permitting the use of accounting gimmicks.

To the first argument, I simply have to say I am at a total loss to understand how it is not to the benefit of the System's farm borrowers to help preserve the System as a viable lending organization. It would be irresponsible for us to allow System banks to become impaired and lose farmer's stock without having tried to avoid such a situation.

To the second argument, I fully concede that this bill would permit the System to possibly solve its own financial problems by deferring its losses instead of accounting for them all at once. As distasteful as this procedure may be to some people, I must argue that it is better than the alternatives.

In my opinion, all the options we face at this point are unattractive, but this bill represents the most reasonable and practical of those options.

We can stand by and do nothing, and let the Farm Credit System come crashing down. I reject this option as no option at all.

We can argue that the Federal Government should rescue the System with a financial aid package now, because sooner or later it is inevitable. I, for one, am not willing to concede to this argument yet. I believe the System can still survive on its own without taxpayer contributions if we buy some time with this bill.

However, if anyone can point out where in the Federal budget there are several billion dollars in unallocated surplus that we can devote to the Farm Credit System, then I'm willing to listen. Perhaps out of an estimated $30 billion in Federal outlays for farm programs this year we can trim enough to rescue the Farm Credit System.

Maybe we can redirect the spending from support programs for milk, cotton, wheat, rice, and feed grains. Maybe we can divert some of the spending we have already approved for soil conservation, agricultural research, or export promotion.

Unfortunately, I am not prepared today to identify where in the agriculture budget we can afford to assist the Farm Credit System with taxpayer dollars. What I am prepared to do is offer this bill as the best effort I know to do something to save the Farm Credit System from going under. It may not be the perfect solution, but at least it is within the art of the possible. In fact, it may even work.

I urge my colleagues to support H.R. 5635. We need this legislation on the books before the 99th Congress adjourns.

Mr. DE LA GARZA. Mr. Speaker, I yield such time as he may consume to the gentleman from Texas [Mr. STENHOLM].

Mr. STENHOLM. Mr. Speaker, today, we are considering H.R. 5635, the Farm Credit Act Amendments of

1986, introduced by the distinguished chairman of the Subcommittee on Conservation, Credit and Rural Development and cosponsored by 62 Members of this body.

This bill is vitally important to farmers, ranchers and cooperatives, as well as to the System's self-help efforts. I would like to make a few comments in that regard.

First, H.R. 5635 enables the institutions of the Farm Credit System to set interest rates on the same basis as any other financial institution—no more and no less. It means that farm credit banks will now be able to ensure that their rates are competitive, an important step if borrower flight is to be stopped.

Second, this bill provides an accounting mechanism for the System to work out of its significant losses and its costs for high-priced debt by amortizing both over a 20-year period. In the first 6 months of the year, the System would have been able to absorb either the added interest expense of $860 million or its loan losses of $980 million without a loss to the System as a whole. Understandably, there are very few firms that could possibly withstand both at the same time.

Third, I would like to assure my colleagues that this bill works in harmony with the 1985 amendments passed last fall. An important element of that legislation was the rechartering of the Farm Credit System Capital Corporation as the vehicle to coordinate System self-help. That role has not changed. Yes, this legislation will have an impact on the Capital Corporation because it offers System institutions a choice between writing off losses over a 20-year period or seeking financial assistance from the Capital Corporation, either directly or through the purchase of nonaccrual loans and acquired property held by a district. And as you would expect, any request for assistance will have onerous conditions. In the end analysis then, it becomes a question of whether or not a district believes it is in their best interest to use the tools provided by this legislation or the mechanism established in the 1985 amendments. Both are important.

Mr. Speaker, the Capital Corporation remains a viable and important institution for the System. It continues to have an important role in helping two districts to work through their financial problems, and it may well be involved with others, depending on a district's financial situation, if this bill is enacted.

Mr. Speaker, I believe System banks must be provided the ability to have the ability to have the flexibility so that they can once again become rate competitive and recapture a sound portfolio of borrowers. The provisions contained within H.R. 5635, I believe, represent a compromised effort to give the Farm Credit System, under the supervision of its Federal regulator, a chance to help itself out of the serious problems it is now facing.

Mr. DE LA GARZA. Mr. Speaker, I yield such time as he may consume to the gentleman from South Carolina [Mr. TALLON].

Mr. TALLON. Mr. Speaker, I rise in support of H.R. 5635, the Farm Credit Act Amendments of 1986 and urge my colleagues to vote in favor of this important legislation.

My congressional district is served by the Columbia District Bank of the Farm Credit System. It plays a significant role in financing farmers and rural communities. The Federal land bank carries over 50 percent of the farm real estate loans in the four State area. The Production Credit Association carries over 30 percent of the short term nonreal estate farm indebtedness, and the bank for cooperatives finances about 80 percent of the credit requirements of cooperatives in the district.

Last year, we overwhelmingly supported changes to the Farm Credit Act to restructure the System's regulator, to establish a backup mechanism for Federal financial assistance and to provide a way in which the System could maximize self-help.

Many of us said then that the real solution to the problems faced by the Farm Credit System was recovery in the agricultural economy. Yet, the drought conditions this summer, declining commodity prices, and a precipitous drop in land values have worsened the situation for the System and its borrowers.

The legislation we consider today will have a major impact on the Farm Credit System's ability to meet the credit needs of our Nation's farmers and our rural communities.

This legislation is needed to insure the Farm Credit System's financial viability, and is fiscally responsible in that it does so without any cost to the taxpayer. It provides an accounting solution to an otherwise untenable problem. As well, it gives the district banks the authority to determine interest rates in order to keep the System competitive with private lenders. This is extremely important in view of the fact that good borrowers are leaving the system because rates are too high.

This legislation enables the System to capitalize losses in excess of one-half of 1 percent incurred between July 1 of this year and December 31, 1988, as well as the excess cost of its borrowings incurred before January 1, 1985. The total amount capitalized will be repaid over a 20-year period.

Mr. Speaker, I urge my colleagues to support this measure.

Mr. DE LA GARZA. Mr. Speaker. I yield 1 minute to the gentleman from Kansas [Mr. GLICKMAN].

Mr. GLICKMAN. Mr. Speaker, I rise in support of this legislation, but I do so with some degree of trepidation and reluctance because there are things in this bill which modify to some degree issues and things which we did last year to buttress the fiscal and financial integrity of the Farm Credit System, particularly as they relate to modifications in the accounting measures in this bill.

Mr. Speaker, less than 1 year ago, this House approved sweeping legislation restructuring the Farm Credit System. Faced with unprecedented losses, the System came to the Congress with a series of reforms designed to enable the System to help itself through those trying times and to strengthen the role of its regulator, the Farm Credit Administration.

Unfortunately, since last December when that bill was passed, little has changed: The agriculture economy remains in the doldrums and the condition of the Farm Credit System remains critical. If anything has changed since then, it has been that the System's financial health has worsened. Indeed, just last month, the General Accounting Office testified before the Committee on Agriculture that the System may this year record a loss of $2.9 billion, topping its losses of 1985, themselves the largest losses ever posted by a financial institution in this country. GAO's report leads to the undeniable conclusion that the question facing the System, its borrowers, the Farm Credit Administration, the Treasury Department, and Congress is not whether the System may need Federal assistance, but when, what kind, and what amount.

H.R. 5635 is one form of assistance. There are two things which make me qualify my support for the bill: One, the Farm Credit System is asking Congress to undo key aspects of the emergency legislation enacted last year. Two, the request comes at the 11th hour of the session with little time for extended consideration of its merits or alternatives. Given the time constraints on the House and the potential financial debacle facing the System, it seems a foregone conclusion that this bill will be approved. So, Mr. Speaker, I believe it is important that I note for the record my concerns with the legislation.

At what cost compared to other alternatives, to the fundamental principles of the System, and to its integrity will the measures in H.R. 5635 be enacted? While the projected costs of a System failure are well established, the costs which might result from enactment of this bill, though less well defined, are no less real and no less serious.

The defeasance authorized in section 4 threatens to drive a wedge into the fundamental cooperative nature of the

System. With such authority, System institutions will no longer be bound by loss-sharing arrangements designed for the strong parts of the System to aid the weaker. This undermines the intent of the Farm Credit Act as well as the amendments of 1985 to encourage the System to work together to solve its common, Systemwide financial problems. Finally, this section raises questions about the specific manner in which defeasance shall be implemented, providing little assurance that institutions which undertake such plans will be held accountable to FCA and the Congress.

Just last December, in reporting to the House on the Farm Credit Act Amendments of 1985, the committee noted:

> The Farm Credit Administration will * * * provide for strict annual examinations of the financial condition of System institutions under generally accepted accounting principles * * *. The previous method of examinations had made it difficult for the FCA, Congress, and others to determine the accurate financial condition of the System. This shortcoming has led to great uncertainty in recent months in designing a legislative response to stress in the System.

Sections 4 and 7 of this bill undo those reforms by allowing the System and its institutions an exception from generally accepted accounting principles in the reporting of its loan losses and the costs of the defeasance plan. It has potentially enormous consequences.

Instead of proceeding along the course of greater independence between the System and its regulator, greater cooperation among System institutions, and greater accountability to the FCA, Congress, borrowers, and investors established under the 1985 amendments, these provisions reverse course.

Finally, while the record substantiates the need for action, there exists little record of the appropriateness and desirability of the approach in H.R. 5635 compared to possible alternatives and there exists even less of a record the legislation's changes will indeed benefit System borrowers.

In considering the bill, I put to my colleagues the same question I faced: Do your uncertainties about the legislation outweigh your certainties about the problem? In the end and with several qualifications, I am able to put aside my uncertainties and support the bill knowing that the committee will be conducting oversight hearings on these new powers very early in the next session. I urge my colleagues to do likewise.

Mr. COLEMAN of Missouri. Mr. Speaker, I yield 4 minutes to the gentleman from Vermont [Mr. JEFFORDS].

Mr. JEFFORDS. Mr. Speaker, this last Thursday the House Committee of which I am a member, unanimously passed legislation entitled the Farm Credit Act Amendments of 1986. The legislation not only removes the authority of the Farm Credit Administration—the regulator—to set or approve lending rates, it also allows each institution to buy back high cost debt, and to capitalize and amortize the interest expense over 20 years.

Mr. Speaker, this legislation is urgently needed in order to allow farm credit institutions to remain competitive in local markets served, and for member borrowers to benefit from lower interest costs. No other Federal financial regulator has the authority to approve or to set interest rates for those institutions they regulate, even if they are financially troubled, and it is inappropriate for the FCA to retain such authority. The legislation is consistent with what Congress had in mind when it passed the Farm Credit Act Amendments of 1985—to make the FCA an arms length regulator, removing it from the day-to-day management such as the setting of interest rates.

Consistent with this congressional intent, Mr. Speaker, I will be later making a summary of comments of the Farm Credit System on FCA's capital adequacy regulations and the impact of these regulations on competitive interest rates. It is apparent that these regulations, if adopted as proposed by the FCA, will merely substitute one form of FCA control over system interest rates for another. Mr. Speaker, by passing this legislation today, our message to the FCA is clear—the setting of interest rates is the right and the responsibility of the System lending institutions, and the proposed regulations must be rewritten by FCA to reflect congressional intent.

As is stated, Mr. Speaker, I support the legislation, but there is one provision that I want to clarify for my colleagues—my understanding is also conveyed in the Agriculture Committee report accompanying the bill. The legislation states in the policy statement section 2 "that no farm credit institution should be allowed to charge rates that are below competitive market rates for similar loans from private lenders to borrowers of equivalent credit worthiness and access to alternate credit." The committee's intent in endorsing this provision is to indicate that institutions should not be allowed to dissipate capital through lowering interest rates below competitive levels.

But the policy language is not intended to restrict normal bank operations to provide reasonable and competitive interest rates. For instance, the previously stated policy statement does not preclude the bank from meeting competition from the lowest credible competitor. Nor is it intended to give sanction authority which would hinder the normal operations of a bank such that regulations would put loan legality at risk.

Further, as agreed in committee debate, the committee does not intend, through this policy statement, to prohibit System institutions that are financially strong from being the rate setter in the local market served as long as they do not lose capital in the process. Indeed, Farm Credit System institutions that have lower cost of funds and lower operating costs still cannot be precluded from charging rates that reflect the financial strength of that institution.

Mr. Speaker, the farm credit banks of Springfield are the dominant agricultural lenders in the Northeast, holding 33 percent of the total agricultural debt. With such a large market share, their interest rates may establish the market interest rate for agricultural lending. A paper done by Prof. Loren Tauer of Cornell University on this subject indicates that "In a national survey of 1,610 agricultural banks, 46.6 percent stated that PCA rates affect their own farm loan rates. In addition, 41.5 percent of lenders making long-term loans to agriculture reported that the FLB's rates affected their own rates."

This legislation encourages farm credit institutions to offer competitive interest rates based upon cost of funds, risk, and normal operating expenses, and to continue to be the rate setter where those considerations so dictate.

Let me now quote selected comments on the FCA capital adequacy regulations:

> This does not mean that sound management and careful FCA supervision are not critical to the recovery of the System's troubled institutions. Indeed, management and directors of the highest caliber are required in the most troubled areas. Given the close inter-relationship of System entities, the System has great incentive to ensure that the proper individuals are placed in control of the troubled institutions and that such individuals be given the ample flexibility to address identified problems. We expect this to be a principal objective of the Capital Corporation. Similarly, we believe that one of FCA's primary objectives should be to ensure that the management and operating issues identified above are being addressed. Primary reliance on capital adequacy determinations will not, in our view, focus FCA's resources where they are most needed and can have the greatest impact.
>
> In this respect, our view of capital adequacy recognizes that the System differs markedly from other types of financial institutions which are not bound together with the legal and financial bonds present within the System.
>
> USE OF CAPITAL ADEQUACY REGULATIONS TO CONTROL SYSTEM INTEREST RATES
>
> While the System strongly supports the concept of eliminating FCA prior approval requirements with respect to "the establishment of or changes to the rate of interest charged on loans," it appears that the proposed Capital Adequacy Regulations would merely substitute one form of FCA control

over System interest rates for another. Under the Regulations, System institutions would be permitted to establish or change interest rates if such action were taken "in accordance with the institution's financial plan." However, another provision of the Regulations imposes a limitation on the financial plans of System institutions that will effectively preclude many, if not all, System institutions from adopting financial plans that provide for competitive interest rates to borrowers.

During the period in which the Capital Corporation is in operation, the Regulations would require each System institution, regardless of zone classification, to adopt "financial plans" which conform with certain specified requirements. 51 Fed. Reg. 26,409 (1986) (to be codified at 12 C.F.R. § 615.5230) (proposed July 23, 1986). (Institutions classified in Zone D and certain Zone C institutions must have their "financial plans" specifically approved by FCA. 51 Fed. Reg. 26,408 (1986) (to be codified at 12 C.F.R. § 615.5225) (proposed July 13, 1986). One of the requirements applicable to all "financial plans" relates specifically to reductions in interest rates (or, as described in the Regulations, "any decrease in the base spread of the institution"). Under this requirement, any decrease in interest rate spreads must be "justified on the basis of a statistical and economic analysis that demonstrates that *such decrease will increase total interest income over the level that the institution would have realized without the spread decrease.*" 51 Fed. Reg. 26,409 (1986) (to be codified at 12 C.F.R. § 615.5230(c)) (proposed July 23, 1986) (emphasis added).

This requirement constitutes a significant burden, if not an insurmountable barrier, for those System institutions that are considering reductions in interest rates in order to remain competitive in their respective markets. Indeed, it may well require many institutions to increase interest rates, and thereby become even more noncompetitive. The reason for this that many System institutions are now burdened with significant amounts of outstanding debt on which they are paying above market interest. Until these high cost obligations mature, the "weighted average rate paid for its outstanding interest-bearing obligations" will likely increase as the volume of loans outstanding declines. Thus, as volume declines in response to noncompetitive interest rates, the proposed regulation would, when applied literally, require the institution to increase interest rates to borrowers to maintain its "base" spread, making the institution even more noncompetitive and further exacerbating the adverse financial impact on the institution of its high cost debt.

The System cannot mount a financial recovery by charging noncompetitive interest rates to its borrower/shareholders. There is substantial and mounting evidence that the System's share of the total agricultural debt is declining, and that this decline is largely attributable to the System's noncompetitive interest rates. It is indisputable that the entire system is experiencing a substantial runoff of business, particularly on the part of its most creditworthy customers. In these circumstances, it is incumbent on all System institutions to determine whether their interest rates are at levels calculated to maximize interest income over a reasonable period of time. To look only to the short term impact of interest rate reductions on "total loan interest income" and ignore the impact of such reductions on the anticipated levels of nonaccrual loans, chargeoffs, and the long term earnings base of the institution is the epitome of "tunnel vision." Retaining existing rates and losing good customers because those rates are too high compounds the System's financial problems by reducing the volume of acceptable loans which form the earnings base of the System and by decreasing the System's ability to access new and lower cost funds.

While it is clear that projections of loan volume based upon possible changes in interest rates will never be a perfect science, and that the advisability of interest rate reductions cannot be separated from the analysis of credit risk, the clear bias in the proposed Regulations against interest rate reductions is unjustified. Decisions to maintain or increase existing rates may, in our judgment, have just as profound an impact on the future financial health of the System as decisions to reduce interest rates. These are decisions that require the exercise of business judgment; they should not be made by an arm's-length regulator.

The System has carefully reviewed the existing capital adequacy regulations of the Comptroller of the Currency, the Federal Reserve Board, the Federal Deposit Insurance Corporation and the Federal Home Loan Bank Board, as well as the proposals that these regulators are currently considering with respect to amending to their present regulations. There is nothing in those regulations or proposals that even remotely resembles FCA's proposed requirements with respect to the interest rates charged by System institutions. While it may well be the case that other financial regulators can take enforcement actions to prevent a financial institution from dissipating its capital by charging *less* than competitive rates for its loans, there is no suggestion in any of these regulations that any of the other financial regulators would ever require an institution under its supervision to charge *more* than competitive rates. The absence of such provisions in the regulations of the other financial regulators strongly suggests that the control of System interest rates contemplated by the proposed Regulations cannot be justified on the basis of FCA's authority to establish capital adequacy levels under Section 4.3(c) of the Act.

Mr. COLEMAN of Missouri. Mr. Speaker, I yield 2 minutes to the gentleman from Wisconsin [Mr. GUNDERSON].

Mr. GUNDERSON. Mr. Speaker, I want to begin by paying a special tribute to our distinguished chairman of both the full committee and of the subcommittee. The last 2 weeks have seen a great deal of concern by Members of both sides of the aisle and both Houses of Congress trying to deal with some of the very legitimate but immediate concerns in the Farm Credit System.

□ 1525

It has been indicated that the legislation in front of us really clarifies or corrects or modifies, as you will, some of the changes made in the 1985 Farm Credit Act amendments. I would suggest to my colleagues that as you look at this you will find three different items which have been mentioned previously.

No. 1, obviously giving the local district banks and institutions the right to raise and lower interest rates as they see fit. Second, the ability to amortize over a longer period of time both the revenue or interest rates costs and, on the other hand, their losses as they perceive them to be.

It is important that everyone who looks at this legislation understands, however, that we are not just playing "funny money" or anything of the sort with the Farm Credit System. We all recognize the severity of the stress under which the Farm Credit System operates today, and I think we also recognize that it is possible that in the future we may have to come back and look for some type of temporary financial assistance.

In that regard, people should be aware that the language, the legislative report language, both of this legislation and of the reconciliation conference report, if we include this language in that as I suspect we are still trying to do, that in those we will require two sets of accounting so that we will continue to operate as the gentleman from Missouri said earlier under a system whereby we will always know by the generally accepted accounting practices exactly where our Farm Credit System stands as a nationwide system of farm credit and its individual banks.

The legislation in front of us is only a positive step taking us where we are today and where we all want to be in the long run.

Mr. COLEMAN of Missouri. Mr. Speaker, I yield myself 30 seconds.

Mr. Speaker, in summation I would say this bill has widespread support. At the same time, I think we all recognize that the reason we are here this afternoon is because of a time situation, forces beyond our control; lawsuits. The fact is that we know we will be out of session for a number of weeks. We want to pass this legislation this afternoon to insure the continuing operation of the Farm Credit System and hopefully, its viability will continue to increase and maintain, one day, the proper position that it should.

We know and we are very reluctant to suggest that this is an answer for all of the problems; it is not. But I think it has to be passed today in order to ensure that the System continues.

Mr. Speaker, I yield back the balance of my time.

Mr. DE LA GARZA. Mr. Speaker, I yield back the balance of my time.

Mr. FRENZEL. Mr. Speaker, I rise in support of the Farm Credit Act amendments, H.R. 5635.

The Farm Credit System is the Nation's largest lender to agriculture. The FCS is currently experiencing difficult times, concurrent with the overall depressed agricultural market. It is anticipated that Federal financial assistance may, at some time, be necessary to save the institution.

H.R. 5635 has been introduced as a means of helping FCS get through these critical times. It is a temporary medicine, and is not expected to completely heal the ailing FCS. It has been fairly criticized as being merely a creative accounting gimmick, but the alternative, not possible now, is a big injection of more Federal money. The plan is to lower the cost of loans to farm borrowers and defer losses.

It is my hope that H.R. 5635 will help to defer, and reduce, the need for financial assistance for the FCS.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Texas [Mr. DE LA GARZA] that the House suspend the rules and pass the bill, H.R. 5635, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

AUTHORIZING CONSTRUCTION OF SALINITY RESEARCH LABORATORY AT RIVERSIDE, CA

Mr. DE LA GARZA. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5215) to authorize the construction by the Secretary of Agriculture of a salinity laboratory at Riverside, CA.

The Clerk read as follows:

H.R. 5215

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That notwithstanding section 1431(a) of Public Law 99-198 (99 Stat. 1556), there are authorized to be appropriated beginning in the fiscal year ending September 30, 1987, such sums as may be necessary for the planning, construction, and acquisition, by the Secretary of Agriculture acting through the Agricultural Research Service, of buildings and equipment to establish a salinity laboratory to be located at Riverside, California. Moneys appropriated under this Act shall remain available without fiscal year limitation.

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from Texas [Mr. DE LA GARZA] will be recognized for 20 minutes and the gentleman from Kansas [Mr. ROBERTS] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Texas [Mr. DE LA GARZA].

Mr. DE LA GARZA. Mr. Speaker, I yield such time as he may consume to the gentleman from California [Mr. BROWN].

Mr. BROWN of California. I thank the gentleman for yielding me this time.

Mr. Speaker, I wish to express my appreciation to the chairman of the full committee and to the subcommittee for the expeditious consideration of this legislation.

I might say by way of explanation that this bill authorizes the construction of a salinity research laboratory in the city of Riverside, CA, which is in my district. Actually, this is already in existence, it is one of the oldest laboratories of the Agricultural Research Service.

Engineering studies made by the Agricultural Research Service indicate that the laboratory is becoming outmoded, in some respects obsolete. It requires additional land and facilities which it does not have, and this engineering report recommends that steps be taken to correct this situation.

Normally the Agricultural Research Service would not be required to have a separate authorization for this action. They have authority to engage in renovation and construction of laboratories, but by action of this Congress in the 1985 farm bill, we required that where the cost of such an action exceeds $5 million, a separate authorization is required.

I would like to make it clear that this does not, by itself, authorize any additional funds. The funds for the Agricultural Research Service for this purpose, for the construction of laboratories, is already included in the appropriations bill, but this merely provides authorization as required by current law to proceed with this particular laboratory because it exceeds the cost ceilings which are included in that legislation.

In the subcommittee and in the full committee there was no objection to this. I might say that it is brought up at this time because only 2 weeks ago the University of California entered into an agreement with the Agricultural Research Service or the regents authorized entering into an agreement which would provide for a new site for the facility and which provided for certain cost sharing of the operations of the facility by the University of California.

So by this action of 2 weeks ago, it made it possible for the Agricultural Research Service to proceed with this under an arrangement which provided a better site and which provided for cost sharing by the university which would enable more economical operation. So we thought it desirable to bring this to the House at this time.

I might say that the Agricultural appropriations bill, already passed by the House, contains the funds for the design and engineering of this facility so this completes the action necessary to allow the ARS to proceed with the action of constructing the facility which will take place over the next several years.

With that, Mr. Speaker, I urge favorable consideration by the House of this measure.

Mr. ROBERTS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I want to commend my friend and colleague from the Agriculture Committee, Mr. BROWN, who for the past 4 years has been working with several interested groups to get this bill, H.R. 5215, before us today.

During subcommittee hearings, it was noted that nearly one-third of the irrigated farmland in the United States is suffering from decreased productivity because of saline buildup in the soil. The economic impact this buildup costs farmers hundreds of millions of dollars each year.

To help producers find sound, cost-effective answers to fighting this reduction in their productivity requires a dedicated research effort, but current facilities are not up to this task for a variety of reasons. This bill will provide the necessary authorization for funds to build a new salinity laboratory that meets today's needs.

Further Mr. Speaker, this problem is not specific to any one area of the country. As pointed out by my friend and colleague Mr. MARLENEE, farmers in Montana and many other States are fighting this problem in irrigated and dryland farming operations; and I support his recommendation that this proposed new salinity research facility have the ability to address salinity problems throughout the United States.

Mr. Speaker, I yield 2 minutes to the gentleman from California [Mr. MCCANDLESS].

Mr. MCCANDLESS. I thank the gentleman for yielding me this time.

Mr. Speaker, I would like to take a moment to thank Mr. DE LA GARZA, Mr. MADIGAN, and all the members of the House Agriculture Committee for their prompt consideration of this bill. I know how tough it is to tackle new legislation toward the end of a difficult Congress, and appreciate the committee's timely action on H.R. 5215.

Mr. Speaker, almost one-third of our Nation's irrigated farmland is now experiencing a loss of productivity due to salinity. In California's San Joaquin Valley, the heartland of Western agriculture, surplus salinity reduced crop yields on some 400,000 acres of land last year, at a cost of more than $31 million. It has also been projected that if this saline subsurface water is not drained by the year 2000, the number of acres affected will be doubled.

To date, we don't possess the knowledge or technology to deal with this problem. But, with the information which can be gathered by the new salinity laboratory proposed in H.R. 5215, we will gain that knowledge and preserve the use of western farmlands for future generations.

The benefits of building a new and updated structure as proposed in H.R. 5215 are numerous. The existing facility is rapidly becoming obsolete, and its site poses great difficulties for remod-

eling and update due to topography. Also, in building a new facility on the campus of the University of California at Riverside, we will promote the cooperation and free exchange of ideas among the facilities' scientists. Working together, they will eliminate much duplication of effort and increase the quality of research produced.

H.R. 5215 offers a positive approach to the problems of salinity management. It proposes the effective use of our current knowledge and technologies to gain insights into the secrets we'll need for tomorrow. It's a good bill, and I urge your support.

□ 1535

Mr. BROWN of California. Mr. Speaker, will the gentleman yield?

Mr. McCANDLESS. I yield to the gentleman from California.

Mr. BROWN of California. Mr. Speaker, I was waiting for the gentleman to make mention of the fact, but perhaps he is too modest to do so, that he and the gentleman from California [Mr. LEWIS], from the other part of our region, are both cosponsors of this legislation and have worked very actively and, in fact, testified before the committee on behalf of its passage.

I think that the Members should give credit to the work that the gentleman has done.

Mr. McCANDLESS. Mr. Speaker, I thank the gentleman from California [Mr. BROWN] for initiating this.

I close by simply saying that the facility, as it is currently instituted, is not feasible, in my opinion, for remodeling. As I said in my previous remarks, to move this a few miles to the university at Riverside will double the capacity of the individuals involved in the scientific world to promote and to involve themselves in the research process, whereas now it is not that close to their research labs at the university to be able to do that much more good.

Mr. ROBERTS. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. DE LA GARZA. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. MONTGOMERY). The question is on the motion offered by the gentleman from Texas [Mr. DE LA GARZA] that the House suspend the rules and pass the bill, H.R. 5215.

The question was taken.

Mr. WALKER. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to the provisions of clause 5, rule I, and the Chair's prior announcement, further proceedings on this motion will be postponed.

GENERAL LEAVE

Mr. DE LA GARZA. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bills, S. 1935 and H.R. 5215.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

PASSENGER SHIP ACT OF 1986

Mr. JONES of North Carolina. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 1935) to authorize the coastwise operation of certain passenger vessels as amended.

The Clerk read as follows:

S. 1935

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. This Act may be cited as the "Passenger Ship Act of 1986".

SEC. 2. In this Act—

(1) "Certificate of Financial Responsibility" means the evidence of financial responsibility for indemnification of passengers for nonperformance of transportation furnished by the Federal Maritime Commission to a person under the Act of November 6, 1966 (46 App. U.S.C. 817d–817e).

(2) "coastwise passenger vessel constructed in the United States" means—

(A) a vessel built in the United States before the date of enactment of this Act that—

(i) is eligible to be or is documented under the laws of the United States with the privilege of operating in the coastwise trade on the date of enactment of this Act;

(ii) is offering services in the coastwise trade on September 1, 1988; and

(iii) has accommodations with modern facilities for not less than 600 passengers;

(B) a vessel built in the United States after the date of enactment of this Act that—

(i) is documented under the laws of the United States; and

(ii) has accommodations with modern facilities for not less than 600 passengers.

(3) "Secretary" means the Secretary of the department in which the Coast Guard is operating.

(4) "substantially complete" means—

(A) in the case of a vessel being constructed in the United States after the date of enactment of this Act—

(i) the keel has been laid;

(ii) firm, irrevocable commitments and financing have been placed to complete the vessel;

(iii) at least 50 percent of the total financing for construction has been expended or contractually obligated;

(iv) sufficient work and associated arrangements have been obligated to make it likely that the vessel will be operating in the coastwise trade during 1989 or shortly thereafter; and

(v) advance bookings for that trade are being offered and advertised under a Certificate of Financial Responsibility; or

(B) in the case of a vessel being refurbished under the laws of the United States after the date of enactment of this Act—

(i) at least 50 percent of the work on the vessel has been completed;

(ii) firm, irrevocable commitments and financing have been placed to complete the vessel;

(iii) at least 50 percent of the total financing for refurbishment has been expended or contractually obligated;

(iv) sufficient work and associated arrangements have been obligated to make it likely that the vessel will be operating in the coastwise trade during 1989 or shortly thereafter; and

(v) advance bookings for that trade are being offered and advertised under a Certificate of Financial Responsibility.

SEC. 3. (a) From the date of enactment of this Act to August 31, 1988, the Secretary shall monitor efforts to construct passenger vessels in the United States, or to refurbish under the laws of the United States passenger vessels built in the United States. Passenger vessels monitored by the Secretary under this section must have accommodations for at least 600 passengers.

(b) During the period referred to in subsection (a) of this section, the Secretary shall publish notice in the Federal Register within 30 days after the substantially complete construction or refurbishment of a vessel described in subsection (a) of this section that was not operating on the date of enactment of this Act as a documented passenger vessel of the United States with the privilege of engaging in the coastwise trade.

SEC. 4. Notwithstanding section 12106 or 12107 of title 46, United States Code, section 8 of the Act of June 19, 1886 (46 App. U.S.C. 289), section 27 of the Merchant Marine Act of 1920 (46 App. U.S.C. 883), or another provision of law, the Secretary, from applications submitted under this Act, shall document vessels not otherwise qualified to be documented as vessels of the United States under chapter 121 of title 46, United States Code with the privilege of engaging in the coastwise trade, if—

(1) the Secretary determines, in accordance with section 3 of this Act, that at least two passenger vessels are not substantially complete by September 1, 1988;

(2) alterations, repairs, or rebuilding of each vessel, necessary to bring the vessel into compliance with the requirements of part B of subtitle II of title 46, United States Code (relating to inspection and regulation of vessels) and regulations prescribed under that part, or any conversion to eliminate cargo space necessary to bring the vessel into compliance with paragraph (5) of this section, are performed in the United States.

(3) all future nonemergency alterations, repairs, or rebuilding of each vessel after documentation under this section are performed in the United States, under applicable laws, as long as the vessel remains documented in the United States;

(4) at the time of documentation, each vessel is owned by a person meeting the requirements of section 2 of the Shipping Act of 1916 (46 App. U.S.C. 802) for a citizen of the United States operating a vessel in the coastwise trade;

(5) each vessel is limited to transporting passengers and their personal luggage and property, and to transporting the personal motor vehicles of passengers on a basis other than as a ferry service;

(6) the owner of each vessel agrees to enter into a contract with the United States to include enhanced military features at Government expense; and

(7) the Secretary determines—

(A) that each vessel is modern, efficient, and economical;

(B) that each vessel is not less than 10,000 gross tons;

(C) that each vessel has accommodations, with modern facilities, for not less than 600 passengers;

(D) that each vessel has a remaining useful economic life of not less than ten years after documentation under this section; and

(E) in consultation with the Secretary of the Navy, that each vessel will be suitable for conversion to a troopship for use in time of war or national emergency.

SEC. 5. (a) An application for documentation under this Act shall be submitted to the Secretary no later than one year after the date of enactment of this Act. A separate application shall be submitted for each vessel applying for documentation under this Act.

(b) The Secretary shall charge a fee of $3,000 for each application submitted.

(c) No later than eighteen months after the date of enactment, the Secretary shall determine those vessels meeting the requirements for documentation under this Act, and shall notify the applicant that the vessel is qualified.

SEC. 6. A vessel qualified for documentation under section 5 of this Act—

(1) may advertise under a Certificate of Financial Responsibility service in the coastwise trade of the United States beginning on March 1, 1988, as long as that advertising contains notice to the public that the vessel will not sail if the Secretary determines under section 4 of this Act that two vessels are substantially complete;

(2) may be issued a coastwise license between August 31, 1988 and September 1, 1990 for the purpose of engaging in the coastwise trade; and

(3) must be placed in service by the person that owned the vessel at the time of documentation under this Act meeting the requirements of section 2 of the Shipping Act of 1916 (46 App. U.S.C. 802).

SEC. 7. The owner of a vessel documented under this Act may not offer substantially similar service, as determined by the Secretary, to the service offered on the date of enactment by the owner, operator, or successor in interest of a coastwise passenger vessel constructed in the United States. If the owner, operator, or successor in interest of a coastwise passenger vessel constructed in the United States terminates that substantially similar service, a vessel documented under this Act may offer that service.

SEC. 8. (a) Except in accordance with this section, the owner of a vessel documented under this Act may not offer substantially similar service, as determined by the Secretary, to service offered or advertised after September 1, 1988 by an owner of a coastwise passenger vessel constructed in the United States, if—

(1) within two years after the vessel documented under this Act enters the coastwise trade, the owner of the coastwise passenger vessel constructed in the United States certifies to the Secretary that it is offering or advertising that service under a Certificate of Financial Responsibility;

(2) the Secretary determines that the service offered or advertised is substantially similar to the service offered by the owner of the vessel documented under this Act, and notifies that owner to terminate the service within 365 days of the notification; and

(3) the coastwise passenger vessel constructed in the United States enters the service certified to the Secretary under paragraph (1) of this section within 365 days of the notification under paragraph (2) of this section.

(b) The Secretary may not determine that the coastwise passenger vessel constructed in the United States is offering substantially similar service to the vessel documented under the Act, unless the coastwise passenger vessel constructed in the United States—

(1) is modern, efficient, and economical;

(2) is not less than 10,000 gross tons;

(3) has accommodations with modern facilities for not less than 600 passengers;

(4) has a remaining useful economic life of not less than ten years; and

(5) will be suitable for conversion to a troopship for use in time of war or national emergency, as determined by the Secretary in consultation with the Secretary of the Navy.

SEC. 9. In determining under sections 7 and 8 of this Act whether a coastwise passenger vessel is offering service substantially similar to service offered by a vessel documented under this Act, the Secretary shall consider, among other things—

(1) the frequency of the comparable service;

(2) the relative size and class of service of the competing vessels;

(3) the number and geographic location of the ports of call of the competing vessels; and

(4) the overall itineraries of the competing vessels.

SEC. 10. The Secretary shall modify the certificate of documentation of a vessel documented under this Act to reflect the imposition or removal of a restriction placed on that vessel by section 4, 7, or 8 of this Act.

SEC. 11. The Secretary may prescribe rules and regulations to carry out the provisions of this Act.

The SPEAKER pro tempore. Is a second demanded?

Mr. SHUMWAY. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from North Carolina [Mr. JONES] will be recognized for 20 minutes and the gentleman from California [Mr. SHUMWAY] will be recognized for 20 minutes.

The Chair recognizes the gentleman from North Carolina [Mr. JONES].

Mr. JONES of North Carolina. Mr. Speaker, I yield myself such time as I may consume.

The Speaker, the purpose of this legislation is to revitalize the U.S.-flag cruise ship industry operating in the coastwise trade. The legislation protects current interest in constructing or refurbishing U.S.-built cruise ships by providing a 2-year waiting period before foreign-built cruise ships would be permitted to operate as U.S.-flag vessels in the coastwise trade. If, by the end of that 2-year period, the construction or refurbishment of two U.S.-built vessels is not substantially completed, then foreign-built vessels would be eligible for documentation as U.S.-flag vessels for operation in the coastwise trade. U.S.-built vessels that are not qualified to engage in the coastwise trade would also be eligible for coastwise privileges.

Legislation to reverse the decline in the U.S.-flag cruise ship industry has been the subject of extensive debate in the House of Representatives during the 98th and 99th Congresses. After two hearings on this subject in the 98th Congress, the Merchant Marine and Fisheries Committee reported two bills, H.R. 2883 and H.R. 4333, aimed at revitalizing the U.S.-flag cruise industry. H.R. 2883 was objected to when brought up on the private calendar; H.R. 4333 was not considered by the full House. Additionally, an amendment similar to H.R. 4333 was added to the Department of Defense authorization bill during 1984. That amendment was adopted by the full House by a record vote of 237 to 159. However, it was dropped during conference consideration.

In the 99th Congress, the Merchant Marine Subcommittee held 2 days of oversight hearings on the cruise industry during 1985. The first hearing was held in Miami, FL, on April 10, 1985, and the second hearing was in Washington, DC, on May 7, 1985. Although the specific focus of these hearings differed, it was apparent that there is a growing cruise industry operating from the United States that benefits the U.S. economy, and that there is increasing interest in developing a U.S.-flag cruise industry to operate in the coastwise trade and take advantage of the growth in the overall cruise industry. The controversy, however, has centered on whether foreign-built vessels should be allowed to reflag in the United States with the privilege of operating in the coastwise trade or whether that trade should continue to be reserved for U.S.-built vessels.

S. 1935 represents a compromise between those parties interested in building or refurbishing U.S.-built cruise vessels, and those interested in reflagging foreign-built vessels in the United States with the privilege of operating in the coastwise trade. The bill was reported to the Senate by the Commerce, Science, and Transportation Committee on September 22, 1986, and the Senate passed it by unanimous consent on September 24.

Because of time constraints as the 99th Congress draws to a close, the Merchant Marine and Fisheries Committee is unable to consider S. 1935 in committee, as it would like to do. The committee, however, believes that certain changes should be made to improve S. 1935. This statement explains the changes made by the committee amendment.

Mr. Speaker, I believe that the committee amendment included as the text for S. 1935 makes a number of improvements to this legislation. I would like to take a moment to explain the amendment to my colleagues.

Section 1 is the short title of the bill and is identical to the Senate bill.

Section 2 contains the definitions of terms used in the bill. The definition of "coastwise passenger vessel constructed in the United States" is substantially the same as the Senate bill. The amendment, however, differentiates between vessels built in the United States before the enactment date of the act and those built in the United States after the enactment date. The Senate bill distinguishes between those built before September 1, 1988 and those built after September 1, 1988. The amendment requires that a vessel built before the enactment date be eligible for documentation as a U.S.-flag coastwise vessel or be documented as a U.S.-flag coastwise vessel on the date of enactment. This amendment maintains the status quo for U.S.-built vessels that have been transferred to foreign flag, thus losing their right to engage in the coastwise trade. The amendment, however, ensures that the SS *Monterey,* which is currently eligible for documentation as a coastwise vessel, and the SS *United States,* which is currently documented as a U.S. vessel, will be able to "bump" under this act.

This section also defines the term "substantially complete." The Senate bill does not define the term. The Senate's intent, however, is contained in report language. The definition in the House amendment is substantially the same as the Senate's report language. The House amendment does clarify the distinction to be made between the U.S. construction of a vessel and the refurbishment of an existing U.S.-built vessel. The committee intends that the Secretary, in determining whether a vessel is substantially complete, consider and make appropriate allowance for unavoidable delays caused by force majeure, acts of God, and other events beyond the control of persons constructing or refurbishing a vessel.

Section 3 of the amendment is substantially the same as the Senate bill. The amendment does delete that subsection delaying until September 1, 1988, the effective date of the provisions regarding the reflagging of foreign-built vessels or U.S.-built vessels that have lost their coastwise privileges. This conforms to the amendment's change in section 5 allowing foreign vessels to be qualified for documentation under the act, contingent on no U.S.-built vessels being substantially complete by September 1, 1988.

Section 4 of the amendment is substantially the same as the Senate bill. The amendment, however, requires that the Secretary of the department in which the Coast Guard is operating document those vessels meeting the listed criteria, if two U.S.-built or refurbished vessels are not substantially complete by September 1, 1988. The Senate bill uses the permissive verb "may," and leaves some doubt as to whether the Secretary would have to document vessels that meet the criteria and requirements of section 4, if the substantially complete requirement is not met.

Section 5 of the amendment allows foreign-built and non-coastwise-qualified vessels to apply for documentation under the act for a 1-year period beginning on the date of enactment of the act. The Secretary is required to select the vessels that are qualified within 6 months after that. The Senate bill does not open the 1-year "window" to foreign vessels until September 1, 1988, and allows the Secretary an additional 6 months before selecting those vessels for coastwise privileges. The end result may be that, at the earliest, no U.S.-flag passenger vessels would be eligible to operate in the coastwise trade until March 1, 1990. The underlying purpose of this legislation is to increase the number of passenger vessels operating under the U.S. flag. If two U.S.-built or refurbished vessels are not substantially complete by the end of the 2-year waiting period, foreign vessels should be allowed to reflag and enter the coastwise trade immediately. The amendment will allow those interested in reflagging these vessels to move forward with those plans, contingent on the Secretary's determination that two passenger vessels are not substantially complete by September 1, 1988. The amendment does not disturb the 2-year waiting period; it merely allows applications for documentation under the act to be made while the waiting period is in effect, and allows the Secretary to approve those applications contingent on the nonoccurrence of substantial completion of U.S.-built or refurbished vessels.

Section 6 of the amendment retains the Senate language requiring that a foreign-built or non-coastwise-qualified vessel documented under the act enter the coastwise trade within 2 years of that documentation. The amendment, in keeping with the intent of section 5, allows those vessels that have been contingently qualified by the Secretary for documentation to begin advertising 6 months before the waiting period expires. That advertising, however, must contain the caveat that the vessel will not be permitted to operate if two U.S.-built or refurbished vessels are substantially complete by September 1, 1988. Additionally, the amendment requires that the reflagged vessel must be placed in service by the U.S. citizen or corporation that owned the vessel at the time of documentation. The citizen or corporation must meet the 75-percent U.S. ownership requirements for the coastwise trade under the Shipping Act of 1916. The intent of the amendment is to ensure that coastwise-qualified documentation "rights" are not sold by one person to another, as has occurred with the limited foreign-building rights authorized in the past for U.S.-cargo vessels receiving operating subsidy.

Section 7 of the amendment is substantially the same as the Senate bill. The amendment does change the operative date from September 1, 1988—as contained in the Senate bill—to the date of enactment. This change will not affect the protection afforded the SS *Independence* and the SS *Constitution* now operating in the Hawaiian Islands. The intent remains to prevent a reflagged vessel from operating in a service substantially similar to that offered by these vessels.

Section 8 is substantially the same as the Senate bill. However, to ensure that a vessel taking advantage of the bumping provisions afforded by this section is of the same caliber as a vessel documented under the act, the amendment requires that the bumping vessel meet the same criteria that the foreign vessel met in order to be documented. The amendment does not change the requirement in section 8(a) of the Senate bill that a "coastwise passenger vessel constructed in the United States" must have accommodations with modern facilities for at least 600 passengers in order to take advantage of the bumping provisions.

Section 9 is almost identical to the Senate bill. The intent of this provision is to outline criteria the Secretary must consider in determining whether a vessel documented under the act is offering "substantially similar" service to a U.S.-built or refurbished vessel. The intent is also to protect the SS *Independence* and the SS *Constitution* from head-to-head competition with reflagged vessels. The intent, however, is not to protect those vessels from any possible service on the west coast or near Hawaii. Substantial service, under the criteria listed in the amendment and the Senate bill, would not include service between the mainland and Hawaii, nor sail-fly packages between the mainland and Hawaii, nor a cruise to Hawaii with an air tour of the islands. These types of services would be too indirect to qualify as substantially similar.

Section 10 of the amendment is identical in intent to the Senate bill.

Section 11 of the amendment is identical to the Senate bill.

I strongly urge my colleagues to support this legislation, to revitalize the U.S.-cruise ship industry, and provide a stronger troop transport mobilization base for our national defense.

□ 1545

Mr. SHUMWAY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, on September 7 of last year, seven cruise ships lined up at

Manhattan's passenger ship terminal to load and unload passengers. These ships are part of a thriving U.S.-based cruise ship industry that generates millions of dollars in revenue each year. The problem with this otherwise happy picture is that not one of these seven vessels flew the U.S. flag. The purpose of S. 1935 is to change that.

Mr. Speaker, I am very happy to rise in support of this bill. S. 1935 represents the resolution of a destructive dispute in the maritime industry. The dispute pitted those who wanted to preserve the coastwise passenger trade exclusively for U.S.-built vessels against those who advocated reflagging foreign-built vessels for operation in that trade. The uncertainty resulted in a lack of progress in either direction. The version of S. 1935 passed by the other body is a compromise designed to break this stalemate. It will permit the documentation and operation of qualifying foreign-built cruise vessels in the coastwise passenger trade if, and only if, construction or refurbishment of two U.S.-built deepwater passenger vessels is not substantially complete by September 1, 1988. Even if two or more U.S.-built vessels are not complete by that date, U.S.-built vessels will be protected from any foreign-built, reflagged vessel competition in the coastwise trade. No foreign-built vessels may compete with U.S.-built vessels in operation on September 1, 1988, and such foreign-built vessels must terminate service if a U.S.-built vessel enters the trade and provides substantially similar service after September 1, 1988.

The substitute proposed by the Committee on Merchant Marine and Fisheries does not change the substance of this compromise. It merely refines and improves several provisions. It requires the Secretary of the Department in which the Coast Guard is operating to qualify any foreign vessels meeting the criteria in the bill. The substitute allows foreign vessels to be provisionally qualified for documentation as U.S. coastwise vessels before the expiration of the 2-year waiting period. The substitute also retains the provisons to protect the two U.S.-flag cruise ships now operating in the Hawaiian Islands.

Mr. Speaker, Congress should act to promote the U.S.-flag passenger fleet. Since the early days of our Nation, it has been the national policy to foster the private merchant marine in order to assure the United States an adequate naval and military auxiliary in time of war or national emergency. This bill will further that policy. Efficient and economical U.S.-flag passenger ships will sail; vessels that will be available for conversions to troopships in time of war or national emergency. The ships will be manned with U.S. citizen crews who will help maintain adequate and trained manpower level to meet national security needs.

This bill provides the opportunity to build ships in U.S. shipyards. I hope that this bill will result in vessels being build in U.S. shipyards with U.S. materials and labor. But even if the vessels are not built here, the requirement in the bill for any rebuilding and all future repairs of any reflagged vessels to take place in U.S. yards will assure utilization of U.S. resources. These shipbuilding or repair contracts will help sustain an active shipbuilding industrial base. Vital jobs and skills will be preserved at no cost to the Government.

Mr. Speaker, I think this is a good bill. It gives those interested in operating U.S.-built cruise vessels the incentive and security to obtain financing now. It gives those who would like to reflag foreign vessels a timeframe within which they will know if they can accomplish their goals. Either way, the country benefits with more ships sailing under the U.S. flag.

Mr. Speaker, I urge my colleagues to support this bill.

Mr. JONES of North Carolina. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would like to call to the attention of the House, and to me it is very important, that we do not have a single American-flag vessel except the *Tuna Hawaii*, in our ocean trade. There are millions, hundreds of millions of tourist dollars, American dollars, going to our friends in other countries. I hope we can bear that in mind and attempt to build up our own resources here. Let us have our own "Love Boats."

Mr. BIAGGI. Mr. Speaker, S. 1935 is an attempt to resolve the controversy that has surrounded the issue of developing a U.S. domestic passenger cruise industry for the last several years. The Subcommittee on Merchant Marine, which I chair, has considered several bills dealing with this issue over the past two Congresses.

After two hearings on this subject in the 98th Congress, the Merchant Marine and Fisheries Committee reported two bills, H.R. 2883 and H.R. 4333, aimed at revitalizing the U.S.-Flag cruise industry. H.R. 2883 was objected to when brought up on the private calendar; H.R. 4333 was not considered by the full House. Additionally, an amendment similar to H.R. 4333 was added to the Department of Defense authorization bill during 1984. That amendment was adopted by the full House by a record vote of 237 to 159. However, it was dropped during conference consideration.

In the 99th Congress, the Merchant Marine Subcommittee held 2 days of oversight hearings on the cruise industry. The first hearing was held in Miami, FL, on April 10, 1985, and the second was in Washington, DC, on May 7, 1985. Although the specific focus of these hearings differed, it was apparent that there is a growing cruise industry operating from the United States that benefits the U.S. economy. However, except for two ships, the industry is dominated by foreign flags. The purpose of the committee's efforts over the past years has been to develop a U.S.-flag cruise industry to operate in the coastwise trade and take advantage of the growth in the overall cruise industry.

S. 1935 represents a compromise between those parties interested in building or refurbishing U.S.-built cruise vessels, and those interested in reflagging foreign-built vessels in the United States with the privilege of operating in the coastwise trade. The bill was reported to the Senate by the Commerce, Science, and Transportation Committee on September 22, 1986, and the Senate passed it by unanimous consent on September 24.

Throughout the deliberations on this subject, the issue has not been whether to develop a domestic cruise ship industry; it has been how to do it. The battle has focused on whether it is possible to build vessels in U.S. shipyards and refurbish existing U.S. vessels, or whether the only way to get passenger vessels under the U.S. flag is to allow foreign-built vessels to reflag with the privilege of operating in the coastwise trade. The end result has been that not a single new passenger vessel has entered the U.S. coastwise trade since this debate began over 4 years ago.

The legislation protects those who have shown an interest in constructing ships in the United States or refurbishing U.S.-built cruise ships by providing a 2-year waiting period before foreign-built cruise ships would be permitted to operate as U.S-vessels in the coastwise trade. If, by the end of that 2-year period, the construction or refurbishment of two U.S.-built vessels is not substantially complete, then foreign-built vessels would be eligible for documentation as U.S.-flag vessels for operation in the coastwise trade. U.S.-built vessels that are not qualilfied to engage in the coastwise trade would be eligible for coastwise privileges.

I believe the concept embodied in S. 1935, as it passed the Senate, is a reasonable compromise. I do, however, have problems with some of the specific provisions included in the bill. For instance, the bill contains "bumping" provisions that would be triggered if two vessels are not substantially complete at the end of 2 years. This provision allows U.S-built or refurbished vessels to knock out of a trade vessels reflagged under this act for up to 2 years after those vessels have entered the coastwise trade.

In the Senate markup of this bill, I am told, the 2-year waiting period was called the put-up-or-shut-up time for those who believe U.S. vessels can be built or refurbished. The bumping period, in effect, extends the put-up-or-shut-up time by 2 years. The underlying intent always has been to increase the number of U.S.-flag passenger vessels. I think 2 years is enough for the U.S.-building interests to accomplish that. If it cannot be done, then the reflagged vessels should not be vulnerable for an additional 2 years. It seems unlikely to me that a businessman would take the risk that his vessels may be run out of a trade after money and effort has been invested to develop that trade. Nevertheless, I have decided to accept the bumping provisions, because I

know that they are an important part of the compromise.

There are other provisions in the Senate bill, however, that I think must be changed. That is why I support the committee amendment to S. 1935. The amendment does not make radical changes in the Senate bill. It will not destroy the balance struck between the U.S.-building interests and the foreign-building interests. In fact, I believe it will place those interests on a more equal footing.

The most significant change made by the amendment is to allow the foreign-built vessels to apply to the Secretary for coastwise privileges between enactment and September 1, 1988. Those vessels would then be provisionally qualified by the Secretary to begin operating in the coastwise trade if, and only if, two U.S.-built or refurbished vessels are not substantially complete by the end of the 2 years. If during 1987 and 1988, two vessels are substantially complete, then the foreign vessels cannot be reflagged to enter the coastwise trade, and no harm is done. But, if the vessels are not substantially complete, then the foreign vessels will be in a position to reflag and begin operating in the trade immediately, rather than going through the additional 18-month lagtime possible under the Senate bill.

I repeat, the intent of this legislation is to get passenger vessels under the U.S. flag. If that cannot be done during the 2-year waiting period, there is no reason for delaying the entry to the foreign vessels. Those vessels should be allowed into the coastwise trade in 1988, not in 1990, or 1992.

The committee amendment also clarifies that the Secretary must qualify vessels for documentation under the act. The Senate bill is unclear on this point, as it uses the permissive verb "may." The committee amendment changes this to "shall" and, thus, leaves no doubt that if two vessels are not substantially complete within 2 years, foreign vessels, meeting the bill's criteria, must be qualified for the coastwise trade.

In addition, the committee amendment denies "bumping" privileges to U.S.-built vessels that are flying foreign-flags on the date of enactment. The amendment ensures that these vessels are not granted special bumping advantages over other vessels that come into the trade under this act.

In summary, I would just say that the question of how to develop a U.S. cruise industry has consumed far too much of Congress's time over the last several years. The committee amendment to S. 1935 is a balanced solution to this problem. It is high time we put this issue to bed, and get on with developing a viable, profitable U.S.-flag coastwise cruise ship industry. I urge my colleagues to support the amendment to S. 1935.

Mr. DAVIS. Mr. Speaker, I rise in support of the proposed substitute for S. 1935. I think it is fair to say that the road that has brought us to this point has been long and contentious in this and the other body. The bill passed by the other body is a good compromise. The proposed substitute under consideration makes it even better.

The substance of the bill, as passed by the other body, can be simply summed up as "fish or cut bait." The bill would permit documentation and operation of foreign-built passenger vessels in the coastwise trade unless construction or reconstruction of two U.S.-built passenger vessels has been substantially completed by September 1, 1988. The bill further contains provisions designed to protect U.S.-built vessels from competition from any foreign-built, reflagged vessels allowed to enter the coastwise trade if the two or more U.S.-built vessels are not completed by September 1, 1988. The bill prohibits the foreign-built vessels from operating in competition with any U.S.-built vessels which are already in operation on September 1, 1988. It also establishes a mechanism to terminate or "bump" the service of a foreign-built, reflagged vessel if a U.S.-built vessel enters the trade and provides substantially similar service after September 1, 1988.

Any way one looks at the bill, the Nation stands to gain. I hope that the vessels which ultimately ply the passenger trades in our coastal waters will all be built in U.S. yards. But even if they are not, under this bill at least all of the alterations, repair work, and rebuilding necessary to bring the foreign-built vessels into compliance with U.S. laws will be done in U.S. yards. This means that jobs and shipbuilding skills will be preserved and a vital defense capability will be maintained at no cost to the Government.

I had hoped that we could even make some changes in the existing law that allows U.S.-built vessels—in this case passenger ships—to go to foreign yards to have the "hotel" refurbishment work done. Mr. Speaker, the bill will allow a U.S.-built ship, that has had this work done abroad, to "bump" one of the reflagged, foreign-built ships that has had all the necessary alterations and repair work done in U.S. yards. I do no think that is right. However, I have been told by my colleagues on the committee that to change the existing law on this subject, in this bill, would kill the bill. I do not want to do that.

The substitute proposed by the Merchant Marine and Fisheries Committee refines several provisions of the Senate-passed bill—but it does not change the basic elements of the compromise between the interests supporting U.S.-built ships and those supporting the reflagging of foreign-built passenger ships.

The key difference deals with the timeframe under which applications can be submitted, and approved, for reflagging. The substitute would allow for some of the paperwork to proceed during the time period preceding the September 1, 1988, decision on whether or not work has been satisfactorily completed on two U.S. ships.

Because of this bill, passenger ships will sail under the U.S. flag with U.S. crews. These ships will be suitable for conversion to troop ships for use in time of war or national emergency with very little effort or cost. Americans will be supporting American companies when they go on one of these ships—instead of foreign companies, as is presently the case. It is time for American companies to get back into the cruise ship business. This bill starts the wheels in motion for U.S. ships to again be calling at U.S. ports.

Mr. Speaker, this bill represents the best efforts of all parties concerned and I urge my colleagues to support it.

Mr. SHAW. Mr. Speaker, I support the passage of S. 1935, as amended, because I believe that it will go a long way toward revitalizing the passenger cruise ship industry in the United States. The bill safeguards the U.S. shipbuilding industry for 2 years to encourage those companies which have expressed an interest in constructing new cruise vessels in the United States or refurbishing old vessels built in the United States. However, if after 2 years, construction or refurbishment of two U.S. deep-water passenger ships is not substantially complete, the bill would allow the documentation and operation of foreign-built cruise vessels. I think this is fair to all sides. I think that S. 1935, as amended, is a compromise everyone can live with and I enthusiastically endorse its passage.

Mr. YOUNG of Alaska. Mr. Speaker, I rise in strong support of the proposed subsititute for S. 1935. I believe that this legislation, which has been debated and argued over at length in both Houses, is a good and fair compromise.

The main purpose of this legislation from the beginning has been to revitilize the U.S. cruise ship industry. I have supported the general concept of reflagging foreign vessels to be eligible for U.S. cruise operations for the past two Congresses. The demestic market for luxury cruise ship services has been untapped for too long. This legislation will be a great benefit to the Nation as a whole and specifically will provide a big boost to the tourism industry of Alaska.

Any current interests that presently exist which are attempting to refurbish or build U.S.-flag cruise ships would be protected by this bill. A waiting period of 2 years is required before any foreign vessels would be allowed to reflag and operate in the coastwise trade. If the construction or refurbishment of two U.S.-built vessels is substantially completed during these 2 years, foreign vessels would not be eligible to operate in the United States.

In addition to taking care of any possible further endeavors to build or refurbish a U.S.-built cruise ship, this legislation would be extremely valuable to maritime and shipbuilding interests. Specific reflagging criteria would require that once these vessels become available for coastwise travel they must have all alterations and repair work done in U.S. shipyards and must also employ U.S. merchant mariners to operate these ships.

Mr. Speaker, this bill has been too long in coming and I strongly urge my fellow colleagues to support this legislation.

Mr. SHUMWAY. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. JONES of North Carolina. Mr. Speaker, I have no further requests for time, I yield back the balance of my time.

The SPEAKER pro tempore. (Mr. MONTGOMERY). The question is on the motion offered by the gentleman from North Carolina [Mr. JONES] that the House suspend the rules and pass the Senate bill, S. 1935, as amended.

The question was taken; and (two-thirds having voted in favor thereof)

the rules were suspended and the Senate bill, as amended, was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. JONES of North Carolina. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the Senate bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman form North Carolina?

There was no objection.

R.M.S. TITANIC MARITIME MEMORIAL ACT OF 1986

Mr. JONES of North Carolina. Mr. Speaker, I move to suspend the rules and pass the Senate bell (S. 2048) to encourage international efforts to designate the shipwreck of the R.M.S. *Titanic* as an international maritime memorial and to provide for reasonable research, exploration, and, if appropriate, salvage activities with respect to the shipwreck.

The Clerk read as follows:

S. 2048

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "R.M.S. Titanic Maritime Memorial Act of 1986".

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) the R.M.S. Titanic, the ocean liner which sank on her maiden voyage after striking an iceberg on April 14, 1912, should be designated as an international maritime memorial to the men, women, and children who perished aboard her;

(2) the recent discovery of the R.M.S. Titanic, lying more than twelve thousand feet beneath the ocean suface, demonstrates the practical applications of ocean science and engineering;

(3) the R.M.S. Titanic, well preserved in the cold, oxygen-poor waters of the deep North Atlantic Ocean, is of major national and international cultural and historical significance, and merits appropriate international protection; and

(4) the R.M.S. Titanic represents a special opportunity for deep ocean scientific research and exploration.

(b) PURPOSE.—The Congress declares that the purposes of this Act are—

(1) to encourage international efforts to designate the R.M.S. Titanic as an international maritime memorial to those who lost their lives aboard her in 1912;

(2) to direct the United States to enter into negotiations with other interested nations to establish an international agreement which will provide for the designation of the R.M.S. Titanic as an international maritime memorial, and protect the scientific, cultural, and historical significance of the R.M.S. Titanic;

(3) to encourage, in those negotiations or in other fora, the development and implementation of international guidelines for conducting research on, exploration of, and if appropriate, salvage of the R.M.S. Titanic; and

(4) to express the sense of the United States Congress that, pending such international agreement or guidelines, no person should physically alter, disturb, or salvage the R.M.S. Titanic in any research or exploratory activities which are conducted.

SEC. 3. DEFINITIONS.

For the purposes of this Act, the term—

(a) "Administrator" means the Administrator of the National Oceanic and Atmospheric Administration (NOAA);

(b) "person" means any individual (whether or not a citizen or national of the United States), any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government;

(c) "R.M.S. Titanic" means the shipwrecked vessel R.M.S. Titanic, her cargo or other contents, including those items which are scattered on the ocean floor in her vicinity; and

(d) "Secretary" means the Secretary of State.

SEC. 4. COMMENDATION.

The Congress of the United States highly commends the members of the joint international expedition which discovered the R.M.S. Titanic.

SEC. 5. INTERNATIONAL GUIDELINES.

(a) The Administrator is directed to enter into consultations with the United Kingdom, France, Canada, and other interested nations to develop international guidelines for research on, exploration of, and if appropriate, salvage of the R.M.S. Titanic, which—

(1) are consistent with its national and international scientific, cultural, and historical significance and the purposes of this Act; and

(2) promote the safety of individuals involved in such operations.

(b) In carrying out subsection (a), the Administrator shall consult with the Secretary and shall promote full participation by other interested Federal agencies, academic and research institutions, and members of the public.

SEC. 6. INTERNATIONAL AGREEMENT.

(a) The Secretary is directed to enter into negotiations with the United Kingdom, France, Canada, and other interested nations to develop an international agreement which provides for—

(1) the designation of the R.M.S. Titanic as an international maritime memorial; and

(2) research on, exploration of, and if appropriate, salvage of the R.M.S. Titanic consistent with the international guidelines developed pursuant to section (5) and the purposes of this Act.

(b) In carrying out the requirements of subsection (a), the Secretary shall consult with the Administrator, who shall provide research and technical assistance to the Secretary.

(c) The Secretary and the Administrator shall report semiannually to the Committee on Merchant Marine and Fisheries and the Committee on Foreign Affairs in the House of Representatives and to the Committee on Foreign Relations and the Committee on Commerce, Science, and Transportation in the Senate on the progress of the negotiations and consultations.

(d) Upon adoption of an international agreement as described in subsection (a), the Secretary shall provide notification of the agreement and recommendations for legislation to implement the agreement to the Committee on Merchant Marine and Fisheries and the Committee on Foreign Affairs in the House of Representatives and to the Committee on Foreign Relations and the Committee on Commerce, Science, and Transportation in the Senate.

SEC. 7. SENSE OF CONGRESS REGARDING CONDUCT OF FUTURE ACTIVITIES.

It is the sense of Congress that research and limited exploration activities concerning the R.M.S. Titanic should continue for the purpose of enhancing public knowledge of its scientific, cultural, and historical significance: *Provided*, That, pending adoption of the international agreement described in section 6(a) or implementation of the international guidelines described in section 5, no person should conduct any such research or exploration activity which would physically alter, disturb, or salvage the R.M.S. Titanic.

SEC. 8. DISCLAIMER OF EXTRATERRITORIAL SOVEREIGNTY.

By enactment of this Act, the United States does not assert sovereignty, or sovereign or exclusive rights or jurisdiction over, or the ownership of, any marine areas or the R.M.S. Titanic.

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from North Carolina [Mr. JONES] will be recognized for 20 minutes and the gentleman from California [Mr. SHUMWAY] will be recognized for 20 minutes.

The Chair recognizes the gentleman from North Carolina [Mr. JONES].

Mr. JONES of North Carolina. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, on September 11, 1985, I introduced H.R. 3272, a bill to encourage international efforts to designate the shipwreck of the *Titanic* as an international maritime memorial. That bill passed the House last December by voice vote.

On September 24, a companion bill—S. 2048, was passed in the Senate. S. 2048 is virtually identical to the bill already passed by the House. It is the Senate bill which I am asking the House to pass today.

We all know the story of the "unsinkable" *Titanic*. In 1912, it collided with an iceberg and sunk. Over 1,500 lives were lost, and the tragic event changed maritime history forever.

The Joint United States-French team which discovered the *Titanic* was directed by an American—Dr. Robert Ballard. Since the United States played a major role in the discovery of the *Titanic*, we have the responsibility to proceed with respect and compassion. The passage of S. 2048 will help fulfill that responsibility.

Passage of this bill will serve several important goals:

It will provide a forum to resolve potential conflicts between scientists, salvors, and family and friends of those who perished;

It will commemorate the lives lost and allow the world to see and learn from this tragic event;

It will commemorate the international team which discovered the *Titanic.*

Since the wreck lies in international waters, the bill seeks to promote cooperation between countries. S. 2048 does not impose regulatory restrictions on any U.S. or foreign citizens. It simply expresses the sense of Congress that the wreck should not be physicially disturbed until appropriate international agreements can be reached. It establishes a mechanism to achieve such agreements.

This legislation has the support of the administration and requires no authorization of funds.

Mr. Speaker, this bill is without controversy. I urge its passage so that the *Titanic* can receive the treatment it so richly deserves.

Mr. SHUMWAY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise to support S. 2048, legislation to designate the *Titanic* as an international maritime memorial.

In December of last year, the House passed companion legislation, H.R. 3272, under suspension of the rules by voice vote. The legislation before us today is identical to H.R. 3272 which the one exception that S. 2048 indicates specifically those committees in the other body which NOAA and the Department of State should report to when updating the Congress pursuant to the requirements in the legislation.

We all know well the tragic history and legend of the *Titanic.* Ironically, what was to have been a technological triumph of the "unsinkable" ship in 1912, ultimately resulted in a technological triumph in oceanography in 1986 with its monumental discovery. Dr. Robert Ballard of Woods Hole Oceanographic Institute has destinguished himself as a true pioneer of the ocean, breaking new ground with his use of submersible vehicles and remotely operated video equipment.

Mr. Speaker, just as the legend of the *Titanic* lives in, the bill before us today is an effort to make sure that the integrity of the shipwreck itself will also live on. The legislation seeks to accomplish this by encouraging the Secretary of State to enter into negotiations with other interested nations to establish an international agreement which will protect the scientific, historical, and cultural significance of the shipwrecked *Titanic.* Moreover, the bill envisions that any such international agreement to protect the *Titanic* would include guidelines developed by NOAA for conducting research on, exploration of, and, if appropriate, salvage of the *Titanic.* Dr. Ballard, for one does not believe successful salvage of the *Titanic* is possible, and, in his mind even if it were possible, it would not be appropriate. Leaving that ultimate question of salvage aside, this bill expresses that it is the sense of Congress that any and all activities relating to the shipwrecked *Titanic* will be conducted in a reasonable and scientifically acceptable manner to ensure that the integrity of this shipwreck, as well as its legend, is preserved.

I urge my colleagues to suspend the rules and pass S. 2048.

Mr. SHUMWAY. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. JONES of North Carolina. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. MONTGOMERY). The question is on the motion offered by the gentleman from North Carolina [Mr. JONES] that the House suspend the rules and pass the Senate bill, S. 2048.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. JONES of North Carolina. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the Senate bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

RECREATIONAL BOATING SAFETY ACT OF 1986

Mr. JONES of North Carolina. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 4731) to amend chapter 131 of title 46, United States Code, relating to the Federal recreational boating safety program, and for other purposes, as amended.

The Clerk read as follows:

H.R. 4731

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Recreational Boating Safety Act of 1986".

"SEC. 2. REPORT.

"(a) Prior to February 1, 1987, the Secretary shall submit a report to Congress relating to the use of alcohol-blended gasoline in recreational vessels including the following:

"(1) the results of (1) testing performed and (2) a review of fire and explosion boating incidents, under the recreational boating safety program of the Coast Guard.

"(2) a survey of published test data performed in the private sector.

"(3) a listing of sales of alcohol-blended gasoline by State and type of alcohol.

"(4) a listing of State requirements for labeling of alcohol-blended gasoline including type of alcohol, percent of alcohol, label requirements, alcohol test standards, enforcement and compliance measures, and any other relevant data.

"(5) an assessment of State labeling requirements in promoting recreational boating safety and in providing information to the consumer regarding alcohol-blended gasoline.

"(6) a listing of Federally mandated requirements that require labeling of alcohol-blended gasoline or regulate or concern the use of alcohol in gasoline.

"(7) a recommendation on how to promote recreational boating safety or advance consumer information regarding the use of alcohol-blended gasoline.

"(8) any other relevant data or information.

"(b) The Secretary shall consult with appropriate agencies and the National Boating Safety Advisory Council in preparing the report required under this section. If possible, the Secretary shall, under section 12110(b)(2) of title 46, United States Code, appoint members of the general public having knowledge, experience, or expertise with alcohol-blended fuels to a panel of the Council for the purpose of advising the Secretary regarding the report.".

SEC. 3. NATIONAL BOATING SAFETY ADVISORY COUNCIL

(a) TERMINAL DATE.—(1) Section 13110 of title 46, United States Code, is amended by inserting at the end the following new subsection:

"(e) The Council shall terminate on September 30, 1991.".

(2) EFFECTIVE DATE.—This amendment made by paragraph (1) takes effect on August 26, 1983.

(b) CHANGE IN MEMBERSHIP.—(1) Section 13110(a) of title 46, United States Code, is amended—

(A) by striking "not more than"; and

(B) by inserting "recreational" after "experience in";

(2) Paragraph (1) of section 13110(b) of title 46, United States Code, is amended to read as follows:

"(1) The membership of the Council shall consist of—

"(A) 7 members from State officials responsible for State boating safety programs;

"(B) 7 members from recreational vessel manufacturers and associated equipment manufacturers; and

"(C) 7 members from national recreational boating organizations and from the general public, at least 5 of whom shall be members from national recreational boating organizations.".

(3) The Secretary of Transportation shall carry out the amendments made by paragraph (2) as vacancies in the membership of the National Boating Safety Advisory Council occur.

SEC. 4. TECHNICAL AMENDMEDNTS.

(a) Section 13102(a) of title 46, United States Code, is amended by striking "Fund established under section 13107 of this title" and inserting "Boat Safety Account established by section 9504 of the Internal Revenue Code of 1954.".

(b) Section 13102(a)(4) of title 46, United States Code, is amended by inserting "out" after "carrying".

(c) Section 13106(b) of title 46, United States Code, is amended by striking "may" the second place it appears and inserting

"shall" and by striking "or" in paragraph (8) and inserting "and.".

CONVEYANCE AGREEMENT PROVISIONS

SEC. 5. (a) Under the Agreement dated December 9, 1977 between the Commandant of the Coast Guard and Koniag, Incorporated, a regional native corporation, pursuant to Public Law 92-203 (a copy of which is recorded beginning at Book 44, Page 179 of the Kodiak Recording District, Kodiak, Alaska) and any conveyance made under that Agreement, the rights or title conveyed to Koniag, Incorporated, shall be construed to include the following:

(1) Under the Agreement, welding or other equipment or machinery may be operated or maintained on lands conveyed to Koniag, Incorporated, if the equipment or machinery does not cause harmful electromagnetic interference with the Coast Guard Holiday Beach receiver site or is operated and maintained under terms and conditions mutually agreeable to the Coast Guard and Koniag, Incorporated. Harmful electromagnetic interference is defined as radio frequency signals which disrupt or degrade communications reception performance.

(2) The conveyance of the "old shipyard" includes the wharf and all lands of any nature beneath the wharf.

(3) An access and utility easement is intended as part of the conveyance for Parcel 2, known as Cliff Point, which consists of—

(A) a 100-foot wide access easement along the existing access road or a location that is mutually agreeable to the Coast Guard and Koniag, Incorporated, and includes the right to construct and operate an access road, bridges, guard rails, and other associated improvements; and

(B) a 40-foot wide utility easement adjacent to the access easement in paragraph (3)(A) of this subsection or a location that is mutually agreeable to the Coast Guard and Koniag, Incorporated.

(4) The construction, maintenance, and operation of a dock facility or location of any structure or thing on the premises described in section (c) of Schedule 4 of the Agreement is not inconsistent with the easement for the barge landing easement and access to and from the barge landing area reserved by the United States Government (hereinafter referred to in this paragraph as the "Government"), if the dock facility is constructed or the structure or thing is located as approved by the Government. Approval by the Government is deemed to be granted if a proposal for the construction and location of the dock facility, structure, or thing is submitted to the Government and—

(A) the Government does not respond within 60 days of receipt of the proposal; or

(B) if a response with recommendations for modification is submitted by the Government within 60 days of receipt of the proposal, the proposal is modified in a manner necessary to reasonably satisfy the requirements of the Government—

(i) to use the dock facility for a barge landing area as contemplated by the easement; and

(ii) to permit access to and from the barge loading area to public highways for the transportation of materials as specified in Agreement.

(b) All rights or conveyances confirmed by this section are subject to the sanctions in the Agreement referred to in subsection (a).

(c) The Commandant of the Coast Guard or other appropriate Federal officer shall issue the appropriate corrective conveyance and perform any other appropriate ministerial or official act necessary to carry out the purposes of this section within 60 days after the date of enactment of this section.

The SPEAKER pro tempore. Is a second demanded?

Mr. SHUMWAY. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from North Carolina [Mr. JONES] will be recognized for 20 minutes and the gentleman from California [Mr. SHUMWAY] will be recognized for 20 minutes.

The Chair recognizes the gentleman from North Carolina [Mr. JONES].

Mr. JONES of North Carolina. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the next bill which we bring before the House is H.R. 4731, the Recreational Boating Safety Act of 1986. During hearings held by our Coast Guard Subcommittee, we received testimony regarding the potential dangers of using alcohol-blended gasoline in recreational boats. Allegations were made that the presence of alcohol causes the deterioration of the rubber portions of the vessels fuel system. This may cause a serious fire hazard.

In order to assure that the committee has all the facts on this issue, H.R. 4731 requires the Secretary of the Department of Transportation to issue a report to Congress regarding this complex topic. The report will incorporate the findings of tests conducted by the Coast Guard as well as the private sector. It will also contain a review of boat fires and explosions.

The legislation also serves to make minor changes to the National Boating Safety Advisory Council. These changes are minor and pertain only to the termination date of the Council and the composition of the Council's membership.

In the interest of recreational boating safety, I urge the adoption of this worthwhile legislation.

Mr. SHUMWAY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, today we are taking up H.R. 4731, entitled the "Recreational Boating Safety Act of 1986." This bill has had a thorough hearing and full consideration by the Merchant Marine and Fisheries Committee.

As amended by the committee, the bill would require the Coast Guard to compile available information on alcohol-blended fuels used in recreational vessels. With this report we should be able to determine whether there is a potential safety hazard with the use of these fuels in recreational vessels and take steps next year to require labeling regulations as appropriate.

The bill also reauthorizes and restructures the National Boating Safety Advisory Council to better represent national recreational boating organizations. A 5-year sunset provision is included to comply with the spirit and terms of the Federal Advisory Committee Act. Further, the bill makes certain technical and clarifying amendments to title 46, United States Code, to correct certain clerical errors and make clear that the Coast Guard should publish titling guidelines for recreational vessels.

Mr. Speaker, I have no objection to the consideration of H.R. 4731.

Mr. DAVIS. Mr. Speaker, today we consider H.R. 4731, legislation which I introduced, dealing primarily with recreational boating safety issues. This legislation, which passed unanimously in the Committee on Merchant Marine and Fisheries, will require the Secretary of Transportation to undertake a study of the relationship of alcohol-blended fuels to recreational boating safety.

Mr. Speaker, our committee has heard testimony from the U.S. Coast Guard and numerous boating organizations that alcohol additives in gasoline can attack rubber fuel hoses used in motorboat fuel systems, creating a hazard or explosion. Our committee this year considered my legislation to require the labeling of gas pumps with information about the type and percentage of alcohol contained in the gasoline. I believe that such labeling is necessary to make the boating public aware of what is in the gasoline they buy. This approach is supported by the Coast Guard and boating organizations. The legislation we consider today is an effort to gather as much information as possible about this issue so that all parties concerned, including the alcohol blenders, will have an opportunity to have input. The study, to be conducted by the Coast Guard in cooperation with the National Boating Safety Advisory Council will include information about: Coast Guard studies of fires and explosions on recreational vessels; currently available test data from private industry on the effects of alcohol blends on motorboat fuel systems; the extent of current State fuel pump labeling requirements; and on current Federal regulations affecting alcohol blends in gasoline.

H.R. 4731 also makes a change in the organization of the National Boating Safety Advisory Council to better reflect the interests of national recreational boating organizations. The makeup of the Council will continue to be evenly divided among State boating law administrators, boating manufacturers, and, in the third category, boating organizations and the general public. The significant change is the setting of a specific number of members from national boating organizations to ensure that they are represented fairly on the Council.

H.R. 4731 also makes technical and miscellaneous changes to title 46, United States Code, one of which will result in the publishing of guidelines for uniform recreational boat titling for the voluntary use of States wishing to enact such titling systems as part of the Federal boating safety program.

I urge my colleagues to support this legislation.

Mr. SHUMWAY. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. JONES of North Carolina. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. LUKEN). The question is on the motion offered by the gentleman from North Carolina [Mr. Jones] that the House suspend the rules and pass the bill H.R. 4731, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill as amended, was passed.

The title of the bill was amended so as to read: "A bill to enhance boating safety by requiring a report relating to the display on gasoline pumps of the type of alcohol, the percentage of each type of alcohol, and the percentage of cosolvents, if any, contained in the gasoline; to amend chapter 131 of title 46, United States Code, relating to recreational boating safety; and for other purposes."

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. JONES of North Carolina. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the bill just passed.

The SPEAKER pro tempore (Mr. LUKEN). Is there objection to the request of the gentleman from North Carolina?

There was no objection.

COAST GUARD CUTTER "TANEY" DECOMMISSION

Mr. JONES of North Carolina. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5598) to provide for the transfer of the Coast Guard cutter *Taney* to the city of Baltimore, MD, for use as a maritime museum and display.

The Clerk read as follows:

H.R. 5598

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the department in which the Coast Guard is operating shall transfer the Coast Guard cutter "Taney" to the city of Baltimore, Maryland, for use as a maritime museum and display, appropriate with the character of the long military service and history of the "Taney". The Secretary shall transfer the "Taney" along with such equipment and in such condition as the Secretary considers appropriate. The Secretary shall make the transfer upon the decommissioning of the "Taney" or at a later time as determined appropriate by the Secretary.

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from North Carolina [Mr. JONES] will be recognized for 20 minutes and the gentleman from California [Mr. SHUMWAY] will be recognized for 20 minutes.

The Chair recognizes the gentleman from North Carolina [Mr. JONES].

Mr. JONES of North Carolina. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 5598 transfers the Coast Guard cutter, the *Taney,* to the city of Baltimore, MD, for use as a maritime museum. The legislation provides that the transfer will not take place until after the cutter is decommissioned, which is planned to take place on December 7, 1986.

By legislatively authorizing this transfer, we avoid the time-consuming and costly procedure of transferring the ship to the Maritime Administration and paying the costs of preparing it for its retirement in the National Defense Reserve Fleet. Due to its age of 50 years, it is unlikely the cutter will ever be used at sea again.

Both the Coast Guard and the Maritime Administration support transferring the vessel to Baltimore with Baltimore paying for the cost of the transfer and the drydocking, rather than the Federal Government picking up the tab. Displaying the vessel will also be educational for the public, and it will be a good promotion for the Coast Guard and the city of Baltimore.

The *Taney* was commissioned in 1936, and until December 7, 1941, she performed law enforcement and search and rescue duties. She then fought at Pearl Harbor, Okinawa, Korea, and served in Vietnam. The *Taney* is the last U.S. warship out of 101 naval vessels in Pearl Harbor on December 7, 1941, to be in active service.

The cutter is named after Roger Brooke Taney, attorney general of Maryland in 1827, Attorney General of the United States in 1831, Secretary of the Treasury in 1833, and the fifth Chief Justice of the U.S. Supreme Court in 1836. His burial site is in Frederick, MD, where his home, the "Taney House," is a State landmark.

This is a noncontroversial bill for a good cause. Its sponsor is the gentlewoman from Maryland, BARBARA MIKULSKI, who has ably chaired our Oceanography Subcommittee of this Congress. I urge the adoption of H.R. 5598.

Mr. SHUMWAY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 5598, legislation which allows the Coast Guard to transfer the Coast Guard cutter *Taney,* when decommissioned, to the city of Baltimore, MD, for use in its maritime museum. This vessel is scheduled to be decommissioned December 7, 1986, and because of its age, it is considered unlikely that the *Taney* would ever again be used at sea.

Mr. Speaker, this legislation does not authorize any Federal funding for this transfer or for the maritime museum. All expenses for this project will be picked up by the city of Baltimore. To the extent that this legislation has any impact on the Federal budget whatsoever, it would save Marad the cost of transferring the cutter to the Ready Reserve Fleet which is about $6,000.

The cutter is named after the fifth U.S. Chief Justice of the Supreme Court, Roger Brooke Taney, a Marylander of true distinction who also served his Nation as Attorney General and Secretary of the Treasury. Its addition to Baltimore's maritime museum would be most worthwhile.

Mr. Speaker, the Coast Guard supports the transfer of this vessel; I am not aware of any opposition and I urge my colleagues to suspend the rules and pass this legislation, H.R. 5598.

Ms. MIKULSKI. Mr. Speaker, I rise in very strong support of H.R. 5598, a bill that would allow the U.S. Coast Guard to transfer the cutter *Taney* to the city of Baltimore, MD, for use as a maritime museum once this vessel has been decommissioned.

As the author of this noncontroversial legislation, I believe it will enhance public relations for both the Coast Guard and one of our Nation's greatest ports, my own Port of Baltimore.

The *Taney* is the last of five Coast Guard cutters in active service which was named after a U.S. Secretary of the Treasury. The *Taney's* namesake, Roger B. Taney, was a native of Frederick, MD, who also served as U.S. Attorney General and Chief Justice of the U.S. Supreme Court.

This vessel is also the last active ship from the naval fleet which was in Pearl Harbor on December 7, 1941.

The *Taney's* long and distinguished service in the Coast Guard fleet, from World War II to the Korean and Vietnam conflicts, warrants that once it is decommissioned, the memory of its service is preserved.

H.R. 5598 would allow the Coast Guard to transfer this vessel after it is decommissioned, now scheduled for December 7, 1986 in Portsmouth, VA.

The bill authorizes no Federal funds for the transfer or related purposes. Instead, the city of Baltimore, and its maritime museum, intend to assume all costs connected with transferring and drydocking the cutter, about $200,000.

If the *Taney* were not transferred to Baltimore, the Coast Guard would probably transfer it to Marad for placement in the Ready Reserve Fleet. This would cost the taxpayers about $6,000.

Such a move would also add nothing to our potential sealift capacity since the Coast Guard has said that it is highly unlikely the

Taney could ever be used on the high seas due to its age.

I am pleased to note that this bill has the full support of the Coast Guard and the administration, as well as the unanimous support of the House Merchant Marine and Fisheries Committee.

I urge my colleagues to support this bill and help preserve a rich part of the Coast Guard's heritage in defending freedom.

Mrs. BENTLEY. Mr. Speaker, I rise in support of H.R. 5598 transferring the Coast Guard Cutter *Taney* to the city of Baltimore and the State of Maryland.

The cutter has been named after one of the outstanding Americans of all time, as well as one of the outstanding Marylanders of all time, Chief Justice Roger Brooke Taney. We in Maryland have an excellent maritime museum set up now. This transfer will be very worthwhile and be an important addition to that museum. The *Taney* was commissioned in 1936 and until December 7, 1941, she performed law enforcement and search and rescue duties. She then fought at Pearl Harbor, Okinawa, Korea, and served in Vietnam. The *Taney* is the last U.S. warship out of 101 naval vessels in Pearl Harbor on December 7, 1941, to be in active service. Since that time, the *Taney* has performed faithful service in all Coast Guard maritime missions.

I note also that the transfer will save the Coast Guard money and time in decommissioning the vessel.

It is, therefore, with a sense of pride that I recommend passage of H.R. 5598, and welcome this historic vessel to a new home in Baltimore for the benefit of all Marylanders and those who visit our great State.

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Mr. SHUMWAY. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. JONES of North Carolina. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. LUKEN). The question is on the motion offered by the gentleman from North Carolina [Mr. JONES] that the House suspend the rules and pass the bill (H.R. 5598).

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. JONES of North Carolina. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

MOTOR VEHICLE SAFETY AUTHORIZATION ACT OF 1986

Mr. DINGELL. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 2248) to authorize appropriations for the National Highway Traffic Safety Administration, and for other purposes, as amended.

The Clerk read as follows:

H.R. 2248

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Motor Vehicle Safety Authorization Act of 1986".

(b) TABLE OF CONTENTS.—The table of contents for this Act follows:

Sec. 1. Short title; table of contents.
Sec. 2. Authorization of appropriations.
Sec. 3. Motor vehicle odometer modifications.
Sec. 4. Violation of odometer requirements.
Sec. 5. Tire registration.
Sec. 6. Control of importation of certain vehicles to ensure compliance with safety standards.
Sec. 7. Country of origin safety certification equality.
Sec. 8. Motor vehicle defects.
Sec. 9. Recall notice by lessors.
Sec. 10. Disclosure of bumper impact capability.
Sec. 11. State motor vehicle safety inspection programs.
Sec. 12. Truck wheel spray reduction safety standards.
Sec. 13. Separability.
Sec. 14. Effective date.

SEC. 2. AUTHORIZATION OF APPROPRIATIONS.

(a) NATIONAL TRAFFIC AND MOTOR VEHICLE SAFETY ACT OF 1966.—Section 121 of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1409) is amended by striking out "and" after "1984," and by inserting before the period a comma and the following: "$52,125,000 for fiscal year 1987, and $53,700,000 for fiscal year 1988".

(b) MOTOR VEHICLE INFORMATION AND COST SAVINGS ACT.—

(1) BUMPER STANDARDS.—Section 111 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1921) is amended by striking out "and" after "1984," and by inserting before the period a comma and the following: "$389,000 for fiscal year 1987, and $400,000 for fiscal year 1988".

(2) AUTOMOBILE CONSUMER INFORMATION.—Section 209 of such Act (15 U.S.C. 1949) is amended by striking out "and" after "1984," and by inserting before the period a comma and the following: "$1,939,000 for fiscal year 1987, and $1,997,000 for fiscal year 1988".

(3) ODOMETER REQUIREMENTS.—Section 417 of such Act (15 U.S.C. 1990g) is amended by striking out "and" after "1984," and by inserting before the period a comma and the following: "$489,000 for fiscal year 1987, and $503,670 for fiscal year 1988".

SEC. 3. MOTOR VEHICLE ODOMETER MODIFICATIONS.

(a) TRANSFERS OF MOTOR VEHICLES.—Section 408 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1988) is amended by adding at the end the following:

"(d)(1)(A) Any motor vehicle the ownership of which is transferred may not be licensed for use in any State unless the transferee, in submitting an application to a State for the title upon which such license will be issued, includes with such application the transferor's title and, if that title contains the space referred to in paragraph (2)(A)(iii), a statement, signed and dated by the transferor, of the mileage disclosure required under subsection (a).

"(B) This paragraph shall not apply to any transfer of ownership of a motor vehicle which has not been licensed before the transfer.

"(2)(A) Any motor vehicle the ownership of which is transferred may not be licensed for use in any State unless the title which is issued by the State to the transferee following such transfer—

"(i) is set forth by means of a secure printing process (or other secure process);

"(ii) indicates the mileage disclosure required to be made under subsection (a); and

"(iii) contains a space for the transferee to disclose (in the event of a future transfer) the mileage at the time of such future transfer and to sign and date such disclosure.

"(B) The requirements of subparagraph (A) shall not be construed to require a State to verify, or preclude the State from verifying, the mileage information contained in the title.

"(e)(1) In the case of any leased motor vehicle, the rules under subsection (a) shall require written disclosure regarding mileage to be made by the lessee to the lessor upon the lessor's transfer of ownership of the leased motor vehicle.

"(2) Under such rules, the lessor of a leased motor vehicle shall provide written notice to the lessee regarding—

"(A) such mileage disclosure requirements, and

"(B) the penalties for failure to comply with them.

"(3) The lessor shall retain the disclosures made by any lessee with respect to any motor vehicle under paragraph (1) for a period of at least 4 years following the date the lessor transfers that vehicle.

"(4) For purposes of this section, if the lessor transfers ownership of any leased motor vehicle without obtaining possession of such vehicle, the lessor may, in lieu of the disclosure required by subsection (a), indicate on the title the mileage disclosed by the lessee under paragraph (1) unless the lessor has reason to believe that such disclosure by the lessee does not reflect the actual mileage of the vehicle.

"(f)(1) The requirements of subsections (d) and (e)(1) respecting the disclosure of motor vehicle mileage when motor vehicles are transferred or leased shall apply in a State unless the State has in effect alternate motor vehicle mileage disclosure requirements approved by the Secretary. The Secretary may promulgate regulations establishing procedures for the consideration and approval of such alternate requirements.

"(2) The Secretary shall approve alternate motor vehicle mileage disclosure requirements submitted by a State unless the Secretary determines that such requirements are not consistent with the purpose of the disclosure required by subsection (d) or (e), as the case may be.

"(g) If any motor vehicle is sold at an auction, the auction company which conducts such auction shall establish and maintain for a period of at least 4 years following the date of such sale the following records:

"(1) The name of the most recent owner of the motor vehicle (other than the auction company) and the name of the buyer of the motor vehicle.

"(2) The vehicle identification number of the motor vehicle required under title VI of

this Act or the National Traffic and Motor Vehicle Safety Act of 1966.

"(3) The odometer reading on the date on which the auction company took possession of the motor vehicle.".

(b) DEFINITIONS.—Section 402 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1982) is amended by adding at the end the following:

"(6) The term 'title' means the certificate of title or other document issued by the State indicating ownership.

"(7) The term 'leased motor vehicle' means any motor vehicle which is leased to a person for a term of at least 4 months by a lessor who has leased 5 or more vehicles in the past 12 months.

"(8) The term 'auction company' means any person who takes possession (whether through consignment or bailment or through any other arrangement) of a motor vehicle owned by another person for purposes of selling such motor vehicle at an auction.".

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), subsections (d), (e), (f), and (g) of section 408 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1988), as added by subsection (a) of this section, shall apply with respect to motor vehicles which are transferred after the date 30 months after the date of the enactment of this Act.

(2) REVISION OF STATE LAWS TO CONFORM TO AMENDMENTS.—

(A) TECHNICAL ASSISTANCE.—The Secretary of Transportation shall, upon application, assist a State in revising its laws to comply with the requirements of section 408(d)(1) and (2) of the Motor Vehicle Information and Cost Savings Act.

(B) EXTENSION OF TIME.—If any State requires time, in addition to the period prescribed by paragraph (1) of this subsection, to revise its laws to achieve such compliance, the Secretary may, upon the request of such State, grant, by notice published in the Federal Register, the State such reasonable additional time as the Secretary determines is necessary to achieve such compliance. The Secretary shall include in the Federal Register notice the reasons for granting additional time. In granting additional time, the Secretary shall ensure that the State is making reasonable efforts to achieve such compliance.

(3) MOTOR VEHICLE DEFINED.—For purposes of this subsection, the term "motor vehicle" has the same meaning as when used in the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1901 and following).

SEC. 4. VIOLATION OF ODOMETER REQUIREMENTS.

(a) CIVIL PENALTY.—Section 412(a) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1990b) is amended by striking out "$1,000" and inserting in lieu thereof "$2,000".

(b) CRIMINAL PENALTY.—Section 413(a) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1990c) is amended by striking out "not more than one year," and inserting in lieu thereof "not more than three years,".

SEC. 5. TIRE REGISTRATION.

Section 158(b)(2) of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1418(b)(2)) is amended—

(1) in subparagraph (A), by inserting before the period the following: "and such dealer does not have in effect an election under subparagraph (C) to be covered by paragraph (1)";

(2) in subparagraph (B), by inserting before "to furnish" the following: "and who does not have in effect an election under subparagraph (C)"; and

(3) by adding at the end the following:

"(C) A dealer or distributor whose business is not owned or controlled by a manufacturer of tires may elect to be subject to the requirements applicable under paragraph (1) to manufacturers by notifying the Secretary in writing of such election. Any such election may be revoked by such dealer or distributor at such times and in such manner as the Secretary shall prescribe.".

SEC. 6. CONTROL OF IMPORTATION OF CERTAIN VEHICLES TO ENSURE COMPLIANCE WITH SAFETY STANDARDS.

(a) REPEAL OF GENERAL AUTHORITY FOR IMPORTATION IN ANTICIPATION OF COMPLIANCE.—Section 108(b) of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1397(b)) is amended by striking out paragraphs (3) and (4) and by redesignating paragraph (5) as paragraph (3).

(b) LIMITED AUTHORIZATION FOR IMPORTATION IN ANTICIPATION OF COMPLIANCE.—Section 108 of such Act (15 U.S.C. 1397) is amended by redesignating subsection (c) as subsection (k) and by inserting after subsection (b) the following new subsections:

"(c)(1) Except as provided in this subsection and subsections (d), (e), (f), (g), (h), and (i), a motor vehicle offered for importation in violation of subsection (a)(1)(A) shall be refused entry into the United States.

"(2) In the case of any motor vehicle imported under paragraph (3), the person importing the motor vehicle shall furnish to the Secretary of the Treasury (acting on behalf of the Secretary) an appropriate bond and shall comply with such terms and conditions as it appears to the Secretary appropriate to ensure that any such motor vehicle—

"(A) will be brought into conformity by such person with all applicable Federal motor vehicle safety standards prescribed under this title within a reasonable time after such importation, as specified by the Secretary, or

"(B) will be exported (at no cost to the United States) by the Secretary of the Treasury or abandoned to the United States.

The amount of the bond furnished under this paragraph shall not be less than the dutiable value, as determined by the Secretary, of the motor vehicle with respect to which the bond was furnished, except that the amount of such bond may not exceed 150 percent of such value.

"(3)(A) Subsection (a)(1)(A) and paragraph (1) of this subsection shall not apply to any motor vehicle if—

"(i) the motor vehicle (I) is determined under subparagraph (C) to be substantially similar to motor vehicles originally manufactured for importation into the United States, or (II) can be shown by test data that it can comply with the applicable Federal motor vehicle safety standards,

"(ii) the motor vehicle is imported by an importer registered under subparagraph (F), and

"(iii) the registered importer pays (I) such annual fee as the Secretary establishes to cover the cost of administering the registration program, and (II) such other annual fee or fees as the Secretary reasonably establishes to cover the cost of processing the bond furnished to the Secretary of the Treasury under paragraph (2) and making the determinations under this section.

"(B) The amount or rate of fees under subparagraph (A)(iii) shall be reviewed and, if appropriate, adjusted by the Secretary at least every 2 years. The fee applicable in any calendar year shall be established by the Secretary before the beginning of such year. All fees collected shall be available until expended, without fiscal year limit, to the extent provided in advance by appropriation Acts, solely for use by the Secretary in the administration of all of the requirements of this subsection and subsection (d)(2) relating to the importation of motor vehicles other than the cost of testing motor vehicles or the cost of discovery, notification, and remedy of motor vehicle defects, including any reasonable reimbursement, including an advance thereof of costs of the Secretary of the Treasury under such subsection.

"(C) For purposes of this paragraph, a model (as defined by the Secretary by regulation) of a motor vehicle is substantially similar to a motor vehicle—

"(i) originally manufactured for importation into, and sale in, the United States,

"(ii) certified under section 114 as being in comformity with all applicable Federal motor vehicle safety standards, and

"(iii) of the same model year (as defined by the Secretary by regulation) as the model of the motor vehicle to be compared,

if the concealed safety features of the motor vehicle to be compared are determined by the Secretary to be substantially the same as those of such originally manufactured motor vehicle or the Secretary determines, in accordance with the next sentence, that the motor vehicle can be readily modified with respect to its concealed safety features to make it substantially the same. The Secretary may determine that a motor vehicle can be readily modified with respect to its concealed safety features to make it substantially the same as those of such originally manufactured motor vehicles only if, on the basis of test data submitted to the Secretary, it can be shown that such features can be readily modified to be substantially the same as those of such originally manufactured motor vehicles.

"(D) As used in subparagraph (C):

"(i) The term 'concealed safety features' means the safety features of the motor vehicle for which compliance with Federal motor vehicle safety standards is determined by complex and instrumented tests or destructive tests and for which compliance cannot be determined by visual inspections or simple measurements.

"(ii) The term 'readily modified' means the replacement or addition of components to a motor vehicle without significant change to its structural integrity.

"(E) The Secretary shall make the determination under subparagraph (C) of motor vehicle similarity only on the petition of any registered importer or any manufacturer. The Secretary shall establish by regulation the information required to be provided by the petitioner to clearly show motor vehicle similarity and the procedures for considering such petitions. In establishing such procedures, the Secretary shall provide for a minimum period for public notice and written comment consistent with ensuring expeditious, but full, consideration of the petition and avoiding delay by any person. In considering any petition under this subparagraph, the Secretary shall give due consideration to any test data or other information available to the Secretary, including any information provided by the manufacturer (whether or not confidential). If the Secretary makes a negative determination regarding the similarity of motor vehicles, another petition may not be considered for those motor vehicles until the end of 12 cal-

endar months after such negative determination. The Secretary shall annually publish in the Federal Register a list of all determinations under this subparagraph. Each determination published in the Federal Register shall apply to the motor vehicles with respect to which the determination was made.

"(F)(i) The Secretary shall establish procedures under which the Secretary shall register any person who complies with the requirements of clause (ii) and who has not previously had a registration revoked under clause (iii).

"(ii) In order to acquire and maintain registration under clause (i), an importer shall comply with all requirements which the Secretary shall prescribe by regulation. Such regulation shall include, as a minimum, requirements for recordkeeping, inspection of records and facilities relating to the motor vehicles which such person has imported, modified, or both, and provision for ensuring that the importer (or any successor in interest) will be able technically and financially to carry out the importer's responsibilities under part B of this title (relating to discovery, notification, and remedy of defects).

"(iii) The Secretary shall establish procedures for (I) the revocation or suspension of a registration issued under clause (i) for failure to comply with any requirement of this section or the regulations issued under this section, (II) automatic suspensions of registrations for failure to pay any fee referred to in subparagraph (A)(iii) in a timely manner or for knowingly filing a false or misleading certification under subparagraph (G), and (III) reinstatement of suspended registrations.

"(G)(i) A registered importer shall not release custody of any motor vehicle—

"(I) imported by the registered importer; or

"(II) imported by an individual referred to in subsection (f) and which the registered importer is modifying to meet Federal motor vehicle safety standards;

to any person (including an importer) for license or registration for use on public roads, streets, or highways or license or register an imported motor vehicle for use on public roads, streets, or highways until 30 calendar days after the importer certifies to the Secretary, in such form as the Secretary shall require, that such motor vehicle complies with each Federal motor vehicle safety standard which was prescribed under this title in the year that vehicle was manufactured and which applies in such year to such vehicle, except that no such release shall be permitted if the Secretary gives written notice, before the expiration of such 30 days, that an inspection will be required under clause (iii). If the Secretary gives such notice, such release shall be permitted at any time but only upon the completion of the inspection showing no failure to comply with applicable Federal motor vehicle safety standards for which the inspection was made and the release by the Secretary. The Secretary and the Secretary of the Treasury shall by rule establish procedures to ensure the release of a motor vehicle and bond at the expiration of such 30 days unless the notice under this clause or clause (vi) is issued. Such rule shall provide that, if such notice is issued, the motor vehicle and bond shall be promptly released after the completion of the inspection showing no such failure to comply.

"(ii) In making such a certification under clause (i) with respect to concealed safety features of a motor vehicle, the registered importer may rely on the manufacturer's certification for the model for which the motor vehicle involved is substantially similar if the importer certifies that any modification undertaken by the importer did not affect the compliance of the motor vehicle's concealed safety features and the importer retains records verifying such certification for such period as the Secretary shall prescribe.

"(iii) The Secretary may require that such certification be accompanied by such evidence of compliance as the Secretary considers appropriate or that the certified motor vehicle be inspected by the Secretary, or both.

"(iv) The Secretary shall periodically inspect a representative number of motor vehicles for which certifications have been filed under clause (i). In conducting any program under this title for the testing of motor vehicles, the Secretary shall include a representative number of vehicles for which certifications have been filed under clause (i).

"(v) The bond required under paragraph (2) for a motor vehicle for which a certification has been made under clause (i) may not be released for a period of not less than 30 days after the receipt of the certification. Any release of a bond required under paragraph (2) shall constitute acceptance of any certification or completion of an inspection but not a determination by the Secretary under section 152 of compliance with all applicable Federal motor vehicle safety standards.

"(vi) Notwithstanding clause (i), no motor vehicle or bond may be released if the Secretary believes or has reason to believe that a certification made under clause (i) is false or contains any misrepresentation and the Secretary gives written notice of such belief or reason to believe to the registered importer before the expiration of 30 days after the date such certification is received by the Secretary. If such notice is provided, the motor vehicle involved and the bond required for the motor vehicle involved may not be released until the Secretary is satisfied with the certification and any modification thereof and publishes notice of that fact in the Federal Register.

"(vii) Each registered importer shall include on each motor vehicle released by it under this subsection a label, in such form as the Secretary may prescribe, on which the registered importer is identified and which states that the vehicle has been modified by such importer to comply with all applicable Federal motor vehicle safety standards for that model.

"(d)(1) For purposes of part B of this title (relating to discovery, notification, and remedy of motor vehicle defects)—

"(A) in the case of any defect or failure to comply with any applicable Federal motor vehicle safety standard in, or regarding, any motor vehicle which was originally manufactured for importation to the United States, any imported motor vehicle that has a valid certification under subsection (c)(3)(G) and that is determined to be substantially similar to such motor vehicle shall be treated as having the same defect or failure unless the manufacturer or registered importer demonstrates otherwise to the Secretary;

"(B) the Secretary shall publish in the Federal Register notice of the defect or failure referred to in subparagraph (A); and

"(C) the registered importer shall be treated as the manufacturer with respect to any motor vehicle that it—

"(i) imports, or

"(ii) brings into conformity with applicable Federal motor vehicle safety standards on behalf of an individual under subsection (f).

"(2) The Secretary shall, by regulation, require each registered importer (and any successor in interest) to provide and maintain evidence, satisfactory to the Secretary, of sufficient financial responsibility to meet its obligations under part B of this title (relating to discovery, notification, and remedy of motor vehicle defects).

"(e) Subsections (a)(1)(A) and (c)(1) shall not apply to any motor vehicle or item of motor vehicle equipment if—

"(1) the motor vehicle or item of equipment requires further manufacturing to perform its intended function (as determined under regulations prescribed by the Secretary), and

"(2) it is accompanied at the time of entry by a written statement which is issued by the manufacturer of the incomplete motor vehicle or item of equipment which indicates the applicable Federal motor vehicle safety standard with which such motor vehicle or item is not in compliance.

"(f) Subsections (a)(1)(A) and (c)(1) shall not apply to any motor vehicle that is imported—

"(1) after the effective date of the regulations initially issued to implement the amendments made to this section by the Motor Vehicle Safety Authorization Act of 1986; and

"(2) for personal use, and not for purposes of resale,

by any individual (other than an individual described in subsections (g) and (h)), if that individual—

"(A) furnishes to the Secretary of the Treasury (acting on behalf of the Secretary)—

"(i) an appropriate bond in an amount determined under subsection (c)(2),

"(ii) a copy of a contract or other agreement with an importer registered under subsection (c) for bringing such vehicle into conformity with applicable Federal motor vehicle safety standards, and

"(iii) a certification that such vehicle meets the requirement set forth in clause (i)(I) or (II) of subsection (c)(3)(A); and

"(B) complies with such terms and conditions as the Secretary shall impose as being appropriate to ensure that such motor vehicle—

"(i) will be brought into conformity with all applicable Federal motor vehicle safety standards within a reasonable time, as specified by the Secretary, after such importation, or

"(ii) will be exported (at no cost to the United States) by the Secretary of the Treasury or abandoned to the United States.

The Secretary, for good cause shown, may allow an individual additional time, but not more than 30 days after the day on which the motor vehicle is offered for importation, to comply with subparagraph (A)(ii).".

"(g) Subsections (a)(1)(A) and (c)(1) shall not apply to any motor vehicle if the motor vehicle is imported for personal use, and not for purposes of resale, by any individual (including any member of the uniformed services)—

"(1) whose assigned place of employment is outside the United States as of the date of the enactment of the Motor Vehicle Safety Authorization Act of 1986, and who has not had a assigned place of employment in the United States between that date and the date of entry of such motor vehicle,

"(2) who has not previously imported a motor vehicle into the United States under the authority of this subsection (or subsection (b)(3) with respect to periods before the date of the enactment of the Motor Vehicle Safety Authorization Act of 1986),

"(3) who had acquired (or had entered into a binding contract to acquire) such motor vehicle before the date of enactment of this subsection,

"(4) who enters such motor vehicle not later than 4 years after such date of enactment, and

"(5) who meets the terms, conditions, and other requirements in effect under subsection (b)(3) on the day before the date of the enactment of this subsection.

Paragraphs (1) through (5) shall be carried out by certification in such form as either the Secretary or the Secretary of the Treasury may prescribe. As used in this subsection, the term 'assigned place of employment' means the principal location at which an individual is permanently or indefinitely assigned to work. In the case of a member of the uniformed services, such term means the individual's permanent duty station.

"(h) Subsections (a)(1)(A) and (c)(1) shall not apply to any motor vehicle if the motor vehicle is imported on a temporary basis for personal use by any individual—

"(1) who is a member of the personnel of a foreign government on assignment in the United States who is within the class of persons for whom free entry of motor vehicles has been authorized by the Secretary of State,

"(2) who is a member of the armed forces of a foreign country on assignment in the United States, or

"(3) who is a member of the Secretariat of a public international organization so designated under the International Organizations Immunities Act.

The Secretary or the Secretary of the Treasury may require such verification of such status as the Secretary considers appropriate. The Secretary shall ensure that any motor vehicle entered under this subsection will be exported (at no cost to the United States) or abandoned to the United States when the individual involved ceases to reside in the United States and hold such status. No motor vehicle imported under this subsection may be sold while within the United States.

"(i) Subsection (a)(1)(A) and (c)(1) shall not apply to any motor vehicle that is 25 or more years old.

"(j) The Secretary may exempt any motor vehicle or item of motor vehicle equipment from subsections (a)(1)(A) and (c)(1) upon such terms and conditions as the Secretary may find necessary solely for the purpose of research, investigations, studies, demonstrations or training, or competitive racing events.".

(c) MANUFACTURER'S CERTIFICATION REQUIRED.—Section 108(a)(1)(A) of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1397(a)(1)(A)) is amended by inserting after "conformity with such standard" the following: "and is covered by a certification issued under section 114,".

(d) MODIFICATION OF CERTIFICATION REQUIREMENTS.—Section 114 of such Act (15 U.S.C. 1403) is amended—

(1) by inserting ", as appropriate," after "furnish to the distributor or dealer";

(2) by striking out "or distributor" each place it appears;

(3) by inserting after the first sentence the following: "Every distributor of a motor vehicle or motor vehicle equipment shall furnish to a dealer (or subsequent distributor) at the time of delivery of such motor vehicle or equipment the manufacturer's certification which was previously furnished to the distributor."; and

(4) by adding at the end the following: "As used in this section, the term 'manufacturer' means any person engaged in the manufacturing or assembling of motor vehicles or motor vehicle equipment, including any other person who acts for or is under the control of such person with respect to the importation of such motor vehicles or equipment.".

(e) TECHNICAL AMENDMENTS.—

(1) Section 108(a(1)(A) of such Act (15 U.S.C. 1397(a)(1)(A)) is amended by striking out "subsection (b)" and inserting in lieu thereof "subsections (b), (c), and (d)".

(2) Section 108(b)(2) of such Act (15 U.S.C. 1397(b)(2)) is amended by striking out "or importer".

(f) EFFECTIVE DATE; NOTICE; REVIEW; REPORT.—

(1) EFFECTIVE DATE.—

(A) GENERAL RULE.—The amendments made by this section shall, unless otherwise specified, take effect for any person subject to such amendments, other than the Secretary of Transportation, not later than the date regulations are promulgated by the Secretary of Transportation to implement subsections (b) through (k) of section 108 of the National Traffic and Motor Vehicle Safety Act (as added by this section) or 12 calendar months after the date of the enactment of this section, whichever comes first. The amendments made by this section shall apply to the Secretary of Transportation for purposes of implementation upon the date of the enactment of this Act.

(B) TRANSITION.—If before the end of 6 months after the date of the enactment of this Act, the regulations referred to in subparagraph (A) have been proposed for more than 45 days but not promulgated, the Secretary of Transportation may for purposes of transition, by notice published in the Federal Register, treat such proposed regulations as interim regulations for purposes of implementing such subsections of section 108, except that interim regulations for the implementation of subsections (c) and (d) of such section 108 shall not be effective for more than 6 calendar months after the date of the publication of such notice. Under such interim regulations for the implementation of subsections (c) and (d) of such section 108, the Secretary may consider and determine requests for registrations and petitions under such subsection (c), but no motor vehicle may be imported until the proposed regulations are promulgated and no such registration shall be effective for more than one year. No court may grant a stay of the interim regulations for the implementation of such subsections of section 108 during judicial review of the regulations. If upon such review, any court should stay the regulations after promulgation, the amendments made by this section—

(i) shall not take effect for any person, and

(ii) the provisions of section 108 of such Act shall continue in effect,

during such stay or until such regulations become, after such review, final.

(2) NOTICE.—As soon as possible after the date of the enactment of this Act, the Secretary of Transportation shall take reasonable steps designed to encourage notification to the extent feasible regarding the provisions of subsections (f), (g), and (h) of section 108 of such Act (as added by this section) to be promptly made to individuals who may be affected by such amendments.

(C) GAO REVIEW.—The Comptroller General of the United States shall conduct a review of the program authorized by the amendments made by this section. The review shall be based on not more than 3 years of experience under the program and shall consider all aspects of the program with emphasis on—

(A) the extent to which motor vehicles imported under the program are fully in compliance with applicable Federal motor vehicle safety standards when released to operate on public roads, streets, and highways;

(B) whether safety considerations warrant extension of the program; and

(C) the administration and enforcement of the program (including actions relating to discovery, notification, and remedy of defects required by such program and the adequacy of the fees) by the Secretary of Transportation.

Promptly upon the completion of the review, the Comptroller General shall submit a report on the review to Congress.

(4) REPORT.—Not later than 18 months after the initial regulations required after this section are promulgated, the Secretary shall provide to Congress a report of the actions taken under this section and the effectiveness of such actions, including the results of any testing by the Secretary under this section. Thereafter, the Secretary shall report by July of each year on such actions.

(g) EXEMPTIONS PROHIBITED.—Notwithstanding any provision of law authorizing exemptions from energy conservation requirements for manufacturers of fewer than 10,000 motor vehicles, a registered importer under section 108(c) of the National Traffic and Motor Vehicle Safety Act of 1966 shall not be treated as such a manufacturer for purpose of such exemptions with respect to any motor vehicle that it—

"(1) imports; or

(2) brings into conformity with applicable Federal motor vehicle safety standards on behalf of an individual under section 108(f) of such Act.

SEC. 7. COUNTRY OF ORIGIN SAFETY CERTIFICATION EQUALITY.

(a) STATEMENT OF PURPOSE.—In order to promote compliance with Federal motor vehicle safety standards, established for the protection of human life and health, it is the purpose of this section to provide a fair and effective method of certification regarding compliance of certain motor vehicles that takes into account the compliance methods in use where such vehicles are manufactured.

(b) AMENDMENT OF CERTIFICATION PROVISIONS.—Section 114 of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1403) is amended by inserting "(a)" after "SEC. 114." and by adding at the end the following:

"(b)(1) In the case of any motor vehicle the manufacturing and assembly of which occurs on or after 2 years after the date of the enactment of this subsection in a country which has one or more corresponding safety standards, any certification under subsection (a) for such vehicle shall not be complete unless it is accompanied by—

"(A) a declaration by the manufacturer that the country of origin of the vehicle, in applying its corresponding safety standards to any motor vehicle manufactured or assembled in the United States and exported for entry to such country for sale or distribution, accepts the certification by the United States manufacturer that the vehicle

conforms to each of the corresponding safety standards—

"(i) without further testing, inspection, or reporting requirements for the vehicle as a condition of its sale or distribution, and

"(ii) under procedures which impose no greater regulatory burden than is experienced under the preceding provisions of this section in the case of any motor vehicle, whether or not manufactured or assembled in the United States; or

"(B) in the absence of such declaration, a verification by the Secretary that the vehicle complies with the Federal motor vehicle safety standards for which there are such corresponding safety standards, which verification shall be made under a designated type approval system—

"(i) which is established by the Secretary,

"(ii) which is determined by the Secretary to be approximately comparable to the system in use by the country of origin for assessing whether a motor vehicle manufactured or assembled in the United States and exported for entry to such country conforms to all of the applicable corresponding safety standards, and

"(iii) the administrative costs of which shall be recovered by such fees as the Secretary may reasonably establish.

"(2)(A)(i) Paragraph (1) shall only apply to vehicles manufactured or assembled outside of the United States in a country for which the Secretary determines there were 350,000 or more new motor vehicles which were manufactured or assembled in such country and which were entered for sale in, or introduced or delivered for introduction in, interstate commerce during calendar year 1984.

"(ii) The determination under clause (i) shall be made based on the information contained in the March 1985 issue of the document published by the United States International Trade Commission entitled 'The U.S. Automobile Industry: Monthly Report on Selected Economic Indicators'.

"(B)(i) Verification of motor vehicles in accordance with paragraph (1)(B) shall not be required with respect to motor vehicles manufactured in a foreign country if, after public notice and an opportunity for public hearing, the Secretary, in consultation with the United States Trade Representative, finds (on the basis of the record of the hearing) that the burdens of such requirement on the United States and United States manufacturers outweigh the benefits of access to the motor vehicle market of such country by United States manufacturers resulting from such requirement.

"(ii) A finding under clause (i) shall cease to be effective unless renewed by the Secretary at least once every 2 years in accordance with the procedures prescribed by such clause. The Secretary is not required to review such finding if the Secretary has withdrawn the verification requirement.

"(C) Paragraph (1) shall not apply in any model year to any type of motor vehicle manufactured in a foreign country if the Secretary, after public notice and an opportunity for public hearing, finds on the basis of the record of the hearing that the potential market in the United States in such model year for such type is not, and will not be, substantial.

"(3)(A) The rate of any fee under paragraph (1)(B)(iii) during any calendar year shall be fixed by the Secretary before the beginning of such year.

"(B) Fees collected shall be available, without fiscal year limitation and to the extent provided in advance by an appropriation Act, for use by the Secretary solely for administering the designated type approval systems under this subsection.

"(4) A verification by the Secretary under paragraph (1)(B) that a motor vehicle complies with Federal motor vehicle safety standards shall not constitute any determination by the Secretary under section 152 of compliance with all applicable Federal motor vehicle safety standards.

"(5) As used in this subsection:

"(A) The term 'corresponding safety standard', when used in relation to a Federal motor vehicle safety standard, means any performance or design standard which the Secretary determines—

"(i) is established by or under any law or regulation of a foreign country,

"(ii) addresses the same or comparable safety aspect of performance addressed by the Federal safety standard, and

"(iii) imposes equivalent or less stringent requirements than the Federal safety standard.

"(B) The term 'country of origin' means the country in which occurs the manufacturing or assembly of a motor vehicle that requires no further manufacturing to perform its intended function.

"(C) The term 'designated type approval system' means a method of verifying compliance with safety standards under which one or more vehicles of the type in question are evaluated by or on behalf of the Secretary by testing, inspection, test data review, or other method.".

SEC. 8. MOTOR VEHICLE DEFECTS.

Section 154 of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1414) is amended by adding at the end the following:

"(d) If notification is required under section 151 or by an order under section 152(b) and has been furnished by the manufacturer to a dealer of motor vehicles with respect to any new motor vehicle or new item of replacement equipment in the dealer's possession at the time of notification which fails to comply with an applicable Federal motor vehicle safety standard or contains a defect which relates to motor vehicle safety, then such dealer may sell or lease such motor vehicle or item of replacement equipment only if—

"(1) the defect or failure to comply has been remedied in accordance with this section before delivery under such sale or lease, or

"(2) in the case of notification required by an order under section 152(b), enforcement of the order has been restrained in an action to which section 155(a) applies or such order has been set aside in such an action.

Nothing in this subsection shall be construed to prohibit any dealer from offering for sale or lease such vehicle or item of equipment.".

SEC. 9. RECALL NOTICE BY LESSORS.

(a) SECTION 153.—Section 153 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1513) is amended by adding at the end the following:

"(d) If a lessor of a leased motor vehicle receives a notice required by section 151 or 152, the lessor shall, within 14 days after receiving such notice, provide a copy of such notice by first class mail to the lessee of such motor vehicle. The Secretary shall, within 180 days of the date of the enactment of this subsection, issue such regulations as may be appropriate to implement the requirement of this subsection. Such regulations may permit reasonable and mutually acceptable arrangements under which the notice required by this subsection may be provided directly to a lessee by a manufacturer in appropriate cases. The term 'leased motor vehicle' has the definition prescribed by section 402(7).".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall not take effect until regulations of the Secretary of Transportation first promulgated under section 153(d) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1513) take effect.

SEC. 10. DISCLOSURE OF BUMPER IMPACT CAPABILITY.

The Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1901 and following) is amended by inserting after section 102 the following new section:

"DISCLOSURE OF BUMPER IMPACT CAPABILITY

"SEC. 102A. (a) The Secretary shall promulgate, in accordance with this section, a regulation establishing passenger motor vehicle bumper system labeling requirements. Such regulation shall apply to passenger motor vehicles manufactured for model years beginning more than 180 days after the date such regulation is promulgated as provided in subsection (c)(2).

"(b) The regulation required in subsection (a) shall provide that, before any passenger motor vehicle is offered for sale, the manufacturer shall affix a label to such vehicle, in a format prescribed in the regulation, disclosing an impact speed at which the manufacturer represents that the vehicle meets the applicable damage criteria. For purposes of this subsection, the term 'applicable damage criteria' means the damage criteria applicable under section 581.5 (c) of title 49, Code of Federal Regulations (as in effect October 1, 1984).

"(c)(1) Not later than 90 days after the effective date of this section, the Secretary shall publish in the Federal Register a proposed initial regulation under this section.

"(2) Not later than 150 days after such effective date, the Secretary shall promulgate a final initial regulation under this section.

"(d) The Secretary may allow a manufacturer to comply with the labeling requirements of subsection (b) by permitting such manufacturer to make the bumper system impact speed disclosure under subsection (b) on the label required by section 506 of this Act or section 3 of the Automobile Information Disclosure Act (15 U.S.C. 1232).

"(e) The regulation under subsection (a) shall provide that the information disclosed under this section be provided to the Secretary at the beginning of the model year for the model involved. As soon as practicable after receiving it, the Secretary shall furnish and distribute to the public such information in a simple and readily understandable form in order to facilitate comparison among the various types of passenger motor vehicles. The Secretary may by rule require automobile dealers to distribute to prospective purchasers any information compiled pursuant to this subsection.

"(f) For purposes of this section, the term 'passenger motor vehicle' means any motor vehicle to which the standard under part 581 of title 49, Code of Federal Regulations, is applicable.".

SEC. 11. STATE MOTOR VEHICLE SAFETY INSPECTION PROGRAMS.

(a) IN GENERAL.—Part A of title III of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1961 and following) is amended by adding at the end the following:

"STATE MOTOR VEHICLE SAFETY INSPECTION PROGRAMS

"SEC. 304. (a) The Secretary shall undertake to enter into appropriate arrangements with the National Academy of Sciences to conduct a study of the effectiveness of State motor vehicle safety inspection programs in—

"(1) reducing highway accidents that result in injuries and deaths, and

"(2) limiting the number of defective or unsafe motor vehicles on the highways.

"(b)(1) The study shall include an evaluation of the implementation, inspection criteria, personnel, budgeting, and enforcement of all types of State motor vehicle safety inspection programs or periodic motor vehicle inspection programs, including inspections of motor vehicle brakes, glass, steering, suspension, and tires.

"(2) If warranted by the study, the National Academy of Sciences shall develop and submit to the Congress recommendations for an effective and efficient State motor vehicle safety inspection program.

"(c) The study shall also consider the feasibility of use by States of private organizations to conduct motor vehicle safety inspection programs and of combining safety and emission inspection programs.

"(d) Appropriate public and private agencies and organizations including the Secretary, the Administrator of the Environmental Protection Agency, affected industries and consumer organizations, State and local officials, and the motor vehicle insurance industry should be consulted in conducting the study required under this section.

"(e) Subject to the availability of funds and when the arrangements with the National Academy of Sciences are completed, the study required by subsection (a) shall be completed and transmitted to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives within 18 months after the date of the enactment of this section.".

SEC. 12. TRUCK WHEEL SPRAY REDUCTION SAFETY STANDARDS.

Part A of title I of the National Traffic and Motor Vehicle Safety Act of 1966 is amended by adding at the end the following:

"SEC. 126. (a) The Secretary shall promulgate minimum standards which are for the installation and performance of splash and spray suppression devices for use on truck tractors, semitrailers, or trailers, which are practicable, which provide objective criteria, and which meet the need for motor vehicle safety, except that, notwithstanding any other provision of law, the Secretary shall not be required to promulgate such standards if—

"(1) the Secretary has determined that there is no available technology that can (A) substantially reduce splash and spray from truck tractors, semitrailers, and trailers, and (B) substantially improve visibility of drivers, as demonstrated during testing under wind, rain, and wet roadway conditions in actual highway use, or

"(2) the Secretary has determined that the standards based on such technology will not result in protecting the public from unreasonable risk of death or injury due to accidents resulting from splash and spray from truck tractors, semitrailers, and trailers.

The Secretary shall ensure that any such standard fosters competition among manufacturers of splash and spray suppression devices.

"(b) The Secretary shall promulgate such standards or make the determinations described in paragraphs (1) and (2) of subsection (a) not later than 12 months after the date of the enactment of this section.".

SEC. 13. SEPARABILITY.

If any provision of this Act or any amendment made by this Act is held by a court to be invalid, such holding shall not affect any other provision of or amendment made by this Act.

SEC. 14. EFFECTIVE DATE.

Except as expressly provided otherwise, this Act shall take effect on the date of the enactment of this Act.

The SPEAKER pro tempore. Is a second demanded?

Mr. FRENZEL. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Michigan [Mr. DINGELL] will be recognized for 20 minutes and the gentleman from Minnesota [Mr. FRENZEL] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Michigan [Mr. DINGELL].

Mr. DINGELL. Mr. Speaker, I yield myself 5 minutes.

Mr. Speaker, H.R. 2248 was reported unanimously by our committee after considerable effort by the distinguished and able chairman of the Subcommittee on Telecommunications, Consumer Protection and Finance, Congressman TIMOTHY E. WIRTH.

Our committee is also grateful to the ranking minority member, Mr. MATTHEW RINALDO, and other members, including Congressmen OXLEY and BLILEY and the gentlelady from Illinois, Mrs. COLLINS. Through their efforts, the controversy was resolved and it received the approval of the entire committee.

The bill also received strong support from the Committee on Ways and Means, through the efforts of Chairman ROSTENKOWSKI and Subcommittee Chairman GIBBONS and Congressman PEASE. The amended version of the bill includes, with some changes worked out with that committee, the provisions urged by the Committee on Ways and Means.

The bill provides funds for fiscal years 1987 and 1988 for the National Highway Traffic Safety Administration to carry out its motor vehicle safety program. It is within the budget. It also contains a number of substantive changes to existing law concerning odometer fraud and penalties, certification of vehicles, an inspection study, gray market imports requirements, notification by dealers of defects, disclosure of bumper impact, recall notices, and other matters.

The gray market provisions will continue to allow imports, but only after considerable improvement in the measures to ensure that such vehicles meet Federal safety standards.

The self-certification provision is particularly important, Mr. Speaker, because it assures that countries with major automobile imports to the United States, like Japan, will provide the same simple self-certification for our exports to those countries that the Japanese enjoy here. It is reasonable and fair. It is not rigid.

Most important, there is no diminution of safety for either country. In all cases, the importer must meet the safety requirements of the appropriate country.

Mr. Speaker, this is a long overdue provision that has broad support.

I urge its adoption.

Mr. WIRTH. Mr. Speaker, H.R. 2248 authorizes appropriations for the National Highway Traffic Safety Administration for fiscal years 1987 and 1988 and makes several other important amendments to our automobile safety and consumer laws. The bill has strong bipartisan support in our Committee and was passed by the Subcommittee on Telecommunications, Consumer Protection and Finance on June 18, 1985, by voice vote, and by the full Committee on Energy and Commerce, as amended, by voice vote on August 12, 1986.

Each year nearly 45,000 people are killed on our highways and millions more are injured. The National Highway Traffic Safety Administration, or NHTSA, has the awesome mandate to develop and promulgate safety standards, ferret out defects, and provide important consumer information aimed at decreasing these automobile fatalities and injuries. Safety standards developed to date have been enormously successful—agency studies indicate that over the last 10 years NHTSA standards have saved over 90,000 lives and prevented many more injuries.

The bill before us today reauthorizes these important programs and, I hope, will provide much needed guidance in setting agency priorities.

H.R. 2248 provides a bare-bones budget of NHTSA. The funds we are authorizing for 1987 are the same as those levels passed by the House this summer in the DOT appropriations bill. The fiscal year 1988 figures represent only a 3-percent increase to allow for inflation over 1987, and a 3-percent decrease from what we appropriated for NHTSA in fiscal year 1985.

H.R. 2248 also provides much-needed tools to combat odometer fraud through amendments to current law developed by Congressmen BRYANT, DINGELL, TAUKE, and myself. Rolling back odometers costs consumers in excess of $2 billion annually. In fact, the National Automobile Dealers Association estimates that over 3 million used cars sold each year have had their odometers rolled back. The average rollback is 30,000 miles and costs consumers an average of $750 per car. The legislation before us enacts more stringent penalties for this type of illegal activity and revamps titling, long-term leasing, and auction responsibilities to save purchasers billions of dollars.

The legislation contains a compromise provision that would ensure that gray market

automobiles imported into this country are brought into compliance with safety standards, and that direct importers carry out defect and recall requirements. Last year some 60,000 vehicles were imported into this country and were supposed to be modified to conform with all applicable safety standards. Yet, when the Department of Transportation visually inspected and crash tested randomly selected vehicles they found grave infractions of the law. Forty percent of the cars tested failed to have all the necessary modifications in physical inspections. When two cars were crashed tested—a procedure that all manufacturers must conduct to certify compliance with standards—both cars failed.

Thus, our committee had serious concerns as to whether in fact cars not originally manufactured for sale in this country could be modified to comply with our safety laws, and if so, how to ensure that necessary work was done safely and that defect and recall campaigns could be carried out. We decided not to foreclose completely the importation of noncomplying vehicles and adopted a comprehensive program which provides safeguards to the motoring public. Under this scheme, DOT is required to make the technical determination of whether a car can be modified to comply with safety standards on a model-by-model basis, before a car may be imported. Those who modify vehicles will have to register with DOT and show evidence that they are financially and technically capable of carrying out modifications and other provisions of our safety laws.

The purpose of these amendments is to ensure that gray market importers are not treated differently than original manufacturers. Both must comply with safety laws and they must pay taxes such as the gas guzzler tax, which, until a February Internal Revenue Service ruling, were not paid by gray market importers, resulting in millions of dollars lost to the U.S. Government. The IRS is now trying to collect these lost taxes, an activity which I'm sure many of our colleagues would heartily endorse. We have worked with our colleagues at the Ways and Means Committee to bring to the House a gray market compromise which ensures safety and ensures fairness.

H.R. 2248 also makes important amendments to our defects and recall laws to ensure that people who lease cars on a long-term basis are notified in the event of a safety recall, and that automobile dealers correct any defects subject to a recall before they deliver the car to the ultimate purchaser.

This bill includes a provision authored by Chairman DINGELL to encourage foreign countries to adopt self-certification requirements for U.S.-made vehicles sold in those countries, while ensuring that the effects of this process are beneficial to the United States and U.S. manufacturers. A provision proposed by Mr. OXLEY is aimed at ending the controversy that has developed regarding splash and spray suppression devices, known as mudflaps. The provision requires the Department of Transportation to issue standards for splash and spray devices for trucks within 12 months unless DOT finds that these standards are not practicable, do not work under actual highway conditions, and will not meet the need for safety. All of us who have ever followed behind a large truck in the rain and been temporarily blinded by the spray will appreciate the need for this provision.

H.R. 2248 requires NHTSA to implement the long-awaited bumper ratings program, which will be of great use to consumers. Since NHTSA rolled-black the bumper standard from 5 miles per hour to 2.5 miles per hour in 1982, it has promised to provide consumers information on what level of damageability various car bumpers provide. Yet, 4 years later we still have no bumper information program from NHTSA.

Therefore, this bill requires manufacturers to disclose the impact speed at which each bumper meets applicable damage criteria and print the rating on the window sticker of each new car offered for sale. I understand that the Ford Motor Co. is already providing such information to prospective purchasers and they should be commended for this action. Each year, under the legislation, NHTSA is required to develop a comparative brochure on bumper ratings for distribution to the public, and can require that auto dealers distribute this information.

Recent crash tests done by the Insurance Institute for Highway Safety [IIHS] show how important bumper information can be to consumers. The Ford Escort, when tested at the old standard of 5 miles per hour impacts sustained no damage in front-to-barrier and rear-to-barrier tests. Angle tests yielded $361 in damages. However, when the Yugo GV, which has a price of $3,990 was tested at the same 5 miles per hour speeds it sustained damages of an incredible $2,197—over 55 percent of the value of the car in a 5 miles per hour fender bender. Clearly, publicizing information of this type has an enormous value to consumers.

Finally, H.R. 2248 eliminates possible duplication in the tire registration and recall laws, and provides for a review of State motor vehicle inspection programs, an issue of interest to Congressman SCHEUER.

Mr. Speaker, H.R. 2248 enjoys strong bipartisan support and in fact was reported from the Energy and Commerce Committee by unanimous voice vote. It is backed by public interest groups and automobile manufacturers and dealers alike. It is compromise legislation, but it is a good compromise to several thorny automobile safety issues.

H.R. 2248 provides both safety and, when implemented, will save consumers money. I urge that my colleagues join me in supporting the bill today.

Mr. FRENZEL. Mr. Speaker, I yield myself 5 minutes.

Mr. Speaker, my committee, the Committee on Ways and Means, had secondary jurisdiction. Primary jurisdiction for this legislation was in the committee of the distinguished gentleman from Michigan [Mr. DINGELL]. His distinguished ranking member, the gentleman from New Jersey [Mr. RINALDO] would like to be here handling this second. In his absence I am doing so.

The Committee on Ways and Means had jurisdiction only over section 6 and section 7 of the bill. Section 6 begins on page 10, section 7 on page 44.

Our committee made some changes. They were not heavily substantive and were in general worked out with the Committee on Energy and Commerce which produced the bill. The bill was passed by a substantial majority in the Ways and Means Committee after coming out of the Committee on Energy and Commerce.

Nevertheless, Mr. Speaker, there remain some features of section 6 and section 7 that make them unacceptable at least to me and probably to the administration. The administration, I understand, believes that section 7, which is the so-called reciprocity on certification section, should be removed. I believe that it should be too.

The USTR has certified that there remain, particularly since the July changes by the Government of Japan, no trade barriers with respect to certification of American automobiles in Japan, and section 7, in my judgment, and in the administration's as well, does provide for a discriminatory change in American rules under the guise of reciprocity.

In addition, there is a problem, I am told, in section 6 with respect to compliance with Federal safety standards for the Secretary of certain public international organizations. My problem is mainly with section 7, and I believe that we make a mistake unless we follow the recommendations of the USTR and the administration on this matter.

Mr. Speaker, I have no comment on the Energy and Commerce section. Our committee respects whatever the Energy and Commerce Committee wants to do on other than section 6 and section 7, and as I indicated, my feelings are in a minority on the Committee on Ways and Means.

Mr. Speaker, I reserve the balance of my time.

Mr. DINGELL. Mr. Speaker, I yield 3 minutes to my dear friend, the distinguished gentleman from Illinois [Mr. ROSTENKOWSKI], chairman of the Committee on Ways and Means.

Mr. ROSTENKOWSKI. Mr. Speaker, I rise in support of H.R. 2248, the Motor Vehicle Safety Authorization Act of 1986. The substitute bill under consideration today incorporates a number of amendments adopted by the Committee on Ways and Means with respect to so-called gray market vehicles and the mirror certification of imports from Japan. The first amendment would permit private individuals, not just registered importers or converters, to import gray market vehicles, as long as they use the services of registered importers in converting the vehicles to meet U.S. standards. Nearly 75 percent of gray market vehicles currently are imported by private individuals. The substitute bill, like

the amendment reported by the Committee on Ways and Means allows these individual imports to continue but ensures that no such vehicles would be permitted to be used on U.S. highways until all U.S. safety standards have been met. A second amendment would delete the sunset provision from the bill as reported by the Committee on Energy and Commerce. Our committee took this action for two reasons: First, that the sunset provision as reported by the other committee may be unconstitutional, and second, that it would be far better to allow the new gray market regulations to continue in existence unless Congress decides to take affirmative steps to change or eliminate them. The third amendment to the gray market section would provide an exception for the importation of antique or classic vehicles.

The section relating to the mirror certification of motor vehicle imports from Japan is nearly identical to the version reported by the Committee on Energy and Commerce. A minor amendment would require consultation by the Secretary of Transportation with the U.S. Trade Representative under certain circumstances.

I am pleased that the Committee on Energy and Commerce accepted the amendments reported by the Committee on Ways and Means. The substitute bill retains the overall integrity of the original version but introduces an important measure of flexibility. I support the adoption of H.R. 2248 and urge my colleagues to vote in favor of the bill.

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Mr. DINGELL. Mr. Speaker, will the gentleman yield?

Mr. ROSTENKOWSKI. I yield to the gentleman from Michigan.

Mr. DINGELL. Mr. Speaker, I would like to observe that we on the Committee on Energy and Commerce have gratefully received the suggestions of our good friends on the Committee on Ways and Means. We were happy to take them. We believe the changes improve the bill. It is always a pleasure to work with our colleagues on that committee.

Mr. ROSTENKOWSKI. I thank the gentleman.

Mr. FRENZEL. Mr. Speaker, I yield 3 minutes to the distinguished gentleman from Ohio [Mr. OXLEY], a member of the Committee on Energy and Commerce.

Mr. OXLEY. Mr. Speaker, I rise in support of H.R. 2248, the Motor Vehicle Safety Authorization Act, and I want to commend my colleagues for finally bringing this important legislation to the floor of the House. In the Energy and Commerce Committee, there were long negotiations over the past year that have, I believe, succeeded in resolving a number of controversial issues.

While I support the bill as a whole, I am not particularly happy with section 7 of the bill, relating to country-of-origin certification. In light of recent improvements by the Japanese of their certification procedures for American cars imported into Japan, I do not see section 7 as being necessary. However, I am pleased that certain exemptions have been included in the bill that provide the Secretary with some discretion to take into account current U.S. market conditions.

Mr. Speaker, I would also like to call my colleagues' attention to section 12 of the bill, which addresses the statutory requirement from the 1982 Surface Transportation Act that trucks be equipped with mudflaps to reduce splash and spray. NHTSA admits that it is late in promulgating final regulations in this regard; however, NHTSA feels that, based on a number of tests to date, there is insufficient and conflicting evidence as to what level of splash and spray reduction can be achieved under a variety of road conditions. Therefore, language is included in the bill that requires NHTSA to go forward with final regulations unless: First, there is no available technology to reduce splash and spray and improve visibility under actual highway use; or second, any standard will not result in protecting the public from accidents resulting from splash and spray. In addition, the language requires the Secretary to ensure that any standard fosters competition among the manufacturers of splash and spray suppression devices. Thus, the bill requires that any standards promulgated must improve safety and permits needed and open competition among mudflap manufacturers.

Mr. Speaker, H.R. 2248 makes a number of other needed changes in our automotive safety laws. This important bill deserves the support of the full House.

Mr. FRENZEL. Mr. Speaker, I yield 8 minutes to the gentleman from New Jersey [Mr. RINALDO], the distinguished ranking member of the Committee on Energy and Commerce.

Mr. RINALDO. Mr. Speaker, the version of H.R. 2248 which we have before us today is a good bill that deserves the full support of both the Republican and Democratic Members. It is the product of bipartisan efforts in a long deliberative process within the Energy and Commerce Committee.

Although H.R. 2248 covers a range of auto safety concerns, ranging from mudflaps and bumpers to odometers, the parts that should be of most concern to Members are the gray market provisions, the country-of-origin safety certification section, the authorization levels, and the odometer disclosure and fraud provisions.

GRAY MARKET

The gray market section of this bill reflects the safety concerns that prompted me to introduce H.R. 1006 last year. Over the years, existing law has permitted certain foreign vehicles to arrive in the United States and enter the stream of commerce, even though they do not conform to our safety standards. These vehicles are different than those imported by foreign manufacturers through their dealerships.

In most cases, a vehicle destined for the U.S. market is made on a separate assemblyline and is markedly different from the comparable model made for European use. It is these foreign versions that have been entering the U.S. market.

Until recently, they have been entering in ever-increasing numbers. Approximately 1,500 came in during 1980. By 1985, that number had risen to 66,000. Although those vehicles were required to be converted to meet our safety standards, there were numerous cases in which they were not properly modified.

Because of the changing market, due in part to the readjustment of currency exchange rates, the number of gray market cars expected to enter this year is only 25,000—less than half of the number brought in during 1985. But the lower number does not lessen the need for legislation.

First, international currency exchange rates can change again, creating great economic pressure for more direct imports of gray market cars. Second, the risks to the individual car buyer, and the others that share the road with him, are no less whether it is one car or 50,000 cars.

There is a popular misconception that it is relatively easy to convert these foreign cars to meet our standards. The truth is that it is more than changing lights, windshields, and mufflers. Some gray market converters learned the truth once they tried to bring cars into compliance. Unfortunately, consumers learned the hard way, because of shoddy workmanship or disreputable converters.

This is not to malign the majority of those in the business. Most are both competent and reliable. But a few jeopardize the entire direct importer industry.

The gray market provision before us today is good legislation. Even though it does not ban gray market vehicles, it retains the safety-related concerns of my original bill while preserving the benefits of competition, consumer choice, and the domestic industry. The bill provides for an effective system of registration, bonding, inspection, recordkeeping, and labeling.

I have received assurances from the industry, and from NHTSA that future vehicles imported outside of

the normal distribution chain can, and will, be brought into compliance with our safety standards.

As reported by the Energy and Commerce Committee, our legislation would have terminated the gray market after 5 years unless it was shown to have been effective. For the sake of moving this legislation at this late date in the session, the Commerce Committee agreed to accept an amendment recommended by the Ways and Means Committee to eliminate that sunset provision. But, under the bill as amended, there will be a full review after 3 years. I, and others on the Commerce Committee, fully expect to monitor and examine the success or failure of this compromise in the coming years. If, contrary to present expectations, it does fail, we will be back with other legislation that provides for a more drastic response.

FUNDING LEVELS

Another major area of concern to many Members is the level of appropriations authorized by the bill. The total amount authorized for fiscal year 1987 is under $55 million. That is below what was appropriated for the same purposes for fiscal year 1986, and is at the same level contained in the House-passed appropriations bill. It is also some $5 million below what was in the bill when the telecommunications, consumer protection, and Finance Subcommittee approved the bill.

CERTIFICATION RECIPROCITY

The third part of the bill on which I will specifically comment is section 7. That section requires that vehicles imported to the United States would have to be accompanied by a declaration that the exporting country allows compliance with their safety standards to be determined by certification of the importer in the same manner that we permit their cars to show compliance with our standards.

This provision is based on the same principle that formed the basis of the amendment that I made to H.R. 3131, the telecommunications trade bill. It is the principle that we should not tolerate a double standard. We have opened our doors to imports from foreign countries, yet we face restrictive procedures when we export to those countries.

I commend Chairman DINGELL on this proposal. It is unfair, and contrary to good trade policy to permit easy access to our markets on the one hand, while tolerating restrictive policies of other countries.

ODOMETER FRAUD AND MILEAGE DISCLOSURE

Also included in this bill is a twofold proposal that reflects a get tough policy regarding fraud in the sale of motor vehicles that involves the tampering of odometers and falsifying required mileage disclosures.

Section 3 of the bill restricts the opportunity for odometer fraud by making the disclosure of an odometer's mileage a condition of title. New titles issued would include a required mileage disclosure. In addition, to combat interstate fraud, auction companies would be required to keep records about the cars they sell by auction.

The second part of the bill makes it a felony to violate the odometer tampering law. The current misdemeanor sanction is inadequate, since prosecutors are often reluctant to devote much of their resources to bringing misdemeanor actions. Increasing the criminal and civil penalties will do much to deter violations of our antitampering law.

In closing, I want to voice my support for this compromise legislation. It is a well balanced and meaningful step forward for automobile safety and American consumers. It is a bill I support, and a bill that I ask my colleagues to support. I want to thank Chairman DINGELL and Chairman WIRTH for their cooperation in fashioning the compromises contained in this legislation. On our side of the aisle, I also want to particularly thank Congressmen BLILEY, TAUKE, FIELDS, DANNEMEYER, and LENT for their legislative contributions to this bill.

□ 1630

Mr. Speaker, I yield back the balance of my time.

Mr. FRENZEL. Mr. Speaker, I yield myself 1 minute.

Mr. Speaker, due to what I am told is an overflow at the GPO, the Ways and Means Committee portion of the committee report is not included and not available to Members today. However, the membership should not feel itself disadvantaged because the remarks of the chairman of the Committee on Ways and Means and my own dissenting statements, I think, fairly represented what is covered in that report when it is printed.

Mr. CRANE. Mr. Speaker, I rise in opposition to H.R. 2248, the National Highway Traffic Safety Administration [NHTSA] bill, because certain provisions of the bill stray unnecessarily into the area of trade policy. Disguised as a procedure to ensure equality in automotive safety certification, section 7 of the bill is really trade protectionism in its worst form. It discriminates against one country, Japan, while at the same time, does nothing to improve the export potential of United States-manufactured automobiles.

Section 7 of the bill would require countries manufacturing 350,000 automobiles for export in 1984—Japan—to allow within 2 years the self-certification by United States auto manufacturers that their automobiles meet the necessary standards for that foreign country. If Japan fails to adopt these United States standards within 2 years, the Secretary of Transportation would require the type-certification method to be applied to every Japanese automobile entering the United States. While on the surface, this section would seem to establish "reciprocity," it really demands favored treatment for the small-volume American automobile exports to Japan.

The type-designation certification system used in Japan is neither overly complicated, excessively burdensome, nor discriminatory. Under this system, a manufacturer submits data to the Japanese Government, has a sample vehicle tested by the Government, and, once approved, is certified to produce vehicles identical in design. Under pressure from the United States, Japan has agreed to send the appropriate officials to the United States so that the procedures can be conducted in this country rather than in Japan. Also, new regulations announced in July will reduce the processing period to 2 months, allow the use of United States emission and noise data, increase uniformity with United States and European standards by eliminating parking light and speed warning device requirements, and eliminate the durability driving test requirements.

For low-volume models that are not mass produced to Japanese safety standards but are modified after they arrive in Japan, Japan adopted a streamlined procedure in 1982 that accepts foreign test data and requires significantly less documentation, no sample vehicle testing, and fewer inspections. The new July regulations will expand applicability to all U.S. imports not covered by type certification, shorten the inspection period to 1 month, eliminate individual car inspections, and permit the U.S. safety, emissions, and noise data.

These procedures for certifying models that must be modified after entry into Japan is simpler than comparable procedures in the United States and Europe. One need only look at section 6 of this bill, H.R. 2248 to see the complicated new procedures planned for individuals, dealers, converters, or manufacturers who import cars that do not meet U.S. safety standards and must be modified once in this country. Exempt from these procedures are those cars manufactured to meet United States standards—as in Japan—or are "similar" and require little further modification. These cars can be self-certified.

Ambassador Michael B. Smith, Deputy United States Trade Representative has stated in a letter to Congress that he is "not aware of any GATT-illegal, standards-related restrictions maintained by the Japanese Government on imports of American automobiles."

The problem is that the proponents of H.R. 2248 want Japan to provide self-certification to United States manufacturers even though most United States manufacturers do not make cars for the Japanese market and must modify them after arrival in Japan. It is clear that United States manufacturers have not made a serious attempt to manufacture cars to Japanese safety standards, and the Cadillac Fleetwood is one of the few United States-made cars that have sought and received type designation approval. Almost all United States-made cars must be modified after arrival in Japan.

Yet, this bill seeks more favorable treatment for all United States auto manufacturers than Japan provides its own manufacturers or other foreign auto producers. This demand is espe-

cially ironic when H.R. 2248 itself establishes a separate procedure for autos that must be modified to meet U.S. standards once they arrive in this country. This is not reciprocity, but a demand for special treatment that we ourselves do not provide.

Finally, we should not ignore the implications of these provisions on our international obligations. Ambassador Smith continues in his letter to Congress:

From the standpoint of our international obligations, the proposed amendment would represent a serious violation of the General Agreement on Tariffs and Trade (GATT) and the Agreement on Technical Barriers to Trade (Standards Code). The Most Favored Nation (MFN) principle of Article I of the GATT prohibits the imposition of discriminatory restrictions on the products of another GATT signatory. By singling out automobiles imported from certain foreign countries for exclusion, the proposed "Country of Origin Certification Equality" requirement would violate MFN. Furthermore, since the proposed amendment would impose testing and certification requirements on certain imported products that are more restrictive than those for domestically produced automobiles, it would also violate the "National Treatment" provision of Article III. Finally, by using a fictitious certification requirement to restrict automobile imports, the proposed amendment would run afoul of the GATT Standards Code. The Standards Code prevents the use of ostensible public health and safety measures as disguised restrictions on trade.

If we continue to take protectionist steps, as this bill does, that violate GATT rules and the spirit of the new round of trade negotiations launched in Punta del Este, Uruguay, last week, we can expect our trading partners to follow our lead. In general, the United States imposes tougher health, safety, and environmental requirements than have other countries. U.S. exports of pharmaceuticals, food additives, medical devices, pesticides, and fertilizers could be threatened if other countries adopted the concept of false reciprocity incorporated in section 7 of this bill.

There can be no objection to demands for fair standards for automobile safety certification that do not discriminate against importers and do not act as nontariff barriers. However, this bill singles out Japan for special restrictions if it does not give United States auto manufacturers further special benefits. It attempts to equate high-volume Japanese car imports that have been manufactured to meet United States standards with low-volume United States car exports that must be modified to meet Japanese safety standards primarily after arrival in Japan. There is no reciprocity in H.R. 2248, only trade protectionism. Thus, I feel compelled to urge a "no" vote on final passage of H.R. 2248.

Mr. FRENZEL. Mr. Speaker, I, along with my colleagues BILL ARCHER, BILL GRADISON, PHILIP CRANE, and HAL DAUB, oppose H.R. 2248, providing reauthorization for the National Highway Traffic Safety Administration [NHTSA] because the bill strays unnecessarily into the trade policy area. It provides a dual standard for auto imports in an attempt to establish "equality" in automobile safety certification procedures. That is unfortunate trade policy. It discriminates against one country—Japan; and, it provides little evidence that the export potential of United States-manufactured automobiles would be improved by this bill's provisions.

The offensive provisions, contained in section 7 of the bill, would require countries manufacturing 350,000 automobiles for export in 1984—Japan—to allow, within 2 years, self-certification by United States manufacturers that they meet the safety standards of that country. If Japan does not adopt United States standards within 2 years, the Secretary of Transportation must require the type-certification method—applied in Japan for both domestic manufacturers and high-volume importers, including the United States—to be applied only to Japanese autos entering the United States. Instead of establishing "reciprocity," the bill demands favored treatment for the small-volume United States auto exports to Japan.

The type of designation certification system used in Japan, primarily for high-volume models produced in Japan, or elsewhere, to meet Japanese safety standards, is not overly complicated nor is it discriminatory. Under this system, a manufacturer submits data to the Japanese Government, has a sample vehicle tested by the Government and, once approved, is certified to produce vehicles identical in design.

Under pressure from the United States, Japan has agreed to send the appropriate officials to the United States so that the procedures can be conducted in this country rather than in Japan. Also, new regulations announced in July will reduce the processing period to 2 months, allow the use of United States emission and noise data, increase uniformity with United States and European standards by eliminating parking light and speed warning device requirements, and eliminate the durability driving test requirements.

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These procedures for certifying models that must be modified after entry into Japan is simpler than comparable procedures in the United States and Europe. One need only look at section 6 of this bill, H.R. 2248, to see the complicated new procedures planned for individuals, dealers, converters, or manufacturers who import cars that do not meet U.S. safety standards and must be modified once in this country. Exempt from these procedures are those cars manufactured to meet United States standards, as in Japan, or are "similar" and require little further modification. These cars can be self-certified.

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The problem is that the proponents of H.R. 2248 want Japan to provide self-certification to United States manufacturers even though most United States manufacturers do not make cars for the Japanese market and must modify them after arrival in Japan. It is clear that United States manufacturers have not made a serious attempt to manufacture cars to Japanese safety standards, and the Cadillac Fleetwood is one of the few United States-made cars that have sought and received type-designation approval. Almost all United States-made cars must be modified after arrival in Japan.

Yet, this bill seeks more favorable treatment for all United States auto manufacturers than Japan provides its own manufacturers or other foreign auto producers. This demand is especially ironic when H.R. 2248 itself establishes a separate procedure for autos that must be modified to meet U.S. standards once they arrive in this country. This is not reciprocity, but a demand for special treatment that we ourselves do not provide.

Finally, we should not ignore the implications of these provisions on our international obligations. Ambassador Smith continues in his letter to Congress:

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If we continue to take steps, as this bill does, that violate GATT rules and the spirit of the new round of trade negotiations launched in Punta del Este, Uruguay, this past week, we can expect our trading partners to follow our lead. In general, the United States imposes tougher health, safety, and environmental requirements than have other countries. U.S. exports of pharmaceuticals, food additives, medical devices, pesticides, and fertilizers could be threatened if other countries adopted the concept of false reciprocity incorporated in section 7 of this bill.

There can be no objection to demands for fair standards for automobile safety certification that do not discriminate against importers and do not act as nontariff barriers. However, this bill singles out Japan for special restrictions if it does not give United States auto manufacturers further special benefits. It attempts to equate high-volume Japanese car imports that have been manufactured to meet

United States standards with low-volume United States car exports that must be modified to meet Japanese safety standards primarily after arrival in Japan. There is no reciprocity in H.R. 2248, only trade protectionism.

We urge a "no" vote on H.R. 2248.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. DINGELL. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. LUKEN). The question is on the motion offered by the gentleman from Michigan [Mr. DINGELL] that the House suspend the rules and pass the bill H.R. 2248, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended, and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. FRENZEL. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks, and include extraneous matter, on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

Mr. DINGELL. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 863) to amend the National Traffic and Motor Vehicle Safety Act of 1966 and the Motor Vehicle Information and Cost Savings Act to authorize appropriations for fiscal years 1986 and 1987, and for other purposes, and ask for its immediate consideration in the House.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 863

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Highway Traffic Safety Administration Authorization Act of 1985".

DEFINITIONS

SEC. 2. As used in this Act, the term—

(1) "multipurpose passenger vehicle" means a motor vehicle with motive power, other than a trailer, which is designed to carry 10 persons or less and which is constructed either on a truck chassis or with special features for occasional off-road operation;

(2) "passenger automobile" means a motor vehicle with motive power, except that the term does not include a multipurpose passenger vehicle, a motorcycle, a bus, a truck, or a trailer designed for carrying 10 persons or less; and

(3) "Secretary" means the Secretary of Transportation.

TITLE I—AUTHORIZATIONS OF APPROPRIATIONS

GENERAL AUTHORIZATIONS

SEC. 101. (a) Section 121 of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1409) is amended—

(1) by striking "and"; and

(2) by striking the period and inserting in lieu thereof ", and $54,157,125 for fiscal year 1987.".

(b) Section 111 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1921) is amended—

(1) by striking "and"; and

(2) by striking the period and inserting in lieu thereof ", and $345,895 for fiscal year 1987.".

(c) Section 209 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1949) is amended—

(1) by striking "and"; and

(2) by striking the period and inserting in lieu thereof ", and $2,030,435 for fiscal year 1987.".

(d) Section 417 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1990g) is amended—

(1) by striking "and"; and

(2) by striking the period and inserting in lieu thereof ", and $496,375 for fiscal year 1987.".

OCCUPANT CRASH PROTECTION PROGRAM

SEC. 102. In order to carry out a national program to encourage the use of safety belts and passive restraints in passenger automobiles, as authorized by section 403 of title 23, United States Code, the Secretary may derive an additional amount not to exceed $20,000,000 from unobligated balances of funds made available for highway safety programs under title 23, United States Code. Not less than one-half of the total of such amounts shall be used for educational efforts related to the use of air bags. Of the funds allocated to such efforts, not less than $5,000,000 shall be used to carry out a program to demonstrate the effectiveness of air bag technology, with emphasis on lowest-cost technologies. Such amounts shall remain available until expended.

TITLE II—HIGHWAY SAFETY GRANTS

AUTHORIZATION OF APPROPRIATIONS

SEC. 201. (a) Section 203(a)(1) of the Surface Transportation Assistance Act of 1982 (Public Law 97-424; 96 Stat. 2138) is amended—

(1) by striking "and" after "1985,"; and

(2) by inserting immediately before the period at the end thereof the following: ", and $132,000,000 for the fiscal year ending September 30, 1987".

(b) Section 203(b) of the Surface Transportation Assistance Act of 1982 (Public Law 97-424; 96 Stat. 2138) is amended—

(1) by striking "and" after "1985," wherever it appears;

(2) by inserting immediately after "1986," the following: ", and $132,000,000 for the fiscal year ending September 30, 1987,"; and

(3) by inserting immediately before the period at the end thereof the following: ", and September 30, 1987".

DRUNK DRIVING INCENTIVE GRANTS

SEC. 202. The first sentence of section 408(g) of title 23, United States Code, is amended by striking all after "Fund," and inserting in lieu thereof "$29,232,000 for the fiscal year ending September 30, 1987.".

TITLE III—AUTOMOBILE CRASHWORTHINESS

PURPOSE AND FINDINGS

SEC. 301. (a) This title is part of the continuing effort by Congress to address the critical highway safety problems facing this Nation.

(b) The Congress finds that—

(1) the Department of Transportation should be given explicit direction as to actions to be taken to save lives, reduce injuries, and decrease consumer costs of accidents;

(2) the current trend toward purchases of smaller and lighter passenger automobiles increases the importance of and the need for effective occupant crash protection;

(3) crashworthiness information should be available upon the introduction of each new passenger automobile model, and a systematic effort must be made to disseminate this information.

SIDE IMPACT PROTECTION

SEC. 302. Not later than 60 days after the date of enactment of this Act, the Secretary shall reopen the rulemaking proceeding terminated on July 12, 1982, to implement Federal Motor Vehicle Safety Standard 214 (49 CFR 571.214). The Secretary shall, not later than one year after the date of enactment of this Act—

(1) establish performance criteria for improved occupant protection in side impact; and

(2) issue an Advance Notice of Proposed Rulemaking to extend the applicability of such Standard to light trucks, vans, and multipurpose passenger vehicles.

AUTOMOBILE CRASHWORTHINESS DATA

SEC. 303. (a) Section 201 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1941) is amended by adding at the end thereof the following:

"(f)(1) The Secretary shall enter into appropriate arrangements with the National Academy of Sciences to conduct a comprehensive study and investigation regarding means of establishing a method for calculating a uniform numerical rating which will enable consumers to compare meaningfully the crashworthiness of different passenger automobile models.

"(2) Such study shall include examination of current and proposed crashworthiness tests and testing procedures and shall be directed to determining whether objective, accurate and relevant information regarding the comparative crashworthiness of different passenger automobile models reasonably can be provided to consumers by means of a crashworthiness rating rule. Such study shall include examination of at least the following proposed elements of a crashworthiness rating rule:

"(A) information on the degree to which different passenger automobile models will protect occupants across the range of motor vehicle crash types when in use on public roads;

"(B) a repeatable and objective test which is capable of identifying meaningful differences in the degree of crash protection provided occupants by the vehicles tested, with respect to such aspects of crashworthiness as occupant crash protection with and without use of manual seat belts, fuel system integrity, and other relevant aspects;

"(C) ratings which are accurate, simple in form, readily understandable and of benefit to consumers in making informed decisions in the purchase of passenger automobiles;

"(D) dissemination of comparative crashworthiness ratings to consumers either at the time of introduction of a new passenger automobile model or very soon after such time of introduction; and

"(E) the development and dissemination of crashworthiness data at a cost which is reasonably balanced with the benefits of such data to consumers in making informed purchase decisions.

"(3) Any such arrangement shall require the National Academy of Sciences to report to the Secretary and the Congress not later than 18 months after the date of enactment of this subsection on the results of such study and investigation, together with its recommendations. The Secretary shall, to the extent permitted by law, furnish to the Academy upon its request any information which the Academy considers necessary to conduct the investigation and study required by this subsection.

"(4) Within 60 days after transmittal of the report of the National Academy of Sciences to the Secretary and the Congress under paragraph (3) of this subsection, the Secretary shall initiate a period (not longer than 90 days) for public comment on implementation of the recommendations of the National Academy of Sciences with respect to a rule promulgated under this title establishing an objectively based system for determining and publishing accurate comparative crashworthiness ratings for different passenger automobiles.

"(5) Not later than 180 days after the close of the public comment period provided for in paragraph (4) of this subsection, the Secretary shall determine, on the basis of the report of the National Academy of Sciences and the public comments on such report, whether an objectively based system can be established by means of which accurate and relevant information can be derived that reasonably predicts the degree to which different makes and models of passenger automobiles provide protection to occupants against the risk of personal injury or death as a result of motor vehicle accidents. The Secretary shall promptly publish the basis of such determination.

"(g)(1) If the Secretary determines that the system described in subsection (f)(5) of this section can be established, the Secretary shall, subject to the exception provided in paragraph (2) of this subsection, not later than three years after the date of enactment of this subsection, promulgate a rule under this title establishing an objectively based system for determining and publishing accurate comparative crashworthiness ratings for different passenger automobiles. The rule promulgated under this subsection shall be practicable and shall provide the public relevant objective information in a simple and readily understandable form in order to facilitate comparison among the various makes and models of passenger automobiles so as to contribute meaningfully to informed purchase decisions.

"(2) The Secretary shall not promulgate such rule unless (A) a period of 60 calendar days has passed after the Secretary has transmitted to the Committee on Commerce, Science, and Transportation of the Senate and to the Committee on Energy and Commerce of the House of Representatives a summary of the comments received during the period for public comment specified in subsection (f)(4) of this section, or (B) each such committee before the expiration of such 60-day period has transmitted to the Secretary written notice to the effect that such committee has no objection to the promulgation of such rule.".

(b)(1) Section 201 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1941), as amended by this Act, is further amended by adding at the end thereof the following:

"(h) If the Secretary promulgates a rule under subsection (g) of this section, not later than 3 years after the date of enactment of the National Highway Traffic Safety Administration Authorization Act of 1985, the Secretary shall by rule establish procedures requiring passenger automobile dealers to make available to prospective passenger automobile purchasers information developed by the Secretary and provided to the dealer which contains data comparing the crashworthiness of passenger automobiles.".

(2) Section 2 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1901) is amended by adding at the end thereof the following new paragraph:

"(19)(A) The term 'passenger automobile' means a motor vehicle with motive power, except that the term does not include a multipurpose passenger vehicle, a motorcycle, a bus, a truck, or a trailer designed for carrying 10 persons or less.

"(B) As used in subparagraph (A) of this paragraph, the term 'multipurpose passenger vehicle' means a motor vehicle with motive power, other than a trailer, which is designed to carry 10 persons or less and which is constructed either on a truck chassis or with special features for occasional off-road operation.".

AUTHORIZATION OF APPROPRIATIONS

SEC. 304. Section 403 of title 23, United States Code, is amended by adding at the end thereof the following:

"(g) There is authorized to be appropriated for purposes of carrying out this section not to exceed $31,000,000 for fiscal year 1987.".

TITLE IV—CONTROL OF IMPORTATION OF CERTAIN VEHICLES TO ENSURE COMPLIANCE WITH SAFETY STANDARDS

AMENDMENTS TO THE NATIONAL TRAFFIC AND MOTOR VEHICLE SAFETY ACT OF 1966

SEC. 401. (a) Section 108(b) of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1397(b)) is amended—

(1) by striking paragraphs (3) and (4); and

(2) by redesignating paragraph (5) as paragraph (3).

(b) Section 108 of such Act (15 U.S.C. 1397) is amended—

(1) by redesignating subsection (c) as subsection (f); and

(2) by inserting after subsection (b) the following:

"(c)(1) Except as provided in this subsection and subsection (d), a motor vehicle or item of motor vehicle equipment offered for importation in violation of subsection (a)(1)(A) shall be refused entry into the United States.

"(2) In the case of any vehicle imported under this subsection, the person importing the vehicle shall furnish a bond in the amount of the dutiable value of the vehicle plus the duty, and shall comply with such terms and conditions as it appears to the Secretary appropriate to ensure that any such vehicle—

"(A) will be brought into conformity by such person with all applicable Federal motor vehicle safety standards prescribed under this title within a reasonable time after such importation (as specified by the Secretary); or

"(B) will be exported (at no cost to the United States) or abandoned to the United States.

"(3)(A) Subsection (a)(1)(A) and paragraph (1) of this subsection shall not apply to any motor vehicle if—

"(i) the vehicle is imported by an importer registered under procedures established by the Secretary;

"(ii)(I) the vehicle is determined under subparagraph (C) to be substantially similar to motor vehicles originally manufactured for importation into the United States and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards; or

(II) where there is no substantially similar United States motor vehicle, as determined by the Secretary, the Secretary determines that the safety features of the vehicle comply with or are capable of being modified to comply with all applicable Federal motor vehicle safety standards, as determined on the basis of destructive test data and such other evidence as the Secretary determines to be adequate;

"(iii) the registered importer pays upon registration and annually each year thereafter (I) such fee as the Secretary reasonably establishes to cover the cost of administering the requirements of this subsection, except those referred to in clause (iv), and (II) such other fee or fees as the Secretary reasonably establishes to cover the cost of processing the bond furnished under paragraph (2), making the determinations under clause (ii), and conducting tests and investigations pursuant to subparagraph (D);

"(iv) the person making modifications to the motor vehicle pays upon registration such fee as the Secretary reasonably establishes to cover the cost of registration and inspection of facilities at which modifications are performed; and

"(v) any modifications to the motor vehicle are performed pursuant to procedures described in support of the petitions approved under subparagraph (C) and are performed at a facility which has been registered by the Secretary under procedures established by the Secretary.

"(B)(i) The amount or rate of fees under subparagraphs (A) (iii) and (iv) shall be reviewed by the Secretary and adjusted, if appropriate, by the Secretary at least every 2 years.

"(ii) The amount or rate of any such fee applicable in any calendar year shall be established by the Secretary before the beginnng of such year.

"(iii) Fees collected shall be available, to the extent provided in advance by appropriation Acts, solely for use by the Secretary in the administration of the requirements of this subsection.

"(iv) The Secretary shall publish such regulations as may be necessary to ensure that the requirements of this section are fully met.

"(C)(i) The Secretary shall make determinations under subparagraph (A)(ii) upon the petition of a registered importer, and shall expend every reasonable effort to make any such determination within 45 days after the receipt of such a petition. The Secretary shall establish by regulation the information required in any such petition, except that each such petition shall contain information that clearly shows that the vehicle is capable of being brought into compliance with all applicable Federal motor vehicle safety standards. Such information shall include a complete description of all the work to be performed, an engi-

neering analysis (where applicable), and evidence that any modification to be made for purposes of such compliance does not appear to create a violation of any applicable Federal motor vehicle safety standard or a defect relating to motor vehicle safety.

"(ii) In considering any such petition, the Secretary shall give due consideration to any tests or other information available to the Secretary, including any information provided by the manufacturer or other interested parties. The Secretary shall in a timely manner compile a list of petitions received, and shall make such lists available to the public. After such a determination is made, petitioners shall be offered an opportunity to present views and evidence relevant to the determinations made by the Secretary.

"(iii) The Secretary shall annually publish in the Federal Register a list of all determinations made under subparagraph (A)(ii) and shall make available to the public all information and evidence submitted by petitioners after such determinations are made. Other interested parties may also comment on such information.

"(iv) The approval of any such petition shall be sufficient authority for any other importer or manufacturer, to take any action which the registered importer or manufacturer who submitted such petition was authorized to take under such approved petition, if the other importer or manufacturer complies with all terms and conditions of such petition.

"(D) The Secretary shall establish procedures for periodically conducting inspections and tests, including destructive tests, of vehicles imported pursuant to this subsection to determine compliance with all applicable Federal motor vehicle safety standards. The Secretary shall also establish procedures for periodically inspecting facilities registered under this subsection to ascertain whether such facilities are performing modifications pursuant to this section. The Secretary shall inspect each such facility within one year after the effective date of regulations promulgated under this section or six months after a facility is registered under this subsection, whichever is later. The Secretary may, to the extent funds for such purposes are available, retain the services of temporary employees for the performance of such inspections, if the Secretary determines that it is necessary to retain such services. Such employees shall not, by reason of such employment, be deemed to be Federal employees for any purpose.

"(E) Determinations made under subparagraph (C)(i) shall be revoked if, on the basis of tests and inspections conducted by the Secretary, the Secretary finds that a clear pattern of noncompliance exists with respect to motor vehicles covered by any such determination. The Secretary shall give due consideration to any relevant information submitted to the Secretary under this subsection.

"(4)(A) In order to acquire and maintain registration under this subsection, an importer shall comply with all requirements which the Secretary shall establish under this subsection. Such requirements shall include requirements for recordkeeping, including a record of the make and model of each vehicle and its vehicle identification number, inspection of records and facilities relating to each vehicle which such person has imported or modified, or both, and, for purposes of maintaining registration under this subsection, annual payment and documentation of payment of any applicable taxes and duties provided for under section 201(a) of the Energy Tax Act of 1978 (26 U.S.C. 4064) and penalties due under section 508(b)(1) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2008(b)(1)). Upon terminating or transferring its business, such importer shall submit such records to the Secretary.

"(B) The Secretary shall establish procedures for (i) the revocation or suspension of a registration issued under this subsection for failure to comply with any requirement of this Act, including the requirements of subparagraph (A), or regulations issued under this Act, (ii) automatic suspension of registrations for failure to pay any fee referred to in paragraph (3)(A) (iii) or (iv) in a timely manner, and (iii) reinstatement of suspended registrations.

"(5)(A) Prior to the date described in subparagraph (B), a registered importer shall not—

"(i) release custody of an imported motor vehicle to any person for license or registration for use on public roads, streets, or highways; or

"(ii) license or register an imported vehicle for use on public roads, streets, or highways or otherwise operate such vehicle (other than for testing).

"(B) An importer shall not take any action set forth in subparagraph (A) until—

"(i) the registered importer has filed a certification statement with the Secretary signed and containing the following statement: 'This vehicle has been modified in accordance with procedures established in an approved determination and conforms to all applicable Federal motor vehicle safety standards in effect on .' (with the date such certification statement is filed being inserted in the blank space);

"(ii) the Secretary has reviewed and accepted such certification as valid;

"(iii) the Secretary has confirmed that the importer has labeled the vehicle and that the label is prominently displayed in a form to be determined by the Secretary, stating that the vehicle was not originally manufactured to comply with all applicable Federal motor vehicle safety standards but has been modified by the registered importer to comply with such standards, and stating the obligations of the registered importer under this subparagraph; and

"(iv) the Secretary has confirmed that the importer has established the fuel economy ratings for purposes of determining the tax due under section 201(a) of the Energy Tax Act of 1978 (26 U.S.C. 4064) and has labeled the vehicle to meet the requirements of section 506(a)(1)(C) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2006(a)(1)(C)).

Within 30 days after the date on which a certification statement is filed under clause (i) of this subparagraph, the Secretary shall accept such certification statement and issue a bond release letter, or reject such certification statement.

"(C) A State may require the registered importer to provide to appropriate State authorities a notarized English translation of all title and ownership documentation.

"(D) The Secretary may require that any such certification statement be accompanied by such evidence of compliance as the Secretary considers appropriate, or that the vehicle be inspected by the Secretary, or both.

"(6) For purposes of part B of this title—

"(A) the registered importer shall be deemed to be the manufacturer with respect to all motor vehicles imported by such importer;

"(B) in the case of any defect or failure to comply with any applicable motor vehicle safety standard in or regarding any motor vehicle which was originally manufactured for importation into the United States, any imported motor vehicle that has a valid certification under this subsection and that is determined to be substantially similar to such motor vehicle shall be treated as having the same defect or failure unless the manufacturer or registered importer demonstrates otherwise to the Secretary;

"(C) the Secretary shall publish in the Federal Register notice of any defect or failure referred to in subparagraph (B), and any defect in or failure to comply regarding any motor vehicle imported under this subsection which is reported by the manufacturer of such motor vehicle; and

"(D) the registered importer shall be treated as the manufacturer with respect to the motor vehicles imported, except that in the cast of defects referred to in subparagraphs (B) and (C), the Secretary shall establish procedures to ensure that the original manufacturer of the vehicle or one of its domestic subsidiaries or affiliates shall, at the time of any recall determination affecting such vehicle, cooperate with the Secretary to facilitate a successful and timely recall.

"(7) The Secretary shall, by regulation, establish requirements to ensure that the registered importer (or any successor in interest) will be capable of carrying out the importer's responsibilities under part B of this title. The Secretary shall require each registered importer to provide evidence of sufficient financial responsibility to meet such obligations. Such evidence may include the posting of a prepaid surety bond for each motor vehicle or similar guarantee measures.

"(8) Section 109 shall apply in the case of any violation of the requirements of this subsection, except that the amount of any civil penalty imposed under such section for any such violation shall not exceed $5,000 for each such violation and shall not exceed $800,000 for any related series of violations.".

(c) Section 108 of such Act (15 U.S.C. 1397) is amended by inserting after subsection (c), as added by subsection (b) of this section, the following:

"(d) Subsection (a)(1)(A) and subsection (c)(1) shall not apply to any motor vehicle or item of motor vehicle equipment if—

"(1) it requires further manufacturing to perform its intended function (as determined under regulations prescribed by the Secretary); and

"(2) it is accompanied at the time of entry by a written statement issued by the manufacturer of the incomplete vehicle or item of equipment which indicates the applicable Federal motor vehicle safety standard with which such vehicle or item is in compliance.".

(d) Section 108 of such Act (15 U.S.C. 1397) is amended by inserting after subsection (d), as added by subsection (c) of this section, the following:

"(e)(1) Subsections (a)(1)(A) and (c)(1) shall not apply to any motor vehicle if the vehicle is imported for personal use, and not for resale, by a member of the uniformed services (as defined in section 2101 of title 5, United States Code) or the foreign service (as defined in section 103 of the Foreign Service Act of 1980 (22 U.S.C. 3903))—

"(A) whose permanent duty station or assigned place of employment is outside the United States;

"(B) who has not previously imported a vehicle into the United States under the authority of this section (or subsection (b)(3) with respect to the period before the date of enactment of the National Highway Traffic Safety Administration Authorization Act of 1985); and

"(C) who agrees to have the vehicle modified to meet all applicable Federal motor vehicle safety standards at a facility registered under subsection (c)(3)(A)(iv).

"(2) Subsections (a)(1)(A) and (C)(1) shall not apply to any motor vehicle if the vehicle is imported on a temporary basis for personal use, and not for resale, by any individual who is a member of—

"(A) the personnel of a foreign government on assignment in the United States who is within the class of persons for whom free entry of vehicles has been authorized by the Secretary of State;

"(B) the armed forces of a foreign country on assignment in the United States; or

"(C) the Secretariat of a public international organization so designated under the International Organizations Immunities Act (22 U.S.C. 288 et seq.).

The Secretary may require such verification of such status as the Secretary considers appropriate. The Secretary shall ensure that any vehicle entered under this subsection will be exported (at no cost to the United States) or abandoned to the United States when the individual involved ceases to reside in the United States and to hold such status.

"(3) The Secretary may exempt any motor vehicle or item of motor vehicle equipment from subsections (a)(1)(A) and (c)(1) upon such terms and conditions as the Secretary may find necessary solely for the purpose of research, investigations, studies, demonstrations or training, or competitive racing events.".

(e)(1) The first sentence of section 501(8) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2001(8)) is amended by inserting immediately before the period the following: "and any importer registered to import vehicles pursuant to section 108(c) of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1397(c))".

(2) Section 502(c)(1) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2002(c)(1)) is amended by inserting immediately after "manufacturer" the first time it appears the following: "(except a manufacturer registered to import vehicles pursuant to section 108(c) of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1397(c))".

(f) Section 108(a)(1)(A) of such Act (15 U.S.C. 1397(a)(1)(A)) is amended by inserting immediately after "such standard" the following: "and is covered by a certification issued under section 114,".

(g) Section 114 of such Act (15 U.S.C. 1403) is amended—

(1) by inserting ", as appropriate," immediately after "dealer";

(2) by striking "or distributor" wherever it appears;

(3) by inserting immediately after the first sentence the following: "Every distributor of a motor vehicle or item of motor vehicle equipment shall furnish to a dealer or subsequent distributor at the time of delivery of such vehicle or item of equipment the manufacturer's certification that was previously furnished to the distributor."; and

(4) by adding at the end thereof the following: "As used in this section and section 108, the term 'manufacturer' means any person engaged in the manufacturing or assembling of motor vehicles or items of motor vehicle equipment, including any other person who acts for or is under the control of such person with respect to the importation of such vehicles or items of equipment.".

(h)(1) Section 108(a)(1)(A) of such Act (15 U.S.C. 1397(a)(1)(A)) is amended by striking "subsection (b)" and inserting in lieu thereof "subsections (b), (c), (d), and (e)".

(2) Section 108(b)(2) of such Act (15 U.S.C. 1397(b)(2)) is amended by striking "or importer".

(i) The General Accounting Office shall prepare and submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives on July 1, 1988 and on or before July 1 of each year thereafter a comprehensive report on the administration of sections 108 (c), (d) and (e) of the National Traffic and Motor Vehicle Safety Act of 1966, as added by this section. Such report shall include, but need not be restricted to—

(1) a listing of the registered importers and the determinations made by the Secretary under section 108(c)(3)(C) of such Act;

(2) a description by model year and make of the vehicles entered under such section;

(3) an itemization of the number of such vehicles entered, segregated by model number and year;

(4) the degree of observed compliance with applicable Federal motor vehicle safety standards;

(5) a description of the efforts undertaken by the Secretary under section 108(c) (3) and (4) of such Act, including tests and investigations conducted and the results of such tests and investigations;

(6) an accounting of the fees collected and expended by the Secretary pursuant to section 108(c)(3)(A) (iii) and (iv) of such Act;

(7) an assessment of the Secretary's compliance in processing certification statements under section 108 of such Act in a timely manner and a compilation of the number of certification statements received;

(8) compliance with any requirement of applicable taxes and duties provided for under section 201(a) of the Energy Tax Act of 1978 (26 U.S.C. 4064); and

(9) such other information as the General Accounting Office considers appropriate.

The report shall contain such recommendations for additional legislation as is considered necessary to ensure that motor vehicles not originally designed or manufactured for compliance with all applicable Federal motor vehicle safety standards are being properly brought into compliance following importation into the United States.

(j) The Secretary of Transportation shall prepare and make available to the public information on the importation of motor vehicles into the United States and procedures to be followed to bring such vehicles into conformity with Federal motor vehicle safety standards.

(k) The Secretary of Transportation shall conduct a study on the effectiveness of the amendments made by this section in ensuring compliance with applicable motor vehicle safety standards and enhancing motor vehicle safety. Such study shall be submitted to the Congress not later than 36 months after the date of enactment of this Act. Following receipt of such study, the Congress shall determine and enact, if any, those changes to existing law which it considers appropriate. Such changes may include termination of the conditional importation of nonconforming vehicles, repeal of this title, or appropriate modifications of procedures provided for under this title.

(l)(1) The Secretary of Transportation shall promulgate such regulations as may be necessary to implement the provisions of this title as soon as practicable, but in no case later than eight months after the date of enactment of this Act. The amendments made by this title shall take effect three months after such regulations become effective, except that such amendments shall take effect prior to the expiration of such three-month period with respect to any model of a vehicle for which a determination is made under section 108(c)(3)(C) of the National Traffic and Motor Vehicle Safety Act of 1966 (as added by subsection (a) of this section), as soon as such determination is made.

(2) Any person may commence a civil action on such person's own behalf against the Secretary of Transportation to compel the Secretary to promulgate regulations under this section where there is alleged a failure by the Secretary to promulgate such regulations by the date specified in paragraph (1) of this subsection. The United States Court of Appeals for the District of Columbia shall have jurisdiction over such action and may award costs of litigation (including reasonable attorney's fees) to the prevailing party (other than the United States Government) whenever the Court determines that such award is appropriate. Any petition under this paragraph shall be granted an expedited hearing by the Court.

(3) As soon as possible after the date of enactment of this Act, the Secretary of Transportation shall take steps designed to encourage notification regarding the changes made by this section to members of the uniformed services and other individuals who may be affected by such changes.

MOTION OFFERED BY MR. DINGELL

Mr. DINGELL. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. DINGELL moves to strike out all after the enacting clause of the Senate bill S. 863, and to insert in lieu thereof the provisions contained in H.R. 2248, as passed by the House.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Michigan [Mr. DINGELL].

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

A similar House bill (H.R. 2248) was laid on the table.

TRUTH IN MILEAGE ACT OF 1986

Mr. DINGELL. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 780) to amend section 408 of the Motor Vehicle Information and Cost Savings Act to strengthen, for the protection of consumers, the provisions respecting disclosure of motor vehicle mileage when motor vehicles are transferred, as amended.

The Clerk read as follows:

H.R. 780

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Truth in Mileage Act of 1986".

SEC. 2. MOTOR VEHICLE ODOMETER MODIFICATIONS.

(a) TRANSFERS OF MOTOR VEHICLES.—Section 408 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1988) is amended by adding at the end the following:

"(d)(1)(A) Any motor vehicle the ownership of which is transferred may not be licensed for use in any State unless the transferee, in submitting an application to a State for the title upon which such license will be issued, includes with such application the transferor's title and, if that title contains the space referred to in paragraph (2)(A)(iii), a statement, signed and dated by the transferor, of the mileage disclosure required under subsection (a).

"(B) This paragraph shall not apply to any transfer of ownership of a motor vehicle which has not been licensed before the transfer.

"(2)(A) Any motor vehicle the ownership of which is transferred may not be licensed for use in any State unless the title which is issued by the State to the transferee following such transfer—

"(i) is set forth by means of a secure printing process (or other secure process);

"(ii) indicates the mileage disclosure required to be made under subsection (a); and

"(iii) contains a space for the transferee to disclose (in the event of a future transfer) the mileage at the time of such future transfer and to sign and date such disclosure.

"(B) The requirements of subparagraph (a) shall not be construed to require a State to verify, or preclude the State from verifying, the mileage information contained in the title.

"(e)(1) In the case of any leased motor vehicle, the rules under subsection (a) shall require written disclosure regarding mileage to be made by the lessee to the lessor upon the lessor's transfer of ownership of the leased motor vehicle.

"(2) Under such rules, the lessor of a leased motor vehicle shall provide written notice to the lessee regarding—

"(A) such mileage disclosure requirements, and

"(B) the penalties for failure to comply with them.

"(3) The lessor shall retain the disclosures made by any lessee with respect to any motor vehicle under paragraph (1) for a period of at least 4 years following the date the lessor transfers that vehicle.

"(4) For purposes of this section, if the lessor transfers ownership of any leased motor vehicle without obtaining possession of such vehicle, the lessor may, in lieu of the disclosure required by subsection (a), indicate on the title the mileage disclosed by the lessee under paragraph (1) unless the lessor has reason to believe that such disclosure by the lessee does not reflect the actual mileage of the vehicle.

"(f)(1) The requirements of subsections (d) and (e)(1) respecting the disclosure of motor vehicle mileage when motor vehicles are transferred or leased shall apply in a State unless the State has in effect alternate motor vehicle mileage disclosure requirements approved by the Secretary. The Secretary may promulgate regulations establishing procedures for the consideration and approval of such alternate requirements.

"(2) The Secretary shall approve alternate motor vehicle mileage disclosure requirements submitted by a State unless the Secretary determines that such requirements are not consistent with the purpose of the disclosure required by subsection (d) or (e), as the case may be.

"(g) If any motor vehicle is sold at an auction, the auction company which conducts such auction shall establish and maintain for a period of at least 4 years following the date of such sale the following records:

"(1) The name of the most recent owner of the motor vehicle (other than the auction company) and the name of the buyer of the motor vehicle.

"(2) The vehicle identification number of the motor vehicle required under title VI of this Act or the National Traffic and Motor Vehicle Safety Act of 1966.

"(3) The odometer reading on the date on which the auction company took possession of the motor vehicle.".

(b) DEFINITIONS.—Section 402 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1982) is amended by adding at the end the following:

"(6) The term 'title' means the certificate of title or other document issued by the State indicating ownership.

"(7) The term 'leased motor vehicle' means any motor vehicle which is leased to a person for a term of at least 4 months by a lessor who has leased 5 or more vehicles in the past 12 months.

"(8) The term 'auction company' means any person who takes possession (whether through consignment or bailment or through any other arrangement) of a motor vehicle owned by another person for purposes of selling such motor vehicle at an auction.".

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), subsections (d), (e), (f), and (g) of section 408 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1988), as added by subsection (a) of this section, shall apply with respect to motor vehicles which are transferred after the date 30 months after the date of the enactment of this Act.

(2) REVISION OF STATE LAWS TO CONFORM TO AMENDMENTS.—

(A) TECHNICAL ASSISTANCE.—The Secretary of Transportation shall, upon application, assist a State in revising its laws to comply with the requirements of section 408(d)(1) and (2) of the Motor Vehicle Information and Cost Savings Act.

(B) EXTENSION OF TIME.—If any State requires time, in addition to the period prescribed by paragraph (1) of this subsection, to revise its laws to achieve such compliance, the Secretary may, upon the request of such State, grant, by notice published in the Federal Register, the State such reasonable additional time as the Secretary determines is necessary to achieve such compliance. The Secretary shall include in the Federal Register notice the reasons for granting additional time. In granting additional time, the Secretary shall ensure that the State is making reasonable efforts to achieve such compliance.

(3) MOTOR VEHICLE DEFINED.—For purposes of this subsection, the term "motor vehicle" has the same meaning as when used in the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1901 and following).

SEC. 3. VIOLATION OF ODOMETER REQUIREMENTS.

(a) CIVIL PENALTY.—Section 412(a) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1990b) is amended by striking out "$1,000" and inserting in lieu thereof "$2,000".

(b) CRIMINAL PENALTY.—Section 413(a) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1990c) is amended by striking out "not more than one year," and inserting in lieu thereof "not more than three years,".

The SPEAKER pro tempore. Is a second demanded?

Mr. RINALDO. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Michigan [Mr. DINGELL] will be recognized for 20 minutes and the gentleman from New Jersey [Mr. RINALDO] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Michigan [Mr. DINGELL].

Mr. DINGELL. Mr. Speaker, I yield myself such time as I may consume.

GENERAL LEAVE

Mr. DINGELL. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill presently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

Mr. DINGELL. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 780 is brought to you through the leadership of a number of my colleagues, Chairman WIRTH, the chairman of our subcommittee of jurisdiction, the distinguished gentleman from Colorado, and its chief sponsor, Mr. BRYANT of Texas. These gentlemen are to be commended for their efforts in pursuing this piece of legislation, which is a needed consumer bill.

Briefly, the amendment conforms the bill to the provisions on odometers developed by our committee in connection with H.R. 2248. A similar bill under the leadership of Senator EXON of Nebraska has passed the other body. Senator EXON has expressed great interest in this legislation to me.

The bill is not controversial. It is a consumer bill. It protects the consumers of this Nation against fraud and the businessmen of this Nation against unscrupulous competitors.

I urge its adoption.

Mr. RINALDO. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I urge support for H.R. 780, the Truth in Mileage Act of 1986.

The provisions of H.R. 780 are identical to sections 3 and 4 of H.R. 2248, which we just considered.

As indicated in my remarks on H.R. 2248, these provisions will go a long way toward better enforcement of our laws against odometer fraud. First, the disclosure provisions and increased criminal and civil penalties in themselves will deter violations. Second, they will aid law enforcement agencies and prosecutors by creating a document trail, which will reduce opportunitites for tampering with odometers; and make tampering more easily detected.

This bill is not controversial, it is in the public interest, and will aid automobile consumers. I urge my colleagues to support H.R. 780.

Mr. BRYANT. Mr. Speaker, I am pleased to be the sponsor of the Truth in Mileage Act of 1986, and to have had the strong support of my colleague from Iowa, Mr. TAUKE, and that of the distinguished chairman of the Energy and Commerce Committee, Mr. DINGELL, in both drafting and moving this legislation.

The need for strong legislation to prevent odometer fraud is evident by the increasing number of indictments being filed for such abuses. Recently, a rental car dealer was indicted in Federal court in Alexandria, VA for allegedly tampering with the odometers of 178 vehicles over a 2½ year period. He was also charged with mail fraud and obstruction of justice. Added to his woes is a suit filed by the Virginia Attorney General seeking more than $290,000 in payments from Americar Rental Systems on behalf of defrauded consumers.

In Texas during the last 2 years alone the attorney general has filed 29 lawsuits, each representing from 3 to 50 separate violations, charging odometer tampering fraud. These mileage rollback suits represent 15 percent of all the consumer protection suits filed by the attorney general since January 1983.

The legislation we are proposing would enable law enforcement officers and the public in general to more readily detect and identify those vehicles which have altered odometers. The National Automobile Dealers Association estimates that more than 3 million vehicles per year are subject to mileage rollbacks which average 30,000 miles at a cost to consumers of $750 to $1,000 per vehicle.

The measure would:

Prohibit the licensing of any vehicle in any State unless the seller discloses the odometer reading at the time of the sale on the title of ownership.

Require automobile auction companies to maintain records on resold vehicles, including the buyer, seller, vehicle identification number and odometer reading.

The maximum criminal penalties for mileage rollback fraud are increased from 1 to 3 years in prison and the civil penalties are increased from $1,000 to $2,000 per violation.

I was fortunate not only to have the able assistance of my colleagues in drafting this odometer fraud legislation, but also the National Automobile Dealers Association and the representatives of the State motor vehicle administrators. One change which will benefit new technologies like that provided by Micro Card Technologies, Inc. in Dallas broadened the language from that which simply required the use of intaglio printing to the use of any system which is tamperproof.

I look forward to the successful passage of this bill into law to put an end to one major type of consumer fraud.

Mr. WIRTH. Mr. Speaker, H.R. 780 was originally introduced by our colleague from Texas, Mr. BRYANT, along with Chairman DINGELL, and Mr. TAUKE. The purpose of this legislation is to stem odometer fraud, which costs consumers over $2 billion annually.

Mr. Speaker each year over 3 million vehicles are subject to odometer tampering. The average odometer rollback on a used car is 30,000 miles and costs consumers an average of $750 per car.

One of the major barriers to decreasing odometer fraud is the lack of evidence—or paper trail—showing the incidence of rollback. H.R. 780 corrects this problem by making the disclosure of an odometer's mileage a condition of title. It also requires that titles are set forth by a secure process to avoid counterfeiting. Additionally, lessors of vehicles with long-term leases are required to have lessees disclose the mileage of the vehicle upon transfer of ownership. Auction companies are also required to establish and maintain records on the used cars they sell.

H.R. 780 also increases the civil penalty for odometer fraud and adds a criminal penalty, thereby making odometer fraud a felony. The Department of Transportation believes that current criminal penalties for odometer tampering are not a sufficient deterrent. Many prosecutors are apparently reluctant to prosecute misdemeanor offenses and place very low priority on these types of cases. However, in many States a felony conviction will cause a revocation of or bar to the issuance of an automobile dealer's license to do business. DOT believes that the fear of losing such a license would create a substantial deterrent to odometer fraud.

Mr. Speaker, H.R. 780 is noncontroversial and enjoys wide bipartisan support. During this session of Congress, in considering this bill, we were able to add provisions to strengthen substantially the legislation. The product is a good bill, at no cost to the Federal Government, that will save consumers a lot of money.

I urge my colleagues to join me in supporting this legislation.

Mr. RINALDO. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. DINGELL. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Michigan [Mr. DINGELL] that the House suspend the rules and pass the bill, H.R. 780, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

Mr. DINGELL. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 475) to amend the Motor Vehicle Information and Cost Savings Act to require certain information to be filed in registering the title of motor vehicles, and for other purposes, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 475

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 408 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1988) is amended by adding at the end thereof the following new subsections:

"(d)(1) No motor vehicle, the ownership of which is transferred by any person to another person in interstate commerce, may be registered or licensed for use in any State, or used in interstate commerce, unless—

"(A) the application to the State by the new owner of such motor vehicle for a certificate of title is accompanied by the prior owner's title (containing the information required under paragraph (2), where applicable);

"(B) the certificate of title (or other document indicating ownership) of such motor vehicle which is issued by the State to the new owner following such transfer—

"(i) is printed in bank note intaglio printing process;

"(ii) indicates on its face the mileage required to be disclosed by the transferor under subsection (a); and

"(iii) contains a space for the transferee to disclose (in the event of a future sale or other transfer of title by such transferee) the mileage at the time of such future transfer and to sign and date such disclosures.

"(2) In the case of an application for a new certificate of title for a motor vehicle, if the prior owner's certificate of title contains the space referred to in clause (iii) of paragraph (1)(B), when such certificate of title is submitted to the State under paragraph (1)(A), it shall contain a statement, signed and dated by such prior owner, of the mileage required to be disclosed by such prior owner under subsection (a).

"(3) No registration card may be issued in any State for any motor vehicle used in interstate commerce unless the application for such registration card contains (determined as of the date on which such application is submitted) the information specified in paragraphs (1) and (2) of subsection (a). Each State shall maintain such information, together with the vehicle identification number to which such information pertains, for a period of five years after the information is received by the State.

"(4) Any State may submit to the Secretary an alternative method for compliance with the requirements of this subsection by motor vehicles registered or licensed for use in the State. The Secretary may promulgate regulations establishing procedures for the consideration and approval of such alternative methods of compliance. No such alternative method may be approved unless the Secretary determines that such method is

consistent with the purposes of this subsection.

"(5) The Secretary shall prescribe such rules as may be necessary to avoid the printing of mileage information pursuant to paragraph (1)(B)(ii) which may be false, misleading, or inaccurate. In order to prevent falsification or alteration of the mileage information required to be disclosed by a prior owner in accordance wth paragraph (2), the Secretary shall prescribe such rules as may be necessary regarding the specific form to be used on certificates of title for compliance with the provisions of paragraph (1)(B)(iii). In addition, the Secretary shall prescribe rules regarding the actions to be taken by States with respect to the unauthorized alteration of motor vehicle certificates of title and other documents on which odometer information is required to be recorded or maintained.

"(e) If any motor vehicle is sold at an auction, the auction company which owns or operates the facilities at which such auction takes place shall maintain a record for a period of at least four years following the date of such sale that includes—

"(1) the name of the seller and the name of the buyer of the motor vehicle;

"(2) the vehicle identification number of the motor vehicle; and

"(3) the odometer reading on the date on which the auction company took possession of the motor vehicle.

"(f)(1) Upon the termination or expiration of any lease for a motor vehicle, the lessee shall provide written disclosure to the lessor of the mileage of the vehicle at the time of such termination or expiration. Upon the request of such lessor, the lessee shall also provide to the lessor such mileage information as may be necessary for the lessor to comply with the requirements of subsection (d)(3).

"(2) The lessor of a motor vehicle shall provide written notice to the lessee of—

"(A) the mileage disclosure requirement set forth in paragaph (1); and

"(B) the penalties for failure to comply with such requirements.

"(3) Each lessor of a motor vehicle shall retain the written disclosure made by the lessee under paragraph (1) for four years after the date on which such lessor transfers ownership of the vehicle to any other person.

"(4) A lessor of a motor vehicle may use the vehicle mileage information provided by lessees under paragraph (1) for purposes of compliance with the requirements of subsection (a) unless such lessor has reason to believe that such information does not reflect the actual mileage of the vehicle. Failure of any lessee to comply with paragraph (1) shall not affect the ability of the lessor to transfer ownership of the vehicle to any other person.".

SEC. 2. Section 402 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1982) is amended by redesignating paragraphs (1) through (5) as (2) through (6), respectively, and by inserting before the newly designated paragraph (2) the following:

"(1) The term 'auction company' means any person who takes possession (whether through consignment, bailment, or through any other arrangement) of a motor vehicle owned by another person for purposes of selling such motor vehicle at an auction.".

SEC. 3. (a) Paragraphs (1) and (2) of section 408(d) of the Motor Vehicle Information and Cost Savings Act, as added by the first section, shall apply with respect to motor vehicles which are transferred after eighteen months after the date of enactment of this Act.

(b) Section 408(d) (3) and (4) of the Motor Vehicle Information and Cost Savings Act, as added by the first section, shall apply with respect to motor vehicles which are registered in any State after eighteen months after the date of the enactment of this Act.

(c) Section 408(e) of the Motor Vehicle Information and Cost Savings Act, as added by the first section, shall apply with respect to motor vehicles which are sold by an auction company after eighteen months after the date of the enactment of this Act.

(d) For purposes of this section, the terms "motor vehicle" and "auction company" shall have the same meanings as used in the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1901 et seq.).

SEC. 4. (a) Section 412(a) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1990b(a)) is amended by striking out "$1,000" and inserting in lieu thereof "$2,000".

(b) Section 413(a) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1990c(a)) is amended by striking out "one year" and inserting in lieu thereof "three years".

MOTION OFFERED BY MR. DINGELL

Mr. DINGELL. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. DINGELL moves to strike out all after the enacting clause of the Senate bill, S. 475, and to insert in lieu thereof the provisions contained in H.R. 780, as passed by the House.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Michigan [Mr. DINGELL].

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed.

The title of the Senate bill was amended so as to read "A bill to amend section 408 of the Motor Vehicle Information and Cost Savings Act to strengthen, for the protection of consumers, the provisions respecting disclosure of motor vehicle mileage when motor vehicles are transferred."

A motion to reconsider was laid upon the table.

A similar House bill (H.R. 780) was laid on the table.

GOVERNMENT SECURITIES ACT OF 1986

Mr. DINGELL. Mr. Speaker, I move to suspend the rules and agree to the resolution (H. Res. 574) to provide for the concurrence of the House to amendments of the Senate to the bill (H.R. 2032) with an amendment.

The Clerk read as follows:

H. RES. 574

Resolved, That upon the adoption of this resolution the bill (H.R. 2032) to amend the Securities Exchange Act of 1934 to provide improved protection for investors in the government securities market, and for other purposes, be and is hereby taken from the Speaker's table to the end that the Senate amendment to the text of the bill be and is hereby agreed to with the following amendment:

In lieu of the matter proposed to be inserted by the amendment of the Senate to the bill, H.R. 2032, insert the following:

SECTION 1. SHORT TITLE AND FINDINGS.

(a) SHORT TITLE.—This Act may be cited as the "Government Securities Act of 1986".

(b) FINDINGS.—The Congress finds that transactions in government securities are affected with a public interest which makes it necessary—

(1) to provide for the integrity, stability, and efficiency of such transactions and of matters and practices related thereto;

(2) to impose adequate regulation of government securities brokers and government securities dealers generally; and

(3) to require appropriate financial responsibility, recordkeeping, reporting, and related regulatory requirements;

in order to protect investors and to insure the maintenance of fair, honest, and liquid markets in such securities.

TITLE I—GOVERNMENT SECURITIES BROKERS AND DEALERS

SEC. 101. ESTABLISHMENT OF GOVERNMENT SECURITIES REGULATORY AUTHORITY.

The Securities Exchange Act of 1934 (hereafter in this title referred to as "the Act") is amended by inserting after section 15B (15 U.S.C. 780-4) the following new section:

"GOVERNMENT SECURITIES BROKERS AND DEALERS

"SEC. 15C. (a)(1)(A) It shall be unlawful for any government securities broker or government securities dealer (other than a registered broker or dealer or a financial institution) to make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any government security unless such government securities broker or government securities dealer is registered in accordance with paragraph (2) of this subsection.

"(B)(i) It shall be unlawful for any government securities broker or government securities dealer that is a registered broker or dealer or a financial institution to make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any government security unless such government securities broker or government securities dealer has filed with the appropriate regulatory agency written notice that it is a government securities broker or government securities dealer. When a government securities broker or government securities dealer ceases to act as such it shall file with the appropriate regulatory agency a written notice that it is no longer acting as a government securities broker or government securities dealer.

"(ii) Such notices shall be in such form and contain such information concerning a government securities broker or government securities dealer that is a financial institution and any persons associated with such government securities broker or government securities dealer as the Board of Governors of the Federal Reserve System shall, by rule, after consultation with each appropriate regulatory agency (including the Commission), prescribe as necessary or appropriate in the public interest or for the protection of investors. Such notices shall be in such form and contain such information

concerning a government securities broker or government securities dealer that is a registered broker or dealer and any persons associated with such government securities broker or government securities dealer as the Commission shall, by rule, prescribe as necessary or appropriate in the public interest or for the protection of investors.

"(iii) Each appropriate regulatory agency (other than the Commission) shall make available to the Commission the notices which have been filed with it under this subparagraph, and the Commission shall maintain and make available to the public such notices and the notices it receives under this subparagraph.

"(2) A government securities broker or a government securities dealer subject to the registration requirement of paragraph (1)(A) of this subsection may be registered by filing with the Commission an application for registration in such form and containing such information and documents concerning such government securities broker or government securities dealer and any persons associated with such government securities broker or government securities dealer as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. Within 45 days of the date of filing of such application (or within such longer period as to which the applicant consents), the Commission shall—

"(i) by order grant registration, or

"(ii) institute proceedings to determine whether registration should be denied. Such proceedings shall include notice of the grounds for denial under consideration and opportunity for hearing and shall be concluded within 120 days of the date of the filing of the application for registration. At the conclusion of such proceedings, the Commission, by order, shall grant or deny such registration. The Commission may extend the time for the conclusion of such proceedings for up to 90 days if it finds good cause for such extension and publishes its reasons for so findings or for such longer period as to which the applicant consents.

The Commission shall grant the registration of a government securities broker or a government securities dealer if the Commission finds that the requirements of this section are satisfied. The Commission shall deny such registration if it does not make such a finding or if it finds that if the applicant were so registered, its registration would be subject to suspension or revocation under subsection (c) of this section.

"(3) Any provision of this title (other than section 5 or paragraph (1) of this subsection) which prohibits any act, practice, or course of business if the mails or any means or instrumentality of interstate commerce is used in connection therewith shall also prohibit any such act, practice, or course of business by any government securities broker or government securities dealer registered or having filed notice under paragraph (1) of this subsection or any person acting on behalf of such government securities broker or government securities dealer, irrespective of any use of the mails or any means or instrumentality of interstate commerce in connection therewith.

"(4) The Secretary of the Treasury (hereinafter in this section referred to as the 'Secretary'), by rule or order, upon the Secretary's own motion or upon application, may conditionally or unconditionally exempt any government securities broker or government securities dealer, or class of government securities brokers or government securities dealers, from any provision of subsection (a), (b), or (d) of this section or the rules thereunder, if the Secretary finds that such exemption is consistent with the public interest, the protection of investors, and the purposes of this title.

"(b)(1) The Secretary shall propose and adopt rules to effect the purposes of this title with respect to transactions in government securities effected by government securities brokers and government securities dealers as follows:

"(A) Such rules shall provide safeguards with respect to the financial responsibility and related practices of government securities brokers and government securities dealers including, but not limited to, capital adequacy standards, the acceptance of custody and use of customers' securities, the carrying and use of customers' deposits or credit balances, and the transfer and control of government securities subject to repurchase agreements and in similar transactions.

"(B) such rules shall require every government securities broker and government securities dealer to make reports to and furnish copies of records to the appropriate regulatory agency, and to file with the appropriate regulatory agency, annually or more frequently, a balance sheet and income statement certified by an independent public accountant, prepared on a calendar or fiscal year basis, and such other financial statements (which shall, as the Secretary specifies, be certified) and information concerning its financial condition as required by such rules.

"(C) Such rules shall require records to be made and kept by government securities brokers and government securities dealers and shall specify the periods for which such records shall be preserved.

"(2) Rules promulgated and orders issued under this section shall—

"(A) be designed to prevent fraudulent and manipulative acts and practices and to protect the integrity, liquidity, and efficiency of the market for government securities, investors, and the public interests; and

"(B) not be designed to permit unfair discrimination between customers, issuers, government securities brokers, or government securities dealers, or to impose any burden on competition not necessary or appropriate in furtherance of the purposes of this title.

"(3) In promulgating rules and issuing orders under this section, the Secretary—

"(A) may appropriately classify government securities brokers and government securities dealers (taking into account relevant matters, including types of business done, nature of securities other than government securities purchased or sold, and character of business organization) and persons associated with government securities brokers and government securities dealers;

"(B) may determine, to the extent consistent with paragraph (2) of this subsection and with the public interest, the protection of investors, and the purposes of this title, not to apply, in whole or in part, certain rules under this section, or to apply greater, lesser, or different standards, to certain classes of government securities brokers, government securities dealers, or persons associated with government securities brokers or government securities dealers;

"(C) shall consider the sufficiency and appropriateness of then existing laws and rules applicable to government securities brokers, government securities dealers, and persons associated with government securities brokers and government securities dealers; and

"(D) shall consult with and consider the views of the Commission and the Board of Governors of the Federal Reserve System, except where the Secretary determines that an emergency exists requiring expeditious or summary action and publishes its reasons for such determination.

"(4) If the Commission or the Board of Governors of the Federal Reserve System comments in writing on a proposed rule of the Secretary that has been published for comment, the Secretary shall respond in writing to such written comment before approving the proposed rule.

"(5) No government securities broker or government securities dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any government security in contravention of any rule under this section.

"(c)(1) With respect to any government securities broker or government securities dealer registered or required to register under subsection (a)(1)(A) of this section—

"(A) The Commission, by order, shall censure, place limitations on the activities, functions, or operations of, suspend for a period not exceeding 12 months, or revoke the registration of such government securities broker or government securities dealer, if it finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or revocation is in the public interest and that such government securities broker or government securities dealer, or any person associated with such government securities broker or government securities dealer (whether prior or subsequent to becoming so associated), has committed or omitted any act or omission enumerated in subparagraph (A), (D), or (E) or paragraph (4) of section 15(b) of this title, has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within 10 years of the commencement of the proceedings under this paragraph, or is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4).

"(B) Pending final determination whether registration of any government securities broker or government securities dealer shall be revoked, the Commission, by order, may suspend such registration, if such suspension appears to the Commission, after notice and opportunity for hearing, to be necessary or appropriate in the public interest or for the protection of investors. Any registered government securities broker or registered government securities dealer may, upon such terms and conditions as the Commission may deem necessary in the public interest or for the protection of investors, withdraw from registration by filing a written notice of withdrawal with the Commission. If the Commission finds that any registered government securities broker or registered government securities dealer is no longer in existence or has ceased to do business as a government securities broker or government securities dealer, the Commission, by order, shall cancel the registration of such government securities broker or government securities dealer.

"(C) The Commission, by order, shall censure or place limitations on the activities or functions of any person associated, or seeking to become associated, with a government securities broker or government securities dealer registered or required to register under subsection (a)(1)(A) of this section or suspend for a period not exceeding 12

months or bar any such person from being associated with such a government securities broker or government securities dealer, if the Commission finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person has committed or omitted any act or omission enumerated in subparagraph (A), (D), or (E) of paragraph (4) of section 15(b) of this title, has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within 10 years of the commencement of the proceedings under this paragraph, or is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4).

"(2)(A) With respect to any government securities broker or government securities dealer which is not registered or required to register under subsection (a)(1)(A) of this section, the appropriate regulatory agency for such government securities broker or government securities dealer may, in the manner and for the reasons specified in paragraph (1)(A) of this subsection, censure, place limitations on the activities, functions, or operations of, suspend for a period not exceeding 12 months, or bar from acting as a government securities broker or government securities dealer any such government securities broker or government securities dealer, and may sanction any person associated with such government securities broker or government securities dealer in the manner and for the reasons specified in paragraph (1)(C) of this subsection.

"(B) In addition, where applicable, such appropriate regulatory agency may, in accordance with section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), section 5 of the Home Owners' Loan Act of 1933 (12 U.S.C. 1464), or section 407 of the National Housing Act (12 U.S.C. 1730), enforce compliance by such government securities broker or government securities dealer or any person associated with such government securities broker or government securities dealer with the provisions of this section and the rules thereunder.

"(C) For purposes of subparagraph (B) of this paragraph, any violation of any such provision shall constitute adequate basis for the issuance of any order under section 8(b) or 8(c) of the Federal Deposit Insurance Act, section 5(d)(2) or 5(d)(3) of the Home Owners' Loan Act of 1933, or section 407(e) or 407(f) of the National Housing Act, and the customers of any such government securities broker or government securities dealer shall be deemed, respectively, 'depositors' as that term is used in section 8(c) of the Federal Deposit Insurance Act, 'savings account holders' as that term is used in section 5(d)(3) of the Home Owners' Loan Act of 1933, or 'insured members' as that term is used in section 407(f) of the National Housing Act.

"(D) Nothing in this paragraph shall be construed to affect in any way the powers of such appropriate regulatory agency to proceed against such government securities broker or government securities dealer under any other provision of law.

"(E) Each appropriate regulatory agency (other than the Commission) shall promptly notify the Commission after it has imposed any sanction under this paragraph on a government securities broker or government securities dealer, or a person associated with a government securities broker or government securities dealer, and the Commission shall maintain, and make available to the public, a record of such sanctions and any sanctions imposed by it under this subsection.

"(3) It shall be unlawful for any person as to whom an order entered pursuant to paragraph (1) or (2) of this subsection suspending or barring him from being associated with a government securities broker or government securities dealer is in effect willfully to become, or to be, associated with a government securities broker or government securities dealer without the consent of the appropriate regulatory agency, and it shall be unlawful for any government securities broker or government securities dealer to permit such a person to become, or remain, a person associated with it without the consent of the appropriate regulatory agency, if such government securities broker or government securities dealer knew, or, in the exercise of reasonable care should have known, of such order.

"(d)(1) All records of a government securities broker or government securities dealer are subject at any time, or from time to time, to such reasonable periodic, special, or other examinations by representatives of the appropriate regulatory agency for such government securities broker or government securities dealer as such appropriate regulatory agency deems necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title.

"(2) Information received by any appropriate regulatory agency or the Secretary from or with respect to any government securities broker or government securities dealer or with respect to any person associated therewith may be made available by the Secretary or the recipient agency to the Commission, the Secretary, any appropriate regulatory agency, and any self-regulatory organization.

"(e)(1) It shall be unlawful for any government securities broker or government securities dealer registered or required to register with the Commission under subsection (a)(1)(A) to effect any transaction in, or induce or attempt to induce the purchase or sale of, any government security, unless such government securities broker or government securities dealer is a member of a national securities exchange registered under section 6 of this title or a securities association registered under section 15A of this title.

"(2) The Commission, after consultation with the Secretary, by rule or order, as it deems consistent with the public interest and the protection of investors, may conditionally or unconditionally exempt from paragraph (1) of this subsection any government securities broker or government securities dealer or class of government securities brokers or government securities dealers specified in such rule or order.

"(f)(1) Nothing in this section except paragraph (2) of this subsection shall be construed to impair or limit the authority under any other provision of law of the Commission, the Secretary of the Treasury, the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, the Federal Savings and Loan Insurance Corporation, the Secretary of Housing and Urban Development, and the Government National Mortgage Association.

"(2) Notwithstanding any other provision of this title, the Commission shall not have any authority to make investigations of, require the filing of a statement by, or take any other action under this title against a government securities broker or government securities dealer, or any person associated with a government securities broker or government securities dealer, for any violation or threatened violation of the provisions of this section or the rules or regulations thereunder, unless the Commission is the appropriate regulatory agency for such government securities broker or government securities dealer. Nothing in the preceding sentence shall be construed to limit the authority of the Commission with respect to violations or threatened violations of any provision of this title other than this section, or the rules or regulations under any such other provision.

"(g)(1) The authority of the Secretary to issue orders and to propose and adopt rules under this section shall terminate on October 1, 1991.

"(2) All orders and rules—

"(A) which have been issued or adopted by the Secretary, and

"(B) which are in effect on the date specified in paragraph (1),

shall continue in effect according to their terms.".

SEC. 102. CONFORMING AMENDMENTS.

(a) DEFINITION OF EXEMPTED SECURITY.—Paragraph (12) of section 3(a) of the Act (15 U.S.C. 78c(a)(12)) is amended to read as follows:

"(12)(A) The term 'exempted security' or 'exempted securities' includes—

"(i) government securities, as defined in paragraph (42) of this subsection;

"(ii) municipal securities, as defined in paragraph (29) of this subsection;

"(iii) any interest or participation in any common trust fund or similar fund maintained by a bank exclusively for the collective investment and reinvestment of assets contributed thereto by such bank in its capacity as trustee, executor, administrator, or guardian;

"(iv) any interest or participation in a single trust fund, or a collective trust fund maintained by a bank, or any security arising out of a contract issued by an insurance company, which interest, participation, or security is issued in connection with a qualified plan as defined in subparagraph (C) of this paragraph; and

"(v) such other securities (which may include, among others, unregistered securities, the market in which is predominantly intrastate) as the Commission may, by such rules and regulations as it deems consistent with the public interest and the protection of investors, either unconditionally or upon specified terms and conditions or for stated periods, exempt from the operation of any one or more provisions of this title which by their terms do not apply to an 'exempted security' or to 'exempted securities'.

"(B)(i) Notwithstanding subparagraph (A)(i) of this paragraph, government securities shall not be deemed to be 'exempted securities' for the purposes of section 17A of this title.

"(ii) Notwithstanding subparagraph (A)(ii) of this paragraph, municipal securities shall not be deemed to be 'exempted securities' for the purposes of sections 15, 15A (other than subsection (g)(3)), and 17A of this title.

"(C) For purposes of subparagraph (A)(iv) of this paragraph, the term 'qualified plan' means (i) a stock bonus, pension, or profit-sharing plan which meets the requirements for qualification under section 401 of the Internal Revenue Code of 1954, (ii) an annuity plan which meets the requirements for the deduction of the employer's contribution under section 404(a)(2) of such Code, or (iii)

a governmental plan as defined in section 414(d) of such Code which has been established by an employer for the exclusive benefit of its employees or their beneficiaries for the purpose of distributing to such employees or their beneficiaries the corpus and income of the funds accumulated under such plan, if under such plan it is impossible, prior to the satisfaction of all liabilities with respect to such employees and their beneficiaries, for any part of the corpus or income to be used for, or diverted to, purposes other than the exclusive benefit of such employees or their beneficiaries, other than any plan described in clause (i), (ii), or (iii) of this subparagraph which (I) covers employees some or all of whom are employees within the meaning of section 401(c) of such Code, or (II) is a plan funded by an annuity contract described in section 403(b) of such Code.".

(b) DEFINITION OF APPROPRIATE REGULATORY AGENCY.—Section 3(a)(34) of the Act is amended—

(1) by inserting after paragraph (F) thereof the following new paragraph:

"(G) When used with respect to a government securities broker or government securities dealer, or person associated with a government securities broker or government securities dealer:

"(i) the Comptroller of the Currency, in the case of a national bank, a bank in the District of Columbia examined by the Comptroller of the Currency, or a Federal branch or Federal agency of a foreign bank (as such terms are used in the International Banking Act of 1978);

"(ii) the Board of Governors of the Federal Reserve System, in the case of a State member bank of the Federal Reserve System, a foreign bank, a State branch or a State agency of a foreign bank, or a commercial lending company owned or controlled by a foreign bank (as such terms are used in the International Banking Act of 1978);

"(iii) the Federal Deposit Insurance Corporation, in the case of a bank insured by the Federal Deposit Insurance Corporation (other than a member of the Federal Reserve System or a Federal savings bank);

"(iv) the Federal Home Loan Bank Board, in the case of a Federal savings and loan association, Federal savings bank, or District of Columbia savings and loan association;

"(v) the Federal Savings and Loan Insurance Corporation, in the case of an institution insured by the Federal Savings and Loan Insurance Corporation (other than a Federal savings and loan association, Federal savings bank, or District of Columbia savings and loan association);

"(vi) the Commission, in the case of all other government securities brokers and government securities dealers."; and

"(2) by inserting ", and the term 'District of Columbia savings and loan association' means any association subject to examination and supervision by the Federal Home Loan Bank Board under section 8 of the Home Owners' Loan Act of 1933" before the period ending the last sentence thereof.

(c) DEFINITION OF STATUTORY DISQUALIFICATION.—Section 3(a)(39) of such Act (15 U.S.C. 78c(a)(39)) is amended—

(1) in subparagraph (B)—

(A) by inserting "or other appropriate regulatory agency" after "Commission"; and

(B) by striking out "or municipal securities dealer" and inserting in lieu thereof "municipal securities dealer, government securities broker, or government securities dealer"; and

(2) in subparagraph (C)—

(A) by striking out "or municipal securities dealer" and inserting in lieu thereof "municipal securities dealer, government securities broker, or government securities dealer"; and

(B) by inserting ", an appropriate regulatory agency," after "Commission".

(d) ADDITIONAL DEFINITIONS.—Section 3(a) of such Act (15 U.S.C. 78c(a)) is further amended by adding at the end thereof the following new paragraphs:

"(42) The term 'government securities' means—

"(A) securities which are direct obligations of, or obligations guaranteed as to principal or interest by, the United States;

"(B) securities which are issued or guaranteed by corporations in which the United States has a direct or indirect interest and which are designated by the Secretary of the Treasury for exemption as necessary or appropriate in the public interest or for the protection of investors;

"(C) securities issued or guaranteed as to principal or interest by any corporation the securities of which are designated, by statute specifically naming such corporation, to constitute exempt securities within the meaning of the laws administered by the Commission; or

"(D) for purposes of sections 15C and 17A, and any put, call, straddle, option, or privilege on a security described in subparagraph (A), (B), or (C) other than a put, call, straddle, option, or privilege—

"(i) that is traded on one or more national securities exchanges; or

"(ii) for which quotations are disseminated through an automated quotation system operated by a registered securities association.

"(43) The term 'government securities broker' means any person regularly engaged in the business of effecting transactions in government securities for the account of others, but does not include—

"(A) any corporation the securities of which are government securities under subparagraph (B) or (C) of paragraph (42) of this subsection; or

"(B) any person registered with the Commodity Futures Trading Commission, any contract market designated by the Commodity Futures Trading Commission, such contract market's affiliated clearing organization, or any floor trader on such contract market, solely because such person effects transactions in government securities that the Commission, after consultation with the Commodity Futures Trading Commission, has determined by rule or order to be incidental to such person's futures-related business.

"(44) The term 'government securities dealer' means any person engaged in the business of buying and selling government securities for his own account, through a broker or otherwise, but does not include—

"(A) any person insofar as he buys or sells such securities for his own account, either individually or in some fiduciary capacity, but not as a part of a regular business;

"(B) any corporation the securities of which are government securities under subparagraph (B) or (C) of paragraph (42) of this subsection;

"(C) any bank, unless the bank is engaged in the business of buying and selling government securities for its own account other than in a fiduciary capacity, through a broker or otherwise; or

"(D) any person registered with the Commodity Futures Trading Commission, any contract market designated by the Commodity Futures Trading Commission, such contract market's affiliated clearing organization, or any floor trader on such contract market, solely because such person effects transactions in government securities that the Commission, after consultation with the Commodity Futures Trading Commission, has determined by rule or order to be incidental to such person's futures-related business.

"(45) The term 'person associated with a government securities broker or government securities dealer' means any partner, officer, director, or branch manager of such government securities broker or government securities dealer (or any person occupying a similar status or performing similar functions), and any other employee of such government securities broker or government securities dealer who is engaged in the management, direction, supervision, or performance of any activities relating to government securities, and any person directly or indirectly controlling, controlled by, or under common control with such government securities broker or government securities dealer.

"(46) The term 'financial institution' means (A) a bank (as such term is defined in paragraph (6) of this subsection), (B) a foreign bank, and (C) an insured institution (as such term is defined in section 401 of the National Housing Act).

"(48) The term 'registered broker or dealer' means a broker or dealer registered or required to register pursuant to section 15 or 15B of this title, except that in paragraph (3) of this subsection and sections 6 and 15A the term means such a broker or dealer and a government securities broker or government securities dealer registered or required to register pursuant to section 15C(a)(1)(A) of this title.".

(e) ENFORCEMENT AND DISCIPLINE.—Section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)) is amended—

(1) in paragraph (4)(A), by inserting "or with any other appropriate regulatory agency" after "Commission" the first time it appears therein;

(2) in paragraph (4)(B), by inserting in clause (ii) thereof "government securities broker, government securities dealer," after "municipal securities dealer,";

(3) in paragraph (4)(C), by striking out "or municipal securities dealer," and inserting in lieu thereof "municipal securities dealer, government securities broker, or government securities dealer,"; and

(4) in paragraph (8)—

(A) by striking out "any broker or dealer required to register pursuant to this title" and inserting in lieu thereof "any registered broker or dealer"; and

(B) by striking out "an exempted security".

(f) NET CAPITAL.—Section 15(c)(3) of such Act (15 U.S.C. 78o(c)(3)) is amended—

(1) by inserting "(other than a government securities broker or government securities dealer, except a registered broker or dealer)" after "dealer"; and

(2) by inserting "(except a government security)" after "exempted security".

(g) REGISTERED SECURITIES ASSOCIATIONS.—(1) Section 15A(f) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-3(f)) is amended to read as follows:

"(f)(1) Except as provided in paragraph (2) of this subsection, nothing in this section shall be construed to apply with respect to any transaction by a registered broker or dealer in any exempted security.

"(2) A registered securities association may adopt and implement rules applicable to members of such association (A) to enforce compliance by registered brokers and dealers with applicable provisions of this title and the rules and regulations thereunder, (B) to provide that its members and persons associated with its members shall be appropriately disciplined, in accordance with subsections (b)(7), (b)(8), and (h) of this section, for violation of applicable provisions of this title and the rules and regulations thereunder, (C) to provide for reasonable inspection and examination of the books and records of registered brokers and dealers, (D) to provide for the matters described in paragraphs (b)(3), (b)(4), and (b)(5) of this section, (E) to implement the provisions of subsection (g) of this section, and (F) to prohibit fraudulent, misleading, deceptive, and false advertising.

"(3) Nothing in subsection (b)(6) or (b)(11) of this section shall be construed to permit a registered securities association to make rules concerning any transaction by a registered broker or dealer in a municipal security.".

(2) Section 15A(g) of such Act (15 U.S.C. 78o-3(g)) is amended—

(A) by inserting after paragraph (3)(C) the following:

"(D) Nothing in subparagraph (A), (B), or (C) of this paragraph shall be construed to permit a registered securities association to deny membership to or condition the membership of, or bar any person from becoming associated with or condition the association of any person with, a broker or dealer that engages exclusively in transactions in exempted securities.";

(B) by redesignating paragraph (4) as paragraph (5); and

(C) by inserting after paragraph (3) the following new paragraph:

"(4)(A) A registered securities association may deny membership to, or condition the membership of, a government securities broker or government securities dealer if such government securities broker or government securities dealer (i) does not meet standards of financial responsibility under rules adopted pursuant to section 15C(b)(1)(A) of this title, or (ii) has engaged and there is a reasonable likelihood that it will again engage in any conduct or practice which would subject such government securities broker or government securities dealer to sanctions under section 15C(c) of this title. A registered securities association may establish procedures including examination of the books and records of government securities brokers and government securities dealers to verify compliance with the provisions of this title and the rules thereunder.

"(B) A registered securities association may bar any person from becoming associated with a member or condition the association of a person with a member (i) if such person has engaged in any conduct or practice and there is a reasonable likelihood that such person will again engage in any conduct or practice which would subject such person to sanctions under section 15C(c) of this title, or (ii) if such person does not agree to supply such association with such information with respect to its relationship and dealings with the member as may be specified in the rules of the association and to permit examination of its books and records to verify the accuracy thereof.".

(h) FILING OF AND ACCESS TO DOCUMENTS.—Section 17(c) of the Act (15 U.S.C. 78q(c)) is amended by adding at the end thereof the following new paragraph:

"(4) The Commission or the appropriate regulatory agency may specify that documents required to be filed pursuant to this subsection with the commission or such agency, respectively, may be retained by the originating clearing agency, transfer agent, or municipal securities dealer, or filed with another appropriate regulatory agency. The Commission or the appropriate regulatory agency (as the case may be) making such a specification shall continue to have access to the document on request.".

(i) LOST AND STOLEN SECURITIES.—Section 17(f) of the Securities Exchange Act of 1934 (15 U.S.C. 78q(f)) is amended—

(1) in paragraph (1) by inserting "government securities broker, government securities dealer," after "municipal securities dealer,";

(2) in paragraph (1)(A), by inserting "and, in the case of government securities, to the Secretary of the Treasury" after "commission" the second time it appears; and

(3) in paragraph (3)—

(A) by inserting "(A)" after "(3)"; and

(B) by adding the following new subparagraph:

"(B) In order to carry out the authority under paragraph (1) of this subsection, the Commission or its designee and the Secretary of the Treasury shall enter into an agreement whereby the Commission or its designee will receive, store, and disseminate information in the possession, and which comes into the possession, of the Department of the Treasury in regard to missing, lost, counterfeit, or stolen securities.".

(j) BURDEN ON COMPETITION; PUBLIC RULEMAKING REQUIREMENTS.—Section 23(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78w(a)) is amended—

(1) by inserting "and the Secretary of the Treasury" after "Commission" each place it appears in paragraph (2);

(2) by inserting "or the Secretary's" after "Commission's" in paragraph (2);

(3) by inserting "and the Secretary" after "Commission" the first, second, and fourth places it appears in paragraph (3); and

(4) by inserting "or the Secretary" after "Commission" the third place it appears in paragraph (3).

(k) JUDICIAL REVIEW OF ORDERS AND RULES.—Section 25(d)(1) of the Act (15 U.S.C. 78y(d)(1) is amended by inserting before the period at the end thereof the following: "and the Secretary of the Treasury insofar as he is acting pursuant to section 15C of this title".

(l) INVESTMENT COMPANIES: DISQUALIFICATIONS.—Section 9 of the Investment Company Act of 1940 (15 U.S.C. 80a-9) is amended—

(1) by striking out paragraphs (1) and (2) of subsection (a) and inserting in lieu thereof the following:

"(1) any person who within 10 years has been convicted of any felony or misdemeanor involving the purchase or sale of any security or arising out of such persons's conduct as an underwriter, broker, dealer, investment adviser, municipal securities dealer, government securities broker, government securities dealer, or entity or person required to be registered under the Commodity Exchange Act, or as an affiliated person, salesman, or employee of any investment company, bank insurance company, or entity or person required to be registered under the Commodity Exchange Act;

"(2) any person who, by reason of any misconduct, is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an underwriter, broker, dealer, investment adviser, municipal securities dealer, government securities broker, government securities dealer, or entity or person required to be registered under the Commodity Exchange Act, or as an affiliated person, salesman, or employee of any investment company, bank, insurance company, or entity or person required to be registered under the Commodity Exchange Act, or from engaging in or continuing any conduct or practice in connection with any such activity or in connection with the purchase or sale of any security; or";

(2) by inserting "or of the Commodity Exchange Act," after "this title," in subsection (b)(2); and

(3) by inserting "or of the Commodity Exchange Act," after "this title," in subsection (b)(3).

(m) INVESTMENT ADVISERS: DISQUALIFICATIONS.—Section 203 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3) is amended—

(1) by striking out "or fiduciary" in subsection (e)(2)(B) and inserting in lieu thereof "government securities broker, government securities dealer, fiduciary, or entity or person required to be registered under the Commodity Exchange Act";

(2) by striking out paragraph (3) of subsection (e) and inserting in lieu thereof the following:

"(3) is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an investment adviser, underwriter, broker, dealer, municipal securities dealer, government securities broker, government securities dealer, or entity or person required to be registered under the Commodity Exchange Act, or as an affiliated person or employee of any investment company, bank, insurance company, or entity or person required to be registered under the Commodity Exchange Act, or from engaging in or continuing any conduct or practice in connection with any such activity, or in connection with the purchase or sale of any security."; and

(3) by inserting "the Commodity Exchange Act," after "this title," in paragraph (4) of subsection (e).

SEC. 103. STUDIES AND RECOMMENDATIONS WITH RESPECT TO EXTENSION OF TREASURY AUTHORITY.

(a) TASK FORCE RECOMMENDATION.—The Secretary of the Treasury, together with the Securities and Exchange Commission and the Board of Governors of the Federal Reserve System, shall evalaute the effectiveness of the rules promulgated pursuant to section 15C of the Securities Exchange Act of 1934 in effecting the purposes of such Act, and shall submit to the Congress, not later than October 1, 1990, their recommendation with respect to the extension of the Secretary's authority under such section and such other recommendations as they may consider appropriate.

(b) COMPTROLLER GENERAL STUDY AND RECOMMENDATIONS.—The Comptroller General shall conduct a study of the regulation of government securities brokers and government securities dealers pursuant to section 15C of the Securities Exchange Act of 1934 and the effectiveness of the amendments made by this Act in protecting investors and in effecting the purposes described in section 15C(b)(2), and shall submit to the Congress, not later than March 31, 1990, his recommendations with respect to the extension of the Secretary's authority under such sec-

tion and such other recommendations as he may consider appropriate.

SEC. 104. STUDY OF TRADING SYSTEM FOR GOVERNMENT SECURITIES.

(a) REQUIREMENTS FOR STUDY.—The Comptroller General, in coordination and consultation with the Board of Governors of the Federal Reserve, the Secretary of the Treasury, and the Commission, shall study the nature of the current trading system in the secondary market for government securities, including—

(1) the extent and form of availability of bids and asks for government securities transactions on a real time basis;

(2) the extent and form of the availability of government securities brokers' services in the secondary market; and

(3) whether quotations for government securities and the services of government securities brokers are available on terms which are consistent with the public interest, the protection of investors, and the purposes of this title.

(b) PUBLIC HEARINGS.—In addition to the collection of information through surveys, public document review, interviews, and other information-gathering methods, at least one joint public hearing shall be held during the course of conducting the study.

(c) REPORT AND RECOMMENDATIONS.—The report of the Comptroller General shall be submitted to the Congress no later than 6 months after the date of enactment of this Act.

SEC. 105. SECURITIES AND EXCHANGE COMMISSION LEGISLATION STUDY.

(a) GENERAL REQUIREMENTS.—The Securities and Exchange Commission is authorized and directed to make a study of the use of the exemption contained in section 3(a)(2) of the Securities Act of 1933 (15 U.S.C. 77c(a)(2)) for securities guaranteed by banks, and of the use of insurance policies to guarantee securities. Such study shall include an analysis of—

(1) the impact of the guarantee provision of such section 3(a)(2) on investor protection and the public interest;

(2) the impact of the guarantee provision of such section 3(a)(2) on competition between banks and insurance companies and between domestic and foreign guarantors;

(3) whether, and under what circumstances, debt securities guaranteed by insurance policies should be exempt from registration under the Securities Act of 1933;

(4) an analysis of the impact of such an exemption on investor protection and the public interest; and

(5) such other issues as the Commission deems relevant.

(b) CONSULTATION.—In conducting the study required by subsection (a), the Commission shall consult with and solicit comment from the Secretary of the Treasury, the Board of Governors of the Federal Reserve System, and other Federal bank regulatory agencies.

(c) REPORT.—The Securities and Exchange Commission shall, on or before 6 months after the date of enactment of this Act, submit a report to the Congress containing—

(1) the results of its study under this section;

(2) the actions it proposes to take on the basis of its study; and

(3) recommendations for legislation.

TITLE II—DEPOSITORY INSTITUTIONS

SEC. 201. DEPOSITORY INSTITUTIONS.

(a) AMENDMENT TO CHAPTER 31 OF TITLE 31, UNITED STATES CODE.—Section 3121 of title 31, United States Code, is amended by adding at the end thereof the following:

"(h)(1) The Secretary shall prescribe by regulation standards for the safeguarding and use of obligations issued under this chapter, and obligations otherwise issued or guaranteed as to principal or interest by the United States. Such regulations shall apply only to a depository institution that is not a government securities broker or a government securities dealer and that holds such obligations as fiduciary, custodian, or otherwise for the account of a customer and not for its own account. Such regulations shall provide for the adequate segregation of obligations so held, including obligations which are purchased or sold subject to resale or repurchase.

"(2) Violation of a regulation prescribed under paragraph (1) shall constitute adequate basis for the issuance of an order under section 5239(a) or (b) of the Revised Statutes (12 U.S.C. 93(a) or (b)), section 8(b) or 8(c) of the Federal Deposit Insurance Act, section 5(d)(2) or 5(d)(3) of the Home Owners' Loan Act of 1933, section 407(e) or 407(f) of the National Housing Act, or section 206(e) or 206(f) of the Federal Credit Union Act. Such an order may be issued with respect to a depository institution by its appropriate regulatory agency and with respect to a federally insured credit union by the National Credit Union Administration Board.

"(3) Nothing in this subsection shall be construed to affect in any way the powers of such agencies under any other provision of law.

"(4) The Secretary shall, prior to adopting regulations under this subsection, determine with respect to each appropriate regulatory agency and the National Credit Union Administration Board, whether its rules and standards adequately meet the purposes of regulations to be promulgated under this subsection, and if the Secretary so determines, shall exempt any depository institution subject to such rules or standards from the regulations promulgated under this subsection.

"(5) As used in this subsection—

"(A) 'depository institution' has the meaning stated in clauses (i) through (vi) of section 19(b)(1)(A) of the Federal Reserve Act and also includes a foreign bank, an agency or branch of a foreign bank, and a commercial lending company owned or controlled by a foreign bank (as such terms are defined in the International Banking Act of 1978).

"(B) 'government securities broker' has the meaning prescribed in section 3(a)(43) of the Securities Exchange Act of 1934.

"(C) 'government securities dealer' has the meaning prescribed in section 3(a)(44) of the Securities Exchange Act of 1934.

"(D) 'appropriate regulatory agency' has the meaning prescribed in section 3(a)(34)(G) of the Securities Exchange Act of 1934.".

(b) AMENDMENTS TO CHAPTER 91 OF TITLE 31, UNITED STATES CODE.—Chapter 91 of title 31, United States Code, is amended—

(1) by adding at the end thereof the following:

"§ 9110. Standards for depository institutions holding securities of a Government-sponsored corporation for customers

"(a) The Secretary shall prescribe by regulation standards for the safeguarding and use of obligations that are government securities described in subparagraph (B) or (C) of section 3(a)(42) of the Securities Exchange Act of 1934. Such regulations shall apply only to a depository institution that is not a government securities broker or a government securities dealer and that holds such obligations as fiduciary, custodian, or otherwise for the account of a customer and not for its own account. Such regulations shall provide for the adequate segregation of obligations so held, including obligations which are purchased or sold subject to resale or repurchase.

"(b) Violation of a regulation prescribed under subsection (a) shall constitute adequate basis for the issuance of an order under section 5239(a) or (b) of the Revised Statutes (12 U.S.C. 93(a) or (b)), section 8(b) or 8(c) of the Federal Deposit Insurance Act, section 5(d)(2) or 5(d)(3) of the Home Owners' Loan Act of 1933, section 407(e) or 407(f) of the National Housing Act, or section 206(e) or 206(f) of the Federal Credit Union Act. Such an order may be issued with respect to a depository institution by its appropriate regulatory agency and with respect to a federally insured credit union by the National Credit Union Administration.

"(c) Nothing in this section shall be construed to affect in any way the powers of such agencies under any other provision of law.

"(d) The Secretary shall, prior to adopting regulations under this section, determine with respect to each appropriate regulatory agency and the National Credit Union Administration Board, whether its rules and standards adequately meet the purposes of regulations to be promulgated under this section, and if the Secretary so determines, shall exempt any depository institution subject to such rules or standards from the regulations promulgated under this section.

"(e) As used in this subsection—

"(1) 'depository institution' has the meaning stated in clauses (i) through (vi) of subparagraph 19(b)(1)(A) of the Federal Reserve Act and also includes a foreign bank, an agency or branch of a foreign bank, and a commercial lending company owned or controlled by a foreign bank (as such terms are defined in the International Banking Act of 1978).

"(2) 'government securities broker' has the meaning prescribed in section 3(a)(43) of the Securities Exchange Act of 1934.

"(3) 'government securities dealer' has the meaning prescribed in section 3(a)(44) of the Securities Exchange Act of 1934.

"(4) 'appropriate regulatory agency' has the meaning prescribed in section 3(a)(34)(G) of the Securities Exchange Act of 1934."; and

(2) by adding at the end of the chapter analysis the following:

"9110. Standards for depository institutions holding securities of a Government-sponsored corporation for customers.".

TITLE III—TRANSITIONAL AND SAVINGS PROVISIONS

SEC. 301. TRANSITIONAL AND SAVINGS PROVISIONS.

(a) EFFECT ON PENDING ADMINISTRATIVE PROCEEDINGS.—The provisions of this Act shall not affect any proceedings pending on the effective date of this Act.

(b) EFFECT ON PENDING JUDICIAL PROCEEDINGS.—The provisions of this Act shall not affect suits commenced prior to the effective date of this Act, and in all such suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and effect as if this Act had not been enacted.

(c) DISCRETION OF THE FEDERAL RESERVE BANK OF NEW YORK.—Nothing in this Act shall be construed to limit or impair the discretion or authority of the Federal Reserve Bank of New York to require reports or establish terms and conditions in connection with the Bank's relationship with any government securities broker or government securities dealer, including a primary dealer.

(d) JURISDICTION OF THE COMMODITY FUTURES TRADING COMMISSION.—Nothing in this Act affects the jurisdiction of the Commodity Futures Trading Commission as set forth in the Commodity Exchange Act over trading of commodity futures contracts and options on such contracts involving government securities.

TITLE IV—EFFECTIVE DATES

SEC. 401. GENERAL EFFECTIVE DATES.

Except as provided in section 402, this Act and the amendments made by this Act shall take effect 270 days after the date of enactment of this Act.

SEC. 402. EFFECTIVE DATE AND REQUIREMENTS FOR REGULATIONS.

Notwithstanding section 401, the Secretary of the Treasury and each appropriate regulatory agency shall, within 120 days after the date of enactment of this Act, publish for notice and public comment such regulations as are initially required to implement this Act, which regulations shall become effective as temporary regulations 210 days after the date of enactment of this Act and as final regulations not later than 270 days after the date of enactment of this Act.

SEC. 403. REGISTRATION DATE.

No person may continue to act as a government securities broker or government securities dealer after 270 days after the date of enactment of this Act unless such person has been registered or has provided notice to the Commission or the appropriate regulatory agency as required by the amendment made by section 101 of this Act.

And be it further resolved, That upon the adoption of this resolution the Senate amendment to the title of the bill (H.R. 2032) be and is hereby agreed to.

The SPEAKER pro tempore. Is a second demanded?

Mr. RINALDO. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Michigan [Mr. DINGELL] will be recognized for 20 minutes and the gentleman from New Jersey [Mr. RINALDO] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Michigan [Mr. DINGELL].

Mr. DINGELL. Mr. Speaker, I yield myself 5 minutes.

Mr. Speaker, I rise in strong support of H.R. 2032, the Government Securities Act of 1986, and urge my colleagues to support its passage. The Securities and Exchange Commission, the Board of Governors of the Federal Reserve System, and the Department of the Treasury all support this legislation.

As my colleagues will recall, between July 1975 and April 1985, several unregulated government securities dealers failed—Financial Corp. of Kansas City, MO, 1975; Winters Government Securities, 1977; Drysdale Government Securities, 1982; Lombard-Wall, 1982; Comark, 1982; Lion Capital Group, Inc., 1984; and most recently E.S.M. Government Securities, Inc. and Bevill, Bresler & Schulman Asset Management Corp., 1985—with estimated losses to investors of about $1 billion. E.S.M.'s failure alone resulted in losses of over $300 million to local governments and savings and loan associations, which triggered a depositor's run on thrift institutions in Ohio and the temporary closing of 71 Ohio thrifts. Similar events occurred in Maryland, followed by a sharp rise in the price of gold in European markets and a corresponding drop in the value of the dollar.

Following extensive hearings, the Committee on Energy and Commerce approved and the House passed in September 1985, legislation carefully crafted to balance the need for Federal regulation of the participants in the government securities market in order to maintain public confidence and liquidity, against the necessity to avoid a negative effect on the market's efficiency. The Senate passed similar legislation last month.

H.R. 2032 is the product of a bipartisan effort in the House and the Senate to produce a focused, well-balanced regulatory framework. I commend my colleagues and the staff for their hard and able work in reconciling the House and Senate bills.

There were many similarities between the two legislative packages but one major difference deserves comment, and that is the selection of the rulemaker. When the House considered this legislation in 1985, the Treasury, in letters and testimony, strongly opposed H.R. 2032, which established an industry representative rulemaking board under Federal Reserve oversight, and S. 1416, which vested rulemaking authority directly with the Federal Reserve, and tried to block passage of those bills. The Treasury stated that sole reliance should be placed on the Treasury's book-entry proposal.

Over the past year, the Department has revisited its book-entry proposal and concluded that the problems and abuses in the government securities market cannot be addressed by book-entry regulations alone. In April 1986, and again in August 1986, the Treasury agreed on the need for and endorsed registration of all brokers and dealers; financial responsibility, recordkeeping, and audit rules; and regulations directly affecting market safety such as collateralization of repurchase agreements.

The amendments currently before the House vest rulemaking authority in the Treasury and express our willingness to work with the Treasury to make these markets honest and liquid. However, to address the concerns of the House about the Department's commitment to their responsibilities, given their past vocal opposition, their authority is sunsetted in October 1991 and must be renewed or transferred to another body by the Congress. The Comptroller General is directed to audit and report on the effectiveness of the rules adopted by the Treasury. The Treasury, together with the SEC and the Federal Reserve, must also evaluate the effectiveness of those rules and report to Congress on the extension of the Treasury's authority 1 year before any decision is due. This is a fair and reasonable compromise.

Finally, no formal conference report has been prepared. In lieu of a report, I am inserting in the RECORD immediately following my remarks a joint floor statement and analysis of the major amendments. This statement and analysis reflects the views of the chairman of the committee and the chairman and ranking minority member of the subcommittee, all of whom played integral roles in authoring this legislation. I thank my colleagues and urge favorable passage of the bill.

FLOOR STATEMENT ON H.R. 2032, THE GOVERNMENT SECURITIES ACT OF 1986

On September 17, 1985, the House passed H.R. 2032, the Government Securities Act of 1985, and, on September 16, 1986, the Senate passed the bill with an amendment. The resolution before the House provides for the concurrence of the House to amendments of the Senate to the bill (H.R. 2032) with an amendment. In lieu of a conference report, this floor statement represents the views of the Chairman of the Committee and the Chairman and Ranking Minority Member of the Subcommittee and is intended to serve as the legislative history, along with H. Rpt. 99-258 (September 9, 1985) and Congressional Record (September 17, 1985) at H7479-H7490, and S. Rpt. 99-426 (September 3, 1986) and Congressional Record (September 16, 1986) at S12699-S12706.

ANALYSIS OF MAJOR PROVISIONS

The Rulemaker.—The amendment grants specific rulemaking authority to the Secretary of the Treasury (Secretary) and provides that the authority of the Secretary to issue orders and to propose and adopt rules shall terminate on October 1, 1991. All orders and rules which have been issued or adopted by the Secretary and which are in effect on the sunset date shall continue in effect according to their terms.

It is our intent and belief that, should Congress fail to renew or transfer this authority by October 1, 1991, the Secretary has the authority to respond to emergency situations and make technical corrections beyond October 1, 1991, pursuant to the Secretary's authority to interpret such rules. The government securities market is vital to the financing of the national debt and the implementation of monetary policy. For this reason, we believe that responsible regulation of this market will be a continuing necessity.

In this regard, the amendment requires certain studies and recommendations with respect to extension of the rulemaking au-

thority of the Department of Treasury (Treasury). The Comptroller General is authorized and directed to conduct a study of the regulation of government securities brokers and government securities dealers and the effectiveness of the amendments made by the legislation, and submit a report, not later than March 31, 1990, with recommendations with respect to, among other things, the extension of the Secretary's authority.

The Secretary, together with the Securities and Exchange Commission (SEC) and the Board of Governors of the Federal Reserve System (Federal Reserve Board) are charged to evaluate the effectiveness of the rules promulgated and submit to Congress, not later than October 1, 1990, their recommendation with respect to, among other things, the extension of the Secretary's authority. Although the Committee expects the Task Force recommendation required by section 103 to reflect a consensus, the Committee understands that such unanimity, while desirable, is not always attainable. Therefore, the recommendation, if appropriate, will contain any divergent viewpoints of the Task Force participants.

These studies and recommendations, along with effective oversight and hearings over the intervening five years, will form the basis for a fair and timely evaluation of the extension or transfer of the Secretary's authority in order to provide the government securities markets with certainty and continuity.

The Rules.—The amendment maintains the core rulemaking areas agreed to by the House and Senate versions of the bill. These include: financial responsibility, recordkeeping and financial statement rules, including the requirement to file annually or more frequently a balance sheet and income statement certified by an independent public accountant. The amendment drops specific reference to rulemaking authority relating to when-issued trading in government securities since the Secretary currently possesses that authority under 31 USC subsection 3121. Furthermore, we believe that our concerns about operational capability and margin can be addressed through capital adequacy requirements and early warning rules.

The amendment incorporates the House positive and negative standards and prohibitions, along with two Senate requirements, for Treasury rulemaking, including authority to classify, a requirement to consult with the SEC and the Federal Reserve Board, and a requirement that the rules not be designed to permit unfair discrimination between customers, issuers, government securities brokers or government securities dealers, or to impose any unnecessary or inappropriate burden on competition. Further, the rules, as specified under the rulemaking authority under 15C(b)(2), will be designed to prevent fraudulent and manipulative acts and practices.

In order to avoid duplicative rulemaking, the amendment also requires the Secretary to consider the sufficiency and appropriateness of existing laws and rules of appropriate regulatory agencies which, to varying degrees, exercise some existing authority over the entities affected by this legislation. For example, the SEC has promulgated extensive net capital and other related rules with respect to currently registered brokers and dealers that will probably be sufficient for government securities brokers and government securities dealers that are currently registered with the SEC.

Registration.—The amendment requires unregulated government securities brokers and government securities dealers to register with the SEC. The amendment requires currently registered brokers and dealers and financial institutions to file a notice with their appropriate regulatory agencies. The Federal Reserve Board shall, after consultation with the appropriate regulatory agencies, prescribe a common notice form for financial institutions in order to ensure the necessary and appropriate consistency in form and content. The amendment does not create an exemption for the so-called primary dealers. Although the Secretary does have authority to exempt and to develop appropriate classification of registrants, primary dealer status alone should not be a sufficient basis for such a classification.

Clearing Agencies.—The amendment includes the House provision to require clearing agencies, as defined in Section 3(a)(23) of the Securities Exchange Act of 1934, to register with the SEC pursuant to Section 17A of the Securities Exchange Act of 1934. Under this amendment, for example, the subsidiary established by Security Pacific Corporation to provide clearing functions with respect to government securities options would be required to register with the SEC pursuant to Section 17A. We believe that this treatment is consistent with the general purposes of H.R. 2032 to ensure that adequate public safeguards exist for transactions in government securities. The Committee on Energy and Commerce currently is looking into the need for legislation to affirm that any person intending to operate a facility bringing purchasers and sellers together for purposes of trading in government securities and options thereon would be required to register as an exchange under Section 6. Such treatment is consistent with the general intent of H.R. 2032 and the Exchange Act and we intend to address this issue in the next Congress.

Studies.—The amendment retains the House provision for a study of the current blind broker trading system in the secondary market for government securities and a report to the Congress by the Comptroller General. It is essential that Congress have sufficient information available to it to facilitate an evalaution of whether quotations for such securities and the services of government securities brokers are available on terms which are consistent with the Exchange Act and the public policy goals of H.R. 2032.

The amendment also includes a requirement that the SEC study the use of the exemption contained in section 3(a)(2) of the Securities Act of 1933 for securities guaranteed by banks, and the use of insurance policies to guarantee securities in competition with banks. We are concerned about broad application of the principle of national treatment under the International Banking Act and recent administrative interpretations which raise competitive and investor protection questions as regards the applicability of the federal securities laws to foreign and domestic banks and domestic financial guarantee insurance companies. We anticipate that at least one public hearing shall be held during the course of conducting the study and that the views of the Department of State and insurance and banking industry representatives will be solicited. It is our intent that there be Congressional hearings as soon as practicable after receipt of the SEC's report.

DEPARTMENT OF THE TREASURY,
Washington, DC, April 8, 1986.

Hon. JAKE GARN,
Chairman, Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The health and integrity of the market for the obligations of the United States, its agencies, and related entities is important for the protection of the savings of our citizens, and an important element in the ability of the government to finance its debt at the least possible cost to them as taxpayers. At the same time, effective financing and implementation of fiscal and monetary policy requires that the government securities market continue to operate quickly and efficiently. For these reasons, we strongly support responsible regulation of this market.

In June 1985, we agreed on the basic principles for such legislation: registration of all brokers and dealers; financial responsibility, record-keeping, and audit rules; and regulations directly affecting market safety such as collateralization of repurchase agreements. We agreed that the Treasury would be appropriate as rule-maker, acting in close consultation with the Federal Reserve, and that the Securities and Exchange Commission and bank regulators should be the enforcement agencies. The business relationship of the primary dealers with the Federal Reserve should remain unchanged.

We wish to reiterate our full agreement with these principles including Treasury's primary role as the rule-maker. We would be pleased to work with you so that this important legislation can be enacted soon.

Sincerely,

James A. Baker III, Secretary of the Treasury; Paul A. Volcker, Chairman of the Board of the Board of Governors of the Federal Reserve System; John S.R. Shad, Chairman, Securities and Exchange Commission.

DEPARTMENT OF THE TREASURY,
Washington, DC, August 12, 1986.

Hon. JAKE GARN,
Chairman, Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Washington, DC.

DEAR SENATOR GARN: I am pleased that legislation providing for regulation of government securities brokers and dealers is scheduled for mark-up by the Banking Committee on Wednesday. As you know, the Treasury fully supports the Committee Print of S. 1416, the Government Securities Act of 1986.

We believe that the type and degree of regulation in the bill is necessary and appropriate. The division of responsibilities among the Treasury as rule-maker and the Securities and Exchange Commission and banking regulators as enforcement agencies will result in rules sensitive to both integrity and efficiency of the market, fairly and equitably enforced.

We look forward to final passage of this legislation and to meeting our responsibilities under it.

Sincerely,

GEORGE D. GOULD.

SECRETARY OF THE TREASURY,
Washington, DC, September 16, 1985.

Hon. THOMAS P. O'NEILL, Jr.,
Speaker of the House of Representatives, Washington, DC.

DEAR MR. SPEAKER: This letter is to inform you of the Administration's strong opposition to H.R. 2032, the "Government Securi-

ties Act of 1985." H.R. 2032 would establish a new regulatory agency and a new system of regulation for the government securities market. We plan to submit legislation in the next few weeks that will meet the essential regulatory objectives of H.R. 2032 in a manner less disruptive of the market for United States Treasury obligations and therefore less likely to lead to increased debt financing costs to the United States taxpayer and larger budget deficits.

H.R. 2032 is designed to respond to problems that have arisen as a result of recent failures of a few small unregulated dealers in the government securities market. As a result of these failures some institutional investors have suffered financial loss. A careful study of the government securities market has led us, and others, to conclude that additional regulatory oversight is necessary. We have reached this conclusion because we believe that the maintenance of unquestioned integrity of the market in United States Treasury obligations is essential to management of the public debt.

However, H.R. 2032 goes far beyond what is needed to maintain the integrity of the market for Treasury securities, establishing a new regulatory system for government securities and a new quasigovernmental regulatory body, the "Government Securities Rulemaking Board." The broad powers of that Board and of the Board of Governors of the Federal Reserve System, which would have oversight responsibility over it, would duplicate the Treasury's debt management responsibilities and impose unnecessary and burdensome regulation on the government securities market. Furthermore, we are concerned that this legislation, which impacts severely on an essential financial function of the federal government, has not been the subject of any consideration by those in Congress with expertise in that area, in particular the House Ways and Means Committee.

The Treasury has been charged by Congress with the efficient management of the public debt. Under the public debt statutes, the Treasury currently issues regulations and imposes certain restrictions on government securities dealers to assure the integrity and efficiency of the market. However, because of recent events, there is a need to broaden the Secretary's authority in order to assure effective compliance with standards that should be met by all dealers in Treasury securities. Treasury believes a legislative proposal along these lines and consistent with the regulatory proposal agreed to by the Treasury, the Federal Reserve, and the Securities and Exchange Commission earlier this year would be the most effective means of securing the integrity of the government securities market.

The market for Treasury securities is largely an institutional one for which the extensive regulatory regimes currently in place for other securities are not appropriated. Passage and implementation of H.R. 2032 would establish duplicative jurisdiction over this market, with resulting confusion and uncertainty. Higher financing costs to the United States taxpayer and higher budget deficits would inevitably follow. Because of the serious problems this legislation would pose, I would not recommend that the President sign the bill if enacted in its present form.

We urge the House to postpone further consideration of H.R. 2032 until these issues, and Treasury's proposed response, can be given full consideration.

Sincerely,

JAMES A. BAKER III.

SECRETARY OF THE TREASURY,
Washington, DC, July 26, 1985.

Hon. JAKE GARN,
Chairman, Committee on Banking, Housing and Urban Affairs, U.S. Senate, Washington, DC.

DEAR JAKE. This is to express my serious concerns about S. 1416, the "Government Securities Dealers Act of 1985" and in particular to inform you of the Treasury Department's reservations about this and similar proposals to impose new and uncoordinated regulatory structures on the market for United States securities. I understand Chairman D'Amato's desire to respond quickly to the losses resulting from the failures earlier this year of two fringe firms in the market. Nevertheless, it is essential that Treasury have an opportunity to testify on S. 1416 or any other proposed legislation.

S. 1416 attempts to deal with problems of apparent fraudulent practices of certain secondary dealers in the government securities market. I can assure you that the Treasury's proposal will deal with those problems in a much more cost-effective way.

My major concern with S. 1416 is that it would require the Federal Reserve Board to duplicate functions of the Treasury which would inevitably lead to overlapping regulation, delays in dealing with rapidly changing market situations, investor confusion, and higher costs to the government.

The Treasury's interest in the government securities market and legislation affecting it is both paramount and unique. The Treasury Department is responsible to Congress, under the public debt statutes, for the management of the public debt. Thus, the Department has developed a body of rules and procedures to assure the efficiency and integrity of the government securities market. This market is widely acknowledged to be the largest and most efficient market in the world. Yet we are constantly striving, in close cooperation with Congress, to improve the market and avoid adding to our interest costs, which are currently in excess of $175 billion a year. We are therefore the agency with the most immediate, direct and continuing interest in making certain that this market is efficient, liquid and flexible. Similarly, Treasury believes that it is essential that investors have the utmost confidence in both the government securities market and investment vehicles used in the market. A market lacking, or perceived to be lacking, in either efficiency or integrity will inevitably add to the cost of financing the government.

What is needed is a balanced coordinated approach for achieving both these objectives. Improvements in investor protection are needed to avoid a repetition of recent events, but these need not, and indeed should not, be accomplished by establishing a new, uncoordinated and ultimately costly regulatory framework focusing on only one portion of the market, the dealers.

Over the last 15 months—starting long before the recent failures—we have been working to revise the regulations governing Treasury securities held in book-entry (nonphysical) form to provide additional protection for investors and to improve operational efficiency. We are also preparing a legislative proposal to provide the proper framework for registering and inspecting dealers in government securities as we take the final step toward a full book-entry system. Treasury feels strongly that the institution of the full book-entry system will go a long way towards improving both operational efficiency and investor safety. Our draft proposal is explained in the enclosed position paper.

The Administration is firmly committed to Treasury's book-entry proposal and to the need to avoid imposing duplicative and costly regulation on the market. I am sure that you will appreciate the importance of our concerns and the necessity of our views being heard so that the Congress has all relevant information prior to taking any legislative action. Chairman D'Amato has also been appraised of our concerns in this matter.

Thank you for your cooperation.

Sincerely,

JAMES A. BAKER III.

SUMMARY OF TREASURY BOOK-ENTRY PROPOSAL

BACKGROUND

In order to (i) facilitate the issuance and trading of Treasury securities, (ii) prevent potential losses associated with the physical transfer of this magnitude of securities in bearer (or endorsed) form, and (iii) reduce substantially the costs to the United States of issuance, transfer, payment of interest on and redemption of securities, in 1969 Treasury first made it possible to hold Treasury securities in non-physical, book-entry form. Governed by Treasury regulations, the book-entry system is constantly being updated and expanded in response to market and operational needs. By 1976, Treasury had made a smooth transition to paperless Treasury bills. Early this year we announced that by mid-1986, all new issues of Treasury securities will be entirely in book-entry form. (94% of the bonds and notes already are held in book-entry form.)

BOOK-ENTRY FACILITIES FOR INVESTORS AND TRADERS

For the small individual or institutional investor who wishes to buy and hold Treasury securities, we are expanding the system under which these securities can be held directly on the books of the Treasury. There will be no charge to the investor, to whom interest and principal payments automatically will be made. Others will trade on a separate commercial book-entry system the first tier of which is run by the Treasury's fiscal agents, the Federal Reserve Banks.

CONCERNS ABOUT THE PRESENT SYSTEM

Currently, in general, only depository institutions are eligible to have securities accounts on the Federal Reserve book-entry system and therefore non-bank dealers and other non-bank book-entry custodians must hold securities through another entity; in practice there are often additional tiers of holders between the Treasury and the ultimate beneficial owners of Treasury securities.

As a result of the tiered system, Treasury does not know the identity or capabilities of book-entry custodians who are responsible for making sure that interest and principal payments are timely credited to customer accounts. Moreover, customers often have no knowledge of the identity of the depository institution on the books of the Federal Reserve and other middlemen through which they hold their securities. Finally, depository institutions (particularly clearing banks) do not know the identity of the beneficial owners of the Treasury securities held through them. Both the Treasury and the ultimate beneficial owners of book-entry Treasury securities share a common interest that government securities dealers and

other custodians perform their duties as book-entry custodians honestly and well.

PROPOSAL

In connection with the expansion of the book-entry system, we are proposing that book-entry custodians be approved by the Treasury and required to have securities accounts at the Federal Reserve Banks. We will probably require that as of the close of business each day all customer securities be held in book-entry custodian accounts on the system.

For an entity to be designated a Treasury book-entry custodian under our proposal, it would be required to register with Treasury. As a condition for registration, book-entry custodians would be required to provide sufficient information about both themselves and persons associated with them to assure both us and their customers of their financial responsibility and professional integrity. Custodians would be required to have proper financial and accounting practices and to submit both certified statements of compliance with the financial responsibility standards and certified financial statements. Customer security procedures would be required to maximize the possibility that fraudulent actions such as the sale of the same securities to more than one party or the use of customer securities for the custodian's own benefit without the customer's knowledge will quickly be detected and stopped. Each custodian would be subject to inspection of its books and records to assure compliance with these standards.

The Federal Reserve Banks, as Treasury's fiscal agents, will play a large role in formulating and operating the system. However, all this must be done in the context of the Treasury system, not through imposition of a separate and duplicative regulatory system. Treasury is preparing legislation to submit to Congress soon to complete the framework for implementation of this proposal.

Mr. WIRTH. Mr. Speaker, I support the motion to amend the Senate amendment to H.R. 2032, Government securities legislation which was initially passed by the House in September of last year.

This measure was developed by a bipartisan group of House and Senate Members, who have sought to protect investors and ensure the stability of the $18 trillion a year Government securities market.

In the past, unsupervised dealers have engaged in fraudulent and unsafe activities, out of sight of financial regulators. They have jeopardized the stability of our banking system, caused a crisis in the State savings and loan system in one State, and robbed millions of dollars from taxpayers in cities and counties around the Nation. Their activities have sent shock waves throughout our entire economy.

The ripple effects of these failures have touched thousands of savers and investors nationwide. In my own State of Colorado, last year two thrifts were threatened with losses as a result of the failure of an unregulated dealer. Colorado dodged a bullet. Ohio savers were not so lucky.

These unsupervised dealers have been able to stop law enforcement agencies at their very doorsteps. A small Florida government securities dealer, E.S.M. Government Securities, Inc., was able to prevent SEC investigators from looking at its books and financial records for almost 7 years, until its bankruptcy closed down the entire State savings and loan system of Ohio.

Last year, we saw lines of depositors camped outside of financial institutions—something we haven't seen since the Depression. After E.S.M.'s failure and the savings and loan crisis in Ohio, domestic and foreign confidence in the U.S. financial system was temporarily—but badly—shaken.

All of this resulted from a serious gap in our system of financial supervision. While most broker-dealers in corporate and municipal securities must register with the SEC, and bank dealers are supervised by bank regulators, dealers who trade only in Government securities operate totally outside the U.S. system of financial supervision. The lack of supervision in the Government securities market is extremely disturbing, in view of the fact that it is the largest securities market in the world, and the market most important to the U.S. economy. Virtually every bank and savings institution in this country participates in this market.

The Federal Reserve reports that in 1984, the monthly trading volume for the largest Government securities dealers was more than $1.5 trillion—about 15 times the total volume of transactions in corporate securities on the stock exchanges and over-the-counter markets. In 1985, the average volume of cash transactions by these dealers was $75 billion on a daily basis, with an additional $31 billion of repurchase agreements.

The Government securities market is also the market tied most directly to our national economy. Through this market, the U.S. Government raised over $860 billion of new funds in the period 1980 through 1985 and, in the same period, refinanced more than $4.3 trillion of maturing debt. In 1985 alone, the Treasury sold about $1.2 trillion of securities to meet its financing and refinancing requirements.

I will not comment at length on the substantive provisions of the legislation. The distinguished chairman of the full committee, the gentleman from Michigan, has introduced into the record a joint statement describing the significant decisions that were made in reaching the measure before us today.

I do, however, want to comment on the path that brought us here today.

When the House passed H.R. 2032 last September, my colleague from Ohio, Mr. OXLEY, called our product "a classic example of the legislative process at work."

It is indeed a process of which we all can be proud.

Beginning in 1984, Chairman DINGELL and I pressed the SEC to make a serious effort to work with us to prevent further failures in the Government securities market. For a time, the SEC would not admit that there were significant potential problems in this unsupervised market that might require a legislative solution.

Within 2 weeks of E.S.M.'s failure last year, we called the SEC before the subcommittee. The dias was filled with concerned Members. The SEC maintained that it still did not have adequate information to craft a remedy. Mr. RINALDO and many other Members joined with us in asking the SEC for a full and complete report, drawing upon the expertise of the Federal Reserve and the Treasury to come forward with recommendations.

Meanwhile, in endless sessions with legal experts, investors and industry participants, we began dafting legislation. The sponsorship of the initial legislation, by Chairman DINGELL and myself, by the ranking minority member, Mr. RINALDO, by the gentleman from Washington, Mr. SWIFT, by the two gentlemen from Ohio, Mr. LUKEN and Mr. OXLEY, and by Mrs. COLLINS, and Mr. BRYANT, was critical to showing both the industry and Federal officials that there was bipartisan concern, and bipartisan resolve to deal with the problem. In short, we were not going to let anyone off the hook this time.

The SEC, Treasury, and Federal Reserve presented their report in June. We held exhaustive hearings on the legislation. We worked closely with Chairman Volcker and other financial leaders. We continued to work and make modifications. In July 1985, the legislation was passed by the subcommittee and by the full committee, without opposition. In September of last year, it passed the full House, also without opposition.

Meanwhile, in the Senate, Senators CRANSTON, PROXMIRE, and RIEGLE had introduced companion legislation in the spring of 1985. Senator D'AMATO soon followed with a bill of his own. Hearings were held. And, although it took almost 1 additional year before the Senate acted, it came forward with a measure that, except for the question of who should have the rulemaking authority and how different participants in the market should be treated, was almost identical to the House bill in major respects.

Both bills required that previoulsy unregistered dealers register with the SEC. Both bills required minimum financial responsibility standards, including capital adequacy. Both required standards for the safeguarding of customer funds and securities. Both required financial reports. Both provided for inspections by Federal enforcement agencies.

The past 2 weeks have involved intensive efforts to bridge the remaining gap. I am proud to say we have done that. It is a credit to the legislative process and to the resolve of many Members.

In my view, the resolution of two major differences has satisfied some basic concerns with the Senate measure.

While the Senate bill gave special treatment to "primary dealers," those large banks and securities dealers who trade directly with the Federal Reserve, the compromise measure adopts the House position and further directs that the rules may not "unfairly discriminate" among dealers and issuers.

This compromise reflects our desire for maximum efficiency in this important market. The more competitors, large and small, the lower the cost of underwriting the massive Federal debt, with lower costs ultimately passed on to taxpayers. The House position on this issue rests on the same policy basis on which our overall system of banking regulation has rested for years—a system typified by many diverse players of all sizes, rather than one dominated by big institutions.

While the Senate bill gave rulemaking authority to the Secretary of the Treasury, the House had taken a different route initially, with the creation of a Government Securities Rule-

making Board. It was our initial view that Treasury simply did not believe there was a problem in this market. Moveover, there were concerns from some sectors that Treasury might unfairly discriminate in favor of large dealers, and in favor of Treasury securities at the expense of Government agency securities funding the housing market.

The compromise measure specifically prohibits unfair discrimination and burdens on competition. Moveover, it places Treasury on a short leash. Treasury's authority expires in 5 years, unless renewed by Congress. This provision is a double-edged sword, for the Treasury and the Congress. It will ensure that Congress takes a thorough and second look at the implementation of this important legislation.

Finally, in adopting this measure, the House and Senate acknowledge the critical and special nature of financial regulation in this country. Our economy simply cannot function in an environment where depositors and investors have no confidence in the system, where they believe the only place they can safely put their money and be sure they will get it when they need it is under a mattress. Congress has a continuing obligation to provide and strengthen the underpinnings of our system of financial supervision and, in turn, our economy as a whole.

□ 1645

Mr. RINALDO. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in favor of H.R. 2032, which amends the Securities Exchange Act of 1934 to regulate Government securities brokers and dealers. The market for U.S. Government securities is the largest securities market in the world and operates with great efficiency. This efficiency permits the Federal Government to minimize the cost to the taxpayers of financing the national debt as well as reducing transactional costs to investors. Nonetheless, many Government securities firms heretofore have been unregulated and have not been subject to any inspection, capital standards, or auditing requirements. Although many firms have acted responsibly, a small number acted recklessly and defrauded customers, including private individuals and even sophisticated local governments. Failures of these firms often has widespread ripple effects for entire States. For example, E.S.M. Government Securities was engaged in fraudulent activities, subsequently failed, and caused a crisis for 71 Ohio savings and loan institutions. Bevil, Bresler & Schulman Asset Management's failure caused a similar crisis in Maryland's savings and loans.

Clearly, Congress has a responsibility to protect the citizens of this Nation from a repetition of these events. However, we do not want to create a regulatory scheme that is so burdensome and expensive that it undermines or impairs the efficient operation of the Government securities market itself.

Mr. Speaker, I believe that this bill addresses both of these objectives because it would not impair the market for Government securities—which has operated well, but it would regulate Government securities firms—some of which have acted fraudulently. This bill would direct the Secretary of the Treasury to adopt rules that would ensure that Government securities firms operate with adequate capital and account for and maintain customers' funds and securities. These regulations should prevent a repetition of failures like Bevil, Bresler, and E.S.M.

In addition, this bill would require Government securities firms to register with or notify designated Federal agencies that they are carrying on a Government securities business. These agencies would be required to determine that the Government securities firms satisfy the Treasury's minimum standards and other relevant requirements. The Federal agencies also would have inspection and enforcement responsibilities under this bill.

I want to be very clear about something this bill would not do: It does not discriminate between the so-called primary dealers—that have a business relationship with the Federal Reserve Bank of New York, and the secondary dealers. This bill would not create any special exemptions for any class of dealers, nor would it create any appearance of special status for any dealers. All Government brokers and dealers would report to those Federal agencies with which they have a logical relationship. For example, the appropriate regulatory agency for all national banks would be the Comptroller of the Currency, and firms, that are not banks or savings and loans would register with the Securities and Exchange Commission. I believe that this statutory scheme ensures that all Government firms will compete on a "level playing field" and without any appearance of favored Government status.

Mr. Speaker, I believe this bill would provide for comprehensive regulation of Government securities brokers and dealers and would not impair the market for Government securities. For these and many other reasons, I urge the House to pass the bill today.

Mr. Speaker, at this point, I would like to engage in a colloquy with the distinguished chairman of the committee, the gentleman from Michigan [Mr. DINGELL].

Mr. Speaker, I wish to express my great admiration and support for the gentleman from Michigan for his efforts regarding this bill. The gentleman's diligent efforts and good judgment have resulted in the House's passage of this important legislation regulating Government securities brokers and dealers. I believe that this legislation, if enacted into law as expected, will redound to the benefit of the American public, and I commend him for it.

Mr. DINGELL. Mr. Speaker, if the gentleman will yield, I thank the gentleman from New Jersey for his kind words. I also wish to note that the gentleman from New Jersey has been an ardent supporter of carefully drafted legislation to regulate these Government securities firms and I appreciate his support and important contributions.

Mr. RINALDO. I thank the gentleman for his statement. I would note further that section 105 of the bill directs the Securities and Exchange Commission to study section 3(a)(2) of the Securities Act of 1933, which exempts from registration securities that are guaranteed by banks. It has been a well-established practice of banks to issue letters of credit assuring payment to investors of interest and principal of corporate debt instruments. Because the bank letter of credit protects security holders from default by the bond's issuer, the Securities Act of 1933 exempts those bonds from registration. It has come to my attention, however, that insurance companies would like to earn underwriting fees by offering similar protections to purchasers of corporate debt by insuring payments of interest and principal. Such securities would not qualify for an exemption from registration under section 3(a)(2) of the Securities Act of 1933 since the promise of indemnification comes from an insurance company and not a bank. The Securities Act's exemptive provisions do not apply to securities backed by insurance policies and, therefore, issuers have to register those securities with the SEC. The Securities Act's distinction between bank and insurance guarantees makes it impossible for insurance companies to provide similar coverage to issuers and raises important competitive issues. I believe that the Committee on Energy and Commerce should review the SEC's study and should hold hearings in the next Congress to determine whether Congress should modify the exemptive provisions of the Securities Act. I believe that such a hearing could determine whether amendments to that act could enhance competition among providers of financial services without diminishing the protection of investors or the public in any way.

Mr. DINGELL. I concur with the observations of the gentleman from New Jersey. I believe that consistent with the protection of investors and the public, the Committee on Energy and Commerce should review the SEC study and hold hearings to determine if any legislative action is needed. It is appropriate to ascertain whether the current statutory scheme is adequate or whether this exemptive provision needs modernizing. I welcome the gen-

tleman's suggestion and endorse his idea of holding hearings on this subject in the next Congress.

Mr. RINALDO. I thank the gentleman from Michigan.

Mr. Speaker, I yield 3 minutes to the gentleman from Ohio [Mr. OXLEY], a member of the committee.

Mr. OXLEY. Mr. Speaker, I rise in support of the Government securities bill, a measure crafted after many hours of bipartisan work in both the House and the other body. This bill will finally bring to the surface the financial capabilities and practices of the many Government securities' dealers who have previously escaped the disclosure details required of others in the industry. The Government securities market is extraordinarily efficient and great care has been given to not overburden this highly liquid market. Unfortunately, the wisdom of establishing these regulations was brought home to me by the experience of a number of my constituents in Ohio who were denied access to savings they had on deposit in the State's privately insured savings and loans—a phenomenon that was triggered by the fraudulent dealings of one large State-insured S&L with the failed Florida-based ESM Government Securities. Just last week, a Federal court indicted a major ESM official and the former president of Home State Savings Bank. If H.R. 2032 had been enacted several years ago, many Ohioans would have been spared the financial hardships they experienced in 1985.

Mr. Speaker, as fine a bill as this is, it is the only major securities bill that has come out of the subcommittee in the 99th Congress, so I would like to raise a point relating to other securities issues in the news at this time. I am referring to takeover reform and the need to close the 13-D window and provide for greater disclosure to the public of possible community impact when a corporate raider takes over a major corporation.

As we stand here today, Wall Street is buzzing over the major purchases of USX stock by a few shareholders. Under present law, any of these purchasers have 10 days to partially disclose their intentions after individually acquiring 5 percent of a company's stock. While Wall Street is buzzing, my hometown of Findlay, OH, with a population of 38,000, is worrying about how a possible USX takeover could affect the corporate headquarters of one of its subsidiaries, Marathon Oil. Marathon is located in Findlay and this small community experienced the same panic a few years ago when Marathon came close to another hostile takeover.

At the time, Mr. Speaker, I would like to ask the distinguished chairman of the committee, the gentleman from Michigan, what his views are regarding legislative proposals on tender offer reform early in the next Congress.

Mr. DINGELL. Mr. Speaker, if the gentleman will yield, as the gentleman from Ohio knows, I was strongly supportive of H.R. 5693 when the committee passed it in the 97th Congress. Measures in that bill would have amply addressed the circumstances you just outlined. Since the committee's passage of the bill, however, some questions and concerns have been raised about those provisions. However, you have my assurances that I would support any efforts to revisit the corporate takeover subject in the early part of the next Congress.

□ 1655

Mr. OXLEY. I thank the chairman for his willingness to participate in this very important issue. I know of his support in the past and look forward to hearings on the legislation very quickly in the 100th Congress.

Mr. DINGELL. Mr. Speaker, I yield 4 minutes to the gentleman from Ohio [Mr. LUKEN].

Mr. LUKEN. I thank the gentleman for yielding me this time.

Mr. Speaker, we all have been working since December 1984 or shortly thereafter on this problem because that is when the collapse of Home State Savings & Loan reverberated, was the shock that reverberated around the world if you recall. Since then not only the chairman, Mr. DINGELL, but the chairman of the subcommittee, Mr. WIRTH, Mr. RINALDO and others have been very active in trying to seek solutions; that is, in finding the means of preventing this recurring again.

Not only was the monetary system of this country and others threatened, but there were many concerns raised in the financial institutions, for example, and in municipalities and counties. Local governments. The city of Toledo lost something like $19 million, as I recall. Pompano Beach lost another $7 million. Other counties and cities across the country which had been depending upon the regulators, that is what we were told in the hearings, they were depending upon the regulators and there were no regulators. That is what this bill is all about. It provides some regulation.

When a large savings and loan association in Ohio, Home State Savings Bank, which had invested well over $100 million with ESM failed 5 days after the security dealer collapsed, the nexus is there and the damage to the tens of thousands of Home State depositors was due to the collapse of ESM. The unregulated, the unregulated securities dealer which handled fantastic amounts of money. Hundreds of millions of dollars in short periods of time.

The recent indictment, as my friend from Ohio just mentioned, the recent indictment of the two leaders of the Home State Savings & Loan revealed some further inner workings of those transactions. The indictments allege even the telephone conversations. They show the connection between the transactions at Home State, the savings and loan; Home State was being used as the cash cow to keep ESM afloat up to a certain point where eventually it could not be kept afloat any more. These gentlemen, in the meantime, were dealing in two capacities. One, in manipulating the ESM, the Government securities dealer through the contacts that they had there and they now have been charged with that by a Federal grand jury. In the other, of furnishing hundreds of millions of dollars of collateral, depositors money in Ohio which has now been made up by the taxpayers from among other sources.

So this is a sorry tale that we reviewed, but we now have agreed upon, and I congratulate the members of the minority as well as our leadership on the committee, but we have come up with what I think is a very workable piece of legislation which will fill the gap. We had some questions of whether it should be the Fed or whether it should be the Treasury, but in any event, we now have something that we can try and we have the Treasury, which is being given the responsibility of regulating, of inspecting, of preventing the kind of concealment that went on here undetected because nobody was looking.

Now, we will have somebody who will be looking. I think this bill is a great step in the right direction. I am pleased to have worked with those who have brought it about.

Mr. RINALDO. Mr. Speaker, I yield 3 minutes to the gentleman from Ohio [Mr. WYLIE].

Mr. WYLIE. I thank the gentleman for yielding me this time.

Mr. Speaker, I rise in strong support of H.R. 2032, the Government Securities Act of 1986. I wish also to commend the distinguished chairman of the full committee, the gentleman from Michigan [Mr. DINGELL] and the gentleman from New Jersey [Mr. RINALDO] for their diligent and intelligent hard work in bringing this bill before us today.

Mr. Speaker, this bill originally was passed by the House on a voice vote last September 17 and was the product of a strong bipartisan effort by the members of the Energy and Commerce Committee, and more especially, the two gentlemen from Ohio who have just spoken, Mr. LUKEN and Mr. OXLEY, who are also to be complimented.

Mr. Speaker, in the wake of the well-publicized failures of a number of Government securities dealers over the past 7 or 8 years mentioned by the

chairman culminating with the collapse of ESM Securities and Bevill, Bresler & Shulman in 1985, it has become clear that some prudential regulation of Government securities brokers and dealers is needed. Most, if not all, of these failures were the result of abuses such as the use of false or misleading financial statements, the use of capital by insiders to engage in transactions for their own account, and double pledging of securities sold under repurchase agreements.

I speak as one with personal experience of the far-reaching and disastrous consequences these failures can have. They were the subject of many hearings before the Government Operations and Banking, Finance and Urban Affairs Committees. The collapse of ESM in the spring of last year also brought down Home State Savings, a $1½ billion thrift in Cincinnati, OH, that had entered into a number of transactions with ESM. The failure of Home State, in turn, led to the collapse of the Ohio Deposit Guaranty Fund, a private deposit insurer and the closing of over 70 other privately insured thrift institutions in Ohio. Thousands of depositors were left without access to their funds or to banking services, causing untold hardship. While ultimately, with the assistance of the Federal Reserve, the Federal Home Loan Bank Board, and the other Federal regulators, and at great cost to the taxpayers of Ohio, banking services were restored, I don't want to see a repeat of this situation anywhere.

The bill before us will ensure that Government securities brokers and dealers are subject to adequate registration, financial responsibility, reporting, and recordkeeping requirements. All are in agreement that this approach strikes a reasonable balance between the need for some degree of regulatory oversight and the unfettered operation of the Government securities market. Passage of this legislation should go a long way toward ensuring the continued maintenance of the integrity of the market for Government securities.

Mr. RINALDO. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. DINGELL. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. MONTGOMERY). The question is on the motion offered by the gentleman from Michigan [Mr. DINGELL] that the House suspend the rules and agree to the resolution, House Resolution 574.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the resolution was agreed to.

A motion to reconsider was laid on the table.

□ 1705

GENERAL LEAVE

Mr. DINGELL. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the resolution just agreed to.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

RELATING TO GSA'S TRANSPORTATION AUDIT RESPONSIBILITY

Mr. BROOKS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5420) to amend section 3726 of title 31, United States Code, relating to payment for transportation, to permit prepayment audits for selected transportation bills, to permanently authorize payment of transportation audit contractors from carrier overpayments collected, and to authorize net overpayments collected to be transferred to the Treasury, as amended.

The Clerk read as follows:

H.R. 5420

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 3726 of title 31, United States Code, is amended—

(1) in subsection (a) by striking out the first sentence and inserting in lieu thereof the following: "A carrier or freight forwarder presenting a bill for transporting an individual or property for the United States Government may be paid before the Administrator of General Services conducts an audit, in accordance with regulation that the Administrator shall prescribe.";

(2) by redesignating subsections (c) and (d) as subsections (f) and (g), respectively, and

(3) by inserting after subsection (b) the following new subsections:

"(c) Expenses of transportation audit contracts and contract administration shall be financed from overpayments collected from carriers on transportation bills paid by the Government and other similar type refunds at not to exceed 40 percent of such collections annually. Payment to any contractor shall not exceed 50 percent of the overpayments identified by any contract audit.

"(d) At least annually, and as determined by the Administrator, after making adequate provision for expenses of refunds to carriers, transportation audit contracts, and contract administration authorized in subsection (c), the balance of the overpayments collected by the General Services Administration shall be transferred to miscellaneous receipts of the Treasury. A report of receipts, disbursements, and transfers (to miscellaneous receipts) pursuant to this section shall be made annually in connection with the budget estimates to the Director of the Office of Management and Budget and to the Congress.

"(e) The Administrator may delegate any authority conferred by this section to another agency or agencies if the Administrator determines that such a delegation would be cost-effective or otherwise in the public interest.".

SEC. 2. (a) Within 60 days after the date of enactment of this Act, the Administrator of General Services shall establish a task force to study and investigate the feasiblity, desirability, and economy of an integrated, automated system that Federal agencies may use in managing the transportation of property for the United States.

(b) The task force established under subsection (a) shall—

(1) be chaired by a representative of the Administrator;

(2) include representatives of the Department of Defense and other Federal agencies significantly involved in the transportation of property for the United States; and

(3) solicit the views of private businesses with expertise in the matters being considered by the task force.

(c) In studying and investigating the integrated, automated system, the task force shall consider including in that system such elements as automated routing, rating, documentation, payment, and auditing.

(d) Each department, agency, and instrumentality of the Federal Government shall furnish to the task force, upon its request, such data, reports, and other information (not otherwise prohibited by law) as the task force deems necessary to carry out its functions under this section.

(e) The head of each department, agency, and instrumentality may provide to the task force such services and personnel as the task force requests on such basis (reimbursable or otherwise) as may be agreed upon between such department, agency, or instrumentality and the task force.

(f) The task force shall submit a final report on the results of its study and investigation to the Congress not later than July 1, 1988.

SEC. 3. (a) Section 402(a)(1) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 512(a)(1)) is amended by striking out "; but in no event shall any property be sold without a condition forbidding its importation into the United States, unless the Secretary of Agriculture (in the case of any agricultural commodity, food, or cotton or woolen goods) or the Secretary of Commerce (in the case of any other property) determines that the importation of such property would relieve domestic shortages or otherwise be beneficial to the economy of this country".

(b) Applications pending before the Secretary of Commerce or the Secretary of Agriculture on, or received after, the date of enactment of this Act for authorization to import property under section 402(a)(1) of the Federal Property and Administrative Services Act of 1949 shall be returned without action, and applicants shall be informed in writing that authorization is no longer required after such date.

(c) The amendment made by subsection (a) shall not affect any civil or criminal proceeding instituted by the United States prior to the date of enactment of this Act.

The SPEAKER pro tempore. Is a second demanded?

Mr. McCANDLESS. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Texas [Mr. BROOKS]

will be recognized for 20 minutes and the gentleman from California [Mr. McCANDLESS] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Texas [Mr. BROOKS].

Mr. BROOKS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 5420 is intended to improve the ability of the General Services Administration and other Federal agencies to audit and control Government transportation charges, which amount to $5 billion per year. This bill is cosponsored by Chairwoman CARDISS COLLINS of our Government Activities and Transportation Subcommittee and its ranking minority member, the gentleman from California [Mr. McCANDLESS]. I want to commend both of them for their efforts at improving Government management through this legislation. Mrs. COLLINS is unable to be here today, and I am presenting the bill on her behalf.

Mr. Speaker, the bill would allow the Government to review transportation bills prior to payment, rather than first paying all such bills before auditing them as required under current law; provide GSA with permanent authority to hire private auditing firms to perform postpayment audits of transportation bills by paying those firms a percentage of collected overcharges that they have identified; require GSA to transfer collected overpayments to the General Treasury, instead of to the agency that incurred the overcharge, thus encouraging agencies to control their transportation costs; authorize GSA to delegate auditing responsibilities to individual agencies if it determined that such a delegation was cost effective or in the public interest; and establish a task force headed by GAO to study an integrated, automated transportation management system for Federal agencies.

Mr. Speaker, H.R. 5420 was ordered reported by the Committee on Government Operations by unanimous vote on September 23, 1986. The measure will not incur any net cost; rather, expenditures for administration of contract auditing and contractors payments will be exceeded by net collections of overcharges by $24 million in fiscal year 1990 and $28 million in fiscal year 1991, according to CBO cost estimates. I urge passage of the bill.

Mr. Speaker, in addition to the provisions of the bill pertaining to transportation audits, I have added section 3 dealing with importation of foreign excess property under the 1949 Federal Property Act. Section 402(a) of that act requires a certification by the Secretary of Commerce or the Secretary of Agriculture, as appropriate, that the importation would relieve domestic shortages or otherwise benefit the country's economy. Section 3 would eliminate this certification requirement, which arose at a time when overseas surplus stocks constituted a credible threat to the domestic economy. Such a threat no longer exists, and today the requirement is obsolete. Repealing the requirements will eliminate public administrative costs particularly within the Department of Commerce, the Defense Logistics Agency, and the Customs Service. The provision is strongly supported by the administration.

This provision is included to conform exactly with the text of S. 2630, which is now on the Senate calendar, and which was approved unanimously by the Committee on Governmental Affairs. Inclusion of this language has been approved by the ranking minority member of our full committee and subcommittee, Mr. HORTON and Mr. McCANDLESS.

Mr. Speaker, I reserve the balance of my time.

Mr. McCANDLESS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in strong support of H.R. 5420 as amended.

I proudly introduced this legislation along with chairwoman, Mrs. COLLINS, in an effort to improve the GSA's ability to find and recover transportation overcharges.

The GSA's Office of Transportation Audits estimates that it and its contractors will identify $50 million in overcharges for fiscal year 1986.

Section 1 of the bill authorizes the GSA to use transportation audit contractors to find overcharges. The GSA has used contractors on a temporary basis since 1983. Contractors benefit the Government because they do not get paid unless they find an overcharge and the Government recovers it.

Additionally, the bill permits prepayment audits—so long as these audits comply with the terms of the Prompt Payment Act. This will enable overcharges to be identified before they are paid.

Section 2 of H.R. 5420 commissions a task force to study the technical feasibility and cost effectiveness of an integrated, automated transportation management system. Such a system would help the process of prepayment auditing. It will also help agency managers make more intelligent shipping decisions. The task force is to report back to the Congress no later than July 1, 1988.

Section 3 of the amended bill will eliminate unnecessary regulatory and paperwork burdens on businesses dealing in foreign surplus merchandise.

Mr. Speaker, H.R. 5420 as amended has bipartisan support in both this and the other body. I want to express my appreciation to subcommittee chairwoman, Mrs. COLLINS and my full committee chairman, Mr. BROOKS, for their efforts in bringing this legislation to the floor.

H.R. 5420 is a good bill, and I recommend my colleagues' support.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. BROOKS. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mrs. COLLINS. Mr. Speaker, I rise in strong support of H.R. 5420, which will broaden the General Services Administration's responsibility for auditing Federal agencies' transportation bills.

As a cosponsor of the bill and chairwoman of the Government Activities and Transportation Subcommittee which reviewed the bill, I am very pleased that we have presented this bill for the House's consideration. Enactment will mean greater efficiency and economy in auditing Federal agencies' transportation bills and bring a big financial return to the Government. The hundreds of thousands of Government transportation transactions represent outlays each year that aggregate almost $5 billion. Let me summarize what the bill will accomplish:

First, the scope of the auditing is to be expanded by adding prepayment auditing capability to the existing postpayment auditing function. Second, the use of private contract auditors will significantly augment Government auditors because there will be permanent authority to pay those auditors their commissions from what they enable the General Services Administration to collect.

Third, a General Services Administration-led task force will study and report to the Congress on development and employment of an integrated, automated system to help Federal agencies manage the transportation of freight for the Government, the cost of which comes to well over $3 billion a year.

I am pleased to help present this bill for another reason. It is an outstanding instance of collaboration among our committee, majority and minority alike, the Governmental Affairs Committee of the other body, and the General Services Administration. This working together, which I gratefully acknowledge, has permitted us to offer the House today language that we expect will correspond exactly to what has been reported by committee to the other body.

As chairwoman, I wish to thank our ranking minority member, the gentleman from California, for cosponsoring the bill with me and for the keen interest and cooperation he has showed throughout.

In addition, I express appreciation to our full committee chairman, the gentleman from Texas, both for his expert guidance of the measure through the Committee on Government Operations and for the helpful legislative report he filed on behalf of the committee as House Report No. 99-932.

This bill fully deserves the wholehearted support it has received from Members of this body.

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This bill fully deserves the wholehearted support it has received from Members of this body.

The SPEAKER pro tempore (Mr. MONTGOMERY). The question is on the motion offered by the gentleman from Texas [Mr. BROOKS] that the House suspend the rules and pass the bill, H.R. 5420, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The title of the bill was amended so as to read: "A bill to amend section 3726 of title 31, United States Code, relating to payment for transportation, to permit prepayment audits for selected transportation bills, to permanently authorize payment of transportation audit contractors from carrier overpayments collected, to authorize net overpayments collected to be transferred to the Treasury, and for other purposes."

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. BROOKS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the legislation just adopted.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

SPECIAL FOREIGN ASSISTANCE ACT OF 1986

Mr. FASCELL. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 1917) to amend the Foreign Assistance Act of 1961 to provide assistance to promote immunization and oral rehydration, and for other purposes, with a Senate amendment to the House amendments thereto, and concur in the Senate amendment to the House amendments.

The Clerk read the title of the Senate bill.

The Clerk read the Senate amendment to the House amendments, as follows:

In lieu of the matter proposed to be inserted by the House amendment to the text of the bill, insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Special Foreign Assistance Act of 1986".

TITLE I—PROMOTING IMMUNIZATION AND ORAL REHYDRATION IN DEVELOPING COUNTRIES

SEC. 101. FINDINGS.

The Congress finds that—

(1) the United Nations Children's Fund (UNICEF) reports that 3.5 million children die annually because they have not been immunized against the six major childhood diseases: polio, measles, whooping cough, diptheria, tetanus, and tuberculosis;

(2) at present less than 20 percent of children in the developing world are fully immunized against these diseases;

(3) each year more than five million additional children are permanently disabled and suffer diminished capacities to contribute to the economic, social, and political development of their countries because they have not been immunized;

(4) ten million additional childhood deaths from immunizable and potentially immunizable diseases could be averted annually by the development of techniques in biotechnology for new and cost-effective vaccines;

(5) the World Health Assembly, the Executive Board of the United Nations Children's Fund, and the United Nations General Assembly are calling upon the nations of the world to commit the resources necessary to meet the challenge of universal access to childhood immunization by 1990;

(6) at the 1984 "Bellagio Conference" it was determined that the goal of universal childhood immunization by 1990 is indeed achievable; and

(7) the Congress has expressed its expectation that the Agency for International Development will set as a goal the immunization by 1990 of at least 80 percent of all the children in those countries in which the Agency has a program.

SEC. 102. UNITED STATES PARTICIPATION IN GLOBAL EFFORT.

(a) UNITED STATES GOVERNMENT SUPPORT.—The Congress calls upon the President to direct the Agency for International Development, working through the Centers for Disease Control and other appropriate Federal agencies, to work in a global effort to provide enhanced support toward achieving the goal of universal access to childhood immunization by 1990 by—

(1) assisting in the delivery, distribution, and use of vaccines, including—

(A) the building of locally sustainable systems and technical capacities in developing countries to reach, by the appropriate age, not less than 80 percent of their annually projected target population with the full schedule of required immunizations; and

(B) the development of a sufficient network of indigenous professionals and institutions with responsibilities for developing, monitoring, and assessing immunization programs and continually adapting strategies to reach the goal of preventing immunizable diseases; and

(2) performing, supporting, and encouraging research and development activities, both in the public and private sector, that will be targeted at developing new vaccines and at modifying and improving existing vaccines to make them more appropriate for use in developing countries.

(b) PRIVATE SECTOR SUPPORT.—In support of this global effort, the President should appeal to the people of the United States and the United States private sector to support public and private efforts to provide the resources necessary to achieve universal access to childhood immunization by 1990.

SEC. 103. FUNDING LEVELS.

(a) EARMARKING.—Section 104(c)(3) of the Foreign Assistance Act of 1961 is amended by adding at the end thereof the following: "Of the aggregate amounts made available for fiscal year 1987 to carry out paragraph (2) of this subsection (relating to the Child Survival Fund) and to carry out subsection (c) (relating to development assistance for health), $50,000,000 shall be used to carry out this paragraph.".

(b) AUTHORIZATION LEVEL FOR CHILD SURVIVAL FUND.—Section 104(c)(2)(B) of that Act is amended by striking out "$25,000,000 for fiscal year 1987" and inserting in lieu thereof "$75,000,000 for fiscal year 1987".

TITLE II—PROMOTING DEMOCRACY IN HAITI

SEC. 201. FINDINGS CONCERNING HAITI.

The Congress finds that—

(1) the establishment of an interim government in Haiti committed to a restoration of democracy provides Haiti with an opportunity to build the political, social, and economic institutions necessary to promote Haiti's development, to provide a better future for the people of Haiti, and to provide the framework for more effective mutual cooperation with the United States, Haiti's neighbor in the Caribbean, and the other nations of the Hemisphere;

(2) the magnitude of the political, economic, and social tasks facing the people of

Haiti will make the achievement of a better future a difficult task which will require a determined and sustained effort by the Haitian people over a long period of time and will require significant external assistance from the United States and other donors; and

(3) it is in the interest of the United States to provide appropriate support for the development of Haiti, a close neighbor which is one of the world's poorest nations and which is committed to the establishment of a democratic government.

SEC. 202. ECONOMIC ASSISTANCE FOR HAITI.

(a) EARMARKING OF FUNDS.—Not less than $108,000,000 of the aggregate amounts available for fiscal year 1987 to carry out sections 103 through 106 of the Foreign Assistance Act of 1961 (relating to development assistance), chapter 4 of part II of that Act (relating to the Economic Support Fund), and titles I and II of the Agricultural Trade Development and Assistance Act of 1954 (relating to the Food for Peace Program) shall be available only for Haiti.

(b) USE OF DEVELOPMENT ASSISTANCE.—Assistance under sections 103 through 106 of the Foreign Assistance Act of 1961 which is provided for Haiti pursuant to subsection (a) shall be used to support a transition to democracy in Haiti, emphasizing foreign investment, job creation (especially in the private sector), rural development, health care and sanitation, small-scale irrigation, reforestation and land conservation, and literacy education. Such assistance should reflect the need to distribute development assistance resources more equitably among the various regions in Haiti in order to support sustainable development in all of Haiti.

(c) REQUIREMENT FOR SEGREGATED ACCOUNT FOR ECONOMIC SUPPORT ASSISTANCE FUNDS PAID TO GOVERNMENT OF HAITI.—Funds under chapter 4 of part II of the Foreign Assistance Act of 1961 which are made available for Haiti pursuant to subsection (a) may be paid to the Government of Haiti only if the Government of Haiti will maintain those funds in a separate account and not commingle them with other funds.

(d) CONDITIONS ON ECONOMIC SUPPORT AND DEVELOPMENT ASSISTANCE.—Funds may be obligated for assistance for Haiti under sections 103 through 106 or chapter 4 of part II of the Foreign Assistance Act of 1961 pursuant to subsection (a) only if the President determines that the interim Government of Haiti—

(1) is improving the human rights situation in Haiti;

(2) is implementing its timetable for completion of a new constitution that promotes genuine democratic reforms and guarantees the fundamental principles of democracy;

(3) is establishing a framework for free and open elections leading to a democratically-elected civilian government, which would include free and functioning political parties and associations, free labor unions, and freedom of the press;

(4) is cooperating fully in implementing United States development, food, and other economic assistance programs in Haiti (including programs for prior fiscal years);

(5) is maintaining a system of fiscal accountability to ensure that all resources allocated to the development of Haiti are used in the most effective and efficient manner;

(6) is continuing its investigation of alleged human rights abuses and corruption by the Duvalier government and is prosecuting, in accordance with due process, those responsible for human rights abuses and corruption;

(7) is maintaining a free and independent judiciary system;

(8) is continuing to cooperate with the United States in halting illegal emigration to the United States from Haiti; and

(9) is encouraging private sector development.

(e) INTER-AMERICAN FOUNDATION.—Section 401(s)(2) of the Foreign Assistance Act of 1969 is amended by striking out "$11,969,000 for fiscal year 1987" and inserting in lieu thereof "$12,969,000 for fiscal year 1987 (not less than $1,000,000 of which shall be for Haiti)".

(f) ADDITIONAL ASSISTANCE FOR ECONOMIC DEVELOPMENT IN HAITI.—In order to assist economic development in Haiti, a Foreign Commercial Service officer should be assigned to the United States embassy in Haiti.

SEC. 203. MILITARY TRAINING AND OTHER NONLETHAL ASSISTANCE FOR HAITI.

(a) AUTHORIZATION OF ASSISTANCE.—Up to $4,000,000 of the aggegate amounts available for fiscal year 1987 to carry out chapter 2 of part II of the Foreign Assistance Act of 1961 (relating to grant military assistance, chapter 5 of part II of that Act (relating to international military education and training), and the Arms Export Control Act (relating to FMS assistance) may be made available for Haiti for education, training, and other nonlethal assistance (such as transportation equipment, communications equipment, and uniforms).

(b) CONDITIONS ON MILITARY ASSISTANCE.—Funds made available pursuant to subsection (a) may be obligated only if the President certifies to the Congress the following:

(1) The Government of Haiti has submitted a formal request to the United States specifying a comprehensive plan for the reform and reorganization of the mission, command, and control structures of the Haitian armed forces consistent with a transition to democracy, the rule of law, constitutional government, and an elected civilian government. Such a plan should include a publicly announced commitment by the armed forces of Haiti to abide by international human rights standards and adoption of a code of conduct to assure adherence to these standards.

(2) The Government of Haiti is making substantial efforts—

(A) to prevent the involvement of the Haitian armed forces in human rights abuses and corruption by removing from those forces and prosecuting, in accordance with due process, those military personnel responsible for the human rights abuses and corruption;

(B) to ensure that freedom of speech and assembly are respected;

(C) to conduct investigations into the killings of unarmed civilians in Gonaives, Martissant, and Fort Dimanche, to prosecute, in accordance with due process, those responsible for those killings, and to prevent any similar occurrences in the future;

(D) to provide education and training to the Haitian armed forces with respect to internationally recognized human rights and the civil and political rights essential to democracy, in order to enable those forces to function consistent with those rights; and

(E) to take steps to implement the policy of the Government of Haiti requiring former members of the Volunteers for National Security (VSN) to turn in their weapons and to take the necessary actions to enforce this requirement.

(c) REPORTS.—Not later than three months after the President submits his certification under subsection (b) and every three months thereafter, the President shall report to the Congress on the extent to which the actions of the Government of Haiti are consistent with each of objectives specified in subsection (b). Half of the assistance provided pursuant to subsection (a) shall be withheld from delivery until the President submits the first such report.

(d) NOTIFICATION TO CONGRESS.—Funds made available pursuant to subsection (a) may be obligated only if the Committee on Appropriations and the Committee on Foreign Affairs of the House of Representatives and the Committee on Appropriations and the Committee on Foreign Relations of the Senate are notified fifteen days in advance.

(e) RELATION TO EXISTING PROVISION.—Assistance under subsection (a) may be provided notwithstanding the limitations contained section 705(e) of the International Security and Development Cooperation Act of 1985 and is in addition to the assistance allowed under that section.

SEC. 204. RECOVERY BY HAITI OF ASSETS STOLEN BY DUVALIER REGIME.

(a) FINDINGS.—The Congress finds that—

(1) the Government of Haiti believes that former president-for-life Jean Claude Duvalier and other individuals associated with the Duvalier regime illegally diverted to their own use substantial amounts of the assets of the Government of Haiti;

(2) the Government of Haiti is attempting to locate and recover those assets through legal means;

(3) virtually every relevant jurisdiction, both in the United States and abroad, requires the posting of some form of security to secure the issuance of orders of attachment or other judicial seizures of property;

(4) the Government of Haiti is unable, without outside assistance, to post the necessary security because of its lack of assets;

(5) Haiti's economic situation could be significantly improved, and the need for external resources reduced, if the Government of Haiti is able to pursue its legal remedies against those who are in large part responsible for the economic crisis in Haiti; and

(6) the United States has a substantial foreign policy interest in helping the Government of Haiti recover any assets which were illegally diverted by those associated with the Duvalier regime.

(b) ACTIONS TO ASSIST HAITI.—The President shall exercise the authorities granted by section 203 of the International Emergency Economic Powers Act (50 U.S.C. app. 1702) to assist the Government of Haiti in its efforts to recover, through legal proceedings, assets which the Government of Haiti alleges were stolen by former president-for-life Jean Claude Duvalier and other individuals associated with the Duvalier regime. This subsection shall be deemed to satisfy the requirements of section 202 of that Act.

TITLE III—PROTECTING TROPICAL FORESTS AND BIOLOGICAL DIVERSITY IN DEVELOPING COUNTRIES

SEC. 301. PROTECTING TROPICAL FORESTS.

Chapter 1 of part I of the Foreign Assistance Act of 1961 is amended—

(1) by redesignating section 118 as section 117;

(2) by striking out subsection (d) of that section; and

(3) by inserting after that section the following new section 118:

"SEC. 118. TROPICAL FORESTS.

"(a) IMPORTANCE OF FORESTS AND TREE COVER.—In enacting section 103(b)(3) of this Act the Congress recognized the importance

of forests and tree cover to the developing countries. The Congress is particularly concerned about the continuing and accelerating alteration, destruction, and loss of tropical forests in developing countries, which pose a serious threat to development and the environment. Tropical forest destruction and loss—

"(1) result in shortages of wood, especially wood for fuel; loss of biologically productive wetlands; siltation of lakes, reservoirs, and irrigation systems; floods; destruction of indigenous peoples; extinction of plant and animal species; reduced capacity for food production; and loss of genetic resources; and

"(2) can result in desertification and destabilization of the earth's climate.

Properly managed tropical forests provide a sustained flow of resources essential to the economic growth of developing countries, as well as genetic resources of value to developed and developing countries alike.

"(b) PRIORITIES.—The concerns expressed in subsection (a) and the recommendations of the United States Interagency Task Force on Tropical Forests shall be given high priority by the President—

"(1) in formulating and carrying out programs and policies with respect to developing countries, including those relating to bilateral and multilateral assistance and those relating to private sector activities; and

"(2) in seeking opportunities to coordinate public and private development and investment activities which affect forests in developing countries.

"(c) ASSISTANCE TO DEVELOPING COUNTRIES.—In providing assistance to developing countries, the President shall do the following:

"(1) Place a high priority on conservation and sustainable management of tropical forests.

"(2) To the fullest extent feasible, engage in dialogues and exchanges of information with recipient countries—

"(A) which stress the importance of conserving and sustainably managing forest resources for the long-term economic benefit of those countries, as well as the irreversible losses associated with forest destruction, and

"(B) which identify and focus on policies of those countries which directly or indirectly contribute to deforestation.

"(3) To the fullest extent feasible, support projects and activities—

"(A) which offer employment and income alternatives to those who otherwise would cause destruction and loss of forests, and

"(B) which help developing countries identify and implement alternatives to colonizing forested areas.

"(4) To the fullest extent feasible, support training programs, educational efforts, and the establishment or strengthening of institutions which increase the capacity of developing countries to formulate forest policies, engage in relevant land-use planning, and otherwise improve the management of their forests.

"(5) To the fullest extent feasible, help end destructive slash-and-burn agriculture by supporting stable and productive farming practices in areas already cleared or degraded and on lands which inevitably will be settled, with special emphasis on demonstrating the feasibility of agroforestry and other techniques which use technologies and methods suited to the local environment and traditional agricultural techniques and feature close consultation with and involvement of local people.

"(6) To the fullest extent feasible, help conserve forests which have not yet been degraded, by helping to increase production on lands already cleared or degraded through support of reforestation, fuelwood, and other sustainable forestry projects and practices, making sure that local people are involved at all stages of project design and implementation.

"(7) To the fullest extent feasible, support projects and other activities to conserve forested watersheds and rehabilitate those which have been deforested, making sure that local people are involved at all stages of project design and implementation.

"(8) To the fullest extent feasible, support training, research, and other actions which lead to sustainable and more environmentally sound practices for timber harvesting, removal, and processing, including reforestation, soil conservation, and other activities to rehabilitate degraded forest lands.

"(9) To the fullest extent feasible, support research to expand knowledge of tropical forests and identify alternatives which will prevent forest destruction, loss, or degradation, including research in agroforestry, sustainable management of natural forests, small-scale farms and gardens, small-scale animal husbandry, wider application of adopted traditional practices, and suitable crops and crop combinations.

"(10) To the fullest extent feasible, conserve biological diversity in forest areas by—

"(A) supporting and cooperating with United States Government agencies, other donors (both bilateral and multilateral), and other appropriate governmental, intergovernmental, and nongovernmental organizations in efforts to identify, establish, and maintain a representative network of protected tropical forest ecosystems on a worldwide basis;

"(B) whenever appropriate, making the establishment of protected areas a condition of support for activities involving forest clearance or degradation; and

"(C) helping developing countries identify tropical forest ecosystems and species in need of protection and establish and maintain appropriate protected areas.

"(11) To the fullest extent feasible, engage in efforts to increase the awareness of United States Government agencies and other donors, both bilateral and multilateral, of the immediate and long-term value of tropical forests.

"(12) To the fullest extent feasible, utilize the resources and abilities of all relevant United States Government agencies.

"(13) Require that any program or project under this chapter significantly affecting tropical forests (including projects involving the planting of exotic plant species)—

"(A) be based upon careful analysis of the alternatives available to achieve the best sustainable use of the land, and

"(B) take full account of the environmental impacts of the proposed activities on biological diversity,

as provided for in the environmental procedures of the Agency for International Development.

"(14) Deny assistance under this chapter for—

"(A) the procurement or use of logging equipment, unless an environmental assessment indicates that all timber harvesting operations involved will be conducted in an environmentally sound manner which minimizes forest destruction and that the proposed activity will produce positive economic benefits and sustainable forest management systems; and

"(B) actions which significantly degrade national parks or similar protected areas which contain tropical forests or introduce exotic plants or animals into such areas.

"(15) Deny assistance under this chapter for the following activities unless an environmental assessment indicates that the proposed activity will contribute significantly and directly to improving the livelihood of the rural poor and will be conducted in an environmentally sound manner which supports sustainable development:

"(A) Activities which would result in the conversion of forest lands to the rearing of livestock.

"(B) The construction, upgrading, or maintenance of roads (including temporary haul roads for logging or other extractive industries) which pass through relatively undegraded forest lands.

"(C) The colonization of forest lands.

"(D) The construction of dams or other water control structures which flood relatively undegraded forest lands.

"(d) PVOs AND OTHER NONGOVERNMENTAL ORGANIZATIONS.—Whenever feasible, the President shall accomplish the objectives of this section through projects managed by private and voluntary organizations or international, regional, or national nongovernmental organizations which are active in the region or country where the project is located.

"(e) COUNTRY ANALYSIS REQUIREMENTS.—Each country development strategy statement or other country plan prepared by the Agency for International Development shall include an analysis of—

"(1) the actions necessary in that country to achieve conservation and sustainable management of tropical forests, and

"(2) the extent to which the actions proposed for support by the Agency meet the needs thus identified.

"(f) ANNUAL REPORT.—Each annual report required by section 634(a) of this Act shall include a report on the implementation of this section.".

SEC. 302. PROTECTING BIOLOGICAL DIVERSITY.

Section 119 of the Foreign Assistance Act of 1961 is amended by striking out subsections (c) and (d) and inserting in lieu thereof the following:

"(c) FUNDING LEVEL.—For fiscal year 1987, not less than $2,500,000 of the funds available to carry out this part (excluding funds made available to carry out section 104(c)(2), relating to the Child Survival Fund) shall be allocated for assistance pursuant to subsection (b) for activities which were not funded prior to fiscal year 1987. In addition, the Agency for International Development shall, to the fullest extent possible, continue and increase assistance pursuant to subsection (b) for activities for which assistance was provided in fiscal years prior to fiscal year 1987.

"(d) COUNTRY ANALYSIS REQUIREMENTS.—Each country development strategy statement or other country plan prepared by the Agency for International Development shall include an analysis of—

"(1) the actions necessary in that country to conserve biological diversity, and

"(2) the extent to which the actions proposed for support by the Agency meet the needs thus identified.

"(e) LOCAL INVOLVEMENT.—To the fullest extent possible, projects supported under this section shall include close consultation with and involvement of local people at all stages of design and implementation.

"(f) PVOs AND OTHER NONGOVERNMENTAL ORGANIZATIONS.—Whenever feasible, the objectives of this section shall be accomplished through projects managed by appropriate private and voluntary organizations, or international, regional, or national nongovernmental organizations, which are active in the region or country where the project is located.

"(g) ACTIONS BY AID.—The Administrator of the Agency for International Development shall—

"(1) cooperate with appropriate international organizations, both governmental and nongovernmental;

"(2) look to the World Conservation Strategy as an overall guide for actions to conserve biological diversity;

"(3) engage in dialogues and exchanges of information with recipient countries which stress the importance of conserving biological diversity for the long-term economic benefit of those countries and which identify and focus on policies of those countries which directly or indirectly contribute to loss of biological diversity;

"(4) support training and education efforts which improve the capacity of recipient countries to prevent loss of biological diversity;

"(5) whenever possible, enter into long-term agreements in which the recipient country agrees to protect ecosystems or other wildlife habitats recommended for protection by relevant governmental or nongovernmental organizations or as a result of activities undertaken pursuant to paragraph (6), and the United States agrees to provide, subject to obtaining the necessary appropriations, additional assistance necessary for the establishment and maintenance of such protected areas;

"(6) support, as necessary and in cooperation with the appropriate governmental and nongovernmental organizations, efforts to identify and survey ecosystems in recipient countries worthy of protection;

"(7) cooperate with and support the relevant efforts of other agencies of the United States Government, including the United States Fish and Wildlife Service, the National Park Service, the Forest Service, and the Peace Corps;

"(8) review the Agency's environmental regulations and revise them as necessary to ensure that ongoing and proposed actions by the Agency do not inadvertently endanger wildlife species or their critical habitats, harm protected areas, or have other adverse impacts on biological diversity (and shall report to the Congress within a year after the date of enactment of this paragraph on the actions taken pursuant to this paragraph);

"(9) ensure that environmental profiles sponsored by the Agency include information needed for conservation of biological diversity; and

"(10) deny any direct or indirect assistance under this chapter for actions which significantly degrade national parks or similar protected areas or introduce exotic plants or animals into such areas.

"(h) ANNUAL REPORTS.—Each annual report required by section 634(a) of this Act shall include, in a separate volume, a report on the implementation of this section.".

TITLE IV—MISCELLANEOUS PROVISIONS RELATING TO CERTAIN FOREIGN ASSISTANCE PROGRAMS

SEC. 401. INCREASE AUTHORIZATION FOR INTERNATIONAL NARCOTICS CONTROL PROGRAMS.

Section 482(a)(1) of the Foreign Assistance Act of 1961 is amended by striking out "$57,529,000 for the fiscal year 1987" and inserting in lieu thereof "$65,445,000 for the fiscal year 1987".

SEC. 402. AUTHORIZING A SEPARATE LINE ITEM APPROPRIATION FOR THE INSPECTOR GENERAL OF THE AGENCY FOR INTERNATIONAL DEVELOPMENT.

Section 667(a)(1) of the Foreign Assistance Act of 1961 is amended by inserting after "Act" the following: ", of which $21,750,000 for the fiscal year 1987 is authorized for the necessary operating expenses of the Office of the Inspector General of the Agency for International Development and the remaining amount for the fiscal year is authorized for other necessary operating expenses of that agency".

SEC. 403. ADDITIONAL PROVISIONS.

(a) BOARD OF THE INTER-AMERICAN FOUNDATION.—Section 401(g) of the Foreign Assistance Act of 1969 (22 U.S.C. 290f.(g)) is amended by striking out "seven" in the first sentence and "Four" in the second sentence and inserting in lieu thereof "nine" and "Six", respectively.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect 120 days after the date of enactment of this Act.

SEC. 404. OFFSETTING REDUCTIONS IN CERTAIN FOREIGN ASSISTANCE PROGRAMS.

In order to provide the increased authorizations of appropriations contained in section 103(b), section 202(e), and section 401 without increasing the overall amount authorized to be appropriated for foreign assistance programs for fiscal year 1987—

(1) section 104(g)(1)(B) of the Foreign Assistance Act of 1961 (relating to development assistance for health programs) is amended by striking out "$205,000,000 for fiscal year 1987" and inserting in lieu thereof "$180,000,000 for fiscal year 1987"; and

(2) section 302(a)(1) of that Act (relating to international organizations and programs) is amended by striking out "$270,000,000 for fiscal year 1987" and insert in lieu thereof "$236,084,000 for fiscal year 1987".

SEC. 405. CONFORMING AMENDMENT.

Paragraph (6) of section 413(a) of the Omnibus Diplomatic Security and Antiterrorism Act of 1986 (Public Law 99-399) is repealed; and the sentence of section 209(a)(1) of the Foreign Service Act of 1980 which was repealed by that paragraph is hereby re-enacted.

Mr. FASCELL (during the reading). Mr. Speaker, I ask unanimous consent that the Senate amendment to the House amendments be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

Mr. SOLOMON. Mr. Speaker, reserving the right to object, I will not object, but I would like to yield to our distinguished chairman for a very brief explanation of this bill, which has already passed the House.

Mr. FASCELL. Mr. Speaker, will the gentleman yield?

Mr. SOLOMON. I yield to the gentleman from Florida.

Mr. FASCELL. Mr. Speaker, the Senate bill, S. 1917, as amended by the other body, is essentially the same measure that this body passed on August 25.

The only changes that have been made in the House amendment were to leave the period of service on the board of the Inter-American Foundation at the original 6 years; increase the authorization for the office of the inspector general for the agency to the Senate level, which is the same appropriation level, and I remind my colleague, of course, that that is not new money because the bill also provides that for every increase in authorization, there has to be an offset.

In addition, the Senate amendment includes some oratory language emphasizing the role of the private sector in development efforts.

Mr. SOLOMON. Mr. Speaker, further reserving the right to object, the other body, as the good chairman has said, made only three fairly routine changes in this House amendment, and I see no reason not to go along with them so that this legislation can at last be cleared for the President's signature.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from Florida?

There was no objection.

A motion to reconsider was laid on the table.

PERMISSION FOR COMMITTEE ON FOREIGN AFFAIRS TO HAVE UNTIL MIDNIGHT, WEDNESDAY, OCTOBER 8, 1986, TO FILE REPORT ON H.R. 4568, TO CLARIFY CERTAIN AUTHORITIES OF THE SECRETARY OF THE INTERIOR

Mr. FASCELL. Mr. Speaker, I ask unanimous consent that the Committee on Foreign Affairs have until midnight Wednesday, October 8, 1986, to file its report on H.R. 4568, to clarify certain authorities of the Secretary of the Interior, and for other purposes.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

COMPUTER FRAUD AND ABUSE ACT OF 1986

Mr. HUGHES. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 4718) to amend title 18, United States Code, to provide additional penalties for fraud and related activities in connection with access devices and computers, and for other purposes, with a Senate amendment thereto, and concur in the Senate amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendment, as follows:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Computer Fraud and Abuse Act of 1986".

SEC. 2. SECTION 1030 AMENDMENTS.

(a) MODIFICATION OF DEFINITION OF FINANCIAL INSTITUTION.—Section 1030(a)(2) of title 18, United States Code, is amended—

(1) by striking out "knowingly" and inserting "intentionally" in lieu thereof;

(2) by striking out "as such terms are defined in the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 et seq.),";

(3) by striking out the term "or" where it appears at the end of section 1030(a)(2) of title 18; and

(4) by adding after the term "financial institution" the following: "or of a card issuer as defined in section 1602(n) of title 15,".

(b) MODIFICATION OF EXISTING GOVERNMENT COMPUTERS OFFENSE.—Section 1030(a)(3) of title 18, United States Code, is amended—

(1) to read as follows:

"(3) intentionally, without authorization to access any computer of a department or agency of the United States, accesses such a computer of that department or agency that is exclusively for the use of the Government of the United States or, in the case of a computer not exclusively for such use, is used by or for the Government of the United States and such conduct affects the use of the Government's operation of such computer;"; and

(2) by striking out the flush language after section 1030(a)(3) of title 18, United States Code, beginning with "It is not an offense" and all that follows through "use of the computer.".

(c) MODIFICATION OF AUTHORIZED ACCESS ASPECT OF OFFENSES.—Paragraphs (1) and (2) of section 1030(a) of title 18, United States Code, are each amended by striking out, "or having accessed" and all that follows through "does not extend" and inserting "or exceeds authorized access" in lieu thereof.

(d) NEW OFFENSES.—Section 1030(a) of title 18, United States Code, is amended by inserting after paragraph (3) the following:

"(4) knowingly and with intent to defraud, accesses a Federal interest computer without authorization, or exceeds authorized access, and by means of such conduct furthers the intended fraud and obtains anything of value, unless the object of the fraud and the thing obtained consists only of the use of the computer;

"(5) intentionally access a Federal interest computer without authorization, and by means of one or more instances of such conduct alters, damages, or destroys information in any such Federal interest computer, or prevents authorized use of any such computer or information, and thereby—

"(A) causes loss to one or more others of a value aggregating $1,000 or more during any one year period; or

"(B) modifies or impairs, or potentially modifies or impairs, the medical examination, medical diagnosis, medical treatment, or medical care of one or more individuals; or

"(6) knowingly and with intent to defraud traffics (as defined in section 1029) in any password or similar information through which a computer may be accessed without authorization, if—

"(A) such trafficking affects interstate or foreign commerce; or

"(B) such computer is used by or for the Government of the United States;".

(e) ELIMINATION OF SECTION SPECIFIC CONSPIRACY OFFENSE.—Section 1030(b) of title 18, United States Code, is amended—

(1) by striking out "(1)"; and

(2) by striking out paragraph (2).

(1) PENALTY AMENDMENTS.—Section 1030 of title 18, United States Code, is amended—

(1) by striking out "of not more than the greater of $10,000" and all that follows through "obtained by the offense" in subsection (c)(1)(A) and inserting "under this title" in lieu thereof;

(2) by striking out "of not more than the greater of $100,000" and all that follows through "obtained by the offense" in subsection (c)(1)(B) and inserting "under this title" in lieu thereof;

(3) by striking out "or (a)(3)" each place it appears in subsection (c)(2) and inserting ", (a)(3) or (a)(6)" in lieu thereof;

(4) by striking out "of not more than the greater of $5,000" and all that follows through "created by the offense" in subsection (c)(2)(A) and inserting "under this title" in lieu thereof;

(5) by striking out "of not more than the greater of $10,000" and all that follows through "created by the offense" in subsection (c)(2)(B) and inserting "under this title" in lieu thereof;

(6) by striking out "not than" in subsection (e)(2)(B) and inserting "not more than" in lieu thereof;

(7) by striking out the period at the end of subsection (c)(2)(B) and inserting "; and" in lieu thereof;

(8) by adding at the end of subsection (c) the following:

"(3)(A) a fine under this title or imprisonment for not more than five years, or both, in the case of an offense under subsection (a)(4) or (a)(5) of this section which does not occur after a conviction for another offense under such subsection, or an attempt to commit an offense punishable under this subparagraph; and

"(B) a fine under this title or imprisonment for not more than ten years, or both, in the case of an offense under subsection (a)(4) or (a)(5) of this section which occurs after a conviction for another offense under such subsection, or an attempt to commit an offense punishable under this subparagraph."; and

(9) by deleting the term "(b)(1)" where it appears in the first line of section 1030(c) of title 18 and inserting in lieu thereof the term "(b)".

(g) CONFORMING AMENDMENTS TO DEFINITIONS PROVISION.—Section 1030(e) of title 18, United States Code, is amended—

(1) by striking out the comma after "As used in this section" and inserting a one-em dash in lieu thereof;

(2) by aligning the remaining portion of the subsection so that it is cut in two ems and begins as an indented paragraph, and inserting "(1)" before "the term";

(3) by striking out the period at the end and inserting a semicolon in lieu thereof; and

(4) by adding at the end thereof the following:

"(2) the term 'Federal interest computer' means a computer—

"(A) exclusively for the use of a financial institution or the United States Government, or, in the case of a computer not exclusively for such use, used by or for a financial institution or the United States Government and the conduct constituting the offense affects the use of the financial institution's operation or the Government's operation of such computer; or

"(B) which is one of two or more computers used in committing the offense, not all of which are located in the same State;

"(3) the term 'State' includes the District of Columbia, the Commonwealth of Puerto Rico, and any other possession or territory of the United States;

"(4) the term 'financial institution' means—

"(A) a bank with deposits insured by the Federal Deposit Insurance Corporation;

"(B) the Federal Reserve or a member of the Federal Reserve including any Federal Reserve Bank;

"(C) an institution with accounts insured by the Federal Savings and Loan Insurance Corporation;

"(D) a credit union with accounts insured by the National Credit Union Administration;

"(E) a member of the Federal home loan bank system and any home loan bank;

"(F) any institution of the Farm Credit System under the Farm Credit Act of 1971;

"(G) a broker-dealer registered with the Securities and Exchange Commission pursuant to section 15 of the Securities Exchange Act of 1934; and

"(H) the Securities Investor Protection Corporation;

"(5) the term 'financial record' means information derived from any record held by a financial institution pertaining to a customer's relationship with the financial institution;

"(6) the term 'exceeds authorized access' means to access a computer with authorization and to use such access to obtain or alter information in the computer that the accesser is not entitled so to obtain or alter; and

"(7) the term "department of the United States' means the legislative or judicial branch of the Government or one of the executive departments enumerated in section 101 of title 5.".

(h) LAW ENFORCEMENT AND INTELLIGENCE ACTIVITIES EXCEPTION.—Section 1030 of title 18, United States Code, is amended by adding at the end the following new subsection:

"(f) This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a political subdivision of a State, or of an intelligence agency of the United States.".

Mr. HUGHES (during the reading). Mr. Speaker, I ask unanimous consent that the Senate amendment be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from New Jersey?

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Mr. McCOLLUM. Reserving the right to object, Mr. Speaker, and I shall not object, would the gentleman advise us what the Senate amendments do?

Mr. HUGHES. Mr. Speaker, will the gentleman yield?

Mr. McCOLLUM. I am delighted to yield to the gentleman from New Jersey.

Mr. HUGHES. Mr. Speaker, as the gentleman knows, the basic thrust of this bill remains its three new offenses with some minor changes in the existing law. The first proposes a 5-year felony violation for unauthorized access to a "Federal interest computer" in furtherance of an intent to defraud. These computers are defined as computers used by the Federal Government, financial institutions or when conduct involves computers in different States. The second new offense, can be categorized as a malicious damage felony violation in regard to Federal interest computers if there is $1,000 or more in damages.

It is in this second circumstance where the Senate has added an amendment penalizing alteration, damage, or destruction in connection with data relating to medical care or treatment. Where such conduct impairs or potentially impairs an individual's medical care, the other body did not believe a showing of $1,000 in financial loss should be necessary. The House Judiciary Committee agrees that tampering with computerized medical treatment records, especially given the potentially life-threatening nature of such conduct, is serious enough to warrant punishment without a showing of pecuniary loss to the victims and therefore accepts this amendment.

The last new offense remains intact and is a misdemeanor provision designed to proscribe conduct associated with pirate bulletin boards used by some to display passwords to other persons' computers.

The other amendments by the Senate are basically technical in nature along with the addition of the Securities Investor Protection Corporation [SIPC] within the ambit of the definition of a "Federal interest" computer. SIPC is not technically an agency or establishment of the U.S. Government, although it performs an analogous function to the Federal Deposit Insurance Corporation [FDIC] and the Federal Savings and Loan Insurance Corporation [FSLIC] and the other body believed it would be appropriate to include it within the bill's protection. We concur in this conclusion.

H.R. 4718 as amended along with the legislation we passed in the last Congress will go a long way in deterring the emergence of the computer criminal in our society. We all recognize that it is not a panacea for high-tech crimes, but it along with appropriate security by the computer industry to protect itself should give this evolving technology essential safeguards.

Mr. McCOLLUM. Continuing my reservation, Mr. Speaker, I would very much like to commend the gentleman on that explanation. The bill was a very fine product out of the House and out of our subcommittee. The gentleman as chairman of that subcommittee worked very hard to perfect this legislation. It sounds to me as though the Senate amendments have improved the bill and I am very supportive of it.

Mr. NELSON of Florida. Mr. Speaker, will the gentleman yield?

Mr. McCOLLUM. Mr. Speaker, under my reservation, I yield to the gentleman from Florida [Mr. NELSON], who has worked quite hard on this legislation.

Mr. NELSON of Florida. Mr. Speaker, I thank my colleague from Florida for yielding.

I just wanted to come and express to this committee and its leadership my appreciation now over the course of 4 years that we have been working on this legislation. It has all come together where we now with the President's signature on this legislation that we pass today will have in place a comprehensive computer crime law that will give our prosecutors the adequate tools to go after these new high-tech kind of criminals who use the computer keyboard instead of the crowbar and the blowtorch to commit some what we consider crimes of the normal kind that we think of; so I am just very happy to see this finally come to fruition. I congratulate the leadership on handling this legislation over the last several years.

Mr. WYDEN. Mr. Speaker, will the gentleman yield?

Mr. McCOLLUM. Continuing my reservation, Mr. Speaker, I yield to the gentleman from Oregon [Mr. WYDEN].

Mr. WYDEN. Mr. Speaker, I'd like to commend my colleague and friend, Mr. HUGHES of New Jersey, for his leadership in this important area of legislation.

Today, we will consider a very important bill—one aimed at reducing the amount of computer crime. Mr. Speaker, "hacking" presents a tremendous danger to all of us. Personal desktop computers can be used to access everything from accounts in financial institutions to the classified ads. And, nowhere is this danger more significant than in the area of health care.

In 1983, with just a few taps of a computer keyboard, a group of adolescents broke into the computer system at Memorial Sloan Kettering Cancer Center in New York and jeopardized the lives of thousands of cancer patients nationwise.

These youngsters used a simple home computer to break into the radiation treatment computer at the center. As a result, they gained access to the radiation treatment records for 6,000 past and present patients and had at their fingertips the ability to control the radiation levels that every patient received. Clearly, that is a danger to patients we cannot let continue.

As a result of that crime, I introduced legislation, H.R. 995, to make unauthorized access to some medical computer records a Federal crime. A similar provision is included in the computer crime bill before us today. The provisions make it a Federal crime to modify or impair the medical examination, diagnosis, treatment, or care of one or more individuals when using a Federal or interstate computer.

I think it is high time Congress outlaw interstate access to and tampering with medical records through computers. If this legislation had been law in 1983, it might have served to deter the youngers from tapping into Sloan-Kettering's computer. If we support the bill before us today, we will protect patients and health care providers from this danger in the future.

This is a big step in the right direction. I appreciate the willingness of the gentleman from New Jersey to accept these important provisions and I thank him for his leadership on this vital issue.

Mr. McCOLLUM. Continuing my reservation, Mr. Speaker, I thank the gentleman for his contribution. There is no question that the gentleman from Oregon [Mr. WYDEN] and the gentleman from Florida [Mr. NELSON] have made valuable input into this from the very beginning.

I am very pleased that we were able to create a product that came out of committee and that we got it as far as we did. Now that we have these amendments from the Senate, as the gentleman from New Jersey explained, they made some very valuable changes in this legislation over there, not major changes in certain ways, but they expanded, for example, the area of the coverage of computers in brokerage houses to include all the securities computers that we discussed for so long in our committee. I think they refined it and did a little better job perhaps of perfecting the language, which we always appreciate.

I think the addition that the gentleman from New Jersey described in the medical area is very significant, because we have so many of our senior citizens dependent on the Medicare checks they receive. The thought of having any of those tampered with through the computer terminals with people absconding with the very moneys that our senior citizens are dependent upon for their health care is a tremendous thought. We should be very happy that we now have some provisions in law, if this goes on to be signed, as I am sure it will, that will give our law enforcement officials the opportunity to get into that and to work at it and to perfect criminal efforts on prosecution in that area.

Mr. HUGHES. Mr. Speaker, will the gentleman yield?

Mr. McCOLLUM. I am very glad to yield to the gentleman from New Jersey.

Mr. HUGHES. Mr. Speaker, as the gentleman knows, computer crime is a rapidly developing crime. We really have no idea just the dimensions of the problem. I am sure this is not going to be the last word on computer crime, but it certainly is a major step.

I want to congratulate the gentleman from Florida, the ranking Republican on the Subcommittee on Crime, and who has been a partner in developing this bipartisan initiative, which I think in the final analysis will put the Federal law in pretty good shape.

This particular issue was brought to my attention for the first time by our colleague, the gentleman from Florida [Mr. NELSON]. He worked very hard I know in the State legislature when he served in that body on computer crime.

Florida has become a model for other States to follow. We certainly pattern much of what we have done after the Florida initiative and much of what our colleague from Florida, BILL NELSON, brought to our attention.

Our colleague from Oregon has made a major contribution. I believe that his initiative passed early, as a matter of fact, dealing with medical records. Unfortunately, it did not move in the other body and we have gotten a major portion of that in this particular initiative; but certainly the tampering and damage of medical records is something that should be covered. It sometimes is beyond the capacity of States to deal with. That is what we are trying to do. We are not trying to replace what the States have done with their initiatives. What we are trying to do is we are trying to supplement what the States have done to try to deal with those areas that in fact cry out for Federal relief.

I think it is a well-crafted bill and I want to thank my colleague from Florida for his cooperation.

Mr. McCOLLUM. Continuing my reservation, Mr. Speaker, I again want to commend the gentleman from New Jersey. It was indeed a thought product well-crafted and we are very proud we are here with it today.

I agree with the amendments that have been tacked on to this.

Mr. HUGHES. Mr. Speaker, I thank the gentleman.

Mr. McCOLLUM. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from New Jersey?

There was no objection.

A motion to reconsider was laid on the table.

INTRODUCTION OF JOINT RESOLUTION OF FREEDOM OF INFORMATION DAY

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Colorado [Mr. WIRTH] is recognized for 5 minutes.

Mr. WIRTH. Mr. Speaker, today, along with 217 of my colleagues, I am introducing a joint resolution authorizing the President to proclaim Monday, March 16, 1987, as national Freedom of Information Day. The bipartisan support given to a similar resolution I introduced last year enabled Americans to celebrate Freedom of Information Day on March 16, 1986.

March 16, 1751, was the birthday of our fourth President and father of the Bill of Rights, James Madison. Two hundred thirty-six years later we live in a society in which we enjoy a free exchange of information and ideas. The origins of these freedoms can be attributed directly to Mr. Madison's contributions to our Constitution. America's traditions of freedom of speech and freedom of the press have become two precious legacies left to us by Mr. Madison. These two constitutionally guaranteed rights set us apart from societies which do not permit their citizens a voice in their government. These rights are the forces that define a nation as a democracy.

At the dawn of our country, Mr. Madison envisioned a new society led by a government open and accessible to the people that it served. The citizens of this Nation would enjoy, when armed with the truth, what he called a peculiar freedom to scrutinize their government. In this way, the United States would remain forever by and for the people. Our citizens, empowered with information, could hold their officials accountable for their actions and make electoral decisions based on honest and open debate. James Madison recognized that a government, faced with an informed society and an active press, must be responsive to its citizens.

More than 200 years ago, these ideas were considered radical. Yet today most Americans take these freedoms—the freedom to ask questions and receive an honest answer, the freedom to hold Government officials up to public scrutiny—for granted. And we strongly condemn the lack of these freedoms in other societies. Yet, we sometime forget that the freedom of information and the opportunity to openly exchange ideas form a foundation for most of our other constitutional freedoms.

A national Freedom of Information Day in 1987 would once again serve to remind Americans and the rest of the world of the vital role these liberties have played in shaping this country. It would honor the most fundamental right of an American—the right to a free and robust marketplace of diverse ideas. I urge the House to adopt this proposal honoring James Madison and the principles for which he stood.

The text of the bill follows:

H.J. RES. —

Joint resolution designating March 16, 1987, as "Freedom of Information Day"

Whereas a fundamental principle of our Government is that a well-informed citizenry can reach the important decisions that determine the present and future of the Nation;

Whereas the freedoms we cherish as Americans are fostered by free access to information;

Whereas many Americans, because they have never known any other way of life, take for granted the guarantee of free access to information that derives from the First Amendment to the Constitution of the United States;

Whereas the guarantee of free access to information should be emphasized and celebrated annually; and

Whereas March 16, is the anniversary of the birth of James Madison, one of the Founding Fathers, who recognized and supported the need to guarantee individual rights through the Bill of Rights: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That March 16, 1987, is designated as "Freedom of Information Day", and the President is authorized and requested to issue a proclamation calling upon Federal, State, and local government agencies and the people of the United States to observe the day with appropriate programs, ceremonies, and activities.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. WYDEN) to revise and extend their remarks and include extraneous material:)

Mr. ANNUNZIO, for 5 minutes, today.

Mr. WIRTH, for 5 minutes, today.

Mr. WEAVER, for 30 minutes, today.

Mr. HOYER, for 60 minutes, on October 7.

EXTENSIONS OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Members (at the request of Mr. COMBEST) and to include extraneous matter:)

Mrs. ROUKEMA.

Mr. SHAW.

Mr. BURTON of Indiana.

Mr. FRENZEL in five instances.

Mr. CHANDLER.

Mr. BOEHLERT.

(The following Members (at the request of Mr. WYDEN) and to include extraneous material:)

Mr. ANDERSON in 10 instances.

Mr. GONZALEZ in 10 instances.

Mr. ANNUNZIO in six instances.

Mr. JONES of Tennessee in 10 instances.

Mr. BONER of Tennessee in five instances.

Mr. DE LA GARZA in 10 instances.

Mr. HALL of Ohio.

Mr. FUQUA.

Mr. STOKES.

Mr. CLAY.

Mr. STARK.

Mr. CARR.
Mr. BENNETT.
Mr. FRANK.
Mr. DYSON.
Mr. MAVROULES.
Mr. MONTGOMERY.
Mr. MICA.
Mr. MRAZEK.
Mr. MINETA.
Ms. MIKULSKI.
Mr. MARKEY.
Mr. BERMAN.
Mr. GARCIA in two instances.
Mrs. LLOYD.
Mr. MORRISON of Connecticut.

SENATE BILLS AND JOINT RESOLUTIONS AND CONCURRENT RESOLUTION REFERRED

Bills and joint resolutions and concurrent resolution of the Senate of the following titles were taken from the Speaker's table and, under the rule, referred as follows:

S. 2323. An act to exempt certain activities from provisions of the antitrust laws; to the Committee on the Judiciary.

S. 2448. An act to repeal Public Law 87-186 relating to the National Armed Forces Museum Advisory Board of the Smithsonian Institution; to the Committee on House Administration.

S.J. Res. 268. Joint resolution to provide for the reappointment of Murray Gell-Mann as a citizen regent of the Board of Regents of the Smithsonian Institution; to the Committee on House Administration.

S.J. Res. 352. Joint resolution to designate the week beginning October 19, 1986, as "Gaucher's Disease Awareness Week"; to the Committee on Post Office and Civil Service.

S.J. Res. 410. Joint resolution to designate the period commencing February 9, 1987, and ending February 15, 1987, as "National Burn Awareness Week"; to the Committee on Post Office and Civil Service.

S.J. Res. 414. Joint resolution to designate March 16, 1987, as "Freedom of Information Day"; to the Committee on Post Office and Civil Service.

S.J. Res. 417. Joint resolution designating the week of January 25 through January 31, 1987 as "National Productivity Improvement Week"; to the Committee on Post Office and Civil Service.

S.J. Res. 418. Joint resolution to designate February 4, 1987, as "National Women in Sports Day"; to the Committee on Post Office and Civil Service.

S. Con. Res. 130. Concurrent resolution to recognize the visit by the descendants of the original settlers of Purrysburg, South Carolina, to Neufchatel, Switzerland, in October of 1986 as an international gesture of goodwill; to the Committee on Foreign Affairs.

ADJOURNMENT

Mr. WYDEN. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 5 o'clock and 28 minutes p.m.) the House adjourned until tomorrow, Tuesday, October 7, 1986, at 12 o'clock noon.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

4299. A letter from the Assistant Secretary of the Navy (Shipbuilding and Logistics), transmitting a third supplement to the environmental impact statement and supplemental information report on the St. Marys Entrance Channel for the Fleet Ballistic Missile Submarine Support Base at Kings Bay, GA, pursuant to 33 U.S.C. 1344(r); to the Committee on Appropriations.

4300. A letter from the Assistant Secretary of State for Legislative and Intergovernmental Affairs, transmitting a report of political contributions by Stephen R. Lyne, of Maryland, Ambassador Extraordinary and Plenipotentiary of the United States-designate to the Republic of Ghana, and members of his family, pursuant to 22 U.S.C. 3944(b)(2); to the Committee on Foreign Affairs.

4301. A letter from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting copies of international agreements, other than treaties, entered into by the United States, pursuant to 1 U.S.C. 112b(a); to the Committee on Foreign Affairs.

4302. A letter from the Acting Administrator, Small Business Administration, transmitting the interim report on the pilot program involving the sale to investors of debentures guaranteed pursuant to section 503 of the Small Business Act of 1958 (16 U.S.C. 697), pursuant to Public Law 99-272, section 18008(b) (99 Stat. 367); to the Committee on Small Business.

4303. A letter from the Director, Congressional Budget Office and Director, Office of Management and Budget, transmitting the revised sequestration report for fiscal year 1987, pursuant to 2 U.S.C. 922(f); to the Temporary Joint Committee on Deficit Reduction.

4304. A letter from the Secretary of Transportation, transmitting a draft of proposed legislation to authorize occupancy of substandard family housing units by members of the Coast Guard on the same basis as members of the other Armed Forces; jointly, to the Committees on Armed Services and Merchant Marine and Fisheries.

4305. A letter from the Assistant Secretary of State for Legislative and Intergovernmental Affairs, transmitting a report on the transfer of property under the Panama Canal Treaty of 1977, pursuant to 22 U.S.C. 3784(b); jointly, to the Committees on Foreign Affairs and Merchant Marine and Fisheries.

4306. A letter from the Comptroller General, General Accounting Office, transmitting a report on the financial statements of the Commodity Credit Corporation for the fiscal years ended September 30, 1985, and 1984 and a report on the Corporation's system of internal accounting controls (GAO/AFMD-86-57), pursuant to 31 U.S.C. 9106(a); jointly, to the Committees on Government Operations and Agriculture.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. JONES of North Carolina: Committee on Merchant Marine and Fisheries. H.R. 4731. A bill to amend chapter 131 of title 46, United States Code, relating to the Federal recreational boating safety program, and for other purposes; with amendments (Rept. 99-968). Referred to the Committee of the Whole House on the State of the Union.

Mr. JONES of North Carolina: Committee on Merchant Marine and Fisheries. H.R. 5598. A bill to provide for transfer of the Coast Guard cutter "Taney" to the city of Baltimore, MD, for use as a maritime museum and display (Rept. 99-969). Referred to the Committee of the Whole House on the State of the Union.

SUBSEQUENT ACTION ON REPORTED BILLS SEQUENTIALLY REFERRED

Under clause 5 of rule X the following action was taken by the Speaker:

[Omitted from the record of October 3, 1986]

H.R. 4568. Consideration of H.R. 4568 by the Committees on Foreign Affairs and Merchant Marine and Fisheries extended for an additional period ending not later than October 8, 1986.

H.R. 5540. Referral to the Committee on the Judiciary extended for a period ending not later than October 8, 1986.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. FRANK:

H.R. 5649. A bill to amend title 39, United States Code, to provide free insurance up to the value of $100 on mail items; to the Committee on Post Office and Civil Service.

By Mr. UDALL:

H.R. 5650. A bill to amend the Price-Anderson provisions of the Atomic Energy Act of 1954 to extend and improve the procedures for liability and indemnification for nuclear incidents; to the Committee on Interior and Insular Affairs.

By Mr. LELAND (for himself, Mrs. COLLINS, Mr. WIRTH, Mr. BRYANT, and Mr. SWIFT):

H.R. 5651. A bill to amend the Communications Act of 1934 to provide for greater participation of women and minorities in telecommunications; to the Committee on Energy and Commerce.

By Mr. MARKEY:

H.R. 5652. A bill to provide for State regulation of the radiological hazards of production and utilization facilities, and for other purposes; jointly, to the Committees on Energy and Commerce and Interior and Insular Affairs.

By Mr. WAXMAN:

H.R. 5653. A bill to amend the Controlled Substances Act to place artificially produced growth hormones in schedule II of that act; jointly, to the Committees on Energy and Commerce and the Judiciary.

By Mr. WIRTH (for himself, Mr. ACKERMAN, Mr. AKAKA, Mr. ANDERSON, Mr. ANDREWS, Mr. ASPIN, Mr. ATKINS, Mr. AUCOIN, Mr. BARNES, Mr. BATEMAN, Mr. BEDELL, Mr. BENNETT, Mrs. BENTLEY, Mr. BERMAN, Mr. BLILEY, Mr. BOLAND, Mr. BONER of Tennessee, Mr. BONIOR of Michi-

gan, Mr. BOSCO, Mr. BOUCHER, Mrs. BOXER, Mr. BROOKS, Mr. BROWN of California, Mr. BROWN of Colorado, Mr. BRUCE, Mr. BRYANT, Mrs. BURTON of California, Mr. BUSTAMANTE, Mrs. BYRON, Mr. CAMPBELL, Mr. CARNEY, Mr. CARPER, Mr. CARR, Mr. CHAPPIE, Mr. CLAY, Mr. COELHO, Mr. COLEMAN of Texas, Mrs. COLLINS, Mr. CONTE, Mr. CONYERS, Mr. COOPER, Mr. CROCKETT, Mr. DANIEL, Mr. DASCHLE, Mr. DELLUMS, Mr. DE LUGO, Mr. DEWINE, Mr. DICKS, Mr. DINGELL, Mr. DIOGUARDI, Mr. DIXON, Mr. DONNELLY, Mr. DORGAN of North Dakota, Mr. DOWDY of Mississippi, Mr. DURBIN, Mr. DYMALLY, Mr. DYSON, Mr. ENGLISH, Mr. ERDREICH, Mr. EVANS of Illinois, Mr. FASCELL, Mr. FAUNTROY, Mr. FAZIO, Mr. FEIGHAN, Mr. FISH, Mr. FLIPPO, Mr. FOGLIETTA, Mr. FOLEY, Mr. FOWLER, Mr. FRANK, Mr. FROST, Mr. FUQUA, Mr. FUSTER, Mr. GARCIA, Mr. GEPHARDT, Mr. GONZALEZ, Mr. GRAY of Illinois, Mr. GRAY of Pennsylvania, Mr. GREEN, Mr. GUARINI, Mr. RALPH M. HALL, Mr. HALL of Ohio, Mr. HAMILTON, Mr. HARTNETT, Mr. HATCHER, Mr. HAYES, Mr. HEFNER, Mr. HORTON, Mr. HOWARD, Mr. HOYER, Mr. HUBBARD, Mr. HUCKABY, Mr. HUGHES, Mr. HUTTO, Mr. HYDE, Mr. JONES of Tennessee, Mr. JONES of Oof California, Mr. LEHMAN of Florida, Mr. LELAND, Mr. LEVIN of Michigan, Mr. LEVINE of California, Mr. LEWIS of Florida, Mr. LIPINSKI, Mrs. LLOYD, Mrs. LONG, Mr. LOWERY of California, Mr. LOWRY of Washington, Mr. LUKEN, Mr. LUNDINE, Mr. MCCLOSKEY, Mr. MCCURDY, Mr. MCDADE, Mr. MCHUGH, Mr. MCKINNEY, Mr. MACK, Mr. MACKAY, Mr. MANTON, Mr. MARKEY, Mr. MARTIN of New York, Mr. MARTINEZ, Mr. MATSUI, Mr. MAVROULES, Mr. MAZZOLI, Mr. MILLER of California, Mr. MILLER of Washington, Mr. MINETA, Mr. MOAKLEY, Mr. MONTGOMERY, Mr. MOODY, Mr. MORRISON of Connecticut, Mr. MRAZEK, Mr. MURPHY, Mr. NATCHER, Mr. NEAL, Mr. NELSON of Florida, Mr. NICHOLS, Ms. OAKAR, Mr. OBERSTAR, Mr. ORTIZ, Mr. OWENS, Mr. PEPPER, Mr. PERKINS, Mr. RAHALL, Mr. RANGEL, Mr. REID, Mr. RICHARDSON, Mr. RODINO, Mr. ROE, Mr. ROEMER, Mr. ROSE, Mr. ROWLAND of Georgia, Mr. RUSSO, Mr. SABO, Mr. SAVAGE, Mr. SAXTON, Mr. SCHAEFER, Mr. SCHEUER, Mrs. SCHROEDER, Mr. SCHUMER, Mr. SEIBERLING, Mr. SHARP, Mr. SIKORSKI, Mr. SKELTON, Mr. SLATTERY, Mr. SMITH of Florida, Mr. SMITH of Iowa, Mr. SOLARZ, Mr. SPRATT, Mr. STARK, Mr. STENHOLM, Mr. STOKES, Mr. STRANG, Mr. STUDDS, Mr. SUNIA, Mr. SYNAR, Mr. TALLON, Mr. TAUZIN, Mr. TORRICELLI, Mr. TOWNS, Mr. TRAFICANT, Mr. TRAXLER, Mr. UDALL, Mr. VALENTINE, Mr. VENTO, Mr. VISCLOSKY, Mr. VOLKMER, Mr. WALGREN, Mr. WAXMAN, Mr. WEAVER, Mr. WEISS, Mr. WILSON, Mr. WISE, Mr. WOLPE, Mr. WORTLEY, Mr. WYDEN, Mr. YATRON, Mr. YOUNG of Florida, Mr. YOUNG of Missouri, Mr. BORSKI, Mr. TAUKE, Mr. OBEY, Mr. PANETTA, Mr. EDWARDS of California, Mr. SISISKY, Mr. GEJDENSON, and Mr. RITTER):

H.J. Res. 745. Joint resolution designating March 16, 1987, as "Freedom of Information Day"; to the Committee on Post Office and Civil Service.

By Mr. DINGELL (for himself, Mr. WIRTH, and Mr. RINALDO)

H. Res. 574. Resolution to provide for the concurrence of the House to amendments of the Senate to the bill (H.R. 2032) with an amendment; considered and agreed to.

By Mr. BROOMFIELD (for himself, Mr. MICHEL, Mr. LOTT, Mr. CHENEY, and Mr. LEWIS of California:

H. Res. 575. Resolution to commend President Reagan for his decision to meet with General Secretary Gorbachev in Reykjavik, Iceland; to the Committee on Foreign Affairs.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 524: Mr. FIELDS and Mr. MCCAIN.

H.R. 1375: Mrs. BYRON.

H.R. 2830: Mrs. LLOYD.

H.R. 3061: Mr. SCHEUER.

H.R. 3118: Mr. SCHEUER.

H.R. 3119: Mr. SCHEUER.

H.R. 4142: Mr. BONER of Tennessee, Mrs. SMITH of Nebraska, Mr. VANDER JAGT, Mr. HALL of Ohio, Mr. LOTT, Mr. PENNY, Mr. ZSCHAU, Mr. DICKINSON, Mr. HUBBARD, and Mr. CARPER.

H.R. 4287: Mr. APPLEGATE, Mr. HERTEL of Michigan, Mr. DASCHLE, Mr. LANTOS, Mr. TRAXLER, and Mr. VENTO.

H.R. 4365: Mr. MONTGOMERY.

H.R. 4485: Mr. LANTOS, Mrs. BOXER, Mr. BONIOR of Michigan, Mr. FAUNTROY, Mr. GILMAN, Mr. LOWRY of Washington, Mr. TRAXLER, Mr. GARCIA, Mr. FOGLIETTA, Mr. WEISS, and Mrs. VUCANOVICH.

H.R. 4820: Mr. BONER of Tennessee, Mr. SPENCE, Mr. HAYES, Mr. BREAUX, and Mr. BUSTAMANTE.

H.R. 4846: Mr. RANGEL, Mr. DIXON, Mr. JONES of North Carolina, Mr. ROSE, Mr. MORRISON of Connecticut, Mr. WOLPE, Mr. CONYERS, Mr. TOWNS, Mr. WHITLEY, Mr. HORTON, Mr. DYMALLY, Mr. BRYANT, Mr. FAZIO, Mr. BUSTAMANTE, Ms. KAPTUR, Mr. MARTINEZ, and Mr. MINETA.

H.R. 5196: Mrs. VUCANOVICH, Mr. GUNDERSON, Mr. ROBINSON, Mr. DENNY SMITH, and Mr. SENSENBRENNER.

H.R. 5531: Mr. PARRIS, Mr. FRANK, Mr. EDWARDS of California, Mr. MORRISON of Connecticut, Mr. DYMALLY, Mr. MCCURDY, Ms. KAPTUR, Mr. ABERCROMBIE, Mr. MITCHELL, Mr. SEIBERLING, Mr. BARNES, Mr. SWIFT, and Mr. MARTINEZ.

H.R. 5532: Mr. MCKINNEY and Mr. LIVINGSTON.

H.R. 5538: Mr. RANGEL.

H.R. 5587: Mr. MRAZEK, Mr. GILMAN, Mr. HATCHER, Mr. LEVIN of Michigan, and Mr. WILLIAMS.

H.J. Res. 96: Mr. BLILEY and Mr. GALLO.

H.J. Res. 244: Mr. WALDON, Mr. SMITH of Florida, Mr. STRATTON, and Mr. NOWAK.

H.J. Res. 410: Mr. STOKES.

H.J. Res. 444: Mr. RICHARDSON, Mr. LUJAN, Mr. SKEEN, and Mr. STOKES.

H.J. Res. 594: Mrs. LONG.

H.J. Res. 651: Mr. ABERCROMBIE, Mr. BREAUX, Mr. BROWN of California, Mrs. COLLINS, Mr. DOWNEY of New York, Mr. FLIPPO, Mr. FORD of Tennessee, Mr. GOODLING, Mr. GRAY of Pennsylvania, Mr. HARTNETT, Mr. IRELAND, Mr. KASTENMEIER, Mr. MCHUGH, Mr. MORRISON of Connecticut, Mr. RICHARDSON, Mr. SCHUETTE, Mr. TAYLOR, and Mr. STRATTON.

H.J. Res. 670: Mr. THOMAS of California, Mr. HUNTER, Mr. MCKINNEY, Mr. BATES, Mr. HUGHES, Mr. LIGHTFOOT, Mr. ABERCROMBIE, Mr. LEHMAN of California, Mr. CARR, Mr. CARNEY, Mr. DUNCAN, Mr. BROOKS, Mr. RUSSO, Mr. ECKART of Ohio, Mr. SUNDQUIST, Mr. RODINO, Mr. MORRISON of Washington, Mr. STANGELAND, Mr. DIOGUARDI, Mr. DORNAN of California, Mr. MATSUI, Mr. WISE, Mr. GUARINI, Mr. RALPH M. HALL, Mr. PERKINS, Mr. FLORIO, Mr. SHARP, Mr. HUTTO, Mr. FOGLIETTA, Mr. BORSKI, and Mr. BREAUX.

H.J. Res. 706: Mr. MCKINNEY, Mr. TRAXLER, and Mr. ROBERTS.

H.J. Res. 709: Mr. RANGEL, Mr. BEILENSON, Mr. TAUKE, Mr. PICKLE, Mr. MARKEY, Mr. ANDREWS, and Ms. SNOWE.

H.J. Res. 716: Mr. MARTINEZ, Mr. LOTT, Mr. BOUCHER, and Mr. FOGLIETTA.

H. Con. Res. 359: Mr. DWYER of New Jersey and Mr. SWIFT.

H. Con. Res. 389: Mr. MONSON and Mr. PACKARD.

SENATE—*Monday, October 6, 1986*

The Senate met at 12 noon and was called to order by the Honorable JOHN C. DANFORTH, a Senator from the State of Missouri.

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray.

The Lord is my shepherd; I shall not want. He maketh me to lie down in green pastures: he leadeth me beside the still waters. He restoreth my soul: he leadeth me in the paths of righteousness for his name's sake. Yea, though I walk through the valley of the shadow of death, I will fear no evil: for thou art with me; thy rod and thy staff they comfort me. Thou preparest a table before me in the presence of mine enemies: thou anointest my head with oil; my cup runneth over. Surely goodness and mercy shall follow me all the days of my life: and I will dwell in the house of the Lord forever.—Psalm 23.

Gracious God, thank You for this beautiful psalm authored by King David, Israel's leader in its golden age. The King knew what it meant to be a shepherd and took considerable comfort in the reality that his Lord was his shepherd. As this week of intense pressure begins, may we hear the shepherd's psalm and find in it the boundless supply of inner resources which it promises. In the name of the Good Shepherd. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore [Mr. THURMOND].

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
WASHINGTON, DC, OCTOBER 6, 1986.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable JOHN C. DANFORTH, a Senator from the State of Missouri, to perform the duties of the Chair.

STROM THURMOND,
President pro tempore.

Mr. DANFORTH thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. Under the previous order, the majority leader is recognized.

Mr. DOLE. Mr. President, I thank the distinguished Acting President pro tempore, the Senator from Missouri [Mr. DANFORTH].

SCHEDULE

Mr. DOLE. Under the standing order, the leaders have 10 minutes each, followed by special orders of Senators WILSON, PROXMIRE, DANFORTH, and BAUCUS not to exceed 5 minutes.

I ask unanimous consent there be added to that list the distinguished Acting President pro tempore, Senator DANFORTH, for 5 minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. DOLE. Then routine morning business not to extend beyond 1 p.m. with Senators permitted to speak therein for not more than 5 minutes each. Following morning business, it will be the majority leader's intention to turn to any of the following items: S. 2792, FIFRA. There is one vote expected on that. Perhaps we could delay that for a little later in the afternoon, S. 2045, CFTC, the Commodity Futures Trading Corporation. I have done a little checking myself on each side. I believe that may be free of problems now. We have conference reports on the Intelligence authorization, which will not require a vote, and again, we can do that early; and the Export-Import Bank conference report. There could be one vote, or there may not be a vote on that issue.

There may be other matters on the Executive Calendar we can dispose of today, and other items that Members on either side will ask us to bring up. We have indicated there will be no votes prior to 2 o'clock. I think some are hoping we can make that 3 o'clock. But we will try to work with the Members on each side to see if we can do some business between now and 2 or 3 o'clock.

That would leave us, I think, a "doable" agenda for the week. We have the impeachment trial that will start tomorrow morning at 10 o'clock. There will be a meeting this afternoon at 3 o'clock with myself and the distinguished minority leader, Senator BYRD, Senator SARBANES, and Senator MATHIAS, and we will go over some of the details of the trial.

But I assume we might take about 4 hours tomorrow and again on Wednesday to try to complete action on this matter. Let me indicate that we are going to make certain that whatever we do we protect the rights of Judge Claiborne, but at the same time not, as I understand it, go back and do everything that has already been done by the committee of 12 Senators.

As the minority leader indicated on Friday, this is a responsibility of every Senator. We should have good attendance. Members should be here starting tomorrow morning at 9 o'clock, and I would hope that we will have a quorum of Senators on the floor at all times. I think there will be a perception out there that this is not being treated seriously unless we have a very good attendance. We hope that in meeting this afternoon we can outline the plan that will protect every right the judge has and at the same time move the process so that Senators will be able to participate in the proceedings.

I know there are a lot of conferences going on. I have already been called by some Senators saying, "I can't be there; I'm on the continuing resolution conference," I know there are going to be a lot of other demands, but hopefully we can do both. We will have the debt limit, budget reconciliation, highway reauthorization, Farmers Home Administration loan authorization, and FSLIC [Federal Saving and Loan Insurance Corporation] recapitalization to do. There are probably other areas the minority leader and others may have on their list we may be able to take up the balance of the week.

Unless there are other things that will be up today, I do not expect this to be a late session.

RETIRING SENATORS

Mr. DOLE. Mr. President, this will be the last week in the Senate—I say that with some conviction—for six of our retiring colleagues, three Republicans and three Democrats. Each has made a significant contribution to this body and to the Nation. We hope to set aside some time this week for statements that Members may wish to make concerning their colleagues.

SENATOR BARRY GOLDWATER OF ARIZONA

Mr. DOLE. Mr. President, probably no Republican has left a bigger imprint on the party, and on the course of contemporary American politics, than BARRY GOLDWATER.

For more than 30 years, BARRY GOLDWATER has been a major player on the American political scene. First elected to the Senate from Arizona in 1952, and our party's Presidential

nominee in 1964, BARRY was a trailblazer for the modern Republican Party. Many of the ideological maxims he set out in the early 1960's—maxims that were considered radical by some—are now accepted as mainstream politics. I might say mainstream in both parties to some degree.

BARRY's career in the Senate, spanning more than three decades, was capped when he took over chairmanship of the Armed Services Committee. He himself called it "the biggest challenge I've had in public life."

But BARRY has more than lived up to the challenge. He has carried out the job—one of the most difficult, and responsible positions in Congress—with all the dedication and spirit that has characterized his career.

As recognition of his commitment to this Nation, the Senate recently established the "Barry Goldwater Scholarship and Excellence in Education Program"—which will provide financial aid to young American scholars interested in public policy.

No one in American public life today deserves the gratitude and esteem of the American people more than BARRY GOLDWATER. Some find him ornery—I find him "all-American." Above all, BARRY always puts America, its concerns, its interests, and its ideal first and foremost. For that, we all owe him our thanks.

□ 1210

LET'S NOT UNDERMINE THE PRESIDENT IN ICELAND

ARMS CONTROL ISSUES CENTRAL TO ICELAND MEETING

Mr. DOLE. Mr. President, next weekend, the President will meet Soviet General Secretary Gorbachev in Iceland, for a presummit session that we all hope will lay the groundwork for a follow-on, successful summit meeting here in the United States.

The Soviets are clearly trying to make the Iceland session a one-issue meeting. It is imperative that we resist that effort. As important as arms control is, we have many other items on our agenda, chief among them human rights and regional issues. We cannot let the Soviets "off the hook" on their mistreatment of their own citizens and their dangerous adventurism in Afghanistan and elsewhere around the world.

Nonetheless, it is clear that arms control will be, and should be, one important focus in Iceland. And I am deeply disturbed, because the provisions passed by the House in both the continuing resolution and in the defense authorization bill would give the Soviets, by default, much of what they hope to accomplish in Iceland.

CONGRESSIONAL ACTIONS TIE PRESIDENT'S HANDS

The list is long and scary. If we do what the House wants, we will force the President into a moratorium on virtually all nuclear testing, in the misguided belief that halting testing will stop the arms race.

Hogwash! The fact is, we need to do some additional testing for two reasons. First, to close a gap the Russians created with their most recent tests. Having completed those tests and jumped ahead, the Russians now piously propagandize about their so-called unilateral moratorium, hoping we will be forced into a moratorium of our own.

Second, we need some additional testing to ensure that our nuclear stockpiles remain reliable and safe. In the long run, all other things being equal, that means we can keep fewer weapons in our stockpiles and have more assurance they will never have to be used.

The House also voted to force U.S. compliance with the SALT II Treaty. Now, we have gone over that ground at great length in the Senate, and I do not want to start up that debate again this week, if we can avoid it. Let me just say that, whatever merit there might be in the United States voluntarily sticking to some of the SALT II limits—and, personally, I do not see any merit in that approach at all, in light of the massive Soviet violations we see—it is blatantly ridiculous for the Congress to force the President to do what the Russians want him to do on SALT before the talks even begin.

The House did not stop there. It also mandated a 1-year ban on Asat testing, despite the fact that the Soviets already have an operational Asat system, while we are still in the research and development stage. Again, maybe there will be some merit, somewhere down the road, to limits on Asat testing. But let us not give away, in advance, and for nothing, our option to produce a system the Soviets already have.

Finally, we have the assaults in both Houses of Congress on the President's SDI budget. We have to make sure that, as we wield the budgetary knife, we do not stick its point into the heart of our national security.

No single action by the Congress would do more to wipe out any hope for a new arms control agreement on long-range offensive weaponry than sustaining the SDI cut voted by the House. I hope the continuing resolution and defense authorization conferences will be wiser than that.

CONGRESS SHOULD STAND BEHIND PRESIDENT

Mr. President, success in Iceland, like success in any other endeavor, will not come cheap. If we want next week's meetings to be a turning point on the road to real nuclear arms reductions, we will have to pay the price. Part of the price is in dollars—we have to fund SDI and the other essential defense programs in the President's budget adequately. An even greater part of the price, though, is in laying aside our parochial and partisan interests, and getting behind our President. He needs our support, and he deserves it.

RECOGNITION OF THE DEMOCRATIC LEADER

The ACTING PRESIDENT pro tempore. Under the previous order, the Democratic leader is recognized.

THE AGENDA

Mr. BYRD. Mr. President, I have listened with great interest to the distinguished majority leader as he has spoken of the program that remains to be transacted before the Senate and the House adjourn sine die, as he has made reference to the upcoming presummit summit which is going to occur in Reykjavik, Iceland.

At this time, I would like to concentrate my remarks on the program for the remainder of this week, the remaining work that has to be done, because I want to focus on this workload in a way that I hope is realistic and in way that will be of service to the majority leader and to colleagues on both sides of the aisle.

First, with respect to the upcoming trial of the impeachment of Judge Harry Claiborne, it is imperative, as I said and as the majority leader said last week, that there be a quorum present in the Senate at all times during the trial. It would not be good for the deliberations in the course of this trial to be interrupted by quorum calls. It would slow down the trial process and it would not reflect well upon the Senate.

It is the responsibility of Senators to be present on the floor during the trial of an impeachment. That is not to say that every Senator has to be here every minute.

I spent about all of yesterday in bed, dealing with a very severe cold. Nevertheless, I was able to read the transcript of what went on in the Select Committee on Impeachment, a joint committee that was appointed by the distinguished majority leader and me. I was able to read what Judge Claiborne had to say in the direct examination, the cross-examination, and the redirect examination. I was able to read what others had to say. So I have been able to familiarize myself with what went on in that committee quite well, not having been able to attend the committee meetings myself.

The work is there for all to see, and this material has been submitted to the offices of all Senators, on both

sides of the aisle, over the past weekend. That is my understanding.

So I want to suggest to the distinguished majority leader that I will not be in favor of committees meeting during the trial on the impeachment. I, personally, will object to committee meetings during that trial and will do everything I can to assure that a quorum is present here at all times during the trial.

□ 1220

I will continue to attempt to impress upon all of our colleagues the importance and necessity of our attendance. Our attendance will expedite the proceedings and I think, in that way, we can do most to see that the Senate is not unduly delayed in the handling of the trial and in the disposition of other business.

Second, I went over to the other side of the Capitol this morning to have a discussion with the majority leader in the House, Mr. WRIGHT. Mr. WRIGHT feels that it is very important that the reconciliation measure be disposed of before the continuing resolution is disposed of and then the debt limit would come along afterward.

I do not attempt to quote Mr. WRIGHT on any of this. I am merely stating my impression of what was said. But I have a feeling that the reconciliation measure will not come up before Wednesday, if then, and that it will be probably Wednesday at the earliest, maybe Thursday or Friday.

Then there is the continuing resolution, and there is the drug bill.

Both Republicans and Democrats in the Senate worked long and hard to develop a package that is bipartisan, and it is a good drug bill. It has some areas in it that are going to be very contentious in conference. The House has included, of course, the death penalty in its bill and a reform of the exclusionary rule, among other things.

The bipartisan package that the Senate sent to the House eliminates some of those very contentious items and it remains to be seen as to whether or not the House and Senate conferees can, in the final analysis, develop a piece of legislation that will pass, because any one or more of those very contentious areas could prove to be a major obstacle to final passage.

So this is going to be a problem for the conference.

I compliment the distinguished majority leader for the very eminent part that he played in the final negotiations that led up to a bipartisan package on which Senators on both sides of the aisle were able to agree.

A very heavy load continues to be on the shoulders of both the majority leader and the minority leader when the legislation comes back to the Senate and we will, I am sure, work together and cooperate in every way to see that we do pass a drug bill.

I personally said this a number of times, but I want to say it again because I think it commits me publicly to the enactment of a drug bill. It may not have everything in it that I want. I would like to see the death penalty in the bill. And I also would like to see a reform of the exclusionary rule.

So I come with good credentials when I say that if the bill that is acted upon by this Senate does not have those items in it, I will still be supportive of a good drug bill. I would not want to let a bill hang up because those items might not be in the bill.

Now, going forward from there is the debt limit. The Senate sent to the House of Representatives a debt limit package with 26 amendments, and I do not believe the House has appointed conferees as yet.

So it may be the plan, and I say it may be—I do not presume to speak for the House leadership—it may be the plan to send to the Senate a clean debt limit, in which case the majority leader would then again have to make a decision along with other Senators as to what happens to Gramm-Rudman on that debt limit.

Gramm-Rudman legislation on that debt limit, of course, could tie the Senate up for a while and also the bill itself. If it is as it usually is, it will be a lightning rod for all kinds of amendments.

Now, next Monday is Yom Kippur, which is one of the foremost religious holidays for our Jewish citizens.

So, we have all of these very nettlesome, yet absolutely necessary pieces of legislation that have to be passed before the Senate and House can adjourn sine die. I will repeat them once more, those that have to be done:

The reconciliation measure, the continuing resolution, the debt limit, the drug bill, and on the part of the Senate, with the participation of the House managers, the trial of the impeachment of Judge Harry Claiborne.

Those are absolute imperatives. As I see it, we cannot go home without first having acted on these measures.

So I would urge all Senators to look at their schedules very seriously, realistically, and I have to raise the possible prospect right now that this Senate might not complete its business this week. I do not like to be the bearer of bad tidings, but I do not want to wait until we get up to the end of the week and have Senators feel they are definitely getting out this week and then find after all, that it is not going to be possible. I hope we will finish the work this week, but we can't guarantee it.

As to the Superfund, the House of Representatives has to act on the Superfund. The Senate has already passed the Superfund. So that is a matter that I hope the House of Representatives will deal with.

I thank the distinguished majority leader for his patience in listening to what I have had to say about the schedule. He has a tough row to hoe, but I think we might as well take a good look at it, stare it in the face, and look at it realistically and have our colleagues understand that even with the best we can do, we still have to contend with the other body, the progress it makes on the issues, the timing that is required on the other side to handle the issues, and it is conceivable that the Senate will not be able to complete its work and go home at the end of this week.

Mr. President, if I have any remaining time, I reserve it for the remainder of the day.

Mr. DOLE. Mr. President, I probably used all my time.

I ask unanimous consent to proceed for 1 minute.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. DOLE. Mr. President, let me again underscore what the distinguished minority leader said about the Claiborne matter, which will start tomorrow morning at 10 o'clock. We intend to notify Senators personally if we can, if not, through their offices, two or three times today.

I have also been advised by the chairman of the Ethics Committee, Senator RUDMAN, that he will have available for every Senator an abbreviated transcript that has been prepared by the Ethics Committee staff members, which might be of some help to Senators. I thought it was going to be on our desks this morning, but it will be on each Senator's desk before the day is out.

I thank Senator RUDMAN and the committee staff for their assistance.

This is a serious matter. We are going to treat it that way and we expect our colleagues to be on the floor. And I agree, we should not have any committee meetings. I do not know whether we can control conferences or not, but at least we can control committee meetings. I think most Members want to participate.

□ 1230

The drug bill, which I failed to mention, is very important. We must complete action on that.

We will probably have periods this week when there will be not much going on on the Senate floor. I hope we could schedule, during those periods, some time for those who wish to make comments about the three Republican Senators and the three Democratic Senators who are retiring this year. We will try to get that information. I will work it out with the distinguished minority leader.

I think it is also well to indicate that there is no certainty that we are going

to leave here on Thursday or Friday. It is probable, but there is no certainty. Much will depend on what the House will do. They have some problems we do not have and we have some they do not have and we have some together. But I think it is the Speaker's hope and our hope that we can complete our work this week. I certainly urge our colleagues, as the minority leader has, to take a look at your schedule and be flexible.

NO MORE CHRISTMAS TREES

Mr. DOLE. Mr. President, we have a lot of fun here on the floor during the end of the legislative season, but we are not alone. The lawyers and lobbyists of the town like to have their fun, too. Evidently they have been disappointed not to have a trade bill come to the floor of the Senate.

They are, however, nothing if not resourceful. And so my office has been flooded today with calls reporting the rumor, apparently spun on K Street, that I plan to call up a trade bill next week.

I do not.

Anyone who has lived through the continuing resolution would not lightly consider offering up a new opportunity for more ornaments to be festooned upon another Christmas tree.

The only thing logical about that idea is that by the time we finished it, such a Christmas tree would be appropriate to the time of year.

I am disappointed, or course, not to have a bill this year. There is much to be done to address our trade problems, although the situation has recently begun to show encouraging signs of improvement.

But the Finance Committee has tried valiantly, and the schedule has simply not permitted it. There were some matters like tax reform that got in the way. And now we are all anxious to adjourn.

I have supported a strong trade reform effort all along, and so have most of my colleagues. I look forward early in the next session to working with Members of both parties to enact a significant bipartisan measure. Indeed, I hope we will all join together to make it a matter of highest priority.

RECOGNITION OF SENATOR PROXMIRE

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Wisconsin [Mr. PROXMIRE], is recognized for not to exeed 5 minutes.

COMING UP: A PRE SUMMIT WITH NO ARMS CONTROL

Mr. PROXMIRE. Mr. President, what progress can we expect in arms control from a summit meeting of the superpower leaders at the end of this year? The most common prediction has been that intermediate nuclear missiles, now deployed or about to be deployed by the two superpowers in Europe would be withdrawn or not deployed. What would this accomplish? It would mean the United States would not deploy our Pershing missiles in Europe. We would withdraw our cruise missiles. The Soviets would withdraw their 421 SS-20 missiles from Asia and Europe.

Would this make Europe nuclear-weapons free? Of course, not. Consider what would remain. The Soviet Union would still have its massive array of ICBM missiles which not only could reach and absolutely devastate the United States. They could also utterly destroy Europe. On the other hand the removal of United States intermediate range missiles from Europe would have even less meaning. United States ICBM's could still reach the Soviet Union, so could the United States nuclear missiles deployed in submarines and bombers. In addition, the agreement would not affect the enormous buildup planned for the next several years in submarine and bomber deployment of nuclear missiles by the United Kingdom and France. So altogether this most widely expected arms control outcome of a summit would have zero effect on the nuclear weapons capability of the superpowers of their two great rival military alliances.

What is the next most talked about area of agreement on arms control at a summit? It is the reduction of strategic nuclear warheads on both sides. At one point, President Reagan proposed a reduction of 50 percent or about 5,000 such warheads by each superpower. Apparently that was too much for the Soviets, so the President reduced his proposal to a 25-percent or 2,500 strategic warhead reduction. The Soviets have been reported to favor a reduction of 20 percent or 2,000 warheads on each side.

Mr. President, this may be great public relations on both sides. It sounds like something significant. In fact, Secretary of State George Shultz has said that eventually the two sides might negotiate down to zero. So is this a promising process? Could this actually over time eliminate nuclear weapons? Both the American President and the Communist Secretary would like to sell this maneuvering as genuine, sincere arms control negotiations aimed at building a more peaceful world. But is it? There is no way this country, regardless of who is President and regardless of who is serving in the Congress, is going to agree to eliminate our nuclear deterrent. And you can bet your last bottom dollar no leader of the Soviet Union and especially one as shrewd as Mikhail Gorbachev is going to bargain away any significant part of their nuclear power.

So, yes, the two sides may decide to reduce their respective strategic nuclear warheads to 8,000 or 7,500. But if they do, it will not mean a thing. It would not mean a thing if they agreed to go down to 5,000 or even lower. Each would still have absolutely destructive retaliatory power. Each would still have the lethal deterrent to virtually end human life in the other superpower. Each would remain one of the two world superpowers. And neither President Reagan nor Secretary Gorbachev will ever take a step that will actually reduce this absolute nuclear power one iota. I might add that this is not a criticism of either President Reagan or of Secretary Gorbachev. World peace would not advance, it would regress if the superpowers eliminated their nuclear deterrents.

But this Senator emphatically disagrees with what the two superpower leaders have said about their arms control intentions. Both have said they favor the elimination of nuclear weapons forever from the face of the Earth. President Reagan said it first. He has argued that his top military priority, the strategic defense initiative [SDI] or star wars, would do exactly this. Secretary Gorbachev has been even more specific. He has said he would negotiate an end to nuclear weapons by both superpowers within 14 years; that is, by the year 2000. Mr. President, anyone who believes that the elimination of any and all nuclear weapons from the arsenals of the Soviet Union and the arsenals of the United States is the objective of either superpower leader—anyone who believes that—will believe anything.

There are ends we can and should accomplish with arms control and ends we cannot and should not accomplish. It is vital that we know the difference. Can we negotiate all nuclear weapons away, or can we build a defensive system that will make them obsolete? The answer is an emphatic and certain no. We cannot for the simple and obvious reason that once a weapon has been developed throughout history, it has only become obsolete when a more devastating and lethal weapon takes its place. Mankind now knows how to build nuclear weapons, just as he knows how to ignite fire, make gun powder, or fabricate TNT. This is knowledge that can never and will never be erased from the mind of mankind. It is there forever. Suppose somehow nuclear weapons should somehow disappear, would conventional superpower war be more likely or less likely? No question about it—it would be more likely, much more likely. The deterrent that has prevented such a war would have vanished. So how long after a superpower conventional war would it take for nuclear

weapons to reappear? Months at the most, more probably in days.

So let us recognize this cruel and certain fact of life the way we recognize the cruel and certain fact of our own eventual death. We must live and live forever with nuclear weapons. What does that mean? That means we must find a way to use our superpower nuclear deterrents to do what they have done since the dawn of the nuclear age. That is, enable us to live in a peace based on the terrible, but certain deterrence, that unless we keep the peace nuclear weapons will destroy, utterly destroy our country as well as the enemy country.

SENATOR HATFIELD'S SPEECH ON ARMS CONTROL

Mr. President, I want to spend the last 30 seconds I have to pay tribute to Senator HATFIELD for a remarkable arms control speech he made last week. The Senator from Oregon delivered a withering attack on Republicans, on Democrats, on the administration, on the press for ignoring the tragic collapse of any real arms control progress. Senator HATFIELD was exactly right in pointing out the domination of the arms control wrecking crew in this Government.

I commend this excellent speech to anyone who believes, as I do, that there is nothing more crucial for this U.S. Senate or the House and the administration than to secure the peace in this nuclear world through arms control.

THE MYTH OF THE DAY

Mr. PROXMIRE. Mr. President, the myth of the day is that Congress is serious about fiscal discipline. For proof of this assertion, look at how we handled the drug bill.

In order to deal with a serious national problem, this legislation proposes new or expanded Federal efforts in education, law enforcement, and prevention. All of this will cost money—about $600 million in fiscal year 1987, more in later years.

How did the Senate decide to pay for this new initiative? Did it find some soft spots in the $1 trillion budget, and cut those lower priority programs to pay for the costs of the drug bill? Failing that, did it find a new revenue source?

The answer to these questions is a resounding "No." The Senate decided the best way to pay for this new national initiative was to promise to pay for it later. What that means is the Senate decided to pay the bill by borrowing the money and increasing the deficit.

Take the good part now—the political credit for doing something about drug abuse, Leave the bad part—how to pay for it until after the election.

Compare the Senate's behavior to that of a drug abuser. If one motive characterizes drug abuse, it is self-indulgence. The costs of such abuse—crime, broken families, ruined health—are real, but they have to be paid tomorrow. Addicts testify that today's pleasure—the high—becomes more important than tomorrow's cost.

Sounds familiar, doesn't it? The Congress is as addicted to fiscal abuse as any addict is to cocaine. The costs of this abuse are just as dangerous.

This Senator would not be making this charge if the way we dealt with the drug bill were truly exceptional. But time after time, we avoid tomorrow's hard choices by taking another sniff of the deficit today. The exceptional has become the commonplace and the deficit stays around $200 billion.

We cannot sidestep the costs of these deficits forever, and that is no myth. I hope our wonderful economy is strong enough to withstand the effects of our self-indulgence.

Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DANFORTH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. WILSON). Without objection, it is so ordered.

RECOGNITION OF SENATOR DANFORTH

The PRESIDING OFFICER. Under the previous order, the Senator from Missouri is recognized for a special order of 10 minutes.

□ 1240

TRIBUTE TO SENATOR THOMAS F. EAGLETON

Mr. DANFORTH. Mr. President, after 18 years in the Senate, and 30 years in elective office, TOM EAGLETON will return to Missouri and to private life.

The many admirers who have recalled his truly illustrious career have paid tribute to his past, to what he has meant to the Senate and to our State. In the Senate, his intellect and his energy have won the admiration of his colleagues. In Missouri, he has been the undisputed leader of his party and a fighter for the people and institutions of our State.

But what has set TOM EAGLETON apart from the rest of us is not his intellect and his energy, impressive as they are. It is his moral passion, his capacity for outrage, his insistence that justice be done, that wrongs be made right.

TOM EAGLETON is more than a bright man and an able man. There are plenty of those in the Senate. What distinguishes him is the intensity of his commitment to what he believes. Those present will never forget his indignation in the Government Affairs Committee when he thought Bert Lance was unfairly treated, or his passion on the Senate floor when he condemned the corruption of Pete Williams. If I am the priest of the Missouri delegation, surely TOM EAGLETON is the prophet. His zeal for righteousness, for the principles in which he believes, is in the tradition of Amos and Jeremiah.

Passionate, certainly, he is that. But stern, mirthless, he is not that at all. Everyone who knows him, knows that TOM EAGLETON is a very funny man. When the Presiding Officer bangs his gavel and pleads for order, it is often EAGLETON's guffaws that echo in this Chamber. More often than not, the object of his humor is himself. Then there is the steady stream of correspondence—sometimes letters, often handwritten notes—very occasionally serious, more often ridiculous. May they never stop. I may even reply, even when he addresses me as "Panama Jack."

So much for the past; now to the future. For long after his votes and his speeches fade into dim memories, TOM EAGLETON's decency will endure as his legacy to the Senate and to Missouri.

In these last weeks before an election, we see again the dark side of politics. Each campaign plumbs new depths of name calling. The 30-second TV commercial has transformed personal attack into an art form. Here in the Senate, we walk on eggs for fear of how our actions will be portrayed in the next campaign. Nameplates are removed when Senators leave committee rooms in case a camera crew will arrive. Rollcall votes are ordered on inflamatory subjects to force adversaries to unpopular positions. The end of victory is used to justify any means at all, and politics becomes an ever dirtier job, hardening to its practitioners, revolting to the public.

The legacy of TOM EAGLETON is his example that politics need not be an embarrassment. It can be a calling. It can be an opportunity to appeal to the best, not the worst in public sentiments.

Eighteen years ago, when I was first elected to public office—to an office he once held, attorney General of Missouri, TOM EAGLETON sought me out. He gave me the benefit of his experience—his best advice on how to succeed in that office. He did not have to do that. He did not have to lift a finger. I was something of an upstart at that time—32 years old, of the other party, a potential rival. TOM EAGLETON made the effort to help me then. He did so again when I was elected to the Senate in 1976, and he has done so repeatedly ever since.

In the past 10 years, TOM EAGLETON has had countless opportunties to upstage me or to embarrass me. We all can do that if we set our minds to it—especially to the other Senator from our own State. TOM EAGLETON never did that to me—not once. We were of different parties and different philosophies, and he never took a cheap shot. He did the opposite. It was as though he was doing everything he could to build me up. It was as though whatever success I might have was his success as well.

When most candidates are going negative, when many officeholders are taking cheap shots, TOM EAGLETON is and will remain the standard for what politics should be—for decency and fairness and principle. He has set a standard for all of us to meet, and that standard will endure for years after his most brilliant speech and noteworthy vote are forgotten.

TOM EAGLETON is a man of energy and intellect, of passion and humor. He is a great Senator and a great Missourian. He is also a great friend.

THE EAGLETON LEGACY

Mr. HOLLINGS. Mr. President, at the end of the 99th Congress, we will say farewell to our esteemed colleague, TOM EAGLETON. Speaking on behalf of his many friends in this body, let me say that his departure will be a great loss to the Senate. We will miss his gutsiness, his intelligence, and his sensitivity. For 18 years, TOM EAGLETON has been one of the best politicians in this body—and, like all superb politicians, he bears that label proudly.

Mr. President, when the Senate says goodbye to a departing colleague, there is a tendency for the farewells to sound like eulogies. Well, the senior Senator from Missouri is still very much alive and kicking. And the measure of the man is not so much what he is retiring from as what he is retiring to. The Senate's loss is the gain of Washington University in St. Louis, where TOM will become university professor. We will still be able to turn to him for advice and friendship.

Mr. President, during two decades in the Senate, I have observed many speakers, many orators. TOM EAGLETON ranks as one of the very best—and I say that with authority, having had the burden of debating him myself on more than one occasion. The authoritative 1986 edition of "Politics in America" characterized TOM EAGLETON—and I quote—as "one of the most effective Senators in floor debate. He is blunt and forceful, and he knows how to frame a difficult issue in a few words for maximum effect."

Several of TOM EAGLETON'S speeches, delivered in this Chamber, are particularly noteworthy:

In 1982, the U.S. Senate sat in judgment on a friend and colleague, Senator Harrison Williams of New Jersey. It was a time that tried the soul of each Member, a time of wrenching personal decisions. TOM EAGLETON served with Pete Williams on the Labor and Human Resources Committee. TOM EAGLETON also served on the Ethics Committee, which had brought the charges against Pete Williams.

As the case was being heard on the floor of the Senate, the agony and unease grew more and more intense. Finally, TOM EAGLETON rose to speak. The Senate Chamber was full. All eyes were on him. In a speech that was both brilliant and passionate, TOM set forth the case against Williams, concluding with the following statement:

On the notion that "this could happen to any one of us," I ask 98 of my colleagues, would any of you have engaged in this tawdry, greedy enterprise? If your silent answer of inner conscience is in the affirmative, then do your soul a favor by serving out your term and passively fade into deserved oblivion.

Senator Williams has not had the good grace and good judgment to withdraw from this body. We should not perpetrate our own disgrace by asking him to stay.

I said, after hearing that extraordinary floor statement, "I do not know when the Williams case began, but I do know when it ended. It ended with TOM EAGLETON'S speech."

TOM EAGLETON first ran for the Senate in 1968 as an outspoken opponent of the war in Vietnam. I know that TOM'S proudest legislative achievement was the 1973 Eagleton amendment to stop United States bombing of Cambodia. In proposing that amendment, he delivered a speech on the Senate floor that was pure EAGLETON both in its moral focus and in the acuteness with which it framed the issue. Let me quote briefly:

The legal and political considerations must weigh heavily in our minds as we vote today. But it is our more profound responsibility to consider the lives—American and Asian—that may be lost if we continue to pursue our present course. It is now up to Congress to decide whether the loss of life, the damage to property and the great expenditure of funds is related to the national interest of the United States.

Much more recently, TOM EAGLETON addressed the Senate on the subject of the Daniel Manion nomination to the seventh court of appeals. In my opinion, his marshaling of the evidence against Manion was the ablest presentation in that entire debate. In the midst of his lengthy extemporaneous critique, TOM reminded the Senate that the prospective Manion appointment was for life: Let me quote briefly:

One thing about judges, when they put on a black robe: They live forever. There is something about a black robe that is good for the blood flow. So Daniel Manion, who is in his early forties—44—will probably be on the Seventh Circuit Court of Appeals when the grandsons of current Members of the U.S. Senate are first elected to the U.S. Senate * * * If you make a mistake, it is a lifetime mistake. There is no "Oops."

This exerpt hardly does justice to the cumulative impact of the speech. The Senate was on television, and phone calls and letters came in from all over the country extolling TOM EAGLETON'S speech on the Manion nomination. And the praise—as in the case of so many Eagleton speeches in the past—was richly deserved.

Mr. President, several weeks ago, I asked TOM EAGLETON to pull together selected speeches from his 30 years in public office. His career began in 1956 as circuit attorney of St. Louis; in 1960, he became attorney general of Missouri; in 1964, lieutenant governor; and in 1968, U.S. Senator. These speeches and articles are a kind of living memorial to TOM EAGLETON. More than that, they are a microcosm of modern American political philosophy.

Accordingly, Mr. President, I ask unanimous consent that this series of Senator EAGLETON'S speeches and articles, including an index and caption headings, be printed in the RECORD at this point.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

EAGLETON ON ECONOMICS, TAXES AND GOVERNMENT EFFICIENCY

Tom Eagleton has always been a voice for reason in the debates over economic and fiscal policies. In his eighteen years in the Senate, he has seen economic policy swing from one extreme to the other, but whether talking about wage and price controls in 1973, inflation remedies in 1978, or supply-side economics in 1981, Eagleton has advocated common sense approaches to our problems. For his success at not contracting "Potomac fever" on economics, Eagleton credits his Missouri constituents, as he notes in his 1973 speech, with helping him maintain a sense of the human side of theories and statistics. In the 1980s, as business and government and labor seemed at a loss to deal with the looming problems of foreign trade, competitiveness and new technologies, Tom Eagleton in 1983 offered a profound plan for industrial policy. In 1986, as the Congress lumbered blindly toward a misguided tax reform, Tom Eagleton bucked popular opinion to oppose the legislation on the grounds that it could easily push the nation into a recession.

In 1978, Tom Eagleton led the charge for the creation of independent Inspector General in each federal department. His floor speech of that year, just prior to passage of the enacting legislation, demonstrates his commitment to ending governmental waste, fraud and abuse.

SPEECHES

"The Nation's Economy—The View From Missouri" Jackson County Chamber of Commerce, Independence, Missouri, August 29, 1973.

Speech to the Missouri Junior Chamber of Commerce Annual Convention, Kansas City, Missouri, May 6, 1978.

"Inspector General Legislation," United States Senate, September 22, 1978.

Remarks Concerning the 1981 Tax Cut, United States Senate, August 3, 1981.

"Trade Reorganization and Industrial Policy," The National Foreign Trade Council Foundation and Business Week Conference on Industrial Policy, Washington, D.C., October 18, 1983.

Remarks on the Tax Reform Conference Legislation, United States Senate, September 26, 1986.

THE NATION'S ECONOMY—THE VIEW FROM MISSOURI

There is a disease, known as "Potomac fever," that is endemic to the Nation's Capital. It is characterized by the conviction that wisdom and truth regarding public policy matters is to be found mainly in Washington, to the exclusion of the rest of the country.

The illness is especially dangerous because it is so insidious. Even members of Congress have been known to succumb, despite their obvious ties to the folks back home.

I have found that the best way to avoid falling victim to this ailment is to avail myself of every opportunity to travel throughout Missouri . . . to meet with the people . . . to listen to them about their concerns and needs. I am back here on the average, when Congress is in session, every other weekend. In the summer, during the regular Congressional August recess, I take an extended trip throughout the state.

In the past these summer fact-finding trips have dealt with a great many public issues—whatever the people wanted to discuss.

But this year there is one issue—the economy—that so stands out above all others, that so influences the lives of everyone, that it warrants separate and special treatment. Accordingly, I have been conducting a series of hearings across the state devoted to the single topic of how Missourians are being affected by current economic conditions. The hearings began last week in St. Louis, continued at a Mid-Missouri hearing held in Jefferson City, and concluded with a Western Missouri hearing this morning in Gladstone.

The reason for conducting these hearings—the reason why I find it beneficial to listen to laypeople on a subject so complicated that the professionals are often in disagreement—related back to the Potomac fever syndrome.

It is one thing to, hear the learned economists explain our economic problems with a string of figures. We get plenty of that in Washington. It is quite another thing—and often more enlightening—to see the faces behind those statistics, to listen to what the people have to say, to humanize the impersonal charts and figures. That's why these hearings were held.

I think that if you really want to know what is going on you have to go beyond the official government statements and numbers. Government pronouncements on economic matters, vital as they may ultimately be, seem remote from our everyday lives. Let me give you some examples:

Take food prices. The statistics tell us that they are 20% higher than in 1972. But that stark figure doesn't have near the meaning that is conveyed by an Independence housewife describing how she has to substitute for meat by serving her young family meatless casseroles flavored with beef soup.

Or consider the residents in a Jefferson City housing project for the elderly. More than half of them responded in a survey that they eat meat of any kind less than four times a week.

Apart from food, the Consumer Price Index informs us that all prices are rising this year at the rate of 8%, the highest in decades. But, for me, the single most telling illustration of these conditions came from a black custodial worker from Columbia. All of his earnings and those of his wife, who works as a domestic, go to meet the immediate needs of themselves and their five young children. They would like to put some money aside so their children might have the chance they never had to go on to college, but there is simply nothing left for savings after they pay for food, clothing, housing and other essentials. He asked me, "What am I going to tell one of my kids when he says he wants to be a teacher, or maybe a lawyer?" I didn't have an answer.

Neither was I able to come up with any solution for the elderly lady in St. Louis who said she had to ask her doctor to reduce the dosages in her medicine. She just didn't have enough money to pay for all he prescribed. I talked about legislation I have offered to include prescription drugs under Medicare. "That's small comfort," she told me. "When you need help right now," she said, "promises don't mean much."

And that's one of the principal messages that emerged from these hearings—one that I'm going to take back to Washington with me. People have had enough rosy promises and optimistic predictions. They've heard them all. And yet things continue to get worse. They can't eat rhetoric or pay the rent with statistics.

It is clear to me from these hearings, with evidence much more compelling than all of the national polls—the evidence of my own eyes and ears—that the Nixon Administration faces a crisis of confidence.

It's not only Watergate . . . although that is part of it.

It's not only rising food prices and fear of shortages . . . though that is part of it, too.

Rather, I think the American people are suffering a general loss of confidence in the capacity of this Administration to undertake rational well-executed policies in a number of areas ranging from energy needs to agriculture.

Nowhere is this lack of confidence so evident as in public attitudes regarding the economy. And after two years, two freezes, four phases, two devaluations of the dollar, and continuing skyrocketing prices, it isn't going to be easy for the Administration to gain back the confidence they have lost.

The statements of the President and his principal economic advisers at the outset of Phase IV do little to reassure a concerned and skeptical citizenry. It appears from them that Phase IV is designed principally to ease out of the most recent price freeze and toward the end of all controls rather than being a serious effort to break the inflationary spiral.

At the same time the President and his economists give themselves a pat on the back for ceasing all glowing predictions of rapid improvement, they are still holding out the promise of an early end to controls and a return to economic growth coupled with price stability. The Kansas City Star, in an editorial last week, aptly labeled these as "unrealistic, out-of-the-trenches-by-Christmas promises."

With the recognition that Phase III was a major economic disaster, and with the institution of Phase IV, the Administration has once again armed itself with the tools to apply price controls. But these controls will mean no more than Phase III unless they are accompanied by effective enforcement—and enforcement is undercut when the Secretary of the Treasury and the Chairman of the Council of Economic Advisors say, in effect, "Don't take all this too seriously."

Again, wishful thinking seems to be the order of the day, rather than the vigorous leadership and clearly enunciated policies necessary to achieve relative price stability.

Congress also has a role to play in the development and implementation of effective anti-inflationary policies. By exercising restraint in spending, it can avoid fueling the fires of inflation with large budget deficits.

The Senate has taken a major step in this direction by passing legislaiton that will draw the line on federal appropriations and spending this year at a level some 800 million dollars less than the amount called for by the President's budget. This measure is now pending before the House where it should receive early consideration.

But none of these governmental actions, nor all of them taken together, will suffice to curb inflation and avoid another recession unless there is a restoration of public confidence in the fundamental strength and prosperity of our nation. Missourians from all walks of life have made that very clear to me in recent days.

Confidence is intangible. You won't find it measured anywhere as an economic indicator. But it is basic to the well-being of the economy. Without it, investment funds dry up, consumers are reluctant to buy and the expectation of rising prices is so pervasive that inflation becomes very nearly a self-fulfilling prophecy.

To restore the public's confidence and get the economy back on the track will take more than pious exhortations and wishful thinking. It cannot be done by urging even more belt-tightening by consumers, workers and small businessmen at the same time that major banks and corporations are allowed to pile up record profits. It is going to require a far steadier hand at the controls than we have seen in the past and a far more equitable allocation of sacrifices and rewards.

Speaking as one Senator, I wish only success for Administration efforts in this area. The economic well-being of all Americans is a goal that transcends partisan political considerations. I have confidence that, given the proper leadership, we as a nation have the strength, the resources and the will to overcome the present obstacles and return to the economics of abundance which for so long characterized this country and which gained the respect and admiration of all the world.

ANNUAL CONVENTION, MISSOURI JUNIOR CHAMBER OF COMMERCE

(By Senate Thomas F. Eagleton)

Business and government are like two ends of the needle in a barometer. When one end swings precipitously, so does the other, and the whole of society reverberates. The two cannot work at cross purposes if we hope to achieve our national goals of balanced growth and economic prosperity.

For this reason, I can assure you that Washington is very concerned with what business thinks.

Perhaps not at the outset of his administration, but most certainly of recent times, President Carter, Treasury Secretary Blumenthal and Federal Reserve Chairman Miller have tuned their ears to the business antenna. All three—Carter, Blumenthal,

and Miller—have declared inflation to be our most persistent and nagging economic ill. The April wholesale price increase announced yesterday is yet an additional reason for inflationary concern.

Inflation eats rapaciously into our budgets; governmental, corporate and family. It has to be addressed on a wide series of fronts.

Let me start with Social Security.

Late last year, Congress attempted to bail out the beleaguered Social Security Trust Fund and enacted heavy, and heavily inflationary, Social Security tax increases in both the rates and the tax base. There was and is no doubt that the Social Security Trust Fund has its troubles. But the remedy selected was absolutely the worst one from an inflationary point of view. I said so then and I voted accordingly against the Social Security bill and I repeat my opposition now.

For the life of me, I do not understand why the Administration does not see the staggering inflationary evil in last year's bill. The enormous rise in Social Security taxes has put pressure on every union leader to seek sharp wage boosts. I fail to see why the President refuses to rewrite his 1978 tax cut proposal so as to trade a large chunk of the planned $17 billion in personal income tax reduction for a cut in the highly inflationary Social Security Tax.

Let me move on to yet another built-in inflationary pressure, the ever-escalating expense of government regulation.

Dr. Murray Weidenbaum, Director of the Center for the Study of American Business at Washington University, St. Louis, has concluded that federal regulations will cost business, taxpayers, and consumers $102.7 billion in 1979. I shall repeat this truly astonishing figure—federal regulations will cost business, taxpayers, and consumers $102.7 billion in 1979. The Council on Wage and Price Stability has estimated that regulation adds anywhere from ½ to 1 percent to the rate of inflation and new regulations this year will raise business costs by an additional $5 billion. The National Commission on Paperwork, I might add, estimates that the cost of paperwork required by the government is between $25 and $32 billion a year.

It has been the practice of the Interstate Commerce Commission for another example, to ratify whatever inflationary wage settlement the truckers negotiate by simply passing along the higher costs in rate increases. On the other hand, as a hopeful example of a step in the right direction, I bring to your attention the recent action of the Senate in partially deregulating the commercial airlines. The effects of these various regulatory and bureaucratic decisions should not be minimized.

Now look at another "hidden" regulatory cost. When government at any level makes a requirement, such as an emissions standard for an automobile or a factory, the cost of compliance with that requirement must be taken into account. Particularly in the environmental, energy and safety fields, the costs of meeting government requirements have been enormous. Decisions in this modality must be examined carefully to determine the inflationary and economic impact. An example of a legislative victory in this area occurred last year. President Carter's energy program contained a very costly industrial user's tax on fuel, designed to force business to convert to coal. Senator Metzenbaum and others designed an alternative, which I supported, which reduced the cost to businesses to about one-fifteenth of the original proposal. The Metzenbaum concept still would save 1.2 million barrels of oil equivalent per day by 1985, or 80 percent of the administration's goal. I cite this as the type of solution we need. By looking harder, we found the least inflationary way to reach a goal of overriding importance, energy conservation.

The most worrisome inflationary pressure is that wages are rising at a faster clip than last year, but productivity is not. Naturally, every worker wants to catch up for his lost purchasing power and, just to be on the safe side, the worker feels the catchup should have something extra in it as a hedge against future inflation. This inexorable "cost-push" factor is staggering.

What can we do? A few, a very few foolhardy souls hint at wage and price controls. I supported the imposition of wage and price controls by President Nixon in 1971. I learned, in the school of hard knocks, that President Nixon's heart never was in the managing of wage and price controls and, thus, such controls were predestined to failure. The negative experience of 1971-1972 with wage and price controls has created a stigma, the result of which has been to make the mere mention of wage and price controls four dirty words.

"Reduce the federal deficit, balance the budget and our prayers will be answered," some say. I am for some reasonable, rational cuts in our federal budget—who isn't? But a crash attempt to instantly balance the budget would court disaster.

At the present time, our economy is operating at only 82 percent of capacity. Slashing the budget drastically would mean a sharp reduction in output, employment and a return to recession or worse. The Herbert Hoover-Andrew Mellon "balance the budget at all cost" technique of the early 1930's has to be kept in mind.

There is a new proposal that is in the very early stages of discussion on Capitol Hill and which I find, at first blush, to be intriguing. It is a proposal by three men: Arthur Okun, the Chairman of the Council of Economic Advisors in 1968-69 under President Lyndon Johnson; Henry C. Wallich, a member of the Federal Reserve Board of Governors and economist Sidney Weintraub. Their proposal—a tax-oriented income policy, otherwise called TIP—would set a numerical wage guidepost, and would penalize corporations through higher taxes if they offered pay increases above the guidepost. With the same objective, they would offer a tax incentive if employers hold down their prices. I am not at this time advocating this concept. However, I intend to study it very closely to see if it has some merit as a viable inflation-fighting technique.

In the near term, the President will have to use the "bully pulpit" of the Presidency to jawbone both business and labor to exercise restraint. What a blow for economic sanity it would be if a few businesses would announce that planned price increases will be moderated! What a plus it would be if some union leaders, drawing on the Social Contract concept in Britain, would announce revised and lowered wage demands!

If voluntary restraint fails, if jawboning avails little, then we will be faced with the most obnoxious, cruelest remedy of all—a planned recession. It might be brought on by the Federal Reserve Board, trying singlehandedly, or by a Congress so determined to drastically reduce the deficit that growth is slowed and unemployment is allowed to rise again. A quick or reduced recession, moreover, would not reduce inflation—only a long and costly period of high unemployment might do that.

Voluntarism may be a weak hope on which to hang an anti-inflation policy. But a hope it is, and God knows we need some of that.

As I see it, the inflation battle is joined. Government, for its part, has to help create the proper economic environment—redress the incredibly inflationary Social Security Tax; meaningfully and demonstrably deregulate so as to engender a cost-competitive atmosphere; a "hold the line" policy on President Carter's budget, not exceeding his recommended spending figures and a "hold the line" policy on salaries of governmental workers with pay increases held slightly below the current rate of inflation; articulate a national incomes policy; vigorously urge restraint in the free enterprise wage-and-price market-place. In the wake thereof, that very same market-place would be expected to show a concomitant restraint, the beneficial consequences of which would lead us to full recovery, and the detrimental ignorance of which would lead us to an economic malaise that none are willing even to acknowledge.

H.R. 8588

Mr. EAGLETON. Mr. President, H.R. 8588, the inspector general legislation, would establish offices of Inspector General in 12 executive departments and agencies to consolidate existing auditing and investigative resources to more effectively combat fraud, abuse, waste, and mismanagement in the programs and operations of those departments and agencies. Affected are the Departments of Agriculture, Commerce, Housing and Urban Development, the Interior, Labor, and Transportation, and the Community Services Administration, the Environmental Protection Agency, the General Services Administration, the National Aeronautics and Space Administration, the small Business Administration, and the Veterans' Administration.

By amendment, I plan to include the department of Defense. Presently, it has a myriad of different audit and investigative units. The amendment would create a task force to study the situation. Additionally, it would require the department to submit the same semiannual reports to Congress as the bill mandates for the other agencies.

The Senate acts today in the shadow of the unfolding scandal at GSA which some have already labeled as the most far-reaching case of fraud and corruption ever uncovered within a Government agency. Plainly, the GSA scandal underscores the need for this legislation and increases the likelihood of swift passage, but the impetus for this legislation long predated the recent revelations concerning GSA. The House voted its overwhelming support for H.R. 8588 on April 18. The Senate Committee on Governmental Affairs voted unanimously to report H.R. 8588 with some modifications on July 27. Morever, H.R. 8588 builds on the earlier legislation enacted by Congress in 1976 to establish an Office of Inspector General in the Department of Health, Education, and Welfare and in 1977 to establish such an office in the new Department of Energy.

This legislation responds to the findings that fraud, abuse, and just plain waste in Federal programs and operations are reaching epidemic proportions. Undoubtedly the problem is not new; however, increased at-

tention by the press and by Government officials has brought to light increasingly disturbing testimony of the magnitude of these problems.

The following examples are illustrative:

A study done for the Agriculture Department estimated that 8 percent of the $5.5 billion spent in the Food Stamp Program in fiscal year 1977 was erroneously spent—about $440 million. A 33 percent error rate was revealed in one 3-month study of the program in one State.

As of last July, 344,000 borrowers had defaulted on their federally insured loans. The default rate was 12 percent, involving over half-a-billion dollars in unpaid principal and interest. While some of the failure to pay was undoubtedly due to financial hardship, many cases simply involved people who never intended to pay.

"In his first annual report, the inspector general at HEW estimated that between $6.3 and $7.4 billion of HEW funds were misspent annually as a result of fraud, abuse and waste. This total represents about 5 percent of the $136 billion which HEW expends on federally funded programs each year. The report repeatedly emphasized that this figure was "at a minimum" and "a conservative estimate." In the medical program, the inspector general estimated that 25 percent of the funds were misused.

"Finally, an official at GAO knowledgeable in this area recently estimated that fraud alone ranged from $12 to $15 billion annually and perhaps as high as $25 billion."

There is now unanimous agreement that the Federal Government has failed to make sufficient and effective efforts to prevent and detect fraud, abuse, waste, and mismanagement in our programs and expenditures. H.R. 8588 reflects the belief that the failure is due in large part to certain basic organizational deficiencies in the way executive agencies have approached their audit and investigative responsibilities. For this reason, statutory offices of inspector general in the agencies covered in this bill should provide significant improvements in the economy, efficiency, and effectiveness of Federal operations and programs, and contribute to substantial savings of taxpayer dollars.

Looking at the present picture, the Committee on Government Affairs and its House counterpart found that a lack of audit and investigative resources has crippled the Federal effort to prevent and detect fraud, abuse, and waste in Federal expenditures. Audit and investigative efforts also lack independence. Frequently auditors and investigators find themselves reporting to the very officials whose programs they are supposedly reviewing. Cooperation between the agencies and the Justice Department necessary to deal with fraud and white-collar crime has been lacking.

The Inspector General concept, which can best be described as the consolidation of auditing and investigative responsibilities under a single high-level official reporting directly to the head of the establishment, responds to the major problems which have been identified in current Federal efforts to prevent and detect fraud and waste.

Reagan Tax Bill

Mr. Eagleton. Mr. President, I realize that the Senate now finds itself in a state of euphoria over the imminent passage of the Reagan tax bill. What I have to say on this bill in no way detracts from the magnitude of the President's victory. The hour is clearly his and now the state of the American economy between now and the end of 1984 is clearly his.

Mr. President, this is an atrocious tax bill. It is atrocious in terms of economic policy and it is atrocious in terms of fundamental equity.

On basic economic policy, you do not have to take my word for it. Listen to some of the most conservative economists in the Nation.

Listen to Henry Kaufman of Salomon Brothers:

"I think we have not yet seen the high in interest rates. And we have not seen the full impact on the financial markets of the tax cuts the administration is proposing, or of the increase in defense spending, or the actual results of what the Federal Reserve is doing to stabilize monetary policy when fiscal policy is so extraordinarily expansionary . . . There is hope by everyone, including the Treasury, that interest rates will come down. But you cannot talk interest rates down, no matter what President Reagan thinks.

"The central bank is being over burdened by the administration. It is encouraging tighter monetary policy while fiscal policy is in the process of becoming even more expansive."

Listen to Edward Yardeni, the chief economist at E.F. Hutton:

"Whereas the consensus has been that the economy is remarkably resilient in the face of these high interest rates, we are finding that the economy has turned much weaker as a result of the Fed's aggressively tight monetary policy . . . A decision has been made in Washington to deliberately engineer a period of protracted economic slack. But the Fed, we've learned, if it errs, is going to err on the side of being too tight rather than too easy . . . This is going to be more painful than many people expected. And if inflation is so dug in that it takes a long and protracted recession to get rid of it, the risk is that the public's patience with this kind of policy will get short."

Listen to Alan Lerner, economist at Bankers Trust Co.:

"The Fed can decide to monetize this huge debt, but if it does, it can kiss the long-run economic outlook good-bye. And it if doesn't, it can kiss the short-run economy good-bye . . . . We will see historical highs in interest rates before the year is over."

What these and other economists are saying is that in order for the Reagan plan to work we will have to go through a protracted period of high interest rates, endure a sharp recession, and rising unemployment.

Although our economy is significantly stronger than that of Great Britain, remember that this is the same medicine—high interest rates, recession, rising unemployment—that Mrs. Thatcher prescribed for Great Britain.

On the question of equity, I do not believe that the American people as yet perceive the inherent inequity of the Reagan program. I do not believe, for example, that the public realizes that a wage earner making $20,000 next year will end up paying more taxes next year than he did the last because his minuscule income tax cut will be more than offset by social security tax increases and bracket inflation.

I do not believe, for example, that the public as yet realizes how we have so brazenly overloaded this tax bill with special benefits for the rich or for the oil companies.

But the day of reckoning, Mr. President, the day of public awareness will come.

Some day, next year perhaps, when a factory worker looks at his paycheck and finds that he has received no net tax cut at all, he will ask his friendly H. & R. Block friend some questions.

The H. & R. Block man-worker conversation may go something like this:

"Worker. Say, what the hell ever happened to that "across the board" tax cut I was going to get?

"H. & R. Block Man. Well, "across the board" was a clever euphemism. "Across the board" means that the wealthy get a whopper of a tax cut and the average guy like you gets little or nothing.

"Worker. Well, wasn't there any tax break for me in that Reagan bill that everyone was bragging about?

"H. & R. Block Man. Well, let's see. I'll ask you some questions to see if you qualify.

"Do you have a large amount of dividend income? Do you own a piece of a Subchapter S company? Income from this stuff is called 'unearned' and the Reagan tax bill gives one hell of a tax break on "unearned" income.

"Worker. I earn all of my income. I don't own any stocks or any of that Subchapter S stuff.

"H.& R. Block Man. Too bad. Well, do you own any oil royalties? If you do, the Reagan bill gives you a heck of a deal on that.

"Worker. No. I've told you. I work for a living. The only thing I own is my car, my dog, and my house and my Savings and Loan owns most of the house.

"H. & R. Block Man. Too bad. There is nothing in the Reagan bill about dogs, although there is a great deal in the Reagan bill for thoroughbred race horses. Do you happen to own a thoroughbred race horse?

"Worker. No. But my father-in-law bets on the horses.

"H. & R. Block Man. Say, speaking of your father-in-law, he can now give you a $10,000 tax free gift under the Reagan bill.

"Worker. I told you, my father-in-law bets on horses. He borrows money from me.

"H. & R. Block Man. Gee, that's too bad. Let me try one more angle. Does anyone in your family own a grove of pecan trees? There's a real good tax steal on those in the Reagan bill."

Mr. DOLE. Mr. President, will the Senator yield?

Mr. EAGLETON. I do not yield.

"Worker. The only trees I own are the two in the backyard, and Dutch Elm is about to get them.

"H. & R. Block Man. Sorry, no gimmick in the bill for Dutch Elm. Do you have a rich relative who might die and leave you a bundle? The Reagan bill is great on rich people when they die.

"Worker. None of my relatives have a pot to cook in.

"H. & Block Man. Well let me take one final stab. Does any member of your family own any oil stock? The Reagan bill gives away the store to the oil industry. The oil boys get a $33 billion give-away in the Reagan tax bill and anyone who earns any capital gains from selling their oil stock will find that he's paying less in taxes to boot. If you or your wife happen to own some Conoco stock, the combination of all the bigshot corporations bidding for Conoco and the special deals the Reagan bill gives to oil companies will give you a huge capital gain on Conoco stock. The Reagan bill gives a great tax deal on capital gains.

"WORKER. The only thing I know about Conoco is that I buy that gasoline and pay too much for it at that.

"H. & R. BLOCK MAN. Well. I'm sorry, fella, the Reagan tax bill doesn't do a thing for you. You aren't rich enough to benefit from its provisions. Perhaps someday you will win a pot of gold on a TV game show. By the way, there is a special tax deal in the Reagan bill for investors in game shows. But I guess you don't own a piece of a theatrical production or a game show. I'm terribly sorry, fella, but the Reagan bill wasn't designed with you in mind."

This conversation may never take place. But the gist of this conversation will take place. Mr. Average Citizen will come to realize that he has been had by the Reagan tax bill. He will realize that about all he gets of the Reagan bill is the privilege to pay high interest rates and the increased risk of losing his job in a credit-crunch recession.

Mr. Average Citizen will realize that the across-the-board Reagan tax cut and its assorted sweeteners constituted nothing more and nothing less than the rape of the U.S. Treasury.

Finally, Mr. President, let me say this: Many articles have been written since the President's decisive, convincing, and overwhelming victory on the tax bill in the House of Representatives. Articles have been written to the effect that the Democratic Party is dead and gone, perhaps forever. Only time will tell the accuracy of those political predictions, those dire predictions, that are being made by some of the journalistic pundits.

But I submit this: I suggest that the Democratic Party is not dead and that the one main thing that is keeping the Democratic Party alive is the egregious, greedy inequity of this Reagan tax program.

I will make the prediction that, come 1982 and come 1984, those journalistic pundits who are predicting the demise of our party will point to this date—will point to the date of August 3, 1981—when the Reagan folks foisted on the American people a greedy, bloated, avaricious tax bill that benefits only the rich and give pittance to the poor and to the moderate income taxpayer.

The journalists will point to this day as the day of the revival of the Democratic Party.

This bill keeps the Democratic Party alive. It is so inherently inequitable, so inherently imbalanced, and so inherently unfair that it will stand as the bedrock for the rebirth of the Democratic Party.

The euphoria of the moment is clear. I do not want to be the skunk at the garden party, but I caution those who are caught up in this euphoria that the day of reckoning is coming. Do not sell the intelligence of the American people short. The American people, at this particular point in time, may not know all the "sweeteners," "goodies," "ripoffs," and the "special benefits" that are in this bill, but they will know. They will come to know them when they see that they get nothing out of this bill and that the rich get richer, the special interests get more special benefits, and that the oil companies get $33 billion in tax relief that they neither need nor deserve.

When the American people come to that awareness, there is going to be a day of political retribution, and that day of political retribution will be visited upon those who foisted this "across-the-board" tax cut euphemism on the American people.

TRADE REORGANIZATION AND INDUSTRIAL POLICY

(By Senator Thomas F. Eagleton before the National Foreign Trade Council Foundation and Business Week Conference on Industrial Policy)

I want to commend the National Foreign Trade Council Foundation and Business Week Magazine for putting together this important conference. The conference could not be more timely or its theme more precisely targeted: we badly need to get beyond the words "industrial policy," which have rapidly become ideologically-charged, to understand what is really at stake here.

In my view, when we talk about industrial policy, we are not talking simply about the merits of a national development bank, or the dangers of picking "winners and losers." We should be talking—as the speakers at this conference are—about the full range of policies and organizational arrangements needed to meet the challenges posed by increasingly intense and sophisticated foreign competition.

The Senate Committee on Governmental Affairs, of which I am the ranking minority member, voted on October 4th to report legislation establishing a new Department of Trade and Industry. The Committee acted only after I and other Democrats were successful in attaching several amendments designed to make the Department a more effective instrument for conducting a more coherent trade and industrial policy. I would like to share some thoughts about these recent legislative efforts and what ideas motivated them.

I believe that major changes in both organization and policy are needed for us to meet the challenges of an increasingly competitive world. Our current approach is based on the assumptions of industrial superiority, a secure domestic market, and the view that government has no useful or significant role to play—assumptions which have all proven inaccurate or outdated. We have taken our prosperity for granted, and if we can no longer do so, we need new policies and a new organizational framework for approaching our problems. In my view, our organizational framework and our policy-making process are simply not adequate to cope with the related pressures of international competition, foreign industrial policies and rapid technological change. We have many assets in any global competition, but we risk squandering them if government cannot "get its act together."

Trade and industrial problems are inextricably linked. We have problems which are genuinely "trade problems": the fight to open up the lucrative Japan market; getting serious about export promotion; whether to protest the European Economic Community's (EEC) subsidies in Geneva, or to fight fire with fire. But we also have a range of more fundamental problems that have eroded our competitiveness: an aging physical plant; the toll taken by adversary relations between business, labor and government; the lack of government policy toward technology and innovation; a shortage of engineers and computer operators. To the extent that it is appropriate to define the relationship in these terms, our trade problems and symptoms, for the most part, of our industrial problems. A new department which does not provide a reasonable framework for government decisions on our industrial problems will not accomplish very much for our trade problems either.

I was disappointed to find that the legislation proposed by Senator Roth and the Reagan Administration conceived of the problem in far narrower terms. Their emphasis was strictly on trade reorganization; the focus on "industry" began and ended in the title. The inference was that any trade problems we had which could not be cured by the free market could be traced to the fact that there was conflict, tension, and duplication between the Department of Commerce and the United States Trade Representative (USTR). In my view, the legislation as written was open to the most damning criticism which can be leveled at a reorganization: boxshuffling, sometimes referred to as moving the deck chairs around the Titanic.

Every Administration, from Kennedy to Carter, had tinkered with trade reorganization; that was familiar terrain. However, because our industrial health had gone unquestioned for so long, as a nation we have done relatively little thinking about how government might organize its efforts to help solve industrial problems. I identified four elements that seemed essential for a new department to deal meaningfully with our trade and industrial problems; those elements are probably critical to organizing for industrial policy with or without a new department.

1. The first element was an effort to institutionalize channels and opportunities for more cooperation between business, labor and government. We all know the toll that adversarialism has taken in this country, while others work cooperatively to become more formidable competitors. While our automakers and our autoworkers battled over wages and benefits and passed the prices on to the rest of us, Japan, stressing cooperation, made great leaps forward in producing better cars and in encouraging worker participation in important desicions that made even assembly-line work more meaningful. The old habits will die hard, but we can no longer afford the luxury of fighting out our traditional antagonisms to a bloody conclusion at every opportunity.

2. The second element is to enhance the analytical capability of the federal government: to understand events and problems that affect competitiveness. Witness after witness before our Committee returned to the same theme: our government doesn't understand the structure, performance and prospects of our industries. We certainly don't understand the way our competitors' industries operate. Not understanding the present situation, we are at a loss to anticipate important future trends and events. Without analytical capability, we are at an enormous disadvantage when we go to the negotiating table; when we consider investments in research and development; or when we evaluate conditions for trade relief. We also deprive our companies of vital information needed to help them make their own decisions. We are condemned to perpetually being surprised, dealing with crises, rather than mapping a coherent strategy of our own.

3. The third element was the interrelationship of science and technology to Trade and Industry. As former Senator Adlai Stevenson reminded our Committee last month, "technology is the basis of our ability to compete." Yet, we have allowed our technological genius and capabilities to decline vis-a-vis other nations. We are all familiar with the statistics which show our country turning out lawyers and accountants, while Japan produces engineers and scientists. We have also been slow to translate science and technological break-

throughs into industrial and commerical advances. The video cassette recorder was invented here, yet there is no VCR industry in America at all at the present time.

The Roth-Baldrige bill contained no concept of the new Department's responsibilities for fostering technological innovation. Looking further, we found that this omission was consistent with the Administration's disgraceful handling of its responsibilities to implement the Stevenson-Wydler Act, a farsighted and innovative piece of legislation enacted in 1980, which could have led to great progress in organizing the government's effort to foster technology.

4. The fourth crucial element is finding a framework which permits positive alternatives to our present system of trade relief to develop.

At the present time our approach to trade and industrial problems often come down to one word: protectionism. Time and again, the same pattern rears its ugly head: a sector begins to suffer a serious loss of market share due to foreign competition; trade relief is sought, and frequently granted, often on the basis of political considerations. Usually, the relief is sought and granted only after the industry is in very serious straits: at an early stage when the problems could be anticipated and identified, the industry wants no part of the government, and government has had no capacity for anticipating when industry might have serious problems. When the relief is granted, nothing is required of the industry receiving relief. They can use the protection to buy time to continue the failed policies of the past, or get into other lines of business without consideration of workers or communities.

We were successful in the Committee in strengthening the legislation along most of these lines. Through amendments, the Secretary received a mandate to foster technological innovation through Stevenson-Wydler and other policies. We created an Office of Competitive Analysis charged with developing an expert understanding of the structure, performance and prospects of our key industries, those of our competitors, and all economic, commercial and technological developments affecting competitiveness.

Controversy flared in the Committee over the attempt by Senator Levin of Michigan and myself to establish a Council on Industrial Strategy within the Department, chaired by the Secretary, including representatives of government, business, labor and the public. The Council was charged with assessing, through appropriate sectoral groups, the conditions and prospects of our critical industries, and developing, where consensus could be reached, positive strategies for adjustment and modernization needed to revitalize the competitiveness of troubled industries. Democrats saw the Council both as a way to begin replacing adversarialism with cooperation, and as a positive alternative to the bankrupt policy of protectionism without any commitment to rebuilding competitiveness. A Council whose non-government members carried over between Administrations could also provide a partial antidote to the short-term thinking that plagues both our political and business leaders. Despite anguished cries of "central planning," the Council's role and recommendations were to be strictly advisory to the Secretary, the President and the Congress.

After the Levin-Eagleton amendment lost on a straight party vote, I proposed a different approach: each year, the Office of Competitive Analysis would identify sectors facing significant risk of challenge from abroad, dislocations, loss of competitiveness, or opportunities for growth and expansion. In any other sector facing such challenges, risks, or opportunities, which the Secretary found to be of national significance, the Secretary would have to convene a temporary industrial competitiveness council, bringing together the diverse affected interests to hammer our recommendations for responses by business, labor and government. Enough Republicans shared my view that the amendment was vitally-needed and relatively modest so that it prevailed. The Administration apparently does not agree; the National Journal has reported that OMB may withdraw support from the bill largely because of this amendment.

It is interesting to watch the Reagan Administration struggle with the rays of reality which occasionally pierce through its ideological cloud cover. Ambassador Brock tells our Committee that education has been the most important factor contributing to Japanese industrial success, yet this remains the most anti-education Administration in memory. Dimly aware that some organizational changes are needed, the Administration offers a belated and lukewarm endorsement of trade reorganization, but threatens to withdraw it as soon as amendments (Republican and Democratic) are added which could strengthen the bill to the point of actually being useful. Nearly three years after abolishing the Carter Administration's tripartite steel committee as an unnecessary interference into the working of the free market, the Reagan Administration prepares again to reconstitute a tripartite effort to look at the problems of the steel industry. How many jobs, and communities, have been sacrificed on the altar of ideology during that three-year period?

Despite the sound and fury which seem destined to greet anything labeled as "industrial policy," the goal we should be seeking is unfrightening: an organizational framework capable of anticipating problems, or at least identifying them early enough, that they can be dealt with in a positive fashion. It is a decisionmaking process that is anticipatory, rather than reactive, which characterizes successful industrial policy. Economist Robert Lekachman put it brilliantly in a recent article:

What we now endure is a set of reactions to claims upon the public purse from organized groups . . . We do little more than register on the political Richter scale the comparative intensity of seismic disturbances.

The Japanese are different . . . Good industrial policy operates well in advance of economic earthquakes.

It needn't entail central planning. Or picking "winners or losers." But government organization that works effectively to produce needed information and to bring parties together to solve problems cooperatively in a timely way can be the difference between meeting the competitive challenge or falling behind it.

STATEMENT OF SENATOR THOMAS F. EAGLETON, IN RE: TAX REFORM CONFERENCE LEGISLATION FRIDAY, SEPTEMBER 26, 1986

Mr. President, certainly no bill is all good or all bad. The bill before us has many redeeming qualities that have survived the legislative process. In fact, at different points in the process, I have enthusiastically supported this bill.

There is much that is commendable about the tax reform bill. Six million low income individuals will be removed from the tax rolls. At the other end of the spectrum, the minimum tax provision will put an end to the spectacle of wealthy individuals and corporations paying no taxes. This bill eliminates scores of tax loopholes and shelters which have distorted investment patterns, especially in real-estate. Finally, by broadening the tax base, the bill makes room for substantial rate cuts which, it is felt, will propel consumer spending and lift the sagging economy.

On the macro economics of the bill, we know that there is much that is troubling about the bill. The bill would raise the cost of capital by an estimated 10 to 15% at a time when capital spending is already declining. Industry by industry analyses show that for most, the bill is a mixed bag. But for heavy manufacturing which is most in need of new investment to meet foreign competition, the repeal of the investment tax credit and the lowering of depreciation will hit particularly hard.

Elimination of the tax credit for bad debt reserves could strain many already shaky financial institutions and certainly will accelerate foreclosures on troubled energy, real estate and farm loans. The ailing farm sector is also a net loser in the bill. By repealing income averaging, the investment tax credit and liberal depreciation rules, the bill is very tough on struggling family farmers.

The renewal of downtown St. Louis and other older cities will be seriously hindered. Limitations on historic rehabilitation credits, coupled with repeals of tax benefits for other real estate investments, could be devastating.

On the revenue side, the bill's $11 billion windfall in 1987 turns into a $17 billion revenue shortfall in 1988 and a $15 billion deficit in 1989. As damaging as that would be for our deficit situation, most economists believe the bill's revenue estimates are substantially overstated, some say by as much as $50 billion over the 5-year life. It has been noted by members of the Finance Committee that the Joint Tax Committee had in many instances used "untrustworthy information." All indications are, however, that this bill is an overall revenue loser.

Finally, tax rate cuts in the bill may turn out to be a Trojan Horse. General agreement among economists is that Chairman Rostenkowski is right and there will be a new tax bill in 1987 with perhaps even across-the-board rate increases.

Having weighed both the good and the bad in the bill, it is critical, I think, to take into account our starting point and the timing of this sweeping tax change. Edward Yardeni, vice-president and chief economist of Prudential-Bache said, "I am in the minority amongst economists, but I believe we are already in a recession. Part of the reason for that is Tax Reform which has been on the horizon since May.

"Tax Reform is a great idea at exactly the wrong time. Tax reform is like leveling the playing field without telling the players to get off."

We know the economy's in trouble. GNP in this quarter slowed to 0.6%. Our trade deficit is well on the way to a record $170 plus billion. The budget deficit also will set a record of $230 billion. U.S. productivity continues to decline. Capital spending is shrinking. Our savings rate is one of the lowest in the industrial world.

Timing can be everything and I am persuaded that this is not the time to legislate this major tax bill. As I hear the concerns expressed by noted economists, I grow increasingly worried.

Alan Greenspan, former White House economic advisor: ". . . additional tax reform negatives clearly raise the risks to economic growth . . . The time for tax reform is probably now or never, but we should understand that we are moving into unexplored, and probably risky territory."

Edward Yardeni of Prudential-Bache: "The last thing we need is to rewrite the tax code from top to bottom."

Murray L. Weidenbaum, of Washington University: ". . . it is evident that the impending changes in the Internal Revenue Code will depress the economy. Although we can debate the precise economic effects of these changes, the direction of impact is clear: less investment, lower economic growth, fewer new jobs."

Martin Mauro, senior economist for Merrill Lynch: "The tax bill raises revenue by about $11 billion next year. That's exactly the wrong thing to do for an economy in the shape that it's in."

Roger Brinner of Date Resources Incorporated: "Tax reform will depress economic growth next year and into the long term: lower investment will lead to lower capital stock and therefore to lower worker productivity. Greater efficiency in the use of capital can offset part, but not most, of this loss."

Laurence Summers of Harvard University: "The major defect of the Conference Committee bill is that it raises the tax burden on new investment . . . The adverse effects of reduced investment on economic growth are likely to dwarf any gains from neutrality."

Jerry Jasinowski of the National Association of Manufacturers: ". . . the burden of taxes will be shifted primarily onto capital intensive manufacturing firms that are heavily exposed to international competition." Jasinowski goes on to say tax reform will: ". . . raise the user cost of capital by large magnitudes." ". . . lower productivity growth thereby raising unit labor costs" ". . . reduce profitability and cash flow" "encourage off-sourcing of production to foreign countries."

There is absolutely no doubt this bill is going to pass and pass by a wide margin. Nothing that is said on this floor, no warnings by economists, no skepticism on the part of the tax-paying public is going to change that.

There are some here who will vote for the bill because they genuinely believe it is the right thing to do and the right time to do it. I disagree, but I respect their view. There are a great many more who will vote for this bill despite serious reservations about its impact on the economy. I disagree, but I understand their position.

I don't know many officeholders who want to be charged in a campaign that they opposed a tax cut. After all, this is an election year and this is an election-year tax bill.

Besides, there is the easy notion around here that if we make a mistake today and the dire predictions of some economists turn out to be right, we can always come back next year with a new tax bill and repair the damage.

I'll make this prediction. Just as certain as it is that this tax bill will pass, this body will be back here next year with a new tax bill. And it won't be just technical corrections. I think it will be another major revision of the tax laws to restore incentives for investment and to raise revenues both to pay for those incentives and to apply against our worsening deficit situation.

My concern is that the damage done to the economy will not be that easily undone. The measure we are considering is the fourth major tax bill we have acted on since 1980. Someday, we are going to have to get it right. We can't keep turning the tax faucet on and off without seriously shaking the confidence of the investment community and the public at large. I think we are seeing some of that already in the widespread skepticism and suspicion that people have about this bill.

The measure before us has many good features, but I think its timing in relation to our weak economic situation is a gross miscalculation.

I agree with Economist Yardeni of Prudential-Bache: "Tax reform is a great idea at exactly the wrong time. Tax reform is like leveling the playing field without telling the players to get off."

EAGLETON ON VIETNAM

Tom Eagleton compaigned for the U.S. Senate in the Democratic primary of 1968 as an anti-Vietnam "dove." He never wavered in his belief that America was in the wrong war, at the wrong place, at the wrong time. Three of his speeches of that era, two made during his campaign and one in his first year in the Senate, talk of the agony of the war.

When asked to single out the one legislative achievement in which he took the greatest pride, he answers: "The 1973 Eagleton Amendment to stop the bombing in Cambodia." That bombing was the last vestige of American military activity in Southeast Asia. At a committee markup of an appropriations bill, Eagleton scribbled out on a yellow legal pad: "None of the funds herein appropriated may be expended to support directly or indirectly combat activities in, over or from off the shores of Cambodia by United States forces." The amendment was adopted and one of the saddest chapters of American history was brought to a close. Eagleton's speech on that amendment is a fitting ending to that chapter.

SPEECHES

Speech to the Ladies Luncheon, Truman Day Rally, Poplar Bluff, Missouri, September 23, 1967.

Speech to the Monroe County Democratic Club, Paris, Missouri, June 15, 1968.

Speech on Vietnam, United States Senate, July 2, 1969.

"Amendment to Halt the Bombing in Cambodia" United States Senate, May 29, 1973.

SPEECH OF LT. GOV. THOMAS F. EAGLETON, DELIVERED AT LADIES LUNCHEON, TRUMAN DAY RALLY

I want to take this occasion to speak on one of the gravest of the many agonies that confront our nation, the war in Vietnam.

We all share the hope that peace and political order will come to the people of Vietnam. It seems to me that a significant pursuit of this purpose on the part of the United States calls for the unilateral cessation of the bombing of North Vietnam for a reasonable period and until concerted efforts to begin a negotiated settlement are proven to be fruitless. I consider this act on our part to be a prelude to peace.

This position is not based upon a sentimental desire for peace at all costs. To my mind, it is coldly realistic. It has been put forth by reasonable and responsible men in the United States Senate, ranging from a moderate and unquestionably loyal Democrat, Majority Leader Mike Mansfield (D., Mont.), to a highly principled and broadly experienced member of the Republican party, John Sherman Cooper (R., Ky.).

It should be made abundantly clear that the Mansfield-Cooper proposal, in which I concur, does not call for withdrawal from Vietnam. Nor does it call for an abandonment of our military personnel or a curtailment of military action in the South. Nor does it call for any lessening of military equipment and materiel so as to protect our troops. Nor does it call for the cessation of bombing of infiltration routes, etc. south of the demilitarized zone.

World leaders of the most diverse national interests and shades of political ideology, ranging from Canadian Prime Minister Pearson to British Prime Minister Wilson to U.N. Secretary U Thant to Russian Premier Kosygin, have made it eminently clear that continuation of the bombing precludes a negotiated settlement in Vietnam. To an impressive and growing number of concerned minds, the strategy of the bombing constitutes the most clear and present danger of the peace of the world today.

The United States Senate is the appropriate forum for debate on the American position in the larger community of nations. Were I there, I would hope to add a forthright and candid voice to the development of progressive policy.

The present American policy, particularly as regards the bombing, limits and constricts. As the nature and number of the targets proliferate, our remaining options for escalation diminish. Experience shows that the war has now taken an unremitting and inexorable course toward escalation.

The bombing strategy has been subjected to the test of time. It has not succeeded. The stated purpose of driving the enemy to the bargaining table is, it would appear, no closer to fulfillment than on the day our bombs first were dropped on the North. If the bombs are intended to indicate our dedication to the fulfillment of our commitment, it seems clear that they have both produced and dramatized the steadfastness and unity of purpose on the other side. At this point, no one can reasonably doubt the willingness and ability of both sides to continue. This struggle could become a pathetic monument to the resolution of differences between men by combat and bombs rather than by diplomatic process and civilized discourse.

Any number of authorities support this thesis. Secretary McNamara, who presumably should know and who labors under his enormous burden of responsibility, has made his doubts public. Former Ambassador Edwin Reischauer, an experienced diplomat and astute scholar of Asiatic affairs, has reported that bombing gave the enemy a unity it did not possess before. U.N. Ambassador Goldberg, in current statements, gives evidence of the impracticability of a purely military resolution of the war and seems to be edging closer to considering the halting of the bombing.

In the recent elections, the people of South Vietnam were afforded an opportunity to express their will. Twenty-two of the most eminent men in America assure us that those elections were reasonably free. What can we conclude from the elections?

In my view the people of South Vietnam said they wanted peace. Remember, only 33

percent of the potential electorate were allowed to vote. Those considered "neutralist" or "Communist" or in geographical areas under the Viet Cong control were disenfranchised; they constituted 67 percent. Of the eligible voters, 83 percent cast ballots, a healthy turnout in American terms. The victorious Thieu-Ky ticket received power by virtue of 35 percent of that vote. Even Thieu promised a one week bombing pause.

But the ambivalent Truong Dinh Dzu, who openly advocated peace, ran a surprising second with over 800,000 votes. We know that at the very least this many South Vietnamese asked for a fundamental change in American strategy. At best we can say that less than 10 percent of the South Vietnamese people have endorsed our nation's present course (35 percent of 83 percent of 33 percent).

This election cannot be read as an American mandate.

In its inception 31 months ago, the decision to bomb North Vietnam was unilateral on our part. Now, the decision to stop it would by its very nature be equally unilateral.

I caution that the cessation of bombing will not instantaneously resolve the Vietnam war. It is not without some danger and disadvantages. It is, I believe, a calculated and necessary first step. It is a step in another direction. It is a step on a long, hard road. But the end of that road is possible peace in Vietnam.

The road we have been taking offers far graver dangers. If the consequences of stopping the bombing are not totally clear, the consequences of continuing are incalculably worse.

SPEECH OF LT. GOV. THOMAS F. EAGLETON DELIVERED BEFORE MONROE COUNTY DEMOCRATIC CLUB, MARK TWAIN CAFE, PARIS, MO

On March 31, 1968 President Johnson announced America's partial bombing halt north of the DMZ.

After some delay and several public exchanges between Washington and Hanoi, it was agreed that Paris would be situs of preliminary peace talks between the United States and the North Vietnamese governments.

The serious talks began in Paris on May 13, 1968 and have continued thereon on a rather irregular basis.

To date there is little that one can point to in terms of identifiable or measurable progress. However, the bare fact that the talks are taking place is in and of itself cause for hope that peace may ultimately come to Vietnam.

The Paris meetings now appear to be stymied over the same question which earlier had prevented any talks from being held at all, namely whether or not the North Vietnamese would promise to deescalate their military endeavors in return for a complete bombing halt. Further, in recent weeks the fighting appears to have been intensified.

Americans are impatient people by nature and when killing is involved impatience becomes all the more acute! "How long are these talks going to take?" people ask. "When is the killing going to end?"

One of the sad facts of world politics is that the diplomatic negotiation process is a painfully slow one. It is a process saturated with subtle psychological thrusts and seemingly limitless propagandizing. Each side carefully jockeys for a slight advantage here or a slight advantage there.

It is said that "history is a great teacher." Thus, we might examine the history of the Korean negotiations to see what lesson can be learned for Vietnam.

The Korean armistice negotiations began at Panmunjom on July 10, 1951 and an armistice was signed on July 27, 1953. Thus, for a period of two years talks ensued. During the period of the talks there was no cease-fire and the fighting and killing continued at an intense rate. The armistice (as distinguished from a final peace treaty which has never come in Korea) itself constituted a cease-fire.

It should be borne in mind that from a purely logistical point of view the negotiation and enforcement of a cease-fire in Korea appears to be a somewhat less complex matter than the instant case of Vietnam.

In Korea, we were fighting a conventional war with regular forces in fixed positions. The battle lines became the cease-fire lines, for the most part. Demarcation of opposing positions was fairly simple.

In Vietnam, we are not fighting a conventional war. There are no battle-lines or fixed positions.

Nevertheless, the negotation of a Vietnam cease-fire should not be written off as impossible. Quite to the contrary, I would hope that this matter above all else could become a top priority item of business at Paris.

After all, no one can predict with any degree of certainty the precise details of the ultimate Vietnamese settlement. Obviously it will take time—more time than we would like, more time than American patience can seem to endure—to work out such thorny questions as the role of the NLF in a future South Vietnamese government, neutralization or no neutralization, election or no elections, reunification or no reunification, the disputed borders between Cambodia, Laos, and the two Vietnams, etc., etc.

However, one must hope that, unlike Korea, while all of these matters are being exhaustively discussed that the killing could be stopped.

Of course, a cease-fire cannot be negotiated in a vacuum totally removed from the aforementioned basic political questions. A will to peace must be expressed at an early date in the Paris negotiations by a tentative, perhaps imprecise agreement on some broad policy matters which will realistically reflect the strengths of the contending parties.

In light of this, can a cease-fire be negotiated and effectively enforced in the context of an unconventional war?

Perhaps the most comparable precedent would be the cease-fire declared for Indonesia by the United Nations Security Council, first in 1947, again in 1948, and still again in 1949. The first and second declarations were not fully enforced, but they did substantially reduce the level of fighting for some time. In the Indonesian struggle, the Dutch forces were much more powerful than the Indonesians who themselves were not under a unified command.

Both in terms of a balance of strength between opposing forces and in terms of command discipline on the two sides, Vietnam is more susceptible to a cease-fire than was the Indonesian situation.

A neutral, international peace-keeping force, which was not present in Indonesia, could be formed and could help significantly in preserving a cease-fire.

In any event, it should be repeated for the sake of emphasis, that to accomplish anything at Paris there must be a will to peace on both sides. There can neither be an agreement for a cease-fire, nor mutual respect for one once declared, unless such a will exists. No special formula, no gimmick can substitute for this basic requirement.

JULY 2, 1969.

STATEMENT BY SENATOR EAGLETON

Mr. EAGLETON. Mr. President, will the Senator yield?

Mr. MCGOVERN. I am happy to yield to the Senator from Missouri.

Mr. EAGLETON. Mr. President, I wish to join with the Senator from Iowa in his expression of commendation for the intellectual and political courage of the Senator from South Dakota, which the Senator from South Dakota has displayed in such enormous abundance on so many occasions.

As has been pointed out, he has been courageous in war himself. Although he would not say it of himself, it is sometimes more difficult to be courageous in the pursuit of peace than it is in the waging of war.

As the Senator from Iowa has pointed out, it was a month or so ago that the Senator from South Dakota stood on this floor—alone—when others were maintaining a respectful honeymoon silence with reference to the conduct of the Vietnam war. He did it, in my opinion, not to bring publicity upon himself, but as a manifestation of how deeply he felt and how deeply he was moved by the conditions that give rise to the remarks he made on that occasion and likewise to the speech he has made here today.

I wish to say, Mr. President, that the Senator from South Dakota, in his analysis of the dilemma that we are in, is not so very much alone after all, as is shown by what some other very distinguished gentlemen are writing and observing.

I call the attention of the Senator and of the Senate to a recent book review prepared by Hans J. Morgenthau that appeared in the June 29 issue of the New York Times. One of the books being reviewed was by Henry J. Kissinger entitled "American Foreign Policy."

If the Senator does not mind, I should like to read some excerpts from the book review.

Mr. Morgenthau said:

"The third essay, dealing with 'The Vietnam Negotiations' and published last January in Foreign Affairs, is, of course, of the greatest current interest and has been widely scrutinized, in view of the author's eminent position as Special Assistant to the President for National Security Affairs in the Nixon Administration, for clues as to the new Administration's approach to the problem. This article provides an extremely shrewd appraisal of the issues likely to be raised in the negotiations, of the pitfalls to be avoided, and of the tactics to be employed.

"Mr. Kissinger is rightly critical of the disjunction between our military strategy and our political aims and of our misunderstanding of the nature of guerrilla war. Yet his arguments, excellent as they are, remain throughout within the conceptual framework established by the Johnson Administration. He sees as the central issue 'confidence in American promises.' He never raises the issue, which to other observers appears to be central: Is the present Saigon Government capable of negotiating a settlement on the basis of equality with the Vietcong? Given its actual weakness, can it have an interest in a peace that would result in its extinction, and is it capable of remedying

that weakness through the reforms which we have vainly urged upon a succession of Saigon Governments since 1954?

"Mr. Kissinger's answer is the conventional one: 'We should continue to strengthen the Vietnamese army to permit a gradual withdrawal of some American forces. Saigon should broaden its base so that it is stronger for the political contest with the Communists, which, sooner or later, it must undertake.'

"While it is untenable to assume the determination of a nation's foreign policy by its class structure, that class structure, that class structure indeed sets limits to what a government is able to do at home and abroad. A government which is in the main supported by the absentee landowners and the businessmen in the cities is incapable of instituting the reforms we urge upon it; for, by doing so, it would destroy its own political base. The issue of peace and war in Vietnam hinges upon our support for a government paralyzed by this dilemma."

I would like to point out that one of the observations made by the distinguished Senator from South Dakota in his speech here today is agreed to by Mr. Morgenthau, whom I consider to be one of the truly brillant commentators on American foreign policy.

Let me add a thought or two of my own. The Senator mentioned in his speech that he, like Clark Clifford, has developed what is tantamount to an obsession on the Vietnam war. His obsession, in its incipient stage, began perhaps in the early months of 1965. As with all obsessions, it continued to fester, multiply, and expand as that which gave rise to the obsession—the Vietnam war—itself seemed to fester, multiply, and expand.

I cannot date back my deep concern over Vietnam to such an early date. In truth and in fact, if I could relate myself back to the early months of 1965, I, too, might have an identical obsession. However, to be perfectly frank about the matter—and since the Senator from Iowa (Mr. HUGHES) has engaged in that which is probably the healthiest of human endeavors, self-analysis, and public confession—my concern for the Vietnam war goes back to a very pragmatic date. It concerned itself with the time when I decided to be a candidate for the U.S. Senate. I decided, as a candidate for the U.S. Senate, that I ought to have some position and know something about that which was developing into the greatest issue of our time.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. McGOVERN. Mr. President, I ask unanimous consent that I be permitted to have an additional 15 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. EAGLETON. So, in the summer of 1967, I, as a lay citizen, began to give some thought, to do some reading, some listening, and some watching with regard to that great national agony called the war in Vietnam.

Although I did a modest amount of thinking, reading, listening, studying, and watching, I readily confess that it did not create me into an instant expert. I nevertheless became convinced that our policies then were erroneous, as I am convinced now that our policies are erroneous.

In the first speech I gave as a candidate for the Senate in September of 1967, I addressed myself to the question of the war in Vietnam, And indeed, it is the one issue perhaps that I belabored to the point of boredom to many Missouri audiences throughout the campaign.

I gave a couple of speeches in the early months of 1968, advocating that which in part is suggested by the Senator from South Dakota and which has now recently been suggested in speeches given by former Vice President Humphrey and Ambassadors Vance and Harriman, with respect to a stand fast cease-fire. That suggestion is contained in the Senator's speech. I commend the Senator for it.

I also commend the Senator for pointing out that which is true beyond dispute, that there is not a new proposal by the present administration on Vietnam. Whether or not we wish to go into the historical analysis, as did the Senator from Wyoming (Mr. MCGEE), of the difference between what presidential candidates say when running for office and the obligations that are thrust upon them once they assume office, the fact remains that there is no new policy from the White House.

Interesting as I deem that to be, and as highly as I regard the Senator from Wyoming, I do not think his analysis is particularly germane to a war which is going on and has already taken thousands of American lives.

The American people were told that there was a new plan, a secret plan, that had been developed. The Senator from South Dakota adroitly inquired of the Senator from Wyoming, "Do you admit that there is no new plan for Southeast Asia?" to which the Senator from Wyoming had less than a satisfactory answer.

The truth is that there is no new plan. It is a redistillation, a rearticulation of that which had been repeatedly said by Secretary of State Dean Rusk so many times that memory cannot recall. It was said during the years 1965, again in 1966, again in 1967, and again in 1968.

I want to associate myself with another portion of speech of the Senator from South Dakota before I move on to the one portion with which I will disagree.

In the Senator's speech, he points to our overreliance on the Thieu-Ky regime. I agree with the Senator. I agree that it is not only an overreliance, but it also at times almost amounts to a subservience to the point of being more worried about offending Mr. Thieu and Mr. Ky than being concerned with what is right for America and what is morally right for Vietnam.

With respect to every conversation that takes place, whether it be at Midway or elsewhere, we are concerned about Mr. Thieu and ask, "Will it cause him any difficulty in his administration?"

The proper concern should be what is right for the American people and what is morally right for the South Vietnamese people of which Thieu and Ky are the technical leaders in an election that is certain not what we view in our country as being a free and fully participatory national election.

Finally, I must say this, so as to make the record clear. There is a portion of the Senator's fine speech with which I cannot identify. I presume that the reason for my inability to adopt that portion is that his agony, his obsession, dates back longer than does mine and with a greater depth of perception that mine—his from early 1965, mine from the fall of 1967. The position the Senator from South Dakota has taken here today may well, in due course, by my position and that of other Senators if this war drones on, if it drones on with weekly issues of Life magazine containing the faces of hundreds of young Americans who are giving their lives, knowing that the war is not going to be won, knowing that it is ever so gradually being deescalated.

Mr. President, if you had a boy 17 or 18 years of age who was about to be drafted, and he came in to see you and said, "I'm going into the Army, and I will probably be sent to Vietnam," I guess if he asked you, you would have to tell him the truth: "Well, young man, you are going to a war that will end perhaps by the end of 1970, maybe in 1971. We are not going to win it, and you and maybe thousands of others are likely to die. But that is American policy, a policy that started way, way back. You know how foreign policy is, young man. It has a way of turning itself on and not turning itself off. But go forth and be a partriotic soldier. I hope you will get back. I hope your picture will not appear in a future issue of Life magazine."

But I would have to say that I am not prepared at this juncture to adopt the penultimate recommendation of the Senator from South Dakota: namely, that the United States should unilaterally withdraw its forces from South Vietnam. Before we reach that decision, I should like to exhaust such other remedies as a standfast ceasefire. I should like to exert more muscle on the Thieu-Ky regime to have it broaden its base considerably so as to include neutralists. I should like to have an opportunity to exhaust remedies such as these and have them shown to be fruitless before adopting the penultimate conclusion.

Finally, I repeat what I said at the outset. The Senator from South Dakota is owed a great debt of gratitude by the American people for his valor, his intellectual courage, and his integity in doing what he has done here today, and has done so ably and nobly in numerous occasions in the past, speaking with a wholesome mind and a compassionate heart about the overriding, compelling issue of our time.

I am pleased that the Senator was so gracious in yielding this time to me.

Mr. McGOVERN. I thank the Senator from Missouri for his statement, which I regard as one of the most moving statements we have heard on the floor in a long time.

Without in any way qualifying the position outlined in my prepared remarks, I may say to the Senator that I regard the first order of business as not the exact timetable of our withdrawal, which I said in my speech would be determined largely by the considerations of safety of our troops; but I agree with him that perhaps the most urgent order of business—and the Senator from Iowa (Mr. HUGHES) made this point—is to change the general order under which General Abrams is now operating, which is one of maximum military pressure on the enemy, and to move, instead, in the opposite direction, so as to avoid contact with the enemy, instead of chasing them out into the jungle. I think we should avoid that kind of tactic and adopt a purely defensive strategy, in which the only time that firepower would be used would be for the defense of any troops that were threatened by a massing of enemy forces.

So I quite agree with the Senator on the priority of orders, which is to move to something we can do immediately, and that is to change the standing orders to our field commanders. The President can do that with a stroke of the pen or by a telephone call. In my judgment, that better fits the official

policy we now espouse, which is a policy of denouncing any hope of military victory, and a policy supposedly aimed at a negotiated settlement of the war.

Let us attach the highest sense of urgency to stopping the killing of American troops and the killing of Vietnamese. I see nothing to be served by offensive operations that do not really change the character of our negotiation position in Paris, but which do harden the lines on both sides and make it very difficult for negotiations to take place—which kill our forces, kill our troops, and lead to continued devastation in Vietnam.

I commend the Senator from Missouri for his sensitive perception of the political and personal issues involved in this struggle. They are perhaps far more significant than the diplomatic and military strategies that have been tried in Vietnam these many years.

I have often wondered why it is that the U.S. Senate has produced so many more critics of our foreign policy in Vietnam than have been produced in the State Department or in the Pentagon although some of them, after they have left office, have some rather dramatic critics of our policy. I think one of the reasons is that Senators are sensitive, as political figures, to some of the dilemmas that our military personnel have faced in Vietnam when they have tried to make up for the political bankruptcy in South Vietnam. They have increased the inputs of American military power. Our basic mistake has been to try to make up for political weakness, a lack of political leadership in Vietnam, by substituting American military power. That has really been at the bottom of our dilemma for many years.

I congratulate the Senator from Missouri (Mr. EAGLETON), the Senator from Iowa (Mr. HUGHES), the Senator from California (Mr. CRANSTON), and other Senators who have had not only the good political judgment, but the good moral judgment, it seems to me, to call for a different course in Vietnam in the interest not only of ourselves but for the people of Vietnam, as well.

SPEECH OF SENATOR THOMAS F. EAGLETON IN THE U.S. SENATE, MAY 29, 1973

Mr. President, two weeks ago the House of Representatives voted for the first time to end American combat activity in Southeast Asia. Technically, the House action only affected the use of funds appropriated by the bill we consider today. But Congressman Clarence Long, sponsor of the fund cutoff amendment, described the full meaning of the House action in the following way: "It is a clear and definite message to the President, and to the world, that Congress does not want any more activity involving U.S. combat personnel in Cambodia."

That message may have been clear and definite to a majority in the House of Representatives . . . and it may have been clear and definite to the American people . . . but apparently it was not clear and definite to the White House. Since that historic House veto, Administration spokesmen have stated categorically that the air bombardment of Cambodia will continue even if the requested transfer authority is denied.

A careful examination of the Administration's position will demonstrate how Congress has been stripped of its options. On the one hand, then Secretary of Defense Richardson stated that the defeat of any amendment which would specifically restrict the use of funds for air support over Cambodia would be considered "as a vote to at least acquiesce in that activity." If, on the other hand, a restriction is approved limiting only funds within this bill, again according to Richardson the Administration will continue the air operations anyway, using money appropriated for other defense purposes.

We are left, therefore, with no room for compromise. A restriction limited only to funds in HR 7447 will be ignored, whereas the defeat of an amendment proposing such a restriction will be interpreted as legal acquiescence in a military action never approved by Congress.

If we are to take any meaningful action here today, therefore, we must act to cut off all funds for combat activity in Cambodia and Laos. Failure to take such action will be interpreted by the Administration as a blank check to continue American involvement in Indochina indefinitely.

Today, the Senate must repeat the message delivered to the President by the House of Representatives. But we must repeat that message in language that cannot be ignored. We must state unequivocally that no appropriation enacted by Congress, past or present, can be used for combat activity in either Cambodia or Laos.

Congress now has the opportunity to accomplish what previous Congresses have tried, but failed to accomplish. We have the historic opportunity to show that the system can end, once and for all, what the system should never have allowed to begin.

In his testimony before the Appropriations Committee on this bill, Secretary Richardson demonstrated the paradoxical nature of the Administration's legal position. In the following exchange with Senator Cotton, Mr. Richardson concedes that a limitation placed on the requested transfer authority would reflect congressional intent:

"Senator COTTON. If Congress should see fit to put the limitation on this $500 million—(that) none of it is to be used in Southeast Asia—the intent of Congress would be unmistakable, would it not?

"Secretary RICHARDSON. I believe you are right, Senator."

But the Secretary didn't stop there. He went on to explain why that expression of intent would be ignored. He reiterated the argument that Article 20 of the Paris Agreement gives the President the legal right to continue combat activities without Congressional approval.

Secretary Richardson argued that since the President had the legal authority to use military action in Cambodia before the cease-fire agreement was signed on January 27, then he retains that authority for the purpose of assuring that Article 20 of the agreement is carried out. But what was the President's authority to conduct combat operations in Cambodia prior to January 27?

The following explanation of that prior authority comes from Mr. Richardson himself, when he explained the Administration's position as Acting Secretary of State in 1970:

"The entry of U.S. forces into Cambodia was directed by the President in the exercise of his constitutional authority as Commander in Chief to protect U.S. forces which had previously been committed to action in Vietnam . . . The President has set and announced explicit limits on the action of U.S. forces in Cambodia . . . these limits clearly restrict the action of such forces to the direct threat posed to American and allied forces in Vietnam by the existence of the border sanctuaries."

To reinforce the "explicit limits" Secretary Richardson referred to as ordered by the President, Congress passed a number of measures setting forth its own explicit limits. These measures set limits on the number of military and civilian personnel assigned in Cambodia, prohibited the use of U.S. ground forces, and specified that U.S. airpower could not be used in support of the government of Cambodia. Thus, when President Nixon signed the Foreign Assistance Act of 1971, the Cooper-Church Amendment, stating that the United States could not undertake a commitment to defend Cambodia, became law. The legislative history of that amendment shows that the clear intent of Congress was that U.S. airpower could be used only for the protection of U.S. forces in Indochina.

The President apparently agreed with the action taken by Congress. Following is a quote from the President's statement of June 3, 1970:

"The only remaining American activity in Cambodia after July 1 will be air missions to interdict the movement of enemy troops and material where I find that it is necessary to protect the lives and security of our men in South Vietnam."

As we look at the authority Secretary Richardson states the Administration had prior to January 27, therefore, we find that there was—as amazing as it may now seem—agreement between Congress and the Executive over the legal basis for that authority, i.e. the protection of American forces.

We are now told that the very cease-fire agreement that removed those forces on March 28, 1973 will be used as legal justification for our continued military involvement in Indochina.

While Americans, including me were paying tribute to the President and Dr. Kissinger for achieving peace through an elaborate, if ambiguous, agreement designed to carefully police the cease-fire in South Vietnam, the Administration was apparently concentrating on the more obscure section of that agreement, Article 20—a vague pronouncement of policy which deals with nations not even represented at the cease-fire negotiations.

We are now told that agreement carries with it an implicit American commitment to help force a cease-fire in Cambodia and Laos. And so the transition is performed before our eyes—a bombing policy which, on March 27 is legally based on the need to protect American forces becomes, on March 28, a policy commitment designed to bring about a cease-fire in Cambodia and Laos.

The President had no statutory authority to initiate combat activities in Cambodia. Prior to March 28, our air operations were based on the President's claimed authority as Commander in Chief "to protect the lives and security of our men in South Vietnam." The basis of the President's own claim thus has been eliminated by the completion of the withdrawal of U.S. Forces from Indochina and the return of our POW's.

But we are not asked to accept a new policy commitment as nothing more than an extension of authority the President had prior to the cease-fire. The Administration is insulting our intelligence. Its legal position is a sham and, in my opinion, represents an effort to circumvent the legitimate power of Congress.

If we accept this position, we are sanctioning a new war—a Cambodian war. And we are acquiescing in a policy that could well lead us back into Indochina.

Almost nine years ago Congress acted to legitimize our escalating involvement in Vietnam by passing the Gulf of Tonkin Resolution. When that vote was taken, few in this body understood its legal and political consequences. And few in America held Congress politically responsible when our Indochina policy failed.

But in the past three years, we have made our case to the American people loud and clear. We complained that the President was fighting a war without our consent . . . that the President did not inform us . . . that the President has not asked for our authorization . . . that the President has usurped our war powers. Over and over we have exposed the constitutional argument to our constituents. Now, according to a recent Gallup Poll, a full 76% of the American people believe that continued involvement in Indochina should be a matter for Congress to decide.

We can no longer hide behind the Presidency. We can no longer put off our responsibilities to await the latest word from Paris. And we can no longer rationalize that our individual vote—even though only one of 535—is unimportant. Now, because we have made the American people aware of the role Congress must play within our government system, we will be held individually and collectively accountable for the action we take.

As we deliberate over a war we hear the familiar pleas from the White House to wait. Congress is again warned in ominous terms: Don't tie the President's hands . . . don't interfere with the negotiations . . . don't do anything.

But this time it won't wash. The American people have a genuine and justifiable fear that we will again become mired in the quicksand of Indochina. And if Congress allows that to happen, this time Congress will be held accountable by the American people.

We now hear reports that Dr. Kissinger and Le Duc Tho have drafted a new protocol to the Paris Agreement. This document is said to contain, among other things, a proposal for truce discussions among the dissident parties of Cambodia. Ambassador Sullivan has traveled to Saigon, Phnom Penh and Vientiane to gain the approval of our allies. I sincerely hope that this latest initiative will succeed.

But as much as we all want real and lasting peace to come to Indochina, we should not again delude ourselves into believing that the United States can impose that peace at the end of a gun. Such a peace would only last so long as America remains intimately involved in the internal affairs of Indochina. If lasting peace is to come, it will come only as the exclusive expression of the Indochinese parties to the conflict.

We are warned that the administration will no longer be able to negotiate from strength if Congress prohibits combat activity in Indochina. But this agreement presumes that the American people have accepted the premise of the latest commitment—a commitment made on their behalf, but without their consent.

Adversary positions in diplomatic negotiations are constructed from a blend of real strength and bluff. But how much bluff can be left on either side after five years of negotiations between the United States and North Vietnam?

It is no secret that the American people want to get out of Indochina—that is why we began the negotiations five years ago.

It is no secret that the American people are concerned that we could become reinvolved in Indochina—that information is readily available from public opinion polls.

It is no secret that the morale of our military men assigned to carry out the bombing missions over Cambodia and Laos is at an all-time low—newspapers and television tell us that.

It is no secret that many Americans consider the military actions being carried out without Congressional consent to be unconstitutional—that assertion can be heard daily in the galleries and hearing rooms of the House and Senate.

I therefore contend that it is no secret that the bombing will someday be stopped.

But each day Congress submits to the Administration's waiting game, we increase the inordinate risk of reinvolvement. For each day we fail to perform our constitutional duty, we allow our system of law to be undermined. And if we wait too long, we may become involved again in spite of ourselves—we may lose the institutional capacity to stop it.

The legal and political considerations must weigh heavily in our minds as we vote today. But it is our more profound responsibility to consider the lives—American and Asian—that may be lost if we continue to pursue our present course. It is now up to Congress to decide whether the loss of life, the damage to property and the great expenditure of funds is related to the national interest of the United States.

Since January 27, when the cease-fire agreement was signed, more than 146,000 tons of bombs have been dropped on Cambodia and Laos. Ten Americans have been killed, two are listed as missing in action and 4 planes have been lost in combat. This Memorial Day weekend another American was killed and 2 planes lost in Indochina. No, the war is not over for America.

And we must also consider the people of Cambodia and Laos—people who have suffered even greater losses. The following quote from a story by New York Times correspondent Sydney Schanberg describes the devastating effect of our bombs:

"The destruction in Cambodia has multiplied greatly since the escalation of the American bombing began here in February. Scores of villages have been blown away. Twelve-foot-deep bomb craters pock the ruins. Great numbers of livestock have been killed, harvested crops burned to ash, orchards destroyed. . . ."

And the bombing has also created a serious problem for the living. According to some estimates, 3 million of the 6.5 million Cambodians are now refugees. These are people deeply terrified at the prospect of having their villages destroyed by bombs. Their fear has no political coloration.

Some argue that the other side is equally guilty of the type of destruction described by Mr. Schanberg. It is obviously true that our adversaries are guilty of abuses. But we must recognize that the use of B-52's over an agrarian society has an impact far beyond the limited policy goals that cause us to deploy that type of sophisticated weapon. To simply satisfy the goal of stalling the attack on Phnom Penh we must use a kind of force whose devastation will be felt by Cambodians for a decade. It is a policy that risks making the prospect of victory or defeat a moot question for the people of Cambodia.

Are our goals in Indochina worth this pain and tragedy? Is it worth the risk that the list of MIA's will increase? Or that another American will be captured and held as a prisoner of war?

We must face these questions today. They are hard questions but they cannot be avoided.

The American people are now more aware than they have been for 30 years of the awesome responsibilities assigned to Congress by the Constitution. If we base our vote today on a desire to defer our judgment to the President, then we will deal a heavy blow to the institutions of government devised by the Founding Fathers.

It is time to answer the hard questions for the American people. Either we vote to stop the war or we vote to grant the President our authority to continue to wage war in Indochina.

To those who will not defer their heavy responsibility, the words of George Santayana should be given our careful consideration: "Those who refuse to learn from history are doomed to repeat it."

I urge my colleagues to end this war once and for all by adopting my amendment. America cannot afford to repeat the long and tragic history of its involvement in Indochina.

EAGLETON ON CIVIL RIGHTS

To Tom Eagleton, racial injustice has always been among the most onerous and reprehensible facts of American society. As his 1964 speech, "Pacem in Terris," shows, Eagleton was in the forefront of advocating a more just society. At a time when many politicians were reticent on this issue, Tom Eagleton was unafraid to speak his mind. Nor did his commitment waver over the years. In 1984, celebrating the twentieth anniversary of the 1964 Civil Rights Act, Eagleton demonstrated that the depth of his commitment to civil justice and racial equality remains inexhaustible. In 1985, when Tom Eagleton was honored with the prestigious Harry S. Truman Public Service Award, he reaffirmed the tradition of progressive Missourians in the vanguard of the civil rights movement.

SPEECHES

"Pacem in Terris," Daughters of Isabella Banquet, St. Joseph, Missouri, October 27, 1964.

"Ronald Reagan's Presidency: Whither Civil Rights?" United States Senate, June 19, 1984.

Remarks at the Harry S. Truman Public Service Awards Ceremony, Independence, Missouri, May 10, 1985.

SPEECH OF ATTORNEY GENERAL THOMAS F. EAGLETON DELIVERED BEFORE THE DAUGHTERS OF ISABELLA BANQUET, ST. JOSEPH, MISSOURI, OCTOBER 27, 1964

Michael Schwerner, Andrew Goodman, and James Chaney died this summer. Schwerner and Goodman died because they were shot through the heart. The medical experts are not sure whether Chaney died from the three bullets fired into his body, or from the brutal beating he endured before his death.

We do not know who killed them. We do know what killed them. They were the victims not so much of their murderers as of the hatred that filled the hearts of those who committed the crime. The oldest of these boys was 24, the youngest 20. Two of them were white, one was a Negro. On the day of their death, they had been in Mississipi helping Negroes to register in order to vote. The presence of these young men was motivated by their desire to give practical application to the undeniable truth that all men are created equal.

Those who killed them would deny that truth; and three young men died near Philadelphia, Mississippi, on June 21st of this year.

A little more than a year before this terrible crime, the world felt the loss of another man, a man of God, a man of love for all: Pope John XXIII.

Though it may seem incongruous to mention these occurrences in the same breath, I submit that each—in its own way—relates directly to the reason for your gathering here today.

Pope John was known as the Pope of Peace. He shattered all precedent when he addressed his last encyclical, "Pacem in Terris", or "Peace on Earth", not only to the Catholics of the world but to "all men of good-will". Such charity and warmth is indeed a far cry from the racial strife that took the lives of the young men in Mississippi, but the teaching of John XXIII may provide the antidote for the poisonous hate that killed these boys.

Violence and inhumanity are the inevitable consequences of a denial of the natural, moral, and human law which decrees that all men are created equal. The tragedy of Philadelphia, Mississippi, is a living contradiction of the basic tenets of our society which hold that all men are entitled to live, work, and educate themselves in freedom and with dignity.

To regard the murder of those young men as the isolated deed of evil individuals is as unrealistic as to deny the existence of the great problem which occasioned the crime. Hatred, unfortunately, is a way of life, a philosophy of being, for many people today. It is a credo that premises every thought and precipitates every deed.

Hate, philosophers tell us, is the total absence of love. Not love in the emotional sense that we hear about in the movies or on television, but love in the sense of recognition of the Godliness in each of us.

The motto of the Daughters of Isabella is, as you well know, "Unity, Friendship, Charity, Sanctity". It strikes me that you have expressed your goals in ascending order, for without unity, without friendship, without charity, there can be no sanctity. Indeed, if we achieve unity, friendship, and charity, sanctity will result.

In his last encyclical, published a few weeks before his death, Pope John sought to convey this very message to all of us. It was an eloquent plea for "peace on earth", from which phrase that document took its name.

The one great message that can be drawn from that work is that the search for true world peace must begin with the fact that "every human being is a person . . . endowed with intelligence and free will". From this principle devolves ". . . the right [of every person] to a basic education and to technical and professional training in keeping with the stage of educational development in the country to which he belongs. Every effort should be made to insure that persons be enabled, on the basis of merit, to go on to higher studies, so that, as far as possible, they may occupy posts and take on responsibilities in human society in accordance with their natural gifts and the skills they have acquired."

Lest any doubt remain as to the import of this statement, the Holy Father continued ". . . the conviction that all men are equal by reason of their natural dignity has been generally accepted. *Hence, racial discrimination can in no way be justified,* at the very least doctrinally or in theory. And this is of fundamental importance and significance for the formation of human society according to those principles which we have outlined above. For, if a man becomes conscious of his rights, he must become equally aware of his duties. Thus he who possesses certain rights has likewise the duty to claim those rights as marks of his dignity, while all others have the obligation to acknowledge those rights and respect them."

If these teachings of Pope John had been universally accepted, Schwerner, Goodman, and Chaney need not have died. There would not have been any reason for their going to Mississippi to participate in the effort to gain for all the right to vote, and the right to live as truly free men.

What could be a better formula for peace than the recognition of such individual rights, as Pope John suggested, not because of or in spite of the color of a man's skin, but by reason of the simple fact that he is a human being—a human being made in the image and likeness of his Creator.

This is not an end that will be achieved solely by passive, intellectual assent. It will be accomplished only by positive action which must start within ourselves individually and be nurtured by mutual effort. "There can be no peace between men", the Pope warned, "unless there is *peace within each of them;* unless . . . each one *builds up within himself* the order wished by God".

I do not ask you now for unity. I do not ask you to extend your friendship or to practice charity. I cannot ask this because you have already committed yourselves to these goals by your membership in this organization. You have translated these ideals into action by your presence here today.

I can only urge that you never stop in your quest for charity and that you never be deterred from your efforts to secure friendship and unity among all men.

The love which Pope John displayed for all men moved a Rabbi to say upon the occasion of the Pope's death, "He lived long enough for glory, but not long enough for mankind." By your dedication to the goals of your organization, you are preserving the teachings of this great man, so that, ultimately, all of mankind will have been touched by his charity; so that, ultimately, the world need not mourn the loss of three young men in Mississippi nor even the death of a Pontiff: Rather, we may rejoice in the eradication of violence and the termination of hatred.

You are moving yourselves—and, by your excellent example, others—toward personal, civil, and—ultimately—world peace, which, as Pope John XXIII said, springs from a moral and natural order "founded on truth, built according to justice, vivified and integrated by charity, and put into practice in freedom".

Ronald Reagan's Presidency: Whither Civil Rights?

(Speech by Senator Thomas F. Eagleton, June 19, 1984)

Standing at the crossroads of history, Congress twenty years ago struck a blow for freedom and adopted the 1964 Civil Rights Act. This law, and the Voting Rights Act which came a year later are still, to this day, the most comprehensive—and successful—legislative assaults on racial inequity in history.

These and succeeding civil rights measures were of such great moment because we, as a people, resolved that every technique used for a century to keep blacks in an inferior position—restrictive voting rules, educational segregation, job and housing discrimination—were simply unacceptable. These laws shine in history because they have brought the power of the federal government permanently to bear on discrimination.

In proposing the 1964 Act—prohibiting discrimination in education, employment, federally assisted programs, and other areas—President Kennedy said it would be enacted "not merely for reasons of economic efficiency, world diplomacy and domestic tranquility—but, above all because it was right." He evinced a ringing determination and an unwavering belief that equality was the automatic birthright of all Americans. That was no easy position in those days.

Nearly twenty years later, President Reagan was confronted with a civil rights issue of his day: whether the government should confer the benefit of tax-exempt status on private, religious schools that openly discriminated against blacks. Even though civil rights is now an accepted part of America life (some even think the issue was long ago "settled"), Reagan said: "I think we should" assist these discriminatory institutions. That is a measure of the distance that separates Reagan from the young President, who, two decades ago, truly understood his country.

The Reagan Administration likes to maintain that its avowedly "principled" opposition to the remedies of busing and hiring quotas are the only reasons anyone could criticize its record. It should not be allowed to get away with concealing its embarrassing policies under an umbrella of opposition to only these two matters. The fact is, Reagan has undertaken a broadscale attack on the statutes and judicial precedents encompassing civil rights law across-the-board: in education, voting rights, employment and housing. This body of law has reached a plateau of consensus in America. A look at the damage Reagan has wrought in each of these areas will show just how far away from the mainstream he is.

A brief review of the education tax exemption fiasco concerning the Supreme Court case of *Bob Jones* will classically demonstrate the radical and disingenuous nature of this Administration. The issue before the Court was whether private schools that have racially discriminatory admission standards on the basis of religious doctrine, qualify for tax exemption. Initially, the Reagan Justice Department supported the twelve-year IRS policy of denying exemptions, and was prepared to submit a brief to the Court so stating. But House Minority Whip Trent Lott wrote to the President, asking him to support tax exemption. Reagan agreed, ordering the Justice Department to switch positions.

There was a firestorm of criticism in Congress and with the public, even producing a rift within Justice itself. More than half of the Civil Rights Division attorneys wrote a letter to Wm. Bradford Reynolds, Division chief, charging that the Department's position "cast serious doubt upon the Division's commitment to enforce vigorously the nation's civil rights laws."

Surprised by the outcry, the Administration then invented a bewildering array of explanations. Ed Meese, the President's counsel, took personal blame. Reagan said he himself was at fault. The President announced that he rejected racism in any form, but felt tied to his position because the IRS "lacked authority" to deny the exemptions. Reagan then took a now-notorious tack: he would propose legislation to explicitly authorize the IRS to deny the ex-

emptions. Justice Department attorneys presented Reagan's bill to congressional committees. It was such a sham. "It's the shabbiest, most unbelievable bunch of crap I've heard since I've been here," exclaimed Michigan Congressman Bill Brodhead. Many of us felt that no new law was needed to say what was already on the books.

Despite such vitriolic opposition, the government stuck to its guns: it filed its brief with the Supreme Court, urging that the exemptions be preserved. Three months later, the Court, in an 8-1 decision, handed the government's head back to it on a platter. The IRS Code's history and purpose, the Court held, clearly established that tax exempt status for charitable institutions required that they "serve a public purpose and not be contrary to established public policy." The Court then explained what should have been obvious to Justice: for the past quarter of a century the judicial, legislative and executive branches provided unmistakable evidence that there was a firm national policy against racial segregation and discrimination in public education. Exemption status denied.

The Department's premise, that the IRS had stepped beyond it bounds and should not have done so without congressional approval, strained credulity. The tax exemption policy was changed in 1970 not by IRS administrative fiat, but substantially because a three-judge District Court in that year enjoined it from issuing exemption rulings to racially discriminatory school in Mississippi (Trent Lott's state). The IRS had not been acting on whim, but under court order.

The Department's justification also camouflaged underlying motives. Clearly, it went out on a limb to resuce a band of private, religious schools which openly discriminated. Why? The answer is that the Administration wanted to test the limits of civil rights policies in order to curb their reach. It knew that its position would pump life into a system which for years had provided one avenue for dodging the school desegregation mandate.

At least part of the *Bob Jones* spectacle is widely known, though perhaps not long remembered. Not as familiar are the other steps Justice has taken to strip away good law in the field of elementary and secondary education—law that was slow to come but which quickly took a high place in the literature of liberty.

Beginning with the watershed 1954 *Brown v. Bd. of Education* decision by the Supreme Court, which changed beyond recognition the landscape of this country, the legal tools that could be brought to bear on segregation were suddenly significant. Brown was a profound turning point, providing that: "in the field of public education, the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal." But this momentous decision did not alone desegregate public education: a decade after the Court had ruled, 98 percent of all black children in eleven southern states still attended all-black schools.

It was the 1964 Civil Rights Act that pushed school districts into compliance. Title VI of the Act (non-discrimination in federally assisted programs) was an awesome weapon because the Civil Rights Division at Justice could bring lawsuits to enjoin non-complying school districts that refused to eliminate discriminatory practices. During the 1960s, the Division brought legal actions against more than 500 school districts. According to reports, by 1972 fewer than nine percent of black children in southern states remained in all-black schools.

Subsequent judicial rulings bolstered the desegregation mandate. Enlarging upon and extending *Brown*, the Supreme Court held that if actions involving intentional segregation occurred in one part of a school system, the onus was on school officials to show that the rest of the school system was free of such racial ostracism. In practical terms, this extended *Brown's* holding to the North—where segregation was less by state law per se but rather through intentional actions of state officials. In addition, in a long line of cases, the high court has held that Federal Courts may require transportation of students if deemed necessary to effectively remove the vestiges of purposeful segregation.

This formidable legal apparatus led us "out of the darkness and into the light," implementing our national will to be a single society. But Ronald Reagan has stopped the clock—and reversed it. Effective implementation of these laws and legal precedents—respected by Democratic and Republican Presidents and upheld by the Supreme Court—has vanished under Reagan and his Civil Rights Division.

The Civil Rights Division has played an historic and invaluable role in enforcing the laws which mandated public school desegregation. But this has changed under the Reagan Administration. On Reagan's marching orders, the current Division has gone from advocate to critic of effective civil rights enforcement. For one, the Division has flouted *Brown*. The very essence of that decision was that separate educational facilities will never be equal. Although Brad Reynolds, chief of the division, embraces this principle in the abstract, and says the Administration will "ferret out all unlawful racial segregation," he believes such a policy does not require use of transportation or other effective remedies, but merely requires "produc[ing] schools of like quality, facilities and staffs." However well disguised, Reyonolds in effect has substituted the constitutional imperative of abolishing segregation for the promise of merely equalizing resources in segregated facilities.

For another example of defective civil rights policy, let's look at the Civil Rights Division's approach to Title VI—the most important desegregation weapon. Owing greatly to the efforts of the Justice Department, this Title may well have been emasculated. With great aplomb, the Department urged the Supreme Court (and it agreed), in the recent case of *Grove City College*, to take the teeth out of the most important law governing sex discrimination in education, and, by implication, three other civil rights statutes, of which Title VI is one.

These affected statutes, presently worded to prohibit discrimination in "any education program or activity receiving federal financial assistance," were intended to ensure that federal money would not end up subsidizing an institution that practices discrimination. But the new view championed by Justice allowed that only the particular program or activity receiving the funds had to obey the law, and not the institution. This "compartmentalization" of discrimination will inevitably result in making most cases of bias simply unreachable by federal law.

The Justice Department disguised its motive with the flimsy and disingenuous excuse that a narrow interpretation of the statutes prevented federal government "bureaucratic overkill." To me, protection of constitutional rights stands much taller than an interest in bureaucratic convenience. I am certainly not alone in this view. for Congress is presently considering legislation to overrule these results. The legislation has enormous support in both houses of Congress, and even though nearly half of the cosponsors in the Senate are Republican, Brad Reynolds of the Civil Rights Division is firmly against the bill and President Reagan has refused to throw the important weight of this office behind it.

Litigation activity under *Brown* or Title VI—one barometer of the Department's enforcement commitment—has seriously slowed. It took the Civil Rights Division three years to initiate its first elementary and secondary school desegregation suit. After three and one-half years, the Department has filed only two such cases. Although there are still a few months left in President Reagan's term, it is highly unlikely his Justice Department will come close to matching the previous Department's record of initiating nine suits by the end of its four years.

Justice has disregarded its enforcement duty even with cases it inherited from prior Administrations. A Tulsa, Oklahoma school system was already under a desegregation order, and the schools' counsel sought in 1982 a fairly common agreement from Justice, whereby the schools would actively continue their desegregation plan for three more years, followed by dismissal of the suit. Reynolds responded by instructing his line attorney: "let's be a little bold and go for dismissal." Defense counsel, who well could have been gleeful at such a reaction, in fact thought Justice was retreating from the requirements of the law. As a result of Reynolds' withdrawal, Justice no longer required yearly reports for three years in order to monitor the schools' progress. That's what you call overzealous unenforcement.

As for the judicial precedents so heavily relied upon in litigating education cases, the Department has struck a new theme: make them harder to win. The Supreme Court, as recently as last year, affirmed the authority of federal agencies involved with Title VI, to enforce regulations providing that a *prima facie* violation of the Title is established if disproportionate effect is shown, regardless of intent. The Department refused to file a brief in the case. Reynolds's explanation for the Department's silence—that there were "conflicting views among the affected federal agencies"—is a subterfuge. All affected government agencies use regulations which are based on an effects standard. Only because of Reynolds' strong opposition to the standard, was there any "conflict." Although the Justice Department's own regulation also calls for this less burdensome effects test, Reynolds will not allow his legal staff to use it.

More significantly, in 1981 Reynolds announced a dramatic break from legal precedent—respected by Democratic and Republican Administrations—that once it is proven that discriminatory intent has produced racial isolation in one part of a school system, the burden shifts to the school officials to show that the rest of the school system is not discriminatory.

In rejecting this "well-settled evidentiary principle," as the Court termed it, Reynolds forced on his legal staff the heavy task of providing violations "school by school." As a deliberate consequence, in the future the pace and reach of desegregation efforts inevitably will be reduced. One Civil Rights

Division attorney, troubled by the radical change, sent a confidential memo to Attorney General Smith, stating: "Under this standard . . . our relief will by design seek a remedy drawn more narrowly than we are, as a matter of law, entitled to seek . . . This may be the basis for some criticism of our enforcement record." As Brad Reynolds must know from his days in private practice, if an attorney deliberately threw away a legal presumption this vital to a client there would be grounds for a malpractice charge. Our Justice Department should not border on the incompetent.

Reagan's Justice Department has also disregarded judicial precedents on busing. While it dismisses this line of cases as radical and wrong, let us remember that the flagship opinion was written by Chief Justice Warren E. Burger, a Nixon appointee and, I might add, a conservative. Nevertheless, the Department will not support a busing order of a Federal Court. Although I have actively opposed, in the so-called Eagleton-Biden amendment, a federal agency going outside the judicial process and using its fund cut-off power—absent any judicial finding of a violation of the Constitution—to compel busing, I have consistently supported the Supreme Court's several crucial decisions establishing that Federal Courts may, on the basis of their detailed findings, order busing.

The Department has also opposed voluntary integration programs that contain a busing component as one of several remedies. My state of Missouri is a case in point. There, the Reagan Justice Department reversed its predecessor's position and opposed the desegregation plan agreed to by an unprecedented number of parties: black students and their parents, the St. Louis City Board of Education and twenty-three suburban school districts. This plan, later approved by the District Court and the Eighth Circuit Court of Appeals, included voluntary reassignment of black and white students. Justice told the Eighth Circuit last year that it would not endorse the settlement agreement. Apparently it objected to the agreement's inclusion of an enforcement mechanism if the stated objectives were not achieved. It makes one wonder whether the Department opposes all forms of effective school desegregation.

The Eighth Circuit itself questioned the Justice Department's opposition. Since the government had not appealed the trial court judgment, the court queried whether Justice could "be heard to attack the judgment, either to enlarge their own rights, or to lessen the rights of their adversary."

Even measured by its standards, the Administration's own voluntary desegregation programs can be faulted. Essentially, it has refused to provide either the carrot or the stick in ensuring the success of these voluntary efforts.

In the most recent of two elementary and secondary desegregation suits initiated by this Administration, the consent decree provided for the voluntary remedy of magnet schools, which involves featuring theme curricula to attract a racially mixed student body. The Justice Department has required only that the school officials exercise "good faith" in achieving a unitary school system. There is no enforcement mechanism: no yardstick for measuring progress, and no goal necessarily to be achieved. Thus, it does not appear that Justice is serious about making even this modest desegregation effort effective, which is what the Supreme Court has required.

The other vital component of successful voluntary desegregation efforts is money—the "carrot," creating incentive for school districts to implement their own desegregation plans. This Administration has consistently opposed federal funding of local desegregation efforts, even though the task of remedying constitutional violations creates a fairly compelling case for federal involvement. A federal program was begun back in 1972 to fund voluntary and mandatory desegregation efforts, and worked well. But the program became an immediate casualty of Reagan's budget-cutting in 1981. Therefore, Senator Moynihan (D-N.Y.) and I have introduced legislation in this Congress to establish a relatively inexpensive fund for school districts. Not surprisingly, the Administration opposes even this modest effort.

Most fundamental to our way of life is the right to choose our leaders. That is what makes us different from most other countries in the world. The Fifteenth Amendment, ratified in 1870, was supposed to ensure that this right was freely exercised by blacks. But nearly a century later, it was clear that this was not the case. In 1964, only about 7.5 percent of the southerners registered to vote were black, although blacks constituted 20 percent of the voting age population.

The Voting Rights Act of 1965 became the vehicle for putting the instruments of democracy into the hands of all. At the time, many felt that voting was the key, from which all other incidents of full participation in society would flow. Some nineteen years later, it is today unquestionably considered the brightest star in the constellation of civil rights statutes. I was astonished the Administration sought to gut the Act when it came before Congress for extension in 1982.

The Act contained a powerful array of weapons against the ingenious means that had been devised to deny access to the ballot box. It provided for blacks to be registered by federal officials if state officials refused to register them; ensured that those registered would not be prohibited from voting; and eliminated literacy and good character tests, and educational requirements as criteria for voter eligibility. Of utmost importance was a provision—often called the heart of the Act—requiring that states with a history of using their laws to discriminate against blacks must obtain clearance from the Justice Department for any changes in their election laws. In cases where Justice brought suit under the Act, violations could be proven by showing that the laws had discriminatory effects, regardless of their intent.

On the advice of Attorney General Smith, Reagan fought against the strongest features of the bill. The President proposed to restrict the scope of the pre-clearance section by allowing states to more easily "bail-out" of the procedure, and insisted that violations of the Act must be proven by showing their intent was discriminatory. The House bill, providing for extension of the Act, expressly included a less burdensome discriminatory results test. If Reagan's stringent intent standard had prevailed, many unfair voting law cases simply could not be brought because satisfying that level of proof would be next to impossible. To the bitter end, Reagan had Brad Reynolds pushing for intent. Reagan knew full well he was cutting very close to the nerve in insisting on these changes.

The President ultimately approved the Act's extension, but only after fighting it for more than a year. When he did sign the extension bill into law—*without* his debilitating amendments—he had the audacity to embrace the Act as if it were his own creation, calling it "the crown jewel of American liberties."

Public and congressional interest in securing the Act's extension was not for casual reasons. Just one measure of the Act's success is the fact that the percentage of black voters registered to vote in Mississippi increased from 6.7 percent in 1964 to 67.4 percent in 1976. In all, black registration in the southern states covered by the Act since 1965 has doubled and in some districts increased tenfold.

Some people argued that the Act was the victim of its own success—that it was no longer needed. Out of 35,000 changes in voting procedures submitted for pre-clearance since 1965, 815 were found objectionable, and over half (or roughly 66 percent) of them occurred since 1975. In Mississippi alone, there were as many pre-clearance violations entered by the Attorney General since 1965 as there were in the previous ten years. We need the Act.

The Justice Department not only denounced the Act's central features, but has refused effectively to enforce the Act. For the first time since the Act's original passage, Federal District Courts have struck down state election plans that have been approved by Justice.

One case involved North Carolina; another concerned Louisiana. In the latter case, that state obtained clearance from Justice for a congressional district realignment plan, despite substantial evidence that it was discriminatory. It took private plaintiffs to persuade a Federal Court that the plan should not have been approved. Thus it appears that, contrary to the intent of Congress, the Department had not required the state to demonstrate that its voting plan conformed to the Act.

In a very important case before a South Carolina District Court, Justice abandoned the litigation, even though its involvement would have made a vast difference. There, black voters alleged that a statute (providing for a discriminatory at-large election system) had failed to obtain necessary preclearance from Justice in 1971. The Department had prepared a brief, vouching for the plaintiffs. Just before the case was heard, Brad Reynolds pulled the brief which was poised for filing, because of Senator Strom Thurmond's last minute political intervention. The court ruled against the plaintiffs. The Department's brief well could have tipped the scale, because its view in voting rights cases is taken to be so determinative. Fortunately, when the case reached the Supreme Court this year, it was reversed. Even though Justice supported reversal, the matter could have been settled long ago—and the affected county could have had elections under fair procedures in 1982—if Justice originally had taken its responsibility seriously.

Reagan's Justice Department has also delayed compelling fair election law changes long enough to prompt private counsel to do the Department's work. Last year, line attorneys in the Division's voting rights section recommended to Reynolds that lawsuits be filed concerning ten election law changes in Mississippi. After substantial delay, Reynolds finally announced that suits would not be filed, on the ground that local counsel would handle them. The Voting Rights Act clearly places this responsibility on the Department, instead of

those least able to bear the cost of litigation.

Employment is another area of the Department's responsibility. Although much of the activity lies with the Equal Employment Opportunity Commission which has exclusive jurisdiction to sue private employers, the Department of Justice has tried to backslide in its more narrow responsibility of overseeing public sector employment. In at least two instances it has urged the Supreme Court to adopt positions which would de-fang important weapons used to fight job bias.

One case, decided by the Court in 1982, involved the standard of proof necessary to show that non-job-related tests were discriminatory. Justice filed a brief, arguing against its own policy since 1966, that a *prima facie* case of discrimination must be established by the more burdensome intent standard. The Court rejected the Department's argument: "A non-job-related test that has a disparate racial impact, and is used to 'limit' or 'classify' employees, is 'used to discriminate' . . . whether or not it was 'designed or intended' to have this effect. . . ."

In another case, decided by the Court in 1983, Justice filed a brief urging new rules in job bias cases in general, that would impose a substantially heavier burden on plaintiffs in establishing a *prima facie* case of discrimination. Writing for the Court, Justice Rehnquist criticized the lower court (which Justice sided with) for stacking the deck against the plaintiffs.

Reynolds likes to boast about the large number of job bias suits the Department has filed. But when the Department strips away the legal tools important in winning many of them, sheer volume of litigation begins to mean less.

Removal of discrimination in housing holds more promise for permanently integrating society than nearly anything else. But it is also one of the most difficult goals to achieve. The Fair Housing Act of 1968 elevated the goal to an urgent national priority. In spite of this sixteen-year-old commitment, unfair housing discrimination is still widespread. A study commissioned by the Department of Housing and Urban Development has found that, in a sample of 40 metropolitan areas nationwide, the odds of a black person encountering discrimination are 3 out of 4 in the rental market and 1 out of 2 in the sales market.

Since the Justice Department is the only federal agency empowered to bring housing enforcement actions, it is essential that its effort be a serious one. This is far from the case. To begin with, in 1983 Reynolds personally ordered separation of the housing and education sections of the Civil Rights Division, obviously preventing his legal staff from pursuing a more effective litigation strategy. It is indisputable that there is a strong correlation between housing discrimination and school segregation. Reynolds includes in his list of achievements one desegregation case in particular (Yonkers), because it involves both of these elements. But this suit was brought by the previous Administration, and Reynolds has made sure there won't be any like it during Reagan's term.

Another salient feature of this Department is that the housing section will not pursue cases of exclusionary zoning. In the past, these cases were some of the most effective in eliminating housing bias on a large scale.

Last year President Reagan pretended to get serious about fair housing, by boldly proposing stiff fines for landlords found violating the Fair Housing Act. What he omitted from his remarks was his opposition to bipartisan amendments in Congress which would have put teeth in the law by appointing administrative judges to swiftly and effectively handle housing discrimination complaints instead of forcing victims to endure months and even years of delay in crowded Federal Courts.

But the central controversy in the Department's record has concerned the evidentiary showing necessary for the government to prove housing discrimination. Federal Courts and the Congress have said that a violation may be proven by showing discriminatory effects, regardless of intent. As in other areas of civil rights enforcement, time has shown that increasingly sophisticated discriminatory techniques necessitate reliance on the effects test.

Predictably, Justice has abandoned the more aggressive standard, claiming there is no legal authority for it. The fact is, several of the Federal Courts of Appeal have upheld the test, in part as a result of the Department's own insistence during previous Administrations. Adopting this tougher standard has hobbled the most effective fair housing program. As one Department attorney said to Attorney General Smith in a confidential memo:

[I]n some instances that may mean we will not bring a suit we could otherwise bring; if we can bring the same suit, the magnified legal standard means delay while trial attorneys continue investigations in search of the sensitive and subtle factual patterns that usually constitute proof of intentional discrimination.

The Department's housing litigation activity reveals how little good work is being done. In past years, until 1981, some 20 to 32 cases per year were filed. After three and one-half years, this Department has filed less than ten cases, and these have tended to provide relief for fewer victims and have involved less significant legal issues than in previous Administrations. It is ironic that the Administration is not more aggressive in fair housing issues, for strenuous efforts there can most help reduce the long-term necessity for transportation remedies, which it abhors.

President Reagan frequently enlists support for his initiatives by beckoning Congress to consider American's founding principles, its traditional values, and its history.

I can think of no better sources than these with which to condemn Reagan's civil rights policies. There is no more ancient tradition, no more omnipresent theme running through American History, than man's unending search for freedom. It began with the Puritans—with men like John Winthrop who, in 1630, led his group of belivers to the new world in search of religious freedom. It continued at Lexington and Concord in 1775, when scraggly revoluntionary troops fired on the British to bring on independence, with Sam Adams proclaiming: "This is a glorious day for America!" Catholics, Jews, Irish, Italians and others, all played later roles in this drama unique to America. The quest for freedom and opportunity for black American has been a continuation of the dream of man, that he need to be a hostage to his past.

The Puritans had a definite mission in America, embodied in a sermon Winthrop wrote, from which the President is fond of quoting. It is a testament to Winthrop's hope that his people would live in harmony with the precepts of Christian charity, so that they would be a model—a "City on a Hill"—for all to emulate. His cardinal theme, may I remind the President, was that men were inherently equal and were bound together by a common fate. Winthrop wrote:

. . . manifest the work of the Spirit . . . so that the rich and mighty should not eat up the poor . . . That every man might have need of the other and from hence they might be all knit more nearly together in the bond of brotherly affection; from hence it appears plainly that no man is made more honorable than another or more wealthy, etc. * * * There are two rules whereby we are to walk towards one another: Justice and Mercy.

Like Winthrop, I think the unifying principle of this land is that we share a belief in the equal dignity of each person and that we are bound together by a common destiny. This has always been America's promise, and we must continue to make good on it. This calls for perpetual resolve to ensure that the blessings of liberty apply with equal force to everyone. We will not be content as a society until we are a single society. President Kennedy said as much in introducing the 1964 legislation: "this nation, for all its hopes and its boasts, will not be fully free until all its citizens are free * * * this is one country."

Enactment of our civil rights laws did not come easily. The 1964 Act, for instance, was so controversial that it crawled through Congress. The House had endless hearings; there was some worry it might not even get past the powerful Rules Committee. The conservative Senate, in the face of doubts, filibusters and provocations, debated it exhaustively for 83 days. Outside the halls of Congress, 250,000 Americans gathered at the Lincoln Memorial in the summer of 1963, to admonish Congress to "let freedom ring." In the hot August sun, Martin Luther King, Jr. spoke of a dream and moved not only the crowd but the nation. When final passage ultimately came, it was a tribute to so many, who had worked so hard.

The sorrow and the pity of it all, is that Mr. Reagan believes that the measures I've discussed—which were adopted by Congress, signed into law, given broad interpretation by the courts, and upheld by Presidents of both political parties—are merely optional. Such a posture has opened up a lot of wounds that had long since healed. Hopefully, the twenty-year anniversary of the 1964 Act will provide the occasion for us to remind President Reagan and his Justice Department that the civil rights protections which millions struggled for—that give expression to what we are as a country—must be taken seriously.

REMARKS BY UNITED STATES SENATOR THOMAS F. EAGLETON, PRESENTATION CEREMONY—HARRY S TRUMAN AWARD FOR PUBLIC SERVICE, HARRY S TRUMAN LIBRARY AND MUSEUM

(Friday, May 10—7:00 P.M.)

To study history, is to subject the lives of the great world players to microscopic inspection and analysis. But the price a great man pays for his place in history is also great. His official conduct and his far-reaching decisions are never left unstudied, even after he is departed. This is the case with Harry S Truman of Independence, the 33rd President of the United States.

Eleven distinguished individuals have received the Harry S Truman Public Service award in past years. I have attended nine of

those memorable ceremonies. I listened with pleasure as many speakers addressed President Truman's undeniable and remarkable leadership in foreign affairs and policymaking for international peace. One memorable speech—Mrs. Coretta Scott King's in 1983—dealt with Harry Truman's tremendous contribution toward guaranteeing civil rights for America's black people. Today, I too wish to pursue the theme of civil rights, because I deem it the field in which that Truman conscience and personality, that Truman courage and basic sense of fair play had the most telling, penetrating and lasting historical impact.

It is impossible to appreciate the Truman contribution to civil rights without recalling the political climate of his time. No president before or since faced a more fearsome array of challenges than befell Harry Truman in the closing days of World War II. His was a Presidency dogged by controversy, embattled on all sides, and forever shadowed by comparison with the fallen and deeply revered FDR.

As his political fortunes sank deeper and deeper in the polls, the very last thing Truman needed was to stir up a storm over civil rights with the risk of dividing his own party. A more calculating politician, but a lesser man, might have shrunk from the challenge.

Think back, too, to the social climate of 1945 when Harry Truman became President. The status of civil rights in this country was, to put it mildly, deplorable. Blacks were segregated in every facet of American life: education, housing, public facilities, employment, military service. You name the area and America was distinctly separate and distinctly unequal. We were the America of Jim Crow and malign neglect.

In St. Louis, as I grew up in the 1930s and 1940s, segregation was a totally accepted and accustomed way of life. Public swimming pools were segregated. Restrictive covenants were commonplace in deeds to property. In Sportsman's Park, one area was assigned to blacks—the right field pavilion—and blacks were not permitted elsewhere in the park. When Satchel Paige pitched in St. Louis, he pitched in the Negro League before a virtually all-black crowd. When Jackie Robinson played his first game for the Brooklyn Dodgers in St. Louis (May, 1947), blacks were still segregated to the right field pavilion. Enos Slaughter, perhaps the most popular player in St. Louis, threatened not to take the field for the Cardinals with Robinson in the opposing lineup.

Only a ringing statement by National League President Ford Frick prevented a players strike from happening. Even so, Robinson was mocked, ridiculed, spiked and spat upon whenever he played the St. Louis Cardinals in that season of anguish and advancement.

Why? Missouri is a border state with a legacy of tensions arising out of the Civil War and Reconstruction. Yet out of such an apparently unpromising heritage came the man who, more than any President since Abraham Lincoln, changed America from a land of racial isolation and rank discrimination to a country of equal access and equal opportunity. 1948 was not the first time Harry Truman risked his political future for what he believed was right.

Listen to a younger Harry Truman in 1940 speaking in Sedalia, Missouri (certainly no hotbed of liberalism then or now) at a time he was fighting for his political life in the famours Truman-Stark-Milligan Senatorial primary.

"I believe in the brotherhood of man, not merely the brotherhood of white men but the brotherhood of men before law.

"I believe in the Constitution and the Declaration of Independence. In giving Negroes the rights which are theirs, we are only acting in accord with our own ideals of a true democracy.

"If any class or race can be permanently set apart from, or pushed down below the rest in political and civil rights, so may any other class or race when it shall incur the displeasure of its more powerful associates, and we may say farewell to the principles on which we count our safety.

"In the years past, lynching and mob violence, lack of schools, and countless other unfair conditions hastened the progress of the Negro from the country to the city. In these centers the Negroes never had much chance in regard to work or anything else. By and large they went to work mainly as unskilled laborers and domestic servants.

"They have been forced to live in segregated slums, neglected by the authorities. Negroes have been preyed upon by all types of exploiters from the installment salesmen of clothing, pianos, and furniture to the vendors of vice.

"The majority of our Negro people find cold comfort in shanties and tenements. Surely, as freemen, they are entitled to something better than this. . . . It is our duty to see that Negroes in our locality have increased opportunity to exercise their privilege as freemen. . . ."

What moved a man with basically a small-town orientation to hold such views? The answer is Truman's profound sense of fairness. As I read the Truman record, he had one fundamental test he applied to public decision-making: Is it fair? I think that is the test he applied to civil rights. Harry Truman was no flaming crusader. He was first, last, and always a just man who knew in his heart and mind that blacks in America were not treated fairly.

On January 15, 1947, he launched the historic President's Commission on Civil Rights with these words:

"This country could very easily be faced with a situation similar to the one with which it was faced in 1922. That date was impressed on my mind because in 1922 I was running for my first elective office—county judge of Jackson County—and there was an organization in that county that met on hills and burned crosses and worked behind sheets. There is a tendency in this country for that situation to develop again unless we do something tangible to prevent it."

Later, on June 29, 1947, he said this to a meeting of the NAACP at the Lincoln Memorial.

"We cannot be content with a civil liberties program which emphasizes only the need of protection against the possibility of tyranny by the government.

"We must keep moving forward with new concepts of civil rights. . . . The extension of civil rights today means not protection of the people against the government, but protection of the people by the government.

"We must make the Federal government a friendly, vigilant defender of the rights and equalities of all Americans. And again I mean all Americans."

And when the Commission came in with its historic report—a landmark civil rights document entitled "To Secure These Rights"—President Truman gave the report his blessing knowing full well it might further split an already splintered Democratic Party.

Henry Wallace had already indicated he was going to run for President and split off the Democratic Far Left. Now, by espousing a civil rights cause, Truman knew that he was putting his candidacy in grave peril in the Deep South. Yet he did it because it was the fair thing to do, the right thing to do.

Truman later described it this way:

"When 1948 was coming along, they said that if I didn't let up with my asking for a Fair Employment Practice Commission and asking for a permanent commission on civil rights and things of that kind, why, some of the Southerners would walk out.

"I said if that happened, it would be a pity, but I had no intention of running on a watered-down platform that said one thing and meant another. And the platform I did run on and was elected on went straight down the line on civil rights."

"People said I ought to pussyfoot around, that I shouldn't say anything that would lose the Wallace vote and nothing that would lose the Southern vote.

"But I didn't pay any attention to that. I said what I thought had to be said. You can't divide the country up into sections and have one rule for one section and one rule for another, and you can't encourage people's prejudices. You have to appeal to people's best instincts, not their worst ones. You may win an election or so by doing the other, but it does a lot of harm to the country."

Every Democratic President following President Truman and three Republican successors (Eisenhower, Nixon and Ford) have followed the civil rights precepts of Harry Truman. His beliefs, his fundamental sense of fair play, have become the inviolable bipartisan conscience of America.

This, to me, is the greatest of the innumerable Truman legacies to America. Today, when the commitment to fairness and to equal rights and opportunities for all America is again being tested, Truman's example stands as an inspiration to us all. Let us never forget his unshakeable, unswerving call to action—"To Secure These Rights!"

EAGLETON ON THE SENATE AS AN INSTITUTION

Every Senator—whether in the body for eighteen months or eighteen years—develops an abiding love of the Senate as an institution. It becomes a part of each member.

Thus, when the Senate as an institution is tarnished, it touches every member in a personal way, as he explains in his 1982 speech on Harrison Williams.

His love for the Senate has compelled him on occasion to point out its faults. In 1986, he spoke of the influence of money in Senate campaigns that has reached such an odious level it threatens the very institution itself. In 1985, he spoke of his concern that Senate procedures and practices have been abused to the point of impairing the efficiency of the institution.

Speeches:

Remarks on Harrison Williams, United States Senate, March 11, 1982;

"A Call For Changes in Senate Procedure," United States Senate, November 23, 1985;

Remarks on Campaign Financing, United States Senate, December 3, 1985.

FLOOR STATEMENT OF SENATOR THOMAS F. EAGLETON

Mr. EAGLETON. Mr. President, we are coming to the close of a chapter of the most distasteful aspect of service in the United States Senate: sitting in judgment of a

fellow Senator. Of the six of us who serve on the Ethics Committee, I have known Senator Williams the longest and the best. For 13 years, I have served with him in this body and for all of those years we served together on the Labor and Human Resources Committee. For 10 of those years, he was the Chairman and leader of that Committee.

Moreover, I am the "showcase" liberal on the Ethics Committee. Senator Williams' governmental philosophy and mine are similar. I have worked with Senator Williams and followed his lead in a wide array of social legislation designed to help the aged, the handicapped, the poor, the sick, the infirm, the working man, the student, and all the rest. Against the strong current political tide, Senator Williams and I share the belief that government, despite its frequent inefficiency and occasional heavy-handedness, has a legitimate and honorable role to play in trying to make life a bit better for those who are not affluent, and an indispensible role in helping to create and maintain the conditions essential to a decent society. And very few Senators who have ever served in this body can claim anything near the legislative accomplishments of Senator Williams. His efforts have improved the lives of literally millions of Americans.

Thus, as all 99 of us sit in this chamber with heavy hearts, mine is possibly a shade heavier than some by reason of my committee association with Senator Williams, my philosophical affinity with Senator Williams, and my service on the Ethics Committee where I, along with the other five members thereof, had an in-depth opportunity to evaluate the Williams case. I ask for no tears or sympathy by reason of all of this. I merely state it for the record and reserve tears for all of us in this body who must participate in this final act of a great human tragedy.

I will not re-plow old ground by offering yet another recitation of the facts in this case. By now, they are well known to every member of the Senate. I would simply like to comment briefly on what I think are the major questions facing the Senate, and in the process, give my characterization of the evidence as I have seen it, as I heard it, as I evaluate it.

The Ethics Committee unanimously recommended that Senator Williams be expelled for "ethically repugnant" behavior. Those Senators who have ably argued the case for a lesser sanction have, in essence, offered two arguments:

First: They say that Senator Williams committed no criminal wrongdoing and demonstrated no corrupt or venal motive. He was helping some friends obtain financing for a legitimate business enterprise, in which he had no financial interest. He never promised to obtain government contracts for the enterprise. He admits to being guilty of misjudgment; of boasting unwisely about his influence; of leading the would-be sheik to believe that he would use that influence; of being, in his words, "soft when he should have been hard," but nothing more. This was not John Jenerette or Richard Kelly, or any of the other Abscam defendants carting away money by the suitcase.

Second: They say that whatever Senator Williams did, he was the victim of manipulation, entrapment and pressure of the FBI and its hired con man, Mel Weinberg. Senator Williams' defenders argue that the government went to extraordinary lengths to nail him; that they refused to accept the fact that he had no criminal intentions; that whatever Senator Williams did must be taken in the context of outrageous government pressure and misconduct.

I see this tragic case quite differently.

In my view, Senator Williams was a knowing participant in this sleazy enterprise. He was not dragooned or bludgeoned into it. He aggressively pursued the scheme with his fellow conspirators at meetings on a yacht anchored at Del Ray Beach, Florida; at the Pierre Hotel in New York City; at the Marriott Hotel in Arlington, Virginia, at the Kennedy Airport in New York; at the Plaza Hotel in New York City; and in his Senate office. He was actively engaged in the enterprise. He devoted considerable time to it. He was going to participate in the rewards which promised to be far greater than the $50,000 which enticed the other Abscam defendants. However, he cooperated in steps to keep his share of the operation secret, leaving no discernible traces.

It is now alleged that Senator Williams' behavior was in the nature of overzealous constituent service. Churchillesque, some constituents! Some service!

On the subject of friends: I will say that my assessment of Senator Williams' behavior is certainly influenced by the friends whom he was "helping." The performance of Camden Mayor Angelo Errichetti is sickening to any person who believes that politics is an honorable profession. Alexander Feinberg, Senator Williams' long-time friend and sometime legal advisor, orchestrated Senator Williams' participation in the scam. He helped get Williams into the plot; he was always looking out for Senator Williams' financial interests; and he was coordinating the effort to cover up any ethical or legal traces to Senator Williams, once the scam had succeeded. Those defending Senator Williams have focused—understandably—on the role played by Mel Weinberg in pulling off this scam at Senator Williams' expense. To me, however, Alexander Feinberg, not Mel Weinberg, is the key player insofar as Senator Williams' guilt is concerned. Senator Williams did not choose Mel Weinberg to be his mouthpiece, but he did pick Alexander Feinberg, his long-time friend and sometime lawyer, to represent his interests and do his bidding. Speaking about Alexander Feinberg, Professor Blakey, Senator Williams' only live witness (other than himself) before the Ethics Committee, stated: "I am outraged by his conduct," and the tragic fall of Pete Williams is closely related to the despicable behavior of Alexander Feinberg.

Painful as this whole process is, I cannot and I do not agree with those who subscribe to the charitable interpretation of Senator Williams' conduct and motives.

This brings me to the role of Mel Weinberg, the government's behavior in this case, and how it bears on Senator Williams.

Mel Weinberg is a demonstrated crook and a liar—truly a reprehensive person. But, as a former prosecutor and State Attorney General, I realize that in certain areas of criminal law enforcement, you must sometimes deal with reprehensive people in order to make a case. In the sale of narcotics cases, you use the testimony of addicts. In organized prostitution cases, you use the testimony of whores. In buying and receiving stolen goods cases, you use the testimony of thieves. In bribery cases, you use the testimony of those who offer bribes. In conspiracy cases, you use the testimony of greasy-thumbed co-conspirators. A free society faces enormous difficulties in trying to investigate and prosecute political corruption and many other forms of criminal conduct. We deal with this challenge, in part, by making use of informants, criminals who "turn," people like Weinberg. I wish that it were not necessary, but no one has shown me a good alternative.

We should not be naive about the need for undercover operations. But we should not be naive about the dangers posed by such operations. I agree with Senators Inouye, Cranston and others to this extent: Weinberg was not the ordinary undercover agent anymore than Abscam was the ordinary undercover operation. I am disturbed by the length to which the government went to make its case against Senator Williams, and the evidence that the FBI failed to supervise Weinberg in accordance with its guidelines governing undercover operations.

The United States Court of Appeals for the Second Circuit and the Supreme Court must decide whether the government crossed the line and violated Senator Williams' constitutional rights. The Congress, particularly its Judiciary Committees, should address the numerous policy questions arising out of Abscam, particularly the overriding question: Does the value of such an operation safely outweigh the danger of resorting to such tactics? These are vital questions, but they are questions for another day. The question facing us today is the Senate's responsibility to judge Senator Williams' conduct.

Some of Senator Williams' supporters have charged that the government is out to get him; that the Ethics Committee is carrying on where the Justice Department left off. Senator Williams, himself, has talked of the solitary fight, against all odds, which he is waging.

It is perhaps worth noting again for the record: Senator Williams has been extraordinarily well represented by a series of outstanding attorneys, who have presented his arguments at every stage of the proceedings involving him.

At the criminal trial itself, he was vigorously represented by an outstanding trial lawyer, George Koelzer, and his rights were fully protected.

At the motion for new trial, or the so-called "Due Process" hearing, he was represented by my Harvard Law School Dean and later, Solicitor General of the United States, Erwin Griswold.

At the Ethics Committee hearing, I can personally attest to the superb quality of representation Senator Williams received from Kenneth Feinberg.

And finally, at this very moment, he is receiving absolutely first-rate representation from the most popular and respected member of this body, Senator Daniel Inouye.

The point I am making is that Senator Williams has at all times had the skilled representation to raise any issue, any question, any doubt about his guilt.

He has not been and is not now defenseless and alone. Any sense of defenselessness comes from the overwhelming thrust of the sordid video tapes. It is the video tapes that constitute the "smoking gun" of this case—indeed, the video tapes in the aggregate, constitute a "smoking maching gun." Senator Williams' dilemma comes from his own gross misconduct, not from the poison of nefarious outside sources. He stands convicted of his own misdeeds.

If non-treasonous behavior be the sole benchmark of fitness to serve in this body, then one must ask how fit is this body in which we serve?

On the motion that "this could happen to any one of us," I ask 98 of my colleagues, would any of you have engaged in this tawdry, greedy enterprise? If your silent answer of inner conscience is in the affirmative, then do your soul a favor by serving out your term and passively fade into deserved oblivion.

Senator Williams has not had the good grace and good judgment to withdraw from this body. We should not perpetrate our own disgrace by asking him to stay.

The Cranston substitute is just such an invitation and I will vote against it.

[From the CONGRESSIONAL RECORD, Nov. 23, 1985]

A CALL FOR CHANGES IN SENATE PROCEDURE

Mr. EAGLETON. Mr. President, this morning near 3 a.m., Senator SIMPSON made some remarks about the process of delay in which we found ourselves with respect to the farm bill and, in particular, pointed the finger of blame in the direction of Senator MELCHER as being the instant villain.

I would briefly like to comment on the Simpson remarks. First, as to the process of delay. The Senate is now in the state of incipient anarchy. The filibuster, once used, by and large, as an occasional exercise in civil rights matters, has now become a routine frolic in almost all matters. Whereas our rules were devised to guarantee full and free debate, they now guarantee unbridled chaos.

Mr. President, I ask each Member of the Senate to obtain and read a copy of, a very interesting document published by the Senate Rules Committee on August 28, 1985. I have it here with me. In that document you will find some enormously useful information above the explosive and uncontrolled growth of the filibuster.

For instance, from page 37 to 72, it lists "Outstanding Senate Filibusters From 1841 to 1984."

I came to the Senate in 1969. Guess how many outstanding Senate filibusters there were before I came here? A total of 62.

Guess how many since I've been here, since 1969? A total of 80.

We've had many more filibusters in the 17 years I have served in the Senate than in the 120 years before I got here.

Guess one of the reasons I am voluntarily leaving the Senate?

Guess why some other Senators have previously left voluntarily? Guess who will be the next to depart voluntarily? Maybe you.

Now let's move on to Senator MELCHER in the role of today's "villain."

Once again, I refer to the aforementioned document rules. Where it mentions the so-called outstanding Senate filibusters, the document, most times, but not always, names the chief filibusters.

Here's the box score since I came to the Senate in 1969 and the number of their "outstanding" participants:

John Cooper	1
Phil Hart	1
Albert Gore	1
Birch Bayh	3
Sam Ervin	4
Bill Proxmire	2
Mike Gravel	2
Alan Cranston	1
Jim Allen	10
Henry Jackson	1
Hugh Scott	1
Gordon Allott	1
Russell Long	1
Bennett Johnston	1
Roman Hruska	1
Jesse Helms	4
Howard Baker	1
James Abourezk	2
Howard Metzenbaum	3
Richard Lugar	1
Orrin Hatch	1
John Melcher	1
Robert Morgan	1
Gordon Humphrey	1
Edward Zorinsky	1
Lawton Chiles	1
Wendell Ford	1

Note.—This list is only so-called Outstanding filibusters and the names of the filibusters were not always mentioned in the Rules Committee document.

Therefore, Mr. President, if my good friend JOHN MELCHER be today's villain, he has had one hell of a lot of earlier company during my service in the Senate.

Note the name Jim Allen and the number—10 times. Jim and I came here the same year. He was very courtly and exceedingly clever. He saw that our Senate rules could be exploited to bring this great deliberative body to a gridlock halt. Others have learned the Allen technique and are prepared to practice the art of gridlock at the drop of a speech or the drop of an amendment. The birds do it, the bees do, all Senators in a breeze do it. [Laughter.]

Mr. President, we, the great deliberators, are deliberating ourselves into national ridicule and embarrassment.

If I can borrow from Shakespeare a bit: "The fault, dear Brutus, is not in our stars, but in ourselves"—and our rules!

As I depart this body for a more sensible life, I urge that the next majority leader in 1987 make as a top priority item the restructuring of our rules, not to stifle legitimate speech, but to avert incipient legislative anarchy and to avoid the continued degradation of the U.S. Senate as an institution of competence, capacity, and trust. [Applause.]

STATEMENT OF SENATOR THOMAS F. EAGLETON ON THE FLOOR OF THE U.S. SENATE, IN RE: THE BOREN AMENDMENT ON CAMPAIGN FINANCING, DECEMBER 3, 1985

Mr. President, I support the Boren amendment not because it will do all that much—it won't—but because it will be a symbol that our present rancid campaign funding system needs drastic change.

The Boren amendment operates at the edges of the problem, cutting back a tiny bit on PAC contributions, etc. I guess such a measure is all that we can swallow at this time.

But the time will come, Mr. President, when we must—in the name of decency and democracy—swallow a great deal more.

Every Senator knows the perniciousness of today's money-dominated electoral system. We all know that raising money has become the paramount objective in the planning and execution of a Senate campaign. Indeed, it has become a benchmark of success or failure.

Money has always been a factor in Congressional politics. By luck and tradition, however, it remained, until a decade ago, at manageable levels. By "manageable levels" I mean within the range of decency; within the ability of a candidate, challenger or incumbent, to raise adequate funds without becoming a political beggar or compromising his independent judgment.

Throughout the last decade, the money factor has exploded exponentially. Most of us have our "tin cups" for alms-begging; our call lists to fat cats; our endless procession of fundraising receptions; our direct mail pleas; etc., etc.

The money race never ends. Senators start the process in the early years of their six-year terms by "building a war chest" for their reelection. House members start on the Wednesday after the Tuesday elections to amass the funds for the next go-around.

Money-raising has its own lexicon of buzzwords and catchphrases: "Can you do anything for me in St. Louis?" "Do you know anybody in the such-and-such industry?" "Do you have any friends at this PAC or that PAC?"

PACs aren't the sole villain in this problem, but simply a notorious symptom. They represent, in structured form, the gathering of funds to impact massively on a Senator's campaign and to impact inescapably on his judgment. They personify the inherent evil of today's perpetual fundraising blitz. Their increasingly dominant role in fundraising is a manifestation of the incredible, scandalous cost of campaigns—the greatest threat facing American democracy.

Lyndon Johnson first made a political name for himself as a fundraiser deftly spreading some money here and there for the Brown & Root construction folks. Today's money-raising is like a bombing raid on Dresden.

Old Clint Murchison of Texas once put it this way: "Money is like manure. If you spread it around, it does a lot of good. But if you pile it up in one place, it stinks like hell." (*Time*, June 16, 1961.)

Mr. President, passage of the Boren amendment won't even begin to eliminate the stink. It will merely acknowledge that we are aware of its presence.

EAGLETON ON THE VALUE OF HUMAN LIFE

No quality more marks the public career of Tom Eagleton than his abiding reverence for life. Whether the issue was abortion, or the death penalty, the slaughter in Vietnam or the senseless brutality of terrorism, Tom Eagleton's voice would ring out in passionate defense of human life. Eagleton attributes his strong beliefs to his Irish-Catholic upbringing. But not even his deep love of the Irish, so movingly expressed in his speech to the Ancient Order of Hibernians, could still his outrage at the brutalities of the terrorist Irish Republican Army.

SPEECHES

Speech to the Missouri Citizens for Life, Old Courthouse, St. Louis, Missouri, October 21, 1973.

Address to the Ancient Order of Hibernians, St. Louis, Missouri, November 1, 1975.

Remarks to the Senate Foreign Relations Committee, United States Senate, June 12, 1986.

MISSOURI CITIZENS FOR LIFE RALLY, OLD COURTHOUSE, ST. LOUIS, MO., OCTOBER 21, 1973

I join you here at the steps of the St. Louis Old Courthouse, one of America's most famous citadels of law, to share your moral dilemma over a legal decision which ignores the most fundamental right of mankind—the right to life.

It was here that Dred Scott, a slave, sought to fulfill his right to life and liberty. In this courthouse two Dred Scott trials were held. In 1847, Scott lost his plea; in 1850 he won only to have his quest ultimately rejected by the Supreme Court of the United States in 1857. In the wake of that decision, a cruel, bloody war was fought dividing state aginst state, brother against brother, friend against friend.

It is fitting, then, that today we assemble here in the interest of life. We seek to undo by lawful means an improvident decision of the Supreme Court which does not give proper recognition of and protection to the intrinsic dignity of human life.

In the process, we must remember that courts do not decide cases in a moral vacuum. Judges are an integral part of the society in which they live and their values tend to mirror the values of that society.

When Justice Taney delivered the majority opinion in the Dred Scott case in 1857, he spoke against the backdrop of a society which had tolerated—indeed, encouraged—slavery for more than two centuries.

So too, Justice Blackmun's majority opinion in the abortion cases in 1973 is the product of a contemporary society that has grown calloused in its attitudes toward life and death—a society that in so many ways has sacrificed humanity for convenience—a society that runs so fast that it no longer tolerates those who cannot keep pace.

In the majority opinion for the court, Justice Blackmun wrote that the state did not have a compelling right to intervene on behalf of the unborn child until it reached "viability," the point at which it could sustain "meaningful life" outside the mother's womb—at about the beginning of the seventh month of pregnancy. Then, in a sweeping order, the court struck down various anti-abortion laws adopted by the states.

Perhaps the most disturbing aspect of the Blackmun opinion was the historical premise on which he based his case. In a scholarly analysis of historic attitudes on abortion, Justice Blackmun observed that strict anti-abortion laws generally did not appear in the Western world until the 19th Century. He then concluded that the weight of history was on the side of allowing abortion.

To my mind, Justice Blackmun's argument in fact leads to the exact opposite conclusion—that the appearance in the 19th Century of laws preventing abortion was a clear indication that as Western civilization progressed, respect for the dignity of life in all forms increased.

The majority opinion blandly sidestepped the key question—the humanity of the unborn. Since they found no clear medical, theological or philosophical consensus on the subject, the majority concluded that the judiciary was in no position to "resolve the difficult question of when life begins." And therefore, Justice Blackmun wrote, the Court saw no need to resolve the question.

Ten months after the Supreme Court decision, I still find it difficult to believe that our nation's highest court can find that it is unnecessary to consider the humanity of the unborn. Their humanity is the entire question. Where there is a question concerning human life, I believe that society must come down on the side of life. I fear the implications for a society whose highest tribunal, on a question of human life, comes down on the side of death.

But as we stand in defense of the unborn, we cannot allow ourselves to ignore the dehumanization of American Society in other areas. We must realistically face the discomforting truth that, as a society, we have lost our respect for life in a variety of ways.

We too easily accept the relegation of the poor, the handicapped and the elderly to the junkyard of society. We too easily countenanced indiscriminate killing in Southeast Asia in pursuit of a misbegotten policy. And we too easily accept the inconsistency implicit in asking our government to protect the life of the fetus while also urging it to use death as a means of punishment.

I possess a reverence for the United States Constitution—one of the most remarkable and enduring products of the genius of man. It is not to be treated lightly. It is not to be tampered with in whim, caprice, anger or emotion.

But as to life, the Constitution must speak with clarity. The Supreme Court has left us with no alternative but to seek, by established means, a Constitutional amendment to protect and enrich the sanctity of life.

SPEECH BY SENATOR THOMAS F. EAGLETON, (D-MO.) NOVEMBER 1, 1975

As we approach our Bicentennial year and recollect the people and principles which have enriched our nation, we should not overlook those remarkable men and women from diverse nations who chanced the unknowns of America to make a new life. To be sure, the Irish were a vital part of this evolution.

Although most history texts date the beginnings of immigration from the time of the disastrous famine of the eighteen forties, Irishmen in some numbers entered the New World from the very beginnings of English settlement in North America. In fact, one of the first descriptions of the Jamestown colony to find its way back to Europe was written in 1609 in Gaelic by Francis Maguire, an Irish settler.

For two centuries prior to the great migrations, a steady trickle found its way to America, especially after 1690, when the heavy-handed brutality of King William of Orange crushed the last flicker of resistance in Ireland itself. These first Irish immigrants came with the memory of massacres fresh in their minds. They came imbued with both a burning passion for freedom, and an equal passion against the British overlords who had ravaged the green hills of their homeland. Both Catholics and Protestants came here, because the oppression they fled spared neither group.

These sons of the Emerald Isle played a conspicuous role in America's struggle for independence. They were the most implacable foes of British oppression in the colonies; they called for complete independence earlier than almost any others; and they provided one of the largest and most enthusiastic groups in the Continental Army, to the extent that they comprised nearly one-third of its strength.

But despite the sacrifices and patriotism of the first Irish settlers, America proved intolerant and suspicious when the trickle of immigrants grew into a vast flood following the total failure of Ireland's potato crop in 1846 and 1847. For two years running almost no edible food was produced for a population of nearly eight million, and the British government maintained its high protective tariff on imported grain while millions starved.

The number of departures from the unhappy island grew to a figure of two hundred thousand each year. Imagine if you will a proportional migration from the United States: it would be on the order of six million persons in a single year.

The Irish Catholic emigrant found a suspicious, resentful America awaiting him at the end of his long sea-voyage. Native born citizens were suspicious of his religion, suspicious of his every difference from them. The first generations of Irish-Americans had to cope with this attitude, and in time they overcame it through methods which have been followed by every one of the numerous groups of "new Americans" who have followed them since. They gained their place in America in part through hard work, building railroads, digging canals, laboring for long hours in the dim factories of the industrial cities of the East. They gained their place through education, emphasizing its importance above almost everything else, and where public education failed them or was non-existent, they founded their own schools, colleges, and universities to ensure the coming generations the advantages of education. They learned early to utilize the American political system to gain for themselves a voice in cities and towns, in the States, and throughout the nation. They learned quickly and so well that to this day Americans of Irish descent are probably the most politically active of any identifiable ethnic group in the United States.

They bought their right to a share of this country with their blood. Irish Americans have fought with courage and distinction in defense of their country in every time of crisis faced by this nation.

Of the many contributions made by the Irish to America, the most fundamental ones are perhaps those that are most difficult to measure. The vitality, imagination, and sense of humor of the Irish in our midst have left a vivid imprint on the developing American culture. Irish wit is proverbial, and American speech has absorbed some of the Irishman's spontaneity and extravagance of expression, as H.L. Mencken has shown in his study of the American language.

The Irish, who contributed such great satirists as Jonathan Swift, Oscar Wilde, and George Bernard Shaw to English literature, have given of their genius to American arts and letters. Of the many important American writers of Irish descent a few twentieth-century examples are the novelists James T. Farrell, F. Scott Fitzgerald and John O'Hara, and the playwright Eugene O'Neill. The American theater has always drawn heavily on Irish talent. Among those writing for the stage was Victor Herbert, master of musical comedy. Many of our most distinguished actors and actresses have been of Irish descent, for example: John Drew, the Barrymores (real name Blythe), George M. Cohan, Maureen O'Hara, Margaret Sullavan, Bing Crosby, Spencer Tracy, Barry Fitzgerald, and Thomas Mitchell.

From Ireland itself in recent decades have come such powerful stimuli to the artistic and intellectual life of America as the Abbey Theatre of Dublin, presenting the plays of Yeats, Synge, and Sean O'Casey; the modern Irish literary revival; and the works of James Joyce, a writer whose influence on creative expression has been worldwide.

In art the Irish are represented by Augustus Saint Gaudens, the sculptor, who was born in Ireland of an Irish mother and French father, and Georgia O'Keefe, the painter. Louis Sullivan was a pioneer architect of the skyscraper.

The Dictionary of American Biography lists hundreds of prominent Americans who were born in Ireland and thousands of Irish descent. William Barton Rogers, son of an Irish exile, one of four famous scientist brothers, was the chief proponent for the founding of the Massachusetts Institute of Technology, and became its first president. Hunter College was named after Thomas Hunter, born in North Ireland. Of the many distinguished Irish doctors was Dr. John Murphy the first to remove an appendix.

Irish engineers and inventors have likewise helped speed our economic advance. Christopher Colles, and expert on pneumatics and hydraulics at the time of the War for Independence, was the first to advocate the building of a system of canals between the Hudson and Great Lakes. John P. Holland perfected the first practical submarine, hoping it might be used against the British Navy.

The first chain grocery was originated by James Butler, the rubber heel by Humphrey O'Sullivan, and Michael Cudahy introduced the summer curing of meet under refrigeration.

In politics, the Irish capacity to lead and inspire has left perhaps its most indellible mark. From President to precinct Irish-Americans have been preeminent in their ability to put the guarantees of freedom into day-to-day practice.

In short, no facet of American life has been untouched of an Irish influence. The culture and heritage of a small nation across the seas has had an influence far transcending its size and numbers.

As I began these remarks I made reference to our forthcoming Bicentennial—our 200 years of freedom—the freedom to speak, to think, to worship as one pleases.

In celebrating and appreciating our heritage, we do so in the certain recognition that others around the world are not so fortunate as we. Better than three fourths of the world lives under dictatorship of either the right or the left. 600 million people of India may be slipping into the shadow of unilateral rule. The Mideast continues to hover on the verge of self-destruction. Lebanon is plunging into civil war. Northern Ireland is torn asunder in bitter and bloody civil strife.

With emotions, suspicions and hatreds nurtured over the course of centuries, no one can accurately foretell the course of future events in Northern Ireland. Within the Irish American community, indeed within this very organization, there are divisions of opinion as to the proper course to be pursued.

There is, however, one thing we can do in unison: As we pray to God and give thanks for America's 200 years of freedom, we can also pray that the oppressed minority in Northern Ireland be not denied their natural and rightful prerogatives as human beings and creatures of God.

The incomparable Robert Emmet said this: "Let no man write my epitaph; for, as no man who knows my motives dares now vindicate them, let no prejudice or ignorance asperse them. Let them and me rest in obscurity and peace, and my tomb remain uninscribed, and my memory in oblivion, until other times and other men can do justice to my character. When my country takes her place among the nations of the earth, then, and not till then, let my epitaph be written. I have done."

The epitaph of Robert Emmet is yet unwritten, for freedom and the full dignity of man is yet unrecognized in Northern Ireland. With God's will this inhumane wrong will be set right.

REMARKS OF SENATOR THOMAS F. EAGLETON

Senator EAGLETON. There is a district difference between a rebellion in a colonial context and an uprising or rebellion, whatever word you prefer, within the sovereign soil of a democracy. It is settled that the northern six are part of Great Britain. Collins signed the agreement, then he was murdered. Garrett Fitzgerald said in the Anglo-Irish Agreement that the northern six are the sovereign soil of Great Britain and will remain so until the people of the northern six vote or decide otherwise.

Let there be a referendum, let there be a vote. So to try to make "Mad Dog" McGlinchey George Washington is a disgrace, a disgraceful use of the English language. To try to compare parcel bombers that blow off hands, bombers who throw their instruments into night clubs and restaurants, who blow up an old man on a ship, who blow up some young men with him to George Washington, John Adams, Alexander Hamilton, Thomas Jefferson, and the Declaration of Independence, there is not a person here who will believe it. I think it is a disgrace.

Now, this treaty, by the way, Senator Helms, can be terminated. It can be terminated on notice of either party. Six months elapses, then the treaty is terminated. So if you do not like Kinnoch, if and when he comes in as Prime Minister and you think he is another mad red, and you have got a President and Secretary of State—hopefully not—that agree with you, they can terminate it when that made red comes in.

So we ought to be serious about what we are doing.

Now, the world is different. It is a much different world today in 1986 than it was even in 1976 or 1876. We are in an era of terrorism. Like it or not, that is the nature of the world in which we live.

And unfortunately, the world abound in terrorists. A lot of them are located in an area we call the Middle East, and a lot of them do desperate and horrible things to Americans and other people around the world, in airports and in night clubs and wherever they can throw their bombs or do their dirty deeds.

A lot of terrorists wear a hood like an Arab; some terrorists have rosy cheeks and speak with a brogue. And we are to try to differentiate between the good terrorists and the bad terrorists. Let there be no doubt that there is a connection between the IRA and the Libyans. The Libyans are our most hated enemy. Recent events prove that.

And to the acclaim of practically every, if not all members of the United States Senate, we supported the President of the United States when he took a retributional act against the horrid Libyans. And we supported him. Europe did not like it. But almost to a person, in the United States Senate we supported the President when he took action against those terrorists.

We knew what was terrorism then, did we not? Did we have any doubt that throwing a bomb in a discotheque or whatever it was that had the fingerprints of Moammar Ghadafy on it was a heinous, sinister act, so repulsive, so repulsive that it is not to be sanctified by the decency of international law. We acted and we reacted.

The President says that if similar events take place with similar fingerprints from similar governments, we will act again. And Senator Helms will probably be among the first to encourage him to do so an to applaud, saying: Amen, Ron, more.

But we are to take a different view. We are to take a different view when the terrorism takes place in Belfast and in Derry, and we are to say: All right, those folks, when they escape, can come over and live here, parcel bombers and ilk of that type, and say that they are to be welcomed into the United States, made even a grand marshal, perhaps, of a St. Patrick's Day parade, and given sanctuary.

So what this treaty attempts to do—and it is concocted by moral man; therefore, it is per se falliable—is to try to lay out what kinds of crimes when they take place are inherently heinous, sufficiently odious as to say, you cannot use a political defense for that crime, you cannot say, I am just a little old neighborhood politician out here throwing bombs, murdering people when I am just campaigning through my neighborhood—political defense.

What connection does bomb-throwing have with politics? There is not anybody in this room that has ever contemplated throwing a bomb as part of his or her political campaign, or so I hope, I hope. Maybe it is time for confession. [Laughter.]

And if anybody has, let us come forth and maybe we can adjust this political defense. Maybe it is a new kind of politics.

Now, maybe we have not done this perfectly. We have met and met and met, and maybe we have not done it perfectly. We have taken language from other statutes, from the European convention. We have added, we have subtracted, we have altered, we have modified.

We have tried to come up with something that some people can agree to. Maybe we failed.

So, page 1, the crimes: murder. Who wants to stand up and say murder is just a good old political act? Now, I will not go through the whole list. Everybody has got it here in front of them.

Kidnapping, is that a useful act, an expression of politics and political ideas? Kidnapping, bombing, grenades. We even specify parcel bombs.

Incendiary devices. That one I want to say a little word about, because I have spent more days in Northern Ireland than any other member of the United States Senate, and I have talked to the full spectrum, the crazos on the left, the crazos on the right, and every spectrum in between. I have talked to them all, I have heard them all.

I came out of it emotionally drained, more emotionally drained than I have ever been in my life. I spent a week there. I had two guards follow me around wherever I went from the RUC. One of them is dead now. He was killed about a year and a half after I was there.

And within a few weeks of after I left, the fire bombing took place in which 12 people were killed in a restaurant. Because of a fire bomb, 12 people were killed. Is that not terrorism? Is that not terrorism?

In this modern age, can you not say that maybe the political defense used to apply to some other things back in sweeter, quieter times, but today throwing a fire bomb and killing 12 people, can we not sort of agree that that is just garden variety repulsive terrorism?

That is what we try to do in this first page. Then later on we try to spell out in article 7 the rights of a fugitive once he is apprehended, to what he can here do in court under probable cause before he goes back.

This does not twist American law. This is garden variety, basic, fundamental, existing American law, not changed one whit. We say, just for anybody that may have any doubts about it—if anybody wants to argue it with me I will debate it—article 7 is a distillation of settled U.S. law. We could have said case law and statutory law, and it is.

That is the rights that a U.S. citizen has when he is arrested, about to be charged with a crime. A hearing is going to be heard. This is probable cause for Joe Sixpack America Joe Fugitive under this treaty, under this bilateral treaty, this bilateral

treaty. It is only between the United States and the United Kingdom.

And then comes article 8, the most contentious article of all. And I guess we have debated it three-fourths of the time. Article 8, sub A, is a lift from the Hughes bill. Joe Biden I think was here. I am not sure who else was here. Congressman Hughes, a very fine man, a Democrat from New Jersey, came over to testify.

He had a bill back in '84, a big thick thing, and we had a lot of professors who came after Congressman Hughes, and they all said the Hughes bill is manna from heaven, that is what we ought to have, the Hughes bill.

The Hughes bill got out of the Judiciary Committee, but got bottled up on the floor of the House, some kind of two-thirds deal or something, and died there. A similar bill or a Hughes-type bill has never been able to move over here, at least in recent years it has not.

So we took, insofar as it applied to this treaty under these circumstances, we took the lift from the Hughes bill. That is sub (a).

Now, I will tell you what that language means to me. Let me tell you what it means to me. I call this the Benignc Aquino clause, and that is the genesis of it in our discussions among Senators. Someone—I do not think it was me; I think maybe it was Chris Dodd. Chris Dodd said: You know, that silly Administration down there—and God, they can be silly; sometimes it is tough to have an ally. That silly Administration down there tendered this very same treaty to Marcos.

Did you know they did that? They tendered this supplementary treaty. When did they send it to Marcos? In 1981. The supplementary treaty that is before us, unamended. That is back when George Bush was giving toasts to Ferdinand over there.

So they tendered this treaty to Marcos. You know, I think it was Chris who said: What the hell would have happened if that treaty had been adopted and ratified by everybody and was in place, and then old Ferdinand gets some boys to sign some affidavits about conspiracy, too—oh, we took conspiracy out—well, just charged him with any one of these crimes listed in front, murder, bombing, or charged him with being an accomplice to one of these crimes up here on the first page, and it had a lot of affidavits and signed signatures and the signatures looked good and they said, yes, he was an accomplice, and shot it on over here.

Old Ninoy Aquino would have to be immediately sent back to the Philippines. So everybody in the room said, well, that is not right, that is not right. So we ought to have a safeguard, we ought to have a safeguard for a trumped-up charge.

So if you want to describe this clause, call it either the Ninoy Aquino clause or the trumped-up charge clause, or whatever suitable word that you like. And this gives the fugitive protection in court to show that the charge against him is a concocted charge, and gives him protection. Both sides can take it up on an expedited appeal. Whatever side loses shoots up under sub (b) on an expedited appeal.

So in two instances, my colleagues, the United States courts, federal courts, are available under this amendment, under this substitute. I have already mentioned that under the probable cause thing, article 7, U.S. courts are involved, and then under article 8 U.S. courts can be involved if there is an aroma, a smell, an indication of trumped up.

So that is our substitute, and I recommend it to the Committee.

Senator BIDEN. Would the Senator yield for a moment for a question?

Senator EAGLETON. Yes.

Senator BIDEN. I thought you made a very—and I am not being smart—but a very moving speech. But I think, Tom, you engaged in a little bit of what you accuse others of engaging in, and that is I think you would agree, would you not, that no one is suggesting, as you suggested, that people who have committed these acts should go free? Nobody has suggested that.

The only thing that has been suggested is that the federal courts should be able to look at it and make a judgment. Nobody has ever said, nobody has ever said, that whoever killed Mountbatten and those young children, whoever threw that fire bomb, whoever killed your guard who was with you, should automatically go free. No one has ever said that.

That is the way this treaty is being portrayed, that if we do not have this amendment somehow "terrorists go free." The only thing the law to date has ever stated with regard to those terrorists is that they could in a federal court raise the argument before a federal judge.

EAGLETON ON WAR POWERS

No single legislative endeavor occupied more of TOM EAGLETON's time and talent than did the War Powers Act. In the wake of Vietnam, EAGLETON joined with Senator Jack Javits (R-N.Y.) and Senator JOHN STENNIS (D-Miss.) in trying to fashion a statutory method of restraining unilateral Presidential war-making. The bill that passed the Senate completely reflected Eagleton's views. Under the Senate bill, the President had the unilateral right to use military forces in self-defense, rescuing endangered American nationals, and other specified areas; however, in all other areas, the right to declare and initiate war belonged constitutionally to the Congress. Eagleton's role in shaping the debate on that issue is evident in his 1972 remarks.

When the War Powers Act came back from the House-Senate Conference, the Senate approach had been radically altered. The President was granted authority to send military forces (for up to 90 days) wherever, whenever, and however he, and he alone, desired.

TOM EAGLETON, in essence, was obliged to vote against his own bill because, in his view, the rationale and constitutional underpinning had been disastrously altered. As EAGLETON has demonstrated throughout his career, however, he did not give up. His two speeches, in 1975 and 1984, show that TOM EAGLETON continues to fight for meaningful amendments to the War Powers Resolution.

Speeches: War Powers Resolution Debate, United States Senate, March 29, 1972; "War Powers Resolution Amendments," United States Senate, May 21, 1975; "War Powers in a Troubled World," Syracuse University, Syracuse, New York, March 19, 1984.

SENATOR THOMAS F. EAGLETON SPEECH IN THE U.S. SENATE, MARCH 29, 1972

Mr. President, the most important decision we, as a nation, can make is the decision to go to war. I ask today that this Congress reassert its constitutional mandate to make this important decision.

It has become easier in this country to go to war than to make peace. This stark reality has not come about because men have erred. It has come about because the institutions established by our Founding Fathers to cope with man's fallibility have been eroded by expediency.

Our Constitution was written by men who had experienced the tyranny of a monarch and who clearly understood the danger of placing ultimate power at the disposal of a single man. The Framers sought to create a process by which important decisions would undergo the careful scrutiny of thorough deliberation and collective judgment. They fully expected that the responsiblity for committing the nation to war would be shared—and that Congress, the most representative branch of government, would authorize this important commitment.

We must begin today to restore balance between the Executive and Legisiative branches so that decisions of such consequence as those involving war and peace do not depend upon the wisdom of one man. That is the purpose of the War Powers Act and that is the intent of the Constitution.

Congress was seen by the Framers as a deliberate, diverse and accessible body—the very characteristics for which it is most fequently criticized today. These qualities were not considered liabilities, but rather assets in the decision-making process. Collective judgment, not efficiency, was seen as the most important ingredient in the solution of the greatest problem that faced our nation.

It was these qualities of Congress in mind that Alexander Hamilton, an advocate of centralization and increased Executive power in his time, conceded ". . . the superior weight and influence of the legislative body in a free government . . ."

The Framers understood that the institutions they had established would be challenged by future events—as they are today. They undoubtedly had this in mind when they gave Congress the residual authority to: ". . . make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof."

Mr. President, the intricate balance created by our Constitution has been severely upset by the overwhelming predominance of the Executive branch. Deliberation and collective judgment have been pre-empted in favor of efficiency. Congress not only has the authority, it has the obligation to act to protect its role in our system.

Some are concerned that this Act will undermine the President in his role as Commander in Chief.

We must remember that our country is a democracy. The President cannot be more committed to a task, nor any wiser, than the people.

The late Adlai Stevenson said, "The essence of republican government is not command. It is consent."

This Act restores consent to the decision to go to war. Its effect will strengthen the President's command, not weaken it.

This bill is the result of months of hearings by the Foreign Relations Committee, extensive public debate and the scholarly work of this nation's best qualified constitutional lawyers. It incorporates the work of five separate resolutions, including my own, S.J. Res. 59.

The sponsors of the War Powers Act are joined together in a purpose which transacends partisan and ideological lines.

We have taken great pains to protect the proper constitutional role of the Commander in Chief to defend our nation and to con-

duct authorized hostilities to assure our security.

We do not cast blame in the direction of energetic and well-meaning Presidents who have perceived the monumental task before them and have taken prerogatives established by predecessors as their own. It is our purpose to assure that Congress will fulfill its constitutional obligation and regain the mandate to decide why, when and where this nation goes to war.

The sponsors of this Act do not presume that good faith can be ordered or that correct decisions can be legislated. Our purpose is to impose clear criteria within which men of good faith can and will operate.

A multitude of scenarios have been hypothesized by opponents of this legislation in an attempt to show that it would tie a President's hands. A careful examination shows that this would not happen.

A most common scenario has a friendly nation under attack while the United States stands idly by, helpless to come to its defense.

If no imminent threat to the United States is apparent but there is adequate consensus that we should come to the aid of our friend, Congress will act—and fast enough. If a nation can be overrun in a matter of hours there is little the United States can do in such a tenuous situation. If, as is normally the case, a hostile action is a gradually accelerating situation, the Congress and the American people will have the time to assess the feasibility and desirability of involving American forces. More importantly, when the United States does act, it will be with a hand strengthened by consent and unity of purpose.

In addition, although unlikely, it is conceivable that an attack on an ally could constitute an implicit threat to the United States. If this is true, and the President can later satisfy Congress and the country that it is true, he may commit U.S. forces under the emergency provisions of Section 3.

Critics have also charged that the United States will not be able to honor its commitments if S. 2956 is enacted. They base these charges on the fact that Section 3 (4) specifies that authority to introduce U.S. forces in hostilities cannot be inferred from existant or future treaties.

In my statement before the Foreign Relations Committee, I pointed out that no treaty, including the NATO Treaty, was self-starting—that U.S. forces cannot be committed to hostilities on the authority of a treaty alone. The President and the Senate could never legally authorize such a self-starting mechanism because the Constitution clearly assigns the war powers to the Congress and the President, not to the Senate and the President. The House, which is not constitutionally engaged in the treaty-making process, must be a part of the decision to declare war.

Article 11 of the NATO Treaty, perhaps the most tightly worded of U.S. treaty commitments, provides that decisions which would put other provisions into effect are to be made in accordance with the constitutional processes of the signing parties. This type of clause is present in all U.S. treaties. The War Powers Act, therefore, has no effect on any United States treaty commitment except to more adequately describe the "constitutional processes" referred to.

Criticism has also been directed at Section 5, which states that authorization granted under the emergency provisions of Section 3 shall not be sustained beyond thirty days without further approval by Congress. It is said that this Section could interfere with the President's Commander-in-Chief powers if he should decide that more than 30 days are necessary to perform his defensive mission.

If the emergency situation is clearly authorized by the Act (and the Constitution) the President should have no problem making his case to Congress within 30 days. Congress is not as susceptible to whim as a single man might be. It therefore would be highly unlikely, if not impossible, that Congress could turn a President down in the face of a real emergency.

If, however, the situation cannot be authorized by Section 3 and it becomes obvious by the 29th day that the President has overstepped his authority, Congress could not, under this Act, take away the President's right—and responsibility—to defend our forces as they withdraw. Congress would, however, insist that those forces be in the withdrawal stage.

Some of the advocates of war powers legislation have expressed concern that Section 3, by allowing an introduction of forces "in situations where imminent involvement in hostilities is clearly indicated," could be construed as allowing a pre-emptive or first-strike nuclear attack solely on the President's judgment.

United States strategic doctrine depends upon second strike deterrence, or retaliation, in the case of nuclear attack. Even the development of an American first-strike potential is constitutionally questionable and has been considered morally reprehensible. A President could not, therefore—short of a complete breakdown of our system—launch a pre-emptive nuclear attack and this bill cannot in any way be interpreted as affecting this policy.

It should also be recognized that, in the final analysis, all any legislation can expect to achieve is to hold a President legally and politically accountable for his actions. The consequences of a nuclear holocaust would make the question of political and legal responsibility moot.

Some have expressed concern with the provision in Section 7 which would require that "any bill or resolution authorizing a continuation of the use of U.S. forces in hostilities would, if sponsored or co-sponsored by one third of the Members of the House of Congress in which it is introduced, be considered reported to the floor no later than one day following its introduction . . ." It should be emphasized that this sentence continues, ". . . unless the Members of such House otherwise determine by yeas and nays." If more than one day of deliberation is required, Congress clearly has the mechanism to provide for it.

Finally, Section 9 states that the Act will "take effect on the date of enactment but shall not apply to hostilities in which the Armed Forces of the United States are involved on the effective date . . ." This Act, therefore, excluded the hostilities in which we are currently engaged in Vietnam.

We do not attempt by this exclusion to ignore the most important issue of our time, and we cannot. This legislation would not be before this body today if Vietnam had not exposed the breakdown of the process by which we go to war.

This Act cannot deny the reality of 55,000 Americans dead and billions of dollars expended in futility. The legacy of Vietnam has been anxiety, doubt and uncertainty about ourselves and our nation. These are the consequences of an unpopular war and they provide the backdrop for this legislation.

Our involvement in Vietnam is still the subject of heated debate in this country. It is the emotion of this debate that we wish to avoid, for we seek not personal recriminations but real institutional reform. This reform can only be achieved in an atmosphere free of partisanship and the emotions of the moment.

We look to the future—a future that will see this country enter a war only with the consent of the people.

In the words of Tolstoi, "War . . . is such a terrible, such an atrocious thing, that no man . . . has the right to assume the responsibility of beginning it."

I urge this body today to return the power to declare war to its constitutionally ordained place within our system—the Congress of the United States.

War Powers Resolution Amendments

(May 21, 1975)

Mr. Eagleton. Mr. President, four times since April 3 the President has reported to Congress under the war powers resolution that he ordered American forces into a hostile—or potentially hostile—situation. On each occasion the President cited the Commander in Chief clause of the Constitution as authority for ordering the military operation.

Controversy will accompany any use of military force, and this is especially true in this post-Vietnam era. Debate over a President's judgment—over whether he needed to use force at all—is, in my opinion, a healthy after-effect of our Vietnam experience.

It is not my intention today, however, to engage in a retrospective analysis of or to quibble over President Ford's judgment in using U.S. forces. I believe it is more important at this time to objectively assess these recent experiences to see whether and how Congress became involved in the decision-making process—to see how the war powers resolution operated—and to suggest improvements both to better involve Congress in the future and to further define and proscribe the President's unilateral emergency power to use force.

Toward that end I am today introducing three amendments to the war powers resolution. Two of these amendments relate directly to the President's recent actions, and another simply broadens the coverage of the law without affecting its procedural provisions.

Before discussing these amendments in detail, I want to reiterate my basic disagreement with the approach taken in the war powers resolution and to modify that criticism somewhat by placing it in the context of recent events.

My opposition to the legislation when it emerged from the conference committee stemmed mainly from its failure to define in legally binding terms the emergency powers of the President and to insist that in all other cases Congress must authorize and initiate the introduction of U.S. forces into hostile situations.

The effort to write war powers legislation resulted from the excessive claims of Presidents of unilateral, inherent powers to commit the Nation to war to the exclusion of any congressional role in the decision-making process.

The specter that faced Congress as it considered this issue after the invasion of Cambodia in 1970 was the complete usurpation of its war powers. Presidents began simply to order the troops into battle in the name

of national security, claiming an "inherent" right to do so. And the courts refused to act on what was labeled a nonjustifiable "political question" between the other two branches of Government. Congress was left to its own means to recapture its most important constitutional prerogative.

Congress' own means are considerable, for under the Constitution Congress can make "all laws which shall be necessary and proper" in carrying out the provisions of the Constitution. And the "necessary and proper" clause went further: Congress could also make laws "for carrying into execution—all other powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof."

Especially in areas of the Constitution where the assignment of responsibility is vague or undefined, Congress has the necessary power to clarify and define. The war powers area is just such an area. Certainly Congress could act here to protect its own prerogatives while being careful not to impinge on the President's recognized right to act in emergencies to "repel sudden attacks."

Yet Congress did not so act. The reason, according to a brief prepared by House conferees considering war powers legislation, was that the "necessary and proper" clause did not give "Congress the right to define the powers of the President." I believe that the acceptance of such a statement is equivalent to a declaration of congressional impotence.

Nonetheless, my concern over the war powers resolution was grounded on practical as well as constitutional considerations. The procedure established by the resolution did not involve Congress in the decisionmaking process until after forces were committed to battle. I was concerned that such a procedure would tie Congress hands and contribute to rather than inhibit the derogation of warmaking responsibilities that had characterized the congressional performance in recent years.

It is not my purpose today to rehash the debate on this issue or to assert that recent experience has proven my case. I am here because I sense a very positive desire on the part of those who supported the war powers resolution to involve Congress in the decisionmaking process at the outset, even before the provisions of the statute come into play. I am encouraged, for example, that such leading advocates of the war powers resolution as Senator JAVITS, and Representatives ZABLOCKI, MORGAN, and FRASER fought to inject the concept of congressional authorization into the Vietnam evacuation. Congress' eventual failure to act on this matter cannot, therefore be ascribed to any of those who worked so long and hard on the war powers resolution.

The amendments I offer today do not go to my central criticism of that resolution. I recognize that reversing the House on such a fundamental matter as the issue of prior authority would be next to impossible. And I will add, on the positive side, that so long as there is a growing awareness of Congress' constitutional responsibility to initiate war and a growing resolve to invoke that power there is, concomitantly, a diminishing requirement for a statutory approach to the problem.

Which leads me to my first amendment relating to the "Purpose and Policy" section of the resolution. Subsection 2(c) cites situations wherein the President can commit U.S. forces to a hostile situation without the prior approval of Congress. These situations as currently listed are: First, to repel an attack upon the United States or its territories and possessions; and second, to repel attacks on U.S. forces stationed abroad.

Subsection 2(c), which of course is not binding on the President, can represent the policy of Congress as to the allocation of war powers. To the exten that 2(c) might exclude a generally accepted emergency power of the President however, it loses standing as a legitimate policy statement.

Such a denigration of 2(c) has taken place over the past 2 months as Presidents have claimed an "inherent" right to use military forces to rescue American citizens. And Members of Congress including me, have publicly acknowledged this right. Yet, subsection 2(c) states that in the absence of a declaration of war or a statutory authorization the President can commit U.S. forces to battle "only pursuant to . . . a national emergency created by attack upon the United States, its territories or possessions, or its Armed Forces."

When I questioned Senator Javits as to whether the words "only pursuant" were meant to exclude the right to rescue, he conceded that they did. Mr. President, I ask unanimous consent that my colloquy with Senator Javits on this subject on October 10, 1973, be printed in the RECORD

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered. (See exhibit 1.)

Mr. EAGLETON. Mr. President, the President's right to introduce U.S. forces to rescue endangered citizens was thoroughly debated during consideration of the Senate war powers bill. While American case law was not particularly convincing one way or the other, historical precedent and international laws governing the use of force strongly supported the citation of such an emergency power. And there was little controversy over the provision in the Senate since the legislation carefully circumscribed the President's actions. The Senate considered the right to rescue to be a logical extension of the President's responsibility to "repel sudden attacks."

It is clear from the recent cases and from the Senate debate on war powers that Congress recognizes the traditionally exercised right of the President to rescue endangered Americans. It is also clear from the Senate war powers bill and from the recent action taken in both Houses on the Vietnam evacuation bill that Congress wants to carefully circumscribe the President's unilateral action. The amendment I am introducing today will satisfy those two considerations. More importantly, it should enhance the integrity of the resolution's policy section by making it all-inclusive.

This amendment carefully circumscribes the President's action by requiring him to determine:

First, that the citizens to be rescued are being involuntarily held with the express or tacit consent of the foreign government; second, that there is a direct and imminent threat to the lives of such citizens; third, that the foreign government in question either cannot or does not want to protect these individuals; and fourth, that the evacuation take place as expeditiously as possible and with a minimum of force.

These requirements trace the guidelines established in international law for the rescue of a nation's citizens endangered and without protection in another country. Waldock, in "The Regulation of the Use of Force by Individual States in International Law," cites the right to protect nationals abroad and states:

". . . The landing of forces without consent, being unmistakably a usurpation of political authority, is prima facie intervention. The question is whether it is an intervention which is justifiable as an exceptional measure of self-protection. That must depend on whether it satisfies the principles laid down in the Caroline incident. There must be (1) all imminent threat of injury to nationals, (2) a failure or inability on the part of the territorial sovereign to protect them and (3) measures of protection strictly confined to the object of protecting them against injury. Even under customary law only an absolute necessity could justify an intervention to protect nationals. But, where such necessity existed, intervention seems to have been legally justifiable in the period before the Covenant."

Mr. President, the emergency powers of the President, even if only defined as a matter of congressional policy, should be all-encompassing. There is today, with one or two notable exceptions, a consensus that the right to rescue is inherent in the Commander in Chief. Even those who would not concede that such a right is inherent would probably agree that Congress, as a practical matter, should delegate the power to cover such emergencies while at the same time carefully circumscribing his possible actions. The amendment I propose today would satisfy those objectives.

I would like here to add a contemporary note concerning powers the President might possess to use force without prior congressional approval. These powers, to the extent they exist, are strictly defensive in nature, deriving from the assumed power of the Present to repel sudden attacks on the Nation, its forces or its citizens when endangered abroad. Under no circumstances should a President take offensive action of a punitive or retaliatory nature without the express approval of Congress.

At this point Mr. Stevenson assumed the chair.

Mr. EAGLETON. In this regard, I have read press accounts of the military operation employed to rescue the crew of the *Mayaguez*. Leaving merit completely aside, I am disturbed by reports that punitive action unrelated to the rescue itself might have been taken against Cambodia. If, for example, the bombing of Ream airport and port facilities at Sihanoukville—bombing which took place a half hour after the crew of the *Mayaguez* was safely aboard the *Wilson*—was unrelated to the need to protect U.S. forces, then the President, in my opinion, exceeded his authority under the Constitution and violated specific prohibitions against combat activity in Indochina. I have asked the General Accounting Office today to investigate this possibility.

The *Mayaguez* incident also afforded an opportunity to assess the effectiveness of the consultation provision of the war powers resolution. This provision states:

"The President in every possible instance shall consult with Congress before introducing United States Armed Forces into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances; and after every such introduction shall consult regularly with the Congress until United States Armed Forces are no longer engaged in hostilities or have been removed from such situations."

It is clear now that little if any real consultation took place prior to the *Mayaguez*

military operation. At most a number of Senators and Congressmen were notified or informed of action already planned or underway. As I understand the procedure employed by the White House to satisfy the consultation provision, no opportunity was given to Congress to provide advice prior to the introduction of forces.

This confusion over the word "consultation" should not exist. Definitions of the word have been established in case law and the standard dictionary meaning leaves little doubt that to "consult" is to seek advice.

Mr. President, I ask unanimous consent that a number of legal definitions of the word "consultation" be printed in the RECORD

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 2.)

Mr. EAGLETON. The second amendment I propose should clear up any confusion as to the intent of Congress in this area. My amendment would replace the phrase "consult with Congress" in section 3 with the words "seek the advice and counsel of Congress." So that there can be no misunderstanding as to what this phrase means, I have included a definitional section stating that the President "shall discuss fully the proposed decision for using—the Armed Forces" with designated Members of Congress. I am hopeful that this amendment will assure that, even in emergency situations when the President is operating within his constitutional powers, Congress view will be represented and considered prior to the introduction of forces.

The third amendment I propose today is one that I presented during consideration of the Senate war powers bill. The purpose of the amendment is to assure that the war powers resolution does, in fact, cover all possible uses of force by the President. The amendment would circumscribe the President's use of American civilian combatants in the same manner uniformed Armed Forces are currently circumscribed by the law.

Under this amendment a President would be bound to report the engagement of American civilians, either directly or as advisers, in a hostile situation within 48 hours.

Mr. President, we have heard much in the past months about the covert activities of the Central Intelligence Agency—of the hiring of contract employees to advise foreign military forces—and of the use of contractors to engage in dangerous missions when the use of American uniformed personnel might be politically prohibitive.

It is time to recognize that American involvement in hostilities cannot be obscured by semantics. If we become involved in combat to pursue a policy objective other than the emergency defense of the United States, its forces or its citizens, then Congress should authorize that involvement. Either we are involved in hostilities or we are not involved. And that should be the operating principle of the war powers resolution.

The potential for use of covert civilian forces by a President to achieve military objectives is curently restricted only by the imagination of man.

We have already seen CIA personnel used as pilots and combat advisers. And if we fail to pass this amendment, we may see an even more wide-ranging use of civilian combatants in lieu of uniformed personnel whose activities will be circumscribed by the reporting provisions of the war powers resolution.

I believe it is time for Congress to acknowledge the vast potential available to the President to expand his warmaking options beyond the scope we have thus far envisioned by using civilian combatants. Congress can protect its prerogatives by assuring that the war powers resolution covers this possibility.

Mr. President, we have learned much from our experience in Vietnam and we have continued to learn as the exigencies of the contempoary Indochina situation have forced us again to use military force in that region. as we look more dispassionately at President Ford's use of force in the past 2 months. I am hopeful that Congress and the President can work together to improve the decisionmaking process. As the late Alexander Bickel often asserted—

"There is no assurance of wisdom in Congress, and no such assurance in the Presidency—The only assurance there is lies in process"—

Mr. President, much can be done to improve the process by which we go to war. I am hopeful that the Senate will consider carefully the amendments I have introduced today which are intended to make the war powers resolution a more utilitarian mechanism for protecting Congress unique power to declare war.

WAR POWERS IN A TROUBLED WORLD

(By Senator Thomas F. Eagleton)

A few weeks ago, Secretary of State George Shultz testified before the Senate Appropriations Committee that prolonged Congressional debate over the deployment of Marines in Lebanon had much to do with the failure of U.S. policy in that tormented country.

The Secretary claimed that the vocal oppostion by Members of Congress sent a message of encoragement to the opposing side and "just totally took the rug out from under U.S. interests."

With that better critique, the Secretary called for a thorough review of the War Powers Act procedure, leaving little doubt from his own feelings that the Act's restrictions on Presidential actions should be repealed.

I think the Secretary is sadly confused about the role and value of debate in a free society and about a principal rationale of the Wars Powers Act which is to build consensus behind U.S. actions in the world.

The Constitution in Article I, Section 8, clearly gives Congress exclusive power to declare war. Modern conditions of warfare, however, have made that article a virtual dead letter. We live in an age when U.S. interests are regularly at stake around the globe; when as often as not, war is carried on without benefit of declaration; when conventional armies are replaced by guerrillas and terrorists; and when a conflict may carry with it the threat of escalation into a showdown between the superpowers.

The War Powers Act was an effort to breathe new life into the Constitutional power that the founding fathers intended Congress to have. Thus, the Act requires the President to come to Congress within 90 days of U.S. troops being "introduced into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances."

The historical basis for this language and the total Act itself was, of coruse, our prolonged, bitterly divisive, and tragic involvement in Vietnam. Here was an undeclared war into which we oozed increment by increment under unchecked Presidential initiative.

No one can doubt the need for an active and sustained American role around the world. But, that role must be founded on a consensus over objectives and the means for achieving them if it is to succeed.

As I said, that was the principal purpose of the War Powers Act of 1973. It sought to establish a framework of prior consultation, reports, and consent by Congress to any actions which had the possibility of involving American armed forces in hostilities. It was not a perfect act by any means. My own views was that the version that finally passed left far too much discretion with the President in that it granted him the unilateral right to dispatch American troops anywhere, on any mission, for up to 90 days. But, despite its flaws, it was, at least, a beginning toward rebuilding consensus behind our foreign policy.

A policy which lacks consensus, as was true of our ill-advised intrusion into Lebanon's religious strife and which seems to be true of our escalating military entanglement in Central America, lacks viability. What kind of policy is it that cannot withstand the examination of free debate? It was not debate that was at fault in Lebanon but U.S. policy itself, which ignored every reality of the power balance in that country and which failed to provide an achievable mission for our forces.

I suspect Secretary Shultz might question it, but it is a fact that all widsom does not reside on the 7th floor of the State Department. Sometimes, Congress can have valuable contributions to make in the framing of U.S. policy. Collective wisdom can flow out of its debates, but it requires the Administration to be listening.

President Reagan's decision to dispatch Marines into Lebanon in August 1982, to assist in the evacuation of the PLO after a negotiated cease fire in Beirut was, on the whole, supportable. His decision to return the Marines in September as a symbol of American determination to uphold the Christian-exclusive Gemayel government against the challenge of the Moslem majority was not. That, and the failure to appreciate the intensity of Syria's involvement, sealed the fate of the President's diplomatic efforts and forced a Congressional showdown.

The Administration was never able to state a purpose or define a mission which justified sending the Marines back into Beirut. Yet it expended considerable effort fending off Congressional calls for compliance with the War Powers Act. After much negotiation and considerable posturing, the White House sought and received an 18-month authorization to maintain the Marine presence. The majority in Congress gave the President what he wanted, a virtual "blank check" to pursue his policy for 18 months.

Enactment of the War Powers Act was no guarantee that Congress would fulfill its responsibilities and I think the Lebanon resolution was evidence of that. That resolution was the first real test of the partnership we fancied we had forged between Congress and the Executive Branch; it was the first full acknowledgment by the Administration that the law had meaning and that the law had teeth.

The result of Congressional debate was something else again. There can be no question that a majority in Congress felt strongly that the deployment of Marines in Beirut was a tragic blunder which could only end

in tragic consequences. But, rather than insisting on an ongoing discussion and review of the situation—which would have been assured under a 90-day authorization—Congress buckled under political pressure and walked away from its responsibility.

When the end came in Lebanon, the Congressional authorization remained intact. The Marines returned to the ships not because Congress demanded it, but because the Administration had arrived at the inescapable conclusion that our self-intended role as "peacekeepers" had been transformed into one of direct participation in a civil war. To keep the troops on station was to risk the loss of more American lives with little prospect for any contribution therefrom to a settlement of the decades-old conflict.

If Secretary Shultz is right that Congressional pressure hastened the removal of the Marines from the Beirut Airport, then, in my mind, the debate served a constructive purpose. The Administration's real complaint is that public debate can highlight policy shortcoming and tends to fix responsibility for failure.

Even as Administration officials lament the lack of a free hand in the conduct of mission impossible in Beirut, they shun Congressional input concerning the expansion of the American military presence in Central America. We are providing millions of dollars in military and security-related economic assistance to our allies there. We are demonstrating a revived naval aggressiveness in southern waters that is the grandchild of an old, if not venerable, American policy of gunboat diplomacy.

We have mounted truly unprecedented military maneuvers that are a thin disguise, in my opinion, for a permanent armed presence in "Fortress" Honduras. In El Salvador, in addition to the dollars, we have armed military advisors and U.S. military reconnaissance overflights of the country.

President Reagan is not the first President to object to restrictions on his freedom of action in military and foreign affairs. All Presidents who have had to operate under the strictures of the War Powers Act have objected to it.

Congress cannot manage the day-to-day conduct of foreign policy, but the Administration cannot ignore legitimate Congressional concerns. It cannot sweep aside Congressional feelings about the human rights practices of some of our authoritarian allies, the true aims of our mercenaries in Nicaragua, or the purposes of a disguised buildup of U.S. forces in Honduras.

The Lebanon experience has forewarned us that to proceed with military action without a consensus is folly. Now is the time for Congress and the President to discuss and debate these issues. Debate does not have to be a dead-end road to divisiveness. it can lead to collective wisdom.

EAGLETON ON THE CONSTITUTION

Tom Eagleton's reverence for the Constitution stems from a place and a person. The place: Harvard Law School; the person: Professor Paul Freund. To Professor Freund and to his student, Tom Eagleton, the Constitution is the greatest living document of liberty ever crafted by mortal men. The Constitution is the essence of American freedom. It is not a document that is to be manipulated, twisted, or thwarted. It is a document for all seasons. It embodies the best of our past, the stability of the present, and the hope of our future. In a series of speeches and articles spanning three decades of American history, Tom Eagleton elaborates on his love of the Constitution and of the high standards he demands in those who interpret it.

SPEECHES

Speech of Missouri Attorney General Tom Eagleton to the Washington University American Freedom Summer Institute, St. Louis, Missouri, July 26, 1963.

E.W. Tucker Lecture, University of Missouri School of Journalism, Columbia, Missouri, April 6, 1973.

"The Constitution According to Madison, Hamilton and Marshall . . . Or Jesse Helms?" Article, 1982.

"Religious Liberty and the American Tradition," United States Senate, March 12, 1984.

"The Nomination of Daniel A. Manion, of Indiana, to be U.S. Circuit Judge for the Seventh Circuit," United States Senate, June 25, 1986.

"On the Nomination of William Rehnquist to be Chief Justice of the U.S. Supreme Court," United States Senate, September 11, 1986.

SPEECH OF ATTORNEY GENERAL THOMAS F. EAGLETON AS CLOSING SPEAKER OF THE AMERICAN FREEDOM SUMMER INSTITUTE

(Note: Approximately 100 high school juniors from 23 states have concluded a five-week program at Washington University. Washington University Chancellor Thomas H. Eliot in inviting Eagleton to make the closing address described the Freedom Institute as follows: "The five-week program offers a study in depth of our American way of life; our laws, liberties, politics, economy, our national goals and purpose: in short, the qualities that make this nation unique. The Freedom Institute is supported by the Educational Council for Responsible Citizenship, through a grant from the Danforth Foundation. It is, we feel, fulfilling admirably the goals set forth by the Council: that the best instruction in civic understanding "is not fear and distaste either of the far right or of the far left, but the positive belief in the ideas of America, the meaning of freedom, and the values of a democratic society.")

For some five weeks, most of you assembled here have been engaged in a study of freedom—an examination of the character and quality of our liberties and the manner in which they are manifested in our lives.

It is a subject worthy of your efforts. Indeed, it is a study which should be made by every citizen. Few people have the opportunity afforded you by the generosity of the Danforth Foundation to undertake such a detailed study. Yet each of us has an obligation to inquire into the nature of the freedoms we enjoy, the better to prevent their erosion.

By training, experience and inclination, I approach this subject from the viewpoint of a lawyer. We lawyers, you know, pride ourselves on being precise. We strive always to grasp at the meaning of a term by defining and redefining, by constantly limiting its scope.

But in many instances we are met with such words as freedom, or liberty, that cannot be fitted neatly into a capsule definition. I am sure that you also have found that the essential quality of freedom cannot be stated in "25 words or less". As Justice Holmes wrote: "A word is not a crystal, transparent and clear. Rather, it is the skin of a living thought".

Though we cannot define the "living thought" contained in the word freedom, we must somehow try to isolate it—to set it off—if we are to reach my understanding of its meaning.

We do this by looking to its sources, to its effect on the institutions in our society, or to the conditions which result in the absence of freedom.

I believe that we can also get a glimmering of what freedom is by studying that which it is not; by examining the causes ostensibly advanced in the name of freedom, but which actually constitute its denial.

Justice Cordozo referred to this when he said: "Many an appeal to freedom is the masquerade of privilege or inequality seeking to intrench itself behind . . . principle."

Let me give you some examples of this masquerade of freedom.

A measure currently popular in conservative circles is the so-called "Liberty" amendment to the Federal Constitution. This proposal, if adopted, would repeal the income tax and require the federal government to dispose of all properties owned by it which compete with private enterprise, including all of the public lands of the United States.

Even the most cursory examination reveals the faults of this proposal. In one fell swoop it would eliminate the principal source of funds for the operation of our government and provide for a giveaway that reduces Teapot Dome to insignificance by comparison. All of the forest and mineral lands held in the national trust would be opened for private exploitation at a forced sale. To recite its terms is to demonstrate the absurdity of the "Liberty" Amendment.

If it were styled the "Giveaway Amendment, I am sure this proposal would be universally rejected. But by masquerading behind the name of "Liberty", it has gained acceptance from several state legislatures. It provides an object lesson in the power of the freedom-label.

I am particularly concerned with another such masquerade. It too is advanced under the guise of freeing the states from the domination of the federal government and comes in the form of three proposed constitutional amendments.

As an official of the State of Missouri, I yield to no one in my desire to advance the proper interests of my state. But as a citizen of the United States, I recognize that we have interests as a nation which are superior to the claims of any section or any state.

The proposed amendments are these:

(1) To permit state legislatures to amend the Constitution without the concurrence of Congress.

(2) To remove from the federal courts jurisdiction over cases involving the apportionment of representatives in state legislatures.

(3) To establish a "Court of the Union", composed of the Chief Justices of the 50 states, and empowered to veto decisions of the Supreme Court of the United States.

Let me emphasize that this is not one of the many hare-brained schemes regularly advocated by crackpots who want to transform our government in keeping with their particular aberrations.

The three amendments were initially proposed by the Council of State Governments, a heretofore respected agency of inter-state cooperation. Paradoxically, though they are radical in the extreme, they are being pushed by many of the so-called conservative elements in the nation.

Undoubtedly, the most subtle, and hence possibly the most lethal of the three is the proposal to permit amendment of the national Constitution by state action alone.

Keep in mind, too, that the intent of the states would not be expressed by popular vote, but by action of the legislatures.

Recent publicity has drawn attention to the gross disparity in representation existing in most state legislatures. Professor Charles Black of Yale University has gathered figures which show that in the 34 states having the least population, 38% of the electorate can name a legislative majority.

Professor Black further points out that the adoption of this proposed constitutional amendment would mean that a bare 15% of the national population could abolish the income tax or repeal the 14th Amendment.

There may be those present who in a spirit of momentary selfishness would not object to eliminating the income tax, but how many are willing to dispense with the guarantees of due process of law and equal protection of the laws?

Possibly the greatest evil in this proposed amendment is that it provides for decisions of great importance to the entire nation to be made without deliberation at the national level.

At present, every amendment to the Constitution must be considered either in Congress or at a national convention called for that purpose. Its pros and cons must be hashed out before the eyes of the entire nation. If the new proposal should be adopted, the focus of attention would be removed from the national forum and fragmented, as fifty different state legislatures try to decide the weighty questions attending the amendment of the Federal Constitution.

Hand in hand with the revision of the amending process goes the proposal to withdraw jurisdiction in legislative apportionment cases from the Supreme Court. It is no secret that representation in the great majority of state legislatures is weighted heavily in favor of rural interests, despite the greater population of urban areas.

In connection with the lodging of the amending power in state legislatures, the drafters of the proposal obviously intend to retain the system by which a relatively few rural voters can control state legislative action.

Please note, if you will, the clever connection between this proposal and the one previously discussed.

If the federal courts could no longer step in and force a state to reapportion its invidiously discriminatory state legislature and if state legislatures acting alone can amend the Federal Constitution, then you have this result: A very few people representing a purely sectional or parochial view, are permanently guaranteed the privilege of amending our Constitution whenever some law or some court decision displeases them.

Furthermore, the amendment established a dangerous precedent. The Supreme Court has held that a system of apportionment of representatives which "invidiously discriminates" against a segment of the population is a denial of equal protection of the laws as guaranteed by the 14th Amendment. Never before have we consented to a constitutional amendment which whittles off from the 14th Amendment an area which the Court has decided it covers.

If legislative apportionment should be removed from federal protection under the Constitution, the way would be cleared for the removal of any number of other matters. It could be segregation in education, or voting rights, or any other subject which the Supreme Court has deemed within the ambit of due process of law or equal protection of the laws.

On its face the proposed amendment tends to undermine the principle of representative government. Prospectively, it points the way for the possible abolition of our most basic liberties.

The third proposal is so extreme as to be almost ludicrous. Imagine it, an unwieldy court of fifty judges assigned to act not as a positive force in the administration of justice but as an instrument of negative mischief.

Ridiculous though it may seem, this proposal has been adopted by five state legislatures as a recommended amendment to the Constitution. It also garnered sufficient votes in the Council of State Governments to be included with the other proposed amendments.

As I noted at the outset, you have been engaged here in a study of freedom, that living thought which is the spirit of democratic government.

Nothing more closely bears on our freedom than the structure and nature of our form of government.

In my judgment, the three proposed constitutional amendments would drastically and dangerously alter that structure and nature. They would so modify the existing federal process as to place us on the road backwards to the days of the Articles of Confederation.

Rather than restore the balance of federal-state relations, they would subvert it. They would promote not freedom, as their advocates loudly proclaim, but the tyranny of sectional self-interest.

These proposals are not straw men. They are a clear and present threat. The amendments were first proposed less than a year ago. In that short span of time 16 state legislatures have approved at least one of them. In 8 other states, one house of the legislature has voted in favor of one or more of them. Their sponsors will undoubtedly re-submit them at future legislative sessions.

There has been a sad lack of opposition as the proposed amendments have made their way through one legislature after another, Missouri's included. Only in the last few months have voices been raised against them.

This relatively silent progress in itself is an indication of what we may expect if the power to decide national questions is ceded to the states.

As young people, interested in our government, interested in our freedom, I implore you to give your attention to these proposals. Decide for yourselves their worth, in the light of all you have learned in the past weeks.

If this Institute has been successful, your concern and interest in the preservation of our liberties will not end today, but will be carried with you back to the 23 states you represent. The measure of its success will be determined by your ability to use the knowledge acquired here for the rest of your lives.

E.W. TUCKER LECTURE, UNIVERSITY OF MISSOURI SCHOOL OF JOURNALISM, JESSE HALL, COLUMBIA, MO, APRIL 6, 1973

The Founding Fathers were sufficiently aware of the critical importance of a free press to a free society to enshrine its protection in the first of the Amendments which make up our Bill of Rights. Yet we as a modern nation have tended until very recently to take our press pretty much for granted.

The presses have rolled on generally without interruption, and the nightly newscasts have been aired on time. And we as a society were lulled into a complacency that meant we rarely, if ever, asked ourselves why a free press is essential to a free society or whether in fact our press is as free and unfettered as our Founding Fathers envisioned it would be.

At least that is the way it used to be, a few short years ago. Today the press is an issue—a much-debated, emotional issue.

Thanks to the unexpected and swift kick delivered to public complacency by Vice President Agnew in the fall of 1969, the American public has become very conscious of the kind and quality of news we receive in print and over the airwaves. We have also become very conscious of the delicate balance that exists between the press and the government.

Finally, we have begun to ask ourselves the critical questions—and we have reawakened to the fact that a free press does not just happen. It must be cultivated and protected. And we are awakening to the fact that our press is not so immune to governmental incursions as we had assumed.

Certainly I am not so naive as to think that the current Administration is bent on destroying the American press. Of course it is not. But the First Amendment circumscribes more than the blatant dismantling of the press.

It disallows governmental management or control of the news in any degree. It simply will not countenance any effort by the government to mold the press—however subtly—into its own image.

And there is evidence of such molding by the government in recent years. In a number of ways, the government has gotten its point across to the media that wisdom dictates deflecting coverage to a line more sympathetic to the Administration and its policies. Or else.

Or else what?

Or else the Administration will push for changes in the license renewal process—changes which put a yoke around the necks of the networks by indirection, through local broadcasters who must plead their case for renewal before the Federal Communications Commission.

Or else the government will harass individual reporters by way of mysterious background investigations—or by way of subpoenas for appearance or production of confidential documents—or by way of exclusion from White House functions.

Or else the Administration will take a meat-ax to public affairs programming on public television.

The cumulative message to the media could not be clearer: it is better to behave, better to stay in line than to incur the wrath of the powerful. Don't take chances. In sum, we have the very chilling effect proscribed by the First Amendment.

Of course the kind of journalism most threatened by this course of events is investigative reporting—reporting whose very soul is digging in to find information which someone—perhaps someone in the government—would prefer to keep under wraps. It is by its nature irritating to someone, some place. And so it depends upon absolute independence from the clutch of government control.

The people—including people in positions of power in government—will not willingly expose their own ineptitude or, worse their wrongdoing, is a truism that hardly needs corroboration.

But if corroboration is necessary, we have it in the gloomy form of Watergate.

Watergate, as columnist James J. Kilpatrick put it the other day, has become "a proper noun" in the American vocabulary of scandals, along with Teapot Dome. It began several months ago with the arrest of seven men in the Democatic National Committee offices and, but for the unflagging persistence of several investigative reporters, it would probably have ended quietly with the conviction of these seven men several weeks ago.

But Watergate has not slipped quietly away, as many in high places had hoped. Despite repeated denials and protestations, more and more incrimination evidence keeps turning up. Not surprisingly, those who would have turned off the inquiry and the flow of information to the people are the very people who appear to be involved in this outrageous course of events up to their necks.

Even now, when enough of the Watergate story has been exposed to indicate that there has been considerable wrongdoing in high places, we are treated to a further spectacle of resistance—now, incredibly, in the form of asserting "executive privilege" in an effort to sabotage the investigation of the Watergate affair by a special bipartisan committee of the Senate.

Thus Watergate gives substance to the view that newsmen are indispensable catalysts where the public's right to know runs headlong into the self-interest of bureaucrats and the powerful in keeping information from the people. Without these independent catalysts, stories, about governmental corruption, waste, and error would simply never reach the light of day.

Of course those in power are not unmindful of the fact that these independent catalysts would more than likely be out of business without inside sources. Not surprisingly there has been some "chilling" in that area, too.

The relatively recent phenomenon of harrassing newsmen by way of subpoenas to appear before grand juries—where they are questioned about their new sources and about information received by them in confidence—undoubtedly "chills" prospective news sources who would rather be safe than sorry.

Some of you may know that I am sponsoring "shield" legislation—legislation opposed by the Administration—to give newsmen the right to refuse to divulge their confidential sources and information given to them in confidence without running the risk of a jail sentence for contempt.

My bill differs in a number of respects from other privilege bills in Congress. First, it provides an absolute privilege against compulsory disclosure, but limits that privilege to disclosure of confidential sources and information received in confidence.

Second, it sets out procedural safeguards to put an end to the process of harrassment through subpoena. The bill gives a newsman the right to a full hearing on the record before any subpoena may be issued against him—with the burden on the party seeking the subpoena to show that the information sought is not privileged.

Finally, my bill draws a distinction between circumstances under which a newsman may be compelled to testify at an ongoing trial in a court of law and circumstances under which he may be called to testify before a grand jury, legislative committee, or executive agency. A newsman may be compelled to testify about his work only at an actual trial, and then only if equivalent testimony cannot be obtained from other witnesses. Under no circumstances could a newsman be compelled to appear before a grand jury to answer questions relating to his work.

Recent news reports bring forewarnings of another possible route for "chilling" potential news sources—in this case, insiders in the federal government who "leak" unauthorized information to the press.

Tucked away deep in President Nixon's mammoth proposed revisions of the Federal Criminal Code are several new provisions which, when read together, authorize the jailing of newsmen for up to seven years for publishing information which has been classified—even where the newsman can show that the information was improperly classified, that it related to matters of waste or corruption, and that its disclosure clearly served the public interest.

The proposed statute would punish government officials who disclosed almost any kind of defense and foreign policy information, whether or not its disclosure would endanger national security.

It would punish newsmen who received such information unless they promptly reported the disclosure and returned the material to a government official.

It would punish not only reporters but all responsible officials of their publications or broadcasting companies who participated in making the unauthorized information public.

It would punish government employees who knew of a colleague's unauthorized disclosure and failed to report their co-worker's action.

The law's penalties—from 3 to 7 years in jail, from $25,000 to $50,000 in fines—would be imposed on actions which are not now considered crimes but instead are the applauded work of investigative journalists.

This latest proposal is but another sign of the times—the latest in a series of assaults on the ability of the press to function freely and unhampered by governmental interference. But it, too, can be pushed back as long as the public keeps clearly in mind that a free press is not a gift from heaven. It is the work of men and women who will not stand by to see it compromised.

Religious Liberty and the American Tradition

Mr. Eagleton. Mr. President, few, if any controversies in the present era have remained so persistently before the U.S. Congress as the 1962 and 1963 Supreme Court rulings which declared unconstitutional teacher-led prayer and Bible reading in the public schools. Past debates have been exhaustive and often acrimonious. Today's will probably be no different. This is ironic because the First Amendment to the Constitution was intended to prevent us from wading into these troubled waters. It was written to prevent government from debating and deciding faith, belief and spiritual conviction—subjects which go to the deepest well springs of our being. It was written because governments of the past had "shackled men's tongues to make them speak only the religious thoughts that government wanted them to speak, and to pray to the God that government wanted them to pray to." [1] The First Amendment's clause prohibiting "establishment of religion" was written as much to protect religion from dilution and degradation by government as it was to protect religious minorities.

I oppose the two constitutional amendments on school prayer that have been reported out of the Judiciary Committee because I have a profound respect for the judgment of the Framers that a wall of separation between Church and State best ensures that religious freedom in America will flourish. If only we could easily and fully appreciate their wisdom, gained through bitter experience.

Origins of the Separation Doctrine

From the beginning of our history, debates raged about the proper relationship between church and state. In Europe, government sponsorship of religion had led to successive waves of civil strife; that same system was transplanted in many parts of colonial America. A glimpse at some of the colonies recalls for us a part of our history we tend to forget.

Pennsylvania's government, led by Quaker William Penn, provided religious toleration to those who "confessed and acknowledged the one Almighty and Eternal God" and allowed only Christians to vote. The Puritans of New England set up their own prescribed beliefs as the only road to salvation. New Jersey gave religious liberty only to Protestants.

The South had its own brand of exclusivity: people could be fined for non-attendance at Anglican worship and in some areas, Jews were totally ostracized. In Virginia, the Anglican Church functioned as an arm of the government until 1785; denial of the Trinity was punishable; Unitarians could be declared unfit parents; and Roman Catholics were excluded and burdened with legal disabilities; Georgia provided freedom of conscience except to Catholics (who were even barred from public office), and the Anglican Church became the established church.

By the time of the Revolutionary War, there were established churches in at least eight of the thirteen former colonies and establshied religions in at least four of the other five.

These turbulent beginnings provided a powerful impetus for constitutionally protecting religious diversity. Although religion was not mentioned in the original Constitution—it was thought that the federal government should have no control over the subject—the several states called for a religious liberty amendment during ratification. James Madison, most responsible for the amendment's passage, placed the privacy of conscience in an exalted position:

"The Religion then of every man must be left to the conviction and conscience of every man; and it is the right of every man to exercise it as these may dictate. . . . Above all are they to be considered as retaining an equal title to the free exercise of religion according to the dictates of conscience." [2]

Thomas Jefferson, author of Virginia's religious liberty statute which became the nation's model, believed that religion consisted in "the inward persuasion of the mind." He recognized that private conscience was sufficiently tender that religious liberty could not be secured under the patronage of the state. Jefferson opposed the introduction of government support even if it were for *all*

[1] *Engel* v. *Vitale*, 370 U.S. 421 at 435 (1962).

[2] 2 Writings of James Madison 183-91 (1901).

religions. "Hands-off," he argued, was the only acceptable policy. Thus, the concept developed (though the nomenclature came later) of "building a wall between church and state." The First Amendment, embodying this principle, is an eloquent manifesto of the sanctity of the human mind and spirit.

RELIGION IN PUBLIC SCHOOLS

If religious differences necessitated strict separation between the government and the church in early American life, such separation is even more compelling today, for our religious composition makes us a vastly more diverse people than were our forefathers. The argument for separation is especially strong with respect to the public schools—one of the surest ways the state can impose its will. It is for this reason that the Supreme Court has been loathe to permit schools to pursue any activity considered as having a religious purpose. The Supreme Court's hallmark opinions make it clear that an important measure of religious freedom is whether it can be meaningfully exercised by all. I undertake a brief review of them because I believe that the Court has correctly interpreted the original meaning behind the First Amendment. I stand behind the Court's interpretations, and reject present efforts to nullify them.

The first significant case setting forth a definitive interpretation of the establishment clause (which did not apply to the states until 1940) was the 1947 Supreme Court case *Everson* v. *Board of Education.* The Court found that it was permissible for a school board to reimburse parents' costs for transporting their children to private and parochial schools. The Court enunciated a doctrine of neutrality between church and state. "The 'establishment of religion' clause of the First Amendment," the Court ruled, "means at least this: Neither a state nor the federal government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another." Thus, the First Amendment did not forbid provision of governmental benefits to all its citizens without regard to their religious belief—there was a "public purpose" served by the program.

Just one year later, the case of *McCollum* v. *Board of Education* held that the First Amendment did not permit religious training during non-instructional periods on public school premises by privately-paid teachers. Justice Frankfurter's concurring opinion holds special significance to the present debate for two reasons. First, he articulated the importance to a Democracy of keeping educational and religious missions separate:

"Designed to serve as perhaps the most powerful agency for promoting cohesion among a heterogeneous democratic people, the public school must be kept scrupulously free from entanglement in the strife of sects."

Second, he rejected the notion that "optional" religious activities in the schools could ever be truly "voluntary":

"That a child is offered an alternative may reduce the constraint; it does not eliminate the operation of influence by the school in matters sacred to conscience and outside the school's domain. The law of imitation operates, and non-conformity is not an outstanding characteristic of children. The result is an obvious pressure upon children to attend."

Consistent with its principle of "neutT1v. *Clausen,* that school children who so desire could *leave* school premises during the day for religious worship and education. This "released-time" program represented government accommodation to the free exercise of religion in a way that did not violate the "wall of separation."

This brings us the two school prayer cases themselves, which the constitutional amendments before us are intended to overrule.

Until the Supreme Court decided *Engel* v. *Vitale* (1962), New York school children began their day by reciting in unison: "Almighty God, we acknowledge our dependence upon Thee and we beg Thy blessings upon us, our parents, our teachers and our country." Out of a deep concern for protecting religion, the Court declared that recitation of this prayer, written by the State Board of Regents, violated the establishment clause. It did not matter that the prayer was non-denominational, or that students could choose to remain silent. Any government influence over prayer is proscribed. The Court believed that the historical antecedents of the establishment clause taught that: "governmentally established religions and religious persecutions go hand in hand," and that "union of government and religion tends to destroy government and to degrade religion. Even though state composition of a prayer may seem a mild form of government entanglement compared to the encroachments 200 years ago, the Court cautioned, in words we should note today: "[I]t may be appropriate to say in the words of James Madison: '[I]t is proper to take alarm at the first experiment on our liberties.' "

School District v. *Schempp,* decided a year later, challenged Bible reading and recitation of the Lord's Prayer as daily morning exercises in the public schools. The Court propounded a test for determination of establishment clause violation, still followed today, which looks to "the purpose and the primary effect of the enactment." As with *Engel,* no different result would obtain if the individual students could choose not to participate. Nor would it have mattered to the Court if this religious exercise were considered only a minor encroachment on the First Amendment, for "[t]he breach of neutrality that is today a trickling stream may all too soon become a raging torrent."

I believe the constitutional amendments considered today represent at least a "trickling stream," slowly eroding our traditional concept of religious liberty, and as implemented across the country, could well result in a "raging torrent" against individual freedom and mutual respect for religious diversity.

PRESIDENT REAGAN'S AMENDMENT

The President's proposed constitutional amendment would directly overrule *Engel* and *Schempp.* It would sanction religious exercise in the schools, rejecting Justice Frankfurter's admonition to "keep [the public schools] scrupulously free from entanglement in the strife of sects." It would cause deep division among families in the schools. It would give school officials power to regulate a student's manner of religious expression. It rejects the immutable fact that "voluntary" religious practices among impressionable children will always contain an element of compulsion.

Senator Thurmond's last-minute addition to the proposal, that the government shall not "compose" the words of prayer, does not preclude a teacher or school official from selecting a particular prayer which has already been composed. For instance, the 24-year-old son of a state governor could no longer write his state's public school prayer—as was done in Alabama a few years ago—but he (or his father or an Alabama state teacher) could pluck a prayer from a favorite collection of prayers.

It is ironic that this constitutional amendment, paraded under the banner of "pro-religion," will actually weaken our religious liberty. Inevitably, when the government peddles religion, it advances it for some but inhibits it for others. It can also render religion virtually meaningless for still other segments of the population. As conservative commentator James J. Kilpatrick wrote about the President's amendment: "One problem with institutional prayer parallels the problem often encountered with institutional food. The group prayers that would be sanctioned by this amendment would be canned peas—bland, innocuous, inoffensive recitations, perfunctory rituals devoid of spiritual meaning. Heartfelt prayer demands something more."

SENATOR HATCH'S AMENDMENT

Silent prayer or meditation, some suggest, is the answer because there the individual can truly contemplate private thoughts in a way that is personally meaningful. Senator Hatch's constitutional amendment seeks a compromise, between restoring audible prayer and the prohibition of any prayer at all. But I have serious problems with both the structure, and more importantly, the intent, of his proposal.

The amendment combines two very disparate concepts into one measure. It calls for silent meditation or prayer and it provides for "equal access" for student religious groups. As one editorial writer put it: "Apples and oranges may be sold by some grocers in a common package; dissimilar constitutional concepts should not be." Nonetheless, both sections on their own, are objectionable.

As to the amendment's first section, prayer, even if silent, is not one of the functions of government. Any group exercise, including silent prayer, requires a teacher to prescribe the time, manner and place of meditation or prayer. Our school officials presently have no power to regulate a student's manner of religious expression, but under Hatch's proposal, they would be authorized to promulgate rules "determining the propriety of [religious] gestures, rituals, and ornaments" for use during prayer periods. Such silent moments which endorse prayer, become officially sponsored prayer, transforming the government into an "instrument of religion."

The Supreme Court has never ruled on silent meditation or silent prayer and the lower federal courts have produced conflicting opinions. The test usually employed to determine whether these statutes violate the establishment clause is whether the legislative history reveals a secular purpose, whether the statutory language is secular and, how the statute would likely operate.

The more recent statutes of this type have been held unconstitutional, and usually on the first of these grounds: the legislative intent was found patently to "reintroduce prayer in public schools." In one case from New Jersey, a federal district court found that in addition to a transparently religious legislative history, the silent meditation statute, as implemented in some schools, required students to assume a posture for a particular religion: to stand up, and either bow heads or close eyes. If school officials get this "religious" about a statute calling

for strict silence, one wonders what they would do with one authorizing prayer.

The Hatch proposal violates at least two parts of the three-part test developed by the courts. First, the proposal's legislative history would be suspect: the Judiciary Committee report on the amendment status that the proposal is "to restore discretion to state or local authorities to structure a religious exercise" in a public schoolroom . . . "it is intended that the government be authorized to sponsor such [silent] prayer. . . ." Second, the proposal's operation would be problematical (and even chaotic), given the scant guidelines contained in its language.

Because Hatch's state-sponsored prayer would be silent, the conflict it presents is perhaps not quite as obvious as with oral, unison prayer proposed by the President. But I believe the principle is no different, and that the potential consequences are similarly troubling.

The Hatch amendment's "equal access" section is uncharted territory. It calls for public schools—at any level, including elementary—to allow voluntary student groups free access to the use of school facilities. The provision seeks to prohibit school officials from barring student gatherings on the basis that they want to discuss religion or to worship. The Supreme Court has upheld the equal access policy in the 1981 case of *Widmar* v. *Vincent*, but only in the context of the university. Although the Court emphasized the importance of the age and maturity of the students—intimating that equal access may not apply to lower school grades—this is not clear, and lower courts disagree. Etching such an uncertain policy into the granite of a constitutional amendment is tremendously unwise.

I support Senator Hatfield's equal access version, chiefly because it is legislation and not a constitutional amendment, and thus can more adequately contain the necessary safeguards concerning implementation. For instance, in addition to limiting application to only secondary schools, the amendment should also make explicit that meetings should: be confined to non-instructional periods so that they are not disruptive of class; occur only where an open forum already exists (i.e., a school is not obligated to provide one); and, avoid opening the campus to outside groups or speakers. The Hatfield bill explicitly contains these elements.

Because the Hatch proposal does not provide answers to these questions, a broad interpretation of the equal access section could overturn the Supreme Court in *McCollum*, barring clergy-run religious instruction programs on public elementary and secondary school campuses.

CONCLUSION

Amending the Constitution is serious business; it is not done casually or capriciously. Our Constitution has been amended only 26 times in the 196 years since its adoption, and ten of those amendments were the Bill of Rights, adopted in 1791. We only amend the Constitution where there is a clear need either to provide an essential governmental procedure or to protect a vital substantive right. I have argued, for instance, that the protection of human life is a vital matter necessitating a constitutional amendment overturning the Supreme Court case of *Roe* v. *Wade*.

No such compelling case has been presented with respect to prayer. Let us remember that what was "taken out of the schools" was state-sponsored, teacher-led prayer. Individual prayer has never been prohibited by any court at any time. The free exercise clause of the First Amendment guarantees the right of individual school children and teachers to pray as their conscience dictates in school as in other places.

Church-state issues are among the most volatile that Congress considers. Legislating or amending the Constitution in an area that so closely turns on our own subjective beliefs, religious upbringings and moral principles are bound to arouse our most deeply-held feelings. But I hope that passion does not cloud reason, not invite false charges. People of equally fervent faith can disagree on these subjects. I happen to be a Roman Catholic, and yet I rejected the recent proposal on tuition tax credits which would have provided reimbursement from federal revenues to parents of private (mostly parochial) school children. That aids religion. By the same token, I have recently spoken out against taxation of churches, in the context of the 1983 Social Security Amendments, which for the first time in our history, impose a tax on religious institutions. That burdens religion. I believe my views on school prayer are consistent with these positions—all seeking to preserve the "wall of separation."

America is a religious country. Its very origin sprang from the quest of diverse people from distant lands to seek a new world that promised religious freedom. But our country has survived, indeed thrived, as a unified nation because it elevated the privacy of thoughts and beliefs beyond the reach of government. The proposed amendments violate this historical legacy by permitting government intrusion into a realm sacred to the family and to the church.

James Madison, as I have said, made much of the religious conscience of Americans. *McCollum* v. *Board of Education*, believed by constitutional scholars to be the best incorporation of Madison's conception of the separation doctrine, contains a phrase that summarizes the perspective I have sought to impart today: "[T]he First Amendment rests on the premise that both religion and government can best work to achieve their lofty aims if each is left free from the other within its respective sphere."

May we heed these words as we deliberate over whether to put the force of government behind prayer in the public schools. For the foregoing reasons, I urge my colleagues to vote against the proposed amendments.

The Constitution According to Madison, Hamilton and Marshall . . . or Jesse Helms?

(By Senator Thomas F. Eagleton)

The role of the Supreme Court as the expounder and guarantor of the Constitution is under growing and ingenious attack. Over thirty bills have been introduced in the Congress to alter the scope and role of the Supreme Court and, in some instances, the lower federal courts. The Senate recently passed one measure to limit court jurisdiction on the subject of busing to achieve integration. Other proposals have received a serious airing at legislative hearings.

DIFFERENCES BETWEEN PREVIOUS ATTACKS ON THE COURTS AND THIS ONE

Attacks on the courts as institutions in our democracy are not new.[1]

Throughout his remarkable 34-year tenure as Chief Justice, John Marshall was in running battle with Presidents, Congress, State Governors and State Supreme Court Justices, as he asserted the judicial supremacy of the Supreme Court.[2] President Jefferson so violently hated Marshall and his rampant Federalism that he even contemplated the impeachment of the Chief Justice.[3]

In the pre-Civil War years, there was intense and, at times, vitriolic debate by Abolitionists in and out of Congress directed at the Taney Court.

Early in the 20th century, progressives in Congress and President Theodore Roosevelt castigated what they viewed to be a reactionary Supreme Court. Moves were initiated to restrict the Supreme Court and to establish a method of recall of federal judges.

Later in the century, President Franklin Roosevelt viewed the Supreme Court as such a colossal impediment to his plans for economic recovery that he proposed to "pack" the Court with more sympathetic judges.

Getting closer to the present, we can recall the billboards and bumper stickers in the '50s and '60s stating, "Impeach Earl Warren."

So, criticizing and disputing the Court and its decisions is as old as the Republic itself and, presumably, "as American as apple pie." Undoubtedly, the present rash of anti-court legislative proposals draws some inspiration from this tradition.

There is a fundamental and momentarily disarming difference between the attacks on the Supreme Court of yesteryear and the attacks of today. In general, those of the past were direct, broadside attacks on the Court itself and its composition.[4] Perceived for what they were, they failed.[5] Those of today are seemingly narrow, targeted attacks on jurisdiction or the definition of words. Today's, by the scalpel-like nature of their approach, may tempt the unwary to support them as short-term expedients, without realizing the grave, long-term danger they pose.

The important thing now, as it was in those previous eras, is to recognize that there will always be deep-seated political divisions within the American body politic over Supreme Court decisions. But we must not permit those political divisions to destroy the Court as an indispensable and vital institution and as the ultimate guarantor of the Constitution itself.

BENCHMARK FOR EVALUATION: IMPACT ON THE INDEPENDENT JUDICIARY THE FOUNDERS ESTABLISHED

In order to understand the power of the Supreme Court and the attacks being made on it, one has to remember the historical origins of the Court.

Reaction to the Articles of Confederation

The Supreme Court was not created in a vacuum. Its parentage had many antecedents. The principal one, in my judgment, was the total and abject failure of our structure of government during the period of the Articles of Confederation from 1781 to 1789. That period is the least evaluated, most ignored period of our nation's history, but, in a constitutional sense, it is perhaps the most important period of our nation's history.

Under the Articles of Confederation, our nation was a league of disunited states, whose representatives met from time to time to deal with a very limited range of common concerns in a system that relied almost entirely on voluntary cooperation. The system of government under the Articles of Confederation was a dismal failure. We are in the "last stage of national humili-

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Footnotes at end of Article.

ation," wrote Madison in Federalist No. 15. Engagements broken, debts unpaid, credit dried up, commerce stagnated, territory violated, remonstrances scorned—all of this was the disorder of the day.[6] Our national governmental non-structure was a "dark catalogue of public misfortunes."[7]

Perhaps the weakest of the weak governmental links under the Articles of Confederation was the court system.[8] When the courts functioned, they functioned in a piecemeal, haphazard way. Sometimes they didn't function at all, as during "Shay's Rebellion" in Massachusetts in 1786, when Disciples of Shay time and again crowded around the courthouses and kept the courts from processing debt claims.[9] Thomas Jefferson, away in France on ambassadorial assignment, was not terribly horrified by "Shay's Rebellion" except insofar as the principal manifestations of discontent were "the attempts to interfere with the orderly process of the courts."[10] The designers of the Constitution would not forget this experience with powerless courts.

Clear choice of a strong National Government and Court

Washington, Adams, Jay, Hamilton, Madison and the at times equivocal Jefferson[11] knew that a much stronger governmental structure was necessary to avoid the chaos, paralysis and disunion of the day.[12] As the antidote to creeping anarchy, the Constitution was born with strong powers in a truly national government. While sovereignty remained divided among a mixture of national and state government responsibilities, the drafters of the Constitution emphasized "the primacy of the national component in the mixture."[13]

An integral part of national sovereignty established by the Constitution was a national Court.[14] The national judicial power was "vested in one supreme Court."[15] James Madison and Alexander Hamilton, the guiding geniuses of Federalism, were clear on the link between a strong, independent Supreme Court and the preservation of the Constitution against future inroads. Thus, in Federalist No. 22, Madison recognized that the national government's laws and treaties under the new Constitution would be "a dead letter without courts to expound and define their true meaning and operation," and that "[t]o produce uniformity in [court] determinations, they ought to be submitted, in the last resort, to one Supreme Tribunal."[16] So, too, did the Federalists recognize that the Supreme Court needed a great degree of independence from other branches of government—particularly the national legislature which, in Madison's colorful prose, was "everywhere extending the sphere of its activity and drawing all power into its impetuous vortex."[17]

That there ought to be one court of supreme and final jurisdiction is a proposition which is not likely to be contested," wrote Hamilton in Federalist No. 81. Indeed, it is highly significant that the power or the role of the Supreme Court was not a continuous or central point of debate between the Federalists and anti-Federalists when the Constitution was before the states for ratification. Such issues as governmental complexity, the need for a Bill of Rights, the "aristocratic tendency" of the Constitution, the expense of a big government, taxation, the growth and influence of the national government, etc., were the focal point of debate. Few of the anti-Federalists focused on the Supreme Court.[18] But even those who did question the power of the Supreme Court[19] did not question the necessity for applying the general principle of the separation of powers to achieve a totally separate, totally independent Supreme Court.[20]

Even if there were more doubt about what the Constitution mandates or what the Founding Fathers envisioned with respect to the ultimate power of the Supreme Court, one would be struck by the consistent approach taken by almost two hundred years of constitutional jurisprudence. In the early landmark opinions of Chief Justice Marshall in *Marbury* v. *Madison*, *McCulloch* v. *Maryland*, and the rest,[21] the Supreme Court left no doubt that it could and would "say what the law is" and that the Constitution was a document of enduring principles which an independent judiciary would interpret and apply throughout changing and evolving history.[22] Later decisions hewed closely and consistently to the course Justice Marshall charted.[23] Perhaps the most impressive of these are cases in which the power of the Court to declare actions of state or federal officials unconstitutional was enunciated—and sustained in the body politic—during very turbulent times.[24]

Emphasis on Court independence by some prominent Court critics

With this historical background, it is no wonder that people displeased with Supreme Court pronouncements of recent years are nevertheless deeply troubled by today's congressional attacks on the Supreme Court. A prime example is Senator Barry Goldwater. While stating his view that "the Supreme Court has erred" in decisions on school busing, abortion and school prayer, the Senator recently warned his colleagues that today's "frontal assault on the independence of the federal courts is a dangerous blow to the foundations of a free society."[25]

Another example is current Attorney General William French Smith. Fond of criticizing specific decisions and the general "activism" of the federal judiciary, the Attorney General has nevertheless warned:

"The integrity of our system of federal law depends upon a single court of last resort having a final say on the resolution of federal questions. The ultimate result of depriving the Supreme Court of jurisdiction over a class of cases would be that federal law would vary in its impact among the inferior courts. . . . There would also exist no guarantee through Supreme Court review that state courts accord appropriate supremacy to federal law when it conflicts with state enactments."[26]

Finally, the Chief Justices of the State Supreme Courts can be expected to have periodic, and perhaps pronounced disagreements with the direction of particular Supreme Court decisions.[27] Despite this, the Conference of State Chief Justices, comprised of the 50 Chief Justices, was sufficiently concerned with the threat posed to the Supreme Court by legislation pending in Congress that it issued this unanimous statement in January of this year:

"Without the unifying functions of Supreme Court review, the United States Constitution could well mean something different in each of the fifty states. Aside from the obvious effect of this anomaly on the nation's citizens, the resulting inconsistencies in legal precedent and the more frequent jurisdictional disputes would further overload state courts."[28]

THREE VARIATIONS ON A FAMILIAR HELMS THEME

I now will turn to the major legislative proposals pending in Congress which attempt to limit, in one fashion or another, the scope of Supreme Court or federal lower court authority to rule in three sensitive and controversial types of cases—prayer in schools, abortion, and school busing. While the proposals raise different constitutional questions warranting some separate analysis, all three are the work product of Senator Jesse Helms (R-N.C.). And all three are, in the final analysis, efforts to amend the Constitution "through the back door." If sanctioned and carried to their ultimate logic, these three proposals would subject an unlimited universe of constitutional issues to quick, legislative nullification.

Prayer in schools

Until President Reagan proposed to amend the Constitution with respect to school prayer,[29] the front-running proposal to overturn Supreme Court decisions in this area was that of Senator Helms. The Helms bill would take away the Supreme Court's jurisdiction to hear cases relating to prayer in schools.[30]

The origins and development of judicial power discussed above provide ample basis for questioning the Helms approach. Permitting the Congress by statute to remove the Supreme Court's (and, indeed, the entire federal judiciary's) power to hear a class of cases would eliminate all means of reconciling conflicting state court interpretations of the Constitution. It would obliterate the judiciary's status as a separate and independent branch of government charged with authoritive and decisive interpretation of the Constitution. Further, the proposals aim by mere statute to change the meaning that the courts would give to the terms of the Constitution.[31] This runs headlong into the Framers' intent that the Constitution be changeable only through the constitutional amendment process.[32] Specifically, statutory amendment of the Constitution would run afoul of the marvelously prescient warning issued by Alexander Hamilton almost two centuries ago:

"[I]t is not to be inferred from [the right of the people to alter or abolish the established Constitution] that the representatives of the people, whenever a momentary inclination happens to lay hold of a majority of their constituents, incompatible with the provisions in the existing Constitution, would, on that account, be justifiable in a violation of those provisions. . . ."[33]

Despite all this, there is a swath of textual material which seems on first inspection to provide constitutional cover for proposals such as the Helms bill. Article III, section 2 of the Constitution gives the Congress power to make "exceptions" and "regulations" to the appellate jurisdiction of the Supreme Court.[34] Proponents of the Helms approach, including Senator Helms himself,[35] have characterized removal of jurisdiction over certain constitutional cases as an "exception " or "regulation" permitted by Article III. Beyond the words of the Constitution, they point to jurisdiction-limiting statutes in non-constitutional settings[36] and to Ex Parte McCardle,[37] which approved a restriction on the Supreme Court's jurisdiction in habeas corpus cases.

Whatever the surface appeal of these arguments, most legal scholars believe reliance on the exceptions clause and McCardle for bills such as S. 481 is misplaced. They see cases decided after McCardle as robbing it of an expansive interpretation.[38] They emphasize that the Exceptions Clause must be read in its broader constitutional context, and against the backdrop of the Con-

stitutional Convention debates.[39] They conclude it is nonsense to view Congress' power over appellate jurisdiction as a license to circumvent the constitutional independence of the Supreme Court and the sole means which the Constitution prescribes for its amendment.[40] As respected legal scholar Henry Hart put it:

"Why, what monstrous illogic! To build up a mere power to regulate jurisdiction into a power to affect rights having nothing to do with jurisdiction! And into a power to do it in contradiction to all the other terms of the very document which confers the power to regulate jurisdiction!" [41]

The present Attorney General of the United States had made the same point—if less emphatically—about the Exceptions Power. In his extensively-documented letter to the Chairman of the Senate Judiciary Committee, Attorney General Smith concludes:

"There is no doubt that Congress possesses some power to regulate the appellate jurisdiction of the Supreme Court. . . . Congress may not, however, consistent with the Constitution, make "exceptions" to Supreme Court jurisdiction which would intrude upon the core functions of the Supreme Court as an independent and equal branch in our system of separation of powers." [42]

The Attorney General found that the Exceptions Clause cannot be adequately analyzed "in a vacuum." He grounded his conclusion instead on the "terms of Article III as a whole, as evidenced by the history of its framing and ratification, its place in the system of separation of powers embodied in the structure of the Constitution, and its consistency with external limitations on congressional power implicit in the Constitution and contained in the Bill of Rights." [43]

The letter's argumentation clearly points to the conclusion that the Helms school prayer bill, and similar attempts to restrict Supreme Court jurisdiction over selected constitutional rights cases, are unconstitutional interferences with the Court's "core functions."

Abortion

The subject of abortion has prompted several jurisdiction-limiting bills along the lines of the Helms school prayer bill. In addition, however, the efforts to reverse Supreme Court cases on the legality of abortion has led to a different proposal for amending the Constitution by the back door. I refer to Senator Helms' bill, which would have Congress, by statute, define the word "person" in the XIVth Amendment thus: "The Congress hereby declares that for the purpose of enforcing the obligation of the states under the XIVth Amendment not to deprive persons of life without the process of law, each human life exists from conception . . ." [44]

Many people, myself included, have been highly critical of the Supreme Court's 1973 abortion decisions, and we seek to rectify those decisions by the traditional constitutional amendment route.[45] However, many abortion decision critics, again including myself, have seen the Helms human life-defining approach as of very dubious constitutionality.[46]

Indeed, as with the school prayer bills, the Helms approach to overturning abortion decisions by statute seems on its face to contradict the fundamental attributes of the judicial power the Founders' ordained. To impute to Congress the power to reverse abortion cases by the simple expedient of writing a statutory definition of "person," would be to impute the right of Congress to define other portions of the XIVth Amendment as well.[47] Thus, if Senator Helms, by statute, can define the word "person" in the XIVth Amendment, then Senator Kennedy is free to define by statute the words "equal protection" in the same Amendment so as to include the Equal Rights Amendment. Some other Senator may want to define "due process," and so on.

The power to define is the power to expound. Under the Constitution, that is the power of the Supreme Court, not of the Congress. The vast bulk of potential challenges to state actions under the Constitution are based on the XIVth Amendment. Thus, to permit a transitory, political majority in Congress to rewrite the XIVth Amendment by statute is to begin the destruction of the Court and the Constitution itself.

Yet, the situation is not quite as simple as it might seem. The Helms approach to abortion is similar to the school prayer bills in another respect: a constitutional provision and an expansively-written Supreme Court decision blur what would otherwise be a clear picture of unconstitutionality.

Thus, proponents of the supposed power of Congress to redefine by statute the XIVth Amendment point to its section 5, which states that, "The Congress shall have power to enforce, by appropriate legislation, the provisions of this [Amendment]." They cite *Katzenback* v. *Morgan*,[48] in which the Supreme Court construed section 5 as permitting Congress to prohibit certain state voting laws as discriminatory, not withstanding the Court's previous ruling that the laws did not violate the Equal Protection Clause.[49]

By reading section 5 and Morgan as permitting Congress generally to displace the Court's judgment on XIVth Amendment questions, supporters of the Helms bill confirm Justice Harlan's foresighted fear that Morgan would foster congressional moves to define constitutional rights "so as in effect to dilute [the] equal protection and due process decisions of this Court."[50] However, while Morgan gives the Helms approach a semblance of constitutional validity, on closer analysis, the semblance is more imaginary than real. Subsequent cases belie any general conclusion that Congress may displace the Court as expounder of XIVth Amendment rights. *Oregon* v. *Mitchell* struck down a legislative conclusion that the 18-year-old vote was necessary to provide Equal Protection under the XIVth Amendment.[51] A majority of the Court joined separate opinions assuming the Court's, not Congress' interpretation of Equal Protection should govern.[52] Also, in subsequent cases upholding legislative enactments based on congressional power to remedy constitutional violations, it is clear that Congress was going farther than the Court, but both were going in the same direction.[53] There is little in current case law to justify a congressional reversal of basic Supreme Court enumerations of the rights embedded in the XIVth Amendment.[54]

School busing

The congressional approach to busing, as spearheaded by Senators Helms and Johnston, is somewhat different from either of the approaches I have discussed so far. The Supreme Court itself would not be denied jurisdiction in these matters. Rather, the lower federal courts would be denied the right to impose a busing remedy beyond fifteen minutes from a student's home.[55]

The justification for this approach is also somewhat different: since, under Article III, Congress has the power to create the lower federal courts, it is argued, it has power to define or limit the remedies a lower federal court may impose.[56]

It is true that efforts to restrict the Supreme Court stand on a different footing from efforts to restrict lower court actions.[57] However, it is even more true that hobbling the judiciary by denying it the necessary remedy to vindicate a constitutional right may well be the same as to deny the constitutional right itself. In constitutional terms, denial of adequate remedial power would be invalid either as an impermissible congressional interference with the essentials of the independent judicial function [58] or as a violation of provisions of the Constitution outside of the Article III power (e.g., Due Process), which nevertheless constrain legislative action.[59]

In the very practical terms of the Helms-Johnston amendment which passed the Senate earlier this year, Congress by statute is saying to an aggrieved minority student that there is a 15-minute "shot clock" on your Equal Protection right. The lower federal courts can provide you a remedy for up to 15 minutes; beyond that, "Sorry, you're on your own."[60]

CONCLUSION

With this article's emphasis on legislative enactments, it is appropriate to close with some moving words from another legislative source:

"Manifestly, if we may force the hand of the Court to secure our interpretation of the Constitution, then some succeeding Congress may repeat the process to secure another and a different interpretation and one which may not sound so pleasant in our ears as that for which we now contend.

"It is essential to the continuance of our constitutional democracy that the judiciary be completely independent of both the executive and legislative branches of the Government, and we assert that independent courts are the last safeguard of the citizen, where his rights come in conflict with the power of governmental agencies."

Thus spoke the Senate Judiciary Committee in 1937 [61] when liberal Franklin Roosevelt sought to re-write conservative Supreme Court opinions by the ingenious strategem of "packing" the Court with appointees of his own choosing. Today, 45 years later, dissatisfied conservatives want to re-write liberal Supreme Court opinions by equally ingenious strategems of re-writing the Constitution by statute or by procedural artifice. In short, they want to amend the Constitution by the back door.

The 1937 words of the Senate Judiciary Committee are just as applicable today. What can be manipulated by today's political majority can be just as easily manipulated by tomorrow's—and to other ends.

In a very real sense, the choice before the Congress and the country is whether we want a Constitution according to Hamilton, Madison, and Marshall, or a Constitution according to Jesse Helms. To me, the choice is abundantly clear.

(I want to thank my legal staff counsel, Glenn C. Smith, for his invaluable assistance in my preparation of this article.)

FOOTNOTES

[1] Charles Warren, *Legislative and Judicial Attacks on the Supreme Court of the United States*, 47 American L.Rev. at 1-35 and at 161-189 (1913); Paul

A. Freund, *Storm Over the American Supreme Court*, 21 The Modern L.Rev. at 345-358 (1958).

[2] One of Chief Justice Marshall's more vitriolic exchanges was with his fellow Virginian Spencer Roane, the Presiding Judge of the Virginia Court of Appeals. In 1821, Roane, presumably at the urging of Thomas Jefferson, wrote for a Richmond, Virginia, newspaper a series of scathing articles attacking Chief Justice Marshall and Marshall's federal supremacy opinions. Jefferson was delighted with the articles because they "pulverized" Marshall. Marshall responded in a letter to Justice Story that Roane had no "pretentions to any decency of character . . . He really is the champion of dismemberment." He went on to assert Roane's "coarseness and malignity." He concluded, "In support of the sound principles of the Constitution and the Union of the States, not a pen is drawn in Virginia; the tendency of things verges rapidly to the destruction of the government and the re-establishment of a league of sovereign states. I look elsewhere for safety." *See* Warren at 16-18.

[3] The zeal in 1804 of Republican political allies of President Jefferson to impeach Associate Justice Samuel Chase was "the opening phase of a concerted party move against the entire bench, up to and including the Chief Justice . . ." Dumas Malone, Jefferson and His time, Vol. 4, at 469 ["Jefferson the President—First Term 1801-1805] (Little, Brown & Co. 1970). Rumblings of impeaching Marshall were also heard in connection with his handling of the Aaron Burr trial in 1807. Dumas Malone, Jefferson and His Time, Vol. 5, at 340 ["Jefferson the President—the Second Term 1805-1809"] (Little, Brown & Co. 1974).

[4] This is not to say that jurisdiction-stripping legislation has not been considered seriously before the current wave of bills. In 1957, Senator Jenner's bill to disallow Supreme Court review of contempt-of-Congress citations or state and local regulations against subversive activities was reported by the Senate Judiciary Committee, but was not voted upon by the Senate. *See* S. Rept. No. 85-1586, 85th Cong., 2nd Sess. (May 15, 1958) (report on S. 2646). This bill was a direct response to several Supreme Court opinions Jenner and others found highly objectionable. In 1964, the House passed legislation to remove Supreme Court and lower federal court jurisdiction over apportionment cases. *See* 110 Cong. Rec. 20213-20221 (August 19, 1964) (discussion of H.R. 11926). This bill was a clear effort to gut the Court's decisions in *Baker* v. *Carr* and *Reynolds* v. *Simms*.

Finally, several jurisdiction-stripping measures were enacted during the period immediately after the Civil War. These enactments became the subject of landmark Supreme Court decisions construing the congressional power to alter jurisdiction. See text accompanying notes 37 and 38, *infra*.

[5] Recently, James MacGreggor Burns and Michael Beschloss advanced the thesis that a tactical error in presenting the Roosevelt court-packing plan figured prominently in its rejection. In an April, 1982, article in The New Republic, the authors stated: "The scheme had a certain logic as a device—if a transparent one—to enforce the will of the American majority. . . But in the message to Congress on Court reorganization, [Roosevelt] committed a major tactical mistake, citing not the rights of the majority but judicial delay and inefficiency. Majority rule was difficult to oppose, but Chief Justice Hughes could easily refute charges of congestion in the courts. Roosevelt's plea for efficiency missed the principle of the matter. It was, as a friendly newspaper said, 'too clever—too damned clever!' " "The Forgotten FDR," The New Republic, April 7, 1982, at 19.

Whatever the early views of the plan, it soon became perceived for what it was. Certainly, its aim was not lost on the Senate Judiciary Committee, which unanimously urged rejection. While the Committee Report on the plan does devote a few pages to refuting the purported concerns about court delay and efficiency, the Committee clearly realized and identified the true nature of the attack on the court's independence: "Neither speed nor "new blood" in the judiciary is the object of this legislation, but a change in the decisions of the Court—a subordination of the views of the judges to the views of the executive and legislative, a change to be brought about by forcing certain judges off the bench or increasing their number." S. Rept. No. 711, Senate Committee on the Judiciary, 75th Cong., 1st Sess. at 9-10 (1937). The bulk of the Report is devoted to criticism and forceful refutation of the transparent purpose of the plan as stated. It is clear that the Committee did not find the notion of imposing "majority rule" on the Court "difficult to oppose."

[6] Of the three who collaborated on the Federalist Papers, it was Hamilton who undertook the burden of spelling out the inadequacies of the Articles of Confederation. In Federalist No. 15, Hamilton sets forth a bill of particulars of the governmental shambles under the Articles of Confederation. He makes the factual case for his "dark catalogue of our public misfortunes."

[7] Herbert J. Storing, What the Anti-Federalists Were For, at 25. (Univ. of Chicago Press 1981).

[8] In Federalist No. 22, Madison described "the want of a judiciary power" as a "circumstance which crowns the defects of the Confederation." Focusing on the impact of the lacking judicial power on treaties entered into by the national government, Madison wrote:

"The treaties of the United States, under the present Constitution, are liable to the infractions of thirteen different legislatures, and as many different courts of final jurisdiction, acting under the authority of those legislatures. The faith, the reputation, the peace of the whole Union, are thus continually at the mercy of the prejudices, the passions, and the interests of every member of which it is composed. Is it possible that foreign nations can either respect or confide in such a government? Is it possible that the people of America will longer consent to trust their honor, their happiness, their safety, on so precarious a foundation?"

Madison's view of the judiciary is generally reflected in modern commentaries on the Confederation period. *But see* Freedman, The United States and the Articles of Confederation: Drifting Toward Anarchy or Inching Toward Confederation?, 88 Yale L.J. 142-143, 158-160 (1978) (revisionist view that courts were "characterized by state deference to national power").

[9] James MacGreggor Burns, The Vineyard of Liberty, at 14 (Alfred A. Knopf, New York 1982).

[10] Dumas Malone, Jefferson and His Time, Vol. 2, at 157-158. ["Jefferson and the Rights of Man"] (Little, Brown & Co. 1951).

[11] Away in France, Jefferson was separated from the formulation and ratification of the Constitution. He did correspond from time to time with Madison and others. Early on, he was only lukewarm about what was going on. In a letter to John Adams, Jefferson said, "I confess I do not go as far in the reforms thought necessary as some of my correspondents in America." *Id.* at 162. In later correspondence to Edward Carrington, he wrote, "As to the Constitution, I find myself nearly a neutral." *Id.* at 168. Later on, he was clearly in the Federalist camp once it was clear that ratification would be followed by the adoption of a Bill of Rights.

[12] "An impudent rebellion, an impotent Congress, a jeering Europe—these were the catalysts for George Washington, and hundreds of others like him, who believed that national independence and personal liberty could flourish only under conditions of unity and order. If government could not check these disorders, Washington wrote James Madison, 'what security has a man for life, liberty or property?' It was obvious that, in the absence of a stronger constitution, 'thirteen Sovereignties pulling against each other, and all tugging at the federal head will soon bring ruin on the whole.' No one knew better than the commanding general of the Continental armies the price of division and weakness in Congress, and he had been as little impressed by the nation's leadership in the years since the war." *The Vineyard of Liberty*, at 16.

[13] *What the Anti-Federalists Were For*, at 33.

[14] For example, while the Constitutional Convention was in session, Jefferson wrote to Madison proposing a broad mandate of judicial review for the federal courts as the preferable way to keep the state governments in line. His later feud with Marshall caused him to rethink the issue of "judicial supremacy." *Jefferson and His Time, Vol. 2*, at 163.

[15] The Constitution of the United States, Article III, Sec. 1.

[16] Madison went on to explain: "If there is in each State a court of final jurisdiction, there may be as many different final determinations on the same point as there are courts. There are endless diversities in the opinions of men. We often see not only different courts but the judges of the same court differing from each other. To avoid the confusion which would unavoidably result from the contradictory decisions of a number of independent judicatories, all nations have found it necessary to establish one court paramount to the rest, possessing a establish one court paramount to the rest, possessing a general superintendence, and authorized to settle and declare in the last resort a uniform rule of civil justice." *See also*, A. Hamilton, Federalist No. 80. ("Thirteen independent courts of final jurisdiction over the same causes, arising upon the same laws, is a hydra in government, from which nothing but contradiction and confusion can proceed.")

[17] Federalist No. 48. In Federalist No. 80, Hamilton said, "If there are such things as political axioms, the propriety of the judicial power of the government being coextensive with its legislative may be ranked among the number."

Further, in Federalist No. 78, Hamilton discussed at length the need for judicial independence as a safeguard against constitutional violations by the legislature, spurred when "a momentary inclination happens to lay hold of a majority of their constituents." He saw judicial independence, assured by lifetime tenure, and the stability of the Constitution until its amendment by constitutionally proper action, as essential to "guard the Constitution and the rights of individuals from the effects of those ill humors, which the arts of designing men, or the influence of particular conjecture, sometimes disseminate among the people themselves . . ."

[18] The result was that "the broadest reaches of the [judicial power] were seldom canvassed during the ratification debates . . ." *What the Anti-Federalists Were For*, at 50.

[19] "The most farsighted of [the anti-federalists], Brutus [Robert Yates of New York], very accurately anticipated the breadth with which the Supreme Court would construe its own powers and those of the general legislature and the line of reasoning that would be used. 'I question whether the world ever saw, in any period of it, a court of justice invested with such immense powers, and yet placed in a situation so little responsible.' . . . Thus some Anti-Federalists saw the general judiciary as a locus from which an irresponsible aristocracy of legal skill might gradually and irresistibly encroach on the more popular parts of government, an anticipation of more recent concerns about the implications of legal rationality and bureaucratization." *What the Anti-Federalists Were For*, at 50.

Also, although women did not participate at the Constitutional Convention in Philadelphia, it was a woman, Mercy Warren, writing under a pseudonym "A Columbian Patriot," who wrote some of the most telling Anti-Federalist articles. Amongst other things, she argued against the "excessive" judicial powers in the Constitution. *The Vineyard of Liberty*, at 59.

[20] *What the Anti-Federalists Were For*, at 60.

[21] *Marbury* v. *Madison*, 5 U.S. (1 Cranch) 137,177 (1803) ("it is emphatically the province and duty of the judicial department to say what the law is"; power to declare Act of Congress unconstitutional); *Fletcher* v. *Peck*, 10 U.S. (6 Cranch) 87 (1810) (power to declare state legislative enactment unconstitutional as violation of prohibition on interference with right of contract); *Martin* v. *Hunter's Lessee*, 14 U.S. (1 Wheat.) 304, 344 (1816) (Story, J.) ("The courts of the United States can without question revise the proceedings of the executive and legislative authorities of the States, and if they are found to be contrary to the Constitution, may declare them to be of no legal validity. Surely, the exercise of the same right over [State] judicial tribunals is not a higher or more dangerous act of sovereign power."); *Cohens* v. *Virginia*, 19 U.S. (6 Wheat.) 264 (1821) (authority to review State criminal proceedings).

[22] It was the very essence of the Constitution, as crafted by Madison and Hamilton and as expounded by Marshall, that put the Supreme Court "beyond the reach of transient popular majorities." *The Vineyard of Liberty*, at 381.

[23] As just one of many examples, consider Chief Justice Taney's formulation of the Court's authority to review state laws and judicial constructions in *Ableman* v. *Booth:*

"It is manifest that ultimate appellate power in a tribunal created by the Constitution itself was deemed essential to secure the independence and supremacy of the General Government in the sphere of action assigned to it; to make the Constitution and laws of the United States uniform, and the same in every State; and to guard against evils which would inevitably arise from conflicting opinions between the courts of a State and of the United States, if there was no common arbiter authorized to decide between them." 62 U.S. 506, 519 (1858).

[24] *E.g., U.S.* v. *Nixon*, 418 U.S. 683 (1974) ("Many decisions of this Court . . . have unequivocally reaffirmed the holding of *Marbury* v. *Madison*"); *Cooper* v. *Aaron*, 358 U.S. 1, 18 (1958) (refusal to permit dilution of holding in *Brown* v. *Board of Education*) ("[*Marbury*] declared the basic principle that the federal judiciary is supreme in the exposition of the law of the Constitution, and that principle has ever since been respected by this Court and the Country as a permanent and indispensable feature of our Constitutional system . . .").

[25] 128 Cong. Rec. S2250 (March 17, 1982). Senator Goldwater went on to say:

"[T]he framers clearly linked the federal judicial power to their plan of national union.

"We must remember that instead of forming a loose connection of 13 different "countries," the framers deliberately turned to a Federal structure with a stronger continental government than had existed under the Articles of Confederation.

"Current efforts to limit Federal court independence repudiate federalism by reverting to State supremacy over matters of basic constitutional doctrine. The anti-federalists lost this argument two centuries ago."

The Senator made his remarks as part of a discussion among 14 other Senators, including myself, on the dangers posed by recent efforts to overturn constitutional decisions by statutory means.

[26] Letter of Attorney General William French Smith to Senator Strom Thurmond, Chairman, Senate Judiciary Committee, May 6, 1982, at 16. [hereinafter cited as *A.G. School Prayer Letter*]; See text accompanying notes 42 & 43, infra.

[27] *See, e.g.*, R. Donnelly, "The State of the Judiciary in Missouri—1982," Address by the Chief Justice of the Missouri Supreme Court to the 81st General Assembly, 2nd Regular Session, January 7, 1982, Jefferson City, Missouri.

[28] "Report to the Conference of Chief Justices on Pending Federal Legislation to Deprive Federal Courts of Jurisdiction In Certain Controversial Areas Involving Questions of Constitutional Law," incorporated in Resolution I, approved by unanimous vote of the Conference of State Chief Justices, Williamsburg, Va., January 30, 1982, reprinted at 128 Cong. Rec. E101 (February 2, 1982).

[29] The proposal is embodied in S.J. Res. 199, which was introduced by Senator Thurmond on May 18, 1982, and referred to the Senate Judiciary Committee.

[30] S. 481 (February 16, 1981). The language of this bill is identical to a Helms-sponsored amendment adopted on April 9, 1979, by the United States Senate. That amendment would have denied the federal district courts all original jurisdiction, and the Supreme Court all appellate jurisdiction, over "any case arising out of any State statute, ordinance, rule, regulation, or any part thereof, or arising out of an Act interpreting, applying, or enforcing a State statute, ordinance, rule, or regulation which relates to voluntary prayers in public schools and public buildings." This bill was not acted upon by the House of Representatives.

[31] *E.g.*, 127 Cong. Rec. S1281, S1283 (February 16, 1981) (Statement of Senator Helms that adjudication of school prayer cases in state, not federal court under S. 481 would "restore to the American people the fundamental right of voluntary prayer in the public school.")

[32] Constitution of the United States, Art. V.

[33] A. Hamilton, Federalist No. 78. Hamilton continued: "Until the people have, be some solemn and authoritative act, annulled or changed the established form, it is binding upon themselves collectively, as well as individually."

[34] The relevant part of clause 2, reads: "In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to Law and Fact, *with such Exceptions, and under such Regulations as the Congress shall make." (italic added.)*

[35] 127 Cong. Rec. at S1283; 125 Cong. Rec. S4130 April 5, 1979).

[36] *E.g.*, The Norris-LaGuardia Act, 47 Stat. 70 (1932) (codified at 29 U.S.C. 101-115) (1976) (restriction on authority of federal courts to issue restraining orders and injunctions in certain labor cases). Note that other statutes, such as the now defunct World War II Emergency Price Control Act of 1942, 56 Stat. 23 (codified at 50 U.S.C. app. 107) (1976) restricted the *lower* federal court's jurisdiction over legal questions. Court approval of lower court restrictions does not necessarily mean support for restrictions on the Supreme Court, given Congress' more plenary control over the lower federal courts. *See* text accompanying note 57, *infra*.

[37] 74 U.S. (7 Wallace) 506 (1869). *McCardle* involved the effort of a newspaper publisher to challenge, through a writ of *habeus corpus* in federal circuit court, his imprisonment under the post-Civil War military government in Mississippi. When the circuit court denied the writ. *McCardle* appealed to the Supreme Court, as permitted by an 1867 statute. After oral argument, but before final decision, Congress repealed the part of the 1867 Act which permitted Supreme Court review. The Court dismissed the case after reargument, painting the constitutional "exceptions" and "regulations" power in broad terms:

We are not at liberty to inquire into the motives of the legislature. We can only examine into its power under the Constitution; and the power to make exceptions to the appellate jurisdiction of this court is given by express words. *Id.* at 514.

[38] The case of *Ex parte Yerger*, 75 U.S. (8 Wallace) 85 coming only two years after *McCardle*, indicated why the earlier Court may have looked so casually on the repeal of its appellate jurisdiction under the 1867 Act. In *Yerger*, the Court ruled that the 1867 repeal did not—and could not—repeal an earlier grant of jurisdiction over *habeus corpus* actions provided by the Judiciary Act of 1789. In rejecting such a construction of the 1867 Act, the Court stated: ". . . . it is too plain for argument that the denial to this court of appellate jurisdiction in this class of cases [would] greatly weaken the efficacy of the writ, deprive the citizen in many cases of its benefits and seriously hinder the establishment of that uniformity in deciding upon questions of personal rights . . . [I]t is evident that the imprisoned citizen, however unlawful his imprisonment may be in fact, is wholly without remedy unless it be found in the appellate jurisdiction of this court [given by the 1789 Act]." 75 U.S. (8 Wallace) at 102-103.

The Court characterized the right to appeal a *habeus corpus* case to it as "conferred by the Constitution, recognized by law, and exercised from the foundation of the government hitherto." *Id.* at 106. Thus *Yerger* suggests that exceptions to jurisdiction may not have the effect of denying all avenues for Supreme Court review of constitutional rights cases. An even clearer rejection of such exception came in 1871 in *United States* v. *Klein*, 80 U.S. (13 Wallace) 128. In *Klein*, the Court rejected as unconstitutional a congressional attempt to alter the outcome of a constitutional rights case in a manner strikingly similar to the Helms school prayer approach. (Congressional ire was aroused in 1870 by a ruling that persons engaged in pro-confederate activities during the Civil War were entitled to proceeds for seized property if they had received a Presidential pardon. To frustrate this result, Congress attached a rider to an appropriations bill which deprived the Court of Claims and the Supreme Court of jurisdiction in any claims case brought by a pardon recipient.) The *Klein* court held that "the acknowledged power of Congress to make exceptions and prescribe regulations to the appellate power" does not permit withholding of jurisdiction "as a means to an end," when that end is to frustrate the Court's power to uphold a claimant's right to just compensation and a President's right to make a pardon without congressional impairment. 80 U.S. (13 Wallace) at 145-147. Asking rhetorically whether Congress could alter Court jurisdiction just to avoid an "adverse" result, the *Klein* Court said, "[T]his question seems to us to answer itself," and then answered No.

[39] The origin of the "exceptions" and "regulations" clause is canvassed in *Sager, Foreword*, at 50-51 and accompanying notes. The author concludes his analysis of the Constitutional Convention debates as follows:

"The exceptions and regulations language first emerged in the Committee of Detail draft. It was adopted by the Convention on August 27 without a ripple of recorded debate, concern, or explication. In light of this quiescence, it is hard to imagine that the framers were consciously adopting a provision that could completely unravel one of the most basic aspects of the constitutional scheme to which they had committed themselves." *Id.* at 51 (citations omitted).

[40] *See, e.g., Tribe, Jurisdictional Jerrymandering: Zoning Disfavored Rights Out of the Federal Courts*, 16 Harv. Civil Rights—Civil Lib. L.Rev. 129 (1981) [hereinafter cited as *Tribe, Jurisdictional Jerrymandering*] ("the upshot would be *no* judicial forum capable of *assuring* either the supremacy *or* the uniformity of entire bodies of federal law, a result that must be condemned as unconstitutional") (emphasis in original); *Ratner, Congressional Power Over the Appellate Jurisdiction of the Supreme Court*, 109 U. of Pa. L.Rev. 157 (1960); Hart, *The Power of Congress to Limit the Jurisdiction of Federal Courts: An Exercise in Dialectic*, 66 Harv. L.Rev. 1362 (1953); Roberts, *Now is the Time: Fortifying the Supreme Court's Independence*, 35 A.B.A.J. 1 (1944).

[41] *Quoted in* Kaufman, *Congress* v. *The Court*, New York Times Magazine, September 20, 1981, at 102. Judge Kaufman's article is both impeccably argued and very readable and has no doubt contributed significantly to public understanding of current court-stripping proposals.

[42] *A.G. School Prayer Letter*, at 2. This conclusion is reiterated forthrightly at page 6.

[43] *Id.* at 6. The Attorney General's Letter echoes several of the points discussed in the text accompanying notes 23 through 25 above. The Letter is in full accord with Professor Sager's characterization of the Constitutional Convention's action on the Exceptions Clause. *Id.* at 6-7. So, too, does the Letter support the interpretation of *McCardle* presented in note 23, above. *Id.* at 13.

[44] S. 2148, 97th Cong. 2nd Sess. (introduced March 1, 1982). This bill is similar to S. 158, which was reported by a Subcommittee of the full Senate Judiciary Committee in July of 1981. The House of Representatives equivalent of S. 158 is H.R. 900, introduced by Congressman Hyde on January 19th, 1981.

[45] E.g., S.J. Res. 110, introduced by Senator Hatch on September 21, 1981; and S.J. Res. 17, introduced by Senator Garn on January 22, 1981.

[46] The best examples of this view can be found in the testimony received by the Senate Judiciary Committee's Subcommittee on the Separation of Powers which considered and approved S. 158.

Professor Charles Alan Wright testified:

"I find *Roe* [v. *Wade*] unpersuasive. Nevertheless, *Roe* exists, it has been repeatedly reaffirmed and even extended, and I do not think Congress has authority by statute to overrule a constitutional decision of the Supreme Court."

Former United States Solicitor General Archibald Cox told the Subcommittee:

"I, myself, wrote critically of *Roe* v. *Wade* a little while after the decision came down.

"But wrongheaded decisions can be changed by time and debate or by constitutional amendments. But the very function of the Constitution and Court is to put individual liberties beyond the reach of both Congressional majorities and popular clamor."

Former Solicitor General, now U.S. Circuit Court Judge, Robert Bork, stated:

"The question to be answered in assessing S. 158 is whether it is proper to adopt unconstitutional countermeasures to redress unconstitutional action by the Court. I think it is not proper. The deformation of the Constitution is not properly cured by further deformation."

Report of the Subcommittee on Separation of Powers of the Senate Judiciary Committee on S. 158, 97th Cong., 1st Sess. at 40-41 (December, 1981) (Minority Views of Senator Baucus, quoting testimony before Subcommittee); *see* memorandum of Wilfred Caron, General Counsel to the U.S. Catholic Conference, *quoted in Id.* at 42 (questioning constitutionality of the human life statute).

[47] *See* testimony of Archibald Cox, *Id.* at 40. ("Any principle which permits Congress, with the approval of the President, to nullify one constitutional right protected by the Constitution, as interpreted by the Court . . . would sanction the nullification of others, and that is why I say that the principle of S. 158 is exceedingly dangerous, and I can only call it radical.")

[48] 384 U.S. 641 (1966).

[49] The enactment at issue in *Morgan* prohibited states from using an English literacy requirement to disenfranchise persons educated in American flag schools, in which the predominant language was not English. The Court had previously ruled that such literacy tests did not violate the Equal Protection Clause, as long as there was no evidence of intent to use them to discriminate. *Lassiter* v. *Northampton County Bd. of Elections*, 360 U.S. 45 (1959). However, *Morgan* upheld the congressional prohibition on English literacy tests as a valid exercise of congressional power to assess independently the justifications put forward by the State in defending a law arguably at odds with the XIVth

Amendment. Citing Congress' "specially informed legislative competence" to appraise voting requirements, the Court said that "it was Congress' prerogative to weigh these competing considerations . . . [I]t is enough that we perceive a basis upon which Congress might predicate a judgment that the application of New York's English literacy requirement . . . constituted an invidious discrimination in violation of the Equal Protection Clause." 348 U.S. at 656.

[50] 384 U.S. at 668 (Harlan, J. dissenting).

[51] 400 U.S. 112 (1970) (upholding voting rights provisions for federal elections, but rejecting lowering of voting age to 18 in state and local elections).

[52] Justices Stewart and Blackmun and Chief Justice Burger rejected the view that Congress had the power "not only to provide the means of eradicating situations that amount to a violation of the Equal Protection Clause, but also *to determine as a matter of substantive constitutional law what situations fall within the ambit of the clause* and what state interests are 'compelling'." 400 U.S. at 296. (*emphasis* added.)

[53] See *Fullilove* v. *Klutznick*, 448 U.S. 448, at 478 (1980) (upholding minority business enterprise "set-aside" provision of Public Works Employment Act of 1977 because "Congress reasonably determined that the prospective elimination of these barriers to minority firm access . . . "was appropriate to ensure that those businesses were not denied equal opportunity to participate in federal grants to state and local governments, which is one aspect of the equal protection laws."); *City of Rome* v. *United States*, 446 U.S. 156 (1980) (power under analogous section 2 of XVth Amendment to enforce voting rights protections through remedial legislation); *Jones* v. *Alfred H. Mayer Co.*, 392 U.S. 409, 420-437 (1968) (congressional power to determine that XIIIth Amendment ban on "the badges and the incidents of slavery" justified statute prohibiting discrimination in private transactions.)

[54] This is clearly what S. 148 would accomplish. *See* M. Rosenberg and K. Lewis, "Constitutional Authority to Enact a Human Life Statute: A Constitutional Analysis of S. 158," memorandum prepared by Congressional Research Service, The Library of Congress, at 20-21 (April 17, 1981) (distinguishing abortion context as one in which "the Supreme Court, prior to enactment of legislation by Congress, held constitutionally invalid any legislative effort, either by a state or the Congress, which undermined or denied a constitutional right established by judicial interpretation"); *Tribe, Jurisdictional Jerrymandering* at 138 & accompanying note 38, 155 & accompanying note 97; sources cited in note 40, *supra*.

[55] The reference is to the "Helms-Johnston" anti-busing provisions the Senate added to S. 951, the Department of Justice authorization bill for fiscal year 1982. The anti-busing bill passed by a vote of 57 to 37 on March 2, 1982. It would prohibit any federal court with original jurisdiction over a school desegregation case from ordering that any student be bused beyond the school closest to his or her residence, if any of the following five factors are present:

"(i) there are reasonable alternatives available which involve less time in travel, distance, danger, or inconvenience;

"(ii) such assignment or transportation requires a student to cross a school district having the same grade level as that of the student;

"(iii) such transportation plan or order or part thereof is likely to result in a greater degree of racial imbalance in the public school system than was in existence on the date of the order for such assignment or transportation plan or is likely to have a net harmful effect on the quality of education in the public school district;

"(iv) the total actual daily time consumed in travel by schoolbus for any student exceeds thirty minutes unless such transportation is to and from a public school closest to the student's residence with a grade level identical to that of the student; or

"(v) the total actual round trip distance traveled by schoolbus for any student exceeds 10 miles unless the actual round trip distance traveled by schoolbus is to and from the public school closest to the student's residence with a grade level identical to that of the student." Section 2, S. 951, 97th Cong., 2nd Sess.

Also, the bill would prohibit the Justice Department from bringing any action seeking to bus any student to a school "other than the school which is nearest to the student's home," except for special education students. Section 3(1)D, S. 951.

[56] *E.g.*, Letter of Attorney General William French Smith to Honorable Peter W. Rodino, Chairman, House Judiciary Committee (May 6, 1982). [Hereinafter cited as *A.G. Busing Letter*]. The Attorney General's Letter states this general view of the power of Congress over inferior courts:

"It seems a necessary inference from the express decision of the Framers that the creation of inferior courts was to rest in the discretion of Congress that, once created, the scope of the court's jurisdiction was also discretionary. The view that, generally speaking, Congress has very broad control over the inferior federal court jurisdiction was accepted by the Supreme Court in [several early cases]. That view remains firmly established today." *Id.* at 9.

Some supporters of congressional limitations on court busing orders seek support from Congress' power, as provided in Section 5 of the XIVth amendment, to enforce the Equal Protection guarantees. *See* Remarks of Senator Gorton, 128 Cong. Rec. S967-968 (February 22, 1982) (portraying more limited busing restriction than Helms-Johnston as legitimate exercise of power to enforce XIVth amendment through remedial legislation). This argument runs into the same problems in the school busing context as in the abortion context, namely, that it is very difficult to portray the restrictive legislation as furthering the current direction of Equal Protection jurisprudence. As the Attorney General has opined:

"Section 5 does not, however, authorize Congress to preclude the inferior federal courts from ordering mandatory busing when, in the judgment of the courts, such busing is necessary to remedy a constitutional violation. This authority must be found, if at all, in the power of Congress under Article III, § 1 to restrict the jurisdiction of the lower federal courts." *A.G. Busing Letter* at 11.

[57] Article III, Section 1 of the Constitution vests "the judicial power" in the Supreme Court, which, therefore, has an existence firmly grounded in the Constitution. As indicated in the previous note, the inferior courts' basis existence is made dependent on initial congressional action and, in most views, on continued congressional sufferance. *See Sager, Foreword*, at 33-36 (discussing general consensus that "[a]t the level of the lower federal courts, a miserly interpretation of Congress' authority to restrict jurisdiction is still more difficult to sustain").

[58] Implicit in the Constitution's grant of "judicial power" to courts is that they retain sufficient scope and authority to rule decisively and completely. *See U.S.* v. *Klein*, 80 U.S. (13 Wall.) 128, 145-57 (1871) (Congress cannot grant jurisdiction and at the same time "prescribe a rule in conformity with which the court" must decide the case a particular way); *A.G. Busing Letter*, at 12 (Congress may not limit remedial authority of lower federal courts "as a guise for usurping the exercise of judicial power"); *Tribe, Constitutional Jerrymandering*, at 136-139 (Article III imposes requirements that there be a "complete" and "efficicacious"judicial power); *Sager, Foreword*, at 85-86 ("if . . . a constitutional claimant has a right to have his or her claim heard in a court capable of fairly and independently adjudicating it, then the court in question must be empowered to grant relief that is reasonably effective"); *cf. Maryland* v. *Louisiana*, 101 S Ct. 2114, 2123 (1981) (to be a case of controversy subject to court review, right asserted must be "susceptible of judicial enforcement.")

[59] *Sager, Foreword*, at 78-80 (restriction of a remedy may be unconstitutional because it violates the constitutional right that it itself "targeted for attack," or the Equal Protection and Due Process clauses applicable to federal legislation); *Tribe, Jurisdictional Jerrymandering*, at 141-146; *Jurisdiction Stripping Proposals in Congress: The Threat to Judicial Constitutional Review*, Report of the Committee on Federal Legislation of the Association of the Bar of the City of New York, at 39-42 (December, 1981) *See A.G. Busing Letter*, at 14-16 (finding Due Process Clause applicable to, but not violated by Helms-Johnston amendment).

[60] The Present Attorney General of the United States has opined that the Helms-Johnston amendment is constitutional because it will have a "limited effect on the court's remedial power." *A.G. Busing Letter*, at 12. Elaborating on why the restriction is "limited," the Attorney General notes that the amendment does not deprive "the inferior federal courts of their power to issue any remedy *at all*" and does not leave the courts "without *any power* to issue relief affecting individual legal rights or obligations in specific cases." (Italic added.)

There are two basic objections to this. First, while the Attorney General declines to define precisely "whatever implicit limitations on Congress' power to control jurisdiction might be contained in the principle of separation of powers," the above-quoted language suggests that analysis of the limitation does not encompass the practical or legal *adequacy* of the remedies have been in some manner restricted. The letter implies that it is sufficient that *some* remedy remains—an implication countered by the authorities cited in note 58, *supra*.

Second, the Attorney General's construction of the Helms-Johnston amendment seems naively charitable. In many desegregation cases, busing may be the only adequate remedy, and the size and geography of a school system may require that any reasonable busing plan require transportation beyond the time and distance limitations of the Helms-Johnston amendment. I believe that Professor Sager more accurately captured the essence of the Helms-Johnston amendment and similar proposals as follows: "by barring or severely restricting court orders that direct public schools to fashion attendance zones on racial grounds, these bills would be virtually fatal to judicial efforts to remedy school segregation. Certainly the proponents of these bills have not identified effective alternatives to the relief they seek to ban." *Sager, Foreword*, at 89. *See Tribe, Jurisdictional Jerrymandering*, at 139 (suggesting unconstitutionality of restrictions which would prevent courts from ordering busing in particular cases "even if such courts determine that no other decree could give effect to their constitutional determinations.")

[61] S. Rept. No. 75-711 at 10.

NOMINATION OF DANIEL A. MANION, OF INDIANA, TO BE U.S. CIRCUIT JUDGE FOR THE SEVENTH CIRCUIT

Mr. EAGLETON. Mr. President, I have been in the Senate now for close to 18 years and today has been one of the strangest of those 18 years.

Whether anyone knows it or not, we are in the midst of a filibuster, Mr. President.

A filibuster is where a Senator or group of Senators get up and speak at an unusual length on a given issue, talking on and on and on, and those who think they have talked too long file a thing called cloture to cut off that inordinate extended debate. Then at a time certain there is a vote on cloture and if 60 Senators vote to cut off the debate, that ends it, more or less, subject to the ad nauseam Allen-type amendments.

The purpose of my remarks at this time, Mr. President, are not to talk about the Senate rule, not to talk about the filibuster, but just to alert the country that we are in one, and it is most unusual that those who would normally be considered to be the filibusterers, those who are against the elevation from obscurity of Daniel Manion of South Bend, IN to the court that is right below the Supreme Court of the United States, the 7th Circuit Court of Appeals, those who are considered the filibusterers do not have any time to speak with respect to Manion. We are going to vote tomorrow to cut off debate without any debate having occurred.

There is a reason for it, Mr. President. There is a reason for it.

The Daniel Manion record as an attorney cannot withstand the focus of public attention and cannot withstand the focus of television attention.

□ 1620

You see, Mr. President, after we return from our July recess, if we are still on the Daniel Manion matter, we are off the air. We are off the air and all we will have are some live bodies in the gallery and a few sleepy-eyed reporters up there in the box that really do not write anything down. They are just serving their time up there

from 9 to 5 pretending to write things down. But we are off the air.

And that's fine with those who are in favor of Mr. Manion going to this court, which, as I say, is right below the Supreme Court of the United States. They want it off the air. They want the Manion nomination to be kept as the most tightly guarded secret in America, next only I guess to star wars or some other top secret item that might be before the Intelligence Committee or the Armed Services Committee.

I am not gleefully happy to talk here today about Daniel Manion, attorney at law, from South Bend, Indiana, but I have to. I have to. Let me tell you why.

I had not been focusing an enormous amount of attention on the Manion nomination until about 2 weeks ago. I read, I think, two editorials that had been written about him. One of them I remember was in the New York Times. I cannot remember where the second one was. I do recall the New York Times editorial.

Mr. Daniel Manion sent word that he would like to see me. I thought, as a courtesy, it would be fine if I saw Mr. Manion. We had an interview. He is a pleasant man. He seems to be, in terms of civility and demeanor, a rather nice gentleman. We had a rather pleasant, if at times innocuous, conversation.

But I remembered reading in that New York Times editorial about some briefs he had written while practicing law. So I asked him about those briefs. He did not seem to want to pursue that part of the conversation very much. But as we parted, I said, "Well, Mr. Manion, I have not read those briefs but I'm going to read them and if I think they ought to be read by some other people, I'm going to send them to other people for their evaluation." And that is how the meeting ended. As I say, that took place a couple or so weeks ago.

Mr. President, I now have read those briefs and I sent those briefs to some of the most distinguished attorneys in the United States. I must say, in all sadness, but in all candor, the evaluation of those five or six briefs is that they are somewhere between awful and deplorable. My own personal evaluation, for what it is worth, is that I would give about three of them an outright F, meaning flunk; and I would give three maybe a friendly D-minus, hoping to encourage the student to do a little better the next time.

I have sat on moot courts in various law schools in this country, Mr. President—and I am sure other Members in this body who are attorneys have also sat on moot court competition or moot courts at Harvard Law School, St. Louis University, or Washington University.

A moot court competition, which is for freshmen law students at the end of the first year, goes something like this: A topic is thrown up for grabs and one of the young students takes the plaintiff's side, the other takes the defendant's side, and they write up the briefs and they argue before you. They submit the briefs in writing, of course and they orally argue the case and use the briefs as part of the oral argument.

Had those Manion briefs, to which I will make some reference now, been submitted to me in any of these moot court endeavors, I would have had to say to the student, the freshman law student:

"Young man or young lady, you have got to go back to the drawing board on this brief. You haven't got the right message. You haven't delivered it in the right way. You don't seem to have a grasp of the law. You don't seem to understand the legal issues that are involved in this case."

But my opinion is not all that important. It is pretty important to me; it is going to determine how I vote. But the opinion of some other people, Mr. President, is a lot more important.

I would like to share with you—and I will put the full letters in the RECORD—excerpts from the letters of some very distinguished attorneys to whom I sent the Manion briefs with a request they evaluate them and tell me what they say about Mr. Manion's qualifications to serve on the Seventh Circuit Court of Appeals.

I will just read some excerpts. As I say, I will put the letters in their entirety in the RECORD at the conclusion of my remarks.

I will start with this one from Sheldon Elsen. Sheldon Elsen is a professor of law at Columbia University, and he is chairman of the committee on Federal courts for the Association of the Bar of the city of New York. He also was a member of the President's Commission on Enforcement and the Administration of Justice, back in 1967. Here is what Professor Elsen, who is the chairman of this committee on the Federal courts for the New York City bar, said about the Manion briefs:

"These briefs vary in quality, depending in part on the complexity of the issue. None are better than mediocre and those which are relatively more complicated, that is, where the issues are not immediately apparent, are quite bad, indeed, opaque, confused, and rambling."

Next, I received a letter from Mr. Cyrus Vance. Cyrus Vance was the Secretary of State in the Carter administration, a nationally recognized attorney, general counsel for the Defense Department in earlier years, the senior partner of one of the most prestigious law firms in the United States, Simpson Thacher, at One Battery Park Plaza, NY. Here is what Cy Vance had to say after reading the Manion briefs:

"Individually and collectively, these briefs are barely adequate. They are far below the standard of legal analysis and writing required of a federal appellate judge. Two of the briefs *(Lindower* and *State of Indiana)* are poorly organized, wordy, and hard to follow. Their arguments do not match. All of the briefs suffer from inadequate attention to spelling, grammar, and syntax."

Continuing with Mr. Vance:

"The generally flaccid reasoning in the briefs does not put the client's case in the strongest favorable light and frequently fails to address the important arguments to the contrary.

These briefs, in sum, do not display the learning, intellectual rigor or persuasive power which should characterize the work of a federal appellate judge."

So writes Mr. Vance.

The next evaluation comes from Mr. Archibald Cox. Mr. Cox, as most people know, is a professor at Harvard Law School, served as Solicitor General of the United States and also served as the Watergate prosecutor for a while—I wish he had served a longer while.

But, in any event, the office of Solicitor General is that office in the Department of Justice that presents the Government's appellate briefs to the Supreme Court of the United States and then makes the oral arguments before the Supreme Court based on those briefs. No one would be in a better position to evaluate the quality of legal briefs than would individuals who served as either the Solicitor General or worked in that office. Here is what Mr. Cox says after reading the Manion briefs:

"Yet even though the five cases were undemanding, the briefs, taken as a group, exhibit none of the skills in accurate legal analysis and clear and precise expression required to serve usefully as a judge on a U.S. Court of Appeals. On the contrary, the briefs contain much evidence of muddiness of both thought and expression."

□ 1630

Then another paragraph from Professor Cox's evaluation.

"The briefs as a group leave me—as I have said—with the conviction that Mr. Manion is not qualified to be a judge in the United States Court of Appeals. They evidence little capacity for pulling the key legal questions out of even rather simple facts, and for then stating clearly both the question and the disposition that he advocates. They accordingly suggest that he would be quite incapable of dealing effectively with the far more complex factual situations and issues of law that come before a U.S. Court of Appeals."

The next letter, Mr. President, is from Prof. Lawrence Tribe, one of the most highly recognized constitutional scholars and appellate advocates on the current seat; Harvard Law School professor, author of American Constitutional Law, and other treatises on the law. Here are the Tribe excerpts, again critiquing the Manion briefs:

"I have read the five briefs you submitted. I had in fact read several of them before, and could hardly believe that any one would submit them as evidence of legal ability."

I will insert parenthetically that Mr. Manion submitted these briefs to the Judiciary Committee as examples of his best legal work. He was asked to send in five of his best briefs. He was free to pick them out. Mr. Manion sent in five of these as his best. A sixth brief came to the Judiciary Committee surreptitiously, that is, over the transom in the dark of the night, anonymously, no fingerprints, no lettering. But it was not one of Manion's best. I will have a little more to say about it. It has to be the worst of the worst.

Returning to Professor Tribe's letter:

"Learning that Mr. Manion regards them as his best work leaves me with a particularly sad feeling about the qualities of mind and scholarship that they reflect."

Continuing from Professor Tribe:

"* * * the burden should be on the President and on the nominee to persuade the Senate that it is not being asked simply to rubberstamp a purely ideological choice by the Chief Executive. But, in Mr. Manion's case, one unfortunately does not even reach the issue of excellence, since the briefs he has written provide convincing evidence of pervasive mediocrity and, to be quite frank, legal ineptitude of the first order."

I am a pretty blunt person, Mr. President. But I do not think I have ever been as blunt as that—"to be quite frank, legal ineptitude of the first order."

Continuing further with Professor Tribe:

"* * * the briefs are characterized by so shallow a command both of legal doctrine and of argumentation as to suggest a virtually complete absence of significant legal capacity."

How about that? "A virtually complete absence of significant legal capacity."

The next evaluation I have, Mr. President, is from Mr. Lloyd Cutler, senior partner of

one of the biggest law firms in Washington, DC, maybe even the whole country, Wilmer, Cutler & Pickering. Here is what Mr. Cutler has to say about Mr. Manion's briefs:

"But based on my review of the briefs he submitted to the committee, I do not believe he possesses the capacity for legal analysis and exposition or the degree of carefulness required for appointment to the Federal bench, especially the Federal appellate bench. If these briefs had been submitted to me by an applicant for a junior position in our law firm, I would have voted against offering him a place. If these briefs fairly reflect Mr. Manion's capacities, I believe he falls well below the minimum standards of eligibility for an Article IV judge. Since it has been suggested that opposition to Mr. Manion's appointment is based on his conservative views, I should perhaps add that I have no knowledge or opinion concerning any such views, nor do I regard them as grounds for disqualification. I would not oppose any well-qualified nominee such as Justice Rehnquist or Judge Scalia on such a ground. My partner, John Pickering, former President of the District of Columbia Bar and the District's current State Delegate to the American Bar Association, has also reviewed the briefs, and he shares my opinion."

Next, Mr. President, former Dean Irwin Griswold, Harvard Law School, former Solicitor General of the United States, practicing Republican, and in the opinion of many lawyers the finest appellate lawyer in the United States. I asked a professor over the phone just the other day, I said, "Who is the John W. Davis of America today? I want to send these briefs to the modern John W. Davis." John W. Davis was the 1924 Democratic Presidential nominee. He had been Solicitor General in the Cabinet of President Wilson, and then later founded the firm of Davis & Polk. He was one of the finest appellate lawyers this country has ever known, as my colleague from Mississippi, Senator STENNIS, well remembers and well acknowledges. So this professor said, "Well, I guess Irwin Griswold is probably the closest we have today to being the modern John W. Davis."

So I packaged up the Manion briefs and sent them down to Dean Griswold. I still call him dean. I said, "Give me your evaluation." Here is what he writes back, just a few excerpts, on the Manion briefs.

"Turning to the substance of the briefs, the thing that strikes me is that they are all quite without distinction in organization, in clarity of expression, or in the effective use of authorities. I do not think that I can say they are bad briefs, but I can say that in my judgment they are not very good. Using law school terminology, I would say they were all "C" work. They would merit a passing grade, but they would not approach even the moderate distinction of being a "B" rank."

Another paragraph from Dean Griswold:

"In view of the finality of nearly all courts of appeals decisions, a good case may be made for the proposition that the same standards should be used in the confirmation of courts of appeals judges as is used with respect to appointments to the Supreme Court. At least there should be a considerable showing of experience and ability well above the ordinary. This seems to me to be entirely lacking with respect to Mr. Manion."

To repeat:

"This seems to me to be entirely lacking with respect to Mr. Manion."

Mr. President, there are some very strong words in those letters, strong words written by some very, very distinguished scholars, distinguished appellate lawyers and distinguished members of the bar. It takes a great deal of courage for one practicing the law to put these words on paper realizing that the Jimmy the Greek odds are that somewhere along the line Daniel Manion will squeak through with 52 to 53 votes and then serve the rest of his natural life on the Seventh Circuit Court of Appeals out there in the Midwest.

Many of these lawyers have a national practice, have offices in Chicago, Los Angeles, and Texas, and Lord knows where, have matters that will in time come before the Seventh Circuit Court of Appeals out there in Chicago. And, hence, it takes a great deal of courage for a legal practitioner, knowing that he and his firm may be before a court, to speak with such directness and such bluntness about the intellectual incapacity of one to serve on the appellate court.

□ 1640

I very seldom take the floor, Mr. President, to give a speech. Senator STENNIS remembers in my first couple of years I guess I was over here twice a day, speaking on Vietnam—at least twice a day, 5 days a week. We took the weekend off. Then the rest of my time was devoted to an attempt to cut the Pentagon budget. But it took so many years to get out of Vietnam and it was such a futile attempt to cut the Pentagon budget that in my later years I did not frequent the Senate floor as much as in my more ebullient younger days.

But I felt with respect to this issue that I had to.

There are 60 lawyers in the U.S. Senate. Each and every one of them takes an oath when he or she becomes a member of whatever State bar it is, that he or she is going to support and defend the Constitution of the United States. And even the 40 nonlawyers in the Senate, all of us, all 100 of us, take an oath when we become Members of this body to support and defend the Constitution of the United States.

The way the Constitution of the United States is defended and the way it is protected is by men of great wisdom, men and women of great wisdom, serving on our courts, our trial courts, our appellate courts, in this instance the court of appeals, and then the ultimate of ultimates, the Supreme Court. We rely on their intellect, their capacity, and their wisdom to render judgments on the laws and on the Constitution, sometimes to render unpopular opinions, sometimes to exhibit the most extraordinary of courage against the currents of the time, whatever those political currents might be.

So those jobs must only go to the best and the brightest. That should be the test. We have never adopted the Roman Hruska mediocrity test. It was offered at one time in a debate with respect to Judge Carswell, the elevation of Carswell to the Supreme Court of the United States back in 1970.

Senator Hruska, of Nebraska, said on March 17: "Well," speaking of Carswell, "even if he were mediocre, there are a lot of mediocre judges and people and lawyers, and they are entitled to a little representation, aren't they? We cannot have all Brandeises, Frankfurters, and Cardozas."

We rejected the Hruska mediocrity test. We said, there may be a lot who are mediocre. Yes, there are. There are too damn many of them, Mr. President. There are a lot of mediocre lawyers. There are a lot of awful lawyers, too damn many of them.

This May and June, 39,000 law students have graduated to enter the practice of law, more than the profession can absorb, more than the profession needs, and probably half of them with less than the talent they need to practice law.

So, yes, there are a lot of mediocre lawyers around. But we do not say that the mediocre lawyers are entitled to their proportionate share of slots on the Supreme Court of the United States and the Seventh Circuit Court of Appeals. If half of the lawyers in this country are mediocre, and one could have a debate on that, then are we to preserve four of the nine slots on the Supreme Court of the United States for the mediocre and five for the superior?

We would have to have two confirmation proceedings. The President would have to nominate saying, "I hereby nominate Mediocre Joe for a mediocre slot and use the mediocre test when you confirm."

Then when he has somebody who is good, like Scalia, who is really good, he would say, "I hereby nominate him for one of the superior slots."

We do not want such a system.

The Federal court should have the highest test in terms of talent, integrity, background, capacity, skill. If you heard those quotes I read from those very distinguished scholars and attorneys, Daniel Manion flunks the test by every measure.

This is no small job we are talking about. This nomination may not make headlines in Los Angeles or in Miami or in Fairbanks, AK. But a lifetime appointment on the Seventh Circuit Court of Appeals is a very, very important position for life.

One thing about judges, when they put on a black robe: They live forever. There is something about a black robe that is good for the blood flow.

So Daniel Manion, who is in his early forties—44—will probably be on the Seventh Circuit Court of Appeals when some grandsons of current Members of the U.S. Senate are first elected to the U.S. Senate. These guys go a long time.

If you make a mistake, it is a lifetime mistake. There is no "Oops."

When you see these opinions that he has written and the problems he has with the English language and grammar, or more importantly, with pursuing a clear line of thought, you have to think what kind of judge he'd be. You cannot go back once the decision is made and say, "Hey, we would like to have a second chance."

These briefs, upon which I have laid great emphasis, are the closest thing we have to judge the quality of this man and to determine what kind of appellate judge he would be if confirmed. A legal brief marshals the facts, marshals the law, and lays it all out in a clear analytical way to guide the court in coming up with a decision.

A brief reflects how a lawyer thinks. It reflects how he analyzes. It reflects how he approaches the law. It reflects how he fits the facts with the law. It reflects how he reasons. It reflects how he writes.

By all of these tests, by all of those reflections, Daniel Manion of South Bend, IN, a nice gentleman, is a gentleman who does not belong on the Seventh Circuit Court of Appeals.

I do not know the precise legal system out in South Bend, IN. I presume they have a trial court, and then an intermediate appellate court, and probably a Supreme Court of Indiana, whatever they call it.

As I read the Manion briefs, and, indeed, as these other gentlemen have read the Manion briefs, Daniel Manion is what is called in the legal trade a small claims lawyer. There is nothing wrong with that. There are a lot of small individuals, small corporations, that have small claims, and require legal representation. There is nothing wrong with that. It is a necessary function of American society.

But that has been the sum total of Daniel Manion's practice of the law. That is the limit of his legal knowledge and his legal competence.

That is not the requisite knowledge and not the record of experience that is demanded for service on the Seventh Circuit Court of Appeals.

□ 1650

Some of Manion's supporters have said, "Well, he will learn. He will learn." They argue that if confirmed as a member of the court of appeals, Mr. Manion will learn about Federal law while deciding cases and that his writing will, in time, improve.

My lord, what a testimonial. It says, confirm this man, confirm this man and let him learn later the law that he will need to know as a Federal judge in a Federal court. Then he will learn how to write so that people can read his opinions and try to figure out what it is that the opinion holds.

Not good enough, Mr. President, not good enough.

I conclude with a true story. It happened in this body before JOE BIDEN was here, before DAN EVANS was here, but while RUSSELL LONG and JOHN STENNIS were here.

We had a marvelous one-term Senator in this body named Williman Spong of Virginia. He served one term. Bill Spong and I, and as I recall, FRITZ HOLLINGS, sat over there, sort of in left field, near the foul line, right up at the wall.

We had the Carswell nomination before the Senate, one of the most hard-fought battles that I can remember. It was back in 1970. It was a tough, tough fight.

Carswell was from the South. Bill Spong was from Virginia, obviously below the Mason-Dixon line. As this debate went on, Bill Spong, marvelous legal scholar that he was—when he left here, he later became the dean of William and Mary Law School—became very concerned. He said to me one day, "You won't see me for a week." I said, "Yes, what gives with you?"

He said, "I have gotten hold of every opinion that Carswell has written as an appellate judge."

Carswell made it to his court of appeals and he was being promoted. When you get on a court of appeals, it isn't necessarily the last stop—you can get promoted upward. Carswell made it to whatever that court of appeals is down South. So there were some printed decisions.

Bill Spong got hold of every typewritten decison or memorandum that Carswell had entered as a Federal district judge, Not all of those were printed. Some were typewritten. But he got all of them. A big batch of stuff.

He went away for a week. And I remember it as if it were yesterday. I was in my chair in the Senate. Spong came through those double doors over there and sat down next to me.

I said, "Bill, tell me, what do you know? What are you going to do?"

In his quiet, cryptic way, Spong answered, "Tom, he is not fit. Tom, he is not fit."

That is all he said. He had read all those opinions, read all those memorandums of opinion. And, as a first-rate lawyer, he made a judgment that G. Harold Carswell was not fit for a lifetime on the Supreme Court. In so doing, Bill Spong, with knowledge aforethought, committed political suicide.

He knew, as the only Mason-Dixon Senator to vote against G. Harold Carswell—and he was the only one—that he was committing political suicide.

They talk about "Profiles in Courage." As far as I am concerned, Bill Spong's vote was the highest profile in political courage I have ever seen.

Mr. President, if Bill Spong can give up a seat in the U.S. Senate because he thought keeping an unqualified person off the Supreme Court was important to the Republic, then I hope that my 99 colleagues at least will take a look at the Manion nomination for the court out there in Chicago, IL., another lifetime position.

You do not have to be a profile in courage on this one. All you have to be is a profile in good judgment, a profile in prudence, a profile in intellectual integrity. That is what a Senator has to do on this nomination.

EAGLETON THE POLITICIAN

Tom Eagleton is a politician and proud of it. To him, politics is among the most enobling of human endeavors if practiced by good and honorable people. From his earliest days, Tom Eagleton recognized those noble qualities in others, as in his 1964 tribute to John Kennedy, and aspired to those standards himself. In his speech to the Missouri Democratic State Convention in 1968, during his first campaign for the U.S. Senate, Eagleton explains the calling of politics: the desire to improve humanity's lot through a beneficent government. Eighteen years later, Eagleton addressed that same gathering and reiterated that same call to purpose. At a 1985 dinner to endow his chair at Washington University, Eagleton once again reminded his audience, and all of us, what the profession of politics is all about. At the same time, as his 1986 speech to a Democratic gathering shows, Eagleton is an astute observer of his profession. In his thirty years in politics, Eagleton notes, there have been enormous changes in the political landscape, and not entirely to the good.

SPEECHES

Remarks at the John F. Kennedy Memorial Service, St. Louis, Missouri, November 22, 1964

Speech to the Missouri Democratic State Convention, Jefferson City, Missouri, June 1, 1968.

Speech to the Missouri Democratic State Convention, Columbia, Missouri, June 9, 1984.

Remarks to the Thomas F. Eagleton Endowment Fund Dinner, St. Louis, Missouri, October 3, 1985.

Address to Jackson Days Dinner, Springfield, Missouri, April 19, 1986.

REMARKS OF ATTORNEY GENERAL THOMAS F. EAGLETON, DELIVERED AT THE JOHN F. KENNEDY MEMORIAL SERVICE

The spontaneous shock and horror of Dallas, November 22, 1963, have finally worn off. The initial feelings of helplessness and dismay that engulfed the entire nation, indeed the entire world, have subsided.

Now, a year removed from the awful tragedy, we can begin to assess the loss of John F. Kennedy.

I say "begin" because our assessment at this early date cannot be complete. It will be a continuing, evolving process, just as historians even today continue their appraisal and reappraisal of Lincoln, dead for nearly a century.

Some will remember President Kennedy for his official deeds in office—the Nuclear Test Ban Treaty which represents man's first substantial effort at preventing the destruction of mankind by a polluted atmosphere—the Cuban missile crisis where with calm certainty John F. Kennedy called a halt to a maneuver which could well have upset the delicate balance of world power and threatened world peace—the Civil Rights Act which he espoused, for which he was so severely excoriated, and with which he breathed new and meaningful life into our Constitutional liberties.

Some will remember John Kennedy for his humor, his wit, his incomparable charm.

Some will remember him as a family man, the handsome husband of a beautiful wife, the proud father of two attractive children.

I share and treasure all of these memories.

But as a politician myself, I shall recall President Kennedy not only for his personality and his programs, but also for the aura of unquestioned respectability he brought to the profession of politics.

In the hands of some, politics is often a game of pretense, a shallow exercise in preserving the status quo, a sham of platitudes and double-talk.

In the hands and mind of John F. Kennedy, politics was the noblest of pursuits for he himself was among the noblest of men.

As one commentator put it, "When most statesmen die they have to be explained away with words like 'integrity', and 'cunning', and 'courage', but Kennedy did not need such apologies. He was simply and superlatively a man of his age, who understood his age, who put all his own energy and the best brains of his country into solving its problems and who eneded up in more cases than not by doing the right thing at the right time because he'd gone about it in the right way."

Death, inexorable and unavoidable, leaves its black print on every year. 1963 was no exception.

In fact, measured by residual pain and remorse, 1963 was paticularly distressing. Earlier in the year, Pope John XXIII, an old man with young ideas, was lost to the world.

Of the Pope's death, a Rabbi said, "He lived long enough for glory, but not long enough for mankind."

I should like to borrow these words and respeak them of John F. Kennedy.

"He lived long enough for glory, but not long enough for mankind."

SPEECH OF LIEUTENANT GOVERNOR THOMAS F. EAGLETON, DELIVERED TO THE DEMOCRATIC STATE CONVENTION, LINCOLN UNIVERSITY AUDITORIUM, JEFFERSON CITY, MISSOURI

It has been said, "Truth is as old as God . . . and will endure as long as He . . ."

Thus, Charles Dickens, in his "A Tale of Two Cities," writing of the latter half of the 18th Century, writing in the latter half of the 19th Century, could well have been writing for the latter half of the 20th Century. He wrote:

"It was the best of times, it was the worst of times, it was the age of wisdom, it was the age of foolishness, it was the epoch of belief, it was the epoch of incredulity, it was the season of Light, it was the season of

Darkness, it was the spring of hope, it was the winter of despair."

Our country today finds itself in a world torn between the best and the worst of human instincts.

On the international scene we find a world, which has suffered through two great world wars, experiencing the ravages of turmoil in various areas: Vietnam, Korea, France, the Middle East, Africa and Latin America.

On the domestic scene, we witness the brutal paradox of the most affluent society man has known harboring within itself some of the greatest poverty man has known.

We are acknowledged as the most educated nation in mankind's history. Yet we simultaneously suffer the monumental foolishness of some of those who benefit most by our educational system: the students themselves who through their rioting close down their universities.

We are a nation determined to practice noble precepts consistent with our historical evolution as a bastion of freedom, yet we find a significant portion of our populace incredulous of our President and distrusting of our country's application of those precepts.

We are, technologically, at the very beginning of an enormously exciting age of development and expansion. Yet, we have not yet solved the basic problem of how to provide jobs for all those who want to work.

In our capability to produce agricultural products, we are the envy of the world. Yet the American farmer, producing with greater and greater efficiency, becomes less and less a participant in the abundance of our economy.

We are, to use the words of Dickens, both in "the spring of hope" and "the winter of despair."

I want to serve in the United States Senate. One Senator cannot alone resolve the dilemmas or rectify the inconsistencies of our age. But one Senator, believing in our country's capacity and in our country's dedication to the redress of the grievances and inequities of the past, can join with other Senators similarly motivated to constitute a chorus of hope for social and economic improvement in the future.

Today, at this convention, I ask for your help in achieving this objective. I ask for your support. I ask for your vote. With your help I will win, and I will join with Governor Hearnes in making the most thorough and vigorous general election campaign this state has ever experienced.

SPEECH BY SENATOR THOMAS F. EAGLETON, DEMOCRATIC STATE CONVENTION, HEARNES MULTIPURPOSE CENTER, COLUMBIA, MISSOURI, JUNE 9, 1984

Four years ago, with telling effect, Ronald Reagan asked this question of the American people: "Are you better off today than you were four years ago?" The people said "no" and voted, in large numbers, for Mr. Reagan.

I think it is time that we ask a different question. "Where will we be four years from now if we continue the reckless policies of Ronald Reagan?"

(1) Under Ronald Reagan, where will we be with continuing budget deficits of near $200 billion per year?

I'll tell you where we'll be.

We'll be in an interest rate crisis with car sales, home building, and all other credit intensive industries in the pits of another recession. That's where we will be.

A Democratic President offers us the chance to reverse the certainty of another economic turndown.

(2) Under Ronald Reagan, where will we be on nuclear arms limitations and reductions?

I'll tell you where we will be.

We will be even deeper in a cold war face-off with the Soviet Union. Both sides will continue to build and deploy more devastating weapons of chilling destruction. We will edge even closer to the brink of disaster. That's where we will be.

A Democratic President offers us the chance to achieve a Nuclear Freeze with the Soviet Union, offers us a chance at meaningful arms reduction talks with the Soviet Union.

(3) Under Ronald Reagan, where will we be in Central America four years from now?

I'll tell you where we will be.

We will have an even bigger CIA army in Nicaragua, more American troops in Honduras, more American equipment and advisors in Costa Rica, more American involvement in El Salvador, and the beginnings of American involvement in Guatemala. That's where we will be.

Reagan's Central America policy is a policy of war, war, and more war. He gives but meager lip service to the efforts of the so-called Contadora group (Mexico, Panama, Columbia, and Venezuela) which is valiantly trying to get peace talks going amongst the various parties.

Ladies and gentlemen, the problems of Central America will not be resolved by war, war, and more war. The only hope is peaceful negotiations.

A Democratic President would pursue the course of peace.

(4) Under Ronald Reagan, where will we be four years from now on Civil Rights?

I'll tell you where we will be.

We will be even further behind than we are now. The past four years under Ronald Reagan have been the worst period of civil rights non-enforcement since Calvin Coolidge. Coolidge, at least, did nothing. Reagan tilts every decision his administration makes against blacks, Hispanics, women, and the handicapped. That's where we will be.

A Democratic President would once again give living meaning to the Equal Protection clause of the Constitution.

(5) Under Ronald Reagan, where will we be with respect to hunger in America?

I'll tell you where we will be.

We will find that additional millions of people have been added to the rolls of the ill fed, the poorly fed, and the seldom fed. That's where we will be.

(6) Under Ronald Reagan, where will we be four years from now with respect to corruption in government?

I'll tell you where we will be.

We will have four more years of SLEAZE, of high public officials using their office either to feather their own nest or to feather the nests of rich fat cat supporters of Reagan. That's where we will be.

The Reagan administration has had more people resign or be dismissed than any administration since the time of Warren G. Harding. There is the acrid smell of unfairness about the Reagan crowd. They are there to do the bidding of the big boys.

A Democratic President would return a sense of ethics, a sense of equity, a sense of fair play to the high levels of government.

As Democrats, our job is to get the American people to look beyond the glitter, the makeup, and the facade of this Administration to see the real Reagan record and the real risks of four more years of Reagan in the White House.

It will not be easy. We will be up against a superb salesman who has mastered the first trick of his trade: When you have a rotten product to sell, then sell yourself instead. And Ronald Reagan has sold himself to the American people with remarkable success.

We will be up against one of the most lavishly staged and lavishly financed productions in campaign history—the best that fat cats can buy.

Against all this, we Democrats have only the truth and our faith in the good sense of the American people. But, I believe that is enough if we put aside our differences and join together to commit our energies to the task ahead.

I remember Harry Truman's words to me when I was a young Circuit Attorney in St. Louis. Truman told me to never forget that "Politics is people. People count. People matter. The Democratic Party cares about people. That's why I am a Democrat and always will be to the day I die."

Let us remember, we are the party of Harry S Truman! We are the party of the people! We have fought the long odds before and we have won! And we will do it again!

In 1984, let us rededicate ourselves to the simple, honest values of Harry S Truman and with his fighting spirit, carry our party's message to the people in every corner of this land.

Let us unite behind a common cause we all share: Let's send Ronnie Back to the Ranch!!

SPEECH OF SENATOR THOMAS F. EAGLETON, THE THOMAS F. EAGLETON ENDOWMENT FUND DINNER EMBARGOED RELEASE, OCTOBER 3, 1985

For weeks now, I have mulled over what I might say here tonight. Those who know me the best realize that I am not comfortable as a spotlighted honoree. Those who know me the least recognize that, on balance, I don't deserve it. In any event, I will put it as directly and sincerely as I can. This dinner tonight will forever linger in my memory. Each and every person here has my sincere thanks and profound appreciation.

I must confess that this is a damned stylish way to close out a political lifetime. With August Busch III and Lou Susman in charge it was bound to be first-rate and stylish. Tonight isn't Miller Time, folks. Everyone knows that I, like my father before me, am a 100%, true-blue Anheuser-Busch man.

Here present are 15 of my colleagues in the Senate, 6 from the House of Representatives, state officials, former state officials, mayors, and on and on. Quite frankly, I haven't seen so much political clout in one place since Clarence Cannon's funeral. Old Clarence drew a hell of a crowd—many of them eager aspirants to fill his still-warm seat in Congress.

I greatly admire all the officials here present and am delighted, truly delighted, by their presence. We are part of that mystical trade called politics. Although we are different, we possess a binding common denominator. We share a sense of fulfillment in the art of influencing and deciding public policy. Some speak better than others. Some look better than others. Some, like me, dress better than others. But all of us are of a common bond which, with the people's approval, allows American democracy,

the most delicate form of government, to flourish.

Politics ain't all singin' and chirpin' from high places. Sure, a modicum of ego and vanity exists. But there is also some sweat, some sleepless nights, some frustration, and finally, some sacrifice.

"Sacrifice," in this context, means placing a political life ahead of other things that should have come first—a family, for example. Run here; run there. Speak here; speak there. The frantic, indeed often frenetic pace of politics sometimes puts first things second. My family has experienced all of that and has suffered me gladly.

So too have my friends indulged me. My quirks, foibles, and frowns, they have all endured. In exclamations of frustrated kindness, my friends excuse me by saying "Hell, nothing is going to change old Eagleton."

But, hallelujah, Eagleton is going to change. After 30 years of being a sweet, amiable, loveable pussy cat, I am entering the rough-and-tumble practice of law I once *pretended* to know and the peppery classroom I *want* to know.

I wanted to make this metamorphosis while I was still suitable to be recycled. Politics has a trance-like quality to it and only God's better angels can help a politician break the spell. There is *no* sadness in leaving public life while you still have something worthwhile to do and the time and motivation to do it. There *is* profound sadness in staying in public life beyond human endurance and beyond the drumbeat of the times.

Anyway, I've provided for some sort of political future. I've called Mayor Daley's son and have asked to be registered and buried in Chicago so I can remain politically active.

Teaching at Washington University is something I want to do. I've learned a lot in 30 years. I've been at least on the fringe of the political playing field at the time, except for the Civil War, of the greatest national tumult in our nation's history. I've formulated judgments—some right, some wrong. I've participated in decisions—some right, some wrong. I've participated in policies—some right, some wrong.

What I have learned by training and instinct, by trial and error, may be of some benefit to a future Dick Gephardt or a future Dale Bumpers of a future Jack Danforth.

I don't want to wallow in the past or dream dreams that never were. The past is written. The future is what counts. Indeed, "our past acclaims our future."

Washington University is of the future. It helps to shape it, to guide it, and to nurture it. That's why I am looking forward to being there.

I'm glad to be home.

REMARKS BY SENATOR THOMAS F. EAGLETON, JACKSON DAYS, SPRINGFIELD, MISSOURI, SATURDAY, APRIL 19, 1986

As I look out on this audience tonight, I cannot help but think back to the time almost 30 years ago when I attended my first Jackson Day dinner.

Believe it or not, I was young once. I was the youthful, inexperienced prosecutor in St. Louis, bitten by the permanently addicting political bug. I wanted to run for statewide office. I wanted to get to know some Democrats in Springfield. For practical purposes, all you really needed to know were Democrats because the primary was the one and only race—the general election was merely a matter of routine affirmation.

I met Mr. Jackson Day, Howard Hannah. He felt sorry for this lost soul from St. Louis. He introduced me around to some of the key political players in the 7th District and, thus, in time, I was off and running for a state-wide office.

Political times were relatively simple then. Meet the Democratic leaders, get to know them, pray for their support, and with a traditional courthouse campaigning, a modest amount of money, and a little bit of luck, you might get the Democratic nomination. Not that the good old days were perfect days, but at least in those days being a Democrat was the important thing. Believing in the Democratic party, in its past, in its principles was the thing. Believing in and recognizing the party structure—whether in St. Louis or Kansas City or Springfield—was an essential ingredient of the politics of those days.

My how things have changed.

Today, you may think like a Republican, but run on the Democratic ticket. Adherence to any set of core Democratic beliefs is an irrelevancy.

Believing in or recognizing any party structure is an irrelevancy. There isn't, by and large, any party structure.

It is the ME generation for all of America and the ME generation for American politics.

Being ME means raising a humongous bundle of cash from every interest group with a checkbook, a TV film maker that makes you smile on cue, and a pollster who tells you what to think because the polls say it is popular. A candidate is packaged and programmed and held up to view not by the Democratic Party as a whole, but by those groups that have claimed power to act in the name of the amorphous Democratic Party.

LABOR

I have had, I say proudly, the support of organized labor through the years. My social conscience, my sense of governmental responsibility, more often than not, tracks with labor's social views. But we don't always agree. No one should always agree with every piece of someone else's platform.

Yet when labor examines Presidential candidates, it seems to want 100 percent, unflinching fidelity. Take my friend, Fritz Mondale, a couple of years ago. No better friend of working men or women could there be. Yet Fritz was so concerned about the sensitivities of labor during the campaign that he never delivered his major speech on industrial policy out of concern that some part of the AFL-CIO might not like it. He had, so it was felt, to be 100 percent faithful.

BLACKS

Presidents Roosevelt, Truman, Kennedy, and Johnson and other Democratic leaders such as Hubert Humphrey fought discrimination and expanded civil rights and the Democratic party remains the bulwark against reactionary forces which believe that the legacy of slavery and Jim Crow have been eradicated. The Democratic Party will remain the party of civil rights and equal opportunity.

However, the interests of black and white voters coincide on the great issues of concern to the American people—a good education for our children, a chance for a productive job, a decent home, and a secure retirement. These common interests should not be divided by the attempts of any one black leader to impose a personal agenda or personal whims on the Democratic Party and its platform.

NATIONAL ORGANIZATION FOR WOMEN

This group has its 100% litmus test. You have to be for government-funded abortions. I'm not. Am I less a Democrat because I'm not?

Must our Presidential nominee have to be 100% with NOW to be deserving of their support? I think not.

HISPANIC CAUCUS

The litmus test here is a bill called Simpson-Mazzoli which might, I say might, begin to do something about the flood of illegal immigration into this country. I'm for Simpson-Mazzoli. So are a majority of Democratic senators (28 to 19) when it was voted on.

Yet with the Hispanic Caucus if you are wrong on Simpson-Mazzoli, you are out of consideration.

Thus, each constituency demands absolute perfection, total adherence to each part and subpart of its ever-growing agenda.

And what do you end up with as a national party? You end up with a party that is less than the sum of its parts. You end up with a party that can win endorsement within the limited constituency of special interest groups' endorsement committee, but cannot win in the nation as a whole.

The majority of voters view themselves as independent of the command of any particular organization. The majority of voters like candidates who are independent of the command of any particular organization.

The majority of voters like candidates who say what they believe, and who speak their conscience as they see it.

The Democratic party in this state and in the nation as a whole has lost its meaning as an open party. The Democratic Party has become the party of whatever group happens to be in the room tonight.

We cringe at the thought of any kind of floor fight on any issue at a convention. Hence, we throw any plank anyone can think of into a cockamamy platform that is unintelligible.

We don't emphasize central Democratic beliefs, but rather get ourselves all hung up on peripheral issues of interest only to the special pleader but not the country as a whole.

The Democratic Party has lost its way. As a party we don't mean much to the people at large, especially young people.

"Happy Days Are Here Again" may turn on the geriatric crowd, but doesn't do a damn thing for an 18 year old who will, by the way, be voting for the next 60 or 70 years.

So, we've got to go back to being a party rather than a clearing house for our own variety of special interests.

Being a Democrat means a lot to me. It still will if we stake out a claim on the great sensible middle of America which wants a government to render beneficial and necessary services in a rational, sensible, and modern way.

The Democratic Party need not shrink from governmental responsibility. We are not a Do Nothin', Know Nothin', See Nothin' group of Calvin Coolidgeites.

At the same time, we have to show that we know what a dollar is, that we know waste when we see it, and that although we have infinite sympathy and concern for all, we recognize the finite limits of government's capacity to be all things to all people.

I know we can never turn the clock back to the good old days of FDR and Harry Truman. Time and politics march on.

It's time for Democratic politics to get in the march. It's time for our party—as a party—to mean something again.

It's time for us to focus on our core beliefs, not our peripheral differences.

And what are those core beliefs of the Democratic Party?

We believe that the public education system in this country needs vast improvement. We believe the teaching profession should not be a position of last economic choice, but one of primary respect.

We believe that decent health care at affordable prices should be a national commitment.

We believe that no one should live in squalor.

We believe in equal opportunities for all.

We believe that the Social Security system is the bedrock of protecting the economic vitality of America's elderly.

We believe that our environment—our land, our lakes and rivers, our air—is a national treasure for all Americans to be protected against exploitation and pollution.

We believe that the goal of a sound economy is for a job for everyone who wants to work.

We believe that in too many respects we are being out-competed and out-produced internationally and that it's time for business, labor, and government to recognize their common interest in working together to cope with it.

We believe that our present, loophole-ridden tax laws are a joke and that Ronald Reagan and a Republican Senate aren't about to do any favors for the average guy. We believe that with this Reagan bunch, every loophole out will result in two loopholes in.

We believe in a strong, but rational defense establishment. We believe a blank check for every pie-in-the-sky weapon system some defense contractor can conjure up doesn't make sense or make us stronger.

We believe in trying to end the arms race with verifiable agreements. We believe the world already is so saturated with arms that we can destroy mankind many times over.

In these things we believe as decent, caring citizens. In these things we believe as today's Democrats.

EAGLETON THE SOCIAL COMMENTATOR

Tom Eagleton has been a thoughtful commentator on the fabric of our times, and on the state of our nation. In 1979, at the height of the "ME" generation, Tom Eagleton, at the annual Jackson Days gathering of Democrats in Springfield, Missouri, decried the egocentrism and fragmenting of society. In 1986, in his last commencement address as U.S. Senator, Tom Eagleton shared with the graduates of Westminster College his insights into the turbulent Sixties and Seventies. In 1973, as the parents of the Baby Boom generation approached retirement and their "Golden Years," Eagleton posed important questions to be answered for our nation's senior citizens. In 1986, Eagleton reminisced about his old St. Louis neighborhood and the role of the neighborhood as a vital part of our urban existence. Later in that same year, he questioned whether the proliferation of lawyers in our society bodes well for our future.

SPEECHES

Speech to the Robert F. Kennedy Memorial Ceremonies, St. Louis, Missouri, June 9, 1986.

Speech to the Medical Society of the District of the Columbia, Washington, D.C., March 21, 1973.

"I Cry for My Country," Jackson Days, Springfield, Missouri, March 31, 1979.

Westminster College Commencement Address, Fulton, Missouri, May 18, 1986.

Remarks for the St. Louis Regional Commerce & Growth Association, St. Louis, Missouri, August 4, 1986.

"More Lawyers and More Lawyers With Access," 11th Annual District of Columbia Judicial Conference, Washington, D.C., June 20, 1986.

SPEECH OF LIEUTENANT GOVERNOR THOMAS F. EAGLETON DELIVERED AT ROBERT F. KENNEDY MEMORIAL CEREMONIES, JUNE 9, 1968

We are gathered here today to pay tribute to Robert F. Kennedy—Kennedy the man, Kennedy the politican, Kennedy the American Dreamer.

Robert F. Kennedy, like his late brothers before him and like his lone brother surviving him, came from a parentage which exemplified strength of character, firmness of resolve, and dedication of purpose.

To the Kennedys life is not merely a 9:00 to 5:00 existence of doing the barest routine. Life is not a quest for idleness or a frivolous endeavor. Life to the Kennedys is a serious challenge wherein each person within his own limits and in his own way owes a measure of service to his fellow man.

Robert Kennedy pursued this principle with a vigor and with a sense of purpose rarely seen in America and it is this trait above all that destined him for greatness.

Sitting as I did yesterday morning in St. Patrick's Cathedral with Governor and Mrs. Hearnes during one of the most deeply moving services I have ever witnessed, I could not help but wonder what Robert Kennedy would feel for his country in this time of sadness.

Would he, I asked myself, be smugly satisfied with the statistics indicating our country's temporal power?

Yes, America is the richest nation on earth. Yes, America has the greatest productive capacity on earth. Yes, we can produce more agricultural products, more cars, and more television sets than any other country. Yes, we are militarily the most highly armed nation on earth.

But I am certain that Robert Kennedy would not be satisfied with these statistics as earning for our country the worthy accolade of greatness.

A nation's greatness is not found in the accumulation of dollars, of material wealth, or of armaments. A nation's greatness is found in the character of its people.

Great Britain as a nation cannot in any way compare to us in financial, industrial, or military might. But in Great Britain for the past 300 years there has not been an assassination of a Prime Minister or of a member of Parliament.

In rich America, violence has become a part of our way of life—not encouraged, not condoned, but sadly accepted as part of our existence.

On Memorial day, thousands and thousands of people crowded into Indianapolis for "The 500". A sample interview a couple of years ago indicated that a majority of those present went there expecting to see some accidents and bloodshed. Not that they were wishing that a driver might be killed, but they certainly wanted to be present to experience the thrill just in case one did.

The most popular move of recent times has been "Bonnie and Clyde," a film infested with senseless violence from beginning to end.

Whenever a television producer is hard up for a new show, he can always safely turn to the old reliable routine of shooting, stabbing or hanging and be assured of sizeable American viewing audiences.

Unwittingly, we have accepted violence as part of the pattern of our existence. We become grief-stricken when that violence reflects itself in its ultimate ugliness—in the assassination of a President Kennedy, in the assassination of a Rev. King, or, as this week, in the assassination of Robert Kennedy.

The question which Robert Kennedy would ask of us today is not "How could it happen here?" The question which he would ask is "How can we avoid it happening again?"

Our country must disabuse itself of the notion that dollars, color TV's, air-conditioned cars, and space capsules will assure our greatness.

Our country must redirect its attention to concern over the character and spirit of the people. Our quest cannot be simply for temporal luxuries, but for the eternal values of truth, peace, brotherhood, and social justice.

This is why one of Robert Kennedy's favorite quotations was George Bernard Shaw's

"Some men see things as they are and say why.

I dream things that never were and say why not."

This is why Edward Kennedy said of his late brother:

He was "a good and decent man, who saw wrong and tried to right it, saw suffering and tried to heal it, saw war and tried to stop it."

Robert Kennedy has met his rendezvous with death and America now faces its rendezvous with destiny.

It is for us who survive to remember Robert Kennedy not only as a fallen victim, but to remember Robert Kennedy for what he struggled to do for America.

It is for us the living to remember the words of the poet, John Masefield, written at the time of President Kennedy's death:

"Grant to us life that tho the man be gone,
The promise of his spirit be fulfilled."

MEDICAL SOCIETY OF THE DISTRICT OF COLUMBIA, SHERATON-PARK HOTEL, WASHINGTON, DC, MARCH 21, 1973

It is said that politicians are time-biased against the future, their horizons extending no farther than the next election campaign. But all of us, whether we be physicians, or elected officials, or members of the general public, must be concerned about such fundamental matters as the population structure of our society in future generations and the possible effects of demographic changes.

So this evening I want to discuss the subject of aging, and the implications arising from an America of the future that will have a population that includes a much greater proportion of old people than the present.

Today there are nearly 21 million Americans aged 65 and older—nearly seven times as many as at the beginning of this century—and the rate of increase in this group is substantially higher than that of the rest of the population.

In the decade of the 1960s, the over-65 population showed a rise of 21 percent while the under-65 population grew only 12.5 percent. Between now and the end of the cen-

tury, we can expect nearly 45 million persons to reach their 65th birthday.

Not only will the United States have an older population in years to come, but so will most of the other nations of the world. Regardless of birth rates in other countries, the expansion of medical knowledge and treatment, along with the systematic eradication of many infectious diseases in parts of the world where they have flourished in the past, point toward an extension of life around the globe.

There are deep controversies over the specifics of such demographic projections but there seems to be a consensus on this one fact—the world will be made up of a generally older population and the actual number of those who are elderly will increase substantially as well.

The first and most obvious conclusion to be drawn from these projections is one of particular interest to physicians. We know from present experience that in this older population health problems tend to be the rule, not the exception.

Eighty per cent of Americans aged 65 or older have a chronic health problem. Forty per cent are impaired in their activities because of a health condition. They are twice as likely to be hospitalized as younger persons and, once hospitalized, their average stay is twice as long. The cost attributable to providing health care to older persons, consequently, is over twice the cost of caring for younger persons.

Despite these facts, the level of federally supported research into phenomena associated with aging has been extremely low. The amount expressly devoted to aging research conducted under the auspices of the National Institutes of Health equals only about one-tenth of one percent of total federal expenditures in health programs for the elderly.

I am convinced that the present policy regarding research in aging is shortsighted and unwise. The Senate Subcommittee on Aging, of which I am chairman, has received testimony from widely respected scientific authorities to the effect that scientific knowledge regarding aging and degenerative diseases has reached a point where major breakthroughs are possible. Critical, but still unanswered, questions about growing old present persuasive arguments for developing an expanded, coordinated research program in aging.

It appears, for example, that aging underlies man's increased susceptibility in his later years to cancer, heart attacks, and other major diseases. These same diseases are found in dogs, which have a life span about one-fifth that for man. But in dogs, these diseases develop and run their course about five times as fast as in man. Thus, there would seem to be a close relationship between the process of aging and the development of chronic disease.

In an effort to promote increased interest in research in aging, I have introduced a bill to establish a National Institute on Aging as a part of the National Institutes of Health. Similar legislation which I offered last year was passed by Congress but vetoed by the President.

I can sympathize with the desires of the administration to avoid a proliferation of categorical institutes within NIH. However, it has become apparent that research in this area will not be expanded unless it is given the identity and focus that accompanies a separate institute.

The research conducted by such an institution should go beyond investigations into the biological processes of aging. There are a number of serious social, economic and political questions raised by the prospect of longer life that need to be considered. Let me give a few examples:

What are the consequences of extending life in a world already concerned about overpopulation and the conservation of scarce resources?

What will be the relationship of older people to the rest of society? Will they be isolated in a barren existence to await death or will there be meaningful tasks and roles for them?

What will be the economic situation of older persons if the average life span is extended? Assuming that those over a certain age will be, at least to some degree, in a dependency status, to what extent will the working population be willing to contribute to their support?

What about the political activities and influences of older generations? Admittedly, I have a somewhat personal interest in this area but it is also information that ought to be acquired for the benefit of society as a whole if we are to prepare properly for a changing population.

These are not questions that are susceptible of easy answers. They can be answered only through extensive, sound research backed by adequate financial support.

Too often, we have had the tendency to leap into grand, new programs resting on a shaky foundation of inadequate research. I hope that expanded research in the field of aging will help us avoid such unwise ventures of this sort in the future.

In all these efforts we must be guided by humane considerations, recognizing that it is the older generation in each society that embodies its collective experience and much of its wisdom. One of the major contributions that all of us can make, in my judgment, is to re-establish the principle of respect of age—a recurring theme through much of recorded history from which we may depart only at our risk. On this subject, I know of no better authority than that wisest of contemporary men, the late Adlai E. Stevenson, who said:

". . . What a man knows at 50 that he did not know at 20 is, for the most part, incommunicable. The knowledge that he has acquired with age is not the knowledge of formulas or forms or words, but of people, places, action—a knowledge not gained by words but by touch, sight, sound, victories, failures, sleeplessness, devotion, love—the experiences and emotions of this earth and one's self and of other men and perhaps, too, a little faith and a little reverence for the things you cannot see."

SPEECH BY SENATOR THOMAS F. EAGLETON, PREPARED FOR DELIVERY TO JACKSON DAY ANNUAL BANQUET, MARCH 31, 1979, SPRINGFIELD, MISSOURI

As most in the audience know, it has not been my custom at Jackson Day to orate in a serious vane. However an event which I heard described yesterday at 1:30 p.m on Mutual Radio as I drove to the Washington airport to come here has caused me to be somewhat serious in these remarks.

I listened to the news and learned that Mr. Airey Neave, a member of Parliament had been assassinated outside of Parliament. Mr. Neave was scheduled to become the Minister for Northern Ireland Affairs in the next British cabinet if Mrs. Thatcher's Conservative Party wins the May election.

I met Mr. Neave over thirty years ago when my late father and he were assistant prosecutors at the Nuremberg War Crime Trials. We had met from time to time in the intervening years. Just a few months ago he sent me a copy of his new book on the Nuremberg Trials.

My eyes became a bit moist. "My God, what a horrible, senseless act," I thought.

Then my mind turned to an occurrence at a big St. Patrick's bash in St. Louis just two weeks ago tonight. A long-time friend of mine, of Irish heritage like myself, came up to me and said, "Tom, I am going to continue to send money to the I.R.A. so that they can kill every man, woman, and child in Britain who stands in the way," as he called it, "of the liberation of the occupied North of Ireland."

Then, figuratively, I cried for my country—when I realized that this otherwise completely civilized American citizen can think and act with such detestable incivility.

This thought, in turn, caused me to think of other troubling conversations I have recently had with Missourians and I want to share some with you—I cry for my country. . . .

When a citizen cancels a contribution to the Church because the clergy spoke out on a significant social issue—I cry for my country. . . .

When an educated person told me that all of education should be turned over to private and parochial schools with government funding, and that the public schools should become a modern day version of a Charles Dicken's Reform School—I cry for my country. . . .

When a farmer says he cares not whether he destroys public property and will continue to destroy public property unless the government guarantees him a profit—I cry for my country. . . .

When a spokesman for a group which advocates greater federal funding to combat a dread disease tells me that he wants his money, regardless of the consequences of taking money away from research on another dread disease—I cry for my country. . . .

When a local public official declines to work with the federal government to build new housing because he doesn't want "those people" in his area—and we all know who "those people" are—I cry for my country. . . .

When a member of the United States Senate whispers to me that what this country needs is another Mayaguez incident so that the United States can beat up the Cambodian Navy to prove we are tough guys—I cry for my country. . . .

When a constituent tells me that he doesn't give a damn whether there is an energy crisis or not and he is going to drive what he wants, where he wants, when he wants, and to hell with conserving energy—I cry for my country. . . .

When a civic leader punches his finger into my chest and tells me he wants the $130 million, 100% Kennedy health bill and he wants it NOW, regardless of what federal deficit it would create—I cry for my country. . . .

When the Senate of the United States tries to sneak through a hush-hush change in the Senate rules so as to allow a Senator to increase his outside earned income by some $16,000—I cry for my country. . . .

When a retired military officer told me that there was nothing wrong in him being a so-called "triple-dipper," that is simultaneously drawing a full military retirement benefit; a social security check, and a pri-

vate corporation pension check—I cry for my country. . . .

When a local public official instructs me to continue and increase federal revenue-sharing so that he may further reduce local taxes—I cry for my country. . . .

When an old, old friend of mine tells me to continue unused Amtrak rail passenger service because of his nostalgic affection for the good old days when the railroads were "King"—

Inartfully, I draw a moral from all of this. Our country is simultaneously suspicious, scared, and selfish. We are suspicious even of ourselves and of attitudes and styles different from our own. We are scared that somehow we have lost our grip on the world and our country and the events which reverberate within it.

Most troubling of all, we are selfish. Selfishness is as old as Adam and Eve. But today in America we have elevated it to an art form. We want what we conceive to be ours; we want it now; we want it regardless of the negative consequences it may have with respect to our fellow citizens and our nation.

My friends, it is nigh on to impossible for government at any level to fashion prudent public policy in a suspicious, scared, and selfish atmosphere. Government cannot live by law alone. Government is predicated on faith and when faith disappears government falters. The rebuilding of faith is not the singular responsibility of the office holder. It is an act of private committment for every citizen. It is the responsibility of everyone in this audience.

Finally, rebuilding of faith isn't easy. It wasn't easy in Roosevelt's time, but it was done.

It wasn't easy in Truman's time, but it was done.

It wasn't easy in Kennedy's time, but it was done.

It isn't easy in Carter's time, but it will be done.

As we leave this room tonight let each one of us examine our own life. Let us ask ourselves—are we being true to the precepts of Jefferson and Jackson? Will we help to rebuild our national faith? Will we give new life and breath to our Democratic Party?

I think we can.

I think we must.

I think we will.

SPEECH BY SENATOR THOMAS F. EAGLETON, WESTMINSTER COLLEGE COMMENCEMENT, MAY 18, 1986, FULTON, MISSOURI

Politicians, when they decide to retire, cannot help but reminisce about the tides and currents of the era their public careers have spanned. But this afternoon here in Fulton, I want to do something slightly different. I want to take you down my own political memory lane, and point out how much some things have changed and how much others have remained the same—or even worsened.

I entered politics under Eisenhower. I leave under Reagan.

Eisenhower's two terms were the quiet years. He resolved the Korean bloodletting. He abhorred but accommodated Joe McCarthy. He duelled with Oral Faubus. But, by and large, it was a period of political calm noted more for Ike's paternal style than for the substance of change. He was a beneficent father who kept us out of trouble—specifically, out of Cuba and Vietnam—two situations he willed to his youthful successor. His final speech was perhaps his best when he, the most revered of modern military men, warned the nation:

"In the councils of government, we must guard against the acquisition of unwarranted influence, whether sought or unsought, by the military-industrial complex. The potential for the disastrous rise of misplaced power exists and will persist."

The Kennedy years were the high point of any young politician's life—like mine. Despite a fib about a non-existent missile gap, despite the early Bay of Pigs fiasco for which he took personal blame, Kennedy was the handsome hero who would lead us from the long shadow of World War II into the brightness of a new Camelot.

He was willing to rely on sound economic advice in the person of Walter Heller. Cutting taxes wasn't a profile in courage. His foreign policy was hawkish, but politically acceptable when uttered by such a brilliant, charming young man. The Peace Corps made us feel humane; facing down Khrushchev on the missiles in Cuba made us feel strong, yet uneasy.

A reluctant leader at first, he finally saw there was no political safe harbor or middle ground on civil rights. He came around to the clear belief that in justice versus injustice, a President had to be unequivocally for justice.

"Who among us," he asked white America, "would be content to have the color of his skin changed and stand in [the Negro's] place? Who among us would then be content with the counsels of patience and delay?" The time had come, Kennedy declared, for "the nation to fulfill its promise . . . A great change is at hand, and our task, our obligation, is to make that revolution, that change, peaceful and constructive for all."

It is still difficult to place the Kennedy presidency in perspective. Though his years were short, though his record was incomplete and less than herculean, he holds an enormous grip on our national conscience. He was what all Americans want to be in presence, style, charm, grace, and wealth. I suspect that this Kennedy aura was a greater legacy than the Kennedy substance.

I entered the Senate as Lyndon Johnson exited office. Never, I submit, in American history have we had two such unique and complex men back-to-back in the Presidency as LBJ and Nixon.

LBJ could be insulting; he could be charming. He could be dictatorial; he could be gentle. He could perceive great vistas; he could be horribly petty. He could be up front; he could be conniving.

He had the stuff of greatness, but he would know the great torment of Presidential failure.

Only LBJ—master Southern politician—could have pulled off the landmark Civil Rights Act of 1964. He knew how and when to cut a deal.

Only LBJ could declare war on Poverty; JFK might think it intellectually, but LBJ felt it in his gut.

And perhaps, only LBJ could see landmark domestic achievements sink into a bottomless foreign quagmire. "I'm not going to lose Vietnam. I'm not going to be the President who saw Southeast Asia go the way China went." he privately resolved shortly after taking office. He stuck by his guns while the whole nation agonized.

Some say that if only Kennedy had lived, it would have been different. He would somehow have gotten us out of Vietnam and launched a "Great Society" of his own.

I think not. As a lifelong history buff, I read it differently. Kennedy's fear of losing was as great as Johnson's, maybe greater since he had already tasted defeat in the humiliation of the Bay of Pigs. Kennedy's advisors and generals were the same as Johnson's. By November, 1963, the skids were already greased for the Vietnam trip.

Vietnam dominated my early years in the Senate—and everyone else's for that matter. There were 535 Secretaries of State. We all had solutions, plans, and timetables, but none of us had individual responsibility.

Finally, after 58,000 lives, 150,000 wounded, and $150 billion (direct appropriation), and after middle class America realized that their boys were being sent into a relentless meat grinder, Congress found the courage and the means to say "No more!". My amendment to a 1973 Appropriation bill stopped the last vestage of American military involvement in Southeast Asia, the bombing of Cambodia.

By this time the tormented Lyndon Johnson had been replaced by Richard Nixon.

Nixon had "a plan" to end the war (he didn't) and he was going to "bring Americans together again" (he couldn't).

In many ways, Richard Nixon was an even greater paradox than Lyndon Johnson.

On the one hand, he could be poised, reflective, analytical, statesman-like. On the other hand he was insecure, frightened, vengeful, envious, and bitter.

One Nixon could make the historic overture to China that only a Republican "commie fighter" could have dared in 1971. Another Nixon could plot how to cover up crimes that struck at the Constitution itself.

It will be for the passage of a decent, pause-for-reflection interval to decide which was the real Richard Nixon? Or were there always and forever two Richard Nixons?

I shall leave Gerald Ford, Jimmy Carter, and Ronald Reagan for other times. Polaroid judgments of the recent Presidents are easy to make yet they often lack the necessary critical focus of history.

What about the era itself? What of this past that has made us what we are?

Save for the Civil War and the Great Depression, the Johnson-Nixon years constitute the most tumultuous years of our nation's history. We still reverberate in their after-shock, and we will for years to come.

America has emerged from a position of overwhelming military superiority to a position of parity with all that implies for diplomatic conduct and international peace.

America has emerged from a position of unchallenged economic superiority to a position of declining industrial and commercial impact. We are becoming a "service" nation. What does that foretell for a superpower?

America has removed the political shackles of racial inequity, but the economic one remains with a frozen grip.

America is less certain, less optimistic about its ultimate destiny than when the era began. We believe in our innate goodness, but can't understand why others don't see us as we see ourselves.

If Edward Gibbon is right that "history. . . is little more than the register of crimes, follies, and misfortunes," then the events of 1956–1986—most especially the mistaken decisions of Johnson and Nixon—fit his definition like a list of bad debts fits a ledgerbook.

But recent U.S. history is more than just the story of an uncollected deficit. It is the public mood and how it changes. It is a roster of promises, principles, policies, delights, defeats, and triumphs. On a larger plane, it is every modern motive of human-

ity, noble and ignoble. Cast against mankind's continuing, creative evolution.

Each of today's Westminster graduates is very much a part of that continuing, creative evolution.

Your degree here today certifies that you are a part of America's educated. You now have the tools, less important of memory, but more important of analysis to deliberate in the process by which we determine what are and are not the compelling needs of our society and the best way to meet them. You are now a full participant in the decision-making process of a free society. You cannot rewrite history, but you can try to see that its mistakes are not repeated. You can analyze, evaluate, think, form judgments, and participate. That's the key word—"participate."

You have been provided with an excellent education. Up until now, you have been a recipient of the best America has to offer. Now is the time to begin repaying America by using your cultivated talents to best advance not only your personal ambitions, but to contribute to the greater good of society. How you do that is up to you. But do it you must if a participatory democracy like ours is to continue to flourish.

Four decades ago, on this very campus, Winston Churchill, in broader, more global terms, put the role of a democracy in a divided and troubled world in these eloquent words. They are not his most famous words, but, as with all Churchillian language, they inspirationally capture the spirit and challenge of both our present and our future.

"If we adhere faithfully to the Charter of the United Nations and walk forward in sedate and sober strength, seeking no one's land or treasure, or seeking to lay no arbitrary control on the thoughts of men, . . . the high roads of the future will be clear, not only for us but for all, not only for our time but for a century to come."

STATEMENT OF SENATOR THOMAS F. EAGLETON, ST. LOUIS REGIONAL COMMERCE & GROWTH ASSOCIATION, 150TH ANNIVERSARY DINNER, ST. LOUIS, AUGUST 4, 1987

Tonight is a stylish, yet cafeteria-like celebration of a book, of a city, and of a concept.

The book, "St. Louis: Neighborhoods and Neighbors," we have all seen at our tables—a sumptuous portrayal of a city in days when livin' was easier in the heart, mind, myth, and, perhaps, even in social conscience.

St. Louis—the city we love—peopled originally by folks from the east who wanted to go west and by some who thought southern, but by and large fought northern when the country split apart.

St. Louis—with its own diverse cultural heritage broadened by the European immigration of the Germans, Italians, Irish, and Eastern Europeans.

St. Louis—scene of Dred Scott—where blacks were relegated to the right field pavilion even as late as Jackie Robinson's entry to the majors and Enos Slaughter's aborted effort to keep him out of Sportsman's Park. In terms of ethnicity, blacks today constitute the biggest single root in today's City of St. Louis.

St. Louis—river city, national brewmaster to 241 million thirsty people, jet manufacturer to the free world, chemical innovator, rail center, outdoor opera, indoor symphony, universities, a zoo, the Post and Globe, KMOX radio, and, win or lose, the baseball Cardinals.

St. Louis—perhaps the most underappreciated and overly inferiority complexed city north of Texas and south of Chicago. Yes, St. Louis—our home, our wonderful, at times atypical fuzzy home—especially fuzzy in the humidity of an August evening.

And the concept—that's what the book is about—it's not just about a city—it's about the pulse and heartbeat of a city—it's about the neighborhoods that give a city a beat, a rhythm, a vitality, a sense of being.

The book tells us about an amalgamation of little worlds: Carondelet, Yeatman, Lafayette Square and Benton Park, Hyde Park and Bissell, Grande Prairie, Shaw or Tower Grove, The Hill, Cabanne, Baden, Kingsbury, and many more.

In essence, it tells us about our roots. Alex Haley may have popularized roots, but he did not invent man's search for same. As urban dwellers, our roots are in our neighborhoods. It has to be so. A mere mortal cannot attach himself to a megapolis like New York or Los Angeles, or even a metropolis like St. Louis. It's too vast, too diffused, too confused, too impersonal

Home is a neighborhood—like mine as a kid. I grew up in a middle class neighborhood in South St. Louis. Some call it Shaw; others Tower Grove. My world was Tower Grove Park playing ball and smoking cigarettes when no one was looking. The Ritz and Shenendoah movie houses—yes, that is what we called them. Holy Innocents Parish where Father Leo McAtee spent 15 minutes on why the parish was broke and 2 minutes on God. Nathan Landau's drugstore where every remedy known to Mayo Clinic—and some even unknown—was at his subtle creativeness. Mike Oldani's grocery store where the word fresh meant just that and the word frozen hadn't been invented. If you desired, you could shoot craps in the basement. Herman Phegley's filling station where free air for bicycle tires was always available with a smile. The library—we didn't go there as much as we should—but it was sort of good to know we had one. It gave the neighborhood a touch of class. Wade Elementary School—The principal was Isabelle Tucker. She was something like the Statue of Liberty in girth and looming presence. She was one of thousands of indentured women, denied job opportunity in fields other than teaching or nursing, who gave daily vibrancy to the word education. By God, you learned when Isabelle taught. White Castle hamburger was our gourment locale. Six for a quarter with a Sunday coupon from the Post or Globe—no charge for the gas. I stayed with White Castle for most of my life—until, that is, they supported Gene McNary in the 1980 Senate race. I gave 'em up along with my Tums.

This was a neighborhood. This is where Earle Harbison and I grew up as best friends—then and now. Everyone knew everyone else. Everyone trusted everyone else. Most everyone was Republican and, thus, was beset by a heavy dose of predictable stability and a tinge of unexcitement.

This was a neighborhood which had identity of individual, access of service, and contained self-fulfillment. There was an ethos to the area. Pretenses were few, pride was high, straightforwardness was the custom, order was the rule. Maybe you worried about the mortgage, but never about the safety of the children. You sometimes worried about "that man" Roosevelt, but not about the security of your home.

But cities had to change. Like the universe, like the globe, cities are not static.

The genius of production, innovation, and implementation which assured our victory in World War II, assured that our cities could never be the same thereafter.

St. Louis, Cleveland, and a few other prewar great cities thought things could remain the same. The city's financial fathers sought to keep things just as they were. St. Louis paid a heavy penalty for its stubborn fight to remain steadfastly in the past—it almost died.

America became a nation of wheels and a nation transfixed to a television tube. Roads and TV liberated us in one sense, but destroyed our roots in the other.

The nearly park, church, school, library, hamburger stand—suddenly these became quasi-irrelevancies as the roads and highways took us to vast, faceless shopping centers and TV transported us to any imaginary location including even church on Sunday if we wanted it that neat and easy.

The progress of instant mobility and economy of scale made neighborhoods less relevant. Neighborhoods became less a slice of life and more a slice of lifetstyle.

And so some sociologists speculate about the decline of urban life. Some wonder about the wonderful, serene old days of neighborhood interrelationships. They might look at a book like "St. Louis: Neighborhoods and Neighbors" and muse about things that were, but no longer are.

If vast urban centers are to flourish as functional, useful, happy assemblages of human kind, they are going to have to recapture some of the intimate structure and identity of the neighborhood past. Progress is going to have to be measured less in built-in living room technology, interstate highways, and monstrous shopping centers, and more in a neighborhood sense of solidarity, commonality, and sharing.

In the last 15 years or so, beginnings in this direction have been made in St. Louis.

Lafayette Square is my favorite example. Lafayette Square was once an area of stunning architectural beauty. Time, neglect, inadequate zoning, outmigration, and the 1896 tornado converted it into a dilapidated assortment of flophouses. With sweat, energy and a shared vision, young couples retransformed Lafayette Square into a neighborhood of charm and beauty—a neighborhood of people with common desire to once again make it a viable, functioning, meaningful world of its own.

So that's what this beautiful book is all about. It captures the story, though, ambiance of neighborhoods past. It sends a subliminal message to neighborhoods present and neighborhoods future. History is mankind's greatest teacher. The history of St. Louis neighborhoods teaches us much of ourselves and our past and much of the future as we should want to dream it—much of the future as we should want to live it.

MORE LAWYERS AND MORE LAWYERS WITH ACCESS

An address to the 11th Annual District of Columbia Judicial Conference by U.S. Senator Thomas F. Eagleton, June 20, 1986)

As I retire from 30 years of politics and reenter the practice of law after this prolonged absence, I contemplate some of the gigantic changes I have observed in the law during that time—observed from the political side of the fence, not the legal side.

While I applaud some of these changes, I am deeply concerned that the profession to which I return is a lesser profession than the one I left for the challenge, excitement,

power and fundamental enjoyment of politics. What has so drastically changed?

First, the sheer numbers. During my 30 years in politics there has been a virtual explosion in the legal profession—an explosion in the number of practitioners, the number of laws, and the number of cases demanding a day in court. While this explosion has had some beneficial side effects, such as destroying the white male monopoly and opening the profession to women and minorities, the overwhelming result has been to clog the courts.

Second, and most evident here in Washington, is the changed nature of the practice of law. While most lawyers throughout the country may still practice traditional law—trying cases, drafting wills, settling estates, handling divorces, or representing alleged criminals—the real growth of the Washington legal profession has been in Access Law—access to federal agencies, access to the Congress, access to the White House. In times past Access Law was a frowned-upon specialty of an unidentifiable few. Now it is a prized and lucrative division of every major Washington law firm.

Is this the direction the law should be moving? Can anything be done to halt these two major, and in my opinion deleterious, trends?

THE NUMBERS

Let's look at the numbers.

In 1956 when I entered politics there were roughly 250,000 lawyers in America. Today there are almost 700,000. In 1968 when I came to the Senate, there were about 15,000 lawyers in the District of Columbia. Today there are nearly 40,000. No town in the world is so over-lawyered.

In the private sector, lawyers are to the District of Columbia what DuPont is to Wilmington, what Phillips Petroleum is to Bartlesville, Oklahoma, and what General Motors and Ford are to Detroit. Yet query whether any of this legal might is providing better legal service and legal representation to the middle class and poor of the District of Columbia? I think not. But it is certainly clogging the courts.

In 1962 there were 85,802 lawsuits filed in federal courts; by 1982 that number had jumped to 238,875. By 1985 the state and local courts had 8 million lawsuits pending, or, about one suit for every 20 adult Americans.

This very conference here in the District is focusing on how best to handle the overwhelming caseload facing the local courts and how to eliminate court delay. Among the alternatives being discussed are the expansion of the D.C. Court of Appeals, limiting the mandatory jurisdiction of the appeals court, or creating an intermediate court of appeals. Also under consideration are proposals recommending additional staff help, new information sharing systems, the use of pro-tem judges to attack the backlog, more judicial involvement in the settlement process, improved case screening, and even a night court.

All of these suggestions need to be analyzed, some obviously need implementation, and some probably should have been adopted long ago. Unfortunately, I'm not sure any of them will attack the major problem, which, in my opinion, is simply that this nation is lawyering and legalizing itself to death.

And it is not only through increased litigation. Decisions have become more complicated and more verbose. The reports of the federal courts of appeals filled 300 volumes from the beginning of our nation until 1925. It took only 29 years to fill the next 200 volumes (1925–1953), the next 400 volumes were filled in only 26 years (1953–1979), and the next 100 volumes were completed in only four years (1979–1983).

Congress, too, must shoulder the blame. While the 98th Congress, which met in 1983–84, approved slightly fewer public laws than the 91st (625 versus 695), those statutes filled more than twice as many pages: 4093 as compared with 2080. The laws, in turn, have created longer and more complicated regulations. The Federal Register numbered 20,466 pages in 1969. Last year, 1985, it numbered 53,478.

Is this over abundance of laws, regulations, cases, and case decisions likely to abate? Probably not. We are spewing forth lawyers at a record pace. This May 36,829 students graduated from law school. Another 81,900 students are in the pipeline. Where will they all practice? Should they all practice? Can they all practice?

I gave the commencement speech at the University of Missouri-Kansas City Law School in May. As I looked out over the graduating class of 122, I made my own informal calculation. Perhaps the top third was fully qualified to practice law and, if some useful and contributing spot could be found for them, all well and good.

Perhaps the middle third were reasonably bright young men and women who could make a useful contribution in some intellectually challenging field, but should they be entering the legal profession which already has more bodies than it needs?

Perhaps the bottom third ought to become travel agents. Since this country seems bent on abdicating its role as an industrial power; since we are going out of the steel, auto, aluminum, and machine tool industries, and, since we are evolving into a service society, servicing each other's not terribly essential needs, being a travel agent is a pretty good deal. At least you could help someone escape from being over-serviced.

The law business is living proof—maybe the only living proof—that Supply Side Economics works. The more lawyers we supply to society the more legal business they generate, not based on public need, but based on the need of the lawyers on the economic bottom rungs to eat. Contrast this to Japan, arguably the most productive and successful world economic power today, where only one in 10,000 persons is a lawyer. In the United States it is one in 345.

Unfortunately, since law schools are one of the few campus moneymakers, I suppose the nation will continue to churn out lawyers until the market literally causes some to starve, at which point we may be the first society to follow Shakespeare's advice and ". . . kill all the lawyers," at least until the surplus is over.

Meanwhile, to quote Laurence Silberman, a former U.S. Deputy Attorney General and now with the Wall Street law firm of Dewey Ballantine: "The legal process, because of its unbridled growth has become a cancer which threatens the vitality of our forms of capitalism and democracy."

And Chief Justice Warren Burger, who has repeatedly voiced his concern about the problem, has said: "We may well be on our way to a society overrun by hordes of lawyers, hungry as locusts, and brigades of judges in numbers never before contemplated."

THE PRACTICE OF LAW

Now, let me focus a bit on the practice of law, or, what I see all these lawyers doing.

It seems strange that with such a huge surplus of legal bodies, we still cannot get adequate legal representation for the poor. The federal government pumps a miniscule $250 million nationwide into the Legal Services Corporation. Perhaps Joe Flom's hostile take-over specialty firm in New York bills that much.

Here in the District, only $1.5 million are spent annually by the local Legal Services Corporation—a travesty of the highest order considering the number of lawyers practicing in the District and the fees earned by the Washington firms. If any class in our society needs legal advice and representation, it is the poor.

There is really no great societal need for a battery of lawyers to devote their lives to the Pantry Pride take-over of Revlon or to the representation of Bendix, Allied Corporation (now Allied-Signal) and Martin Marietta in their three-way marriage. But there is a need for some necessary and very humdrum legal service in class action suits. Unfortunately, in the name of free enterprise, this nation channels its lawyers to where the need isn't and abandons the area where the need is.

Derek Bok, President of Harvard University and former Dean of the Law School, puts it this way: "The blunt, inexcusable fact is that this nation, which prides itself on efficiency and justice, has developed a legal system that is the most expensive in the world, yet cannot manage to protect the rights of most of its citizens."

What are they doing instead? As mentioned earlier, what I have noted is the frightening growth of Access Law. Now, Access Law isn't brand new. David Broder, Washington Post political writer and columnist, points out: ". . . the merchandising of influence and access did not begin on the day Jimmy Carter left town. Long before the Reaganites came, there were well-established and successful Democratic law firms with partners who did little but arrange fund-raisers for members of Congress. There were ex-Cabinet members and ex-senators who drew six-figure salaries for giving elegant lunches and dinners for their firms' clients and their old friends on Capitol Hill and the White House staff. . . . All of this was going on before Reagan's time and will continue, I am sure, when he has gone to the ranch."

Yes, in days of yore we had Tommy the Cork. Even earlier, in the Teddy Roosevelt era, there was John Thomas Taylor, a Washington lawyer with such access that he boasted that he "personally had written between 1,500 and 2,000 bills." Even earlier, in 1874, there was the famous case of Linus Child, a Boston lawyer who influenced Congress to pass a private relief bill for his client, N.P. Trist. When Trist failed to pay Child his 25 percent lawyer-lobbying fee, Child sued.

The case eventually reached the Supreme Court, which delivered a stinging rebuke of Child's form of lobbying.

So lawyer-lobbying isn't new. What is new is the brazenness lawyers now bring to Washington lobbying. Again I quote Broder: "What is striking now is . . . the commercialization of contacts, the abolutely unabashed exploitation of government service for private gain."

What is new is that today too many high-level government lawyers use government service as a stepping-stone to big bucks in the private practice of law. What is new is that lawyers have become active processors of large amounts of political campaign

funds in order to guarantee their access and, hopefully, even more—decision-making predisposition. What is new is the role of the traffic cop partner in each firm, the individual who schedules the partners to each evening's battery of fund-raisers by a dozen Congressmen and Senators.

Behind all this Access Law are, of course, the nation's campaign spending laws. Lawyers take pen to paper decrying the product liability morass, the inequities of the tax code, or efforts to eliminate contingent fees, but seldom do these same lawyers speak out against one of the nation's worst scandals—campaign financing. The ABA, which "resolves" nearly everything (benefits to judges, changes in the tax code, nuclear weapons testing, creation of a Senior Lawyers Division for the ABA House of Delegates—to name a few of the weighty issues "resolved" by the ABA last year) has only sporadically adopted resolutions on campaign financing.

Since 60 members of the Senate are lawyers and since 45 percent of the House are lawyers, wouldn't it make sense for lawyers to take the lead in advocating a change in the campaign financing system that discredits both government and the profession of law? Shouldn't lawyers help change this most egregious example of Access Law?

It would be fair at this point for this audience—lawyers all—to defend itself and point the blame instead at my soon-to-be alma mater, Congress. Congress, you say, should reform itself. Congress, however, is a hopeless junkie when it comes to campaign spending and lobby reform. Congress, frankly, has lost control of itself and desperately needs outside help.

Congress cannot convince the public-at-large about the severity and extent of the problem because the public-at-large perceives no problem until a matter reaches Watergate proportions. Common Cause, most sadly, is dismissed not as a bunch of little old ladies in tennis shoes, but as a bunch of irrelevant do-gooders in Gucci loafers. Congress needs the American Bar. It needs the entire profession of law. The public believes lawyers know the law and know ethical behavior.

Lawyers, of course, know that Access Law is not confined to Washington. It has permeated the 50 state capitols and hundreds of city and county councils. The District bar, however, is the fountainhead of the legal profession, and I urge this audience to begin to initiate a cure.

Is a cure possible? As I voluntarily leave the Senate I am deeply concerned about the impact of Access Law on the future viability of our nation's democracy. As a practical matter, I don't see lawyers eliminating their bread and butter anymore than I see Congress going cold turkey from its addiction to PACs.

There may be fewer lawyers in the future as young people realize the bloom is off the rose and that law is essentially boring. In fact, law school applications are dropping off and the "with-it" young are now heading toward investment banking and merger mania, an even more remunerative field with even less socially redeeming value. Litigation may also drop off as the public realizes a three-to-five year wait for a decision is hardly worth the legal fight. But where is the answer to Access Law? I do not know. I guess, like Ole' Man River, it will just keep rolling along until overwhelmed by odious scandal of sufficient proportions to shock the national conscience.

I realize this is a sobering speech delivering a pessimistic message. During my 30 years in politics, however, I have observed such a diminution of our nation's law and legal process that I felt I must share those observations with this distinguished audience. Once I am practicing law in St. Louis and teaching law at St. Louis' Washington University, I expect I will continue to write and lecture on this topic, and I hope then that I will see some positive changes and have a more optimistic assessment to offer.

Eagleton on Education and Health

From his childhood, in the late 1930s and early 1940s, when his father would take him to St. Louis School Board meetings, through the present, Tom Eagleton has had a keen interest in education. In his eighteen years in the Senate, Tom Eagleton made education one of his most vital areas of activity. His concern for the basics of education are illustrated in a speech from the early 1980s, while his commitment to quality public education for all is demonstrated in speeches from 1968 and 1978. In 1969, 1975, and 1986, Tom Eagleton addressed himself to the serious questions of the day confronting education: campus unrest, busing, and the failures of collegiate athletics. On retiring from the U.S. Senate, Tom Eagleton will accept a professorship at St. Louis' Washington University.

Tom Eagleton has been a long-standing proponent of health care research. Through his lengthy tenure on the Senate Labor and Human Resources Committee, he has established an impressive record of advocacy for quality health care, and for providing such services to all people. At the same time, however, Eagleton's incisive mind sees beyond the superficial successes in medical research to the more nagging problems those successes bring. In his 1986 article, Eagleton asks, "In an era of limited resources and ever-expanding medical ability, who makes the choices?"

SPEECHES

"Break the Cycle of Ignorance," Bonhomme Township Regular Democratic Organization, St. Louis, Missouri, May 22, 1968.

Address to the Missouri Association of Junior College Student Governments, St. Louis, Missouri, April 25, 1969.

"Busing," United States Senate, September 23, 1975.

Floor Speech on Tuition Tax Credits, United States Senate, August 15, 1978.

"The Humanities in Eclipse," Villa Duchesne High School Commencement, St. Louis, Missouri, June 4, 1982.

Address to the Washington University School of Medicine, St. Louis, Missouri, January 31, 1986.

"Collegiate Jockcracy," United States Senate.

Break the Cycle of Ignorance

(Speech of Lieutenant Governor Thomas F. Eagleton, May 22, 1968)

In the large urban areas of this country the child of poverty is very often the child of neglect, as well. It is unlikely that his meager background has provided him with much that will stimulate his mental processes or encourage his intellectual curiosity. The early experiences of such a child as he tries to adjust to the program of the normal school are often bitter and frustrating.

He is handicapped because he does not have many of the experiences that are common to most children. He has never heard certain words and hence does not know their meanings. Rarely, has he ever learned to live and work successfully with a group. These handicaps, if they are not overcome, insure failure at the very outset of his school experience. A child with these handicaps simply will not have the same educational opportunities as one who is more fortunate, unless steps are taken to remedy them at an early stage.

Millions of the children we call educationally deprived come from homes in the slums, or have unemployed parents, or see no evidence of literacy in their homes, or have never received adequate medical attention, or have never known human kindness or consideration. Some may suffer from all of these evils in combination.

Such children, almost inevitably, bring to school with them attitudes of hostility and strong feelings of rejection and inferiority. Their behavior may be so anti-social and their conduct so disruptive that they constitute a threat to the successful operation of the school.

They need special help, special care, special treatment if they are ever to achieve an adequate education and become useful citizens. To ignore the problems of these children, who are coming to the schools of our large cities in increasing numbers, is to invite the disintegration of the schools; to meet the problem will cost money, large sums of money.

The Elementary and Secondary Education Act of 1965 was enacted by Congress to help provide additional resources for the improvement of educational opportunity. Title 1 of this Act provides money to schools located in areas where there is a dense concentration of poverty and is designed to meet the special needs of educationally deprived children.

During the two and a half years of its existence, Title 1 has been of great value in attacking the problems of the educationally disadvantaged poor in this country. Nearly three billion dollars has been received by local school districts in that time to help them meet their responsibilities—the greatest source of federal aid to schools.

However, the total amount available to the schools under Title 1 is decreasing rather than increasing. Thus, the city of St. Louis, with 62% of its enrollment classified as living in poverty areas, received $5,191,000 from this source for the school year 1965-66; for the current school year, 1967-68, it is scheduled to receive only $4,300,000.

Such a reduction, of course, requires sharp curtailment of programs already in progress. But this curtailment would not be necessary if Congress would appropriate the amount authorized by the Act. For example, although the total authorization for Title 1 for fiscal year 1968 was $2.5 billion, the actual appropriation was slightly less than $1.2 billion, not quite half the authorization figure.

Moreover, Congress needs to revise the standards by which federal aid for schools is distributed. At present, Title 1 money may be used only in those St. Louis schools which have a higher percentage of families receiving Aid to Dependent Children benefits than the city as a whole. If the percentage of families receiving ADC benefits in a particular school area is less than the city-wide percentage, the children are not entitled to the special programs made possible through Federal assistance, no matter how poor the children may be.

The result is that there are thousands of educationally deprived children living in border-line areas who are not present in suf-

ficient number to qualify to school as a poverty school. Many of these children need help as badly as those who are getting it; to deprive them of such help is to deprive them of the opportunity which Title 1 is designed to provide.

Further, the pattern of funding most of the federal school programs can only be described as chaotic. Typically, Title 1 funds are not received until the Spring of the school year in which they are intended to be used. Obviously, under this system, planning is reduced to a guessing game and the money, when finally received, cannot be used with maximum efficiency.

Basic education clearly is and should be primarily a matter of local responsibility and control. We cannot permit the Federal Government to prescribe who may be educated or what they may be taught.

But our experience with the Elementary and Secondary Education Act—and especially with Title 1 of that Act—has shown that there is an important and constructive role in education for the Federal Government, while still maintaining local control.

Our commitment to quality education for all is a national one, just as the benefits of such an education, and the disadvantages resulting from the lack of good education, are shared by the entire nation. We in Missouri are now laboring under the handicaps imposed by the migration to the state of large numbers of people—white people as well as black people—who are products of inferior, and sometimes discriminatory, educational systems. I think it is time to break this cycle of ignorance.

In my judgment, the job cannot be done simply with the limited resources available to local school districts. We need federal assistance, it must be sufficient to meet our needs, and it must be funded on a regular basis.

To achieve this end is a matter of the most pressing urgency. It will rank high on my list of priorities, if I am elected as your United States Senator.

SPEECH OF SENATOR THOMAS F. EAGLETON DELIVERED TO THE MISSOURI ASSOCIATION OF JUNIOR COLLEGE STUDENT GOVERNMENTS, FLORISSANT VALLEY COMMUNITY COLLEGE, ST. LOUIS, MO., APRIL 25, 1969

The proliferation of community colleges, most of them at the junior college level, is one of the most impressive and important developments in education today. These colleges have the potential to make a reality of our often-repeated but never realized pledge to extent the opportunity for higher education to all Americans who qualify academically.

Now, however, we are witnessing another, quite different phenomenon which raises a substantial threat to the continued development of all institutions of higher learning, particularly to those that are absolutely dependent upon local support for vital financing.

Campus unrest and student protest are not unique products of this country or even of this age. University students in medieval Europe and early America were often more renowned for brawling and roistering than for serious academic accomplishments. The panty raids which seemed to erupt each Spring during the 1950's may have been sparked by nothing more than youthful exuberance, but they occasionally became full-fledged riots. And universities as far removed as Paris and Tokyo have been forced to close within the past year because of student take-over by force.

Historical and geographic perspective provide little comfort, though, for the millions of Americans who are deeply disturbed by the new violence on our campuses. They see in the campus disturbances of the last several years a new element which goes far beyond the traditional restlessness of youth. The theme of campus rebels today appears to be:

"If this place won't operate my way, it won't operate at all."

They are willing to use the most violent and obnoxious means to reach their goals: seizure of university buildings, disruption of classes, incarceration of administrators, and silencing of those who disagree.

These tactics are anathema to the principles of academic freedom and freedom of expression which underlie the position of colleges and universities as centers of uninhibited scholarship and informed discussion. They can in no way be justified as a means of securing rights denied or protesting inequities gone unremedied: the violent disruption of the university is, of itself, an infringement of the right of professors to teach, of scholars to pursue the advancement of knowledge, and of students to learn, free from unreasonable pressures or interference. And I fear that this self-seeking violence will produce a reaction from which we and all our institutions will suffer.

To be sure, there are many legitimate needs and aspirations of students which have too long gone unheeded by some institutions and administrators. Health, Education and Welfare Secretary Finch stated to a Congressional subcommittee last week that: "We cannot assume, out of hand, that campus conflict is simply conflict for its own sake: in many instances it is solidly based in legitimate grievances."

Moreover, the unrest evidenced by students is, to an extent, a manifestation of conditions in our society which should alarm us all.

Young people see, perhaps more acutely than their elders, poverty amidst plenty, pollution of our environment, racial conflict and injustice, war and the threat of more war, a distortion of Governmental priorities—all adding to a general discontent with the quality of American life. Their apparent inability to affect these conditions contributes to a widespread feeling of frustration and, as we have seen, may lead to violence.

But giving due credit to the idealism motivating a large proportion of the campus rebels does not mean that violent and disruptive tactics can be countenanced. As Justice Fortas pointed out in his book on dissent and civil disobedience, "In both the Negro and the young rebellions, the critical question is one of method, of procedure." Hence, even the most laudable aims of a college protest do not provide a license to destroy.

There are those who would write off this entire protest movement by reciting statistics to show that only a fractional few of the nation's 6,700,000 college students can be classed as destructive radicals—an undeniable and certainly commendable fact. But I think this approach is deficient in that it promotes a kind of complacency, a feeling that one of these days students will return to "normal."

It overlooks the equally undeniable and equally commendable fact that a great majority of this generation of students has expressed a deep concern and sympathy for many of the same causes that have been espoused by the vocal minority. Thousands of students followed Senator McCarthy in a campaign which ultimately transformed the American political scene. Thousands more joined with Robert Kennedy in his quest for a "newer world." Not surprisingly, they and others like them have carried back to their campuses and communities a conviction that people can and must have a voice in the functioning of the institutions of our society.

Those of you who represent the student leadership of a substantial segment of Missouri's colleges can have a profound impact on the course of this movement. Its success will be determined largely by the extent to which your responsible leadership can prevail over the demagoguery of those few who measure political victories by the number of heads split open in violent confrontation.

I am not one who sees only violence in militancy, or conspiracy in dissent, but I am one who deeply believes that constructive and lasting change can be accomplished by peaceful and democratic means. We can work to end the war; to revise the terribly inequitable and arbitrary draft system; to aid oppressed minorities and decaying cities—and we certainly can use the energy and ideas and support of youth in doing so.

Young people understandably are inclined to dismiss summarily those who advise patience and deliberation. They have been hearing the counsels of caution all their lives from their parents, their teachers, their elders generally. But, for a while, there was a man young people listened to, a man who earned their highest admiration and confidence. And Robert Kennedy said it better than any of us: "Patience is the greatest, and perhaps the hardest, lesson youth must learn . . ." New voices will be heard if they are raised in a responsible manner, not in a harangue, not in shouts of violence, but as part of a reasoned dialogue.

BUSING

(Speech in the U.S. Senate September 23, 1975)

Mr. President, few public issues gnaw at our national conscience and trouble our personal sensitivities the way that problems of school desegregation do, particularly as they involve busing children away from their neighborhood schools for racial purposes. For a generation now, America has been striving to overcome the effects of long-established practices of racial segregation that were given official sanction through a dozen or more preceding generations.

In my judgement, it is time for us to review the array of practices that are being employed to desegregate schools and determine whether busing, in particular, is really serving a remedial purpose or whether it is creating greater problems than those it is intended to remedy.

The 1954 decision by the Supreme Court in *Brown* v. *Board of Education* effectively eliminated as constitutional doctrine the principle of "separate but equal," but it could not so quickly eradicate the social imprint of that doctrine or change the way of life it exemplified.

Slowly and painfully, for the remainder of the 1950's and into the decade of the 1960's, the process of desegregation got underway in a host of school districts in the South.

There was resistance, sometimes with violence, other times with legal artifice. Confrontations and challenges were met and overcome. But by the late 1960's, only the most zealous die-hard would espouse "inter-

position" or "massive resistance" or "segregation now and forever."

Throughout this period, the cutting edge of the law of school desegregation was honed in the federal courts. Actions based upon the Equal Protection Clause of the Fourteenth Amendment were brought in federal court by aggrieved individuals and, after 1964, by the Attorney General of the United States.

As the law in this area evolved, the Supreme Court declared as a fundamental principle that the authority of the federal courts extended only to cases of school desegregation resulting from official action of some kind or, as it is often called, de jure segregation. In such cases, federal courts have an obligation to impose such remedies as may be appropriate to vindicate the rights of the children who have been unlawfully segregated by ordering that a plan to desegregate the school system be adopted and implemented.

However, the Supreme Court has repeatedly emphasized that the federal courts have no authority with respect to schools that become segregated because of residential segregation that is unrelated to official governmental action, that is, de facto segregation.

Congress observed this distinction between de jure and de facto segregation in enacting the Civil Rights Act of 1964. Title IV of the Act, which deals with desegregation of public education, expressly provides that no official or court of the United States is empowered "to issue any order seeking to achieve racial balance in any school by requiring the transportation of pupils or students from one school to another or one school district to another in order to achieve such racial balance." The term "racial balance" has been read by the courts to relate to situations of de facto segregation.

The passage of the Civil Rights Act of 1964 resulted in a major shift in responsibility for enforcing desegregation requirements as it authorized, in Title VI, the Department of Health, Education, and Welfare to cut off the flow of federal education funds to school districts which were not in compliance with the requirements of law regarding school desegregation. Armed with this grant of authority, HEW began to assume from the courts the main burden of desegregation enforcement.

In addition to the change from judicial to administrative enforcement of school desegregation, there ensued a geographic shift as school districts in the South gradually began to comply with the law and the new focus of desegregation enforcement turned to urban and suburban districts of the North and West.

In the process the rationale for desegregation changed, subtly perhaps, but change it did. No longer was it desegregation of school systems that had been segregated by law, but the integration of districts which considered themselves to be unitary districts, not having a dual system of schools.

Where authorities were formerly concerned with relatively clearcut violations of constitutional rights through the maintenance of dual systems of black and white schools, they now embarked on a search for official action in the form of government-supported housing construction, school location, zoning policy and other actions leading to segregated neighborhoods and, consequently, segregated schools. Distinctions between de jure and de facto segregation not only because increasingly blurred de jure and de facto segregation not only became increasingly blurred, but the finding of one or the other legal conclusion was increasingly made by a governmental agency, HEW, not the courts.

Where actions are brought in federal court, there continues to be a rigorous sifting of the evidence in an adversary proceeding to determine whether or not the existence of predominantly black and predominantly white schools is the result of some form of governmental action. But in the administrative enforcement proceedings undertaken by HEW, there has been a growing tendency to achieve mathematical racial balance rather than to identify the causes of segregation. Under the HEW statistical formulae, school districts are required, at the risk of losing all federal funds, to transport large numbers of school children across neighborhood zone boundaries in order to achieve a racial balance in each school that reflects approximately the same racial makeup as the school population in the district as a whole.

I see a vast constitutional difference between enforcing valid equal protection rights to eradicate de jure segregated educational systems and making the quantum leap so as to create a mythical constitutional right of statistical racial balance in each classroom.

The Equal Protection Clause, as I view it, mandates the former, not the latter.

As the pattern of HEW practices has become more and more apparent, Congress has time and again stated its judgment that busing solely for the purpose of racial balance is unsound, unwise, and unnecessary. Nine times—in nine separate appropriations bills relating to HEW funds—Congress has adopted language which prohibits funds from being used by HEW to force any school district to bus students to overcome racial imbalance.[1]

In addition, Congress has included busing strictures in the two major education authorization bills adopted since 1970 in order to prohibit use of federal funds for transportation of students (1) to overcome racial balance, or (2) where such busing poses an undue risk to student health or safety, or (3) if it impinges significantly on the educational process, or (4) if the educational opportunities at the school to which the student would be bused are inferior. The Education Amendments of 1974 also provide that no student may be bused to a school other than that "closest or next closest" to his or her home. Further, the 1974 legislation limited cross-district busing, and banned mid-year implementation of court ordered desegregation.

It does not appear that these repeated congressional admonitions have had their intended effect. It is increasingly clear to me that the Department of Health, Education, and Welfare considers itself to have a mandate to achieve racial balance in the major urban school districts of the United States. I believe this policy is inherently self-destructive. To spread a dwindling number of white students throughout a predominantly black city school system is a self-defeating exercise. While the so-called "white flight" from the cities to the suburbs cannot be attributed solely to unreasonable busing requirements, it certainly has been an important factor.[2]

Mr. President, things that seemed so very clear, almost self-evident in 1954 are not quite so clear, not quite so self-evident in 1975.[3]

The practice of busing to destroy the de jure segregated school system somehow has been distorted to require busing for racial balance in a unitary school system.[4]

The conventional wisdom that a black student learned quicker and better with a white student on his left and right is not quite so universally accepted today.[5]

I believe we are at a juncture where we must examine what we have done, where we are, and where we are heading.

Certain things we must not do.

We must not tinker with the Equal Protection Clause of the Constitution. Like President Ford, I see no basis whatever for taking away vested constitutional rights and obligations.[6]

We must not act in response to violence or the threat of violence. Bus burners, rock throwers, and bully boys have no right to respect, no standing to be honored.

What we can do is to examine the aspects of the desegregation enforcement process that have been legislatively created. We can pass no statute which seeks to circumvent the Constitution by unreasonably limiting the courts in their authority to fashion remedies to vindicate constitutional rights. But

[1] The so-called Scott-Mansfield amendment which was first enacted in 1969 and has been reenacted every year since.

[2] The recent statements of Professor James Coleman of the University of Chicago are of considerable interest on this score. His 1966 report has served as a significant rationale supporting the concept of student integration to improve educational performance. Coleman has recently stated, however, that busing students may well be counterproductive in that it further drives white families out of the central city, resegregating the central city school system.

[3] In the words of Washington Post columnist William Raspberry: "A lot of us are wondering whether the busing game is worth the prize. Some of us aren't even sure just what the prize is supposed to be." September 10, 1975.

Note also comments of the late Professor Alexander Bickel in his recently published book The Morality of Consent (Yale University Press, 1975).

[4] The cause of busing so as to achieve a racial balance in a unitary school district has been stated by the highly respected Professor Kenneth Clark. "There is not such a thing as improvement in the schools while they are still segregated. I see no alternative to busing. Integration is a painful job."

See also two articles by Marian Wright Edelman, New York Times, September 22 and 23, 1975.

[5] Wilson Riles, Superintendent of Public Instruction for the State of California, says: "If you have to have blacks sitting next to Caucasians to learn, we are in a mess, because two-thirds of the world is non-white, and we would not have enough whites to go around. If the schools are effective and children learn, that is the easiest way to achieve the ultimate goal of integration."

A recent study by Sar A. Levitan, William B. Johnson and Robert Taggart concluded that "the weight of the evidence seems to suggest that integration in the schools can make small improvements in black I.Q. and achievement."

[6] As I read it, the Supreme Court has itself imposed the constitutional outer limit on busing. In the Ditroit case (*Milliken* v. *Bradley*) the Court ruled that where there was no gerrymandering of school district lines between the city and the suburbs and where there was no complicity to segregate between the city and the suburbs, the Court could not and would not order cross-district busing between the central city and suburbs.

The holding in the Detroit case may well be determinative in other predominantly black central city school systems such as Atlanta, Baltimore, Cleveland, Jersey City, Kansas City, Newark, St. Louis, Washington, etc. insofar as the relation between those central city school systems and their contiguous suburbs are concerned.

Congress is not bound to select the same remedies employed by the courts when it comes to fashioning, through legislation, an administrative process to enforce school desegregation.

Congress clearly had the power to create the enforcement powers of HEW under Title VI of the Civil Rights Act and Congress clearly has the power to revoke or, as I would prefer, to limit those administrative powers through subsequent legislation. This is especially true in this case, where Congress has on at least nine occasions adopted statutory prohibitions against HEW forcing school districts to bus students to overcome racial imbalance.

Looking at the experience of the last decade, I find no compelling reason to maintain busing as a congressionally authorized procedure in school desegregation cases when it has become increasingly apparent that busing offers no remedy at all. Indeed, in a great many cases, the social problems created by busing now outweigh the social advantages to be derived from bringing black and white students together.

I supported the amendment offered by the Senator from Delaware (Mr. Biden) last week, since it was the only vehicle before us which related directly to the busing ordered by HEW. However, I believe that the perfecting amendment offered by the Senator from West Virginia (Mr. Byrd) is a preferable approach for the Senate to take since it does not limit HEW in mandating other methods of school desegregation, but would simply remove the authority of HEW to require busing.

Mr. President, when I entered public life in 1955, shortly after the decision of *Brown* v. *Board of Education,* I carried with me a commitment to equal right for all citizens. I have continued that commitment through the several offices I have held in city, state, and national government.

In the Senate, I have repeatedly voted against and will continue to vote against any unconstitutional attempt by Congress, by statute, to modify or restrict the Equal Protection Clause of the Constitution. On the other hand, I will continue to vote as I have voted at least nine times to prohibit HEW from administratively ordering busing to achieve racial balance. In my view, the busing practices of HEW are no longer related to remedying the denial of rights in de jure school segregation situations. Indeed, I am concerned that continuation of HEW policies will result in even greater school segregation in the future.

For these reasons, I support the amendment of the Senator from West Virginia to restrict HEW from requiring busing while permitting the Department to employ other remedies not incompatible with previous strictures already legislatively imposed by Congress.

SENATOR EAGLETON FROM CONGRESSIONAL RECORD, AUG. 15, 1978

Mr. EAGLETON. Madam President, I will address my remarks, in essence, to the Hollings amendment, but since the Packwood amendment treats of the question of the constitutionality of tuition tax credits, I think the remarks will be equally germane at this point as well.

I favor, Madam President, the Hollings amendment, which would strike from the Packwood-Moynihan bill those provisions which pertain to tuition tax credits for private elementary and secondary education. I do take this position with simple or benign comfort, for my own personal elementary and secondary education was through private schools. Pluralistic education, as afforded by a mix of public and private schools, is one of the great strengths of our Nation. The private education competent of that mix is caught in the creeping squeeze between declining enrollment and rising costs. No doubt the private schools need help. No doubt the private schools have been helped. No doubt the enactment of Packwood-Moynihan, if constitutional, would help private schools. The threshold question for me, Mr. President, is not one of need, but one of constitutionality.

It is clear to me that the mechanism selected by Senators Packwood and Moynihan—the tuition tax credit—is unconstitutional under the Supreme Court's decisions in the Nyquist and Sloan cases—(*Committee for Public Education* v. *Nyquist,* 413 U.S. 756 (1973); *Sloan* v. *Lemon,* 413 U.S. 825 (1973)).

THE CONSTITUTIONAL ISSUE

The first amendment to the U.S. Constitution reads as follows:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Since the preponderance of private schools in this country are church related, it is the establishment clause which has caused the Supreme Court to monitor closely whether a particular legislative mechanism is or is not violative of the "wall of separation between church and state" as the Supreme Court has expounded first amendment law.

To be sure, the Supreme Court has not at all times spoken with a clarion voice on separation of church and state issues. Prof. Antonin Scalia of the University of Chicago School of Law, a vocal proponent of the Packwood-Moynihan bill, testified with considerable vigor and some persuasiveness on the "confusing" and "bewildering" nature of Supreme Court decisions beginning with the Everson case in 1947 right up through the Wolman case in 1977 with lots of cases—and, admittedly, lots of zigs and zags—in between.

But, Madam President, although there are many unresolved constitutional thickets in first amendment law, there is one area where the Court has spoken precisely and definitively: tuition tax credits for elementary and secondary private education are unconstitutional. That is what the Supreme Court said in both the Nyquist and Sloan cases when it declared unconstitutional statutes in New York and Pennsylvania which sought to provide same.

It is because of the Nyquist and Sloan cases that the Attorney General of the United States has stated that Packwood-Moynihan is unconstitutional. It is because of the Nyquist and Sloan cases that Professors Paul Freund, Harvard Law School; Laurence Tribe, Harvard Law School; Andrew Kaufman, Harvard Law School; Gerald Gunther, Stanford Law School; William Van Alstyne, Duke Law School; Kent Greenwalt, Columbia Law School, amongst others, state that Packwood-Moynihan is unconstitutional.

It is Nyquist and Sloan that the proponents of tuition tax credit cannot escape, although escape they try. Senator Moynihan escapes them by not even mentioning them in his two major public utterances on the constitutional issues involved in his bill. I refer to his article in the April 1978 issue of Harper's magazine and his address to the College of St. Rose, Albany, N.Y., in May 1978. The good Senator flails away at bigotry of the Jacksonian Democrats, the anti-Catholicism of President Ulysses S. Grant, the anti-Papist plank in the 1876 Republican platform, and unintended, but apparent anti-Catholic bias of Justice William O. Douglas, in his speech, I think it is, "I do not think Douglas was anti-Catholic. It is just that * * *" Good wordsman that the Senator is, I wonder why he did not have even one word for the two Supreme Court cases which outlaw the premise of his bill? He simply writes them out of existence by failure even to mention them.

Let me quote from the Supreme Court in the Nyquist case:

"Special tax benefits, however, cannot be squared with the principle of neutrality established by the decisions of this Court. To the contrary, insofar as such benefits render assistance to parents who sent their children to sectarian schools, their purpose and inevitable effect are to aid and advance those religious institutions.

"There is no doubt that the private schools are confronted with increasingly grave fiscal problems, that resolving these problems by increasing tuition charges forces parents to turn to the public schools, and that this in turn—as the present legislation recognizes—(meaning the New York statute that was before the court) exacerbates the problems of public education at the same time that it weakens support for the parochial schools. . . . They are substantial reasons. Yet they must be weighed against the relevant provisions and purposes of the First Amendment, which safeguard the separation of church from State and which have been regarded from the beginning as among the most cherished features of our constitutional system.

"It is true, of course, that this Court has long recognized and maintained the right to choose nonpublic over public education. It is also true that a state law interfering with a parent's right to have his child educated in a sectarian school would run afoul of the Free Exercise Clause. But this Court repeatedly has recognized that tension inevitably exists between the Free Exercise and the Establishment Clauses, and that it may often not be possible to promote the former without offending the latter. . . . However great our sympathy for the burdens experienced by those who must pay public school taxes at the same time that they support other schools . . . neither may justify an eroding of the limitations of the Establishment Clause now firmly emplanted."

The Supreme Court, by the way, misspelled the word "implanted."

Madam President, the Packwood-Moynihan bill is purely and simply a repackaging of the New York and Pennsylvania statutes struck down by the Supreme Court in Nyquist and Sloan. It is specious to argue that putting a pretty new congressional ribbon around an already declared unconstitutional package somehow purifies the contents.

Finally, Madam President, let me addresss the question as to whether we as Senators should at all concern ourselves about the issue of constitutionality. Some of my colleagues argue: "What the heck, our job is to pass laws. It's the Supreme Court's job to pass on their constitutionality. We should do 'our thing.' Let the Supreme Court do 'its thing.'" Professor Scalia, mentioned earlier as a proponent of Packwood-Moynihan, puts it a bit more professorially: "I urge

you, then"—meaning the menbers of the Senate——"to approach this issue as a question of what the constitutional law 'should be,' rather than vainly seeking to determine what it 'is' under the decisions of the Court."

I submit that it is our role to enact bills which will make both good public policy and sound constitutional law. Our role is not to grasp at an ephemeral, flimsy pretext of somehow granting the Supreme Court a second-chance learning experience. Our job is not to pass the constitutional buck to the Supreme Court simply to get it off our backs. Time and again in other legislation we make constitutional evaluations pertaining, for example, to the search and seizure clause, the due process clause, the equal protection clause, the interstate commerce clause and so forth. How can we and why should we shirk our responsibility with respect to the first amendment issue?

Madam President, I am well aware of the political appeal of granting partial relief to parents who support the public schools they do not use. While simple equity might demand that we find a way to relieve these citizens of the heavy financial burden of educating their children, I do not think the tuition tax credit as provided by this bill, insofar as it provides relief at the elementary and secondary school level, comports with the constitutional requirement of separation of church and state, and therefore, at the appropriate time, when we get around to voting on it, I shall support the Hollings amendment to strike it from the bill.

The Humanities in Eclipse

(Speech by Senator Thomas F. Eagleton, June 4, 1982)

For a quarter-century, the humanities departments of American colleges have had the look of species staggering down the path to extinction. The launching of Sputnik in 1957 focused the attention of educators away from the liberal arts and onto the applied sciences. In the late 1960s, the student movement's demand for "relevance" shoved Shakespeare and Hardy into the background and brought Cleaver and Marcuse into the classroom. Now, in an extended period of reaction against the excesses of the '60s and the '70s, as well as a defense against economic uncertainty, students have turned to the colleges for the specific tools with which to master the specialized jobs of the age of technology.

The result is that the humanities departments are almost withering on the vine. Students are voting with their matriculation cards, and in schools that are especially sensitive to the shifting winds of student taste—the small private colleges, the junior colleges, the less prestigious public universities—the consequences for the liberal arts are dire.

Some examples:

The University of Michigan is shutting down its geography department.

Brigham Young University is no longer accepting applicants for Ph.D.'s in English and foreign languages.

The State University of New York abandoned its two doctoral programs in French literature and some campuses within the state system have dropped Ph.D. programs in philosophy.

The University of Massachusetts has under active consideration the abolition of its department of comparative literature.

Even prosperous Princeton found out that its resources were finite and, in a cost-cutting exercise, abolished its Department of Slavic Languages.

We have an indirect, but nonetheless telltale, sign on the federal level where the Congress, at the urging of the President, slashed the budget of the National Archives, the result of which will be that historians, political scientists, and the public will have much more limited and much less timely access to important, historic public documents.

Not only is the National Archives in trouble, but ever major academic research library in the country (with perhaps the single exception of Harvard) is in some sort of difficulty by reason of budgetary constraints. Acquisitions have been curtailed and major library collections are in danger.

"Our whole culture is up for grabs," observes Kenneth Wadleigh, the dean of the graduate school at M.I.T.

"It's truly frightening. Imagine a civilization without the best people in philosophy, languages, and literature," says Alfred Susman, dean of the graduate school at the University of Michigan.

Classics and foreign language departments are being whittled to token dimensions. Even the sturdy old standbys of English and history are feeling the shock of student indifference—particularly in those institutions that have abandoned the traditional curriculum and level course selection to student whim.

This has put higher education in a nasty spot. The schools in shaky condition have little choice save to close down the French and music departments and have more specialists in computers; for some institutions the choice quite literally is between life and death, and who can blame them for choosing life.

An even more troublesome and divisive event looms ahead: as federal government funds for scientific research and for the training of scientists are cut back, the universities will be faced with a series of reallocation challenges. In order to support the energetic and productive ventures in science that will be left tottering in the wake of the federal retreat, it will be urged that university general funds, including funds now allocated for the humanities, be redeployed into science.

Even the major institutions that enjoy the benefits of prestige and broad support also have to deal with the problem. Some of them, thank God, still operate on the quaint belief that the chief responsibility of higher education is to educate—to immerse the student in the length and breadth of cultural heritage. A few of these institutions—in a major way, Harvard, and to a lesser degree, Yale—in their own reactions against the '60s and '70s, are returning to curricula that require students to spend at least two years in closely-prescribed, general studies before moving into their majors. These schools—and I applaud them—strive for a well-rounded education, not a trade progam. It seems to me that it isn't asking too much for at least two years of one's college life to be spent in discovering the riches of the past.

This is not to say that all "career-oriented" courses of study are for the birds. The demands of the job market naturally enough draw a student in that direction in any event. I realize that if you can quote a few lines from "Othello," they'll think you're a hell of a fellow, but it probably won't do you all that much good in the job market.

Nonetheless, I feel that the educational pendulum has swung far too far away from the humanities. I do not accept the notion that there is, in curriculum planning, an inherent contradiction or mutually exclusive rivalry between utility and cultivation. I do not accept the notion that a decent intellectual exposure to the central Western cultural traditions is somehow elitist or irrelevant.

A four year college education, in my judgment, should be balanced. It should be a blend of old values and new arts and sciences. It should be a synthesis of modern practices and timeless ideals.

As you enter college this Fall, I urge you, in planning you own curriculum, to heed these words of Bart Giamatti, the dynamic, young President of Yale University.

"A curriculum finally reflects that patterned pluralism of value, method and perception that the educated mind must first engage to sharpen judgment and then pursue a chosen goal.

"Within any curriculum, however conceived, must lie those subjects that bear the values of the whole culture and which have historically been seen as at the center of a liberal education."

Can We Afford Success?

(Remarks of Senator Thomas F. Eagleton, January 31, 1986)

America is undergoing a profound demographic transformation that will be, without question, the issue of the 21st century.

Our population is aging rapidly. In 1980, for the first time in the history of the United States, half of all Americans were over age 30. Between the years 2010 and 2020, when the first great wave of the baby boom reaches 65, our older population is expected to increase by more than 12 million. That is roughly the same number of Americans who will reach age 65 in the thirty year period of 1980 to 2010! Today there are more persons over the age of 65 than there are teenagers. By 2025, there will be twice as many older Americans as teenagers.

This unprecedented demographic change is a result of the baby boom generation's passage from youth into the later stages of life, but it is accentuated by the recent phenomenal explosion of technological innovation at both ends of the age scale. Fertility rates of women dropped dramatically with the advent of widespread use of effective and relatively cheap contraceptives. That technology began a "baby bust" in the 1960's which continues today at a stabilized rate below replacement level. Most significantly, however, medical science has extended, beyond our wildest dreams, life expectancies at older ages.

In 1940, less than 30 percent of our senior citizens were 75 or older. By the year 2000, almost half of those who reach the age of 65 will live to be 75. In 1960, about 5 percent of the older population was over 85; by 1980, that percentage had risen to almost 9; by the year 2000, that percentage is projected to reach 15. Persons reaching 85 can expect to live, on average, beyond 92.

This plethora of demographic data is an eloquent testament to the marvels of medical science and the accessibility and quality of our health care system. Science has made progress in combatting virtually all 15 leading causes of death. Heart disease remains the number one killer for all age groups, but the death rate of heart disease for older persons declined more dramatically in the 1970s than in any previous decade. Similarly, the mortality rate for strokes among older persons showed a remarkable decline during the same decade.

We relish our medical and scientific successes; our technology continues to expand the limits of our medical abilities; and some scientists believe that new discoveries will, in the near future, increase the life span by 20 to 30 years. As people live longer, however, they are more and more likely to suffer chronic disabling conditions such as Alzheimer's and other brain disorders, arthritis, incontinence, and others. These chronic disabling diseases fall outside a health care system designed for the elderly back when there were fewer elderly people and when health care was defined almost entirely in terms of acute care in the hospital.

What are the costs of this increased longevity? The dollar costs are staggering, but the human costs are even more devastating.

Let's look first at the budgetary impact—everything in Washington these days is evaluated in terms of its budgetary impact. If more of us will be around later in life, how will we pay our medical bills? How will we pay the pensions and Social Security benefits that already have the federal government tied up in knots? According to the Health Care Financing Administration, the federal bureaucracy that administers the Medicare and Medicaid programs, the nation's nursing home population is expected to grow by 57 percent from 1980 to 1995, and to increase nearly three and a half times by the year 2040, when 4.3 million elderly are expected to be in nursing homes.

Medicaid now picks up roughly half of the tab for all nursing home costs, about evenly split between the feds and the states. Already, in nearly every state, Medicaid is one of the top line-item expenditures. At the federal level, proposals to keep Medicaid costs at a manageable level have called for artificially imposed caps on the amount of matching funds the feds give to the states. That idea is not just a budget cut. It is a clear statement that no matter if medical technology increases costs or if your aging population is growing by leaps and bounds, we, the federal government, simply aren't going to pay any more. That decision shifts the burden to the states, which will surely try to shift their additional costs to the private sector. Someone will have to pay the bills.

How much are we as a society willing to spend? If, for example, we were to provide liver transplants for the thirty to forty thousand people a year who die from liver disease, at a cost of $240,000 a transplant, that one procedure alone would consume almost half of the nation's nursing home bill in 1980.

Last year, 150 pancreas transplants were performed. Estimates are that there are some twelve to fourteen thousand Americans who need them, at a cost ranging from $25,000 to $40,000 per operation.

If the biotechnology industry can successfully develop an antibody that will seek out cancer cells in the body and deliver a dose of cancer-killing substance, experts predict sales as high as $2.6 billion. Who is going to pay the $2.6 billion?

In 1973, experts told us a complete kidney dialysis program would cost about $100 million a year. Today, the cost is about $4 billion. If we were debating that program today and knew its true costs, we wouldn't start it. Simple as that. No money.

Like it or not, we are going to have to come to grips with the trade-offs between the costs of life-extending techniques and the benefits associated with them. Like it or not, the cost of health care, which has already to some extent determined who lives and who dies, will be an even bigger determinant in the future.

Alzheimer's disease research has an enormous contribution to make toward reducing future costs for the aging population. If, and sadly today it is a very big if, a treatment can be developed or prevention can be achieved, millions of future older Americans will not have to be relegated to nursing homes because Alzheimer's disease has robbed them of any vitality. But just as surely as vaccines and antibiotics brought the decline of infectious disease, as surely as anti-hypertensives and cardiac drugs sent death rates from heart disease plummeting, new and unexpected medical syndromes will appear. Even if we could achieve life without disease, our life span is finite. Eventually the body parts begin to wear out.

When the parts wear out, separate and apart from disease, life loses any semblance of vitality. Visit any nursing home in the country and you will see older persons whose minds and bodies have been ravaged by time. One may sit all day in a rocking chair, hugging a teddy bear—weak, feeble, unable to communicate in any way. Another may be bedridden, drawn up in the fetal position, unable to utter a sound except a cry of pain when an attendant tries to relieve the pressure on the inevitable bed sores.

These people's bodies are telling them they cannot go on any longer. However, our cultural tradition combined with our medical know-how has told them they cannot die. This surely isn't what the golden years were supposed to be about.

Am I advocating euthanasia? Of course not. I am not advocating any act of killing. What I am saying is that medical science may be on the verge of outstripping the ability of society to pay for its genius-like techniques and discoveries or for warehousing the breathing bodies that linger on beyond any semblance of useful life. Society cannot afford to put every cardiac patient in a CCU. Society cannot afford liver transplants for every person with a cirrhotic liver. We probably cannot afford kidney dialysis on demand. We probably cannot afford monoclonal antibodies for all Americans afflicted with some forms of cancer. We probably cannot afford a crib in an ICU for every baby who might benefit from that intensive care.

The horrible disaster with the Challenger space shuttle shows that, even in the quest for the infinity of space, there are finite, often tragic, mortal results. Research medicine sometimes seems to be in the quest for infinity, but we would all do well to remember that finite mortality lingers just off stage in that drama as well.

Collegiate Jockcracy

(Floor Speech by Senator Thomas F. Eagleton, June 26, 1986)

Mr. President. A great deal of soul-searching has occurred in recent days about the excruciatingly sad death of Maryland University basketball star Len Bias.

The whole scene is beset with tragedy. Tragedy in losing a fine young man at the peak of his skills and on the verge of a promising career in professional sports. Tragedy for his family and friends in losing one whom they cherished. Tragedy for the University of Maryland in seeing a superstar who proudly carried their sports emblem come to such a premature and untimely death.

Then there is the broader tragedy of what Len Bias' death signifies for sports as they are conducted at "major" colleges and universities which pursue "aggressive" athletic programs.

The Bias case illustrates what we have all known about big league university sports. Players are bought, rented, and hired by the university not to be students, but to be a commercial commodity for the university. The big league university hires its athletes the same way it hires an automobile or hires a paver to smooth out a driveway or hires a painter to spruce up the arena. There is little or no intent to educate the young man. There is little or no intent to see that he is equipped with intellectual or technical skills to compete in his post university life, unless it be in professional sports.

The intent is to hire or rent a football or basketball team that can win games and gin up some money, publicity, and supposed prestige for the university.

Big league college sports is big money. If you fill the stadium and go to a post season bowl game, that's big bucks for dear old alma mater. If you fill the basketball arena and go to the NCAA tourament, that's big bucks for dear old alma mater.

Of all young men in college football and college basketball, only a handful—a tiny handful—make the pros. Yet most every entering athlete hopes he may be the one.

If the school doesn't give a damn if he cuts classes or flunks courses, why should he care? If the school doesn't try to motivate him to acquire vitally needed educational skills, then how is he to be motivated?

The motto of today's sports-minded American universities is: "Ask not how this university can educate you; ask what sport you can play for this university."

Len Bias had, in essence, flunked out of the University of Maryland. Coach Lefty Driesell didn't care because (1) Len Bias was going to make millions in the pros and (2) his playing time at the University of Maryland was over.

But what about all the other athletes at Maryland University who won't make the pros? What are they to do for the rest of their lives with a sham, nursemaided Maryland education and with a flunk out at that?

And Maryland is by no means the only culprit in this business of duping athletes. Scandals abound: University of Georgia, Clemson, Tulane, Texas Christian, University of Miami, University of Florida, and more.

Enticing, deceiving, and misdirecting athletes is a national collegiate disease and a disgrace. It is a huge, ugly, nefarious war of the university goliaths from coast to coast not to compete with Harvard or Stanford academically, but to compete with the University of Nevada at Las Vegas or the University of Houston in sleazy athletic programs.

In my own state of Missouri, some powerful alumni have expressed the view that a principal reason for trying to oust the Chancellor of the University of Missouri (at Columbia) is the way she handled "the search for the football coach and athletic director."

It is the era of collegiate "jockcracy." Distinction in academics is secondary to "fight, team, fight."

So Len Bias' death should cause all of us to do lots of thinking—thinking about values, goals, and missions—thinking about what's first at a university and what's peripheral—thinking about young people's minds and not about their height or bulk.

Some of the thinking must come from university presidents. I've talked to a few. They hate the athletic sleaze they know is going

on. But they feel they are victims caught in the vise of alumni ego and the quest for athletic cash and glory. As they see it, if other universities are doing it, they have to. That's the way the real world is.

Well, maybe one Robert Maynard Hutchins isn't enough. But there is safety and comfort in numbers. If several university presidents could band together and say "no pass, no play" and say that athletes would be required to carry and complete a standard, unpampered course load, a beginning might be made. If the powerhouse athletic conferences would invoke and enforce standard rules of meaningful academic behavior, a beginning might be made.

Len Bias is dead. But lots of other noneducated, non-graduating jocks live in this country wondering what happened to them. The glory days are over and there is nothing to show for it. Life goes on and they are ill-equipped to cope. They have been used. They have been had. They were rented like the floor chairs in the arena and, like the chairs, they were folded up when the games were over.

EAGLETON ON FOREIGN POLICY AND DEFENSE

Throughout his career, Tom Eagleton has always been concerned with questions of American foreign policy and our national defense. In an age of nuclear weapons, Eagleton believes these topics to be everyone's concern. In 1968, he spoke out against profligate defense spending, initiating a fight he would pursue throughout his tenure in the Senate, with an awareness of the issue that others would not gain until the 1980s. On entering the Senate in 1969, and throughout the 1970s, Eagleton reacted to breaking world events with a clarity of thought and insight that earned him the respect of his colleagues. In 1969, he spoke of a centrist path to peace in the Middle East, and in 1978 of the ongoing tragedy of Cyprus. Eagleton's well-reasoned view on abolishing the draft in 1971 predicted with grim accuracy the economics of voluntary military service. In 1985, Tom Eagleton sounded a call for reform of the Joint Chiefs of Staff, leading the way for passage of such legislation in 1986. During his first months as U.S. Senator, in 1969, he spoke of nuclear weapons, the arms race, and the terrible specter of nuclear war. Thirteen years later, as the Reorganized Church of Latter Day Saints prepared to debate its policy of the nuclear freeze, Tom Eagleton once more spoke to these questions.

Speeches:

Remarks at the Opening of the Franklin County Eagleton For Senator Headquarters, Washington, Missouri, July 27, 1968;

Remarks Concerning the Middle East, United States Senate, March 2, 1969;

Speech to the St. Louis County Democratic Central Committee Community Forum, St. Louis, Missouri, April 7, 1969;

"Blessed Are The Poor For They Shall Fight Our Wars," United States Senate, June 4, 1971;

Speech Concerning Cyprus, United States Senate, July 25, 1978;

Address to the World Conference of the Reorganized Church of Latter Day Saints, Independence, Missouri, March 28, 1982;

"The Joint Chiefs of Staff," United States Senate, May 24, 1985.

SPEECH OF LT. GOV. THOMAS F. EAGLETON, DELIVERED AT THE OPENING OF THE FRANKLIN COUNTY EAGLETON FOR SENATOR HEADQUARTERS, JULY 27, 1968—WASHINGTON, MO

The Constitution of the United States, in the words of its preamble, was established, among other reasons, in order to "provide for the common defense, promote the general welfare, and secure the blessings of liberty."

During the past 25 years this country has pursued the first of these objectives at increasingly high cost, in some cases at the expense of the latter two.

Any decision concerning the common defense is influenced by, and will in turn influence, domestic programs and priorities.

For instance, the Vietnam War now costs over 30 billion dollars per year—but this figure does not measure the real cost in terms of men, material, and domestic well being. The cost of Vietnam is certainly the major reason for the recently passed surtax, an increase which apparently will be purchased at the price of 6 billion dollars in budget cuts. Unfortunately, it appears that much of the reduced spending will come from vital domestic programs.

Many people assume that after Vietnam, the 30 billion dollars per year—or a large portion of it—will be instantaneously freed to pursue the domestic problems afflicting 20th Century America. This is simply not the case.

At present, there is much political pressure to continue to spend excessively large amounts of money on weapons and defense. These pressures are exerted by what has come to be known as the "military-industrial complex."

President Eisenhower, in his last major speech before retiring from the White House, warned: "In the councils of government, we must guard against the acquisition of unwarranted influence, whether sought or unsought, by the military-industrial complex. The potential for the disastrous rise of misplaced power exists and will persist."

This complex is the natural outgrowth of 25 years of the cold war during which a large and permanent military establishment was created, an establishment whose needs have been met by the vast private defense industry.

The industries and businesses that fill military orders are the largest producers of goods and services in the United States today. Their activities pour approximately 45 billion dollars into over 5,000 cities and towns. They employ over 8,000,000 people, or approximately one-tenth of the entire labor force.

The military lobby is the largest in the country today, having spent $3,810,458 in 1967 compared with the highest civilian lobby, which spent only $277,524.

At present there are 991 separate defense industry installations in 363 of the country's 435 congressional districts. These facts suggest the immense bargaining power of the defense establishment with Congress.

The growth of this complex has had, and will have, great implications on the policies of the United States, whether foreign or domestic, whether arms sales abroad or priorities at home.

Congress is now holding hearings under Senator John Stennis' Preparedness Subcommittee, and according to most reports, this subcommittee and many Congressmen and Senators are willing to continue spending the same amount or even more money for military purposes after Vietnam.

At present, there are discussions underway concerning how to "augment the common defense." A costly and technically questionable "thin" anti-ballistic missile system estimated to cost between 5 billion and 7 billion dollars has recently been approved by Congress and enthusiastically endorsed by Secretary of Defense Clark Clifford—although his predecessor had fought against such a system and only grudgingly gave his support, apparently after pressure from the White House.

This system has been denounced by many as the precursor to a "thick" shield which would cost more than 40 billion dollars to construct.

There are also tentative plans for a new fleet of long range attack planes, although conventional bombers are generally considered outmoded. A whole new series of overlapping anti-submarine weapons, including an anti-submarine carrier force of dubious effectiveness, is also under consideration.

Certainly I don't argue against adequate and needed defense expenditures. As John F. Kennedy said on July 15, 1960: "It is an unfortunate fact that we can secure peace only by preparing for war." But such preparation must be intelligently judged and diligently examined. The military budget, just like the domestic budget, is deserving of close Congressional scrutiny.

In the past the military has virtually been handed a blank check by Congress. Such action is neither wise nor acceptable. For instance, Senator Phillip Hart of Michigan has recently estimated that over 5 billion dollars could be saved annually through more competition in the defense procurement process.

In the past, to question the military budget was considered somehow unpatriotic. This is a ludicrous attitude. According to Senator Symington, an authority on defense matters: "76¢ out of every tax dollar goes to pay for past, present, or possible future wars."

This spending is not necessary simply to keep the American economy functioning. The Wall Street Journal and others forsee no major difficulties in a gradual switch to domestic production for many of the industries. The President has assigned a Cabinet Committee the task of insuring that the transition is made as smoothly as possible.

I firmly believe that the price of peace need not be unemployment, that foreign conflict need not be a necessary ingredient of domestic prosperity.

Neither is it heresy to examine the request for a costly anti-missile system—not only in terms of such a system's technical effectiveness, but also in terms of the alternative costs of deferring programs to meet this country's domestic problems of urban slums, poverty, crime, health, transportation, inadequate education, pollution of our air and water, and the quality of American life.

One must balance both military and civilian requests against the priorities of needs. Since 1945, this country has spent 936.4 billion dollars on the military and 114.9 billion dollars on education, health, welfare, housing, and community developments. Yet these latter problems are no less grave, nor are their effects on America's future less critical.

The United States need not and should not become a garrison state, with an economy based on armaments. Entrenched self-interest may move the military and its supplies to demand that the current level of de-

fense spending be maintained—or even increased—after Vietnam.

As a Senator, I will attempt to examine defense expenditures in terms of defense needs and in relation to the other needs of this country. I will never hesitate to vote for funds needed to protect the nation's security, but I will never hesitate to oppose unnecessary spending simply because it is proposed by the Pentagon.

After Vietnam, I think that priorities must be reassessed and funds redirected. The United States must possess not only the military strength of a strong nation, but also the moral strength of a compassionate one, moving to build a better society for all of her people. Only then will the general welfare truly be promoted and the blessings of liberty truly be secured.

SPEECH BY SENATOR THOMAS F. EAGLETON, JEWISH FEDERATION OF ST. LOUIS, ST. LOUIS, MO, MARCH 2, 1969

Mr. Edison, honored clergy, members of the Board of the Jewish Federation, members of the Board of the Constituent Agencies of the Jewish community, ladies and gentlemen—"Shalom."

The word "shalom" has many meanings, but one is particularly relevent to our world today—"peace be with you."

I would like to address myself to the problems of a region which has had little peace in over a generation—the Middle East.

Let me state at the beginning that I believe unequivocally that the United States must reaffirm its moral and political commitment to the continued existence and independence of the State of Israel.

Israel has a right to exist in peace and tranquility, with guaranteed access to international waterways and border security. These rights are necessary to assure its safe future, and I am committed to them.

The belief that Israel's existence must be secure is one of the few foreign policy questions that is unanimously agreed upon by individuals of both political parties—President Nixon, former Vice President Hubert Humphrey, the late Senator Robert F. Kennedy, Senator Symington, Kennedy, and McCarthy, and our beloved former President and fellow Missourian, Harry S. Truman.

For Israel is the epitome of democracy in the Middle East and a buffer against the expansion of Soviet influence in that area. The United States must not and will not let Israel perish.

In my opinion, the following principles must be followed before any meaningful and lasting peace can exist in the Middle East.

First, we must end the wasteful and destructive arms race in the Middle East.

Unfortunately, such action is not likely until the balance of weaponry is at equilibrium, with both sides convinced that further arms escalation is useless and dangerous.

Israel's most antagonistic neighbors have been rearmed by the Soviets. Israel must maintain equivalent strength. The United States should provide whatever assistance necessary to assure that Israel has sufficient force to avert or, if need be, stave off aggression.

Nor can the arms race be ended without a joint action by the United States and the Soviet Union. All of the developments in the Middle East—military, economic, and political—are substantially influenced by the two great powers. Until the United States and the Soviet Union agree to limit this race for superiority in the balance of weaponry, there will be no permanent peace.

I urge the Nixon Administration to undertake immediate high-level discussion with the Soviet Union to stop the inflow of armaments to the Middle East.

Second: It is obvious to anyone that in order to have a lasting peace, the Arab leaders must be willing to recognize the state of Israel and have direct negotiations with Israel.

Clearly the parties to the conflict must ultimately be the parties to the peace. I have always urged direct negotiation by the adversaries.

Third: The refugee problem must be solved with justice to both sides and, most of all, to the refugees themselves. I urge that the refugees be given freedom of choice, a personal self-determination as to which land they prefer to settle in.

Contributions by the United States to the United Nations Relief and Works Agency would be of assistance in this cause, as would pressure on both the Arabs and the Israelis to work through this agency for the relief, rehabilitation, health, and welfare of the refugees.

Fourth: Peace will not prevail in an area where understanding is absent. Today proud Arabs suffer unspeakable poverty beside a flourishing neighbor, while exposed only to demagogic propaganda at home.

Arabs and Israelis must meet and mix, trade with each other. In this way they will begin to understand and appreciate each other's ways.

The United States should encourage and support cultural, educational, athletic, and other exchanges between the peoples of both the Arab world and the Israeli world, similar to the present exchange agreements between the United States and Russia.

In particular, these cultural, educational, and athletic exchanges should be aimed toward the young people of both countries. Fortunately, hatreds do mealt and people—especially the young—are flexible. I fear we have gotten out of the habit of fostering these basic human instincts for brotherhood.

Peaceful co-existence is better than any treaty that can be written, any wars that can be fought, or any guarantees that can be given. As the United States guarantees the existence and security of Israel, we must also lend our finest minds and efforts to coping with the tension-building poverty, hunger, and despair in the Arab lands.

Meaningful and appropriate assistance directed to specific ills could strengthen both Israel and the Arab world, and help turn the Arab countries' thoughts from war and revenge toward peaceful development and better lives for their people.

Friendship toward Israel does not mean hostility to Arabs, but friendly attitudes toward Arabs does not mean a weakening in our commitment to Israel.

To find a just peace in an area where the world has known only armed truces and three major and bitter wars in a generation, is not an easy task. But nothing in our world today can be solved easily and simply. Old problems call for fresh solutions, not old palliatives that have been tested and found wanting.

As your United States Senator, I pledge to support whatever action is necessary to maintain the integrity, security, and existence of Israel . . . to restore peace to the area * * * and to reduce the festering preconditions for conflict, hate and despair in the Arab world. I shall support policies which will foster dignity, security and integrity of all nations—all governments—all religions—and all men in the land and birthplace where these very concepts of humanity, dignity, and God were born.

"Shalom." May there be peace to all in the Middle East and world.

SPEECH TO COMMUNITY FORUM, SPONSORED BY ST. LOUIS COUNTY DEMOCRATIC CENTRAL COMMITTEE, MERAMEC COMMUNITY COLLEGE, ST. LOUIS, MO, APRIL 7, 1969

(Senator Thomas F. Eagleton)

Americans are concerned today—perhaps more than at any time in a generation—about the awful cost and the fundamental irrationality of the arms race.

In a dangerous and unpredictable world, we have tried to give ourselves the best protection possible. For a quarter-century, we have felt compelled to explore every avenue of military technology which offered hope of better protection, and done so with very little regard for cost.

Now it is proposed that we try yet another major new arms system—the anti-ballistic missile system, or ABM.

But there is a difference. A very large number of Americans are refusing to support the try-anything, buy-anything philosophy of national defense we have pursued in the past. And I think they are right.

The Pentagon's case for an ABM is predicated on the fear that almost all of our nuclear force could be simultaneously destroyed in a first strike by the enemy, leaving us without the power to retaliate with a devastating "second strike" on the Soviet Union.

If this were true, the deterrent power on which our security has until now been premised would indeed be in jeopardy. In the judgment of an overwhelming majority of the independent scientific community, however, and in my judgment, the Pentagon's case won't hold water.

Secretary Laird cites the continued deployment by the Soviet Union of the SS-9, a large rocket comparable to our Titan-2, as the new threat to our land based retaliatory capability. The Pentagon has upped the estimate of the SS-9's nuclear warhead from the 5 to 10 megatons of last year to an estimated 20 to 25 megatons this year.

The SS-9 has been around for several years. It is the only Soviet weapon capable of carrying multiple warheads. By 1975, an estimated 500 could be deployed, and each could carry four warheads. However, the megatonage of each multiple warhead would be greatly reduced and thus require far more accuracy to destroy our hardened missile silos—a degree of accuracy which is presently impossible and highly improbable in 1975.

Moreover, our second strike retaliatory capability is not based solely—or even primarily—on our Intercontinental Ballistic Missiles which the ABM is designed to partially protect. It currently includes our 41 Polaris submarines with their 656 nuclear missiles. (And 31 submarines have or will have these missiles replaced by the Poseidon missile, each with ten nuclear warheads—raising the total to 5120.)

Also, it includes over 600 Strategic Air Force bombers around the world with over 1,000 nuclear weapons; our intermediate range nuclear weapons in Western Europe; our 7,000 tactical nuclear weapons in Western Europe; an unspecified number of nuclear weapons at other foreign bases, and other tactical nuclear weapons throughout the world.

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I find no one who convincingly argues that this aggregate retaliatory force can be almost instantaneously obliterated.

Granted: in a volatile world where technology can change rapidly, anything is possible. But can we, as a sane nation, base our defense and set our national priorities on the worst fears and fantasies we can conjure up?

Aside from the question of need, there is the problem of workability.

The preponderance of independent scientific testimony heard to date indicates that the system could be easily duped by penetration aides such as balloons, decoys, wire chaff, radio waves and "nuclear blackout" caused by nuclear explosions.

The indispensable component of the ABM is its complex radar system. Each ABM site depends on one radar, and should it break down or be destroyed, all intercept missiles would be useless.

And yet this radar system, according to most estimates, is ten times more vulnerable than the offensive missiles it is designed to defend. It is the weak link in a weak system—and without it the system is totally useless.

Eminent scientists, such as Dr. George Kistiakowsky and Dr. Wolfgang Panofshy, have suggested that more efficient and less costly defenses can be devised for our ICBM's. If there is a better way, let's find it. But let's not waste money on a system that won't do the job.

Next, I believe the ABM is a prescription for another futile round in the arms race, despite President Nixon's and Secretary of Defense Laird's statements to the contrary. If we try to build an ABM system, the Soviet Union will, in my judgment, react by devising additional offensive methods of penetrating an ABM system on the outside chance that our ABM might be successful.

We know just how this kind of escalation works, U.S. development of the "multiple independently targeted re-entry vehicle," or MIRV, was our response to the deployment by the Soviet Union of its own ABM system around Moscow. Reports now indicate that the Soviet Union has discontinued deployment of its ABM system—doubtless because of its ineffectiveness and high cost—but work on the MIRV by the United States continues. This kind of sustained over-reaction is common in the field of weapons systems, and the weapons race does not need a further stimulus at the very time we are attempting to explore arms control talks with the Soviet Union.

Finally, there is the enormous cost factor. No one can even reasonably estimate the final cost for an ABM system. Estimates—and they are just that—vary from a few billions of dollars to many billions of dollars depending on how far we go with it.

If history is a guide to the future, we many expect a cost far higher than the estimates. The Sentinel system was orignally estimated at $4.4 billion, grew to $5.6 billion, and before it was replaced by Safeguard, it was estimated to cost $9.6 billion.

A recent study by the Rand Corporation indicated that the average cost for missile systems has been three times as high as the original estimate, and the missiles seldom tested at even 60 percent of the original specifications.

Using this study as a guide and the administration estimate of 7 billion dollars as a base, the Safeguard system, as now conceived, would cost over 20 billion dollars.

And as is usually the case, this is only the tip of the budget iceberg. Last week, before the Senate Armed Services Committee, Secretary of the Navy John H. Chafee testified in favor of the Navy's Sea-based Ballistic Missile Intercept System as a supplement to the ABM. He stated, "Primary calculations show that this plus the Safeguard anti-ballistic missile system can be an effective strategic defense-in-depth to deal with possible future Soviet or Communist Chinese weapons." Secretary Chafee's recent testimony is ominous in its implications for further escalation of the arms race and further escalation of the military hardware budget.

When queried as to cost, the Armed Services Committee responded that the information was "classified."

In the face of overwhelming evidence that such a system is not needed, will not work, will escalate the arms race and further distort domestic priorities, the Department of Defense has forged ahead with plans to deploy the Safeguard ABM.

And the veracity of the Department of Defense has been called into question by overzealous representations and even outright misrepresentation.

Just recently David Packard, Assistant Secretary of Defense, named Dr. Wolfgang K. H. Panofsky, head of Stanford University's linear acceleration center, as an "outside expert" with whom the Department of Defense consulted.

It was discovered that the "consultation" was a chance meeting at the San Franscisco Airport, and that Dr. Panofsky felt that the Safeguard ABM was an "unwise decision" from the standpoints of engineering, economy and halting the arms race.

The press recently published a report of a 17-page classified Pentagon memo prepared by General Starbird which outlines a massive and expensive public relations campaign to sell the old city-defense Sentinel—which even the Pentagon now admits would have been "escalatory and unworkable" This campaign to influence the public, it should be noted, was to be paid for with public funds. When the original rationale for an ABM had to be abandoned, another—the defense of the missile sites against a new, secret, and still unsubstantiated Russian first strike threat—was conveniently and very promptly found.

Why, one may ask, does the Administration insist on going ahead with the system?

The ABM debate is about more than a weapons system. It is abut a basic and recurring problem in this country which, if allowed to continue unfettered, may well destroy us.

We live in an age of specialization. And consequently, we tend to compartmentalize our thinking. Henry Kissinger, President Nixon's personal foreign foreign policy adviser, pointed out in his professorial days that "as a nation of specialists we like to believe that a problem is either political, or spiritual, or economic, or military. And we are tempted to assume that among all our challenges we must concentrate on one to the exclusion of the others."

This has happened in the field of national security. Over the past quarter century the Department of Defense has emerged as the major spokesman for national security needs—viewing these needs in a one-dimensional military frame of reference, disregarding the other implications of development and deployment of evermore sophisticated weapons systems.

And yet military decisions markedly affect chances for disarmament and distort domestic priorities. They have enormous and still unmeasured political and social implications, to wit, the growth of an influential alliance between industry and labor and the military.

For over 20 years military programs have annually marched through Congress, cloaked in secrecy or wrapped in the flag, while Congress saluted and appropriated virtually without question or debate.

In my judgment, we have perhaps become the victims of a sort of Parkinson's law of military momentum, with military budgets and requests for sophisticated new weapons systems constantly feeding on themsleves—self-perpetuating and ever growing with little regard for cost, effectiveness, or need.

I believe the ABM serves as a clear illustration of the heretofore irresistible momentum of the defense establishment. There is no need for an ABM and it is unworkable. It will escalate the arms race and it will take billions of dollars from urgent domestic needs,

And yet, the ABM marches on. As one commentator stated recently:

"One can hardly avoid the conclusion that the most important element in the decision to proceed with the deployment of the Sentinel system was simply an irresistible pressure to move ahead in the technology of nuclear warfare.

"The rationale, quite obviously, was of secondary importance. When one—the defense of the cities—had to be abandoned, another—the defense of the missile sites—was soon found. The important thing in the minds of those backing Sentinel was to get the project off the drawing boards and into production one way or another."

I fervently hope that the national debate generated by the insistence of the Pentagon to deploy the ABM will mark the return of sanity to our search for national security.

Blessed Are the Poor, for They Shall Fight Our Wars

Mr. EAGLETON. Mr. President, under the rules of the Senate, a Senator speaking on the floor speaks to the President of the Senate.

Of course, he hopes those of his colleagues on the floor at the time of his remarks are listening. His eyes are usually lifted upward to the press gallery in hopes of favorable play by the men and women of the fourth estate. But ultimately he is addressing his remarks to the folks back home.

Today I address none of these. I direct the thrust of my remarks to but one segment of the U.S. Senate—the so-called doves: the 34 Senators still in the Senate who voted for the McGovern-Hatfield amendment last year; the new Senators who support that proposition this year; the Senators who opposed McGovern-Hatfield last year but have had a change of attitude as yet another agonizing year of the Indochina war has elapsed.

I address my remarks to my fellow doves because many of them in their rightful disillusionment over the Indochina agony view the termination of the draft as the best, perhaps the only mechanism to halt the war.

But ending the draft will not end this war, and it will not prevent future wars. All it will do is make this and future wars the business of the poor.

If we allow this to happen, Vietnam will be an even greater tragedy.

The revulsion and disillusionment that decent men feel in the wake of war have

caused major errors in American public policy during the 20th century.

The blindly isolationist aftermath of World War I turned America against things foreign and military. Scapegoats, from domestic munitions makers to international bankers, were discovered and castigated as America turned inward, while much of the Western world slipped into a war that was eventually to consume our total national energy.

Desperately wanting to learn from the past after World War II, we learned the wrong lesson. Instead of learning moderation, we switched to the other extreme. With the same zeal and determination that marked America's withdrawal from the world only a decade before, we adopted a world view which demanded far-reaching, entangling alliances and an ever-growing commitment of resources to military might.

The Vietnam war now threatens to become the "new lesson"—"no more Vietnams" the new slogan—and the revulsion of our Vietnam experience and the new distortion that blurs rational discussion and obscures fundamental issues.

This is happening now, as the Senate debates the extension of the draft. Congress, thus far unwilling to end the Vietnam war for all Americans, is attempting to end the draft for some.

If, in the disillusionment of Vietnam, Congress approves a volunteer army in wartime, it will be saying to those who have not shared in America's abundance and opportunity: "We will allow you to go to war, to fight and die for national policies, and we will pay you well in the process."

We have already started down this road by voting a $6,000 combat enlistment bonus—more properly, blood money—which will not attract the sons of the affluent and middle class.

This is not the America that I want to see.

Let us not fool ourselves, Mr. President. An all-volunteer army will be a poor boys' army. It will be composed of young men from the lower end of the socioeconomic scale who, because of lack of formal education, lack of training, lack of opportunity, and lack of money, accept military service as a means of economic survival.

In this era in which succeeding Presidents—Truman, Eisenhower, Kennedy, Johnson, and Nixon—have all expanded upon the theory of the Commander in Chief's power to the point where it is viewed in the White House as being almost totally without limits, an all-volunteer poor boys' army of 2,400,000 is an awesome juggernaut at one man's disposal or one man's whim.

Who will complain when a poor boys' army continues to fight in Vietnam or when, years later, in a different era, a different President, perceiving a different threat, sends an army of the well-paid poor to yet another foreign land to fight yet another mistaken war?

Certainly, poor mothers and fathers will complain. But, Mr. President, Congress has a rather immaculate record of not deeply concerning itself with the pleas of the poor. The poor are numerous, but the voices of the poor are seldom heard in the Halls of Congress.

What has been responsible for the change in public attitude toward the war in Asia?

Was it the voices from the inner city pleading, "Stop the killing"? No.

Was it the chorus of voices from small, poverished rural towns crying, "Spare our sons?" No.

The chorus of voices which changed our attitude on the war began as a barely audible chant on the college campuses and grew to a loud roar in the suburbs of affluent and middle America.

Congress listens to affluent America. Congress listens to middle America.

In the light of past congressional performance—and absent any new check on the unrestrained Commander in Chief power—the only leash this Nation can have on future military adventures is the pragmatic fact that Presidents and Congresses will be held accountable by affluent and middle America.

Both the President and Congress must know that the lives that are lost and the blood that is spilled will come not only from the vast plains of Kansas and the ghettos like Watts and Pruit-Igoe. It will also be the blood of Chevy Chase, Md., and Ladue, Mo., and Exeter and Groton.

The President and Congress read neatly typed letters from bank presidents, lawyers, and union leaders. They take campaign contributions form them, also. When these parents say "Stop the war," most elected officials listen.

Mr. President, we must not allow our Vietnam dissillusionment to obscure the question that goes to the heart of our society.

Congress should not be debating whether ending the draft will end the Vietnam war. Rather, Congress must decide how a democracy raises its military forces to carry out national policies.

The way we answer, or fail to answer, this question will say a lot about the fairness of American society. More important, it will determine what kind of society America is going to be.

The Schweiker amendment—the 1-year draft extension—is a middleground today, perhaps, but it is not a responsible answer. If it is adopted, Congress will simply be delaying the all-volunteer Army of the poor until next year.

We, as practicing politicians, all know that in June 1972—during the presidential primaries campaign in which 18-year-olds can vote—the draft will not be extended.

Mr. President, I believe that America is not only the land of opportunity but also the land of obligation.

One of those obligations is to bear arms in time of war—even a foolish one. That obligation must be borne equally, across the board.

It is not simply the obligation of the ill tutored and the unwashed. It is also the obligation of those who have partaken more fully of the abundance of American life.

The opportunity to live and prosper in our democracy carries with it the companion obligation to fight and to incur the risk of death in war.

If the draft is ended, many around this country will genuinely shout with joy.

But, Mr. President, joyful shouts last only a brief while.

Years later—in a different war, with a different President, with a different "threat" either real or mistaken—a poor boys' army may be sent off to yet another foreign land by another Commander in Chief.

Affluent and Middle America will watch with silent amazement. Poor America will watch with sullen resignation to the fact that in this land of the free and home of the brave, it is the plight of the poor to do our Nation's fighting and dying.

The Bible tells us:

Blessed are the meek, for they shall inherit the earth.

Congress, by creating a poor boys' army, would write its own addendum to the Scriptures: "Blessed are the poor, for they shall fight our wars."

REMARKS OF SENATOR EAGLETON FROM CONGRESSIONAL RECORD, JULY 25, 1978

Mr. EAGLETON. Mr. President, as we begin debate on the Turkish arms embargo, the fourth anniversary of the August 1974, Turkish invasion of Cyprus is approaching. At that time, the Turkish army took by force nearly 40 percent of the island, driving some 200,000 Greek-Cypriots from their homes. This status continues unchanged today.

The history of the arms embargo is well-known to most of my colleagues. It was imposed because Turkey—in conscious violation of U.S. law and bilateral agreements between the United States and Turkey—used U.S.-supplied weapons in its 1974 invasion of Cyprus. Provisions of those laws spell out beyond a doubt that such weapons are for legitimate self-defense purposes only and set forth the penalties which will follow if a violation occurs.

That body of law is as follows: The 1947 bilateral agreement between Turkey and the United States; the 1960 London-Zurich agreements; the Foreign Assistance Act of 1961, particularly sections 505 (a) and (b); and the Foreign Military Sales Act of 1968, section 3(c) and section 4.

I would like to quote portions of each of those statutes or laws which apply in this case.

The 1947 agreement on aid to Turkey states in part:

The Government of Turkey will make use of the assistance furnished for the purposes for which it has been accorded. . . . The Government of Turkey will not transfer, without the consent of the Government of the United States . . . this use of any such article . . . for any purpose other than that for which the article . . . is furnished.

The 1960 London-Zurich agreement—I quote from a GAO report on the subject of the illegality of Turkish use of arms in the 1974 Cyprus invasion—provides:

That military assistance furnished by the United States to Turkey [can] not be deployed on Cyprus without the formal consent of the United States Government.

The Foreign Assistance Act of 1961, section 502, specifies:

Defense articles and defense services to any country shall be furnished solely for internal security, for legitimate self-defense, to permit the recipient country to participate in regional or collective arrangements or measures consistent with the Charter of the United Nations or otherwise to permit the recipient country to participate in collective measures requested by the United Nations for the purpose of maintaining or restoring international peace and security. . . .

And, finally, the Foreign Military Sales Act of 1968, section 3(c), provides:

Except as otherwise provided in subsection (d), any foreign country which hereafter uses defense articles or defense services furnished such country under this Act, in substantial violation of any provision of this Act or any agreement entered into under this Act, shall be immediately ineligible for further cash sales, credits or guarantees.

Mr. President, I have not engaged in this recitation of U.S. law for academic purposes, but to set forth beyond a doubt the clear violation that occurred with the Turkish invasion of Cyprus and the subsequent occupation of the island. The compilation of

laws and statutes spells out to the letter the obligations undertaken by the recipient government—in this case, Turkey.

If we vote to repeal the embargo, are we not, in fact, sending a message to other countries to whom we supply arms that they need not take U.S. law seriously? If we fail to hold the line on Turkey, what happens somewhere down the line when a similar incident occurs? Do we continue to tap on the wrist those who violate the obligations undertaken in an agreement with us and turn our back on the law?

If we have learned anything in the aftermath of Watergate, it is that disregard for the law is insidious and habit-forming. Our society is only as strong as the foundation of our law. The decision we make on the arms embargo will be a measure of the strength of that foundation.

United States concern with Cyprus is a matter of longstanding. Cyprus has been the subject of four special Presidential missions. In 1964, President Johnson sent George Ball to Turkey to inform the Turks—who were then contemplating an invasion of Cyprus—that such an invasion would violate the previously mentioned body of law, and they would risk losing U.S. assistance and military aid if the invasion were carried off. The same year, President Johnson, delivered the following strong message in a letter to Premier Inonu of Turkey:

I wish . . . to call your attention to the bilateral agreement between the United States and Turkey in the field of military assistance. Under Article IV of the Agreement with Turkey of July 1947, your Government is required to obtain United States consent for the use of military assistance for purposes other than those for which such assistance was furnished. Your Government has on several occasions acknowledged to the United States that you fully understand this condition.

I must tell you in all candor that the United States cannot agree to the use of any United States supplied military equipment for a Turkish intervention in Cyprus. . . .

No clearer declaration of the consequences of Turkey's utilization of American equipment could have been formulated than was done in this very direct and blunt letter from President Johnson to Turkish Premier Inonu in 1964.

Again in 1967, a crisis erupted, followed by a new threat of a Turkish invasion of Cyprus. This time President Johnson sent Cyrus Vance, who warned Turkey that an invasion of Cyprus would trigger the effect of the bilateral agreements and statutes. The crisis was averted.

In July 1974, President Nixon dispatched Joseph Sisco, then Undersecretary of State for Political Affairs, in an effort to forestall a pending Turkish invasion of Cyprus. Sisco's mission came too late, and by the time he arrived in Ankara, the decision to invade was all but finalized.

In response to Sisco's impassioned request that Turkey call off the invasion, Prime Minister Ecevit—fully cognizant of Turkey's obligations under the law—responded:

The United States and Turkey have both made mistakes—the United States by preventing Turkish military action and Turkey by accepting. We should not make the same mistakes again.

As we know, the first invasion occurred on July 20, 1974, followed by another invasion on August 14, 1974, when Turkey expanded further into the northern part of Cyprus. It was the second invasion that put the wheels of U.S. law and bilateral agreements with Turkey into motion, necessitating the action taken by Congress in imposing the embargo.

Critics of the embargo put forth the argument that Congress acted hastily in singling out this ally to chastise, and that the punishment was too harsh. These critics overlook the fact that, in the interest of obtaining a Cyprus settlement—a settlement which Secretary of State Kissinger intimated was forthcoming—Congress delayed the effective date of the embargo until February 5, 1975, to permit Kissinger to pursue settlement efforts. Congress dealt with Secretary Kissinger in good faith during this time; unfortunately, we were not afforded the same courtesy by Mr. Kissinger, who would not make public his own legal department's opinion, which concurred with the opinion of Congress that the invasion did constitute an illegal use of U.S.-supplied weapons.

The critics also overlook the fact that the embargo has always been a partial embargo: During the Ford administration it was eased to permit $125 million in FMS to Turkey; this amount was later increased to $175 million early in the Carter administration. Even with the arms embargo in place. Turkey remains the third largest recipient of U.S. foreign military sales, third only to Israel and South Korea.

The Turks have also benefited from the use of a little-known NATO supply agency called NAMSA—referred to by Columnist Mary McGrory as the "Pentagon's boutique in Luxembourg"—to purchase some $30 million of additional weapons in circumvention of the embargo.

All this considered, it can hardly be said that Congress acted either precipitously or exceedingly harshly in its handling of this situation. To the contrary, I think Congress has taken care to allow the administrations involved a degree of flexibility in their efforts to bring about a Cyprus settlement.

Mr. President, there are several issues of importance at stake in this vote. One is the principle of law—law which constitutes the fundamental underpinning of our society.

Another is that of the fate of some 200,000 Greek-Cypriot refugees who to this day have not been permitted to resettle in their homes in northern Cyprus. There are currently some 22,000 Turkish troops occupying nearly 40 percent of Cyprus.

I might add, at this point, that the 40 percent of Cyprus held by Turkish troops is precisely what they have held since August 1974. The Turks have not budged 1 inch from what they took by force 4 years ago.

The Turks have been asked to open the Nicosia airport. They refuse.

The Turks have been asked to open the highway between Nicosia and Famagusta, the two main cities of Cyprus. They refuse.

The Turks have been asked to return the unoccupied portion of new Famagusta to the Greeks so that some of the homeless refugees can be housed. They refuse.

In short, the Turks in 1974 grabbed off as much of Cyprus as they could swallow and have been intransigent, unyielding, and uncompromising ever since.

While I am on the subject of new Famagusta—sometimes called Varosha—I caution my colleagues not to be taken in by the statement made last Thursday (July 20) by the leader of the Turkish Cypriot community, Mr. Rauf Denktash.

Let us examine Mr. Denktash's statement. First, what about its timing coming on the very eve of this Turkish embargo debate? I am very suspicious of "death-bed conversions" and "one minute to midnight" changes of heart. The very timing of the statement's release makes suspect both the intent and the substance of Mr. Denktash's statement.

As to the statement itself, I hope my colleagues will read it closely. It does nothing. It says that Mr. Denktash is "prepared to discuss" new Famagusta. Is that not marvelous? Is that not wonderful? I guess we should say, Hallelujah. After 4 long, tragic years during which 200,000 Greek-Cypriots have been homeless, Mr. Denktash is now "prepared to discuss" new Famagusta.

Mr. President, what I have said repeatedly during these 4 years has been that Turkey and the Turkish Cypriots could not simply talk about doing, a few positive things in order to demonstrate a modicum of good faith in achieving a viable settlement in Cyprus. All of the things I have mentioned earlier—opening the airport, opening the road between Nicosia and Famagusta, returning uninhabitated Varosha—new Famagusta—to the Greek Cypriots for their occupancy and their administration—are things which Turkey and the Turkish Cypriots could have done. For Mr. Denktash now to say, on the eve of the Senate's vote on the embargo, that he is willing to discuss the future of new Famagusta is really to say nothing of substance. It is purely and simply a cosmetic ploy to project, on the eve of the Senate vote, a posture of "sweet reasonableness" in the hope that this will erase 4 years of unyielding intrasigence.

Mr. President, by what sense of equity or morality should we remove the embargo against Turkey? The embargo, when finally imposed in early 1975, was a direct consequence of Turkey's willful, conscious, premeditated violation of American law. Do we now knuckle under to Turkey and say that, despite the blatant illegality of the Turkish occupation and Turkey's refusal to make even the slightest of concessions, Turkey now deserves or has in some mystical way earned the lifting of the embargo?

When we vote on this issue, we are not just voting on a question of U.S. foreign policy—we are determining, in part, the future of 200,000 refugees. In a collection of essays entitled "Cyprus Reviewed," Michael Attalides points out that—

The ultimate [political] reality is that of the people whose lives are dislocated . . . the price of politics can be human loss—loss of life, loss of material, loss of dignity and loss of meaning.

If the embargo is lifted, absent a Cyprus settlement, it is unlikely that the Turks will find any reason to alter the status quo. If they have not made any movement toward a Cyprus settlement while the embargo is in place, what incentive could possibly remain following its repeal?

Removal of the embargo will imply U.S. sanction of the status quo and will only finalize the displacement of the refugees and legitimize the physical alteration of Cyprus that has occurred since 1974 under Turkish occupation.

Let me relate one refugee's experience:

We left the village on Thursday, early morning, with nothing, and I sat idle for 2 or 3 months. . . . I wanted to live with more dignity so I kept trying until I found work. . . .

I haven't taken one of the loans to farmers that the government has been offering because I am completely disillusioned by the situation of Cyprus today. I am in complete uncertainty . . . no one knows . . .

what will happen each day, or what to expect from the Turkish conqueror. I have neither the courage nor the appetite to find land to cultivate to live.

Mr. President, I visited Cyprus in December 1975, and saw firsthand the tragic plight of the refugees. Their pride and strength has helped them endure the situation, but their spirit is discouraged and they feel increasingly resigned to their situation. I cannot, in good conscience, support repeal of the embargo with the certain knowledge that it means a continuation of the hardships these people have suffered already.

Another consideration in this vote is the impact lifting the embargo could have on Greece. The last election in Greece was a surprise to many. Not only did Karamanlis not receive the margin anticipated, the vote also gave a healthy 25 percent of the vote to Andreas Papandreou, who is not known for his pro-American attitudes.

Papandreou would like to see Greece withdraw from NATO and develop a strong, independent military structure, in addition to developing its own arms industry to make it further isolated from the West. Papandreou was quoted in a recent New York Times interview as saying:

If [Greece is] exposed to real danger, we could and should arm ourselves with nuclear weapons. And I can assure you we can get them.

If Congress chooses to reverse itself on the Turkish arms embargo it is possible that we will be sending a signal to Greece that could trigger off strong anti-American sentiment and play into the hands of Papandreou and his supporters. It would not serve the interests of either the United States or of NATO to have Greece isolate herself.

Mr. President, with due respect to my distinguished colleagues from West Virginia and South Dakota, I must say that passage of the Byrd-McGovern amendment would deal a serious blow to the principle of law we have taken such pains to preserve these 3 years the embargo has been in place.

If the amendment passes, the embargo would be repealed under the transparent guise of a "policy statement" alining the United States on the side of progress toward a Cyprus settlement.

Mr. President, there is nothing new in this approach. In point of fact, it is a restatement of the policy we have supposedly been following these 3 years—tying arms sales to turkey to a Cyprus settlement. The only difference now is that—if the embargo is lifted unconditionally—the Turks will be rewarded for their refusal to budge on Cyprus.

We have consistently encouraged the Turks to take some tangible action on Cyrpus in exchange for lifting the embargo. We have shown our good faith by allowing a ceiling of $175 million under the embargo. The Turks have not budged. I fail to see the logic now in handing them another quid without a single quo in return. Removal of the embargo does not just give the turks license to buy whatever they want in the way of arms, it also removes any prohibition on transferral of arms to Cyprus and on increasing their troop level on Cyprus. For these reasons, I think passage of the Byrd-McGovern amendment would be a grave mistake.

Mr. President, we have heard the phrase rule of law invoked so frequently in the recent past that for some it may have become a cliché. This is regrettable. Without the law to bind us as a nation, we run the risk of succumbing to the tyranny of the minority, to any man's will. This runs contrary to the founding principles of our country.

Sir Anthony Eden, at the time of the Suez crisis, made the folowing observation:

Drift is the demon of democracy. Democracies should rather consider, in any step they take in world affairs, whether what they do will serve only to relax tension for a while, or whether it is in the true interest of lasting peace. That is the difference between appeasement and peace.

Mr. President, that, it seems to me, is the choice we are confronted with today: appeasement of the Turks or principle. If we lift the embargo, we have decided that it is best to appease, the Turkish Government, at the expense of the rule of law, at the expense of 200,000 Greek-Cypriot refugees, and at the expense, perhaps of our relationship wtih Greece.

I hope my colleagues will give careful consideration to the points I have raised. And I hope the choice we make today will favor the principle of law, rather than the expedient of appeasement.

Mr. EAGLETON. Mr. President, I rise to speak in opposition to the Byrd-McGovern substitute.

Mr. President, at first blush this is sort of an intriguing little gem, but it does not wear very well on second blush.

The first impression is, well, this is some kind of a halfway compromise. We are really not lifting the embargo, and then again we really are, and we are going to sort of tell Turkey we are going to be looking at them, so on and so forth.

The truth is, Mr. President, stripped of all its coquetry and pious words, the Byrd-McGovern substitute is, pure and simple, a lifting of the embargo. I must disagree with the observations made with respect to the embargo by one of the amendment's principal sponsors, Senator McGovern. He stated that this embargo, or limitation on sales of arms, was an insult to Turkey and that he was going to shed deep tears for this great insult to Turkey.

I say, Mr. President, to lift this embargo is an insult to Congress, because it is Congress that imposed the restrictions on the transfer of arms to Turkey. It is Congress, by the Foreign Military Sales Act, and other legislation, that stipulated that arms that we ship to allies are not to be used for aggressive acts against their neighbors.

It is not only Congress that is insulted, but the Presidency of the United States is insulted because it was President Johnson in 1964, when he sent George Ball to Turkey, and President Johnson again in 1967 when he sent Cyrus Vance to specifically warn the Turks, who were in both of those instances contemplating an invasion of Cyprus, that if they did so with American equipment they would be foreclosed from further arms from the United States.

Turkey was never surprised, Mr. President, when this embargo was imposed. The only thing which surprised them was that it took so long to do it, that it was not until February 1975 that we finally did it, because they had been warned by Ball, by Vance, indeed by Sisco himself in 1974 when, despite Sisco's warnings and despite his objections, the Turks went ahead with the August invasion in 1974.

So if any insult is to be gleaned from this debate today, if we lift this embargo, then the insult, Mr. President, is heaped upon ourselves, not upon the country of Turkey.

I am a little curious about all of these recent acts of great magnanimity by Mr. Denktash. We learned just a couple of days ago that he was going to say something with respect to Varosha, sometimes called New Famagusta. What did he say? He really did not say anything, Mr. President. He said he was "prepared to discuss" Varosha with the Greek Cypriots. Those are the words from his communique. Is that not marvelous? After 4 long years with New Famagusta under Turkish occupation, Denktash is "prepared to discuss" New Famagusta. I say that is not much concession at all. In fact, I say one has to question its timing just a few days before this debate.

Then it is pointed out, "Well, you know, at one time there were over 40,000 troops on Cyprus, and you know what great progress they are making there now. Why, they have drawn it down to 25,000 troops." Well, goodie goodie. They still occupy close to 40 percent of the island, and 25,000 troops on Cyprus are equivalent of having about 500,000 troops stationed in Washington, D.C. Twenty-five thousand foreign troops on Cyprus constitutes a massive military occupation.

Turkey has not budged one bit, and we are now being asked to budge, to eat the restrictions in our laws, to tear up the bilateral agreements into which Turkey freely entered, and to go back on what we have done in this Congress in saying that we believe that the rule of law and principle of law are very important to sustain.

Bear in mind that if we lift this embargo we are saying to all other countries in the world that buy our weapons that hereafter bilateral agreements with the United States and existing U.S. law do not apply. We are saying to the Shah of Iran, who buys a lot of U.S. weapons, and wants a lot more—specifically, the Shah wants a lot of F-14's right now—"Shah, use them any way you want. Use them in any endeavor that you may desire because any restrictions that we have on our arms transfer were repealed when we told Turkey to go on her merry way with respect to Cyprus." The same message could be received by Saudia Arabia which has just purchased 60 F-15's from us. Are we not, by acting to repeal the Turkish arms embargo, saying to all current and prospective arms purchasers, "Take your pick without fear of restriction."

There is a lot involved in this debate, Mr. President, and I hope my colleagues will bear some of these points in mind.

REMARKS PREPARED FOR DELIVERY BY SENATOR THOMAS F. EAGLETON AT THE OPENING CEREMONY OF THE 1982 WORLD CONFERENCE OF THE REORGANIZED CHURCH OF JESUS CHRIST OF LATTER DAY SAINTS, MARCH 28, 1982

There is an old English adage that holds that the Church is "an anvil that has worn out many hammers." While the forgotten author of this proverb probably had the Anglican Church in mind, the point applies to organized religion as a whole. No matter how dire the threat to its survival, religion has always risen to the challenge, endured and flourished in the process. Along the way, it helped to shape the ideas, discoveries, and values that have nurtured civilization as we know it.

One need only look back to the days that civilization sprang to life along the banks of the Nile, or to the miracle of philosophy and science that was the signature of classical Greece, or to the emergency of modern Europe to see the indelible mark of those mortal men who rose to fulfill both duty and destiny by acting as the bridge between

divine justice and earthly force. While the religious beliefs of these individuals differed from region to region and age to age, all were guardians of a spiritual force. All were men of faith and commitment who rose to serve as the social conscience of their day.

Today, man is again living through an era of momentous revolution—a time of great promise and even greater peril. Once again, the world has great need of moral leadership to find its way through its hour of danger.

War again threatens the Middle East. The Soviet Union increases its oppression of the peoples of Afghanistan and Poland. Revolution wracks the countries of Central America. Hunger stalks the continents of Asia and Africa. Poverty has become more the rule in the world than the exception. The list of particulars is endless.

But there is one blight on the globe that dwarfs all others by comparison—the growing threat of nuclear annihilation. It is truly the greatest peril confronting mankind today. For the past 36 years, man has lived in the shadow of the mushroom cloud. For all these years, he has lived on borrowed time.

I would like to focus my remarks on the grave threat posed by nuclear weapons production and the strategic nuclear revitalization effort that is the keystone of President Reagan's military buildup program.

It is the contention of the present Administration that our nation's security can only be ensured by renewed military strength—particularly in the area of strategic weaponry. I am one of a growing number who contends that the unconscionable stockpiling of nuclear warhead upon nuclear warhead ensures only insecurity and may prove to be mankind's ultimate undoing.

I address this issue not as one seeks to educate—for I am confident that those gathered here are only too aware of the mortal peril posed by nuclear weapons—rather I speak to encourage this Conference and the entire membership of the Reorganized Church of Jesus Christ of Latter Day Saints to join in the struggle to bring moral sanity to the debate over the future of nuclear weapons development.

No generation in history has faced a more momentous question. It involves nothing less than the survival of mankind.

And yet, this moral dimension seems lost on those who set and influence policy.

Consider for example, Secretary of State Alexander Haig's curt dismissal of the proposed nuclear freeze—"bad defense policy and bad arms control policy as well."

Or take the haughty view of influential columnist, George Will, who belittled the numerous town meeting resolutions that have been adopted in favor of a nuclear freeze on the grounds that those people just don't know enough to make an intelligent judgment.

Maybe people don't know much about the intricacies of defense policy and arms control negotiations. But the people know something far more important and that is the monstrous evil that could befall this earth unless some force outside the gameplayers at the Pentagon and State Department intervenes to halt this nuclear madness.

I am heartened by the knowledge that during the course of the coming week, this body will consider a resolution that represents an unprecedented call for the Church congregation to work to end the spread of the nuclear menace. I am especially encouraged that the resolution, as drafted by the Committee on World Peace, emphasizes that it is a "Christian duty to participate responsibly in governmental processes." In this particular case, it is especially true.

Religion has always played a significant role in the democratic experiment that is the United States. While there has always been—and must always be—a clear separation of church and state, each has nurtured the other. The patriotism that has propelled our nation to great heights has always been rooted in the same moral conviction that is the essence of all great religions. Together, these forces have given America that unique quality that has sustained it as the leader of free world nations.

As President Franklin Roosevelt—one of our nation's truly great leaders—so eloquently stated, "Where freedom of religion has been attacked, the attack has come from sources opposed to democracy. Where democracy has been overthrown, the spirit of free worship has disappeared. And where religion and democracy have vanished, good faith and reason in international affairs have given way to strident ambition and brute force."

Two decades ago, during his memorable inaugural address, a youthful and hopeful John Kennedy sounded the call to arms for our generation: "Now the trumpet summons us again . . . to bear the burden of a long twilight struggle . . . a struggle against the common enemies of man: tyranny, poverty, disease and war itself."

Much time and energy has been devoted to the struggle against tyranny, poverty, and disease—and modest progress has been made. But too little has been devoted to the greatest single issue of our day—the avoidance of nuclear incineration. Today we stand at the edge of the abyss of nuclear oblivion; we can no longer ignore the call to action.

We all recognize that the civil rights achievements of the 1960s can be credited in large measure to the efforts of one extraordinary man—the Reverend Martin Luther King. His achievements in the area of social reform will forever go unmatched. But the danger of the nuclear proliferation did not escape him. On accepting his Nobel Peace Prize, Dr. King stated emphatically: "I refuse to accept the cynical notion that nation after nation must spiral down a militaristic stairway into the hell of nuclear destruction." The assassination of this great man was not only a tragic loss to the racially oppressed but also a profound loss to peace-loving men of all creeds and colors.

Others have already risen to carry on Dr. King's campaign to eliminate social injustice; others must rise to echo his rebuke of the madness that is the nuclear arms race.

When the matter of the resolution condemning the proliferation of nuclear weapons is debated by this body later this week, you will have the opportunity to add your voice to that of Dr. King and other religious leaders and organizations who have spoken out against the nuclear menace.

John Cardinal Krol of the Roman Catholic Archdiocese of Philadelphia, speaking for the 368 bishops of the United States Catholic Conference, testified before the Senate Foreign Relations Committee on the moral dimension of the nuclear arms control debate. In no uncertain terms, he proclaimed it to be immoral—in the view of the Conference—for any nationa to use the nuclear strength it possesses or even make declarations of intent to use those forces. While considered by many to be a radical proclamation, it drove home the point that man's obligation to control the threat of nuclear destructiveness is more fundamental than any debate over limiting the size of nuclear arsenals.

The National Conference of Churches, which represents some 40 million Protestants, is on record as supporting a bilateral nuclear freeze. And the American Baptist Churches have declared "that the presence of nuclear weapons and the willingness to use them is an affront to our Christian beliefs and commitments."

Despite recent Administration rhetoric to the contrary, I cannot accept that there is any rational man who can truly believe that a nuclear exchange is winnable. Consider the words of former Soviet Premier Nikita Khruschev who once told an Egyptian journalist: "When I was appointed First Secretary of the Central Committee and learned all the facts about nuclear power I couldn't sleep for several days. Then I became convinced that we could never use these weapons, and when I realized that I was able to sleep again."

The Atomic Age was ushered in during the early morning hours of July 16, 1945 in a remote desert region some fifty miles from Alamo-gordo, New Mexico. It exploded on the public conscience less than a month later when bombs fell on Hiroshima and Nagasaki.

The memories of the destruction that were those cities after The Bomb will simmer as long as man survives. But the unholy power of the bombs that fell on those Japanese cities represents but a fraction of the might that makes up the nuclear weapons now being produced.

Today, there are some 50,000 nuclear warheads in the world arsenal; the majority of these each contain more destructive power than the sum total of all the conventional bombs dropped during the Second World War. Notwithstanding the comments of those Administration officials who assert that we could recover from a nuclear attack in a matter of four or five years, in my opinion, if the bombs ever fall again, there will be no one left to record the event.

From my days as a trial attorney, I recall this courtroom maxim derived from an old Jewish proverb: "When a man knows any evidence in favor of a defendant, he is not free to keep silent, for in doing so he may become responsible for the defendant's death." Now that the future of nuclear weaponry is being tried in the court of public opinion, I ask each of you to consider carefully what the verdict in this case will mean to you and your children and to ask yourself if you are indeed free to keep silent.

If ever there were an issue of universal dimensions—one compelling the attention of all mankind—if ever there were an issue requiring the voice of all reasonable men, then this is it.

As a politician, I pledge to you my undying commitment to the cause of exposing the folly of pursuing international peace through gamesmanship—or, to borrow the term coined by Adlai Stevenson, "brinkmanship."

I have recently joined with a member of my colleagues in offering two Senate resolutions—one calling for "major mutual and verifiable reductions" in nuclear weaponry and the other, calling on the President to "immediately invite" the Soviets to negotiations on limiting future proliferation of nuclear weapons and technology. While I do not believe these measures will, in themselves, bring about immediate change, I do

see them as a step towards a dialogue that seeks to cut across traditional political boundaries.

As men and women of moral principles, I implore each of you to join me in this endeavor.

As church leaders, you have a responsibility to address the moral dilemma posed by the nuclear arms race. It is the duty of church leaders to speak out. Indeed, it is a moral imperative that your voices be heard.

I would like to conclude by leaving you with the words of one of the former leaders of my religion, Pope Paul VI, a man of quiet but strong conviction.

"Peace today * * * is maintained more by terror of deadly weapons than by mutual harmony and faith among peoples. And if the peace were broken—God forbid—all humanity could be destroyed."

FLOOR STATEMENT OF THOMAS EAGLETON, MAY 24, 1985

Mr. EAGLETON. Mr. President, my amendment seeks to address and remedy one of the most serious problems plaguing our national defense: the performance of the Joint Chiefs of Staff (JCS). This measure is identical to the amendment I offered last June to the Defense Authorization Act.

Following the productive debate on my amendment last summer, I agreed to withdraw it with the understanding that a staff report on reform would be soon completed and that the issue would receive expeditious treatment in the Armed Services Committee during the remaining months of the 98th Congress.

I was disappointed that, at the end of the 98th Congress, no report had been issued and no action has been taken by the committee. By offering my amendment again today, I hope to refocus the attention of the Senate on the issue.

JCS reform is far too important to out Nation's security to be ignored during the time remaining in this session of Congress. Dissatisfaction with Defense Department management and the widespread concern about the budget deficit make the issue ripe for action. Congress must act with forethought, but also with a sense of urgency, to redress this serious flaw in the U.S. defense structure.

I do not pretend to have discovered this problem, nor do I claim to be alone today in calling for reorganization; quite the contrary. As R. James Woolsey, former Under Secretary of the Navy, has written, "The weakness and lack of influence of the Joint Chiefs in one of the Pentagon's less well-kept secrets."

Problems and criticisms date back to the original compromise creating the Joint Chiefs of Staff in 1947. The organization has been the subject of an almost endless series of critical studies conducted by blue-ribbon panels inside and outside DOD (21 in the last 36 years). The latest study, which was released 2 months ago by the Defense Organization Project at Georgetown University's Center for Strategic and International Studies (CSIS), has given JCS reform efforts tremendous momentum.

The CSIS study, entitled "Toward a More Effective Defense," was developed by 70 individuals with experience at the highest levels of the defense establishment, including retired senior military and civilian officials, industry executives, and Members of Congress (Senators COHEN, EXON, KASSEBAUM, and NUNN, and a number of House Members from both parties). The study was endorsed by six former Secretaries of Defense (Brown, Clifford, Laird, McNamara, Richardson, and Schlesinger) who wrote: "There are serious deficiencies in the organization and managerial procedures of the defense establishemnt * * * we are able to testify about the degree to which they weaken efforts to ensure U.S. security."

In its "Joint Military Structures" chapter, the CSIS study quickly put its finger on the most fundamental, inescapable flaw in the current JS structure:

"Each member of the JCS, except the chairman, faces an inherent conflict between his joint role on the one hand and his responsibility to represent the interests of his service on the other. As the senior military planning and advisory body, the JCS are charged with providing military advice that transcends individual service concerns. At the same time, each chief is the military leader of his service and its primary spokesman to the civilian leadership. Although the 1947 National Security Act mandates that a service chief's joint role should take precedence over his duties as leader of a service, this does not occur in practice—and for good reason. If a chief did not defend service positions in the joint forum, he would lose the support and loyalty of his service, thus destroying his effectiveness."

The CSIS study agrees with its predecessors: The Chiefs' understandable, and admirable commitment to the respective service which they lead make it impossible for the chiefs to set aside their service perspectives to effectively discharge their joint responsibilities. In other words, the present system creates an unavoidable conflict of interest for each service chief.

The tradition that JCS advice be unanimous—with each service able to exercise veto power—reduces that advice to negotiated pabulum, rather than the crisp, well-reasoned assessment of the problems and options which the Secretary of Defense and the President are entitled to expect from their principal military advisers.

John Kester, Secretary Brown's Special Assistant and Deputy Assistant Secretary of the Army during the Nixon administration, made this firsthand observation on the subject:

"When I worked in the Secretary of Defense's Office, I was surprised that memoranda from the JCS were not the crisp assessments of situations and options one might expect. They more closely resemble the contract for sale of your house, with numbered lines and carefully drafted circumlocutions designed to protect bureaucratic interests and conceal compromises."

Gen. David Jones, former Chairman of the JCS and a participant in the CSIS study, whose willingness to criticize the Joint Chiefs sparked new interest in the issue, had the same experience:

"When the Chairman or the other members of the Joint Chiefs gave their own personal advice, it was given high marks. But when it became corporate advice, of five people together, it was of very little use, not very influential, and given very poor marks by the customers, the civilian leadership, as well as the senior military officials."

The organizational failings of the JCS leave our defense effort with a profound vacuum at the top where joint strategy, contingency planning, and budgeting and allocation of resources are involved. In this regard, the distinguished retired Gen. Andrew J. Goodpaster has testified:

"Although the JCS bear only part of the responsibility (for the lack of) a coherent, effective defense policy, military strategy and military posture . . . they bear an important part of . . .

"The contributions to increased military efficiency and effectiveness that could be made through improved top-level military planning and advice are not being realized. In particular, the mechanisms for developing and advancing individual service interests and promoting individual weapons systems are stronger by far than those for providing coherent overall strategic plans and responding to overall national security interests and needs . . ."

Perhaps one of the most visible adverse consequences of the current organization is with respect to the bloated defense budget. We know all too well that the military is not making the hard choices between weapons which effective joint leadership could help to produce. Former Defense Secretary James Schlesinger commented on this subject during a recent call to reorganize the JCS:

"The general rule is that no service ox may be gored . . . The unavoidable outcome is a structure in which logrolling, backscratching, marriage agreements and the like flourish . . .

"What comes up from the Joint Chiefs is a mutual endorsement of the individual desires of the several services. There is no crosscutting—nor, given the nature of the structure, can there be any crosscutting. As I generally have been a supporter of the top dollar for the military services, I believe I can say that the dollar requests are invariably so high that they cannot conceivably be sustained by the national consensus."

The ineffectiveness of the present JCS system has also left its dirty fingerprints on U.S. military operations. According to Dr. Schlesinger, "the existing structure does impede planning, for each of the services quite naturally wishes a piece of the action in any crisis—and the existing structure assures that all somehow will be fitted in, even if a service provides less than optimal forces for dealing with that particular crisis." Robert Komer, Ambassador and former Under Secretary of Defense, has provided a specific example:

"I was unable to get a corporate view from the JCS on the optimum strategy for deterrence and defense in the Persian Gulf.

"That doesn't mean that each of the Chiefs didn't have some clear ideas on what to do. Some of them emphasized a maritime strategy. Some of them emphasized victory through air power. Others emphasized sending a lot of divisions. But there was no way which would permit them to give meaningful military advice to the Secretary of Defense institutionally as to how best to defend Persian Gulf oil."

Experience teaches what logic would suggest: the weaknesses resulting from the lack of an effective joint mechanism—and the dangers inherent in the "something for every service" approach—do not disappear when actual combat situations occur. Instead, they are exacerbated. Consider the following:

The Vietnam war. According to former JCS Chairman Jones, "the organizational arrangements were a nightmare; for example, each service fought its own air war."

The Iranian hostage rescue attempt. Air Force helicopter pilots, who had flown in Vietnam and were specially trained for hazardous overland missions, were passed over in favor of marine pilots who were clearly less qualified. The overriding consideration was, apparently, ensuring that the Marines

would have some role to play in the important mission.

The tragedy at the marine compound in Beriut. Marines found themselves at the bottom of an unwieldy chain of command headed by an Army general, then an Air Force general, and then four levels of Navy officers. The Defense Department's own Long Commission reported apparent and understandable confusion about who actually was the senior commander of the U.S. multinational force in Lebanon. The Navy commander of the Amphibious Task Force was the "Commander, U.S. Forces Lebanon." The Marine commander of the Amphibious Task Force was the "Commander, U.S. Forces, Ashore Lebanon." The commission sharply criticized the entire chain of command for not "initiating actions to effectively insure the security" of the Marine compound.

Even beyond the fundamental problem of conflict of interest which arises from "dual hatting," the time demands placed on the Chiefs are unreasonable. Leading one of the armed services is a more than full-time responsibility by itself, without the distraction of joint responsibilities. Inevitably, the need to play two roles can undermine the performance of one or the other—or both. General Jones has observed:

"Omar Bradley once said he didn't have time to do both jobs well . . . Things are much more complex now than they were in his time . . . It is very difficult to have enough time to immerse oneself deeply into joint issues and to do the job as the chief of a service."

The recent CSIS report concludes that many of the problems I have outlined could be alleviated by designating "the Chairman as the prinicpal military adviser to the President, the Secretary of Defense, and the National Security Council, replacing the corporate JCS in that role." My amendment incorporates this recommendation by designating a Chief of Military Staff to take the place of the corporate JCS and to serve as the principal adviser to the civilian leadership.

The amendment that I offer today incorporates another CSIS recommendation by creating a Deputy Chief of Military Staff to assist the Chief with day-to-day activities and the management of crisis situations. At present, the Chairman of the Joint Chiefs is the only senior executive—civilian or military—in the Defense Department without a deputy.

The conflict of interest problem that afflicts the JCS is reflected in the workings of the Joint Staff (which provides support for the Joint Chiefs.) The CSIS study notes:

"The officers who serve on the Joint Staff have strong incentives to protect the interests of their services in the joint arena. Joint Staff officers usually serve only a single tour there, and must look to their parent service for promotions and future assignments. Their performance is judged in large part by how effectively they have represented service interest."

Because the interests of each service take precedence over the joint interests generally, and because duty with the JCS is not a respected assignment, the equality of the Joint Staff suffers. Indeed, many experts have observed that the services are unwilling to assign their best officers to joint service, and as John Kester has noted, "talented officers approach service on the Joint Staff with the same enthusiasm of sailors ordered to chip paint."

CSIS recommends a number of changes in the Joint Staff system "so that officers are attracted to, trained for, and rewarded for service in joint positions." Again, I believe that my legislation offers a solution that incorporates the CSIS recommendation.

There is no single "magic bullet" that will solve all our defense problems overnight, but I am convinced that fundamental change of the JCS is as important as any single step we could take. I am hopeful that the results of the CSIS report and the increased awareness in Congress and in the public of the need for military reform will prod Congress to make necessary reforms in the near future.

My amendment would do the following:

It would abolish the JCS, replacing the corporate entity with a single Chief of Military Staff who would serve as the principal military adviser to the President, Congress, the Secretary of Defense, and the National Security Council.

It would create a Deputy Chief of Military Staff, also to be appointed by the President and confirmed by the Senate. If the Chief came from the Army or the Air Force, the Deputy would come from the Navy or the Marines, or vice versa.

It would establish a National Military Advisory Council (NMAC), comprised of four officers drawn from the respective services, to advise the Chief of Military Staff. Unlike the present situation, however, the members of the NMAC would be the last tour of duty for particularly distinguished, senior military officers who would not be returning to their services (except in cases of necessity during a declared war).

In this way, hopefully, the Chief of Military Staff could get the advice of senior officers of unquestioned stature who would be in a position to consider our overall defense picture, rather than the interests of a particular service.

Service on the Joint Staff would be upgraded in several ways. The legislation specifies that the Secretaries of the services should recommend only outstanding officers for joint service. to underscore the importance of the assignment, the legislation would give the Chief of Military Staff the authority to select up to 100 others who were not recommended by the services. Special provisions are made to ensure that service of the joint military staff will be accorded substantial weight in considering promotions. If the Chief of Military Staff requested, a selection board to consider promotions for officers of the Joint Staff, at the same time that the selection boards were considering promotions for those officers in individual services, and a percentage of the vacancies would be set aside for officers being considered by the special board.

Those who favor serious reform of the JCS have fallen into one of two camps. My amendment represents one school of thought which argues that becuase the conflict of interest arising from "dual hatting" is the essence of the problem, we should remove the service chiefs from their joint responsibilities. Many noted defense experts—civilian and military—have endorsed this view, including Harold Brown, Gen. "Shy" Meyer, Gen. Maxwell Taylor, and David Packer. Others, seeing the same problem, argue that reform would be more realistic—and encounter less resistance—if the chiefs retained their position on the JCS, while the Chairman's role was significantly strengthened.

Although the two groups favoring reform diverge on the proper role for the service chiefs, a clear consensus exists about major elements of a reform package: Making one officer the principal military adviser to the President, the Secretary of Defense, and the NSC; allowing that office to direct the activities of a strengthened Joint Staff, with incentives to make joint service more attractive; and creating a four-star deputy chief to assist the chief military officer.

HOUSE LEGISLATION

During the 98th Congress, the House approved legislation making certain changes in the JCS structure and last summer added the bill's language to the fiscal year 1985 Defense Authorization Act. The controversial House language was dropped in conference.

The House may well act on similar JCS reform legislation during the current Congress and I am hopeful that the Senate will offer a different version. This expected activity presents the Congress with an opportunity, but also a danger. Not since 1958 has Congress focused seriously on the issue of JCS.

Realistically, once we legislate, any changes made are likely to stay in effect for years. For that reason, reform must be accomplished soon, but it must be done right, through legislation which will stand the test of time. Accordingly, I would like to take a few moments to critique last year's House-passed reform bill.

While I admire the leadership of the House committee on this issue, I believe that the House legislation did too little and too much at the same time.

It did too little in just those areas where a consensus on the need for reform seems to have emerged: The legislation did not create a deputy chairman; it did not give the Chairman the sole authority for directing the activities of the Joint Staff; it did not explicitly make the Chairman the principal military adviser to the President, the Secretary of Defense, and the NSC.

At the same time, the House legislation went too far by straying into two sensitive and dangerous areas. The House would have made the Chairman of the JCS a member of the NSC. It also would have placed the Chairman, by statute, in the chain of command, specifying that orders to combat commands shall be issued by the President or the Secretary through the Chairman.

These are far-reaching changes. Under current law, the Joint Chiefs have staff, not command, duties. "Their function," President Eisenhower reminded Congress, "is to advise and assist the Secretary of Defense."

By placing the Chairman on the NSC, the House bill made him a co-equal with the Secretary of Defense—not his foremost military adviser. John Kester, who has given these issues as much thought as anyone, has predicted these consequences:

"It gives the Chairman another hat, as they say in the military. It gives him a statutory office which is not derivative from the Secretary of Defense. It takes little foresight to predict that some day, if only because of the relentless pressure of his subordinates (who are not malevolent, but simply behave like any other official's subordinates), the Chairman will have a staff to assist him in preparing for his participation in the National Security Council, and for developing *his* NSC position.

". . . such a separate role would encourage barriers (there are already enough of them at the staff level) between the Chairman and the Secretary of Defense. When queried by the Secretary of Defense, or more likely by one of the Secretary of Defense's staff such as the Undersecretary for Policy, the

Chairman's staff will politely reply, what the Chairman does in his role as an NSC member is independent, and is none of the Secretary's business. It is already difficult enough to get the rest of the government to understand that the JCS is part of the Defense Department and that the Chairman by law does work for the Secretary of Defense. No legislation is needed to enhance the problem.

"This totally unnecessary addition of role (unnecessary because the Chairman is in attendance and available at all NSC meetings anyway), can do nothing but work mischief. No coherent argument in support of such a change has been advanced; the best thing that proponents say for it is that it may be harmless. That is no basis on which to alter one of the most important and delicate organizational balances in our government."

Placing the Chairman in the chain of command represents an even more fundamental change. The House would have amended the long-standing law that prohibits the Chairman from commanding the Armed Forces. The legislation inserts the Chairman into the chain of command between the Secretary of Defense and the nine worldwide commanders. Every order from the President and the Secretary of Defense would have to go through the Chairman. The Defense Department's Counsel to the Congress stated that the legislation would "vest him with supreme military command in his own right" as a single military leader of all American combat units.

Harold Brown has testified to the Senate Armed Services Committee about his misgivings about putting the Chairman in the chain of command: That it is unnecessary and simply invites others to circumvent the Secretary of Defense.

In my view, the House legislation was the wrong way to go. The dangerous departures outweigh the worthwhile reforms by a considerable margin. But the flaws in the House legislation do not change the fact that JCS reform is desperately needed. Both my amendment and the reform proposals of the highly respected CSIS study, demonstrate that meaningful reform can be accomplished—and should be accomplished—without shifting the country's chief military officer from an advisory position to a command position.

That the House is likely to act on similar legislation this year should be ample incentive for the Senate to push ahead with a more reasonable approach to JCS reorganization.

OPPOSITION TO REFORM

One last point. There is a stubborn group of individuals who oppose any JCS reform. Their fear of change too often seems to result from parochial "turf" interests rather than national defense interests. Nonetheless, opponents have raised legitimate questions about reform proposals such as that which was passed in the House last year.

One of the leading opponents has been the Secretary of the Navy, John Lehman, who has aptly criticized the House JCS legislation but has inaccurately equated JCS reorganization with the specter of a German-style general staff, which would threaten the very foundations of civilian control of the military.

This is an old argument, and in my judgment, a red herring. Obviously, in any reform we undertake we must be vigilant about maintaining the tradition of civilian control of the military which is essential to the way our democracy—and any democracy—functions. I oppose the House legislation because I believe it tampers excessively with the civilian-military balance.

But I think that the issue—like so many that we face in Congress—is one of trying to strike a realistic balance—and not being afraid to make needed changes because of a worst-case, doomsday scenario. We have a serious problem, amply documented over the decades; the service interests have prevailed over the joint interests and prevented coherent budgeting, planning and operations for the overall defense needs of this country. The quality of military advice to the Secretary of Defense, the NSC, and the President is not what it should be. That is the reality with which we must deal.

General Jones has pointed out that the British, after whom we modeled our JCS, have recently moved to strengthen their Chief of Defense Staff to enhance effective integration of their defense capabilities—"secure in the knowledge that their democratic traditions will not be threatened." Other experts have noted that since 1947, many power centers in our Government have developed to hold any military staff in check: the Assistant Secretary of Defense, the State Department, the Arms Control Agency, the staff of the National Security Adviser, and the CIA. With these realities in mind, Harold Brown has described the fear that JCS reorganization would produce "something analogous to a German general staff * * * as completely baseless." Or as James Woolsey, former Undersecretary of the Navy, has written more graphically:

"We can afford to move several light years toward military staff centralization before we come within any distance of Prussianism. The United States is about as close to having Prussian style general staff today as it is to having a dictatorship of the proletariat."

Secretary Lehman is entitled to his view that JCS reform "is usually pushed by a coalition of civilian arm chair strategists, who don't really understand the Pentagon bureaucracy, and by uniformed military staff officers, who understand it too well." Into the first category, Secretary Lehman would apparently put: Harold Brown, James Schlesinger, David Packard, Elliot Richardson, Mel Laird, Robert Komer, Clark Clifford, Robert McNamara, Stuart Symington, Roswell Gilpatric, James Woolsey, John Kester, and Brent Scowcroft. Into Secretary Lehman's second category would fall the following generals: David Jones, "Shy" Meyer, Andrew Goodpaster, Maxwell Taylor, James Gavin, Omar Bradley, and Dwight D. Eisenhower. All these men have identified themselves with the cause of JCS reform. I have been persuaded by their collective wisdom and thoroughly unconvinced by the weak arguments of those opposed to reform.

I urge detractors of reform to focus their arguments on the weak points of bills such as the one passed by the House of Representatives last year and not on the concept of reorganization itself.

As our recently retired colleague Senator Tower said during the JCS debate last summer, "there are a number of us who have recognized for some time the need for reform. The great difficulty is trying to agree on what form reform should take." The challenge before us is enormous, but it is not insurmountable.

Mr. President, this amendment may not be the perfect solution. But it is long past time that we commit ourselves to a serious debate about the weaknesses that are almost universally diagnosed and perceived to be extremely detrimental to the defense of this Nation. This legislation is a start—perhaps a catalyst—for forceful efforts to find the right answer.

I yield the floor.

EAGLETON ON THE ENVIRONMENT

Tom Eagleton takes justifiable pride in his work on environmental protection. In 1971 and 1972, as a freshman Senator, he was made Vice-Chairman of the Environment Subcommittee while Chairman Ed Muskie was occupied with a run for the Presidency. In this leadership role, Tom Eagleton helped craft some of the most significant environmental legislation—the Clean Air and Clean Water Acts—of the last twenty years. His 1971 speech on the Clean Water Act is indicative of his concern and insight into this critical issue. His commitment to protecting the environment has endured through the years as new environmental issues have appeared—toxic wastes, radioactive dumpsites, land use problems. When the Reagan Administration came to town in 1981, Tom Eagleton rose to defend the environment against the policies of James Watt. Two columns, from 1981 and 1982, reflect his firm opposition to retreat on this vital national priority.

Speeches:

Speech to the American Society of Civil Engineers Annual Convention, St. Louis, Missouri, October 18, 1971;

"Watt's Policy—Clear Cut," Column, United States Senate, April 27, 1981;

"Save Our Endangered Species," Column, United States Senate, March 8, 1982.

AMERICAN SOCIETY OF CIVIL ENGINEERS ANNUAL CONVENTION, CHASE-PARK PLAZA HOTEL, ST. LOUIS, MISSOURI, OCTOBER 18, 1971

Within the next few days—perhaps tomorrow—the Senate Public Works Committee will send a new water pollution control bill to the floor of the Senate. The bill is both a logical extension of the existing water pollution control program and a significant departure from the program that is familiar to many of you.

To an unprecedented degree, members of the engineering fraternity have testified on this subject and shared their insights and expertise with the Committee during the long process of drafting the bill. The bill will challenge the imagination and ingenuity of engineers, and I would like to spend a few minutes describing the opportunities it offers you.

First, the bill reflects a significant shift in focus from controlling pollution indirectly, through water quality standards and limitations on effluents, to an emphasis on direct control of effluents. Water quality standards will remain significant in the new program, as an index of our progress, but they will serve less as an instrument of that progress.

This new emphasis on direct effluent controls is reflected in a set of escalating requirements for control of point source pollution. The basic requirement is to meet the state-adopted and federally approved water quality standards under the 1965 act. The first round of effluent controls will require the application by January 1, 1976, of the best practicable control technology that is then available for industrial sources of pollution. By June 30, 1974, the equivalent of secondary treatment will be required for municipal waste treatment facilities. In this round, more stringent limits on effluents and earlier dates for compliance can be

specified where necessary to meet requirements already laid down under the 1965 act.

The second round of effluent limitations will require that industrial sources achieve, by January 1, 1981, a level of effluent control that will result in no discharge of pollutants. If the owner or operator of such a source demonstrates that application of the best available technology will not produce that result, limits will be set at the level of control that can be achieved by application of the best available control methods.

The obligation laid upon municipal waste treatment facilities in the second round is to apply the best practicable waste treatment technology, with the further requirement that the control option finally selected be susceptible to the application of later technological development.

This new emphasis on effluent controls as such, and on the incremental tightening of control requirements over time, leads up to a second significant aspect of the bill—the call for elimination, with certain exceptions, of all discharges of pollutants from point sources by 1985. That objective is to be pursued through an accelerated research effort, one of the more significant components of a $65 million research program under the bill.

The effluent limitation requirements in phase two of the effluent control program are adjustable . . . if it is demonstrated in individual cases that they would produce substantial economic or social dislocation, or that the economic and social costs of applying them vastly outweigh the benefits.

An area of special interest to engineers is the construction grant program for waste water treatment facilities. The bill redefines the term "treatment works" to permit a much broader-gauged approach to the control of municipal and industrial waste water. New and innovative control strategies are encouraged, and will be eligible for funding under this new definition.

Furthermore, the bill will require the development of water pollution control facilities within an areawide (or regional) context, rather than on a city-by-city or town-by-town basis, as has been the case too often in the past. By July 1, 1974, all construction grants will be made to agencies designated to handle a region's water pollution control problems. A very substantial increase in funds (beginning at about $100 million and increasing thereafter) will be available for planning of control strategies and facilities—up to 100% of the costs for the first two years, and 75% in succeeding years. Both EPA and the Corps of Engineers are authorized, when requested, to provide technical assistance in the development of waste treatment management plans, or a designated agency can seek technical and other assistance from whomever it wishes.

The final details on the level of federal funding for actual construction remain to be worked out. However, there will be a substantial increase. The federal share will go up to a base level of 60%, which can be increased to 70% if a state puts up a 10% nonrepayable grant.

I think these are the principal points in which you may be interested, but I am sure there are others in a bill as comprehensive and lengthy as this one. It contains several new research provisions dealing with such diverse subjects as agricultural pollution . . . unconventional approaches to wastewater collection and treatment in areas where conventional systems are financially or otherwise impracticable . . . influencing the demand for water and waste water treatment services through pricing policy and low-water-use facilities and processes . . . and the water pollution and other problems associated with the discarding of waste oils.

An effort is being made to merge the Refuse Act Permit Program with the general water quality legislation in a way that will permit the eventual delegation of much of the responsibility for the program to the states. Those of you who deal with the various, and varying, water quality criteria adopted by the states under the 1965 act will be interested in the new requirement that nationwide water quality criteria be adopted by the EPA Administrator.

In conclusion, let's review these dates:

June 30, 1974—equivalent of secondary treatment for municipal facilities.

July 1, 1974—construction grants only for regional, municipal and joint municipal-industrial treatment facilities.

January 1, 1976—best available control technology required for industrial sources.

January 1, 1981—no discharge of pollutants from industrial sources or best available technology if the "no-discharge" requirement cannot be achieved.

1985—elimination of all pollutant discharges.

This bill is a tough measure, but I think it is also realistic. It signals a period of adjustments to new demands. Some of these adjustments will be painful. It will require new, exciting breakthroughs in science, engineering and economics, and changes in our everyday lives as well.

The ultimate success of our efforts, though, rests less upon laws and regulations than on the efforts of informed citizens. Your interest and active involvement in developing solution to environmental problems is vitally important. I welcome your participation, and look forward to the contributions I know you will make in this effort.

[From Frankly Speaking, April 27-May 1, 1981]

WATT'S PARK POLICY—CLEAR CUT

(By Senator Tom Eagleton)

You may remember the joke that circulated during the Presidential campaign about President Reagan's "killer trees". Following the nomination of James Watt to become Secretary of the Interior, another joke surfaced:

"How much energy does it take to destroy a country?" The response: "One Watt."

Such jokes have stopped as we have come to grips with the grim prospect of Administration proposals that could reshape land-use policies and scale back or eliminate many of our important environmental programs. The cold reality is that our parks, our public lands, our endangered species, our forests, land in Alaska, clean air and clean water are all under serious attack.

In just eight short weeks, James Watt has already proposed a number of drastic policy changes like these:

Leasing of offshore oil and gas drilling interests along 1.3 million acres of scenic California coastline.

Elimination of the Urban Park Program.

A moratorium on any new purchases of land for National Parks.

A reduction of environmental safeguards around Lake Tahoe.

A possible closing of National Park areas, and development of minerals in the parks.

Elimination of research funds under the Fish and Wildlife Cooperative Unit program.

Elimination of the Coastal Zone Management Funding.

Reduction of Endangered Species operating funds.

It is a wild understatement to say that this is going to bring a different tone to environmental protection and management of wilderness, wildlife, and parks. In addition to blocking all new acquisitions to our National Park system, the Interior Department plans other major changes in the way the Park Service operates. Secretary Watt has said that some parks "are probably too big", and has indicated that he may close some, and possibly hand over jurisdiction over others to state and local governments. There is also speculation that private companies may be permitted to run our parks.

In addition, legislation was introduced recently that would threaten the Eastern Wilderness System, including Missouri's own Paddy Creek and Irish Wilderness areas. If passed, the bill would end protection of future wilderness sites.

There is no joke about it. America's national parks and natural resources are facing serious challenges in the days ahead. We cannot sacrifice the and for a handful of transient budget savings.

[From Frankly Speaking, March 8-12, 1982]

SAVE OUR ENDANGERED SPECIES

(By Senator Tom Eagleton)

As the random destruction of our natural environment accelerates, the loss of species poses a grave risk to our future. Harvard biologist Edward O. Wilson has said that the "loss of genetic and species diversity by the destruction of natural habitats . . . is the folly our descendents are least likely to forgive us."

The Endangered Species Act, up for renewal this year, was signed into law in 1966. The purpose of the Endangered Species Act is to preserve all species and subspecies of animals and plants in danger of extinction in the United States and worldwide. The ultimate goal of the legislation is to restore each endangered species to a point at which it is no longer in danger of extinction.

Everyone is familiar with the protection that whooping cranes, California condors, polar bears, bobcats, cacti, and many species of orchids have been given under the Act. Other species, like the Tennessee Tellico snail darter or the bunched arrowhead plant, seem insignificant due to their size and rarity. But, all are important. Genetic scientists tell us that the extinction of various species could have a profound impact on our health, food supply, and scientific research. The extinction of a species may mean the loss of unkown industrial, agricultural, and medical applications for tomorrow.

I am concerned over the Reagan Administration's attitude toward preserving our endangered species. During 1979 and 1980, the Fish and Wildlife Service added an average of 46 species annually to the endangered list. However, during the first year of the Reagan Administration, only three plants and one species of Hawaiian snail have been added. This slowdown is explained by the Department of the Interior as "a matter of priorities."

The Reagan Administration has also proposed amendments to this year's Endangered Species Act to favor higher vertebrate forms of life over the invertebrate life forms. It is neither good science nor good public policy to place a rating on one form of life over another.

President Reagan has also cut the budget for the Fish and Wildlife Cooperative Units, which provide research funds for universities in fish and wildlife programs. The University of Missouri has been a recipient of many of these funds over the years. Last year, I joined a coalition of Senators to restore this valuable research money, and I will fight again this year for funding.

In reviewing the Endangered Species Act this year, Congress must focus its attention on ways to enhance the efficiency of the program's activities and to ensure adequate financial support for them.

The building blocks for a successful program are now in place; I do not believe that we need to tamper with the structure. I plan to continue my strong support for the Endangered Species Act. This Administration's short-sightedness could launch the destruction of many vital species.

Mr. DANFORTH. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

(Mr. DANFORTH assumed the chair.)

□ 1250

Mr. LEVIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. HECHT). Without objection, it is so ordered.

Mr. LEVIN. Mr. President, I ask unanimous consent that I may proceed as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

YUGOSLAVIA MISTREATMENT OF AN AMERICAN CITIZEN

Mr. LEVIN. Mr. President, this morning I personally protested to the Yugoslavian Ambassador to the United States the mistreatment of an American citizen by his Government, and the Ambassador's failure to respond to urgent appeals relative to this matter.

Mr. Pjeter Ivezaj is a 30-year-old naturalized United States citizen who emigrated to this country from Yugoslavia in 1972 and now lives in Sterling Heights, MI. On July 9 he returned to visit his uncle and grandmother in Titograd, Yugoslavia, and on August 19 was arrested and imprisoned.

His wife, Juliana, did not know what he was charged with and she was not allowed to visit him. His wife happens to be pregnant with her second child and is accompanied by her first child, a 6-year-old daughter.

A representative of the United States Embassy in Yugoslavia tried to visit Mr. Ivezaj on September 1, but was refused.

I was first contacted by relatives of Mr. Ivezaj on September 3, and was astounded to discover that no U.S. Government representative had been allowed to visit him. During the following week, numerous attempts were made to see him in prison but were rebuffed, so I sent an urgent letter to the Yugoslavian Ambassador on September 15 asking him to make an inquiry to his foreign ministry as to when a visit would be allowed and what the charges against this man were.

□ 1300

I received no response to my letter. My staff tried to find out from the Yugoslavian Embassy in Washington when we would hear from the Ambassador but could not. I called the Ambassador myself and left messages but my calls were not returned.

It was not until last Friday, October 3, after he had been imprisoned for 6 weeks, that a U.S. consular officer was allowed to see Mr. Ivezaj, and that was on the day his trial began. He has apparently been charged with membership in a so-called hostile organization under section 136 of the Yugoslav Criminal Code.

I spoke with our State Department this morning and told them I would be taking the Senate floor today to condemn both this uncivilized treatment of an American citizen and the refusal to respond to an urgent inquiry from a Member of the U.S. Senate. I was informed that the Ambassador has been summoned to meet with a Deputy Assistant Secretary of State for European Affairs this afternoon to discuss this case. I asked the State Department to make sure that my own outrage was expressed to the Ambassador since he had previously refused to speak with me directly.

Minutes later, the Ambassador called me to the phone to try to explain his Government's actions in this case. I vigorously protested the delay in responding to my repeated inquiries and the incommunicado treatment of my constituent.

I am now informed that Mr. Ivezaj's trial ended today and a verdict is expected this Wednesday. I can only hope that the U.S. Government will do everything in our power to protect the rights of this American citizen.

I intend to press for congressional review of our relationship with Yugoslavia since Yugoslavia does not follow the minimal normal diplomatic custom of visists by Embassy personnel to United States citizens in foreign jails.

Mr. President, I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. WILSON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

EARTHQUAKE ENGINEERING RESEARCH CENTER

Mr. WILSON. Mr. President, I had originally intended to offer an amendment to the continuing resolution. That amendment would have prevented the National Science Foundation [NSF] from awarding $5 million to the State University of New York at Buffalo for an Earthquake Engineering Research Center [EERC] in fiscal year 1987. I decided to withhold my amendment until the GAO was ready to report on its investigation into this matter, and I had an opportunity to meet with Dr. Erich Bloch, Director of the National Science Foundation. We have had that meeting and I believe that we share similar concerns about the seriousness of the issues raised relative to the possible violation of standard National Science Foundation review protocols.

Before I proceed with my concerns relative to the awarding of the EERC, I want to briefly discuss the issue of peer review. It is a subject that every elected representative at the Federal level should be aware of because of the Federal Government's extensive role in making awards on this basis. The Federal Government presently gives universities approximately $5 billion annually for a host of research and development programs. I believe the peer review system has worked extremely well, but more importantly, Mr. President, it is a system that most of us have come to trust, relying on the integrity of a process which seeks to assure that grant awards will be made on the merits, other than on the basis of political influence.

I want to emphasize the word "trust," Mr. President, because that word is the driving force of the peer review process. When the process has a defect or is in some other way impaired, we must correct it or be willing to suffer the consequences. One of the unfortunate consequences of an impaired review process is academic pork barrel, and that Mr. President is a poor substitute.

Mr. President, I find it somewhat ironic to be standing before my colleagues criticizing the peer review process I have defended so strongly in the past and which I hope will justify my support in the future. But I feel strongly about the issue of peer review whether it works to the financial advantage or disadvantage of California. In defending the peer review process, I am actually criticizing the corrupting influences which seem to have attached themselves to a particular award recently granted by the National Science Foundation. In my earlier remarks, I mentioned that the NSF had awarded an earthquake engineering center to the State University of New York at Buffalo. Unfortunately, the NSF's decision to make this par-

ticular award, apparently without adequate review is regrettable and has cast a shadow of doubt raised the most serious questions about and the way in which the NSF conducts professional peer review.

Before I proceed further on the subject, let me provide my colleagues with some backgound on this issue. On December 31, 1985 the NSF issued a program announcement to solicit proposals from institutions engaged in earthquake engineering research and related activities for an earthquake engineering center. The NSF received six proposals of which only two were recommended for further review. The two finalists for the center were the University of California at Berkeley and SUNY Buffalo which I have already mentioned.

On August 15, 1986, amid a storm of controversy and protest, the NSF made the EERC grant award to the State University of New York at Buffalo. The total amount of the award is worth $25 million over a period of 5 years from the NSF, which must be matched by State of private resources. Prior to the NSF's decision to award the EERC to SUNY Buffalo, I, other Members of Congress and respected academicians from California and New York raised deep concerns regarding the way in which the NSF was handling the review process. Early on there were allegations that California would get the grant because of their long association with earthquake research and the fact that the State has a large number of earthquakes. As the decision drew nearer there was considerable discussion about the political twist that the peer review process had taken because of the two States political delegations putting pressure on the NSF.

Since the NSF's decision to award the center, the General Accounting Office [GAO] has accepted a request from Senator CRANSTON and myself to conduct an investigation into possible violations of NSF review protocols and academic impropriety.

Now, Mr. President let me state what I hope to accomplish by having the GAO conduct an investigation into the NSF's peer review process:

First to restore confidence in the Earthquake Hazards Mitigation Program. This program has provided obvious benefits to the approximately 27 million citizens of my State who live with the daily possibility of a major earthquake.

Second and even more important, to restore confidence in the integrity of the peer review process which has served us so well in the past.

The peer review process would provide a level playing field for imaginative, innovative proposals to receive consideration for National Science Foundation funding. In fact, Mr. President, there is evidence to suggest that irregular internal tactics may have been used to bypass the traditional process of consultation and peer review.

Mr. President, at this point, I ask unanimous consent to insert into the RECORD a comparison of the two proposals from Berkeley and Buffalo. Before proceeding to consider the comparison, it must be noted that most of the individuals selected by the NSF as members of the review panel do not have the technical skills to adequately review the proposals. Only one has earthquake engineering expertise. In addition, it appears that the National Science Board didn't have sufficient or accurate information on which to base their final decision.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

PROPOSAL COMPARISON

An examination of the two proposals reveals that they have much in common but also have some significant differences. A summary of some major features of the proposals follows:

1. The management structure described in the two proposals is basically similar. Both have an oversight committee or board, a center director, a technical director and various research teams. Both use a matrix approach to project organization and management.

2. The emphasis of the New York proposal is strongly regional while the California proposal does not stress regionalism. This would suggest the need for a reveiw panel which was regionally unbiased.

3. The technical activities described in the two proposals are very similar. The New York proposal claims to emphasize problems with "break through" potential but there is no technical basis provided for assessing this assertion.

4. The California proposal has a sharper problem focus than the New York proposal. The California focus is on the national problem, of existing hazardous structures. The New York proposal covers nearly all of the topics included in earthquake engineering research.

5. The New York Center would require much greater start up funding than would a California center. Adequate facilities and personnel for a center currently do not exist at the New York schools. The proposed expenditures for library facilities, experimental facilities, and faculty represent a very large portion of the budget. Less funds would therefore be available for research.

6. Based on biographical information suppled, the earthquake engineering experience and expertise of the New York researchers is not at all comparable to that of the California researchers.

7. Even after the New York Center is fully operational, its experimental faciliteis will be significantly inferior to those which presently exist at the universities involved in the California proposal. For example, the shake table at the University of California Berkeley has nearly three times the useable area of the shake table at SUNY-Buffalo and much greater force capacity. The same comparison holds for static testing facilities, centrifuge facilities, and other experimental facilities.

8. The educational component of the New York proposal is significantly weaker than that of the California proposal. The California universities involved in the proposed center are rated by the American Council on Education as among the very best of all civil engineering schools in the nation. In the same rating, SUNY-Buffalo is rated well below the California schools. UC Berkeley is rated number one in the nation.

9. The implementation goals of the proposed New York Center are very high but it is questionable whether they are achievable as New York has no established infrastructure for the implementation of earthquake engineering research. New York does not have an aggressive structural engineering community, there are few, if any, earthquake code committees, and little record of public or government interest in or support for seismic safety. By contrast, the California proposal outlines a very strong implementation strategy which is built upon a record of success.

Since many of the technical and management aspects of the two proposals are quite similar, the most important issue in evaluation of these two proposals is the likelihood of success in achieving the stated goals and objectives. A background in and demonstrated understanding of the field of earthquake engineering would seem to be essential to a fair and accurate assessment of the assertions made in the proposals. The NSF appointed review panel did not possess these qualifications.

PANEL REVIEW

On July 8 and 9, the panel members and six representatives from NSF made a two day site visit to the State University of New York at Buffalo. At the conclusion of this visit, on July 9, the panel submitted a glowing review of the proposed New York center using numerous superlatives. Again, the panel's review was decidedly positive, stressing only the strengths of the New York proposal. The same day, the panel wrote a resolution favoring award of the Center to New York.

On July 16, the Principal Investigator of the California proposal was told that no California site visit would be necessary. The assistance of the California Congressional Delegation was solicited at this time, and shorty thereafter, NSF agreed to a site visit.

The SUNY-Buffalo proposal was considered by the NSF Directors Action Review Board (DARB) at a meeting on July 24, prior to the California site visit. The function of the DARB is to review recommended actions recommended to the National Science Board. Normally, actions considered by the DARB must have prior approval of the Assistant Director, Division Director and Section Head. This would suggest that the recommendation considered by the DARB was prepared shortly after the July 9 site visit to SUNY-Buffalo.

On August 9, the review panel and three NSF staff members made a one day site visit to California. Immediately following this visit, the panel submitted a review of the California proposal. The tone of this review is in stark contrast to that of the New York proposal. It is decidedly negative, stressing only perceived weaknesses.

Even a casual reading of the panel reviews of the California and New York proposals shows these reviews to be clearly biased against the California proposal. In the case of New York, only strengths are discussed while in the case of California, perceived weaknesses are emphasized. In point of fact, both proposals must have had strengths and

weaknesses and a fair evaluation would have discussed both aspects of each proposal. The matter could not have been as black-and-white as represented by the panel. The reviews are definitely unbalanced and selective in their discussion of the two proposed centers and appear to be more designed to support a predetermined conclusion than to present a fair evaluation. Often the same set of facts are portrayed in an opposite light depending on which proposal is being discussed. Some examples of the biased nature of the reviews follows:

1. Regarding the fact that both California and New York presently have only one year funding, it is said that New York "expects" that funds will continue while for California "future year funding is not assured". The facts are the same but the interpretation is clearly biased.

2. In the New York site visit report it is stated that the University at Buffalo will provide the use of its $1.5 million Seismic Research Laboratory. No mention is made in the California site visit report of the much larger and fully equipped California research laboratories except to say that the testing facilities and support equipment "would support a national earthquake engineering center".

3. In the New York site visit report it is pointed out that the University at Buffalo will provide $150,000 per year toward salaries and provide administrative space. In referring to the contribution pledged by the California group, the site visit report merely states that "in kind contributions . . . do not represent any new sources of support". No mention is made of the fact that the California schools pledged over $1,000,000 toward faculty salaries and facility support.

4. In the New York site visit report it is stated that "corportate interest is very high" and that several corporate representatives were present during the site visit and financial contributions were expected in the future from corporate sources. No mention was made of similar representation and pledges by California's much larger and more active private earthquake engineering sector in the California site visit report even though a number of nationally prominent representatives participated in the presentation.

5. In the New York site visit report it is stated that "during the site visit, New York State and University at Buffalo officials made it clear that they are committed to establishing a first-rate earthquake engineering research center". No mention is made in the California site visit report of the same commitment expressed by high level California State and university officials. Nor was it pointed out that the California facilities are already considered "world-class".

6. In the New York site visit report it is stated that the proposed Center Director, Robert Ketter, has an outstanding record as a researcher and administrator. In the California site visit report the proposed Center Director, Joseph Penzien, who has a much more distinguished record as a researcher and an equally outstanding record as an administrator of technical and research activities was not even mentioned. Professor Penzien was elected to the National Academy of Engineering based on his earthquake engineering contributions and was the founding Director of the Earthquake Engineering Research Center at Berkeley. In the evaluation of the California proposal it was stated that the "director was not even named". This is totally false and misleading. The lack of experience of the proposed New York Center Director in earthquake engineering was never mentioned.

7. In the New York site visit report it was stated that the Center Oversite Committee "will have representatives from industry, government and the research and educational community, and will set policies and provide oversite for the center". No mention was made of a similar oversite committee and functions in the report on the California site visit except to say that the governing board "lacked national broad representation". The strong background of experience in earthquake engineering related matters of the California oversight committee and its national stature was never mentioned. Likewise, the specifics of the national representation on the New York board was not discussed.

8. In the California site visit report it was stated that the California team is excellent technically and well recognized "but is aging". Isn't the New York team also aging? The factual basis for this assertion is never discussed and it is not clear that this point is really pertinent anyway. However, it conveys a negative impression.

9. In the New York site visit report it is stated that the New York Center will emphasize structural systems including low- and high-rise buildings, dams, and bridges as well as lifeline systems using a matrix organization. This is cast in a very positive light. On the other hand, in the California site visit report it is stated that what is proposed is a structure based on a "complicated matrix arrangement" which covers buildings, dams, and "virtually all topics in earthquake engineering". The emphasis was clearly negative. The overall coverage of the New York proposal does not appear to be substantially different from that of the California proposal (structures and lifelines covers most earthquake engineeering) but this is expressed very differently in the two reviews. More important, no mention was made of the very significant fact that the California proposal has a single strong focus which pulls everything together; the national problem of existing hazardous structures. The focus of the New York proposal is decidedly regional.

10. In the New York site visit report it is stated that "many of the principals uncovered in its research program will have implications for earthquake harzard reduction in California and other Western States". On the other hand, in the California site visit report it is stated that "although the research plan was focused on a national need it was very narrow and was directed only on the State of California". This interpretation is highly opinionated and totally unwarranted. The California research team has a demonstrated record of accomplishment in the application of earthquake engineering research nationwide.

11. The New York site visit report contains brief, upbeat summaries of the proposed research. No such summaries of proposed research are contained in the report on the California site visit as supplied by NSF.

12. The New York site visit report states that "the investigators were also impressive in terms of their sensitivity to education and technology transfer matters". No mention was made in the California site visit report of the fact that the California schools are recognized national leaders in earthquake engineering education and technology transfer. On the contrary, it is stated that California proposed "no new mechanisms for technology transfer" and that "technology transfer was weak and left to the individual investigators and was not part of the overall management plan". This is totally false. One of the major strengths of the proposed California Center which was stressed during the visit was that the Center would be an integral part of an innovative multifaceted, and comprehensive implementation program. The Center would have been a key element in a major new State program of seismic safety. This program would have set an example for the rest of the nation and saved many lives.

13. In the New York site visit report it is stated that "a library collection of documents, graphic materials and computer programs related to earthquake hazard reduction will be developed". In the report on the California site visit, no mention is made of the fact that a unique collection of such materials currently exists at the California universities and that this material has been made readily available to all researchers nationwide through the NSF supported National Information Service for Earthquake Engineering (NISEE). In fact, in the proposal review, the NISEE operation which is managed by the University of California, Berkeley and Caltech was treated in a negative light rather than as a positive asset of the proposed California Center and the nation. To imply that important earthquake engineering materials are not currently available to the eastern U.S. is simply untrue.

14. The report on the New York site visit is filled with references to the beliefs and hopes of the proposers regarding the proposed center; the belief that major breakthroughs will result, the belief that efforts can be integrated to handle the infrastructure problem, the hope that cost effective seismic design and rehabilitation techiques will result, and the hope that other hazards can also be addressed. No such statements of positive *feelings* are included in the report on the California site visit, even though the California researchers strongly expressed similar positive feelings. Furthermore, New York hopes are never compared to the California record of accomplishment.

15. A great deal is made of the fact that the New York center will add a number of new faculty members. In the report on the California site visit, it is stated that no new faculty members are projected. The latter conclusion is dubious since the question of new faculty members was never raised during the site visit. Furthermore, the reason that so many faculty members are needed in New York is that the New York schools are presently inadequately staffed to conduct the activities of a research center. The total number of faculty members who will be active would have been a more appropriate measure of the strength. Even with an increase of 12 faculty members, the New York center will still have fewer faculty active in earthquake engineering that the more than 50 faculty members presently involved in earthquake engineering education and research at the California universities participating in the California proposal.

16. In the report on the California site visit, the panel expressed "disappointment" that California projected "only a 50% increase in students". Why is this disappointing? It was not mentioned that this 50% increase would represent a very substantial increase in the total number of well-trained earthquake engineers nationwide.

17. In the review of the California site visit it was stated that "it was expected that

code development in California would presumably become a model which would dictate national codes, as it has in the past, without taking into account differing conditions in other parts of the country". This statement is clearly biased and fails to recognize the leadership position that California has played and will continue to play in the development of earthquake codes and other forms of implementation. It also makes it appear that the California researchers are insensitive to what are thought to be differing conditions in other parts of the country. This is also an unfair implication as a very large number of California researchers have been heavily involved in the implementation of earthquake engineering research nationwide. Only a very small number of New York researchers have been involved in implementation.

18. In the report on the California site visit, it is stated that "it is evident that there was significant difficulty in getting the (California) legislation passed". Such a comment is completely inappropriate and out of order in a review. There is, in fact, no basis for this statement and one wonders where the review panel obtained this information.

19. Finally, the panel's review of the California proposal notes that there is; "no indication of consideration of interaction with wind or floods in consideration of comprehensive design and code criteria." This is not surprising since the Program Announcement focuses explicitly on earthquake mitigation and not on other natural hazards.

On August 9, after the NSF Directors Action Review Board had already considered the SUNY-Buffalo proposal, the review panel reaffirmed its earlier resolution to recommend award of the center to Buffalo. On August 13 John H. Moore, deputy director of NSF, sent a memorandum to the members of the National Science Board recommending approval of the award of the center to Buffalo. In that memorandum it was noted that the review was conducted by a "Blue Ribbon Panel". It was not mentioned that only one member of this panel had any relevant experience in earthquake engineering. It was also not mentioned that there were no members on the panel from any of the highly seismic western states. The reasons for selecting New York over California were not discussed or specified. The decision of the National Science Board to support the NSF staff recommendation is not surprising considering the strongly biased reviews upon which their decision was based.

Mr. WILSON. Mr. President, I do not wish to hold up the business of the Senate so I will only make brief reference to a few of the more glaring deficiencies of the National Science Foundation's review of these earthquake proposals. The issues I am raising should be of special concern to those Senators whose committee responsibilities include the National Science Foundation. I hope the concerns I am raising today will be a catalyst for the NSF to suspend this award until the process for awarding this grant can be fully reviewed.

Mr. President, at this point, I ask unanimous consent to insert into the RECORD, a letter from Prof. Paul Jennings at the California Institute of Technology in Pasadena, to Dr. Erich Bloch, Director of the National Science Foundation. Professor Jennings, I might add, is also a member of the advisory committee to the engineering directorate of the National Science Foundation.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

CALIFORNIA INSTITUTE OF TECHNOLOGY,
Pasadena, CA, September 19, 1986.

Mr. ERICH BLOCH,
Director, National Science Foundation, Washington, D.C. 20550.

DEAR MR. BLOCH: At my request, a colleague and faculty member in my Division, Professor Wilfred D. Iwan, loaned me a copy of the successful proposal for an Earthquake Engineering Research Center submitted by the SUNY Buffalo. He received the proposal in his capacity as Chairman of the California Seismic Safety Commission.

Dr. Nam Suh is also receiving a copy of this letter. As he can tell you, my own field of specialization is earthquake engineering, although I am primarily an administrator in my current position as Chairman of the Division of Engineering and Applied Science at Caltech. I am also a member of the Advisory Committee to the Engineering Directorate of the National Science Foundation.

When reading the proposal from Buffalo, you can imagine my surprise when I discovered my own words! I invite your comparison of parts of pages 3 and 4 of the proposal and the highlighted sections of pages 9, 10 and 12 of the report "Experimental Research Needs for Improving Earthquake-Resistant Design of Buildings—Overview and Recommendations," Earthquake Engineering Research Institute Report No. 84-02, of which I am the principal author/editor. See Appendix A. (Report 84-02 is a heavily edited and rewritten abstraction from EERI Report No. 84-01, "Experimental Research Needs for Improving Earthquake Resistant Design of Buildings," edited by Roger Scholl.) It is obvious from the comparison that nearly all of this part of the Buffalo proposal was taken selectively, verbatim and without attribution from my report. The few changes that occur are editorial. It is ironic that this deliberate copying occurs in the Introduction of the proposal under the sub-heading "Why Buffalo."

I examined the proposal further. I next invite your comparison of the first paragraph of the proposal's section on "Description of Research," page 11, with the highlighted paragraph of the Summary section, page 1 of the "Proceedings of the U.S. National Workshop on Strong-Motion Earthquake Instrumentation," included in Appendix B of this letter. The Summary section of the workshop's proceedings were written by the editor and organizer, Professor Iwan. The irony in this case is that the leading paragraph of the Buffalo proposal's section "Description of Research" is lifted verbatim and without attribution from the writings of one of the Principal Investigators of the opposing proposal.

These are the only two instances where I found evidence of this kind of copying. However, from reading the proposal it is my personal assessment that it is reasonable to expect that a close examination would reveal other instances.

I am sure that you agree that what has happened is deplorable and goes far beyond the "cut-and-paste" composition that sometimes occurs in proposal writing. I think such copying should disqualify a proposal.

Because both of the reports from which the material was taken received fairly wide distribution in the earthquake engineering and seismological communities, an Evaluation Panel composed of people experienced in the field may well have noticed this copying, as I did, and given it proper consideration in its rating of the proposal. Unfortunately, in this case, only one member of the Panel was knowledgeable in the field and he did not recognize what had happened.

As you are doubtless aware, this is just an additional facet of a complex and potentially damaging situation. I am concerned about the effects of this affair on the earthquake engineering research program and the continued effectiveness of NSF in this area. My recommendation is that you start over. Surely some way could be found to restart the process, with new procedures that all parties would consider suitable. I believe the National Science Foundation would be better off in the long run to accept the possibility of a mistake and restart the competition than to go ahead and establish a Center under a cloud of serious, persistent doubt and criticism.

Sincerely,

PAUL C. JENNINGS,
Chairman.

EARTHQUAKE ENGINEERING RESEARCH CENTER PROPOSAL

Submitted to: Earthquake Hazard Mitigation, National Science Foundation.
Submitted by: Research Foundation of SUNY on behalf of State University of New York at Buffalo.
Date: January 15, 1986.

EVALUATION OF VARIOUS EXPERIMENTAL METHODS

The workshop discussions of the various experimental methods for earthquake engineering research focused on the particular applications; advantages, and limitations of the methods. Separate committees were organized to address the following methods of researching structural response to earthquake-like motions:

Shaking-table testing;
Reaction-wall testing;
Small-scale model testing;
Prototype testing using existing buildings;
Buried high-explosive excitation testing; and
Instrumentation of existing buildings.

The findings of each committee are summarized below:

SHAKING-TABLE EARTHQUAKE SIMULATION

Shaking-table testing has become very important in earthquake engineering research because it can be used to simulate earthquake shaking in the controlled environment of a laboratory. A structure or component can be built on a shaking table, and its response and performance under various intensities of earthquake shaking can be precisely measured and observed. The limitations of shaking-table testing are related to the size of the table and the number of components of earthquake motion it can simulate. A shaking table large enough to test full-scale building structures and with the capacity to simulate six components of motion has only one limitation. It cannot practically account for the effects of soil-structure interaction. To put our national testing capability into perspective, it is important to note that the United States does not yet have one shaking table that is large enough to test even a small prototype building at full scale.

REACTION-WALL TESTING

Reaction-wall facilities have been used extensively for conducting component and subassembly tests. More recently the erection of large reaction walls has allowed the testing of structural systems. The primary advantage of reaction-wall testing for components, subassemblies, and structural systems is that it provides results applicable to earthquake engineering with modest expenditures of funds. The most serious limitation of reaction-wall testing is the difficulty in simulating loading and restraint conditions for structural systems, for example, a joint assembly in a movement-resistant frame.

For seismic design problems. It is essential to study behavior under cyclic load reversals. Although it is not difficult to apply the cyclic loads, the deformation levels to which the component should be subjected cannot be easily determined. As a result, there may be differences between the type of damage observed in earthquake reconnaissance studies and that observed in the laboratory. Furthermore, in highly redundant systems, there will be a redistribution of forces and loads. Such redistribution cannot be simulated easily with statically determinate component tests. Although on-line computer simulation can reduce these difficulties, reaction-wall testing is most applicable for making detailed measurements of stress and strain in the testing of subassemblies and components.

SMALL-SCALE MODEL EXPERIMENTS

Small-scale model testing is advantageous when constraints of economy and size render the testing of full-scale prototypes impractical. Small-scale is generally defined as scaled size 1:5 and smaller. Small-scale model testing is applicable to qualitative studies of earthquake response behavior of all types of structures. Results of some recent shaking table tests have demonstrated that they can also be successfully used to make reliable quantitative observations. A specific application of this type of testing for buildings is to test small-scale models on shaking tables to determine and compare the relative merits of different structural systems.

PROTOTYPE TESTING OF EXISTING BUILDINGS

Prototype testing of existing buildings is one of the oldest forms of earthquake engineering experimentation and includes three principal methods of excitation; harmonic excitation by eccentric-mass vibrators, reciprocating-mass vibrators, or gas pulsers; ambient excitation by wind forces or buried explosives; and impulse loading which includes both pullback and sudden release and controlled impulses that can be generated by the programmed deceleration of a large mass. All of these tests possess one strong advantage that ensures their continued use in earthquake engineering; they are all performed on real, full-scale structures—the complete structure is tested, including the structural system, nonstructural components, and the soil foundation.

There are two important limitations to the types of full-scale testing discussed above. The first is that the range of response for the dynamic methods is generally limited to relatively low, essentially linear, levels of material behavior. Even though the capacity of some of the more recently developed shaking machines is much larger than that of earlier versions, the fact remains that they do not possess sufficient force to excite most major structures into the yielding range. The second important disadvantage of prototype tests of existing buildings is the difficulty of securing permission to test existing structures. Unless the building or structure is owned by the agency that performs the tests, it is usually very difficult to obtain permission to perform tests. Tests performed at damaging levels to reveal information on ultimate capacity typically are possible only on buildings slated for demolition.

Because full-scale tests are concerned with the properties of real structures, they provide the final proof of advances in theory and practice and will always remain a part of a balanced program of earthquake engineering research. However, the costs of prototype tests both in time and money, and the lack of availability of structures for such tests means that they cannot take the central role in experimental research.

BURIED HIGH-EXPLOSIVE EXCITATION EXPERIMENTS

Buried high-explosive excitation testing involves the emplacement and detonation of high explosives capable of generating earthquake-like motions. This test procedure has not been particularly attractive in the past because the ground motions generated were not sufficiently earthquake-like to produce results applicable to earthquake engineering. However, recently developed techniques have been shown to be effective for generating earthquake-like ground motions; therefore, high-explosive excitation methods may be applicable to the study of earthquake response at damaging levels and at ultimate capacity levels.

The advantages of testing with buried high explosives are that soil-structure interaction can be studied and that full-scale tests of large buildings can be performed. The technique allows tests of larger structures than can be tested on shaking tables at this time.

There are three notable disadvantages of testing with high explosives. The turnaround time between tests is long compared with shaking-table testing, and repeat testing at increased amplitudes and iterative testing to improve structures and theoretical models are not convenient. Second, the creation of crater debris and dust, coupled with the high-intensity ground motions generated, requires that a large test area be available to avoid disturbance to adjacent properties. Finally, each explosion is a single transient event that cannot be repeated without significant expense. Hence, instrumentation and experimental methods must be highly reliable. The use of contained explosions helps overcome many of these difficulties.

INSTRUMENTED BUILDINGS FOR NATURAL EARTHQUAKES

Instrumented buildings for natural earthquakes are valuable sources of test data for earthquake engineering because they can be used for proof tests of the ultimate capacity of real full-scale buildings. At present, approximately 400 buildings in the United States are instrumented with strong-motion accelerographs. About 75 are instrumented for the purpose of obtaining building response data for structural response studies, with the rest instrumented to help evaluate possible overstressing and damage.

For the structural response studies, the buildings are heavily instrumented to obtain detailed data that can be used to improve engineering design practice. With these instruments, one can differentiate between torsional and translational response and can determine the shapes and frequencies of the several modes that dominate the response. In the other buildings, instruments are generally placed in structures more than 10 stories high, and usually only two or three accelerometers are used; one is placed in the basement, one at midheight (if there is a third accelerometer) and one at the top. These instruments have the more limited objective of evaluating the safety of the buildings following an earthquake.

The advantage of this method of experimentation is that results are obtained for real buildings in actual earthquakes. This allows investigation of soil-structure interaction, complete building response (including nonstructural as well as structural components), and response over a wide amplitude range, even to damaging levels if a severe earthquake occurs. The basic shortcoming of this method of experimental research is that one is completely at the mercy of random, infrequent occurrences of strong-motion earthquakes. Instrumentation must therefore be extremely reliable over long periods of time (40 years is a typical goal) with little maintenance, a difficult performance requirement to fulfill.

U.S. STRONG-MOTION EARTHQUAKE INSTRUMENTATION

(Proceedings of the U.S. National Workshop on Strong-Motion Earthquake Instrumentation, April 12-14, 1981, Santa Barbara, CA)

CHAPTER 1—SUMMARY

1.1 Introduction

The problem of safeguarding life and property from the destructive effects of earthquakes is truly national in scope. Although many regions of the United States have relatively low seismicity, damaging earthquakes have historically occurred from coast to coast. In fact, some of the most severe seismic disturbances experienced during the short history of this country occurred in the mid-west and east; the New Madrid earthquakes of 1811 and 1812 and the Charleston earthquake of 1886. Figure 1.1 shows the geographic distribution of earthquakes within the United States based on Intensity (observed local effects).

As the nation's population and the output of goods and services have become more and more concentrated geographically, the potential for loss associated with a single earthquake event has become correspondingly greater. It has been estimated that a major earthquake in some regions of the country could result in the loss of tens of thousands of lives and cost on the order of one hundred billion dollars in property damage and lost output and productivity. Such an occurrence would have to be considered a disaster of national proportions no matter where in the country it might occur.

The ultimate goal of earthquake hazard mitigation research is to gain sufficient understanding of the phenomena involved in an earthquake to be able to devise socially and economically acceptable means of minimizing the loss of life and property resulting from such an event. In order to design safe, economical structures and facilities in earthquake-prone regions of the United States, it is necessary to understand both the nature of the ground motion that these systems may be expected to experience during their lifetime and the nature of their response to this excitation. This understanding can ultimately come only from the measurement of the near-field strong ground motion and system response resulting from actual damaging earthquakes.

The first recordings of strong ground motion were obtained during the damaging Long Beach earthquake of 1933 from special instruments designed and installed only a year earlier. Since this event, the design of strong-motion instruments has been greatly improved and these instruments have been deployed throughout the United States and in many seismic regions around the world.

EXPERIMENTAL RESEARCH NEEDS FOR IMPROVING EARTHQUAKE-RESISTANT DESIGN OF BUILDINGS

III. INTRODUCTION

Why Buffalo?

Since the late 1960's the State University of New York at Buffalo has been engaged in the construction of a new campus in the suburban town of Amherst. When completed in the late 1980's, the new campus will have cost considerably more than one-half billion dollars.

The Department of Civil Engineering, in planning for its new facilities, decided to build its strength in structural and geotechnical engineering by developing dynamic experimental capabilities. After a long period of careful consideration of advice provided by various distinguished structural and geotechnical engineers, educators and researchers, the facility and administration decided to develop an earthquake simulation facility as a major experimental adjunct to its structural and geotechnical engineering laboratories.

A more intensive study of the design of the new laboratory was made in 1977 just prior to the beginning of building construction. Faculty members visited most major earthquake simulators in the U.S. to seek advice from key people in charge of those facilities. These efforts reinforced the earlier conclusion that it would be desirable to construct a shaking table in order to provide additional experimental research capabilities and manpower training in Earthquake Engineering.

Much consideration was given to the size, type and dynamic characteristics of the shaking table. The final decision on the design was made in 1979, based on budgeted tradeoffs and on special characteristics and capabilities of other available facilities in the U.S. The total cost of the system, including the foundation, plumbing, construction of the "table," and automated control/analysis digital computer package and an interface with the analog system was in excess of $1.5 million. The State University of New York provided most of the monies. A detailed description of the facility is given in Appendix B.

A number of experimental methods are available for determining the response of systems to earthquake loading: Shaking-table testing, reaction-wall testing, small-scale model testing, prototype testing using existing buildings, buried high-explosive excitation testing, instrumentation of existing buildings.

Each has its advantages, and each its disadvantages.

Shaking-table testing has become very important in earthquake engineering research in recent years because it can be used to simulate earthquake shaking in the controlled environment of a laboratory. A structure or a component can be affixed to the table and its response to various excitations can be precisely measured. The limitations of shaking-table testing are related to the size of the table and the number of components of earthquake motion it can simulate.

Reaction-walls have been used extensively for conducting component and subassembly tests. The primary advantage of these systems is that they provide results applicable to earthquake engineering with modest expenditure of funds. The most serious limitation is the difficulty in simulating loading and restraint conditions.

When constraints of economy and size render the testing of full-scale prototypes impractical, small-scale model testing is advantageous.

Full-scale prototype tests of existing buildings, because they are concerned with "real structures," will always provide the final proof. The costs in time and money, however, insures that they will never take the central role in experimental research.

Recently-developed techniques using buried high-explosive excitation have been shown to be effective for generating earthquake-like ground motions. The advantages of testing via this method are that soil-structure interaction can be studied, and that full-scale tests of large buildings can be performed. Obvious limitations are turnaround time between tests, size of test area, and each explosion is a single transient event that cannot be repeated without significant expense.

The advantage of using instrumented facilities in actual earthquakes is self-evident. This allows investigation of soil-structure interaction, complete building response, and response over a wide amplitude range. The basic shortcoming is that one is completely at the mercy of random, infrequent occurrences of strong-motion earthquakes.

The most versatile and productive experimental method available for earthquake engineering research is shaking-table testing. There are, however, only a limited number of such facilities available in the U.S. Table 1 and Figure 1 of this proposal summarize the major shaking tables in the U.S. Two separate groupings are indicated; one for university facilities and the other for industrial and governmental laboratories. The map numbers for the various installations in each category are listed in order of date of construction. Also shown in Table 1 are the corresponding entry number in the CIB Register of World Large Scale Testing Facilities for Building Research. The relative size of the test area available on the shaking table has been indicated on the maps by the sizes of the indicated circles: large, > 3.0m; medium, 1.0m−3.0m; small, < 1.0m. The model weight capacity of the various installations at "full loading" have been shown in KN.[1]

IV. DESCRIPTION OF RESEARCH

IV.1. Goals and initial research thrusts

The ultimate goal of earthquake engineering research is to gain sufficient understanding of the phenomena involved to be able to devise socially and economically acceptable means of minimizing injury, loss of life, and property damage resulting from seismic events. In order to design safe, economical structures and other facilities, it is necessary to understand both the nature of the ground motion that these systems may be expected to experience during their lifetime and the nature of their responses to such excitation.

But understanding the phenomena, while necessary, is not in itself sufficient. There must be dissemination of the information. Education programs must be changed to incorporate the findings. Engineering design and construction practices must improve. State and local building codes must be refined and revised. New and better systems and devices must be developed and marketed. Programs of public awareness and education must be instituted. Better warning and preparedness strategies, including evacuation plans, must be developed. Conscious upgrading of facilities and services must be undertaken. In short, the research results should have an impact.

The research to be pursued through the proposed Earthquake Engineering Research Center will have the primary purpose of substantially upgrading the state of the art of the basic knowledge, engineering practice and implementations of seismic hazard mitigation procedures in order to minimize the loss of property and human lives and the disruption of all facets of human activities resulting from severe earthquakes.

It is not the intention of the Center to cover the whole spectrum of earthquake engineering research but rather to identify major thrusts based on the following criteria:

1. Research thrusts should be directed to key problems that have not been adequately addressed and should have 'breakthrough potential'.

2. Research thrusts should reflect the particular interests and strengths of the participating institutions, faculty, and research facilities.

3. On the basis of these considerations, two major research thrusts are identified and stated below.

Mr. WILSON. Mr. President, in his letter, Professor Jennings raised the issue of the New York consortium including copied information in their proposal from an article he had written. Although Professor Jennings called it copying one could clearly call this plagiarism. The dictionary defines plagiarism as "the appropriation or imitation of the language, ideas, and thoughts of another author, and representation of them as one's original work." I raised this concern with Erich Bloch, asking him to withhold funding of the earthquake center until the GAO could complete its investigation. His response to me was; "Pending our review, * * * we have no basis for suspending or rescinding the agreement the Government has executed."

I applaud the NSF for conducting an internal review of the matter, but if they saw the need to conduct their own review, why did they proceed with their plans to provide funding to Buffalo? This is a serious matter, Mr. President, and should not be taken lightly. I hope the NSF will do the right thing by suspending this award, otherwise it will send a signal to the research community that this is an acceptable and highly regular practice, which it is not.

[1] At least for Berkeley (3) and Buffalo (8), the model weights listed in the CIB Register (and, therefore, those shown in Table 1 and Figure 1) are incorrect. Apparently in compiling the report they presumed that the test weights were in U.S. tons rather than in metric tons. The numbers should have been 3(490) 8(198). Also to be noted, recent studies have indicated that at slightly reduced frequencies, accelerations and/or velocities, the maximum test load on the Buffalo table can be increased to 490 KN.

Mr. President, as a member of the Aging Committee I was shocked to learn that age was an issue in rejecting California's proposal. I quote from the site visit team's recommendations which were accepted by the NSF. They state; "The present staff of the California team is excellent technically and well recognized but is aging." When has age become an acceptable peer review criteria? Is it even relevant? The inclusion of age in the panel's review is deplorable, but consistent with their inability to judge these proposals on their merit.

I have only one more point that I would like to emphasize, Mr. President, but I think it will be clear to my colleagues from reading the RECORD that the NSF's handling of the proposals was biased and inconsistent.

This "blue ribbon panel" which I hasten to add, had only one member with any earthquake engineering experience, also made the following comment about the California proposal. "The California team did not plan to add any new faculty positions or slots as a result of the new center. This is considered to be a weakness and will probably prevent growth and development of the center and future engineering researchers and personnel." It is my understanding that this question of whether Berkeley was going to add additional faculty was never raised by the panel during their visit to Berkeley. Anyway, how such a charge will prevent growth and development, as well as future engineering researchers and personnel is questionable. In 1984 Prof. Jimmy Jirsa from the University of Texas at Austin conducted an informal survey of schools with earthquake engineering programs and the number of master's and doctoral degree students they graduated between 1978 and 1983. The University of California at Berkeley had graduated 65 doctoral students and 155 master's degree students. The University of Buffalo wasn't even listed.

The entire review is replete with these inaccuracies and inconsistencies. My hope is, Mr. President, that the National Science Foundation will do the right thing by admitting that there may have been a mistake and withhold future funds for the earthquake center pending the outcome of the GAO investigation.

Mr. President, I yield the floor.

ROUTINE MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a period for the transaction of routine morning business with statements therein limited to 5 minutes each.

Mr. HELMS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HELMS. Mr. President, I ask unanimous consent that further proceedings under the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

COACH WALLACE WADE

Mr. HELMS. Mr. President, at an emotional time like this, it is generally better to have a prepared transcript, which I do not have. But I would take note of the passing of a distinguished North Carolinian and a dear friend of many in this Senate, Wallace Wade. Coach Wade, as we knew him, led teams from the University of Alabama to the Rose Bowl, and two from Duke University. He was a remarkable man in every way; he had a vital interest in current affairs, particularly those of the government. He was a fine American.

□ 1320

Wallace Wade was loved across the breadth and width of this country. He was 94 when he died this morning in Durham. I had the privilege of talking with him with some regularity for the past several years, and always it was the same: Coach Wade would inquire about what was going on in the Senate, what was going on in Washington. And when I told him, to the extent I knew, about the affairs of Government, he inevitably displayed a remarkable knowledge of the events of our time.

So, he was a very perceptive man, and he offered many suggestions which were practical and full of common sense. Some of his suggestions are now law.

Always, at the conclusion of a conversation, I would say, "Coach, is there anything I can do for you?" He would say, "No, I reckon not."

However, a couple of years ago, he gave a different answer when I asked that question. He said: "Yes. You may not be able to do it, but I would like to meet this President. I have never met him. I have always admired him. I supported him. I just wonder if it would be possible for me to walk into the Oval Office and shake his hand on some occasion."

I happened to see the President the next day, and I told him about my conversation with Coach Wade. The President said unhesitatingly: "By all means, let's work that out." So we did.

Within 2 or 3 weeks, up from Durham, NC, came Coach Wade and Mrs. Wade, and their daughter and her husband, who live nearby in Maryland.

We went to the White House. We got in line with a great many others for what is known as a photo opportunity. The President's schedule was quite full that day, and aides to the President were concerned lest there be further delay in the schedule, which was already behind. One of them slipped over to me and said, "Senator, I hope we can keep this short. The President is behind in his schedule, and if you can help us, we'll appreciate it."

Coach Wade overheard that little comment, and he turned quickly and said: "I don't want to take up the President's time. I just want to shake hands with him, I assure you that I will not prolong it." That aide thanked Coach Wade and stepped back, with some satisfaction.

Presently, we were ushered into the Oval Office. I shall always remember the President of United States striding across the room, first shaking Coach Wade's hand and then embracing him.

The coach said: "Mr. President, it's a great pleasure to meet you. I thank you for seeing me. I don't want to take up your time."

President Reagan interrupted him and said: "Wait a minute. I've been looking forward to this opportunity for a long time. You know, I broadcast your last Rose Bowl game in Pasadena."

From that point on, there was a lively conversation between the President of the United States and Coach Wallace Wade. Twenty-five minutes elapsed, with the aides frequently stepping forward to remind the President that he was already behind in his schedule. The President waved them aside and continued reminiscing with Coach Wade.

Finally, we departed; and I have never seen Coach Wade more elated than he was following his conversation with the President.

Since that time, the President has mentioned to me a dozen times the visit by Coach and Mrs. Wade, always inquiring about the coach's health, always sending his best regards.

Today, I had the sad duty of calling the White House and informing the President that his friend, his supporter, Wallace Wade, had passed away.

Mr. President, these comments are awkward, because I feel very strongly, in a personal way, a deep loss. It is difficult to talk about a friend at a time like this. Wallace Wade was a friend of many of us, but he was especially helpful to me. I shall miss him. I shall always be grateful that he was my friend and that I was privileged to be his.

Dorothy and I send our deepest sympathy to Mrs. Wade—Peg, as she is affectionately known—and to the remainder of Coach Wade's family.

Funeral services will be at 11 o'clock Wednesday morning at Duke Chapel, on the campus of Duke University, in Durham, NC.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

□ 1350

Mr. DURENBERGER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

INTELLIGENCE AUTHORIZATION ACT, FISCAL YEAR 1987—CONFERENCE REPORT

Mr. DURENBERGER. Mr. President, I submit a report of the committee of conference on H.R. 4759 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 4759) to authorize appropriations for fiscal year 1987 for intelligence and intelligence-related activities of the United States Government, the Intelligence Community Staff, and the Central Intelligence Agency Retirement and Disability System, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by all of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of October 1, 1986.)

Mr. DURENBERGER. Mr. President, I am pleased to have the opportunity to present to the Members of the Senate the conference report for the fiscal year 1987 intelligence authorization.

The classified annex to the report has been made available for review by the Members. As they will see, I am happy to say, the agreement reached by the conferees responds to the critical situation that exists in the intelligence community today. As I said here on the floor last month, when the select committee reported the intelligence authorization bill for fiscal year 1987, the National Foreign Intelligence Program is being stretched to its utmost in covering the growing demands of intelligence consumers today.

I would urge the Members to review the report at their convenience. Without refering to specific details, I would point out, however, that the report retains most of the measures adopted by the select committee in response to the cut in intelligence spending in fiscal year 1986, the new demands being placed on the intelligence community, and the difficulties caused by the recent setbacks suffered by the U.S. Space Program.

The conference report also retains the Senate bill's measures for enhancing FBI access to financial and telephone records for counterintelligence purposes; the mandate to reduce the size in the Soviet mission to the United Nations; and the measures to provide benefits to former spouses of CIA officers who currently receive none.

We believe, Mr. President, that the conference report is a major step in ensuring that the intelligence community is able to keep pace with a mission that continually grows more difficult. We strongly urge its adoption by the Members.

This year, Mr. President, marks the 10th anniversary of the select committee on Intelligence, a mark of the success of congressional oversight. It also marks the conclusion of my term as chairman of the select committee. It has been a privilege to chair the select committee during the 99th Congress, and in my final report to the Senate, I would like to take a moment to share with my colleagues some of the accomplishments the committee has achieved during the past 2 years.

As I view oversight, the select committee on Intelligence must fill two roles. It must be a watchdog acting in behalf of the Senate, of course, to ensure that the intelligence community performs its mission efficiently and within the Constitution and laws of the United States. On the other hand, the select committee also has another role, serving as a go-between, or a bridge between the intelligence community on one side, and the Senate and the American public on the other.

Let me first describe some of the committee's achievements in filling its role as a watchdog.

During the first several years of the select committee's existence, the Members focused most of their attention on the oversight of covert action and the protection of civil liberties. This was only natural, as these were the main concerns that brought about the creation of the committee.

This form of oversight is important, and I will tell you about some additional steps we have taken to enhance the committee's capabilities in these areas in a moment. However, when I assumed the position as chairman, it was my belief that oversight had to be extended to all intelligence activities. I also believed that the committee should extend its horizon to long-range issues as well as more immediate, day-to-day concerns.

This is why, soon after I became chairman, the committee requested the Director of Central Intelligence to provide the select committee with a national intelligence strategy when he next submitted his budget request. The requirements for the strategy were simple: We asked the DCI to tell the Members what missions he had assumed for the intelligence community; the priority he assigned to each misson; and his plan for carrying out these missions.

The purpose of the national intelligence strategy was to give the Members of the select committee the big picture of the National Foreign Intelligence Program. The strategy was also intended to provide a measure showing how well the intelligence community was able to cover its assigned missions, and how responsive the community was to the intelligence consumer.

Bill Casey, I am pleased to say, responded splendidly. The select committee received the first national intelligence strategy along with the fiscal year 1987 budget last February.

The strategy became the benchmark for our budget review. In going through the budget, we could see how the individual programs fit together. We also saw where the shortcomings were, and what needed to be done to fill these gaps. I might add, too, that the national intelligence strategy offered the DCI an opportunity to give the intelligence community a clear statement of his vision for U.S. intelligence.

The real test of the strategy-driven budget, though, came when the intelligence budget moved from the select committee to the Armed Services Committee for authorization, and, later, when it moved to the Appropriations Committee. It was at this point that the demands of a relatively small National Foreign Intelligence Program met head on with the challenge of Gramm-Rudman-Hollings, which had cut the President's $320 billion defense request to a $295 billion defense budget resolution.

With the articulate help of our cross over Members on the select committee—especially our colleagues SAM NUNN, BILL COHEN, and FRITZ HOLLINGS—the strategy held the intelligence authorization intact. Compare this outcome with the reductions the intelligence budget suffered last year, and you will see the tremendous value to intelligence of a long-term strategy. For the first time, the budget cutters were faced not with the traditional choices between analysts or system, or between human intelligence or technical intelligence; instead, the budget-cutters had to choose between missions. They had to identify which missions that the intelligence community currently supported, but which they believed could be dropped or degraded.

The national intelligence strategy also played a part in our review of covert action. Along with the strategy, we asked the DCI to provide a special select section explaining his covert

action policy and how it fit into U.S. foreign policy as a whole. In my view, covert action is not an end in itself; it is a special tool that can only be justified if it is consistent with broader U.S. goals, and only if it is the best tool for achieving those goals.

The final step the select committee has taken to strengthen its watchdog function is in the area of sensitive collection operations and in relations with foreign intelligence services.

Intelligence sometimes requires the United States to conduct collection operations which, if detected, could cause the country considerable embarrassment. Others are potentially dangerous to the people carrying out the operation. Congress must know about these operations. Even if we agree that the risk of the operation is warranted, briefing Congress before the operation is carried out insures our support if the worst happens and the operation fails. The same argument is true of relations with foreign intelligence services.

During the past year, the select committee has met with the DCI to discuss these issues. We have developed procedures similar to those we use for covert action to make sure the committee is kept informed on these issues in a timely fashion. I hope that the committee will continue to press the DCI on this matter as his administration colleagues are by nature reluctant to involve Congress in sensitive collection activities.

Let me now describe how the select committee has strengthened its other role, acting as a link between the intelligence community, the Senate, and the public.

The intelligence community is not just a creature that can remain totally concealed and protected within the executive branch. Frequently people or organizations outside the executive branch have a legitimate requirement for intelligence. On other occasions, the intelligence community needs the cooperation of people or organizations outside the executive branch to carry out its mission.

Let me give you two examples.

Among the outsiders who have legitimate requirements for intelligence support is the Senate itself. We need information for making decisions on foregin policy and defense legislation. If an arms control treaty is submitted to the Senate for ratification, the Senate must decide whether the treaty can be monitored. This makes us an intelligence consumer.

Or, consider the problem of combatting terrorism. Intelligence is intrinsically tied to any program of counterterrorism; intelligence is necessary for warning of future terrorist attacks, identifying terrorists after an attack has occurred, and establishing the links between certain countries and the terrorist groups they support.

The select committee could assist in these and other cases. Indeed, during this past year we did exactly that. The members and staff of the committee received numerous briefing on U.S. monitoring capabilities as the administration developed new proposals for arms control. The committee also worked with the Holloway Commission in developing the Commission's recommendations for a U.S. counterterrorism program.

To strengthen the abilities of the committee to carry out this mission of serving as a link between the community and the rest of the world, we have tried to follow three principles.

First, our relationship with the community is designed by law, but based on trust. To earn the trust of the community during the past years we had a security specialist with several decades of experience in the intelligence community inspect the security procedures of the committee. We rated well in his eyes indeed, better than the community in some respects—and we are currently implementing the additional measures he recommended to the committee.

Second, the committee's relationship with the community must be bipartisan. Intelligence cannot be a political football; intelligence sources are too perishable for that. We may debate intelligence issues vigorously within the secure area of the committee chambers, but we cannot take those debates outside.

And, third, the select committee, in becoming the primary overseer of the intelligence community, also becomes the primary means for the public to understand the necessity for intelligence and the problems that the intelligence community faces. To ensure that the committee can perform both of these functions, during the past 2 years we have raised the professional level of the committee staff. Many of our staffers are themselves experienced intelligence analysts or intelligence managers. Others come to the staff with a background in defense or foreign policy. In either case, the objective has been to have the expertise necessary to review the intelligence community as professionals, while also explaining in a knowledgeable manner the challenges the intelligence community faces.

The value of this kind of professional staff support became clear during the past 2 years when the select committee worked with the intelligence community to examine how we could improve the community's performance in a number of areas. Let me give you a few specific cases.

According to Senate Resolution 400, the select committee has been assigned the mission of assuring "that the appropriate departments and agencies of the United States provide informed and timely intelligence necessary for the executive and legislative branch to make sound decisions." In other words, the select committee is supposed to monitor the quality of U.S. intelligence and make sure that it is reaching the consumers who need it.

In order to carry out this mission, the select committee drafted a series of case studies—postmortems, if you will—of several pieces of finished intelligence that the community had published in recent years. This intelligence ranged from national intelligence estimates to interagency intelligence memoranda, to the periodic reports that the community publishes on Soviet compliance to arms control. The purpose of the study was to determine whether the intelligence was as accurate as could be expected and, even more importantly, whether it met the needs of its audience. The draft of the study was circulated around the intelligence community for comments. Overall, the reception was favorable. This study not only showed that the committee cares about the quality of intelligence and will work with the community to make it even better; it will also serve as a benchmark for the committee in the future.

The committee has carried out similar studies on other intelligence matters. While the Stilwell Commission was reviewing U.S. policies concerning security and counterintelligence, the select committee was conducting a parallel study from the perspective of the legislative branch. An unclassified version of this study will be released tomorrow. The point to make here, though, is how the select committee worked closely with the Stilwill Commission, ensuring that our actions could be coordinated with each other. The resulting recommendations for improving security were, I believe, a splendid example of how these two branches of government can work together to solve one of the most pressing problems facing the country.

The results of this collaboration can already be seen. The executive branch has a number of initiatives underway that were originally Stilwell Commission recommendations.

On the Hill, we are taking measures to improve security. For example, the Congress handles such an unbelievably large amount of classified information—as one would expect, if Congress acts as an equal partner on matters of defense and foreign policy. Yet we have not, to be frank, developed our standard procedures for protecting this information as fully as we could. That is why, as part of the select committee's own security review, we have worked with the Senate leadership to establish the necessary measures.

One other issue deserves special mention before leaving the issue of security. In both the Stilwell Commission's study and the select committee's

own investigation, the Soviet presence in the United Nations was identified as a critical threat to the security of United States secrets. The blatant abuse of diplomatic immunity and other U.N. perquisites by the Soviet Union to protect their KGB and GRU agents is well known. The expulsion of 25 Soviets from the U.N. mission now underway is a direct result of the initiative first taken by the Cohen-Leahy amendment, which will limit the Soviet Union's ability to exploit diplomatic cover for the purpose of espionage.

As one final illustration of the recent work the select committee has done in close cooperation with the executive to solve a major intelligence problem, I would direct the attention of the Members to the committee's ongoing study of personnel policies within the community.

When all is said and done, intelligence is people. We could spend billions of dollars on the most sophisticated collection systems, but unless there is a qualified analyst to use the data, the entire effort would be wasted.

Ironically, in comparison with planning intelligence personnel, the technical problems almost seem simple. Maintaining a viable corps of intelligence professionals requires success in recruitment, processing, training, retention, and retirement. If we fail at any step, we will have major difficulties in producing the intelligence support the United States needs.

Furthermore, redirecting personnel policies in the intelligence community is like steering a supertanker: It is difficult to change course and there will always be a significant lag between the time corrective actions are taken and time the effects are seen. The problem is that most intelligence work is highly specialized. It takes considerable time just to find qualified applicants. It takes even longer to train new personnel.

The first phase of our study of intelligence personnel policies will be completed by January 1987. When completed, we will share our findings with the intelligence community and discuss with the members of the community what actions, if any, need to be taken in this area.

Finally, one other area in which the select committee has become more active is in working with other committees of the Senate on legislative items of mutual concern. For instance, when the Armed Services Committee was drafting its reform of defense acquisition policies, our staff assisted members of their staff in making sure that the newly created Under Secretary of Defense for Acquisition would have the resources necessary to insure acquisition decisions were made on the basis of the best intelligence possible. Similarly, the committee has cooperated with the Foreign Relations Committee to determine the intelligence requirements implied by the administration's policy for regional security in the Third World.

This kind of activity and cooperation by the select committee is essential to the oversight process. Under Senate Resolution 400, the review of policy concerning intelligence and the handling of information supplied by the intelligence community is concentrated in the select committee. Concentrating these matters in a single committee is absolutely necessary for the sake of security, and, hence, the ability of Congress to review such sensitive issues. However, if this arrangement is to work, the members of the select committee must assure the other members and committees in the Senate that their interests are being protected.

As I said last month, when Senator LEAHY and I brought the intelligence authorization to the floor, the oversight process in the United States is unique. I am pleased to report that the process also is a success. It works, it works well, and we are steadily improving it.

Yet, Mr. President, before leaving as chairman, I must alert my colleagues to several challenges that the intelligence community and Congress will have to face in the future. Some of these challenges will be upon us as early as next January, when we return for the first session of the 100th Congress.

The first issue is money.

Mr. President, reviewing the DCI's budget request and national intelligence strategy showed the select committee just how tightly stretched the National Foreign Intelligence Program is today. Intelligence demands and the consumers of intelligence keep growing. Everybody, it seems, needs intelligence. Defense, the State Department, the Commerce Department, the Drug Enforcement Agency, even the Department of Agriculture are presenting new requirements for intelligence.

The trouble is, this intelligence will not appear by magic. The collection systems and the analysts necessary to meet these requirements must be planned, programmed, and paid for. That is why I believe that plans for intelligence and its funding must be linked to the demands of those who consume the product.

The second problem also concerns money, but in a different way.

For reasons of security, most of the intelligence budget is hidden in the budget of the Department of Defense. The problem is that the defense budget is under pressure. The final word for fiscal year 1987 is not yet in, but it looks as though we will have a second consecutive year of cuts in outlays for defense.

Cutting the defense budget puts pressure on intelligence spending, even though the Senate may not really intend to cut intelligence at all. Protecting intelligence funding is difficult when intelligence must compete for space in a shrinking defense budget. If, as it seems, we will have even more reductions in real defense spending, it would seem that we have locked ourselves in a formula that cut into intelligence investments at the very time demands on the intelligence community are growing as never before.

The third issue I would bring to the attention of my fellow members is that, of all Government activities, intelligence may be the most sensitive to starts and stops in funding. The systems operated by the intelligence community must be planned 10 to 15 years in advance. Right now we are planning systems that will be used into the next century. Funding disruptions will have ripple effects well into the next century, too. The same is true of the very specialized talent on which the intelligence community relies; 5 or more years may be required to train a replacement for an intelligence analyst lost to private industry because of budget cuts.

I would suggest, therefore, that in considering how to reduce spending in order to meet targets for the Federal budget, we take a measured approach to intelligence. We should decide how much intelligence we will need over the long haul, consider how much we are willing to spend on intelligence, and then keep to a steady course in managing the intelligence budget.

Mr. President, this has been an awfully long description of our response to our mission. But then, Mr. President, it has been an awfully long 2 years for congressional oversight of intelligence. The year of the spy was followed by the year of the leak. The select committee was unusually visible in both, but then again the rush of spies from within intelligence organizations and the epidemic of leaks from within the Executive demanded response from the oversight process.

In both cases we have been understanding of the DCI's plight and his sensitivities, and supportive of his remedies. Americans expect this, our colleagues demand it, and we have delivered.

Mr. President, I would like to take this opportunity to thank my colleagues on the Intelligence Committee and the members of the intelligence community who have supported me during my tenure as chairman, I am proud we have accomplished so much with a committee, a majority of whose members were new to intelligence oversight.

I would like to pay special tribute to PAT LEAHY, who, as vice chairman, has demonstrated that the select commit-

tee can live up to its ideal of bipartisanship. As you know, unlike the practice in almost all other committees, in the select committee the vice chairman becomes the presiding member in the absence of the chairman. I always knew that in this role PAT would, if called, see to it that the mandate and responsibilities of the select committee would be carried out without interruption or divergence from the committee's mission.

BILL COHEN and SAM NUNN also deserve special mention for making the select committee's case in the Armed Services Committee, BILL and SAM were critical in ensuring that our colleagues on armed services understood the recommendations of the select committee and how they were reached.

Although we did not always have an identity of views, I would also express the committee's appreciation to the House Permanent select committee on Intelligence and its chairman, LEE HAMILTON. We may have disagreed on particulars, but we know that both committee shared the common goal of producing the strong intelligence program the country requires.

The Senate Appropriations Committee and, in particular, its Defense Subcommittee, deserve credit for working with the select committee to review funding issues for intelligence and to express the views of our Senate colleagues in the formulation of U.S. intelligence policy.

Among the members of the intelligence community, I must first, of course, single out Bill Casey. We may have had some disagreements during the past 2 years, but we always worked toward the same goal. Bill Casey deserves full credit for being a driving force in the restoration of U.S. intelligence capabilities and will be remembered as one of the most effective DCI's this country has had. I would also like to thank Bill for the personal effort he put into the development of the national intelligence strategy.

Others in the intelligence community with whom the select committee has enjoyed a special relationship during my term as chairman include former DDCI John McMahon; current DDCI Robert Gates; NSA Director General William Odom and his predecessor, Gen. Lincoln Faurer; past and current DIA Directors James Williams and Leonard Perroots; and Assistant Secretary of Defense Donald Latham.

There are, of course, several other officials in the intelligence community whom we would like to thank, but for reasons of security, cannot mention by name. Rest assured we appreciate their support and their service.

I would especially like to thank the staff of the select committee for their assistance, always rendered with dedication and distinction. Special thanks must go to Bernard F. McMahon, staff director; Eric Newsom, minority staff director, and Daniel Finn, who acted as both minority counsel and, when the position became vacant earlier this year, chief counsel to the committee.

I must also express the committee's appreciation to the staff members who support the select committee's oversight of intelligence community estimates and analysis, including Stephen E. Ockenden, chief of the production oversight staff; Robin Cleveland, James Currie, and Marvin Ott, our regional specialists; Michael Mattingly, George Tenet, and Joseph Meyer, who reviewed Soviet analysis and arms control issues; Natalie Bockock, our expert on petroleum estimates; Anne Greene, who covers narcotics intelligence; and John Despres, special assistant for the development of the national intelligence strategy.

In our operation division, which supports committee oversight of covert action and intelligence community internal affairs, the select committee offers its thanks to my long-time designee and Division Chief Edward Levine; John Elliff and Charles Battaglia, who are responsible for covering counterintelligence and security issues; and James Dykstra, Larry Kettlewell, and John Wickham III, who assist the committee on counterterrorism issues. I would especially like to commend the operations division for the outstanding reports it prepared for the committee this year on counterintelligence and security, counterterrorism, and personnel policies within the intelligence community.

The conference report we have submitted to the members represents the culmination of a year-long effort by the committee with the support of its Budget and Systems Analysis Division, under the leadership of Keith Hall, its Director. Jim Martin, who took on some of the most technical and complex issues associated with the intelligence budget deserves special mention, as does Charlene Packard, who supported our review of the General Defense Intelligence Program. In keeping with the bipartisan tradition of the committee, John Nelson, designee for Senator HOLLINGS, and Carolyn Fuller, designee for Senator EAGLETON, supported the committee's review of a broad range of issues.

Dorthea Roberson, our chief clerk, and David Holliday, the committee's press officer, did heroic duty in behalf of the committee's dealings with the outside world.

And finally, none of the committee's work would have been possible without the support staff. Our thanks go to Gary Moore, Director of the Support Staff and Chief of Security; Fred Ward and Joan Piermarini, who prepare the committee's transcripts; Security Officers Paul Joyal, Judy Hodgson, and Sheryl Summers; our ever-dedicated secretaries, Rose Nahrgang, Susan Salvucci, and Kathleen McGhee; the committee's public face, Receptionists Flo Thompson and Zo-Anne Thompson; and our logistics officer, without whom we would all be in the dark, Jim Van Cook.

The committee expresses its gratitude to each and all, and commends them for a job well done.

And finally, Mr. President, I would like to thank at this time Howard Baker for his decision in 1979 to select me from the class of freshman Senators for membership on the Senate Intelligence Committee. I am also grateful to his successor as majority leader, BOB DOLE, for the special confidence he placed in me when other options were available to him. It hasn't been easy, but it's always been rewarding. I trust when my successor stands here next year his committee's work will reflect well on the manner in which the Members of the Intelligence Committee in the 99th Congress met the challenge of doing the public's work in the anonymity of professional intelligence oversight.

Mr. President, at this point we felt it appropriate at the request of our colleague from North Carolina to engage in a brief colloquy. I would at this point yield for that purpose to my colleague, Mr. HELMS.

Mr. HELMS addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. I indeed have a few inquiries I would make for the purposes of the record. Let me begin by quoting the unclassified record on H.R. 4759.

Section 104 of the Senate amendment amended the Senate intelligence committee's classified supplement to its committee report through additional directions to the Intelligence Community on a variety of topics. This provision was in the nature of a Senate request for a report from the Director of Central Intelligence and therefore need not be included in the conference report. The Senate conferees have requested a report from the Director of Central Intelligence on the topics covered by Section 104 of the State amendment.

Mr. President, that was an extract from the unclassified report on H.R. 4759, regarding the Helms omnibus amendment. I wanted to pose three questions about this language to the distinguished chairman. First, it is my understanding that the Helms omnibus amendment would not be contained in the act as such, but the conferees state that it has the effect of a Senate request for a report. Is this correct?

□ 1400

Mr. DURENBERGER. Yes; as the conferees noted, the Senate committee has requested a response from the Director of Central Intelligence on this subject.

Mr. HELMS. I thank the chairman. Second, it is my understanding that the Director of Central Intelligence is required by law to respond to requests from the Intelligence Committees for information on intelligence activities. Does not the language of the conference report make clear that the effect of adopting the Helms omnibus amendment constituted a formal request for such a report, on the items contained in the classified supplement, from the Director of Central Intelligence?

Mr. DURENBERGER. It is correct that the Director of Central Intelligence is expected to respond to the Senate request and is required by section 501(a)(2) of the National Security Act to furnish any information or material concerning intelligence activities which is requested by either the House or Senate Intelligence Committee.

Mr. HELMS. I thank the chairman. Is it therefore correct that the supplement to the classified committee report adopted through the Senate amendment stands as direction to the intelligence community?

Mr. DURENBERGER. The conferees characterized the directives contained in the classified supplement to the Senate report as a Senate request for a report from the Director of Central Intelligence on the items included in the supplement. The Director of Central Intelligence, as I just stated, would be required to respond to the Senate request.

Mr. HELMS. I thank the Senator. Mr. President, I would like to ask the distinguished chairman if it is correct that the direction in the Helms amendment is considered binding?

Mr. DURENBERGER. The Director of Central Intelligence is required by statute to provide information in response to committee inquiries concerning intelligence activities.

Mr. HELMS. Mr. President, the following language is also contained in the unclassified report of H.R. 4759:

> Section 604 of the Senate amendment would have required the Director of Central Intelligence to provide a report to the Intelligence Committee of the Congress by March 1, 1987, concerning whether and to what extent the defense forces of the Government of Panama had violated the human rights of Pamamanian people, are involved in international drug trafficking, arms trafficking, or money laundering, or were involved in the death of Dr. Hugo Spadafora. The conferees decided that it was not necessary to include this provision in the conference report, in view of the fact that existing statutory authority requires the Director of Central Intelligence to respond to requests from the intelligence committees of Congress. The conferees expect the Director of Central Intelligence to provide all relevant information on the subject to the Intelligence Committees.

Mr. President, let me ask the distinguished chairman of the Intelligence Committee whether I am correct in my understanding that this language means that both the Senate and House conferees expect the Director of Central Intelligence to report all relevant information on Panama to the Intelligence Committees?

Mr. DURENBERGER. That is correct.

Mr. HELMS. Mr. President, again I thank the distinguished chairman of the Senate Select Committee on Intelligence for the fine spirit of cooperation and comity he has displayed throughout the consideration of this bill, and I appreciate his making this colloquy part of the official record.

Mr. DURENBERGER. Mr. President, I move adoption of the conference report.

Mr. MOYNIHAN addressed the Chair.

The PRESIDING OFFICER (Mr. GRAMM). The Senator from New York.

Mr. MOYNIHAN. Mr. President, before we vote, I would like to note that there are a number of us who have been concerned with what we have read in the press about this bill.

The morning after it was first brought to the floor as an authorization from the committee, we learned there were a number of provisions in the bill that had been inserted at the request of the distinguished Senator from North Carolina, measures having to do with the way the intelligence community would be organized. On some specific matters we did know the content because the Senator openly brought them to the floor, including an amendment concerning various matters having to do with Panama, and they were voted upon and prevailed.

Then we learned of other provisions which certainly came as a surprise to this Senator, who served, as my friend knows, for 8 years on the Intelligence committee; provisions having to do with the allocation of responsibilities within the intelligence community. There was a question of the primacy of the DCI, the Director of Central Intelligence, in the matter of military estimates, and the question of whether or not the Defense Intelligence Agency was to acquire a separate capacity in that regard distinct from the intelligence community at large which regularly produces estimates for the President on military affairs around the world, and does so as a community with distinct perspectives, sometimes with separate sources of information.

This morning in the New York Times, Mr. William Safire, who is well regarded in Washington and is very well-informed, has a column entitled "The 32nd Item" in which he writes of "strange doings in the murky depths." Safire says that there is something causing apoplexy at Langley, which is the Central Intelligence Agency, and he is refering to a list of 32 "intelligence problems" published in the CONGRESSIONAL RECORD on September 24. Items such as the "reasons for the continuing underestimation by CIA of Soviet strategic forces"; and "the possibility that the CIA and the State Department have been penetrated by the KGB."

"But then comes Item 32 and the gulping can be heard across the Potomac," writes Mr. Safire, "Reasons for Reported CIA Long-Term Underestimation of Soviet Submarine Capabilities."

We have seen something of the Soviet capabilities most recently this weekend.

The whole question is one which I wonder if my friend from Minnesota could enlighten us about. What has happened here? What happened in the necessary privacy of the Intelligence Committee?

□ 1410

Without prejudging in any way, because I do not know of anything, I wonder if the Senator could help me. I am afraid I came in in the middle of the colloquy between the distinguished chairman and the distinguished Senator from North Carolina. I wonder if we could not talk about this a bit?

Mr. DURENBERGER. That is fine with me, Mr. President.

Let me begin by commenting for the record that the Senator from New York and I served 6 years together, as I recall, on the Select Committee on Intelligence. For at least 4 of those years, as I recall, he was the ranking Democratic member on that committee.

Mr. MOYNIHAN. Yes, Mr. President.

Mr. DURENBERGER. I say that by way of background for a couple of comments which may or may not be relevant.

One, the specific answer to the questions that the Senator has raised relative to the Safire column, which I have not read, the Engleberg article in the New York Times, which I have read, and various other results of the apoplectic reaction of the Director of the Central Intelligence—all of those answers are available to my colleague from New York, as they are available to all other Members of this body. So whatever I say from here on out by way of clarification is all verifiable in the language of the act and can be compared with the report language from the Senate and from the House.

First, let me observe that, on the basis of his experience on the committee, particularly in the first 4 years of this administration, the Senator should find nothing unusual about curiosity on the outside of the muddling that appears to go on inside the so-called murky depths. At the same time, the Senator should find nothing

unusual about apoplexy at Langley. We all know what this means. It simply means that the Director of Central Intelligence has a relatively thin skin, which says nothing about the high quality of his professional approach to his job. Yet at times, and my colleague is well aware from the occasions on which he was a part of the apoplexy during his time, the Director of Central Intelligence has demonstrated concern about the congressional oversight process.

As I best recall what led up to the current bout of apoplexy, our colleague from North Carolina, who may or may not still be on the floor, filed a series of amendments which he proposed in the event or at such time as the intelligence authorization bill was brought to the floor for passage.

The number of amendments, perhaps more than their content, although I am sure the content had something to do with it, caused some concern on the part of the majority leader as to whether we were going to be able to finish the work of the 99th Congress in a reasonable time, given the nature of these amendments, which usually are not proposed against an intelligence authorization bill.

So, at that time, in my capacity as chairman of the committee, I met with the Senator from North Carolina and we discussed some of the amendments. We discussed the role the Senator from North Carolina wanted to play in the process of the committee's obtaining for us and for the American public certain information.

We arrived at the conclusion that to avoid putting in 32 amendments or 31 amendments, or whatever the Senator from North Carolina proposed, our staff should work together to reduce the amendments to a minimal number, which we did.

When the bill passed here 2 weeks ago, we accepted one amendment, which is the series of requests for information which has subsequently become, as the colloquy just indicated, a set of requests by the Senate for information from the Director of Central Intelligence.

In addition, the Members voted for an amendment which I resisted, which required a comparable report from the Director of Central Intelligence having to do with human rights violations and related matters in Panama. When those two amendments went to conference, the House resisted incorporating the requests, or requirements as the law may indicate, for information into the act itself. Again, as the colloquy on the floor has just indicated, at that point and again at the insistence of the House, the request for this variety of information became Senate requests of the Director of Central Intelligence.

As I pointed out on the floor 2 weeks ago, had the Senator from North Carolina presented these requests to the Intelligence Committee, they may very well have showed up as requests from the Intelligence Committee and there may very well never have been activity on the floor of the Senate. I suspect that is not the case relative to Panama as it was stated, but the reality is had he presented it to the committee as any other Senator had the right to do, it may have taken the form of requests for information from the committee.

In any event, the colloquy that just took place on the floor, as I understand, that colloquy had more to do with indicating requests of the Senate, requests for information from the DCI, than it had to do with what changes in procedure or law were going to take place. We have not requested reports from the DCI; we have requested a report, which is translated information, which can take a variety of forms, as the Senator well knows. In effect, what we have done is ask for a response from the DCI to this set of requests. Again, as my colleague knows, this response can take a variety of forms.

I just happen to recall off the top of my head that one of the requests for information from the Senator from North Carolina was for a piece of information that, by law—at least as I understand the executive authority of the President—cannot be delivered to the Senator from North Carolina or to the U.S. Senate because of executive privilege. That, to avoid curiosity about that subject, has to do with the 1980 report of the transition team of the administration. As presented in here it is a request for information and it is presumed that the Director of Intelligence may respond to that request by asserting the executive privilege in response.

But I shall finish this, because I, too—I have not been disturbed by the reports in the paper because I know that none of them is true. The issue of the prioritization of the Defense Intelligence Agency reports over DCI reports is nowhere to be found in this act as proposed or in the reports that are requested.

If the Senator can be any more specific about the allegations, with a little staff help here, I could probably clarify each item. But I think I have tried to clarify the environment in which this publicity has arisen.

I do not want to characterize any more either the behavior or the reactions of any of the individuals involved. I do not know that that would be responsive to the Senator's question.

□ 1420

Mr. MOYNIHAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. MOYNIHAN. Let me first thank my friend and colleague, the chairman of the Select Committee on Intelligence, for the openness with which he responds to my necessary somewhat obscure concerns because I know no more in this regard than I have read in the press and I am sufficiently concerned by what I have read to want to learn what is in this legislation.

Now, to specifics.

It is perfectly normal for the Select Committee on Intelligence to address requests for information from the intelligence community in the course of its oversight responsibilities. That is a normal thing to do. And I gather that there is at least one such request—well, one was provided by amendment. I am told that the House did not agree to putting that request in law, and indeed there would be no reason for it to be in law. It would be perfectly appropriate for the Intelligence Committee simply to ask the DCI for information on a particular subject and judge the quality of the result as it comes in. We have hearing processes, we have all manner of the normal ways of eliciting information, the differences being simply that it is done in confidence and behind properly closed doors.

Now, do I take it then, that the Senate side has agreed to ask the DCI, the Director of Central Intelligence, questions with regard to Panama? Is that what we understand to have been the outcome of the conference with the House?

Mr. DURENBERGER. As we indicated in the colloquy, I think the Senator from North Carolina actually read the language which is in the report, the unclassified report on H.R. 4759. The concluding part that he read says, "The conferees expect the DCI to provide all relevant information on the subject to the intelligence committees." Prior to that it sets out reference to the extent to which the defense forces of the Government of Panama have violated human rights.

Mr. MOYNIHAN. And the death of Dr. Spodafora.

Mr. DURENBERGER. That is right.

Mr. MOYNIHAN. Then I would say there is nothing in the least unusual or untoward in that the committee has asked the intelligence community for information about things that would be of interest.

Mr. DURENBERGER. I would say, if my colleague will yield, on the subject of Panama, as on the subject of the Central American countries, the Senator will recall from his service on the committee that we are continually asking the DCI for information on this particular subject.

My objection on the floor of the Senate on the issue of Panama was

not to obtaining information from the DCI. My objection was to the process of a Senator coming to the floor and making a specific request for a specific piece of information which he could very easily do by simply contacting a member of the committee. The objection was designed to discourage this kind of activity for my successors.

Mr. MOYNIHAN. So that it would not be done as a statutory matter.

Mr. DURENBERGER. Exactly right.

Mr. MOYNIHAN. I recall, if I may say, at the time I voted with the chairman in that regard, voting against the amendment, and I remarked to one of our colleagues that we must not turn the intelligence community into a congressional research service. These matters should go through the committee in a proper way.

But now, if I might briefly turn to a much more important matter, I think it is important that the Senate know that the authorization bill before us, which we are soon to adopt, does not make any changes in the structure of the Intelligence Committee, or with its legal responsibilities, or with the authority of the Director of the Central Intelligence, both as head of the CIA and as DCI.

I think we need to make that distinction for the record; the person who heads the Central Intelligence Agency also has been for some years now the President's director of the intelligence community in general and has an office in the Executive Office Building to signify that.

Mr. DURENBERGER. Right. I was going to cover this in my initial respose to my colleague, but the response was already getting too long.

There is nothing in the supplement which would change—the supplement meaning the add-ons already on the floor when the bill passed—in any way the organization of the intelligence community. There is no new allocation of responsibility within the community. The Defense Intelligence Agency does not have any new authority or any change in responsibility. The Director of Central Intelligence is still in charge of the processes in the same way that he was in charge of the process at the time the bill came to the floor.

I wonder if I might make an inquiry of my colleague before we get too far into this. This Senator made a reference earlier to the absence of the vice chairman.

Mr. MOYNIHAN. I believe the vice chairman is on his way to the floor.

Mr. DURENBERGER. I see. All right. I thank the Senator.

Mr. MOYNIHAN. I thank the Senator for his assurance. It is important to hear. It was jarring to read of a possibility that the Senate had brought changes in the charter of the intelligence community without this being explicitly presented to us. It is the proper and earned and deserved role of the Intelligence Committee to make judgments on behalf of the Senate as to what the Senate needs to know about these matters, and we place great trust in the prudence with which this deference is indulged.

I wonder if I might ask the chairman, in retrospect, does he think it would have been best to close the Chamber and discuss these matters more openly, or does he feel that the matters are sufficiently clear that there has been no change and that the intelligence community does not feel there has been a change?

Mr. DURENBERGER. My response, if the Senator is asking me as chairman of the committee, is no. I think we went about this very appropriately. I think there is a value to the open part of the process because to the degree that we can discuss some of these issues in an open fashion we remove some of the concerns about the murk. So I think it is very appropriate that we carry on a certain amount of this discussion on the floor. I am concerned about one thing only and that is that having selected, as the Senator from North Carolina did, the issue of an unpopular general in what on this floor since 1978 has been an unpopular country, as a vehicle for an amendment that was opposed by the chairman of the committee and put to a vote, some precedent of some kind may have been set by the votes of 53 of our colleagues who said we ought to have the same right to come to the floor on an intelligence authorization bill and amend it even though we have never been part of the process; we have delegated the process to 15 of our colleagues; they do meet in secret; they are not able to discuss a lot of these matters publicly, but we therefore assert the same pride we have with regard to other authorizing committees—to come to the floor and, if we can structure the amendment in a timely fashion around an appropriate subject—the more unpopular foreign country or dictator the better—the more we can dictate the authorizations.

□ 1430

Again, in this respect, I am doing nothing by these comments, I intend nothing by these comments, to detract from the motivations of the Senator from North Carolina. I appreciate, as you do, and a lot of other people do, his concern for our national security as it relates to the future of Panama, and particularly for the record of human rights violations in that country.

Mr. MOYNIHAN. As the distinguished chairman knows, in the early years of the existence of the select committee, there was a subcommittee that set out to provide a charter for the intelligence community. If I am not mistaken, the present statutory provision for the Central Intelligence Agency is one paragraph in the Defense Act of 1947. It speaks more of coordinating functions than the creation of a large institution.

In time, the efforts of that subcommittee to produce a charter collapsed of their own right. The more the matter was considered, the longer the document became. If one paragraph is inadequate, 800 pages is perhaps excessive. In any event, in the end this effort to provide a charter ceased, and we have simply confined ourselves to the understandings that have developed through the appropriations process and the authorization process and the relationship with the two committees of Congress. We have seen an allocation of responsibilities that is well enough understood, works to the satisfaction of successive Presidents, we think, and works to the satisfaction of successive committees as well.

Since the Senator from Minnesota has said it is the case, let us be quite explicit: Do I correctly understand from the distinguished chairman of the Select Committee on Intelligence that no changes are provided in this statute, which we are about to adopt, which in any way alter the organization, responsibilities, or duties of the intelligence community, in the large sense that we use that word, referring to the Central Intelligence Agency, the Defense Intelligence Agency, the National Security Agency, and a number of other bodies?

Mr. DURENBERGER. The Senator is correct.

Mr. MOYNIHAN. I thank the Senator.

I hope I have not delayed the Senate, which has not been very busy today. It seemed to me important to get that matter formally on the record and to dispel any doubts.

Mr. DURENBERGER. Mr. President, I understand that the vice chairman is now on an elevator, on his way to the floor.

Mr. President, I am prepared to move the adoption of the conference report.

I see that my colleague from Vermont is now on the floor. If he had been here during my opening statement, I would have read more of it and he would have heard the glowing compliments I paid him, but a perusal of the statement will provide him that opportunity.

As any chairman of this uniquely organized committee, I am indebted to the vice chairman in bringing nonpartisanship to the consideration of these issues.

Mr. LEAHY. Mr. President, I appreciate the comments of the Senator from Minnesota.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

□ 1440

Mr. LEAHY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEAHY. Mr. President, the conference report before us is one of those unique things in the Senate or in Congress as a whole.

We, I feel, as Senators can be very proud of what it contains. Most of what it contains we are not going to talk about either on this floor or elsewhere.

The distinguished Senator from Minnesota deserves an enormous amount of credit for pushing forward and getting this authorization through. It is one where the negotiations are by nature secret both with us and with the other body.

I have enjoyed working with the distinguished Senator from Minnesota in that respect. I think the unique aspect of what is contained in here for the Senate is those things contained from the Senate come with virtual—I was going to say bipartisan—truly nonpartisan unanimity from our committee. Maybe in the days of television everywhere this might be an example sometimes when its best is not. But I think that Senators understand the realities of the extraordinarily classified aspects of this and why it has to be that way.

I certainly urge the acceptance and adoption of this conference report.

Mr. DURENBERGER. Mr. President, I move the adoption of the conference report.

The PRESIDING OFFICER. If there be no futher debate, the question is on agreeing to the conference report.

The conference report was agreed to.

Mr. DURENBERGER. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

Mr. LEAHY. Mr. President, I move to lay that motion on the table

The motion to lay on the table was agreed to.

Mr. DURENBERGER. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

□ 1450

Mr. ARMSTRONG. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE KOREAN WAR MEMORIAL

Mr. ARMSTRONG. Mr. President, it is my understanding that the leadership and the cloakroom staffs on each side are running the trap lines on the Korean War Memorial legislation. I just wanted to make a brief observation about it because I think the passage of this legislation, which I believe is essentially assured both in this Chamber and in the other body, if not before the day is over certainly within the next 24 to 48 hours, is extremely important and significant.

In fact, Mr. President, I believe that this is a truly historic day in the life of our country for the Senate to pass legislation authorizing construction of the Korean War Memorial bill. In doing so, the Senate recognizes the sacrifice of nearly 6 million Americans who fought for human dignity and freedom under extraordinarily trying and difficult circumstances.

In a sense, these men and women who went to Korea are the "forgotten warriors." Today, or later today, or perhaps tomorrow, depending on the ultimate passage of this legislation, we will take the first step to honor each and every one of those who answered the call of duty for their country.

While this is a proud moment for America, it is also, in a sense, a sobering one, because for more than three decades Korean veterans have been forgotten. With the exception of Korea, memorials have been constructed in our Nation's Capital to honor the veterans of every war in which this country has been engaged since the American Revolution. So while we are late in taking this step and establishing this war memorial, we do so now with a tremendous sense of pride and obligation and gratitude to those who served.

May I also say, Mr. President, it has been a great personal pleasure for me to be involved with the passage of this legislation. I especially want to thank those who have made it possible for it to come to the floor of the Senate and to have it passed this week. I want to thank my colleague and friend, MALCOLM WALLOP, and his staff on the Senate Public Lands Subcommittee, and also Senator JERRY DENTON and Senator JOHN GLENN; and, in the other body, our friends, Congressmen STAN PARRIS, JIM FLORIO, SONNY MONTGOMERY, and JOHN PAUL HAMMERSCHMIDT.

I would also like to acknowledge, if I may, Mr. President, the fine contribution to this effort which has been made by outside groups, especially the Disabled American Veterans, the Veterans of Foreign Wars, and the Embassy of the Republic of Korea. Because of the involvement of each of them, we believe not only will it be constructed in a timely and appropriate manner, but also that it will be done in a way which involves many thousands of Americans and Koreans, as well, suitable to the honor of the veterans involved.

Then I would like to offer my personal thanks to the many Korean veterans and families of Korean veterans who have worked to ensure the passage of this legislation. The phone calls, the public support, the private funding which has been raised for this effort is extremely significant and just reinforces my conclusion, Mr. President, that this is a proud moment in the life of our country.

I thank the Chair.

I yield the floor.

Mr. DENTON. Mr. President, I am delighted that the Senate is acting today on H.R. 2205, legislation to establish a Korean War Memorial. I am gratified that those of us in the Senate have been able to agree upon a reasonable and responsible approach to a truly crying need.

I particularly want to thank my friend from Colorado [Mr. ARMSTRONG], my friend and service colleague from Ohio [Mr. GLENN], the chairman of the Committee on Energy and Natural Resources, Mr. MCCLURE, and the chairman of that committee's Subcommittee on Public Lands, Reserved Water and Resource Conservation, Mr. WALLOP. Their work, and the persistent and effective efforts of their staffs, have made the legislation possible in the form of a committee amendment to the House-passed bill.

It is clear that the time has come for our country to acknowledge the contributions and sacrifices of our men and women who served during the Korean war. The Korean war is the only significant conflict in which United States troops were engaged that does not have a memorial in our Nation's Capital.

No one would question that the men and women who served in Korea were as brave and as devoted to the ideals of freedom as were those who fought in our other conflicts. The fact, however, that the Korean war was legally considered as a "police action," conducted under the auspices of the United Nations, and with a somewhat ambiguous outcome, has perhaps stood in the way of full appreciation of the service and sacrifice of the Americans who fought there.

Mr. President, the time has come for the Congress to act to authorize a Korean War Memorial. The brave men and women who served in our Armed Forces during that conflict deserve no less.

The Senate had three bills before it, of which one, H.R. 2205, was originally passed by the other body in a very different form from that which it has today.

One of the two Senate bills, S. 1223, introduced by my distinguished colleague and friend from Colorado, provided for Federal funding of a memori-

al and contained an open-ended authorization.

By contrast, my bill, Senate Joint Resolution 184, sought to authorize private funding for the memorial, provided for full involvement of the appropriate governmental bodies, included a sunset provision, and designated a specific private organization to raise funds and build the memorial. I believed that the private option needed to be seriously considered, and I am gratified that that goal was fully achieved during the Senate's examination of the issue.

I understand that some of my colleagues had concerns about private funding of a memorial in light of the situation with another memorial. I think it only fair to point out, however, that the Vietnam Veterans Memorial did turn out fairly well, a result in which I had some interest and role, and that its popularity certainly attests to its responsiveness to the concerns of many of our citizens.

Moreover, I believe it fair to say that the memorial was erected far more quickly with private funds than it would have been with public funds. I hope that the same situation will prevail with the Korean War Memorial, and that the combination of private funds and Federal "seed money" will facilitate that process.

I would also like to observe that we all owe a debt of gratitude to the private groups and individuals who have worked long, hard, and effectively to awaken the public and the Congress to the need for a Korean War Memorial. That we are acting on legislation here today is in large measure atttributable to their efforts. They have my appreciation, and I am sure the appreciation of everyone else who believes that there should be a Korean War Memorial in our Nation's Capital.

I am particularly grateful that Senator ARMSTRONG and I were able to compromise our different approaches to the problem and to agree upon legislation that, I strongly believe, responds effectively to the deep and growing national desire for a memorial. As always, Senator ARMSTRONG showed himself to be both an effective legislator and a most congenial colleague.

On his behalf, I am sure, as well as on my own, I extend thanks to Wendy Lechner of Senator ARMSTRONG's staff and to Allan Cameron of my staff. They worked effectively together to shape the compromise to which their principals agreed.

I also thank the staff of the Committee on Energy and Natural Resources, and its Subcommittee on Public Lands, Reserved Water and Resource Conservation, particularly Tony Benvinetto and Patty Kennedy, for their effective efforts and assistance. Our Korean war veterans owe all of them thanks and appreciation.

Mr. President, my purpose in submitting legislation was to see a memorial erected for those who served in Korea. That purpose is, I am confident, shared by all of us who have an interest in the issue. I hope that we can now move quickly to achieve that most worthy goal.

The brave men and women who fought and died in Korea to preserve our freedom, and the cause of freedom throughout the world, deserve to have a memorial in Washington, DC. That memorial will be a fitting, if inadequate, testimonial to the ongoing debt of gratitude that we and all Americans owe to them.

Thank you, Mr. President.

FUTURES TRADING ACT OF 1986

Mr. DOLE. Mr. President, I ask unanimous consent that we now turn to the consideration of Calendar No. 636, S. 2045, the commodity futures trading bill.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 2045) to amend the Commodity Exchange Act to reauthorize appropriations to carry out such act, and for other purposes.

The PRESIDING OFFICER. Is there objection to the request for the Senator from Kansas?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Agriculture, Nutrition, and Forestry, with an amendment to strike all after the enacting clause and insert in lieu thereof, the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Futures Trading Act of 1986".

TITLE I—ENFORCEMENT

SEC. 101. FRAUDULENT PRACTICES.

Section 4b of the Commodity Exchange Act (7 U.S.C. 6b) is amended—

(1) by designating the first and second unnumbered paragraphs as subsections (a) and (b), respectively;

(2) in subsection (a) (as so designated)—

(A) by striking out "on or subject to the rules of any contract market," in clause (2);

(B) by redesignating clauses (a), (b), and (c) as clauses (A), (B), and (C), respectively; and

(C) by redesignating subclauses (A), (B), (C), and (D) as subclauses (i), (ii), (iii), and (iv), respectively; and

(3) by adding at the end thereof the following new subsection:

"(c) Nothing in this section shall apply to any activity that occurs on a board of trade, exchange, or market, or clearinghouse for such board of trade, exchange, or market, located outside the United States, or territories or possessions of the United States, involving any contract of sale of any commodity for future delivery made, or to be made, on or subject to the rules of such board of trade, exchange, or market.".

SEC. 102. EXTRATERRITORIAL SERVICE OF SUBPOENAS.

Section 6(b) of the Commodity Exchange Act (7 U.S.C. 15) is amended—

(1) in the fourth sentence, by striking out "or any State" and inserting in lieu thereof ", any State, or any foreign country or jurisdiction"; and

(2) by inserting after the fourth sentence the following new sentence: "A subpoena issued under this section may be served upon any person who is not to be found within the territorial jurisdiction of any court of the United States in such manner as the Federal Rules of Civil Procedure prescribe for service of process in a foreign country.".

SEC. 103. EX PARTE APPOINTMENT OF TEMPORARY RECEIVERS.

The proviso of the first sentence of section 6c of the Commodity Exchange Act (7 U.S.C. 13a-1) is amended by inserting within the parenthetical phrase before the closing parenthesis the following: ", and other than an order appointing a temporary receiver to administer such restraining order and to perform such other duties as the court may consider appropriate".

TITLE II—LEVERAGE TRANSACTIONS

SEC. 201. DEFINITIONS.

Section 2(a)(1)(A) of the Commodity Exchange Act (7 U.S.C. 2) is amended—

(1) in the first proviso of the third sentence (relating to the definition of the term "commodity"), by striking out ", and transactions subject to regulation by the Commission pursuant to section 19 of this Act"; and

(2) in the sixteenth sentence (relating to the definition of the term "commodity trading advisor")—

(A) by striking out the comma after "a contract market" and inserting in lieu thereof "or"; and

(B) by striking out "or any leverage transaction authorized under section 19,".

SEC. 202. PENALTY FOR MANIPULATION OF PRICES.

The first sentence of section 9(b) of the Commodity Exchange Act (7 U.S.C. 13(b)) is amended—

(1) by inserting "or" after "4h,"; and

(2) by striking out ", or section 19".

SEC. 203. PENALTY FOR PROHIBITED TRANSACTIONS.

The first sentence of section 9(d) of the Commodity Exchange Act (7 U.S.C. 13(d)) is amended by striking out "or any transaction for the delivery of any commodity under a standardized contract commonly known to the trade as a margin account, margin contract, leverage account, or leverage contract, or under any contract, account, arrangement, scheme, or device that the Commission determines serves the same function or functions as such a standardized contract, or is marketed or managed in substantially the same manner as such a standardized contract,".

SEC. 204. PENALTY FOR USE OF NONPUBLIC INFORMATION.

Section 9(e) of the Commodity Exchange Act (7 U.S.C. 13(e)) is amended by striking out each place it appears the following: ", or in any transaction for the delivery of any commodity under a standardized contract commonly known to the trade as a margin account, margin contract, leverage account, or leverage contract, or under any contract, account, arrangement, scheme, or device that the Commission determines serves the same function or functions as such a standardized contract, or is marketed or managed in substantially the same manner as such a standardized contract".

SEC. 205. RELATION TO OTHER LAWS.

Section 12(e)(2) of the Commodity Exchange Act (7 U.S.C. 16(e)(2)) is amended by striking out "or 19".

SEC. 206. LEVERAGE TRANSACTIONS.

Section 19 of the Commodity Exchange Act (7 U.S.C. 23) is repealed.

SEC. 207. PRIVATE RIGHT OF ACTION.

Section 22(a)(1)(C) of the Commodity Exchange Act (7 U.S.C. 25(a)(1)(C)) is amended—

(1) by inserting "or" after the semicolon at the end of clause (i);

(2) by striking out clause (ii); and

(3) by redesignating clause (iii) as clause (ii).

SEC. 208. EFFECTIVE DATE.

The amendments made by this title shall become effective 2 years after the date of enactment of this Act.

TITLE III—REGISTERED FUTURES ASSOCIATIONS

SEC. 301. DISCIPLINARY ACTIONS.

Subsection (h) of section 17 of the Commodity Exchange Act (7 U.S.C. 21(h)) is amended to read as follows:

"(h)(1)(A) If any registered futures association takes final disciplinary action against any member of the association or any person associated with such a member or denies admission to any person seeking membership in the association, or bars any person from being associated with a member, the association shall promptly file notice thereof with the Commission.

"(B) The notice shall be in such form and contain such information as the Commission, by rule, may prescribe as necessary or appropriate to carry out the purposes of this Act.

"(2)(A) Any action with respect to which a registered futures association is required by paragraph (1) to file notice shall be subject to review by the Commission—

"(i) on the motion of the Commission; or

"(ii) on application by any person aggrieved by the action filed within—

"(I) 30 days after the date the notice was filed with the Commission and received by the aggrieved person; or

"(II) such longer period as the Commission may determine.

"(B) Application to the Commission for review, or the institution of review by the Commission on its own motion, shall not operate as a stay of the action unless the Commission otherwise orders, summarily or after notice and opportunity for hearing on the question of a stay (which hearing may consist solely of the submission of affidavits or presentation of oral arguments).

"(C) The Commission shall establish standards for expedited procedures to be used in the consideration of the request for a stay.".

SEC. 302. COMMISSION REVIEW OF ASSOCIATION ACTION.

Subsection (i) of section 17 of the Commodity Exchange Act (7 U.S.C. 21(i)) is amended to read as follows:

"(i)(1) In a proceeding to review final disciplinary action taken by a registered futures association against a member thereof or a person associated with a member, after appropriate notice and opportunity for hearing (which hearing may consist solely of consideration of the record before the association and opportunity for the presentation of supporting reasons to affirm, modify, or set aside the sanction)—

"(A) if the Commission finds—

"(i) on the basis of the record in the proceeding before the association and such other matters as may be presented to the Commission, that the member or person associated with a member has engaged in such acts or practices or has failed to engage in such acts or practices;

"(ii) that the acts, practices, or failures to act, are in violation of the rules of the association as specified in the determination of the association; and

"(iii) that the rules of the association are and were applied in a manner consistent with this Act,

the Commission shall, by order, so declare and, as appropriate, affirm the sanction imposed by the association, modify the sanction in accordance with paragraph (2), or remand the case to the association for further proceedings; or

"(B) if the Commission makes no such finding, the Commission shall, by order—

"(i) set aside the sanction imposed by the association; and

"(ii) if appropriate, remand the case to the association for further proceedings.

"(2) If, after a proceeding conducted in accordance with paragraph (1), the Commission finds that any penalty imposed on a member or person associated with a member is excessive, with due regard for the public interest, the Commission shall, by order, cancel, reduce, or require the remission of the penalty.

"(3)(A) In any proceeding to review the denial of membership in a registered futures association or the barring of any person from being associated with a member, after appropriate notice and opportunity for hearing (which hearing may consist solely of consideration of the record before the association and opportunity for the presentation of supporting reasons to affirm, modify, or set aside the action of the association), the Commission shall, by order, dismiss the proceeding for review if the Commission determines that—

"(i) the specific grounds on which the denial or bar is based exist in fact;

"(ii) the denial or bar is in accordance with the rules of the association; and

"(iii) the rules are and were applied in a manner consistent with this Act.

"(B) If no such determination is made, the Commission shall, by order, set aside the action of the association and require the association to admit the applicant to membership in the association or to permit the person to be associated with a member.

"(4) Any person (other than a registered futures association) aggrieved by a final order of the Commission entered under this subsection may file a petition for review with a United States court of appeals in accordance with section 6(b).".

SEC. 303. RULE REVIEW PROCEDURES.

Section 17(j) of the Commodity Exchange Act (7 U.S.C. 21(j)) is amended by striking out the third sentence.

TITLE IV—AUTHORIZATION FOR APPROPRIATIONS AND MISCELLANEOUS AMENDMENTS

SEC. 401. CERTAIN PROHIBITED TRANSACTIONS.

Section 9(d) of the Commodity Exchange Act (7 U.S.C. 13(d)) is amended—

(1) in the first sentence, by inserting before the period at the end thereof the following: "if nonpublic information is used in the investment transaction, if the investment transaction is prohibited by rule or regulation of the Commission, or if the investment transaction is made through the use of any instrument regulated by the Commission, except that the prohibitions in this sentence shall not apply to any transaction or class of transactions that the Commission, by rule or regulation, has determined would not be contrary to the public interest or otherwise inconsistent with the purposes of this subsection"; and

(2) by striking out the second and third sentences.

SEC. 402. AUTHORIZATION FOR APPROPRIATIONS.

Subsection (d) of section 12 of the Commodity Exchange Act (7 U.S.C. 16(d)) is amended to read as follows:

"(d) There are authorized to be appropriated to carry out this Act such sums as may be required for each of the fiscal years during the period beginning October 1, 1986, and ending September 30, 1992.".

SEC. 403. TECHNICAL CORRECTIONS.

The Commodity Exchange Act is amended—

(1) in the third sentence of section 2(a)(1)(B)(iv)(I) (7 U.S.C. 2a(iv)(I)), by striking out "Securities Exchange Commission" and inserting in lieu thereof "Securities and Exchange Commission";

(2) in the fourth full sentence of section 5a(12) (7 U.S.C. 7a(12)), by striking out "particpate" and inserting in lieu thereof "participate";

(3) in the first sentence of section 9(c) (7 U.S.C. 13(c)), by striking out "section 4k." and inserting in lieu thereof "section 4k,";

(4) in the first sentence of section 9(d) (7 U.S.C. 13(d)), by striking out "advance guarantee" and inserting in lieu thereof "advance guaranty";

(5) by repealing section 11 (7 U.S.C. 14 note);

(6) in the second full sentence of section 17(b)(2) (7 U.S.C. 21(b)(2)), by striking out "with in" and inserting in lieu thereof "within"; and

(7) in section 17(k)(1) (7 U.S.C. 21(k)(1)), by striking out "title" and inserting in lieu thereof "section".

Mr. HELMS. Mr. President, I have been in consultation with the distinguished Senator from Nebraska [Mr. ZORINSKY] and the majority leader. It is certainly our hope that we will be able to move expeditiously on this. If we get bogged down, down she goes.

Let me yield to Senator ZORINSKY.

Mr. ZORINSKY. Mr. President, I concur with the chairman in his assessment that expeditious treatment of this should take place. We have spent a lot of time in the committee concerning hearings and the markup. I hope that my colleagues would allow us to continue expeditously on this bill. Otherwise, as has been indicated, the bill would have to be pulled down.

AMENDMENT NO. 3228

(Purpose: To revise agricultural price support and related programs, federal meat inspection requirements, and for other purposes)

Mr. BOSCHWITZ. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER (Mr. ARMSTRONG). The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Minnesota [Mr. BOSCHWITZ] proposes an amendment numbered 3228.

Mr. BOSCHWITZ. Mr. President, I ask unaninous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment reads as follows:

At the appropriate place in the bill, add the following:

TITLE —GENERAL PROVISIONS

SEC. . CROSS COMPLIANCE FOR PRODUCERS OF EXTRA LONG STAPLE COTTON

Paragraph (16) of section 103(h) of the Agricultural Act of 1949 (7 U.S.C. 1444(h)(16)) is amended to read as follows:

"(16)(A) Notwithstanding any other provision of law, except as provided in subparagraph (B), compliance on a farm with the terms and conditions of any other commodity program may not be required as a condition of eligibility for loans or payments under this subsection.

"(B) In the case of each of the 1989 and 1990 crops of extra long staple cotton, the Secretary may require that, as a condition of eligibility of producers for loans or payments under this subsection, the acreage planted for harvest on the farm to any other commodity for which an acreage limitation program is in effect shall not exceed the crop acreage base established for the farm for that commodity.

"(C) Notwithstanding any other provision of law, in the case of each of the 1987 and 1988 crops of extra long staple cotton, compliance with the terms and conditions of the program authorized by this subsection may not be required as a condition of eligibility for loans, purchases, or payments under any other commodity program.".

SEC. . LOCAL AGRICULTURAL STABILIZATION AND CONSERVATION COMMITTEES.

The fifth paragraph of section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)) (as amended by section 3 of Public Law 99-253 (100 Stat. 36)) is amended—

"(1) by inserting after the third sentence the following new sentence: "Notwithstanding the preceding sentence, there may be 1 local administrative area in any county for which there had been established less than 3 local administrative areas as of December 23, 1985."; and

"(2) in the sixth sentence (as it existed before the amendment made by paragraph (1)), by striking out ": *Provided,*" and all that follows through the period and inserting in lieu thereof a period.

SEC. . VALENCIA PEANUTS.

Section 108B(4)(A) of the Agricultural Act of 1949 (7 U.S.C. 1445c-2(4)(A)), as added by section 705 of the Food Security Act of 1985, is amended by inserting after "additional peanuts" the following: "(other than net gain on additional peanuts in separate type pools established under paragraph (3)(B)(i) for Valencia peanuts produced in New Mexico)".

SEC. . BASIS FOR COMPUTATION OF EMERGENCY COMPENSATION UNDER THE 1986 WHEAT PROGRAM.

(a) Section 107D(c)(1)(E)(ii) of the Agricultural Act of 1949 is amended by striking out "marketing year for such crop" and inserting in lieu thereof "first 5 months of the marketing year for the 1986 crop and the marketing year for each of the 1987 through 1990 crops".

(b) The amendment made by this section shall not be applicable to any producer of 1986-crop wheat who (1) elects to have payments under section 107D(c)(1)(E)(ii) of the Agricultural Act of 1949 computed in accordance with the provisions of law in effect prior to the enactment of this Act and (2) so informs the Secretary of Agriculture in writing by December 1, 1986.

SEC. . ELIGIBILITY OF CERTAIN LAND UNDER THE CONSERVATION RESERVE PROGRAM.

Section 1231 of the Food Security Act of 1985 is amended by adding at the end thereof a new subsection (f) as follows: "(f) For purposes of this subtitle, alfalfa and other multiyear grasses and legumes in rotation, as approved by the Secretary, shall be considered agricultural commodities.".

TITLE —FEDERAL MEAT INSPECTION

SEC. . SHORT TITLE

This title may be cited as the "Processed Products Inspection Improvement Act of 1986".

SEC. . PURPOSE.

The amendments made by this title are in furtherance of the findings made by Congress in section 2 (21 U.S.C. 602) of the Federal Meat Inspection Act.

SEC. . AMENDMENTS TO FEDERAL MEAT INSPECTION ACT.

(a) MANNER AND FREQUENCY OF INSPECTION.—Section 6 of the Federal Meat Inspection Act (21 U.S.C. 606) is amended by striking out "That for purposes" and all that follows through "*Provided,* That", and inserting in lieu thereof the following:

"For the purposes hereinbefore set forth, the Secretary shall cause to be made by inspectors appointed for that purpose, an examination and inspection of meat food products prepared for commerce in any slaughtering, meat-canning, salting, packing, rendering, or similar establishment. Such examination and inspection shall be conducted with such frequency and in such manner as the Secretary deems necessary, as provided in rules and regulations issued by the Secretary, taking into account such factors as the Secretary deems to be appropriate, including—

"(1) the nature and frequency of the processing operations at such establishment;

"(2) the adequacy and reliability of the processing controls and sanitary procedures at such establishment; and

"(3) the history of compliance with inspection requirements in effect under this Act, by the operator of such establishment or anyone responsibly connected with the business (as described in section 401(g) of this Act) that operates such establishment.

All such products found by such inspectors, if any, and by the operator of such establishment to be not adulterated shall be marked, stamped, tagged, or labeled as 'Inspected and passed'; and all such products found by any of such inspectors or by the operator of such establishment to be adulterated shall be marked, stamped, tagged, or labeled as 'Inspected and condemned'. All such condemned products shall be destroyed for human food purposes. The Secretary may suspend inspection at, and thereby remove inspectors from, any establishment that fails to so condemn adulterated meat food products or fails to so destroy condemned meat food products. For purposes of any examination and inspection, such inspectors shall have access to every part of an establishment at all times, by day or night, and without regard to, whether such establishment is operated. Notwithstanding the preceding provisions of this section,".

(b) ENFORCEMENT METHODS.—Section 401 of the Federal Meat Inspection Act (21 U.S.C. 671) is amended—

(1) by inserting "(a)" after "Sec. 401.",

(2) in the first sentence—

(A) by striking out "applicant, for" and inserting in lieu thereof "applicant for",

(B) by striking out "any felony, or (2)", and

(C) by inserting before the period at the end thereof "or (2) any felony",

(3) in the second sentence—

(A) by indenting the first word 2 ems so as to create a new paragraph, and

(B) by inserting "(f)" before the first word,

(4) by inserting "(g)" before the first word of the third sentence,

(5) in the fourth sentence—

(A) by striking out "The" and inserting in lieu thereof "(h) Except as provided in subsection (e)(2), the", and

(B) by striking out "this section" and inserting in lieu thereof "subsection (e)", and

(6) by inserting after subsection (a), as so designated by paragraph (1) of this subsection, the following new subsections:

"(b)(1) On the request of the Secretary at the time of the sentencing of an individual who is a person responsibly connected with any business requiring inspection under title I of this Act and who is convicted of a felony involving—

"(A) the intentional adulteration of food (except as defined in section 1(m)(8) of this Act);

"(B) the adulteration of food, as defined in section 1(m)(8) of this Act, with intent to defraud;

"(C) bribery; or

"(D) extortion;

the sentencing court shall issue a temporary order forbidding such individual to exercise operational control of, or to be physically present at, any establishement requiring inspection under title I of this Act if the court finds that the exercise of operational control by, or the presence of, such individual at the establishment either poses a direct and substantial threat to the public health or safety or, if such individual is convicted of a felony described in subparagraph (B), poses a clear likelihood of significant economic harm to consumers.

"(2) Such order shall terminate—

"(A) whenever the Secretary determines by order, after a hearing on the record, whether such individual should exercise operational control of, or be physically present at any establishment requiring inspection under title 1 of this Act, and judicial review, if any of such determination is completed; or

"(B) ninety days after the issuance of such temporary order by the court if the Secretary does not commence such hearing before the expiration of such ninety days;

whichever occurs earlier.

"(c) Any determination and order of the Secretary issued under subsection (a) or (b) shall be conclusive and enforceable unless the affected applicant for, or recipient of, inspection service or the affected individual files, not later than thirty days after the effective date of such order, a petition for review of such order in the United States Court of Appeals for the District of Columbia Circuit or the court of appeals for the circuit in which the relevant establishment is doing business. Judicial review of such order shall be upon the record upon which the determination and order are based

"(d)(1) Subject to paragraph (3), the Secretary may commence a civil action in an appropriate court, as provided in section 404, to withdraw inspection service under title I of this Act with respect to any establishment or to prevent any individual responsibly connected with any business requiring inspection under title I of this Act from exercising operational control of, or being present at, any establishment requiring inspection under title 1 of this Act.

"(2) If the court finds on the basis of clear and convincing evidence, that the recipient of inspection service or such individual has repeatedly failed to comply with the requirements of this Act, or the rules and regulations issued under this Act, in a manner that poses a direct and substantial threat to the public health or safety, then the court shall issue an order—

"(A) withdrawing inspection at such establishment; or

"(B) forbidding such individual to exercise operational control of, or to be physically present at, such establishment?

for such period as the court deems necessary to carry out the purposes of this Act.

"(3) Not less than ninety days, and not more than 450 days, before commencing a civil action under paragraph (1), the Secretary shall give to each recipient of inspection service, and each individual responsibly connected with the business, with respect to which such action is commenced a written notice that includes—

"(A) a statement that the Secretary intends to commence such action;

"(B) a comprehensive description of the violations of this Act and the regulations issued under this Act alleged by the Secretary; and

"(C) a description of the actions the Secretary considers necessary to be taken by such recipient or such individual to comply with this Act and to eliminate the need to commence such civil action.

"(c)(1) The Secretary may temporarily withdraw inspection service under title I of this Act with respect to any establishment for such period as is necessary to ensure the safe and effective performance of official duties under this Act if the Secretary determines, after an opportunity for a hearing on the record, that an officer, employee, or agent of such establishment—

"(A) threatened to forcibly assault;

"(B) forcibly assaulted;

"(C) forcibly intimidated ; or

"(D) forcibly interfered with;

an employee of the United States engaged in, or on account of, the performance of any of such official duties.

"(2)(A) Notwithstanding paragraph (1), the Secretary may temporarily suspend inspection service under title I of this Act with respect to any establishment pending an expedited administrative hearing on the record and judicial review of the order of the Secretary based on such record, if the Secretary determines that temporary suspension of such inspection service is necessary for the safety of any employee who performs official duties under this Act

"(B) If the Secretary receives, before or after temporarily suspending such inspection service in accordance with subparagraph (A), adequate written assurances from the recipient of inspection service, or the individuals involved, that the conduct or circumstances that threatened the safety of such employee will not continue to recur, the Secretary may continue or restore such inspection service on the condition that such assurances are fulfilled.".

(c) WARNING; REPORTING OF VIOLATIONS.—Section 406 of the Federal Meat Inspection Act (21 U.S.C. 676) is amended—

(1) in subsection (b) by adding at the end thereof the following:

"In determining whether the public interest could be adequately served by a written notice of warning, the Secretary shall take into account, among other factors—

"(1) the compliance history of such establishment;

"(2) the magnitude of the violation;

"(3) whether compliance with this Act would likely be obtained as a result of such notice; and

"(4) whether such violation is of a minor or technical nature.". and

(2) by adding at the end thereof the following new subsection:

"(c) Unless the Secretary by regulation provides otherwise, before any violation of the Act is reported by the Secretary for prosecution of a criminal proceeding, the Secretary shall give the person alleged to have committed such violation—

"(1) reasonable notice that the Secretary intends to report such violation for prosecution; and

"(2) an opportunity to present to the Secretary, orally or in writing, views with respect to such proceeding.".

(d) CONFORMING AMENDMENTS.—

(1) NIGHTTIME.—Section 9 of the Federal Meat Inspection Act (21 U.S.C. 609) is amended by inserting ", except as provided in section 6," after "equines, and" the first place it appears.

(2) ADMINISTRATION.—Section 21 of the Federal Meat Inspection Act (21 U.S.C. 621) is amended by striking out "and meat food products" and inserting in lieu thereof "thereof, and of meat food products".

(e) CONSTRUCTION OF AMENDMENTS.—The amendments made by this section shall not be construed to authorize the Secretary of Agriculture to refuse to provide inspection under the Federal Meat Inspection Act at an establishment solely because such establishment does not participate in a total plant quality-control program.

SEC. . REENACTMENT OF FORMER PROVISIONS OF LAW.

(a) REENACTMENT.—Effective 6 years after the date of the enactment of this Act, sections 6, 9, 21, 401, and 406 of the Federal Meat Inspection Act (21 U.S.C. 606, 609, 621, 671, 676) are amended to read, respectively, as such sections read immediately before the date of the enactment of this Act.

(b) SAVING PROVISION.—The amendments made by subsection (a) shall not have the effect of releasing or extinguishing any penalty, forfeiture, or liability incurred under the Federal Meat Inspection Act as amended by section 1023, or under the rules or regulations issued under such Act.

SEC. . SENSE OF CONGRESS.

It is the sense of Congress that the Secretary of Agriculture should—

(1) carry out a program to detect residues in livestock that are subject to inspection under title I of the Federal Meat Inspection Act, and

(2) evaluate the feasibility of, and develop, a program that would enable the Secretary to trace any particular livestock that are subject to inspection under title I of the Federal Meat Inspection Act, in order to identify the producer of such livestock.

SEC. . ANNUAL REPORT.

Not later than 1 year after the date of the enactment of this Act, and annually thereafter, the Secretary of Agriculture shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report describing—

(1) any proposed or taken by the Secretary to implement the amendments made by this subtitle,

(2) any action proposed or taken by the Secretary to carry out a program to detect residues in livestock that are subject to inspection under title I of the Federal Meat Inspection Act,

(3) any action proposed or taken by the Secretary to evaluate the feasibility of, and develop, a program that would enable the Secretary to trace any particular livestock that are subject to inspection under such title, in order to identify the producer of such livestock, and

(4) any personnel action action proposed or taken by the Secretary as a result of the amendments made by this subtitle and any effort made by the Secretary to minimize any adverse economic effect of such amendments on employees of the Department of Agriculture.

SEC. . CONGRESSIONAL REEVALUATION.

Not later than 6 years after the date of the enactment of this Act, Congress shall—

(1) evaluate the operation and effects of the amendments made by this subtitle, for the purpose of determining whether to extend or modify the operation of such amendments, and

(2) enact such legislation as may be necessary to efficiently and effectively carry out the Federal Meat Inspection Act.

SEC. . EFFECTIVE DATE; APPLICATION OF AMENDMENTS.

(a) GENERAL EFFECTIVE DATE.—Except as provided in section 2024(a) and in subsection (b) of this section, this title and the amendments made by this title shall take effect on the date of the enactment of this Act.

(b) TEMPORARY APPLICATION OF EXISTING LAW.—Sections 6, 9, and 21 of the Federal Meat Inspection Act (21 U.S.C. 601 et seq.), as in effect immediately before the date of the enactment of this Act, shall apply with respect to establishments until the Secretary of Agriculture first issues rules and regulations as provided in the amendment made by section 2023(a) of this Act.

Mr. BOSCHWITZ. Mr. President, this is an amendment that has the agreement of both sides of the aisle. It has to do with several items that have either been passed already in the Senate at different times or have been passed on the continuing resolution.

Mr. President, this amendment would make several changes in the operation of the programs of the U.S. Department of Agriculture.

EXTRA LONG STAPLE COTTON CROSS-COMPLIANCE

One provision of the amendment would prohibit the Secretary of Agriculture from requiring participants in 1987 and 1988 acreage reduction programs for wheat, feed grains, upland cotton, and rice, to limit their acreage of extra long staple [ELS] cotton to the established acreage base for their respective farms. The Secretary of Agriculture would retain discretion to impose this requirement, commonly known as limited cross-compliance, on participants in the 1989 and 1990 pro-

grams for wheat, feed grains, upland cotton, and rice.

This legislation is needed to correct a requirement in the Food Security Act of 1985 that limited cross-compliance be applied to all of—or none of—the crops for which there are acreage reduction programs, including wheat, feed grains, rice, cotton, and ELS cotton. I do not believe it was the intent of the farm bill conferees to require cross-compliance on producers of ELS cotton whenever it is required on other crops for which there are acreage reduction programs in effect.

This legislation will permit ELS cotton producers to expand their production to meet a burgeoning export market. Because participants in other target-price programs will not be required to limit ELS acreage on their farms to their respective acreage bases, participation in the ELS Program may actually decrease as a result of this legislation. For this reason, the Congressional Budget Office has attributed a zero cost to this section.

In addition, the legislation would, for the 1989 and 1990 crops, allow the Secretary of Agriculture to prohibit participants in the ELS Cotton Program from producing in excess of their acreage bases of other crops for which acreage reduction programs are in effect. The Secretary of Agriculture does not have that authority in current law.

LOCAL ASCS COMMITTEE PROVISION

Another portion of the amendment would make a technical change in section 8(b) of the Soil Conservation and Domestic Allotment Act to correct language controlling the establishment of local agricultural stabilization and conservation [ASC] committees.

Section 1711 of the Food Security Act of 1985 requires that each county be composed of three local administrative areas from which local ASC committees could be elected, except from counties having a population of less than 150 farmers and those areas determined by the Secretary of Agriculture to have an insufficient number of farmers to make up a slate of candidates for a local ASC committee.

This legislation would give the Secretary of Agriculture discretionary authority to permit continuation of a single ASC administrative area in those counties having less than three local ASC administrative areas on December 23, 1985, the date of enactment of the Food Security Act of 1985.

Another provision of the amendment would make a technical change in the peanut program, as that program is implemented in New Mexico. The provision has the strong support of the Senator from New Mexico, Mr. DOMENICI.

Another portion of the amendment would authorize the payment of all of the 1986 wheat deficiency payment in 1986, for those producers who elect to receive their payment in 1986.

Another portion of the amendment would authorize alfalfa and other multiyear grasses and legumes, as approved by the Secretary, to be included as agriculture commodities for purposes of the highly erodible land and conservation reserve programs.

Mr. President, another provision of the amendment is designed to make the Federal meat inspection program more effective, efficient, and better equipped to protect the public health. Previously introduced as the Processed Products Inspection Improvement Act of 1986, this amendment has the support of Senators HELMS, ZORINSKY, DOLE, MELCHER, LUGAR, LEAHY, COCHRAN, HARKIN, WILSON, HEFLIN, MCCONNELL, PRYOR, DIXON and SYMMS. An identical amendment was adopted by the House Agriculture Committee as part of the Omnibus Budget Reconciliation Act of 1986, H.R. 5300, recently passed by the House of Representatives.

There is a real need for legislation to modernize USDA's meat inspection procedures. For several years a variety of experts, both inside and outside of the Government, have recognized that the maintenance of this traditional inspection system in today's environment is outmoded, inefficient, and unnecessarily expensive. USDA began seeking this authority in 1982, advising Congress at that time the passage of such legislation would enable the Department to deal more efficiently and effectively with the many different kinds of inspection situations it faced. Today's legislation is also supported by the American Meat Institute and other industry groups. There is a clear consensus for change.

This legislation would allow the Secretary of Agriculture greater flexibility in allocating inspection resources to meat processing establishments. This amendment would make no changes in the way slaughtering facilities are inspected.

In determining the appropriate level of inspection for processing plants, the Secretary would be directed to consider the nature and frequency of the processing operations in question, the adequacy and reliability of an establishment's processing control and sanitary procedures and the operator's history of compliance with the law. Under current law, the Secretary must provide continuous inspection at all Federal establishments. As a result, the daily physical presence of a USDA inspector is maintained regardless of the size, sophistication or reliability of a given facility.

This is simply not good use of manpower since more and more companies are adopting highly sophisticated quality control systems. These systems are designed to assure continuing compliance with both regulatory requirements and company specifications. Frequent samples are taken of the product to guarantee that its composition does not deviate beyond stringent tolerance levels.

This bill will bring greater uniformity to our Government's broad scope of food inspection activities. In other segments of food processing, the Food and Drug Administration successfully maintains a system of random, periodic inspections. Even in the areas of poultry product processing, a parallel program maintained by USDA, the Secretary enjoys substantially more discretion in allocating inspection resources.

It is important to point out what this legislation will not do. It will not affect slaughtering operations, where the continuing presence of a Federal inspector will be maintained. It will not mandate adoption of any particular type of quality control system as a prerequisite to inspection. Establishments will remain free to employ whatever systems fit their own needs, so long as regulatory compliance is maintained. The bill will also not automatically reduce the amount of time spent by an inspector at each and every establishment. Should the Secretary determine that it is necessary, the number of inspectors in some establishments could actually be increased. One of the key benefits of this legislation will, in fact, be the way in which it will serve to increase the public health protection by enabling the Secretary to utilize his resources where they will do the most good.

Another major factor which recommends this legislation is the fact that it will save money. USDA has estimated that passage of this legislation will generate $63 million in savings during its 5-year phase-in period. The Department then anticipates yearly savings of approximately $27 million.

The changes that would be made in inspection procedures are supported by USDA. The portion of my bill which addresses inspection enforcement would amend USDA's authority to withdraw inspection under section 401 of the Meat Inspection Act. Several provisions are included which will alter the previous process and grant the Secretary of Agriculture the authority to refuse to provide inspection service.

After consulting with consumer groups, several additions were made to the original legislation to monitor the new procedures and provide closer congressional oversight. Unlike the original bill, this amendment includes a sunset provision which automatically repeals this legislation after 6 years. There are also two sections encouraging the Secretary to establish a residue detection program for livestock and to study the feasibility of a program to trace the origins of any

animal. In addition, the Secretary will be required to submit an annual report detailing the implementation of this legislation, the progress of establishing a residue detection program and determining the feasibility of a tracing program. In this report the Secretary would also be required to describe any personnel action taken as a result of this legislation and the efforts made to minimize any adverse effects of such action.

This legislation modernizing USDA's meat inspection program, as I have already indicated, will simply make the Federal meat inspection program more effective and efficient and further ensure that consumers will be receiving a quality product. I urge my colleagues to support this amendment.

ADJUSTMENT OF BASIS OF DETERMINATION OF WHEAT DEFICIENCY PAYMENTS

Mr. BOREN. Mr. President, I am very pleased that this package includes my amendment regarding wheat deficiency payments. This provision has been adopted twice by the Senate: First, it was added to the debt limit bill and second, it was adopted last Friday on the continuing resolution. This amendment will modify the basis for determination of a portion of wheat deficiency payments for the 1986 wheat crop.

As I have stated before, this amendment will not cost the taxpayers 1 cent. According to CBO estimates, there is no cost associated with the amendment.

The Food Security Act of 1985 included a provision which requires a portion of the deficiency payment to be determined on the basis of the reduced loan rate or the average price received by farmers during the marketing year. In the past, the entire deficiency was based on the loan rate or the average price during the first 5 months of the marketing year. Under previous law, producers could get their entire deficiency payment 5 months after the beginning of the marketing year. For wheat, that meant producers received their deficiency payments in November. Under the farm bill enacted this past year, producers can get a portion of their deficiency payment in November, but must wait until June or July of the next year to receive the balance.

The 1985 farm bill provides for two deficiency payments, in essence. The regular deficiency payment is based on the difference between the target price and the statutory loan rate or the average market price during the first 5 months of the marketing year, whichever is higher. The Secretary has the authority under the law to reduce the loan rate by up to 20 percent. If the Secretary uses this authority, which he has for the 1986 wheat crop, the producer is then entitled to another deficiency payment. This payment is based on the difference between the statutory loan rate and the new loan rate or the average market price during the entire marketing year.

The 1986 program for wheat provides for a target price of $4.38 per bushel. The statutory loan rate is $3, providing for a maximum deficiency payment of $1.38. The Secretary did use his authority to drop the loan rate to $2.40 thereby providing for a second deficiency payment with a maximum rate of 60 cents. It is this deficiency payment which is determined by using the market price for the entire marketing year. As the law stands now, farmers must wait until June or July of 1987 to receive this second payment on a crop that is harvested, in Oklahoma, in May 1986. For wheat, the marketing year ends in May the year after the crop is harvested. When this provision was included, obviously little thought was given as to the effect this would have on producers' income and their ability to pay their operating loans or their ability to cash-flow.

American farmers are having a very difficult time generating enough cash to meet their current expenses right now. If they cannot get all of their deficiency payment until the summer of 1987, many will be unable to raise enough cash to continue operating due to the fact that they will not be able to produce a financial statement which cash-flows this year. Farmers need to receive their payments in a prompt manner; they cannot afford to wait an entire year to be paid for their crop. Creditors will be hesitant to provide a farmer money for the 1987 crop if the farmer cannot pay off his loan for the 1986 crop.

Mr. President, this problem is very serious. There could be many producers forced out of business simply because of the provision contained in the 1985 act.

It is true, we adopted the same provision in the farm bill for corn. However, corn producers are not faced with the problem encountered by wheat producers. A corn farmer's balance sheet and his ability to cash-flow will not be changed if he receives the balance of his deficiency payments 12 months after the marketing year begins or 5 months after. This is because the marketing year for corn begins on September 1 and ends on August 31. If the payment is based on the first 5 months of the marketing year, they get their payment in February. If the payment is based on the full 12 months of the marketing year, they get the payment 7 months later, in October of the same year. The corn farmer's cash-flow statement remains the same for that calendar year.

Wheat producers, on the other hand, are affected because the wheat marketing year begins on June 1 and ends on May 31. This means that if the payment is based on a 5-month average, the producer gets the money in November of this year. If the payment is based on a 12-month average, on the other hand, the producer will not get the payment until July of the next year. This creates a shortfall for the current year. For wheat producers, unlike corn producers, there is a cash-flow problem.

The amendment we are considering today will correct this problem by requiring that all deficiency payments be determined on the basis of the average market price received during the first 5 months of the marketing year instead of the entire marketing year, unless the producer chooses to have the payment based on the average price of the entire marketing year. This modification would only affect the 1986 wheat crop. The amendment does not modify the farm bill with respect to future crops.

As I stated earlier, this amendment will not cost the Federal Government one cent. Without its adoption, on the other hand, it will place a tremendous burden on the wheat farmers of our Nation.

At the suggestion of the ranking member of the Senate Agriculture Committee, I modified my amendment to include a provision which would enable producers of alfalfa and other multiyear grasses and legumes to bid such planted acres into the Conservation Reserve Program.

Alfalfa and other similar multiyear grasses and legumes are not currently eligible for entry into the Conservation Reserve Program. Yet, at the same time, they are not exempt from the swamp-buster and sodbuster provisions contained in the 1985 farm bill.

As many of my colleagues are aware, alfalfa is a perennial crop and it is therefore quite common for farmers who rotate their field crops with alfalfa to leave their ground in alfalfa for the productive life of the plant. This can be 5 years or longer.

Because of this, an alfalfa producer in a 5-year rotation with alfalfa planted in crop years 1981 through 1985 with the intention of planting field crops in the years thereafter, is ineligible to place his land into the Conservation Reserve Program. However, a farmer who produced a more highly erosive crop would be eligible.

This provision would enable alfalfa producers to bid their planted acres into the conservation reserve.

I understand that Senator ZORINSKY has discussed this provision with the Department of Agriculture and the Department has no objection to its inclusion in this amendment.

Mr. President, both of these provisions are extremely important and I urge my colleagues to support this amendment. While I support this package because it includes this provision, I am very concerned about in-

cluding the meat inspection provision included in the package offered by the distinguished Senator from Minnesota, Mr. BOSCHWITZ. My concern is not so much based on the merits of the proposal, rather, it is based on the lack of information we have had on the exact proposal.

PROCESSED PRODUCTS INSPECTION IMPROVEMENT PROVISION

A version of this provision was introduced on July 22 of this year, S. 2675, "Processed Products Inspection Improvement Act." However, it is my understanding that this is not exactly like the proposal we are considering today. Frankly, Mr. President, I have not seen the proposal we are considering today.

The so-called less-than-continuous meat inspection issue has some merits and some problems in my opinion. Regretfully, the Senate Committee on Agriculture has not had an opportunity to hold hearings on this legislation. If hearings had been held, perhaps my reservations would dissipate.

Mr. President, I had hoped that we would have the opportunity to adopt another provision relating to meat inspection when we considered the proposal from Senator BOSCHWITZ. For the past 13 years, Congress has had under consideration legislation which would allow State-inspected meat and poultry products to be eligible for sale or transportation in interstate commerce and permit the entry of State-inspected products into federally inspected plants for further processing. Hearings on this legislation have been held on many occasions. In 1983, the Department of Agriculture favored the enactment of this legislation, but regretfully, a proper vehicle was unavailable.

At the present time, there is a double standard on State-inspected meat and poultry products. State-inspected products must equal or exceed the safety criteria of federally inspected products under the current law. Yet, these State-inspected products are prohibited from being sold in interstate commerce.

There are many small, State-inspected packing plants in my home State of Oklahoma, whose inability to sell their products 10 miles away in Texas, Kansas, and Arkansas has created hardship on these plants. Why don't these plants secure Federal inspection, some have asked? Small plants, applying for Federal inspection, have found the process too expensive.

As a result of the present situation, approximately 5,000 State-inspected plants are restricted from serving their natural marketing areas.

I believe the time has come for us to implement this legislation. Since we were unable to secure its adoption this year, I fully intend to introduce this legislation again next year. I had attempted to have this provision in this package but was unable to obtain the clearances required from other Members to do so.

Mr. DOMENICI. Mr. President, the Boschwitz amendment modifies cross compliance requirements for producers of extra long staple [ELS] cotton. The second modifies some unintended and undesirable changes in the procedure of election of agricultural stabilization and conservation [ASC] county committee members. In addition, I wish to outline my understanding of why these changes are necessary.

ELS COTTON

Earlier this year the Secretary of Agriculture announced his intention to require limited cross compliance for 1987 price support programs for wheat, feed grains, upland cotton, and rice.

Limited cross compliance would require that, as a condition of eligibility for wheat, feed grain, cotton, and rice price support loans, the acreage planted for harvest on a farm in other commodities, including ELS cotton, may not exceed the crop acreage base of such commodities.

If implemented as proposed by the Secretary, limited cross compliance would have a disastrous impact on our domestic ELS cotton industry by drastically reducing production in the face of expanding domestic and export demand. A very successful, producer financed, export development program would very likely be destroyed if this interpretation is left unchanged.

This bill would correct this situation by exempting ELS cotton from limited cross compliance, however.

ELS cotton is primarily grown in New Mexico, Texas, and Arizona. The typical ELS cotton producer is primarily and upland cotton producer with a much larger established upland cotton base. Economics will dictate his participation in the upland cotton price support program.

It is estimated by the cotton industry that if cross compliance is implemented, about 95 percent of ELS growers would be participating in the upland cotton program and would be prohibited from planting in excess of their base acres. The result would be a significant reduction in the production of ELS cotton and a corresponding inability to meet foreign demand which the industry has so carefully created. This likely would seriously damage the supima industry's image of being a reliable supplier of superior quality pima—long staple—cotton.

This bill is supported by the supima cotton industry, the Department of Agriculture, and the Senate Agriculture Committee.

For these reasons I strongly support the ELS provisions in this bill.

ASC COUNTY COMMITTEES

Mr. President, in response to concern voiced by farmers in New Mexico, I worked with the chairman of the Senate Agriculture Committee, my good friend Senator HELMS, to add the ASC committee section of this bill during the Agriculture Committee markup.

Farmers in New Mexico and the Nation are concerned with new procedures for ASC county committee elections. These new procedures were adopted in a technical correction act to the 1985 farm bill, Public Law 99-253.

Public Law 99-253 inadvertently requires counties which have chosen to be "one community counties" in the past to become "three community counties." This new ASC county committee election procedure will adversely affect farmers and ranchers in our Nation by requiring a less democratic and more expensive method of election.

Mr. President, there are over 1,000 counties in the United States that have chosen to be one community counties in 1986. In New Mexico, almost 70 percent of our counties are one community counties. There are six States in which 100 percent of the counties are one community. There are 20 States in which 50 percent or more of the counties are one community.

For the record, I ask unanimous consent that a table showing each States' percentage of one community ASC counties be inserted in the RECORD at this point.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE ONE/MULTIPLE COMMUNITY COUNTIES BY STATE, FEB. 6, 1986

State	One community counties	Multiple counties	Total county counties	Percent one community
Nevada	17	0	17	100.0
Georgia	159	0	159	100.0
Montana	56	0	56	100.0
Alaska	4	0	4	100.0
Rhode Island	5	0	5	100.0
New Jersey	16	0	16	100.0
Kansas	92	13	105	87.6
Florida	56	10	66	84.8
Washington	33	6	39	84.6
Oregon	29	7	36	80.6
Hawaii	3	1	4	75.0
Maryland	17	6	23	73.9
Idaho	30	13	43	69.8
Utah	20	9	29	69.0
New Mexico	22	10	32	68.8
North Dakota	34	19	53	64.2
California	35	22	57	61.4
Colorado	32	27	59	54.2
Arizona	8	7	15	53.3
Texas	130	124	254	51.2
Nebraska	43	50	93	46.2
New Hampshire	4	6	10	40.0
Minnesota	32	58	90	35.6
Wyoming	8	15	23	34.8
West Virginia	16	38	54	29.6
Maine	4	12	16	25.0
Massachusetts	3	10	13	23.1
Virginia	20	77	97	20.6
Kentucky	22	98	120	18.3
Louisiana	11	50	61	18.0
Mississippi	13	69	82	15.9
Vermont	2	12	14	14.3
South Carolina	6	40	46	13.0
South Dakota	8	58	66	12.1
Wisconsin	8	64	72	11.1
Michigan	9	74	83	10.8
New York	5	50	55	9.1
Indiana	8	84	92	8.7

AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE ONE/MULTIPLE COMMUNITY COUNTIES BY STATE, FEB. 6, 1986—Continued

State	One community counties	Multiple counties	Total county counties	Percent one community
Oklahoma	6	71	77	7.8
Pennsylvania	5	61	66	7.6
Arkansas	4	71	75	5.3
North Carolina	5	95	100	5.0
Missouri	4	110	114	3.5
Ohio	2	86	88	2.3
Tennessee	0	95	95	0
Alabama	0	67	67	0
Delaware	0	3	3	0
Connecticut	0	8	8	0
Iowa	0	100	100	0
Illinois	0	102	102	0
Total	1,046	2,008	3,054	34.3

It is my understanding that the authors of the legislation never intended to require these changes for one community counties.

Mr. President, the Boschwitz amendment perfects Public Law 99-253 by allowing one community counties to remain one community if they desire. Multiple community counties are limited to three communities, as in Public Law 99-253.

The ASC Committee section of this amendment is straightforward and reasonable. I strongly support this section. In addition, the ASC Committee section of this bill is supported by the Department of Agriculture and the Senate Agriculture Committee.

Without this amendment, these new county ASC Committee election procedures will be forced on thousands of farmers against their will. It will cause much confusion and frustration.

It is my understanding that this amendment has been accepted on both sides. I am pleased that the Senate has adopted this bill.

Mr. HELMS. Mr. President, the Senator from Minnesota has stated it correctly. We have examined this amendment and find it acceptable on this side.

Mr. ZORINSKY. I am pleased that the Senate is moving forward to consider legislation that will provide needed modifications and improvements in certain agricultural programs. The pending amendment would: First, modify cross-compliance requirements in the case of extra long staple cotton; second, permit greater flexibility in the establishment of local ASC committees; third, clarify the intent of a provision contained in the Food Security Act of 1985 regarding the cross-pool compliance of Valencia peanuts that are grown in New Mexico; fourth, modify the basis for determination of a portion of wheat deficiency payments for the 1986 wheat crop; fifth, enable producers of alfalfa and other multiyear grasses and legumes to bid such planted acres into the Conservation Reserve Program; and sixth, authorize the Secretary of Agriculture to issue rules and regulations to provide for less-than-continuous inspection of processed meat products, while providing for added enforcement methods and procedures.

The pending amendment will provide a modification of the limited cross-compliance provision of the 1985 farm bill by permitting the planting of extra long staple cotton by producers who are participating in other crop programs in excess of the base acres during crop years 1987 and 1988. For the 1989 and 1990 crops, the Secretary will have the option to allow cross-compliance with respect to extra long staple cotton. The provision is especially important because of the success extra long staple cotton has experienced in export sales. This provision is necessary because it is anticipated that sales for extra long staple cotton will be in excess of the base acreage.

The 1985 farm bill requires that each county be composed of three local administrative areas from which local ASC committees could be elected, except from those counties having a population of less than 150 farmers and those areas determined by the secretary to have an insufficient number of farmers to make a slate of candidates for a local ASC committee. A number of States have only one administrative area per county and one local committee which also serves as the county ASC committee. These States, in particular, believe they do not need additional local committees. Therefore, the provision would give the Secretary discretion to permit the continuation of the one committee system in those counties that have had such a system in effect prior to the enactment of the 1985 farm bill.

The legislation modifies the basis for determination of a portion of wheat deficiency payments for the 1986 wheat crop. For the 1986 crop, producers will be given the option of receiving their final deficiency payments in the present calendar year or in calendar year 1987. Because the wheat marketing ends at the end of of May, the requirement that all deficiency payments be determined on the basis of the average market price received during the first 5 months of the marketing year instead of the entire marketing year will help alleviate the cash-flow problem that wheat producers might otherwise experience.

Alfalfa and other similar multiyear grasses and legumes are not considered field crops under current law, so they are not eligible for bidding into the Conservation Reserve Program. Because alfalfa is a perennial, it is common for farmers who rotate their field crops with alfalfa to leave their ground in alfalfa for the productive life of the plant, which may be 5 years or longer.

Thus, an alfalfa producer in a 5-year rotation with alfalfa planted in crop years 1981 through 1985 with the intention of planting field crops in the years thereafter is ineligible to place his land into the Conservation Reserve Program. In contrast, a farmer producing a more highly erosive row crop for years 1981 through 1985 is eligible to bid the lands into the Conservation Reserve Program and receive reimbursement fo the cost of diverting the erodible land. This inequity will be corrected by the amendment we are considering today.

With regard to the provision amendment the Federal Meat Inspection Act, the provision represents a consensus reached by sponsors of the legislation, the U.S. Department of Agriculture, and consumer representatives. The provision is designed to eliminate redundant inspection by granting the Secretary the discretion to determine the intensity and frequency of the physical inspection of the processing of meat and meat food products and to use new, innovative techniques to assure the public that the meat it consumes is both wholesome and safe. The provision also strengthens the Secretary's authority to remove from the meat industry individuals and companies that threaten the public health and undermine public confidence in the meat supply. Under the provision, the Secretary will be able to take prompt action in egregious cases, thereby eliminating the threat to the public while providing due process protections to ensure that such severe sanctions are not needlessly or unfairly imposed.

Any reduction in the USDA inspector work force is to occur gradually. USDA has anticipated that about half of those individuals displaced could be retained to fill other FSIS positions. In addition to retraining costs, savings realized by enactment of the legislation would be reinvested in USDA's national residue program.

Mr. President, I urge my colleagues to support the amendment.

Mr. President, the amendment has been examined on this side also. We recommend its adoption.

The PRESIDING OFFICER. Is there further discussion of the amendment. If not, the question is on agreeing to the amendment.

The amendment (No. 3228) was agreed to.

Mr. HELMS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. ZORINSKY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

□ 1500

Mr. GRASSLEY addressed the Chair.

The Senator from Iowa is recognized.

AMENDMENT NO. 3229

(Purpose: To improve the quality of grain provided to domestic and foreign buyers)

Mr. GRASSLEY. Mr. President, I send an unprinted amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Iowa [Mr. GRASSLEY], for himself, Mr. HARKIN, Mr. ANDREWS, Mr. DOLE, Mr. ABDNOR, and Mr. LUGAR, proposes amendment No. 3229.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the bill, add the following new title:

TITLE V—GRAIN QUALITY IMPROVEMENT

SEC. 501. SHORT TITLE.

The title may be cited as the "Grain Quality Improvement Act of 1986".

SEC. 502. DECLARATION OF POLICY.

Section 2 of the United States Grain Standards Act (7 U.S.C. 74) is amended by adding at the end thereof the following new paragraph:

"It is the policy of the United States—

"(1) to promote the marketing of grain of high quality to both domestic and foreign buyers;

"(2) that the primary objective of the official United States standards for grain is to certify the quality of grain as accurately as practicable; and

"(3) that official United States standards for grain shall—

"(A) define uniform and accepted descriptive terms to facilitate trade in grain;

"(B) provide information to aid in determining grain storability;

"(C) offer users of such standards the best possible information from which to determine end-product yield and quality of grain; and

"(D) provide framework necessary for markets to establish grain quality improvement incentives.".

SEC. 503. FOREIGN MATERIAL RECOMBINATION

(a) PROHIBITED ACT.—Section 13 of United States Grain Standards Act (7 U.S.C. 87b) is amended by adding at the end thereof the following new subsection:

"(d)(1) Subject to paragraph (3), to ensure the quality of grain marketed in or exported from the United States—

"(A) no dockage or foreign material, as defined by the Secretary once removed from grain shall be recombined with any grain; and

"(B) no dockage or foreign material of any origin may be added to any grain.

"(2) The Secretary shall conduct a study to determine the appropriate levels of dust in grain to be exported. Based on the results of such study, the Secretary shall establish a maximum tolerance for dust in grain to be exported and issue regulations applicable to the recombination of dust with grain.

"(3) Nothing in paragraph (1) shall be construed to prohibit—

"(A) the treatment of grain to suppress, destroy, or prevent insects and fungi injurious to stored grain;

(B) the marketing, domestically or for export, of dockage or foreign material removed from grain if such dockage or foreign material is marketed—

"(i) separately and uncombined with any such whole grain;

"(ii) in pelletized form; or

"(iii) as a part of a processed ration for livestock, poultry, or fish;

"(C) the blending of grain with similar grain of a different quality to adjust the quality of the resulting mixture;

"(D) the recombination of broken corn or broken kernels, as defined by the Administrator, with grain of the type from which the broken corn or broken kernels were derived;

"(E) effective for the period ending December 31, 1987, the recombination of dockage or foreign material removed at an export loading facility from grain destined for shipment as a cargo under one export official certificate of inspection if—

"(i) the recombination occurs during the loading of the cargo;

"(ii) the purpose is to ensure uniformity of dockage or foreign material throughout that specific cargo; and

"(iii) the separation and recombination are conducted in accordance with regulations issued by the Administrator;

"(F) the addition to grain of a dust suppressant, or the addition of confetti or any other similar material that serves the same purpose in a quantity necessary to facilitate identification of ownership or origin of a particular lot of grain.

"(4)(A) The Secretary may, by regulation, exempt from paragraph (1) the last handling of grain in the final sale and shipment of such grain to a domestic user or processor if such exemption is determined by the Secretary to be in the best economic interest of producers, grain merchants, the industry involved, and the public.

"(B) Grain sold under an exemption authorized by this paragraph shall be consumed or processed into one or more products by the purchasers, but may not be resold into commercial channels for such grain or blended with other grain for resale. Neither products nor byproducts derived therefrom shall be blended with or added to grain in commercial channel.

(b) EFFECTIVE DATE.—The amendments made by this section shall become effective on May 1, 1987.

SEC. 504. INSECT INFESTATION.

Not later than 6 months after the date of enactment of this Act, the Administrator of the Federal Grain Inspection Service shall issue a final rule that revises grain inspection procedures and standards under the United States Grain Standards Act (7 U.S.C. 71 et seq.) to more accurately reflect levels of insect infestation.

SEC. 505. STUDY OF PREMIUMS FOR HIGH-QUALITY GRAIN.

(a) STUDY.—After public comment from and in consultation with grain producers, grain merchants, grain processors, and grain exporters, the Secretary of Agriculture shall conduct a study of the feasibility and appropriateness of adjusting Commodity Credit Corporation grain premium and discount schedules—

(1) to encourage the delivery, storage, and export of high-quality, clean grain; and

(2) to offer incentives to minimize the quantity of moisture, foreign material, dockage, shrunken and broken kernels, and damaged kernels in lots of grain pledged as collateral for Commodity Credit Corporation loans or in grain owned by the Commodity Credit Corporation.

(b) REPORT.—Not later than 180 days after the date of enactment of this Act, the Secretary shall transmit a report describing the results of the study, together with recommendations, to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

SEC. 506. REVIEW OF OPTIMAL GRADE PROPOSAL.

(a) NOTICE AND COMMENT.—To evaluate the effects of moving to an optimal grain grading system, the Administrator of the Federal Grain Inspection Service shall—

(1) publish in the Federal Register a detailed description of the proposals contained in H.R. 5354, 99th Congress, the Optimal Grain Grading Act of 1986; and

(2) solicit public comment, during a period of not less than 60 days, or—

(A) the optimal grain grading system as proposed in H.R. 5354; and

(B) the general objective of improving grain quality by revising the official United States grain standards to provide greater economic incentives for production and sale of high-quality grain.

(b) REPORT.—The Administrator shall report to Congress, by May 1, 1987, on the comments received and on the recommendations of the Administrator with respect to the matters on which comments were solicited.

SEC. 507. STUDY OF UNIFORM END-USE VALUE TESTS.

(a) STUDY.—The Secretary of Agriculture shall direct the Federal Grain Inspection Service and the Agricultural Research Service to conduct a study of the need for and availability of uniform end-use value tests for grain. The study shall include the following:

(1) A survey of domestic and foreign buyers of grain to determine what information about grain characteristics would be most useful to such buyers. The survey shall take into account those factors that buyers specify in contracts, test for, measure, or would measure if tests were available, including but not limited to—

(A) the starch, oil, and protein content, breakage susceptibility, and individual kernel moisture of corn;

(B) the banking characteristics, protein content, gluten content and quality, and milling hardness of wheat; and

(C) the protein, oil, and free-fatty-acid content of soybeans.

(2) A review of the development and availability of tests for the characteristics identified in the survey conducted under paragraph (1), including an evaluation of the costs of providing such tests.

(b) END-USE TESTS. —

(1) ONGOING REVIEW. —The Secretary of Agriculture shall direct the Federal Grain Inspection Service and the Agricultural Research Service to maintain an ongoing review to determine the end-use tests that are of economic value of buyers, and the availability and costs of such tests.

(2) REVISION OF PROCEDURES. —The Administrator of the Federal Grain Inspection Service, to the extent practicable, shall revise official grain inspection and certification procedures to include within official inspection (as defind in section 3(i) of the United States Grain Standards Act (7 U.S.C. 75(i)) those tests that are identified under the study conducted under subsection (a) as useful, available, and economically feasible.

(c) REPORTS. —

(1) STUDY AND REVISION OF PROCEDURES. — Not later than 1 year after the date of enactment of this Act, the Administrator of the Federal Grain Inspection Service shall submit a report to Congress setting forth the results of the study conducted under subsection (a) and actions taken under subsection (b)(2).

(2) ONGOING REVIEW. —The Administrator shall report yearly to Congress on the ongoing review conducted under subsection (b)(1).

Mr. GRASSLEY. Mr. President, I failed to mention that this amendment is cosponsored by Senator HARKIN, Senator ANDREWS, Senator DOLE, Senator ABDNOR, and Senator LUGAR.

It is basically what the House passed on grain quality so that we deal with the problem by which we have had poor quality of grain because of the addition of foreign material.

Mr. President, today I am introducing a grain quality amendment, along with my colleagues Senator HARKINS, Senator ANDREWS, Senator DOLE, Senator ABDNOR and Senator LUGAR, to the CFTC reauthorization bill. The bill is called the Grain Quality Improvement Act of 1986. The purpose of this amendment is to promote the marketing of high quality grain. Very similar language has already passed the House and I am hopeful that the Senate will see the wisdom of doing the same. I believe it is important for the Senate to have an opportunity to address this issue.

I do not pretend that this amendment will be the answer to all our grain quality problems—but it is an important first step. The amendment has a number of important provisions to improve grain quality. First, it makes it clear that the policy of the U.S. Government is to provide high quality grain to both domestic and foreign customers. Second, it states clearly that the primary purpose of our grain standards is to accurately state the true condition of our grain. Third, it completely prohibits the addition of dirt and trash to our grain. Fourth, the amendment requires the Secretary to establish maximum levels of dust allowable in grain. Let me make it clear that the Secretary does have the option to completely prohibit the reintroduction of dust into grain once removed. Fifth, the bill will do away with the reintroduction of dockage or foreign material once it has been removed from grain.

I do not need to go into a lot of detail about the complaints being received from foreign buyers of U.S. grain. Articles about this problem have been appearing for months in virtually every agricultural newspaper and magazine. Constituents in my State are particularly concerned about this issue because of their dependence on agriculture and international trade. It's the second most talked about agricultural issue in my State at my meetings.

Believe me, my constituents have reason to be concerned. Agricultural trade has dropped dramatically over the last few years. Grain sales were $21.9 billion in 1981 and last year they were only $10.2 billion. We actually had an agricultural trade deficit last May. That is the first time that has happened in 15 years and it has happened a couple of times just this year.

It is time we realized that the United States is no longer the only game in town. We must sell our grain in a very competitive international marketplace. Unfortunately, we are not winning this quality battle because many other countries enforce standards that are higher than ours. This is particularly upsetting to the producers in my State because they know that when that grain leaves their farm it is second to none in the world in terms of quality.

Let me give you one example: I have at my desk three bags. One contains 182 stones, another has 26 pieces of glass, and another contains 4.5 ounces of oats. Each one of the things contained in each of these three bags could be in a bushel of wheat and it would still be graded as No. 1 quality according to our present laws. What is even more disturbing is that twice this amount could be in a bushel of wheat and it would still be graded as No. 2. And four times this amount could be in a bushel of wheat and it could still be graded No. 3 wheat.

Similar standards are also true for corn. This situation cannot continue. This amendment attempts to help close these kind of abuses, but even this amendment will not stop this practice.

My colleague from Iowa, Congressman COOPER EVANS, has been one of the foremost authorities on this issue and has helped to lead the fight for regaining confidence in the quality of grain produced and marketed by the United States. This legislation is a tribute to him, and my other Iowa colleagues, Congressmen NEAL SMITH and BERKLEY BEDELL, who were able to steer a similar bill through the House.

Now it is our turn. We must not let our producers down by allowing special interests to stop this bill. I strongly encourage my colleagues to support this amendment and other efforts to guarantee our farmers that they will be treated fairly in the international marketplace.

Mr. HELMS. Mr. President, the amendment is acceptable on this side of the aisle.

Mr. ZORINSKY. Mr. President, I have stated many times that the dramatic decline in exports of American grain cannot be attributed solely to the lack of a competitive price. As a former businessman, I am well aware of the need to deliver a quality product.

I have heard firsthand the stories of overseas customers who simply refrain from buying American grain at any price, because the poor quality of past purchases had rendered it unfit for its intended use.

While I am willing to see us take the Grassley amendment to conference, I am not certain it should be enacted in its present form.

The operative language of the amendment prohibits the introduction or recombination of dockage and foreign material that was previously removed from any grain. While I question the wisdom of encumbering otherwise legal transactions between willing buyers and willing sellers, I am supportive of prohibitions on adulteration of grain, and would whole heartedly support the amendment if it accomplished what the language purports to do.

However, this operative language is followed by six exemptions, including one which allows high quality grain to be blended with low quality grain in order to adjust the quality of the final mixture.

Further, I call to your attention the opposition of the National Association of Wheat Growers, the National Corn Growers Association, and other leading farm organizations to grain quality legislation at this time. These groups have formed a grain quality task force to study the issue and make recommendations. I commend their efforts and agree with them that this legislation may well be ill-timed.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The Senator from Kansas.

GRAIN QUALITY

Mr. DOLE. Mr. President, several of my colleagues and I have had an interest in improving U.S. grain quality. I commend Senator GRASSLEY for his interest in this issue as well as Senator ANDREWS who held subcommittee hearings earlier in the session. Senator ABDNOR has also visited with me about the need to improve our export quality as have other Senators.

A GROWING CONCERN

The issue of grain quality has gained greater attention in recent years as exports have declined from peak levels in 1981 of $44 billion to last year's low of $26.5 billion. As complaints by foreign customers such as Japan, the Soviet Union, and China have increased in recent years, many farmers have expressed concerns that our grain quality may be hampering our export efforts.

We are aware that price plays as great a role in determining export levels as any factor. I have considered introducing legislation mandating a marketing loan for wheat, feed grains, and soybeans which I believe would make us price competitive in world markets. However, I submit we also

need to put the world on notice that the United States will be a reliable supplier of high-quality grain.

PROVISIONS

The legislation includes a declaration of policy that the United States should market high-quality grain; the objective of the grain standards is to certify quality and standards should result in providing adequate quality information.

It would also include a prohibition against recombining dockage or foreign material, as defined by the administrator once it has been removed. There are exceptions made for current trade practices and to reflect the realities of the grain marketing system.

The legislation also would include several studies which address several areas of concern regarding grain quality issues.

CONCLUSION

Mr. President, I would reiterate that our grain quality standards are of concern to many of us. We realize this legislation is not a cure-all for solving our export problems and that a more in-depth review of grain quality issues is needed. The action we are taking today is a good first step toward solving many of the concerns farmers have.

Mr. BOREN. Mr. President. I strongly support the goal of providing clean grain for export to enhance the competitive position of American grain in world markets. I have reservations, however, about legislating in regard to what should properly be handled by experts in the field. If we merely wanted to lower tolerances for foreign matter. That would be one thing, but this amendment appears to go much further into areas more appropriately handled administratively. It remains questionable that this amendment will actually result in clean grain shipments.

Mr. MELCHER addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana.

Mr. ZORINSKY. Mr. President, Senator HARKIN is on his way to make a statement on this amendment.

Mr. HELMS. Mr. President, I ask unanimous consent that the amendment be temporarily laid aside.

The PRESIDING OFFICER. The Senator from Montana has the floor. Is the Senator seeking recognition to speak on this amendmemt?

Mr. MELCHER. Mr. President, I was not seeking recognition to speak on this amendment. I was merely going to offer another amendment.

The PRESIDING OFFICER. Will the Senator yield to the Senator from North Carolina for his unanimous-consent request?

Mr. MELCHER. I certainly do.

The PRESIDING OFFICER. Is the request that this amendment be laid aside temporarily?

Mr. HELMS. That is correct.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Montana.

Mr. McCONNELL. Mr. President, Will the Senator from Montana yield?

Mr. MELCHER. Yes.

Mr. McCONNELL. I have an amendment that has been cleared on both sides. It could be handled very briefly. I did not know whether the Senator from Montana had a lengthy statement or whether he might be able to let me move ahead with this.

AMENDMENT NO. 3230

Purpose: To require a GAO study of trading in Cattle Futures (contracts).

Mr. MELCHER. I will respond to my friend. I have an amendment to send to the desk, and it has been agreed to on both sides also.

I send the amendment to the desk now and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Montana [Mr. MELCHER] for himself and Mr. ZORINSKY, proposes an amendment numbered 3230.

Mr. MELCHER. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 24, after line 16, insert a new section as follows:

SEC. 404. GAO STUDY OF TRADING IN CATTLE FUTURES CONTRACTS.

(a) The Comptroller General shall conduct and complete a comprehensive study of the effect of trading in contracts for the future delivery of live cattle on the cash market price of live cattle, with particular emphasis on the following matters—

(1) Whether the reaction of the live cattle futures market to the results of the whole-herd buyout program in March 1986 was based upon and accurately reflected the then prevailing conditions of supply and demand;

(2) What effect the trading in contracts for the future delivery of live cattle has on—

(i) the price relationship between feeder cattle and fed cattle,

(ii) the price discovery process with respect to live cattle, and

(iii) price competition within the cattle industry;

(3) What effect the use of packer contracts, as a means of obtaining slaughter cattle, has had upon the increase in short hedging in contracts for the future delivery of live cattle and what effect this increase in short hedging has had on prices in the futures and cash markets;

(4) The effect on the ability of the cash markets to accurately reflect prevailing conditions of supply and demand if packer contracts become the prevalent method of marketing fed cattle;

(5) Whether the present delivery system for contracts for the future delivery of live cattle creates any bias (either upward or downward) in the cash price for cattle;

(6) Whether the present delivery system for contracts for the future delivery of live cattle creates price volatility during the delivery month; and

(7) Whether there are advantages or disadvantages to a cash settlement system in lieu of the present delivery system in the case of contracts for the future delivery of live cattle.

(b) Not later than one year after the date of enactment of this Act, the Comptroller General shall submit a detailed report on the results of the study required under subsection (a) to the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry. The Comptroller General shall submit a preliminary report on the results of the study to such Committees by January 15, 1987.

Mr. MELCHER. Mr. President, this amendment requires the General Accounting Office to study trading in cattle futures contracts. It is a needed amendment. As I stated previously, I believe it is agreed to on both sides.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. Mr. President, this side finds the amendment acceptable.

The PRESIDING OFFICER. The Senator from Nebraska is recognized.

Mr. ZORINSKY. Mr. President, this side of the aisle supports the amendment and recommends its adoption.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from Montana.

The amendment (No. 3230) was agreed to.

Mr. HELMS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. ZORINSKY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question recurs on the amendment of the Senator from Iowa.

Mr. HELMS. Mr. President, I ask unanimous consent that the pending amendment be temporarily laid aside.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 3231

(Purpose: To require the Comptroller General to conduct a study of the marketing practices of FmHA borrowers and to require the Secretary of Agriculture to establish a program to train farmers and ranchers in advanced marketing techniques)

Mr. McCONNELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Kentucky is recognized.

Mr. McCONNELL. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Kentucky [Mr. McCONNELL] proposes an amendment numbered 3231.

Mr. McCONNELL. I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the bill, add the following new section:

SEC. . MARKETING PRACTICES AND TRAINING.

(a) MARKETING PRACTICES OF FMHA APPLICANTS AND BORROWERS.—

(1) STUDY.—The Comptroller General of the United States shall conduct a study of marketing practices used by applicants for and borrowers of loans made, insured, and guaranteed under the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.). The study shall include an examination of the channels through which the applicants and borrowers sell agricultural commodities, livestock, and acquaculture and the extent to which the applicants and borrowers use advanced marketing techniques for such sales.

(2) REPORT.—Not later than 180 days after the date of enactment of this Act, the Comptroller shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report describing the results of the study conducted under paragraph (1), together with any appropriate recommendations.

(b) ADVANCED MARKETING TRAINING FOR FARMERS AND RANCHERS.—The Secretary of Agriculture establish a program to train farmers and ranchers in advanced marketing Techniques for commodities, livestock, and acquaculure produced by such farmers and ranchers, including (where appropriate as determined by the Secretary) training in the use of futures and options markets.

Mr. McCONNELL. Mr. President, I rise to offer as an amendment to the Commodity Futures Trading Commission bill legislation which I believe is very appropriate to the reauthorization of the Commission. In June of this year, I introduced S. 2553, a bill to require FmHA borrowers to certify that they have received training in advanced marketing techniques as a condition for eligibility for receiving Farmers Home Administration farm loans. My purpose in introducing the legislation was to ensure that those farmers who were using the taxpayer's money to buy and operate farms were familiar with the latest innovations in marketing agricultural commodities.

Quite frankly, Mr. President, I found that most people with whom I discussed the bill were in general agreement with the notions contained therein. But some expressed concerns that farmers' reaction to the training requirement might be very negative and that the purpose of the legislation—to provide farmers with a knowledge of the marketing system so that they could help themselves—would be misconstrued as an insensitivity to their problems. This amendment addresses some of these concerns.

My amendment provides that GAO will be required to conduct a study of the marketing techniques of FmHA borrowers to see if there is indeed a need for most Farmers Home borrowers to improve their knowledge of alternative methods of marketing raw farm products. The results of this study will be useful in determining the extent to which a program of mandatory marketing training may be useful to farmers.

The second part of my amendment is an extension of section 1743 of the Food Security Act of 1985 relating to training in the usage of futures and options by farmers. As my colleagues will remember, a section of the farm bill provided that 40 counties would be selected by the Secretary of Agriculture to participate in a USDA Pilot Program, with producers in these counties receiving training in the use of futures and options. These producers would in turn be permitted to participate in a training exercise where futures and options would actually be a part of the producers' farm marketing program.

My amendment would require that the Secretary would devise an educational program for general use, over and above that directly associated with the educational training material developed in the 40 pilot counties specifically for trading in futures and options. It would be my intention, Mr. President, that an educational program would include information in such areas as tele-marketing, direct consumer marketing, and other possible marketing alternatives, in addition to educational information on futures and options trading.

Mr. President, only now are we beginning to understand the critical importance of marketing strategies in today's difficult agricultural environment. In fact, a statement of the American Agricultural Economics Association says that meeting head-on the critical issue of increasing profitability of agricultural requires that agriculture professionals "identify, and extend through educational activities, farm business management and marketing strategies for operating in an uncertain economic environment." John Butler, executive vice-president of the Illinois Beef Council, concludes that today's cattleman recognizes the need for accurate record keeping to evaluate performance and purchases livestock based on performance records, yet often sacrifices this investment of time and energy by "giving away the cattle at the local auction." Innovative farmers are finding ways to maximize profit opportunity by aggressively looking for a niche in a market. It may be fruits and vegatables or it may be custom feeding, but the innovative farmer finds a way to make money.

All this is not to suggest that Farmers Home borrowers are poor marketers. As I said when I introduced the original legislation, S. 2553, there are certainly instances where an FmHA borrower has parlayed a small loan into a profitable farming operation because of his shrewd management ability. But when we consider that 60 percent of America's raw farm commodities are sold at the lowest one-third of the market, it appears to this Senator that their may be an information vacuum out there in rural America somewhere. My amendment seeks to fill this information vacuum and is targeted at the farmers who are the most direct beneficiaries of Federal farm assistance.

Mr. President, I understand that this amendment has been cleared on both sides and I move its adoption.

Mr. President, this is a simple amendment. It requires a GAO study of marketing characteristics of the Farmers Home Administration borrowers. The results of this study will show whether there is a need for a major marketing education program geared toward FmHA borrowers. In addition, this study will serve as a supplement to the study required by the 1985 farm bill on futures and options markets.

It compliments section 1734 of the 1985 farm bill to require the Secretary of Agriculture authority to develop an expanded market education program in addition to the program already developed for the 40-pilot counties in the use of futures and options as a marketing tool.

The new program would cover other innovative marketing methods beside future options trading, and would be made available to the farmers on a nationwide basis.

It is my understanding that this has been cleared on both sides of the aisle.

Mr. HELMS. Mr. President, it indeed has been cleared by this side of the aisle, and I believe on the other side.

Mr. ZORINSKY. Mr. President, this side of the aisle has agreed to the amendment, and recommends its approval and adoption.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from Kentucky.

The amendment (No. 3231) was agreed to.

Mr. HELMS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. ZORINSKY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HELMS. Mr. President, I ask unanimous consent that the pending amendment be temporarily laid aside so that Senator ZORINSKY may offer his amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Nebraska is recognized.

AMENDMENT NO. 3232

(Purpose: To direct the Secretary of Agriculture to convey, without consideration, to the Nebraska Game and Parks Commission, approximately 173 acres of land within the Nebraska National Forest to be used for the purposes of expanding the Chadron State Park, Nebraska)

Mr. ZORINSKY. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Nebraska [Mr. ZORINSKY] proposes an amendment numbered 3232.

Mr. ZORINSKY. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 24, after line 16, insert a new section as follows:

SEC. 404. TRANSFER OF LAND

(a) Subject to the provisions of subsection (b), the Secretary of Agriculture shall convey to the Nebraska Game and Parks Commission, all right, title, and interest of the United States in approximately 173 acres of National Forest System land in Dawes County, Nebraska, as depicted on a Department of Agriculture, Forest Service map entitled "Land Conveyance, Nebraska National Forest", dated October 1985. The map and legal description of the land conveyed by this Act shall be on file and available for public inspection in the office of the Chief, Forest Service, Department of Agriculture.

(b) The conveyance made pursuant to subsection (a) shall reserve to the United States all gas, oil, coal, and other mineral deposits as may be found in the lands conveyed by this Act. The Secretary shall provide that title in the lands conveyed shall revest in the United States upon failure of the Nebraska Game and Parks Commission to use the land as part of the Chadron State Park, Nebraska.

(c) The lands shall be conveyed without consideration, except that the Nebraska Game and Parks Commission shall bear all reasonable costs of administration, survey, and appraisal incident to such conveyance as determined by the Secretary of Agriculture.

Mr. ZORINSKY. Mr. President, I am offering the amendment which transfers 173 acres of land within the National Forest Service Nebraska Game and Parks Commission. This has already had hearings. It has passed the Senate. I recommend its adoption.

Mr. HELMS. Mr. President, the amendment is certainly cleared on this side.

The PRESIDING OFFICER. Is there further debate on the amendment. If not, the question is on agreeing to the amendment of the Senator from Nebraska.

The amendment (No. 3232) was agreed to.

Mr. HELMS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. ZORINSKY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question now recurs on the amendment of the Senator from Iowa.

Mr. HARKIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. HARKIN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

□ 1510

Mr. HELMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HELMS. I ask for the yeas and nays on final passage.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on the amendment of the Senator from Iowa.

Mr. DOLE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HARKIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 3229

Mr. HARKIN. Mr. President, I want to thank the distinguished chairman and the majority leader for their indulgence in not moving on this bill until I had a chance to speak. I have been waiting since last week to make some comments on this amendment I wanted to offer.

I want to compliment my colleague, Senator GRASSLEY, for proposing this amendment. I am honored to cosponsor it with him.

Mr. President, the purpose of the amendment, of course, is to improve the quality of U.S. grain provided both foreign and domestic buyers. The need for legislation has been made abundantly clear by the rise in complaints recently filed by foreign purchasers of U.S. grain and increasing public perception that the quality of grain shipped from the United States does not match that of our major competitors.

This amendment will revise the U.S. Grain Standards Act declaration of policy, to add the statement that it is our policy to promote the marketing of high quality grain. Then the bill has new provisions that will prohibit the recombination of grain we ship abroad with foreign material. Right now, unbeknownst, I think, to a lot of Americans, as the grain is taken out of the fields, very cleanly, I might add, by our farmers, put in the elevators and put into railroad cars and shipped to our ports, foreign material can be actually added to it, up to a certain amount. In other words, in 1 bushel of No. 1 grain wheat there could be as much as 4½ ounces of foreign material, including glass. While that may not sound like much, I want to graphically demonstrate for Senators and others who may be watching just how much glass can go into 1 bushel of wheat and still be shipped abroad as No. 1 wheat.

[Demonstrating.]

That much glass in 1 bushel of wheat, and it can still be regarded as No. 1 wheat. We are allowing that to happen and we are allowing it to be shipped overseas in that manner.

It is not just glass; it is also rock. It can have up to 4½ ounces of rock in a bushel of wheat and still be No. 1 wheat.

[Demonstrating.]

You can have that much rock in 1 bushel of wheat, sell it to our foreign purchasers and it is still considered No. 1 wheat.

Can anyone now doubt why we are losing some of our foreign purchasers when they get a bushel of wheat with that much rock or that much glass in it? We still say it is No. 1 wheat.

Mr. President, I can tell you that my farmers, and I am sure the farmers of Senators from agriculture States feel as I do, are not putting rocks in it and the elevators are not putting rock in it, but somewhere along the line from the time the grain leaves the farmer's field until it gets to the foreign purchasers, they are putting it in. I think that is a lot of rock to go into a bushel of wheat and still be No. 1 wheat.

When you are thinking about shipping millions of tons of wheat abroad one can only imagine how much rock and glass is in it.

That is why this amendment is so necessary. It may sound like to many Senators, "Well, a little bit of dirt in the grain, so what?"

So that means our foreign purchasers are getting rock, glass and other material in it. I think it is time to stop it.

This amendment is almost identical to the one that was passed by the House of Representatives I have every confidence that in conference we will adjust the differences and send this down to the President for his quick signature.

I believe nothing that we can do right now could do more to enhance our ability to sell grain abroad than to

pass this amendment offered by my colleague from Iowa.

Again I want to compliment him. I just wanted to take the time to graphically demonstrate just how much foreign material can go into 1 bushel of wheat and it still be called No. 1 wheat.

Mr. President, I urge adoption of the amendment and I yield the floor.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No 3229) was agreed to.

Mr. GRASSLEY. I move to reconsider the vote by which the amendment was agreed to.

Mr. HELMS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3233

(Purpose: To eliminate the sugar quota of countries with governments involved in the trade of narcotics illegal in the United States, to maintain the sugar quota for specified countries, and for other purposes)

Mr. HELMS. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from North Carolina [Mr. HELMS], for himself, Mr. ZORINSKY, Mrs. HAWKINS, Mr. MELCHER, Mr. HATCH, Mr. DODD, Mr. HECHT, Mr. HUMPHREY, Mr. INOUYE, Mr. MCCLURE, Mr. SYMMS, Mr. THURMOND, Mr. TRIBLE, and Mr. WILSON, proposes an amendment numbered 3233.

Mr. HELMS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the bill, add the following:

SEC. . (a) Notwithstanding any other provision of law:

(1) The President may not allocate any limitation imposed on the quantity of sugar to—

(A) any country which has a Government involved in the trade of illicit narcotics or is failing to cooperate with the U.S. in narcotics enforcement activities as determined by the President.

(B) any foreign country that imports sugar produced in Cuba, as dedermined by the President.

(2) The President shall—

(A) use all authorities available to the President as is necessary to enable the Secretary of Agriculture to operate the sugar program established under section 201 of the Agricultural Act of 1949 (7 U.S.C. 1446) at no cost to the Federal Government by preventing the accumulation of sugar acquired by the Commodity Credit Corporation; and

(B) subject to paragraph 1, and to the extent possible, subject to subparagraph (A), allocate any limitation imposed on the quantity of sugar entered during calendar year 1987 among foreign countries in a manner that ensures that the total quantity of sugar allocated under such limitation to each beneficiary country for calendar year 1987 is not less than the total quantity of sugar entered during quota year 1986 that are products of such beneficiary country.

(b) For purposes of this section—

(1) The term "beneficiary country"—

(A) has the meaning given to such term by section 212(a)(1) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2702(a)(1)); and

(B) includes the Republic of the Philippines and the Republic of Ecuador.

(2) The term "entered" means entered, or withdrawn from warehouse, for consumption in the customs territory of the United States.

(3) The term "customs territory of the United States" means the States, the District of Columbia, and Puerto Rico.

At the end of the pending amendment add the following:

Sec. . Congress finds that the Philippines—

(1) have been a reliable supplier of sugar to the United States since 1796 when the first shipment of their sugar arrived at Boston Harbor;

(2) have a special historical relationship with the United States and has been one of this Nation's most constant and dependable allies;

(3) rely on the exportation of sugar to generate needed capital;

(4) have not been afforded fair and adequate access to the United States sugar market since import quotas were imposed on sugar in 1982; and

(5) should be given access to the United States sugar market on terms at least as favorable as those provided to any other country.

Sec. . Notwithstanding any other provision of law—

(a) beginning with the first calendar quarter of 1987, the total base quota amount of sugars, syrups, and molasses permitted to be imported into the United States under headnote 3, subpart A of part 10 of schedule 1 of the Tariff Schedules of the United States shall be allocated on such basis that the quota allocated to the Republic of the Philippines shall not be less than the quota allocated to any other country.

(b) during any calendar year in which sugars, syrups, and molasses from any country are not subject to any rate of duty provided for in subpart A of part 10 of schedule 1 of the Tariff Schedules of the United States and are permitted to enter the United States duty-free, sugar, syrups, and molasses from the Republic of the Philippines shall be permitted, to the same extent, to enter duty-free; and

(c) unless specifically authorized by statute, no agency or instrumentality of the United States shall provide, in any rule regulation, shipping schedule, or otherwise, for the entry into the United States of sugars, syrups, and molasses from any country under terms or conditions more favorable than those applicable to the entry of sugars, syrups, and molasses from the Republic of the Philippines.

Mr. HELMS. Mr. President, this amendment has been cleared on both sides. It was passed by the Senate previously.

Mr. ZORINSKY. This side of the aisle agrees to the amendment and recommends its adoption.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3233) was agreed to.

Mr. HELMS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. ZORINSKY. Mr. President, I move to lay that motion on the table.

Mr. HELMS. Mr. President, I know of no other amendments. I ask for third reading.

Mr. MELCHER. addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana.

LEVERAGE PROVISION

Mr. MELCHER. Mr. President, section 206 of title II of this bill repeals the separate regulations for leverage contracts.

The committee found that present leverage contract trading under separate regulations was unfair and had serious flaws. Leverage contracts are now the only form of futures trading that does not occur on exchanges.

Leverage contract prices are set solely by the leverage firms and not through an open auction market, like all other futures.

Leverage contracts are subject to a special set of regulations tailored to the business practices of the two existing leverage firms.

Under present regulations and unlike any other futures contracts, leverage may be offered to the public despite the fact that leverage cannot meet the CFTC's economic purpose test for all other futures.

Continuing to exempt leverage from the same regulations as apply to all other futures contracts, jeopardizes customer protection.

The leverage provisions in title II of the Senate amendment, which require leverage contracts to be regulated like all other futures, should be accepted.

Mr. President, I yield the floor.

Mr. MOYNIHAN. Mr. President, I strongly endorse S. 2045 and congratulate the distinguished committee chairman and subcommittee chairman for mastering this complex field and reporting out this sound legislation. We all know that the commodity markets reflect a balance between speculative impulses and the national economic benefits provided by commodity hedging and price discovery. Years ago, Congress decided to harness these forces by requiring all commodity futures contracts to be traded openly and competitively on federally approved exchanges.

The bill before us today, S. 2045, is faithful to this founding principle of Federal futures law, as best illustrated by the legislation's reform of the troublesome area of leverage contracts. S. 2045 recognizes leverage contracts to be the futures contracts that they are

and so requires leverage to be regulated like all other futures. Ending the special treatment of leverage contracts afforded by existing law is supported by the CFTC, the States, and many consumer groups. It is a solution that makes sense, as a matter of law, economics, fairness, competition, and efficient use of Government resources.

It is also a solution that was initially adopted by the full House, before being narrowly defeated on reconsideration. Looking toward the conference committee, therefore, I am confident that the Senate negotiators are in a very strong bargaining position, since the House seems to be equally supportive of the Senate approach and that of the House committee.

VALENCIA PEANUT PROFIT AND LOSS OFFSETTING

Mr. DOMENICI. Mr. President, the U.S. peanut industry is divided into three separate production regions: First, the Southeast area—Georgia, Florida, Alabama; second, the Southwest area—Texas, Oklahoma, New Mexico; and third, the Virginia-North Carolina area.

Within each of these three production areas different types of peanuts are produced, such as florunners, Virginia, and Spanish. The Southeast region mostly grows runner peanuts. The southwest region grows about two-thirds Spanish and one-third runner. The Virginia-North Carolina region grows the Virginia peanut. A fourth type, the valencia, is grown in New Mexico.

Each of the three peanuts producing regions is further broken into separate peanut pools by type of peanut.

The 1985 farm bill required the three production areas to offset profits and losses so as to assure no cost to the U.S. Government—this is commonly called across area profit and loss cross compliance. New Mexico valencias are explicitly exempt from across area profit and loss offsetting in the statute.

The 1985 farm bill also requires within area of profit and loss cross compliance, that is, profit and loss offsetting within each of the three production areas. Because of a technical drafting error during the drafting of the 1985 farm bill, the USDA is requiring New Mexico valencias to offset losses within the Southwest area.

Neither the Congress or the peanut industry ever intended for New Mexico valencias to offset profits and losses with other peanuts produced in the Southwest area. Congress intended for New Mexico valencias to be exempt from within area profit and loss cross compliance. The 1985 farm bill established separate type pools for valencia peanuts produced in New Mexico. In addition, New Mexico valencias are only a tiny fraction of the entire U.S. peanut industry.

Mr. President, I ask unamious consent that the following letter to the Secretary of Agriculture be inserted in the RECORD at this point.

This letter to Secretary Lyng, which was signed by 14 Senators from peanut producing States, expresses bipartisan support for excluding New Mexico valencias from within area profit and loss offsetting.

The Domenici valencia peanut amendment, which corrects this technical error, is supported by the chairman of the Senate Agriculture Committee, the Secretary of Agriculture, and the peanut industry.

There being no objection the letter was ordered to be printed in the RECORD, as follows:

COMMITTEE ON THE BUDGET,
Washington, DC, July 15, 1986.

Hon. RICHARD E. LYNG,
Secretary of Agriculture, U.S. Department of Agriculture, Washington, DC.

DEAR DICK: We are writing to alert you to a problem we have with ASCS interpretation of the peanut cross-compliance provisions in the 1985 farm bill.

As you know, the 1985 farm bill established a seperate pool for Valencia peanuts produced in New Mexico. Bright hull and dark hull Valencia peanuts are considered as seperate types for the purposes of establishing pools. In addition, the 1985 farm bill exempted New Mexico Valencia peanuts from cross-compliance.

It has recently come to our attention that the USDA is considering requiring cross-compliance for New Mexico-produced Valencia peanuts with other peanuts produced in the southwest area. This would clearly violate Congressional intent and we strongly suggest the Department reconsider its position on this issue.

New Mexico Valencias are only a tiny fraction of the entire U.S. peanut industry and Congressional intent was, and still is, to keep New Mexico Valencia peanuts in a seperate pool that is exempt from cross-compliance requirements.

We appreciate your careful attention to this matter.

Sincerely,

HOWELL HEFLIN,
JEREMIAH DENTON,
STROM THURMOND,
FRITZ HOLLINGS,
JEFF BINGAMAN,
THAD COCHRAN,
JESSE HELMS,
PETE DOMENICI,
SAM NUNN,
LAWTON CHILES,
DAVID L. BOREN,
MACK MATTINGLY,
LLOYD BENTSEN,
DON NICKLES.

□ 1520

Mr. HELMS. Mr. President, I ask for a third reading.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

Mr. HELMS. I ask unanimous consent to proceed to consideration of H.R. 4613, Calendar Order No. 723, the House companion bill.

The PRESIDING OFFICER. Is there objection? Without objection, the clerk will state the bill by title.

The legislative clerk read as follows:

A bill (H.R. 4613) to reauthorize appropriations to carry out the Commodity Exchange Act and to make technical improvements to that Act.

The Senate proceeded to consider the bill.

Mr. HELMS. Mr. President, I move to strike out all after the enacting clause of H.R. 4613 and insert in lieu thereof the text of S. 2045 as amended.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from North Carolina.

The motion was agreed to.

Mr. HELMS. Mr. President, I ask unanimous consent that the yeas and nays previously obtained be transferred from the Senate bill to the House bill.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The Chair understands it is the request of the Senator that the yeas and nays be ordered on the pending House bill?

Mr. HELMS. Yes, Mr. President.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HELMS. Mr. President, the yeas and nays have been ordered.

Mr. ZORINSKY. Mr. President, are we in third reading?

Mr. HART. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. HART. I do not want to delay things; I just want to make sure from a parliamentary point of view we are not creating a bad precedent by transferring yeas and nays. Is that in the accepted order of procedure of the Senate?

The PRESIDING OFFICER. The Chair advises the Senator from Colorado that there is precedent for this action.

Mr. HART. I thank the Chair.

Mr. BOREN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HELMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BOREN. Mr. President, as you know, I have long had an interest in the international implications of the CFTC's exercising its authority abroad. Like other independent agencies, the CFTC is not fully within the executive branch family, and consequently we must be careful that it be enabled to pursue its goals only in har-

mony with the Nation's broader foreign policy objectives.

I am interested in ensuring that the authority given to the Commission to serve subpoenas abroad is carefully circumscribed.

Mr. HELMS. The committee appreciates your concern about this subpoena authority, and I want to assure you that we have, in fact, carefully circumscribed the Commission's authority in several ways.

First, the Commission has assured the committee, and it is the intent of the committee, that the Commission will not serve subpoenas abroad routinely.

Second, the Commission has assured me that it is sensitive to the issues raised by a number of foreign governments and foreign exchanges. CFTC Chairman Phillips assured me in a letter dated March 24, 1986, that the Commission will exercise its authority in a way that will take those concerns into consideration. I ask unanimous consent that this letter be included in the RECORD at the conclusion of my remarks.

Mr. BOREN. Will the Commission work with the Department of State on these subpoenas?

Mr. HELMS. Yes, where practicable. We expect the Commission to find means of obtaining information in a way that seeks to avoid offending other nations and to consult with a representative of the receiving nation through the Department of State with a view toward minimizing any perceived intrusion on the sovereignty of that nation, where practicable and appropriate.

Mr. BOREN. I appreciate the gentleman's comments. Am I correct in understanding that the Commission's authority will be exercised just like that of the Department of Justice and the FTC in serving civil investigative demands abroad?

Mr. HELMS. Yes, a letter to this effect was sent to the Subcommittee on Conservation, Credit, and Rural Development of the House Agriculture Committee, and I ask unanimous consent that this letter also be printed in the RECORD. The Commission has agreed, for example, and it is the intention of this body, that the Commission's use of subpoena power abroad will be limited to the precomplaint, investigatory stage of enforcement proceedings. Moreover, the courts and the Commission itself are bound, as are we all, by the due process clause of the Constitution. This would, of course, be a factor in any subpoena enforcement proceeding.

Mr. BOREN. I thank the chairman for his remarks.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

COMMODITY FUTURES
TRADING COMMISSION,
Washington, DC, March 24, 1986.

Hon. JESSE HELMS,
Chairman, Senate Committee on Agriculture, Nutrition and Forestry,
Hon. RICHARD G. LUGAR,
Chairman, Senate Subcommittee on Agricultural Research, Conservation, Forestry and General Legislation,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR MR. CHAIRMAN: The Commodity Futures Trading Commission has been apprised of two communications concerning the proposed amendment of the Commodity Exchange Act to clarify the Commission's authority to serve subpoenas outside of the United States. The first of these communications, a note dated February 20, 1986 from the government of the United Kingdom to the Department of State (Note No. 29) suggests the view that the mechanism for obtaining information from sources in Great Britain should result from bilateral agreement between our two governments rather than by legislative enactment. This view is echoed in the second communication, a statement dated February 21, 1986 of five London exchanges,[1] which also expresses concern over the Commission's proposal to amend Section 4b of the Act. Because these communications, and particularly that of the London exchanges, indicate a misapprehension of the effect of the amendments as well as the background of the events that led to their proposal, the Commission offers this brief reply, and requests that it be included in the hearing record.

The Commission has proposed an amendment to Section 6(b) of the Act to clarify the ambiguity created by the decision in *CFTC* v. *Nahas*, 738 F.2d 487 (D.C. Cir. 1984) concerning the Commission's authority to investigate trading in U.S. markets by persons and entities located overseas. The amendment derives from the Commission's responsibility for the integrity of the U.S. markets and its purpose is to support the Commission's efforts to that end. Thus, the amendment is directed solely to the detection and prosecution of violations of U.S. law in connection with conduct in United States markets.

The statement of the London exchanges fails to distinguish the issue of the method by which subpoenas are served overseas, which was the subject of the D.C. Circuit's opinion in *FTC* v. *Compagnie de Saint-Gobain-Pont-A-Mousson*, 636 F.2d 1300 (D.C. Cir. 1980), from the issue of whether extraterritorial service of subpoenas is authorized in the first instance, regardless of the method of service employed, which was the subject of the decision in *CFTC* v. *Nahas*. The CFTC proposed amendment principally addresses the latter issue.

The Commission has sought congressional clarification of its authority to serve subpoenas extraterritorially because the Commission considers that authority to be critical to its ability to investigate possible violations of the Commodity Exchange Act by persons located overseas. The Commission does not anticipate that exercising this extraterritorial authority will be a routine matter. However, the need to be able to exercise such authority in appropriate cases has grown as participation in United States futures markets has become increasingly international in character.

The Commission is sensitive to the concerns which appear to underlie both the British Government note and the statement of the London exchanges. The Commission has traditionally consulted with the State Department, as it did in the Nahas case, to find a means of contacting foreign nationals in a way that seeks to avoid offending the foreign nation. The Commission intends to maintain that practice, where practicable.

In like fashion, although dependent on the facts and circumstances of a particular case, where appropriate the Commission intends to consult through the State Department with the representative of the receiving nation with a view toward minimizing any perceived intrusion upon that nation's sovereignty. In addition, where there are particular treaties or governmental mutual assistance guarantees, the Commission would contemplate utilizing them to the extent practicable.

The Commission wishes to assure the Committtee, the British Government and London exchanges, as well as other interested persons of its sensitivity to the concerns expressed in the two communications and its desire to perform its responsibilities to maintain the integrity of the U.S. markets in a way that will take those concerns into consideration.

In their statement, the London exchanges also expressed concern that the Commission's proposal to delete from Section 4b of the Act the reference to futures contracts traded "on or subject to the rules of any contract market" could be read to extend the antifraud coverage of Section 4b to futures contracts traded on foreign exchanges. The Commission wishes to make clear that its proposal to amend Section 4b is primarily intended to supplement the Commission's enforcement efforts under Section 4(a) of the Act, which makes it unlawful to market off-exchange futures contracts in the United States. The amendment would clarify that purveyors of illegal off-exchange futures contracts in the U.S. who also commit fraud could be charged under the antifraud provisions of Section 4b of the Act, as well as Section 4(a). The Commission anticipates, therefore, that an amended Section 4b would most often be invoked in cases also alleging violations of Section 4(a). In this connection, it should be pointed out that Section 4(a) exempts the sale of futures contracts traded on or subject to the rules of exchanges located outside the United States.

The Commission nevertheless agrees with the London exchanges that amended Section 4b can be read to cover fraud committed in connection with foreign futures contracts. However, this is not a new concept under the Commodity Exchange Act. As the London exchanges indicate, another section of the Act, Section 4(b), and Commission Rule 30.02 presently deal with foreign futures contracts. Section 4(b), enacted in 1982, supplements existing Commission authority under 2a(1) and 4c and authorizes the Commission to develop regulations—including antifraud regulations—governing the marketing of foreign futures contracts by persons located in the United States. Those regulations may not govern the rules or actions of foreign exchanges or the terms of their contracts. Rule 30.02, adopted in 1975, prohibits fraud in connection with the marketing in the United States of contracts

[1] The exchanges on whose behalf the statement was made are: the London Commodity Exchange Company Limited, the Metal Market and Exchange Company Limited, the London International Financial Futures Exchange Limited, the Grain and Feed Trade Association, and the International Commodities Clearing House Limited.

traded on foreign commodity exchanges. This Rule could be used, for instance, to stop the flow of fraudulent solicitation materials into the United States.

The Commission wishes to assure the Committee and the London exchanges that, given the stated purposes underlying its Section 4b proposal and its existing authority under Section 4(b) and Rule 30.02, the Commission would not charge Section 4b violations in connection with activity that occurs on a foreign board of trade. However, there may be instances, particularly involving fraudulent retail sales practices in the United States, when the Commission should be able to proceed under Section 4b in cases where fraud is committed upon U.S. citizens in connection with foreign futures contracts. Further, violations of Section 4b clearly may be prosecuted criminally, whereas violations of Rule 30.02 or Section 4(b) rules arguably may not. Thus, for example, the Commission could invoke Section 4b against operators who entice United States citizens to trade on the London exchanges but who either have no intention of sending customers' money to London for that purpose or intend to churn the customers' accounts to generate commissions. Such fraudulent conduct amounts to nothing less than theft and is appropriately the subject of Commission and criminal law enforcement action. The Commission is confident that the London exchanges would agree that the misuse of their name and reputation in such unlawful conduct should not go unpunished.

The Commission wishes to emphasize that, in keeping with the restrictions in Section 4(b), antifraud enforcement efforts under Section 4b involving foreign futures contracts would not be directed at the rules of, or trading practices occurring on, the London exchanges, or at the terms or conditions of their futures contracts, but rather at the unscrupulous operators who seek to commit fraud in the United States. To accomplish this result, the Commission is prepared to offer an amendment to Section 101 of S. 2045.

Sincerely,

SUSAN M. PHILLIPS
Chairman.

COMMODITY FUTURES
TRADING COMMISSION,
Washington, DC, May 1, 1986.

Hon. ED JONES,
Chairman, Subcommittee on Conservation, Credit, and Rural Development, Committee on Agriculture, U.S. House of Representatives, Longworth House Office Building, Washington, DC.

DEAR MR. CHAIRMAN: As you are aware, Section 3 of H.R. 4613 would amend Section 6(b) of the Commodity Exchange Act expressly to empower the Commission to serve administrative subpoenas on persons located outside the United States. During the April 22 mark-up on H.R. 4613 before the Subcommittee on Conservation, Credit, and Rural Development, Congressman Daschle expressed some concern that the scope of the Commission's extraterritorial subpoena authority would exceed the authority conferred upon the United States Department of Justice ("Justice") and the Federal Trade Commission ("FTC") to serve "civil investigative demands" or "CIDs" extraterritorially. See 15 U.S.C. § 1312(d)(2); 15 U.S.C. § 57b-1(c). I am writing this letter to expand upon the responses that I made to Congressman Daschle at that time.

CIDs and the Commission's requested subpoena authority are parallel courses for the obtaining of needed investigatory evidence. In order to clarify any uncertainty about the scope of our proposal, we intend that the use of Commission extraterritorial subpoenas would be limited to the pre-complaint, investigatory stage of enforcement proceedings. As a result, the scope of our requested subpoena authority would be very similar to that which presently exists for CIDs. We would not object to appropriate report language to make this clear. Moreover, there is an additional procedural safeguard for the issuance of a Commission subpoena. Under H.R. 4613, the full Commission must approve the issuance of an extraterritorial subpoena, while CIDs can be issued by a single individual.

We take issue with the assertion that a Commission subpoena could be enforced in violation of due process of law. Section 3 of H.R. 4613 does not alter the existing provision of Section 6(b) of the Act which requires that the Commission seek the aid of a United States district court to enforce an administrative subpoena, just as Justice and the FTC must resort to the federal district courts to enforce CIDs. The Court in any such enforcement action would give appropriate consideration to any due process defenses raised by respondents.

We believe that the proposed amendment to Section 6(b) of the Commodity Exchange Act is necessary in light of the decision of the United States Court of Appeals for the District of Columbia Circuit in *CFTC* v. *Nahas*, 738 F.2d 487 (D.C. Cir. 1984). Nahas held that Section 7(b) in its present form does not grant the Commission authority to serve investigative subpoenas outside the territorial limits of the United States. An amendment to Section 6(b) like that which we have proposed will make explicit the existence of that power. A similar approach was taken by Congress in 1976 when the existing statute governing CIDs in antitrust investigations conducted by Justice was amended expressly to provide for extraterritorial service of CIDs. Without the subpoena authority we have requested, the Commission might be foreclosed from investigating the conduct of foreign participants in the domestic futures markets, regardless of the magnitude of their involvement in those markets. Would-be violators of the Act who trade on U.S. markets might therefore be able to escape the Commission's enforcement authority simply by conducting their transactions on the American exchanges from abroad.

In closing, we repeat our assurances that the Commission's authority to issue extraterritorial subpoenas embodied in H.R. 4613 would not be used routinely. Where appropriate, the Commission would consult with the State Department to find a means of contacting foreign nationals in a manner that would seek to avoid offending a foreign nation. In addition, where there are particular treaties or governmental mutual assistance guarantees, the Commission would utilize them to the extent practicable to obtain essential documents or testimony.

Sincerely yours,

SUSAN M. PHILLIPS,
Chairman.

The PRESIDING OFFICER. The question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

Mr. HELMS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BOREN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HELMS. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

□ 1530

Mr. DOLE. Mr. President, I ask unanimous consent that further proceedings under the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The question is on passage of the House bill. The yeas and nays have been ordered. The clerk will call the roll.

The bill clerk called the roll.

Mr. SIMPSON. I announce that the Senator from North Carolina [Mr. BROYHILL], the Senator from New York [Mr. D'AMATO], the Senator from Alabama [Mr. DENTON], the Senator from Utah [Mr. GARN], the Senator from Florida [Mrs. HAWKINS], the Senator from Nevada [Mr. LAXALT], the Senator from Alaska [Mr. MURKOWSKI], the Senator from Idaho [Mr. SYMMS], the Senator from South Carolina [Mr. THURMOND] and the Senator from Connecticut [Mr. WEICKER] are necessarily absent.

I further announce that, if present and voting, the Senator from North Carolina [Mr. BROYHILL], the Senator from Florida [Mrs. HAWKINS], the Senator from Idaho [Mr. SYMMS], and the Senator from South Carolina [Mr. THURMOND] would each vote "yea."

Mr. CRANSTON. I announce that the Senator from Delaware [Mr. BIDEN], the Senator from Connecticut [Mr. DODD], the Senator from Ohio [Mr. GLENN], the Senator from Hawaii [Mr. INOUYE], the Senator from New Jersey [Mr. LAUTENBERG], and the Senator from New York [Mr. MOYNIHAN] are necessarily absent.

The PRESIDING OFFICER (Mr. MCCONNELL). Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 83, nays 1, as follows:

[Rollcall Vote No. 331 Leg.]

YEAS—83

Abdnor	Armstrong	Bentsen
Andrews	Baucus	Bingaman

Boren	Harkin	Mitchell
Boschwitz	Hart	Nickles
Bradley	Hatch	Nunn
Bumpers	Hatfield	Packwood
Burdick	Hecht	Pell
Byrd	Heflin	Pressler
Chafee	Heinz	Pryor
Chiles	Helms	Quayle
Cochran	Hollings	Riegle
Cohen	Humphrey	Rockefeller
Cranston	Johnston	Roth
Danforth	Kassebaum	Rudman
DeConcini	Kasten	Sarbanes
Dixon	Kennedy	Sasser
Dole	Kerry	Simon
Domenici	Leahy	Simpson
Durenberger	Levin	Specter
Eagleton	Long	Stafford
Evans	Lugar	Stennis
Exon	Mathias	Stevens
Ford	Matsunaga	Trible
Goldwater	Mattingly	Wallop
Gore	McClure	Warner
Gorton	McConnell	Wilson
Gramm	Melcher	Zorinsky
Grassley	Metzenbaum	

NAYS—1

Proxmire

NOT VOTING—16

Biden	Glenn	Murkowski
Broyhill	Hawkins	Symms
D'Amato	Inouye	Thurmond
Denton	Lautenberg	Weicker
Dodd	Laxalt	
Garn	Moynihan	

So the bill (H.R. 4613), as amended, was passed.

□ 1600

Mr. HELMS. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. ZORINSKY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HELMS. Mr. President, I move that the Senate insist on its amendment to H.R. 4613 and request a conference with the House of Representatives, and I ask that the Chair be authorized to appoint conferees on the part of the Senate.

The motion was agreed to, and the Presiding Officer (Mr. MCCONNELL) appointed Mr. HELMS, Mr. DOLE, Mr. LUGAR, Mr. COCHRAN, Mr. WILSON, Mr. ZORINSKY, Mr. MELCHER, Mr. HEFLIN, and Mr. BOREN conferees on the part of the Senate.

Mr. HELMS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded the call the roll.

Mr. LUGAR. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT AMENDMENTS

Mr. LUGAR. Mr. President, I ask unanimous consent that the Senate now turn to the consideration of Calendar Order No. 874, S. 2792, the FIFRA reauthorization bill.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 2792) to amend the Federal Insecticide, Fungicide, and Rodenticide Act, and for other purposes.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Indiana?

Mr. ZORINSKY. Mr. President, I know of no outstanding objection on this side.

There being no objection, the Senate proceeded to consider the bill.

□ 1610

Mr. LUGAR. Mr. President, the bill before the Senate today is historic legislation that represents nearly 2 years of negotiations and compromise among competing interests in the pesticide area. This omnibus bill has been endorsed by the National Agricultural Chemicals Association, a coalition of 41 environmental and labor groups, and the American Farm Bureau Federation.

Without question the most significant aspect of this legislation is the reregistration of older pesticides. Prior to the creation of the Environmental Protection Agency in the early 1970's, pesticides were regulated by the Department of Agriculture using standards that were far less stringent than today's requirements for registration. Despite two mandates by Congress in 1972 and again in 1978 to review and reregister some 600 active ingredients, the EPA has reregistered less than 1 percent of these products. These active ingredients continue to be registered and marketed today despite the fact that adequate health and safety data may not be available to support such a registration.

The committee-approved bill establishes a five-phase plan with strict deadlines for the reregistration process. The process will require about 10 years to complete action on all 600 active ingredients. This compares to an expected completion date of beyond the year 2005 under current procedures.

This legislation improves upon previous reregistration mandates because it authorizes the EPA to require registrants to pay a user fee for each reregistered active ingredient. The reregistration fee will generate approximately $46 million in additional revenue to help the EPA complete this process within the mandated time deadlines. This represents about one-half of the estimated $90 million that will be necessary to complete this process.

The Senate Agriculture Committee has taken special care to ensure that small businesses will not be adversely affected by this fee. They are required to pay a proportionately lower fee based upon historical sales volume of the active ingredients. The bill also authorizes the EPA to reduce the fee for minor-use pesticides that do not have enough sales volume to justify such an expense.

S. 2792 resolves other issues that in the past have bitterly divided environmentalists and the pesticide manfacturing industry. The bill establishes a system whereby the public may review health and safety data used to support an EPA pesticide registration. This issue has sharply divided the pesticide industry and environmentalists in the past. The Senate Agriculture Committee's unsuccessful attempt to reauthorize FIFRA in 1982 was motivated almost exclusively as a result of this issue. Environmentalists believe that health and safety data submitted to support an EPA pesticide registration should be available to the public for review of any potential hazards to public health and the environment. The pesticide registrants, on the other hand, believe that health and safety data is proprietary information that cannot be allowed to reach their competitors. This is particularly the case with overseas competitors who are not governed by U.S. patent laws.

The committee's bill strikes a reasonable accord between these competing interests. The bill requires the registrants to prepare summaries of the health and safety data that would be disclosed to the general public. The registrant can prepare the summaries in a way that protects proprietary data—and yet, the general public will be able to review the results of the health and safety studies.

The bill also directs the EPA to regulate inert ingredients in pesticides. Inert ingredients are additives that are inactive within that particular pesticide formula. They are added simply as a carrier of the active ingredients. It is estimated that some 2,000 inert ingredients are used in pesticides formulations. Most inert ingredients have little, if any, effect upon public health and the environment. The EPA, however, has identified approximately 55 inert ingredients known to cause adverse health and environmental effects. Another group of 51 are suspected to have such effects.

S. 2792 requires the EPA to establish a priority list of not less than 50 and no greater than 75 inert ingredients to review. Within 1 year, the EPA must determine whether or not additional health and safety data is needed for a listed inert. If a potential risk to human health and the environment exists, the EPA may require the registrants to generate health and safety studies for such inert ingredients. Registrants would have 4 years to generate these studies.

The bill establishes a new program for the regulation of pesticides in ground water. The EPA is required to issue ground water residue guidance

levels—or "Gurgles"—for all pesticide registrations where a potential for leaching exists. The EPA must also announce "Gurgles" whenever a pesticide has been detected in three different geographical areas or is detected in a drinking water well that serves a significant population.

The EPA, in consultation with the Secretary of Agriculture and the Governors of each State, is required to implement a groundwater monitoring program in representative geographical areas. Based upon its monitoring program, the EPA may require registration amendments as a preventative tool to keep pesticides from exceeding the "Gurgle" in drinking water wells and potential water wells.

In addition, the committee's bill enacts time deadlines for administrative review of registered pesticides suspected of causing adverse efects upon public health and the environment. The FIFRA statute has been sharply criticized for the time required to cancel pesticides with proven toxic effects. The bill prevents excessive delays due to lack of action by EPA.

The bill also addresses many business concerns to pesticide manufacturers. The committee bill addresses complaints received from the secondary registrants who market follow-on pesticides after the expiration of the original registrants 17-year patent. Under current law, the secondary registrant may obtain an EPA registration by either generating their own health and safety data or by citing the original registrants data. Secondary registrants must offer to pay compensation for the use of original registrants data.

In the mid-1970's, the EPA was responsible for determining the appropriate level of compensation. This placed EPA in an impossible position of having to arbitrate between two competing segments of the pesticide industry. At EPA's request, the Congress voted to have a nonpartisan arbitration panel determine the level of data compensation. The decision of arbitration panel is binding to both parties and is not subject to appeal in a U.S. court of appeals.

The secondary registrants testified that the arbitration panel has issued only one decision thus far and it heavily favored the interests of the original registrant. In response to these concerns, the committee adopted an amendment whereby the arbitration panel's decisions would be nonbinding to secondary registrants. They would no longer be bound by an arbitrator's decision they believe to be excessive. In addition, either party involved in arbitration could seek judicial review of any arbitrator's decision.

Finally, the bill contains the so-called "patent-term" restoration provisions that enable the original registrants to obtain a patent extension for the period of time necessary for the Environmental Protection Agency to review and approve the pesticide registration. Such a provision will encourage the pesticide manufacturers to invest in costly research programs to develop safer and more effective pesticides. The incentive for research commitments are greatly reduced under current law where 5 to 7 years of the patent life expires prior to the EPA's registration approval.

Mr. President, I summarize this bill by simply stating that it is a carefully crafted piece of work that balances the interests of farmers, pesticide manufacturers, and the general public. I encourage my colleagues to vote for prompt approval of this measure.

I yield the floor.

Mr. ZORINSKY addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. ZORINSKY. Mr. President, S. 2792 is an original bill reported by the Senate Committee on Agriculture, Nutrition, and Forestry. It would extend the authorization of appropriations to carry out the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act for a period of 5 years. It would also make numerous substantive changes in the regulatory program for pesticides under the act. In addition, the bill addresses other important matters, such as first, farmer liability in cases where they use pesticides in compliance with label instructions, second, the extension of the term of patents for pesticides, third, tolerances for pesticides residues in food, and fourth, ground water contamination.

The effective regulation of pesticides is necessary to ensure the safety and productivity of our farmers and ranchers, the safety of our food and drinking water, and the control of disease while otherwise protecting the environment.

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Because the use of pesticides can have both beneficial and adverse effects, pesticide regulation involves very complex issues. The role of the Federal Government in this area has long been established.

The first Federal statute regulating pesticides was enacted in 1910. The Federal Insecticide, Fungicide, and Rodenticide Act became law in 1947. FIFRA has been subsequently amended numerous times. The amendments enacted in 1972 were among the most important.

The 1972 legislation broadened the scope of FIFRA. It required, among other things, the reregistration and classification of thousands of pesticides that had been previously registered. Many of these chemicals had never been subjected to adequate scientific evaluation.

The 1972 amendments proved to be difficult to implement. Therefore, the act was amended again in 1975. Although the reregistration process was required in October 1977, virtually none of the pesticides had been reregistered by such date.

At the time legislation was considered in 1978, it was estimated that, because of budgetary restrictions, the reregistration process would require an additional 10 years.

It is now 8 years later, and the Environmental Protection Agency is still a long way from completing the reregistration that was initially required under the 1972 legislation.

The failure to make substantial progress is completing this process is of great concern to pesticide manufacturers, consumers, environmental groups, and users of both agricultural and nonagricultural pesticides, as well as members of Congress. One of the primary purposes of S. 2792 is to ensure that the Environmental Protection Agency proceed to complete the process in the foreseeable future.

Many of the provisions of S. 2792 are similar to those in S. 2346, the bill introduced by Chairman HELMS, and S. 2215, the bill introduced by Senators LUGAR, LEAHY, and PROXMIRE. These Senators are to be commended for their efforts to have the reregistration problem addressed during this session of Congress. I understand that the bill has the support of many groups, including, among others, the National Agricultural Chemicals Association, certain environmental organizations, and the American Farm Bureau.

In developing this legislation, the committee carefully considered the practicality of the time restrictions to be imposed upon EPA for the completion of the reregistration process. I am hopeful that the deadlines that EPA would be required to meet under this legislation will not prove to be unrealistic.

The reregistration of thousands of chemicals will require adequate personnel and funding for EPA. One of the reasons that reregistration has proceeded at an unsatisfactory pace is that adequate funding has not been provided. Under S. 2792, additional funding for this effort would be provided through the imposition of a one-time modest fee for reregistering a pesticide active ingredient. The cost of this fee would be shared by registrants of pesticides that contain such active ingredient.

Mr. President, in addition to the provisions relating to reregistration or older pesticides, S. 2792 would include, among other things:

First, provisions for public access to pesticide health and safety data;

Second, new requirements for conditional pesticide registration;

Third, procedures to ensure replacement of invalid health and safety data;

Fourth, required cooperation or cost-sharing in the development of health and safety data on currently registered pesticides;

Fifth, revised rules for the payment of compensation in cases where a pesticide registrant uses another party's data in the registration of a pesticide;

Sixth, extension of the term of patents of certain pesticides to reflect the time period between the time a patent is granted for a pesticide and the time that the pesticide is registered for use;

Seventh, establishment of uniform pesticide residue tolerances for food;

Eighth, requirements for the protection of ground water from pesticide contamination;

Ninth, provisions relating to pesticide worker safety and training; and

Tenth, restrictions of liability for farmers who use pesticides in accordance with the label instructions and who are not otherwise negligent.

I believe that the farmer liability provision is of particular importance. Currently, farmers are potentially liable for unforeseen damage caused by a pesticide even though there was compliance with all label requirements for its use. If farmers are found to be strictly liable for damages that may result from the prescribed use of pesticides, the cost of farming would greatly increase, and the increased cost could very well change the structure of agriculture in this country. This is because few, if any, farmers could afford to pay the high court awards for such damages or the cost of insurance to cover their potential liability for such damages.

Another important provision of the bill relates to the use of a patented pesticide to develop data for subsequent submission to EPA in connection with the registration of a generic pesticide. This provision is similar to one included in the patent term restoration bill for human drugs enacted into law in 1984. It is intended to overrule a court decision that has the effect of indirectly extending patents for pesticides beyond the extended period covered by the bill.

The provision provides that it shall not be a patent infringement to make, distribute, sell or use a patented pesticide solely for uses related to the development and submission of information under a Federal law that regulates the approval of pesticides. Its purpose is to establish that a manufacturer of a generic pesticide may experiment with a patented pesticide prior to the expiration of the patent to develop health and safety information required by EPA so that it may obtain approval to begin commercial activity after a valid patent expires.

Under FIFRA, a person can distribute a pesticide only if the pesticide is registered with EPA. To obtain a registration, the applicant must submit test data demonstrating that the pesticide will not cause unreasonable adverse effects to man or the environment. This requirement for the submission of test data applies to all applicants even if the pesticide is a generic pesticide identical in all respects to a pesticide that had previously been approved by EPA.

The effect of the provision is to overrule the decision of the court in *Roche Products, Inc.* v. *Bolar Pharmaceutical Co., Inc.*, 733 F.2d 858. In that case, it was held that the experimental use of a drug product prior to the expiration date of a patent on that drug product constitutes patent infringement, even though the only purpose of the experiments is to seek FDA approval for the commercial sale of the drug after the patent expires.

This decision prohibits the manufacturer of a generic pesticide from developing any data prior to the expiration of its patent which would be necessary for the registration of the product after the patent expires. The court decision effectively would add a period of up to 5 years—the period for completion of these tests—to the term of a patent in addition to the extension provided by the bill.

Experimentation to develop health and safety data does not have any adverse economic impact on the patent owner's exclusivity during the life of a patent, but prevention of such activity effectively extends the patent owner's commercial exclusivity beyond the patent expiration date. The committee believes that immediate competition after the expiration of the patent should be encouraged. Therefore, this provision was adopted to help ensure that there will be no other direct or indirect method of extending the term of a patent other than the extension provided for in the bill.

Mr. President, I am aware that there is an interest on the part of a number of Senators to amend a number of the provisions of this bill, including the ground water, uniform tolerance, and farmer liability provisions. I am hopeful that, as we proceed with consideration of this legislation, these concerns can be addressed to the satisfaction of all interested parties and that the Senate will move expeditiously to pass S. 2792.

Mr. President, I yield the floor.

Mr. HELMS. Mr. President, this bill, the Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1986, will reauthorize and amend the Federal Insecticide, Fungicide, and Rodenticide Act [FIFRA]. This act is the basic statute governing the production, sale, and use of pesticides for agricultural purposes and for many general household purposes.

FIFRA is administered by the Environmental Protection Agency.

That agency is charged with responsibility for ensuring that pesticides do not cause unreasonable adverse effects on the environment, taking into account particular costs and benefits associated with the use of each pesticide.

This bill represents almost 2 years of negotiations among competing interests.

It is the product of careful consideration and debate by each member of the Committee on Agriculture, Nutrition, and Forestry during 2 days of hearings and 3 days of markup.

Arguments by farmers and other users, environmentalists, and pesticide manufacturers were carefully evaluated as the committee proceeded through the legislative process. In forging this compromise legislation, the committee recognized the need to protect the environment, users, and consumers of pesticide products from unnecessary harm.

Everyone involved had the goal of ensuring that safe and effective chemical products make their way into the marketplace, while at the same time balancing these important concerns with the need to maintain the effectiveness of the free enterprise system in a growing economy.

Mr. President, I shall describe in the briefest way the principal features of this bill:

First, the bill accelerates the reregistration process for pesticide active ingredients and requires the payment of reregistration fees for each active ingredient to help EPA with the costs of the reregistration process. Special exemptions from the reregistration fees are provided for small businesses.

Second, the bill establishes national uniform tolerances for pesticide residues. However, individual States are able to establish stricter standards for residues in cases of compelling local conditions or where an imminent hazard to human health exists.

Third, the bill increases public access to pesticide health and safety data.

Fourth, EPA is directed to regulate the use of potentially hazardous inert ingredients in pesticides.

Fifth, the bill establishes a comprehensive program to protect against pesticide contamination in ground water.

Sixth, the training and certification provisions currently in FIFRA are expanded and strengthened.

Seventh, farmers are generally exempted from liability for damages caused by pesticide use in cases where the farmer has followed the pesticide label instructions.

Mr. President, this is a carefully crafted bill which, I believe, meets many competing interests and needs. I urge its careful consideration and adoption.

Mr. President, I would also like to note for the record an error that appears in the section of the committee report stating the proposed "Changes in Existing Law."

There is a reference in that section on page 116 of the report to an amendment to the definition of "unreasonable adverse effects on the environment" as set forth in FIFRA. That reference is in error. The committee did not adopt any amendment to that definition during the markup.

At this point I would like to yield back to Senator LUGAR, the distinguished chairman of the Subcommittee on Agricultural Research, Conservation, Forestry, and General Legislation. Senator LUGAR has been intimately involved with the development of this bill. I commend him for his fine work in helping to bring this bill to the Senate floor.

Mr. PROXMIRE. Mr. President, I rise in support of S. 2792, the product of a landmark agreement between 92 pesticide manufacturers represented by the National Agricultural Chemical Association [NACA] and the 41 environmental groups which make up the campaign for pesticide reform [CPR]. While each side sacrificed a few dearly held objectives in reaching the final compromise, the result is well worth their efforts.

For the first time our pesticides law can protect the environment, provide farmers with reliable products and ensure consumers of a safe food supply.

This bill will banish forever the chemical-of-the-month syndrome which has plagued EPA's pesticide program since its birth.

Can we afford to wait for the so-called perfect bill which solves every thorny pesticides problem? No way, Mr. President. Even though the 1972 FIFRA Act gave EPA 5 years to reregister all pesticides according to modern scientific standards, 14 years later no pesticide has made it all the way through the regulatory process. Yet almost all of these thousands of products, the result of formulations of 600 active ingredients, are still on the market today. Our current pesticide program is largely an illusion, fooling farmers and consumers and leaving the environment unprotected.

S. 2792 results from a series of negotiations held over a 2-year period by NACA and CPR representatives and deserves the support of the Senate. Last week the House passed almost identical legislation with only four dissenting votes. The Senate should follow their courageous lead.

Mr. President, in 1983 and again in 1985 I introduced two versions of pesticides bills stronger than S. 2792. Those two bills contained stricter deadlines for examining the most hazardous pesticides, those most implicated as threats to public health. In addition, they were less restrictive than S. 2792 regarding public access to health and safety data prior to registration. These changes represent major concessions by environmental groups during the negotiations.

Yet despite the need to accommodate the diverse viewpoints represented in the NACA-CPR coalition, S. 2792 still preserves a large percentage of the ideas contained in my two earlier bills.

For example, the heart of S. 2792 remains the reform of the reregistration process. This goal dates back to those earlier efforts as do provisions closing registration loopholes, improving public participation, requiring sanctions for submission or false health and safety data, export controls, improved pesticide applicator training and regulation of inert ingredients. But S. 2792 also acknowledges the needs of the farmers who use pesticides to improve their harvests. Farmers need the assurance of safe, effective products for combating pests. They also need protection for themselves and their communities from the potentially harmful effects of inadequately tested products. Take ground water for example.

When a pesticide contaminates ground water wells, as has frequently happened in my home State of Wisconsin, farmers suffer along with the nonfarmers who use ground water for drinking. Wisconsin relies on ground water for 70 percent of its drinking water yet we suffer from pollution by a dozen different pesticides, including Temik.

Worst of all, dairy cows tainted with pesticides may take years, if ever, to detoxify, often resulting in a total loss to farmers.

Current law provides EPA with general authority for regulating ground water contamination, but for the first time, under S. 2792, the Agency receives specific instructions on the creation of a new ground water program.

The ground water provision represents the best efforts of the NACA-CPR coalition, EPA representatives, and Senate staff. While protections could be tightened, especially regarding prevention of contamination, only the language contained in the bill was acceptable to all negotiators.

Uniform preemption of State tolerances for pesticide residues on food products, a provision added in committee, also raises concerns with diverse interests including State governments and environmental groups. While I do not support the preemption effort, critics should note that the provision sunsets after 5 years and the section is also limited by an exception from uniformity in cases where necessary to prevent an imminent hazard to human health. I hope the sunset will be retained in conference.

While I fully support this vitally needed legislation, I am concerned about one amendment added by the Agriculture Committee in section 801 of the bill. This amendment establishes uniform tolerances for certain categories of pesticides and bars States from setting more stringent residue limits for pesticides in foods—except under limited circumstances. However, the provision is limited in its scope and applies solely to pesticides that have been fully tested pursuant to EPA testing guidelines, either as new products added to the market or to pesticides that have been fully reregistered under section 105 of this legislation after April 25, 1985.

Thus it would not affect a State's authority to regulate the vast majority of pesticides now on the market that are old pesticides and that have not been reregistered. The States' authority to act against chemicals such as ethylene dibromide [EDB] or daminozide is thus fully protected. In addition, the amendment goes only to numerical regulatory limits on the amount of residue allowed in the food chain for this limited category of pesticides. The provision thus would have no impact whatsoever on other State regulatory authority to protect its food supply, such as to require inspections, confiscate adulterated food, require warnings, issue health advisories, or the like.

The catalyst for my original legislation was the woeful record of EPA which failed to act decisively where specific pesticides such as ethylene dibromide [EDB] posed serious risks to human health. A host of reports by relevant House and Senate committees, the National Academy of Sciences, the GAO and others created a frightening record of years of neglect and unacceptable delay in protecting the public from known bad actor chemicals found in our drinking water, food supply, workplace, and environment. Thus, it took EPA an entire decade before it finally removed EDB from the market in 1984, 10 years after the National Cancer Institute determined that it was a probable human carcinogen. The process EPA employs to reach such decisions, known as special review or RPAR has simply failed, plagued by bureaucratic footdragging, political interference, and unchecked influence by pesticide manufacturers.

For this reason, a central provision of this bill establishes a mandatory duty on the Administrator to replace its current special review regulations with new, streamlined procedures preventing such unnecessary delays and other abuses in the future. Section 301 of the bill mandates open, public, special review procedures with full opportunity for public participation. Closed-door meetings or secret negotiations

with industry are specifically prohibited. In addition, the Administrator is required to replace its current special review regulations with new criteria for initiating special reviews based on levels of risk. No consideration of possible benefits of the pesticide will be permissible at this initial stage of the process. And EPA is allowed to decline a review on grounds of lack of exposure to the chemical only if the Administrator had available and considered all relevant means of exposure.

Yet, it is the farmer and the farmworker who are—by far—most in jeopardy. A recent and important epidemiological study by the National Cancer Institute found human cancer rates among farmers exposed to the herbicide 2-4-D to be many times higher than the general population. Other studies of farmworkers and other agricultural workers have similarly found disproportionately higher rates of birth defects, male sterility and other chronic illnesses.

Agricultural labor is now the single most hazardous occupation in the United States. Yet in the last two decades the sum total of EPA's actions to protect agricultural workers amounts to the adoption of one-half of a page of now antiquated and meaningless regulations. For example, the longest reentry interval required under Federal law between application of a pesticide and worker reentry is 48 hours. In contrast, California law provides reentry intervals of up to 60 days.

This bill will do much to change this sorry state of affairs. As noted, it will mandate full health and safety testing of these dangerous chemicals by a certain date so that Government can regulate from knowledge, not from ignorance. It will greatly streamline EPA procedures to get bad actors off the market—and out of the workplace—quickly, preventing a repetition of the EDB case. And, most importantly, it creates a mandatory, judicial enforceable duty on EPA to adopt, by a specific date, comprehensive regulations to protect agricultural workers from these potentially deadly pesticide chemicals. This bill represents an important step forward in worker protection and in generally safeguarding the American public from pesticide exposure.

Further, this bill would ensure that EPA could no longer sit on pesticide regulatory decisions for years after receiving data indicating that risk-based review triggers were exceeded, without even initiating a review. Instead, on receipt of information demonstrating that risk criteria have been met, EPA must immediately notify the registrant who has 30 days to respond. Not later than 60 days after receipt of such response, EPA has a mandatory duty to decide whether to initiate a review. This key requirement is intended to ensure that such special review decisions are made promptly, publicly, and openly, preventing past delays and abuses where pesticides were sold to farmers and an unknowing public.

Finally, a mandatory deadline of 18 months is imposed on the Administrator for completion of these reviews. This carefully considered deadline can be extended only in rare circumstances and then for no more than 1 year.

Among the many reasons I support this landmark pesticide reform bill are its heightening protections required for those more exposed to these dangerous chemicals—the Nation's food and agricultural workers. Three years ago, as I noted previously, much national attention was focused on the deadly pesticide ethylene dibromide [EDB] after trace amounts were found in various foodstuffs and drinking water. The resulting public uproar and press attention resulted in the suspension by EPA of this powerful carcinogen. But years before this controversy erupted, workers throughout the country had been exposed to EDB at frighteningly high levels—on loading docks, in holds of ships, in grain silos, and in farmers' fields. Cancer risks as high as 1 in 100 were not uncommon.

EDB is but one example of the dozens of pesticides to which American workers are exposed daily. Many of these highly toxic chemicals have been linked to reproductive failure, genetic mutations, cancer, birth defects, and other life-threatening diseases. Most have never been adequately tested even to determine their adverse effects on human health. Yet we continue to increase pesticide use in American agriculture—this year to a recordbreaking 2.6 billion pounds annually. Who knows what we are doing to our workers—and to future generations? Certainly not the multibillion dollar chemical industry that supplies these untested products to farmers.

Another critical provision of this legislation addresses the fundamental flaw in this Nation's entire pesticide regulatory apparatus—the absence of complete, valid, and modern-day scientific data concerning the acute and chronic health risks posed by the 2.7 billion pounds of pesticides introduced into the environment annually. The bill addresses this issue by establishing a series of mandatory, judicially enforceable duties on the Administrator and the registrant. The amendment provides for a greatly accelerated pesticide reregistration program through which the registrant and then, independently, the Administrator identify gaps in existing data due to missing or inadequate studies that do not comply with EPA regulations and guidelines.

In performing this review, the Administrator is required to thoroughly examine the studies themselves, not just summaries or abstracts supplied by registrants. Mandatory deadlines are then imposed on the registrant to complete all required studies for the pesticide registration.

Where registration standards have already been issued identifying such data requirements, it is intended that the administratively imposed deadlines will be met earlier than the deadlines established by this legislation and reregistration completed within the framework created by this bill.

Finally, the Administrator must thoroughly and carefully review the pesticide's data base by a date certain to determine if its registration should be renewed and, if so, under what restrictions.

Another important provision of this bill places new and strict limitations of the use of so-called conditional registrations which, in the past, have been used to allow the marketing of new pesticides, or new uses of existing pesticides, even where these products were not fully tested for their health and environmental effects. Section 103 of the bill places a series of limitations on this process to address past abuses and insure that we do not add to or exacerbate the already serious data gap problem. Thus, in a change from current law, an additional use of an old pesticide lacking a full data base will in the future be permitted only if its use will not materially increase risks to health or the environment. It is the intent of this provision that any increase in the theoretical maximum residue contributing greater than 1 percent or total use greater than 2 percent would exceed this standard. In addition, and in any event, such conditional registrations are prohibited if adequate data could have been generated but are still absent concerning the ability of the pesticide to cause cancer, birth defects, reproductive hazards, nerve damage, or other chronic illnesses.

The bill breaks new ground on reregistration fees which the bill requires for the first time. Under this unique provision registrants are assessed a large percentage of the regulatory costs of reregistration of their products. I know of no other instance of regulatory user fees. This section raises over $40 million over the 9-year reregistration period. The funds provided insure EPA has the means necessary for meeting the requirements of the bill.

Mr. President, Senators LUGAR and HELMS and the Agriculture Committee staff did an excellent job of shepherding this bill through the legislative process. But the committee and I shared excellent outside help who were there every step of the way, right back to the drafting of my first pesticides bill in 1983, the so-called Harper's Ferry I bill.

I refer to Gary Endicott of the legislative counsel's office and James

Aidala of the Congressional Research Service. Both men possess encyclopedic knowledge of FIFRA, past and present. Gary Endicott's drafts and Jim Aidala's analyses and wise counsel guided both the House and Senate with the thorny issues and difficult choices raised along the way.

Finally, Mr. President, S. 2792 is the most important environmental pollution bill since passage of Superfund in 1980. Its consensus approach provides a good model not just for our efforts on acid rain and toxic wastes but also for other nonenvironmental problems.

Mr. President, I ask unanimous consent that a report prepared by James Aidala of the Congressional Research Service be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

CONGRESSIONAL RESEARCH SERVICE,
THE LIBRARY OF CONGRESS,
Washington, DC, September 25, 1986.

To: Honorable William Proxmire. Attention: Ruth Fleischer.

From: James Aidala, Analyst in Environmental Policy, Environment and Natural Resources Policy Division.

Subject: National Uniformity for Pesticide Residue Tolerances.

In response to your request, I have prepared some background information concerning Federal preemption of State pesticide residue tolerances. Such a preemption is contained in S. 2792 as reported by the Senate Agriculture Committee. An amendment to strike this provision is expected to be offered during the Senate debate of S. 2792, the 1986 amendments to the Federal, Insecticide, Fungicide, and Rodenticide Act (FIFRA).

It is also commonly known that the main proponent of the preemption language is the Grocery Manufacturers of America (GMA), a trade association of firms involved with the processing and distribution of food. The preemption authority has many other supporters, among them many agricultural producer groups and others involved with the production, processing, or distribution of food products. Preemption is vigorously opposed by numerous environmental and consumers groups, as well as representatives of State government officials, such as the National Governors' Association. The issue has historically been and remains very controversial.

This memo will provide some background about establishing residue tolerance and other related issues. It should also be noted that the House approves a similar preemption amendment on September 19; H.R. 2482 now includes a similar provision to preempt State authority to set pesticide residue tolerance in certain circumstances.

[For further background about this issue and other proposed amendments to FIFRA, see CRS Report 86-796 ENR, "Pesticide Regulation: 1986 Amendments to FIFRA."]

TOLERANCES FOR PESTICIDE RESIDUES

As part of its pesticide registration responsibilities, EPA also sets tolerances for pesticide residues in foods. Tolerances define the maximum amount of a pesticide residue that can occur on a food or feed; products with residues exceeding the tolerance are considered to be adulterated and subject to seizure.

Tolerance-setting authorities evolved separately from pesticide registration. The existing authority to set tolerances for pesticide residues originated in 1954 amendments to the Food, Drug, and Cosmetic Act (P.L. 83-518). Until 1970, pesticide residue tolerances were set and enforced by the Food and Drug Administration. The authority to set tolerances was transferred to EPA in Reorganization Plan No. 3 of 1970; FDA retains enforcement powers.

Because of the way pesticide residues are defined and incorporated into the food additive provisions of the FDCA, there are actually several kinds of tolerances, each covering certain food products and each subject to different decision criteria. A pesticide may have many tolerances, including any mix of raw agricultural commodity tolerances, food additive tolerances, and animal feed tolerances, each subject to its particular decision criteria. For example, a pesticide could have a raw agricultural tolerance on tomatoes, a food additive tolerance on tomato paste, and a feed additive tolerance on tomato wastes used as animal feeds.

Tolerances are initially calculated by measuring the amount of pesticide that remains in or on a crop after it is treated at the maximum rate on the proposed label. Since residues can vary as a result of weather and other factors, the tolerance is set at a level calculated to give 95 percent certainty that under worst case conditions the residue will not exceed the tolerance. Then EPA calculates the possible risk posed by that proposed tolerance to see if it is acceptable. In calculating risk, EPA estimates exposure as the "theoretical maximum residue concentration" (TMRC), normally assuming three factors: that all of the crop is treated, that residues are all at the maximum residue level (the proposed tolerance), and that all consumers eat a set percent of the commodity in their diet. This exposure calculation is then compared to an "acceptable daily intake" (ADI) calculated on the basis of the pesticide's inherent toxicity (except for carcinogens). If the "acceptable daily intake" is less than the "theoretical maximum residue concentration," the tolerance would normally be approved. If the TMRC exceeds the ADI, however, the tolerance is questionable and EPA is likely to ask the petitioner to consider changes in application rates to reduce the TMRC. If the residue level remains above the ADI, then EPA may consider benefits to see if they exceed risks. For substances found carcinogenic in laboratory animal tests, a separate risk analysis is conducted in order to establish the raw agricultural commodity tolerance. Food and feed additive tolerances are subject to the Delaney Clause of the FDCA and cannot normally be granted if the substance is found to be carcinogenic.

Federal/state roles under FIFRA

Tolerances have been part of a continuing controversy over the rights of individual States to establish requirements that are more stringent than those set by EPA under FIFRA. FIFRA restrictions and requirements are currently considered "a floor, not a ceiling," in that States may impose use requirements, data requirements, or tolerances which are more stringent than EPA's. Furthermore, in some areas this interpretation has been extended to include rights of local jurisdictions to impose requirements unless forbidden by State law. The potential for numerous and varied State or local regulations has led some to call for Federal preemption of State or local authority in order to not hinder interstate commerce and to facilitate national marketing of pesticide products, pest treatment services, and treated commodities.

Organizations responsible for food preparation in national markets have particularly advocated Federal preemption of State activities regarding residue tolerances. They argue that variable State regulations applying to products distributed nationwide makes monitoring and compliance burdensome if not impossible. Opponents of preemption argue that due to differences in climate, land use, or dietary habits, among other factors, State or local variation from Federal standards is justified.

During the 97th Congress the rights of States to require further health and safety data beyond that required by EPA proved especially contentious; attempts to strengthen Federal preemption powers were defeated by the full House. For the 99th Congress, different preemption issues have arisen. Debate has centered on two issues: the rights of local jurisdictions to impose any requirements on pesticide users, such as notification requirements (which will not be discussed in this memo), and the right of States to establish residue tolerances which may differ from Federal standards about pesticides.

The issue of whether there should be a Federal preemption for allowable residues in food arose during the controversy surrounding the use of Ethylene Dibromide (EDB) to fumigate grain. In late 1983 and early 1984, a small number of States issued more stringent (lower) tolerances for residues of EBD in grain products sold in those States. This case was complicated by the fact that EPA had issued a suspension order to stop the use of EDB, which meant EPA felt that its use presented an imminent and substantial hazard. Further, EDB had never been issued a tolerance for allowable residues, since at the time of its initial registration, it was believed that no residues of the pesticide remained on the treated crop. In the absence of a Federal tolerance for EDB residues, some States established their own. Later, after EPA announced a recommended tolerance level, some of these States retained their own lower standard.

More recently, controversies over the pesticide daminozide, known also as Alar (a plant growth regulator used especially in apple production), has led some States to consider setting their own tolerance, lower than the Federal tolerance. First registered in 1963, daminozide is primarily used on apples to prevent preharvest fruit drop, increase storage life, and promote red color. Evidence of daminozide's carcinogenic activity in animals was not discovered until 1977. Of particular concern is a component of daminozide, (unsymetrical) 1,1-Dimethylhydrazine (UDMH), which is created in greater amounts when the treated crop is processed. As a result, raw apples and apple products such as applesauce and apple cider may contain UDMH. Infant and children, which often eat proportionately greater amounts of apple products than adults, are a population of special concern regarding daminozide and UDMH.

In July 1984 EPA began a "Special Review" of daminozide, which was completed in September 1985. At that time EPA announced its intention to cancel all food use registration of daminozide on the basis of animal laboratory data showing that the pesticide and its unavoidable degradation products presented unreasonable risks to consumers of the treated foods. However, later in September 1985, the FIFRA Scien-

tific Advisory Panel concluded that the evidence presented by EPA was not sufficient to be the basis of a quantitative risk assessment, and so regulatory conclusions such as cancellation of the product's registrations were not supportable at the present time. In January 1986, EPA changed its earlier position, and announced its decision to permit continued use of daminozide pending submission of new toxicology and residue chemistry data. In the interim, reduced application rates and revised tolerances were established on apples.

In light of this situation, in May 1986, the State of Massachusetts established much lower tolerances for apple products sold in the State, starting in October 1986. Also in May 1986, the State of Maine proposed that no residues of daminozide would be allowed in baby food after October 1, 1986, and no residues would be allowed in heat-processed food packaged after that date. Although these are the only States to have taken any action, some major retailers of apple products (including the Safeway supermarket chain) have announced that they will no longer buy apples treated with daminozide. It is this kind of case, where the Federal position allows continued use, but a small number of State actions result in variable acceptance of the treated products, which arguably leads to marketplace confusion and a potential loss of consumer confidence in the wholesomeness of the Nation's food supply in spite of Federal agency assurances that the products are safe.

Some observers fear that cases such as daminozide are likely to increase in frequency in the near future. The 1986 amendments to FIFRA would result in an acceleration of data development and EPA review of older pesticides. Meanwhile, many pesticides, including some used very widely for treating food crops, have only a small amount of reliable data which meets current Federal standards for a modern safety assessment. Continued improvement in analytic techniques are likely to reveal previously unrecognized hazards due to the discovery of increasingly smaller amounts of pesticides, their impurities, breakdown products, or metabolites in treated or processed foods. State officials may differ with Federal regulators in interpreting the evidence or in establishing adequate margins of safety to protect the public health given the paucity of data in some cases, or in interpretation of newly generated information.

Opponents of preempting States' rights in this area argue that given the lack of data about many pesticides, a long history of implementation difficulties encountered by EPA's pesticide program, and the general principle of States' prerogatives to protect their citizens according to their own laws, States should retain the right to differ from EPA. It is argued that current EPA standards may have been established on the basis of information no longer considered adequate or complete. Or more simply, the assessment of State regulators may differ with the conclusions of EPA staff.

In light of this debate, there seem to be three broad issues underlying the question of Federal preemption: (1) do States have the fundamental right to issue and enforce differing residue tolerances regardless of the rationale; (2) what is the proper role of the State when there is disagreement about the interpretation of available evidence about a pesticide residue and its effects, especially since the data base for most compounds is incomplete at this time; and (3) what is the proper role of the State once there is agreement about the interpretation of the evidence, but still disagreement about what should be done in light of that evidence.

Preemption amendments

The provisions of S. 2792 would: (1) allow for preemption of tolerances established by States if the pesticide is one which meets all current EPA data requirements and has completed the EPA review process; and (2) allow the State to ask for a waiver from the Federal standard to take into account any special considerations for that State. This language was added during markup of S. 2792, and an attempt to strike it from the bill is expected to be offered during Senate debate of the measure.

Specifically, States would be preempted from establishing tolerances different from the Federal standard if the pesticide has been newly registered or reregistered as of April 25, 1985, or otherwise meets all current EPA data requirements. Differences would be allowed only in the case of an imminent hazard in the State, or if the State follows a petition process asking EPA for a waiver from the preemption on the basis of special conditions in the State (dietary differences, for example). Critics of this aspect of the amendment claim that under the conditions required for granting a waiver, no waiver is likely to be approved under virtually any circumstances.

The amendment would allow States to establish tolerances not identical to Federal standards if the pesticide is one which does not have a complete set of data or has not been reviewed according to modern assessment criteria. These are the older compounds, registered before the EPA's current data requirements were in place (these are known as "Part 158 requirements," which is where they are published in the Federal Register—40 CFR 158). This would give the States the authority to establish a different tolerance in those cases where the database is incomplete and differences in assessment and regulatory opinion are more likely to occur. Daminozide would be such a compound.

However, the amendment would preempt differences in regulatory conclusions for those pesticides which have completed the current EPA review process. These are pesticides which have been first registered in the recent past, and those which complete the reregistration process. (Reregistration is the term used to refer to the de novo review of pesticides registered before modern data requirements were in place. Generally these are pesticides first registered before 1978 when EPA's new data requirements were first proposed.) This assumes that for these pesticides, the database is complete, and there should be little or no disagreement about the interpretation of the evidence, since the data will be of reliable quality, and EPA's assessments based on state of the art criteria.

Critics of EPA's assessment capabilities, or others simply unwilling to concede EPA the power of making ultimate regulatory conclusions about the interpretation of the evidence, argue that complete data sets and de novo review notwithstanding, State officials may legitimately differ either in their interpretation of the evidence, or in deciding what is the appropriate regulatory action in light of the data. These decisions are risk-benefit decisions, as FIFRA is a risk balancing statute; State laws may result in different calculation of what is an acceptable risk for the population of that State. For pesticides with complete data sets, the amendment would preempt any difference between Federal and State officials in making decisions about acceptable risks under the authority and criteria of FIFRA.

"Pipeline Proviso"

In the Senate, during mark-up of S. 2792, the Senate Agriculture Committee added a preemption amendment. The preemption amendment approved by the Senate Agriculture Committee differs in two ways from the language approved by the House of Representatives as part of H.R. 2482: (1) the Federal preemption authority expires automatically after five years; and (2) includes a provision allowing for the marketing of products which complied with State and Federal law at the time the commodity was treated. This last point, allowing the marketing of treated commodities, is to address the issue of food "in the pipeline," already treated and somewhere in the distribution chain between agricultural producer and ultimate retail consumer. As a result, it is sometimes known as the "pipeline proviso."

Supporters of this addition to the preemption amendment argue that it is necessary to allow the treated products to be marketed in order to prevent disruption of the markets of agricultural producers and food processors which acted in compliance with the law at the time of applying the pesticide. So, even in those cases where the State exercises the prerogative to establish a different tolerance under the amendment (that is, in cases of older pesticides), the treated commodities should continue to be sold unless the residue presents some kind of imminent hazard to the consumer.

Opponents of any pipeline proviso argue that the State has the right to decide how to best protect its citizens, and this may at times include the immediate end to the consumption of foodstuffs treated with certain pesticides, previous Federal or State regulatory positions notwithstanding.

During Senate consideration of S. 2792, Senator Durenberger is expected to offer an amendment to strike the preemption provisions. At this time, it is unclear if any other changes to the language of S. 2792, in lieu of, or in addition to the move to strike the language altogether, will be offered.

If I can be of further assistance, please call me at 287-5937.

Mr. McCONNELL. Mr. President, I rise today as a member of the Senate Agriculture Committee in support of this legislation, although I must candidly tell my colleagues that I have some reservations about certain provisions of it. On the whole, this bill achieves the overall objective of the committee, that goal being to update legislation which had not been dealt with substantively since 1972. The legislation is a carefully crafted, highly technical document which has the backing of EPA, many major chemical manufacturers, environment groups and the American Farm Bureau Federation.

Mr. President, I will not pretend to be an expert on many of the issues contained in this legislation. However, there are some noteworthy provisions which I would like to highlight for my colleagues. Perhaps the most important provision of this bill is the compromise on ground water contamination which was authored after exten-

sive negotiations led by the distinguished Senator from Florida, Senator HAWKINS. I believe it is extremely important to water users that EPA be required to establish some credible criteria for pesticide residues in ground water. This legislative language is not a mandate for EPA to go on a ground water witchhunt; to the contrary, these provisions provide EPA with the necessary discretion to deal with situations where certain pesticides may show up in ground water, but at such low levels that there is absolutely no danger to humans. This appears to me to be reasonable, common sense and compromise approach. I commend Senator HAWKINS and strongly recommend this provision to my colleagues.

During beginning deliberations on this legislation, I was concerned that pesticide users, particularly farmers, had not been adequately safeguarded from liabilities associated with pesticide usage. I'm happy to say that this problem was met head on by representatives of the Farm Bureau and an excellent compromise had been developed. Language in the reported bill will insure that farmers who use pesticides according to labeled instructions will automatically be absolved from any liability under Federal law. In addition, farmers were further protected under legislative language added at the request of Senator WILSON and myself. My concerns centered on current regulations governing the certified pesticide applicator program. In my view, current language on this issue is so ambiguous that a publicity-seeking environmental lawyer might be tempted to file a class action lawsuit to create further unreasonable certification requirements for family farmers. The reported bill has adequately addressed this issue and I'm satisfied that farmers are protected from an unreasonable entanglement of litigation.

An important provision of the FIFRA revision also, for the first time, recognizes that household products are different from farm pesticides. The Chemical Specialities Manufacturers Association is to be commended for its part in ensuring that consumers will no longer be forced to pay higher prices for products because of unnecessary regulatory requirements for manufacturers of household cleansers and like products. The real importance of this provision is that consumers can expect lower prices on these products as manufacturers benefit from lower registration costs.

I would be remiss, Mr. President, if I did not mention some troubling aspects of this bill. Upon close analysis of this bill, I have found there to be some 1,100 reregistration deadlines mandated of EPA. The attempt to speed up the registration process is certainly a worthy goal, but I see no purpose in establishing deadlines which are practically impossible to meet. Further, I am concerned that pressure from environmental groups on EPA to expedite the reregistration process will force the agency to reallocate limited funding from new registrations efforts. This is of tantamount concern to those of us from the Southeast where specialty crops like peanuts, cotton, and tobacco are grown. I have been assured that such a situation will not occur, but what is the incentive for a major chemical manufacturer to conduct research on new products if there is a small likelihood that it will be timely evaluated by EPA? I fear the problem may be compounded, especially when, from a volume standpoint, there is little incentive for major chemical manufacturers to formulate and manufacture specialty crop pesticides in the first place. Again, I say to my colleagues, representatives of chemical formulators advise me that such a situation will not occur. I hope they are correct.

The issue of data compensation has also been particularly divisive. Even now, no compromise has been developed which accommodates both sides on this issue. A nonbinding arbitration feature has been added to the FIFRA law, in cases where formulating and nonformulating chemical companies cannot agree on just compensation for a chemical formula after the patent for such formula has expired. I frankly do not buy the argument of "big manufacturers versus little companies;" it looks more like a case to me of "big companies versus bigger companies." I find myself having some sympathy for nonformulator companies. It certainly appears to me that farmers who use certain popular agricultural chemicals are forced to pay a higher price for the pesticide because there is no competitive force in action. Nonetheless, as this issue was of critical importance to the delicate compromise, I supported the compromise language contained in the reported bill. I do hope, Mr. President, that the parties involved will make every effort to reach an equitable solution to this issue, because the real loser in the debate is the American farmer.

Mr. President, in conclusion I might say that this is by no means a perfect bill. I understand that the environmental groups are unequivocably opposed to one provision of this compromise legislation. However, given the fact that no Congress since 1972 has been willing to tackle FIFRA, I suggest the committee language before the Senate is the best we could get. I am going to vote for its passage and urge my colleagues to do likewise.

Mr. DURENBERGER addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. DURENBERGER. Mr. President, I rise to congratulate my colleague and the Agriculture Committee on the work that they and a lot of other people have done to bring this legislation to the floor today. If there is an environmental year in the Senate since I have been here, since 1978, this is the proper year. And there are a lot of people involved in that process in the Agriculture Committee, along with the Environment and Public Works Committee, and several other authorizing committees of this Congress, who have played leadership roles in the reauthorization legislation.

I congratulate my colleagues, the chairman of the committee, the chairman of the subcommittee, the ranking member, the Senator from Nebraska, and everyone else for the work they have done and the commitment they have made to the environmental issues which are included in the Federal Insecticide, Fungicide, and Rodenticide Act.

Mr. President, in that connection, I ask unanimous consent that editorials praising the work of the committee in reporting S. 2792 from the following newspapers be printed at this point in the RECORD: the Washington Post, the Los Angeles Times, the Minneapolis Star and Tribune, the Miami Herald, the Los Angeles Times, another from the Washington Post, the Sacramento Bee, the Lincoln Journal, the Chicago Sun Times, the Fresno Bee, and another from the Los Angeles Times.

There being no objection, the editorials were ordered to be printed in the RECORD, as follows:

[From The Washington Post, Sept. 25, 1986]

ENVIRONMENTAL CROSSROADS

Two major pieces of environmental legislation now hang in the balance in Congress. One would extend the Superfund program to clean up industrial dumps that threaten the ground-water supply. The other would speed up federal testing of pesticides. Their enactment would make this easily the most important environmental Congress of the Reagan administration. Failure would have the opposite result.

The Senate is scheduled to take up the pesticide bill today. The House has already passed it. It seeks to resolve a problem that has defied resolution for 14 years: the retesting of pesticides that were already on the market when Congress gave the Environmental Protection Agency the job of regulating these substances in 1972. The old pesticides and their first cousins make up most of the mixtures still on the market. They contain about 600 active ingredients; over the years EPA has managed to review fewer than 40.

The bill would set a timetable for reviewing the rest. It follows an extraordinary agreement reached earlier this year between the nation's major environmental groups and chemical companies. Previous disagreement between these customary adversaries had blocked legislation, and their current pact is perishable. That is why it is doubly important that Congress act now.

The problem with this bill, as with any such bill in the last days of a session, is that it can so easily be held hostage. Here the extraneous issue is who shall be liable, farmer

or manufacturer, if a pesticides contaminates the ground-water supply. Some members are threatening to propose an amendment saying the companies would be liable; the companies would, of course, resist. This issue should be left for another bill. The House has already used the bill to say that states cannot exceed federal pesticides regulations by setting higher standards of their own. The provision is also in the Senate version. The bill would be much better without it, but the bill with it is better than no bill at all.

As to Superfund, the authorizing legislation has been in conference since last winter. Conferees finally reached agreement in August on the terms of the program: how many dumps EPA would have to clean up a year, what standards of cleanliness it should use, how it should seek to apportion costs. Still at issue is how to pay for it; the tax conferees have not agreed.

On Oct 1, the clean-up program will have been without sufficient funds or clear direction for a year. If the executive branch had done this, Congress would be howling, and rightly so. The members should turn a little of that indignation on themselves.

[From the Los Angeles Times, Sept. 19, 1986]

STATES' RIGHTS ON PESTICIDES

A unique alliance of chemical manufacturers and environmental groups faces a stiff test as Congress completes work on landmark reform of the nation's pesticide laws. The industry and citizens' groups negotiatied a package of changes in the existing law, but now lobbyists are urging that it include what they call uniform standards for pesticide residues on food. In fact, such standards would prevent states like California from providing better protection against cancer threats than the federal government has been willing to provide.

Insistence on retaining states' rights to be tougher than the federal government is not simply a legalistic exercise. It has practical consequences. Two years ago the Environmental Protection Agency dragged its feet on banning ethyldibromide (EDB), a known carcinogen. Finally, when unacceptable levels of the fungicide showed up on fruit that had been fumigated and in grain products, California acted. California and every other state should retain that right.

The Senate Agriculture Committee was unable to resist the argument of the groups led by the Grocery Manufacturers Assn., and inserted the preemption into its version of the bill. The House Agriculture Committee signaled its backing of preemption in debate, but didn't write it into its bill because then the legislation would have gone to a committee chaired by Rep. Henry A. Waxman (D-Los Angeles), who does see the value in providing the best possible protection to consumers.

The House is now debating the measure, and is being asked by Rep. Pat Roberts (R-Kan.) to establish uniform national standards for pesticide residues so that farmers and food processors can market their products in all states in an orderly fashion. The amendment purports to bring states into the decision-making process, but really would add a meaningless layer of delay and should be defeated.

An alternative amendment has been worked out by Waxman and Rep. Leon E,. Panetta (D-Monterey). It would permit the EPA to establish national tolerance levels but allow states to exceed those standards if necessary specifically to protect public health. If the federal preemption provision cannot be deleted altogether, the Waxman-Panetta approach seems a reasonable resoluton of the dispute.

This revision of the Federal Insecticide, Fungicide and Rodenticide Act could be one of the key pieces of environmental legislation of the decade. It would require testing of pesticides for their potential health effects under tougher standards than were in effect when the chemicals first went on the market, set deadlines for that review and speed the process of canceling the use of pesticides suspected of harming people or the environment.

Such legislation would have nationwide benefits. But Californians have demonstrated in the past the need to establish more stringent standards than federal ones that may be adequate for most states but not for California. Air-pollution control is another example, in addition to pesticides. This right should be retained in the final version of the new national pesticide law.

[From the Minneapolis Star and Tribune, Aug. 29, 1986]

SEALING THE DEAL ON PESTICIDE REFORM

Come September, Congress has a chance to break a 14-year stalemate on pesticide reform. That is when a compromise plan hammered out last winter by pesticide makers and environmentalists will reach the House and Senate floors. Lawmakers can seal the deal by assuring that it passes quickly and without weakening amendments.

The 1972 Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) is meant to keep agricultural chemicals from polluting the environment or the food supply. Ample evidence suggests the law doesn't work. Of the thousands of pesticides currently on the market, only a tiny fraction have been tested for safety. Makers of new chemicals often bypass testing requirements by claiming their products are similar to older pesticides wrongly assumed to be safe. Even when a pesticide is found "to be dangerous, remedial action can take years: The fumigant EDB was banned nearly a decade after the National Cancer Institute warned of its carcinogenic properties. The upshot is that hazardous pesticides are sometimes discovered in well water, milk supplies and on fruits and vegetables.

Those flaws can be repaired by bills approved this summer by agriculture committees in both chambers. The result of a pact between pesticide manufacturers and environmentalists, both bills would revamp FIFRA in exchange for longer patents on new pesticides. They would force the Environmental Protection Agency to adhere to new deadlines and standards for reviewing all pesticides and banning dangerous ones. The legislation would set firm rules for exporting pesticides and block the flow of pesticide-contaminated imports. And both bills would impose the cost of pesticide testing on the companies that benefit from pesticide sales.

Although both would do much to patch up FIFRA, the Senate bill contains one serious flaw: a provision that would prohibit states from establishing pesticide residue limits for food that are stricter than EPA tolerance levels. That provision is backed by food producers, who argue that differing state regulations hobble their efforts to conduct business nationwide. But that argument overlooks states' admirable leadership in detecting and controlling pesticide contamination. In the 1984 EDB scare, for example, California and Florida prodded the EPA into action by removing poisoned citrus and grain products from market shelves.

A better approach is offered by the House bill, which permits states to act independentaly against pesticide hazards. Minnesota Sen. Dave Durenberger hopes to improve the Senate measure on the floor by offering an amendment to alter the preemption language. If that change is made, lawmakers in both chambers can vote enthusiastically to end the pesticide standoff.

[From The Miami Herald, Sept. 8, 1986]

BUGGED ON PESTICIDES?

The most important revision to Federal pesticide laws in 39 years awaits the approval of Congress, which reconvenes today.

House and Senate agriculture committees have cleared bills to tighten requirements for testing, marketing, and using new pesticides. A rare coalition of environmental and public-health organizations and chemical companies backs the proposed revisions to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). It would accelerate Environemntal Protection Agency (EPA) testing of some 600 pesticides registered before 1972 and never tested for safety and environmental impact. The revisions also will require tests of inert ingredients, which researchers have found can pose greater hazards than active ingredients. Health and safety standards to protect foodstuffs and ground water from contamination also will be established.

At Sen. Paula Hawkins's insistence, the Senate bill includes provisions beefing up the EPA's power to protect ground water from contamination. Coalition members agree that the House bill should embrace these provisions. Wholly unacceptable, however, is North Carolina Sen. Jesse Helms' amendment to the Senate bill stripping the states of their power to set limits for pesticide residues in foodstuffs. States have always had the right to protect their citizens' health, and Florida has a particularly sophisticated laboratory for testing food for purity and wholesomeness. Indeed, it was Florida Agriculture Commissioner Doyle Conner who blew the whistle when ethylene dibromide, used to protect stored grain, began showing up in processed foods.

Two years under negotiation, the compromises contained in FIFRA are delicately balanced. House and Senate leaders are discouraging floor amendments that would disrupt that balance and delay passage. They pragmatically recognize the bill's technical complexity, its economic impact, and its importance to Americans' health and environmental well-being.

Congress should respect the compromises, pass FIFRA, and free the EPA to begin the tedious task of culling those pesticides that pose more dangers than benefits.

[From the Los Angeles Times, July 3, 1986]

PROTECTION FROM PESTICIDES

Landmark pesticide-reform legislation, the product of a laboriously negotiated agreement between manufacturers and environmentalists, has passed its first test in relatively good form. The measure, which would speed the testing of pesticide ingredients, has cleared the House Agriculture Committee intact. The full House and the Senate will take up the measure after the fourth of July recess; speedy passage would be a clear victory for the public that the measure seeks to protect.

The bill would strengthen the pesticide law known as the Federal Insecticide, Fungicide and Rotenticide Act, or FIFRA. It is necessary because about 600 active ingredients of pesticides have never been adequately tested for health hazards, for they came into use before tougher standards were enacted. Under the legislation, these substances would have to be screened and reregistered—or restricted, if that is necessary—within nine years. To pay for this accelerated testing, the bill would assess fees totaling $150,000 on each pesticide being reviewed.

The agreement that was hammered out between representatives of 92 chemical companies and 41 environmental, consumer and labor orgranizations also would allow the Environmental Protection Agency to regulate inert ingredients of pesticides for the first time. John Moore, EPA's assistant administrator for pesticides and toxic substances, says that inert ingredients may be as harmful as active ingredients. Now those must be tested and listed on pesticide labels.

There remains one serious threat to the strength of this reform legislation. Food manufacturers are backing an amendment that would allow federal regulation to preempt state standards limiting food contamination on the ground that they do business nationwide and need uniform regulation. That proposal would work against Californians, who have regularly been more skeptical about pesticides than the federal government has. In fact, in 1984 it took action by California—and Florida—removing from the market citrus and grain products contaminated by treatment with ethyl dibromide (EDB) before the EPA finally acted. California needs to retain that authority to act against contaminated food.

House Agriculture Committee members finessed the point by first passing that amendment to show that they supported the idea, then deleting it so that it wouldn't be sent to a committee headed by Rep. Henry A. Waxman (D-Los Angeles), who threatened to make a scene about it. So it is especially important that no preemption be included in any Senate bill so that no such provision goes to a conference committee of the House and Senate working out the final version. Gov. George Deukmejian could provide some valuable leadership by letting Californians on Capitol Hill know that the state wants to retain the authority to protect its own citizens.

[From the Washington Post, July 29, 1986]

STATES' RIGHTS AND PESTICIDES

When Congress tried to write a new federal pesticide law in 1982, one issue over which it stumbled was states' rights—whether anxious states should be able to exceed federal regulations with stiffer laws of their own. Now, in somewhat different form, the issue has arisen again.

A major problem in pesticide regulation is that many chemicals now in use were approved years ago on the basis of suspect standards that no longer pass muster. The Environmental Protection Agency was told in 1972 to review these old approvals. In the 14 years it has had the job, it has made its way through only about 40 of the 600 active ingredients involved.

This year the country's major chemical companies and environmental groups reached a remarkable accord on procedures to speed up this review. A new pesticide law seemed possible. The House Agriculture Committee reported out a version last month, 42 to 1. The Senate committee is supposed to mark up another this week. But time is short before adjournment, and the nation's grocery manufacturers have raised the state "preemption" issue.

On two recent occasions, involving first the fumigant EDB, used heavily on grain, and now the growth regulator daminozide, used particularly on apples, state regulators have moved ahead of EPA to ban or limit use. The grocery manufacturers see the possibility of more such free-lancing in any serious review of the nation's pesticides, as contemplated in the current bills. A crazy quilt of state regulations as to permissible pesticides residues on food would make it enormously difficult for national food companies to do business. The grocery companies would basically limit the right of states to regulate to emergencies only. The House committee actually agreed to such an amendment, then dropped it for fear of complications before the bill reaches the floor.

Those resisting the amendment note that states have preemptive rights under other major environmental statutes which they have not abused; that competition can only be good for a federal agency with a record so sluggish as EPA's on pesticides; that EDB and daminozide are the only examples the grocery manufacturers can point to, and that the time to solve the crazy-quilt problem is when it occurs. Right now, this argument goes, the greater risks are on the other side. That seems right to us.

[From the Sacramento Bee, July 28, 1986]

PRE-EMPTING CALIFORNIA

In the past six months, environmentalists and representatives of the chemical industry reached agreement on one of the most important environmental issues facing the country: the updating and strenghtening of a federal pesticide law that has allowed hundreds of untested or poorly tested products to be used on the market. That agreement, which is to go to a floor vote in the House of Representatives in the next couple of weeks, is now in jeopardy from a proposed amendment, pushed by the grocery manufacturers, that would prohibit any state from imposing stricter standards for pesticide residues in food products than the federal government.

The effort to push the amendment was expected; what's surprising is the fact that among its chief sponsors is Congressman Tony Coelho of Merced and that the Deukmejian administration has done nothing to oppose it. Coelho's staff says there are efforts being made to negotiate about the language of the amendment, but to date no such negotiations have taken place.

If the amendment passes, it would be a major setback for pesticide regulation in California. It would preclude this state not only from imposing its own controls when the U.S. Environmental Protection Agency fails to act or where it standards are inadequate; it would, most likely, also destroy the compromise on the crucial revisions to the federal law that have already been negotiated. Those revisions include, among other things, a provision that EPA review all health and safety studies for pesticides now on the market and, where they are found to be inadequate, require the submission of new data by the manufacturers. The revisions also provide that the registration of all pesticides validated by data supplied by Industrial BioTest Laboratories, the now-defunct testing firm that had falsified hundreds of tests, will be suspended unless new data is furnished.

The grocery manufacturers insist, with some logic, that they ought not to have to meet 50 different sets of state requirements. But that presumes (1) that the EPA has done (or would do) a first-rate job of setting and enforcing standards in this field, and (2) that the states capriciously impose their own regulations, neither of which is true. The instance most often cited by the manufacturers as a horrible example of state regulation was when California and Florida ordered flour, cake mix and other products containing high residues of the carcinogenic fumigant EDB off the shelves. That action was taken only after more than a decade of EPA inaction during which EDB's dangers were known and after mounting public fears about those dangers. It was because the states acted that EPA was finally forced to take its own measures. Had there been no state action, EPA might still be fiddling.

Should there ever be flagrant or capricious use of state authority in the future, the law would be easy enough to amend. But that hasn't happened in the past; rather, state authority has been a check on those instances where EPA has been dangerously lax. Elimination of that power is not something that a California congressman ought to be backing or that its governor ought silently to allow to be enacted. Again and again, EPA has been too slow or too politically compromised to take even the most obvious protective measures. In the face of that, no state should permit itself to be stripped of its ability to protect its people.

[From the Lincoln Journal]

ON THE CONGRESSIONAL AGENDA: IMPROVED PESTICIDE CONTROL LAW

When chronic adversaries such as environmentalists and agricultural chemical makers are sweet harmony—groups like the Sierra Club, the National Wildlife Federation and Friends of the Earth on one side, Dow Chemical, W.R. Grace & Co. and American Cyanamid on the other—the rest of us should respectfully listen to what they're singing.

That song: Please, Congress, before you adjourn this year, enact reforms in the nation's basic pesticide control law, the Federal Insecticide, Fungicide and Rodenticide Act, or FIFRA. The reforms are the compromises packaged after a year's hard negotiation, and which sailed (42-1) through the House Agriculture Committee in mid-June.

A critical and apparently agreed-to feature of the bill would be an accelerated testing and reregistering of an estimated 600 active ingredients of pesticides. Charges assessed for reregistering—$150,000 per pesticide—would come near paying the administrative cost of the entire operation. Regulation of inert elements also would be charged to the Environmental Protection Agency, for the first time.

Based on materials received here from competitive lobbying organizations, the main roadblock to FIFRA rejuvenation in 1986 is an amendment pushed by food producer and processor groups. In the Senate, this amendment has been co-sponsored by Nebraska Sen. Edward Zorinsky.

Effectively, it would not allow any state to have day-to-day pesticide control regulations more demanding than those in FIFRA or promulgated by the EPA. Several states—California, for one—long have had such standards. They acted because of the EPA's historic inability to be a consistently alert, responsive, tough regulator or foodchain

chemicals having human and animal health hazards.

Leading a coalition of more than 55 organizations, the Grocery Manufacturers of America says the power of states to have their own ("inconsistent") definitions of permissible residue levels in food products poses possible disruptions in the national system of food distribution. But the uniformity language which this coalition backs also is regarded as a "killer" amendment by the other side.

The advantages of a strengthened FIFRA outweigh the potential inconvenience to selected commodity producers who might run afoul of more demanding, more health-protecting state chemical-residue-level requirements.

Moreover, a principle is at work here which surely commends itself to the Reagan administration. That's federalism. FIFRA should not bar—as the law does not now bar—individual states from demonstrating a higher concern for their citizens than pesticide-residue minimums prescribed by Congress and federal agencies. Agricultural chemicals have contributed to the nation's abundance of food. But they also are not without risk to the ultimate consumer as residues—and to the applicator-producer, as a fresh study of Kansas farmers reaffirms.

The killer amendment to FIFRA should itself be killed, and the spiffed-up act then sent on to the White House.

[From the Chicago Sun-Times, Sept. 4, 1986]

DON'T ZAP PESTICIDE BILLS

A few months ago we rejoiced at the landmark agreement struck between environmentalists and pesticide manufacturers for a tougher, more comprehensive law regulating pesticides.

But the agreement, embodied in bills awaiting approval by the House and Senate, now stands in danger of itself being fumigated by narrow interests.

The bills were the result of 18 months of careful and difficult negotiations between 40 environmental, consumer and labor groups, called the Campaign for Pesticide Reform, and the pesticide industry represented by the 92-member National Agricultural Chemical Association. Crafted with the assistance of the American Farm Bureau Federation, the legislation would give the public additional protection from potentially health-damaging chemicals by tightening procedures and requirements for testing, registering and labeling pesticides, by imposing better restrictions on pesticide use and by establishing standards for removing pesticides from the market if new evidence indicates they pose a health hazard.

Legislation embodying the agreement has been endorsed by both the Senate and House agriculture committees. However, lawmakers have only a few more weeks to approve the bills when they return to work next week. Failure to act in those few weeks will unravel the agreement and require all sides to start from scratch next year.

But that could be the scenario. Lawmakers have much to do before the projected (and unlikely) Oct. 3 adjournment date, from tax reform to budget-setting.

Furthermore, several members of Congress are threatening to hang amendments on the legislation. One would prevent states from imposing product registration standards more stringent than the federal government's—an amendment we would oppose because of the special needs of some crop-producing states. The manufacturers generally support the environmentalists in their strong opposition to this amendment. Another possible amendment centers on a complicated issue involving compensation owed to a pesticide's inventor.

The pesticide agreement is much too important to die, because of almost-certain floor fights over these special-interest amendments. The legislation should be approved by Congress without amendment and signed into law by President Reagan as soon as possible.

[From the Fresno Bee, Mar. 14, 1986]

AGREEING ON PESTICIDES

Last September, after years of acrimony and stalemate, leading environmental groups reached what's been called an "historic accord" with the chemical industry on major revisions tightening the federal law governing the registration of pesticides in this country. The agreement, which dealt only with the general principles of reform, left a great many details to be worked out and thus a great many areas for contention. Most of these have now been resolved and written into legislation introduced in Congress by Sen. Richard Lugar, an Indiana Republican, and Rep. Berkley Bedell, an Iowa Democrat. The result is a major agreement and bills that should be passed.

The legislation provides, among other things, for rapid review and regulatory action on the scores of pesticides whose registration was based on false or invalid data and, where no adequate new tests are supplied, for the banning of those products; prohibition on importation of food containing residues of pesticides whose registration has been cancelled; mandatory notification to foreign countries of cancelled pesticide registrations; the streamlining of what had been cumbersome cancellation procedures; tighter regulation of inert ingredients which can themselves be environmentally or medically hazardous; and a right-to-know provision requiring chemical plants to notify their local communities—including, of course, fire and police departments—of the health hazards of the materials they produce.

There are still unresolved matters on which negotiations are now under way: problems dealing with groundwater contamination, pesticide drift, the protection of farm workers, and the training of pesticide applicators. Moreover, it's more than likely that certain special interest groups, particularly the grocery manufacturers, will try to introduce restrictive amendments.

The most significant, which will probably be carried by California Sen. Pete Wilson, would pre-empt state authority to control pesticide residues in food products. The food processors argue that since they market nationally, they should not be hamstrung with the task of dealing with different and sometimes contradictory state regulations. Presumably what's safe in one state is safe in all.

Yet in fact the only major occasion in memory in which a state set residue levels of their own was in the case of the carcinogenic pesticide EDB, where California and Florida, among others, set their own standards because the federal government had failed for years to act on its own. It was those measures which finally prompted the Environmental Protection Agency, which had known about the hazards of EDB for more than a decade, to take action.

That history hardly justifies pre-emption; on the contrary it suggests quite the opposite. Nor do the unresolved issues detract from the importance of the matters that have been resolved in many months of hard bargaining of from the importance of getting them enacted. The reforms should be passed—and without the mischievous preemption amendment now lurking in the wings.

[From the Los Angeles Times, Aug. 5, 1986]

TEST ON PESTICIDES

For years environmental, business and labor groups have been negotiating the terms of a new law that would tighten federal safety controls over pesticides. There are still loose threads, however—so many that the package could come unraveled on Capitol Hill if the competing forces keep pulling in their own directions instead of toward the public interest. If the package does fall apart, there may not be another chance to improve this important area of environmental law for many years.

Several key issues remain to be resolved in the Senate Agriculture Committee as it nears a vote Wednesday on changes in the Federal Insecticide, Fungicide and Rodenticide Act. Among them are the right of local and state governments to set higher standards than federal law. Committee members who want the public well protected should insist that the federal law not preempt state or local standards.

One troublesome amendment would prevent cities and counties from enacting regulations, as Mendocino County did in 1979 when it banned aerial spraying of phenoxy herbicides in a move aimed at timber companies operating locally. After Mendocino took the action, the California Legislature wrongheadedly passed a bill giving the state jurisdiction over the uses of such chemicals. The only redeeming feature of the law is that it allows local governments to write their own controls and have them adopted as state regulations.

Local governments are entitled to decide for themselves what is appropriate under special and local circumstances. And the fact that the California Legislature weakened the rights of local governments in the field of pesticides and herbicides should not be used as an argument in favor of the federal government's doing the same thing to states. Sen. Pete Wilson—who is on the Agriculture Committee and may support the preemption, depending on how it is worded—should keep that point in mind.

The other preemption under debate is potentially more onerous. Many food-industry lobbyists want the legislation to preempt all state regulation of the levels of pesticides that will be tolerated in the food supply. They argue that if states are allowed to have toughter standards, they, not the Environmental Protection Agency, will be setting federal policy. Others, who saw California move more quickly than the federal agency to deal with the hazards of ethyl dibromide, what to retain that independent ability to act when circumstances warrant. We agree with them.

A spokesman for Wilson said that he might favor an approach that would require uniform standards, with no state exceptions, but apply those uniform standards only to pesticides approved in the future under the tough guidelines. That might be an avenue for compromise, but the committee should again keep the public interest uppermost in any talks of giving away any state protections.

The legislation as approved by the House Agriculture Committee and moving through the Senate would set deadlines for testing pesticides that farmers started using before tougher guidelines went into effect. It would give the public more information on where pesticides are produced. It would require the EPA to issue regulations on protecting farm workers who deal with pesticides. It might establish national standards for the amount of pesticides in groundwater. The bill is a careful piece of work, and one of the most important environmental bills to appear before Congress in many years. The painstaking work must not be undone by last-minute changes that could weaken the protection of the public.

Mr. DURENBERGER. Mr. President, no legislation is basically perfect, and all of it is really the result of compromise. All of us on the Environment and Public Works Committee had the opportunity to look at the work done by our colleagues on the Agriculture Committee and we were already quite pleased. I stand here as chairman of the Toxic Substances Subcommittee and one who has put in a fair amount of time reviewing some of the issues that are contained in the FIFRA amendments.

We had several areas of disagreement with the work of the Agriculture Committee, and those today have been reduced to only three. As I understand it, in two cases the differences, while slight, have been resolved. I intend to offer an amendment which I understand will be accepted, and then offer a third amendment which relates to the preemption of tolerances which I understand the committee cannot accept and which will be subject to a vote.

As I do that, I would like to say in light of the experiences we have had dealing with tough issues, like the Superfund, Safe Drinking Water Act, the Clean Water Act, and some other issues in which we have crossed committee jurisdictions, my experience would lead me to say to you, Mr. President, that in the staff-to-staff relationships between our committee, coming in way at the end of this process, and the staff of the Agriculture Committee, we probably have never had a better set of staff-to-staff relationships and accommodations on the part of the two staffs.

For that, obviously, I compliment not only the staff members involved on both sides, but particularly the agriculture staff because they did all the work and we sort of came along at the last minute. It looked like we were critical of some of their work.

I would also like to compliment the leadership of the committee for their willingness to make some changes.

AMENDMENT NO. 3234

Mr. DURENBERGER. Mr. President, at this point I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Minnesota [Mr. DURENBERGER] proposes an amendment numbered 3234.

Mr. DURENBERGER. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Beginning on page 185, line 6 strike all of section 821 relating to "liability" through page 186, line 11.

Mr. DURENBERGER. Mr. President, this amendment removes section 821 of the bill related to the liability for pesticide damages.

This amendment resolves certain jurisdictional concerns that have been raised with regard to consideration of this bill.

Under the major environmental statutes of the United States, the Environmental Protection Agency is given authority to protect public health and the Nation's natural resources from various pollutants that may be released by man. The theory that the Congress has adopted in these statutes is one that says the person causing the pollution should pay for cleanup costs and compensate others for any damages done. This "polluter pays" theory is reflected all through our environmental laws, from the Clean Water and Clean Air Acts to Superfund and the Solid Waste Disposal Act.

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Mr. President, even the normal, lawful use of pesticides can cause extensive environmental damage and can threaten human health. Pesticide contamination of rivers and lakes—what is sometimes called nonpoint pollution—occurs all across our Nation. We have also recently discovered that pesticides in high concentration can get into our ground water and contaminate our drinking water supplies. Our environmental laws—not just FIFRA, but several laws—give EPA the authority to control and regulate the use of pesticides to prevent damage and these laws impose the responsibility for cleaning up a damaging release or replacing drinking water supplies or taking other actions on the person who used the pesticide. Quite often that user is a farmer or other agricultural producer.

The FIFRA bill as reported by the Agriculture Committee contains a provision that would exempt farmers from liability for damages and cleanup costs under these various environmental statutes. From one perspective, that amendment is commendable. The farmers of our Nation are hard pressed these days. Prices are low. Costs are high. The last thing the American farmer needs is to have EPA come down on them for the costs of cleaning up a river or an aquifer contaminated with pesticides.

But from another perspective that exemption from liability is troubling. Liability results from injury. Where there is no injury there is no liability. It may be possible to waive away legal liability by passing an amendment to a law here in Washington, DC. But an exemption from legal liability for farmers will not stop the injury that has been caused by pesticide contamination all across the country.

It is said that farmers need protection from their liability. Well, farmers also need protection from surface water and ground water contamination by pesticides. They use the water first. It's not the water in some big city that gets contaminated by pesticides. When one farmer pollutes the water, the person that suffers is usually his neighbor, another farmer, or the nearest small town.

There are 14 million private wells in the United States which supply water to 20 million Americans. Most of that water is consumed untested and untreated. It costs hundreds of dollars to test a drinking water supply for the presence of pesticides. It costs thousands to install the treatment technology that is necessary to take pesticides out of water that has been contaminated. It is too expensive to test and treat the drinking water for millions of Americans who live in rural areas. So it is especially important that we take care to prevent pesticide contamination. And the Senate will consider an amendment on that point later today.

As I say, Mr. President, the injury is real. The injury often occurs even when the farmer is following the label. The pesticide that killed 2,000 people in Bhopal has also caused widespread contamination in the United States when used in lawful ways by farmers to protect their crops. The manufacturer of this pesticide is not only facing billions of dollars in lawsuits in India. It has also been forced to buy carbon filters for 2,600 families on Long Island where the application of aldicarb to potato fields threatens the water supply of millions. And in the Central Sands region of Wisconsin, again aldicarb applied on potato fields has leached to ground water.

Perhaps some Senators recall the recent watermelon contamination incident in California. In that case aldicarb had been applied lawfully on a cotton field years ago, but when the same field was rotated to watermelon, several people ended up in the hospital. All of this from one pesticide, aldicarb. Contamination by 16 other pesticides has been discovered in 23 other States.

So the injury is real. People lose their wells, the use of their property. People lose their health. Quite often the people injured are farmers or their neighbors in the small towns that dot our landscape. These people need protection, too.

One way to give the farmer protection for his liability problem, while at the same time continuing the protection for his neighbor's water supply is to shift the liability for cleanup to the manufacturer. Pesticides are a product. When a product causes injury despite the careful use by the consumer according to the directions on the label, the manufacturer should be held responsible. That is the theory of product liability. The House has adopted an amendment which moves in that direction. It shifts the liability for the damage done by a pesticide from the farmer to the pesticide manufacturer. We will face that amendment in the conference.

For now, this amendment simply strikes section 821 from the Senate bill. We will be silent on that question. This is an arrangement which has been carefully worked out and I want to thank all the members of the Agriculture Committee and especially its distinguished chairman for their cooperation in this respect.

So, Mr. President, I see my colleagues are ready to respond.

Mr. LUGAR. Mr. President, I thank the distinguished Senator from Minnesota for his very generous comments about the work of the Agriculture Committee on this legislation and his compliments to the leadership and especially his thoughtful remarks about the staff work. Our collective judgment is it has been exemplary and the cooperation between the two committees has been important.

I am pleased to indicate that I believe the amendment offered by the distinguished Senator is a most constructive one. I ask Members to support that amendment.

FARMER LIABILITY PROVISION IN FIFRA

Mr. BOREN. Mr. President, the committee-reported bill includes a very important provision which provides protection for farmers and ranchers. The bill states explicitly that an agricultural producer would not be liable in any action brought under any Federal statute for damages caused by pesticide use unless the producer has acted negligently, recklessly, or intentionally. Proof that a pesticide was applied in accordance with label instructions will create a rebuttable presumption that the agricultural producer did not act negligently.

From the standpoint of farmers and ranchers, one of the most pressing needs in FIFRA is to provide a measure of protection from liability to individuals who conscientiously adhere to federally approved label directions, employ generally accepted farming practices, adhere to the recommendations of USDA extension service, and demonstrate their proficiency through training and certification programs.

If the Environmental Protection Agency is doing its job properly, and the farmers and ranchers are applying pesticides according to the EPA-approved label, the farmers and ranchers should not be liable to any action against them. It is not the responsibility of our farmers and ranchers to determine the proper method of application; it is only their responsibility to apply pesticides according to the labels. The labels are approved by EPA and therefore the responsibility to ensure that pesticides are labeled properly resides with the EPA, not with producers.

At the heart of liability protection is the question of fairness. It is only fair that producers only be responsible for following the instructions on the labels of pesticides.

As I understand the amendment by the Senator from Minnesota, the provision protecting farmers and ranchers from liability would be removed. I urge my colleagues to strongly oppose this amendment.

Mr. PROXMIRE. Mr. President, I rise in support of Senator DURENBERGER's amendment to strike language preempting current rights of States to set stricter tolerances for pesticide residues on food than those set by EPA.

This provision was not contained in the original bill I cosponsored with Senator LUGAR nor was it the product of the negotiations between the National Agricultural Chemical Association and the Campaign for Pesticide Reform. Instead, the preemptive language added by the Agriculture Committee resembles an amendment added on the House floor although the Senate version is wisely limited by a 5-year sunset period.

While it is true that the Senate uniform tolerance section would, in all likelihood, apply in very few cases, it is still unnecessary. No other environmental law prevents States from regulating more strictly than EPA, when, in their opinion, such strictness is required for protection of public health.

My own State of Wisconsin, a leader in pesticide regulation, wrote me strongly urging that I oppose the uniform tolerance language in the bill as a threat to their own program.

In the past, EPA was extremely slow in reacting to threats, posed by chemicals such as ethylene dibromide [EDB], and alar, which are present not only on raw agricultural products but also in processed goods such as cake mixes or applesauce. States stepped in to fill the gap left by EPA inaction.

With proper implementation, the new pesticides bill should eliminate the delays and bureaucratic red tape which plagued regulation of these chemicals and so many others like them. Then, the uniform tolerance issue may turn out to be largely symbolic. But until the new system gets tested, it makes no sense to abandon what has already proved an effective last resort against food contamination.

Mr. ZORINSKY. Mr. President, we on this side of the aisle have examined the amendment and will be willing to take it to conference.

Mr. DURENBERGER. Mr. President, I move the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3234) was agreed to.

Mr. ZORINSKY. I move to reconsider the vote by which the amendment was agreed to.

Mr. LUGAR. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3235

(Purpose: To amend the Federal Insecticide, Fungicide, and Rodenticide Act and for other purposes)

Mr. DURENBERGER. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Minnesota [Mr. DURENBERGER] for himself, Mrs. HAWKINS, Mr. BAUCUS, Mr. MITCHELL, Mr. HEINZ, Mr. KERRY, and Mr. PROXMIRE, proposes an amendment numbered 3235.

Mr. DURENBERGER. I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Section 814 of the bill relating to the protection of ground water is amended to read as follows:

SEC. 814. GROUND WATER AUTHORITY.

(a) DEFINITIONS.—Section 2 (7 U.S.C. 136) (as amended by section 802(d)(2) of this Act) is further amended by adding at the end thereof the following new subsections:

"(ll) DRINKING WATER WELL.—The term 'drinking water well' means a well or spring currently supplying water for human consumption;

"(mm) GROUND WATER.—The term 'ground water' means water below the land surface in the zone of saturation;

"(nn) GROUND WATER SAMPLING POINT.—The term 'ground water sampling point' means a public or community water supply, a private water supply, a spring, or a monitoring well or other ground water source, if the well or source is reasonably designed and of adequate depth to permit the collection of representative ground water samples;

"(oo) POTENTIAL SOURCES OF DRINKING WATER.—The term 'potential sources of drinking water' means an aquifer or portion of an aquifer system which may supply a

drinking water well. Any determination as to whether an aquifer or its portion is a potential source of drinking water shall include:

"(1) whether there is sufficient quantity to supply a drinking water well;

"(2) whether it contains fewer than 10,000 mg/1 total dissolved solids;

"(3) hydrogeological considerations and depth to drinking water; and

"(4) geographic considerations including any State criteria or guidelines established under section 1428 of the Public Health Service Act or other State authority.

"(pp) The term 'reliable analytical data' means scientific information that verifies the presence of a pesticide in a ground water sample and that is of a reliable scientific quality according to generally recognized standards and good laboratory practices for sampling and analysis of pesticides in ground water; and

"(qq) GROUND WATER RESIDUE GUIDANCE LEVEL.—The term 'ground water residue guidance level' means a ground water residue guidance level established under section 1429 of the Public Health Service Act.".

(b) PROTECTION OF GROUND WATER.—The Act is amended—

(1) by redesignating section 31 (7 U.S.C. 136y) as section 32; and

(2) by inserting the following new section:

"Sec. 31. Protection of Ground Water.

"(a) LEACHING POTENTIAL.—

"(1) CRITERIA.—The Administrator shall publish and seek comment on criteria to determine whether a pesticide has the potential to leach into ground water. Such criteria may include, but are not limited to, factors such as: the intended use of the pesticide; the timing, rate and method of application for the pesticide; the mobility of the pesticide in soil and water under various conditions; and the rates of degradation of the pesticide in soil and water under various conditions.

"(2) Each person seeking to register or reregister a pesticide under this Act shall submit such data and information as the Administrator shall require with respect to the potential for the pesticide to leach into ground water and the fate and transport of the pesticide.

"(3) At the time of registering or reregistering a pesticide (and using the criteria developed under paragraph (1)) the Administrator shall determine whether the pesticide has the potential to leach into ground water. With respect to a determination made under this paragraph, any pesticide detected at three or more ground water sampling points shall be determined to have the potential to leach into ground water. Any determination made under this paragraph shall be amended, if the Administrator receives reliable analytical data that the pesticide has been detected at three or more ground water sampling points or determines that the pesticide does not have the potential to leach into ground water.

"(4) DETERMINATION.—If the Administrator determines that a pesticide has the potential to leach into ground water according to the provisions of this subsection, the Administrator shall also determine whether monitoring data on the presence of the pesticide in ground water are required to register or maintain in effect an existing registration of the pesticide.

"(b) MONITORING.—

"(1) REQUIREMENT FOR MONITORING.—

"(A) If the Administrator determines that additional data on the presence of a pesticide in ground water are required to maintain in effect an existing registration of the pesticide, the Administrator may, under section 3(c)(2)(B) of this Act, require registrants of the pesticide to conduct ground water monitoring.

"(B) The Administrator shall consult with the Secretary of Agriculture, the heads of other appropriate Federal agencies, and the States concerning the design and scope of the monitoring requirements imposed under this paragraph. The design and the scope of the monitoring requirement should take into account information such as the magnitude and frequency of detection, pattern of pesticide use and soil types involved in the detection, physical and chemical properties of the pesiticide, rainfall patterns, well construction, rates of degradation, reliability and analytical accuracy of the detection, and results of State or other sponsored monitoring.

"(C) To the extent feasible, monitoring should be conducted at representative geographical and hydrogeological areas associated with locations and conditions of concern as determined by the Administrator.

"(2) JUDICIAL REVIEW.—Monitoring requirements imposed under this subsection shall be subject to judicial review under section 16.

"(C) NOTIFICATION.—

"(1) REQUIREMENT.—When a registrant of a pesticide obtains reliable analytical data that a pesticide has been detected at any ground water sampling point, the registrant shall file a report containing such information within 15 working days with the Administrator, the State where such pesticide has been detected, and the owner of the property at the ground water sampling point.

"(2) CONTENT OF REPORT.—A report required under paragraph (1) for detection of a pesticide shall contain information known to the registrant on the level of detection, frequency of detection, location (including depth), date, well construction, soil type, and analytical method used, including information on the precision, accuracy, and limit of detection of the method and any quality assurance and control procedures."

"(d) REVIEW FOR FURTHER ACTION.—On receiving information of a detection of a pesticide at any ground water sampling point, the Administrator shall promptly review the information to determine the reliability of the detection and to determine whether action should be taken to protect ground water.

"(e) REGISTRATION AMENDMENTS.—

"(1) REQUIREMENT.—

"(A)(i) After reviewing reliable analytical data, the Administrator shall determine whether there is a reasonable likelihood that the ground water residue guidance level for a pesticide will be exceeded in drinking water wells in different localities.

"(ii) If the Administrator determines that there is a reasonable likelihood of exceeding such level in different localities, the Administrator shall promptly require amendments to the registration of the pesticide involved that are reasonably necessary to assure that the use of the pesticide in accordance with the amended registration will not cause the final ground water residue guidance level to be exceeded in drinking water wells.

"(iii) The Administrator shall make such a determination public.

"(iv) If the Administrator proposes to require registration amendments under this paragraph, the Administrator shall notify registrants of such amendments and shall public notice of the determination in the Federal Register. Such notice shall include the determination of the Administrator whether the presence of the pesticide in drinking water wells appears to have been the result of use of the pesticide in accordance with the labeling or widespread and generally recognized practice.

"(B)(i) After reviewing reliable analytical data, the Administrator shall determine whether there is a reasonable likelihood that the ground water residue guidance level for a pesticide will be exceeded in potential sources of drinking water in different localities.

"(ii) If the Administrator determines that there is a reasonable likelihood that such level will be exceeded in different localities, the Administrator shall promptly require amendments to the registration of a pesticide involved that are reasonably necessary to ensure that use of the pesticide in accordance with the amended registration will not cause the final ground water residue guidance level to be exceeded in potential sources of drinking water.

"(iii) If the Administrator proposes to require amendments under this paragraph, the Administrator shall notify registrants of such amendments.

"(iv) In establishing such amendments, the Administrator shall—

"(I) meet the requirements of subparagraph (A);

"(II) take into account information submitted by States on land and ground water use classification or other governmental actions that could affect when ground water may be used for drinking water; and

"(III) consider the views of the Secretary of Agriculture, other heads of appropriate Federal agencies, and States as required in paragraph (2).

"(2) CONSULTATION.—

"(A) In taking action under paragraph (1), the Administrator shall consult with the Secretary of Agriculture and the State where the pesticide involved has been detected in any ground water sampling point and each other State in which there is significant use of the pesticide.

"(B) The Administrator shall notify such State of the determination of the Administrator that there is a reasonable likelihood that the ground water residue guidance level will be exceeded and shall provide the State with all information relevant to this determination subject to section 10(h).

"(C) States shall promptly provide the Administrator with information relevant to taking action under this section and shall make recommendations regarding necessary registration amendments with respect to that State.

"(3) REASONABLE LIKELIHOOD.—

"(A) There shall be a presumption that pesticides detected above 30% of the ground water residue guidance level meet the 'reasonable likelihood' standard, unless considering the other factors described in subparagraph (B) of this paragraph, the Administrator determines, after notice and opportunity determines, after notice and opportunity for public comment, that the 'reasonable likelihood' standard has not been met.

"(B) The circumstances surrounding the presence of the pesticide in ground water, taking into account all relevant information, include the frequency and time of occurrence at the site of detection and elsewhere, use patterns, soil types, physical and chemical properties of the pesticide, rainfall patterns, well construction, analytical accuracy, and rates of degradation.

"(4) SCOPE OF AMENDMENTS.—

"(A) Amendments to the registration of a pesticide may include—

"(i) limitations on the purposes for and location at which the pesticide may be used, considering factors such as environmentally sensitive areas and conditions;

"(ii) limitations on the rate at which the pesticide is applied;

"(iii) limitations on the time or frequency of pesticide use;

"(iv) limitations on the method of pesticide application, storage, handling, or disposal;

"(v) reporting or other requirements, including label changes or changes in classification;

"(vi) requirements for the training or certification of pesticide applicators or other persons using the pesticide;

"(vii) required site-specific responses; or

"(viii) any other requirement under this Act to ensure that the ground water residue guidance level for such pesticide will not be exceeded.

"(B) The amendments to the registration of a pesticide should, to the extent feasible, be directed to the same or similar uses of the pesticide, similar geographical and hydrogeological areas and other similar conditions that led to the determination under subparagraph (A) or (B) of paragraph (1).

"(C) In taking regulatory action under this subsection, the Administrator may utilize recommendations provided by the States under paragraph (2).

"(D) In requiring such amendments, the Administrator shall consider the effect of any voluntary actions by registrants or other persons, including actions by the State to prevent the ground water residue guidance level from being exceeded, and compliance with other environmental laws.

"(5) If the Administrator has imposed registration amendments on the use of a pesticide according to the provisions of this subsection, the Administrator shall—

"(A) periodically review reliable analytical data on the occurrence of the pesticide at ground water sampling points representative of the locations at which the pesticide is used to determine whether such amendments are effective in meeting the requirements of paragraph (1) of this section;

"(B) require additional registration amendments, if such amendments are necessary to assure that the ground water residue guidance level for such pesticide will not be exceeded in drinking water wells and potential sources of drinking water;

"(C) report to the Congress at 18 months, 36 months, and 60 months after such amendments are first imposed indicating whether the amendments have been effective in meeting the requirements of paragraph (1) of this subsection; and

"(D) report to the State in which the pesticide was detected at 18 months, 36 months and 60 months after such amendments are first imposed indicating whether the amendments have been effective in meeting the requirements of paragraph (1) of this subsection including trends in any drinking water wells located in such State.

"(5) PROCEDURES.—Registration amendments under paragraph (1) shall be imposed in accordance with the procedures required by this Act.

"(f) SITE-SPECIFIC RESPONSE.—

"(1) REQUIREMENT.—

"(A) If the Administrator determines that a pesticide is present in a drinking water well in a concentration that exceeds the final ground water residue guidance level and that the presence of the pesticide in drinking water well may be the result of use of the pesticide in accordance with the labeling on the pesticide or as a result of widespread and commonly recognized practice involving the pesticide, the Administrator shall—

"(i) notify the State in which the drinking water well is located of the determination of the Administrator; and

"(ii) provide the State, subject to section 10(h) of this Act, with all information relevant to the determination;

"(B) Such State shall take action within 90 days of such notification to prevent potential adverse effects on human health and the environment from such pesticide. In taking such action, the State shall take appropriate action regarding the sale or use of the pesticide detected at such drinking water well to bring and retain concentrations of the pesticide at such drinking water well at or below the final ground water residue guidance level applicable to the pesticide.

"(2) ACTION BY THE ADMINISTRATOR.—

"(A) If—

"(i) a State does not have the authority to take action required by paragraph (1) with respect to a pesticide detected in a drinking water well or fails to take such action within the time period prescribed by such paragraph;

"(ii) a pesticide is present in a drinking water well in the State at a concentration that exceeds the final ground water residue guidance level; and

"(iii) the presence of the pesticide may be the result of use in accordance with the labeling or of widespread and commonly recognized practice.

the Administrator shall take appropriate action under this Act to bring and retain the concentration detected at such drinking water well at or below the final ground water residue guidance level applicable to the pesticide and may take such other action under this Act as the Administrator deems necessary to prevent potential adverse effects on human health and the environment from the pesticide at such drinking water well.

"(B) The Administrator shall publish notice of the the action in the Federal Register and take appropriate steps to inform all registrants, potentially affected persons, and interested members of the public. Such notice shall specify the factual findings and conclusions relied on in support of the decision.

"(C) Any person adversely affected by an action, or failure to act under this paragraph shall have an opportunity for an expedited hearing, pursuant to the procedures of section 6(c)(2) of this Act, to determine whether the action was taken in accordance with this paragraph or whether the Administrator was required to take action.

"(D) Notwithstanding any other provision of this Act, a hearing shall be held and a determination made under this subsection within 75 days after receipt of the request for such a hearing.

"(E) The Administrator shall provide reasonable procedures for a petition to modify or terminate the action of the Administrator under this paragraph, if the concentration of the pesticide in the water from the drinking water well no longer exceeds the applicable ground water residue guidance level and will likely remain below such level.

"(3) *Judicial review.*—Judicial review of actions taken under this subsection shall be governed by section 16.

"(g) INFORMATION ON PESTICIDES IN GROUND WATER.—The Administrator may collect and make available through a public information file information concerning the detection of pesticides in any ground water sampling point. The file may summarize for each pesticide that has been detected in ground water, based on reliable analytical data, whether the pesticide has been detected at a concentration that exceeds the applicable ground water residue guidance level and whether the presence of the pesticide in ground water appears to have been caused by use of the pesticide in compliance with this Act.

"(h) TECHNICAL ASSISTANCE TO STATES.—The Administrator shall provide technical information to a Governor of a State for the purpose of implementing this section. Subject to section 10(h), the technical information shall include, but not be limited to, data on the toxicity, environmental fate, physical or chemical pesticide ingredient characteristics, predictive modeling, exposure and other relevant subjects. In addition, the Administrator shall provide information, to the extent reasonably available, on the alternative methods of pest control and on agricultural or other management practices that could minimize the presence of pesticides in ground water.

"(i) SPECIAL REVIEW.—On receiving reliable analytical data that a pesticide has been detected above the ground water residue guidance level in ground water not in a drinking water well or potential source of drinking water, the Administrator may initiate a public interim administrative review under section 3(c)(8) of this Act to determine whether the pesticide may cause unreasonable adverse effects on the environment from such use.

"(j) SITE-SPECIFIC INFORMATION.—The Administrator shall enter into a memorandum of understanding with the Secretary of Agriculture, the Secretary of Commerce, and the Secretary of the Interior, for the purpose of developing information management systems and other techniques designed to make readily available to State and local officials and agricultural producers, applicators and other persons using the pesticide information on the soil, hydrology, climate and other characteristics at specific sites of pesticide application to be used by such officials and users in developing practices and making application decisions that will prevent the contamination of ground water by pesticides.

"(1) Under the direction of the Administrator a council will be established in order to assist the Environmental Protection Agency in developing a site-specific pesticide information system. This council shall consist of experts on information management who have experience with information retrieval from the following agencies: the Environmental Protection Agency, the National Agricultural Library, the Soil Conservation Service, the U.S. Geological Survey, the National Oceanographic and Atmospheric Administration. This council shall—

"(A) Review existing information retrieval and referral services which access information on soil, hydrology, climate, and other characteristics at specific sites important to pesticide application.

"(B) Determine what information relevant to making site-specific pesticide decisions is available directly from existing data banks.

"(C) Based on these determinations develop and submit to the Administrator a plan for an information management system which would direct and assist users in gain-

ing access to site-specific information available in printed and electronic form.

"(2) The Environmental Protection Agency shall take the plans developed by the council into consideration when developing the site-specific pesticide information management system.

"(k) EFFECT ON OTHER PROVISIONS.—Nothing in this section shall limit the authority of the Administrator or of any State under other provisions of this Act or under any other law.

"(l) AUTHORIZATION.—For purposes of carrying out the provisions of this section there are authorized to be appropriated $25,000,000 for each of the fiscal years ending on September 30, 1987, 1988, 1989, 1990 and 1991. Of such amounts $2,500.00 in each fiscal year shall be available only to carry out the purposes of subsection (j).".

"(c) UNLAWFUL ACTS.—Section 12(a)(2) (7 U.S.C. 136j(a)(2)) (as amended by section 808(2)(D) of this Act) is further amended by adding at the end thereof the following new subsection:

"(U) to violate an order issued under section 31(f)(2).".

(d) GROUND WATER RESIDUE GUIDANCE LEVEL.—Part C of title XIV of the Public Health Service Act is amended by adding at the end thereof the following—

"SEC. 1429. GROUND WATER RESIDUE GUIDANCE LEVEL.—

"(a) REQUIREMENT.—

"(1) The Administrator, on the Administrator's own initiative, may issue a ground water residue guidance level for a pesticide registered under the Federal Insecticide, Fungicide, and Rodenticide Act. The Administrator shall issue a ground water residue guidance level for a pesticide whenever the Administrator registers or reregisters a pesticide under such Act if the Administrator determines that the pesticide has the potential to leach into ground water. In addition, the Administrator shall issue a ground water residue guidance level for a pesticide if—

"(A) based on reliable analytical data, the pesticide has been detected at ground water sampling points in three different geographical areas;

"(B) based on reliable analytical data, the pesticide has been detected in a drinking water well or wellfield that services a population of over 500 people; or

"(C) a Federal agency or a State petitions the Administrator to set a ground water residue guidance level for the pesticide.

"(2)(A) If the Administrator has promulgated or promulgates a maximum contaminant level under subsection (b)(3) that applies to a pesticide the ground water residue guidance level required under paragraph (1) for the pesticide shall be set at such level within 30 days of being required under such subsection.

(B) If a maximum contaminant level that would be applicable to a pesticide for which a ground water residue guidance level is required by paragraph (1) has not been established under section 1412, the Administrator, in the Administrator's discretion may use a health advisory level in establishing such ground water residue guidance level. The ground water residue guidance level established by the Administrator for such pesticide shall reflect the level of the pesticide in drinking water at which no known or anticipated adverse effect on the health of persons occur, the need for an adequate margin of safety, the nature of the toxic effects caused by the pesticide, and the validity, completeness, and adequacy of data about the pesticide. If all required chronic, oncogenicity, reproduction, or teratogenicity data are absent or invalid for the pesticide, the ground water residue guidance level for the pesticide shall be set at the limit of detection. If any required chronic, oncogenicity, reproduction, or teratogenicity data are absent or invalid for the pesticide, the ground water residue guidance level for the pesticide shall include an additional margin of safety that takes into account the absence of such data.

"(3)(A) Before issuing a final ground water residue guidance level for a pesticide, the Administrator shall publish an interim ground water residue guidance level for the pesticide in the Federal Register and allow public comment for at least 30 days. During the public comment period, the Administrator shall invite comment on the level from the Secretary of Agriculture and States.

"(B) If the Administrator is required under paragraph (1) to issue a ground water residue guidance level for a pesticide and the ground water residue guidance level is to be issued pursuant to paragraph (2)(B), the Administrator shall issue an interim ground water residue guidance level within 30 days after the requirement to issue the ground water residue guidance level takes effect.

"(C) Within 3 months after establishing an interim ground water residue guidance level, the Administrator shall establish a final ground water residue guidance level. Until a final ground water residue guidance level is established under paragraph (1) for a pesticide, an interim ground water residue guidance level established for the pesticide shall remain in effect.

"(4) The Administrator may revise a ground water residue guidance level for a pesticide. The Administrator shall allow at least 30 days for public comment on any proposed revision.

"(5) An interim ground water residue guidance level shall not be subject to judicial review before the expiration of 3 months after its issuance. Judicial review of any final ground water residue guidance level or failure to establish an interim or final ground water residue guidance level shall be governed by section 1448. A gound water residue guidance level established under paragraph (2)(A) shall not be subject to judicial review.

On page 183; delete lines 9-12 and insert the following

"(C) Nothing in this subsection shall affect the authorities or requirements concerning pesticide containers under the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 et seq.).

"(D) The Administrator may, at his discretion, exempt products intended solely for household use from the requirements of this subsection.

GROUND WATER PROTECTION

Mr. DURENBERGER. Mr. President, I am very pleased to introduce, along with Senators HAWKINS, BAUCUS, and MITCHELL, a consensus amendment on ground water protection. The issue of ground water protection is of great importance to me personally and is an issue to which the Environment and Public Works Committee has devoted a great deal of attention. The Toxic Substances and Environmental Oversight Subcommittee, which I chair, has, during the 99th Congress, held almost 2 weeks of hearings on ground water contamination and the steps we might take as a nation to better protect our drinking water supplies and ground water resources.

So I was very pleased when the Agriculture Committee reported the FIFRA reauthorization with a ground water protection amendment. As a result of the hard work and leadership of Senator HAWKINS, S. 2792 contains a very strong ground water protection provision. Section 814 was carefully negotiated over several weeks in discussions with many interests including EPA, the States, the environmental community, organizations representing farmers and agricultural producers, and the chemical companies.

Members of the Committee on Environment and Public Works, including Senators BAUCUS, MITCHELL, STAFFORD, BURDICK, and me, took an interest in the ground water protection section of S. 2792 to assure that it is compatible with the programs that our committee has already created and that it anticipates the comprehensive legislation which we intend to report in the 100th Congress. The amendment we offer here today has essentially the same structure as the Hawkins amendment. We have built a few bridges between this FIFRA Program and the other ground water protection efforts that are taking shape in our committee, including those that were recently authorized in the Safe Drinking Water Act.

Ground water contamination by pesticides is pervasive. Over 600 pesticides are registered for use in the United States. Herbicides, insecticides, and nematicides are applied over millions of acres of land area. Underneath much of that land, there are vulnerable aquifers that are now assaulted by the tons of pesticides applied every year. Those ground water aquifers are an extremely valuable resource. The drinking water for one-half of the American population comes from ground water sources. In rural areas, ground water supplies fully 90 percent of human drinking water and household needs. Ground water is also an important resource for livestock watering, irrigation, and industrial supply.

It was not until recently that we began to look at pesticides as a potential source of ground water contamination. In State after State, the findings are almost always the same: pesticides have contaminated the ground water. This is a practical and potentially serious health problem for the Americans relying on ground water for their source of drinking water. Contamination of ground water also destroys an irreplaceable and essential natural resource. Ground water may, for instance, be Florida's most valuable resource, along with her Senators, which may explain Mrs. HAWKINS' commit-

ment to use FIFRA to create a basis for an approach to solving this problem.

Back in October 1984, the Office of Technology Assessment issued a major two-volume study on ground water contamination. The report called for a national ground water protection strategy that would have three parts: first, prevention; second, detection; and third, correction.

OTA argued that the national strategy must emphasize prevention because a strategy that relies on detection or correction only would not work. To fully appreciate their conclusion, you must understand a little bit about ground water.

Ground water does not mix like surface water or air, so plumes of contamination which move like slugs through the soil can be highly concentrated.

Because contaminants percolate to ground water slowly, pollution can go on for several years before any hint of the problem would be identified by a detection strategy. Even if the source of the pollution is then capped or closed, damage to the ground water resource may continue and even increase for many years afterward.

Testing ground water supplies for contamination is expensive. The average water sample—for a limited number of parameters—costs between $200 and $500 to analyze. There are 240,000 public and 14 million private ground water wells in the Nation. That is a cost of $3 to $7 billion just to test each well once. So we cannot rely on a strategy that allows the resource to be degraded in the belief that we can detect the contaminants at the points where we use the water.

Ground water is generally delivered to the consumer without treatment. Unlike surface water supplies, where we often filter the water or apply disinfectants, we drink our ground water raw—untested and untreated.

Ground water, once contaminated, is very expensive to clean up. Superfund—really a ground water protection program—will cost the Nation $8.5 billion over the next 5 years, averaging more than $8 million in cleanup costs at each site. Preventing contamination at those sites would have been far less costly.

Prevention of ground water pollution by pesticides is possible. Let me use the case of the pesticide aldicarb as an example. Aldicarb—which is also called Temik—is a pesticide applied to soil to kill nematodes, small worms that invade plants in the root zone. In the late 1970's and early 1980's, aldicarb was found to be a ground water pollutant over extensive areas of the United States including Long Island, upstate New York, Wisconsin, Florida, and California. In fact, it has been identified as a problem in 15 different States. Hundreds of water wells have been lost to aldicarb contamination. Union Carbide, the manufacturer of aldicarb, has installed carbon filtration systems on over 2,600 private water supplies to remove aldicarb from household water. Union Carbide has found it necessary to sample an additional 20,000 wells to determine the extent of the contamination problem.

Only after all of that expensive experience with detection and correction did Union Carbide begin to search for ways to prevent ground water contamination by aldicarb. Their prevention research was highly successful. By making only small changes in the timing and rate of application, by using very simple best management practices, it was demonstrated that the leaching rate for aldicarb on many crops could be reduced by as much as 70 percent without losing the efficacy of the pesticide.

The lesson, here, is that no one thought to look for the management practices that would reduce the leaching rate before the pesticide had contaminated water supplies n 15 States. And even today, EPA is not requiring the use of those practices in the application of aldicarb. We can and we must find means to prevent contamination by pesticides, if prevention is the focus of our program.

PURPOSE

And prevention is the focus of this amendment. It is the purpose of this amendment to prevent the contamination of ground water supplies and to assure that public health, welfare and our environment will be adequately protected from the threat of damage or injury by exposure to pesticides that may result from ground water contamination. Mr. President, in that regard I wish to emphasize language which is contained in the report of the Agriculture Committee on page 87 by reading it into the RECORD at this time. Those words are as follows:

It is the intent of the Committee that the ground water protection provisions authorize and require the EPA Administrator to take appropriate regulator action to protect health and the environment from pesticides in ground water.

It is perhaps important that someone in this long debate on the ground water amendment to FIFRA take a moment to clarify the environmental aspects of this standard. Most of the discussion is conducted in the context of protecting human health and preventing contamination of drinking water wells. But the reference to environmental protection which has been carefully included all through this discussion is not some vague invocation of magic words. What is the significance of the phrase, "protect the environment from pesticides in ground water"? Well, 30 percent of the water that flows in our streams and rivers each year is discharged to the surface from a ground water supply. At critical times and in low flow periods, ground water discharge may be the entire source of water in some surface water bodies. If that water is contaminated by pesticides, serious environmental damage—damage to fish, aquatic life, and other wildlife—may result. Therefore, in carrying out the provisions of this act, the Administrator is to give all necessary attention to the responsibility for environmental protection which is assigned to the EPA under this amendment. When we review the actions taken by EPA under this new authority, we expect to see a recognizable component or components that are designed to protect environmental resources from damage by pesticides which reach the surface environment as a result of ground water contamination.

SUMMARY

Mr. President, perhaps it would be helpful at this point in my comments to include a brief summary of the ground water protection program that we are proposing today.

First, the resource protected is broadly defined. It includes both current drinking water in public and private wells and all potential sources of drinking water.

Second, when registering a pesticide for use in the United States, the Environmental Protection Agency will be required to determine whether that pesticide has the potential to leach into ground water.

Third, if the pesticide is determined to have the potential to leach, EPA will set a health-based standard, called a ground water residue guidance level, for the pesticide. The objective of this program is to assure that the ground water residue guidance level for a pesticide is not exceeded in drinking water or ground water supplies.

Fourth, if a pesticide is likely to leach into ground water, EPA will require the registrant or manufacturer of the pesticide to conduct a ground water monitoring program at some sites where the pesticide is used. This monitoring is to assure the earliest possible warning that ground water contaminaton may result from the normal uses of the pesticide.

Fifth, if the registrant receives information that a pesticide has been detected in ground water, that information is to be transmitted to EPA.

Sixth, if EPA determines, based on information provided by the registrant or available from some other source, that ground water contamination is occurring and that there is a reasonable likelihood that the ground water residue guidance level is likely to be exceeded as the result of current practices, the EPA will impose restrictions on the uses of the pesticide that are necessary to prevent further contamination. These restrictions, called registration amendments, are triggered

when the pesticide has been detected at levels exceeding 25 percent of the ground water residue guidance level.

Seventh, EPA and the States are assigned duties to assure that the ground water residue guidance level is not exceeded in drinking water wells and are required to take actions to bring and retain water quality in drinking water wells below such levels.

Eighth, the EPA is authorized to collect information on ground water contamination by pesticides and to make that information available to the public.

Ninth, EPA is authorized to provide technical assistance to the States to carry out ground water protection programs that are focused on pesticide contamination.

Tenth, EPA and the Departments of Agriculture, Commerce, and Interior are authorized to enter into cooperative agreements to make available to farmers information on soil, climate and hydrogeology at specific sites of pesticide use that would be helpful to the farmer in protecting ground water from contamination.

And finally, the legislation contains an authorization of $25 million per year for 5 years to carry out this new ground water protection program.

DEFINITIONS

The amendment to section 814 that we are introducing today seeks to protect ground water from contamination in a variety of ways and the resource protected is broadly defined. Protection is afforded not only to current drinking water sources, both public and private wells, but also to any other waters which may serve a drinking water well in the future. The definition of "potential sources of drinking water" in this legislation tracks the definition that is used in current EPA regulations for underground sources of drinking water. That definition turns on two notions, one related to quantity and the other to quality. To be a potential source of drinking water, an underground supply must be able to yield a sufficient quantity of water to a well to meet daily needs. Yield is, of course a function of the depth of the well and also of the permeability of the geologic formation. Water that is above the zone of saturation in the root zone would not generally be a potential source of drinking water because it would not yield a sufficient quantity of water to meet daily needs which is about 50 gallons per day per person.

On the issue of quality, this definition, and the definition of underground sources of drinking water in the current EPA regulations, affords an extra margin of protection. Human beings will generally drink water only if the mineral content is less than about 500 parts per million total dissolved solids. But the definition of potential sources of drinking water in this amendment includes waters with total dissolved solids up to 10,000 parts per million. Extending the definition to this range provides protection from pesticide contamination for water that might be treated to remove dissolved solids to bring it within the normal range considered appropriate for human consumption and also protects ground water for other uses such as livestock watering where use is not excluded because of the presence of dissolved solids at low levels.

Mr. President, this definition also includes a feature to take into account the ground water protection provisions from the recently enacted Safe Drinking Water Act Amendments of 1986. In that legislation we created a new program to protect the wellhead areas around public drinking water wells. In determining whether a particular aquifer or a portion of an aquifer is a potential source of drinking water, EPA or the States would include all of the land surface within an area defined as wellhead protection area under the Safe Drinking Water Act even if some other element of the definition of potential sources of drinking water were not satisfied. This legislation, of course, goes beyond the areas covered by wellhead protection programs, because it is designed to protect both public and private wells.

Mr. President, there are two other aspects of the definitions in this amendment which I would like to mention. First, the definition of "ground water sampling point" indicates that the sampling well should be of an adequate depth to assure the collection of representative samples. This language does not mean that the sample has to be representative of the quality of all the water in the aquifer. It is not required that one go to a depth of 500 feet in a 1,000-foot thick aquifer to get a representative sample. All that is required is that the sampling well be of a depth adequate to sample water that would be representative of the water that may eventually enter a drinking water well taking into account the quantity of water that is necessary to meet daily needs.

The second item in the definitions that needs to be mentioned relates to the meaning of the term "reliable analytical data." Such data is information that verifies the presence of a pesticide in ground water. We do not intend that a second sample must be taken in order to verify a detection in the first sample. Verify does not mean repeat in this case. All that is intended is that the methodology used to produce the data be of sufficient validity and reliability so that a positive indication in one sample can be used for regulatory purposes.

One definition which is not explicitly included in this legislative language but which we intend to carry forward from the legislative report of the Agriculture Committee on S. 2792 is the definition of the term pesticide. As used in this amendment that term includes all of the active and inert ingredients and their metabolites and degradation products associated with a pesticide product. It is not necessary for the purposes of this section that a ground water sample contain ingredients in precisely the same chemical formulation as is found in the pesticide product when it is sold. Because ingredients will be transported and degraded at different rates once they are released into the environment, ground water samples will not match the formulations of the pesticide product in its manufactured form. Therefore, it is necessary to read the use of the term pesticide broadly here to include all of the chemical constituents and byproducts in order to assure adequate protection of ground water resources.

POTENTIAL TO LEACH

Moving on from the definitions to the substantive provisions of this amendment, an important addition to S. 2792 is a requirement that EPA promulgate criteria to determine whether a pesticide has the potential to leach into ground water. This is an essential element if we are serious about preventing, rather than simply responding to, ground water contamination. In developing such criteria, the Administrator of EPA is to begin with the factors listed in subsection (a)(1) of the amendment. EPA has been working to develop such criteria and the purpose of this section is simply to give a legislative home to the work that is already underway.

At the time of registration or reregistration of a pesticide, the Administrator is to determine whether a pesticide has the potential to leach into ground water. The Administrator will require the person proposing to register a pesticide to provide data on the fate and transport of that pesticide in the environment including the saturated and unsaturated zone. Based on that information, the criteria that the Administrator has established and other information that may be available, the Administrator will make a determination whether the pesticide has the potential to leach into ground water.

Any pesticide that has been detected at three or more sampling points is considered to have leaching potential. If at the time of registration, EPA makes a determination that a pesticide does not have the potential to leach, but subsequently, that pesticide is discovered at three or more ground water sampling points, then the determination is to be changed to classify the pesticide as a potential "leacher." In addition, we would expect EPA to revisit the criteria, if they fail to flag pesticides which are subsequently found in ground water supplies.

A determination that a pesticide has the potential to leach into ground water is the first step in prevention of contamination. For this reason, the Administrator should err on the side of protecting human health and the environment and make a determination that a pesticide has no leaching potential only when any other conclusion is unsupportable.

MONITORING

Mr. President, there is an additional element of ground water protection in subsection (a) of this amendment to FIFRA. If EPA determines that a pesticide has the potential to leach into ground water, then the Administrator is also required when registering or reregistering a pesticide to determine whether ground water monitoring should be conducted with respect to that pesticide. The purpose of the monitoring is to assure that we get the earliest possible information on the actual fate of the pesticide in the environment. EPA should not wait for the pesticide to be accidentally discovered by a person monitoring a drinking water supply for some other purpose, but rather should require the registrant of the suspected "leacher" to conduct a targeted monitoring program at sites that are representative of the places where the pesticide is used.

It is not intended that the registrant be required to install monitoring wells at all or even a very large number of locations. It is only intended that EPA design a reasonable monitoring program for the pesticide to be conducted by the registrant at sites reasonably representative of the crops, climates, soils and hydrogeology associated with use of the pesticide so as to assure that reliable analytical data will be available at the earliest practicable time should the pesticide, in fact, leach to ground water.

The legislative authority for the monitoring program I have just discussed is included in subsection (b) of the amendment that we are proposing to FIFRA. In the development of this legislation there has been a great deal of debate with regard to monitoring. Other than the specifications which have been included here, it has not been possible to reach a legislative formulation of the other monitoring authorities which are inherent in current law, both under FIFRA and other statutes like the Safe Drinking Water Act. These authorities include monitoring at specific sites to determine the extent and causes of contamination of underground sources of drinking water and appropriate remedial actions. Those authorities are very broadly defined in current law. We have chosen not to open that issue here for fear that our decisions would unnecessarily or unwisely restrict authorities that EPA already has.

Mr. President, one aspect of the pesticide contamination problem that is especially troubling is the long lag time that may occur between application of the pesticide and the date that it actually shows up in a ground water sample. Contaminants move very slowly in the soil and ground water. It may take years for a pesticide applied on the surface to reach the water table 40 or 50 feet below. Because of this long period of percolation, pesticides will build up in the soil and, even if the pesticide is banned for use on the surface after the first detection is made in the ground water below, the level of contamination will continue to increase as the built up pesticide moves into the saturated zone. It is for this reason, Mr. President, that we have focused in this amendment on provisions that will assure the earliest possible detection of ground water contamination. That is the purpose of the monitoring provisions included in this legislative language.

But in addition to the actions legally required here, it is my hope that EPA will also be exploring monitoring technology that does not rely solely on ground water samples. We need to develop and take advantage of technology that focuses on monitoring of the unsaturated zone so that ground water contamination might be predicted even before it occurs. I know that monitoring technology for the unsaturated zone is not entirely reliable at this time, but EPA should be making every effort in its research and development program to perfect monitoring techniques for the unsaturated zone so that they can be implemented as a part of the FIFRA Program and in other ground water protection regimes like the Solid Waste Disposal Act.

NOTIFICATION

Another important aspect of this amendment is the notification requirement. Registrants are required to notify EPA within 15 working days if a registrant obtains, through its own testing source or through some other source, reliable analytical data that a pesticide has been detected at any ground water sampling point. The notification report to EPA is to include information regarding the detection, and circumstances under which the pesticide was detected. The amendment mentions factors such as well type, soil type, method used, date, information on the accuracy of the method, and quality assurance and control procedures.

GROUND WATER RESIDUE GUIDANCE LEVEL

Mr. President, one of the principal elements in this consensus package is not actually an amendment to FIFRA, but rather is drafted as an amendment to the Safe Drinking Water Act. Under a new section 1429 of the drinking water law, EPA will be setting new health-based standards for drinking water supplies to assure that pesticide contamination does not become a threat to the health of our citizens. These new standards are called ground water residue guidance levels—the acronym is GRGL, pronounced gurgle in the discussions that we have been having. However frivolous the nickname, the purpose embodied in this amendment to the drinking water law is a serious and important effort to assure adequate protection for our drinking water and ground water supplies.

We have made the ground water residue guidance level a part of the drinking water law because the considerations that are to be taken into account when setting a GRGL are very similar to those that are employed when setting standards under the drinking water law. The standard in that law is based on a level of protection that assures no adverse effect on human health.

Mr. President, FIFRA is a risk balancing statute. It instructs the Administrator to allow the use of a pesticide where no unreasonable risk of injury to human health, welfare or the environment can be expected. The Safe Drinking Water Act does not call upon the Administrator to balance the risks and benefits of a pecticide, or any other chemical, in setting standards. It is not like FIFRA in that respect.

The Environmental and Public Works Committee conducted a hearing on the legislation reported by the Agricultural Committee. At that hearing every witness—including representatives of EPA, the States, the pesticide manufacturers, the environmental community, and farm organizations—all of those witnesses testified that the GRGL established by this legislation should be solely health-based and that no consideration of the benefits of the pesticide should be taken into account when setting drinking water standards for the pesticide. So we decided in this amendment to make the GRGL setting authority a new part of the Safe Drinking Water Act, rather than FIFRA, to assure that the standard is one that protects human health from any adverse effect.

The legislation reported by the Agricultural Committee stated that in setting a GRGL, the Administrator was to "consider" the level at which no adverse effect on health occurs. To assure that this standard is consistent with the health protection requirements of SDWA, as specified in the authority of the Administrator to set maximum contaminant level goals under that law, the language in the amendment has been changed to require that the Administrator set the GRGL at the level which reflects no adverse effect on the health of persons. This is an appropriate standard for the GRGL, Mr. President, because this standard is intended to be a part

of a regulatory program that protects ground water from contamination. This is not a cleanup program. This is not a program for treating contaminated water. This is a prevention program, and as such, it is appropriate that the standard for the GRGL parallel the standard for the maximum contaminant level goal in the Safe Drinking Water Act.

The Administrator is to establish a ground water residue guidance level for a pesticide whenever the Administrator registers or reregisters a pesticide that has the potential to leach into ground water. In addition, GRGL's are to be issued if: First, the pesticide has been detected at ground water sampling points at three different locations; second, the pesticide has been detected in drinking water wells or well fields serving more than 500 people; or third, a Federal agency or the Governor of a State petitions the Administrator to set a GRGL for a pesticide.

Based on these criteria, it is expected that GRGL's would be established for a large number of pesticides. EPA is preparing to conduct a national survey of pesticide contamination of ground water. As part of that survey EPA is developing health advisories for several dozen pesticides. It is expected that EPA will be able to use the information in the health advisories to quickly develop the GRGL's authorized by this amendment.

In fact, the legislation that we are adopting does authorize EPA to use the information in the health advisory in developing GRGL's. But it must be understood that GRGL's will not be serving the same purpose as those advisories. Health advisories have been developed by the drinking water office at EPA as an informal mechanism to assist others in preventing short-term exposures that may present an imminent and substantial endangerment to public health. They are not intended to substitute for regulatory standards, nor do they reflect the same considerations as to health protection which the Administrator is instructed to take into account under these amendments. One cannot conclude from the legislative language adopted here that there is an equivalence between the standard incorporated in a ground water residue guidance level and the considerations that EPA has been including in the development of health advisories.

I cannot overstate the importance of the health standard, Mr. President. It has been and continues to be fundamental to all our environmental statutes. Here the Administrator is required to establish GRGL's that are sufficiently stringent to protect human health, including populations such as children who may be particularly sensitive to pesticide exposure. He must also take into account other factors, which, if present, would indicate that an additional margin of safety in the standard is necessary.

Mr. President, the ground water residue guidance level established under the Safe Drinking Water Act will serve as a standard for prevention measures taken under the two other major sections of this legislation. Those sections are amendments to FIFRA. One section requires the Administrator to regulate pesticides through so-called registration amendments to prevent the ground-water residue guidance levels from being exceeded in drinking water and potential sources of drinking water. And subsection (f) of these amendments to FIFRA will require the States and EPA to work together, taking measures that may necessarily go beyond general registration requirements, to assure on a site-specific basis that the GRGL is not exceeded in any current drinking water supply.

REGISTRATION AMENDMENTS

One of the principal elements of pesticide regulation under FIFRA are the restrictions that are put on the use of a pesticide at the time of registration. Subsection (e) of this amendment uses these registration amendments to assure that GRGL's will not be exceeded in ground water. Nothing in this language requires the Administrator to register a pesticide that may present an unreasonable risk of injury to human health or the environment as a result of the potential for the pesticide to leach into ground water. These amendments are not designed to license leachers, but to protect ground water and, thus, the Administrator's authority and current policy to decline to register pesticides that present an unreasonable risk because of the likelihood that they will leach to ground water or for any other reason is not disturbed.

Furthermore, EPA is to include at the time of registration all the restrictions on the use of a pesticide which the Administrator determines are necessary to meet the requirements of the FIFRA statute. We do not intend to send a signal with this amendment that restrictions on the registration or label of a pesticide to protect ground water are only appropriate after contamination has actually been discovered. That would be completely contrary to the intent of this amendment. Rather it is our purpose to assure that when the EPA learns that a groundwater residue guidance level for a pesticide is likely to be exceeded, a mandatory and judicially enforceable duty is imposed on the Administrator to restrict the use of the pesticide to avoid that result. Again these amendments are designed to prevent contamination and to assure that the health-based ground-water residue guidance level will not be exceeded.

Mr. President, this amendment draws on certain provisions that were included in the legislative report of the Agriculture Committee to define the point at which the Administrator is required to impose registration amendments to protect ground-water supplies. To give definition to the phrase "determine whether there is a reasonable likelihood that the ground water residue guidance level will be exceeded" this amendment now explicitly includes a presumption that such a determination will be triggered whenever the pesticide has been detected in an amount which exceeds 30 percent of the ground water residue guidance level in different localities. The 30-percent standard—which is a fraction of the health-based standard—is appropriate in this instance because ground water is, as I have said earlier, not thoroughly mixes and as a result the quantity of a contaminant at a particular sampling point may vary by as much as an order of magnitude in separate samples drawn from that single site over a short period of time. So at one time we may find that the level of contamination is only 30 percent of the GRGL, but could find, even on the next day, a sample that is contaminated at a level which is three times the GRGL. Thus, it would be reasonable to conclude that a GRGL might be exceeded, even if a sample or samples indicate contamination at a fraction of the health-based standard established under the drinking water law. Again, as in other public health and environmental protection programs, when there is doubt or uncertainty, EPA is to ERR on the conservative side—on the side of protecting health and the environment.

In this section of the amendment the phrase "in different localities" is to indicate that EPA is not required to impose registration amendments because the 30-percent trigger has been exceeded at a single place. There is no need to set in motion a national restriction because of a unique contamination incident. However, the phrase is not intended to allow EPA to ignore the first signs of contamination which may result from normal practices of pesticide use. EPA is not to set some arbitrary trigger based on the number of locations at which contamination has been detected in excess of 30 percent of the GRGL and wait to act until after that number of incidents has been discovered. EPA should impose restrictions even if the 30-percent level has been exceeded at only one site, if at that site the contamination resulted from normal practices which can be expected to result in contamination at other places where the pesticide is used.

The registration amendments required by this section are to be imposed promptly. Although we considered including a specific deadline in this amendment, it was not possible to

do so, because imposing the restrictions is a regulatory process and not a single event. The procedures for imposing amendments are specified in the FIFRA statute rather than this amendment. EPA is to begin the process by proposing the amendments as soon as practicable after the 30-percent trigger has been reached and is to proceed with the regulatory process so that the restrictions necessary to protect ground water are effective as soon as practicable thereafter. Paragraph (5) of this subsection affirms that procedures for making registration amendments are the procedures included in the FIFRA statute. Here, we are referring to the administrative processes outlined in FIFRA. This reference is not intended to substitute the unreasonable risk standard of FIFRA for any part of the determinations that are triggered by the groundwater residue guidance levels which are established under the Safe Drinking Water Act.

RESPONSE AUTHORITIES

Mr. President, the other major provision of this amendment which I would like to discuss today is subsection (F) which establishes authority for response to ground-water contamination at a specific site. Again, the purposes of this section are to assure that the ground-water residue guidance level for a pesticide will not be exceeded. Here, the Administrator is required to take action, action which goes beyond that required by general registration amendments, only after EPA receives information that a GRGL has been exceeded at a particular drinking water well. The action taken by the Administrator in the first instance will rely on the States which are given 90 days to take steps that will bring and retain the level of the pesticide in the water supply to a point that is below the GRGL. If the States do not have sufficient authority or fail to act within the 90-day period, the duty to bring and retain the contamination to a level that is below the GRGL falls on EPA. The general standard which applies to EPA's actions under this section is one which will protect human health and the environment from adverse effects as a result of the presence of the pesticide in the drinking water well.

With respect to site-specific responses, there are several differences between the amendment that we are offering here and the language reported by the Agriculture Committee. I would like to highlight two of the differences in my comments. First, the authority for EPA to conduct a response is available immediately. There is no time lag between the date of enactment and the time when EPA may use this response authority. There are thousands of wells in the Nation that are already contaminated with pesticides and it is expected that response to that contaminated with pesticides and it is expected that response to that contamination will begin as soon as GRGL's are promulgated under the Safe Drinking Water Act.

Second, language which suggested that an appropriate response might simply be a closing of the contaminated well has been deleted by this amendment. Although the immediate threat to health may be removed by closing a well, that is not in our view a sufficient response to pesticide contamination.

People should not drink contaminated water. And authority to prevent the distribution of contaminated water should be used. Alternative water supplies should be made available immediately. But the response should also include cleanup of the contaminated supply so that the original resource is restored to productive use.

Mr. President, the Administrator of the Environmental Protection Agency has authority to respond to contamination of drinking water supplies by pesticides pursuant to the provisions of several laws. In addition to FIFRA, the EPA may also respond under the Safe Drinking Water Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Clean Water Act, the Solid Waste Disposal Act and perhaps other statutes. These authorities are very broadly drafted and include everything from imposing monitoring requirements to mandating cleanup of a contaminated aquifer. Although the language of the amendment we are offering only makes reference to the specific response authorities of FIFRA, there is nothing in this amendment which displaces or alters the response authorities that are contained in these other statutes or which would suggest that only FIFRA authorities should be used to respond to pesticide contamination of ground water.

The other response authorities do exist. They were intended to be used. And they should be applied by EPA to incidents of pesticide contamination which come to light as a result of implementing the provisions contained in these amendments. The duty of the Administrator to prevent human exposure to dangerous levels of drinking water contaminants which is contained in the Safe Drinking Water Act is not a duty to be segregated from the responsibilities created here. All of the authorities that have been granted by the Congress to the Environmental Protection Agency should be used in a coordinated way to protect public health from the threat that is posed by pesticide contamination of ground water supplies.

INFORMATION

Mr. President, there is one final element of this consensus package that I wanted to mention before concluding my remarks. Subsection (j) of the amendment creates an authority for EPA and other agencies of the Federal Government, including the Department of Agriculture, to enter into arrangements that will make available to individual farmers information that has been collected on soil and climate characteristics that would be helpful to the farmer as he or she makes decisions with respect to the use of a particular pesticide. Mr. President, much of this site-specific information has already been developed by the soil conservation districts and natural resource agencies of this country. What we are promoting here is an effort to organize this information in a way that makes it useful to the farmer as decisions on pesticide uses and application practices are made.

I wanted to mention this section on site-specific information, in particular, so that I could thank Senator BURDICK for his efforts in developing the legislative language that is included here. It is quite a thorough and carefully crafted subsection and is an important complement to the other preventive measures that we are proposing. In developing this language I know that Senator BURDICK relied on the assistance of Jonathan Haskett of his staff. Mr. Haskett is a graduate student from the University of Minnesota who has been on a fellowship with Senator BURDICK over the past year. His expertise in soil science and other disciplines related to ground water protection has been very valuable to the committee and his role in assisting Senator BURDICK and other members of the committee in developing this legislation is much appreciated.

As I conclude these comments on the consensus ground water package, Mr. President, there are many who deserve credit—staff of the committee, those in the environmental community who have given long hours to develop this language, those who traveled to Washington to testify at our hearing, staff at EPA, and representatives of the farm community who fully understand that ground water is their resource, the source of their drinking water and livelihood, and that ground water protection is in their interest.

I conclude by once again thanking the cosponsors of this amendment. Senator BAUCUS, who is the ranking member of the Environmental Oversight Subcommittee, and Senator MITCHELL, who together with the Senator from Montana has introduced comprehensive ground water protection legislation, have been steadfast partners in this effort. Their expertise in matters relating to the drinking water law, ground water protection, and cleanup has been an essential element in developing a workable program. I have mentioned Senator BURDICK's role already. I also want to thank the distinguished chairman of

the Environment Committee [Mr. STAFFORD] for supporting our work on this legislation. When there is a conflict as to jurisdiction between committees in the Senate, the result, too often, is legislative deadlock. We avoided that result in this case largely through the patience and guidance of the Senator from Vermont.

I want to indicate, once again, to the Senate and to the Nation the debt that we all owe to the distinguished Senator from Florida, Senator PAULA HAWKINS. It was her leadership and determination all through the legislative process that has brought us to this point. And she deserves all of the credit for the public health and environmental protection which will result from the adoption of these ground water amendments to the Federal Insecticide, Fungicide and Rodenticide Act.

Mrs. HAWKINS. Mr. President, I rise today with Senator DURENBERGER to offer an amendment to strengthen and refine the ground water protection provisions in the FIFRA bill before us. As the author of the ground water protection provisions included in the bill, I continue to believe that we have a historic opportunity to take major steps to protect our Nation's ground water resources with respect to pesticide use.

Enactment of a ground water protection program is vitally important to the people in the State of Florida and to all Americans. Consider for a moment the pervasiveness of the resource this legislation seeks to protect from contamination by pesticides. Ground water makes up 96 percent of all freshwater in the United States. Ground water supplies almost 95 percent of rural drinking water supplies. Ground water supplies 40 percent of all irrigation needs nationwide. Clearly, ground water is an important resource across the Nation. It is even more important in my home State of Florida.

In Florida, the 10½ million residents are dependent on acquifers that begin, in most cases, only a few feet below the ground and which recharge the aquifers used for drinking water supplies. Agriculture in Florida is also dependent on these same aquifers to supply its irrigation needs. And agriculture in Florida generates over 20 percent of the State's gross State product. Unfortunately, the $4.5 billion a year agricultural industry in Florida is also dependent on pesticides to protect crops from pests and disease at this time. These facts demand that action be taken now to insure that ground water resources that supply or potentially supply drinking water be protected from possible contamination by pesticides.

Upon enactment of the ground water protection provisions in this FIFRA legislation a clear program to protect ground water from pesticide contamination will be underway. Establishment of this program has been a priority during the Committee on Agriculture's action to reauthorize FIFRA. The compromise amendment that was forged in the committee brought us a long way toward that goal. The amendment that I join in offering with Senator DURENBERGER today takes us even closer to our goal.

After working with Senator DURENBERGER and other members of the Committee on Environment and Public Works, we are fortunate to have had the opportunity to include a number of additional important provisions in this amendment. Taken together, the language of the committee amendment and the amendment we are offering today, this legislation provides strong new protections for the Nation's ground water.

The amendment we are offering today adds four new provisions to the basic program provided in the committee bill.

First, a new subsection is included on the potential for pesticides to leach into ground water. Under this provision, the Administrator is required to develop criteria and procedures for identifying the potential of pesticides to leach into ground water. He is also required to determine whether or not pesticides have such potential at the time of registration or reregistration. Finally, he must determine whether pesticides that have the potential to leach into ground water require ground water monitoring data.

This provision improves the preventive aspects of the bill by assuring, early identification of potential leachers, prompt development of ground water residue guidance levels, and a decision whether ground water monitoring data is needed.

Second, new followup procedures are required when the Administrator requires registration amendments. The Administrator is required to review available data to determine whether amendments have been effective in protecting ground water and to require additional registration amendments if necessary. He will also report to the Congress and the States on the effectivess of the registration amendments that have been made.

This provision will ensure that EPA is constantly vigilant in making sure that our ground water resources are being protected.

Another new provision has been included to develop information networks to help States and agricultural producers and applicators make informed decisions on pesticides use with respect to ground water. This information network would be established through a cooperative effort of Federal agencies. It will be very helpful educating users on the many factors which affect the potential for pesticides to be found in ground water and therefore will help users better decide on appropriate use practices and techniques. Senator BURDICK's assistance was instrumental in developing this provision.

Finally, in addition to these important elements which will strenthen the protection programs in the bill, we have also included specific authorizing language for carrying out EPA's responsibilities under this section. Ground water protection is so important, in my view, that it is incumbent for the Congress to make sure adequate resources are available to support these essential protection activities.

In addition to these new provisions, it should also be noted that the amendment transfers the authority for the Administrator to establish ground water residue guidance levels which will guide regulatory decisions under FIFRA to the Safe Drinking Water Act. The procedures and approach taken are identical to those included in the bill reported by the Committee on Agriculture.

Placing the authority in the Safe Drinking Water Act while recognizing the equal jurisdiction of the Committee on Agriculture and the Committee on Environment and Public Works satisfies important jurisdiction concerns. I would remind my colleagues that Senator DURENBERGER authored the Safe Drinking Water Act amendments which were signed into law earlier this year. I want to take this opportunity to commend him for his success on that major environmental legislation.

As I mentioned earlier, this amendment builds upon the new ground water protection provisions for FIFRA that I authored. The amendment embodies a preventative approach so that potential problems are identified early on and are addressed through changes in the pesticide registration to protect drinking water and ground water.

First, in order to respond to any detection of a pesticide in ground water, the provision provides authority for EPA to require registrants of the pesticide to conduct ground water monitoring.

The Administrator may require this monitoring after receiving information that a pesticide has been detected in ground water. This Administrator may receive such information from the public. Further, registrants are required to provide such information to the Administrator and the State within 15 working days.

The purpose of this monitoring program is to get a handle on the situation as soon as possible so that the Administrator and the States can proceed with appropriate regulatory action.

Second, in order to guide regulatory action, ground water residue guidance

levels are to be issued by the Administrator.

These GRGL's are to be issued whenever the Administrator registers or reregisters a pesticide if it has the potential to leach into ground water and in other appropriate circumstances.

If the Administrator has promulgated a maximum contaminant level under the Safe Drinking Water Act, then the GRGL is set at that level.

If there is no maximum contaminant level, then the Administrator is to establish a GRGL which may take into account any health advisory level issued by the Administrator under the Safe Drinking Water Act and which reflect certain specified health-based factors.

An interim GRGL is to be issued 30 days after the requirement takes effect, to be followed by a 30-day public comment period. Comments are also invited from the EPA Science Advisory Panel and the Secretary of Agriculture.

Within 3 months of issuing an interim GRGL the Administrator must issue a final GRGL. Finally, the Administrator may revise the GRGL.

To address the emergency problem of how to deal with the situation where a pesticide has exceeded the GRGL in a drinking water well, the amendment provides a site specific response.

If the Administrator determines that a pesticide is present in a drinking water well at a level higher than the GRGL, then the Administrator must notify the State and supply all relevant information. The State is to act within 90 days to bring and retain the concentration of the pesticide below the GRGL. If the State fails to act, the Administrator is to take appropriate action under this act.

Any person adversely affected by an EPA action or failure to act concerning a pesticide detection in a drinking water well above the GRGL may petition the Administrator to modify or terminate such action on certain grounds.

As a preventative tool to keep pesticides from exceeding the GRGL's in drinking water wells and potential drinking water the Administrator is required to amend pesticide registrations. These registration amendments must be reasonably likely to ensure that the use of the pesticide will not cause the GRGL's to be exceeded.

To ensure that the Administrator will differentiate between drinking water and potential drinking water, he is required to take into account available information on when land and ground water use classification and consider the views of the Secretary of Agriculture and the States when proposing registration amendments for the purpose of protecting potential drinking water.

In making registration amendments the Administrator is required to consult with the Secretary of Agriculture and the States. In turn, States are required to provide the Administrator with information relevant to taking action and to make recommendations regarding necessary registration amendments.

The amendment also provides that the Administrator may collect and make information concerning the detection of the pesticide in the ground water available through a public information file.

The Administrator is also required to provide technical information to the States to assist in implementing the provisions of the amendment.

To provide comprehensive protection for all ground water, the Administrator may initiate a special review when a pesticide has been found in ground water that is neither a drinking water well or potential drinking water to determine whether the pesticide will cause unreasonable adverse effects on the environment.

Finally, the amendment provides that nothing in this section shall limit the authority of the Administrator or of any State under other provisions of this act or any other law.

Mr. MITCHELL. Mr. President, I rise in support of the ground water amendment to the pending bill to reauthorize our pesticide programs. I am pleased to be a cosponsor of the amendment.

Ground water is a resource of tremendous value. More than half of all Americans rely on it for drinking water. Ninety percent of rural households have no source other than ground water. In my home State of Maine, full one-third of the population is served by private wells drawing on ground water.

Pesticides are a major cause of ground water pollution. And, one of the biggest weaknesses in our framework of legislation to protect ground water is the lack of an effective program to control the migration of pesticides to ground water. Dangerous levels of pesticides have been found in drinking water wells in many States.

I would like to commend the Agriculture Committee for developing the ground water provision included in the current bill. The provision includes important elements of a program to control pesticides in ground water including monitoring, contaminant standards, site specific response, and a mechanism for revision of pesticide registrations when a product is found to cause ground water pollution.

While the proposed program has some commendable provisions, I believe that this amendment offers some substantial improvements.

One of the most important provisions of the amendment requires EPA to set ground water guidance levels based on health, specifically at levels at which no known or anticipated adverse effects on the health of persons occur. The requirements of section 814(d)(2)(B) are the Safe Drinking Water Act standards, which is appropriate since this is now a Safe Drinking Water Act amendment.

It is difficult to overemphasize the importance of health in this context. Without the requirement that the ground water guidance level be established based on health, this provision would have been unacceptable to me.

The reason for my concern is EPA's response to a question I raised at an Environment and Public Works Committee hearing on this provision. Dr. John A. Moore, Assistant Administrator for Pesticides and Toxic Substances indicated that ground water guidance levels could be used as applicable or relevant and appropriate standards for cleaning up Superfund sites. As such, it is of course essential that ground water guidance levels be established solely on health concerns, which is what EPA has stated unequivocally it will do and it is what this bill requires.

Further, it is important to state clearly the health standard. Section 814 requires EPA to set ground water guidance levels at a level at which no known or anticipated adverse effects on the health of persons occur. EPA may also consider an adequate margin of safety, the nature of the toxic effects, and the value of the data. This is, and is intended to be, a standard that is highly protective of human health.

Another important provision of the amendment would require that the registration of a pesticide be amended when there is a reasonable likelihood that the guidance level will be exceeded. A "reasonable likelihood" is defined in the amendment as a case where a pesticide is found at a level of 30 percent of the guidance level. The inclusion of the 30-percent level provides clear direction to the EPA for when it is to act to prevent a ground water pollution problem.

The amendment also includes a direction to the EPA and the States to take actions at specific sites where pesticides exceed guidance levels to "bring and retain" concentrations at or below the guidance level. While this provision does not require EPA or States to take action until a guidance level is exceeded, it is important that EPA and States monitor problem areas and act aggressively to prevent violation of a guidance level.

This provision clearly provides that States and EPA are to take actions to "prevent" potential adverse effects on human health and the environment from pesticides. In order to prevent adverse health effects, States and EPA need to act to reduce contamination

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before a guidance level is exceeded whenever possible.

The amendment would make several additional improvements including clarifying EPA actions to control the use of a pesticide found to pollute ground water currently used for drinking water, adding an authorization of $25 milion, and assuring that EPA will review pesticide controls on a regular basis.

I urge my colleagues to support this important amendment.

Mr. BAUCUS. Mr. President, I join with Senator HAWKINS, Senator DURENBERGER and Senator MITCHELL in sponsoring a substitute amendment to the ground water provision in the committee-reported bill.

I commend Senator HAWKINS and other members of the Agriculture Committee for their willingness to work with members of the Environment and Public Works Committee to resolve this issue.

The Environment and Public Works Committee has long had an interest in the protection of the Nation's drinking water and, in turn, the Nation's ground water.

Earlier this summer, amendments to the Safe Drinking Water Act which included a new ground water protection program for areas around public water supply wells was enacted into law.

Senator MITCHELL and I, along with eight cosponsors from the Environment and Public Works Committee introduced comprehensive ground water legislation during the first session of this Congress.

Senator DURENBERGER, chairman of the Subcommittee of the Environment and Public Works Committee with jurisdiction over ground water has held numerous oversight hearings on ground water both during this Congress and the last Congress. He was the major sponsor of the Leaking Underground Storage Tank Program.

I am ranking member of that subcommittee and know of Senator DURENBERGER'S deep commitment to development of comprehensive ground water legislation.

The pesticides in ground water amendments within FIFRA, build upon the growing recognition of the threats being posed to our Nation's ground water supplies.

The Agriculture Committee is to be commended for their willingness to address this issue. Farmers are the major constituency of the Agriculture Committee. It is precisely for this reason that pesticide contamination is a concern.

If pesticides contaminate ground water it will most directly affect this Nation's farmers. These farmers are often totally dependent upon ground water for drinking water.

Individual farmers and small rural communities are least able to pay the high cost of removing contaminants from ground water. It is America's farmers who deserve the highest level of protection.

This substitute amendment improves the Agriculture Committee amendment as originally reported in attaining the salutary goal of preventing ground water contamination.

It correctly places ground water residue guidance level standard setting within the structure of the Safe Drinking Water Act, a public health statute.

In setting these standards, the direction to EPA is to protect public health. Language in the original amendment has been strengthened from "to consider" to "to reflect" the level of the pesticide in drinking water at which no known or anticipated adverse effect on the health of a person occurs. It is the intention of the word "Reflect" to mean to give back or mirror so as to be exactly the same. In other words to require the standard to be set at the no known or anticipated adverse effect on the health or persons level. It is the intent of this language to ensure that standards protect public health.

When a ground water residue guidance level is exceeded in a drinking water well, the amendment requires States to prevent potential adverse effects on human health from such pesticide. A ground water residue guidance level is to be set at the level of a maximum contaminant level standard, if one exists. MCL's are the level above which a public water supply system must be trusted. A casual reading of the amendment could be read to imply that even if the Administrator knows of a potential problem based upon monitoring or registration amendment, he does not need to do anything until the GRGL is exceeded. Local water suppliers need to be alerted as early as possible as to any potential contamination so that contingency planning can begin as soon as possible.

Within other sections of the amendment, provisions require that monitoring and amendments to a registration to be undertaken at levels far below an exceedance of the ground water residue guidance level. The over-riding purpose of this new ground water authority is to prevent contamination of drinking water.

As knowledge concerning pesticide contamination in a specific well becomes known, it is encumbent upon the Environmental Protection Agency to notify States and local public water suppliers about potential problems prior to actual exceedance of a ground water residue guidance level. It is in everyone's best interest that local communities be given maximum time to plan for alternatives to address contamination of drinking water wells.

The requirement to require the Administrator to notify States as to the effectiveness of a reregistration amendment in addressing a pesticide contamination problem has been included to provide this early notification.

Concerns have been raised that language presuming that pesticides detected about 25 percent of the ground water residue guidance level, will be used by the Agency to regulate pesticides in ground water. This 25 percent trigger is meant to act as an action level to begin looking at a potential problem and find ways to address this contamination prior to ground water residue guidance levels being exceeded.

The reregistration requirements of the amendment are properly kept within the framework of FIFRA and will make certain that a process is in place to ensure that pesticides do not contaminate the Nation's ground water.

THE NATURE OF THE PROBLEM

When ground water pollution emerged as a public issue in the late 1970's, major documented sources of contamination were generally associated with the disposal of manufactured wastes. By the early 1980's, several incidents of ground water contamination resulting from the field application of pesticides had been confirmed.

The most widespread problems involve the insecticides/nematocides aldicarb [temik] and DBCP [Dibromochloropropane]. Early findings led to monitoring for other pesticides and several additional active ingredients have now been detected in ground water in at least two dozen States.

Ground water contamination of field applied pesticides was almost entirely unexpected, particularly since the pesticides being found in ground water included those generally assumed to degrade or volatize rapidly.

When the first incidents were documented, pesticide manufacturers and regulatory officials had little pertinent baseline data on ground water quality to assess the scope of emerging problems.

Where residues have been found, actions to protect the public health and to prevent further contamination have been adopted largely on an ad hoc basis. Consequently, the levels of residues from ground water that trigger concern and remedial actions are not consistent from State to State. For example, Wisconsin and Florida have set health guidelines for aldicarb of 10 parts per billion, whereas New York has set its health guideline for aldicarb at 7 parts per billion. The EPA's Office of Pesticides Programs acceptable daily intake for aldicarb is 0.003 milligrams per kilogram per day and it is recommended drinking water health advisory level is 30 parts per billion; the EPA's Office of Drinking Waters acceptable daily intake for aldicarb is 0.001 milligrams per kilogram a day and its proposed health advisory

level is 10 parts per billion. The National Research Council's Committee on Drinking Water and Health is currently reviewing the toxic chronological data on aldicarb, to see if a revision is warranted.

Where well supply and drinking water contamination has been found in excess of applicable standards, remedial actions have included supplying bottled water, installing granulated activated carbon filters, extending community water supplies to households with contaminated wells, capping contaminated wells, and drilling new wells. Some remedial actions have been funded by pesticide manufacturers, for example, Union Carbide, an FMC corporation on Long Island, and applicators—State of Florida, for State applied EDB.

Immediate actions to prevent further ground water contamination have included bans on certain pesticides, at least temporarily, and use restrictions designed to minimize the possibility of contamination. Restrictions on the timing, method, site, and rate of application have been adopted for aldicarb in both Florida and Wisconsin. In Suffolk County, NY, a 1-year experimental program that restricted the conditions of aldicarb use indicated that even these steps were insufficient to keep ground water contamination levels below guidelines. Accordingly, the use of aldicarb is no longer permitted in Suffolk and Nassau Counties, NY.

Efforts to respond to the present field applied pesticides in ground water, have highlighted a series of needs and problems. The first set of needs concerns the information necessary to determine the nature and scope of contamination by pesticides; how widespread is the leaking of pesticides in ground water? What chemical and hydrogeological factors determine the likelihood of leaching? What is the toxicological significance of residues detected in ground water? The second set of needs concerns the institutional and policy capabilities to respond to the problem. The third set deals with adjustments in agricultural management, necessitated by the potential pesticides leached ground water.

Some 200 pesticides are in common use, and a wide range of hydrogeological conditions affect the susceptibility of ground water to contamination. Clearly, it is impractical to sample every aquifer and test for every pesticide. Rather, efficient monitoring of resources depends on the establishment of systematic procedures for sampling and testing and collection of data that can be used to identify critical site/pesticide combinations.

Ground water is extremely important for both drinking water and for other comsumptive uses. In States such as Florida, ground water is particularly important since 90 percent of its drinking water comes from ground water sources. Concerns over ethylenedibromide [EDB] were raised at a hearing before the Toxic Substances Environmental Oversight Subcommittee of the Environment and Public Works Committee during the last Congress. EDB was used extensively as a soil fumigant to control burrowing nematodes on citrus. It was applied for more than 15 years by private individuals and by the State to establish barriers to control the nematodes.

Because EDB is highly volatile, the potential to contaminate ground water was originally unsuspected. Studies of its environmental behavior are underway and preliminary data indicated EDB in ground water has a half-life measured in years.

Beginning in 1983, a testing program for EDB in Florida wells was undertaken. EDB was detected; the State banned its use in September 1983; set a 0.1 part per billion tolerance in drinking water; and formed an EDB task force, consisting of representatives of five State agencies. The State installed a toll-free hotline and established an EDB newsletter. Information on EDB application sites was mapped, and the task force proposed sampling all wells located within 300 feet of such sites. Priority was given to public drinking wells located within 1,000 feet of EDB applications.

The sampling program that began in August 1983, had by February 19, 1985, tested 7,609 wells; 828—11 percent—showed the presence of EDB.

In 1984 the Florida Legislature authorized $3.1 million to remedy well water contamination problems, resulting from the State application and use of EDB. The EDB task force stipulated that activated carbon filters be installed on contaminated wells, except where connections to nearby uncontaminated public water supplies are feasible. As of May 3, 1984, 36 municipal and 601 private wells in the State had been found to be contaminated. Another 200 private wells are expected to be found contaminated. The total cost to clean up the wells contaminated by State action is estimated to be $4.7 million, plus $331,000 for annual operation and maintenance. The total cost to clean up wells contaminated by other applicators, is estimated to be $2.25 million.

This is an example of one pesticide found in one State. This example is by no means the only example that I could give. A little prevention and forethought of pesticide use could have avoided this problem.

In 1980, about one-fourth of all fresh water used in the United States came from ground water. This is a 162-percent increase from ground water use since 1950. The percentage continues to increase.

The principal uses are for irrigation and public drinking water, while smaller amounts are used in industry and rural households, the degree of dependence on ground water for industrial and rural household use is often higher. Clearly, ground water is critical to millions of Americans.

The likelihood of pesticide contamination of ground water and its impact on the environment depend in part on geologic and hydrologic characteristics that vary from location to location. These characteristics determine how quickly ground water moves, how and whether it is discharged in surface water, how deep it is below the surface layer, how withdrawing it affects surface water, how effectively soils filter out pesticides, and how easily pesticides can interact. This complex combination of factors makes it difficult to predict what level or duration of ground water contamination of pesticides may cause at different sites.

Even though ground water moves slowly through the ground, it eventually discharges to surface waters. In some areas of the country, springs and aquifers contribute large quantities of water. In the coastal States, aquifers discharge to the seas and wetlands and supplement fresh water flows. In other areas, ground water is discharged in lakes, ponds, and inland wetlands.

If ground water becomes contaminated, contamination may eventually appear in surface water.

Ground water may become contaminated by pesticides at any point in the lifecycle of the pesticide, its manufacture, distribution, storage, use on the land or industrial setting, and disposal. Either accidental spills and leaks, or it can occur through applications to control insect and weed pest on agricultural and forest land, as well as homes and gardens and on highway and utility rights-of-way. When pesticides are applied to the land they enter the ground by rainfall, runoff, filtration, and snow melt.

At the present time, there are no techniques available for cleaning up contamination that involves a large geographical area, and it is virtually impossible to identify the party or parties who are responsible since pesticide use is a common practice. For these nonpoint or diffuse sources, prevention is the key. Prevention efforts will necessarily involve both regulation of individual pesticides as well as changes in pest control and land management practices.

At present, the extent of pesticide contamination of ground water cannot be determined. Numerous surveys have been undertaken for different reasons using different design strategies. These studies have provided information about a limited number of pesticides in specific areas, but they are small pieces of a very large and intricate puzzle.

Past monitoring for pesticides in ground water has been minimal. Before 1979, relatively little systematic water monitoring was focused on ground water. Surface water and urban drinking water supplies received almost all the attention. While a number of urban water systems draw on ground water, they have been required to routinely monitor for only six pesticides since 1975: endrine, lindane, methoxychlor, toxapene, 2,4-D and 2,4,5-T. Of these pesticides, only lindane, methoxychlor, and 2,4,-D are still being used to any appreciable extent. Most are all used although the others have been removed from the marketplace by EPA.

Testing of pesticides with a potential to leach through soil and contaminate groundwater has also been very limited. Most pesticides on the market today were registered for use before sophisticated environmental testing was routinely required.

In 1984, a total of 12 pesticides have been detected in groundwater in 18 States. By 1985, 17 pesticides had been detected in 23 States. It can be anticipated that with additional monitoring we will reveal more and more locations where pesticides have entered ground water. As many as 50 other pesticides have been detected in ground water, but the sources of detection are uncertain and may be the result of accidental spills or leaks rather than leaching from the normal application of pesticides.

The substitute amendment to address ground water contamination by pesticides is an important step forward. It is a small step and a commendable step. Hopefully, by acting now, we will minimize the extent of the problem. I appreciate the Senator from Florida's willingness to address the problem and support adoption of the substitute amendment.

□ 1640

Mr. LUGAR. Mr. President, I add appreciation to the distinguished Senator from Florida [Mrs. HAWKINS] for an extraordinary contribution to this legislation and to the quality of the debate and coordination of staff work in the Agriculture Committee, and I express appreciation to the distinguished Senator from Minnesota [Mr. DURENBERGER] for the bridges, as he has stated it, which go between our committee's deliberations and the work in his committee with colleagues in that committee. I believe the amendment is highly constructive and we are prepared to accept it on our side.

Mr. MELCHER. Mr. President, we have examined the amendment on our side. We are in agreement with it and urge its adoption.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment.

The amendment (No. 3235) was agreed to.

Mr. DURENBERGER. I move to reconsider the vote by which the amendment was agreed to.

Mr. LUGAR. I move to lay the motion on the table.

The motion to lay on the table was agreed to.

Mr. DURENBERGER. Mr. President, I have another amendment which I have indicated is a controversial amendment. I understand that the Senator from Tennessee has a noncontroversial amendment and I will be pleased to yield to my colleague.

AMENDMENT NO. 3236

(Purpose: To require the Administrator of the Environmental Protection Agency to establish, monitor, and enforce efficacy standards for antimicrobial control agents used to control pest microorganisms that pose a threat to human health)

Mr. GORE addressed the Chair.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. GORE. Thank you, Mr. President. I wish to thank my colleague for his courtesy in allowing me to go forward with this amendment on behalf of myself and Senator SARBANES.

Mr. President, I send an amendment to the desk at this time. It has been cleared with the chairman and ranking member.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Tennessee [Mr. GORE], for himself and Mr. SARBANES, proposes an amendment numbered 3236.

Mr. GORE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 185, between lines 4 and 5, insert the following new section:

SEC. . ANTIMICROBIAL STANDARDS.

Section 3 (7 U.S.C. 136a) (as amended by section 817 of this Act) is further amended by adding at the end thereof the following new subsection:

"(i) ANTIMICROBIAL STANDARDS.—

"(1) DEFINITION.—As used in this subsection, the term 'efficacy' means the capacity of an antimicrobial control agent (including a disinfectant) to produce the desired effect of the effectiveness of such an agent.

"(2) STANDARDS.—The Administrator shall—

"(A) establish efficacy standards for antimicrobial control agents (including disinfectants) used to control pest microorganisms that pose a threat to human health, including standards for disinfectants used in hospitals and other health care facilities;

"(B) monitor the compliance of the agents, or a representative sample of the agents, with the standards in a facility maintained by the Environmental Protection Agency to conduct biological testing of pesticides; and

"(C) implement an enforcement program under which the agents must comply with the standards or be prohibited from sale or distribution as antimicrobial control agents.".

On page 204, between the item relating to section 3(h) and the item relating to section 4, insert the following new item:

"(i) Antimicrobial standards.
"(1) Definition.
"(2) Standards.".

Mr. GORE, Mr. President, as I have indicated, we have discussed this amendment with the chairman of the committee and with the ranking minority member. It embodies the results of hearings that Senator SARBANES called. It reflects the work that he and I did on a little known problem that is of great significance involving hospital disinfectants.

Mr. President, over the past 4 years, the Federal Government has let a potential disaster develop in America's hospitals—and most doctors, patients, and administrators don't even know about it. The fact is, going into the hospital these days could be enough to make you sick. Many hospital disinfectants do not work—and some actually carry the bacteria they are meant to kill. Yet the administration stopped testing these chemicals in 1982 and has no plans to resume it.

Documents that were uncovered by my staff during months of investigation, and during a hearing I cochaired with the distinguished Senator from Maryland [Mr. SARBANES] pointed out the necessity for resuming this valuable program.

Hospitals use disinfectants to clean floors, beds, some medical instruments, and other areas where germs can spread. But studies show that the chemicals fail at least 20 percent of the time, leaving bacteria and viruses to infect other patients. According to the Public Health Service, 2 million Americans become infected in hospitals each year. These secondary infections cause 20,000 deaths annually and cost the Nation an estimated $2.5 billion.

Manufacturers can get away with selling ineffective disinfectants because the administration lets companies test the products themselves. In the past, a Federal laboratory checked disinfectants to make sure they worked. But administration officials shut down the lab in 1982, even though failure rates were running as high as 72 percent. The Government refuses to open it again despite several studies confirming the extent of the problem.

The results are shocking and tragic; 2 years ago, for example, doctors at the Mayo Clinic used a bronchoscope to examine the lungs of a tuberculosis victim. They disinfected the instrument and use it on a patient who did not have the disease. After treating a third patient, the doctors discovered that the disinfectant had failed. The bronchoscope still carried tubercular

germs—and in the meantime two patients had been exposed to TB. The clinic had to treat the two for several months to keep from developing the disease.

The State of North Carolina, which is one of only four States with testing program, found bacteria growing in a disinfectant designed to kill it. Using a contaminated disinfectant to fight germs is like using gasoline to put out a fire.

As the distinguished chairman from North Carolina knows, the commissioner of agriculture for the State of North Carolina, Mr. James A. Graham, has expressed his support for this amendment. The amendment also has the strong support of industry, including the Chemical Specialty Manufacturers' Association, hospital officials, State officials, environmental groups, and the EPA. A similar amendment was passed in the House without opposition.

Our society cannot afford to ignore this problem any longer. We spend more than $450 billion a year on health care—yet the administration refuses to spend the $500,000 it would take to make sure our hospitals are clean and safe.

Many hospitals are just becoming aware of this problem and will need our help to solve it. Government has a duty to protect people against threats they can neither see nor control. We must not let the agencies that should be looking out for the public fall asleep at the wheel.

Mr. President, we place tremendous faith in our hospitals and public health officials. Americans will not stand for products that don't work—or Government that fails to do its job.

I urge the adoption of this amendment.

Before I close, I want to pay special tribute to my colleague, the Senator from Maryland [Mr. SARBANES], who found out about this matter and immediately went to work on it. He and I worked together as a team. The two of us questioned a whole series of witnesses in two full hearings. This amendment resulted from it. So I really appreciate his work and his concern and I appreciate the committee, both the chairman and the ranking member, being so cooperative in helping us to put this together.

I yield the floor.

Mr. SARBANES addressed the Chair.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Mr. President, I will be very brief. I thank the able Senator from Minnesota for allowing us to come forward with this amendment.

Mr. President, I rise in strong support of the amendment offered by my able colleague, the junior Senator from Tennessee, to require the Environmental Protection Agency to resume biological testing of hospital disinfectants and antimicrobial control agents. I commend the Senator from Tennessee for his very effective and dedicated leadership on this important issue.

For the approximately 34 million Americans who will be hospitalized this year, and for doctors and all hospital personnel, the effectiveness and dependability of hospital disinfectants is a matter of serious concern. Every year, about 2 million Americans come down with secondary—hospital-based or so-called nosocomial—infections. The Public Health Service estimates that these infections cause thousands of deaths and contribute to a rising cost in annual health care, estimated at some additional $2.5 billion.

Until 1982, the Federal Government exercised responsibility for assuring the reliability of hospital disinfectants and other products through a testing facility operated by the Environmental Protection Agency in Beltsville, MD. Indeed, the Federal Government had assumed that responsibility long before the establishment of the EPA, and the testing program was simply transferred to EPA from the existing pesticide testing program at the Department of Agriculture.

In April 1982, however, the EPA closed the Beltsville laboratory and, in so doing, abandoned the Federal role in assuring safe and effective hospital disinfectants. The decision was justified on the grounds that it would reduce EPA costs and was consistent with the general policy of deregulation. EPA also argued that States would undertake the responsibility of testing and that market forces would control efficacy problems. As far as could be determined, however, no effort was made to weigh the short-term budget savings to EPA against the significantly greater health care costs over the long term. Nor were efforts made to identify efficacy problems which might arise from the laboratory's closing.

Recently, the Subcommittee on Investment, Jobs and Prices of the Joint Economic Committee, as part of a series of hearings on the current state of Federal health and safety standards and the social and economic ramifications of lowering them, held two hearings to review the issue of hospital disinfectants since the EPA's testing program was stopped 4 years ago. Expert witnesses drawn from several of the Nation's major schools of medicine and public health, from industry, and from one of only four States which has undertaken its own testing program all agreed on the following:

Regularized testing procedures to assure reliability is essential;

This can be done most effectively and efficiently at the Federal level; hospitals do not have the capability to test the vast number and array of disinfectants on the market today.

The 1982 EPA decision to close its testing facility, thereby terminating Federal responsibility in this area, was not cost effective and constituted a serious mistake.

Market forces cannot be relied upon to control efficacy problems.

The amendment which Senator GORE and I sponsor today would address this situation by mandating the resumption of a very reasonable testing program that should never have been abandoned. It requires EPA to maintain an in-house facility and that the facility be used to verify data supplied in connection with hospital disinfectant registrations. The amendment would also require EPA to enforce efficacy standards for hospital disinfectants. I urge my colleagues to join me in supporting this amendment.

Mr. President, I ask unanimous consent that a New York Times article on this subject be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the New York Times, June 22, 1986]

NEED CITED FOR U.S. TESTING FOR HOSPITAL DISINFECTANTS

(By Robert Pear)

WASHINGTON, June 21.—Federal officials say a significant proportion of the disinfectants approved for hospital use do not kill germs, but the Government's ability to act against the products is seriously hampered because Federal testing stopped four years ago.

The Government no longer checks the efficacy of these products because in 1982, as part of President Reagan's effort to reduce Federal regulation, it closed the Federal laboratory that had routinely tested disinfectants since the late 1940's. Disinfectants are used to prevent the spread of bacteria, viruses, fungi and other microorganisms.

State officials, hospital officials and several members of Congress say there is an urgent need for the Federal Government to resume testing and increase regulation of hospital disinfectants. Ralph Engel, president of the Chemical Specialties Manufacturers Association, which represents makers of disinfectants, also called for reopening the Federal laboratory, at Beltsville, Md., although he insisted that most of the products were "highly efficacious."

2 MILLION INFECTIONS A YEAR

The products are considered important because they are intended to destroy or inactivate germs that cause such ailments as tuberculosis, typhoid fever, pneumonia, blood poisoning, food poisoning, strep throat, influenza and staphylococcus infection. Hospital disinfectants are used to clean floors, walls, beds, table tops, medical equipment and certain instruments that are inserted into the body.

The Public Health Service estimates that two million patients acquire infections in hospitals each year. The infections cause 20,000 deaths, contribute to an additional 60,000 deaths and add $2.5 billion a year to the nation's health care costs, the agency estimates.

When the Beltsville laboratory was closed, the Environmental Protection Agency, which regulates disinfectants under the pesticide statutes, assumed that states would take over responsibility for testing. But that has not occurred. Only four states, Florida, North Carolina, Mississippi and Virginia, regularly do laboratory testing of hospital disinfectants, according to the Federal agency.

The E.P.A. has no plans to reopen the laboratory. But it recently acknowledged "a generic efficacy problem" and estimated that there would be a "20 percent failure rate" if disinfectants were tested by an impartial laboratory such as the one closed in 1982. The failure rate averaged more than 30 percent for samples tested at the laboratory in the five years before it was closed; however, the samples were not randomly selected but were generally from products suspected of having problems. Indeed, in the three years before the laboratory closed, the failure rates were 46 percent, 59 percent and 72 percent.

Dr. Martha E. Rhodes, who as Assistant Commissioner of the Florida Department of Agriculture and Consumer Services supervises regulation of hospital disinfectants, said, "In recent years, 15 to 20 percent of the samples we analyzed were showing ineffective products." Indeed, she said, "two or three samples were received by the state laboratory in Tallahassee with large numbers of bacteria growing in the disinfectant that was supposed to kill them."

In a notice published last month in the Federal Register, the Environmental Protection Agency said it was concerned about "Unwarranted claims" for disinfectants that purport to kill the AIDS virus and a hepatitis virus. The agency said the manufacturers has not submitted data to support their claims.

Confidential agency documents say that "no private sector testing or quality asurance program exists" and that "market forces cannot be relied upon to control efficacy problems."

Senator Albert Gore Jr., Democrat of Tennessee, is drafting legislation that would require the Federal Government to test disinfectants on the market.

Hospital patients "place their lives and health in the hands of professionals," Mr. Gore said in an interview. "If those hands are contaminated with bacteria or other microorganisms because the disinfectants are ineffective, the patient runs the risk of getting a secondary infection. That happens with alarming frequency."

JOINT EFFORT WITH STATES URGED

A.E. Conroy 2d, an enforcement official at the Environmental Protection Agency, has recommended that the Federal Government join the states in a cooperative effort to test hospital disinfectants. "The absence of Federal efficacy testing" creates a "void," he said.

The agency has registered more than 3,300 hospital disinfectants, thus clearing them for sale.

Linda H. Brooks, director of infection control for the American Hospital Association, which represents 5,600 hospitals, said disinfectants were "not adequately tested by a neutral source." She added: "We have to rely too much on the manufacturers' testing data. Our members would like a Government agency to verify the data."

Martin S. Favero of the Federal Centers for Disease Control said there had been "an explosion in the number of germicidal products available to hospitals." The industry is "highly competitive," he said, adding, "Exaggerated claims are often made."

A report by Aram Beloian, a microbiologist at the E.P.A., said "the absence of testing at the Federal level poses a problem for public health officials." For years, he said, the Public Health Service has "discouraged hospital microbiologists from doing efficacy testing of disinfectants," assuring hospitals that they could "rely on the testing performed by E.P.A." to assure that commercial disinfectants met "test criteria for effectiveness."

Mr. SARBANES. Mr. President, I again commend my colleague from Tennesse for coming forward with this very positive and constructive amendment.

Mr. LUGAR. Mr. President, I commend the distinguished Senator from Tennessee and the distinguished Senator from Maryland for their leadership and for the hearings that, as the Senator from Tennessee pointed out, served as the basis for the research and discussion of this amendment. I know of no opposition on our side to the amendment.

We are prepared to accept it.

Mr. MELCHER. Mr. President, we have examined the amendment on this side and have no objection to it. We urge its adoption.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3236) was agreed to.

Mr. DURENBERGER. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. LUGAR. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3237

Mr. DURENBERGER. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Minnesota [Mr. DURENBERGER] for himself, Mr. MITCHELL, Mr. STAFFORD, Mr. BAUCUS, Mr. LAUTENBERG, Mr. LEAHY, Mr. BURDICK, Mr. MOYNIHAN, Mr. PROXMIRE, Mr. PELL, Mr. COHEN, Mr. HUMPHREY, Mr. CHAFEE, and Mr. KERRY proposes an amendment numbered 3237.

Beginning on page 140, line 1 strike all of section 801(d) relating to "uniform tolerances" through page 143, line 13.

Mr. DURENBERGER. Mr. President, S. 2792 as reported by the Agriculture Committee contains a preemption provision. It preempts State law. It would preempt the existing authority of State governments to protect public health from injuries that may be caused by pesticide residues on food and agricultural products. The provision got into the bill on an amendment by the chairman of the committee without a rollcall vote in committee. The amendment we are offering strikes the preemption provision from the bill.

Mr. President, the subject matter we are dealing with here is complex, so I want to take a moment to explain how the regulatory system works before making my arguments against the preemption that Senator HELMS and the Agriculture Committee have reported.

The Environmental Protection Agency regulates pesticides in a variety of ways. One form of regulation is label instructions on the pesticide. Those instructions tell users—farmers and food manufacturers and distributors—how the pesticide is to be applied, on what crops the pesticide can be applied, what training is necessary for applicators, and so on. The authority for these regulations is contained in the FIFRA statute that we are reauthorizing here today. EPA's authority under the FIFRA law extends to cancellation or emergency suspension of a pesticide, if its presence in the environment presents an unreasonable risk.

EPA also has separate authority to regulate pesticides under the Food, Drug and Cosmetic Act. Under that law, which is not before the Senate today and which is the jurisdiction of the Labor and Human Resources Committee, EPA can establish standards for food and agricultural products to prevent harmful pesticide residues on foods sold in commerce. These standards are called food tolerances. They are specific quantitative statements of the allowable amount of a pesticide on an apple, in the rind of an orange, in flour or cake mix—on grocery products—as those commodities move through the food distribution system.

That is a brief description of the Federal regulatory structure for pesticides on food. In recent years, we have found that this regulatory system doesn't always work. About 2 years ago the nation was shocked by the story of ethylene dibromide. We learned—and I will describe the EDB story in detail here in a moment we learned that we had been consuming a gasoline additive, a potent carcinogen, EDB, as a residue on our grocery shelves for many years. We found out that the Environmental Protection Agency knew about this threat, had known about this threat for years, and did nothing to protect public health. EDB enjoyed a 3-year-old exemption from tolerance requirements. And we watched as States came forward and set their own standards for this pesticide on food.

□ 1650

Since the ethylene dibromide crisis of a few years ago, there have been several hearings in both Houses of the Congress on the pesticide residue issue. Congress now has a great deal of expertise on the food tolerance ques-

tion. We have looked closely at all that happened during the EDB crisis. And there is no evidence on the record that the right of States to protect the health of their citizens was abused anywhere in this process.

EDB was forced out of the market. We have the States to thank for finally bringing the problem to the attention of the Nation. But there was no undue interference with commerce. There was no widespread injury to the grocery industry or the American consumer.

Betty Crocker is still in her kitchen in Minneapolis. General Mills' profits were up 21 percent last quarter. The price of a muffin did not go up. The Pillsbury doughboy is still dancing on food shelves across America—but without the gasoline additive EDB—thanks to Florida, thanks to Texas, thanks to Massachusetts; and no thanks to the Environmental Protection Agency or any other agency of the Federal Government.

Mr. President, there is no need for the preemption provision in this bill. There are some 400 pesticides approved by EPA for use on food products in the United States. To date, States have taken action to regulate only two of those products, EDB and a growth regulator used on apples called Alar. In both cases, agencies of the Federal Government have found that the pesticide may present a serious threat to public health. But the Federal Government has done nothing to protect our citizens from that threat.

Let me give the Senate some detail on the EDB case. The Federal Government gave ethylene dibromide an exemption from Federal regulation in 1956 long before the health consequences of EDB were understood. In 1975 the National Cancer Institute warned that EDB was a potent human carcinogen. EPA began a series of studies, everyone of which came to the same conclusion. EDB is a killer. Risk levels associated with a typical American diet laced with EDB suggested excess deaths as high as one in a thousand. But as late as 1984 EPA, had taken no action to protect the public from EDB residues on fruit, vegetables and in grain products.

When several States discovered EDB in their gound water and began to look for it in grocery products, they found it at alarming levels. And they took action against the pesticide, using their inherent authority to protect their citizens from health hazards. I want to stress, Mr. President, that the States used their own authority to remove EDB from the food system. They did not act under the mandate or the color of Federal law. They were not using some power extended to them by the Congress of the United States. Let me repeat: They were not using some power extended to them by the Congress of the United States. They were using the most basic authority of Government as it is constituted all across this land. That is the authority of Government to act to protect its citizens from a threat to health or life itself. We are here today debating legislation that would preempt that authority from 50 governments in this country.

It gets worse, Mr. President. It is clear that this amendment is an attack on the authority of the States. But what also needs to be understood, Mr. President, is that there is no effective Federal authority that can fill the void that we will be creating by adopting this uniform tolerance provision in S. 2792. The Senator from North Carolina is not simply removing the States from an area of regulation. He is creating a void—a gap—in the health protection that is afforded the American public.

To illustrate the gap, Mr. President, let me continue with the story of EDB. After the States created a national concern, EPA canceled the use of the pesticide on agricultural products using the authority that exists in FIFRA. That was done on an emergency basis. But EPA was not able, under the Food, Drug and Cosmetic Act, which contains the basic authority for food tolerances, to regulate the residue of the pesticide on grocery products. The authorities of the Food and Drug Act were too cumbersome for EPA to use to remove the threat from grocery products that had already been contaminated.

Because EDB had been given a tolerance exemption, EPA first had to go through a rulemaking to remove the exemption. Only after that lengthy process has been completed—and it is not completed yet—only then will EPA be able to establish a tolerance for EDB. There is, today, no enforceable Federal standard for EDB on food products; and it is 2 years after the States got EDB off the market.

So EPA could not prohibit the sale of flour, cake mix, muffins, and other products laced with EDB back in 1984. They banned use of the pesticide on wheat in the field and flour at the mill. But there was no regulation for the food that was already contaminated.

It was EPA's position that agriculture commodities that had been contaminated should just be allowed to flow through the food distribution chain until EDB was worked out of the system. And that is the position taken by the legislation before us. This bill gives food distributors the right to sell food products that are contaminated with a pesticide above a level found threatening to health by EPA. The bill prevents the States from taking action to get that contaminated food out of the marketplace.

Back in 1984, when it became clear to the States that EPA was powerless to set an enforceable standard for EDB on grocery products, the States took the matter into their own hands and set their own standards. The States set numbers that were enforceable. There was some variation in the numbers. But the point was to get contaminated food off the shelves and that is what the States accomplished where the Federal Government was powerless to act.

So here is the situation, Mr. President. The Federal Government decides that a pesticide is extremely dangerous to health, but it has no power to keep food products containing that pesticide out of grocery stores. So the States of the Union use their inherent powers as sovereign governments to protect their citizens. They use those powers carefully and they use them effectively. EDB is gone now. But the next time that the Congress of the United States takes up the question of pesticide safety, it takes up legislation that would strip the States of the very authority they saved the Nation from a health crisis.

□ 1700

What we should be doing today is giving EPA and FDA the authority to act on an emergency basis to protect the public. Authority which they did not have in the case of EDB and which they do not have today.

But we do not have that kind of bill before the Senate today. We are not adding to the protection that people expect from their Government. We have before us a proposal that will diminish the level of protection significantly. Not only will EPA be unable to act quickly to respond to contaminated food supplies, but we are also going to deny the States authority to act as well.

The logic of this preemption completely escapes me, Mr. President. We have a crisis. It is declared a crisis by Federal agencies with health protection responsibilities. But the Federal agencies are powerless to do anything immediately other than give advice. So the States take steps to protect their citizens. That was the EDB story. That is the story with Alar, today.

And what is the Agricultural Committee proposing to do? Are they saying that we should give EPA the necessary authority so that they can act in a crisis. No, they do not give EPA any new authority. The Agriculture Committee proposes and the bill includes a provision intended to paralyze the States, as well.

I say, Mr. President, where is the sense in all of that?

I urge my colleagues to vote to strike this preemption by voting for this amendment.

At this time I yield to our colleague from Maine and the chief cosponsor of the amendment, Mr. MITCHELL.

Mr. MITCHELL. Mr. President, does my colleague from Maine wish me to yield to him?

Mr. COHEN. No. I will wait until my colleague from Maine makes his remarks.

Mr. MITCHELL. All right.

Mr. President, I thank the Senator from Minnesota. I commend him for his effort on this issue and I urge our colleagues in the Senate to support this amendment to preserve the right of States to set tolerances for pesticide residues on food which are more stringent than those established by the Federal Government.

Two basic points should be made about the provision in the bill which preempts State authority to set tolerances for pesticides on food. First, the preemption provision is simply bad policy. Second, there is no evidence of the problem which it seeks to address. It is in fact a solution in search of a problem.

Why is the preemption provision bad policy?

It is bad policy because it would erode the longstanding authority of the States to protect the health and safety of their citizens, and it reverses the basic premise of virtually all other Federal environmental laws which holds that States may establish public health standards more stringent than those of the Federal Government.

It is bad policy because it would upset the delicate Federal and State partnership in this area, lessening the quality of debate about product safety and taking away the leverage which States have to gain entry into the process, the right to act independently to set levels of safety for their citizens.

And it is bad policy because it would undermine public confidence in the effectiveness of the food safety process and standards.

Let me review each of these arguments.

Throughout our Nation's history, States have traditionally had the fundamental responsibility to protect health and safety. Over time, as some health and safety issues have become more complex and national in scope, some of these responsibilities have been shifted to the Federal Government. But in general, increased Federal authority has not been at the expense of State authority.

This approach is reflected in most of our environmental laws, which establish minimum standards for the protection of public health and the environment. Generally, these statutes allow States to set more stringent standards if they so choose than those of the Federal Government.

This respect for the role of States in public health issues has served us well. What might we expect if we eliminate the role of States in this process, relying instead exclusively on the efforts of the Federal Government? Clearly less protection of the public health and safety will be the result.

Today, while the Federal Government carries most of the burden for review of the safety of pesticides and establishment of safe levels of pesticide residues on food, the States continue to play a vital role in this process and provide an important backup to the Federal standards. States participate in the review and assessment of pesticides. And more importantly, they have the right to act independently to set more stringent safety standards.

States can set safety standards more quickly than the EPA in response to an emergency. They can set a standard which is more stringent than the standard set by the EPA. And they can set a standard which provides more comprehensive protection than a Federal standard. For example, my home State of Maine and that of my colleague, Senator COHEN, has considered setting a standard for a pesticide which is both more stringent than the Federal standard and is better designed to protect young children, and our State ought to be able to do that if it so chooses in behalf of its citizens.

If States are no longer able to act independently to protect health, they will lose their access to the Federal process and the balance of the current system will be lost. Such a process will be less likely to evoke a range of scientific information and viewpoints. And the debate over the safety of these substances will be narrower. As the scope of the debate narrows, the views of industry experts in Washington will have a greater role while the public, the American people, will have a lesser role.

Preemption of the States rights to set more stringent tolerances, and thereby reduce State participation in the process, will result in a lowering of the quality of food tolerances and a lowering of the degree of public health protection. In addition, I am concerned that the public perception of the safety of food products will decline.

A recent national poll found that 77 percent of the American people believes pesticides in food present a "serious" hazard, compared to 32 percent expressing concern over food additives or preservatives.

Why is the public so concerned about the levels of pesticides on food? One reason is the poor record of the Environmental Protection Agency in this area. As my colleague from Minnesota has detailed, the American people remember the case of ethylene dibromide or EDB. The National Cancer Institute issued a notice that EDB was suspected of being a carcinogen in 1974. It was not until 1984, 10 years later, that EPA totally and finally cancelled the registration of the product.

The EPA record in tolerance setting has additional weaknesses. Tolerances have been based on outdated data or inaccurate data and EPA has not regulated inert ingredients in pesticides.

While the bill before us would improve the tolerance setting process in some respects, the past record must be a matter of concern. With that record in mind, we must do everything we can to improve the process. Keeping the States in the process as active partners with the Federal Government, able to act independently, will improve the process. Improvements to the process will help build public confidence in the safety of food products.

Not only is preemption of State authority in this area bad policy, there is little evidence of the problem which the policy is supposed to address.

Those who seek to preempt State authority to set tolerances contend that they are promoting convenience and efficiency in the marketing, packaging, and distribution of products and thus reduce costs to consumers.

To reach this conclusion, there must first be substantive and convincing evidence that such State authority which has existed and continues to exist today has been frequently exercised and has damaged the food distribution system, undermined the enforcement process, and added significant costs to the food products purchased by consumers.

But there is virtually no evidence of this sort. In fact, States have acted to strengthen Federal tolerances in exactly two cases. In those cases, fewer than a dozen States have been involved. And in those cases the States did not act as "Lone Rangers," setting standards without regard to the quality of data or the views of other States or the Federal Government. To the contrary, States worked hard to get an acceptable Federal action first.

□ 1710

Some have argued that while we do not yet have evidence of a problem, we should act to preempt States rights in order to prevent such a problem in the future. But the fact that no problem has occurred in the past is the best indication that there is unlikely to be any problem in the future.

The most reliable predictor of future human behavior is past human behavior.

I share the view expressed in a recent editorial in the Washington Post which concluded that, given the major reversal of policy involved and the need to improve the Federal tolerance setting process, the time to solve such a problem is when it occurs, if it ever does.

In conclusion, Mr. President, let me point out that the Washington Post is not the only voice of opposition to the preemption provision. The organizations which originally developed the framework of amendments to the pesticide law—the National Agriculture Chemical Association and the Campaign for Pesticide Reform—also oppose the preemption provision.

And, the National Governor's Association and professional groups such as the Association of State and Territorial Health Officers oppose preemption. I should note that the position of the National Governor's Association required a two-thirds vote.

In addition, a number of State Governors have expressed opposition to the preemption provision. I have letters from the Governors of Maine, Nebraska, Nevada, South Carolina, California, New Mexico, New York, West Virginia, Vermont, Hawaii, Minnesota, New Jersey, and Massachusetts. I also have letters from state department heads in Florida, Minnesota, Wisconsin, and Texas opposing preemption.

Mr. President, I ask unanimous consent that the letters and various statements be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER (Mr. MATHIAS). Is there objection? Without objection, it is so ordered.

[See exhibit 1.]

Mr. MITCHELL. Mr. President, what the opposition to the participation by the States amounts to is that it is supposed to be inconvenient to have to deal with 50 States and one Federal Government. Well, Mr. President, to that I say, that is a fact which is a direct result of our system of Government. We have a republican form of government in which we have 51 sovereigns—one Federal, and 50 States. As a result, we now have 51 sets of criminal laws in this country, and that is inconvenient. We have 51 sets of civil laws in this country, and that is inconvenient. We have 51 agencies which regulate insurance, and that is inconvenient. And we have 51 agencies which regulate other types of business act, and that is inconvenient.

We can go on down the list of separate areas of administration by the 50 States and the Federal Government and to each of them we can say it is inconvenient. And so if inconvenience is the only test, let us abolish all State criminal laws, let us abolish all State civil laws, let us abolish all State environmental regulations, let us abolish all State functions in all other States.

The fact of the matter is that is simply no argument in our form of government. The benefits which we have derived from having a republican form of government in which we have one Federal and 50 State sovereign governments vastly outweigh any inconvenience which people who do business in this country have in dealing with those 50 State governments.

In the absence of any evidence whatsoever, other than the mere inconvenience, I submit we ought not now to reverse 200 years of national policy; we ought not to single out this one area and say in this one area we are going to abolish the rights of States to protect the health of their citizens. There is no logic to it. There is no consistency to it. There is no common sense to it.

Mr. President, I urge my colleagues to support this amendment.

I yield the floor.

EXHIBIT 1

STATE OF NEW JERSEY,
Trenton, NJ., July 28, 1986.

Hon. HENRY WAXMAN,
Chairman, Subcommittee on Health and the Environment, Committee on Energy and Commerce, Rayburn House Office Building, Washington, DC.

DEAR CHAIRMAN WAXMAN: I would like to lend my support for your efforts to preserve existing state authority to set tolerance levels for pesticide residues. It is essential that Governors and state officials who are charged with protecting public health retain the ability to adopt standards which are stricter than those set by the federal government.

Current law establishes a partnership between the federal government and the states in pesticide regulation. I believe this partnership has served us well. New Jersey has generally accepted federal standards, and I see no reason for this change. While there may be reasons for uniform standards, unusual circumstances arise requiring individual states to differ from federally-approved levels. These situations can involve state-specific health risks, emergencies, public demands for the state action, or questions regarding EPA data analysis.

In these situations, we must have authority to balance the risks and benefits of pesticides and make decisions that meet our unique conditions and protect the public health. The most recent example, of course, involved ethylene dibromide (EDB). We and other states judged that the health of our citizens required a residue level stricter than that adopted by EPA. Under the amendment expected to be offered by Rep. Roberts add others, we would no longer have the authority to do so. I oppose this amendment.

Thank you for your leadership in arguing the case to preserve this important state authority.

Sincerely,

THOMAS H. KEAN, *Governor.*

STATE OF HAWAII,
Honolulu, HI, September 12, 1986.

Hon. HENRY A. WAXMAN,
Chairman, Subcommittee on Health and Environment, Committee on Energy and Commerce, U.S. House of Representatives, Rayburn House Office Building, Washington, DC.

DEAR CONGRESSMAN WAXMAN: Thank you for your letter of August 22, 1986, and your explanation of the state preemption amendment to H.R. 2482, regarding the Federal Insecticide and Rodenticide Act.

We had reviewed the proposed amendment and found that it will not provide the safeguards needed to protect the health and safety of the public. As such, we opposed the amendment, and have informed our congressional representatives, as well as the National Governors' Association, of our opposition (copy enclosed.).

Your efforts on this important matter are appreciated.

With warm personal regards, I remain,

Yours very truly,

GEORGE R. ARIYOSHI, *Governor.*

STATE OF HAWAII,
Honolulu, HI, August 6, 1986.

Hon. DANIEL K. INOUYE,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR DAN: It has come to my attention that a floor amendment to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) will be offered by Congressman Pat Roberts, Charles W. Stenholm, Tony Coehlo, and Edward Madigan. If adopted, this amendment would preempt state authority to set standards for pesticide residues on feed that are more stringent than federal standards with few exeptions. The intent of this amendment is to "permit national marketing of all food products without jurisdiction barriers" in order "to assure a safe and reasonably priced food supply for consumers," i.e., to minimize the economic hardships brought about by the disruption of interstate commerce.

Although I am sympathetic to the hardship imposed on growers and manufacturers when the normal flow of interstate commerce is disrupted, I believe that the health and safety of Hawaii's people must be considered first and held above all other concerns. This amendment does neither. For instance, in the case where "compelling and unique local circumstances," e.g., dietary patterns, may point to the establishment of more stringent standards, the amendment would require the state to petition the Environmental Protection Agency (EPA) in addition to going through the regulatory proceedings already required by state law. In the event of an imminent health hazard, the amendment authorizes the state to establish an emergency standard only after public notice and public hearing. Within 10 days of establishing an emergency standard, the state would have to petition EPA for an exemption from the federal standard. The exemption process is too cumbersome for the state to handle without additional resources and acts as a deterrent to local initiatives because of the burden if imposes on a petitioning state.

If adopted, the amendment would set a precedent for the preemption of other state regulations and environmental standards. While I support federal minimum standards for air, water, and food, I believe that states should have the authority to set stricter standards in order to preserve the quality of life they choose. The amendment runs contrary to existing laws that allow states to set more stringent standards when those set by EPA are not considered to be adequate to preserve environmental quality. I believe that this amendment is a misuse of FIFRA and that it abrogates the rights of states in favor of special interests.

In addition, the amendment significantly broadens the scope of FIFRA through the regulation of the levels of residue of pesticides in or on food. Presently, the authority to establish the levels of residues of pesticides in processed foods lies with the Food and Drug Administration (FDA) pursuant to the Federal Food, Drug and Cosmetic Act, as amended (FFDCA). Since processed foods are included within the broader defi-

nition of food, the EPA and FDA will share concurrent jurisdiction over processed foods. The regulation of the levels of residues of pesticides in processed foods should remain with the FDA until the Congress and states can fully assess the consequences of the amendment. Once the question of concurrent jurisdiction is resolved, program managers can begin to assess what resources will be needed to implement the amendment on the state level. Proceeding without an in-depth review of the amendment could lead to divisive inter-agency conflicts on both the state and federal levels and leave program managers overwhelmed and without needed resources.

In view of these concerns, I urge you to oppose the amendment and to seek other avenues to assure a safe and reasonably priced food supply for consumers.

With warm personal regards, I remain,

Yours very truly,

GEORGE, R. ARIYOSHI, *Governor.*

STATE OF VERMONT,
Montpelier, VT, September 9, 1986.

Representative HENRY A. WAXMAN,
Chairman, Subcommittee on Health and the Environment, Committee on Energy and Commerce, Rayburn House Office Building, Washington, DC.

DEAR REPRESENTATIVE WAXMAN: Thank you for your recent letter alerting me to the proposed amendment to FIFRA that would preempt state authority over unsafe pesticide residue levels.

On July 22, 1986, I wrote the Vermont Congressional delegation encouraging their opposition to the proposal. A copy of the letter to Representative James Jeffords is attached. As you can see, I appreciate your position on the issue. In addition, Dr. Roberta Coffin, the Vermont Health Commission, has testified against the preemption policy before the Senate Committee on Environment and Public Works.

Please contact my office if I can be of further assistance. Good luck in your efforts.

Sincerely yours,

MADELEINE M. KUNIN, *Governor.*

JULY 22, 1986.

Hon. JAMES M. JEFFORDS,
U.S. Representative,
Washington, DC.

DEAR JIM: I am writing to request your assistance in opposing a move in Congress to weaken the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) by preempting state authority to set stricter standards for pesticide residues on food.

As I understand it, a floor amendment will be offered in the House of Representatives during the next few days. Specifically, the amendment would:

Preempt the states' authority to set more stringent standards for residues on food for any pesticide which has been registered or re-registered by the EPA in accordance with current data requirements. Seventeen pesticides were registered with EPA and approximately 20 more would be added annually.

Preempt states from setting standards for residues on food where the pesticide has been used for an unintended purpose, such as accidental contamination, if EPA acts to set a standard for such cases.

Authorize states to petition EPA to adopt a more stringent nationwide standard or allow a state to develop a more stringent standard, if the state can show "compelling and unique local conditions that do not exist elsewhere in the United States," or a local issue not under federal jurisdiction. In addition, the state would have to show that its proposal would not unduly burden interstate commerce.

Authorize states to establish an emergency standard to abate an imminent hazard only after public notice and public hearing. Within 10 days of establishing an emergency standard, the state would have to petition EPA for an exemption from the federal standards.

While it is clearly appropriate for the federal government to set uniform minimum safety standards, it is not good public policy to allow the Environmental Protection Agency to weaken steps taken by states to increase the level of protection for their citizens. In fact, securing the health and safety of their citizens is one of the most important constitutional powers granted to the states.

The need to preserve state authority is further underscored by the EPA's poor track record in providing credible and timely pesticide evaluations. The states have had to respond to public demands for action, emergency situations, state specific health risks, and other instances when the federal regulator has been too slow, or unable, to act.

In May of this year, I initiated a seven point plan that will lead to the reduction and minimization of pesticides used in the state of Vermont. These policies represent a prevention strategy that will lessen the need for chemical treatment and thus the controversy surrounding the setting of safety standards. However, until the reductions are realized, Vermont must have the option to adopt more stringent requirements.

If you have any questions, please do not hesitate to contact my office.

Sincerely yours,

MADELEINE M. KUNIN, *Governor.*

STATE OF WEST VIRGINIA,
OFFICE OF THE GOVERNOR,
Charleston, WV, September 11, 1986.

Hon. HENRY A. WAXMAN,
Chairman, Subcommittee on Health and the Environment, U.S. House of Representatives, Rayburn House Office Building, Washington, DC.

DEAR REPRESENTATIVE WAXMAN: I have carefully reviewed the information attached to your letter of August 26, 1986 regarding the proposed amendment to H.R. 2482. After discussion with various staff members, I wish to lend my support in opposition to the amendment. I feel that the states have a duty and a right to establish a more stringent pesticide residue if and when the need arises.

I know that various EPA/FDA associated regulatory groups in West Virginia have voiced their opposition to the amendment through their professional associations. I will send a copy of my response to you to our Congressional Representatives so that they may know my feelings.

Sincerely,

ARCH A. MOORE, Jr.,
Governor.

STATEMENT OF NANCY KIM, PHD.

I am Nancy Kim, Director of the Bureau of Toxic Substance Assessment, of the New York State Department of Health and am submitting testimony on behalf of Governor Cuomo and New York State Health Commissioner Axelrod. New York State urges the Congress to oppose an amendment to the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) which would restrict states' rights to establish tolerance levels in or on foods. We believe that the right to establish and enforce residue levels should be reserved for states. The states have the responsibility and technical capability to undertake these activities. The existing legislation gives the states these rights and exercising these rights has not led to any difficulties which would justify or necessitate changes in the legislation.

My testimony concentrates on three major issues: the intent of the legislation, including the safety of the food supply; the prevention of jurisdictional barriers restricting national marketing; and the ability of the states to exercise their rights in a legal and scientifically responsible manner.

The intent of the proposed legislation, according to its sponsor, is:

"to assure a safe and reasonably priced food supply for consumers. In order to achieve this goal, it is declared to be the express intent of Congress to require national uniformity in the regulation of the levels of residues of pesticides in or on food in order to permit national marketing of all food products without jurisdictional barriers."

"Safe" is an important word in the proposal's intent. In New York State, our awareness of the need to understand and explain the potential impact of chemical exposures has led to a reluctance to use the word safe. It implies that a given exposure to a chemical is without risk to everyone under every circumstance. In reality a given exposure is deemed to be acceptable because the level of risk is considered to be small compared to the benefits associated with the use of the chemical. Evaluating and interpreting the toxicologic data on a given chemical is not an exact science and two intelligent, scientifically knowledgeable, and conscientious individuals can come to different conclusions about the exposure. As individuals can come to different conclusions, partially influenced by personal perspectives and philosophies, so can states reflect the concerns of those they govern. Exposure to chemicals, especially pesticides which are produced to interfere with biological functions, in or on food is accompanied by some risk, however small or difficult to quantify that risk may be. Passage of this amendment, which would restrict the states' ability to set tolerance levels, will not guarantee that the food supply is safe; it will only guarantee that the residue levels are deemed acceptable by the Administrator of the United States Environmental Protection Agency (EPA).

The intent of the amendment and the amendment itself imply that the states' authority to establish tolerance levels creates jurisdictional barriers which would prohibit national marketing. Presently, rules, regulations, and standards are established under FIFRA, as well as other environmental laws, which provide a baseline of protection while preserving the states' right to adopt stricter standards. The existing legislation giving authority to the states has worked well and has not led to the creation of jurisdictional barriers which have prohibited national marketing. Given that the states already have the authority to establish tolerance levels, this amendment would only be needed if the goal of a "safe and reasonably priced food supply for consumers" was not being met.

In fact, the states have only rarely exercised their authority to establish tolerance levels and this has only been done after the risks associated with a given exposure from

a residue on food have been evaluated and deemed unacceptably high. Moreover, use of the state authority provides a useful review process, helping to ensure that the food supply is as risk free as is practical. As such, the existing authority of the states to establish tolerance levels helps to ensure that the goal of this amendment, "to assure a safe * * * food supply" is achieved.

One concern is the creation of jurisdiction barriers which will interfere with national marketing. Given that the states already have the authority to establish their own standards and that authority has not led to jurisdictional barriers or to an unreasonably priced food supply, an alternative approach can be considered to address the concerns of the food industry. An amendment to the Federal Food, Drug and Cosmetic Act could be developed which would facilitiate the removal of a state established tolerance level which creates jurisdictional barriers which interfere with national marketing or which lead to unreasonably priced food supplies. Such an amendment should place the burden of proof upon the supplier or upon the Federal government to demonstrate irreparable harm from the imposition of tolerance levels determined by the states to be appropriate for the protection of the health and safety of its residents.

In unusual situations where the states have found it necessary to become involved in a detailed review of the data on a specific compound, they have brought additional scientific perspective to bear on the problem. A state becomes aware of potential exposures or additional toxicologic data or develops an alternative interpretation of the data. These findings dictate the actions undertaken by the state. For example, New York's interpretation of the data on ethylene dibromide (EDB), which led to lower state tolerance levels than those adopted by EPA, differed from EPA's because of differences in food consumption data, especially for children, because the combined exposure from air, water, and food were examined together, and because the potential for adverse reproductive effects was examined in addition to the potential for carcinogenic effects. We have also reviewed the data on the carcinogenicity of daminozide/UDMH, a breakdown product of daminozide, and have concluded that when all the studies are examined together, the data are sufficient to show that daminozide/UDMH is an animal carcinogen. In contrast, EPA has concluded that the data are not sufficient to show qualitatively that daminozide/UDMH is carcinogenic.

Another example of New York's efforts concerns chlordane. Although it is not used on food products, New York has analyzed over 1,000 air samples taken in homes for chlordane and evaluated the potential health risks associated with its use as a termiticide and determined that the continued use of this product can not be justified. All of these actions have triggered additional reviews or actions by EPA to reduce exposure of the public to these chemicals.

I would like to offer these additional comments on specific sections of the proposed amendment:

The provision which restricts states' authority to indirectly establish a permissible residue level is unduly restrictive. Any additional label restriction adopted by a state could be interpreted as such a requirement. The states' rights to adopt special label restrictions could be affected.

Permissible levels in water, although not usually considered a food could be interpreted as falling under this amendment. Under such an interpretation, this amendment is in direct conflict with the Clean Water Act and the Safe Drinking Water Act which allow states to establish stricter standards and regulations than those established by EPA.

The amendment would apply to an unknown number of pesticides which are deemed to be registered by the Administrator. The registration process considers the available residue and toxicologic data in establishing tolerance levels; if these data are considered adequate, the presumption is that no changes in tolerance levels would ever be necessary and that additional toxicologic or residue data will never be developed to initiate a change in tolerance levels. Obviously, additional data on our understanding of the human body and the effect of chemicals on the body continues to accumulate every day. Recently, regulatory agencies have focused on potential carcinogenic effects; we are now beginning to focus on the potential effects on the immune and reproductive system. As we continue to develop an understanding of behavioral effects, these will need to be considered in establishing tolerances. To suggest that any chemical should be excluded from scrutiny by a state concerned with the protection of the health and safety of its citizens is to make a mockery of the developing understanding and knowledge of potentially toxic materials.

The amendments restricts the states' authority whenever regulations or interpretations are issued by EPA. An interpretation could include statements made in a memorandum or a letter. An interpretation can be issued without an extensive review of the available toxicologic or residue data. The states while establishing a tolerance level may very well conduct a more thorough review of the available data than that conducted by EPA in issuing an interpretation. The restriction on states' authority under these circumstances is unjustified.

The proposed amendment contains a petition process for exceptions. As I have previously indicated, the burden should rest with those who seek to provide a lesser degree of public health protection than that proposed by the states. Where the federal government feels that state action imperils appropriate federal policy, the federal government should be required to bring suit against the state and demonstrate its rationale for opposing state policy.

After reviewing the proposed amendment to restrict states' ability to regulate pesticides and to establish tolerance levels, New York State has concluded that the proposal is unjustified. It represents an intrusion into states' rights to protect the health and safety of its citizens. We are opposed to this amendment and would be happy to provide you with any further supporting information you may need. Thank you.

STATE OF NEW MEXICO,
OFFICE OF THE GOVERNOR,
Santa Fe, NM, September 5, 1986.

Hon. HENRY A. WAXMAN,
Chairman, Subcommittee on Health and the Environment, Rayburn House Office Building, Washington, DC.

DEAR CHAIRMAN WAXMAN: I am writing to express my strong opposition to the Roberts-Stenholm amendment to H.R. 2482, which reauthorizes FIFRA. The Roberts' amendment would rob states of the ability to protect their citizens from the harmful effects of pesticide residues on foods. If enacted, the Roberts' amendment would leave states with no effective enforcement authority to ensure that their citizens are not exposed to carcinogenic pesticide residues on the foods they purchase within their state. The amendment would prohibit states from taking public health actions regarding unsafe residue levels; this prohibition would even extend to the State's ability to issue public health advisories and to act against "imminent hazards."

The preemption provision of the Roberts-Stenholm amendment would have particularly serious implications for the citizens of our State. New Mexico was one of the states which recognized the danger of EDB and made a decision to protect its citizens from EDB residues before the U.S. Environmental Protection Agency took action. Even though EPA failed to set any specific tolerance level for EDB in baby food, this State adopted an enforceable tolerance level of 1 ppb, in accordance with the recommendations of State epidemiologists. I believe that it is imperative that states retain this ability to act to prevent exposure of their citizens to pesticide residues on food, which may be mutagenic, teratogenic and carcinogenic, without having to wait for the lengthy decision-making process of the Environmental Protection Agency.

I commend your efforts to defeat the Roberts-Stenholm amendment and assist states in protecting the health of their citizens.

Sincerely,

TONEY ANAYA,
Governor.

STATE OF SOUTH CAROLINA,
OFFICE OF THE GOVERNOR,
Columbia, SC, July 15, 1986.

Hon. HENRY WAXMAN,
Chairman, Subcommittee on Health and Environment, Committee on Energy and Commerce, Rayburn House Office Building, Washington, DC.

DEAR MR. WAXMAN: I understand you are planning a hearing on the FIFRA amendments entitled "Food Production and Marketing Uniformity Amendments of 1986" which were submitted by Congressman Roberts.

While I am sympathetic to the desire of the Grocery Manufacturers to have a nationwide distribution system free of any type of state "barriers", I do not believe that preempting the states' health and safety powers is prudent.

You will hear testimony on this matter from Dr. Robert S. Jackson, South Carolina's State Health Officer, which contains the specifics of our many concerns. In addition, your staff has letters from the National Governors' Association—in particular, from Governor Earl, Chairman of its Committee on Energy and Environment and Governor Bransted, Chairman of the Agriculture Committee—expressing the National Governors' Association's opposition.

I urge to reject these amendments.

Yours sincerely,

RICHARD W. RILEY.

STATE OF CALIFORNIA,
GOVERNOR'S OFFICE,
Sacramento CA, September 5, 1985.

Hon. HENRY A. WAXMAN,
House of Representatives, Rayburn House Office Building, Washington, DC.

DEAR HENRY: Thank you for your correspondence regarding a proposed amendment to the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) which would preempt the States from establishing pesticide

residue levels that are more stringent than those adopted by the Environmental Protection Agency (EPA).

As you may know, my administration, including the Department of Food and Agriculture, the Department of Health Services and my Washington, D.C. office, has been thoroughly evaluating this legislation over the past few months.

After careful consideration, we are opposed to total preemption of the States' ability to set pesticide residue tolerance levels. We recognize that there are benefits in having a uniform system of pesticide regulation throughout the nation. However, States should have flexibility and discretion to respond to emergency situations and protect the public against health hazards by establishing more stringent standards before having to go through time consuming EPA procedures.

California law currently allows the State to set specified pesticide tolerances if it is determined that EPA standards do not adequately protect the public health. The State standards remain in effect while EPA is petitioned to take appropriate action at the federal level.

I support this concept and remain opposed to total state preemption. My Washington Office is in the process of communicating our position to California's Congressional Delegation and the other members of Congress.

Most cordially,

GEORGE DEUKMEJIAN.

THE STATE OF NEVADA,
EXECUTIVE CHAMBER,
Carson City, NV, September 15, 1986.

Hon. HENRY A. WAXMAN,
Chairman, Subcommittee on Health and the Environment, Rayburn House Office Building, Washington, DC.

DEAR CONGRESSMAN WAXMAN: Thank you for the opportunity to review the Roberts-Stenholm State Preemption Amendment to H.R. 2482, the Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1985. Your explanation was particularly helpful to me and members of my staff in clarifying the specific issues.

After reviewing the information you sent, I agree with your opposition to the proposed legislation. We feel that it is inappropriate to limit the states' authority to set more stringent standards. The federal standard for a particular compound may not adequately protect the public health in all locations, especially where, because of industrial or agricultural land use, unusual environmental conditions exist. Standards that reflect local public health needs can most efficiently be set at the state level. Therefore, I oppose this legislation and support your committee work to defeat it.

Please consider these views. If you have any questions or more information is required, please contact me.

Sincerely,

RICHARD H. BRYAN,
Governor.

September 11, 1986.

Congressman HENRY A. WAXMAN,
Chairman, Subcommittee on Health and the Environment, U.S. House of Representatives, Rayburn House Office Building, Washington, DC.

DEAR CONGRESSMAN WAXMAN: Thank you for bringing to my attention the proposed state preemption amendment to H.R. 2482, the Federal Insecticide, Fungicide and Rodenticide Act Amendments. I oppose this amendment for the very reasons mentioned in your "Explanation and Section-by-Section Analysis of Problems".

Particularly disturbing is Section 34(b)(1)(A) which would prohibit states from issuing warning labels or informing the public that they disagree with the federal standard. This appears to be an infringement of the public's right to know. Additionally, this amendment may prohibit states from issuing fish consumption advisories based on pesticide levels that were less than FDA action levels. I also question whether this amendment would prohibit state marketing strategies that promote products as "free from" certain pesticides.

In short, the state preemption amendment would limited a state's options for protecting the health and safety of its citizens.

Sincerely,

ROBERT KERREY,
Governor.

NATIONAL GOVERNORS' ASSOCIATION,
September 16, 1986.

Hon. HENRY A. WAXMAN,
U.S. House of Representatives, Rayburn House Office Building, Washington, DC.

DEAR CONGRESSMAN WAXMAN: I am writing to thank you for your leadership against the attempt to preempt state authority to establish tolerances for pesticide residues on food more stringent than federal minimum standards, and to urge your continued efforts against such preemption.

As you know, the official position of the National Governors' Association is that the EPA should establish minimum standards, with the states allowed, as under current law, to establish more stringent standards. While individual Governors are always free to express their own opinions, the NGA rules require that our official positions be adopted by at least two-thirds of the Governors voting on the issue. Our policy on food tolerances was overwhelmingly approved by the Association in accordance with those rules.

As I have mentioned before, the Roberts' preemption amendment would seriously inhibit the states' abilities to protect the health of their citizens and erode the states' most basic authority. The record shows that the states have exercised this authority responsibly, and have adopted more stringent standards only in exceptional situations. The Roberts' amendment makes such responsible action on behalf of public health impossible, even in exceptional circumstances, given the unreasonable conditions which must be met in order to petition for an exemption.

I look forward to working with you to defeat the preemption amendment.

Sincerely,

GOV. ANTHONY S. EARL,
Chairman, Committee on Energy and Environment.

TESTIMONY OF GOV. JOSEPH BRENNAN, AS GIVEN BY KAY EVANS

Mr. Chairman and members of the subcommittee, my name is Kay Evans. I am Associate Commissioner of the Department of Agriculture, Food and Rural Resources of the State of Maine. I am speaking on behalf of Commissioner of Agriculture, Barbara Gottschalk, Commissioner Human Services, Michael Petit and the Governor of Maine, Joseph Brennan, in favor of the presentation of the fundamental authority of states to protect the health, safety and welfare of their citizens and of the particular authority to set tolerance levels for pesticide residues in foods and food products.

I want to express our appreciation to you for insisting that this issue receive the public attention it deserves. While we have kept a weather eye on it ever since the EDB events of 1984, it has so far been possible to follow its course only if you know the intricacies of federal legislative action or can talk to someone who knows. The debate has not been public; we hope that these hearing will change that. We are glad for the opportunity to testify and hope that our testimony is useful to you and useful in the debate in general.

We are unequivocally opposed to any limitation on state authority to set pesticide residue tolerances in foods and food products. We are unequivocally opposed whether the limitation is total preemption, partial preemption, or partial preemption with an opportunity for a state to act in the preempted area if it can show "particular local needs." I will lay out the reasons for our opposition in a moment.

You are aware that Maine has acted independently to set pesticide residue tolerances. Maine has done so in two instances. In 1984, we established limitations more strict than those established federally for residues of ethylene dibromide (EDB) and we are about to adopt stricter limitations for residues of daminozide. In both cases, our decisions to take independent action were not easy ones. We had to consider all of the possible choices for action, weigh the evidence, understand scientific judgments and advice, consider legal questions, assess our ability to enforce. We had to ask whether we were promising our citizens more than we could actually deliver by way of protection. In both instances we concluded that the action taken by the Environmental Protection Agency was insufficiently protective of our citizens' health and safety and we decided upon an independent course of action.

In order to understand why the preservation of state authority is so important, consider why states have traditionally had the fundamental responsibility to protect health and safety. The question to ask is: How are the people best served? Are they best served by a system in which both their state and federal governments have the authority to make decisions which directly affect their health and safety? Or are they best served by a system in which all such decision-making authority is arrogated to the federal government?

I think it is reasonably clear that the Constitution contemplates that most, if not all, of the responsibility and authority for protecting public health and safety resides with the states. Over time, more of that responsibility and authority has also been placed with the federal government, which the Constitution has not been seen to prohibit. But in general, increased federal authority has not been at the expense of state authority.

We should ask whether anything in present-day life tells us that the people are now better served by limiting state authority to protect their health and safety. Those who seek to limit the traditional role of the states argue that national residue tolerance standards, established federally, promote efficiency in manufacturing, packaging and distribution of products and thus reduce costs to consumers. Those who favor the preservation of state authority argue that the existence of that authority ensures better protection of health and safety, whether by a federal or state standard. So

long as states have the authority to act independently, they are a force to be reckoned with in the development of federal policy and the making of federal decisions, as well they should be. They can work to make federal policy reflect their concerns and, to the extent that it does so, there is then less reason for them to act independently. If states are without the authority to act, the principal influences on federal policy will be those private entities which have the greatest resources to expend and the most to gain from the shaping of that policy.

In the area of pesticide residue tolerances, those private entities will be the chemical companies who manufacture the pesticides, and the food processors and manufacturers. While these companies are not without public concern, they have a particular concern for that part of the public which is made up of their shareholders. Public interest groups will work to counter their influence but their resources are not comparable to those of the industries and, as they have no independent authority, the possibility of their taking independent action does not have to be factored in to policy development and decision-making. Only the states bring with them into discussions and negotiations the countervailing power of their authority to act independently if all else fails.

We believe that the constitutional role of the states in protecting their citizens' health and safety is predicated on the principle that state governments are better able to appreciate, understand and respond to the needs and concerns of their citizens than is the federal government. State government process is more accessible and more accountable, able to respond more quickly, to channel concern into effective action and to strike finer balances. "Governmental process" means "access to government." "Federal process" is too often almost a contradiction in terms, because of its terrific complexity and its incredible slowness. For example, in 1974 the National Cancer Institute issued a notice that EDB was suspected of being a carcinogen. Ten years later, EPA acted. The first study indicating that daminozide caused cancer in laboratory animals was published in 1973. It was 1977 before EPA began considering a special review of daminozide and 1980 before EPA notified the manufacturer that a special review would be conducted. It is worth noting how quickly EPA can move—in the opposite direction: in September 1985, we saw EPA issue a notice to cancel daminozide's registration; in January 1986, we saw EPA back down.

On the substantive decisions to be made, we again believe that the people are best served if the states retain independent authority. Making decisions in matters of pesticide residue tolerance levels necessarily involves technical and scientific expertise. No state can responsibly act without a sound technical and scientific basis for its actions. Nor can the federal government. Where states disagree with federal policy or federal action, there must be a sound technical and scientific basis for that disagreement. Thus, the ability of states to question federal government action and to consider independent action encourages debate on the merits of the science involved, a debate which can only improve and refine that science and which contributes to the public understanding that much of science is debatable and needs to be debated.

We all know, of course, that these decisions are not based on pure science. The research data are not unequivocal. The discussion leads inexorably to questions of values and their expression in policy: what is safe? how much risk is acceptable? risk to whom? at what cost? Not all of the scientific and technical expertise resides in Washington or is at the disposal of the chemical and food industries. Nor are all of the best and most sensitive policy makers in Washington. To the extent that states have the authority to act independently, they will call out other scientific viewpoints, and the states' policy makers will take on the issues of values. To the extent that these debates widen and become more public, we improve our chances to remain a free people, freely and effectively participating in its own governance.

It is impossible to spend much time with this issue without observing that while the solution raises profound political and philosophical questions, the problem is superficial. The proponents of preemption are proposing the destruction of traditional state authority to protect health and safety in response to a situation that has arisen exactly twice. Only on EDB and daminozide have any states taken independent action. There is no reason to expect a dramatic increase in either the number of times that states act independently or the number of states that act. These decisions come too hard and are too resource-intensive.

Nor are states parochial or looking to be Lone Rangers. There are many reasons why an acceptable federal policy is often better than a perfect state policy. In establishing policy and making these decisions, our approach in Maine has been to try to achieve agreement with the largest possible number of states. The largest possible number is of course 50, and there are obvious benefits to everyone from reaching agreement on a federal policy or decision. In the two instances in which Maine has taken independent action, we have first put considerable effort into trying to get an acceptable federal result. Failing that, our next effort has been to work for an acceptable regional result. Failing that, we have looked to the action contemplated or taken by other individual states, seeking principally to achieve the highest possible degree of geographic uniformity.

In light of the number of times the "problem" of independent state action has arisen, the amount of resources devoted to this issue by the chemical and food processing industries raises serious questions about their perspective and balance. However, there can be no question that, where threatened or taken, independent state action has led either to more acceptable federal policy or to more rapid and more effective "voluntary" action by industry, as in EDR and in daminozide. It is, therefore, hard to avoid the suspicion that a motivation, if not the motivation, of those who favor preemption of state authority is not to protect the efficiency or integrity of the chemical and food manufacturing and distribution systems but rather to eliminate or severely restrict the states' ability to influence federal policy and to eliminate or at least limit the amount of attention the industries must pay to the concerns of the states and their citizens.

Further, with respect to the food distribution system, the industry makes two patently inconsistent arguments. On the one hand, the industry claims that it does not have and cannot develop a system which enables it to manufacture and direct the distribution of products to meet individual state standards. On the other hand, the industry would have us believe that the food distribution system is so finely tuned that action by an aberrant state will crash it, emptying the nation's grocery store shelves. With respect to the first argument, it is clear that the industry has found ways to manufacture and distribute products to meet particular consumer demands in particular areas of the country. Where there is a taste for hush puppies and grits, or for baked beans, you'll find them on the shelves. There is no readily apparent reason why the same skills that make and distribute foods to meet particular tastes cannot make and distribute foods to meet particular state standards. In fact, in Maine's recent rulemaking hearing on residue tolerances for daminozide, industry representatives testified that, given the regional nature of modern food distribution systems, standards set by one state essentially set the standard for all states in that distributional region. With respect to the second argument, on a few occasions we in Maine have not been greatly impressed with the fine detail of the food distribution systems, as we watched companies' efforts to locate food products which had been recalled because of contamination or tampering.

It is interesting, and sobering, to contrast this effort to preempt or limit the states' traditional constitutional authority with the approach generally taken in areas where citizens' health, safety and welfare are at stake. The general approach has been the establishment of federal minimum standards below which states may not go. Preemption or limitation is exactly the opposite approach: states would not be able to provide protection any greater than that provided by federal standards. What reasons are there to stand the usual approach on its head? Are the people better served by doing so?

We suggest that the appropriate and more effective action for the Congress to take is to enact measures which would require the Environmental Protection Agency to be more responsive to states' concerns in the shaping of federal policy and the making of federal decisions. To do so would achieve the ends sought by those who seek to preempt, whether totally or partially, the states' traditional role. If the EPA were more responsive to state concerns and less to those of the industries, federal policy and decisions would be more responsible and thus more broadly acceptable to the states. The result would be even fewer instances of independent state action.

Thank you again for giving Maine the opportunity to be heard on this issue. I will be glad to answer any questions.

STATEMENT OF GOVERNOR MICHAEL S. DUKAKIS, COMMONWEALTH OF MASSACHUSETTS

Mr. Chairman, members of the subcommittee, thank you for this opportunity to testify before you today on the proposed amendment to the Federal Insecticide, Fungicide, and Rodenticide Act [FIFRA] which would preempt the authority of states to set more stringent standards than the Federal Government for pesticide residues on food.

As a Governor charged with the responsibility of protecting the public health and welfare of citizens in my State, I feel very strongly that the State role in pesticide regulations must be preserved. I am therefore opposed to legislation which would severely restrict State authority in this area such as the proposed food production and marketing uniformity amendments to FIFRA.

My position on this amendment should not be construed as opposition to a strong Federal presence in the regulation of pesticide use. In my view, and the view of the National Governor's Association, the Federal Government has a clear obligation to set minimum standards for chemical residues on food. However, States must then be free, as they are under current law, to establish more stringent standards. This authority to protect the health and safety of our citizens is one of the State's most fundamental powers and reflects important constitutional principles.

The State's authority to regulate food safety also represents an important check on Federal decisionmaking. In setting food safety standards, complex judgement must be made often in the face of incomplete or uncertain data. The final decision represents a value judgment regarding an appropriate balance of risks and benefits.

As long as states have confidence in Federal standards, there will be little, if any, incentive for them to adopt more stringent requirements. But when the Federal Government strikes a balance between risks and benefits which the State considers inappropriate, the State has an obligation to enact its own tougher standards. It would be wrong for the Federal Government to insist that only its value judgment on food safety is the correct one.

As you know, on other occasions the Congress has debated the question of proper State role in connection with environmental and other laws aimed at protecting health and safety. In programs like the Clean Air Act, the Clean Water Act, and the Hazardous Waste Laws, the Federal Government sets a baseline of protection and allows State discretion to set stricter levels of protection. The system has worked well in those programs and currently works well with regard to food safety. It is unwise and unnecessary to create an exception to that model in the case of pesticides.

Past experience demonstrates that States have acted responsibly in exercising their current authority to regulate pesticide products, balancing the public health risks with the economic costs of their actions. I am certainly not here today to encourage states to set lower tolerance limits on a range of pesticide products in conflict with Federal regulations. However, States should be reserved the right to act when it is judged, based on a careful review of the health data and scientific evidence, that the Federal Government has not moved quickly or forcefully enough. The proposed amendment would severely limit my ability to act in the public health interest of citizens in my State and would compromise efforts to assure a safe food supply.

Let me also emphasize as I speak today in support of Massachusetts' right to protect the public health, my commitment to promoting the development of the agricultural sector of our State's economy. The goal of reducing chemicals in our food supply must be made at minimal expense to our farmers' livelihood. Thus, Massachusetts has set stricter pesticide standards only in specific, isolated cases when it was determined that the continued use of these products posed a significant public health threat in our State.

While we reserve the right to protect our citizens when necessary, let me be clear that we view the establishment by States or more stringent pesticide standards only as a last resort. Thus, in Massachusetts we are also pursuing the development of a strong system of integrated pest management [IPM] in order to minimize the exposure of our food supply to pesticides and reduce the need for emergency regulatory action.

As you may know, an IPM system makes use of all acceptable pest-control options, integrating the use of chemical pesticides with the effective use of nonchemical alternatives. Such a system fosters a strong, competitive agricultural sector withou sacrificing or jeopardizing the public health of our citizens.

I think it is fair to say that Massachusetts is recognized as a leader in the acceptance and use of IPM. It is hoped that through the use of IPM we will be able to reduce the more toxic pesticides in the Commonwealth by 50 percent by the year 1995.

To sum up, we are committed to the protection of our State's food supply and we are determined to use all the approaches available to us. Passage of the proposed FIFRA amendment, however, would compromise our efforts in this area and, therefore, is not is the public health interest of the citizens of my State. After all, effective State and Federal regulation which instills consumer confidence in a wholesome food product is in the best interests of the agricultural community.

Let me now turn to State Health Commissioner Bailus Walker who will talk more about the importance of preserving the rights of States to occasionally set more stringent pesticide limits than required by the Federal Government.

Thank you again for giving me the opportunity to testify before you today and I look forward to working with this subcommittee and other Members of Congress to protect the States' right to regulate food safety.

STATE OF FLORIDA DEPARTMENT OF HEALTH AND REHABILITATIVE SERVICES,
Tallahassee, FL, July 23, 1986.

Mr. DAVE JOHNSON,
Florida-Washington Office, North Capitol Street.

DEAR MR. JOHNSON: Thank you for your July 11 memorandum notifying me of the pending amendments to the Federal Insecticide, Fungicide, and Rodenticide Act which would seriously restrict the states' ability to regulate deleterious substances in foods.

As Dr. Howell of the HRS Health Program Office communicated with you on June 19, we feel any such amendment drawn in the name of orderly marketing should not prevent states from protecting the health of their citizens when federal standards are outdated by time, technology or unforeseen circumstances without necessity for lengthy petition procedures. In other words, the Department strenuously opposes the proposed Roberts amendment as presently drafted.

Sincerely,
J. DAVID SELLARS
(For William J. Page, Secretary.)

STATEMENT OF ORLO EHART, EXECUTIVE ASSISTANT

Chairman Waxman and Members of the Subcommittee:

I am representing Governor Anthony Earl, State of Wisconsin, who chairs the National Governors Association's Energy and Environment Committee and the Wisconsin Department of Agriculture, Trade and Consumer Protection which administers the pesticide and food laws for the State of Wisconsin. I am appearing in opposition to the proposed amendment language to HR 2482 which would prohibit states from establishing pesticide residue levels on or in food.

We oppose the proposed amendment because it would preempt state ability to establish numerical standards for pesticide residues. The proposed amendment's petition process authorizing a state to establish stricter standards has too great a burden of proof to be useful or workable.

Federal preemption proposed by the amendment is presumptuous and counterproductive to safeguarding public health and safety because federal agencies have not established all residue levels of importance and do not review new data in a timely fashion. Consequently, we in the states need to have the authority to act in the interest of protecting public health and safety. We regard this state authority as a fundamental part of our federal system, and it has worked well under current laws.

We believe national pesticide standards are desirable, and if they were kept up to date with current technology, states would accept them. However, when federal actions are not adequate to protect our citizens, we should not be forced to rely only upon the federal government to protect public health and safety when these issues can appropriately be handled by the states.

We recognize there is a concern that states may establish standards that are not founded on scientific evidence, but a better way to deal with this issue is to certify that the states' technical capabilities and resources are adequate and continue to authorize state authority to establish standards.

The effect of the amendment on Wisconsin's programs could be significant. Water is generally included in the definition of food. Wisconsin developed a program to evaluate the adequacy of a federal number and use nationally available data to set groundwater standards. The preemption would eliminate the state's creativity in program development and hinder progress in the protection of humans and the environment.

We also object to the proposed amendment because policy on authorized residue levels on or in food should be established under the Federal Food, Drug and Cosmetic Act (FFDCA), not FIFRA. Jurisdiction over the FIFRA should remain with the House Agriculture Committee, while the authority to establish tolerances for pesticide residues should remain under the FFDCA. It is inapproporiate to attach this amendment to the FIFRA bill.

Lastly, we find the proposed amendment to be vague, that it proposes policies and terms inconsistent with existing FIFRA and FFDCA, and it does not establish an understandable enforcement policy. We urge the House of Representatives to reject this amendment and concept.

TESTIMONY OF RICHARD W. LOWERRE

Chairman Waxman, members of the subcommittee, my name is Richard Lowerre. I oversee the Regulatory division of the Texas Department of Agriculture, which includes pesticide-regulation and consumer protection programs. I am here on behalf of the Texas Commissioner of Agriculture to affirm the importance of a state role in establishing food tolerances for pesticide residues. As you know, an attempt was made recently in the House Committee on Agriculture to preempt states' authority to establish such tolerances and this issue may come up again on the House Floor. The Texas Department of Agriculture emphatically opposes these efforts for several reasons.

First, we think that it would be a serious mistake for Congress to deprive states of an authority they exercise to protect the health of their citizens. Texas's experience with EDB demonstrated the importance of that authority to us. While TDA does not have the tolerance setting authority in Texas, TDA did play a major role in assisting the Texas Department of Health in moving on EDB in Texas. In 1984, the Texas Department of Health adopted stricter standards for EDB than those of EPA. Their move proved to be the right one, as EPA eventually banned most uses of EDB.

States must be free to act swiftly in the public's behalf. They must be allowed to respond to their citizens. They should be free to act more restrictively then the federal government when available data about the health effects of dietary exposure to pesticides are open to differing interpretations. Further, states should be the judge of when the health of their citizens is in jeopardy. In some cases, special local circumstances will dictate a more conservative standard. In short, we support the idea of the federal government's mandating minimum standards for states, but think states should have the option of adopting a stricter standard of protection for their citizens if they see fit and if they are on sound scientific ground. We think arguments about marketing convenience do not justify depriving states of this basic right.

Second, we think efforts to preempt state authority in this area are unnecessary. States have had the authority to set pesticide tolerances for decades, but have used it infrequently. EPA itself has acknowledged that differences between states and the federal government over pesticide tolerances are rare and have arisen only over highly controversial pesticides. There is simply no evidence that states are out to obstruct commerce with a confusing patchwork of local residue tolerances. If, on the oher hand, the important tool of tolerance setting is removed from the states, states will still respond to protect their citizens. More disruptive steps may then have to be taken by states.

Finally, we think the efforts made so far in committee to preempt state authority on pesticide tolerances demonstrate problems inherent in moving to a strictly centralized procedure for setting pesticide tolerances. The Roberts amendment acknowledged the legitimacy of a state role in establishing pesticide tolerances: it allowed states to petition federal authorities to adopt a state standard and to enforce a state standard when they identified an "imminent hazard" to the public health. But these avenues of participation are so cumbersome and are subject to such stringent standard of proof, that they would effectively cut states out of the decision making process altogether. Once tolerance setting is taken away, any such efforts to give back to states some limited role will only overburden the process. States have a legitimate stake in the process of setting food tolerances for pesticide residues, and they have a perfectly serviceable mechanism for participating in that process under current law. There is not need to change it.

Thank you for this opportunity to express our opposition to preemption of tolerance setting by state.

TEXAS DEPARTMENT OF HEALTH,
Austin TX, July 15, 1986.

Hon. HENRY WAXMAN,
House of Representatives, Washington, DC.

DEAR CONGRESSMAN WAXMAN: We understand that an amendment is being offered which will change current law to preclude states from establishing separate pesticide residue standards which are more stringent than federal standards for any pesticide which has been re-registered by the Environmental Protection Agency. We support minimum national standards for pesticide residues in food and feel that all tolerances should be set by the federal government. But we also believe that states should retain authority to establish more stringent standards when unique circumstances require this action.

The Texas Food, Drug and Cosmetic Act provides for the automatic adoption of federal regulations concerning pesticide tolerances. It also provides authority to the Texas Board of Health to amend those tolerances, and provides emergency authority to the Commissioner of Health to regulate food products by executive order until the Board can adopt or rescind actions taken by the Commissioner. This authority resulted from the ethylene dibromide (EDB) issue in which criticisms were leveled at the Department for failure to adopt uniform pesticide tolerances and act expediently to remove products contaminated with EDB.

The real failure in the EDB episode was the inability of the EPA to make a decision concerning the safety of this pesticide. This forced the states to take action independent of that agency. We feel that this amendment removes any authority the states have to act promptly in emergency situations involving pesticides (such as the EDB episode), and it makes it extremely difficult for states to have tolerances changed when problems are identified. This amendment appears to contradict the desires of the Texas Legislature which recently moved to increase our authority to regulate pesticides.

We believe that the federal government should provide a uniform national standard to which states should adhere, but states should retain their authority to act in situations involving any health hazards. In addition, the amendment should provide a less complicated procedure for petitioning the federal government to change pesticide tolerances.

Due to the numerous deficiencies in the amendment, we must join the Association of State and Territorial Health Officers and the National Governors Association in their recommendation that the amendment be rejected.

Sincerely,
ROBERT BERSTEIN, M.D., F.A.C.P.,
Commissioner of Health.

Mr. STAFFORD. Mr. President, I compliment the Senator from Maine on his excellent speech.

Mr. President, I completely support the amendment of the Senator from Minnesota to preserve the right of States to protect their own citizens.

The sponsors of this legislation have described at length why and how the existing Federal law is bad and how this bill will change all that. We have been told this bill is so good that States will never again need to act on their own against pesticides.

But surely those who wrote the FIFRA provisions of the 1950's, 1960's, and 1970's thought the same. Yet those laws were demonstrated in time to be flawed and citizens had but one place to turn for protection. That place was State government.

The question before the Senate is whether we will continue to leave room for State governments in this field. Had there been no room for States to act, food contaminated by EDB would still be on the grocery shelves in America. And if the public health doctors, pediatricians, and States directors of public health had been forced to live with the EPA decision on another pesticide, alar, infants and children throughout our country would still be eating apples and apple products containing it.

Perhaps they should be. I am not saying that alar or any other particular pesticide is safe or unsafe. What I am saying, however, is that the health experts in Vermont are paid to protect the health of Vermonters, as are those in Maine for the health of people in that State. If they are dissatisfied with a decision—or lack of one—in Washington, they should continue to have the prerogative which is theirs under the existing law; namely, to decide for themselves, and the people who pay them, what risk the people of that State will be exposed to.

Mr. President, I emphasize that it is the committee bill which would change existing law, not Senator DURENBERGER's amendment. No companies have been bankrupted by the existing law. No farms have been foreclosed because of it. No widespread pattern of abuse for the sake of narrow political purposes has been established.

The existing law works, and it works well. There is no reason to change it and thereby part with two centuries of precedent.

This is not a new or novel question. Those who wrote the Constitution faced it 200 years ago. The answer they provided has stood the test of time. States have obligations to their citizens and the Federal Government has no right usurping them.

I support Senator DURENBERGER's amendment and hope my colleagues will do the same.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Maine.

Mr. COHEN. Mr. President, I want to rise in strong support of the statements offered by my colleagues, Senator DURENBERGER, from Minnesota, and Senator MITCHELL, from Maine. I think it is clear that since the ratification of the 10th amendment the States have had the right to protect the health and safety of their citizens.

I think the Federal Government has recognized this over the years when we passed the Clean Air Act, the Clean Water Act, and the Resource Conservation Act. In each of these cases, we noticeably deferred to the States having a measure of authority to provide protection for their own citizens. Pesticides surely fall within the category of clean air and clean water. If States can regulate the standard or have a higher standard than the Federal one in the field of clean water, then surely we have to have the ability to regulate the quality of food that is ingested into our bodies.

Pesticides can be an asset to farmers, but pesticides can also be silent assassins for consumers and it does not do very much good for us to wait for 10 years until these killers take their victims and then look for relief.

The second point I would like to make is that the Federal tolerances for pesticides ought to be mandatory minimum standards. And that is clear to me at least, in view of what my colleague, Senator MITCHELL, has just said, in view of the responsibility and the restraint that has been exercised over the States over the years, only twice during the past 40 years have the States undertaken to intervene and propose regulations that will protect their own citizens.

The second instance was touched upon by my colleague from Minnesota. Maine and Massachusetts have been concerned about daminozide, which is a spray or pesticide used on apples and peanuts.

In 1985, the EPA announced plans in September of that year to cancel the registration of this pesticide because the data showed it was a carcinogen. Well, EPA has since delayed a final decision until 1988.

I have to ask a question: Why would the committee preempt State law when the States have shown such restraint and such responsibility? All of the principal sponsors of this legislation, I believe, are fairly regarded as conservatives. I see them here now and I suspect that they would take that as a compliment. They are regarded as conservatives.

□ 1720

But conservatism implies a healthy regard, indeed a reverence, for the Constitution, particularly for the 10th amendment. I can only conclude that what we have here is a case of situational ethics because I have heard those Members over the years rail against the imposition or the invocation of the commerce clause, that it was an intrusion into legitimate functions of the States. They have invoked the 10th amendment when it has suited their cause when they supported those particular State policies. Now it appears that they can invoke the commerce clause when it suits their own constituencies.

This is not a question of power. I would be the first to concede that under the commerce clause the Federal Government has the raw naked power to preempt State jurisdictions in this area. The question is one of policy. Is it sound or good policy for the Federal Government to preempt the authority of the States in this area?

As a matter of policy it seems to me the State should have some residue, some small measure of power to protect its citizens against these silent assassins or killers.

Uniformity is important. But I think as Senator DURENBERGER and Senator MITCHELL have demonstrated there is no patchwork of regulations, and there is no crazy quilt of statutes out there among the States that would cause some massive interruption with the free flow of commerce.

What the committee has done is to preempt as such any consideration of the future by the States of these serious questions. Uniformity is important, but it does not amount to a categorical imperative. And where there has been no documented evidence—in fact the evidence is totally to the contrary—that the States have abused the exercise of the power to protect the life, the safety, and the health of their citizens, it seems to me we ought to at least pay some reverence to the 10th amendment saying here is a proper area, if not of power of one of policy, for the Federal Government to tread very, very gently. In the absence of that kind of evidence that the States have abused the authority to protect their citizens, it seems to me the question of policy is one that has to fall on the side of States rights.

Senator MITCHELL appropriately quoted from the Washington Post, and there are many other periodicals and papers that have come to the same conclusion. I would conclude with a quote taken from a local paper in the State of Maine, the Lewiston Journal, which says:

> Establishing minimum federal standards ensures that all Americans, no matter where they live, will be protected from the most deleterious effects of pollution. But states that desire a higher standard of protection for their residents shouldn't be shackled by federal legislation. . . . Two points are salient here: One is that state programs are sometimes more effective than existing or proposed federal programs. . . . The other is that sometimes it takes action at the state level to prod the federal government into restricting or banning harmful substances. The federal government is slow and cumbersome. State governments frequently can devise solutions before the federal government even knows a problem exists.

So, Mr. President, in conclusion, let me say that this is not a question of power. We conceded that issue. It is a question of policy, of wise interpretation of the Constitution that recognizes the Federal Government should not move in with a heavy foot and stamp and stomp on the rights of individual States to pass judgment upon products that have a direct effect upon the health and safety of their citizens. And when we pass legislation like this or attempt to pass it we are in my judgment violating that reverence for the Constitution and the proper allocation of power between the Federal Government and the States.

Mr. CHAFEE and Mr. LEAHY addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. I will be very brief, Mr. President.

I would not want to unduly delay consideration of the bill.

I would note that I am a cosponsor of this amendment, as is the distinguished Presiding Officer, Senator STAFFORD, and the Senator from Maine, Senator MITCHELL.

My views are spelled out clearly in the report of the Committee on Agriculture, Nutrition, and Forestry on the FIFRA bill, S. 2792. In that committee report, my colleagues will note that I introduced sunset legislation on the uniform tolerances provision. I offered a sunset provision because it was the best provision environmental interests could obtain in the Agriculture Committee.

I do not think that the Senate should adopt this particular section concerning uniform tolerances. I agree with the speakers who have preceded me. This is an area of great concern to the State of Vermont, represented by the distinguished Presiding Officer and myself. Vermont is a State that is very concerned about its environment, as are many States represented by those who are cosponsors of this amendment.

If, as some say, current law may create a commercial problem for commerce; that is a determination the States must make. The States each elect legislators. They elect Governors. The 100 Members of the U.S. Senate need not engage in micromanaging, whether it is the agriculture departments or the environmental departments in each of the individual 50 States.

I applaud the Senators who have joined Senator DURENBERGER, Senator MITCHELL, and me in offering this amendment. I urge its passage.

Thank you, Mr. President.

Mr. CHAFEE addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Mr. President, the bill before us makes significant and long-overdue reforms in the Nation's chief pesticide law known as FIFRA. If we succeed in enacting a strong FIFRA bill—that is, dealing with the Federal

insecticides, rodenticides, and fungicides—it seems to me it will be a significant victory for public health, safety, and the environment. It will, in my opinion, be one of the most important achievements of this Congress.

However, Mr. President, there is one serious problem with the bill as it has come before us. That is the provision that has been discussed here, one that I am deeply concerned about; namely, the one that takes away or prevents the State from taking those steps it believes necessary to protect its citizens from the dangers of pesticide residues in food.

We all remember how in 1984 it was necessary for individual States to step in and pull products containing the pesticide EDB or ethylene dibromide from the grocery store shelves. This was because EPA failed to take action against EDB despite studies which had been available for nearly 10 years showing that to be a cancer-causing substance.

In cases like these, States can act as a sort of safety valve, and it is critically important that they continue to do so. I use the word "continue," Mr. President, because that is the right the States currently have. In other words, we are not changing the law by giving the States that so-called preemptive power. We are merely keeping the law as it currently exists. And it not only exists in that fashion in this pesticide law we are discussing here today, but also States rights to preemption exist under all other major Federal laws governing environmental protection.

The general rule is that Federal law provides a minimum standard—a sort of floor. States may then enact stricture rules if they so choose. But we should not permit, as this bill does, a weak Federal standard to replace a strong State standard.

This, of course, is particularly true in the case of pesticides, an area in which the Federal Government has been notoriously lax.

Mr. President, during the debate, we have heard strong arguments in favor of the States' preemption. I will vote for the amendment which will restore the rights of the States to protect their residents as they see fit when dealing with pesticides.

Thank you, Mr. President.

Mr. LUGAR addressed the Chair.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. LUGAR. Mr. President, the committee approved the amendment that has been discussed—that is, the committee approved amendment that is the subject of the amendment by the distinguished Senator from Minnesota to strike that amendment.

I would simply say that the provision was added as a result of the EDB incident which has been mentioned. EPB canceled EDB registration and announced residue tolerance levels which some believe to be too high. Five States did therefore announce stricter tolerances which forced grocery manufacturers to remove some products from their shelves in some States, and those products were then moved to other States for sale within the tolerance level.

□ 1730

The sense of the Durenberger amendment would strike this section of the bill.

The amendment came before the committee with that in mind, introduced by the distinguished chairman of the committee, Senator HELMS, and was adopted without a record vote, as was mentioned, after an amendment by the distinguished Senator from Vermont, Senator LEAHY.

I would submit that the actions the committee took are these:

First, of all, the committee approved an amendment which establishes uniformity only for those pesticides which have been evaluated under the most rigorous scientific criteria and found to be safe. That is, pesticides registered or reregistered after April 25, 1985.

Mr. President, this is a very significant distinction.

The argument thus far has been made between the Federal Government and States rights, and essentially the committee tried to strike a balance, a judicious compromise on this issue, and said, in essence, older pesticides, those that have not been registered or re-registered since April 25, 1985, would continue under current law where the States are free to set tolerances more stringent than the Federal tolerance. This date of April 25, 1985, represents the significant threshold point. All other pesticides clearly move along in the same area that is being argued eloquently by Senators on the floor today.

Second, the Agriculture Committee provided two specific avenues for a State to seek relief from a federally imposed tolerance on a pesticide approved after April 25, 1985. First of all, in the case of an imminent hazard with a substantial risk of serious harm to human health, in that sense, a State can act without delay to set a stricter tolerance. A State need only file a petition with the EPA after acting. State action remains in effect until EPA acts on that petition.

Second, another way where the State could overturn the Federal registration or reregistration ruling subsequent to April 25, 1985, is where an imminent hazard does not exist and a State could petition EPA under those circumstances for an exemption based upon, one, compelling local conditions which are likely to increase the need for tougher pesticide laws, or, two, on condition that the exemption would not unduly burden interstate commerce. Once such a petition is filed, a State must wait for the scientific advisory panel to review the merits of the petition and if EPA does not act within 60 days, the State is free to take whatever action it deems necessary.

Thus, Mr. President, there are at least two broad areas in which States can take action, where there is imminent danger for immediate action, and States rights hold until EPA has acted upon that petition.

There is a section of it that provides where there is not imminent hazard a State may act and the EPA has 60 days and the State may then be free to act however it deems necessary in behalf of the safety of its citizens.

Third, the committee amendment, and that is current amendment before us that the Senator from Minnesota is seeking to amend, provides that products to be marketed where the State will establish tolerance is exceeded if the pesticide residue in question was legal at the time of its application. That is important. Many of the 600 active ingredients to be registered under this bill are not likely to pass today's more rigid standards. With many products being canceled we simply must protect products in the pipeline or else products for farm use might be disrupted. The committee bill requires that EPA, in consultation with the Secretary of Agriculture, take action to minimize the duration of distribution of existing grain stocks that have residue in excess of State tolerance.

Fourth, the Agriculture Committee rejected all attempts to limit the authority of States and local governments to regulate pesticide registrations issued within their own domain. As under current law, States are absolutely free to request additional registration data to ensure that their residents are protected. Once the EPA and the State grant such a registration, then interstate commerce should be protected by having uniform tolerances established by the Federal Government.

Fifth, Mr. President, States are free to establish any pesticide tolerance residue level if the Federal Government has not established a tolerance. The argument that States need full authority to set tolerances because of inaction at the Federal level is discounted because of this fact.

Sixth, Mr. President, consumer confidence would be preserved under the committee amendment that the Agriculture Committee has adopted. Consumer confidence in the wholesomeness of the food supply could be jeopardized when State and Federal regulators set inconsistent residue standards and some foods are allowed to be

marketed in some States while not allowed in others.

Finally, Mr. President, as the distinguished Senator from Vermont [Mr. LEAHY] mentioned, the Agriculture Committee did accept an amendment offered by Senator LEAHY that would sunset this committee provision in 5 years and the committee would have to reevaluate at that time.

Mr. President, I appreciate these arguments may not be satisfactory to all Senators. Indeed, we have had a vigorous debate. But I wanted to put in context at least the action that the committee has taken. There has been serious consideration on the part of the Agriculture Committee of the need for States to act where the Federal Government has not acted. There is consideration of the need for States to act if there are old pesticides that have not been registered or registered very recently under very stringent standards. There may be occasions in which States, because of local conditions, or because of a feeling of imminent jeopardy to health and safety, wish to act. The bill that we are proposing not only permits this but offers full latitude for that action to take place while consideration proceeds. In other instances, it puts stringent requirements upon the EPA for action and lets the State simply be able to proceed in the event the EPA does not act in a timely manner.

For these reasons, Mr. President, we will oppose the amendment of the distinguished Senator from Minnesota.

Mr. DURENBERGER addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. DURENBERGER. Mr. President, I wanted to take just a minute to respond and maybe make two or three points.

Before I do that, Mr. President, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. DURENBERGER. Mr. President, I also ask unanimous consent that a letter addressed to me dated October 3, 1986, from the National Governors' Association be printed in the RECORD at this point.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

NATIONAL GOVERNORS' ASSOCIATION,
October 3, 1986.

Hon. DAVE DURENBERGER,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR DURENBERGER: I am writing, as Chairman of National Governors' Association Committee on Energy and Environment, to thank you for your leadership against the attempt to preempt state authority to establish tolerances for pesticide residues on food more stringent than federal minimum standards, and to urge your continued efforts against such preemption.

The Governors believe the proposal to preempt state authority over food tolerances is both unwise and unnecessary. In our view the federal government ought to set minimum standards for chemical residues on food. States must then be free, as they are under current law, to establish more stringent standards. This authority to fully protect the health and safety of their citizens is one of the state's most fundamental powers and reflects important constitutional principles.

The states' authority to regulate food safety also represents an important balance with federal decision making. In setting food safety standards, complex judgments must be made, often in the face of incomplete or uncertain data. The final decision is really only a value judgment regarding an appropriate balance of risks and benefits. So long as states have confidence in federal standards, there will be little, if any, incentive for them to adopt more stringent requirements. But when the federal government strikes a balance between risks and benefits which states consider inappropriate, states may feel an obligation to enact their own standards. It would be wrong for the federal government to insist that only its judgment on food safety is the correct one.

The record will show that the states' right to establish stricter pesticide standards has been exercised responsibly and only in exceptional situations. The record will also show that it has been this kind of state action—which would be virtually impossible under the proposed preemption—which has forced the Environmental Protection Agency to take long-overdue enforcement action on a number of dangerous pesticides.

The authors of this preemption maintain that their intent is to allow states the right to establish more stringent standards upon petition to the EPA. However, the unreasonable conditions that must be met to achieve the exemptions would make it virtually impossible for states to use the petition process.

We appreciate your efforts to develop comprehensive pesticide legislation that provides optimum protection to man and the environment without unduly limiting the availability and use of pesticides. The states play a critical role in protecting their citizens and natural resources that should be preserved.

We look forward to working with you in the days ahead to secure the passage of legislation that is also consistent with important federalism principles and that protects important states' rights.

Sincerely,

GOV. ANTHONY S. EARL,
Chairman, Committee on Energy and Environment.

Mr. DURENBERGER. Mr. President, our colleague from Indiana makes the argument preemption in this bill would not apply because the legislation has a cutoff date in it. I have to say there is something to the argument. The provision is certainly more acceptable than it would have been without the cutoff date in it. There is no question about that. But the problem is the EPA went right on making the EDB mistake through 1981, 1982, 1983, and 1984. They did not do anything about this until the States forced them to. If the States had not forced the EPA to act, they would still be making the EDB mistake today, in 1986.

EPA, Mr. President, is in the process of reregistering all of the pesticides marketed before the late 1970's. They continue to be a timid agency in this area. They choose not to regulate too often, waiting for further information.

In this past week, EPA's pesticide office declined to take significant action with respect to the pesticide called Aldicord despite having in its hands a memorandum from EPA's drinking water office asking that the pesticide be suspended on an emergency basis because is was contaminating the ground water.

□ 1740

The second point I make, I believe my colleague from Indiana talked about the 60-day emergency authority. I said we have held hearings for 2 years on the aftermath of EDB and we have found nowhere any need for this preemption. There is no evidence on the record that the States have abused their authority to regulate pesticides' residues on food and so I say to my colleagues we do not need the amendment, to say nothing of the 60-day emergency so-called protection from the amendment. Get rid of the amendment in the Agriculture Committee by adopting our amendment and we do not have to worry about emergencies.

If we adopt the amendment of the Agriculture Committee, there will then be no level of Government left which has adequate authority to protect the public from threats like that posed by EDB.

The amendment put in the bill by the Agriculture Committee is contrary to the general principles which are incorporated in every one or practically all of our environmental laws, all of which have served this Nation very well. The principles are designed to serve the authority and the role of State governments in our Federal system. They deserve to appear in the FIFRA legislation as well.

Mr. MELCHER. Mr. President, having listened to this entire debate, I want to assure all my colleagues and all consumers of the United States—for that matter, all consumers of the world, because many of the products that are produced in the United States are consumed abroad—that not only is Congress zealous in protecting the health of consumers in every way possible but, believe it or not, so are the two committees involved, the Agriculture Committee in the House and the Agriculture Committee in the Senate. There is nothing that will pass in conference that does not hold that uppermost.

How did this language evolve? It might be instructive to look at just

how it did evolve. The House Agriculture Committee developed the language, presented it to the entire committee for adoption. It was voted upon 31 to 9 in committee; practically the whole membership of the committee overwhelmingly voted on that. Then it was immediately withdrawn. A peculiar action, indeed; a peculiar action. I think consumers would want to know what goes on here: Offer the language for an important part of the bill, it is voted in overwhelmingly, 31 to 9, then a motion is made to reconsider and by voice vote, they reconsider and defeat the amendment.

Why? Something that, outside this Capitol and outside our immediate confines, is very difficult to understand. They withdrew it simply because it touched on different jurisidictions of different committees and they reserved it to present to the House floor, where the differing jurisdictions would have no—it is an arena where the jurisdictions of the various committees of the House or, for that matter, of the Senate, vote it up or down. So they voted it on the House floor and it carried. That is the language that we have in this bill before us today.

The question really is, and it is only one question: Should the States be allowed to set higher standards? The proponents of the amendment have presented it that way and have concluded that they should. So the question arises, What is the other side of the argument?

Of course, the other side of the argument is one that is tiresome even to talk about. When you are setting standards for some product, if it varies from State to State, there can be utter confusion.

The proponents of the amendment have made the argument that the States have this authority and they are not abusing that authority. I think that argument has some merit. They are not abusing that authority. But the question comes up then with the question of EDB, and that is a pretty good example of where some States took some action and they forced some corrective measures. That is good. That is good for consumers. So who worries about this?

Well, people who produce food and process food and put it in our supermarkets and make it available to us as consumers are somewhat worried about it. They should be worried about it if the States are going to set a number of different standards.

It is not easy to defend EPA. It is not easy to defend the Federal bureaucracy. They are very slow. They have a lot of people to consider and therefore, a lot of things they have to do—by law, mind you, set by Congress—before they can make their final determination. So it is partially our fault. I want to assure everybody that this bill does move forward in expediting that process and assure them that it is not only faster but it is more efficient and effective. We should not forget that.

The people that produce food and process it, sell it, if they should be faced with a series of circumstances where States have set a higher standard, there ought to be some method, some rhyme or reason, to that. Whether or not the amendment that got into this bill on the House side and the Senate side sets out the proper procedure for that I am not sure. But it does set out a procedure that has been negotiated by the proponents of this amendment to strike the legal law that now is. So there is a weakness there on the part of the proponents, Senator DURENBERGER, Senator MITCHELL, Senator COHEN, and others.

That is really a weakness because as far as I understand their amendment, they do not really address that part of it, they just leave the law the way it is. It is a little bit cumbersome and pretty much a burden on those who produce, process, manufacture, and retail the foods that we all consume.

I can find no fault in what we have been doing except what is the process by which a State is going to set a higher standard? That is what the language of this bill, passed by both the House and the Senate, at least goes forward and tries to correct. That is good. Whether the Durenberger amendment passes or fails, I can assure my colleagues that on behalf of the two committees, they are going to be very certain, whatever final language we come out with, as to two criteria: No. 1, and the paramount one, that the consumers' interest, the health interest, of the American public is protected; No. 2, that the mechanism of operating between Federal control and State control is one that is workable. Perhaps that means that whichever way you vote on this amendment, you are not going to let down the American consumer. That is my belief.

While I shall support the bill as it is before us, I recognize all of the arguments that have been made by the proponents of the Durenberger amendment. I share their concern.

□ 1750

I am not sure how they would treat that mechanism between State and Federal control in the future. I think on that point the amendment is weak, and for that reason I oppose it.

Mr. ZORINSKY. Mr. President, in the United States today the production, processing, and distribution of food are conducted on a national scale. Wheat that is produced in Nebraska ultimately may be used in frozen pizza produced in Ohio and sold for consumption in the Eastern States. It is because of this vast network of production and distribution that a great variety of fresh and processed food are available throughout the year to the residents of every State.

The delivery of food at affordable prices, in the variety that is currently available, is dependent upon a system of distribution that is free from undue burdens. Any disruption of the distribution of food from producer to consumer can result in substantial economic losses leading to higher prices for consumers.

Under current law, it is possible for the various State governments to set more stringent tolerances for pesticide residues in food than that set by the Federal Government. When one or more States acts to set such tolerance levels, the result can be chaos in the marketplace. We experienced this recently in the case of EDB.

The committee considered this possible adverse effect on interstate commerce and the legitimate interests of the States in ensuring the health of their residents. The provision that the pending amendment would strike was developed to try to balance these interests.

Under the bill, a tolerance level established by the Federal Government for a pesticide registered after April 25, 1985, could not be preempted under State law except in specific cases. States would be permitted an exemption from the Federal tolerance if a different level could be justified by compelling local conditions, would not unduly burden interstate commerce, and would not cause any food to be in violation of the Federal standard. A State would also be permitted to establish, for a limited period of time, a different tolerance in cases of an imminent hazard.

It also should be noted that the States would remain free to establish different tolerances for all pesticides registered prior to April 25. The committee believes that the States may have legitimate concerns over residue levels of these pesticides inasmuch as many of them lack sufficient health data.

Under S. 2792, the uniform tolerance provision will sunset at the expiration of the authorization period of the bill. This will ensure that the Congress will review the provision in 5 years to determine whether there are unseen adverse effects from its operation.

I urge my colleagues to oppose the amendment.

Mr. PROXMIRE. Mr. President, I rise in support of Senator DURENBERGER'S amendment to strike language preempting current rights of States to set stricter tolerances for pesticide residues on food than those set by EPA.

This provision was not contained in the original bill I cosponsored with Senator LUGAR nor was it the product

of the negotiations between the National Agricultural Chemical Association and the Campaign for Pesticide Reform. Instead, the preemptive language added by the Agriculture Committee resembles an amendment added on the House floor although the Senate version is wisely limited by a 5-year sunset period.

While it is true that the Senate uniform tolerance section would, in all likelihood, apply in very few cases, it is still unnecessary. No other environmental law prevents States from regulating more strictly than EPA, when, in their opinion, such strictness is required for protection of public health.

My own State of Wisconsin, a leader in pesticide regulation, wrote me strongly urging that I oppose the uniform tolerance language in the bill as a threat to their own program.

In the past, EPA was extremely slow in reacting to threats posed by chemicals such as ethylene dibromide [EDB], and Alar, which are present not only on raw agricultural products but also in processed goods such as cake mixes or applesauce. States stepped in to fill the gap left by EPA inaction.

With proper implementation, the new pesticides bill should eliminate the delays and bureaucratic redtape which plagued regulation of these chemicals and so many others like them. Then, the uniform tolerance issue may turn out to be largely symbolic. But until the new system gets tested, it makes no sense to abandon what has already proved an effective last resort against food contamination.

Mr. DURENBERGER. I yield back any time I may have on the amendment.

Mr. LUGAR. Mr. President, I ask unanimous consent that a series of letters sent by distinguished Governors of various States and departments of agriculture be submitted in the RECORD in support of the committee's action.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

OFFICE OF THE GOVERNOR,
Indianapolis, IN, July 29, 1986.

Hon. RICHARD G. LUGAR,
U.S. Senate,
Washington, DC.

Attention: Chuck Conner.

DEAR DICK: This letter serves to express my support of the National Uniformity Amendment to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). I am aware that shortly the Senate Committee on Agriculture Nutrition and Forestry will be considering this amendment and wanted you to know of our support.

Lieutenant Governor John Mutz and I count the maintenance and creation of an orderly marketing process for our many Indiana agricultural commodities amongst our major objectives. We are fortunate in Indiana to have a broad base of national and international markets. That being the case, we are interested in breaking down barriers to the distribution of our products. Certainly in the pesticide area, that is the intent of the proposed National Uniformity Amendment.

As proposed, there seems to be no significant threat to our right to set pesticide standards. That, also, is a most important consideration. If this prerogative were substantially diminished, I would have very serious concerns about this amendment. But, as proposed, there seems to be adequate provision for state action, while at the same time facilitating the interstate commerce of agricultural commodities.

The Indiana State Board of Health is also wholeheartedly in favor of this proposed amendment.

Thank you for your thoughtful consideration in this matter.

Sincerely,

ROBERT D. ORR,
Governor.

STATE OF MISSOURI,
July 16, 1986.

Hon. CHARLES STENHOLM,
U.S. House of Representatives, Washington, DC.

DEAR REPRESENTATIVE STENHOLM: I am writing in support of the amendment you are sponsoring to H.R. 2482, the Stenholm-Roberts National Uniformity FIFRA Amendment for Pesticides in Foods.

I feel that this amendment would greatly facilitate interstate agricultural commerce. We in Missouri would like to avoid cases of agricultural commodities marketers being met with a myriad of state requirements dealing with allowable levels of pesticides in and on food. National pesticide tolerances, developed through careful testing to ensure their scientific defensibility, would allow Missouri's agricultural commerce to be carried out in a more orderly manner.

I see no great threat posed by this amendment to Missouri's rights to set pesticide standards. The amendment's allowing States to petition the federal government for acceptance of a State requirement or prohibition regarding pesticide residues, as well as its allowing exemptions to federal standards for States in which unique local conditions require special attention, gives States the ability to strengthen federally established requirements and prohibitions.

This amendment would serve the best interests of Missouri's agricultural commodities marketers without compromising our state's rights. I believe it deserves passage.

Sincerely,

JOHN ASHCROFT,
Governor.

STATE OF CONNECTICUT,
DEPARTMENT OF CONSUMER PROTECTION,
Hartford, Conn, July 10, 1986.

Hon. HENRY WAXMAN,
House Health and Environment Subcommittee, U.S. House of Representatives, Washington, D.C.

DEAR REPRESENTATIVE WAXMAN: The Association of Food and Drug Officials (AFDO) is a non-profit organization founded in 1886 to provide a forum for food and drug regulatory officials from state, local and federal jurisdictions.

Among its many goals has been the sharing of information and results of regulatory actions designed to improve the marketplace for both consumers and manufacturers. Its networking is most effective because the regular membership includes representatives from all the states and the territory of Puerto Rico.

AFDO is committed to the principles of food safety standards uniformity in cases when it is obvious that such standards provide the best and most workable protection for the consumer. It became clear to many regulatory officials during the "EDB crisis" that the lack of a system to set quickly a uniform tolerance level resulted in widespread confusion further undermining the nation's consuming public's view of the ability of government to act quickly and to restore confidence in the country's food supply.

In light of this, the AFDO Executive Board has reviewed the Stenholm-Roberts National Uniformity FIFRA (H.R. 2482) Amendment for Pesticide Residues in Foods and supports its purpose. We believe the bill, through its petitioning process provision, provides the individual states with an opportunity for its public voice to be heard. Other provisions also insure the states' role in the regulatory process.

We believe that the amendments now offered to this bill provide a strong but flexible system which will promote the cooperative working of federal and state regulators. The aim of such cooperation, in this instance targeted towards the food supply, should be to assure the public that government has provided the best possible conditions for their public safety.

Respectfully yours,

MARY M. HESLIN,
Commissioner.

MICHIGAN DEPARTMENT OF AGRICULTURE,
Lansing, MI, April 28, 1986.

Hon. JESSE A. HELMS,
U.S. Senate, Dirkson Senate Office Building, Washington, DC.

DEAR SENATOR HELMS: The Association of Food and Drug Officials is a non-profit organization founded in 1896 to promote uniform food, drug and other consumer protection laws. Its members, principally regulatory officials, represent all states and the Puerto Rican Territory of the United States as well as federal agencies concerned with the above goals.

AFDO is committed to the principles of food safety standards uniformity. The AFDO executive board has reviewed a proposed amendment (drafted by the Grocers Manufacturers Association) to be inserted in H.R. 4513, page 86, after line 3 entitled "Sec. 33 Food Production and Marketing Uniformity" and believes it to be consistent with these goals of uniformity. The AFDO executive board supports these proposed amendments to H.R. 4513 which would amend the Federal Insecticides, Fungicides and Rodenticide Act, or others similarly dedicated to uniformity.

We urge your favorable consideration.

Sincerely,

E.C. HEFFRON, D.V.M.,
President.

Hon. PAT ROBERTS,
U.S. House of Representatives, Washington, DC.

DEAR REPRESENTATIVE ROBERTS: The American Farm Bureau Federation supports passage of the amendments to the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) contained in H.R. 2482. In addition, we strongly urge your support for the Stenholm-Roberts amendment on uniform tolerances which will be offered to H.R. 2482 during full House consideration. H.R. 2482 is the result of many months of discussions; and it is largely acceptable to agricul-

tural, industry and environmental interests. From an agricultural perspective, however, one critical provision is lacking and should be addressed. Specifically, it is the need for uniformity in the establishment of pesticide residue tolerance for feed and food commodities.

Federal law requires the Environmental Protection Agency to set permissible (safe) levels of residue of agricultural chemicals in foods. Federally approved label instructions to farmers allow for use of that product in a manner that will result in residues remaining below the scientifically established safe levels.

In recent years, however, we have seen activity by some states that set tolerance levels different from the federally established safe levels. The impact to agricultural producers is significant, and such actions place farmers in an impossible dilemma. Use of the product may preclude a farmer from legally marketing his crop in one or more states despite residue levels below the legal federal tolerance. A decision not to use a chemical could jeopardize crops or may result in reduced yields and income. When available, alternative chemicals could be used but may result in less effective crop protection and higher production costs.

The Stenholm/Roberts amendment seeks to address this serious problem that has disrupted the sale of agricultural products in domestic and foreign markets and caused difficult and costly management problems for farmers.

The Stenholm/Roberts amendment seeks to address this serious problem that has disrupted the sale of agricultural products in domestic and foreign markets and caused difficult and costly management problems for farmers.

In conclusion, we ask your support of H.R. 2482 and the Stenholm/Roberts tolerance amendment during floor consideration.

Sincerely,

DEAN R. KLECKNER,
President.

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA,
Washington, DC, June 4, 1986.

Hon. E DE LA GARZA,
U.S. House of Representatives, Washington, DC.

DEAR MR. DE LA GARZA: On behalf of the U.S. Chamber of Commerce, I respectfully request your support for the Food Production and Marketing Uniformity Amendments of 1986. We understand that Representative Pat Roberts intends to offer these amendments when the Agriculture Committee marks up the Federal Insecticide, Fungicide and Rodenticide Act reauthorization legislation (H.R. 4513) later this month.

These long-needed amendments provide for national uniformity in the regulation of pesticide residues in or on food while providing states and subdivisions of states with a major role in the regulatory process. This legislation strikes a careful balance between the need to produce and market food products without jurisdictional barriers and the right of states and their subdivisions to protect their citizens where special local circumstances pertain.

Conflicting or inconsistent standards and requirements for pesticide residues in food disrupt interstate commerce and result in an enormous cost to the food industry and consumers. What is far worse, inconsistent standards confuse consumers, weaken the credibility of federal and state regulatory authorities and undermine public confidence in the safety of the food supply. Consumer acceptance of the wholesomeness of the food supply is one of the most important assets farmers, ranchers and the entire food industry possess. This confidence is jeopardized when state and federal regulators set inconsistent residue standards. The amendments will remedy this situation and assure that federal and state resources and regulators work together to assure the public safety.

The Chamber appreciates your leadership on food and agriculture issues and respectfully requests your support of the Food Production and Uniform Marketing Amendments.

Sincerely,

ALBERT D. BOURLAND,
Vice President, Congressional Relations.

STATE OF NORTH CAROLINA,
DEPARTMENT OF AGRICULTURE,
Raleigh, NC, July 11, 1986.

Hon. HENRY A. WAXMAN,
House of Representatives, Room 2415, Rayburn House Office Building, Washington, DC.

DEAR CONGRESSMAN WAXMAN: The North Carolina Department of Agriculture supports the adoption of an amendment to FIFRA which requires uniform national tolerances for pesticide residues in agricultural commodities.

It is our opinion that the EPA has the mechanism and resources to acquire the data and to conduct the toxicological reviews necessary to establish pesticide residue tolerances on raw agricultural commodities before allowing a pesticide to be introduced into use in this country. The entire tolerance setting process used by the Agency is geared to establishing residue levels below which there should be no reasonable expectation of an adverse effect to the consumer. Most states do not have the resources to undertake a comprehensive program to establish residue tolerances on their own produce, much less the commodities entering a state through interstate commerce. Further, if the EPA process to establish tolerances is not sufficient to protect public interest and public health, then how do states assure that their process will perform any better?

I believe that if Congress fails to insist on nationally uniform tolerances for pesticide residues on food and feed which protect public health, not only do you risk public health but you also jeopardize our ability to conduct interstate and international commerce.

We have reviewed the amendment to FIFRA proposed by Representatives Stenholm (TX) and Roberts (KS) and find the proposal to be workable in accomplishing the requirement for uniform tolerances as well as providing a mechanism to allow for EPA consideration of a truly unique local situation.

I, therefore, respectfully request your favorable consideration of this important issue.

Cordially,

JAMES A. GRAHAM,
Commissioner.

STATE OF MICHIGAN,
DEPARTMENT OF AGRICULTURE,
Lansing, MI, July 16, 1986.

Re H.R. 2482.

Hon. CHARLES STENHOLM,
House of Representatives, 1232 Longworth House Office Building, Washington, DC.

DEAR CONGRESSMAN STENHOLM: It is fitting that Michigan indicate its support on behalf of the Stenholm-Roberts National Uniformity FIFRA (House Resolution 2482) amendment for pesticide residues in foods. It is fitting because it was the Dairy and Food Commissioner of Michigan, Elliott Grosvenor, in 1886 who, along with his counterpart in Ohio, established the then-named "National Association of Dairy and Food Departments" to combat the lack of uniformity in safety requirements for foods in interstate commerce. History shows Michigan and this association worked ten years to get a U.S. Food and Drugs Law and a Federal Meat Act along with a federal meat inspection program in 1906.

It has continued to be Michigan's position that safe and wholesome food is only assurable if states, in coordination and collaboration with federal agencies, enforce meaningful, founded requirements. Each of these regulating entities have inherent strengths, particular resource capabilities, and unique but logical preferential roles to serve in enforcement.

In general, states' enforcement agencies are in a preferential position for conducting surveillance, collecting samples and subsequent analysis, and communicating with consumers concerning pesticide residues in foods. Consumers have a right to timely investigations and meaningful methods of sampling and analyses, and they should be able to expect a governmental agency's enforcement efforts to be free of arbitrary or non-objective, biased influence.

Is there a place for a less reliable method of analysis? Is there a place for using a residue tolerance standard that has not been based upon the most recent data analyzed by experts in their respective disciplines? There is doubt resources necessary to establish pesticide residue tolerances and analytical methods are generally available in our states and means of mustering the necessary information from across the country and often internationally are not readily or at all within a state's capabilities. It appears obvious that, excluding unique cases or situations of an imminent hazard, this same base data must be generated and the same process used to determine the safety of a pesticide residue in a food stuff whether in a Great Lake state, west coast, or wherever. This assessment makes an assumption of the respect and desire for an equally high standard of the quality of life in all states.

It is no secret timely establishment of pesticide tolerances by federal agencies (the Environmental Protection Agency and U.S. Food and Drug Administration) have not always been forthcoming. Michigan, as many other states, have been anxious to see a greater emphasis, yes—commitment, on timely pesticide residue tolerance establishment. We believe these federal agencies have greater potential and real resources and are logical as the beacon for other useful, important resources, especially those splintered and sequestered among the states. House Resolution 2482 addresses the issue of initiating responsive action to a petition of a state with constraints to cause timeliness. Discretion beyond specified limits is simply not granted in HR 2482.

An expected statement is "States will have difficulty justifying food pesticide residue enforcement programs if residue tolerances are established at the federal level." In deference to the fact states can better employ surveillance sampling, analysis, enforcement, and related public communications, they can expand their effectiveness by uniform tolerances (and analytical methodology).

Uniformity allows state programs to have an additive effect with the program of all other states regulating a similar substance and similar food. By enforcing the same standards, the burden is shared and complemented among several states. States' testing resources are extended by sharing test results, as is currently done by Michigan, with certain other states and the FDA.

Michigan, as a producer of a great variety of fruits and vegetables (preceded only by California in variety) and a processor of billions of dollars worth of finished food products, realizes the impact non-uniform standards, including those of pesticides in or on foods, have upon marketing costs. In addition, unnecessary shunting and/or destruction costs coupled with selective distribution are borne by the populace for no public health benefit.

I believe, based upon years of experience as a food safety regulator in Michigan and contacts with similar persons in North America, that most food safety regulatory officials favor a uniform residue tolerance program with provisions such as provided in House Resolution 2482. This may be the result of experiences in which they attempted or were successful in establishing tolerances in the past based upon incomplete data or improperly analyzed data. By no means does this infer states consider broad federal standard setting authority over states as principle, but it does mean there are a few circumstances in which selective Federal authority over standard setting results in the greater benefit to the states. Michigan has, as of July 1986, adopted by statute, all EPA and FDA pesticide tolerances. This is further testimony to its literal support for the concepts within HR 2482.

On behalf of the people of the state of Michigan and the quality of life for the people of all states, I ask this letter of testimony be placed in the hearing record recommending support for the Stenholm-Roberts National Uniformity FIFRA (HR 2482) Amendment for Pesticide Residues in Foods.

Sincerely,

E.C. HEFFROM, D.V.M.,
Director, Food Division.

Iowa Department of Agriculture,
Des Moines, IA, May 3, 1986.

Hon. CHARLES GRASSLEY,
135 Hart Senate Office Building,
Washington, DC.

DEAR SENATOR CHUCK: I am writing this letter to you requesting that you consider co-sponsoring a bill to provide national uniformity in the regulation of pesticide residues. The bill is based on a three-part concept:

1. Uniform national tolerances for pesticide residues;

2. Relief and initiative petitions for state governments;

3. State regulatory involvement through a national advisory committee.

I am enclosing a suggested proposal and analysis of the bill.

Key elements of a national uniformity provision should include:

National uniformity in the establishment of tolerances for pesticide residues in food;

A provision permitting the states to petition for an exemption based on compelling and unique local conditions;

Local and state training assistance.

The legislation should not address:

Questions involving the registration of pesticides;

Issues concerning the application of pesticides.

The ability of analytical chemists to detect minute amounts of pesticide residues in food poses a major public policy question for Congress.

The Ethelyne Dibromide (EDB) experienced last year certainly focused attention on this policy issue. Consequently there is a pressing need to reform pesticide law to establish the clear policy of national uniformity in the application of pesticide residue safety decisions made by the EPA and FDA. EPA is charged by law to make safety decisions in the use of pesticides on raw agricultural commodities. FDA enforces those decisions. Legislation is needed to ensure that once all the parties have been heard, once all the science has been submitted and examined, a decision by EPA or FDA applies uniformly across the nation.

I am enclosing some information on background for the cause—"Food Production and Marketing Uniformity Amendments of 1985" and also a Section-by-Section Analysis of Food Production and Marketing Uniformity Amendments of 1985."

Support for the concept for national uniformity in the regulation of pesticide residues has come from the Iowa Corn Growers, Iowa Farm Bureau, Iowa Fertilizer and Chemical Company, and the Iowa Pork Producters Council.

I believe that the first two co-sponsors of this proposal are the Chairman of the Senate Agricultural Committee, Senator Helms, and the Ranking Democrat on the Committee, Senator Zorinsky.

I sincerely hope that you will also be listed as a co-sponsor prior to the introduction of the bill.

Thank you for your consideration and support of this type of legislation.

With my kindest personal regards, I remain

Sincerely yours,

R.H. LOUNSBERRY,
Secretary of Agriculture.

NORTHWEST HORTICULTURAL COUNCIL,
Yakima, WA, August 25, 1986.

Hon. MARK HATFIELD,
U.S. Senate,
Washington, DC.

DEAR SENATOR HATFIELD: The Northwest Horticultural Council supports the uniform tolerance amendment to the Federal Insecticide, Fungicide & Rodenticide Act (FIFRA) that has been adopted by the Senate's Committee on Agriculture, Nutrition and Forestry. We ask for your support for this amendment when the FIFRA legislation is debated by the full Senate some time after the Labor Day recess.

The apple, pear and cherry growers of Oregon and Washington need to market their fruit throughout the fifty states. Interstate commerce in our product should not be jeopardized by actions that may be hastily taken by individual states on incomplete information or as a result of emotional pressure. Questions regarding chemical residues on food are best left at the federal level with the Environmental Protection Agency. Anything other than this would only serve to unnecessarily endanger our nation's food delivery system.

While the amendment offered by the Committee on Agriculture, Nutrition and Forestry is not the total pre-emption of state law that we would like, it is a step forward. We, therefore, respectively ask your support of this much needed amendment.

Sincerely yours,

CHRISTIAN E. SCHLECT,
President.

NORTHWEST HORTICULTURAL COUNCIL,
Yakima, WA, August 18, 1986.

Hon. DON BONKER,
U.S. House of Representatives, Cannon Office Building, Washington, DC.

CONGRESSMAN BONKER: The Northwest Horticultural Council supports adoption of the Stenholm-Roberts amendment on uniform tolerances which will be offered to HR 2482 during full House consideration of the Federal Insecticide, Fungicide & Rodenticide Act (FIFRA).

The Council represents, through its member organizations, producers and shippers of apples, pears and cherries grown in Oregon and Washington.

While we would prefer a flat federal preemption in the area of pesticide residues on food in interstate commerce, we believe the Stenholm-Roberts amendment is a practical compromise between competing views on the subject. Commercial problems in shipping fruit throughout the fifty states would be horrible if each has total latitude to set its own pesticide residue levels. Some individual states might cave in to irrational fears and take unnecessary action lowering a particular chemical residue on food absent the scientific information available to the federal Environmental Protection Agency. The issue of safety is a serious one and should be decided with the best scientific evidence available. Once the safety issue has been decided, it should be applied uniformally throughout the fifty states.

It is not impossible to imagine certain state or local officials who might try to make their careers by being the first to ban or restrict a given pesticide that may be in the news. Our growers deserve better than to be left to the fate of fifty separate jurisdictions on this sensitive issue when the market in each state is vital to their sales effort. Safety is the paramount concern but it should be decided on a uniform basis at the national level. Only in the most exceptional case should a state, after certain procedures have been followed, be allowed to act on its own.

The Stenholm-Roberts amendment should be adopted by the House of Representatives when the FIFRA legislation is considered in September. We believe that reason dictates that the federal government be the primary decision maker regarding pesticide residue issues. Our growers should not be subjected to potential disruption of markets occasioned by the actions of state health officials who may be operating on less than complete scientific information or be subject to local political pressure. Again, to avoid the chaos which might occur if each of the fifty states were to set individual residue levels for each chemical, we urge your support of the Stenholm-Roberts amendment to HR 2482.

Sincerely yours,

CHRISTIAN E. SCHLECT,
President.

[Same letter mailed to the house delegation for Oregon and Washington.]

FLORIDA CITRUS MUTUAL,
Lakeland, FL, April 29, 1985.

Hon. PAULA HAWKINS,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR PAULA: The Officers and Board of Directors of Florida Citrus Mutual at their last meeting on April 10, 1985 fully considered a request from the Grocery Manufacturers of America, Inc. that Florida Citrus Mutual go on record in support of a proposed bill that would provide national uniformity in the pesticide residue tolerances in and on food and food products.

The Officers and Board of Directors of Florida Citrus Mutual unanimously went on record in support of the proposal, and we respectfully request your serious consideration of becoming a co-sponsor of this important piece of legislation. It is our understanding that Senator Jesse Helms and Senator Edward Zorinsky are co-sponsoring the bill, and we hope that after a full analysis you would become a co-sponsor as well. A copy of the proposed bill as well as a copy of explanatory documents are attached.

We believe that this bill as advanced will assure effective and uniform implementation of all laws regulating the safety of pesticides in food, and we further believe that this proposal would be beneficial to Florida citrus in particular, and to the entire State of Florida in general.

We look forward to working with and assisting you in passage of this legislation, and we stand ready to offer any additional information which you require on this proposal.

Thank you so much for your continued assistance.

Warm personal regards.

Sincerely,

BOBBY F. MCKOWN,
Executive Vice President.

FLORIDA FRUIT & VEGETABLE ASSOCIATION,
Orlando, FL, April 10, 1985.

Hon. PAULA HAWKINS,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR: A few years ago, Florida's experience with EDB demonstrated the necessity for national tolerance standards for food use chemicals. At the time, there were no Federal standards and the State rightly acted to protect the public. However, if each state set its own standards and they were different in each state, it would be virtually impossible for the producers in a state to adequately keep informed and track individual state activity. This could be particularly true to our Florida food producers where an extremely high percentage of production is shipped to other states.

I am attaching information recently received from the Grocery Manufacturers of America, Inc. We have been in discussion with them and fully agree with their effort to obtain Federal legislation to establish national uniformity in the application of pesticide residue safety decisions made by EPA and FDA.

The members of this Association, who produce a substantial portion of the vegetables, tropical fruit, citrus and sugar cane in Florida, request your backing of the legislation and your becoming a co-sponsor to the proposed "Food Production & Marketing Uniformity Amendments of 1985" Act which is attached. It is understood both Senators Wilson and Helms have agreed to sponsor the bill.

Please let me know if we can provide further information.

Sincerely,

KENNETH F. JORGENSEN,
President.

NORTHWEST FOOD PROCESSORS ASSOCIATION,
Portland, OR, June 3, 1986.

Subject: Pesticide residue uniformity.

Hon. BOB SMITH,
U.S. House of Representatives, Washington, DC.

CONGRESSMAN SMITH: We appreciate your vote in support of the Roberts' amendment in the Agriculture Committee on June 18.

Growers and food processors in the Northwest make every effort to produce products that are wholesome, safe and free from harmful residues. Since 80 percent of more of the processed fruits and vegetables from the Northwest are sold outside the region, it is vital to our industry that the residue regulations be uniform nationwide. Such uniformity would be accomplished through the Roberts' amendment.

We appreciate your vote in committee and ask that you continue supporting this amendment when it is offered on the House floor.

Sincerely yours,

DAVID A. PAHL,
President.

[Same letter mailed to Hon. Sid Morrison, Hon. Richard Stallings, and Hon. Tom Foley.]

CALIFORNIA LEAGUE OF FOOD PROCESSORS,
Sacramento, CA, May 23, 1986.

Subject: Support of food production and marketing uniformity amendment.

Hon. GEORGE E. BROWN,
U.S. House of Representatives, Washington, DC.

DEAR GEORGE: As you may know, Congressman Pat Roberts will soon offer a Uniformity Amendment to the Federal Insecticide, Fungicide and Rodenticide Act reauthorization under consideration by the Committee on Agriculture.

We strongly support this Amendment, copy of which has been sent to your office.

California and U.S. food processors have enough problems and do not need additional ones posed by each state enacting its own pesticide residue tolerances. This has already happened once resulting in a tremendous loss of perfectly good food. Currently it appears that we are being confronted with a similar situation with at least one state playing one-upmanship by enacting tolerances unnecessarily more restrictive than those approved by the EPA.

We urge your careful consideration of this Amendment and would be pleased to offer any additional information you may need to support our position.

Please let us know what your decision is on this matter.

Thank you.

Sincerely,

LAWRENCE K. TABER,
President.

CORNGROWERS ASSOCIATION OF NORTH CAROLINA, INC.,
Raleigh, NC, July 25, 1986.

Hon. JESSE HELMS,
Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR HELMS: I know that you understand how difficult it is for the agriculture community when states have different pesticide residue tolerances. We appreciate your support for the national uniformity amendments being offered in both the House and the Senate.

The National Corn Growers Association and the Corn Growers Association of North Carolina both support these amendments, and we would appreciate your continued support.

Sincerely,

TED IVEY,
President.

TEXAS CORN PRODUCERS BOARD,
Dimmitt, TX, May 27, 1986.

Representative CHARLES STENHOLM,
Longworth House Office Bldg., Washington, DC.

DEAR REPRESENTATIVE STENHOLM: It has been brought to my attention that Representative Pat Roberts will offer an amendment entitled the Food Production and Marketing Uniformity Amendment, during the mark-up of the Federal Insecticide, Fungicide and Rodenticide Act.

We in Texas Corn Growers believe we need a National Uniformity Amendment of some type in the development of Pesticide Residue Regulations. I have briefly reviewed this amendment and it would probably come as close to the changes needed as we know of now.

Please advise me of your views on this legislation. We seek your support for National Uniformity Amendment on insecticide and fungicide.

Sincerely,

CARL L. KING,
President, Texas Corn Growers Association.

CALIFORNIA GRAIN AND FEED ASSOCIATION,
June 11, 1986.

Hon. TONY COELHO,
U.S. House of Representatives, Washington, DC.

DEAR CONGRESSMAN COELHO: The California Grain and Feed Association, representing over 500 member firms who manufacture, handle and merchandise grain and feed products, urges your support for the Food Production and Marketing Uniformity Amendment to the Federal Insecticide, Fungicide and Rodenticide Act reauthorization.

This amendment, offered by Congressman Pat Roberts, provides for national uniformity in pesticide residue standards. California utilizes over 9 million tons of grain per year, of which 60 percent is shipped in from other states. The absence of a uniform system on a national level can have a serious effect on the efficient interstate movement of agricultural commodities.

Your support for this amendment in the Committee on Agriculture would be greatly appreciated by our members. Thank you for considering our views.

Sincerely,

PAUL W. STEPHANY,
Associate Director.

CORN REFINERS ASSOCIATION, INC.,
Washington, DC, July 8, 1986.

Hon. ROBIN TALLON,
U.S. House of Representatives,
Washington, DC.

DEAR CONGRESSMAN TALLON: Later this month when the House debates the Federal Insecticide, Fungicide and Rodenticide Act Reauthorization (H.R. 2482), an amendment will be offered to establish a nationally uniform system for regulating pesticide residues in food. We believe such a system is essential to the free commerce in food and can be achieved without jeopardizing food safety. We urge you to give your full support to this amendment.

Specifically, we seek your support for the Stenholm-Roberts-Coehlo national uniformity amendment. This amendment provides mechanisms for states to take immediate action against imminent hazards and to force federal action on specialized local problems or chronic hazards. At the same time, it halts the dangerous pattern of individual and uncoordinated state and local regulations which agriculture, the food industry and American consumers experienced in the EDB scare. Such chaotic responses are not only costly to the American economy, but also have the potential to disrupt the basic food delivery system, as the proliferation of inconsistent regulations forces food processors to leave markets because they cannot adapt to multiple sets of standards.

The lack of uniformity can be particularly damaging to an industry like corn refining, which processes over 800 million bushels of corn per year into starches, oils and sweeteners essential to thousands of finished food products. A residue panic, if it triggered irrational action against our products, could sweep entire aisles of the supermarkets clear without increasing consumer safety. We believe the national uniformity amendment can prevent such an occurrence, and we hope you will support it.

Sincerely,

ROBERT C. LIEBENOW,
President.

CALIFORNIA CHAMBER OF COMMERCE,
July 14, 1986.

Hon. HENRY WAXMAN,
U.S. House of Representatives,
Washington, DC.

DEAR MR. WAXMAN: The California Chamber of Commerce supports the Stenholm-Roberts Food Production and Marketing Uniformity Amendment.

Please make this statement a part of the hearing record.

Sincerely,

JAMES G. VAN MAREN,
Director, Agriculture Department.

FLORIDA CITRUS MUTUAL,
Lakeland, FL, April 29, 1985.

Hon. PAULA HAWKINS,
U.S. Senate,
Washington, DC.

DEAR PAULA: The Officers and Board of Directors of Florida Citrus Mutual at their last meeting on April 10, 1985 fully considered a request from the Grocery Manufacturers of America, Inc. that Florida Citrus Mutual go on record in support of a proposed bill that would provide national uniformity in the pesticide residue tolerances in and on food and food products.

The Officers and Board of Directors of Florida Citrus Mutual unanimously went on record in support of the proposal, and we respectfully request your serious consideration of becoming a co-sponsor of this important piece of legislation. It is our understanding that Senator Jesse Helms and Senator Edward Zorinsky are co-sponsoring the bill, and we hope that after a full analysis you would become a co-sponsor as well. A copy of the proposed bill as well as a copy of explanatory documents are attached.

We believe that this bill as advanced will assure effective and uniform implementation of all laws regulating the safety of pesticides in food, and we further believe that this proposal would be beneficial to Florida citrus in particular, and to the entire State of Florida in general.

We look forward to working with and assisting you in passage of this legislation, and we stand ready to offer any additional information which you require on this proposal.

Thank you so much for your continued assistance.

Warm personal regards.

Sincerely,

BOBBY F. MCKOWN,
Executive Vice President.

FLORIDA FRUIT & VEGETABLE ASSOCIATION,
April 10, 1985.

Hon. PAULA HAWKINS,
U.S. Senate,
Washington, DC.

DEAR SENATOR: A few years ago, Florida's experience with EDB demonstrated the necessity for national tolerance standards for food use chemicals. At the time, there were no Federal standards and the State rightly acted to protect the public. However, if each state set its own standards and they were different in each state, it would be virtually impossible for the producers in a state to adequately keep informed and track individual state activity. This could be particularly true to our Florida food producers where an extremely high percentage of production is shipped to other states.

I am attaching information recently received from the Grocery Manufacturers of America, Inc. We have been in discussion with them and fully agree with their effort to obtain Federal legislation to establish national uniformity in the application of pesticide residue safety decisions made by EPA and FDA.

The members of this Association, who produce a substantial portion of the vegetables, tropical fruit, citrus and sugar cane in Florida, request your backing of the legislation and your becoming a co-sponsor to the proposed "Food Production & Marketing Uniformity Amendments of 1985" Act which is attached. It is understood both Senators Wilson and Helms have agreed to sponsor the bill.

Please let me know if we can provide further information.

Sincerely,

KENNETH F. JORGENSEN,
President.

NORTHWEST FOOD PROCESSORS ASSOCIATION,
June 3, 1986.

Subject: Pesticide residue uniformity.

Hon. BOB SMITH,
Hon. SID MORRISON,
Hon. RICHARD STALLINGS,
Hon. TOM FOLEY,
U.S. House of Representatives,
Washington, DC.

CONGRESSMAN SMITH: We appreciate your vote in support of the Roberts' amendment in the Agriculture Committee on June 18.

Growers and food processors in the Northwest make every effort to produce products that are wholesome, safe and free from harmful residues. Since 80 percent or more of the processed fruits and vegetables from the Northwest are sold outside the region, it is vital to our industry that the residue regulations be uniform nationwide. Such uniformity would be accomplished through the Roberts' amendment.

We appreciate your vote in committee and ask that your continue supporting this amendment when it is offered on the House floor.

Sincerely yours,

DAVID A. PAHL,
President.

CALIFORNIA LEAGUE OF FOOD PROCESSORS,
August 15, 1986.

RE: Support for national uniformity pesticide amendment.

Hon. VIC FAZIO,
House Office Building,
Washington, DC.

DEAR VIC: As you undoubtedly know there is a major effort being made by the food industry to establish a system of National Uniformity for Pesticide Residues. This will insure the orderly marketing of our agricultural commodities.

California as well as other U.S. food processors have more than enough problems complying with Federal, State and local laws and regulations, and certainly do not need the additional burden of States enacting their own pesticide residue tolerances. There is no scientific supportable need for the States taking independent action in this area.

Over 90 percent of the food processed in California is shipped to other states and other countries—hence the critical need for National Uniformity. Various states have been playing one-upmanship by enacting tolerances unnecessarily more restrictive than those approved by the EPA. As a result there has been a severe economic impact on some companies, and in the long run the likely result of increased prices for food products to the consumer.

We urge your careful consideration of this amendment and ask for your support when it comes up for vote.

Our members are interested in what your position is on this issue. Thanks for your consideration.

Sincerely,

LAWRENCE K. TABER.

CALIFORNIA LEAGUE OF FOOD PROCESSORS,
May 23, 1986.

Subject: Support of food production and marketing uniformity amendment.

Hon. GEORGE E. BROWN,
U.S. House of Representatives,
Washington, DC.

DEAR GEORGE: As you may know, Congressman Pat Roberts will soon offer a uniformity Amendment to the Federal Insecticide, Fungicide and Rodenticide Act reauthorization under consideration by the Committee on Agriculture.

We strongly support this Amendment, copy of which has been sent to your office.

California and U.S. food processors have enough problems and do not need additional ones posed by each state enacting its own pesticide residue tolerances. This has already happened once resulting in a tremendous loss of perfectly good food. Currently it appears that we are being confronted

with a similar situation with at least one state playing one-upmanship by enacting tolerances unnecessarily more restrictive than those approved by the EPA.

We urge your careful consideration of this Amendment and would be pleased to offer any additional information you may need to support our position.

Please let us know what your decision is on this matter.

Thank you

Sincerely,

LAWRENCE K. TABER.

P.S.—Attached is a recent article by Professor Bruce N. Ames, Chairman of the Biochemistry Department, University of California, Berkeley.

CORNGROWERS ASSOCIATION OF NORTH CAROLINA, INC.,
Raleigh, NC, July 25, 1986.

Hon. JESSE HELMS,
Dirksen Senate Office Building,
Washington, DC.

DEAR SENATOR HELMS: I know that you understand how difficult it is for the agriculture community when states have different pesticide residue tolerances. We appreciate your support for the national uniformity amendments being offered in both the House and the Senate.

The National Corn Growers Association and the Corn Growers Association of North Carolina both support these amendments, and would appreciate your continued support.

Sincerely,

TED IVEY, *President.*

ILLINOIS PORK PRODUCERS ASSOCIATION,
Springfield, IL, May 30, 1986.

Hon. RICHARD J. DURBIN,
House of Representatives,
Washington, DC.

DEAR CONGRESSMAN DURBIN: As you know, our Association has always been interested and dedicated to delivering to the public a product that is of the highest quality and safety as possible. We are writing you with that same intent in mind as we inform you of our support for the Food Production and Marketing Uniformity Amendment.

The essential components of this program include:

1. A uniform nationwide system for the regulation of pesticide residues.

2. Enfranchisement of state regulatory officials in the development of pesticide residue regulations.

3. Provision for state or local officials to initiate the development of pesticide residue regulations.

4. Provision for exemption from the uniform national regulations where local conditions dictate unique regulatory approaches, or a condition of imminent hazard exists.

We believe this proposed program to be in the best interests of the public. The passage of this uniform national system is essential to provide an equitable marketplace for farmers, food processors and retailers. This amendment will help all of us address the concern today for public health and safety.

Sincerely,

JERRY KING, *President.*

TEXAS CORN PRODUCERS BOARD,
Dimmitt, TX, May 27, 1986.

Representative CHARLES STENHOLM,
Longworth House Office Building,
Washington, DC.

DEAR REPRESENTATIVE STENHOLM: It has been brought to my attention that Representative Pat Roberts will offer an amendment entitled the Food Production and Marketing Uniformity Amendment, during the mark-up of the Federal Insecticide, Fungicide and Rodenticide Act.

We in Texas Corn Growers believe we need a National Uniformity Amendment of some type in the development of Pesticide Residue Regulations. I have briefly reviewed this amendment and it would probably come as close to the changes needed as we know of now.

Please advise me of your views on this legislation. We seek your support for National Uniformity Amendment on insecticide and fungicide.

Sincerely,

CARL L. KING,
President, Texas Corn Growers Association.

CALIFORNIA GRAIN AND FEED ASSOCIATION,
June 11, 1986.

Hon. TONY COELHO,
U.S. House of Representatives,
Washington, DC.

DEAR CONGRESSMAN COELHO: The California Grain and Feed Association, representing over 500 member firms who manufacture, handle and merchandise grain and feed products, urges your support for the Food Production and Marketing Uniformity Amendment to the Federal Insecticide, Fungicide and Rodenticide Act reauthorization.

This amendment, offered by Congressman Pat Roberts, provides for national uniformity in pesticide residue standards. California utilizes over 9 million tons of grain per year, of which 60 percent is shipped in from other states. The absense of a uniform system on a national level can have a serious effect on the efficient interstate movement of agricultural commodities.

Your support for this amendment in the Committee on Agriculture would be greatly appreciated by our members. Thank you for considering our views.

Sincerely,

PAUL W. STEPHANY,
Associate Director.

CORN REFINERS ASSOCIATION, INC.,
1001 Connecticut Avenue, N.W.,
Washington, DC, July 8, 1986.

Hon. ROBIN TALLON,
U.S. House of Representatives,
Washington, DC.

DEAR CONGRESSMAN TALLON: Later this month when the House debates the Federal Insecticide, Fungicide and Rodenticide Act Reauthorization (H.R. 2482), an amendment will be offered to establish a nationally uniform system for regulating pesticide residues in food. We believe such a system is essential to the free commerce in food and can be achieved without jeopardizing food safety. We urge you to give your full support to this amendment.

Specifically, we seek your support for the Stenholm-Roberts-Coehlo national uniformity amendment. This amendment provides mechanisms for states to take immediate action against imminent hazards and to force federal action on specialized local problems or chronic hazards. At the same time, it halts the dangerous pattern of individual and uncoordinated state and local regulations which agriculture, the food industry and American consumers experienced in the EDB scare. Such chaotic responses are not only costly to the American economy, but also have the potential to disrupt the basic food delivery system, as the proliferation of inconsistent regulations forces food processors to leave markets because they cannot adapt to multiple sets of standards.

The lack of uniformity can be particularly damaging to an industry like corn refining, which processes over 800 million bushels of corn per year into starches, oils and sweeteners essential to thousands of finished food products. A residue panic, if it triggered irrational action against our products, could sweep entire aisles of the supermarkets clear without increasing consumer safety. We believe the national uniformity amendment can prevent such an occurrence, and we hope you will support it.

Sincerely,

ROBERT C. LIEBENOW,
President.

CALIFORNIA CHAMBER OF COMMERCE,
Sacramento, CA, July 14, 1986.

Hon. HENRY WAXMAN,
U.S. House of Representatives, Rayburn House Office Building, Washington, DC.

DEAR MR. WAXMAN: The California Chamber of Commerce supports the Stenholm-Roberts Food Production and Marketing Uniformity Amendment.

Please make this statement a part of the hearing record.

Sincerely,

JAMES G. VAN MAREN,
Director, Agriculture Department.

U.S. CHAMBER OF COMMERCE,
Washington, DC, July 24, 1986.

Hon. RICHARD G. LUGAR,
U.S. Senate,
Washington, DC.

DEAR SENATOR LUGAR: The U.S. Chamber of Commerce respectfully requests your support for the Food Production and Uniform Marketing Amendments of 1986. The Chamber understands that these amendments will be offered when the Committee on Agriculture, Nutrition, and Forestry marks up the Federal Insecticide, Fungicide and Rodenticide Act reauthorization legislation on July 30–31.

These long-needed amendments provide for national uniformity in the regulation of pesticide residues in or on food, while providing states and certain subdivisions of states with a major role in the regulatory process. Since consumers now rely on a nationwide market for practically all their food, rather than on local or regional production and markets as in the past, a national residue tolerance level without regard to state or county lines is essential. This legislation strikes a careful balance between the need to produce and market food products without jurisdictional barriers and the right of states and their subdivisions to protect their citizens where special local circumstances pertain.

Conflicting or inconsistent standards and requirements for pesticide residues in food disrupt interstate commerce and result in an enormous cost to the food industry and consumers. Inconsistent standards confuse consumers, weaken the credibility of federal and state regulatory authorities and undermine public confidence in the safety of the food supply. Consumer acceptance of the wholesomeness of the food supply is one of

the most important assets that farmers, ranchers and the entire food industry possess. This confidence is jeopardized when state and federal regulators set inconsistent residue standards. These amendments, more comprehensive than those to be offered by Representatives Stenholm and Roberts during House floor consideration of FIFRA, will remedy this situation by providing consistent, nationwide standards for all food-use chemicals. Moreover, these amendments assure that federal and state resources and regulators work together to assure the public safety.

The Chamber appreciates your leadership on food and agriculture issues and respectfully requests your support of the Food Production and Uniform Marketing Amendments.

Sincerely,

ALBERT D. BOURLAND.

STATE OF ILLINOIS
DEPARTMENT OF AGRICULTURE,
OFFICE OF THE DIRECTOR,
Springfield, IL, May 20, 1985.

Hon. ALAN J. DIXON,
U.S. Senate,
Washington, DC.

DEAR ALAN: Senator Pete Wilson has a proposed bill to provide national uniformity for pesticide residue regulation. I support the concept of legislation that will provide such uniformity.

I would like for you to consider becoming a co-sponsor with Senator Wilson on this issue. Consumers need to be assured that all food products are safe for consumption.

Thank you for your consideration.

Sincerely,

LARRY A. WERRIES, *Director.*

Mr. HELMS. Mr. President, I strongly oppose this amendment, which would strike a very important provision in the bill.

Mr. President, so many misstatements have been made about the provision the Senator seeks to strike that I think it is necessary to explain exactly what this provision does and does not do.

Basically, it provides for national uniformity in the regulation of pesticide residues in or on food in order to facilitate national production and marketing of all foods without jurisdictional barriers.

At the same time, this provision recognizes the needs of the States to establish tolerances stricter than the national levels. The provision permits a State to petition for an exemption from the national pesticide residue level if a different requirement is justified by, first, compelling local conditions; second, would not unduly burden interstate commerce; and, third, would not cause any food to be in violation of Federal law.

Mr. President, in addition, the provision allows a State to establish stricter tolerances in cases of an imminent hazard of a substantial risk of serious harm to human health until the EPA Administrator acts upon a State's petition for a differing requirement.

Mr. President, this provision has been modified drastically from versions discussed during last year's farm bill debate to address concerns raised by the environmental community. It represents a fair compromise among competing interests and strikes a careful balance between Federal and State authority to regulate public health and safety.

Furthermore, during the markup, the committee decided to put in a 5-year sunset for this provision. After 5 years, we will have a chance to see how this provision has worked.

Mr. President, I urge my colleagues to oppose this amendment, and vote to table it.

Mr. LUGAR. Mr. President, in a moment I shall move to table the Durenberger amendment, but prior to that I want to indicate to all Members that it would appear, after disposition of the Durenberger amendment, there will be offered by Senators a series of amendments that will be accepted by both sides, to the best of my knowledge. So it is possible that we could complete action on the bill quickly thereafter. I know Senators are eager to see the session come to an end, as I am, but that appears to be the roadmap ahead of us following disposition of this amendment.

Mr. PRYOR. May I pose a question to the distinguished manager, if I might, Mr. President.

Is the major controversy the Durenberger-Mitchell amendment? Is that the only amendment that will be considered major, to the best of the knowledge of the manager?

Mr. LUGAR. To the best of my knowledge, this is the only major amendment requiring a rollcall vote.

Mr. PRYOR. Will it require a rollcall vote on final passage of the bill? Has there been a request?

Mr. LUGAR. There has not been a request thus far of which I am aware. I yield to the distinguished Senator from Montana.

Mr. MELCHER. I know of no request.

Mr. PRYOR. I thank the managers.

Mr. LUGAR. We would hope to move without one unless there is a request.

Mr. President, I move to table the Durenberger amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk called the roll.

Mr. JOHNSTON (when his name was called). Mr President, on this vote, I have a pair with the distinguished Senator from New Jersey [Mr. LAUTENBERG]. If he were present and voting, he would vote "nay." If I were permitted to vote, I would vote "yea." I withhold my vote.

Mr. SIMPSON. I announce that the Senator from North Carolina [Mr. BROYHILL], the Senator from New York [Mr. D'AMATO], the Senator from Missouri [Mr. DANFORTH], the Senator from Alabama [Mr. DENTON], the Senator from Kansas [Mr. DOLE], the Senator from Utah [Mr. GARN], the Senator from Florida [Mrs. HAWKINS], the Senator from Pennsylvania [Mr. HEINZ], the Senator from Nevada [Mr. LAXALT], the Senator from Alaska [Mr. MURKOWSKI], the Senator from Delaware [Mr. ROTH], the Senator from Idaho [Mr. SYMMS], the Senator from South Carolina [Mr. THURMOND], and the Senator from Connecticut [Mr. WEICKER] are necessarily absent.

I further announce that, if present and voting, the Senator from North Carolina [Mr. BROYHILL] and the Senator from South Carolina [Mr. THURMOND] would each vote "yea."

Mr. CRANSTON. I announce that the Senator from Delaware [Mr. BIDEN], the Senator from Connecticut [Mr. DODD], the Senator from Hawaii [Mr. INOUYE], the Senator from New Jersey [Mr. LAUTENBERG], the Senator from New York [Mr. MOYNIHAN], and the Senator from Mississippi [Mr. STENNIS] are necessarily absent.

The PRESIDING OFFICER (Mr. PACKWOOD). Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 34, nays 45, as follows:

[Rollcall Vote No. 332 Leg.]

YEAS—34

Abdnor	Goldwater	McConnell
Andrews	Gramm	Melcher
Armstrong	Grassley	Nickles
Bentsen	Hatch	Pressler
Boren	Hecht	Quayle
Bumpers	Heflin	Simpson
Chiles	Helms	Stevens
Cochran	Kassebaum	Wallop
Dixon	Long	Wilson
Domenici	Lugar	Zorinsky
Ford	Mattingly	
Glenn	McClure	

NAYS—45

Baucus	Gorton	Nunn
Bingaman	Harkin	Packwood
Boschwitz	Hart	Pell
Bradley	Hatfield	Proxmire
Burdick	Hollings	Pryor
Byrd	Humphrey	Riegle
Chafee	Kasten	Rockefeller
Cohen	Kennedy	Rudman
Cranston	Kerry	Sarbanes
DeConcini	Leahy	Sasser
Durenberger	Levin	Simon
Eagleton	Mathias	Specter
Evans	Matsunaga	Stafford
Exon	Metzenbaum	Trible
Gore	Mitchell	Warner

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

JOHNSTON, for.

NOT VOTING—20

Biden	Garn	Murkowski
Broyhill	Hawkins	Roth
D'Amato	Heinz	Stennis
Danforth	Inouye	Symms
Denton	Lautenberg	Thurmond
Dodd	Laxalt	Weicker
Dole	Moynihan	

So the motion to lay on the table the amendment (No. 3237) was rejected.

(Later the following occurred:)

Mr. HATFIELD. Mr. President, I have checked with some of the leadership. I have been in a conference with the House on the continuing resolution. I must confess that, in dashing to the floor of the Senate, I thought we were voting up or down on the Durenberger amendment and I voted aye. I would like unanimous consent to reflect my thinking on that issue by being able to change my vote to no.

The PRESIDING OFFICER. Is there objection?

Mr. BYRD. Reserving the right to object, and I will not object, as I understand it, this changing of the vote to no would not alter the outcome.

Mr. HATFIELD. It would not change the outcome of the vote.

Mr. BYRD. I have no objection.

Mr. HATFIELD. I thank the Senator.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The foregoing tally has been changed to reflect the above order.)

□ 1810

Mr. DURENBERGER. Mr. President, I move to reconsider the vote by which the motion to lay on the table was rejected.

Mr. BOSCHWITZ. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator is seeking recognition.

Mr. LUGAR. Mr. President, I yield to the distinguished Senator from North Carolina.

Mr. HELMS. Mr. President, if I may have the attention of the Senators, is there any burning inclination to have a rollcall vote on final passage, if we get to it?

I hear none.

Would those who will be offering amendments require a rollcall vote?

Mr. DIXON. No, I will not.

I have an agreed amendment I am ready to offer.

Mr. METZENBAUM. Mr. President, I will not. I have two amendments and they will be accepted as I understand it.

Mr. HELMS. I did not understand the Senator.

Mr. METZENBAUM. I said I have two amendments. My understanding is both of them will be accepted.

Mr. HELMS. I believe that is correct.

□ 1820

Mr. President, with some feeling of security, I do not think there will be any more rollcall votes tonight.

The PRESIDING OFFICER. I might suggest, the amendment has not yet been agreed to and the yeas and nays have been ordered.

Mr. DURENBERGER. Mr. President, will the Senator yield?

Mr. LUGAR. Yes.

Mr. DURENBERGER. Mr. President, I move to reconsider the vote by which the motion was rejected.

Mr. MELCHER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DURENBERGER. Mr. President, if it is agreeable with the leadership on the Agriculture Committee to accept the amendment, I will move that we vitiate the yeas and nays.

The PRESIDING OFFICER. I cannot hear the Senator from Minnesota.

Mr. DURENBERGER. If it is agreeable with the chairman of the committee to accept the amendment, I will move to vitiate the yeas and nays.

Mr. LUGAR. We are prepared to accept the amendment.

The PRESIDING OFFICER. Is there objection?

Mr. MELCHER. Mr. President, we are prepared to accept it on this side.

The PRESIDING OFFICER. Is there objection? Without objection, the yeas and nays are vitiated.

The question is on agreeing to the amendment of the Senator from Minnesota [Mr. DURENBERGER].

The amendment (No. 3237) was agreed to.

AMENDMENT NO. 3239

Mr. MELCHER. Mr. President, I have an amendment at the desk and I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Montana [Mr. MELCHER] proposes an amendment numbered 3239.

Mr. MELCHER. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment reads as follows:

1. On page 122, lines 1 and 2, redesignate "(1)" and "(2)" as "(2)" and "(3)", respectively, and

2. On page 122 immediately before line 1 insert the following:

"(1) by redesignating clause (ii) as clause (ii)(I) and adding at the end of such clause the following new subclause:

"(II) If the term of a patent for a pesticide registered under this section is extended under section 158, Chapter 14 of title 35, United States Code, the amount of compensation to be paid under arbitration under subclause (I) for the use of data submitted to the Administrator for such pesticide shall be a fair share of the cost of producing the data plus a value premium not to exceed that share, as determined in the arbitration process. For pesticides for which the term of a patent has not been so extended,

(A) after the patent for the pesticide has expired, and

(B) there has elapsed a period of time equal to the regulatory review period for the original registration of the pesticide that occurred after the patent for the pesticide was granted, but not more than three years,

the amount of compensation to be paid under arbitration under subclause (I) for use of data submitted to the Administrator for such pesticide shall be as provided in the preceding sentence. If the Administrator has inadequate records to determine the regulatory review period, the amount of compensation to be paid for such use of data shall be as provided in the first sentence of this subclause (II) beginning three years after the patent for the pesticide has expired. The provisions of this subclause (II) shall become effective with respect to applications by persons, other than the original data submitter, filed with the Administrator after the date of enactment of the Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1986.

Mr. MELCHER. Mr. President, I yield to the distinguished assistant majority leader without losing my right to the floor.

Mr. SIMPSON. Mr. President, I very much thank the Senator from Montana.

Let me try to bring you a little up to date. The leader is necessarily absent at this moment. He very much wants to finish this measure.

I wish I could tell you that there would be no more rollcall votes, and I think that is the intent. But we do want to finish this measure tonight. I think, if these next two amendments go, or one, or whatever it is, and there is no indication to call for a rollcall vote, that there will not be any, but I cannot spring you yet, because we do want to finish it this evening.

Mr. DURENBERGER. Mr. President, will my colleague yield for a minute so I might move to reconsider the last vote?

Mr. MELCHER. Yes, I yield to my distinguished colleague from Minnesota to make his motion if I can have unanimous consent that I still retain the floor.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. DURENBERGER. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. MELCHER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. SIMPSON. Mr. President, I thank the Senator from Montana for his gracious assistance.

Mr. MELCHER. I thank my friend from Wyoming for the very fine encouragement that he gave us that there will not be any more rollcall votes and that we can go home tonight.

Mr. SIMPSON. Not yet.

Mr. MELCHER. Soon.

Mr. President, the amendment that I have presented is one to correct existing law regarding pesticides.

Under current law, all pesticides must be registered with EPA before they may be sold or otherwise distributed. When a pesticide comes off patent and a generic manufacturer wants to obtain a registration from EPA and enter the market with a similar product, he must purchase the right to cite health and safety data previously submitted to EPA.

The amendment that is now before us, Mr. President, gives us a method of doing that, which is workable and reasonable and permits generic pesticide manufacturers to get into the act.

The law does not provide any standard as to the compensation that must be paid. If a dispute arises between the parties as to the amount of compensation, it must be decided by binding arbitration. In the one case decided thus far, Stauffer Chemical Co. versus PPG Industries, the arbitrators required as compensation a payment of over five times the entire cost of producing the data. The generic producer could generate his own data but this takes from 5 to 7 years on an issue for which EPA has already been satisfied.

Unlike pesticides, when a human drug comes off patent, a generic manufacturer can enter the market simply by demonstrating to EPA that it is manufacturing the same chemical compound.

The amendment would not go as far as the provisions that relate to human drugs. It would merely provide a reasonable standard for determining data compensation to be paid by the manufacturer of a generic pesticide. The standard would be a fair share of the cost of producing the data plus a value premium not to exceed that share.

In those cases where the patent for the pesticide held by the original data submitter had been extended under the patent term restoration provisions of the FIFRA amendments of 1986, the standard would apply after the expiration of the extended patent. If there was no such extension of the patent, once the patent expired there would be a waiting period before the standard would apply, equivalent to the regulatory review period for registration of the pesticide by the original data submitter, but not to exceed a waiting period of 3 years. If there were inadequate records to determine the regulatory review period the standard would apply after a waiting period of 3 years subsequent to the expiration of the patent.

Mr. President, I ask unanimous consent that some addition material relating to this subject be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

FARMERS' STAKE IN REFORMING DATA COMPENSATION PROVISION OF FIFRA

Agricultural chemicals have made enormous contributions to the productivity of agriculture and the quality of farm produce. Basic manufacturers of pesticides spend hundreds of millions of dollars on research and development in developing new products. They are to be commended for this innovative effort. Farmers need the effective pesticides this R&D generates.

However, farmers are also interested in competitively priced pesticides especially during this time to economic adversity in order to keep their input costs to a minimum.

Greater competition in the pesticide industry can be achieved by making it easier for generic producers to enter the market. Changing the current "data compensation" provisions of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) would help advance that goal.

When a human drug comes off patent, a generic manufacturer can enter the market simply by demonstrating to the FDA that is is capable of producing the same chemical compound. Not so when a pesticide comes off patent. Current law requires the would-be generic manufacturer to submit enormous amounts of health and safety data to EPA in order to get a registration to allow marketing. The generic producer can either (1) generate his own data, which takes five to seven years; or (2) he can purchase the right to cite the data previously submitted to EPA according to a complex, lengthy and costly procedure from the originator.

Whichever avenue he pursues, farmer access to generic pesticides is delayed. It also means that because of the cost involved, the price will not be as low as it otherwise would be once the generic product is on the market.

Generic pesticide producers are looking at a range of options. The first is outright repeal of the whole data compensation process thus putting pesticides on the same footing as pharmaceuticals. There is great logic and considerable appeal in this approach. On the other hand, if approved by Congress, it might generate such strong opposition from some of the basic manufacturers that the passage of the FIFRA legislation would be endangered.

The alternative is to try to develop statutory language which would lend certainty to the data compensation process so that generic manufacturers can make a rationale decision about whether or not to enter the market. If a data compensation procedure is retained, the generic producers want the total cost to be capped at a reasonable level allowing them to enter the market with a reasonable expectation of success. Otherwise the farmer will not get the full benefit of generic production.

If there is any credibility to the argument of the basic manufacturers that they need to preserve their monopolistic pricing power beyond the life of the patent in order to provide the incentives for development of new pesticides, they should argue for a lengthening of the life of the patent. This is being provided in amendments (the patent term restoration—PTR—provision) to the FIFRA bill that would extend the patent to offset the time lost in marketing the pesticide because of the regulatory review period. The absence of data compensation in regards to drug manufacturing has not demonstrably meant less R&D investment.

The data compensation issue is all the more important at this time because we are approaching a window of time during which, over the next five years, 21 pesticides widely used by American farmers will come off patent. These constitute about 43 percent of all pesticides used by farmers at this time.

Hard cost estimates are difficult to come by, but by analyzing past experiences when pesticides have finally been produced by generic manufacturers and also by comparing domestic price levels with the prices that major producers charge for their products overseas, it is clear that a vigorous competition in the pesticide industry would significantly lower the price of generic pesticides to farmers, possibly as much as $2 billion over the next five years. (A detailed statistical analysis is attached.)

Thus the Congress, by declining to inject a hearty dose of competition, the pesticide industry could give the farmer a real break in imput costs which would be of benefits to his overall economic performances. And all of this could be done without further drain on the U.S. Treasury.

PESTICIDE PRODUCERS ASSOCIATION

PESTICIDE COSTS: THE POTENTIAL OF GENERIC SAVINGS

1. The following chart compares for three major products pre-patent expiration prices and prices in 1986 after the generic producer entered the market.[1]

PRODUCT TRADE NAME AND YEAR GENERIC ENTERED MARKET

	Phostoxin (1982) (kilograms)	Treflan (1985) (gallons)	Sutan (1984) (gallons)
Pregeneric prices	30.20	28.50	19.89
Prices after generics entered the market (1986)	24.28	21.43	17.90
Percent change in price	−19.6	−24.8	−10.0

Average price decrease = 18.1 percent.

2. The following chart shows prices during the period from 1983–1986 for three major pesticides for which there are currently no generic producers in the U.S.[1]

PRODUCT TRADE NAME

[In gallons]

Year	Furdan	Lasso	Lorsban
1983	40.72	17.73	26.80
1984	46.60	18.59	30.21
1985	44.82	18.61	29.59
1986	45.77	18.06	30.93
Percent change in price	+12.4	+1.9	+15.4

Average price increase = 9.9 percent.

The above pesticides were selected at random and are representative of those products which are currently being used in U.S. Agriculture.

The foregoing charts show the impact of generic pesticides on the U.S. agricultural economy. When generic products enter the market, the farmer saves an average of 28 percent (the total of amount in 1 and 2 above).

In the next five years, the patents will expire on over 45 percent of pesticides currently used in the United States (the total U.S. pesticide market in 1985 was approximately $3,200,000,000). If these products were available to our farmers from generic pesticide manufacturers, the potential

[1] Farmland Industries, Inc., detailed sales information.

saving could be $420,000,000 to $500,000,000 per year.

When generic pesticide producers enter the market following the expiration of a patent they generally only capture 10 percent to 20 percent of the existing market; however, their over-all impact on prices can be seen by the previous examples.

As a result of a recent arbitration decision, it has become difficult for any generic manufacturer to enter the market on a timely basis and at a reasonable cost. The arbitration award required the generic manufacturer to pay compensation to the original data submitter in the amount of over five times the cost of producing the data for the privilege of citing the data in its registration application.

Generic manufacturers are reluctant to attempt to enter markets when their potential data compensation costs will exceed their profits for many years. Their alternative is to produce their own data which will take from 5 to 7 years after the patent has expired. The loser in this case is our farmers and ranchers who will continue to pay higher prices for their pesticides during this period of agricultural hardships.

Congress has an opportunity to correct this inequity by amending the current law to provide for a reasonable compensation to be paid by generic producers. This amendment would not cost the tax payers any money and could result in savings to our farmers of as much as $500,000,000 per year.

Mr. MELCHER. Mr. President, this amendment has been, of course, agreed to on this side. It is my understanding that the distinguished subcommittee chairman, the manager of the bill, Senator LUGAR, is prepared to accept it also.

Mr. LUGAR. Mr. President, the distinguished Senator from Montana is correct in his assumption. The amendment is a controversial amendment. We did have discussions on it in the committee with a clear division of opinion. Nevertheless, we are intent upon trying to move this bill along. The distinguished Senator from Montana has been a thoughtful participant in this debate, as in so many others, and we are prepared to accept the amendment.

Mr. MELCHER. I thank the Senator.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment.

The amendment (No. 3239) was agreed to.

Mr. MELCHER. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. LUGAR. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3240

Mr. DIXON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Illinois [Mr. DIXON] proposes an amendment numbered 3240.

Mr. DIXON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment reads as follows:

On page 137, strike lines 8 through 25 and on page 138, strike lines 1 through 21, and insert the following in lieu thereof:

SEC. 801. AUTHORITY OF STATES.

"(a) STATE REGULATION.—

"(1) IN GENERAL.—A State may regulate the sale or use of any federally registered pesticide or device in the State, but only if and to the extent the regulation does not permit any sale or use prohibited by this Act.

"(2) HOUSEHOLD ANTIMICROBIAL PESTICIDES.—

"(A) This paragraph shall apply to any household antimicrobial pesticide where—

"(i) the pesticide is a formulated end-use product which, as registered, is not intended for use on food or feed;

"(ii) the pesticide has been registered under section 3(c)(5), or reregistered under section 3A, after the effective date of the Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1986;

"(iii) the Administrator has determined that the product as so registered or reregistered poses no significant toxicological concern;

"(iv) the Administrator has published the determination of no significant toxicological concern in the Federal Register;

"(v) the registrant of the product has offered, at the time the registrant provides the final product label to the Administrator, to provide under the conditions of this Act to the appropriate State authority any date submitted by the registrant to the Administrator in support of the registration; and

"(vi) at least 45 days have elapsed from the date upon which an application for State registration has been filed.

"(B) A State may not prohibit any sale or use permitted under this Act of a pesticide described in subparagraph (A) for which an application for State registration has been filed unless and until the State has finally acted on such application pursuant to applicable State law.

"(C) This paragraph shall cease to be effective five years after the date of enactment of the Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1986 and shall not be construed during the five year effective period to (i) preclude a State from requiring in the State registration process submission of additional data beyond that required by the Administrator or (ii) otherwise affect State authority to regulate the sale or use of a pesticide when final action is taken under State law.".

Mr. DIXON. Mr. President, the amendment I have offered is an amendment that has been cleared with both the distinguished manager of the bill and the distinguished ranking member. This amendment addresses concerns which have been raised by some environmental groups that the class of household and garden pesticides covered by the language of the bill in its present form is too broad. It narrows the scope of a previous amendment, which I sponsored and which was adopted during markup on this legislation, by the Senate Agriculture Committee.

To accommodate this concern, new language has been worked out which has the support of the campaign for pesticide reform, the National Association of Agricultural Chemicals, and Sterling Drug, Inc. This amendment narrows the class of products covered to household antimicrobial pesticides and makes certain other modifications which are agreeable to all parties.

The purpose of the new paragaph 24(a)(2) of the act is to facilitate the movement of certain household antimicrobial products into commerce once the appropriate Environmental Protection Agency [EPA] registration for the product has been obtained. It addresses a problem in current law where a substantial time lag exists between Federal and State registrations in some States, resulting, for example, in situations where manufacturers can become subject to State recalls because distributors of their products send them to States where the product has not yet been registered under the State system.

On the other hand, this provision recognizes the legitimate interests of States and the right of States to make independent registration decisions. The amendment seeks to strike a reasonable balance between a household antimicrobial product manufacturer's need for nationwide product distribution upon EPA registration and requirements for State registration.

First, it is understood that the amendment is strictly limited to household antimicrobial pesticide products generally available from retail outlets such as grocery stores.

Second, the amendment is further limited to those household antimicrobial pesticides which are formulated products not intended for use on food or feed.

Third, the amendment applies only to household antimicrobial products registered or reregistered pursuant to the amended act. Thus, the more vigorous procedures of the amended act and review under contemporary scientific standards add further assurance that public health concerns will not be compromised.

Fourth, the Administrator must determine that the pesticide poses no significant toxicological concern and publish that determination in the Federal Register. This publication is intended to give clear notice to the States and public at large that EPA has registered the product and has determined it poses no significant toxicological concern.

Fifth, the registrant must offer to the State, at the time the registrant provides the product label to the Administrator, to provide under the conditions of FIFRA the date supplied to

the Administrator in support of the registration application. Further, the registrant must defer marketing until 45 days after filing the State registration application. Where a State grants a State registration within less than 45 days, the registrant may of course begin marketing in that State notwithstanding this provision.

Once the above conditions are satisfied, and only then, is the operative language of the paragraph triggered. At this stage, the State may not prohibit the sale or use of the product unless the State, pursuant to State law, has finally acted upon any applicable State registration of the product.

In a sense, then, the EPA registration operates as a conditional State registration. Thus, the amendment solely addresses the timing of such State action and in no way is a States ultimate authority to register or otherwise restrict the sale or use of a pesticide limited by this provision.

For example, if the household antimicrobial pesticide product manufacturer puts the product on the market in a State pursuant to this paragraph, that manufacturer unequivocally assumes the risk that the State may subsequently deny the State registration. Of course, this could necessitate a recall, but that is the risk the manufacturer must be deemed to have assumed. To avoid any such potential cost or regulatory risk, the manufacturer may simply not market the product in the State until the State has finally acted upon the State registration. If there is a significant risk that the State would deny or limit registration even though EPA has registered the product, it is up to the manufacturer to assess that risk and to act accordingly.

Finally, the last subparagraph provides that the provision will cease to be effective 5 years after the date of enactment. In addition, it provides that the provision does not preclude a State from requiring additional data beyond that required by the Administrator or otherwise affect State authority to regulate the sale or use of a pesticide when final action is taken under State law.

Mr. LUGAR. Mr. President, I commend the Senator from Illinois on a constructive amendment. We are prepared to accept it on this side.

Mr. MELCHER. Mr. President, we have examined the amendment and find it acceptable and urge its adoption.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from Illinois [Mr. DIXON].

The amendment (No. 3240) was agreed to.

Mr. DIXON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. LUGAR. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3241

(Purpose: To provide greater protection to American consumers from hazardous pesticides)

Mr. METZENBAUM. Mr. President I send an amendment to the desk on behalf of myself and Senator HARKIN, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Ohio [Mr. METZENBAUM], for himself and Mr. HARKIN proposed an amendment numbered 3241.

Mr. METZENBAUM. Mr. President, I ask unanimous consent further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment reads as follows:

On page 100, between lines 13 and 14, insert the following new section:

SEC. 505. COOPERATION IN INTERNATIONAL EFFORTS.

Subsection (d) of section 17 (7 U.S.C. 136o(d)) is amended to read as follows:

"(d) COOPERATION IN INTERNATIONAL EFFORTS.—The Administrator shall—

"(1) in cooperation with the Secretary of State, other appropriate Federal agencies, and nongovernmental and international organizations, actively participate in international efforts to develop improved pesticide research and regulatory programs; assistance to develop comprehensive pesticide regulatory programs;

"(2) provide foreign countries with technical assistance to develop comprehensive pesticide regulatory programs;

"(3) within 1 year after the effective date of the Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1986, and each 3 years thereafter, conduct and publish a survey of all countries that import pesticides from United States exporters or from which the United States imports agricultural commodities, to ascertain what procedures are in place in each country—

"(A) regarding registration, labeling, and training to ensure safe handling, transportation, application, and disposal of pesticides; and

"(B) to control residues on foods to meet tolerances established under United States law, and

"(4) report to Congress annually on the activities conducted under this subsection and the results thereof.".

On page 126, line 7, strike out "three" and insert in lieu thereof "two".

On page 135, line 14, strike out the closed quotation marks and the following period.

On page 135, between lines 14 and 15, insert the following:

"(d) This section shall cease to be effective after September 30, 1993.".

On page 135, line 18, strike out "Except as provided in paragraph (2), during" and insert in lieu thereof "During".

On page 136, strike out lines 8 through 11.

On page 136, line 12, strike out "(3) Paragraphs (1) and (2)" and insert in lieu thereof "(2) Paragraph (1)".

On page 136, line 16, strike out "(4)" and insert in lieu thereof "(3)".

On page 136, line 20, strike out "paragraph (3)" and insert in lieu thereof "paragraph (2)".

On page 136, line 22, strike out "(5)" and insert in lieu thereof "(4)".

On page 143, between lines 13 and 14, insert the following new subsection:

(e) TOLERANCES FOR AGRICULTURAL COMMODITIES.—

(1) REVOCATIONS AND SUSPENSIONS.—Section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a) is amended by adding at the end the following new subsection:

"(p)(1)(A) If the registration of each pesticide containing a specific active or inert ingredient registered for use on a particular raw agricultural commodity—

"(i) has been canceled by the Administrator under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.);

"(ii) has voluntarily been canceled under such Act; or

"(iii) has voluntarily been withdrawn under such Act;

due in whole or in part to dietary risks to humans, the Administrator, not later than 60 days after the effective date of such cancellation or after receipt of information of such withdrawal, shall revoke any tolerance established under subsection (b) for residues of such pesticide chemical in or on such commodity or any exemption from the need for such tolerance established under subsection (c). In revoking a tolerance or an exemption from a tolerance, the procedures required under section 553 of title 5, United States Code, shall be used.

"(B) The effective date of a revocation under subparagraph (A) may be delayed to permit distribution in commerce of food that bears residues of the active or inert ingredient as the result of—

"(i) the use of the canceled pesticide before the date of its cancellation;

"(ii) the use of existing stocks of such pesticide as authorized under the order canceling the registration of the pesticide; or

"(iii) unavoidable residual environmental contamination.

"(2) If the registration of each pesticide containing a specific active or inert ingredient registered for use on a particular raw agricultural commodity has been suspended by the Administrator under the Federal Insecticide, Fungicide, and Rodenticide Act due in whole or in part to dietary risks to humans, the Administrator, not later than 60 days after the effective date of such suspension, shall suspend any tolerance established under subsection (b) for residues of such pesticide chemical in or on such commodity or any exemption from the need for such tolerance established under subsection (c). The effective date of such suspension may be delayed to permit distribution in commerce of food that bears residues of the active or inert ingredient as the result of—

"(A) the use of the suspended pesticide before the date of its suspension;

"(B) the use of existing stocks of such pesticides as authorized under the order suspending the registration of the pesticide; or

"(C) unavoidable residual environmental contamination.

In suspending a tolerance or an exemption from a tolerance, the procedures required under section 553 of title 5, United States Code, shall be used. The suspension of a tolerance or an exemption from a tolerance for

a pesticide chemical shall be effective as long as the registration of the pesticide to which the tolerance or exemption is applicable is suspended under the Federal Insecticide, Fungicide, and Rodenticide Act. If the registration of the pesticide ceases to be suspended and is not canceled under such Act, the Administrator shall rescind any such suspension of a tolerance or exemption.

"(3) At the time the Administrator makes a determination under section 3A(h)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act regarding an ingredient of a pesticide, any tolerance established under subsection (b) for residues of a pesticide chemical that is or contains such ingredient or any exemption from the need for such a tolerance established under subsection (c) or a food additive regulation for residues of a pesticide chemical established under section 409 shall be reassessed.

"(4)(A) At such time, the Administrator shall—

"(i) make a determination whether such tolerance, exemption from tolerance, or regulation meets the requirements of this Act; and

"(ii) confirm, establish, amend, or revoke such tolerance, exemption, or regulation in accordance with the requirements of this Act.

"(B) Any such tolerance, exemption, or regulation shall not become effective until the Administrator determines that a practical method for detecting residues in or on food or feed is available in order to enforce such tolerance, exemption, or regulation.".

(2) PROCEDURE.—Section 408(m) of such Act (21 U.S.C. 346a(m)) is amended by striking out "The" and inserting in lieu thereof "Except as provided in subsection (p), the".

On page 202, line 22, insert after "Act)" the following: ", and section 408(p)(3) of the Federal Food, Drug, and Cosmetic Act (as added by section 801(e)(1) of this Act),".

Mr. METZENBAUM. Mr. President, I have great concerns about the provisions for patent extension in this bill. I do not believe that the patents should be extended beyond 17 years, but I have decided to go along with the provisions that are in the bill for those extensions provided there are certain modifications as provided for in this amendment.

The amendment reduces somewhat the extension for pesticides currently under regulatory review, those that are in the pipeline, those that are being worked on. It would provide those would be reduced from a 3-year extension to a 2-year extension. It provides for the generic companies trying to get into the market to have an extra year of testing to give them a chance to get on the market faster.

And it limits—and this is the critical part, as far as I am concerned—the duration of a patent extension provisions to 7 years so Congress can get some idea of its effect and and can make an informed judgment about the benefits to the public from patent extensions.

There is a rather interesting development around here. Every time you turn around, somebody has an idea about extending the patents—extending patents for drugs, extending patents for those products involved in this particular legislation having to do with pesticides, extending patents for some other chemicals. All of a sudden, the 17-year limit with respect to the patents is to become 20 years and 22 years and 27 years. The real question is: Why? And the only one good answer as to why is because there is an effective lobby around here, and it is able to prevail on some Members of Congress to agree with them to go along with the extension. There is not any other single reason to give an extension for patents.

I do not believe in patent extension. However, rather than tying up this whole bill at this late point in the session, I have agreed to go along with the extension, provided that there was a sunset provision in it.

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Should it go to the conference, and should that provision be dropped, I give fair warning that this Senator will do everything possible to kill the whole bill. I say that as sincerely as I possibly can. I am willing to go along with the provision that is offered with this amendment. Senator HARKIN joined me in this amendment. He offered an amendment in committee very similar to the part of this amendment dealing with revoking tolerance levels for pesticides. But if it is changed, once it goes to conference, then I will make every effort to defeat the entire bill. I do not think that would be good because there are some good provisions in this bill.

Let me also describe the other provisions of this amendment dealing in the pesticide safety.

This amendment provides for international cooperation in research on pesticides for revoking the permitted tolerance level for a pesticide if it is suspended or canceled, and for reassessing the appropriate tolerance levels for pesticides when a pesticide is re-registered. By requiring that tolerance levels for banned pesticides are revoked, Americans will not be exposed to food imported from abroad which contains dangerous pesticides.

This amendment provides for more competition in the market for pesticides, it gives Congress an opportunity to reassess the effects of patent extension, and it provides further protection to the American public from pesticides found to be dangerous.

Mr. HARKIN and Mr. WILSON addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Mr. WILSON. Mr. President, I send an——

The PRESIDING OFFICER. Excuse me. There is an amendment pending at the desk.

The Senator from Iowa.

Mr. HARKIN. Thank you, Mr. President.

I rise in support of the amendment offered by the distinguished Senator from Ohio. Mr. President, there are a couple of parts of the amendment now under consideration. The first part of the amendment has to do with the patent limitation as aptly described by the distinguished Senator from Ohio. The other part of it deals with the amendment that I offered in committee dealing with pesticide residues in imported foods that come into this country.

The situation, Mr. President, as it exists right now is that for certain pesticides we have a zero tolerance in this country. In other words, they are banned like DDT. Ethylene dibromide is banned in the United States. Therefore, since it is banned, there is a zero tolerance level for those pesticides in this country. However, Mr. President, the United States is the world's largest single producer of pesticides. Nearly 40 percent of our total pesticide production is exported. What happens is that we export these pesticides that are banned in this country. We actually produce pesticides in this country which are banned but which are permitted to be used in other countries. So we export them to those other countries. Those other countries use those pesticides that are banned here on their fruits, vegetables, and coffee beans and other things. We import that food into this country with residues of those pesticides on it. Our consumers are unsuspecting victims of the fact that these banned pesticides are in residues in food that come into this country.

Right now, Mr. President, we import a significant amount of fresh fruits and vegetables into the United States. Six percent of all vegetables, I might point out one-third of all cucumbers, 25 percent of all fruits, and 98 percent of all coffee beans are imported into the United States. What happens is that the Third World farmers are often untrained in the safe and proper pesticide use. These pesticides are banned in the United States. But we export them to these countries. They turn around and come back in. A GAO report in 1979 noted that in a sample of the top 10 exporting nations 76 out of 94 different pesticides allowed for use of coffee beans have no U.S. tolerance. Seventy-six out of 94 pesticides allowed to be used to spray coffee beans have no allowable U.S. tolerance. Yet, they come into this country with the coffee that we import.

Professor Pinental at Cornell University estimates that as much as 75 percent of the pesticides used in developing nations will be classified as illegal for use in the United States, and 75 percent of them would be classified as illegal for use in the United States. I might also point out that overall pesticide use in these countries has been increasing in the last decade.

I take the case of ethylene dibramide which has been discussed at length here today. EBD is banned in the United States. But we still produce it here and export it. It is readily available to most foreign food growers. So it is used on citrus crops in other countries, and those are imported into this country. Again, our consumers are unsuspecting victims.

A significant portion of the pesticide used on imported fruits and vegetables have in fact been banned. For example, aldrin and dieldrin which are carcinogenic insecticides banned for use in the United States are permitted for use in coffee beans in the major coffee producing countries. Costa Rica for example also allows for chlordane, another chemical banned in the United States to be used on coffee. The FDA results reveal many of the major food commodities imported into this country arrive and over half of their shipments containing technical levels of pesticide residues. In stark contrast to domestically grown food items imported goods have twice as many food quality violations.

Mr. President, I spoke about the fact that our consumers are unsuspecting victims of this. But I also might point out it is unfair to our farmers. We do not allow our farmers to use ethylene dibromide for example in Florida. They cannot use it on their citrus crops, but you go across the water a little ways to Latin America, Haiti, or the Dominican Republic, and they can use ethylene dibramide and ship it right into this country. It is unfair to our farmers that we tell them you cannot use pesticides, chlordane, aldrin, or ethylene dibramide, but we manufacture it, ship it to other contries, they can use it, and then compete with our farmers.

So any way you want to look at it, from the consumer angle, that our consumers are consuming untold quantities of pesticide residues that are banned in this country or if you want to look at it from the standpoint of protecting our farmers, our farmers are being unfairly competed against by these other farmers in other countries using banned pesticides which our farmers cannot use.

Any way you want to look at it, the amendment offered by the distinguished Senator from Ohio is a good amendment. I hope it will be adopted. I hope that we can put our same level of zero tolerance on the foods we import into this country as we have on the foods that are grown domestically.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Is there further debate?

Mr. BURDICK. Mr. President, this amendment is a necessary addition to the legislation before us. One of its most important features is that it assures the public that all foods marketed in the United States meet the same high standards of safety. The amendment states that foods imported into this country will be subject to the same health-based residue tolerances as domestic foods. In the interests of the health and well-being of our citizens we should demand no less. Is a chemical any less dangerous because it is applied to food in a foreign country, rather than in our own country? In many countries the rules governing pesticide application as well as the actual day-to-day practices involving their use, are much less stringent than those which we require.

It is the time honored requirement that goods which are intended to enter the U.S. market, meet the health and safety standards of the United States. This is not an infringement on free trade, it is common practice. We require for example that automobiles intended for import into this country be equipped with the seatbelts, and the pollution control devices required in domestically manufactured cars. The same standard should be applied here.

In addition, by requiring these tolerances for imported food, we are insuring that our own farmers are not trying to compete for the domestic market at a disadvantage. Is it fair for farmers in other countries to be able to grow foods for our markets using chemicals denied our own farmers? It is not. Let us then ensure that the American consumer is protected from exposure to levels of chemicals known to be dangerous, and that the American farmer competes in a market place in which the same rules apply to all. For these reasons I urge the adoption of this amendment.

The PRESIDING OFFICER. Is there further debate? The Senator from Indiana.

Mr. LUGAR. Mr. President, we are prepared to accept both parts of this amendment by the distinguished Senator from Ohio and the distinguished Senator from Iowa. Let me state for the record, Mr. President, that both these proposals to the amendment have considerable controversy. I have heard the distinguished Senator from Ohio indicate that in the event we were not able to prevail in conference, that he would oppose the conference report.

I would simply report to the body that there are other Members that feel so strongly that if the Senator's amendment is adopted, they will oppose the conference report. As manager of this legislation, I simply have come to a judgment that it is important to the country that FIFRA legislation progress.

We have not been able as a Congress to make progress in this area. Many Members have commended this as the best environmental action of the year. I tend to think clearly it deserves the commendation of most Members who are sincerely interested in this area. But let me just say, Mr. President, to expedite the passage of this bill, we are prepared to accept the amendment, and to do our best in conference in behalf of both the distinguished coauthors.

Mr. McCLURE addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DIXON. Mr. President, this side is willing to accept the amendment.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. McCLURE. Mr. President, I am happy to see that the FIFRA reauthorization bill has progressed to the floor of the Senate. This bill is the result of more than 18 months of intense negotiations needed to resolve many of the longstanding points of dispute among the major parties concerned with FIFRA. The agreement involved the agricultural community, a 41-member coalition of consumer, environmental and labor groups, and the 92-member National Agricultural Chemicals Association. It represents a major overhaul of the Nation's pesticide control law.

Mr. President, first I want to express my appreciation to everyone who has worked on this bill. It has taken many months to work out the details of this bill to the point of reaching the Senate floor and many issues were agreed to by compromises which were difficult to reach. I realize the hard work and long hours which went into this bill and do not want to hold up Senate consideration of this legislation. However, I am concerned that at the last hour, a change was made in the basic framework of the agreement which changed the complexion of this legislation in the Senate.

An amendment which is pending to the patent term restoration section of FIFRA would sunset the patent provision in the year 1992. The original coalition formed around this bill which support the patent term restoration provision without a sunset, did not and does not agree to this term in the legislation. In addition, as a matter of patent policy, a 6-year sunset provision makes absolutely no sense. As a matter of fair play it has no justification.

I have had an opportunity to review the amendment sought by Senator METZENBAUM and agreed to by Senator LUGAR on the patent term restoration provision. I certainly appreciate Senator LUGAR's efforts to clear the way for Senate action on this important issue. I am concerned that the imposition of this sunset provision undermines the goal of patent term restoration for pesticide inventions which is to stimulate long-range research and development projects in the agrichemical industry.

Under Senator METZENBAUM's amendment, the patent restoration

would be available only to new agrichemicals which complete regulatory review at the EPA in the next 7 years. Such a provision could have little impact on the investment decisions to be made in the next few years in agrichemical research projects because of the uncertainty as to whether they will result in a product approved by the EPA in time to apply for a patent term restoration to compensate for the time lost during the lengthy approval process. Far from stimulating innovation, the provision would only reward innovation that has already been achieved, that is, products that have been patented and are about to enter the lengthy regulatory review process at the EPA.

A sunset would also run contrary to the most basic argument for patent term restoration in the industry; namely, that pesticide inventions ought to receive the same 17-year patent term that is enjoyed by any other type of invention, and should not be denied full patent life because of the lengthy premarket regulatory review at the EPA.

The willingness of the agrichemical industry to come to the table and compromise on the FIFRA amendments was based on the understanding that this legislation was to be linked with congressional consideration of a patent term restoration measure. To now attach a sunset provision amendment to this legislation is contrary to the spirit of the agreement and the good faith process of negotiations which produced it.

As a matter of policy this attempt to sunset the patent term restoration in 6 years reminds me of other attempts by those who call themselves environmentalists but are actually obstructionists, who see anything they want in legislation as sacrosanct and "nonsunsetable" and anything industry wants as "sunsetable." In other words, anything that is mine is mine and anything that is yours is negotiable. This sunset clause is a thinly vieled attempt to force negotiations upon industry in 6 years for something they already negotiated for in good faith and should not have to revisit.

I grow tired of these attempts by certain Senators and their backers. I have seen this type of "back-door" legislating attempts and abhor the attitude which fosters it. Groups entering into negotiations on legislation with assurances as to the sections most important to their needs, who rely on these assurances should not be forced to renegotiate their positions in this manner. It is truly unfortunate that certain Members of this body see themselves as obstructionist and operate in this manner.

I, for one, hope that this problem can be solved by the Senate or failing that by a wise conference. This action should not be agreed to by the Senate nor should the conference stand for its inclusion in this carefully crafted bill. The sunset provision should be dropped by the conference members and I urge that they do so to maintain the integrity of the process.

The PRESIDING OFFICER. Is there further debate?

Mr. HARKIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Mr. President, I wanted to add one other thing. I feel very strongly about this amendment that has just been offered by the distinguished Senator from Ohio. I heard him say earlier that if this amendment were dropped in conference that he would be willing to take measures to ensure that the bill would not be signed into law, if I correctly interpret what he said.

Mr. METZENBAUM. The Senator is 100 percent correct.

Mr. HARKIN. I would like to join my colleague in stating that I will join him in that if either one of these measures are brought to the conference that I too would be willing to do whatever I could to see that the bill would not become law because without these provisions I really think that the bill would be kind of meaningless.

Mr. METZENBAUM. I thank the Senator from Iowa.

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. METZENBAUM. I heard the Senator from Iowa, and I appreciate his support. I also heard the Senator from Indiana. I want to say to the Senator from Indiana the reason I made the statement is that this amendment reflects a strenuous give-and-take compromise.

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What the pesticide manufacturers are getting out of this bill is unquestionably worth millions of dollars to them and it will cost the consumers millions of dollars. It will be an effective cost to them. I just wanted to say that I think we have gone far enough in the compromise that has been made. If we are in the closing hours of the session, I do not believe it would be that difficult to discuss this matter and indicate our concerns as to why the measure should be defeated if this is dropped. I strongly urge the managers on the Senate side to see to it that the amendment is kept in because absent it I do believe there will be no bill.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. LUGAR. Mr. President, I will respond respectfully to my distinguished colleague from Ohio. I appreciate his strong feeling on this subject. It is an important area. There have been compromises and I suspect that has been true throughout the consideration of the legislation. The bill comes because of a compromise between 41 environmental groups with the chemical producers and others who have had an historical interest in this. It is a remarkable feat that all these persons have been able to come to compromise. I have no doubt that the distinguished Senator, joined by the distinguished Senator from Iowa, and others, is concerned with this process.

Mr. President, I would only pray that the Senator would leave a little latitude for consideration of the enormity of the achievement involved in this. If each Senator is to press for that which he sought, it is clear that probably there would not be legislation. I hope at least Senators will allow the conference to work its will and to do so in good faith.

The Senator may prevail and may not. I simply make that point.

Mr. METZENBAUM. Mr. President, I do not feel it is necessary to belabor the point any further. I know the Senator from Indiana is fair. I hope he will be able to prevail in the conference committee and keep the amendment.

Mr. HARKIN. If the Senator will yield, I might reply to the distinguished Senator from Indiana that I am not very well versed in the aspects of the patent situation. That is not my area of expertise. But in the area of the residue in imported foods, I will say that this was in the compromise that was hammered out between the chemical companies and the environmental groups. It was part of that compromise which is in the House version.

I again believe that taking it out and leaving it out, if that would be the case, will really upset that balance. I think I can speak for a lot of groups who would be very upset if, in fact, the final product did not have that tolerance for imported foods concerning pesticides.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment.

The amendment (No. 3241) was agreed to.

Mr. HARKIN. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. LUGAR. Mr. President, I move to lay that motion on the table.

AMENDMENT NO. 3242

(Purpose: To authorize the Secretary of Agriculture to construct a salinity laboratory at Riverside, California)

Mr. WILSON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from California [Mr. WILSON], for himself and Mr. CRANSTON, proposes an amendment numbered 3242.

Mr. WILSON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place, insert the following new section:

SEC. . Notwithstanding section 1431(a) of the Food Security Act of 1985 (Public Law 99-198; 99 Stat. 1556), there are authorized to be appropriated, beginning in the fiscal year ending September 30, 1987, such sums as may be necessary for the planning, construction, and acquisition, by the Secretary of Agriculture acting through the Agricultural Research Service, of buildings and equipment to establish a salinity laboratory to be located at Riverside, California. Sums appropriated under this section shall remain available without fiscal year limitation.

Mr. WILSON. Mr. President, today I rise to offer an amendment to the pending legislation along with my colleague from California, Senator CRANSTON, to authorize the planning and construction of a new U.S. Salinity Laboratory at Riverside, CA. This new research facility is needed to replace the existing U.S. Salinity Laboratory Facility which has become obsolete and is highly undesirable for remodeling.

The success of Western agriculture is directly linked to our ability to control salinity accumulation in our irrigation systems and on our lands in general. Currently, we do not possess the technology or methodology to accomplish this task in an effective manner. Even more disturbing is that the total acreage affected by salinity problems continues to rise to alarming levels.

In the State of California alone, of the 55.6 million acres of non-Federal land, it is estimated that salinity affects over 4 million acres. More importantly, of the 10.1 million acres of irrigated farmland, salinity affects approximately 3 million acres—a figure expected to increase by nearly 600,000 acres before the year 2000.

Mr. President, allow me to dwell briefly upon the cost associated with these acreage figures, because I believe that it would be beneficial for this body to understand the magnitude of this problem. For example, in the San Joaquin Valley, where the majority of our Nation's fruit and vegetable crops are grown, surplus salinity reduced crop yields on 400,000 acres of land last year at a cost to producers of $31 million. Should this salinity buildup be left unchecked, at the end of this century, the resulting loss would be $321 million.

And, I would stress that this problem is not unique to California. Saline problems are now developing in all Western States, North and South Dakota and several Canadian Provinces. Over 400,000 acres are affected in the Northern U.S. Plains alone and this total, including Canada and parts of Texas and Oklahoma, could reach 2 million acres.

Quite simply, we face salinity problems of threatening proportions in this country. As our dependence on irrigation grows, so will our need to find a solution. The U.S. Department of Agriculture recognizes the urgency of this problem, but is limited in its ability to request new research facilities. For this reason, I believe that it is Congress' responsibility to obtain funding for a new U.S. Salinity Laboratory.

Given the inadequacy of the facility at which our present research efforts are being conducted, we must act to ensure that future research efforts are given every opportunity to succeed. Clearly, this action must begin with providing modern equipment and an appropriate research environment. The present antiquated facility lacks both.

Built in 1937 in Riverside, CA, the existing research facility was established as the U.S. Regional Salinity Laboratory to develop technologies and practices to prevent or solve salinity problems in agriculture production. Currently, the facility is in dire need to either renovation or replacement. At my request and that of several other members, USDA conducted a feasibility study to determine whether or not to renovate the existing laboratory or to build a new facility.

The study pointed out many benefits to constructing a new and updated facility—benefits which I believe justify a new laboratory. For example, the existing site was found to be limited and undesirable for remodeling due to topography. In fact, the best building at this site was constructed in 1938—a good indication of the generally poor condition of the laboratory's present location.

One of the options currently being studied is the construction of a new salinity laboratory on the University of California at Riverside campus. The advantages to this move are many. Not only would our salinity research efforts benefit from the vast agricultural resource materials and state of the art equipment at UCR, Federal costs could be significantly reduced through joint faculty appointments and cooperative building maintenance agreements. Moreover, UCR is already the site for the California Center for Environmental Toxicology and has an excellent research base in agriculture and in related disciplines.

Mr. President, earlier this year, both the House and the Senate committees on agricultural appropriations included $1 million dollars in their fiscal year 1987 spending measures for the planning and development of a new salinity research facility. Absent an authorization, the Secretary of Agriculture will be unable to begin this much needed process. For this reason, my colleague from California and I are introducing this amendment and urge its immediate adoption.

Mr. CRANSTON. Mr. President, I am pleased to join with my colleague from California, Mr. WILSON, in offering this amendment to authorize the construction of a salinity laboratory in Riverside, CA.

At the present time, both the Agricultural Research Service [ARS] and the University of California at Riverside [UCR] are engaged in salinity research in Riverside. The ARS Salinity Laboratory, however, has been without a director for 2 years now, and needed renovation work at the present location is making it difficult for USDA to attract outstanding scientists.

Relocation of the facility to the UCR campus, as proposed by the university and supported by the Riverside community, offers an attractive solution to the problem. Relocation would facilitate interaction among scientists and consolidate and strengthen research efforts. The chemistry and physics programs at UCR and the Salinity Lab are complementary. While the lab's plant Science Program would enhance the UCR Program, the economics program at UCR would strengthen the ARS Program.

Both the House and Senate Appropriations Committees have already recognized the need for a new ARS salinity lab in Riverside and provided an appropriation of $1 million for planning in fiscal year 1987. This amendment would provide the necessary authorization for the project. I urge its adoption.

Mr. LUGAR. Mr. President, has money for this project been appropriated in the continuing resolution?

Mr. WILSON. One million dollars were appropriated on both the House and Senate sides.

Mr. LUGAR. Mr. President, on our side, we will accept the amendment.

Mr. ZORINSKY. Mr. President, we have examined the amendment and are prepared to accept it.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3242) was agreed to.

Mr. WILSON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. LUGAR. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3243

(Purpose: To permit applicants to file abbreviated applications for registration of pesticides or new uses of pesticides under certain circumstances)

Mrs. KASSEBAUM. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Kansas [Mrs. KASSEBAUM], for herself, Mr. MATTINGLY, Mr. GORE, and Mr. ANDREWS, proposes an amendment numbered 3243.

Mrs. KASSEBAUM. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On Page 185, between lines 4 and 5, insert the following new section:

SEC. . ABBREVIATED APPLICATIONS FOR REGISTRATION OF PESTICIDES AND NEW USES OF PESTICIDES.

Section 3(c) (7 U.S.C. 136a(cc)) (as amended by section 101(a) of this Act) is further amended by adding at the end thereof the following new paragraph:

"(10) Abbreviated Applications.—

"(A) An applicant may file with the Administrator an abbreviated application for the registration of a pesticide, or for an application for an amendment adding a new use to the registration of a pesticide, in accordance with this paragraph.

"(B) The application shall contain—

"(i) information to demonstrate that—

"(I) the pesticide is identical or substantially similar chemically to a pesticide previously registered under this Act;

"(II) the conditions of use recommended in the labeling proposed for the pesticide have been approved for the previously registered pesticide; and

"(III) the labeling proposed for the pesticide is the same as the labeling approved for the previously registered pesticide, except for differences approved by the Administrator under other provisions of this Act; and

"(ii) a certification that to the best of the knowledge of the applicant no data that has been previously submitted to the Administrator for the previously registered pesticide is entitled to exclusive use under paragraph (1)(D)(i).

"(C) Notwithstanding any other provision of law, paragraphs (1)(D) (other than clause (i)), (2)(B)(v), and (2)(D) shall not apply to an application filed under this paragraph.

"(D) Nothing in this paragraph shall be construed to supersede part II or III of title 35, United States Code.".

On page 204, between the items relating to sections 3(c)(9) and 3(d), insert the following new item:

"(10) Abbreviated applications.".

Mrs. KASSEBAUM. Mr. President, the amendment I am offering on behalf of myself, Senator MATTINGLY, Senator GORE, and Senator ANDREWS, eliminates the data compensation provisions of FIFRA.

In addition, it provides for the use of an abbreviated application for registration of generic pesticides. Enactment of this amendment would, in effect, place manufacturers of generic pesticides on equal footing with generic pharmaceutical manufacturers.

My purpose in offering this amendment is simply to cut production costs for farmers. This amendment could provide savings in the range of $200 million to $500 million annually in the pesticide bills of American farmers. These savings would be achieved by making it easier and quicker to bring generics into the market.

Let me emphasize that this amendment is not intended to deprive manufacturers who originate pesticides from receiving an ample return on their investment. Current law recognizes the substantial research and development cost involved in pesticide production by providing a 17-year exclusive marketing right over registered pesticides. Manufacturers are eligible for research and development tax deductions and credits as well. In addition, the bill now before us extends the patent life of pesticides for up to 5 years.

I believe these provisions offer adequate incentives for innovation. Yet, the truth if that barriers to market entry do not end with the expiration of a patent when it comes to pesticides. In short, at the same time we have gone to great lengths to protect the investments of original manufacturers, we have done nothing to advance the interests of pesticide consumers who would benefit from greater generic competition.

When we granted patent term extension to pharmaceutical products in 1984, we at the same time made it easier for generic products to come onto the market. Rather than duplicating tests of a drug, a generic manufacturer now only has to prove to the Food and Drug Administration that it can produce an identical chemical compound in order to begin marketing it.

This general approach has also been endorsed by the administration. In a March 10, 1986, letter to Senator THURMOND, Health and Human Services Secretary Otis Bowen strongly recommended that legislation providing for patent term extension of veterinary drugs be amended. The Secretary proposed that a provision be added to enable manufacturers to obtain premarket approval of generic drugs without having to duplicate the safety and effectiveness studies required for approval of the original drug. Mr. President, I ask unanimous consent that the full text of Secretary Bowen's letter appear in the RECORD following my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mrs. KASSEBAUM. Today, we are offering patent term extension for pesticides without removing roadblocks to production of generic products. I would like to explain briefly how onerous those roadblocks are.

Current law requires that an enormous amount of health and safety data be submitted to the Environmental Protection Agency [EPA] in order to register a pesticide product. Without EPA registration, a pesticide may not be put on the market. A generic producer has two options for meeting this requirement.

One, the producer can generate his own data—which takes anywhere from 5 to 7 years. In so doing, the generic producer is duplicating work that has already been done.

The producer's second option is to buy the right to cite the data previously submitted to EPA by the originator of the product. The amount of the data compensation due is determined by a system of binding arbitration which was set up in the 1978 amendments to FIFRA.

The law does not contain any explicit standard for determining compensation. Thus, the only guidance we have as to the effects of the arbitration process is the single case which has been completed under it—Stauffer Chemical Co. versus PPG Industries (1983).

In that case, the arbitration award to the original manufacturer—Stauffer Chemical—amounted to 50 percent of the cost of the data plus a 10-year royalty. The royalty amount was intended to represent the value to the generic manufacturer of being able to enter the market much sooner than would otherwise be possible. In all, the value of the award is estimated to exceed $15 million—an amount five times the actual cost of producing the data.

Commenting on this case, an analyst with the Congressional Research Services notes:

This award was so large that it could effectively foreclose secondary registrants by making the cost of entering the market so uncertain that few if any firms would be willing to take the risk, and for smaller firms, making the up-front costs so high they could scarcely take the risk.

This system simply doesn't make sense. Generic drug manufacturers have never had to pay for data which has already been filed with the Food and Drug Administration. Why should pesticides be different?

Clearly, this situation works against the American farmer who is trying to cut costs and operate at maximum efficiency. The monopoly held by original pesticide producers extends long beyond the expiration of a patent, as a potential generic competitor must either spend 5 to 7 years duplicating data or debate whether it is worth the financial risk to purchase that data.

Either way, the bottom line is that farmers pay more for pesticides. Mr. President, I ask unanimous consent that an article on this subject by

George Anthan of the Des Moines Register be printed in the RECORD following my remarks.

THE PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 2.)

Mrs. KASSEBAUM. Farmers spend about $3.4 billion on pesticides every year. Competition within the industry would significantly reduce prices, as illustrated by past experience when generics have come onto the market. The price of Phostoxin, for example, has dropped nearly 20 percent since a generic version became available in 1982. Treflan has seen a price drop of nearly 25 percent since a generic appeared on the market last year.

It is particularly important that we act now to address this situation. Over the next 5 years, 21 pesticides widely used by American farmers will come off patent. These pesticides constitute about 43 percent of the entire pesticide market.

Congress, by deciding to inject a healthy dose of competition into the pesticide industry, could give the farmer a real break. And, this could be done without further drain on the U.S. Treasury.

EXHIBIT 1

THE SECRETARY OF
HEALTH AND HUMAN SERVICES,
Washington, DC, March 10, 1986.

Hon. STROM THURMOND,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: There is pending before the Committee, S. 1093, a bill "To amend the patent law to restore the term of the patent in the case of certain products for the time of the regulatory review period preventing the marketing of the product claimed in the patent." We take this opportunity to inform you of our views on that bill. We understand that S. 1093 is scheduled for mark-up on March 11, 1986 before the Subcommittee on Patents, Copyrights and Trademarks.

Our views focus on S. 1093 as it would affect veterinary drugs, which are regulated by the Food and Drug Administration (FDA) under the Federal Food, Drug, and Cosmetic (FDC) Act. S. 1093 would authorize the restoration of patent time lost due to Federal premarket requirements for veterinary drugs, pesticides, and agricultural chemicals.

In summary, we support patent restoration for veterinary drugs, but urge the Committee to add an additional provision that would enable manufacturers to obtain Federal premarket approval to market generic versions of these drugs without having to duplicate the potentially costly and time-consuming safety and effectiveness studies that are required of pioneer manufacturers. Without such a provision, there would appear to be no need for patent restoration since the current Federal requirement for duplicative testing would continue to serve as an effective economic barrier to competition even after the expiration of patents that would be restored by this legislation.

The Department of Health and Human Services traditionally has supported patent restoration for the products that require the premarket approval of FDA. These products often entail high development costs, the risk of failure and small potential markets. In addition, innovators typically lose years of patent exclusivity because of testing requirements and regulatory review. We are mindful of the paradox that the careful and time-consuming scientific review needed to confirm safety and effectiveness may be reducing initiatives to develop new veterinary drugs. Streamlining the regulatory process will help. However, the FDA premarket approval system must continue to be thorough enough to assure safety and efficacy even if that means living with a process that takes longer than we would ideally prefer. We want to encourage innovation, but not at the expense of safety. Consequently, we support patent extension for veterinary drugs as a means of encouraging innovative research.

Patent restoration would have little meaning, however, if Federal regulatory barriers had the effect of preventing the marketing of virtually identical generic products after patents expire. Such a situation existed for human drugs until 1984, when the Congress enacted legislation that both extended patents associated with human drugs and removed regulatory barriers that effectively prevented the development of many generic human drugs. The situation still exists, however, for veterinary drugs.

Consequently, in addtion to patent extension, we strongly support the enactement of an explicit statutory authority that would allow a manufacturer to market a generic version of a veterinary drug without having to duplicate the time-consuming and costly studies that are necessary to demonstrate that the original version of the drug is safe and effective. The generic manufacturer only would have to demonstrate in an "abbreviated" application for marketing approval to FDA that it is capable of manufacturing an equivalent product.

FDA presently allows abbreviated applications for generic versions of veterinary drugs that were approved before 1962, the year in which Congress amended the FDC Act to require that both human and veterinary drugs be shown to be effective as well as safe. A similar procedure has not been established for post-1962 veterinary drugs. As a consequence, the duplicative testing for safety and effectiveness that generic manufacturers must conduct for post-1962 drugs constitutes an effective economic barrier to their development. In this respect, the Federal drug approval process unwittingly serves as a quasi-patent whose term never expires.

We have concluded, therefore, that both patent restoration and an abbreviated approval procedure ought to be included in the same legislation so that they may be considered and, hopefully, enacted together. We continue to believe that it is good public policy to link the two concepts in order to foster research for new products and at the same time encourage competition and lower prices. In our view, it would be unfair to consumers as well as to the industry as a whole if one were enacted but not the other or if a substantial time lag occurred between the enactment of both. We would be pleased to work with the Committee to add an abbreviated application provision to S. 1093.

We are advised by the Office of Management and Budget that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

OTIS BOWEN,
Secretary.

EXHIBIT 2

FARMERS PURSE STRINGS MAY TIE UP CHEMICAL LEGISLATION

(By George Anthan)

The already shaky agreement over legislation to re-authorize the Federal Insecticide, Fungicide and Rodenticide Act could unravel because of an important sticking point involving farmers' pocketbooks.

The lengthy and complex debate in Congress over FIFRA, under which farm and garden chemicals are regulated, has involved representatives of the chemical industry and environmentalists, but farmers have a huge financial stake in the situation.

Negotiations have taken years, but a series of compromises this year involving the industry and environmental groups has cleared the way for both houses of Congress to take up the bill before they adjourn this fall.

The House and Senate Agriculture committee have approved versions of the new bill under which FIFRA would be extended for five years. The new law would require that pesticides must be "registered" by the Environmental Protection Agency and that some 600 pesticides in use when the original law was passed in 1971 must be tested for their health effects. The "re-registration" of these pesticides would be financed through fees paid by the manufacturers.

The controversy is over "data compensation," splitting the mostly big companies whose research brings pesticides into the market and the mostly smaller companies and cooperatives who later want to enter the market and produce the same pesticides as generic products at a lower cost to farmers.

Farmland Industries Inc., a farm cooperative based in Kansas City, has estimated that over the next five years, patents on some 45 percent of pesticides now in use will expire and that if these products can be produced by generic manufacturers, the potential saving to farmers would range from $420 million to $500 million a year.

Tim Galvin, an aide to Congressman Berkley Bedell, whose subcommittee developed the House version of FIFRA, says the issue of how to compensate the big pesticide "innovators" is "very divisive, almost intractable."

The larger chemical companies pay for the research necessary to bring new pesticides into the market and to get them registered by the EPA. In return, they get a 17-year exclusive right to sell the products. Once the patent expires, other firms, in most cases smaller, can move in and produce the pesticides under "generic" labels.

But, under current law, companies seeking to enter the market with a pesticide on which the patent has expired have been forced to compensate the innovators more than five times their cost of generating the data filed with EPA.

Farmland Industries officials told Congress recently that "when a human drug comes off patent, for example, a generic producer has only to prove to the Food and Drug Administration that it is capable of producing an identical chemical compound and is then authorized to begin marketing. * * *"

But FIFRA provides that the question of how much a pioneering firm is to be compensated for the scientific data it generated to gain approval for the pesticide will be determined through binding arbitration. In a case involving Stauffer Chemical Co., the original developer of a product, and PPG In-

dustries Inc., which wanted to enter the market, arbitrators gave Stauffer an award valued at almost $16 million, 90 times what PPG had considered reasonable.

The Congressional Research Service notes in a report that "this award was so large that it could effectively foreclose secondary registrants by making the cost of entering a market so uncertain that few firms would be willing to take the risk. * * *"

The Senate version of the FIFRA bill greatly pleases the large chemical companies because it allows patents on new pesticide products to be extended for up to five years, depending on how long the product was undergoing regulatory review by EPA. The Senate bill also gives smaller companies the right to begin health tests on such a pesticide up to two years before the patent expires.

The House bill includes some provisions for non-binding arbitration. But Farmland emphasizes that any new law that's passed should include a ceiling on the amount of compensation that could be paid to a company which developed a pesticide.

Farmland cites data showing dramatic drops in the prices of some pesticides that were produced under generic labels. The data show that Phostoxin, a product that has been produced generically since 1982, has dropped in price by almost 20 percent. Treflan has had generic competition since last year, Farmland stated, and has experienced a price cut of almost 25 percent.

In contrast, the cooperative contends, several leading pesticides that have no generic competition have had significant price increases in recent years.

Mrs. KASSEBAUM. Mr. President, I believe a cosponsor, Senator GORE, would like to offer his comments.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. GORE. Mr. President, I commend my colleague, the Senator from Kansas, for her amendment. I am happy to join as cosponsor.

The issue here is very simple. The patent period strives to reach a balance between giving incentives for innovation on the one hand and protecting the public against unfair and lengthy monopolies on the other hand. Seventeen years has been chosen as an appropriate period. Under some circumstances, for example as proposed in this bill, that period can be extended even more.

At the end of that period of patent protection, however, other manufacturers ought to have the right to come in and manufacture this product. The data necessary to get approval should be in the public domain after having been protected to an exclusive manufacturer for such a long period of time.

Normally a generic manufacturer, often a smaller company, will, at the end of the patent period, come in seeking to produce the same product, typically at a much cheaper price. This is possible only if the company can take advantage of the data that is already on file.

But under the regulatory scheme available in FIFRA as opposed to what the Food and Drug Act provides, the data upon which Government approval must be based remains in the complete control of the company which originally secured the patent.

The generic company wanting to come in the produce at a lower price has to get that data. Under current law, to get the data, the generic company must pay for it through a system known as data compensation.

If the two companies involved are unable to agree on what amount will be paid they go to binding arbitration.

This process has resulted in a decision where the generic company was told it would have to pay the original manufacturer $12 million—over 5 times what it cost to produce the data in the first place. The result is to effectively prohibit generic competition; a result costing the farmers of our Nation hundreds of millions of dollars.

Let me add parenthetically that under the Food and Drug Act, such compensation does not even exist. It allows generic companies to come in and get approval if they just demonstrate they are making the same product the Government has already approved.

Under the FIFRA scheme, the cost of obtaining that data from the original patent holder has suddenly escalated to such a high level that it serves as a way of unfairly extending the period of exclusive protection intended under the patent to much longer than the 17 years provided for in the law.

What the Senator from Kansas is trying to do in this amendment is restore a more reasonable approach. There was a court case that touched off this problem and it is not solved by the bill. It should be.

I might say the amendment earlier offered by the Senator from Montana and adopted by this body does help somewhat, but it does not go as far as it should. The amendment offered by the Senator from Kansas now pending really does address this problem. I might say that many small generic companies really have no objection to the prospect of paying for the data, but for that cost to be artificially raised as an economic barrier to any other manufacturers getting into it is really not fair. That is the problem our amendment seeks to address. We are interested in having this issue raised. I again compliment my colleague for raising it. I support her amendment very strongly and I think it is in the public interest.

The PRESIDING OFFICER. Is there further discussion? The Senator from Indiana.

Mr. LUGAR. Mr. President, I appreciate the remarks of my distinguished colleague, the Senator from Kansas [Mrs. KASSEBAUM] and likewise those of the distinguished Senator from Tennessee [Mr. GORE]. They have spoken directly and with clarity on a very important issue.

I must say, however, that I have to oppose her proposal. We considered this general issue—the so-called data compensation issue—in our deliberations in the Agriculture Committee. We rejected a related amendment at that time. However, I recognize that what Senator KASSEBAUM proposes is a new approach to an issue that has been debated for many years.

In my judgment, we cannot properly deal with this proposal under current time constraints. Nevertheless, because this is a new approach and because my distinguished colleagues and others feel strongly about it, I am willing to assure that the Senate Agriculture Committee will hold appropriate and timely hearings on this proposal next year.

The PRESIDING OFFICER. Is there further debate? The Senator from Kansas.

Mrs. KASSEBAUM. Mr. President, I first thank the Senator from Tennessee for his comments and I also thank the Senator from Indiana for his thoughtful offer of further consideration. I think this raises a very important issue. I feel strongly about the amendment. But I also recognize that it is very important for the FIFRA bill to move forward. Much time and effort and long hours of work and negotiation have gone into it and I think it is an important piece of legislation. It is not my intention to stop the wheels of progress on this legislation at this late date. So, given the assurance that this proposal will receive the prompt attention of the Senate Agriculture Committee, I withdraw my amendment.

Before leaving the subject altogether, however, I would like to pose a question to the distinguished Senator from Indiana. In my earlier remarks, I cited the very high award in the Stauffer Chemical versus PPG Industries (1983) arbitration case as having a very chilling effect on generic pesticide producers who might want to enter the market after a patent has expired.

My question to the Senator is this: Is it not the case that unlike judicial rulings, which have the effect of establishing powerful precedents, a finding by a data compensation arbitration panel should not and does not set a binding precedent and that, indeed arbitration in future data compensation cases may very well fully discharge their duties by rendering far less costly judgments to the interested generic producer?

Mr. LUGAR. Mr. President, let me respond to the distinguished Senator that that indeed is my understanding. I agree that an arbitration panel's decision on a particular case should not be viewed as a precedent for future cases.

Let me also say that I thank the Senator for bringing this proposal to our attention. I appreciate her withdrawing the amendment so that we may proceed with the consideration of the basic FIFRA bill, and I look forward to having her proposal fully aired next year.

Mrs. KASSEBAUM. Mr. President, I withdraw my amendment.

The PRESIDING OFFICER. The Senator has that right.

The amendment (No. 3243) was withdrawn.

Mr. GORE. Briefly, Mr. President, I wish to say I concur with the decision of the Senator from Kansas for the reasons she enunciated. I say that because I also want to reiterate my strong support for the legislation pending before us. This bill does represent an important, even historic compromise between groups that have often been at odds in the past. It represents an important step forward. It is a bill I strongly support and urge all my colleagues to support.

The PRESIDING OFFICER. Who seeks recognition?

The Senator from Indiana.

AMENDMENT NO. 3244

(Purpose: To authorize EPA in cooperation with FDA to conduct a study of the health effects of DDT contamination of fish in Santa Monica Bay, California)

Mr. LUGAR. I send an amendment to the desk on behalf of the Senator from California [Mr. CRANSTON] and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Indiana [Mr. LUGAR] for Mr. CRANSTON and Mr. WILSON proposes an amendment numbered 3244.

At the appropriate place in the bill, add as follows:

SEC. STUDY.

The Administrator of the Environmental Protection Agency, in cooperation with the Commissioner of the Food and Drug Administration, shall conduct a thorough evaluation of the health effects of DDT and other contamination of fish in Santa Monica Bay, California, and in surrounding waters. The evaluation shall include an assessment of—

(1) the level of contamination of edible fish caught in the Bay and surrounding waters.

(2) the rate of consumption of contaminated fish from the Bay and surrounding waters by residents of Santa Monica and Los Angeles, California, and surrounding communities, and

(3) the health risks associated with the consumption of such contaminated fish.

The Administrator shall complete the evaluation within 6 months of the date of the enactment of this Act and shall report the results of the evaluation to the Congress.

Mr. CRANSTON. Mr. President, this amendment on behalf of Senator WILSON and myself authorizes the Environmental Protection Agency in cooperation with the Food and Drug Administration to conduct a study of the health effects of toxic contamination of fish in Santa Monica Bay, CA.

The amendment requires EPA to assess the level of contamination of edible fish caught in Santa Monica Bay, determine the rate of consumption of contaminated fish from the bay, and evaluate the health risks associated with the consumption of such contaminated fish. It also requires EPA to report its findings to Congress.

Today there is increasing concern about toxic contamination of fish from Santa Monica Bay. For 26 years from 1946 to 1972 when DDT was banned, Montrose Chemical Co., a major producer of DDT, discharged 400 to 600 pounds of the pesticide daily into Santa Monica Bay. Fourteen years later, studies have documented DDT residues in white croaker fish from the bay. A Loma Linda University research team found that commercially sold fish caught in waters off southern California have the highest concentration of DDT found anywhere in the Nation.

There are other sources of concern. Chevron Corp. has been fined for dumping excessive amounts of refinery waste—grease ammonia, chromium, and other chemical byproducts—into Santa Monica Bay. Just last month, the Justice Department filed suit against Chevron for 880 violations of Federal pollutant discharge limits since 1981. The Hyperion sewage treatment plant continues to discharge about 600 tons of sludge daily through its outfall 7 miles into the bay and between September 1984 and September 1985 discharged some 2.8 million gallons of raw sewage.

As a result of this situation, the California Department of Health has issued warnings on consumption of fish from the bay waters.

But no one really knows the health risks associated with eating fish caught in Santa Monica Bay. There have been no EPA or FDA studies. It's critical that we learn as quickly as possible whether there are threats to local residents and the millions of visitors to area. This amendment will help provide that essential information to the public.

I understand the amendment is acceptable to the managers of the bill. I ask for its adoption.

Mr. LUGAR. Mr. President, on our side, we are prepared to accept the amendment.

Mr. ZORINSKY. Mr. President, we have examined the amendment and recommend its acceptance.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3244) was agreed to.

Mr. ZORINSKY. I move to reconsider the vote by which the amendment was agreed to.

Mr. LUGAR. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3245

(Purpose: To authorize an officer or employee of the United States or a designated State to enter any place where a pesticide that has had its registration canceled or suspended is stored and to require that notices be furnished for certain stored pesticides with canceled or suspended registrations)

Mr. LUGAR. Mr. President, I send an amendment to the desk on behalf of the distinguished Senator from Missouri [Mr. DANFORTH] and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Indiana [Mr. LUGAR], for Mr. DANFORTH, proposes an amendment numbered 3245.

On page 90, between lines 6 and 7, insert the following:

"(2) in the case of a pesticide that has had its registration canceled or suspended under section 6 and that the Administrator has reasonable cause to believe may pose a danger to public health or safety, to enter any place where the pesticide is stored, to inspect and obtain samples of any pesticide, active ingredient, or device being stored at such place or of any packaging or labeling of any such pesticide, active ingredient, or device;

On page 90, line 7, strike out "(2)" and insert in lieu thereof "(3)".

On page 90, line 12, strike out "(3)" and insert in lieu thereof "(4)".

On page 90, line 19, strike out "(4)" and insert in lieu thereof "(5)".

On page 185, between lines 4 and 5, insert the following new section:

SEC. . NOTICE FOR STORED PESTICIDES WITH CANCELED OR SUSPENDED REGISTRATIONS.

(a) NOTICE.—Section 6 (7 U.S.C. 136d) (as amended by sections 302(1) of this Act) is further amended by adding at the end thereof the following new subsection:

"(j) NOTICE FOR STORED PESTICIDES WITH CANCELED OR SUSPENDED REGISTRATIONS.—

"(1) IN GENERAL.—Any producer or exporter of pesticides, registrant of a pesticide, applicant for registration of a pesticide, applicant for or holder of an experimental use permit, pesticide testing facility, or any person who distributes or sells any pesticide that has in its possession any pesticide that has had its registration canceled or suspended under this section shall notify the Administrator and appropriate State and local officials of—

"(A) such possession;

"(B) the quantity of such pesticide in its possession; and

"(C) the place at which such pesticide is stored.

"(2) COPIES.—The Administrator shall transmit a copy of each notice submitted under this subsection to the regional office of the Environmental Protection Agency that has jurisdiction over the place of pesticide storage identified in the notice.".

(b) ENFORCEMENT.—Subparagraph (K) of section 12(a)(2) (7 U.S.C. 136j(a)(2)(K)) (as amended by section 808(a)(2)(B)) is further amended by inserting after "Act" the fol-

lowing: "or to fail to submit a notice in accordance with section 6(j)".

On page 206, between the item relating to section 6(i) and the item relating to section 7, insert the following new item:

"(i) Notice for stored pesticides with canceled or suspended registrations.

"(1) In general.

"(2) Copies.".

Mr. DANFORTH. Mr. President, my amendment would require any producer, seller, exporter, distributor, or pesticide testing facility that is storing a suspended or canceled pesticide to report the quantity and location of that pesticide to the EPA and appropriate State and local officials. The amendment would also provide EPA with discretionary authority to inspect facilities where canceled and suspended pesticides are stored. This authority could be invoked only when the Administrator has reasonable cause to believe that public health and safety may be endangered.

My amendment would add needed safeguards to protect against unsafe storage and handling of potentially dangerous pesticides, and new requirements which would help to ensure that State and local officials have the information that they need to protect communities where these chemicals are stored. Thus, it would complement the public right-to-know requirements of S. 2792, which apply only to current manufacturing and processing.

S. 2792 would set deadlines for EPA review of approximately 600 pesticide ingredients that were approved for use before November 1984. Inevitably, some registrations will be withdrawn. If enacted into law, my amendment would provide new assurances that pesticides which have their registration discontinued during the course of these reviews will be handled responsibly.

Mr. President, I believe that this amendment has been cleared by the managers, and I urge its adoption.

Mr. LUGAR. Mr. President, we have examined the amendment and we are prepared to accept it.

Mr. ZORINSKY. Mr. President, we have examined the amendment and urge its acceptance.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3245) was agreed to.

Mr. ZORINSKY. I move to reconsider the vote by which the amendment was agreed to.

Mr. LUGAR. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3246

Mr. LUGAR. Mr. President, I send an amendment to the desk on behalf of the Senator from Alabama [Mr. HEFLIN] and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Indiana [Mr. LUGAR], for Mr. HEFLIN, proposes an amendment numbered 3246.

On page 135, strike lines 20, 21 and "cide)" on line 22, and insert in lieu thereof:

"(except for a patent that claims only a method for manufacturing the pesticides)".

Mr. HEFLIN. Mr. President, I commend the chairman of the Agriculture Committee, the floor manager of this bill, and the distinguished ranking member of the committee for the outstanding job they have done in considering all aspects of this extremely complicated piece of legislation. It has been a very laborious process in getting the farm groups, the chemical companies, and the environmental groups together.

I think this bill is long over due and hope that we can pass this legislation today.

There is one provision, however, in which the bill, as reported does not accurately reflect the committee's intention, as I understood it. This involves the ability to test a product before its patent has expired. It was and is my understanding that section 703(b) was intended to apply to patents covering composition of matter and method of use, but was supposed to exclude process patents. However, the bill as written specifically includes them.

As my colleagues know, process patents—those that cover methods of manufacturing—are the weakest of patents, in that it is exceptionally easy to effectively eliminate the protection afforded the patent by some slight variation in the patented process. So in order to have the bill accurately reflect the understanding that process patents are to be excluded, I am offering an amendment that I feel is technical in nature, but one that is necessary to clear up any possible confusion on this matter.

I understand that this amendment is acceptable with the Republican floor manager and the chairman of the committee.

Mr. LUGAR. Mr. President, we are prepared to accept the amendment.

Mr. ZORINSKY. Mr. President, in the interest of advancing the FIFRA legislation, we are prepared to accept the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3246) was agreed to.

Mr. ZORINSKY. I move to reconsider the vote by which the amendment was agreed to.

Mr. LUGAR. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ORDER OF BUSINESS

Mr. BYRD. Mr. President, I seek the floor now to ascertain whether or not there will be any more rollcall votes tonight.

Mr. LUGAR. In a short while, Mr. President, we shall have an amendment by the distinguished Senator from New Mexico [Mr. DOMENICI] that will be the only amendment that might require a vote. I shall be able to ascertain that in a few minutes.

Mr. BYRD. I thank the Senator.

AMENDMENT NO. 3247

(Purpose: To permit Federal agencies to use pesticides registered under the Federal Insecticide, Fungicide, and Rodenticide Act in compliance with its registered uses without duplicating research or analyses on human health effects)

Mr. LUGAR. Mr. President, I send an amendment to the desk on behalf of the Senator from Idaho [Mr. SYMMS] and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Indiana [Mr. LUGAR], for Mr. SYMMS, proposes an amendment numbered 3247.

On page 185, between lines 4 and 5, insert the following new section:

SEC. . USE OF PESTICIDES BY FEDERAL AGENCIES.

(a) DATA IN SUPPORT OF REGISTRATION.—Subparagraph (A) of section 3(c)(2) (7 U.S.C. 136a(c)(2)(A)) (as amended by section 106(a) of this Act) is further amended to read as follows:

"(A) DATA IN SUPPORT OF REGISTRATION.—

"(i) the Administrator shall publish guidelines specifying the kinds of information that would usually be required to support the registration of a pesticide and shall revise such guidelines from time to time.

"(ii) If after such publication the Administrator requires any additional kind of information under subparagraph (B) (including information concerning an inert ingredient in a pesticide), the Administrator shall permit sufficient time for applicants to obtain such additional information.

"(iii) Any Federal agency may proceed with the use of such pesticide unless the Administrator determines that missing or deficient data is sufficiently important to warrant a suspension or cancellation.

"(iv) The Administrator, in establishing guidelines for data requirements for the registration of pesticides with respect to minor uses and with respect to various types and classes of pesticides, shall make such guidelines commensurate with the anticipated extent of use, pattern of use, and the level and degree of potential exposure of man and the environment to the pesticide. In the development of such guidelines, the Administrator shall consider the economic factors of potential national volume of use, extent of distribution, and the impact of the cost of meeting the guidelines on the incentives for any potential registrant to undertake the development of the required data.

"(v) Analyses in support of registration are equivalent to an environmental impact statement and may be incorporated by reference and relied on by any other Federal

agency for purposes of compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

"(vi) Such guidelines may not contain a requirement for applicants to perform human epidemiological studies to obtain or support registrations.

"(vii) Guidelines, and modifications thereof, shall be published in the Federal Register. The Administrator shall provide for comment for guidance in development of such guidelines or modifications.".

(b) RESEARCH.—Subsection (a) of section 20 (7 U.S.C. 136r(a)) is amended to read as follows:

"(a) RESEARCH.—

"(1) IN GENERAL.—The Administrator shall undertake such research as may be necessary to carry out this Act, including research by grant or contract with other Federal agencies, universities, or other entities or persons.

"(2) INTEGRATED PEST MANAGEMENT.—The Administrator shall conduct research into integrated pest management in cooperation with the Secretary of Agriculture.

"(3) DUPLICATION.—The Administrator shall ensure that research conducted under this subsection does not duplicate research being undertaken by any other Federal agency. For purposes of compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 432 et seq.), such agency may not be required to duplicate or supplement research already reviewed and accepted by the Administrator in the course of registration and the finding of no unreasonable adverse impact resulting from the use of registered material.".

On page 208, strike out the item relating to section 20(a) and insert in lieu thereof the following:

"(a) Research.

"(1) In general.

"(2) Integrated pest management.

"(3) Duplication.".

Mr. SYMMS. Mr. President, this is a simple amendment to solve a major problem facing rural and agricultural States like Idaho. Most of my amendment merely restates current law. Some important clarifications are made, however. These are:

First, Federal agencies may use registered pesticides as prescribed on the label, unless the Administrator of the Environmental Protection Agency [EPA] determines that missing or deficient data is sufficiently important to warrant a suspension or cancellation.

Second, the research and analysis done by EPA when registering pesticides may be relied on by any other Federal agencies in the process of complying with the National Enviromental Policy Act of 1969.

Third, other Federal agencies are not required to duplicate research already reviewed during EPA's registration process.

These clarifications are unneeded in most parts of the country. In some Federal districts, however, courts are not clear whether research done under FIFRA can be used to satisfy the testing requirements of the National Enviromental Policy Act.

Clarification is urgently needed. It simply is not wise environmental policy to have Federal agencies review, let alone conduct detailed scientific research, when they have absolutely no facilities, manpower, or expertise in that area. They don't even receive appropriations for such research.

My amendment is even more urgently needed by the already depressed agricultural sector of the Nation. Earlier this year, farmers and ranchers in Idaho were notified that the States largest landlord, the Federal Government, would have to suspend control of noxious weeds on Government lands. Thistle, leafy spurge, knapweed, and other noxious weeds will now grow unchecked on millions of acres in Idaho.

The impact on agriculture is devastating. Under current conditions, noxious weeds in Idaho cost the State an estimated $50 million a year in lost agricultural production. If current control programs are suspended, and millions of acres of Government lands become weed infested, the losses to agriculture could double or even triple.

How can we in Congress justify such willful negligence and disregard for a sector of society that is already facing enormous difficulties? Could it be that noxious weed control programs are being suspended in order to save lives, protect vital species of animal or plant, or prevent some major environmental disruption? No. Noxious weeds are spreading uncontrolled while we wait for the Bureau of Land Management to complete research and paperwork that will yield no new information beyond what was already discovered when EPA registered the pesticide in the first place.

The cost of duplicating this research is phenomenal. The Bureau of Land Management estimates that it could cost as much as $5 million per compound. Just to illustrate what that adds up to, take for example the Federal Forest Vegetation Management Program. That program uses 14 different compounds, translating into 70 million dollars' worth of research required before the program could proceed. Furthermore, this research could take from 5 to 7 years. The timber lost during that period is estimated by the Bureau of Land Management to be worth $21,720,000 annually.

Further, there are numerous Government pesticide and herbicide programs that could be effected in a similar way. The Animal and Plant Health Inspection Service's programs could be suspended, the Drug Enforcement Administration's marijuana control could be halted, and the Forest Service's seedling protection programs could come to a standstill. All of this at tremendous cost, both directly to the people of the United States and to their Treasury.

If we wish to have a credible—reasonable—Federal pesticide policy, confusion of the type addressed by this amendment must be cleared away. I therefore urge the immmediate adoption of this amendment.

Mr. McCLURE. Mr. President, I support the amendment offered by my colleague from Idaho. I have long been in support of this amendment because it addresses a major problem in the State of Idaho and throughout the West. That problem is caused by the interpretation of current law that each governmental agency conduct its own research on pesticides, even though the Environmental Protection Agency has cleared the pesticide for use. Research and analysis done by EPA when registering pesticides should be relied upon by any other Federal agency and be accepted in any other Federal documentation developed in compliance with the National Environmental Policy Act of 1969. This research and analysis should also be equivalent to an environmental impact statement developed in compliance with NEPA.

The type of problem this amendment is designed to clarify is unneeded in most parts of the country. However, some Federal district courts are not clear whether research done under FIFRA can be used to satisfy the testing requirements of NEPA. This clarification is needed now. Entire parts of the Western United States are without adequate noxious weed control because one judge decided that each Federal agency must do its own research on each individual pesticide and herbicide it wishes to use on Federal lands. This will lead to massive expensive duplication of research even though the EPA has registered the pesticide for use. This cannot be allowed to go on.

In our State of Idaho, this issue precipitated the suspension of the noxious weed spray program. Idaho farmers and ranchers were notified last year and this year that the Federal Government would not use chemical methods of noxious weed control on Federal lands because the needed chemicals were not satisfactorily researched as to human health hazards. Not only has this cost farmers and ranchers millions of dollars in lost agricultural production, it has cost sportsmen and hunters. Elk and deer cannot survive on Federal lands which are infested with Russian and spotted knapweed, yellow star thistle, dyers woad, and leafy spurge. The chemicals we need to use on these weeds for control can be purchased by anyone in a hardware store but because of Federal law it is not available for use on Federal lands.

This must stop and this amendment will help put a stop to it. It will clarify the Federal position on registered pesticides—that as long as applicators use the chemical as prescribed on the label it can be used without further Federal research. The Administrator of the

Environmental Protection Agency must still determine whether missing or deficient data is sufficiently important to warrant a suspension or cancellation. That safety valve still remains but reason is now entered into law.

Idaho and other Western States can no longer wait for the Federal Government to complete redundant paperwork which will yield no new information beyond what the EPA has already done, the noxious weeds on Forest Service and Bureau of Land Management Lands continue to spread, becoming more costly to control each year. These control programs are not being held up because of the hope of new research of chemicals—they are being delayed because of Federal paperwork—unnecessary duplication of paperwork.

The cost of duplication or research is mindboggling. The Bureau of Land Management estimates that it will cost up to $5 million per compound to duplicate the research on each chemical they wish to use. This useless duplication cannot be paid for in todays deficit situations—and indeed should not be stood for in any situation.

There are other Government programs that could be effected in a similar way. The Animal and Plant Health Inspection Service's programs could be suspended—which could cause immense, expensive problems to producers and consumers, the Drug Enforcement Administration's control program could be halted and the Forest Service's seedling protecting programs could be halted. If this were to happen costs would be tremendous and long standing programs of pest and disease control could be stalled.

We must—and I do—stand for a reasonable, workable Federal pesticide policy. We must eliminate the confusion and contradiction evident by the necessity of this amendment. I urge the Senate to accept this amendment and attach it to this bill.

Mr. LUGAR. Mr. President, on our side, we are prepared to accept the amendment.

Mr. ZORINSKY. Mr. President, in the interest of advancing the FIFRA legislation, we are prepared to accept the amendment.

The PRESIDING OFFICER. Is there further debate? The question is on agreeing to the amendment.

The amendment (No. 3247) was agreed to.

Mr. ZORINSKY. I move to reconsider the vote by which the amendment was agreed to.

Mr. LUGAR. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3248

(Purpose: To clarify the eligibility of homeless individuals for certain benefits)

Mr. DOMENICI. Mr. President, I send an amendment to the desk and ask for its immediate consideration. Senator DIXON, who is on the floor, is my principal cosponsor. Other cosponsors are Senators GORTON, HEINZ, BINGAMAN, DOLE, NUNN, GORE, DODD, RUDMAN, MOYNIHAN, KASSEBAUM, and LEVIN.

The PRESIDING OFFICER. The amendment will be stated. The assistant legislative clerk read as follows:

The Senator from New Mexico [Mr. DOMENICI], for himself, Mr. DIXON, Mr. GORTON, Mr. GORE, Mr. HEINZ, Mr. BINGAMAN, Mr. DOLE, Mr. NUNN, Mr. DODD, Mr. RUDMAN, Mr. MOYNIHAN, Mrs. KASSEBAUM, and Mr. LEVIN, proposes an amendment numbered 3248.

Mr. DOMENICI. I ask unanimous consent that further reading be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the bill, add the following new title:

TITLE —HOMELESS ELIGIBILITY CLARIFICATION ACT

SEC. . SHORT TITLE.

This title may be cited as the "Homeless Eligibility Clarification Act".

SUBTITLE A—EMERGENCY FOOD FOR THE HOMELESS

SEC. . MEALS SERVED TO HOMELESS INDIVIDUALS.

(a) DEFINTION OF FOOD.—Section 3(g) of the Food Stamp Act of 1977 (7 U.S.C. 2012(g)) is amended—

(1) in clause (1), by striking out "and (8)" and inserting in lieu thereof "(8), and (9)";

(2) by striking out "and" at the end of clause (7); and

(3) by inserting before the period at the end thereof the following: ", and (9) in the case of households that do not reside in permanent dwellings and households that have no fixed mailing addresses, meals prepared for and served by a public or private nonprofit establishment (approved by an appropriate State or local agency) that feeds such individuals and by a public or private nonprofit shelter (approved by an appropriate State or local agency) in which such households temporarily reside (except that such establishments and shelters may only request voluntary use of food stamps by such individuals and may not request such households to pay more than the average cost of the food contained in a meal served by the establishment or shelter)".

(b) DEFINITION OF HOUSEHOLD.—The last sentence of section 3(i) of such Act (7 U.S.C. 2012(i)) is amended by inserting after "battered women and children," and following: "residents of public or private nonprofit shelters for individuals who do not reside in permanent dwellings or have no fixed mailing addresses, who are otherwise eligible for coupons,".

(c) DEFINITION OF RETAIL FOOD STORE.—Section 3(k)(2) of such Act (7 U.S.C. 2012(k)(2)) is amended by striking "and (8)" and inserting in lieu thereof "(8), and (9)".

(d) PARTICIPATION OF ESTABLISHMENTS AND SHELTERS.—Section 9 of such Act (7 U.S.C. 2018) is amended by adding at the end thereof the following new subsection:

"(g) In an area in which the Secretary, in consultation with the Inspector General of the Department of Agriculture, finds evidence that the participation of an establishment or shelter described in section 3(g)(9) damages the programs's integrity, the Secretary shall limit the participation of such establishment or shelter in the food stamp program, unless the establishment or shelter is the only establishment or shelter serving the area.".

(e) REDEMPTION OF COUPONS.—The first sentence of section 10 of such Act (7 U.S.C. 2019) is amended—

(1) by striking out "and" after "battered women and children,"; and

(2) by inserting after "blind residents" the following: ", and public or private nonprofit establishments, or public or private nonprofit shelters that feed individuals who do not reside in permanent dwellings and individuals who have no fixed mailing addresses".

(f)(1) The amendments made by this section shall become effective, and be implemented by issuance of final regulations, not later than April 1, 1987.

(2) Not later than September 30, 1988, the Secretary of Agriculture shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report that evaluates the program established by the amendments made by this section, including any proposed legislative recommendations.

(3) The amendments made by this section shall cease to be effective after September 30, 1990.

SUBTITLE B—JOB TRAINING FOR THE HOMELESS

SEC. . JOB TRAINING FOR THE HOMELESS.

(a) ECONOMICALLY DISADVANTAGED TO INCLUDE HOMELESS.—Section 4(8) of the Job Training Partnership Act (29 U.S.C. 1503(8)) is amended—

(1) by striking out "or" at the end of subparagraph (D);

(2) by striking out the period at the end of subparagraph (E) and inserting in lieu thereof a semicolon; and

(3) by adding at the end thereof "(F) an individual who is homeless and whose total income is not in excess of the income levels described in subparagraph (B).".

(b) JOB TRAINING PLAN.—Section 104(b)(2) of the Job Training Partnership Act (29 U.S.C. 1514(b)) is amended by inserting before the semi-colon a comma and the following: "and a description of how the program will be established in locations providing services to the homeless".

(c) BARRIERS TO EMPLOYMENT RULE.—Section 203(a)(2) of the Job Training Partnership Act (29 U.S.C. 1603(a)(2)) is amended by striking out "or addicts" and inserting in lieu thereof "addicts, or homeless".

SUBTITLE C—ENTITLEMENTS ELIGIBILITY

SEC. . TREATMENT OF HOMELESS INDIVIDUALS ELIGIBLE UNDER AFDC, SSI, AND MEDICAID PROGRAMS.

(a) AFDC.—Section 402(a) of the Social Security Act (42 U.S.C. 602(a)) is amended—

(1) by striking out "and" at the end of paragraph (38),

(2) by striking out the period at the end of paragraph (39) and inserting in lieu thereof "; and", and

(3) by adding at the end the following new paragraph:

"(40) provide a method of verifying the eligibility of, and making aid available with respect to, a dependent child who does not reside in a permanent dwelling or does not have a fixed home or mailing address.".

(b) SSI PROGRAM.—Section 1631(e) of such Act (42 U.S.C. 1383(e)) is amended by

adding at the end the following new paragraph:

"(3) The Secretary shall provide a method of verifying the eligibility of, and making payments under this title to, an eligible individual who does not reside in a permanent dwelling or does not have a fixed home or mailing address.".

(c) MEDICAID PROGRAM.—Section 1902(a) of such Act (42 U.S.C. 1396a(a)) is amended—

(1) by striking out "and" at the end of paragraph (45),

(2) by striking out the period at the end of paragraph (46) and inserting in lieu thereof "; and", and

(3) by adding at the end the following new paragraph:

"(47) provide a method of verifying the eligibility of, and making medical assistance available to, an eligible individual who does not reside in a permanent dwelling or does not have a fixed home or mailing address.".

(d) EFFECTIVE DATE.—

(1) Except as provided in paragraph (2), the amendments made by this section shall become effective on the date of the enactment of this Act.

(2) If a State agency administering a plan approved under part A of title IV of the Social Security Act or under title XIX of such Act demonstrates, to the satisfaction of the Secretary of Health and Human Services, that it cannot, by reason of State law, comply with the requirements of an amendment made by subsection (a) or (c) of this section, respectively, the Secretary may prescribe that, in the case of such State, the amendment will become effective beginning with the first month beginning after the close of the first session of such State's legislature ending on or the date of the enactment of this Act. For purposes of the preceding sentence, the term "session of a State's legislature" includes any regular, special, budget, or other session of a State legislature.

SEC. . SINGLE APPLICATION FOR SSI AND FOOD STAMP BENEFITS BY SSI PRE-RELEASE INDIVIDUALS.

(a) IN GENERAL.—Section 1631 of the Social Security Act (42 U.S.C. 1383) is amended by adding at the end the following new subsection:

"Single Application for SSI and Food Stamp Benefits by SSI Pre-Release Individuals

"(j)(1) The Secretary shall provide for the establishment, maintenance, and improvement of procedures designed to ease the transition of institutionalized persons from medical, penal, and other institutions to the community, and to prevent homelessness, by permitting such persons to apply for benefits under this title prior to their discharge or release from such institutions and thereby assuring that essential support (such as housing, food, and clothing) is available to them upon such discharge or release.

"(2) Under regulations prescribed by the Secretary, the procedures described in paragraph (1) shall—

"(A) require that personnel of the district offices of the Social Security Administration, and of the appropriate State disability determination services, make regular visits to all institutions of the types involved to receive and process applications for benefits under this title and for food stamps under paragraph (3);

"(B) provide for the development of descriptive materials on such procedures for use by such district offices and by social service departments in such institutions;

"(C) provide training for employees in such district offices; and

"(D) establish time limits within which State agencies must complete their processing of applications filed pursuant to such procedures.

"(3) The Secretary and the Secretary of Agriculture shall establish special procedures under which persons applying for benefits under this title prior to their discharge or release from an institution pursuant to the pre-release procedures described in paragraphs (1) and (2) can also apply to participate in the food stamp program under the Food Stamp Act of 1977, utilizing a single application for this purpose.".

(b) EFFECTIVE DATE.—

(1) The amendment made by subsection (a) shall become effective April 1, 1987.

(2) The Secretary of Health and Human Services shall promulgate final regulations to implement the amendment made by subsection (a) not later than April 1, 1987.

SEC. . DELIVERY OF VETERANS' BENEFITS PAYMENTS.

(a) IN GENERAL.—(1) Section 3003 of title 38, United States Code, is amended by adding at the end thereof the following new subsection:

"(c) Benefits under laws administered by the Veterans' Administration may not be denied an applicant on the basis that the applicant does not have a mailing address.".

(2) Section 3020 of title 38, United States Code, is amended by adding at the end thereof the following new subsection:

"(f)(1) In the case of a payee who does not have a mailing address, payments of monetary benefits under laws administered by the Veterans' Administration shall be delivered under an appropriate method prescribed pursuant to paragraph (2) of this subsection.

"(2) The Administrator shall prescribe an appropriate method or methods for the delivery of payments of monetary benefits under laws administered by the Veterans' Administration in cases described in paragraph (1) of this subsection. To the maximum extent practicable, such method or methods shall be designed to ensure the delivery of payments in such cases.".

(b) EFFECTIVE DATE.—(1) The amendment made by subsection (a)(1) shall take effect on the date of enactment of this Act.

(2) The amendment made by subsection (a)(2) shall take effect with respect to payments made on or after October 1, 1986.

Mr. DOMENICI. Mr. President, this series of amendments I choose to call the Homeless Eligibility Clarification Act. I believe the Senate remembers about 10 days ago, when we were on the drug bill, I indicated that about 30 percent of the homeless suffer from some kind of drug impairment or drug addiction.

□ 1900

For that reason I put this amendment on that bill. I am concerned, however, because that bill may not get conferenced and consequently something I am confident the entire Senate would support and the U.S. House would like to have as law may get lost in this last 3 or 4 days because we will not be able to confer on the drug bill.

Mr. HELMS. Mr. President, I want to verify with the sponsor of the amendment that the phrase "average cost of the food contained in the meal served" refers to direct costs, through purchases, of food used in meals served in these soup kitchens and homeless shelters. It would not include the value of donated foods—such as those furnished through USDA, or by private individuals or companies—nor would it include other indirect costs incurred by the establishments in the acquisition, storage, or preparation of the food used in the meals.

Mr. DOMENICI. The Chairman is correct. Our purpose deals explicitly with the cost of the food—and I would emphasize only food—that is contained in the meals served.

Mr. HELMS. Additionally, Mr. Chairman, I want to verify my understanding that it is not the intent of the provision to establish a right to "cash change" for those recipients who redeem food stamp coupons at such soup kitchens and homeless shelters. At the present time, only food stamps redeemed in retail food stores are subject to having change provided to the recipient, and in those cases, the change must be 99 cents or less.

Mr. DOMENICI. That is correct.

Mr. HELMS. On the basis of these understandings, Mr. President, I am prepared to accept the amendment.

Mr. DOMENICI. Mr. President, this amendment makes sure that homeless, who by definition have no residency, receive benefits, such as veterans benefits, AFDC benefits and the like to which they are entitled. In addition, this makes permanent the eligibility of the homeless to use food stamps for hot meals in the places that they have to go to get meals. We will allow them to pay for shelter or soup kitchen meals with food stamps.

The homeless, however, cannot get any cash change when they use food stamps to purchase hot meals. The colloquy with the distinguished chairman of the Committee on Agriculture clarifies our intent that they cannot be charged for foodstuffs that are a gratuity of the National Government when the price of the meal is calculated. The actual out-of-pocket costs of these centers, these food kitchens, where they have to buy food, could be charged to the homeless, who could pay for them in food stamps if, indeed, they wanted to and were eligible for the food stamps. I think this is long overdue.

I thank the distinguished chairman of the Agriculture Committee for concurring and for his help with this amendment. Obviously, my distinguished cosponsor, Senator DIXON, had this idea and many more as he put together with others a bill to alleviate as best we could some of the societal problems of the homeless that are so severe and about which we continue to be very concerned. This will at least make sure they are entitled to what we as a society thought they were getting and adds one thing. There is no

use giving them food stamps when they do not have a house because there is no place to store food. They cannot buy food with food stamps and go home because they do not have a home. So we have given them this one additional right. If a kitchen intends to put this program into place, the homeless could now pay them with food stamps. I yield the floor.

Mr. DIXON. Mr. President, I am pleased to join the distinguished senior Senator from New Mexico in sponsoring this package of amendments which will have a major impact on the lives of the homeless and no impact, may I say, on the Federal deficit.

I sponsored legislation earlier this year which would authorize the redemption of food stamps for prepared meals in nonprofit facilities. Many of my colleagues may not realize that the current law does not permit food stamps to be redeemed for hot meals. This seems unreasonable since life on the street often does not provide access to cooking facilities or refrigeration, thereby making it impossible to prepare a hot meal or store food.

The legislation being proposed would allow the homeless to redeem food stamps, to which they are already entitled, for prepared meals in authorized facilities. It is a commonsense approach to feeding the neediest among us.

In addition, it will spread the limited resources of soup kitchens a little farther, in that they will be able to redeem these food coupons for more food.

Many facilities turn away people every day. They have far more mouths to feed than provisions with which to feed them. Even minimal assistance to feeding centers which provide meals at an average cost of about 75 cents, can make a big difference.

There is no requirement that anyone participate. It is strictly voluntary.

The Congressional Budget Office informed me there was no additional cost associated with this change. In fact, it would probably mean a more cost-effective way of redeeming food stamps, since people wouldn't have to purchase more costly prepared foods and would not waste that which could not be stored properly.

The Food Stamp Act makes it impossible for the homeless to effectively utilize a program which was designed to meet the needs of the most destitute in our society. Therefore it just makes plain sense to tailor the program for those it was intended to serve.

There have been previous exceptions made to the Food Stamp Act to accommodate other groups which for one reason or another, needed to redeem their food coupons for prepared meals rather than raw commodities. These exceptions have been in effect for over 10 years in some cases.

In 1973, the Food Stamp Act was amended to allow the elderly to redeem their coupons for prepared meals at congregate meal sites. The justification was that many elderly are unable to cook either because they do not have access to cooking facilities or are physically unable to do so, and in order to make the Food Stamp Program useful to them, accommodations were necessary. Since 1973, 1,694 meal sites participate in the Food Stamp Program.

Also in 1973, drug addicts and alcoholics, enrolled in residential treatment programs, who were entitled to food stamps, were permitted to use food coupons for prepared meals in the residential facility in which they resided. Since 1973, 615 facilities have participated in that program.

In 1977, the law was amended to permit the disabled to use food coupons for Meals on Wheels, 1,190 programs have participated since that time by accepting food stamps for delivered meals.

In 1979, the law was amended to permit the disabled who reside in small group facilities to redeem food stamps for prepared meals.

In 1980, battered women's shelters were permitted to accept food coupons for prepared meals from their residents. This program has had 20 facilities participating since it went into effect. Report lanaguage when the act was passed stated that it would assure nutritious meals for women and reduce operating costs for these shelters. The same can certainly be said for homeless shelters.

It would seem logical that if the homeless do not have to spend their days looking for food, they can use their time more productively in looking for work or participating in job training.

It is important to note that the previous exceptions to the Food Stamp Act were implemented over the past 13 years and there have been few problems of any real consequence. These exceptions were implemented without going through any demonstration project or pilot programs. The Department of Agriculture developed regulations to administer them and in each case, they are operating effectively.

Another provision of our amendment would add the homeless as a target group for the Job Training Partnership Act.

The amendment would direct job training plans which are required under provisions in the act, to include a description of how job training programs will address the homeless population. It is hoped that this will provide a special concentration on the homeless and make job training programs more responsive to the homeless who are already technically eligible, so that their special needs can be addressed.

The final section of this amendment generally addresses the problems associated with getting benefits to which the homeless are entitled. It clarifies existing law to assure that just because an individual lacks a permanent address, benefits should not be denied. This would apply to aid to families with dependent children, Social Security benefits, Medicaid, and veterans' benefits.

The amendment also cuts through some redtape by providing that people who are about to be released from public institutions will be able to apply for supplemental security income benefits and food stamps in a single application.

Mr. President, we continue to make progress, little by little, in alleviating the suffering of our Nation's poor. Although these simple changes may seem inconsequential, they can mean better nutrition, improved chances for a job, a streamlined delivery system for benefits and an ultimate hope of greater dignity and independence for America's poor.

We have addressed some concerns of the Department of Agriculture, the Senate Agriculture Committee, and others by revising language which was previously passed by a voice vote as part of the drug bill.

Some members of the Senate Agriculture Committee had concerns about allowing for-profit facilities to accept food coupons from the homeless for meals. They are currently able to accept them from the elderly and disabled by previous amendments to the act. In the interest of getting this measure passed this year, we are deleting that provision from our amendment.

This in no way diminishes my interest in seeing this resource available in the future. In certain areas, there are no shelters or soup kitchens within easy access of large numbers of homeless individuals. Many of the homeless live in places with no kitchens or food storage capabilities—either on the streets or in welfare hotels. Many have small children to care for, and yet these children cannot have a hot meal because the resources do not exist. It is an issue which should be revisited next year.

Mr. President, I thank the distinguished senior Senator from New Mexico for his interest in this subject, I thank the distinguished manager and the ranking member for their accommodation of our amendment, and I thank the distinguished chairman of the Agriculture Committee for his accommodation of the senior Senator from New Mexico and myself.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. I wish to make one last observation. Again, I am most appreciative of the distinguished Senator from North Carolina [Mr. HELMS], who chairs the Committee on Agriculture, for his help. As far as the Department of Agriculture, which administers the Food Stamp Program, I hope and trust they will understand this is not a simple and easy proposition. Obviously, they will have to set some rules and regulations because the soup kitchens for the poor and the homeless are going to be able to receive at least some food stamps in exchange for the cost of food. I understand they have to regulate and promote rules. But I hope they will not do this in a way that is calculated to make it difficult. I hope they will understand that if we had a vote in the Senate I do not know who would oppose this. We really would like to have them make it work, not to have it not work.

I have no indication that they will be anything but cooperative. They have helped us draft this amendment and in a sense it could have a very dramatic impact on the capabilities of these centers and food kitchens to serve more and more of the homeless if we will just accommodate in a way that is reasonable and rational and give them some benefit of the doubt from time to time as the rules are promulgated.

Mr. President, I am most pleased to be joined by my colleague from Illinois in our efforts to clarify some eligibility issues for the homeless. Majority leader DOLE and several other Senators—Mr. GORTON, Mr. GORE, Mr. HEINZ, Mr. BINGAMAN, Mr. NUNN, Mr. DODD, Mr. RUDMAN, and Mr. MOYNIHAN—are convinced that these no-cost changes are in order and should be enacted as soon as possible.

This amendment removes the legal barriers that exist in our law that can prohibit a homeless person from receiving benefits to which he or she should be entitled. In its simplest terms, this amendment provides that the lack of a fixed address will no longer be a barrier in qualifying the homeless for the following programs—job training, aid to families with dependent children [AFDC], supplemental security income [SSI], Medicaid, and veterans' programs.

Another important feature of this amendment is the addition of emergency shelters as an allowable place to use food stamps. We also provide that shelters may redeem food stamps only for food and cannot charge food stamp recipients more for meals than nonrecipients. The final feature of this amendment is the provision that allows a single application for SSI and food stamps in the existing prerelease program for institutionalized individuals.

In December 1984, the Federal Task Force on the Homeless reported to the Secretary of Health and Human Services, Margaret M. Heckler, that the homeless fall into three categories:

First, people who have suffered recent economic setbacks.

Second, people who have experienced severe, personal crises.

Third, people who are chronically disabled by mental illness and/or alcohol and drug abuse.

The third group, a combination of mental illness and substance abuse, is estimated in this report to the Secretary to be "from one-half to two-thirds of the homeless population."

Other estimates place the drug and alcohol abusers at about one-third of all homeless individuals—third report by the "House Committee on Government Operations, the Federal Response to the Homeless Crisis," April 18, 1985, page 25. It is this connection to substance abuse that led my colleagues to support the major provisions of this bill on the drug control bill. Due, however, to the uncertain future of this bill, I ask my colleagues to join us in attaching our bill to S. 2792.

The House report mentioned above makes the following observation about the homeless:

> Until the 1970's, the homeless were usually single white males suffering from alcoholism or drug dependency. However, today's population is more heterogeneous. The homeless of today are younger, and include much larger percentages of minorities, women, children and entire families.

This is a no-cost bill, Mr. President. My attached explanation of the provisions of this amendment explains the source of Congressional Budget Office analyses supporting our conclusion that this is a no-cost bill.

In summary, passage of this amendment will open doors that are now closed to homeless individuals. These are people who are otherwise eligible for assistance from the Federal Government. The lack of a fixed address, however, gives a conscientious Federal employee a reason to deny benefits that should otherwise flow to many homeless people. We believe, Mr. President, that there is not a single Federal worker who enjoys denying vital and minimal benefits to people in desperate need. This amendment will allow Federal employees, in the name of the people of the United States of America, to qualify those homeless people, who otherwise fit program criteria, to become fully eligible for AFDC, SSI, Medicaid, job training, and veterans programs.

The explanation is as follows:

AN AMENDMENT TO THE DRUG CONTROL BILL TO ASSURE ACCESS FOR ELIGIBLE HOMELESS PERSONS TO GOVERNMENT ASSISTANCE PROGRAMS

LINK TO DRUG CONTROL BILL

One third of homeless persons are substance abusers or members of families of drug and/or alcohol abusers.

PURPOSE

An amendment to assure access for eligible homeless persons under the food stamp, job training, Aid to Families with Dependent Children (AFDC), Supplemental Security Income (SSI), Medicaid and veterans programs. This amendment is designated to achieve these objectives by making modifications that CBO has determined will not result in additional costs. The CBO estimates were made in conjunction with the introduction of the bills identified below.

LEGISLATIVE HISTORY

These provisions are currently contained in two House bills, H.R. 5139 and H.R. 5140, and two Senate bills, S. 2608 and S. 2533, which were introduced in the House of Representatives and in the Senate in June of 1986. H.R. 5139 was introduced by Congressman Leland (D-TX) and Congressman Rodino (D-NJ) and has been referred to the Ways and Means Committee. H.R. 5140 was introduced by Congressman Leland and 52 co-sponsors and has been referred jointly to the Ways and Means, Agriculture, Education and Labor, Banking, Energy and Commerce and Veterans' Affairs Committees.

S. 2608 was introduced by Senator Gore (D-TN) and Senator Moynihan (D-NY) and has been referred to the Finance Committee. S. 2533 was introduced by Senator Dixon (D-IL) and has been referred to the Agriculture Committee.

PROVISIONS

1. Purchase of shelter meals with food stamps

Amends the Food Stamp Act to allow residents of emergency shelters to use their food stamps to purchase meals at the shelter. The amendment would also provide that shelters may redeem food stamps only for food and cannot charge food stamp recipients more for meals than non-recipients.

2. Use of food stamps by homeless persons to buy prepared meals

Amends the Food Stamp Act to allow persons without fixed address to use food stamp coupons to buy meals in public or private nonprofit establishments.

3. Job training for the homeless

Amends the Job Training Partnership Act to include the homeless as a targeted group and requires job training plans under the Act to include a description of how programs will be established in locations providing services to the homeless.

4. Access to the AFDC program

Clarifies existing law to assure that eligible homeless persons will not be denied AFDC benefits because they do not have a fixed address.

5. Access to SSI benefits

Clarifies existing law to assure that eligible homeless persons will not be denied SSI benefits because they do not have a fixed address.

6. Single application for SSI and food stamps by prerelease individuals

Reduces administrative burdens by allowing individuals about to be released from a public institution to execute a single appli-

cation for SSI and food stamp benefits under the existing prerelease program.

7. Access to veterans' benefits

Clarifies existing law to assure that eligible homeless persons will not be denied veterans' benefits because they do not have a fixed address.

CBO COST ESTIMATES

1. Purchase of shelter meals with food stamps

A CBO estimate made in conjunction with the introduction of S. 2533 indicated no additional cost for this provision.

2. Use of food stamps by homeless persons to buy prepared meals

A CBO estimate made in conjunction with the introduction of 2533 indicated no additional cost for this provision.

3. Job training for the homeless

A June 25, 1986 CBO estimate made in conjunction with the introduction of H.R. 5140 indicated no additional cost for this provision.

4. Access to the AFDC program

A June 25, 1986 CBO estimate made in conjunction with the introduction of H.R. 5140 indicated no additional cost for this provision.

5. Access to SSI benefits

A June 25, 1986 CBO estimate made in conjunction with the introduction of H.R. 5140 indicated no additional cost for this provision.

6. Access to the Medicaid program

A June 25, 1986 CBO estimate made in conjunction with the introduction of H.R. 5140 indicated no additional cost for this provisions.

7. Single application for SSI and food stamps by pre-release individuals

As a result of this change, federal paperwork will be reduced because a single application will replace the two applications presently required.

8. Access to veterans' benefits

A June 25, 1986 CBO estimate made in conjunction with the introduction of H.R. 5140 indicated no additional cost for this provision.

Mr. HELMS. Mr. President, the confusion with regard to how much should be charged by the soup kitchens and shelters is evidenced by the evolution of the present language.

The present provision specifies that soup kitchens and shelters may request the homeless to pay, on a voluntary basis, no more than the "average cost of the food contained in a meal served" by the soup kitchens or shelters.

The original version of the legislation (S. 2533) and that included in the drug bill required individuals to pay no more than other individuals are required to "pay" for such meals.

How a determination is to be made of the "average cost" is going to be quite difficult. Such meals are often comprised of many donated items—both those donated by private, commercial interests, as well as commodity donations made by individuals and the Federal Government. Obviously, such "donations" that constitute part of the meal would not be included in the determination of "cost" as proposed by the amendment.

Mr. President, it would be illogical to expect the Federal Government to pay, through food stamps, for meals comprised of commodities that the Federal Government has already donated that are included in the meals. A good deal of USDA commodities do find their way into such operations. Similarly, it would be illogical to expect the cost of items that are donated by private individuals to be included in the "average cost of the food contained in a meal served." Many, if not most, of the contributors of such food are able to take a tax deduction for the value of the contributions that they have made. Indeed, such tax deductibility is intended to encourage such donations.

Thus, the only costs that would be used in determining the costs of the meal are those costs actually associated with the food contained in the meal. This would not include any donated items, or other food items for which the soup kitchen or shelter did not incur a direct expense. Similarly, based on the provision's specific language, it would not include other food-related or other costs that may be incurred by the soup kitchen or shelter such as heat, lights, and so forth.

Mr. President, in all candor, I'm not sure the amendment will achieve all that the sponsors desire, but I do not disagree with the earnest desire of the sponsors to help the homeless. Frankly, Mr. President, it seems that it will be quite difficult to implement the provision in a meaningful way. A great deal of detail will have to be addressed by the Secretary of Agriculture in rather comprehensive regulations setting forth guidelines on the types of costs that are legitimately related to the "average cost of the food contained in a meal served."

Another issue, Mr. President, which I suspect the Secretary will have to address, is that of cash change being provided to such individuals under this provision. Under current law, recipients who purchase food in retail food stores are permitted to receive as much as 99 cents from any food stamp purchase. Above that amount must be returned in uncanceled food stamp coupons.

However, this provision establishes a new category for soup kitchens and homeless shelter residents. In all likelihood, there would be no cash change returned to such recipients who use food stamps at such facilities. This is consistent with other aspects of the Food Stamp Program in which residential facilities—for battered women, drug and alcohol rehabilitation, and others—and congregate feeding sites for the elderly are not required to provide any change to the recipients.

Mr. LUGAR. Mr. President, as the distinguished chairman of the Budget Committee has reported, he and the distinguished chairman of the Agriculture Committee have entered into a colloquy with regard to this important amendment. On the basis of that colloquy, we are prepared to accept the amendment.

Mr. ZORINSKY addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. ZORINSKY. In the interest of advancing the FIFRA legislation, we are prepared to accept the amendment.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment.

The amendment (No. 3248) was agreed to.

Mr. ZORINSKY. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. LUGAR. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ABDNOR. Mr. President, one of the key issues in the FIFRA reauthorization has been that of protecting from liability farmers who have used agricultural chemicals in compliance with federally approved label directions. This is very important to my own farm constituents and farmers across the country.

It is my understanding that the negotiations that produced this compromise FIFRA bill included agricultural interests, and that liability protection was their single highest priority and objective. I do not want my farmers to come out of this bill empty-handed, the victims of last-minute desires to move a bill. Farmers need this protection. Currently, they are in the impossible position of having to second-guess EPA regulators and industry scientists on whether or not compliance with label directives will adequately protect them and the environment.

The Senate is taking action to strike the provision relating to farmers' liability in order to temporarily further the progress of this bill. I wish to emphasize, in no uncertain terms, that the Senate action should not be construed or interpreted as a negative action by this body on this issue.

Mr. President, the House recently approved by voice vote an amendment to FIFRA affording this type of protection to farmers and ranchers. I believe this provision is essential and I ask the chairman and our colleagues who serve with him on the conference committee to work to ensure its inclusion in the final FIFRA bill.

Mr. LUGAR. Mr. President, I am unaware of further amendments and I ask for third reading of S. 2792, as amended.

Mr. DOLE. Mr. President, today we are considering an important bill, S. 2792, the Federal Insecticide, Fungicide, and Rodenticide Act [FIFRA] Amendments of 1986.

I commend Senator LUGAR, Senator HELMS, and Senator HAWKINS for their tireless efforts in behalf of this legislation. It represents an enormous amount of time committed on their part to address a very complex and comprehensive package dealing with our pesticide laws.

Pesticides have become an important component of agricultural production and health protection. Certainly we must weigh the benefits of specific pesticides against the risks they pose to all Americans and to the environment. This is a very difficult task given the number of competing interests—producers, consumers, manufacturers, environmentalists, and others affected by the use of pesticides. So we have taken a positive and significant step in bringing the legislation before the Senate today.

LEGISLATIVE PURPOSE

The legislation is aimed at improving the pesticide approval process, strengthening provisions that protect the public, making health data available on pesticides, ensuring that users of pesticides are treated fairly under the pesticide program, and providing an efficient and equitable regulatory program for producers and distributors of pesticides.

PROVISIONS

The legislation includes provisions dealing with data compensation. I am aware Senator KASSEBAUM has an interest in the data compensation issue from the standpoint of providing greater competition in the pesticide industry by making it easier for generic producers to enter the market. I think this idea has merit and is worth taking a closer look at. If we are not able to address this issue fully today, I would suggest that Congress should take a closer look at this issue during the next session.

The bill reported out of the Senate Agriculture Committee would have also restored patent life to pesticide products whose patent terms are eroded by mandatory Federal premarket testing before their commercial marketing or use. I am aware there has been an agreement on patent term restoration which would impose a sunset in 1993 on the patent term restoration provision. There is concern that such a sunset would have an adverse impact on the stimulation of long-range research and development of new pesticides and run contrary to the restoration of full patent life. We may have to take a closer look at this issue.

The legislation also includes important langauge protecting from liability, farmers who have used agricultural chemicals in compliance with federally approved label directions. I am advised there will be an effort to strike this language. If this occurs, it would be desirable to resolve this issue between House and Senate versions of the bill to ensure protection to farmers.

The bill would also provide for national uniformity in the regulation of residues of pesticides in or on food in order to facilitate national production and marketing of all foods without jurisdictional barriers.

PESTICIDE REREGISTRATION

Mr. President, it is important to note the centerpiece of the legislation is to quicken the pace of pesticide reregistration. The EPA is still in the process of reviewing and reregistering some 600 active ingredients. Registrants would be required to pay a users fee to help provide a portion of the resource needed for this formidable task. Precaution has been taken to ensure that small business won't be adversely affected by this fee.

It is fair to say that the polarized public debate surrounding pesticide use cannot be expected to subside until a successful reregistration program restores confidence in the regulatory system that governs pesticide approval and use.

CONCLUSION

Mr. President, this is an important bill of interest to many Americans. I would hope we could act expeditiously in passing this legislation.

● Mr. MOYNIHAN. Mr. President, I rise today to speak in support of the Federal Insecticide, Fungicide, and Rodenticide Act [FIFRA] Amendments of 1986. It has taken far too long for these important revisions to our basic pesticide law to reach the floor of the Senate.

The original FIFRA law dates from 1947; the last revisions were in 1972. With the increase in our knowledge of the effects of chemical pesticides on human health and the environment has come increased concern over the real and potential dangers posed by their use. The regulatory framework has not kept pace with our knowledge or our needs; we have before us the opportunity to catch up.

This bill, S. 2792, sets deadlines for EPA to review some 600 pesticide active ingredients to determine whether they ought to be on the market. These substances are incorporated in thousands of retail products; this broad inquiry has the potential for a very real impact on every one of us. It is none too soon.

This bill has the support of environmental, chemical industry, and farming groups, because all agree that reform of our pesticide law is necessary beyond any doubt. I commend my colleagues of both the Agriculture and Environment Committees for their good work in resolving disputes over ground water protection and other matters, and I urge all of my colleagues to be guided by their success.

With this in mind, Mr. President, I regret that my remarks must now turn to a divisive issue that is not yet resolved: The question of food tolerance levels for the amounts of chemicals that may remain as residues in food. I cannot support the provisions of the bill that would restrict the right of the States to go farther than the Federal Government on this issue, and I urge my colleagues to join with the Senator from Minnesota in removing this provision from the bill before it is passed.

All of our major environmental laws—the Clean Air Act, Clean Water Act, Safe Drinking Water Act, Superfund, Resource Conservation and Recovery Act, and others—reserve to the States the right to insist on more rigorous protections than the Federal standards, which represent minimum starting points. This approach should not be abandoned in FIFRA. EPA standards are often less stringent than the States feel are necessary to protect their citizens' health, and the right of the States to go farther should not be abridged.

This is a basic environmental issue. The food manufacturing industries that are most affected by standards for pesticide residues argue that State-by-State regulations for various chemical residues would disrupt their food supply systems, causing supply problems and price increases among other things. Speaking from experience, I might say that this does not appear to be the case. In New York, our standards for ethylene dibromide [EDB], the powerful grain-sterilizing fumigant, are substantially more stringent than those set by EPA, yet we have had no disruption of our supply of grain or grain-based food products.

Similarly, New York's residue standards for Alar, used to produce harder, crisper apples, are stronger than EPA's. There is no reason for the Federal Government to be in the position of telling New York, or any other State, that its citizens cannot buy cleaner apples or grains or vegetables if they so choose.

States with aggressive and sophisticated health agencies charged with protecting their citizens should not be restrained from using their resources to provide more protection than the Federal Government if those citizens wish to pay for it. Tolerance levels established by Federal regulations and the costs of enforcing them may be subject to OMB review. Individual States may be willing to go further than the OMB in paying the costs of cleaner food.

I close by reemphasizing my general support for the FIFRA Amendments of 1986, and for the work done by my colleagues in bringing S. 2792 to the Senate floor. With action to continue

the longstanding policy of allowing the States to act individually to protect their citizens from environmental hazards, we can both preserve our established practice and pass a stronger pesticide law that has been a long time coming. I thank the Chair, and urge prompt passage of the bill.●

Mr. MATHIAS. I rise in support of S. 2792, the FIFRA Amendments of 1986, a bill to strengthen and reauthorize our Nation's laws controlling the safety, environmental effects, and efficacy of pesticides. An enormous amount of careful, patient work in the Agriculture Committees in both Houses has gone into developing this bill. The U.S. agricultural chemical industry and the environmental and public interest groups came together in determined negotiations that stretched through many months of this Congress, finally achieving a balanced plan for assuring full protection of the public and environment without unnecessarily burdening the procedures and users of pesticides.

I want to concentrate in these brief remarks on a portion of S. 2792 that derives from work done in the Judiciary Committee on a bill that I have sponsored over the past 5 years—namely, the agrichemical patent term restoration bill. The provision, section 703 of S. 2792, is taken, with some changes and an addition, from the agrichemical patent restoration provisions in S. 1093 as reported by the Judiciary Subcommittee on Patents, Copyrights, and Trademarks on March 11. The provision would allow up to 5 years of extension on an agrichemical patent. This extension would compensate for time lost after the patent was granted while the product was prevented from going on the market because of safety and efficacy testing to satisfy the EPA requirements.

Our patent laws provide for a 17-year term of exclusive rights for all patented inventions, but the Federal regulatory review requirements in some industries, like agrichemicals, have in effect reduced this standard patent term by a number of years. In addition to the 5-year cap on the length of the extension, section 703 places an overall cap of 25 years from the time of the first U.S. patent application, including any claim in the patent ultimately issued, to the final expiration date of the extended patent.

The patent term restoration provision in S. 2792 sets out an exact method of calculating the length of the regulatory review period, so as to exclude delays that are attributable to the negligence or procrastination of the patent holder rather than the regulatory requirements themselves. To back this up, the Administrator of the EPA may, upon request of any interested person, call an informal public hearing to review whether the patent holder acted with due diligence in performing the tests and providing the information required by the EPA's regulatory review procedure.

When the Senate Agriculture Committee adopted the patent term restoration as a part of the FIFRA bill, a further addition was made to allow the generic pesticide producers to begin laboratory testing with patented pesticide products, processes or methods of use during the last 2 years before the patent expires. This will allow generic pesticide producers to be ready to go on the market more rapidly after the patent on the original product expires. Under current patent law, affirmed in a decision of the Court of Appeals for the Federal Circuit, unauthorized laboratory testing of a patented invention is an infringement of the patent. Congress enacted an exception to this rule 2 years ago in the case of human pharmaceutical drugs, and S. 2792 would make an exception for patented agrichemical inventions as well.

I must express my disappointment, however, with one provision of the patent term restoration provisions of FIFRA as now presented to the Senate. This is the sunset provision, which eliminates the patent term restoration provisions in 7 years. As a rule, sunset provisions are particularly inappropriate in bills addressing intellectual property protection, which seek to provide an incentive for long-range research and development of new products. The extremely short sunset period contained in the bill now before us would, I fear, seriously impair our efforts to encourage innovation in this field in the future; it would only reward innovation that has already occurred. I hope that the bill that is finally enacted will improve on this highly objectionable feature of the measure before us.

I will conclude my remarks by commenting on one misunderstanding that frequently crops up in connection with the patent laws. A patent is not a monopoly. Our patent system derives from article I, section 8 of the Constitution, wherein Congress is empowered:

• • • To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries • • •.

By granting such exclusive rights for limited times, there is no guarantee against another inventor developing a different invention to rival the first—for example, a different pesticide that provides the same or better protection than a previously patented pesticide. Monopoly power, by contrast, implies the power to tie up some portion of a market. A patent does not provide that kind of power.

The irony of the debate on patent term restoration for pesticides is that the erosion of patent life actually has been—and, if left unremedied, will continue to be—one of the causes of increased concentration in the agrichemical industry. Only the few giants with abundant financial resources and long staying power can continue to compete when the ability to recoup their R&D investment is curtailed by incomplete patent life. Moreover, these industry giants are forced to concentrate their research funds on a smaller range of products, resulting in a loss of diversity of products offered to the Nation's farmers to help them protect crops. The farmers have been overwhelmingly in favor of patent term restoration for pesticides. They understand that it will mean a longer time that they will have to pay higher prices before the patent expires. They are ready to pay this price because they know the patent system in the long run is the best way to assure them of higher quality and wider diversity of pesticide products.

Some observers of the debate have called the linking of the FIFRA amendments and the patent term restoration bill a compromise deal or a tradeoff. In my view, both parts of the package are in the public interest and deserve to be passed on their own merits. As a package, they address a wide range of concerns felt by environmentalists and the pesticide industry, and I think an appropriate balance has been struck. Both measures have traveled a long and arduous path to get to this point, and I look forward to completing our work on them in the short time remaining in this Congress.

Mr. LEAHY. Mr. President, at what seems to be the 11th hour, the Senate will have the opportunity to debate the FIFRA amendments bill, S. 2792. The bill was ordered reported from the Agriculture Committee in August.

The Federal Insecticide, Fungicide, and Rodenticide Amendments Act of 1986—S. 2792—is one of the most important bills to be considered by the Senate Agriculture Committee in the 99th Congress. A great deal of effort has been expended in the development of this bill, and there are many provisions of the bill that are major improvements to existing authorities.

The Senate Committee on Agriculture has developed a basically sound bill adding new authorities to project consumers and farmers from unsafe pesticides. The bill contains many of the same provisions as were contained in S. 2215, introduced by Senator LUGAR, Senator PROXMIRE, and me.

The FIFRA legislation ordered reported by the Agriculture Committee contains comprehensive proposals to amend existing law to, among other things, ensure that pesticide registrations that are supported by inadequate health and safety data will be reregistered in a timely manner.

In summary, S. 2792—

First, establishes a schedule for the completion of the reregistration process;

Second, imposes fees on chemical companies to partially offset environmental protection agency's costs for reregistration;

Third, gives priority to review of inert ingredients;

Fourth, strengthens pesticide applicator training requirements;

Fifth, requires regulations for worker protection;

Sixth, accords liability protection to farmers who follow label instructions;

Seventh, expands public access to data and public participation in the registration process;

Eighth, strengthens export regulation;

Ninth, requires increased protection of ground water from pesticide contamination; and

Tenth, maintains data compensation arbitration provisions of current law, but allows additional health and safety testing of a pesticide under patent by companies who want to market a generic version of the pesticide.

These provisions, and the policy they embody, represent major advances over current law. These and other provisions deserve widespread and strong support.

Unfortunately for environmental interests, the bill has some deficiencies.

First, the bill contains a provision that could restrict a State's ability to set more restrictive tolerances for pesticide residues in food. I opposed adoption of the amendment. However, the committee adopted a modification of the amendment that will sunset in 5 years the Federal preemption of State authority. This sunset provision will serve to protect most State authority because the Federal override will only apply to reregistered pesticides—and only a few pesticides will be completely reregistered in the next 5 years.

Second, S. 2792 as reported does not provide specific authority for limiting pesticide residue on imported food. The committee defeated a proposal to establish pesticide residue tolerances on imported foods on a 9-to-7 vote. The proposal to limit pesticide residue was a feature of S. 2215.

Third, the committee adopted a new section 31, protection of ground water. I believe the new section could and should be modified to provide for better environmental protection. I understand that Senators BAUCUS and DURENBERGER have made substantial progress in modifying the committee's provision, and I am pleased that the Senate will adopt the provision.

UNIFORM TOLERANCES

During consideration of FIFRA amendments by the Agriculture Committee, a provision was adopted that limits the ability of a State to limit pesticide contamination of food. While the committee adopted my suggestion to sunset this provision in 1991, I still have deep reservations about the need, the precedent, and the administrative problems involved.

The amendment could improperly preempt a State's authority to limit pesticide contamination in the food chain in order to protect the health of its citizens. One Governor has stated that the authority to protect the health and safety of citizens is one of a State's most fundamental powers. I agree, and I believe that States should retain that right.

As with other areas of pesticide regulation, Federal tolerances should be used as mandatory minimum standards, but a State should have the option of adopting a stricter standard of protection for its citizens. Marketing convenience simply is not a sound reason to deprive the States of this basic right.

State-established tolerances are the exception rather than the rule. Though States have long been able to set and enforce tolerances within their borders, they have exercised this authority with respect to only two pesticides—ethylene dibromide [EDB] and daminozide.

In 1984, several States established separate tolerances for EDB, a soil fumigant and a fumigant for citrus, stored grain, and other food products. Such State actions were prompted by a lengthy delay in establishing a Federal tolerance level for EDB. EDB became a problem only after EPA delayed action on the compound even after widespread findings of EDB residues in many foods, in many geographical areas, and after EPA was unable to conclude a chaotic regulatory review of the pesticide's registration. Without a binding legal standard for residues, States were left to their own to act until Federal law could catch up with the explosive situation. If anything, the EDB example indicates that potential action by a State may serve as a good prod for EPA, deterring sluggish reactions in the future.

This year, two States established separate tolerances for daminozide, a growth regulator used primarily on apples and peanuts. Again, State actions have been prompted by delays at the Federal level in setting a safe tolerance level when evidence indicated one was needed. In September 1985, EPA announced plans to cancel registrations of daminozide because of data showing it to be carcinogen. But in January 1986, the agency reversed that decision and decided to ask further data which will not be submitted until 1988. The States decided not to wait for the Federal Government to obtain further data to quantify the health risk and acted to protect their citizens from exposure to this chemical.

The record of State tolerance setting shows a clear pattern or responsible action—nothing in the history of this issue suggests that a State has acted to willfully obstruct commerce. Rather, the actions have been taken in the light of clear risk when the Federal Government has been unable, under Federal law, to take responsible action expeditiously.

Parallel statutes expect the Federal Government to establish minimum standards that States may make more stringent. The Clean Air Act, the Clean Water Act, and the Resource Conservation and Recovery Act all allow States to be more strict.

As a practical matter, the public should not consider any pulblic agency to be infallible and, even with all requested data on file and fully evaluated, EPA could err. A report of the EPA Science Advisory Board on tolerances in 1980 urged EPA to improve the method used to estimate and express the level of human exposure. Specifically, EPA was urged to improve the accuracy of estimates of exposure from ingesting pesticide residues on food, and to better quantify human exposure from sources other than ingestion.

Several groups, largely food manufacturers and distributors, support this prohibition on strict State-established pesticide residue tolerances. Without the provision, they envision chaos in commerce—a patchwork of State regulations concerning food would make it difficult for national food companies to do business. I believe their fears to be unfounded—the banning of EDB and daminozide are the only examples of State action anyone can point to—and, under any circumstances, public health is a more important concern than possible, limited, temporary disruptions of interstate commerce.

The uniform tolerances provision adopted by the committee is opposed by 92 chemical companies, 41 environmental, labor, and consumer groups. Deleting this provision during consideration of the bill on the Senate floor would be wise environmental policy.

GROUND WATER

Ground water pollution is a matter of grave concern. We all have a vital interest in having EPA do more to assure that public health is not jeopardized by exposure to pesticide-contaminated ground water.

S. 2792, as reported by the Committee on Agriculture, deals with pesticide contamination of ground water. I am not convinced, however, that the provision the Agriculture Committee has adopted will adequately address this serious and growing problem. The provision could be stronger and could better emphasize concern for protect-

ing our water resources. I understand that the Committee on Environment and Public Works will consider legislation that will accomplish this objective.

I am concerned that the bill reported by the Agriculture Committee may inadvertently be doing a great disservice both to the Nation's present ground water users and to future users if we hold out the promise of a congressional response to this problem that falls short of what could and should be done.

First, it is imperative that the ground water section not be read as a restriction on EPA's ground water authorities. It is an expansion and addition to current authorities. The record must be absolutely clear on this point.

This section does not restrict EPA authority under other provisions of this act, but there are no other provisions in this act which speak exclusively to ground water. This section, on the other hand, is entitled "Ground Water Authority" and it includes, along with certain new mandates to the EPA Administrator, a restatement of existing monitoring authority. That combination could imply a consolidation of all ground water authority into one section of FIFRA. Certainly, the committee does not intend to restrict EPA authority.

Second, the ground water section goes to the heart of the public policy directions we would choose—if we accept this amendment as reported by the committee. I believe that our national environmental policy must be established with a view to the nation's long-term interests, and with an view toward preventing, rather than merely responding to, contamination of our water resources. Unfortunately, the ground water section of the committee-reported bill offers a ground water policy that is based almost exclusively on response. Surely we will not be satisfied with ignoring safety hazards until disaster strikes. I do not believe that Congress intends to sanction contamination. We must not condone the contamination of ground water, and must take all reasonable steps to prevent contamination.

EPA must accomplish a massive task in the area of pesticide regulation in the next few years. The General Accounting Office's recent assessment of the pesticide office's resource needs indicates that the bill will not bridge the gap between EPA funding needs and resources available. As a result, no matter how well we might draft the section dealing with site-specific responses, the agency cannot mount an effective effort against pesticide contamination of ground water on a case-by-case response basis. In order to better protect underground sources of drinking water, EPA must use its authorities more effectively and when necessary amend pesticide registrations. And in this area, the ground water amendment reported by the Agriculture Committee is—despite considerable effort on the part of the drafters—still woefully inadequate.

EPA should not be in a position of waiting until there is a reasonable likelihood that drinking water standards will be exceeded in wells in several localities before EPA initiates proceedings to amend the registration of a leaching pesticide. Nor do I believe Congress intends to establish a short-sighted policy that offers lesser protections to underground sources of drinking water that have not yet been tapped. Surely we do not intend to condone contamination beyond drinking water standards simply because the contamination does not happen to intersect a drinking water well. Frankly, I fail to see the difference between that approach and the approach that the agency has already stumbled into with TEMIK and EDB. EPA's past timidity is not a satisfactory model for new public policy.

EPA clearly needs to look ahead, to assess the pesticides that are leaching into ground water, and to work with the manufacturers and the users of such pesticides to assure that the national label restrictions limit to the greatest extent practicable the contamination of underground sources of drinking water.

I believe that the registration amendment section of the reported bill should, and hopefully will, be interpreted by EPA so as to establish a regional but proactive approach—responding to contamination of ground water at levels of concern, but moving on registration amendments before drinking water sources that we use today or that we may need tomorrow are in serious jeopardy. However, I am deeply concerned that the section might be interpreted otherwise, and I cannot support a congressional answer that may be used as an excuse for inaction.

CONCLUSION

Mr. President, years of effort on the part of several organizations concerned about safer uses of pesticides have been devoted to formulating a FIFRA bill this year. For example, many organizations supported S. 2215, the bill I introduced with Senators LUGAR and PROXMIRE, and that bill is the source of many provisions of S. 2792. Such organizations include the campaign on pesticide reform—a coalition of 41 consumer, environmental, and labor groups—and the National Agricultural Chemicals Association, whose membership includes some 92 companies. I would hope that we can pass a bill in the Senate that rewards the efforts of those groups.

The House of Representatives has passed similar legislation—H.R. 2482—and we must act rapidly in the Senate to conclude a conference before this session of Congress ends.

FIFRA "RECIPROCITY FOR DEALER LICENSING"

Mr. HEFLIN. Mr. President, the three main wood preservatives—pentachlorophenol, creosote, and inorganic arsenicals—will become restricted-use pesticides on November 10, 1986. Some States now require all persons who use, distribute, or sell pesticides classified for restricted use to meet each States' certified pesticide applicator requirements for the respective States. This is a hardship on many small businesses which distribute and sell these pesticides in many States. It is also a needless duplication of private and government workers' time and financial resources. Reciprocity for pesticide dealer licensing is needed in those areas without cooperative agreements to mutually recognize uniform licensing requirements.

Report 99-424 on S. 2792, the Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1985, page 67 contains the following language dealing with the reciprocity of training:

> In general, it is the intent of the committee that these amendments should be construed in a manner that encourages the States to employ reciprocity for the satisfaction of training requirements in situations where applicators are applying pesticides in more than one State. Reciprocity among the States should be considered an effective means of achieving a consistently high level of competency while encouraging the free flow of commerce across State lines.

The spirit of this report language should apply in situations where dealers, sales representatives, and technical representatives of wood preserving pesticides are selling their product in multistate areas. Reciprocity in this area would also help to achieve a consistent high level of dealers competency while encouraging the free flow of commerce across State lines.

Thank you, Mr. President.

Mr. WILSON. Mr. President, it has been 8 years since the reform process which we are debating today has been successfully completed. The last time Congress amended the Federal pesticide law—known as FIFRA—was in 1978. In recent years, many of us have become concerned about the adequacy of the statute and are interested in improving the regulatory framework.

This interest and concern is obviously not confined to the Members of the Senate. Indeed, a diverse coalition of interested parties—including the Agency itself—have spent numerous hours, working together, in an attempt to address and resolve some of the most difficult and contentious issues regarding this law, such as pesticide reregistration and cancellation. I believe that these groups—as well as the distinguished managers of the bill—are to be commended or their efforts which have greatly eased the reauthorization process.

The bill before us contains provisions which represents major improvement, in the existing statute. The 7-year reregistration process is especially noteworthy. By 1994, every food use chemical will have been retested by the manufacturers and its health and safety data reevaluated by EPA to determine if the registration of the pesticide should continue or withdraw.

As part of the registration process, all interested parties will have access to data prior to EPA approving a chemical's use on food products, so that they can more effectively and knowingly participate in the Agency's decisionmaking. Once EPA approves a registration and establishes a tolerance, then the bill would provide that the tolerance generally applies uniformly throughout the country.

There are several wise exceptions to these national uniformity provisions which permit State initiatives where required to give consumers essential protection, such as that based on compelling local circumstances, which would allow a State to diverge from the national norm.

In another provision, if any State disagrees with the federally established tolerance level, it is free to petition EPA to review and change the Federal standard. The bill provides that EPA would have 60 days in which to act upon the petition; and if the Agency fails to respond in a timely manner, then the State can set its own tolerance level.

Similarly, the bill wisely provides that a State could expeditiously set its own tolerance level if its citizens are faced with an imminent hazard, which State agriculture officials are fully prepared to do in California should the need arise.

Moreover, the uniformity provisions are almost entirely prospective. In other words, only the tolerance level on pesticides which meet the new minimum data requirements established in 1985 by EPA would be subject to the bill's uniformity provision. In my view, this makes sense given the stringent reregistration standards and timetable contained in the bill. As the Los Angeles Times stated in an August 5 editorial, applying "Uniform standards only to pesticides approved in the future under tough guidelines * * * might be an avenue for compromise."

If this bill is enacted, pesticide labels will not only list major active ingredients, but will include inerts that may pose a health or safety concern. In addition, producers who apply the product in a manner consistent with the label will not be liable for resulting damages associated with the chemical.

The bill would also restore some of the patent term protection to which manufacturers of chemicals are legitimately entitled, but which they frequently lose due to the length of the Federal registration process. This part of the bill represents the patent term restoration proposal which has been introduced in previous Congresses and which I have cosponsored.

This legislation is of particular importance to me and the farmers in my State. Because California is the Nation's largest agricultural-producing State, it is also a major user of registered pesticides. By some estimates, California uses approximately 20 percent of our Nation's pesticides.

In addition, California has the Country's most diverse agricultural economy—commercially producing more than 200 different commodities. Many of the fruits and vegetables and nuts upon which Californian farmers rely for their livelihood represent only minor uses for the pesticides produced by chemical manufacturers. Fortunately, the bill before us assures that manufacturers will continue to have incentives for marketing safe and effective products for these so-called minor use crops. In addition, the bill would ensure that the Secretary of Agriculture continue to provide support for the so-called IR-4 program which develops the testing data upon which EPA relies for registering these minor use pesticides.

For all of these reasons, the bill is being supported by a diverse coalition of environmental, chemical, and agricultural organizations. And understandably so. It provides essential protection for consumers by means of wise exceptions to its general rule of national uniformity. State initiatives are permitted where required to give this protection. Accordingly, I was pleased to support the bill in committee and urge my colleagues to join with me in passing this critical legislation on final passage.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

Mr. LUGAR. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of H.R. 2482, Calendar Order No. 951, the House companion bill.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 2482) to amend the Federal Insecticide, Fungicide, and Rodenticide Act, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. LUGAR. Mr. President, I move to strike out all after the enacting clause of H.R. 2482 and insert the text of S. 2792, as amended.

The motion was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the amendments and third reading of the bill.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill (H.R. 2482), as amended, was read the third time and passed, as follows:

H.R. 2482

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1986".

(b) TABLE OF CONTENTS.—The table of contents is as follows:

Sec. 1. Short title and table of contents.
Sec. 2. References to the Federal Insecticide, Fungicide, and Rodenticide Act.

TITLE I—REGISTRATION

Sec. 101. Preregistration access to data.
Sec. 102. Criminal penalties for disclosure of information.
Sec. 103. Conditional registration.
Sec. 104. Definition of outstanding data requirement.
Sec. 105. Reregistration of registered pesticides.
Sec. 106. Administrator's authority to require data on inert ingredients.
Sec. 107. Definition of ingredient statement.
Sec. 108. Disclosure of inert ingredients.
Sec. 109. Compensation for data on inert ingredients.

TITLE II—INFORMATION DISCLOSURE

Sec. 201. Public right to know.
Sec. 202. Data disclosure to States.

TITLE III—REVIEW AND CANCELLATION

Sec. 301. Public interim administrative review.
Sec. 302. Hearing procedures after public interim administrative review.
Sec. 303. Cancellation and change in classification or labels.
Sec. 304. Public hearings and scientific review.
Sec. 305. Administrative changes.
Sec. 306. Cancellation of registration based on false or invalid data.

TITLE IV—RECORDS AND INSPECTIONS

Sec. 401. Records.
Sec. 402. Inspections.

TITLE V—EXPORTS

Sec. 501. Definition of misbranded.
Sec. 502. Definition of importing country.
Sec. 503. Pesticides and devices intended for export.
Sec. 504. Cancellation notices furnished to foreign governments.
Sec. 505. Cooperation in international efforts.

TITLE VI—CERTIFICATION, TRAINING, AND RECORDKEEPING FOR PESTICIDE APPLICATORS

Sec. 601. Certification, training, and recordkeeping for pesticide applicators.

TITLE VII—ADDITIONAL DATA, DATA COMPENSATION, AND PATENTS

Sec. 701. Additional data to support existing registrations.

Sec. 702. Data compensation and arbitration.
Sec. 703. Restoration of patent term for certain agricultural and chemical products.

TITLE VIII—GENERAL

Subtitle A—Amendments to the Federal Insecticide, Fungicide, and Rodenticide Act

Sec. 801. Authority of States.
Sec. 802. Definitions.
Sec. 803. Information requested.
Sec. 804. Cooperative agreements.
Sec. 805. Scientific Advisory Panel.
Sec. 806. Authority for EPA action.
Sec. 807. Expiration of State primary enforcement responsibility.
Sec. 808. Unlawful acts.
Sec. 809. Penalties and subpoenas.
Sec. 810. Congressional review.
Sec. 811. Review of regulations.
Sec. 812. Delegation and cooperation.
Sec. 813. Indemnification by EPA.
Sec. 814. Ground water authority.
Sec. 815. Worker health and safety.
Sec. 816. Authorization for appropriations.
Sec. 817. Neurotoxic and behavioral effects of pesticides.
Sec. 818. Pesticide containers.
Sec. 819. Antimicrobial standards.
Sec. 820. Notice for stored pesticides with canceled or suspended registrations.
Sec. 820A. Use of pesticides by Federal agencies.

Subtitle B—Other Provisions

Sec. 821. IR4 program.
Sec. 822. Pesticide risk rating.
Sec. 823. Salinity laboratory, Riverside, California.
Sec. 824. Study.

TITLE IX—CLARIFYING AND TECHNICAL AMENDMENTS

Sec. 901. Clarifying amendments.
Sec. 902. Technical amendments.
Sec. 903. Table of contents amendments.

TITLE X—EFFECTIVE DATE

Sec. 1001. Effective date.

TITLE XI—HOMELESS ELIGIBILITY CLARIFICATION ACT

Sec. 1101. Short title.

Subtitle A—Emergency Food for the Homeless

Sec. 1111. Meals served to homeless individuals.

Subtitle B—Job Training for the Homeless

Sec. 1121. Job training for the homeless.

Subtitle C—Entitlements Eligibility

Sec. 1131. Treatment of homeless individuals eligible under AFDC, SSI, and medicaid programs.
Sec. 1132. Single application for SSI and food stamp benefits by SSI pre-release individuals.
Sec. 1133. Delivery of veterans' benefits payments.

SEC. 2. REFERENCES TO THE FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT.

Except as otherwise specifically provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.).

TITLE I—REGISTRATION

SEC. 101. PREREGISTRATION ACCESS TO DATA.

(a) IN GENERAL.—Section 3(c) (7 U.S.C. 136a(c)) is amended by adding at the end thereof the following new paragraph:

"(9) PREREGISTRATION ACCESS TO DATA.—

"(A) If an application for—

"(i) a registration of a pesticide containing a new active ingredient; or

"(ii) a registration of a pesticide to authorize the initial food use of a pesticide active ingredient,

is submitted to the Administrator, the Administrator, before acting on such application, shall provide, in accordance with this paragraph, public access to health, safety, and environmental data that are submitted or cited in support of such application.

"(B) To obtain access to the data referred to in subparagraph (A), a person shall send by certified mail—

"(i) not later than 30 days after the publication under paragraph (4) of a notice of the application referred to in subparagraph (A); and

"(ii) simultaneously to the Administrator and to the applicant for the registration of the pesticide,

a request for such access and the affirmation required by subparagraph (D).

"(C)(i) Unless within 15 days after the receipt by the Administrator of a request for access to such data and of an affirmation complying with subparagraph (D) the applicant submits to the Administrator an objection to the request asserting that the affirmation is inaccurate and the reasons for the objection, the Administrator shall grant the request. If an objection to a request is submitted to the Administrator within such 15-day period, the Administrator shall determine whether to grant the request within 5 days after the receipt of the objection. If the Administrator determines to grant the request, access shall not be permitted until 5 days after the applicant making the objection has been notified that access has been granted.

"(ii) If access to data is denied under clause (i), comments on the application for which such data were submitted or cited shall be filed within 60 days after the decision of the Administrator denying access.

"(D)(i) Data referred to in subparagraph (A) may be made available only to a person who provides an affirmation (and such supporting evidence as the Administrator considers necessary) containing the information prescribed by clause (ii).

"(ii) The affirmation required under clause (i) shall—

"(I) state that the person is not engaged in, and is neither employed by nor acting (directly or indirectly) on behalf of any other person or affiliate thereof engaged in, the production, sale, or distribution of a pesticide;

"(II) identify any business, employer, or other person, if any, on whose behalf the person is requesting access to the data; and

"(III) state that the person will not intentionally or recklessly violate this paragraph.

"(iii) For purposes of clause (ii), an affiliate of a person is a person who directly or indirectly, through one or more intermediates, controls or is controlled by or is under common control with the other person.

"(iv) Section 1001 of title 18, United States Code, shall apply to an affirmation made under this subparagraph.

"(E)(i) Data supporting an application may be made available under subparagraph (A) to a person only for the purpose of permitting the person to comment to the Administrator on such application. Such comments may reasonably quote data submitted to the Administrator. No person, including the Administrator, may make such comments public before the decision of the Administrator on the application for the registration of the pesticide for which such data were submitted or after such decision if the application for registration is denied.

"(ii) Except as provided in clause (iii), a person who obtains data under subparagraph (A) (directly or indirectly) may not—

"(I) publish, copy, or transfer the data to any other person to obtain approval to sell, manufacture, or distribute a pesticide anywhere in the world; or

"(II) use the data for any purpose in any court or agency of the United States or any State or political subdivision thereof before the decision of the Administrator on the application for the registration of the pesticide for which such data were submitted or after such decision if the application for registration is denied.

"(iii) Such data and comments may be disclosed consistent with section 10 after registration of the pesticide for which such data were submitted.

"(F)(i) Data made available under this paragraph may be examined at an office of the Environmental Protection Agency or an appropriate State agency under the conditions prescribed by this paragraph and may not be removed from such office.

"(ii) The Administrator shall maintain a record of the persons who inspect data. A copy of such record shall be sent to the data submitter on request.

"(G) Once access to data respecting an application is granted, the data may be examined and notes may be taken for use in developing comments on the application. Such comments on the application shall be filed within 60 days after the decision of the Administrator granting access, unless the comment period is extended by the Administrator for an additional 30 days for good cause.".

(b) NOTICE OF APPLICATION.—Section 3(c)(4) (7 U.S.C. 136a(c)(4)) is amended—

(1) in the first sentence, by striking out "promptly" and inserting in lieu thereof "not later than 30 days"; and

(2) in the second sentence—

(A) by striking out "The notice" and inserting in lieu thereof "Except as provided in paragraph (9), the notice"; and

(B) by striking out "30" and inserting in lieu thereof "60".

SEC. 102. CRIMINAL PENALTIES FOR DISCLOSURE OF INFORMATION.

Paragraph (3) of section 14(b) (7 U.S.C. 136l(b)(3)) is amended to read as follows:

"(3) DISCLOSURE OF INFORMATION.—

"(A) Any person who, with intent to defraud, uses or reveals information relative to the formula of a product acquired under section 3 shall be fined not more than $25,000 or imprisoned for not more than 3 years, or both.

"(B) Any person, including any officer, contractor, or employee of the United States or a State, who—

"(i) is granted access to data under section 3(c)(9); and

"(ii) in furtherance of a commercial purpose involving the production, registration, distribution, or sale of a pesticide—

"(I) knowingly violates such section; or

"(II) knowingly allows data to be made available in violation of such section,

shall be fined not more than $100,000 or imprisoned for not more than 3 years, or both.".

SEC. 103. CONDITIONAL REGISTRATION.

Subparagraphs (B) and (C) of section 3(c)(7) (7 U.S.C. 136a(c)(7) (B) and (C)) are amended to read as follows:

"(B)(i) The Administrator may conditionally amend the registration of a pesticide under this subparagraph to permit additional uses of such pesticide notwithstanding the fact that data concerning the pesticide may be insufficient to support an unconditional amendment, if the Administrator determines that—

"(I) the applicant has submitted or cited additional data that the Administrator may require solely for the proposed additional use;

"(II) amending the registration in the manner proposed by the applicant would not materially increase the risk of any unreasonable adverse effect on the environment; and

"(III) the additional use is in the public interest.

"(ii)(I) Except as provided in subclause (II), if the Administrator has issued a notice stating that a pesticide, or any ingredient thereof, meets or exceeds risk criteria associated in whole or in part with human dietary exposure and specified in regulations issued under paragraph (8), no registration of the pesticide may be amended under clause (i) to add any food or feed use during the pendency of any evaluation by the Administrator initiated by such notice.

"(II) If the Administrator has issued a notice stating that a pesticide, or any ingredient thereof, meets or exceeds risk criteria associated in whole or in part with human dietary exposure and specified in regulations issued under paragraph (8), the Administrator may amend the registration of the pesticide under clause (i) to add a minor food or feed use if the Administrator determines, with the concurrence of the Secretary of Agriculture, that there is not available an effective alternative pesticide that does not meet or exceed such risk criteria.

"(iii) An applicant seeking an amended registration of a pesticide under this subparagraph shall submit or cite to the Administrator such data as would be required to obtain a registration of a similar pesticide under paragraph (5). Except as provided in clause (iv), if the applicant is unable to submit or cite an item of such data because it has not yet been generated, the Administrator may amend the registration of the pesticide under such conditions as will require the submission or citation of such data not later than the time such data are required to be submitted for the maintenance of a registration of the similar pesticide under this section.

"(iv) If data concerning chronic dosing, oncogenicity, reproductive effects, mutagenicity, neurotoxicity, or teratogenicity are required to support the registration of a pesticide and if a period reasonably sufficient for the generation and submission of such data has elapsed since the Administrator first imposed the data requirement, a conditional amendment to permit an additional use of the pesticide for other than a minor use shall not be granted under clause (i) unless such data have been submitted.

"(C)(i) The Administrator may conditionally register a pesticide under this subparagraph containing an active ingredient not contained in any registered pesticide for a period reasonably sufficient for generation and submission of required data that have not been submitted because a period reasonably sufficient for generation of the data has not elapsed since the Administrator first imposed the data requirement—

"(I) on the conditions that by the end of such period the Administrator receives such data and that the data that the Administrator receives do not meet or exceed risk criteria enumerated in regulations issued under paragraph (8); and

"(II) on such other conditions as the Administrator may prescribe.

"(ii) A conditional registration under this subparagraph shall be granted only if the Administrator determines that—

"(I) use of the pesticide during the period referred to in clause (i) will not cause any unreasonable adverse effect on the environment; and

"(II) use of the pesticide is in the public interest.

"(iii) The Administrator shall not conditionally register a pesticide under this subparagraph if—

"(I) data concerning chronic dosing, oncogenicity, reproductive effects, mutagenicity, neurotoxicity, or teratogenicity would be required for registration of such a pesticide under paragraph (5);

"(II) a period reasonably sufficient for generation of such data has elapsed since the Administrator first imposed the data requirement; and

"(III) such data have not been submitted to the Administrator.".

SEC. 104. DEFINITION OF OUTSTANDING DATA REQUIREMENT.

Section 2 (7 U.S.C. 136) is amended by adding at the end thereof the following new subsection:

"(ff) OUTSTANDING DATA REQUIREMENT.—

"(1) IN GENERAL.—The term 'outstanding data requirement' means a requirement for any study, information, or data that is necessary to make a determination under section 3(c)(5) and which study, information, or data—

"(A) has not been submitted to the Administrator; or

"(B) if submitted to the Administrator, the Administrator has determined must be resubmitted because it is not valid, complete, or adequate to make a determination under section 3(c)(5) and the regulations and guidelines issued under such section, as determined by the Administrator.

"(2) FACTORS.—In making a determination under paragraph (1)(B) respecting a study, the Administrator shall examine, at a minimum, relevant protocols, documentation of the conduct and analysis of the study, and the results of the study to determine whether the study and the results of the study fulfill the data requirement for which the study was submitted to the Administrator.".

SEC. 105. REREGISTRATION OF REGISTERED PESTICIDES.

(a) IN GENERAL.—The Act is amended by inserting after section 3 (7 U.S.C. 136a) the following new section:

"SEC. 3A. REREGISTRATION OF REGISTERED PESTICIDES.

"(a) GENERAL RULE.—The Administrator shall reregister, in accordance with this section, each registered pesticide containing any active ingredient contained in any pesticide first registered before November 1, 1984, except for any pesticide as to which the Administrator has determined, after November 1, 1984, and before the effective date of this section, that—

"(1) there are no outstanding data requirements; and

"(2) the requirements of section 3(c)(5) have been satisfied.

"(b) SPECIAL AUTHORITIES OF ADMINISTRATOR.—

"(1) GUIDELINES.—

"(A) Not later than 1 year after the effective date of the Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1986, the Administrator, by order, shall issue guidelines to be followed by registrants in accordance with subsection (f)(1) in—

"(i) summarizing studies;

"(ii) reformatting studies;

"(iii) identifying adverse information; and

"(iv) identifying studies that have been submitted previously that may not meet the requirements of section 3 or regulations issued under such section.

"(B) Guidelines issued under this paragraph shall not be subject to judicial review.

"(2) MONITORING.—The Administrator shall monitor the progress of registrants in acquiring and submitting the data required under this section.

"(3) SUSPENSIONS AND PENALTIES.—

"(A) The Administrator shall issue a notice of intent to suspend the registration of a pesticide in accordance with the procedures prescribed by section 3(c)(2)(B)(iv) if—

"(i) the Administrator determines that progress is insufficient to ensure the submission of the data required for such pesticide under a commitment made under subsection (e)(3)(B) or (f)(1)(H) within the time period prescribed by subsection (e)(4)(B) or (f)(2)(B) or the registrant has not submitted such data to the Administrator within such time period;

"(ii) the Administrator determines that tests necessary to fill an outstanding data requirement for such pesticide have not been initiated within 1 year after the issuance of a notice under subsection (g)(1)(B);

"(iii) the Administrator determines that progress is insufficient to ensure submission of the data referred to in clause (ii) within the time period prescribed by subsection (g)(2)(B) or the required data have not been submitted to the Administrator within such time period; or

"(iv) a registrant fails to comply with clause (ii) or (iii) of section 3(c)(2)(B).

"(B) A registrant who submits a certification under subsection (f)(1)(G) that is false shall be considered to have violated this Act and shall be subject to the penalties prescribed by section 14.

"(c) REREGISTRATION PHASES.—Reregistrations of pesticides under this section shall be carried out in the following phases:

"(1) The first phase shall include the listing under subsection (d) of the active ingredients of the pesticides that will be reregistered.

"(2) The second phase shall include the submission to the Administrator under subsection (e) of notices by registrants respecting their intention to seek reregistration, identification by registrants of missing and inadequate data for such pesticides, and commitments by registrants to replace such missing or inadequate data within the applicable time period.

"(3) The third phase shall include submission to the Administrator by registrants of the information required under subsection (f).

"(4) The fourth phase shall include an independent, initial review by the Administrator under subsection (g) of submissions under phases two and three, identification of outstanding data requirements, and the issuance, as necessary, of requests for additional data.

"(5) The fifth phase shall include the review by the Administrator under subsection (h) of data submitted for reregistration

and appropriate regulatory action by the Administrator.

"(d) PHASE ONE.—

"(1) PRIORITY FOR REREGISTRATION.—For purposes of the reregistration of the pesticides described in subsection (a), the Administrator shall list the active ingredients of pesticides and shall give priority to, among others, active ingredients (other than active ingredients for which registration standards have been issued before the effective date of the Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1986) that—

"(A) are in use on or in food or feed and may result in postharvest residues;

"(B) may result in residues of potential toxicological concern in potable ground water, edible fish, or shellfish;

"(C) have been determined by the Administrator before the effective date of the Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1986 to have significant outstanding data requirements; or

"(D) are used on crops, including in greenhouses and nurseries, where worker exposure is most likely to occur.

"(2) REREGISTRATION LISTS.—For purposes of reregistration under this section, the Administrator shall by order—

"(A) not later than 70 days after the effective date of the Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1986, list pesticide active ingredients for which registration standards have been issued before such date;

"(B) not later than 4 months after such effective date, list the first 150 pesticide active ingredients, as determined under paragraph (1);

"(C) not later than 7 months after such effective date, list the second 150 pesticide active ingredients, as determined under paragraph (1); and

"(D) not later than 10 months after such effective date, list the remainder of the pesticide active ingredients, as determined under paragraph (1).

Each list shall be published in the Federal Register.

"(3) JUDICIAL REVIEW.—The content of a list issued by the Administrator under paragraph (2) shall not be subject to judicial review.

"(4) NOTICE TO REGISTRANTS.—On the publication of a list of pesticide active ingredients under paragraph (2), the Administrator shall send by certified mail to the registrants of the pesticides containing such active ingredients a notice of the time by which the registrants are to notify the Administrator under subsection (e) whether the registrants intend to seek or not to seek reregistration of such pesticides.

"(e) PHASE TWO.—

"(1) IN GENERAL.—The registrant of a pesticide that contains an active ingredient listed under subparagraph (B), (C), or (D) of subsection (d)(2) shall submit to the Administrator, within the time period prescribed by paragraph (4), the notice described in paragraph (2) and any information, commitment, or offer described in paragraph (3).

"(2) NOTICE OF INTENT TO SEEK OR NOT TO SEEK REREGISTRATION.—

"(A) The registrant of a pesticide containing an active ingredient listed under subparagraph (B), (C), or (D) of subsection (d)(2) shall notify the Administrator by certified mail whether the registrant intends to seek or does not intend to seek reregistration of the pesticide.

"(B) If a registrant submits a notice under subparagraph (A) of an intention not to seek reregistration of a pesticide, the Administrator shall publish a notice in the Federal Register stating that such a notice has been submitted.

"(3) MISSING OR INADEQUATE DATA.—Each registrant of a pesticide that contains an active ingredient listed under subparagraph (B), (C), or (D) of subsection (d)(2) and for which the registrant submitted a notice under paragraph (2) of an intention to seek reregistration of such pesticide shall submit to the Administrator—

"(A) in accordance with regulations issued by the Administrator under section 3, an identification of—

"(i) all data that are required by regulation to support the registration of the pesticide with respect to such active ingredient;

"(ii) data that were submitted by the registrant previously in support of the registration of the pesticide that are inadequate to meet such regulations; and

"(iii) data identified under clause (i) that have not been submitted to the Administrator; and

"(B) either—

"(i) a commitment to replace the data identified under subparagraph (A)(ii) and submit the data identified under subparagraph (A)(iii) within the applicable time period prescribed by paragraph (4)(B); or

"(ii) an offer to share in the cost to be incurred by a person who has made a commitment under clause (i) to replace or submit the data and an offer to submit to arbitration as described by section 3(c)(2)(B) with regard to such cost sharing.

For purposes of a submission by a registrant under subparagraph (A)(ii), data are inadequate if the data are derived from a study with respect to which the registrant is unable to make the certification prescribed by subsection (f)(1)(G) that the registrant possesses or has access to the raw data used in or generated by such study. For purposes of a submission by a registrant under such subparagraph, data shall be considered to be inadequate if the data are derived from a study submitted before January 1, 1970, unless it is demonstrated to the satisfaction of the Administrator that such data should be considered to support the registration of the pesticide that is to be reregistered.

"(4) TIME PERIODS.—

"(A) A submission under paragraph (2) or (3) shall be made—

"(i) in the case of a pesticide containing an active ingredient listed under subsection (d)(2)(B), not later than 3 months after the date of publication of the listing of such active ingredient;

"(ii) in the case of a pesticide containing an active ingredient listed under subsection (d)(2)(C), not later than 3 months after the date of publication of the listing of such active ingredient; and

"(iii) in the case of a pesticide containing an active ingredient listed under subsection (d)(2)(D), not later than 3 months after the date of publication of the listing of such active ingredient.

On application, the Administrator may extend a time period prescribed by this subparagraph if the Administrator determines that factors beyond the control of the registrant prevent the registrant from complying with such period.

"(B) A registrant shall submit data in accordance with a commitment entered into under paragraph (3)(B) within a reasonable period of time, as determined by the Administrator, but not more than 48 months after the date the registrant submitted the commitment. The Administrator, on application of a registrant, may extend the period prescribed by the preceding sentence by no more than 2 years if extraordinary circumstances beyond the control of the registrant prevent the registrant from submitting data within such prescribed period.

"(5) CANCELLATION AND REMOVAL.—

"(A) If the registrant of a pesticide does not submit a notice under paragraph (2) or (3) within the time prescribed by paragraph (4)(A), the Administrator shall issue a notice of intent to cancel the registration of such registrant for such pesticide and shall publish the notice in the Federal Register and allow 60 days for the submission of comments on the notice. On expiration of such 60 days, the Administrator, by order and without a hearing, may cancel the registration or take such other action, including extension of applicable time periods, as may be necessary to enable reregistration of such pesticide by another person.

"(B)(i) If—

"(I) no registrant of a pesticide containing an active ingredient listed under subsection (d)(2) notifies the Administrator under paragraph (2) that the registrant intends to seek reregistration of any pesticide containing that active ingredient;

"(II) no such registrant complies with paragraph (3)(A);

"(III) no such registrant makes a commitment under paragraph (3)(B) to replace or submit all data described in clauses (ii) and (iii) of paragraph (3)(A); or

"(IV) the fee prescribed by subsection (j)(1) has not been paid with regard to the active ingredient,

the Administrator shall publish in the Federal Register a notice of intent to remove the active ingredient from the list established under subsection (d)(2) and a notice of intent to cancel the registrations of all pesticides containing such active ingredient and shall provide 60 days for comment on such notice.

"(ii) After the 60-day period has expired, the Administrator, by order, may cancel any such registration without hearing, except that the Administrator shall not cancel a registration under this subparagraph if—

"(A) during the comment period a person acquires the rights of the registrant in that registration;

"(B) during the comment period that person furnishes a notice of intent to reregister the pesticide in accordance with paragraph (2); and

"(C) not later than 120 days after the publication of the notice under this subparagraph, that person has complied with paragraph (3) and the fee prescribed by subsection (j)(1) has been paid.

"(f) PHASE THREE.—

"(1) INFORMATION ABOUT STUDIES.—Each registrant of a pesticide that contains an active ingredient listed under subparagraph (B), (C), or (D) of subsection (d)(2) who has submitted a notice under subsection (e)(2) of an intent to seek the reregistration of such pesticide shall submit, in accordance with the guidelines issued under subsection (b)(1), to the Administrator—

"(A) a summary of each study concerning the active ingredient previously submitted by the registrant in support of the registration of a pesticide containing such active ingredient and considered by the registrant to be adequate to meet the requirements of section 3 and the regulations issued under such section;

"(B) a summary of each study concerning the active ingredient previously submitted by the registrant in support of the registra-

tion of a pesticide containing such active ingredient that may not comply with the requirements of section 3 and the regulations issued under such section but which the registrant asserts should be deemed to comply with such requirements and regulations;

"(C) a reformat of the data from each study summarized under subparagraph (A) or (B) by the registrant concerning chronic dosing, oncogenicity, reproductive effects, mutagenicity, neurotoxicity, teratogenicity, or residue chemistry of the active ingredient that were submitted to the Administrator before January 1, 1982;

"(D) where data described in subparagraph (C) are not required for the active ingredient by regulations issued under section 3, a reformat of acute and subchronic dosing data submitted by the registrant to the Administrator before January 1, 1982, that the registrant considers to be adequate to meet the requirements of section 3 and the regulations issued under such section;

"(E) an identification of data that are required to be submitted to the Administrator under section 6(g)(4) indicating an adverse effect of the pesticide;

"(F) an identification of any other information available that in the view of the registrant supports the registration;

"(G) a certification that the registrant or the Administrator possesses or has access to the raw data used in or generated by the studies that the registrant summarized under subparagraph (A) or (B);

"(H) either—

"(i) a commitment to submit data to fill each outstanding data requirement identified by the registrant; or

"(ii) an offer to share in the cost of developing such data to be incurred by a person who has made a commitment under clause (i) to submit such data, and an offer to submit to arbitration as described by section 3(c)(2)(B) with regard to such cost sharing; and

"(I) evidence of compliance with section 3(c)(1)(D)(ii) and regulations issued thereunder with regard to previously submitted data as if the registrant were now seeking the original registration of the pesticide.

"(2) TIME PERIODS.—

"(A) The information required by paragraph (1) shall be submitted to the Administrator—

"(i) in the case of a pesticide containing an active ingredient listed under subsection (d)(2)(B), not later than 12 months after the date of publication of the listing of such active ingredient;

"(ii) in the case of a pesticide containing an active ingredient listed under subsection (d)(2)(C), not later than 12 months after the date of publication of the listing of such active ingredient; and

"(iii) in the case of a pesticide containing an active ingredient listed under subsection (d)(2)(D), not later than 12 months after the date of publication of the listing of such active ingredient.

"(B) A registrant shall submit data in accordance with a commitment entered into under paragraph (1)(H) within a reasonable period of time, as determined by the Administrator, but not more than 48 months after the date the registrant submitted the commitment under such paragraph. The Administrator, on application of a registrant, may extend the period prescribed by the preceding sentence by no more than 2 years if extraordinary circumstances beyond the control of the registrant prevent the registrant from submitting data within such prescribed period.

"(3) CANCELLATION.—

"(A) If the registrant of a pesticide fails to submit the information required by paragraph (1) within the time prescribed by paragraph (2), the Administrator, by order and without hearing, shall cancel the registration of such pesticide.

"(B)(i) If the registrant of a pesticide submits the information required by paragraph (1) within the time prescribed by paragraph (2) and such information does not conform to the guidelines for submissions established by the Administrator, the Administrator shall determine whether the registrant made a good faith attempt to conform its submission to such guidelines.

"(ii) If the Administrator determines that the registrant made a good faith attempt to conform its submission to such guidelines, the Administrator shall provide the registrant a reasonable period of time to make any necessary changes or corrections.

"(iii)(I) If the Administrator determines that the registrant did not make a good faith attempt to conform its submission to such guidelines, the Administrator may issue a notice of intent to cancel the registration. Such a notice shall be sent to the registrant by certified mail.

"(II) The registration shall be canceled without a hearing or further notice at the end of 30 days after receipt by the registrant of the notice unless during that time a request for a hearing is made by the registrant.

"(III) If a hearing is requested, a hearing shall be conducted under section 6(d), except that the only matter for resolution at the hearing shall be whether the registrant made a good faith attempt to conform its submission to such guidelines. The hearing shall be held and a determination made within 75 days after receipt of a request for hearing.

"(g) PHASE FOUR.—

"(1) INDEPENDENT REVIEW AND IDENTIFICATION OF OUTSTANDING DATA REQUIREMENTS.—

"(A) The Administrator shall review the submissions of all registrants of pesticides containing a particular active ingredient under subsections (e)(3) and (f)(1) to determine if such submissions identified all the data that are missing or inadequate for such active ingredient. To assist the review of the Administrator under this section, the Administrator may require a registrant seeking reregistration to submit complete copies of studies summarized under subsection (f)(1).

"(B) The Administrator shall independently identify and publish in the Federal Register the outstanding data requirements for each active ingredient that is listed under subparagraph (B), (C), or (D) of subsection (d)(2) and that is contained in a pesticide to be reregistered under this section. The Administrator, at the same time, shall issue a notice under section 3(c)(2)(B) for the submission of the additional data that are required to meet such requirements.

"(2) TIME PERIODS.—

"(A) The Administrator shall take the action required by paragraph (1)—

"(i) in the case of a pesticide containing an active ingredient listed under subsection (d)(2)(B), not later than 18 months after the date of the listing of such active ingredient;

"(ii) in the case of a pesticide containing an active ingredient listed under subsection (d)(2)(C), not later than 24 months after the date of the listing of such active ingredient; and

"(iii) in the case of a pesticide containing an active ingredient listed under subsection (d)(2)(D), not later than 33 months after the date of the listing of such active ingredient.

"(B) If the Administrator issues a notice to a registrant under paragraph (1)(B) for the submission of additional data, the registrant shall submit such data within a reasonable period of time, as determined by the Administrator, but not to exceed 48 months after the issuance of such notice. The Administrator, on application of a registrant, may extend the period prescribed by the preceding sentence by no more than 2 years if extraordinary circumstances beyond the control of the registrant prevent the registrant from submitting data within such prescribed period.

"(h) PHASE FIVE.—

"(1) DATA REVIEW.—The Administrator shall conduct a thorough examination of all data submitted under this section concerning an active ingredient listed under subsection (d)(2) and of all other available data found by the Administrator to be relevant.

"(2) REREGISTRATION AND OTHER ACTIONS.—

"(A) Within 1 year after the submission of all data concerning an active ingredient of a pesticide under subsection (g), the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration. For extraordinary circumstances, the Administrator may extend such period for not more than 1 additional year.

"(B) Before reregistering a pesticide, the Administrator shall obtain any needed product-specific data regarding the pesticide by use of section 3(c)(2)(B) and shall review such data within 90 days after its submission. The Administrator shall require that data under this subparagraph be submitted to the Administrator not later than 8 months after a determination of eligibility under subparagraph (A) has been made for each active ingredient of the pesticide, unless the Administrator determines that a longer period is required for the generation of the data.

"(C) After conducting the review required by paragraph (1) for each active ingredient of a pesticide and the review required by subparagraph (B) of this paragraph, the Administrator shall determine whether to reregister a pesticide by determining whether such pesticide meets the requirements of section 3(c)(5). If the Administrator determines that a pesticide is eligible to be reregistered, the Administrator shall reregister such pesticide within 6 months after the submission of the data concerning such pesticide under subparagraph (B).

"(D) If after conducting a review under paragraph (1) or subparagraph (B) of this paragraph the Administrator determines that a pesticide should not be reregistered, the Administrator shall take appropriate regulatory action.

"(i) COMPENSATION OF DATA SUBMITTER.—If data that are submitted by a registrant under subsection (e), (f), (g), or (h) are used to support the application of another person under section 3, the registrant who submitted such data shall be entitled to compensation for the use of such data as prescribed by section 3(c)(1)(D). In determining the amount of such compensation, the fees paid by the registrant under this section shall be taken into account.

"(j) FEES.—

"(1) INITIAL FEE FOR FOOD OR FEED PESTICIDE ACTIVE INGREDIENTS.—The registrants of pesticides that contain an active ingredient that is listed under subparagraph (B), (C), or (D) of subsection (d)(2) and that is an

active ingredient of any pesticide registered for a major use on food or feed shall collectively pay a fee of $50,000 on submission of information under paragraphs (2) and (3) of subsection (e) for such ingredient.

"(2) FINAL FEE FOR FOOD OR FEED PESTICIDE ACTIVE INGREDIENTS.—

"(A) The registrants of pesticides that contain an active ingredient that is listed under subparagraph (B), (C), or (D) of subsection (d)(2) and that is an active ingredient of any pesticide registered for a major use on food or feed shall collectively pay a fee of $100,000—

"(i) on submission of information for such ingredient under subsection (f)(1) if data are reformatted under subsection (f)(1)(C); or

"(ii) on submission of data for such ingredient under subsection (f)(2)(B) if data are not reformatted under subsection (f)(1)(C).

"(B) The registrants of pesticides that contain an active ingredient that is listed under subsection (d)(2)(A) and that is an active ingredient of any pesticide registered for a major use on food or feed shall collectively pay a fee of $100,000 at such time as the Administrator shall prescribe.

"(3) FEES FOR OTHER PESTICIDE ACTIVE INGREDIENTS.—

"(A) The registrants of pesticides that contain an active ingredient that is listed under subparagraph (B), (C), or (D) of subsection (d)(2) and that is not an active ingredient of any pesticide registered for a major use on food or feed shall collectively pay fees in amounts determined by the Administrator. Such fees may not be less than one-half of, nor greater than, the fees required by paragraphs (1) and (2). A registrant shall pay such fees at the times corresponding to the times fees prescribed by paragraphs (1) and (2) are to be paid.

"(B) The registrants of pesticides that contain an active ingredient that is listed under subsection (d)(2)(A) and that is not an active ingredient of any pesticide that is registered for a major use on food or feed shall collectively pay a fee of not more than $100,000 and not less than $50,000 at such time as the Administrator shall prescribe.

"(4) REDUCTION OR WAIVER OF FEES FOR MINOR USE AND OTHER PESTICIDES.—

"(A) In the case of an active ingredient of a pesticide that is registered solely for an agricultural or nonagricultural minor use or in the case of a pesticide the value or volume of use of which is small, the Administrator, on application and in the sole discretion of the Administrator, may reduce or waive the fees prescribed by paragraph (3).

"(B) In the case of an antimicrobial active ingredient for which the production level does not exceed 1,000,000 pounds per year, the Administrator, on application and in the sole discretion of the Administrator, may reduce or waive the fees prescribed by paragraph (3).

"(C)(i) Notwithstanding any other provision of this subsection, in the case of a small business registrant of a pesticide, the registrant shall pay a fee for the reregistration of each active ingredient of the pesticide that does not exceed an amount determined in accordance with this subparagraph.

"(ii) If during the 3-year period prior to reregistration the average annual gross revenue of the registrant from pesticides containing such active ingredient is—

"(I) less than $5,000,000, the registrant shall pay 0.5 percent of such revenue;

"(II) $5,000,000 or more but less than $10,000,000, the registrant shall pay 1 percent of such revenue; or

"(III) $10,000,000 or more, the registrant shall pay 1.5 percent of such revenue, but not more than $150,000.

"(iii) For the purpose of this subparagraph, a small business registrant is a corporation, partnership, or unincorporated business that—

"(I) has 150 or fewer employees; and

"(II) during the 3-year period prior to reregistration, had an average annual gross revenue from pesticides that did not exceed $40,000,000.

"(5) OTHER FEES.—On payment of fees for the reregistration of a pesticide in accordance with paragraph (1), (2), (3), or (4), the Administrator may not levy any other fees for the reregistration with respect to that active ingredient.

"(6) APPORTIONMENT.—

"(A) If two or more registrants are required to pay any fee prescribed by paragraph (1), (2), or (3) with respect to a particular active ingredient, the fees for such active ingredient shall be apportioned among such registrants on the basis of the market share in United States sales of the active ingredient for the 3 calendar years preceding the date of payment of such fee, except that—

"(i) small business registrants that produce the active ingredient shall pay fees in accordance with paragraph (4)(C); and

"(ii) registrants who have not marketed the active ingredient during such 3 calendar years but who choose to reregister such active ingredient shall pay 15 percent of such fees.

"(B) The Administrator, by order, may require registrants referred to in subparagraph (A) to submit such reports as the Administrator determines to be necessary to allow the Administrator to determine and apportion fees under this subsection.

"(C) If any such report is not submitted by a registrant after receiving notice of such report requirement, or if any fee prescribed by this subsection for an active ingredient is not paid by a registrant to the Administrator by the time prescribed under this subsection, the Administrator, by order and without hearing, may cancel each registration held by such registrant of a pesticide containing the active ingredient with respect to which the fee is imposed. The Administrator shall reapportion the fee among the remaining registrants and notify the registrants that the registrants are required to pay to the Administrator any unpaid balance of the fee within 30 days after receipt of such notice.

"(k) EXEMPTION OF CERTAIN REGISTRANTS.—The requirements of subsections (e), (f), (g), and (j) regarding data concerning an active ingredient and fees for review of such data shall not apply to any person who is the registrant of a pesticide to the extent that, under section 3(c)(2)(D), the person would not be required to submit or cite such data to obtain an initial registration of such pesticide.

"(l) REREGISTRATION FUND.—

"(1) ESTABLISHMENT.—There shall be established in the Treasury of the United States a reregistration fund.

"(2) SOURCE AND USE.—All fees collected by the Administrator under subsection (j) shall be deposited into the fund and shall be available to the Administrator, without fiscal year limitation, to carry out this section.

"(3) UNUSED FUNDS.—Money in the fund not currently needed to carry out this section shall be—

"(A) maintained on hand or on deposit;

"(B) invested in obligations of the United States or guaranteed thereby; or

"(C) invested in obligations, participations, or other instruments that are lawful investments for fiduciary, trust, or public funds.

"(4) ACCOUNTING.—The Administrator shall—

"(A) provide an annual accounting of the fees collected and disbursed from the fund; and

"(B) take all steps necessary to ensure that expenditures of such funds are used only to carry out this section.

"(m) JUDICIAL REVIEW.—Any failure of the Administrator to take any action required by this section shall be subject to judicial review under the procedures prescribed by section 16(b).".

(b) CONFORMING AMENDMENT.—Section 3 (7 U.S.C. 136a(g)) is amended by striking out subsection (g).

(c) DEFINITIONS.—

(1) ANTIMICROBIAL.—Section 2 (7 U.S.C. 136) (as amended by section 104 of this Act) is further amended by adding at the end thereof the following new subsection:

"(gg) ANTIMICROBIAL.—The term 'antimicrobial' means any active ingredient that is contained only in pesticides that are not registered for any food or feed use and that are—

"(1) sanitizers intended to reduce the number of living bacteria or viable virus particles on inanimate surfaces or in water or air;

"(2) bacteriostats intended to inhibit the growth of bacteria in the presence of moisture;

"(3) disinfectants intended to destroy or irreversibly inactivate bacteria, fungi, or viruses on surfaces or inanimate objects;

"(4) sterilizers intended to destroy viruses and all living bacteria, fungi, and their spores on inanimate surfaces; or

"(5) fungicides or fungistats.".

(2) PESTICIDE.—Section 2(u) (7 U.S.C. 136(u)) is amended—

(A) by striking out "and" before the first clause (2); and

(B) by inserting after "desiccant" the following: ", and (3) any substance or mixture of substances intended for a purpose described in subsection (gg)".

SEC. 106. ADMINISTRATOR'S AUTHORITY TO REQUIRE DATA ON INERT INGREDIENTS.

(a) DATA IN SUPPORT OF REGISTRATION.—The second sentence of section 3(c)(2)(A) (7 U.S.C. 136a(c)(2)(A)) is amended by inserting "(including information concerning an inert ingredient in a pesticide)" after "paragraph".

(b) PRIORITY LIST AND DATA REQUIREMENTS.—Section 3 (7 U.S.C. 136a) (as amended by section 105(b) of this Act) is further amended by adding at the end thereof the following new subsection:

"(g) PRIORITY LIST AND DATA REQUIREMENTS FOR INERT INGREDIENTS.—

"(1) ESTABLISHMENT OF LIST.—

"(A) Subject to paragraph (4), the Administrator shall establish a priority list of inert ingredients consisting of—

"(i) inert ingredients that appear to cause a pesticide to meet or exceed a criterion for initiating a public interim administrative review under subsection (c)(8);

"(ii) inert ingredients—

"(I) for which additional data are reasonably necessary to assess the risk that the inert ingredient may result in a pesticide causing an unreasonable adverse effect on the environment;

"(II) that are similar in molecular structure to a chemical that is oncogenic, mutagenic, or teratogenic or causes another similarly significant adverse effect; and

"(III) that have significant use in pesticides or to which there is significant exposure from pesticides; and

"(iii) inert ingredients for which additional data are reasonably necessary to assess the risk that the inert ingredient may result in a pesticide causing an unreasonable adverse effect on the environment and to which there is significant exposure from pesticides.

"(B) In establishing the priority list, the Administrator shall take into account—

"(i) the differences in concept, usage, and environmental risk between various classes of pesticides; and

"(ii) data for evaluating such risk between agricultural and nonagricultural pesticides.

"(2) PUBLICATION OF LIST.—Not later than 90 days after the effective date of the Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1986, the Administrator shall publish the priority list required under paragraph (1). The Administrator shall publish revisions to such list at least annually.

"(3) JUDICIAL REVIEW.—The priority list under paragraph (1), the inclusion or exclusion of an ingredient on or from the priority list, and any revision of the priority list shall not be subject to judicial review.

"(4) NUMBER OF INGREDIENTS.—The priority list under paragraph (1) shall consist of not less than 50 inert ingredients unless the Administrator determines that there is not a sufficient number of inert ingredients meeting the requirements for listing under paragraph (1) to reach such minimum number. Such list may not exceed 75 inert ingredients.

"(5) ADDITIONAL DATA.—

"(A)(i) The Administrator shall determine whether additional data are required for an inert ingredient in a registered pesticide not later than 1 year after the inert ingredient is placed on the priority list under paragraph (1).

"(ii) The Administrator shall require submission of such data from each registrant of such pesticide under this Act or from manufacturers and processors of the inert ingredient under the Toxic Substances Control Act (15 U.S.C. 2601 et seq.).

"(iii) Such data shall be submitted within a reasonable time but not later than 4 years after the date of the request. The Administrator may extend the period for the submission of data by not more than 2 years if extraordinary circumstances beyond the control of the registrant or producer prevent the submission of the necessary data.

"(B) Data requirements imposed under subparagraph (A) or a decision not to require data for an inert ingredient shall be subject to judicial review under section 16(b).

"(6) EVALUATION.—Within 1 year after the receipt of additional data under paragraph (5) for an inert ingredient, the Administrator shall evaluate the data and take such steps as are appropriate to prevent unreasonable adverse effects on the environment caused by pesticides containing such inert ingredient. Under exceptional circumstances, the Administrator may extend the period for evaluation by not more than 1 year.

"(7) CONSTRUCTION.—This subsection shall not be construed to affect the authority of the Administrator—

"(A) to regulate under this Act impurities, contaminants, degradants, or other ingredients of pesticides that have not been deliberately added to the pesticides;

"(B) to regulate under this Act any deliberately added inert ingredient that has not previously been used in a pesticide or a significant new use in a pesticide of a deliberately added inert ingredient;

"(C) to require the submission of short-term, environmental fate, or residue studies for deliberately added inert ingredients; or

"(D) to require the submission of revised formula statements under subsection (c)(2)(B).".

(c) DATA COMPENSATION.—Section 3(c)(1)(D)(ii) (7 U.S.C. 136a(c)(1)(D)(ii)) is amended—

(1) by striking out "or for reregistration" and inserting in lieu thereof "for reregistration, or to support the safety of an inert ingredient"; and

(2) by inserting "or in support of the safety of an inert ingredient" before "by any other person".

SEC. 107. DEFINITION OF INGREDIENT STATEMENT.

Subsection (n) of section 2 (7 U.S.C. 136(n)) is amended to read as follows:

"(n) INGREDIENT STATEMENT.—The term 'ingredient statement' means a statement that contains—

"(1) the name and percentage of each active ingredient, and the total percentage of all inert ingredients, in a pesticide;

"(2) the name of each inert ingredient in the pesticide that the Administrator determines must appear in the ingredient statement because of the hazard that the Administrator has determined may be posed by the toxicity, use pattern, and concentration level of the inert ingredient in the pesticide;

"(3) if the pesticide contains arsenic in any form, a statement of the percentages of total and water soluble arsenic, calculated as elementary arsenic;

"(4) any other information concerning the chemical composition or identity of any active ingredient of the pesticide, including information on chemical equivalency, that the Administrator requires to appear in the ingredient statement so that the nature of the active ingredient is accurately represented; and

"(5) the name of any inert ingredient for which the Administrator has required additional data under section 3(g)(5) because such ingredient is listed under section 3(g)(1)(A) as appearing to cause a pesticide to meet or exceed a criterion for initiating a public interim administrative review under section 3(c)(8).".

SEC. 108. DISCLOSURE OF INERT INGREDIENTS.

The first sentence of section 10(d)(3) (7 U.S.C. 136h(d)(3)) is amended by striking out "If" and inserting in lieu thereof "Except with respect to disclosure of information on inert ingredients in ingredient statements in accordance with section 2(n), if".

SEC. 109. COMPENSATION FOR DATA ON INERT INGREDIENTS.

Subparagraph (D) of section 3(c)(2) (7 U.S.C. 136a(c)(2)) is amended to read as follows:

"(D)(i) No applicant for registration or amended registration of a pesticide who proposes to purchase a registered pesticide from another producer to formulate such purchased pesticide into the pesticide that is the subject of the application shall be required to—

"(I) submit or cite data pertaining to such purchased pesticide; or

"(II) offer to pay reasonable compensation otherwise required by paragraph (1)(D) for the use of any such data.

"(ii) No applicant for registration or amended registration of a pesticide who proposes to purchase an inert ingredient from another person to formulate the pesticide shall be required to offer to pay reasonable compensation otherwise required by paragraph (1)(D) for a study concerning such ingredient if any portion of the cost of the study will be or could be included in the price of the purchased ingredient.".

TITLE II—INFORMATION DISCLOSURE

SEC. 201. PUBLIC RIGHT TO KNOW.

(a) FACT SHEETS AND REPORTS.—Section 7 (7 U.S.C. 136e) is amended by adding at the end thereof the following new subsection:

"(e) PUBLIC RIGHT TO KNOW.—

"(1) FACT SHEETS.—Any producer operating an establishment in any State shall prepare or obtain a fact sheet complying with this subsection for each active ingredient manufactured or used at the establishment. The producer shall maintain copies of the fact sheet at the establishment and shall furnish a copy to any person on request.

"(2) CONTENTS.—

"(A) Each fact sheet for an ingredient required under paragraph (1) shall—

"(i) contain the chemical name, each common name, and any trade name of the ingredient and a summary of relevant health, safety, and environmental data concerning the ingredient; and

"(ii) be revised as often as is necessary to reflect current information about the ingredient.

"(B) The Administrator may require a fact sheet to be amended to provide accurate and clear information to the public.

"(3) REPORTS.—Each producer to whom this subsection applies shall furnish to the Administrator annually, in accordance with regulations published by the Administrator, a report that includes—

"(A) for each establishment operated by the producer in any State, the name of each ingredient for which a fact sheet is required that is manufactured or used at that establishment;

"(B) for each ingredient for which a fact sheet is required, the location of each establishment where such ingredient is manufactured or used by the producer; and

"(C) a current copy of each required fact sheet.

"(4) PUBLIC AVAILABILITY.—The fact sheets required by paragraph (1) and the annual reports required by paragraph (3) shall be available to the public.".

(b) CONFIDENTIAL INFORMATION.—Section 7(d) (7 U.S.C. 136e(d)) is amended by inserting "and production locations" after "names".

SEC. 202. DATA DISCLOSURE TO STATES.

Section 10 (7 U.S.C. 136h) is amended by adding at the end thereof the following new subsection:

"(h) DATA DISCLOSURE TO STATES.—

"(1) IN GENERAL.—The Administrator may disclose to a State any data or information acquired under this Act if the State assures the Administrator, and the Administrator determines, that the submitter of the data or information will receive no less protection with respect to the disclosure and use of the data or information by the State than is provided by section 3 and this section.

"(2) ACTION FOR JUST COMPENSATION.—For the purpose of any action that may lie against the United States for just compensation under section 1491 of title 28, United States Code—

"(A) the disclosure or use of data or information provided by the Administrator under paragraph (1) to a State in a manner inconsistent with this section or section 3 shall be considered a taking of property; and

"(B) the act of a State with respect to such data or information shall be considered an act of the United States.

"(3) REQUIRED DISCLOSURE.—The Administrator shall disclose to a State any data or information acquired under this Act if the State assures the Administrator, and the Administrator determines, that—

"(A) the submitter of the data or information will receive no less protection with respect to the disclosure and use of the data or information by the State than is provided by section 3 and this section; and

"(B) the law of the State allows the submitter of the data or information to recover just compensation in a civil action against the State for losses resulting from the disclosure or use of the data or information by the State or its employees or agents in a manner inconsistent with section 3 or this section.".

TITLE III—REVIEW AND CANCELLATION

SEC. 301. PUBLIC INTERIM ADMINISTRATIVE REVIEW.

(a) IN GENERAL.—Paragraph (8) of section 3(c) (7 U.S.C. 136a(c)(8)) is amended to read as follows:

"(8) PUBLIC INTERIM ADMINISTRATIVE REVIEW.—

"(A) A public interim administrative review process to determine whether the use of a pesticide (including a category of pesticides) may cause unreasonable adverse effects on the environment shall be conducted in accordance with this paragraph.

"(B)(i) Criteria for initiating a public interim administrative review of a pesticide shall be set forth in regulations published by the Administrator.

"(ii) Such criteria shall be established on the basis of levels of risk and may include consideration of currently available exposure data.

"(iii) Absence of exposure data shall not delay or preclude initiation of a public interim administrative review. The Administrator may decline to initiate a public interim administrative review solely on the basis of exposure only if adequate data on all relevant means of exposure have been considered.

"(C) The Administrator may not initiate a public interim administrative review process to develop a risk-benefit evaluation of a pesticide or any of its uses before initiating a formal action to cancel, suspend, or deny the registration of such pesticide required under this Act unless such public interim administrative review process is based on a validated test or other significant evidence raising prudent concerns of unreasonable adverse risk to man or to the environment.

"(D)(i) On receipt of information respecting a pesticide demonstrating that the criteria for initiating a public interim administrative review established under subparagraph (B) have been met, the Administrator shall immediately notify all registrants of such pesticide and provide the registrants with appropriate information and an explanation of the manner in which the criteria have been met.

"(ii) Not later than 30 days after receipt of a notice provided under clause (i), a registrant may respond to such notice.

"(iii) Not later than 60 days after the Administrator provides a notice under clause (i) concerning a pesticide, the Administrator shall determine whether a public interim administrative review of the pesticide shall be initiated.

"(E) If the Administrator intends to initiate a public interim administrative review of a pesticide that is registered for agricultural uses, the Administrator shall notify the Secretary of Agriculture of the intention to initiate such review and the reasons therefor.

"(F)(i) Any public interim administrative review proceeding shall be initiated and conducted in accordance with regulations published by the Administrator. Such regulations shall provide that a public interim administrative review shall include—

"(I) a notice of initiation of the public interim administrative review and opportunity for public comment on such notice;

"(II) a notice of a preliminary determination and opportunity for public comment on such notice; and

"(III) a notice of a final determination,

except that such regulations may authorize the Administrator to combine or forgo any such notice.

"(ii) Any proposed determination of the Administrator shall be submitted to the Scientific Advisory Panel established under section 25(d) at its next scheduled meeting for comment solely on relevant scientific issues. The public may submit comments to the Scientific Advisory Panel concerning such issues.

"(iii)(I) The notice of the initiation of a public interim administrative review or the notice of a preliminary determination shall state the basis for such review or determination and include a request for any additional data needed and a bibliography of all scientific data and studies and expert analyses concerning the risks or benefits of the pesticide that are under review.

"(II) Information in the bibliography shall be made available to the public consistent with section 10. The Administrator shall determine, to the extent feasible, before the initiation of the public interim administrative review which data in the bibliography may be disclosed to the public under section 10(d)(1).

"(III) If the Administrator receives additional data concerning such risks or benefits, the Administrator, within 30 days after receiving the additional data, shall revise the bibliography to reflect such data and make the revised bibliography available to the public.

"(iv)(I) Not later than 90 days after the publication of a notice of the initiation of a public interim administrative review or a notice of a preliminary determination, comments may be submitted on such review or determination. Any person who submits comments shall disclose to the Administrator all scientific data and studies and expert analyses in the possession of such person concerning the risks or benefits of the uses of the pesticide that are under review that were not included in the bibliography included in such notice.

"(II) If such person receives additional scientific data or studies or expert analyses of such data or studies that were not included in such bibliography, the person shall disclose such scientific data, studies, and expert analysis to the Administrator within 30 days after receipt.

"(v) Not later than 18 months after the initiation of a review, the Administrator shall decide which regulatory action (if any) to take regarding the pesticide that is the subject of the review and shall publish the decision.

"(vi) The time limits specified in this subparagraph may not be extended, except in exceptional circumstances in which—

"(I) additional data critical to a fair and accurate determination of risks posed by the pesticide subject to review are required;

"(II) the extension is for a period limited to the time required to obtain such data on an expedited basis and in no event to exceed 1 year; and

"(III) the Administrator acted to obtain the additional data at the time the public interim administrative review was initiated unless the Administrator could not have reasonably known of the need for such data at such time.

"(G) Any person may seek judicial review under section 16(a) of the failure of the Administrator to act within the time period prescribed under this paragraph.".

(b) SCIENTIFIC ADVISORY PANEL.—The first sentence of section 25(d) (7 U.S.C. 136w(d)) is amended by striking out "The" and inserting in lieu thereof "Except with respect to a referral under section 3(c)(8)(F), the".

(c) APPLICATION OF AMENDMENTS.—The amendments made by this section shall apply to public interim administrative reviews under section 3(c)(8) of the Federal Insecticide, Fungicide, and Rodenticide Act initiated after January 1, 1987.

SEC. 302. HEARING PROCEDURES AFTER PUBLIC INTERIM ADMINISTRATIVE REVIEW.

Section 6 (7 U.S.C 136d) is amended—

(1) by redesignating subsection (f) as subsection (i); and

(2) by inserting after subsection (e) the following new subsection:

"(f) HEARING PROCEDURES AFTER PUBLIC INTERIM ADMINISTRATIVE REVIEW.—

"(1) GENERAL RULE.—Except as provided in paragraphs (2) and (3), subsection (d) shall govern any hearing under such subsection—

"(A) that results from the final determination of the Administrator in a public interim administrative review proceeding under section 3(c)(8) that is initiated after January 1, 1987;

"(B) that includes an opportunity for comment on a notice of preliminary determination issued in connection with such review; and

"(C) for which the time between the first public notice for such review under section 3(c)(8)(F) and the close of the last comment period provided for such review is not less than 180 days.

"(2) REQUEST FOR HEARING.—Any person who is adversely affected by a decision of the Administrator respecting a pesticide (including a person without an economic interest in such pesticide) following a public interim administrative review described by paragraph (1) may request, or intervene in, a hearing in the manner provided by subsection (b)(2)(B) within 30 days after such decision. A person may request a hearing, or intervene in a hearing, only if that person submitted comments during the public interim administrative review proceeding and otherwise complied with section 3(c)(8)(F).

"(3) PROCEDURES.—

"(A) At the request of a party, an administrative law judge conducting a hearing may receive into evidence portions of a public interim administrative review record and other evidence, if the party demonstrates that such portions of the record and other evidence are relevant and material to the disputed issues and are not unduly repetitious, and if a competent witness is made available to be cross-examined on all matters relating to such evidence. Direct testi-

mony of witnesses concerning scientific data or studies that were not, but could have been, obtained and submitted in the public interim administrative review proceeding by the exercise of due diligence by the offering party shall not be admissible.

"(B) The right of other parties to confront and cross-examine witnesses with respect to such evidence shall be preserved with respect to material issues of adjudicative fact, so long as such cross-examination is not unduly repetitious.

"(C)(i) Not later than 120 days after an administrative law judge is appointed, prehearing matters shall be completed and the hearing shall commence.

"(ii) The administrative law judge may establish a schedule for prehearing matters, including discovery and motions, and shall ensure that the hearing schedule is met. The administrative law judge shall issue such orders as are appropriate for the purpose of simplifying and clarifying issues, specifying the order of presentation of witnesses, and allocating the time for cross-examination, briefing, and decision.

"(iii) Discovery shall be permitted after the expiration of 120 days after the appointment of the administrative law judge on a determination by the administrative law judge that—

"(I) such discovery shall not in any way unreasonably delay the proceeding;

"(II) the information to be obtained is not otherwise obtainable; and

"(III) such information has significant probative value and is necessary to obtain relevant evidence needed to resolve a material issue in dispute.

"(D) Any challenge to—

"(i) the authority to issue; or

"(ii) the procedural correctness of the issuance of,

any notice of intent to cancel or change classification or to any request for a hearing or motion to intervene shall be filed with the administrative law judge not later than 30 days before the commencement of the evidentiary phase of the hearing.

"(E) Not later than 30 days before the hearing commences, each party shall make available to the other parties the names of the expert and other witnesses the party expects to call, together with a brief narrative summary of their expected testimony and a list of all documents and exhibits that the party expects to introduce into evidence. Thereafter, witnesses, documents, or exhibits may be added and narrative summaries of expected testimony amended on motion by a party.

"(F) If new studies become available that were not available during the public interim administrative review, the administrative law judge, on request of any party and when in the judgment of the administrative law judge it is necessary, may submit such studies to the Scientific Advisory Panel established under section 25(d) for supplemental comment on an expedited basis under such time limits as may be established by the administrative law judge.

"(G) The administrative law judge shall schedule the presentation and examination of witnesses so that the presentation of evidence is completed within 60 days after the commencement of the hearing, except that the schedule shall not prejudice the right of a party to present evidence. The person who requested a hearing on an issue shall have the burden of going forward to present an affirmative case and shall have the burden of proof as to that issue.

"(H) A hearing conducted in accordance with this subsection shall be completed and the Administrator shall make a final decision within 300 days after the issuance of the notice that gave rise to the hearing. The time limit imposed by this subparagraph may not be extended, except in exceptional circumstances in which such extension is essential for a fair and accurate determination of pivotal facts central to the proceeding. In no event may such time limit be extended more than 180 days. Any other time limit imposed by this paragraph may be extended for good cause.

"(I) Failure to complete a hearing and make a final decision within the time period prescribed by subparagraph (H) shall be grounds for a civil action in a district court of the United States seeking an order to establish a schedule requiring the prompt completion of the hearing, but shall not be grounds for termination of the hearing or for making a final decision respecting the pesticide that is the subject of the hearing.".

SEC. 303. CANCELLATION AND CHANGE IN CLASSIFICATION OR LABELS.

Subsection (b) of section 6 (7 U.S.C. 136d(b)) is amended to read as follows:

"(b) CANCELLATION AND CHANGE IN CLASSIFICATION OR LABELS.—

"(1) NOTICE OF CANCELLATION OR CHANGE IN CLASSIFICATION.—

"(A) If it appears to the Administrator that a pesticide or its labeling or other material required to be submitted does not comply with this Act or, when used in accordance with widespread and commonly recognized practice, generally causes unreasonable adverse effects on the environment, the Administrator may issue a notice of intent—

"(i) to cancel its registration or to change its classification, together with the reasons (including the factual basis) for the action of the Administrator; or

"(ii) to hold a hearing to determine whether or not its registration should be canceled or its classification changed.

"(B) A notice issued under subparagraph (A) shall be sent to each registrant of the pesticide with respect to which the notice is issued and shall be made public.

"(C) In determining whether to issue a notice under subparagraph (A), the Administrator shall include among those factors to be taken into account the impact of the action proposed in such notice on production and prices of agricultural commodities, retail food prices, and otherwise on the agricultural economy.

"(D)(i) Not later than 60 days before sending a notice to a registrant or making public such notice under subparagraph (B), whichever occurs first, the Administrator shall provide the Secretary of Agriculture with a copy of the proposed notice under subparagraph (A) and an analysis of the impact of the proposed action on the agricultural economy. The Secretary of Agriculture shall provide comments on such notice and analysis to the Administrator within 30 days after receiving the copy of such notice.

"(ii)(I) If the Secretary of Agriculture provides such comments in writing within 30 days after receiving the copy of such notice, the Administrator shall publish in the Federal Register (with the notice) the comments of the Secretary and the response of the Administrator with regard to the comments of the Secretary.

"(II) If the Secretary of Agriculture does not provide such comments in writing within 30 days after receiving the copy of such notice, the Administrator may notify the registrant and make public the notice at any time after such 30-day period.

"(iii) The time requirements imposed by this subparagraph may be waived or modified to the extent agreed on by the Administrator and the Secretary of Agriculture.

"(E) If the Administrator finds that suspension of a pesticide registration is necessary to prevent an imminent hazard to human health, the Administrator may waive the requirements of notice to the Secretary of Agriculture prescribed by subparagraph (D) and submission to the Scientific Advisory Panel under section 25(d) and proceed in accordance with subsection (c).

"(2) HEARING.—

"(A) The action proposed in a notice issued under paragraph (1)(A) shall become final and effective at the end of 30 days after receipt by the registrant or publication of a notice issued under paragraph (1)(B), whichever occurs later, unless within that time—

"(i) the registrant makes the necessary corrections, if possible; or

"(ii) a request for a hearing is made by a person adversely affected by the notice.

"(B) Whenever a request for a hearing is made, the request shall—

"(i) identify with particularity the findings and conclusions of the decision of the Administrator that are disputed; and

"(ii) include a complete statement of the reasons and factual basis that support the request for a hearing.

"(C) Any party to the proceeding may identify findings and conclusions in dispute.

"(D) If a hearing is held pursuant to such a request or the determination of the Administrator under paragraph (1)(A)(ii), a decision pertaining to registration or classification issued after completion of such hearing shall be final.

"(E) On receipt of a request for a hearing from a person without an economic interest in the pesticide with respect to which the hearing is requested, the Administrator shall convene such hearing if the request presents a substantial issue of fact, as determined by the Administrator, pertaining to whether such pesticide poses an unreasonable risk to man or the environment.

"(3) FACTORS.—In taking any action under paragraph (1), the Administrator shall—

"(A) consider restricting a use or uses of a pesticide as an alternative to cancellation and fully explain the reasons for such restriction; and

"(B) consider the impact of such action on production and prices of agricultural commodities, retail food prices, and otherwise on the agricultural economy, and publish in the Federal Register an analysis of such impact.

"(4) LABEL CHANGES.—

"(A)(i) The Administrator may—

"(I) notify the registrant of a pesticide of a label change proposed by the Administrator that may be made by rulemaking under subparagraph (B); and

"(II) provide that the registrant may submit comments to the Administrator on such proposed change during the 30-day period beginning on the date of the receipt of such notice.

"(ii) If a registrant who is notified by the Administrator of a proposed label change notifies the Administrator that the registrant does not object to such change, such change shall take effect as prescribed by the Administrator.

"(iii) If a registrant who is notified by the Administrator of a proposed label change

does not submit comments to the Administrator in such 30-day period, the Administrator shall send such registrant a second notice stating that, if such registrant does not submit any comments to the Administrator in the 30-day period beginning on the date the registrant receives the second notice, the registration of such registrant shall be canceled without a hearing or further notice. The registration of a registrant who does not submit comments on a second notice within such 30-day period shall be canceled without a hearing or further notice.

"(iv) If in response to a notice under this subparagraph a registrant submits comments to the Administrator objecting to a proposed label change, the Administrator may proceed under subparagraph (B).

"(B)(i) The Administrator may require changes to the label of a pesticide by informal rulemaking under this paragraph unless the changes—

"(I) are equivalent to a cancellation of a use;

"(II) render the pesticide unmarketable; or

"(III) otherwise have a major economic impact on persons affected by such changes.

"(ii) If the Administrator may not require changes to the label of a pesticide by informal rulemaking under this paragraph because of subclause (I), (II), or (III) of clause (i), the Administrator may only require such changes by a proceeding authorized by other provisions of this Act.

"(C)(i) After the promulgation of a regulation under subparagraph (B), the Administrator shall—

"(I) notify each registrant of the pesticide subject to the regulation of the label change required by the regulation; and

"(II) provide a 30-day period for each registrant to apply to the Administrator for an amendment to the registration to comply with the regulation.

"(ii) If a registrant does not apply for such an amendment within such period, the Administrator shall issue a notice of intent to cancel the registration of such registrant in accordance with paragraph (2). For purposes of paragraph (2), such notice shall be deemed to have been issued under paragraph (1).

"(D) A registrant or user of a pesticide subject to a regulation issued under subparagraph (B) may request a hearing under subsection (d) on such regulation in accordance with paragraph (2). The scope of the hearing shall be limited to—

"(i) whether the pesticide complies with the regulation;

"(ii) whether the regulation by its terms is applicable to such pesticide; and

"(iii) whether, because of significant information that was not (and could not reasonably have been) presented in the proceeding wherein the regulation was promulgated, it would be unreasonable to require such pesticide to comply with the regulation.

"(E)(i) Except as provided in clause (ii), in an action under 16(e) for review of a regulation issued under subparagraph (B), the court, on request, shall postpone the effective date of the regulation until completion of the review action if the petitioner shows—

"(I) a likelihood of success on the merits in such action; and

"(II) that the implementation of the regulation before completion of the action would cause a risk of substantial harm to the petitioner.

"(ii) A court in a review action under section 16(e) shall not postpone the effective date of a regulation issued under subparagraph (B) if the Administrator shows that failure to implement the regulation before completion of the action would cause a risk of substantial harm to health or the environment.".

SEC. 304. PUBLIC HEARINGS AND SCIENTIFIC REVIEW.

Section 6(d) (7 U.S.C. 136d(d)) is amended—

(1) by striking out the fifth through ninth sentences;

(2) in the tenth sentence—

(A) by striking out "(including the report of the Academy)"; and

(B) by striking out "90 days thereafter" and inserting in lieu thereof "18 months after issuance of the notice that gave rise to the hearing";

(3) by inserting before the last sentence the following new sentence: "The time period prescribed by the preceding sentence may be extended by the Administrator under extraordinary circumstances for not more than 1 year."; and

(4) in the heading, by striking out "AND SCIENTIFIC REVIEW".

SEC. 305. ADMINISTRATIVE CHANGES.

(a) ADMINISTRATIVE REVIEW.—Section 6 (7 U.S.C. 136d) (as amended by section 302 of this Act) is further amended by inserting after subsection (f) the following new subsection:

"(g) GENERAL PROVISIONS.—

"(1) VOLUNTARY CANCELLATION.—A registrant at any time may request that any of its pesticide registrations be cancelled or be amended to delete one or more uses. Before acting on such request, the Administrator shall publish in the Federal Register a notice of the receipt of the request. Thereafter, the Administrator may approve such a request.

"(2) PUBLICATION OF NOTICE.—A notice of denial of registration, intent to cancel, suspension, or intent to suspend issued under this Act, a notice issued under subsection (d)(4) or (e)(5)(A) of section 3A, or a notice issued under the third sentence of subsection (b)(4)(A) shall be published in the Federal Register and shall be sent by certified mail, return receipt requested, to the registrant's or applicant's address of record on file with the Administrator. If the mailed notice is returned to the Administrator as undeliverable at that address, if delivery is refused, or if the Administrator otherwise is unable to accomplish delivery of the notice to the registrant or applicant after making reasonable efforts to do so, the notice shall be deemed to have been received by the registrant or applicant on the date the notice was published in the Federal Register.

"(3) EXISTING STOCKS.—The Administrator may permit the continued use, distribution, or sale, or any combination thereof, of existing stocks of a pesticide whose registration is canceled under this Act to such extent, under such conditions, during such periods, and for such uses as the Administrator may specify if the Administrator determines that such distribution, sale, or use is not inconsistent with the purposes of this Act and will not cause unreasonable adverse effects on the environment.

"(4) ADDITIONAL INFORMATION.—If at any time after the registration of a pesticide the registrant has additional information regarding unreasonable adverse effects on the environment of the pesticide, the registrant shall submit such information to the Administrator. For purposes of this paragraph, the term 'information' includes factual information and expert opinion regarding risks or benefits.".

(b) CONFORMING AMENDMENTS.—

(1) DENIAL OF REGISTRATION.—Section 3(c)(6) (7 U.S.C. 136a(c)(6)) is amended by striking out the period at the end thereof and inserting in lieu thereof the following: "except as otherwise provided in this paragraph. A request for a hearing under section 6 shall be made within 30 days after the receipt of such notification. The Administrator may issue regulations governing the right to a hearing under section 6 with regard to the denial of any application for the registration of a pesticide containing an ingredient that was canceled under section 6. Under such regulations, due weight shall be given to the desirability of finality of prior proceedings and determinations and the extent that the applicant had an opportunity to participate in earlier proceedings. Section 6(g)(2) applies with respect to the publication of a notice of a denial of a registration.".

(2) CANCELLATION AFTER FIVE YEARS.—Section 6(a) (7 U.S.C. 136d(a)) is amended—

(A) by striking out paragraph (2); and

(B) in paragraph (1)—

(i) by striking out "(1) PROCEDURE.—";

(ii) by striking out "*: Provided*" and all that follows in the first sentence and inserting in lieu thereof a period; and

(iii) by inserting the matter in such paragraph after the subsection heading so that it is flush with the full left-hand margin of the section.

(3) CONDITIONAL REGISTRATION.—Section 6(e)(1) (7 U.S.C. 136d(e)(1)) is amended by striking out "*: Provided*" and all that follows and inserting in lieu thereof a period.

SEC. 306. CANCELLATION OF REGISTRATION BASED ON FALSE OR INVALID DATA.

Section 6 (7 U.S.C. 136d) (as amended by section 305(a) of this Act) is further amended by inserting after subsection (g) the following new subsection:

"(h) SUSPENSION AND CANCELLATION OF REGISTRATION BASED ON FALSE OR INVALID DATA.—

"(1) NOTICE.—

"(A) The Administrator shall immediately issue an order of suspension and a notice of intent to cancel the registration of a pesticide if—

"(i) before the effective date of the Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1986, the Administrator has previously determined in the Industrial Biotest validation process conducted by the Administrator that data submitted by the registrant of the pesticide to the Administrator in support of such registration were invalid;

"(ii) the data referred to in clause (i)—

"(I) have not been replaced as of the effective date of such Act; or

"(II) are in the process of being replaced on the effective date of such Act but are not submitted to the Administrator by April 1, 1988; and

"(iii) such data are material to the registration.

"(B) The Administrator may issue an order of suspension and a notice of intent to cancel the registration of a pesticide by a registrant who cited data described in subparagraph (A) in support of the registration of the pesticide.

"(2) INVALID DATA.—

"(A) If, after the effective date of the Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1986, the Administrator determines that invalid data are submitted

by a registrant to the Administrator in support of a registration of a pesticide, the Administrator may—

"(i) require the registrant to submit valid replacement studies or data on an expedited schedule and to submit interim progress reports; or

"(ii) issue a notice of intent to cancel such registration if the Administrator determines that such action would be in the public interest, taking into account the scope of the invalid data and the need to use the data to determine whether the pesticide may cause unreasonable adverse effects on the environment.

"(B) If, after the effective date of such Act, the Administrator determines that invalid data are cited by a registrant to the Administrator in support of a registration of a pesticide, the Administrator may—

"(i) require the registrant to submit valid replacement studies or data on an expedited schedule and to submit interim progress reports; or

"(ii) issue a notice of intent to cancel such registration if the Administrator determines that such action would be in the public interest, taking into account the scope of the invalid data and the need to use the data to determine whether the pesticide may cause unreasonable adverse effects on the environment.

"(3) FALSE DATA.—If a registrant willfully submits material data known to be false in support of the registration of a pesticide, the Administrator shall immediately issue notices of intent to suspend and cancel such registration.

"(4) HEARING.—

"(A) Any suspension or cancellation under this subsection shall become final and effective at the end of the 30-day period beginning on the date of receipt by the registrant of a notice issued under this subsection unless during such period a request for a hearing is made by a person adversely affected.

"(B) A hearing under this paragraph shall be conducted in accordance with the procedures prescribed by subsection (c) or (d), as appropriate.

"(C) In the case of a hearing held with respect to action proposed to be taken under paragraph (1), the only matters for resolution shall be whether—

"(i) in response to a notice of the Administrator issued under section 3(c)(2)(B) or other formal notice, data previously determined by the Administrator to be invalid—

"(I) have not been replaced as of the effective date of the Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1986; or

"(II) are in the process of being replaced on the effective date of such Act but are not submitted to the Administrator by April 1, 1988; and

"(ii) the data are material to the registration.

"(D) In the case of a hearing held with respect to action proposed to be taken under paragraph (2), the only matters for resolution shall be whether data are invalid, material, and necessary to adequately determine whether a pesticide may cause unreasonable adverse effects on the environment.

"(E) In the case of a hearing held with respect to action proposed to be taken under paragraph (3), the only matters for resolution shall be whether a registrant willfully submitted material data known to be false.

"(F) A decision after completion of a hearing conducted under this paragraph shall be final.

"(G) Notwithstanding any other provision of this Act, a hearing shall be held, and a determination made, under this subsection within 75 days after the receipt of a request for such hearing.".

TITLE IV—RECORDS AND INSPECTIONS

SEC. 401. RECORDS.

(a) IN GENERAL.—Section 8 (7 U.S.C. 136f) is amended to read as follows:

"SEC. 8. RECORDS.

"(a) AUTHORITY TO REQUIRE RECORDS.—

"(1) IN GENERAL.—The Administrator, by regulation, may require any producer or exporter of pesticides, registrant, applicant for registration, applicant for or holder of an experimental use permit, pesticide testing facility, or commercial applicator, or any person who distributes or sells any pesticide—

"(A) to prepare, and to maintain for reasonable periods of time, such records as the Administrator finds to be necessary for the effective implementation or enforcement of this Act;

"(B) to furnish to the Administrator reports stating the location where the records are maintained; and

"(C) to furnish a copy of any such record to the Administrator on written request.

"(2) RETAIL DISTRIBUTION OR SALE.—Except as provided in subsections (c), (d), and (e), the Administrator may not require any person who distributes or sells at retail a registered pesticide that is not subject to a restricted use classification under section 3 to prepare, maintain, or furnish any record under this subsection with respect to such pesticide.

"(b) LIMITATIONS.—The Administrator may not, under the authority of subsection (a), require any person to maintain records of—

"(1) financial data, sales data, or pricing data;

"(2) personnel data, except for data concerning exposure of employees to pesticides or ingredients of pesticides, or concerning health effects on employees that could reasonably be attributable to such exposure; or

"(3) research or test data (other than data relating to a registered pesticide, data relating to any pesticide for which an application for registration or for an experimental use permit has been filed, or data relating to testing at a pesticide testing facility).".

(b) DEFINITION OF PESTICIDE TESTING FACILITY.—Section 2 (7 U.S.C. 136) (as amended by section 105(c)(1) of this Act) is further amended by adding at the end thereof the following new subsection:

"(hh) PESTICIDE TESTING FACILITY.—The term 'pesticide testing facility' means any person that conducts any test, study, survey, or investigation of the properties, effects, or behavior of any pesticide (or any ingredient, metabolite, or degradation product thereof) on its own behalf or on behalf of any registrant, applicant for registration, or other person who sells or distributes the pesticide (or contemplates selling or distributing the pesticide). The term does not include any person solely on account of the participation of such person as a cooperator in field testing of a pesticide in compliance with an experimental use permit issued under section 5.".

(c) CONFORMING AMENDMENTS.—The second sentence of section 26(c) (7 U.S.C. 136w-1(c)) is amended—

(1) by striking out "Notwithstanding the provisions of section 2(e)(1) of this Act" and inserting in lieu thereof "Notwithstanding section 2(kk)";

(2) by striking out "8(b) of this Act" and inserting in lieu thereof "9"; and

(3) by striking out "9(a) of this Act" and inserting in lieu thereof "9".

SEC. 402. INSPECTIONS.

(a) AUTHORITY TO ENTER, INSPECT, AND COPY.—Subsection (a) of section 9 (7 U.S.C. 136g(a)) is amended to read as follows:

"(a) AUTHORITY TO ENTER, INSPECT, AND COPY.—An officer or employee of the United States or of any State, duly designated by the Administrator, is authorized at reasonable times, as provided by this section—

"(1) to enter any place where any pesticide, active ingredient, or device is distributed or sold, to inspect and obtain samples of any pesticide, active ingredient, or device being distributed or sold at such place or of any packaging or labeling of any such pesticide, active ingredient, or device;

"(2) in the case of a pesticide that has had its registration canceled or suspended under section 6 and that the Administrator has reasonable cause to believe may pose a danger to public health or safety, to enter any place where the pesticide is stored, to inspect and obtain samples of any pesticide, active ingredient, or device being stored at such place or of any packaging or labeling of any such pesticide, active ingredient, or device;

"(3) to enter any place where there are located any records required under this Act or any place reported under section 8(a) as a location where such records are maintained, to inspect and obtain copies of such records;

"(4) to enter any pesticide testing facility—

"(A) to inspect the facility and the testing being conducted at the facility; and

"(B) to inspect and obtain copies of any records required by or under the authority of this Act to be maintained by the pesticide testing facility; and

"(5) to enter any place where such officer or employee has reason to believe that this Act has been or is being violated by any person other than a person acting in the capacity of a private applicator, to inspect such place to obtain evidence of such violation.".

(b) WARRANTS.—Subsection (b) of section 9 (7 U.S.C. 136g(b)) is amended to read as follows:

"(b) WARRANTS.—An officer or employee of the United States or of any State, duly designated by the Administrator, is empowered to obtain and execute warrants authorizing—

"(1) entry, inspection, and obtaining of evidence for the purposes of this section;

"(2) inspection and copying of all records required under this Act; and

"(3) seizure of any pesticide or device that is in violation of this Act.".

(c) PROCEDURE, COORDINATION, AND CRIMINAL VIOLATIONS.—Section 9 (7 U.S.C. 136g) is amended by adding at the end thereof the following new subsections:

"(d) PROCEDURE.—

"(1) CREDENTIALS AND STATEMENTS.—Before any entry or inspection of any premises not open to the general public is made under this section, the person conducting the inspection shall present to the person in charge of the premises appropriate credentials, and a written statement of the reason for the entry or inspection and whether a violation of this Act is suspected.

"(2) PROMPTNESS.—Each entry or inspection shall be commenced and completed with reasonable promptness.

"(3) SAMPLES.—If the person conducting the entry or inspection obtains a sample of a pesticide or device, before leaving the premises such person shall give to the person in charge of the premises a receipt describing the sample and, if requested and practicable, a portion of each such sample equal in volume or weight to the portion retained. If an analysis of any such sample is made, a copy of the results of such analysis shall be furnished on request to the person in charge of the premises.

"(e) COORDINATION.—The Administrator shall coordinate actions taken under this section with actions taken under other Federal laws for the purpose of avoiding duplication of inspections.

"(f) CRIMINAL VIOLATIONS.—An officer or employee of the United States or of any State, duly designated by the Attorney General, may obtain and execute a warrant in accordance with rule 41 of the Federal Rules of Criminal Procedure if a court or magistrate determines under such rule that there is probable cause to believe that—

"(1) a criminal violation of this Act has occurred or is occurring on the property to be entered or searched; or

"(2) evidence of a criminal violation of this Act will be found on such property.".

TITLE V—EXPORTS

SEC. 501. DEFINITION OF MISBRANDED.

Section 2(q)(1) (7 U.S.C. 136(q)(1)) is amended—

(1) by striking out "or" at the end of subparagraph (G);

(2) by striking out the period at the end of subparagraph (H) and inserting after the close quotation marks "; or"; and

(3) by adding at the end thereof the following new subparagraph:

"(I) in the case of a pesticide intended for export that is substantially similar in composition and use pattern to a pesticide registered under section 3, the label—

"(i) is not written in an appropriate language as required by section 17(a)(4)(A); or

"(ii) does not contain the same health, safety, and hazard precautions as the pesticide registered under section 3, unless such precautions on the label are in conflict with the law of the importing country.".

SEC. 502. DEFINITION OF IMPORTING COUNTRY.

Section 2 (7 U.S.C. 136) (as amended by section 401(b) of this Act) is further amended by adding at the end thereof the following new subsection:

"(ii) IMPORTING COUNTRY.—The term 'importing country' means the first country to which a pesticide, device, or active ingredient, subject to the notification requirements of section 17(a), is exported from the United States.".

SEC. 503. PESTICIDES AND DEVICES INTENDED FOR EXPORT.

(a) IN GENERAL.—Subsection (a) of section 17 (7 U.S.C. 136o(a)) is amended to read as follows:

"(a) PESTICIDES AND DEVICES INTENDED FOR EXPORT.—

"(1) VIOLATIONS.—Notwithstanding any other provision of this Act, no pesticide or device, or active ingredient used in producing a pesticide, intended solely for export to any foreign country shall be considered in violation of this Act when prepared or packed according to the specifications or directions of the foreign purchaser, except that producers of such pesticides and devices and active ingredients used in producing pesticides shall be subject to section 2(p), subparagraphs (A), (C), (D), (E), (G), (H), and (I) of section 2(q)(1), subparagraphs (A), (B), (C)(i), (C)(iii), and (D) of section 2(q)(2), sections 7 and 8, and paragraphs (2), (3), and (4) of this subsection.

"(2) EXPORT OF RESTRICTED USE OR UNREGISTERED PESTICIDES.—

"(A) This paragraph applies to a pesticide, device, or active ingredient—

"(i) for which a restricted use classification has become effective under section 3;

"(ii) for which a cancellation or suspension has become effective under section 6;

"(iii) the registration of which has been voluntarily withdrawn by the registrant, if such withdrawal is associated with concern over potential adverse public health or environmental effects; or

"(iv) that is not registered under section 3 for any use.

"(B) No pesticide, device, or active ingredient described in subparagraph (A) may be exported to any foreign country by any person unless—

"(i) at least 30 days before the first shipment each year of such pesticide, device, or active ingredient to such country, the Administrator has notified, under paragraph (3), the appropriate government regulatory office in the importing country; and

"(ii) prior to export, the foreign purchaser has signed a statement acknowledging that the purchaser understands that such pesticide is not registered for use in the United States and cannot be sold in the United States under this Act.

"(C) A copy of the statement required under subparagraph (B)(ii) shall be transmitted to an appropriate official of the government of the importing country.

"(D) Documents referred to in subparagraph (B) shall be made available to the public, on request.

"(3) NOTIFICATION SPECIFICATIONS.—The notification required under paragraph (2) shall be made in an appropriate language and shall contain—

"(A) the name of the pesticide and the common and chemical names of each active ingredient;

"(B) the name and address of the person exporting the pesticide, device, or active ingredient;

"(C) the name and address of the person importing the pesticide, device, or active ingredient;

"(D) the name and address of the appropriate government regulatory office in the importing country;

"(E) a statement of the reasons why the registration of the pesticide was canceled, suspended, voluntarily withdrawn, or the pesticide, is not registered in the United States, or is classified for restricted use, and the list of restrictions; and

"(F) the name and address of the office of the United States Environmental Protection Agency that, on request by the importer or official of the importing country, can provide additional information on the pesticide, device, or active ingredient.

"(4) LABELS.—

"(A) The label of a pesticide intended for export from the United States shall be written in an appropriate language.

"(B) Except as provided in section 2(q)(1)(H), such label may not refer to compliance with the laws of the United States unless the label also contains or is accompanied by a description of the relevant requirements of such laws.

"(5) RECORDS.—The Administrator, by regulation, may require any person subject to this subsection to prepare, maintain, and submit such records as may be necessary to carry out this subsection.".

(b) EFFECTIVE DATES AND IMPLEMENTATION.—

(1) IN GENERAL.—Paragraphs (2) and (3) of section 17(a) of the Federal Insecticide, Rodenticide, and Fungicide Act (as amended by subsection (a) of this section) shall become effective 90 days after the effective date of this Act.

(2) PUBLICATION OF LIST.—Not later than 30 days after the effective date of this Act, the Administrator of the Environmental Protection Agency shall publish in the Federal Register a list of the names, addresses, and international telecommunications codes of appropriate regulatory offices required to receive notices under section 17(a)(2)(B) of the Federal Insecticide, Rodenticide, and Fungicide Act (as amended by subsection (a)).

(3) REVISION OF LIST.—Not later than 180 days after the effective date of this Act, and annually thereafter, the Administrator shall revise the list required under paragraph (2).

(4) PRELIMINARY GUIDELINES.—Not later than 90 days after the effective date of this Act, the Administrator shall publish in the Federal Register preliminary guidelines regarding—

(A) the form of the notification required under section 17(a) of the Federal Insecticide, Rodenticide, and Fungicide Act (as amended by subsection (a));

(B) translation of the notification and labels required under such section 17(a) into the appropriate language;

(C) preparation and retention of records under such section 17(a); and

(D) procedures for public access to documents submitted by exporters under such section.

SEC. 504. CANCELLATION NOTICES FURNISHED TO FOREIGN GOVERNMENTS.

Subsection (b) of section 17 (7 U.S.C. 136o(b)) is amended to read as follows:

"(b) NOTICES OF REGULATORY ACTION FURNISHED TO FOREIGN GOVERNMENTS.—

"(1) ISSUANCE.—The Administrator shall promptly transmit through the Secretary of State a notice, at such time and annually thereafter, to the appropriate governmental regulatory offices of other countries and to appropriate international agencies whenever—

"(A) a registration, or a cancellation or suspension of the registration, of a pesticide becomes effective or ceases to be effective; or

"(B) a pesticide is classified for restricted use.

"(2) CONTENTS.—A notice under paragraph (1) shall include—

"(A) the reasons for the regulatory action taken;

"(B) in the case of a canceled or suspended registration of a pesticide, information concerning other pesticides that are registered under section 3 and that could be used in lieu of such pesticide; and

"(C) the name and address of the office of the United States Environmental Protection Agency that, on request, can provide additional information on the pesticide.".

SEC. 505. COOPERATION IN INTERNATIONAL EFFORTS.

Subsection (d) of section 17 (7 U.S.C. 136o(d)) is amended to read as follows:

"(d) COOPERATION IN INTERNATIONAL EFFORTS.—The Administrator shall—

"(1) in cooperation with the Secretary of State, other appropriate Federal agencies, and nongovernmental and international organizations, actively participate in interna-

tional efforts to develop improved pesticide research and regulatory programs;

"(2) provide foreign countries with technical assistance to develop comprehensive pesticide regulatory programs;

"(3) within 1 year after the effective date of the Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1986, and each 3 years thereafter, conduct and publish a survey of all countries that import pesticides from United States exporters or from which the United States imports agricultural commodities, to ascertain what procedures are in place in each country—

"(A) regarding registration, labeling, and training to ensure safe handling, transportation, application, and disposal of pesticides; and

"(B) to control residues on foods to meet tolerances established under United States law, and

"(4) report to Congress annually on the activities conducted under this subsection and the results thereof.".

TITLE VI—CERTIFICATION, TRAINING, AND RECORDKEEPING FOR PESTICIDE APPLICATORS

SEC. 601. CERTIFICATION, TRAINING, AND RECORDKEEPING FOR PESTICIDE APPLICATORS.

(a) DEFINITIONS.—

(1) APPLICATOR.—Subsection (e) of section 2 (7 U.S.C. 136(e)) is amended to read as follows:

"(e) APPLICATOR.—

"(1) COMMERCIAL APPLICATOR.—

"(A) Except as provided in subparagraph (B), the term 'commercial applicator' means a person (whether or not the person is a private applicator with respect to some uses) who—

"(i) uses or supervises the use, for any purpose or on any property, of any pesticide that is classified for restricted use;

"(ii) uses or supervises the use of any pesticide (other than a pesticide that the Administrator determines may be applied without the need for training) for hire as the principal part of the business or work of the person; or

"(iii) as an employee of a person described in clause (ii), uses or supervises the use of any pesticide.

"(B) The term does not include a person who uses or supervises the use of a pesticide as described in paragraph (2).

"(2) PRIVATE APPLICATOR.—The term 'private applicator' means a person who uses or supervises the use of any pesticide that is classified for restricted use for purposes of producing any agricultural commodity—

"(A) on property owned or rented by such person or the employer of such person; or

"(B) on other property if applied without compensation (other than trading of personal services between producers of agricultural commodities).

"(3) CERTIFIED APPLICATOR.—The term 'certified applicator' means a commercial or private applicator who is certified under section 4.

"(4) UNDER THE DIRECT SUPERVISION OF A CERTIFIED APPLICATOR.—Unless otherwise prescribed by its labeling, a pesticide shall be considered to be applied under the direct supervision of a certified applicator if the pesticide is applied by a person acting under the direct supervision and the instructions and control of a certified applicator who is available if and when needed, even though such certified applicator is not physically present at the time and place the pesticide is used.".

(2) PESTICIDE DEALER.—Section 2 (as amended by section 502 of this Act) is further amended by adding at the end thereof the following new subsection:

"(jj) PESTICIDE DEALER.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the term 'pesticide dealer' means any person who, in the ordinary course of business, distributes or sells any pesticide that is classified for restricted use or designated under section 8(d)(2).

"(2) EXCEPTION.—Such term does not include a person who only distributes or sells pesticides that are classified for general use and that are not designated under section 8(d)(2).".

(b) CERTIFICATION AND TRAINING FOR PESTICIDE APPLICATORS.—

(1) IN GENERAL.—Section 4 (7 U.S.C. 136b) is amended by adding at the end thereof the following new subsections:

"(d) USE BY COMMERCIAL APPLICATORS.—

"(1) IN GENERAL.—It shall be a violation of this Act for any person to use any pesticide as a commercial applicator unless such person is—

"(A) a certified commercial applicator; or

"(B) a registered commercial applicator under the direct supervision of a certified commercial applicator.

"(2) CERTIFIED COMMERCIAL APPLICATORS.—To be considered to be a certified commercial applicator, a person, at a minimum, shall—

"(A) have met the standards prescribed under subsection (a) and have received training—

"(i) prescribed by the State agency, including training in the material referred to in subsection (g);

"(ii) conducted by a trainer who has met the requirements prescribed under subsection (h); and

"(iii) that satisfies the minimum standards for training programs prescribed under subsection (h);

"(B) have had field, institutional, or industrial experience in pesticide use and application;

"(C) have passed an examination prescribed by such State agency; and

"(D) possess a valid commercial applicator certification issued by such State agency.

"(3) REGISTERED COMMERCIAL APPLICATORS.—

"(A) To be considered to be a registered commercial applicator, a person, at a minimum, shall—

"(i) have received training—

"(I) prescribed by the State agency, including training in the material referred to in subsection (g); and

"(II) conducted by a trainer who has met the requirements prescribed under subsection (h); and

"(ii) possess a valid registration issued by such State agency.

"(B) A person may obtain a registration by providing to the State agency a report, signed and dated by the trainer and by the person who received the training, stating that the prescribed minimum training has been provided and received.

"(e) USE BY PRIVATE APPLICATORS.—

"(1) IN GENERAL.—A restricted use pesticide shall be considered to have been applied by, or under the direct supervision of, a certified private applicator only if the pesticide is applied by a person who is either—

"(A) a certified private applicator; or

"(B) a supervised private applicator who uses the pesticide under the direct supervision of a certified private applicator.

"(2) CERTIFIED PRIVATE APPLICATORS.—To be considered to be a certified private applicator, a person, at a minimum, shall—

"(A) have met the standards prescribed under subsection (a) and have received training—

"(i) prescribed by the State agency, including training in the material described in subsection (g);

"(ii) conducted by a trainer who has met the requirements prescribed under subsection (h); and

"(iii) that satisfies the minimum standards for training prescribed under subsection (h); and

"(B) possess a valid private applicator certification issued by such State agency.

"(3) SUPERVISED PRIVATE APPLICATORS.—

"(A) To be considered to be a supervised private applicator, a person, at a minimum, shall have received basic instruction—

"(i) prescribed by the State agency or based on material prescribed by such State agency, including basic instruction material concerning the use of appropriate pesticide application and safety procedures, appropriate clothing and protective equipment for pesticide applications, the detection of common symptoms of pesticide poisoning, the means of obtaining emergency medical treatment, hazards posed by pesticides to workers, the public health, and the environment, and the requirements of applicable laws, regulations, and labeling; and

"(ii) given by a certified private applicator, a commercial applicator who is certified in the pest control category appropriate for the instruction being provided, or a trainer who has met the requirements prescribed under subsection (h).

"(B) The State agency may require the employer of a supervised private applicator to confirm that the basic instruction described in subparagraph (A)(i) has been received.

"(f) RECERTIFICATION AND REREGISTRATION.—

"(1) IN GENERAL.—Each certified applicator and each registered commercial applicator within a State shall undergo refresher training and be recertified or reregistered within a period established by the State agency of such State of not more than 5 years.

"(2) TRAINING MATERIAL.—The refresher training shall be prescribed by the State agency and shall include training in the materials referred to in subsection (g) and in the relevant requirements of other subsections of this section and sections 3(d), 12, and 14.

"(3) RECERTIFICATION.—To be recertified, an applicator, at a minimum, shall meet—

"(A) the requirements of subparagraphs (A), (B), and (D) of subsection (d)(2); or

"(B) the requirements of paragraphs (1) and (2) of subsection (e).

"(4) REREGISTRATION.—To be reregistered, a commercial applicator, at a minimum, shall meet the requirements of subsection (d)(3).

"(g) TRAINING MATERIAL.—

"(1) DEVELOPMENT.—The Administrator, in consultation with the Secretary of Agriculture, shall develop training material on the use of appropriate procedures for the application of pesticides, safety procedures for pesticide application, clothing and protective equipment for pesticide application, the detection of common symptoms of pesticide poisoning, the means of obtaining emergency medical treatment, hazards posed by pesticides to workers, the public health, and the environment, specific commercial appli-

cation categories, and the requirements of applicable laws, regulations, and labeling.

"(2) REVISIONS.—Within 12 months after the effective date of the Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1986, the Administrator, in consultation with the Secretary of Agriculture, shall revise and make current such material and thereafter shall update such material as needed.

"(h) MINIMUM STANDARDS FOR TRAINERS AND TRAINING PROGRAMS.—

"(1) TRAINING OF COMMERCIAL APPLICATORS.—

"(A) The Administrator shall establish within 1 year after the effective date of the Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1986—

"(i) minimum standards of competency, and experience or expertise, for trainers referred to in subsection (d); and

"(ii) minimum standards for the training programs referred to in subsection (d).

"(B) Training programs prescribed by any State under subsection (d) shall comply with the minimum standards established by the Administrator under subparagraph (A) not later than 2 years after the effective date of such standards. If on the expiration of such 2-year period a State's training program fails to meet such minimum standards, or if a State fails to prescribe such a program, the Administrator shall notify the State of such failure. After receipt of a notice, a State shall have 90 days to bring the training program of the State into compliance with such standards. If on expiration of such 90-day period, the training program of the State does not meet such standards, the Administrator shall prescribe such training programs referred to in subsection (d) for use in such State.

"(2) TRAINING OF PRIVATE APPLICATORS.—

"(A) The Administrator shall establish within 2 years after the effective date of the Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1986—

"(i) minimum standards of competency, and experience or expertise, for trainers referred to in subsection (e); and

"(ii) minimum standards for the training programs referred to in subsection (e).

"(B) Training programs prescribed by any State under subsection (e) shall comply with the minimum standards established by the Administrator under subparagraph (A) not later than 2 years after the effective date of such standards. If on the expiration of such 2-year period the training program of a State fails to meet such minimum standards, or if a State fails to prescribe such a program, the Administrator shall notify the State of such failure. After receipt of a notice, a State shall have 90 days to bring the training program of the State into compliance with such standards. If on expiration of such 90-day period the training program of the State does not meet such standards, the Administrator shall prescribe the training programs referred to in subsection (e) for use in such State.

"(i) PRIVATELY ADMINISTERED TRAINING PROGRAMS.—A State agency may approve any privately administered training program that the Administrator determines meets the more stringent of—

"(1) requirements established under this section; or

"(2) requirements established by the State agency.

"(j) ENFORCEMENT OFFICER TRAINING.—Federal and State field personnel responsible for on-site observations and inspections of pesticide use shall have training that, at a minimum, includes training covering materials specified in subsection (g) for the commercial application categories for which they are assigned enforcement responsibility.

"(k) SEPARATE STANDARDS.—In establishing standards under this section applicable to applicators, the Administrator shall establish separate standards for commercial applicators and private applicators.

"(l) DEFINITION OF STATE AGENCY.—For purposes of this section, the term 'State agency' means the agency of a State that is designated under subsection (a)(2)(A) if the State has primary enforcement responsibility for pesticide use violations, as provided for by section 26. In the case of a State that does not have such primary enforcement responsibility or that does not have an agency designated under subsection (a)(2)(A), a reference to a State agency shall be considered a reference to the Administrator.".

(2) EFFECTIVE DATES.—

(A) COMMERCIAL APPLICATORS.—

(i) IN GENERAL.—Except as provided in clauses (ii) and (iii), subsection (d) of section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act (as added by paragraph (1)) shall become effective in a State on the expiration of the period prescribed by subsection (h) of such section within which training programs of such State under subsection (d) are required to be in compliance with minimum standards prescribed by the Administrator of the Environmental Protection Agency under subsection (h).

(ii) CERTIFIED COMMERCIAL APPLICATORS.—If an applicator in a State is certified as a commercial applicator under subsection (a) of section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act before the effective date prescribed by clause (i) and the Administrator has determined that the previous certification or recertification requirements in that State do not conform to the requirements of subsection (d) of such section, such applicator shall be recertified—

(I) within 2 years after the date the training programs of such State under subsection (d) comply with such minimum standards of the Administrator; or

(II) within such earlier time as the State may prescribe.

(iii) REGISTERED COMMERCIAL APPLICATORS.—The requirements of subsection (d) of section 4 for registered commercial applicators shall become effective 1 year after the expiration of the period prescribed by subsection (h) of such section within which training programs of such State under subsection (d) are required to be in compliance with minimum standards prescribed by the Administrator of the Environmental Protection Agency under subsection (h).

(B) PRIVATE APPLICATORS.—

(i) IN GENERAL.—Except as provided in clauses (ii) and (iii), subsection (e) of section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act (as added by paragraph (1)) shall become effective in a State on the expiration of the period prescribed by subsection (h) of such section within which training programs of such State under subsection (e) are required to be in compliance with minimum standards prescribed by the Administrator of the Environmental Protection Agency under subsection (h).

(ii) CERTIFIED PRIVATE APPLICATORS.—If an applicator in a State is certified as a private applicator under subsection (a) of section 4 before the effective date prescribed by clause (i) and the Administrator has determined that the previous certification or recertification requirements in such State do not conform to the requirements of subsection (d) of such section, such applicator shall be recertified—

(I) within 2 years after the date the training programs of such State under subsection (e) comply with such minimum standards of the Administrator; or

(II) within such earlier time as the State may prescribe.

(iii) SUPERVISED PRIVATE APPLICATORS.—The requirements of subsection (e) of section 4 for supervised private applicators shall become effective 1 year after the expiration of the period prescribed by subsection (h) of such section within which training programs of such State under subsection (e) are required to be in compliance with minimum standards prescribed by the Administrator of the Environmental Protection Agency under such subsection.

(C) ENFORCEMENT OFFICER TRAINING.—The requirements of subsection (j) of section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act (as added by paragraph (1)) shall become effective 1 year after the Administrator issues the training materials specified in subsection (g) of such section.

(c) RECORDS OF PESTICIDE APPLICATORS AND DEALERS.—

(1) IN GENERAL.—Section 8 (7 U.S.C. 136f) (as amended by section 401 of this Act) is further amended by adding at the end thereof the following new subsections:

"(c) RECORDS OF APPLICATORS.—

"(1) COMMERCIAL APPLICATORS.—The Administrator shall require each commercial applicator to maintain records of each pesticide application, including the identity and quantity of pesticide applied and the date and location of such application, for a period of 2 years after each such application.

"(2) PRIVATE APPLICATORS.—No regulations issued by the Administrator to carry out this Act may require any private applicator to maintain any records or file any reports or other documents.

"(d) RECORDS OF PESTICIDE DEALERS.—

"(1) IN GENERAL.—The Administrator, by regulation, shall require each pesticide dealer to maintain a record of each sale or distribution of—

"(A) a pesticide classified for restricted use; and

"(B) any other pesticide designated for purposes of this subsection by the Administrator by regulation because the pesticide may cause significant adverse effects on health or the environment.

"(2) CONTENTS.—Such records shall include the identity of the pesticide sold or distributed, the identity of the person to whom the pesticide was distributed or sold, the date of the distribution or sale, and the amount of the pesticide distributed or sold.

"(3) DURATION.—A pesticide dealer shall maintain the records required under this subsection for 3 years after the date of the distribution or sale.

"(e) ACCESS.—

"(1) EMPLOYEES, CUSTOMERS, AND COMPLAINANTS.—

"(A) A pesticide dealer or commercial applicator shall afford to an employee or former employee of such dealer or applicator access to records required to be kept under subsections (c) and (d) that directly relate to the employment duties of the employee.

"(B) A pesticide dealer or commercial applicator shall afford to a customer of such dealer or applicator access to the records that directly relate to any pesticide that the customer purchased from the dealer or that

relate to any pesticide application made by such an applicator at the request of the customer or under a contract with a customer.

"(C) Each State enforcement agency, as part of an investigation or enforcement action in response to a formal complaint, shall make available reports of the findings of such investigation or action to the complainant. On the request of a complainant, such agency shall provide in a timely manner a progress report or interim report that contains, at a minimum, the records required to be kept under subsections (c) and (d) and obtained in the investigation or action.

"(D) The records for which access is provided under subparagraph (A), (B), or (C) shall be accessible within 30 days after a request made under such subparagraph, except that if necessary to protect the public health or in a medical emergency, such records shall be provided as soon as possible, but no later than 24 hours, after the request is made.

"(2) STATE AGENCIES.—A copy of any record to be required to be maintained under subsection (c) or (d) shall be submitted to a State agency that has primary enforcement authority under section 26 on request by such State agency to the commercial applicator or dealer required to maintain such records.

"(f) INFORMATION FOR EMPLOYEES.—An employer who uses or supervises the use of a pesticide shall—

"(1) know or have access to the brand name and common or chemical name of each ingredient listed on the labeling of the pesticide, and to the safety, first aid, and antidote information listed on the labeling of the pesticide; and

"(2) be responsible for promptly making such information available, on request, to any employee exposed to the pesticide and to treating medical personnel.".

(2) CONFORMING AMENDMENT.—Section 11 (7 U.S.C. 136i) is repealed.

(d) UNLAWFUL ACTS.—Section 12(a)(2) (7 U.S.C. 136j(a)(2)) is amended—

(1) by striking out "or" at the end of subparagraph (O);

(2) by striking out the period at the end of subparagraph (P) and inserting in lieu thereof a semicolon; and

(3) by adding after subparagraph (P) the following new subparagraph:

"(Q) to obtain or use records acquired under section 8(e) in furtherance of a commercial purpose;".

TITLE VII—ADDITIONAL DATA, DATA COMPENSATION, AND PATENTS

SEC. 701. ADDITIONAL DATA TO SUPPORT EXISTING REGISTRATIONS.

Section 3(c)(2)(B) (7 U.S.C. 136a(c)(2)(B)) is amended—

(1) by striking out clauses (i) and (ii) and inserting in lieu thereof the following new clauses:

"(i) If the Administrator determines that additional data are required to maintain in effect an existing registration of a pesticide or the existing registrations of a group of pesticides, the Administrator shall notify the registrant of each pesticide to which the determination relates and provide a list of such registrants to any person.

"(ii)(I) Each registrant of such a pesticide shall provide evidence within 90 days after receipt of notification that the registrant is taking appropriate steps to secure and submit the additional data that are required.

"(II) Two or more registrants may agree to develop jointly, or to share in the cost of development of, such data. Any registrant who enters into such an agreement, or who offers to agree to share in the cost of development of such data, shall be entitled to examine such data and rely on such data to maintain or obtain registrations under this Act or under the law of any State. An offer to enter into such an agreement may be accepted at any time and may not be withdrawn without the consent of the person to whom the offer was made."; and

(2) in clause (iii), by striking out the first sentence and inserting in lieu thereof the following new sentence: "If at the end of 60 days after two or more registrants have entered into an agreement under clause (ii) the registrants have not further agreed on the terms of the data development or cost-sharing agreement or on a procedure for reaching such agreement, any of such registrants may initiate binding arbitration proceedings to fix such terms by requesting the Federal Mediation and Conciliation Service to appoint an arbitrator from the roster of arbitrators maintained by the Service.".

SEC. 702. DATA COMPENSATION AND ARBITRATION.

Section 3(c)(1)(D) (7 U.S.C. 136a(c)(1)(D)) is amended—

(1) by redesignating clause (ii) as clause (ii)(I) and adding at the end of such clause the following new subclause:

"(II) If the term of a patent for a pesticide registered under this section is extended under section 158, Chapter 14 of title 35, United States Code, the amount of compensation to be paid under arbitration under subclause (I) for the use of data submitted to the Administrator for such pesticide shall be a fair share of the cost of producing the data plus a value premium not be exceed that share, as determined in the arbitration process. For pesticides for which the term of a patent has not been so extended,

"(A) after the patent for the pesticide has expired, and

"(B) there has elapsed a period of time equal to the regulatory review period for the original registration of the pesticide that occurred after the patent for the pesticide was granted, but not more than three years,

the amount of compensation to be paid under arbitration under subclause (I) for use of data submitted to the Administrator for such pesticide shall be as provided in the preceding sentence. If the Administrator has inadequate records to determine the regulatory review period, the amount of compensation to be paid for such use of data shall be as provided in the first sentence of this subclause (II) beginning three years after the patent for the pesticide has expired. The provisions of this subclause (II) shall become effective with respect to applications by persons, other than the original data submitter, filed with the Administrator after the date of enactment of the Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1986.".

(2) by redesignating clause (iii) as clause (iv); and

(3) by inserting after clause (iii) the following new clause:

"(iii)(I) In the case of a pesticide the term of the patent for which has expired, the terms and amount of compensation, for data that was submitted for such pesticide, to be paid by a person who intends to file an application for registration of a pesticide that cites such data may be fixed before the submission of such application by arbitration under clause (ii) initiated by such person.

"(II) The arbitration shall be binding on the original data submitter and shall be binding on such person after the date the application of such person is submitted.

"(III) The findings and determination of the arbitrator shall be subject to judicial review in the United States Court of Appeals on the filing of an action by a party to the arbitration up to the date such person submits such application. The findings and determination of the arbitrator with regard to issues of fact shall be sustained if they are supported by substantial evidence when considered on the record of the arbitration as a whole.

"(IV) Each party to the first arbitration under this clause to determine the terms and amount of compensation for the use of particular data shall share equally in the payment of the fees and expenses of the arbitrators and shall each pay its own attorney's fees.

"(V) In all subsequent arbitrations under this clause to determine the terms and amount of compensation for the use of such data, the party to such subsequent arbitration who seeks to cite the data of the original data submitter shall pay the fees and expenses of the arbitrators and the attorney's fees of the original data submitter.

"(VI) Clause (ii) shall apply to arbitrations under this clause, except as otherwise provided in this clause.".

SEC. 703. RESTORATION OF PATENT TERM FOR CERTAIN AGRICULTURAL AND CHEMICAL PRODUCTS.

(a) IN GENERAL.—Chapter 14 of title 35 of the United States Code is amended by adding the following new section immediately after section 157:

"§ 158. Restoration of patent term for certain agricultural and chemical products

"(a)(1) The term of a patent that claims a product subject to a regulatory review period or a method for using such a product or a method for manufacturing such a product shall be extended, in accordance with this section, from the original expiration date of the patent if—

"(A) the product sponsor notifies the Commissioner in compliance with the provisions of subsection (b)(1);

"(B) the product has been subject to a regulatory review period pursuant to statute before its commercial marketing or use;

"(C) the term of the patent has never been extended; and

"(D) the patent to be extended has not expired prior to notice to the Commissioner under subsection (b)(1).

"(2) The rights derived from any claim of any patent extended under paragraph (1) shall be limited in scope during the period of any extension as follows:

"(A) In the case of any patent, to the scope of such claim that relates to the product subject to regulatory review.

"(B) In the case of a patent that claims a method of manufacturing a product, to the method of manufacturing as used to make the approved product.

"(3)(A) Subject to subparagraph (B), the term of a patent shall be extended by the time equal to the regulatory review period that occurred after such patent was granted.

"(B)(i) In determining a regulatory review period for purposes of subparagraph (A), if an application or notice described in paragraph (4)(B)(ii) or (4)(C)(ii) of subsection (c) was rejected and returned to the product sponsor because of insufficiency of data, the period beginning on the date the application was rejected for insufficiency of data and ending on the date the application was

subsequently accepted shall be excluded, except that if during such period the product sponsor conducts a major health or environmental effects test, the period during which such test is conducted shall not be excluded.

"(ii) In determining a regulatory review period for purposes of subparagraph (A), the regulatory review period shall be reduced by any period determined under subsection (b)(2) during which the product sponsor did not act with due diligence.

"(iii) In no event shall the term of any patent be extended for more than five years. No term of any extended patent may exceed twenty-five years from the date of filing of the earliest United States patent application that provides support under section 120 of this title for any claim of the patent to be extended. If the regulatory review period for a product began before the date of enactment of this section and if on such date the regulatory review period had not ended, it shall be measured from the date of enactment and the period of extension for the patent shall not exceed two years. If the regulatory review period for a product began before the date of enactment of this section, and if on such date the regulatory review period has been completed, there shall be no extension of the patent.

"(C) In no event shall more than one patent be extended for the same regulatory review period for any product.

"(D) For purposes of the extension of the term of a patent relating to a pesticide under subsection (a)—

"(i) each formulation of the pesticide containing the identical active ingredient shall be considered the same pesticide; and

"(ii) no pesticide may be the subject of more than one patent extension.

"(b)(1) To obtain an extension of the term of a patent under subsection (a), the product sponsor shall notify the Commissioner within sixty days after the termination of the regulatory review period for the product to which the patent relates, that the regulatory review period has ended. If the product sponsor is not the owner of record of the patent, the notification shall include the written consent of the owner of record of the patent. Such notification shall be in writing and shall—

"(A) identify the Federal statute under which regulatory review occurred;

"(B) state the dates on which the regulatory review period commenced and ended;

"(C) identify the product for which regulatory review was required;

"(D) state that the requirements of the statute under which the regulatory review referred to in subsection (a)(1)(B) occurred have been satisfied and commercial marketing or use of the product is not prohibited under the Federal statute identified in subparagraph (A);

"(E) identify the patent and any claim thereof to which the extension is applicable; identify the filing date of the earliest United States application referred to in subsection (a)(3)(B)(iii); and state that the term of the patent has never been extended and that no other patent has been extended for the regulatory review period for the product; and

"(F) include such other information as the Commissioner may require.

"(2)(A) Within 60 days after the submittal of the extension notification under paragraph (1), the Commissioner shall notify the Administrator if the patent claims a pesticide subject to the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.), a chemical substance or mixture subject to the Toxic Substances Control Act (15 U.S.C. 2601 et seq.), or a method of using or manufacturing such a pesticide, substance, or mixture, of the extension notification and shall submit to the Administrator a copy of the extension notification. Not later than thirty days after the receipt of the extension notification from the Commissioner, the Administrator shall review the dates contained therein pursuant to paragraph (1)(B) and determine the applicable regulatory review period, shall notify the Commissioner of the determination, and shall publish in the Federal Register a notice of such determination.

"(B) If a petition is submitted to the Administrator, not later than one hundred and eighty days after the publication of the determination under subparagraph (A), upon which it may reasonably be determined that the product sponsor did not act with due diligence during the applicable regulatory review period, the Administrator shall, in accordance with regulations promulgated by the Administrator, determine if the product sponsor acted with due diligence during the applicable regulatory review period. The Administrator shall make such determination not later than 90 days after the receipt of such a petition. The Administrator may not delegate such authority to an office below the Assistant Administrator for Pesticides and Toxic Substances.

"(C) The Administrator making a determination under subparagraph (B) shall notify the Commissioner of the determination and shall publish in the Federal Register a notice of such determination, together with the factual and legal basis for such determination. Any interested person may request, within the 60-day period beginning on the publication of a determination, the Administrator to hold a hearing on the determination. Such a hearing shall be an informal hearing that is not subject to section 554, 556, or 557 of title 5, United States Code. If such a request is made within such period, the Administrator shall hold such hearing not later than thirty days after the date of the request, or at the request of the person making the request, not later than sixty days after such date. The Administrator shall provide notice of the hearing to the product sponsor and to any interested person and provide the owner and any interested person an opportunity to participate in the hearing. Within thirty days after the completion of the hearing, the Administrator shall affirm or revise the determination that was the subject of the hearing and notify the Commissioner of such affirmation or any revision of the determination and shall publish such affirmation or revision in the Federal Register.

"(D) Failure of a product sponsor to act with due diligence during a regulatory review period shall not be a defense in any action involving the infringement of a patent.

"(E) For purposes of this paragraph, the term 'due diligence' means that degree of attention, continuous directed effort, and timeliness as may reasonably be expected from, and are ordinarily exercised by, a person during a regulatory review period.

"(F) In a proceeding under this paragraph, the Administrator may take into consideration the failure of a product sponsor to submit data that the product sponsor knew or reasonably should have known was necessary to support an application or notice described in paragraph (4) of subsection (c).

"(G) The Administrator and the Commissioner may establish such fees as are appropriate to cover the costs of carrying out their respective duties and functions under this section.

"(3)(A) The Commissioner shall determine that a patent is eligible for extension under subsection (a) and that the requirements of subsection (b)(1) have been complied with. A determination that a patent is eligible for extension may be made by the Commissioner solely on the basis of the representations contained in the notification under subsection (b)(1). If the Commissioner determines that the patent is eligible for extension, and upon receipt of a final determination of the applicable regulatory review period under paragraph (2), he shall issue to the owner of record of the patent a certificate of extension, under seal, stating the length of the extension, identifying the product and the statute under which regulatory review occurred, and specifying any claim to which such extension is applicable. Such certificate shall be recorded in the official file of the patent and shall be considered as part of the original patent. The Commissioner shall publish in the Official Gazette of the Patent and Trademark Office a notice of such extension.

"(B) If the term of a patent for which notification has been submitted under subsection (b)(1) would expire before a certificate of extension is issued or denied under subparagraph (A) respecting the notification, the Commissioner shall extend, until such determination is made, the term of the patent for periods of up to one year if he determines that the patent is eligible for extension.

"(4) If information submitted by a product sponsor during a regulatory review period is considered a trade secret or confidential commercial or financial information under the law under which such regulatory review occurred, such information may only be disclosed under this section in accordance with such law, except that the Administrator may disclose information to the extent necessary to publish a notice and hold a hearing under paragraph (2).

"(c) As used in this section:

"(1) The term 'Administrator' means the Administrator of the Environmental Protection Agency.

"(2) The term 'product' means any machine, manufacture, or composition of matter for which a patent may be obtained and is limited to—

"(A) any chemical substance or mixture subject to regulation under the Toxic Substances Control Act (15 U.S.C. 2601 et seq.); or

"(B) any pesticide subject to regulation under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.).

"(3) The term 'major health or environmental effects test' means an experiment or study to determine or evaluate health or environmental effects that requires at least six months to conduct, not including any period for analysis or conclusions, and the data from which is submitted to receive permission for commercial marketing or use.

"(4) The term 'product sponsor' means any person who, with the consent of the patent owner, initiates testing or investigations, claims an exemption, or submits an application, petition, protocol, request, or notice described in paragraph (5) of this subsection.

"(5) The term 'regulatory review period' has the following meaning:

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"(A) With respect to a product that is a pesticide, the term means the sum of—

"(i) the period beginning on the earlier of the date the product sponsor (I) initiates a major health or environmental effects test on such pesticide, or (II) requests, in accordance with regulations issued by the Administrator, the grant of an experimental use permit for the pesticide under section 5 of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136c), and ending on the date an application is submitted for registration of such pesticide pursuant to section 3 of such Act (7 U.S.C. 136a); and

"(ii) the period beginning on the date an application is submitted, in accordance with regulations issued by the Administrator, for registration of such pesticide pursuant to section 3 of such Act and ending on the date such pesticide is first registered, either conditionally or fully, under such section.

"(B) With respect to a product that is a chemical substance for which notice is required under section 5 of the Toxic Substances Control Act (15 U.S.C. 2604) or that is a mixture that contains a substance for which such notice is required and—

"(i) that is subject to a rule requiring testing under section 4(a) of such Act (15 U.S.C. 2603), the term means a period commencing on the date the product sponsor has initiated the testing required in such rule and ending on the expiration of the notice period for such chemical substance or mixture under section 5 of such Act, or if an order or injunction is issued under section 5(e) or 5(f) of such Act, the date on which such order or injunction is dissolved or set aside; or

"(ii) that is not subject to a testing rule under section 4 of such Act, the term means a period commencing on the earlier of the date the product sponsor—

"(I) submits, in accordance with regulations issued by the Administrator, a notice under section 5 of such Act, or

"(II) initiates a major health or environmental effects test on such chemical substance or mixture,

and ending on the expiration of the notice period for such substance under section 5 of such Act or if an order or injunction is issued under section 5(e) or 5(f) of such Act, the date on which such order or such injunction is dissolved or set aside.

No regulatory review period shall be deemed to have commenced until a patent has been granted for the product that is subject to regulatory review, for the method for using such product, or for the method for producing such product.

"(d) This section shall cease to be effective after September 30, 1993.".

(b) INFRINGEMENT OF PESTICIDE PATENTS.—Section 271 of title 35, United States Code, is amended by adding at the end thereof the following new subsection:

"(g)(1) During the last 2 years of the term of a patent relating to a pesticide (except for a patent that claims only a method for manufacturing the pesticides) that is or has been registered under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.), or that is marketed with the permission of the patent holder, it shall not be an act of infringement of the patent—

"(A) to make, use, or sell the pesticide solely for testing reasonably related to the development and submission of data to comply with such Act; or

"(B) to obtain a tolerance, exemption from the need for a tolerance, or food additive regulation under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.).

"(2) Paragraph (1) shall apply only to the first patent the effect of which was to make an infringement the unlicensed manufacture, use, or sale of the patented product as a pesticide.

"(3) It shall be an act of infringement for any person, other than the patent holder or the licensee of the patent, to submit an application for the registration under the Federal Insecticide, Fungicide, and Rodenticide Act of a pesticide covered by the first patent, as described in paragraph (2), before expiration of such patent.

"(4) For purposes of this paragraph, each formulation of a pesticide containing the identical active ingredient shall be considered the same pesticide.".

(c) TABLE OF CONTENTS.—The analysis for chapter 14 of title 35 of the United States Code is amended by adding at the end thereof the following:

"158. Restoration of patent term for certain agricultural and chemical products.".

TITLE VIII—GENERAL

Subtitle A—Amendments to the Federal Insecticide, Fungicide, and Rodenticide Act

SEC. 801. AUTHORITY OF STATES.

(a) STATE REGULATION.—

(1) IN GENERAL.—A State may regulate the sale or use of any federally registered pesticide or device in the State, but only if and to the extent the regulation does not permit any sale or use prohibited by this Act.

(2) HOUSEHOLD ANTIMICROBIAL PESTICIDES.—

(A) This paragraph shall apply to any household antimicrobial pesticide where—

(i) the pesticide is a formulated end-use product which, as registered, is not intended for use on food or feed;

(ii) the pesticide has been registered under section 3(c)(5), or reregistered under section 3A, after the effective date of the Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1986;

(iii) the Administrator has determined that the product as so registered or reregistered poses no significant toxicological concern;

(iv) the Administrator has published the determination of no significant toxicological concern in the Federal Register;

(v) the registrant of the product has offered, at the time the registrant provides the final product label to the Administrator, to provide under the conditions of this Act to the appropriate State authority any data submitted by the registrant to the Administrator in support of the registration; and

(vi) at least 45 days have elapsed from the date upon which an application for State registration has been filed.

(B) A State may not prohibit any sale or use permitted under this Act of a pesticide described in subparagraph (A) for which an application for State registration has been filed unless and until the State has finally acted on such application pursuant to applicable State law.

(C) This paragraph shall cease to be effective five years after the date of the enactment of the Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1986 and shall not be construed during the five year effective period to (i) preclude a State from requiring in the State registration process submission of additional data beyond that required by the Administrator or (ii) otherwise affect State authority to regulate the sale or use of a pesticide when final action is taken under State law.

(b) STATE REGISTRATIONS.—Section 24(c) is amended—

(1) in paragraph (1), by adding at the end thereof the following new sentence: "Such registration shall expire and be of no further effect, without further action by the Administrator—

"(A) at the end of the period, if any, provided as the duration of the registration by the State that approved it; or

"(B) 10 days after the date the Administrator publishes in the Federal Register a notice stating that the State that issued the registration has informed the Administrator that the State no longer desires the registration to continue in effect."; and

(2) in paragraph (2), by adding at the end thereof the following new sentence: "The Administrator shall establish criteria that define the conditions under which a special local needs registration may be disapproved, taking into account geographic patterns of use.".

(c) DIFFERENCES IN USAGE AND RISK.—Section 24 is amended by adding at the end thereof the following new subsection:

"(d) DIFFERENCES IN USAGE AND RISK.—In promulgating any regulations or policies pertaining to the sale or use of pesticides within a State, the State shall take into account the difference in concept and usage between various classes of pesticides and the differences in environmental risk and the appropriate data for evaluating such risk between agricultural and nonagricultural pesticides.".

(d) TOLERANCES FOR AGRICULTURAL COMMODITIES.—

(1) REVOCATIONS AND SUSPENSIONS.—Section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a) is amended by adding at the end the following new subsection:

"(p)(1)(A) If the registration of each pesticide containing a specific active or inert ingredient registered for use on a particular raw agricultural commodity—

"(i) has been canceled by the Administrator under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.);

"(ii) has voluntarily been canceled under such Act; or

"(iii) has voluntarily been withdrawn under such Act;

due in whole or in part to dietary risks to humans, the Administrator, not later than 60 days after the effective date of such cancellation or after receipt of information of such withdrawal, shall revoke any tolerance established under subsection (b) for residues of such pesticide chemical in or on such commodity or any exemption from the need for such tolerance established under subsection (c). In revoking a tolerance or an exemption from a tolerance, the procedures required under section 553 of title 5, United States Code, shall be used.

"(B) The effective date of a revocation under subparagraph (A) may be delayed to permit distribution in commerce of food that bears residues of the active or inert ingredient as the result of—

"(i) the use of the canceled pesticide before the date of its cancellation;

"(ii) the use of existing stocks of such pesticide as authorized under the order canceling the registration of the pesticide; or

"(iii) unavoidable residual environmental contamination.

"(2) If the registration of each pesticide containing a specific active or inert ingredient registered for use on a particular raw agricultural commodity has been suspended by the Administrator under the Federal Insecticide, Fungicide, and Rodenticide Act due in whole or in part to dietary risks to humans, the Administrator, not later than 60 days after the effective date of such suspension, shall suspend any tolerance established under subsection (b) for residues of such pesticide chemical in or on such commodity or any exemption from the need for such tolerance established under subsection (c). The effective date of such suspension may be delayed to permit distribution in commerce of food that bears residues of the active or inert ingredient as the result of—

"(A) the use of the suspended pesticide before the date of its suspension;

"(B) the use of existing stocks of such pesticide as authorized under the order suspending the registration of the pesticide; or

"(C) unavoidable residual environmental contamination.

In suspending a tolerance or an exemption from a tolerance, the procedures required under section 553 of title 5, United States Code, shall be used. The suspension of a tolerance or an exemption from a tolerance for a pesticide chemical shall be effective as long as the registration of the pesticide to which the tolerance or exemption is applicable is suspended under the Federal Insecticide, Fungicide, and Rodenticide Act. If the registration of the pesticide ceases to be suspended and is not canceled under such Act, the Administrator shall rescind any such suspension of a tolerance or exemption.

"(3) At the time the Administrator makes a determination under section 3A(h)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act regarding an ingredient of a pesticide, any tolerance established under subsection (b) for residues of a pesticide chemical that is or contains such ingredient or any exemption from the need for such a tolerance established under subsection (c) or a food additive regulation for residues of a pesticide chemical established under section 409 shall be reassessed.

"(4)(A) At such time, the Administrator shall—

"(i) make a determination whether such tolerance, exemption from tolerance, or regulation meets the requirements of this Act; and

"(ii) confirm, establish, amend, or revoke such tolerance, exemption, or regulation in accordance with the requirements of this Act.

"(B) Any such tolerance, exemption, or regulation shall not become effective until the Administrator determines that a practical method for detecting residues in or on food or feed is available in order to enforce such tolerance, exemption, or regulation.".

(2) PROCEDURE.—Section 408(m) of such Act (21 U.S.C. 346a(m)) is amended by striking out "The" and inserting in lieu thereof "Except as provided in subsection (p), the".

SEC. 802. DEFINITIONS.

(a) IN GENERAL.—

(1) TO USE ANY REGISTERED PESTICIDE IN A MANNER INCONSISTENT WITH ITS LABELING.—In the first proviso of section 2(ee) (7 U.S.C. 136(ee)) is amended—

(A) in clause (1), by inserting before the comma at the end thereof the following: "unless the labeling specifically prohibits deviation from the specified dosage, concentration, or frequency"; and

(B) in clause (3), by inserting before the comma at the end thereof the following: "unless the labeling specifically states that the product may be applied only by the methods specified on the labeling".

(2) TO DISTRIBUTE OR SELL.—Section 2 (as amended by section 601(a)(2) of this Act) is further amended by adding at the end thereof the following new subsection:

"(kk) TO DISTRIBUTE OR SELL.—The term 'to distribute or sell' means to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, release for shipment, or receive and (having so received) deliver or offer to deliver. The term does not include the holding or application of registered pesticides or use dilutions thereof by any applicator who provides a service of controlling pests without delivering any unapplied pesticide to any person so served.".

(b) CONFORMING AMENDMENTS.—

(1) REGISTRATION OF PESTICIDES.—Subsection (a) of section 3 (7 U.S.C. 136a(a)) is amended to read as follows:

"(a) REQUIREMENT OF REGISTRATION.—Except as provided by this Act, no person in any State may distribute or sell to any person any pesticide that is not registered under this Act.".

(2) UNLAWFUL ACTS.—Section 12(a) (7 U.S.C. 136j(a)) is amended—

(A) in paragraph (1), by striking out "distribute, sell, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person—" and inserting in lieu thereof "distribute or sell to any person—"; and

(B) in paragraph (2)(F), by striking out "to make" and inserting in lieu thereof "to distribute or sell, or to make".

SEC. 803. INFORMATION REQUESTED.

Section 7 (7 U.S.C. 136e) (as amended by section 201(a) of this Act) is further amended by adding at the end thereof the following new subsection:

"(f) INFORMATION REQUESTS.—Consistent with section 3507(a)(1) of title 44, United States Code, the Administrator shall catalog and retrieve data in such a manner as to eliminate or reduce burdensome requests to registrants for submission of information, particularly requests that require the submission of duplicate confidential data.".

SEC. 804. COOPERATIVE AGREEMENTS.

Subsection (a) of section 23 (7 U.S.C. 136u(a)) is amended to read as follows:

"(a) COOPERATIVE AGREEMENTS.—

"(1) PURPOSES.—The Administrator may enter into cooperative agreements with States and Indian Tribes for the following:

"(A) To delegate to any State or Indian Tribe the authority to cooperate in the enforcement of this Act through the use of its personnel or facilities, to train personnel of the State or Indian Tribe to cooperate in the enforcement of this Act, and to assist States and Indian Tribes in implementing cooperative enforcement programs through grants.

"(B) To provide an amount equal to 50 percent of the anticipated cost of each State or Indian tribe, as agreed under such cooperative agreements, of conducting training programs for certification of applicators. Funds shall be distributed among States and Indian tribes on a formula basis, as developed cooperatively between the Secretary of Agriculture and the Administrator.

"(C) To provide an amount equal to 50 percent of the anticipated cost to each State or Indian tribe, as agreed under such cooperative agreements, of conducting pesticide certification and licensing programs, and in the case of a State, for administering the State plan of each State approved under section 4(a)(2). Funds shall be distributed among the States and Indian tribes on a formula basis as specified by the Administrator.

"(2) AUTHORIZATION FOR APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary for cooperative agreements and grants under this subsection.".

SEC. 805. SCIENTIFIC ADVISORY PANEL.

Section 25(d) (7 U.S.C. 136w(d)) is amended—

(1) by striking out "consist of 7 members" and inserting in lieu thereof "be permanent and consist of 9 members"; and

(2) by striking out the sentence beginning "The advisory panel established".

SEC. 806. AUTHORITY FOR EPA ACTION.

The second sentence of section 27(a) (7 U.S.C. 136w-2(a)) is amended to read as follows: "If a State—

"(1) does not promptly initiate appropriate investigative action after receiving such referral; or

"(2) does not initiate appropriate enforcement action within 90 days after receipt of such referral,

the Administrator may act on such complaint or information in accordance with this Act.".

SEC. 807. EXPIRATION OF STATE PRIMARY ENFORCEMENT RESPONSIBILITY.

Section 26 (7 U.S.C. 136w-1) is amended by adding at the end thereof the following new subsection:

"(d) EXPIRATION.—Notwithstanding subsections (a) and (b), the primary enforcement responsibility of a State under this section for pesticide use violations shall expire on January 1, 1990, unless the Administrator determines that the State has the authority to impose civil and criminal penalties at least equal to those provided in section 14.".

SEC. 808. UNLAWFUL ACTS.

(a) IN GENERAL.—Section 12(a) (7 U.S.C. 136j(a)) (as amended by section 601(d) of this Act) is further amended—

(1) in paragraph (1), by striking out subparagraph (A) and inserting in lieu thereof the following new subparagraph:

"(A) any pesticide that is not registered under section 3 or whose registration has been canceled or suspended, except to the extent that distribution or sale otherwise has been authorized by the Administrator under this Act;"; and

(2) in paragraph (2)—

(A) by striking out subparagraph (B) and inserting in lieu thereof the following new subparagraph:

"(B) to refuse to—

"(i) prepare, maintain, or submit any records required by or under this Act;

"(ii) submit any reports required by or under this Act; or

"(iii) allow any entry, inspection, copying of records, or sampling authorized by this Act;";

(B) by striking out subparagraphs (J) and (K) and inserting in lieu thereof the following new subparagraphs:

"(J) to violate any suspension order issued under section 3(c)(2)(B), 3A, or 6;";

"(K) to violate any cancellation order issued under this Act;";

(C) in subparagraph (M), by striking out "section 8" and inserting in lieu thereof "this Act"; and

(D) by adding at the end thereof the following new subparagraphs:

"(R) to falsify all or part of any information relating to the testing of any pesticide (or any ingredient, metabolite, or degradation product thereof), including the nature of any protocol, procedure, substance, organism, or equipment used, observation made, or conclusion or opinion formed, submitted to the Administrator, or that the person knows will be furnished to the Administrator or will become a part of any records required to be maintained by this Act;

"(S) to submit to the Administrator data known to be false in support of a registration;

"(T) to violate any regulation issued under section 3(a), 19(a), 25(c)(3), or 25(f); or".

(b) ACTS OF OFFICERS, AGENTS, ETC.—

(1) IN GENERAL.—Section 12 (7 U.S.C. 136j) is amended by adding at the end thereof the following new subsection:

"(c) ACTS OF OFFICERS, AGENTS, ETC.—When construing and enforcing the provisions of this Act, the act, omission, or failure of any officer, employee, agent, or other person acting for or employed by any person shall be deemed to be the act, omission, or failure of such person as well as that of the person employed.".

(2) CONFORMING AMENDMENT.—Paragraph (4) of section 14(b) (7 U.S.C. 136l(b)) is repealed.

SEC. 809. PENALTIES AND SUBPOENAS.

(a) CIVIL PENALTIES.—Section 14(a) (7 U.S.C. 136l(a)) is amended—

(1) by striking out paragraphs (1) and (2) and inserting in lieu thereof the following new paragraphs:

"(1) IN GENERAL.—

"(A) Any registrant, applicant for a registration, producer, or pesticide testing facility that violates any provision of this Act may be assessed a civil penalty by the Administrator of not more than $25,000 for each offense. If a registrant, applicant for a registration, producer, or pesticide testing facility violates any provision of this Act after violating the same or similar provision of this Act, the Administrator may assess a civil penalty of not more than $50,000 for such subsequent violation.

"(B) Any—

"(i) commercial applicator of restricted use pesticides; or

"(ii) any other person not described in subparagraph (A) who distributes or sells pesticides or devices,

that violates any provision of this Act may be assessed a civil penalty by the Administrator of not more than $10,000 for each offense. If such person violates any provision of this Act after violating the same or similar provision of this Act, the Administrator may assess a civil penalty of not more than $20,000 for such subsequent violation.

"(2) PRIVATE APPLICATOR.—Any private applicator who violates any provision of this Act subsequent to receiving a written warning from the Administrator or following a citation for a prior violation, and any other person not included in paragraph (1) that violates any provision of this Act, may be assessed a civil penalty by the Administrator of not more than $1,000 for each offense. If such person violates any provision of this Act after violating the same or similar provision of this Act, the Administrator may assess a civil penalty of not more than $2,000 for such subsequent violation. The Administrator may waive the requirement for a warning or citation for a first offense by a private applicator if the Administrator determines that the violation was intentional or caused significant harm to health or the environment.";

(2) in paragraph (3), by adding at the end thereof the following new sentence: "If the person neither resides nor has a principal place of business in the United States, the Administrator may designate a site for the hearing in the United States that is reasonably convenient for the parties."; and

(3) in the first sentence of paragraph (4), by inserting "the economic benefit (if any) resulting from the violation," after "to continue in business,".

(b) CRIMINAL PENALTIES.—Section 14(b) is amended—

(1) by striking out paragraph (1) and inserting in lieu thereof the following new paragraph:

"(1) IN GENERAL.—

"(A) Any registrant, applicant for a registration, producer, or pesticide testing facility that knowingly violates any provision of this Act shall be fined not more than $50,000 or imprisoned for not more than 2 years, or both.

"(B) Any commercial applicator of a restricted use pesticide, or any other person not described in subparagraph (A) who distributes or sells pesticides or devices, that knowingly violates any provision of this Act shall be fined not more than $25,000 or imprisoned for not more than 2 years, or both."; and

(2) in paragraph (2)—

(A) by striking out "$1,000" and inserting in lieu thereof "$2,000"; and

(B) by striking out "30" and inserting in lieu thereof "60".

(c) SUBPOENAS.—Section 14(a) is amended by adding at the end thereof the following new paragraph:

"(6) SUBPOENAS.—The Administrator, in connection with administrative proceedings under this subsection, may issue subpoenas compelling the attendance and testimony of witnesses and subpoenas duces tecum and may request the Attorney General to bring an action to enforce any subpoena issued under this paragraph. The district courts of the United States shall have jurisdiction to enforce such subpoenas and impose sanctions.".

SEC. 810. CONGRESSIONAL REVIEW.

Paragraph (4) of section 25(a) (7 U.S.C. 136w(a)(4)) is amended to read as follows:

"(4) CONGRESSIONAL REVIEW OF REGULATIONS.—Simultaneously with the promulgation of any rule or regulation under this Act, the Administrator shall transmit a copy thereof to the Secretary of the Senate and the Clerk of the House of Representatives. The rule or regulation shall not become effective until the passage of 60 calendar days after the rule or regulation is so transmitted.".

SEC. 811. REVIEW OF REGULATIONS.

Section 16 (7 U.S.C. 136n) is amended by adding at the end thereof the following new subsection:

"(e) REVIEW OF REGULATIONS.—

"(1) IN GENERAL.—

"(A) Any regulation issued under this Act and first published in the Federal Register in final form after the effective date of the Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1986 shall be reviewable only as provided by this subsection. Any person may obtain judicial review of the regulation by filing a petition for review in the United States court of appeals for the circuit wherein the person resides or has its principal place of business or in the United States Court of Appeals for the District of Columbia Circuit. Any petition under this paragraph for review of a regulation shall be filed within 120 days after the date of promulgation of the regulation as designated by the Administrator in the Federal Register.

"(B) Any refusal by the Administrator of a petition to modify or rescind a regulation issued under this Act shall be reviewable only as provided by this subsection. Any person may obtain judicial review of the refusal by filing a petition for review in the United States court of appeals for the circuit wherein the person resides or has its principal place of business or in the United States Court of Appeals for the District of Columbia Circuit. Any such petition for review of a refusal to modify or rescind a regulation shall be filed within 120 days after such refusal.

"(C) The scope of review under subparagraph (A) or (B) shall be as specified in section 706 of title 5, United States Code. The commencement of a proceeding under subparagraph (A) or (B), unless specifically ordered by the court to the contrary, shall not operate as a stay of the regulation.

"(2) JUDICIAL REVIEW.—A regulation issued by the Administrator or a refusal by the Administrator of a petition to modify or rescind a regulation issued under this Act shall not be subject to judicial review—

"(A) in any suspension, cancellation, or denial proceeding under this Act or in any appeal therefrom; or

"(B) in any proceeding under section 13 or 14(a), or subsection (c), or in any appeal therefrom except on request of a person who, as an agricultural producer, is adversely affected by such action.

"(3) STAYS.—If a person who is a party to a proceeding described in subparagraph (A) or (B) of paragraph (2) that is based on a regulation issued under this Act petitions the Administrator to modify or rescind such regulation, the application of such regulation in the proceeding shall be stayed until the Administrator issues a final decision on the petition.

"(4) DEFINITION OF AGRICULTURAL PRODUCER.—As used in this subsection, the term 'agricultural producer' means a nongovernmental producer of agricultural commodities who—

"(A) uses or supervises the use of any pesticide for the production of such commodities on property owned or rented by the producer or the employer of the producer; or

"(B) without compensation other than the trading of personal services, assists another agricultural producer with the application of pesticides on the land of the producer.".

SEC. 812. DELEGATION AND COOPERATION.

Section 22 (7 U.S.C. 136t) is amended by adding at the end thereof the following new subsection:

"(c) EFFECT ON CERTAIN OTHER LAWS.—

"(1) IN GENERAL.—In exercising any authority under this Act, the Administrator shall not, for the purposes of section 4(b)(1) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653(b)(1)), be considered to be exercising statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health to the extent that the Administrator and the Secretary of Labor by agreement specify that such exercise of authority by the Administrator under this Act is not to be considered an exercise of statutory authority for purposes of section 4(b)(1) of the Occupational Safety and Health Act of 1970.

"(2) COORDINATION.—To ensure the safety and health of workers, the Administrator and the Secretary of Labor shall seek to

reach such agreements and to coordinate the exercise of their statutory authority.".

SEC. 813. INDEMNIFICATION BY EPA.

Section 15 (7 U.S.C. 136m) is amended by adding at the end thereof the following subsection:

"(c) INDEMNIFICATION.—

"(1) REPORTS.—If the Administrator takes an action that under subsection (a) requires the payment of indemnification, the Administrator shall report to the Committee on Agriculture of the House of Representatives, the Committee on Agriculture, Nutrition, and Forestry of the Senate, and the Committees on Appropriations of the House of Representatives and the Senate—

"(A) the action taken that requires the payment of indemnification;

"(B) the reasons for taking such action;

"(C) the estimated cost of the payment; and

"(D) a request for the appropriation of funds for such payment.

"(2) APPROPRIATION REQUIRED.—The Administrator may not make such payment unless a specific line item appropriation of funds has been made in advance for such payment.".

SEC. 814. GROUND WATER AUTHORITY.

(a) DEFINITIONS.—Section 2 (7 U.S.C. 136) (as amended by section 802(d)(2) of this Act) is further amended by adding at the end thereof the following new subsections:

"(11) DRINKING WATER WELL.—The term "drinking water well" means a well or spring currently supplying water for human consumption;

"(mm) GROUND WATER.—The term "ground water" means water below the land surface in the zone of saturation;

"(nn) GROUND WATER SAMPLING POINT.—The term "ground water sampling point" means a public or community water supply, a private water supply, a spring, or a monitoring well or other ground water source, if the well or source is reasonably designed and of adequate depth to permit the collection of representative ground water samples;

"(oo) POTENTIAL SOURCES OF DRINKING WATER.—The term "potential sources of drinking water" means an aquifer or portion of an aquifer system which may supply a drinking water well. Any determination as to whether an aquifer or its portion is a potential source of drinking water shall include:

"(1) whether there is sufficient quantity to supply a drinking water well;

"(2) whether it contains fewer than 10,000 mg/l total dissolved solids;

"(3) hydrogeological considerations and depth to drinking water; and

"(4) geographic considerations including any State criteria or guidelines established under section 1428 of the Public Health Service Act or other State authority.

"(pp) The term "reliable analytical data" means scientific information that verifies the presence of a pesticide in a ground water sample and that is of reliable scientific quality according to generally recognized standards and good laboratory practices for sampling and analysis of pesticides in ground water; and

"(qq) GROUND WATER RESIDUE GUIDANCE LEVEL.—The term "ground water residue guidance level" means a ground water residue guidance level established under section 1429 of the Public Health Service Act.".

(b) PROTECTION OF GROUND WATER.—The Act is amended—

(1) by redesignating section 31 (7 U.S.C. 136y) as section 32; and

(2) by inserting the following new section:

"SEC. 31. PROTECTION OF GROUND WATER.

"(a) LEACHING POTENTIAL.—

"(1) CRITERIA.—The Administrator shall publish and seek comment on criteria to determine whether a pesticide has the potential to leach into ground water. Such criteria may include, but are not limited to, factors such as: the intended use of the pesticide; the timing, rate and method of application for the pesticide; the mobility of the pesticide in soil and water under various conditions; and the rates of degradation of the pesticide in soil and water under various conditions.

"(2) Each person seeking to register or reregister a pesticide under this Act shall submit such data and information as the Administrator shall require with respect to the potential for the pesticide to leach into ground water and the fate and transport of the pesticide.

"(3) At the time of registering or reregistering a pesticide (and using the criteria developed under paragraph (1)) the Administrator shall determine whether the pesticide has the potential to leach into ground water. With respect to a determination made under this paragraph, any pesticide detected at three or more ground water sampling points shall be determined to have the potential to leach into ground water. Any determination made under this paragraph shall be amended, if the Administrator receives reliable analytical data that the pesticide has been detected at three or more ground water sampling points or determines that the pesticide does not have the potential to leach into ground water.

"(4) DETERMINATION.—If the Administrator determines that a pesticide has the potential to leach into ground water according to the provisions of this subsection, the Administrator shall also determine whether monitoring data on the presence of the pesticide in ground water are required to register or maintain in effect an existing registration of the pesticide.

"(b) MONITORING.—

"(1) REQUIREMENT FOR MONITORING.—

"(A) If the Administrator determines that additional data on the presence of a pesticide in ground water are required to maintain in effect an existing registration of the pesticide, the Administrator may, under section 3(c)(2)(B) of this Act, require registrants of the pesticide to conduct ground water monitoring.

"(B) The Administrator shall consult with the Secretary of Agriculture, the heads of other appropriate Federal agencies, and the States concerning the design and scope of the monitoring requirements imposed under this paragraph. The design and the scope of the monitoring requirement should take into account information such as the magnitude and frequency of detection, pattern of pesticide use and soil types involved in the detection, physical and chemical properties of the pesticide, rainfall patterns, well construction, rates of degradation, reliability and analytical accuracy of the detection, and results of State or other sponsored monitoring.

"(C) To the extent feasible, monitoring should be conducted at representative geographical and hydrogeological areas associated with locations and conditions of concern as determined by the Administrator.

"(2) JUDICIAL REVIEW.—Monitoring requirements imposed under this subsection shall be subject to judicial review under section 16.

"(c) NOTIFICATION.—

"(1) REQUIREMENT.—When a registrant of a pesticide obtains reliable analytical data that a pesticide has been detected at any ground water sampling point, the registrant shall file a report containing such information within 15 working days with the Administrator, the State where such pesticide has been detected, and the owner of the property at the ground water sampling point.

"(2) CONTENT OF REPORT.—A report required under paragraph (1) for detection of a pesticide shall contain information known to the registrant on the level of detection, frequency of detection, location (including depth), date, well construction, soil type, and analytical method used, including information on the precision, accuracy, and limit of detection of the method and any quality assurance and control procedures."

"(d) REVIEW FOR FURTHER ACTION.—On receiving information of a detection of a pesticide at any ground water sampling point, the Administrator shall promptly review the information to determine the reliability of the detection and to determine whether action should be taken to protect ground water.

"(e) REGISTRATION AMENDMENTS.—

"(1) REQUIREMENT.—

"(A)(i) After reviewing reliable analytical data, the Administrator shall determine whether there is a reasonable likelihood that the ground water residue guidance level for a pesticide will be exceeded in drinking water wells in different localities.

"(ii) If the Administrator determines that there is a reasonable likelihood of exceeding such level in different localities, the Administrator shall promptly require amendments to the registration of the pesticide involved that are reasonably necessary to assure that the use of the pesticide in accordance with the amended registration will not cause the final ground water residue guidance level to be exceeded in drinking water wells.

"(iii) The Administrator shall make such a determination public.

"(iv) If the Administrator proposes to require registration amendments under this paragraph, the Administrator shall notify registrants of such amendments and shall publish notice of the determination in the Federal Register. Such notice shall include the determination of the Administrator whether the presence of the pesticide in drinking water wells appears to have been the result of use of the pesticide in accordance with the labeling or widespread and generally recognized practice.

"(B)(i) After reviewing reliable analytical data, the Administrator shall determine whether there is a reasonable likelihood that the ground water residue guidance level for a pesticide will be exceeded in potential sources of drinking water in different localities.

"(ii) If the Administrator determines that there is a reasonable likelihood that such level will be exceeded in different localities, the Administrator shall promptly require amendments to the registration of a pesticide involved that are reasonably necessary to ensure that use of the pesticide in accordance with the amended registration will not cause the final ground water residue guidance level to be exceeded in potential sources of drinking water.

"(iii) If the Administrator proposes to require amendments under this paragraph, the Administrator shall notify registrants of such amendments.

"(iv) In establishing such amendments, the Administrator shall—

"(I) meet the requirements of subparagraph (A);

"(II) take into account information submitted by States on land and ground water use classification or other governmental actions that could affect when ground water may be used for drinking water; and

"(III) consider the views of the Secretary of Agriculture, other heads of appropriate Federal agencies, and States as required in paragraph (2).

"(2) CONSULTATION.—

"(A) In taking action under paragraph (1), the Administrator shall consult with the Secretary of Agriculture and the State where the pesticide involved has been detected in any ground water sampling point and each other State in which there is significant use of the pesticide.

"(B) The Administrator shall notify such State of the determination of the Administrator that there is a reasonable likelihood that the ground water residue guidance level will be exceeded and shall provide the State with all information relevant to this determination subject to section 10(h).

"(C) States shall promptly provide the Administrator with information relevant to taking action under this section and shall make recommendations regarding necessary registration amendments with respect to that State.

"(3) REASONABLE LIKELIHOOD.—

"(A) There shall be a presumption that pesticides detected above 30 percent of the ground water residue guidance level meet the 'reasonable likelihood' standard, unless considering the other factors described in subparagraph (B) of this paragraph, the Administrator determines, after notice and opportunity for public comment, that the 'reasonable likelihood' standard has not been met.

"(B) The circumstances surrounding the presence of the pesticide in ground water, taking into account all relevant information, include the frequency and time of occurrence at the site of detection and elsewhere, use patterns, soil types, physical and chemical properties of the pesticide, rainfall patterns, well construction, analytical accuracy, and rates of degradation.

"(4) SCOPE OF AMENDMENTS.—

"(A) Amendments to the registration of a pesticide may include—

"(i) limitations on the purposes for and location at which the pesticide may be used, considering factors such as environmentally sensitive areas and conditions;

"(ii) limitations on the rate at which the pesticide is applied;

"(iii) limitations on the time or frequency of pesticide use;

"(iv) limitations on the method of pesticide application, storage, handling, or disposal;

"(v) reporting or other requirements, including label changes or changes in classification;

"(vi) requirements for the training or certification of pesticide applicators or other persons using the pesticide;

"(vii) required site-specific responses; or

"(viii) any other requirement under this Act to ensure that the ground water residue level for such pesticide will not be exceeded.

"(B) The amendments to the registration of a pesticide should, to the extent feasible, be directed to the same or similar uses of the pesticide, similar geographical and hydrogeological areas and other similar conditions that led to the determination under subparagraph (A) or (B) of paragraph (1).

"(C) In taking regulatory action under this subsection, the Administrator may utilize recommendations provided by the States under paragraph (2).

"(D) In requiring such amendments, the Administrator shall consider the effect of any voluntary actions by registrants or other persons, including actions by the State to prevent the ground water residue guidance level from being exceeded, and compliance with other environmental laws.

"(5) If the Administrator has imposed registration amendments on the use of a pesticide according to the provisions of this subsection, the Administrator shall

"(A) periodically review reliable analytical data on the occurrence of the pesticide at ground water sampling points representative of the locations at which the pesticide is used to determine whether such amendments are effective in meeting the requirements of paragraph (1) of this section;

"(B) require additional registration amendments, if such amendments are necessary to assure that the ground water residue guidance level for such pesticide will not be exceeded in drinking water wells and potential sources of drinking water;

"(C) report to the Congress at 18 months, 36 months, and 60 months after such amendments are first imposed indicating whether the amendments have been effective in meeting the requirements of paragraph (1) of this subsection; and

"(D) report to the State in which the pesticide was detected at 18 months, 36 months and 60 months after such amendments are first imposed indicating whether the amendments have been effective in meeting the requirements of paragraph (1) of this subsection including trends in any drinking water wells located in such State.

"(5) PROCEDURES.—Registration amendments under paragraph (1) shall be imposed in accordance with the procedures required by this Act.

"(f) SITE-SPECIFIC RESPONSE.—

"(1) REQUIREMENT.—

"(A) If the Administrator determines that a pesticide is present in a drinking water well in a concentration that exceeds the final ground water residue guidance level and that the presence of the pesticide in a drinking water well may be the result of use of the pesticide in accordance with the labeling on the pesticide or as a result of widespread and commonly recognized practice involving the pesticide, the Administrator shall—

"(i) notify the State in which the drinking water well is located of the determination of the Administrator; and

"(ii) provide the State, subject to section 10(h) of this Act, with all information relevant to the determination;

"(B) Such State shall take action within 90 days of such notification to prevent potential adverse effects on human health and the environment from such pesticide. In taking such action, the State shall take appropriate action regarding the sale or use of the pesticide detected at such drinking water well to bring and retain concentrations of the pesticide at such drinking water well at or below the final ground water residue guidance level applicable to the pesticide.

"(2) ACTION BY THE ADMINISTRATOR.—

"(A) If—

"(i) a State does not have the authority to take action required by paragraph (1) with respect to a pesticide detected in a drinking water well or fails to take such action within the time period prescribed by such paragraph;

"(ii) a pesticide is present in a drinking water well in the State at a concentration that exceeds the final ground water residue guidance level; and

"(iii) the presence of the pesticide may be the result of use in accordance with the labeling or of widespread and commonly recognized practice,

the Administrator shall take appropriate action under this Act to bring and retain the concentration detected at such drinking water well at or below the final ground water residue guidance level applicable to the pesticide and may take such other action under this Act as the Administrator deems necessary to prevent potential adverse effects on human health and the environment from the pesticide at such drinking water well.

"(B) The Administrator shall publish notice of the action in the Federal Register and take appropriate steps to inform all registrants, potentially affected persons, and interested members of the public. Such notice shall specify the factual findings and conclusions relied on in support of the decision.

"(C) Any person adversely affected by an action, or failure to act under this paragraph shall have an opportunity for an expedited hearing, pursuant to the procedures of section 6(c)(2) of this Act, to determine whether the action was taken in accordance with this paragraph or whether the Administrator was required to take action.

"(D) Notwithstanding any other provision of this Act, a hearing shall be held and a determination made under this subsection within 75 days after receipt of the request for such a hearing.

"(E) The Administrator shall provide reasonable procedures for a petition to modify or terminate the action of the Administrator under this paragraph, if the concentration of the pesticide in the water from the drinking water well no longer exceeds the applicable ground water residue guidance level and will likely remain below such level.

"(3) JUDICIAL REVIEW.—Judicial review of actions taken under this subsection shall be governed by section 16.

"(g) INFORMATION ON PESTICIDES IN GROUND WATER.—The Administrator may collect and make available through a public information file information concerning the detection of pesticides in any ground water sampling point. The file may summarize for each pesticide that has been detected in ground water, based on reliable analytical data, whether the pesticide has been detected at a concentration that exceeds the applicable ground water residue guidance level and whether the presence of the pesticide in ground water appears to have been caused by use of the pesticide in compliance with this Act.

"(h) TECHNICAL ASSISTANCE TO STATES.—The Administrator shall provide technical information to a Governor of a State for the purpose of implementing this section. Subject to section 10(h), the technical information shall include, but not be limited to, data on the toxicity, environmental fate, physical or chemical pesticide ingredient characteristics, predictive modeling, exposure and other relevant subjects. In addition, the Administrator shall provide information, to the extent reasonably available, on the alternative methods of pest control and on agricultural or other management practices that could minimize the presence of pesticides in ground water.

"(i) SPECIAL REVIEW.—On receiving reliable analytical data that a pesticide has been detected above the ground water resi-

due guidance level in ground water not in a drinking water well or potential source of drinking water, the Administrator may initiate a public interim administrative review under section 3(c)(8) of this Act to determine whether the pesticide may cause unreasonable adverse effects on the environment from such use.

"(j) SITE-SPECIFIC INFORMATION.—The Administrator shall enter into a memorandum of understanding with the Secretary of Agriculture, the Secretary of Commerce, and the Secretary of the Interior, for the purpose of developing information management systems and other techniques designed to make readily available to State and local officials and agricultural producers, applicators and other persons using the pesticide information on the soil, hydrology, climate and other characteristics at specific sites of pesticide application to be used by such officials and users in developing practices and making application decisions that will prevent the contamination of ground water by pesticides.

"(1) Under the direction of the Administrator a council will be established in order to assist the Environmental Protection Agency in developing a site-specific pesticide information system. This council shall consist of experts on information management who have experience with information retrieval from the following agencies: the Environmental Protection Agency, the National Agricultural Library, the Soil Conservation Service, the U.S. Geological Survey, the National Oceanographic and Atmospheric Administration. This council shall—

"(A) Review existing information retrieval and referral services which access information on soil, hydrology, climate, and other characteristcs at specific sites important to pesticide application.

"(B) Determine what information relevant to making site-specific pesticide decisions is available directly from existing data banks.

"(C) Based on these determinations develop and submit to the Administrator a plan for an information management system which would direct and assist users in gaining access to site-specific information available in printed and electronic form.

"(2) The Environmental Protection Agency shall take the plans developed by the council into consideration when developing the site-specific pesticide information management system.

"(k) EFFECT ON OTHER PROVISIONS.—Nothing in this section shall limit the authority of the Administrator or of any State under other provisions of this Act or under any other law.

"(l) AUTHORIZATION.—For purposes of carrying out the provisions of this section there are authorized to be appropriated $25,000,000 for each of the fiscal years ending on September 30, 1987, 1988, 1989, 1990 and 1991. Of such amounts $2,500,000 in each fiscal year shall be available only to carry out the purposes of subsection (j).".

(c) UNLAWFUL ACTS.—Section 12(a)(2) (7 U.S.C. 136j(a)(2)) (as amended by section 808(2)(D) of this Act) is further amended by adding at the end thereof the following new subsection:

"(U) to violate an order issued under section 31(f)(2).".

(d) GROUND WATER RESIDUE GUIDANCE LEVEL.—Part C of title XIV of the Public Health Service Act is amended by adding at the end thereof the following:

"SEC. 1429. GROUND WATER RESIDUE GUIDANCE LEVEL.—

"(a) REQUIREMENT.—

"(1) The Administrator, on the Administrator's own initiative, may issue a ground water residue guidance level for a pesticide registered under the Federal Insecticide, Fungicide, and Rodenticide Act. The Administrator shall issue a ground water residue guidance level for a pesticide whenever the Administrator registers or reregisters a pesticide under such Act if the Administrator determines that the pesticide has the potential to leach into ground water. In addition, the Administrator shall issue a ground water residue guidance level for a pesticide if—

"(A) based on reliable analytical data, the pesticide has been detected at ground water sampling points in three different geographical areas;

"(B) based on reliable analytical data, the pesticide has been detected in a drinking water well or wellfield that serves a population of over 500 people; or

"(C) a Federal agency or a State petitions the Administrator to set a ground water residue guidance level for the pesticide.

"(2)(A) If the Administrator has promulgated or promulgates a maximum contaminant level under subsection (b)(3) that applies to a pesticide the ground water residue guidance level required under paragraph (1) for the pesticide shall be set at such level within 30 days of being required under such subsection.

"(B) If a maximum contaminant level that would be applicable to a pesticide for which a ground water residue guidance level is required by paragraph (1) has not been established under section 1412, the Administrator, in the Administrator's discretion may use a health advisory level in establishing such ground water residue guidance level. The ground water residue guidance level established by the Administrator for such pesticide shall reflect the level of the pesticide in drinking water at which no known or anticipated adverse effect on the health of persons occur, the need for an adequate margin of safety, the nature of the toxic effects caused by the pesticide, and the validity, completeness, and adequacy of data about the pesticide. If all required chronic, oncogenicity, reproduction, or teratogenicity data are absent or invalid for the pesticide, the ground water residue guidance level for the pesticide shall be set at the limit of detection. If any required chronic, oncogenicity, reproduction, or teratogenicity data are absent or invalid for the pesticide, the ground water residue guidance level for the pesticide shall include an additional margin of safety that takes into account the absence of such data.

"(3)(A) Before issuing a final ground water residue guidance level for a pesticide, the Administrator shall publish an interim ground water residue guidance level for the pesticide in the Federal Register and allow public comment for at least 30 days. During the public comment period, the Administrator shall invite comment on the level from the Secretary of Agriculture and States.

"(B) If the Administrator is required under paragraph (1) to issue a ground water residue guidance level for a pesticide and the ground water residue guidance level is to be issued pursuant to paragraph (2)(B), the Administrator shall issue an interim ground water residue guidance level within 30 days after the requirement to issue the ground water residue guidance level takes effect.

"(C) Within 3 months after establishing an interim ground water residue guidance level, the Administrator shall establish a final ground water residue guidance level. Until a final ground water residue guidance level is established under paragraph (1) for a pesticide, an interim ground water residue guidance level established for the pesticide shall remain in effect.

"(4) The Administrator may revise a ground water residue guidance level for a pesticide. The Administrator shall allow at least 30 days for public comment on any proposed revision.

"(5) An interim ground water residue guidance level shall not be subject to judicial review before the expiration of 3 months after its issuance. Judicial review of any final ground water residue guidance level or failure to establish an interim or final ground water residue guidance level shall be governed by section 1448. A ground water residue guidance level established under paragraph (2)(A) shall not be subject to judicial review.

SEC. 815. WORKER HEALTH AND SAFETY.

Section 25 (7 U.S.C. 136w) is amended by adding at the end thereof the following new subsection:

"(f) WORKER HEALTH AND SAFETY.—

"(1) IN GENERAL.—

"(A) The Administrator, as soon as practicable after the effective date of the Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1986, shall promulgate regulations that require the protection, as appropriate and necessary, of employees who mix, load, or apply pesticides and agricultural employees who work in pesticide-treated areas.

"(B) The Administrator shall promulgate regulations that provide for the training, as appropriate and necessary, of employees who mix, load, or apply pesticides. Any training requirement that may be established by the Administrator under this subparagraph shall not apply to any person who is required to receive the training described in subsection (d) or (e) of section 4.

"(C) For purposes of subparagraphs (A) and (B), the term 'employees' does not include employees occupationally exposed to pesticides or pesticide residues as a result of the use of pesticides on livestock or other animals.

"(2) RULEMAKING PROCEDURES.—

"(A) The Administrator shall promulgate regulations under paragraph (1) for employees not described in subparagraph (B) not later than 3 years after the effective date of the Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1986.

"(B) The Administrator shall provide a period of at least 6 months for comments on proposed regulations issued under paragraph (1) that apply to agricultural employees who mix, load, or apply pesticides or who work in pesticide-treated areas. Such regulations shall be promulgated not later than 2 years after the effective date of the Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1986.

"(3) REPORT ON REGULATIONS.—Not later than 6 months after the date of the publication of the notice of proposed rulemaking issued for the regulations for employees described in paragraph (2)(B) to be promulgated under paragraph (1), the Secretary of Agriculture shall submit to the Administrator a report on the impact, cost, and effectiveness of such regulations on the agricultural community. The Secretary shall submit a copy of such report to Congress.

"(4) COPY OF REGULATIONS.—Simultaneously with the promulgation of regulations under paragraph (1), the Administrator

shall transmit a copy of such regulations to the Secretary of the Senate and the Clerk of the House of Representatives. Such regulations may not become effective until the expiration of 120 days after the date such regulations are so transmitted.".

SEC. 816. AUTHORIZATION FOR APPROPRIATIONS.

Effective October 1, 1986, section 32 (7 U.S.C. 136y) (as redesignated by section 814(b)(1) of this Act) is further amended to read as follows:

"SEC. 32. AUTHORIZATION FOR APPROPRIATIONS.

"There is authorized to be appropriated to carry out this Act (other than sections 23(a) and 31)—

"(1) $78,363,500 for fiscal year 1987, of which not more than $13,735,500 shall be available for research under this Act;

"(2) $87,414,200 for fiscal year 1988, of which not more than $14,343,600 shall be available for research under this Act;

"(3) $91,673,400 for fiscal year 1989, of which not more than $14,978,200 shall be available for research under this Act;

"(4) $98,305,800 for fiscal year 1990, of which not more than $15,625,900 shall be available for research under this Act; and

"(5) $106,808,700 for fiscal year 1991, of which not more than $16,300,100 shall be available for research under this Act.".

SEC. 817. NEUROTOXIC AND BEHAVIORAL EFFECTS OF PESTICIDES.

Section 3 (7 U.S.C. 136a) (as amended by section 106(b) of this Act) is amended by adding at the end thereof the following new subsection:

"(h) NEUROTOXIC AND BEHAVIORAL EFFECTS OF PESTICIDES.—The Administrator shall—

"(1) conduct and support such research as the Administrator finds appropriate to develop methods for testing to more accurately detect neurotoxic and behavioral effects of pesticides and the ingredients of pesticides; and

"(2) as such methods are developed, require that data from such testing be submitted by persons seeking to obtain or maintain pesticide registrations under this Act, to the extent appropriate and necessary.

SEC. 818. PESTICIDE CONTAINERS.

(a) IN GENERAL.—Section 19 (7 U.S.C. 136q) is amended by adding at the end thereof the following new subsections:

"(d) CONTAINER DESIGN.—

"(1) PROCEDURES.—

"(A) Not later than 3 years after the effective date of the Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1986, the Administrator shall, in consultation with the heads of other interested Federal agencies, promulgate regulations for the design of pesticide containers that will promote the safe storage and disposal of pesticides.

"(B) The regulations shall assure, to the fullest extent practicable, that the containers—

"(i) accommodate procedures used for the removal of pesticides from the containers and the rinsing of the containers;

"(ii) facilitate the safe use of the containers, including elimination of splash and leakage of pesticides from the containers;

"(iii) facilitate the safe disposal of the containers; and

"(iv) facilitate the safe refill and reuse of the containers.

"(2) COMPLIANCE.—The Administrator shall require compliance with the regulations referred to in paragraph (1) not later than 5 years after the effective date of the Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1986.

"(e) PESTICIDE RESIDUE REMOVAL.—

"(1) PROCEDURES.—

"(A) Not later than 3 years after the effective date of the Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1986, the Administrator shall, in consultation with the heads of other interested Federal agencies, promulgate regulations prescribing procedures and standards for the removal of pesticides from containers prior to disposal.

"(B) The regulations may—

"(i) specify, for each major type of pesticide container, procedures and standards providing for, at a minimum, triple rinsing or the equivalent degree of pesticide removal;

"(ii) specify procedures that can be implemented promptly and easily in various circumstances and conditions;

"(iii) provide for reuse, whenever practicable, or disposal of rinse water and residue.

"(C) Nothing in this subsection shall affect the authorities or requirements concerning pesticide containers under the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 et seq.).

"(D) The Administrator may, at his discretion, exempt products intended solely for household use from the requirements of this subsection.

"(2) COMPLIANCE.—Effective beginning 5 years after the effective date of the Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1986, a State may not exercise primary enforcement responsibility under section 26, or certify an applicator under section 4, unless the Administrator determines that the State is carrying out an adequate program to assure compliance with this subsection.

"(f) PESTICIDE CONTAINER STUDY.—

"(1) STUDY.—

"(A) The Administrator shall conduct a study of options to encourage or require—

"(i) the return, refill, and reuse of pesticide containers;

"(ii) the development and use of pesticide formulations that facilitate the removal of pesticide residues from containers; and

"(iii) the use of bulk storage facilities to reduce the number of pesticide containers requiring disposal.

"(B) In conducting the study, the Administrator shall—

"(i) consult with the heads of other interested Federal agencies, State agencies, industry groups, and environmental organizations; and

"(ii) assess the feasibility, costs, and environmental benefits of encouraging or requiring various measures or actions.

"(2) REPORT.—Not later than 2 years after the effective date of the Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1986, the Administrator shall submit to Congress a report describing the results of the study required under paragraph (1).".

(b) DEFINITION OF CONTAINER.—Section 2 (7 U.S.C. 136) (as amended by section 814(a) of this Act) is amended by adding at the end thereof the following new subsection):

"(qq) CONTAINER.—The term 'container' means any package, can, bottle, bag, barrel, drum, tank, or other containing-device (excluding spray applicator tanks) used to enclose a pesticide or pesticide-related waste.".

SEC. 819. ANTIMICROBIAL STANDARDS.

Section 3 (7 U.S.C. 136a) (as amended by section 817 of this Act) is further amended by adding at the end thereof the following new subsection:

"(i) ANTIMICROBIAL STANDARDS.—

"(1) DEFINITION.—As used in this subsection, the term 'efficacy' means the capacity of an antimicrobial control agent (including a disinfectant) to produce the desired effect of the effectiveness of such an agent.

"(2) STANDARDS.—The Administrator shall—

"(A) establish efficacy standards for antimicrobial control agents (including disinfectants) used to control pest microorganisms that pose a threat to human health, including standards for disinfectants used in hospitals and other health care facilities;

"(B) monitor the compliance of the agents, or a representative sample of the agents, with the standards in a facility maintained by the Environmental Protection Agency to conduct biological testing of pesticides; and

"(C) implement an enforcement program under which the agents must comply with the standards or be prohibited from sale or distribution as antimicrobial control agents.".

SEC. 820. NOTICE FOR STORED PESTICIDES WITH CANCELED OR SUSPENDED REGISTRATIONS.

(a) NOTICE.—Section 6 (7 U.S.C. 136d) (as amended by sections 302(1) of this Act) is further amended by adding at the end thereof the following new subsection:

"(j) NOTICE FOR STORED PESTICIDES WITH CANCELED OR SUSPENDED REGISTRATIONS.—

"(1) IN GENERAL.—Any producer or exporter of pesticides, registrant of a pesticide, applicant for registration of a pesticide, applicant for or holder of an experimental use permit, pesticide testing facility, or any person who distributes or sells any pesticide that has in its possession any pesticide that has had its registration canceled or suspended under this section shall notify the Administrator and appropriate State and local officials of—

"(A) such possession;

"(B) the quantity of such pesticide in its possession; and

"(C) the place at which such pesticide is stored.

"(2) COPIES.—The Administrator shall transmit a copy of each notice submitted under this subsection to the regional office of the Environmental Protection Agency that has jurisdiction over the place of pesticide storage identified in the notice.".

(b) ENFORCEMENT.—Subparagraph (K) of section 12(a)(2) (7 U.S.C. 136j(a)(2)(K)) (as amended by section 808(a)(2)(B)) is further amended by inserting after "Act" the following: "or to fail to submit a notice in accordance with section 6(j)".

SEC. 820A. USE OF PESTICIDES BY FEDERAL AGENCIES.

(a) DATA IN SUPPORT OF REGISTRATION.—Subparagraph (A) of section 3(c)(2) (7 U.S.C. 136a(c)(2)(A)) (as amended by section 106(a) of this Act) is further amended to read as follows:

"(A) DATA IN SUPPORT OF REGISTRATION.—

"(i) The Administrator shall publish guidelines specifying the kinds of information that would usually be required to support the registration of a pesticide and shall revise such guidelines from time to time.

"(ii) If after such publication the Administrator requires any additional kind of information under subparagraph (B) (including information concerning an inert ingredient in a pesticide), the Administrator shall permit sufficient time for applicants to obtain such additional information.

"(iii) Any Federal agency may proceed with the use of such pesticide unless the Ad-

ministrator determines that missing or deficient data is sufficiently important to warrant a suspension or cancellation.

"(iv) The Administrator, in establishing guidelines for data requirements for the registration of pesticides with respect to minor uses and with respect to various types and classes of pesticides, shall make such guidelines commensurate with the anticipated extent of use, pattern of use, and the level and degree of potential exposure of man and the environment to the pesticide. In the development of such guidelines, the Administrator shall consider the economic factors of potential national volume of use, extent of distribution, and the impact of the cost of meeting the guidelines on the incentives for any potential registrant to undertake the development of the required data.

"(v) Analyses in support of registration are equivalent to an environmental impact statement and may be incorporated by reference and relied on by any other Federal agency for purposes of compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.)

"(vi) Such guidelines may not contain a requirement for applicants to perform human epidemiological studies to obtain or support registrations.

"(vii) Guidelines, and modifications thereof, shall be published in the Federal Register. The Administrator shall provide for public comment for guidance in development of such guidelines or modifications.".

(b) RESEARCH.—Subsection (a) of section 20 (7 U.S.C. 136r(a)) is amended to read as follows:

"(a) RESEARCH.—

"(1) IN GENERAL.—The Administrator shall undertake such research as may be necessary to carry out this Act, including research by grant or contract with other Federal agencies, universities, or other entities or persons.

"(2) INTEGRATED PEST MANAGEMENT.—The Administrator shall conduct research into integrated pest management in cooperation with the Secretary of Agriculture.

"(3) DUPLICATION.—The Administrator shall ensure that research conducted under this subsection does not duplicate research being undertaken by any other Federal agency. For purposes of compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 432 et seq.), such agency may not be required to duplicate or supplement research already reviewed and accepted by the Administrator in the course of registration and the finding of no unreasonable adverse impact resulting from the use of registered material.".

Subtitle B—Other Provisions

SEC. 821. IR4 PROGRAM.

Section 2(c) of the entitled "An Act to facilitate the work of the Department of Agriculture, and for other purposes", approved August 4, 1965 (7 U.S.C. 450i(c)), is amended by inserting before the first sentence after paragraph (2) the following new sentence: "The Secretary in making grants under paragraph (2)(B) shall provide support for the interregional project number 4 program (commonly referred to as the 'IR4 program').".

SEC. 822. PESTICIDE RISK RATING.

(a) STUDY.—

(1) IN GENERAL.—Subject to subsection (b), the Administrator of the Environmental Protection Agency may contract with the Board of Agriculture of the National Academy of Sciences to conduct a study to determine the feasibility of establishing an environmental risk rating for pesticides used in the production of agricultural commodities.

(2) RISK RATING FACTORS.—Such risk rating shall take into consideration methods of application, chronic and acute toxicity, and anticipated losses to and persistence in the environment.

(3) PUBLIC INPUT.—In conducting the study, the National Academy of Sciences shall seek information and advice from recognized public and private sector scientists and provide opportunity for public comment on the preliminary findings relating to the development of a risk rating.

(4) REPORT.—The National Academy of Sciences shall report the findings of such study to the Administrator and to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate within 18 months after entering into the contract referred to in paragraph (1).

(b) LIMITATION.—The study required by subsection (a) shall be conducted at such cost as the Administrator, in consultation with the National Academy of Sciences, may establish.

(c) CONTRACT AUTHORITY.—The authority of the Administrator to enter into contracts under this section shall be effective only to such extent or in such amounts as are provided in advance in appropriation Acts.

SEC. 823. SALINITY LABORATORY, RIVERSIDE, CALIFORNIA.

Notwithstanding section 1431(a) of the Food Security Act of 1985 (Public Law 99-198; 99 Stat. 1556), there are authorized to be appropriated, beginning in the fiscal year ending September 30, 1987, such sums as may be necessary for the planning, construction, and acquisition, by the Secretary of Agriculture acting through the Agricultural Research Service, of buildings and equipment to establish a salinity laboratory to be located at Riverside, California. Sums appropriated under this section shall remain available without fiscal year limitation.

SEC. 824. STUDY.

The Administrator of the Environmental Protection Agency, in cooperation with the Commissioner of the Food and Drug Administration, shall conduct a thorough evaluation of the health effects of DDT and other contamination of fish in Santa Monica Bay, California, and in surrounding waters. The evaluation shall include an assessment of—

(1) the level of contamination of edible fish caught in the Bay and surrounding waters,

(2) the rate of consumption of contaminated fish from the Bay and surrounding waters by residents of Santa Monica and Los Angeles, California, and surrounding communities, and

(3) the health risks associated with the consumption of such contaminated fish.

The Administrator shall complete the evaluation within 6 months of the date of the enactment of this Act and shall report the results of the evaluation to the Congress.

TITLE IX—CLARIFYING AND TECHNICAL AMENDMENTS

SEC. 901. CLARIFYING AMENDMENTS.

(a) REGISTRATION OF PESTICIDES.—

(1) LIMITATION ON UNREGISTERED PESTICIDES.—Section 3(a) (7 U.S.C. 136a(a)) (as amended by section 802(b)(1) of this Act) is further amended by adding at the end thereof the following new sentence: "To the extent necessary to prevent unreasonable adverse effects on the environment, the Administrator may by regulation limit the distribution, sale, or use in any State of any pesticide that is not registered under this Act and that is not the subject of an experimental use permit under section 5 or an emergency exemption under section 18.".

(2) REGISTRATION UNDER SPECIAL CIRCUMSTANCES.—The second sentence of section 3(c)(7)(A) (7 U.S.C. 136a(c)(7)(A)) is amended—

(A) by striking out "submit" each place it appears and inserting in lieu thereof "submit or cite";

(B) by striking out "submission" and inserting in lieu thereof "submission or citation"; and

(C) by striking out "submitted" and inserting in lieu thereof "submitted or cited".

(3) CLASSIFICATION OF PESTICIDES.—Section 3(d)(1) (7 U.S.C. 136a(d)(1)) is amended—

(A) in the second sentence of subparagraph (A), by striking out "on the initial classification"; and

(B) in subparagraph (C)—

(i) by striking out the colon preceding clause (i) and inserting in lieu thereof a period;

(ii) by striking out clause (i);

(iii) by striking out "(ii)"; and

(iv) by running in the material after "restricted use." so that the margin is the same as the margin of paragraph (1)(C).

(b) CERTIFICATION OF PESTICIDE DEALERS.—The last sentence of section 4(a)(1) (7 U.S.C. 136b(a)(1)) is amended by inserting "by regulation" after "may".

(c) REGISTRATION OF ESTABLISHMENTS.—Section 7(c)(1) (7 U.S.C. 136e(c)(1)) is amended—

(1) in the first sentence, by striking out "shall inform the Administrator" and inserting in lieu thereof "shall, in accordance with regulations promulgated by the Administrator, submit to the Administrator a report";

(2) in the first sentence, by striking out "of the" and inserting in lieu thereof "describing"; and

(3) in the second sentence, by striking out "information" and inserting in lieu thereof "report".

(d) AUTHORITY OF ADMINISTRATOR.—Section 25(c) (7 U.S.C. 136w(c)) is amended—

(1) by inserting "or by regulation" after "hearing"; and

(2) in paragraph (5), by striking out "prescribe regulations requiring" and inserting in lieu thereof "require".

SEC. 902. TECHNICAL AMENDMENTS.

(a) SECTION 2.—Section 2 (7 U.S.C. 136) is amended—

(1) in subsection (c), by striking out "if:" and inserting in lieu thereof "if—";

(2) in subsection (p)(2), by striking out "Health, Education, and Welfare" and inserting in lieu thereof "Health and Human Services";

(3) in subsection (q)(2)(A), by striking out "if:" and inserting in lieu thereof "if—";

(4) in subsection (q)(2)(C)(iii), by striking out ": *Provided*, That" and inserting in lieu thereof ", except that";

(5) in subsection (u)—

(A) by striking out ": *Provided*, That" and inserting in lieu thereof ", except that";

(B) by striking out "(1)(a)";

(C) by striking out "or (b)";

(D) by striking out "Health, Education, and Welfare" and inserting in lieu thereof "Health and Human Services";

(E) by striking out "(2) that" and inserting in lieu thereof "that"; and

(F) by striking out "an article covered by clause (1) of this proviso" and inserting in lieu thereof "a new animal drug"; and

(6) in subsection (ee)—

(A) by striking out ": *Provided*, That the term" and inserting in lieu thereof ", except that the term";

(B) by striking out "or" before clause (4);

(C) by striking out ": *Provided further*, That the term also shall not include" and inserting in lieu thereof ", (5)";

(D) by striking out "or any use" and inserting in lieu thereof "or (6) any use"; and

(E) by striking out ": *And provided further*, That after" and inserting in lieu thereof a period and "After".

(b) SECTION 3.—Section 3 (7 U.S.C. 136a) is amended—

(1) in subsection (c)(1)(D), by striking out "subsection (c)(2)(D) of this section" and inserting in lieu thereof "paragraph (2)(D)";

(2) in subsection (c)(1)(D)(i)—

(A) by striking out ": *Provided*, That such" and inserting in lieu thereof a period and "Such"; and

(B) by striking out the semicolon at the end thereof and inserting in lieu thereof a period;

(3) in subsection (c)(1)(D)(ii)—

(A) by striking out "except as" and inserting in lieu thereof "Except as";

(B) by striking out "subparagraph (D)(i) of this paragraph" and inserting in lieu thereof "clause (i)"; and

(C) by striking out the semicolon at the end thereof and inserting in lieu thereof a period;

(4) in subsection (c)(1)(D)(iv) (as redesignated by section 702(1) of this Act)—

(A) by striking out "after expiration" and inserting in lieu thereof "After expiration";

(B) by striking out "subparagraphs (D)(i) and (D)(ii) of this paragraph" and inserting in lieu thereof "clauses (i), (ii), and (iii)"; and

(C) by striking out the semicolon at the end thereof and inserting in lieu thereof a period;

(5) in subsection (c)(2)—

(A) by striking out "(2)(A) DATA IN SUPPORT OF REGISTRATION.—The" and inserting in lieu thereof the following:

"(2) DATA IN SUPPORT OF REGISTRATION.—

"(A) The";

(B) by indenting all of subparagraph (A) (as amended by the preceding provisions of this Act) two ems, so as to align its left margin with the margin of subparagraph (A) of section 3(d)(1);

(C) in subparagraph (B), by striking out "(B)" and all that follows through "(i) If" and inserting in lieu thereof the following:

"(B)(i) If";

(D) by realigning clauses (iii), (iv), and (v) of subparagraph (B) (as amended by the preceding provisions of this Act) two ems to the left, so as to align the left margin of each clause with the margin of subparagraph (A) (as amended by subparagraph (B) of this paragraph);

(E) in the fourth sentence of subparagraph (B)(iv), by striking out ": *Provided*, That the" and inserting in lieu thereof a period and "The";

(F) in the first sentence of subparagraph (B)(v), by striking out "subsection (c)(1)(D) of this section" and inserting in lieu thereof "paragraph (1)(D)";

(G) in subparagraph (C), by striking out "SIMPLIFIED PROCEDURES.—"; and

(H) by indenting all of subparagraph (C) two ems, so as to align its left margin with the margin of subparagraph (A) (as amended by subparagraph (B) of this paragraph);

(6) in subsection (c)(7), by striking out "subsection (c)(5) of this section" each place it appears and inserting in lieu thereof "paragraph (5)";

(7) in the second sentence of subsection (c)(7)(A), by striking out ": *Provided*, That if" and inserting in lieu thereof a period and "If";

(8) in subsection (d)(1)(A)—

(A) in the first sentence, by striking out ", provided that if" and inserting in lieu thereof a period and "If"; and

(B) in the last sentence, by striking out ": *Provided, however*, That the" and inserting in lieu thereof a period and "The";

(9) in subsection (d)(1)(C)(ii), by striking out the last sentence and inserting in lieu thereof the following new sentence: "Any such regulation shall be reviewable in accordance with section 16(e).."; and

(10) in subsection (f)(2), by striking out ": *Provided*, That as" and inserting in lieu thereof a period and "As".

(c) SECTION 4.—Section 4(a)(1) (7 U.S.C. 136b(a)(1)) is amended—

(1) by striking out ": *Provided*, That such" and inserting in lieu thereof a period and "Such"; and

(2) by striking out ": *Provided, however*, That the" and inserting in lieu thereof a period and "The".

(d) SECTION 5.—The last sentence of section 5(g) (7 U.S.C. 136c(g)) is amended by striking out ": *Provided*, That such" and inserting in lieu thereof a period and "Such".

(e) SECTION 6.—Section 6 (7 U.S.C. 136d) is amended—

(1) in subsection (c), by striking out "Agency" each place it appears and inserting in lieu thereof "Administrator";

(2) in subsection (c)(1), by running into the second sentence the undesignated paragraph in that subsection;

(3) in the second sentence of subsection (c)(3)—

(A) by striking out "(i)" and inserting in lieu thereof "(A)"; and

(B) by striking out "(ii)" and inserting in lieu thereof "(B)"; and

(4) in the second sentence of subsection (e)(2), by striking out ": *Provided*, That the" and inserting in lieu thereof a period and "The".

(f) SECTION 10.—Section 10(d) (7 U.S.C. 136h(d)) is amended—

(1) in paragraph (1)—

(A) by striking out ": *Provided*, That the" and inserting in lieu thereof a period and "The"; and

(B) by striking out ": *Provided further*, That this" and inserting in lieu thereof a period and "This"; and

(2) in the second sentence of paragraph (3), by striking out ": *Provided*, That where" and inserting in lieu thereof a period and "Where".

(g) SECTION 12.—Section 12(a)(2)(F) (7 U.S.C. 136j(a)(2)(F)) is amended by striking out ": *Provided*, That it" and inserting in lieu thereof a period and "It".

(h) SECTION 13.—Section 13 (7 U.S.C. 136k) is amended—

(1) in subsection (b), by moving the last sentence in paragraph (3) after such paragraph as a full measure sentence; and

(2) in the first sentence of subsection (c), by striking out ": *Provided*, That upon" and inserting in lieu thereof a period and "On".

(i) SECTION 15.—Section 15(a) (7 U.S.C. 136m(a)) is amended by striking out "(i)" and "(ii)".

(j) SECTION 16.—Subsection (a) of section 16 (7 U.S.C. 136n) is amended to read as follows:

"(a) DISTRICT COURT REVIEW.—Except as otherwise provided in this Act, the refusal of the Administrator to cancel or suspend a registration or to change a classification not following a hearing and other final actions of the Administrator not committed to the discretion of the Administrator by law are judicially reviewable by the district courts of the United States.".

(k) SECTION 17.—Section 17(c) (7 U.S.C. 136o(c)) is amended—

(1) by striking out ": *Provided*, That the" and inserting in lieu thereof a period and "The"; and

(2) by striking out ": *And provided further*, That all" and inserting in lieu thereof a period and "All".

(l) SECTION 18.—Section 18 (7 U.S.C. 136p) is amended—

(1) in the heading, by inserting "AND STATE" after "FEDERAL"; and

(2) by running in the second sentence after the first sentence.

(m) SECTION 19.—Section 19(a) (7 U.S.C. 136q(a)) is amended by striking out "canceled under section 6(c)" and inserting in lieu thereof "suspended under section 6(c) and canceled".

(n) SECTION 21.—Section 21 (7 U.S.C. 136s) is amended—

(1) in subsection (a), by inserting "SECRETARY OF AGRICULTURE.—" after the subsection designation;

(2) in subsection (b), by inserting "VIEWS.—" after the subsection designation; and

(3) in subsection (c), by inserting "NOTICE.—" after the subsection designation.

(o) SECTION 24.—Section 24 (7 U.S.C. 136v) is amended—

(1) in subsection (b), by inserting "UNIFORMITY.—" after the subsection designation; and

(2) in subsection (c)—

(A) by striking out "(c)(1) A" and inserting in lieu thereof the following:

"(c) ADDITIONAL USES.—

"(1) A"; and

(B) by indenting each paragraph two ems, so as to align the left margin of each paragraph with the margin of paragraph (4) of section 25 (as added by section 810 of this Act).

(p) SECTION 25.—Section 25 (7 U.S.C. 136w) is amended—

(1) in subsection (a)—

(A) by striking out "(a)(1) REGULATIONS.—The" and inserting in lieu thereof the following:

"(a) IN GENERAL.—

"(1) REGULATIONS.—The";

(B) by indenting all of paragraphs (1) and (3) two ems, so as to align the left margin of each paragraph with the margin of paragraph (4) of such section (as added by section 810 of this Act);

(C) in paragraph (2), by striking out "(2) PROCEDURE.—" and inserting in lieu thereof the following:

"(2) PROCEDURE.—";

(D) by indenting each subparagraph of paragraph (2) two ems, so as to align the left margin of each subparagraph with the margin of subparagraph (A) of section 25(f)(1) (as added by section 815 of this Act);

(E) in paragraph (2)—

(i) in subparagraph (A), by striking out "PROPOSED REGULATIONS.—";

(ii) in subparagraph (B), by striking out "FINAL REGULATIONS.—";

(iii) in subparagraph (C), by striking out "TIME REQUIREMENTS.—"; and

(iv) in subparagraph (D), by striking out "PUBLICATION IN THE FEDERAL REGISTER.—"; and

(F) in paragraph (3), by striking out "Committee on Agriculture and Forestry" and inserting in lieu thereof "Committee on Agriculture, Nutrition, and Forestry"; and

(2) in the second sentence of subsection (e), by striking out ": *Provided*, That whenever" and inserting in lieu thereof a period and "Whenever".

(q) SECTION 26.—Section 26 (7 U.S.C. 136w-1) is amended—

(1) in subsection (a), by inserting "IN GENERAL.—" after the subsection designation;

(2) in subsection (a)(1), by striking out "; *Provided*, That the" and inserting in lieu thereof ", except that the";

(3) in subsection (b), by inserting "SPECIAL RULES.—" after the subsection designation; and

(4) in subsection (c), by inserting "ADMINISTRATOR.—" after the subsection designation.

(r) SECTION 27.—Section 27 (7 U.S.C. 136w-2) is amended—

(1) in subsection (a), by inserting "REFERRAL.—" after the subsection designation;

(2) in subsection (b), by inserting "NOTICE.—" after the subsection designation; and

(3) in subsection (c), by inserting "CONSTRUCTION.—" after the subsection designation.

(s) REDESIGNATION OF SECTIONS 3A AND 4.—

(1) REDESIGNATION OF SECTION 4 AS SECTION 11.

(A) IN GENERAL.—Section 4 (7 U.S.C. 136b) (as amended by the preceding provisions of this Act) is redesignated as section 11 (as amended by section 601(c)(2)).

(B) CONFORMING AMENDMENTS.—Sections 2(e)(3) (as amended by section 601(a)(1) of this Act), 5(f), 19(e)(2) (as added by section 818(a) of this Act), 23(a)(1)(C) (as amended by section 804 of this Act), 25(f)(1)(B) (as added by section 815 of this Act), and 26(b) are each amended by striking out "section 4" and inserting in lieu thereof "section 11".

(2) REDESIGNATION OF SECTION 3A AS SECTION 4.

(A) IN GENERAL.—Section 3A (as added by section 105(a) of this Act) is redesignated as section 4.

(B) CONFORMING AMENDMENTS.—Sections 6(g)(2) (as added by section 305(a) of this Act), 12(a)(2)(J) (as amended by section 808(a)(2)(B) of this Act), and 24(a)(2)(A)(ii) (as amended by section 801(a) of this Act), and section 408(p)(3) of the Federal Food, Drug, and Cosmetic Act (as added by section 801(e)(1) of this Act), are each amended by striking out "3A" and inserting in lieu thereof "4".

SEC. 903. TABLE OF CONTENTS AMENDMENTS.

Subsection (b) of section 1 (7 U.S.C. prec. 121) is amended to read as follows:

"(b) TABLE OF CONTENTS.—

"Section 1. Short title and table of contents.
"(a) Short title.
"(b) Table of contents.
"Sec. 2. Definitions.
"(a) Active ingredient.
"(b) Administrator.
"(c) Adulterated.
"(d) Animal.
"(e) Applicator.
"(1) Commercial applicator.
"(2) Private applicator.
"(3) Certified applicator.
"(4) Under the direct supervision of a certified applicator.
"(f) Defoliant.
"(g) Desiccant.
"(h) Device.
"(i) District court.
"(j) Environment.
"(k) Fungus.
"(l) Imminent hazard.
"(m) Inert ingredient.
"(n) Ingredient statement.
"(o) Insect.
"(p) Label and labeling.
"(1) Label.
"(2) Labeling.
"(q) Misbranded.
"(r) Nematode.
"(s) Person.
"(t) Pest.
"(u) Pesticide.
"(v) Plant regulator.
"(w) Producer and produce.
"(x) Protect health and the environment.
"(y) Registrant.
"(z) Registration.
"(aa) State.
"(bb) Unreasonable adverse effects on the environment.
"(cc) Weed.
"(dd) Establishment.
"(ee) To use any registered pesticide in a manner inconsistent with its labeling.
"(ff) Outstanding data requirement.
"(1) In general.
"(2) Factors.
"(gg) Antimicrobial.
"(hh) Pesticide testing facility.
"(ii) Importing country.
"(jj) Pesticide dealer.
"(1) In general.
"(2) Exception.
"(kk) To distribute or sell.
"(ll) Drinking water well.
"(mm) Ground water.
"(nn) Ground water sampling point.
"(oo) Potential drinking water.
"(pp) Reliable analytical data.
"(qq) Container.
"Sec. 3. Registration of pesticides.
"(a) Requirement of registration.
"(b) Exemptions.
"(c) Procedure for registration.
"(1) Statement required.
"(2) Data in support of registration.
"(3) Time for acting with respect to application.
"(4) Notice of application.
"(5) Approval of registration.
"(6) Denial of registration.
"(7) Registration under special circumstances.
"(8) Public interim administrative review.
"(9) Preregistration access to data.
"(d) Classification of pesticides.
"(1) Classification for general use, restricted use, or both.
"(2) Change in classification.
"(3) Change in classification from restricted use to general use.
"(e) Products with same formulation and claims.
"(f) Miscellaneous.
"(1) Effect of change of labeling or formulation.
"(2) Registration not a defense.
"(3) Authority to consult other Federal agencies.
"(g) Priority list and data requirements for inert ingredients.
"(1) Establishment of list.
"(2) Publication of list.
"(3) Judicial review.
"(4) Number of ingredients.
"(5) Additional data.
"(6) Evaluation.
"(7) Construction.
"(h) Neurotoxic and behavioral effects of pesticides.
"(i) Antimicrobial standards.
"(1) Definition.
"(2) Standards.
"Sec. 4. Reregistration of registered pesticides.
"(a) General rule.
"(b) Special authorities of Administrator.
"(1) Guidelines.
"(2) Monitoring.
"(3) Suspensions and penalties.
"(c) Reregistration phases.
"(d) Phase one.
"(1) Priority for reregistration.
"(2) Reregistration lists.
"(3) Judicial review.
"(4) Notice to registrants.
"(e) Phase two.
"(1) In general.
"(2) Notice of intent to seek or not to seek reregistration.
"(3) Missing or inadequate data.
"(4) Time periods.
"(5) Cancellation and removal.
"(f) Phase three.
"(1) Information about studies.
"(2) Time periods.
"(3) Cancellation.
"(g) Phase four.
"(1) Independent review and identification of outstanding data requirements.
"(2) Time periods.
"(h) Phase five.
"(1) Data review.
"(2) Reregistration and other actions.
"(i) Compensation of data submitter.
"(j) Fees.
"(1) Initial fee for food or feed pesticide active ingredients.
"(2) Final fee for food or feed pesticide active ingredients.
"(3) Fees for other pesticide active ingredients.
"(4) Reduction or waiver of fees for minor use and other pesticides.
"(5) Other fees.
"(6) Apportionment.
"(k) Exemption of certain registrants.
"(l) Reregistration fund.
"(1) Establishment.
"(2) Source and use.
"(3) Unused funds.
"(4) Accounting.
"(m) Judicial review.
"Sec. 5. Experimental use permits.
"(a) Issuance.
"(b) Temporary tolerance level.
"(c) Use under permit.
"(d) Studies.
"(e) Revocation.
"(f) State issuance of permits.
"(g) Exemption for agricultural research agencies.
"Sec. 6. Administrative review; suspension.
"(a) Cancellation after five years.
"(b) Cancellation and change in classification or labels.
"(1) Notice of cancellation or change in classification.
"(2) Hearing.
"(3) Factors.
"(4) Label changes.
"(c) Suspension.
"(1) Order.
"(2) Expedite hearing.
"(3) Emergency order.
"(4) Judicial review.
"(d) Public hearings.
"(e) Conditional registration.

"(f) Hearing procedures after public interim administrative review.
"(1) General rule.
"(2) Request for hearing.
"(3) Procedures.
"(g) General provisions.
"(1) Voluntary cancellation
"(2) Publication of notice.
"(3) Existing stocks.
"(4) Additional information.
"(h) Suspension and cancellation of registration based on false or invalid data.
"(1) Notice.
"(2) Invalid data.
"(3) False data.
"(4) Hearing.
"(i) Judicial review.
"(j) Notice for stored pesticides with canceled or suspended registrations.
"(1) In general.
"(2) Copies.
"Sec. 7. Registration of establishments.
"(a) Requirements.
"(b) Registration.
"(c) Information required.
"(d) Confidential records and information.
"(e) Public right to know.
"(1) Fact sheets.
"(2) Contents.
"(3) Reports.
"(4) Public availability.
"(f) Information requests.
"Sec. 8. Records.
"(a) Authority to require records.
"(1) In general.
"(2) Retail distribution or sale.
"(b) Limitations.
"(c) Records of applicators.
"(1) Commercial applicators.
"(2) Private applicators.
"(d) Records of pesticide dealers.
"(1) In general.
"(2) Contents.
"(3) Duration.
"(e) Access.
"(1) Employees, customers, and complainants.
"(2) State agencies.
"(f) Information for employees.
"Sec. 9. Inspection of establishments, etc.
"(a) Authority to enter, inspect, and copy.
"(b) Warrants.
"(c) Enforcement.
"(1) Certification of facts to Attorney General.
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TITLE X—EFFECTIVE DATE

SEC. 1001. EFFECTIVE DATE.

Except as otherwise provided in this Act, the amendments made by this Act shall take effect on the expiration of 60 days after the date of enactment of this Act.

TITLE X—HOMELESS ELIGIBILITY CLARIFICATION ACT

SEC. 1101. SHORT TITLE.

The title may be cited as the "Homeless Eligibility Clarification Act".

Subtitle A—Emergency Food for the Homeless

SEC. 1111. MEALS SERVED TO HOMELESS INDIVIDUALS.

(a) DEFINITION OF FOOD.—Section 3(g) of the Food Stamp Act of 1977 (7 U.S.C. 2012(g)) is amended—

(1) in clause (1), by striking out "and (8)" and inserting in lieu thereof "(8), and (9)";

(2) by striking out "and" at the end of clause (7); and

(3) by inserting before the period at the end thereof the following: ", and (9) in the case of households that do not reside in permanent dwellings and households that have no fixed mailing addresses, meals prepared for and served by a public or private nonprofit establishment (approved by an appropriate State or local agency) that feeds such individuals and by a public or private nonprofit shelter (approved by an appropriate State or local agency) in which such households temporarily reside (except that such establishments and shelters may only request voluntary use of food stamps by such individuals and may not request such households to pay more than the average cost of the food contained in a meal served by the establishment or shelter)".

(b) DEFINITION OF HOUSEHOLD.—The last sentence of section 3(i) of such Act (7 U.S.C. 2012(i)) is amended by inserting after "battered women and children," the following: "residents of public or private nonprofit shelters for individuals who do not reside in permanent dwellings or have no fixed mailing addresses, who are otherwise eligible for coupons,".

(c) DEFINITION OF RETAIL FOOD STORE.—Section 3(k)(2) of such Act (7 U.S.C. 2012(k)(2)) is amended by striking "and (8)" and inserting in lieu thereof "(8), and (9)".

(d) PARTICIPATION OF ESTABLISHMENTS AND SHELTERS.—Section 9 of such Act (7 U.S.C. 2018) is amended by adding at the end thereof the following new subsection:

"(g) In an area in which the Secretary, in consultation with the Inspector General of the Department of Agriculture, finds evidence that the participation of an establishment or shelter described in section 3(g)(9) damages the program's integrity, the Secretary shall limit the participation of such establishment or shelter in the food stamp program, unless the establishment or shelter is the only establishment or shelter serving the area.".

(e) REDEMPTION OF COUPONS.—The first sentence of section 10 of such Act (7 U.S.C. 2019) is amended—

(1) by striking out "and" after "battered women and children,"; and

(2) by inserting after "blind residents" the following: ", and public or private nonprofit establishment, or public or private nonprofit shelters that feed individuals who do not reside in permanent dwellings and individuals who have no fixed mailing addresses".

(f)(1) The amendments made by this section shall become effective, and be implemented by issuance of final regulations, not later than April 1, 1987.

(2) Not later than September 30, 1988, the Secretary of Agriculture shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report that evaluates the program established by the amendments made by this section, including any proposed legislative recommendations.

(3) The amendments made by this section shall cease to be effective after September 30, 1990.

Subtitle B—Job Training for the Homeless

SEC. 1121. JOB TRAINING FOR THE HOMELESS.

(a) ECONOMICALLY DISADVANTAGED TO INCLUDE HOMELESS.—Section 4(8) of the Job Training Partnership Act (29 U.S.C. 1503(8)) is amended—

(1) by striking out "or" at the end of subparagraph (D);

(2) by striking out the period at the end of subparagraph (E) and inserting in lieu thereof a semicolon; and

(3) by adding at the end thereof "(F) an individual who is homeless and whose total income is not in excess of the income levels described in subparagraph (B).".

(b) JOB TRAINING PLAN.—Section 104(b)(2) of Job Training Partnership Act (29 U.S.C. 1514(b)) is amended by inserting before the semicolon a comma and the following: "and a description of how the program will be established in locations providing services to the homeless".

(c) BARRIERS TO EMPLOYMENT RULE.—Section 203(a)(2) of the Job Training Partnership Act (29 U.S.C. 1603(a)(2)) is amended by striking out "or addicts" and inserting in lieu thereof "addicts, or homeless".

Subtitle C—Entitlements Eligibility

SEC. 1131. TREATMENT OF HOMELESS INDIVIDUALS ELIGIBLE UNDER AFDC, SSI, AND MEDICAID PROGRAMS.

(a) AFDC.—Section 402(a) of the Social Security Act (42 U.S.C. 602(a)) is amended—

(1) by striking "and" at the end of paragraph (38),

(2) by striking the period at the end of paragraph (39) and inserting in lieu thereof "; and", and

(3) by adding at the end the following new paragraph:

"(40) provide a method of verifying the eligibility of, and making aid available with respect to, a dependent child who does not reside in a permanent dwelling or does not have a fixed home or mailing address.".

(b) SSI PROGRAM.—Section 1631(e) of such Act (42 U.S.C. 1383(e)) is amended by adding at the end the following new paragraph:

"(3) The Secretary shall provide a method of verifying the eligibility of, and making payments under this title to, an eligible individual who does not reside in a permanent dwelling or does not have a fixed home or mailing address.".

(c) MEDICAID PROGRAM.—Section 1902(a) of such Act (42 U.S.C. 1396a(a)) is amended—

(1) by striking "and" at the end of paragraph (45),

(2) by striking the period at the end of paragraph (46) and inserting in lieu thereof "; and", and

(3) by adding at the end the following new paragraph:

"(47) provide a method of verifying the eligibility of, and making medical assistance available to, an eligible individual who does not reside in a permanent dwelling or does not have a fixed home or mailing address.".

(d) EFFECTIVE DATE.—

(1) Except as provided in paragraph (2), the amendments made by this section shall become effective on the date of the enactment of this Act.

(2) If a State agency administering a plan approved under part A of title IV of the Social Security Act or under title XIX of such Act demonstrates, to the satisfaction of the Secretary of Health and Human Services, that it cannot, by reason of State law, comply with the requirements of an amendment made by subsection (a) or (c) of this section, respectively, the Secretary may prescribe that, in the case of such State, the amendment will become effective beginning with the first month beginning after the close of the first session of such State's legislature ending on or the date of the enactment of this Act. For purposes of the preceding sentence, the term "session of a State's legislature" includes any regular, special, budget, or other session of a State legislature.

SEC. 1132. SINGLE APPLICATION FOR SSI AND FOOD STAMP BENEFITS BY SSI PRE-RELEASE INDIVIDUALS.

(a) IN GENERAL.—Section 1631 of the Social Security Act (42 U.S.C. 1383) is amended by adding at the end the following new subsection:

"Single Application for SSI and Food Stamp Benefits by SSI Pre-Release Individuals

"(j)(1) The Secretary shall provide for the establishment, maintenance, and improvement of procedures designed to ease the transition of institutionalized persons from medical, penal, and other institutions to the community, and to prevent homelessness, by permitting such persons to apply for benefits under this title prior to their discharge

or release from such institutions and thereby assuring that essential support (such as housing, food, and clothing) is available to them upon such discharge or release.

"(2) Under regulations prescribed by the Secretary, the procedures described in paragraph (1) shall—

"(A) require that personnel of the district offices of the Social Security Administration, and of the appropriate State disability determination services, make regular visits to all institutions of the types involved to receive and process applications for benefits under this title and for food stamps under paragraph (3);

"(B) provide for the development of descriptive materials on such procedures for use by such district offices and by social service departments in such institutions;

"(C) provide training for employees in such district offices; and

"(D) establish time limits within which State agencies must complete their processing of applications filed pursuant to such procedures.

"(3) The Secretary and the Secretary of Agriculture shall establish special procedures under which persons applying for benefits under this title prior to their discharge or release from an institution pursuant to the pre-release procedures described in paragraphs (1) and (2) can also apply to participate in the food stamp program under the Food Stamp Act of 1977, utilizing a single application for this purpose.".

(b) EFFECTIVE DATE.—

(1) The amendment made by subsection (a) shall become effective April 1, 1987.

(2) The Secretary of Health and Human Services shall promulgate final regulations to implement the amendment made by subsection (a) not later than April 1, 1987.

SEC. 1133. DELIVERY OF VETERANS' BENEFITS PAYMENTS.

(a) IN GENERAL.—(1) Section 3003 of title 38, United States Code, is amended by adding at the end thereof the following new subsection:

"(c) Benefits under laws administered by the Veterans' Administration may not be denied an applicant on the basis that the applicant does not have a mailing address.".

(2) Section 3020 of title 38, United States Code, is amended by adding at the end thereof the following new subsection:

"(f)(1) In the case of a payee who does not have a mailing address, payments of monetary benefits under laws administered by the Veterans' Administration shall be delivered under an appropriate method prescribed pursuant to paragraph (2) of this subsection.

"(2) The Administrator shall prescribe an appropriate method or methods for the delivery of payments of monetary benefits under laws administered by the Veterans' Administration in cases described in paragraph (1) of this subsection. To the maximum extent practicable, such method or methods shall be designed to ensure the delivery of payments in such cases.".

(b) EFFECTIVE DATE.—(1) The amendment made by subsection (a)(1) shall take effect on the date of enactment of this Act.

(2) The amendment made by subsection (a)(2) shall take effect with respect to payments made on or after October 1, 1986.

Mr. ZORINSKY. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. LUGAR. I move to lay this motion on the table.

The motion to lay on the table was agreed to.

□ 1910

Mr. LUGAR. Mr. President, I thank the distinguished chairman of the Agriculture Committee for his resolute leadership throughout this complex operation. I also thank the distinguished ranking minority member, Senator ZORINSKY, who has managed this bill so ably, and I extend my thanks to the staffs on both sides of the aisle, who have made this moment possible.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LUGAR. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LUGAR. Mr. President, I ask unanimous consent that consideration of S. 2792 be indefinitely postponed.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SIMPSON. Mr. President, I thank very much Senator LUGAR, who has done a splendid job here, as well as the chairman of the Agriculture Committee, Senator HELMS, and Senator ZORINSKY. I also thank the Senator from Montana [Mr. MELCHER]. They have been very helpful to the leadership—Senator DOLE and Senator BYRD—in getting this matter disposed of. I particularly thank Senators DURENBERGER, KASSEBAUM, METZENBAUM, and many others who have been involved in this important legislation.

ORDER OF PROCEDURE

Mr. SIMPSON. Mr. President, we now have some other business, a good bit of wrapups, and information for the Senate, and getting ourselves prepared for the impeachment proceedings. All of that should be completed without a rollcall vote; thus, there will be no further rollcall votes this evening.

ROUTINE MORNING BUSINESS

Mr. SIMPSON. Mr. President, I ask unanimous consent that there be a period for the transaction of routine morning business, not to extend beyond 7:30 p.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

HANFORD RESERVATION

Mr. GORTON. Mr. President, during the course of the debate on the continuing resolution for fiscal year 1987, Senator HATFIELD and I engaged in a colloquy concerning environmental matters relating to the Hanford Reservation in Washington State. Unfortunately, the text of this colloquy was not printed in the CONGRESSIONAL RECORD of October 2, 1986. I ask that the text of this colloquy be printed as part of the official RECORD at this time.

The PRESIDING OFFICER. Without objection it is so ordered.

HANFORD RESERVATION

Mr. GORTON. Mr. President, I would like to engage Mr. HATFIELD, the chairman of the Appropriations Committee, in a colloquy on two important environmental matters relating to the Hanford Reservation in Washington State.

Since 1983, the State of Washington has attempted to get DOE to comply with environmental laws and regulations. Years of protracted negotiations between DOE and the State have resulted in very gradual and often tentative concessions by the Department to comply with selected environmental laws and regulations. Proper handling of Hanford's toxic, hazardous, and mixed waste streams is long overdue. A report issued by the General Accounting Office last week found that: First, Hanford facilities have contaminated the ground water with radioactive and hazardous materials to such an extent that drinking water standards have been significantly exceeded; second, soil at the Hanford Reservation has been contaminated by radioactive materials; third, Hanford's N-reactor is violating the discharge permit issued to it by the State under the Clean Water Act; and fourth, DOE contends that N-reactor's hazardous liquid waste streams, which are contaminating the soil and water, are "by-product materials" and thus are exempt from the Resource Conservation and Recovery Act. GAO recommends that the Department provide Congress with a comprehensive report on its plans and cost estimates for bringing its facilities into compliance with applicable environmental laws. I agree with this GAO recommendation, and I think it is time for the Department of Energy to reach an agreement with the Environmental Protection Agency and the State to manage Hanford's waste in an environmentally safe manner.

Can I have the chairman's assurance that he will include language in the continuing resolution conference report that directs the Department of Energy to provide the Appropriations Committees within 120 days of enactment of the continuing resolution with a comprehensive plan for the management of all waste substances at the Hanford Reservation? And that the conference report will direct the Department to develop this plan with the Environmental Protection Agency and the State of Washington, and to include in the plan a proposed schedule for compliance with all Federal and

State environmental laws and regulations pertaining to toxic and hazardous waste management?

Mr. HATFIELD. I can assure the Senator from Washington that I will work with the conferees and make every effort to include such language in the continuing resolution conference report. The Senator from Washington is to be commended for his leadership in addressing Hanford's environmental problems. In my view the Department must do more to dispose of radioactive mixed waste, which constitutes the bulk of Hanford's hazardous waste, in an environmentally safe manner.

Mr. GORTON. The second issue I would like to address is funding for Hanford's defense waste management activities. I am concerned that DOE's activities and expenditures have been heavily influenced by concern over the production of defense materials. The House of Representatives approved report language which earmarked $174 million for defense waste management activities at Hanford. Can the chairman assure me that language will be included in the continuing resolution conference report to direct the Department of Energy to provide at least $174 million for Hanford's defense waste management activities? And that these funds should be used, in part, to focus on compliance with environmental laws, jet-pumping of single-shell tanks, grouting double-shell tank liquid waste, and further research and testing of disposal and management activities where needed?

Mr. HATFIELD. The Senator from Washington's concern is well taken. He has my assurance that I will work with the conferees and make every effort to include such language in the continuing resolution conference report.

RABBI JACOB BERNARD AGUS

Mr. MATHIAS. Mrs. Mathias and I have been saddened by the death of a personal friend of many years—Rabbi Jacob Bernard Agus. Beyond the sense of loss that we feel, we know that Rabbi Agus' death on September 24 deprives the people of Maryland of one of the wise, thoughtful, and scholarly leaders who has contributed so much for more than a generation.

In a world in which hatred and violence play too large a role, Rabbi Agus devoted himself to reconciliation and peacemaking. Even his ecumenical studies were directed at this goal and it became the theme of his life. He projected the theme outside his study into the practical world, where he developed contacts with diverse individuals and groups, including Moslems.

Although he was a genuine scholar he did not shun the world in other practical respects. He recognized that even members of the clergy have civic responsibilities and he cheerfully discharged them. It was in this area that we first met and became friends two decades ago.

In the intervening years Mrs. Mathias and I have often turned to Rabbi Agus in moments of stress and in times of joy. Whatever the occasion he was always wise and helpful, but above all responsive.

I would like to quote briefly from a memorial prepared at the time of Rabbi Agus' death to illustrate the breadth of his interests and the extent of his accomplishments:

MEMORIAL—RABBI JACOB BERNARD AGUS

The world has lost a sweet soul, a leading proponent of cultural and religous understanding, a stirring leader of his people, a compassionate pastor of his congregation and friends, and a teacher of all who had the privilege to listen.

Born in Swislocz, Poland in 1911 to a pious family, descended from a thousand-year line of Rabbis, Rabbi Agus received a traditional Jewish education in Poland and, later, Palestine. He arrived in New York City in 1927, already recognized as a Talmudic genius. He continued his Jewish studies at the Rabbi Isaac Elchanan Theological Seminary and began his secular studies at Yeshiva College and Columbia University. In 1935, after additional years of study at the kollel (postgraduate rabbinic study), he was ordained as an Orthodox Rabbi and accepted his first pulpit in Norfolk, Virginia.

From 1936 to 1940, Rabbi Agus was both the Rabbi of a congregation in Cambridge, Massachusetts, and a graduate student in the History and Philosophy of Religion at Harvard University. Under the tutelage of such academic greats as Professors William Hocking and Harry A. Wolfson, he began his comparative study of religious philosophies and designed the framework for his religious understanding of history. At the same time he continued to deepen his Jewish learning by forming a hevruta (study relationship) with the famed Rabbi J. B. Soloveitchik. Together, they explored the thought of the great Jewish medieval Rabbi, thinker and codifier Moses Maimonides (the Rambam).

After receiving his M.A. and Ph.D. from Harvard and meeting and marrying his lifelong mate, Miriam Shore of Boston, he moved to Chicago to assume the pulpit of Agudas Achim Congregation. He was then ready to become a major figure in the ongoing effort to relate the traditional teachings of Judaism to the challenges of the modern era. The first of nine scholarly volumes, Philosophies of Judaism, was published in 1940. It was the first work in English to analyze the thought of the German Jewish thinkers Hermann Cohen, Martin Buber and Franz Rosenzweig, and the major American Jewish thinker, Mordecai M. Kaplan.

In 1942, three congregations in Dayton, Ohio invited Rabbi Agus to serve as their Rabbi. He moved there with his wife and first child, Zalman, and soon their daughter, Edna, and son, Robert, were born. Serving as the Rabbi of the newly founded Beth Abraham Synagogue, he continued his lifelong study, teaching, preaching and writing. In 1946, he published a biography and analytic study of the life and work of the late Chief Rabbi of Palestine, Abraham I. Kook (published under the title Banner of Jerusalem and reissued as High Priest of Rebirth).

Soon after the publication of this volume, Rabbi Agus joined the Conservative Movement of Judaism and became a leader within the Rabbinical Assembly of America. He served as chair, officer and active member of numerous committees such as the Prayer Book, Ideology, and Law and Standards Committees. He developed a dynamic approach to the interpretation of Jewish law (halachah). He was responsible for a major program to revitalize Sabbath observance in Conservative Jewish homes.

Rabbi Agus always preferred to accentuate the positive in his orientation toward life and religious observance. He wrote that encouraging the performance of mitzvot (commandments) was more important than dwelling on sinful behavior. For over 30 years, Rabbi Agus expounded his "liberal" approach to Judaism through writing, lecturing, teaching and participation on the Committee on Jewish Law and Standards.

In 1950, he moved to Baltimore to assume the position of Rabbi of the recently formed synagogue, Beth El Congregation. Under his leadership as Rabbi for thirty years and Rabbi Emeritus for six years, the congregation grew to be a major institution in the life of Baltimore. The congregation, reflecting Rabbi Agus's philosophical bent, supported numerous scholarly programs and interfaith activities. As a liberal Conservative congegation, it developed its own models of prayer and ritual observance that incorporated the Rabbi's love of the Tradition, desire for beauty and order, and respect for the Divine within each person. The Beth El way is distinctly Jewish in its embrace of the beautiful and noble aspects of the general culture within a specifically Jewish environment.

As the Rabbi of a congregation of 1400 families, Rabbi Agus devoted many hours each week to the pastoral tasks of visiting the sick, comforting the mourners, counseling the confused, and sharing the joy of simchas (celebrations of life). He is remembered by his congregants for his compassionate attention to their lives and for his gift for enabling each one to feel important and unique, no less than for his scholarly achievements.

During this period, Rabbi Agus authored Guideposts In Modern Judaism, The Evolution of Jewish Thought, The Meaning of Jewish History, The Vision and the Way, Dialogue and Tradition, Jewish Identity In An Age of Identities, and The Jewish Quest, as well as numerous scholarly articles. In addition, he was the Consulting Editor on Judaica for the Encyclopedia Britannica. He served as Professor of Rabbinic Thought at Temple University, the Reconstructionist Rabbinical College, and Dropsie University, and taught the Jewish aspects of the Gospel to students at St. Mary's Seminary.

While continuing to achieve in the realms of Jewish law and theology and general religious philosophy, Rabbi Agus initiated what he termed a "dialogue" with the non-Jewish world. For thirty years he worked to warn the world about the cataclysmic potential of nuclear weapons and struggled to build understanding among jews, Christians and Moslems.

On behalf of the American Jewish Committee and the Synagogue Council of America, Rabbi Agus worked with priests, professors, Bishops and Cardinals to lay the groundwork for the Church's revised position on Judaism and the Jewish People. Correspondence with Cardinal Bea of the Vatican and others eventually bore fruit in the work of Vatican II and subsequent

Papal Encyclicals. Rabbi Agus continued to work for world peace by maintaining an active dialogue with leading Christian scholars and by teaching seminary students.

Underlying all of Rabbi Agus's work was a passionate adherence to a rational faith. As he wrote:

"My view is that God alone is Eternal Being as well as the holistic process in the various levels of creation. We cannot say anything specific about His character as Eternal Being. But all we can and do say about His continuous creativity presupposes His Being. His reality implies a dimension of metaphysical depth that cannot be captured by our conceptual processes. . . . God is the source of darkness as of light, of death as of life. But it is light and life that express His purpose and will. As the Kabbalists put it, there is His Will, reflected in the laws governing all experience, and then there is 'the Will of Wills,' expressed in the bursts of love and compassion that illumine our lives."

Mr. President, Rabbi Mark G. Loeb of Beth El Congregation delivered a eulogy at Rabbi Agus' funeral that eloquently characterized the meaning of his life. As Rabbi Loeb pointed out:

The essence of Jacob Agus was not the brilliant mind with which he was blessed. His life's meaning will not be found in a shelf full of books he wrote. What makes his life of profound significance is the way in which he used his mind—as a vehicle for the service of God and the love of mankind.

The death of Rabbi Jacob Agus is, of course, a profound loss to his family and to Beth El Congregation. But it is also a loss to the community of Baltimore, to the State of Maryland, and to all men and women who shared his commitment to ecumenical understanding. He will be missed.

Mrs. Mathias joins me in expressing our sympathy to Mrs. Agus and her family.

CONTINUATION OF THE INTERAGENCY COMMITTEE ON SECURITY EQUIPMENT

Mr. HOLLINGS. Mr. President, last Friday, October 3, I discussed the continuation of the Interagency Committee on Security Equipment [IACSE] with the distinguished chairman of our Treasury, Postal Service Appropriations Subcommittee. Unfortunately, there occurred a printing error that gravely distorts the meaning of our colloquy. The crucial word "not" was left out of the last sentence of my comments.

Accordingly, I rise to ask that the permament RECORD show that sentence as follows: I found that they share my concerns and are agreed that GSA must continue its role as head of IACSE, that funding of $1.6 million still remains available, and that such funds are not to be utilized for other GSA purposes.

Mr. ABDNOR. Mr. President, the distinguished Senator from South Carolina [Mr. HOLLINGS] is absolutely correct. As I indicated in my response last week, we share his concerns about the elimination of IACSE. I join him in asking that the permanent RECORD be revised as the Senator requested.

The PRESIDING OFFICER. Without objection, it is so ordered.

MESSAGES FROM THE HOUSE

At 5:10 p.m., a message from the House of Representatives, delivered by Mr. Berry, one of its reading clerks, announced that the House agrees to the amendments of the Senate numbered 1, 4, 5, 8, 9, 10, and 11 to the bill (H.R. 2434) to authorize appropriations for the Patent and Trademark Office in the Department of Commerce, and for other purposes; it agrees to the amendments of the Senate numbered 2, 3, 6, and 7 to the bill, each with an amendment, in which it requests the concurrence of the Senate.

At 6:33 p.m., a message from the House of Representatives delivered by Ms. Goetz, one of its reading clerks, announced that the House has passed the following bills, without amendment:

S. 2048. An act to encourage international efforts to designate the shipwreck of the R.M.S. *Titanic* as an international maritime memorial and to provide for reasonable research, exploration, and, if appropriate, salvage activities with respect to the shipwreck;

S. 2062. An act to designate the Federal Building and United States Courthouse to be constructed and located in Newark, New Jersey, as the "Martin Luther King, Jr. Federal Building and United States Courthouse"; and

S. 2788. An act to designate the Federal building located in San Diego, California, as the "Jacob Weinberger Federal Building".

The message also announced that the House has passed the bill (S. 1935) to authorize the coastwise operation of certain passenger vessels; with an amendment, in which it requests the concurrence of the Senate.

The message further announced that the House has passed the bill (S. 863) to amend the National Traffic and Motor Vehicle Safety Act of 1966 and the Motor Vehicle Information and Cost Savings Act to authorize appropriations for fiscal years 1986 and 1987, and for other purposes; with amendments, in which it requests the concurrence of the Senate.

The message also announced that the House disagrees to the amendments of the Senate to the bill (H.R. 5313) making appropriations for the Department of Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 1987, and for other purposes; it agrees to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and appoints Mr. BOLAND, Mr. TRAXLER, Mr. STOKES, Mrs. BOGGS, Mr. BONER of Tennessee, Mr. MOLLOHAN, Mr. WHITTEN, Mr. GREEN, Mr. COUGHLIN, Mr. LEWIS of California, and Mr. CONTE as managers of the conference on the part of the House.

The message further announced that the House disagrees to the amendments of the Senate to the joint resolution (H.J. Res. 738) making continuing appropriations for the fiscal year 1987, and for other purposes; it agrees to the conference asked by the Senate on the disagreeing votes of the two Houses thereon; and appoints the following as managers of the conference on the part of the House:

Ordered, That Mr. Whitten, Mr. Boland, Mr. Natcher, Mr. Smith of Iowa, Mr. Yates, Mr. Obey, Mr. Roybal, Mr. Bevill, Mr. Chappell, Mr. Lehman of Florida, Mr. Dixon, Mr. Fazio, Mr. Hefner, Mr. Conte, Mr. McDade, Mr. Myers of Indiana, Mr. Miller of Ohio, Mr. Coughlin, Mr. Young of Florida, Mr. Kemp, and Mr. Regula be appointed as conferees for the entire joint resolution and Senate amendments thereto.

As additional conferees solely for consideration of Senate amendments within the jurisdiction of the Subcommittee on Agriculture, Rural Development, and Related Agencies, and modifications committed to conference: Mr. Traxler, Mr. McHugh, Mr. Akaka, Mr. Watkins, Mr. Durbin, Mrs. Smith of Nebraska, Mr. Rogers, and Mr. Skeen.

As additional conferees solely for consideration of Senate amendments within the jurisdiction of the Subcommittee on the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies, and modifications committed to conference: Mr. Alexander, Mr. Early, Mr. Dwyer of New Jersey, Mr. Carr, Mr. Mollohan, Mr. Rogers, and Mr. Michel.

As additional conferees solely for consideration of Senate amendments within the jurisdiction of the Subcommittee on the Department of Defense, and modification committed to conference: Mr. Murtha, Mr. Dicks, Mr. Wilson, Mr. AuCoin, Mr. Sabo, Mr. Miller of Ohio, and Mr. Livingston.

As additional conferees solely for consideration of Senate amendments within the jurisdiction of the Subcommittee on the District of Columbia, and modifications committed to conference: Mr. Stokes, Mr. Wilson, Mr. Sabo, Mr. Hoyer, Mr. Green, and Mr. Wolf.

As additional conferees solely for consideration of Senate amendments within the jurisdiction of the Subcommittee on Energy and Water Development, and modifications committed to conference: Mrs. Boggs, Mr. Watkins, Mr. Boner of Tennessee, Mrs. Smith of Nebraska, and Mr. Rudd.

As additional conferees solely for consideration of Senate amendments within the jurisdiction of the Subcommittee on Foreign Operations, and modifications committed to conference: Mr. McHugh, Mr. Wilson, Mr. Gray of Pennsylvania, Mr. Mrazek, Mr. Edwards of Oklahoma, Mr. Lewis of California and Mr. Porter.

As additional conferees solely for consideration of Senate amendments within the jurisdiction of the Subcommittee on the Department of Housing and Urban Development-Independent Agencies, and modifications committed to conference: Mr. Traxler, Mr. Stokes, Mrs. Boggs, Mr. Boner of Tennessee, Mr. Mollohan, Mr. Green, and Mr. Lewis of California.

As additional conferees solely for consideration of Senate amendments within the jurisdiction of the Subcommittee on the Department of the Interior and Related Agencies, and modifications committed to conference: Mr. Murtha, Mr. Dicks, Mr. AuCoin, and Mr. Loeffler.

As additional conferees solely for consideration of Senate amendments under the jurisdiction of the Subcommittee on Military Construction, and modifications committed to conference: Mr. Alexander, Mr. Coleman of Texas, Mr. Early, Mr. Dicks, Mr. Edwards of Oklahoma, Mr. Loeffler, Mr. Rudd, and Mr. Lowery of California.

As additional conferees solely for consideration of Senate amendments under the jurisdiction of the Subcommittee on the Department of Transportation and Related Agencies, and modifications committed to conference: Mr. Gray of Pennsylvania, Mr. Carr, Mr. Durbin, Mr. Mrazek, Mr. Sabo, Mr. Pursell, and Mr. Wolf.

As additional conferees solely for consideration of Senate amendments under the jurisdiction of the Subcommittee on Treasury, Postal Service, and General Government, and modifications committed to conference: Mr. Akaka, Mr. Hoyer, Mr. Coleman of Texas, Mr. Skeen, Mr. Lowery of California, and Mr. Wolf.

The message also announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 103. An act to require the Secretary of the Interior to permit trapping in the Ozark National Scenic Riverways area;

H.R. 2663. An act to amend title 5, United States Code, to credit time spent in the Cadet Nurse Corps during World War II as creditable service for civil service retirement;

H.R. 3951. An act to designate the building which will house the United States District Court for the Eastern District of Texas in Lufkin, Texas, as the "Ward B. Burke United States Courthouse";

H.R. 4118. An act to designate the building commonly known as the Old Post Office in Worcester, Massachusetts, as the "Harold D. Donohue Federal Building";

H.R. 4576. An act to designate the United States Attorney's Building for the Southern District of New York as the "Silvio James Mollo Federal Building";

H.R. 4731. An act to enhance boating safety by requiring a report relating to the display on gasoline pumps of the type of alcohol, the percentage of each type of alcohol, and the percentage of cosolvents, if any, contained in the gasoline; to amend chapter 131 of title 46, United States Code, relating to recreational boating safety; and for other purposes;

H.R. 5151. An act to provide for the consideration under the Color of Title Act of a certain parcel of land in Waynesboro, Mississippi, and for other purposes;

H.R. 5180. An act to designate the Federal Building at 111 W. Huron Street, Buffalo, New York, as the "Thaddeus J. Dulski Federal Building";

H.R. 5181. An act to designate the United States Courthouse at 68 Court Street, Buffalo, New York, as the "Michael J. Dillon Memorial United States Courthouse";

H.R. 5218. An act to amend title 5, United States Code, to provide that certain individuals be accorded competitive status for purposes of transferring to the competitive service;

H.R. 5343. An act to designate certain segments of the Maurice and the Manumuskin Rivers in New Jersey as study rivers for inclusion in the national wild and scenic rivers system;

H.R. 5415. An act to designate the United States Courthouse in Aiken, South Carolina, as the "Charles E. Simons, Jr. United States Courthouse";

H.R. 5446. An act to designate the Federal Building and United States Post Office located at 315 West Allegan Street in Lansing, Michigan, as the "Charles E. Chamberlain Federal Building and United States Post Office;

H.R. 5470. An act to designate the United States Courthouse for the Eastern District of Virginia in Alexandria, Virginia, as the "Albert V. Bryan United States Courthouse";

H.R. 5536. An act to amend title 35 of the United States Code to extend the term of patents for agricultural and chemical products for the period during which they underwent regulatory review;

H.R. 5555. An act to designate certain property located in Scranton, Pennsylvania, as the "Steamtown National Historic Site";

H.R. 5570. An act to designate the United States Courthouse and Customhouse at 601 West Broadway, Louisville, Kentucky, as the "Gene Snyder United States Courthouse and Customhouse";

H.R. 5598. An act to provide for the transfer of the Coast Guard cutter "Taney" to the city of Baltimore, Maryland, for use as a maritime museum and display;

H.R. 5602. An act to amend the Public Buildings Act of 1959 to authorize the Administrator of General Services to issue obligations to finance the acquisition and construction of public buildings;

H.R. 5617. An act to designate the Warren E. Burger Federal Building and United States Courthouse in St. Paul, Minnesota, to name various other Federal buildings and facilities, and for other purposes;

H.R. 5626. An act to make technical corrections in the Federal Employees' Retirement Act of 1986, and for other purposes; and

H.R. 5635. An act to amend the Farm Credit Act of 1971 regarding interest rates charged by Farm Credit System institutions and financial operations of such institutions.

MEASURES REFERRED

The following bills read the first and second times by unanimous consent, and referred as indicated:

H.R. 3951. An act to designate the building which will house the United States District Court for the Eastern District of Texas in Lufkin, Texas, as the "Ward B. Burke United States Courthouse"; to the Committee on Environment and Public Works.

H.R. 4118. An act to designate the building commonly known as the Old Post Office in Worcester, Massachusetts, as the "Harold D. Donohue Federal Building"; to the Committee on Environment and Public Works.

H.R. 4576. An act to designate the United States Attorney's Building for the Southern District of New York as the "Silvio James Mollo Federal Building"; to the Committee on Environment and Public Works.

H.R. 4731. An act to enhance boating safety by requiring a report relating to the display on gasoline pumps of the type of alcohol, the percentage of each type of alcohol, and the percentage of cosolvents, if any, contained in the gasoline; to amend chapter 131 of title 46, United States Code, relating to recreational boating safety; and for other purposes; to the Committee on Commerce, Science, and Transportation.

H.R. 5151. An act to provide for the consideration under the Color of Title Act of a certain parcel of land in Waynesboro, Mississippi, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 5180. An act to designate the Federal Building at 111 W. Huron Street, Buffalo, New York, as the "Thaddeus J. Dulski Federal Building"; to the Committee on Environment and Public Works.

H.R. 5181. An act to designate the United States Courthouse at 68 Court Street, Buffalo, New York, as the "Michael J. Dillon Memorial United States Courthouse"; to the Committee on Environment and Public Works.

H.R. 5415. An act to designate the United States Courthouse in Aiken, South Carolina, as the "Charles E. Simons, Jr. United States Courthouse"; to the Committee on Environment and Public Works.

H.R. 5446. An act to designate the Federal Building and United State Post Office located at 315 West Allegan Street in Lansing, Michigan, as the "Charles E. Chamberlain Federal Building and United States Post Office; to the Committee on Environment and Public Works.

H.R. 5470. An act to designate the United States Courthouse for the Eastern District of Virginia in Alexandria, Virginia, as the "Albert V. Bryan United States Courthouse"; to the Committee on Environment and Public Works.

H.R. 5570. An act to designate the United States Courthouse and Customhouse at 601 West Broadway, Louisville, Kentucky, as the "Gene Snyder United States Courthouse and Customhouse"; to the Committee on Environment and Public Works.

H.R. 5617. An act to designate the Warren E. Burger Federal Building and United States Courthouse in St. Paul, Minnesota, to name various other Federal buildings and facilities, and for other purposes; to the Committee on Environment and Public Works.

MEASURES PLACED ON THE CALENDAR

The following bill, previously received from the House of Representatives, was read the first and second times by unanimous consent, and placed on the calendar:

H.R. 5595. An act to amend title XVI of the Social Security Act to make necessary improvements in the SSI program with the objective of assuring that such program (including the work incentive provisions in section 1619 of such act) will more realistically and more equitably reflect the needs and circumstances of applicants and recipients thereunder.

The following bill, received today from the House of Representatives, was read the first and second times by unanimous consent, and placed on the calendar:

H.R. 5536. An act to amend title 35 of the United States Code to extend the term of patents for agricultural and chemical products for the period during which they under-went regulatory review.

ENROLLED JOINT RESOLUTIONS PRESENTED

The Secretary of the Senate reported that on today, October 6, 1986, she had presented to the President of the United States the following enrolled joint resolutions:

S.J. Res. 245. Joint resolution designating "National Epidermolysis Bullosa Awareness Week";

S.J. Res. 318. Joint resolution designating November 1986, as "National Diabetes Month";

S.J. Res. 368. Joint resolution to designate the month of October 1986, as "National Spina Bifida Month"; and

S.J. Res. 390. Joint resolution to authorize and request the President to proclaim the week of November 23, 1986, to November 30, 1986, as "American Indian Week".

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. DANFORTH, from the Committee on Commerce, Science, and Transportation, with amendments:

S. 2611. A bill to improve efforts to monitor, assess, and reduce the adverse impacts of driftnets (Rept. No. 99-529).

By Mr. DANFORTH, from the Committee on Commerce, Science, and Transportation, with an amendment in the nature of a substitute:

H.R. 4208. A bill to authorize appropriations for the Coast Guard for fiscal years 1987 and 1988, and for other purposes (Rept. No. 99-530).

By Mr. ANDREWS, from the Select Committee on Indian Affairs, with amendments:

S. 2260. A bill to settle certain claims arising out of activities on the Pine Ridge Indian Reservation (Rept. No. 99-531).

By Mr. ANDREWS, from the Select Committee on Indian Affairs, with an amendment in the nature of a substitute:

S. 2243. A bill to improve the health status of Native Hawaiians, and for other purposes (Rept. No. 99-532).

By Mr. McCLURE, from the Committee on Energy and Natural Resources:

Special Report on Budget Allocations of the Committee on Energy and Natural Resources (Rept. No. 99-533).

ADDITIONAL COSPONSORS

S. 2057

At the request of Mr. HATCH, the name of the Senator from New Mexico [Mr. BINGAMAN] was added as a cosponsor of S. 2057, a bill to establish the President's Council on Health Promotion and Disease Prevention.

S. 2454

At the request of Mr. MURKOWSKI, the names of the Senator from Utah [Mr. GARN], the Senator from Vermont [Mr. LEAHY], and the Senator from Kansas [Mr. DOLE] were added as cosponsors of S. 2454, a bill to repeal section 1631 of the Department of Defense Authorization Act, 1985, relating to the liability of Government contractors for injuries or losses of property arising out of certain atomic weapons testing programs, and for other purposes.

SENATE JOINT RESOLUTION 359

At the request of Mr. NICKLES, the names of the Senator from Florida [Mr. CHILES], and the Senator from Alabama [Mr. HEFLIN] were added as cosponosrs of Senate Joint Resolution 359, a joint resolution to designate March 17, 1987, as "National China-Burma-India Veterans Association Day."

SENATE JOINT RESOLUTION 407

At the request of Mr. CHILES, the names of the Senator from West Virginia [Mr. ROCKEFELLER], the Senator from Vermont [Mr. LEAHY], the Senator from New Jersey [Mr. LAUTENBERG], the Senator from South Carolina [Mr. HOLLINGS], the Senator from Rhode Island [Mr. CHAFEE], and the Senator from Pennsylvania [Mr. SPECTER] were added as cosponsors of Senate Joint Resolution 407, a joint resolution designating November 12, 1986, as "Salute to School Volunteers Day."

SENATE JOINT RESOLUTION 419

At the request of Mr. MOYNIHAN, the names of the Senator from Michigan [Mr. RIEGLE], and the Senator from Michigan [Mr. LEVIN] were added as cosponsors of Senate Joint Resolution 419, a joint resolution to designate December 11, 1986, as "National SEEK and College Discovery Day."

SENATE CONCURRENT RESOLUTION 164

At the request of Mr. D'AMATO, the names of the Senator from New York [Mr. MOYNIHAN], the Senator from Tennessee [Mr. GORE], the Senator from Utah [Mr. HATCH], the Senator from Virginia [Mr. WARNER], and the Senator from Vermont [Mr. LEAHY] were added as cosponsors of Senate Concurrent Resolution 164, a concurrent resolution expressing the sense of the Congress concerning the Soviet Union's continued interference with postal communications between the United States and the Soviet Union.

AMENDMENTS SUBMITTED

STANDARDS AND REGULATIONS FOR GAMING ACTIVITIES ON INDIAN LANDS

ANDREWS AMENDMENT NO. 3226

(Ordered to lie on the table.)

Mr. ANDREWS submitted an amendment intended to be proposed by him to the bill (H.R. 1920) to establish Federal standards and regulations for the conduct of gaming activities on Indian reservations and lands, and for other purposes, as follows:

Strike out all after the enacting clause and substitute in lieu thereof:

INDEX TO BILL

Sec. 1. Title of Act.
Sec. 2. Findings.
Sec. 3. Declaration of Policy.
Sec. 4. Miscellaneous (Lands/IRS).
Sec. 5. National Indian Gaming Commission.
Sec. 6. Powers of the Chairman.
Sec. 7. Powers of the Commission.
Sec. 8. Commission Staffing.
Sec. 9. Commission Access to Information.
Sec. 10. Interim Authority to Regulate Gaming.
Sec. 11. Tribal Gaming Ordinances.
Sec. 12. Management Contracts.
Sec. 13. Review of Existing Ordinances and Contracts.
Sec. 14. Civil Penalties.
Sec. 15. Subpoena and Deposition Authority.
Sec. 16. Investigative Powers.
Sec. 17. Commission Funding.
Sec. 18. Authorization of Appropriations.
Sec. 19. Definitions.
Sec. 20. Dissemination of Information.
Sec. 21. Severability.
Sec. 22. Criminal Penalties.

That this Act may be cited as the "Indian Gaming Regulatory Act".

FINDINGS

SEC. 2. (a) The Congress finds that—

(1) numerous Indian tribes have become engaged in or have licensed gaming activities on Indian lands as a means of generating tribal governmental revenue;

(2) State criminal laws are applicable in Indian country only to the extent that the Congress has provided by legislation that the States, rather than the Federal Government, should exercise jurisdiction over a particular subject matter;

(3) the Federal and tribal governments exercise criminal jurisdiction over crimes committed in Indian country, except in certain situations generally not related to gambling;

(4) Federal law sometimes assimilates the criminal laws of the States when there is no general Federal criminal statute on point;

(5) several Federal courts have held that State criminal laws are assimilated by section 13 of title 18, Unite States Code for enforcement by the Federal Government in Indian country, that State gambling enforcement statues are regulatory laws which are not assimilated by section 13 of title 18, United States Code, or made applicable to Indians or Indian tribes by Pub. L. 83-280; and, consequently, that the Indian tribes have the exclusive right to regulate gaming which is not prohibited by Federal law and which is conducted in a State which does not, as a matter of public policy, prohibit such gaming;

(6) Federal courts have held that section 2103 of the Revised Statutes, as amended, (25 U.S.C. 81) requires Secretarial review of management contracts dealing with Indian gaming, but does not provide standards for approval of such contracts;

(7) existing Federal law does not provide clear standards or regulations for the conduct of gaming on Indian lands; and

(8) a principal goal of Federal Indian policy is to promote tribal economic development, tribal self-sufficiency, and strong tribal government.

DECLARATION OF POLICY

SEC. 3. The purpose of this Act is—

(a) to provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic devel-

opment, self-sufficiency, and strong tribal governments;

(b) to provide a statutory basis for the regulation of gaming by an Indian tribe adequate to shield it from organized crime and other corrupting influences, to ensure that the tribe is the primary beneficiary of the gaming operation, and to assure that gaming is conducted fairly and honestly by both the operator and players; and

(c) to declare that the establishment of independent Federal regulatory authority for gaming on Indian lands, the establishment of Federal standards for gaming on Indian lands, and the establishment of a National Indian Gaming Commission are necessary to meet Congressional concerns regarding gaming and to protect such gaming as a means of generating tribal revenue.

MISCELLANEOUS

SEC. 4. (a) NEWLY ACQUIRED LANDS.—Except as provided in subsection (b), gaming regulated by this Act shall be unlawful on lands acquired by the Secretary under other authority in trust for the benefit of an Indian tribe after the date of enactment of this Act—

(1) if such lands are located outside the boundaries of such tribe's reservation; or

(2) with respect to lands in Oklahoma, if such lands are outside of the boundaries of such tribe's former reservation, as defined by the Secretary, or are not contiguous to other land held in trust or restricted status by the United States for such tribe in Oklahoma; or

(3) outside of Oklahoma, where there is no current reservation, if such lands are outside of such tribe's last recognized reservation within the State or States within which such tribe is presently located.

(b) Subsection (a) shall not apply if—

(1) the Indian tribe requesting the acquisition of such lands in trust obtains the concurrence of the Governor of the State, the State legislature, and the governing bodies of the county and municipality in which such lands are located;

(2) with respect to Class II gaming only, to prevent the Secretary of the Interior, upon the request of the Miccosukee Tribe of Indians of Florida, from accepting from the Tribe, in trust and as an Indian Reservation for the Tribe under sections 5 and 7 of the Act of June 18, 1934 (48 Stat. 985, 986), all of the Tribe's interest in approximately 25 contriguous acres of land more or less in Dade County, Flordia, adjoining State Road Number 27 (also known as Krome Avenue) and the Tamiami Canal. Such lands shall be accepted by the Secretary subject to existing encumbrances and rights. A legal description of the land taken into trust shall be published by the Secretary in the Federal Register; and

(3) To lands taken into trust as part of a settlement of a land claim or the initial reservation of a tribe acknowledged by the Secretary under the Federal acknowledgement process.

(c) Nothing in this section shall affect or diminish the authority and responsibility of the Secretary to take land into trust.

(d) Nothing in this Act may be construed to permit gaming activities, except to the extent permitted under the laws of the State of Rhode Island, on lands acquired by the Narragansett Indian Tribe under the Rhode Island Indian Claims Settlement Act (Public Law 95-395), or on any lands held by or on behalf of such Tribe.

(e) APPLICATION OF IRS CODE.—Provisions of the Internal Revenue Code of 1954, as amended, concerning the taxation and the reporting and withholding of taxes pursuant to the operation of gambling or wagering operation shall apply to the operations in accord with the Indian Gaming Regulatory Act the same as they apply to State operations

NATIONAL INDIAN GAMING COMMISSION

SEC. 5. (a) There is established within the Department of the Interior an independent Commission to be known as the National Indian Gaming Commission.

(b)(1) The Commission shall be composed of five (5) full-time members who shall be appointed as follows:

(A) A Chairman, who shall be appointed by the President with the advice and consent of the Senate;

(B) Four associate members who shall be appointed by the Secretary of the Interior as follows—

(i) The Department of Justice shall conduct a background investigation on any person considered by the Secretary for appointment as an associate member of the Commission; and

(ii) The Secretary shall publish in the Federal Register the name and other information the Secretary deems pertinent regarding a nominee for associate membership on the Commission and shall allow a period of not less than 30 days for receipt of public comment.

(2) Not more than three members of the Commission shall be of the same political party. At least two members of the Commission shall be enrolled members of a federally recognized tribe.

(3) The members of the Commission shall be appointed for three year terms, except that the initial terms of the Commission shall be staggered so that—

(A) three members, including the Chairman, shall serve terms of three years; and

(B) two members shall serve terms of two years.

(4) No individual shall be eligible for any appointment to, or to continue service on, the Commission, who—

(A) has been convicted of a felony or gaming offense;

(B) has any financial interest in, or management responsibility for, any gaming activity regulated pursuant to this Act; and

(C) has a financial interest in, or management responsibility for, any management contract approved pursuant to section 12 of this Act.

(5) During this term of office, a Commissioner may only be removed for neglect of duty, or malfeasance in office, or for other good cause shown.

(c) Vacancies occurring on the Commission shall be filled in the same manner as the original appointment. A member may serve after the expiration of his term until his successor has been appointed, unless he has been removed for cause under subsection (b)(5).

(d) Three members of the Commission, at least one of which is the Chairman or Vice-Chairman, shall constitute a quorum.

(e) The Commission shall select, by majority vote, one of the members to serve as Vice-Chairman who shall serve as Chairman during meetings of the Commission in the absence of the Chairman. .

(f) The Commission shall meet at the call of the Chairman or a majority of its members.

(g)(1) the Chairman of the Commission shall be paid at a rate equal to that of level IV of the Executive Schedule (5 U.S.C. 5316).

(2) The other members of the Commission shall each be paid at a rate equal to that of level V of the Executive Schedule (5 U.S.C. 5316).

(3) All members shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties.

POWERS OF THE CHAIRMAN

SEC. 6. (a) The Chairman shall have power, subject to the approval of the Commission, to—

(1) appoint a General Counsel of the Commission;

(2) issue orders of temporary closure of gaming activities as provided in section 14(b); and

(3) select, appoint, and supervise the staff of the Commission as provided in section 8 of this Act.

(b) The Chairman shall have power, subject to an appeal to the Commission, to—

(1) levy and collect civil fines as provided in section 14(a);

(2) approve tribal ordinances or resolutions regulating Class II gaming as provided in section 11(b); and

(3) approve management contracts for Class II gaming as provided in section 12.

(c) The Chairman shall have such other powers as may be delegated by the Commission.

(d) Decisions under subsections (a) and (b) of this section shall be final agency decisions for purposes of appeal to the appropriate Federal district court pursuant to the Administrative Procedures Act, title 5, United States Code.

POWERS OF THE COMMISSION

SEC. 7. (a) The Commission shall have specific power, not subject to delegation—

(1) upon the recommendation of the Chairman, to approve the annual budget of the Commission as provided in section 17;

(2) to adopt regulations for the assessment and collection of civil fines as provided in section 14(a);

(3) by a vote of not less than three members, to adopt the annual assessments as provided in section 17;

(4) by a vote of not less than three members, to authorize the Chairman to issue subpoenas as provided in section 15; and

(5) by a vote of not less than three members and after a full hearing, to make permanent a temporary order of the Chairman closing a gaming activity as provided in section 14(b).

(b) The Commission shall have power—

(1) to monitor Indian gaming activities on a continuing basis;

(2) to inspect and examine all premises where Indian gaming is conducted;

(3) to conduct or cause to be conducted such background investigations as may be necessary;

(4) to demand access to and inspect, examine, photocopy, and audit all papers, books, and records respecting gross income of a gaming activity and all other matters necessary to the enforcement of this Act;

(5) to use the United States mail in the same manner and under the same conditions as other departments and agencies of the United States;

(6) to procure supplies, services, and property by contract in accordance with applicable Federal laws and regulations;

(7) to enter into contracts with Federal, State, tribal and private entities for activities necessary to the discharge of duties of the Commission and, to the extent feasible,

contract the enforcement of the Commission's regulations with the tribes;

(8) to hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission deems appropriate;

(9) to administer oaths or affirmations to witnesses appearing before the Commission; and

(10) to promulgate such regulations and guidelines as it deems appropriate to implement the provisions of this Act.

(c) The Commission shall submit a report with minority views, if any, to the Congress on December 31, 1988, and every two years thereafter. The report shall include information on—

(1) whether the associate commissioners should continue as full or part-time officials;

(2) funding, including income and expenses, of the Commission;

(3) recommendations for amendments to the Act; and

(4) any other matter deemed appropriate by the Commission.

COMMISSION STAFFING

SEC. 8. (a) The Chairman, with the approval of the Commission, shall appoint a General Counsel to the Commission who shall have a background in Indian affairs. The General Counsel shall be paid at the annual rate of basic pay payable for GS-18 of the General Schedule (5 U.S.C. 5332).

(b) The Chairman shall appoint other staff on the Commission without regard to the provisions of title 5, United States Code, governing appointments in the competitive service. Such staff shall be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no individual so appointed may receive pay in excess of the annual rate of basic pay payable for GS-17 of the General Schedule under section 5332 of that title.

(c) The Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, but at rates for individuals not to exceed the daily equivalent of the maximum annual rate of basic pay payable for GS-18 of the General Schedule.

(d) Upon the request of the Chairman, the head of any Federal agency is authorized to detail any of the personnel of such agency to the Commission to assist the Commission in carrying out its duties under this Act, unless otherwise prohibited by law.

(e) The Secretary or Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

COMMISSION—ACCESS TO INFORMATION

SEC. 9. The Commission may secure directly from any department or agency of the United States information necessary to enable it to carry out this Act. Upon the request of the Chairman, the head of such department or agency shall furnish such information to the Commission, unless otherwise prohibited by law.

INTERIM AUTHORITY TO REGULATE GAMING

SEC. 10. The Secretary shall promptly provide staff and support assistance to provide interim regulation of and orderly transition until such time as the Commission is appointed and can become organized.

TRIBAL GAMING ORDINANCES

SEC. 11. (a)(1) Class I gaming is within the exclusive jurisdiction of the Indian tribes and shall not be subject to the provisions of this Act.

(2) Class II gaming shall be within the jurisdiction of the Indian tribes, subject to the provisions of this Act, where such Indian gaming is located within a State that permits such gaming for any purpose by any person, organization or entity (and such gaming is not otherwise prohibited by federal law).

(b)(1) An Indian tribe may engage in, or license and regulate, Class II gaming on Indian lands within such tribe's jurisdiction, if the governing body of the tribe adopts an ordinance or resolution which is approved by the Chairman pursuant to this Act. A license shall be required for each place, facility, or location.

(2) The Chairman shall approve any tribal ordinance or resolution concerning the conduct, or regulation of Class II gaming on the Indian lands of such tribe if such ordinance or resolution provides that—

(A) except as provided in paragraph (3), the Indian tribe itself shall have the sole proprietary interest and responsibility for the conduct of any gaming activity;

(B) net revenues from any tribal gaming are not to be used for purposes other than—

(i) to fund tribal government operations or programs;

(ii) to provide for the general welfare of the Indian tribe and its members;

(iii) to promote tribal economic development;

(iv) to donate to charitable organizations; or

(v) to help fund operations of local government agencies;

Provided, That, if such net revenues are used for per capita payments to tribal members, those payments are subject to Federal tax.

Provided further, That per capita payments shall not be made unless the tribe has prepared a plan to allocate revenues to uses authorized by this clause and the plan is approved by the Secretary as adequate, particularly with respect to (i) and (iii) of this clause.

(C) annual outside independent audits of the gaming will be obtained by the Indian tribe and made available to the Commission;

(D) all contracts for supplies, services, or concessions for a contract amount in excess of $25,000 annually, except contracts for professional legal or accounting services, relating to such gaming shall be subject to such independent audits; and

(E) the construction and maintenance of the gaming facility, and the operation of that gaming is conducted in a manner which adequately protects the environment and the public health and safety.

(F) an adequate system to ensure that background investigations are conducted on the primary management officials and key employees of the gaming enterprise and that oversight of such officials and their management is conducted on an ongoing basis. Such system shall include:

(i) Tribal licenses for primary management officials and key employees of the gaming enterprise;

(ii) A standard whereby any person whose prior activities, criminal record, if any, or reputation, habits and associations pose a threat to the public interest or to the effective regulation of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming shall not be eligible for employment;

(iii) Notification to the Commission by the tribe before the issuance of such license of the results of such background check. The Commission shall consult with appropriate law enforcement officials and shall have 30 days to notify the tribe of any objections to the issuance of a license; and

(iv) If after the issuance of a license, reliable information is received indicating that a primary management official or key employee does not meet the standard in subparagraph (ii), the tribe shall suspend such license and after notice and hearing may revoke such license.

(G) card games may not exceed the same nature and scope, as certified by the Secretary, as many tribally operated or regulated card games which are operative within such tribe's state on September 1, 1986, or may in the future be authorized by such state's law.

(3)(A) a tribal ordinance or resolution may provide for the licensing or regulation of Class II gaming activities owned by individuals or entities other than the Indian tribe, except that the tribal licensing requirements shall be at least as restrictive as those established by State law governing similar gaming within the jurisdiction of the State within which such tribe is located. No individual or entity, other than the tribe, shall be eligible to receive a tribal license to own a Class II gaming activity within the tribe's jurisdiction if such individual or entity would not be eligible to receive a State license to conduct the same activity within the jurisdiction of the State.

(B) The provisions of clause (A) of this paragraph and the provisions of subsection (b)(2) (A) and (B) of this section shall not bar the continued operation of an individually owned Class II gaming operation if—

(i) on September 1, 1986, such gaming operation was licensed and regulated by a tribe pursuant to an ordinance reviewed or approved by the Secretary, and such gaming operation was in operation on that date;

(ii) the exemption from the application of this subsection may not be transferred to any person or entity and shall remain in effect only so long as such gaming activity remains within the same nature and scope as operated on the date of enactment of this Act;

(iii) that within sixty days of the date of enactment of this Act, the Secretary shall prepare a list of each such individually owned gaming operation and shall publish such list in the Federal Register.

(c)(1) Except as provided in paragraph (2) of this subsection, Class III gaming shall be unlawful on any Indian lands under section 1166 of title 18, United States Code.

(2)(A) A gaming activity on Indian lands that is otherwise legal within the state where such lands are located may be exempt from the operation of paragraph (1) of this subsection where the Indian tribe requests the Secretary to consent to the transfer of jurisdiction over the proposed gaming enterprise to the state within which such gaming enterprise is to be located and the Secretary so consents. The Secretary shall approve such jurisdiction transfer where the Commission certifies—

(i) that the tribe's authorizing resolution or ordinance conforms to the standards contained in Section 11(b)(2)(A) (without reference to paragraph (3)), (B), (C), (D), and (E);

(ii) that any management contract conforms to section 12; and

(iii) that the state within which such gaming enterprise is proposed has agreed to such jurisdiction transfer. The Secretary shall cause to be published in the Federal Register a notice of consent to the jurisdic-

tion transfer. Such transfer shall be effective 60 days after publication and shall terminate as of the date such gaming enterprise ceases to operate; Provided, however, that in the event of a cessation of operation such transfer of jurisdiction shall remain in full force and effect as to any activity which occurs prior to such cessation. In accordance with the provisions of section 22.(d) prosecution and enforcement pursuant to this subsection shall be within the appropriate courts of the respective state.

(B) The provisions of section 5 of the Act of January 2, 1951 (64 Stat. 1135; 5 U.S.C. 1175) shall not apply to any gaming conducted under this paragraph.

(C) For purposes of this subsection, any regulation or authority exercised by a state under this subsection, including issuance of a license, shall be exercised in the same manner and to the same extent as it is exercised on non-Indian lands within the state. For purposes of this subsection, an Indian tribe shall be considered to be a person as defined in section 1 of title 1, United States Code, and shall have the same rights and remedies as does any person or citizen of the United States, and any state or Federal court of competent jurisdiction shall have jurisdiction and authority to issue such orders as may be necessary to enforce the rights granted under this subsection.

(d) Not later than ninety (90) days after the submission of any tribal gaming ordinance or resolution, the Chairman shall approve such ordinance or resolution if it meets the requirements of this section. Any such ordinance or resolution not acted upon at the end of that ninety (90) day period shall be deemed to have been approved by the Chairman, except as such ordinance or resolution may be inconsistent with the provisions of this Act.

MANAGEMENT CONTRACTS

SEC. 12. (a) Subject to the approval of the Chairman, an Indian tribe may enter into a management contract for the operation and management of a Class II gaming activity, except that, before approving such contract, the Chairman shall require and obtain the following information:

(1) the name, address, and other additional pertinent background information on each person or entity (including individuals comprising such entity) having a financial interest in, or management for, such contract, or, in the case of a corporation, those individuals who serve on the Board of Directors of such corporation and each of its stockholders who hold (directly or indirectly) ten (10) per centum or more of its issued and outstanding stock;

(2) a description of any previous experience which each person listed pursuant to paragraph (1) has had with other gaming contracts with Indian tribes or with the gaming industry generally, including specifically the name and address of any licensing or regulatory agency with which such person has had contact relating to gaming;

(3) a complete financial statement of each person listed pursuant to paragraph (1); and

(4) Any person listed pursuant to paragraph (1) shall be required to respond to such written or oral questions that the Chairman may propound in accordance with his responsibilities under this section.

(b) Any management contract entered into pursuant to this section shall specifically provide—

(1) that adequate accounting procedures are maintained and that verifiable financial reports are prepared by or provided to the tribal governing body on a monthly basis;

(2) that appropriate tribal officials shall have reasonable access to the daily operations of the gaming and shall have the right to verify the daily gross and income made from any such tribal gaming activity;

(3) for a minimum guaranteed payment to the Indian tribe that has preference over the retirement of development and construction costs;

(4) for an agreed ceiling for the repayment of development and construction costs;

(5) that the term of the contract shall not exceed seven years; and

(6) for grounds and mechanisms for terminating such contract: *Provided*, That contract termination shall not require the approval of the Commission.

(c) The Chairman may approve a management contract providing for a fee based upon a percentage of the net revenues of a tribal gaming activity if he determines that such percentage fee is reasonable in light of surrounding circumstances, but in no event shall such fee exceed 40 per centum of the net revenues.

(d) Not later than one hundred and twenty days after the submission of a contract, the Chairman shall approve or disapprove such contract on its merits. Any such contract not acted upon at the end of such time shall be deemed to have been approved by the Chairman.

(e) The Chairman shall not approve any contract where he determines that:

(1) any person listed pursuant to subsection (a)(1) of this section—

(A) is an elected member of the governing body of the Indian tribe which is the party to the management contract;

(B) has been or subsequently is convicted of any felony or gaming offense;

(C) has knowingly and willfully provided materially important false statements or information to the Commission or the tribe pursuant to this Act or has refused to respond to questions propounded pursuant to subsection (a)(4); or

(D) has been determined to be a person whose prior activities, criminal record if any, or reputation, habits, and associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming or the carrying on of the business and financial arrangements incidental thereto;

(2) the management contractor has, or has attempted to, unduly interfere or influence for its gain or advantage any decision or process or tribal government relating to the gaming activity;

(3) the management contractor has deliberately or substantially failed to comply with the terms of the management contract or the tribal gaming ordinance or resolution adopted and approved pursuant to this Act; or

(4) a trustee, exercising the skill and diligence that a trustee is commonly held to, would not approve the contract.

(f) The Chairman, after notice and hearing, shall have the authority to require appropriate contract modifications or may void any contract if he subsequently determines that any of the provisions of this section have been violated.

(g) No management contract for the operation and management of a gaming activity regulated by this Act shall transfer or, in any other manner, convey any interest in land or other real property, unless specific statutory authority exists and unless clearly specified in writing in said contract.

(h) The authority of the Secretary under Section 2103 of the Revised Statutes, as amended, (25 U.S.C. 81) relating to management contracts regulated pursuant to this Act, is delegated to the Commission.

(i) The Commission shall require the potential contractor to pay a fee which, in the opinion of the Commission, will be equal to the cost of the investigation necessary to reach a determination required in subsection (e)(1)(D) of this section.

REVIEW OF EXISTING ORDINANCES AND CONTRACTS

SEC. 13. (a) As soon as practicable after the organization of the Commission, the Chairman shall notify each Indian tribe or management contractor who, prior to the enactment of this Act, adopted an ordinance or resolution authorizing Class II gaming or entered into a management contract, that such ordinance, resolution, or contract must be submitted for his review within sixty days of such notification.

(b)(1) Within ninety days after the submission of an ordinance or resolution authorizing Class II gaming pursuant to subsection (a), the Chairman shall review such ordinance or resolution to determine if it conforms to the requirements of section 11(b) of this Act.

(2) If he determines that such ordinance or resolution conforms to section 11(b), he shall approve it.

(3) If he determines that such ordinance or resolution does not conform to the requirements of section 11(b), he shall provide written notification of necessary modifications to the Indian tribe which shall have not more than one hundred and twenty days to come into compliance.

(c)(1) Within one hundred and eighty days after the submission of a management contract pursuant to subsection (a), the Chairman shall subject such contract to the requirements and process of section 12 of this Act.

(2) If he determines, at the end of such period, that such contract and the management contractor meet the requirements of section 12, he shall approve it.

(3) If he determines, at the end of such period, that such contract and/or the management contractor do not meet the requirements of section 12, he shall provide written notification to the parties to such contract of modifications necessary to come into compliance and the parties shall have not more than one hundred and twenty days to come into compliance.

(4) Where a management contract submitted pursuant to subsection (a), including a management contract utilizing a lease, has been previously approved by the Secretary or his representative, said contract shall be deemed in compliance thereof and no further action shall be required.

CIVIL PENALTIES

SEC. 14. (a)(1) Subject to such regulations as may be adopted by the Commission, the Chairman shall have authority to levy and collect appropriate civil fines, not to exceed $25,000 per violation, against the tribal operator of an Indian game or a management contractor engaged in gaming for any violation of any provision of this Act or any regulation adopted by the Commission pursuant to this Act. Fines collected pursuant to this section shall be utilized by the Commission to defray its operating expenses. Tribal regulations, ordinances, or resolutions, approved under Sections 11 and 13 of this Act, are adopted as Commission regulations for purposes of this section.

(2) The Commission shall, by regulation, provide an opportunity for an appeal and hearing before the Commission on fines levied and collected by the Chairman.

(3) Whenever the Commission has reason to believe that the tribal operator of an Indian game or a management contractor engaged in activities regulated by this Act or regulations thereunder has violated any provision of this Act or regulations thereunder that may result in the imposition of a fine, the permanent closure of such game, or the modification or termination of any management contract, the Commission shall provide such tribal operator or management contractor with a written complaint stating the acts or omissions which form the basis for such belief and the action or choice of action being considered by the Commission. The allegation shall be set forth in ordinary and concise language and must specify the statutory or regulatory provision(s) alleged to have been violated, but may not consist merely of allegations stated in statutory or regulatory language.

(b)(1) The Chairman shall have power to order temporary closure of an Indian game for substantial violation of the provisions of this Act or regulations adopted by the Commission pursuant to this Act.

(2) Not later than thirty days after the issuance by the Chairman of an order of temporary closure, the Indian tribe or management contractor involved shall have a right to a hearing before the Commission to determine whether such order should be made permanent or dissolved. The Commission may, by a vote of not less than three of its members, order a permanent closure of the gaming operation after such hearing.

(c) A decision of the Commission to give final approval of a fine levied by the Chairman or to order a permanent closure pursuant to this section shall be appealable to the appropriate Federal district court pursuant to the Administrative Procedures Act, title 5, United States Code.

SUBPOENA AND DEPOSITION AUTHORITY

SEC. 15. (a) The Commission shall have the power to require by subpoena the attendance and testimony of witnesses and the production of all books, papers, and documents relating to any matter under consideration of investigation. Witnesses so summoned shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

(b) The attendance of witnesses and the production of books, papers, and documents, may be required for any place in the United States at any designated place of hearing. The Commission may request the Secretary to request the Attorney General to bring an action to enforce any subpoena under this section.

(c) Any court of the United States within the jurisdiction of which an inquiry is carried on may, in case of contumacy or refusal to obey a subpoena to any person, issue an order requiring such person to appear before the Commission (and produce books, papers, or documents as so ordered) and give evidence concerning the matter in question and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(d) A Commission may order testimony to be taken by deposition in any proceeding or investigation pending before the Commission at any stage of such proceeding or investigation. Such depositions may be taken before any person designated by the Commission and having power to administer oaths. Reasonable notice must first be given to the Commission in writing by the party or his attorney proposing to take such deposition, and, in cases in which a Commissioner proposes to take a deposition, reasonable notice must be given. The notice shall state the name of the witness and the time and place of the taking of his deposition. Any person may be compelled to appear and depose, and to produce books, papers, or documents, in the same manner as witnesses may be compelled to appear and testify and produce like documentary evidence before the Commission, as hereinbefore provided.

(e) Every person deposing as herein provided shall be cautioned and shall be required to swear (or affirm, if he so requests) to testify to the whole truth, and shall be carefully examined. His testimony shall be reduced to writing by the person taking the deposition, or under his direction, and shall, after it has been reduced to writing, be subscribed by the deponent. All depositions shall be promptly filed with the Commission.

(f) Witnesses whose depositions are taken as authorized in this chapter, and the persons taking the same, shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

INVESTIGATIVE POWERS

SEC. 16. (a) Except as provided in subsection (b), the Commission shall preserve any and all information received pursuant to this Act as confidential pursuant to the provisions of paragraphs (4) and (7) of section 552(b) of title 5, United States Code.

(b) The Commission may, when such information indicates a violation of Federal, State, or tribal statutes, ordinances, or resolutions, provide such information, to the appropriate law enforcement officials.

(c) The Attorney General of the United States is authorized to investigate activities associated with gaming authorized by this Act which may be a violation of Federal law, including but not limited to section 13 of title 18, United States Code (Assimilative Crimes Act), section 1152 of title 18 (General Crimes Act), section 1153 of title 18 (Major Crimes Act), and section 1163 of title 18 relating to embezzlement and theft from tribal organizations. The Attorney General is authorized to enforce such laws, or assist in the enforcement of such laws, upon evidence of violation as a matter of Federal law, or upon the referral of information by the Commission pursuant to section 16(b) of this Act.

COMMISSION FUNDING

SEC. 17. (a)(1) Not less than three-quarters of the annual budget of the Commission shall be derived from an assessment of not to exceed 2½ per centum of the gross revenues from each Indian gaming activity regulated pursuant to this Act.

(2) The Commission, by a vote of not less than three of its members, shall annually adopt the rate of assessment authorized by this section which shall be uniformly applied to all gaming activities and which shall be payable on a quarterly basis.

(3) Failure to pay the assessment shall, subject to the regulations of the Commission, be grounds for revocation of any approval or license of the Commission required under this Act for the operation of tribal gaming.

(4) To the extent that funds derived from such assessments are not expended or committed at the end of the budget year, such surplus funds shall be credited to each gaming activity on a pro rata basis against the assessment for the succeeding year.

(5) For purposes of this section, gross revenues shall constitute the total wagered moneys less any amounts paid out as prizes or paid for prizes awarded.

(b)(1) The Commission, in coordination with the Secretary and in conjunction with the fiscal cycle of the United States, shall adopt an annual budget for the expenses and operation of the Commission.

(2) The budget of the Commission may include a request for appropriations, as authorized by section 18, in an amount not to exceed one-third the amount of funds derived from assessments authorized by subsection (a) for the fiscal year preceding the fiscal year for which the appropriations request is made.

(3) The request for appropriations pursuant to section 16 shall be subject to the approval of the Secretary and shall be included as a part of the budget request of the Department of the Interior.

AUTHORIZATION OF APPROPRIATIONS

SEC. 18. (a) Subject to the provisions of section 17, there is hereby authorized to be appropriated such sums as may be necessary for the operation of the Commission.

(b) Notwithstanding the provisions of section 17, there is hereby authorized to be appropriated not to exceed $2,000,000 to fund the operation of the Commission for the first fiscal year after the date of enactment of this Act.

DEFINITIONS

SEC. 19. For the purposes of this Act—0

(1) "Attorney General" means the Attorney General of the United States;

(2) "Chairman" means the Chairman of the National Indian Gaming Commission;

(3) "Commission" means the National Indian Gaming Commission established pursuant to section 5 of this Act;

(4) "Indian lands" means—

(i) all lands within the limits of any Indian reservation; and

(ii) any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to restriction by the United States against alienation and over which an Indian tribe exercises governmental power;

(5) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians which is recognized as eligible by the Secretary for the special programs and services provided by the United States to Indians because of their status as Indians and is recognized as possessing powers of self-government;

(6) "gaming" means to deal, operate, carry-on, conduct, or maintain for play any banking or percentage game of chance played for money, property, credit, or any representative value, and shall consist of—

(A) "Class I gaming" which shall include social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as a part of or in connection with tribal ceremonies or celebrations;

(B) "Class II gaming" which shall include card games and the games of chance commonly known as bingo or lotto which are played for prizes, including monetary prizes, with cards bearing numbers or other designations, the holder covering such numbers or designations as objects, similarly numbered or designated, are drawn or electronically determined and the game being won by the person first covering a previously designated arrangement of numbers or designations on such card, and shall also in-

clude, where otherwise legal, pull-tabs, punch boards, tip jars, and other similar games. Card games on Indian lands in a state that has a legalized commercial gaming industry and comprehensively regulates such commercial gaming including casino gaming such as roulette and slot machines, shall be subject to the provisions of Section 11(c) of this Act; and

(C) "Class III gaming" which shall include all other forms of gaming not defined in subparagraphs (A) and (B) of this paragraph;

(6) "net revenues" means gross revenues of an Indian gaming activity less amounts paid out as, or paid for, prizes and total operating expenses including management fees; and

(7) "Secretary" means the Secretary of the Interior.

DISSEMINATION OF INFORMATION

SEC. 20. Consistent with the requirements of this Act, section 1307 of title 18, United States Code, shall apply to any gaming conducted by a tribe pursuant to this Act.

SEVERABILITY

SEC. 21. In the event that any section or provision of this Act is held invalid, it is the intent of Congress that the remaining sections or provisions of this Act shall continue in full force and effect.

CRIMINAL PENALTIES

SEC. 22. Chapter 53 of title 18 of the United States Code is amended by adding at the end thereof new sections 1166 through 1168 to read as follows:

"SEC. 1166. GAMBLING IN INDIAN COUNTRY.

"(a) Except as provided in subsection (c), all State laws pertaining to the licensing, regulation, or prohibition of gambling, including but not limited to criminal sanctions applicable thereto, shall apply on Indian lands in the same manner and to the same extent as such laws apply elsewhere in the State.

"(b) Whoever on Indian lands is guilty of any act or omission involving gambling, whether or not conducted or sanctioned by an Indian tribe, which, although not made punishable by any enactment of Congress, would be punishable if committed or omitted within the jurisdiction of the State in which the act or omission occurred, under the laws governing the licensing, regulation, or prohibition of gambling in force at the time of such act or omission, shall be guilty of a like offense and subject to a like punishment.

"(c) For the purpose of this section, the term "gambling" does not include gaming authorized by this Act and approved by the National Indian Gaming Commission.

"(d) It is intent of Congress that criminal prosecutions of violations of State gambling laws applicable under this Act on Indian lands should be undertaken by the United States, unless a tribe pursuant to section 11(c), or otherwise has consented to the transfer of state criminal jurisdiction with respect to gambling on the tribe's lands.

"SEC. 1167. THEFT FROM GAMING ESTABLISHMENTS ON INDIAN LANDS.

"(a) Whoever embezzles, abstracts, purloins, willfully misapplies, or takes and carries away with intent to steal, any moneys, funds, or other property of a value of $1,000 or less belonging to an establishment approved by the National Indian Gaming Commission shall be fined not more than $100,000 or be imprisoned for not more than one year, or both.

"(b) Whoever embezzles, abstracts, purloins, willfully misapplies, or takes and carries away with intent to steal, any moneys, funds, or other property of a value in excess of $1,000 belonging to a gaming establishment approved by the National Gaming Commission shall be fined not more than $250,000, or imprisoned for not more than ten years, or both.

"SEC. 1168. THEFT BY OFFICERS OR EMPLOYEES OF GAMING ESTABLISHMENTS ON INDIAN LANDS.

"(a) Whoever, being an officer, employee, or individual licensee of a gaming establishment approved by the National Indian Gaming Commission, embezzles, abstracts, purloins, willfully misapplies, or takes and carries away with intent to steal, any moneys, funds, assets, or other property of such establishment of a value of $1,000 or less shall be fined not more than $250,000 and be imprisoned for not more than five years, or both;

"(b) Whoever, being an officer, employee, or individual licensee of a gaming establishment licensed by the National Indian Gaming Commission, embezzles, abstracts, purloins, willfully misapplies, or takes and carries away with intent to steal, any moneys, funds, assets, or other property of such bingo establishment of a value in excess of $1,000 shall be fined not more than $1,000,000 or imprisoned for not more than twenty years, or both.".

SEC. 23. The analysis of chapter 53 of title 18 of the United States Code is amended by adding at the end thereof the following:

"1166. Gambling in Indian country.
"1167. Theft from gaming establishments on Indian lands.
"1168. Theft by officers or employees of gaming establishments on Indian lands."

● Mr. ANDREWS. Mr. President, today I am offering an amendment in the nature of a substitute to H.R. 1920, as reported out of the Select Committee on Indian Affairs. I intend to offer this substitute bill when H.R. 1920 is brought up for consideration in the Senate.

Mr. President, this substitute bill contains a number of amendments of a technical and clarifying nature and also amendments to address concerns which have been expressed regarding the bill. Among other changes, the substitute bill alters the manner in which the members of the National Indian Gaming Commission are appointed; it tightens the provisions for tribal ordinances providing for background checks and tribal licensing of primary management officials and key employees of tribal licensing of primary management officials and key employees of tribal gaming enterprises; with respect to class II games, it makes clear that only those games that are otherwise legal within a State shall fall within the definition of a class II game; it makes clear that the transfer of jurisdiction to the State contemplated for class III gaming includes the authority for the State to prosecute violations of the State's laws in State courts; it provides a substitute provision for judicial review for denial of a license to a tribe by a State for a class III game which is premised upon 14th amendment rights to equal protection; and it requires the Commission to file with the Congress periodic reports which shall include, among other things, recommendations on whether the Commission should continue as a full-time Commission or should have only part-time associate members, and reports on funding of the Commission.

I would like to state that H.R. 1920 as reported by the Select Committee on Indian Affairs, and as provided in the substitute bill I am offering today, is a tough law and order bill, but one which is sensitive to the rights of Indian tribes as declared by statutes and judicial decisions. The bill requires tribes to adopt ordinance governing various aspects of a gaming enterprise which must be approved by the Commission before a tribe may license a game, tribal ordinances are adopted for Federal enforcement purposes, it provides for a system of civil fines and closure authority to assure compliance with the Federal and tribal regulations and ordinances. The Commission is vested with strong investigatory authority and with authority to levy fines, close games, and approve or reject tribal gaming ordinances and contracts related to the games. The Commission has the authority to terminate or modify contracts, levy assessments on the games to finance the costs of the Commission, conduct audits, and enter and inspect any Indian gaming enterprise.

I believe that H.R. 1920 provides a firm framework for the regulation of gaming in Indian country and I urge its enactment in this Congress.●

LIABILITY OF CERTAIN DEFENSE CONTRACTORS

McCONNELL AMENDMENT NO. 3227

(Ordered to lie on the table.)

Mr. McCONNELL proposed an amendment to the bill (S. 2454) to repeal section 1631 of the Department of Defense Authorization Act, 1985, relating to the liability of Government contractors for injuries or losses of property arising out of certain atomic weapons testing programs; and for other purposes; as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

That (a) section 1631 of the Department of Defense Authorization Act, 1985 (Public Law 98-525; 98 Stat. 2646) is repealed effective on October 19, 1984.

(b) The period during which section 1631 of the Department of Defense Authorization Act, 1985, was in effect shall not be taken into account in computing the period provided in any Federal or State statute of limitations applicable to any civil action for an injury, loss of property, personal injury, or death described in subsection (a)(1) of such section.

(b)(1) A contractor shall not be found liable for damages in any action subject to this Act unless (A) the contractor supplied a product to an agency or instrumentality of the United States which, when it left the control of the contractor, deviated in a material way from the design specifications or formula of the contractor or from otherwise identical units of the product manufactured by the contractor to the same specifications or formula, and such deviation was the proximate cause of the damages sought; or (B) the contractor was negligent, and such negligence was the proximate cause of the damages sought.

(2)(A) Except as provided in subparagraph (B), joint and several liability may not be applied in any action subject to this Act. A contractor found liable for damages in any such action may be found liable, if at all, only for those damages directly attributable to the contractor's pro-rata share of fault or responsibility for the injury, and may not be found liable for damages attributable to the pro-rata share of fault or responsibility of any other person (without regard to whether that person is a party to the action) for the injury, including any person bringing the action.

(B) This subsection shall not apply as between persons acting in concert where the concerted action proximately caused the injury for which one or more of such persons are found liable for damages. As used in this subsection, "concerted action" or "acting in concert" means the conscious acting together in a common scheme or plan, of two or more persons, intended to cause a tortious injury.

(3)(A) In any action subject to this Act in which damages are awarded, the amount and timing of damages for future economic loss shall be determined by the court. If such damages exceed $100,000, no contractor shall be required to pay such damages in a single, lump-sum payment, but shall be permitted to pay such damages periodically based on the determination of the period of time during which the damages will be incurred.

(B) The court may require such contractor to purchase an annuity making such periodic payments if the court finds a reasonable basis for concluding that the contractor may not make the periodic payments.

(C) In the absense of fraud, the judgment of the court awarding such periodic payments may not be reopened at any time to contest, amend, or modify the schedule or amount of the payments.

(4)(A) Any award of damages to a person in any action subject to this Act shall be reduced by the court by the amount of any past or future payment or benefit covered by this subsection which the person has received or for which the person is eligible on account of the same personal injury or death for which such damages are awarded.

(B) As used in this subsection, "payment or benefit covered by this subsection" means—

(i) any payment or benefit (other than a workers' compensation benefit) by or paid for in whole or in part by any agency or instrumentality of the United States, a State or a local government, but does not include such payment or benefit that is (or by law is required to be) the subject of a reasonably founded claim of subrogation, reimbursement, or lien, or

(ii) any payment or benefit by a workers' compensation system or a health insurance program funded in whole or in part by an employer.

(C) This subsection shall not preempt or supersede any State law which provides that damage awards may be reduced by payments or benefits other than those covered by this subsection, or which reduces such damage awards by payments or benefits by an agency or instrumentality of the United States, a State, a local government, even when such payments or benefits are (or by law are required to be) the subject of a reasonably founded claim of subrogation, reimbursement, or lien.

(5) For the purposes of this section, "action subject to this Act" means any action or claim filed in Federal or State court seeking damages from a contractor for a personal injury or death attributable to any work performed for or on behalf of or any product supplied to an agency or instrumentality of the United States.

(6) For the purposes of this section, "contractor" means any person who has contracted with an agency or instrumentality of the United States to supply a product or service, and includes a subcontractor under such a contract.

(c) This Act shall become effective on the date of enactment and shall apply to any action filed in Federal or State court after such date.

(d) If any provision of this Act, or its application to any person or circumstance is held invalid, the remainder of this Act and its application shall not be affected thereby.

● Mr. McCONNELL. Mr. President, I sent to the desk today an amendment in the nature of a substitute for S. 2454, a bill to repeal section 1631 of the Department of Defense Authorization Act of 1985. On June 27, 1986, I chaired a hearing of the Judiciary Committee concerning this bill. During that hearing, two thoughts came to mind. One, adoption of the Warner amendment clearly had caused unintended consequences, consequences which need to be remedied. Two, if Congress were to act to repeal section 1631, without more, equally unforseen results could extend to those who had contracted with the Government in good faith. To moderate the result here and in similar situations, this amendment would provide rational limits and standards to actions against Government contractors.

Mr. President, I have been quite vocal about the need to return rational limits to our tort system. Although this amendment is far more limited than other legislation I have introduced to bring relief to the civil justice system, it nevertheless addresses an area in need of reform. In substantial part, this amendment is derived from S. 2441, the Government Contractor Liability Reform Act of 1986. I am proud to have introduced that bill, Mr. President, because it signaled a unity of approach between the administration and the principle Senate committees with jurisdiction in the tort and insurance fields.

The amendment provides for a return to the concept of fault-based liability. This concept, perhaps the cornerstone of the administration's tort policy working group report, has historically been the basis for liability in our civil justice system. If the court system is to administer a comprehensive compensation system, as much of tort law has become, then it is appropriate that Congress establish the reasonable parameters for that system. The return to a fault based standard in the connection of Government contractor liability will do just that.

Second, my amendment would eliminate the application of joint and several liability for those actions covered by the bill. Under current law, a defendant who is only minimally responsible for an injury can be held responsible for the entire award of damages, while a defendant who is 99 percent responsible may pay nothing. This doctrine must be changed if we are to return to a sensible approach to tort law.

Third, this amendment would provide for the court to determine the amount and timing of damages for future ecomomic loss. Where the damages exceed $100,000, the contractor would be permitted to pay such damages periodically.

Fourth, this amendment reduces an award of damages for an injury covered by this act by the amount of collateral payments for the same injury. In an era when collateral sources of income were financed largely by the plaintiff himself, the collateral source rule may have been sensible. Today, however, when many collateral sources are provided or subsidized by the Government or by third parties, the traditional justification is called into question. Increasingly, the collateral source rule simply permits a windfall recovery by the plaintiff.

Mr. President, I do not dispute that the atomic veterans deserve their day in court. Nor do I believe that the doors to the courthouse should be closed to those with claims against Government contractors. However, I do know that it is in our national interest to return reason to the civil justice system as it touches upon Government contractors. Mr. President, I urge adoption of this amendment.●

FUTURES TRADING ACT

BOSCHWITZ AMENDMENT NO. 3228

Mr. BOSCHWITZ proposed an amendment to the bill (S. 2045) to amend the Commodity Exchange Act to reauthorize appropriations to carry out such act, and for other purposes; as follows:

At the appropriate place in the bill, add the following:

TITLE. —GENERAL PROVISIONS

SEC. . CROSS COMPLIANCE FOR PRODUCERS OF EXTRA LONG STAPLE COTTON.

Paragraph (16) of section 103(h) of the Agricultural Act of 1949 (7 U.S.C. 1444(h)(16)) is amended to read as follows:

"(16)(A) Notwithstanding any other provision of law, except as provided in subparagraph (B), compliance on a farm with the terms and conditions of any other commodity program may not be required as a condition of eligibility for loans or payments under this subsection.

"(B) In the case of each of the 1989 and 1990 crops of extra long staple cotton, the Secretary may require that, as a condition of eligibility of producers for loans or payments under this subsection, the acreage planted for harvest on the farm to any other commodity for which an acreage limitation program is in effect shall not exceed the crop acreage base established for the farm for that commodity.

"(C) Notwithstanding any other provision of law, in the case of each of the 1987 and 1988 crops of extra long staple cotton, compliance with the terms and conditions of the program authorized by this subsection may not be required as a condition of eligibility for loans, purchases, or payments under any other commodity program.".

SEC. LOCAL AGRICULTURALSTABILIZATION AND CONSERVATION COMMITTEES.

The fifth paragraph of section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)) (as amended by section 3 of Public Law 99-253 (100 Stat. 36)) is amended—

(1) by inserting after the third sentence the following new sentence: "Notwithstanding the preceding sentence, there may be 1 local administrative area in any county for which there had been established less than 3 local administrative areas as of December 23, 1985."; and

(2) in the sixth sentence (as it existed before the amendment made by paragraph (1)), by striking out ": Provided," and all that follows through the period and inserting in lieu thereof a period.

SEC. . VALENCIA PEANUTS.

Section 108B(4)(A) of the Agricultural Act of 1949 (7 U.S.C. 1445c-2(4)(A)), as added by section 705 of the Food Security Act of 1985, is amended by inserting after "additional peanuts" the following: "(other than net gain on additional peanuts in separate type pools established under paragraph (3)(B)(i) for Valencia peanuts produced in New Mexico)".

SEC. . BASIS FOR COMPUTATION OF EMERGENCY COMPENSATION UNDER THE 1986 WHEAT PROGRAM.

(a) Section 107D(c)(1)(E)(ii) of the Agricultural Act of 1949 is amended by striking out "marketing year for such crop" and inserting in lieu thereof "first 5 months of the marketing year for the 1986 crop and the marketing year for each of the 1987 through 1990 crops".

(b) The amendment made by this section shall not be applicable to any producer of 1986-crop wheat who (1) elects to have payments under section 107D(c)(1)(E)(ii) of the Agricultural Act of 1949 computed in accordance with the provisions of law in effect prior to the enactment of this Act and (2) so informs the Secretary of Agriculture in writing by December 1, 1986.

SEC. . ELIGIBILITY OF CERTAIN LAND UNDER THE CONSERVATION RESERVE PROGRAM.

Section 1231 of the Food Security Act of 1985 is amended by adding at the end thereof a new subsection (f) as follows: "(f) For purposes of this subtitle, alfalfa and other multi-year grasses and legumes in rotation, as approved by the Secretary, shall be considered agricultural commodities.".

TITLE. —FEDERAL MEAT INSPECTION

SEC. . SHORT TITLE.

This title may be cited as the "Processed Products Inspection Improvement Act of 1986".

SEC. . PURPOSE.

The amendments made by this title are in furtherance of the findings made by Congress in section 2 (21 U.S.C. 602) of the Federal Meat Inspection Act.

SEC. . AMENDMENTS TO FEDERAL MEAT INSPECTION ACT.

(a) MANNER AND FREQUENCY OF INSPECTION.—Section 6 of the Federal Meat Inspection Act (21 U.S.C. 606) is amended by striking out "That for purposes" and all that follows through *"Provided,* That", and inserting in lieu thereof the following:

"For the purposes hereinbefore set forth, the Secretary shall cause to be made, by inspectors appointed for that purpose, an examination and inspection of meat food products prepared for commerce in any slaughtering, meat-canning, salting, packing, rendering, or similar establishment. Such examination and inspection shall be conducted with such frequency and in such manner as the Secretary deems necessary, as provided in rules and regulations issued by the Secretary, taking into account such factors as the Secretary deems to be appropriate, including—

"(1) the nature and frequency of the processing operations at such establishment;

"(2) the adequacy and reliability of the processing controls and sanitary procedures at such establishment; and

"(3) the history of compliance with inspection requirements in effect under this Act, by the operator of such establishment or anyone responsibly connected with the business (as described in section 401(g) of this Act) that operates such establishment.

All such products found by such inspectors, if any, and by the operator of such establishment to be not adulterated shall be marked, stamped, tagged, or labeled as 'Inspected and passed'; and all such products found by any of such inspectors or by the operator of such establishment to be adulterated shall be marked, stamped, tagged, or labeled as 'Inspected and condemned'. All such condemned products shall be destroyed for human food purposes. The Secretary may suspend inspection at, and thereby remove inspectors from, any establishment that fails to so condemn adulterated meat food products or fails to so destroy condemned meat food products. For purposes of any examination and inspection, such inspectors shall have access to every part of an establishment at all times, by day or night, and without regard to whether such establishment is operated. Notwithstanding the preceding provisions of this section,".

(b) ENFORCEMENT METHODS.—Section 401 of the Federal Meat Inspection Act (21 U.S.C. 671) is amended—

(1) by inserting "(a)" after "Sec. 401.",

(2) in the first sentence—

(A) by striking out "applicant, for" and inserting in lieu thereof "applicant for",

(B) by striking out "any felony, or (2)", and

(C) by inserting before the period at the end thereof "or (2) any felony",

(3) in the second sentence—

(A) by indenting the first word 2 ems so as to create a new paragraph, and

(B) by inserting "(f)" before the first word,

(4) by inserting "(g)" before the first word of the third sentence,

(5) in the fourth sentence—

(A) by striking out "The" and inserting in lieu thereof "(h) Except as provided in subsection (e)(2), the", and

(B) by striking out "this section" and inserting in lieu thereof "subsection (e)", and

(6) by inserting after subsection (a), as so designated by paragraph (1) of this subsection, the following new subsections:

"(b)(1) On the request of the Secretary at the time of the sentencing of an individual who is a person responsibly connected with any business requiring inspection under title I of this Act and who is convicted of a felony involving—

"(A) the intentional adulteration of food (except as defined in section 1(m)(8) of this Act);

"(B) the adulteration of food, as defined in section 1(m)(8) of this Act, with intent to defraud;

"(C) bribery; or

"(D) extortion;

the sentencing court shall issue a temporary order forbidding such individual to exercise operational control of, or to be physically present at, any establishment requiring inspection under title I of this Act if the court finds that the exercise of operational control by, or the presence of, such individual at the establishment either poses a direct and substantial threat to the public health or safety or, if such individual is convicted of a felony described in subparagraph (B), poses a clear likelihood of significant economic harm to consumers.

"(2) Such order shall terminate—

"(A) whenever the Secretary determines by order, after a hearing on the record, whether such individual should exercise operational control of, or be physically present at, any establishment requiring inspection under title I of this Act, and judicial review, if any, of such determination is completed; or

"(B) ninety days after the issuance of such temporary order by the court if the Secretary does not commence such hearing before the expiration of such ninety days;

whichever occurs earlier.

"(c) Any determination and order of the Secretary issued under subsection (a) or (b) shall be conclusive and enforceable unless the affected applicant for, or recipient of, inspection service or the affected individual files, not later than thirty days after the effective date of such order, a petition for review of such order in the United States Court of Appeals for the District of Columbia Circuit or the court of appeals for the circuit in which the relevant establishment is doing business. Judicial review of such order shall be upon the record upon which the determination and order are based.

"(d)(1) Subject to paragraph (3), the Secretary may commence a civil action in an appropriate court, as provided in section 404, to withdraw inspection service under title I of this Act with respect to any establishment or to prevent any individual responsibly connected with any business requiring inspection under title I of this Act from exercising operational control of, or being present at any establishment requiring inspection under title I of this Act.

"(2) If the court finds, on the basis of clear and convincing evidence, that the recipient of inspection service or such individual has repeatedly failed to comply with the requirements of this Act, or the rules and regulations issued under this Act, in a manner that poses a direct and substantial

threat to the public health or safety, then the court shall issue an order—

"(A) withdrawing inspection at such establishment; or

"(B) forbidding such individual to exercise operational control of, or to be physically present at, such establishment;

for such period as the court deems necessary to carry out the purposes of this Act.

"(3) Not less than ninety days, and not more than 450 days, before commencing a civil action under paragraph (1), the Secretary shall give to each recipient of inspection service, and each individual responsibly connected with the business, with respect to which such action is commenced a written notice that includes—

"(A) statement that the Secretary intends to commence such action;

"(B) a comprehensive description of the violations of this Act and the regulations issued under this Act alleged by the Secretary; and

"(C) a description of the actions the Secretary considers necessary to be taken by such recipient or such individual to comply with this Act and to eliminate the need to commence such civil action.

"(c)(1) The Secretary may temporarily withdraw inspection service under title I of this Act with respect to any establishment for such period as is necessary to ensure the safe and effective performance of official duties under this Act if the Secretary determines, after an opportunity for a hearing on the record, that an officer, employee, or agent of such establishment—

"(A) threatened to forcibly assault;

"(B) forcibly assaulted;

"(C) forcibly intimidated; or

"(D) forcibly interfered with;

an employee of the United States engaged in, or on account of, the performance of any of such official duties.

"(2)(A) Notwithstanding paragraph (1), the Secretary may temporaily suspend inspection service under title I of this Act with respect to any establishment, pending an expedited administrative hearing on the record and judicial review of the order of the Secretary based on such record, if the Secretary determines that temporary suspension of such inspection service is necessary for the safety of any employee who performs official duties under this Act.

"(B) If the Secretary receives, before or after temporarily suspending such inspection service in accordance with subparagraph (A), adequate written assurances from the recipient of inspection service, or the individuals involved, that the conduct or circumstances that threatened the safety of such employee will not continue or recur, the Secretary may continue or restore such inspection service on the condition that such assurances are fulfilled.".

"(c) WARNING; REPORTING OF VIOLATIONS.—Section 406 of Federal Meat Inspection Act (21 U.S.C. 676) is amended—

(1) in subsection (b) by adding at the end thereof the following:

"In determining whether the public interest could be adequately served by a written notice of warning, the Secretary shall take into account, among other factors—

"(1) the compliance history of such establishment;

"(2) the magnitude of the violation;

"(3) whether compliance with this Act would likely be obtained as a result of such notice; and

"(4) whether such violation is of a minor or technical nature.". and

(2) by adding at the end thereof the following new subsection:

"(c) Unless the Secretary by regulation provides otherwise, before any violation of this Act is reported by the Secretary for prosecution of a criminal proceeding, the Secretary shall give the person alleged to have committed such violation—

"(1) reasonable notice that the Secretary intends to report such violation for prosecution; and

"(2) an opportunity to present to the Secretary, orally or in writing, views with respect to such proceeding.".

(d) CONFORMING AMENDMENTS.—

(1) NIGHTTIME.—Section 9 of the Federal Meat Inspection Act (12 U.S.C. 609) is amended by inserting ", except as provided in section 6," after equines, and" the first place it appears.

(2) ADMINISTRATION.—Section 21 of the Federal Meat Inspection Act (21 U.S.C. 621) is amended by striking out "and meat food products" and inserting in lieu thereof "thereof, and of meat food products".

(e) CONSTRUCTION OF AMENDMENTS.—The amendments made by this section shall not be construed to authorize the Secretary of Agriculture to revise to provide inspection under the Federal Meat Inspection Act at an establishment solely because such establishment does not participate in a total plant quality-control program.

SEC. . REENACTMENT OF FORMER PROVISIONS OF LAW.

(a) REENACTMENT.—Effective 6 years after the date of the enactment of this Act, sections 6, 9, 21, 401, and 406 of the Federal Meat Inspection Act (21 U.S.C. 606, 609, 621, 671. 676) are amended to read, respectively, as such sections read immediately before the date of the enactment of this Act.

(b) SAVING PROVISION.—The amendments made by subsection (a) shall not have the effect of releasing or extinguishing any penalty, forfeiture, or liability incurred under the Federal Meat Inspection Act as amended by section 1023, or under the rules or regulations issued under such Act.

SEC. . SENSE OF CONGRESS.

It is the sense of Congress that the Secretary of Agriculture should—

(1) carry out a program to detect residues in livestock that are subject to inspection under title I of the Federal Meat Inspection Act, and

(2) evaluate the feasibility of, and develop, a program that would enable the Secretary to trace any particluar livestock that are subject to inspection under title I of the Federal Meat Inspection Act in order to identify the producer of such livestock.

SEC. . ANNUAL REPORT.

Not later than 1 year after the date of the enactment of this Act, and annually thereafter, the Secretary of Agriculture shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report describing—

(1) any action proposed or taken by the Secretary to implement the amendments made by this subtitle,

(2) any action proposed or taken by the Secretary to carry out a program to detect residues in livestock that are subject to inspection under title I of the Federal Meat Inspection Act,

(3) any action proposed or taken by the Secretary to evaluate the feasibility of, and develop, a program that would enable the Secretary to trace any particular livestock that are subject to inspection under such title, in order to identify the producer of such livestock, and

(4) any personnel action proposed or taken by the Secretary as a result of the amendments made by this subtitle and any effort made by the Secretary to minimize any adverse economic effect of such amendments on employees of the Department of Agriculture.

SEC. . CONGRESSIONAL REEVALUATION.

Not later than 6 years after the date of the enactment of this Act, Congress shall—

(1) evaluate the operation and effects of the amendments made by this subtitle, for the purpose of determining whether to extend or modify the operation of such amendments, and

(2) enact such legislation as may be necessary to efficiently and effectively carry out the Federal Meat Inspection Act.

SEC. . EFFECTIVE DATE; APPLICATION OF AMENDMENTS.

(a) GENERAL EFFECTIVE DATE.—Except as provided in section 2024(a) and in subsection (b) of this section, this title and the amendments made by this title shall take effect on the date of the enactment of this Act.

(b) TEMPORARY APPLICATION OF EXISTING LAW.—Sections 6, 9, and 21 of the Federal Meat Inspection Act (21 U.S.C. 601 et seq.), as in effect immediately before the date of the enactment of this Act, shall apply with respect to establishments until the Secretary of Agriculture first issues rules and regulations as provided in the amendment made by section 2023(a) of this Act.

GRASSLEY (AND OTHERS) AMENDMENT NO. 3229

Mr. GRASSLEY (for himself, Mr. HARKIN, Mr. ANDREWS, Mr. ABDNOR, Mr. DOLE, and Mr. LUGAR) proposed an amendment to the bill (S. 2045), supra; as follows:

At the end of the bill, add the following new title:

TITLE V—GRAIN QUALITY IMPROVEMENT

SEC. 501. SHORT TITLE.

The title may be cited as the "Grain Quality Improvement Act of 1986".

SEC. 502. DECLARATION OF POLICY.

Section 2 of the United States Grain Standards Act (7 U.S.C. 74) is amended by adding at the end thereof the following new paragraph:

"It is the policy of the United States—

"(1) to promote the marketing of grain of high quality to both domestic and foreign buyers;

"(2) that the primary objective of the official United States standards for grain is to certify the quality of grain as accurately as practicable; and

"(3) that official United States standards for grain shall—

"(A) define uniform and accepted descriptive terms to facilitate trade in grain;

"(B) provide information to aid in determining grain storability;

"(C) offer users of such standards the best possible information from which to determine end-product yield and quality of grain; and

"(D) provide framework necessary for markets to establish grain quality improvement incentives.".

SEC. 503. FOREIGN MATERIAL RECOMBINATION

(a) PROHIBITED ACT.—Section 13 of United States Grain Standards Act (7 U.S.C. 87b) is amended by adding at the end thereof the following new subsection:

"(d)(1) Subject to paragraph (3), to ensure the quality of grain marketed in or exported from the United States—

"(A) no dockage or foreign material, as defined by the Secretary once removed from grain shall be recombined with any grain; and

"(B) no dockage or foreign material of any origin may be added to any grain.

"(2) The Secretary shall conduct a study to determine the appropriate levels of dust in grain to be exported. Based on the results of such study, the Secretary shall establish a maximum tolerance for dust in grain to be exported and issue regulations applicable to the recombination of dust with grain.

"(3) Nothing in paragraph (1) shall be construed to prohibit—

"(A) the treatment of grain to suppress, destroy, or prevent insects and fungi injurious to stored grain;

(B) the marketing, domestically or for export, of dockage or foreign material removed from grain if such dockage or foreign material is marketed—

"(i) separately and uncombined with any such whole grain;

"(ii) in pelletized form; or

"(iii) as a part of a processed ration for livestock, poultry, or fish;

"(C) the blending of grain with similar grain of a different quality to adjust the quality of the resulting mixture;

"(D) the recombination of broken corn or broken kernels, as defined by the Administrator, with grain of the type from which the broken corn or broken kernels were derived;

"(E) effective for the period ending December 31, 1987, the recombination of dockage or foreign material removed at an export loading facility from grain destined for shipment as a cargo under one export official certificate of inspection if—

"(i) the recombination occurs during the loading of the cargo;

"(ii) the purpose is to ensure uniformity of dockage or foreign material throughout that specific cargo; and

"(iii) the separation and recombination are conducted in accordance with regulations issued by the Administrator;

"(F) the addition to grain of a dust suppressant, or the addition of confetti or any other similar material that serves the same purpose in a quantity necessary to facilitate identification of ownership or origin of a particular lot of grain.

"(4)(A) The Secretary may, by regulation, exempt from paragraph (1) the last handling of grain in the final sale and shipment of such grain to a domestic user or processor if such exemption is determined by the Secretary to be in the best economic interest of producers, grain merchants, the industry involved, and the public.

"(B) Grain sold under an exemption authorized by this paragraph shall be consumed or processed into one or more products by the purchasers, but may not be resold into commercial channels for such grain or blended with other grain for resale. Neither products nor byproducts derived therefrom shall be blended with or added to grain in commercial channel.

(b) EFFECTIVE DATE.—The amendments made by this section shall become effective on May 1, 1987.

SEC. 504. INSECT INFESTATION.

Not later than 6 months after the date of enactment of this Act, the Administrator of the Federal Grain Inspection Service shall issue a final rule that revises grain inspection procedures and standards under the United States Grain Standards Act (7 U.S.C. 71 et seq.) to more accurately reflect levels of insect infestation.

SEC. 505. STUDY OF PREMIUMS FOR HIGH-QUALITY GRAIN.

(a) STUDY.—After public comment from and in consultation with grain producers, grain merchants, grain processors, and grain exporters, the Secretary of Agriculture shall conduct a study of the feasibility and appropriateness of adjusting Commodity Credit Corporation grain premium and discount schedules—

(1) to encourage the delivery, storage, and export of high-quality, clean grain; and

(2) to offer incentives to minimize the quantity of moisture, foreign material, dockage, shrunken and broken kernels, and damaged kernels in lots of grain pledged as collateral for Commodity Credit Corporation loans or in grain owned by the Commodity Credit Corporation.

(b) REPORT.—Not later than 180 days after the date of enactment of this Act, the Secretary shall transmit a report describing the results of the study, together with recommendations, to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

SEC. 506. REVIEW OF OPTIMAL GRADE PROPOSAL.

(a) NOTICE AND COMMENT.—To evaluate the effects of moving to an optimal grain grading system, the Administrator of the Federal Grain Inspection Service shall—

(1) publish in the Federal Register a detailed description of the proposals contained in H.R. 5354, 99th Congress, the Optimal Grain Grading Act of 1986; and

(2) solicit public comment, during a period of not less than 60 days, or—

(A) the optimal grain grading system as proposed in H.R. 5354; and

(B) the general objective of improving grain quality by revising the official United States grain standards to provide greater economic incentives for production and sale of high-quality grain.

(b) REPORT.—The Administrator shall report to Congress, by May 1, 1987, on the comments received and on the recommendations of the Administrator with respect to the matters on which comments were solicited.

SEC. 507. STUDY OF UNIFORM END-USE VALUE TESTS.

(a) STUDY.—The Secretary of Agriculture shall direct the Federal Grain Inspection Service and the Agricultural Research Service to conduct a study of the need for and availability of uniform end-use value tests for grain. The study shall include the following:

(1) A survey of domestic and foreign buyers of grain to determine what information about grain characteristics would be most useful to such buyers. The survey shall take into account those factors that buyers specify in contracts, test for, measure, or would measure if tests were available, including but not limited to—

(A) the starch, oil, and protein content, breakage susceptibility, and individual kernel moisture of corn;

(B) the banking characteristics, protein content, gluten content and quality, and milling hardness of wheat; and

(C) the protein, oil, and free-fatty-acid content of soybeans.

(2) A review of the development and availability of tests for the characteristics identified in the survey conducted under paragraph (1), including an evaluation of the costs of providing such tests.

(b) END-USE TESTS. —

(1) ONGOING REVIEW. —The Secretary of Agriculture shall direct the Federal Grain Inspection Service and the Agricultural Research Service to maintain an ongoing review to determine the end-use tests that are of economic value of buyers, and the availability and costs of such tests.

(2) REVISION OF PROCEDURES. —The Administrator of the Federal Grain Inspection Service, to the extent practicable, shall revise official grain inspection and certification procedures to include within official inspection (as defind in section 3(i) of the United States Grain Standards Act (7 U.S.C. 75(i)) those tests that are identified under the study conducted under subsection (a) as useful, available, and economically feasible.

(c) REPORTS. —

(1) STUDY AND REVISION OF PROCEDURES. — Not later than 1 year after the date of enactment of this Act, the Administrator of the Federal Grain Inspection Service shall submit a report to Congress setting forth the results of the study conducted under subsection (a) and actions taken under subsection (b)(2).

(2) ONGOING REVIEW. —The Administrator shall report yearly to Congress on the ongoing review conducted under subsection (b)(1).

MELCHER (AND ZORINSKY) AMENDMENT NO. 3230

Mr. MELCHER (for himself and Mr. ZORINSKY) proposed an amendment to the bill (S. 2045), supra, as follows:

On page 24, after line 16, insert a new section as follows:

SEC. 404. GAO STUDY OF TRADING IN CATTLE FUTURES CONTRACTS.

(a) The Comptroller General shall conduct and complete a comprehensive study of the effect of trading in contracts for the future delivery of live cattle on the cash market price of live cattle, with particular emphasis on the following matters—

(1) Whether the reaction of the live cattle futures market to the results of the whole-herd buyout program in March 1986 was based upon and accurately reflected the then prevailing conditions of supply and demand;

(2) What effect the trading in contracts for the future delivery of live cattle has on—

(i) the price relationship between feeder cattle and fed cattle,

(ii) the price discovery process with respect to live cattle, and

(iii) price competition within the cattle industry;

(3) What effect the use of packer contracts, as a means of obtaining slaughter cattle, has had upon the increase in short hedging in contracts for the future delivery of live cattle and what effect this increase in short hedging has had on prices in the futures and cash markets;

(4) The effect on the ability of the cash markets to accurately reflect prevailing conditions of supply and demand if packer contracts become the prevalent method of marketing fed cattle;

(5) Whether the present delivery system for contracts for the future delivery of live cattle creates any bias (either upward or downward) in the cash price for cattle;

(6) Whether the present delivery system for contracts for the future delivery of live cattle creates price volatility during the delivery month; and

(7) Whether there are advantages or disadvantages to a cash settlement system in lieu of the present delivery system in the case of contracts for the future delivery of live cattle.

(b) Not later than one year after the date of enactment of this Act, the Comptroller General shall submit a detailed report on the results of the study required under subsection (a) to the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry. The Comptroller General shall submit a preliminary report on the results of the study to such Committees by January 15, 1987.

McCONNELL AMENDMENT NO. 3231

Mr. McCONNELL proposed an amendment to the bill (S. 2045), supra; as follows:

At the end of the bill, add the following new section:

SEC. . MARKETING PRACTICES AND TRAINING.

(a) MARKETING PRACTICES OF FmHA APPLICANTS AND BORROWERS.—

(1) STUDY.—The Comptroller General of the United States shall conduct a study of marketing practices used by applicants for and borrowers of loans made, insured, and guaranteed under the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.). The study shall include an examination of the channels through which the applicants and borrowers sell agricultural commodities, livestock, and aquaculture and the extent to which the applicants and borrowers used advanced marketing techniques for such sales.

(2) REPORT.—Not later than 180 days after the date of enactment of this Act, the Comptroller shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report describing the results of the study conducted under paragraph (1), together with any appropriate recommendations.

(b) ADVANCED MARKETING TRAINING FOR FARMERS AND RANCHERS.—The Secretary of Agriculture establish a program to train farmers and ranchers in advanced marketing techniques for commodities, livestock, and aquaculture produced by such farmers and ranchers, including (where appropriate as determined by the Secretary) training in the use of futures and options markets.

ZORINSKY AMENDMENT NO. 3232

Mr. ZORINSKY proposed an amendment to the bill (S. 2045), supra; as follows:

On page 24, after line 16, insert a new section as follows:

SEC. 404. TRANSFER OF LAND.

(a) Subject to the provisions of subsection (b), the Secretary of Agriculture shall convey to the Nebraska Game and Parks Commission, all right, title, and interest of the United States in approximately 173 acres of National Forest System land in Dawes County, Nebraska, as depicted on a Department of Agriculture, Forest Service map entitled "Land Conveyance, Nebraska National Forest", dated October 1985. The map and legal description of the land conveyed by this Act shall be on file and available for public inspection in the office of the Chief, Forest Service, Department of Agriculture.

(b) The conveyance made pursuant to subsection (a) shall reserve to the United States all gas, oil, coal, and other mineral deposits as may be found in the lands conveyed by this Act. The Secretary shall provide that title in the lands conveyed shall revest in the United States upon failure of the Nebraska Game and Parks Commission to use the land as part of the Chadron State Park, Nebraska.

(c) The lands shall be conveyed without consideration, except that the Nebraska Game and Parks Commission shall bear all reasonable costs of administration, survey, and appraisal incident to such conveyance as determined by the Secretary of Agriculture.

HELMS (AND OTHERS) AMENDMENT NO. 3233

Mr. HELMS (for himself, Mr. ZORINSKY, Mrs. HAWKINS, Mr. MELCHER, Mr. HATCH, Mr. DODD, Mr. HECHT, Mr. HUMPHREY, Mr. INOUYE, Mr. McCLURE, Mr. SYMMS, Mr. THURMOND, Mr. TRIBLE, and Mr. WILSON) proposed an amendment to the bill (S. 2045), supra, as follows:

At the end of the bill, add the following:

SEC. . (a) Notwithstanding any other provision of law:

(1) The President may not allocate any limitation imposed on the quantity of sugar to—

(A) any country which has a Government involved in the trade of illicit narcotics or is failing to cooperate with the U.S. in narcotics enforcement activities as determined by the President.

(B) any foreign country that imports sugar produced in Cuba, as determined by the President.

(2) The President shall—

(A) use all authorities available to the President as is necessary to enable the Secretary of Agriculture to operate the sugar program established under section 201 of the Agricultural Act of 1949 (7 U.S.C. 1446) at no cost to the Federal Government by preventing the accumulation of sugar acquired by the Commodity Credit Corporation; and

(B) subject to paragraph 1, and to the extent possible, subject to subparagraph (A), allocate any limitation imposed on the quantity of sugar entered during calendar year 1987 among foreign countries in a manner that ensures that the total quantity of sugar allocated under such limitation to each beneficiary country for calendar year 1987 is not less than the total quantity of sugar entered during quota year 1986 that are products of such beneficiary country.

(b) For purposes of this section—

(1) The term "beneficiary country"—

(A) has the meaning given to such term by section 212(a)(1) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2702(a)(1)); and

(B) includes the Republic of the Philippines and the Republic of Ecuador.

(2) The term "entered" means entered, or withdrawn from warehouse, for consumption in the customs territory of the United States.

(3) The term "customs territory of the United States" means the States, the District of Columbia, and Puerto Rico.

At the end of the pending amendment add the following:

SEC. . Congress finds that the Philippines—

(1) have been a reliable supplier of sugar to the United States since 1796 when the first shipment of their sugar arrived at Boston Harbor;

(2) have a special historical relationship with the United States and has been one of this Nation's most constant and dependable allies;

(3) rely on the exportation of sugar to generate needed capital;

(4) have not been afforded fair and adequate access to the United States sugar market since import quotas were imposed on sugar in 1982; and

(5) should be given access to the United States sugar market on terms at least as favorable as those provided to any other country.

SEC. . Notwithstanding any other provision of law—

(a) beginning with the first calendar quarter of 1987, the total base quota amount of sugars, syrups, and molasses permitted to be imported into the United States under headnote 3, subpart A of part 10 of schedule 1 of the Tariff Schedules of the United States shall be allocated on such basis that the quota allocated to the Republic of the Philippines shall not be less than the quota allocated to any other country;

(b) during any calendar year in which sugars, syrups, and molasses from any country are not subject to any rate of duty provided for in subpart A of part 10 of schedule 1 of the Tariff Schedules of the United States and are permitted to enter the United States duty-free, sugar, syrups, and molasses from the Republic of the Philippines shall be permitted, to the same extent, to enter duty-free; and

(c) unless specifically authorized by statute, no agency or instrumentality of the United States shall provide, in any rule, regulation, shipping schedule, or otherwise, for the entry into the United States of sugars, syrups, and molasses from any country under terms or conditions more favorable than those applicable to the entry of sugars, syrups, and molasses from the Republic of the Philippines.

FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT AMENDMENTS

DURENBERGER AMENDMENT NO. 3234

Mr. DURENBERGER proposed an amendment to the bill (S. 2792) to amend the Federal Insecticide, Fungicide, and Rodenticide Act, and for other purposes; as follows:

Beginning on page 185, line 6 strike all of section 821 relating to "liability" through page 186, line 11.

DURENBERGER (AND OTHERS) AMENDMENT NO. 3235

Mr. DURENBERGER (for himself, Mr. BAUCUS, Mrs. HAWKINS, Mr. MITCHELL, Mr. HEINZ, Mr. KERRY, and

Mr. PROXMIRE) proposed an amendment to the bill (S. 2792), supra, as follows:

Section 814 of the bill relating to the protection of ground water is amended to read as follows:

SEC. 814. GROUND WATER AUTHORITY.

(a) DEFINITIONS.—Section 2 (7 U.S.C. 136) (as amended by section 802(d)(2) of this Act) is further amended by adding at the end thereof the following new subsections:

"(ll) DRINKING WATER WELL.—The term 'drinking water well' means a well or spring currently supplying water for human consumption;

"(mm) GROUND WATER.—The term 'ground water' means water below the land surface in the zone of saturation;

"(nn) GROUND WATER SAMPLING POINT.—The term 'ground water sampling point' means a public or community water supply, a private water supply, a spring, or a monitoring well or other ground water source, if the well or source is reasonably designed and of adequate depth to permit the collection of representative ground water samples;

"(oo) POTENTIAL SOURCES OF DRINKING WATER.—The term 'potential sources of drinking water' means an aquifer or portion of an aquifer system which may supply a drinking water well. Any determination as to whether an aquifer or its portion is a potential source of drinking water shall include:

"(1) whether there is sufficient quantity to supply a drinking water well;

"(2) whether it contains fewer than 10,000 mg/l total dissolved solids;

"(3) hydrogeological considerations and depth to drinking water; and

"(4) geographic considerations including any State criteria or guidelines established under section 1428 of the Public Health Service Act or other State authority.

"(pp) The term 'reliable analytical data' means scientific information that verifies the presence of a pesticide in a ground water sample and that is of a reliable scientific quality according to generally recognized standards and good laboratory practices for sampling and analysis of pesticides in ground water; and

"(qq) GROUND WATER RESIDUE GUIDANCE LEVEL.—The term 'ground water residue guidance level' means a ground water residue guidance level established under section 1429 of the Public Health Service Act.".

(b) PROTECTION OF GROUND WATER.—The Act is amended—

(1) by redesignating section 31 (7 U.S.C. 136y) as section 32; and

(2) by inserting the following new section:

"SEC. 31. PROTECTION OF GROUND WATER.

"(a) LEACHING POTENTIAL.—

"(1) CRITERIA.—The Administrator shall publish and seek comment on criteria to determine whether a pesticide has the potential to leach into ground water. Such criteria may include, but are not limited to, factors such as: the intended use of the pesticide; the timing, rate and method of application for the pesticide; the mobility of the pesticide in soil and water under various conditions; and the rates of degradation of the pesticide in soil and water under various conditions.

"(2) Each person seeking to register or reregister a pesticide under this Act shall submit such data and information as the Administrator shall require with respect to the potential for the pesticide to leach into ground water and the fate and transport of the pesticide.

"(3) At the time of registering or reregistering a pesticide (and using the criteria developed under paragraph (1)) the Administrator shall determine whether the pesticide has the potential to leach into ground water. With respect to a determination made under this paragraph, any pesticide detected at three or more ground water sampling points shall be determined to have the potential to leach into ground water. Any determination made under this paragraph shall be amended, if the Administrator receives reliable analytical data that the pesticide has been detected at three or more ground water sampling points or determines that the pesticide does not have the potential to leach into ground water.

"(4) DETERMINATION.—If the Administrator determines that a pesticide has the potential to leach into ground water according to the provisions of this subsection, the Administrator shall also determine whether monitoring data on the presence of the pesticide in ground water are required to register or maintain in effect an existing registration of the pesticide.

"(b) MONITORING.—

"(1) REQUIREMENT FOR MONITORING.—

"(A) If the Administrator determines that additional data on the presence of a pesticide in ground water are required to maintain in effect an existing registration of the pesticide, the Administrator may, under section 3(c)(2)(B) of this Act, require registrants of the pesticide to conduct ground water monitoring.

"(B) The Administrator shall consult with the Secretary of Agriculture, the heads of other appropriate Federal agencies, and the States concerning the design and scope of the monitoring requirements imposed under this paragraph. The design and the scope of the monitoring requirement should take into account information such as the magnitude and frequency of detection, pattern of pesticide use and soil types involved in the detection, physical and chemical properties of the pesticide, rainfall patterns, well construction, rates of degradation, reliability and analytical accuracy of the detection, and results of State or other sponsored monitoring.

"(C) To the extent feasible, monitoring should be conducted at representative geographical and hydrogeological areas associated with locations and conditions of concern as determined by the Administrator.

"(2) JUDICIAL REVIEW.—Monitoring requirements imposed under this subsection shall be subject to judicial review under section 16.

"(C) NOTIFICATION.—

"(1) REQUIREMENT.—When a registrant of a pesticide obtains reliable analytical data that a pesticide has been detected at any ground water sampling point, the registrant shall file a report containing such information within 15 working days with the Administrator, the State where such pesticide has been detected, and the owner of the property at the ground water sampling point.

"(2) CONTENT OF REPORT.—A report required under paragraph (1) for detection of a pesticide shall contain information known to the registrant on the level of detection, frequency of detection, location (including depth), date, well construction, soil type, and analytical method used, including information on the precision, accuracy, and limit of detection of the method and any quality assurance and control procedures."

"(d) REVIEW FOR FURTHER ACTION.—On receiving information of a detection of a pesticide at any ground water sampling point, the Administrator shall promptly review the information to determine the reliability of the detection and to determine whether action should be taken to protect ground water.

"(e) REGISTRATION AMENDMENTS.—

"(1) REQUIREMENT.—

"(A)(i) After reviewing reliable analytical data, the Administrator shall determine whether there is a reasonable likelihood that the ground water residue guidance level for a pesticide will be exceeded in drinking water wells in different localities.

"(ii) If the Administrator determines that there is a reasonable likelihood of exceeding such level in different localities, the Administrator shall promptly require amendments to the registration of the pesticide involved that are reasonably necessary to assure that the use of the pesticide in accordance with the amended registration will not cause the final ground water residue guidance level to be exceeded in drinking water wells.

"(iii) The Administrator shall make such a determination public.

"(iv) If the Administrator proposes to require registration amendments under this paragraph, the Administrator shall notify registrants of such amendments and shall public notice of the determination in the Federal Register. Such notice shall include the determination of the Administrator whether the presence of the pesticide in drinking water wells appears to have been the result of use of the pesticide in accordance with the labeling or widespread and generally recognized practice.

"(B)(i) After reviewing reliable analytical data, the Administrator shall determine whether there is a reasonable likelihood that the ground water residue guidance level for a pesticide will be exceeded in potential sources of drinking water in different localities.

"(ii) If the Administrator determines that there is a reasonable likelihood that such level will be exceeded in different localities, the Administrator shall promptly require amendments to the registration of a pesticide involved that are reasonably necessary to ensure that use of the pesticide in accordance with the amended registration will not cause the final ground water residue guidance level to be exceeded in potential sources of drinking water.

"(iii) If the Administrator proposes to require amendments under this paragraph, the Administrator shall notify registrants of such amendments.

"(iv) In establishing such amendments, the Administrator shall—

"(I) meet the requirements of subparagraph (A);

"(II) take into account information submitted by States on land and ground water use classification or other governmental actions that could affect when ground water may be used for drinking water; and

"(III) consider the views of the Secretary of Agriculture, other heads of appropriate Federal agencies, and States as required in paragraph (2).

"(2) CONSULTATION.—

"(A) In taking action under paragraph (1), the Administrator shall consult with the Secretary of Agriculture and the State where the pesticide involved has been detected in any ground water sampling point and each other State in which there is significant use of the pesticide.

"(B) The Administrator shall notify such State of the determination of the Administrator that there is a reasonable likelihood that the ground water residue guidance level will be exceeded and shall provide the State with all information relevant to this determination subject to section 10(h).

"(C) States shall promptly provide the Administrator with information relevant to taking action under this section and shall make recommendations regarding necessary registration amendments with respect to that State.

"(3) REASONABLE LIKELIHOOD.—

"(A) There shall be a presumption that pesticides detected above 30% of the ground water residue guidance level meet the 'reasonable likelihood' standard, unless considering the other factors described in subparagraph (B) of this paragraph, the Administrator determines, after notice and opportunity determines, after notice and opportunity for public comment, that the 'reasonable likelihood' standard has not been met.

"(B) The circumstances surrounding the presence of the pesticide in ground water, taking into account all relevant information, include the frequency and time of occurrence at the site of detection and elsewhere, use patterns, soil types, physical and chemical properties of the pesticide, rainfall patterns, well construction, analytical accuracy, and rates of degradation.

"(4) SCOPE OF AMENDMENTS.—

"(A) Amendments to the registration of a pesticide may include—

"(i) limitations on the purposes for and location at which the pesticide may be used, considering factors such as environmentally sensitive areas and conditions;

"(ii) limitations on the rate at which the pesticide is applied;

"(iii) limitations on the time or frequency of pesticide use;

"(iv) limitations on the method of pesticide application, storage, handling, or disposal;

"(v) reporting or other requirements, including label changes or changes in classification;

"(vi) requirements for the training or certification of pesticide applicators or other persons using the pesticide;

"(vii) required site-specific responses; or

"(viii) any other requirement under this Act to ensure that the ground water residue guidance level for such pesticide will not be exceeded.

"(B) The amendments to the registration of a pesticide should, to the extent feasible, be directed to the same or similar uses of the pesticide, similar geographical and hydrogeological areas and other similar conditions that led to the determination under subparagraph (A) or (B) of paragraph (1).

"(C) In taking regulatory action under this subsection, the Administrator may utilize recommendations provided by the States under paragraph (2).

"(D) In requiring such amendments, the Administrator shall consider the effect of any voluntary actions by registrants or other persons, including actions by the State to prevent the ground water residue guidance level from being exceeded, and compliance with other environmental laws.

"(5) If the Administrator has imposed registration amendments on the use of a pesticide according to the provisions of this subsection, the Administrator shall

"(A) periodically review reliable analytical data on the occurrence of the pesticide at ground water sampling points representative of the locations at which the pesticide is used to determine whether such amendments are effective in meeting the requirements of paragraph (1) of this section;

"(B) require additional registration amendments, if such amendments are necessary to assure that the ground water residue guidance level for such pesticide will not be exceeded in drinking water wells and potential sources of drinking water;

"(C) report to the Congress at 18 months, 36 months, and 60 months after such amendments are first imposed indicating whether the amendments have been effective in meeting the requirements of paragraph (1) of this subsection; and

"(D) report to the State in which the pesticide was detected at 18 months, 36 months and 60 months after such amendments are first imposed indicating whether the amendments have been effective in meeting the requirements of paragraph (1) of this subsection including trends in any drinking water wells located in such State.

"(5) PROCEDURES.—Registration amendments under paragraph (1) shall be imposed in accordance with the procedures required by this Act.

"(f) SITE-SPECIFIC RESPONSE.—

"(1) REQUIREMENT.—

"(A) If the Administrator determines that a pesticide is present in a drinking water well in a concentration that exceeds the final ground water residue guidance level and that the presence of the pesticide in drinking water well may be the result of use of the pesticide in accordance with the labeling on the pesticide or as a result of widespread and commonly recognized practice involving the pesticide, the Administrator shall—

"(i) notify the State in which the drinking water well is located of the determination of the Administrator; and

"(ii) provide the State, subject to section 10(h) of this Act, with all information relevant to the determination;

"(B) Such State shall take action within 90 days of such notification to prevent potential adverse effects on human health and the environment from such pesticide. In taking such action, the State shall take appropriate action regarding the sale or use of the pesticide detected at such drinking water well to bring and retain concentrations of the pesticide at such drinking water well at or below the final ground water residue guidance level applicable to the pesticide.

"(2) ACTION BY THE ADMINISTRATOR.—

"(A) If—

"(i) a State does not have the authority to take action required by paragraph (1) with respect to a pesticide detected in a drinking water well or fails to take such action within the time period prescribed by such paragraph;

"(ii) a pesticide is present in a drinking water well in the State at a concentration that exceeds the final ground water residue guidance level; and

"(iii) the presence of the pesticide may be the result of use in accordance with the labeling or of widespread and commonly recognized practice.

the Administrator shall take appropriate action under this Act to bring and retain the concentration detected at such drinking water well at or below the final ground water residue guidance level applicable to the pesticide and may take such other action under this Act as the Administrator deems necessary to prevent potential adverse effects on human health and the environment from the pesticide at such drinking water well.

"(B) The Administrator shall publish notice of the the action in the Federal Register and take appropriate steps to inform all registrants, potentially affected persons, and interested members of the public. Such notice shall specify the factual findings and conclusions relied on in support of the decision.

"(C) Any person adversely affected by an action, or failure to act under this paragraph shall have an opportunity for an expedited hearing, pursuant to the procedures of section 6(c)(2) of this Act, to determine whether the action was taken in accordance with this paragraph or whether the Administrator was required to take action.

"(D) Notwithstanding any other provision of this Act, a hearing shall be held and a determination made under this subsection within 75 days after receipt of the request for such a hearing.

"(E) The Administrator shall provide reasonable procedures for a petition to modify or terminate the action of the Administrator under this paragraph, if the concentration of the pesticide in the water from the drinking water well no longer exceeds the applicable ground water residue guidance level and will likely remain below such level.

"(3) JUDICIAL REVIEW.—Judicial review of actions taken under this subsection shall be governed by section 16.

"(g) INFORMATION ON PESTICIDES IN GROUND WATER.—The Administrator may collect and make available through a public information file information concerning the detection of pesticides in any ground water sampling point. The file may summarize for each pesticide that has been detected in ground water, based on reliable analytical data, whether the pesticide has been detected at a concentration that exceeds the applicable ground water residue guidance level and whether the presence of the pesticide in ground water appears to have been caused by use of the pesticide in compliance with this Act.

"(h) TECHNICAL ASSISTANCE TO STATES.—The Administrator shall provide technical information to a Governor of a State for the purpose of implementing this section. Subject to section 10(h), the technical information shall include, but not be limited to, data on the toxicity, environmental fate, physical or chemical pesticide ingredient characteristics, predictive modeling, exposure and other relevant subjects. In addition, the Administrator shall provide information, to the extent reasonably available, on the alternative methods of pest control and on agricultural or other management practices that could minimize the presence of pesticides in ground water.

"(i) SPECIAL REVIEW.—On receiving reliable analytical data that a pesticide has been detected above the ground water residue guidance level in ground water not in a drinking water well or potential source of drinking water, the Administrator may initiate a public interim administrative review under section 3(c)(8) of this Act to determine whether the pesticide may cause unreasonable adverse effects on the environment from such use.

"(j) SITE-SPECIFIC INFORMATION.—The Administrator shall enter into a memorandum of understanding with the Secretary of Agriculture, the Secretary of Commerce, and the Secretary of the Interior, for the purpose of developing information management systems and other techniques designed to make readily available to State and local of-

ficials and agricultural producers, applicators and other persons using the pesticide information on the soil, hydrology, climate and other characteristics at specific sites of pesticide application to be used by such officials and users in developing practices and making application decisions that will prevent the contamination of ground water by pesticides.

"(1) Under the direction of the Administrator a council will be established in order to assist the Environmental Protection Agency in developing a site-specific pesticide information system. This council shall consist of experts on information management who have experience with information retrieval from the following agencies: the Environmental Protection Agency, the National Agricultural Library, the Soil Conservation Service, the U.S. Geological Survey, the National Oceanographic and Atmospheric Administration. This council shall—

"(A) Review existing information retrieval and referral services which access information on soil, hydrology, climate, and other characteristics at specific sites important to pesticide application.

"(B) Determine what information relevant to making site-specific pesticide decisions is available directly from existing data banks.

"(C) Based on these determinations develop and submit to the Administrator a plan for an information management system which would direct and assist users in gaining access to site-specific information available in printed and electronic form.

"(2) The Environmental Protection Agency shall take the plans developed by the council into consideration when developing the site-specific pesticide information management system.

"(k) EFFECT ON OTHER PROVISIONS.—Nothing in this section shall limit the authority of the Administrator or of any State under other provisions of this Act or under any other law.

"(l) AUTHORIZATION.—For purposes of carrying out the provisions of this section there are authorized to be appropriated $25,000,000 for each of the fiscal years ending on September 30, 1987, 1988, 1989, 1990 and 1991. Of such amounts $2,500.00 in each fiscal year shall be available only to carry out the purposes of subsection (j).".

"(c) UNLAWFUL ACTS.—Section 12(a)(2) (7 U.S.C. 136j(a)(2)) (as amended by section 808(2)(D) of this Act) is further amended by adding at the end thereof the following new subsection:

"(U) to violate an order issued under section 31(f)(2).".

(d) GROUND WATER RESIDUE GUIDANCE LEVEL.—Part C of title XIV of the Public Health Service Act is amended by adding at the end thereof the following—

"Sec. 1429. Ground Water Residue Guidance Level.—

"(a) REQUIREMENT.—

"(1) The Administrator, on the Administrator's own initiative, may issue a ground water residue guidance level for a pesticide registered under the Federal Insecticide, Fungicide, and Rodenticide Act. The Administrator shall issue a ground water residue guidance level for a pesticide whenever the Administrator registers or reregisters a pesticide under such Act if the Administrator determines that the pesticide has the potential to leach into ground water. In addition, the Administrator shall issue a ground water residue guidance level for a pesticide if—

"(A) based on reliable analytical data, the pesticide has been detected at ground water sampling points in three different geographical areas;

"(B) based on reliable analytical data, the pesticide has been detected in a drinking water well or wellfield that services a population of over 500 people; or

"(C) a Federal agency or a State petitions the Administrator to set a ground water residue guidance level for the pesticide.

"(2)(A) If the Administrator has promulgated or promulgates a maximum contaminant level under subsection (b)(3) that applies to a pesticide the ground water residue guidance level required under paragraph (1) for the pesticide shall be set at such level within 30 days of being required under such subsection.

(B) If a maximum contaminant level that would be applicable to a pesticide for which a ground water residue guidance level is required by paragraph (1) has not been established under section 1412, the Administrator, in the Administrator's discretion may use a health advisory level in establishing such ground water residue guidance level. The ground water residue guidance level established by the Administrator for such pesticide shall reflect the level of the pesticide in drinking water at which no known or anticipated adverse effect on the health of persons occur, the need for an adequate margin of safety, the nature of the toxic effects caused by the pesticide, and the validity, completeness, and adequacy of data about the pesticide. If all required chronic, oncogenicity, reproduction, or teratogenicity data are absent or invalid for the pesticide, the ground water residue guidance level for the pesticide shall be set at the limit of detection. If any required chronic, oncogenicity, reproduction, or teratogenicity data are absent or invalid for the pesticide, the ground water residue guidance level for the pesticide shall include an additional margin of safety that takes into account the absence of such data.

"(3)(A) Before issuing a final ground water residue guidance level for a pesticide, the Administrator shall publish an interim ground water residue guidance level for the pesticide in the Federal Register and allow public comment for at least 30 days. During the public comment period, the Administrator shall invite comment on the level from the Secretary of Agriculture and States.

"(B) If the Administrator is required under paragraph (1) to issue a ground water residue guidance level for a pesticide and the ground water residue guidance level is to be issued pursuant to paragraph (2)(B), the Administrator shall issue an interim ground water residue guidance level within 30 days after the requirement to issue the ground water residue guidance level takes effect.

"(C) Within 3 months after establishing an interim ground water residue guidance level, the Administrator shall establish a final ground water residue guidance level. Until a final ground water residue guidance level is established under paragraph (1) for a pesticide, an interim ground water residue guidance level established for the pesticide shall remain in effect.

"(4) The Administrator may revise a ground water residue guidance level for a pesticide. The Administrator shall allow at least 30 days for public comment on any proposed revision.

"(5) An interim ground water residue guidance level shall not be subject to judicial review before the expiration of 3 months after its issuance. Judicial review of any final ground water residue guidance level or failure to establish an interim or final ground water residue guidance level shall be governed by section 1448. A gound water residue guidance level established under paragraph (2)(A) shall not be subject to judicial review.

On page 183; delete lines 9-12 and insert the following

"(C) Nothing in this subsection shall affect the authorities or requirements concerning pesticide containers under the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 et seq.).

"(D) The Administrator may, at his discretion, exempt products intended solely for household use from the requirements of this subsection.

GORE (AND SARBANES) AMENDMENT NO. 3236

Mr. GORE (for himself and Mr. SARBANES) proposed an amendment to the bill (S. 2792), supra, as follows:

On page 185, between lines 4 and 5, insert the following new section:

SEC. . ANTIMICROBIAL STANDARDS.

Section 3 (7 U.S.C. 136a) (as amended by section 817 of this Act) is further amended by adding at the end thereof the following new subsection:

"(i) ANTIMICROBIAL STANDARDS.—

"(1) DEFINITION.—As used in this subsection, the term 'efficacy' means the capacity of an antimicrobial control agent (including a disinfectant) to produce the desired effect of the effectiveness of such an agent.

"(2) STANDARDS.—The Administrator shall—

"(A) establish efficacy standards for antimicrobial control agents (including disinfectants) used to control pest microorganisms that pose a threat to human health, including standards for disinfectants used in hospitals and other health care facilities;

"(B) monitor the compliance of the agents, or a representative sample of the agents, with the standards in a facility maintained by the Environmental Protection Agency to conduct biological testing of pesticides; and

"(C) implement an enforcement program under which the agents must comply with the standards or be prohibited from sale or distribution as antimicrobial control agents.".

On page 204, between the item relating to section 3(h) and the item relating to section 4, insert the following new item:

"(i) Antimicrobial standards.

"(1) Definition.

"(2) Standards.".

DURENBERGER (AND OTHERS) AMENDMENT NO. 3237

Mr. DURENBERGER (for himself, Mr. MITCHELL, Mr. STAFFORD, Mr. BAUCUS, Mr. LAUTENBERG, Mr. LEAHY, Mr. BURDICK, Mr. MOYNIHAN, Mr. PROXMIRE, Mr. PELL, Mr. COHEN, Mr. HUMPHREY, Mr. CHAFEE, and Mr. KERRY) proposed an amendment to the bill (S. 2792), supra, as follows:

Beginning on page 140, line 1 strike all of section 801(d) relating to "uniform tolerances" through page 143, line 13.

PRICE-ANDERSON ACT AMENDMENTS

SIMPSON (AND OTHERS) AMENDMENT NO. 3238

(Ordered to lie on the table.)

Mr. SIMPSON (for himself, Mr. MCCLURE, Mr. STAFFORD, Mr. JOHNSTON, Mr. DOMENICI and Mr. BENTSEN) submitted an amendment intended to be proposed by them to the bill (S. 1225) to amend the Atomic Energy Act of 1954, as amended, to establish a comprehensive, equitable, reliable, and efficient mechanism for full compensation of the public in the event of an accident resulting from activities undertaken under contract with the Department of Energy or activities undertaken by Nuclear Regulatory Commission licensees involving nuclear materials; as follows:

Strike all after the enacting clause and insert the following:

SHORT TITLE

SECTION 1. This Act may be cited as the "Price-Anderson Act Amendments Act of 1985".

FINDINGS AND PURPOSES

SEC. 2. (a) The Congress finds and declares that—

(1) an equitable, efficient, reliable, and comprehensive system, established in advance of any accident involving nuclear materials subject to the Atomic Energy Act of 1954, as amended, that provides a mechanism for full compensation of the public in the event of such an accident is in the public interest;

(2) the basic framework established under section 170 of the Atomic Energy Act of 1954, as amended, and the essential elements of that approach, have achieved those fundamental objectives and, accordingly, should be retained;

(3) the responsiblity of the Federal Government for the storage, disposal, and transportation of, and research and development on, radioactive waste makes it imperative that the Federal Government explicitly assume its responsibility in this Act to provide full, equitable, and efficient compensation to the public for all damages and injuries arising out of a nuclear incident relating to such activities, including activities pursuant to the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101 et seq.) and activities authorized as Waste Isolation Pilot Project (Project 77-13-f) pursuant to FY 1980 Department of Energy for National Security Programs Appropriations (Public Law 96-164); and

(4) based upon the experience gained in implementing the present system of providing compensation for accidents involving nuclear materials, and in light of developments that have taken place since the Congress last extended and amended such system, it is appropriate and in the public interest for the Congress to consider such experience and developments and to make such changes as will advance the fundamental objectives set forth in clause (1).

(b) The purposes of this Act are to—

(1) establish an equitable, efficient, reliable, and comprehensive system, in advance of any accident involving nuclear materials, which provides a mechanism for full compensation of the public in the event of such an accident for both present and future nuclear material activities; and

(2) incorporate in such system the experience gained and the developments that have taken place since the Congress last extended and amended the system.

FINANCIAL PROTECTION

SEC. 3. Section 170 b. of the Atomic Energy Act of 1954, as amended, is amended to read as follows:

"b. (1) The amount of financial protection required shall be the amount of liability insurance available from private sources, except that the Commission may establish a lesser amount on the basis of criteria set forth in writing, which it may revise from time to time, taking into consideration such factors as—

"(A) the cost and terms of private insurance,

"(B) the type, size, and location of the licensed activity and other factors pertaining to the hazard, and

"(C) the nature and purpose of the licensed activity.

For facilities designed for producing substantial amounts of electricity and having a rated capacity of one hundred thousand electrical kilowatts or more, the amount of financial protection required shall be the maximum amount available at reasonable cost and on reasonable terms from private sources. Such financial protection may include private insurance, private contractual indemnities, self insurance, other proof of financial responsibility, or a combination of such measures and shall be subject to such terms and conditions as the Commission may, by rule, regulation, or order, prescribe.

(2)(A) In prescribing such terms and conditions for licensees required to have and maintain financial protection equal to the maximum amount of liability insurance available from private sources, the Commission shall, by rule initially prescribed not later than twelve months from the date of enactment of the Price-Anderson Act Amendments Act of 1985, include, in determining such maximum amount, private liability insurance available under an industry retrospective rating plan providing for premium charges deferred in whole or major part until public liability from a nuclear incident exceeds or appears likely to exceed the level of the primary financial protection required of the licensee invovled in the nuclear incident: *Provided*, That such insurance is available to, and required of, all of the licensees of such facilities without regard to the manner in which they obtain other types or amounts of such financial protection. The standard deferred premium which may be charged following any nuclear incident under such a plan shall be not more than $60,000,000 (but not more than $12,000,000 in any one year) for each facility required to maintain the maximum amount of financial protection.

"(B) The amount which may be charged a licensee under the industry retrospective rating plan required pursuant to subparagraph (A) following any nuclear incident shall not exceed the licensee's pro rata share of the aggregate public liability claims and costs arising out of the nuclear incident. Payment of any State premium taxes which may be applicable to any deferred premium provided for in this Act shall be the responsibility of the licensee and shall not be included in the retrospective premium established by the Commission. The Commission is authorized to establish a maximum amount which the aggregate deferred premium charged for each facility within one calendar year may not exceed. The Commission may establish amounts less than the standard premium for individual facilities taking into account such factors as the facility's size, location, and other factors pertaining to the hazards.

"(C) The Commission shall establish such requirements as are necessary to assure availability of funds to meet any assessment of deferred premiums within a reasonable time when due, and may provide reinsurance or shall otherwise guarantee the payment of such premiums in the event it appears that the amount of such premiums will not be available on a timely basis through the resources of private industry and insurance. Any agreement by the Commission with a licensee or indemnitor to guarantee the payment of deferred premiums may contain such terms as the Commission deems appropriate to carry out the purposes of this section and to assure reimbursement to the Commission for its payments made due to the failure of such licensee or indemnitor to meet any of its obligations arising under or in connection with financial protection required under this subsection including without limitation terms creating liens upon the licensed facility and the revenues derived therefrom or any other property or revenues of such licensee to secure such reimbursement and consent to the automatic revocation of any license.".

"(D)(i) If the aggregate annual deferral premiums assessed pursuant to section 170 b. (2)(A) for a nuclear incident are insufficient to indemnify public liability claims resulting from such incident in a timely manner as such public liability claims arise, the Commission is authorized to issue, and shall request the Congress to appropriate sufficient funds for issuing, obligations to the Secretary of the Treasury for the purpose of compensating such claims, in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be agreed to by the Commission and the Secretary of the Treasury.

"(ii) The aggregate amount of such obligations, including any interest to be paid on such obligations, shall not exceed the balance of deferred premiums to be assessed pursuant to section 170 b. (2)(A) for such nuclear incident.

"(iii) With respect to liability for a nuclear incident covered by an industry retrospective rating plan required pursuant to section 170 b., the aggregate payments in any single year by or on behalf of persons indemnified shall not be required to exceed the amount of financial protection provided in that year pursuant to section 170 b. (2)(A).

"(iv) The funds provided by financial protection pursuant to subsection 170 b. in any year by or on behalf of such persons indemnified and, where appropriate, the funds provided as a result of the issuance of obligations pursuant to clause (i), shall be the exclusive source of payments for public liability claims.

"(v) The total of obligations issued pursuant to clause (i) for any given nuclear incident, including any interest to be paid on such obligations, shall not exceed amounts provided in appropriation Acts.

"(vi) Redemption of obligations issued pursuant to clause (i), including any interest to be paid on such obligations, shall be made by the Commission from the balance of deferred premiums to be assessed pursuant to section 170 b. (2)(A) as a result of the nuclear incident for which such obligations were issued.

"(vii) Obligations issued pursuant to clause (i) shall bear interest at a rate determined by the Secretary of the Treasury, which shall be not less than a rate determined by taking into consideration the average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the obligations under this paragraph. The Secretary of the Treasury shall purchase any issued obligations, and for such purpose the Secretrary of the Treasury is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, United States Code, and the purposes for which securities may be issued under such Act are extended to include any purchase of such obligations. The Secretary of the Treasury may at any time sell any of the obligations acquired by him under this paragraph. All redemptions, purchases, and sales by the Secretary of the Treasury of obligations under this paragraph shall be treated as public debt transactions of the United States.

INDEMNIFICATION AGREEMENTS FOR ACTIVITIES UNDERTAKEN UNDER CONTRACT WITH THE DEPARTMENT OF ENERGY

SEC. 4. Section 170 b. of the Atomic Energy Act of 1954, as amended, is amended to read as follows:

"d. (1)(A) In addition to any other authority the Secretary of the Department of Energy (hereinafter in this section referred to as the Secretary) may have, the Secretary is authorized until August 1, 2007, to enter into agreements of indemnification with its contractors for the construction or operation of production or utilization facilities or other activities under contracts for the benefit of the United States involving activities under the risk of public liability for a substantial nuclear incident.

"(B)(i) The authority conferred upon the Secretary pursuant to subparagraph (A) to enter into agreements of indemnification with contractors shall include contracts entered into by the Secretary for the purpose of carrying out such activities as the Secretary is authorized to undertake, pursuant to this Act or any other law, involving the storage or disposal of spent nuclear fuel, high-level radioactive waste, or transuranic waste, including the transportation of such materials to a storage or disposal site or facility, and the construction and operation of any such site or facility. For all such activities, the authority conferred upon the Secretary pursuant to subsection 170d.(1)(A) shall be the exclusive means of indemnification under this section.

"(ii) For the purpose of compensating public liability claims, as defined in section 11 w. of this Act arising out of activities involving the storage or disposal of spent nuclear fuel, high-level radioactive waste, or transuranic waste produced as a result of the generation of electricity in a civilian nuclear power reactor, including the transportation of such materials to a storage or disposal site or facility, and the construction and operation of any such site or facility, the Secretary shall make available such funds as may be necessary, in an amount not to exceed the maximum amount of financial protection required of licensees pursuant to subsection 170 a., from the nuclear waste fund established pursuant to section 302 of the Nuclear Waste Policy Act of 1982 (42 U.S.C 10222).

"(iii) Public liability claims arising out of activities involving the storage or disposal of all other spent nuclear fuel, high-level radioactive waste, or transuranic waste not specified in clause (ii), including the transportation of such materials to a storage or disposal site or facility, and the construction and operation of any such site or facility, shall be compensated in accordance with the provisions of this Act, and from the same source of funds applicable to all other contractors indemnified pursuant to this subsection.

"(iv)(I) In the event of a nuclear incident that arises out of or results from or occurs in the course of activities undertaken by the Secretary in connection with the storage or disposal of spent nuclear fuel, high-level radioactive waste, or transuranic waste, including the transportation of such materials to a storage or disposal site or facility, and the construction and operation of any such site or facility, the Secretary shall determine the extent to which such incident involves materials produced as a result of the generation of electricity in a civilian nuclear power reactor, or material resulting from other activities, or both, and based upon such determination, render a decision as to the appropriate source of funds, in accordance with clauses (ii) and (iii), to be used in compensating public liability claims.

"(II) The funds to be used to compensate public liability claims pursuant to this subparagraph shall be provided in a manner and in such amounts as are appropriate to ensure that the funds necessary to compensate such claims are shared on a pro rata basis, in accordance with the determination rendered pursuant to subclause (I). The decision on the sources of such funds shall be final and conclusive. Within ninety days of the date of enactment of the Price-Anderson Act Amendments Act of 1985, the Secretary shall promulgate standards and regulations for making the determinations required under the subparagraph.

"(2) In agreements of indemnification entered into pursuant to subsection 170 d. (1), the Secretary may require its contractor to provide and maintain finanical protection of such a type and in such amounts as the Secretary shall determine to be appropriate to cover public liability arising out of or in connection with the contractual activity, and shall indemnify the persons indemnified against such claims above the amount of the financial protection required, in an amount equal to the maximum amount of financial protection required of licensees pursuant to subsection 170 a., excluding costs of investigating and settling claims and defending suits for damage in the aggregate for all persons indemnified in connection with such contract and for each nuclear incident: *Provived,* That this amount of indemnity shall be reduced by the amount of the financial protection that the Secretary requires of the contractor.

"(3) Notwithstanding paragraph (2) of this subsection, if the maximum amount of financial protection required of licensees pursuant to subsection 170 a. is increased by the Commission, the amount of indemnity, together with any financial protection required of the contractor, shall at all times remain equal to the maximum amount of financial protection required of licensees pursuant to subsection 170 a. The amount of indemnity provided contractors pursuant to this subsection shall not, at any time, be reduced in the event that the maximum amount of financial protection required of licensees is reduced.

"(4) In the case of nuclear incidents occurring outside the United States, the amount of the indemnity provided by the Secretary pursuant to this subsection shall not exceed $100,000,000.

"(5) The provisions of this subsection may be applicable to lump sum as well as cost type contracts and to contracts and projects financed in whole or in part by the Secretary.

"(6) A contractor with whom an agreement of indemnification has been executed and who is engaged in activities connected with the underground detonation of a nuclear explosive device shall be liable, to the extent so indemnified under this section, for injuries or damage sustained as a result of such detonation in the same manner and to the same extent as would a private person acting as principal, and no immunity or defense founded in the Federal, State, or municipal character of the contractor or of the work to be performed under the contract shall be effective to bar such liability.".

AGGREGATE LIABILITY FOR A SINGLE NUCLEAR INCIDENT

SEC. 5. Section 170 e. of the Atomic Energy Act of 1954, as amended, is amended to read as follows:

"e. (1)(A) With respect to nuclear incidents involving—

"(i) licensees required to have and maintain financial protection equal to the maximum amount of liability insurance available from private sources, and

"(ii) contractors with whom the Secretary has entered into an agreement of indemnification, pursuant to subsection 170 d.,

the aggregate liability for a single nuclear incident of persons indemnified, including the reasonable costs of investigating and settling claims and defending suits for damage, shall not exceed the maximum amount of financial protection required of licensees pursuant to subsection 170 a.: *Provided, however,* That the aggregate liability for nuclear incidents involving contractors with whom the Secretary has entered into an agreement of indemnification, pursuant to subsection 170 d., shall not, at any time, be reduced in the event that the amount of financial protection required of licensees required to have and maintain financial protection equal to the maximum amount of liability insurance available from private sources is reduced.

"(B) With respect to nuclear incidents involving licensees other than those specified in subsection 170 e. (1)(A)(i), the aggregate liability for a single nuclear incident of persons indemnified, including the reasonable costs of investigating and settling claims and defending suits for damage, shall not exceed (i) the sum of $500,000,000 together with the amount of financial protection required of the licensee, or (ii) if the amount of financial protection required of the licensee exceeds $60,000,000, such aggregate liability shall not exceed the sum of $560,000,000 or the amount of financial protection required of the licensee, whichever amount is greater.

"(C) In the event of a nuclear incident involving damages in excess of the amount of aggregate liability, the Congress will thoroughly review the particular incident, in accordance with the procedures set forth in subsection 170 i., and will, in accordance with such procedures, take whatever action is necessary, including approval of appropriate compensation plans, to compensate the public in full for all public liability claims resulting from a disaster of such magnitude.

"(2) With respect to any nuclear incident occurring outside of the United States to which an agreement of indemnification en-

tered into under the provisions of subsection 170 d. is applicable, such aggregate liability shall not exceed the amount of $100,000,000 together with the amount of financial protection required of the contractor.".

CONGRESSIONAL REVIEW OF COMPENSATION PLANS

SEC. 6. Section 170 i. of the Atomic Energy Act of 1954, as amended, is amended to read as follows:

"i. (1) After any nuclear incident which will probably require payments by the United States under this section, the Secretary or the Commission, as appropriate, shall make a survey of the causes and extent of damage, and shall submit such report forthwith to the Congress, to the Congressmen of the affected districts, to the Senators of the affected States, and, except for information which would cause serious damage to the national defense of the United States, to the public, to the parties involved, and to the courts. The Commission and the Secretary shall report annually to the Congress on the operations under this section.

"(2) Upon a determination by a court, pursuant to subsection 170 o., that public liability from a single nuclear incident may exceed the aggregate liability under subsection 170 e., the President of the United States shall, within ninety days after such determination, submit to the Congress—

"(A) a report setting forth the causes and extent of damage and the estimated requirements for full, equitable, and efficient compensation and relief of all claimants;

"(B) one or more compensation plans, containing a recommendation or recommendations as to the relief to be provided; and

"(C) any additional legislative authorities necessary to implement such compensation plan or plans.

"(3) Any compensation plan transmitted to the Congress pursuant to paragraph (2) shall bear an identification number and shall be transmitted to both Houses of Congress on the same day and to each House while it is in session.

"(4) No such compensation plan may be considered approved for purposes of subsection 170 e. (1) unless between the date of transmittal and the end of the first period of sixty calendar days of continuous session of Congress after the date on which such action is transmitted to such House, each House of Congress passes a resolution described in paragraph 6 of this subsection.

"(5) For the purpose of paragraph 4 of this subsection—

"(A) continuity of session is broken only by an adjournment of Congress sine die; and

"(B) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the sixty-day calendar period.

"(6)(A) This paragraph is enacted by Congress—

"(i) As an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in the House in the case of resolutions described by clause (B) and it supersedes other rules only to the extent that it is inconsistent therewith; and

"(ii) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of the House.

"(B) For purposes of this paragraph, the term 'resolution' means only a resolution of either House of Congress the matter after the resovling clause of which is as follows: "That the approves the compensation plan numbered submitted to the Congress on , 19 .", the first blank space therein being filled with the name of the resolving House and the other blank spaces being appropriately filled; but does not include a resolution which specifies more than one compensation plan.

"(C) A resolution once introduced with respect to a compensation plan shall immediately be referred to a committee (and all resolutions with respect to the same compensation plan shall be referred to the same committee) by the President of the Senate or the Speaker of the House of Representatives, as the case may be.

"(D)(i) If the committee to which a resolution with respect to a compensation plan has been referred has not reported it at the end of twenty calendar days after its referral, it shall be in order to move either to discharge the committee from further consideration of such resolution or to discharge the committee from further consideration with respect to such compensation plan which has been referred to the committee.

"(ii) A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same compensation plan), and debate thereon shall be limited to more than one house, to be divided equally between those favoring and those opposing the resolution. And amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

"(iii) If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other resolution with respect to the same compensation plan.

"(E)(i) When the committee has reported, or has been discharged from further consideration of, a resolution, it shall be at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

"(ii) Debate on the resolution referred to in clause (i) of this subparagraph shall be limited to not more than ten hours, which shall be divided equally between those favoring and those opposing such resolution. A motion further to limit debate shall not be debatable. An amendment to, or motion to recommit, the resolution shall not be in order, and it shall not be in order to move to reconsider the vote by which such resolution was agreed to or disagreed to.

"(F) (i) Motions to postpone, made with respect to the discharge from committee, or the consideration of a resolution or motions to proceed to the consideration of other business, shall be decided without debate.

"(ii) Appeals from the decision of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedures relating to a resolution shall be decided without debate.".

WAIVER OF DEFENSES

SEC. 7. (a) Section 170 n. (1) of the Atomic Energy Act of 1954, as amended, is amended—

(1) by adding "or" at the end of subparagraph (c);

(2) by adding the following new paragraphs (d), (e), and (f):

"(d) arises out of or results from or occurs in the course of the construction, possession, or operation of any facility licensed under section 53, 63, or 81 of this Act, for which the Commission has imposed as a condition of the license a requirement that the licensee have and maintain financial protection pursuant to subsection 170 a., or

"(e) arises out of or results from or occurs in the course of transportation of source material, byproduct material, or special nuclear material to or from any facility licensed under section 53, 63, or 81 of this Act, for which the Commission has imposed as a condition of the license a requirement that the licensee have and maintain financial protection pursuant to subsection 170 a., or

"(f) arises out of or results from or occurs in the course of activities undertaken by the Secretary, including activities undertaken by contract, in connection with the storage or disposal of high-level radioactive waste, spent nuclear fuel, or transuranic waste, including the transportation of such materials to a storage or disposal site or facility, and the construction and operation of any such site or facility,".

(b) Subsection n. of section 170 of the Atomic Energy Act of 1954, as amended, is amended—

(1) in paragraph (1) by—

(A) inserting after "the Commission" the following: "or the Secretary, as appropriate,"; and

(B) striking out "a Commission" in clause (c) and insert in lieu thereof "a Department of Energy"; and

(2) in paragraph (2), by inserting after "the Commission" the following: "or the Secretary, as appropriate,".

INDEMNIFICATION FROM PUBLIC LIABILITY IN EXCESS OF LEVEL OF FINANCIAL PROTECTION

SEC. 8. Section 170 c. of the Atomic Energy Act of 1954, as amended, is amended to read as follows:

"c. (1) the Commission shall, with respect to licenses issued between August 30, 1954, and August 1, 2007, for which it requires financial protection of less than $560,000,000, agree to indemnify and hold harmless the licensee and other persons indemnified, as their interest may appear, from public liability arising from nuclear incidents which is in excess of the level of financial protection required of the licensee. The aggregate indemnity for all persons indemnified in connection with each nuclear incident shall not exceed $500,000,000, excluding costs of investigating and settling claims and defending suits for damage: *Provided, however,* That this amount of indemnity shall be reduced by the amount that the financial protection required shall exceed $60,000,000.

"(2) Such a contract of indemnification shall cover public liability arising out of or in connection with the licensed activity.

"(3) With respect to any production or utilization facility for which a construction permit is issued between August 30, 1954, and August 1, 2007, the requirements of this subsection shall apply to any license issued

for such facility subsequent to August 1, 2007.".

DEFINITIONS

SEC. 9. (a) Subsection s. of section 11 of the Atomic Energy Act of 1954, as amended, is amended by adding at the end thereof the following: "In the event that the Secretary of Energy, in carrying out any activity that the Secretary is authorized or directed to undertake pursuant to this Act or any other law involving the risk of public liability for a nuclear incident as a result of the storage or disposal of, or research and development on, spent nuclear fuel, high-level radioactive waste, or transuranic waste (including the transportation of such materials to a storage or disposal site or facility, and the construction and operation of any such site or facility), undertakes such activity in a manner that involves the actual physical handling of spent nuclear fuel, high-level radioactive waste, or transuranic waste by the Secretary, the Secretary shall be considered as if he were a contractor with whom an indemnity agreement has been entered into pursuant to subsection 170d. of this Act.".

(b) Subsection t. of section 11 of the Atomic Energy Act of 1954, as amended, is amended in clause (1) by inserting after "and any other person" the following: ", as defined in subsection (s),".

DATE OF EXEMPTION FROM FINANCIAL PROTECTION REQUIREMENT

SEC. 10. Section 170 k. of the Atomic Energy Act of 1954, as amended, is amended by striking out "August 1, 1987" wherever it appears and inserting in lieu thereof "August 1, 2007."

REPORT TO JOINT COMMITTEE BY COMMISSION

SEC. 11. Section 170 o. of the Atomic Energy Act of 1954, as amended, is amended—

(1) in paragraph (3) by inserting after "The Commission", both places such phrase appears the following: "or the Secretary, as appropriate,"; and

(2) by striking out paragraph (4).

DATE OF REPORT TO CONGRESS BY NUCLEAR REGULATORY COMMISSION AND DEPARTMENT OF ENERGY

SEC. 12. Section 170 p. of the Atomic Energy Act of 1954, as amended, is amended by striking out "shall submit to the Congress by August 1, 1983, a detailed report", and inserting in lieu thereof "and the Secretary shall submit to the Congress by August 1, 2003, detailed reports".

CONFORMING AMENDMENTS

SEC. 13. Subsection g., h., j., and m. of section 170 of the Atomic Energy Act of 1954, as amended, are amended by inserting after "The Commission" or "the commission" wherever they appear the following: "or the Secretary, as appropriate,".

SEC. 14. Subsection f. of section 170 of the Atomic Energy Act of 1954, as amended, is amended by striking "Commission" the first two times it appears and inserting in lieu thereof "Commission or the Secretary, as appropriate,".

SEC. 15. Section 170 n. (1) of the Atomic Energy Act of 1954, as amended, is amended by striking "twenty" and inserting in lieu thereof "thirty".

PUNITIVE DAMAGES

SEC. 16. Section 170 of the Atomic Energy Act of 1954, as amended, is further amended by adding a new subsection 170 r. as follows:

"r. (1)(A) No court may award exemplary or punitive damages under State law in any action with respect to a nuclear incident against a person on behalf of whom the United States is obligated to make payments under an agreement of indemnification covering such incident.

"(B) Subparagraph (A) applies to any nuclear incident or evacuation covered by an agreement of indemnification under—

"(i) subsection 170 c. with a licensee of the Commission that is required to maintain less than the maximum amount of financial protection;

"(ii) subsection 170 d.; and

"(iii) subsection 170 k.

"(2) Nothing in this subsection affects the authority of any court to award exemplary or punitive damages under State law in any instance other than an instance subject to paragraph (1).".

PRECAUTIONARY EVACUATIONS

SEC. 17. (a) Section 170 of the Atomic Energy Act of 1954, as amended, is amended by adding at the end thereof a new subsection 170s. as follows:

"s. The provisions of this section shall apply to any legal liability arising out of or resulting from a precautionary evacuation, as defined in section 11.dd., notwithstanding that no nuclear incident has occurred.".

(b) Section 11 of the Atomic Energy Act of 1954, as amended, is amended by adding at the end thereof the following new subsection:

"dd. The term 'precautionary evacuation' means an evacuation of the public, where no nuclear incident has occurred, that is ordered by an officer of a State or a political subdivision of a State who—

(1) is authorized by State law to order such an evacuation; and

(2) reasonably determines, at the time that such evacuation is ordered, that such evacuation is necessary to protect those evacuated from imminent danger of bodily injury, sickness, disease, or death arising out of or resulting from the radioactive, toxic, explosive, or other hazardous properties of source, special nuclear, or byproduct material, where such material is subject to an agreement of indemnification entered into pursuant to section 170.".

Mr. SIMPSON. Mr. President, I submit a section-by-section analysis of the provisions in this substitute amendment, and ask unanimous consent that the section-by-section analysis be reprinted in the CONGRESSIONAL RECORD at the conclusion of my remarks.

This amendment is a proposed amendment in the nature of a substitute to the two different versions of S. 1225 that have been reported by the Committee on Environment and Public Works and the Committee on Energy and Natural Resources. The text of the proposed substitute amendment reflects what Senators MCCLURE, STAFFORD, JOHNSTON, DOMENICI, and I feel represents a reasonable reconciliation between the two versions of Price-Anderson legislation that have been reported to the full Senate. The chairman and ranking minority members of the committees intend to propose this language as a substitute to S. 1225, when that bill is called up on the Senate floor. It remains our intention to fashion a final Senate consensus position of Price-Anderson legislation during consideration of the proposed amendment. The assistance of all Members of the Senate in achieving that objective would be appreciated.

There being no objection, the section-by-section analysis was ordered to be printed in the RECORD, as follows:

SECTION-BY-SECTION ANALYSIS

Section 1 provides that this Act may be cited by its short title, the "Price-Anderson Act Amendments Act of 1985."

Section 2 provides a statement of congressional findings and purposes regarding compensation of the public for injuries suffered as a result of accidents involving nuclear materials.

Section 3 provides for two major changes in the financial protection required for those commercial nuclear powerplants licensed by the Nuclear Regulatory Commission that have a related capacity of 100,000 electrical kilowatts or more. First, this section directs the Commission to increase the standard deferred premium which may be charged the licensee of each such reactor following any nuclear incident, from its current level of $5,000,000 to an amount not more than $60,000,000 (but not more than $12,000,000 in any one year). Under this section, the Commission would be required to undertake a notice and comment rulemaking and to promulgate a final rule within twelve months of the date of enactment of this Act establishing the maximum standard deferred premium to be assessed each such reactor per nuclear incident.

Second, section 3 authorizes the Commission to borrow funds to pay public liability claims, in the event that the aggregate annual deferred premiums assessed following a nuclear incident are insufficient to indemnify public liablity claims, as they arise, because such claims emerge at a rate that exceeds the deferred premium assessments authorized pursuant to section 170b.(2)(A) (i.e., $12,000,000 per year times the number of commercial nulcear powerplants required to carry the maximum amount of financial protection). All such borrowing is subject to approval in advance in appropriations Acts. The total amount of obligations that may be issued pursuant to this provision for any given nulcear incident (including any interest on such obligations) may not exceed the unpaid balance of deferred premiums to be assessed pursuant to section 170b.(2)(A) for such incident. All such obligations, including any interest to be paid on such obligations, shall be repaid from assessments to be collected as a result of the unpaid balance of deferred premiums to be assessed pursuant to section 170b.(2)(A) for such nuclear incident. This provision does not authorize the Commission to issue obligations to discharge its obligation to guarantee the payment of deferred premiums due to the failure of a licensee or indemnitor to meet any of its obligations arising under or in connection with financial protection required under section 170b. of the Atomic Energy Act.

Finally, section 3 makes a number of technical and conforming changes to improve on the drafting of section 170.b. These changes are not intended to effect any substantive changes in the existing section 170.b.

Section 4 makes three major changes in the Price-Anderson Act, as it applies to Department of Energy contractors involved in the construction or operation of production or utilization facilities or other activities (including nuclear waste activities) that in-

volve the risk of public liability for a substantial nuclear incident. First, this section extends to 20 years the authority of the Department of Energy to enter into agreements of indemnification with such contractors, from the current expiration date of August 1, 1987, to August 1, 2007.

Second, this section includes a number of provisions to clarify the application of Price-Anderson to high-level nuclear waste transportation, storage, and disposal activities of the Department of Energy. This section clarifies that the Secretary's present authority to enter into such agreements of indemnification covers all of those activities undertaken by contract for the Department of Energy involving the storage or disposal of spent nuclear fuel, high-level radioactive waste, or transuranic waste. This includes the transportation of such materials to a storage or disposal site or facility and the construction and operation of any such site or facility. For these activities, this section further provides that the authority of the Department of Energy to enter into indemnity agreements shall be the exclusive means of indemnification for such activities.

In addition, this section provides that in the event of a nuclear incident involving the nuclear waste program, the Secretary of Energy shall determine the extent to which such incident involves materials produced as a result of the generation of electricity produced in a civilian nuclear power reactor or materials resulting from other activities (e.g., defense-related wastes), or both. Based upon determining this pro rata contribution of civilian and defense waste to the incident, the Secretary is then to determine the appropriate source of funds for compensating public liability claims, with the commercial pro rata share coming from the nuclear waste fund established under section 302 of the Nuclear Waste Policy Act of 1982, and the defense pro rata share coming from federal funds. In order to make these determinations, this section also provides that the Secretary of Energy shall promulgate implementing regulations within 90 days of the date of enactment of this Act.

Finally, this section provides for an increase in the amount of federal indemnity for public liability claims arising out of or in connection with DOE contractual activities, from the current level of $500,000,000 to an amount equal to the sum of the two layers of coverage mandated for NRC reactor licensees. [Thus, for example, with the 101 reactors presently licensed to operate, and assuming a $600,000,000 retrospective assessment per reactor plus $160,000,000 in primary coverage, this would result in federal indemnity for DOE contractors of $6.22 billion.] In this regard, this section also provides that, as the amount of financial protection required of NRC reactor licensees increases, the amount of federal indemnity for DOE contractors shall also increase, so that, at all times, the amount of federal indemnity for DOE contractors remains equal to the maximum amount of financial protection required of NRC commercial reactor licensees. Under this provision, federal indemnity for DOE contractors is to be set at whatever that maximum amount is at any given time, with the proviso that the federal indemnity shall not be reduced in the event that the financial protection required of NRC commercial reactor licensees is reduced.

Section 5 makes two major changes in section 170.e. of the Price-Anderson Act. First, this section increases the aggregate liability for a single nuclear incident for NRC commercial reactor licensees and for DOE contractors to an amount equal to the maximum amount of financial protection required of NRC commercial reactor licensees. For DOE contractors, this amount would increase as the two-tiered coverage available for commercial reactor licensees increases, and would, at all times, remain equal to the maximum amount of such financial protection. Aggregate liability for DOE contractors would not decrease in the event that the financial protection required of commercial nuclear reactor licensees decreases.

Second, this section provides that in the event of a nuclear accident involving damages in excess of the aggregate liability specified in the Act, the Congress will thoroughly review the accident and will take whatever action is necessary to compensate the public in full for all public liability claims resulting from such an accident.

Section 6 amends the Price-Anderson Act by establishing a new mechanism for Congressional review of any nuclear accident that appears likely to result in public liability claims in excess of the funds immediately available for compensation, and a mechanism for compensating the public in full for such claims.

Under this provision, the President is required to submit a comprehensive report to the Congress within 90 days of a determination by a court that public liability from a single nuclear incident may exceed the aggregate liability specified in the Act, in which the President: (A) sets forth the causes and extent of damage and the estimated requirements for full, equitable, and efficient compensation of all claimants; (B) recommends one or more compensation plans, setting forth the President's recommendation(s) as the relief to be provided; and (C) submits any additional legislative authorities necessary to implement such compensation plans. In preparing this report, it is anticipated that the President will consult with the Nuclear Regulatory Commission of the Department of Energy, as appropriate.

Once the President's recommended compensation plan is submitted to the Congress, this section provides that the Congress shall consider and act upon such compensation plan in accordance with expedited congressional review procedures, in order to ensure that a prompt decision is reached by the Congress. As stated in section five of this bill, the Congress will take whatever action is necessary, in acting upon such compensation plans, to compensate the public in full for all public liability claims arising from the accident, and to do so in a fashion that achieves four objectives: (A) to provide both the President and the Congress an opportunity to review and assess the cause and consequences of any given accident, and thereby tailor the proposed compensation plans to the facts of the given case (including determining what sources of funds should be considered to provide additional compensation; assessing how quickly those funds must be provided, based upon the extent of latent injuries; and determining the appropriate distribution of such funds); (B) to establish a congressional review mechanism that will ensure a prompt decision on the President's recommended compensation plan(s); (C) to provide for full compensation of all public liability claims in an equitable and efficient manner; and (D) to preserve for the Congress a major decision making role in determining the approach to be taken in structuring an approach to full compensation.

Section 7 amends the Price-Anderson Act to extend the "extraordinary nuclear occurrence" feature of the existing Act to cover commercial and defense waste activities and indemnified nuclear materials licensees. Under this provision, the waiver of defenses provisions would apply to these activities or licensees, in the same manner and to the same extent as those provisions now apply to the facilities or activities currently specified in section 170.n.(1) (a), (b), and (c) of the existing Price-Anderson Act. It is anticipated that the Department of Energy or the Nuclear Regulatory Commission, as appropriate, would adopt whatever changes are necessary in their existing criteria for determining whether an "extraordinary nuclear occurrence" has occurred, to reflect the changes made under this provision. Particular attention should be devoted to determining how the ENO criteria will apply to nuclear waste transportation, storage, and disposal activities.

Section 8 extends by twenty years the authority of the Nuclear Regulatory Commission to indemnify certain licensees and other persons from public liability arising from nuclear incidents which is in excess of the required level of financial protection.

Section 9 amends the definition of "person" contained in section 11.s. of the Atomic Energy Act to provide that in the event that the Secretary of Energy, in carrying out any activity that the Secretary is authorized or directed to undertake pursuant to this Act or any other law involving the risk of public liability for a nuclear incident as a result of the storage or disposal of, or research and development on, spent nuclear fuel, high-level radioactive waste, or transuranic waste, and undertakes such activity in a manner that involves the actual physical handling of spent nuclear fuel, high-level radioactive waste, or transuranic waste by the Secretary, the Secretary shall be considered as if he were a contractor with whom an indemnity agreement has been entered into pursuant to subsection 170d.

This provision is intended to address a potential situation of an exceptional nature, where DOE directly undertakes an activity normally carried out by contract—the actual physical handling of spent nuclear fuel, high-level radioactive waste, or transuranic waste—to ensure that if a nuclear incident occurs as a result of such activity, the Price-Anderson framework would still apply to any public liability claims that might arise out of such incident.

This section also amends the definition of "person indemnified" to clarify that under the existing law, this provision covers any State, any political subdivision, or any political entity within a State. No substantive change, beyond this simple clarification confirming existing law, is intended by this provision.

Section 10 extends by twenty years the authority of the Nuclear Regulatory Commission over nonprofit educational institutions under section 170.k. of the Price-Anderson Act.

Section 11 strikes the requirement for the Commission to submit a Report to the Joint Committee on Atomic Energy. In light of the changes contained in section six, this provision is no longer necessary.

Section 12 requires the Nuclear Regulatory Commission and the Department of Energy to submit reports to the Congress by August 1, 2203, four years before the expiration of the authority conferred under this bill, on the operations of each respective

agency under this Act, and recommendations for modifying or extending the authority of this Act.

Section 13 and 14 contain a number of technical and conforming changes.

Section 15 authorizes the Nuclear Regulatory Commission and Department of Energy to incorporate provisions in indemnity agreements with licensees and contractors, respectively, which provide for the waiver of any issue or defense based on any statute of limitations if suit is instituted within three years from the date on which the claimant first knew, or reasonably could have known, of his injury or damage and the cause thereof but in no event more than thirty years after the date of the nuclear incident. Current law authorizes the Commission and the Department to provide for the waiver of such issues or defenses, up to twenty years from the date of the nuclear incident.

Section 16 prohibits any court from awarding punitive damages against any person indemnified by the United States with respect to a nuclear incident covered by the Price-Anderson Act. The aim of this provision is to insure that the Price-Anderson Act is consistent with established federal policy most forcefully stated in the Federal Tort Claims Act (28 U.S.C. 2674), that punitive damages may not be awarded against the Federal Government.

This provision ensures that taxpayers will not be forced to pay punitive damages in public liability claims against DOE contractors and those NRC licensees that are indemnified by the United States under the Price-Anderson Act.

No preference is intended to be inferred from this provision about the desirability of awarding punitive damages in suits involving persons on behalf of whom the United States is not obligated to make payments, pursuant to an agreement of indemnification, for public liabiilty claims.

Section 17 expands Price-Anderson to cover legal liability arising from a precautionary evacuation involving contractors indemnified by the Department of Energy and licensees indemnified by the Nuclear Regulatory Commission. Under this provision, legal liability arising out of or resulting from a precautionary evacuation will be covered by the Price-Anderson Act to the same extent as the Act covers legal liability arising out of or resulting from an evacuation due to a nuclear incident, if such precautionary evacuation meets the definition established in this provision.

Under this provision, a precautionary evacuation is defined as an evacuation of the public, where no nuclear incident has occurred, that is ordered by an official of a State or a political subdivision of a state who—(1) is authorized by State law to order such an evacuation; and (2) reasonably determines, at the time that such evacuation is ordered, that such evacuation is necessary to protect those evacuated from imminent danger of bodily injury, sickness, disease, or death arising out of or resulting from the radioactive, toxic, explosive, or other hazardous properties of source, special nuclear, or byproduct material, where such material is subject to an agreement of indemnification entered into pursuant to section 170.

Under current law, legal liability arising out of a precautionary evacuation is not within the scope of the Act's protections because, by definition, there would be no "nuclear incident" to trigger the application of the Act. This section modifies current law so that such legal liability will be treated in the same manner as "public liability" under the Price-Anderson Act, even though no nuclear incident has occurred.

This means that persons who are indemnified or covered by financial protection for public liability shall be indemnified or covered by financial protection for any legal liability arising out of a precautionary evacuation. All substantive and procedural provisions applicable to public liability, such as the limit on aggregate liability, shall be applicable to any legal liability arising from precautionary evacuations. Since, by definition, a precautionary evacuation is an incident that does not involve the release of radioactive materials, the waiver of defenses provisions of the Price-Anserson, triggered in the event of an extraordinary nuclear occurrence, would not be triggered for a precautionary evacuation.

The inclusion of this provision is not intended to affect in any way the laws of any jurisdiction regarding legal liability for the costs of an evacuation incurred by state and local governments or the public. This provision does not create any liability on behalf of persons engaged in nuclear activities to state and local governments or to any other person for the costs of a precautionary evacuation, nor does it provide for recovery by any person, including state and local governments, for precautionary evacuation expenses in the absence of liability under the applicable law of the state. This provision does not alter current law in that persons may recover these expenses only if there is liability under the applicable state law. This section provides that should such jurisdiction impose liability for these costs, then this liability is to be treated under the Act as if it had arisen from a nuclear incident.

● Mr. JOHNSTON. Mr. President, I am joining my colleagues in sponsoring an amendment in the nature of a substitute to S. 1225 that is based substantially on the bill reported by the Committee on Environment and Public Works. The substitute also incorporates two provisions of the bill reported by the Committee on Energy and Natural Resources that are useful and important additions to the Price-Anderson Act and a third provision relating to coverage under the act when Federal employees are engaged directly in nuclear activities, as opposed to the much more usual situation when contractors perform work for the Government involving nuclear materials or processes.

We are introducing this substitute to indicate what we consider a good basic framework for Senate action to extend the Price-Anderson Program. As my colleagues know, the act expires in August 1987. It would be a good idea to extend this valuable program now. I hope we get a chance to do that.

The Environment and Public Works Committee bill is an excellent basic bill. My only quarrel, and it is a substantial one, is with the parameters that have been inserted in the bill.

The overall limit on liability—above $6 billion—is, in my opinion, far too high. The Federal responsibility for addressing the injury caused by a substantial nuclear accident should, and I believe, would, be brought to bear long before billions of dollars of costs have been shoved onto the bills of the ratepayers of this Nation's electric utilities. I have agreed to cosponsor a bill at this liability limit only very reluctantly, because I believe the public benefits of the Price-Anderson system require us to take all reasonable steps—and then some—to prevent expiration of the law.

My second significant problem is with the length of the extension contained in the bill. The Energy and Natural Resources Committee bill extended the law for 25 years. The Environment and Public Works Committee bill extends the law for 20 years. These differences do not seem great until we take into account the apparent desire of the House of Representatives for a much shorter extension of the Price-Anderson Act.

I believe it is very important to establish a certain regime for liability in nuclear accidents so that everyone knows the rules of the game and knows that those rules will not be changed. This is particularly important for the siting of facilities for the handling, storage, and disposal of spent nuclear fuel and nuclear waste. Short-term extensions only compound the difficulty of assuring the public that any damages arising out of these operation of facilities will be reasonably compensated.

So, I believe that the Senate should stick to the 20-year extension in this substitute. We should not set up a situation where we dramatically increase the liability limits in the program and then suggest that what we have accomplished will all be up for grabs again in a relatively short time.

Mr. President, I support this substitute, but I am not prepared to go beyond it.

If the act expires next year the Nation's existing nuclear power reactors will be covered under the system for the term of their licenses at a liability limit substantially below $1 billion. However, contractors to the Department of Energy—atomic energy defense, uranium fuel preparation, nuclear waste disposal—will be without the comprehensive, compensation-oriented system of liability insurance that Price-Anderson provides. This will compel Congress to act to preserve the ability of the Federal Government to undertake these essential Federal activities. I do not know who will get the better deal in the next Congress. In this Congress, the substitute we are introducing goes as far as I can go toward solving this problem now. Others may want to go farther. If that is the case, I would prefer to see what we can do with another Congress.●

MELCHER AMENDMENT NO. 3239

Mr. MELCHER proposed an amendment to the bill (S. 2792), supra, as follows:

1. On page 122, lines 1 and 2, redesignate "(1)" and "(2)" as "(2)" and "(3)", respectively, and

2. On page 122 immediately before line 1 insert the following:

"(1) by redesignating clause (ii) as clause (ii)(I) and adding at the end of such clause the following new subclause:

"(II) If the term of a patent for a pesticide registered under this section is extended under section 158, Chapter 14 of title 35, United States Code, the amount of compensation to be paid under arbitration under subclause (I) for the use of data submitted to the Administrator for such pesticide shall be a fair share of the cost of producing the data plus a value premium not to exceed that share, as determined in the arbitration process. For pesticides for which the term of a patent has not been so extended,

(A) after the patent for the pesticide has expired, and

(B) there has elapsed a period of time equal to the regulatory review period for the original registration of the pesticide that occurred after the patent for the pesticide was granted, but not more than three years,

the amount of compensation to be paid under arbitration under subclause (I) for use of data submitted to the Administrator for such pesticide shall be as provided in the preceding sentence. If the Administrator has inadequate records to determine the regulatory review period, the amount of compensation to be paid for such use of data shall be as provided in the first sentence of this subclause (II) beginning three years after the patent for the pesticide has expired. The provisions of this subclause (II) shall become effective with respect to applications by persons, other than the original data submitter, filed with the Administrator after the date of enactment of the Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1986.

DIXON AMENDMENT NO. 3240

Mr. DIXON proposed an amendment to the bill (S. 2792), supra, as follows:

On page 137, strike lines 8 through 25 and on page 138, strike lines 1 through 21, and insert the following in lieu thereof:

SEC. 801. AUTHORITY OF STATES.

"(a) STATE REGULATION.—

"(1) IN GENERAL.—A State may regulate the sale or use of any federally registered pesticide or device in the State, but only if and to the extent the regulation does not permit any sale or use prohibited by this Act.

"(2) HOUSEHOLD ANTIMICROBIAL PESTICIDES.—

"(A) This paragraph shall apply to any household antimicrobial pesticide where—

"(i) the pesticide is a formulated end-use product which, as registered, is not intended for use on food or feed;

"(ii) the pesticide has been registered under section 3(c)(5), or reregistered under section 3A, after the effective date of the Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1986;

"(iii) the Administrator has determined that the product as so registered or reregistered poses no significant toxicological concern;

"(iv) the Administrator has published the determination of no significant toxicological concern in the Federal Register;

"(v) the registrant of the product has offered, at the time the registrant provides the final product label to the Administrator, to provide under the conditions of this Act to the appropriate State authority any date submitted by the registrant to the Administrator in support of the registration; and

"(vi) at least 45 days have elapsed from the date upon which an application for State registration has been filed.

"(B) A State may not prohibit any sale or use permitted under this Act of a pesticide described in subparagraph (A) for which an application for State registration has been filed unless and until the State has finally acted on such application pursuant to applicable State law.

"(C) This paragraph shall cease to be effective five years after the date of enactment of the Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1986 and shall not be construed during the five year effective period to (i) preclude a State from requiring in the State registration process submission of additional data beyond that required by the Administrator of (ii) otherwise affect State authority to regulate the sale or use of a pesticide when final action is taken under State law.".

METZENBAUM AMENDMENT NO. 3241

Mr. METZENBAUM proposed an amendment to the bill (S. 2792), supra, as follows:

On page 100, between lines 13 and 14, insert the following new section:

SEC. 505. COOPERATION IN INTERNATIONAL EFFORTS.

Subsection (d) of section 17 (7 U.S.C. 1360(d)) is amended to read as follows:

"(d) COOPERATION IN INTERNATIONAL EFFORTS.—The Administrator shall—

"(1) in cooperation with the Secretary of State, other appropriated Federal agencies, and nongovernmental and international organizations, actively participate in international efforts to develop improved pesticide research and regulatory programs;

"(2) provide foreign countries with technical assistance to develop comprehensive pesticide regulatory programs;

"(3) within 1 year after the effective date of the Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1986, and each 3 years thereafter, conduct and publish a survey of all countries that import pesticides from United States exporters or from which the United States imports agricultural commodities, to ascertain what procedures are in place in each country—

"(A) regarding registration, labeling, and training to ensure safe handling, transportation, application, and disposal of pesticides; and

"(B) to control residues on foods to meet tolerances established under United States law, and

"(4) report to Congress annually on the activities conducted under this subsection and the results thereof.".

On page 126, line 7, strike out "three" and insert in lieu thereof "two".

On page 135, line 14, strike out the closed quotation marks and the following period.

On page 135, between lines 14 and 15, insert the following:

"(d) This section shall cease to be effective after September 30, 1993.".

On page 135, line 18, strike out "Except as provided in paragraph (2), during" and insert in lieu thereof "During".

On page 136, strike out lines 8 through 11.

On page 136, line 12, strike out "(3) Paragraphs (1) and (2)" and insert in lieu thereof "(2) Paragraph (1)".

On page 136, line 16, strike out "(4)" and insert in lieu thereof "(3)".

On page 136, line 20, strike out "paragraph (3)" and insert in lieu thereof "paragraph (2)".

On page 136, line 22, strike out "(5)" and insert in lieu thereof "(4)".

On page 143, between lines 13 and 14, insert the following new subsection:

(e) TOLERANCES FOR AGRICULTURAL COMMODITIES.—

(1) REVOCATIONS AND SUSPENSIONS.—Section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a) is amended by adding at the end the following new subsection:

"(p)(1)(A) If the registration of each pesticide containing a specific active or inert ingredient registered for use on a particular raw agricultural commodity—

"(1) has been canceled by the Administrator under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.);

"(ii) has voluntarily been canceled under such Act; or

"(iii) has voluntarily been withdrawn under such Act;

due in whole or in part to dietary risks to humans, the Administrator, not later than 60 days after the effective date of such cancellation or after receipt of information of such withdrawal, shall revoke any tolerance established under subsection (b) for residues of such pesticide chemical in or on such commodity or any exemption from the need for such tolerance established under subsection (c). In revoking a tolerance or an exemption from a tolerance, the procedures required under section 553 of title 5, United States Code, shall be used.

"(B) The effective date of a revocation under subparagraph (A) may be delayed to permit distribution in commerce of food that bears residues of the active or inert ingredient as the result of—

"(i) the use of the canceled pesticide before the date of its cancellation;

"(ii) the use of existing stocks of such pesticide as authorized under the order canceling the registration of the pesticide; or

"(iii) unavoidable residual environmental contamination.

"(2) If the registration of each pesticide containing a specific active or inert ingredient registered for use on a particular raw agricultural commodity has been suspended by the Administrator under the Federal Insecticide, Fungicide, and Rodenticide Act due in whole or in part to dietary risks to humans, the Administrator, not later than 60 days after the effective date of such suspension, shall suspend any tolerance established under section (b) for residues of such pesticide chemical in or on such commodity or any exemption from the need for such tolerance established under subsection (c). The effective date of such suspension may be delayed to permit distribution in commerce of food that bears residues of the active or inert ingredient as the result of—

"(A) the use of the suspended pesticide before the date of its suspension;

"(B) the use of existing stocks of such pesticide as authorized under the order suspending the registration of the pesticide; or

"(C) unavoidable residual environmental contamination.

In suspending a tolerance or an exemption from a tolerance, the procedures required under section 553 of title 5, United States

Code, shall be used. The suspension of a tolerance or an exemption from a tolerance for a pesticide chemical shall be effective as long as the registration of the pesticide to which the tolerance or exemption is applicable is suspended under the Federal Insecticide, Fungicide, and Rodenticide Act. If the registration of the pesticide ceases to be suspended and is not canceled under such Act, the Administrator shall rescind any such suspension of a tolerance or exemption.

"(3) At the time the Administrator makes a determination under section 3A(h)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act regarding an ingredient of a pesticide, any tolerance established under subsection (b) for residues of a pesticide chemical that is or contains such ingredient or any exemption from the need for such a tolerance established under subsection (c) or a food additive regulation for residues of a pesticide chemical established under section 409 shall be reassessed.

"(4)(A) At such time, the Administrator shall—

"(i) make a determination whether such tolerance, exemption from tolerance, or regulation meets the requirements of this Act; and

"(ii) confirm, establish, amend, or revoke such tolerance, exemption, or regulation in accordance with the requirements of this Act.

"(B) Any such tolerance, exemption, or regulation shall not become effective until the Administrator determines that a practical method for detecting residues in or on food or feed is available in order to enforce such tolerance, exemption, or regulation.".

"(2) PROCEDURE.—Section 408(m) of such Act (21 U.S.C. 346a(m)) is amended by striking out "The" and inserting in lieu thereof "Except as provided in subsection (p), the".

On page 202, line 22, insert after "Act)" the following: ", and section 408(p)(3) of the Federal Food, Drug, and Cosmetic Act (as added by section 801(e)(1) of this Act),".

WILSON (AND CRANSTON) AMENDMENT NO. 3242

Mr. WILSON (for himself and Mr. CRANSTON) proposed an amendment to the bill (S. 2792), supra, as follows:

At the appropriate place, insert the following new section:

SEC. . Notwithstanding section 1431(a) of the Food Security Act of 1985 (Public Law 99-198; 99 Stat. 1556), there are authorized to be appropriated, beginning in the fiscal year ending September 30, 1987, such sums as may be necessary for the planning, construction, and acquisition, by the Secretary of Agriculture acting through the Agricultural Research Service, of buildings and equipment to establish a salinity laboratory to be located at Riverside, California. Sums appropriated under this section shall remain available without fiscal year limitation.

KASSEBAUM (AND OTHERS) AMENDMENT NO. 3243

Mrs. KASSEBAUM (for herself, Mr. MATTINGLY, Mr. GORE, and Mr. ANDREWS) proposed an amendment to the bill (S. 2792), supra, as follows:

On page 185, between lines 4 and 5, insert the following new section:

SEC. . ABBREVIATED APPLICATIONS FOR REGISTRATION OF PESTICIDES AND NEW USES OF PESTICIDES.

Section 3(c) (U.S.C. 136a(c)) (as amended by section 101(a) of this Act) if further amended by adding at the end thereof the following new paragraph:

"(10) ABBREVIATED APPLICATIONS.—

"(A) An applicant may file with the Administrator an abbreviated application for the registration of a pesticide, or for an application for an amendment adding a new use to the registration of a pesticide, in accordance with this paragraph.

"(B) The application shall contain—

"(i) information to demonstrate that—

"(I) the pesticide is identical or substantially similar chemically to a pesticide previously registered under this Act;

"(II) the conditions of use recommended in the labeling proposed for the pesticide have been approved for the previously registered pesticide; and

"(III) the labeling proposed for the pesticide is the same as the labeling approved for the previously registered pesticide, except for differences approved by the Administrator under other provisions of this Act; and

"(ii) a certification that to the best of the knowledge of the applicant no data that has been previously submitted to the Administrator for the previously registered pesticide is entitled to exclusive use under paragraph (1)(D)(i).

"(C) Notwithstanding any other provision of law, paragraph (1)(D) (other than clause (i)), (2)(B)(v), and (2)(D) shall not apply to an application filed under this paragraph.

"(D) Nothing in the paragraph shall be construed to supersede part II or III of title 35, United States Code.".

On page 204, between the items relating to sections 3(c)(9) and 3(d), insert the following new items:

"(10) Abbreviated applications.".

CRANSTON AMENDMENT NO. 3244

Mr. LUGAR (for Mr. CRANSTON) proposed an amendment to the bill (S. 2792), supra, as follows:

At the appropriate place in the bill insert the following:

SEC. . STUDY.—The Administrator of the Environmental Protection Agency, in cooperation with the Commissioner of the Food and Drug Administration, shall conduct a thorough evaluation of the health effects of DDT and other contamination of fish in Santa Monica Bay, California, and in surrounding waters. The evaluation shall include an assessment of—

(1) the level of contamination of edible fish caught in the Bay and surrounding waters;

(2) the rate of consumption of contaminated fish from the Bay and surrounding waters by residents of Santa Monica and Los Angeles, California, and surrounding communities; and

(3) the health risks associated with the consumption of such contaminated fish.

The Administrator shall complete the evaluation within 6 months of the date of the enactment of this Act and shall report the results of the evaluation to the Congress.

DANFORTH AMENDMENT NO. 3245

Mr. LUGAR (for Mr. DANFORTH) proposed an amendment to the bill (S. 2792), supra, as follows:

On page 90, between lines 6 and 7, insert the following:

"(2) in the case of a pesticide that has had its registration canceled or suspended under section 6 and that the Administrator has reasonable cause to believe may pose a danger to public health or safety, to enter any place where the pesticide is stored, to inspect and obtain samples of any pesticide, active ingredient, or device being stored at such place or of any packaging or labeling of any such pesticide, active ingredient, or device;

On page 90, line 7, strike out "(2)" and insert in lieu thereof "(3)".

On page 90, line 12, strike out "(3)" and insert in lieu thereof "(4)".

On page 90, line 19, strike out "(4)" and insert in lieu thereof "(5)".

On page 185, between lines 4 and 5, insert the following new section:

SEC. . NOTICE FOR STORED PESTICIDES WITH CANCELED OR SUSPENDED REGISTRATIONS.

(a) NOTICE.—Section 6 (7 U.S.C. 136d) (as amended by section 302(1) of this Act) is further amended by adding at the end thereof the following new subsection:

"(j) NOTICE FOR STORED PESTICIDES WITH CANCELED OR SUSPENDED REGISTRATIONS.—

"(1) IN GENERAL.—Any producer or exporter of pesticides, registrant of a pesticide, applicant for registration of a pesticide, applicant for or holder of an experimental use permit, pesticide testing facility, or any person who distributes or sells any pesticide that has in its possession any pesticide that has had its registration canceled or suspended under this section shall notify the Administrator and appropriate State and local officials of—

"(A) such possession;

"(B) the quantity of such pesticide in its possession; and

"(C) the place at which such pesticide is stored.

"(2) COPIES.—The Administrator shall transmit a copy of each notice submitted under this subsection to the regional office of the Environmental Protection Agency that has jurisdiction over the place of pesticide storage identified in the notice.".

(b) ENFORCEMENT.—Subparagraph (K) of section 12(a)(2) (7 U.S.C. 136j(a)(2)(K)) (as amended by section 808(a)(2)(B)) is further amended by inserting after "Act" the following: "or to fail to submit a notice in accordance with section 6(j)".

On page 206, between the item relating to section 6(i) and the item relating to section 7, insert the following new item:

"(i) Notice for stored pesticides with canceled or suspended registrations.

"(1) In general.

"(2) Copies.".

HEFLIN AMENDMENT NO. 3246

Mr. LUGAR (for Mr. HEFLIN) proposed an amendment to the bill (S. 2792) supra, as follows:

On page 135, strike lines 20, 21 and "cide)" on line 22, and insert in lieu thereof: "(except for a patent that claims only a method for manufacturing the pesticides)".

SYMMS AMENDMENT NO. 3247

Mr. LUGAR (for Mr. SYMMS) proposed an amendment to the bill (S. 2792), supra, as follows:

On page 185, between lines 4 and 5, insert the following new section:

SEC. . USE OF PESTICIDES BY FEDERAL AGENCIES.

(a) DATA IN SUPPORT OF REGISTRATION.—Subparagraph (A) of section 3(c)(2) (7 U.S.C. 136a(c)(2)(A)) (as amended by section 106(a) of this Act) is further amended to read as follows:

"(A) DATA IN SUPPORT OF REGISTRATION.—

"(i) The Administrator shall publish guidelines specifying the kinds of information that would usually be required to support the registration of a pesticide and shall revise such guidelines from time to time.

"(ii) If after such publication the Administrator requires any additional kind of information under subparagraph (B) (including information concerning an inert ingredient in a pesticide), the Administrator shall permit sufficient time for applicants to obtain such additional information.

"(iii) Any Federal agency may proceed with the use of such pesticide unless the Administrator determines that missing or deficient data is sufficiently important to warrant a suspension or cancellation.

"(iv) The Administrator, in establishing guidelines for data requirements for the registration of pesticides with respect to minor uses and with respect to various types and classes of pesticides, shall make such guidelines commensurate with the anticipated extent of use, pattern of use, and the level and degree of potential exposure of man and the environment to the pesticide. In the development of such guidelines, the Administrator shall consider the economic factors of potential national volume of use, extent of distribution, and the impact of the cost of meeting the guidelines on the incentives for any potential registrant to undertake the development of the required data.

"(v) Analyses in support of registration are equivalent to an environmental impact statement and may be incorporated by reference and relied on by any other Federal agency for purposes of compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

"(vi) Such guidelines may not contain a requirement for applicants to perform human epidemiological studies to obtain or support registrations.

"(vii) Guidelines, and modifications thereof, shall be published in the Federal Register. The Administrator shall provide for public comment for guidance in development of such guidelines or modifications.".

(b) RESEARCH.—Subsection (a) of section 20 (7 U.S.C. 136r(a)) is amended to read as follows:

"(a) RESEARCH.—

"(1) IN GENERAL.—The Administrator shall undertake such research as may be necessary to carry out this Act, including reserach by grant or contract with other Federal agencies, universities, or other entities or persons.

"(2) INTEGRATED PEST MANAGEMENT.—The Administrator shall conduct research into integrated pest management in cooperation with the Secretary of Agriculture.

"(3) DUPLICATION.—The Administrator shall ensure that research conducted under this subsection does not duplicate research being undertaken by any other Federal agency. For purposes of compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 432 et seq.), such agency may not be required to duplicate or supplement research already reviewed and accepted by the Administrator in the course of registration and the finding of no unreasonable adverse impact resulting from the use of registered material.".

On page 208, strike out the item relating to section 20(a) and insert in lieu thereof the following:

"(a) Research.
"(1) In general.
"(2) Integrated pest management.
"(3) Duplication.

DOMENICI (AND OTHERS) AMENDMENT NO. 3248

Mr. DOMENICI (for himself, Mr. DIXON, Mr. GORTON, Mr. GORE, Mr. HEINZ, Mr. BINGAMAN, Mr. DOLE, Mr. NUNN, Mr. DODD, Mr. RUDMAN, Mr. MOYNIHAN, and Mr. LEVIN) proposed an amendment to the bills (S. 2792), supra, as follows:

At the end of the bill, add the following new title:

TITLE —HOMELESS ELIGIBILITY CLARIFICATION ACT

SEC. . SHORT TITLE.

This title may be cited as the "Homeless Eligibility Clarification Act."

Subtitle A—Emergency Food for the Homeless

SEC. . MEALS SERVED TO HOMELESS INDIVIDUALS.

(a) DEFINITION OF FOOD.—Section 3(g) of the Food Stamp Act of 1977 (7 U.S.C. 2012(g)) is amended—

(1) in clause (1), by striking out "and (8)" and inserting in lieu thereof "(8), and (9)";

(2) by striking out "and" at the end of clause (7); and

(3) by inserting before the period at the end thereof the following: ", and (9) in the case of households that do not reside in permanent dwellings and households that have no fixed mailing addresses, meals prepared for and served by a public or private nonprofit establishment (approved by an appropriate State or local agency) that feeds such individuals and by a public or private nonprofit shelter (approved by an appropriate State or local agency) in which such households temporarily reside (except that such establishments and shelters may only request voluntary use of food stamps by such individuals and may not request such households to pay more than the average cost of the food contained in a meal served by the establishment or shelter)."

(b) DEFINITION OF HOUSEHOLD.—The last sentence of section 3(i) of such Act (7 U.S.C. 2012(i)) is amended by inserting after "battered women and children," the following: "residents of public or private nonprofit shelters for individuals who do not reside in permanent dwellings or have no fixed mailing addresses, who are otherwise eligible for coupons,".

(c) DEFINITION OF RETAIL FOOD STORE.—Section 3(k)(2) of such Act (7 U.S.C. 2012(k)(2)) is amended by striking "and (8)" and inserting in lieu thereof "(8), and (9)".

(d) PARTICIPATION OF ESTABLISHMENTS AND SHELTERS.—Section 9 of such Act (7 U.S.C. 2018) is amended by adding at the end thereof the following new subsection:

"(g) In an area in which the Secretary, in consultation with the Inspector General of the Department of Agriculture, finds evidence that the participation of an establishment or shelter described in section 3(g)(9) damages the program's integrity, the Secretary shall limit the participation of such establishment or shelter in the food stamp program, unless the establishment or shelter is the only establishment or shelter serving the area.".

(e) REDEMPTION OF COUPONS.—The first sentence of section 10 of such Act (7 U.S.C. 2019) is amended—

(1) by striking out "and" after "battered women and children,"; and

(2) by inserting after "blind residents" the following: ", and public or private nonprofit establishments, or public or private nonprofit shelters that feed individuals who do not reside in permanent dwellings and individuals who have no fixed mailing addresses".

(f)(1) The amendments made by this section shall become effective, and be implemented by issuance of final regulations, not later than April 1, 1987.

(2) Not later than September 30, 1988, the Secretary of Agriculture shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report that evaluates the program established by the amendments made by this section, including any proposed legislative recommendations.

(3) The amendments made by this section shall cease to be effective after September 30, 1990.

Subtitle B—Job Training for the Homeless

SEC. . JOB TRAINING FOR THE HOMELESS.

(a) ECONOMICALLY DISADVANTAGED TO INCLUDE HOMELESS.—Section 4(8) of the Job Training Partnership Act (29 U.S.C. 1503(8)) is amended—

(1) by striking out "or" at the end of subparagraph (D);

(2) by striking out the period at the end of subparagraph (E) and inserting in lieu thereof a semicolon; and

(3) by adding at the end thereof "(F) an individual who is homeless and whose total income is not in excess of the income levels described in subparagraph (B).".

(b) JOB TRAINING PLAN.—Section 104(b)(2) of the Job Training Partnership Act (29 U.S.C. 1514(b)) is amended by inserting before the semicolon a comma and the following: "and a description of how the program will be established in locations providing services to the homeless".

(c) BARRIERS TO EMPLOYMENT RULE.—Section 203(a)(2) of the Job Training Partnership Act (29 U.S.C. 1603(a)(2)) is amended by striking out "or addicts" and inserting in lieu thereof "addicts, or homeless".

Subtitle C—Entitlements Eligibility

SEC. . TREATMENT OF HOMELESS INDIVIDUALS ELIGIBLE UNDER AFDC, SSI, AND MEDICAID PROGRAMS.

(a) AFDC.—Section 402(a) of the Social Security Act (42 U.S.C. 602(a)) is amended—

(1) by striking "and" at the end of paragraph (38),

(2) by striking the period at the end of paragraph (39) and inserting in lieu thereof "; and", and

(3) by adding at the end the following new paragraph:

"(40) provide a method of verifying the eligibility of, and making aid available with respect to, a dependent child who does not reside in a permanent dwelling or does not have a fixed home or mailing address.".

(b) SSI PROGRAM.—Section 1631(e) of such Act (42 U.S.C. 1383(e)) is amended by

adding at the end the following new paragraph:

"(3) The Secretary shall provide a method of verifying the eligibility of, and making payments under this title to, an eligible individual who does not reside in a permanent dwelling or does not have a fixed home or mailing address.".

(c) MEDICAID PROGRAM.—Section 1902(a) of such Act (42 U.S.C. 1396a(a)) is amended—

(1) by striking "and" at the end of paragraph (45),

(2) by striking the period at the end of paragraph (46) and inserting in lieu thereof "; and", and

(3) by adding at the end the following new paragraph:

"(47) provide a method of verifying the eligibility of, and making medical assistance available to, an eligible individual who does not reside in a permanent dwelling or does not have a fixed home or mailing address.".

(d) EFFECTIVE DATE.—

(1) Except as provided in paragraph (2), the amendments made by this section shall become effective on the date of the enactment of this Act.

(2) If a State agency administering a plan approved under part A of title IV of the Social Security Act or under title XIX of such Act demonstrates, to the satisfaction of the Secretary of Health and Human Services, that it cannot, by reason of State law, comply with the requirements of an amendment made by subsection (a) or (c) of this section, respectively, the Secretary may prescribe that, in the case of such State, the amendment will become effective beginning with the first month beginning after the close of the first session of such State's legislature ending on or the date of the enactment of this Act. For purposes of the preceding sentence, the term "session of a State's legislature" includes any regular, special, budget, or other session of a State legislature.

SEC. . SINGLE APPLICATION FOR SSI AND FOOD STAMP BENEFITS BY SSI PRE-RELEASE INDIVIDUALS.

(a) IN GENERAL.—Section 1631 of the Social Security Act (42 U.S.C. 1383) is amended by adding at the end the following new subsection:

"Single Application for SSI and Food Stamp Benefits by SSI Pre-Release Individuals

"(j)(1) The Secretary shall provide for the establishment, maintenance, and improvement of procedures designed to ease the transition of institutionalized persons from medical, penal, an other institutions to the community, and to prevent homelessness, by permitting such persons to apply for benefits under this title prior to their discharge or release from such institutions and thereby assuring that essential support (such as housing, food, and clothing) is available to them upon such discharge or release.

"(2) Under regulations prescribed by the Secretary, the procedures described in paragraph (1) shall—

"(A) require that personnel of the district offices of the Social Security Administration, and of the appropriate State disability determination services, make regular visits to all institutions of the types involved to receive and process applications for benefits under this title and for food stamps under paragraph (3);

"(B) provide for the development of descriptive materials on such procedures for use by such district offices and by social service departments in such institutions;

"(C) provide training for employees in such district offices; and

"(D) establish time limits within which State agencies must complete their processing of applications filed pursuant to such procedures.

"(3) The Secretary and the Secretary of Agriculture shall establish special procedures under which persons applying for benefits under this title prior to their discharge or release from an institution pursuant to the pre-release procedures described in paragraphs (1) and (2) can also apply to participate in the food stamp program under the Food Stamp Act of 1977, utilizing a single application for this purpose.".

(b) EFFECTIVE DATE.—

(1) The amendment made by subsection (a) shall become effective April 1, 1987.

(2) The Secretary of Health and Human Services shall promulgate final regulations to implement the amendment made by subsection (a) not later than April 1, 1987.

SEC. . DELIVERY OF VETERANS' BENEFITS PAYMENTS.

(a) IN GENERAL.—(1) Section 3003 of title 38, United States Code, is amended by adding at the end thereof the following new subsection:

"(c) Benefits under laws administered by the Veterans' Administration may not be denied an applicant on the basis that the applicant does not have a mailing address.".

(2) Section 3020 of title 38, United States Code, is amended by adding at the end thereof the following new subsection:

"(f)(1) In the case of a payee who does not have a mailing address, payments of monetary benefits under laws administered by the Veterans' Administration shall be delivered under an appropriate method prescribed pursuant to paragraph (2) of this subsection.

"(2) The Administrator shall prescribe an appropriate method or methods for the delivery of payments of monetary benefits under laws administered by the Veterans' Administration in cases described in paragraph (1) of this subsection. To the maximum extent practicable, such method or methods shall be designed to ensure the delivery of payments in such cases.".

(b) EFFECTIVE DATE.—(1) The amendment made by subsection (a)(1) shall take effect on the date of enactment of this Act.

(2) The amendment made by subsection (a)(2) shall take effect with respect to payments made on or after October 1, 1986.

ALASKA NATIVE CLAIMS SETTLEMENT ACT

STEVENS (AND MURKOWSKI) AMENDMENT NO. 3249

Mr. STEVENS (for himself and Mr. MURKOWSKI) proposed an amendment to the bill (H.R. 4162) to amend the Alaska Native Claims Settlement Act to provide Alaska Natives with certain options for the continued ownership of lands and corporate shares received pursuant to the act and for other purposes; as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

That (a) this Act may be cited as the "Alaska Native Claims Settlement Act Amendments of 1986".

(b) Unless otherwise expressly provided, whenever in this Act an amendment is expressed in terms of an amendment to a section or subsection, the reference shall be considered to be made to a section or subsection of the Alaska Native Claims Settlement Act of 1971, as amended (43 U.S.C. 1601-1629a).

CONGRESSIONAL FINDINGS AND DECLARATION OF POLICY

SEC. 2. The Congress finds and declares that—

(1) the Alaska Native Claims Settlement Act was enacted in 1971 to achieve a fair and just settlement of all aboriginal land and hunting and fishing claims by Natives and Native groups of Alaska with maximum participation by Natives in decisions affecting their rights and property;

(2) the settlement enabled Natives to participate in the expansion of Alaska's economy over the past fifteen years, encouraged efforts to address serious health and welfare problems in rural Alaska, and sparked a resurgence of interest in the cultural heritage of the Native peoples of Alaska;

(3) despite these achievements and Congress's desire that the settlement be accomplished rapidly without litigation and in conformity with the real economic and social needs of Natives, the complexity of the land conveyance process and frequent and costly litigation have delayed implementation of the settlement and diminished its value;

(4) furthermore, many Natives have come to the conclusion that the corporate model adopted by the Alaska Native Claims Settlement Act is not always well adapted to the reality of life in Native villages and to traditional Native cultural values;

(5) to ensure the continued success of the settlement and to guarantee Natives continued participation in decisions affecting their rights and property, the Alaska Native Claims Settlement Act must be amended to enable the shareholders of each Native Corporation to structure, in accordance with the provisions of this Act, the further implementation of the settlement in light of their particular circumstances and needs;

(6) among other things, the shareholders should be permitted to consider—

(A) whether restrictions on alienation of stock issued as part of the settlement should continue beyond 1991,

(B) whether Natives born after December 18, 1971, should participate in the settlement, and

(C) whether legal title to lands received in the settlement should be transferred from the Native Corporation to another entity;

(7) no provision of this Act (the Alaska Native Claims Settlement Act Amendments of 1986) shall—

(A) supersede the declaration of policy set forth in section 2 of the Alaska Native Claims Settlement Act of 1971,

(B) rescind the extinguishment of aboriginal land claims and hunting and fishing rights effected by section 4 of that Act, or

(C) confer on any Native organization any degree of sovereignty over lands (including management of, or regulation of the taking of, fish and wildlife) or over persons in Alaska; and

(8) the Alaska Native Claims Settlement Act, as amended, and this Act are both Indian legislation enacted by Congress pursuant to its plenary authority under the Constitution of the United States to regulate Indian affairs.

NEW DEFINITIONS

SEC. 3. Section 3 (43 U.S.C. 1602) is amended—

(1) by inserting "group," after "individual," in subsection (h);

(2) by striking out "and" at the end of subsection (k);

(3) by striking out the period at the end of subsection (l) and inserting in lieu thereof a semicolon;

(4) by striking out "Native Group." in subsection (m) and inserting in lieu thereof "Group Corporation;"; and

(5) by adding at the end thereof the following new subsections:

"(n) 'Group Corporation' means an Alaska Native Group Corporation organized under the laws of the State of Alaska pursuant to section 14(h)(2) of this Act as a business for-profit or not-for-profit corporation to hold, invest, manage and/or distribute lands, property, funds, and other rights and assets for and on behalf of members of a Native group in accordance with the terms of this Act;

"(o) 'Urban Corporation' means an Alaska Native Urban Corporation organized under the laws of the State of Alaska pursuant to section 14(h)(3) of this Act as a business for-profit or not-for-profit corporation to hold, invest, manage and/or distribute lands, property, funds, and other rights and assets for and on behalf of members of an urban community of Natives in accordance with the terms of this Act;

"(p) 'Settlement Common Stock' means stock of a Native Corporation issued pursuant to section 7(g)(1) that carries with it the rights and restrictions listed in section 7(h)(1);

"(q) 'Replacement Common Stock' means stock of a Native Corporation issued in exchange for Settlement Common Stock pursuant to section 7(h)(4); and

"(r) 'Descendant of a Native' means—

"(1) a lineal descendant of a Native or of an individual who would have been a Native if such individual were alive on December 18, 1971, or

"(2) an adoptee of a Native or of a descendant of a Native, whose adoption—

"(A) occurred prior to his or her majority, and

"(B) is recognized at law or in equity.".

ISSUANCE OF STOCK

SEC. 4. Subsection (g) of section 7 (43 U.S.C. 1606(g)) is amended to read as follows:

"(g) SETTLEMENT COMMON STOCK.—(1)(A) The Regional Corporation shall be authorized to issue such number of shares of Settlement Common Stock (divided into such classes as may be specified in the articles of incorporation to reflect the provisions of this Act) as may be needed to issue 100 shares of stock to each Native enrolled in the region pursuant to section 5.

"(B)(i) Notwithstanding any other provision of law, a Regional Corporation may amend its articles of incorporation to authorize the issuance of additional shares of Settlement Common Stock to—

(I) Natives born after December 18, 1971, or

(II) Natives who were eligible for enrollment pursuant to section 5 but were not so enrolled, for no consideration or for such consideration as may be specified in the amendment to the articles of incorporation or in a resolution adopted by the board of directors pursuant to authority expressly vested in the board by the amendment.

"(ii) No more than 100 shares of additional Settlement Common Stock may be issued to any one individual pursuant to clause (i).

"(iii) Upon the death of the Native to whom Settlement Common Stock was issued pursuant to clause (i), such Settlement Common Stock (or stock issued in exchange for such Settlement Common Stock pursuant to subsection (h)(3) or section 38(f)) shall be deemed cancelled. No compensation for this cancellation shall be paid to the estate of the deceased Native or to any person holding the stock.

"(C)(i) Notwithstanding any other provision of law, a Regional Corporation may amend its articles of incorporation to authorize the issuance of additional shares of Settlement Common Stock as a dividend or other distribution (without regard to surplus of the corporation under the laws of the State) upon each outstanding share of Settlement Common Stock issued pursuant to subparagraph (A).

"(ii) The amendment authorized by clause (i) may provide that the shares of Settlement Common Stock issued as a dividend or other distribution shall constitute a separate class of stock with greater per share voting power than Settlement Common Stock issued pursuant to subparagraphs (A) and (B).

"(2) OTHER FORMS OF STOCK.—(A) Notwithstanding any other provison of law and in addition to any other authority, a Regional Corporation may amend its articles of incorporation to authorize the issuance of additional shares of stock in accordance with the provisions of this paragraph. Such amendment may provide that preemptive rights of shareholders under the laws of the State shall not apply to the issuance of such additional shares of stock.

"(B) The amendment authorized by subparagraph (A) may provide that the additional stock to be issued shall be one or more of the following—

"(i) divided into classes and series within classes, with preferences, limitations, and relative rights, including, without limitation—

"(I) dividend rights,

"(I) Natives who have attained the age of 65, or

"(II) voting rights, or

"(III) liquidation preferences;

"(ii) made subject to one or more of—

"(I) the restrictions on alienation described in clauses (i), (ii), and (iv) of subsection (h)(1)(B), and

"(II) the restriction described in paragraph (1)(B)(iii); and

"(iii) restricted in issuance to—

"(I) Natives who have attained the age of 65, or

"(II) another identifiable group of Natives defined in terms of general applicability and not in any way by reference to place of residence or family; or

"(III) entities established for the sole benefit of Natives or descendants of Natives, including an identifiable group of Natives or descendants of Natives defined in terms of general applicability and not in any way by reference to place of residence, family, or position as an officer, director, or employee of a Native Corporation.

"(C) The amendment authorized by subparagraph (A) shall provide that the additional shares of stock shall be issued—

"(i) as a dividend or other distribution (without regard to surplus of the corporation under the laws of the State) upon all outstanding shares of stock of any class or series, or

"(ii) for such consideration as may be permitted by law (except that this requirement may be waived with respect to issuance of stock to Natives who have attained the age of 65 or entities described in subparagraph (B)(iii)(III)).

"(D) During the period in which the restrictions imposed by subsection (h)(1)(B) on alienation of Settlement Common Stock of the corporation are in effect, no stock, whose issuance is authorized pursuant to subparagraph (A), shall be—

"(i) issued to a group of individuals composed only of employees, officers or directors of the corporation; or

"(ii) issued more than 13 months after the date on which the vote of the shareholders authorizing the issuance of such stock occurred if, as a result of the issuance, the outstanding shares of Settlement Common Stock will represent less than a majority of the total voting power of the corporation for the purpose of electing directors.

"(3) DISCLOSURE REQUIREMENTS.—(A) An amendment to the articles of incorporation of a Regional Corporation authorized by paragraph (2)(A) shall specify—

"(i) the maximum number of shares of any class or series of stock to be issued, and

"(ii) the maximum number of votes that may be held by such shares.

"(B) If an amendment to the articles of incorporation of a Regional Corporation authorized paragraph (2)(A) permits the issuance of classes or series of stock that, when issued singly or in combination, may cause the outstanding shares of Settlement Common Stock to represent less than a majority of the total voting power of the corporation for the purpose of electing directors, the shareholders shall be expressly so advised in the proxy statement or other informational material distributed in advance of their vote upon the amendment.

"(4) SAVINGS.—(A)(i) No shares of stock issued pursuant to paragraphs (1)(B), (1)(C), or (2) shall carry rights to share in distributions made to shareholders under subsections (j) and (m).

"(ii) Notwithstanding the issuance of additional shares of stock pursuant to paragraphs (1)(B), (1)(C), or (2), a Regional Corporation shall continue to apply the ratio last computed under subsection (m) before the date of the enactment of the Alaska Native Claims Settlement Act Amendments of 1986 for purposes of distributing funds under subsections (j) and (m).

"(B) The issuance of additional shares of stock pursuant to paragraphs (1)(B), (1)(C), or (2) shall not affect the division and distribution of revenues under subsection (i).

"(C) No provision of this Act shall limit the right of a Regional Corporation to take any action authorized under the laws of the jurisdiction of incorporation so long as such action is consistent with the provisions of this Act.".

SETTLEMENT COMMON STOCK

SEC. 5. Subsection (h) of section 7 (43 U.S.C. 1606(h)) is amended to read as follows:

"(h) RIGHTS AND RESTRICTIONS.—(1)(A) Except as otherwise expressly provided in this Act, Settlement Common Stock of a Regional Corporation shall—

"(i) carry a right to vote in elections for the board of directors and on such other questions as properly may be presented to shareholders;

"(ii) permit the holder to receive dividends or other distributions from the corporation; and

"(iii) vest in the holder all rights of a shareholder in a business corporation organized under the laws of the State.

"(B) Except as otherwise provided in this subsection and in subsection (r), Settlement Common Stock, inchoate rights thereto, and any dividends paid or distributions made with respect thereto (other than dividends

or distributions of stock made pursuant to subsection (g)(2)) may not be—

"(i) sold;

"(ii) pledged;

"(iii) subjected to a lien or judgment execution;

"(iv) assigned in present or future;

"(v) treated as an asset in bankruptcy estate; or

"(vi) otherwise alienated.

"(C) The restrictions contained in subparagraph (B) shall not preclude a transfer of Settlement Common Stock if the transfer is made to—

(i) Natives or descendants of Natives—

"(I) pursuant to a court decree of separation, divorce, or child support, or

"(II) by a holder who is a member of a professional organization, association, or board that limits the ability of the holder to practice his or her profession because the holder holds Settlement Common Stock; or

"(ii) a child, grandchild, niece, or nephew of a holder as an inter vivos gift from the holder.

"(D) A transfer made pursuant to subparagraph (C)(ii) shall not subject the holder or his or her child, grandchild, niece, or nephew to any form of federal, state, or local taxation.

"(E) The restrictions imposed by subparagraph (B) on alienation of Settlement Common Stock shall remain in effect until terminated in accordance with the provisions of this Act.

"(2) INHERITANCE OF SETTLEMENT COMMON STOCK.—(A) Upon the death of a holder of Settlement Common Stock, ownership of such stock shall be transferred in accordance with the last will and testament of such holder or under applicable laws of intestate succession. In the event that the holder fails to dispose of his or her stock by will and has no heirs under applicable laws of intestate succession, the stock shall escheat to the issuing Regional Corporation and be cancelled in accordance with law.

"(B) A Regional Corporation shall have the right to purchase at fair value Settlement Common Stock transferred under applicable laws of intestate succession to a person not a Native or a descendant of a Native after the date of the enactment of the Alaska Native Claims Settlement Act Amendments of 1986 if the corporation—

"(i) issued such stock, and

"(ii) amends its articles of incorporation to authorize such purchases.

The corporation may exercise the right granted by this subparagraph at any time within 90 days after the date that the corporation either determines the decedent's heirs in accordance with the laws of the State or receives notice that such heirs have been determined, whichever later occurs.

"(C) Settlement Common Stock of a Regional Corporation

"(i) transferred by will or under applicable laws of intestate succession after the date of the enactment of the Alaska Native Claims Settlement Act Amendments of 1986, or

"(ii) transferred by any means prior to the date of the enactment of the Alaska Native Claims Settlement Act Amendments of 1986,

to a person not a Native or a descendant of a Native shall not carry voting rights unless the articles of incorporation of the corporation are amended to provide otherwise. If at a later date such stock is lawfully transferred to a Native or a descendant of a Native, voting rights shall be automatically restored unless the articles of incorporation of the corporation are amended to provide otherwise.

(3) REPLACEMENT COMMON STOCK.—(A)(i) On the date on which the restrictions imposed by paragraph (1)(B) terminate in accordance with the provisions of this Act, all Settlement Common Stock previously issued by a Regional Corporation shall be deemed cancelled, and shares of Replacement Common Stock of the appropriate class shall be issued to each shareholder, share for share, subject only to such restrictions consistent with this Act as may be provided under clauses (ii) and (iii), by the articles of incorporation of the corporation, or in agreements between the corporation and individual shareholders.

"(ii) Replacement Common Stock issued in exchange for Settlement Common Stock issued pursuant to subsection (g)(1)(B)(i) shall bear a legend indicating that the stock will eventually be cancelled in accordance with the requirements of subsection (g)(1)(B)(iii).

"(iii) The board of directors of the corporation shall approve a resolution to provide that each share of Settlement Common Stock issued pursuant to subsection (g)(1)(A) to the class of shareholders who were not residents of villages in the region incorporated pursuant to this Act shall be exchanged either for—

(I) a share of Replacement Common Stock that carries the right to share in distributions made to such shareholders under subsections (j) and (m), or

"(II) a share of Replacement Common Stock that does not carry such right together with a separate, non-voting security that represents only such right.

"(iv) The articles of incorporation of the Regional Corporation shall be deemed amended to authorize the issuance of Replacement Common Stock and the security described in clause (iii)(II).

"(B) Prior to the date on which the restrictions imposed by paragraph (1)(B) terminate, a Regional Corporation may amend its articles of incorporation to impose upon the Replacement Common Stock to be issued pursant to subparagraph (A) one or more of the following—

"(I) a restriction denying voting rights to any holder of Replacement Common Stock who is not a Native or a descendant of a Native;

"(II) a restriction granting the Regional Corporation, or the Regional Corporation and members of the shareholder's immediate family who are Natives or descendants of Natives, on reasonable terms, the first right to purchase the Replacement Common Stock of the shareholder prior to the sale or transfer of such stock (other than a transfer by will or intestate succession) to any other party, including a transfer in satisfaction of a lien, writ of attachment, judgment execution, pledge, or other encumbrance; and

"(III) any other term, restriction, limitation, or other provision permitted under the laws of the State.".

PURCHASE OF SETTLEMENT COMMON STOCK BY THE ISSUING REGIONAL CORPORATION

SEC. 6. Section 7 (43 U.S.C. 1606) is amended by adding at the end thereof the following new subsection:

"(r)(1) AUTHORIZATION TO PURCHASE.—A Regional Corporation may amend its articles of incorporation to—

"(A) permit the corporation to purchase any or all shares of its Settlement Common Stock then issued and outstanding (except when the corporation is unable to pay its debts as they become due in the usual course of business), and

"(B) permit the shareholders of the corporation to sell any or all their Settlement Common Stock to the corporation, on a willing seller basis.

"(2) SOURCE OF FUNDS TO PURCHASE.—(A) An amendment authorized by paragraph (1) shall require that payment for shares of Settlement Common Stock purchased by the corporation shall be made out of—

"(i) unreserved or unrestricted earned surplus of the corporation,

"(ii) net profits for the fiscal year in which the purchase is being made and for the preceding fiscal year, or

"(iii) the excess of the assets of the corporation over its liabilities.

"(B) For purposes of this paragraph, net profits derived from the exploitation or liquidation of timber resources or the subsurface estate of land may be determined without consideration of depletion of those assets resulting from lapse of time, consumption, liquidation, or exploitation.

"(3) REQUIRED ACTIONS.—An amendment authorized by paragraph (1) shall require that—

"(A) shares of Settlement Common Stock purchased by the corporation shall be cancelled in accordance with law,

"(B) the board of directors of the corporation shall determine a price at which such a purchase will be made, and

"(C) each holder of Settlement Common Stock shall be given the same opportunity to participate in any purchase offer made by the corporation as is given to any other holder of such stock.

"(4) VALUATION OF STOCK.—In determining a price pursuant to paragraph (3)(B), the board of directors of the corporation, at its discretion, may exclude the value of land, or any interest in land, received by the corporation pursuant to this Act if such land or interest in land—

"(A) is committed by the corporation to traditional or cultural uses, or

"(B) is of speculative value on the date such determination is made.

Such an exclusion shall be disclosed to the holders of Settlement Common Stock of the corporation in the offer to purchase made by the corporation.".

VILLAGE, URBAN, AND GROUP CORPORATIONS

SEC. 7. Subsection (c) of section 8 (43 U.S.C. 1607(c)) is amended to read as follows:

"(c)(1) APPLICABILITY OF SECTION 7.—The provisions of subsections (g), (h), (o), and (r) of section 7 of this Act shall apply in all respects to Village Corporations, Urban Corporations, and Group Corporations.

"(2) TERMINATION OF RESTRICTIONS ON ALIENATION OF SETTLEMENT COMMON STOCK.—(A) The restrictions imposed by section 7(h)(1)(B) on alienation of Settlement Common Stock issued by a Village Corporation, Urban Corporation, or Group Corporation shall continue indefinitely. Such corporation may amend its articles of incorporation to terminate such restrictions. Such amendment shall specify the time of termination, either by establishing a date certain or by describing the specific event upon which the restrictions shall terminate.

"(B) An amendment authorized by subparagraph (A) may be considered by the shareholders of the corporation and voted on only once prior to December 18, 1991. The rejection of such an amendment shall not preclude consideration of subsequent amendments to terminate the restrictions

imposed by section (7)(h)(1)(B). Such amendments may be considered and voted on only once annually after December 18, 1991.

"(3) ELECTION OF SECTION 38.—Paragraph (2) shall not apply to a Village Corporation in the Aleut or Bristol Bay regions if the board of directors of such corporation approves, no later than one year after the date of the enactment of the Alaska Native Claims Settlement Act Amendments of 1986, a resolution electing the application of section 38 in lieu of paragraph (2). All other provisions of this section shall continue to apply to the corporation.".

PROCEDURES FOR CONSIDERING AMENDMENTS AND RESOLUTIONS

SEC. 8. The Alaska Native Claims Settlement Act of 1971, as amended, is further amended by adding the following new section:

"PROCEDURES FOR CONSIDERING AMENDMENTS AND RESOLUTIONS

"SEC. 36. (a) COVERAGE.—Notwithstanding any provision of the laws of the State, other than those that relate to proxy statements and solicitations and that are not inconsistent with this subsection—

"(1) an amendment to the articles of incorporation of a Native Corporation authorized by subsections (g), (h), and (r) of section 7, section 8(c), subsection (d) of this section, section 38, or section 39; or

"(2) a resolution authorized by section 37(a)(2) or section 40;

shall be considered in accordance with the requirements of this section.

"(b) BASIC PROCEDURE.—(1)(A) An amendment or resolution described in subsection (a) may be approved by the board of directors of a Native Corporation in accordance with the bylaws. If it approves the amendment or resolution, the board shall direct that the amendment or resolution be submitted to a vote at the next annual meeting, or at a special meeting (if the board, at its discretion, chooses to schedule such special meeting), of the shareholders. One or more such amendments or resolutions may be submitted to the shareholders and voted upon at one meeting.

"(B) Within 30 days of the date on which it approves an amendment authorized by section 8(c)(2) or 38(b) or a resolution authorized by section 40, the board of directors shall, by first-class mail, notify the shareholders of such approval. The notice shall consist only of a copy of the approved amendment or resolution and a statement of the date of approval. In no event, shall the approved amendment or resolution be submitted to the shareholders for a vote sooner than seven months after the date of approval.

"(2)(A) A written or printed notice (including a proxy statement if required under applicable law), setting forth the amendment or resolution approved pursuant to paragraph (1) or a summary of the changes to be effected, together with any amendment or resolution approved pursuant to subsection (c)(1) and the statements described in subsection (c)(1)(B) shall be sent by first-class mail or hand-delivered to each shareholder of record entitled to vote at his or her address as it appears in the records of the Native Corporation not less than 50 days nor more than 60 days before the meeting of the shareholders. The corporation may also communicate with its shareholders at any time and in any manner permitted under the laws of the State.

"(B) If the board of directors determines, for quorum purposes of otherwise, that it is necessary to postpone or adjourn the date of a previously-noticed meeting, it may, by giving notice to shareholders, set a new date not more than 45 days later than the original date without being required to send shareholders a new notice or proxy statement setting forth the amendment or resolution or a summary of changes to be effected. If, however, the new date that is set is more than 45 days after the original date, a written or printed notice (including a proxy statement if required by applicable law), setting forth the amendment or resolution or a summary of the changes to be effected, shall be delivered or sent to shareholders not less than 30 days nor more than 45 days prior to the new meeting date.

"(c) SHAREHOLDER PETITIONS.—(1)(A) With respect to an amendment or resolution authorized by section 7(g)(1)(B), 7(g)(2)(B)(iii)(I), 8(c)(2), 37, 38, or 40, the holders of shares representing 25 percent of the total voting power of a Native Corporation may petition the board of directors to approve and submit such amendment or resolution to a vote of the shareholders in accordance with the provisions of this subsection and subsection (b).

"(B) The requirements of the laws of the State pertaining to the solicitation or proxies shall govern solicitation of signatures for any such petition, except that the requirements of federal law shall apply with respect to any petition to be submitted to a Native Corporation with a class of equity securities registered pursuant to the Securities Exchange Act of 1934, as amended (48 Stat. 881). If a petition meets the applicable solicitation requirements and—

"(i) the board agrees with such petition, the board shall submit the amendment or resolution and either the proponents' statement or its own statement in support of the amendment or resolution to the shareholders for a vote, or

"(ii) the board disagrees with the petition for any reason, the board shall submit the amendment or resolution and the proponents' statement to the shareholders and may, at its discretion, submit an opposing statement or an alternative resolution.

"(C) In the event of a petition concerning a resolution or amendment proposed pursuant to section 37(a)(2), the board of directors shall be required to submit such a resolution or amendment to a vote only if—

"(i) the petition is received no later than 120 days after the date of the mailing of the notice required by subsection (b)(1)(B), and

"(ii) the amendment (or resolution) whose approval is announced in the notice provides for the termination of restrictions imposed by section 7(h)(1)(B) on alienation of Settlement Common Stock pursuant to section 8(c)(2) or for the continuation of such restrictions pursuant to section 38(b) (or for the conveyance of corporate assets pursuant to section 40 for less than fair market value consideration).

"(2) Subsection (b)(1)(B) and paragraph (1) of this subsection shall not apply to the Bristol Bay Native Corporation, any Regional Corporation that elects application of section 39 in lieu of section 38 under section 39(a), or a Village Corporation in the Bristol Bay region that elects the application of section 38 pursuant to section 8(c)(3). Insofar as they are not inconsistent with subsection (e), the laws of the State shall govern any shareholder right of petition for such corporation.

"(d) VOTING STANDARDS.—(1) Except as provided in paragraph (2), an amendment or resolution described in subsection (a) shall be considered to be adopted by the shareholders of a Native Corporation if it receives the affirmative vote of shares representing—

"(A) at least a majority of the total voting power of the corporation, or

"(B) some level of total voting power of the corporation greater than a majority (but not greater than two-thirds of the total voting power of the corporation) if the corporation establishes such a level by an amendment to its articles of incorporation.

"(2)(A)(i) The voting standard for consideration of an amendment authorized by section 38 or 39 may be modified in accordance with the provisions of this subparagraph at the discretion of the board of directors of a Native Corporation. Once a voting standard has been modified in this manner, it shall not be changed under any circumstances.

"(ii) No later than seven months prior to the consideration of an amendment authorized by section 38 or 39 by the shareholders of a Native Corporation, the board of directors may send by first-class mail a voting standard ballot to each holder of Settlement Common Stock or other stock of the corporation entitled to vote on an amendment authorized by section 38 or 39. The ballot shall include—

"(I) a recommendation from the board on what the minimum vote to adopt an amendment authorized by section 38 or 39 should be (in no event shall the board recommend a minimum vote lower than a majority of 51 percent of the total voting power of the corporation or higher than two-thirds of the total voting power of the corporation);

"(II) a statement that the minimum vote recommended by the board will be sufficient to adopt an amendment authorized by section 38 or 39 if the mimimum vote represents a majority of the voting power of the corporation actually voting on the amendment; and

"(III) a request to the shareholders that they signify their approval or disapproval of the recommendation of the board on the ballot and return the ballot by a date certain to the corporation.

The board shall provide for the return of the ballots by mail and may also provide for personal collection of some or all of the ballots.

"(iii) No later than four months after the mailing of a voting standard ballot authorized by clause (ii), the board shall tabulate the ballots that have been returned. The recommendation of the board shall be considered to be adopted if—

"(I) shareholders holding shares of stock representing at least a majority of the total voting power of the corporation for purposes of considering an amendment authorized by section 38 and 39 have voted and returned ballots in time for the tabulation, and

"(II) shareholders holding shares of stock representing a majority of the voting power of the corporation (as defined in subclause (I)) actually voting the ballots have voted to approve the recommendation.

"(iv) The board shall immediately notify the shareholders of the results of a tabulation conducted pursuant to clause (iii) by first-class mail. The rejection of a recommendation by the board shall not preclude the board from submitting a subsequent recommendation in accordance with the provisions of this subparagraph. If the board chooses not to submit a subsequent recommendation, then the voting standard speci-

fied in paragraph (1) shall apply to consideration of an amendment authorized by section 38 or 39.

"(B) Once a voting standard is established pursuant to subparagraph (A), an amendment authorized by section 38 or 39 shall be considered to be adopted by the shareholders of a Native Corporation if the amendment receives the affirmative vote of shares that—

"(i) represent a majority of the voting power of the corporation actually voting, and

"(ii) meet the minimum vote required under the voting standard established pursuant to subparagraph (A),

so long as the shares voting on the amendment, in aggregate, represent at least a majority of the total voting power of the corporation.

"(3) Notwithstanding paragraph (1) or any other provision of this section, a Native Corporation in amending its articles of incorporation pursuant to section 7(g)(2) to authorize the issuance of a new class or series of stock may provide that a majority (or more than a majority) of the shares of such class or series must vote in favor of an amendment or resolution described in subsection (a) (other than an amendment authorized by section 8(c)(2) or section 38 or section 39) in order for such amendment or resolution to be adopted.

"(e) VOTING POWER.—for the purposes of this section (excluding subsection (d)(2)(A)(iii)), the determination of the total voting power of a Native Corporation shall include all outstanding shares of stock that carry voting rights except shares that are not permitted to vote on the amendment or resolution in question because of restrictions in the articles of incorporation of the corporation.".

DISSENTERS RIGHTS

SEC. 9. The Alaska native Claims Settlement Act of 1971, as amended, is further amended by adding the following new section:

"DISSENTERS RIGHTS

"SEC. 37. COVERAGE.—(a)(1) Notwithstanding the laws of the State—

"(A) if the shareholders of a Native Corporation fail to adopt an amendment authorized by section 8(c)(2) to terminate the restrictions imposed by 7(h)(1)(B) on alienation of Settlement Common Stock of the corporation, a shareholder who voted for the amendment may request payment from the corporation for all of his or her shares of Settlement Common Stock;

"(B) if the shareholders of a Native Corporation adopt an amendment authorized by section 38(b) to continue the restrictions imposed by 7(h)(1)(B) on alienation of Settlement Common Stock of the corporation without issuing alienable common stock pursuant to section 38(f), a shareholder who voted against the amendment may request payment from the corporation for all of his or her shares of Settlement Common Stock; or

"(C) if the shareholders of a Native Corporation adopt a resolution authorized by section 40 to convey assets of the corporation to a qualified transferee entity for less than fair market value consideration, a shareholder who voted against the resolution may request from the corporation payment for all of his or her shares of Settlement Common Stock.

"(2)(A) A request for payment made pursuant to paragraph (1)(B) shall be honored by a Native Corporation.

"(B) A request for payment made pursuant to paragraph (1)(A) shall be honored by a Native Corporation only if contemporaneously with the vote giving rise to the request, the corporation approved a resolution providing for the purchase of Settlement Common Stock from dissenting shareholders.

"(C) A request for payment made pursuant to paragraph (1)(C) shall be honored by a Native Corporation only if—

"(i) the corporation is the Bristol Bay Native Corporation or a Village Corporation in the Bristol Bay region that elects the application of section 38 pursuant to section 8(c)(3); or

"(ii) contemporaneously with the vote giving rise to the request, the corporation approved a resolution providing for the purchase of Settlement Common Stock from dissenting shareholders.

"(b) RELATIONSHIP TO STATE PROCEDURE.—(1) Except as provided in paragraph (2) and section 38(e), and insofar as they are not inconsistent with this section and section 38(e), the laws of the State governing the right of a dissenting shareholder to demand and receive payment for his or her shares shall apply to requests for payment honored pursuant to subsection (a)(2).

"(2) The board of directors of a Native Corporation may approve a resolution to provide a dissenting shareholder periods of time longer than those provided in the laws of the State to take actions required under paragraph (1).

"(c) VALUATION OF STOCK.—Before a vote described in subsection (a)(1), the board of directors of a Native Corporation may approve a resolution to provide that one or both of the following conditions will prevail in the event a request for payment is honored pursuant to subsection (a)(2)—

"(1) The Settlement Common Stock shall be valued as restricted stock.

"(2) The value of land, or an interest in land, received by the corporation pursuant to this Act shall be excluded by the shareholder making the request for payment, the corporation purchasing the Settlement Common Stock of the shareholder, and any court determining the fair value of the shares of Settlement Common Stock to be purchased if such land, or interest in land—

"(A) is committed by the corporation to traditional or cultural uses, or

"(B) is of speculative value on the date the vote described in subsection (a)(1) is conducted.

"(d) FORM OF PAYMENT.—(1) Before a vote described in subsection (a)(1), the board of directors of a Native Corporation may approve a resolution to provide that in the event a request for payment is honored pursuant to subsection (a)(2) payments to each dissenting shareholder shall be made by the corporation through the issuance of a negotiable note in thercent of the face value of the note; or

"(C) a lien upon the real property interests of the corporation valued at 125 percent or more of the face amount of the note, other than lands or interests in land that are committed to traditional or cultural uses and the percentage interest in the corporation's timber resources and subsurface estate that exceeds its percentage interest in revenues from such property under section 7(i).

"(2) Any note issued pursuant to paragraph (1) shall provide that—

"(A) interest shall be paid semi-annually, beginning as of the date on which the vote described in subsection (a)(1) occurred, at the rate applicable on such date to obligations of the United States having a maturity date of one year, and

"(B) the principal amount and any undistributed interest of such note shall be payable to the former shareholder or his or her heirs or devisees at any time at the option of the corporation but in no event later than the date that is five years after the date on which the vote from which the former shareholder dissented was conducted.".

EXTENSIONS OF RESTRICTIONS ON ALIENATION OF SETTLEMENT COMMON STOCK

SEC. 10. The Alaska Native Claims Settlement Act, as amended, is furtons imposed by section 7(h)(1)(B) on alienation of their Settlement Common Stock in accordance with the provisions of this section—

"(1) Regional Corporations, and

"(2) Village Corporations that elect the application of this section pursuant to section 8(c)(3).

No other Native Corporation shall be subject, in any respect, to this section.

"(b) BASIC PROCEDURE.—(1) The board of directors of a Native Corporation described in subsection (a) shall, at least once prior to January 1, 1991, approve, and submit to a vote of the shareholders, an amendment to the articles of incorporation of the corporation to extend the restrictions imposed by section 7(h)(1)(B) on alienation of Settlement Common Stock of the corporation. If the amendment is not adopted by the shareholders, the board of directors may submit another such amendment to the shareholders once or more a year until December 18, 1991.

"(2) An amendment authorized by paragraph (1) and any amendment authorized by paragraph (3) may provide for an extension of the restrictions of section 7(h)(1)(B) for an indefinite period of time or a period of time specified in years.

"(3) If an amendment adopted by the shareholders of a Native Corporation described in subsection (a) pursuant to paragraph (1) or this paragraph extends the restrictions of section 7(h)(1)(B) for a period of time specified in years, the termination of the restrictions at the close of such period may be postponed if a further amendment to the articles of incorporation of the corporation is adopted to extend the restrictions. There shall be no limit on the number of such amendments that can be adopted. Such amendments shall not be effective to extend the restrictions unless adopted before the expiration of the period of extension then in force.

"(c) AUTOMATIC TERMINATION OF RESTRICTIONS ON ALIENATION.—(1) If an amendment extending the restrictions of section 7(h)(1)(B) for a period of time specified in years is adopted pursuant to subsection (b), the restrictions shall automatically terminate at the end of such period unless the restrictions are extended in accordance with the provisions of subsection (b).

"(2) If no amendment authorized by subsection (b) is adopted by the shareholders of a Native Corporation described in subsection (a) before December 18, 1991, the restrictions of section 7(h)(1)(B) shall terminate on that date.

"(d) TERMINATION OF AN EXTENSION OF RESTRICTIONS ON ALIENATION.—(1) Notwithstanding any other provision of this section, a Native Corporation that adopts an amendment pursuant to subsection (b) to extend the restrictions of section 7(h)(1)(B) may later amend its articles of incorporation to

terminate the restrictions. Such amendment shall specify the time of termination, either by establishing a date certain or by describing the specific event upon which the restrictions shall terminate.

"(2) The rejection of an amendment described in paragraph (1) by the shareholders shall not preclude consideration of subsequent amendments to terminate the restrictions imposed by section 7(h)(1)(B).

"(e) IDENTIFICATION AND COMPENSATION OF DISSENTERS.—(1) If a Native Corporation amends its articles of incorporation pursuant to subsection (b) to extend the restrictions imposed by section 7(h)(1)(B) on alienation of its Settlement Common Stock, a shareholder who—

"(A) voted against such amendment, and

"(B) desires to relinquish his or her Settlement Common Stock in exchange for the stock or payments authorized by the board of directors pursuant to paragraph (2),*ERR19*l approve either—

"(A) a resolution to provide that each shareholder who has notified the corporation pursuant to paragraph (1) that he or she desires to relinquish his or her Settlement Common Stock shall receive alienable common stock in exchange for his or her Settlement Common Stock pursuant to subsection (f), or

"(B) a resolution to provide that each shareholder who has notified the corporation pursuant to paragraph (1) that he or she desires to relinquish his or her Settlement Common Stock shall be given an opportunity to request payment for his or her Settlement Common Stock pursuant to section 37(a)(1)(B).

"(3) This subsection shall apply only to the first extension of the restrictions imposed by sections 7(h)(1)(B) approved by the corporation. No dissenters rights of any sort shall be permitted in connection with subsequent extensions of such restrictions.

"(f) ISSUANCE OF ALIENABLE COMMON STOCK.—(1)(A) If the board of directors of a Native Corporation approves a resolution providing for the issuance of alienable common stock pursuant to subsection (e)(2), no later than 60 days after the approval of the resolution (but in no event before December 18, 1991, the Settlement Common Stock of each shareholder who has notified the corporation pursuant to subsection (e)(1) that he or she prefers not to retain his or her Settlement Common Stock shall be deemed cancelled, and shares of alienable common stock of the appropriate class shall be issued to such shareholder, share for share, subject only to subparagraph (C) and paragraph (2) and to such restrictions consistent with this Act as may be provided by the articles of incorporation of the corporation or in agreements between the corporation and individual shareholders.

"(B) Alienable common stock issued in exchange for Settlement Common Stock issued pursuant to section 7(g)(1)(B)(i) shall bear a legend indicating that the stock will eventually be cancelled in accordance with the requirements of section 7(g)(1)(B)(iii).

"(C)(i) In the resolution authorized by subsection (e)(2), the board of directors shall provide that each share of Settlement Common Stock issued pursuant to section 7(g)(1)(A) to the class of shareholders who were not residents of villages in the region incorporated pursuant to this Act shall be exchanged either for—

"(I) a share of alienable common stock that carries the right to share in distributions made to such shareholders under sections 7(j) and 7(m), or

"(II) a share of alienable common stock that does not carry such right together with a separate, non-voting security that represents only such right.

"(ii) In the resolution authorized by subsection (e)(2), the board of directors may impose upon the alienable common stock to be issued in exchange for Settlement Common Stock one or more of the following—

"(I) a restriction granting the corporation, or the corporation and members of the shareholder's immediate family who are Natives or descendants of Natives, on reasonable terms, the first right to purchase the alienable common stock of the shareholder prior to the sale or transfer of such stock (other than a transfer by will or intestate succession) to any other party, including a transfer in satisfaction, of a lien, writ of attachment, judgment execution, pledge, or other encumbrance; or

"(II) any other term, restriction, limitation, or other provision permitted under the laws of the State.

"(2) No share of alienable common stock issued pursuant to paragraph (1) shall carry voting rights if it is owned, legally or beneficially, by a person not a Native or a descendant of a Native. The issuing Native Corporation is hereby authorized to enforce this restriction.

"(3)(A) A purchaser or other transferee of shares of alienable common stock issued pursuant to paragraph (1) shall, as a condition of the obligation of the issuing Native Corporatand certifying—

"(i) that such transferee is or is not a Native or a descendant of a Native;

"(ii) that such transferee, if not a Native or a descendant of a Native, understands that shares of such alienable common stock shall carry no voting rights so long as such shares are held by such transferee or any subsequent transferee not a Native or a descendant of a Native;

"(iii) that such transferee, if a purchaser, understands that such acquisition may be subject to section 13(d) of the Securities Exchange Act of 1934, as amended, and the regulations of the Securities and Exchange Commission promulgated thereunder; and

"(iv) that such transferee will be the sole beneficial owner of such shares (if not, the transferee must certify as to the identities of all beneficial owners of such shares).

"(B) The statement required by subparagraph (A) shall be prima facie evidence of the matters certified therein and may reasonably be relied upon by the corporation in effecting a transfer on its books. The statement, however, shall not be binding on the corporation.

"(C) For purposes of this paragraph, a beneficial owner of a security includes any person (including a corporation, partnership, trust, association, or other entity) who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise has or shares—

"(i) voting power, which includes the power to vote, or to direct the voting of, such security; or

"(ii) investment power, which includes the power to dispose, or to direct the disposition of, such security.

"(D) Any person who, directly or indirectly, creates or uses a trust, proxy, power of attorney, pooling arrangement, or any other contract, arrangement, or device with the purpose or effect of divesting such person of beneficial ownership of a security or preventing the vesting of such beneficial ownership as part of a plan or scheme to evade the requirements imposed by this section or section 13(d) of the Securities Exchange Act of 1934, as amended, shall be deemed for purposes of such sections to be the beneficial owner of such security.

"(4) The statement required by paragraph (1) shall be verified by the transferee before a notary public or other authorized official in accordance with the laws of the state of residence of the transferee or in which the transfer is made.".

RECAPITALIZATION OPTION FOR REGIONAL CORPORATIONS

SEC. 11. The Alaska Native Claims Settlement Act, as amended, is further amended by adding the following new section:

"RECAPITALIZATION OPTION FOR REGIONAL CORPORATIONS

"SEC. 39. (a) COVERAGE.—The board of directors of a Regional Corporation may approve a resolution electing the application of this section in lieu of section 38. Once such election is made, the corporation shall extend the restrictions imposed by section 7(h)(1)(B) on alienation of its Settlement Common Stock only in accordance with the provisions of this section.

"(b) BASIC PROCEDURE.—(1) The board of directors of a Regional Corporation may approve, and submit to a vote of the shareholders, an amendment to the articles of incorporation of the corporation to extend, as a part of a recapitalization plan that provides for the issuance of voting alienable common stock to all holders of Settlement Common Stock of the corporation, the restrictions imposed by section 7(h)(1)(B) on alienation of Settlement Common Stock of the corporation. If the amendment is not adopted by the shareholders, the board of directors may submit another such amendment to the shareholders once or more a year until December 18, 1991.

"(2) An amendment submitted pursuant to paragraph (1) and any subsequent amendment submitted pursuant to paragraph (3) may provide for an extension of the restrictions of section 7(h)(1)(B) for—

"(A) an indefinite period of time,

"(B) a period of time specified in years, or

"(C) a period of time that shall end upon the occurrence of a specified event or condition, including a shift in the capital structure of the corporation such that stock other than Settlement Common Stock represents a majority of the total voting power of the corporation for the purpose of electing directors.

"(3) If an amendment adopted pursuant to paragraph (1) or this paragraph extends the restrictions of section 7(h)(1)(B) for a specified period of time, the termination of the restrictions at the close of such period may be postponed if a further amendment to the articles of incorporation of the corporation is adopted to extend the restrictions. There shall be no limit on the number of such amendments that can be adopted. Such amendments shall not be effective to extend the restrictions unless adopted before the expiration of the period of extension then in force.

"(4)(A) In soliciting the votes of the shareholders of a corporation on a recapitalization plan that includes an extension of the restrictions imposed by section 7(h)(1)(B), the board of directors may ask the shareholders to approve the plan as a whole, pursuant to a single shareholder vote.

"(B) Notwithstanding any other provision of this Act, the issuance of stock pursuant to sections 7(g)(1)(C) and 7(g)(2) may be authorized by the single shareholder vote au-

thorized by subparagraph (A) subject to the voting standard established in accordance with section 36(d).

"(c) AUTOMATIC TERMINATION OF RESTRICTIONS.—(1) If an amendment extending the restrictions of section 7(h)(1)(B) for a specified period is adopted pursuant to subsection (b), the restrictions shall automatically terminate at the end of such period unless the restrictions are extended in accordance with the provisions of subsection (b)(3).

"(2) If no amendment authorized by subsection (b) is adopted by the shareholders of a Regional Corporation before December 18, 1991, the restrictions of section 7(h)(1)(B) shall terminate on that date.

"(d) TERMINATION OF AN EXTENSION OF RESTRICTIONS ON ALIENATION.—(1) Notwithstanding any other provision of this section, a Regional Corporation that adopts an amendment pursuant to subsection (b) to extend the restrictions of section 7(h)(1)(B) may later amend its articles of incorporation to terminate the restrictions. Such amendment shall specify the time of termination, either by establishing a date certain or by describing the specific event upon which the restrictions shall terminate.

"(2) The rejection of an amendment described in paragraph (1) by the shareholders shall not preclude consideration of subsequent amendments to terminate the restrictions imposed by section 7(h)(1)(B).

"(e) ADEQUACY OF A RECAPITALIZATION PLAN.—If a recapitalization plan adopted pursuant to subsection (b)(1) distributes voting alienable common stock to each holder of shares of Settlement Common Stock (issued pursuant to section 7(g)(1)(A)) that carries aggregate dividend and liquidation rights equivalent to those carried by such shares of Settlement Common Stock (except for rights to distributions under sections 7(j) and 7(m)), then such holder shall have no right under section 37 to further compensation from the corporation with respect to action taken under this section.".

CONVEYANCE OF ASSETS TO A QUALIFIED TRANSFEREE ENTITY

SEC. 12. The Alaska Native Claims Settlement Act of 1971, as amended, is further amended by adding at the end thereof the following new section:

"SEC. 40. (a) AUTHORIZATION TO CONVEY.—(1)(A) A Native Corporation may convey any or all of its assets, including the title to land, or interests in land, to a qualified transferee entity for no consideration or for such consideration as its shareholders approve if—

"(i) a resolution approving of such conveyance is adopted by a vote of the shareholders of the Native Corporation in accordance with the provisions of section 36,

"(ii) the Native Corporation has no shares of stock outstanding other than Settlement Common Stock (or stock issued to Natives who have attained the age of 65 pursuant to section 7(g)(2) if that stock is subject to all the restrictions listed in section 7(g)(2)(B)(ii)(I)), and

"(iii) the Native Corporation has adopted a plan to satisfy its outstanding debts and obligations.

"(B) Upon petition of no less than 25 percent of the former shareholders of a Native Corporation that has been involuntarily dissolved under the laws of the State, a court of the State of appropriate jurisdiction shall order the conveyance of any or all of the assets of the Native Corporation, including the title to surface estate in land, to a qualified transferee entity for no consideration or for such consideration as the former shareholders of the corporation approve if—

"(i) a resolution approving such conveyance is adopted by a vote of the former shareholders of the Native Corporation in accordance with the provisions of section 36 and under the supervision of the court, but without the requirement that the resolution be adopted by the board of directors of the corporation,

"(ii) the Native Corporation has not issued shares of stock other than Settlement Common Stock (or stock issued to Natives who have attained the age of 65 pursuant to section 7(g)(2) if that stock is subject to all the restrictions listed in section 7(g)(2)(B)(ii)(I)), and

"(iii) all outstanding debts and obligations of the dissolved Native Corporation have been satisfied under the supervision of the court.

"(C)(i) Notwithstanding the provisions of subparagraphs (A) and (B)—

"(I) no subsurface estate, or any interest in subsurface estate, received by a Regional Corporation pursuant to this Act shall be conveyed to a qualified transferee entity,

"(II) no land received by a Regional Corporation pursuant to this Act whose timber resources are in the process of development shall be conveyed to a qualified transferee entity, and

"(III) no timber resources on land received by a Regional Corporation pursuant to this Act and conveyed to a qualified transferee entity shall be commercially developed, or encumbered as security for a debt, by such qualified transferee entity.

"(ii) A conveyance pursuant to subparagraphs (A) and (B) not in conformance with the provisions of this subsection shall be void ab initio and shall be given no effect in any court.

"(2) Resolutions described in paragraph (1) shall set forth the terms under which the transfer of assets is to be made, including whether the payment of consideration by the qualified transferee entity will be required.

"(b) QUALIFICATIONS AND POWERS.—(1) An entity shall be qualified to accept a conveyance of assets pursuant to subsection (a) if such entity—

"(A) is organized pursuant to, or recognized by, State or federal law (including a traditional Native council or a Native council organized pursuant to the Act of June 18, 1934 (48 Stat. 987), as amended);

"(B) has a membership composed of persons whose interest in the entity is nontransferable; and

"(C) provides full membership for every person who—

"(i) holds Settlement Common Stock in the Native Corporation proposing to make the conveyance of assets on the day before the date of such conveyance, or

"(ii) held stock in the involuntarily dissolved Native Corporation whose assets are being conveyed pursuant to a court order on the day before the date of the dissolution of the corporation.

"(2)(A) Notwithstanding any other provision of State or federal law, a qualified transferee entity is hereby authorized to—

"(i) admit to full membership Natives and non-Natives for the purpose of complying with paragraph (1)(C);

"(ii) distribute cash and other assets to its members; and

"(iii) convey fee title to land, or an interest in land, to a person, organization, or governmental entity but only if such conveyance is—

"(I) authorized by subparagraph (B), or

"(II) required under sd

"(ii) exchange land, or interests in land, pursuant to the provisions of section 22(f) of this Act and section 1302(h) of the Alaska National Interest Lands Conservation Act of 1980;

on the same basis as the Native Corporation that conveyed such land, or interests in land, to the qualified transferee entity pursuant to subsection (a).

"(C) A conveyance by a qualified transferee entity of a fee interest in land, or interests in land, not in conformance with the provisions of this subsection shall be void ab initio and shall be given no effect in any court.

"(c) SAVINGS.—(1) Notwithstanding any other provision of law, the provisions of this Act (including sections 14(c), 14(f), 14(g), 21(d), and 21(e)) and section 907 of the Alaska National Interest Lands Conservation Act of 1980 (43 U.S.C. 1636) shall continue to apply to any land, or interest in land, conveyed to a qualified transferee entity as if the land, or interest in land, were still held by the Native Corporation that conveyed the land, or interest in land, pursuant to subsection (a).

"(2) Notwithstanding any other provision of law, the conveyance of any assets pursuant to subsection (a) to a qualified transferee entity shall not affect the applicability or enforcement (including specific enforcement) of any contract, judgment, lien, or other obligation (including an obligation arising under section 7(i)) to which such assets were expressly or potentially subject immediately before such conveyance.

"(3)(A) A claim made under paragraphs (1) and (2) shall be enforceable against the qualified transferee entity holding the land, interest in land, or other assets in question.

"(B) The sovereign immunity, if any, of a qualified transferee entity shall be deemed waived for purposes of—

"(i) allowing the enforcement of a claim pursuant to subparagraph (A), and

"(ii) enabling the State and its political subdivisions to tax (and condemn for public purposes) lands, and interests in land, in accordance with the provisions of section 907 of the Alaska National Interest Lands Conservation Act of 1980 (43 U.S.C. 1636).".

"(d) TRANSACTIONAL IMMUNITY FROM TAXATION, BASIS, SAVINGS.—(1) If a Native Corporation conveys assets or stock—

"(A) to a qualified transferee entity pursuant to this section; or

"(B) to a partnership, corporation, or other entity pursuant to other law (and following the completion of the conveyance, the partnership, corporation, or other entity is wholly owned by the corporation or its shareholders or by both the corporation and its shareholders);

neither the conveyance of the assets or stock, the receipt of the assets or stock, nor the distribution of stock or other beneficial interests in the qualified transferee entity (or partnership, corporation, or other entity) receiving the assets or stock to the shareholders of the corporation as part of the conveyance shall subject the corporation, its shareholders, or the qualified transferee entity (or partnership, corporation, or other entity) accepting the conveyance to any form of federal, state, or local taxation with respect to such conveyance, receipt, or distribution.

"(2) The basis to the qualified transferee entity (or partnership, corporation, or other entity) accepting a conveyance of any asset

or stock conveyed pursuant to this section (or other law) shall be the same as it would be in the hands of the Native Corporation making thrporation and its shareholders, to the same extent that such sections applied to such asset when held by the corporation.

"(B) Section 907 of the Alaska National Interest Lands Conservation Act of 1980, as amended, shall continue to apply to any asset conveyed to a partnership, corporation, or other entity as long as a majority of the total voting power of such entity or beneficial interest therein is held by the corporation making the conveyance, its shareholders on the date of conveyance, or both the corporation and its shareholders.".

SUBSURFACE DEVELOPMENT

SEC. 13. Section 14 (43 U.S.C. 1613) is amended by adding at the end thereof the following new subsection:

"(i) AUTHORIZATION TO ENTER INTO A MANAGEMENT AGREEMENT.—(1) If a Regional Corporation owns the subsurface estate underlying surface estate owned by a Village Corporation, Urban Corporation, Group Corporation, or entity described in section 40, the Regional Corporation may enter into an agreement with the Village Corporation, Urban Corporation, Group Corporation, or qualified transferee entity (as defined in section 40) to provide for the management of such subsurface estate.

"(2) PERMITTED TERMS.—An agreement described in paragraph (1) may provide that—

"(A) the subsurface estate shall not be developed without the consent of the Village Corporation, Urban Corporation, Group Corporation, or qualified transferee entity;

"(B) the subsurface estate shall be developed only in accordance with such terms and conditions that the Village Corporation, Urban Corporation, Group Corporation, or qualified transferee entity determines to be appropriate;

"(C) the Regional Corporation shall not pledge or otherwise encumber the subsurface estate without the consent of the Village Corporation, Urban Corporation, Group Corporation, or qualified transferee entity.

"(3) SECTION 7(i) EXCLUSION.—If a Regional Corporation that is a party to an agreement described in paragraph (1) with a Village Corporation, Urban Corporation, Group Corporation, or qualified transferee entity makes any payment to such corporation or entity to secure approval of the development of any subsurface estate, such payment shall not be a deductible cost for purposes of section 7(i), and any such payment made by another person to a Village Corporation, Urban Corporation, Group Corporation, or qualified transferee entity that is a party to an agreement described in paragraph (1) with a Regional Corporation shall be included in the revenues of such Regional Corporation for purposes of section 7(i).".

ALASKA LAND BANK

SEC. 14. Section 907 of the Alaska National Interest Lands Conservation Act of 1980 (43 U.S.C. 1636) is amended—

(a) by striking out the phrase "subsection (c)(2)" throughout the section and inserting in lieu thereof "subsection (d)(1)";

(b) in the proviso of subsection (a), by striking out "lands not owned by landowners described in subsection (c)(2) shall not" and inserting in lieu thereof "no lands shall";

(c) by amending subsections (c), (d), and (e) to read as follows:

"(c) BENEFITS TO PRIVATE LANDOWNERS.—(1) In addition to any requirement of applicable law, the appropriate Secretary is authorized to provide technical and other assistance with respect to fire control, trespass control, resource and land use planning, and the protection, maintenance, and enhancement of any special values of the land subject to the agreement, all with or without reimbursement as agreed upon by the parties, so long as the landowner is in compliance with the agreement.

"(2) The provisions of section 21(e) of the Alaska Native Claims Settlement Act of 1971, as amended, shall apply to all lands which are subject to an agreement under this section so long as the parties to the agreement are in compliance therewith."

"(d) AUTOMATIC PROTECTIONS FOR LANDS CONVEYED PURSUANT TO THE ALASKA NATIVE CLAIMS SETTLEMENT ACT.—(1) Notwithstanding any other provision of law, all land, and interests in land, conveyed pursuant to the Alaska Native Claims Settlement Act of 1971, as amended, to any Native individual, Native Corporation, or qualified transferee entity (as defined in section 40 of the Alaska Native Claims Settlement Act of 1971, as amended), shall be exempt, so long as such land and interests are not developed (or leased or sold to third parties) from—

"(A) adverse possession and similar claims based upon estoppel;

"(B) real property taxes by any governmental entity;

"(C) judgments resulting from any claim based upon, or arising under, title 11 of the United States Code, other insolvency or moratorium laws, or other laws generally affecting creditors' rights;

"(D) judgments in any action at law or in equity to recover sums owed or penalties incurred by any Native Corporation or qualified transferee entity or any employee, officer, director, or shareholder of such corporation or entity, unless this exemption is waived is a valid and binding contract executed prior to the commencement of such action; and

"(E) involuntary distributions or conveyances related to the involuntary dissolution of a Native Corporation.

"(2) DEFINITIONS.—(A) For purposes of this subsection, the term—

"(i) 'Developed' means a purposeful modification of land, or an interest in land, from its original state that effectuates a condition of gainful and productive present use without further substantial modification. Surveying, construction of roads, providing utilities, or other similar actions, which are normally considered to be component parts of the development process but do not create the condition described in the preceding sentence, shall not constitute a developed state within the meaning of this clause. In order to terminate the exemptions listed in paragraph (1), land, or an interest in land, must be developed for purposes other than exploration, and the exemptions will be terminated only with respect to the smallest practicable tract actually used in the developed states;

"(ii) 'Exploration' means the examination and investigation of undeveloped land to determine the existence of subsurface nonrenewable resources; and

"(iii) 'Lease' means a grant of primary possession entered into for gainful purposes with a determinable fee remaining in the hands of the grantor. With respect to a lease that conveys rights of exploration and development, the exemptions listed in paragraph (1) shall continue with respect to that portion of the leased tract that is used solely for the purposes of exploration.

"(B) For purposes of this subsection—

"(i) land shall not be considered developed solely as a result of—

(I) the construction, installation, or placement upon such land of any structure, fixture, device, or other improvement intended to enable, assist, or otherwise further subsistence or other customary or traditional uses of such land, or

"(II) the receipt by the holder of the land of fees related to hunting, fishing, and guiding activities conducted on such land;

"(ii) land upon which timber resources are being harvested shall be considered developed only during the period of such harvest and only to the extent that such land is integrally related to the timber harvesting operation; and

"(iii) land subdivided by a state or local platting authority on the basis of a subdivision plat submitted by, or on behalf of, the holder of the land, shall be considered developed on the date of final approval of the subdivision plat unless the subdivided property is a remainder parcel.

"(3) ACTION BY A TRUSTEE.—(A) Except as provided in this paragraph and in section 14(c)(3) of the Alaska Native Claims Settlement Act of 1971, as amended, no trustee, receiver, or custodian vested under applicable federal or State law with a right, title, or interest of a Native individual, Native Corporation, or qualified transferee entity may—

"(i) assign or lease to a third party,

"(ii) commence development or use of, or

"(iii) convey to a third party, any right, title, or interest in any land, or interests in land, subject to paragraph (1).

"(B) The prohibitions of subparagraph (A) shall not apply—

"(i) when the actions of such trustee, receiver, or custodian are for purposes of exploration or pursuant to a judgment in law or in equity (or arbitration award) arising out of any claim under section 7(i) or section 14(c) of the Alaska Native Claims Settlement Act of 1971, as amended;

"(ii) to any land, or interest in land, which has been developed or leased prior to the vesting of the trustee, receiver, or custodian with the right, title, or interest of the Native Corporation or qualified transferee entity; or

"(iii) to any land, or interest in land, which has been specifically pledged as security for any loan or specifically committed to any commercial transaction in a valid and binding agreement.

"(4) EXCLUSIONS, REATTACHMENT OF EXEMPTIONS.—(A) The exemptions listed in paragraph (1) shall not apply to any land, or interest in land, which is—

"(i) developed (or leased or sold to a third party); or

"(ii) held by a Native Corporation in which the shares of stock held by Natives and descendants of Natives represent less than a majority of the total voting power of the corporation for the purposes of electing directors.

"(B) The exemptions described in paragraphs (1)(C), (1)(D), and (1)(E) shall not apply to any land, or interest in land—

"(i) if, and for so long as, such land or interest is specifically pledged as security for any loan or specifically committed to any commercial transaction in a valid and binding agreement, and

"(ii) to the extent necessary to enforce a judgment in any action at law or in equity (or any arbitration award) arising out of any claim under section 7(i) or section 14(c) of

the Alaska Native Claims Settlement Act of 1971, as amended.

"(C) If the exemptions listed in paragraph (1) are terminated with respect to land, or an interest in land, as a result of development (or a lease to a third party), and such land, or interest in land, subsequently reverts to an undeveloped state (or the third-party lease is terminated), then the exemptions shall again apply to such land, or interest in land, in accordance with the provisions of this subsection.

"(5) TAX RECAPTURE UPON SUBDIVISION PLAT APPROVAL.—Upon the final approval by an appropriate government authority of a subdivision plat submitted by, or on behalf of, a Native individual, Native Corporation, or qualified transferee entity with respect to land subject to the exemption described in paragraph (1)(B), such individual, corporation, or qualified transferee entity shall pay all state and local property taxes on the smallest practicable tract integrally related to the subdivision project that would have been incurred by the individual, corporation, or qualified transferee entity on such land (excluding the value of subsurface resources and timber) in the absence of the exemption described in paragraph (1)(B) during the 30 months prior to the date of the final approval of the plat. The state and local property taxes (together with interest at the rate of five percent per annum commencing on the date of final approval of the subdivision plat) shall be paid in equal semi-annual installments over a two year period commencing on the date six months after the date of final approval of the subdivision plat.

"(6) SAVINGS.—(A) Nothing in this subsection shall be construed to impair, or otherwise affect in any manner, any contract or other obligation that was entered into prior to the date of the enactment of the Alaska Native Claims Settlement Act Amendments of 1986.

"(B) Nothing in this subsection shall be construed to impair, supersede, or otherwise affect in any manner the operation of section 21(d) of the Alaska Native Claims Settlement Act of 1971, as amended.

"(e) CONDEMNATION.—Notwithstanding any other provision of law, all land subject to an agreement made pursuant to subsection (a) and all land, and interests in land, conveyed pursuant to the Alaska Native Claims Settlement Act of 1971, as amended, to any Native individual, Native Corporation; or qualified transferee entity (as defined in section 40 of the Alaska Native Claims Settlement Act of 1971, as amended) shall be subject to condemnation for public purposes in accordance with the provisions of applicable State law."; and

(d) by adding at the end therefore the following new subsection:

"(g) STATE JURISDICTION.—Except as expressly provided in subsection, (d), nothing in this section shall be construed as affecting the civil or criminal jurisdiction of the State of Alaska.".

ALASKA NATIVE HERITAGE TRUST

SEC. 15. The Alaska Native Claims Settlement Act of 1971, as amended, is further amended by adding at the end thereof the following new section:

"SEC. 41. (a) PURPOSE.—The board of directors of any Regional Corporation, is authorized to establish an Alaska Native Heritage Trust for the purpose of preserving, during the term of the trust, the present ownership of such corporation's stock and thereby assuring the opportunity for continued management of the corporation consistent with traditional Native values.

"(b) ESTABLISHMENT.—(1) The board of directors of any Regional Corporation may establish one Alaska Native Heritage Trust with respect to the stock of the corporation and may authorize by appropriate resolution the establishment of more than one such trust under such terms and conditions as such board may prescribe consistent with this Act.

"(2) Before the board of directors may solicit any shareholder to place all or any portion of his or her stock in an Alaska Native Heritage Trust, the corporation shall disseminate to every shareholder at least 30 days before commencement of the solicitation—

"(A) a copy of the Alaska Native Heritage Trust Agreement,

"(B) an accurate, simple and concise summary of that agreement,

"(C) appropriate identification of the initial board of trustees, and

"(D) such other information and material as the board of directors believes appropriate.

Any information or material disseminated by the corporation or by others in regard to such solicitation shall not be materially false or misleading. Whether any such information or material is materially false of misleading shall be determined by reference to federal securities laws rather than those laws applicable to execution of trust instruments: *Provided,* nothing herein shall preclude claims based upon common law fraud, overreaching or similar conduct: *Provided further,* so long as the information and materials disseminated by the corporation or by others comply with the requirements of this subsection, no shareholder's decision to place shares in the trust may be set aside on the grounds that such information and materials failed to address the financial or other circumstances of a particular shareholder or that the shareholder did not understand the consequences of that decision.

"(3) When any shareholder is solicited to place his shares in an Alaska Native Heritage Trust, he shall be given a simple form on which he can elect to place any or all of his shares in the trust for such time and under such terms consistent with this Act.

"(c) ALASKA NATIVE HERITAGE TRUST.—(1) An Alaska Native Heritage Trust shall be operated as a non-profit organization, exempt from federal, state and local taxation.

"(2) A shareholder may elect at any time to place all or any portion of his shares, of whatever class or classes, in the trust for such period and upon such terms and conditions as the trust agreement may authorize consistent with this Act.

"(3) Except as otherwise provided by this Act or by the express terms of the trust agreement consistent with this Act, all rights incident to the ownership of the stock are reserved to the shareholder who has placed such shares in trust, including but not limited to the rights to inspect the books and records of the corporation, to vote for directors, to vote the stock except as otherwise limited, to receive dividends in cash, in kind, or in stock, and to receive any other distributions in cash or in kind. Both the trust and the shareholder shall have the right to bring or initiate a quo warranto, class or other shareholder suit or action against the corporation, its officers or directors, or a derivative suit in behalf of the corporation.

"(4) Subject to the provisions of subsection (e), the transfer of stock to the trust by a shareholder shall be irrevocable during the period elected by him pursuant to subsection (b)(3), except as expressly provided in the terms of the trust agreement. The consideration for the transfer shall be the mutual consent and agreement of the other shareholders to the terms of the trust agreement.

"(5) No transfer of shares or other action taken in connection with the establishment, operation or dissolution of the trust shall be considered a taxable event for purposes of federal, state or local law.

"(6) Neither the beneficial interests of a shareholder whose shares are held in a trust established pursuant to this section, nor the shares which are held by such a trust, shall be subject to any form of voluntary or involuntary transfer, including but not limited to attachment, execution of judgment or transfer to a trustee in bankruptcy, except that this prohibition shall not apply to transfers pursuant to a court decree of separation, divorce or child support in accordance with section 7(h)(1).

"(7) Any stock placed in an Alaska Native Heritage Trust pursuant to this section shall not be considered treasury stock under the laws of the State or under federal law, and shall be considered issued and outstanding for all purposes.

"(d) TRUSTEES.—(1) Every Alaska Native Heritage Trust shall have a board of not less than three (3) trustees who shall be responsible for the management and operation of the trust.

"(2) Notwithstanding any other provision of law, a shareholder who has elected to place his shares in the trust may serve as a trustee, and such service shall not effect a merger of his legal and beneficial interests in his stock.

"(3) Unless otherwise prohibited by this Act or by the terms of the trust agreement, any individual, whether or not a shareholder, or a corporation or other institution may serve as a trustee: *Provided,* neither the corporation the stock of which is the subject of the trust nor an affiliate or subsidiary, directly or indirectly owned in whole or in part by the corporation the stock of which is the subject of the trust, may serve as a trustee of such trust: *Provided further,* the board of directors in establishing or authorizing the trusts may determine whether all or any particular number of trustees must be shareholders of the corporation.

"(4) Notwithstanding any other provision of law, a director, officer or employee of any corporation, or any person transacting or proposing to transact business with the corporation the stock of which is the subject of the Alaska Native Heritage Trust, or with the shareholders of such corporation, may serve as a trustee of the trust for such corporation subject to such terms and conditions as the board of directors may impose governing actual or potential conflicts of interest unless the trust agreement specifically prohibits such service.

"(5) There shall be annual elections of trustees for terms not to exceed three years by the shareholders who have placed stock in the Alaska Native Heritage Trust in accordance with the terms and conditions of the Alaska Native Heritage Trust Agreement. *Provided,* the agreement may divide the trustees into classes and provide for the election of only one class annually. The agreement also shall provide for the filling of vacancies. To the extent practicable, the trust agreement shall provide that the elec-

tion and removal of trustees and the filling of vacancies shall be conducted in accordance with the laws of the State governing the election and removal of directors and the filling of vacancies on the board of directors of a general, for-profit business corporation.

"(6) Prior to the election of any trustees, all candidates shall be required to make full disclosure to the shareholders who have placed their shares in the Alaska Native Heritage Trust of their present and anticipated financial interests in, and associations related to, the corporation, the stock of which is the subject of the trust.

"(7) The trustees shall have such powers and duties as may be described by the Alaska Native Heritage Trust Agreement: *Provided*, they shall have no power to dispose of, or to transfer, any stock held in trust except to distribute it upon dissolution as described in this Act or upon court decree of separation, divorce or child support in accordance with section 7(h)(1).

"(8) The trustees shall have the right to vote the stock held in trust on all matters specified in the trust agreement, except that the right to vote for the election or removal of directors of the corporation shall be reserved for the shareholders whose stock is held in the trust. Decisions of the trustees on how to vote the stock shall be made by majority vote of the trustees at a meeting open to all shareholders whose stock is held in the trust and only after providing to such shareholders reasonable notice of such meeting and an opportunity to be heard. Such a meeting of the trust shareholders may be consolidated with any other meeting of the corporation.

"(9) Notwithstanding any other provision of law, trust shareholders shall have the right to call a meeting of all trust shareholders at which, by majority vote of all shares held in trust, they may direct the trustees to vote in a particular way to take other appropriate action. Such meeting shall be called and conducted in accordance with the laws of the State governing meetings of shareholders of general, for-profit business corporations. Such a meeting of the trust shareholders may be consolidated with any other meeting of the corporation.

"(e) DISSOLUTION OF THE TRUST.—(1) The interest of an individual trust shareholder in the trust shall end upon expiration of the term elected by him or her pursuant to subsection (b)(3) or upon his or her death plus one year, whichever first occurs. One year after death, the trustees shall distribute his or her shares in accordance with his or her last will and testament or in accordance with the applicable laws of intestacy: *Provided*, such distribution shall be subject to the rights, if any, of the corporation or members of the shareholder's immediate family to purchase such shares from the decedent's estate.

"(2) The trust shall be dissolved upon the voluntary dissolution of the corporation or any involuntary dissolution of the corporation, except one occurring for failure to comply with periodic corporate filing or payment-of-fees requirements under the laws of the State.

"(3) The trust shall be dissolved when no shares remain in the trust or upon the expiration of the term of the trust as provided in the trust agreement.

"(4) The trust shall be dissolved upon the approval by the shareholders of a merger or consolidation of the corporation in accordance with the laws of the State or upon a transfer of all or substantially all of the assets of the corporation to a qualified transferee entity in accordance with section 40.

"(5) The trust, or the trust status of the shares of any individual held in trust, may be dissolved by an affirmative vote of a majority of all shares held in the trust. A vote on such matters may be called by the trustees or by trust shareholders who comply with laws of the State governing shareholder action.".

CONFORMING AMENDMENTS

SEC. 16. (a) SECTION 21.—Section (f) of section 21 (43 U.S.C. 1620(f)) is amended by striking out "January 1, 1992" and inserting is in lieu thereof "such time as the restrictions imposed by section 7(h)(1)(B) on Settlement Common Stock have terminated".

(b) SECTION 30.—Subsection (b) of section 30 (43 U.S.C. 1627(b)) is amended by striking out "prior to December 19, 1991" and inserting in lieu thereof "while the Settlement Common Stock of all corporations subject to merger or consolidation remains subject to the restraints imposed by section 7(h)(1)(B) on alienation of Settlement Common Stock.".

(c) SECURITIES EXCHANGE ACT OF 1934.—Section 13(d)(1) of the Securities Exchange Act of 1934 is amended by inserting "or any equity security issued by an Alaska Native Corporation pursuant to section 38(f) of the Alaska Native Claims Settlement Act of 1971, as amended" after "Investment Company Act of 1940".

(d) ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT OF 1980.—Section 1431(o)(1) of the Alaska National Interest Lands Conservation Act of 1980 (94 Stat. 2542) is amended by deleting "five years" and inserting in lieu thereof "fifteen years."

(e) SECTION 7.—Subsection (o) of section 7 (43 U.S.C. 1606) is amended to strike everything following the word "stockholder" except the period at the end of the subsection.

SEVERABILITY

SEC. 17. Section 27 (85 Stat. 688) is amended to read as follows:

"SEVERABILITY

"SEC. 27. The provisions of this Act and the Alaska Native Claims Settlement Act Amendments of 1986 are severable and, if any provision of either Act is determined by a court of competent jurisdiction to be invalid, such invalidity shall not affect any other provision of such Act.".

SECURITIES LAWS EXEMPTION

SEC. 18. Section 28 (43 U.S.C. 1625) is amended to read as follows:

"SECURITIES LAWS EXEMPTION

"SEC. 28. (a) Any Native Corporation shall be exempt from the provisions, as amended, of the Investment Company Act of 1940 (54 Stat. 789), the Securities Act of 1933 (48 Stat. 74), and the Securities Exchange Act of 1934 (48 Stat. 881) until the earlier of—

"(1) the day after the date on which the corporation by dividend or other distribution issues any shares of stock other than Settlement Common Stock to persons other than—

"(A) Natives,

"(B) descendants of Natives, or

"(C) entities established for the sole benefit of Natives or descendants of Natives;

"(2) the day on which the corporation offers or sells any shares of stock (other than Settlement Common Stock) issued by the corporation in a transaction other than a transaction that would be exempt under the Securities Act of 1933, as amended, an issuance of stock by dividend or distribution to shareholders of the corporation, or a distribution of stock to dissenting shareholders under section 38(f); or

"(3) the day after the date on which the restrictions imposed on Settlement Common Stock by section 7(h)(1)(B) terminate.

"(b) Nothing in this section shall be construed to require or imply that any Native Corporation shall, or shall not, be subject to provisions of the Acts listed in subsection (a) after any of the dates described in subsection (a).

"(c)(1) Any Native Corporation that, but for this section, would be subject to the provisions of the Securities Exchange Act of 1934 shall transmit to its shareholders each year a report containing substantially all the information required to be included in an annual report to shareholders by a corporation subject to that Act.

"(2) For purposes of determining the applicability of the registration requirements of the Securities Exchange Act of 1934 on or after the dates described in subsections (a)(1), (a)(2), and (a)(3), holders of Settlement Common Stock shall be excluded from the calculation of the number of shareholders of record pursuant to section 12(g) of that Act."

"(d) Notwithstanding subsection (a) or any other provision of law, the provisions of the Investment Company Act of 1940 shall not apply to any Native Corporation prior to January 1, 2001.".

ELIGIBILITY FOR FEDERAL PROGRAMS, MINORITY STATUS

SEC. 19. Section 29 (43 U.S.C. 1626) is amended by adding the following new subsection:

"(c) In determining the eligibility of any household or individual Native or descendant of a Native to—

"(1) participate in the Food Stamp program,

"(2) receive assistance under the Social Security Act, or

"(3) receive financial assistance or benefits under any other federal program or federally-assisted program,

any compensation (including in-kind or cash dividends on stock received from a Native Corporation to the extent that such dividends do not, in aggregate, exceed $2,000 per individual per annum), stock (including stock issued by a Native Corporation as a dividend or distribution on stock), land or interest in land (including land or an interest in land received from a Native Corporation as a dividend or distribution on stock), or other benefits received by such individual, such household, or any member of such household under this Act shall not be taken into account, regardless of whether such compensation, stock, land or interest in land, or other benefit is subject to federal, state, or local taxation.

"(d) Notwithstanding any other provision of this Act or of any other law, Alaska Natives shall remain eligible for all federal Indian programs on the same basis as other Native Americans.

"(e) For all purposes of federal law, a Native Corporation shall be considered to be a corporation owned and controlled by Natives if—

"(1) the Settlement Common Stock of the corporation represents 50 percent, or more, of the total voting power of the corporation for purposes of electing directors; or

"(2) Natives or descendants of Natives own shares of stock representing 50 percent, or more, of the total voting power of the cor-

poration for the purpose of electing directors.

"(f) For purposes of the Federal Oil and Gas Royalty Management Act of 1982, as long as land, or interests in land, received pursuant to this Act by a Regional Corporation are, or have been, administered by the United States pursuant to section 14(g), such land, and interests in land, shall be within the class defined in section 3(3) of the Federal Oil and Gas Royalty Management Act of 1982, and such Regional Corporation shall be within the class defined in section 3(4) of such Act.".

JUDICIAL REVIEW

SEC. 20. (a) STATUTE OF LIMITATIONS.—(1) Notwithstanding any other provision of law, a civil action to contest the constitutionality of any amendment made by, or other provision of, this Act (the Alaska Native Claims Settlement Act Amendments of 1986) shall be barred unless—

(A) if the civil action challenges—

(i) the issuance or distribution of Settlement Common Stock for less than fair market value consideration pursuant to section 7(g)(1)(B) or 7(g)(2)(B)(iii) of the Alaska Native Claims Settlement Act of 1971, as amended;

(ii) an extension of the restrictions imposed by section 7(h)(1)(B) on Settlement Common Stock that involves the issuance of stock pursuant to section 38(f) or 39 of the Alaska Native Claims Settlement Act of 1971, as amended; or

(iii) the conveyance of assets to a qualified transferee entity for less than fair market value consideration pursuant to section 40 of the Alaska Native Claims Settlement Act of 1971, as amended;

the civil action is filed within 6 months of the date of the shareholder vote authorizing the challenged action and a request for a declaratory judgment or injunctive relief is made before the Native Corporation taking the challenged action issues stock or conveys assets; or

(B) with respect to any other civil action, the civil action is filed within two years of the date of issuance of the Presidential Proclamation described in section 22(e).

(2) Notwithstanding any other provision of this Act, no Native Corporation taking an action described in paragraphs (1)(A)(i), (1)(A)(iii), or (1)(A)(iii) shall issue stock or convey assets within 14 days of the date of the shareholder vote authorizing such action.

(b) JURISDICTION AND PROCEDURE.—The United States District Court for the District of Alaska shall have exclusive original jurisdiction over any such action. The action shall be heard and determined by a court of three judges as provided in section 2284 of title 28 of the United States Code. Any appeal of the final judgment in the action shall be made directly to the United States Supreme Court.

(c) STATEMENT OF PURPOSE.—The purpose of the limitation on legal challenges to this Act outlined in subsection (a) is—

(1) to ensure that after the expiration of a reasonable period of time, Native shareholders and their corporations, the United States, and the State and its political subdivisions will be able to plan their affairs with certainty in full reliance on the provisions of this Act, and

(2) without infringing on the constitutional rights of any individual, to minimize the possibility that the United States will incur a monetary liability as a result of the enactment of this Act.

(d) Notwithstanding any provision of this Act, in any civil action challenging an amendment authorized by section 38 or 39 the court is authorized to issue an order extending the restrictions imposed by section 7(h)(1)(B) on alienation of Settlement Common Stock during the pendency of the action and for a reasonable period thereafter sufficient to allow the rejection or approval of the proposed amendment by the shareholders of the Native Corporation involved. In determining whether to issue such order, the court shall consider the irreparable damage that may occur if such restrictions are terminated.

DISCLAIMER

SEC. 21. (a) No provision of this Act (the Alaska Native Claims Settlement Act Amendments of 1986), amendment made by this Act, exercise of authority pursuant to this Act (including a conveyance of assets under section 40 of the Alaska Native Claims Settlement Act, as amended, to a qualified transferee entity), or change in the status of land (including a change in ownership) effected under this Act shall be construed to—

(1) enlarge or diminish or in any way affect the scope of the governmental authority, if any, of any Native organization, including any federally-reorganized tribe, traditional Native council, Native council organized pursuant to the Act of June 18, 1934 (48 Stat. 987), as amended, or qualified transferee entity over lands (including management of, or regulation of the taking of, fish and wildlife) or over persons in Alaska;

(2) grant or deny any governmental authority to such organization over lands (including management of, or regulation of the taking of, fish and wildlife) or over persons in Alaska; or

(3) create or validate or invalidate any assertion by such organization of any form of governmental authority over lands (including management of, or regulation of the taking of, fish and wildlife) or over persons in Alaska.

(b) No provision of this Act (the Alaska Native Claims Settlement Act Amendments of 1986), amendment made by this Act, exercise of authority pursuant to this Act (including a conveyance of assets under section 40 of the Alaska Native Claims Settlement Act to a qualified transferee entity), or change in the status of land (including a change in ownership) effected under this Act shall be construed to validate or invalidate or in any way affect any assertion that Indian county, as defined in 18 U.S.C. 1151, exists or does not exist in Alaska.

(c) No provision of this Act (the Alaska Native Claims Settlement Act Amendments of 1986), amendment made by this Act, exercise of authority pursuant to this Act (including a conveyance of assets under section 40 of the Alaska Native Claims Settlement Act to a qualified transferee entity), or change in the status of land (including a change in ownership) effected under this Act may be taken into account by any court in determining—

(1) the existence of any governmental authority described in subsection (a),

(2) the existence of Indian country within the boundries of the State of Alaska,

(3) any issue related to the existence of any governmental authority described in subsection (a) or any Indian country within the boundries of the State of Alaska,

(4) the intent of Congress with regard to any of the matters described in paragraphs (1), (2), or (3).

APPROVAL OF THE REVISION OF THE TERMS OF THE 1971 SETTLEMENT BY SHAREHOLDERS OF NATIVE CORPORATIONS

SEC. 22. (a) NEED FOR APPROVAL.—Sections 2 through 21 of this Act (the Alaska Native Claims Settlement Act Amendments of 1986) shall not become effective unless Native Corporation shareholders vote to approve the revision of the provisions of this section.

(b) DISTRIBUTION OF BALLOTS.—(1) No later than January 1, 1987, the board of directors of each Regional Corporation (and of each Village Corporation that elected to acquire title to the surface and subsurface estates in a reserve pursuant to section 19(b) of the Alaska Native Claims Settlement Act of 1971, as amended) shall send by first-class mail a ballot to each holder of Settlement Common Stock at his or her address as it appears in the records of the corporation.

(2) The ballot shall state only the following:

"1991 AMENDMENTS BALLOT

"Congress has passed the "1991 Amendments" (Public Law 99-) to the Alaska Native Claims Settlement Act of 1971. Among other things, the amendments—

"(1) allow stock restrictions to continue after 1991,

"(2) allow shareholders to authorize new stock for elders and Natives born after 1971,

"(3) protect subsistence lands from property taxes, squatters' rights, and involuntary loss,

"(4) allow shareholders to transfer land out of the corporation into different organizations, and

"(5) allow corporations to restructure their stock before 1991 to avoid unfriendly takeovers.

"The 1991 amendments will take effect only if approved by shareholders.

"Do you approve the amendments? Yes or No.

"Please return this ballot by February 28, 1987, for it to count." The ballot shall indicate how many shares of Settlement Common Stock the shareholder is voting and require the shareholder to affix his signature and indicate the date on which the ballot is voted. The board shall provide for the return of the ballots by mail and may also provide for personal collection of some or all of the ballots.

(c) COUNTING OF BALLOTS AND CERTIFICATION OF RESULTS.—(1) The board of directors of each Regional Corporation and Village Corporation described in subsection (b)(1) shall count ballots returned or collected. No later than March 9, 1987, the board shall certify the results of the balloting within the region or village to the Alaska Federation of Natives, Inc. Every properly-executed ballot that is either—

(A) received on, or before, February 28, 1987; or

(B) mailed on, or before, that date (as indicated by the postmark) and received by March 8, 1987;

shall be included in the counting of ballots.

(2) The board of directors of the Alaska Federation of Natives, Inc., shall compile the results received from each Regional Corporation and Village Corporation described in subsection (b). If the proposition stated in subsection (b)(2) has been approved by Native Corporation shareholders, the board shall certify such fact to the Secretary of the Interior no later than March 16, 1987.

(d) STANDARD FOR APPROVAL.—The proposition stated in the ballots shall be considered to be approved if holders of shares of Settlement Common Stock representing a majority of the shares of Settlement Common Stock actually voting the ballots have voted to approve the proposition.

(e) PRESIDENTIAL PROCLAMATION.—(1) Upon receipt of a certification from the Alaska Federation of Natives, Inc., the Secretary shall notify the President of the United States that Native Corporation shareholders have approved the proposition stated in subsection (b)(2).

(2) Upon receipt of a notice from the Secretary of the Interior pursuant to paragraph (1), the President shall issue a proclamation stating that—

(A) Native Corporation shareholders have approved the proposition stated in subsection (b)(2), and

(B) sections 2 through 21 of the Alaska Native Claims Settlement Act Amendment of 1971 have become effective.

(3) Sections 2 through 21 of this Act shall become effective on the date that the President issues the proclamation described in paragraph (2).

PUEBLO AUTHORIZATION

DOMENICI AMENDMENT NO. 3250

Mr. SIMPSON (for Mr. DOMENICI) proposed an amendment to the bill (H.R. 4873) to authorize certain transfers affecting the Pueblo of Santa Ana in New Mexico, and for other purposes, as follows:

On page 2, line 4, strike out "before the date of enactment of this Act".

On page 3, line 23, strike out the comma after "Northeast quarter".

On page 9, after line 10, insert the following:

SEC. 6. (a) Except as otherwise provided in this section, the provision of this Act, and the amendments made by this Act, shall take effect on the date of enactment of this Act.

(b)(1) The provisions of subsections (a) and (b) of section 1 shall take effect on the day on which the Secretary of the Interior publishes in the Federal Register notice of a determination made by the Secretary of the Interior that the Pueblo of Santa Ana has consented to private easements of access over lands held by, or on behalf of, the Pueblo of Santa Ana, as recommended by the Secretary of the Interior, in accordance with the provisions of part 169 of title 25, Code of Federal Regulations, to each person—

(A) who without such an easement has no practical surface ingress or egress to property owned in fee simple by such person, and

(B) who has submitted to the Pueblo of Santa Ana and to the Secretary of the Interior an application for such an easement, in accordance with part 169 of such title, before the date that is 90 days after the date of enactment of this Act.

(2) The Secretary of the Interior may make a determination under paragraph (1) at any time after the date of enactment of this Act, but the Secretary of the Interior shall make a determination of whether the Pueblo of Santa Ana has consented to easements of access to each person described in paragraph (1) by no later than the date that is 30 days after the date on which the Pueblo of Santa Ana requests the Secretary of the Interior to make such a determination.

ESTABLISHMENT OF RISK RETENTION GROUPS

KASTEN AMENDMENT NO. 3251

Mr. SIMPSON (for Mr. KASTEN) proposed an amendment to the amendment of the House to the bill (S. 2129) to facilitate the ability of organizations to establish risk retention groups, to facilitate the ability of such organizations to purchase liability insurance on a group basis, and for other purposes; as follows:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Risk Retention Amendments of 1986".

SEC. 2. REFERENCES IN THE ACT.

Whenever in this Act an amendment is expressed in terms of an amendment to a section, the reference shall be deemed to be a reference to the Product Liability Risk Retention Act of 1981 (15 U.S.C. 3901 et seq.), unless otherwise provided.

SEC. 3. COVERAGE OFFERED BY RISK RETENTION GROUPS.

"(a) EXPANSION OF COVERAGE.—Section 2(a) (15 U.S.C. 3901(a)) is amended—

(1) by striking paragraphs (1) and (3);

(2) by redesignating paragraph (2) as paragraph (1); and

(3) by inserting after paragraph (1), as so redesignated, the following new paragraphs:

"(2) 'liability'—

"(A) means legal liability for damages (including costs of defense, legal costs and fees, and other claims expenses) because of injuries to other persons, damage to their property, or other damage or loss to such other persons resulting from or arising out of—

"(i) any business (whether profit or nonprofit), trade, product, services (including professional services), premises, or operations; or

"(ii) any activity of any State or local government, or any agency or political subdivision thereof; and

"(B) does not include personal risk liability and an employer's liability with respect to its employees other than legal liability under the Federal Employers' Liability Act (45 U.S.C. 51 et seq.);

"(3) 'personal risk liability' means liability for damages because of injury to any person, damage to property, or other loss or damage resulting from any personal, familial, or household responsibilities or activities, rather than from responsibilities or activities referred to in paragraphs (2)(A) and (2)(B);".

(b) DEFINITIONS.—Such section is further amended—

(1) by striking "and" at the end of paragraph (5);

(2) by striking the period at the end of paragraph (6) and inserting "; and"; and

(3) by adding at the end the following new paragraph:

"(7) 'hazardous financial condition' means that, based on its present or reasonably anticipated financial condition, a risk retention group is unlikely to be able—

"(A) to meet obligations to policyholders with respect to known claims and reasonably anticipated claims; or

"(B) to pay other obligations in the normal course of business.".

SEC. 4. REQUIREMENTS RELATING TO RISK RETENTION GROUPS AND PURCHASING GROUPS.

(a) CHARACTERISTICS OF RISK RETENTION GROUPS AND THEIR MEMBERS.—(1) Section 2(a)(4) (15 U.S.C. 3901(a)(4)) is amended by striking "taxable as a corporation, or as an insurance company, formed under the laws of any State, Bermuda, or the Cayman Islands".

(2) Subparagraph (A) of such section is amended by striking "product liability or completed operations liability risk exposure" and inserting "liability exposure".

(3) Subparagraph (C) of such section is amended to read as follows:

"(C) which—

"(i) is chartered and licensed as a liability insurance company under the laws of a State and authorized to engage in the business of insurance under the laws of such State; or

"(ii) before January 1, 1985, was chartered or licensed and authorized to engage in the business of insurance under the laws of Bermuda or the Cayman Islands and, before such date, had certified to the insurance commissioner of at least one State that it satisfied the capitalization requirements of such State, except that any such group shall be considered to be a risk retention group only if it has been engaged in business continuously since such date and only for the purpose of continuing to provide insurance to cover product liability or completed operations liability (as such terms were defined in this section before the date of the enactment of the Risk Retention Amendments of 1986).".

(4) Such section is further amended—

(A) by striking "and" at the end of subparagraph (D); and

(B) by striking subparagraph (E) and inserting the following new subparagraphs:

"(E) which—

"(i) has as its owners only persons who comprise the membership of the risk retention group and who are provided insurance by such group; or

"(ii) has as its sole owner an organization which has as—

"(I) its members only persons who comprise the membership of the risk retention group; and

"(II) its owners only persons who comprise the membership of the risk retention group and who are provided insurance by such group;

"(F) whose members are engaged in businesses or activities similar or related with respect to the liability to which such members are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations;

"(G) whose activities do not include the provision of insurance other than—

"(i) liability insurance for assuming and spreading all or any portion of the similar or related liability exposure of its group members; and

"(ii) reinsurance with respect to the similar or related liability exposure of any other risk retention group (or any member of such other group) which is engaged in businesses or activities so that such group (or member) meets the requirment described in subparagraph (F) for membership in the risk retention group which provides such reinsurance; and

"(H) the name of which includes the phrase 'Risk Retention Group'.".

(b) CHARACTERISTICS OF PURCHASING GROUPS.—Section 2(a)(5) (15 U.S.C. 3901(a)(5)) is amended to read as follows:

"(5) 'purchasing group' means any group which—

"(A) has as one of its purposes the purchase of liability insurance on a group basis;

"(B) purchases such insurance only for its group members and only to cover their similar or related liability exposure, as described in subparagraph (C);

"(C) is composed of members whose businesses or activities are similar or related with respect to the liability to which members are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations; and

"(D) is domiciled in any State.".

SEC. 5. CONCERNING SCOPE OF EXEMPTIONS RELATING TO RISK RETENTION GROUPS.

(a) IN GENERAL.—Section 3(b) (15 U.S.C. 3902(b)) is amended to read as follows:

"(b) The exemptions specified in subsection (a) apply to laws governing the insurance business pertaining to—

"(1) liability insurance coverage provided by a risk retention group for—

"(A) such group; or

"(B) any person who is a member of such group;

"(2) the sale of liability insurance coverage for a risk retention group; and

"(3) the provision of—

"(A) insurance related services;

"(B) management, operations, and investment activities; or

"(C) loss control and claims administration (including loss control and claims administration services for uninsured risks retained by any member of such group);

for a risk retention group or any member of such group with respect to liability for which the group provides insurance.".

(b) PLANS OF OPERATION, FEASIBILITY STUDIES, AND FINANCIAL STATEMENTS.—Section 3 (15 U.S.C. 3902) is further amended—

(1) in subsection (a)(1)—

(A) by striking subparagraph (D) and redesignating subparagraphs (E), (F), and (G) as subparagraphs (D), (E), and (F), accordingly; and

(B) by striking all that follows after "documents or process" in subparagraph (D) (as redesignated) and inserting a semicolon; and

(2) by adding at the end of such section the following new subsection:

"(d) Each risk retention group shall submit—

"(1) to the insurance commissioner of the State in which it is chartered—

"(A) before it may offer insurance in any State, a plan of operation or a feasibility study which includes the coverages, deductibles, coverage limits, rates, and rating classification systems for each line of insurance the group intends to offer; and

"(B) revisions of such plan or study if the group intends to offer any additional lines of liability insurance;

"(2) to the insurance commissioner of each State in which it intends to do business, before it may offer insurance in such State—

"(A) a copy of such plan or study (which shall include the name of the State in which it is chartered and its principal place of business); and

"(B) a copy of any revisions to such plan or study, as provided in paragraph (1)(B) (which shall include any change in the designation of the State in which it is chartered); and

"(3) to the insurance commissioner of each State in which it is doing business, a copy of the group's annual financial statement submitted to the State in which the group is chartered as an insurance company, which statement shall be certified by an independent public accountant and contain a statement of opinion on loss and loss adjustment expense reserves made by—

"(A) a member of the American Academy of Actuaries, or

"(B) a qualified loss reserve specialist."

"(c) EXAMINATION OF FINANCIAL CONDITION.—Section 3(a)(1)(E) (as redesignated by subsection (b)) is amended—

(1) by striking clause (i);

(2) by redesignating clause (ii) as clause (i); and

(3) by adding at the end the following new clause:

"(ii) any such examination shall be coordinated to avoid unjustified duplication and unjustified repetition;"

(d) COMPLIANCE WITH DELINQUENCY PROCEEDING ORDERS.—Section 3(a)(1)(F) (as redesignated by subsection (b)) is amended to read as follows:

"(F) comply with a lawful order issued—

"(i) in a delinquency proceeding commenced by the State insurance commissioner if there has been a finding of financial impairment under subparagraph (E); or

"(ii) in a voluntary dissolution proceeding;"

(e) ADDITIONAL STATE LAW REQUIREMENTS.—Section 3(a)(1) (15 U.S.C. 3902(a)(1)) is further amended by adding at the end the following new subparagraphs:

"(G) comply with any State law regarding deceptive, false, or fraudulent acts or practices, except that if the State seeks an injunction regarding the conduct described in this subparagraph, such injunction must be obtained from a court of competent jurisdiction;

"(H) comply with an injunction issued by a court of competent jurisdiction, upon a petition by the State insurance commissioner alleging that the group is in hazardous financial condition or is financially impaired; and

"(I) provide the following notice, in 10-point type, in any insurance policy issued by such group:

" 'NOTICE

" 'This policy is issued by your risk retention group. Your risk retention group may not be subject to all of the insurance laws and regulations of your State. State insurance insolvency guaranty funds are not available for your risk retention group.' ".

SEC. 6. ADDITIONAL REQUIREMENTS RELATING TO PURCHASING GROUPS.

Section 4 (15 U.S.C. 3903) is amended by adding at the end the following new subsections:

"(d)(1) A purchasing group which intends to do business in any State shall furnish notice of such intention to the insurance commissioner of such State. Such notice—

"(A) shall identify the State in which such group is domiciled;

"(B) shall specify the lines and classifications of liability insurance which the purchasing group intends to purchase;

"(C) shall identify the insurance company from which the group intends to purchase insurance and the domicile of such company; and

"(D) shall identify the principal place of business of the group.

"(2) Such purchasing group shall notify the commissioner of any such State as to any subsequent changes in any of the items provided in such notice.

"(e) A purchasing group shall register with and designate the State insurance commissioner of each State in which it does business as its agent solely for the purpose of receiving service of legal documents or process, except that such requirement shall not apply in the case of a purchasing group—

"(1) which—

"(A) was domiciled before April 1, 1986; and

"(B) is domiciled on and after the date of the enactment of this Act;

in any State of the United States;

"(2) which—

"(A) before the date of the enactment of this Act, purchased insurance from an insurance carrier licensed in any State; and

"(B) since such date of enactment, purchases its insurance from an insurance carrier licensed in any State;

"(3) which was a purchasing group under the requirements of this Act before the date of the enactment of the Risk Retention Amendments of 1986; and

"(4) as long as such group does not purchase insurance that was not authorized for purposes of an exemption under this Act as in effect before the date of the enactment of the Risk Retention Amendments of 1986.

"(f) A purchasing group may not purchase insurance from a risk retention group that is not chartered in a State or from an insurer not admitted in the State in which the purchasing group is located, unless the purchase is effected through a licensed agent or broker acting pursuant to the surplus lines laws and regulations of such State.".

SEC. 7. CONCERNING AUTHORITY OF STATES TO ENJOIN CERTAIN CONDUCT.

Section 3 (15 U.S.C. 3902), as amended by section 5(b) of this Act, is further amended by adding at the end the following new subsection:

"(e) Nothing in this section shall be construed to affect the authority of any Federal or State court to enjoin—

"(1) the solicitation or sale of insurance by a risk retention group to any person who is not eligible for membership in such group; or

"(2) the solicitation or sale of insurance by, or operation of, a risk retention group that is in hazardous financial condition or is financially impaired.".

SEC. 8. ADDITIONAL CLARIFICATION OF PERMISSIBLE STATE AUTHORITY.

(a) CLARIFICATION OF STATE AUTHORITY RESPECTING RISK RETENTION GROUPS.—Section 3 (15 U.S.C. 3902), as amended by sections 5(b) and 7 of this Act, is further amended by a adding at the end the following new subsections:

"(f)(1) Subject to the provisions of subsection (a)(1)(G) (relating to injunctions) and paragraph (2), nothing in this Act shall be construed to affect the authority of any State to make use of any of its powers to enforce the laws of such State with respect to which a risk retention group is not exempt under this Act.

"(2) If a State seeks an injunction regarding the conduct described in paragraphs (1) and (2) of subsection (e), such injunction must be obtained from a Federal or State court of competent jurisdiction.

"(g) Nothing in this Act shall affect the authority of any State to bring an action in any Federal or State court.

"(h) Nothing in this Act shall be construed to affect the authority of any State to regulate or prohibit the ownership interest in a risk retention group by an insurance company in that State, other than in the case of ownership interest in a risk retention group whose members are insurance companies.".

(b) CLARIFICATION OF STATE AUTHORITY RESPECTING PURCHASING GROUPS.—Section 4 (15 U.S.C. 3903), as amended by section 6 of this Act, is further amended—

(1) in subsection (a), by inserting "and section 6" after "section"; and

(2) by adding at the end the following new subsections:

"(g) Nothing in this Act shall be construed to affect the authority of any State to make use of any of its powers to enforce the laws of such State with respect to which a purchasing group is not exempt under this Act.

"(h) Nothing in this Act shall effect the authority of any State to bring an action in any Federal or State court.".

(c) OTHER CLARIFICATION.—The Act is further amended by adding at the end the following new section:

CLARIFICATION CONCERNING PERMISSIBLE STATE AUTHORITY

"SEC. 6. (a) Nothing in this Act shall be construed to exempt a risk retention group or purchasing group authorized under this Act from the policy form or coverage requirements of any State motor vehicle no-fault or motor vehicle financial responsibility insurance law.

"(b) The exemptions provided under this Act shall apply only to the provision of liability insurance by a risk retention group or the purchase of liability insurance by a purchasing group, and nothing in this Act shall be construed to permit the provision or purchase of any other line of insurance by any such group.

"(c) The terms of any insurance policy provided by a risk retention group or purchased by a purchasing group shall not provide or be construed to provide insurance policy coverage prohibited generally by State statute or declared unlawful by the highest court of the State whose law applies to such policy.

"(d) Subject to the provisions of section 3(a)(4) relating to discrimination, nothing in this Act shall be construed to preempt the authority of a State to specify acceptable means of demonstrating financial responsibility where the State has required a demonstration of financial responsibility as a condition for obtaining a license or permit to undertake specificed activities. Such means may include or exclude insurance coverage obtained from an admitted insurance company, an excess lines company, a risk retention group, or any other source regardless of whether coverage is obtained directly from an insurance company or through a broker, agent, purchasing group, or any other person.".

SEC. 9. INJUNCTIVE POWERS OF FEDERAL COURTS.

The Act, as amended by section 8(c) of this Act, is further amended by adding at the end the following new section:

"INJUNCTIVE ORDERS ISSUED BY UNITED STATES DISTRICT COURTS

"SEC. 7. Any district court of the United States may issue an order enjoining a risk retention group from soliciting or selling insurance, or operating, in any State (or in all States) or in any territory or possession of the United States upon a finding of such court that such group is in hazardous financial condition. Such order shall be binding on such group, its officers, agents, and employees, and on any other person acting in active concert with any such officer, agent, or employee, if such other person has actual notice of such order.".

SEC. 10. OVERSIGHT OF IMPLEMENTATION; REPORT TO CONGRESS.

(a) IN GENERAL.—(1) Not later than September 1, 1987, and not later than September 1, 1989, the Secretary of Commerce shall submit reports to the Congress concerning implementation of this Act.

(2) Such report shall be based on—

(A) the Secretary's consultation with State insurance commissioners, risk retention groups, purchasing groups, and other interested parties; and

(B) the Secretary's analysis of other information available to the Secretary.

(b) CONTENTS OF THE REPORT.—The report shall describe the Secretary's views concerning—

(1) the contribution of this Act toward resolution of problems relating to the unavailability and unaffordability of liability insurance;

(2) the extent to which the structure of regulation and preemption established by this Act is satisfactory;

(3) the extent to which, in the implementation of this Act, the public is protected from unsound financial practices and other commercial abuses involving risk retention groups and purchasing groups;

(4) the causes of any financial difficulties of risk retention groups and purchasing groups;

(5) the extent to which risk retention groups and purchasing groups have been discriminated against under State laws, practices, and procedures contrary to the provisions and underlying policy of this Act and the Product Liability Risk Retention Act (as amended by this Act); and

(6) such other comments and conclusions as the Secretary deems relevant to assessment of the implementation of this Act.

SEC. 11. EFFECTIVE DATE; APPLICABILITY.

(a) GENERAL RULE.—Subject to subsection (b), this Act shall take effect on the date of its enactment.

(b) SPECIAL RULE REGARDING FEASIBILITY STUDY.—The provisions of section 3(d) of the Liability Retention Act of 1986 (as added by section 5(b) of this Act), relating to the submission of a feasibility study, shall not apply with respect to any line or classification of liability insurance which—

(1) was defined in the Product Liability Risk Retention Act of 1981 before the date of the enactment of this Act; and

(2) was offered before such date of enactment by any risk retention group which has been chartered and operating for not less than 3 years before such date of enactment.

(c) RULE REGARDING POLLUTION LIABILITY.—

(1) Section 210 of the Superfund Amendments and Reauthorization Act of 1986 is amended by inserting "(a)" following "Pollution Liability Insurance" and adding at the end thereof the following:

"(b) For purposes of subsection (a) of this section, the powers and authorities of States addressed by the Risk Retention Amendments of 1986 are in addition to those of this Act.".

(2) Nothing in this Act shall be construed, interpreted or applied to diminish the obligations of any person to establish or maintain evidence of financial responsibility or otherwise comply with any of the requirements of Federal environmental laws, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 and the Solid Waste Disposal Act.

SEC. 12. TECHNICAL AND CONFORMING AMENDMENTS.

(a) IN THE SHORT TITLE.—Section 1 (15 U.S.C. 3901, note) is amended to read as follows:

"SHORT TITLE

"SECTION 1. This Act may be cited as the 'Liability Risk Retention Act of 1986'."

(b) IN SECTION 2(b).—Section 2(b) (15 U.S.C. 3901(b)) is amended by striking "product liability and product liability insurance" and inserting "liability, personal risk liability, and insurance".

(c) IN SECTION 3(a)(1)(C).—Section 3(a)(1)(C) (15 U.S.C. 3902(a)(1)(C)) is amended by striking "product liability or completed operations".

(d) IN SECTION 4(b).—Section 4(b) (15 U.S.C. 3903(b)) is amended—

(1) in paragraph (1), by striking "product liability or completed operations liability insurance, and comprehensive general liability insurance which includes either of these coverages," and inserting "liability insurance"; and

(2) in paragraph (2), by striking "product liability or completed operations insurance, and comprehensive general".

COMPACT OF FREE ASSOCIATION

McCLURE (AND JOHNSTON) AMENDMENT NO. 3252

Mr. SIMPSON (for Mr. McCLURE and Mr. JOHNSTON) proposed an amendment to the joint resolution (H.J. Res. 626) to approve the "Compact of Free Association" between the United States and the Government of Palau, and for other purposes, as follows:

Strike all after the resolving clause and insert in lieu thereof the following:

TITLE I—APPROVAL OF COMPACT; INTERPRETATION OF, AND UNITED STATES POLICIES REGARDING, COMPACT; SUPPLEMENTAL PROVISIONS

APPROVAL OF COMPACT OF FREE ASSOCIATION

SEC. 101. (a) APPROVAL.—The Compact of Free Association set forth in title II of this joint resolution between the United States and the Government of Palau is hereby approved, and Congress hereby consents to the agreements as set forth on pages 154 through 405 of House Document 99-193 of April 9, 1986 (hereafter in this joint resolution referred to as subsidiary or related agreements), as they relate to such Government. Subject to the provisions of this joint resolution, the President is authorized to agree, in accordance with section 411 of the Compact, to an effective date for and thereafter to implement such Compact, having taken into account any procedures with respect to the United Nations for termination of the Trusteeship Agreement.

(b) REFERENCE TO THE COMPACT.—Any reference in this joint resolution to the "Compact" shall be treated as a reference to the Compact of Free Association set forth in title II of this joint resolution.

(c) AMENDMENT, CHANGE, OR TERMINATION OF THE COMPACT AND CERTAIN AGREEMENTS.—(1) Mutual agreement by the Government of the United States as provided in the Compact which results in amendment, change, or termination of all or any part

thereof shall be affected only by Act of Congress and no unilateral action by the Government of the United States provided for in the Compact, and having such result, may be effected other than by Act of Congress.

(2) The provisions of paragraph (1) shall apply—

(A) to all actions of the Government of the United States under the Compact including, but not limited to, actions taken pursuant to sections 431, 432, 441, or 442;

(B) to any amendment, change, or termination in any agreement that may be concluded at any time between the Government of the United States and the Government of Palau regarding friendship, cooperation and mutual security concluded pursuant to sections 321 and 323 of the Compact referred to in section 462(h);

(C) to any amendment, change, or termination of the agreements concluded pursuant to Compact sections 175 and 221(a)(4), the terms of which are incorporated by reference into the Compact; and

(D) to the following subsidiary agreements, or portions thereof:

(i) Article II of the agreement referred to in section 462(a) of the Compact;

(ii) Article II of the agreement referred to in section 462(b) of the Compact;

(iii) Article II and Section 7 of Article X of the agreement referred to in section 462(f) of the Compact;

(iv) the agreement referred to in section 462(g) of the Compact;

(v) Articles II, III, IV, V, VI, and VII of the agreement referred to in section 462(h) of the Compact; and

(vi) Articles VI, XV, and XVII of the agreement referred to in section 462(i) of the Compact.

"(d) EFFECTIVE DATE.—(1) The authority of the President to agree to an effective date for the Compact of Free Association between the United States and Palau concurrently with termination of the Trusteeship shall be carried out in accordance with this section, and the Compact shall not take effect until after—

"(A) The President has certified to the Congress that the Compact has been approved in accordance with Section 411 (a) and (b) of the Compact, and that there exists no legal impediment to the ability of the United States to carry out fully its responsibilities and to exercise its right under Title Three of the Compact, as set forth in this Act, and

"(B) enactment of a joint resolution which has been reported by the Committee on Energy and Natural Resources of the Senate and the appropriate Committees of the House of Representatives authorizing entry into force of the Compact, and

"(C) agreements have been concluded with Palau which satisfy the requirements of Section 102 of Public Law 99-239. For the purpose of this subsection the word "Palau" shall be substituted for "Federated States of Micronesia" whenever it appears in Section 102 of Public Law 99-239.";

(2) Any agreement concluded with Palau pursuant to subparagraph 101(d)(1)(B) of this title and any agreement which would amend, change, or terminate any subsidiary agreement or related agreement, or portion thereof, as set forth in paragraph (4) of this subsection shall be submitted to the Congress. No such agreement shall take effect until after the expiration of 30 days after the date such agreement is so submitted (excluding days on which either House of Congress is not in session.)

(3) No agreement described in paragraph (2) shall take effect if a joint resolution of disapproval is enacted during the period specified in paragraph (2). For the purpose of expediting the consideration of such a joint resolution, a motion to proceed to the consideration of any such joint resolution after it has been reported by an appropriate committee shall be treated as highly privileged in the House of Representatives. Any such joint resolution shall be considered in the Senate in accordance with the provisions of section 601(b) of Pubic Law 94-329.

(4) The subsidiary agreement or portions thereof referred to in paragraph (2) are as follows:

(A) Articles III and IV of the agreement referred to in section 462(b) of the Compact.

(B) Articles III, IV, V, VI, VII, VIII, IX, and X (except for section 7 thereof) of the agreement referred to in section 462(f) of the Compact.

(C) Articles IV, V, X, XIV, XVI, and XVIII of the agreement referred to in section 462(i) of the Compact.

(D) Articles II, V, VI, VII, and VIII of the agreement referred to in section 462(h) of the Compact.

(E) The agreement referred to in section 462(j) of the Compact

(5) No agreement between the United States and the Government of Palau which would amend, change, or terminate any subsidiary or related agreement, or portion thereof, other than those set forth in subsection (d) of this section or paragraph (4) of this subsection, shall take effect until the President has transmitted such an agreement to the President of the Senate and the Speaker of the House of Representatives, together with an explanation of the agreement and the reasons therefor.

EXTENSION OF COMPACT OF FREE ASSOCIATION TO PALAU

SEC. 102. (a) The interpretation of and United States Policy Regarding the Compact of Free Association set forth in section 104 of Public Law 99-239 shall apply to the Compact of Free Association with Palau.

(b) The provisions of section 105, except for subsection (i), section 106, section 110, and section 111 (a) and (d) of Public Law 99-239, shall apply to Palau in the same manner and to the same extent as such sections apply to the Marshall Islands.

REPEAL OF TITLE V OF THE COMPACT OF FREE ASSOCIATION ACT (PUBLIC LAW 99-239)

SEC. 103. Title V of the Public Law 99-239 is repealed.

SUPPLEMENTAL PROVISIONS

"SEC. 104. (a) CIVIC ACTION TEAMS.—In recognition of the special development needs of Palau and the Marshall Islands, the United States shall make available United States military Civic Action Teams for use in Palau or the Marshall Islands under terms and conditions mutually agreed upon by the Government of the United States and the Governments of Palau or the Marshall Islands, as appropriate. The Government of Palau may use the amount of $250,000 annually from current account funds provided pursuant to section 211 of the Compact to defray expenditures attendant to the operation of the Civic Action Teams made available pursuant to this subsection. The Government of the Marshall Islands may use the amount of $250,000 annually from current account funds provided under section 211 of Title Two of the Compact of Free Association with the Marahall Islands to defray expenditures attendant to the operation of the Civic Action Teams made available pursuant to this subsection.

"(b) INVENTORY AND STUDY OF NATURAL, HISTORIC AND OTHER RESOURCES.—The Secretary of the Interior shall conduct, upon request of Palau, the Federated States of Micronesia or the Marshall Islands, and through the Director of the National Park Service, a comprehensive inventory and study of the most unique and significant natural, historical, cultural, and recreational resources of Palau, the Federated States of Micronesia or the Marshall Islands. Areas or sites exhibiting such qualities shall be described and evaluated with the objective of the preservation of their values and their careful use and appreciation by the public, along with a determination of their potential for attracting tourism. Alternative methodologies for such preservation and use shall be developed for each area or site (including continued assistance from the National Park Service); current or impending damage or threats to the resources of such areas or sites shall be identified and evaluated; and authorities needed to properly protect and allow for public use and appreciation shall be identified and discussed. Such inventory and study shall be conducted in full cooperation and consultation with affected governmental officials and the interested public. A full report on such inventory and study shall be transmitted to Palau or the Federated States of Micoronesia or the Marshall Islands, the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate no later than two complete calendar years after the date of enactment of this joint resolution. The inventory and study shall also identify areas or sites which, if they were located in the United States, would qualify to be listed on the Registry of Natural Landmarks and the National Register of Historic Places.

"(c) AUTHORIZATION FOR TRANSITION PURPOSES.—Section 105(c)(2) of Public Law 99-239 is amended by deleting 'infrastructure.' and inserting in lieu thereof 'infrastructure, except that, for purposes of an orderly reduction of United States programs and services in the Federated States of Micronesia, the Marshall Islands, and Palau, United States programs or services not specifically authorized by the Compact of Free Association or by other provisions of law may continue but, unless reimbursed by the respective freely associated state, not in excess of the following amounts:

" '(1) For fiscal year 1987, an amount not to exceed 75 per centum of the total amount appropriated for such programs for fiscal year 1985;

" '(2) For fiscal year 1988, an amount not to exceed 50 per centum of the total amount appropriated for such programs for fiscal year 1985;

" '(3) For fiscal year 1989, an amount not to exceed 25 per centum of the total amount appropriated for such programs for fiscal year 1985;

"(d) PELELIU AND ANGAUR.—Not later than one year after the date of enactment of this joint resolution, the Secretary of Agriculture, after appropriate studies conducted in consultation with the Government of Palau, shall report to the President and the Congress concerning the feasibility and cost of rehabilitating and restoring the fertility of the topsoil of the islands of Peleliu and Angaur. Upon the request of the Government of Palau, the President shall make the report of the Secretary of Agriculture avail-

able to the Government of Palau. Technical assistance to accomplish such rehabilitation and restoration, if feasible, may be provided to the Government of Palau on a nonreimbursable basis, subject to the availability of appropriated funds.

"(e) Neither the Secretary of the Treasury nor any other officer or agent of the United States shall pay or transfer any portion of the sums and amounts payable to the Government of Palau pursuant to this joint resolution to any party other than the Government of Palau. The provisions of section 174(a) of the Compact shall apply with respect to any action based on a contract or debt related to any electrical generating plant or related facilities entered into or incurred by Palau prior to the date of enactment of this joint resolution.

"(f) Amounts appropriated to be paid pursuant to section 177 of Article I of Title One or Articles I and III of Title Two of the Compact of Free Association with the Federated States of Micronesia and the Marshall Islands, as set forth in Title II of the Compact of Free Association Act of 1985, or pursuant to section 103(h), 103(k), or 105(m) of such Act (Public Law 99-239), or pursuant to Article I of Title Two of the Compact with Palau, as set forth in Title II of this joint resolution, or section 104(*l*) of this joint resolution shall not be reduced, notwithstanding Public Law 99-177, Public Law 99-396, and other law enacted to implement Public Law 99-177, or any other provision of law.

"(g) The Congress reaffirms all of the understandings, interpretations, and policy statements contained in Public Law 99-239 (99 Stat. 1770). Congressional Resolution 4-60 adopted by the 4th Congress of the Federated States of Micronesia on March 26, 1986 and Resolution No. 62 adopted by the Nitijela of the Marshall Islands on February 18, 1986 do not preclude or modify any provision of the Compact of Free Association as approved by the United States. To the extent that any understandings, interpretations, and policy statements contained in such Resolutions are inconsistent with the provisions of Public Law 99-239, the United States does not concur therein. The President shall take such steps, including but not limited to, communicating with the Governments of the Federated States of Micronesia and the Republic of the Marshall Islands, as may be necessary to preserve all rights of the United States in connection with interpretation and implementation of such Public Law.

"(h) ADDITIONAL PROVISIONS RELATING TO TITLE THREE OF THE COMPACT.—

"(1) The Government of the United States recognizes and respects the scarcity and special importance of land in Palau. In making any designation of land pursuant to section 322 of the Compact, the Government of the United States shall follow the policy of requesting the minimum area necessary to accomplish the required security and defense purpose, of requesting only the minimum interest in real property necessary to support such purpose, and of requesting first to satisfy the requirement through public real property, where available, rather than through private real property.

"(2) The Armed Forces of other nations invited to use military areas and faciliitites in Palau pursuant to section 312 of the Compact shall be permited only as it is incident to the authority and under the control of the United States. The activities of such third country forces shall be subject to the same limitations and restrictions applicable to the authority of the United States under the terms of the Compact.

"(3) The Government of the United States considers 'Exclusive use' areas established for the United States pursuant to Title Three of the Compact to be 'within the jurisdiction of Palau,' as that term is used in section 324 of the Compact."

(i) Notwithstanding any other provision of law, funds appropriated for the Compact of Free Association, Public Law 99-239, or this joint resolution, in the act making supplemental appropriations for fiscal year 1986, shall remain available until expended.

(j)(1) section 4(c) of the Act of December 27, 1974 (88 Stat. 1784; 16 U.S.C. 460ff-3(c)) is amended by inserting "(1)" after "(c)" and by adding the following at the end thereof:

"(2) The Secretary is authorized and directed, in cooperation with the Secretary of Agriculture, the State of Ohio, and affected local governments, to undertake a program of and treatment for the purpose of restoring suitable vegetative cover to substantially eliminate erosion from all lands, public and private, within the authorized boundaries of the recreation area. In the case of any private lands, within such authorized boundaries such treatment may be undertaken only with the consent of the owner thereof and shall be contingent upon assurances that such land treatment will be maintained by the owner for a period of not less than ten years. The Secretary shall, in conjunction with such program, take such actions as may be required to correct areas of ecological degradation which create hazards to health and safety.".

(2) Section 6 of such Act (16 U.S.C. 460ff-5) is amended by adding the following at the end thereof:

"(c) There are hereby authorized to be appropriated not more than $500,000 for fiscal year 1986, $1,000,000 for fiscal year 1987, $1,500,000 for fiscal year 1988, and $1,759,000 for fiscal year 1989, to carry out the provisions of section 4(c)(2) of this Act. Any amounts authorized to be appropriated for any fiscal year under this subsection which are not appropriated for the fiscal year shall remain available for appropriation in succeeding fiscal years.".

(3) No authority under this subsection to enter into contracts or to make payments shall be effective except to the extent and in such amounts as provided in advance in appropriations Acts. Any provision of this subsection which authorizes the enactment of new budget authority shall be effective only for fiscal years beginning after September 30, 1985.

TITLE II—COMPACT OF FREE ASSOCIATION

COMPACT OF FREE ASSOCIATION

SEC. 201. The Compact of Free Association is as follows:

COMPACT OF FREE ASSOCIATION

PREAMBLE

THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF PALAU

Affirming That their Governments and the relationship between their Governments are founded upon respect for human rights and fundamental freedoms for all, and

Affirming the common interests of the United States of America and the people of Palau in creating close and mutually beneficial relationships through a free and voluntary association of their Governments; and

Affirming the interest of the Government of the United States in promoting the economic advancement and self-sufficiency of the people of Palau; and

Recognizing that their previous relationship has been upon the International Trusteeship System of the United Nations Charter; and that pursuant to Article 76 of the Charter, the peoples of the Trust Territory have progressively developed their institutions of self-government, and that in the exercise of their sovereign right to self-determination they have, through their freely-expressed wishes, adopted a Constitution appropriate to their particular circumstances; and

Recognizing their common desire to terminate the Trusteeship and establish a new government-to-government relationship in accordance with a new political status based on the freely-expressed wishes of the people of Palau and appropriate to their particular circumstances; and

Recognizing that the people of Palau have and retain their sovereignty and their sovereign right of self-determination and the inherent right to adopt and amend their own Constitution and form of government and that the approval of the entry of their Government into this Compact of Free Association by the people of Palau constitutes an exercise of their sovereign right to self-determination;

NOW, THEREFORE, AGREE to enter into relationship of free association which provides a full measure of self-government for the people of Palau; and

FURTHER AGREE that the relationships of free association derives from and is as set forth in this Compact; and that, during such relationships of free association, the respective rights and responsibilities of the Government of the United States and the Government of the freely associated state of Palau in regard to this relationship of free association derives from and is as set forth in this Compact.

TITLE ONE

GOVERNMENT RELATIONS

Article I

Self-government

Section 111

The people of Palau, acting through their duly elected government established under their constitution, are self-governing.

Article II

Foreign Affairs

Section 121

(a) The Republic of Palau has the capacity to conduct foreign affairs in its own name and right, except as otherwise provided in this Compact and the Government of the United States recognizes that the Government of Palau, in the exercise of this capacity, may enter into, in its own name and right, treaties and other international agreements with governments and regional and international organizations.

(b) In the conduct of its foreign affairs the Government of Palau confirms that it shall act in accordance with principles of international law and shall settle its international disputes by peaceful means.

Section 122

The Government of the United States shall support application by the Government of Palau for membership or other participation in regional or international organizations as may be mutually agreed. The Government of the United States agrees to accept citizens of Palau for training and instruction at the United States Foreign Service Institute, established under 22 U.S.C.

4021, or similar training under terms and conditions to be mutually agreed.

Section 123

In recognition of the authority and responsibility of the Government of the United State under Title Three, the Government of Palau shall consult with the Government of the United States. The Government of the United States, in the conduct of its foreign affairs, shall consult with the Government of Palau on matters which the Government of the United States regards as relating to or affecting the Government of Palau, and shall provide, on a regular basis, information on regional foreign policy matters.

Section 124

(a) The Government of Palau has authority to conduct its foreign affairs relating to law of the sea and marine resources matters, including the harvesting, conservation, exploration or exploitation of living and nonliving resources from the sea, seabed or subsoil to the full extent recognized under international law.

(b) The Government of Palau has jurisdiction and sovereignty over its territory, including its land and internal waters, territorial seas, the airspace superjacent thereto only to the extent recognized under international law.

Section 125

Except as othewise provided in this Compact or its related agreements, all obligations, responsibilities, rights and benefits of the Government of the United States as administering authority which have resulted from the application pursuant to the Trusteeship Agreement of any treaty or other international agreement to the Trust Territory of the Pacific Islands on the day preceding the effective date of this Compact are no longer assumed and enjoyed by the Government of the United States.

Section 126

The Government of the United States shall accept responsibility for those actions taken by the Government of Palau in the area of foreign affairs, only as may from time to time be expressly and mutually agreed.

Section 127

The Government of the United States may assist or act on behalf of the Government of Palau in the area of foreign affairs as may be requested and mutually ageed from time to time. The Government of the United States shall not be responsible to third parties for the actions of the Government of Palau undertaken with the assistance or through the agency of the Government of the United States pursuant to this Section unless expressly agreed.

Section 128

At the request of the Government of Palau and subject to the consent of the receiving state, the Government of the United States shall extend consular assistance on the same basis as for citizens of the United States to citizens of Palau for travel outside of Palau, the Marshall Islands, the Federated States of Micronesia, the United States and its territories and possessions.

Article III

Communications

Section 131

(a) The Government of Palau has full authority and responsibility to regulate its domestic and foreign communicatons, and the Government of the United States shall provide communication assistance in accordance with the terms of a related agreement which shall come into effect simultaneously with this Compact, and such agreement shall remain in effect until such time as any election is made pursuant to Section 131(b) and which shall provide for the following:

(1) the Government of the United States remains the sole administration entitled to make notification to the International Frequency Registration Board of the International Telecommunications Union of frequency assignments to radio communications stations in Palau; and to submit to the International Frequency Registration Board seasonal schedules for the broadcasting stations in Palau in the bands allocated exclusively to the broadcasting service between 5,950 and 26,100 kHz and in any other additional frequency bands that may be allocated to use by high frequency broadcasting stations; and

(2) the United States Federal Communications Commission has jurisdiction, pursuant to the Communications Act of 1934, 47 U.S.C. 151 *et seq.*, and the Communications Satellite Act of 1962, 47 U.S.C. *et seq.*, over all domestic and foreign communications services furnished by means of satellite earth terminal stations where such stations are owned or operated by United States common carriers and are located in Palau.

(b) The Government of Palau may elect at any time to undertake the functions enumerated in Section 131(a) and previously performed by the Government of the United States. Upon such election, the Government of the United States shall so notify the International Frequency Registration Board and shall take such other actions as may be necessary to transfer to the Government of Palau the notification authority referred to in Section 131(a) and all rights deriving from the previous exercise of any such notification authority by the Government of the United States.

Section 132

The Government of Palau shall permit the Government of the United States to operate telecommunications services in Palau to the extent necessary to fulfill the obligations of the Government of the United States under this Compact in accordance with the terms of related agreements which shall come into effect simultaneously with this Compact.

Article IV

Immigration

Section 141

(a) Any person in the following categories may enter into, lawfully engage in occupations, and establish residence as a nonimmigrant in the United States and its territories and possessions without regard to paragraphs (14), (20), and (26) of section 212(a) of the Immigration and Nationality Act, 8 U.S.C. 1182(a) (14), (20), and (26):

(1) a person who, on the day preceding the effective date of this Compact, is a citizen of Trust Territory of the Pacific Islands, as defined in Title 53 of the Trust Territory Code in force on January 1, 1979, and has become a citizen of Palau;

(2) a person who acquires the citizenship of Palau, at birth, on or after the effective date of the Constitution of Palau; or

(3) a naturalized citizen of Palau, who has been an actual resident there for not less than five years after attaining such naturalization and who holds a certificate of actual residence.

Such persons shall be considered to have the permission of the Attorney General of the United States to accept employment in the United States.

(b) The right of such persons to establish habitual residence in a territory or possession of the United States may, however, be subjected to nondiscriminatory limitations provided for:

(1) in statutes or regulations of the United States; or

(2) in those statutes or regulations of the territory or possession concerned which are authorized by the laws of the United States.

(c) Section 141(a) does not confer on a citizen of Palau, the right to establish the residence necessary for naturalization under the Immigration and Nationality Act, or to petition for benefits for alien relatives under that Act. Section 141(a), however, shall not prevent a citizen of Palau from otherwise acquiring such rights or lawful permanent resident alien status in the United States.

Section 142

(a) Any citizen or national of the United States may enter into, lawfully engage in occupations, and reside in Palau, subject to the right of that Government to deny entry to or deport any such citizen or national as an undesirable alien. A citizen or national of the United States may establish habitual residence or domicile in Palau only in accordance with the laws of Palau. This subsection is without prejudice to the right of the Government of Palau to regulate occupations in Palau in a nondiscriminatory manner.

(b) With respect to the subject matter of this Section, the Government of Palau shall accord to citizens and nationals of the United States treatment no less favorable than that accorded to citizens of other countries; any denial of entry to or deportation of a citizen or national of the United States as an undesirable alien must be pursuant to reasonable statutory grounds.

Section 143

(a) The privileges set forth in Section 141 shall not apply to any person who takes an affirmative step to preserve or acquire a citizenship or nationality other than that of Palau.

(b) Every person having the privileges set forth in Sections 141 and 142 who possesses a citizenship or nationality other than that of Palau or the United States ceases to have these privileges two years after the effective date of this Compact, or within six months after becoming 21 years of age, whichever comes later, unless such person executes an oath of renunciation of that other citizenship or nationality.

Section 144

(a) A citizen or national of the United States who, after notification to the Government of the United States of an intention to employ such person by the Government of Palau, commences employment with that Government shall not be deprived of his United States nationality pursuant to Section 349(a)(2) and (a)(4) of the Immigration and Nationality Act, 8 U.S.C. 1481 (a)(2) and (a)(4).

(b) Upon such notification by the Government of Palau, the Government of the United States may consult with or provide information to the notifying Government concerning the prospective employee, subject to the provisions of the Privacy Act, 5 U.S.C. 552a.

(c) The requirement of prior notification shall not apply to those citizens or nationals of the United States who are employed by the Government of Palau on the effective date of this Compact with respect to the positions held by them at that time.

Article V

Representation

Section 151

The Government of the United States and the Government of Palau may establish and maintain representative offices in the capitals of the other.

Section 152

(a) The premises of such representative offices, and their archives wherever located, shall be inviolable. The property and assets of such representative offices shall be immune from search, requisition, attachment and any form of seizure unless such immunity is expressly waived. Official communications in transit shall be inviolable and accorded the freedom and protections accorded by recognized principles of international law to official communications of a diplomatic mission.

(b) Persons designated by the sending Government may serve in the capacity of its resident representatives with the consent of the receiving Government. Such designated persons shall be immune from civil and criminal process relating to words spoken or written and all acts performed by them in their official capacity and falling within their functions as such representatives, except insofar as such immunity may be expressly waived by the sending Government. While serving in a resident representative capacity, such designated persons shall not be liable to arrest or detention pending trial, except in the case of a grave crime and pursuant to a decision by a competent judicial authority, and such persons shall enjoy immunity from seizure of personal property, immigration restrictions, and laws relating to alien registration, fingerprinting, and the registration of foreign agents.

(c) The sending Governments and their respective assets, income and other property shall be exempt from all direct taxes, except those direct taxes representing payment for specific goods and services, and shall be exempt from all customs duties and restrictions on the import or export of articles required for the official functions and personal use of their representatives and representative offices.

(d) Persons designated by the sending Government to serve in the capacity of its resident representatives shall enjoy the same taxation exemptions as are set forth in Article 34 of the Vienna Convention on Diplomatic Relations.

(e) The privileges, exemptions and immunities accorded under this Section are not for the personal benefit of the individuals concerned but are to safeguard the independent exercise of their official functions. Without prejudice to those privileges, exemptions and immunities, it is the duty of all such persons to respect the laws and regulations of the Government to which they are assigned.

Article VI

Environmental Protection

Section 161

The Government of the United States and the Government of Palau declare that it is their policy to promote efforts to prevent or eliminate damage to the environment and biosphere and to enrich understanding of the natural resources of the Palau.

Section 162

(a) The Government of the United States and the Government of Palau agree that with respect to the activities of the Government of the United States in Palau, and with respect to substantively equivalent activities of the Government of Palau, each of the Governments shall be bound by such environmental protection standards as may be mutually agreed for the purposes of carrying out the policy set forth in this Compact.

Section 163

In order to carry out the policy set forth in this Article, the Government of the United States and the Government of Palau agree to the following undertakings.

(a) The government of the United States:

(1) shall apply environmental standards substantively similar to those in effect on the day preceding the effective date of this Compact to any activity requiring the preparation of an Environmental Impact Statement under the provisions of the National Environmental Policy Act of 1969, 83 Stat. 852, 42 U.S.C. 4321 *et seq.*

(2) shall develop, prior to conducting any activity included within the category described in this Section, appropriate mechanisms, including regulations or other standards and procedures, to regulate such activity in Palau in a manner appropriate to the special governmental relationship set forth in this Compact. The Government of the United States shall provide the Government of Palau with the opportunity to comment formally the development of such mechanisms.

(b) The Government of Palau shall develop standards and procedures to protect the environment of Palau. As a reciprocal obligation to the undertakings of the Government of the United States under this Article, the Government of Palau, taking into account the particular environment of Palau, shall develop standards for environmental protection substantively similar to those required of the Government of the United States by Section 163(a)(1) prior to conducting activities in Palau substantively equivalent to activities conducted there by the Government of the United States and, as a further reciprocal obligation, shall enforce those standards.

(c) Section 163(a), including any standard or procedure applicable thereunder, and Section 163(b) may be modified or superseded in whole or in part by agreement of the Government of the United States and the Government of Palau.

(d) Disputes arising under this Article, except for Section 163(e), shall be resolved exclusively in accordance with Article II of Title Four.

(e) The President of the United States may exempt any of the activities of the Government of the United States under this Compact and its related agreements from any environmental standard or procedure which may be applicable under this Article if the President determines it to be in the paramount interest of the Government of the United States to do so, consistent with Title Three of this Compact and the obligations of the Government of the United States under internatinal law. Prior to any decision pursuant to this subsection, the views of the Government of Palau shall be sought and considered to the extent practicable. If the President grants such an exemption, to the extent practicable, a report with his reasons for granting such exemption shall be given promptly to the Government of Palau.

Article VII

General Legal Provisions

Section 171

Except as provided in this Compact or its related agreements, the application of the laws of the United States to the Trust Territory of the Pacific Islands by virtue of the Trusteeship Agreement ceases with respect to Palau as of the effective date of this Compact.

Section 172

(a) Every citizen of Palau who is not a resident of the United States shall enjoy the rights and remedies under the laws of the United States enjoyed by any nonresident alien.

(b) The Government and every citizen of Palau shall be considered a "person" within the meaning of the Freedom of Information Act, 5 U.S.C. 552, and of the judicial review provisions of the Administrative Procedure Act, 5 U.S.C. 701-706.

Section 173

The Government of the United States and the Government of Palau, agree to adopt and enforce such measures, consistent with this Compact and its related agreements, as may be necessary to protect the personnel, property, installations, services, programs and official archives and documents maintained by the Government of the United States in Palau pursuant to this Compact and its related agreements and by that Government in the United States pursuant to this Compact and its related agreements.

Section 174

Except as otherwise provided in this Compact and its related agreements:

(a) The Government of Palau shall be immune from the jurisdiction of the courts of the United States, and the Government of the United States shall be immune from the jurisdiction of the courts of Palau.

(b) The Government of the United States accepts responsibility for and shall pay:

(1) any unpaid money judgment rendered by the High Court of the Trust Territory of the Pacific Islands against the Government of the Trust Territory of the Pacific Islands or the Government of the United States with regard to any cause of action arising as a result of acts or omissions of the Government of the Trust Territory of the Pacific Islands or the Government of the United States prior to the effective date of this Compact;

(2) any claim settled by the claimant and the Government of the Trust Territory of the Pacific Islands but not paid as of the effective date of this Compact; and

(3) settlement of any administrative claim or of any action before a court of the Trust Territory of the Pacific Islands, pending as of the effective date of this Compact, against the Government of the Trust Territory of the Pacific Islands or the Government of the United States, arising as a result of acts or omissions of the Government of the Trust Territory of the Pacific Islands or the Government of the United States.

(c) Any claim not referred to in Section 174(b) and arising from an act or omission of the Government of the Trust Territory of the Pacific Islands or the Government of the United States prior to the effective date of this Compact shall be adjudicated in the same manner as a claim adjudicated according to Section 174(d). In any claim against the Government of the Trust Territory of the Pacific Islands, the Government of the United States shall stand in the place of the Government of the Trust Territory of the Pacific Islands. A judgment on any claim referred to in Section 174(b) or this subsection, not otherwise satisfied by the Government of the United States, may be presented for certification to the United States

Court of Appeals for the Federal Circuit, or its successor court, which shall have jurisdiction therefor, notwithstanding the provisions of 28 U.S.C. 1502, and which court's decisions shall be reviewable as provided by the laws of the United States. The United States Court of Appeals for the Federal Circuit shall certify such judgment, and order payment thereof, unless it finds, after a hearing, that such judgment is manifestly erroneous as to law or fact, or manifestly excessive. In either of such cases the United States Court of Appeals for the Federal Circuit shall have jurisdiction to modify such judgment.

(d) The Government of Palau, shall not be immune from the jurisdiction of the courts of the United States, and the Government of the United States shall not be immune from the jurisdiction of the courts of Palau in any case in which the action is based on a commercial activity of the defendant Government carried out where the action is brought, or in a case in which damages are sought for personal injury or death or damage to or loss of property occurring where the action is brought. This subsection shall apply only to actions based on commercial activities entered into or injuries or losses suffered on or after the effective date of this Compact.

Section 175

A separate agreement, which shall come into effect simultaneously with this Compact, shall be concluded between the Government of the United States and the Government of Palau regarding mutual assistance and cooperation in law enforcement matters including the pursuit, capture, imprisonment and extradition of fugitives from justice and the transfer of prisoners. The separate agreement shall have the force of law. In the United States, the laws of the United States governing international extradition, including 18 U.S.C. 3184, 3186 and 3188–3195, shall be applicable to the extradition of fugitives under the separate agreement, and the laws of the United States governing the transfer of prisoners, including 18 U.S.C. 4100–4145, shall be applicable to the transfer of prisoners under the separate agreement.

Section 176

The Government of Palau confirms that final judgments in civil cases rendered by any court of the Trust Territory of the Pacific Islands shall continue in full force and effect, subject to the constitutional power of the courts of Palau to grant relief from judgments in appropriate cases.

Section 177

(a) Federal agencies of the Government of the United States which provide services and related programs in Palau are authorized to settle and pay tort claims arising in Palau from the activities of such agencies or from the acts or omissions of the employees of such agencies. Except as provided in Section 177(b), the provisions of 28 U.S.C. 2672 and 31 U.S.C. 1304 shall apply exclusively to such administrative settlements and payments.

(b) Claims under Section 177(a) which cannot be settled under Section 177(a) shall be disposed of exclusively in accordance with Article II of Title four. Arbitration awards rendered pursuant to this subsection shall be paid out of funds under 31 U.S.C. 1304.

(c) The Government of the United States and the Government of Palau shall provide for:

(1) the administrative settlement of claims referred to in Section 177(a), including designation of local agents in Palau, such agents to be empowered to accept, investigate and settle such claims, in a timely manner, as provided in such related agreements; and

(2) arbitration, referred to in Section 177(b), in a timely manner, at a site convenient to the claimant, in the event a claim is not otherwise settled pursuant to Section 177(a).

(d) The provisions of Section 174(d) shall not apply to claims covered by this Section.

TITLE TWO
ECONOMIC RELATIONS
Article I
Grant Assistance

Section 211

In order to assist the Government of Palau in its efforts to advance the well-being of the people of Palau and in recognition of the special relationship that exist between the United States and Palau, the Government of the United States shall provide to the Government of Palau on a grant basis the following amounts:

(a) $12 million annually for ten years commencing on the effective date of this Compact, and $11 million annually for five years commencing on the tenth anniversary of the effective date of this Compact, for current account operations and maintenance purposes, which amounts commencing on the fourth anniversary of the effective date of this Compact shall include a minimum annual distribution of $5 million from the fund specified in Section 211(f).

(b) $2 million annually for fourteen years commencing on the first anniversary of the effective date of this Compact as a contribution to efforts aimed at achieving increased self-sufficiency in energy production, of which annual amounts not less than $500,000 shall be devoted to the energy needs of those parts of Palau not served by its central power-generating facility.

(c) $150,000 annually for fifteen years commencing on the effective date of this Compact as a contribution to current account operations and maintenance of communications systems, and the sum of $1.5 million, to be made available concurrently with the grant assistance provided during the first year after the effective date of this Compact, for the purpose of acquiring such communications hardware as may be located within Palau or for such other current or capital account activity as the Government of Palau may select.

(d) $631,000 annually on a current account basis for fifteen years commencing on the effective date of this Compact for the purposes set forth below:

(1) for the surveillance and enforcement by Government of Palau of its maritime zone;

(2) for health and medical programs, including referrals to hospital and treatment centers; and

(3) for a scholarship fund to support the post-secondary education of citizens of Palau attending United States accredited, post-secondary institutions in Palau, the United States, its territories and possessions, and states in free association with the United States. The curricular criteria for the award of scholarships shall be designed to advance the purposes of the plan referred to in Section 231.

(e) The sum of $666,800 as a contribution to the commencement of activities pursuant to Section 211(d)(1).

(f) The sum of $66 million on the effective date of this Compact, and the sum of $4 million concurrently with the grant assistance to be made available during the third year after the effective date of this Compact, to create a fund to be invested by the Government of Palau in issues of bonds, notes or other redeemable instruments of the Government of the United States or other qualified instruments which may be identified by mutual agreement of the Government of the United States and the Government of Palau. Investment of the fund in qualified instruments of United States nationality, and the distribution of sums derived from such investment to the Government of Palau, shall not be subject to any form of taxation by the United States or its political subdivisions. The Government of the United States and the Government of Palau shall set forth in a separate agreement, which shall come into effect simultaneously with this Compact, provisions for the investment, management and review of the fund so as to allow for an agreed minimum annual distribution from its accrued principal and interest commencing upon the effective date of this Compact for fifty years. The objective of this sum is to produce an average annual distribution of $15 million commencing on the fifteenth anniversary of this Compact for thirty-five years. Any excess or variance from the agreed minimum annual distributions which may be produced from these sums shall accrue to or be absorbed by the Government of Palau unless otherwise mutually agreed in accordance with the provisions of the separate agreement referred to in this paragraph. The annual distributions produced from these sums are not subject to Sections 215 and 236.

Section 212

In order to assist the Government of Palau in its efforts to advance the economic development and self-sufficiency of the people of Palau and in recognition of the special relationship that exists between the United States and Palau, the Government of the United States shall provide:

(a) To the people of Palau, a road system in accordance with mutually agreed specifications, the construction of which shall be completed prior to the sixth anniversary of the effective date of this Compact; and

(b) To the Government of Palau, the sum of $36 million, during the first year after the effective date of this Compact, for capital account purposes.

Section 213

The Government of the United States shall provide on a grant basis to the Government of Palau the sum of $5.5 million in conjunction with Article II of Title Three. This sum shall be made available concurrently with the grant assistance provided pursuant to this Article during the first year after the effective date of this Compact. The Government of Palau, in its use of such funds, shall take into account the impact of the activities of the Government of the United States in Palau.

Section 214

All funds previously appropriated to the Trust Territory of the Pacific Islands for the Government of Palau which are unobligated by the Government of the Trust Territory as of the effective date of this Compact shall accrue to the Government of Palau for the purposes for which such funds were originally appropriated as determined by the Government of the United States.

Section 215

Except as otherwise provided, the amounts stated in Sections 211(a), 211(b), 211(c) and 212(b) shall be adjusted for each

fiscal year by the percent which equals two-thirds of the percentage change in the United States Gross National Product Implicit Price Deflator, or seven percent, whichever is less in any one year, using the beginning of Fiscal Year 1981 as the base.

Article II

Program Assistance

Section 221

(a) The Government of the United States shall make available to Palau, in accordance with and to the extent provided in the separate agreement referred to in Section 232, without compensation and at the levels equivalent to those available to the Trust Territory of the Pacific Islands during the year prior to the effective date of this Compact, the services and related programs:

(1) of the United States Weather Service;

(2) provided pursuant to the Postal Reorganizataion Act, 39 U.S.C. 101 *et seq.*;

(3) of the United States Federal Aviation Administration; and

(4) of the United States Civil Aeronautics Board or its successor agencies which has the authority to implement the provisions of paragraph 5 of Article IX of such separate agreements, the language of which is incorporated into this Compact.

(b) The Government of the United States, recognizing the special needs of the Palau particularly in the fields of education and health care, shall make available, as provided by the laws of the United States,

(1) the annual amount of $2 million which shall be allocated in accordance with the provisions of the separate agreement referred to in Section 232; and

(2) the sums of $4.3 million, $2.9 million and $1.5 million, respectively, during the first, second and third years after the effective date of this Compact, which sums shall be used by the Government of Palau as current account funds to finance programs similar to those programs of the United States that applied to Palau prior to the effective date of this Compact and that provided financial assistance for education to any institution, agency, organization or permanent resident of Palau or to the College of Micronesia.

(c) The Government of the United States shall make available to Palau such alternate energy development projects, studies and conservation measures as are applicable to the Trust Territory of the Pacific Islands on the day preceding the effective date of this Compact, for the purposes and duration provided in the laws of the United States.

(d) The Government of the United States shall have and exercise such authority as is necessary for the purposes of this Article and as is set forth in the related agreements referred to in Section 232, which shall also set forth the extent to which services and programs shall be provided to Palau.

Section 222

The Government of Palau may request, from time to time, technical assistance from the Federal agencies and institutions of the Government of the United States, which are authorized to grant such technical assistance in accordance with its law and which shall grant such technical assistance in a manner which gives priority consideration to Palau over other recipients not a part of the United States, its territories or possessions and equivalent consideration to Palau with respect to other states in Free Association with the United States.

Section 223

The citizens of Palau who are receiving post-secondary education assistance from the Government of the United States on the day preceding the effective date of this Compact shall continue to be eligible, if otherwise qualified, to receive such assistance to complete their academic programs for a maximum of four years after the effective date of this Compact.

Section 224

The Government of the United States and the Government of Palau may agree from time to time to the extension to Palau of additional United States grant assistance and of United States services and programs as provided by the laws of the United States.

Article III

Administrative Provisions

Section 231

(a) The annual expenditure by the Government of Palau of the grant amounts specified in Article I of this Title shall be in accordance with an official national development plan promulgated by the Government of Palau and concurred in by the Government of the United States prior to the effective date of this Compact. This plan may be amended from time to time by the Government of Palau.

(b) The Government of the United States and the Government of Palau recognize that the achievement of the goals of the plan referred to in this Section depends upon the availability of adequate internal revenue as well as economic assistance from sources outside of Palau, including the Government of the United States, and may, in addition, be affected by the impact of exceptional, economically adverse circumstances. The Government of Palau shall therefore report annually to the President of the United States and to the Congress of the United States on the implementation of this plan and on its use of the funds specified in this Article. This report shall outline the achievements of the plan to date and the need, if any, for an additional authorization and appropriation of economic assistance for that year to account for any exceptional, economically adverse circumstances. The availability of such additional economic assistance from the Government of the United States shall be subject to the authorization and appropriation of funds by the Government of the United States.

Section 232

The specific nature, extent and contractual arrangements of the services and programs provided for in Section 221 as well as the legal status of agencies of the Government of the United States, their civilian employees and contractors, and the dependents of such personnel while present in Palau, and other arrangements in connection with a service or program furnished by the Government of the United States, are set forth in related agreements which shall come into effect simultaneously with this Compact.

Section 233

The Government of the United States, in consultation with the Government of Palau, shall determine and implement procedures for the periodic audit of all grants and other assistance made under this Title. Such audits shall be conducted at no cost to the Government of Palau.

Section 234

Title to the property of the Government of the United States situated in the Trust Territory of the Pacific Islands and in Palau or acquired for or used by the Government of the Trust Territory of the Pacific Islands on or before the day preceding the effective date of this Compact shall, without reimbursement or transfer of funds, vest in the Government of Palau as set forth in a separate agreement which shall come into effect simultaneously with this Compact. The provisions of this Section shall not apply to the personal property of the Government of the United States for which the Government of the United States determines a continuing requirement.

Section 235

(a) Funds held in trust by the High Commissioner of the Trust Territory of the Pacific Islands, in his official capacity, as of the effective date of this Compact shall remain available as trust funds to their designated beneficiaries. The Government of the United States, in consultation with the Government of Palau, shall appoint a new trustee who shall exercise the functions formerly exercised by the High Commissioner of the Trust Territory of the Pacific Islands.

(b) To provide for the continuity of administration, and to assure the Government of Palau that the purposes of the laws of the United States are carried out and that the funds of any other trust fund in which the High Commissioner of the Trust Territory of the Pacific Islands has authority of a statutory or customary nature shall remain available as trust funds to their designated beneficiaries, the Government of the United States agrees to assume the authority formerly vested in the High Commissioner of the Trust Territory of the Pacific Islands.

Section 236

Except as otherwise provided, approval of this Compact by the Government of the United States shall constitute a pledge of the full faith and credit of the United States for the full payment of the sums and amounts specified in Article I of this Title. The obligation of the Government of the United States under Article I of this Title shall be enforceable in the United States Claims Court, or its successor court, which shall have jurisdiction in cases arising under this Section, notwithstanding the provisions of 28 U.S.C. 1502, and which court's decisions shall be reviewable as provided by the laws of the United States.

Article IV

Trade

Section 241

Palau is not included in the customs territory of the United States.

Section 242

The President of the United States shall proclaim the following tariff treatment for articles imported from Palau which shall apply during the period of effectiveness of this Title:

(a) Unless otherwise excluded, articles imported from Palau, subject to the limitations imposed under sections 503(b) and 504(c) of title 5 of the Trade Act of 1974 (19 USC 2463(b): 2464(c)), shall be exempt from duty.

(b) Only canned tuna provided for in item 112.30 of the Tariff Schedules of the United States that is imported from the Federated States of Micronesia, the Marshall Islands and Palau during any calendar year not to exceed 10 percent of the United States consumption of canned tuna during the immediately preceding calendar year, as reported by the National Marine Fisheries Service, shall be exempt from duty; but the quantity of tuna given duty free treatment under this paragraph for any calendar year shall be counted against the aggregate quantity of canned tuna that is dutiable under rate

column numbered 1 of such item 112.30 for that calendar year.

(c) The duty-free treatment provided under paragraph (1) shall not apply to:

(1) watches, clocks and timing apparatus provided for in sub-part E of part 2 of schedule 7 of the Tariff Schedules of the United States;

(2) buttons (whether finished or not finished) provided for in item 745.32 of such Schedules;

(3) textile and apparel articles which are subject to textile agreements; and

(4) footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel which were not eligible articles for purposes of chapter V of the Trade Act of 1974 (19 USC 2461 et seq.) on April 1, 1984.

(d) If the cost or value of materials produced in the customs territory of the United States is included with respect to an eligible article which is a product of Palau, an amount not to exceed 15 percent of the appraised value of the article at the time it is entered that is attributable to such United States cost or value may be applied for duty assessment purposes toward determining the percentage referred to in section 503(b)(2) of title V of the Trade Act of 1974.

Section 243

Articles imported from Palau which are not exempt from any duty under paragraphs (a), (b), (c) and (d) of Section 242 shall be subject to the rates of duty set forth in column numbered 1 of the Tariff Schedules of the United States and all products of the United States imported into Palau shall receive treatment no less favorable than that accorded like products of any foreign country with respect to customs duties or charges of a similar nature and with respect to laws and regulations relating to importation, exportation, taxation, sale, distribution, storage, or use.

Article V

Finance and Taxation

Section 251

The currency of the United States is the official circulating legal tender of Palau. Should the Government of Palau act to institute another currency, the terms of an appropriate currency transitional period shall be as agreed with the Government of the United States.

Section 252

The Government of Palau may, with respect to United States persons, tax income derived from sources within its respective jurisdiction, property situated therein, including transfers of such property by gift or at death, and products consumed therein, in such manner as such Government deems appropriate. The determination of the source of any income, or the situs of any property, shall, for purposes of this Compact, be made according to the United States Internal Revenue Code.

Section 253

A citizen of Palau, domiciled therein and who is a nonresident and not a citizen of the United States, shall be exempt from estate, gift, and generation-skipping transfer taxes imposed by the Government of the United States.

Section 254

(a) In determining any income tax imposed by the Government of Palau, the Government of Palau shall have authority to impose tax upon income derived by a resident of Palau from sources without Palau in the same manner and to the same extent as the Government of Palau imposes tax upon income derived from within its jurisdiction. If the Government of Palau exercises such authority as provided in this subsection, any individual resident of Palau who is subject to tax by the Government of the United States on income which is also taxed by the Government of Palau shall be relieved of liability to the Government of the United States for the tax which, but for this subsection, would otherwise be imposed by the Government of the United States on such income. For purposes of this Section, the term "resident of Palau" shall be deemed to include any person who was physically present in Palau for a period of 183 or more days during any taxable year. The relief from liability referred to in this subsection means only:

(1) relief in the form of the foreign tax credit (or deduction in lieu thereof) available with respect to the income taxes of a possession of the United States, and

(2) relief in the form of the exclusion under section 911 of the United States Internal Revenue Code of 1954.

(b) If the Government of Palau subjects income to taxation substantially similar to that imposed by the Trust Territory Code in effect on January 1, 1980, such Government shall be deemed to have exercised the authority described in Section 254(a).

Section 255

(a) For purposes of section 936 of the Internal Revenue Code of 1954 Palau shall be treated as if it was a possession of the United States.

(b) Subsection (a) of this Section shall not apply to Palau for any period after December 31, 1986, during which there is not in effect between Palau and the United States an exchange of information agreement of the kind described in section 274(h)(6)(C), (other than clause (ii) thereof) of the Internal Revenue Code of 1954.

(c) If the tax incentives extended to Palau under subsection (a) of this Section are, at any time during which the Compact is in effect, reduced, the United States Secretary of the Treasury shall negotiate an agreement with the Government of Palau under which, when such agreement is approved by law, Palau will be provided with benefits substantially equivalent to such reduction in benefits. If within the 1-year period after the date of the enactment of the Act making the reduction in benefits, an agreement negotiated under the preceding sentence is not approved by law, the matter shall be submitted to the Arbitration Board established pursuant to Section 424. For purposes of Article V of this Title, the Secretary of the Treasury or his delegate shall be the member of such Board representing the Government of the United States. Any decision of such Board in the matter when approved by law shall be binding on the United States, except that such decision rendered is binding only as to whether the United States has provided the substantially equivalent benefits referred to in this subsection.

(d) For purposes of section 274(h)(3)(A) of the Internal Revenue Code of 1954, the term "North American area" shall include Palau.

Section 256

This Article shall apply to income earned, and transactions occurring, after September 30, 1985, in taxable years ending after such date.

TITLE THREE

SECURITY AND DEFENSE RELATIONS

Article I

Authority and Responsibility

Section 311

The territorial jurisdiction of the Republic of Palau shall be completely foreclosed to the military forces and personnel or for the military purposes of any nation except the United States of America, and as provided for in Section 312.

Section 312

The Government of the United States has full authority and responsibility for security and defense matters in or relating to Palau. Subject to the terms of any agreements negotiated pursuant to Article II of this Title, the Government of the United States may conduct within the lands, water and airspace of Palau the activities and operations necessary for the exercise of its authority and responsibility under this Title. The Government of the United States may invite the armed forces of other nations to use military areas and facilities in Palau in conjunction with and under the control of United States Armed Forces.

Section 313

The Government of Palau shall refrain from actions which the Government of the United States determines, after consultation with that Government, to be incompatible with its authority and responsibility for security and defense matters in or relating to Palau.

Article II

Defense Sites and Operating Rights

Section 321

The Government of the United States may establish and use defense sites in Palau, and may designate for this purpose land and water areas and improvements in accordance with the provisions of a separate agreement which shall come into force simultaneously with this Compact.

Section 322

(a) When the Government of the United States desires to establish or use such a defense sites specifically identified in the separate agreement referred to in Section 321, it shall so inform the Government of Palau which shall make the designated site available to the Government of the United States for the duration and level of use specified.

(b) With respect to any site not specifically identified in the separate agreement referred to in Section 321, the Government of the United States shall inform the Government of Palau, which shall make the designated site available to the Government of the United States for the duration and level of use specified, or shall make available one alternative site acceptable to the Government of the United States. If such alternative site is unacceptable to the Government of the United States, the site first designated shall be made available after such determination.

(c) Compensation in full for designation, establishment or use of defense sites is provided in Title Two of this Compact.

Section 323

The military operating rights of the Government of the United States and the legal status and contractual arrangements of the United States Armed Forces, their members, and associated civilians, while present in Palau, are set forth in related agreements which shall come into effect simultaneously with this Compact.

Section 324

In the exercise in Palau of its authority and responsibility under this Title, the Government of the United States shall not use, test, store or dispose of nuclear, toxic chemical, gas or biological weapons intended for use in warfare and the Government of Palau assures the Government of the United States that in carrying out its security and defense responsibilities under this Title, the Government of the United States has the right to operate nuclear capable or nuclear propelled vessels and aircraft within the jurisdiction of Palau without either confirming or denying the presence or absence of such weapons within the jurisdiction of Palau.

Article III

Defense Treaties and International Security Agreements

Section 331

Subject to the terms of this Compact and its related agreements, the Government of the United States, exclusively, shall assume and enjoy, as to Palau, all obligations, responsibilities, rights and benefits of:

(a) Any defense treaty to other international security agreement applied by the Government of the United States as administering authority of the Trust Territory of the Pacific Islands as of the day preceding the effective date of this Compact; and

(b) Any defense treaty or other international security agreement to which the Government of the United States is or may become a party which it determines to be applicable in Palau. Such a determination by the Government of the United States shall be preceded by appropriate consultation with the Government of Palau.

Article IV

Service in the Armed Forces of the United States

Section 341

Any citizen of Palau entitled to the privileges of Section 141 of this Compact shall be eligible to volunteer for service in the Armed Forces of the United States, but shall not be subject to involuntary induction into military service of the United States so long as such person does not establish habitual residence in the United States, its territories or possessions.

Section 342

The Government of the United States shall have enrolled, at any one time, at least one qualified student from Palau as may be nominated by the Government of Palau, in each of:

(a) The United States Coast Guard Academy pursuant to 14 U.S.C. 195; and

(b) The United States Merchant Marine Academy pursuant to 46 U.S.C. 1295b(b)(6), provided that the provisions of 46 U.S.C. 1295b(b)(6)(C) shall not apply to the enrollment of students pursuant to Section 342(b) of this Compact.

Article V

General Provisions

Section 351

(a) The Government of the United States and the Government of Palau shall establish a joint committee empowered to consider disputes which may arise under the implementation of this Title and its related agreements.

(b) The membership of the joint committee shall comprise selected senior officials of each of the participating Governments. The senior United States military commander in the Pacific area shall be the senior United States member of the joint committee. For the meetings of the joint committee, each of the Governments may designate additional or alternate representatives as appropriate for the subject matter under consideration.

(c) Unless otherwise mutually agreed, the joint committee shall meet semi-annually at a time and place to be designated, after appropriate consultation, by the Government of the United States. The joint committee also shall meet promptly upon request of either of its members. Upon notification by the Government of the United States, the joint committee shall meet promptly in combined session with other such joint committees so notified. The joint committee shall follow such procedures, including the establishment of functional subcommittes, as the members may from time to time agree.

(d) Unresolved issues in the joint committee shall be referred to the Government of the United States and the Government of Palau for resolution, and the Government of Palau shall be afforded, on an expeditious basis, an opportunity to raise its concerns with the United States Secretary of Defense personally regarding any unresolved issue which threatens its continued association with the Government of the United States.

Section 352

In the exercise of its authority and responsibility under this Compact, the Government of the United States shall accord due respect to the authority and responsibility of the Government of Palau under this Compact and to the responsibility of the Government of Palau to assure the well-being of Palau and its people. The Government of the United States and the Government of Palau agree that the authority and responsibility of the United States set forth in this Title are exercised for the mutual security and benefit of Palau and the United States, and that any attack on Palau would constitute a threat to the peace and security of the entire region and a danger to the United States. In the event of such an attack, or threat thereof, the Government of the United States would take action to meet the danger to the United States and Palau in accordance with its constitutional processes.

Section 353

(a) The Government of the United States shall not include the Government of Palau as a named party to a formal declaration of war, without the consent of the Government of Palau.

(b) Absent such consent, this Compact is without prejudice, on the ground of belligerence or the existence of a state of war, to any claims for damages which are advanced by the citizens, nationals or government of Palau which arise out of armed conflict subsequent to the effective date of this Compact and which are:

(1) petitions to the Government of the United States for redress; or

(2) claims in any manner against the government, citizens, nationals or entities of any third country.

(c) Petitions under Section 353(b)(1) shall be treated as if they were made by citizens of the United States.

TITLE FOUR

GENERAL PROVISIONS

Article I

Approval and Effective Date

Section 411

This Compact shall come into effect upon mutual agreement between the Government of the United States, acting in fulfillment of its responsibilities as Administering Authority of the Trust Territory of the Pacific Islands and the Government of Palau, subsequent to completion of the following:

(a) Approval by the Government of Palau in accordance with its constitutional processes;

(b) Approval by the people of Palau in a referendum called on this Compact; and

(c) Approval by the Government of the United States in accordance with its constitutional processes.

Article II

Conference and Dispute Resolution

Section 421

The Government of the United States and the Government of Palau shall confer promptly at the request of the other on matters relating to the provisions of this Compact or of its related agreements.

Section 422

In the event the Government of the United States or the Government of Palau, after conferring pursuant to Section 421, determines that there is a dispute and gives written notice thereof, the Governments shall make a good faith effort to resolve the dispute among themselves.

Section 423

If a dispute between the Government of the United States and the Government of Palau cannot be resolved within 90 days of written notification in the manner provided in Section 422, either party to the dispute may refer it to arbitration in accordance with Section 424.

Section 424

Should a dispute be referred to arbitration as provided for in Section 423, an arbitration board shall be established for the purpose of hearing the dispute and rendering a decision which shall be binding upon the two parties to the dispute unless the two parties mutually agree that the decision shall be advisory. Arbitration shall occur according to the following terms:

(a) An arbitration board shall consist of a chairman and two other members, each of whom shall be a citizen of a party to the dispute and each of the two parties to the dispute shall appoint one member to the arbitration board. If either party to the dispute does not fulfill the appointment requirements of this Section within 30 days of referral of the dispute to arbitration pursuant to Section 423, its member on the arbitration board shall be selected from its own standing list by the other party to the dispute. Each government shall maintain a standing list of 10 candidates. The parties to the dispute shall jointly appoint a chairman within 15 days after selection of the other members of the arbitration board. Failing agreement on a chairman, the chairman shall be chosen by lot from the standing lists of the parties to the dispute within 5 days after such failure.

(b) The arbitration board shall have jurisdiction to hear and render its final determination on all disputes arising exclusively under Articles, I, II, III, IV, and VI of Title One, Title Two, Title Four and their related agreements.

(c) Each member of the arbitration board shall have one vote. Each decision of the arbitration board shall be reached by majority vote.

(d) In determining any lega

in Article 38 of the Statute of the International Court of Justice.

(e) The arbitration board shall adopt such rules for its proceedings as it may deem appropriate and necessary, but such rules shall not contravene the provisions of this Compact. Unless the parties provide otherwise by mutual agreement, the arbitration board shall endeavor to render its decision within 30 days after the conclusion of arguments. The arbitration board shall make findings of fact and conclusions of law and its members may issue dissenting or individual opinions. Except as may be otherwise decided by the arbitration board, one-half of all costs of the arbitration shall be borne by the Government of the United States and the remainder shall be borne by the Government of Palau.

Article III

Amendment and Review

Section 431

The provisions of this Compact may be amended at any time by mutual agreement of the Government of the United States and the Government of Palau in accordance with their respective constitutional processes.

Section 432

Upon the fifteenth and thirtieth and fortieth anniversaries of the effective date of this Compact, the Government of the United States and the Government of Palau shall formally review the terms of this Compact and its related agreements and shall consider the overall nature and development of their relationship. In these formal reviews, the governments shall consider the operating requirements of the Government of Palau and its progress in meeting the development objectives set forth in the plan referred to in Section 231(a). The governments commit themselves to take specific measures in relation to the findings of conclusions resulting from the review. Any alteration to the terms of this Compact or its related agreements shall be made by mutual agreement and the terms of this Compact and its related agreements shall remain in force until otherwise amended or terminated pursuant to Title Four of this Compact.

Article IV

Termination

Section 441

This Compact may be terminated by mutual agreement and subject to Section 451.

Section 442

This Compact may be terminated by the Government of the United States subject to Section 452, such termination to be effective on the date specified in the notice of termination by the Government of the United States but not earlier than six months following delivery of such notice. The time specified in the notice of termination may be extended.

Section 443

This Compact shall be terminated, pursuant to its constitutional processes, by the Government of Palau subject to Section 452 if the people of Palau vote in a plebiscite to terminate. The Government of Palau shall notify the Government of the United States of its intention to call such a plebiscite which shall take place not earlier than three months after delivery of such notice. The plebiscite shall be administered by such government in accordance with its constitutional and legislative processes, but the Government of the United States may send its own observers and invite observers from a mutually agreed party. If a majority of the valid ballots cast in the plebiscite favors termination, such government shall, upon certification of the results of the plebiscite, given notice of termination to the Government of the United States, such termination to be effective on the date specified in such notice but not earlier than three months following the date of delivery of such notice. The time specified in the notice of termination may be extended.

Article V

Survivability

Section 451

Should termination occur pursuant to Section 441, economic assistance by the Government of the United States shall continue on mutually agreed terms.

Section 452

Should termination occur pursuant to Section 442 or 443, the following provisions of this Compact shall remain in full force and effect until the fiftieth anniversary of the effective date of this Compact and thereafter as mutually agreed:

(a) Article I and Section 233 of Title Two;

(b) Title Three; and

(c) Articles II, III, V and VI of Title Four.

Section 453

Notwithstanding any other provision of this Compact:

(a) The provisions of Section 311, even if Title Three should terminate, are binding and shall remain in effect for a period of 50 years and thereafter until terminated or otherwise amended by mutual consent;

(b) The related agreements referred to in Article II of Title Three shall remain in effect in accordance with their terms; and

(c) The Government of the United States reaffirms its continuing interest in promoting the long-term economic advancement and self-sufficiency of the people of Palau.

Section 454

Any provision of this Compact which remains in effect by operation of Section 452 shall be construed and implemented in the same manner as prior to any termination of this Compact pursuant to Section 442 or 443.

Article VI

Definition of Terms

Section 461

For the purpose of this Compact the following terms shall have the following meanings:

(a) "Trust Territory of the Pacific Islands" means the area established in the Trusteeship Agreement consisting of the administrative districts of Kosrae, Yap, Palau, Ponape, the Marshall Islands and Truk as described in Title One, Trust Territory Code, Section 1, in force on January 1, 1979. This term does not include the area of the Northern Mariana Islands.

(b) "Trusteeship Agreement" means the agreement setting forth the terms of trusteeship for the Trust Territory of the Pacific Islands, approved by the Security Council of the United Nations April 2, 1947, and by the United States July 18, 1947, entered into force July 18, 1947, 61 Stat. 3301, T.I.A.S. 1665, 8 U.N.T.S. 189.

(c) "Palau" is used in a geographic sense and includes the land and water areas to the outer limits of the territorial sea and the air space above such areas as now or hereafter recognized by the Government of the United States consistent with the Compact and its related agreements.

(d) "Government of Palau" means the Government established and organized by the Constitution of Palau including all the political subdivisions and entities comprising that Government.

(e) "Habitual Residence" means a place of general abode or a principal, actual dwelling place of a continuing or lasting nature; provided, however, that this term shall not apply to the residence of any person who entered the United States for the purpose of full time studies as long as such person maintains that status, or who has been physically present in the United States or Palau for less than one year, or who is a dependent of a resident representative, as described in Section 152.

(f) For the purposes of Article IV of Title One of this Compact:

(1) "Actual Residence" means physical presence in Palau during eighty-five percent of the period of residency required by Section 141(a)(3); and

(2) "Certificate of Actual Residence" means a certificate issued to a naturalized citizen by the Government which has naturalized him stating that the citizen has complied with the actual residence requirement of Section 141(a)(3).

(g) "Defense Sites" means those land and water areas and improvements thereon in Palau reserved or acquired by the Government of Palau for use by the Government of the United States, as set forth in the related agreements referred to in Section 321.

(h) "Capital Account" means, for each year of the Compact, those portions of the total grant assistance provided in Article I of Title Two, which are to be obligated for:

(1) the construction or major repair of capital infrastructure; or

(2) public and private sector projects identified in the official overall economic development plan.

(i) "Current Account" means, for each year of the Compact, those portions of the total grant assistance provided in Article I of Title Two, which are to be obligated for recurring operational activities including infrastructure maintenance as identified in the annual budget justifications submitted yearly to the Government of the United States.

(j) "Official National Development Plan" means the documented program of annual development which identifies the specific policy and project activities necessary to achieve a specified set of economic goals and objectives during the period of free association, consistent with the economic assistance authority in Title Two. Such a document should include an analysis of population trends, manpower requirements, social needs, gross national product estimates, resource utilization, infrastructure needs and expenditures, and the specific private sector projects required to develop the local economy of Palau. Project identification should include initial cost estimates, with project purposes related to specific development goals and objectives.

(k) "Tariff Schedules of the United States" means the Tariff Schedules of the United States as amended from time to time and as promulgated pursuant to United States law and includes the Tariff Schedules of the United States Annotated (TSUSA), as amended.

(l) "Vienna Convention on Diplomatic Relations" means the Vienna Convention on Diplomatic Relations, done April 18, 1961, 23 U.S.T. 3227, T.I.A.S. 7502, 500 U.N.T.S. 95.

Section 462

The Government of the United States and the Government of Palau shall conclude related agreements which shall come into effect and shall survive in accordance with their terms, and which shall be construed and implemented in a manner consistent with this Compact, as follows:

(a) Agreements Regarding the Provision of Telecommunication Services by the Government of the United States to Palau Concluded Pursuant to Section 131 of the Compact of Free Association;

(b) Agreement Regarding the Operation of Telecommunication Services of the Government of the United States in Palau, Concluded Pursuant to Section 132 of the Compact of Free Association;

(c) Agreement on Extradition, Mutual Assistance in Law Enforcement Matters and Penal Sanctions Concluded Pursuant to Section 175 of the Compact of Free Association;

(d) Agreement Regarding United States Economic Assistance to the Government of Palau Concluded Pursuant to Section 211(f) of the Compact of Free Association;

(e) Agreement Regarding Construction Projects in Palau Concluded Pursuant to Section 212(a) of the Compact of Free Association;

(f) Agreement Regarding Federal Programs and Services, Concluded Pursuant to Article II of Title Two and Section 232 of the Compact of Free Association;

(g) Agreement Regarding Property Turnover, Concluded Pursuant to Section 234 of the Compact of Free Association;

(h) Agreement Regarding the Military Use and Operating Rights of the Goverment of the United States in Palau Concluded Pursuant to Sections 321 and 322 of the Compact of Free Association; and

(i) Status of Forces Agreement Concluded Pursuant to Section 323 of the Compact of Free Association.

(j) Agreement regarding the Jurisdiction and Sovereignty of the Republic of Palau over its Territory and the Living and Nonliving Resources of the Sea.

Article VII

Concluding Provisions

Section 471

(a) The Government of the United States and the Government of Palau agree that they have full authority under their respective constitutions to enter into this Compact and its related agreements and to fulfill all of their respective responsibilities in accordance with the terms of this Compact and its related agreements. The Governments pledge that they are so committed.

(b) The Government of the United States and the Government of Palau shall take all necessary steps, of a general or particular character, to ensure, not later than the effective date of this Compact, that their laws, regulations and administrative procedures are such as to effect the commitments referred to in Section 471(a).

(c) Without prejudice to the effects of this Compact under international law, this Compact has the force and effect of a statute under the laws of the United States.

Section 472

This Compact may be accepted, by signature or otherwise, by the Government of the United States and the Government of Palau. Each government shall possess an original English language version.

IN WITNESS THEREOF, the undersigned, duly authorized, have signed this Compact of Free Association which shall come into effect in accordance with its terms between the Government of the United States and the Government of Palau.

DONE AT ——, THIS — DAY OF —, ONE THOUSAND NINE HUNDRED EIGHTY-FIVE

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA

DONE AT ——, THIS — DAY OF —, ONE THOUSAND NINE HUNDRED EIGHTY-FIVE

FOR THE GOVERNMENT OF THE REPUBLIC OF PALAU

JURISDICTION

SEC. 202. (a) MARITIME AND TERRITORIAL JURISDICTION.—With respect to section 321 of the Compact of Free Association and its related agreements, the jurisdictional provisions set forth in subsection (b) of this section shall apply only to the citizens and nationals of the United States and aliens lawfully admitted to the United States for permanent residence who are in Palau.

(b) DEFENSE SITES.—The defense sites of the United States established in Palau in accordance with the Compact of Free Association and its related agreements are within the special maritime and territorial jurisdiction of the United States as set forth in section 7, title 18, United States Code.

(c) OFFENSES.—(1) Any person referred to in subsection (a) of this section who within or upon such defense sites is guilty of any act or omission which, although not made punishable by any enactment of Congress, would be punishable if committed or omitted within the jurisdiction of the territory of Guam by the laws thereof, in force at the time of such act or omission, shall be guilty of a like offense and subject to a like punishment.

(2) The District Court of Guam shall have jurisdiction to try all criminal offenses against the United States, including the laws of Guam made applicable to the defense sites in Palau by virtue of subsection (c)(1) of this section, committed by any person referred to in subsection (a) of this section.

(3) The District Court of Guam may appoint one or more magistrates for the defense sites in Palau. Such Magistrates shall have the power and the status of Magistrates appointed pursuant to chapter 43, title 28, United States Code: Provided however, That such Magistrates shall have the power to try persons accused of, and sentence persons convicted of, petty offenses, as defined in section 1(3), title 18, United States Code, including violations of regulations for the maintenance of peace, order, and health issued by the Commanding Officer on such defense sites, without being subject to the restrictions provided for in section 3401(b), title 18, United States Code.

DELIVERY OF LEGAL SERVICES IN THE CRIMINAL JUSTICE SYSTEM

THURMOND AMENDMENT NO. 3253

Mr. SIMPSON (for Mr. THURMOND) proposed an amendment to the bill (S. 1581) to amend section 3006A of title 18, United States Code, to improve the delivery of legal services in the criminal justice system to those persons financially unable to obtain adequate representation, and for other purposes, as follows:

Insert the following at the appropriate place in the bill:

On page 1, line 4, strike "1985" and insert "1986".

On page 2, line 23, strike "competency" and insert "condition".

On page 4, line 5, strike the semicolon.

On page 5, line 7, strike "1985" and insert "1986".

On page 5, line 12, strike ", United States Code,".

On page 7, strike lines 24 and 25 and on page 8, line 1, strike "in the fourth sentence," and insert the following:

"(ii) Subsection (h)(2)(A) is amended by inserting after the fourth sentence"

On page 8, line 17, insert "established under this subsection" immediately after "Organization".

On page 8, line 18, insert "established under this subsection which is" after "Organization".

On page 8, line 19, strike "established under this subsection,".

On page 8, line 20, insert "loss of liberty," between "injury," and "loss of property".

On page 10, line 2, strike "Section" and insert "section".

On page 10, line 6, insert "subparagraphs" after "as".

On page 12, line 20, insert "of this Act," after "2(a)(3)(A).".

On page 12, line 24, insert "of this Act," after "2(a)(3)(B)".

On page 13, lines 3 and 4, strike "paragraphs (B) and (C) of section 2(a)(4)" and insert "subparagraphs (B) and (C) of section 2(A)(4) of this Act,".

THURMOND (AND HEFLIN) AMENDMENT NO. 3254

Mr. SIMPSON (for Mr. THURMOND and Mr. HEFLIN) proposed an amendment to the bill (S. 1581), supra, as follows:

Insert the following at the appropriate place in the bill:

That section 631(d) of title 28, United States Code, is amended by—

(1) striking out "No" and inserting in lieu thereof "Except as otherwise provided in sections 375 and 636(h) of this title (allowing retired magistrates to be recalled to serve), no";

(2) striking out "unanimous" and inserting in lieu thereof "majority"; and

(3) inserting after "courts," the following: "taken upon the magistrate's attaining age seventy and upon each subsequent anniversary thereof,".

SEC. 2. Section 636 of title 28, United States Code, is amended by adding at the end thereof the following:

"(h) A United States magistrate who has retired may, upon consent of the chief judge of the district involved, be recalled to serve as a magistrate in any judicial district by the judicial council of the circuit within which such district is located. Upon recall, a magistrate may receive a salary for such service in accordance with regulations promulgated by the conference, subject to the restrictions on the payment of an annuity in

subchapter III of chapter 83 or chapter 84 of title 5. The qualification requirements of subsections (a), (b), and (d) of section 631 shall not apply to the recall of a retired magistrate.".

SEC. 3. Section 633(b) of title 28, United States Code, is amended by striking out "643" and inserting in lieu thereof "634".

SEC. 4. Section 8331 of title 5, United States Code is amended by—

(1) redesignating subparagraphs (A) and (B) of paragraph 22 thereof as items (i) and (ii);

(2) adding immediately after the word "individual" in paragraph 22 the following: "(A) who is";

(3) adding at the end of item (i), as so redesignated, the following: "or";

(4) redesignating subparagraph (C) of paragraph 22 as subparagraph (B);

(5) striking out "and" at the end of paragraph (23);

(6) striking out the period at the end of paragraph (24) and inserting in lieu thereof a semicolon; and

(7) adding at the end thereof the following new paragraphs:

"(25) 'magistrate' or 'United States magistrate' means an individual appointed under section 631 of title 28; and

"(26) 'Claims Court judge' or 'judge of the United States Claims Court' means an individual appointed under section 171 of title 28 or serving under section 167 of Public Law 97-164, 96 Stat. 50.".

SEC. 5. (a) Section 8334(a)(1) of title 5, United States Code, is amended by inserting after "Member", the following: ", a United States magistrate, a judge of the United States Claims Court,".

(b) Section 8334(c) of title 5, United States Code, is amended by inserting at the end of the table thereof the following:

"United States magistrate or judge of the United States Claims Court	1⅓	August 1, 1920, to June 30, 1926.
	3⅓	July 1, 1926, to June 30, 1942.
	5	July 1, 1942, to June 30, 1948.
	6	July 1, 1948, to October 31, 1956.
	6⅓	November 1, 1956, to December 31, 1969.
	7	January 1, 1970, to December 31, 1986.
	8	After December 31, 1986.".

SEC. 6. Section 8336(k) of title 5, United States Code, is amended to read as follows:

"(k) A bankruptcy judge, magistrate, or judge of the United States Claims Court who is separated from the service, except by removal, after becoming sixty-two years of age and completing five years of civilian service or after becoming sixty years of age and completing ten years of service as a bankruptcy judge, magistrate, or judge of the United States Claims Court is entitled to an annuity.".

SEC. 7. Section 8339(n) of title 5, United States Code, is amended to read as follows:

"(n) The annuity of an employee who is a United States bankruptcy judge, a United States magistrate, or a judge of the United States Claims Court is computed with respect to service as a referee in bankruptcy, as a bankruptcy judge, as a United States magistrate, as a United States commissioner, as a judge of the United States Claims Court, and as a commissioner of the Court of Claims and military service (not exceeding five years) creditable under section 8332 of this title by multiplying 2½ percent of his average annual pay by the years of that service.".

SEC. 8. Chapter 84 of title 5, United States Code, as added by section 101 of the Federal Employees' Retirement System Act of 1986 (Public Law No. 99-335; 100 Stat. 514) is amended—

(1) in section 8401, by—

(A) striking out "and" at the end of paragraph (30);

(B) striking out the period at the end of paragraph 31 and inserting a semicolon in lieu thereof; and

(C) adding at the end thereof the following new paragraphs:

"(32) the terms 'bankruptcy judge' and 'United States bankruptcy judge' mean an individual appointed under section 152 of title 28;

"(33) the terms 'magistrate' and 'United States magistrate' means an individual appointed under section 631 of title 28; and

"(34) the terms 'Claims Court judge' and 'judge of the United States Claims Court' mean an individual appointed under section 171 of title 28.";

(2) in section 8412(f), by adding immediately after the word "Member" the following: ", magistrate, bankruptcy judge, or judge of the United States Claims Court";

(3) in section 8415(b), by—

(A) designating the existing text thereof as paragraph (1); and

(B) adding at the end thereof the following new paragraph:

"(2) The annuity of a United States magistrate, a United States bankruptcy judge, or a judge of the United States Claims Court retiring under this subchapter is computed under subsection (a), except that if the individual has had at least 5 years of service as a magistrate, bankruptcy judge, or judge of the United States Claims Court, or any combination thereof, so much of the annuity as is computed with respect to such type of service (or a combination thereof), not exceeding a total of 20 years, shall be computed by multiplying 1 7/10 percent of the individual's average pay by the years of such service."; and

(4) in section 8422(a)(2), by adding immediately after "air traffic controller," each time it appears the following: "United States magistrate, United States bankruptcy judge, judge of the United States Claims Court,".

SEC. 9(a). Chapter 17 of title 28, United States Code, is amended by adding, immediately after section 374 thereof the following new section:

"§ 375. Recall of certain judges and magistrates.

"(a)(1) A United States bankruptcy judge appointed under chapter 6 of this title, a judge of the United States Claims Court appointed under chapter 7 of this title or a United States magistrate appointed under chapter 43 of this title who has retired under the applicable provisions of title 5 upon attaining the age and years of service requirements established in section 371(c) of this title may agree to be recalled to serve under this section during the next five years, upon certification that substantial service is expected to be performed during such five-year period. With the agreement of the judge or magistrate involved, a certification under this subsection may be renewed for successive five-year periods.

"(2) For purposes of paragraph (1) of this subsection, a certification may be made by—

"(A) The judicial council of the circuit in which the judge's or magistrate's official duty station at the time of retirement was located, in the case of a United States bankruptcy judge or a United States magistrate; and

"(B) The Chief Judge of the United States Claims Court, in the case of a judge of that court.

"(b) A judge or magistrate recalled under this section may exercise all the powers and duties of the office held at the time of retirement, incuding the ability to serve in any other judicial district to the extent applicable, but may not engage in the practice of law or engage in any other business, occupation, or employment inconsistent with the expeditious, proper, and impartial performance of duties as a judicial officer.

"(c) During the time that a certification under subsection (a) of this section is in effect, the judge or magistrate involved shall receive, in addition to the annuity provided under the applicable provisions of title 5, an amount equal to the difference between that annuity and the current salary of the office to which recalled.

"(d) Nothing in this section shall affect the right of judges and magistrates to whom it applies and who retire under the provisions of chapter 83 or chapter 84 of title 5 to serve as re-employed annuitants in accordance with the provisions of title 5 or any other provision of law.

"(e) For purposes of determining the eligibility for recall under this section, any service as a United States bankruptcy judge, a judge of the United States Claims Court or a United States magistrate, and any prior service as a referee in bankruptcy, a commissioner of the Court of Claims, or a United States commissioner may be credited.

"(f) Except as otherwise specifically provided in this section, a judge or magistrate recalled under this section shall be deemed a reemployed annuitant under chapter 83 or chapter 84 of title 5.

"(g) The Judicial Conference of the United States may promulgate rules and regulations to implement this section.".

(b) The item relating to section 375 in the sectional analysis of chapter 17 of title 28, United States Code, is amended to read as follows:

"375. Recall of certain judges and magistrates.".

SEC. 10. Section 374 of title 28, United States Code, is amended by adding, immediately after the words "a retired judge", the following: "or a judge or magistrate recalled under section 155, 375, 636, or 797 of this title".

SEC. 11(a). Section 155(b) of title 28, United States Code is amended by inserting immediately after the words "chapter 83" the words "or chapter 84".

(b) Section 797(a) of title 28, United States Code, is amended by inserting immediately after the words "chapter 83" the words "or chapter 84".

SEC. 12. This Act and the amendments made by this Act shall take effect on the date of enactment.

COMMISSION ON THE BICENTENNIAL OF THE CONSTITUTION

METZENBAUM AMENDMENT NO. 3255

Mr. BURDICK (for Mr. METZENBAUM) proposed an amendment to the bill (H.R. 3559) to amend the act establishing a Commission on the Bi-

centennial of the Constitution of the United States to clarify the status of employees of the Commission, to raise the limits on private contributions, and for other purposes, as follows:

On page 3, at line 15, after the word "logo," insert the following language:

"Such rules and regulations shall provide, among other things, that all projects, goods, and services as to which use of the logo is authorized shall be educational or commemorative, and shall relate to the bicentennial of the United States Constitution, the establishment of the Federal Government, or the Bill of Rights, and none of such projects, goods or services shall exploit the United States Constitution or the Bill of Rights. The purpose of the Commission in authorizing use of the logo shall not be primarily or exclusively to raise funds."

ADDITIONAL STATEMENTS

THE CHARLES McC. MATHIAS, JR., NATIONAL STUDY CENTER FOR TRAUMA AND EMERGENCY MEDICAL SYSTEMS

● Mr. SARBANES. Mr. President, last Friday, the Senate passed legislation to designate the Maryland Institute for Emergency Medical Services Systems at the University of Maryland as the "Charles McC. Mathias, Jr., National Study Center for Trauma and Emergency Medical Systems." I am pleased to join my colleagues in support of this measure.

Trauma is the No. 1 cause of death in the United States for persons under age 37 and is the fourth leading cause of death in the total population, after heart disease, cancer, and stroke. Yet, trauma has received only marginal national attention, considering the magnitude of the problem. A national focus is essential in dealing with the problem of trauma, as well as emergency medical services in general. Specifically, designation of the Maryland Institute as a National Study Center for Trauma and Emergency Medical Systems would establish a national clearinghouse for emergency medical services and trauma systems to conduct research on emergency medical issues, to train professionals in traumatology and emergency medical services, and to provide technical assistance nationwide.

The institute in Maryland is currently serving increasing numbers of patients which need to kind of care that only a specialized trauma center can provide. Yet in recent years Federal support for emergency medical services systems has decreased; and emergency and trauma service has been neglected in many parts of the country despite its demonstrated success for saving lives. Concern over the mounting toll from accidents must be transformed into an action program, involving both research and the establishment of emergency facilities to provide the critically injured with the best treatment available. The designation of a national study center would focus attention on the need to improve trauma and emergency medical services systems. This legislation, which does not require any Federal funding, would serve as a model that could be studied by other areas interested in establishing shock trauma centers and serve as a facility where interaction among professionals can occur.

Maryland has played a leading role in the development of trauma services and Senator CHARLES MCC. MATHIAS, who is retiring at the end of the 99th Congress, has played a crucial role in the founding and development of the National Study Center. In this regard, it is only fitting that the Study Center for Trauma and Emergency Medical Systems at the University of Maryland in Baltimore be designated as the "Charles McC. Mathias, Jr., National Study Center for Trauma and Emergency Medical Systems."

MAC MATHIAS is a leader of integrity and intellect, of courage and compassion, for whom I have the deepest respect and admiration. For more than 30 years at the local, State, and Federal level MAC MATHIAS has been steadfast in his commitment to the vision of our Founding Fathers, to the principles of the Constitution, and to the well-being and health of our people. Maryland and the Nation have been fortunate to have a man of his quality in public office.

The progress made in Maryland has influenced the development of emergency medical systems throughout the country. Passage of this legislation conveys an honor on the State and citizens of Maryland as well as my senior colleague in the Senate that is richly deserved.●

RELIGIOUS FREEDOM IN THE CAPTIVE NATIONS

● Mr. RIEGLE. Mr. President, I want to commend the Senate for giving its unanimous support to Senate Resolution 454, a resolution expressing the solidarity of the United States with the millions of believers behind the Iron Curtain who are denied their religious freedoms.

In the words of Deacon Michael Kirila, chaplain of the Association of Romanian Catholics of America who wrote to me recently:

This resolution is, without a doubt, one of the strongest positions taken in more than 40 years by America against the brutal oppression and human rights abuses imposed by the Communist regimes upon millions of people, particularly the Byzantine Rite Catholics.

Through this resolution, the Senate specifically urges President Reagan to instruct the U.S. delegation attending the Helsinki Review Meeting in Vienna next month, to press for the full restoration of the Byzantine Rite Catholic Church and freedom of religion for the people of all of the captive nations.

It is my hope that the Senate's unanimous approval of Senate Resolution 454 will ensure that the important issue of religious freedom is high on the list of United States concerns to be discussed with Soviet authorities, not only at the Helsinki Review Meeting, but at the upcoming summit between President Reagan and General Secretary Gorbachev, and on every other appropriate occasion as well.

The Ukrainian Helsinki Monitoring Group, which will mark its 10th anniversary on November 9, is the largest of the groups formed to monitor Soviet compliance with the human rights provisions of the Helsinki Final Act. Members of that organization, all of whom have suffered greatly for protesting Soviet violations of the Helsinki accords in Ukraine, opened a new phase in the Ukrainian struggle for human and national rights. They demanded not only that the Soviet Government protect the human rights of its people, but also that the Western democracies support the human rights struggle of those living under Soviet domination.

Freedom of religion is one of the most important guarantees contained in the Helsinki accords. Believers in the captive nations are doing all they can to keep their religious and cultural traditions alive. All Americans must join them in that quest.

The Ukrainian-American community in this country, and particularly in my State of Michigan, deserves special tribute for the critical role they have played in drafting and securing Senate passage of this resolution. For them, it is vitally important that friends and loved ones in the homeland be permitted to practice their religious faith openly.

I believe that with our continued work and vigilance, religious freedom will be returned to the captive nations. The Senate's unanimous approval of this resolution has moved us closer to that goal, and I thank my colleagues for their support.●

SALUTE TO JOE SUMMERS

● Mr. DURENBERGER. Mr. President, in July of this year, my home State of Minnesota lost one of those unique personalities which make life a joy, with the death of Ramsey County District Judge Joe Summers.

Although Joe Summers and I were members of opposing political parties, I considered him a good friend, and an individual to whom thousands of others could love and admire.

In recent years, Joe became a regular Friday night guest in thousands of Minnesota homes by virtue of his role as cohost of "Almanac," a weekly public affairs program on KTCA-TV,

the Twin Cities public television station.

Because of the outstanding contributions made by Joe Summers, and his lasting impression on the people of Minnesota, I ask that the article and editorial on Joe be printed in the RECORD.

The material follows:

LEGAL SCHOLAR, SHOWMAN JOE SUMMERS DIES AT 47

(By Katherine Lanpher)

Ramsey County District Judge Joseph P. Summers, who combined an engaging blend of legal scholarship and showmanship, died at his home Tuesday, apparently of a massive heart attack.

Summers, 47, was a law professor who doubled as a television personality, a motorcyle-riding judge who dispensed legal opinions and witticisms with equal flair.

He had been recuperating at his Pascal Street home from a heart attack suffered June 14. He died in his sleep shortly before 7 p.m., when he was discovered by his wife, Carol.

On Monday, Summers agreed to take on a part-time teaching job at the University of Minnesota Law School; just last week he was planning a late July return to the KTCA-TV show "Alamanc," which he cohosted with Jan Smaby, head of Hennepin County social services.

"He'd been doing very well," Carol Summers said. "Everything seemed to indicate he was taking care of himself . . . He was doing just fine."

Summers had the kind of engaging personality that attracted adjectives whenever someone tried to describe it—words like urbane, witty, intelligent, extroverted.

"He was the original Renaissance man," said St. Paul lawyer Bill Rosen, who practiced law with Summers for six years.

"He was a prodigious and fast worker and a tremendous scholar," said Ramsey County District Judge David Marsden. "Beneath that sense of humor was a very, very brilliant mind."

"It's hard to think of the Twin Cities without Joe," said Bill Hanley, executive producer of news and public affairs at KTCA-TV.

Summers was a native of St. Paul; his father was a reporter for the Minneapolis Tribune. He attended St. Thomas Military Academy, where he graduated at 16 with top honors.

He went on to the College of St. Thomas, where he met a College of St. Catherine coed who would later become his wife. They married while he was attending law school at the University of Notre Dame in South Bend, Ind.

After a brief stint with a Washington, D.C., law firm, he returned to the Twin Cities. One of his first appointments was to the state attorney general's office run by Walter Mondale, where he served as a legislative representative, special counsel to the governor and state coordinator of the War on Poverty program led by President Lyndon B. Johnson.

When Summers worked for Mondale, one of his colleagues was Warren Spannaus, who later would be attorney general himself.

Both worked on Mondale's campaigns for attorney general in 1962 and for senator in 1966.

"He could write a speech, a script, a press release just off the top of his head," Spannaus recalled. "It was always better than anyone else's if they worked at it for hours."

"He was great fun to work with," Spannaus said. "He got a lot done, but we had fun doing it."

Spannaus described Summers as "a classic guy. There's no one else like him. There was only one Joe Summers." He had a unique blend of intelligence, good judgment and sense of humor, "with just the right touch of each of them," Spannaus said.

In 1967, Spannaus became St. Paul city attorney under then Mayor Tom Byrne. During his three years in that post, he was instrumental in setting up a program that provided a low-income people with free legal counsel.

After three years in private practice, Summers was appointed a municipal judge in 1973. He told a reporter at the time that he had always wanted to be a judge.

In 1978, he was appointed to the district court bench, where he rapidly became known as a progressive judicial figure who wasn't afraid to mix humor with compassion, reform with justice.

District Judge Harold Schultz described Summers as "somewhat of a maverick."

"He was willing to try things and he didn't ask your blessing," Schultz said. "He had a lot of courage. If it didn't work and he caught hell, he'd accept it. If it did, he'd get a little praise and that was fine, too. He was his own man."

Summers considered the circumstances of each case and was not afraid to veer from the state sentencing guidelines that prescribe prison sentences, Schultz said.

"If the guidelines didn't fit, he would do the tough thing if he thought it was right," Schultz said.

Summers handled many major criminal trials, such as that of basement waterproofer William Lone. His colleagues said he was equally adept at civil cases, where the legal issues sometimes are more complex.

And he had a deft touch in his courtroom, using humor to lighten the often stodgy specter of the law.

One afternoon, according to a courtroom observer, a convicted felon appeared in front of the judge's bench for sentencing. Accompanying the man was his record—a long list of bad checks written at stores too numerous to mention.

Summers took a quizzical look at the presentencing investigation report and then shot an even longer look at the defendant.

"How do you do it?" he asked. "I can't even get a check cashed."

In January 1985, Summers was made a cohost of "Almanac," the KTCA current events program. With Smaby, Summers' wit—and his penchant for chat—helped prove that a public affairs show doesn't have to be dull.

According to family and friends, Summers loved doing the show as much as be loved being a judge.

"It was one of the biggest joys in his life besides his family," said Gail Summers, his sister-in-law. "He absolutely loved it."

"He was one of the best legal and political minds in the state," said media and political consultant D.J. Leary, who sometimes appeared on the show with Summers and who had been substituting for him during his recuperation.

KTCA has no immediate plans on a replacement for Summers, a spokesman said.

Leary was shaken by the news. So was Hanley, who hired Summers for the television spot.

"It's such a shock because he was getting so much better," Hanley said. "Today, we finally set the date when he was coming back. He was coming back next week."

Summers told his television boss that he had cut down on his heavy smoking habit, that he was exercising more.

"It's really been his attitude," Hanley said. "He took it as his chance to change."

"It's just gonna seem so strange to not have him pull up in front of Channel 2 on his motorcycle to do the show," Leary said.

Summer's motorcycle was one of the more obvious symbols of his zest for living. It served as a trademark for a judge who cheerfully performed countless weddings during his tenure and who sometimes could be found with City Council President Vic Tedesco entertaining senior citizens at a nursing home. The judge would play ukelele, the politican manned the accordian.

His motorcycles were a passion for Summers, according to his eldest son, Paul, who said he got his father interested in them by leaving advertisements on his bed.

Often, his father rode with a group of motorcyclists who, like him, also had been through chemical dependency treatment, Paul Summers said.

The elder Summers recently received a pin marking his fifth year of sobriety. His treatment for alcoholism was a subject that he treated with his usual candor.

"He would have been my best man at my wedding," said his son. "That's how I always described him. That's how he is. He's my best man."

Summers is survived by his wife, Carol; sons, Paul, 24, of Minneapolis, Andrew, 20, Patrick, 13, and Matthew, 10, of St. Paul; and daughter, Peggy, 17, also of St. Paul.

He also is survived by his mother, Marjorie Summers, and his brother, Thomas, both of St. Paul.

Funeral arrangments are pending.

JOE SUMMERS: INCOGNITO JUDGE OF "ALMANAC"

Seven o'clock Friday evening used to seem to us an unnatural time to stay home and watch TV. Fridays felt more fit for dawdling over dinner or, better yet, for leaving the house, taking the kids out to supper and splurging on tickets to a real movie. And if someone had urged us to sully Friday evening by watching an hour of interviews and talk about Minnesota politics or public affairs—well, we would have shrugged and said no.

But a year ago last winter we somehow tuned in to "Almanac," the then-new Channel 2 talk show about politics and issues in Minnesota. To our surprise, we didn't tune out. And almost every Friday since, we've come back to "Almanac."

A big part of the reason for that change in Friday habits was "Almanac's" co-host, Joseph Summers. Joe—right away, it seemed OK to call him that—quickly caught our eyes with his. They looked tough when he asked a question and flashed with scorn when he got a dumb answer. Yet Joe's eyes seldom showed anger and usually hinted that even as inquisitor he had his ego under control. His voice was that way too; loud but laughing, fast-talking but patient in quest of clear answers. His unaffectedness helped his strong humanity come through; bald and bearded Joe made no pretense at being a television pretty-boy. In his book, pretense and pomposity were mostly for puncturing. Until the news of his heart attack last month, some of us didn't know Joe was a judge.

Now another heart attack has taken Joe Summers' life. With many other Minnesotans, we'll find it unnatural not to watch him Friday evenings.●

NAUM AND INNA MEIMAN: A BRAVE DEDICATION

● Mr. SIMON. Mr. President, last week President Reagan announced his affirmation of a presummit meeting in Iceland with Secretary Gorbachev. This week I am introducing a proposal that asks the President to urge the Soviets to discuss human rights with Mr. Gorbachev.

Many Soviet citizens are held in the Soviet Union against their will. Captivity in the Soviet Union is a violation of the Helsinki accords. Something must be done.

Soviet citizens who have spoken out against their Government's human rights policies are brave individuals dedicated to a just cause. Mr. Orlov, just recently released from Siberia, is a perfect example. Naum and Inna Meiman are another excellent example.

Socially isolated from society, the Meimans await the opportunity to emigrate to the West. Inna is deathly ill with a cancerous tumor on her neck. After the removal of four tumors, the Soviet doctors feel there is nothing more they can do for her fifth and most recent tumor. Fortunately there is experimental treatment available for Inna in the West. Let us not have Inna die a slow and painful death.

I strongly urge the Soviet Union to allow the Meimans to emigrate to Israel.●

UNIVERSITY OF BUFFALO EARTHQUAKE RESEARCH CENTER

● Mr. D'AMATO. Mr. President, the criticism of the National Science Foundation's award of $25 million to the University of Buffalo for earthquake research is no more than "sour grapes." This award was made according to the peer review process, a funding mechanism that relies on a panel of outside scientific experts to make authoritative recommendations on the relative merit of proposals for financial support. This was the case with the University of Buffalo's award, but now there is an attempt by some to disregard the obvious merit of the University of Buffalo's proposal for an earthquake center.

If we begin to address the specifics of each proposal on the Senate floor on a project-by-project basis, there will be a limited amount of time to deal with national and international issues of scientific and technological advancement. Members of Congress have requested that peer reviewers should make decisions on grants, as was the case with the University of Buffalo's project. Now that the decision is not what some may want, however, some have decided to intervene. The California schools have received an inordinate amount of the Federal research and development funds as compared to the University of Buffalo. The small amount that Buffalo has received is insignificant when compared to the total dollars received by Stanford, Berkeley, and other California schools.

Mr. President, I ask that a table with some of the information reported by the National Science Foundation which exemplifies this point be printed in the RECORD. I question whether the California schools believe that they should be the only recipients of Federal assistance. Other universities clearly conduct meritorious research and should, therefore, share in receipt of Federal research and development dollars, whether it be concerning earthquake research or any other scientific issue.

The material follows:

FEDERAL OBLIGATION FOR RESEARCH AND DEVELOPMENT TO UNIVERSITIES AND COLLEGES

FISCAL YEAR 1984

A Report to the President and Congress, Federal Support to universities, colleges, and selected nonprofit institutions, fiscal year 1984. (January 1986)

Institutions ranked by amount received:	*Total*
3. Stanford University	$160,274,000
14. University of California Berkeley	85,852,000
16. University of Southern California	79,617,000
29. California Institute of Technology	48,589,000
78. State University of New York at Buffalo	19,270,000

Source: National Science Foundation, NSF. The total does not include Research and Development obligations to university-associated federally funded research and development Centers (FFRDC's).

Mr. President, to allege, as some have, that there were some improprieties in this award is absurd. Mr. President, I ask that a copy of a letter from the University of Buffalo, and its attachment, in response to these allegations be printed in the RECORD. I would like to read a small portion of this letter which states:

Dean Lee, Dr. Rennie and I [William Greiner, University of Buffalo, Provost] have carefully reviewed the Jennings' letter and the attachments to it. The attachments to the Jennings' letter are excerpts from Report #84-02 of the Earthquake Engineering Research Institute (E.E.R.I.) entitled Experimental Research Needs for Improving Earthquake-Resistant Design of Building, P. Jennings and R. Scholl reporter; and U.S. Strong-Motion Earthquake Instrumentation, edited by W.D. Iwan. Report 84-02 is a report of the E.E.R.I. Committee on Experimental Research. Both Dr. Jennings and Dr. Scholl reported on behalf of the E.E.R.I. Committee. Their reports are themselves distillations of material from E.E.R.I. Report 84-01, Experimental Research Needs for Improving Earthquake Resistant Design of Buildings. Report No. 84-01 is a summary of the proceedings of a workshop sponsored by NSF. The document edited by Dr. Iwan is also a report of the proceedings of a workshop sponsored by NSF. It appears that both documents have been widely circulated, and are well known to investigators in earthquake and structural engineering. Neither document represents the original work of any individual. Indeed, both reports incorporate and meld the views of many scientists and engineers. To the best of our knowledge neither document has been copyrighted. Thus, in every sense the contents of both documents are very much in the public domain.

The letter goes on to say:

Moreover, the reliance on Report 84-02 for some descriptive material in this part of the proposal is in fact acknowledged on page 5 of the SUNY-Buffalo proposal which is the page immediately following the pages which Professor Jennings implied contain improper use of material.

The letter follows:

UNIVERSITY AT BUFFALO,
STATE UNIVERSITY OF NEW YORK,
Buffalo, NY, October 1, 1986.

Hon. ALFONSE M. D'AMATO,
U.S. Senate,
Washington, DC.

DEAR SENATOR D'AMATO: I have enclosed a preliminary response from the University's Provost, Dr. William R. Greiner, to President Steven B. Sample that addresses allegations made by Dr. Peter Jennings of Cal Tech concerning possible improprieties in the State University of New York at Buffalo's (SUNY-Buffalo) proposal for the national Earthquake Engineering Research Center. In my judgment, this letter from Provost Greiner to President Sample effectively dispells the idea that any legal or ethical violations occurred in the preparation of the proposal which was submitted to the National Science Foundation.

Senator D'Amato, please feel free to share this letter with whomever you wish. We will be sending a copy to members of the various news media who request one.

I will certainly keep you informed as our investigation proceeds. Thank you for your continuing support of SUNY-Buffalo in this matter.

Sincerely,

RONALD H. STEIN,
Interim Vice President
For Sponsored Programs.

UNIVERSITY AT BUFFALO,
STATE UNIVERSITY OF NEW YORK,
Buffalo, NY, September 30, 1986.

Dr. STEVEN B. SAMPLE,
President, 501 Capen Hall,
Amherst Campus.

DEAR PRESIDENT SAMPLE: As you know, a member of the California Institute of Technology faculty, Dr. Paul Jennings, has alleged that improper use was made of published materials in the proposal from SUNY-Buffalo and its partner institutions (Cornell, Columbia, Princeton, RPI, and Lehigh) to the National Science Foundation (NSF) for the establishment of a national earthquake engineering research laboratory. Specifically, Dr. Jennings alleges that in the introductory narrative of the SUNY proposal, something less than one page of the text quotes or paraphrases from a report edited by him, but without acknowledgment as to source. Dr. Jennings also alleges that one introductory paragraph in

another section of the SUNY proposal quotes or paraphrases from a document authored by Professor W. D. Iwan, once again without acknowledgment of the source.

Dr. Jennings' allegations were made in a letter to Mr. Erich Bloch, Director of NSF. That letter and its attachments were forwarded to you by Dr. Richard S. Nicholson, Assistant Director of NSF, who has been handling the earthquake laboratory matter for the Foundation. You in turn asked that I look into the matter and prepare a response.

All of us, of course, take very seriously any allegations of impropriety regarding unattributed use of another's work. Accordingly, I have initiated a process for fully examining Dr. Jennings' allegations. That examination will be conducted by me and Dr. Donald Rennie, Vice Provost for Research and Graduate Education, over the next week to ten days. Our first step will be to review the matter with Dr. Robert Ketter, Professor of Civil Engineering, who is the lead investigator on the earthquake proposal. Since Dr. Ketter is attending a scientific conference overseas, and will not return to Buffalo until this coming Friday, October 3, we have not been able to take this essential first step in our process.

We have, however, carried out a preliminary review, and recent developments suggest that an interim progress report should be made at this time. The need for this interim report results from the fact that Dr. Jennings' letter has been shared with members of the California Congressional delegation, notably Senator Peter Wilson, and members of the press. As a result, Dr. Ketter and his co-investigators and SUNY-Buffalo and our partner institutions are being subjected to a potential trial by press and legislative debate. In fairness to all, some statement for the record should be made now, even though a full examination and report will not be available until after Dr. Ketter's return.

I have discussed this matter with Dean George Lee of our Faculty of Engineering. Dean Lee is a civil engineer. With Dr. Ketter and Dr. Larry Soong, of our Faculty, Dr. Lee was a prime sponsor of the SUNY-Buffalo proposal. Though not directly involved in writing the proposal, he is very familiar with the participants and the process followed by them in preparing the proposal. As he describes it, the proposal was prepared as a joint effort of five principal co-investigators, aided by others. Two of those principal investigators reside in Buffalo, while the other three are faculty members at our partner institutions, as are many of the other participants in the consortium of scientists and engineers led by Dr. Ketter. The final proposal was edited by Dr. Ketter and Dr. Soong, following a collaborative process involving many participants and extending over a span of some six to eight weeks in December of 1985 and January of 1986. I mention this as a contextual factor because the short time span and the dispersed locations of the several participants in the process made the preparation of the proposal to NSF a particularly hectic exercise.

Dean Lee, Dr. Rennie and I have carefully reviewed the Jennings' letter and the attachments to it. The attachments to the Jennings' letter are excerpts from Report #84-02 of the Earthquake Engineering Research Institute (E.E.R.I.) entitled Experimental Research Needs for Improving Earthquake-Resistant Design of Buildings, P. Jennings and R. Scholl reporters; and U.S. Strong-Motion Earthquake Instrumentation, edited by W.D. Iwan. Report 84-02 is a report of the E.E.R.I. Committee on Experimental Research. Both Dr. Jennings and Dr. Scholl reported on behalf of the E.E.R.I. Committee. Their reports are themselves distillations of material from E.E.R.I. Report 84-01, Experimental Research Needs for Improving Earthquake Resistant Design of Buildings. Report No. 84-01 is a summary of the proceedings of a workshop sponsored by NSF. The document edited by Dr. Iwan is also a report of the proceedings of a workshop sponsored by NSF. It appears that both documents have been widely circulated, and are well known to investigators in earthquake and structural engineering. Neither document represents the original work of any individual. Indeed, both reports incorporate and meld the views of many scientists and engineers. To the best of our knowledge neither document has been copyrighted. Thus, in every sense the contents of both documents are very much in the public domain.

Professor Jennings has alleged that "copying" of excerpts from these reports was done in the process of preparing the SUNY-Buffalo proposal. The use of the term "copying" by Dr. Jennings implies that, in the process of preparing the SUNY-Buffalo proposal, all or some of the co-investigators, or assistants working for them, reproduced portions of the two workshop reports and then knowingly inserted those excerpts in the proposal to NSF without attribution. We have no way to fully test that proposition until we talk with Dr. Ketter. What is clear to us is that at the bottom of page 3 and top of page 4 of the proposal to NSF, language from a few paragraphs from Report 84-02 is either repeated verbatim or summarized in other words. We surmise, as does Professor Jennings, that this occurred as a result of the "cut and paste" process so common in the preparation of grant and contract proposals. It appears that reliance on such published sources is fair use material and raises no issue of law, such as copyright violation.

What is much more important, however, is the ethical question raised by unacknowledged use of such material derived from a prior publication. In this instance we find no evidence whatsoever to believe that any violation of ethical principles has occurred. The repetition and editing of a very brief excerpt from Report 84-02 appears in the general introductory portions of the SUNY-Buffalo proposal to NSF, and comprises a very general description of widely-known methods for testing structural resistance to earthquakes. It is not, by any means, original research, and it has no bearing on the substance of the proposal. Put another way, the passages in question are part of the introductory overview, the so-called "boiler plate", which sets the stage for the substantive portions of the proposal. Moreover, the reliance on Report 84-02 for some descriptive material in this part of the proposal is in fact acknowledged on page 5 of the SUNY-Buffalo proposal which is the page immediately following the pages which Professor Jennings implied contain improper use of material. The material in question constitutes less than one page of the text (i.e., less that 2%) of the 53-page SUNY-Buffalo proposal. Finally, the material in question is used in the context of a grant proposal, a very special type of document, in which liberal use of descriptive materials from general sources is quite common, and in which extensive use of footnotes, bibliographies, and other such accoutrements of scholarly publications are not the norm.

In light of all this, our preliminary conclusion is that although a small amount of material from Report 84-02 appears to have been repeated or rephrased without attribution, it would be extremely imprudent to infer that this occurred knowingly, deliberately, or with any intent to mislead. The much more reasonable conclusion is that, at worst, an oversight occurred, and that although acknowledgment as to source would have been appropriate, that omission was in all probability completely inadvertent, especially in light of the fact that acknowledgment of Report 84-02 was made on page 5 of the proposal.

Professor Jennings also alleges that on page 12 of the SUNY proposal, material from workshop proceedings edited by Dr. Iwan is repeated or rephrased. The material in issue here consists of one paragraph comprising nine lines of text. That paragraph tracks very closely the text of an introductory paragraph on the first page of the NSF workshop proceedings edited by Dr. Iwan. As in the case of the material related to Report 84-02, some attribution to source would have been appropriate here, assuming that the editor of the proposal was in fact aware of the source to which that material relates. In this instance we once again see a very small bit of well-known introductory "boiler plate" being used without attribution as to source. As in the prior instance, the scope and purpose of the usage, i.e., brief and introductory, is not sufficient to support any inference of a violation of ethical principles. Certainly no reasonable person could conclude any improper intent on the part of the co-investigators. At best, one might conclude that an oversight occurred in another of the "cut and paste" elements common to so many grant and contract proposals.

While our preliminary conclusion is that there is no evidence whatsoever to indicate that any violation of legal or ethical principles took place, we will certainly weigh these matters very carefully with the co-investigators after Dr. Ketter returns to Buffalo. In the meantime, Dean Lee, Dr. Rennie and I all hope that the disappointment suffered by some of the other competitors for the earthquake engineering research grant will not lead to rash charges and innuendos that call into question the scientific integrity of the SUNY-Buffalo proposal or its co-investigators. Propriety should have called for review of this matter through the normal procedures of NSF and the University. Unfortunately emotions seem to be running high at this moment, and good judgment seems to have been overborne. We at SUNY-Buffalo will not participate in that unseemly exchange. We will proceed to do a careful and thorough examination of the matter, and we will present to you a full report of our findings. We take very seriously any allegations of violations of the ethical standards of the academy. So does the National Science Foundation and its staff. We will work fully and openly with the Foundation staff to resolve the issues raised by Dr. Jennings' letter and Senator Wilson's attempt to use those allegations to defeat the legitimate results of the NSF peer review process which awarded the national earthquake engineering research grant to SUNY-Buffalo.

Sincerely yours,

WILLIAM H. GREINER,
University Provost.

Mr. President, the University of Buffalo proposal was based on merit. Their research focuses on earthquake hazard mitigation in the Eastern United States; it assesses location needs for special equipment and facilities to accelerate our country's ability to mitigate the loss of property and lives which can result from severe earthquakes. The center proposes an assessment of ground motion, laboratory and field experiments, innovative computing, as well as societal and educational issues.

The center would cost $50 million: $25 million from NSF—$5 million each year for 5 years—with a dollar-for-dollar match, or $25 million, from other sources. Applications were submitted by 6 institutions including one group from California—including Stanford, Berkeley, California Institute of Technology, and Southern California. The University of Buffalo's application for the Earthquake Hazard Mitigation Program involves the collaboration of six other institutions. These collaborators include Columbia University, Cornell University, Lamont-Doherty Geological Observatory of Palisades New York, Princeton University, City College of New York, and Lehigh University in Bethlehem, Pennsylvania.

Mr. President, the Chinese Government is now building facilities patterned after Buffalo's laboratory. The University of Buffalo's facility, dedicated in 1983, is a 6,800-square-foot laboratory that is the most up-to-date and versatile facility of its kind in the United States. Its equipment, including a state-of-the-art shaking table with many pulsing options, modern sensing and data analysis equipment, materials testing machines, and a huge "strong floor" for testing many full-size products, components, and systems, makes it a model facility.

The National Science Foundation's press release of the award to the University of Buffalo stated:

Although many persons think of earthquakes as primarily a west coast problem, they are in fact, a national problem. Thirty-nine of the fifty States are subject to moderate-to-major earthquakes each year, making them a prime concern of planners. This country's worst trembler occurred in New Madrid, Missouri, in 1811-1812. Another major earthquake occured in Charleston, South Carolina, in 1886, resulting in substantial damage.

Thus, contrary to popular belief, earthquakes are not limited to the west coast.

The National Science Foundation also stated that:

In all, six proposals were received. The method of evaluation used to consider the proposals was to assemble a Blue Ribbon Panel of earthquake and engineering systems experts to review the proposals and provide the Foundation with their evaluation and review, which included two site visits, the panel recommended that the proposal submitted by the University of Buffalo, State University of New York, be supported.

Mr. President, I ask that a copy of the National Science Foundation's Press Release be printed in the RECORD.

The material follows:

NATIONAL SCIENCE BOARD APPROVES ESTABLISHMENT OF EARTHQUAKE ENGINEERING RESEARCH CENTER

The National Science Board (NSB) today (Aug. 15) approved an award to the State University of New York at Buffalo to establish this country's first federally funded Earthquake Engineering Research Center.

The NSB is the policymaking body of the National Science Foundation (NSF) which was authorized to make the $25 million grant over five years. Recommended funding for fiscal year 1986 is $384,000; subsequent support is predicated on the usual NSF criteria of availability of funds and satisfactory progress of the project.

Although the award is to Buffalo, which will serve as a focal point for the center's activities, the new facility will involve the coordinated efforts of the City College of New York, Columbia University, Cornell University, Lamont-Doherty Geological Observatory, Lehigh University, Princeton University and Rensselaer Polytechnic Institute. The center will be directed by Dr. Robert L. Ketter, Leading Professor of Engineering and Applied Sciences.

Matching funds of $5 million for the first year will be supplied by the Urban Development Corporation of the State of New York. This state-government partnership will promote improved cooperation among universities, government and industry.

The center will conduct research to improve basic knowledge about earthquakes, engineering practice and the implementation of seismic hazard mitigation procedures to minimize the loss of lives and property. The center also will be a national focal point for earthquake engineering research and enhance the international competitiveness of the U.S.

The NSF said the intention of the center is not to cover the entire spectrum of earthquake engineering research, but to focus on major thrusts at key problems that have potential breakthroughs that are not being addressed adequately through the agency's unsolicited proposal system.

Major areas of study initially will be directed toward buildings and other structures built before the need to mitigate the effects of earthquakes was realized. Emphasis will be given to a systems approach in which earthquake requirements are integrated with consideration of other hazards such as high winds.

Although many persons think of earthquakes as primarily a West Coast problem, they are, in fact, a national problem. Thirty-nine of the 50 states are subject to moderate-to-major earthquakes each year, making them a prime concern of planners. This country's worst temblor occurred in New Madrid, Missouri, in 1811-1812. Another major earthquake occurred in Charleston, South Carolina, in 1886, resulting in substantial damage.

In addition to their primary function, institutions involved with the new center will develop graduate courses in the area of earthquake hazard mitigation. Extensive technology transfer activities will be undertaken on a nation-wide basis and coordinated with existing national activities.

Mr. President, statements made to the press from supporters of the California application suggested that the decision should be based on location. Mr. President, I ask that a copy of an article printed in the Washington Post on April 18, 1986, be printed in the RECORD.

The article follows:

CALIFORNIA AT CENTER OF RUMBLE OVER U.S. EARTHQUAKE GRANT

(By Jay Mathews)

LOS ANGELES, April 18.—Eighty years ago today, a loud rumble through the hills of Chinatown announced one of the great disasters of the century: the great San Francisco earthquake.

Today, a similar noise is echoing through the offices of California's most distinguished earthquake engineers at the news that Illinois, Michigan or even New York might soon snatch a $50 million research project they thought was right under their seismically sensitive noses.

When the National Science Foundation last year announced a major matching grant for the establishment of a new center for earthquake engineering, California's chance seemed as certain as slippage on the San Andreas Fault. The NSF would put up $25 million over five years, and the winner would match that.

As Haresh Shah, chairman of Stanford University's civil engineering department, put it, "The world's greatest engineers are located here, the world's finest facilities are located here." He did not need to mention that California faces an earthquake threat greater than in any state east of the Sierras.

But California also has some of the country's most tenacious opponents of government spending. One of them, former U.S. Senate candidate Paul Gann, had managed to pass a statewide initiative limiting yearly increases in state spending. The earthquake engineers needed a relatively modest $5 million a year for five years to match the grant, but the Gann initiative jeopardizes all proposed new programs.

Joined by engineers and scientists from the four major universities involved—the University of California at Berkeley, the California Institute of Technology, the University of Southern California and Stanford—Shah is trying to set off a political trembler of his own.

New York, where earthquakes are as common as quiet lunch hours on fifth Avenue, has authorized $10 million in matching funds to back its grant application. The California scientists tremble in rage at their state's seeming nonchalance.

"After the Mexican earthquake, they were all jumping up and down saying 'Are we prepared?' The next big one here is going to make Mexico look like a Sunday afternoon tea party," Shah said. "It would take five years just to bring New York to half the level of research facilities we already have in California."

In a statement issued Thursday, earthquake engineers from the four California universities noted that the Federal Emergency Management Agency has forecast the strong chance of a magnitude 7.5 earthquake that could cause 23,000 deaths, 91,000 injuries and $69 billion in property loss in the Long Beach-Los Angeles area. Appropriate earthquake engineering research could reduce these potential losses by 75 percent in the next decade, the statement said, but loss of the grant would mean that about 30

percent of federal funding for this work would go elsewhere.

"It would be a tragic misuse of scarce state and national funds to have the center go anywhere but California," the joint statement said.

This argument has inspired few tears at the State University of New York at Buffalo, leader of an effort by several northeastern universities to share in the federal grant. George Lee, dean of engineering and applied sciences, said, "If we are talking about past accomplishments, Berkeley has been the leader."

But he added that his school's proposal should be judged on merit. Figuring how to make buildings withstand quakes requires good minds and laboratories, but does not require "living in an earthquake zone," he said.

University of Michigan civil engineering professor Robert Hanson agreed. He has university and private financial support for a proposal he said he thinks matches anything in the field. W.J. Hall, professor of civil engineering at the University of Illinois, said his proposal includes cooperation from universities as far away as the Massachusetts Institute of Technology.

Informed of the anguished rumblings from California, the NSF's earthquake hazards mitigation program director. A.J. Eggenberger, declined to comment. He said the foundation hoped that a center pooling the efforts of many researchers would yield faster, better results than individual projects. Eggenberger said he has six applications and hopes to announce a winner by this summer.

The California Senate education committee passed a bill Thursday authorizing the $5 million for the program's first year, but committee consultant Linda Bond noted that the state budget appears to be $200 million above the Gann limits and must be cut back. Under the Gann formula, there is little room for new programs in a low-inflation year.

The earthquake engineers are lobbying hard, and Shah noted that one important actor in California politics has yet to be heard from. "If there is a major earthquake in the Bay Area or Los Angeles in the next month or two," he said, "we will have absolutely no trouble getting the money."

Mr. President, this article exemplies this point. For example, without discussing the merits of either proposal, this article states:

When the National Science Foundation last year announced a major matching grant for the establishment of a new center for earthquake engineering, California's chance seemed as certain as slippage in the San Andreas Fault.

This article goes on to say that—

It would be a tragic misuse of scarce state and national funds to have the center go anywhere but California.

The University of Buffalo responded by saying: "If we are talking about past accomplishments, Berkeley has been the leader," but added that Buffalo's proposal should be based on merit. I would like to highlight an additional point made by the University of Buffalo, and I quote:

Figuring out how to make buildings withstand quakes requires good minds and good laboratories, but does not require "living in an earthquake zone."

Mr. President, the statements presently being made criticizing the award to the University of Buffalo are inappropriate and outrageous. Therefore, I urge my colleagues to reject this sour grapes, sore loser, reaction to the wisdom of our science agency's blue ribbon panel.●

HONORING CASIMIR PULASKI

● Mr. RIEGLE. Mr. President, every October 11, we honor the memory of Casimir Pulaski, the Polish-American hero of our Revolutionary War who died on that date in 1779.

As a young man Pulaski fought to free Poland from the domination of Czarist Russia. During that struggle, he demonstrated the kind of courage and commitment to freedom that he was later to show in our own Nation's struggle for independence.

Although his unsuccessful efforts to free Poland from the Czar's grasp forced Pulaski to flee to Western Europe, his undaunted courage and zeal inspired the Polish people and helped preserve their spirit.

Like other political activists of the time, Pulaski was not content to simply wait in exile. While in Paris, he met Benjamin Franklin who recognized Pulaski's talent for leadership and willingness to fight for freedom. In 1777, with Franklin's help, Pulaski traveled to America, where George Washington recommended to the Continental Congress that he be given authority to organize the cavalry. And so Pulaski, a Polish-American, became the "Father of our Cavalry."

As a brigadier general, Pulaski went on to organize his own independent corps of cavalry and light infantry which became known as Pulaski's Legion. As the head of this fighting unit, he distinguished himself in many important battles of our War of Independence.

Tragically, the battle in Savannah was to be his last. After leading a full cavalry charge into an opening in the enemy's works, Pulaski fell mortally wounded, and died 2 days later at the age of 31.

Although Pulaski had been in America only 2 years at the time of his death, he will forever be remembered as one of this country's greatest heroes. His tragic death did not erase his deeds from the memory of future generations, either in the Old World or the New. His dedication and love for the cause of freedom were best revealed when he said:

I came here to sacrifice everything for the independence of America. I wish to live in a free country, and before I settle down here I wish to fight for that country's freedom.

Each year, on Pulaski Day, Americans honor the memory of this soldier of liberty, the undaunted warrior who sacrificed his life in the cause of American independence. The many monuments which have been erected in his memory around the United States are a tribute to his important contributions. In my own State of Michigan, the Polish community has erected a monument in downtown Detroit in thankful acknowledgment of his sacrifices.

Pulaski was one in a long line of outstanding Polish Americans who have made important contributions to our Nation. The millions of Americans of Polish descent are living symbols of the commitment to freedom and liberty which Pulaski represented. Their efforts are felt not only in this country, but in the homeland as well.

There, despite ruthless oppression from both Nazi and Communist tyranny, the Polish people have not lost faith in the freedom to which Casimir Pulaski dedicated his life. Today, in Poland, the struggle for freedom continues so Solidarity activists work to keep the banned movement alive. Critical to their success is the continued support we in the West lend to their effort. The significant work of the Polish-American community in that effort is a source of inspiration and pride to all Americans.

And so, as we honor Casimir Pulaski, we must redouble our commitment to actively support the struggle for freedom, not only in Poland, but in all the captive nations of the world.●

TRIBUTE TO GLENN CARLSON

● Mr. DURENBERGER. Mr. President, few individuals have contributed more to their respective communities during their working lives than has Glenn Carlson, who recently retired as the president of the St. Cloud Area Chamber of Commerce.

As a native of the St. Cloud area, I have known Glenn for many years, and I know that he is regarded as one of the outstanding chamber of commerce executives in cities his size in the entire country.

Under Glenn's leadership, the St. Cloud Area Chamber of Commerce has been a positive force for businesses and for the general community interest. In more than three decades with the chamber, Glenn has seen St. Cloud grow and develop into one of America's most liveable cities.

Mr. President, because of the outstanding contributions made by Glenn Carlson during his career, I ask that an article on Glenn from the St. Cloud Daily Times be printed at this point in the RECORD.

The article follows:

[From the St. Cloud (MN) Daily Times, Aug. 28, 1986]

CARLSON ENDS REIGN OF QUIET LEADERSHIP

(By Mike Kennedy)

A stocky man wearing an overcoat goes unnoticed as he wheels a cart of boxes into

the St. Cloud Area Chamber of Commerce office.

People standing at the counter page through magazines and brochures, and secretaries go on typing and answering the phone.

The man leans over a secretary's shoulder and asks where she wants the boxes. She doesn't bother to look up from her typewriter, but directs him to put them in a back room.

Glenn Carlson doesn't mind the lack of attention. He'd rather have it that way. As president of the St. Cloud Area Chamber of Commerce for the past 33 years, Carlson has thrived on avoiding the limelight.

But he will command center stage tonight during his retirement dinner at the Del-Win Ballroom in St. Joseph, where an expected crowd of 600 will show their appreciation for Carlson's leadership in the area's largest business association.

During Carlson's tenure, the chamber has grown from 223 members and $19,000 in annual membership dues to 1,050 members and $230,000 in annual dues.

Carlson, 65, is proud of the chamber's growth, but shrugs off personal accolades. He credits his staff and chamber members for much of the success.

"The big thing is to get people involved, get their interest and get them to take leadership positions. There's no need for my name in the paper all the time—no need for my picture in the paper all the time," he said during a recent interview.

Talk to Carlson about leaving behind the only job he ever had in St. Cloud and he'll play down the difficulty. But those who work with him know better.

"It's hard for him to leave. This is his baby, and he's been here a long time," said Lori Jurgens, interim vice president of St. Cloud Convention & Visitors Bureau, a division of the chamber.

Carson thinks of his position as more than a job. "I remember when I started here. Glenn came up to me and said, 'Welcome to our family,'" Jurgens said.

"He's real concerned about the people who work for him. Everyone around here thinks of him as a father figure."

Carlson, a native of Thief River Falls, shows the same concern for area businesses. As a newcomer to St. Cloud in 1953, Carlson wasted no time cultivating business growth.

He began writing letters to industries across the country, urging them to blaze a trail to St. Cloud. After all, St. Cloud is a debt-free city, he proudly told them.

Industry owners declined Carlson's invitations, telling him that being debt-free means being dormant. Having a debt means a city has borrowed money to improve streets, sewers and other necessities.

Undaunted, Carlson set out to convince the public to approve a bond issue for a new water filtration plant and the city's first wastewater treatment plant. Although it had been defeated in 1950, the issue passed overwhelmingly in 1953.

With Carlson's help, St. Cloud Opportunities formed in 1955. The nonprofit chamber spinoff began selling $250 bonds in a quest to raise $50,000 to buy farm land and start St. Cloud's first industrial park across from the Veterans Administration Medical Center.

Fingerhut Corp. moved from Princeton to St. Cloud, and the industrial park was on its way to becoming a full house. St. Cloud Opportunities opened a second industrial park in 1971.

"It was one of the highlights of my career here," Carlson said.

The area has lost some of its industrial power since those days, with the closing of Brown Boveri Turbomachinery Inc., Burlington Northern's Waite Park car shop and Landy Packing Co.

But existing industry remains strong, and the area has evolved into a retail powerhouse, with retail sales of more than $1 billion.

Despite all its successes, the business community remains splintered. Crossroads Shopping Center and downtown merchants, for instance, for years have played a tug of war for business, with downtown coming out on the short end.

Being chamber president has meant taking some unpopular stands, Carlson said.

The chamber's board of directors supported the construction of U.S. Highway 10, but some business owners along Lincoln Avenue protested because they held claim to the city's main north-south traffic artery.

Some canceled their chamber memberships, but later rejoined.

"I feel badly that people get divided," Carlson said. "It separates good friendships temporarily. It usually doesn't last."

Juggling the interests of such a diverse business community hasn't left Carlson without scars. He suffered a heart attack two years ago, but the incoming chamber president, Tom Moore, stepped in and proved himself, Carlson said.

Carlson hasn't let the heart attack slow him down. He's been known to snowmobile into work during blizzards and man the chamber office by himself.

He has a reputation for not being above stuffing envelopes, answering phones or running the office copy machine.

Going into business in Thief River Falls at 16 as agency manager of the Minneapolis Star taught him how to work with people, Carlson said.

He also published a mimeographed sheet of local news, comics and advertisements that he delivered to households twice a week. He later was an agent for State Farm Mutual Insurance Co. before coming to St. Cloud.

It may be too late to start a new career, but Carlson sometimes thinks about those he's passed up, including a political career.

Rep. Harold Hagen, a former 9th District Republican congressman, asked Carlson to run his Washington office in the late 1940s.

Party officials were looking for someone to succeed Hagen after retirement, and Carlson appeared to be a good choice. He went to Washington for a week, but he and his wife, Blanche, decided against the move.

Carlson delved into politics of sorts when he became chamber president. Although Carlson is not known for being a high-profile president, he ranked as the city's second most influential person in a 1970 survey by former Mayor Ed Henry.

Even in retirement, Carlson promises, he'll be involved in chamber activities. He is set to join the chamber after he finishes his last day of work tomorrow.

Said Carlson: "I leave here with mixed emotions. My mind wants to do many things, but my body won't support it. There's still so much to do."●

ADDITIONAL BENEFITS FOR FORMER PRISONERS OF WAR

● Mr. HEINZ. Mr. President, I am pleased that the Senate has passed S. 2422, and I support this important piece of legislation. I especially want to complement the distinguished chairman of the Senate Veterans' Committee for his excellent work in developing this veterans health package.

In particular, I had a concern that S. 2422, as reported by the Senate Veterans' Affairs Committee, included only one additional benefit for former prisoners of war: organic residuals of frostbite. At that time, I made it known that I planned to offer an amendment during consideration of S. 2422 to add three additional benefits for former prisoners of war: presumption for traumatic arthritis, spastic colon, and a reduction in the time a prisoner would have to have been incarcerated before receiving dental benefits.

Presumptions of service-connection for former POW's are much needed because America's enemies were not kind enough to keep health and medical records for our servicemen who were made prisoners of war. When hundreds of thousands of POW's were freed from Hitler's prison camps, they did not return with detailed records of their medical care while they were incarcerated. However, many who were taken prisoner in the European Theater of World War II and Korea did return with frostbitten hands and feet, broken bones, and malnutrition. Because they have no documentation, when valorous former servicemen present themselves at the Veterans' Administration in desperate need of care, they are unable to prove that their injury is service-related and are unable to receive priority care in the V.A. hospital system.

This is a true injustice and I am pleased that S. 2422 will allow an additional presumption for former POW's in three cases: frostbite, traumatic arthritis, and spastic colon. Under the Senate Veterans' Committee bill as reported to the Senate, POW's who suffered frostbite during the blizzards of the Battle of the Bulge, soldiers who suffered beatings of the hands of captors and now feels the pain of traumatic arthritis, or soldiers who contracted spastic colon as a result of malnutrition or abuse, will qualify for VA treatment.

These benefits have been a long time in coming for POW's, and I am pleased that the chairman of the Senate Veterans' Committee has graciously decided to address the concerns I had with the original committee bill. With passage of S. 2422, POW's have the additional benefits they deserve to compensate for their special injuries and their special contribution to our Nation.●

ABORTION AND INFORMED CONSENT: LOUISIANA

● Mr. HUMPHREY. Mr. President, Judy in Louisiana insists that in-

formed consent for abortion procedures is a minimum requirement of justice. Indeed, I hope my colleagues are beginning to realize that thousands of women have not been informed about the various effects of abortion, and they need to be protected.

Why didn't anyone tell Judy that she could have future problems with carrying a baby to term? This is a commonly known consequence of abortion. Why couldn't someone have warned her that there might be other physical and emotional problems? The answer to these questions is that abortion is a lucrative industry.

I hope my colleagues will join me in cosponsoring my bill which would provide protection for women who face an unplanned pregnancy. I especially hope my colleagues in Louisiana will note the concern of their constituent and seriously consider S. 2791.

JUNE 5, 1986.

DEAR SENATOR HUMPHREY: It is with sincere urgency that I write this letter expressing my support of your "informed consent" for abortions legislation.

Many are the repercussions following abortion, but few are the services to counsel women in crisis pregnancy situations. After my abortion in 1976, I experienced seven and one half years of spiritual, emotional and physical side effects, including the premature birth of my son James Michael, four years after my abortion. He died when he was 23 days old. Premature births of subsequent pregnancies is a growing concern of women who unknowingly choose abortion as an alternative in a crisis pregnancy. I use the word "unknowingly" because I was not counselled at the time of my abortion that this choice might affect my ability to carry later pregnancies to term. Nor was I forewarned that I would be under the doctor's care for three years to heal atypical vaginal cells following that abortion, nor that I would struggle for seven and one half years with fears and anxieties to the point of becoming agoraphobic, an emotional condition that not only put a strain on my marriage but also contributed to its eventual failure.

Just as the surgeon general warns that cigarette smoking could be dangerous to your health, so also should women be forewarned that the list of complications related to abortion is growing and be provided with ample counsel concerning these complications. "Informed consent" is not only necessary for a women to make an educated decision, but antecedent for justice to prevail on the part of women in the abortion arena.

Sincerely yours,

JUDY A. OULLIBER,
Louisiana.●

H.R. 5313, THE HUD-INDEPENDENT AGENCIES APPROPRIATIONS BILL, 1987

● Mr. DOMENICI. Mr. President, I would like to take a few moments to bring the Senate up-to-date on fiscal year 1987 appropriations action. First of all, I commend the distinguished chairman and ranking member of the Senate Appropriations Committee for their diligence and dedication to completing action on the fiscal year 1987 appropriation bills. The House-Senate conference on the continuing resolution will convene this afternoon, and I know the members of the committee will do their utmost to get a bill that can be signed by the President.

I would also like to have printed in the RECORD tables on the Senate version of the HUD-independent agencies appropriations bill, which passed the Senate on October 2. That bill provides $53.7 billion in budget authority and $30.9 billion in outlays for fiscal year 1987 for the activities of the Department of Housing and Urban Development, the Veterans' Administration, the Environmental Protection Agency, the National Aeronautics and Space Administration, the National Science Foundation, and other independent agencies. With outlays from prior-year budget authority and possible later requirements taken into account, the bill is $0.4 billion in budget authority under the subcommittee's 302(b) allocation and generally consistent with the subcommittee's 302(b) allocation and generally consistent with the subcommittee's 302(b) outlay allocation. I also ask that a table showing the status of appropriations action to date be printed in the RECORD.

Mr. President, the Senate has come a long way toward meeting the goals of the fiscal year 1987 budget resolution and the Balanced Budget Act. I hope we can work together to maintain this momentum by completing reconciliation at the earliest possible time, by enacting the tax reform bill, and by developing a continuing resolution that the President can sign. With these actions, I am confident the Congress can avoid an across-the-board sequester to meet its deficit reduction mandate.

The material requested to be printed in the RECORD follows:

SPENDING TOTALS—SENATE-PASSED BILL

[In billions of dollars]

	Fiscal year 1987	
	Budget authority	Outlays
Outlays from prior-year budget authority and other actions completed	0.1	25.0
H.R. 5313, as passed by the Senate	53.7	30.9
Later requirements: Veterans compensation COLA	(1)	.2
Adjustment to conform mandatory programs to budget resolution assumptions	+.1	+.3
Subcommittee total	53.9	56.4
Senate subcommittee 302(b) allocation	54.3	56.4
House-passed bill	54.2	56.1
President's request	46.7	56.0
Subcommittee total compared to:		
Subcommittee 302(b) allocation	−.4	+(1)
House-passed bill	−.3	+.3
President's request	+7.1	+.5

[1] Less than $50,000,000.

Note.—Details may not add to totals due to rounding.

CREDIT TOTALS—SENATE-PASSED BILL

[In billions of dollars]

	Fiscal year 1987	
	Direct loans	Loan guarantees
Obligations from prior-year commitments	2.6	
H.R. 5313, as passed by the Senate	.9	74.8
Subcommittee total	3.5	74.8
Senate subcommittee 302(b) allocation	3.45	49.9
House-passed level	3.5	49.9
President's request	2.8	56.0
Subcommittee total compared to:		
Senate subcommittee 302(b) allocation	+(1)	+24.9
House-passed level		+24.9
President's request	+.7	+18.8

[1] Less than $50,000,000.

Note.—Details may not add to totals due to rounding.

STATUS OF APPROPRIATIONS BILL IN THE SENATE

[in billions of dollars]

Subcommittee	Appropriations Committee's 302(b) allocation		Adjusted bill totals [1]		Bill compared to allocation		Bill status
	Budget authority	Outlays	Budget authority	Outlays	Budget authority	Outlays	
Agriculture	31.3	24.1	31.3	24.1	−(2)	+(2)	Reported.
Commerce-Justice	12.1	12.3	11.7	12.3	−.4	−(2)	Do.
Defense	227.1	264.5	272.5	264.5	−4.6	−(2)	Do.
Deficiencies and Supplementals	.8	.1			−.8	−.1	
District of Columbia	.6	.6	.6	.6	−(2)	−(2)	Passed.
Energy-Water	14.5	14.9	14.5	14.9	+(2)	+(2)	Reported.
Foreign Operations	13.0	10.8	13.0	10.8	+(2)	+(2)	Do.
HUD-Independent	54.3	56.4	53.9	56.4	−.4	+(2)	Passed.
Interior	7.8	8.8	7.7	8.8	−.1	−(2)	Do.
Labor-HHS	114.0	118.0	113.6	117.9	−.4	−.1	Conference.
Legislative Branch	1.7	1.7	1.6	1.6	−.1	−.1	Do.
Military Construction	8.2	7.9	8.2	7.9	+(2)	+(2)	Passed.
Transportation	10.6	26.9	10.2	26.9	−.4	−(2)	Do.
Treasury-Postal Service	13.3	13.4	13.3	13.4	−(2)	+(2)	Reported.
Total, Appropriations Committee	559.3	560.4	552.2	560.1	−7.1	−.3	

[1] In addition to the bill, includes outlays from budget authority enacted in prior years, possible later requirements, adjustments to conform mandatory items to budget ressolution level, and other adjustments.
[2] Less than $50,000,000.

Note.—Details may not add to totals due to rounding.
Source: Prepared by Senate Budget Committee staff.●

BUDGET SCOREKEEPING REPORT

● Mr. DOMENICI. Mr. President, I hereby submit to the Senate the budget scorekeeping report for this week, prepared by the Congressional Budget Office in response to section 308(b) of the Congressional Budget Act of 1974, as amended. This report also serves as the scorekeeping report for the purposes of section 311 of the Budget Act.

The material follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 6, 1986.

Hon. PETE V. DOMENICI,
Chairman, Committee on the Budget, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The attached report shows the effects of Congressional action on the budget for fiscal years 1986 and 1987. The estimated totals of budget authority, outlays, and revenues for each fiscal year are compared to the appropriate or recommended levels contained in the most recent budget resolutions, S. Con. Res. 32 for fiscal year 1986, and S. Con. Res. 120 for fiscal year 1987. This report meets the requirements for Senate scorekeeping of Section 5 of S. Con. Res. 32 and is current through October 3, 1986. The report is submitted under Section 308(b) and in aid of Section 311 of the Congressional Budget Act, as amended.

Since my last report Congress has completed action on H.R. 5316, the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986, changing budget authority and outlay estimates for 1987.

This is my final report for fiscal year 1986.

With best wishes,

Sincerely,

EDWARD GRAMLICH
(For Rudolph G. Penner).

CBO WEEKLY SCOREKEEPING REPORT FOR THE U.S. SENATE, 99TH CONG., 2D SESS., AS OF OCT. 3, 1986

[In billions of dollars]

	Current level [1]	Budget resolution S. Con. Res. 32	Current level +/− resolution
FISCAL YEAR 1986			
Budget authority	1,053.0	1,069.7	−16.7
Outlays	980.0	967.6	12.4
Revenues	778.5	795.7	−17.2
Debt subject to limit	2,111.0	[2] 2,078.7	32.3
FISCAL YEAR 1987			
Budget authority	634.0	1,093.4	−459.4
Outlays	734.5	995.0	−260.5
Revenues	857.1	852.4	4.7
Debt subject to limit	2,111.0	[2] 2,322.8	−211.8
Direct loan obligations	20.4	34.6	−14.1
Guaranteed loan commitments	33.1	100.8	−67.7

[1] The current level represents the estimated revenue and direct spending effects (budget authority and outlays) of all legislation that Congress has enacted in this or previous sessions or sent to the President for his approval. In addition, estimates are included of the direct spending effects for all entitlement or other programs requiring annual appropriations under current law even though the appropriations have not been made. The current level of debt subject to limit reflects the latest U.S. Treasury information on public debt transactions.

[2] The current statutory debt limit is $2,111 billion.

SUPPORTING DETAIL FOR CBO WEEKLY SCOREKEEPING REPORT, U.S. SENATE, 99TH CONG., 2D SESS., AS OF OCT. 3, 1986

[In millions of dollars]

	Budget authority	Outlays	Revenues
FISCAL YEAR 1986			
I. Enacted in previous sessions:			
Revenues			777,794
Permanent appropriations and trust funds	723,461	629,772	
Other appropriations	525,778	544,947	
Offsetting receipts	−188,561	−188,561	
Total, enacted in previous sessions	1,060,697	986,159	777,795
II. Enacted this session:			
Commodity Credit Corporation urgent supplemental appropriation (Public Law 99–243)			
Federal Employees Benefits Improvement Act of 1986 (Public Law 99–251)		4	
VA home loan guarantee amendments (Public Law 99–255)		−51	
Omnibus Budget Reconciliation Act 1986 (Public Law 99–272)	−4,259	−6,001	765
Department of Agriculture urgent supplemental, 1986 (Public Law 99–263)			
Advance to hazardous substance response trust fund (Public Law 99–270)			
FHA and GNMA Credit Commitment Assistance Act (Public Law 99–289)		−380	
Federal Employees Retirement Act of 1986 (Public Law 99–335)			−90
Temporary extension of certain housing programs (Public Law 99–345)		−304	
Military Retirement Reform Act (Public Law 99–348)	−25		
Urgent supplemental appropriations, 1986 (Public Law 99–349)	−3,508	475	
Panama Canal Commission Authorizing Act (Public Law 99–368)	18	16	
Total	−7,773	−6,240	675
III. Continuing resolution authority			
IV. Conference agreements ratified by both Houses			
V. Entitlement authority and other mandatory items requiring further appropriation action:			
Compact of free association	3	3	
Special benefits (Federal employees)	14	14	
Family social services	100	75	
Payment to civil service retirement [1]	(37)	(37)	
Total, entitlements	118	93	
Total, current level as of Oct. 3, 1986	1,053,024	980,012	778,469
1986 budget resolution (S. Con. Res. 32)	1,069,700	967,600	795,700
Amount remaining:			
Over budget resolution		12,412	
Under budget resolution	16,676		17,231
FISCAL YEAR 1987			
I. Enacted in previous sessions:			
Revenues			843,799
Permanent appropriations and trust funds	733,558	647,692	
Other appropriations		195,861	
Offsetting receipts	−165,990	−165,990	
Total enacted in previous sessions	567,568	677,563	843,799
II. Enacted this session:			
Federal Employees Benefits Improvement Act of 1986 (Public Law 99–251)		2	
Technical corrections amends to Food Security Act (Public Law 99–253)	50	50	

SUPPORTING DETAIL FOR CBO WEEKLY SCOREKEEPING REPORT, U.S. SENATE, 99TH CONG., 2D SESS., AS OF OCT. 3, 1986—Continued

[In millions of dollars]

	Budget authority	Outlays	Revenues
VA home loan guarantee amendments (Public Law 99–255)		49	
Food Security Improvements Act of 1986 (Public Law 99–260)	−115	−115	
White Earth Reservation Land Settlement Act of 1985 (Public Law 99–264)	10	10	
Consolidated Omnibus Budget Reconciliation Act of 1986 (Public Law 99–272)	155	−3,553	2,503
FHA and GNMNA Credit Commitment Assistance Act (Public Law 99–289)		−178	
Federal Employees' Retirement System Act of 1986 (Public Law 99–335)	−150	−1,670	−666
Judicial Improvements Act (Public Law 99–336)	2		
Temporary extension of certain housing programs (Public Law 99–345)		−85	
Military Retirement Reform Act (Public Law 99–348)	−47	146	
Urgent supplemental appropriations, 1986 (Public Law 99–349)	−278	−914	
Panama Canal Commission Authorizing Act (Public Law 99–368)		2	
Omnibus Diplomatic Security and Anti-Terrorism Attack Act (Public Law 99–399)	1	1	
Children's Justice and Assistance Act (Public Law 99–401)	10		
Socorro County land conveyance (Public Law 99–427)	−1	−1	
Total enacted this session	−363	−6,255	1,837
III. Continuing resolution authority			
IV. Conference agreements ratified by both Houses:			
Tax Reform Act (H.R. 3838)	65	65	11,462
Higher Education Amendments of 1986 (S. 1965)		−579	
Bankruptcy Amendments of 1986 (H.R. 5316)	−55	−55	
Total, conference agreements ratified by both Houses	10	−569	11,642
V. Entitlement authority and other mandatory items requiring further appropriation action:			
Payment to the CIA retirement fund	126	126	
Claims, defense	156	150	
Payment to the foreign service retirement trust fund [1]	(173)	(173)	
Range improvements	10	7	
BLM: Miscellaneous trust fund	(2)	(2)	
Compact of free association	42	42	
Administration of territories	35	30	
Payments to air carriers, DOT	32	30	
Retired pay—Coast Guard	370	341	
Maritime, operating-differential subsidies		297	
BIA: Miscellaneous trust funds	1	1	
Social services block grant	2,700	2,538	
Family social services	758	584	
Guaranteed student loans	3,219	2,580	
Guaranteed student loans (S. 1965)	−75	−65	
Higher education facilities loans and insurance	19		
Government payment for annuities	1,459	1,301	
Retirement pay for PHS officers	83	81	
Medicaid	19,595	19,241	
Medical facilities guarantee and loan fund	20	19	
Payments to health care trust funds [1]	(20,826)	(20,826)	
Special milk program	16	11	
Child nutrition programs	4,212	3,791	
Federal unemployment benefits and allowances	103	102	
Advances to unemployment trust fund [1]	(9)	(9)	

SUPPORTING DETAIL FOR CBO WEEKLY SCOREKEEPING REPORT, U.S. SENATE, 99TH CONG., 2D SESS., AS OF OCT. 3, 1986—Continued

[In millions of dollars]

	Budget authority	Outlays	Revenues
Special benefits (general retirement and Federal employment retirement)	257	257	
Black lung disability trust fund	549	549	
Supplemental security income	7,846	7,846	
Special benefits for disabled coal miners	698	638	
Assistance payments	7,350	7,350	
Child support enforcement	599	583	
Payments to Social Security trust funds [1]	(501)	(501)	
Veterans insurance and indemnities	5	4	
Veterans readjustment benefits	750	723	
Veterans compensation	10,300	9,360	
Veterans pensions	3,684	3,385	
Veterans burial benefits	138	138	
Salaries of judges	104	103	
Fees and expenses of witnesses	46	37	
Compensation of the President	(2)	(2)	
Payment of civil service retirement trust fund [1]	(4,557)	(4,557)	
National wildlife refuge fund	6	6	
Military pay raises and benefits	1,566	1,539	
Total, entitlements	66,780	63,728	
Total, current level as of Oct. 3, 1986	633,995	734,466	857 ,098
1987 budget resolution (S. Con. Res. 120)	1,093,350	995,000	852,400
Amount remaining:			
Over budget resolution			4,698
Under budget resolution	−459,355	260,534	

[1] Interfund transactions do not add to budget totals.
[2] Less than $500,000.

Note.—Numbers may not add due to rounding.●

Mr. SIMPSON. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

□ 1920

ALASKA NATIVE CLAIMS ACT AMENDMENT

Mr. STEVENS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The distinguished Senator from Alaska is recognized.

Mr. STEVENS. Mr. President, I ask unanimous consent that there be printed in the RECORD at this point an amendment that I shall offer in the nature of a substitute for H.R. 4162, Calendar No. 1083, the Alaska Native Claims Settlement Act amendments at the appropriation time when the matter is called up before the Senate but I wish to have the amendment in the nature of a substitute printed in the RECORD at this point.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The text of the amendment is printed in the RECORD under "Amendments Submitted.")

Mr. STEVENS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SIMPSON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

COURT OF IMPEACHMENT SCHEDULE

Mr. SIMPSON. Mr. President, the Senate sits tomorrow morning, Tuesday, October 7, at 9:30 a.m., as a court of impeachment, a very important proceeding and the distinguished majority leader and distinguished minority leader have discussed the importance of the attendance of Members. To promote attendance it is the intention of the leadership to begin the proceedings tomorrow with a live quorum.

I would like to just briefly identify the matters we will take up tomorrow.

The Senate will hear the argument on several motions tomorrow. The Senate's disposition of these motions will determine whether the Senate will hear closing arguments tomorrow afternoon and deliberate on its verdict on Wednesday or whether other proceedings will occur.

All of the motions which the Senate shall hear tomorrow are motions by Judge Claiborne. The House is no longer asking the Senate to decide any House motions in advance of the Senate's deliberation on the articles. The House is prepared to go directly to closing argument based on the record compiled before the Senate Impeachment Trial Committee.

One motion which will be argued tomorrow is Judge Claiborne's motion to postpone the consideration of the Articles of Impeachment. The motion to postpone was distributed to each Member last Thursday, October 2, and was reprinted in the CONGRESSIONAL RECORD that day. The motion asked that the Senate delay its consideration of the articles until the District Court for the District of Nevada or the Ninth Circuit Court of Appeals resolves Judge Claiborne's motion for a new trial.

Judge Claiborne's counsel will also argue that the Senate must hear witnesses in open Senate rather than utilize the evidentiary record compiled by the Senate Impeachment Trial Committee. Judge Claiborne has also moved before the committee to declare Senate impeachment rule XI unconstitutional. His motion and memorandum, and the House opposition to the motion, are reprinted in part I of Senate Hearing Report 99-812. The committee referred that motion to the Senate. Also, last Thursday Judge Claiborne filed a motion styled "supplemental motion for full and fair impeachment trial before the entire Senate of the United States, or in the alternative for dismissal," and also an application for more than 50 subpoenas. The new motion and application were also distributed to Members on October 2 and reprinted in the RECORD on that day. The issue which the Senate is being asked to consider is whether the record of testimonial and documentary evidence which has been reported by the committee is a constitutional and sufficient basis for the Senate's deliberation on the articles.

The House has filed response to these motions today.

Judge Claiborne's counsel also proposed to argue tomorrow in support of a motion that the Senate establish that the burden of proof in this impeachment is proof beyond a reasonable doubt. This motion had been submitted to the committee and was referred by it to the Senate. The motion and the House opposition to it are reprinted in part I of Senate Hearing Report 99-812.

I send to the desk a unanimous-consent request, on the scheduling of these proceedings, which I ask the clerk to read.

□ 1930

ORDER EXTENDING ROUTINE MORNING BUSINESS FOR AN ADDITIONAL 15 MINUTES

The PRESIDING OFFICER. The Chair would note that the time for morning business has expired.

Mr. SIMPSON. Mr. President, I ask unanimous consent that the time for morning business be extended an additional 15 minute period.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The clerk will read.

The legislative clerk read as follows:

Ordered, That on Tuesday, October 7, 1986, at the hour of 9:30 a.m., the Senate proceed as a court of impeachment.

Ordered further, That after the ascertainment of a quorum, after which during the sessions of the Senate as a court of impeachment the Chair is authorized to ascertain the presence of a quorum, there be 2 hours, equally divided between the managers on the part of the House of Representatives and the counsel on the part of the respondent, for argument on pending motions: *Provided,* That notwithstanding the provisions of S. Res. 28, the television cameras shall be permitted to focus on any person speaking.

Ordered further, That at the conclusion of the argument on motions, the Senate proceed in closed session until no later than the hour of 1:00 p.m. for deliberation on the motions.

Ordered further, That the Senate stand in recess between the hours of 1:00 and 2:00 p.m.

Ordered further, That upon the reconvening of the Senate at 2:00 p.m., the motions be disposed of.

Ordered further, That if, upon its disposition of the motions, the Senate determines

that it is ready for final arguments, the Senate shall proceed to hear final arguments with the time until no later than 6:00 p.m. equally divided between the managers on the part of the House of Representatives and the counsel for the respondent, or the respondent himself: *Provided*, That the final arguments shall be opened and closed by the House of Representatives as provided in Senate impeachment rule 22.

Ordered further, If under the previous provisions of this order, the Senate has heard closing arguments on Tuesday, October 7, 1986, then on Wednesday, October 8, 1986, at the hour of 9:30 a.m., the Senate shall proceed in closed session to deliberate upon the articles of impeachment, and upon completion of its deliberations the Senate shall proceed to a vote.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

EXPORT-IMPORT BANK ACT AMENDMENTS — CONFERENCE REPORT

Mr. SIMPSON. Mr. President, I submit a report of the committee of conference on H.R. 5548 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 5548) to amend the Export-Import Bank Act of 1945, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of October 2, 1986.)

Mr. SIMPSON. Mr. President, I understand a Member on our side of the aisle may wish to speak on this issue. For the purpose of that notification which I had not been previously aware of, I ask unanimous consent that we temporarily lay this item aside.

The PRESIDING OFFICER. Without objection, it is so ordered.

PUEBLO OF SANTA ANA LAND TRANSFERS

Mr. SIMPSON. Mr. President, I ask unanimous consent that the Senate now turn to consideration of H.R. 4873, now being held at the desk, dealing with certain transfers affecting the Pueblo of Santa Ana.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (H.R. 4873) to authorize certain transfers affecting the Pueblo of Santa Ana in New Mexico, and for other purposes.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Wyoming?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 3250

(Purpose: To delay effective date of transfer of mineral estate until Secretary of the Interior certifies that certain easements have been granted by the Pueblo of Santa Ana)

Mr. SIMPSON. Mr. President, I send an amendment to the desk on behalf of Senator DOMENICI with regard to the Pueblo of Santa Ana.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Wyoming [Mr. SIMPSON], for Mr. DOMENICI, proposes an amendment numbered 3250.

Mr. SIMPSON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment reads as follows:

On page 2, line 4, strike out "before the date of enactment of this Act".

On page 3, line 23, strike out the comma after "Northeast quarter".

On page 9, after line 10, insert the following:

SEC. 6. (a) Except as otherwise provided in this section, the provisions of this Act, and the amendments made by this Act, shall take effect on the date of enactment of this Act.

(b)(1) The provisions of subsections (a) and (b) of section 1 shall take effect on the day on which the Secretary of the Interior publishes in the Federal Register notice of a determination made by the Secretary of the Interior that the Pueblo of Santa Ana has consented to private easements of access over lands held by, or on behalf of, the Pueblo of Santa Ana, as recommended by the Secretary of the Interior, in accordance with the provisions of part 169 of title 25, Code of Federal Regulations, to each person—

(A) who without such an easement has no practical surface ingress or egress to property owned in fee simple by such person, and

(B) who has submitted to the Pueblo of Santa Ana and to the Secretary of the Interior an application for such an easement, in accordance with part 169 of such title, before the date that is 90 days after the date of enactment of this Act.

(2) The Secretary of the Interior may make a determination under paragraph (1) at any time after the date of enactment of this Act, but the Secretary of the Interior shall make a determination of whether the Pueblo of Santa Ana has consented to easements of access to each person described in paragraph (1) by no later than the date that is 30 days after the date on which the Pueblo of Santa Ana requests the Secretary of the Interior to make such a determination.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment.

The amendment (No. 3250) was agreed to.

Mr. DOMENICI. Mr. President, this bill is identical to Senate bill 2504 and transfers gravel rights to the Pueblo of Santa Ana. The tribe purchased land with gravel in 1981 from private individuals. In 1983, the Supreme Court ruled that gravel rights must be transferred as a mineral right. This change in the legal status of the gravel changes the value of the purchased land which was sought precisely for its rich gravel resources. This bill transfers the gravel to the Pueblo.

There are technical amendments to correct the descriptions in Public Law 95-498. There is no net increase or decrease in acreage to the Pueblo.

Parts of Coronado Monument near Bernalillo were found to be in trespass on Santa Ana Pueblo land. The University of New Mexico and the Pueblo have reached an agreement which is ratified by this bill. Under the terms of the agreement, the University of New Mexico will be allowed to convey about 120 acres of land on the west and north sides of the monument to the Pueblo in exchange for the Pueblo's land—about 26 acres—under use at the Coronado State Monument.

ADDITIONAL REQUESTS OF THE PUEBLO

In addition to the agreement among the members of the New Mexico congressional delegation on the basic provisions of S. 2504 and H.R. 4873 as described above, the Pueblo of Santa Ana has convinced the New Mexico congressional delegation that the following provisions are also necessary to carry out the purposes of this bill:

A technical correction to transfer 18 acres of land erroneously placed in trust for Santa Ana in 1961. The land in question belongs to the Pueblo of Zia.

The placement in trust of the lands transferred to the Pueblo of Santa Ana to settle the Coronado Monument dispute. These lands are adjacent to the existing boundaries.

A 99-year lease for a portion of Pueblo lands to be leased to a gypsum wallboard company. This extension would add 49 years to the current ability of the Pueblo to lease its lands under current law which allows a 50-year lease.

On September 16, 1986, the House of Representatives passed H.R. 4873 authorizing certain land and mineral transfers affecting the Pueblo of Santa Ana with the amendments requested by the Pueblo as described above.

EASEMENTS ACROSS SANTA ANA LAND

Prior to House passage of this legislation, the members of the New Mexico congressional delegation were made aware of an easement problem between Alfred L. Baca of Bernalillo, NM, and the Pueblo of Santa Ana. Requests were made to the Santa Ana Pueblo attorneys to rectify this situation with no positive results.

The delegation has agreed that this easement question must be settled in a firm and clear manner prior to any transfer of gravel rights as allowed in

S. 2504 and H.R. 4873. In order to accomplish this end, the delegation has agreed to support an amendment to the Santa Ana land legislation now pending before the U.S. Senate. Our amendment would bring about an equitable solution to the easement problem in accordance with the provisions of part 169 of title 25, Code of Federal Regulations, pertaining to easement across Indian land.

This amendment makes no change affecting the important timing of the Coronado Monument segment of the legislation which must be settled before December 31, 1986.

Th PRESIDING OFFICER. If there be no further amendment to be proposed, the question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read the third time.

The amendment was engrossed and the bill was read the third time.

The bill (H.R. 4873), as amended, was passed.

Mr. SIMPSON. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BURDICK. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

RISK RETENTION AMENDMENTS OF 1986

Mr. SIMPSON. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 2129.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 2129) entitled "An Act to facilitate the ability of organizations to establish risk retention groups, to facilitate the ability of such organizations to purchase liability insurance on a group basis, and for other purposes", do pass with the following amendments:

Strike out all after the enacting clause, and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Risk Retention Amendments of 1986".

SEC. 2. REFERENCES IN THE ACT.

Whenever in this Act an amendment is expressed in terms of an amendment to a section, the reference shall be deemed to be a reference to the Product Liability Risk Retention Act of 1981 (15 U.S.C. 3901 et seq.), unless otherwise provided.

SEC. 3. COVERAGE OFFERED BY RISK RETENTION GROUPS.

(a) EXPANSION OF COVERAGE.—Section 2(a) (15 U.S.C. 3901(a)) is amended—

(1) by striking paragraphs (1) and (3),

(2) by redesignating paragraph (2) as paragraph (1), and

(3) by inserting after paragraph (1), as so redesignated, the following new paragraphs:

"(2) 'liability'—

"(A) means legal liability for damages (including costs of defense, legal costs and fees, and other claims expenses) because of injuries to other persons, damage to their property, or other damage or loss to such other persons resulting from or arising out of—

"(i) any business (whether profit or nonprofit), trade, product, services (including professional services), premises, or operations, or

"(ii) any activity of any State or local government, or any agency or political subdivision thereof; and

"(B) does not include personal risk liability and an employer's liability with respect to its employees other than legal liability under the Federal Employers' Liability Act (45 U.S.C. 51 et seq.);

"(3) 'personal risk liability' means liability for damages because of injury to any person, damage to property, or other loss or damage resulting from any personal, familial, or household responsibilities or activities, rather than from responsibilities or activities referred to in paragraphs (2)(A) and (2)(B);".

(b) DEFINITIONS.—Such section is further amended—

(1) by striking "and" at the end of paragraph (5);

(2) by striking the period at the end of paragraph (6) and inserting "; and"; and

(3) by adding at the end the following new paragraph:

"(7) 'hazardous financial condition' means that, based on its present or reasonably anticipated financial condition, a risk retention group is unlikely to be able—

"(A) to meet obligations to policyholders with respect to known claims and reasonably anticipated claims, or

"(B) to pay other obligations in the normal course of business.".

SEC. 4. REQUIREMENTS RELATING TO RISK RETENTION GROUPS AND PURCHASING GROUPS.

(a) CHARACTERISTICS OF RISK RETENTION GROUPS AND THEIR MEMBERS.—(1) Section 2(a)(4) (15 U.S.C. 3901(a)(4)) is amended by striking "taxable as a corporation, or as an insurance company,".

(2) Subparagraph (A) of such section is amended by striking "product liability or completed operations liability risk exposure" and inserting "liability exposure".

(3) Subparagraph (C) of such section is amended to read as follows:

"(C) which—

"(i) is chartered or licensed as a liability insurance company and authorized to engage in the business of insurance under the laws of any State; or

"(ii) before January 1, 1985, was chartered or licensed and authorized to engage in the business of insurance under the laws of Bermuda or the Cayman Islands and, before such date, had certified to the insurance commissioner of at least one State that it satisfied the capitalization requirements of such State, except that any such group shall be considered to be a risk retention group only if it has been engaged in business continuously since such date and only for the purpose of continuing to provide insurance to cover product liability or completed operations liability (as such terms were defined in this section before the date of the enactment of the Risk Retention Amendments of 1986);".

(4) Such section is further amended—

(A) by striking "and" at the end of subparagraph (D), and

(B) by striking subparagraph (E) and inserting the following new subparagraphs:

"(E) which—

"(i) has as its members only persons who have an ownership interest in the group and which has as its owners only persons who are members who are provided insurance by the risk retention group; or

"(ii) has as its sole member and sole owner an organization which is owned by persons who are provided insurance by the risk retention group (hereinafter in this section referred to as 'secondary owners');

"(F) whose members or secondary owners are engaged in businesses or activities similar or related with respect to the liability to which such members or secondary owners are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations,

"(G) whose activities do not include the provision of insurance other than—

"(i) liability insurance for assuming and spreading all or any portion of the liability of its group members or secondary owners; and

"(ii) reinsurance with respect to the liability of any other risk retention group (or any members or secondary owners of such other group) which is engaged in businesses or activities so that such group or member or secondary owner meets the requirement described in subparagraph (F) for membership in the risk retention group which provides such reinsurance; and

"(H) the name of which includes the phrase 'Risk Retention Group'.".

(b) CHARACTERISTICS OF PURCHASING GROUPS.—Section 2(a)(5) (15 U.S.C. 3901(a)(5)) is amended to read as follows:

"(5) 'purchasing group' means any group which—

"(A) has as one of its purposes the purchase of liability insurance on a group basis;

"(B) purchases such insurance only for its group members and only to cover their similar or related liability exposure, as described in subparagraph (C);

"(C) is composed of members whose businesses or activities are similar or related with respect to the liability to which members are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations; and

"(D) is domiciled in any State;".

SEC. 5. CONCERNING SCOPE OF EXEMPTIONS RELATING TO RISK RETENTION GROUPS.

(a) IN GENERAL.—Section 3(b) (15 U.S.C. 3902(b)) is amended to read as follows:

"(b) The exemptions specified in subsection (a) apply to laws governing the insurance business pertaining to—

"(1) liability insurance coverage provided by a risk retention group for—

"(A) such group; or

"(B) any person who is a member of such group;

"(2) the sale of liability insurance coverage for a risk retention group; and

"(3) the provision of—

"(A) insurance related services;

"(B) management, operations, and investment activities; or

"(C) loss control and claims administration (including loss control and claims administration services for uninsured risks retained by any member of such group);

for a risk retention group or any member of such group with respect to liability for which the group provides insurance.".

(b) PLANS OF OPERATION, FEASIBILITY STUDIES, AND FINANCIAL STATEMENTS.—Section 3 (15 U.S.C. 3902) is further amended—

(1) in subsection (a)(1)—

(A) by striking subparagraph (D) and redesignating subparagraphs (E), (F), and (G) as subparagraphs (D), (E), and (F), accordingly; and

(B) by striking all that follows after "documents or process" in subparagraph (D) (as redesignated) and inserting a semicolon; and

(2) by adding at the end of such section the following new subsection:

"(d) Each risk retention group shall submit—

"(1) to the insurance commissioner of the State in which it is chartered—

"(A) before it may offer insurance in any State, a plan of operation or a feasibility study which includes the coverages, deductibles, coverage limits, rates, and rating classification systems for each line of insurance the group intends to offer; and

"(B) revisions of such plan or study if the group intends to offer any additional lines of liability insurance;

"(2) to the insurance commissioner of each State in which it intends to do business, before it may offer insurance in such State—

"(A) a copy of such plan or study (which shall include the name of the State in which it is chartered and its principal place of business); and

"(B) a copy of any revisions to such plan or study, as provided in paragraph (1)(B) (which shall include any change in the designation of the State in which it is chartered); and

"(3) to the insurance commissioner of each State in which it is doing business, a copy of the group's annual financial statement submitted to the State in which the group is chartered as an insurance company, which statement shall be certified by an independent public accountant and contain a statement of opinion on loss and loss adjustment expense reserves made by—

"(A) a member of the American Academy of Actuaries, or

"(B) a qualified loss reserve specialist.".

(c) EXAMINATION OF FINANCIAL CONDITION.—Section 3(a)(1)(E) (as redesignated by subsection (b)) is amended—

(1) by striking clause (i);

(2) by redesignating clause (ii) as clause (i); and

(3) by adding at the end the following new clause:

"(ii) any such examination shall be coordinated to avoid unjustified duplication and unjustified repetition;".

(d) COMPLIANCE WITH DELINQUENCY PROCEEDING ORDERS.—Section 3(a)(1)(F) (as redesignated by subsection (b)) is amended to read as follows:

"(F) comply with a lawful order issued—

"(i) in a delinquency proceeding commenced by the State insurance commissioner if there has been a finding of financial impairment under subparagraph (E); or

"(ii) in a voluntary dissolution proceeding;".

(e) ADDITIONAL STATE LAW REQUIREMENTS.—Section 3(a)(1) (15 U.S.C. 3902(a)(1)) is further amended by adding at the end the following new subparagraphs:

"(G) comply with any State law regarding deceptive, false, or fraudulent acts or practices, except that if the State seeks an injunction regarding the conduct described in this subparagraph, such injunction must be obtained from a court of competent jurisdiction;

"(H) comply with an injunction issued by a court of competent jurisdiction, upon a petition by the State insurance commissioner alleging that the group is in hazardous financial condition or is financially impaired; and

"(I) provide the following notice, in 10-point type, in any insurance policy issued by such group:

"'NOTICE

"'This policy is issued by your risk retention group. Your risk retention group may not be subject to all of the insurance laws and regulations of your State. State insurance insolvency guaranty funds are not available for your risk retention group.'".

SEC. 6. ADDITIONAL REQUIREMENTS RELATING TO PURCHASING GROUPS.

Section 4 (15 U.S.C. 3903) is amended by adding at the end the following new subsections:

"(d)(1) A purchasing group which intends to do business in any State shall furnish notice of such intention to the insurance commissioner of such State. Such notice—

"(A) shall identify the State in which such group is domiciled;

"(B) shall specify the lines and classifications of liability insurance which the purchasing group intends to purchase;

"(C) shall identify the insurance company from which the group intends to purchase insurance and the domicile of such company; and

"(D) shall identify the principal place of business of the group.

"(2) Such purchasing group shall notify the commissioner of any such State as to any subsequent changes in any of the items provided in such notice.

"(e) A purchasing group shall register with and designate the State insurance commissioner of each State in which it does business as its agent solely for the purpose of receiving service of legal documents or process, except that such requirement shall not apply in the case of a purchasing group—

"(1) which—

"(A) was domiciled before April 1, 1986; and

"(B) is domiciled on and after the date of the enactment of this Act,

in any State of the United States;

"(2) which—

"(A) before the date of the enactment of this Act, purchased insurance from an insurance carrier licensed in any State, and

"(B) since such date of enactment, purchases its insurance from an insurance carrier licensed in any State;

"(3) which was a purchasing group under the requirements of this Act before the date of the enactment of the Risk Retention Amendments of 1986; and

"(4) as long as such group does not purchase insurance that was not authorized for purposes of an exemption under this Act as in effect before the date of the enactment of the Risk Retention Amendments of 1986.

"(f) A purchasing group may not purchase insurance from a risk retention group that is not chartered in a State or from an insurer not admitted in the State in which the purchasing group is located, unless the purchase is effected through a licensed agent or broker acting pursuant to the surplus lines laws and regulations of such State.".

SEC. 7. CONCERNING AUTHORITY OF STATES TO ENJOIN CERTAIN CONDUCT.

Section 3 (15 U.S.C. 3902), as amended by section 5(b) of this Act, is further amended by adding at the end the following new subsection:

"(e) Nothing in this section shall be construed to affect the authority of any Federal or State court to enjoin—

"(1) the solicitation or sale of insurance by a risk retention group to any person who is not eligible for membership in such group; or

"(2) the solicitation or sale of insurance by, or operation of, a risk retention group that is in hazardous financial condition or is financially impaired.".

SEC. 8. ADDITIONAL CLARIFICATION OF PERMISSIBLE STATE AUTHORITY.

(a) CLARIFICATION OF STATE AUTHORITY RESPECTING RISK RETENTION GROUPS.—Section 3 (15 U.S.C. 3902), as amended by sections 5(b) and 6 of this Act, is further amended by adding at the end the following new subsections:

"(f)(1) Subject to the provisions of subsection (a)(1)(G) (relating to injunctions) and paragraph (2), nothing in this Act shall be construed to affect the authority of any State to make use of any of its powers to enforce the laws of such State with respect to which a risk retention group is not exempt under this Act.

"(2) If a State seeks an injunction regarding the conduct described in paragraphs (1) and (2) of subsection (e), such injunction must be obtained from a Federal or State court of competent jurisdiction.

"(g) Nothing in this Act shall affect the authority of any State to bring an action in any Federal or State court.

"(h) Nothing in this Act shall be construed to affect the authority of any State to regulate or prohibit the ownership interest in a risk retention group by an insurance company in that State, other than in the case of ownership interest in a risk retention group whose members are insurance companies.".

(b) CLARIFICATION OF STATE AUTHORITY RESPECTING PURCHASING GROUPS.—Section 4 (15 U.S.C. 3903), as amended by section 6 of this Act, is further amended—

(1) in subsection (a), by inserting "and section 6" after "section"; and

(2) by adding at the end the following new subsections:

"(g) Nothing in this Act shall be construed to affect the authority of any State to make use of any of its powers to enforce the laws of such State with respect to which a purchasing group is not exempt under this Act.

"(h) Nothing in this Act shall affect the authority of any State to bring an action in any Federal or State court.".

(c) OTHER CLARIFICATION.—The Act is further amended by adding at the end the following new section:

"CLARIFICATION CONCERNING PERMISSIBLE STATE AUTHORITY

"SEC. 6. (a) Nothing in this Act shall be construed to exempt a risk retention group or purchasing group authorized under this Act from the policy form or coverage requirements of any State motor vehicle no-fault or motor vehicle financial responsibility insurance law.

"(b) The exemptions provided under this Act shall apply only to the provisions of liability insurance by a risk retention group or the purchase of liability insurance by a purchasing group, and nothing in this Act shall be construed to permit the provision or purchase of any other line of insurance by any such group.

"(c) The terms of any insurance policy provided by a risk retention group or purchased by a purchasing group shall not provide or be construed to provide coverage prohibited by State statute or declared unlawful by the highest court of the State whose law applies to such policy.

"(d) Subject to the provisions of section 3(a)(4) relating to discrimination, nothing in this Act shall be construed to preempt the

authority of a State to specify acceptable means of demonstrating financial responsibility where the State has required a demonstration of financial responsibility as a condition for obtaining a license or permit to undertake specified activities. Such means may include or exclude insurance coverage obtained from an admitted insurance company, an excess lines company, a risk retention group, or any other source regardless of whether coverage is obtained directly from an insurance company or through a broker, agent, purchasing group, or any other person.

"(e) Nothing in this Act shall be construed to preempt the authority of a State to specify acceptable means for managing the liability of the State or its local governments (or any agency or political subdivision thereof). Such means may include or exclude insurance coverage obtained from an admitted insurance company, an excess lines company, a risk retention group, or any other source, or through a broker, agent, purchasing group, or any other person.".

SEC. 9. INJUNCTIVE POWERS OF FEDERAL COURTS.

The Act, as amended by section 7(c) of this Act, is further amended by adding at the end the following new section:

"INJUNCTIVE ORDERS ISSUED BY UNITED STATES DISTRICT COURTS

"SEC. 7. Any district court of the United States may issue an order enjoining a risk retention group from soliciting or selling insurance, or operating, in any State (or in all States) or in any territory or possession of the United States upon a finding of such court that such group is in hazardous financial condition. Such order shall be binding on such group, its officers, agents, and employees, and on any other person acting in active concert with any such officer, agent, or employee, if such other person has actual notice of such order.".

SEC. 10. OVERSIGHT OF IMPLEMENTATION; REPORT TO CONGRESS.

(a) IN GENERAL.—(1) Not later than September 1, 1987, and not later than September 1, 1989, the Secretary of Commerce shall submit reports to the Congress concerning implementation of this Act.

(2) Such report shall be based on—

(A) the Secretary's consultation with State insurance commissioners, risk retention groups, purchasing groups, and other interested parties; and

(B) the Secretary's analysis of other information available to the Secretary.

(b) CONTENTS OF THE REPORT.—The report shall describe the Secretary's views concerning—

(1) the contribution of this Act toward resolution of problems relating to the unavailability and unaffordability of liability insurance;

(2) the extent to which the structure of regulation and preemption established by this Act is satisfactory;

(3) the extent to which, in the implementation of this Act, the public is protected from unsound financial practices and other commercial abuses involving risk retention groups and purchasing groups;

(4) the causes of any financial difficulties of risk retention groups and purchasing groups; and

(5) such other comments and conclusions as the Secretary deems relevant to assessment of the implementation of this Act.

SEC. 11. EFFECTIVE DATE; APPLICABILITY.

(a) GENERAL RULE.—Subject to subsection (b), this Act shall take effect on the date of its enactment.

(b) SPECIAL RULE REGARDING FEASIBILITY STUDY.—The provisions of section 3(d) of the Liability Risk Retention Act of 1986 (as added by section 5(b) of this Act), relating to the submission of a feasibility study, shall not apply with respect to any line or classification of liability insurance which—

(1) was defined in the Product Liability Risk Retention Act of 1981 before the date of the enactment of this Act; and

(2) was offered before such date of enactment by any risk retention group which has been chartered and operating for not less than 3 years before such date of enactment; and

SEC. 12. TECHNICAL AND CONFORMING AMENDMENTS.

(a) IN THE SHORT TITLE.—Section 1 (15 U.S.C. 3901, note) is amended to read as follows:

"SHORT TITLE

"SECTION 1. This Act may be cited as the 'Liability Risk Retention Act of 1986'."

(b) IN SECTION 2(b).—Section 2(b) (15 U.S.C. 3901(b)) is amended by striking "product liability and product liability insurance" and inserting "liability, personal risk liability, and insurance".

(c) IN SECTION 4(b).—Section 4(b) (15 U.S.C. 3903(b)) is amended—

(1) in paragraph (1), by striking "product liability or completed operations liability insurance, and comprehensive general liability insurance which includes either of these coverages," and inserting "liability insurance"; and

(2) in paragraph (2), by striking "product liability or completed operations insurance, and comprehensive general".

Amend the title so as to read: "An Act to amend the Product Liability Risk Retention Act of 1981 to include coverage of other lines of liability insurance, and for other purposes.".

AMENDMENT NO 3251

Mr. SIMPSON. Mr. President, I move that the Senate concur in the House amendments with a further Senate amendment which I send to the desk on behalf of Senator KASTEN and others.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Wyoming [Mr. SIMPSON], on behalf of Mr. KASTEN, for himself, Mr. FORD, Mr. DANFORTH, Mr. GORTON, Mr. HOLLINGS, Mr. INOUYE, Mr. GORE, and Mr. ROCKEFELLER, proposes an amendment numbered 3251.

Mr. SIMPSON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment reads as follows:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Risk Retention Amendments of 1986".

SEC. 2. REFERENCES IN THE ACT.

Whenever in this Act an amendment is expressed in terms of an amendment to a section, the reference shall be deemed to be a reference to the Product Liability Risk Retention Act of 1981 (15 U.S.C. 3901 et seq.), unless otherwise provided.

SEC. 3. COVERAGE OFFERED BY RISK RETENTION GROUPS.

"(a) EXPANSION OF COVERAGE.—Section 2(a) (15 U.S.C. 3901(a)) is amended—

(1) by striking paragraphs (1) and (3);

(2) by redesignating paragraph (2) as paragraph (1); and

(3) by inserting after paragraph (1), as so redesignated, the following new paragraphs:

"(2) 'liability'—

"(A) means legal liability for damages (including costs of defense, legal costs and fees, and other claims expenses) because of injuries to other persons, damage to their property, or other damage or loss to such other persons resulting from or arising out of—

"(i) any business (whether profit or nonprofit), trade, product, services (including professional services), premises, or operations; or

"(ii) any activity of any State or local government, or any agency or political subdivision thereof; and

"(B) does not include personal risk liability and an employer's liability with respect to its employees other than legal liability under the Federal Employers' Liability Act (45 U.S.C. 51 et seq.);

"(3) 'personal risk liability' means liability for damages because of injury to any person, damage to property, or other loss or damage resulting from any personal, familial, or household responsibilities or activities, rather than from responsibilities or activities referred to in paragraphs (2)(A) and (2)(B);".

(b) DEFINITIONS.—Such section is further amended—

(1) by striking "and" at the end of paragraph (5);

(2) by striking the period at the end of paragraph (6) and inserting "; and"; and

(3) by adding at the end the following new paragraph:

"(7) 'hazardous financial condition' means that, based on its present or reasonably anticipated financial condition, a risk retention group is unlikely to be able—

"(A) to meet obligations to policyholders with respect to known claims and reasonably anticipated claims; or

"(B) to pay other obligations in the normal course of business.".

SEC. 4. REQUIREMENTS RELATING TO RISK RETENTION GROUPS AND PURCHASING GROUPS.

(a) CHARACTERISTICS OF RISK RETENTION GROUPS AND THEIR MEMBERS.—(1) Section 2(a)(4) (15 U.S.C. 3901(a)(4)) is amended by striking "taxable as a corporation, or as an insurance company, formed under the laws of any State, Bermuda, or the Cayman Islands".

(2) Subparagraph (A) of such section is amended by striking "product liability or completed operations liability risk exposure" and inserting "liability exposure".

(3) Subparagraph (C) of such section is amended to read as follows:

"(C) which—

"(i) is chartered and licensed as a liability insurance company under the laws of a State and authorized to engage in the business of insurance under the laws of such State; or

"(ii) before January 1, 1985, was chartered or licensed and authorized to engage in the business of insurance under the laws of Bermuda or the Cayman Islands and, before such date, had certified to the insurance commissioner of at least one State that it satisfied the capitalization requirements of such State, except that any such group shall be considered to be a risk retention

group only if it has been engaged in business continuously since such date and only for the purpose of continuing to provide insurance to cover product liability or completed operations liability (as such terms were defined in this section before the date of the enactment of the Risk Retention Amendments of 1986).".

(4) Such section is further amended—

(A) by striking "and" at the end of subparagraph (D); and

(B) by striking subparagraph (E) and inserting the following new subparagraphs:

"(E) which—

"(i) has as its owners only persons who comprise the membership of the risk retention group and who are provided insurance by such group; or

"(ii) has as its sole owner an organization which has as—

"(I) its members only persons who comprise the membership of the risk retention group; and

"(II) its owners only persons who comprise the membership of the risk retention group and who are provided insurance by such group;

"(F) whose members are engaged in businesses or activities similar or related with respect to the liability to which such members are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations;

"(G) whose activities do not include the provision of insurance other than—

"(i) liability insurance for assuming and spreading all or any portion of the similar or related liability exposure of its group members; and

"(ii) reinsurance with respect to the similar or related liability exposure of any other risk retention group (or any member of such other group) which is engaged in businesses or activities so that such group (or member) meets the requirment described in subparagraph (F) for membership in the risk retention group which provides such reinsurance; and

"(H) the name of which includes the phrase 'Risk Retention Group',".

(b) CHARACTERISTICS OF PURCHASING GROUPS.—Section 2(a)(5) (15 U.S.C. 3901(a)(5)) is amended to read as follows:

"(5) 'purchasing group' means any group which—

"(A) has as one of its purposes the purchase of liability insurance on a group basis;

"(B) purchases such insurance only for its group members and only to cover their similar or related liability exposure, as described in subparagraph (C);

"(C) is composed of members whose businesses or activities are similar or related with respect to the liability to which members are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations; and

"(D) is domiciled in any State;".

SEC. 5. CONCERNING SCOPE OF EXEMPTIONS RELATING TO RISK RETENTION GROUPS.

(a) IN GENERAL.—Section 3(b) (15 U.S.C. 3902(b)) is amended to read as follows:

"(b) The exemptions specified in subsection (a) apply to laws governing the insurance business pertaining to—

"(1) liability insurance coverage provided by a risk retention group for—

"(A) such group; or

"(B) any person who is a member of such group;

"(2) the sale of liability insurance coverage for a risk retention group; and

"(3) the provision of—

"(A) insurance related services;

"(B) management, operations, and investment activities; or

"(C) loss control and claims administration (including loss control and claims administration services for uninsured risks retained by any member of such group);

for a risk retention group or any member of such group with respect to liability for which the group provides insurance.".

(b) PLANS OF OPERATION, FEASIBILITY STUDIES, AND FINANCIAL STATEMENTS.—Section 3 (15 U.S.C. 3902) is further amended—

(1) in subsection (a)(1)—

(A) by striking subparagraph (D) and redesignating subparagraphs (E), (F), and (G) as subparagraphs (D), (E), and (F), accordingly; and

(B) by striking all that follows after "documents or process" in subparagraph (D) (as redesignated) and inserting a semicolon; and

(2) by adding at the end of such section the following new subsection:

"(d) Each risk retention group shall submit—

"(1) to the insurance commissioner of the State in which it is chartered—

"(A) before it may offer insurance in any State, a plan of operation or a feasibility study which includes the coverages, deductibles, coverage limits, rates, and rating classification systems for each line of insurance the group intends to offer; and

"(B) revisions of such plan or study if the group intends to offer any additional lines of liability insurance;

"(2) to the insurance commissioner of each State in which it intends to do business, before it may offer insurance in such State—

"(A) a copy of such plan or study (which shall include the name of the State in which it is chartered and its principal place of business); and

"(B) a copy of any revisions to such plan or study, as provided in paragraph (1)(B) (which shall include any change in the designation of the State in which it is chartered); and

"(3) to the insurance commissioner of each State in which it is doing business, a copy of the group's annual financial statement submitted to the State in which the group is chartered as an insurance company, which statement shall be certified by an independent public accountant and contain a statement of opinion on loss and loss adjustment expense reserves made by—

"(A) a member of the American Academy of Actuaries, or

"(B) a qualified loss reserve specialist."

"(c) EXAMINATION OF FINANCIAL CONDITION.—Section 3(a)(1)(E) (as redesignated by subsection (b)) is amended—

(1) by striking clause (i);

(2) by redesignating clause (ii) as clause (i); and

(3) by adding at the end the following new clause:

"(ii) any such examination shall be coordinated to avoid unjustified duplication and unjustified repetition;"

(d) COMPLIANCE WITH DELINQUENCY PROCEEDING ORDERS.—Section 3(a)(1)(F) (as redesignated by subsection (b)) is amended to read as follows:

"(F) comply with a lawful order issued—

"(i) in a delinquency proceeding commenced by the State insurance commissioner if there has been a finding of financial impairment under subparagraph (E); or

"(ii) in a voluntary dissolution proceeding;"

(e) ADDITIONAL STATE LAW REQUIREMENTS.—Section 3(a)(1) (15 U.S.C. 3902(a)(1)) is further amended by adding at the end the following new subparagraphs:

"(G) comply with any State law regarding deceptive, false, or fraudulent acts or practices, except that if the State seeks an injunction regarding the conduct described in this subparagraph, such injunction must be obtained from a court of competent jurisdiction;

"(H) comply with an injunction issued by a court of competent jurisdiction, upon a petition by the State insurance commissioner alleging that the group is in hazardous financial condition or is financially impaired; and

"(I) provide the following notice, in 10-point type, in any insurance policy issued by such group:

"'NOTICE

"'This policy is issued by your risk retention group. Your risk retention group may not be subject to all of the insurance laws and regulations of your State. State insurance insolvency guaranty funds are not available for your risk retention group.'".

SEC. 6. ADDITIONAL REQUIREMENTS RELATING TO PURCHASING GROUPS.

Section 4 (15 U.S.C. 3903) is amended by adding at the end the following new subsections:

"(d)(1) A purchasing group which intends to do business in any State shall furnish notice of such intention to the insurance commissioner of such State. Such notice—

"(A) shall identify the State in which such group is domiciled;

"(B) shall specify the lines and classifications of liability insurance which the purchasing group intends to purchase;

"(C) shall identify the insurance company from which the group intends to purchase insurance and the domicile of such company; and

"(D) shall identify the principal place of business of the group.

"(2) Such purchasing group shall notify the commissioner of any such State as to any subsequent changes in any of the items provided in such notice.

"(e) A purchasing group shall register with and designate the State insurance commissioner of each State in which it does business as its agent solely for the purpose of receiving service of legal documents or process, except that such requirement shall not apply in the case of a purchasing group—

"(1) which—

"(A) was domiciled before April 1, 1986; and

"(B) is domiciled on and after the date of the enactment of this Act;

in any State of the United States;

"(2) which—

"(A) before the date of the enactment of this Act, purchased insurance from an insurance carrier licensed in any State; and

"(B) since such date of enactment, purchases its insurance from an insurance carrier licensed in any State;

"(3) which was a purchasing group under the requirements of this Act before the date of the enactment of the Risk Retention Amendments of 1986; and

"(4) as long as such group does not purchase insurance that was not authorized for purposes of an exemption under this Act as in effect before the date of the enactment of the Risk Retention Amendments of 1986.

"(f) A purchasing group may not purchase insurance from a risk retention group that is not chartered in a State or from an insurer not admitted in the State in which the

purchasing group is located, unless the purchase is effected through a licensed agent or broker acting pursuant to the surplus lines laws and regulations of such State.".

SEC. 7. CONCERNING AUTHORITY OF STATES TO ENJOIN CERTAIN CONDUCT.

Section 3 (15 U.S.C. 3902), as amended by section 5(b) of this Act, is further amended by adding at the end the following new subsection:

"(e) Nothing in this section shall be construed to affect the authority of any Federal or State court to enjoin—

"(1) the solicitation or sale of insurance by a risk retention group to any person who is not eligible for membership in such group; or

"(2) the solicitation or sale of insurance by, or operation of, a risk retention group that is in hazardous financial condition or is financially impaired.".

SEC. 8. ADDITIONAL CLARIFICATION OF PERMISSIBLE STATE AUTHORITY.

(a) CLARIFICATION OF STATE AUTHORITY RESPECTING RISK RETENTION GROUPS.—Section 3 (15 U.S.C. 3902), as amended by sections 5(b) and 7 of this Act, is further amended by a adding at the end the following new subsections:

"(f)(1) Subject to the provisions of subsection (a)(1)(G) (relating to injunctions) and paragraph (2), nothing in this Act shall be construed to affect the authority of any State to make use of any of its powers to enforce the laws of such State with respect to which a risk retention group is not exempt under this Act.

"(2) If a State seeks an injunction regarding the conduct described in paragraphs (1) and (2) of subsection (e), such injunction must be obtained from a Federal or State court of competent jurisdiction.

"(g) Nothing in this Act shall affect the authority of any State to bring an action in any Federal or State court.

"(h) Nothing in this Act shall be construed to affect the authority of any State to regulate or prohibit the ownership interest in a risk retention group by an insurance company in that State, other than in the case of ownership interest in a risk retention group whose members are insurance companies.".

(b) CLARIFICATION OF STATE AUTHORITY RESPECTING PURCHASING GROUPS.—Section 4 (15 U.S.C. 3903), as amended by section 6 of this Act, is further amended—

(1) in subsection (a), by inserting "and section 6" after "section"; and

(2) by adding at the end the following new subsections:

"(g) Nothing in this Act shall be construed to affect the authority of any State to make use of any of its powers to enforce the laws of such State with respect to which a purchasing group is not exempt under this Act.

"(h) Nothing in this Act shall effect the authority of any State to bring an action in any Federal or State court.".

(c) OTHER CLARIFICATION.—The Act is further amended by adding at the end the following new section:

CLARIFICATION CONCERNING PERMISSIBLE STATE AUTHORITY

"SEC. 6. (a) Nothing in this Act shall be construed to exempt a risk retention group or purchasing group authorized under this Act from the policy form or coverage requirements of any State motor vehicle no-fault or motor vehicle financial responsibility insurance law.

"(b) The exemptions provided under this Act shall apply only to the provision of liability insurance by a risk retention group or the purchase of liability insurance by a purchasing group, and nothing in this Act shall be construed to permit the provision or purchase of any other line of insurance by any such group.

"(c) The terms of any insurance policy provided by a risk retention group or purchased by a purchasing group shall not provide or be construed to provide insurance policy coverage prohibited generally by State statute or declared unlawful by the highest court of the State whose law applies to such policy.

"(d) Subject to the provisions of section 3(a)(4) relating to discrimination, nothing in this Act shall be construed to preempt the authority of a State to specify acceptable means of demonstrating financial responsibility where the State has required a demonstration of financial responsibility as a condition for obtaining a license or permit to undertake specificed activities. Such means may include or exclude insurance coverage obtained from an admitted insurance company, an excess lines company, a risk retention group, or any other source regardless of whether coverage is obtained directly from an insurance company or through a broker, agent, purchasing group, or any other person.".

SEC. 9. INJUNCTIVE POWERS OF FEDERAL COURTS.

The Act, as amended by section 8(c) of this Act, is further amended by adding at the end the following new section:

"INJUNCTIVE ORDERS ISSUED BY UNITED STATES DISTRICT COURTS

"SEC. 7. Any district court of the United States may issue an order enjoining a risk retention group from soliciting or selling insurance, or operating, in any State (or in all States) or in any territory or possession of the United States upon a finding of such court that such group is in hazardous financial condition. Such order shall be binding on such group, its officers, agents, and employees, and on any other person acting in active concert with any such officer, agent, or employee, if such other person has actual notice of such order.".

SEC. 10. OVERSIGHT OF IMPLEMENTATION; REPORT TO CONGRESS.

(a) IN GENERAL.—(1) Not later than September 1, 1987, and not later than September 1, 1989, the Secretary of Commerce shall submit reports to the Congress concerning implementation of this Act.

(2) Such report shall be based on—

(A) the Secretary's consultation with State insurance commissioners, risk retention groups, purchasing groups, and other interested parties; and

(B) the Secretary's analysis of other information available to the Secretary.

(b) CONTENTS OF THE REPORT.—The report shall describe the Secretary's views concerning—

(1) the contribution of this Act toward resolution of problems relating to the unavailability and unaffordability of liability insurance;

(2) the extent to which the structure of regulation and preemption established by this Act is satisfactory;

(3) the extent to which, in the implementation of this Act, the public is protected from unsound financial practices and other commercial abuses involving risk retention groups and purchasing groups;

(4) the causes of any financial difficulties of risk retention groups and purchasing groups;

(5) the extent to which risk retention groups and purchasing groups have been discriminated against under State laws, practices, and procedures contrary to the provisions and underlying policy of this Act and the Product Liability Risk Retention Act (as amended by this Act); and

(6) such other comments and conclusions as the Secretary deems relevant to assessment of the implementation of this Act.

SEC. 11. EFFECTIVE DATE; APPLICABILITY.

(a) GENERAL RULE.—Subject to subsection (b), this Act shall take effect on the date of its enactment.

(b) SPECIAL RULE REGARDING FEASIBILITY STUDY.—The provisions of section 3(d) of the Liability Retention Act of 1986 (as added by section 5(b) of this Act), relating to the submission of a feasibility study, shall not apply with respect to any line or classification of liability insurance which—

(1) was defined in the Product Liability Risk Retention Act of 1981 before the date of the enactment of this Act; and

(2) was offered before such date of enactment by any risk retention group which has been chartered and operating for not less than 3 years before such date of enactment.

(c) RULE REGARDING POLLUTION LIABILITY.—

(1) Section 210 of the Superfund Amendments and Reauthorization Act of 1986 is amended by inserting "(a)" following "Pollution Liability Insurance" and adding at the end thereof the following:

"(b) For purposes of subsection (a) of this section, the powers and authorities of States addressed by the Risk Retention Amendments of 1986 are in addition to those of this Act.".

(2) Nothing in this Act shall be construed, interpreted or applied to diminish the obligations of any person to establish or maintain evidence of financial responsibility or otherwise comply with any of the requirements of Federal environmental laws, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 and the Solid Waste Disposal Act.

SEC. 12. TECHNICAL AND CONFORMING AMENDMENTS.

(a) IN THE SHORT TITLE.—Section 1 (15 U.S.C. 3901, note) is amended to read as follows:

"SHORT TITLE

"SECTION 1. This Act may be cited as the 'Liability Risk Retention Act of 1986'."

(b) IN SECTION 2(b).—Section 2(b) (15 U.S.C. 3901(b)) is amended by striking "product liability and product liability insurance" and inserting "liability, personal risk liability, and insurance".

(c) IN SECTION 3(a)(1)(C).—Section 3(a)(1)(C) (15 U.S.C. 3902(a)(1)(C)) is amended by striking "product liability or completed operations".

(d) IN SECTION 4(b).—Section 4(b) (15 U.S.C. 3903(b)) is amended—

(1) in paragraph (1), by striking "product liability or completed operations liability insurance, and comprehensive general liability insurance which includes either of these coverages," and inserting "liability insurance"; and

(2) in paragraph (2), by striking "product liability or completed operations insurance, and comprehensive general".

Mr. KASTEN. Mr. President, today I am pleased to present to the Senate an amendment in the nature of a substitute for the House amendment to S. 2129, the Risk Retention Amendments of 1986. The amendment which I am presenting to the Senate today has

been agreed to by the chairman and ranking minority member of both the Senate Committee on Commerce, Science, and Transportation, and the House Committee on Energy and Commerce. This amendment also have been agreed to by the principal proponents and sponsors of this legislation in both the House and the Senate.

S. 2129, which I introduced with Senators DANFORTH, HOLLINGS, and ROCKEFELLER as original cosponsors, amends the Product Liability Risk Retention Act of 1981 in order to make it easier for business, associations, professionals, governmental entities, and other organizations to form collective purchasing groups and self-insurance groups for liability insurance. This measure was reported favorably by the Senate Commerce Committee last spring. Additional cosponsors are Senators PRESSLER, GORE, SASSER, KASSEBAUM, SIMON, INOUYE, WEICKER, SARBANES, HEINZ, ABDNOR, and NICKLES.

Mr. President, on July 17, 1986, S. 2129 was adopted by the Senate with an amendment in the nature of a substitute offered by Senators GORTON, FORD, DANFORTH, HOLLINGS, GORE, ROCKEFELLER, and myself. This amendment assures the formation and operation of risk retention groups and purchasing groups while permitting legitimate regulatory oversight by State officials who are concerned that these groups operate in a way which is financially sound and also fair.

Subsequently, on September 23, 1986, the House passed its own version of this legislation, H.R. 5225. The House then substituted its text for the Senate-passed bill and returned that bill to the Senate for further consideration.

S. 2129, as amended by the House, is very similar in content and purpose to the original measure passed by the Senate. The House language expands upon and clarifies further the intent of the Senate bill. As a consequence, the amendment I am presenting to the Senate today adopts the House language with only a few substantive changes as well as several clarifying and technical amendments.

I would like to make several comments about the language of this amendment. First, I would like to express my concern, as an original sponsor of this legislation, about the House provision dealing with financial responsibility, which has been retained in this amendment. This House provision states that, subject to the provisions set forth in section 3(a)(4) of the existing act prohibiting discrimination against a risk retention group, nothing in the act shall be construed to preempt the authority of any State to specify acceptable means of demonstrating financial responsibility where the State has required a demonstration of financial responsibility as a condition for obtaining a license or permit to undertake specified activities.

The Senate bill contained no similar provision. However, in a colloquy with Senator GORTON, I indicated agreement with his understanding that the Risk Retention Act was not intended to preempt State regulatory schemes that require proof of insurance or financial responsibility in order to obtain a license or permit to engage in certain activities.

The House has made this continuing State authority provision an explicit provision of the bill. The House bill further provides, and this is very helpful, that a State's authority to impose or apply financial responsibility requirements is subject to the general statutory prohibition that a State cannot impose any discriminatory requirements on a risk retention group. This is very important because the purpose of this legislation is to broaden and strengthen the Risk Retention Act—not to authorize States to impose restrictions prohibiting the legitimate formation and operation of risk retention groups and purchasing groups. While States may impose justified requirements regarding financial responsibility for a license or permit to engage in specified activities, enactment of statutes by States or the application of existing laws which are only intended to prohibit, or which unjustifiably prohibit, the operation of a risk retention group would not be authorized. Such action would be contrary to the plain meaning and intent of this provision.

Let me add just one further comment on this point. A large risk retention group insuring homebuilders has been established and has been in operation for approximately 4 years. That group has been subjected to some inquiries and litigation by State officials who were hostile to the Risk Retention Act. In addition, such professional groups as the nurse-midwives have been seeking to establish a risk retention group. I would hope that States would not use this financial responsibility authority to attempt to curtail the beneficial Homebuilder Risk Retention Group Program and the efforts of such groups as the nurse-midwives, or take any other action that is intended to prohibit or discourage the formation and operation of other legitimate and financially sound risk retention groups.

At the same time, I concur with the statement made by Senator GORTON on July 17, 1986, during Senate floor consideration of S. 2129. This statement appears at page S9233 of the CONGRESSIONAL RECORD. As Senator GORTON explained, under this act, these State financial responsibility requirements would remain applicable where a State has established a regulatory requirement of proof of financial responsibility before an individual can engage in certain hazardous activities such as applying pesticides. In addition, any State law requirements that specify the amount of insurance coverage that must be maintained by a person before engaging in an activity would remain applicable.

These same considerations apply with respect to the authority of States to specify acceptable means for managing the liability of the State or its subdivisions. The House bill contained language indicating that this measure does not preempt State authority with respect to the management of the liability of the State or any agency or subdivision of the State. This language has been dropped as unnecessary, because this State authority, as delineated in the House bill, is not affected by this legislation.

Mr. President, both the Senate and House bills contain provisions defining the enforcement authority of nonchartering States. Because the House language makes explicit the intent of the Senate bill and clarifies further the scope of that authority, the House language has been retained in this amendment.

With respect to this authority, it should be noted that both the House and Senate bills provide that a State insurance commissioner may exercise any powers available under State law to investigate the conduct of a risk retention group and to enforce provisions of State law not preempted under the Risk Retention Act. This would include but is not limited to issuing subpoenas investigating market conduct or the financial condition of a group as well as actions for the failure to register or file financial statements or to respond to a request for documents. A State insurance commissioner would be authorized to rely on State procedural law and regulations in connection with any such inquiry or proceeding.

However, both the Senate and the House bill provide that if a State insurance commissioner seeks to enjoin a group because of conduct constituting deceptive, false, or fradulent acts or practices, any such injunction must be obtained from a court of competent jurisdiction. This will assure that any such decision to prohibit a group from operating will be made by an independent judicial officer.

The House bill reorganizes and attempts to clarify further the State enforcement authority preserved by S. 2129. In so doing, the House bill preserves the key provision of the Senate measure that requires that any action to enjoin a risk retention group because of deceptive, false, or fraudulent acts or practices must be made by court order. In addition, the House bill preserves the requirement of the Senate measure that an action to enjoin a risk retention group because

it is in a hazardous financial condition or is financially impaired must be by court order.

The House committee report explains that States retain authority to initiate administrative proceedings, as opposed to judicial proceedings, against a risk retention group for any violation of State law not preempted by the Risk Retention Act, except an action to enjoin certain specified conduct such as deceptive, false, or fraudulent acts or practices or other activity which I described previously. It is hoped that, where appropriate, actions to enjoin unlawful conduct and impose penalties on a group would be brought in a single proceeding and any such action which sought as a remedy an injunction against deceptive, false, or fraudulent conduct must be pursuant to a court order.

In any event, however, if a State seeks to impose administrative sanctions without seeking to enjoin future violations, it is clearly intended that the State be prohibited from initiating or maintaining discriminatory enforcement actions against a risk retention group or a purchasing group. This limitation is fundamental to the policy of the Risk Retention Act. As we did in the 1981 act, we have sought in this legislation to exempt risk retention groups and purchasing groups from burdensome and duplicative laws that would hinder their operation. At the same time, we have sought to preserve for the State insurance commissioners the necessary powers to ensure that risk retention groups can be prohibited from engaging in any false, fraudulent, or deceptive conduct or continuing in operation if they are not in a sound financial condition.

The same concerns apply to State enforcement authority against purchasing groups. The House bill states that the act does not affect the authority of a State to make use of any of its powers to enforce the laws of such State with respect to which a purchasing group is not exempt under the act. It is essential that States recognize the legitimacy of these groups and utilize their powers in an even-handed and nondiscriminatory manner. I believe that the House language has been shaped to achieve that goal and therefore I urge its adoption. At the same time, however, because of our continuing concern about maintaining the delicate balance beweeen State authority and the policy of the act, we have added an additional reporting requirement to this measure.

Our amendment retains the House language requiring the Secretary of Commerce to report to Congress in 1987 and 1989 concerning implementation of the act; however, a provision has been added requiring the Secretary to report on his views concerning the extent to which risk retention groups and purchasing groups have been discriminated against under State laws, practices, and procedures contrary to the provisions and underlying policy of the risk Retention Act.

This provision reflects our concern that the States not abuse their legitimate authority to discriminate against these groups by obstructing their operation and formation. This concern is consistent with the underlying policy of this legislation as reflected in sections 3(a)(4) and 4(a)(8) of the original 1981 act. These provisions protect risk retention groups and purchasing groups, as well as their members, from such discrimination.

Finally, I would like to note that a number of other minor clarifying and technical amendments have been agreed to, including a change in the House language pertaining to the ownership of a risk retention group. The purpose of this change, which is consistent with the language of the House report, is to leave no uncertainty that any existing and future risk retention groups that have indirect member ownership may operate. This provision preserves the requirement that there be an identity among the owners, members, and insureds of the risk retention group.

Mr. President, as I have stated repeatedly, this measure is not intended as a cure-all for the liability insurance problems facing us today. Nonetheless, expansion of the Risk Retention Act should provide some immediate relief for those affected by the insurance crisis by providing insurance alternatives that were not previously available and by promoting competition. Of course, this is a matter of particular concern for small businesses in this country. It should be noted that this legislation has been endorsed by the 1986 White House Conference on Small Business which included congressional approval of this measure in its final recommendations.

As a consequence, I am very pleased that we have reached agreement on this amendment in the nature of a substitute. I wish to commend all my colleagues in this body and the House, who have been involved in this process, as well as their staffs, and the staffs of the House and Senate committees. I urge my colleagues to adopt this amendment so that we can now move ahead to swift enactment of this important legislation.

Mr. FORD. Mr. President, I support the passage of the Risk Retention Amendments of 1986 and am pleased that many of my original problems with the legislation reported from the Commerce Committee have been resolved.

Mr. President, I opposed this legislation during the Commerce Committee consideration because I felt that consumer protection was being overlooked in the hasty congressional attempt to ease the insurance crisis. As I said in my minority views on S. 2129:

> Remedial measures are being pursued in every State. If the Committee wishes to supplement the response by State regulators, we ought to preserve as much State regulatory protection of insurance commissioners for the benefit of injured parties as possible. This includes the ability of the State insurance commissioners to know the financial condition of the risk retention group operating in their State, even if the risk retention group is chartered in another State. State regulatory protection should also include the ability of a State insurance commissioner to proceed with an injunction in a court of competent jurisdiction should a hazardous financial condition or a financially impaired condition be found in a risk retention group. Consumer protection should not be overlooked in this attempt to ease the insurance crisis.

I was pleased as a primary cosponsor of the substitute amendment eventually adopted by the Senate that many of my concerns were met. This substitute amendment clarified the authority of each insurance commissioner to obtain adequate reports and information about risk retention groups doing business in their State and to act to protect the consumer if necessary.

Mr. President, the House has adopted the main substantive provisions of the bill which originally passed the Senate. The House has clarified that bill by stating more clearly the scope of the exemption from State regulation and the scope of State authority to enforce its laws and to regulate risk retention and purchasing groups. This action is consistent with the substitute amendment which I cosponsored in the Senate to clarify the States authority to better protect the consumer. Therefore, I am pleased to support this Senate amendment basically encompassing the House version of the legislation.

It is my hope that this act will assist those seeking alternatives to the traditional marketplace. Supporters of this legislation include the:

American College of Nurse Midwives.

National Restaurant Association.

National Association of Wholesalers/Distributors.

Risk and Insurance Management Society.

Home Owners Warranty Corporation.

U.S. Conference of Mayors.

National Conference of State Legislatures.

The League of Cities.

American Trucking Association.

National Association of Insurance Brokers.

The White House Conference on Small Business listed passage of this bill as one of its final recommendations.

One additional note, as an advocate of congressional oversight, I am extremely pleased that reports will be

submitted to Congress concerning the implementation of the act. Based on this report, the respective Commerce Committees should, in my opinion, conduct oversight hearings to assess the contribution of this act toward resolution of insurance affordability and availability problems; the extent to which the regulation and preemption established by the act is satisfactory; and the extent to which the public is protected from unsound financial practices and other commercial abuses involving risk retention and purchasing groups. In addition, the committees should assess any instance in which these groups have been discriminated against under State laws, practices, and procedures contrary to the policy and provisions of this act.

Mr. President, I support this legislation, now considerably changed from the legislation reported from the Senate Commerce Committee. I believe the additional provisions will help to assure adequate oversight for the consumer but will retain the needed flexibility to facilitate the formation of these groups.

Mr. DANFORTH. Mr. President, I rise in support of the amendment being offered by Senator KASTEN as a substitute for the House amendment to S. 2129, the Risk Retention Amendments of 1986.

S. 2129 was reported by the Commerce Committee on March 27, 1986, and passed by the Senate by a resounding 96-to-1 vote on July 17, 1986. On September 23, 1986, the House passed an amended version of S. 2129. Because the House version of this measure is consistent with the intent and purpose of the bill approved by the Senate, the amendment before us today retains most of the substantive changes of the House amendment with some minor technical and clarifying amendments.

The primary difference between the Senate and House bills is that the House bill clarifies further the authority of State insurance commissioners to regulate risk retention and purchasing groups. However, the House bill is not inconsistent with the intent of S. 2129 as passed by the Senate. Moreover, I believe that the clarification of State enforcement authority delineated in the House bill is reasonable and fair and will not impair the functioning of legitimate risk retention groups and purchasing groups, because of the act's prohibitions on discrimination against risk retention and purchasing groups or their members.

One additional point should be clarified, Mr. President. The House report on the Risk Retention Act states that the word "operations" included in the definition of liability extends to the liability of commercial fishing operations conducted on an independent contractor basis. This is consistent with the intent of the Senate bill as to the scope of liability insurance coverage under the act. In addition, and it is my understanding this reflects the intent of the House, the word "operations" includes other maritime operations such as dredging and barge operations conducted on an independent contractor basis.

Mr. President, the need for this legislation is urgent. Millions of Americans are affected by the high cost and unavailability of liability insurance. This situation is unacceptable to our constituents and it should be unacceptable to the Senate as well. S. 2129 is not a complete solution to this problem, but, by creating new alternatives for liability coverage, it represents an important step toward alleviating the problem. S. 2129 has the support of manufacturing groups, municipalities, nurse-midwives, insurance brokers, and many other organizations. Joining these groups is the 1986 White House Conference on Small Business, which recently urged in its final recommendations that Congress pass the risk retention amendments.

I would like to commend Senator KASTEN, Senator GORTON, Senator HOLLINGS, Senator FORD, and Senator ROCKEFELLER, along with all the other Members of the House and the Senate who have worked to reach agreement on this amendment to S. 2129. I urge my colleagues to join me in concurring in the House amendment to S. 2129 with the further amendment offered by Senator KASTEN.

Mr. GORTON. Mr. President, the substitute amendment before us today strikes a delicate balance between the need for a mechanism to permit certain groups to provide insurance coverage where it might not otherwise be available through the formation of risk retention or purchasing groups, and the very legitimate regulatory concerns of the States. We hope we have found the proper balance, but if we have not, we will have the benefit of a study by the Department of Commerce to indicate where corrections might be needed in the structure of the legislation.

I am particularly pleased, Mr. President, that language contained in the House bill recognizing the right of a State to require proof of financial responsibility before the undertaking of certain activities and to prescribe the manner for meeting that requirement, is retained in this amendment. As I stated on the floor at the time of the passage of the Senate bill, requirements of financial responsibility are usually the result of a State's concern about third parties who might be injured by the insured's activities. In the State of Washington, for instance, many activities require prior proof of insurance by a carrier admitted to do business in the State. Such laws would continue to be valid notwithstanding the fact that they might preclude participation in an out-of-State risk retention group for the purpose of meeting that requirement.

Mr. President, the Senator from Wisconsin [Mr. KASTEN], mentioned an existing risk retention group and one that is likely to be formed if this bill is enacted in his discussion of the bill's financial responsibility provision. He stated that he hoped that the States would not use their authority with respect to financial responsibility to curtail the activities of these groups. I would like to note that that admonition to the States should not be taken to imply that a State cannot impose financial responsibility requirements on the members of those groups. If the State chooses to impose such a requirement, however, it may not make unfair distinctions between risk retention groups and conventional insurers.

Mr. President, the bill before us today is vastly different from the bill reported by the Commerce Committee. Although I have reservations about the process we have crafted, I believe that, on balance, those groups which will seek to use it deserve the opportunity to try to respond to the problems of availability and affordability of insurance in the conventional market through the mechanism of a risk retention or purchasing group. I hope that the concerns many of us have expressed in the course of this debate will prove to be unfounded and we will have provided a meaningful response to the problems of so many of our constituents.

Mr. HOLLINGS. Mr. President, I am extremely pleased that the Senate is today concurring to the amendment of the House to S. 2129, the Risk Retention Amendments of 1986, with an amendment. This amendment makes further clarification to the House substitute amendment to the bill and retains the main substantive provisions of the original Senate bill as passed the Senate. As an original cosponsor of S. 2129, I fully endorse the intent of the legislation. The legislation would make it easier for businesses, professional groups, local government entities, and other buyers of insurance to obtain commercial liability coverage.

The hearings held on February 19 and March 4 of this year by the Senate Commerce Committee on the availability and affordability problems faced by insurance buyers underlined the fact that many entities are indeed facing an insurance crisis. I certainly agree with the testimony of the National Association of Insurance Brokers at the March 20 hearing specifically on S. 2129, that the conventional marketplace has not functioned as well as it normally does. S. 2129 will create a safety valve for those who face the prospect of having to continue operations with no insurance at all.

I am pleased that action on this legislation served as a catalyst to the providing of insurance to the American College of Nurse-Midwives, whose members needed expeditious enactment of S. 2129 lest they face the bleak prospect of going without insurance by midsummer. My office began working on this legislation after speaking with a representative of the nurse-midwives about their problem back in 1985.

At the Commerce Committee hearing, witnesses noted that the insurance crisis has arisen during a period of falling interest rates, prior to which competing insurance companies had been underpricing their product in order to maximize cash-flow and enhance investment income. The committee report accompanying S. 2129 discusses the problems experienced by the insurance industry which precipitated the crisis: "When interest rates began to fall, companies were forced to increase premiums because investment income was no longer compensating for underwriting losses. This practice of cash-flow underwriting was linked directly to the current crisis."

Mr. President, the more I have studied this issue, the more convinced I am that the insurance industry itself is responsible for the large increases in premiums. Various commentators confirm that the crisis is of the insurance industry's own making. For example, the editors of Business Week stated that "mainly the industry shot itself in the foot." A study by the National Association of Attorneys General Ad Hoc Committee on Insurance recently concluded that "the cyclical nature of the industry, and not any changes in tort claims, is largely responsible for the current crisis." Similarly, some insurance industry executives have recently remarked: "Insurance industry leaders must stand up and squarely accept the responsibility for a crisis that is wholly their fault."

In any case, I believe that expansion of the Risk Retention Act is an appropriate response to this insurance crisis. If the insurance marketplace is not supplying insurance at an affordable rate, this law will be in place to be utilized by any entities engaged in similar or related businesses or activities.

Five years ago, Congress enacted the Product Liability Risk Retention Act of 1981, which was reported by the Commerce Committee as S. 1096. This bill was enacted to facilitate the ability of product manufacturers and sellers to purchase product liability insurance on a group basis and to establish self-insurance coverage on a group basis for product liability risks. Risk retention legislation first had been considered by the committee as a response to the high cost and unavailability of product liability insurance during the insurance crisis of the mid-1970's.

The cyclical nature of the insurance market has resulted in another crisis in the mid-1980's. The policy underlying the 1981 act is applicable to other lines of liability coverage and the broad scope of the current crisis warrants its expansion to facilitate the formation of risk retention and purchasing groups beyond that of product manufacturer and seller groups. It is my hope that the act will be utilized, if necessary, by the cities, city officials, charity groups, professional groups, businesses involved in environmental cleanup efforts, commercial fishing operations conducted on an independent contractor basis and other maritime operations, and many more entities. Small businesses have shown particular interest in and support for this legislation.

Mr. President, the bill as reported from the committee made changes in the overall regulatory framework of the 1981 Risk Retention Act. I cosponsored a substitute amendment which was passed by the Senate. This amendment further clarified S. 2129 with respect to the authority of State insurance commissioners to oversee the operation of risk retention groups and purchasing groups established under the Risk Retention Act. These provisions outlined the authority of each insurance commissioner to obtain adequate reports and information about risk retention groups doing business in their State.

The House recently adopted the main provisions of the bill which passed the Senate. The principal differences which the Senate will agree to with its substitute amendment are as follows:

Hazardous financial condition.—The House bill contains additional language providing that a hazardous financial condition is based on both the present and reasonably anticipated financial condition of a risk retention group and a group is in hazardous financial condition if it is "unlikely to be able" to meet its obligations to policyholders and other creditors.

Ownership.—Under the House bill, membership in a risk retention group is restricted to persons who have an ownership in the group and membership is restricted to persons who are provided insurance by the group. In addition, the Senate amendment will add language clarifying that such a group can have as its sole owner an organization which has as its members only persons who comprise the membership of the risk retention group and which has as its owners only persons who comprise the membership of the risk retention group and who are provided insurance by such group. This is intended to clarify that an existing group, which is owned by the Home Owner's Warranty Corporation is brought within the new description of a risk retention group. The corporation is, in turn, owned by the many home builders who are members of this group.

Reinsurance.—Under the House bill, reinsurance may be offered only to a risk retention group whose risks are similar or related to the group which provides reinsurance coverage.

Purchasing group definition.—A purchasing group as defined in the House bill may purchase insurance "only to cover [the members'] similar or related liability exposure."

Risk retention group exemption from State law.—The House bill states that the exemption of a risk retention group from State law applies to "laws governing the insurance business" pertaining to insurance coverage provided by risk retention groups and other insurance-related services.

Financial examination.—The House bill provides that financial examination shall be coordinated to avoid unjustified duplication and unjustified repetition.

False, deceptive or fraudulent acts or practices.—The House bill provides that a risk retention group must comply with any State law regarding false, deceptive or fraudulent acts or practices except that if a state seeks an injunction to prohibit such conduct, the injunction must be made by court order.

Purchasing group notice requirements.—The House bill requires a purchasing group to give notice to the insurance commissioner of each State in which it intends to do business. This notice must identify the State in which the group is domiciled, the lines and classifications of liability insurance it intends to offer, the name of the insurance company providing insurance, and the insurer's State of domicile. A newly formed purchasing group is also required to register with the insurance commissioner of each State in which it does business and designate the commissioner as its agent for service of process in any legal proceedings against the group.

State enforcement authority.—The House bill provides that, subject to the requirement that any action to enjoin false or deceptive conduct, must be pursuant to a court order, nothing in the act shall be construed to effect the authority of any State to make use of any of its powers to enforce the laws of that State to which a risk retention group is not exempt under this act.

Insurance company ownership.—The House bill provides that nothing in the Risk Retention Act shall be construed to effect the authority of any State to regulate or prohibit the ownership interest in a risk retention group by an insurance company other than in the case of insuring an insurance companies own liability risks.

State enforcement authority re purchasing groups.—The House bill contains a provision stating that "nothing in this act shall be construed to effect the authority of any State to make use of any of its powers to enforce the laws of that State with respect to which a purchasing group is not exempt under this act."

Unlawful policy terms.—The House bill prevents any insurance policy provided by a risk retention or a purchasing group from providing coverage that is prohibited by a State statute or that has been declared unlawful by the highest court of the State whose law applies to that policy.

Financial responsibility.—The House bill contains a provision that, subject to the provision prohibiting discrimination against the risk retention group, nothing in the act shall be construed to preempt any State law that specifies acceptable means for demonstrating the financial responsibility where such a requirement is made a condition for obtaining a license or permit to undertake specified activities. The Senate has agreed to adopt this provision which was in the House bill. It is important to note that al-

though the States may impose these financial responsibility requirements, they cannot do so if the purpose or intent of these laws is to discriminate against the formation or operation of a risk retention group or purchasing group. The House Committee Report more thoroughly explains this limitation on State authority.

Commerce Department reports.—The House bill requires that the Secretary of Commerce shall submit reports to Congress concerning the implementation of the Risk Retention Act. The Senate amendment requires that any discrimination under State laws, practices, or procedures must be reported to the Congress.

In addition, this amendment does not contain the provision in the House bill which provides that nothing in the act limits the authority of a State to specify acceptable means for managing the liability of municipalities. States already have this authority. Also the definition of "financial impairment" from the Senate passed bill has been dropped as this is defined within State insurance law.

Mr. President, the insurance industry appears to be coming out of the recent crisis. The General Accounting Office testified before the Senate Commerce Committee that the underwriting cycle has turned again and "is now moving in a positive direction." The industry is projecting substantial net gains over the next 5 years. The GAO has stated that the property/casualty industry will enjoy "an expected net gain before taxes of more than $90 billion over the years 1986–1990."

In any case, as the Department of Commerce has indicated, "the knowledge that substantial insurance buyers can create their own alternative insurance mechanism will be an incentive to commercial insurers to avoid sharp peaks and valleys in their costs."

Mr. President, I urge the Senate to expeditiously pass this needed and important legislation. I hope the House will then quickly act to send this legislation to the President for his signature.

Mr. ROCKEFELLER. Mr. President, I applaud the Congress for its swift passage of the Risk Retention Amendments of 1986. As an original cosponsor of this measure, I believe that this is a significant achievement that will provide an insurance safety valve for doctors, businessmen, day care providers, public officials, among others.

For over a year now this Nation has been mired in one liability crisis after another and my own State of West Virginia provided some of the most dramatic examples. Beginning in about November 1985, I started to hear from West Virginia's businessmen, doctors, day care providers, mayors, and county commissioners. Recognizing how widespread the insurance problem was becoming, I wrote to my State's mayors and county commissioners. Their letters were overwhelming, all echoing the same theme: despite their excellent claims record their insurance had been canceled.

By April, the insurance crisis reached its peak in West Virginia when three medical insurance providers issued cancellation notices to most of our State's 7,000 doctors, 58 hospitals, and other health professionals. The industry's action, in a State which is already medically underserved, threw the State into turmoil. Scores of West Virginians called my office after being told by their doctors that their hospital, health clinic, dialysis center or doctor's office would be closed.

For 2 months, West Virginians were held hostage to the threats of three insurance companies who said they would rather abandon the State than comply with an insurance/tort reform measure enacted by the legislature.

Ultimately, the State legislature buckled to the demands of the insurers. I am convinced, however, that if West Virginia's health providers had access to another liability insurance option, the insurance companies would have been hard pressed to blackmail our State. The Risk Retention Act amendments provide consumers with the safety valve option that they so desperately need.

These amendments provide doctors, municipalities, small businesses, counties, nonprofit groups, and others with the latitude necessary to help them through insurance crises. The measure preempts differing State insurance laws and allows certain groups to form interstate insurance pools. For example, Williamson, WV, could join in a municipal liability insurance pool with South Williamson, KY. Likewise, a doctor in Buckhannon, WV, could join in a medical malpractice pool with a doctor from Manchester, NH, and a West Virginia ski resort could pool with a similar outfit in Pennsylvania.

The worst of the 1985–86 insurance crisis may be abating, but based on the cyclical history of the insurance market, we can expect insurance crises in the future. While the risk retention amendments do not solve our Nation's insurance crisis, or necessarily avert future crises, they do provide some degree of relief for a whole range of troubled insurance buyers.

Mr. President, I am pleased that the Congress has passed this significant and useful measure.

Mr. GORTON. Mr. President, in the risk retention bill that passed the Senate there were two provisions that permitted a nonchartering State to enjoin the solicitation or sale of insurance by, or the operations of, a risk retention group—or purchasing group—whose officers, organizers, or directors have been found to have engaged in certain wrongful conduct within the previous 5 years under circumstances which create a likelihood that such conduct would be repeated. The purpose of those provisions, of course, was to make it clear that a State would not have to permit operations by groups formed or managed by bad actors. We are all familiar with the unfortunate pattern of certain persons who use the corporate structure to insulate their activities from regulatory action.

I understand that this language was dropped because it was unnecessary. In other words, there is nothing in this bill that curtails a State's ability to act in this regard to the extent such authority exists under State law and is not used to discriminate unfairly against a risk retention group or purchasing group. Does the Senator from Wisconsin agree with my understanding of the reason for dropping this provision?

Mr. KASTEN. I do. The Senator from Washington has correctly stated the reason for dropping the Senate language.

Mr. GORTON. I thank the Senator.

Mr. GORE. Mr. President, I am pleased to cosponsor this amendment which will make it easier for businesses, governmental entities, professional associations, and other groups to form self-insurance groups and collective-purchasing groups for the purpose of obtaining liability insurance. This measure balances the need for additional capacity in the liability insurance markets against the legitimate role of State regulators in protecting the consumers of insurance and the interests of third party beneficiaries in their States.

During hearings on this legislation in the Commerce Committee, the Tennessee Municipal League representative testified as to the success of the TML risk retention group available to municipalities in Tennessee. Due to the success of this group, Tennessee has had fewer experiences like those in some other States where municipalities and their officials cannot obtain insurance at all—or at affordable rates. Not only will this bill make it easier for such groups to form in those States that do not have such groups, but it will facilitate the formation of reinsurance groups which are essential to the success of primary risk retention groups.

While it is the purpose of this measure to preempt those State laws which unfairly discriminate against the creation and operation of rish retention and purchasing groups, it is important to note that this legislation has gone through several versions, each strenghtening the supervisory role of the nonchartering States within which the risk retention group or purchasing group operates. Equally important, the House language, which the Senate has accepted in this amendment, makes it clear that a State retains the power to specify acceptable means of demonstrating financial responsibility as a condition for obtaining a license

or permit to undertake specified activities. However, this power may not be exercised by the State in a manner which unfairly and unreasonably discriminates against risk retention or purchasing groups. Indeed, the central purpose of this legislation would be undermined by such conduct.

Finally, I want to highlight what I believe is an extremely important provision of this legislation, the requirement that the Secretary of Commerce submit reports to the Congress regarding implementation of the act. The entire debate over the unavailability and unaffordability of liability insurance has been clouded by a lack of impartial analysis. This provision requires the Secretary to undertake a comprehensive examination of the liability insurance market in order to determine the impact of risk retention and purchasing groups on capacity and pricing in those markets. I believe that the Secretary, in order to fulfill the requirements of this provision, would need to discuss the availability and quality of insurance claims data and other information relevant to the pricing of liability insurance. This section also requires the Secretary to closely examine any conduct by the States which may have effect of unfairly and unreasonably discriminating against risk retention and purchasing groups. There is little doubt that Congress would consider further preemption of State authority should it be determined that the States engaged in such conduct contrary to the purposes of this act.

Mr. President, I want to commend all those who have been involved in the process of drafting and redrafting this legislation so that it can be enacted today without significant opposition. Expansion of the Risk Retention Act can provide some relief to those who have found liability insurance to be unavailable. Hopefully, small businesses will now be able to take advantage of this act through the formation of purchasing and risk retention groups. In fact, this legislation was endorsed by the 1986 White House Conference on Small Business. I urge my colleagues to adopt this amendment and to enact this measure promptly.

Mr. LAUTENBERG. Mr. President, I rise to support the amendment of the Senator from Wisconsin [Mr. KASTEN] to the House amendment to S. 2129.

The bill before us is much improved over the bill the Senate passed in July. Major flaws in the bill have been addressed. The version before us makes explicit States' freedom to ensure the solvency and prudent management of risk retention groups. Who may own risk retention groups is clarified to guard against fly-by-night operators.

The power of States to enforce financial responsibility laws is clearly preserved. Additionally, the act does not restrict or otherwise affect the authority of the Federal Government or State government under any other Federal law to impose financial responsibility requirements, including the means of demonstrating such financial responsibility.

At the same time, the basic goal of the bill—to establish an alternative, competitive insurance mechanism—is not undermined.

I am pleased that the Senator from Wisconsin has agreed to include in the proposed amendment, at my suggestion, a provision which amends the Comprehensive Environmental Response, Compensation and Liability Act of 1980 [CERCLA] as amended by the Superfund Amendments and Reauthorization Act of 1986 [SARA]. The Senate last week approved the conference report on SARA, legislation to amend and reauthorize CERCLA. SARA would authorize risk retention groups and purchasing groups in the area of pollution liability. The relevant provisions are modeled very closely on the 1981 Product Liability Risk Retention Act.

S. 2129 would also authorize risk retention groups and purchasing groups in the area of pollution liability. However, the risk retention group and purchasing group provisions in SARA do not reflect the clarifying work—to ensure solvency and prudent management and to protect the public interest—that has been done on the generic risk retention measure before us.

If SARA is ultimately signed into law after enactment of the measure before us, an argument might well be made that the latter enactment would prevail, in the event of any conflicts or conflicting interpretations. The result could be underregulated groups that would face a greater risk of failure, leaving insureds uncovered and communities and injured parties without a source of recovery for their injuries. That is not our intent and the amendment before us includes a provision, at subsection (c)(1) of section 11, that is intended to avoid such a statutory construction and to avoid such a result.

Of course, if S. 2129 is enacted after SARA, there also should be no doubt that pollution liability risk retention groups and purchasing groups would be subject to the additional safeguards, requirements and oversight explicitly provided in S. 2129.

Mr. President, risk retention groups and purchasing groups can provide an important alternative for the provision of insurance. These amendments would provide for the formation of these groups subject to appropriate oversight.

I urge adoption of the legislation.

Mr. SIMPSON. Mr. President, I move the adoption of the motion to concur.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

Mr. BURDICK. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

□ 1940

APPROVAL OF THE COMPACT OF FREE ASSOCIATION BETWEEN THE UNITED STATES AND THE GOVERNMENT OF PALAU

Mr. SIMPSON. Mr. President, I ask unanimous consent that the Senate now turn to the consideration of calendar item 1018, House Joint Resolution 626, the compact with Palau.

The PRESIDING OFFICER. Without objection, it is so ordered

The clerk will report.

The legislative clerk read as follows:

A joint resolution (H.J. Res. 626) to approve the "Compact of Free Association" between the United States and the Government of Palau, and for other purposes.

There being no objection, the Senate proceeded to the consideration of the joint resolution.

AMENDMENT NO. 3252

Mr. SIMPSON. Mr. President, I send an amendment to the desk on behalf of Senator MCCLURE and Senator JOHNSTON in the nature of a substitute and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Wyoming [Mr. SIMPSON], for Mr. MCCLURE and Mr. JOHNSTON, proposes an amendment numbered 3252.

Mr. SIMPSON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike all after the resolving clause and insert in lieu thereof the following:

TITLE I—APPROVAL OF COMPACT; INTERPRETATION OF, AND UNITED STATES POLICIES REGARDING, COMPACT; SUPPLEMENTAL PROVISIONS

APPROVAL OF COMPACT OF FREE ASSOCIATION

SEC. 101. (a) APPROVAL.—The Compact of Free Association set forth in title II of this joint resolution between the United States and the Government of Palau is hereby approved, and Congress hereby consents to the agreements as set forth on pages 154 through 405 of House Document 99-193 of April 9, 1986 (hereafter in this joint resolution referred to as subsidiary or related agreements), as they relate to such Government. Subject to the provisions of this joint resolution, the President is authorized to agree, in accordance with section 411 of the Compact, to an effective date for and thereafter to implement such Compact, having taken into account any procedures with re-

spect to the United Nations for termination of the Trusteeship Agreement.

(b) REFERENCE TO THE COMPACT.—Any reference in this joint resolution to the "Compact" shall be treated as a reference to the Compact of Free Association set forth in title II of this joint resolution.

(c) AMENDMENT, CHANGE, OR TERMINATION OF THE COMPACT AND CERTAIN AGREEMENTS.—(1) Mutual agreement by the Government of the United States as provided in the Compact which results in amendment, change, or termination of all or any part thereof shall be affected only by Act of Congress and no unilateral action by the Government of the United States provided for in the Compact, and having such result, may be effected other than by Act of Congress.

(2) The provisions of paragraph (1) shall apply—

(A) to all actions of the Government of the United States under the Compact including, but not limited to, actions taken pursuant to sections 431, 432, 441, or 442;

(B) to any amendment, change, or termination in any agreement that may be concluded at any time between the Government of the United States and the Government of Palau regarding friendship, cooperation and mutual security concluded pursuant to sections 321 and 323 of the Compact referred to in section 462(h);

(C) to any amendment, change, or termination of the agreements concluded pursuant to Compact sections 175 and 221(a)(4), the terms of which are incorporated by reference into the Compact; and

(D) to the following subsidiary agreements, or portions thereof:

(i) Article II of the agreement referred to in section 462(a) of the Compact;

(ii) Article II of the agreement referred to in section 462(b) of the Compact;

(iii) Article II and Section 7 of Article X of the agreement referred to in section 462(f) of the Compact;

(iv) the agreement referred to in section 462(g) of the Compact;

(v) Articles II, III, IV, V, VI, and VII of the agreement referred to in section 462(h) of the Compact; and

(vi) Articles VI, XV, and XVII of the agreement referred to in section 462(i) of the Compact.

"(d) EFFECTIVE DATE.—(1) The authority of the President to agree to an effective date for the Compact of Free Association between the United States and Palau concurrently with termination of the Trusteeship shall be carried out in accordance with this section, and the Compact shall not take effect until after—

"(A) The President has certified to the Congress that the Compact has been approved in accordance with Section 411 (a) and (b) of the Compact, and that there exists no legal impediment to the ability of the United States to carry out fully its responsibilities and to exercise its right under Title Three of the Compact, as set forth in this Act, and

"(B) enactment of a joint resolution which has been reported by the Committee on Energy and Natural Resources of the Senate and the appropriate Committees of the House of Representatives authorizing entry into force of the Compact, and

"(C) agreements have been concluded with Palau which satisfy the requirements of Section 102 of Public Law 99-239. For the purpose of this subsection the word "Palau" shall be substituted for "Federated States of Micronesia" whenever it appears in Section 102 of Public Law 99-239.";

(2) Any agreement concluded with Palau pursuant to subparagraph 101(d)(1)(B) of this title and any agreement which would amend, change, or terminate any subsidiary agreement or related agreement, or portion thereof, as set forth in paragraph (4) of this subsection shall be submitted to the Congress. No such agreement shall take effect until after the expiration of 30 days after the date such agreement is so submitted (excluding days on which either House of Congress is not in session.)

(3) No agreement described in paragraph (2) shall take effect if a joint resolution of disapproval, is enacted during the period specified in paragraph (2). For the purpose of expediting the consideration of such a joint resolution, a motion to proceed to the consideration of any such joint resolution after it has been reported by an appropriate committee shall be treated as highly privileged in the House of Representatives. Any such joint resolution shall be considered in the Senate in accordance with the provisions of section 601(b) of Pubic Law 94-329.

(4) The subsidiary agreement or portions thereof referred to in paragraph (2) are as follows:

(A) Articles III and IV of the agreement referred to in section 462(b) of the Compact.

(B) Articles III, IV, V, VI, VII, VIII, IX, and X (except for section 7 thereof) of the agreement referred to in section 462(f) of the Compact.

(C) Articles IV, V, X, XIV, XVI, and XVIII of the agreement referred to in section 462(i) of the Compact.

(D) Articles II, V, VI, VII, and VIII of the agreement referred to in section 462(h) of the Compact.

(E) The agreement referred to in section 462(j) of the Compact

(5) No agreement between the United States and the Government of Palau which would amend, change, or terminate any subsidiary or related agreement, or portion thereof, other than those set forth in subsection (d) of this section or paragraph (4) of this subsection, shall take effect until the President has transmitted such an agreement to the President of the Senate and the Speaker of the House of Representatives, together with an explanation of the agreement and the reasons therefor.

EXTENSION OF COMPACT OF FREE ASSOCIATION TO PALAU

SEC. 102. (a) The interpretation of and United States Policy Regarding the Compact of Free Association set forth in section 104 of Public Law 99-239 shall apply to the Compact of Free Association with Palau.

(b) The provisions of section 105, except for subsection (i), section 106, section 110, and section 111 (a) and (d) of Public Law 99-239, shall apply to Palau in the same manner and to the same extent as such sections apply to the Marshall Islands.

REPEAL OF TITLE V OF THE COMPACT OF FREE ASSOCIATION ACT (PUBLIC LAW 99-239)

SEC. 103. Title V of the Public Law 99-239 is repealed.

SUPPLEMENTAL PROVISIONS

"SEC. 104. (a) CIVIC ACTION TEAMS.—In recognition of the special development needs of Palau and the Marshall Islands, the United States shall make available United States military Civic Action Teams for use in Palau or the Marshall Islands under terms and conditions mutually agreed upon by the Government of the United States and the Governments of Palau or the Marshall Islands, as appropriate. The Government of Palau may use the amount of $250,000 annually from current account funds provided pursuant to section 211 of the Compact to defray expenditures attendant to the operation of the Civic Action Teams made available pursuant to this subsection. The Government of the Marshall Islands may use the amount of $250,000 annually from current account funds provided under section 211 of Title Two of the Compact of Free Association with the Marshall Islands to defray expenditures attendant to the operation of the Civic Action Teams made available pursuant to this subsection.

"(b) INVENTORY AND STUDY OF NATURAL, HISTORIC AND OTHER RESOURCES.—The Secretary of the Interior shall conduct, upon request of Palau, the Federated States of Micronesia or the Marshall Islands, and through the Director of the National Park Service, a comprehensive inventory and study of the most unique and significant natural, historical, cultural, and recreational resources of Palau, the Federated States of Micronesia or the Marshall Islands. Areas or sites exhibiting such qualities shall be described and evaluated with the objective of the preservation of their values and their careful use and appreciation by the public, along with a determination of their potential for attracting tourism. Alternative methodologies for such preservation and use shall be developed for each area or site (including continued assistance from the National Park Service); current or impending damage or threats to the resources of such areas or sites shall be identified and evaluated; and authorities needed to properly protect and allow for public use and appreciation shall be identified and discussed. Such inventory and study shall be conducted in full cooperation and consultation with affected governmental officials and the interested public. A full report on such inventory and study shall be transmitted to Palau or the Federated States of Micronesia or the Marshall Islands, the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate no later than two complete calendar years after the date of enactment of this joint resolution. The inventory and study shall also identify areas or sites which, if they were located in the United States, would qualify to be listed on the Registry of Natural Landmarks and the National Register of Historic Places.

"(c) AUTHORIZATION FOR TRANSITION PURPOSES.—Section 105(c)(2) of Public Law 99-239 is amended by deleting 'infrastructure.' and inserting in lieu thereof 'infrastructure, except that, for purposes of an orderly reduction of United States programs and services in the Federated States of Micronesia, the Marshall Islands, and Palau, United States programs or services not specifically authorized by the Compact of Free Association or by other provisions of law may continue but, unless reimbursed by the respective freely associated state, not in excess of the following amounts:

"'(1) For fiscal year 1987, an amount not to exceed 75 per centum of the total amount appropriated for such programs for fiscal year 1985;

"'(2) For fiscal year 1988, an amount not to exceed 50 per centum of the total amount appropriated for such programs for fiscal year 1985;

"'(3) For fiscal year 1989, an amount not to exceed 25 per centum of the total amount appropriated for such programs for fiscal year 1985;

"(d) PELELIU AND ANGAUR.—Not later than one year after the date of enactment of this joint resolution, the Secretary of Agriculture, after appropriate studies conducted in consultation with the Government of Palau, shall report to the President and the Congress concerning the feasibility and cost of rehabilitating and restoring the fertility of the topsoil of the islands of Peleliu and Angaur. Upon the request of the Government of Palau, the President shall make the report of the Secretary of Agriculture available to the Government of Palau. Technical assistance to accomplish such rehabilitation and restoration, if feasible, may be provided to the Government of Palau on a nonreimbursable basis, subject to the availability of appropriated funds.

"(e) Neither the Secretary of the Treasury nor any other officer or agent of the United States shall pay or transfer any portion of the sums and amounts payable to the Government of Palau pursuant to this joint resolution to any party other than the Government of Palau. The provisions of section 174(a) of the Compact shall apply with respect to any action based on a contract or debt related to any electrical generating plant or related facilities entered into or incurred by Palau prior to the date of enactment of this joint resolution.

"(f) Amounts appropriated to be paid pursuant to section 177 of Article I of Title One or Articles I and III of Title Two of the Compact of Free Association with the Federated States of Micronesia and the Marshall Islands, as set forth in Title II of the Compact of Free Association Act of 1985, or pursuant to section 103(h), 103(k), or 105(m) of such Act (Public Law 99-239), or pursuant to Article I of Title Two of the Compact with Palau, as set forth in Title II of this joint resolution, or section 104(*l*) of this joint resolution shall not be reduced, notwithstanding Public Law 99-177, Public Law 99-396, and other law enacted to implement Public Law 99-177, or any other provision of law.

"(g) The Congress reaffirms all of the understandings, interpretations, and policy statements contained in Public Law 99-239 (99 Stat. 1770). Congressional Resolution 4-60 adopted by the 4th Congress of the Federated States of Micronesia on March 26, 1986 and Resolution No. 62 adopted by the Nitijela of the Marshall Islands on February 18, 1986 do not preclude or modify any provision of the Compact of Free Association as approved by the United States. To the extent that any understandings, interpretations, and policy statements contained in such Resolutions are inconsistent with the provisions of Public Law 99-239, the United States does not concur therein. The President shall take such steps, including but not limited to, communicating with the Governments of the Federated States of Micronesia and the Republic of the Marshall Islands, as may be necessary to preserve all rights of the United States in connection with interpretation and implementation of such Public Law.

"(h) ADDITIONAL PROVISIONS RELATING TO TITLE THREE OF THE COMPACT.—

"(1) The Government of the United States recognizes and respects the scarcity and special importance of land in Palau. In making any designation of land pursuant to section 322 of the Compact, the Government of the United States shall follow the policy of requesting the minimum area necessary to accomplish the required security and defense purpose, of requesting only the minimum interest in real property necessary to support such purpose, and of requesting first to satisfy the requirement through public real property, where available, rather than through private real property.

"(2) The Armed Forces of other nations invited to use military areas and facilities in Palau pursuant to section 312 of the Compact shall be permited only as it is incident to the authority and under the control of the United States. The activities of such third country forces shall be subject to the same limitations and restrictions applicable to the authority of the United States under the terms of the Compact.

"(3) The Government of the United States considers 'Exclusive use' areas established for the United States pursuant to Title Three of the Compact to be 'within the jurisdiction of Palau,' as that term is used in section 324 of the Compact."

(i) Notwithstanding any other provision of law, funds appropriated for the Compact of Free Association, Public Law 99-239, or this joint resolution, in the act making supplemental appropriations for fiscal year 1986, shall remain available until expended.

(j)(1) section 4(c) of the Act of December 27, 1974 (88 Stat. 1784; 16 U.S.C. 460ff-3(c)) is amended by inserting "(1)" after "(c)" and by adding the following at the end thereof:

"(2) The Secretary is authorized and directed, in cooperation with the Secretary of Agriculture, the State of Ohio, and affected local governments, to undertake a program of and treatment for the purpose of restoring suitable vegetative cover to substantially eliminate erosion from all lands, public and private, within the authorized boundaries of the recreation area. In the case of any private lands, within such authorized boundaries such treatment may be undertaken only with the consent of the owner thereof and shall be contingent upon assurances that such land treatment will be maintained by the owner for a period of not less than ten years. The Secretary shall, in conjunction with such program, take such actions as may be required to correct areas of ecological degradation which create hazards to health and safety.".

(2) Section 6 of such Act (16 U.S.C. 460ff-5) is amended by adding the following at the end thereof:

"(c) There are hereby authorized to be appropriated not more than $500,000 for fiscal year 1986, $1,000,000 for fiscal year 1987, $1,500,000 for fiscal year 1988, and $1,759,000 for fiscal year 1989, to carry out the provisions of section 4(c)(2) of this Act. Any amounts authorized to be appropriated for any fiscal year under this subsection which are not appropriated for the fiscal year shall remain available for appropriation in succeeding fiscal years.".

(3) No authority under this subsection to enter into contracts or to make payments shall be effective except to the extent and in such amounts as provided in advance in appropriations Acts. Any provision of this subsection which authorizes the enactment of new budget authority shall be effective only for fiscal years beginning after September 30, 1985.

TITLE II—COMPACT OF FREE ASSOCIATION

COMPACT OF FREE ASSOCIATION

SEC. 201. The Compact of Free Association is as follows:

COMPACT OF FREE ASSOCIATION

PREAMBLE

THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF PALAU

Affirming That their Governments and the relationship between their Governments are founded upon respect for human rights and fundamental freedoms for all, and

Affirming the common interests of the United States of America and the people of Palau in creating close and mutually beneficial relationships through a free and voluntary association of their Governments; and

Affirming the interest of the Government of the United States in promoting the economic advancement and self-sufficiency of the people of Palau; and

Recognizing that their previous relationship has been upon the International Trusteeship System of the United Nations Charter; and that pursuant to Article 76 of the Charter, the peoples of the Trust Territory have progressively developed their institutions of self-government, and that in the exercise of their sovereign right to self-determination they have, through their freely-expressed wishes, adopted a Constitution appropriate to their particular circumstances; and

Recognizing their common desire to terminate the Trusteeship and establish a new government-to-government relationship in accordance with a new political status based on the freely-expressed wishes of the people of Palau and appropriate to their particular circumstances; and

Recognizing that the people of Palau have and retain their sovereignty and their sovereign right of self-determination and the inherent right to adopt and amend their own Constitution and form of government and that the approval of the entry of their Government into this Compact of Free Association by the people of Palau constitutes an exercise of their sovereign right to self-determination;

NOW, THEREFORE, AGREE to enter into relationship of free association which provides a full measure of self-government for the people of Palau; and

FURTHER AGREE that the relationships of free association derives from and is as set forth in this Compact; and that, during such relationships of free association, the respective rights and responsibilities of the Government of the United States and the Government of the freely associated state of Palau in regard to this relationship of free association derives from and is as set forth in this Compact.

TITLE ONE

GOVERNMENT RELATIONS

Article I

Self-government

Section 111

The people of Palau, acting through their duly elected government established under their constitution, are self-governing.

Article II

Foreign Affairs

Section 121

(a) The Republic of Palau has the capacity to conduct foreign affairs in its own name and right, except as otherwise provided in this Compact and the Government of the United States recognizes that the Government of Palau, in the exercise of this capacity, may enter into, in its own name and right, treaties and other international

agreements with governments and regional and international organizations.

(b) In the conduct of its foreign affairs the Government of Palau confirms that it shall act in accordance with principles of international law and shall settle its international disputes by peaceful means.

Section 122

The Government of the United States shall support application by the Government of Palau for membership or other participation in regional or international organizations as may be mutually agreed. The Government of the United States agrees to accept citizens of Palau for training and instruction at the United States Foreign Service Institute, established under 22 U.S.C. 4021, or similar training under terms and conditions to be mutually agreed.

Section 123

In recognition of the authority and responsibility of the Government of the United States under Title Three, the Government of Palau shall consult with the Government of the United States. The Government of the United States, in the conduct of its foreign affairs, shall consult with the Government of Palau on matters which the Government of the United States regards as relating to or affecting the Government of Palau, and shall provide, on a regular basis, information on regional foreign policy matters.

Section 124

(a) The Government of Palau has authority to conduct its foreign affairs relating to law of the sea and marine resources matters, including the harvesting, conservation, exploration or exploitation of living and nonliving resources from the sea, seabed or subsoil to the full extent recognized under international law.

(b) The Government of Palau has jurisdiction and sovereignty over its territory, including its land and internal waters, territorial seas, the airspace superjacent thereto only to the extent recognized under international law.

Section 125

Except as othewise provided in this Compact or its related agreements, all obligations, responsibilities, rights and benefits of the Government of the United States as administering authority which have resulted from the application pursuant to the Trusteeship Agreement of any treaty or other international agreement to the Trust Territory of the Pacific Islands on the day preceding the effective date of this Compact are no longer assumed and enjoyed by the Government of the United States.

Section 126

The Government of the United States shall accept responsibility for those actions taken by the Government of Palau in the area of foreign affairs, only as may from time to time be expressly and mutually agreed.

Section 127

The Government of the United States may assist or act on behalf of the Government of Palau in the area of foreign affairs as may be requested and mutually agreed from time to time. The Government of the United States shall not be responsible to third parties for the actions of the Government of Palau undertaken with the assistance or through the agency of the Government of the United States pursuant to this Section unless expressly agreed.

Section 128

At the request of the Government of Palau and subject to the consent of the receiving state, the Government of the United States shall extend consular assistance on the same basis as for citizens of the United States to citizens of Palau for travel outside of Palau, the Marshall Islands, the Federated States of Micronesia, the United States and its territories and possessions.

Article III

Communications

Section 131

(a) The Government of Palau has full authority and responsibility to regulate its domestic and foreign communications, and the Government of the United States shall provide communication assistance in accordance with the terms of a related agreement which shall come into effect simultaneously with this Compact, and such agreement shall remain in effect until such time as any election is made pursuant to Section 131(b) and which shall provide for the following:

(1) the Government of the United States remains the sole administration entitled to make notification to the International Frequency Registration Board of the International Telecommunications Union of frequency assignments to radio communications stations in Palau; and to submit to the International Frequency Registration Board seasonal schedules for the broadcasting stations in Palau in the bands allocated exclusively to the broadcasting service between 5,950 and 26,100 kHz and in any other additional frequency bands that may be allocated to use by high frequency broadcasting stations; and

(2) the United States Federal Communications Commission has jurisdiction, pursuant to the Communications Act of 1934, 47 U.S.C. 151 *et seq.*, and the Communications Satellite Act of 1962, 47 U.S.C. *et seq.*, over all domestic and foreign communications services furnished by means of satellite earth terminal stations where such stations are owned or operated by United States common carriers and are located in Palau.

(b) The Government of Palau may elect at any time to undertake the functions enumerated in Section 131(a) and previously performed by the Government of the United States. Upon such election, the Government of the United States shall so notify the International Frequency Registration Board and shall take such other actions as may be necessary to transfer to the Government of Palau the notification authority referred to in Section 131(a) and all rights deriving from the previous exercise of any such notification authority by the Government of the United States.

Section 132

The Government of Palau shall permit the Government of the United States to operate telecommunications services in Palau to the extent necessary to fulfill the obligations of the Government of the United States under this Compact in accordance with the terms of related agreements which shall come into effect simultaneously with this Compact.

Article IV

Immigration

Section 141

(a) Any person in the following categories may enter into, lawfully engage in occupations, and establish residence as a nonimmigrant in the United States and its territories and possessions without regard to paragraphs (14), (20), and (26) of section 212(a) of the Immigration and Nationality Act, 8 U.S.C. 1182(a) (14), (20), and (26):

(1) a person who, on the day preceding the effective date of this Compact, is a citizen of Trust Territory of the Pacific Islands, as defined in Title 53 of the Trust Territory Code in force on January 1, 1979, and has become a citizen of Palau;

(2) a person who acquires the citizenship of Palau, at birth, on or after the effective date of the Constitution of Palau; or

(3) a naturalized citizen of Palau, who has been an actual resident there for not less than five years after attaining such naturalization and who holds a certificate of actual residence.

Such persons shall be considered to have the permission of the Attorney General of the United States to accept employment in the United States.

(b) The right of such persons to establish habitual residence in a territory or possession of the United States may, however, be subjected to nondiscriminatory limitations provided for:

(1) in statutes or regulations of the United States; or

(2) in those statutes or regulations of the territory or possession concerned which are authorized by the laws of the United States.

(c) Section 141(a) does not confer on a citizen of Palau, the right to establish the residence necessary for naturalization under the Immigration and Nationality Act, or to petition for benefits for alien relatives under that Act. Section 141(a), however, shall not prevent a citizen of Palau from otherwise acquiring such rights or lawful permanent resident alien status in the United States.

Section 142

(a) Any citizen or national of the United States may enter into, lawfully engage in occupations, and reside in Palau, subject to the right of that Government to deny entry to or deport any such citizen or national as an undesirable alien. A citizen or national of the United States may establish habitual residence or domicile in Palau only in accordance with the laws of Palau. This subsection is without prejudice to the right of the Government of Palau to regulate occupations in Palau in a nondiscriminatory manner.

(b) With respect to the subject matter of this Section, the Government of Palau shall accord to citizens and nationals of the United States treatment no less favorable than that accorded to citizens of other countries; any denial of entry to or deportation of a citizen or national of the United States as an undesirable alien must be pursuant to reasonable statutory grounds.

Section 143

(a) The privileges set forth in Section 141 shall not apply to any person who takes an affirmative step to preserve or acquire a citizenship or nationality other than that of Palau.

(b) Every person having the privileges set forth in Sections 141 and 142 who possesses a citizenship or nationality other than that of Palau or the United States ceases to have these privileges two years after the effective date of this Compact, or within six months after becoming 21 years of age, whichever comes later, unless such person executes an oath of renunciation of that other citizenship or nationality.

Section 144

(a) A citizen or national of the United States who, after notification to the Government of the United States of an intention to employ such person by the Government of Palau, commences employment with that Government shall not be deprived of his United States nationality pursuant to

Section 349(a)(2) and (a)(4) of the Immigration and Nationality Act, 8 U.S.C. 1481 (a)(2) and (a)(4).

(b) Upon such notification by the Government of Palau, the Government of the United States may consult with or provide information to the notifying Government concerning the prospective employee, subject to the provisions of the Privacy Act, 5 U.S.C. 552a.

(c) The requirement of prior notification shall not apply to those citizens or nationals of the United States who are employed by the Government of Palau on the effective date of this Compact with respect to the positions held by them at that time.

Article V

Representation

Section 151

The Government of the United States and the Government of Palau may establish and maintain representative offices in the capitals of the other.

Section 152

(a) The premises of such representative offices, and their archives wherever located, shall be inviolable. The property and assets of such representative offices shall be immune from search, requisition, attachment and any form of seizure unless such immunity is expressly waived. Official communications in transit shall be inviolable and accorded the freedom and protections accorded by recognized principles of international law to official communications of a diplomatic mission.

(b) Persons designated by the sending Government may serve in the capacity of its resident representatives with the consent of the receiving Government. Such designated persons shall be immune from civil and criminal process relating to words spoken or written and all acts performed by them in their official capacity and falling within their functions as such representatives, except insofar as such immunity may be expressly waived by the sending Government. While serving in a resident representative capacity, such designated persons shall not be liable to arrest or detention pending trial, except in the case of a grave crime and pursuant to a decision by a competent judicial authority, and such persons shall enjoy immunity from seizure of personal property, immigration restrictions, and laws relating to alien registration, fingerprinting, and the registration of foreign agents.

(c) The sending Governments and their respective assets, income and other property shall be exempt from all direct taxes, except those direct taxes representing payment for specific goods and services, and shall be exempt from all customs duties and restrictions on the import or export of articles required for the official functions and personal use of their representatives and representative offices.

(d) Persons designated by the sending Government to serve in the capacity of its resident representatives shall enjoy the same taxation exemptions as are set forth in Article 34 of the Vienna Convention on Diplomatic Relations.

(e) The privileges, exemptions and immunities accorded under this Section are not for the personal benefit of the individuals concerned but are to safeguard the independent exercise of their official functions. Without prejudice to those privileges, exemptions and immunities, it is the duty of all such persons to respect the laws and regulations of the Government to which they are assigned.

Article VI

Environmental Protection

Section 161

The Government of the United States and the Government of Palau declare that it is their policy to promote efforts to prevent or eliminate damage to the environment and biosphere and to enrich understanding of the natural resources of the Palau.

Section 162

(a) The Government of the United States and the Government of Palau agree that with respect to the activities of the Government of the United States in Palau, and with respect to substantively equivalent activities of the Government of Palau, each of the Governments shall be bound by such environmental protection standards as may be mutually agreed for the purposes of carrying out the policy set forth in this Compact.

Section 163

In order to carry out the policy set forth in this Article, the Government of the United States and the Government of Palau agree to the following undertakings.

(a) The government of the United States:

(1) shall apply environmental standards substantively similar to those in effect on the day preceding the effective date of this Compact to any activity requiring the preparation of an Environmental Impact Statement under the provisions of the National Environmental Policy Act of 1969, 83 Stat. 852, 42 U.S.C. 4321 *et seq.*

(2) shall develop, prior to conducting any activity included within the category described in this Section, appropriate mechanisms, including regulations or other standards and procedures, to regulate such activity in Palau in a manner appropriate to the special governmental relationship set forth in this Compact. The Government of the United States shall provide the Government of Palau with the opportunity to comment formally the development of such mechanisms.

(b) The Government of Palau shall develop standards and procedures to protect the environment of Palau. As a reciprocal obligation to the undertakings of the Government of the United States under this Article, the Government of Palau, taking into account the particular environment of Palau, shall develop standards for environmental protection substantively similar to those required of the Government of the United States by Section 163(a)(1) prior to conducting activities in Palau substantively equivalent to activities conducted there by the Government of the United States and, as a further reciprocal obligation, shall enforce those standards.

(c) Section 163(a), including any standard or procedure applicable thereunder, and Section 163(b) may be modified or superseded in whole or in part by agreement of the Government of the United States and the Government of Palau.

(d) Disputes arising under this Article, except for Section 163(e), shall be resolved exclusively in accordance with Article II of Title Four.

(e) The President of the United States may exempt any of the activities of the Government of the United States under this Compact and its related agreements from any environmental standard or procedure which may be applicable under this Article if the President determines it to be in the paramount interest of the Government of the United States to do so, consistent with Title Three of this Compact and the obligations of the Government of the United States under international law. Prior to any decision pursuant to this subsection, the views of the Government of Palau shall be sought and considered to the extent practicable. If the President grants such an exemption, to the extent practicable, a report with his reasons for granting such exemption shall be given promptly to the Government of Palau.

Article VII

General Legal Provisions

Section 171

Except as provided in this Compact or its related agreements, the application of the laws of the United States to the Trust Territory of the Pacific Islands by virtue of the Trusteeship Agreement ceases with respect to Palau as of the effective date of this Compact.

Section 172

(a) Every citizen of Palau who is not a resident of the United States shall enjoy the rights and remedies under the laws of the United States enjoyed by any nonresident alien.

(b) The Government and every citizen of Palau shall be considered a "person" within the meaning of the Freedom of Information Act, 5 U.S.C. 552, and of the judicial review provisions of the Administrative Procedure Act, 5 U.S.C. 701-706.

Section 173

The Government of the United States and the Government of Palau, agree to adopt and enforce such measures, consistent with this Compact and its related agreements, as may be necessary to protect the personnel, property, installations, services, programs and official archives and documents maintained by the Government of the United States in Palau pursuant to this Compact and its related agreements and by that Government in the United States pursuant to this Compact and its related agreements.

Section 174

Except as otherwise provided in this Compact and its related agreements:

(a) The Government of Palau shall be immune from the jurisdiction of the courts of the United States, and the Government of the United States shall be immune from the jurisdiction of the courts of Palau.

(b) The Government of the United States accepts responsibility for and shall pay:

(1) any unpaid money judgment rendered by the High Court of the Trust Territory of the Pacific Islands against the Government of the Trust Territory of the Pacific Islands or the Government of the United States with regard to any cause of action arising as a result of acts or omissions of the Government of the Trust Territory of the Pacific Islands or the Government of the United States prior to the effective date of this Compact;

(2) any claim settled by the claimant and the Government of the Trust Territory of the Pacific Islands but not paid as of the effective date of this Compact; and

(3) settlement of any administrative claim or of any action before a court of the Trust Territory of the Pacific Islands, pending as of the effective date of this Compact, against the Government of the Trust Territory of the Pacific Islands or the Government of the United States, arising as a result of acts or omissions of the Government of the Trust Territory of the Pacific Islands or the Government of the United States.

(c) Any claim not referred to in Section 174(b) and arising from an act or omission of the Government of the Trust Territory of the Pacific Islands or the Government of the United States prior to the effective date of this Compact shall be adjudicated in the same manner as a claim adjudicated according to Section 174(d). In any claim against the Government of the Trust Territory of the Pacific Islands, the Government of the United States shall stand in the place of the Government of the Trust Territory of the Pacific Islands. A judgment on any claim referred to in Section 174(b) or this subsection, not otherwise satisfied by the Government of the United States, may be presented for certification to the United States Court of Appeals for the Federal Circuit, or its successor court, which shall have jurisdiction therefor, notwithstanding the provisions of 28 U.S.C. 1502, and which court's decisions shall be reviewable as provided by the laws of the United States. The United States Court of Appeals for the Federal Circuit shall certify such judgment, and order payment thereof, unless it finds, after a hearing, that such judgment is manifestly erroneous as to law or fact, or manifestly excessive. In either of such cases the United States Court of Appeals for the Federal Circuit shall have jurisdiction to modify such judgment.

(d) The Government of Palau, shall not be immune from the jurisdiction of the courts of United States, and the Government of the United States shall not be immune from the jurisdiction of the courts of Palau in any case in which the action is based on a commercial activity of the defendant Government carried out where the action is brought, or in a case in which damages are sought for personal injury or death or damage to or loss of property occurring where the action is brought. This subsection shall apply only to actions based on commercial activities entered into or injuries or losses suffered on or after the effective date of this Compact.

Section 175

A separate agreement, which shall come into effect simultaneously with this Compact, shall be concluded between the Government of the United States and the Government of Palau regarding mutual assistance and cooperation in law enforcement matters including the pursuit, capture, imprisonment and extradition of fugitives from justice and the transfer of prisoners. The separate agreement shall have the force of law. In the United States, the laws of the United States governing international extradition, including 18 U.S.C. 3184, 3186 and 3188–3195, shall be applicable to the extradition of fugitives under the separate agreement, and the laws of the United States governing the transfer of prisoners, including 18 U.S.C. 4100–4145, shall be applicable to the transfer of prisoners under the separate agreement.

Section 176

The Government of Palau confirms that final judgments in civil cases rendered by any court of the Trust Territory of the Pacific Islands shall continue in full force and effect, subject to the constitutional power of the courts of Palau to grant relief from judgments in appropriate cases.

Section 177

(a) Federal agencies of the Government of the United States which provide services and related programs in Palau are authorized to settle and pay tort claims arising in Palau from the activities of such agencies or from the acts or omissions of the employees of such agencies. Except as provided in Section 177(b), the provisions of 28 U.S.C. 2672 and 31 U.S.C. 1304 shall apply exclusively to such administrative settlements and payments.

(b) Claims under Section 177(a) which cannot be settled under Section 177(a) shall be disposed of exclusively in accordance with Article II of Title four. Arbitration awards rendered pursuant to this subsection shall be paid out of funds under 31 U.S.C. 1304.

(c) The Government of the United States and the Government of Palau shall provide for:

(1) the administrative settlement of claims referred to in Section 177(a), including designation of local agents in Palau, such agents to be empowered to accept, investigate and settle such claims, in a timely manner, as provided in such related agreements; and

(2) arbitration, referred to in Section 177(b), in a timely manner, at a site convenient to the claimant, in the event a claim is not otherwise settled pursuant to Section 177(a).

(d) The provisions of Section 174(d) shall not apply to claims covered by this Section.

TITLE TWO

ECONOMIC RELATIONS

Article I

Grant Assistance

Section 211

In order to assist the Government of Palau in its efforts to advance the well-being of the people of Palau and in recognition of the special relationship that exist between the United States and Palau, the Government of the United States shall provide to the Government of Palau on a grant basis the following amounts:

(a) $12 million annually for ten years commencing on the effective date of this Compact, and $11 million annually for five years commencing on the tenth anniversary of the effective date of this Compact, for current account operations and maintenance purposes, which amounts commencing on the fourth anniversary of the effective date of this Compact shall include a minimum annual distribution of $5 million from the fund specified in Section 211(f).

(b) $2 million annually for fourteen years commencing on the first anniversary of the effective date of this Compact as a contribution to efforts aimed at achieving increased self-sufficiency in energy production, of which annual amounts not less than $500,000 shall be devoted to the energy needs of those parts of Palau not served by its central power-generating facility.

(c) $150,000 annually for fifteen years commencing on the effective date of this Compact as a contribution to current account operations and maintenance of communications systems, and the sum of $1.5 million, to be made available concurrently with the grant assistance provided during the first year after the effective date of this Compact, for the purpose of acquiring such communications hardware as may be located within Palau or for such other current or capital account activity as the Government of Palau may select.

(d) $631,000 annually on a current account basis for fifteen years commencing on the effective date of this Compact for the purposes set forth below:

(1) for the surveillance and enforcement by Government of Palau of its maritime zone;

(2) for health and medical programs, including referrals to hospital and treatment centers; and

(3) for a scholarship fund to support the post-secondary education of citizens of Palau attending United States accredited, post-secondary institutions in Palau, the United States, its territories and possessions, and states in free association with the United States. The curricular criteria for the award of scholarships shall be designed to advance the purposes of the plan referred to in Section 231.

(e) The sum of $666,800 as a contribution to the commencement of activities pursuant to Section 211(d)(1).

(f) The sum of $66 million on the effective date of this Compact, and the sum of $4 million concurrently with the grant assistance to be made available during the third year after the effective date of this Compact, to create a fund to be invested by the Government of Palau in issues of bonds, notes or other redeemable instruments of the Government of the United States or other qualified instruments which may be identified by mutual agreement of the Government of the United States and the Government of Palau. Investment of the fund in qualified instruments of United States nationality, and the distribution of sums derived from such investment to the Government of Palau, shall not be subject to any form of taxation by the United States or its political subdivisions. The Government of the United States and the Government of Palau shall set forth in a separate agreement, which shall come into effect simultaneously with this Compact, provisions for the investment, management and review of the fund so as to allow for an agreed minimum annual distribution from its accrued principal and interest commencing upon the effective date of this Compact for fifty years. The objective of this sum is to produce an average annual distribution of $15 million commencing on the fifteenth anniversary of this Compact for thirty-five years. Any excess or variance from the agreed minimum annual distributions which may be produced from these sums shall accrue to or be absorbed by the Government of Palau unless otherwise mutually agreed in accordance with the provisions of the separate agreement referred to in this paragraph. The annual distributions produced from these sums are not subject to Sections 215 and 236.

Section 212

In order to assist the Government of Palau in its efforts to advance the economic development and self-sufficiency of the people of Palau and in recognition of the special relationship that exists between the United States and Palau, the Government of the United States shall provide:

(a) To the people of Palau, a road system in accordance with mutually agreed specifications, the construction of which shall be completed prior to the sixth anniversary of the effective date of this Compact; and

(b) To the Government of Palau, the sum of $36 million, during the first year after the effective date of this Compact, for capital account purposes.

Section 213

The Government of the United States shall provide on a grant basis to the Government of Palau the sum of $5.5 million in conjunction with Article II of Title Three. This sum shall be made available concurrently with the grant assistance provided pursuant to this Article during the first year after the effective date of this Com-

pact. The Government of Palau, in its use of such funds, shall take into account the impact of the activities of the Government of the United States in Palau.

Section 214

All funds previously appropriated to the Trust Territory of the Pacific Islands for the Government of Palau which are unobligated by the Government of the Trust Territory as of the effective date of this Compact shall accrue to the Government of Palau for the purposes for which such funds were originally appropriated as determined by the Government of the United States.

Section 215

Except as otherwise provided, the amounts stated in Sections 211(a), 211(b), 211(c) and 212(b) shall be adjusted for each fiscal year by the percent which equals two-thirds of the percentage change in the United States Gross National Product Implicit Price Deflator, or seven percent, whichever is less in any one year, using the beginning of Fiscal Year 1981 as the base.

Article II

Program Assistance

Section 221

(a) The Government of the United States shall make available to Palau, in accordance with and to the extent provided in the separate agreement referred to in Section 232, without compensation and at the levels equivalent to those available to the Trust Territory of the Pacific Islands during the year prior to the effective date of this Compact, the services and related programs:

(1) of the United States Weather Service;

(2) provided pursuant to the Postal Reorganizataion Act, 39 U.S.C. 101 *et seq.*;

(3) of the United States Federal Aviation Administration; and

(4) of the United States Civil Aeronautics Board or its successor agencies which has the authority to implement the provisions of paragraph 5 of Article IX of such separate agreements, the language of which is incorporated into this Compact.

(b) The Government of the United States, recognizing the special needs of the Palau particularly in the fields of education and health care, shall make available, as provided by the laws of the United States,

(1) the annual amount of $2 million which shall be allocated in accordance with the provisions of the separate agreement referred to in Section 232; and

(2) the sums of $4.3 million, $2.9 million and $1.5 million, respectively, during the first, second and third years after the effective date of this Compact, which sums shall be used by the Government of Palau as current account funds to finance programs similar to those programs of the United States that applied to Palau prior to the effective date of this Compact and that provided financial assistance for education to any institution, agency, organization or permanent resident of Palau or to the College of Micronesia.

(c) The Government of the United States shall make available to Palau such alternate energy development projects, studies and conservation measures as are applicable to the Trust Territory of the Pacific Islands on the day preceding the effective date of this Compact, for the purposes and duration provided in the laws of the United States.

(d) The Government of the United States shall have and exercise such authority as is necessary for the purposes of this Article and as is set forth in the related agreements referred to in Section 232, which shall also set forth the extent to which services and programs shall be provided to Palau.

Section 222

The Government of Palau may request, from time to time, technical assistance from the Federal agencies and institutions of the Government of the United States, which are authorized to grant such technical assistance in accordance with its law and which shall grant such technical assistance in a manner which gives priority consideration to Palau over other recipients not a part of the United States, its territories or possessions and equivalent consideration to Palau with respect to other states in Free Association with the United States.

Section 223

The citizens of Palau who are receiving post-secondary education assistance from the Government of the United States on the day preceding the effective date of this Compact shall continue to be eligible, if otherwise qualified, to receive such assistance to complete their academic programs for a maximum of four years after the effective date of this Compact.

Section 224

The Government of the United States and the Government of Palau may agree from time to time to the extension to Palau of additional United States grant assistance and of United States services and programs as provided by the laws of the United States.

Article III

Administrative Provisions

Section 231

(a) The annual expenditure by the Government of Palau of the grant amounts specified in Article I of this Title shall be in accordance with an official national development plan promulgated by the Government of Palau and concurred in by the Government of the United States prior to the effective date of this Compact. This plan may be amended from time to time by the Government of Palau.

(b) The Government of the United States and the Government of Palau recognize that the achievement of the goals of the plan referred to in this Section depends upon the availability of adequate internal revenue as well as economic assistance from sources outside of Palau, including the Government of the United States, and may, in addition, be affected by the impact of exceptional, economically adverse circumstances. The Government of Palau shall therefore report annually to the President of the United States and to the Congress of the United States on the implementation of this plan and on its use of the funds specified in this Article. This report shall outline the achievements of the plan to date and the need, if any, for an additional authorization and appropriation of economic assistance for that year to account for any exceptional, economically adverse circumstances. The availability of such additional economic assistance from the Government of the United States shall be subject to the authorization and appropriation of funds by the Government of the United States.

Section 232

The specific nature, extent and contractual arrangements of the services and programs provided for in Section 221 as well as the legal status of agencies of the Government of the United States, their civilian employees and contractors, and the dependents of such personnel while present in Palau, and other arrangements in connection with a service or program furnished by the Government of the United States, are set forth in related agreements which shall come into effect simultaneously with this Compact.

Section 233

The Government of the United States, in consultation with the Government of Palau, shall determine and implement procedures for the periodic audit of all grants and other assistance made under this Title. Such audits shall be conducted at no cost to the Government of Palau.

Section 234

Title to the property of the Government of the United States situated in the Trust Territory of the Pacific Islands and in Palau or acquired for or used by the Government of the Trust Territory of the Pacific Islands on or before the day preceding the effective date of this Compact shall, without reimbursement or transfer of funds, vest in the Government of Palau as set forth in a separate agreement which shall come into effect simultaneously with this Compact. The provisions of this Section shall not apply to the personal property of the Government of the United States for which the Government of the United States determines a continuing requirement.

Section 235

(a) Funds held in trust by the High Commissioner of the Trust Territory of the Pacific Islands, in his official capacity, as of the effective date of this Compact shall remain available as trust funds to their designated beneficiaries. The Government of the United States, in consultation with the Government of Palau, shall appoint a new trustee who shall exercise the functions formerly exercised by the High Commissioner of the Trust Territory of the Pacific Islands.

(b) To provide for the continuity of administration, and to assure the Government of Palau that the purposes of the laws of the United States are carried out and that the funds of any other trust fund in which the High Commissioner of the Trust Territory of the Pacific Islands has authority of a statutory or customary nature shall remain available as trust funds to their designated beneficiaries, the Government of the United States agrees to assume the authority formerly vested in the High Commissioner of the Trust Territory of the Pacific Islands.

Section 236

Except as otherwise provided, approval of this Compact by the Government of the United States shall constitute a pledge of the full faith and credit of the United States for the full payment of the sums and amounts specified in Article I of this Title. The obligation of the Government of the United States under Article I of this Title shall be enforceable in the United States Claims Court, or its successor court, which shall have jurisdiction in cases arising under this Section, notwithstanding the provisions of 28 U.S.C. 1502, and which court's decisions shall be reviewable as provided by the laws of the United States.

Article IV

Trade

Section 241

Palau is not included in the customs territory of the United States.

Section 242

The President of the United States shall proclaim the following tariff treatment for articles imported from Palau which shall apply during the period of effectiveness of this Title:

(a) Unless otherwise excluded, articles imported from Palau, subject to the limitations imposed under sections 503(b) and 504(c) of title 5 of the Trade Act of 1974 (19 USC 2463(b): 2464(c)), shall be exempt from duty.

(b) Only canned tuna provided for in item 112.30 of the Tariff Schedules of the United States that is imported from the Federated States of Micronesia, the Marshall Islands and Palau during any calendar year not to exceed 10 percent of the United States consumption of canned tuna during the immediately preceding calendar year, as reported by the National Marine Fisheries Service, shall be exempt from duty; but the quantity of tuna given duty free treatment under this paragraph for any calendar year shall be counted against the aggregate quantity of canned tuna that is dutiable under rate column numbered 1 of such item 112.30 for that calendar year.

(c) The duty-free treatment provided under paragraph (1) shall not apply to:

(1) watches, clocks and timing apparatus provided for in subpart E of part 2 of schedule 7 of the Tariff Schedules of the United States;

(2) bottons (whether finished or not finished) provided for in item 745.32 of such Schedules;

(3) textile and apparel articles which are subject to textile agreements; and

(4) footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel which were not eligible articles for purposes of chapter V of the Trade Act of 1974 (19 USC 2461 et seq.) on April 1, 1984.

(d) If the cost or value of materials produced in the customs territory of the United States is included with respect to an eligible article which is a product of Palau, an amount not to exceed 15 percent of the appraised value of the article at the time it is entered that is attributable to such United States cost or value may be applied for duty assessment purposes toward determining the percentage referred to in section 503(b)(2) of title V of the Trade Act of 1974.

Section 243

Articles imported from Palau which are not exempt from any duty under paragraphs (a), (b), (c) and (d) of Section 242 shall be subject to the rates of duty set forth in column numbered 1 of the Tariff Schedules of the United States and all products of the United States imported into Palau shall receive treatment no less favorable than that accorded like products of any foreign country with respect to customs duties or charges of a similar nature and with respect to laws and regulations relating to importation, exportation, taxation, sale, distribution, storage, or use.

Article V

Finance and Taxation

Section 251

The currency of the United States is the official circulating legal tender of Palau. Should the Government of Palau act to institute another currency, the terms of an appropriate currency transitional period shall be as agreed with the Government of the United States.

Section 252

The Government of Palau may, with respect to United States persons, tax income derived from sources within its respective jurisdiction, property situated therein, including transfers of such property by gift or at death, and products consumed therein, in such manner as such Government deems appropriate. The determination of the source of any income, or the situs of any property, shall, for purposes of this Compact, be made according to the United States Internal Revenue Code.

Section 253

A citizen of Palau, domiciled therein and who is a nonresident and not a citizen of the United States, shall be exempt from estate, gift, and generation-skipping transfer taxes imposed by the Government of the United States.

Section 254

(a) In determining any income tax imposed by the Government of Palau, the Government of Palau shall have authority to impose tax upon income derived by a resident of Palau from sources without Palau in the same manner and to the same extent as the Government of Palau imposes tax upon income derived from within its jurisdiction. If the Government of Palau exercises such authority as provided in this subsection, any individual resident of Palau who is subject to tax by the Government of the United States on income which is also taxed by the Government of Palau shall be relieved of liability to the Government of the United States for the tax which, but for this subsection, would otherwise be imposed by the Government of the United States on such income. For purposes of this Section, the term "resident of Palau" shall be deemed to include any person who was physically present in Palau for a period of 183 or more days during any taxable year. The relief from liability referred to in this subsection means only:

(1) relief in the form of the foreign tax credit (or deduction in lieu thereof) available with respect to the income taxes of a possession of the United States, and

(2) relief in the form of the exclusion under section 911 of the United States Internal Revenue Code of 1954.

(b) If the Government of Palau subjects income to taxation substantially similar to that imposed by the Trust Territory Code in effect on January 1, 1980, such Government shall be deemed to have exercised the authority described in Section 254(a).

Section 255

(a) For purposes of section 936 of the Internal Revenue Code of 1954 Palau shall be treated as if it was a possession of the United States.

(b) Subsection (a) of this Section shall not apply to Palau for any period after December 31, 1986, during which there is not in effect between Palau and the United States an exchange of information agreement of the kind described in section 274(h)(6)(C), (other than clause (ii) thereof) of the Internal Revenue Code of 1954.

(c) If the tax incentives extended to Palau under subsection (a) of this Section are, at any time during which the Compact is in effect, reduced, the United States Secretary of the Treasury shall negotiate an agreement with the Government of Palau under which, when such agreement is approved by law, Palau will be provided with benefits substantially equivalent to such reduction in benefits. If within the 1-year period after the date of the enactment of the Act making the reduction in benefits, an agreement negotiated under the preceding sentence is not approved by law, the matter shall be submitted to the Arbitration Board established pursuant to Section 424. For purposes of Article V of this Title, the Secretary of the Treasury or his delegate shall be the member of such Board representing the Government of the United States. Any decision of such Board in the matter when approved by law shall be binding on the United States, except that such decision rendered is binding only as to whether the United States has provided the substantially equivalent benefits referred to in this subsection.

(d) For purposes of section 274(h)(3)(A) of the Internal Revenue Code of 1954, the term "North American area" shall include Palau.

Section 256

This Article shall apply to income earned, and transactions occurring, after September 30, 1985, in taxable years ending after such date.

TITLE THREE

SECURITY AND DEFENSE RELATIONS

Article I

Authority and Responsibility

Section 311

The territorial jurisdiction of the Republic of Palau shall be completely foreclosed to the military forces and personnel or for the military purposes of any nation except the United States of America, and as provided for in Section 312.

Section 312

The Government of the United States has full authority and responsibility for security and defense matters in or relating to Palau. Subject to the terms of any agreements negotiated pursuant to Article II of this Title, the Government of the United States may conduct within the lands, water and airspace of Palau the activities and operations necessary for the exercise of its authority and responsibility under this Title. The Government of the United States may invite the armed forces of other nations to use military areas and facilities in Palau in conjunction with and under the control of United States Armed Forces.

Section 313

The Government of Palau shall refrain from actions which the Government of the United States determines, after consulation with that Government, to be incompatible with its authority and responsibility for security and defense matters in or relating to Palau.

Article II

Defense Sites and Operating Rights

Section 321

The Government of the United States may establish and use defense sites in Palau, and may designate for this purpose land and water areas and improvements in accordance with the provisions of a separate agreement which shall come into force simultaneously with this Compact.

Section 322

(a) When the Government of the United States desires to establish or use such a defense sites specifically identified in the separate agreement referred to in Section 321, it shall so inform the Government of Palau which shall make the designated site available to the Government of the United States for the duration and level of use specified.

(b) With respect to any site not specifically identified in the separate agreement referred to in Section 321, the Government of the United States shall inform the Government of Palau, which shall make the designated site available to the Government of the United States for the duration and level of use specified, or shall make available one alternative site acceptable to the Government of the United States. If such alterna-

tive site is unacceptable to the Government of the United States, the site first designated shall be made available after such determination.

(c) Compensation in full for designation, establishment or use of defense sites is provided in Title Two of this Compact.

Section 323

The military operating rights of the Government of the United States and the legal status and contractual arrangements of the United States Armed Forces, their members, and associated civilians, while present in Palau, are set forth in related agreements which shall come into effect simultaneously with this Compact.

Section 324

In the exercise in Palau of its authority and responsibility under this Title, the Government of the United States shall not use, test, store or dispose of nuclear, toxic chemical, gas or biological weapons intended for use in warfare and the Government of Palau assures the Government of the United States that in carrying out its security and defense responsibilities under this Title, the Government of the United States has the right to operate nuclear capable or nuclear propelled vessels and aircraft within the jurisdiction of Palau without either confirming or denying the presence or absence of such weapons within the jurisdiction of Palau.

Article III

Defense Treaties and International Security Agreements

Section 331

Subject to the terms of this Compact and its related agreements, the Government of the United States, exclusively, shall assume and enjoy, as to Palau, all obligations, responsibilities, rights and benefits of:

(a) Any defense treaty to other international security agreement applied by the Government of the United States as administering authority of the Trust Territory of the Pacific Islands as of the day preceding the effective date of this Compact; and

(b) Any defense treaty or other international security agreement to which the Government of the United States is or may become a party which it determines to be applicable in Palau. Such a determination by the Government of the United States shall be preceded by appropriate consultation with the Government of Palau.

Article IV

Service in the Armed Forces of the United States

Section 341

Any citizen of Palau entitled to the privileges of Section 141 of this Compact shall be eligible to volunteer for service in the Armed Forces of the United States, but shall not be subject to involuntary induction into military service of the United States so long as such person does not establish habitual residence in the United States, its territories or possessions.

Section 342

The Government of the United States shall have enrolled, at any one time, at least one qualified student from Palau as may be nominated by the Government of Palau, in each of:

(a) The United States Coast Guard Academy pursuant to 14 U.S.C. 195; and

(b) The United States Merchant Marine Academy pursuant to 46 U.S.C. 1295b(b)(6), provided that the provisions of 46 U.S.C. 1295b(b)(6)(C) shall not apply to the enrollment of students pursuant to Section 342(b) of this Compact.

Article V

General Provisions

Section 351

(a) The Government of the United States and the Government of Palau shall establish a joint committee empowered to consider disputes which may arise under the implementation of this Title and its related agreements.

(b) The membership of the joint committee shall comprise selected senior officials of each of the participating Governments. The senior United States military commander in the Pacific area shall be the senior United States member of the joint committee. For the meetings of the joint committee, each of the Governments may designate additional or alternate representatives as appropriate for the subject matter under consideration.

(c) Unless otherwise mutually agreed, the joint committee shall meet semi-annually at a time and place to be designated, after appropriate consultation, by the Government of the United States. The joint committee also shall meet promptly upon request of either of its members. Upon notification by the Government of the United States, the joint committee shall meet promptly in combined session with other such joint committees so notified. The joint committee shall follow such procedures, including the establishment of functional subcommittees, as the members may from time to time agree.

(d) Unresolved issues in the joint committee shall be referred to the Government of the United States and the Government of Palau for resolution, and the Government of Palau shall be afforded, on an expeditious basis, an opportunity to raise its concerns with the United States Secretary of Defense personally regarding any unresolved issue which threatens its continued association with the Government of the United States.

Section 352

In the exercise of its authority and responsibility under this Compact, the Government of the United States shall accord due respect to the authority and responsibility of the Government of Palau under this Compact and to the reponsibility of the Government of Palau to assure the wellbeing of Palau and its people. The Government of the United States and the Government of Palau agree that the authority and responsibility of the United States set forth in this Title are exercised for the mutual security and benefit of Palau and the United States, and that any attack on Palau would constitute a threat to the peace and security of the entire region and a danger to the United States. In the event of such an attack, or threat thereof, the Government of the United States would take action to meet the danger to the United States and Palau in accordance with its constitutional processes.

Section 353

(a) The Government of the United States shall not include the Government of Palau as a named party to a formal declaration of war, without the consent of the Government of Palau.

(b) Absent such consent, this Compact is without prejudice, on the ground of belligerence or the existence of a state of war, to any claims for damages which are advanced by the citizens, nationals or government of Palau whch arise out of armed conflict subsequent to the effective date of this Compact and which are:

(1) petitions to the Government of the United States for redress; or

(2) claims in any manner against the government, citizens, nationals or entities of any third country.

(c) Petitions under Section 353(b)(1) shall be treated as if they were made by citizens of the United States.

TITLE FOUR

GENERAL PROVISIONS

Article I

Approval and Effective Date

Section 411

This Compact shall come into effect upon mutual agreement between the Government of the United States, acting in fulfillment of its responsibilities as Administering Authority of the Trust Territory of the Pacific Islands and the Government of Palau, subsequent to completion of the following:

(a) Approval by the Government of Palau in accordance with its constitutional processes;

(b) Approval by the people of Palau in a referendum called on this Compact; and

(c) Approval by the Government of the United States in accordance with its constitutional processes.

Article II

Conference and Dispute Resolution

Section 421

The Government of the United States and the Government of Palau shall confer promptly at the request of the other on matters relating to the provisions of this Compact or of its related agreements.

Section 422

In the event the Government of the United States or the Government of Palau, after conferring pursuant to Section 421, determines that there is a dispute and gives written notice thereof, the Governments shall make a good faith effort to resolve the dispute among themselves.

Section 423

If a dispute between the Government of the United States and the Government of Palau cannot be resolved within 90 days of written notification in the manner provided in Section 422, either party to the dispute may refer it to arbitration in accordance with Section 424.

Section 424

Should a dispute be referred to arbitration as provided for in Section 423, an arbitration board shall be established for the purpose of hearing the dispute and rendering a decision which shall be binding upon the two parties to the dispute unless the two parties mutually agree that the decision shall be advisory. Arbitration shall occur according to the following terms:

(a) An arbitration board shall consist of a chairman and two other members, each of whom shall be a citizen of a party to the dispute and each of the two parties to the dispute shall appoint one member to the arbitration board. If either party to the dispute does not fulfill the appointment requirements of this Section within 30 days of referral of the dispute to arbitration pursuant to Section 423, its member on the arbitration board shall be selected from its own standing list by the other party to the dispute. Each government shall maintain a standing list of 10 candidates. The parties to the dispute shall jointly appoint a chairman within 15 days after selection of the other members of the arbitration board. Failing

agreement on a chairman, the chairman shall be chosen by lot from the standing lists of the parties to the dispute within 5 days after such failure.

(b) The arbitration board shall have jurisdiction to hear and render its final determination on all disputes arising exclusively under Articles, I, II, III, IV, and VI of Title One, Title Two, Title Four and their related agreements.

(c) Each member of the arbitration board shall have one vote. Each decision of the arbitration board shall be reached by majority vote.

(d) In determining any legal issue, the arbitration board may have reference to international law and, in such reference, shall apply as guidelines the provisions set forth in Article 38 of the Statute of the International Court of Justice.

(e) The arbitration board shall adopt such rules for its proceedings as it may deem appropriate and necessary, but such rules shall not contravene the provisions of this Compact. Unless the parties provide otherwise by mutual agreement, the arbitration board shall endeavor to render its decision within 30 days after the conclusion of arguments. The arbitration board shall make findings of fact and conclusions of law and its members may issue dissenting or individual opinions. Except as may be otherwise decided by the arbitration board, one-half of all costs of the arbitration shall be borne by the Government of the United States and the remainder shall be borne by the Government of Palau.

Article III

Amendment and Review

Section 431

The provisions of this Compact may be amended at any time by mutual agreement of the Government of the United States and the Government of Palau in accordance with their respective constitutional processes.

Section 432

Upon the fifteenth and thirtieth and fortieth anniversaries of the effective date of this Compact, the Government of the United States and the Government of Palau shall formally review the terms of this Compact and its related agreements and shall consider the overall nature and development of their relationship. In these formal reviews, the governments shall consider the operating requirements of the Government of Palau and its progress in meeting the development objectives set forth in the plan referred to in Section 231(a). The governments commit themselves to take specific measures in relation to the findings of conclusions resulting from the review. Any alteration to the terms of this Compact or its related agreements shall be made by mutual agreement and the terms of this Compact and its related agreements shall remain in force until otherwise amended or terminated pursuant to Title Four of this Compact.

Article IV

Termination

Section 441

This Compact may be terminated by mutual agreement and subject to Section 451.

Section 442

This Compact may be terminated by the Government of the United States subject to Section 452, such termination to be effective on the date specified in the notice of termination by the Government of the United States but not earlier than six months following delivery of such notice. The time specified in the notice of termination may be extended.

Section 443

This Compact shall be terminated, pursuant to its constitutional processes, by the Government of Palau subject to Section 452 if the people of Palau vote in a plebiscite to terminate. The Government of Palau shall notify the Government of the United States of its intention to call such a plebiscite which shall take place not earlier than three months after delivery of such notice. The plebiscite shall be administered by such government in accordance with its constitutional and legislative processes, but the Government of the United States may send its own observers and invite observers from a mutually agreed party. If a majority of the valid ballots cast in the plebiscite favors termination, such government shall, upon certification of the results of the plebiscite, given notice of termination to the Government of the United States, such termination to be effective on the date specified in such notice but not earlier than three months following the date of delivery of such notice. The time specified in the notice of termination may be extended.

Article V

Survivability

Section 451

Should termination occur pursuant to Section 441, economic assistance by the Government of the United States shall continue on mutually agreed terms.

Section 452

Should termination occur pursuant to Section 442 or 443, the following provisions of this Compact shall remain in full force and effect until the fiftieth anniversary of the effective date of this Compact and thereafter as mutually agreed:

(a) Article I and Section 233 of Title Two;

(b) Title Three; and

(c) Articles II, III, V and VI of Title Four.

Section 453

Notwithstanding any other provision of this Compact:

(a) The provisions of Section 311, even if Title Three should terminate, are binding and shall remain in effect for a period of 50 years and thereafter until terminated or otherwise amended by mutual consent;

(b) The related agreements referred to in Article II of Title Three shall remain in effect in accordance with their terms; and

(c) The Government of the United States reaffirms its continuing interest in promoting the long-term economic advancement and self-sufficiency of the people of Palau.

Section 454

Any provision of this Compact which remains in effect by operation of Section 452 shall be construed and implemented in the same manner as prior to any termination of this Compact pursuant to Section 442 or 443.

Article VI

Definition of Terms

Section 461

For the purpose of this Compact the following terms shall have the following meanings:

(a) "Trust Territory of the Pacific Islands" means the area established in the Trusteeship Agreement consisting of the administrative districts of Kosrae, Yap, Palau, Ponape, the Marshall Islands and Truk as described in Title One, Trust Territory Code, Section 1, in force on January 1, 1979. This term does not include the area of the Northern Mariana Islands.

(b) "Trusteeship Agreement" means the agreement setting forth the terms of trusteeship for the Trust Territory of the Pacific Islands, approved by the Security Council of the United Nations April 2, 1947, and by the United States July 18, 1947, entered into force July 18, 1947, 61 Stat. 3301, T.I.A.S. 1665, 8 U.N.T.S. 189.

(c) "Palau" is used in a geographic sense and includes the land and water areas to the outer limits of the territorial sea and the air space above such areas as now or hereafter recognized by the Government of the United States consistent with the Compact and its related agreements.

(d) "Government of Palau" means the Government established and organized by the Constitution of Palau including all the political subdivisions and entities comprising that Government.

(e) "Habitual Residence" means a place of general abode or a principal, actual dwelling place of a continuing or lasting nature; provided, however, that this term shall not apply to the residence of any person who entered the United States for the purpose of full time studies as long as such person maintains that status, or who has been physically present in the United States or Palau for less than one year, or who is a dependent of a resident representative, as described in Section 152.

(f) For the purposes of Article IV of Title One of this Compact:

(1) "Actual Residence" means physical presence in Palau during eighty-five percent of the period of residency required by Section 141(a)(3); and

(2) "Certificate of Actual Residence" means a certificate issued to a naturalized citizen by the Government which has naturalized him stating that the citizen has complied with the actual residence requirement of Section 141(a)(3).

(g) "Defense Sites" means those land and water areas and improvements thereon in Palau reserved or acquired by the Government of Palau for use by the Government of the United States, as set forth in the related agreements referred to in Section 321.

(h) "Capital Account" means, for each year of the Compact, those portions of the total grant assistance provided in Article I of Title Two, which are to be obligated for:

(1) the construction or major repair of capital infrastructure; or

(2) public and private sector projects identified in the official overall economic development plan.

(i) "Current Account" means, for each year of the Compact, those portions of the total grant assistance provided in Article I of Title Two, which are to be obligated for recurring operational activities including infrastructure maintenance as identified in the annual budget justifications submitted yearly to the Government of the United States.

(j) "Official National Development Plan" means the documented program of annual development which identifies the specific policy and project activities necessary to achieve a specified set of economic goals and objectives during the period of free association, consistent with the economic assistance authority in Title Two. Such a document should include an analysis of population trends, manpower requirements, social needs, gross national product estimates, resource utilization, infrastructure needs and expenditures, and the specific private sector projects required to develop the local econo-

my of Palau. Project identification should include initial cost estimates, with project purposes related to specific development goals and objectives.

(k) "Tariff Schedules of the United States" means the Tariff Schedules of the United States as amended from time to time and as promulgated pursuant to United States law and includes the Tariff Schedules of the United States Annotated (TSUSA), as amended.

(l) "Vienna Convention on Diplomatic Relations" means the Vienna Convention on Diplomatic Relations, done April 18, 1961, 23 U.S.T. 3227, T.I.A.S. 7502, 500 U.N.T.S. 95.

Section 462

The Government of the United States and the Government of Palau shall conclude related agreements which shall come into effect and shall survive in accordance with their terms, and which shall be construed and implemented in a manner consistent with this Compact, as follows:

(a) Agreements Regarding the Provision of Telecommunication Services by the Government of the United States to Palau Concluded Pursuant to Section 131 of the Compact of Free Association;

(b) Agreement Regarding the Operation of Telecommunication Services of the Government of the United States in Palau, Concluded Pursuant to Section 132 of the Compact of Free Association;

(c) Agreement on Extradition, Mutual Assistance in Law Enforcement Matters and Penal Sanctions Concluded Pursuant to Section 175 of the Compact of Free Association;

(d) Agreement Regarding United States Economic Assistance to the Government of Palau Concluded Pursuant to Section 211(f) of the Compact of Free Association;

(e) Agreement Regarding Construction Projects in Palau Concluded Pursuant to Section 212(a) of the Compact of Free Association;

(f) Agreement Regarding Federal Programs and Services, Concluded Pursuant to Article II of Title Two and Section 232 of the Compact of Free Association;

(g) Agreement Regarding Property Turnover, Concluded Pursuant to Section 234 of the Compact of Free Association;

(h) Agreement Regarding the Military Use and Operating Rights of the Goverment of the United States in Palau Concluded Pursuant to Sections 321 and 322 of the Compact of Free Association; and

(i) Status of Forces Agreement Concluded Pursuant to Section 323 of the Compact of Free Assocation.

(j) Agreement regarding the Jurisdiction and Sovereignty of the Republic of Palau over its Territory and the Living and Nonliving Resources of the Sea.

Article VII

Concluding Provisions

Section 471

(a) The Government of the United States and the Government of Palau agree that they have full authority under their respective constitutions to enter into this Compact and its related agreements and to fulfill all of their respective responsibilities in accordance with the terms of this Compact and its related agreements. The Governments pledge that they are so committed.

(b) The Government of the United States and the Government of Palau shall take all necessary steps, of a general or particular character, to ensure, not later than the effective date of this Compact, that their laws, regulations and administrative procedures are such as to effect the commitments referred to in Section 471(a).

(c) Without prejudice to the effects of this Compact under international law, this Compact has the force and effect of a statute under the laws of the United States.

Section 472

This Compact may be accepted, by signature or otherwise, by the Government of the United States and the Government of Palau. Each government shall possess an original English language version.

IN WITNESS THEREOF, the undersigned, duly authorized, have signed this Compact of Free Association which shall come into effect in accordance with its terms between the Government of the United States and the Government of Palau.

DONE AT ____, THIS __ DAY OF —, ONE THOUSAND NINE HUNDRED EIGHTY-FIVE

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA

DONE AT ____, THIS __ DAY OF —, ONE THOUSAND NINE HUNDRED EIGHTY-FIVE

FOR THE GOVERNMENT OF THE REPUBLIC OF PALAU

JURISDICTION

SEC. 202. (a) MARITIME AND TERRITORIAL JURISDICTION.—With respect to section 321 of the Compact of Free Association and its related agreements, the jurisdictional provisions set forth in subsection (b) of this section shall apply only to the citizens and nationals of the United States and aliens lawfully admitted to the United States for permanent residence who are in Palau.

(b) DEFENSE SITES.—The defense sites of the United States established in Palau in accordance with the Compact of Free Association and its related agreements are within the special maritime and territorial jurisdiction of the United States as set forth in section 7, title 18, United States Code.

(c) OFFENSES.—(1) Any person referred to in subsection (a) of this section who within or upon such defense sites is guilty of any act or omission which, although not made punishable by any enactment of Congress, would be punishable if committed or omitted within the jurisdiction of the territory of Guam by the laws thereof, in force at the time of such act or omission, shall be guilty of a like offense and subject to a like punishment.

(2) The District Court of Guam shall have jurisdiction to try all criminal offenses against the United States, including the laws of Guam made applicable to the defense sites in Palau by virtue of subsection (c)(1) of this section, committed by any person referred to in subsection (a) of this section.

(3) The District Court of Guam may appoint one or more magistrates for the defense sites in Palau. Such Magistrates shall have the power and the status of Magistrates appointed pursuant to chapter 43, title 28, United States Code: Provided however, That such Magistrates shall have the power to try persons accused of, and sentence persons convicted of, petty offenses, as defined in section 1(3), title 18, United States Code, including violations of regulations for the maintenance of peace, order, and health issued by the Commanding Officer on such defense sites, without being subject to the restrictions provided for in section 3401(b), title 18, United States Code.

Mr. McCLURE. Mr. President, it had been anticipated that the Senate would approve the Compact of Free Association with Palau through passage of Senate Joint Resolution 325. However, in light of House passage of the companion measure, House Joint Resolution 626, it would be more appropriate to make the necessary amendments to the House-passed resolution.

I ask unanimous consent that the original statements by myself and Senator JOHNSTON describing the committee amendment to Senate Joint Resolution 325 and the colloquy describing the McClure/Johnston amendment to the committee amendment to Senate Joint Resolution 325 be inserted in the RECORD. These statements describe the provisions included in the amendment substituting the text of Senate Joint Resolution 325, as modified, for the text of House Joint Resolution 626.

The PRESIDING OFFICER. Without objection it is so ordered.

Mr. McCLURE. Mr. President, on January 14, 1986, Public Law 99-239 was enacted approving the Compact of Free Association between the United States and the Federated States of Micronesia and the Republic of the Marshall Islands. Title V of that law provided for the approval, in principle, of the Compact of Free Association with Palau, the question before us now. I urge my colleagues to approve Senate Joint Resolution 325 as reported.

The committee amendment inserts a new text in lieu of Senate Joint Resolution 325. Except as I will describe below, the language precisely mirrors the text and the intent of Public Law 99-239, including the tax and trade provisions offered to the previous compact at the request of the administration.

The committee amendment includes, as title II, the text of Senate Joint Resolution 325 as it was transmitted by the administration. Title I of the amendment has four sections which provide as follows:

Section 101 approves the compact; provides that amendments, changes or termination of the compact or its subsidiary agreements can only become effective through an act of Congress; and provides that the President shall not agree to an effective date for compact until after certifying to the Congress that there are no legal impediments to the ability of the United States to carry out fully its security and defense responsibilities under the compact. It is intended that an effective date will take into account the procedures of the United Nations regarding termination of the trusteeship agreement and will recognize the prin-

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ciples of the Palau Constitution. It is further intended that the President shall not agree to an effective date unless the agreements required to be concluded with the Federated States of Micronesia under section 102 of Public Law 99-239 are also concluded with Palau and approved by Congress.

Section 102 extends the relevant provisions of Public Law 99-239 to Palau: Section 104, regarding the interpretation of U.S. policy; section 105—except subsection (i)—extending certain programs and services; section 106, and authorization for appropriations to cover additional costs incurred by the Government of Palau in hiring U.S. firms for construction and major repair contracts; section 110, detailing the President's responsibilities regarding financial audits; and section 111, the compensatory adjustment provisions. The provisions of section 111 add benefits to the compact agreements in order to offset the reduction in benefits which result from the provisions of the administration amendment on tax and trade. I would like to specifically point out that the tax and trade provisions of title IV of Public Law 99-239 are included in this resolution as articles IV and V of title II of the compact itself and that it is intended that these provisions shall apply in Palau under this resolution as they apply in the Federated States of Micronesia and the Republic of the Marshall Islands under Public Law 99-239.

Section 103 repeals title V of Public Law 99-239 which provides for the approval in principle of the Compact of Free Association with Palau. Because this resolution actually approves that compact, title V is no longer relevant and can therefore be repealed.

Finally, section 104 adds three new provisions to the resolution: One, making the U.S. civil action teams available to Palau on a reimbursable basis; two, directing the Secretary of the Interior to conduct a study of the significant natural, historical, cultural, and recreational resources of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands; and three, providing an authorization for the orderly reduction of U.S. programs and services in these three Freely Associated States.

The record on Senate consideration of Public Law 99-239 and the consideration of Senate Joint Resolution 325 by the Committee on Energy and Natural Resources is extensive and I would refer anyone to floor debate, committee reports, and numerous hearing transcripts. There are, however, several issues that I would like to highlight at this point.

Mr. President, in the consideration and passage of legislation we in Congress strive to communicate and clarify our intent. Unfortunately, despite an extensive legislative history there are those who will go to extraordinary lengths to misconstrue or ignore this intent. Such is the case with the extension of certain programs and services to the Freely Associated States under sections 105 and 111 of Public Law 99-239. I would like to once again state our interest in the hope that the message will get through to those responsible for implementation of these agreements.

These sections do not authorize appropriations for these programs and services to be offered in the Freely Associated States, rather, these sections extend eligibility for these programs and services to the Freely Associated States. Accordingly, these programs and services are to be made available in the same manner as such programs and services are made available to other eligible governments, institutions or persons and within the funds appropriated generally to the agencies for such programs. A unified budget for funding of provisions under Public Law 99-239 or this resolution is not authorized. Rather, it is expected that the agencies providing these programs and services shall provide the necessary funding and shall consult with the Secretary of the Interior and provide the programs under his supervision.

A related issue on which there remains persistent resistance to clear congressional intent pertains to the framework for management of the post-trusteeship relations between the United States and the Freely Associated States. The Secretary of State is to have general responsibility for government-to-government relations which include formal communications between the governments. The Secretary of State would also be required to fund and administer certain services, traditionally provided by the Department of State, such as consular assistance. Certain domestic programs and services shall be provided to the Freely Associated States as they are provided domestically, except that they shall be provided only after consultation with and under the supervision of the Secretary of the Interior. It is expected that the Secretary of the Interior will be prepared to annually address the activities of Federal agencies in the Freely Associated States before the authorizing and appropriating committees of Congress. Although the President is authorized to convene a Cabinet-level group to review and offer policy guidance with respect to the Freely Associated States, this authorization does not permit the creation of a separate office nor does it permit the reassignment or delegation of the responsibilities of the Secretary of State or the Secretary of the Interior outside of their respective Departments.

Mr. President, I urge my colleagues to agree to this joint resolution as amended by the Committee on Energy and Natural Resources. The passage of Senate Joint Resolution 325 approving the Compact of Free Association with Palau will grant congressional approval to the last of several agreements which have been reached between the four governments that comprise the Trust Territory of the Pacific Islands and the United States. Taken together, these agreements will govern future United States relations with the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, and, with the agreement approved by Senate Joint Resolution 325 before us now, the Republic of Palau. With enactment of this resolution, the United States and the governments of the Trust Territory will be able to conclude their efforts before the United Nations to terminate the Trust Territory and will achieve our long and mutually sought objective of political self-determination for the peoples of the Trust Territory.

I would like to recognize the long and dedicated efforts of many persons in this process which is now concluding. I would particularly like to acknowledge the role of Lazarus Salii, now the President of Palau, but who has been involved in this process since its beginnings over 20 years ago when he was a negotiator for the Congress of Micronesia. I would also like to acknowledge the role of Noriwo Ubedei, the Washington representative of Palau for his contributions to this long sought goal.

On the part of the United States I would like to acknowledge the role of our most recent negotiator, Fred Zeder, and his very able staff, Jim Berg and Howard Hills. I would also like to acknowledge the commitment of many of our colleagues in the House, Congressmen SOLARZ, UDALL, SEIBERLING, DON YOUNG, BLAZ, LEACH, and LUJAN, as well as their staffs.

I would like to thank my colleague and distinguished ranking member of the Committee on Energy and Natural Resources, Senator JOHNSTON. We have worked together for many years in both the authorizing and appropriations committees in nonpartisan efforts to fulfill our commitments in Micronesia and his assistance is greatly appreciated.

Finally, I want to thank the staff who worked on this agreement: Jim Beirne, Al Stayman, Frank Cushing, and Gary Ellsworth of the committee majority staff, Mike Harvey of the committee minority staff, and Laura Hudson and Patty Murphy of Senator JOHNSTON'S personal staff. Each has contributed a great deal to this effort.

Mr. President, I urge my colleagues to join with me in adoption of the committee amendment and to support passage of this measure.

Mr. JOHNSTON. Mr. President, I want to associate myself with all the remarks of my distinguished chairman and would only like to emphasize the significance of this most unusual piece of legislation. This is really an historic moment. It is not every day that Members of this Congress have an opportunity to personally participate in the emergence of new units of democratic self-government.

This compact will establish the fundamental political relationship between the American people and the good people of Micronesia with whom we have been closely tied since the end of the Second World War. While House Joint Resolution 626 formalizes our relationship with Palau, it will also grant congressional approval to the last of several agreements which have been reached between the four governments that comprise the Trust Territory of the Pacific Islands [TTPI] and the United States. With enactment of this resolution the United States and the governments of the trust territories will be able to conclude their efforts before the United Nations to terminate the Trust Territory and will achieve their internationally recognized human right of self-determination. These governments are the Commonwealth of the Northern Mariana Islands [CNMI], the Federated States of Micronesia [FSM], the Republic of the Marshall Islands [RMI] and, with the resolution now before us, the Republic of Palau.

We should remember that it was 40 years ago that men and women of this Nation shed their blood for just such principles as these in the battles to control the Pacific—many of them fought in Palau. Thus, this region has not only contemporary strategic value to the United States, it represents a region where this nation has a profound historical investment and commitment.

In a very symbolic way, the negotiation of a compact involving the democratically expressed will of the peoples of the freely associated states underscores a foreign policy tradition that contrasts the commitment of the United States to the rule of law in a world which other parties too frequently ascribe to the principle of the rule of force.

For the last 40 years, the citizens of these Pacific Island States have lived under U.S. administration pursuant to a U.N. trusteeship agreement. Today the TTPI is the last remaining U.N. trusteeship. Failure by the United States to provide for a fair and just termination of this trusteeship relationship in response to the freely expressed will of the people of this area would not only be an international embarassment to this country, but a travesty of our international responsibilities and the very principles upon which this Nation was founded.

Since the beginning of the trusteeship, Micronesians have been studying all forms of government and deciding what form they wanted to pursue. They did this very cautiously and thoroughly, through the Congress of Micronesia. The results are a tribute to this country. Saipan, in 1975, chose to be a U.S. commonwealth; the others chose free association with the United States.

I would like to quote from the statement of intent of the final report of the Micronesian Commission established by the Congress of Micronesia:

(W)e choose an associated state because we recognize the historically unique partnership between Micronesia and the United States. In recommending free association with the United States, we seek not an end but a re-definition, renewal and improvement of this partnership.

Whatever our particular evaluations of the American administration in Micronesia may be, we feel that one contribution has been indelible, one achievement almost unqualified: The idea of democratic, representtive, constitutional government. Our recommendation of a free associated state is indissolubly linked to our desire for such a democratic, representative, constitutional government. We endorse this system—which was brought to us by America and which we have come to know as an essentially American system.

As a self-governing state, Micronesia will continue to look to America: For representation and protection in international affairs, for material and human assistance in the affairs of government, both in times of crisis and in day-to-day operations. As a self-governing state, Micronesia's needs will be as great or greater than as a Territory. We do not underestimate the problems we will face. We do not wish for any lessening of American concern for Micronesia or of American presence in Micronesia.

Mr. President, there is really little more that can be said. The Micronesian Governments should be congratulated for their determination in the negotiation process in reaching what they sought these many years. In that struggle, strong leaders have emerged who now head each of those governments: Gov. Pedro P. Tenorio of the CNMI, President Tosiwo Nakayama of the FSM, President Amata Kabua of the Republic of the Marshall Islands, and President Lazarus Salii of the Republic of Palau.

We enter this relationship with pride and friendship, as partners. Make no mistake. We are providing funds to help these governments continue with their development plans toward self-sufficiency and independence. As I see it, we in turn are receiving two very important benefits: Certain defense rights affording us protection of vital U.S. national security interests and the friendship of the peoples of these nations. I hope that our relationship will continue to be as close in the years ahead.

It is not only desirable, but incumbent on us as trustees of this territory to enact the legislation before us today. Such action would allow the United States to complete its constitutional processes as administering authority and to take advantage of the best opportunity available to gain U.N. approval to terminate the trusteeship, and thereby end U.N. involvement in Micronesia. It would allow the United States to implement the compact with the FSM and the RMI and avoid funding problems that would occur with delay after October 1.

The Trusteeship Council of the United Nations has already adopted a resolution supporting termination, including Palau, based upon the votes which have been conducted. A casual observer may question going forward with this legislation in light of Palau's delay in completing its internal process because of a Palau Supreme Court decision saying that certain defense portions of the compact required a 75-percent vote. But a closer examination of the process in the context of its 16-year history reveals that linkage of our approval to the action of the Palau court would actually undermine the very constitutional processes in Palau that the United States seeks to protect. For the Palau Constitution requires that the political branches of Palau's government determine what course to take in light of the court's decision, and the United States should bring to a logical and correct conclusion the approval process for the existing agreement without prejudging what the foreign relations organs of the Palau Government will do next. Further, such action would define the final U.S. position with regard to the Palau compact and allow Palau to initiate its constitutional amendment procedures to resolve the existing conflict.

The Trusteeship Council, through its resolution, has recognized satisfaction of international standards for self-determination, and on that basis the matter of trusteeship termination can be taken up with the Security Council. However, while there is precedent in U.N. practice for action to terminate the trusteeship prior to completion of Palau's internal process, there is a requirement that the United States agree to termination, and approval of the Palau compact is the last act required to enable the United States to agree to terminate the trusteeship.

In this light, the only remaining concern I have with respect to Palau is that once its internal processes are complete, that Congress have an opportunity to review the compact prior to its implementation. For that reason I am cosponsoring an amendment to House Joint Resolution 626 with the distinguished chairman of the committee to require that Congress enact a joint resolution authorizing entry of the compact into force for Palau.

I urge my colleagues to support this amendment to the committee amendment and to pass House Joint Resolution 626, as amended.

I also want to acknowledge the contributions of the many U.S. officials who have worked diligently to complete this document. Our most recent negotiator, Fred Zeder, and his two key aides, Jim Berg and Howard Hills, and many of our House colleagues including Congressmen SOLARZ, UDALL, SIEBERLING, DON YOUNG, BLAZ, LEACH, and LUJAN have all worked tirelessly to forge an agreement. I also congratulate the distinguished chairman of the Energy Committee, Senator MCCLURE, for his key role in helping us conclude this long process. Last, but certainly not least, I want to acknowledge the efforts of the staff here in the Senate who have brought the professionalism and skill which have enabled us to complete our work successfully: the minority staff director of the Energy Committee, Mike Harvey, Laura Hudson, and Patricia Murphy of my personal staff, and Jim Beirne, Allen Stayman, Frank Cushing, and Gary Ellsworth of the committee's majority staff.

Mr. MCCLURE. Mr. President, I would like to make a few comments regarding the amendment offered by myself and the distinguished ranking member of the committee, Senator JOHNSTON. This amendment would modify paragraph 101(d)(1) and section 104 of the committee amendment and it would modify the preamble of the joint resolution.

The purpose of the modification to paragraph 101(d)(1) is to require that the actual implementation of the agreement approved by Senate Joint Resolution 325, would require enactment of a joint resolution of Congress authorizing such implementation. This modification is necessary because, although the United States will have completed its approval of the Palau compact upon enactment of Senate Joint Resolution 325, Palau has not yet completed its approval process. Approval of Senate Joint Resolution 325 by the United States will allow Palau to initiate its final approval process and to resolve any issues that may remain within Palau.

The situation in Palau is different than the situation in the other three trust territory governments with which Congress has approved agreements. The Northern Mariana Islands, Federated States of Micronesia, and Republic of the Marshall Islands have already approved their respective agreements with the United States whereas Palau has not. This modification of the committee amendment to Senate Joint Resolution 325 will assure that the Congress will have one last opportunity to review this agreement with Palau prior to its implementation, and that Congress will have an opportunity to clarify, if necessary, its intent with regard to implementation.

It should be clear to both the administration and the Government of Palau that passage by the Senate of Senate Joint Resolution 325 constitutes final approval by the U.S. Senate of the future political status agreements with the four trust territory governments. The joint resolution required under this modification to the committee amendment to Senate Joint Resolution 325 would only apply to the actual date for termination of the trusteeship agreement and full implementation of the agreement with Palau as approved by Senate Joint Resolution 325, and it does not affect the other three agreements.

The second purpose of this amendment is to modify section 104 of the committee amendment to reflect certain revisions and additions agreed to in recent negotiations between the House and Senate. Subsection (a) is modified to make available civic action teams to the Marshall Islands as they are made available to Palau and the Federated States of Micronesia. Subsection (b) is modified by shortening its title and subsection (c) is not changed. The amendment would, in addition to these changes, add five new subsections to section 104 as follows:

New subsection (d) would require the Secretary of Agriculture to study and report on the feasibility and cost of rehabilitating and restoring the fertility of the top soil of the Islands of Peleliu and Angaur. This authorization is already included within the general authorization for technical assistance but apparently, the House believes a specific reference would be helpful.

Subsection (e) would clarify that United States payments to Palau shall be made only to the Government of Palau and not to any other party. This subsection would also clarify that the provisions of 174(a) regarding court immunity shall apply with respect to any action based on a contract or debt related to any electrical generating plant or related facilities entered into or incurred by Palau prior to enactment of this joint resolution. This language ensures that the obligations of the United States to provide specified levels of assistance to Palau are met. The language is redundant of existing law with respect to appropriations and that appropriated funds must be spent in accordance with the provisions of law. It does, however, require those involved in the powerplant arrangement, which was never authorized nor consented to by Congress, to pursue their actions with Palau in Palau.

New subsection (f) would provide that the nuclear claims settlement payments required under section 177 of the Compact of Free Association would not be subject to the Gramm-Rudman deficit reduction law. Because these payments are part of a settlement of various court suits, they are not the type of payments which were contemplated to be subject to sequester. The Office of Management and Budget concurs in this analysis. This subsection would also exempt three other payments from Gramm-Rudman sequestration: Radiological health care and agricultural food payments, Enjebi trust fund payments and prior service benefit payments. These funds were included in the 1986 supplemental, and probably have been obligated. To that extent this section is moot. There will likely to be a delay in the technical obligation of the 177 settlement funds, but clearly the settlement would be ineffective if any part of the funds were not available. This was a one-time appropriation and is not a recurring problem.

New subsection (g) reaffirms the understanding interpretations and policy statements contained in Public Law 99-239 and directs the President to take such steps as are necessary to preserve all rights of the United States in connection with the interpretation and implementation of Public Law 99-239.

Finally, new subsection 104(h) clarifies the intent of the United States pursuant to the use of land in Palau and reaffirms that armed forces of other nations invited by the United States to use military areas in Palau shall be subject to the same limitations and restrictions applicable to the United States. An additional modification made by this amendment to the committee amendment is that the preamble to Senate Joint Resolution 325 is modified to reflect the fact that Palau has not yet approved the agreement as had been anticipated when this joint resolution was introduced. The new language recognizes that the approval process in Palau has not yet been completed and that the President of Palau has requested the United States to complete the approval process of the United States.

This amendment which we offer would delete two provisions from the House-passed measure. The first deleted provision would make clear that the United States has no ulterior motives in the language set forth in section 324 of the compact despite the assertions of those who oppose the agreement. Palau has been subject to numerous disingenuous attempts to distort the compact. There have been assertions that the United States intends to construct major military facilities, use Palau as a Trident base, and use the islands as a nuclear weapons depot. However irresponsible these attempts to distort the compact may be, we must recognize that there is a sensitivity in the Pacific and we must

respect that sensitivity. I do not view this provision as useful and I do not think that we should dignify the calculated distortions of those who would use the Palauan people for their own objectives.

Perhaps it is simply the world we live in where people refuse to accept the plain meaning of language. If there is one fact which should remain unaltered and unassailable, it should be that the United States will stand by its word and its commitment. It does not matter whether that commitment is expressed in the compact as a promise of assistance to a people who have freely sought a long-term association with us, or by a commitment to defend them against foreign adventurism, or by an agreement not to engage in certain activities. Our word is our bond.

The second House provision deleted by our amendment would turn certain provisions of Public Law 99-239 into entitlements. When the Congress originally considered the compact legislation for the Marshall Islands and the Federated States of Micronesia, the House had included language intended to assure that certain assistance would be provided. There was a question as to whether the House language constituted an entitlement or simply an authorization. When the House Members and the Senate met to resolve the few issues in disagreement, it was decided to accept the House language unaltered, however it might be interpreted. Subsequently, the House Appropriations Committee requested a solicitor's opinion on the language. That opinion held that the language was an authorization. Notwithstanding the opinion, the Appropriations Committee has funded these provisions.

I understand the concern of the House, expecially Congressman SEIBERLING, that there is no assurance that there will be funding in the future if such funding is needed. I do want to acknowledge the deep concern and compassion of Congressman SEIBERLING, and I fully understand his concern, since he is retiring, that he try to do all in his power to see that these issues are not forgotten. I made a commitment last year and I will repeat that commitment, that I will sympathetically consider any of these issues in the future as needs arise.

I would also like to point out that the language in Public Law 99-239 on one of these items, prior service benefits, contemplates an annual payment by the United States. That approach is not the desire of the trust territory, Social Security Administration, the governments of the Federated States, the Marshalls, Palau, or the Appropriations Committees. We believe that a lump-sum payment to capitalize the outyear obligations is more consistent with the sovereignty of these areas and the proper management of the Social Security funds. Accordingly, last year, as chairman of the Appropriations Subcommittee for Interior and Related Agencies, I included an appropriation of $8 million to capitalize the necessary fund.

Finally, I understand that there is a budget problem with this provision, but that is secondary to my belief that this provision is not only unnecessary, but could be counterproductive, such as with respect to the prior Service Benefit Program. I want to again acknowledge the concern whch led to the inclusion of this provision and to repeat my commitment to see that those concerns are considered in the future.

In addition, in an effort to complete action on other measures pending before the Senate, the amendment includes the provisions of H.R. 934, regarding the Cuyahoga National Recreation Area. I would refer everyone to the report of the committee (S. Rept. 99-360) for an explanation of the provisions. The measure was reported unanimously from the Committee on Energy and Natural Resources and I believe that it should be enacted. The administration opposes the measure, and given the time of the year, I think that the best way to ensure that it is enacted is to include it on this measure which the administration supports strongly.

Mr. JOHNSTON. Mr. President, I thank the distinguished chairman, Senator MCCLURE, for his explanation of this amendment which we offer to modify the committee amendment to Senate Joint Resolution 325. I agree with the amendment, and with his explanation of its intent. I would urge my colleagues to support its adoption.

Mr. MCCLURE. Mr. President, I thank the distinguished ranking member and also urge adoption of this amendment to the committee amendment.

The PRESIDING OFFICER. If there be no further amendment to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute.

The committee amendment was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the committee amendment and third reading of the bill.

The amendment was ordered to be engrossed, and the joint resolution to be read a third time.

The joint resolution was read a third time.

The PRESIDING OFFICER. The joint resolution having been read the third time, the question is, Shall it pass?

So the joint resolution (H.J. Res. 626), as amended, was passed.

The preamble was agreed to.

Mr. SIMPSON. Mr. President, I move to reconsider the vote by which the joint resolution was passed.

Mr. BURDICK. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

CRIMINAL JUSTICE ACT REVISION

Mr. SIMPSON. Mr. President, I ask unanimous consent that the Senate turn to the consideration of Calendar Item No. 1021, S. 1581, the Criminal Justice Act revision.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1581) to amend section 3006A of title 18, United States Code, to improve the delivery of legal services in the criminal justice system to those persons financially unable to obtain adequate representation, and for other purposes.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on the Judiciary, with amendments, as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets, and the parts of the bill intended to be inserted are shown in italic):

S. 1581

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Criminal Justice Act Revision of 1985".

SEC. 2. (a) Section 3006A of title 18, United States Code, is amended as follows:

(1) Subsection (a) is amended by striking out "(1) who is" and all that follows through "subsection (h)" and inserting in lieu thereof the following: "in accordance with this section. Representation under each plan shall include counsel and investigative, expert, and other services necessary for adequate representation. Each plan shall provide the following:

"(1) Representation shall be provided for any financially eligible person who—

"(A) is charged with a felony or a misdemeanor (other than a petty offense as defined in section 1 of this title);

"(B) is a juvenile alleged to have committed an act of juvenile deliquency as defined in section 5031 of this title:

"(C) is charged with a violation of probation;

"(D) is under arrest, when such representation is required by law;

"(E) is entitled to appointment of counsel in parole proceedings under chapter 311 of this title;

"(F) is subject to a mental competency hearing under chapter 313 of this title;

"(G) is in custody as a material witness;

"(H) is entitled to appointment of counsel under the sixth amendment to the Constitution; or

"(I) faces loss of liberty in a case, and Federal law requires the appointment of counsel.

"(2) Whenever the United States magistrate or the court determines that the interests of justice so require, representation may be provided for any financially eligible person who—

"(A) is charged with a petty offense for which a sentence to confinement is authorized; or

"(B) is seeking relief under section 2241, 2254, or 2255 of title 28.

"(3) Private attorneys shall be appointed in a substantial proportion of the cases. Each plan may include, in addition to the provisions for private attorneys, either of the following or both:

"(A) Attorneys furnished by a bar association or a legal aid agency.,

"(B) Attorneys furnished by a defender organization established in accordance with the provisions of subsection (g).".

"(2) Subsection (b) is amended—

"(A) in the second sentence—

"(i) by striking out "In every criminal case" and all that follows through "violation of probation and" and inserting in lieu thereof "In every case in which a person entitled to representation under a plan approved under subsection (a)"; and

(ii) by striking out "defendant"; and inserting in lieu thereof "person";

(B) in the third sentence by striking out "defendant" each place it appears and inserting in lieu thereof "person"; and

(C) in the fifth sentence by striking out "defendants" and inserting in lieu thereof "persons".

[(3)(A) Subsection (d)(1) is amended by striking out "not exceeding $60" and all that follows through "Such attorney" and inserting in lieu thereof the following: "not in excess of $50 per hour, unless.]

(3)(A) Subsection (d)(1) is amended by striking "court. Such attorney" and inserting in lieu thereof "court, unless the Judicial Conference determines that a higher rate of not in excess of $75 per hour is justified for a circuit or for particular districts within a circuit, for time expended in court or before a United States magistrate and for time expended out of court. The Judicial Conference [may] *shall* develop guidelines for determining the maximum hourly rates for each circuit in accordance with the preceding sentence, with variations by district, where appropriate, taking into account such factors as the minimum range of the prevailing hourly rates for qualified attorneys in the district in which the representation is provided and the recommendations of the judicial councils of the circuits. Not less than 3 years after the effective date of the Criminal Justice Act Revision of 1985, the Judicial Conference is authorized to raise the maximum hourly rates specified in this paragraph up to the aggregate of the overall average percentages of the adjustments in the rates of pay under the General Schedule made pursuant to section 5305 of title 5, United States Code, on or after such effective date. After the rates are raised under the preceding sentence, such maximum hourly rates may be raised at intervals of not less than 1 year each, up to the aggregate of the overall average percentages of such adjustments made since the last raise was made under this paragraph. Attorneys".

(B) Subsection (d)(2) is amended—

(i) in the first sentence—

(I) by striking out "$2,000" and inserting in lieu thereof [$5,000";] and *"$3,500";* and

(II) by striking out "$800" and inserting in lieu thereof [$1,500";] *"$1,000";*

(ii) in the second sentence by striking out "$2,000" and inserting in lieu thereof [$3,000";] *"$2,500";* and

(iii) by striking out the third sentence and inserting in lieu thereof the following: "For any other representation required or authorized by this section, the compensation shall not exceed [$1,000] *$750* for each attorney in each proceeding.".

[(C) Subsection (d)(3) is amended by striking out "for extended or complex representation".]

(C) Subsection (d)(3) is amended by adding at the end thereof the following: "The chief judge of the circuit may delegate such approval authority to an active circuit judge.".

(D) Subsection (d)(4) is amended in the first sentence by striking out "represented the defendant" and inserting in lieu thereof "provided representation to the person involved".

(4)(A) Subsection (e)(1) is amended in the first sentence by striking out "an adequate defense" and inserting in lieu thereof "adequate representation".

(B) Subsection (e)(2) is amended to read as follows:

"(2) WITHOUT PRIOR REQUEST.—(A) Counsel appointed under this section may obtain, subject to later review, investigative, expert, and other services without prior authorization if necessary for adequate representation. Except as provided in subparagraph (B) of this paragraph, the total cost of services obtained without prior authorization may not exceed $300 and expenses reasonably incurred.

"(B) The court, or the United States magistrate, if the services were rendered in a case disposed of entirely before the United States magistrate, may, in the interest of justice, and upon the finding that timely procurement of necessary services could not await prior authorization, approve payment for such services after they have been obtained, even if the cost of such services exceeds $300.".

(C) (i) Subsection (e)(3) is amended by striking out "$300" and inserting in lieu thereof "$1,000".

(ii) Subsection (e)(3) is amended by adding at the end thereof the following: "The chief judge of the circuit may delegate such approval authority to an active circuit judge.".

(5)(A)(i) Subsection (h)(2)(A) is amended by striking out "similarly as under title 28, United States Code, section 605, and subject to the conditions of that section" and inserting in lieu thereof "in accordance with section 605 of title 28".

(ii) Section 3006A(h)(2)(A) of title 18, United States Code, is amended by inserting after "of duty." in the fourth sentence, the following: "Upon the expiration of his term, a Federal Public Defender may, by a majority vote of the judges of the court of appeals, continue to perform the duties of his office until his successor is appointed, or until one year after the expiration of such Defender's term, whichever is earlier.".

(B) Subsection (h)(2)(B) is amended in the third sentence by striking out "coming" and inserting in lieu thereof "next fiscal".

(C) Subsection (h) is further amended by adding at the end thereof the following:

"(3) MALPRACTICE AND NEGLIGENCE SUITS.—The Director of the Administrative Office of the United States Courts shall, to the extent the Director considers appropriate, provide representation for and hold harmless, or provide liability insurance for, any person who is an officer or employee of a Federal Public Defender Organization, or a Community Defender Organization receiving periodic sustaining grants, established under this subsection, for money damages for injury, loss of property, or personal injury or death arising from malpractice or negligence of any such officer or employee in furnishing representational services under this section while acting within the scope of that person's office or employment.".

(6) Subsection (j) is amended by inserting immediately before the period at the end of the first sentence the following: ", including funds for the continuing education and training of persons providing representational services under this section".

(7) Subsection (l) is amended—

(A) by striking out ", other than subsection (h) of section 1,"; and

(B) by striking out "Act" each place it appears and inserting in lieu thereof "section".

(b)(1) Section 3006A of title 18, United States Code, is further amended by striking out subsection (g) and redesignating subsections (h) through (l) as subsections (g) through (k), respectively.

(2) Subsection (j), as redesignated by paragraph (1), is amended to read as follows:

"(j) DISTRICTS INCLUDED.—As used in this section, the term 'district court' means each district court of the United States created by chapter 5 of title 28, the District Court of the Virgin Islands, the District Court for the Northern Mariana Islands, and the District Court of Guam,".

SEC. 3. Section 223(e) of the Comprehensive Crime Control Act of 1984, title II, Public Law 98-473, 98 Stat. 1837, October 12, 1984, is amended to read as follows:

"(e) Section 3006A(a) is amended—

"(1) in paragraph (1)(A) by deleting 'misdemeanor (other than a petty offense as defined in Section 1 of this title)' and inserting in lieu thereof 'Class A misdemeanor';

"(2) in paragraph (1) by deleting subparagraph (E) and redesignating subparagraphs (F) through (I) as (E) through (H), respectively; and

"(3) in paragraph (2)(A) by deleting 'petty offense' and substituting 'Class B or C misdemeanor, or an infraction'.".

SEC. 4. Section 1825 of title 28, United States Code, is amended to read as follows:

"§ 1825. Payment of fees

"(a) In any case in which the United States or an officer or agency of the United States is a party, the United States marshal for the district shall pay all fees of witnesses on the certificate of the United States attorney or assistant United States attorney, and in the proceedings before a United States magistrate, on the certificate of such magistrate, except that any fees of defense witnesses, other than experts, appearing pursuant to subpoenas issued upon approval of the court, shall be paid by the United States marshal for the district—

"(1) on the certificate of a Federal public defender or assistant Federal public defender, in a criminal case in which the defendant is represented by such Federal public defender or assistant Federal public defender, and

"(2) on the certificate of the clerk of the court upon the affidavit of such witnesses' attendance given by other counsel appointed pursuant to section 3006A of title 18, in a criminal case in which a defendant is represented by such other counsel.

"(b) In proceedings in forma pauperis for a writ of habeas corpus, and in proceedings in forma pauperis under section 2255 of this title, the United States marshal for the district shall pay, on the certificate of the district judge, all fees of witnesses for the party authorized to proceed in forma pauperis, except that any fees of witnesses for such party, other than experts, appearing

pursuant to subpoenas issued upon approval of the court, shall be paid by the United States marshal for the district—

"(1) on the certificate of a Federal public defender or assistant Federal public defender, in any such proceedings in which a party is represented by such Federal public defender or assistant Federal public defender, and

"(2) on the certificate of the clerk of the court upon the affidavit of such witnesses' attendance given by other counsel appointed pursuant to section 3006A of title 18, in any such proceedings in which a party is represented by such other counsel.

"(c) Fees and mileage need not be tendered to a witness upon service of a subpoena issued on behalf of the United States or an officer or agency of the United States, upon service of a subpoena issued on behalf of a defendant represented by a Federal public defender, assistant Federal public defender, or other attorney appointed pursuant to section 3006A of title 18, or upon service of a subpoena issued on behalf of a party authorized to proceed in forma pauperis, where the payment of such fees and mileage is to be made by the United States marshal under this section.".

[SEC. 5. This Act and the amendments made by sections 2, 3, and 4 of the Act shall take effect on October 1, 1985, or 120 days after enactment, whichever is later.]

SEC. 5. This Act and the amendments made by section 2, 3, and 4 of this Act shall take effect 120 days after the date of enactment. The maximum hourly rates provided in section 3006A(d)(1) of title 18, United States Code, as amended by section 2(a)(3)(A) shall apply only to services performed on or after the effective date of this Act. The maximum allowed for compensation for a case, as provided in section 3006A(d)(2) of title 18, United States Code, as amended by section 2(a)(3)(B) shall apply only to compensation claims in which some portion of the claim is for services performed on or after the effective date of this Act. The maximum compensation allowed pursuant to section 3006A(e) of title 18, United States Code, as amended by paragraphs (B) and (C) of section 2(a)(4) shall apply only to services obtained on or after the effective date of this Act.

Mr. THURMOND. Mr. President, I rise in support of S. 1581, the proposed Criminal Justice Act Revisions of 1985.

On August 1, 1985, I introduced this legislation at the request of the Judicial Conference of the United States. On June 17, 1986, the Senate Judiciary Committee Subcommittee on the Constitution considered and approved S. 1581, with amendments. Then, on September 19, 1986, the full Judiciary Committee unanimously approved S. 1581 as approved by the subcommittee.

Mr. President, the sixth amendment to the Constitution guarantees to each criminal defendant the right to effective assistance of counsel. The Criminal Justice Act is intended to ensure that this guarantee is fulfilled at the Federal level. The legislation before the Senate was requested by the Judicial Conference to improve the delivery of legal services under the Criminal Justice Act.

The major provisions of this legislation would provide for:

Variation of the hourly rates for defenders among districts and circuits to account for differences in economic conditions;

Future increases in the hourly rates for defenders based upon cost-of living salary adjustments given to Federal employees;

Increases in the case compensation maximums paid to defenders;

Authority to appoint counsel for financially eligible persons charged with a petty offense, where confinement is authorized and representation is determined to be in the interest of justice; and

Professional liability protection for Federal defenders.

Mr. President, I believe that these proposals, and other issues addressed by this legislation are important ones and I urge the support of my colleagues for passage.

Mr. HATCH. Mr. President, I would like to express my appreciation to members of the Constitution Subcommittee for their work on this bill. S. 1581. It was approved unanimously, with some amendments, by the subcommittee. The full Judiciary Committee gave it a similar unanimous endorsement.

I will explain the legislation and the amendments adopted by the Constitution Subcommittee.

The Criminal Justice Act provides a system of compensation to attorneys for the representation of persons who are financially unable to obtain adequate representation in Federal court on criminal and related matters. The primary impetus for the revision of the CJA has come from Federal judges through the Judicial Conference of the United States—Judicial Conference—which has indicated its concern that the compensation system be periodically reviewed to ensure realization of the congressional purpose of providing adequate representation under the sixth amendment to those individuals unable to reasonably afford defense services. The act was enacted in 1964—Public Law 88-455, section 2, August 20, 1964, 78 Stat. 522—to insure that a system of representation was available for defendants in Federal criminal cases who were financially unable to obtain counsel. At the time of enactment, maximum hourly rates for an appointed attorney were set at $10 for out-of-court work and $15 for in-court work. Case compensation maximums were set at $500 for a felony and $300 for a misdemeanor.

In 1970, the CJA was amended—Public Law 91-447, section 1, October 14, 1970, 84 Stat. 916—to increase the hourly rates to $20 for out-of-court work and $30 for in-court work. Case compensation maximums were raised to $1,000 for a felony and $400 for a misdemeanor, with a provision for waiving the maximums in the case of "extended or complex representation." The CJA was expanded to include representation of defendants charged with violation of probation, certain defendants charged with juvenile delinquency, any person under arrest when such representation is required by law, and at the discretion of the court any person who is subject to revocation of parole, in custody as a material witness, or seeking collateral relief under sections 2241, 2254, or 2255 of title 28 United States Code or section 4245 of title 18 United States Code, or certain ancillary matters. A maximum of $1,000 was set for each case on appeal and a $250 maximum for post-trial motions, probation revocation proceedings, and the discretionary matters mentioned previously.

During the 97th Congress, the Judicial Conference, acting on a resolution adopted in September of 1980, requested that legislation be introduced to update the Criminal Justice Act. A legislative proposal which was the culmination of efforts by the Judicial Conference, its Committee to Implement the Criminal Justice Act, the Criminal Justice Act Division of the Administration Office of the U.S. Courts, and the Federal Defender Advisory Committee, was submitted. The two major problems which the conference's committee had noted were: first, the difficulties encountered by courts in obtaining attorneys willing to accept CJA appointments, and, second, an additional administrative burden imposed upon the chief judges of the circuits by the substantial increases in claims by attorneys for compensation in excess of the maximum limit under the CJA. The resolution adopted by the conference indicated its concern about the inadequacy of existing rates of compensation and maximum limits, its adverse effect, and a recommendation that Congress address the issues as soon as possible.

In the 98th Congress, the Judicial Conference again requested new legislation. An excerpt from the letter follows:

> There is increasing concern at all levels of the Federal Judiciary that further delay in implementing the proposed amendments will seriously threaten the availability of experienced and qualified counsel willing to accept appointment under the Act and may significantly erode the quality of legal services which the Sixth Amendment to the Constitution mandates.
>
> The General Accounting Office, in its recent report on the administration of the Criminal Justice Act (GAO/GGD-83-18), stated the "real value [of the fees currently paid to court appointed attorneys under the CJA] has obviously decreased substantially because of inflation. On this basis alone they deserve examination."

The result was consideration in the 98th Congress of H.R. 4307 and S. 2420 as noted above.

During this Congress, the Judicial Conference submitted a further request that legislation be enacted to

deal with needed reforms in the Criminal Justice Act Program. S. 1581 as reported contains the reforms recommended by the Judicial Conference.

S. 1581 as reported updates the CJA in the following manner. S. 1581 would authorize the Judicial Conference, in consultation with the Judicial councils of the circuits, to vary the maximum hourly rates by district, considering factors such as the minimum range of prevailing rates for qualified attorneys in the district. Three years after the effective date of the act, the hourly rates may be raised consistent with cost-of-living raises granted to Federal employees, but only if the Judicial Conference decides it is appropriate. A cost-of-living increase is not mandatory after 3 years, but is left to the discretion of the Judicial Conference. S. 1581 raises the maximum payment per case to $3,500 for a felony, $1,000 for a misdemeanor, $2,500 for an appeal, $750 for other proceedings, and raises support services for example, investigative and expert services—to $1,000 with permission or nunc pro tunc authorization under certain circumstances, or $300 without advance permission. Case compensation maximums for attorney compensation and expert or other services may be waived if the court issues the appropriate certification and payment is approved by the chief judge of the circuit.

S. 1581 also makes other improvements recommended by the Judicial Conference including allowing the option of malpractice insurance for Federal defenders or providing representation and holding them harmless, appointment of counsel in certain petty offenses, mandating appointment of counsel for financially eligible material witnesses in custody, and the continuing education and training of panel attorneys. It also removes a restriction placed in the act in 1970 which precludes the U.S. District Court for the District of Columbia from establishing a Federal Defender Organization. The Chief Judges of the U.S. District Court—D.C.—and of the Court of Appeals—D.C. Circuit—have supported the repeal of this restriction. Thus, the D.C. Circuit will, as all other circuits, have the option of creating a mixed private bar/public defender system. S. 1581 amends section 1825 of title 28, United States Code, to authorize Federal public defenders and their assistants appointed under the CJA to certify the payment of defense fact witness in Federal criminal cases. In those cases where representation is furnished by other counsel appointed under the CJA—private panel attorneys or attorneys furnished by a Community Defender Organization—defense fact witnesses fees would be certified by the clerk of the district court upon the affidavit of the witnesses' attendance by the appointed attorney. In each case, the appearance of defense witnesses would be pursuant to a subpoena issued upon approval of the court. This amendment to section 1825 of title 28, United States Code, has had the support of the Department of Justice. Currently U.S. attorneys and their assistants perform this function, and this role is burdensome to them and may create a conflict of interest.

As noted above, during the 98th Congress a much less comprehensive amendment to the CJA was enacted as part of the Comprehensive Crime Control Act of 1984. The 1984 amendment as enacted into law raised the CJA hourly rates—which had not been amended since 1970—from $20—out-of-court—and $30—in-court—to $40—out-of-court—and $60—in court. In addition, it increased case compensation maximums from $1,000 to $2,000 for a felony, from $400 to $800 for a misdemeanor, from $1,000 to $2,000 for an appeal, and from $250 to $500 for a posttrial motion, a probation revocation hearing, and other related proceedings. While the 1984 amendment was a step in the right direction, it did not involve the comprehensive review of the CJA program deemed desirable to address many of the issues raised by the Judicial Conference. S. 1581 as introduced was designed to provide the basis for this review with the presumption that the amendments included in the bill as proposed by the Judicial Conference were meritorious improvements in the CJA program. The legislation is supported by the Judicial Conference, the American Bar Association, the National Association of Former U.S. Attorneys, the Federal Public and Community Defenders, the National Legal Aid and Defender Association, the National Association of Criminal Defense Lawyers, Inc., numerous State and local bar associations and individuals. Among the State and local bar associations which have indicated support for updating the CJA are: the Alaska Bar Association, the State Bar of Arizona; California Attorneys for Criminal Justice, the State Bar of California—Criminal Law Section and Federal Courts Committee—the Los Angeles County Bar Association, the Bar Association of San Francisco, the District of Columbia Bar, the Hispanic Bar Association of D.C., the Idaho State Bar, the State Bar of Montana—Judicial Committee—the New York State Defenders Association, the Northern Marianas Bar Association, the Oregon State Bar—Defense of the Indigent Accused Committee—the Philadelphia [PA] Bar Assocation, the State Bar of Wisconsin, and the Dane County [WI] Criminal Defense Lawyers Association. There is no known opposition to the legislation. S. 1581 responds to the documented need to further update the CJA.

As previously noted, the Subcommittee on the Constitution approved six amendments to S. 1581, as introduced. To facilitate understanding of these changes which are part of this version of S. 1581, I would like to briefly explain the nontechnical substantive amendments adopted by my Subcommittee:

1. Generally Applicable Maximum Hourly Attorney Compensation Rate. S. 1581 as introduced would set the generally applicable maximum hourly attorney compensation rate at $50 for both in-court and out-of-court time rather than the $40 out-of-court and $60 in-court rates established in the Comprehensive Crime Control Act of 1984. Due to the significantly higher ratio of out-of-court hours to in-court hours, this feature would add an estimated $4.5 million annually to the program. The bill before the Senate would simply retain the current $40-$60 rate structure, thereby reducing the potential cost of the legislation.

2. Case Compensation Maximums. S. 1581 as introduced would increase the case compensation maximums to the following figures: felony—from $2,000 to $5,000; misdemeanor—from $800 to $1,500; appeals—from $2,000 to $3,000; other cases—from $500 to $1,000. This bill would set the case compensation maximums as follows: felony—$3,500; misdemeanor—$1,000; appeal—$2,500; other cases—$750. These limits may be waived in appropriate circumstances. The amendment is estimated to reduce the potential cost of the legislation by $.25 to $.3 million.

3. Criteria for Waiving Generally Applicable Case Compensation Maximums. S. 1581 as introduced would amend 18 U.S.C. § 3006A(d)(3) to eliminate the requirement that a case must be determined to be "extended or complex" before generally applicable cases maximums may be waived. This amendment to S. 1581 would retain the "extended for complex" basis for the waiver.

4. Effective Date. S. 1581 as introduced is ambiguous whether and to what extent the changes proposed in the bill would apply to services performed before the date of enactment. This bill clarifies this situation. In general, the Act and the amendments made by sections 2, 3, and 4 would take effect 120 days after the date of enactment. The maximum hourly rates amendments would apply only to services performed on or after the effective date of the Act. The new case compensation maximums would apply only to compensation claims in which some portion of the claims is for services performed on or after the effective date of the Act. Maximum compensation allowed for services other than counsel under amendments to 18 U.S.C. § 3006A(e) would apply only to services obtained on or after the effective date of the Act.

5. Term of Federal Public Defender. This amendment to S. 1581 would permit a Federal Public Defender whose term has expired to be retained in office for one year or until a successor is appointed, whichever occurs earlier. This is a Judicial Conference recommendation adopted at its March 1986 proceedings.

6. Delegation of Authority relating to Excess Case Compensation. This amendment to S. 1581 would authorize the circuit chief judge to delegate to other circuit judges the task of reviewing and approving excess compensation. This is a Judicial Conference recommendation adopted at its March 1986 proceedings.

Mr. SIMPSON. Mr. President, I move the adoption of the committee-reported amendments.

The committee amendments were agreed to.

AMENDMENT NO. 3253

Mr. SIMPSON. Mr. President, I send an amendment to the desk on behalf of Senator THURMOND, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Wyoming [Mr. SIMPSON] for Mr. THURMOND, proposes an amendment numbered 3253.

Mr. SIMPSON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Insert the following at the appropriate place in the bill:

On Page 1, line 4, strike "1985" and insert "1986".

On Page 2, line 23, strike "competency" and insert "condition".

On Page 4, line 5, strike the semicolon.

On Page 5, line 7, strike "1985" and insert "1986".

On Page 5, line 12, strike ", United States Code,".

On Page 7, strike lines 24 and 25 and on page 8, line 1, strike "in the fourth sentence," and insert the following:

"(ii) Subsection (h)(2)(A) is amended by inserting after the fourth sentence"

On Page 8, line 17, insert "established under this subsection" immediately after "Organization".

Page 8, line 18, insert "established under this subsection which is after "Organization".

On Page 8, line 19, strike "established under this subsection,".

On Page 8, line 20, insert "loss of liberty," between "injury," and "loss of property".

On Page 10, line 2, strike "Section" and insert "section".

On Page 10, line 6, insert "subparagraphs" after "as".

On Page 12, line 20, insert "of this Act," after "2(a)(3)(A)".

On Page 12, line 24, insert "of this Act," after "2(a)(3)(B)".

On Page 13, lines 3 and 4, strike "paragraphs (B) and (C) of section 2(a)(4)" and insert "subparagraphs (B) and (C) of section 2(A)(4) of this Act,".

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from South Carolina.

The amendment (No. 3253) was agreed to.

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Mr. SIMPSON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 3254

(Purpose: To amend title 28 of the United States Code to provide for retired magistrates to be recalled to service and to provide a retirement system for U.S. magistrates equal to the retirement system for bankruptcy judges)

Mr. SIMPSON. Mr. President, I send a second amendment to the desk on behalf of Senator THURMOND and Senator HEFLIN, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Wyoming [Mr. SIMPSON], for Mr. THURMOND and Mr. HEFLIN, proposes an amendment numbered 3254.

Insert the following at the appropriate place in the bill: That section 631(d) of title 28, United States Code, is amended by—

(1) striking out "No" and inserting in lieu thereof "Except as otherwise provided in sections 375 and 636(h) of this title (allowing retired magistrates to be recalled to serve), no";

(2) striking out "unanimous" and inserting in lieu thereof "majority"; and

(3) inserting after "courts," the following: "taken upon the magistrate's attaining age seventy and upon each subsequent anniversary thereof,".

SEC. 2. Section 636 of title 28, United States Code, is amended by adding at the end thereof the following:

"(h) A United States magistrate who has retired may, upon consent of the chief judge of the district involved, be recalled to serve as a magistrate in any judicial district by the judicial council of the circuit within which such district is located. Upon recall, a magistrate may receive a salary for such service in accordance with regulations promulgated by the conference, subject to the restrictions on the payment of an annuity in subchapter III of chapter 83 or chapter 84 of title 5. The qualification requirements of subsections (a), (b), and (d) of section 631 shall not apply to the recall of a retired magistrate.".

SEC. 3. Section 633(b) of title 28, United States Code, is amended by striking out "643" and inserting in lieu thereof "634".

SEC. 4. Section 8331 of title 5, United States Code is amended by—

(1) redesignating subparagraphs (A) and (B) of paragraph 22 thereof as items (i) and (ii);

(2) adding immediately after the word "individual" in paragraph 22 the following: "(A) who is";

(3) adding at the end of item (i), as so redesignated, the following: "or";

(4) redesignating subparagraph (C) of paragraph 22 as subparagraph (B);

(5) striking out "and" at the end of paragraph (23);

(6) striking out the period at the end of paragraph (24) and inserting in lieu thereof a semicolon; and

(7) adding at the end thereof the following new paragraphs:

"(25) 'magistrate' or 'United States magistrate' means an individual appointed under section 631 of title 28; and

"(26) 'Claims Court judge' or 'judge of the United States Claims Court' means an individual appointed under section 171 of title 28 or serving under section 167 of Public Law 97-164, 96 Stat. 50.".

SEC. 5. (a) Section 8334(a)(1) of title 5, United States Code, is amended by inserting after "Member", the following: ", a United States magistrate, a judge of the United States Claims Court,".

(b) Section 8334(c) of title 5, United States Code, is amended by inserting at the end of the table thereof the following:

"United States magistrate or judge of the United States Claims Court.	2½	August 1, 1920, to June 30, 1926.
	3½	July 1, 1926, to June 30, 1942.
	5	July 1, 1942, to June 30, 1948.
	6	July 1, 1948, to October 31, 1956
	6½	November 1, 1956, to December 31, 1969.
	7	January 1, 1970, to December 31, 1986
	8	After December 31, 1986.".

SEC. 6. Section 8336(k) of title 5, United States Code, is amended to read as follows:

"(k) A bankruptcy judge, magistrate, or judge of the United States Claims Court who is separated from the service, except by removal, after becoming sixty-two years of age and completing five years of civilian service or after becoming sixty years of age and completing ten years of service as a bankruptcy judge, magistrate, or judge of the United States Claims Court is entitled to an annuity.".

SEC. 7. Section 8339(n) of title 5, United States Code, is amended to read as follows:

"(n) The annuity of an employee who is a United States bankruptcy judge, a United States magistrate, or a judge of the United States Claims Court is computed with respect to service as a referee in bankruptcy, as a bankruptcy judge, as a United States magistrate, as a United States commissioner, as a judge of the United States Claims Court, and as a commissioner of the Court of Claims and military service (not exceeding five years) creditable under section 8332 of this title by multiplying 2½ percent of his average annual pay by the years of that service.".

SEC. 8. Chapter 84 of title 5, United States Code, as added by section 101 of the Federal Employees' Retirement System Act of 1986 (Public Law No. 99-335; 100 State. 514) is amended—

(1) in section 8401, by——

(A) striking out "and" at the end of paragraph (30);

(B) striking out the period at the end of paragraph 31 and inserting a semicolon in lieu thereof; and

(C) adding at the end thereof the following new paragraphs:

"(32) the terms 'bankruptcy judge' and 'United States bankruptcy judge' mean an individual appointed under section 152 of title 28;

"(33) the terms 'magistrate' and 'United States magistrate' mean an individual appointed under section 631 of title 28; and

"(34) the terms 'Claims Court judge' and 'judge of the United States Claims Court' mean an individual appointed under section 171 of title 28.";

(2) in section 8412(f), by adding immediately after the word "Member" the following: ", magistrate, bankruptcy judge, or judge of the United States Claims Court";

(3) in section 8415(b), by—

(A) designating the existing text thereof as paragraph (1); and

(B) adding at the end thereof the following new paragraph:

"(2) The annuity of a United States magistrate, a United States bankruptcy judge, or a judge of the United States Claims Court retiring under this subchapter is computed under subsection (a), except that if the individual has had at least 5 years of service as a magistrate, bankruptcy judge, or judge of the United States Claims Court, or any combination thereof, so much of the annuity as is computed with respect to such type of service (or a combination thereof, not exceeding a total of 20 years, shall be computed by multiplying 1⅞₀ percent of the individual's average pay by the years of such service."; and

(4) in section 8422(a)(2), by adding immediately after "air traffic controller," each time it appears the following: "United States magistrate, United States bankruptcy judge, judge of the United States Claims Court,".

SEC. 9(a). Chapter 17 of title 28, United States Code, is amended by adding, immediately after section 374 thereof the following new section:

"§ 375. Recall of certain judges and magistrates.

"(a)(1) A United States bankruptcy judge appointed under chapter 6 of this title, a judge of the United States Claims Court appointed under chapter 7 of this title or a United States magistrate appointed under chapter 43 of this title who has retired under the applicable provisions of title 5 upon attaining the age and years of service requirements established in section 371(c) of this title may agree to be recalled to serve under this section during the next five years, upon certification that substantial service is expected to be performed during such five-year period. With the agreement of the judge or magistrate involved, a certification under this subsection may be renewed for successing five-year periods.

"(2) For purposes of paragraph (1) of this subsection, a certification may be made by—

"(A) The judicial council of the circuit in which the judge's or magistrate's official duty station at the time of retirement was located, in the case of a United States bankruptcy judge or a United States magistrate; and

"(B) The Chief Judge of the United States Claims Court, in the case of a judge of that court.

"(b) A judge or magistrate recalled under this section may exercise all the powers and duties of the office held at the time of retirement, including the ability to serve in any other judicial district to the extent applicable, but may not engage in the practice of law or engage in any other business, occupation, or employment inconsistent with the expeditious, proper, and impartial performance of duties as a judicial officer.

"(c) During the time that a certification under subsection (a) of this section is in effect, the judge or magistrate involved shall receive, in addition to the annuity provided under the applicable provisions of title 5, an amount equal to the difference between that annuity and the current salary of the office to which recalled.

"(d) Nothing in this section shall affect the right of judges and magistrates to whom it applies and who retire under the provisions of chapter 83 or chapter 84 of title 5 to serve as re-employed annuitants in accordance with the provisions of title 5 or any other provision of law.

"(e) For purposes of determining the eligibility for recall under this section, any service as a United States bankruptcy judge, a judge of the United States Claims Court or a United States magistrate, and any prior service as a referee in bankruptcy, a commissioner of the Court of Claims, or a United States commissioner may be credited.

"(f) Except as otherwise specifically provided in this section, a judge or magistrate recalled under this section shall be deemed a reemployed annuitant under chapter 83 or chapter 84 of title 5.

"(g) The Judicial Conference of the United States may promulgate rules and regulations to implement this section.".

(b) The item relating to section 375 in the sectional analysis of chapter 17 of title 28, United States Code, is amended to read as follows:

"375. Recall of certain judges and magistrates.".

SEC. 10. Section 374 of title 28, United States Code, is amended by adding, immediately after the words "a retired judge", the following: "or judge or magistrate recalled under section 155, 375, 636, or 797 of this title".

SEC. 11(a). Section 155(b) of title 28, United States Code is amended by inserting immediately after the words "chapter 83" the words "or chapter 84".

(b) Section 797(a) of title 28, United States Code, is amended by inserting immediately after the words "chapter 83" the words "or chapter 84".

SEC. 12. This Act and the amendments made by this Act shall take effect on the date of enactment.

Mr. THURMOND. Mr. President, I rise today in support of an amendment to S. 1581, the Criminal Justice Act Revision of 1985, which is the text of the substitute amendment to S. 2529, which was favorably reported from the Judiciary Committee. This amendment provides Federal magistrates with retirement benefits equal to those currently received by bankruptcy judges and allows the recall of retired magistrates when a substantial need exists. I believe that it is appropriate that Congress pass legislation to ensure that benefits for magistrates are sufficient to make certain that we continue to attract high-caliber candidates for magistrate positions. The Judiciary Committee passed the text of this amendment by unanimous consent, and I hope that it will receive similar, expeditious consideration and approval by the full Senate.

Magistrates have been entrusted with a steady increase in responsibility since creation of the United States Magistrate System in 1968. The district courts appoint and oversee the Federal magistrates, and district courts have experimented with expanding the role of magistrates in the Federal court system with great success.

This amendment contains many important features which will ensure that we continue to recruit and maintain the quality of judicial officers which Congress envisioned in enacting and expanding the magistrate system. It allows magistrates to serve past the age 70 when the retired magistrate is recalled upon the majority votes of the judges of the Federal judicial district and amends the schedule of deductions and contributions in the civil service retirement laws to increase the percentage to be deducted from their salary and contributed to their retirement from 7 to 8 percent. It also amends the criteria for bankruptcy judge's eligibility to receive an annuity under the civil service retirement laws to include magistrates and claims court judges. Finally it provides treatment for bankruptcy judges, magistrates, and claims court judges equivalent to that bankruptcy judges now have under the civil service retirement laws.

The expansion of the powers and jurisdiction of magistrates has reflected the recognition of Congress that magistrates are necessary and capable of officers at the "front line of Federal justice." If the Federal district courts are to continue to utilize magistrates to the extent which Congress intends, we should adopt measures to ensure the continued high quality of these judicial officers. I urge my colleagues to support this amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3254) was agreed to.

The PRESIDING OFFICER. The bill is before the Senate and open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill (S. 1581) was ordered to be engrossed for a third reading and was read the third time.

Mr. SIMPSON. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of H.R. 3004, the House companion bill, that the Senate proceed to its immediate consideration, and I move to strike all after the enacting clause and insert the text of S. 1581 as amended.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 3004) to amend section 3006A of title 18, United States Code, to improve the delivery of legal services in the criminal justice system to those persons financially unable to obtain adequate representation, and for other purposes.

The PRESIDING OFFICER. Without objection, the Senate will proceed to its immediate consideration.

The bill (H.R. 3004), as amended, was ordered to a third reading, read the third time, and passed.

Mr. SIMPSON. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BURDICK. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. SIMPSON. Mr. President, I ask unanimous consent that S. 1581 be indefinitely postponed.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMISSION ON THE BICENTENNIAL OF THE CONSTITUTION OF THE UNITED STATES

Mr. SIMPSON. Mr. President, I ask unanimous consent that all action on Calendar item 701, H.R. 3559, dealing with the Commission on the Constitution, be vitiated and I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 3559) to amend the Act establishing a Commission on the Bicentennial of the Constitution of the United States to clarify the status of employees of the Commission, to raise the limits on private contributions and for other purposes.

AMENDMENT NO. 3255

(Purpose: To restrict licensing of the Commission logo to appropriate purposes)

Mr. BURDICK. Mr. President, I send an amendment to the desk on behalf of Senator METZENBAUM and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from North Dakota [Mr. BURDICK], for Mr. METZENBAUM, proposes an amendment numbered 3255.

Mr. BURDICK. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 3, at line 15, after the word "logo," insert the following language,

"Such rules and regulations shall provide, among other things, that all projects, goods, and services as to which use of the logo is authorized shall be educational or commemorative, and shall relate to the bicentennial of the United States Constitution, the establishment of the Federal Government, or the Bill of Rights, and none of such projects, goods or services shall exploit the United States Constitution or the Bill of Rights. The purpose of the Commission in authorizing use of the logo shall not be primarily or exclusively to raise funds."

Mr. THURMOND. Mr. President, the amendment proposed by the distinguished Senator from Ohio, Senator METZENBAUM, is consistent with the intention of this legislation, as introduced. My colleagues on the Commission on the Bicentennial of the Constitution and I are in full agreement with Senator METZENBAUM that the logo of the Commission should be used only on educational or commemorative projects, goods, or services.

We also agree enthusiastically with the concern of Senator METZENBAUM that the bicentennial logo should not be used in any manner which would exploit the U.S. Constitution or the Bill of Rights.

We, therefore, are pleased to accept the amendment offered by Senator METZENBAUM.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3255) was agreed to.

The PRESIDING OFFICER. The bill is before the Senate and open to further amendment. If there be no further amendment to be proposed, the question is on third reading and passage.

The bill (H.R. 3559) was ordered to a third reading, was read the third time, and passed.

Mr. SIMPSON. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BURDICK. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

TO TRANSFER CERTAIN LANDS NEAR AIKEN, SC, TO THE UNITED STATES DEPARTMENT OF ENERGY

Mr. SIMPSON. Mr. President, I ask unanimous consent that the Agriculture Committee be discharged from further consideration of S. 1577 dealing with certain lands near Aiken, SC, and I ask for its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1577) to transfer title, control, and custody of certain lands near Aiken, South Carolina, from the United States Department of Agriculture, to the United States Department of Energy.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the committee proceeded to consider the bill.

Mr. THURMOND. Mr. President, I rise for the purpose of entering into a colloquy with the distinguished Chairman of the Senate Committee on Agriculture, Nutrition, and Forestry.

Senator HELMS, on August 1, 1985, I introduced S. 1577, a bill which would transfer control of certain forest lands near the Savannah River Plant from the U.S. Forest Service in the U.S. Department of Agriculture [USDA] to the Department of Energy [DOE]. The 6,201 acres of land to be transferred from the USDA to the control of the DOE has traditionally provided a variety of outdoor recreation opportunities for the residents of Aiken, SC, and other nearby communities. The three tracts of land that comprise this transfer have many game species including deer, wild hogs, wild turkey, small game and waterfowl. Good fishing is also available in two lakes within this acreage.

It is my understanding that upon the transfer of this property to DOE that these lands should continue to be available for outdoor recreation, such as hunting and fishing. Senator HELMS, is my understanding correct?

Mr. HELMS. Yes, it is my intent that such recreational use would be continued. This land exchange would facilitate improved security for the Savannah River Plant. However, security and recreation are not mutually exclusive objectives. Accordingly, I fully expect the Department of Energy to do everything reasonable to continue public recreational use of these lands.

Mr. THURMOND. Over the years the S.C. Wildlife and Marine Resources Department has invested considerable time and effort in these lands. Would it be reasonable to expect that they could continue to participate in the management of these lands for their wildlife and recreation opportunities?

Mr. HELMS. It is my understanding that DOE intends to have a close working relationship with the S.C. Wildlife and Marine Resources Department for the management of these lands for recreational opportunities.

Mr. THURMOND. The Department of Energy has expressed in writing their intent to continue to permit the recreational use of this land. I ask unanimous consent that a letter to me from Secretary Herrington of the Department of Energy concerning this matter be inserted at the conclusion of this colloquy.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

THE SECRETARY OF ENERGY,
Washington, DC, May 16, 1986.

Hon. STROM THURMOND,
U.S. Senate,
Washington, DC.

DEAR SENATOR THURMOND: Thank you for your letter of March 25, 1986, concerning proposed Federal legislation to return control of U.S. Forest Service lands to the Department of Energy (DOE).

This legislation (S. 1577) will greatly improve the security posture at the Savannah River Plant (SRP), and is consistent with similar actions recently taken by DOE, such as proposed airspace restrictions and improved control on South Carolina Highway 125. Controlling public access onto SRP in response to an increasing threat of international and domestic terrorism has been a primary goal of DOE over the past few years. In particular, we have evaluated security implications of uncontrolled public access on the three parcels of land which we formerly controlled, and have concluded that their transfer back to DOE would greatly enhance SRP security.

While it is true that the Savannah River can provide a means of access to SRP, a river, being a natural barrier, does not facili-

tate access to a geographic site in the same way that a land mass does. On the contrary, rivers have historically served as impediments to access.

Regarding the access to SRP afforded by the land on the Georgia side of the river that is under private ownership, it would be impossible for DOE to acquire all the land in the vicinity of SRP that represents a means of access to SRP. Additionally, acquisition of privately-owned land would result in displacing the owners.

Your constituent also expressed concern regarding the decline in recreation opportunities resulting from transfer of the land back to DOE. It is true that no security incidents have occurred at SRP during the past 2 years; however, as the incidence of terrorism increases, so must the measures to counteract terrorism. Additional land buffers form an integral part of the site integrity equation. On the other hand, we recognize our responsibility to be good stewards of the land, and with respect to recreational use, we intend to incorporate the land into our deer hunt program. These are public hunts conducted annually in the fall, as necessary, to reduce the incidence of deer/vehicle collisions. During 1985, we conducted 18 hunts which accommodated 3,312 hunters. The hunts are completely controlled by SRP operating and security forces, including providing transportation to and from the hunt sites. This control is necessary for evacuation purposes, to protect the health and safety of hunters in the unlikely event of a plant emergency.

We appreciate the opportunity to provide our views on this very sensitive subject. I trust this information will be responsive to your request.

Yours truly,

JOHN S. HERRINGTON.

Mr. ZORINSKY. Mr. President, S. 1577 would transfer 6,021 acres of land in the Sumter National Forest to the Department of Energy. The purpose of the transfer is to establish a buffer zone to improve the security and safety of the Department of Energy's Savannah River Plant located near Aiken, SC. The transfer of this land will increase significantly the distance between areas of uncontrolled public access and the various facilities at the plant that are essential to meet the defense needs of the United States. These facilities include the Savannah River Laboratory, Fuel Fabrication Operating Center, and Emergency Operating Center.

The three parcels of land involved in this legislation were originally acquired by the United States in 1950 as part of the general acquisition of land for the Savannah River Plant. In 1952, the Forest Service, under an agreement with the Atomic Energy Commission, assumed responsibility for the management of the lands that were acquired for the plant but not actually used for nuclear production. In 1972, the three parcels of land, totalling 6,021 acres, were transferred to the Forest Service under Executive Order 11508 to provide public recreational benefits. The land was given National Forest status in 1974.

This legislation has been requested by the Department of Energy inasmuch as the transfer cannot be accomplished through Executive action. The Department of Agriculture has concurred in the request.

Mr. President, returning these three parcels of lands to the control of the Department of Energy will permit the restriction of public access to Federal lands located in close proximity to a critical nuclear facility. Limiting public access to this land will improve the safety and security of the Savannah River Plant, and I urge the Senate to pass this legislation.

The PRESIDING OFFICER. Is there further debate? If not, the question is on the engrossment and third reading of the bill.

The bill (S. 1577) was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 1577

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, to provide for a security buffer zone for the United States Department of Energy's Savannah River Plant near Aiken, South Carolina, title, control, and custody to six thousand twenty-one acres, more or less, of United States Department of Agriculture, Forest Service, lands shown on a map entitled "Forest Service Property Transfer, Savannah River Plant, Aiken, South Carolina", dated June 1984, are transferred without cost or reimbursement to the United States Department of Energy. The map and legal description of the boundaries of these lands shall be on file and available for public inspection in the Office of the Chief of the Forest Service, Department of Agriculture, the Director of Real Property and Facilities Management, United States Department of Energy, and appropriate field offices of those agencies.

SEC. 2. This Act does not affect valid existing rights, or interests in existing land use authorizations, except that any right or authorization shall be administered by the Department of Energy after the enactment of this Act. Reissuance of any authorization shall be in accordance with applicable law and the regulations of the Department of Energy, except that the change of administrative jurisdiction shall not in itself constitute a ground to deny the renewal or reissuance of any authorization.

Mr. SIMPSON. Mr. President, I still wait further disposition concerning the conference report to accompany H.R. 5548.

ORDERS FOR TUESDAY, OCTOBER 7, 1986

RECESS UNTIL TOMORROW AT 9 A.M.

Mr. SIMPSON. Mr. President, after conferring with the acting Democratic leader, I ask unanimous consent that once the Senate completes its business today, it stand in recess until the hour 9 a.m. on Tuesday, October 7, 1986.

The PRESIDING OFFICER. Without objection, it is so ordered.

ROUTINE MORNING BUSINESS

Mr. SIMPSON. Mr. President, following the recognition of the two leaders under the standing order, I ask unanimous consent that there be a period for the transaction of routine morning business, not to extend beyond the hour of 9:30 a.m., with Senators permitted to speak therein for not more than 5 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

DELIBERATION OF THE ARTICLES OF IMPEACHMENT

Mr. SIMPSON. Mr. President, at 9:30 a.m., a live quorum call will begin in order to establish the presence of a quorum. Following the establishment of a quorum, the Senate will begin its deliberation of the articles of impeachment against Harry E. Claiborne, a judge from the U.S. District Court for the District of Nevada.

The Senate will continue its consideration of the impeachment until 1 p.m. At 1 p.m., the Senate will stand in recess until the hour of 2 p.m. in order for the weekly party caucuses to meet.

At 2 p.m., the Senate will resume consideration of the articles of impeachment.

Votes can be expected during Tuesday's session of the Senate.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SIMPSON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ACTION ON H.R. 5548 VITIATED

Mr. SIMPSON. Mr. President, we are unable to complete our activity with regard to this conference report. Therefore, I ask unanimous consent that any action tonight on the conference report on H.R. 5548 be vitiated.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

ORDER OF BUSINESS

Mr. SIMPSON. Does the acting Democratic leader have any further business?

Mr. BURDICK. No further business on this side, Mr. President.

RECESS UNTIL TUESDAY, OCTOBER 7, 1986, AT 9 A.M.

Mr. SIMPSON. Mr. President, in accordance with the previous order, I move that the Senate stand in recess until the hour of 9 a.m. on Tuesday, October 7, 1986.

The motion was agreed to and, at 7:50 p.m., the Senate recessed until tomorrow, Tuesday, October 7, 1986, at 9 a.m.

EXTENSIONS OF REMARKS

HONORING THE ASIAN AMERICAN VOTERS COALITION

HON. ROBERT GARCIA

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, October 6, 1986

Mr. GARCIA. Mr. Speaker, this past weekend the Asian American Voters Coalition held its national leadership banquet in Dallas.

Dr. Joy Cherian was installed as the coalition's new chairman. I am submitting a copy of Dr. Cherian's fine acceptance speech for the RECORD for my colleagues' perusal.

ASIAN AMERICAN VOTERS COALITION—A COALITION IN MOTION: A CALL FOR MORE ACTION

(Actual text of acceptance speech delivered by Joy Cherian, incoming chairman of the Asian Americans Voters Coalition [AAVC], at the coalition's National Leadership Banquet on October 4, 1986, in Dallas, TX.)

We are here today to celebrate our unity—a unity which makes the Asian American Community of 5.2 million people a strong and visible political force in the mainstream of American policy. May I suggest that the secret of our success will depend on our ability to join the mainstream to become part of Main Street, USA.

My friends, I am proud of you for all the achievements you have accomplished. You make me humble. It's a great honor for me to accept all the responsibilities of the Chairman of the Asian American Voters Coalition. This is a coalition on the move—moving to bring about remarkable action for the promotion of our community intentions. The wonderful thing about this is that as we pursue our community goals, we benefit as much as the society at large is enriched by our contributions.

Let us think for a few seconds about an important point affecting our life in the coming days. How can we achieve a greater share of political power in proportion to our population and in proportion to our contribution to this country? Do you believe that contributing a few thousand dollars alone can bring up political clout and influence in American society? The answer is "no."

We have to show our political muscle to the political parties—muscle with the flesh and blood of our valuable votes and political contributions.

I take this opportunity to call on you, my leaders who have come from various parts of the country, to begin a nationwide voter registration campaign—I repeat—to begin nationwide voter registration campaign—upon your return to your own jurisdictions. We have to activate new and old citizens of Asian origin to register and vote in coming elections. Remember, in many state and national election districts, many candidates win only by a few hundred votes. Do you realize that in a tough and close presidential election, the success of a candidate can be determined by the "swing" votes of few thousand Asian Americans living in large states? Let me ask you one thing: if this is true, why can't we add to the local electoral rolls thousands and thousands of those potential Asian American votes without delay? The time has come for us to elect good candidates who will be sensitive to our needs and concerns.

What are those needs and concerns? Let me list a few of them.

We need our children to reach excellence in education without facing problems from quota systems backed by unwritten rules established in certain centers by higher learning.

We need our fair share of small business facilities and freedom to practice our professions.

We want to live peacefully in a drug-free society without becoming victims of racial violence.

We want to receive equal employment opportunities and a fair share of decision-making jobs at state and national levels.

We want absolute freedom of travel without the fear of terrorism, and we want the benefits of free international trade in goods and services.

We want the United States to strengthen democratic traditions in Asian countries.

We want to preserve our cultural identities, linguistic talents, and religious beliefs which are enriching America every day.

We need fair housing and medical facilities for our older people. Above all, we demand the equal rights and privileges that we really deserve under the Constitution and the statutes of the United States.

Are we asking for these rights and privileges because we are an Asian American minority? No, we are asking because we are Americans and are an integral part of the United States of America.

To earn our rights we have to perform our duties—duties which will uphold our personal social and civic responsibilities.

To gain politically we have to bargain with government and political leaders. To bargain we should form issue-based coalitions—coalitions with blacks and whites, Hispanics and native Americans. We should develop our alliance with Jewish people and with descendants of Western and Eastern Europeans. These coalitions and alliances should be made not only on the basis of necessity but on the recognition of common underlying ends, including a respect for diversity and the belief that a pluralistic America enriches the fabric of American life.

In concluding my remarks, I pledge that I will be your messenger for the next year in the nation's Capital to knock at the doors around the Congressional halls and at the gates of the White House.

My dear friends, thank you for your support and your blessing.

NEWTON JACKSON FORD

SPEECH OF

HON. LOUIS STOKES

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Friday, October 3, 1986

Mr. STOKES. Mr. Speaker, I would like to thank the gentleman from Tennessee, Mr. SUNDQUIST, for taking out this special order so that Members may offer tribute to the late Newton Jackson Ford of Memphis, father of our colleague, HAROLD FORD.

N.J. Ford was widely known and respected throughout the State of Tennessee as successful businessman, community activist, and political patriarch. Father of HAROLD FORD, our colleague here in the House of Representatives; John, a Tennessee State Senator; James, chairman of the Memphis City Council; and Emmitt, a former Tennessee State Representative, N.J. clearly instilled in his children a sense of responsiblility to their community, State, and country. He leaves a legacy of public service that will not only be fulfilled by his children, but by all those who came to know him and were touched by his dedication.

Mr. Speaker, I attended N.J. Ford's funeral in Memphis on September 18, 1986. While I knew of his accomplishments in the public arena, I must say that I was more deeply touched by the outpouring of love and great respect expressed by all who knew him. N.J. Ford was a man who lent support to the weak, encouraged the talented, stood by the troubled, taught the young, inspired the dreamers, comforted the despondent and was a pillar of strength to both his family and community. He provided a fine example of fatherhood, citizenship, and community service and he shall be missed.

Mr. Speaker, I would like to take this opportunity to extend my condolences to his wife, Vera D. Ford, an outstanding individual in her own right, his children and the remaining members of the Ford family. They have lost a fine husband, father, grandfather and friend, but what they gained through simply knowing him can never be lost.

RECENT DEVELOPMENTS IN EAST TIMOR

HON. TONY P. HALL

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Monday, October 6, 1986

Mr. HALL of Ohio. Mr. Speaker, for several years I have been greatly concerned about the situation in East Timor, the predominantly Roman Catholic former Portuguese colony which was invaded by Indonesia almost 11 years ago.

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.
Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

On December 10, 1985, I introduced House Concurrent Resolution 244, which expresses the sense of Congress about developments in East Timor. To date, 135 of my House colleagues have cosponsored this resolution. This is a significant statement of congressional support for the human rights of the people of East Timor.

While there is little time remaining in this 99th Congress for action to be taken on a resolution of this kind, I intend to continue to work with my colleagues in the future to secure House action on a resolution like House Concurrent Resolution 244.

I am very much encouraged by the interest in the East Timor issue taken by the House Appropriations Committee's Subcommittee on Foreign Operations. The committee report to accompany H.R. 5339, the foreign assistance appropriations bill for fiscal 1987, contains a special reference to the issue of human rights in East Timor. The following statement about East Timor can be found at pages 38 and 39 of H. Rept. 99–747:

The Committee is concerned about continuing reports of human rights violations by the Indonesian Armed Forces on East Timor. The Committee believes that the Administration should take all appropriate measures to ensure that the Government of Indonesia takes actions to bring these abuses under control, such as maintaining and expanding access to and guaranteeing freedom of movement in East Timor for humanitarian organizations so that such organizations can carry out their humanitarian operations to the fullest extent feasible; and guaranteeing full freedom of expression for an end to intimidation of the Roman Catholic Church in East Timor.

The Committee is also concerned about reports that a population control program has been imposed on East Timor by the occupying authorities, despite the severe depopulation of the island since the Indonesian invasion in 1975. It is the Committee's expectation that population programs should be entirely voluntary, that adequate education is provided the participants and that the religious values of the East Timorese are respected.

I commend Chairman DAVID OBEY of the Subcommittee on Foreign Operations for this excellent expression of concern about the plight of the people of East Timor.

Such continued interest in the situation in East Timor is urgently needed in view of the ongoing reports of human rights violations in the territory. Accounts have reached the outside world of the beating of a Roman Catholic priest by Indonesian soldiers on June 27, 1986. In addition, three East Timorese students at a Catholic university in the Indonesian capital of Jakarta were arrested in September and are being held incommunicado. Amnesty International fears that the three—Antonino Goncalves and Joao Freitas da Camara, both law students, and Francisco Fernandes Carvalho, an engineering student—could face torture. Amnesty International is asking the Indonesian Government to make public the charges against all three men, to make known their place of detention, to ensure that they have access to lawyers and friends, and to guarantee that they are humanely treated while in custody.

These incidents underscore the importance of continued attention to developments in East Timor by the outside world. Indifference by the rest of the world could foster further abuses against the people of East Timor.

I would like to share with my colleagues the testimony on East Timor before the United Nations Special Committee on Decolonization by Floyd Abrams, a constitutional lawyer speaking on behalf of Asia Watch. The text of this statement follows:

TESTIMONY OF FLOYD ABRAMS ON BEHALF OF THE ASIA WATCH COMMITTEE

Mr. Chairman, I appreciate the opportunity to testify with respect to East Timor before the Special Committee on Decolonization. My name is Floyd Abrams, and I am a New York-based attorney specializing in constitutional law relating to freedom of expression. I have practiced law in that area, taught it at Yale and Columbia law schools, and written and testified about it frequently. I have as well chaired Committees of the American Bar Association on Freedom of Expression, and Freedom of Speech and the Press. I have also served on the boards of several international human rights monitoring groups, including the Americas Watch Committee, the Lawyers Committee for Human Rights, and the Asia Watch Committee.

I testify today on behalf of Asia Watch, a committee established by the Fund for Free Expression in 1985 to monitor and promote internationally recognized human rights in Asia. Asia Watch is affiliated with the Americas Watch and Helsinki Watch Committees. Over the past year, Asia Watch has committed significant resources to researching and reporting on human rights issues in East Timor, and we believe our information and observations will be useful to the work of the Special Committee.

Since 1975, human rights monitors have received continual reports from East Timor on the killing of non-combatants, extrajudicial executions, torture and detention without trial. Armed conflict between independence forces and the Indonesian military continues in 1986, as do repeated reports of human rights abuses. It is difficult to confirm all reports received from the territory or to obtain an accurate assessment of the degree of human rights violations, as the Indonesian government maintains a policy of near complete denial of free expression, association, or contact with the outside world for East Timorese. Even the Catholic Church in East Timor is subject to such limitations. Church sources have repeatedly indicated that religious leaders in both East Timor and Indonesia have been sternly warned by Indonesian military officials against making statements on the human rights situation in the territory. As the former Acting Bishop of the Roman Catholic Church, Martinho da Costa Lopes, stated last year:

"In such an atmosphere, the average person in East Timor would be even more reluctant to speak with any outsider. Traumatized by a conflict that has seen many thousands of East Timorese killed and imprisoned since Indonesia invaded the territory in 1975, and well aware that most visits by foreigners are designed to advance Indonesian political goals, most East Timorese would just as soon protect themselves and keep quiet. There are exceptions, of course, but those who defy the rules as defined by Jakarta risk lengthy interrogation, imprisonment, or worse."

In light of these circumstances, it is important to note that independent human rights organizations have been denied permission by the Indonesian authorities to carry on-the-spot investigations of the situation in East Timor. Early last month, Asia Watch itself was denied such permission. Moreover, the Indonesian government has barred visits by persons with greatest capacity to assess conditions in East Timor: recognized experts and others who lived in the territory at great length prior to the Indonesian invasion. Such people speak and understand local languages and thus would be in a position to communicate with the inhabitants of the territory without intermediaries, assuming the proper conditions for such discussions. That visits by such people have not been allowed—more than 10 years after the Indonesian invasion of the territory—speaks eloquently and sadly of the government's desire to hide the situation in East Timor from security of the international community.

Foreign visitors who have been permitted access to the territory are generally subject to strict limitations on their movements. The Indonesian military controls most of the transportation arrangements for such visits, and the authorities vigilantly resist efforts by visitors to break free from such control. For example, an East Timorese taxi driver who drove foreign journalists to an Indonesian military cemetary last year was reportedly arrested and interrogated for this "offense".

The importance of free access to East Timor by outsiders cannot be overestimated. A deliberate policy of allowing brief, infrequent visits by some—while totally banning those thought to be too experienced or knowledgeable—clearly indicates that the government is not prepared to allow authentic scrutiny of its actions in East Timor. Moreover, all but a tiny handful of foreign visitors are forced to rely on interpreters provided by the Indonesian government. Would the Special Committee or any other United Nations agency willingly accept such arrangements in any other territory within its mandate? Without reasonable access, there is no basis for reasonable assessment. And there is surely no basis for assuming that Indonesian claims on human rights conditions in East Timor are valid. Nor can visits by foreign political figures, whatever their nationality or intentions, substitute for authentic investigations that would begin to reflect the views of the inhabitants of the territory and accurately assess conditions. Finally, I noted that there are few places in the world where outsiders cannot visit as tourists. East Timor is one, and this only adds to the understandably widespread preception that the situation in the territory is far from the tranquil one the Indonesian authorities maintain it is.

Asia Watch believes that restrictions on information and movement also make it extremely difficult to recognize and respond adequately to important humanitarian needs in the territory. Reports we have received indicate an exceptionally high mortality rate among children between the ages of one and five in the Baucau region of East Timor. And according to our information, this problem is not limited to the Baucau region. We appeal both to the government and to responsible international organizations to facilitate proper nutritional and medical care for people in need as quickly as possible. We also urge the Indonesian government to grant full access for agencies seeking to address these problems.

Apart from the absence of normal contact with the outside world that is itself ground for suspicion and deepest concern, there are

added reasons to fear for the state of human rights in East Timor. For the information we have been able to receive suggests such fear is justified. There are reports from the territory that detainees in the Los Palos district of East Timor were tortured in 1985, and that authorities have continued to apply summary justice outside of Dili, the capital. A recent article in the Indonesian daily, Sinar Harapan, reported:

"Since the only district court in East Timor is in Dili, the [authorities] . . . often execute summary justice on the spot [emphasis added], far from Dili, because it would cost time and money to bring the persons to Dili for trial."

Asia Watch is also deeply concerned about the health and well-being of East Timorese detainees. Over a period of several years human rights organizations have received reports of prisoners being denied adequate food and medical care, which in at least some cases, has lead to slow and painful death from tuberculosis. The Asia Watch appeals to the Special Committee to urge the Indonesian government to ensure approrpriate medical and nutritional care for all East Timorese detainees. Asia Watch also notes that detainees "released" from Atauro Island have not been permitted to return to their homes, but are being held in "resettlement centers" where their movements are restricted.

Asia Watch is concerned as well about the fairness of continuing "subversion trials" in East Timor. The circumstances surrounding the trials strongly suggest absence of proper procedure. By the end of 1985, some 200 Timorese suspected of involvement in the independence movement had been tried and convicted. Remarkably—regrettably we fear, not remarkably—all the defendants were reported to have pleaded guilty. None have appealed their convictions. There is strong reason to suspect that prisoners fear retribution for even minimal exercise of their legal rights. According to local press reports and the Far Eastern Economic Review, prisoners have been encouraged to proceed in this manner by a handful of government-appointed lawyers flown into East Timor to handle these cases. A recent statement by the Indonesian Chief Judge in Dili is hardly reassuring. He said: "If all trials proceeded as they do in East Timor, the job of our law enforcement officers would be very easy indeed."

In these circumstances, we believe it essential that the United Nations strongly urge the Indonesian government to allow international trial observation in East Timor.

At the same time, Asia Watch notes recent reports that the Indonesian government may make a special attempt to present Timorese participation in 1987 Indonesian national elections as a legitimate expression of Timorese desire to integrate with Indonesia. This Committee should reject any such inference from the simple act of participation in an election. Moreover, past experience in the territory gives us reason to fear that the results of any election—even a plebiscite on the future of the territory—would not represent a free and fair expression of the will of the people of East Timor. More than 10 years ago the Indonesian government convened an East Timorese "People's Assembly" that was said to have requested union with Indonesia. As the members of this Committee are aware, no international legal authority has accepted this exercise as an expression of the will of the people of East Timor. There is the strongest basis for concern about the fairness of any vote held under Indonesian government auspices in 1987, given the atmosphere of fear and coercion that still exists in East Timor and the continuing armed conflict in the territory. Thus we would urge the most careful and demanding scrutiny of any such exercise. Finally, if the Indonesian government is indeed confident that such a vote will be free and fair, we would expect it to permit free access for independent election observers in the several weeks leading up to, and including the ballot count.

Until satisfied that a free and fair expression of the popular will has taken place, the Committee should not ratify a government claim that the Timorese people favor integration. A ratification based on the pretext that the Timorese people have made their sentiments known would be a setback for the rights of those in the territory and would erode the credibility and impact of UN efforts to discourage generally the practice of annexation by conquest.

We are aware that the Indonesian government has argued that human rights reporting in East Timor has been biased. While we do not believe this is so, we are prepared to acknowledge that due to factors such as the rigid controls on access to East Timor, inspection of mail, and military control of telephone links to the territory, some reporting may have been inaccurate. There is a quick and sure antidote to this and it lies wholly in the hands of the Indonesian authorities: let the world community view the conditions in East Timor first-hand. Let the world into East Timor and then see the news and views that come out of East Timor. We urge that the Committee do all within its power to ensure improved access for impartial international observers and to continue to monitor respect for basic human rights in the territory.

SCIENCE FOR SOCIETY

HON. DON FUQUA

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Monday, October 6, 1986

Mr. FUQUA. Mr. Speaker, Dr. Leon Lederman, director of one of America's most prestigious national laboratories—the Fermi National Accelerator Laboratory, made a presentation at the Governors' Conference on Science and Technology in Illinois that is both insightful and persuasive about the importance of basic research to our national welfare.

Because basic research is so narrowly focused and scientifically sophisticated in nature, we as lawmakers have a tendency to lose sight of its global impact and influence.

As a concluding point, Dr. Lederman brings us to an even more fundamental issue, the scientific illiteracy that is rampant across our land, and the threat that it poses to our entire democratic system.

I highly recommend Dr. Lederman's excerpted remarks for my colleagues' review and consideration. Dr. Lederman's presentation follows:

BASIC RESEARCH AND ECONOMIC DEVELOPMENT

(Leon M. Lederman, the Fermi National Accelerator Laboratory)

My assignment is, I think, to illuminate the connection between Basic Research and Economic Development. This is not exactly a new problem. It was first illuminated about the year 1600 by Francis Bacon. Bacon was famous for articulating what we call the modern scientific method—no mean accomplishment in those distant (before Newton!) times at the very dawn of the modern era of science. But Bacon insisted on the great practical value of scientific knowlege. The insight which the scientist obtains into nature can and should, Bacon insisted, be employed in commanding nature for the service of man . . . science is for improving the condition of the human race—not to make humans perfect but to make imperfect humans comfortable. The notion of science as culture (like music, art and literature) was one aspect of science highly valued by Bacon but the other aspect was to endow human life with new inventions and riches. Most of us, Bacon said, would like to have both if we can get them. Bacon thought in fact that they are inseparable.

The wisdom and prescience of Francis Bacon is a fact of history, but it is only in very recent times that societies as a whole, through governments, recognized science as a powerful stimulus for economic change and progress and thus only recently (30–40 years) did governments begin consciously to promote science with significant funding.

In order to comment on this, I'd like to be very sure that our definitions coincide.

Let me define basic ("pure") research. It is designed to increase our understanding of the nature of the universe in which we live. It is curiousity-driven, unmotivated by thoughts of usefullness and hence almost by definition, it is not aimed at economic development. The consequences of basic research are characterized by unpredictability. Research is a venture, literally, into the unknown. Scientists take up basic research out of a sense of pure excitement, out of joy at enhancing human culture, out of awe at the heritage handed down by generations of masters and, . . . out of a need to publish and become famous.

The term basic research spans a spectrum of activities from the purest: e.g. extragalactic astronomy to the "almost applied". There is much fundamental research in chemistry, medicine, agriculture, oceanography, etc., although these subjects are obviously closer to the real world. The bridge between basic research and economic development is called Technology: i.e., the process of finding ways of doing things which do impact directly on society. As such, technology includes applied science, engineering, prototyping, etc. It is a signature of the times that these three activities, basic research, technology and economic development are intertwined together, advancing in an ever increasing spiral. The understanding of these connections is a major task for government, industry, university scholars and citizens whose lives are affected. Here we need all the help we can get because this combination has indeed changed our lives, continues to change our lives and the prognosis is for an ever increasing rate of change. It is rather easy to see why: science begets technology, technology begets economic activity; this enables science to use technology to beget more science and so on. Let me give an example: basic research in the 1940's developed the circuits that made digital computers possible. Digital computers then became essential for the design of new accelerators needed for the further advancing of particle physics. One such style of accelerator was featured last week in the Wall Street Journal as being an essential component in the manufacture of computer

chips via x-ray lithography if we are to continue the process of increasing the speed of digital computers . . . and so it goes.

Let me expand this story. In the first two decades of this century, physicists began studying data from the world of the atom. As it happened, the body of preexisting knowledge—developed over three centuries by Newton, Faraday, Maxwell and so many others, turned out to be totally incapable of explaining the experiments made on atoms. It took twenty years and some of the greatest minds of Europe: Einstein, Bohr, Schrodinger, Heisenberg, Pauli, Dirac, Fermi to make the breakthrough—one of the two great intellectual revolutions of the 20th century. It is called: Quantum Theory. And, in the late 20's and 30's, the atom was understood. And when the atom was understood, the mathematics of atoms combining to form molecules was understood and we had modern chemistry. And then the curious tight organization of atoms into solids was understood—and why some conduct electricity and some don't and some sort of do—semiconductors. And we had a science of materials. And metals, semiconductors, plasmas, liquids, superconductors came under understanding and control. And new technologies arose which probably now contributes a very significant fraction to our four trillions dollar GNP.

To get from quantum theory to the new industries that are beholden to it—communications, microelectronics, biotechnology, information science, lasers, masers, cryogenics and too many others to list, more basic research needed to be done—but now the activity was closer to applications: chemistry, materials science, quantum optics, etc. and a generation of students with names like Pauling, Bardeen, Townes, etc, carried out these activities. The new technology became essential in order to construct the instruments required for a new assault on the frontiers of basic research. And so the cycle continues. The reality of the rapidity of change is having its impact on everything we do—our industry, our education, and our public policy in science and technology.

Of course the atomic theory was not the first or the last of these scientific revolutions which have had so profound an effect. In the 19th century it was electricity which, in 1830, was as exotic a scientific curiosity as Fermilab's quarks are today. Then, Faraday, in pursuit of the . . . "unity of nature's forces" discovered the electric generator or dynamo. Had we the foresight to put a tenth of a percent tax on that for the use of future basic research, the world today would no doubt be a more perfect place. It took about fity years from Faraday's discovery until there was an electrical industry. Faraday's work eventually led to Maxwell's synthesis of the nature of electricity, magnetism and light. The verification of Maxwell's famous equations give rise to radio waves—their production and use. The entire spectrum of Maxwell's radiation is another scientific and economic development of almost unmeasurable extent: radio, radar, microwave links, TV, UV, x-rays, IR and so on. Here again, much ingenious engineering was required to convert the pure science of Maxwell to practical use. And after 1930, some of the heroes of the quantum theory went on to study the nucleus. This lead to nuclear power industry, nuclear weapons, radioisotopes, radiation detectors for medicine, agriculture, oil well logging and various industries. If nuclear technology has not been as spectacularly beneficial as atomic technology one can debate the causes but no one can fault the scientific success in our understanding of the physics of nuclear phenomena.

Judged by the criterion of economic rate of return, expenditures on basic scientific research has, so far, been enormously more profitable than any other major form of investment (with the exception of universal education). Now if it is so profitable, why does it have to be supported from public funds? The answer seems pretty clear, the end products of pure science has the character of what economists (!) call a public good, much more so than applied research or development. That is, the results, especially these days, are costly to produce, but are easily available to all at little cost and can only with great difficulty be appropriated for the benefit of the originator of the research.

Suppose for example that Ernest Rutherford, the discoverer of the atomic nucleus had been working for Bell Labs or IBM or one of the other great industrial research labs (there aren't nearly so many—not nearly enough!). It is obvious that this absolutely crucial discovery could never be patented, could never be reserved for the use and profit of the institution that paid for the research. This is why most basic research carried out in industry is constrained to areas which are at least relevant to the industry's concerns. Of course there are exceptions but not many. And this is why one must look to the Federal Government for support of pure research which always has and always will enrich our culture and which always has, in the past at least, paid for itself.

We have described a process of proceeding from science to technology to engineering to manufacture to distribution and sales and from sales (hopefully) to revenue and voila! economics. It is possible to short circuit the science (but this is much more rare nowadays) by invention—like the the cotton gin or the automobile or the telephone . . . these, as far as we know, are not based on science. but by far the norm is that, as George Pake of Xerox put it—technoogical progress springs from the primordial ooze of the research laboratory—and it takes time before this science is put to use.

The idea is that once the basic understanding is deep enough, imaginative scientists and engineers begin to see modifications that lead to utility. Look at the laser—a fantastic tool in research, and slowly, very slowly, there emerged useful devices: lasers for electronic printing, retinal surgery, optical communications, precision surveying, monitoring of atmospheric impurities, high fedility recording etc. What I'd like to stress is that neither electronic printing nor retinal surgery nor any of the other 1003 uses would have provided the impetus to invent the laser. Neither did the power companies invent electricity, nor the electronics companies discover the electron nor the computer companies invent the basic circuits they use. Also note the interval between Charles Townes' masler work (1955) and the major industry of optical communications, an industry emerging in the 1980's.

The public policy implications are very clear. I am aware of the complexities of the chain we described: the primordial ooze of basic science, the evolution of a principle, often as a device to advance other science, the passage to technology and engineering etc.—all of this has all kinds of modifying complications: venture capital, labor costs, productivity, marketing etc.—nevertheless, for a continuing genesis of technology for economic development, we must have what is clearly the necessary ingredient of a healthy basic research infrastructure. This starts with a population of first rate young scientists. They need the traditional freedom to choose their own research activity . . . to allow for the most challenging and exciting problems to be addressed. They need to find their universities well equipped and well staffed. They need to have been nurtured in high quality schools so that their interest in science is not quenched by indifference, not discouraged by uninspired teaching. And they need the stability from year to year so that the time is there to absorb the light of their intellectual efforts and create the fruit of socal and economic good.

So how well are we doing?

It's not too hard to find out for yourself—we are doing better than five years ago but scientific research, basic research as carried on in this nation, overwhelmingly in our universities, is fragile indeed. It has far from recovered from a long period of inattention, during the dismal period of 1968–1980, university equipment is obsolescent, the mean age of faculty members is growing alarmingly, the entry of U.S. citizens into graduate schools is shrinking, the trend of our expenditures for basic nondefense research, as a fraction of our GNP, has fallen relative to every other industrialized nation, our feeder schools, the secondary schools, are suffering from what national surveys such as the "Nation at Risk" say is a crumbling of our educational infrastructure, especially in science and mathematics.

No wonder we have lost our competitive edge, our traditional control of high-tech trade. Not only must we learn from Japan and Western Europe but also from South Korea and Singapore.

I did say that things had been improving since—1980 and they have—but it takes a long time to re-establish the infrastructure in science. Remember it takes over ten years to train a Ph.D. in science or mathematics or engineering. We were making progress until 1985 and the relatively sudden recognition of federal budget deficits. Obviously, with no tax increase, with inviolable military budgets and social security, the options for control of the federal budget deficits are limited. Our scientific renaissance of 1980–1985 may indeed be short lived. At Fermilab where, with the support of the U.S. Department of Energy, Congress has appropriated over $400 M to build the world's most powerful accelerator and where 1987 should have been the year to begin the exploration of a new domain of the physical universe, we'll be lucky if we can operate at all and we'll probably have to lose valuable and highly trained staff. Yes, the infrastructure is difficult to establish but very easy to damage.

We have argued that basic research has yielded large economic returns. These come from two processes—the dramatic breakthrough like electricity, atomic physics, nuclear science, the discovery of DNA. There is also the continuing influence that comes from spin-offs, i.e. from inventions made in order to advance scientific research but which find a market in our civilian economy. Accelerators were invented for nuclear research but now there are thousands in use in hospitals, industry and applied laboratories. Superconducting technology is another example. These will no doubt continue to flow out, aided and abetted by technology transfer mechanisms. However as for dramatic changes—there can be no guarantee

that these will continue but there is also no reason to think that all commercially valuable basic research discoveries have already been made. If you are one who believes that the good life is already good enough, then you can think about the need to satisfy the desires of the developing nations—or you can ponder the formidable problems of the environment—acid rain, ozone depletion, greenhouse effect, global oil spills. If that doesn't grab you, think about shortages; the oil glut is temporary, high grade ores are disappearing, rare minerals are getting rarer and are in unreliable hands. Surely there is enough here to require vastly more science-based technology, deployed with wisdom and compassion.

But if I have to conclude with a plea, it is not to urge you to write your congressman about research budgets but to be concerned about what to me is the primary problem we face in having a healthy science and in its eventual conversion to technology for the enrichment or protection of society. This is the fact that, except for the few, science is a black box. We have, as I emphasized, an accelerating advancement of knowledge against the background of citizens unable to understand enough about it to shape the decisions that we need. I hereby implicate the Congress, the leaders of our administration, the heads of major corporations, university presidents and faculties in the social sciences and humanities. How often have I heard distinguished colleagues confess proudly to their scientific illiteracy! It is a cheap way to gain popularity with their audience. But this scientific illiteracy threatens our entire democratic system as well as the scientific community and through this, the long range economic health of the nation. Important national decisions involving scientific knowledge are being made increasingly on the basis of ignorance and misunderstanding.

Now I would not bring this up at this late time in my talk if I thought it was hopeless. It is a battle we can win if we think it is important. It starts in the schools and with the teachers. It continues with our colleges and it is just beyond belief how little science you must know to be qualified as a college graduate! Then there is the media, TV, newspapers, science magazines—going under, not for lack of readers but for lack of advertisers! I have no pat formula for installing all the changes we need.

One byproduct of a scientifically literate public will be sharing of that mode of thought which is the supreme achievement of the modern ages and of which, Jacob Bronowski once wrote: " . . . (the achievements of 20th century science) . . . is an immortal work. The human imagination, working communally has produced no monument to equal it—not the pyramids, not the Iliad, not the ballads, not the cathedrals."

I hate to conclude this talk by imposing on the images of Newton and Einstein, those of Gramm and Rudman but I would summarize by stating that basic scientific research is an investment which society makes in its culture and in its comfort, i.e. its expectation of economic returns. So far, science has more than fulfilled these expectations. But science is not a consumption good to be expanded in good times and restricted in bad times. The doing of science as well as the supporting of science is an expression of faith in the future. It would have been possible to have told Newton and Faraday, Maxwell and Einstein, Bohr and Heisenberg that, given the poverty and squalor around them, their research were luxuries which could not be afforded. To have done so would be to destroy the economic progress that came out of their science and which was the main factor in relieving that poverty and squalor. We seem to be on the verge of saving one percent but sacrificing untold scientific discoveries and their unpredictable economic benefits.

PROBLEMS FACING OUR NATION'S YOUTH

HON. ROY DYSON

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Monday, October 6, 1986

Mr. DYSON. Mr. Speaker, I rise today to bring to your attention the myriad problems that often overwhelm our Nation's youth whether it be sex, drug or alcohol related. It is in this vein that I read to this distinguished body four prize winning essays sponsored by the Liebman-Berger Post No. 707 Auxiliary, Jewish War Veterans of the United States and the Wicomico County, Maryland Board of Education:

THE BIGGEST PROBLEM TEENAGERS FACE TODAY

(1st Place Winner—Miss Lauren Casey, James M. Bennett High School; Salisbury, MD)

The greatest problem facing young people today is learning to deal with the various pressures placed upon them in their homes, in school, and in their social lives. Many times it seems as though the requirements placed upon teenagers by others are overwhelming.

In the home, parents may unknowingly put great pressure on their child to fulfill what they decide is the young person's potential. Parents desire them to do well in school and also to join various clubs and sports which will make them more well-rounded persons. They expect good grades so that the student will go to college and become successful. Additionally, they want their teenagers to make their own decisions with the expectations that the choices are to be correct.

At school, teachers expect students to complete all of their assignments on time. They also want students to put forth their very best efforts in class, which is sometimes quite a feat.

Perhaps the greatest pressure facing teenagers today is that of peer pressure. Teenagers must battle with the problem of trying to be their own person with their own set of values, yet being accepted by friends at the same time. They feel the need for companionship and, most importantly, acceptance. Trying to maintain a balance between peer pressure and personal moral standards is difficult. A teenager must decide to what lengths he should go to conform to the wishes of friends. Most of the time a teenager's conscience dictates to him to avoid trouble but many times the security of belonging to a group overrules the conscience. Therefore, young people may drink or use drugs in order to be noticed and accepted by their peers. To make the decision to succumb to peer pressure usually means trouble from parents; yet not to go along with others may make a young person feel like an outcast.

Dealing with the pressures placed upon young people enables them to grow stronger and realize from mistakes that they can cope with life's problems and learn more about themselves.

FEAR OF FAILURE

(2d Place Winner—Miss Katherine Shenasky, James M. Bennett High School; Salisbury, MD)

If today's American teenagers were polled, many would say the biggest problem the world faces is the threat of nuclear war, or terrorism, or a polluted environment. Although these issues are often in a teenager's thoughts, the fear of personal failure is the most universal problem they experience. The increasing suicide rate among teenagers has been well publicized. Teenagers' abuse of alcohol and drugs is also well known. This behavior is a response to the pressure teenagers face from teachers, parents, peers, coaches, and society.

The pressures teenagers are subjected to influence them every day. Teachers expect them to achieve, peers pressure them to equal their expectations of success and popularity, academic achievement is stressed by many parents, coaches want their players to excel, and society puts demands on teens to emulate media-created lifestyles. Teens are afraid to fail because they do not want to disappoint themselves or others.

Some teenagers use this fear of failure as an incentive to strive harder in school, at work, or in athletic competition. Others ignore their problems and resort to drug or alcohol abuse rather than face their problems. But the most tragic alternative teenagers choose in dealing with pressure is suicide. They put an end to conflicting pressures and a feeling of hopelessness by taking their own lives.

An increasing awareness of ways to deal with stress has resulted in the formation of parent and peer groups such as MADD or SADD. Drug and alcohol abuse hotlines, church youth groups, and guidance personnel in schools provide assistance.

The key to avoiding failure is a realization of the positive aspects of our society. With advances in medicine, teenagers will be able to live longer, healthier, and more prosperous lives than was previously possible. A more stable economy also contributes to a general feeling of optimism. Vast and new knowledge in a variety of fields such as pharmaceuticals, ecology, or space travel serves as a challenge for motivated and bright young adults to master. Teenagers have many years to look forward to, and with help and guidance in our communities, we can more actively contribute to society, and overcome the problems and conflicts we face.

(3d Place Winner—Miss Heather L. Kimmel, Wicomico Senior High School; Salisbury, MD)

Young people in America today face many problems as they seek their identity. I feel that the biggest obstacles they face are external pressures from parents, peers, and the public. Such influences can strongly affect the course of developing individuals.

Some parents expect their children to fulfill the dreams they were unable to attain. They want their offspring to have many friends, to be popular, and to excel in school. Teenagers often feel restricted by their parents and begin to rebel by breaking the rules. Many are unhappy because they feel forced to participate in events they really do not enjoy. This can result in strained family relations.

Peer pressure is perhaps the strongest influence because young people want to be accepted by their friends. Teenagers want to be "cool", so they do what "everybody" is doing or supposedly doing, such as taking drugs, drinking alcohol, or engaging in sexual relations. Being involved in those actions can result in addiction to drugs or alcohol, unwanted pregnancies, or trouble with the authorities.

Another major influence on young people today is the American culture in general. Television, newspapers, and magazines advertise the epitome of American people who are slim, attractive, wealthy, and materialistic. Teenagers try to achieve this image by expending a great deal of money, time, and energy. They may go into debt by buying unnecessary items and waste valuable time and energy in pursuing transient fads or goals. If one does not succeed, the result is a feeling of worthlessness, which can lead to emotional problems and possibly even suicide.

Parental, peer, and public pressures cannot be avoided, but they can be handled in such a manner that their effects are constructive rather than destructive. With acceptance and proper guidance, the teenager can become the person he wants to be.

PEER PRESSURE: A TEENAGER'S BIGGEST PROBLEM

(Honorable Mention—Miss Stephanie Cyran, Mardela High School, Mardela, MD)

The biggest problem that American teenagers face today is the same one as it has always been—peer pressure. Covering everything from what a teen wears to the kinds of friends he has, peer pressure affects all teens in one of two ways. Directly, some teens might tell others straight out, "If you don't let us cheat off you, we won't like you." Indirectly, peer pressure defines the way people dress, talk, and act. They may dress in the tackiest clothes, curse, smoke, and do things that get them into trouble because they want to be like everyone else around them.

Teens have problems trying to find out what kind of individuals they are and what they want to do with their lives. They waste time trying to be just like others (otherwise known as "yellow pencil syndrome"). Some teens never do figure out how they want their lives to be and end up drifting along or staying in their own little corner of the world with their own little group of friends and plugging away at a hum-drum job.

Someone who has a so-called golden life with everything going his or her way, with looks, with talent, and with friends can have all that changed in an instant. For example, a teen at a party with all his friends wants to fit in, and he tries some drugs with them—just once. The next day he's a vegetable in the hospital. His golden future is gone because he had to go along with everyone else.

Think about the teens who get virtually incurable sexually transmitted diseases with horrible side effects because they think everyone is doing it. Think of those who go driving with friends they know are drunk. Because they don't want to seem "out if it," they get into an accident and might even die. Countlessly sad examples can be stated about teens losing their happiness or even their lives because they go along with the crowd, thinking that doing so will make them popular and therefore, happy.

This peer pressure problem can be eradicated if teens choose friends who would influence them in a good way, if they take good advice, if they stay out of compromising situations, and if they stand up for what they know is the right and best thing to do.

FIGHTING FOR DEMOCRACY IN CHILE

HON. ROBERT GARCIA

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, October 6, 1986

Mr. GARCIA. Mr. Speaker, the New York Teacher's September 15 edition contained a fine article about a Chilean teacher's union's attempt to fight the repression of the Pinochet government, I am inserting in the RECORD a copy of that article. I urge my colleagues to take a look at it so that they can better acquaint themselves with these brave individuals and their struggle.

TEACHERS, LABOR FIGHTING REPRESSION IN CHILE

(By Antonio Ramirez)

A NYSUT member on a labor-sponsored fact-finding visit to Chile found many human rights violations there but the labor movement, including teachers, is fighting to restore democracy.

"The repression one feels in Chile is palpable," reports Patricia Stryker, director of legislation and political action for the United Federation of Teachers, NYSUT's New York City local.

Stryker visited Chile in August as one of a five-member delegation from the Women's Committee of the International Confederation of Free Trade Unions to which the AFL–CIO is affiliated.

"Despite the repression, the extraordinary thing to observe is the character of the trade union people," says Stryker. "Adversity has united them."

Upon her arrival in Chile, accompanied by trade union women from Great Britain, Belgium, Colombia and Sweden, Stryker found that Osvaldo Verdugo, president of the Chilean teacher's union, was one of 15 trade unionist members of the Civil Assembly who had been arrested for allegedly violating Chile's state security law. According to his fellow trade unionists, Verdugo and the others were arrested by the regime of General Augosto Pinochet for supporting the restoration of the democratic process, an end to censorship and restrictions on the press, and freedom for trade union activity.

"The president of Chile's teachers has been detained for the sole crime of representing our aspirations," declared a teacher in a radio interview.

Stryker visited Verdugo in jail and assured him that American teachers and other trade unionists were seeking his release. Information of such activity, she notes, does not readily reach political prisoners in Chile because of press censorship.

Although speaking freely to the visiting trade unionists involved an element of risk. Stryker reports that many came forward and are willing to be quoted publicly in their opposition to the repressive state of affairs.

Among the Chileans the trade unionists met were a leader of the women's trade union organization who is on crutches after a suspicious accident, who has been tortured, and whose brother was assassinated; another woman who was jailed twice, and a third woman who spent three years in prison and who was punished by having her hair cut off.

The delegation also met with members of the Chilean Human Rights Committee who briefed them on housing problems, the proliferation of disease following cuts in government support of health programs, the spread of prostitution and the growing suicide rate among women.

Stryker visited a women's prison where she met prisoners who reported having been tortured, including a pregnant woman who was concerned about the health of her unborn child following electric shock torture.

The visitors also interviewed officials of a training program, church officials, a group of retirees, an imprisoned leader of an Indian opposition group, a leader of the medical association, a group of unemployed workers who have been blacklisted for political reasons, and members of the railway and textile workers' unions.

"We held a press conference at the textile workers' union before we left," Stryker reports. "We later learned that nothing appeared in the papers or on the radio, which is not surprising."

Osvaldo Verdugo is free on bail. Readers are urged to join AFT President Albert Shanker and other AFL–CIO leaders in calling for the continued freedom of, and dropping of charges against, Verdugo and the other labor leaders. Letters should be sent to Ricardo Garcia, Minister of the Interior, Government of Chile, Palacio de la Moneda, Santiago, Chile.

A SALUTE TO FRANKLIN POLK

HON. LOUIS STOKES

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Monday, October 6, 1986

Mr. STOKES. Mr. Speaker, the 21st District of Ohio boasts many fine citizens who contribute a great amount of time and effort toward improving their communities. There is, however, a select group of citizens whose service and dedication to public service without financial compensation sets them apart from all others. Franklin A. Polk, Esq., of Cleveland is one such individual. Recently, he was again honored for his contributions to the community.

On September 24, 1986, the Order of St. Wenceslaus honored Mr. Polk at their annual dinner-dance at Czech Karlin Hall in Cleveland. The Order of St. Wenceslaus was created to honor individuals in the community for years of service and dedication. The annual celebration of this organization culminated with the feast of the Bohemian King and Patron, on September 28, 1986.

Mr. Speaker, Franklin Polk has been involved with the Catholic Workman [Katolicky Delnik], a public service organization, since 1921 when he joined St. Adelbert Lodge No. 22; in 1927, at age 16, he was elected its treasurer. When Czech Karlin Hall and Club was organized by the Catholic Workman in 1936, he served as its first secretary. In September 1936, he served as chairman of the National Convention of the Katolicky Delnik and following that convention, he was elected treasurer and wrote the first check for $1,000 to start the building fund to begin construction

on Czech Karlin Hall and Club 50 years ago this year. Since its construction, the hall has served as headquarters for numerous community activities and services. Franklin Polk continued to be active in the Czech community throughout the years, most notably in the 1965 "Welcome to Cleveland" of Josef Cardinal Beran, and as a trustee of the Czech Guild of the Holy Family Cancer Home.

Mr. Speaker I would like to take this opportunity to congratulate Franklin A. Polk on his recent award and ask my colleagues to join me in a salute to this outstanding citizen.

SENATE COMMITTEE MEETINGS

Title IV of Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules Committee—of the time, place, and purpose of the meetings, when scheduled, and any cancellations or changes in the meetings as they occur.

As an additional procedure along with the computerization of this information, the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the CONGRESSIONAL RECORD on Monday and Wednesday of each week.

Any changes in committee scheduling will be indicated by placement of an asterisk to the left of the name of the unit conducting such meetings.

Meetings scheduled for Tuesday, October 7, 1986, may be found in the Daily Digest of today's RECORD.

MEETINGS SCHEDULED

OCTOBER 8

11:00 a.m.
Agriculture, Nutrition, and Forestry
Foreign Agricultural Policy Subcommittee
To resume hearings to review foreign agricultural trade issues.
SR-332

SENATE—*Tuesday, October 7, 1986*

(Legislative day of Monday, October 6, 1986)

The Senate met at 9 a.m., on the expiration of the recess, and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray.

God of truth and justice, manifest Yourself in this Chamber today as the Senate faces a very difficult and painful duty. You Who know the hearts and motives and mysteries of life, guide the thoughts and intentions of each Senator as he listens, as he sifts information, as he weighs evidence. May the light of Your truth shine upon the Senate and may Your justice be served as judgment is made. In the name of Him Who loved and died for truth and justice. Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The distinguished acting majority leader is now recognized.

Mr. MATTINGLY. Thank you, Mr. President.

SCHEDULE

Mr. MATTINGLY. Mr. President, the two leaders under the standing order have 10 minutes each, then routine morning business this morning is not to extend beyond 9:30 a.m., with Senators permitted to speak therein for not more than 5 minutes each. At 9:30 a.m., a live quorum will begin, to be followed by the beginning proceedings for the impeachment of Judge Claiborne.

At 1 p.m., the Senate will stand in recess until 2 p.m., in order for the weekly party caucuses to be held.

At 2 p.m., the Senate will resume the impeachment proceedings and the Senate shall proceed to hear final arguments until no later than 6 p.m., this evening. Rollcall votes can be expected during Tuesday's session of the Senate. The Senate will resume the impeachment proceedings at 9:30 a.m., tomorrow and it is the hope of the majority leader that a vote can occur no later than 12 noon or so on Wednesday.

RECOGNITION OF THE ACTING MINORITY LEADER

The PRESIDENT pro tempore. The distinguished acting Democratic leader is now recognized.

IMPEACHMENT PROCEEDINGS

Mr. CRANSTON. Mr. President, this is a very unusual day in the Senate, with the impeachment trial about to proceed. I urge all Senators to respond early to the live quorum that commences at 9:30 a.m., so that the proceedings can commence as early as possible. It is required that 51 Senators, a quorum, be on the floor at all times, and I urge Senators to note that and to spend as much of their time as they can on the floor for the proceedings.

SUPERFUND

Mr. CRANSTON. Mr. President, it is reported that President Reagan plans to delay acting on the Superfund bill until Congress adjourns, and then he proposes to kill it by pocket veto. That would be a huge and compounded mistake. There are 104 toxic waste sites that need to be cleaned up, 9 of them in my home State of California. These toxic waste sites are threats to the lives and health of the people of California and the country. They make life very unpleasant. The smells that pervade so many neighborhoods and communities and get inside people's homes are a disgrace to our country. We have to cope with this problem.

The Government has already delayed the cleanup all too long. The President should stand up and be counted on Superfund. He should sign the bill when it reaches his desk. I hope he will do that. But if the President insists, unwisely, in vetoing the Superfund bill, he should do it outright, do it as soon as it reaches his desk so that we then can proceed in an orderly fashion to cope with that veto. I am confident, if the President does veto the bill, Congress will override his veto. Congress wants to do its part in the fight against pollution, with or without President Reagan. But win or lose, I believe the American people are entitled to a veto override vote. For the President to kill Superfund by pocket veto and thus deny Congress and the people the opportunity for an override would make a bad situation intolerably worse. We should not allow him to get away with it.

Senator FRANK LAUTENBERG of New Jersey and I—and I note the Senator is on the floor—plan to propose to the Democratic caucus at our meeting that the Senate remain in pro forma session after adjournment until the President acts on Superfund. We urge the Republican caucus to join in this proposal. Then if the President vetoes the measure, we can return to Washington for 1 day for the override vote. I, for one, would be more than willing to do so. I am sure most of my colleagues, who voted 88 to 8 to pass Superfund in the first place, would be happy to return from whatever they are doing for that important vote. I trust they will if the President imposes that necessity upon the Congress.

I would now like to yield such time as he needs to the distinguished Senator from New Jersey [Mr. LAUTENBERG], who has been a great, great leader on the Superfund issue and on the toxic fund issue, very effective, always driving, never missing any opportunity to move us forward on this vitally important matter.

I yield to the Senator from New Jersey.

The PRESIDING OFFICER. The distinguished Senator from New Jersey.

Mr. LAUTENBERG. I thank the distinguished Senator from California, who has been a longtime leader in matters concerning the environment. His leadership is acknowledged here today and his initiative is greatly appreciated.

I join with him in urging that the Congress remain in session long enough to wait the President out on Superfund. On Friday, the Senate approved the conference report on the Superfund reauthorization by an overwhelming vote, 88 to 8. The House is expected to act today or tomorrow. But the White House has yet to make its plans public on what it intends to do about Superfund. Evidently, many of the President's advisers are urging him to veto this bill, not only to veto but to pocket veto it after we adjourn, depriving the Senate of the opportunity to reconsider that veto.

Mr. President, we cannot permit that to happen. That is why Senator CRANSTON and I are here today expressing our support for the Senate's remaining in session until President Reagan reveals his plans on the Superfund Program.

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

If he intends to veto the bill, we should stay here as long as it takes to consider an override. It would be unconscionable for the Congress to adjourn before we address the No. 1 environmental issue facing our Nation. Too much hard work has gone into Superfund to allow it to die at the 11th hour.

The Senator from California and I are ready to go the extra mile. There are too many sites demanding action in New Jersey, California, and elsewhere around the country to close up shop and let the President veto this bill without reconsideration.

Mr. President, we want the opportunity to override a veto if one is coming. The momentum certainly is there and all we need is a chance to cast a vote.

Mr. President, Congress has spent over 2 years working on this legislation. As a member of the Environment and Public Works Committee and the Superfund conference, I know the thousands of hours that went into this bill and the important provisions it contains. This bill not only renews the Superfund Program but expands it substantially in strength. The bill contains tough, new cleanup standards so that the job is done right and our money is not wasted. It contains community right-to-know provisions which I sponsored to notify communities about chemicals stored or manufactured nearby, about chemicals released into the air, and provides for more adequate community response in case of an emergency release.

This bill contains a radon mitigation program to advance mitigation techniques and assess the national threat from radon which affects not only my State but 44 others.

□ 0910

Mr. President, Superfund is hanging by a thread. The program is starting to shut down. Termination notices went out to contractors engaged in site cleanups last week. Remedial work at over 100 Superfund sites, including 16 in New Jersey, will stop at the end of this month if this bill is not signed.

Mr. President, public opinion on this issue is clear. A recent, national poll by CBS and the New York Times indicated that 67 percent of the American people want tough requirements for toxic waste cleanup, despite the cost. Another NBC/Wall Street Journal poll found that 67 percent of the public views cleaning up toxic waste as more important than tax reform.

Mr. President, we are wrapping up for the year. Every morning the majority leader lists his "must do" items. The fact that the Senate has approved this legislation, in my judgment, does not remove Superfund from the list. I think we should keep Superfund on the must do list, including an override of a potential veto by the President. I urge the President to sign this bill. But, if he plans to veto it, I urge him to get on with it. Once the House approves the conference report, the White House should take prompt action—either to sign it, which would be a most welcome step—or to veto it, giving the people's representatives in Congress a chance for a veto override.

Mr. President, the Senator from California and I intend to raise this in the Democratic caucus, when it meets, and I hope the caucus on the other side will discuss it as well.

Mr. President, I yield the floor.

Mr. CRANSTON. I thank my colleague from New Jersey for his leadership on this issue.

I gather that he would agree that it would be a courtesy of the President, if he intends to veto this measure, to veto it now, while we are here, rather than causing all of us to have to return during the break, when many Members will be campaigning and others will be with their families.

Mr. LAUTENBERG. Despite the inconvenience, I think the mood in the Senate and the House of Representatives is to deal with this matter, and we should have an opportunity to deal with it promptly.

Mr. CRANSTON. Absolutely. I thank my friend.

Mr. President, I ask unanimous consent that 3 more minutes may be reserved for future use by the minority leader.

The PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. MATTINGLY. Mr. President, I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. PROXMIRE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDENT pro tempore. Without objection, it is so ordered.

ROUTINE MORNING BUSINESS

Mr. PROXMIRE. Mr. President are we in morning business now? Do I have 5 minutes under the previous order?

The PRESIDING OFFICER (Mr. MATTINGLY). The Senator does not have 5 minutes allocated to him. But we are now in morning business, and the Senator has 5 minutes.

WHAT SHOULD BE AMERICA'S ARMS CONTROL PRIORITIES?

Mr. PROXMIRE. Mr. President, what should be this Nation's highest arms control priorities in this dangerous nuclear world? The determination of our arms control priorities should depend on the answer to one simple question. It is this. How do we most surely preserve the nuclear peace? The best practical answer to that question lies in the solid experience that we have had with nuclear weapons in the 40 years since Hiroshima. What have we learned? What works? What doesn't work?

Our first arms control priority should be to strengthen and more strongly support the Nonproliferation Treaty. Why is this No. 1? Here's why: The Nonproliferation Treaty has a solid record of working and working surprisingly well. Twenty-five years ago, there was a strong consensus here in the Senate that the spread of nuclear weapons to scores of nations was inevitable. The consensus agreed that this would lead to nuclear war some time, some place, some where. The Nonproliferation Treaty has begun to challenge that consensus. About 160 nations, including most of the potential nuclear weapon states, have signed that treaty. Those nations have overwhelmingly agreed to international inspection to prevent the diversion of processed uranium or plutonium—the key elements in fabricating nuclear weapons—to military purposes. But this critical arms control treaty needs stronger superpower support to continue and extend its success in preventing the spread of nuclear weapons.

The second priority is an agreement between the superpowers to stop all nuclear weapons testing with a follow-up with other nuclear countries to join the ban. Such a treaty would end the nightmare of ever more powerful, cheaper, lighter nuclear weapons. This would help stabilize the nuclear deterrents of both superpowers. It would also prevent the development of nuclear weapons tailor-made for smaller countries like Syria and Libya that cannot now afford a nuclear arsenal.

The third priority should be the protection and absolute preservation of the nuclear deterrent that has undoubtedly been the prime factor in preventing nuclear war for the past 40 years. This should end any consideration of the construction of a star wars of SDI system, the whole purpose of which is to destroy the credibility of the adversary's deterrent. Here is why the ABM arms control treaty is so vital. The purpose of the treaty is to prevent either superpower from building an SDI or star wars system that would threaten the credibility of the adversary's deterrent.

Our fourth arms control priority should be to negotiate arms control agreements that would stabilize the deterrents of both superpowers. That means negotiating agreements to eliminate first-strike weapons, and to concentrate on mobile, land, air, and underwater deployments.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

□ 0920

Mr. PROXMIRE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

MYTH THAT YOU GET ACCURATE ADVICE FROM THE IRS

Mr. PROXMIRE. Mr. President, from time to time many Americans just do not know how to answer a question on their income tax forms. The complexity of the Tax Code makes this inevitable.

So what do many of these taxpayers do? They call the IRS for advice. They attempt to get the right answers to their questions.

Now these are not people interested in avoiding taxation. They are not those who have invested in tax shelters. They are not the rich who can afford private tax counsels.

For the most part they are ordinary Americans trying to comply with the law, trying to be good citizens and pay their taxes on time and accurately.

What happens when they call the local IRS office for advice? The General Accounting Office recently looked at this precise issue. They conducted a test for 32 days in the spring of 1986. Using 21 tax questions with prearranged, confirmed answers, they contacted 31 of 34 IRS telephone answering services. They made 1,280 calls seeking advice on these 21 questions.

The GAO then compiled the resulting data. Here is what they found. Sixty-eight percent of the time they got the IRS on the telephone line on their first call. Now that is not too bad considering that phone lines always seem to be busy these days.

But as for accuracy, the IRS could improve a bit. Only 83 percent of the questions asked by the GAO were answered correctly, as judged by the correct answers supplied by the IRS itself.

That means in 17 percent of the cases, the taxpayer received inaccurate advice.

Now the problem is that the IRS insists that taxpayers fill out their returns accurately. They make no allowance for an error rate of 17 percent. Penalties are assessed in many cases for errors of any significant magnitude.

So the lesson is be wary of the tax advice of the IRS. The odds are it will be correct. But in 1 case out of 6, you will be given some wrong information.

I hope, Mr. President, the tax reform bill simplifies the tax preparation process so that this error rate can be brought down significantly or that the IRS improves its telephone advice. Both would be positive developments.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

□ 0930

Mr. HARKIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

Mr. MATTINGLY. I object, Mr. President.

The PRESIDING OFFICER (Mr. GRASSLEY). Objection has been heard.

The clerk will continue to call the roll.

The legislative clerk resumed the call of the roll.

Mr. HARKIN. Mr. President, I ask unanimous consent that I be allowed to proceed for 3 minutes as if in morning business.

Mr. MATTINGLY. I object.

The PRESIDING OFFICER. There is a quorum call in progress.

The clerk will continue to call the roll.

The legislative clerk resumed the call of the roll.

□ 0940

Mr. McCLURE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is now closed.

IMPEACHMENT OF JUDGE HARRY E. CLAIBORNE

COURT OF IMPEACHMENT

The PRESIDING OFFICER. Under the previous order, the hour of 9:30 having arrived, the Senate will now proceed as a court of impeachment, and the Sergeant at Arms will make the proclamation.

The Sergeant at Arms, Ernest E. Garcia, made proclamation as follows:

All persons are commanded to keep silent on pain of imprisonment while the House of Representatives is exhibiting to the Senate of the United States articles of impeachment against Judge Harry E. Claiborne.

CALL OF THE ROLL

Mr. McCLURE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk called the roll and the following Senators answered to their names:

[Quorum No. 14]

Armstrong	Grassley	McClure
Broyhill	Hatfield	Proxmire
Chiles	Hecht	Pryor
Dole	Johnston	Simon
Eagleton	Kerry	Stevens
Gore	Mathias	
Gramm	Mattingly	

□ 0950

The PRESIDING OFFICER. A quorum is not present. The clerk will call the names of the absent Senators.

The legislative clerk resumed the call of the roll, and the following Senators entered the Chamber and answered to their names:

Abdnor	Ford	Moynihan
Andrews	Glenn	Nickles
Baucus	Gorton	Nunn
Bentsen	Gramm	Packwood
Bingaman	Hart	Pell
Boren	Heflin	Pressler
Bumpers	Heinz	Quayle
Burdick	Hollings	Riegle
Byrd	Humphrey	Rockefeller
Chafee	Inouye	Roth
Cochran	Kassebaum	Rudman
Cohen	Kennedy	Sarbanes
Cranston	Lautenberg	Sasser
D'Amato	Laxalt	Simpson
Danforth	Leahy	Stafford
DeConcini	Levin	Stennis
Dixon	Lugar	Thurmond
Dodd	Matsunaga	Trible
Domenici	McConnell	Wallop
Durenberger	Melcher	Warner
Evans	Metzenbaum	Wilson
Exon	Mitchell	Zorinsky

Mr. SIMPSON. I announce that the Senator from Minnesota [Mr. BOSCHWITZ], the Senator from Alabama [Mr. DENTON], the Senator from Utah [Mr. GARN], the Senator from Arizona [Mr. GOLDWATER], the Senator from Utah [Mr. HATCH], the Senator from Florida [Mrs. HAWKINS], the Senator from North Carolina [Mr. HELMS], the Senator from Wisconsin [Mr. KASTEN], the Senator from Alaska [Mr. MURKOWSKI], the Senator from Pennsylvania [Mr. SPECTER], the Senator from Idaho [Mr. SYMMS], and the Senator from Connecticut [Mr. WEICKER] are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Delaware [Mr. BIDEN], the Senator from New Jersey [Mr. BRADLEY], and the Senator from Louisiana [Mr. LONG] are necessarily absent.

□ 1000

The VICE PRESIDENT. The Senate will be in order. A quorum is present.

The majority leader is recognized.

PRIVILEGE OF THE FLOOR

Mr. DOLE. Mr. President, I ask unanimous consent that floor privileges during the impeachment proceedings of Judge Harry Claiborne be granted to the individuals noted below:

SENATE IMPEACHMENT TRIAL COMMITTEE STAFF

Michael Davidson, Senate legal counsel, counsel.

Floyd M. Riddick, Senate Parliamentarian Emeritus, consultant.

John B. Childers, staff director, Senate Rules Committee, staff director.

William McW. Cochrane, Democratic staff director, Senate Rules Committee.

Anthony L. Harvey, professional staff member, Senate Rules Committee, clerk.

Byron Hoover, staff assistant, Senate Rules Committee, assistant clerk.

Carole J. Blessington, assistant chief clerk, Senate Rules Committee, staff assistant.

Gerald R. Gereau, chief investigator, Senate Rules Committee, security coordinator.

MANAGERS OF THE HOUSE OF REPRESENTATIVES

Hon. PETER W. RODINO, JR.
Hon. ROBERT W. KASTENMEIER.
Hon. ROMANO L. MAZZOLI.
Hon. WILLIAM J. HUGHES.
Hon. DAN GLICKMAN.
Hon. HAMILTON FISH, JR.
Hon. HENRY J. HYDE.
Hon. THOMAS N. KINDNESS.
Hon. MICHAEL DEWINE.

HOUSE MANAGERS STAFF

Nicholas D. Chabraja, special counsel.

David W. DeBruin, associate special counsel.

M. Elaine Mielke, general counsel.

Alan F. Coffey, Jr., associate counsel.

JUDGE CLAIBORNE'S REPRESENTATIVES

Oscar B. Goodman.
Hon. Howard W. Cannon.
David Chesnoff.
Michael Stuhff.
Timothy Cory.
Linda Rogers.
Allan Cannon.

The VICE PRESIDENT. Without objection, it is so ordered.

Mr. DOLE. Mr. President, I ask unanimous consent that Michael Davidson, John B. Childers, and Gerald R. Gereau, staff members of the Senate Impeachment Trial Committee; and Ernest E. Garcia, Sergeant at Arms; Sheila Burke, chief of staff to the majority leader; Pete Velde, Judiciary Committee; and Charles Kinney, Democratic Policy Committee, be authorized to be present when the Senate goes into executive session during the impeachment proceedings of Judge Harry E. Claiborne.

The VICE PRESIDENT. Without objection, it is so ordered.

Mr. DOLE. Mr. President, first, let me indicate that I hope absent Members will come to the Senate floor. I know there are a number of conferences taking place, but this is an important matter. I urgently request our colleagues on both sides to come to the Senate Chamber.

Mr. President, on August 14, 1986, the Presiding Officer, pursuant to Senate Resolution No. 481, appointed a committee of 12 Senators to perform the duties provided for by rule XI of the Rules of Procedure and Practice of the Senate When Sitting on Impeachment Trials. On the recommendation of the majority leader, the Presiding Officer appointed Senators MATHIAS, HATCH, WARNER, RUDMAN, PRESSLER, and MCCONNELL to be members of the committee. On the recommendations of the distinguished minority leader, the Presiding Officer appointed Senators SARBANES, HEFLIN, DECONCINI, PRYOR, GORE, and BINGAMAN to be members of the committee.

The committee held an organizational meeting on August 15 and elected the distinguished Senators from Maryland [Mr. MATHIAS and Mr. SARBANES] to be chairman and vice chairman respectively. The committee heard pretrial arguments on September 10 and September 15 and heard testimony for 7 days, beginning on the 15th and ending on the 23d of September. The committee heard testimony from three witnesses who were called by the House of Representatives and from 16 witnesses who were called by Judge Claiborne. Judge Claiborne testified on his own behalf over the course of 3 days. Witnesses were subject to examination and cross-examination by the managers on behalf of the House or their counsel and by counsel for Judge Claiborne. Witnesses were also questioned by members of the committee.

□ 1010

The proceedings before the committee have been printed in Senate Hearing Report No. 99-812. The committee filed a report on October 1, 1986, Senate Report No. 99-511, which certified, in accordance with Senate Impeachment Rule XI, that the hearing report is a transcript of the proceedings and testimony given before the committee.

It is my understanding now that the committee has reported to the Senate that the evidence and testimony received by the Senate from the committee, in the words of rule XI, "shall be considered to all intents and purposes, subject to the right of the Senate to determine competency, relevancy and materiality as having been received and taken before the Senate.* * *" Will the Presiding Officer advise the Senate whether this is correct?

The VICE PPRESIDENT. The majority leader is correct. The Senate has received the report of the committee appointed under Senate Impeachment Rule XI. In accordance with the rule, the evidence and the testimony which the committee has reported is considered in its impeachment trial to all intents and purposes as having been received and taken before the Senate. The receipt of this documentary evidence is subject to the right of the Senate to determine competency, relevancy, and materiality. Rule XI also provides that nothing in the rule prevents the Senate from sending for any witness and hearing that witness's testimony in open Senate, or by order of the Senate having the entire trial in the open Senate.

In accordance with the unanimous-consent order of yesterday, each side is allocated a total of 1 hour in the aggregate for the argument of all motions this morning. Managers on their side and counsel for Judge Claiborne on his side may allocate the portion of this hour which each wishes to devote to each motion as long as the total time for each side does not exceed 1 hour. Altough the rules provide that all motions shall be addressed to the Presiding Officer, we have provided that counsel may face the full Senate during their presentations. Also, as Members of the Senate are aware, in accordance with Senate Impeachment Rule XIX, any questions which Members may wish counsel to address during their arguments shall be reduced to writing and put by the Presiding Officer.

Counsel for Judge Claiborne, Mr. Goodman, will now be heard on his motion for a postponement. Mr. Goodman.

MOTION FOR POSTPONEMENT

Mr. GOODMAN. Mr. President, House Managers, Judge Claiborne, Senator Cannon, Mr. Chesnoff, Mr. Stuhff, esteemed Members of the U.S. Senate:

Moments ago I had the privilege of shaking the hands of the most powerful men in the world, the leaders of a country that has been founded on principles which go back some 200 years by the Founding Fathers and the framers of the U.S. Constitution. Within the past month, I had the privilege of appearing before 12 members of a committee assembled pursuant to rule XI of the Rules of Impeachment and had the opportunity to witness their incisive examination of the various witnesses who were brought before them in their assignment to gather evidence which would be presented to this esteemed body.

These 12 gentlemen conducted themselves in a manner which makes me proud as an American citizen because they set out to the best of their ability to perform their function in a manner which was meaningful to serve the citizenry of the United States as well as my client, an article III Federal judge—a separate branch of the Government—giving him every courtesy to which he was entitled as a member of that separate branch and every consideration in the way they conducted themselves in receiving the evidence.

The reason I am making these prefatory remarks is I believe, when we entered the rule XI committee meeting, we entered with that group of Senators expecting that their decision, although not to be reported to the Senate but as far as their own personal belief was concerned, was foregone that Judge Claiborne was in fact guilty and should be impeached because of the fact that he is a sitting Federal judge who is presently incarcerated drawing his salary in a prison in Montgomery, AL. That is not a pop-

ular position to postulate before those who are your judge, who have to make a political determination and report to their constituents as to why they are going to engage in a particular act, and particularly after a full and fair hearing before the Senate they would acquit Judge Claiborne. It is very difficult to explain that to the average citizen because the average citizen does not want to accept that type of verdict based on the fact that the man is in prison and has been convicted.

But the beautiful part about this country and about the fact that the impeachment proceedings are autonomous from the court proceedings is that an article III judge such as Judge Claiborne is entitled to a separate, autonomous ruling as far as his position is concerned. And Judge Claiborne does not like to be sitting where he is before the leaders of this country, gentlemen who he all respects. It is not pleasant; he is subject to ignominy; he is subject to scorn, and perhaps it would have been a lot easier for some other man to have given up his position, to have forfeited his salary, and to go on to another day. But the reason that Judge Claiborne does not do this—and this is what the American public has to know in this national inquest, because that is what an impeachment proceeding is all about. They must understand that Judge Claiborne is pursing his remedies pursuant to the impeachment process for two reasons and two reasons alone.

First, he sincerely believes deep down within his inner body and his soul that he is innocent, that he has committed no willful violation, that he has engaged in no high crime or misdemeanor but, rather, is a victim of circumstances where he has not before the last 2 weeks been able to even put forth the beginning essence of why, of what, or how things happened.

The second reason that Judge Claiborne is sitting before this esteemed body is because he has been caught in the vortex of a constitutional crisis, a situation that has to affect every Member of this body because, God forbid, it could happen to them, where Judge Claiborne became victimized as a result of a vendetta of the Justice Department and the strike force and a special agent in charge of the FBI, who came to the Nevada desert to bury the American flag and vowed that he would put Judge Claiborne's picture on his wall as he had other criminals throughout his career as an FBI agent. That is the reason Judge Claiborne is before you today. That is the reason he has not resigned. That is the reason you gentlemen owe him, and I say that respectfully, the obligation to judge him fairly, to judge him impartially, to not rush to judgment but, rather, to give him every consideration to which he is entitled as an American citizen and an article III judge.

□ 1020

I said those remarks so you could get some flavor as to why the man is here. He is asking for consideration, at first, to postpone these proceedings.

After the trial—and there were two trials which took place in Reno, NV—Judge Claiborne discovered that he was a victim of a burglary of his premises, where we maintain certain items and personal effects were taken and photographed and utilized against him in his prosecution. If he is correct, under the exclusionary rule, which is a judicially fashioned rule, he could very well be entitled to suppression of the evidence and exoneration and acquittal of the matters upon which he stands convicted.

In addition to that, because of the fact this was a public inquest and it was televised to the American public in the past several weeks, witnesses have come forward, bringing information to us, which we never had before, which could change the entire structure of the Claiborne conviction.

On the date that we served the motions in this particular action, we filed in the U.S. District Court for the District of Nevada a motion for a new trial, styling it a motion under 2255 of the Federal Rules—in effect, a writ of habeas corpus. In that motion, we brought forward the new proofs that have emerged, which go to the very issues which were litigated not only in the courts but which were expressed and brought forward before the rule XI committee.

I do not know whether you gentlemen have had the opportunity to read the volumes of transcripts which cover some 7 days of taking testimony. I hope that you did, because, in my opinion, in my humble opinion, you would have to do that in order to effectively resolve certain matters which must be decided today. It would not suffice, as far as giving Judge Claiborne a full and fair hearing of all the matters, to have just read it, because you would not have had the opportunity to judge the demeanor of the witnesses, in order to ascertain whether or not they were credible. But, nevertheless, to understand the background of the Claiborne situation, a reading of these transcripts is necessary.

But as a brief precis as to what the underlying allegations which Judge Claiborne defended against, I would submit that you should understand he is being charged with signing tax returns for years 1979 and 1980 where there is some material misstatement within the return; and the legal theory upon which he was prosecuted, both in court as well as the legal theory which the House managers have taken upon themselves to prove, was that he engaged in such activity willfully and knowingly.

Now, the briefs which have been posited for your perusal defined "willfully and knowingly." Depending on which side you are advocating, you would take the position that "willfully" either means with bad purpose or, from the House perspective, knowing that you have a legal obligation and intentionally violating that obligation.

The 1979 return—and it is so difficult within the time constraints that I have to attempt to educate you just briefly as to what this is all about—but the 1979 return was prepared by a public accountant—not a CPA, but a public accountant who had been grandfathered in—with whom Judge Claiborne had been doing business for many, many years when Judge Claiborne was in private practice and had a law business, in effect, to run, and then carried over when Judge Claiborne was appointed to the Federal bench on September 1, 1978.

The key which was agreed upon both at the time of the trial as well as inferentially or implicitly agreed upon as the issue which was before the committee under rule XI, as far as the relevance and materiality of the witnesses that were coming forward, were as to whether or not, in signing that return, which the judge signed in blank, he engaged in willful activity.

The essence of his defense was that on April 11, 1980, his secretary delieved a handwritten note, composed by Judge Claiborne, together with a check in the amount of $8,000 and a W-2, and delivered these to the tax preparer, Joseph Wright; and in that note Judge Claiborne made a full disclosure of all of the income earned not as a result of fee-splitting, as it has been characterized, but all of the income earned as a result of his work product while he was in private practice, which was collected during that particular tax year.

It was at issue as to whether or not Judy Ahlstrom ever delivered anything on April 11, 1980. During the trial, the prosecutor framed that issue, the defense framed that issue, and it was contested that Judy Ahlstrom in fact did not make such a delivery on that particular day.

What took place as a result of this national inquest and people coming forward, new witnesses were developed who brought us information which, I submit, unequivocally proved that in fact the April 11, 1980, letter was delivered with the check and the W-2 to Jay Wright's office.

A woman actually was watching C-SPAN, and she said:

I can't believe this testimony that I'm hearing. I know that this woman was in there on April 11, 1980. I worked there. I saw her there. I received the envelope from her, and I gave this envelope to the tax preparer.

Another employee of Jay Wright's office came forward, a Mr. Kenneth Swanson, and he testified:

Not only was I told that Judge Claiborne's secretary was there on that day, but I also know that Jay Wright's office was the subject of several burglaries.

Now, Jay Wright, because of age, because of illness, because of the fact that his testimony was shaped by the IRS agent with whom he had almost a fraternal relationship, for whatever reason, did not have an independent recollection of anything to which he testified. He took the hypothetical and, based on his ordinary practice, testified as though it were fact. Jay Wright, all of a sudden, admitted he may—and it was only at this hearing before the committee, pursuant to rule XI—he may have received the letter that day. He really could not tell or not—a crucial piece of evidence which was withheld from us by the prosecution and by the trial judge at the time Judge Claiborne was tried, both the first time and the second time, in Reno.

The second year was 1980, and the tax return was prepared by a Jerry Watson, and nobody is arguing that this tax return was properly prepared. It was an abomination. It was written in pencil. It has arrows attached to it saying, "Type here." It was what the prosecutor, during the time of trial, characterized as a badge of fraud. It was crying out for an audit. But because Judge Claiborne is treated differently in every situation, other than other persons who are in a similarl situation, there was no audit, but, rather, he was indicted and stood trial.

And Watson, as the evidence was suggested before the committee of 11, was approached at an airport in Las Vegas by representatives of the executive branch, the same persons who were after Judge Claiborne who had the vendetta against Judge Claiborne, and these individuals knowing that Watson was warned that he was a target of a grand jury investigation that very day said to him, "Mr. Watson, you better get yourself a new lawyer." They chilled his rights under the first amendment and the sixth amendment. "You better get yourself a new lawyer because Judge Claiborne will turn on you if you continue to maintain your position of trying to help him and tell the truth that in fact Judge Claiborne did disclose to you for purposes of the preparation of the 1980 tax return the figure of $88,500 as moneys received from his private practice during that particular year the tax return was prepared."

And that, too, at the time of trial, was a contested issue.

There was a suggestion that documents were actually created after the fact by Judge Claiborne and myself in order to provide to him a defense, and when the truth came out and witnesses, once again as a result of not being afraid of the legal process, not being afraid of the abuse that they were getting from the executive and even—and I do not mean to sound paranoid; I submit I am telling the truth—even by the judge who tried the case, who was intimidated and who refused to turn over exculpatory material and who did not even examine exculpatory material, these witnesses felt within the perhaps breast of the 12 committee members who are receiving the evidence that they had nothing to fear, and they came forward and they told the truth and Charlotte Travaglia confirmed for the first time in any type of proceeding that she in fact knew that Judge Claiborne provided Mr. Watson with the figure of $88,500, and then she went on to recount her relationship with Mr. Watson as to how the return was prepared.

But in both instances the matters which were contested before the trial court in both instances have been clarified and rectified and now the subject of a motion for new trial which is pending in the district court.

What we ask of you is to consider at this juncture postponing your decision on the impeachment issue and provide us the opportunity to appear within a judicial environment, hopefully an environment where the Ninth Circuit will for the first time appoint one of their own to apply Ninth Circuit law where the vicinages of the alleged violation took place, to judge Judge Claiborne and to resolve the issue of the burglaries, of the withholding of favorable exculpatory evidence which was affirmatively withheld and suppressed by the executive and by the judiciary, provide us the opportunity to go into the burglaries of Mr. Wright's office, items which were never permitted to be expressed before, to explore the intimidation of the witnesses who did not come forward as a result of the attitude and treatment of the executive toward them and to have the judiciary resolve the issue.

That is one alternative which I suggest to you this day. That is a matter which you have within your discretion where you can say, "We don't want to make the decision now as far as Judge Claiborne is concerned, but rather let the courts make it."

I myself, looking around the room, knowing the type of treatment which we received before the committee, would feel very comfortable if you rejected that suggestion, and I will address that in a few moments. I myself would feel comfortable if we went forward with a full and fair trial before this esteemed body. But I wanted to at least suggest to you that you have an alternative at this time which you can adopt in order to postpone the matter for further consideration.

The VICE PRESIDENT. Thank you, Mr. Goodman.

We will now hear from Mr. Manager HYDE in opposition to the motion for postponement.

Mr. HYDE.

Mr. Manager HYDE. Mr. President, distinguished Senators, Chairman RODINO, Mr. Goodman, just a few remarks about the remarks of Mr. Goodman.

Judge Claiborne is not here because of any misconduct by the Government. He is here because he was tried and convicted beyond a reasonable doubt, given the presumption of innocence, by a jury of 12 people. His motion for a new trial was denied. His appeal to the Ninth Circuit was denied. His motion for rehearing en banc was denied. And his right of certiorari to the Supreme Court was denied.

That is why he is here.

And I suggest we are not here to determine the Government's alleged misconduct so colorfully described by Mr. Goodman. We are here to determine Judge Claiborne's misconduct, and if this vast conspiracy involving the Chief Justice of the Supreme Court down to IRS agents, FBI agents, and so many more, has any merit, then let an investigation be had by an appropriate committee of the Senate or of the House.

But here and now it is distraction, it is diversion, it is legal paranoia, the time-honored ploy of the defense—try anybody but the defendant; try the government.

Now, Judge Claiborne has filed a post-trial motion to postpone this hearing until the district court in Nevada or the Ninth Circuit of Appeals disposes of a new amended supplementary motion to vacate the sentence for an evidentiary hearing for discovery proceedings and for a new trial.

We submit this motion is dilatory, without merit, and ought to be denied.

Judge Claiborne cannot be heard to say that he has not had time to prepare his defense. He has been aware of the nature of these charges since at least December 1983. He has defended against these charges in two previous criminal trials, and in a full, fair, and wide-ranging hearing before the Senate Impeachment Trial Committee, a hearing that lasted 7 days of testimony.

A law school professor once said the first thing a lawyer has to learn to do is to be plausible in support of a groundless motion. I could not help thinking of that as I listened to Mr. Goodman exercise what I suggest is a positive gift for wanting things both ways.

Take note, if you will, that Judge Claiborne has had a full and fair trial on the tax issues before us. He even

had witnesses testify that had never testified before in either criminal trial, 7 full days of testimony. Now he says to you with this motion, "Hold everything, stand in place, while I take portions of the record developed before the Senate committee, run back to Nevada and seek a new trial. That is for Judge Hoffman to decide or some of the 32 judges that have had to deal with this case so far to decide."

The issue here is not whether his felony convictions should be set aside and a new trial ordered, but whether on this record this court should remove him from office.

By this motion to postpone, Judge Claiborne proclaims a linkage with his criminal trial, his criminal convictions, but it was only a few short days ago Judge Claiborne's lawyer was insisting that these impeachment proceedings are and ought to be separate, distinct, and autonomous from any judicial proceeding.

Looking at the record here are some of the things that Mr. Goodman said: The record page 255, paragraph 14:

That, most significantly, the impeachment proceedings before the Honorable United States Senate are a separate and distinct proceeding from any judicial proceeding and are sanctified by the solemnity of constitutional creation.

He asked for a trial de novo and he got it.

The record page 256, paragraph 19:

. . . the Senate trial should also be treated as a distinct and autonomous proceeding . . .

. . . the sanctity of the separation of powers doctrine would be irreparably eroded if the position of the Judicial and Executive Branch were substituted for the reasoned judgment of the United States Senate.

Record page 264:

Significantly the Executive and the Courts did not bar his judicial trial because he had not already been impeached. Why then, extending that logic, should the legislative impeachment trial not be accorded the same solemn autonomy as the judicial trial? They are independent of each other. A trial on the merits is dictated in . . .

Record page 266:

The issues must be tried before the Senate to confirm again the separation of powers doctrine:

Lastly, on record page 269:

If the judicial function was an autonomous event, so, too, should his impeachment be.

□ 1040

So the issues have been fully and fairly tried and tried de novo. If you read through all the pleadings and arguments, you will see where, early on, Mr. Goodman argued the judge could not be criminally tried until he was impeached. But he could not be impeached for merely understating his income as that did not arise in and out of his function as a judge.

When I heard that one, I thought of Dr. Edward Teller, a Hungarian, describing another Hungarian as "someone who follows you into a revolving door and comes out ahead of you."

As to the issue of finality, this case has been tried, appealed to the ninth circuit, petitioned for rehearing en banc, denied, a writ of certiorari, denied and a full trial de novo committed. Enough is enough.

It is fundamental law that the pendency of posttrial motions in no way vitiates the finality of the status of Judge Claiborne's convictions. And in many criminal cases, as you know, years after conviction, a blizzard of posttrial motions continues to be filed. It is routine. There are jail house lawyers who make a career of doing that.

There is nothing more final than sitting in prison. And no court trial or appellate has stayed the execution of Judge Claiborne's sentence.

This Senate, sitting as a court, needs to determine whether it must remove Judge Claiborne from office, not from jail. You don't have that power and you don't have that responsibility. And I respectfully suggest you ought not to defer that judgment, which you are constitutionally mandated to make, by awaiting the outcome of the subsequent proceeding beyond this Chamber.

Senators, Judge Claiborne has a right to be treated fairly, but so does the American people. A complete record has been made before the Senate on every relevant issue of fact and law. And every day that Harry Claiborne sits in prison and collects his salary as a Federal judge is an insult to every law-abiding citizen of this country.

The prospect of his serving his sentence and then returning to a courtroom where all must rise and address him as "Your Honor" is an affront to the dignity of the Federal judiciary and an embarrassment to the rule of law and, yes, to ourselves, as well.

The record is here. The record is complete. It is time to get on with this unhappy task that circumstances thrust upon us and vote.

The VICE PRESIDENT. Thank you, Manager HYDE.

Mr. Goodman will now be heard on Judge Claiborne's motion to declare Senate Impeachment Rule XI unconstitutional, his motion for a full and fair impeachment trial before the entire Senate, and his application for subpoenas.

Mr. Goodman.

MOTION TO DECLARE SENATE IMPEACHMENT RULE XI UNCONSTITUTIONAL

Mr. GOODMAN. Mr. Chairman, thank you.

At the outset, my opening remarks, I would suggest, are not inconsistent with the position that we desire a full and fair trial before the U.S. Senate, an autonomous body, the only body, pursuant to our U.S. Constitution, that can conduct a trial for impeachment.

The judicial review which we seek in no way is antagonistic to that concept. They could be concurrent proceedings. And for the House to suggest that I was engaging in some type of sophistry I submit is unfair.

The hearing that we had before the rule XI committee was a very limited hearing. Chairman MATHIAS was clear in his mandate that, at the conclusion of the hearing, we had the right and, in fact, invited us if we thought it was appropriate to seek from this honorable body an expansion of the evidence which was taken before this committee, to seek from this body permission to have you summon and subpoena witnesses before you in order to make the determination as to whether or not you find those witnesses to be credible. And in no way were we limited to the record which was taken in a factfinding, filtering manner by the committee.

What is important and what has never been litigated in the courts, because we have been precluded from day one from so litigating, was the state of mind of Judge Claiborne.

I would like to give you a tidbit, if I might, as to the factual background as to what was existing in the Las Vegas, NV, community at the same time that Judge Claiborne purportedly engaged in these acts of willful misconduct. Before Judge Claiborne even went on the bench, there was a war going on between the Nevada judiciary and representatives of the Federal strike force; a war of such magnitude that a respected Federal judge, a senior judge in Reno, NV, characterized the strike force attorney as being schizophrenic; a war which brought in an FBI agent, Joseph Yablonsky, who vowed to get members of a particular religion, to get the judge, and to get other persons who were involved in politics in Nevada.

And this is what was existing at the time that Judge Claiborne, who knew he was a target of this type of vendetta, purportedly engaged in the acts which resulted in his conviction. And this was never permitted to be brought out before any court of law. The first time it was even hinted at was in the last several weeks before the rule XI committee.

As I indicated, on September 1, 1978, Judge Claiborne went on the bench. From the moment he got on the bench, not as a result of his relationship with these entities, but as a result of their perception of him, they felt, as Judge Claiborne so adequately described it last week, that he stood in the way of their ambitious task.

And on April 4, 1980, a Federal judge in Las Vegas issued a warrant, an unprecedented warrant, to the U.S. marshal there to seize from the Federal

Justice Department Strike Force office caricatures of the Federal judiciary which portrayed them in a contumacious manner, which the judge indicated would bring fear into the hearts and minds of witnesses who were being prepared for presentation before grand juries or petit juries. And they characterized Judge Claiborne as the Ayatollah Claiborne and they characterized the other Federal judge as a clown. This is what the executive was doing.

And then, on April 9, 1980, just 5 days later, Judge Claiborne read—and it is an exhibit before you in volume 4—he read in the Las Vegas newspaper that he was the target of a grand jury investigation. That was on April 9, 1980. He was a target of a grand jury investigation where they said he engaged in illegal bugging of persons before he went on the bench.

On April 10, 1 day thereafter, Judge Claiborne, perhaps injudiciously, but perhaps as a man, lashed out and he said, "I'm not going to let this bunch of bums run roughshod over the citizens of this community." And he referred to them in terms much harsher than bums. And he took them on and he let them know what he thought. And that was on April 10, 1980.

And what happened on April 11, 1980? That is the day that he provided his tax preparer with the information which was going to be reflected on the 1979 tax return. And, as Judge Claiborne has stated time and again, nobody has ever accused him of being dumb. And, when he knew what kind of pressure was being applied against him and what type of vendetta was launched against him, he was not about to defraud his Government. He wasn't about to engage in activity which in any way would suggest an improper motive on his part. That is the type of environment that existed which a jury was never permittd to hear.

Now, why is that important? Because, at the time that Judge Claiborne was engaging in the activities for which he stands indicted, the providing or lack of providing his tax preparers with certain information, it was this type of feeling that was present in the community directed against him.

□ 1050

He saw his friends being brought in before grand juries and indicted. He saw individuals in the community being picked upon, being threatened, and the threat was, "You won't be bothered by the executive anymore if you will provide information against Judge Claiborne." And he knew that he was the subject of their feeling because the FBI agent charged made it no secret—and the evidence is in the committee record—made no secret that he was going to get Judge Claiborne, that he did not like Judge Claiborne.

Judge Claiborne was subjected to break-ins. Judge Claiborne was subjected to a mail cover. Just about every person who came into Nevada to stand trial who had any contact with either Judge Claiborne or Judge Claiborne's associates over the years was approached by representatives of the FBI and the IRS and said, "Your charges will be dropped, will be dismissed. All you have to do is you have to tell us that Judge Claiborne did something wrong." On occasion, they went to one client of mine, an attorney that I was representing, and they said to him, "If you give Judge Claiborne $50,000 to fix your case, the case will be dismissed against you. If you don't want to give it to Judge Claiborne directly, give it to Goodman." That is what was happening in Nevada at the time, and Judge Claiborne is not dumb. He knew it. He would never engage in willful activity to cheat his Government.

The decisionmaking process was shaky as a result of this attitude that the executive had against Judge Claiborne. He has never been treated the same as any other citizen in this country in any proceeding which he has been involved in since day one. In the court proceedings, the rules were changed. People don't want to believe sometimes these allegations because they are so horrendous and so offensive to our sense of justice. But even at the appellate level by a special threeman panel which was appointed from judges outside of the ninth circuit, a judge, who was the author of the Claiborne opinion affirming the conviction, said that Joseph Conforte, the panderer who started this onslaught of evidence alleged against Judge Claiborne—that his reduction of sentence was legal because under rule XXXV of the Federal Rules of Federal Procedure, if a motion is made for reduction of sentence, the judge can grant it after 120 days.

That same judge, 3 days from that point in time that he wrote that opinion in a case called United States versus Gerhardt, wrote another opinion and he said the 120-day period is a fixed period, and the judge may not reduce the sentence outside of that period of time.

So the rules for one citizen are different from the rules as they apply to Harry Claiborne. It has been that way, and I hope that it will not continue that way because what we ask from you gentlemen today is a full and fair trial, the type of trial which was envisioned by the framers of the Constitution, by Thomas Jefferson, by Jay, by Hamilton.

Do you realize that the prior impeachment trials, the majority of which have ended in acquittals before the U.S. Senate over the years, the majority of impeachment trials last between 16 and 17 days? My good friends will say there are more important things in this country than to have an impeachment trial over some insignificant judge from the State of Nevada. No. There is not.

I respectfully submit to you that there is nothing more important to this country, to the United States of America, than to have its people see its Government in action, to have the Nation be witness to an inquest which evidences that there really is a separation of powers, which will witness the leaders of this country explore in depth whether or not one branch of Government can impede and violate the independence and the integrity of another branch of Government because of the instillation of fear.

That is the lesson that this country has to learn. Maybe at that point in time it will learn to respect our laws, and we will not have the dope dealing which is a national crisis and the crime on its streets when we learn to respect that our leaders are interested in these concepts to get to the bottom as to whether or not at the time that Judge Claiborne engaged in the signing of his returns he did so willfully.

And I did state to the honorable Members of the House of Representatives that this is an autonomous proceeding. There is no question about that. The only body under our Constitution who can make the determination here is the U.S. Senate as to whether or not they are going to vote for impeachment.

With all due respect to Judge Claiborne, I resubmit that all he asks of you is not for an acquittal at this time. It is premature to ask for an acquittal because you have not heard the evidence. You have not witnessed the demeanor of the witnesses. You have not been able to grasp the nuance of the testimony. You have not been able to see an IRS agent who was being cross-examined 2 weeks ago, who was lying through his teeth, and in the afternoon of his examination he was wringing his hands and the sweat was coming down off his brow. Then they did to him what they did to their witnesses during the trial. They shaped him up overnight. When he came back the next morning, the sweat was stopped and the hands were on his lap and he was a much more relaxed witness. But you have to be able to see, you have to be able to see the witnesses in order to judge who is telling the truth. Was Judy Ahlstrom telling the truth that she delivered the April 11, 1980 letter? Was she telling the truth only by looking at Judy Ahlstrom, or taking perhaps the observation of one of the Senators who saw her, and saying she was credible because that was one of the few instances within the transcript where

there was at least a semifinding of credibility, accepting that, or whether Charlotte Travaglia did in fact receive the $88,500 figure as a full disclosure by Judge Claiborne?

These are the types of things which are contemplated by a full and fair trial before the U.S. Senate, and not contemplated as a result of a filtering process engaged in by the committee of 11.

When we say that the committee of 11 is an unconstitutional committee, we do not do so disrespectfully but we do so with the fear that their limitation as to the scope of what was to be determined and what was to be suggested at that hearing will be limited upon this entire body of 100 Senators. That is where the fear comes in because it is only through having the 100 Senators make the determination as to the issues in the case can a fair trial as contemplated by our Founding Fathers be maintained.

The list of witnesses which we proposed encompass several areas of witness starting with the witnesses that engaged in the vendetta against Judge Claiborne. This would include the FBI agent in charge, Joseph Yablonsky, it would include Joseph Conforte, a panderer who received perhaps the most unconscionable disposition of a case in the history of this country.

Let me just give you this, if I may respectfully, for some flavor as to the price that the United States of America through its Justice Department was willing to pay for testimony against Judge Claiborne which was conceded at the time of the appeal as being perjured testimony, and which I submit to you if we were given the opportunity to have a full and fair trial before this body, and we were permitted to call the prosecutorial attorney, and Joseph Conforte, we would be able to show to you that the prosecutor knowingly used perjured testimony when he sought the indictment against Judge Claiborne, that the prosecutor knowingly used perjured testimony because he could not have indicted Judge Claiborne initially since the statute of limitations had run, and he knew that from Conforte's own mouth. Yet we were never able to bring that out in any court proceedings.

Joseph Conforte is a panderer who was a fugitive, who was under a 20-year sentence at the time he left the United States and settled in Rio de Janeiro.

□ 1100

The prosecutor on his honeymoon visited with Joseph Conforte and began negotiations with him to bring him back as a fugitive to the United States in order to testify against Judge Claiborne. And people complain about Harry Claiborne collecting his salary as he sits in a Federal institution. Well, how about if I told you that the Justice Department entered into a deal with Joe Conforte when they reduced his tax liability from 16 to 8? They assured him that he would not be prosecuted as a habitual criminal where he could receive a life sentence. They reduced his sentence illegally under any standard whatsoever by bringing him back to Washington, DC, and reducing his sentence after the reduction had been denied by another judge in Reno, NV, years before, and reduced his sentence to some 15 months, which would run concurrently with the State sentence that he was serving; that they permitted him to return to the United States as a fugitive without penalty.

As an American citizen, and all I do for my living is to defend persons who are accused of crimes, I have to believe every morning I wake up that the laws are going to be upheld and maintained, and the only thing that I can hang onto in my life representing the criminally accused, many of whom are innocent, is the Constitution. If I at any time believe that the Constitution is not being upheld, then I am going to have to do something else than practice law defending individual rights.

I have to look at this esteemed body to uphold the Constitution as it was contemplated some 200 years ago, and that is to ask you to fulfill your mandate, to satisfy your obligation, and provide to Harry Claiborne the fair and full trial to which he is entitled.

Mr. President, may I ask whether or not I have any time remaining?

The VICE PRESIDENT. The gentleman has 18 minutes remaining.

The Chair will inquire if it is your intention that the House managers respond to your statement at this point.

Mr. GOODMAN. Yes, sir.

The VICE PRESIDENT. Thank you, Mr. Goodman.

We will now hear from Manager HUGHES in response to these motions and applications.

Mr. Manager HUGHES. Thank you, Mr. President.

My colleagues from the House of Representatives, the House managers, Judge Claiborne, counsel, and Members of this distinguished Senate: I rise in opposition to the motions to declare Senate Impeachment Rule XI unconstitutional, against the motion for a full and fair impeachment trial, and the collateral motion for application for the issuance of subpoenas. The latter, of course, is moot, if the previous motions are rendered moot.

First, I would like to direct myself to the argument of counsel that the Senate Impeachment Rule XI is unconstitutional. The rule provides for evidence to be received by a special committee designated by the U.S. Senate. It is procedure that is well within the sound discretion of the Senate in conducting an impeachment trial.

Article I, section 3 of the Constitution of the United States provides that the Senate "shall have the sole power to try all impeachments."

The Constitution does not dictate the manner in which the trial shall be conducted except no person shall be convicted without the concurrence of two-thirds of the Members present.

Consistent with its sole power to conduct an impeachment trial, the Senate has the inherent authority to fashion rules that govern the admissibility of evidence, the scope of the proceeding, and the manner, form, and location in which evidence will be received.

The Senate is essentially, as you well know, a legislative body. Although it sits as a jury and a judge on the merits of the articles of impeachment reported by the House of Representatives, it does require special procedures to receive the evidence and enable the some 100 Members of the Senate to evaluate that evidence.

The framers of the Constitution could have very easily vested the power and responsibility of impeachment in the Supreme Court or elsewhere. In their wisdom, that power and responsibility was created in the legislative branch of the Government. It was the intent of the framers that the proceeding be legislative and political as well as judicial in nature.

Of course, common sense must be used in fashioning a procedure that enables the Senate to judge a case of impeachment fairly and impartially and fully, relevant, of course, to the time in history that impeachment occurs.

It is not dissimilar, indeed, to the duties of the Senate with regard to its responsibility to advise and consent.

Counsel would argue that in fact it requires 100 Members of the Senate to advise and consent, not a Committee of the Judiciary or otherwise in the Senate. That is the defendant's basic argument.

The credibility of witnesses is alluded to. As you well know, that is judged on many, many factors, such as the documentary evidence in a particular case; an explanation of the inconsistent or incriminating conduct that might be involved in a particular case; the motive or lack of motives of the witnesses; and, of course, common sense is an extremely important aspect in determining the credibility of witnesses.

As you well know, a video tape is available for those Members of the Senate who want to view the specific testimony of witnesses. I, frankly, was very interested in hearing counsel describe the FBI agent wringing his hands, sweat coming off his brow. We must have been in a different forum.

Of course, that is more of an aside and I respect the counsel for attempting to argue the case as he sees it.

But the fact of the matter is that the Senate is the sole judge of the type of trial to be accorded to a defendant who stands for an impeachable offense, and the delegation of this authority to a committee was a wise, prudent, and constitutional delegation of authority.

Relative to the defendant's motion for a full and fair impeachment trial, the defendant has had and is receiving a full and fair opportunity to present the evidence that he believes is important in establishing his innocence of the charges directed against him.

What is it that Judge Claiborne would have the Senate do at this time? He wants another trial, if you will, a fourth trial. Two jury trials, one being a hung jury, which took 4 months; a second trial when he was convicted by a jury of his peers on two counts of filing a false income tax return.

The Senate convened this special committee. That committee took some 7 days, fully receiving evidence to be submitted to the U.S. Senate.

In addition to these proceedings, Judge Claiborne has filed some 93 motions for relief in connection with his conviction for filing false income tax returns, including three motions and appeal to the ninth circuit court of appeals, two appeals to the U.S. Supreme Court for writs of certiorari. Presently pending is a motion for relief under section 2255, and several other motions are pending before the courts at the present time.

Indeed, the defendant indicates that he wants to be treated no differently than anyone else. The fact of the matter is the defendant has received special treatment. Very few defendants facing charges around this great country of ours have received the treatment that this defendant has received.

□ 1110

So it should be. Why is it the defendant at the present time is asking for a fair and full impeachment trial? First, it is clearly an effort to delay. Judge Claiborne realizes that time is on his side. With the press of legislative business and the need to adjourn this session of Congress, it obviously is in the interest of the defense to delay, in fact, postpone. It is also excellent defense strategy to cloud the defendant's own conduct with allegations of misconduct on the part of others; divert at any cost the attention from the defendant's conduct and place it on other people's conduct.

The defendant has argued about the alleged conduct or misconduct of everyone except himself. It reminds me of basic strategy 101 when I was in law school: When the facts are against you, you argue the law; when the law is against you, you argue the facts; when they are both against you, you just get up and argue. Basically, that is what we have seen throughout these entire proceedings. Indeed, the defendant would put the entire system on trial.

He suggests he has been targeted by the executive branch of the Government. That was the first motion, in fact, that was filed by the defendant to quash the indictments returned by a grand jury alleging governmental misconduct. So it has been throughout the entire proceedings, allegations of executive misconduct. The defendant would bring in the Director of the FBI. He has dropped Director Webster as one of the witnesses to be subpoenaed but that is a recent innovation. The defendant wanted to bring in Director Webster; Joseph Yablonsky, a former special-agent-in-charge; Steven Shaw, prosecutor, of the Public Integrity Sector of the Justice Department, a whole host of IRS agents, FBI agents. The defendant would have you believe that in addition, certain evidence was excluded such as the evidence of one Charlotte Travaglia in connection with an interview of June 7, 1983. We heard from Charlotte Travaglia; though she added very little, we did receive her testimony. She was available at the time of trial and could very easily have been called in the case below by the prosecution or the defense but was not called.

There were allegations that in some way, counsel was denied access to an interview of Joseph J. Wright on February 16, 1983, about so-called moves to destroy documents. We heard everything about that. Those dealt with documents that were destroyed, that were outdated, documents that were dated prior to 1976, that were destroyed in connection with a move of Mr. Wright's accounting office to a new location.

The defendant suggests that there was a coaching of witnesses and a harassment of other witnesses. Chairman MATHIAS permitted the defense carte blanche in examining the witnesses relative to the so-called coaching of witnesses and harassment of witnesses, and there was no demonstration that the Government in any way harassed witnesses. At most, what we saw was evidence that the Government throughout its proceedings did talk to the witnesses, attempt to refresh their recollection from the records that were available. Time dims recollection and it is only natural for the prosecution to talk to witnesses before a trial.

The defendant would argue that there were 100 hours of time consumed in coaching witnesses. Well, that included time once we received the evidence when the case was traveling through court, waiting for the grand jury to receive their testimony. So there was in essence no showing that there was harassment or a coaching of witnesses other than is normal in any trial.

We have heard a great deal about Joseph Conforte and the poisoning of the grand jury in this proceeding. Joseph Conforte has no role to play. He is not involved in any way in this proceeding. He wasn't a witness in the court below where the defendant was convicted. He has not in any way been a factor in this particular proceeding. But once again, the defense would take you out in that direction to talk about one Joseph Conforte, who really has no relevance in this proceeding.

Then finally, the argument that the prosecution engaged in an alleged black bag job on Judge Claiborne's home. No specification as to what was supposed to have been taken from the home. The allegations are disputed by the Government. It is suggested that in some way, the information concerning in fact the information, the tax information from 1979 and 1980 might have been taken at that time.

Finally, the defendant suggests that there is a conspiracy in selection of the judges for trial, conspiracy that originated with the Chief Justice of the United States right down to the members of the court of appeals. The defendant would bring in, as he requested during the hearing before the Senate committee, not just a Chief Justice but three judges of the ninth circuit court of appeals, and the Federal district court judge that produced the sentence on Joseph Conforte here, in the District of Columbia.

So in essence, the defendant alleges a form of misfeasance of judges in essence for not reading their briefs. Finally, the defendant attacks the process developed by the Senate to receive the evidence, it attacks the House managers for creating a mentality of a rush to judgment. In essence, what the defendant has done or endeavored to do is divert our attention away from the only relevant circumstance before this body; that is the question of the defendant's guilt or innocence on two counts of filing and subscribing false income tax returns for 1979 and 1980.

The defendant Harry Claiborne stands before you after having been convicted of a jury of his peers of making and subscribing false income tax returns for those 2 years. The conviction under title 26, section 7206(1) of the United States Code is based on essentially four factors: No. 1, that Harry Claiborne made or subscribed a tax return that was incorrect as to a material matter; No. 2, that the return contained a written declaration that was made under penalty of perjury; No. 3, that Harry Claiborne did not believe the return to be a true and correct portraying of his income in those years; and finally that Harry Claiborne subscribed willfully—that is, not

by accident, mistake, or negligence. The only issue really in dispute in the court below and really before the Senate is a question of defendant's state of mind, whether Harry Claiborne made and subscribed those two returns in 1979 and 1980 intentionally and willfully.

The other factors are not in dispute and they weren't in dispute below when they were tried before a jury of his peers who found against the defendant.

The special committee created by the Senate under the chairmanship of Senator MATHIAS from Maryland took testimony, as I have indicated, for 7 full days. We worked some days 7 and 8 hours, much of the time without interruption. The Senate rules are indeed consistent with the rules of Federal evidence relative to the evidence that was to be received. Essentially, the chairman indicated that evidence would be received that is relevant. The rule that is adopted by the Senate parallels essentially the rules of Federal procedure. Rule 401 defines the concept of relevance as relevant evidence means evidence having any tendency to make the evidence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

□ 1120

So the question becomes whether it is probative, whether it has a probative value in establishing a fact. It was the ruling of the chairman, supported by the committee, that much of the proffer by the defense was not relevant. For instance, in connection with the allegations of judicial misconduct, biased and utter failings on the part of the judiciary, Chairman MATHIAS ruled—and the committee upheld that ruling—that that was not relevant. It is the Senate, not the judiciary, that will be the sole judge of the law and the facts in this particular case, not the judiciary. The deficiencies in the bribery prosecution, Chairman MATHIAS ruled—and that was supported by the committee—are not relevant to the tax cases. There is no connection between the alleged bribery offenses that were originally part of the prosecution's strategy in the first trial and the tax cases for which the defendant stands convicted by a jury of his peers.

Finally, Chairman MATHIAS, with the support of the committee, held that the alleged black bag job on Judge Claiborne's residence—and which is seriously disputed—basically would be received in the form of affidavits. There is no allegation, as I have indicated, that anything was removed from the judge's residence. At most the allegation is that the Government succeeded in receiving information about the legal fees in 1979 and 1980, and as I have indicated that really wasn't in dispute. The defendant conceded, admitted that those legal fees were received.

During the proceedings, Judge Claiborne alleged the Government harassing and coaching of witnesses. I have already indicated to you that we went way beyond what was originally intended in receiving evidence on that issue, and the defense came up empty on any suggestions that there was harassment in any way. The chairman permitted counsel wide discretion in examining Donald Skelton and other witnesses—in fact, asked to have him declared as a hostile witness so that he could cross examine Donald Skelton and other witnesses, and he did just that. There was no testimony whatsoever to support the thrust of the defendant's argument that there was in any way intimidation, harassment, or improper coaching of any of the witnesses that were adduced. He called and was able to produce testimony from each and every witness that the defendant wanted to produce on the tax charges.

Harry Claiborne has, indeed, received a fair and full trial before the Senate as intended by the framers of the Constitution. He is not entitled to turn this proceeding into an attack upon the system itself. It was never the intent of the framers of the Constitution to permit Harry Claiborne to be able to attack the judiciary, the executive branch of the Government, and finally the Congress of the United States in an effort to in fact shield his own conduct. The only conduct that is relevant in these proceedings is the defendant's conduct. The defendant would turn these proceedings into a three-ring circus, try everybody conceivable except the defendant himself.

His attempt to divert your attention from his conduct by attacking the judiciary, the executive branch of the Government, and now the Congress should be rejected by this distinguished body. Judge Claiborne has received his day in court and the proceeding that the Senate is now embarked upon is a fair proceeding, one that in fact does make common sense, given the fact that it is a legislative body and the defendant in fact is making the arguments that he has indicated he should make all along. This body has voluminous transcripts available, a video tape available of these proceedings, and certainly a full and complete record upon which to judge the defendant's guilt or innocence of the only charges before this body, whether or not the defendant did in fact file false income tax returns in the years 1979 and 1980.

The VICE PRESIDENT. Thank you, Manager HUGHES.

Mr. Goodman will now be heard on Judge Claiborne's motion to designate beyond a reasonable doubt as the standard of proof in an impeachment trial.

MOTION TO DESIGNATE BEYOND A REASONABLE DOUBT AS THE STANDARD OF PROOF IN AN IMPEACHMENT TRIAL

Mr. GOODMAN. Mr. President, much of what has been said is accurate. The issue which is before this body is whether or not in the first time of the history of our country an impeached official is going to receive less than a full and fair trial as was contemplated by the framers of the Constitution. The authors of the Federalist Papers have made it abundantly clear that a trial before the U.S. Senate on the issue of impeachment is an autonomous proceeding. I find it difficult to understand the relevance as to what has taken place within the court situation when references are constantly made to the first mistrial, the second trial resulting in a conviction, and the third trial before the committee of 11. That wasn't a trial. It was never contemplated to be a trial. That was a filtering process and that is what we were advised at the beginning. This was not a factfinding expedition. It was an exploratory venture.

Initially, in 1935, when rule XI was first promulgated, the legislative history would suggest it was a method for the Senators to go out into the country to bring evidence back to the Senate so the Senate could make a determination as to what witnesses they wanted to be brought into the Senate Chamber for purposes of conducting a trial in front of the Senate. And the rule was never utilized before this instance. In Judge Halsted Ritter's case, it wasn't utilized. It was contemplated in the potential impeachment proceeding in 1974 but it wasn't utilized even at that point in time. And it wasn't a constitutional mandate. It was a rule made by the Senate that was to expedite proceedings, but it wasn't to replace the constitutional directive of a full trial before this esteemed body.

Now, if you were to have available to you the live witnesses or perhaps even as a secondary measure if you would commit yourselves to the proposition of looking at the video tapes of the witnesses who were examined during the committee hearing to ascertain what type of expansion you would desire to make for the purposes of concluding the full trial, we would have no objection. What we are concerned about is this rush to judgment that we feel, and I would like to advise this honorable body at this point in time—and there has been talk about this, but there has never been a resolution of it—so that we don't rush, so that we provide to Judge Claiborne the same right which is provided for the last 200 years and 300 years before that in England to persons in high office who are the subject of impeachment, don't be afraid that Judge Claiborne will

draw his salary if given a full and fair hearing. If permitted that, he would tender his salary into an escrow. He would place it with the Secretary of the Senate or whatever officer would take possession of it and pending a resolution of a vote after a full and fair exposition, if he were successful and acquitted, he would expect his due. If it was a ruling against him, it would be forfeited.

In addition, do not be fearful that should Judge Claiborne be released from the prison as a result of parole that he will return to the bench. Judge Claiborne took the position initially when the indictment was returned on December 8, 1983, and he wrote to Chief Judge Browning of the ninth circuit and said, "I will follow whatever directive the Chief Judge has for me as far as sitting on cases" and did not actively sit on cases since that time.

So those are not real fears as long as he is provided with what he is entitled to under the Constitution. And as far as the expanse of the record, I can't represent to this esteemed body what took place in executive session after certain of the motions were argued before the rule XI committee. We heard through the grapevine, for lack of better expression, that there were certain members of the committee who desired an expansion of the record but they couldn't carry the day as far as the vote was concerned. But those Senators know their innermost feelings and as to how they would have applied their judgment for seeing the witnesses live and before them and being able to judge their demeanor and credibility.

□ 1130

I do not know what the House managers are afraid of. Isn't this supposed to be a search for truth? Isn't that what this country is all about? That is all we are asking for, that the truth finally comes out, and we have been precluded from that opportunity since the day the indictment was returned.

When you make your judgment and you evaluate the evidence in the case, I would respectfully suggest to you that the standard that you utilize is the standard of proof beyond a reasonable doubt. This has been debated through the years. Back in 1974, in anticipation of another impeachment proceeding, the Honorable Robert Taft, Jr., indicated that, in discussing the proceedings going back to President Johnson's impeachment, that the accused can only be convicted when the evidence makes the case clear beyond a reasonable doubt. And he states that nothing thereafter has changed that position, and the Senate had acquiesced and agreed to that very day that that was the required means of persuasion.

The Honorable Sam Ervin, in 1974, said: "In cases of this kind, if we are called upon to try an impeachment"——

To try an impeachment——

"—I would not vote for conviction on any charge unless I was satisfied beyond a reasonable doubt of the truth of the charges."

The Honorable Senator STROM THURMOND, who sits here today, recognized what an impeachment is all about when he said: "The penalty of impeachment is severe. It is not a criminal penalty, but I know of no penalty that would be more severe then to remove, once again, a President from office, and therefore I believe that the evidence should be beyond a reasonable doubt."

I see the Honorable Senator JOHN STENNIS, who stated: "Where any party is charged with an impeachable offense and is tried by the Senate, it is highly important to them——"

And I add, as an aside, nothing could be more important to Harry Claiborne as he sits here today——

"—be it a so-called minor offense on up to the highest official under our Constitution, then I think the proof required ought to be beyond a reasonable doubt. The Nation is a party, and that requires substantial evidence beyond a resonable doubt."

I submit to you that the Nation is a party to these proceedings, and the Nation is watching these proceedings; and, in all humility, I would respectfully suggest and request that history not be broken, that history continue, and that Harry Claiborne get a full and fair trial, to which he is entitled.

The VICE PRESIDENT. Thank you, Mr. Goodman.

Manager KASTENMEIER will now be heard in response to the motion.

Mr. Manager KASTENMEIER. Mr. President, I will speak briefly in opposition to the motion to designate "beyond a reasonable doubt" as a standard of proof, and narrowly to that question.

Since we believe the fundamental purpose of an impeachment proceeding is to preserve the confidence of the people in public officials and institutions, we believe it proper that the House of Representatives establishes by a preponderance of the evidence that Judge Claiborne has committed an impeachable offense.

Now, it is true that the Supreme Court has held as a standard of law in this country that in a criminal proceeding, the charges must be proved beyond a reasonable doubt. This is to safeguard those who would lose their liberty or lose their lives in a criminal proceeding. This standard, I submit, is inapplicable in an impeachment trial, which cannot result in the imposition of criminal punishment.

As a matter of fact, article I, section 3 of the Constitution expressly provides that the judgment of the Senate "shall not extend further than removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the United States."

Parenthetically, of course, the respondent has, in fact, been tried in a separate proceeding and been found guilty, wherein, as a matter of fact, the standard beyond a reasonable doubt has been found. But not here. The job of this body is to judge whether or not removal from office is appropriate.

It is a case, I suppose, in terms of loss of job, that millions of Americans have lost jobs, sometimes for cause and sometimes not. At least, thousands have lost jobs in positions of trust for Government, sometimes for cause and sometimes not. But this is a rare case, where the respondent has enormous constitutional prerogatives for his defense.

We know specifically how difficult it is to remove by the impeachment process a public official. He is safeguarded. It must be a separate proceeding of the House that affirms articles and a separate proceeding of this body that affirms articles, and by a two-thirds vote in this body.

In a balancing of interests, in assessing the public interest, in the removal of a corrupt official, do not impose such a high standard as probable cause—or, reasonable doubt, rather. Historically, these proceedings are not criminal proceedings.

As recently as 50 years ago, in the last proceeding, the impeachment of Halsted Ritter, the Presiding Officer said:

> An impeachment proceeding before the Senate, sitting as a court, is sui generis, partaking neither of the harshness nor rigidity of criminal law, nor of the civil proceeding requiring less particularity.

This is not a criminal proceeding. We should not be deluded by terms such as high crimes and misdemeanors, as conviction, that appear in the Constitution, borrowing from the past, from a British tradition that imposed criminal sanctions.

We here submit that there is no reason for the Senate to adopt the burden of proof that would fail to provide sufficient protection to the public interest for the removal of corrupt officials.

We submit, too, that never has the U.S. Senate, in impeachment proceedings past, ever adopted such a standard.

It may be true, as the respondent's attorney has suggested, that individual Members, especially years ago, considering the severity of the case of an impeachment of a President, may have submitted that they, themselves, might contemplate a higher standard. But I say to you, even if that were the

case then, on an individual basis, do not shackle this body by imposing such a high standard. Impeachment trials in this body historically have never done so and precedentially do not bind you.

□ 1140

Please do not bind yourselves now or potentially unfortunately in the near future possibly when again such an unfortunate proceeding may be necessary for judgment in the future. Apply your own good judgment and reason.

A preponderance of the evidence is all that is necessary for removal from office. You are not sending the respondent to prison. You are not taking his life.

It is well to think of the interests of the people of the United States in this process. I submit that standard submitted by the respondent ought to be rejected by this body and that the Senate, as it has historically, apply its own personal judgment and even conviction to this matter and not an artifical criminal standard.

The VICE PRESIDENT. Thank you, Mr. Manager KASTENMEIER.

CLOSED SESSION

The VICE PRESIDENT. In accordance with the unanimous consent agreement that was entered into yesterday, the Senate shall proceed now in closed session until no later than 1 p.m., with deliberation of the motion, and the Sergeant at Arms will make the necessary arrangements.

(At 11:45 a.m., the doors of the Chamber were closed. The proceedings of the Senate were held in close session until 1:10 p.m., at which time the Senate recessed until 2 p.m. whereupon the following occurred:)

□ 1400

OPEN SESSION

The VICE PRESIDENT. The majority leader is recognized.

Mr. DOLE. Mr. President, I know there is a unanimous-consent agreement that we should vote at 2 o'clock, but until the distinguished minority leader is present, I suggest the absence of a quorum.

The VICE PRESIDENT. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

□ 1410

Mr. DOLE addressed the Chair.

The VICE PRESIDENT. The Senate will be in order and the majority leader is recognized.

Mr. DOLE. I ask that further proceedings of the quorum call be rescinded.

The VICE PRESIDENT. Without objection, it is so ordered.

Mr. DOLE. I ask that we may have order in the Senate.

The VICE PRESIDENT. The Senate will be in order. Senators are asked to take their seats and the gallery will be in order. The clerk will report a motion.

The assistant legislative clerk read as follows:

Motion by Messrs. HEFLIN and WARNER: move to postpone the decisions on all the motions except for the first motion to postpone until the conclusion of the presentation by the managers and the defendant.

The VICE PRESIDENT. The question is on the motion.

Mr. BYRD. Parliamentary inquiry, Mr. President.

The VICE PRESIDENT. The Senator will state it.

Mr. BYRD. What would be the interpretation of the Chair as to the time when the decision would be made on the motions other than the first one?

The VICE PRESIDENT. Beginning at 6 p.m. this evening.

Mr. BYRD. I thank the Chair.

The VICE PRESIDENT. All those in favor say aye. Opposed.

The ayes appear to have it. The ayes have it. The motion is carried.

The question now is on the first motion. Judge Claiborne has moved the Senate to postpone its consideration of the Articles of Impeachment pending the disposition by the district court for the District of Nevada and the Ninth Circuit Court of Appeals of a supplemental motion under title 28, section 2255, of the United States Code. All those in favor of postponing this impeachment trial please signify by saying aye. All those opposed.

The nays have it and the motion is rejected.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the motion was rejected.

Mr. MATHIAS. I move to lay that motion on the table.

The VICE PRESIDENT. Without objection, the motion is laid on the table.

In accordance with the unanimous-consent agreement of yesterday, the time until 6 p.m. is allotted for final argument. This time will be equally divided between the parties. Under Senate impeachment rule XXII, final arguments shall be open and closed by the House of Representatives.

The Chair understands that final arguments for the House will be presented by Manager RODINO and Manager FISH.

Mr. FISH, it is the Chair's understanding that you will speak first. Manager FISH.

Mr. Manager FISH. Mr. President, Members of the U.S. Senate, my colleagues, the House managers, Judge Claiborne, Mr. Goodman: This is a solemn and tragic moment. It has been 50 years since a Member of the House of Representatives stood in the well of this Chamber to ask for the conviction of a public official who has been impeached.

The role of the House of Representatives in bringing this case against Judge Claiborne is not one that we relish. An impeachment leaves a scar not only on the public official involved but on our entire Government.

So why are we here today? We are here because Judge Claiborne has been convicted by a jury of his peers of two felony offenses. We are here because Judge Claiborne sits in prison for his crimes. Most importantly, distinguished members of the Senate, we are here because the evidence gathered here independently proves that Judge Harry E. Claiborne willfully and intentionally understated his taxable income by over $190,000 in just 2 years.

Now, how did he do this? He failed to disclose detailed information to his accountant. He participated in the creation of an imaginary sale at a loss of the successful legal practice he built before going on the bench. He reported no gain from the sale of a home that he knew would cause substantial tax liability. He cashed legal fee checks at casinos.

These actions of Judge Claiborne—not the FBI, not the IRS, not his accounts, nor the judicial, nor the executive branch of Government—these actions of Judge Claiborne compelled his conviction by 12 citizens of the State of Nevada, and these same actions compel his conviction in the Senate and his removal from office.

The evidence that myself and my colleague, Mr. RODINO, will summarize tells a fascinating tale of deception, of dishonesty and, yes, greed.

These were not the actions of a gullible, unsophisticated, overworked man but of a college educated law school graduate, successful trial lawyer, and Federal judge. Before considering that evidence in detail, let me review the charges that have been brought against Judge Claiborne. On June 26, 1986, the House of Representatives voted to impeach Judge Claiborne on four Articles of Impeachment. The vote in the House of Representatives was unanimous. Each of the Articles of Impeachment are separate and distinct and provide a compelling basis for Judge Claiborne's conviction in the Senate.

Article I alleges that Judge Claiborne willfully made and subscribed a false statement on his 1979 income tax return. Specifically, article I alleges that Judge Claiborne falsely reported his income in 1979, understating that income by over $18,000. In other words, article I alleges the underlying conduct that formed the basis for Judge Claiborne's conviction.

Article II alleges that Judge Claiborne made and subscribed in false statement on his 1980 tax return. In 1980, Judge Claiborne understated his taxable income by over $173,000.

Again, article II alleges the underlying conduct that formed the basis for Judge Claiborne's conviction.

Article III alleges the fact of these convictions of Judge Claiborne as an independent basis for his removal from office. Article III asserts that an individual who has been convicted of two felony offenses, in a proceeding that was fundamentally fair and that now is final, should—for that reason alone—be removed from the position of trust that he holds on behalf of the United States.

Finally, article IV alleges that Judge Claiborne, through his conduct and by his convictions, has damaged the integrity and the impartiality of the Federal judiciary that he represents. Judge Claiborne's conduct and his convictions do more than undermine his personal reputation. He has brought disrepute upon the Federal judiciary. To restore the integrity of the judicial branch of our Government, and to maintain public confidence in the administration of justice, article IV pleads that Judge Claiborne should be removed from office.

Each of these articles of impeachment, either directly or indirectly, involve charges that Judge Claiborne willfully made a false statement on his 1979 and 1980 income tax returns, in violation of section 7206 sub. (1) of title 26, United States Code. This statute is one of the provisions enacted by the Congress to ensure the full and honest disclosure of tax information by all citizens. Voluntary and complete disclosure is the cornerstone of the self-assessment of our tax liability.

The elements of this offense are simple. Section 7206 sub. (1) is violated when an individual "willfully makes and subscribes any tax return, under penalties of perjury, that he does not believe to be true and correct as to every material matter." Simply stated, the offense requires first, a material falsehood; second, a declaration that the statement is made under penalties of perjury; and third, willful and knowing conduct on the part of the taxpayer.

Judge Claiborne did not deny in this case that he received over $190,000 in 1979 and 1980 that he did not report on his tax returns. Although he attempted to conceal his receipt of income, cashing checks at casinos and giving false information to his accountant, Judge Claiborne's receipt of income was established unequivocally by other documentary evidence. Thus, Judge Claiborne's defense has centered on the element of "willfulness"; he claims he is the "innocent beneficiary" of gross errors committed by two different accountants. In considering this claim, it is useful to understand precisely what the term "willfulness" means.

The Supreme Court of the United States recently held that "willfulness" in the tax statutes does not require a finding of a bad purpose or evil motive. Judge Claiborne's brief simply misstates the law. Willfulness simply means, and I quote the high court: "a voluntary, intentional violation of a known legal duty."

Courts also have recognized, not surprisingly, that the element of "willfulness," which is a subjective state of mind, rarely is proved through direct evidence. A crime whose very purpose is to conceal is not often broadcast with direct proof. However, willfulness may be inferred from circumstantial evidence. Once again, our Supreme Court has held that willfulness may be inferred from "any conduct, the likely effect of which would be to mislead or to conceal."

Willfulness has been inferred in other decided cases, involving other taxpayers, from precisely the kind of evidence that is present in this case. Willfulness has been inferred from a consistent pattern of underreporting. Indeed, courts have held that "a 2-year pattern of derelictions is itself indicative of the willfulness of the taxpayer's actions." Willfulness also has been inferred from the magnitude of the error; the larger the misstatement, the less likely a taxpayer would not realize what he was doing. Willfulness also has been inferred from the disclosure of only summary information to a tax preparer, rather than detailed, underlying data; from a sudden and suspicious change in accountants; and from the presence of "surreptitious cash transactions." Courts repeatedly have recognized that willfulness is likely where the taxpayer is highly educated, has substantial business or professional experience, or has demonstrated a familiarity in the past with basic tax concepts. Finally, courts have held that it is proper to infer willfulness "from proof that a taxpayer deliberately closed his eyes to what would otherwise have been obvious to him."

Mr. RODINO and I soon shall demonstrate that every one of these factors is present in this case, although willfulness may be inferred from just one. This is a textbook case. While an inference of willfulness can be inferred from any of the eight fact situations that I have enumerated, in this case we have all eight.

I ask you bluntly: Can it be mere coincidence that Judge Claiborne underreported his income in 1979, again in 1980, and indeed in 1981 and 1982 as well? That the amounts involved total almost $250,000? That for the first time in his life he began cashing fee checks at casinos? That to carry out this scheme, he dropped his accountant of 30 years to hire a man with no professional training? That throughout this period, Judge Claiborne was writing opinions in tax cases? Consider these factors, ladies and gentleman, as you hear the evidence summarized by both the House of Representatives and the defense.

Before he became a Federal judge, Judge Claiborne had a lucrative private practice. He specialized in criminal law and earned an outstanding reputation as a trial lawyer. Stop for a moment and consider the significance of that fact. To be successful, a trial lawyer must be perceptive. He must probe for the truth. He must pay close attention to detail. Using these skills, Judge Claiborne developed a private practice that grossed over $375,000 in 1977, with a net income of almost $200,000.

In 1978, Judge Claiborne assumed the Federal bench. His salary dropped to $54,000. However, he continued to receive legal fees for work he had done before he became a judge. Judge Claiborne received a significant amount of legal fee income in 1979, 1980, 1981, and 1982. It was this fee income that Judge Claiborne understated on his 1979 tax return, and that he failed to report in its entirety on his 1980, 1981, and 1982 returns.

It is not disputed that, in 1979, Judge Claiborne received over $41,000 in legal fees. He reported only $22,000 of that sum on his form 1040, schedule C—an underreporting of over $18,000.

Judge Claiborne's 1979 tax return was prepared by his friend and accountant for 30 years, Mr. Joseph Wright. Both Mr. Wright and Judge Claiborne testified that, prior to 1979, Judge Claiborne had his bank statements and bank deposit records sent directly to Mr. Wright by the bank. Judge Claiborne had for years instructed Wright to treat all deposits reflected on the bank statements as legal fee income, unless he was otherwise advised. Judge Claiborne admitted that, prior to 1979, he always deposited all of his fee income in his bank account.

Two significant things changed in 1979. First, for the first time in his life, Judge Claiborne began to cash fee checks at local casinos. In doing so, of course, he left no meaningful record of the receipt of this income. What kind of explanation does Judge Claiborne give for this behavior? First, he suggests that he cashed fee checks so as to have "pocket money." Yet, many of these checks were for amounts of several thousand dollars. Indeed, in 1980, one check that he cashed at the casino amounted to $37,500. Some pocket money. What kind of pocket money did Judge Claiborne need?

□ 1430

Second, perhaps realizing the absurdity of this claim, Judge Claiborne testified for the first time in this proceeding that, after he cashed checks at casinos, he deposited some of the money in the bank. Why would a man

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cash a check at a casino, and then deposit cash, rather than the fee check itself, in the bank? I suggest there is no legitimate explanation for Judge Claiborne's cashing of fee checks. The only explanation is to obscure the receipt of fee income.

A further significant event occurred in 1979. Judge Claiborne told his bank not to send Mr. Wright the bank statements. In addition, Judge Claiborne did not personally give those bank statements to Mr. Wright. In that year, as a result of these actions of Judge Claiborne, Joseph Wright became completely dependent on Judge Claiborne for information concerning the judge's fee income.

In March 1980, Judge Claiborne provided that information to him. He sent Wright a memorandum, House exhibit 17, that purported to be a recap of the Judge's fee income for 1979. The memorandum is important for three reasons. First, it claimed to be authentic. Second, in his own handwriting, Judge Claiborne told Wright that his fee income was approximately $46,000. The judge testified that he knew from memory that this figure was correct. Third, Judge Claiborne stated in the memo, and testified before the Senate, that he compiled the information "from his bank statements." Consider this, Members of the Senate, we know, and Judge Claiborne knew, that he had cashed over half of his fee checks for the year 1979. What can be the significance of his testimony under oath that he prepared an "authentic" list of his fee income from his bank statements? The March 1980 memorandum and Judge Claiborne's sworn testimony are false. Judge Claiborne knew that he had cashed over half of the fee checks, but he obviously did not want Mr. Wright to know this fact. I ask you to ask yourself, why?

Joseph Wright repeatedly relied upon the information that Judge Claiborne gave him in the March 1980 memorandum. March 7, Wright sent a letter to a mortgage company, identifying Judge Claiborne's fee income as approximately $46,000. April 8 Wright prepared an estimate of the Judge's tax liability for 1979, again using the $46,000 figure for fee income. May 22, Wright again, at the Judge's request, sent letters to mortgage companies, identifying Judge Claiborne's 1979 fee income as $46,000. Throughout March, April, and May of 1980, Joseph Wright relied upon the information that Judge Claiborne had given him in the March 1980 memorandum.

The most significant event with respect to the 1979 return occurred however, after May 22, 1980. It is an event for which Judge Claiborne has absolutely no explanation. After May 22, Judge Claiborne called Mr. Wright and told him that certain items in the March 1980 memorandum were not legal fees. Specifically, Judge Claiborne told Wright that a February 2, 1979, deposit actually consisted in part of the proceeds of a time certificate of deposit. An April 18, 1979, deposit resulted from the sale of an airplane. Deposits on May 30, 1979, and on November 20, 1979, represented interest income. Judge Claiborne told Mr. Wright that the remaining four deposits—and only those deposits—represented his fee income for 1979. These four items totaled the exact amount that Joseph Wright later reported on Judge Claiborne's 1979 income tax return. Judge Claiborne told Wright that his fee income was only $22,000—about half of the true amount.

Joseph Wright made a detailed record of this conversation. Next to each "deposit" on the March 1980 memorandum, Mr. Wright recorded the information that Judge Claiborne gave him. As Judge Claiborne admitted, Wright had no other source of information for the notations he recorded. Judge Claiborne had told the bank to stop sending information to Wright. Only Judge Claiborne could have supplied the false information that Wright recorded.

Subsequent to this conversation, Judge Claiborne sent Mr. Wright another handwritten memorandum, House exhibit 21. In this memorandum, which was written for the explicit purpose of giving Wright detailed information for the preparation of the 1979 tax return, Judge Claiborne wrote that his fee income was $22,000. Let me repeat, Members of the Senate: This false statement is in Judge Claiborne's own handwriting. It was not prepared by anyone else. Let's place the blame in this case where it lies: with Harry E. Claiborne. Moreover, in a Judicial Ethics statement prepared during this same period, House exhibit 16, Judge Claiborne again identified his income from legal fees as $23,000. These documents prepared by Judge Claiborne conclusively prove that he is no "innocent beneficiary" in the underreporting of his income.

What does Judge Claiborne say about these documents? In his posttrial brief, he says absolutely nothing. On behalf of the House of Representatives, I invite each of you to search that brief for any explanation of these documents, written by Judge Claiborne, that falsely depict his 1979 fee income. You will find not one reference to the March 1980 memorandum. You will find not one reference to the tax worksheets prepared by Judge Claiborne, nor will you find one reference to the judicial ethics filing. Judge Claiborne chooses to talk about burglaries and wild theories of a government conspiracy. Why? Because these documents prove that Judge Claiborne, and not his accountant, was responsible for the understatement of income of his tax return.

At the evidentiary hearing, Judge Claiborne did attempt to respond to this damaging proof. Let me demonstrate how his efforts were completely unsuccessul and, indeed, fraudulent. Consider please this testimony offered by Judge Claiborne.

In an attempt to explain the notations that Wright made on the March 1980 memorandum, Judge Claiborne testified that he did tell Wright some time later that the February 2 deposit actually resulted from the cashing of a time certificate of deposit. Judge Claiborne was very specific in this testimony. He said that Wright called him and asked whether the February 2 deposit was a legal fee. The Judge allegedly responded that he would check. Judge Claiborne explained under oath that he went to his records, determined that the February 2 deposit was a time certificate of deposit, and called Wright to tell him so. Can this testimony be true? The answer is no. In response to Judge Claiborne's attempted explanation—which, by the way, he had not made in either of his criminal trials—the House of Representatives introduced a series of bank records, House exhibit 42. Those bank records show that Judge Claiborne did make a deposit of approximately $21,000 on February 2. The records also show the source of that deposit. It consisted of three checks: A $17,000 fee check, an $84 fee check, and a $3,000 salary check. The February 2 deposit had nothing to do with a time certificate of deposit.

How can Judge Claiborne stand before the Senate with a straight face and state under oath that he told Joseph Wright that the February 2 deposit actually was a time certificate of deposit? Not only has Judge Claiborne changed his testimony from his earlier trials, that testimony is demonstrably false. This man does not deserve to be a Federal judge.

Judge Claiborne also attempts to absolve himself from responsibility for the misstatement of income on the return by declaring that he signed the return in blank. When pressed by the House of Representatives, Judge Claiborne testified under oath that he signed the blank return on the evening of May 2, 1980, in Mr. Wright's office. The House then proved that Joseph Wright had left on vacation the afternoon of May 2. Confronted with this fact, Judge Claiborne changed his testimony and stated that he signed the return over the lunch hour. This inconsistent, self-serving testimony simply is not credible. There is direct evidence that Judge Claiborne did not sign his 1979 return in blank. There is a notation in Mr. Wright's appointment book that, on Monday, June 16, 1980—the date the completed tax return was filed—Judge Claiborne went to Mr. Wright's office. When

confronted with this evidence, Judge Claiborne testified that the appointment book had been falsified by Joseph Wright, his close friend for 30 years.

□ 1440

To accept Judge Claiborne's explanation, you must believe that Joseph Wright computed the wrong figure for fee income from thin air. Judge Claiborne offers no explanation. You must believe that Joseph Wright would falsify documents to convict a man who was a special client and an honored friend.

Judge Claiborne earlier has testified that Joseph Wright is "highly qualified and exceedingly honest." It is a tragedy and a travesty to hear Judge Claiborne now accuse that same man of falsifying documents.

Finally, to accept Judge Claiborne's explanation, you must believe that he simply "forgot" half of his fee income when he prepared his tax worksheets. You must believe that he simply "forgot" half of his fee income when he prepared his judicial ethics statement. Yet when he needed to secure a mortgage for a new home, he "remembered" the full amount of the same fee income.

Judge Claiborne asks you to believe too much. A jury rejected his explanation. So too should the U.S. Senate.

Judge Claiborne does not focus on these propositions, even though they are critical to his case. Instead, he speaks only of a letter that he supposedly sent Wright on April 11, 1980, which allegedly identified the correct amount of his legal fee income. There are several things that are significant about this mysterious letter. The information in the letter was not solicited by Mr. Wright or even needed at that time. The letter makes no reference to the earlier March 1980 memorandum. Several weeks after the letter supposedly was sent, Joseph Wright wrote letters to two mortgage companies, still using the information in the March 1980 memorandum. Severeal weeks after the letter supposedly was sent, Judge Claiborne prepared tax worksheets and a Judicial Ethics statement that reflected legal fee income of only $22,000. Both Joseph Wright and his wife, Constance Wright, testified that they had never seen the April 11 letter until it was shown to them by Oscar Goodman in 1983. Unlike all of the other documents in this case, that single piece of paper was not found in Mr. Wright's files. Judy Ahlstrom, who claimed that she delivered the letter, was impeached repeatedly with prior inconsistent sworn testimony. In sum, there are many reasons to believe that Judge Claiborne never wrote or sent the April 11 letter.

In any event, proof of willfulness in 1979 does not depend upon the delivery or nondelivery of the April 11 letter. The evidence that Judge Claiborne reviewed the information in the March 1980 memorandum, that he directly told Joseph Wright that his fee income was $22,000, that he recorded that amount on his tax worksheets, that he used that amount in filing his judicial ethics statement, and that he signed a tax return that reported $22,000 in legal fee income, all conclusively demonstrate that Judge Claiborne personally is responsible for the understatement of income and the evasion of taxes on his 1979 return.

There is direct evidence of falsehood in 1979, substantial proof of "surreptitious cash transactions," and the disclosure of only summary information to Mr. Wright. Each of these facts provides a legitimate and compelling evidence of willfulness. Coupled with the overwhelming evidence of Judge Claiborne's massive understatement of income in 1980 and subsequent years, the record demonstrates that Judge Claiborne's actions were willful. Gentlemen, we, the managers on the part of the House, would not be here otherwise.

The same evidence that has been presented to the Senate was heard by a jury in Judge Claiborne's criminal trial. That jury weighed this evidence, evaluated the credibility of these same witnesses, and found beyond any reasonable doubt that Judge Claiborne willfully had underreported his income in 1979. Based on this same evidence, and the fradulent explanations that have been offered by Judge Claiborne, the Senate must reach the same conclusion.

I now turn to my colleague, the Honorable PETER RODINO, to summarize the evidence presented in support of article II and the 1980 return, as well as articles III and IV.

The VICE PRESIDENT. Mr. Manager RODINO.

Mr. Manager RODINO. Thank you very much, Mr. FISH.

Mr. President, distinguished Members of the U.S. Senate:

Let me begin with consideration of the events of a new tax year, the year of 1980. That I do so at all is significant. The 1980 return involves different tax concepts, and a different tax preparer. The cast of characters is different, but two facts remain constant: First, Judge Claiborne's income is grossly understated, this time by over $170,000; and two, Judge Claiborne blames his accountant for the error. Once again, Judge Claiborne asks you to believe that he is simply an innocent beneficiary of errors that avoided the payment of over $96,000 in taxes.

If Judge Claiborne's explanation of these events is acceptable, no citizen need voluntarily pay any tax. The criminal sanctions in the Tax Code can never be utilized. According to Judge Claiborne, an individual can hire the most incompetent tax preparer, participate in the most irresponsible treatment of basic tax concepts, create sales of assets that do not exist, fail even to bother to read the return, enjoy a refund of thousands of dollars, and simply wait for an audit. What I have just described, however, is not the tax system in our country. What I have just described is a fraud, which was perpetrated on our Government and then paraded before the U.S. Senate.

We have witnessed events that smack of impropriety and deceit. The man who conspired with Judge Claiborne in the preparation of this shocking return, Mr. Jerry Watson, was represented at the hearing by one of the Judge's character witnesses. First, Mr. Watson blamed a woman named Charlotte Travaglia. After Mrs. Travaglia cleared her name, Mr. Watson—upon the advice of biased counsel—invoked the fifth amendent. After a weekend recess, Mr. Watson returned to blame the return now on a secretary, who is dead.

In the midst of these events, new documents mysteriously appeared and just as suddenly were dropped. After 6 years, Judge Claiborne identified for the first time a document that he supposedly received that explains the 1980 tax return. Defense Counsel Oscar Goodman then pulled this document from his briefcase, and claimed that it had simply been gathering dust through two criminal trials. Perhaps realizing the absurdity of this contention, after a recess, Judge Claiborne testified that the document in Mr. Goodman's briefcase was identical to the one that he had received, except for the last section. No explanation ever was offered for that last section, and the document was quietly shelved. Then Mr. Watson began to produce documents from his file, even though he had never produced these documents before, he had failed to disclose them when his files were subpoenaed by a grand jury, and he previously had testified that he had returned all documents to Judge Claiborne. These are just some of the remarkable events that occurred in this proceeding.

I submit to you that this is the climate in which Judge Claiborne's testimony with respect to 1980 must be considered. There is no question that he misstated his income by over $170,000 and evaded payment of over $96,000 in taxes. Could he be blind to these facts? The evidence proves that he was not.

In 1980, two significant tax events occurred for Judge Claiborne, each having substantial tax consequences. First, he received a large amount of fee income from his law practice. He received four checks that totaled almost $88,000—an amount far greater than his judicial salary of $54,000. Second, Judge Claiborne sold his home

for a considerable gain, and reinvested only a portion of that money in a new dwelling. Specifically, he sold his home, which had an adjusted basis of $362,000, for $725,000. He reinvested only $285,000 in a new home. Discounting all appropriate exclusions, Judge Claiborne incurred a taxable gain on the sale of $214,000. Judge Claiborne specifically was told that he would incur a substantial tax liability because of this transaction.

The treatment of these two events on the 1980 return is astonishing. That return was prepared by Jerry Watson, of "Creative Tax Planning." After 30 years, Judge Claiborne suddenly discarded Mr. Wright, not even bothering to return Wright's repeated telephone calls. Mr. Wright was calling Judge Claiborne only for the purpose of telling him that he wanted to prepare his tax return. The Judge admits that he hired Watson without making any attempt to learn Watson's qualifications. Watson, in fact had no professional training. I submit to you, Members of this august body, that Judge Claiborne discarded Joseph Wright, and hired Jerry Watson, because Joseph Wright was too honest and too proper to create the tax savings that Judge Claiborne sought.

(Mr. THURMOND assumed the chair.)

Watson reported no legal fee income on the 1980 return. The return did not include a schedule C, where Judge Claiborne properly had reported fee income for 30 years. Indeed, the $88,000 figure for legal fee income does not appear anywhere on the return.

There is in the 1980 return, however, a schedule D, which is a form used to report a gain or loss from the sale of a capital asset. It was here that Judge Claiborne and his tax preparer created an imaginary loss, which they used to offset surreptitiously Judge Claiborne's receipt of legal fee income. Here is what they did.

First, they reported on schedule D that a transaction had occurred with respect to assets allegedly acquired in 1978 and sold in 1980. In fact, no such transaction occurred. Second, they listed the cost or other adjusted basis of the property sold as $250,000, a figure Watson admitted was his estimate of fair market value rather than cost. The estimate was based at least in part on information supplied by Judge Claiborne. Finally, they deducted an artificial sales price of $150,000, which allegedly included the $88,000 of ordinary income. From a nonexistent sale, they created a $100,000 loss. Using this method, Judge Claiborne and Mr. Watson eliminated $88,000 in taxable income in 1980, $40,000 in taxable income in 1981, and a similar amount in 1982—all in addition to a $3,000 loss actually utilized as a deduction.

The 1980 return also reported no taxable gain on the sale of Judge Claiborne's home. Through a series of purported "computational" errors on form 2119 of the return, Judge Claiborne eliminated an actual taxable gain of over $214,000. After consideration of the appropriate tax preference for capital gains, Judge Claiborne avoided over $85,000 in taxable income.

As a consequence of the fraudulent treatment of these two tax events, Judge Claiborne declared a total tax liability in 1980 of only $1,103. In other words, a man who had earned a judicial salary of over $54,000, who had received almost $88,000 in legal fees, and who had realized a taxable gain of over $214,000 on the sale of his home, reported and paid $1,103 in taxes. Not surprisingly, the return declared that Judge Claiborne was entitled to a refund of over $20,000. After consideration of estimated tax payments that were not reflected on the return, Judge Claiborne in fact received a check from the U.S. Treasury for over $44,000. Judge Claiborne cashed and enjoyed the proceeds of this check.

Through the blatant errors on his 1980 return, Judge Claiborne reported only 5.4 percent of his true taxable income. The $1,103 in tax liability that he declared was only 1.1 percent of the $97,864 that he actually should have paid as income tax for 1980.

In attempting to offer an explanation for this astoundingly false return, Judge Claiborne seeks to portray a very specific image of himself. He seeks to portray himself as a simple "country boy" with no sophistication, as an ardent civil libertarian who was unfairly hounded by Federal prosecutors, and as an overworked judge who simply had no time to read his tax return or to realize the gross errors that it contained. I respectfully submit that, while you undoubtedly will hear such claims, you should not believe them. The evidence proves that they simply are not true.

Judge Claiborne is far from unsophisticated. He was a highly successful criminal trial lawyer, and he built up a lucrative private practice. As both a lawyer and a judge, he participated in numerous cases involving tax and tax-related issues. He personally wrote at least eight judicial opinions in these cases. He instructed juries on tax-related issues in numerous other cases. By his own admission, Judge Claiborne is familiar with basic tax concepts. He understands the distinction between ordinary income and capital gains. With his education, experience and knowledge, he clearly was able to understand the concepts in the 1980 return, which are not complex.

Moreover, Judge Claiborne was familiar with the manner in which Mr. Watson stated he would prepare the 1980 return. Mr. Watson and Judge Claiborne had several discussions prior to the completion of the return, in which they discussed the sale of his home and the creation of the "loss" eventually reflected on schedule D. The initial discussions between Judge Claiborne and Mr. Watson centered around the sale of his home. Judge Claiborne had been told to expect a substantial tax liability as the result of that sale; Watson told Judge Claiborne that he believed he could "do something" about that tax liability. In addition, the two men had "several" discussions about the imaginary sale and loss eventually reflected on schedule D. Judge Claiborne acknowledged one conversation of between 30 and 45 minutes, as well as at least one additional conversation.

Moreover, Mr. Watson confirmed in writing that he could avoid the tax liability that Judge Claiborne had been told to expect. In a letter that Watson sent to Judge Claiborne in April 1981, House Exhibit 31, Jerry Watson stated that "on your home we should be able to work up a figure that would cause that transaction to be tax free." Watson confirmed in the letter that "the possibility of taking a loss on your business looks good." After Judge Claiborne received this letter, he told Watson that he wanted Watson to prepare the 1980 return. In sum, there is no basis for Judge Claiborne to state that he was not aware of the manner in which Watson would prepare the 1980 return. His claims of ignorance are inconsistent with the evidence and should fall on deaf ears.

So too should Judge Claiborne's self-serving testimony that, as an overworked Federal judge, he had no time to review the mistakes that Watson made. Judge Claiborne testified that he used the $44,000-tax refund that he received in 1980 to investigate the purchase of quarter horses in Mexico and to invest in two apartment houses. He sold one home, bought two others, and remodeled at least one. Remarkably, Judge Claiborne was not too busy for these business transactions and investments.

Faced with overwhelming evidence of willful misconduct, Judge Claiborne instead argues that he was entitled to an audit to correct the errors in these tax returns. That argument is incorrect as a matter of law. Courts repeatedly have held that, and I quote, "the filing of an administrative assessment record is not required before a criminal prosecution may be instituted . . . for failure to report or pay income taxes." In other words, and again I quote, "a grand jury may investigate and indict, and a valid judgment of conviction may ultimately be entered, for criminal tax violations regardless of whether the taxpayer has been afforded an opportunity to explain his

conduct at an IRS pre-indictment conference." That is the law.

The evidence establishes that Judge Claiborne is not an innocent man who was hounded by the Government because of his ardent support for civil liberties. Judge Claiborne was prosecuted because the evidence overwhelmingly proves that he willfully defrauded the U.S. Government by making false statements on his income tax returns. His repeated attempts to divert the focus of this inquiry away from his conduct, by urging that he was the "innocent victim" of a vendetta against him, should be ignored.

The evidence in 1980 is overwhelming. Judge Claiborne changed accountants in circumstances that are highly suspect. He understated his income for a second consecutive year by a significant amount. Again there is evidence of surreptitious cash transactions. Moreover, Judge Claiborne's repeated claims that he never questioned Watson about his qualifications, that he never read the return, and that he never attempted to understand Watson's treatment of the capital gain and legal fee income is evidence, at a minimum, that Judge Claiborne deliberately closed his eyes to what would otherwise have been obvious to him. Willfulness must be found on this evidence. Intent may be established where a taxpayer chooses to keep himself uninformed as to the full extent that the return is insufficient.

On even less evidence than that heard by the Senate, a jury of his peers found beyond any reasonable doubt that Judge Claiborne willfully underreported his income in 1980. Considering the legal standard of willfulness, and the overwhelming evidence in this case, no other conclusion is tenable. Judge Claiborne must be found guilty on article II.

VII. ARTICLES III AND IV

Let me now turn to consider the allegations in articles III and IV. The arguments here may be stated concisely and briefly.

The allegations in article III and article IV each follow from the evidence that has been established with respect to articles I and II.

Article III alleges that Judge Claiborne should be removed from office because he has been convicted of two felony offenses in the Federal courts of the United States. The facts in support of this article are not in dispute. On August 10, 1984, a jury of his peers found Judge Claiborne guilty of two counts of willfully making a false statement on a Federal income tax return. The U.S. Court of Appeals for the Ninth Circuit affirmed the conviction. That same court, with 19 different judges participating, refused to grant a petition for rehearing. The U.S. Supreme Court subsequently denied a petition for a writ of certiorari. In all, at least 32 judges have considered Judge Claiborne's case. His convictions are final. Judge Claiborne presently is a Federal prisoner.

□ 1510

The evidence of these convictions provides an independent and sufficient basis for Judge Claiborne's removal from office. The evidence presented before the Senate establishes that the convictions are supported by substantial evidence and that the proceedings in which they were obtained were fundamentally fair and proper.

An individual who has been convicted of a felony cannot in good conscience be permitted to sit as a Federal judge. Judge Harry E. Claiborne is, and will forever remain, a convicted felon—a man who cannot legitimately preside over judicial proceedings, who cannot with any respect for decency pass judgment on other persons, and who cannot hope to maintain the trust and the respect of the American people.

The House of Representatives submits that judgment is appropriate on article III. Through his convictions for a felony offense, Judge Claiborne has violated the public trust. He has earned a mark of shame, which the evidence proves is sadly but unequivocally deserved. That stigma—his felony convictions in a Federal court—provides a legitimate and sufficient basis for the Senate to determine that he should never resume the Federal bench.

Article IV alleges that Judge Claiborne should be removed from office because he has "betrayed the trust of the people of the United States and reduced confidence in the integrity and impartiality of the Judiciary." The allegations of article IV rest on the same evidence adduced in support of articles I, II, and III. The allegations have been proved by overwhelming evidence. Conviction on article IV, however, rests on a separate and compelling legal theory, which has roots deeply embedded in the impeachment power. In 1936, the Senate convicted Judge Halsted L. Ritter of bringing disrepute upon the Federal judiciary that he had been chosen to represent.

Through his actions, Judge Claiborne also has brought disrepute upon the Federal judiciary. In 2 years, he failed to report over $190,000 in taxable income. He cashed large fee checks at local casinos. He used the tax refund that he received to invest in quarter horses in Mexico and invest in real estate in Las Vegas. The evidence consistently and persuasively demonstrates that his actions were deliberate, purposeful, and willful. When confronted with his crimes, the evidence suggests that Judge Claiborne—and this is what the evidence suggests—lied under oath. He has refused to resign his office. He has continued to collect his salary while in prison. He has drawn scorn upon himself and the Federal judiciary that he represents.

As Members of this body have recognized in prior judicial impeachments, the judges of our Federal courts occupy a unique position of trust and responsibility in our system of government: They are the only members of any branch who hold their office for life; they are purposely insulated from the immediate pressures and shifting currents of the body politic. But with this special prerogative of judicial independence comes the most exacting standard of public and private conduct. As Congressman Norris noted during the impeachment trial of Judge Robert W. Archbald in 1913—

> When public officials disregard their duty and violate the common standards of propriety with impunity, the standard of our citizenship is lowered and the very foundation of our government is threatened. Of all the Departments of Government, the judiciary is, and ought to be, held in the highest regard. Our Government can not perform its full destiny unless the courts are above reproach and the judges above suspicion.

Judge Claiborne has spoken in these proceedings about honor. The American people have their own simple concept of honor. Honor in the eyes of the American people lies in the voluntary payment of one's taxes, not in misstating income and counting on an audit. Honor in the eyes of the American people means accepting and admitting the overwhelming evidence of guilt, not attempting to blame two different tax preparers and then lying under oath. Honor in the eyes of the American people means resigning upon conviction in a fair and valid proceeding, not continuing to collect a Federal salary while in prison. Honor in the eyes of the American people lies in public officials who respect the law, not in those who violate the trust that has been given to them when they are trusted with public office.

Judge Harry E. Claiborne has, sad to say, undermined the integrity of the judicial branch of Government. To restore that integrity and to maintain public confidence in the administration of justice, Judge Claiborne must be convicted on the fourth Article of Impeachment.

CONCLUSION

Respected Members of the Senate, the responsibility which has been placed in us as managers to present this impeachment to the Senate is not a pleasant one. In fact, it saddens us. And indeed, this is a sad day for our Nation, for a Federal judge has defrauded the Government of over $100,000. He has been convicted of these crimes. He continues to press arguments that fail to respond to the evidence. He continues to press explanations that defy common sense and logic. As a result, the Congress of the United States has devoted countless hours and thousands of dollars to this

impeachment proceeding. I invite you to listen one more time to Judge Claiborne's explanation, but when you listen, listen critically and carefully. His explanation will fail to address the evidence, and fail to explain Judge Claiborne's egregious conduct.

On behalf of the people of the United States, and on the basis of the evidence that has been adduced, the House of Representatives submits that the Senate should convict Judge Claiborne on each of the four articles of impeachment. Judge Claiborne must be removed from office.

The PRESIDENT pro tempore. Chairman Rodino, I have been requested to propound a question to you by the distinguished Senator from Alabama [Mr. HEFLIN]. The question is this: Would a conviction under article III based on the fact that he was convicted by a court of competent jurisdiction of a felony set a precedent that a judgment of acquittal on a felony is a complete defense?

Mr. Manager RODINO. I do not believe that that could be the case. It would not set such a precedent. I believe again the Senate, as the body that is the trier of the impeachment, must consider the impeachment on the basis of the facts before it.

The PRESIDENT pro tempore. Thank you.

Thank you, Mr. Managers RODINO and FISH.

Mr. Goodman, have you determined whether Judge Claiborne will participate in the summation?

Mr. GOODMAN. Mr. President, he intends to. I shall, with the President's permission, make the opening address.

The PRESIDENT pro tempore. You may proceed.

Mr. GOODMAN. Thank you.

Mr. President, Senators, it is easy in retrospection to say that the leopard has changed his spots. But as the triers of fact and of law in this trial before the U.S. Senate, common sense must prevail in helping you make your decision as to whether or not you are going to vote for conviction of a fellow citizen, who attained the highest position available to a member of his profession as an article III Federal judge, based on the evidence which has thus far been adduced.

□ 1520

Judge Claiborne, the evidence reflects, has been characterized as a man—and this evidence goes unrefuted; there is not one piece of evidence to the contrary during the presentation before the committee formed pursuant to rule XI—whose character trait for honesty and integrity, for truth and veracity, was impeccable. Brought before the committee, and whose testimony was not summarized in the Ethics Committee summary of the evidence, were numerous character witnesses, gentleman who were former prosecutors, were former States' attorneys, who were members of the bar of the State of Nevada, who testified that Harry Claiborne as a judge was the fairest of judges, who gave all litigants who testified and came before him the benefit of every doubt and every courtesy, and if the verdict was such after a fair and full trial that they were found guilty, he would impose a stern sentence.

He asked for no less as far as his own destiny was concerned but received far less because he did not get the type of trial which is being relied upon by the House managers which he would have provided to a fellow citizen.

These witnesses testified that Harry Claiborne was a gentleman whose whole life was devoted to concepts of fairness and justice, concepts which assured the integrity of the U.S. Constitution and all of its protections to be afforded to those who came before him. Harry Claiborne was deprived of those very principles to which he dedicated himself every living day.

Harry Claiborne, at one point during the course of my representation of him, objected to my characterization of his personality as being unusual, because he saw nothing unusual about his lifestyle and the way he conducted himself while he was an attorney and then as a judge. And I said, "Judge, people don't do what you do and expect to go uncriticized for it." And he said, "What do you mean?" And I said, "Judge, people don't keep a $50,000 cashier's check in their drawer for over a year not earning any interest on it."

That is what Harry Claiborne did, and the record will support it, while he was a judge and supposedly in need of the moneys, as the prosecutor during the criminal trials and the House managers would suggest.

And I said, "Judge, people don't keep $100,000 which you received from a grateful client in a safe deposit box in a casino without drawing any interest and then, upon being appointed to the Federal bench, make a deposit of $75,000 cash of that $100,000 in a bank account in order to satisfy your tax obligation." I said, "People don't do that, Judge, and that is going to be suspect as far as the evidence is concerned."

And he said, "Well, on hindsight, maybe it is a bit unusual but while I was doing it, I didn't think there was anything wrong with it." And I said, "Judge, people don't get a $44,000 check from the Internal Revenue Service, from the Department of the Treasury, as a refund and go to the Golden Nugget Casino in Las Vegas, NV, and cash that check if you are trying to conceal your financial affairs from the Government who has conducted a vendetta against you."

And he said, "That's not the reason I went to the Golden Nugget to cash a check. It was convenient. It was convenient for me to go there with a $44,000 check and cash the check." And yet the same prosecutor who said that there was something unusual about Judge Claiborne keeping $100,000 in a safe deposit box in a casino didn't have the answer as to why the same judge would take an IRS check, which he characterized as a badge of fraud, and cash it at a local casino.

What does this show? It shows a man who really wasn't concerned about trying to protect himself at a time when he should have been trying to protect himself. Harry Claiborne is a man 69 years of age, and while he is here and he doesn't complain about it, it is important that you understand what kind of man he is because he does not complain, as he sleeps in the brig at Quantico in an isolated lockdown on a mattress which is an inch thick. He doesn't complain because he's getting what he desires to achieve by virtue of having this presentation, and he's hoping that the evidence will be opened up so he can expose what is wrong as far as the executive trying to intimidate and chill an article III Federal judge.

He knew from the very moment that he took the bench in Nevada that he was such a target. He tried to have this expressed before the juries that tried him in Reno, NV, and he was deprived of that opportunity. So for the House to say that he received a full and fair trial, he has not received one yet. He's waiting for the day that he's going to get a full and fair trial so he can expose the wrongs and the egregious activity that he's been subjected to. Harry Claiborne is 69 years of age, has lived a life which is admirable, which has caused those who are defending him to defend him pro bono, because they believe that he's one of the few Federal judges who would stand up to an oppressive executive branch and call it the way it was, and he has to be repaid for that.

And mistakes, not willful activity but mistakes caused by himself—he's never said he hasn't participated in the creation of the problem—caused by himself because of his inattentiveness to his tax concerns, based on sloppy preparation and based on sloppy recordkeeping, that it is not enough to have resulted in a conviction and it's not enough to have a man of his background and of his impeccable reputation as a judge doing the things that judges do best to be found guilty in an impeachment proceeding. Judge Claiborne may have acted negligently, may have acted grossly negligently but he did not act willfully.

The courts have coped with the concept of willfulness as it has developed

over the years. Maybe one court says willfulness is an act with bad purpose and another court says it is an intentional effort to violate a known legal obligation. But the bottom line of willfulness is that the taxpayer had to have attempted to avoid his responsibility knowingly, with some purpose to violate a known legal obligation.

□ 1530

In this particular instance, on the facts of this case as they have been presented to the committee, under the certain circumstances that the committee conducted their reception of the evidence, I submit to you and each of you that willfulness was not proved; and anything less than that, any standard less than that, does not satisfy the burden which was assumed at the inception of the proceedings by the House managers, where they said: "You can count on the fact that we will not deviate"—because I asked for a bill of particulars concerning this, and they said: "We will not deviate from our position that we can prove, by whatever standard of evidence the Senate wants to apply, that Harry Claiborne acted in a willful manner."

Harry Claiborne was educated in Arkansas. He comes from a humble background. He worked his way through school. He served this country well in the Armed Forces. At the conclusion of his service, he went to Las Vegas, NV, when Las Vegas was a small, friendly community, where a man could not specialize in any particular aspect of the practice of law but, rather, had to be a general practitioner.

He held himself out to the populace of Las Vegas as a man who wanted to be a good lawyer. He worked in the district attorney's office, and he served the community well. He was elected to the State assembly, and he served the community well. He went into private practice, and he handled all types of cases; and to this day, he receives letters and commentary from people who said: "I remember Harry Claiborne. Harry Claiborne is the man who, when I was being operated on at the hospital, stopped and said, 'You'll be all right.' Harry Claiborne is the man who, when I couldn't afford to pay the fee said, 'I'll represent you for nothing, and when you can pay me, bring the money by.'"

Harry Claiborne was interested in only one thing, and that was that the citizen he was representing would be represented in the best manner, the best tradition of the profession, whether the individual could pay or not. Harry Claiborne was not interested in the monetary aspects of the practice of law. But because he worked hard, he was rewarded financially for his efforts.

He began to represent high profile clients. He represented movie actors and movie actresses, and he represented unpopular people.

He and I, at one point in time, represented a fellow who was charged with a sexual assault on a little girl. I will never forget, I took my wife to the supermarket one day and somebody said, "Are you representing this undesirable—" using expressions far worse than that, and virtually spit in my wife's face because her husband was representing somebody of that ilk and that nature.

That does not mean to say that Harry Claiborne, when he represented unpopular people, had to like those people, although I can assure you he found something good in everybody he represented, and he formed a relationship that they knew they could be truthful with him and he would not sell them down the river.

Harry Claiborne represented these people to the best of his ability, and he represented reputed members of organized crime. He developed a reputation as giving no quarter, but he was going to make sure that these unpopular persons received the same constitutional guarantees that any other citizen would receive, and it did not matter what they were being labeled but, rather, he was going to make sure that the Constitution applied equally to them.

During the course of representing these types of people, the unpopular and the hated, Harry Claiborne made enemies along the way, and he knew it. These were not secretive enemies. These were people who came right out and said, "We don't like you, Harry Claiborne."

Then, in 1978, something happened in his life that was his goal. He took a position which meant more to him than maybe any lady and gentlemen in this Chamber can understand what it is like to attain, a lifelong ambition. He became a nominee for a U.S. district court position for the district of Nevada. He was sponsored by Senator PAUL LAXALT and Hon. Howard Cannon, who is at this time participating in his defense.

He took the position because he wanted to make a lasting contribution to the profession that he dedicated his whole life to. As an aside, I can tell you that as a practicing attorney he worked as hard as any lawyer I have seen. We have tried cases together, and we worked Saturdays and Sundays and into the night, and the hours melded into days and the days into weeks, and it did not matter. It was not a matter of counting the dollars that were being made. It was a matter of accomplishing the result that the profession obligated us to perform. He did it without any conception that he was in the practice for the purpose of making money.

As a lawyer, before he ascended to the bench, Harry Claiborne had a law business. Many of you Senators were in the private practice of law, and when you have a law business, you run it not only as a profession but as a business, and you set up certain protections as far as reporting your income is concerned. Harry Claiborne, in fact, set up such mechanisms in his office. He realized that the least important thing to him as a lawyer was to account for the moneys that were being earned.

What did he do? He said to his secretary, "Send all my bank statements to Joseph Wright"—Jay Wright, his longtime accountant, who had been his accountant for a 30-year period—"and have them go directly to Mr. Wright's office, and send over my receipts to him, and send over everything to him so he can prepare the return."

Jay Wright had one standing directive from Harry Claiborne, and that directive was, "If there is ever a question about an item that you have before you, treat it as income, because I don't want a problem with the IRS." Because when Judge Claiborne was Attorney Claiborne back in the 1960's, he underwent an audit by the IRS that was disruptive, and he never wanted to go through an experience like that again; and he instructed his tax accountant to report every cent and—in the words of all the witnesses who can testify to it—"Give the IRS, give the Government, the benefit of every doubt."

That is what he did, and he reported this income to his accountant, and he trusted his tax preparer to file an appropriate return. Harry Claiborne made his disclosures to his tax preparer, and he relied on the tax preparer preparing the return in a manner which was consistent with good accounting practices.

The trust went so deep—and, once again, it is easy for us to be critical of the man on hindsight—but the trust went so deep that on more than one occasion he signed his tax returns in blank. Shame on him and shame on his accountant, who permitted him to sign the returns in blank. But it was not done with any malice or willfulness or any intent to violate a known legal obligation. It was just a matter of trust between himself and his tax preparer.

The record is unrefuted that in 1978, which was an original year in the indictment in this case, which was ultimately dismissed by the Government after the first trial ended in a hung jury, Harry Claiborne, when he was assigned by Chief Judge Browning on the ninth circuit to sit on a case in Washington, knowing he was going to be out of the community, signed the return in blank; and Jay Wright filled in the return and filed it with the Government, and the tax obligations were satisfied.

The same procedure was followed in 1980 for the preparation of the 1979 return, when Harry Claiborne knew that he was going to be assigned to Los Angeles on this judicial function, and he signed the return so it would be filed in a timely manner.

□ 1540

Now, it is crucial in ascertaining whether or not Judge Claiborne acted willfully to understand, as I tried to give you some flavor about this morning, what the community was like in Las Vegas, NV, at the time that he provided the information to his tax preparer, a matter which is glossed over and it is so easy to do it when you look back some 4 or 5 years and you try to reconstruct events, and it is unfair in many ways when that type of process is used when you say that Judge Claiborne provided Jay Wright with information about his financial condition and about fees earned and you gloss over the fact that that information which was provided to Mr. Wright in March 1980 was not for his tax purposes. It was for the purpose of a letter to be written to have a mortgage guaranty, and Judge Claiborne indicated that the mortgage company wanted to know what his income from private practice was, and Judge Claiborne said based on a very cursory review of his records and thinking about his financial condition he writes to his accountant that his fees earned from his private practice, and this isn't fee splitting and, as I said before, this was money earned by Judge Claiborne when he was in private practice, he said, "I earned $46,000 from my private practice."

That was more money than in fact he did earn, but that information wasn't even being provided to Mr. Wright for tax purposes. It was being provided for a purpose completely separate and apart from that.

Then just a little bit later when I indicated to you that the search and seizure took place in the strike force office where he was characterized as an "ayatollah," where he was condemned by the Executive, where he was advised in the media that he was going to be a target and was targeted for an indictment by a grand jury for something that he had nothing to do with whatsoever and he lashed back at them on April 9, 1980, indicating that in fact they were a bunch of bastards—pardon the expression, because that is what he called them, and it was reported as such in the media, certainly not a shy effort on his part and not one which would not incur the wrath of the Executive.

Judge Claiborne 2 days later writes the letter for tax purposes for the first time providing information to his tax preparer for tax purposes where to the very penny he advises the tax preparer what he earned from his private practice and relied on the tax preparer to prepare a return which was consistent with good accounting principles. That is where his defense was on the issue of willfulness.

And to suggest once again using our common sense that he would do anything to defraud or do anything which would be considered to be willful concerning the providing of this information to the preparer, I think borders on the incredulous; it makes no sense because the one thing the record does suggest is that Judge Claiborne is not a foolish person. He may have been a careless person. He may have been negligent or grossly negligent. But he certainly was not the type of person who was acting in a manner to commit an offense against the United States.

In the trial—in the trials I should say—the trial court would not permit any evidence to go to the jury concerning the atmosphere of the Las Vegas community as it applied to Judge Claiborne and, in fact, what the jury had before it in making its determinations were the two barebone tax returns for 1979 and 1980 which when taken out of context are in many ways inexplicable, but placed within a context certainly the trier of fact had to take into consideration that somebody who had the type of heat on them, the type of vendetta against them, the type of pressure against them would not engage in any activity which would be considered willful, and because of that the prosecutor from the public integrity section, who was prosecuting the case, and the agents who were preparing the witness and the witnesses from the IRS and FBI, they knew that the truth could not come out and they created a scenario which was suggestive of the proposition that in fact there was no delivery by Judy Ahlstrom of the April 1, 1980, letter wherein the judge declares his entire fees earned from his private practice.

And even though we were able to show without any equivocation that the letter was consistent with the other documentation which you, as Senators, have before you in volume 4 to the effect that there was an $8,000 check written to the IRS with a certain number affixed to the check and a W-2 which was submitted at the same time, along with this letter, and then later on that same day there was another check written for $2,500 by Judge Claiborne with a number next in seriatum to the one for $8,000, notwithstanding that, it wasn't enough to overcome their position that there was some type of scenario created where Judy Ahlstrom was in fact lying to the jury.

But what has happend as a result of this public inquest? People who became aware and familiar with the allegations that were being made, seeing it on television and reading in the newspaper, came forward and they said wait a second, wait a second, said Ken Swanson, "I was in Jay Wright's office on the day that Judy Ahlstrom did deliver a package, and somebody said 'there's Judge Claiborne's secretary, she's delivering an envelope here'." Then we talk about the accusation that documents are being created.

We get a phone call, my office receives a phone call, from a woman out of nowhere for the first time saying that she worked for Jay Wright and she knows of her own personal knowledge that Judy Ahlstrom brought in an envelope that day.

So all of a sudden Judy Ahlstrom is corroborated, and it is not placed in a position where they can criticize her credibility, a young lady who—and I submit anybody, anybody in the world to refute this—a young lady who when she was testifying at the trial in Reno was petrified, was terrorized by the trial court and she expressed that to the committee pursuant to rule XI, and she said she was able to come forward now and express herself in a more credible manner because she was not afraid anymore.

This was a constant recurring theme—they weren't being intimidated anymore, they felt comfortable to let the truth come out. So Judy Ahlstrom now, according to the concession on the part of the House managers, is not being called a liar anymore.

Now the story is being shifted a little bit, OK, well, nobody ever said that she didn't deliver the envelope, nobody ever called Judy Ahlstrom a liar anymore. All we are saying now is that the letter which she testified to under oath, swearing to God about, that the letter wasn't in existence at the time on April 11, 1980.

I submit to you that if you believe Judy Ahlstrom in one aspect of her testimony, you have to believe Judy Ahlstrom in another aspect of her testimony unless you can show that she lied in one aspect of our testimony and then you have the right not to believe her in all aspects of her testimony.

And Harry Claiborne provided this information to his tax preparer; and unfortunately, once again, when you try to put together the shattered egg and have sense made out of it, 4 years back, it is so very difficult to come up with smooth-fitting explanations because you weren't preparing at the time that the events were taking place to defend against conversations that took place between Jay Wright and Harry Claiborne over the phone where they were exchanging information, and you have Jay Wright who is ready to testify to anything during the trial up in Reno, during the second trial in Reno, during the hearing before the rule XI committee because the gentleman says, and I don't hesitate in saying it, he says, "I don't remember anything," he says "I have no inde-

pendent recollection of any fact whatsoever," and what we did as we sat down with Agent Skelton of the IRS, Agent Skelton who is my friend now, and we spent maybe not 100 hours, I think the proof is before the committee 45 to 50 hours together. And when Wright came back to testify before the committee who did he call up to go to dinner? Not Oscar Goodman. He called up Mr. Skelton. He wanted to go out to dinner with Mr. Skelton. But they didn't discuss the case.

□ 1550

And I ask you, if you are not going to hear live testimony to see who is telling the truth, see who is telling the truth as far as the presentation is concerned and the way Mr. Skelton reacted under cross examination, see whether, as the House managers said, he was sitting there and not sweating and not moving his hands like that.

I submit to you that if the camera was on him, he was scared to death because he knew he was not telling the truth. He knew he was lying. That is the type of person who is preparing this person, Mr. Wright, who had no independent recollection. And that is the truth. And I address the verdict on that truth.

And Mr. Wright says, after he is being interviewed during these 40 to 50 hours by the representatives of the Internal Revenue Service and the strike force and the public integrity section, who don't have any notes, who violated every statute and regulation concerning the preparation of memorandum, who just willy-nilly worked with this man to create his testimony, they all take the position that at no time did Mr. Wright indicate anything other than the fact he could not have lost, could not have misplaced the April 11, 1980 letter.

And it was not until the national inquest began when Mr. Swanson, Ken Swanson, came forward and he indicated, he said: "Wait a second. Couldn't have misplaced anything? Couldn't have lost anything? My goodness, at this point in time, Wright's office was burglarized on four or five occasions and nothing of value was taken. I think at one time he testified maybe a calculator was taken. The rest of the time it just looked as if somebody was looking through files. There were files on the floor and we really couldn't tell what was missing and what wasn't missing because we did not have any catalog system."

And that was consistent with the woman who indicated she called. Judy Ahlstrom brought the letter because they were looking for something, Mr. and Mrs. Wright. After the letter was brought in, for the next several days they wanted to know where that file was, there was the material that Judy Ahlstrom brought in. And they looked everywhere for it.

So to suggest, as was suggested during the criminal proceedings and the inference which the House managers ask you to draw, that there was some lie about Judge Claiborne's disclosing all of his income in private practice to Jay Wright, I believe is patently unfair. It is an unfair characterization and does not help achieve the truth in this factfinding process.

And the return went in. And there is no question that there was income omitted on the return, but the question is, when you take Judge Claiborne as a person whose character for honesty, integrity, and truth and veracity has gone unchallenged, with his background, you ask yourself, was it an intentional, willful act on the part of Judge Claiborne or was it a negligent, careless act on the part of Judge Claiborne? Did Judge Claiborne have a right to rely on his long-time accountant? Did Judge Claiborne advise his long-time accountant of the fees received from his private practice?

And I submit, at the conclusion of weighing all of this evidence, no matter what standard you use, either that of reasonable doubt—which I urge you to adopt, that type of doubt which makes you hesitate in the most important of your own affairs—or whether you use a lesser standard or you vote your conscience, whatever is your prerogative as U.S. Senators, I submit to you that under that set of facts you can't in good conscience vote for a conviction on count 1 of the Articles of Impeachment, not when the evidence strongly suggests that the judge did what he did without the type of willfulness which is required by the allegations in article I.

Judge Claiborne developed a new enemy—and once again these are not pleasant allegations to make, but they are real allegations and they are allegations that we have never been able to litigate. We have never been able to have a forum where we could put a former member of the executive branch, Joseph Yablonsky, a special agent in charge of the FBI office in Las Vegas, under oath and ask him whether or not he set out to get Judge Claiborne as part of his vendetta against Nevada and Nevadans and the Nevada community and his effort to plant the flag, the American flag, in the desert. We have never been able to ask him about this.

But Judge Claiborne knew. He knew, and if you will permit us to bring our witnesses forward we would be able to prove to your satisfaction beyond a reasonable doubt, he knew that Joseph Yablonsky was invading and encroaching upon Judge Claiborne's liberty and lifestyle and touching those around Judge Claiborne in an effort to substantiate charges against Judge Claiborne.

I told you about this attorney that I represented who was offered $50,000. All he had to do was give it to Judge Claiborne to fix the case; didn't matter whether it went directly to Judge Claiborne, it would have gone to me and I could have passed it on to Judge Claiborne and this would have satisfied Joseph Yablonsky because then he would have had Judge Claiborne.

But this particular attorney from Miami indicated he wasn't interested; he didn't believe anybody would get involved in that kind of activity. And, interestingly enough, this attorney had as an employee at one point in time in his office in Miami the wife of Joseph Yablonsky acting as his secretary.

And there was another individual whose relationship to Judge Claiborne has not been developed here for your consideration, and that is a gentleman by the name of Eddie LaRue. Eddie LaRue was a private detective and Eddie LaRue was the private detective who supposedly had setup these bugging devices which Judge Clairborne was being investigated about, which caused the headline in the prior year, 1980, in the newspaper, saying he was the target of a grand jury investigation.

Eddie LaRue was not as fortunate as some of the others who were being stalked in order to get Judge Claiborne. Eddie LaRue was indicted and the prosecutor who prosecuted him was not a Nevada prosecutor or was not a member of the U.S. Attorney's Office but rather was a public integrity section attorney who was sent out from Washington, DC, not because he was sent out to prosecute Eddie LaRue, but because he was sent out to get Judge Claiborne, because he had no jurisdiction over Eddie LaRue. He had only that jurisdiction over some Federal official who was being targeted by the executive branch of government. Eddie LaRue was offered a sweet deal.

They said, "Eddie, you don't have to go on trial in Reno." Right before it was supposed to start, 3 days before the trial was supposed to start, they moved the case out of Las Vegas and deprived him of all of his character witnesses and took him to Reno where the judge was brought in to try the case from Salt Lake City, UT, and completely disassembled LaRue's defense mechanisms. He went up there to Reno and he was offered a deal where he could escape the prosecution, the unpleasant experience of having to defend oneself in a court under indictment and was told, "Eddie, we won't push for the 25 years if you give us Judge Claiborne," And Eddie said, "I have nothing to give you on Judge Claiborne." And, fortunately for Eddie LaRue, Eddie LaRue was acquitted by that jury in Reno.

Chuck Lee was a detective with the Las Vegas Metropolitan Police Depart-

ment. Chuck Lee was approached by Harry Claiborne when Harry Claiborne found out he was under investigation for this illegal bugging activity. And Harry Claiborne said to Chuck Lee because he was such a good polygrapher, the best lie detector in Nevada, Harry Claiborne said, "Give me a lie detector test. Make sure that I can bring documentation to somebody to show them that scientifically I am telling the truth."

And Harry Claiborne took the lie detector test and, of course, he passed the lie detector test and took the results. And when the Federal Government found out that he had the results about the lie detector test, they went after Chuck Lee and they accused him of creating another fraudulent document, another phony set of documents because, apparently, anything that Harry Claiborne came into contact with had to be fraudulent, had to be phony, when the Federal authorities were characterizing it.

□ 1600

And Chuck Lee was able to show that his work product was of course legitimate but while showing that he was punished, too, and he was demoted from his high office to that of a desk sergeant with the police department.

I am not going to go on and on telling you about each one of these people, but there is one that is pretty important. That is the District Director of the Internal Revenue Service for the District of Nevada, a gentleman by the name of Gerald Swanson. Gerald Swanson was approached to OK the tax reduction on the tax liability of Joseph Conforte that I indicated to you this morning, the $16.5 million reduction in order to have Conforte testify against Judge Claiborne. Swanson said he would not believe Conforte, and he wasn't about to engage in that type of activity. So what happened? The Internal Revenue people went beyond Swanson, went around him, and they got permission from other persons within the Internal Revenue Service to make a deal with this panderer and procurer in order to get Judge Claiborne. They set up a sting operation for Swanson. And he did not buy the sting. But that didn't end there because Gerald Swanson found himself being drummed out of Nevada from the district director's position to some type of collection job in Dallas, TX, away from his wife and away from his family. They broke his life in half as well.

There was one after another of the people who were in jail who were approached by representatives of the executive to give them Harry Claiborne, and they had the key to their own cell. They could walk out. And there is an attorney who I wanted to call as one of our witnesses who didn't know Joseph Yablonsky from Adam, who came into Nevada with a friend of his and went to Yablonsky's office and after being there about 5 minutes Joe Yablonsky, to a complete stranger, pointed to his wall and he said, "You see that empty space there? That is where I am going to put Harry Claiborne's picture." And all of the other pictures on Joe Yablonsky's wall had victims of his targeting activities throughout his career as a 20-plus-year agent with the FBI, and it had a blank space there that he told a complete stranger he was going to put Harry Claiborne.

With that state of mind that Harry Claiborne purportedly, according to the theory of the House and according to the theory of the prosecution during his trail, indicated that he engaged in an act of willfulness. I submit to you that under those circumstances Harry Claiborne knew full well that he was going to be a target, and it belies once again fragility. It just is impossible for one to conclude that he was engaging in an intentional lack of willful act and act of bad purpose, an act to violate some known legal duty when he participated in providing the information to his tax preparer for the preparation of his 1980 return.

Now, you are being asked to draw some inference from the fact that Judge Claiborne switched accountants. Once again, Judge Claiborne wasn't preparing a defense for an impeachment proceeding or for criminal prosecution. Judge Claiborne was with a former wife of his in 1981, a woman he felt a great deal of affection for, who utilized the services of Jerry Watson. And she went to Jerry Watson's accounting office, and she delivered some papers to Jerry Watson.

Judge Claiborne didn't go up with her when she delivered these papers but when she returned she said "Harry, my accountant would like to meet you." Now, there is nothing untoward or illegal about that. There is nothing untoward or unseemly or illegal to change your tax preparer. Judge Claiborne's needs had changed from the time he had his business where he was reporting all of these checks received in the normal course of his business, and he did not have that type of accounting bookkeeping need any more.

He got a couple of checks as a result of income earning in his private practice. I believe only four checks for the year of 1980 were received in 1981. He received his check from the Federal Government. He cashed some of these checks at the Las Vegas casinos.

As I indicated to you before he cashed the $44,000 refund check that he got in a Las Vegas casino. So to draw some kind of inference once again that there is something unseemly or untoward or nefarious about cashing checks in Las Vegas, NV, is I think completely unfair under the circumstances. It won't happen in Philadelphia, PA. It may not happen in Omaha, NE. But in Las Vegas, NV, these casinos are virtual banks. There is nothing wrong with somebody going in where they are known to be able to cash a check anytime day or night. There is no obligation. There is no legal requirement.

They can do your financial transactions at a bank, and Harry Claiborne has no obligation to account for where the moneys went and where they were spent. It is not a crime to cash a check. It was not a crime for him to cash a check that he received as part of a fee, and it was not a crime for him to cash a check that he received as part of a refund.

What he did is he met Jerry Watson. I think it is important for one to judge Jerry Watson either on a video tape or in person because you will see a fellow who has an answer for everything. He is a jack of all trades. Judge Claiborne was introduced to him and recognized him as being a fellow member of the Baptist Church. They had seen each other. When Judge Claiborne was in his office, he heard Watson talking on the phone. Watson puffed, and he impressed the caller. And Judge Claiborne listened to him, and rightfully or wrongfully—and upon reflection wrongfully, but not willfully—Judge Claiborne was impressed by Jerry Watson.

One would say, how could you be impressed by Jerry Watson? How could you be impressed by this man who doesn't know anything about anything and yet holds himself out as an expert on everything? I think the committee members under rule XI were scratching their head. How can you rely on this Jerry Watson? Well, Harry Claiborne wasn't the Lone Ranger because when the evidence was finally brought out and was brought out for the first time and never brought out in any of his trials, and of course that doesn't matter as far as I am concerned, and I submit to you that your determination is an autonomous determination as the trial of the Senate. But Jerry Watson didn't have just one professional client. He had plenty of professional clients. The record shows he represented businessmen and prepared their returns, that he represented doctors and he prepared their returns, and what happened as a result of all of it? Jerry Watson ended up in an involuntary bankruptcy because he got everybody in trouble who touched or came into contact with him in addition to Harry Claiborne.

But these other folks weren't indicted because they didn't have the vendetta going with the United States executive. Harry Claiborne was indicted. He was not contacted by the IRS. You want to talk about frame of mind and

you want to talk about the circumstances in a particular situation, I researched because Senator HEFLIN had queried what the procedure was concerning who makes the determination as to whether a matter is handled civilly or criminally, whether it goes under one or whether it goes directly through indictment as far as the IRS is concerned.

I researched it the best that I know how. I contacted representatives of the IRS and people who specialized in criminal tax practice. The bottom line, as I understand it, because we have not been permitted to bring in an expert here to ask the question, is that it is discretionary, that it is in the decisionmaking process of the investigators. And they made that decision.

Can you imagine somebody who was acting willfully, can you imagine somebody who was acting willfully with an intent to cheat his Government to defraud, to get away with something, to hide when he knows he is a target, can you imagine him signing a tax return which was in pencil, which had arrows pointing on it, "type here" which kindly is described as an abomination? Not willful. Foolish maybe, careless, maybe not even with the intention to think it was the final product, 4 or 5 years later to explain why you signed a document, and to come up with a logical explanation of it when you had your instant immediate problems and concerns and work, at the time that the event took place where you cannot reconstruct an answer which is palatable, when you are sitting back, you are calm, relaxed, and you thought out the process.

□ 1610

Why did he sign that? I do not know. I would not have signed it. But I sure would not have signed it if I was looking to cheat my Government because it was a red herring. It was a flag that said, "If you want to get me, here it is, come and get me," because the return was horrendous.

But interestingly, because we are asked now for the first time in my proceedings to find that Harry Claiborne willfully cheated on his return as far as the real estate treatment on the return, I think it is the 2119 form, the first time that we are asked to find that he did something wrong willfully, with bad purpose, with a knowing intent to violate the law, believe it or not after two trials in Reno, with Government experts sitting down and culling over and looking at the document and trying to examine it and being critical of it. Two trials in Reno and not one Government expert picked up that there was anything wrong with the treatment on the return of that particular real estate transaction, not one.

We had a tax lawyer who was representing Judge Claiborne during the case. He did not pick it up.

We had multiple Government prosecutors and IRS agents. They did not pick it up.

For the first time, before the Senate rule XI committee, it was picked up, and I submit to you that that is not the type of situation which suggests a finding of willfulness or bad purpose on the part of the taxpayer.

Now, what did Judge Claiborne do?

During the trial and up until, once again, when we come before the Senate when we were able to show, because witnesses are not afraid of coming forward and bringing all the evidence before the trier of facts, before the committee who was receiving or sifting through the evidence, we find for the first time that now—well, let me go back because I have to tell you what happened during the two trials.

During the two trials, once again Judge Claiborne was accused of phonying up some document, of creating some document for purpose of escaping conviction. The suggestion was clear that on the $88,500 which he provided to his tax preparer which represents virtually the very figure—a little higher—the amount earned from his private practice, for the first time it is conceded by the House, for the first time because it has always contested it, for the first time it is conceded that the $88,500 was provided by Judge Claiborne to his preparer and there was never any question about it.

The reason for that is this: Because Watson indicated that the $88,500 had been given to him, but Watson, because of the fact that Watson is incredible, Watson could not be believed. But our Government, our executive branch of the Government and the prosecutors, had within their possession at the time the case was tried in Reno, NV, a statement from Charlotte Travaglia, Watson's assistant associate, where she indicated that she had that figure within her possession, and they show that Charlotte Travaglia would not talk to Claiborne's lawyer because she believed that she was a prosecution witness and was precluded.

It was never brought to our attention, and Charlotte Travaglia was never brought forward as a witness at the trials to testify that this fact that was contested was, in fact, an untrue fact. That was withheld.

I submit to you that not only was it withheld by the executive but like so many of the other documents where people do not want to hear these things once again, where things were placed under seal and provided to the trial court and should have been provided to the defendant so that an appropriate defense could have been raised for Judge Claiborne, that envelope with these documents, believe it or not—and that is why I have to take issue with this concept of article III, that Judge Claiborne received a full and fair trial because he received a proceeding far less than that—that envelope that has exculpatory material in it was not opened by the trial judge, and when the special panel—because everything with Harry Claiborne is special—when the special panel was appointed from parts of the country other than the ninth circuit and they sat and reviewed the proceedings to determine whether or not Harry Claiborne got a fair trial, they did not open up that sealed envelope.

The first time the sealed envelope had ever been inspected has been an in camera inspection as a result of our moving for it, and the committee under rule XI receiving it. We have been advised that an independent in camera investigation was made. That is the first time.

So I do not want to hear about fair trials. The only fair trial that Harry Claiborne is ever going to get, if he gets one, will be before the U.S. Senate, because he has not received one yet.

Not only did Harry Claiborne provide for his tax preparer the figure of $88,500 but he did far in excess of that. He provided the tax preparer, as any other taxpayer would under the circumstances where he was going to a new tax preparer and wanted a complete review of his tax situation, he provided him with returns going back—he really could not understand why Watson wanted it but he gave it to him anyhow even though it seemed like an unusual request—the tax returns going back to 1973.

He knew that Watson said he was going to review everything and get the best possible return for the taxpayer. We all try to do that.

Once again, Harry Claiborne said to Watson and the evidence does not refute it as far as this is concerned, "Make sure that everything is done properly because I got enough problems. I got enough heat with the FBI. I don't need it with the IRS."

That goes to the issue of willfulness. Harry Claiborne gave Watson escrow instructions, briefings, sales agreements, trustees, promissory notes, contractor agreements, canceled checks, bills, invoices, tax returns, everything, so that Watson could prepare an appropriate return.

Watson held himself out to Judge Claiborne as having two fine accounts, one account handling over a million dollars. That was the kind of accountant that was taking care of Judge Claiborne's return. Watson promised Judge Claiborne, and this is the cruelest joke of them all, "Don't worry, Judge, the returns will not only be prepared by the tax preparers who

work for me who have the expertise, but I am personally going to supervise it."

Well, he supervised it and he permitted a situation to exist in his office where he penciled—I refuse to give it the integrity of a return—penciled a 1040 form held together by a paper clip signed by Judge Claiborne as a result of receiving a phone call from the secretary in Watson's office. The entire return, the evidence showed, was prepared without Harry Claiborne's input as far as treatment was concerned.

There were discussions about the law practice, there were discussions about the sale of his home, and information was provided to the tax preparer. But the ultimate determination was made by Watson's office and the return reached the IRS in pencil form. Judge Claiborne was never contacted regarding it in order to see whether he could resolve the situation short of being indicted.

Judge Claiborne, when he thought there may have been something wrong with the return, he questioned Watson about it. After he received the refund he questioned Watson about it. Watson even had the audacity to tell Judge Claiborne that the return was OK, "Don't worry about it, Judge, because I checked it with two IRS agents."

It does not matter whether it is true or not, but that is what Watson told Judge Claiborne.

Judge Claiborne once again has a contraindication of willfulness, of fraud.

Judge Claiborne took that check and I tell you, if you are trying to cheat your Government you do not take an IRS check to a casino and cash it. But Judge Claiborne took that check to the casino and cashed it. No crime. But to suggest that it is a badge of fraud, a badge of willfulness, I submit once again does not make sense under the circumstances and what existed at the time as far as Judge Claiborne's mental frame of mind was concerned.

One other thing that I think is crucial when we are looking at willfulness and frame of mind is 1 month from the time this return was signed, the 1980 return was signed, by Judge Claiborne under the prosecution theory that he did not tell Watson about the $88,500, 1 month from that point in time Judge Claiborne filed with the Judicial Ethics Committee a financial disclosure statement.

□ 1620

That financial disclosure statement declared an amount from fees from private practice during the year 1980 of $88,500. Now there is a principle in law that the right hand is supposed to know what the left hand is doing. To suggest that Judge Claiborne was trying to commit some kind of deceitful act with the IRS, a part of the United States of America, and to tell the truth to the Judicial Ethics Committee, a part of the United States of America, once again, makes no sense. It is that type of context that we have to ask ourselves, was Judge Claiborne willful or was he careless? I submit you have to find at the worst that he was careless.

Now, we then get to article IV, because I submit that based on the record that is before us, he did not receive a trial worthy of consideration as receiving some type of summary judgment of collateral adoption under article III of the Articles of Impeachment.

As to count 4, has Harry Claiborne brought discredit upon the judiciary? I think the historical background as indicated by the House managers, which forms the precedents for an allegation such as article IV, is really found within the context of the Ritter impeachment back in 1935. We have to be careful when we analyze precedent in impeachment proceedings. Judge Ritter was charged with seven Articles of Impeachment. Six articles were substantive-type offense which related to the judicial function. Even article VI, which was cast on a concept that he was guilty of income tax fraud, related to article I in the Ritter Articles of Impeachment. There appeared in a document showing where he appointed one of his friends, a sum of money which was not there in his tax return. So all of the articles related to the judicial function. So historically, the Articles of Impeachment under which a Federal judge has been charged have related to the judicial function.

In my research, this is the only instance in the history of this Republic that an individual has been charged with a situation outside of his judicial function, because nothing that is being charged against Judge Claiborne reflects on his judicial performance or on the way he dispensed his judicial obligation. In Judge Ritter's situation, he was found guilty of the seventh article, which was a catchall, but the catchall directed itself to the activities which related to the judicial function. In this particular situation, we do not have that.

The fourth article under which Judge Claiborne is charged in the Articles of Impeachment does not go to a violation of his judicial function or misconduct as far as being a judge. It is a general article and it talks in terms of its bringing discredit to the judiciary.

I submit this to you: Every once in a while, in a perfect society, and our society is about as perfect or as close to perfect as you can become, there is an aberration. I submit that based on all of the circumstances surrounding the prosecution of Judge Claiborne, this was an aberration. But the one thing that Judge Claiborne can stand proud about is that the record as it exists before the committee pursuant to rule XI suggests that his judicial function was performed with integrity, was performed with scholarship, was performed with dedication, and he was the valued public servant that one seeks to have serving in the judiciary in the American public.

I submit that instead of being looked at with scorn and ignominy as a result of his contesting the impeachment proceeding, instead of throwing up his hands and saying, "I quit, I resign," I think the fact that he has gone through this because he believes in his innocence, that he has gone through this to carve out an example with the American public that our system of separation of powers does work, that it is vitally important that the integrity and the independence of the Federal judiciary remain intact and not be chilled as a result of the acts of another branch of government—that he does all of this at his own personal physical and mental and emotional expense, that he undergoes this traumatic experience for the purpose of accomplishing something as an American citizen, should not bring him into a context of causing discredit to the judiciary. Rather, it should cast him in the mold of an individual who is carrying through to the very end what he believes in and what he has dedicated his life to as a public servant serving the people of Nevada, both as a practitioner, a lawyer, and as a judge.

I submit to you that the proper determination under the circumstances that have been brought to you would be to bring these witnesses forward and to evaluate after you saw them whether or not, within the context of the hatred and the vendetta and the bitterness and the acrimony that existed at the time that Judge Claiborne is charged with committing willful violations, whether anybody would have engaged in such activity under those circumstances.

I submit to you that if in fact you make that reserved judgment, you will conclude that you must find in performing your autonomous function that Judge Claiborne, as a member of an equal branch of government and entitled to that respect as an article III judge, should be acquitted and found not guilty of the four Articles of Impeachment.

RECESS FOR 15 MINUTES

The PRESIDENT pro tempore. The distinguished Senator from Maryland.

Mr. MATHIAS. Mr. President, I suggest and ask unanimous consent that the Senate may take a 10-minute recess at this point.

The PRESIDENT pro tempore. Without objection, it is so ordered.

The Senate will take a 15-minute recess.

(Thereupon, at 4:28 p.m., the Senate recessed for 15 minutes; whereupon, at 4:53 p.m. the Senate reconvened when called to order by the Vice President.)

□ 1750

The VICE PRESIDENT. The Senate will be in order.

Senators are asked to take their seats.

The majority leader is recognized.

Mr. DOLE. Mr. President, I am permitted to make an announcement?

The VICE PRESIDENT. Without objection, the majority leader.

ANNOUNCEMENT

Mr. DOLE. Mr. President, let me announce that between the hours of 6 and 7 in room S-230 we will have guests of myself, the distinguished minority leader, Senators LUGAR, PELL, and METZENBAUM. Mr. and Mrs. Orlov and Mr. and Mrs. Daniloff.

The VICE PRESIDENT. Counsel may proceed.

Mr. GOODMAN. Mr. President, with your permission may Judge Claiborne address the honorable body?

The VICE PRESIDENT. He has that right.

Mr. GOODMAN. May I also raise the question of a quorum being present?

The VICE PRESIDENT. Under the order the Chair is prepared to count for a quorum.

Senators are asked to take their seats so the quorum count may be concluded.

A quorum is present.

Mr. Claiborne.

Mr. CLAIBORNE. Mr. President, the distinguished Members of the Senate, distinguished Members of the House, and my attorney:

I don't think I will take as long as the other people that have addressed you because I have a very sore throat. But I did want to talk to you primarily I think to let you see me. I kind of feel like a piece of meat that is thrown out to a couple of dogs, jerking back and forth for possession, between the engagement between the House managers and my lawyers.

I have been called a liar three times in my life, once in Reno, NV, in my second trial by a member of the Justice Department, one of my prosecutors, and once here today by Mr. FISH and once by Mr. RODINO.

□ 1700

I find those charges, to say the least, unsettling. But on reflection, I think, considering the number of trials that I have been in in my lifetime, that maybe it is a compliment after all that I am only called a liar three times in my adult life.

You were told that we would make some wild charges about vendettas. In fact, Mr. RODINO asked you to listen carefully to what we say in that regard. He said something about the old adage of if you didn't have the facts, you would argue the law, and if you didn't have the law with you, argue the facts. And he indicated that our charges of a vendetta were somewhat less than realistic and maybe that we were paranoid. Nothing could be further from the truth.

I want to be honest with every Member of this body. I would much rather right today be almost any place than here. But I knew when I was convicted that this was the place that I had to come. And I have felt that I was not dealt fairly with on the trial level, in that on the trial level, they refused to hear my pleas, if you please, of Government misconduct against me. And the appellate court turned a deaf ear also.

And I knew that I had to go somewhere. I knew there would be somewhere, somebody that would listen. And I told my lawyers and I told everyone that was concerned with my personal life that somewhere along the line, some judge is going to say, "Wait a minute. Wait a minute. What in the world went on? What happened?" And when the time comes that that judge will say that, I would receive some relief.

I am not fighting here for a judgeship. That may forever be gone. I am not fighting for my freedom, because I have given up a large part of that, and I know I will give up some more before I am released.

There is more involved than Judge Harry Claiborne of the District Court of Nevada. And what is involved is a spirit of fair play. What is involved is honesty and decency and what is involved is the independence of the American judiciary.

I won't bore you with long tales of how I suffered or what Government has done to me, but I will tell you this: that I have served the judiciary well, that I have been energetic in the pursuits of my duty, that I have been loyal to my oath, and no Federal judge in America has worked any harder or produced any more in the period of time that I was on the Federal bench.

And the only reason that I could not give more to the duties of my office would have been the confines of my intellect and my ability, because I gave that job all of my very being, both physically and intellectually.

When I went away to prison, the day before, I journeyed to San Francisco because I felt obligated that I should go and talk to Judge Browning, my boss, the chief judge of the ninth circuit. And I went to say goodbye to him and to thank him for all of the encouragement that he extended me during the period of time that I was on the bench. And he walked out to the door with me, and he said: "I want you to remember this because the way may be hard for you in the future and this may be something that you need to fall back on some day." And he said, "You must keep constantly in your mind that you were not just a good judge, but you were a fine judge and that nobody in this country will be able to take that away from you."

And I have no special message here today to you. The only thing that I can say to you is that I have been, I think, a fine judge. And I have brought to the bench, I thought, a sense of fairness that was unusual in the judicial system.

One of the brightest things of all the hearings and trials that I have been through, one of the most pleasant things that has happened to me was in the impeachment hearings before the committee of 12, and the fine U.S. attorneys that had practiced before me, one by one came to give character evidence of the fact that I was a good judge. And the thing that I was most happy to hear was the fact that they said, "He was fair."

And that is what I went to the bench to do, and that is what I did. I ran a fair court. I ran a court that was cordial and pleasant to counsel. I ran a court that was cordial and pleasant to the litigants. And I ran a court that every human being that walked in, their case would be heard fairly and everybody given a just and fair hearing.

I recognized when I went on the bench that it was difficult for the average citizen to take on what we call in the vernacular city hall. And did you ever happen to think what a burden it is to the private citizen who must fight an agency of the Federal Government? The average citizen who fights an agency of the Federal Government ordinarily cannot go out and hire the best lawyer there is because they are limited by finances.

□ 1710

They can't go out because of the same limited finances and hire experts but a Government agency can bring in the finest talents in the world and bid against them. The Federal agency has an unlimited amount of funds to pour into the trial, and to bring experts from all over the world. Not one, but dozens of them who will testify to every scientific fact known to the case. And there is the little common citizen who has almost an impossible burden when he attempts to win or he attempts to litigate against the Federal Government or any agency of it.

If, in the future, they ever write down anything that I ever did in my whole life, they will be able to say that Harry Claiborne had a court where the little citizen received fair and just treatment from the bench. And I am prouder of that than I am in the ac-

complishment that I may have had on the Federal bench.

I am not here by choice. As I said to the committee of 12 when we were appearing before them in my testimony, I have had nearly all the people that love me, and fortunately for me, there are more of them than I ever dreamed—have begged me not to do the thing that I am doing this very moment, to just resign, walk away, do my time, get back to my people, pick up the pieces from my shattered life, and start rebuilding something of the future. But I could not do it. I could not do it, and I appreciated the love and concern they all had for me.

I know that they all had my best interests and my welfare at heart. But I could not walk away. I could not walk away because I have not violated a single law of the United States. I have not defrauded my Government. I have heard the word corrupt used in these arguments by the House Members today. I have not been corrupt in my office. And as long as that is so, I could not walk away and leave any impression that I may be guility of something that I did not do.

So I chose to fight. And I will fight here, and if I lose here I will continue to fight. And I will continue to fight until my good name is cleared, and until somewhere along the line someone will listen and find out that once and for all what has happened to me, and what has happened to my life.

I owe that to countless other Federal judges now sitting on the bench. I owe that to the citizens of this country. And I owe that, as I said before, to my grandchildren because that is the only legacy I will be able to leave, is the legacy of courage, because I have been stripped of everything else.

But I can do that because other Federal judges are going to follow me. Believe me. Other Federal judges will follow me. They will follow me next year and they will follow me the year after. And some Federal judges will be here for the same reasons that I am here, because it has started now and no longer, no longer do the young Turks in the Justice Department respect the judiciary to the point that they will say, hey, listen, we think that this is wrong, and talk to you about it, and reason with you about it. They don't want that because there is a certain inclination in Justice today to become headhunters, to try and prosecute those individuals that will give them the most publicity—those that can attract the most attention, I say and I predict that I will not be the last Federal judge before this very body or the new body of next year. I will not be the last.

I did nothing, I don't think, that the average American citizen does. I think when the American citizen, the average American citizen goes to a tax preparer or an accountant, and he furnishes him all of the information and especially if he uses a long form 1040, and then he gets his return, that he casually looks it over. He is concerned first with "What do I owe," and when he is told what he owes he pulls out his checkbook, he writes the check, and he mails it to the Internal Revenue Service. I do not think the average citizen goes home and makes a personal audit of the account's return, or check it minutely to see that every entry in it is correct. I think that he goes to the individuals in whom he has special trust, and when he gives him the information pertaining to his taxes, he rests upon the trust of the individual that does his return. And when he finds out what he owes, he pays it, and he goes his way.

And I don't think the average citizen has an occasion to return to look at his 1040 unless something untoward occurs. And he must go once again and review it.

I am no different than anybody else. I hired a man that I thought was capable. I gave him all of the information pertaining to my income that I had. And all that existed. And they prepared my return, and as I said before, they made mistakes. They made mistakes in my return. If I had been the average citizen, and if it hadn't been that I had made certain people a little angry at me along the way, if I had kept my mouth shut, and I had not said some things about the strike that I said, then in all probability nothing would ever have occurred with reference to my return except a simple audit. But no audit was ever made of my return.

The first thing I know is I am being audited by the grand jury. My taxes have been submitted to the grand jury. And in Reno, NV, in the summer of 1983, before I was indicted in December 1983, what occurred before that investigations of me by a grand jury, in Las Vegas, NV, in the year 1980 wherein that the Government was investigating me for wiretapping while I was a lawyer, a private lawyer, where they were accusing me with some private detective of bugging someone's home. And that grand jury investigation went on for a number of months. And there wasn't one iota of evidence ever presented to that grand jury that I had ever in my entire life bugged anyone's house or ever hired anybody to do it or ever asked anybody to do it.

And then all of a sudden they go into Brazil, and they inquire of one Joseph Conforte, and as Mr. Goodman told you, they gave him a tax break for life by reducing his taxes some millions of dollars, wiping out all of his criminal slate for 15 months, and they brought him here and they began to investigate me then for bribery. And they tried me for two counts of bribery. They couldn't make a case against me then either. They charged me and tried me for fraud, wire fraud by telephone, and nobody to this day has been able to figure out what that charge was about.

□ 1720

They offered little or no evidence of that.

They charged me with obstruction of justice. They tried to get a lawyer to testify falsely before the grand jury. Those charges, some seven of them, went before the court and the jury was out some 8 days and could not agree. But they did hold 10 for acquittal and 2 for conviction.

Then the Government decided to try me on the tax case, and they did, and they convicted me on the 1979 return and on the 1980 return.

This is plainly a matter, in my opinion, that they did not believe my secretary. In 1979 I had sent a document to my accountant and in this document, a letter that I had written to him, I gave him the exact amount of fees that I had collected. I attached to the letter my W-2. I attached to it a check for $8,000 that he asked for. I sent my secretary to his office.

In the course of the trial, he first admitted that he received the letter and that he treated it in some manner.

Then there was a recess and he went out into the hall and after conversations with government counsel he came back and on reexamination he testified, "No, I was wrong when I said that I received the letter and that I considered it. I have never seen this letter until Mr. Goodman brought it to me and showed it to me."

The jury must have believed my secretary who said she took the letter to his office or believed Mr. Wright. Apparently, they chose to believe Mr. Wright. If they believed my secretary, then they believed that I was telling the truth also. If they didn't believe her, then they didn't.

Then they didn't believe me.

It was not known at that time, as Mr. Goodman carefully explained to you today, that my secretary had given this letter to a different lady than she thought she had given it to. This lady happened to be the office manager of Mr. Wright. She did not appear but she saw the impeachment proceedings and she gave an affidavit, which was received in evidence; she said she did in fact receive the letter from my secretary, she did in fact put it on Mr. Wright's desk, and Mr. Wright did, in fact, use it, and Mr. Wright came to her a few days after and said they had lost the letter and wanted to go through all of her files looking for it.

We did not have the benefit of that at the trial. If we had had the benefit of it at the trial in all probability I may not have been here.

But one thing that I do know, that I truthfully gave my accountant all the information pertaining to every quarter of my income in both the years 1979 and 1980. I argued for Watson in good faith. I went into his office. I talked to him. He told me he had one CPA working for him and that she would do the work on my tax return. He said he would review it. While I was there, the record shows, and I have testified to this before, I heard him answer some tax problems of a client on the telephone. I was impressed by the manner in which he answered the questions. He was forthright in his answers. He answered them deliberately. He impressed me as being a man who knew what he was doing.

He told me while I was there that he did tax planning and estate planning, and I believed him.

I heard a short time afterwards that a number of doctors were clients of his, and I believed that he was qualified. I trusted him. I gave him every bit of the information that I had, every bit of the information pertaining to all of my income, all of my deductions, all of my bills and he prepared my return. He turned it over to a lady who went so far with it and could not go any further and presented the matter to him. Then he gave it to another lady and she brought it back. I went in and signed the return. I went in and signed the return during the lunch hour and went back to my quarters. A few days later he gave me the bill for his services.

The VICE PRESIDENT. The Chair must state that under the order of the Senate the remaining time belongs to the managers for the House to close the argument.

Mr. MATHIAS. Mr. President, I ask unanimous consent that the respondent have 5 minutes in which to complete his statement.

The VICE PRESIDENT. Without objection, it is so ordered.

Mr. CLAIBORNE. They have all maintained that I am a good judge, that I was a good lawyer, that I was a professional, and that I should have known that my return was incorrect.

Mind you, the only thing the Government was charging me with on the 1980 return is that I did not declare fees that I collected in the amount of $88,500.

Mr. Watson's office had treated the $88,500 on a schedule D, which my accountant when he performed my audit after I was indicted said he can't do that. We conceded that he did it incorrectly. But I did not catch that it was done incorrectly. He told me that it was correct.

When it began to look like I was going to be indicted, I talked to him. I said, "I want to know how you did it. I want to know exactly what you did."

He told me then that he had taken business losses, that he had deducted the amount that I had received in collection from fees, past fees, deducted that from the amount of my business losses, and he had treated it on a schedule D. I said, "Can you support that?"

He said, "Yes." Then he said, "Judge, I have taken your return to two IRS agents, both of whom I trust and have great confidence in their ability. Both of them have told me, and one of them does nothing but audits of over $1 million involved, and they both have told me that your tax return was done correctly." That reassured me. That reassured me.

That was the sole government contention everywhere but here. Since we got here, an expert testified that there were other errors in that nobody had caught. Four experts testified for the government in the two trials. My CPA testified on his audit. It had been gone over time and time and time again by experts in the IRS and nobody, of all of those qualified people, had ever picked up there was an additional error of some importance in my return.

I ask you this question, am I under any different standards for me that if the experts for the IRS, if the experts for the Federal Government, and if the CPA experts that I have hired do not catch an obvious mistake in a return that I should have the audit, or that I should have caught the matter in schedule D?

Of course not.

□ 1730

They say that it is not realistic, that I claimed to be too busy, that I had time for other things, I had time to buy houses, I had time to buy an apartment house, and I had time to shop for quarter horses in Mexico.

It isn't realistic that I did not have time.

I want to tell you right now that I had very little time for my personal business, very little time. And I am not alone. I don't think there is a Federal judge in America on the bench that has time for his personal business. I can honestly state that I believe this, that Federal judges of this Nation are killing themselves. You cannot imagine the long hours they are working. You cannot imagine the time they spend on the bench. During recess, they are dictating orders or signing orders or reading briefs or preparing opinions, sustaining opinions. Then they go back on the bench and try a case. They cut their lunch hours short, they stay at night or get into their offices sometimes as early as 6:30 in the a.m.

The VICE PRESIDENT. The additional time has expired. The remaining time is under the control of the managers of the House.

Mr. Manager RODINO. Mr. President, I seek recognition.

The VICE PRESIDENT. Mr. Rodino is recognized.

Mr. Manager RODINO. Mr. President, the managers on the part of the House respectfully submit that they have summed up the evidence and the facts that are contained in the post-trial brief and, rather than belabor and rebut this record, we respectfully recommend to your attention that House brief which carefully, accurately, and truthfully reviews the evidence and presents the law.

Thank you.

Mr. DOLE. Mr. President, I suggest the absence of a quorum.

The VICE PRESIDENT. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The VICE PRESIDENT. Without objection, it is so ordered.

The majority leader is recognized.

CLOSED SESSION

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate now go into closed session.

The VICE PRESIDENT. Without objection, it is so ordered. The Senate will go into closed session.

Whereupon, at 5:36 p.m., the Senate proceeded into closed session.

OPEN SESSION

(Thereupon, at 6:28 p.m. the Senate continued in open session.)

Mr. HUMPHREY addressed the Chair.

The VICE PRESIDENT. The majority leader is recognized.

Mr. HUMPHREY. I ask unanimous consent that I might proceed for 30 seconds.

The VICE PRESIDENT. Is there objection?

Mr. DOLE. Are we not in open session?

The VICE PRESIDENT. The Senate is now in open session.

Mr. HUMPHREY. Mr. President, I ask unanimous consent that I might proceed for 30 seconds.

The VICE PRESIDENT. Without objection, the Senator from New Hampshire is recognized for 30 seconds.

Mr. GORE. Mr. President, reserving the right to object, parliamentary inquiry.

The VICE PRESIDENT. The Senator will state the parliamentary inquiry.

Mr. GORE. Mr. President, if we go back into open session, are we then governed by the rules that preclude any Senator from speaking? Are we

automatically back on the impeachment?

The VICE PRESIDENT. The Senate is automatically back on impeachment. That is correct.

The Senator from New Hampshire under a unanimous-consent request has asked for 30 seconds. Is there objection?

Without objection, the Senator will proceed.

Mr. HUMPHREY. I thank the Chair.

□ 1830

Mr. HUMPHREY. Mr. President, sometime soon, I take it, we are going to vote on the motion on the part of Judge Claiborne that we designate beyond a reasonable doubt as the standard of proof. Some of us are not lawyers. Absent a ruling, what is the standard? We have scarcely debated what the standard will be and we are about to vote on this motion. I would like to know what standard we are going to adopt if we rule against Judge Claiborne's motion.

Mr. LONG addressed the Chair.

The VICE PRESIDENT. The Senator from Louisiana.

Mr. LONG. Mr. President, I ask unanimous consent to proceed for 1 minute.

Mr. MATHIAS. Is the Senator addressing himself to the impeachment proceedings?

Mr. LONG. To the motion.

Mr. MATHIAS. Will the Senator withhold for a minute?

Mr. LONG. I only asked for 1 minute.

Mr. MATHIAS. I raise the objection to proceeding in open session without the presence of the parties.

The PRESIDING OFFICER. Objection has been heard.

Mr. GORE. A parliamentary inquiry, Mr. President.

Mr. DOLE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the role.

The assistant legislative clerk proceeded to call the roll.

□ 1900

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. BOSCHWITZ). Without objection it is so ordered.

Mr. DOLE. Mr. President, I renew my request that the Chair rule on the third motion, the one that has been restated in closed session. I ask that it be restated in public session.

The PRESIDING OFFICER. The clerk will read.

Mr. HEFLIN. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. Debate is not in order in open session.

Mr. HEFLIN. I have a parliamentary inquiry.

By declining to adopt the reasonable doubt as a standard of truth, does that prevent individual Senators from adopting their own, individual standard of proof, which might be clear and convincing, preponderance, or a reasonable doubt?

As I gather, Senator SARBANES suggested that the matter was a reasonable doubt or whatever standard a Senator wanted to use himself. So my parliamentary inquiry is, if we were to reject this, does this prevent a Senator from using, in his own mind, a reasonable doubt standard?

The PRESIDING OFFICER. The Chair cannot impose any standard upon any Senator, so that a Senator could impose upon himself reasonable doubt as a standard.

Mr. DOLE. Mr. President, I renew my request.

The PRESIDING OFFICER. The clerk will read.

The assistant legislative clerk read as follows:

Motion to designate "beyond a reasonable doubt" as the standard of proof in the impeachment trial.

The Respondent, Judge Harry E. Claiborne, through his counsel, Oscar B. Goodman, Esq. and, the Honorable Howard W. Cannon, respectfully moves the Senate to designate "Beyond a Reasonable Doubt" as the standard of proof in the impeachment trial of said Respondent. The grounds in support of this Motion are set forth in the Memorandum attached hereto and incorporated herein by reference.

Mr. METZENBAUM. Mr. President, a parliamentary inquiry.

Mr. DOLE. A parliamentary inquiry is not in order.

Mr. METZENBAUM. They just accepted one.

The PRESIDING OFFICER. Debate is not in order.

Mr. METZENBAUM. I am not asking for debate. I am merely asking a parliamentary inquiry: whether or not by turning down the motion, there is any inference left that the standard of reasonable doubt shall not be applicable.

The PRESIDING OFFICER. The Chair has not denied the motion. The Chair cannot establish any type of standard to each Senator.

Mr. METZENBAUM. If the Senate as a body turns down the motion, is there an inference left that would be applicable?

The PRESIDING OFFICER. The inference that would then be left is that each Senator will make his own determination of what standard of evidence he applies to the decision.

Mr. METZENBAUM. I thank the Chair.

The PRESIDING OFFICER. Judge Claiborne has moved that the Senate establish a standard of evidence at the impeachment trial to be proof beyond a reasonable doubt. The Presiding Officer, under the Senate impeachment rule VII, is empowered to determine all forms of proceedings not otherwise provided for.

It is the Chair's determination that the question of standard of evidence is for each Senator to decide individually when voting on Articles of Impeachment.

Mr. HATCH. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. HATCH. As I understand it, the Chair has decided that the standard to be adopted in this manner will be that which is in the heart of each Senator. Is that correct?

The PRESIDING OFFICER. That is correct.

Mr. HATCH. If we wanted to have a standard of reasonable doubt, would we have to appeal the ruling of the Chair?

The PRESIDING OFFICER. The Senator would have to ask that the motion of Judge Claiborne be submitted to the Senate.

Mr. HATCH. Then, I so ask, and I ask for the yeas and nays.

The PRESIDING OFFICER. The Senator has that right.

Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. HATCH. Mr. President, a parliamentary inquiry.

Mr. DOLE. No debate.

Mr. HATCH. Is there no debate on whether we should have the standard set?

The PRESIDING OFFICER. No debate is in order. That is correct.

Mr. SIMON. Mr. President, I ask unanimous consent that each side may have 2 minutes to discuss this briefly, because I think we are talking about something extremely important.

Mr. HATCH. I join in that unanimous-consent request.

Mr. MATHIAS. Mr. President, reserving the right to object——

The PRESIDING OFFICER. The Chair will say, and is advised by the Parliamentarian, that debate in open session is specifically prohibited.

Mr. DOLE. I object.

Mr. STEVENS. Regular order.

The PRESIDING OFFICER. Objection is heard.

The yeas and nays have been ordered, and the clerk will call the roll.

Mr. ARMSTRONG. Will the Chair state the question?

The PRESIDING OFFICER. The question is whether or not the motion of the respondent is well taken.

The clerk will call the roll.

Mr. HATCH. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator from Utah will state it.

Mr. HATCH. If a Senator votes "yes" or "aye," what will he or she be voting for?

The PRESIDING OFFICER. In the event a Senator votes "aye," he will be in support of the motion, and the motion is to establish the "beyond a reasonable doubt" test.

The yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk proceeded to call the roll.

□ 1910

Mr. EXON. May we have order in the Senate.

The PRESIDING OFFICER (Mr. HUMPHREY). The clerk will suspend.

The Senate will come to order. Could we have order?

The clerk will resume.

The legislative clerk resumed and concluded the call of the roll.

Mr. SIMPSON. I announce that the Senator from North Dakota [Mr. ANDREWS], the Senator from Alabama [Mr. DENTON], the Senator from Utah [Mr. GARN], the Senator from Florida [Mr. HAWKINS], the Senator from Pennsylvania [Mr. SPECTER], the Senator from Idaho [Mr. SYMMS], and the Senator from Connecticut [Mr. WEICKER] are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Mississippi [Mr. STENNIS] is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 17, nays 75, as follows:

[Rollcall Vote No. 333]

(Motion to Designate "Beyond a Reasonable Doubt" as the Standard of Proof in the Impeachment Trial—Court of Impeachment—Judge H.E. Claiborne)

YEAS—17

Burdick	Helms	Pell
Evans	Johnston	Pryor
Goldwater	Laxalt	Riegle
Hart	Long	Simon
Hatch	Matsunaga	Warner
Hatfield	Metzenbaum	

NAYS—75

Abdnor	Eagleton	McClure
Armstrong	Exon	McConnell
Baucus	Ford	Melcher
Bentsen	Glenn	Mitchell
Biden	Gore	Moynihan
Bingaman	Gorton	Murkowski
Boren	Gramm	Nickles
Boschwitz	Grassley	Nunn
Bradley	Harkin	Packwood
Broyhill	Hecht	Pressler
Bumpers	Heflin	Proxmire
Byrd	Heinz	Quayle
Chafee	Hollings	Rockefeller
Chiles	Humphrey	Roth
Cochran	Inouye	Rudman
Cohen	Kassebaum	Sarbanes
Cranston	Kasten	Sasser
D'Amato	Kennedy	Simpson
Danforth	Kerry	Stafford
DeConcini	Lautenberg	Stevens
Dixon	Leahy	Thurmond
Dodd	Levin	Trible
Dole	Lugar	Wallop
Domenici	Mathias	Wilson
Durenberger	Mattingly	Zorinsky

NOT VOTING—8

Andrews	Hawkins	Symms
Denton	Specter	Weicker
Garn	Stennis	

So the motion was denied.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the motion was denied.

Mr. MATHIAS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Could we have order?

The majority leader.

Mr. DOLE. Mr. President, as I understand, a parliamentary inquiry is not in order, is that correct?

The PRESIDING OFFICER. Debate is not in order.

Mr. DOLE. Mr. President, I ask unanimous consent that I may proceed for 2 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE. Mr. President, I would just say to my colleagues, I have been advised by the Chair now that if we adjourn as a court of impeachment and go into legislative session and take care of a pile of work that we have, then the remaining motion would fall because, by unanimous consent obtained last evening, at 9:30 a.m. on Wednesday, October 6, we would deliberate the Articles of Impeachment. There is no time limit on how long the deliberations would take, but they would start at 9:30 tomorrow and the remaining motion would disappear.

I am going to suggest that we modify the unanimous-consent order so that at 9:30, we discuss not only the Articles of Impeachment but the remaining motion, because I think that is very important. And I think the managers, those who were on the committee of 12, and all other Senators, would agree that we should not let it disappear because of some unanimous-consent agreement.

□ 1930

But I am wondering if we might also add to that unanimous consent tomorrow morning that we would complete our discussions at 11:30 a.m. That would be 2 hours of debate in closed session starting at 9:30, and then proceeding until about 1:30. Does anybody object to that? Would that be adequate time? The reason I ask that is, I have been asked by a number of Members who are in very important conferences, and they want to be here. They want to be there. They have been here most of the day, I think rightfully so. Would anybody object to that agreement?

Mr. PRYOR. Reserving the right to object, Mr. President, if the majority leader would answer this question: Is there a reason why, during that period of time, the session would be closed rather than open session?

Mr. DOLE. It is the rule. I understand it is the rule.

Mr. BYRD. Mr. President, would the distinguished majority leader yield?

Mr. DOLE. I am happy to yield?

Mr. BYRD. Mr. President, the rules of impeachment require the Senate be in executive session when they are in deliberation in relation to an impeachment. By unanimous consent, of course, the rules can be set aside. That is why we have not been able to debate while the Senate has been in open session. It is what the rules require. I think it is good that we have this debate in closed session with respect to certainly this next motion. I hope that the request would be granted because I think this next motion, as far as I am concerned looking at the long-term future and with great regard for the precedents of the Senate, is extremely important. I would like to have that motion debated, and decided.

Mr. STEVENS. Mr. President, will the Senator yield?

Mr. DOLE. Yes.

Mr. STEVENS. What would be the impact of the majority leader's request after 2 hours of debate? Would we then go to a vote?

Mr. DOLE. Then we would proceed to dispose of the motion. At that time, if we had disposed of the motion, it would be my present intention then to suggest that we not vote on the articles until the following day. So the Members would have that additional time to review the evidence.

Mr. STEVENS. May I inquire, if I may? Would it be in order at that time at the expiration of the 24 hours for the motion to postpone to a day certain to be considered by the Senate?

The PRESIDING OFFICER. That would require unanimous consent.

Mr. STEVENS. May I make a parliamentary inquiry? In any part in the proceedings from here on, would it be in order for a Senator to make a motion to postpone the final disposition of this case to a day certain?

The PRESIDING OFFICER. Such a motion would not be in order. The Senate can do it only by unanimous consent.

Mr. STEVENS. Is there a limitation on debate, Mr. President?

The PRESIDING OFFICER. There is a unanimous-consent order that the Senate proceed to vote following tomorrow's closed session.

Mr. DOLE. Mr. President, I yield to the Senator from Idaho.

Mr. McCLURE. If I understand correctly, the request would require that we come in at 9:30 tomorrow, the motion would be pending, there would be a period of time for debate, and then we would vote on the motion. So the debate tomorrow morning would

be with respect to the motion. Is that correct?

Mr. DOLE. It would be in respect to the motion, and we would also deliberate on the Articles of Impeachment. The order now provides that at 9:30, we debate on the Articles of Impeachment. There is no time limit. It does not say at 1:30 you stop. It just says we start at 9:30. I am seeking to amend that order by including the remaining motion as well as the Articles of Impeachment be deliberated upon commencing at 9:30 and ending at 11:30 a.m.

Mr. McCLURE. Would the Senator yield further?

Mr. DOLE. Yes.

Mr. McCLURE. Whatever of that time would be taken with respect to the motions, we would vote no later than 11:30 with respect to the motions?

Mr. DOLE. Unless there was an agreement to extend the time.

Mr. McCLURE. If there were anytime available between 9:30 and 11:30 for debate upon the articles themselves, that would depend upon the flow of the debate and the disposition of the motions?

Mr. DOLE. That is correct.

Mr. METZENBAUM. Reserving the right to object, I want to say very reluctantly, I will object. I am concerned about this procedure. I know the leader has the responsibility to keep this body moving. We are also dealing with an extremely important matter. I don't have to reemphasize that. As I understand it, if we accept the leader's unanimous-consent request, there will be 2 hours, within which time we will be expected to debate the pending motion, and we also would have expected to debate the issue as it pertains to the articles themselves as to whether there is a finding of guilty or not guilty. Frankly, I strongly feel that I want to hear more from DAVID PRYOR, AL GORE, ORRIN HATCH, and some of the others who are on this committee.

I would hope that the Senate would have an opportunity not alone to have heard the arguments made very eloquently by the House and the defense, but I hope some of the Members of this body could be heard because I think there is still considerable amount of confusion that exists. Many of us are not certain just what is the right decision to make.

I do not want to be the person who throws the monkey wrench into the procedure. But I do feel very strongly that the Senate is entitled and should have more than 2 hours to debate the motion as well as the articles.

As to the motion, I have no problem for 2 hours. But as to the question of guilt or nonguilt, I am concerned there will be no time left for that debate. I think there ought to be. I respectfully submit to the leader that at least we ought to have 4 hours before we actually are called upon to vote as to whether this man is guilty or not guilty.

Mr. DOLE. Mr. President, if I may proceed to make unanimous consent for additional 2 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE. Mr. President, one way to resolve the problem would be to have the debate tomorrow morning for 2 hours just on the motion and then agree to dispose of the motion; then include in that request that at 9:30 a.m. on Thursday morning, there will be another 24-hour period where we could have time to take a look at the record. We would then have 2 additional hours of debate on the Articles of Impeachment. Following that debate, then we would vote on the articles.

Mr. BYRD. Mr. President, the distinguished majority leader would be thinking in terms of, say, beginning on the votes at 2 o'clock in the afternoon.

Mr. DOLE. If we came in at 9:30, we would hopefully be on the vote at 11:30.

Mr. BYRD. On Thursday?

Mr. DOLE. Yes.

Mr. BYRD. I would hope for reasons which I will be happy to discuss with the distinguished majority leader that the votes not occur until in the afternoon at 2 o'clock or thereafter.

Mr. DOLE. We complete our debate at 11:30.

Mr. BYRD. That would be all right.

Mr. STEVENS. Is that a unanimous-consent request?

Mr. DOLE. I am just suggesting. Everybody wants to put it together here and somebody has to. We are either going to do something or we are going to move on to something else.

Mr. STEVENS. Would the majority leader include in that some concept that we could have determination of the wish of some Members that we postpone the matter until a day certain?

Mr. DOLE. We are going to postpone it now until a day certain, Thursday.

Mr. STEVENS. I have in mind postponing it for the week we are back here in November.

Mr. BINGAMAN. Would the majority leader yield?

Mr. DOLE. I am happy to yield.

Mr. BINGAMAN. I just ask. It seems to me that the disposition of this motion tomorrow morning at 11:30, which is contemplated, will determine when the Senate should take additional action and what additional action the Senate should take. So that I certainly have no problem with the unanimous-consent request that contemplates 2 hours of discussion on the motion tomorrow and then a vote on it. But I am reluctant to go along with the unanimous consent that it would bind us for what happens after that in case the motion is granted and the Senate determines to call witnesses or something. We need a different schedule.

Mr. DOLE. Mr. President, I would agree with that. I would suggest that we modify the request that at 9:30 a.m. tomorrow until 11:30 a.m., we deliberate on the one motion that is still pending.

Mr. DOMENICI. Reserving the right to object, Mr. Majority Leader, what does that mean with reference to the already agreed-upon unanimous consent that would indicate we would vote immediately after? I believe that is the unanimous consent now. That would have to be vitiated, would it not?

□ 1940

Mr. DOLE. Mr. President, this would modify the unanimous-consent request. There is nothing in the current unanimous consent that would indicate when we would vote on the Articles of Impeachment. It just says we will commence that discussion tomorrow morning at 9:30. I am modifying that unanimous consent agreement, that at 9:30 tomorrow morning, we would debate for not to exceed 2 hours, until 11:30, the remaining motion. I will make that request.

The PRESIDING OFFICER. Is there objection?

Mr. STEVENS. Is that time controlled?

Mr. DOLE. It would be 1 hour on each side.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. STEVENS. Is there now, Mr. President, a time certain to vote on the Articles of Impeachment?

Mr. DOLE. No, and there never was.

Mr. BYRD. Mr. President, while the majority leader has the floor, I understood earlier that there might be another rollcall vote today.

Mr. DOLE. I understand that the request for a rollcall on the Eximbank has now been withdrawn. We need to do that. We have about 30 bills to do on the legislative wrap-up calendar.

LEGISLATIVE SESSION

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate now adjourn as a court of impeachment and return to legislative session.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

(Thereupon, at 7:40 p.m., the Senate adjourned as a court of impeachment, and resumed legislative session.)

Mr. DOLE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

□ 1950

Mr. HEINZ. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Pennsylvania.

H.R. 5548—EXPORT-IMPORT BANK ACT AMENDMENTS—CONFERENCE REPORT

Mr. HEINZ. Mr. President, I submit a report of the committee of conference on H.R. 5548 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 5548) to amend the Export-Import Bank Act of 1945, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of October 2, 1986.)

Mr. HEINZ. Mr. President, the conference report the Senate takes up today is the culmination of a year's work to extend and improve the charter of the Export-Import Bank. Passage of this legislation will position the Bank to support aggressively the efforts of U.S. exporters to correct record trade imbalances facing the United States.

This report incorporates all provisions related to the operations of the Bank that were passed by the Senate on September 26 in the text of H.R. 5548. Since these provisions are unchanged and were covered in detail in my statement at that time, I will not review them again at this time. I would, however, like to review briefly three items not related to Bank operations added to the original bill on the Senate floor and incorporated only in part in this final form of the legislation.

They were of interest to a large number of Senators as nongermane amendments.

The Chair will recall that the Senate amended the Trade Act of 1974 to extend the group eligibility requirements of certification by the Secretary of Labor for adjustment assistance for workers to provide relief for workers in the oil and gas industry. This amendment was proposed by Senator JOHNSTON. The House had no comparable provision and faced jurisdictional problems with consideration of the language. The Senate therefore receded to the House.

The two other Senate provisions included in the bill were accepted by House conferees with amendments. The final text includes an amended sense of the Congress resolution relating to United States business involvement in Angola; this provision was introduced by Senator DECONCINI. As amended, the provision deplores United States business support for Angola and requests the President to consider using his authority under the Export Administration Act of 1979, rather than under the International Emergency Economic Powers Act as in the Senate bill, to restrict business dealings with Angola that are in conflict with United States security interests there.

Also included is an amended version of the provision sponsored by Senator NICKLES directing the Secretary of the Treasury and U.S. Executive Directors at the multilateral development banks to oppose bank support for production of commodities or minerals for export if they are in world surplus and likely to injure U.S. producers. The original Senate language also called for reduction of U.S. payments to those institutions in proportion to their support for such projects. The House Banking conferees receded to the Senate but insisted on deletion of the second provision on U.S. contributions to the banks.

I believe that the final form of this bill incorporates all of the authorities that the Senate sought to include for the Export-Import Bank. In particular, it creates the tied aid credit warchest sought by the administration to support negotiations to end predatory tied aid export financing. The negotiations resume this week.

Prompt action is needed on this conference report because of the expiration of the Bank's authority to finance U.S. exports a week ago.

The Bank will certainly be out of business through the end of this week. If the President goes to Iceland as planned at the end of the week, we would like him, before he goes to his meeting with the Soviet leader, to sign this. If he does not, the Bank will have been out of business for 2 weeks and I do not believe anybody on the floor wants that to happen.

Mr. PROXMIRE. Mr. President, I rise in support of the conference report.

Mr. President, on September 26 I spoke about H.R. 5548, a bill to amend and renew the charter of the Export-Import Bank. On that day we passed the identical bill previously passed by the House, and I explained my views on its various provisions. Since none of these identical provisions were changed in conference I do not feel compelled to restate my views on those issues at this time. The Senate, however, also added three provisions not contained in the House bill but which were in the Eximbank charter renewal passed by the Senate in July. It was the Senate decision to put these provisions into H.R. 5548 which led the House to call for a conference on that bill. One of the provisions dealt with trade adjustment assistance for oilfield workers. Another gave directions to the Secretary of the Treasury regarding U.S. participation in certain multilateral development banks. The third provision, among other things, called on the President to use his authority under the International Emergency Economic Powers Act [IEEPA] to block United States business transactions in Angola which conflict with our national security interests in that country.

The House would not agree in conference to take the provision dealing with trade adjustment assistance. We had to compromise with the House on the provision dealing with multilateral development banks. The adopted language will improve U.S. participation in those banks by requiring our representatives to oppose loans that would support the foreign production of commodities or minerals that are in surplus, if that production substantially harms U.S. producers. This makes sense and it is similar to other requirements we are putting into the Eximbank charter to ensure that bank does not make loans that harm U.S. companies or farmers or laborers.

I am happy to report that we were able to salvage most of the provision, authored by Senator DECONCINI, dealing with United States security interests in Angola. The provision, as finally compromised, calls on the President to use his powers under the Export Administration Act [EAA], not the IEEPA. There was concern by House Members that the declaration of national emergency required of the President before he can invoke IEEPA could not be justified in Angola. But the message is still clear—the Congress is concerned about the revenue being produced by oil companies in Angola that are used to pay for the presence of Cuban troops in that country. The President is urged to consider using his present legal authority under the EAA to stop that sort of action by our oil companies. I hope the President will pay attention to this message and pull the economic plug on the Communist government of that country—rather than give secret aid to Dr. Jonas Savimbi to help overthrow that government.

UNITED STATES BUSINESS AND ANGOLA

Mr. DECONCINI. Mr. President, today we will consider the conference report on H.R. 5548, a bill to amend the Export-Import Bank Act of 1945. This bill will extend the charter of the Export-Import Bank which expired

last night at midnight. This bill represented a compromise between the Senate and House Banking Committees. Yesterday, in an informal conference, the differences between these two bills were worked out.

I commend Senator PROXMIRE and Senator HEINZ for their diligence and hard work on this bill, especially in light of the difficult circumstances at the end of the session. They have also exhibited patience and courtesy with me, as I attached an amendment to this bill which the House considered nongermane and controversial. Subsequently, this amendment was accepted; however, there were changes in it and I feel I should clarify my position as well as that of the 15 Senators who cosponsored the amendment.

This amendment is a sense of Congress which expresses that the interests of the United States are best served when United States business transaction conducted in Angola do not directly or indirectly support Cuban troops or Soviet Advisers. Second, Congress hereby expresses that the President use his authority under the International Emergency Economic Powers Act to block United States business transactions which conflict with the United States security interests in Angola. The conference changes this from the International Emergency Economic Powers Act to the Export Administration Act. Although I am happy to see that the President will receive a strong message from Congress on his lack of policy in this increasingly volatile region, this change removes some of its vigor and strength.

Senators from both parties and all ideologies supported this amendment under the International Emergency Economic Powers Act. Senators THURMOND, HATCH, QUAYLE, SYMMS, GRASSLEY, HAWKINS, TRIBLE, RUDMAN, D'AMATO, BOREN, GORE, HOLLINGS, CHILES, INOUYE, and LEAHY are cosponsors. They supported the original amendment. This is as broad and bipartisan a spectrum as you will see on any bill or amendment in this body.

While the Export Administration Act would implement aspects of this amendment, it would take much longer and would still allow a large amount of circumvention. Many United States businesses would still be able to subsidize the Angolan economy and support the 35,000 Cuban and Soviet troops in blatant conflict with United States support for UNITA. The United States businesses would still subsidize the purchase of over $2 billion in Soviet weaponry. If ever the President should use "emergency" powers, it is in Angola. Presidents have utilized this special authority in Iran, Libya, and Nicaragua. In Angola, United States business openly subsidizes the Soviet and Cuban troops who are in battle with UNITA troops, supported by the United States. This makes no sense whatsoever. It has been 11 years since the Marxist government in Angola assumed power. They still have not held elections. They have not come to an agreement on the situation of Namibian independence. They have told America that we are no longer a credible negotiating partner in the 6 year peace talks and will now pursue all discussions through the United Nations. Additionally, the House just recently voted by a margin of almost 50 votes to continue to support Dr. Savimbi against Angola.

Mr. President, I could go on, but I will not. I just want the President to know that this issue will not go away. The regional conflict in this area grows and is exacerbated by the situation in South Africa. We have no coherent or sensible policy in Angola when U.S. business directly funds our enemies. The Soviet Union should have to shoulder the burden and pay the price of its own wars. If the President does not act in a prompt and sufficient manner after hearing this message from Congress, I will assure him that this legislation will come up again in the next Congress with a timetable and with stronger language.

I thank Senators PROXMIRE and HEINZ once again for their assistance.

(Mrs. KASSEBAUM assumed the chair.)

Mr. ARMSTRONG. Mr. President, it is very seldom that the Senator from Pennsylvania is grossly in error but he has stated something that is so far right of the mark that I am constrained to correct the Senator. He said there is no Senator who does not wish that this bill be signed before the President goes to Iceland.

Mr. HEINZ. If the Senator from Colorado will yield, the Senator from Pennsylvania chose his words rather carefully. I want to remind the Senator of what he said, which is that I do not think any Senator wants the Bank to be put out of business in this fashion.

Mr. ARMSTRONG. As usual, the Senator from Pennsylvania is ahead of me. But I would like to see it put out of business in some fashion or other.

Mr. HEINZ. I do not wish to interrupt the Senator's train of thought. I know where he stands. I thank him for yielding.

Mr. ARMSTRONG. Mr. President, I wonder if the Senator from Pennsylvania or others recall that scene out of one of Shakespeare's plays in which Hotspur confronts the Duke of Northumberland and explains "I can call forth spirits from the vasty deep."

The upshot is that Northumberland's response is, "Of course you can and so can any man. The question is, when you summon them, will they come?"

The theory of this conference report on the Eximbank is that by willing improvement in our international trade, we can get it, if we spend a little money, if we prime the pump a little, we are going to get a permanent or even temporary improvement in international trade.

I have some good news and some bad news. The good news is if we are serious about doing something on the budget deficit, here is where we can save several hundred millions dollars or more. The bad news is that we are not going to do that. The Senate is going to pass this tonight is some kind of routine way because the impression is that it will help us in international trade. My opinion is that this bill should not be passed, the Eximbank should not be reauthorized, not on the basis of some idea it will improve international trade.

The Export-Import Bank was created in 1934 to provide direct loans, loan guarantees and insurance to assist U.S. exporters in responding to competitors subsidized by foreign governments. But there has been a steady drumbeat of criticism from supporters that the bank is not working out.

As early as 1975, the General Accounting Office expressed concern about the Bank's financial soundness. During the 1970's, the Bank was rapidly expanding its subsidy programs. These large subsidies resulted in the Bank's $1.1 billion operating losses during 1982–1985.

In April 1983, GAO pointed out that the Bank's problem loans were increasing while its capital reserves were dwindling. The yearly losses came from three primary sources: First, interest expense exceeded interest revenue, second, insurance and guarantee claims exceeded insurance premiums and guarantee fees, and third, high administrative expenses. By far, the largest source of losses has been the negative interest rate differential. This is because the Bank's retained earnings have been reduced from $2.0 billion to $1.4 billion from 1982–84.

Let us just be simple about it: We are borrowing money from the public in order to give it to Exim to loan it out at lower than market interest rates to Exim, at lower costs than borrowing by our Government. Many people have pointed out this is a very popular program. It is not surprising that if you are giving free money, subsidized money, money at below-market-interest rates to people, they are going to think that is wonderful indeed. And that is the case, as Senators know who have heard from beneficiaries of this program.

In May 1985, GAO reported the Bank suffered even worse problems. GAO said the Bank's financial statements were misleading because they did not reflect losses likely to result

from the uncollectibility of its loans. By not recognizing the loan losses, the Bank's financial statements overstated annual income—or understated annual losses—and, on a cumulative basis, substantially overstated the government's equity position.

Earlier this year, GAO reemphasized its concerns about the Bank before the Senate Banking Committee stating;

As shown on the statements, the Bank's financial position does not appear as severe as it is in reality and the Congress may be led to make policy decisions that it would not otherwise make were the Bank's true financial condition fairly presented.

□ 2000

GAO is right; Congress should not be making policy decisions that ignore the financial and political disasters of the Eximbank. GAO reports that the Bank had net losses of $160 million in 1982, $247 million in 1983 and $343 million in 1984. I guess with losses of that magnitude any other kind of a bank would have folded. Instead, Congress with its oversight responsibilities continues to ignore the basic problem of the Bank and actually in this legislation is not only renewing the existing authority of the Bank, we are stepping in to create a new program.

I would like to focus on the new program for a moment because it comes to us not only with the imprimatur of the Banking Committee but, I regret to say, with the recommendation of the administration. And the next time the administration is up here shedding crocodile tears about some kind of big deficits that are threatening the national economy, I think you ought to remind them this is a program that they have endorsed, and the next time some of the business trade groups are up here telling us how they want to cut back spending, you might mention this as a good place to start, because many of the people who wail the longest and the loudest about the excesses of the Federal Government when it is in things like food stamps or welfare programs, or so on, somehow do not feel the same way about it when it affects a subsidy for business and, indeed, for the biggest of big business.

Now, let me mention to you the new program which is being started. It is the so-called war chest, a $300 million authorization to help U.S. firms attempt to fend off foreign competitors who receive subsidies from their Governments. Here is how it works. The legislation creates a new tied-aid credit program. Now, the theory of this is that if some other country—France is a notable example—offers a tied-aid program, a subsidized credit program, well, we can match it and by matching it we will discourage them from doing it and we can both back away from it.

It seems to me that it is hard to imagine, really almost impossible to imagine that it is going to work out that way in practice. What we are really getting into is a program that will not have a limited shelf life, as has been suggested by its sponsors, but, indeed, is most likely going to end up a program which will be still in existence, still growing, still shoveling out money long after the Senator from Pennsylvania and the Senator from Wisconsin and the Senator from Colorado have retired to greener pastures and are no longer Senators, and in fact 50 years from now people will be looking back and saying, "What in the world were those guys thinking of in 1986 when they authorized this," just as some of us, I must say, look back 50 years in the past to 1934 when this program was first initiated as some kind of a temporary measure, I expect with the expectation it would only last a year or two, sort of pump us up, sort of give us a shot. I do not know this, but that is what I am speculating.

But that is the way all programs get started, it will get us past the next bad economic cycle, it will get us past the next election coming right up and we will come to our senses when we have time. I am just telling you by adopting this so-called tied-aid program we are starting something that will be very difficult to ever end and in my opinion it is unlikely that we ever will do so.

Despite, however, these reservations about the bill, I do want to acknowledge that there are some things about it that I think are really commendable. My colleague from Pennsylvania has already mentioned the fact that we are taking steps to deny loans and guarantees to countries that do not adhere to free market principles, and I think that is really an important step. To me, much as I dislike the basic notion of the Eximbank, it really goes down hard to think that we are subsidizing Communist nations. To send money, for example, to Angola at the very same time that we are sending money to Jonas Savimbi to overthrow the Government of Angola seems to me to be financing both sides of the war, and I would like to get on one side or the other and not pay for both sides of that operation, and yet that is exactly what we are doing.

We are also doing it in a number of other countries, and I think it is very helpful that that will be terminated as a result of an amendment put in here on the floor of the Senate and also by action in the House. There was great interest in specifying, I think, a list of a dozen or more countries which will simply not be eligible for aid under this program, and I do commend the managers of the bill for that.

I also want to mention one other aspect of the bill even though in a sense it undercuts an argument I have already made. I have just said that this is probably going to be with us for a long, long time, but there is, Madam President and my colleagues, one glimmer of hope in this bill. There is one provision in this bill which could very well at some future time, hopefully not in the too distant future, cause the Congress to reconsider this. It was inserted at the recommendation of the Senator from Wisconsin [Mr. PROXMIRE], as I recall, and it is a provision that the Eximbank Board must henceforth, when it is making its loans, consider not only the positive effects on some U.S. company, or on some U.S. community, or on some U.S. group of employees, but also the potential negative effects. If the Eximbank Board is faithful to this mandate—and I expect they will be—the result will be to put on the public record the countereffects which I judge in most cases, at least in a great many cases, will be at least as significant, at least as large in dollar amount as the positive effects.

Now, you might wonder why I would say that, but let me mention a couple of quite specific examples of how sometimes when we are shoveling out this money to help one U.S. company, we end up hurting another company as bad or worse.

In 1983, Exim sought to provide $254 million in direct aid and $426 million in financial guarantees to Singapore Airlines, Ltd., for the purchase of four new Boeing 757's and six new Boeing 747's plus spare parts. As it turned out, the airline turned down the guarantee portion but it went ahead and bought the planes anyway. The 747's were considered the sweetener because there is no foreign competition for this aircraft.

It should be noted, by the way, that SIA [Singapore International Airline] is 98.2 percent government owned, and is becoming one of the top commercial air carriers in the world.

Now, the significance of this is not just the effort it had on Boeing. Obviously, it was good for Boeing, it was good for Boeing stockholders, it was good for Boeing employees, it was good for Boeing subcontractors, and you would not have to look around very far before you could find a long list of people who fit one of those classifications. In fact, I would judge that probably at the drop of a hat somebody who is a Boeing manager, employee, subcontractor, or supplier would be glad to visit your office and tell you how wonderful it is, and I fully expect I will probably hear from somebody in one of those four categories or all four tomorrow morning.

But let me tell you about who got hurt. It was Pan American Airlines, which was competing on the same routes against Singapore and which, as you all know, having pioneered the Pacific service for this country as America's first flag carrier out to the Pacific, recently had to sell off the routes. That is how tough it is to stay in business out on that route competing

against foreign air carriers who acquire their airplanes at least in part with funds provided at subsidized rates. So while we were helping Boeing, on the one hand, we were hurting Pan Am, which ultimately had to withdraw from that particular class of service with which they have such a long and proud and historic identification.

You might be interested to know, by the way, that the first notification that Pan Am had about the Eximbank deal was when the press reported that Exim had finalized the deal and notified Congress of the loan. At the time of Exim's consideration of the adverse impact on the domestic industry, Pan Am's concerns were brought up and considered for a total of 29 seconds, according to a report of our colleague from New York, Mr. D'AMATO.

Due to financial difficulties that have struck the entire U.S. airline industry, Pan Am, and for that matter most other American airlines, has been unable to buy any new Boeing airplanes since 1979. Instead, they buy used planes. Interestingly, Pan Am purchased three used Boeing airplanes in 1984 and one more in 1985 from Singapore International Airlines. Do not lose the train of this. That is the same outfit that the Export-Import Bank is subsidizing so they can buy the new planes. What in the world are we getting into?

Madam President, is the SIA-Pan Am case sort of an isolated example? Let us talk about the oil industry. As you may know, the Eximbank provides extensive financing for oil development in other countries. Now, while this assists companies who are in the business of exporting equipment and technology, it also has its adverse effects.

□ 2010

During 1984 alone, Eximbank authorized $157 million in loans and guarantees, the vast majority in direct credits, for oil development in such countries as Angola, Yugoslavia, Thailand, Brazil, Colombia, India, Indonesia, and Tunisia. Of this amount, the largest single payment was to Angola, the second largest to Yugoslavia. The two of those were $84 million and $47 million, respectively.

I note that such loans would not be possible under the new language in the bill which forbids loans to Communist countries, but the principle is the same.

While we were helping one industry, notably the industries that build oil refineries and export technology, on the other hand we were hurting other industries. When you build an oil refinery, you do not build just enough to fulfill your existing demand. You build a little extra capacity, and that extra capacity then competes with U.S. industries.

I happen to think that U.S. industries ought to be called upon to stand on their own. I am not in favor of subsidies or tariffs or, with very rare exceptions, any kind of special protection for U.S. industries. I am not saying there are no exceptions to that general principle, but it seems to me a good rule. But when you take beleaguered industries, industries that are fighting for survival, like the airline and the oil industries, and say let us subsidize their competitors, that does not seem fair to me. It brings into focus the underlying problem with this whole Eximbank financing idea. It is really a noble idea. It is not case where somebody is deliberately setting out to harm U.S. companies or to harm U.S. jobs. It is a case where people are trying to do something.

There is a certain mentality that says we can cope with these economic problems if we can get big labor, big government, and big business around a table and make big decisions, and that somehow is going to render a more favorable or more just or more patriotic result than letting companies, industries, and employees do for themselves.

Madam President, I guess I have had my say. I am tempted to really go to war with this issue. I am tempted to filibuster the issue. I am tempted to call for a rollcall vote. I am tempted to do almost anything to avoid the passage of it. Not because it is the largest authorization we are going to pass. It is not. It is several hundered million dollars for next year. Not because I even think it is the worst. But just because it is a pretty typical example of the kind of thing we could do without. Just a very few days ago, we enacted a budget waiver to permit funding of, I believe, $600 million—the exact number is not entirely fresh in my mind, but it was more or less $600 million—for the drug program, because we believed this was a major national priority, to somehow stem the tide of illegal drugs coming into this country. We thought it was so important that we said explicitly that we are not going to enforce budget discipline on it because this was a unique program and we could not find anyplace to save $600 million. Here is a place we could save $600 million if we wanted to do it.

I regret that it is not likely that there are enough other Senators who share my point of view that we could kill this bill. I regret that there are probably not enough to make a good fight of it. If I thought so, I would make that fight.

But I wanted to note in passing, despite my pessimism about how hard it is to get rid of Government programs, that this is a turkey. This is a program which is not doing the job, and as the Proxmire amendment comes into force and we see the adverse results, we will see someday that we are going to do away with it. I hope that day will be sooner rather than later.

Mr. PROXMIRE. Madam President, will the Senator yield?

Mr. ARMSTRONG. I yield.

Mr. PROXMIRE. I congratulate the Senator on an excellent statement. I really mean that. I think that in the latter part of the statement, the Senator indicated that it was unrealistic to think that we could make an effective fight on the floor, even get close to a majority to reject continuation of the Eximbank. I think that is correct.

As the Senator said so well and in detail—he has documented it—this bill does represent an improvement from his standpoint, and that was the reason why this Senator did not join in the struggle with my good friend from Colorado. This was an excellent statement he made tonight, one that I think may be very helpful in the future.

Incidentally, we now know that the Eximbank in the future will be subject to appropriations action every year, so that we will have an opportunity, as time goes on, to act on this, and we will call to the attention of the Senate—we will have to—the cost of this operation.

I thank my good friend.

Mr. ARMSTRONG. I thank the Senator.

Mr. DOMENICI. Madam President, I wonder if the distinguished chairman of the Subcommittee on International Finance, Senator HEINZ, would clarify a section of H.R. 5548, the Export-Import Bank conference agreement, for me.

Mr. HEINZ. I shall be happy to accommodate my good friend from New Mexico, Mr. DOMENICI.

Mr. DOMENICI. I thank the Senator from Pennsylvania.

The section I would appreciate clarification on is section 20 of H.R. 5548. Specifically section 20(a) of the bill contains the following language:

No amount is authorized to be appropriated for commitments to make interest subsidy payments on loans for which the Bank extends a loan guarantee commitment if any amount of such loan guarantee commitment is scored as budget authority in any estimate of budget authority prepared pursuant to any provision of the Congressional Budget and Impoundment Control Act of 1974.

I ask the distinguished subcommittee chairman if this language is meant in any way to prescribe to the Budget Committees or the Congressional Budget Office rules of scoring on loan guarantee authority.

Mr. HEINZ. I respond to the distinguished chairman of the Budget Committee, Senator DOMENICI, by assuring him that the language he cites in section 20 of the Export-Import Bank conference agreement is not intended in any way to prescribe methods of budgetary scoring to either the

Budget Committees or the Congressional Budget Office. It is meant simply to make the authorization of appropriations for certain interest subsidy payments conditional, in part, on scoring decisions made by the Budget Committees and the Congressional Budget Office.

Mr. DOMENICI. I thank my good friend, Senator HEINZ, for his clarification that the "budget scoring" language of section 20 of H.R. 5548 in no way prescribes rules of budgetary scoring, but simply references scoring decisions made by the Budget Committees and the Congressional Budget Office. The Senator's explanation of the intent behind this language makes clear that the language does not violate the purpose of section 306 of the Budget Act which is to assure that any bill, resolution, or amendment dealing with the congressional budget, on such issues as scoring, must be handled by the Budget Committees of the Congress.

Mr. HEINZ. I understand Senator DOMENICI's concern and would mention that on July 21, 1986, during Senate floor consideration of the original Senate version of the Exim bill, S. 2247, I offered a floor amendment to strike language from that bill in order to bring the bill into compliance with section 306 of the Budget Act. the language which amendment number 2213 struck from S. 2247 died in fact prescribe scoring rules, giving rise to a section 306 Budget Act violation. Unlike the language struck from S. 2247, conferees on H.R. 5548 intend section 20 of the conference agreement to be nothing more than a reference to how a matter has been scored, as opposed to a prescription of how to do that scoring.

Mr. DOMENICI. I thank the Senator.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the conference report.

The conference report was agreed to.

Mr. HEINZ. Madam President, I move to reconsider the vote by which the conference report was agreed to.

Mr. PROXMIRE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HEINZ. Madam President, I thank all Senators for their support of this bill.

I want to commend my comanager of the bill, Senator PROXMIRE, for his great assistance. He made many contributions to the consideration of the bill, in spite of some reservations he has about it.

I want to thank constructive critics, such as the Senator from Colorado, who are always articulate in their positions and offer a very useful and helpful insight to the body as we consider legislation.

I simply want to comment that the Exim Bank bill, which we estimate will cost, in terms of net subsidy, about $145 million next year, will allow us to ship exports, beyond what we otherwise would have done, valued at between $9 billion and $12 billion. To many people, that probably is just a large, meaningless number with a tremendous number of zeros after it—nine zeros after it. If you use the rough rule of thumb—and this is one that has been documented by the Congressional Budget Office and by a number of economists—for every $1 billion in exports that we are able to generate, that creates about 20,000 jobs. By simple multiplication, this legislation will help us keep, create, or add between 180,000 and 240,000 jobs.

I decided that even that is a little bit abstract and that it might be a good idea to calculate roughly what that means in the way of additions to our national income account from the pay of people who work in these factories. If you assume that the total amount of pay and benefits is somewhere in the neighborhood of $20,000—it could be a bit less in some jobs, a bit more in orders—what you are talking about is the generation through the Export-Import Bank of some $4 billion of export, related jobs, salaries, of which the Federal Government gets its own small slice.

If you just look at how much the Federal Government will gain in the way of both employer and employee social security taxes, you are talking about in excess of $500 million.

□ 2020

In terms of what the Federal Government gets in additional revenues to the general fund from both corporate and personal income taxes, a conservative estimate would be at minimum $500 million more. It could go up as high as $1 billion depending on the tax bracket assumptions for the business and individuals involved.

So the low estimate on what the Federal Government is going to generate for this $145 million estimated expenditure is a minimum of $1 billion.

Madam President, that is by any stretch of the imagination one extraordinary return on investment. And the best thing about it is that the investment is a human investment in job creation, opportunity, and a better future for Americans.

I support this legislation. I am delighted the Senate has acted on it.

After some concern on my part over-delays, we have taken the initiative to reestablish the Export-Import Bank. The Bank has been out of business for almost a week. A number of programs and decisions have been held up, including the sale of some feed grain to one country that the Bank was involved with.

I am delighted that my colleagues have done this, and once again I thank all Senators.

STEAMTOWN NATIONAL HISTORIC SITE

Mr. HEINZ. Madam President, I ask unanimous consent that once the Senate receives from the House H.R. 5555, a bill to designate certain property located in Scranton, PA, as the steamtown national historic site, it be held at the desk pending further consideration.

Mr. PROXMIRE. Madam President, I apologize to my good friend from Pennsylvania on this. He did discuss this with me earlier. He explained it very well. I said, "I have no objection."

I have now learned, however, that unfortunately members of the Energy Committee have informed our staff that it has not been cleared with them. They do object. On behalf of them, I have to object.

Mr. HEINZ. Will the Senator reserve his right to object to enter into a brief discussion?

Mr. PROXMIRE. I will.

Mr. HEINZ. I understand the Senator's position. I thank the Senator for yielding.

I want to make the record and point out that this legislation is authorizing legislation to create as a national historic site "Steamtown U.S.A." It is a location at which are collected some 30 to 40 absolutely extraordinary steam engines of the old iron horse days going back as much as 100 years. Part of it is a magnificent old roundhouse.

We have shrines and national historic sites for everything in the United States. We have a national Football Hall of Fame in Canton, OH, and a Baseball Hall of Fame.

We are very good at preserving a lot of our history.

Here is the railroad age and we know how the railroads opened up this country to commerce, to people, broke down the barriers that had held this country in two halves.

Everyone remembers the driving of the golden spike at Promontory Point in Utah.

In spite of the fact that I understand we will not be able to hold this legislation at the desk here tonight, this will be, when we establish it, the only national historic site, shrine, call it what you will, that will preserve as part of our national heritage the contribution of the steam locomotive. Indeed, it will be a living museum because they plan to run these trains on some tracks, recreating the heritage of the old "iron horse" as people used to call it.

I would only add that the National Park Service, and that is to say the

Reagan administration, is deeply interested in this legislation.

It is my hope that we will be able to take it up on another occasion and pass it.

I have no animosity at all toward the Senator from Wisconsin. There is an objection on his side of the aisle from the Energy Committee and he is only doing his duty as I would have to do mine if there were no objection on our side of the aisle.

I just want everyone to understand he is not doing it because he himself has any personal objections to this legislation. He has tried to accommodate me on many occasions and when it has been within his power to do it he has. I might add the Senator from Wisconsin has gone beyond the call of duty in that respect.

I thank the Senator for reserving his right to object and I thank him for yielding. I know it is not his decision. I know what he has to decide.

Mr. PROXMIRE. Madam President, I really do hesitate to object. The Senator from Pennsylvania is so eloquent. If the Chair could see my eyes she could see that tears are welling up because I love the iron horse. I remember reading about it when I was a little boy, that marvelous vision of what the locomotive has done for our country.

But, Madam President, I have no choice. Some members of the Energy Committee have indicated they object and, therefore, I have to do so.

The PRESIDING OFFICER. Objection is heard to the bill of the Senator from Pennsylvania.

Mr. HEINZ. Madam President, I am not going to ask, but I have considered asking that the bill be read. Were it to be read, as is our right to have a bill read under a rule XIV, it would go over for consideration on the next legislative day. But I am not going to do that for this reason: We do not often move along in terms of legislative days and it may very well be that were I to succeed in my request to have the bill read and put over until the next legislative day, we might never get to the next legislative day. The bill would be in a legislative limbo from which we could never retrieve it in this session.

So I am not going to take any further action to prevent the bill from being referred to the committee. I am going to work with the Committee on Energy and Natural Resources to speed action on the bill, and it is my hope that the members of that committee on both Senator PROXMIRE's side of the aisle and my own will be able to expedite action on it as quickly as possible.

So, Madam President, at this point we have concluded this matter.

SPEECH BY ADM. WILLIAM J. CROWE JR.

Mr. THURMOND. Mr. President, on September 19, Americans all over the country honored their fellow countrymen who are counted as POW's and MIA's. On this occasion, I had the honor of attending a ceremony at the Capitol which recognized these heroic soldiers.

As the ranking Republican on the Armed Services Committee, and a former major general in the Army Reserve, I believe that our commitment to the men and women who defend our Nation must be strong and unequivocal. This is especially true for the large number of POW's and MIA's from American conflicts.

Our POW's suffered extreme hardship in the service of their country. Who can forget that emotional moment when Jeremiah Denton, now one of the distinguished Senators from Alabama, stepped off a military transport plane and reported back to duty after having been a prisoner of the Viet Cong for 7½ years?

POW/MIA Recognition Day gave us an opportunity to renew the commitment we owe to the families of our MIA's in Southeast Asia to obtain a final accounting of their fate. Our responsibility in this matter was eloquently summarized in the remarks made by Adm. William J. Crowe, Jr., the Chairman of the Joint Chiefs of Staff. His inspirational words emphasized the great debt which all Americans owe to their soldiers, living and dead, POW's and MIA's. Mr. President, I would like to ask unanimous consent that a copy of Admiral Crowe's speech be inserted in the RECORD.

There being no objection, the speech was ordered to be printed in the RECORD, as follows:

REMARKS OF ADM. WILLIAM J. CROWE, JR.

Thank you, ladies and gentlemen. I am deeply honored to participate in this ceremony today and to represent the Chiefs of our Military Services and all the members of our Armed Forces, some three million strong.

Moreover, it is a privilege to share this podium with our distinguished guest speakers, two of whom have served our country under the most difficult of circumstances as prisoners of war, and now continue in the service of our nation in the halls of Congress

This is a special day when all Americans pay their respects to our POWs and MIAs from past conflicts. For instance, we still carry some 13,000 names on the rolls of the MIAs from the four wars since 1900. It is especially appropriate that we honor these noble warriors who have done so much in behalf of their countrymen.

A great deal has been written about war—its glories, its ravages, its great captains, its heroes, its historical significance, but literature has given comparatively little space to captives, prison camps, and deeds of heroism performed off the battlefield.

From the American Revolution to our war in Vietnam, our country has produced a special breed of men who have survived the rigors of enemy prison camps—men who have overcome extraordinary hardships in the name of their beliefs. Senator Denton and Representative McCain belong to that elite fraternity.

During the American Revolution, our POWs were sent to England in prison ships. The conditions were atrocious and many died at sea. Those that survived did not return for several years. The Civil War saw prisoners of both sides subjected to harsh and brutal treatment. Almost 50,000 Americans died in prisons during that tragic chapter in our history.

While World War I saw over 4,000 doughboys captured, it was during World War II that the largest number of our servicemen suffered this fate—approximately 130,000. Over 14,000 perished in German and Japanese camps.

In Korea, American POWs were forced for the first time to endure a more sophisticated form of torture—brainwashing. They were isolated, deprived of sleep and browbeaten, and faced with squads of trained interrogators, who attempted not only to exact obedience but to break their will, and to lead them to renounce their country and friends. In the face of these atrocities, thousands of our men stood heroically resolute, refusing to bend to this psychological pressure.

Our prisoners in Vietnam were likewise victims of extreme forms of physical and mental torture. The Vietnamese communists refined and elaborated on North Korean techniques, capitalizing on the divisive nature of the war to play on the minds of our POWs and to sow doubts about their government's morality.

Nowhere is the contrast between democracy and communism starker than in the way the two political systems deal with prisoners of war.

Nonetheless, our POWs remained indomitable and determined. Men like Jim Stockdale, Robbie Risner, Ed Alvarez, Jeremiah Denton and John McCain served their country with distinction under conditions of great duress. In an era when Americans are accused of being amoral, overly materialistic, commercial, cynical and superficial, these brave and determined men laid those charges to rest, not with words but with deeds. They resisted intimidation and refused to renounce their country or its principles—even at the risk of losing their lives. Whatever the price, they clung stubbornly to their ideals and rejected the shoddy, philosophy of their captors. The North Vietnamese jailkeepers, no matter what they did, could not conquer their souls—the souls of these men simply were not for sale.

They demonstrated for the world to see that deep-down patriotism, loyalty, duty, sacrifice, determination, guts are not hollow words but are still alive and well among the people of our Republic. What a magnificent lesson for each and every one of us. Above all, what a priceless example for our children. We are eternally indebted to these men who have suffered so much, but in doing so have illuminated our nation's greatness, restored our pride in ourselves and given us a timeless legacy of inspiration.

Today, the POW/MIA flag flies as a national tribute to these men who gave so much and is a vivid reminder that over 2,400 are still missing and unaccounted for as a result of the Vietnamese conflict. We as a nation can never forget them and on this

day all Americans join in a firm resolve to support their government's efforts to achieve as full an accounting as possible. As a nation, too, we reach out to embrace the families, relatives, and friends of these courageous Americans and let them know that they do not suffer alone.

Within the Joint Chiefs of Staff, we take our responsibilities on this issue very seriously, and very personally. We feel a special duty to ensure that the sacred obligation to our comrades and their families is fulfilled.

May the POW/MIA flag that flies today serve as a reminder for future generations that freedom is not free—but demands recurring payments of courage, dedication and service.

NERVE GAS PRODUCTION

Mr. HATFIELD. Mr. President, before a single member of the North Atlantic Treaty Organization has agreed to store them, before a military need has been demonstrated, and before the technical feasibility of these new weapons has been proven, the administration wants to break a 17-year moratorium on nerve gas production. And despite all laws of logic, Congress may soon give its blessings to the administration and its destabilizing program of lethal nerve gas weapons production. Despite all laws of logic, Congress may soon put the cart before the horse.

I have been an opponent of renewed production since the administration first asked Congress to fund these ghastly weapons in 1981. But this time the issue is not whether or not we are for nerve gas production. This time the issue is whether we are for or against releasing millions of dollars for a program which will make a mockery of deterrence and weaken the credibility of this Congress as it now stands.

Despite 19 close votes in this Congress over the past 6 years, no consensus has ever been reached and production funds annually are conditioned or withheld at the last minute. Members have been able to avoid the issue. Not this time. This time the money will be released and the production lines will begin rolling very soon.

Mr. President, I want to make sure my colleagues understand the issue on the eve of the House-Senate conference on the continuing resolution because it is in that conference that this issue will be decided.

Last year Congress conditioned the renewed production of nerve gas weapons on the formal approval of the North Atlantic Council. Nerve gas weapons can be a potentially effective deterrent only if they are stored in Western Europe. We know that. And before we start producing these lethal weapons, we need to know that NATO governments are willing to cooperate. The North Atlantic Council, composed of member nation foreign ministers, is the highest political body in NATO, the only body in NATO able to express the political resolve necessary for production to go forward. While we agree that nerve gas production ought to be considered by NATO military bodies, military consensus is not enough.

The nerve gas production issue was never raised in the North Atlantic Council. Instead, the administration deemed the issue appropriately considered only in a military context and buried it in a force goal approved by a lower body's consensus procedure. Presidential certification of NATO approval came to Congress recently, but the requirement of this body was never met. If my colleagues have any doubts about that fact, take note of the comments of several NATO member Ambassadors:

The chemical weapons modernization in NATO has been discussed in the framework of the Defense Planning Committee, and not in the North Atlantic Council,

Said the Netherlands Ambassador.

The issue was formally dealt with in NATO's Defense Planning Committee alone.

Said the West German Ambassador.

The Secretary of State, did not raise the question of renewed chemical weapons production at the Ministerial Session of the North Atlantic Council nor did he engage in a discussion of this question with his colleagues,

Explained the Canadian Ambassador.

And if those statements are not enough to prove the administration's blatant disregard for our requirement. Take a look at the language in section 109 of the 1987 defense authorization bill passed by this body in August. There you will find a technical amendment, deleting the words "North Atlantic Council" from last year's requirement and replacing them with "Defense Planning Committee." The administration, you see, wanted to cover its tracks.

The specific language of the congressional requirement holds that

fund may be used for the procurement or assembly of binary chemical munitions if the President certifies to Congress that the United States has submitted to the North Atlantic Treaty Organization a force goal and said force goal has been formally adopted by the North Atlantic Council.

The Appropriations Conference Committee members who wrote that requirement did not include the words "formally adopted" or "North Atlantic Council" for their own entertainment, nor did they include these words so the administration could interpret them as it desired. I should know because I chaired that conference committee. We included the words "formally adopted" and "North Atlantic Council" with a specific intent. Moreover, we included them as part of the law.

Of course it makes sense that the administration wanted to deal with the nerve gas production issue in NATO as quietly as possible and only in a military context. European politicians squirm at the very mention of nerve gas. Many of the people who elected them remember the grotesque effects of chemical weapons and the deaths and chronic illnesses caused by their use during World War I. By dealing with the production issue quietly and allowing the NATO allies to voice loud objection to deployment, the administration gave our NATO allies political cover. As things stand now, every nation in NATO is in an excellent position to deny that they actually approved anything—never mind something as politically poisonous as nerve gas.

It makes sense that the administration wanted to avoid trying to obtain formal approval of nerve gas production by the North Atlantic Council, but it is not acceptable. The integrity of the Appropriations Committee and of this institution is undermined by this avoidance. Our word is the word of law, and not even the administration is above our requirements.

Not only was the letter of the law violated, but its spirit was also flouted. We included that language because we wanted to make sure that our NATO allies were politically willing to go along with our decision. But despite the low level military discussion of the issue, the political statements of our NATO allies suggest that they are not willing to go along with our decision. Indeed, a number of member nations took great pains to express their opposition to the storing, basing, or deploying of nerve gas weapons on their soil.

In other words, despite the fact that the administration certified to Congress that NATO approval had been acquired, the congressional requirement was ignored and no nation in NATO indicated a willingness to take these new weapons once they have been produced. "It defies common sense to assert that NATO backs the production of new chemical weapons," wrote the leader of the Opposition Party in the Belgian House of Representatives in a recent letter to me.

To bring West Germany along as a silent partner in this charade, President Reagan worked out an agreement with Chancellor Kohl which essentially creates a nuclear free zone in that nation. By 1992, all existing nerve gas weapons in the only European nation which now stores them will be removed. They will be replaced only with the formal consent of West Germany. Even in time of crisis, West Germany now has absolute veto power. The former commander in chief of the U.S. Army forces in Europe, General Frederick Kroesen, recently said that the agreement represents "a step away from deterrence." "There will be no retaliatory capability in Europe," he said, "almost an in-

vitation for Soviet use." Let me point out that I personally believe that a formidable protective capability is the most meaningful and effective deterrent to Soviet use, but I am simply quoting General Kroesen.

Now there is a stroke of military genius, Mr. President. In order to get nerve gas production underway, the administration has given away the one deterrent it had in Europe. Is anyone really going to argue that some other NATO member will volunteer for duty? Or maybe someone wants to argue that transporting nothing but nerve gas—no troops, no hardware—for solid weeks from the United States to Western Europe in time of crisis will pose an effective deterrent? A crisis in this age will not last 4 weeks—by the time we finish transporting our shiny new weapons, Mr. President, only the wreckage of Western Europe will be waiting for us.

The real irony of this folly is that the nerve gas weapons the administration so successfully negotiated out of existence are not old or leaking or unusable. In fact, the weapons just negotiated out of existence are, according to Defense Secretary Caspar Weinberger in a recent interview, "in fact in excellent condition." While arguments might be made for an existing need in our European chemical deterrent, artillery shells clearly are not it. In its desperation to get renewed nerve gas production underway, the administration has in fact sacrificed what its own experts agreed was a viable deterrent and an integral part of negotiations with the Soviet Union.

In reality, none of the existing nerve gas artillery shells—in the West German stockpile or our own—are obsolete. In 6 years of testimony before the Senate Appropriations Committee, no expert or strategist or administration official has been able to argue that binary nerve gas weapons production is necessary to fill an existing void. "We want them, Mr. Chairman, but we cannot really say that we need them." That is what I have heard over and over again, and yet here we are negotiating away what Pentagon strategy planners have testified before my committee are our best chemical deterrent and allocating millions of dollars for these unnecessary and workable weapons.

We do not really need the 155mm artillery shells, but that is only half of the production request included in this bill. The other half is for a deep strike binary bomb which simply does not work. A better argument can be made for a deep strike nerve gas bomb than for the artillery shells. But even assuming that we do need some version of this weapon, the one we are being asked to fund simply does not work. A General Accounting Office report released in May concluded that the technical problems of the Bigeye are so great that it may never be ready for production.

Mr. President, the staunchest opponent of renewed nerve gas weapons production could not have written a better scenario. The administration wants us to approve millions of dollars for procurement of one weapon that is not necessary and another that does not work. Since we bargained away our only Western European storehouse, we are not entirely sure where we are going to put these weapons. And on top of it all, the administration, blinded by its eagerness to start up the production lines, ignored the expressed will of Congress and violated the law.

Given the compelling arguments against renewed production and the close votes this year on the issue, approval of the nerve gas production funds makes no sense. And we will have one last chance to say so. We have one last chance to tell the administration that when we said North Atlantic Council last year, we meant North Atlantic Council. We have one last chance to tell the administration that we are not willing to sacrifice the one chemical deterrent in Western Europe. We have one last chance to tell the Pentagon that we are not going to pay for weapons that are unnecessary and unworkable at this time. And we have one last chance to serve notice to friend and foe alike that only with a highly compelling reason will we give up the moral high ground we attained 17 years ago when President Richard Nixon declared a moratorium on nerve gas weapons production.

Before we write our first check for this multibillion—yes, I said, multibillion-dollar program, shouldn't we make sure that we are going to get more than a weakened deterrence and eroded credibility for our money? No one who allows this program to go forward can honestly go back home and talk about fiscal responsibility and congressional integrity.

In short, Mr. President, I hope that members of the conference committee have the courage to refuse to put the cart before the horse and the integrity to uphold our own laws.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mrs. Emery, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

At 1:00 p.m., a message from the House of Representatives, delivered by Mr. Berry, one of its reading clerks, announced that the House agrees to the amendment of the Senate to the bill (H.R. 4718) to amend title 18, United States Code, to provide additional penalties for fraud and related activities in connection with access devices and computers, and for other purposes.

The message also announced that the House agrees to the amendment of the Senate to the amendment of the House to the text of the bill (S. 1917) to amend the Foreign Assistance Act of 1961 to provide assistance to promote immunization and oral rehydration, and for other purposes.

The message further announced that the House agrees to the amendment of the Senate to the text of the bill (H.R. 2032) to amend the Securities Exchange Act of 1934 to provide improved protection for investors in the Government securities market, and for other purposes, with an amendment, in which it requests the concurrence of the Senate; and that the House agrees to the amendment of the Senate to the title of the bill.

The message also announced that the House has passed the bill (S. 475) to amend the Motor Vehicle Information and Cost Savings Act to require certain information to be filed in registering the title of motor vehicles, and for other purposes, with amendments, in which it requests the concurrence of the Senate.

The message also announced that the House has passed the bill (S. 2506) to establish a Great Basin National Park in the State of Nevada, and for other purposes, with an amendment, in which it requests the concurrence of the Senate.

The message further announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 5420. An act to amend section 3726 of title 31, United States Code, relating to payment for transportation, to permit prepayment audits for selected transportation bills, to permanently authorize payment of transportation audit contractors from carrier overpayments collected, to authorize net overpayments collected to be transferred to the Treasury, and for other purposes.

ENROLLED BILLS AND JOINT RESOLUTIONS SIGNED

The message also announced that the Speaker has signed the following enrolled bills and joint resolutions:

S. 1965. An act to reauthorize and revise the Higher Education Act of 1965, and for other purposes;

S. 2884. An act to amend the Fair Labor Standards Act of 1938 to require that wages based on individual productivity be paid to handicapped workers employed under certificates issued by the Secretary of Labor;

H.R. 4216. An act to provide for the replacement of certain lands within the Gila Bend Indian Reservation, and for other purposes;

H.R. 4545. An act to authorize appropriations for the American Folklife Center for fiscal years 1987, 1988, and 1989, and for other purposes;

H.R. 5430. An act to amend the Gila River Pima-Maricopa Indian Community judgment distribution plan;

H.R. 5522. An act to authorize the release to museums in the United States of certain objects owned by the United States Information Agency;

S.J. Res. 280. Joint resolution designating the month of November 1986 as "National Alzheimer's Disease Month";

S.J. Res. 385. Joint resolution to designate October 23, 1986, as "National Hungarian Freedom Fighters Day";

S.J. Res. 406. Joint resolution to designate October 4, 1986 as "National Outreach to the Rural Disabled Day";

H.J. Res. 210. Joint resolution designating the Study Center for Trauma and Emergency Medical Systems at the Maryland Institute for Emergency Medical Systems at the University of Maryland as the "Charles McC. Mathias, Jr., National Study Center for Trauma and Emergency Systems";

H.J. Res. 588. Joint resolution commemorating January 28, 1987, as a National Day of Excellence in honor of the crew of the space shuttle Challenger;

H.J. Res. 617. Joint resolution to designate the week beginning September 21, 1986, as "National Adult Day Care Center Week"; and

H.J. Res. 686. Joint resolution to designate August 12, 1987, as "National Civil Rights Day".

The enrolled bills and joint resolutions were subsequently signed by the President pro tempore [Mr. THURMOND].

At 3:13 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House has passed the following bill, without amendment:

S. 197. An act for the relief of Elga Bouilliant-Linet.

The message also announced that the House has passed the bill agrees to the amendments of the Senate to the bill (H.R. 5299) to amend title 38, United States Code, to provide a 2-percent increase in the rates of compensation and of dependency and indemnity compensation [DIC] paid by the Veterans' Administration, and for other purposes, with amendments, in which it requests the concurrence of the Senate.

The message further announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 628. An act for the relief of John M. Gill;

H.R. 1330. An act for the relief of Marsha D. Christopher;

H.R. 1981. An act for the relief of Lawrence K. Lunt;

H.R. 2682. An act for the relief of Jean DeYoung;

H.R. 3860. An act for the relief of Joyce G. McFarland;

H.R. 4706. An act for the relief of Rick Hangartner, Russell Stewart, and David Walden; and

H.R. 4779. An act for the relief of Allen H. Platnick.

At 6:16 p.m., a message from the House of Representatives, delivered by Mr. Berry, one of its reading clerks, announced that the House has passed the following bills, each with an amendment, in which it requests the concurrence of the Senate:

S. 332. An act for the relief of Ramzi Sallomy and Marie Sallomy;

S. 593. An act for the relief of the Merchants National Bank of Mobile, Alabama; and

S. 1895. An act for the relief of Marlboro County General Hospital Charity, of Bennettsville, South Carolina.

The message also announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 3355. An act to develop a national methanol energy policy and to coordinate efforts to implement such policy;

H.R. 5576. An act to provide for the stability of the domestic banking and thrift systems, to improve housing, to protect the American consumer of financial services, and for other purposes; and

H.R. 5613. An act to provide for the uniform disclosure of the rates of interest which are payable on savings accounts, to provide for detailed and uniform disclosures of information on interest rates and other fees in applications and solicitations for credit cards, and for other purposes.

MEASURES REFERRED

The following bill was read the first and second times by unanimous consent, and referred as indicated:

H.R. 5555. An act to designate certain property located in Scranton, Pennsylvania, as the "Steamtown National Historic Site"; to the Committee on Energy and Natural Resources.

ENROLLED BILLS AND JOINT RESOLUTIONS PRESENTED

The Secretary of the Senate reported that on today, October 7, 1986, she had presented to the President of the United States the following enrolled bills and joint resolutions:

S. 1965. An act to reauthorize and revise the Higher Education Act of 1965, and for other purposes;

S. 2884. An act to amend the Fair Labor Standards Act of 1938 to require that wages based on individual productivity be paid to handicapped workers employed under certificates issued by the Secretary of Labor;

S.J. Res. 280. Joint resolution designating the month of November 1986 as "National Alzheimer's Disease Month";

S.J. Res. 385. Joint resolution to designate October 23, 1986, as "National Hungarian Freedom Fighters Day"; and

S.J. Res. 406. Joint resolution to designate October 4, 1986, as "National Outreach to the Rural Disabled Day".

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. THURMOND, from the Committee on the Judiciary:

Report to accompany the bill (S. 1534) for the relief of Masayoushi Goda, Nobuko Goda, Maki Goda, and Eri Goda (Rept. No. 99-534).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. GOLDWATER, from the Committee on Armed Services:

James F. McGovern, of Virginia, to be Under Secretary of the Air Force; and

Robert B. Barker, of California, to be Chairman of the Military Liaison Committee to the Department of Energy.

(The above nominations were reported with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

Mr. GOLDWATER. Mr. President, from the Committee on Armed Services, I report favorably the attached listing of nominations.

Those identified with a single asterisk (*) are to be placed on the Executive Calendar. Those identified with a double asterisk (**) are to lie on the Secretary's desk for the information of any Senator since these names have already appeared in the CONGRESSIONAL RECORD and to save the expense of printing again.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The nominations ordered to lie on the Secretary's desk were printed in the RECORD of September 10, September 11, September 16, September 18, September 22, September 23, September 24, September 30, and October 2, 1986, at the end of the Senate proceedings.)

*In the Army there are 57 appointments to the grade of brigadier general (list begins with William J. Meehan II) (Ref. 1313).

**In the Air Force Reserve there are 21 promotions to the grade of lieutenant colonel (list begins with Michael G. Beadle) (Ref. 1351).

**In the Air Force Reserve there are 847 promotions to the grade of lieutenant colonel (list begins with John L. Adams) (Ref. 1352).

**In the Air Force there are 1,047 appointments to a grade no higher than captain (list begins with Rudy C. Abeyta) (Ref. 1353).

**In the Army Reserve there are 73 promotions to the grade of colonel and below (list begins with Wylie A. Abercrombie) (Ref. 1354).

**In the Navy there are 9 promotions to the grade of commander and below (list begins with Robin L. Adams) (Ref. 1355).

**In the Navy there are 428 appointments to the grade of lieutenant junior grade (list begins with Leland Sinclair Barratt III) (Ref. 1356).

*General Robert W. Bazley, U.S. Air Force, to be placed on the retired list (Ref. 1365).

*Lieutenant General Jack I. Gregory, U.S. Air Force, to be general (Ref. 1366).

*Lieutenant General Carl H. Cathey, U.S. Air Force, to be placed on the retired list (Ref. 1367).

*Major General Aloysius G. Casey, U.S. Air Force, to be lieutenant general (Ref. 1368).

*Major General Thomas G. McInerney, U.S. Air Force, to be lieutenant general (Ref. 1369).

*Major General Craven C. Rogers, Jr., U.S. Air Force, to be lieutenant general (Ref. 1370).

**In the Navy and Naval Reserve there are 24 appointments to the grade of captain and below (list begins with James T. Bergeron) (Ref. 1371).

*Major General Claudius E. Watts III, U.S. Air Force, to be lieutenant general (Ref. 1374).

*Lieutenant General Casper T. Spangrud, U.S. Air Force, to be reassigned (Ref. 1375).

*General Richard L. Lawson, U.S. Air Force, to be placed on the retired list (Ref. 1376).

*Lieutenant General Thomas C. Richards, U.S. Air Force, to be general (Ref. 1377).

*In the Army National Guard there are 23 appointments to the grade of major general and below (list begins with Ronald Bowman) (Ref. 1382).

*Colonel Raymond C. Bonnabeau, Jr., U.S. Army Reserve, to be brigadier general (Ref. 1383).

*Lieutenant General James R. Brown, U.S. Air Force, to be reassigned (Ref. 1387).

*Major General Robert C. Oaks, U.S. Air Force, to be lieutenant general (Ref. 1388).

*In the Navy there are 3 promotions to the grade of rear admiral (list begins with Robert Paul Caudill, Jr.) (Ref. 1389).

**Lawrence L. Vandiford, U.S. Air Force, to be lieutenant colonel (Ref. 1390).

**In the Air Force there are 15 promotions to the grade of lieutenant colonel and below (list begins with Barry W. Christen) (Ref. 1391).

**In the Air Force Reserve there are 18 promotions to the grade of lieutenant colonel (list begins with Russel V. Gatlin) (Ref. 1392).

**In the Army there are 7 promotions to the grade of major (list begins with Arthur J. Bland) (Ref. 1393).

**In the Air Force there are 1,011 promotions to the grade of colonel (list begins with Dennis O. Abbey) (Ref. 1396).

**In the Marine Corps there are 532 appointments to the grade of colonel and below (list begins with Felipe Torres) (Ref. 1397).

**Diana S. Stepanik, U.S. Army, to be lieutenant colonel (Ref. 1408).

**In the Army there are 297 promotions to the grade of major (list begins with Priscilla M. Alston) (Ref. 1409).

**In the Army there are 721 appointment to the grade of colonel (list begins with Michael H. Abbott) (Ref. 1410).

*Rear Admiral John B. Mooney, Jr., U.S. Navy, to be Chief of Naval Research (Ref. 1415).

**In the Marine Corps there are 3 appointments to the grade of second lieutenant (list begins with Ronnie A. Crawford) (Ref. 1416).

**In the Army there are 173 promotions to the grade of lieutenant colonel (list begins with Jerry W. Black) (Ref. 1420).

*Lieutenant General James J. Lindsay, U.S. Army, to be general, and Major General John W. Foss, U.S. Army, to be lieutenant general (Ref. 1421).

*Major General Roger P. Scheer, Air Force Reserve, to be Chief, Air Force Reserve (Ref. 1430).

**In the Army there is 1 promotion to the grade of major (Thomas G. Tecec) (Ref. 1433).

**In the Marine Corps there are 3 appointments to the grade of lieutenant colonel and below (list begins with Peter J. Burner) (Ref. 1448).

**In the Navy there are 157 appointments to the grade of captain and below (list begins with David L. Neel) (Ref. 1449).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. MURKOWSKI:

S. 2910. A bill to clarify the definition of "vessels of the United States" in the Magnuson Fishery Conservation and Management Act; to the Committee on Commerce, Science, and Transportation.

By Mr. DURENBERGER (for himself and Mr. BOSCHWITZ):

S. 2911. A bill to designate the Federal Building and U.S. Courthouse at 316 North Robert Street, St. Paul, MN, as the "Warren E. Burger Federal Building and U.S. Courthouse; to the Committee on Environment and Public Works.

By Mr. GLENN (for himself, Mr. HEINZ, Mr. CHILES, Mr. MELCHER, Mr. DODD, Mr. BURDICK, Mr. METZENBAUM, Mr. BINGAMAN, Mrs. HAWKINS, and Mr. SPECTER):

S. 2912. A bill to amend the Older Americans Act of 1965 to strengthen and improve the provisions relating to State long-term care ombudsman programs, and for other purposes; to the Committee on Labor and Human Resources.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. MURKOWSKI:

S. 2910. A bill to clarify the definition of "vessels of the United States" in the Magnuson Fishery Conservation and Management Act; to the Committee on Commerce, Science, and Transportation.

DEFINITION OF "VESSELS OF THE UNITED STATES"

● Mr. MURKOWSKI. Mr. President, the Magnuson Fishery Conservation and Management Act was passed by Congress 10 years ago to promote the Americanization of fishing activities with the 200-mile exclusive economic zone of the United States. The U.S. seafood industry is beginning to replace foreign fishing operations and fully utilize the vast resources in the North Pacific Ocean; however, it is possible for foreign companies to retain access to U.S. fishing resources through a quirk in our vessel documentation laws. Under present law, a foreign-owned company can simply reflag their foreign-build processing vessel to U.S. flag. As long as such a vessel only conducts processing activities, it would be considered a domestic operation and would thereby receive priority access to U.S. fishery resources, even though it may be wholly foreign-owned.

The North Pacific Fishery Management Council recently heard testimony from fishing industry representatives and other interested individuals regarding their concern over the transfer by foreign fishing companies of processing ships from foreign registry to U.S. registry. The council unanimously endorsed the call for action to prevent the documentation of foreign-built vessels as U.S.-flag vessels.

This bill will assure that after October of this year, foreign-built processing vessels do not receive U.S. documentation. U.S. companies are rapidly expanding their capacity to process all of the fishery resources in the North Pacific. By requiring that all processing vessels be U.S. built, both existing U.S. floating and shoreside processors can be confident that their efforts to Americanize the fishery will continue without being jeopardized by foreign companies. There are currently two foreign-built processing ships which would remain; however, in the future, as the U.S. fishing industry fully develops, foreign companies will not be allowed to re-flag their existing vessels to retain access to our fishery resources.

Development of the U.S. processing industry has made great progress during the last few years. By the end of this year there will be three surimi processing plants in Alaska, with more to follow soon. This bill is necessary to assure that the progress toward Americanization of our fishery resources continues.

Mr. President, I ask unanimous consent that a copy of the bill be printed in the CONGRESSIONAL RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2910

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled,

Paragraph (27) of Section 3 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1802 (27)) is amended in part (A) by inserting after the word "vessel" the words "built in and".

Section 2. This amendment is effective for vessels documented after October 1, 1986.●

By Mr. GLENN (for himself, Mr. HEINZ, Mr. CHILES, Mr. MELCHER, Mr. DODD, Mr. BURDICK, Mr. METZENBAUM, Mr. BINGAMAN, Mrs. HAWKINS, and Mr. SPECTER):

S. 2912. A bill to amend the Older Americans Act of 1965 to strengthen and improve the provisions relating to State long-term care ombudsman programs, and for other purposes; to the Committee on Labor and Human Resources.

STATE LONG-TERM CARE OMBUDSMAN ADVOCACY IMPROVEMENT ACT

● Mr. GLENN. Mr. President, I rise today to introduce legislation to strengthen the State Long-Term Care Ombudsman Program, an extremely important nationwide program that protects the rights of the elderly who reside in nursing homes and other long-term care facilities. This legislation, the State Long-Term Care Ombudsman Advocacy Improvement Act of 1986, would amend the Older Americans Act to improve State and local long-term care ombudsman programs which operate in every State in our country.

I am pleased to be joined in introducing this bill by several of my distinguished colleagues from the Special Committee on Aging, including Chairman JOHN HEINZ, and Senators LAWTON CHILES, JOHN MELCHER, CHRIS DODD, QUENTIN BURDICK, HOWARD METZENBAUM, JEFF BINGAMAN, PAULA HAWKINS, ARLEN SPECTER.

The Ombudsman Program, which is now entering its 12th year, began in 1975 as a demonstration project, and was formally authorized in the 1978 amendments to the Older Americans Act [OAA]. During the 1987 reauthorization of the OAA, I expect that we will consider improvements to the Ombudsman Program. The legislation we are introducing today is intended to guide the course of discussion over the next several months with State and national organizations that will play key roles in amending the OAA. I intend to reintroduce the State Long-Term Care Ombudsman Advocacy Improvement Act early in the 100th Congress and look forward to broad support.

Similar to ombudsmen throughout the world, the primary purpose of State long-term care ombudsmen is to investigate complaints and resolve problems. In this case, the complaints are those made by or on behalf of residents of nursing homes and other adult residential care facilities, such as board and care homes.

Each State has an ombudsman program usually operated by the State agency responsible for OAA funds. Most States have also established local or substate ombudsman offices that typically are run by community-based senior citizen organizations and other nonprofit or governmental agencies. The program represents an effective partnership between the State and local organizations; the State providing the authority and direction for ombudsman activities and the local offices providing most of the day-to-day contact with nursing home residents.

A major objective of the Ombudsman Program is to develop a regular presence in nursing homes. This typically is done by relying upon trained volunteers to visit the facilities weekly. Thus the ombudsman becomes acquainted with the facility, its management and employees, and most importantly with the elderly residents, as well as their visitors and family. This presence in the facility enables the ombudsman to establish credibility and trust with residents, employees, and others so often necessary for the frail and vulnerable to voice their problems and concerns. As a result, many problems are raised with ombudsmen that would otherwise not surface. Since some 50 percent of nursing home residents have no family, there may be no one else to voice concerns on their behalf. Furthermore, regular visits by an ombudsman often prevent incidents from occurring or slippages in care or complicance with standards.

Ombudsmen have a broad mandate in responding to complaints; they are not limited to complaints about care standards. They may also respond to complaints about adverse decisions or inaction by governmental agencies, problems with guardians, or theft of personal property. Ombudsmen, since they do not have formal enforcement or sanction authority, have great flexibility in resolving problems. They often serve as brokers, linking the complainant with various entities which may resolve their problem.

The role of ombudsmen visiting facilities on a regular basis contrasts with that of State licensure and enforcement officials who typically visit facilities only for annual inspections and in response to complaints filed with their office. Thus, their actual time in a given facility is usually limited and consequently, they rarely become acquainted with individual patients or employees, except facility management. Furthermore, the scope of ombudsman activity is broader than that of licensing authorities whose role is primarily of a regulatory nature.

The growth in the Ombudsman Program has been remarkable. There are now over 500 local programs throughout our Nation. According to the Administration on Aging, between 1982 and 1984, the number of volunteers increased some 57 percent to nearly 5,200. The number of complaints handled by the program throughout the country during that time increased by 75 percent from approximately 41,000 to 71,000. Of these, 67 percent were partially or fully resolved.

As a result of this growth and the program's significant impact on quality of care and residents' rights problems, a number of national groups have strongly recommended strengthening the Ombudsman Program. This includes the recommendations made by the Senate Aging Committee as a result of the hearings in 1985 on "Medicare's Prospective Payment System" and this year on nursing home care. The Institute of Medicine, in its major report "Improving the Quality of Care in Nursing Homes," released in February of this year, recommended a series of amendments to the OAA to improve the Ombudsman Program. More recently, the Senate Labor and Human Resources' Subcommittee on Aging held a hearing on reauthorization of the OAA, at which several major national aging organizations recommended improvements in statutory language governing the program.

Mr. President, the State Long-Term Care Ombudsman Advocacy Improvement Act would strengthen the Ombudsman Program's capacity to assist long-term care facility residents in several important ways. First, it would establish a new part D in title III of the OAA, thus giving the program greater focus, eliminating competition for funding with the many other title III-B social services and providing a framework for future expansion.

Second, local or sub-State programs would receive formal recognition in the OAA. When the program was enacted in 1978, there were few local programs, but it is time to recognize the tremendous role that the community-based programs now play. The role of the State in designating local offices would be improved and the State ombudsman's responsibility for designating and training representatives of his or her office would be clarified.

Third, the tools necessary to effectively respond to and resolve complaints would be strengthened. Access to facilities, to facility residents and to their records, with the resident's consent, would be assured. Immunity would be provided for good faith performance of official duties and the States would make available legal counsel and representation to ombudsmen carrying out their duties. Furthermore, retaliation against residents and employees who voice complaints or provide information to ombudsmen would be prohibited as would willful interference with the performance of official duties. And, licensure and certification agencies would be required to share essential information with ombudsman programs.

Fourth, the ombudsman's role as a voice for the frail and voiceless would be clarified by improving existing language concerning the ombudsman's responsibility to provide information and recommendations regarding issues affecting facility residents to the public, to governmental agencies, and to State and Federal legislative bodies.

Fifth, to keep the program focused on solely representing the interests of the clients they serve, conflict of interest language would be improved and States would have to assure that the programs under their jurisdiction are free of conflicts of interest, and that mechanisms are in place to identify and resolve conflicts.

Sixth, the ombudsman's ability to continue to assist clients who move from nursing homes to hospitals would be improved by assuring access to Medicare and Medicaid hospital patients.

Finally, the responsibilities of the Administration on Aging [AOA] with respect to the Ombudsman Program would be clearly spelled out. The AOA would be required to ensure that adequate staff are assigned to work on this program. The AOA would be required to establish a technical assistance and training capacity for ombudsman programs as well as to evaluate the program and provide substantive reports to Congress.

Our legislation does not address expansion of the Ombudsman Program into other long-term care settings, including home health care. There is growing interest, which I share, in the need to establish ombudsman services for clients of home care services. I believe, however, that such expansion should not occur without additional funding to serve new populations. The program currently has a large responsibility and inadequate funding to meet its present mandate.

Many of the bill's provisions represent refinements and improvements in the program as it exists today, and would not require increased costs. Therefore, many of the provisions in this bill would take effect in the absence of an appropriation for this new part of title III of the OAA. The specific funding level for the program would be addressed during reauthorization of the OAA during the 100th Congress. At minimum, the amount would be equal to current Federal expenditures under the OAA for the Ombudsman Program, which according to the administration's most recent figures, was $10.2 million in fiscal year 1985.

Mr. President, the State Long-Term Care Ombudsman Advocacy Improvement Act of 1986 is a much-needed response to recommendations made by various national groups, including our Aging Committee, to improve this essential program. I believe that our bill will play a significant role in strengthening the Ombudsman Program during reauthorization of the Older Americans Act. I look forward to the support of my colleagues in this important effort.

I ask unanimous consent that the text of the bill appear in the RECORD at this point.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2912

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "State Long-Term Care Ombudsman Advocacy Improvement Act of 1986".

SEC. 2. STATE LONG-TERM CARE OMBUDSMAN PROGRAM.

(a) IN GENERAL.—Title III of the Older Americans Act of 1965 (42 U.S.C 3021 et seq.) is amended by adding at the end thereof the following new part:

"PART D—STATE LONG-TERM CARE OMBUDSMAN PROGRAMS

"STATE PLAN REQUIREMENTS

"SEC. 341. (a) In order to meet the requirements of section 307(a), a State shall—

"(1) establish and operate, either directly or by contract or other arrangement, with any public agency or other appropriate private nonprofit organization, an Office of the State Long-Term Care Ombudsman (in this part referred to as the 'Office') that meets the requirements of subsection (c), provided that no such agency directly operating the program shall be an entity described in subsection (d);

"(2) establish procedures for access by representatives of the Office to long-term care facilities and patients' records, including procedures to protect the confidentiality of such records and ensure that the identity of any complainant will not be disclosed without the consent of the complainant or a legal representative thereof;

"(3) establish a statewide uniform reporting system to collect and analyze data relating to complaints and conditions in long-term care facilities for the purpose of identifying and resolving significant problems, with provision for submission of such data to the agency of the State responsible for licensing or certifying long-term care facilities in the State and to the Commissioner on a regular basis;

"(4) establish procedures to ensure that any files maintained by the Office shall be disclosed only at the discretion of the State Long-Term Care Ombudsman (or a designee), except that the identity of any complainant shall not be disclosed unless the complainant (or a legal representative thereof) consents to such disclosure;

"(5) in planning and operating the ombudsman program, consider the views of area agencies on aging, older individuals, and provider agencies;

"(6) provide assurances—

"(A) that no individual involved in the designation of the State Long-Term Care Ombudsman (whether by appointment or otherwise) or the designation of the head of any subdivision of the Office or any organization designated under subsection (c)(2) is subject to a conflict of interest, and

"(B) that no officer, employee, or other representative of the Office is subject to a conflict of interest, and

"(C) that mechanisms are in place to identify and remedy any such or other similar conflicts;

"(7) provide that—

"(A) no representative of the Office shall be liable under State law for the good faith performance of his or her official duties, and

"(B) that adequate legal counsel is available to the Office for advice and consultation and that legal representation shall be provided to any representative of the Office against whom suit is brought in connection with the performance of his or her official duties;

"(8)(A) provide that willful interference with representatives of the Office in the performance of their official duties (as defined the Commissioner) shall be unlawful,

"(B) prohibit retaliation and reprisals by a long-term care facility or other entity with respect to any resident or employee by reason of his or her filing a complaint with, or providing information to, the Office, and

"(C) provide for appropriate sanctions with respect to such interference, retaliation, and reprisals;

"(9) provide that the State agency or agencies responsible for licensing or certifying long-term care facilities shall—

"(A) provide to the Office a copy of any inspection reports, notices of deficiencies, and notices of sanctions or adverse determinations issued by such agency with respect to long-term care facilities in the State; and

"(B) to the extent permitted by the applicable provisions of State law governing the confidentiality of records, provide representatives of the Office with access to such investigative reports and findings of such agency as are reasonably related to any investigation undertaken by the Office in response to a complaint filed with the Office against a long-term care facility in the State; and

"(10) provide that representatives of the Office shall have access to long-term care facilities and their residents, and, with the permission of a resident or resident's legal guardian, have access to review the resident's medical and social records.

"(b) It shall be the duty of the Office to—

"(1) prepare an annual report containing data from subsection (a)(3), and findings regarding the types of problems experienced and complaints received by or on behalf of individuals residing in long-term care facilities, and to provide policy, regulatory, and legislative recommendations to solve such problems and resolve such complaints and improve the quality of care and life of long-term care facilities;

"(2) submit the annual reports described in paragraph (1) to the State Governor, the agency or agencies of the State responsible for licensing or certifying long-term care facilities and long-term health care professionals in the State, the State's area agencies on aging, and the State legislature;

"(3) investigate and resolve complaints made by or on behalf of individuals who are residents of long-term care facilities relating to action, inaction, or decisions of providers, or their representatives, of long-term care services, of governmental agencies, or of social service agencies, that may adversely affect the health, safety, welfare, or rights of such residents;

"(4) analyze and monitor the development and implementation of Federal, State, and local laws, regulations, and policies with respect to long-term care facilities and services in that State, and advocate any changes in such laws, regulations, and policies deemed by the Office to be appropriate;

"(5) provide information to public agencies, legislators, and others, as deemed necessary by the Office, regarding the problems and concerns, including recommendations related to such problems and concerns, of older individuals residing in long-term care facilities;

"(6) provide for the training of the Office staff, including volunteers and other representatives of the Office, in—

"(A) Federal, State, and local laws, regulations, and policies with respect to long-term care facilities in the State,

"(B) investigative techniques, and

"(C) such other matters as the State deems appropriate;

"(7) promote the development of citizen organizations to participate in the ombudsman program; and

"(8) carry out such other activities as the Commissioner deems appropriate.

"(c)(1) The Office of the State Long-Term Care Ombudsman shall be headed by the State Long-Term Care Ombudsman, who shall be a full-time employee of the Office, and shall have staff sufficient to carry out the duties of the Office.

"(2) Only an individual who—

"(A) is the head of the public agency or organization operating the Office, or reports directly to the head of such public agency or such organization;

"(B) has no pecuniary interest in an entity described in subsection (d); and

"(C) has demonstrated knowledge relating to long-term care matters involving older individuals;

may be eligible to be appointed or employed as State Long-Term Ombudsman.

"(3) The Office shall include any area or local ombudsman entity designated by the State Long-Term Care Ombudsman as a subdivision of the Office. Any representative of an entity designated in accordance with the preceding sentence (whether an employee or an unpaid volunteer) shall be treated as a representative of the Office for purposes of this section.

"(4) No officer, employee, or other representative of the Office may investigate any complaint filed with the Office unless the individual has received such training as may be required under subsection (b)(6) and has been approved by the State Long-Term Care Ombudsman as qualified to investigate such complaints.

"(d) No State may establish or operate an Office of the Long-Term Care Ombudsman under subsection (a)(1) by contract or other arrangement with—

"(1) an agency or organization that is responsible for licensing or certifying—

"(A) long-term care facilities,

"(B) health care professionals, or

"(C) other individuals providing long-term care services,

in the State,

"(2) any—

"(A) long-term care facility, or

"(B) association (or an affiliate of such an association) of long-term care facilities (including any other residential facility for older individuals).

"TECHNICAL ASSISTANCE AND TRAINING FOR OMBUDSMEN

"SEC. 342. (a) The Secretary shall provide technical assistance and training (by contract, grant, or otherwise) to State Long-Term Care Ombudsman programs established under section 341, and to individuals designated under such section to be representatives of a State Long-Term Care Ombusdman, in order to enable such ombudsmen and such representatives to carry out the ombudsman program effectively.

"(b) There is authorized to be appropriated to carry out subsection (a), $2,000,000 for fiscal year 1987 and $2,000,000 for each of the succeeding fiscal years.".

(b) CONFORMING AMENDMENTS.—

(1) Section 303(a) of such Act is amended by inserting before the period at the end thereof a comma and the following: "and for the purposes of the State Long-Term Care Ombudsman Programs under part D".

(2) Sections 302(3) and 304(d)(1)(B) of such Act (42 U.S.C. 3022(3) and 42 U.S.C. 3024(d)(1)(B)) are each amended by striking "section 307(a)(12)" and inserting in lieu thereof "part D".

(3) Section 307(a)(12) of such Act (42 U.S.C. 3027(a)(12)) is amended to read as follows:

"(12) provide assurances that—

"(A) the State will satisfy the requirements of part D if the amount available for the State Long-Term Care Ombudsman Programs for such part D in the State is at least as much as was available for the State Long-Term Care Ombudsman Programs in fiscal year 1986 pursuant to this clause as in effect prior to the enactment of the State Long-Term Care Ombudsman Advocacy Improvement Act of 1986, or

(B) in the event the amount so available is less than was available in fiscal year 1986, the State will comply with clause (12) as in effect prior to the enactment of the State Long-Term Care Ombudsman Advocacy Improvement Act of 1986.".

SEC. 3. ACCESS TO FACILITIES AND RECORDS; PROHIBITION AGAINST REPRISALS.

(a) SKILLED NURSING FACILITIES.—Section 1866(a)(1) of the Social Security Act (42 U.S.C. 1395cc(a)(1)) is amended—

(1) by striking the "and" inserted at the end of the subparagraph (I) by section 9122(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985,

(2) by striking the period at the end of subparagraph (J) and inserting in lieu thereof a comma,

(3) by redesignating the subparagraph (I) inserted by section 9403(b) of the Consolidated Omnibus Budget Reconciliation Act of 1985 as subparagraph (K) and by inserting it after subparagraph (J),

(4) by adding "and" at the end of subparagraph (K), as redesignated, and

(5) by inserting after subparagraph (K) the following new subparagraph:

"(L) in the case of a skilled nursing facility—

"(i) to provide access for representatives of the Office of the State Long-Term Care Ombudsman (established under part D of the Older Americans Act of 1965)—

"(I) to the facility and its residents (at times deemed reasonable and necessary by the State Long-Term Care Ombudsman), and

"(II) with the permission of a patient or the patient's legal guardian, to the patient's medical and social records; and

"(ii) to make no retaliation or reprisal with respect to any patient or employee by reason of his or her filing of a complaint against the facility with such Office.".

(b) INTERMEDIATE CARE FACILITIES.—Section 1905(c) of such Act (42 U.S.C. 1396d(c)) is amended—

(1) by striking "and (4)" and inserting in lieu thereof "(4)", and

(2) by inserting ", and (5) meets the requirements of section 1866(a)(1)(L)" before the period at the end of the first sentence.

(c) HOSPITALS.—(1) Section 1861(e) of such Act (42 U.S.C. 1395x(e)) is amended—

(A) by striking "and" at the end of paragraph (8),

(B) by redesignating paragraph (9) as paragraph (10), and

(C) by inserting after paragraph (8) the following new paragraph:

"(9) in the case of an acute care hospital, agrees to provide access for representatives of the Office of the State Long-Term Care Ombudsman (established under part D of the Older Americans Act of 1965) to individuals who are admitted to the hospital from a skilled nursing facility or an intermediate care facility; and".

(2) Section 1902(a) of such Act (42 U.S.C. 1396a(2)) is amended—

(A) by striking "and" at the end of paragraph (45),

(B) by striking the period at the end of paragraph (46) and inserting in lieu thereof ", and", and

(C) by adding at the end thereof the following new paragraph:

"(47) provide access for representatives of the Office of the State Long-Term Care Ombudsman (established under part D of the Older Americans Act of 1965) to individuals who are admitted to acute care hospitals from a skilled nursing facility or an intermediate care facility.".

(d) VETERANS ADMINISTRATION HEALTH CARE FACILITIES.—The State Ombudsman shall have access to veterans receiving long-term hospital, nursing home, or domiciliary care under Chapter 17 of title 38, United States Code, and the records maintained by the Veterans Administration relating to such care.

(e) INDIAN HEALTH SERVICE FACILITIES.—The State Ombudsman shall have access to patients in facilities operated by the Indian Health Service or under contracts entered into with the Secretary of Health and Human Services under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) and all records kept on such patients by such facilities.

SEC. 4. NOTIFICATION TO OMBUDSMAN OF MEDICARE AND MEDICAID SANCTIONS.

The Secretary of Health and Human Services shall promptly notify the appropriate Office of the State Long-Term Care Ombudsman (established under part D of the Older Americans Act of 1965) of any sanction imposed under section 1128 or 1128A of the Social Security Act with respect to a skilled nursing facility or an intermediate care facility.

SEC. 5. ANNUAL REPORT TO THE CONGRESS.

(a) IN GENERAL.—Not later than January 15 of each year, the Commissioner on Aging (in this section referred to as the "Commissioner") shall compile a report—

(1) summarizing and analyzing the data collected under section 341(a)(3) of the Older Americans Act of 1965 for the then most recently completed fiscal year,

(2) identifying significant problems and issues revealed by such data (with special emphasis on problems relating to quality of care and residents' rights),

(3) discussing current issues concerning the State's Long-Term Care Ombudsman Programs, and

(4) making recommendations regarding legislation and administrative actions to resolve such problems.

(b) REPORT.—(1) The Commissioner shall submit the report required by subsection (a) to—

(A) the Select Committee on Aging of the House of Representatives;

(B) the Special Committee on Aging of the Senate;

(C) the Committee on Education and Labor of the House of Representatives; and

(D) the Committee on Labor and Human Resources of the Senate.

(2) The Commissioner shall make the report required by subsection (a) available to—

(A) the Administrator of the Health Care Finance Administration;

(B) the Office of the Inspector General of the Department of Health and Human Services;

(C) the Office of Civil Rights of the Department of Health and Human Services; and

(D) the public agencies and private organizations designated under section 341(a)(1).

SEC. 6. DESIGNATION OF OMBUDSMAN PROGRAM SPECIALISTS.

Section 205 of the Older Americans Act of 1965 (42 U.S.C. 3016) is amended by redesignating subsection (d) as subsection (e) and inserting after subsection (c) the following new subsection:

"(d) The Secretary shall require the Commissioner, not later than 90 days after the date of the enactment of this subsection, to designate full-time staff of the Administration sufficient in number to carry out the duties of the Administration with respect to the programs established under part D of title III.".

SEC. 7. OMBUDSMAN PROGRAM EVALUATION.

Section 206 of the Older Americans Act of 1965 (42 U.S.C. 3017) is amended by redesignating subsections (b), (c), (d), (e), (f), and (g) as subsections (c), (d), (e), (f), (g), and (h) and inserting after subsection (a) the following new subsection:

"(b) The Commissioner shall evaluate the Long-Term Care Ombudsman program to analyze current practices, procedures, new developments and related issues, and shall make the findings of such evaluations available to the Congress, the States, and to State Ombudsmen.".

SEC. 8. STUDIES ON OMBUDSMAN PROGRAMS.

(a) The Administration on Aging shall conduct studies concerning involvement in the Ombudsman program and its impact upon issues and problems affecting elderly residents of board and care facilities and other similar adult care homes, including recommendations for expanding and improving ombudsman services in such facilities, and the effectiveness of recruiting, supervising and retaining volunteer ombudsmen.

(b) Findings and recommendations of the studies described in subsection (a) shall be reported to the Congress no later than December 31, 1988.

SEC. 9. ACCESS TO PEER REVIEW ORGANIZATION INFORMATION.

Section 1160(b)(1) of the Social Security Act (42 U.S.C. 1320c-9(b)(1)) is amended—

(1) in subparagraph (C), by striking "is required" and inserting "are required",

(2) by striking "and" at the end of subparagraph (B), and,

(3) by adding at the end following new subparagraph:

"(D) to assist representatives of the Office of the State Long-Term Care Ombudsman (established under part D of the Older Americans Act of 1965), and State protection and advocacy officials whom the Secretary identifies as having responsibility for assuring the quality of care furnished by providers or practitioners, which data and information shall be provided by the peer review organization to any such representative or official upon request relating to a specific provider or practitioner, but only to the extent that such data and information are related to the quality of care furnished by a provider or practitioner and only if the peer review organization determines that the data and information may reflect a failure in a substantial number of cases or a gross and flagrant failure in one or more instances to provide services of a quality which meets professionally recognized standards of health care, and that the data and information are needed by the representative or official in carrying out official duties;".

SEC. 10. EFFECTIVE DATE.

This Act and the amendments made by this Act shall become effective on the date of the enactment of this Act.●

● Mr. HEINZ. Mr. President, as chairman of the Special Committee on Aging, I am proud to join my colleague from Ohio in introducing the "Long-Term Care Ombudsman Advocacy Improvement Act of 1986." This legislation will improve and strengthen the State long-term care ombudsman programs, which are authorized under the Older Americans Act, and play an essential role in protecting the health, welfare, and rights of residents of long term care facilities.

The ombudsman program, which was originally authorized in 1978, is a vital element of the Older Americans Act. Next year the Older Americans Act will be reauthorized for the 11th time. Any changes incorporated into the act next year will, I hope, reflect the changing needs of America's older population, including the need for an expanded and more vigilant ombudsman program. It is our intention to place this ombudsman program reform legislation on the table today so that it may be carefully reviewed prior to the 100th Congress and then incorporated into the Older Americans Act during its reauthorization proceedings in 1987.

The need for expanded ombudsman services has been brought on by the dramatic growth in the number of frail older adults who need assistance. Also, the Medicare Prospective Payment System has placed a greater demand on community based services including the ombudsman programs which monitor the welfare of individuals living in long-term care facilities. Recent investigations by the Special Committee on Aging into the quality of nursing home care have revealed that a large number of nursing home residents are subjected daily to substandard levels of care, albeit in a minority of nursing homes. The legislation that we are introducing today is designed to address these problems by strengthening the ability of ombudspersons to carry out their duties, to protect the integrity of the program from possible conflicts of interest, protect complainants from retaliation, and to provide expanded training for ombudsman program personnel.

Mr. President, our bill would expand the Older Americans Act by creating a separate part—part D—under title III of the act to authorize State long-term care ombudsman programs. Currently, the ombudsman program is authorized in part B of title III of the act along with a myriad of diverse services for noninstitutionalized elderly. These services are all essential parts of the Older Americans Act picture, yet they are very different from the type of service provided by the ombudsman program. The ombudsman program is unique in its role as an advocate for long-term care facility residents and it is for this reason that our legislation sets it apart from the other services in title III(B).

In addition, for the purposes of funding the ombudsman program, we believe that a separate part and appropriation is in order. As the real dollars have decreased for the Older Americans Act over the last 10 years, the competition for those dollars between title III(B) programs has heightened. This is not healthy because all of these programs are needed, and the need is growing. It is my belief that the ombudsman program is so important to the health, welfare, and rights of older adults who utilize long-term care facilities that we must create a new part for it under the Act and fund that part separately and adequately each year.

Mr. President, this legislation also addresses the need to strenghten the tools that ombudspersons use to monitor the quality of care that residents of facilities receive and to effectively react to reports of mistreatment. This bill provides for improved access by ombudspersons to long-term care facilities and their residents. It also improves access to inspection reports and notices of deficiencies and sanctions issued with respect to long-term care facilities, as well as other data relevant to an investigation being conducted by an ombudsperson. The bill requires peer review organizations to make their relevant findings available to the ombudsman program personnel as well.

Our legislation couples this expanded right of access with provisions to protect complianants from misuse of the information ombudspersons obtain, and from retaliatory action of the long-term care facility where the complainant lives or works. These protections are crucial to ensure that problems related to long-term care are reported by residents and their families, and employees of these facilities. Without assurances that the information that they provide will be held in the strictest of confidence and that complainants will not face reprisals, reports will not be made and the quality of life in these facilities will not improve.

Another provision of the ombudsman legislation, which I feel is extremely important, is that which protects the integrity of the program by strengthening conflict of interest restrictions which already exist in cur-

rent law. We must prohibit organizations and individuals with an interest in long-term care facilities from influencing the work of the ombudsman program, which is designed to monitor these facilities. Our bill will prevent conflicts of interest and ensure objective evaluations of long-term care facilities.

Mr. President, under current law ombudsman program personnel are in danger of being held liable for good faith performance of duties, and are not guaranteed appropriate counsel. The legislation we propose will protect ombudspersons from liability for good faith performance and mandates that States be responsible for providing legal counsel and advise. This practice has occurred in several States and has been quite successful. It is our responsibility to protect the ombudsman program from a position of legal vulnerability; our bill alleviates that threat.

Finally, this legislation addresses the quality of the ombudsman program by providing for technical assistance and training for State long-term care ombudspersons. It also mandates that ombudsman staff and volunteers who do investigative work are trained in Federal, State, and local laws, regulations, and policies with respect to long-term care facilities, and in the area of investigative techniques. The provisions will help to improve the quality of the ombudsman program work and the integrity of their interaction with long-term care facilities.

Mr. President, I believe that the impact of the "Long-Term Care Ombudsman Advocacy Improvement Act of 1986" will be an overdue recognition of the importance of the State long-term care ombudsman programs and a dramatic increase in their effectivenss. I challenge my colleagues to join us during the 100th Congress in supporting an improved ombudsman program.●

ADDITIONAL COSPONSORS

S. 2454

At the request of Mr. MURKOWSKI, the names of the Senator from North Dakota [Mr. BURDICK], and the Senator from New York [Mr. MOYNIHAN] were added as cosponsors of S. 2454, a bill to repeal section 1631 of the Department of Defense Authorization Act, 1985, relating to the liability of Government contractors for injuries or losses of property arising out of certain atomic weapons testing programs, and for other purposes.

S. 2588

At the request of Mr. DOMENICI, the names of the Senator from Maine [Mr. COHEN], and the Senator from Minnesota [Mr. BOSCHWITZ] were added as cosponsors of S. 2588, a bill to provide permanent authorization for White House Conferences on Small Business.

S. 2678

At the request of Mr. BENTSEN, the name of the Senator from Illinois [Mr. DIXON] was added as a cosponsor of S. 2678, a bill to provide a comprehensive national oil security policy.

S. 2786

At the request of Mr. MOYNIHAN, the name of the Senator from Florida [Mrs. HAWKINS] was added as a cosponsor of S. 2786, a bill to amend title XVIII of the Social Security Act to provide the exemption of certain cancer research and treatment centers from the prospective payment system.

S. 2902

At the request of Mr. WALLOP, the names of the Senator from Nevada [Mr. LAXALT], the Senator from New Mexico [Mr. BINGAMAN], the Senator from West Virginia [Mr. ROCKEFELLER], the Senator from Idaho [Mr. MCCLURE], the Senator from Arkansas [Mr. BUMPERS], and the Senator from Colorado [Mr. HART] were added as cosponsors of S. 2902, a bill entitled the "Federal Land Exchange Facilitation Act of 1987."

S. 2903

At the request of Mr. ZORINSKY, the names of the Senator from Nebraska [Mr. EXON], and the Senator from North Dakota [Mr. BURDICK] were added as cosponsors of S. 2903, a bill to require the Secretary of Agriculture to proclaim national marketing quotas for the 1988 through 1990 crops of wheat and to hold a marketing quota referendum by wheat producers, and for other purposes.

SENATE JOINT RESOLUTION 388

At the request of Mr. LEVIN, the name of the Senator from Oklahoma [Mr. NICKLES] was added as a cosponsor of Senate Joint Resolution 388, a joint resolution designating the week beginning January 4, 1987, as "National Bowling Week."

SENATE JOINT RESOLUTION 403

At the request of Mr. ROTH, the name of the Senator from Michigan [Mr. LEVIN] was added as a cosponsor of Senate Joint Resolution 403, a joint resolution to designate 1988 as the "National Year of Friendship with Finland."

SENATE JOINT RESOLUTION 407

At the request of Mr. CHILES, the names of the Senator from Kansas [Mrs. KASSEBAUM], the Senator from Connecticut [Mr. DODD], the Senator from Washington [Mr. GORTON], the Senator from Tennessee [Mr. SASSER], the Senator from Ohio [Mr. GLENN], the Senator from Idaho [Mr. MCCLURE], the Senator from Idaho [Mr. SYMMS], and the Senator from Massachusetts [Mr. KERRY] were added as cosponsors of Senate Joint Resolution 407, a joint resolution designating November 12, 1986, as "Salute to School Volunteers Day."

SENATE JOINT RESOLUTION 419

At the request of Mr. MOYNIHAN, the names of the Senator from Connecticut [Mr. DODD], the Senator from Iowa [Mr. GRASSLEY], and the Senator from Nevada [Mr. HECHT] were added as cosponsors of Senate Joint Resolution 419, a joint resolution to designate December 11, 1986 as "National SEEK and College Discovery Day."

SENATE JOINT RESOLUTION 420

At the request of Mr. GOLDWATER, the names of the Senator from Pennsylvania [Mr. HEINZ], and the Senator from North Dakota [Mr. ANDREWS] were added as cosponsors of Senate Joint Resolution 420, a joint resolution relating to the commemoration of January 28, 1987, as a "National Day of Excellence."

SENATE CONCURRENT RESOLUTION 163

At the request of Mr. DECONCINI, the name of the Senator from Utah [Mr. HATCH] was added as a cosponsor of Senate Concurrent Resolution 163, a concurrent resoution expressing the sense of the Congress that the total number of Soviet diplomatic agents and consular officers in Washington, DC, and San Francisco, should be reduced to equal the total number of American diplomatic agents and consular officers in Moscow and Leningrad.

ADDITIONAL STATEMENTS,

SALUTE TO ROBERT W. GERBER

● Mr. DURENBERGER. Mr. President, the departments and agencies of the U.S. Government are staffed by several million dedicated individuals who are devoting their lives to public service.

One of those dedicated individuals, Bob Gerber, is retiring this year after 15 years of service with the Federal Government.

In his capacity as a deputy manager of the U.S. Department of Housing and Urban Development, Bob has been an invaluable resource both to me and to my staff. In particular, Bob's work as the Regional Labor Relations Office for the HUD Office in Minnesota required an interface with all segments involved with HUD financed developments. This difficult job took all the skills of diplomacy and knowledge that Bob fortunately possesses.

I know that my Minnesota staff was very appreciative of the manner in which Bob handled constituent inquiries. What may have started out as a confrontation, generally ended in some form of mutual accord and understanding. Even if constituents did not win their point, they generally left meetings with Bob Gerber feeling they had been treated in a fair and courteous manner.

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That mode of thinking continued as Bob was promoted through the Department. While I know that all those who had the privilege of dealing with Bob regret his retirement. But, the time has come for Bob to enjoy the good life and do the things he has always wanted to do. He will be missed.●

ADELIA ROSASCO-SOULE, POET LAUREATE OF THE PANHANDLE

● Mr. CHILES. Mr. President, I am proud to recognize the contributions of Adelia Rosasco-Soule, recently honored as the first poet laureate of the Florida Panhandle. Adelia's own words evoke the richness emanating from 85 active, caring, joyful years:

> Each of us carries some memories etched deep—never to be forgetten, graven not only in the mind, but in the heart.

Her life embodies America's pioneer spirit. She was born in the Old World and brought to the New World as a 3-year-old to live in a mansion in the backwoods, West Florida Panhandle. After earning advanced degrees in areas including foreign studies, she traveled the world as a military wife and mother, recording droll anecdotes and incidents. Her poems, essays, short stories, and inspirational prayers have appeared in magazines and newspapers worldwide. She has published three collections of poems and inspirational prayers, and is preparing a fourth book which chronicles the colorful, daily experiences of life in this unique region; religion, birth, death, medicine, politics, hurricanes, wars and epidemics all play a part in the panhandle's vivid history.

For her enormous literary contributions and admirable personal strengths, I commend Adelia Rosasco-Soule as an example of the true pioneer. I ask that a copy of the resolution, adopted by the governments of the cities of Pensacola and Milton and the counties of Escambia and Santa Rosa, which recognizes Adelia for her talents and gifts be printed at this point in the RECORD.

The resolution follows:

RESOLUTION

Whereas, the governments of the Cities of Pensacola and Milton, and the Counties of Escambia and Santa Rosa, do hereby recognize the benefits of preserving the unique literary heritage of the Northwest Florida Panhandle; and

Whereas, establishment of the Honorary Post of Poet Laureate of the Panhandle will inaugurate a tradition by which local writers may be honored and their works preserved; and

Whereas, Adelia Rosasco-Soule, through her own creative voice and vision, has been writing about the Panhandle and its people for more than 70 years in poems, prayers, essays, stories, newspaper and magazine articles; and

Whereas, the intimate, yet highly literate body of her work comprises a significant artistic achievement of great intellectual range, and a major contribution to the literature and history of Northwest Florida; and

Whereas, her writing has proved to be a cultural goldmine in providing vital and articulate records of the daily lives of Panhandle pioneers following the turn of the century, an era of timber and fishing, and a time when immigrants of many nations, her family included, came to Northwest Florida; and

Whereas, she has further contributed to the preservation of this heritage through donations of her literary manuscripts, diaries, journals, photographs, personal and family papers, and business records of her family's Bay Point Mill Company to the Special Collections of the John C. Pace Library of the University of West Florida. Now, therefore, be it *Resolved*, That the Majors of Pensacola and Milton, and the Chairmen of the County Commissions of Escambia and Santa Rosa, do hereby designate and appoint Adelia Rosasco-Soule to be the first Poet Laureate of the Panhandle.●

SALUTE TO ED SLETTOM

● Mr. DURENBERGER. Mr. President, few individuals have contributed more to the important role of cooperatives in America than Ed Slettom who is retiring November 1 after 30 years as executive director of the Minnesota Association of Cooperatives.

Because of the outstanding contributions made by Ed Slettom to the cooperative movement—and because of the importance of cooperatives to the American economy—I ask that the following article from the Land O'Lakes Mirror be printed at this point in the RECORD:

The article follows:

SLETTOM RETIRING AS HEAD OF MAC

After 30 years as executive director of the Minnesota Association of Cooperatives (MAC), Ed Slettom will be retiring November 1. A 35-year veteran of state legislative lobbying for cooperatives and agriculture, Slettom began his lobbying career in 1951 as Minnesota's deputy commissioner of agriculture.

During his five-year tenure with the ag department, Slettom was responsible for promoting the department's legislation before state lawmakers. His close working relationship with members of the legislature continued as he took over the reins of MAC in 1956.

"I've witnessed an awful lot of changes in cooperatives during my years with the Association," Slettom says. "There are fewer cooperatives in existence now than there were in 1956, but those remaining are, for the most part, much larger and more diversified."

Slettom points with pride to the fact that over the years, his office has been successful in lobbying against punitive legislation aimed at cooperatives.

"In a sense, cooperatives have become more accepted during the last 30 years," he says.

In his early days with MAC, Slettom says an anti-cooperative organization known as the National Tax Equity Association (NTEA) used to routinely bad-mouth cooperatives, claiming that they were "not a part of the free-enterprise system" and calling for repeal of specially designed tax laws that recognized cooperatives' unique status as member-owned businesses.

"Back then, lots of people refused to see cooperatives as 'mainstream,' Slettom says, "And the NTEA got a lot of its funding from mainstreet merchants."

To illustrate just how much times have changed, MAC today rents its office space in downtown St. Paul from the 'mainstream' Minnesota Association of Commerce and Industry, which has offices right next door. And Slettom, himself, has served as president of the Society of Association Executives—something he says would have been unusual 30 years ago.

Slettom says he's also proud that his office spearheaded efforts to preserve the home of the author of the "Magna Charta" of cooperatives—Congressman Andrew Volstead.

"It's only fitting that Volstead's home in Granite Falls, Minn. be preserved to the memory of the man who did so much to guarantee the right of farmers to organize cooperatively, Slettom says.

MAC's board has named Allen Gerber, executive assistant at MAC for the past eight years, as Slettom's successor.●

TRIBUTE TO NETTIE VIOLA GATLEY GRAY

● Mr. PRYOR. Mr. President, the Ard community near Dardanelle, AR, saw one of its leading citizens celebrate her 103d birthday this past March. Nettie Viola Gatley Gray, or Mama Gray, as she is known to everyone there reached this milestone.

Born March 24, 1883, Mama Gray was part of a poor, but proud, family. She worked long hours in the cotton fields there as a child to help her parents. In 1903 she married Andrew Jackson Gray, Jr. She and Andy had six daughters and one son. Together the family worked the fields and then would come home to prepare dinner and do housework together. Though poor, Andy and Mama Gray's children never went hungry or were cold. They were raised in the Church of Christ, which Mama Gray still attends when her health permits.

Mama Gray has been an inspiration to the whole Ard community. She always has a smile and a hug and kiss for everyone. A visit with Mama Gray is like a trip back in history.

I join the people of the Ard community in paying tribute to this wonderful woman and I wish her continued good health as she approaches her 104th year.●

DR. GEORGE WARREN

● Mr. PRYOR. Mr. President, at its recent annual convention, Dr. George Warren of Smackover, AR, was elected to the board of the American Academy of Family Physicians.

This national organization of family doctors and medical students represents 57,000 individuals in the medical profession all across our Nation.

The academy issued a press release following Dr. Warren's election and I would ask that it be included in the

RECORD at this point. I am proud to pay tribute to this outstanding member of the medical profession in Arkansas.

The release follows:

LOCAL FAMILY PHYSICIAN ELECTED TO NATIONAL FAMILY PHYSICIAN BOARD

WASHINGTON, DC.—George W. Warren, M.D., of Smackover, Ark., was elected to a three-year term on the Board of Directors of the American Academy of Family Physicians (AAFP) here Sept. 29. The AAFP is the national association of family doctors, representing 57,000 family physicians and medical students.

Dr. Warren was elected during the annual meeting of the AAFP's Congress of Delegates at the Washington Hilton Hotel Sept. 27-29. The Congress—the Academy's governing body—consists of two representatives from each of the 54 constituent chapters. The Congress preceded the AAFP's 38th Annual Scientific Assembly, which runs Sept. 29-Oct. 2 at the Washington Convention Center.

Also elected to the AAFP Board were: Glen F. Aukerman, M.D., of Jackson Center, Ohio and Hugh M. Upton, M.D., of Mountain View, Calif.

Dr. Warren has been a delegate from Arkansas to the AAFP Congress of Delegates for four years. A graduate of the University of Tennessee Center for Health Sciences in Memphis, he is in private practice in Smackover. He is an assistant clinical professor of family and community medicine at the University of Arkansas for Medical Science in Little Rock.

He has been active on Academy commissions and committees, currently serving on the Committee on Minority Health Affairs. He also has served on the Commission on Legislation and Governmental Affairs.

He is a Fellow of the Academy and is board-certified by the American Board of Family Practice. On the state level, Dr. Warren has served as president of the Arkansas Academy of Family Physicians.

Headquartered in Kansas City, MO., the AAFP was instrumental in establishing the medical specialty of family practice in 1969. It also was a pioneer in continuing medical education (CME), requiring its members to earn 150 hours of approved CME credit every three years.●

TRIBUTE TO GORDON PETERSON

● Mr. DURENBERGER. Mr. President, for more than 30 years, Gordon Peterson reigned as one of Minnesota's outstanding high school band directors in his capacity as director for instrumental music for the Elbow Lake-Wendell school system.

During his 33 years, Gordon Peterson developed a band program which made Elbow Lake and Wendell communities which were known throughout the entire country for their outstanding musical organizations.

Because of the outstanding contributions made by Gordon Peterson to the education of his students and the reputation which he holds in a State which places a high value on music and high school bands, I ask that the following article from the Fergus Falls Daily Journal be printed at this point in the RECORD:

The article follows:

PETERSON ENDS NOTABLE MUSIC CAREER

(By Ken Korczak)

ELBOW LAKE.—"Be reasonable, do it my way," reads the sign on Gordon Peterson's cluttered desk.

Peterson is quick to admit that a successful band director won't win any popularity contests—but to have a good band, he says, you have to be aggressive, and you can't always be a nice guy.

Since Peterson took over as director 33 years ago, the Elbow Lake band has gained national recognition, including an invitation to the Fiesta Bowl in Phoenix, two trips to the Cotton Bowl in Dallas and two invitations to play at the Indy 500 Festival Parade at the Indianapolis 500 auto race in Indianapolis.

In 1972, the Elbow Lake band was one of only four bands ever to receive an invitation to play at the Midwest National Band and Orchestra Clinic in Chicago, a gathering of more than 3,000 of the best bands and musicians in the nation.

The band currently holds a state record with 32 consecutive years of the highest ratings in the state and region music contest sponsored by the Minnesota State High School League. The band was featured in a public television doumentary in 1976 and was chosen as the 1976 Band of the Year by WCCO radio and television in Minneapolis.

Not bad for a small-town high school band from west central Minnesota.

"I've never had an interest in having a second-rate band," Peterson said. "You have to put a lot of pressure on yourself to make the band good, and you can't be scared to push the kids to do their best."

Peterson has upheld the tradition of excellence in the Elbow Lake band program, which was established by the first band director, Sophus Lund, in 1931. There have been only three other band directors since Lund. Edward Iverson succeeded him in 1938 and directed until 1942. Ray Morrau directed from 1943 to 1953. There was two other directors, but both were drafted into the armed services after only two months on the job.

Peterson, 59, will retire this year, and both Lund and Iverson will travel to Elbow Lake this Sunday to participate in this final spring concert. The concert will be at 3 p.m. in the high school gymnasium.

Through his 26 years as a high school band director, Peterson has determined the specific ingredients needed to produce an exceptional band.

"The first thing you need is an aggressive band director," he said. "Then you need parents who will provide support and quality instruments for their kids, an administration that will give you a proper schedule and a superintendent that will provide you with a proper budget. Then they have to stay out of your way so you can develop a proper band."

Peterson's own musical career began when he joined his high school band as a clarinet player. He then attended the University of Minnesota and played in the university band.

After deciding to become a band instructor, he transferred from the university to the MacPhail School of Music in Minneapolis, where he worked his way through school as a cement finisher. He graduated No. 1 in his class in 1950 with a master's degree in music.

After graduation, he was hired as the band director of the Perham High School. He spent three years in Perham and then applied for a job in Elbow Lake, a coveted position because of band's reputation as one of the best in the state.

"I didn't feel any pressure at the time, even though I knew I was taking over for Ray Morrau," he said. "Luckily, we both had the same philosophy—excellence, aggressiveness and disciplining the students and getting them to work hard on learning their music."

Peterson said the highlight of his career was his band's performance at the Midwest National Band and Orchestra Clinic in Chicago.

"They wanted me to get some big names to be my guest conductor and soloist," Peterson said. "But I said, 'No, I'll feature my own kids.' I brought my superintendent as gust conductor and used my son as the soloist."

"That was really a great band—they could really knock your socks off," he said. "I'll never foreget when my son played the trombone solo. When he hung on that last note as the number ended, the crowd jumped to their feet and applauded and roared. Tears came to my eyes—that was my greatest moment."

Peterson was especially proud of his band since he had personally instructed each student from the 5th grade.

"There were a lot of big schools there who had a director and several associate directors and assistants," he said. "But every kid in that band had been my student."

The hardest part of being a band director, Peterson said, is seeing since students' musical careers cut short.

"The real discouraging part is when a youngster wants to join band and his parents won't let him," he said "It's a real tragedy when a parent won't supply a horn. There is never less than 80 percent of a 5th grade class that wants to join band. There are always going to be casualties."

Peterson said declining enrollment is currently making it more difficult to produce exceptional bands. He said the bands of the 1970s were the best Elbow Lake has ever had.

Although he is retiring, the Peterson name will probably continue to produce exceptional bands in Minnesota. Peterson's oldest son, Mike, is the band director of the Fulda High School Band and has already been invited to several college bowl games, including the Cotton Bowl. Another son, Rick, is a band director at Albert Lea.

All of Peterson's five sons were members of his band in Elbow Lake. His wife, Beverly, plays the saxaphone. During family get-togethers, they form The Peterson Band.

Peterson said that any band director that succeeds him should have the same qualities as his four predecessors.

"They should look for somebody who has an established reputation and who can be aggressive," he said. "I think he should also be encouraged to attend the state and national music clinics. The wisest thing my superintendent did for me was to tell me to go to Chicago to that clinic. They can be a source of inspiration."

Peterson said setting goals is also important.

"You have to have a goal, both long-term and short-term," he said. "You may never make it, but then, I never expected to make it, either."●

TRIBUTE TO E.S. GANDRUD

● Mr. DURENBERGER. Mr. President, one of the greatest attributes of this great Nation is its entrepreneurial spirit.

And few individuals represent that spirit to a greater extent than E.S. "Gandy" Gandrud of Owatonna, MN. "Gandy" is now well past his 80th birthday, but still remains active in the business he founded. Gandy is an inventor, a genius with more than 80 patents to this name.

He is also a successful business owner who recently celebrated 50 years of successful operation of the company he founded.

Mr. President, because of the outstanding contributions to his company—and his community—represented in "Gandy" Gandrud, I ask that the following article from Corporate Report Minnesota be printed at this point in the RECORD.

The article follows:

[From Corporate Report Minnesota, November 1985]

THE FATHER OF INVENTION

It was the sort of sultry Indian summer day that can warm old bones and move a body to stroll down memory lane. But E.S. "Gandy" Gandrud, 82, founder of Owatonna-based Gandy Company, has no time for nostalgia. He's too busy. With some 80 patents to his name, Gandrud still spends six and a half days a week at the plant, and participates in the design and development of new Gandy products.

Gandy Gandrud was star performer and center of attention at the 50th anniversary celebration of his farm equipment manufacturing firm—an event that also marked kick-off sales of the Orbit-Air, a sophisticated whiz-bang capable of applying a wide variety of fertilizers, seeds, and granular chemicals.

The theme of the celebration was "50 Years of Wheels"—Gandrud's first patent having been for a wheel that could accurately measure cropland—and was everything you could hope for in a southern Minnesota media event. About 40 journalists, farmers and Gandy employees sweltered through a news conference in the brick equipment shed on the Gandy Research farm a few miles south of Owatonna. Surrounded by the "Gandy Pastry Frame," "First Gandy Spreader," "Portable Blackboard and Stand," and other testimonies to his inventive mind, Gandy Gandrud recounted the history of his company before son Dale and other Gandy employees came on to extoll the virtues of the Orbit-Air.

No media event is complete without food, of course, and the Gandy Company laid out a spread without a single finger sandwich or white-wine spritzer in sight. Roast pig was served under a striped marquee tent, two side flaps of which were down to hold out a strong southerly wind. Afterward came the 48 apple pies baked by Sue Condon, who helps manage the research farm, all of them made with pastry rolled on the Gandy Pastry Frame and apples from a single Dutchie tree in her backyard. Then came the inevitable new product demonstration out on a dusty portion of the 200-acre farm. For the most part, it demonstrated only that there's more to the technology of sophisticated farm equipment than meets the eye.

Gandy Gandrud was a county agent when he applied for his first patent in 1936 for the Gandy wheel, but he'd been inventing things long before that watershed year. His first tinkerings were designed to help his parents on the family homestead near Detroit Lakes, Minnesota. "There were lots of things," he recalls. "A new kind of cow stall that kept the cows clean. A washboard for my mother."

Along with Gandrud's instinctive knack for invention comes a distrust of 20th century bugaboos like specialization. Among his dicta for successful business is a ban on hiring engineers. "I don't want them!" he declares. "I wouldn't let Dale take engineering. I made him study agronomy."

"There's a natural instinct in the Gandrud family that things have to be simple and practical or we don't want anything to do with them," he explains. "That trait even goes back to the Gandrud tribe in Norway. My grandfather's brother, Knut, he invented a metal lock for his grain storage building that they're still using over there."

After 50 years on the job, Gandy Gandrud admits to slowing down some, but gives no thought to quitting. "That's the worst punishment," he says. But now that the Gandy Company's "50 Years of Wheels" celebration is over, there is one thing he'd like to do. "I'd like to take a couple of days vacation and go up to the old family farm," he says. "My kid brother runs it. Haven't seen him in a while."●

DR. AMAIL CHUDY, FAMILY DOCTOR OF THE YEAR

● Mr. PRYOR. Mr. President, recently the American Academy of Family Physicians honored Dr. Amail Chudy of North Little Rock, AR, as that organization's "Family Doctor of the Year." I am pleased to pay tribute to this dedicated doctor, who has given so willingly of his time and talents to the health needs of his community.

AAFP issued a press release outlining Dr. Chudy's accomplishments and I would ask that this release be placed in the RECORD at this point. I would add that I am proud to represent people in the medical profession of Dr. Chudy's caliber.

The release follows:

AAFP HONORS ARKANSAS PHYSICIAN AS FAMILY DOCTOR OF THE YEAR

WASHINGTON, DC.—Dr. Amail Chudy is the kind of physician who sets the standard for others in his profession. A distinguished family physician, medical leader, humanitarian and family man, the North Little Rock, AK, doctor will be recognized by his fellow family physicians as the 1986 "Family Doctor of the Year" in ceremonies here Saturday, Sept. 27, at the Washington Hilton Hotel.

Dr. Chudy will be honored during the 38th Annual Convention and Scientific Assembly of the American Academy of Family Physicians (AAFP) Sept. 27–Oct. 2. He was selected from nominees nationwide and will be presented to the nation on the NBC-TV "Today" show Oct. 8.

The Family Doctor of the Year award recognizes a family physician who is an Academy member and who epitomizes the finest standards of family health care. Dr. Chudy has been in private practice in North Little Rock for more than 30 years.

He was instrumental in establishing North Little Rock Memorial Hospital, a modern, conveniently-located medical center. And while he campaigned for a hometown hospital, he built a thriving practice treating patients of all ages—whether they could pay or not. He volunteered his services to North Little Rock's St. Joseph's Orphanage and also established a well-child clinic (the first of its kind) in the Silver City Courts public housing project for low income families. He subsequently began nutritional counseling services at the project health center.

Dr. Chudy is active in Catholic Church missionary work. He helped direct the Diocesan Special Mission, a project that brought countless physicians, nurses and construction workers to rural Mexican villages to build hospitals, clinics, water supply systems and homes.

And along the way, he has stayed on top of the latest medical advances. He served as chairman of the AAFP's Committee on Drugs and Devices in 1984-85.

Dr. Chudy now oversees a four-doctor clinic, yet he still finds time to make house calls. His regular patients are extremely devoted to him. In fact, one patient insisted on calling him for medical advice once from Sidney, Australia.

Currently he serves as vice president of the Board of Directors of the Medical Education Foundation of Arkansas and frequently talks to area junior and senior high school classes about careers in medicine.

"In some respects, Amail Chudy is an anachronism," said Les Anderson, M.D., president of the Arkansas Academy of Family Physicians. "Clearly, his skills reflect an assimilation of the improvements and discoveries that take place in medicine virtually daily. But his philosophy of medicine brings to mind an image of the trusted family doctors of years ago—a role he thoroughly enjoys."

Dr. Chudy and his wife, Ann, have two daughters, Elizabeth and Amelia.●

RULES OF PROCEDURE OF SELECT COMMITTEE ON INTELLIGENCE

● Mr. DURENBERGER. Mr. President, pursuant to rule XXVI, paragraph 2 of the Standing Rules of the Senate, I am submitting for printing in the CONGRESSIONAL RECORD changes to the Rules of Procedure of the Select Committee on Intelligence. I ask that the rules of the committee be reprinted to reflect the amendments I send to the desk.

The rules follow:

PROPOSED SECURITY RELATED RULES CHANGES

Rule 10.1: Substitute the following:

"For purposes of these rules, Committee staff includes employees of the Committee, employees of the Members of the Committee assigned to the Committee, consultants to the Committee, or any other person engaged by contract or otherwise to perform services for or at the request of the Committee. To the maximum extent practicable, the Committee shall rely on its full-time employees to perform all staff functions. No individual may be retained as staff of the Committee or to perform serivces for the Committee unless that individual holds appropriate security clearances."

Reference: Kotapish Report, p. 6, para. 1.1.2

Rule 10.2: Add at the end thereof the following:

"No Committee staff shall be given access to any classified information or regular access to the Committee offices, until such Committee staff has received an appropriate security clearance as described in section 6 of Senate Resolution 400 of the 94th Congress."

Reference: Kotapish Report, p. 8, para. 3.1.5

Rule 10.6: Change the period at the end thereof to a comma and add the following: "and to abide by the Committee's code-of-conduct."

Reference: Kotapish Report, p. 9, para. 3.1.7

Rule 9.2: Add to the end thereof the following: "All documents or materials removed from the Committee offices for such authorized purposes must be returned to the Committee's secure storage area for overnight storage."

Reference: Kotapish Report, p. 18, para. 7.2.1

RULES OF PROCEDURE FOR THE SELECT COMMITTEE ON INTELLIGENCE, UNITED STATES SENATE

(Adopted June 23, 1976)

(Amended October 1986)

RULES OF PROCEDURE

RULE 1. CONVENING OF MEETINGS

1.1 The regular meeting day of the Select Committee on Intelligence for the transaction of committee business shall be every other Wednesday of each month, unless otherwise directed by the chairman.

1.2 The chairman shall have authority, upon proper notice, to call such additional meetings of the committee as he may deem necessary and may delegate such authority to any other member of the committee.

1.3 A special meeting of the committee may be called at any time upon the written request of five or more members of the committee filed with the clerk of the committee.

1.4 In the case of any meeting of the committee, other than a regularly scheduled meeting, the clerk of the committee shall notify every member of the committee of the time and place of the meeting and shall give reasonable notice which, except in extraordinary circumstances, shall be at least 24 hours in advance of any meeting held in Washington, DC, and at least 48 hours in the case of any meeting held outside Washington, DC.

1.5 If five members of the committee have made a request in writing to the chairman to call a meeting of the committee, and the chairman fails to call such a meeting within seven calendar days thereafter, including the day on which the written notice is submitted, these members may call a meeting by filing a written notice with the clerk of the committee who shall promptly notify each member of the committee in writing of the date and time of the meeting.

RULE 2. MEETING PROCEDURES

2.1 Meetings of the committee shall be open to the public except as provided in Senate Resolution 9, 94th Congress, 1st session.

2.2 It shall be the duty of the staff director to keep or cause to be kept a record of all committee proceedings.

2.3 The chairman of the committee, or if the chairman is not present the vice chairman, shall preside over all meetings of the committee. In the absence of the chairman and the vice chairman at any meeting the ranking majority member, or if no majority member is present the ranking minority member present shall preside.

2.4 Except as otherwise provided in these rules, decisions of the committee shall be by majority vote of the members present and voting. A quorum for the transaction of committee business, including the conduct of executive sessions, shall consist of five committee members, except that for the purpose of hearing witnesses, taking sworn testimony, and receiving evidence under oath, a quorum may consist of one Senator.

2.5 A vote by any member of the committee with respect to any measure or matter being considered by the committee may be cast by proxy if the proxy authorization (1) is in writing; (2) designates the member of the committee who is to exercise the proxy; and (3) is limited to a specific measure or matter and any amendments pertaining thereto. Proxies shall not be considered for the establishment of a quorum.

2.6 Whenever the committee by roll call vote reports any measure or matter, the report of the committee upon such measure or matter shall include a tabulation of the votes cast in favor of and the votes cast in opposition to such measure or matter by each member of the committee.

RULE 3. SUBCOMMITTEES

Creation of subcommittees shall be by majority vote of the committee. Subcommittees shall deal with such legislation and oversight of programs and policies as the committee may direct. The subcommittees shall be governed by the rules of the committee and by such other rules they may adopt which are consistent with the rules of the committee.

RULE 4. REPORTING OF MEASURES OR RECOMMENDATIONS

4.1 No measures or recommendations shall be reported, favorably or unfavorably, from the committee unless a majority of the committee is actually present and a majority concur.

4.2 In any case in which the committee is unable to reach a unanimous decision, separate views or reports may be presented by any member or members of the committee.

4.3 A member of the committee who gives notice of his intention to file supplemental, minority, or additional views at the time of final committee approval of a measure or matter, shall be entitled to not less than three working days in which to file such views, in writing with the clerk of the committee. Such views shall then be included in the committee report and printed in the same volume, as a part thereof, and their inclusion shall be noted on the cover of the report.

RULE 5. NOMINATIONS

5.1 Unless otherwise ordered by the committee, nominations referred to the committee shall be held for at least 14 days before being voted on by the committee.

5.2 Each member of the committee shall be promptly furnished a copy of all nominations referred to the committee.

5.3 Nominees who are invited to appear before the committee shall be heard in public session, except as provided in rule 2.1.

5.4 No confirmation hearing shall be held sooner then seven days after receipt of the background and financial disclosure statement unless the time limit is waived by a majority vote of the committee.

5.5 The committee vote on a confirmation shall not be sooner than 48 hours after the committee has received transcripts of the confirmation hearing unless the time limit is waived by unanimous consent of the committee.

5.6 No nomination shall be reported to the Senate unless the nominee has filed a background and financial disclosure statement with the committee.

RULE 6. INVESTIGATIONS

No investigation shall be initiated by the committee unless at least five members of the committee have specifically requested the chairman or the vice chairman to authorize such an investigation. Authorized investigations may be conducted by members of the committee and/or by designated committee staff members.

RULE 7. SUBPOENAS

Subpoenas authorized by the committee for the attendance of witnesses or the production of memoranda, documents, records or any other material may be issued by the chairman, and may be served by any person designated by the chairman, the vice chairman, or any member of the committee designated by the chairman, vice chairman or member issuing the subpoenas. Each subpoena shall have attached thereto a copy of Senate Resolution 400, 94th Congress, 2d session, and a copy of these rules.

RULE 8. PROCEDURES RELATED TO THE TAKING OF TESTIMONY

8.1 *Notice.*—Witnesses required to appear before the committee shall be given reasonable notice and all witnesses shall be furnished a copy of these Rules.

8.2 *Oath or Affirmation.*—Testimony of witnesses shall be given under oath or affirmation which may be administered by any member of the committee.

8.3 *Interrogation.*—Committee interrogation shall be conducted by members of the committee and such committee staff as are authorized by the chairman, vice chairman, or the presiding member.

8.4 *Counsel for the witness.*—(a) Any witness may be accompanied by counsel. A witness who is unable to obtain counsel may inform the committee of such fact. If the witness informs the committee of this fact at least 24 hours prior to his appearance before the committee the committee shall then endeavor to obtain voluntary counsel for the witness. Failure to obtain such counsel will not excuse the witness from appearing and testifying.

(b) Counsel shall conduct themselves in an ethical and professional manner. Failure to do so shall, upon a finding to that effect by a majority of the members present, subject such counsel to disciplinary action which may include warnings, censure, removal, or a recommendation of contempt proceedings.

(c) There shall be no direct or cross-examination by counsel. However, counsel may submit in writing any question he wishes propounded to his client or to any other witness and may, at the conclusion of his client's testimony, suggest the presentation of other evidence or the calling of other witnesses. The committee may use such questions and dispose of such suggestions as it deems appropriate.

8.5 *Statement by Witnesses.*—A witness may make a statement which shall be brief and relevant, at the beginning and conclusion of his testimony. Such statements shall not exceed a reasonable period of time as determined by the chairman, or other presiding member. Any witness desiring to make a prepared or written statement for the record of the proceedings shall file a copy with the clerk of the committee, and

insofar as practicable and consistent with the notice given, shall do so at least 72 hours in advance of his appearance before the committee.

8.6 *Objections and Rulings.*—Any objection raised by a witness or counsel shall be ruled upon by the chairman or other presiding member, and such ruling shall be the ruling of the committee unless a majority of the committee present overrules the ruling of the chair.

8.7 *Inspection and Correction.*—All witnesses testifying before the committee shall be given a reasonable opportunity to inspect, in the office of the committee, the transcript of their testimony to determine whether such testimony was correctly transcribed. The witness may be accompanied by counsel. Any corrections the witness desires to make in the transcript shall be submitted in writing to the committee within 5 days from the date when the transcript was made available to the witness. Corrections shall be limited to grammar and minor editing, and may not be made to change the substance of the testimony. Any questions arising with respect to such corrections shall be decided by the chairman. Upon request, those parts of testimony given by a witness in executive session which are subsequently quoted or made part of a public record shall be made available to that witness at his expense.

8.8 *Requests to Testify.*—The committee will consider requests to testify on any matter or measure pending before the committee. A person who believes that testimony or other evidence presented at a public hearing, or any comment made by a committee member or a member of the committee staff may tend to affect adversely his reputation, may request to appear personally before the committee to testify on his own behalf, or may file a sworn statement of facts relevant to the testimony, evidence, or comment, or may submit to the chairman proposed questions in writing for the cross-examination of other witnesses. The committee shall take such action as it deems appropriate.

8.9 *Contempt Procedures.*—No recommendation that a person be cited for contempt of Congress shall be forwarded to the Senate unless and until the committee has, upon notice to all its members, met and considered the alleged contempt, afforded the person an opportunity to state in writing or in person why he should not be held in contempt, and agreed, by majority vote of the committee to forward such recommendation to the Senate.

8.10 *Release of Name of Witness.*—Unless authorized by the chairman, the name of any witness scheduled to be heard by the committee shall not be released prior to, or after, his appearance before the committee.

RULE 9. PROCEDURES FOR HANDLING CLASSIFIED OR SENSITIVE MATERIAL

9.1 Committee staff offices shall operate under strict security precautions. At least one security guard shall be on duty at all times by the entrance to control entry. Before entering the office all persons shall identify themselves.

9.2 Sensitive or classified documents and materials shall be segregated in a secure storage area. They may be examined only at secure reading facilities. Copying, duplicating, or removal from the committee offices of such documents and other materials is prohibited except as is necessary for use in, or preparation for, interviews or committee meetings, including the taking of testimony, and in conformity with Section 10.3 hereof. All documents or materials removed from the Committee offices for such authorized purposes must be returned to the Committee's secure storage area for overnight storage.

9.3 Each member of the committee shall at all times have access to all papers and other material received from any source. The staff director shall be responsible for the maintenance, under appropriate security procedures, of a registry which will number and identify all classified papers and other classified materials in the possession of the committee, and such registry shall be available to any member of the committee.

9.4 Whenever the Select Committee on Intelligence makes classified material available to any other committee of the Senate or to any members of the Senate not a member of the committee, the clerk of the committee shall be notified. The clerk of the committee shall maintain a written record identifying the particular information transmitted and the committee or members of the Senate receiving such information.

9.5 Access to classified information supplied to the committee shall be limited to those committee staff member with appropriate security clearances and a need-to-know, as determined by the committee, and under the committee's direction, the staff director and minority staff director.

9.6 No member of the committee or of the committee staff shall disclose, in whole or in part or by way of summary, to any person not a member of the committee or the committee staff for any purpose or in connection with any proceeding, judicial or otherwise, any testimony given before the committee in executive session including the name of any witness who appeared or was called to appear before the committee in executive session, or the contents of any papers or other materials or other information received by the committee except as authorized by the committee in accordance with section 8 of the Senate Resolution 400 of the 94th Congress and the provisions of these rules, or in the event of the termination of the committee, in such a manner as may be determined by the Senate.

9.7 Before the testimony makes any decision regarding the disposition of any testimony, papers, or other materials presented to it, the committee members shall have a reasonable opportunity to examine all pertinent testimony, papers, and other materials that have been obtained by the members of the committee or the committee staff.

10.1 For purposes of these rules, Committee staff includes employees of the Committee, employees of the Members of the Committee assigned to the Committee, consultants to the Committee, or any other person engaged by contract or otherwise to perform services for or at the request of the Committee. To the maximum extent practicable the Committee shall rely on its full-time employees to perform all staff functions. No individual may be retained as staff of the Committee or to perform services for the Committee unless that individual holds appropriate security clearances.

10.2 The appointment of committee staff shall be confirmed by a majority vote of the committee. After confirmation, the chairman shall certify committee staff appointments to the financial clerk of the Senate in writing. No Committee staff shall be given access to any classified information or regular access to the Committee offices, until such Committee staff has received an appropriate security clearance as described in section 6 of Senate Resolution 400 of the 94th Congress.

10.3 The committee staff works for the committee as a whole, under the general supervision of the chairman and vice chairman of the committee. Except as otherwise provided by the committee, staff personnel affairs and day-to-day operations, including security and control of classified documents and material, shall be administered under the direct supervision and control of the staff director. The minority staff director and the minority counsel shall be kept fully informed regarding all matters and shall have access to all material in the files of the committee.

10.4 The committee staff shall assist the minority as fully as the majority in the expression of minority views, including assistance in the preparation and filing of additional, separate and minority views, to the end that all points of view may be fully considered by the committee and the Senate.

10.5 The members of the committee staff shall not discuss either the substance or procedure of the work of the committee with any person not a member of the committee or the committee staff for any purpose or in connection with any proceeding, judicial, or otherwise, either during his tenure as a member of the committee staff or at anytime thereafter except as directed by the committee in accordance with section 8 of Senate Resolution 400 of the 94th Congress and the provision of these rules, or in the event of the termination of the committee, in such a manner as may be determined by the Senate.

10.6 No member of the committee staff shall be employed by the committee unless and until such a member of the committee staff agrees in writing, as a condition of employment to abide by the conditions of the nondisclosure agreement promulgated by the Senate Select Committee on Intelligence pursuant to section 6 of Senate Resolution 400 of the 94th Congress, 2d Session, and to abide by the Committee's code-of-conduct.

10.7 No member of the committee staff shall be employed by the committee unless and until such a member of the committee staff agrees in writing, as a condition of employment, to notify the committee or in the event of the committee's termination the Senate of any request for his testimony, either during his tenure as a member of the committee staff or at any time thereafter with respect to information which came into his possession by virtue of his position as a member of the committee staff. Such information shall not be disclosed in response to such requests except as directed by the committee in accordance with section 8 of Senate Resolution 400 of the 94th Congress and the provisions of these rules, or in the event of the termination of the committee, in such manner as may be determined by the Senate.

10.8 The committee shall immediately consider action to be taken in the case of any member of the committee staff who fails to conform to any of these rules. Such disciplinary action may include, but shall not be limited to, immediate dismissal from the committee staff.

RULE 11. PREPARATION FOR COMMITTEE MEETINGS

11.1 Under direction of the chairman and the vice chairman, designated committee staff members shall brief members of the committee at a time sufficiently prior to any committee meeting to assist the committee

members in preparation for such meeting and to determine any matter which the committee member might wish considered during the meeting. Such briefing shall, at the request of a member, include a list of all pertinent papers and other materials that have been obtained by the committee that bear on matters to be considered at the meeting.

11.2 The staff director shall recommend to the chairman and the vice chairman the testimony, papers, and other materials to be presented to the committee at any meeting. The determination whether such testimony, papers, and other materials shall be presented in open or executive session shall be made pursuant to the rules of the Senate and rules of the committee.

RULE 12. LEGISLATIVE CALENDAR

12.1 The clerk of the committee shall maintain a printed calendar for the information of each committee member showing the measures introduced and referred to the committee and the status of such measures; nominations referred to the committee and their status; and such other matters as the committee determines shall be included. The calendar shall be revised from time to time to show pertinent changes. A copy of each such revision shall be furnished to each member of the committee.

12.2 Unless otherwise ordered, measures referred to the committee shall be referred by the clerk of the committee to the appropriate department or agency of the Government for reports thereon.

RULE 13. COMMITTEE TRAVEL

13.1 No member of the committee or committee staff shall travel abroad on committee business unless specifically authorized by the chairman and vice chairman. Requests for authorization of such travel shall state the purpose and extent of the trip. A full report shall be filed with the committee when travel is completed.

13.2 When the chairman and the vice chairman approve the foreign travel of a member of the Committee staff not accompanying a member of the committee, all members of the committee are to be advised, prior to the commencement of such travel, of its extent, nature and purpose. The report referred to in rule 13.1 shall be furnished to all members of the committee and shall not be otherwise disseminated without the express authorization of the committee pursuant to the rules of the committee.

13.3 No member of the committee staff shall travel within this country on committee business unless specifically authorized by the staff director as directed by the committee.

RULE 14. CHANGES IN RULES

These rules may be modified, amended, or repealed by the committee, provided that a notice in writing of the proposed change has been given to each member at least 48 hours prior to the meeting at which action thereon is to be taken.

ARIZONA PEACE CORPS VOLUNTEERS

● Mr. DECONCINI. Mr. President, there are many Americans devoting 2 years of their lives to help others in countries around the world. Arizonans like Donna and Bill Peck have worked to bring clean water to villages in west central Ghana. When the Pecks finish their work, villagers in Longokrom will no longer have to walk miles for bad drinking water that could cause ailments such as Guinea worm. Instead they will have a pump right on main street that delivers clean and fresh water. The Pecks do more than just work in Ghana. They train the villagers so that when they leave, the Ghanians will be able to build and maintain these pumps themselves.

Donna and Bill are only two examples of the more than 6,000 Americans who volunteer their services in more than 60 countries around the world as members of the Peace Corps. This year marks the 25th anniversary of the Peace Corps' efforts to help bridge the gap between American and other nations. This is a vivid example of just how much America cares. This has become a fundamental ingredient in U.S. foreign policy.

In this time of increased international tensions, civil war, and strained foreign relations, this work is more important than ever. Peace Corps volunteers do more than just bring water to deserts, build schools, and treat malnourished children. They give people in other countries the opportunity to learn about Americans firsthand. Additionally, by living and working in other communities they bring back firsthand knowledge of other people and cultures. This helps us in developing a better understanding of their indigenous environment and should ultimately lead to more effective solutions.

In the more than two decades since its inception, the world has changed while the Peace Corps' tactics have remained the same. The Peace Corps continues to take small steps, changing things one village at a time with one volunteer at a time. In today's world where bigger means better these tiny steps might be translated as insignificant ones but this is not the case with the Peace Corps. Since 1961, more than 100,000 volunteers have been providing training in such areas as agriculture, health education, small business, and teaching. Volunteers like the Pecks have helped to increase economic development in other countries. Volunteers have been presenting a very positive image of America to people abroad.

Columnist Alan Thurber of the Arizona Republic phrased it quite appropriately after visiting with a Peace Corps volunteer in Mansundu, a small village in West Africa: "The people of Mansundu love her, and she loves them. That's the kind of American presence in the Third World that no amount of foreign aid can buy." President Kennedy originally conceived of the Peace Corps back in 1961. He said: "I look forward to an America which commands respect throughout the world not only for its strength but for its civilization as well." Our commitment to the aspirations and endeavors of the Peace Corps is a worthwhile investment all over the world.

Mr. President, I would also request that the following articles written by Alan Thurber, a columnist for the Arizona Republic, be placed in the RECORD.

The articles follow:

PEACE CORPS COUPLE IN GHANA BRING ABUNDANT INSTANT RESULTS

WENCHI, GHANA.—Bill and Donna Peck are unusual Peace Corps volunteers.

He's 56, for one thing. She's 47.

And in the Peace Corps world of gradual change, small triumphs and intangible results, the Pecks are different. They get immediate results and instant gratification.

They bring water—clean water—wherever they go.

They drill wells.

The job, actually, isn't so different from the one they used to have. They had their own well-drilling company in Prescott and then in Utah.

And Bill Peck is still running his operation as if it was a profit-making enterprise. He drills a well a day somewhere within 50 miles of Wenchi, a large town in west-central Ghana, driving himself and driving his crew as if lives depended on their work. (They do.)

One day last month, he drove to Longokrom, a tiny village 40 miles from here, and drilled a well. The 40 miles translates to 2½ hours of getting there, and 2½ hours of getting home, over incredible, rutted dirt roads with two huge trucks that were never intended to be off-road vehicles.

Each truck was stuck once; each pulled the other out. There were three flat tires (two on inside duals). Par for the course.

But less than two hours of drilling and subsequent pipe casing brought immeasurable change to Longokrom and the six villages nearby (total Population, 500).

Instead of walking two miles for bad water in the wet season, and eight miles in the dry, the villagers had water right there on main street, gushing out of the ground. In another week, it would be gushing out of a new, shiny hand pump.

They shouted and laughed and clapped with delight, and filled buckets and gourds and large enameled pans. One young man washed his bicycle, the only vehicle in town. A woman shampooed her hair with a bar of soap. Children waded in the temporary stream.

Bill Peck let the water run a while for their pleasure and then had his crew cap the well.

His wife kept the records, noting the depth (140 feet), pressure (12 gallons per minute), lengths of pipe and other particulars. She also collects money (villagers pay part of the cost) and gives instructions on pump use.

(Most of the well-drilling project is paid for by donations to the Divine Word Missionaries, headquartered in Chicago. That group instigated the project; the Pecks made it work.

(Peace Corps volunteers try not to reinvent the wheel; they work with other agencies and local government officials and get funding from any source available.)

The next day, Donna Peck drove to a larger village in another direction, where they had drilled a well a year before. Half of the residents had been suffering from Guinea worm, a painful ailment that cripples the victim for months.

Now there were just a few cases, and the victims admitted to drinking bad water, not from the pump.

"That's satisfying," Donna said.

"Our Peace Corps experience, supervising this work and training Ghanaians to carry on when we've gone, has been the single most rewarding experience of our lives," Bill said. "If you can't like Ghanaians, you're anti-social."

The Pecks will return to their home in Hillside, after a swing through Europe, next fall.

They'll be remembered in Ghana as long as the water comes out of the pump.

VOLUNTEER SEEKS SMALL CHANGES, NOT BIG ONES

MANSUNDU, SIERRA LEONE.—Lori Buseck lives here, thousands of miles from her home in Tempe, Ariz., and a few centuries back in history.

She lives in a tiny house of mud brick, with a roof and ceiling of rusty corrugated metal. Sheets of metal enclose her latrine out back.

Chickens run through her house, goats have given birth on her front porch, and rodents are active at night.

Water comes from a stream a quarter-mile away; she carries it home on her head. The laundry is there, too, slightly downstream. Once a week she carries her wash there, also balanced on her head, and beats it against a rock, scrubbing it with a bar of soap.

She greets people, and is greeted by people along the way. Greeting can be quite a long formality, especially when you have a pail of water on your head—"How's your mother? Is your work going well?"

"I view greeting people and toting water as part of my work," Buseck said. "When you bathe with the women, and wash your clothes with them, you are part of them, and gain their respect."

Buseck is the only Peace Corps volunteer (and only Caucasian) in her region of West Africa, and she is far upcountry, 230 miles from Freetown, the capital. To get there takes a couple of days. She has a motorcycle, but it's broken. There are no spare parts in Sierra Leone.

Her lighting is a kerosene lamp. Her furniture consists of a cot, a few shelves, a bench, a stool, a canvas chair and a huge storage box.

Buseck speaks Krio (Creole), a pidgin English that is the unofficial national language, with considerable fluency and the proper lilt, and some Kono, the local tribal tongue.

Her work is in agriculture, growing upland swamp rice with simple irrigation, and experimenting with a few vegetables.

"Whatever change I make here will be very small," she said, "and that's the way I want it. Change comes slowly; I'm not here to build big things."

But Lori Buseck is a "big man" in her village. They have given her a Kono name that means "first girl child of Mansundu."

"I'm very visible," she said. "Everyone knows what I'm doing."

She is their television set, their entertainment, their honored guest, their status symbol. The town chief came to greet the visiting journalist, bringing palm wine (interesting, but an acquired taste) and making speeches about the village pride in its white girl child.

Buseck, a 1979 graduate of Tempe High School, has a degree in Asian studies from Pomona College in California.

"It might have made more sense to send me to Asia," she admits, "but I had a good background in cross-cultural relationships.

"I want to continue development work when I get home, perhaps in other countries. And I want to influence people the way this experience has influenced me. It has made me world-conscious.

"This is not the Africa of Hollywood. It may look like *National Geographic*, but when you're sitting inside the photo, it doesn't feel like that. It's not exotic; it's where I live. You have to relate to people as people."

Buseck is a young Jewish woman in a Moslem community, but that is no problem. She is also the only white woman, the only American, and the only regular contact with the outside world.

A Peace Corps volunteer, she said, needs resourcefulness and guts. Lori Buseck has plenty of both.

The people of Mansundu love her, and she loves them. That's the kind of American presence in the Third World that no amount of foreign aid can buy.

1987 BUDGET CUTS STUNT REVIVAL OF PEACE CORPS

Budget cuts will force the Peace Corps to reduce the number of volunteers from the current 6,200, working in 63 developing countries throughout the world, to 5,000 in the next fiscal year, according to Director Loret Miller Ruppe.

"The effect of the cut will be particularly painful in Africa," she said, "where we are just starting a major new program to increase food production."

Even more painful to Ruppe is that the Peace Corps, which went into a decline after the Kennedy years and experienced a strong resurgence under her direction in the Reagan administration, has to start retrenching in this, its 25th-anniversary year.

The new budget, for the fiscal year beginning in October, is about $125 million.

That's about half of the cost of a new destroyer.

It is less, Ruppe notes, than our annual expenditure for military marching bands.

It's about 50 cents per American.

The United States, for all its good intentions, does a lot of dumb things overseas. We anger people who should be our friends and put a lot of money into the wrong pockets.

The Peace Corps is one of the good things we do. It helps in places that are in desperate need of help. It works, as in the new Food Systems Initiative, for long-term improvement. It isn't a welfare program; it helps people help themselves.

And it presents the most positive image of America possible to people around the world—not money, or power, but people; real live American people, who live in their villages and speak their language and observe their customs and work side by side with them.

They provide help in such areas as health education, agriculture, teacher training and small-business development. No quick fixes, but gradual, long-term betterment.

I met more than 30 volunteers, half of them from Arizona, in five countries. They were all dedicated, hard-working, knowledgeable people who were highly respected and listened to in their communities. They loved the people and were loved in return.

These weren't average people, but they were average volunteers. They were handpicked only because they were from Arizona, and I met, with one exception who was too far away, every Arizona volunteer in Sierra Leone, Ghana, Togo, Mali and the Dominican Republic.

You get a real case of jet lag flying into West Africa. You have to set your watch seven hours ahead, and your calendar perhaps a thousand years back.

These are simple people, leading simple lives in a complex world. They are intelligent people. We may look at them as backward or undeveloped, and they are, according to European/American standards.

They know little of nutrition or sanitation or efficient agriculture or environmental protection. They also know little of nuclear-arms races, organized crime or junk food.

They live much as they did before Europe found them and enslaved them and colonized them and divvied them up—"one for you, one for me"—into little dependencies with artificial boundaries slicing across age-old tribal lines.

Now they are independent nations, forced to compete in a world of someone else's making. Their total experience in government, in economy, in self-determination, is 25 years.

They are in trouble, burdened by debt and exploding populations. They need a lot of help, as do all the developing nations around the world.

You return from such places grateful to live where you do and frustrated that you don't know what to do about the things you've seen.

For there aren't any easy solutions. One of the most cost-efficient is the Peace Corps, which doesn't look for easy solutions.

It just goes in and helps in any way it can and shows people around the world, in the most direct way possible, that America cares.

UA GRADUATE PLAYS GAMES TO NURTURE ILLITERATES' HEALTH

SAN FRANCISCO DE MACORIS, DOMINICAN REPUBLIC.—Norberto Morel lives with his wife and two small children in a rough board shack 12 kilometers from here.

He works in the rice fields, and makes 15 pesos (about 5 cents) a day. He can only find work six months out of the year, but he is raising fighting chickens that he hopes will win and make him wealthy.

Fortunately, his wife, Lourdes, makes 50 pesos a month as a health promoter, working under the direction of Judy Carr, a Peace Corps volunteer from Tucson whose parents (Ken and Joan) recently moved to Tempe.

Carr, who has degrees in Spanish and Latin American studies from the University of Arizona, works in public health in two rural communities.

"We have a clinic, built by U.S. AID (Agency for International Development)," she said, "but it has neither a doctor nor medicine.

"We rely heavily on local women as health promoters. We teach them, and they talk to their neighbors. They are proud of their jobs and take them seriously. Still, it's hard to teach them the importance of sanitation and good nutrition."

"Ninety percent of the people here know they should drink clean water; perhaps 1 percent actually do it," Carr said. "Half get their water from the irrigation canal. The other half get it from the river, which is worse.

"Unless they boil the water, the children will get sick. Ten percent die."

Carr holds meetings with her health promoters, who are chosen on the basis of their credibility and influence in the community. She teaches them with picture books, drawings and games. Most are illiterate.

"We talk about water, and we talk about nutrition," she said. "The people here eat rice, and that fills them up, so they don't eat fruits or vegetables that cost money. They grow those things for export, not for themselves.

"I also try to teach them basic first aid. That's new here. They put sugar on cuts, or horse manure. They treat burns—a major problem with kids and ground-level cook stoves—with vinegar, sugar and lard. And they put Vicks VapoRub on everything."

Like many Peace Corps volunteers, Carr was given a broad assignment and a territory. She has used her own initiative to determine particular needs in her district and ways to meet them.

She has learned, for example, that the Dominican government had resources that her people needed, but neither the government nor the people had any experience in working together.

"I've had to force rural people to deal with government officials," she said. "Authoritarian figures have always been people to be feared. I've led health promoters by the hand into agricultural extension offices.

"Conversely, I've taken officials out of their offices to meetings with rural people. They talked about gardening, and did a good job. They'd never done that before.

"And they had free seeds and little plants available for distribution, but nobody knew that."

Carr, who wants to go on for a doctorate in public-health education, is not going to solve all the problems of the Dominican Republic. When she leaves in mid-1987, Norberto Morel will still be poor.

But his children may survive, and may even live long enough to see better days.

TRAINING, INITIATIVE FILL GAPS IN EXPERTISE

When the Peace Corps began 25 years, ago, a lot of eager, young, idealistic liberal-arts graduates raced off to do good, and most of them did.

However, the Peace Corps has learned a lot over the years and now recruits more selectively, looking at people with experience and expertise.

So how does Judy Carr fit into this? She has degrees in Spanish and Latin American studies from the University of Arizona and is teaching health, sanitation and nutrition to rural residents of the Dominican Republic.

Wouldn't it be better to send a nurse or an experienced health educator? Sure. Except that nurses in the Peace Corps are used for nursing, or even doctoring, or health-program administration.

When the Peace Corps gets a health educator, she or he is used to train people like Carr.

What does Carr know about health? Compared with what?

Compared with village women whose children are drinking swamp or irrigation water, whose diet is only rice and who let the kids crawl around with the chickens, she knows a great deal.

She's a bright, dedicated woman who speaks the language and had three months of Peace Corps training on the local culture, rural health needs and training methods.

And she has taught herself, particularly in dealing with illiterate adults. She has developed a series of educational materials that may become a separate program.

Sure, the Peace Corps could use an infinite supply of doctors, nurses and professional health educators. In real life, it's very happy to have someone of the caliber of Judy Carr.●

ABORTION AND INFORMED CONSENT: MAINE

● Mr. HUMPHREY. Mr. President, in Donna's letter from Maine we have yet another example of the preabortion counseling most women receive. She was not prepared for the procedure. She was not informed about the potential physical and emotional repercussions she might experience. She was not informed about the development of her child, and so was unprepared for what she saw during the abortion itself.

Mr. President, I call upon my colleagues to cosponsor S. 2791 to promote informed consent. This is a guarantee of justice because it will ensure that women know the facts about abortion before they opt for the procedure.

I ask that the letter be printed in the RECORD.

The letter follows:

DEAR SENATOR HUMPHREY: I pray abortion is history before my daughters reach the age where they would be pressured into an unforgettable experience like abortion. One never forgets.

I became pregnant at age twenty-one. It was March 1973, the Supreme Court had made its fatal decision that January. Abortion was the only alternative (or so I thought). In fact, when I called the medical center for my test results, the woman on the other end of the line never said "how happy for you" or "can we be of help at this time." What she said was, "Do you want it terminated?" Even in my mind, I knew it was murder . . . a woman knows, whether she chooses to admit it or not!

The abortion of my child was performed after a brief and very vague description of the procedure. The order of events that followed I was not prepared for. My cervix was forced open. What happened after the suction is impressed upon my mind until I die. The "canister" where the body is suctioned into was not completely closed. I saw pieces of arms and little legs floating in a bloody mess. Now that I do alternatives to abortion counselling, I understand that my baby's head was crushed in order to suction it out.

The period of my life after my abortion was devastating. It's only within the last few years that I can honestly say I can feel good about myself and can honestly enjoy a good belly laugh again. In retrospect, if abortion is so wonderful, then why does one go through so much shame and hide it from loved ones and friends? Deep down we know what a pathetic machine of sexual convenience abortion has become.

In my "counselling" at our local pregnancy center, if I can just get through to one girl who can avoid the hell I've gone through by telling her what abortion is about and its risks, then I've saved one more little one from a murder-happy doctor.

Sincerely,

DONNA E. ZUPCO, *Maine.*●

AMERICAN UNIVERSITY OF BEIRUT

● Mr. LUGAR. Mr. President. I wish to call to the Senate's attention an article entitled "Kidnapping A University In Beirut," which appeared in the Washington Post for September 28, 1986. In this article David Ignatius writes that "the American University of Beirut represents the very best of what we stand for as a country." He points out, however, that this great liberal institution—which prizes knowledge and freedom and opposes backwardness and ignorance—must have the support of the American people if it is to withstand the violence and fundamentalism which threatens the university's ideals as well as its personnel. I share Mr. Ignatius' view that we must not stand "in numb silence" and watch the mugging of this great university.

I ask that his article be printed at this point in the RECORD.

[From the Washington Post, Sept. 28, 1986]

KIDNAPPING A UNIVERSITY IN BEIRUT

(By David Ignatius)

If you read between the lines of the news stories from Lebanon these days, you can watch something terrible happening in front of your eyes; the slow death of a great liberal institution in the Arab world.

The American University of Beirut was for decades the symbol of liberal values in the Middle East. It was modern, cosmopolitan, tolerant, secular. It prized knowledge and freedom and opposed backwardness and ignorance. It was, in short, the embodiment of what America represented to a hopeful generation of Arabs.

But like America itself, the university was also vulnerable to attack. For these reasons—its power and its helplessness—it became a special target for attack by the Islamic zealots who seek to purge the Middle East of Western influence.

Of the five Americans who are hostages in Lebanon, three are officials of the American University of Beirut: Thomas Sutherland, the dean of the agriculture school; David Jacobsen, the administrator of the American University Hospital; and the latest victim, Joseph J. Cicippio, the school's acting controller, who was kidnaped just two weeks ago.

The attack on these Americans is appalling. But what is in some ways worse is the lack of response from the American people. We seem to have lost the capacity for outrage. We watch helplessly as kidnapers pick off, one by one, the best and bravest of our citizens, who have risked their lives to try to do some good in Lebanon. In our passivity, we seem almost like New Yorkers in the time of Kitty Genovese, so brutalized by violence that we watch the mugging of a university and listen to the screams of the victims in numb silence. No wonder the kidnapers have such contempt for America.

To understand what drives the kidnapers to such frenzy, it's useful to examine what the American University of Beirut is all about. For I suspect the kidnapers are right in singling out the university as a symbol of what America represents—or at least, what it used to.

I should forewarn the reader that I have a bias on the subject. I am an unabashed fan

of AUB, have written laudatory articles about it in the past, and even contribute a few dollars every year to help keep it operating. I think it is a wholly virtuous institution and the best thing America has going in the Middle East. It saddens me to watch its demise.

The American University of Beirut was founded in 1866 by a Protestant missionary from Vermont named Daniel Bliss. It was part of the wave of Yankee evangelism that swept out of New England in the late 19th century to every part of the globe. Bliss summed up his mission in 1872 with a simple statement of liberal values that must have seemed (and still seems) breathtaking in the context of Lebanon:

"This college is for all conditions and classes of men, without regard to color, nationality, race or religion. A man white, black or yellow, Christian, Jew, Mohammadan or heathen, may enter and enjoy all the advantages of this institution for three, four or eight years; and go out believing in one God, in many Gods, or no God. But it will be impossible for anyone to continue with us long without knowing what we believe to be the truth and our reasons for that belief."

For Bliss, education was about building character. He delivered a sermon to the graduating class of 1888 warning them against the indolence of the Arab world: "Sipping coffee in the coffee shop, shuffling cards on the veranda, throwing dice into the backgammon boards . . . may be very pleasing, but they ill become a man who is striving for the mastery in intellectual greatness."

The American University of Beirut grew and prospered into the 20th century. After debates over whether it was proper to teach Darwin, and a strike by Moslem students who refused to sing hymns in chapel, the school gradually lost its missionary character. It became, instead, a proselytizer for the American civic values of freedom, tolerance and democracy.

The university's success as an evangelist for American values is attested by one remarkable statistic; 19 of the signers of the United Nations Charter in 1945 were graduates of the American University of Beirut.

The fortunes of this liberal university began to decline in the 1970s when the liberal and democratic Lebanon it had helped to create proved unable to contain the convulsions of Christian-Moslem sectarianism and the Arab-Israeli conflict. Indeed, the university became a battlefield before most of the rest of Lebanon did. The student strikes and demonstrations of the late 1960s and early 1970s were a precursor of the Lebanese civil war that began in 1975 and has continued, in one form or another, ever since.

The American University of Beirut survived the worst of Lebanon's troubles, until the university itself became a target. That happened in the early 1980s, following the Israeli invasion of Lebanon and direct American military involvement in the Lebanese war. At that point, a shadowy Islamic organization—intent on driving this symbol of the Great Satan from Lebanon—began attacking the university's top officials.

The first target was acting AUB president David Dodge, who was kidnaped in 1982 and later freed. Next came his successor, AUB president Malcolm Kerr, a man who had devoted his academic career to understanding the politics of the Arab world. I recall several afternoons spent talking with Kerr on his patio, gazing down at the blue Mediterranean, listening to him explain how he planned to keep the campus alive. "This is a university, not a political football," Kerr explained once. "Our best protection is to be very professional."

That wasn't enough, as it turned out. A few months after that conversation, Kerr was murdered by a gunman on the doorstep of his office. A year later Jacobsen was kidnaped, then Sutherland, then Cicippio.

The current president of the American University of Beirut is Calvin Plimpton. He's a genial man in his late 60's, ironic, self-deprecating, very much in the New England tradition of the university. He's also one of the bravest people around, who has defied the threat of kidnaping and assassination to continue directing the university in recent years.

The thing that upsets Plimpton these days isn't the threat to his own safety, but the worrisome decline in academic standards at AUB. Students who are refused admission have begun threatening members of the admissions committee, and students who are unhappy about their grades try to intimidate their professors. Inevitably, says Plimpton, this takes a toll on the university. "Our people are nervous. They are human They don't want to risk themselves or their families.

"The question," continues Plimpton, "is how the Dickens we can keep this place going?"

One way, surely, is for Americans to recognize that the American University of Beirut represents the very best of what we stand for as a country. In this sense, each time an AUB official is kidnaped, it is an attack aimed at all of us and the values we cherish as Americans.●

CONFRONTING THE OTHER DRUG PROBLEM

● Mr. DURENBERGER. Mr. President, just days ago, the Senate passed a comprehensive piece of legislation aimed at fighting the trafficking, use, and abuse of illegal drugs. As chairman of the Health Subcommittee of the Senate Finance Committee, I spoke out to my colleagues that we can't just talk about illegal drugs. Illegal drug abuse is just one part of the much broader substance abuse problem that also includes alcohol and legal drug abuse. To assure a broader, more effective reach to this legislation, I added an amendment that would set up drug and alcohol education, prevention, treatment, and rehabilitation programs for Federal employees and require all Federal agencies to establish employee assistance programs.

My amendment will serve this Government's employees well, and hopefully, by example, other employed Americans and their families. But, of course, the employment setting is only one avenue and the focus there will be, appropriately, on alcohol and drugs.

But the other critical drug abuse problem that we have not talked about, Mr. President, is the misuse and abuse of legal prescription drugs. According to a survey taken by the Food and Drug Administration, and reported in this morning's Washington Post, more than half of all Americans get at least one prescribed drug a year, and at least half of these are misused. They are taken in doses that are too small or too large, or just every now and then, or they are not taken at all. And these misuses/abuses can be very dangerous, particularly when the drug involved absolutely must be taken in precise doses and on a regular schedule.

It is not difficult to know where to point the finger in this somewhat silent drug abuse problem. The culprit is in the one-on-one interaction between health care provider and patient. In the 1982 FDA survey, over 70 percent of consumers reported that their physicians and pharmacists did not tell them about precautions and side effects of drugs they were being prescribed, and 40 percent indicated that they were not told how to take the medication or how much to take. But we can't heap all the blame on the providers. In the same survey, 95 percent of the respondents said they did not ask any questions of their physicians or pharmacists.

Mr. President, with all the hullabaloo about drugs lately, we have the good fortune of having the Nation's attention focused on this important issue. During this receptive time, we must address this problem, this severe lack of communication between patient and provider in our health care system that leads to the misuse and abuse of legal drugs by millions of Americans. It is certainly the responsibility of the doctor, nurse, or pharmacist to teach the patient about his medications, and it is also the responsibility of the patient to be an informed consumer and know what he is getting and what to do with it. By doing these rather simple things, we will be able to tackle this "other drug problem."

Mr. President, I ask that the text of the article from the Post be printed in the RECORD.

The article follows:

[From the Washington Post, Oct. 7, 1986]

CONFRONTING THE OTHER DRUG PROBLEM

(By Victor Cohn)

The patient is given a prescription at two thirds of all visits to doctors.

More than half of all Americans get at least one prescribed drug a year for a total of 1.6 billion bottles and packets of pills, potions, lotions, and medicines.

At least half of all of these are misused, according to a startling government estimate. They are taken in doses that are too large or too small. Or they're not taken at all. Or they are taken for too short a time, or at the wrong times, not according to directions. Or taken only now and then, when the patient remembers or doesn't feel good.

All this adds up to what Dr. Robert Windom, the government's assistant secretary for health, calls "the other drug problem," one not as obvious as that of heroin

and cocaine but one that also threatens our health.

Look at the prescription bottles still in your own medicine cabinet or think back to the most recent medications you've been directed to take. Don't some of the misuses sound familiar?

They are both familiar and dangerous.

Among the results, say the federal Department of Health and Human Services and the National Council on Patient Information and Education (an alliance of medical and other groups), are these:

Millions of deaths a year are caused by all drug misuse. Exactly how many such deaths there are no one knows, but, say these sources, each year sees "more than 225 million potentially dangerous incidents," often resulting in return of an illness or prolonged illness or avoidable side effects, if not death.

There are 125,000 deaths a year among heart patients—a group that has been more precisely studied—mainly from misuse of drugs to control faulty heart rhythms.

Of patients with glaucoma, only 42 percent use their drugs correctly; of asthmatics, 46 percent; of diabetics, 48 percent.

More than 10 percent of all hospital admissions are related to prescription drug misuse.

When patients with heart disease ignore or misuse their lifesaving medications, before they know it they're in a crisis and on their way in an ambulance to the nearest intensive care unit, Windom reports.

"When a 70-year-old woman takes her high blood pressure medicine improperly," adds Dr. Frank Young, Food and Drug Administration commissioner, "the toll in mental disorientation, physical effects and even death may be just as great as when her grandson smokes marijuana or takes a street drug."

"A typical thing is that a patient comes in and I ask, 'Did you take your medicine?' " says Windom, a practicing physician for 26 years until he became a Federal health official last June.

"The patient says, 'Yes, I took it today.'

"It turns out that he took it today because he didn't feel well. But he hadn't been taking it for several weeks."

Why not?

Perhaps he, or she, did not realize that continued use was needed to keep feeling better.

"At the time of diagnosis, we're fearful and anxious," Young explains. "We don't hear what the physician is telling us." Or we become confused. We may be taking five or six medications, pills and capsules in different colors and doses, and it's not easy to remember what to take when.

The cures?

Obviously physicians need to do a far better job of telling us about the drugs they prescribe, Drs. Windom and Young agreed as they helped launch a national "Talk About Prescriptions" month and a continuing prescription awareness campaign.

But whether or not physicians do all they might—and some do and some do not—we patients need to pay more attention to the little pills that can save us or kill us.

In Young's words, "The patient is an active part of the therapeutic regimen. The highest quality medication will have no impact if the patient doesn't take it correctly."

The National Council on Patient Information and Education and Information, headed by former Florida representative Paul Rogers, urges us to learn the answers to five key questions—reproduced on this page—and to keep asking them of doctors, nurses, physicians' assistants and pharmacists until we're satisfied we know the answers.

"Communicating about medicines must become a routine part of every encounter where medicines are prescribed or dispensed," said Rogers, long known as "Mr. Health" for his outstanding chairmanship of a House health subcommittee.

"Don't be afraid to ask these questions. You have a right to ask them."

If we don't ask these questions," Young said, "we are failing" to become part of the active, two-way process that good health care requires."

Windom, Young and Rogers appeared at a Department of Health and Human Services news conference last week.

As it neared its conclusion, a semi-retired pharmacist, Louis Rubenstein of Alexandria, arose. At age 79, he has served for 11 years as a volunteer and chairman of an Alexandria Task Force on the Elderly and Medications. He has talked to countless older, and also younger, people who have had trouble getting their doctors' directions right.

Or who did not get adequate directions in the first place.

His contribution was simple and practical. "My suggestion is this," he said. "Before you leave your doctor, say. 'Will you please write the information down for me, or have your nurse write it down?' "●

RECOGNITION OF LOUISVILLE TENNIS CLUB'S NATIONAL CHAMPIONSHIP

● Mr. McCONNELL. Mr. President, today I rise before this body to pay special tribute to 12 outstanding adult athletes from my hometown, Louisville, KY.

These 12 gentlemen make up the Louisville Tennis Club, which, this year went undefeated for the season and won the USTA/Volvo Tennis League 3.0 National Championship on September 14 in Seabrook Island, SC.

The National Championships are the culmination of a nationwide network of adult recreational tennis teams participating in season-long competition administered by the U.S. Tennis Association. To win the national title, the Louisville team went unbeaten by all other 3.0 teams in Louisville, in the Commonwealth of Kentucky and in the Southern Regional Tournament which included teams such as Tennessee, Alabama, and Georgia.

To advance to the national finals, the Louisville team beat Ponce, Puerto Rico 3 to 2. In the final match the Louisville team defeated Richmond 4 to 1 to capture the national crown.

This is an outstanding tribute to our Louisville athletes, who incidently are an average age of 55½ years old, competing in a league with an average age of 35. The oldest of our national champions is 65 years old.

My hat is off to these tremendous Louisville athletes. I ask my Senate colleagues to join me in congratulating each and every member of the Louisville Tennis Club: Lewis Bass, Jerry Fangman, Tom Faszold, Chas Francke, Ted Hartmann, Cliff Johnson, Irv Kupper, Richard Schreck, Bill Spaulding, Rich Stuedle, Gary Tucker, and Bill Welch. Their accomplishments are ones which all Kentucky is proud.

Mr. President, I also ask that the attached news clip from the Louisville Times which highlights the Louisville Tennis Club's outstanding season be printed in the RECORD.

The material follows:

[From the Louisville Times, Sept. 15, 1986]

LOUISVILLE TENNIS CLUB

Tennis—A men's tennis team from Louisville beat a team from Richmond, Va., yesterday to win the USTA/Volvo Tennis League 3.0 National Championships at Seabrook Island, SC.

The National Championships are the culmination of a nation-wide network of adult tennis teams participating in a recreational program administered by the United States Tennis Association.

The Louisville team beat Richmond 4-1 in the final, which consisted of two singles matches and three doubles matches.

Louisville won doubles matches with the teams of Bill Welch and Rich Steuedle, Irv Kupper and Dick Schreck, and Charles Francke and Bill Spaulding. Sonny Bass won a singles match, but Jerry Fangman lost in singles for Louisville.

Louisville advanced to the final with a 3-2 victory over Ponce, Puerto Rico.●

SALUTE TO MARK OLSON

● Mr. DURENBERGER. Mr. President, it is hard to overstate the important role played in small and medium sized communities in this country by a now threatened institution—the home-owned bank.

Fortunately, Fergus Falls, MN, has such a bank and its success is due in no small measure to its president, Mark Olson.

But, Mark Olson is no ordinary home-owned banker. In fact, on October 28, his outstanding leadership ability is being recognized when he takes office as president of the American Bankers Association.

Because of Mark Olson's outstanding record—as a banker, as a community leader, and as a leader in the banking industry nationally—I ask that an article from the St. Paul Dispatch and Pioneer Press be printed at this point in the RECORD.

The article follows:

[From the St. Paul Pioneer Press and Dispatch, Oct. 6, 1987]

FERGUS FALLS MAN LEADS NATION'S BANKERS

(By Jim McCartney)

FERGUS FALLS.—When Mark Olson returns to his native town late this month, he'll be greeted by a homecoming celebration—sponsored by a competitor.

The celebration will mark Olson's induction Oct. 28 as president of the American Bankers Association, one of the largest and most powerful trade associations in the country.

The ABA, with 13,000 member banks, has 400 employees in its Washington headquarters and a $60 million annual budget. Olson is the head of Security State Bank in Fergus Falls, the smallest of three banks in the town and one of the smallest members of the ABA.

Charles Kretchman, president of Norwest Bank Fergus Falls, the town's largest bank, came up with the idea for the homecoming celebration. Kretchman convinced the Fergus Falls Chamber of Commerce to organize the event, and his bank is helping to fund it. On Oct. 30, as many as 1,000 people will cheer Olson's return from the ABA convention in San Francisco. That will be followed by a dinner for 325.

"Although we are competitors and always will be competitors, we are very proud of his forthcoming election," Kretchman said. "And, after all, this is rural Minnesota and we need some reason to say 'hurrah.' We need a morale booster."

The 43-year-old Olson will be the youngest person to assume the ABA position. He also is one of the more unassuming aspirants to the post. His resume barely touches on his four years of work for Rep. William Frenzel, R-Minn., or his civic contributions to Fergus Falls during his 10 years as president of Security State Bank.

The soft-spoken Olson attributes his modest manner to his Scandinavian heritage.

"He doesn't project a lot of flash, but I can assure you he went through a lot of scrutiny in our organization in order to get the nod," Kretchman said.

But while Olson may appear laid back, he knows how to seize opportunities. William Sands, a St. Paul banker and longtime friend of Olson, recounts the day in 1976 when Olson heard there was an opening at Security State Bank, a bank Olson's father helped to organize in 1957.

"He hopped in his car and drove up there the same day," Sands said. "He hoped he would be considered before anyone else."

The 190-mile trip from the Twin Cities to Fergus Falls paid off.

A trip to the moon wouldn't cover more miles than Olson will in the next 12 months. After already traveling about 150,000 miles to 28 states as president-elect of the ABA, Olson expectes to put an additional 250,000 to 300,000 miles on his frequent flyer card. A secretary at his bank spends about a quarter of her time on Olson's ABA activities and his travel plans, he said.

The ABA positon will greatly enhance Olson's access to power and his public profile. Earlier this month, Olson had a private conference with Federal Reserve Chairman Paul Volcker. His ABA duties has also led him to become well-acquainted with the heads of the two other federal banking regulatory agencies, the Comptroller of the Currency and the Federal Deposit Insurance Corp.

"Being head of the major banking trade group gives me credibility and access," he said.

"But I must also use it properly—I shouldn't use my position to get onto a golf course," continued Olson, who is an avid golfer.

He'll be the organization's main spokesman on Capitol Hill. He's already been a guest on "Good Morning, America," ABC's morning news show. And, as president of the ABA, he will be a mainstay at state banking association meetings throughout the country.

The office is a mix of public speaking, lobbying and diplomacy. Fittingly, Olson's background is a rare mix of banking and politics. He worked for Frenzel as legislative director and district director. Several years ago, he joined the ABA's government relations committee, which sets the organization's legislative goals. His knowledge of Washington politics led to his election as chairman of the committee, one of the most visible positions in the ABA.

"I think one of the reasons he was picked was the outstanding job he did as chairman of the government relations committee for the ABA," Sands said. "He has a good knowledge of how things function in Washington and is extremely well-liked and respected."

DIFFICULT DECISION

The decision to pursue the top position at the ABA was a difficult one because it meant being away from his wife, Renee Korda, their family and his bank.

"Renee and I sat down and decided together that I should do it." Olson said. "The first consideration was the children, the next was how we would work at home and the third was whether it would work at the bank."

Olson will probably spend 70 percent of his time in the next year on ABA duties. His wife has agreed to travel with him about once a month during his stint as president.

Olson believes that his bank will benefit from his ABA involvement. For instance, he has been able to step on top of industry trends through his contacts in the organization. In addition, the fact that an experienced banker near retirement was available to run the bank has enabled him to be absent from his duties as bank president.

Although his bank is in the heart of farm country, Olson is not overly concerned about its financial condition. The sugar beet and dairy farms that dot the area have survived better than other types of agriculture, he said. And the lake country just to the north provides a strong tourist trade. The economy also benefits from the headquarters of Ottertail Power Co., the town's largest employer, as well as from its position as a retail and medical center for the region.

Since many banks are being threatened by the farm crisis, Olson's rural perspective is a particularly timely one for an ABA president. He was involved in devising legislation proposed this year by the ABA to help farm banks, and he backed an ABA study of the farm crisis that could help guide future legislation.

"It's a big job, a real challenge, because there are so many different bankers with different viewpoints," said Sands, president of Western State Bank in St. Paul. "To move forward is difficult because there is a lot of disagreement over major issues. The president has the main responsibility of developing a consensus."

MORE UNIFIED PLATFORM

The bankers' group will probably be less divided this year than in the past few years because interstate banking is less of an issue for the group. Small banks fear they will suffer as large banks are allowed to cross state lines. Large money center banks complain that without national legislation, regional bank holding companies get an unfair head start in the expansion game.

But the growing number of states with regional interstate banking pacts has begun to diffuse the issue. Last year, the ABA finally came out with a position in interstate banking, supporting regional interstate banking as long as nationwide expansion eventually is allowed.

"There are not nearly as many issues dividing the banks this year as two or three years ago," Olson said.

Olson will carry the key plank of the ABA's platform to Congress: Allow banks to compete by removing regulations that restrict them from engaging in financially related activities.

"We would like to be able to have securities, real estate and insurance businesses under the same roof as banking," Olson said.

The new powers would help banks compete with other financial institutions that have steadily encroached into markets once solely the banker's turf. The encroachment began in earnest in 1980 when securities firms introduced money market mutual funds, which paid savers a higher interest rate than banks were allowed to offer.

Olson says that turning loans into securities has been the most recent development to hurt banks. More companies are borrowing money short-term through the commercial paper market rather than through banks. And finance subsidiaries owned by the automakers, which package and sell car loans to investors, have all but taken over the car loan business, once the domain of banks.

Since those who deal in securities operate on thinner margins than banks because they do not have to risk their own capital, they can offer more attractive interest rates to borrowers.

If banks can't beat them, they would at least like to be permitted to offer commercial paper or issue their own loan-backed securities, Olson said.

Banks also would like to offer mutual funds and underwrite municipal bonds and stock offerings.

GROWING SYMPATHY

Although such proposals have been made before, Olson thinks Congress may be more sympathetic to bankers' pleas this year.

"There a growing sense in Congress that bankers are being disadvantaged, and they are more receptive to our requests," he said.

Don't be surprised if Olson's return to Washington whets his appetite for politics. Olson has maintained his interest in politics since leaving Frenzel's office, and has been a financial supporter of congressional candidates and a delegate to the state Independent-Republican convention. In fact, only his duties as president-elect of the ABA prevented him from attending this year's state convention, his first absence in years.

But "being a banker is not a logical springboard into politics," he acknowledges.

"I don't think I'll run for office, but then I never thought I would be president of the ABA or president of Security State Bank.●

CONCERNING VETERANS' FAST FOR LIFE

● Mr. DURENBERGER. Mr. President, I rise today to draw the attention of my colleagues to a remarkable event taking place on the steps of the Capitol building. Four Americans, all veterans of U.S. Armed Forces and one of them the recipient of the Congressional Medal of Honor, are engaged in a "Fast for Life" with the purpose of opposing U.S. policy in Nicaragua.

I shared a few moments with these veterans last week. While I express no judgment on their very personal deci-

sion to fast, I think we do have an obligation to consider the issues raised by their stand. As the debate continues in the coming months about our policy in Central America, I sincerely hope that Charles Liteky, George Mizo, Duncan Murphy, and Brian Willson will be with us as participants.

Citizens of our Nation continue to express their concern with the direction of our Central American policies. I met with three Minnesotans last week who voiced their dismay over many aspects of the current U.S. approach to the region. As I have indicated on numerous occasions before this body, I too have grave doubts that our present policy combines the proper mix of diplomatic, economic, and military elements.

Mr. President, the vote by this body to provide $100 million in aid for the Contras in Nicaragua must not be the end of our consideration of the enduring problems in Central America. The four veterans are attempting to ensure tht U.S. policy toward Central America continues to be the subject of vigorous and healthy debate. The issues raised by the fasting veterans will be with us for a long while. I ask that my colleagues reflect on these issues as we continue to address the multifaceted problems of Central America. I ask that an article from the Washington Post discussing the veteran's fast be printed in the RECORD.

The article follows:

THE CALLING OF CHARLIE LITEKY

(By Paul Hendrickson)

He sits there beatifically, with his Contadora sign and his code-blue armband and his plastic gallon jug of water, all in the name of love toward his bleeding brothers in far-off Nicaragua. He hasn't eaten for 33 days.

The other evening, when I reached over to touch him lightly, I couldn't stop myself from recoiling. I thought one of his shoulder blades was sticking through his back.

There are four veterans fasting on the steps of the U.S. Capitol, withering there for our moral contemplation. They are trying to galvanize the country against contra aid, ignite old flames of the protest movement.

But there is only one fasting there whom I can really think about, only one who seems to be rolling through my sleep like a boulder. His name is Charlie Liteky, and I have known him for over 25 years, in lesser and greater ways. What is more, we first knew each other in religious life, when both of us shared a simple dream of one day helping people. We are all in training to be fishers of men in that little hick, holy, Alabama seminary school that now seems like something from back beyond time.

The place was called Holy Trinity, and it was a kind of ramshackle cell at the outback of Christianity. Eventually it locked its doors and sent most of us out into a wider world. A few among us made it all the way to priesthood. Charlie Liteky was among that narrow percentage. A little while later, he went overseas and won the congressional Medal of Honor. The hero priest of 'Nam, they called him.

He saved 20 men in a jungle firefight without so much as a helmet or a flak jacket on, pulling them out on his belly. Lyndon Johnson decorated him in the East Room of the White House. My old seminary friend, Charlie Liteky, was an American hero. "Son," LBJ said, draping the rich blue ribbon around Charlie's neck, "I'd rather have one of these babies than be president."

Afterward he left the priesthood and began to wander the earth, though not aimlessly. For a time he lived on an island in Florida, in a scrap-wood cabin that looked out to an infinity of sea. He said he was trying to get in touch with his prayer life again. He got in rhythm with the tides. He bought an old truck, and he hauled people's trash, and he got by okay on the government pension Medal of Honor winners get for the rest of their lives. One day he moved on. When I caught up with him five or six years ago, he was living in a cheap hotel on Eddy Street in San Francisco, with $50 hookers outside the door. He said he felt he had some responsibility to the rest of man.

And now the "Veterans Fast for Life" against "the new Vietnam" in Central America is grinding resolutely toward its sixth week, picking up the curious and the bereaved and the conflicted and, at last, the media powers that be.

Someone has written a song called "Fasting." A few congressmen have come by, not very many. Benjamin Spock stopped by a week ago. The mail now begins to pile up—more than 1,000 pieces on a recent day—in the Fast office on Massachusetts Avenue. On a good day, maybe 100 people show up at the steps for the 6 p.m. prayer vigil.

A couple weeks ago I saw Tip O'Neill smile and wave from behind the shaded glass of his big glossy limo. Charlie gave some literature about the fast to the speaker's driver. The man was closing the car's truck. In a moment the limo rolled away.

This is all going on 10 blocks from where I live comfortably with my wife and baby son.

Once, my old seminary friend Charlie Liteky went suicidally beautiful into the fields of Asian brightness. And now he is encamped on the steps of a cathedral of power. I was certain he'd be dead by now, which shows how much I really know about him. If anything his mental energy has seemed to grow sharper in the past week, even as one of the others fasting with him seems on the very lip of death.

In fact, I have seldom heard Charlie so lucid or passionate or articulate. Nearly a year ago he went to Nicaragua to see the bleeding for himself.

But what is it exactly that he wants? Sometimes I'm not sure he knows.

"The contras do not now, nor have they ever, received the support of the majority of the Nicaraguan people," he says.

"President Reagan has a road to Damascus to face," he says.

"When I wake up I'm going to see the face of God," he says again.

There have been moments when I have truly hated him for this thing he is doing with his life. As the geek of death creeps closer now, grinning on its haunches at the fringe of the feast, the fast has sometimes struck me not as something profound or spiritual but as some awful perversion of the lessons Christ tried to teach with His own life. It has seemed like no more than emotional blackmail.

Any yet, just when I feel the rising anger of that, comes something else, and then the revulsion and fright and contempt begin to dissolve, and its place is suddenly—what? Something close, in texture and kind, to the old holiness I used to know a long time ago, when the softness of a seminary hymn came wafting round.

"O Clemens," we used to sing. *"O Pia."*

"Oh, merciful, oh, sweet."

At such moments, I begin to feel that what Charlie Liteky is attempting to say with his life is something far beyond me, far beyond any of us, trying to gaze in on it from the outside. Then I tend to shrug and think of it as just one more Byzantine turn—the last, apparently—in a deep Christian's search for sancitity. If Charlie makes a sainthood somewhere on the other side of here, it won't be the kind that will ever find itself enshrined in stained glass in the Vatican; no, his was ever and only the sanctity of being, as a mutual priest friend of ours once said.

The lives of the other three men are every bit as sacred as Charlie's life, of course, and each has his own deep history to relate. I have somewhat come to know Duncan Murphy and Brian Wilson and George Mizo in these past few weeks, and I feel that they are men of conscience and bravery, flawed and needful and willful and wry, like the best of us. ("I'm a Cardinal fan since 1953, when Harvey Haddix was a first baseman," Wilson told me the other day. "I hope I make the World Series. I'll tell you, yesterday I wanted a hot dog and a vanilla milkshake so bad it was killing me.")

Wilson and Murphy started their fast on Sept. 15. George Mizo, who was exposed to Agent Orange in Vietnam, began with Charlie on the 1st. He is the one appearing to sink most rapidly. He has contracted a respiratory infection, and although doctors were able to get him into a hospital for tests, he has refused to quit. This weekend he is scheduled to be taken, at his own insistence, to a peace event in New England.

Last weekend, Charlie flew to Los Angeles to make an appearance at a $100-a-plate dinner on behalf of Central America. He felt a little dizzy getting off the plane, he said.

One of Charlie's fellow fasters told me the other evening, "If you want to know, I wish to hell sometimes your friend Charlie never won that —— medal." What he meant, I think, is that Charlie is the quarterback of this event, the one everybody's watching. It was ever thus.

The immediate event that brought these four veterans to the east side of the Capitol was the Senate's approval in August of $100 million to the Nicaraguan contras. But I am somehow inclined to believe that there is a richer and stranger destiny that has yoked these lives together, like bridge-crossers on the way to San Luis Rey. I have heard someone try to describe it as "prophetic disequilibrium," and that may be as good an explanation as any.

I will say this and be done with it: For as long as I have known him, Charlie has been giving things back. I don't really know why, but I have come to accept it as fact. This past summer he gave his medal back. (He put it in a manila envelope and set it at the base of one of the panels at the Vietnam Veterans Memorial. Ironically, that event drew far more attention than this fast, at least thus far.)

A decade or so ago, he gave his priesthood back. There have been various other givebacks in between. And now he seems ready to give the ultimate gift back. I have wondered if this awful need isn't tied up with a fundamental sense of unworthiness, and if all of it doesn't go back to his earliest family roots—and then complicates itself by the holy guilt of religious life.

Somehow I can't help feeling that Charlie wants to go home very badly. In truth, he once said this to me in nearly these words. This was in San Francisco five or six years ago, and our lives had rejoined after a long absence. I was trying to write a book about his life and my life and some other seminary lives.

"I just have never clung to this life," he said. "I'm not anxious to die, but I look forward to that moment when I can get away from this violence, the cruelty, the uncertainty of the world. I think I'll be happy to go home when the time comes."

And yet, just lately, I have heard hints from him about "life after the fast."

He told me this past summer, when he had decided to go ahead, that he was sure he could last for 50 days. "Course, after 20 you're in the danger zone," he said almost airily. "You know, blindness, pneumonia, base-line heart problems, that sort of thing. I guess you know both my parents died of heart attacks."

The way he said it, I had the distinct feeling he was looking forward to the first set of complications. He also had said this: "Frankly, I don't expect to make it." What I heard more than anything was the eagerness. There have been other times when I have heard the preachiness, the ego, the seeming messianic impulses.

At one point Charlie talked about trying to bring 100,000 people to the lawn of the Capitol in protest against our "proxy killers" in Nicaragua. There is not much talk of that now. What Charlie and the others want is an end to U.S. militarism in Central America, and to that end they are suggesting rallies, vigils, write-ins to Congress, national prayer and fasting in solidarity with their own fasting. And some of this is happening. Still, to me at least, the goals seem ill-focused, and maybe unattainable.

But I have been wrong about this man many times before in my life, and maybe I am wrong again, and anyway there are such unknowable levels of reality here, mystical and spiritual levels, profane and tawdry levels.

Because at another point this summer, when I suspect it was all beginning to grow and spread in his head, like foxfire, he said meekly: "I just pray for clarity of vision, Paul, the courage to stay with this stuff. I feel if I moved away from this line I'm on now, I might lose my own soul. Sometimes I think I'm losing my mind. As someone who was very close to that once. I think about it quite often. But then someone comes along and says, no, Charlie, you're not crazy."

I think of Mitch Snyder and then I think of Gandhi and then I wonder: where do you fit, Charlie?

The other evening, a mutual friend from the seminary called. Butch lives in Birmingham. He's been trying to pick up whatever news of Charlie he can from National Public Radio. (They have been reporting on it since the start.) We talked about Charlie for half an hour, and then Butch said, as if to dispense with something that is impenetrable, "It's Calvary. An internal creation, an external destruction."

Charlie's wife Judy is on the steps with him now. She arrived from San Francisco two weeks ago. At first no one knew for sure that she would come. Charlie had indicated to me a while ago that he had given Judy a certain veto power over the fast. "Yes, that's true," Judy told me the other night, as we sat on the steps together and alternately held hands and laughed nervously. "But frankly, our understanding is it will only be invoked if I mentally start to break down."

Judy is a former nun, with her own long dedication to justice and social causes. But she wants to work within the despised "system," while her husband has journeyed over to the other side of some revolutionary vision. If Charlie survives this, I doubt they can really stay together, except in spirit. They got married just three years ago this month, with a pact to each other that neither would ever try to stop the other from following a call that seemed beyond the other's capability to comprehend.

"He's tender, I promise you he's being tender to me," she said.

The other evening, Judy got up and said a prayer aloud, asking the 50 or so people in attendance to "try to pray for the thing that touches the heart that makes the spirit go on."

He was many classes ahead of me at Holy Trinity, which was located far out into the scabbed red dirt and fragrant scrub-pine of Russell County, Ala. In a school full of heroes and Christ figures, Charlie Liteky had his own kind of legend. Acutally, I never got to know him until the year before I went to the novitiate. Then we spent a summer together on a mission. I remember how he used to mesmerize those rural kids during catechetic class. He drove an old yellow school bus, picking them up each morning, and I rode along with him and tried to copy his songs and stories.

In the seminary, his classmates used to say that if Charlie hadn't come to God, he would have gone to Vince Lombardi. He could throw a football 70 yards-flick it, like a rock. Somebody would hike it to Brother Angelo (we had all given up our regular names and adopted religious names, to show we were dead to the world) and everybody on his team would go out for the pass. Charlie, ever the quarterback, would dance in the backfield, eluding his captors, then heave the bomb at the first seminarian to reach the end zone. It was only pickup football, shoved in between Cicero and trigonometry, but legends like that die hard.

Charlie Liteky, superstar.

There has always seemed something mythic about his life. He once told me the story, in a kind of dead monologue, of the drowning of his younger brother, Jimmy Liteky. There used to be three Liteky brothers—Charlie, Pat, and Jimmy. Two went to Holy Trinity; the third, Jimmy, stayed home. Jimmy drowned in a Florida river in 1959, nine months before Charlie was ordained to the priesthood. He was such a fine swimmer, such a standout athlete. He just dove in that day and never came up.

Charlie was the one in the family who found the body. For three days grappling hooks had been skimming a dark murky river. Below the chemical riffles, divers labored. They could find nothing. On the third day of the search, Charlie and some other men put their boat toward the point of an island. It was dusk. They were letting themselves drift in the current. The boat was riding past the little green island, and Charlie was standing up in the bow, peering down into the darkened waters, saying to himself, Come on, Jimmy, dammit, just come on, when—suddenly—there was Jimmy. He just rose up, right in front of his big brother, clean and beautiful and smiling, with a gash over his forehead and his arms outstretched. It was as if his brother were trying to get into the boat with him. The body seemed to be projecting right out of the water into Charlie's arms. Charlie grabbed for his little brother, and then the smell was nearly overwhelming.

At the funeral, Charlie's mother, Gertrude Liteky, a kind of suffering Monica, had her first heart attack. And Charlie's father, the old hardened Navy chief, the King Lear of this family, said: "Well, God took two of my sons. Now he's got the third."

I have been keeping haphazard notes, almost in spite of myself, on this fast. On the 17th day I started off intending to tell Charlie to go to hell for what he was doing on the steps of the Capitol, disturbing my life like this with his damn prophetic disequilibrium. It didn't work out that way.

I suppose what I was angry about, but didn't really want to face, was my own silent lie in the matter. Because I had been riding my bike over to the Capitol steps every few days since the fast began, like a voyeur at a car wreck who can't stop himself. Always I had stood at the edge of the fasters' 6 o'clock prayer vigil, not really participating in the prayers and singing, just wishing with lasers of intensity that Charlie, and the other three as well, could be shown the light to give this insanity up.

But I had never really said this, in so many words, and certainly never to Charlie. There has always been a resistance in me to try and tell him anything, partly, I suppose, out of a fear he'll go the other way—he's always been that perverse.

So, this particular evening, on the 17th day, I said, nearly startling myself: "But why, Charlie, I want to know right now, tell me why you are doing this to people you love." I didn't mean myself primarily, for though I love him all right, I would consider it obscene to suggest that his apparent approaching death is doing to me even half of what it is doing to Judy.

What prompted my remark was that Charlie had just said again, almost by rote, the words I have heard him say repeatedly since the summer: "I'm ready to die, Paul." He had said this several times in my own house, especially as the fast began. (He lived with us for the first seven days, as he has on and off since he came to town last February and began working with a group called Americans for Peace in the Americas and another called Witness for Peace.)

He was sitting on a goofy blue plastic cushion made by the Shamrock Sport Bag Co., the kind people lug to football stadiums. The words "Fighting Irish" were emblazoned on the pad. He was sipping water from a styrofoam cup as if it contained all the sustenance mankind had ever known. the skin around his Adam's apple hung like turkey flesh.

"To make a statement, make a statement with my life, that's all," he said, with no discernible tension in his voice. "Because I feel I can make a bigger statement with my death right now than with my life, and so that's what I'm prepared to do. This is coming from the inside. This is a spiritual thing, that's what you've got to understand, that's what I've been trying to tell you from the beginning." He hesitated. "You see, we're so inured. We've just been saturated with pleasure."

"But who's going to give a damn, Charlie, don't you understand that?" I said now. "You're going to die on these lousy steps because we voted $100 million to the contras. Okay, big deal, it'll be in the paper the next day, National Public Radio will do a eulogy, but then who gives a damn a week later? It's all just a macabre joke, a joke on you, Charlie. Don't you see that?"

"Maybe the people in Nicaragua won't see it as some macabre joke," he said softly. And this from a man who has been far from soft in his life. Because when you say everything else about Charlie Liteky, you must also say that there is an anger, a terrible frightful anger, he has never really come to terms with.

"I made a mistake with Vietnam. I thought it was a just war. It was a travesty. It was a filthy lie, from the Gulf of Tonkin onward. I can't stand by and let Vietnam happen all over again. This is the only way I know. Let others work it out as a cerebral problem. I see the thing as a burning house, and I'm going in."

"But will it make any difference?" I said.

"I don't know that it will," he said.

I wanted to say, "Do you think you're Jesus Christ or something?" but instead I said:

"What about Judy?" Again, I wanted to say, but didn't, "Yeah, you save Nicaragua, and you kill your wife, eh, Charlie."

He didn't really answer, just nodded beatifically.

Prophetic disequilibrium.

About the beaver:

My son is 2½, and nearly from the moment that Charlie came to Washington last winter to be a full-time peace advocate, he and Matthew have had a wonderful rapport. They have gotten down on the floor of our living room and kitchen to play a game called "How 'Bout" that I really don't understand.

But in the early days of his fast, Charlie did something that upset Matthew terribly. He lost the beaver. The beaver is just a cruddy little plastic likeness of a beaver that we had attached to a key chain and given to Charlie, so that he could come and go from our house as he pleased. Charlie misplaced the key ring with the beaver on it. (He's always traveled light and left things here and there; he's the least materially oriented person I've ever known.) Matthew couldn't understand this.

"But Charlie, where's the beaver?" he kept saying.

Charlie didn't have an answer.

"Will you look for the beaver, Charlie?" Matthew kept saying. "I want you to look for the beaver, Charlie. Look for it!" He said it with the same insistence with which he demands things of his adoring parents, which I think only suggests how close he and Charlie have become in these last few months.

On the eighth day of his fast, Charlie called my house. "I have wonderful news," he said with true jubilation in his voice.

Jesus, I thought, he's going to stop the fast.

"Paul, I found the beaver!" he said. "Can I give it to you tonight on the steps?"

We took Matthew over that night. He and Charlie hugged. "The beaver!" Matthew crowed. Later, Charlie told me, "You know, Paul, I was really afraid that the only memory Matthew was ever going to have of me was that I lost the beaver."●

COMMEMORATION OF THE CENTENNIAL OF THE STATUE OF LIBERTY, AND THE ROLE OF PRESIDENT GROVER CLEVELAND

● Mr. LAUTENBERG. Mr. President, this summer saw renewed national pride in the Statue of Liberty, and the ideals for which she stands. In New Jersey living in the shadow of the great monument, we take special pride in the statue. As the son of immigrant parents who entered the United States through Ellis Island, the statue has great personal significance for me as well.

New Jerseyans have had a special role in the history of the statue. In 1886, it was President Grover Cleveland, a New Jersey native, who, on behalf of all Americans, officially accepted the Statue of Liberty from the people of France.

October 28, 1986, will mark the actual bicentennial of the dedication of the Statue of Liberty. In commemoration of this important anniversary, Ms. Jacqueline A. Beusse, a commissioner of the New Jersey Motion Picture and Television Commission, has prepared a statement on the events of that day.

Mr. President, I ask that a copy of the text of Ms. Beusse's statement be included in the RECORD.

The statement follows:

A TRIBUTE TO PRESIDENT GROVER CLEVELAND AND THE CENTENNIAL OF THE DEDICATION OF THE STATUE OF LIBERTY

(By Jacqueline Beusse, Commissioner, New Jersey Motion Picture and Television Commission)

At the time of the official dedication of the Statue of Liberty—October 28, 1886—President Grover Cleveland, a native son of New Jersey, accepted Lady Liberty from the people of France on behalf of the American people.

In the New Jersey-New York harbor that day, after a ticker-tape parade in lower Manhattan, President Cleveland, members of his presidential cabinet, and dignitaries from France sailed out to the Island, to the unveiling of the Statue and the official acceptance ceremony.

Amid the sound of fire boat whistles, church bells and cheering crowds, President Cleveland accepted the Statue of Liberty with these words:

"The people of the United States accept with gratitude from their brethren of the French Republic the grand and complete work of art we here inaugurate. This token of the affection and consideration of the people of France demonstrates the kinship of republics, and conveys to us the assurance that in our efforts to commend to mankind the excellence of a government resting upon popular will, we still have beyond the American continent a steadfast ally.

"We are not here today to bow before the representation of a fierce warlike god, filled with wrath and vengeance, but we joyously contemplate instead our own deity keeping watch and ward before the open gates of America and greater than all that have been celebrated in ancient song.

"Instead of grasping in her hand thunderbolts of terror and of death, she holds aloft the light which illumines the way to man's enfranchisement. We will not forget that Liberty has here made her home, nor shall her chosen altar be neglected.

"Willing votaries will constantly keep alive its fires and these shall gleam upon the shores of our sister Republic thence, and joined with answering rays a stream of light shall pierce the darkness of ignorance and man's oppression, until Liberty enlightens the world."

President Cleveland is the only president in American history to serve two non-consecutive terms. He was a candidate for the office on the Democratic ticket in the campaign of 1884 and again in 1892. He was sworn into office on March 4, 1893.

President Cleveland was born in the Town of Caldwell, in northwest Essex County, New Jersey on March 18, 1837. Next year shall mark the 150th anniversary of his birth in a small frame home which is maintained today on Bloomfield Avenue in Caldwell as a national and state historic site.

His father, the Reverend William Cleveland, was pastor of the First Presbyterian Church at Caldwell and he named his son after the founding pastor, the Reverend Stephen Grover Cleveland.

The Town of Caldwell, New Jersey is a most historic town, the site of many battles during the fight for independence from British colonial rule. Like much of New Jersey, it has been called "the cockpit of the American Revolution."

The Town of Caldwell was named after the fighting parson of the American Revolution, the Rev. James Caldwell, who was also the first chaplain of the American forces. He and his wife lost their lives during the fight for independence. Their home was burned as was their church in bitter battles during the long and eventually victorious fight for freedom.

It is appropriate as we pay tribute to the Statue of Liberty, and the Republic of France which presented this great symbol of liberty to the American people, that we also reflect on our own nation's fight for freedom and commitment to preserving freedom for all Americans and protecting it around the globe.

It is also appropriate to pay tribute to President Cleveland who accepted the Statue on behalf of the American people, to his birth in the historic Town of Caldwell, and his years of service to his country.

During his terms of office he was known for drastic civil service reform. His second term of office was concerned with his vigorous handling of the national credit, opposition to the free silver question, and firm foreign policy, including his insistence of the arbitration of the British-Venezuelan boundary dispute to protect American interests.

He made his home in Princeton, New Jersey when he completed his second term in 1897, and lectured at Princeton University. Upon his death in 1908, he was laid to rest in Princeton.●

TRIBUTE TO RICHARD BLANCHARD WILLIAMS

● Mr. JOHNSTON. Mr. President, I would like to draw the attention of the Senate to a very fine and talented citizen of Louisiana whose career suggests a solution to some problems which vex our modern industrial society.

First, there is the problem of time: In our youth and middle years, most of us never have enough of it. We admire artists and crafters but are too busy to learn their skills. In retirement, it's the other way around: We have the time and regret the opportunities we passed up. Meanwhile the old crafts, like weaving and cabinetmak-

ing, are being lost. People who rely for entertainment on spectator sports and television tend to forget the exhilaration of being creative and productive.

My good friend Richard Blanchard Williams is a professional benchsitter. He has now retired from the Tenth Judicial District Court which sits in Nachitoches, but he continues to take his seat behind the loom. Every day he has the pleasure of creating materials which are both useful and beautiful—Judge Williams is a master weaver.

Judge R.B. learned to weave 30 years ago, taught by his dear wife Ora who herself had learned from Miss Cammie Henry of Melrose Plantation. While he does not sell his pieces, he has trouble finding enough hours to satisfy the wishes of family and friends. They are eager to own heirlooms which are works of art, made even more valuable by the time, skill, and love which have gone into their production.

The pattern of education should prepare us for the pattern of life. In Judge R.B.'s case, he learned the skills in youth which he is now using in his later years, and he is carrying on the tradition by teaching them to his children and grandchildren. As judge and weaver, he is a man for all seasons and I am proud to know him.

S. 670, PERFORMING ARTS LABOR RELATIONS AMENDMENTS

● Mr. SIMON. Mr. President, American workers have long had the right to be represented through collective bargaining concerning the terms and conditions of their employment. There are some categories of working Americans, however, who have been excluded from this basic right.

S. 670, introduced by Senator PELL with 37 cosponsors, seeks to reverse a decision of the National Labor Relations Board which excludes musicians from the benefits of collective bargaining because the Board defined them as independent contractors, able to detemine their own conditions of employment.

Today, several cosponsors of S. 670 are making statements in support of this legislation which provides for simple fairness—allowing musicians the rights of representation for collective bargaining. I add my own support for this bill based on a number of special circumstances experienced by musicians, which argues for inclusion in, rather than exclusion from, fair labor practices laws.

S. 670 simply says that a musician who has chosen to join a union shall be represented by that union. Musicians are not defined as independent contractors if they are represented by that union so that an employer-employee relationship is clear. An organization or promotor hiring the services of a union musician is the employer. It seems a simple statement and a fair statement.

The current definition of a musician as an independent contractor has lead to abuses where promotors, agents, and corporate entities do not live up to the terms and conditions of employment. The musician must act, as an independent contractor, to receive compensation through the courts. This is often prohibitively protracted and expensive. Allowing a musician who chooses to join a union to have the advantages of union representation and the resources of that organization, rights a wrong which has resulted in financial hardships for many performers. Because of canceled engagements, nonpayment for performances, convoluted liability and other difficulties, individual musicians often are unable to address the problems themselves. Because of frequent travel, 1 night performances, and working with a variety of booking agents and contractors musicians are very much in need of the protections they should have as employees.

I have cosponsored S. 670 because musicians, like all working Americans, should be able to choose to be represented by a union which can arbitrate disputes or negotiate working arrangements as they do for millions of Americans. It is a question of fairness.●

OLDEST SHOE STORE IN THE UNITED STATES

● Mr. COHEN. Mr. President, despite the severe pressure on the domestic shoe industry caused by the flood of imported shoes crowding the market, not all news about the industry is bad. I am pleased to note that the Nation's oldest shoe store—located in Belfast, ME—is still going strong after selling shoes for more than 150 years to people throughout Maine.

I ask that an article about Colburn's Shoe Store—published, as it happens, in Maine's oldest weekly newspaper, the Republican Journal of Belfast—be included in the RECORD for the benefit of my colleagues.

The article follows:

[From the Republican Journal, Aug. 28, 1986]

COLBURN'S—OLDEST SHOE STORE IN UNITED STATES

(By Nancy Finman)

If you've grown up in the Belfast area, chances are that you've bought some shoes at Colburn Shoe Store. If your parents grew up here, they probably did, too. In fact, as many as ten generations of Belfast area residents have purchased footwear from the store and, this summer, it was made official: Colburn Shoe Store is the oldest shoe retailer in the United States.

The Colburn store was founded by William Thaxter Colburn, known as W.T., in 1832, when he was only 21 years old. Colburn bought an inventory of goods and groceries from Samuel Spring, an area merchant, and rented a store on lower Main Street. In October, 1832, Colburn posted an advertisement in the Republican Journal notifying the public that he would "sell goods at a fair rate, for cash, lumber, cord wood or produce, or approved short credit."

In those days, Colburn sold just about everything a household might be lacking, but shoes were always his specialty and, as time passed, he began narrowing his stock. In his obituary in the Journal it is noted that "on taking charge of the store, Mr. Colburn at once closed out the liquor department, being several years in advance of his neighbors, and also of public sentiment in that direction."

So, Colburn cleared his shelves of liquor and, eventually, also of produce, groceries, hardware supplies and clothing, until by 1846, he sold only shoes, boots, and luggage, becoming Belfast's first shoe store.

The store prospered and was moved in 1850 to the McClintock Block, then known as the City Block, on the corner of Main and High Streets.

PLAYBOY GUS

W.T. died in 1892 leaving the business to his son, Augustine "Gus" Colburn, an athlete and playboy whose antics are still legendary in the Colburn store. Gus, apparently, shared neither his father's passion for the shoe business nor his abhorrence of alcohol, and the business ran a clear second to his athletic and romantic pursuits.

According to Allen Horne, the current proprietor of the store, Gus lived with his two unmarried and puritanical sisters, but kept a separate "office in the Opera House building which he used for entertaining women and drinking whiskey.

Horne also told of an incident in early winter one year after ice had just formed on Swan Lake, when Gus was easing his way down a flight of stairs in the store with an arm load of shoes. Halfway down, the stack of boxes tiled away from him and out of his grasp, sending scores of shoes and boxes tumbling into the store.

Gus kicked his way through the debris, knocking shoes and boots all the way into the street, and made a beeline for Swan Lake where he spent the day ice fishing, leaving the store clerk, Albert Smalley, to clean up behind him.

In 1905, Gus transferred the business to 81 Main Street where it has remained ever since. Many of the fixtures installed by him are still in use, including the two old rolling ladders connected to runners that span the length of the store. Gus saved the sales brochures from the ladders, sold by the Colburn ladder company for $9 each.

In 1922, Gus retired from the shoe business, and sold it to Smalley, the loyal sales clerk who had spent much of his time covering for the carefree Gus.

ROBBED

Gus, it turns out, met a tragic fate when, in 1936, two Belfast youths attempted to rob him as he entered the Opera House Building. The fiesty 87-year-old fought back with such force that the two boys grabbed lengths of firewood and beat him to unconsciousness. Gus died later and the two boys received life sentences for the brutal crime.

But the business continued, and Smalley even retained the Colburn name after assuming ownership. Other shoe stores came and went—places like Dinsmore's, Timm's McMahan's and Webber's—but none had the staying power of Colburn's.

Smalley operated the store, and later was assisted by his nephews, Philip and Allen Horne. When Smalley died in 1948, Philip, the elder of the two brothers, purchased the

business. He sold it to his brother, Allen in 1972. And Allen Horne makes no secret of his intentions for the store. His son, Brian, a regular employee, will take over when he retires.

There have been lots of changes over the years, to be sure. "Prices have changed for one thing," Allen says. Indeed, the $1.98 specials on men's shoes offered by Colburn's at the turn of the century are hard to match these days.

And, Brian notes, "We don't accept lumber or goat's milk or anything like that in exchange for shoes," as W.T. did more than 150 years ago.

Prices may rise, styles may change, and even the faces behind the plate glass windows may be different, but Colburn Shoe Store retains a strong Belfast link to the past.●

WORK INCENTIVE (WIN) DEMONSTRATION PROGRAM

● Mr. MOYNIHAN. Mr. President, during consideration of the continuing resolution (H.J. Res. 738) last Friday, October 3, the Senate accepted an amendment offered on behalf of myself, Senators KERRY, KENNEDY, BOREN, and MITCHELL. Our amendment extended through June 30, 1988, the existing authorization of the Work Incentive (WIN) Demonstration Program, the Federal employment and training program for welfare recipients.

A statement outlining the purpose of the amendment was inadvertently omitted from the CONGRESSIONAL RECORD at that time. Mr. President, I ask that my remarks on the Work Incentive Demonstration Program be inserted in the RECORD, and that they be included in the permanent record during consideration of amendment No. 3181 to House Joint Resolution 738.

The material follows:

AMENDMENT TO THE CONTINUING RESOLUTION TO EXTEND AUTHORITY FOR THE WIN DEMONSTRATION PROGRAM

Mr. President, I rise today to offer an amendment on behalf of myself, Senators Kerry, Kennedy, Boren, and Mitchell, which would simply extend for one year the authority for States to operate employment and training programs for recipients of Aid to Families with Dependent Children (AFDC) under the Work Incentive (WIN) Demonstration program.

In 1967, Congress amended the AFDC laws (Title IV of the Social Security Act) to require States to register all able-bodied welfare recipient for employment and training services as a condition for receiving public assistance. Thereafter, all States established Work Incentive (WIN) programs through which such mandatory registration took place.

Mr. President, in 1981, I joined my distinguished colleague, Senator Boren, in offering legislation to expand the WIN program as we knew it at the time. That legislation, ultimately incorporated into the Omnibus Budget Reconciliation Act (OBRA), established the authority for States to operate WIN Demonstration programs, administered at the State level by the welfare agency, and at the federal level by the Department of Health and Human Services. The WIN Demonstration was originally conceived as a modified verison of WIN, giving States the option of experimenting with sole-agency administration of employment and training activities for welfare recipients.

Today, 26 States operate successful and active WIN Demonstrations for their public assistance recipients. Each incorporates different job training and work related activities, ranging from on-the-job training to classroom education to community work experience (CWEP).

However, WIN Demonstration authority, reauthorized once under the Supplemental Appropriations bill in 1984, will expire on June 30, 1987. But more problematic, the authority for States to apply for permission to operate WIN Demonstrations expired last June. Thus, States now wishing to initiate WIN Demonstration programs are unable to do so under current Federal law.

The purpose of this amendment is straightforward. It would simply extend WIN Demo authority through June 30, 1988; and it would reopen the WIN Demo application period through June 30, 1987.

Mr. President, this amendment is not controversial; the Administration supports the extension of WIN Demonstration authority. As we approach a new session of Congress and the likely consideration of comprehensive welfare reform legislation, the success of WIN Demonstration programs at the State level will serve as an important and useful model for reform proposals. I urge my colleagues to support the extension of authorization for the WIN Demonstration programs.●

SOVIET GENOCIDE IN AFGHANISTAN

● Mr. HUMPHREY. Mr. President, for almost 7 years, Soviet troops have ravaged the nation of Afghanistan. Acting with complete disregard for human rights, they have transformed that nation into a battlefield. The most recent report of the U.N. Human Rights Commission observes that the continuation of a military solution in Afghanistan will "lead inevitably to a situation approaching genocide." The frightening and disturbing reality, however, is that the Soviet atrocities have gone largely unnoticed by the vast majority of the world. This is no accident. The Soviet Union has succeeded in bringing down a dark curtain which masks their barbarities from the rest of the world. Consequently, they have escaped the various pressures, both diplomatic and political, which otherwise may have convinced them that a policy of genocide, perpetrated against a defenseless people, is not in their interest.

This week, the Washington Post printed an outstanding front-page series that lifts the curtain concealing Soviet actions in Afghanistan. This commendable series entitled "Afghanistan—the Resistance Under Siege," by James Rupert, focuses on the complexities of this tragic war and the devastating impact it is having on the Afghan people. I applaud this most timely contribution and I urge each of my colleagues to take a few moments to read these articles. Mr. President, I ask that the articles entitled "Soviets Exploit Civilian Discontent" and "Tale of a Ruined City: Fighting Over Rubble," be printed in the RECORD.

The articles follow:

SOVIETS EXPLOIT CIVILIAN DISCONTENT

REBELS' SUPPORT DIMINISHES AS BATTLE BECOMES MORE SUBTLE

(By James Rupert)

KANDAHAR, AFGHANISTAN.—Nearly seven years after Soviet forces poured into this once neutral country to prop up a faltering communist regime, a combination of more sophisticated political tactics by both the Soviet and Afghan governments and a sense of exhaustion among the population has begun to weaken support for the Moslem resistance movement here.

Having pursued a scorched-earth military policy that has devastated much of rural Afghanistan over the past several years, the Soviets and their surrogates in the Afghan government now are increasingly using more subtle methods of winning cooperation from war-weary Afghans.

"The war this year has been 75 percent political and 25 percent military," suggested Asmat Hayat Khan, a scholar at Pakistan's Peshawar University.

In the latest evolution of Soviet strategy in Afghanistan, Moscow and Kanbul are cleverly exploiting tribal differences, appealing to the country's Islamic traditions and using cash bribes to erode popular support for the anticommunist resistance fighters, or *mujaheddin*.

They also have escalated their campaign to intimidate Pakistan—the funnel for most of the arms and supplies being provided by the United States and other countries—into reducing its vital support for the resistance with a combination of political and military pressures.

The battle for Afghanistan has stretched into a war of attrition—a test of whose people can absorb the deaths and suffering without losing the will to fight. On the surface, it seems an uneven and predictable contest.

The Soviet system insulates the Kremlin from the kind of pressure at home that helped force the United States out of Vietnam. And the Soviets have carefully limited their casualties in Afghanistan by deploying no more than an estimated 115,000 to 120,000 troops, in mostly defensive positions. Although there are no reliable casualty figures here, western estimates put Soviet deaths at 10,000 to 15,000 since their December 1979 invasion.

The Afghans, by contrast, have suffered massively in this war, with hundreds of thousands killed, their homes and land destroyed and probably more than a third of the population now living as refugees. It is difficult to estimate the number of mujaheddin involved in the resistance, since many move back and forth between fighting and trying to make a living.

In recent months, Soviet tactics have aimed at weakening both the Afghan civilian supporters of the resistance and the other group that seems to be most tired of the war: the people of neighboring Pakistan who bear the burden of 2 to 3 million Afghan refugees.

FIGHTING LEAVES VILLAGERS IMPOVERISHED

The ruins of this city, once among the most prosperous in Afghanistan, starkly illustrate how this war has become a grinding

contest of stamina. The destruction of Afghanistan's economy—has left the few people still living here impoverished and desperate to relieve the misery of their lives.

Interviews and observations from reporting trips to Afghanistan last November and in July and September of this year, and two months of recent travel in the bordering areas of Pakistan, suggests that the Soviet Union and the Afghan government it controls are now scoring significant, if partial, successes.

An invigorated propaganda barrage by a new Afghan government aimed at wooing back some of the millions of Afghans who have fled to Pakistan and Iran has clearly failed. But a combined campaign of intimidation and diplomacy has strengthened resistance inside Pakistan to its policy of support for the resistance fighters.

While Moscow and Kabul seem to have succeeded in forcibly prying away some of the resistance's civilian support inside Afghanistan, the regime appears so far unable to solidify in any dramatic way its own popular bases or strengthen its fractious and inefficient institutions.

The recent successes of Soviet tactics and a lull in the fighting this past summer have left many Afghan-watchers pessimistic about the future of the resistance. But the slowdown in the fighting has been at least partly due to rebel supply problems from late-melting snows and a series of unusually determined Soviet offensives during the spring, a critical time for the mujaheddin to resupply.

In certain zones where villages or local tribes are especially vulnerable to Soviet pressure, "the resistence leaders have no choice; they are forced to allow civilians to proclaim their neutrality and to accept the loss of many kinds of open support," said Olivier Roy, a French scholar who travels frequently in Afghanistan. "Local notables have been 'won' to the government side not because they support the regime, but because they are defending their own interests," he said.

But there are no visible trends that might bring an early end to the war. The mujaheddin have made slow adjustments in recent years to the general problems of mass depopulation in the countryside. While it is not yet clear how—or whether—they will adjust to the latest challenges, the combination of their tenacity and the Soviets' continued inability to build institutions that they might leave behind in Afghanistan promise an indefinite guerrilla struggle much like the current one.

The military battle at Kandahar remains a near stalemate. The mujaheddin and the Soviet-led forces here fight almost continuously, with neither side truly controlling the area.

This summer's visits, to Logar Province in the east and here in Afghanistan's south, show that the resistance fighters remain fiercely dedicated to their *Jihad*, or holy war, against Moscow and the Afghan communist government it holds in place. While many commanders and fighters inside the country recognize the challenge posed by the recent Soviet tactics, top resistance leaders based in Pakistan insist they are not losing civilian backing.

"We have no such problem," said Gulbuddin Hekmatyar, leader of one of the seven main resistance parties. "You cannot differentiate between the mujaheddin and the civilians," he said. "The whole nation is *mujahed*."

SOVIETS ADD BRIBES TO THEIR ARSENAL

On a rocky trail about 12 miles south of Kabul, six mujaheddin and an American reporter approached an elderly, bearded Afghan sitting alone in the shade of a boulder.

The mujaheddin warned the reporter to wait while they greeted the old man. As a few fighters chatted amiably with the stranger, others quickly hustled the reporter past him.

"You must be careful about old men along the trail," Ahmed Ji, the leader of the group, told the reporter. Such men, separated by the war from the grown children who traditionally support them in old age, are often destitute and recruited by the Afghan government as spies, he said.

The incident showed how, with the protracted war ruining the ecomony, impoverished Afghans are increasingly vulnerable to the government's ability to purchase their services, or at least their neutrality. Afghanistan's devastated land and people show clearly that the current political tactics are based on longstanding military policy.

If the Soviets find it possible to buy support from the Afghan population, it is because of the brutal scorched-earth attacks that have left many people here with no other way to survive or to care for their families.

"Poor people are easier to buy," said Abdul Haq, a resistance commander from the Kabul region.

Earlier this year, the government sent officials into villages south of Kandahar to express sympathy over the villagers' economic problems and to invite them to stop helping the mujaheddin and accept government "protection" and economic aid.

"The people told [the goverment officials] they would only listen if the government got their sons out of jail—and [the government] did it," said Habibullah Karzai, a former Afghan diplomat and tribal leader from the Kandahar region who is now in the resistance.

"The regime is trying so show people that it can do things for them, make their lives easier," Karzai said. "They told the villagers that the mujaheddin would never be able to force the Russians to go home, but promised that if the villages stopped helping the mujaheddin and let the government establish order, then in a few years the government would tell the Russians to go."

Other Afghans here repeated Karzai's account and said that such persuasion—including government promises to send the Soviets home eventually—is sometimes proving effective at winning the acquiescence, if not the overt support, of Afghans who once backed the jihad.

In each of the three trips into Afghanistan, this reporter has traveled freely along supply trails that had only weeks before been the target of Soviet offensives. This suggest that such military efforts have failed to do more than momentarily cut the resistance's key supply routes from Pakistan.

The Soviets, however, appear to be having more success with the tactic of paying high salaries to border tribesmen who agree to form militias to disrupt resistance supplies.

It was the high salary that also convinced Mohammed Anwar to join the Afghan Air Force when he graduated from high school in Kabul two years ago. "My father is getting old, and he cannot make enough money to support the whole family," Anwar explained in an interview in Pakistan.

After being trained as a helicopter mechanic, Anwar was taken prisoner by mujaheddin who shot his helicopter down last summer. Weeping as he spoke in the guerrillas' custody, Anwar said, "I join the [Afghan communist] party because they said I had to, to be paid the full salary.

"They told us we had to defend the [communist] revolution and the decision of [its] leaders. But so many people are in the party just as a way to live," he said. "It was not something important to us."

"For the Soviets, money is more effective than their soldiers," said Sardar Dost Mohammed Khan Gurgeish, a tribal leader from Afghanistan's southwest.

Not all of the government's recruiting efforts rely on money, and not all are successful, a point illustrated most clearly by the regime's inability to keep soldiers in the Afghan Army. In a village near here, a mujahed from Sheberghan Province in the north told how the Army had taken him from his home to be an infantryman, and how he had deserted only 40 days later.

Akmurad, in his late thirties, explained that he had been flown to Kabul for 30 days of military training. Of the 80 men on the plane who were being forced into the Army, Akmurad said, "I knew about 30—and 20 of them were mujahedin.

"They gave us political lessons, saying that the Americans and Pakistanis and Chinese were fighting in our country, that with the mujaheddin, they were trying to ruin Afghanistan, to stop the progress of our country," Akmurad said, laughing.

"Of course, we did not answer them; we just tried to look like good soldiers," he said.

NAJIBULLAH USES ISLAM AS IMAGE BUILDER

Many observers believe that the campaign to win popular cooperation through economic incentives has been strengthened by the political skills of the country's leader since May, Najibullah. Formerly Afghanistan's secret police chief, Najibullah is regarded as particularly deft at manipulating the complex tribal loyalties of many Afghans in attempts to divide the resistance.

Najibullah is also proving a vigorous public politician. "Najib has been acting like he's in an election campaign, giving speeches and meeting groups of people," said Sayed Majrooh, a former Kabul University professor who monitors Afghanistan from Peshawar, Pakistan.

The Kabul regime, particularly through Najibullah, is trying to adopt a more popularly acceptable Islamic image after years of having been regarded as an enemy of religion. Najibullah regularly quotes the Koran in his speeches, and is shown in the official Kabul media making frequent visits to mosques.

The government also has been holding a year-long series of local "elections" and is drafting a new constitution as part of a campaign to broaden and legitimize the organs of its rule.

The recent political and economic initiatives are the latest phase in the growing sophistication of Soviet strategy ever since Afghanistan's communists seized power in a 1978 military coup.

That first communist government, run by the militant Khalq faction of the Afghan communist party, tried to enforce changes virtually overnight on the tradition-bound Afghan society, treating traditional leaders, such as tribal chiefs and mullahs, as enemies.

The Khalq's policies, including sweeping land reforms and mandatory education for

women, quickly provoked a civil war. According to diplomats in Afghanistan at the time, the Soviets tried in vain to press the Afghan communists to moderate their program as a way of reducing popular opposition.

That Soviet strategy has remained constant, ever since the Kremlin took direct control with their December 1979 invasion. They installed Babrak Karmal and his more ideologically flexible Parcham faction in office, and Karmel immediately began denouncing the "excesses" of his predecessors.

At the beginning of his term in office, and consistently in successive years, Karmel tried both to broaden state institutions and to coopt the clergy with official positions and pay for government-trained mullahs.

As the centerpiece of a new round of political initiatives last year, Moscow and Kabul turned to a traditional Afghan institution, the *loya jirgah*, or grand national assembly.

Delegates to the *loya jirgah*—a body convened by Afghan kings on only seven occasions since 1121—were selected this time under the ruling party's auspices. The grant assembly formally approved the regime's policies, including the presence of Soviet forces in the country.

In August 1985, the government held "elections" to local government councils in Kabul and has regularly announced similar exercises in other parts of the country, including districts under control of the resistance.

Shortly after taking office in May, Najibullah declared that national elections first promised in 1981 will finally take place next year. But Afghan and western observers suggest that such tactics aimed as much at international opinion as at the Afghan population, remain ineffective in broadening the base of the regime.

MOSCOW PUTS PRESSURE ON PAKISTAN

Recent Soviet-led tactics against the resistance have included intensified pressure this year on another vital pillar of the resistance; Pakistan.

Military violations of Pakistani territory by Soviet-led forces increased dramatically this year, and Pakistan blames the Afghan secret police for a wave of sabotage and terrorits bombings in the Pakistani provinces bordering Afghanistan.

Western diplomats in Islamabad suggest the Soviets are trying to freighten Pakistan from its policy of supporting the mujaheddin, without seeking immediately to destabilize the government of President Mohammed Zia ul-Haq. The show of force in Pakistan's western borderlands worries many Pakistanis, though, and has enlivened the local political challenge in these regions to government backing for the mujaheddin.

Pakistan's two western provinces bordering Afghanistan have always been politically troublesome for the central government in Islamabad. Both the North-West Frontier and Baluchistan provinces are traditional areas of nationalist dissent, a feeling sharpened by their economic backwardness.

In Pakistan, these two provinces carry the main burden of the war by hosting what is the world's largest refugee population. Pathan and Baluch tribespeople have seen their economic prospects stagnate or decline as they compete with the flood of Afghans for jobs, land and even water.

In Baluchistan, especially, frustrated hopes for economic development and bitter memories of past warfare with the central government combine in young men to harden dissent into radical anger at Pakistan and the United States—and sympathy for the Soviet Union. In Baluchistan's capital, Quetta, slogans painted by the dominant student group condemn American "imperialism" and proclaim "Long Live the Afghan Revolution."

Both officials and opposition figures in Islamabad express worries about the threat of possible direct retaliation by the Soviet Union, perhaps in some form of "hot pursuit" of mujaheddin operating from bases in Pakistan. In 1984, the Soviets and Afghans warned Pakistan that they claimed the right to pursue guerrillas over the border. But they have so far avoided any action beyond shallow, brief incursions into Pakistani territory.

Nonetheless, cautious Pakistani officials, anxious to keep a low profile while helping the mujaheddin, have apparently delayed two American programs aimed at helping the rebels. The Pakistani government delayed for several months a U.S. program of economic aid for the mujaheddin and their supporters inside Afghanistan, while Afghan and Pakistani sources said this summer that Pakistan had held up the delivery of sophisticated U.S. Stinger antiaircraft missiles to the guerrillas.

[From the Washington Post, Oct. 6, 1986]

TALE OF A RUINED CITY: FIGHTING OVER RUBBLE

(By James Rupert)

KUL CHABAT, Afghanistan.—As one blazing desert sun settled beyond the horizon, the quavering voices of Kandahar's muezzin rose hauntingly above the city, summoning the Moslem faithful to prayer.

Seen from a rocky mountaintop nearby, Kandahar lay calm amid a sprawling green oasis of farming villages, vineyards and orchards. At sunset, its residents bowed toward Mecca in worship, the city savored precious moments of peace before lunging into another night of killing.

Minutes later, with dusk fading into darkness, the distant tak-tak-tak of automatic rifle fire rose from scattered parts of the city and its suburbs. Afghan resistance fighters had launched their nightly attacks on Soviet and Afghan government forces, resuming the battle for control of Afghanistan's second-largest city. Kandahar at night is a lethal fireworks display. During a week-long stay here, I saw red tracer bullets break through the streets each night, while green, white and red flares garishly lit the landscape—all amid the crash of artillery shells, mortars and gunfire.

Nearly seven years after the Soviet Army invaded this country to prevent the collapse of a communist regime, the battle for Kandahar—as for Afghanistan—is mired in a painful, brutal stalemate. Soviet leader Mikhail Gorbachev earlier this year called the war here "a bleeding wound."

"Kandahar was a city like a garden," said Mohammed Khan, a middle-aged resistance fighter in this battered village on the outskirts. Khan used to own some of the fruit orchards and vineyards that have long made this region one of the most prosperous in Afghanistan.

Khan gestured toward the fertile fields that surround the city, many of them now untended or cratered by the daily rain of artillery fire. "We had the best life of anyone in Afghanistan . . . and now we have the most war of anyone in Afghanistan," he said.

As they struggle to survive economically and sustain their fight against the communists, many of Kandahar's guerrillas wonder why the outside world seems not to notice. Listening to a shortwave broadcast one morning, some rebels scoffed at a report on a bombing in Beirut.

"Why do they always talk about Beirut?" one man asked. "Kandahar had a hundred bombs last night."

Resistance fighters, or mujaheddin, here say they have more heavy weapons this year to fire against the Soviet and Afghan government guard posts throughout the city, but the Soviets also have intensified long-range missile attacks on them from a large base at the city's airport.

While there are few reliable casualty figures for any area in this war, all accounts agree that the fighting in Kandahar is consistently heavy. A report last January in the official Soviet daily, Pravda, described this as the "most misery-stricken" province in the country and conceded that the mujaheddin "were still there in big numbers."

"The result of the fighting is the same" as in previous years, according to Khudai Rahim, a Kandahar mujahed.

HALF OF KANDAHAR'S RESIDENTS FLED

Years of warfare have destroyed most of Kandahar and its surrounding villages. While cities such as Kabul and Jalalabad have grown in population because the Soviet and government forces have provided better security there, the ferocious fighting in Kandahar and Herat has cut the population by more than half as residents have fled the war zone for safer areas.

On a recent afternoon, the city's outlying neighborhoods were almost empty. Houses lay silent and shattered by mortar shells and missiles, their roofs sometimes littered with empty rifle cartridges where mujaheddin had sniped at nearby government posts.

Strolling through Kandahar's outlying streets, a group of mujaheddin and an American reporter detoured frequently to avoid a tight defensive line of government guard posts, set about 200 yards apart. The posts, many of them built this year, were simple concrete or sandbag emplacements built on top of abandoned buildings, each with a soldier or two surveying the neighborhood from over the barrel of a machine gun.

"We do not cross their line during the day," said Sakhedad, one of the escorts. He pointed to where the government had bulldozed walls and buildings or laid mines to prevent guerrillas from slipping between the posts.

The Soviet and Afghan armies built many of the posts this year to try to cut off the guerrillas' access to the city's center. But nighttime gunfire within the old central bazaar—coming as soon as a few minutes after sunset—supported rebel claims that they easily slip through the perimeter at night, and even keep groups hidden in the city center to attack Soviet and government targets.

As in other towns of Afghanistan, the mujaheddin attack in small groups with light weapons, including mortars and rocket-propelled grenades.

Several times during the war, the mujaheddin have captured a number of posts and taken control of Kandahar's center. But with intensive air and artillery bombardments, Soviet and government units have always forced them to abandon the city.

The visit showed that the mujaheddin dominate the outlying areas of Kandahar and the adjacent villages, a fact underscored by their relaxed air as they walked among fields of ripening grapes and past the rusted

hulks of Soviet-built armored vehicles destroyed in earlier fighting.

In the oasis of farms surrounding Kandahar, the Soviets maintain a number of larger posts, which the mujaheddin avoid. But over the course of a week, no Soviet or government movements could be seen on the ground outside the city center, except along heavily protected sections of the main road to Kabul, or in armored columns on the road to the northwestern city of Herat.

Here in the devastated village of Kul Chabat, a mile from Kandahar, artillery shells whistled down invisibly from the night sky to blast yet more holes in the nearby houses. Inside one half-ruined home, now a guerrilla post, mujaheddin leapt to douse kerosene lanterns and open a tunnel dug for protection against such attacks.

The next morning, walking through the rubble of nearby streets, it was difficult to see what new damage the shelling had done. Like the other villages adjacent to Kandahar, Kul Chabat has been shelled so many times that every building is either damaged or destroyed, and each daily bombardment seems only to pound the rubble into smaller pieces.

AT NIGHT WE FIGHT THE COMMUNISTS

The constant shelling and rocketing—coming mostly from the large Soviet base at Kandahar's airport—has turned the villages into eerie ghost towns. In Nagahan, northeast of the city, the rubble of a village that once housed about 5,000 people lies silent under the hot sun, lifeless but for the buzz of wasps and flies among the overgrown ruins.

About 300 mujaheddin from the village and surrounding areas now live in isolated buildings and shelters scattered among the village's fields. "There are many men who have taken their families to [refugee camps in] Pakistan and then come back to look after their land," said Abderrahman, a middle-aged vineyard worker and a mujahed.

At a makeshift guerrilla post and grape-packing center set up in the village's destroyed government office building, Abderrahman explained, "We work in the fields during the day, and at night we fight the communists. Two or three years ago, they used to send soldiers out here to fight us, but . . . now they only attack us with rockets.

"We can just be standing in the fields," said Abderrahman," and ta-Room, things fall and begin exploding all around us."

Mohammed Khan explained that by far most of the guerrillas' casualties are from the bombardments. "We keep about 40 men in this guerrilla center," he said, "and 10 of us were martyred in the past year."

Many such casualties of Kandahar's war are buried in gaudily decorated cemeteries, in graves adorned by flags, richly embroidered cloths, shards of broken pottery and, often, fragments of the bombs that killed them. One such cemetery, in a dense grove of trees at the edge of the city, contained more than a hundred such graves, with barely enough space to walk between them.

BOTH SIDES RELY ON FRUIT TRADE

The living, too, display the savagery of Kandahar's endless warfare.

Saifullah, a 31-year-old mujahed, was blinded and his left hand blown off by a grenade during a resistance attack on a Soviet post two years ago. Even before the war, as a day laborer in the vineyards, he could not provide much for his family.

"Now, I am a beggar," Saifullah said as he ate lunch with his old group of guerrillas. He, his wife and five children live largely on the unharvested fruit of nearby orchards and vineyards, and try to survive the winters on what little food the other mujaheddin can spare them.

Nasirullah, a 15-year-old guerrilla at Kul Chabat, is healthy and uninjured, but a visitor wonders how long that will last. Nasirullah's specialty is digging up Soviet land mines and defusing them.

Displaying an all-plastic land mine he dug up a few weeks ago, Nasirullah expertly slipped the detonator back into place and explained, "Like this, we will bury it against the communists."

At the edge of Kandahar, where the maze of streets and mud-brick buildings gives way to the first fields and vineyards, a dozen women, old men and children work slowly along the rows of fruits and vegetables, almost in the shadow of a government post.

Amid its continuous warfare, Kandahar spares energy for survival. The region still produces tons of fruit, mostly grapes, and exports them to Pakistan.

Like any business that involves crossing the lines in this war, the fruit trade is conducted by men too old to serve in the active ranks of either the government Army or the mujaheddin. During my visit, they drove large trucks from the city into the villages to buy crates of grapes and pomegranates from packing centers run by the mujaheddin or civilians.

The men then drive the fruit back into the Soviet-dominated center of the city, where officially licensed traders deliver it to the Pakistani border for sale.

"Both the communists and the mujaheddin want to keep the fruit business going," explained Abderrahman, in Nagahan. "This is the only way to get money so the people in Kandahar can live."

Despite their determination to maintain their livelihood in the face of relentless warfare, Afghans in this ravaged region show clear signs of exhaustion.

Mallem Sahib can tell you how weary people have become of the war. "Mr. Teacher," as he is respectfully called by his neighbors, no longer teaches school in his village near Kandahar. The school was destroyed in the war, and Mallem Sahib now runs a small store from the courtyard of his mud-brick house.

"There are not many people left here," he said, "and many of those still here would go to Pakistan if they had the money." They would go, he explained, because the years of fighting against the Soviets have killed their relatives, ruined their farms and shattered their lives.●

SELECT COMMITTEE ON INTELLIGENCE REPORT ON U.S. COUNTERINTELLIGENCE AND SECURITY PROGRAMS

● Mr. DURENBERGER. Mr. President, the Select Committee on Intelligence is submitting to the Senate today a major report, with both classified and public versions, on the hostile intelligence threat and U.S. counterintelligence and security programs. This fulfills a commitment made to the Senate in June 1985, when we debated the desirability of establishing a National Commission on Espionage and Security in the wake of the Walker-Whitworth espionage case.

The committee began its review of these matters even before the Walker case, because of our growing concern about Soviet espionage and increasing evidence of other security vulnerabilities. By the summer of 1985, we knew we had an extraordinary opportunity to focus executive branch attention and action on the causes and implications of what came to be known as the year of the spy.

Since then, we have worked closely with the National Security Council staff, the Director of Central Intelligence, and all the relevant executive branch agencies. We deeply appreciate the outstanding cooperation that we have received from the President, who designated representatives to work with us and stood with us on the need for decisions and actions, rather than mere rhetoric. The committee believes that many more decisions are still needed, but we are very much aware of the unusual and special cooperation that has gone into this study and report.

The Intelligence Committee held 16 closed hearings on counterintelligence and security in 1985 and 1986. Our staff had scores of briefings and interviews with experts in executive branch agencies, the military, and industry. We found that many intelligent, dedicated people, with dozens of good ideas on how to improve U.S. counterintelligence and security. We also found bureaucratic roadblocks to decisions on those ideas, however, and we joined with the administration to get around those roadblocks. Just as the Stilwell Commission in 1985 enabled the Secretary of Defense to confront and decide difficult issues of security in the military, so we have worked to bring the whole range of counterintelligence and security issues to the Senior Interdepartmental Group for Intelligence and to the President. Through an exchange of preliminary reports with the committee, the President and the executive branch responded to over a hundred committee proposals. In many cases, proposals have been adopted and implementation has already begun.

This report, entitled "Meeting the Espionage Challenge," is the first comprehensive examination by the Congress of the capabilities of the United States to counter Soviet and other hostile intelligence operations. In addition to the unclassified version released publicly, the committee has prepared a more detailed, classified report with additional findings and recommendations. The classified report is available to be read by all Members of the Senate.

I urge the Members and their staffs to read at least the unclassified report, because it spells out in unprecedented detail the nature and scope of the hostile intelligence operations that our

Nation confronts. We found the hostile intelligence threat from the Soviet bloc and other countries to be more serious than anyone in the Government has yet acknowledged. We also found that the Government's security programs lack the resources and national policy direction to cope with a threat that continues to expand.

Recent espionage cases represent a severe blow to U.S. intelligence and have involved billions of dollars of actual and potential damage to U.S. military programs. In making the first unclassified assessment of all the recent spying cases and security compromises, the committee found that the combination of human espionage and sophisticated technical collection has done immense damage to the national security. The report goes on to warn that the current danger appears to be a wishing away of the consequences of hostile intelligence efforts.

The committee believes the solution to the security problem cannot be just more of the same. There are fundamental flaws in the way the Government is organized to protect sensitive information and activities against espionage and other hostile intelligence threats. Our report explains the stakes involved and recommends a full-scale reorganization of the policy structure for defensive security programs.

As the committee recommended last December, after a series of closed hearings that scrutinized the full range of security measures, we need a truly national strategic security program to coordinate and foster the protection of the most sensitive information and activities.

Why do we make this recommendation? Several examples illustrate the reasons. First of all, when we asked senior officials to tell us how much money the Government was spending on security countermeasures, nobody had a good answer. There was no way either the President or the Congress could find out what all the departments and agencies handling classified information had spent or planned to spend on security. There was no system to hold departments and agencies accountable for spending security funds effectively and efficiently.

Another example comes from the field of personnel security, where the committee followed up on excellent work done during 1985 by the Permanent Subcommittee on Investigations of the Governmental Affairs Committee, chaired by Senators ROTH and NUNN. In 1983, the President asked an interagency group to come up with the new Executive order on personnel security. In 1985, the Permanent Subcommittee on Investigations made the same recommendation. Now it is late 1986, and we still have yet to see even a draft order.

The most frightening example, however, is computer security. The growth of computer data bases and networks makes sensitive information far more vulnerable to compromise by a single individual. Senior witnesses at our hearings testified that the most vital ingredient in computer security is personnel security, the policies for selecting and monitoring the people who are granted this sensitive access.

The problem is that the computer security experts and the personnel security specialists have not been working together on joint plans to deal with this threat. Why not? The basic explanation is that the Government has one national policymaking body for computer security and an entirely different structure for personnel security, with nobody to bridge the gap.

The Intelligence Committee's report seeks to lay the groundwork with the public and the Congress for a Presidential initiative that will overcome the bureaucratic turf interests and the different mindsets in the various security fields. We urge the President to establish a single, enduring framework for national strategic security policy that transcends current politics and becomes a constructive legacy for future administrations.

Let me add that the committee is not just critical of the executive branch. Congress must put its own house in order. The report describes serious weaknesses in Senate security practices and presents a proposal, made jointly with the chairman and ranking minority members of the Rules and Governmental Affairs Committees, for a new Senate security office to implement improved security procedures. The report also includes a draft Senate security manual.

In the area of counterintelligence, the committee's findings are more encouraging. As a result of significant improvements in recent years, the Nation's counterintelligence structure is fundamentally sound. A national counterintelligence strategy, recommended by the committee last year, is now being developed to integrate the work of the FBI, the CIA, and the Departments of State, Defense, and Justice.

The cases of the last 2 years highlight the need for better counterintelligence performance, but executive branch agencies are moving to correct their shortcomings and the committee is closely monitoring their progress. We have also moved on the legislative front. Yesterday, Congress enacted laws to lessen the hostile intelligence presence in the United States and to give the FBI better access to law enforcement, bank, and telecommunications records.

Finally, I want especially to thank the vice chairman of the Intelligence Committee, Senator LEAHY, and all the other members who devoted so much time to a difficult and often troubling enterprise. Learning of the damage from espionage and other security compromises was not a pleasant experience, but it was essential to hold the executive branch accountable for its performance. I also want to thank the committee staff members who have worked so diligently to arrange for hearings, gather material, and write and coordinate our interim and final reports.

The following is a summary of the unclassified highlights of the committee's report, "Meeting the Espionage Challenge: A Review of United States Counterintelligence and Security Programs."

The report follows:

HIGHLIGHTS OF COUNTERINTELLIGENCE AND SECURITY REPORT

This report is the result of the Senate Intelligence Committee's comprehensive review during 1985-86 of U.S. counterintelligence and security programs for dealing with the threat to the United States from Soviet espionage and other hostile intelligence activities. The Committee is also submitting a classified report to the Senate with additional findings and recommendations.

The Committee reports assess the hostile intelligence threat and propose far-reaching measures to strengthen U.S. counterintelligence and security programs without violating constitutional rights or upsetting the delicate balance between security and freedom.

HOSTILE INTELLIGENCE THREAT

The Committee finds that the hostile intelligence threat is more serious than anyone in the Government has yet acknowledged publicly. The combination of human espionage and sophisticated technical collection has done immense damage to the national security.

The report presents the first unclassified analysis of the totality of the damage to U.S military and intelligence capabilities and other national security interests from recent espionage cases, including the Walker, Whitworth, Howard, Pelton, Chin, Pollard, and Miller cases. Further significant damage has resulted from Soviet technical collection that ranges from the bugging of typewriters at the U.S. embassy in Moscow to the interception of U.S. domestic communications from a 2,000-man site at Lourdes, Cuba.

The broad dimensions of Soviet and other hostile intelligence operations are described in considerable detail, with special emphasis on:

The sweeping goals of Soviet bloc, Cuban, and other countries' intelligence operations targeted at U.S interests.

The extensive operations in the United States by the KGB and other intelligence services from embassies and consulates, at the United Nations, in foreign-owned business firms, and among exchange visitors, trade delegations, and foreign students.

The techniques for use of recruited American agents, deep-cover "illegals," and foreign nationals employed at U.S. facilities abroad.

The massive Soviet effort to obtain U.S. technology by illegal export and diversion.

Worldwide Soviet covert action, disinformation, and "active measures," including a forged letter to the Committee's Chairman.

The Soviet capability to monitor and exploit U.S. communications, gaining access to an enormous volume of government and private sector data and posing risks to the business community as well as governmental interests.

The technologically advanced and sophisticated Soviet effort to penetrate U.S. facilities abroad, as shown by the typewriter bugging in Moscow.

The vulnerability created by rapid growth of computer data bases and networks, which multiply enormously the access that a single individual may obtain to computerized files.

Increasing Soviet photoreconnaissance activity from aircraft and space satellites.

In describing these threats, the Committee does not seek to exaggerate the dangers or engender an atmosphere of suspicion. Rather, the aim is to give the American people—especially leaders in business and industry, science and technology, and international affairs—a fuller awareness of the changing threat from foreign intelligence services. Such awareness is part of a mature understanding of the reality of U.S. relations with other countries in a world of competing national interests.

MEETING THE CHALLENGE: ORGANIZATION OF THE U.S. GOVERNMENT

To meet the hostile intelligence challenge, the U.S. relies on a combination of counterintelligence efforts to detect and neutralize hostile intelligence operations directly, and defensive security countermeasures to protect sensitive information and activities.

The Committee finds that, as a result of significant improvements in recent years, the nation's counterintelligence structure is fundamentally sound, although particular elements need to be strengthened. A national counterintelligence strategy is being developed to integrate the work of the FBI the CIA, and the Departments of State, Defense, and Justice.

The Committee finds, by contrast, that defensive security programs lack the resources and national policy direction needed to cope with expanding hostile intelligence operations.

Personnel security policies remain fragmented.

Information security and classification reforms are long overdue.

Communications and computer security measures have not kept pace with technological change.

The Committee calls for development of a National Strategic Security Program to coordinate and foster the protection of information and activities which have the greatest strategic importance. While noting recent efforts to improve the security policy structure, the Committee finds these changes to be insufficient because they fail to bridge the gaps between the various security disciplines. The Committee urges the Administration to create a new structure that transcends current politics and policies and is embodied in a single Executive Order.

COUNTERINTELLIGENCE: LEARNING THE LESSONS OF RECENT CASES

The Committee examined recent espionage cases and the Yurchenko defection in detail, and many of its recommendations reflect lessons learned through those cases.

Greater counterintelligence and security awareness is needed.

Security awareness programs are insufficient to meet the needs of particular audiences, including Government employees in sensitive jobs, targeted groups, and congressional staff. Once the Navy began to improve its security awareness after the Walker case, co-workers of Jonathan Pollard speedily noted his unusual pattern of document requests and alerted authorities.

The FBI and Justice Department should be involved earlier in cases of suspected espionage.

When officials hold back from bringing in the FBI, events often get out of control. When the FBI is alerted in time, its investigative and interview skills often lead to confessions. Early Justice Department involvement builds more solid cases resulting in convictions.

More attention is needed to the finances, foreign travel and foreign contacts of persons with highly sensitive information.

The FBI sometimes lacks access to financial and telephone records in its counterintelligence investigations. Insufficient attention has been given to signs of trouble regarding former employees with sensitive access. Too few people have alerted security offices or the FBI when they were approached by possible intelligence officers.

Espionage activities targeted at the U.S. must not be tolerated, regardless of their source.

The Chin, Pollard, and Scranage cases taught that espionage services outside the Soviet bloc target this country. The Bell and Harper cases underscored the need for controls on East European commercial activities. The Zakharov case, like the Enger and Chernyayev case eight years ago, exhibited the KGB's use of the U.N. Secretariat for intelligence cover.

CIA counterintelligence improvements must be monitored.

The Howard and Scranage cases led to investigations and coorrective actions in the CIA. Significant steps have also been taken to improve recruitment and career development programs for CIA counterintelligence personnel. The Committee will continue to monitor these efforts.

The U.S. Government's approach to defectors should be re-examined.

Investigation of the Yurchenko defection and re-defection produced useful CIA actions to improve the handling of defectors, who are often valuable counterintelligence sources. More should be done, however, to meet the Government's obligation to help defectors succeed in, and contribute to, American society.

Counterintelligence improvements are needed in the FBI, the Justice Department, and the military services.

The FBI and Justice Department are still absorbing the lessons of the Howard case. The FBI and the military services are improving counterintelligence recruitment and career development programs, but their progress is uneven. Special effort is needed to keep the best possible FBI personnel in the New York office, which faces the biggest challenge.

SECURITY COUNTERMEASURES: DEFENDING ON MANY FRONTS

The report sets out the essential elements of a National Strategic Security Program and recommends specific improvements in personnel security, classification, information controls, communications and computer security, technical surveillance countermeasures, and industrial security. The Committee also makes detailed proposals for better Congressional security.

National Strategic Security Program

A national program is crucial for giving security countermeasures the senior-level policy attention their importance to national security demands. It must resolve issues on which different agencies have failed to agree for years, such as the wasteful duplication of security background investigations. It must bridge gaps between experts in different fields, such as computer systems and personnel security. It must forge effective cooperation among agencies on emerging security problems. It must promote operations security practices to protect sensitive programs. It must improve recruitment, training, and rewards for security specialists to reflect the increased importance and sophistication of their role. The Committee feels strongly that many of these issues will remain unsettled until a more effective security policy structure is implemented.

Personnel security

Improved personnel security practices are needed for sensitive government and industrial contractor positions. This includes greater attention to reinvestigation of those who already have security clearances, more intensive investigations for Secret clearances, stricter standards in hiring persons who have committed felonies, and better follow-up where persons with admitted problems such as drug use are granted clearances. Interagency agreement on a "single scope" background investigation for Top Secret and Sensitive Compartmented Information (SCI) clearances would help avoid duplication and free resources for these other tasks. A new Executive order should set up a Government-wide personnel security oversight office. The Committee believes that the most sensitive clearances should be granted only to those persons best able to cope with the pressures of sensitive access and security. The Committee also stresses that the use of the polygraph for personnel screening should not be undertaken without the strictest, demonstrated quality controls and procedural protections.

Classification system

The classification system is unduly complicated and breeds cynicism and confusion in those who create and use classified information. The Committee believes that a streamlined system, in which the Confidential classification is eliminated and information is protected either as Secret or as the equivalent of Sensitive Compartmented Information, would be much more workable despite the major changes and start-up costs entailed. Another problem is the establishment of too many special access programs, all in the name of security but sometimes with lower security standards than regular classified programs.

Information controls

Authorized disclosures and unauthorized leaks of classified information are so commonplace as to imperil many sensitive programs and operations. The Committee calls on the Executive branch to go beyond investigation and punishment in cases of unauthorized disclosure. Procedures should be adopted to govern authorized disclosures, so there is a record that relieves the FBI of the need to investigate cases that are not real leaks, and so that those who originate classified information have a chance to argue against its premature release.

Communications security

The Committee supports the National Security Agency's many efforts to improve communications security, including the NSA plan for low-cost secure voice telephone equipment. For FY 1987 the Committee has proposed additional funds for NSA to begin the encryption of many domestic commer-

cial communications satellite links. These efforts, if sustained in the years ahead, should neutralize the most damaging Soviet intercept operations aimed at domestic communications.

Computer security

The Committee endorses NSA's role in developing computer security hardware, systems, and standards, but recommends increased attention to personnel security aspects of protecting computerized information. This includes State Department efforts to place only U.S. citizens in charge of U.S. embassy computers, as well as personnel reliability programs for Government employees with access to the most sensitive computer systems. There must be better analysis of their vulnerabilities before systems are used for sensitive information.

Technical surveillance countermeasures

The Committee supports steps to combat technical penetration efforts, such as the bugging of Moscow embassy typewriters, through the embassy rebuilding program proposed by the Inman Panel and an equipment protection program funded in the Diplomatic Security Act. Agencies must work more closely with each other to bring the best expertise to bear on technical security problems.

Industrial security

The Committee finds that major changes are warranted in the industrial security system for classified intelligence and defense contracts. A pilot program should assign Defense Investigative Service personnel full time to large sensitive contractor facilities. Security should be a direct cost in contracts and contracts should have greater incentives for security performance. Contractor security officers should be trained and government-certified.

CONGRESSIONAL SECURITY

Attention to security requirements is needed in Congress. The Committee finds that there is no centralized registry of Senate personnel with clearances, insufficient security awareness material for Congress, and little understanding of how to protect sensitive information provided to Member offices and committees. At the Majority Leader's request, the Committee joined with the Committee on Rules and Administration and the Committee on Governmental Affairs in recommending that a Senate security office be established to develop and oversee implementation of standards and procedures in these areas. The Committees recommended that the security office be instructed to survey the extent of clearances among Senate staff, to recommend how the number of cleared people might be reduced, and to develop a Senate security manual, the provisions of which would be binding on all Members, Officers and employees of the Senate. The Committee continues to work closely with the Senate leadership on these efforts, with a goal of creating a security office early in the next session.

BUDGETARY IMPACT

The Committee believes that the U.S. has suffered for years from inadequate investment in security countermeasures. Recent Committee initiatives have included an additional $129 million for communications security (including the first year of a 5-year plan to encrypt sensitive domestic communications satellite channels), and additional $22 million to improve personnel security in the Defense Department, and a $35 million supplemental appropriation for improved technical security at U.S. facilities abroad. Funding for implementation of the Diplomatic Security Act will upgrade security at U.S. missions.

The Committee expects an increase in annual spending for counterintelligence and security in FY 1987 of at least $500 million above the funding level in FY 1985. This commitment must continue, and further increases may well be required to meet growing technical, communications, and computer security vulnerabilities. Additional funds to meet these needs could also be freed through better management geared to more refined threat assessments. Moreover, the costs of improved security will be offset by gains to the U.S. in the overall Soviet-U.S. balance.

LEGISLATIVE PROPOSALS

The Committee has recommended legislation to strengthen U.S. counterintelligence efforts. Three proposals to control the hostile intelligence presence have been offered in the FY 1987 Intelligence Authorization bill:

A legislated policy of equivalence between U.S. and Soviet U.N. missions (introduced by Senators Leahy and Cohen as S. 1773).

Registration of commercial entities controlled by Warsaw Pact governments (introduced by Senators Roth and Nunn as S. 1900).

Extension of the Foreign Missions Act to commercial and other entities controlled by foreign governments (introduced by Senators Durenberger and Leahy as S. 1947).

Additional proposals to enhance FBI counterinteligence capabilities were also included in the FY 1987 Authorization bill. Under this authority, banks and telecommunications companies would be required to comply with FBI requests for access to customer records in duly authorized full counterintelligence investigations of suspected foreign agents.

Consideration of the following new legislative actions in the next Congress is also recommended:

Creation of a court order system, comparable to the Foreign Intelligence Surveillance Act, to authorize physical searches for counterintelligence purposes.

Financial incentives to retain counterintelligence specialists in the FBI's New York City field office.

Improved means of prosecuting foreign agents who operate in the U.S. under nonofficial cover and who engage in intelligence support functions without actually passing classified information.

The report also discussed future Congressional options for improved assistance to defectors, legislative authority for the Defense Department's counterintelligence polygraph program, and establishment of a Senate security office. The Committee does not endorse legislative proposals to criminalize the unauthorized disclosure of classified information to the news media, pending judicial resolution of the scope of the espionage laws through the appeals in the Morison case.

RESPECT FOR INDIVIDUAL RIGHTS

The Committee stresses that a free society cannot allow fear of foreign adversaries to undermine the constitutionally protected rights that define the true character of our nation. As President Reagan has stated, "[W]e can counter this hostile threat and still remain true to our values. We don't need to fight repression by becoming repressive ourselves."

The Committee believes that a broad range of improvements can be made without adversely affecting the rights of individuals, and the additional tools needed for counterintelligence and security programs can be made subject to reasonable safeguards that minimize intrusion into the privacy of American citizens.

● Mr. LEAHY. Mr. President, I join with the chairman of the Select Committee on Intelligence in submitting to the Senate the committee's report on U.S. counterintelligence and security programs. This is a truly bipartisan report that reflects participation by every member of the committee in a series of closed hearings that probed some of the most thorny issues our Government faces.

The Howard and Pelton cases were severe blows to U.S. intelligence, and the Walker-Whitworth case was a disaster for the Navy. The bugging of embassy typewriters in Moscow and the expanding Soviet communications intercept operations directed at the United States from Cuba are clear evidence that the technical threat is as serious as the human espionage problem.

The committee's report makes clear, however, that there is one thing the United States can do about the hostile intelligence threat inside this country. That is to limit the numbers and the activities of foreign government officials from countries such as the Soviet Union.

The report confirms the presence of approximately 450 trained Soviet KGB or GRU—military—intelligence officers in the United States under cover as diplomats, U.N. employees, or other positions. In 1985 Senator COHEN and I sponsored an amendment which sought to reduce the number of Soviet Embassy and consular personnel in the United States, by adopting a policy of equivalence. The Soviets have 320 compared to some 200 Americans at our Embassy and consulate in the U.S.S.R.

Unfortunately, the State Department is moving in the wrong direction, with current plans that could permit an increase in Soviet Embassy and consular personnel in this country. The committee rejects that plan and calls for efforts to reduce the 320 ceiling on the Soviets by, for instance, refusing to allow them to replace officials expelled from the United States for espionage-related activity.

The administration decision to cut the size of the Soviet U.N missions implements a requirement in the intelligence authorization recommended in the committee's report and passed by the Congress yesterday, based on a bill submitted by Senator COHEN and myself. The Intelligence Authorization Act also provides controls on Soviet bloc commercial firms, as recommended in the committee report and in bills offered by Senators DURENBERGER, ROTH, NUNN, and myself.

The Congress has demonstrated its ability to act promptly to fulfill its legislative responsibilities. The question now is whether the executive branch can meet the challenge of the committee's recommendations for far-reaching organizational reforms and policy initiatives. The ideas in the report are not the committee's own. They reflect in large measure the best thinking of experienced officials and other experts who see the need for fundamental change, but do not have the ability to get the executive branch to act.

The chairman, Senator DURENBERGER, has given the committee wise leadership in taking this approach to a difficult and complex set of problems. Thanks are due to him and the other members of the committee for making this report one of the most significant accomplishments in the 10 years of the Intelligence Committee's existence.●

NUCLEAR POLICY AFTER 1988

● Mr. SIMON. Mr. President, John W. Douglas is a distinguished Washington attorney who has written an op ed piece for the New York Times on nuclear policy which makes eminent good sense.

Speaking good sense comes to John Douglas naturally. He served as an Assistant Attorney General to Bobby Kennedy, and he is the son of the former distinguished Senator from Illinois, Paul H. Douglas. John Douglas is getting to look more like his father in appearance all the time, and this article expresses the same spirit that was part of the Paul Douglas career.

But, much more important than John Douglas' background and appearance is what he has to say.

As the arms race proceeds, we march day by day closer to a future that is beyond our worst nightmares.

I urge my colleagues to read the John Douglas article.

The article follows:

NUCLEAR POLICY AFTER 1988

(By John W. Douglas)

WASHINGTON.—It is none too soon for each 1988 Presidential aspirant, regardless of party, to begin shaping what should be the centerpiece of his 1989 Inaugural Address—a frank exposition of the nuclear threat and of the first steps he will take to defuse it. That shock treatment is essential if the world is to break out of its torpor and reverse the advancing risk of nuclear war.

Unfortunately, no President has been fully candid with the American people on the extent and imminence of the nuclear peril. Every President (and this goes for the leaders of the Soviet Union as well) has temporized, pushing half measures at best, spurring the arms race at worst or, in most instances, promoting some combination of the two. Every superpower leader has found it easier to rally his country against the other than to concede, even tacitly, that responsibility for the danger lies with both nations. And none has been willing to risk his political base by openly confronting the problem. Tomorrow's problems, they seem to say, can be left to tomorrow's politicians.

But tomorrow is now at hand. We are approaching a hair-trigger environment. We would do well to remember that in the past, with few exceptions, man has utilized every weapon he has invented. And plainly the risk of nuclear conflict is growing. Technical changes and national strategies are magnifying the chances for fatal miscalculations. Reaction times have been cut, nuclear weapons have been introduced to the battlefield, first-strike capabilities have been enhanced. The Geneva summit meeting of 1985 did not improve those destabilizing fundamentals, and the next Reagan-Gorbachev meeting seems destined to follow the same path.

It is true that in the last few years Americans have come to understand that a nuclear war is unwinnable. But the country has not yet accepted either the totality of nuclear destruction or the imminence of the threat. Presidents have failed to educate the nation on either point, preferring instead to apply a cheerful veneer. If the outlook is somber, the tendency is to blame somebody else and to promise a turnaround. Leaders fear being tagged as scare-mongers or doomsayers. Optimists are cast as winners, pessimists as losers. This is as true in Moscow as it is here.

As Presidents have thus followed a similar course, alternating patriotic calls to arms with happy talk or vacuous generalities. And all have believed that they could "manage" the nuclear problem. Each has then bequeathed that problem to his successor in worse shape than when he inherited it.

Meanwhile, technological developments continue to undermine the capacity for rational decision-making in periods of superpower crisis. The reliability of strategic information is declining. The expanding numbers of weapons systems means that planners must deal with ever-larger and more complex flows of information. And the information systems themselves are growing increasingly suspect, threatened by potential destruction by antisatellite weapons, and vulnerable to the deceptive tactics of increasingly sophisticated missiles and bombers. The combination of more information and poorer information, as well as a shorter time span in which to digest that information, invites mistakes and malfunctions. Under such pressures, no command-and-control system can insure that key orders will be correct and that those orders will be carried out.

By 1989, the risks of nuclear war will be much greater. The next President will have to move quickly to build a durable popular interest in arms control, arms reduction and international stability. And even as he recognizes the obdurate nature of the Soviet regime, he must have a strategy for progress that reaches out to America and the rest of the world, including the Soviet Union.

He should be calm, he can be hopeful, but, above all, he must be frank and precise. He should not only explain the total destruction that a nuclear war would entail but also state why the dangers of miscalculation are so great. Should he equivocate, however, events will soon dissipate his political and moral capital. He will then have squandered his best opportunity to stop the nuclear train before it goes over the cliff.●

U.S. SENATE PRODUCTIVITY AWARD PROGRAM

● Mr. MATHIAS. Mr. President, in 1982 the Senate established the U.S. Senate Productivity Award to recognize how important productivity is to the economic well-being of our country. At that time, the Senator from Alaska [Mr. STEVENS] and others thought it would be appropriate to award a medal in each State for outstanding improvements in productivity.

The program was to serve two purposes. First, it would bring attention to those companies, organizations and individuals who were actually doing something to be more competitive and, hopefully, inspire others to follow their example. Second, it would help Members of the Senate become more aware of the productivity efforts in the country and how public policy could enourage improved productivity.

For the past 3 years, I have conducted a productivity program in conjunction with the University of Maryland's Center for Productivity and Quality of Working Life. We put together a panel of distinguished Marylanders and invited individuals, unions, companies and other organizations to tell us how and why they were improving productivity. The quality of the responses has been excellent and demonstrates that there are people doing things to make themselves and the country more competitive.

The winners of this year's U.S. Senate Productivity Award for Maryland were the 4,600 Associates of Preston Trucking Co. in Caroline County, MD, and around the country. At Preston, productivity is gospel. Last year Preston's Associates developed, approved and implemented over 3,000 productivity initiatives.

But Preston has not been content with just winning the Senate Productivity Award. The company will provide information on productivity to anyone interested and in the future will offer case studies for business schools and a how-to series on productivity applicable to any company. Preston has also started the American Productivity Campaign to bring national attention to the need for improvements in productivity.

Mr. President, this productivity award program has demonstrated its effectiveness to me over the past several years and I hope other Senators will consider how it can be used to make more people more aware of productivity in their States.●

NAUM AND INNA MEIMAN: SOCIAL ISOLATION

● Mr. SIMON. Mr. President, I rise today to speak again on behalf of my two friends Naum and Inna Meiman. They are Soviet citizens who have

been refused emigration privileges by the Soviet Union. The Meimans have been seeking to emigrate to Israel for more than 10 years. During this time, they have been socially isolated from their community. They have been fired from their jobs, they have lost their phone and they have been followed by Soviet agents. This is the type of treatment most Soviet dissidents receive after seeking to permanently leave the Soviet Union.

Inna Meiman is suffering from cancer. After the removal of four tumors on her neck, the Soviet doctors feel there is nothing more they can do for her fifth and most recent carcenoma. I believe it is imperative to get Inna to the West where there is experimental treatment available to her.

I strongly urge the Soviet Union to allow the Meimans to emigrate to Israel.●

TRIBUTE TO TONY KUCHERAK

● Mrs. HAWKINS. Mr. President, in these troubled times it is indeed rewarding when issues brought to this body represent truly the best about this great country of ours and the grassroots from which it derives its strength. Often it is easy to forget just what makes it great, who makes it great and why it is the envy of the rest of the world.

I wish to bring to your attention the dedicated work of a man from my State who recently gave his life for this country: Anthony J. Kucherak, who lived and died in Miami, FL. He gave his life unselfishly, and not in the sense one would normally think. He indeed was in the Uniformed Services. He was in the Army in the European (Italian) theater during World War II. He was exposed to hazard. He was awarded medals. But it was his continuous, quiet, unrelenting effort in the behalf of this Nation's youth and disadvantaged where he spent his energies, where he gave his life.

Tony was listed in Who's Who in the Midwest and in the International Who's Who in Public Relations. He belonged to numerous cultural, civic, and military organizations. He was the recipient of awards such as the Afro-American Family and Community Services Volunteer Service Award; the Golden Trumpet Award; and several Outstanding Service to the Community Awards by the United Way of America and the Florida Public Relations Association.

During the 1960's he was very active in the Florida United Way. He then was invited to be the United Way State director of public relations in Chicago where a $41 million United Way Campaign grew to $62.8 million when he retired.

He worked tirelessly for the Young Astronauts, an educational organization that seeks to raise the confidence and competence of elementary and junior high school children in math and science. He worked with Florida schools, with Young Astronauts Chapters, with the media. He encouraged students. He worked closely with them. He strenuously worked a booth all day at a Saturday exhibit in Cutler Ridge, FL, giving out information, conducting surveys, answering questions, enlisting participants and publicizing the program the day before his fatal heart attack.

Tony Kucherak was quite a man: A man to be proud to know; a man that will be sorely missed; but a man that gave his life for his Nation and its future. He never stopped giving. Let us be a credit to his memory. Thank you, Helen and Stephanie, for sharing your husband and father with us, with American youth and our Nation's future.●

BATTLE OF NORMANDY MEMORIAL AND MUSEUM

● Mr. MATHIAS. Mr. President, the Battle of Normandy, which raged for 78 days after the Allied invasion of June 6, 1944, was the greatest land battle in history with over 3 million men engaged in combat. To commemorate that effort and the Allied sacrifices during the summer of 1944, which resulted in the liberation of Europe, the people of France are building a Memorial Museum and Research Center in Caen, Normandy.

As a part of this initiative, a U.S Committee for the Battle of Normandy Museum has been created, to remind Americans of the significance of World War II and of the Battle of Normandy, and to encourage their support of this important project. I am honored to be part of the U.S. Committee, which includes a number of prominent citizens: Former Chairman of the Joint Chiefs of Staff, John W. Vessey; Senator STROM THURMOND and Representative SAM GIBBONS, who are both Normandy veterans; Ambassador to the United Nations, Gen. Vernon Walters; Paul C. Sheeline, a businessman who fought with the French resistance; and Anthony C. Stout, President of the U.S. Committee for the battle of Normandy Museum, headquartered here in Washington.

This summer, the Congress passed a resolution endorsing the building of this memorial museum and study center in Normandy and encouraging American participation in its development.

The museum, to be called the "Memorial de la Bataille de Normandie, un Musee de la Paix," will be constructed on 37 acres outside the city of Caen which was the plot around which the worst fighting took place. The museum will be located directly over the underground bunker headquarters of Gen. Von Richter, commander of the 716th German Infantry Division. It is being financed by the French central, regional, and municipal governments.

The official groundbreaking for the memorial took place on September 10 before 2,500 veterans, government officials, foreign dignitaries, members of the international press corps, and French citizens. Prime Minister Jacques Chirac gave the dedication speech and the Patrouille de France flew overhead.

The Ambassadors from all countries engaged in combat on June 6, 1944—Belgium, Canada, Czechoslovakia, the Federal Republic of Germany, the German Democratic Republic, Greece, Luxembourg, the Netherlands, Norway, Poland, the United Kingdom, and the United States—participated in the event. They brought cornerstones from their respective countries, each of which was engraved with a suitable passage in their native languages.

The American stone of Tennessee marble bore an inscription from Gen. Dwight D. Eisenhower's order to his troops on June 6, 1944:

"The eyes of the world are upon you. The hopes and prayers of liberty-loving people everywhere march with you."

The cermeony was particularly moving because representatives of both sides of the conflict were present. A band played the national anthem of each country as its flag was raised.

Each of the Governors of the 50 United States was invited to attend the goundbreaking and to send a State stone, bearing a plaque or engraving with the name of the State and of any units which fought in Normandy. The Governors were represented by four adjutants general, one from my own State of Maryland and the others from Michigan, New Jersey, and Pennsylvania; the commander of the 142d Field Artillery Unit of the Arkansas National Guard; the commander of the Texas State Guard; a recipient of the Medal of Honor and a Normandy veteran from Iowa; the daughter of the Governor of Wisconsin; and civilian delegates from Virginia and Illinois.

On the day following the official groundbreaking, a special ceremony took place at the historic town hall of Caen, bural site of William the Conqueror, for the presentation of the individual State stones to the Senator-Mayor of Caen, Jean-Marie Girault. Many of these stones, which weighted from 40 to 140 pounds apiece, had symbolic significance:

The Maryland stone of Woodstock granite is the same material as Marylands World War II monument and is engraved with the name of the 29th Division of the Maryland National Guard, which fought in Normandy;

The Michigan stone came from the Upper Peninsula, home of the 107th Engineer Battalion, of which Company A was in the first wave of the invasion;

The Pennsylvania stone came from the "Devil's Den" section of the Battlefield of Gettysburg, where 1,212 soldiers lost their lives in an earlier war;

The Wisconsin stone came from a quary specially reopened for the purpose by the widow of a Normandy veteran. The stone was carved, polished, and engraved by veterans;

The State of Connecticut is sending a stone taken from the quary that provided the base for the Statue of Liberty.

These stones will be placed in the Garden of Remembrance next to the Eisenhower Esplanade, leading to the entrance of the memorial and museum.

Mr. President, Santayana said, "Those who cannot remember the past are doomed to repeat it." World War II, a fierce struggle to preserve our humanity, our democracy, and our freedom, is an experience I hope we never have to repeat.

As World War II becomes more and more a part of our past, we must continually search for ways to keep it from fading from our memory. There must be symbols to remind present and future generations of its harsh reality. This museum, which will be dedicated on June 6, 1988, is such a symbol. We hope this message will be heard loud and clear throughout the world.●

ORDER OF BUSINESS

Mr. HEINZ. Madam President, it is my responsibility to close the session. I have a series of unanimous consent requests.

Are there any other Senators—I do not think there are—who wish to be heard on this or any other matter?

ORDERS FOR WEDNESDAY

RECESS UNTIL 9:00 A.M.

Mr. HEINZ. Madam President. I ask unanimous consent that once the Senate completes its business today, it stand in recess until the hour of 9:00 a.m., on Wednesday, October 8, 1986.

The PRESIDING OFFICER. Without objection, it is so ordered.

ROUTINE MORNING BUSINESS

Mr. HEINZ. Madam President following the recognition of the two leaders under the standing order, I ask unanimous consent that there be a period for the transaction of routine morning business not to extend beyond the hour of 9:30 a.m., with Senators permitted to speak therein for not more than 5 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. HEINZ. Madam President, at 9:30 a.m., the Senate will resume the impeachment proceedings in closed session. The question is the remaining motion of the respondent. That motion is limited to 2 hours; therefore, a vote could occur at 11:30 a.m. on the remaining motion. Following the vote on the motion, the Senate can be expected to resume legislative session to consider any legislative or executive items cleared for action.

I am advised by the majority leader that votes can be expected during Wednesday's session of the Senate.

RECESS UNTIL WEDNESDAY AT 9 A.M.

The PRESIDING OFFICER. Is there any further business to come before the Senate?

Hearing none, the Senate will stand in recess until the hour of 9 a.m., Wednesday.

Whereupon, at 8:27 p.m., the Senate recessed until tomorrow, Wednesday, October 8, 1986, at 9 a.m.

NOMINATIONS

Executive nominations received by the Senate October 7, 1986:

DEPARTMENT OF STATE

Melissa Foelsch Wells, of New York, a career member of the Senior Foreign Service, class of minister-counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the People's Republic of Mozambique.

U.S. ARMS CONTROL AND DISARMAMENT AGENCY

Martin Anderson, of California, to be a Member of the General Advisory Committee of the U.S. Arms Control and Disarmament Agency, vice Shirley N. Pettis, resigned.

DEPARTMENT OF AGRICULTURE

Milton J. Hertz, of North Dakota, to be a Member of the Board of Directors of the Commodity Credit Corporation, vice Everett George Rank, Jr., resigned.

COMMISSION ON MERCHANT MARINE AND DEFENSE

The following-named persons to be Members of the Commission on Merchant Marine and Defense (new positions):

Edward Elmer Carlson, of Washington.
William E. Haggett, of Maine.
James L. Holloway III, of Maryland.
Joseph Sewall, of Maine.
Shannon J. Wall, of New Jersey.

FEDERAL HOME LOAN BANK BOARD

Lee H. Henkel, Jr., of Georgia, to be a Member of the Federal Home Loan Bank Board for the term of 4 years expiring June 30, 1989, vice Donald I. Hovde, resigning.

FOREIGN SERVICE

The following-named career member of the Senior Foreign Service, class of career minister, for the personal rank of Career Ambassador in recognition of especially distinguished service over a sustained period:

Deane Roesch Hinton, of Illinois.

HOUSE OF REPRESENTATIVES—*Tuesday, October 7, 1986*

The House met at 12 noon.

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

With the pressures and anxieties of these days, we pray, O God, that Your spirit will grant a measure of serenity and bring the assurance that Your Word allows. We know, gracious God, that our responsibility for gaining success in this world depends upon the dedication of our talents toward the tasks before us and by committing ourselves to doing the ⅛right as best we can. If we are faithful to our labors, O God, we can believe that Your grace is always sufficient for us, and come what may, we can be content that Your providence ever surrounds us. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Hallen, one of its clerks, announced that the Senate had passed with amendments in which the concurrence of the House is requested, bills and joint resolution of the House of the following titles:

H.R. 2482. An act to amend the Federal Insecticide, Fungicide, and Rodenticide Act, and for other purposes;

H.R. 3004. An act to amend section 3006A of title 18, United States Code, to improve the delivery of legal services in the criminal justice system to those persons financially unable to obtain adequate representation, and for other purposes;

H.R. 3559. An act to amend the act establishing a Commission on the Bicentennial of the Constitution of the United States to clarify the status of employees of the Commission, to raise the limits on private contributions, and for other purposes;

H.R. 4613. An act to reauthorize appropriations to carry out the Commodity Exchange Act, and to make technical improvements to that Act;

H.R. 4873. An act to authorize certain transfers affecting the Pueblo of Santa Ana in New Mexico, and for other purposes; and

H.J. Res. 626. Joint resolution to approve the "Compact of Free Association" between the United States and the Government of Palau, and for other purposes.

The message also announced that the Senate insists upon its amendment to the bill (H.R. 4613) "An act to reauthorize appropriations to carry out the Commodity Exchange Act, and to make technical improvements to that Act," requests a conference with the House on the disagreeing votes of the two Houses, thereon, and appoints Mr. HELMS, Mr. DOLE, Mr. LUGAR, Mr. COCHRAN, Mr. ZORINSKY, Mr. MELCHER, Mr. HEFLIN, and Mr. BOREN, to be the conferees on the part of the Senate.

The message also announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4759) "An act to authorize appropriations for fiscal year 1987 for intelligence and intelligence-related activities of the United States Government, the Intelligence Community Staff, and the Central Intelligence Agency Retirement and Disability System, and for other purposes."

The message also announced that the Senate agrees to the amendments of the House to the bill (S. 2129), "An act to facilitate the ability of organizations to establish risk retention groups, to facilitate the ability of such organizations to purchase liability insurance on a group basis, and for other purposes," with an amendment.

The message also announced that the Senate had passed a bill of the following title, in which the concurrence of the House is required:

S. 1577. An act to transfer title, control, and custody of certain lands near Aiken, SC from the U.S. Department of Agriculture to the U.S. Department of Energy.

PRIVATE CALENDAR

The SPEAKER. This is Private Calendar day. The Clerk will call the first individual bill on the Private Calendar.

MARLBORO COUNTY GENERAL HOSPITAL CHARITY, OF BENNETTSVILLE, SC

The Clerk called the bill (H.R. 3896) for the relief of Marlboro County General Hospital Charity, of Bennettsville, SC.

There being no objection, the Clerk read the bill as follows:

H.R. 3896

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EXEMPTION FROM LIABILITY UNDER THE PUBLIC HEALTH SERVICE ACT.

When the Secretary of Health and Human Services (hereinafter in this Act referred to as the "Secretary") finds that Marlboro County General Hospital Charity, of Bennettsville, South Carolina, has complied with sections 2(a) and 3(a), Marlboro County General Hospital Charity shall be relieved of all liability under section 609 of the Public Health Service Act resulting from the sale of Marlboro County General Hospital, Inc., also known as Marlboro County General Hospital, of Bennettsville, South Carolina, the predecessor in interest of Marlboro County General Hospital Charity, to the Hospital Corporation of America.

SEC. 2. ESTABLISHMENT OF A TRUST.

(a) ESTABLISHING A TRUST.—Marlboro County General Hospital Charity shall establish and maintain an irrevocable trust in the amount described in section 609(d)(1)(A)(i) of the Public Health Service Act.

(b) USE OF THE TRUST.—The trust described in subsection (a) shall only be used to provide health care services to persons who reside in Marlboro County, South Carolina, and who are unable to pay for such services.

(c) PROVIDING SERVICES.—Marlboro County General Hospital Charity shall provide the health care services described in subsection (b) throughout the period beginning 15 days after the date of enactment of this Act and ending on the last day of the most recent 20-year period during which Marlboro County General Hospital, Inc. was required to remain a public or nonprofit hospital under section 609 of the Public Health Service Act.

SEC. 3. AGREEMENT WITH THE SECRETARY.

(a) PROVISIONS OF THE AGREEMENT.—Marlboro County General Hospital Charity shall enter into an agreement with the Secretary to execute the provisions of sections 2(b) and 2(c).

(b) PENALTIES FOR NONCOMPLIANCE.—The agreement described in subsection (a) shall specify penalties, to be determined by the Secretary, for noncompliance by Marlboro County General Hospital Charity.

AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. TALLON

Mr. TALLON. Mr. Speaker, I offer an amendment in the nature of a substitute.

The Clerk read as follows:

Amendment in the nature of a substitute offered by Mr. TALLON:

Strike all after the enacting clause and insert the following:

SECTION 1. LIABILITY UNDER THE PUBLIC HEALTH SERVICE ACT.

(a) IN GENERAL.—If—

(1) the Hospital Corporation of America and the Marlboro County General Hospital Charity of Bennettsville, South Carolina, enter into an agreement with the Secretary of Health and Human Services within 12 months of the date of the enactment of this Act which meets the requirements of section 2, and

(2) the Secretary of Health and Human Services certifies to Congress that the requirements of such section have been fulfilled,

Marlboro County General Hospital Charity of Bennettsville, South Carolina, and the Hospital Corporation of America shall each be relieved of all liability under section 609

of the Public Health Service Act resulting from the sale of Marlboro County General Hospital, Inc., also known as Marlboro County General Hospital, of Bennettsville, South Carolina, the predecessor in interest of Marlboro County General Hospital Charity, to the Hospital Corporation of America.

(b) LIABILITY.—

(1) During the 6-month period beginning on the date of the enactment of this Act Marlboro County General Hospital Charity of Bennettsville, South Carolina, and the Hospital Corporation of America shall each not be subject to the interest penalty described in section 609(c)(2)(A) of such Act for the sale referred to in subsection (a).

(2) If such an agreement is not entered into within one year of the date of the enactment of this Act, the Secretary of Health and Human Services shall take such action as may be necessary to recover from Marlboro County General Hospital Charity of Bennettsville, South Carolina, and the Hospital Corporation of America the amount the United States is entitled to recover under section 609 of such Act for the sale referred to in subsection (a).

SEC. 2. AGREEMENT REQUIREMENTS.

The agreement referred to in subsection (a) shall contain the following requirements:

(1) Under the agreement Marlboro County General Hospital Charity shall establish and maintain an irrevocable trust in the amount described in section 609(d)(1)(A)(i) of the Public Health Service Act.

(2) The principal and interest of the trust described in paragraph (1) shall only be used to pay for medically necessary services provided at Marlboro County General Hospital Charity by the Hospital Corporation of America at no charge to individuals unable to pay for such services. For purposes of this paragraph, an individual shall be considered unable to pay for medically necessary services if such individual (A) has an income below 100 percent of the nonfarm income official poverty line defined by the Office of Management and Budget (and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size of such individual's family, and (B) does not have private health insurance coverage and is not eligible for assistance under title XVIII of the Social Security Act, a Medical Assistance Plan approved under title XIX of such Act, or any other public indigent medical care program.

(3) The Hospital Corporation of America shall at Marlboro Park Hospital—

(A) not deny needed medical services to persons unable to pay for such medical services,

(B) participate, if qualified, in the program under title XVIII of the Social Security Act and a Medical Assistance Plan approved under title XIX of such Act, and in any other public indigent program in South Carolina.

(C) treat all individuals in need of medical care who are eligible, or may be eligible, for assistance under a program described in subparagraph (3) irrespective of whether such individuals have a personal physician with admitting privileges at Marlboro Park Hospital, and

(D) notify each individual seeking medical care in writing of the availability of reimbursement under paragraph (2) for charges and services.

Mr. TALLON (during the reading). Mr. Speaker, I ask unanimous consent that the amendment in the nature of a substitute be considered as read and printed in the RECORD.

The SPEAKER. Is there objection to the request of the gentleman from South Carolina?

There was no objection.

The SPEAKER. The gentleman from South Carolina [Mr. TALLON] is recognized for 5 minutes in support of his amendment.

Mr. TALLON. Mr. Speaker, this amendment in the nature of a substitute represents a compromise between the Committee on Energy and Commerce and the Committee on the Judiciary. It is a carefully crafted amendment that makes the interests of those seeking to maintain indigent health care in Marlboro County, SC, and those concerned about the integrity of our health care system.

I urge adoption of this amendment.

Mr. Speaker, I yield back the balance of my time.

The SPEAKER. The question is on the amendment in the nature of a substitute offered by the gentleman from South Carolina [Mr. TALLON].

The amendment in the nature of a substitute was agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

Mr. BOUCHER. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 1895) for the relief of Marlboro County General Hospital Charity, of Bennettsville, South Carolina, and ask for its immediate consideration in the House.

The SPEAKER. Is there objection to the request of the gentleman from Virginia?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 1895

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) Marlboro County General Hospital Charity, the successor in interest to Marlboro County General Hospital, Inc., also known as Marlboro County General Hospital, of Bennettsville, South Carolina, shall be relieved of all liability under title VI of the Public Health Service Act resulting from the sale of Marlboro County General Hospital to the Hospital Corporation of America, if such Marlboro County General Hospital Charity complies with the provisions of this Act.

(b) Such Marlboro County General Hospital Charity shall—

(1) establish and maintain an irrevocable trust in the amount described in section 609(d)(1)(A)(i) of the Public Health Service Act;

(2) provide that such trust will only be used to provide health care services to persons who reside in Marlboro County, South Carolina, and who are unable to pay for such services; and

(3) provide such services to such persons during the period beginning 15 days after the date of enactment of this Act and ending on the date described in subsection (d).

(c)(1) If—

(A) the Secretary of Health and Human Services determines that such Marlboro County General Hospital Charity has complied with the provisions of paragraph (1) of subsection (b); and

(B) such Marlboro County General Hospital Charity has entered into an agreement with the Secretary to ensure compliance with paragraphs (2) and (3) of subsection (b),

such Marlboro County General Hospital Charity shall be permanently relieved of any liability under title VI of the Public Health Service Act resulting from the sale of Marlboro County General Hospital to the Hospital Corporation of America.

(2) Any agreement entered into under paragraph (1)(B) shall contain appropriate provisions specifying penalties for noncompliance by such Marlboro County General Hospital Charity with the provisions of subsection (b).

(d) The date referred to in subsection (b)(3) is the last day of the most recent 20-year period during which the Marlboro County General Hospital was required, under section 609 of the Public Health Service Act, to remain as a public or other nonprofit hospital.

MOTION OFFERED BY MR. BOUCHER

Mr. BOUCHER. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. BOUCHER moves to strike out all after the enacting clause of the Senate bill, S. 1895, and to insert in lieu thereof the text of H.R. 3896, as passed by the House.

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed.

The title was amended so as to read: "A bill for the relief of Marlboro County General Hospital Charity, of Bennettsville, South Carolina."

A motion to reconsider was laid on the table.

A similar House bill (H.R. 3896) was laid on the table.

NABIL YALDO

The Clerk called the Senate bill (S. 345) for the relief of Nabil Yaldo.

The SPEAKER. Is there objection to the present consideration of the bill?

Mr. SENSENBRENNER. Mr. Speaker, I object.

Mr. WALKER. Mr. Speaker, I object.

The SPEAKER. Two objections are heard. Under the rule, the bill is recommitted to the Committee on the Judiciary.

ELGA BOUILLIANT-LINET

The Clerk called the Senate bill (S. 197) for the relief of Elga Bouilliant-Linet.

There being no objection, the Clerk read the bill as follows:

S. 197

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, for the purposes of the Immigration and Nationality Act, Elga Bouilliant-Linet shall be held and considered to have been lawfully admitted to the United States for permanent residence as of the date of the enactment of this Act upon payment of the required visa fee. Upon the granting of permanent residences of such alien as provided for in this Act, The Secretary of State shall instruct the proper officer to reduce by one number, during the current fiscal year or the fiscal year next following, the total number of immigrant visas and conditional entries which are made available to natives of the country of the alien's birth under section 203(a) of the Immigration and Nationality Act, or, if applicable, from the total number of immigrant visas and entries which are made available to natives under section 202(e) of such Act.

The Senate bill was ordered to be read a third time, was read the third time, and passed, and motion to reconsider was laid on the table.

RAMZI SALLOMY AND MARIE SALLOMY

The Clerk called the Senate bill (S. 332) for the relief of Ramzi Sallomy and Marie Sallomy.

There being no objection, the Clerk read the Senate bill, as follows:

S. 332

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, in the administration of the Immigration and Nationality Act, Ramzi Sallomy and Marie Sallomy shall be held and considered to have been lawfully admitted to the United States for permanent residence as of the date of the enactment of this Act upon payment of the required visa fees. Upon the granting of permanent residence to such aliens as provided for in this Act, the Secretary of State shall instruct the proper officer to reduce by the proper number, during the current fiscal year or the fiscal year next following, the total number of immigrant visas and conditional entries which are made available to natives of the country of the aliens' birth under section 203(a) of the Immigration and Nationality Act or, if applicable, the total number of immigrant visas and conditional entries which are made available to natives of the country of aliens' birth under section 202(e) of such Act.

With the following committee amendment:

On page 2, line 9, after the word "Act." insert the following: "*Provided further,* That a suitable and proper bond or undertaking, approved by the Attorney General, be deposited on behalf of Ramzi Sallomy as prescribed by section 213 of the said Act.".

The committee amendment was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

MARSHA D. CHRISTOPHER

The Clerk called the bill (H.R. 1330) for the relief of Marsha D. Christopher.

There being no objection, the Clerk read the bill as follows:

H.R. 1330

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of sections 8131 and 8132 of title 5, United States Code, shall not apply with respect to injuries incurred by Marsha D. Christopher of Romulus, Michigan, as a result of an attack by a dog on August 9, 1979, while Marsha D. Christopher was performing her duties as a letter carrier for the United States Postal Service.

SEC. 2. (a) The Secretary of the Treasury shall pay, out of any funds in the Treasury not otherwise appropriated, to Marsha D. Christopher, an amount equal to the sum of—

(1) any amount of compensation for the injuries referred to in the first section of this Act, refunded, under section 8132 of title 5, United States Code, to the United States by Marsha D. Christopher, or on her behalf, before the date of the enactment of this Act, and

(2) any amount of reduction in compensation payable to Marsha D. Christopher under chapter 81 of title 5, United States Code, for the injuries referred to in the first section of this Act, made under section 8132 of such title before the date of the enactment of this Act.

(b) It shall be unlawful for any amount of the payment referred to in subsection (a) to be paid to, delivered to, or received by any agent or attorney in consideration for services rendered in connection with such payment. Any person who violates this subsection shall be fined not more than $1,000.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

JOYCE G. McFARLAND

The Clerk called the bill (H.R. 3860) for the relief of Joyce G. McFarland.

There being no objection, the Clerk read the bill, as follows:

H.R. 3860

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ENTITLEMENT TO SURVIVOR ANNUITY AND OTHER PAYMENTS.

For the purposes of section 8339, 8332(c), 8334(j), and 8341 of title 5, and section 8991 of title 10, of the United States Code, the late Neal G. McFarland (Service Number AF 34427284; Social Security Number 425-12-3260) shall be deemed to have, on March 28, 1975—

(1) waived entitlement to his military retired pay,

(2) elected to receive in lieu thereof a civil service retirement annuity based on his combined military and civilian service, and

(3) made any deposit required to be made in order to receive such an annuity.

SEC. 2. PAYMENTS.

(a) TO JOYCE G. MCFARLAND.—

(1) MONTHLY PAYMENT OF ANNUITY.—A survivor annuity payable to Joyce G. McFarland by virtue of section 1 shall commence on the first day of the first calendar month beginning after the date of the enactment of this Act. The initial annuity rate shall be the annuity rate which Joyce G. McFarland would have been entitled to receive had this Act been enacted on April 16, 1975.

(2) LUMP SUM PAYMENT.—The Secretary of the Treasury shall pay to Joyce G. McFarland, out of the Civil Service Retirement and Disability Fund, a lump sum payment—

(A) equal to the sum of—

(i) the survivor annuity payments which Joyce G. McFarland would have been entitled to receive under chapter 83 of title 5, United States Code, had this Act been enacted on April 16, 1975; and

(ii) the civil service retirement annuity payments which would have been payable to Neal G. McFarland based on his service, had this Act been enacted on March 28, 1975; less

(B) an amount equal to the sum of—

(i) the amount referred to in subsection (b);

(ii) an amount equal to any deposit which he would have been required to make in order to have received a civil service retirement annuity based on his combined military and civilian service;

(iii) any interest which would have been required to be included with the payment of such deposit by section 8334(j)(2) of title 5, United States Code, had such deposit been made on the date of the enactment of this Act;

(iv) the amounts received by Neal G. McFarland under chapter 83 of title 5, United States Code, after March 28, 1975; and

(v) the amounts received by Joyce G. McFarland as survivor benefits under chapter 83 of title 5, United States Code, during the period beginning on April 16, 1975, and ending on the day of the calendar month in which this Act is enacted.

(b) TO THE SECRETARY OF THE AIR FORCE.—The Secretary of the Treasury shall pay to the Secretary of the Air Force, out of the Civil Service Retirement and Disability Fund, an amount, which shall be credited to appropriations for retired pay, equal to the retired pay received by Neal G. McFarland from the Department of the Air Force after March 28, 1975.

SEC. 3. PROHIBITION AND PENALTY.

No part of the sums paid under section 2(a) of this Act in excess of 10 percent thereof shall be paid or delivered to, or received by, any agent or attorney on account of the services rendered in connection with this claim, and such acts shall be unlawful, any contract or agreement to the contrary notwithstanding. Any person violating the preceding sentence shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not more than $1,000.

The bill was ordered to be engrossed and read a third itme, was read the third time, and passed, and a motion to reconsider was laid on the table.

LAWRENCE K. LUNT

The Clerk called the bill (H.R. 1981) for the relief of Lawrence K. Lunt.

There being no objection, the Clerk read the bill as follows:

H.R. 1981

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the

Secretary of the Treasury shall pay, out of any money in the Treasury not otherwise appropriated to Lawrence K. Lunt of Saratoga, Wyoming, the sum of $614,185 as full compensation for losses he suffered and expenses he incurred in connection with his conviction in Cuba for espionage and his imprisonment there between 1965 and 1979.

SEC. 2. Not more than 10 per centum of the sum appropriated in the first section of this Act shall be paid to any agent or attorney for services rendered in connection with the claim specified in such section. Any person violating this section shall be fined not less than $1,000.

With the following committee amendment:

Page 1, line 5: After "the sum of", insert "614,185.".

Mr. BOUCHER (during the reading). Mr. Speaker, I ask unanimous consent that the committee amendment be considered as read and printed in the RECORD.

The SPEAKER. Is there objection to the request of the gentleman from Virginia?

There was no objection.

The committee amendment was agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

JEAN DEYOUNG

The Clerk called the bill (H.R. 2682) for the relief of Jean DeYoung.

There being no objection, the Clerk read the bill, as follows:

H.R. 2682

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. RELIEF FROM LIABILITY; REIMBURSEMENT.

(a) AMOUNT OF RELIEF.—Jean DeYoung of Clarendon Hills, Illinois, is relieved of liability to the United States in the amount of $2,932.02, representing overpayment by the United States to Jean DeYoung resulting from administrative error by the Administrative Office of the United States Courts.

(b) REIMBURSEMENT.—The Secretary of the Treasury shall pay to Jean DeYoung, out of any money in the Treasury not otherwise appropriated, any sum paid by her to, or withheld from her by, the United States with respect to the indebtedness referred to in subsection (a).

SEC. 2. AUDIT AND SETTLEMENT; ATTORNEY'S FEES.

(a) AUDIT AND SETTLEMENT.—In the audit and settlement of the account of any certifying or disbursing officer of the United States, full credit shall be given for the amount of liability relieved by section 1(a).

(b) ATTORNEY'S FEES.—Not more than 10 percent of the amount specified in section 1(a) may be transferred, directly or indirectly, to any attorney or other agent as consideration for services rendered to Jean DeYoung in connection with the relief from liability granted in section 1(a) and the reimbursement permitted under section 1(b). Any person violating this subsection shall be fined not more than $1,000.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

RICK HANGARTNER, RUSSELL STEWART, AND DAVID WALDEN

The Clerk called the bill (H.R. 4706) for the relief of Rick Hangartner, Russell Stewart, and David Walden.

There being no objection, the Clerk read the bill, as follows:

H.R. 4706

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. PAYMENTS.

The Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, the sum of $6,900.45 to Rick Hangartner of Tampa, Florida, the sum of $8,398.82 to Russell Stewart of Largo, Florida, and the sum of $8,268.75 to David Walden of Aberdeen, Maryland. Payment of such sums shall be in full settlement of all claims of Rick Hangartner, Russell Stewart, and David Walden against the United States for all losses or expenses incurred by them in connection with—

(1) the investigation by the Committee on Government Operations of the House of Representatives into improprieties in the award and management of the Social Security Administration's contract with Paradyne Corporation; and

(2) the Securities and Exchange Commission's investigation of and litigation with Paradyne Corporation.

SEC. 2. LIMITATION ON ATTORNEY'S FEES.

No amount exceeding 10 percent of a payment made under section 1 shall be paid to or received by any agent or attorney in consideration for services rendered in connection with such payment. Any violation of this section shall be a misdemeanor and any person convicted thereof shall be fined not more than $1,000.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

ALLEN H. PLATNICK

The Clerk called the bill (H.R. 4779) for the relief of Allen H. Platnick.

There being no objection, the Clerk read the bill, as follows:

H.R. 4779

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SATISFACTION OF CLAIM AGAINST UNITED STATES.

The Secretary of the Treasury shall pay, out of any money in the Treasury not otherwise appropriated, the sum of $1,756.02 to Allen H. Platnick. The payment of such sum shall be in full satisfaction of any claim of such person against the United States arising out of an offer of employment at Fairchild Air Force Base that was made to such person in 1978 through agents of the United States Army and was subsequently withdrawn by agents of the United States Air Force.

SEC. 2. LIMITATION ON ATTORNEYS AND AGENTS FEES.

It shall be unlawful for more than 10 percent of the amount appropriated in section 1 to be paid to or received by any agent or attorney for services rendered in connection with the claim described in such section. Any person who violates this section shall be fined not more than $1,000.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

JOHN M. GILL

The Clerk called the bill (H.R. 628) for the relief of John M. Gill.

There being no objection, the Clerk read the bill, as follows:

H.R. 628

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury shall pay, out of any money in the Treasury not otherwise appropriated, to John M. Gill (Social Security Numbered [redacted]) of Merced, California, the sum of $285,000. Payment of such sum shall be in full settlement of all claims of John M. Gill against the United States for the value of personal property that was lost in Vietnam as a result of the fall of Saigon in 1975.

SEC. 2. Not more than 10 per centum of the sum appropriated in the first section of this Act shall be paid to or received by any agent or attorney for services rendered in connection with the claim specified in such section. Any person violating this section shall be fined not more than $1,000.

With the following committee amendment:

Page 1, line 6: Strike "$285,000." and insert "$15,000.".

Mr. BOUCHER (during the reading). Mr. Speaker, I ask unanimous consent that the committee amendment be considered as read and printed in the RECORD.

The SPEAKER. Is there objection to the request of the gentleman from Virginia?

There was no objection.

The committee amendment was agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

MERCHANTS NATIONAL BANK OF MOBILE, AL

The Clerk called the bill (H.R. 1527) for the relief of the Merchants National Bank of Mobile, AL.

There being no objection, the Clerk read the bill, as follows:

H.R. 1527

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, the sum of $809,609, to the Merchants National Bank of Mobile, Alabama, for compensation for losses sustained during the period January 1, 1976, through December 31, 1978, concerning the issuance and cancellation of a

Government loan guarantee and the subsequent issuance of a second loan guarantee on reduced terms, resulting from actions and misrepresentations of the Defense Logistics Agency of the Department of Defense and its fiscal agent, the Federal Reserve Bank of Atlanta.

SEC. 2. (a) The payment made pursuant to the first section of this Act shall constitute full settlement of the legal and equitable claims by the Merchants National Bank of Mobile, Alabama, against the United States, covered by this Act.

(b) No part of the amount appropriated in this Act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with such claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Violation of the provisions of this subsection is a misdemeanor punishable by a fine not to exceed $1,000.

Mr. CALLAHAN. Mr. Speaker, I rise in support of H.R. 1527, a bill for the relief of the Merchants National Bank of Mobile, AL. Passage of the bill would conclude a congressional reference proceeding that began in the Senate more than 6 years ago. The Senate approved its version of the bill, S. 593, by voice vote on December 6, 1985.

The bill complements the legislation that was introduced in the 96th Congress and referred in November 1979 by Senate Resolution 291 to the Chief Commissioner of the U.S. Claims Court.

The reference sought the court's consideration of whether the Merchants National Bank was legally or equitably entitled to compensation for losses sustained in connection with a defective Federal loan guarantee issued by the Department of Defense. After a lengthy trial before a hearing officer, and argument before a review panel, the claims court, through its chief judge, has advised that the bank has an equitable claim for $809,609, and that payment of the amount would not constitute a gratuity.

The losses sustained by the bank relate to loans made to a Government contractor in Mobile, AL, which was attempting to perform two contracts, awarded by the Defense Logistics Agency in 1976, to assemble combat rations for the military. In the early stages of the contracts, lengthy delays and mishandling of material by the Government generated substantial unforeseen costs to the contractor. To assist the contractor in securing financing for the costs, the Agency approved a loan guarantee to the bank pursuant to the Defense Production Act V-Loan Guarantee Program.

When the bank had advanced virtually the entire guaranteed sum—almost $2 million—the Agency abruptly canceled the guarantee because it discovered that no funds had been appropriated to support the guarantee agreement. Nevertheless, stressing the importance of the combat rations contracts to the defense effort, the Agency pledged its full assistance to Merchants Bank and the contractor to encourage them to proceed with the contracts. The Agency even drafted legislation to allow the issuance of a suitable replacement guarantee. Based upon these assurances, the bank agreed to continue supporting the Government's contractor.

Soon thereafter, appropriate language was included in the 1978 Defense Appropriations Act to make available $5 million for the express purpose of authorizing new loan guarantee agreements. At this point, the bank applied for a new V-Loan Guarantee consistent with the assurances it had received from the Defense Logistics Agency. Notwithstanding the availability of suitable loan guarantee authority and the assurances that the Agency would do everything possible to restore the guarantees upon which the bank had relied, the Agency refused the application. Instead, it offered a guarantee substantially less favorable than the first, and only after requiring the bank to extend an additional half-million dollars in unguaranteed credit to the Government's contractor.

Meanwhile, the Agency acknowledged that its handling of the contracts had substantially increased the cost of performance. Consequently, it enlarged the credit requirements of the contractor. Because the second loan guarantee was wholly insufficient to support these credit requirements, and since the bank could not prudently extend further credit in light of its already substantial unguaranteed exposure, the contractor was forced to close its doors and file for bankruptcy in 1978. Both before and after the bankruptcy petition was filed, the bank expressed its willingness several times to join the Agency in cooperative financing arrangements that would save the company. The Agency refused to entertain these suggestions and in April 1978, the contractor was adjudged bankrupt.

In extending credit for the performance of the Government contracts, the bank understandably relied upon representations and assurances of the Defense Logistics Agency. When the first guarantee was suddenly canceled, the bank again relied upon the assurances of senior Agency officials that, pending enactment of new guarantee authority, a replacement loan guarantee would be established in an amount sufficient to protect the bank. When the Agency ultimately refused to stand by those assurances, the resultant credit limitations left the contractor facing bankruptcy and caused the bank to suffer losses of nearly $1.7 million.

Because the bank's losses were primarily the result of its reliance upon a guarantee that exceeded the authority of the responsible Government officers, it was apparent that a successful legal cause of action for the recovery of these losses was extremely unlikely. Where Government officials act beyond the scope of their authority, the obstacles to maintaining a legal cause of action to recover from the United States are virtually insurmountable. For that reason, S. 2052 was introduced in the 96th Congress and was referred by Senate resolution to the court of claims for consideration.

After a lengthy trial, which filled 2,000 transcript pages, Judge Spector, a senior judge of the claims court, on April 30, 1984, issued an exhaustive 65-page report in which he recommended that Congress authorize payment to Merchants Bank of $809,609 in full settlement of all its legal or equitable claims against the United States. Government counsel took exception to many of the findings, and a three-page Review Panel of the Claims Court considered yet another round of briefs and oral argument from the parties. The resulting 22-page report of December 6, 1984, confirmed Judge Spector's conclusion that Merchants Bank has an equitable claim against the Government for $809,609.

The bill would give effect to the conclusions rendered after careful adjudication by the claims court. It does not compensate the bank for all of the losses it has suffered in supporting this Government contractor, nor has the bank sought total compensation.

Mr. Speaker, the bill contains language which makes clear that no part of the amount appropriated in the bill in excess of 10 percent could be paid or delivered to any agent or attorney of the bank on account of services rendered in connection with the claim. The purpose of this language is to prohibit any agent or attorney of the bank from receiving funds due from the bank on a contingent fee or success fee basis as a result of its representation of the bank; the language makes clear that payments by the bank to any agents or attorneys on a contingent basis in excess of 10 percent of $809,609 are unlawful. The section is not intented to apply to traditional hourly arrangements made by the bank for attorneys in connection with representation of the bank in handling this congressional reference claim through the detailed process set out in 28, United States Code, sections 1492, 2509.

Mr. Speaker, the bill involves a unique, unprecedented set of facts and will provide compensation only to the Merchants National Bank of Mobile for its own proven losses. I urge passage of this bill.

The bill was order to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

Mr. BOUCHER. Mr. Speaker, I ask unanimous consent that the Committee on the Judiciary be discharged from further consideration of the Senate bill (S. 593) for the relief of the Merchants National Bank of Mobile, AL, and ask for its immediate consideration in the House.

The Clerk read the title of the Senate bill.

The SPEAKER. Is there objection to the request of the gentleman from Virginia?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 593

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, the sum of $809,609 to the Merchants National Bank of Mobile, Alabama for compensation for losses sustained during the period January 1, 1976 through December 31, 1978, concerning the issuance and cancellation of a Government loan guarantee and the subsequent issuance of a second loan guarantee on reduced terms, resulting from actions and misrepresentations of the Defense Logistics Agency of the Department of Defense and its fiscal agent, the Federal Reserve Bank of Atlanta.

SEC. 2 The payment made pursuant to the first section of this Act shall constitute full settlement of all legal and equitable claims by the Merchansts National Bank of Mobile, Alabama against the United States, covered by this Act.

MOTION OFFERED BY MR. BOUCHER

Mr. BOUCHER. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. BOUCHER moves to strike out all after the enactng clause of the Senate bill, S. 593, and to insert in lieu thereof the provisions contained in H.R. 1527, as passed by the House.

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

A similar House bill (H.R. 1527) was laid on the table.

GENERAL LEAVE

Mr. BOUCHER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the private bills just passed.

The SPEAKER. Is there objection to the request of the gentleman from Virginia?

There was no objection.

The SPEAKER. This concludes the call of the Private Calendar.

OMNIBUS VETERANS' BENEFITS IMPROVEMENT AND HEALTH CARE AUTHORIZATION ACT OF 1986

Mr. MONTGOMERY. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 5299) to amend title 38, United States Code, to provide a 2-percent increase in the rates of compensation and of dependency and indemnity compensation (DIC) paid by the Veterans' Administration, and for other purposes, with Senate amendments thereto, and concur in the Senate amendments with House amendments to the Senate amendments.

The Clerk read the title of the bill.

The Clerk read the Senate amendments and the House amendments to the Senate amendments, as follows:

Senate amendments:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS

(a) SHORT TITLE.—This Act may be cited as the "Omnibus Veterans' Benefits Improvement and Health Care Authorization Act of 1986".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. References to title 38, United States Code.

TITLE I—COMPENSATION AND OTHER BENEFIT PROGRAMS

PART A—BENEFITS

Sec. 101. Disability compensation and dependency and indemnity compensation rate increases.
Sec. 102. Presumptions relating to certain diseases and disabilities of former prisoners of war.
Sec. 103. Extension of pilot program of independent living services and assistance.
Sec. 104. Extension of veterans readjustment appointments authority.

PART B—BENEFIT PROGRAM ADMINISTRATION

Sec. 111. Veterans' Administration acquisition of foreclosed properties.
Sec. 112. Bar to duplication of educational assistance benefits.
Sec. 113. Membership of the Administrator's Advisory Committee on Education.
Sec. 114. Disclosure of financial information by fiduciaries.
Sec. 115. Waiver of congressional notice and waiting period for administrative reorganization of certain Veterans' Administration activities.
Sec. 116. Administrative debt collection by offset of benefits.

TITLE II—HEALTH CARE

PART A—HEALTH-CARE PROGRAMS

Sec. 201. Definition of home health services.
Sec. 202. Treatment and rehabilitation for chronically mentally ill veterans.
Sec. 203. Respite care pilot program.
Sec. 204. Pilot program of noninstitutional alternatives to institutional care.
Sec. 205. Services to overcome service-connected disability affecting procreation.
Sec. 206. Continuation of certain counseling services for a deceased veteran's family members.
Sec. 207. Eligibility for domiciliary care.
Sec. 208. Contracts and grants for medical care for United States veterans in the Republic of the Philippines.
Sec. 209. Medicaid treatment of per diem payments to State veterans' homes.
Sec. 210. Vietnam-era veterans' readjustment counseling program.

PART B—HEALTH-CARE ADMINISTRATION

Sec. 211. Enforcement of State and local traffic laws by Veterans' Administration police officers.
Sec. 212. Ionizing radiation registry.
Sec. 213. Authority to waive licensure and internship requirements for research psychologists.
Sec. 214. Requirement for medicare hospitals to participate in Veterans' Administration contract health-care program.
Sec. 215. Organization of the Department of Medicine and Surgery.
Sec. 216. Authority for part-time and temporary appointments.
Sec. 217. Report on a national drug file.

PART C—MEDICAL FACILITY CONSTRUCTION AND PLANNING

Sec. 221. Parking facilities.
Sec. 222. Consideration of sharing Department of Defense facilities.
Sec. 223. State home grants.

TITLE III—MISCELLANEOUS PROVISIONS

Sec. 301. Modifications of certain reporting requirements.
Sec. 302. Contract authority subject to appropriations.

SEC. 2. REFERENCES TO TITLE 38, UNITED STATES CODE

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

TITLE I—COMPENSATION AND OTHER BENEFIT PROGRAMS

PART A—BENEFITS

SEC. 101. DISABILITY COMPENSATION AND DEPENDENCY AND INDEMNITY COMPENSATION RATE INCREASES

(a) IN GENERAL.—(1) The Administrator of Veterans' Affairs shall provide for increases in the rates of and limitations on Veterans' Administration disability compensation and dependency and indemnity compensation in accordance with this subsection.

(2)(A) In the case of each of the rates and limitations in sections 314, 315(1), 362, 411, 413, and 414 of title 38, United States Code, as increased by sections 101(a), 102, 103, 104, 105, and 106 of the Veterans' Compensation Rate Increase and Job Training Amendments of 1985 (Public Law 99-238), the Administrator shall further increase such rates and limitations by the same percentage that benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 et seq.) are increased effective December 1, 1986, as a result of a determination under section 215(i) of such Act (42 U.S.C. 415(i)).

(B) In the computation of increased rates and limitations pursuant to paragraph (1), amounts of $0.50 or more shall be rounded to the next higher dollar amount and amounts of less than $0.50 shall be rounded to the next lower dollar amount.

(b) SPECIAL RULE.—The Administrator may adjust administratively, consistent with the increases made under subsection (a), the rates of disability compensation payable to persons—

(1) to whom the provisions of section 10 of the Act entitled "An Act to consolidate into one Act all of the laws administered by the Veterans' Administration, and for other purposes.", approved September 2, 1958 (Public Law 85-857; 72 Stat. 1263) are applicable; and

(2) who are not in receipt of compensation payable pursuant to chapter 11 of title 38, United States Code.

(c) PUBLICATION REQUIREMENT.—At the same time as the matters required by section 215(i)(2)(D) of the Social Security Act (42 U.S.C. 415(i)(2)(D)) are published by reason of a determination made under section 215(i) of such Act during fiscal year 1987, the Administrator shall publish in the Federal Register the rates and limitations being increased under this section and the rates and limitations as so increased.

(d) EFFECTIVE DATE.—The provisions of this section shall take effect on December 1, 1986.

SEC. 102. PRESUMPTIONS RELATING TO CERTAIN DISEASES AND DISABILITIES OF FORMER PRISONERS OF WAR

Section 312(b) is amended—

(1) by striking out "or" at the end of clause (9); and

(2) by inserting after clause (10) the following new clauses:

"(11) organic residuals of frostbite, if the Administrator determines that the veteran was interned in climatic conditions consistent with the occurrence of frostbite, or

"(12) post-traumatic osteoarthritis, or

"(13) irritable bowel syndrome if the veteran is suffering from a psychiatric disability which is service connected and compensable in degree,".

SEC. 103. EXTENSION OF PILOT PROGRAM OF INDEPENDENT LIVING SERVICES AND ASSISTANCE

(a) EXTENSION OF AUTHORITY AND CLARIFYING AMENDMENT.—(1) Section 1520(a) is amended—

(A) in paragraphs (1), (5), and (6), by striking out "1985" each place it appears and inserting in lieu thereof "1989"; and

(B) in paragraph (2), by inserting "currently" after "goal".

(b) CONFORMING AMENDMENTS.—(1) Paragraphs (6)(B) and (9)(A)(i) of section 1501 are amended by inserting "currently" after "be".

(2) Section 1503(d) is amended by inserting "currently" after "goal".

(3) Section 1505 is amended—

(A) in subsection (a), by inserting "currently" after "whether it";

(B) in subsection (b), by inserting "current" after "of the"; and

(C) in subsection (d), by inserting "currently" after "goal".

(4) Section 1506 is amended—

(A) in subsection (a)(2)(B), by inserting "currently" after "goal";

(B) in subsection (b), by inserting "currently" after "goal";

(C) in subsection (c), by inserting "currently" after "goal" the first place it appears; and

(D) in subsection (d)—

(i) in the first sentence, by inserting "currently" after "veteran"; and

(ii) in the third sentence, by inserting "currently" after "goal" and after "achievement" the second place it appears.

(5) Section 1509 is amended by inserting "currently" after "veteran" the first place it appears.

(c) REPORT.—Section 1520 is amended by striking out subsection (b) and inserting in lieu thereof the following new subsection:

"(b) Not later than February 1, 1989, the Administrator shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives statistical data regarding veterans' participation in the pilot program conducted under subsection (a) of this section during fiscal years 1987 and 1988 and any recommendations of the Administrator for administrative or legislative action or both regarding the program.".

SEC. 104. EXTENSION OF VETERANS READJUSTMENT APPOINTMENTS AUTHORITY

Section 2014(b)(2) is amended by striking out "1986" and inserting in lieu thereof "1988".

PART B—BENEFIT PROGRAM ADMINISTRATION

SEC. 111. VETERANS' ADMINISTRATION ACQUISITION OF FORECLOSED PROPERTIES

Section 1816(c) is amended—

(1) in paragraph (5), by striking out "In" and inserting in lieu thereof "Except as provided in paragraph (10) of this subsection, in";

(2) in paragraph (7), by striking out "In" and inserting in lieu thereof "Except as provided in paragraph (10) of this subsection, in"; and

(3) by adding at the end the following new paragraph:

"(10)(A) The holder of a defaulted loan shall not have the option of conveying the property securing the loan to the United States under paragraph (5) of this subsection and the Administrator may not accept conveyance of such property under paragraph (7) of this subsection unless the Administrator determines, on the basis of the considerations specified in subparagraph (B) of this paragraph, that the Administrator is likely to be able, within 1 year after the date of the liquidation sale of the property, to sell the property for a price which would make it economically advantageous to the United States for the Administrator to acquire and dispose of the property.

"(B) In making a determination with respect to a particular property for the purpose of subparagraph (A) of this paragraph, the Administrator shall consider—

"(i) the size of the inventory of the properties held by the Veterans' Administration (after acquisition under this section) which are located in the same general real estate market area as such property;

"(ii) the current and projected conditions of the real estate market in such area; and

"(iii) the current and projected general economic conditions in such area.".

SEC. 112. BAR TO DUPLICATION OF EDUCATIONAL ASSISTANCE BENEFITS

Section 1433(a)(1) is amended by striking out "chapter 31" and all that follows through "both programs" and inserting in lieu thereof "chapter 31, 32, or 35 of this title, under chapter 106 or 107 of title 10, or under the Hostage Relief Act of 1980 (Public Law 96-449; 5 U.S.C. 5561 note) may not receive assistance under two or more of such programs".

SEC. 113. MEMBERSHIP OF THE ADMINISTRATOR'S ADVISORY COMMITTEE ON EDUCATION.

Section 1792(a) is amended by striking out "World War II, the Korean conflict era,".

SEC. 114. DISCLOSURE OF FINANCIAL INFORMATION BY FIDUCIARIES

The second sentence of section 3202(b) is amended by striking out "beneficiary," and inserting in lieu thereof "beneficiary and any additional information about the beneficiary's financial circumstances required by the Administrator (unless unknown by the fiduciary),".

SEC. 115. WAIVER OF CONGRESSIONAL NOTICE AND WAITING PERIOD FOR ADMINISTRATIVE REORGANIZATION OF CERTAIN VETERANS' ADMINISTRATION ACTIVITIES

(a) WAIVER.—The Administrator of Veterans' Affairs may undertake the administrative reorganization described in subsection (b) without regard to the requirements of section 210(b)(2) of title 38, United States Code.

(b) COVERED ADMINISTRATIVE REORGANIZATION.—The administrative reorganization referred to in subsection (a) is a reorganization that—

(1) involves the transfer of certain functions from the Office of Administration of the Veterans' Administration to the Department of Veterans' Benefits and to the Office of the Associate Deputy Administrator of Veterans' Affairs for Public and Consumer Affairs; and

(2) is described in letters dated February 5, 1986, that were submitted by the Acting Administrator of Veterans' Affairs to the President of the Senate and the Speaker of the House of Representatives.

SEC. 116. ADMINISTRATIVE DEBT COLLECTION BY OFFSET OF BENEFITS

Section 3101 is amended—

(1) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively; and

(2) by inserting after subsection (b) the following new subsection (c):

"(c)(1) Notwithstanding any other provision of this section, the Administrator may, after receiving a request under paragraph (2) of this subsection relating to a veteran, collect by offset of any compensation or pension payable to the veteran under laws administered by the Veterans' Administration the uncollected portion of (A) the amount of any overpayments of retired or retainer pay (for service in a uniformed service named in section 101(3) of title 37) made to the veteran, and (B) the amount of any indebtedness associated with the veteran's participation in a plan prescribed in subchapter I or II of chapter 73 of title 10.

"(2) If the Secretary concerned (as defined in section 101(5) of title 37) has tried under section 3711(a) of title 31 to collect an amount described in paragraph (1) of this subsection in the case of any veteran, has been unable to collect such amount, and has determined that the uncollected portion of such amount is not collectible from amounts payable by the Secretary to the veteran or that the veteran is not receiving any payment from the Secretary, the Secretary may request the Administrator to make collections in the case of such veteran as authorized in paragraph (1) of this subsection.

"(3)(A) A collection authorized by paragraph (1) of this subsection shall be conducted in accordance with the procedures prescribed in section 3716 of title 31 for administrative offset collections made after attempts to collect claims under section 3711(a) of such title.

"(B) For the purpose of subparagraph (A) of this paragraph, as used in the second sentence of section 3716(a) of title 31—

"(i) the term 'records of the agency' shall be considered to refer to the records of the department of the Secretary concerned; and

"(ii) the term 'agency' in clauses (3) and (4) shall be considered to refer to such department.

"(4) Funds collected under this subsection shall be credited to the Department of Defense military retirement fund.".

TITLE II—HEALTH CARE

PART A—HEALTH-CARE PROGRAMS

SEC. 201. DEFINITION OF HOME HEALTH SERVICES

(a) Section 601 is amended by adding at the end the following new paragraph:

"(10) The term 'home health services', in the case of services furnished to a veteran in other than a Veterans' Administration facility or the veteran's home, includes services furnished to a veteran in any setting in which the veteran is residing at the time such services are furnished but does not include any structural improvements or alterations.".

(b) As provided in sections 601(6) and (as added by subsection (a)) 601(10), 603, and 612 of title 38, United States Code, when Veterans' Administration facilities are not capable of furnishing economical home health services because of geographical inaccessibility or are not capable of furnishing the home health services required for a veteran, the Administrator of Veterans' Affairs may contract with non-Veterans' Administration facilities in order to furnish such home health services.

SEC. 202. TREATMENT AND REHABILITATION FOR CHRONICALLY MENTALLY ILL VETERANS

(a) AUTHORITY TO CONTRACT FOR COMMUNITY-BASED PSYCHIATRIC RESIDENTIAL TREATMENT.—Subchapter II of chapter 17 is

amended by adding at the end the following new section:

"§ 620B. Community-based psychiatric residential treatment for chronically mentally ill veterans

"(a) For the purposes of this section—

"(1) The term 'case management' includes the coordination and facilitation of all services furnished to a veteran by the Veterans' Administration, either directly or through a contract, including, but not limited to, screening, assessment of needs, planning, referral (including referral for services to be furnished by either the Veterans' Administration or another entity), monitoring, reassessment, and followup.

"(2) The term 'contract facility' means any facility which has been awarded a contract under subsection (b)(1) of this section.

"(3) The term 'eligible veteran' means a veteran who, at the time of referral to a contract facility—

"(i) is being furnished hospital, domiciliary, or nursing home care by the Administrator for a chronic mental illness disability, or

"(ii) is a veteran described in section 612(a)(1)(B) of this title who has a chronic mental illness disability.

"(b)(1) The Administrator, in furnishing hospital, nursing home, and domiciliary care and medical and rehabilitative services under this chapter, may contract for care and treatment and rehabilitative services in halfway houses, therapeutic communities, psychiatric residential treatment centers, and other community-based treatment facilities for eligible veterans suffering from chronic mental illness disabilities.

"(2) Before furnishing such care and services to any veteran through a contract facility, the Administrator shall approve (in accordance with criteria which the Administrator shall prescribe by regulation) the quality and effectiveness of the program operated by such facility for the purpose for which such veteran is to be furnished such care and services.

"(c) In the case of each eligible veteran provided care and services under this section, the Administrator shall designate a Veterans' Administration health-care employee to provide case management services.

"(d) In furnishing care and services under this section, the Administrator shall accord priority for such care and services in the following order:

"(1) To any veteran for a service-connected chronic mental illness disability.

"(2) To any veteran with a disability rated as service-connected.

"(3) To any veteran for a non-service-connected disability, if the veteran is unable to defray the expenses of necessary care as determined under section 622(a)(1) of this title.

"(e) The Administrator may provide in-kind assistance (through the services of Veterans' Administration employees and the sharing of other Veterans' Administration resources) to a contract facility under this section. Any such in-kind assistance shall be provided under a contract between the Veterans' Administration and the contract facility. The Administrator may provide such assistance only for use solely in the furnishing of appropriate services under this section and only if, under such contract, the Veterans' Administration receives reimbursement for the full cost of such assistance, including the cost of services and supplies and normal depreciation and amortization of equipment. Such reimbursement may be made by reduction in the charges to the United States or by payment to the United States. Any funds received through such reimbursement shall be credited to funds allotted to the Veterans' Administration facility that provided the assistance.

"(f) Not later than 3 years after the date of the enactment of the Omnibus Veterans' Benefits Improvement and Health Care Authorization Act of 1986, the Administrator shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report on the experience under this section. The report shall include the Administrator's evaluation and findings regarding—

"(1) the quality of care furnished to participating veterans through contract facilities;

"(2) any health advantages that may result from furnishing such care and services to such veterans in such contract facilities rather than in inpatient facilities over which the Administrator has direct jurisdiction;

"(3) the effectiveness of the use of contract facilities under this section in enabling the participating veterans to live outside of Veterans' Administration inpatient facilities and to achieve independence in living and functioning in their communities;

"(4) the cost-effectiveness of furnishing such care through contract facilities under this section, including the effect on the average daily census in Veterans' Administration hospital, nursing home, and domiciliary facilities participating in the program (taking into account whether the beds previously occupied by the participating veterans were subsequently occupied by other eligible veterans or remained unoccupied) and the effect on the numbers of Veterans' Administration staff employed at such facilities; and

"(5) any plans for administrative action, and any recommendations for legislation, that the Administration considers appropriate to include in such report.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 17 is amended by inserting after the item relating to section 620A the following new item:

"620B. Community-based psychiatric residential treatment for chronically mentally ill veterans.".

SEC. 203. RESPITE CARE PILOT PROGRAM

(a) AUTHORITY FOR PILOT PROGRAM.—(1) Subchapter II of chapter 17 is further amended by adding at the end the following new section:

"§ 620C. Respite care; pilot program

"(a) During the period beginning on October 1, 1986, and ending on September 30, 1990, the Administrator may conduct a pilot program to furnish respite care services, and to evaluate the furnishing of such services, to any veteran who has a service-connected disability which is compensable in degree and who is receiving services under this chapter.

"(b) For the purposes of this section, the term 'respite care' means hospital or nursing home care which (1) is of limited duration, (2) is furnished in a Veterans' Administration facility on an intermittent basis to a veteran who is suffering from a chronic illness and who resides primarily at home, (3) is furnished for the purpose of helping the veteran to continue residing primarily at home, and (4) does not (as determined by the head of the facility furnishing the care) adversely affect the range of services, the quality of care, or the established priorities for care furnished to other veterans seeking care at such facility.".

(2) The table of sections at the beginning of chapter 17 is amended by inserting after the item relating to section 620B (as added by section 202 of this Act) the following new item:

"620C. Respite care; pilot program.".

(b) REPORT ON EXPERIENCE UNDER PILOT PROGRAM.—If the Administrator of Veterans' Affairs furnishes respite care under section 620C of title 38, United States Code (as added by subsection (a))—

(1) the Administrator shall conduct an evaluation of the health efficacy and cost-effectiveness of furnishing such care; and

(2) not later than February 1, 1990, shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report containing—

(A) the results of any such evaluation; and

(B) any plans for administrative action, and any recommendations for legislation, that the Administrator considers appropriate to include in the report.

SEC. 204. PILOT PROGRAM OF NONINSTITUTIONAL ALTERNATIVES TO INSTITUTIONAL CARE

(a) ESTABLISHMENT OF PILOT PROGRAM.—Subchapter II of chapter 17 is further amended by adding at the end the following new section:

"§ 620D. Noninstitutional alternatives to institutional care; pilot program

"(a)(1) The Administrator, during the period beginning January 1, 1987, and ending December 31, 1990, and subject to subsection (c) of this section, shall conduct a pilot program under which veterans eligible under this chapter for and otherwise in need of hospital, nursing home, or domiciliary care will be furnished medical, rehabilitative, and health-related services in noninstitutional settings at not less than five nor more than ten demonstration project sites.

"(2) In selecting veterans for participation in the program, the Administrator shall accord priority to veterans who have service-connected disabilities, to veterans who are 65 years of age or older, to veterans who are totally and permanently disabled, to veterans who, by reason of blindness in both eyes, have only light perception or are in need of regular aid and attendance, and to veterans who are suffering from Alzheimer's disease or other forms of dementia.

"(b)(1) In the conduct of the program, the Administrator shall (A) furnish appropriate health-related services solely through contracts with appropriate public and private agencies that provide such services, and (B) in the case of each veteran furnished services under the program, appoint a Veterans' Administration health-care employee to furnish case management services (as defined in section 620B(a)(1) of this title).

"(2) In order to evaluate the cost-effectiveness of utilizing certain health services of agencies other than the Veterans' Administration in cases in which no Veterans' Administration facility in the vicinity of a demonstration project provides such services, the Administrator, in not more than two of the demonstration projects, may utilize appropriate health services of appropriate public and private agencies that furnish such services.

"(3) The Administrator may provide in-kind assistance (through the services of Veterans' Administration employees and the sharing of other Veterans' Administration resources) to a facility furnishing services to veterans under paragraph (1)(A) of this subsection. Any such in-kind assistance shall be provided under a contract between the Veterans' Administration and the facility concerned. The Administrator may provide such

assistance only for use solely in the furnishing of appropriate services under this section and only if, under such contract, the Veterans' Administration receives reimbursement for the full cost of such assistance, including the cost of services and supplies and normal depreciation and amortization of equipment. Such reimbursement may be made by reduction in the charges to the United States or by payment to the United States. Any funds received through such reimbursement shall be credited to funds allotted to the Veterans' Administration facility that provided the assistance.

"(c) The total cost of conducting the pilot program under this section shall not exceed 60 percent of the cost that would have been incurred by the Veterans' Administration during the period of the pilot program if the veterans being furnished services under the pilot program had been furnished, instead, nursing home care under section 610 of this title. In any fiscal year, the cost of carrying out the pilot program shall not exceed 65 percent of the cost that would have been so incurred for such year under such section 610.

"(d) Not later than April 1, 1990, the Administrator shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report setting forth the Administrator's evaluation, findings, and conclusions regarding the pilot program, and its results for the participating veterans, during its first 36 months. The report shall include a description of the conduct of the program (including a description of the veterans furnished services and of the services furnished under the pilot program), and any plans for administrative action, and any recommendations for legislation, that the Administrator considers appropriate to include in the report.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 17 is amended by inserting after the item relating to section 620C (as added by section 203 of this Act) the following new item:

"620D. Noninstitutional alternatives to institutional care; pilot program.".

SEC. 205. SERVICES TO OVERCOME SERVICE-CONNECTED DISABILITY AFFECTING PROCREATION

(a) IN GENERAL.—Clause (A) of section 601(6) is amended to read as follows:

"(A)(i) surgical services, (ii) (in the case of a veteran who applies for such services prior to October 1, 1989) services to achieve pregnancy in a veteran or a veteran's spouse where such services are necessary because of a service-connected disability which causes the veteran's inability to procreate, (iii) dental services and appliances as described in sections 610 and 612 of this title, (iv) optometric and podiatric services, (v) (in the case of a person otherwise receiving care or services under this chapter) preventive health-care services as defined in section 662 of this title, (vi) (except under the conditions described in section 612(f)(1)(A)(i) of this title) wheelchairs, artificial limbs, trusses, and similar appliances, special clothing made necessary by the wearing of prosthetic appliances, and such other supplies or services as the Administrator determines to be reasonable and necessary, and (vii) travel and incidental expenses pursuant to the provisions of section 111 of this title; and".

(b) REPORT.—Not later than February 1, 1989, the Administrator of Veterans' Affairs shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report setting forth the experience under the authority in section 601(6)(A)(ii) of title 38, United States Code (as added by subsection (a)) prior to October 1, 1988, and any plans for administrative action, and any recommendations for legislation, that the Administrator considers appropriate to include in the report.

SEC. 206. CONTINUATION OF CERTAIN COUNSELING SERVICES FOR A DECEASED VETERAN'S FAMILY MEMBERS

Clause (B) of section 601(6) is amended to read as follows:

"(B)(i) such consultation, professional counseling, training, and mental health services as are necessary in connection with the treatment—

"(I) of the service-connected disability of a veteran pursuant to section 612(a) of this title, and

"(II) in the discretion of the Administrator, of the non-service-connected disability of a veteran eligible for treatment under section 612(f)(1)(A)(ii) of this title where such services were initiated during the veteran's hospitalization and the provision of such services on an outpatient basis is essential to permit the discharge of the veteran from the hospital,

for the members of the immediate family or legal guardian of a veteran, or the individual in whose household such veteran certifies an intention to live, as may be essential to the effective treatment and rehabilitation of the veteran (including, under the terms and conditions set forth in section 111 of this title, travel and incidental expenses of such family member or individual in the case of a veteran who is receiving care for a service-connected disability, or in the case of a dependent or survivor of a veteran receiving care under the last sentence of section 613(b) of this title); and

"(ii) in the case of an individual who was a recipient of services under subclause (i) of this clause at the time of (I) the unexpected death of the veteran, or (II) the death of the veteran while the veteran was participating in a hospice program conducted by the Administrator, such counseling services, for a period of not to exceed 6 months, as the Administrator determines to be reasonable and necessary to assist such individual with the emotional and psychological stress accompanying the veteran's death.

For the purposes of this paragraph, a dependent or survivor of a veteran receiving care under the last sentence of section 613(b) of this title shall be eligible for the same medical services as a veteran.".

SEC. 207. ELIGIBILITY FOR DOMICILIARY CARE

(a) IN GENERAL.—Subsection (b) of section 610 is amended to read as follows:

"(b) The Administrator, through Veterans' Administration facilities, may furnish such domiciliary care as the Administrator determines is needed by a veteran for the purpose of receiving treatment or rehabilitation if the Administrator finds, pursuant to regulations which the Administrator shall prescribe, that the veteran—

(1) has a service-connected disability, or

(2) is incapacitated from earning a living and has no adequate means of support.".

(b) CONFORMING AMENDMENT.—Section 622(g) is amended by striking out "sections 610(b)(2) and" and inserting in lieu thereof "section".

SEC. 208. CONTRACTS AND GRANTS FOR MEDICAL CARE FOR UNITED STATES VETERANS IN THE REPUBLIC OF THE PHILIPPINES

(a) EXTENSIONS OF AUTHORITIES; IMPROVEMENT OF GRANT AUTHORITY.—Section 632 is amended—

(1) in subsection (a), by striking out "September 30, 1986" and inserting in lieu thereof "September 30, 1989"; and

(2) in subsection (b)—

(A) in paragraph (1), by striking out "September 30, 1986" and inserting in lieu thereof "September 30, 1989"; and

(B) by adding at the end the following new paragraph:

"(4)(A) Grants under this subsection for any fiscal year shall be made on a biannual basis, with no more than one-half of the amount of the grant being paid during the first half of such fiscal year and with no more than one-half of such amount being paid during the second half of such fiscal year.

"(B) No payment of such a grant may be made unless the Administrator has first submitted to the appropriate committees of the Congress a report setting forth the amount of the preceding biannual payment and a detailed accounting showing the uses made of such payment by the Veterans Memorial Medical Center.".

(b) EFFECTIVE DATES OF GRANT-AUTHORITY IMPROVEMENTS.—(1) Subparagraph (A) of paragraph (4) of section 632(b) of title 38, United States Code, as added by subsection (a)(2)(B), shall take effect on October 1, 1986.

(2) Subparagraph (B) of such paragraph, as so added, shall take effect on April 1, 1987.

SEC. 209. MEDICAID TREATMENT OF PER DIEM PAYMENTS TO STATE VETERANS' HOMES

Section 641 is amended by adding at the end thereof the following new subsection:

"(d) Payments made to States pursuant to this section—

"(1) shall not be considered to be a third-party liability for any purpose under section 1902(a)(25) of title XIX of the Social Security Act (42 U.S.C. 1396a(25)); and

"(2) shall, for purposes of determining under title XIX of the Social Security Act the reasonable costs of services provided by a State home, not be deducted directly or indirectly from the operating or other costs of such State home.".

SEC. 210. VIETNAM-ERA VETERANS READJUSTMENT COUNSELING PROGRAM

(a) EXTENSION OF PROGRAM TRANSITION.—Section 612A(g) is amended—

(1) in paragraph (1)—

(A) by striking out "twelve-month" and inserting in lieu thereof "24-month";

(B) by striking out "September 30, 1988" and inserting in lieu thereof "September 30, 1989"; and

(C) in clause (A), by striking out "orderly transition by October 1, 1988" and inserting in lieu thereof "orderly and gradual transition by October 1, 1989";

(2) in paragraph (2)—

(A) in subparagraph (A), by inserting "(or, if the study is not completed, whatever information from it is then available)" after "1983";

(B) in subparagraph (B)—

(i) by striking out "and" at the end of clause (i);

(ii) by striking out the period at the end of clause (ii) and inserting in lieu thereof a semicolon and "and"; and

(iii) by adding at the end, the following new clause:

"(iii) the Administrator's analysis and findings as to whether or not veterans who served on active duty during World War II or the Korean conflict (with particular emphasis on those who served in combat) could benefit from services provided under this

section and, if so, the Administrator's recommendations on the most desirable means by which such services could be furnished.";

(3) in paragraph (3), by adding at the end the following new sentence: "Such report shall be prepared taking into consideration the results of the study required by section 102 of the Veterans' Health Care Amendments of 1983 (or, if the study is not completed, whatever information from it is then available)."; and

(4) by adding at the end the following new paragraph:

"(4) Not later than February 1, 1989, the Administrator shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the Administrator's evaluation of the experience under as much of the transition as was carried out pursuant to paragraph (1) of this subsection prior to September 30, 1988, and, based on that evaluation, the results of the study required by section 102 of the Veterans' Health Care Amendments of 1983 (or, if the study is not completed, whatever information from it is then available), and other pertinent information regarding the readjustment counseling program, the Administrator's opinion as to the extent to which the provision of readjustment counseling services under this section in a program providing such services through facilities situated apart from Veterans' Administration healthcare facilities is needed to meet the readjustment needs of veterans who served on active duty during the Vietnam era.".

(b) STUDY OF VIETNAM-ERA VETERANS' PSYCHOLOGICAL PROBLEMS.—Section 102 of the Veterans' Health Care Amendments of 1983 (Public Law 98-160; 97 Stat. 994) is amended—

(1) in subsection (b) by striking out "October 1, 1986" and inserting in lieu thereof "October 1, 1987"; and

(2) by adding at the end the following new subsection:

"(d) In order to promote the participation in the study required by subsection (a) of a number of study subjects sufficient to yield scientifically valid results from such study, the Administrator shall pay an appropriate stipend to each individual participating in the study as a subject. In determining the amount of such stipend, the Administrator shall take into account (1) the amount of time that the individual is expected to devote to participation in the study, (2) the extent to which the individual's normal routine is disrupted as a result of such participation, (3) any travel by the individual in connection with such participation, and (4) such other factors as the Administrator considers appropriate.".

PART B—HEALTH-CARE ADMINISTRATION

SEC. 211. ENFORCEMENT OF STATE AND LOCAL TRAFFIC LAWS BY VETERANS' ADMINISTRATION POLICE OFFICERS

Paragraph (1) of section 218(b) is amended to read as follows:

"(1) Veterans' Administration employees who are Veterans' Administration police officers shall enforce, with respect to acts occurring on Veterans' Administration property—

"(A) Federal laws;

"(B) the rules prescribed under subsection (a)(2)(A) of this section; and

"(C) traffic and motor vehicle laws of a State or local government within the jurisdiction of which such Veterans' Administration property is located, pursuant to an express grant of authority under State or local law to enforce such laws, by issuing citations for violations thereof.

Subject to regulations prescribed under paragraph (2) of this subsection, a Veterans' Administration police officer may make an arrest on Veterans' Administration property for a violation of any Federal law or any such rule.".

SEC. 212. IONIZING RADIATION REGISTRY

(a) ESTABLISHMENT OF REGISTRY.—Not later than 180 days after the date of the enactment of this Act, the Administrator of Veterans' Affairs shall establish, and shall thereafter maintain, a special record to be known as the "Ionizing Radiation Registry" (hereafter in this section referred to as the "Registry").

(b) CONTENT OF REGISTRY.—The Registry shall include the following information:

(1) Subject to subsection (c), a list containing the name of each veteran who was exposed to ionizing radiation under the conditions described in section 610(e)(1)(B) of title 38, United States Code, and—

(A) who has applied for hospital or nursing home care from the Veterans' Administration under such title; or

(B) who has filed a claim for compensation under chapter 11 of such title on the basis of a disability which may be associated with the exposure to ionizing radiation; or

(C) who has died and is survived by a spouse, child, or parent who has filed a claim for dependency and indemnity compensation under chapter 13 of such title on the basis of the exposure of such veteran to ionizing radiation.

(2) Medical data relating to each veteran listed in the Registry under paragraph (1), including the veteran's medical history and health status recorded by the Veterans' Administration including the results of physical examinations by the Veterans' Administration, and a statement describing birth defects, if any, in the natural children of the veteran.

(3) Data on claims for the benefits referred to in paragraph (1), including decisions and determinations of the Veterans' Administration relating to such claims.

(4) An estimate of the dose of radiation to which each veteran listed in the Registry under paragraph (1) was exposed under the conditions described in section 610(e)(1)(B) of such title.

(c) NAMES NOT REQUIRED TO BE INCLUDED.—The Administrator is not required to include in the Registry the name of a veteran described in subsection (b)(1) if the request or claim referred to in subsection (b)(1) which relates to such veteran was filed before the date of the enactment of this Act and such veteran or the survivor filing the claim (in the case of a claim referred to in clause (C) of subsection (b)(1)) does not request the Veterans' Administration to include the veteran's name in the Registry.

(d) CONSOLIDATION OF EXISTING INFORMATION.—For the purpose of establishing and maintaining the Registry, the Administrator of Veterans' Affairs shall compile and consolidate relevant information maintained by the Department of Veterans' Benefits, the Department of Medicine and Surgery, and the Board of Veterans' Appeals of the Veterans' Administration, relevant information maintained by the Defense Nuclear Agency of the Department of Defense, and relevant information maintained by any other subdivision of the Veterans' Administration or the Department of Defense.

(e) DEPARTMENT OF DEFENSE INFORMATION.—The Secretary of Defense shall furnish the Administrator such information maintained by any agency of the Department of Defense as the Administrator considers necessary to establish and maintain the Registry.

(f) DEFINITION.—For the purpose of this section, the term "veteran" shall have the meaning provided in section 101(2) of title 38, United States Code, and shall also include a person who died in the active military, naval, or air service.

SEC. 213. AUTHORITY TO WAIVE LICENSURE AND INTERNSHIP REQUIREMENTS FOR RESEARCH PSYCHOLOGISTS

Clause (8) of section 4105(a) is amended by striking out "may" and all that follows through "and" at the end of such clause and inserting in lieu thereof the following:

"may, on a case-by-case basis—

"(A) waive the requirement of licensure or certification for a psychologist for a period not to exceed 2 years on the condition that such psychologist provide patient care only under the direct supervision of a psychologist who is so licensed or certified; and

"(B) waive the requirements of internship and of licensure or certification for a psychologist who is to be employed to conduct research and is to have no responsibility for furnishing direct patient-care services; and".

SEC. 214. REQUIREMENT FOR MEDICARE HOSPITALS TO PARTICIPATE IN VETERANS' ADMINISTRATION CONTRACT HEALTH-CARE PROGRAM

(a) IN GENERAL.—Section 1866(a)(1) of the Social Security Act (42 U.S.C. 1395cc(a)(1) is amended—

(1) by striking out "and" at the end of subparagraph (I);

(2) by striking out the period at the end of subparagraph (J) and inserting in lieu thereof a comma and "and"; and

(3) by inserting after subparagraph (J) the following new subparagraph:

"(K) in the case of hospitals which provide inpatient hospital services for which payment may be made under this title, to be a participating provider of medical care under section 603 of title 38, United States Code, in accordance with such admission practices, and such payment methodology and amounts, as are prescribed under joint regulations issued by the Secretary and by the Administrator of Veterans' Affairs in implementation of such section.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to inpatient hospital services provided pursuant to admissions to hospitals occurring on or after January 1, 1987.

(c) REPORT.—(1) The Secretary of Health and Human Services shall report to the Congress periodically on the number of hospitals that have terminated or failed to renew an agreement under section 1866 of the Social Security Act as a result of the additional conditions imposed under the amendments made by subsection (a).

(2) Not later than April 1, 1987, the Administrator of Veterans' Affairs shall report to the Committees on Veterans' Affairs of the Senate and the House of Representatives regarding implementation of this section and shall thereafter notify such committees in the event that any hospital terminates or fails to renew an agreement described in paragraph (1) for the reasons therein described.

SEC. 215. ORGANIZATION OF THE DEPARTMENT OF MEDICINE AND SURGERY

(a) OFFICE OF THE CHIEF MEDICAL DIRECTOR.—Section 4103(a) is amended—

(1) by inserting "persons, each of whom shall be qualified in the administration of health services" after "following";

(2) in clause (3)—

(A) by striking out "The" and inserting in lieu thereof "Two";

(B) by striking out "Director" the first place it appears and inserting in lieu thereof "Directors";

(C) by striking out "an assistant" and inserting in lieu thereof "assistants";

(D) by striking out "shall be a qualified doctor of medicine" and inserting in lieu thereof "both shall be persons with specified qualifications"; and

(E) by adding at the end the following new sentence: "Not more than one Associate Deputy Chief Medical Director may be a person who is a person with specified qualifications solely by reason of clause (ii) of the last sentence of this subsection.";

(3) in clause (4)—

(A) by striking out "shall be" the first place it appears and inserting in lieu thereof "all shall be persons with specified qualifications,";

(B) by striking out "qualified in the administration of health services who are not doctors of medicine, dental surgery, or dental medicines" and inserting in lieu thereof "who are persons with specified qualifications solely by reason of clause (ii) of the last sentence of this subsection"; and

(C) by striking out "qualified physician" and inserting in lieu thereof "person with specified qualifications";

(4) in clause (5)—

(A) by inserting a comma and "all of whom shall be persons with specified qualifications," after "Directors";

(B) by striking out the comma after "Administrator" and "Director", respectively; and

(C) by striking out the second sentence;

(5) in clause (6), by inserting "upon the recommendation of the Chief Medical Director" after "Administrator";

(6) in clause (7)—

(A) by inserting a comma and "each of whom shall be licensed in the appropriate service field" after "Optometric Service"; and

(B) by inserting "upon the recommendation of the Chief Medical Director" after "Administrator"; and

(7) by adding at the end the following new sentence:

"For the purpose of this subsection, the term 'person with specified qualifications' means (i) a person meeting the requirements set forth in clause (1), (2), (3), (5), (6), (7), or (8) of subsection (a) of section 4105 of this title, or (ii) a person who meets or has met the requirements set forth in clause (4) of such subsection.".

(b) TECHNICAL AMENDMENT.—Clause (3) of section 4103(b) is amended by inserting a comma after "reappointed" and after "extended", respectively, and by striking out the comma after "reappointment".

SEC. 216. AUTHORITY FOR PART-TIME AND TEMPORARY APPOINTMENTS

Section 4114(a) is amended—

(1) in paragraph (1)—

(A) in clause (A), by inserting after "dental auxiliaries" a comma and "certified or registered respiratory therapists, licensed physical therapists, licensed practical or vocational nurses"; and

(B) in clause (B), by inserting after "dental auxiliaries" a comma and "certified or registered respiratory therapists, licensed physical therapists, licensed practical or vocational nurses";

(2) in paragraph (2), by striking out "paragraph (1) of section 4104" and inserting in lieu thereof "paragraphs (1) and (3) of section 4104"; and

(3) in paragraph (3)—

(A) in subparagraph (A), by striking out "paragraph (1) of section 4104" and inserting in lieu thereof "paragraphs (1) and (3) of section 4104";

(B) in subparagraph (B), by inserting "and except as authorized in subparagraph (D) of this paragraph" after "programs"; and

(C) by adding at the end the following new subparagraph:

"(D) During any period during which the Administrator is exercising the authority of only section 4106 (a) and (g)(1) of this title for the appointment of personnel in the category of certified or registered respiratory therapists, licensed physical therapists, or licensed practical or vocational nurses—

"(i) the Administrator may make temporary full-time appointments of personnel in such category for periods exceeding 90 days if the Chief Medical Director finds that circumstances render it impractical to obtain the necessary services through appointments under paragraph (3) of section 4104 of this title; and

"(ii) part-time appointments of personnel in such category may be for periods of more than 1 year.".

SEC. 217. REPORT ON A NATIONAL DRUG FILE

Not later than 90 days after the date of the enactment of this Act, the Administrator of Veterans' Affairs shall transmit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the plans of the Department of Medicine and Surgery for the development, establishment, and administration of a national drug file, including an agency-wide reclassification and inventory system for all drugs utilized by the Veterans' Administration. The report shall also include—

(1) any timetable for the establishment of such a drug file;

(2) an estimate (and the underlying criteria therefor) of the number of employees, all computer equipment (including any additional computer equipment), and total expenditures necessary to develop, establish, and administer such a drug file; and

(3) any other matters the Administrator considers appropriate to include in the report.

PART C—MEDICAL FACILITY CONSTRUCTION AND PLANNING

SEC. 221. PARKING FACILITIES

(a) REVISION OF AUTHORITIES.—(1) Section 5009 of title 38, United States Code, is amended to read as follows:

"§ 5009. Parking facilities

"(a) For the purpose of this section—

"(1) the term 'garage' means a structure (or part of a structure) in which vehicles may be parked;

"(2) the term 'parking facility' includes a surface parking lot and a garage; and

"(3) the term 'eligible person' means an individual to whom the Administrator is authorized to furnish medical examination or treatment.

"(b) In order to accommodate the vehicles of employees of medical facilities, vehicles used to transport veterans to or from such facilities for the purpose of examination or treatment, and the vehicles of visitors and other individuals having business at such facilities, the Administrator—

"(1) may construct or alter parking facilities, and may acquire, by purchase, lease, condemnation, donation, exchange, or otherwise, such land or interests in land as the Administrator considers necessary for use as the site for any such construction or alteration;

"(2) may acquire, by purchase, lease, condemnation, donation, exchange, or otherwise, any facility that the Administrator considers necessary for use as a parking facility; and

"(3) may operate and maintain parking facilities.

"(c)(1) Except as provided in paragraph (2) of this subsection, each employee, visitor, and other individual having business at a medical facility for which parking fees have been established under subsection (d) or (e) of this section shall be charged the applicable parking fee for the use of a parking facility at such medical facility.

"(2) A parking fee shall not be charged under this subsection for the accommodation of any vehicle used to transport to or from a medical facility (A) a veteran or eligible person in connection with such veteran or eligible person seeking examination or treatment, or (B) a volunteer worker (as determined in accordance with regulations which the Administrator shall prescribe) in connection with such worker performing services for the benefit of veterans receiving care at a medical facility.

"(3) The Administrator shall collect (or provide for the collection of) parking fees charged under this subsection.

"(d)(1) For each medical facility where—

"(A) a garage constructed or acquired by the Veterans' Administration at a cost exceeding $500,000 (or, in the case of acquisition by lease, $100,000 per year), is first opened for use after September 30, 1986; or

"(B) a project for the alteration of a garage at a cost exceeding $500,000 is completed after September 30, 1986,

the Administrator shall prescribe a schedule of parking fees to be charged at all parking facilities used in connection with such medical facility.

"(2) The parking fee schedule prescribed for a medical facility referred to in paragraph (1) of this subsection shall be designed to establish fees which the Administrator determines are reasonable under the circumstances and, at a minimum, will provide revenue sufficient to recover the costs of operating and maintaining all parking facilities at such medical facility.

"(e) The Administrator may prescribe a schedule of parking fees for the parking facilities at any medical facility not referred to in subsection (d) of this section. Any such schedule shall be designed to establish fees which the Administrator determines to be reasonable under the circumstances and shall cover all parking facilities used in connection with such medical facility. The Administrator may consider the costs of operating and maintaining such parking facilities in prescribing any such fee schedule.

"(f) The Administrator may contract, by lease or otherwise, with persons, firms, or corporations for the operation of parking facilities at medical facilities under such terms and conditions as the Administrator shall prescribe and may do so without regard to laws requiring full and open competition.

"(g) Subject to subsections (h) and (i) of this section, there are authorized to be appropriated such amounts as are necessary to finance (in whole or in part)—

"(1) the construction, alteration, and acquisition (including site acquisition) of parking facilities at medical facilities; and

"(2) the operation and maintenance of parking facilities at medical facilities.

"(h)(1) Amounts appropriated pursuant to subsection (g) of this section and parking fees collected under subsection (c) of this section shall be administered as a revolving fund and shall be available without fiscal year limitation.

"(2)(A) Except as provided in subparagraph (B) of this paragraph, the revolving fund shall be deposited in a checking account with the Treasurer of the United States.

"(B) The Administrator may deposit in depositories selected by the Administrator such amounts as the Administrator determines necessary to establish and maintain accounts for the purposes of the operation and maintenance of parking facilities.

"(3)(A) Except as provided in subparagraph (B) of this paragraph, no funds other than funds from the revolving fund may be expended for the construction, alteration, or acquisition (including site acquisition) of a garage at a medical facility after September 30, 1986.

"(B) Subparagraph (A) of this paragraph does not apply to the use of funds for investigations and studies, surveys, designs, plans, working drawings, specifications, and similar actions not directly involved in the physical construction of a structure.

"(i)(1) The expenditure of funds from the revolving fund may be made only for the construction, alteration, acquisition (including site acquisition), operation, and maintenance of parking facilities at medical facilities and may be made only as provided for in appropriation Acts.

"(2) For the purpose of section 5004(a)(2) of this title, a bill, resolution, or amendment which provides that funds in the revolving fund (including any funds proposed in such bill, resolution, or amendment to be appropriated to the revolving fund) may be expended for a project involving a total expenditure of more than $2,000,000 for the construction, alteration, or acquisition (including site acquisition) of a parking facility or facilities at a medical facility shall be considered to be a bill, resolution, or amendment making an appropriation which may be expended for a major medical facility project.

"(j) Nothing in this section shall preclude funds appropriated to the Veterans' Administration medical care account from being used for the operation and maintenance of parking facilities at medical facilities.".

(2) The table of sections at the beginning of chapter 81 of such title is amended by striking out the item relating to section 5009 and inserting in lieu thereof the following:

"5009. Parking facilities.".

(b) EFFECTIVE DATES.—(1) Except as provided in paragraph (2), the amendments made by this section shall take effect on the date of the enactment of this Act.

(2)(A)(i) The amendments made by this section shall not abrogate the provisions of a collective bargaining agreement which, on the date of the enactment of this Act, is in effect and includes a provision which specifies a termination date for such agreement.

(ii) In the case of a collective bargaining agreement which on such date of enactment is in effect but has no provision which specifies a termination date, the authorities and requirements in section 5009 of title 38, United States Code, as amended by subsection (a)(1) of this section, to establish and collect parking fees shall take effect on January 1, 1988.

(iii) After the date of the enactment of this Act, if a collective bargaining agreement described in division (i) is modified, extended, or renewed, division (i) shall no longer, as of the date of the modification, extension, or renewal, apply to such agreement.

(B) Subsection (h)(3) of section 5009 of title 38, United States Code, as such section is amended by subsection (a)(1) of this section, shall not apply to the expenditure of funds appropriated for a fiscal year prior to fiscal year 1987 for the construction, alteration, or acquisition (including site acquisition) of a parking facility at a Veterans' Administration medical facility.

SEC. 222. CONSIDERATION OF SHARING DEPARTMENT OF DEFENSE FACILITIES

Section 5004(b)(1) is amended by inserting "and to the sharing of health-care resources with the Department of Defense under section 5011 of this title" after "purchase".

SEC. 223. STATE HOME GRANTS

(a) DELETION OF AUTHORITY FOR GRANTS FOR THE EXPANSION OF STATE HOME HOSPITAL FACILITIES.—(1) Section 5031(c) is amended to read as follows:

"(c) The term 'construction' means—

"(1) the construction of new domiciliary or nursing home buildings;

"(2) the expansion of existing buildings for the provision of domiciliary or nursing home care in State homes;

"(3) the remodeling or alteration of existing buildings for the provision of domiciliary, nursing home, or hospital care in State homes; and

"(4) the provision of initial equipment for any such buildings.".

(2) Section 5032 is amended to read as follows:

"§ 5032. Declaration of purpose

"The purpose of this subchapter is to assist the several States (1) to construct State home facilities (or to acquire facilities to be used as State home facilities) for furnishing domiciliary or nursing home care to veterans, (2) to expand existing buildings for furnishing domiciliary or nursing home care to veterans in State homes, and (3) to remodel or alter existing buildings for furnishing domiciliary, nursing home, or hospital care to veterans in State homes.".

(b) EXTENSION OF AUTHORIZATION OF APPROPRIATIONS.—Section 5033 is amended by striking out "five" and inserting in lieu thereof "8".

(c) ESTABLISHMENT OF PRIORITY OF PROJECTS.—(1)(A) Subchapter III of chapter 81 is amended by adding at the end the following new section:

"§ 5038. Priority of projects

"(a) Sums available for grants under this subchapter shall be allocated among State home facilities construction projects in accordance with the priority established for such projects pursuant to subsection (b) of this section.

"(b) The Administrator shall prescribe regulations to establish criteria and procedures for determining the priority to be accorded to State home facilities construction projects with respect to which applications have been approved under section 5035 of this title.".

(B) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 5037 the following new item:

"5038. Priority of projects.".

(2)(A) The Administrator of Veterans' Affairs shall develop the regulations required by section 5038(b) of title 38, United States Code (as added by paragraph (1)), and any amendments to those regulations, through a public review and comment process in accordance with the provisions of section 553 of title 5, United States Code. The period for public review and comment shall be completed not later than 60 days after the proposed regulations or proposed amendments are published in the Federal Register in accordance with subparagraph (B).

(B) Not later than 180 days after the date of the enactment of this Act, the Administrator shall develop and publish in the Federal Register a proposed version of the regulations required to be prescribed by such section 5038(b).

(C) Not later than 270 days after the date of the enactment of this Act, the Administrator shall publish in the Federal Register the final regulations required to be prescribed by such section 5038(b).

(3)(A) Except as provided in subparagraph (B), the amendments made by paragraphs (1) and (2) shall take effect with respect to applications submitted to the Administrator of Veterans' Affairs under section 5035 of title 38, United States Code, on or after October 1, 1986.

(B) The amendments made by paragraphs (1) and (2) shall not apply with respect to an application referred to in subparagraph (A) if, before October 1, 1986, the applicant furnished any preliminary information to the Veterans' Administration relating to such application in accordance with procedures established by the Veterans' Administration and then in effect in connection with the administration of subchapter III of chapter 81 of title 38, United States Code.

TITLE III—MISCELLANEOUS PROVISIONS

SEC. 301. MODIFICATIONS OF CERTAIN REPORTING REQUIREMENTS

(a) REPEAL OF ANNUAL REPORTS ON EQUITABLE RELIEF.—Section 210(c)(3) is amended by striking out "(A)" and clause (B).

(b) CONDITIONAL ELIMINATION OF REQUIREMENT FOR REPORT ON CONTRACT DENTAL CARE.—Paragraph (4) of section 612(b) is amended—

(1) by striking out "In" after "(4)" and inserting in lieu thereof "(A) Except as provided in subparagraph (B) of this paragraph, in"; and

(2) by adding at the end the following new subparagraph:

"(B) No report under subparagraph (A) of this paragraph with respect to a fiscal year is required if, in the documents submitted by the Administrator to the Congress in justification for the amounts included for Veterans' Administration programs in the President's Budget, the Administrator specifies with respect to contract dental care described in such subparagraph—

"(i) the actual level of expenditures for such care in the fiscal year preceding the fiscal year in which such Budget is submitted;

"(ii) a current estimate of the level of expenditures for such care in the fiscal year in which such Budget is submitted; and

"(iii) the amount included in such Budget for such care.".

(c) EXTENSION OF PERIOD FOR REPORT ON SPECIAL PAY FOR PHYSICIANS AND DENTISTS.—Section 4118(g)(2)(C) is amended by striking out "once every two years" and inserting in lieu thereof "December 31, 1984, and once every 3 years".

(d) REPEAL OF REQUIREMENT FOR REPORT ON EXCHANGE OF MEDICAL INFORMATION PRO-

GRAM.—(1) Section 5053 is amended by adding at the end the following new subsection:

"(e) The Administrator shall submit to the Congress not more than 60 days after the end of each fiscal year a report on the activities carried out under this section. Each report shall include (1) an appraisal on the effectiveness of the activities authorized in this section and the degree of cooperation from other sources, financial and otherwise, and (2) recommendations for the improvement or more effective administration of such activities.".

(2) Section 5057 is repealed.

(3) The table of sections at the beginning of chapter 81 is amended by striking out the item relating to section 5057.

SEC. 302. CONTRACT AUTHORITIES SUBJECT TO APPROPRIATIONS

All authorities provided in this Act to enter into contracts are effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts.

Amend the title so as to read: "An Act to amend title 38, United States Code, to increase the rates of disability compensation for disabled veterans and the rates of dependency and indemnity compensation for surviving spouses and children of veterans; to improve the Veterans' Administration home loan guaranty program; to revise the authority of the Veterans' Administration to construct and operate parking facilities at its medical facilities; to provide the Veterans' Administration with authority to contract for psychiatric residential treatment for certain chronically mentally ill veterans, to conduct pilot programs to provide respite care for certain veterans, and to contract for health-related services for certain veterans; to extend certain expiring authorities; to require the Veterans' Administration to establish an Ionizing Radiation Registry; and for other purposes.".

House amendments to Senate Amendments to H.R. 5299:

In lieu of the matter proposed to be inserted by the Senate amendment to the text of the bill, insert the following:

SECTION 1. SHORT TITLE; REFERENCES TO TITLE 38, UNITED STATES CODE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Veterans' Benefits Improvement and Health-Care Authorization Act of 1986".

(b) REFERENCES TO TITLE 38.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

(c) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

TABLE OF CONTENTS

Sec. 1. Short title; references to title 38, United States Code; table of contents.

TITLE I—COMPENSATION INCREASES AND OTHER COMPENSATION MATTERS

Sec. 101. Disability compensation.
Sec. 102. Additional compensation for dependents.
Sec. 103. Clothing allowance for certain disabled veterans.
Sec. 104. Dependency and indemnity compensation for surviving spouses.
Sec. 105. Dependency and indemnity compensation for children.
Sec. 106. Supplemental dependency and indemnity compensation for children.
Sec. 107. Effective date for rate increases.
Sec. 108. Improved benefits for former prisoners of war.
Sec. 109. Special consideration for loss of paired organs or extremities.

TITLE II—HEALTH CARE AND MEDICAL FACILITIES

Part A—Health-Care Programs

Sec. 201. Respite care.
Sec. 202. Home health services.
Sec. 203. Continuation of certain counseling services for a deceased veteran's family members.
Sec. 204. Transition period for readjustment counseling centers.
Sec. 205. Therapeutic and rehabilitative activities.
Sec. 206. Contracts and grants for medical care for United States veterans in the Republic of the Philippines.

Part B—Health-Care Administration

Sec. 211. Enforcement of State and local traffic laws by Veterans' Administration police officers.
Sec. 212. Regional medical education centers.
Sec. 213. Period of obligated service under scholarship program.
Sec. 214. Period of appointment of certain temporary and part-time health-care personnel.
Sec. 215. Report on a national drug file.
Sec. 216. Stipend for participation in study of Vietnam-era veterans' psychological problems.

Part C—Facility Construction and Planning

Sec. 221. Consideration of sharing Department of Defense facilities.
Sec. 222. Annual report on facilities construction.
Sec. 223. Parking facilities.
Sec. 224. Revision of State home construction grant program.

Part D—Miscellaneous

Sec. 231. Modification of certain reporting requirements.
Sec. 232. Ionizing Radiation Registry.
Sec. 233. Requirement for Medicare hospitals to participate in Veterans' Administration contract health-care program.
Sec. 234. Prohibition against excessing of certain Veterans' Administration properties.
Sec. 235. Report on treatment and services for chronically mentally ill veterans.
Sec. 236. Designation of Veterans' Administration Medical Center in Phoenix, Arizona.
Sec. 237. Technical amendments.

TITLE III—EDUCATION AND EMPLOYMENT

Part A—Education

Sec. 301. Apprenticeship or other on-job training under the New GI Bill.
Sec. 302. Educational assistance for correspondence courses under the New GI Bill.
Sec. 303. Provisions relating to reduction of pay in the New GI Bill.
Sec. 304. Advisory committee amendments.
Sec. 305. Certification under New GI Bill.
Sec. 306. Bar to duplication of benefits.
Sec. 307. Adjustment of delimiting period for individuals entitled to certain combined benefits.
Sec. 308. Work-study allowance under the New GI Bill and the post-Vietnam era veterans' educational assistance program.
Sec. 309. Termination of enrollments in post-Vietnam era veterans' educational assistance program.
Sec. 310. On-job training under post-Vietnam era veterans' educational assistance program.
Sec. 311. Duration of and limitations on entitlement to post-Vietnam era veterans' educational assistance.
Sec. 312. Educational and vocational counseling.
Sec. 313. Delimiting period under the survivors' and dependents' educational assistance program.
Sec. 314. Elimination of the requirement for an education plan for survivors and dependents.
Sec. 315. Measurement of certain noncollege degree courses.
Sec. 316. Payment of educational assistance for certain less-than-half-time training.
Sec. 317. Prohibition on benefits under more than one educational assistance program.
Sec. 318. Reporting requirements for educational institutions.
Sec. 319. Prohibition of a term-by-term certification requirement.
Sec. 320. Commission to assess veterans' education policy.
Sec. 321. Technical and clerical amendments.

Part B—Employment and Other Programs

Sec. 331. Employment rights of certain individuals.
Sec. 332. Veterans' readjustment appointments.
Sec. 333. Extension of program of independent living services and assistance.

TITLE IV—HOUSING PROGRAMS AND NATIONAL CEMETERIES

Part A—Housing

Sec. 401. Specially adapted housing.
Sec. 402. Credit underwriting and loan processing standards.
Sec. 403. Foreclosure information.
Sec. 404. Competitive contracting requirements.
Sec. 405. Authority to transfer funds.
Sec. 406. Use of attorneys in home loan foreclosures.
Sec. 407. Appraisals.
Sec. 408. Furnishing information to real estate professionals to facilitate the disposition of properties.
Sec. 409. Home loan origination fee.

Part B—National Cemeteries

Sec. 411. National cemetery grave markers.
Sec. 412. Reports on the National Cemetery System.
Sec. 413. Memorial areas in Arlington National Cemetery.
Sec. 414. Authority to establish national cemeteries.

TITLE V—ADMINISTRATIVE PROVISIONS

Sec. 501. Clarification of requirement for a detailed plan and justification for administrative reorganization.
Sec. 502. Collocation of regional offices and medical centers.

Sec. 503. Effective date of discontinuance of certain benefits paid to incompetent individuals.
Sec. 504. Administrative debt collection by offset of benefits.
Sec. 505. Disclosure of financial information by fiduciaries.

TITLE VI—EXEMPTION OF CERTAIN PROGRAMS FROM BUDGET REDUCTION

Sec. 601. Treatment of certain veterans' programs under Balanced Budget and Emergency Deficit Control Act of 1985.

TITLE VII—MISCELLANEOUS

Sec. 701. Elimination of gender-based language distinctions in title 38.
Sec. 702. General technical amendments.
Sec. 703. Technical amendments to provisions enacted by Veterans' Benefits Improvement Act of 1984.

TITLE I—COMPENSATION INCREASES AND OTHER COMPENSATION MATTERS

SEC. 101. DISABILITY COMPENSATION.

(a) IN GENERAL.—Section 314 is amended—

(1) by striking out "$68" in subsection (a) and inserting in lieu thereof "$69";

(2) by striking out "$126" in subsection (b) and inserting in lieu thereof "$128";

(3) by striking out "$191" in subsection (c) and inserting in lieu thereof "$194";

(4) by striking out "$274" in subsection (d) and inserting in lieu thereof "$278";

(5) by striking out "$388" in subsection (e) and inserting in lieu thereof "$394";

(6) by striking out "$489" in subsection (f) and inserting in lieu thereof "$496";

(7) by striking out "$617" in subsection (g) and inserting in lieu thereof "$626";

(8) by striking out "$713" in subsection (h) and inserting in lieu thereof "$724";

(9) by striking out "$803" in subsection (i) and inserting in lieu thereof "$815";

(10) by striking out "$1,335" in subsection (j) and inserting in lieu thereof "$1,355";

(11) by striking out "$62", "$1,659", and "$2,325" in subsection (k) and inserting in lieu thereof "$63", "$1,684", and "$2,360", respectively;

(12) by striking out "$1,659" in subsection (l) and inserting in lieu thereof "$1,684";

(13) by striking out "$1,829" in subsection (m) and inserting in lieu thereof "$1,856";

(14) by striking out "$2,080" in subsection (n) and inserting in lieu thereof "$2,111";

(15) by striking out "$2,325" each place it appears in subsections (o) and (p) and inserting in lieu thereof "$2,360";

(16) by striking out "$998" and "$1,487" in subsection (r) and inserting in lieu thereof "$1,013" and "$1,509", respectively; and

(17) by striking out "$1,494" in subsection (s) and inserting in lieu thereof "$1,516".

(b) SPECIAL RULE.—The Administrator of Veterans' Affairs may adjust administratively, consistent with the increases authorized by this section, the rates of disability compensation payable to persons within the purview of section 10 of Public Law 85-857 who are not in receipt of compensation payable pursuant to chapter 11 of title 38, United States Code.

SEC. 102. ADDITIONAL COMPENSATION FOR DEPENDENTS.

Section 315(1) is amended—

(1) by striking out "$81" in clause (A) and inserting in lieu thereof "$82";

(2) by striking out "$136" and "$43" in clause (B) and inserting in lieu thereof "$138" and "$44", respectively;

(3) by striking out "$56" and "$43" in clause (C) and inserting in lieu thereof "$57" and "$44", respectively;

(4) by striking out "$66" in clause (D) and inserting in lieu thereof "$67";

(5) by striking out "$147" in clause (E) and inserting in lieu thereof "$149"; and

(6) by striking out "$124" in clause (F) and inserting in lieu thereof "$126".

SEC. 103. CLOTHING ALLOWANCE FOR CERTAIN DISABLED VETERANS.

Section 362 is amended by striking out "$360" and inserting in lieu thereof "$365".

SEC. 104. DEPENDENCY AND INDEMNITY COMPENSATION FOR SURVIVING SPOUSES.

Section 411 is amended—

(1) by striking out the table in subsection (a) and inserting in lieu thereof the following:

"Pay grade	Monthly rate
E-1	$498
E-2	513
E-3	526
E-4	560
E-5	574
E-6	587
E-7	616
E-8	650
E-9	[1] 679
W-1	630
W-2	655
W-3	674
W-4	714
O-1	630
O-2	650
O-3	696
O-4	736
O-5	811
O-6	$914
O-7	988
O-8	1,083
O-9	1,162
O-10	[2] 1,274

[1] If the veteran served as sergeant major of the Army, senior enlisted advisor of the Navy, chief master sergeant of the Air Force, sergeant major of the Marine Corps, or master chief petty officer of the Coast Guard, at the applicable time designated by section 402 of this title, the surviving spouse's rate shall be $733.

[2] If the veteran served as Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, or Commandant of the Coast Guard, at the applicable time designated by section 402 of this title, the surviving spouse's rate shall be $1,365.";

(2) by striking out "$57" in subsection (b) and inserting in lieu thereof "$58";

(3) by striking out "$147" in subsection (c) and inserting in lieu thereof "$149"; and

(4) by striking out "$72" in subsection (d) and inserting in lieu thereof "$73".

SEC. 105. DEPENDENCY AND INDEMNITY COMPENSATION FOR CHILDREN.

Section 413 is amended—

(1) by striking out "$247" in clause (1) and inserting in lieu thereof "$251";

(2) by striking out "$356" in clause (2) and inserting in lieu thereof "$361";

(3) by striking out "$460" in clause (3) and inserting in lieu thereof "$467"; and

(4) by striking out "$460" and "$93" in clause (4) and inserting in lieu thereof "$467" and "$94", respectively.

SEC. 106. SUPPLEMENTAL DEPENDENCY AND INDEMNITY COMPENSATION FOR CHILDREN.

Section 414 is amended—

(1) by striking out "$147" in subsection (a) and inserting in lieu thereof "$149";

(2) by striking out "$247" in subsection (b) and inserting in lieu thereof "$251"; and

(3) by striking out "$126" in subsection (c) and inserting in lieu thereof "$128".

SEC. 107. EFFECTIVE DATE FOR RATE INCREASES.

The amendments made by sections 101 through 106 shall take effect on December 1, 1986, except that such amendments shall not take effect unless benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 et seq.) are increased effective December 1, 1986, as a result of a determination under section 215(i) of such Act (42 U.S.C 415(i)).

SEC. 108. IMPROVED BENEFITS FOR FORMER PRISONERS OF WAR.

(a) PRESUMPTION OF SERVICE CONNECTION FOR CERTAIN DISABILITIES.—Section 312(b) is amended—

(1) by striking out "or" at the end of clause (9); and

(2) by inserting after clause (10) the following new clauses:

"(11) organic residuals of frostbite, if the Administrator determines that the veteran was interned in climatic conditions consistent with the occurrence of frostbite, or

"(12) post-traumatic osteoarthritis,".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect as of October 1, 1986.

SEC. 109. SPECIAL CONSIDERATION FOR LOSS OF PAIRED ORGANS OR EXTREMITIES.

(a) REVISION OF SECTION 360.—(1) Section 360 is amended to read as follows:

"§ 360. Special consideration for certain cases of loss of paired organs or extremities

"(a) Where a veteran has suffered—

"(1) blindness in one eye as a result of service-connected disability and blindness in the other eye as a result of non-service-connected disability not the result of the veteran's own willful misconduct;

"(2) the loss or loss of use of one kidney as a result of service-connected disability and involvement of the other kidney as a result of non-service-connected disability not the result of the veteran's own willful misconduct;

"(3) total deafness in one ear as a result of service-connected disability and total deafness in the other ear as the result of non-service-connected disability not the result of the veteran's own willful misconduct;

"(4) the loss or loss of use of one hand or one foot as a result of service-connected disability and the loss or loss of use of the other hand or foot as a result of non-service-connected disability not the result of the veteran's own willful misconduct; or

"(5) permanent service-connected disability of one lung, rated 50 percent or more disabling, in combination with a non-service-connected disability of the other lung that is not the result of the veteran's own willful misconduct,

the Administrator shall assign and pay to the veteran the applicable rate of compensation under this chapter as if the combination of disabilities were the result of service-connected disability.

"(b) If a veteran described in subsection (a) of this section receives any money or property of value pursuant to an award in a judicial proceeding based upon, or a settlement or compromise of, any cause of action for damages for the non-service-connected disability described in such subsection, the increase in the rate of compensation otherwise payable under this section shall not be paid for any month following a month in which any such money or property is received until such time as the total of the amount of such increase that would otherwise have been payable equals the total of the amount of any such money received and the fair market value of any such property received.".

(2) The item relating to such section in the table of sections at the beginning of chapter 11 is amended to read as follows:

"360. Special consideration for certain cases of loss of paired organs or extremities.".

(b) CONFORMING AMENDMENT.—Subsection (t) of section 314 is repealed.

(c) EFFECTIVE DATE.—(1) Except as provided in paragraph (2), the amendments made by this section shall take effect on the date of the enactment of this Act.

(2) In the case of an award of compensation for a disability described in clause (1), (2), (3), or (5) of subsection (a) of section 360 of title 38, United States Code, as amended by subsection (a) of this section, subsection (b) of such section shall apply only to awards of compensation made on or after the date of the enactment of this Act.

TITLE II—HEALTH CARE AND MEDICAL FACILITIES

PART A—HEALTH-CARE PROGRAMS

SEC. 201. RESPITE CARE.

(a) AUTHORITY FOR RESPITE CARE PROGRAM.—(1) Subchapter II of chapter 17 is amended by adding at the end the following new section:

"§ 620B. Respite Care

"(a) The Administrator may furnish respite care services to a veteran who is eligible to receive care under section 610 of this title.

"(b) For the purpose of this section, the term 'respite care' means hospital or nursing home care which—

"(1) is of limited duration;

"(2) is furnished in a Veterans' Administration facility on an intermittent basis to a veteran who is suffering from a chronic illness and who resides primarily at home; and

"(3) is furnished for the purpose of helping the veteran to continue residing primarily at home.

"(c) The authority provided by this section terminates on September 30, 1989.".

(2) The table of sections at the beginning of chapter 17 is amended by inserting after the item relating to section 620A the following new item:

"620B. Respite care.".

(b) REPORT.—If the Administrator of Veterans' Affairs furnishes respite care under section 620B of title 38, United States Code (as added by subsection (a))—

(1) the Administrator shall conduct an evaluation of the health efficacy and cost-effectiveness of furnishing such care; and

(2) not later than February 1, 1989, shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report containing—

(A) the results of such evaluation; and

(B) any plan for administrative action, and any recommendation for legislation, that the Administrator considers appropriate to include in the report.

SEC. 202. HOME HEALTH SERVICES.

Section 612 is amended—

(1) by striking out "As" in subsections (a)(2) and (f)(2) and inserting in lieu thereof "Subject to subsection (k) of this section, as"; and

(2) by adding at the end the following new subsection:

"(k) The Administrator may furnish home health services to a veteran in any setting in which the veteran is residing. The Administrator may not furnish such services in such a manner as to relieve any other person or entity of a contractual obligation to furnish services to the veteran. When home health services are furnished in a setting other than the veteran's home, such services may not include any structural improvement or alteration.".

SEC. 203. CONTINUATION OF CERTAIN COUNSELING SERVICES FOR A DECEASED VETERAN'S FAMILY MEMBERS.

Clause (B) of section 601(6) is amended to read as follows:

"(B)(i) such consultation, professional counseling, training, and mental health services as are necessary in connection with the treatment—

"(I) of the service-connected disability of a veteran pursuant to section 612(a) of this title, and

"(II) in the discretion of the Administrator, of the non-service-connected disability of a veteran eligible for treatment under section 612(f)(1)(A)(ii) of this title where such services were initiated during the veteran's hospitalization and the provision of such services on an outpatient basis is essential to permit the discharge of the veteran from the hospital,

for the members of the immediate family or legal guardian of a veteran, or the individual in whose household such veteran certifies an intention to live, as may be essential to the effective treatment and rehabilitation of the veteran (including, under the terms and conditions set forth in section 111 of this title, travel and incidental expenses of such family member or individual in the case of a veteran who is receiving care for a service-connected disability, or in the case of a dependent or survivor of a veteran receiving care under the last sentence of section 613(b) of this title); and

"(ii) in the case of an individual who was a recipient of services under subclause (i) of this clause at the time of—

"(I) the unexpected death of the veteran; or

"(II) the death of the veteran while the veteran was participating in a hospice program (or a similar program) conducted by the Administrator,

such counseling services, for a limited period, as the Administrator determines to be reasonable and necessary to assist such individual with the emotional and psychological stress accompanying the veteran's death.

For the purposes of this paragraph, a dependent or survivor of a veteran receiving care under the last sentence of section 613(b) of this title shall be eligible for the same medical services as a veteran.".

SEC. 204. TRANSITION PERIOD FOR READJUSTMENT COUNSELING CENTERS.

(a) EXTENSION OF TRANSITION PERIOD.—Paragraph (1) of section 612A(g) is amended—

(1) by striking out "the twelve-month period ending on September 30, 1988" and inserting in lieu thereof "the 24-month period ending on September 30, 1989"; and

(2) by striking out "orderly transition, by October 1, 1988" in clause (A) and inserting in lieu thereof "orderly, gradual transition by October 1, 1989".

(b) CONTENT OF REPORTS.—(1) Paragraph (2)(A) of such section is amended by inserting "(Public Law 98-160) (or, if the study is not then completed, whatever information from it is then available)" in the second sentence after "the Veterans' Health Care Amendments of 1983".

(2) Paragraph (3) of such section is amended by adding at the end the following new sentence: "Such report shall be prepared taking into consideration the results of the study referred to in paragraph (2)(A) of this subsection (or, if the study is not then completed, whatever information from it is then available).".

(c) REPORT ON TRANSITION.—Such section is further amended by adding at the end the following new paragraph:

"(4) Not later than February 1, 1989, the Administrator shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the experience under as much of the transition as was carried out pursuant to paragraph (1) of this subsection before September 30, 1988, including such recommendations for legislative and administrative action as the Administrator considers appropriate in light of such experience.".

SEC. 205. THERAPEUTIC AND REHABILITATIVE ACTIVITIES.

Section 618 is amended—

(1) in subsection (a)—

(A) by striking out "may utilize" and inserting in lieu thereof "may use";

(B) by striking out "purposes, at nominal remuneration, and such" and inserting in lieu thereof "purposes. Such"; and

(C) by striking out "utilization" and inserting in lieu thereof "use";

(2) in subsection (b)(1), by striking out "for remuneration";

(3) in subsection (c)—

(A) by striking out "pay" in paragraph (2) and inserting in lieu thereof "distribute"; and

(B) by striking out "and wage rates" in paragraph (3) and inserting in lieu thereof "rates of distribution"; and

(4) in subsection (f)—

(A) by inserting "(1)" after "(f)";

(B) by striking out "remuneration" and inserting in lieu thereof "a distribution"; and

(C) by adding at the end the following new paragraph:

"(2) A distribution of funds made under this section shall be considered for purposes of chapter 15 of this title to be a donation from a public or private relief or welfare organization.".

SEC. 206. CONTRACTS AND GRANTS FOR MEDICAL CARE FOR UNITED STATES VETERANS IN THE REPUBLIC OF THE PHILIPPINES.

(a) EXTENSIONS OF AUTHORITIES.—(1) Section 632 is amended by striking out "September 30, 1986" in subsections (a) and (b)(1) and inserting in lieu thereof "September 30, 1989".

(2) Any action by the Administrator of Veterans' Affairs in contracting under the provisions of section 632(a) of title 38, United States Code, with respect to the period beginning on October 1, 1986, and ending on the date of the enactment of this Act is hereby ratified.

(b) REPORTS ON USE OF FUNDS.—Not later than February 1, 1987, 1988, and 1989, the Administrator of Veterans' Affairs shall submit to Congress a report describing the use of funds provided to the Republic of the Philippines under section 632(b) of title 38, United States Code, during the preceding fiscal year.

PART B—HEALTH-CARE ADMINISTRATION

SEC. 211. ENFORCEMENT OF STATE AND LOCAL TRAFFIC LAWS BY VETERANS' ADMINISTRATION POLICE OFFICERS.

Paragraph (1) of section 218(b) is amended to read as follows:

"(1)(A) Veterans' Administration employees who are Veterans' Administration police officers shall, with respect to acts occurring on Veterans' Administration property, enforce—

"(i) Federal laws;

"(ii) the rules prescribed under subsection (a)(2)(A) of this section; and

"(iii) subject to subparagraph (B) of this paragraph, traffic and motor vehicle laws of a State or local government within the jurisdiction of which such Veterans' Administration property is located.

"(B) A law described in clause (iii) of subparagraph (A) of this paragraph may be enforced under such clause only as authorized by an express grant of authority under applicable State or local law. Any such enforcement shall be by the issuance of a citation for violation of such law.

"(C) Subject to regulations prescribed under paragraph (2) of this subsection, a Veterans' Administration police officer may make arrests on Veterans' Administration property for a violation of a Federal law or any rule prescribed under subsection (a)(2)(A) of this section.".

SEC. 212. REGIONAL MEDICAL EDUCATION CENTERS.

(a) STATUS OF PROGRAM.—Section 4121(a) is amended—

(1) by striking out "pilot"; and

(2) by striking out "in geographically dispersed areas of the United States".

(b) PROGRAM FLEXIBILITY.—Section 4121(b) is amended—

(1) by striking out "in-residence"; and

(2) by striking out "medical and health".

(c) SHARING OF TRAINING PROGRAMS.—Section 4123 is amended—

(1) by inserting "(a)" before "The Chief Medical Director";

(2) by striking out the third and fourth sentences; and

(3) by adding at the end the following:

"(b) To the extent that facilities are available, medical and health personnel from outside the Department of Medicine and Surgery may, on a reimbursable basis, be provided training in the Centers. Such reimbursement may include reciprocal training of personnel of the Department of Medicine and Surgery provided under sharing arrangements entered into by the Chief Medical Director and the heads of the entities providing such reciprocal training. Any amounts received by the United States as reimbursement under this subsection shall be credited to the applicable Veterans' Administration medical appropriation account.".

SEC. 213. PERIOD OF OBLIGATED SERVICE UNDER SCHOLARSHIP PROGRAM.

Section 4142(e)(1)(B)(iv)(I) is amended by striking out the parenthetical phrase and inserting in lieu thereof "(or, in the case of a participant who is a part-time student, six months for each calendar year, or part of a calendar year, for which the participant was provided a scholarship, with an academic semester or quarter to be counted in only one calendar year)."

SEC. 214. PERIOD OF APPOINTMENT OF CERTAIN TEMPORARY AND PART-TIME HEALTH-CARE PERSONNEL.

(a) TEMPORARY AND PART-TIME APPOINTMENTS.—(1) Paragraph (1) of section 4114(a) is amended—

(A) by inserting "certified or registered respiratory therapists, licensed physical therapists, licensed practical or vocational nurses," after "dental auxiliaries," in clause (A); and

(B) by inserting ", certified or registered respiratory therapists, licensed physical therapists, licensed practical or vocational nurses" after "dental auxiliaries" in clause (B).

(2) Paragraph (2) of such section is amended by striking out "paragraph (1) of section 4104" and inserting in lieu thereof "paragraphs (1) and (3) of section 4104".

(3) Paragraph (3) of such section is amended—

(A) by inserting "except as authorized in subparagraph (D) of this paragraph" in subparagraph (A) after "year";

(B) by inserting "and except as authorized in subparagraph (D) of this paragraph" in subparagraph (B) after "programs"; and

(C) by adding at the end the following new subparagraph:

"(D) During any period during which the Administrator is exercising the authority of only section 4106(a) and (g)(1) of this title in connection with the appointment, under section 4104(3) of this title, of personnel in the category of certified or registered respiratory therapists, licensed physical therapists, or licensed practical or vocational nurses—

"(i) the Administrator may make temporary full-time appointments of personnel in such category for periods exceeding 90 days if the Chief Medical Director finds that circumstances render it impractical to obtain the necessary services through appointments under paragraph (3) of section 4104 of this title; and

"(ii) part-time appointments of personnel in such category may be for periods of more than one year.".

(b) LICENSURE OF PSYCHOLOGISTS.—Section 4114(d) is amended by inserting "psychologist," after "podiatrist," both places it appears.

SEC. 215. REPORT ON A NATIONAL DRUG FILE.

Not later than 90 days after the date of the enactment of this Act, the Administrator of Veterans' Affairs shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the plans of the Department of Medicine and Surgery for the development, establishment, and administration of a national drug file, including an agency-wide reclassification and inventory system for all drugs used by the Veterans' Administration. The report shall also include—

(1) the timetable for the establishment of such a drug file;

(2) an estimate (and the underlying criteria therefor) of the number of employees, all computer equipment (including any additional computer equipment), and total expenditures necessary to develop, establish, and administer such a drug file; and

(3) any other matters the Administrator considers appropriate to include in the report.

SEC. 216. STIPEND FOR PARTICIPATION IN STUDY OF VIETNAM-ERA VETERANS' PSYCHOLOGICAL PROBLEMS.

Section 102 of the Veterans' Health Care Amendments of 1983 (Public Law 98-160; 97 Stat. 994) is amended by adding at the end the following new subsection:

"(d) In order to promote the participation in the study required by subsection (a) of a number of study subjects sufficient to yield scientifically valid results from such study, the Administrator shall pay an appropriate stipend to each individual participating in the study as a subject. In determining the amount of such stipend, the Administrator shall take into account—

"(1) the amount of time that the individual is expected to devote to participation in the study,

"(2) the extent to which the individual's normal routine is disrupted as a result of such participation,

"(3) any travel by the individual in connection with such participation, and

"(4) such other factors as the Administrator considers appropriate."

PART C—FACILITY CONSTRUCTION AND PLANNING

SEC. 221. CONSIDERATION OF SHARING DEPARTMENT OF DEFENSE FACILITIES.

(a) IN GENERAL.—Section 5002 is amended by adding at the end the following new subsection:

"(d) In considering the need for any project for the construction, alteration, or acquisition (other than by exchange) of a medical facility which is expected to involve a total expenditure of more than $2,000,000, the Administrator shall give consideration to the sharing of health-care resources with the Department of Defense under section 5001 of this title as an alternative to all or part of such project.".

(b) REQUIREMENT FOR DESCRIPTION IN PROSPECTUS.—Section 5004(b)(1) is amended by inserting "and to the sharing of health-care resources with the Department of Defense under section 5011 of this title" after "purchase".

SEC. 222. ANNUAL REPORT ON FACILITIES CONSTRUCTION.

Section 5007(a) is amended by inserting ", after considering the analysis and recommendations of the Chief Medical Director," after "Administrator" both places it appears.

SEC. 223. PARKING FACILITIES.

(a) REVISION OF AUTHORITIES.—(1) Section 5009 of title 38, United States Code, is amended to read as follows:

"§ 5009. Parking facilities

"(a) For the purpose of this section—

"(1) The term 'garage' means a structure (or part of a structure) in which vehicles may be parked.

"(2) The term 'parking facility' includes—

"(A) a surface parking lot; and

"(B) a garage.

"(3) The term 'eligible person' means an individual to whom the Administrator is authorized to furnish medical examination or treatment.

"(b) In order to accommodate the vehicles of employees of medical facilities, vehicles used to transport veterans and eligible persons to or from such facilities for the purpose of examination or treatment, and the vehicles of visitors and other individuals having business at such facilities, the Administrator—

"(1) may construct or alter parking facilities, and may acquire, by purchase, lease, condemnation, donation, exchange, or otherwise, such land or interests in land as the Administrator considers necessary for use as the site for any such construction or alteration;

"(2) may acquire, by purchase, lease, condemnation, donation, exchange, or otherwise, any facility that the Administrator considers necessary for use as a parking facility; and

"(3) may operate and maintain parking facilities.

"(c)(1) Except as provided in paragraph (2) of this subsection, each employee, visitor, and other individual having business at a medical facility for which parking fees have been established under subsection (d) or (e) of this section shall be charged the applicable parking fee for the use of a parking facility at such medical facility.

"(2) A parking fee shall not be charged under this subsection for the accommodation of any vehicle used to transport to or from a medical facility—

"(A) a veteran or eligible person in connection with such veteran or eligible person seeking examination or treatment; or

"(B) a volunteer worker (as determined in accordance with regulations which the Administrator shall prescribe) in connection with such worker performing services for the benefit of veterans receiving care at a medical facility.

"(3) The Administrator shall collect (or provide for the collection of) parking fees charged under this subsection.

"(d)(1) For each medical facility where funds from the revolving fund described in subsection (h) of this section are expended for—

"(A) a garage constructed or acquired by the Veterans' Administration at a cost exceeding $500,000 (or, in the case of acquisition by lease, $100,000 per year); or

"(B) a project for the alteration of a garage at a cost exceeding $500,000,

the Administrator shall prescribe a schedule of parking fees to be charged at all parking facilities used in connection with such medical facility.

"(2) The parking fee schedule prescribed for a medical facility referred to in paragraph (1) of this subsection shall be designed to establish fees which the Administrator determines are reasonable under the circumstances.

"(e) The Administrator may prescribe a schedule of parking fees for the parking facilities at any medical facility not referred to in subsection (d) of this section. Any such schedule shall be designed to establish fees which the Administrator determines to be reasonable under the circumstances and shall cover all parking facilities used in connection with such medical facility.

"(f) The Administrator may contract (by lease or otherwise) for the operation of parking facilities at medical facilities under such terms and conditions as the Administrator prescribes and may do so without regard to laws requiring full and open competition.

"(g) Subject to subsections (h) and (i) of this section, there are authorized to be appropriated such amounts as are necessary to finance (in whole or in part) the construction, alteration, and acquisition (including site acquisition) of parking facilities at medical facilities.

"(h)(1) Amounts appropriated pursuant to subsection (g) of this section and parking fees collected under subsection (c) of this section shall be administered as a revolving fund and shall be available without fiscal year limitation.

"(2) The revolving fund shall be deposited in a checking account with the Treasurer of the United States.

"(3)(A) Except as provided in subparagraph (B) of this paragraph, no funds other than funds from the revolving fund may be expended for the construction, alteration, or acquisition (including site acquisition) of a garage at a medical facility after September 30, 1986.

"(B) Subparagraph (A) of this paragraph does not apply to the use of funds for investigations and studies, surveys, designs, plans, working drawings, specifications, and similar actions not directly involved in the physical construction of a structure.

"(i)(1) The expenditure of funds from the revolving fund may be made only for the construction, alteration, and acquisition (including site acquisition) of parking facilities at medical facilities and may be made only as provided for in appropriation Acts.

"(2) For the purpose of section 5004(a)(2) of this title, a bill, resolution, or amendment which provides that funds in the revolving fund (including any funds proposed in such bill, resolution, or amendment to be appropriated to the revolving fund) may be expended for a project involving a total expenditure of more than $2,000,000 for the construction, alteration, or acquisition (including site acquisition) of a parking facility or facilities at a medical facility shall be considered to be a bill, resolution, or amendment making an appropriation which may be expended for a major medical facility project.".

(2) The item relating to such section in the table of sections at the beginning of chapter 81 of such title is amended to read as follows:

"5009. Parking facilities.".

(b) EFFECTIVE DATES.—(1) Except as provided in paragraphs (2) and (3), the amendments made by this section shall take effect on the date of the enactment of this Act.

(2)(A) The amendments made by this section shall not abrogate the provisions of a collective bargaining agreement which, on the date of the enactment of this Act, is in effect and includes a provision which specifies a termination date for such agreement.

(B) After the date of the enactment of this Act, if a collective bargaining agreement described in subparagraph (A) is modified, extended, or renewed, such subparagraph shall no longer, as of the date of the modification, extension, or renewal, apply to such agreement.

(C) In the case of a collective bargaining agreement which on such date of enactment is in effect but has no provision which specifies a termination date, the authorities and requirements in section 5009 of title 38, United States Code, as amended by subsection (a)(1) of this section, to establish and collect parking fees shall take effect on January 1, 1988.

(3) Section 5009 of title 38, United States Code, as amended by subsection (a)(1) of this section, shall not apply to the expenditure of funds appropriated for a fiscal year prior to fiscal year 1987 for the construction, alteration, or acquisition (including site acquisition) of a parking facility at a Veterans' Administration medical facility.

SEC. 224. REVISION OF STATE HOME CONSTRUCTION GRANT PROGRAM.

(a) AUTHORIZATION OF APPROPRIATIONS.—The first sentence of section 5033(a) is amended to read as follows: "There are hereby authorized to be appropriated such sums as are necessary to carry out this subchapter through September 30, 1989.".

(b) PRIORITY FOR CERTAIN PROJECT APPLICATIONS.—Subsection (b) of section 5035 is amended to read as follows:

"(b)(1) Upon receipt of an application for a grant under subsection (a) of this section, the Administrator—

"(A) shall determine whether the application meets the requirements of this section and of the regulations prescribed under section 5034 of this title;

"(B) shall notify the State submitting the application whether the application conforms with those requirements and, if it does not, of the actions necessary to bring the application into conformance with those requirements; and

"(C) shall determine the priority of the project described in the application in accordance with the provisions of this subsection.

"(2) Subject to paragraphs (3) and (5)(C) of this subsection, the Administrator shall accord priority to applications in the following order:

"(A) An application from a State that has made sufficient funds available for the construction or acquisition of the project for which the grant is requested so that such project may proceed upon approval of the grant without further action required by the State to make such funds available for such purpose.

"(B) An application from a State that does not have a State home facility constructed or acquired with assistance under this subchapter (or for which such a grant has been made).

"(C) An application from a State which the Administrator determines, in accordance with criteria and procedures specified in regulations which the Administrator shall prescribe, has a greater need for nursing home or domiciliary beds than other States from which applications are received.

"(D) An application that meets such other criteria as the Administrator determines are appropriate and has established in regulations.

"(3) In according priorities to projects under paragraph (2) of this subsection, the Administrator—

"(A) shall accord priority only to projects which would involve construction or acquisition of either nursing home or domiciliary buildings; and

"(B) may not accord any priority to a project which would expand a State's capacity to furnish hospital care in a State home.

"(4) The Administrator shall establish a list of approved projects, in the order of their priority, as of July 1 of each year. The Administrator shall award grants in the order of their priority on the list during the fiscal year beginning on October 1 of the calendar year in which the list was made.

"(5)(A) The Administrator shall defer approval of an application that otherwise meets the requirements of this section if the State submitting the application does not, by the July 1 deadline (as defined in subparagraph (D) of this paragraph), demonstrate to the satisfaction of the Administrator that the State has provided adequate financial support for construction of the project.

"(B) In a case in which approval of an application is deferred under subparagraph (A) of this paragraph, the Administrator shall select for award of a grant or grants under this subsection an application or applications which would not have been approved during the fiscal year but for the deferral and to which the Administrator accords the highest priority under paragraph (2) of this subsection.

"(C) An application deferred in accordance with the requirements of this paragraph shall be accorded priority in any subsequent fiscal year ahead of applications that had not been approved before the first day of the fiscal year in which the deferred application was first approved.

"(D) For the purposes of this paragraph, the term 'July 1 deadline' means July 1 of the fiscal year in which the State is notified by the Administrator of the availability of funding for a grant for such project.".

(c) REPEAL OF LIMIT ON GRANTS TO ANY STATE.—Section 5035(d) is amended—

(1) by striking out "(1)" and all that follows through "shall provide for payment" and inserting in lieu thereof "The amount of a grant under this subchapter shall be paid"; and

(2) by striking out paragraph (2).

(d) TECHNICAL AMENDMENT.—Section 5031 is amended by redesignating paragraphs (a), (b), (c), and (d) as paragraphs (1), (2), (3), and (4), respectively.

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect on July 1, 1987.

(f) DEADLINE FOR REGULATIONS.—The Administrator of Veterans' Affairs shall prescribe regulations not later than April 1, 1987, to implement the amendments made by this section.

PART D—MISCELLANEOUS

SEC. 231. MODIFICATION OF CERTAIN REPORTING REQUIREMENTS.

(a) REPORTING PERIOD FOR REPORTS ON SPECIAL PAY FOR VETERANS' ADMINISTRATION PHYSICIANS AND DENTISTS.—Section 4118(g)(2)(C) is amended by striking out "December 31, 1982, and once every two years" and inserting in lieu thereof "December 31, 1988, and once every four years".

(b) CONDITIONAL ELIMINATION OF REQUIREMENT FOR REPORT ON CONTRACT DENTAL CARE.—Paragraph (4) of section 612(b) is amended—

(1) by striking out "In" after "(4)" and inserting in lieu thereof "(A) Except as provided in subparagraph (B) of this paragraph, in"; and

(2) by adding at the end the following new subparagraph:

"(B) A report under subparagraph (A) of this paragraph with respect to a fiscal year is not required if, in the documents submitted by the Administrator to the Congress in justification for the amounts included for Veterans' Administration programs in the President's Budget, the Administrator specifies with respect to contract dental care described in such subparagraph—

"(i) the actual level of expenditures for such care in the fiscal year preceding the fiscal year in which such Budget is submitted;

"(ii) a current estimate of the level of expenditures for such care in the fiscal year in which such Budget is submitted; and

"(iii) the amount included in such Budget for such care.".

(c) REPEAL OF REQUIREMENT FOR REPORT OF EXCHANGE OF MEDICAL INFORMATION PROGRAM.—(1) Section 5053 is amended by adding at the end the following new subsection:

"(e) The Administrator shall submit to the Congress not more than 60 days after the end of each fiscal year a report on the activities carried out under this section. Each report shall include—

"(1) an appraisal of the effectiveness of the activities authorized in this section and the degree of cooperation from other sources, financial and otherwise; and

"(2) recommendations for the improvement or more effective administration of such activities.".

(2)(A) Section 5057 is repealed.

(B) The table of sections at the beginning of chapter 81 is amended by striking out the item relating to section 5057.

SEC. 232. IONIZING RADIATION REGISTRY.

(a) ESTABLISHMENT OF REGISTRY.—The Administrator of Veterans' Affairs shall establish and maintain a special record to be known as the "Ionizing Radiation Registry" (hereinafter in this section referred to as the "Registry").

(b) CONTENT OF REGISTRY.—Except as provided in subsection (c), the Registry shall include the following information:

(1) A list containing the name of each veteran who was exposed to ionizing radiation under the conditions described in section 610(e)(1)(B) of title 38, United States Code, and who—

(A) applies for hospital or nursing home care from the Veterans' Administration under chapter 17 of such title;

(B) files a claim for compensation under chapter 11 of such title on the basis of a disability which may be associated with the exposure to ionizing radiation; or

(C) dies and is survived by a spouse, child, or parent who files a claim for dependency and indemnity compensation under chapter 13 of such title on the basis of the exposure of such veteran to ionizing radiation.

(2) Medical data relating to each veteran listed in the Registry, including—

(A) the veteran's medical history, latest health status recorded by the Veterans' Administration, physical examinations, and clinical findings; and

(B) a statement describing birth defects, if any, in the natural children of the veteran.

(3) Data on claims for the compensation referred to in paragraph (1), including decisions and determinations of the Veterans' Administration relating to such claims.

(4) An estimate of the dose of radiation to which each veteran listed in the Registry was exposed under the conditions described in section 610(e)(1)(B) of such title.

(c) VETERANS SUBMITTING CLAIMS BEFORE DATE OF ENACTMENT.—If in the case of a veteran described in subsection (b)(1) the application or claim referred to in such subsection was submitted or filed before the date of the enactment of this Act, the Administrator shall include in the Registry, to the extent feasible, such veteran's name and the data and information described in subsection (b) relating to the veteran.

(d) CONSOLIDATION OF EXISTING INFORMATION.—(1) For the purpose of establishing and maintaining the Registry, the Administrator shall compile and consolidate—

(A) relevant information maintained by the Department of Veterans' Benefits and the Department of Medicine and Surgery of the Veterans' Administration,

(B) relevant information maintained by the Defense Nuclear Agency of the Department of Defense; and

(C) any relevant information maintained by any other element of the Veterans' Administration or the Department of Defense.

(2) With respect to a veteran whose name is included in the Registry and for whom the information in the Registry is not complete, the Administrator shall include information described in paragraph (1) with respect to that veteran (A) to the extent that such information is reasonably available in records of the Veterans' Administration or Department of Defense, or (B) if such information is submitted by the veteran after the enactment of this Act.

(e) DEPARTMENT OF DEFENSE INFORMATION.—The Secretary of Defense shall furnish to the Administrator such information maintained by the Department of Defense as the Administrator considers necessary to establish and maintain the Registry.

(f) DEFINITION.—For the purpose of this section, the term "veteran" has the meaning given that term in section 101(2) of title 38, United States Code, and includes a person who died in the active military, naval, or air service.

(g) EFFECTIVE DATE.—The Registry shall be established not later than 180 days after the date of the enactment of this Act.

SEC. 233. REQUIREMENT FOR MEDICARE HOSPITALS TO PARTICIPATE IN VETERANS' ADMINISTRATION CONTRACT HEALTH-CARE PROGRAM.

(a) IN GENERAL.—Section 1866(a)(1) of the Social Security Act (42 U.S.C. 1395cc(a)(1)), as amended by section 1895(b) of the Tax Reform Act of 1986, is amended—

(1) by striking out "and" at the end of subparagraph (J);

(2) by striking out the period at the end of subparagraph (K) and inserting in lieu thereof ", and"; and

(3) by inserting after subparagraph (K) the following new subparagraph:

"(L) in the case of hospitals which provide inpatient hospital services for which payment may be made under this title, to be a participating provider of medical care under section 603 of title 38, United States Code, in accordance with such admission practices, and such payment methodology and amounts, as are prescribed under joint regulations issued by the Secretary and by the Administrator of Veterans' Affairs in implementation of such section.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to inpatient hospital services provided pursuant to admissions to hospitals occurring after June 30, 1987.

(c) REPORT.—(1) The Secretary of Health and Human Services shall periodically submit to the Congress a report on the number of hospitals that have terminated or failed to renew an agreement under section 1866 of the Social Security Act as a result of the additional conditions imposed under the amendments made by subsection (a).

(2) Not later than October 1, 1987, the Administrator of Veterans' Affairs shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report regarding implementation of this section. Thereafter, the Administrator shall notify such committees if any hospital terminates or fails to renew an agreement described in paragraph (1) for the reasons described in that paragraph.

SEC. 234. PROHIBITION AGAINST EXCESSING OF CERTAIN VETERANS' ADMINISTRATION PROPERTIES.

(a) IN GENERAL.—The Administrator of Veterans' Affairs may not take any action before January 1, 1988, in connection with declaring as excess to the needs of the Veterans' Administration, transferring to another Federal agency, or otherwise relinquishing any Veterans' Administration interest in or disposing of any portion of the real property described in subsection (b). Any such action taken before the date of the enactment of this Act shall be without effect. If on the date of the enactment of this Act, such property (or any portion thereof) is under the jurisdiction of an agency of the United States other than the Veterans' Administration, such property shall revert back to the jurisdiction of the Veterans' Administration.

(b) DESCRIPTION OF PROPERTY.—The property referred to in subsection (a) is certain land and improvements at the Veterans' Administration Medical Center, West Los Angeles, California (consisting of approximately 109 acres), and at the Veterans' Administration Medical Center, Sepulveda, California (consisting of approximately 46 acres), described in letters dated February 5, 1986 (and enclosed maps), submitted by the Administrator to the Committees on Veterans' Affairs of the Senate and of House of Representatives pursuant to section 5022(a)(2) of title 38, United States Code.

SEC. 235. REPORT ON TREATMENT AND SERVICES FOR CHRONICALLY MENTALLY ILL VETERANS.

(a) REPORT REQUIREMENT.—The Administrator shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the Administrator's current use of authority—

(1) to contract for care and treatment, and for rehabilitative services, for chronically mentally ill veterans through—

(A) halfway houses;

(B) therapeutic communities;

(C) psychiatric residential treatment centers; and

(D) other community-based treatment facilities; and

(2) to furnish home health services to such veterans in such veterans' homes or in other settings in which they reside (as provided for in section 612 of title 38, United States Code, as amended by section 202).

(b) DEFINITION.—For purposes of subsection (a), the term "chronically mentally ill veterans" means veterans who are eligible for health care from the Veterans' Administration and who are suffering from chronic mental illness disabilities.

(c) DEADLINE FOR SUBMISSION.—The report under subsection (a) shall be submitted not later than December 15, 1987.

SEC. 236. DESIGNATION OF VETERANS' ADMINISTRATION MEDICAL CENTER IN PHOENIX, ARIZONA.

The Veterans' Administration Medical Center in Phoenix, Arizona, shall after the date of the enactment of this Act be known and designated as the "Carl T. Hayden Veterans' Administration Medical Center". Any reference to such medical center in any law, regulation, map, document, record, or other paper of the United States shall after such date be deemed to be a reference to the Carl T. Hayden Veterans' Administration Medical Center.

SEC. 237. TECHNICAL AMENDMENTS.

(a) Section 610(a)(1)(C) is amended by inserting "who is in receipt of, or" after "veteran".

(b)(1) Section 610(f)(3) is amended by adding at the end the following new subparagraph:

"(F) A veteran may not be required to make a payment under this subsection or section 612(f) of this title for any days of care in excess of 360 days of care during any 365-calendar-day period.".

(2) Section 612(f)(4) is amended—

(A) by redesignating subparagraphs (D), (E), and (F) as subparagraphs (E), (F), and (G), respectively; and

(B) by inserting after subparagraph (C) the following new subparagraph (D):

"(D) A veteran may not be required to make a payment under this subsection if such payment would result in the veteran paying, under this subsection and section 610(f) of this title, a total amount greater than four times the amount of the inpatient Medicare deductible for care or services, or any combination thereof, furnished under this chapter during any 365-calendar-day period.".

(c) The amendments made by this section shall take effect as of April 7, 1986.

TITLE III—EDUCATION AND EMPLOYMENT

PART A—EDUCATION

SEC. 301. APPRENTICESHIP OR OTHER ON-JOB TRAINING UNDER THE NEW GI BILL.

(a) IN GENERAL.—Section 1402(3) is amended to read as follows:

"(3) The term 'program of education'—

"(A) has the meaning given such term in section 1652(b) of this title, and

"(B) includes a full-time program of apprenticeship or of other on-job training approved as provided in clause (1) or (2), as appropriate, of section 1787(a) of this title.".

(b) AMOUNT OF ASSISTANCE.—Section 1432 is amended by adding at the end the following new subsection:

"(c)(1) Except as provided in paragraph (2) of this subsection, the amount of the monthly educational assistance allowance payable to an individual pursuing a full-time program of apprenticeship or other on-job training under this chapter is—

"(A) for each of the first six months of the individual's pursuit of such program, 75 percent of the monthly educational assistance allowance otherwise payable to such individual under this chapter;

"(B) for each of the second six months of the individual's pursuit of such program, 55 percent of such monthly educational assistance allowance; and

"(C) for each of the months following the first 12 months of the individual's pursuit of such program, 35 percent of such monthly educational assistance allowance.

"(2) In any month in which an individual pursuing a program of education consisting of a program of apprenticeship or other on-job training fails to complete 120 hours of training, the amount of monthly educational assistance allowance payable under this chapter to the individual shall be limited to the same proportion of the applicable rate determined under paragraph (1) of this subsection as the number of hours worked during such month, rounded to the nearest eight hours, bears to 120 hours.

"(3) For each month that an individual is paid a monthly educational assistance allowance under this chapter, the individual's entitlement under this chapter shall be charged at the rate of—

"(A) 75 percent of a month in the case of payments made in accordance with paragraph (1)(A) of this subsection;

"(B) 55 percent of a month in the case of payments made in accordance with paragraph (1)(B) of this subsection; and

"(C) 35 percent of a month in the case of payments made in accordance with paragraph (1)(C) of this subsection.".

(c) CONFORMING AMENDMENT.—Section 1434(a) is amended by striking out the parenthetical matter in the first sentence and inserting in lieu thereof "(with the exception of sections 1780(c), 1780(g), and 1787)".

(d) CLERICAL AMENDMENTS.—(1) The heading of section 1432 is amended to read as follows:

"**§ 1432. Limitations on educational assistance for certain individuals**".

(2) The item relating to such section in the table of sections at the beginning of chapter 30 of such title is amended to read as follows:

"1432. Limitations on educational assistance for certain individuals.".

SEC. 302. EDUCATIONAL ASSISTANCE FOR CORRESPONDENCE COURSES UNDER THE NEW GI BILL.

Section 1434 is amended—

(1) by redesignating subsection (c) as subsection (d); and

(2) by inserting after subsection (b) the following new subsection (c):

"(c) When an eligible individual is pursuing a program of education under this chapter by correspondence, the individual's entitlement under this chapter shall be charged at the rate of one month's entitlement for each month of benefits paid to the individual.".

SEC. 303. PROVISIONS RELATING TO REDUCTION OF PAY IN THE NEW GI BILL.

(a) IN GENERAL.—(1) Section 1411(b) is amended by striking out the second sentence and inserting in lieu thereof the following: "Any amount by which the basic pay of an individual is reduced under this subsection shall revert to the Treasury and shall not, for purposes of any Federal law, be considered to have been received by or to be within the control of such individual."

(2) Section 1412(c) is amended by striking out the second sentence and inserting in lieu thereof the following: "Any amount by which the basic pay of an individual is reduced under this subsection shall revert to the Treasury and shall not, for purposes of any Federal law, be considered to have been received by or to be within the control of such individual.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to any reduction in basic pay made under section 1411(b) or 1412(c) of title 38, United States Code, after December 31, 1985.

SEC. 304. ADVISORY COMMITTEE AMENDMENTS.

Section 1792 is amended—

(1) in the first sentence of subsection (a)—

(A) by striking out "an advisory committee" and inserting in lieu thereof "a Veterans' Advisory Committee on Education"; and

(B) by inserting "30," after "chapter"; and

(2) in the first sentence of subsection (b), by inserting "30," after "chapters".

SEC. 305. CERTIFICATION UNDER NEW GI BILL.

Section 1434(b) is amended to read as follows:

"(b) The Administrator may, pursuant to regulations which the Administrator shall prescribe, determine and define enrollment in, pursuit of, and attendance at, any program of education by an individual enrolled in or pursuing a program of education under this chapter for any period for which the individual receives educational assistance under this chapter. Subject to such reports and proof as the Administrator may require to show an individual's enrollment in and satisfactory pursuit of such individual's program, the Administrator may withhold payment of benefits to such individual until the required proof is received and the amount of the payment is appropriately adjusted.".

SEC. 306. BAR TO DUPLICATION OF BENEFITS.

(a) IN GENERAL.—Section 1433(a)(1) is amended by striking out "chapter 31" and all that follows through "both programs" and inserting in lieu thereof "chapter 31, 32, or 35 of this title, under chapter 106 or 107 of title 10, or under the Hostage Relief Act of 1980 (Public Law 96-449; 5 U.S.C. 5561 note) may not receive assistance under two or more of such programs".

(b) SELECTED RESERVE SERVICE.—Section 1433(c) is amended to read as follows:

"(c) An individual who serves in the Selected Reserve may not receive credit for such service under both the program established by this chapter and the program established by chapter 106 of title 10 but shall elect (in such form and manner as the Administrator may prescribe) the program to which such service is to be credited.".

SEC. 307. ADJUSTMENT OF DELIMITING PERIOD FOR INDIVIDUALS ENTITLED TO CERTAIN COMBINED BENEFITS.

(a) IN GENERAL.—(1) Section 1411(a)(1)(B) is amended by inserting "and was on active duty on October 19, 1984, and without a break in service since October 19, 1984," after "title".

(2) Section 1412(a)(1)(B) is amended by inserting "and was on active duty on October 19, 1984, and without a break in service since October 19, 1984," after "title".

(b) CONFORMING AMENDMENT.—Section 1431 is amended—

(1) by striking out "(d)" in subsection (a) and inserting in lieu thereof "(e)";

(2) by redesignating subsection (e) as subsection (f); and

(3) by inserting after subsection (d) the following new subsection;

"(e) In the case of an individual described in section 1411(a)(1)(B) or 1412(a)(1)(B) of this title who is entitled to basic educational assistance under this chapter, the 10-year period prescribed in subsection (a) of this section shall be reduced by an amount of time equal to the amount of time that such individual was not serving on active duty during the period beginning on January 1, 1977, and ending on October 18, 1984.".

SEC. 308. WORK-STUDY ALLOWANCE UNDER THE NEW GI BILL AND THE POST-VIETNAM ERA VETERANS' EDUCATIONAL ASSISTANCE PROGRAM.

(a) NEW GI BILL.—The first sentence of section 1434(a) is amended by striking out "and 1683" and inserting in lieu thereof "1683, and 1685".

(b) POST-VIETNAM ERA VETERANS' EDUCATIONAL ASSISTANCE PROGRAM.—Section 1641 is amended by inserting "1685," after "1683,".

(c) CONFORMING AMENDMENT.—The first sentence of section 1685(b) is amended by striking out "education or training under chapters 31 and 34" and inserting in lieu thereof "rehabilitation, education, or training under chapter 30, 31, 32, or 34".

SEC. 309. TERMINATION OF ENROLLMENTS IN POST-VIETNAM ERA VETERANS' EDUCATIONAL ASSISTANCE PROGRAM.

(a) IN GENERAL.—(1) Section 1601(1) is amended by inserting "and before July 1, 1985," after "December 31, 1976,".

(2) Section 1602(1)(A) is amended—

(1) by inserting "and before July 1, 1985," after "January 1, 1977," both places it appears; and

(2) by striking out "such date" both places it appears and inserting in lieu thereof "January 1, 1977".

(3) Section 1621(a) is amended—

(A) by inserting "and before July 1, 1985," after "January 1, 1977,"; and

(B) by inserting "before July 1, 1985" before the period at the end of the first sentence.

(b) CONFORMING REPEAL.—Section 704 of the Veterans' Educational Assistance Act of 1984 (title VII of Public Law 98-525; 98 Stat. 2564) is repealed.

(c) EXCEPTION.—Notwithstanding the amendments made by subsection (a), any individual on active duty in the Armed Forces who was eligible on June 30, 1985, to enroll in the program established by chapter 32 of title 38, United States Code, may enroll, before April 1, 1987, in such program.

(d) NOTICE REQUIREMENT.—The Secretary of Defense, and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, shall carry out activities for the purpose of notifying, to the maximum extent feasible, individuals described in subsection (c) of the opportunity provided by such subsection.

SEC. 310. ON-JOB TRAINING UNDER THE POST-VIETNAM ERA VETERANS' EDUCATIONAL ASSISTANCE PROGRAM.

(a) IN GENERAL.—Section 1602 is amended—

(1) by striking out paragraph (2) and inserting in lieu thereof the following:

"(2) The term 'program of education'—

"(A) has the meaning given such term in section 1652(b) of this title, and

"(B) includes a full-time program of apprenticeship or other on-job training approved as provided in clause (1) or (2), as appropriate, of section 1787(a) of this title."; and

(2) by adding at the end the following new paragraphs:

"(4) The term 'educational institution' has the meaning given such term in section 1652(c) of this title.

"(5) The term 'training establishment' has the meaning given such term in section 1652(e) of this title.".

(b) AMOUNT OF PAYMENT.—(1) Section 1631(a)(2) is amended by striking out "The" and inserting in lieu thereof "Except as provided in section 1633 of this title and subject to section 1641 of this title, the".

(2) Subchapter III of chapter 32 is amended by adding at the end the following new section:

"§ 1633. Apprenticeship or other on-job training

"(a) Except as provided in subsection (b) of this section, the amount of the monthly benefit payment to an individual pursuing a full-time program of apprenticeship or other on-job training under this chapter is—

"(1) for each of the first six months of the individual's pursuit of such program, 75 percent of the monthly benefit payment otherwise payable to such individual under this chapter;

"(2) for each of the second six months of the individual's pursuit of such program, 55 percent of such monthly benefit payment; and

"(3) for each of the months following the first 12 months of the individual's pursuit of such program, 35 percent of such monthly benefit payment.

"(b) In any month in which an individual pursuing a program of education consisting of a program of apprenticeship or other on-job training fails to complete 120 hours of training, the amount of the monthly benefit payment payable under this chapter to the individual shall be limited to the same proportion of the applicable rate determined under subsection (a) of this section as the number of hours worked during such month, rounded to the nearest eight hours, bears to 120 hours.

"(c) For each month that an individual is paid a monthly benefit payment under this chapter, the individual's entitlement under this chapter shall be charged at the rate of—

"(1) 75 percent of a month in the case of payments made in accordance with subsection (a)(1) of this section;

"(2) 55 percent of a month in the case of payments made in accordance with subsection (a)(2) of this section; and

"(3) 35 percent of a month in the case of payments made in accordance with subsection (a)(3) of this section.".

(3) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 1632 the following new item:

"1633. Apprenticeship or other on-job training.".

(c) ADMINISTRATION.—Section 1641 is amended—

(1) by inserting "(a)" before "The";

(2) by striking out "sections 1777, 1780(c), and 1787) shall be applicable to the program." and inserting in lieu thereof "section 1787) shall be applicable with respect to individuals who are pursuing programs of education while serving on active duty."; and

(3) by adding at the end the following new subsection:

"(b) The provisions of sections 1663, 1670, 1671, 1673, 1674, 1676, 1683, and 1691(a)(1) of this title and the provisions of chapter 36 of this title (with the exception of section 1787) shall be applicable with respect to individuals who are pursuing programs of education following discharge or release from active duty.".

SEC. 311. DURATION OF AND LIMITATIONS ON ENTITLEMENT TO POST-VIETNAM ERA VETERANS' EDUCATIONAL ASSISTANCE.

The text of section 1632 is amended to read as follows:

"(a)(1) Except as provided in paragraphs (2) and (3) of this subsection, educational assistance benefits shall not be afforded an eligible veteran under this chapter more than 10 years after the date of such veteran's last discharge or release from active duty.

"(2)(A) If any eligible veteran was prevented from initiating or completing such veteran's chosen program of education during the delimiting period determined under paragraph (1) of this subsection because of a physical or mental disability which was not the result of such veteran's own willful misconduct, such veteran shall, upon application made in accordance with subparagraph (B) of this paragraph, be granted an extension of the applicable delimiting period for such length of time as the Administrator determines, from the evidence, that such veteran was so prevented from initiating or completing such program of education.

"(B) An extension of the delimiting period applicable to an eligible veteran may be granted under subparagraph (A) of this paragraph by reason of the veteran's mental or physical disability only if the veteran submits an application for such extension to the Administrator within one year after (i) the last date of the delimiting period otherwise applicable to the veteran under paragraph (1) of this subsection, or (ii) the termination date of the period of the veteran's mental or physical disability, whichever is later.

"(3) When an extension of the applicable delimiting period is granted an eligible veteran under paragraph (2) of this subsection, the delimiting period with respect to such veteran shall again begin to run on the first day after such veteran's recovery from such disability on which it is reasonably feasible, as determined in accordance with regulations prescribed by the Administrator, for such veteran to initiate or resume pursuit of a program of education with educational assistance under this chapter.

"(b)(1) In the event that an eligible veteran has not utilized any or all of such veteran's entitlement by the end of the delimiting period applicable to the veteran under subsection (a) of this section, such eligible veteran is automatically disenrolled.

"(2)(A) Any contributions which were made by a veteran disenrolled under paragraph (1) of this subsection and remain in the fund shall be refunded to the veteran after notice of disenrollment is transmitted to the veteran and the veteran applies for such refund.

"(B) If no application for refund of contributions under subparagraph (A) of this paragraph is received from a disenrolled veteran within one year after the date the notice referred to in such subparagraph is transmitted to the veteran, it shall be presumed, for the purposes of section 1322(a) of title 31, that the veteran's whereabouts is unknown and the funds shall be transferred as provided in such section.".

SEC. 312. EDUCATIONAL AND VOCATIONAL COUNSELING.

Section 1663 is amended by inserting after the first sentence the following: "In any case in which the Administrator has rated the veteran as being incompetent, such counseling shall be required to be provided to the veteran prior to the selection of a program of education or training.".

SEC. 313. DELIMITING PERIOD UNDER THE SURVIVORS' AND DEPENDENTS' EDUCATIONAL ASSISTANCE PROGRAM.

Section 1712(b) is amended by adding at the end the following:

"(3)(A) Notwithstanding the provisions of paragraph (1) of this subsection, any eligible person (as defined in clause (B) or (D) of section 1701(a)(1) of this title) may, subject to the approval of the Administrator, be permitted to elect a date referred to in subparagraph (B) of this paragraph to commence receiving educational assistance benefits under this chapter. The date so elected shall be the beginning date of the delimiting period applicable to such person under this section.

"(B) The date which an eligible person may elect under subparagraph (A) of this paragraph is any date during the period beginning on the date the person became an eligible person within the meaning of clause (B) or (D) of section 1701(a)(1) of this title and ending on the date determined under subparagraph (A), (B), or (C) of paragraph (1) of this subsection to be applicable to such person.".

SEC. 314. ELIMINATION OF THE REQUIREMENT FOR AN EDUCATION PLAN FOR SURVIVORS AND DEPENDENTS.

(a) IN GENERAL.—Section 1720 is amended to read as follows:

"§ 1720. Educational and vocational counseling.

"The Administrator may, upon request, arrange for educational or vocational counseling for persons eligible for benefits under this chapter to assist such persons in selecting their educational, vocational, or professional objectives and in developing their programs of education.".

(b) CONFORMING AMENDMENTS.—(1) Section 1721 is amended—

(A) by striking out "finally";

(B) by striking out clause (1); and

(C) by redesignating clauses (2), (3), (4), and (5) as clauses (1), (2), (3), and (4), respectively.

(2) The heading of such section is amended to read as follows:

"§ 1721. Approval of application".

(3) The items relating to sections 1720 and 1721 in the table of sections at the beginning of chapter 35 are amended to read as follows:

"1720. Educational and vocational counseling.

"1721. Approval of application.".

SEC. 315. MEASUREMENT OF CERTAIN NONCOLLEGE DEGREE COURSES.

(a) IN GENERAL.—(1) Section 1780(a) is amended—

(A) in clause (1), by inserting ", or a course that meets the requirements of section 1788(a)(7) of this title," after "degree"; and

(B) in clause (2), by inserting "courses that meet the requirements of section 1788(a)(7) of this title and" after "excluding".

(2) Section 1788 is amended—

(A) in subsection (a)—

(i) by striking out "and" at the end of clause (5);

(ii) by striking out the period at the end of clause (6) and inserting in lieu thereof "; and"; and

(iii) by inserting after clause (6) the following new clause:

"(7) an institutional course not leading to a standard college degree, offered by a fully accredited institution of higher learning in residence on a standard quarter- or semester-hour basis, shall be measured as full time on the same basis as provided in clause (4) of this subsection if (A) such course is approved pursuant to section 1775 of this title, and (B) a majority of the total credits required for the course is derived from unit courses or subjects offered by the institution as part of a course, so approved, leading to a standard college degree."; and

(B) in subsection (c), by striking out "(4)".

(b) DETERMINATION IN CERTAIN CASES.—Section 1788 is amended by inserting at the end the following new subsection:

"(e) For the purpose of determining whether a course—

"(1) which is offered by an institution of higher learning, and

"(2) for which such institution requires one or more unit courses or subjects for which credit is granted toward a standard college degree

will, during the semester (or quarter or other applicable portion of the academic year) when such unit course or subject is being pursued, be considered full time under clause (1) or (2) of subsection (a) of this section, each of the numbers of hours specified in such clause shall be deemed to be reduced, during such semester (or other portion of the academic year), by the percentage described in the following sentence and rounded as the Administrator may prescribe. Such percentage is the percentage that the number of semester hours (or the equivalent thereof) represented by such unit course or subject is of the number of semester hours (or the equivalent thereof) which, under clause (4) of such subsection, constitutes a full-time institutional undergraduate course at such institution.".

SEC. 316. PAYMENT OF EDUCATIONAL ASSISTANCE FOR CERTAIN LESS-THAN-HALF-TIME TRAINING.

The first sentence of section 1780(f) is amended by striking out "during" and inserting in lieu thereof "not later than the last day of".

SEC. 317. PROHIBITION ON BENEFITS UNDER MORE THAN ONE EDUCATIONAL ASSISTANCE PROGRAM.

Section 1781(b) is amended by striking out "for the pursuit of the same program of education".

SEC. 318. REPORTING REQUIREMENTS FOR EDUCATIONAL INSTITUTIONS.

Section 1784(a) is amended—

(1) by striking out "(a) The" and inserting in lieu thereof "(a)(1) Except as provided in paragraph (2) of this subsection, the"; and

(2) by adding at the end the following new paragraph:

"(2)(A) In the case of a program of independent study pursued on less than a half-time basis in an educational institution, the Administrator may approve a delay by the educational institution in reporting the enrollment or reenrollment of an eligible veteran or eligible person until the end of the term, quarter, or semester if the educational institution requests the delay and the Administrator determines that it is not feasible for the educational institution to monitor interruption or termination of the veteran's or eligible person's pursuit of such program.

"(B) An educational institution which, pursuant to subparagraph (A) of this paragraph, is delaying the reporting of the enrollment or reenrollment of a veteran shall provide the veteran with notice of the delay at the time that the veteran enrolls or reenrolls.".

SEC. 319. PROHIBITION OF A TERM-BY-TERM CERTIFICATION REQUIREMENT.

Section 1784(a), as amended by section 318 of this Act, is further amended by adding at the end the following new paragraph:

"(3)(A) Subject to subparagraph (B) of this paragraph, an educational institution offering courses on a term, quarter, or semester basis may certify the enrollment of a veteran who is not on active duty, or of an eligible person, in such courses for more than one term, quarter, or semester at a time, but not for a period extending beyond the end of a school year (including the summer enrollment period).

"(B) Subparagraph (A) of this paragraph shall not apply with respect to any term, quarter, or semester for which the veteran or eligible person is enrolled on a less than half-time basis and shall not be construed as restricting the Administrator from requiring that an educational institution, in reporting an enrollment for more than one term, quarter, or semester, specify the dates of any intervals within or between any such terms, quarters, or semesters.".

SEC. 320. COMMISSION TO ASSESS VETERANS' EDUCATION POLICY.

(a) ESTABLISHMENT AND MEMBERS.—(1) There is established a Commission on Veterans' Education Policy (hereafter in this section referred to as the "Commission").

(2)(A) The Commission shall consist of 11 members, 10 of whom shall be appointed, not later than March 1, 1987, by the Administrator of Veterans' Affairs in consultation with the chairmen and the ranking minority members of the Committees on Veterans' Affairs of the Senate and of the House of Representatives (hereafter in this section referred to as "the Committees"), and one of whom shall be the chairman of the Advisory Committee on Education established under section 1792 of title 38, United States Code (as amended by section 304).

(B) The members of the Commission—

(i) shall be broadly representative of entities engaged in providing education and training and of veterans' service organizations; and

(ii) shall be selected on the basis of their knowledge of and experience in education and training policy and the implementation of such policy with respect to programs of assistance administered by the Veterans' Administration.

(3) The Administrator of Veterans' Affairs, the ex officio members of the Advisory Committee on Education referred to in paragraph (2)(A), and the chairmen and ranking minority members of the Committees (or, in the case of any such individual, a designee of any such individual) shall be ex officio, nonvoting members of the Commission.

(4)(A) The Administrator shall designate a member from among the voting members of the Commission to chair the Commission.

(B) The chairman of the Commission, with the concurrence of the Commission, shall appoint an executive director, who shall be the chief executive officer of the Commission and shall perform such duties as are prescribed by the Commission.

(C) The Administrator shall furnish the Commission with such professional, technical, and clerical staff and services and administrative support as the Commission de-

termines necessary for the Commission to carry out the provisions of this section effectively.

(b) FIRST REPORT.—(1) Not later than 18 months after the date on which at least 8 members of the Commission have been appointed, the Commission shall submit a report on the Commission's findings and recommendations on the matters described in paragraph (2) of this subsection to the Administrator and the Committees.

(2) The report required by paragraph (1) shall include the Commission's findings, views, and recommendations on the following matters:

(A) The need for distinctions between certificate-granting courses and degree-granting courses.

(B) The measurement of courses for the purposes of payment of educational assistance benefits.

(C) The vocational value of courses offered through home study.

(D) The role of innovative and nontraditional programs of education and the manner in which such programs should be treated for purposes of payment of educational assistance benefits by the Veterans' Administration, including courses that result in the achievement of continuing education units.

(E) Such other matters relating to administration of chapters 30, 31, 32, 34, 35, and 36 of title 38, United States Code, by the Veterans' Administration as (i) the Commission considers appropriate or necessary, or (ii) are suggested by the Administrator or, concurrently, by the chairmen and ranking minority members of the Committees.

(c) INTERIM AND FINAL REPORTS.—(1) Not later than 6 months after the date on which the report is submitted under subsection (b), the Administrator shall submit an interim report to the Committees. The interim report shall contain—

(A) the Administrator's views on the desirability, feasibility, and cost of implementing each of the Commission's recommendations, and the actions taken or planned with respect to the implementation of such recommendations;

(B)(i) the Administrator's views on any legislation or regulations proposed by the Commission, (ii) the Administrator's views on the need for any alternative or additional legislation or regulations to implement the Commission's recommendations, (iii) the Administrator's recommendations for any such alternative or additional legislation, (iv) the proposed text of any regulations referred to in subclause (i) or (ii) which the Administrator considers necessary and the proposed text of any legislation referred to in such subclause which is recommended by the Administrator, and (v) a cost estimate for the implementation of any regulations and legislation referred to in such subclause; and

(C) any other proposals that the Administrator considers appropriate in light of the Commission's report.

(2) Not later than 90 days after the date on which the Administrator's interim report is submitted under paragraph (1), the Commission shall submit a report to the Administrator and the Committees containing the Commission's views on the Administrator's interim report.

(3) Not later than two years after the date on which the Commission's report is submitted under subsection (b), the Administrator shall submit a final report to the Committees. The final report shall include the actions taken with respect to the recommendations of the Commission and any further recommendations the Administrator considers appropriate.

(d) TERMINATION.—The Commission shall terminate 90 days after the date on which the Administrator submits the final report required by subsection (c)(3).

SEC. 321. TECHNICAL AND CLERICAL AMENDMENTS.

Title 38 is amended as follows:

(1) Section 1411(a) is amended—

(A) in clause (1)(A)(ii)(II), by inserting "continuous" after "months of" both places it appears; and

(B) in clause (1)(B)(ii)(II), by inserting "continuous" after "months of".

(2) Section 1412 is amended—

(A) in subsection (a), by striking out "subsection (c)" and inserting in lieu thereof "subsection (d)"; and

(B) in subsection (b)(1), by inserting "such" after "three and one-half years of".

(3) Section 1413 is amended—

(A) in subsection (a)(2), by inserting the following before the period at the end: "after the date of the beginning of the period for which the individual's basic pay is reduced under section 1411(b) of this title, in the case of an individual described in section 1411(a)(1)(A)(ii)(I) of this title, or after June 30, 1985, in the case of an individual described in section 1411(a)(1)(B)(ii)(I) of this title"; and

(B) in subsection (b)—

(i) by inserting in clause (1) after "individual" the following: "after the date of the beginning of the period for which such individual's basic pay is reduced under section 1412(c) of this title, in the case of an individual described in section 1412(a)(1)(A), or after June 30, 1985, in the case of an individual described in section 1412(a)(1)(B) of this title"; and

(ii) by inserting "after the applicable date specified in clause (1) of this subsection" after "Selected Reserve" in clause (2).

(4) The text of section 1416 is amended to read as follows:

"(a) A member of the Armed Forces who—

"(1) first becomes a member or first enters on active duty as a member of the Armed Forces after June 30, 1985, and does not make an election under section 1411(c)(1) or section 1412(d)(1);

"(2) completes at least two years of service on active duty after such date;

"(3) after such service, continues on active duty or in the Selected Reserve without a break in service (except as described in section 1412(b)(2) of this title); and

"(4) but for section 1411(a)(1)(A)(i)(I) or 1412(a)(1)(A)(ii) of this title would be eligible for basic educational assistance,

may receive educational assistance under this chapter for enrollment in an approved program of education while continuing to perform the duty described in section 1411(a)(1)(A)(i)(I) or 1412(a)(1)(A)(ii) of this title.

"(b) A member of the Armed Forces who—

"(1) as of December 31, 1989, is eligible for educational assistance benefits under chapter 34 of this title;

"(2) after June 30, 1985, has served the two years required by section 1412(a)(1)(B)(i); and

"(3) but for section 1412(a)(1)(B)(ii) of this title would be eligible for basic educational assistance,

may, after December 31, 1989, receive educational assistance under this chapter for enrollment in an approved program of education while continuing to perform the duty described in section 1412(a)(1)(B)(ii) of this title.".

(5) Section 1421 is amended by striking out "in addition to" each place it appears in subsections (a)(1) and (b)(1) and inserting in lieu thereof "after".

(6) Section 1421(c)(1) is amended by striking out "his" and inserting in lieu thereof "the member's".

(7)(A) Subsection (a) of section 1431 is amended by striking out "(d)" and inserting in lieu thereof "(e)".

(B) Subsection (b) of such section is amended—

(i) by striking out "subchapter II or III of";

(ii) by striking out "of such subchapter" and inserting in lieu thereof "of this chapter";

(iii) by striking out "(1)" after "before"; and

(iv) by striking out "or (2)" and all that follows through "1412(a)(3) of this title,".

(C) Subsection (e)(2) of such section is amended by inserting "not" after "educational institution".

(8) Section 1435(b)(2) is amended by striking out "section 1415(a)" and inserting in lieu thereof "subsection (a) or (b) of section 1415".

(9) Section 1781(b) is amended by striking out "Chapter 107" in clause (2) and inserting in lieu thereof "Chapters 106 and 107".

(10) Section 3013 is amended by inserting "30," after "chapters".

(11) Section 3103A(b)(3) is amended—

(A) by striking out "or" at the end of clause (D);

(B) by striking out the period at the end of clause (E) and inserting in lieu thereof "; or"; and

(C) by adding at the end the following new clause:

"(F) to benefits under chapter 30 of this title in the case of a person entitled to benefits under such chapter by reason of section 1411(a)(1)(A)(ii)(II) of this title.".

PART B—EMPLOYMENT AND OTHER PROGRAMS

SEC. 331. EMPLOYMENT RIGHTS OF CERTAIN INDIVIDUALS.

Section 2021(b)(3) is amended—

(1) by inserting "seeks or" after "who";

(2) by inserting "hiring," after "shall not be denied"; and

(3) by inserting a comma after "employment" the first place it appears.

SEC. 332. VETERANS' READJUSTMENT APPOINTMENTS.

Section 2014(b)(2) is amended by striking out "September 30, 1986" and inserting in lieu thereof "December 31, 1989".

SEC. 333. EXTENSION OF PROGRAM OF INDEPENDENT LIVING SERVICES AND ASSISTANCE.

(a) EXTENSION OF AUTHORITY AND CLARIFYING AMENDMENT.—(1) Section 1520(a) is amended—

(A) in paragraphs (1), (5), and (6), by striking out "1985" each place it appears and inserting in lieu thereof "1989"; and

(B) in paragraph (2), by inserting "currently" after "goal".

(b) CONFORMING AMENDMENTS.—(1) Paragraphs (6)(B) and (9)(A)(i) of section 1501 are amended by inserting "currently" after "be".

(2) Section 1503(d) is amended by inserting "currently" after "goal".

(3) Section 1505 is amended—

(A) in subsection (a), by inserting "currently" after "whether it";

(B) in subsection (b), by inserting "current" after "of the"; and

(C) in subsection (d), by inserting "currently" after "goal".

(4) Section 1506 is amended—

(A) in subsection (a)(2)(B), by inserting "currently" after "goal";

(B) in subsection (b), by inserting "currently" after "goal";

(C) in subsection (c), by inserting "currently" after "goal" the first place it appears; and

(D) in subsection (d)—

(i) in the first sentence, by inserting "currently" after "veteran"; and

(ii) in the third sentence, by inserting "currently" after "goal" and after "achievement" the second place it appears.

(5) Section 1509 is amended by inserting "currently" after "veteran" the first place it appears.

(6) The heading for section 1520 is amended by striking out "**Pilot Program**" and inserting in lieu thereof "**Program**".

(7) The item relating to section 1520 in the table of sections at the beginning of chapter 31 is amended by striking out "Pilot program" and inserting in lieu thereof "Program".

(c) REPORT.—Section 1520(b) is amended to read as follows:

"(b) Not later than February 1, 1989, the Administrator shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives statistical data regarding veterans' participation in the program conducted under subsection (a) of this section during fiscal years 1987 and 1988 and any recommendations of the Administrator for administrative or legislative action or both regarding the program.".

TITLE IV—HOUSING PROGRAMS AND NATIONAL CEMETERIES

PART A—HOUSING

SEC. 401. SPECIALLY ADAPTED HOUSING.

(a) IN GENERAL.—Section 801(b)(1) is amended by inserting before the period the following: "or in acquiring a residence already adapted with special features determined by the Administrator to be reasonably necessary for the veteran because of such disability".

(b) CONFORMING AMENDMENT.—Section 802(b)(1) is amended by striking out "cost" and inserting in lieu thereof "cost, or, in the case of a veteran acquiring a residence already adapted with special features, the fair market value,".

SEC. 402. CREDIT UNDERWRITING AND LOAN PROCESSING STANDARDS.

(a) IN GENERAL.—Section 1810(b)(3) is amended by inserting before the semicolon at the end the following: ", as determined in accordance with the credit underwriting standards established pursuant to subsection (g) of this section".

(b) DEFINITION AND STANDARDS.—Section 1810 is amended by adding at the end the following new subsection:

"(g)(1) For the purposes of this subsection, the term 'veteran', when used with respect to a loan guaranteed or to be guaranteed under this chapter, includes the veteran's spouse if the spouse is jointly liable with the veteran under the loan.

"(2) For the purpose of determining whether a veteran meets the standards referred to in subsection (b)(3) of this section and section 1819(e)(2) of this title, the Administrator shall prescribe regulations which establish—

"(A) credit underwriting standards to be used in evaluating loans to be guaranteed under this chapter; and

"(B) standards to be used by lenders in obtaining credit information and processing loans to be guaranteed under this chapter.

"(3) In the regulations prescribed under paragraph (2) of this subsection, the Administrator shall establish standards that include—

"(A) debt-to-income ratios to apply in the case of the veteran applying for the loan;

"(B) criteria for evaluating the reliability and stability of the income of the veteran applying for the loan; and

"(C) procedures for ascertaining the monthly income required by the veteran to meet the anticipated loan payment terms.

"(4)(A) Any lender making a loan under this chapter shall certify, in such form as the Administrator shall prescribe, that the lender has complied with the credit information and loan processing standards established under paragraph (2)(B) of this subsection, and that, to the best of the lender's knowledge and belief, the loan meets the underwriting standards established under paragraph (2)(A) of this subsection.

"(B) Any lender who knowingly and willfully makes a false certification under subparagraph (A) of this paragraph shall be liable to the United States Government for a civil penalty equal to two times the amount of the Administrator's loss on the loan involved or to another appropriate amount, not to exceed $10,000, whichever is greater. All determinations necessary to carry out this subparagraph shall be made by the Administrator.

"(5) Pursuant to regulations prescribed to carry out this paragraph, the Administrator may, in extraordinary situations, waive the application of the credit underwriting standards established under paragraph (2) of this subsection when the Administrator determines, considering the totality of circumstances, that the veteran is a satisfactory credit risk.".

(c) CONFORMING AMENDMENTS.—(1) Section 1816 is amended by adding at the end the following new subsection:

"(e) The Administrator may not make a loan to finance a purchase of property acquired by the Administrator as a result of a default on a loan guaranteed under this chapter unless the purchaser meets the credit underwriting standards established under section 1810(g)(2)(A) of this title.".

(2) Section 1819(e)(2) is amended by inserting "as determined in accordance with the regulations prescribed under section 1810(g) of this title and" after "credit risk,".

SEC. 403. FORECLOSURE INFORMATION.

Section 1816, as amended by section 402(c)(1) of this Act, is amended by adding at the end the following new subsection:

"(f)(1) The Administrator shall identify and compile information on common factors which the Administrator finds contribute to foreclosures on loans guaranteed under this chapter.

"(2) The Administrator shall include a summary of the information compiled, and the Administrator's findings, under paragraph (1) of this subsection in the annual report submitted to the Congress under section 214 of this title. As part of such summary and findings, the Administrator shall provide a separate analysis of the factors which contribute to foreclosures of loans which have been assumed.".

SEC. 404. COMPETITIVE CONTRACTING REQUIREMENTS.

Section 1820(b) is amended by striking out "$1,000" and inserting in lieu thereof "the amount prescribed in clause (1) of the first sentence of such section".

SEC. 405. AUTHORITY TO TRANSFER FUNDS.

Section 1823 is amended by adding at the end the following new subsection:

"(d)(1) The Secretary of the Treasury shall transfer from the direct loan revolving fund to the loan guaranty revolving fund established by section 1824(a) of this title such amounts as the Administrator determines are not needed in the direct loan revolving fund.

"(2) Not later than 30 days after the date on which the Secretary makes a transfer under paragraph (1) of this subsection, the Administrator shall submit a notice of such transfer to the appropriate committees of the Congress.".

SEC. 406. USE OF ATTORNEYS IN HOME LOAN FORECLOSURES.

The second sentence of section 1830(a) is amended by striking out "With the concurrence of the Attorney General of the United States, the" and inserting in lieu thereof "The".

SEC. 407. APPRAISALS.

(a) IN GENERAL.—Subchapter III of chapter 37 is amended by adding at the end the following new section 1831:

"**§ 1831. Appraisals**

"(a) The Administrator shall—

"(1) in consultation with appropriate representatives of institutions which are regularly engaged in making housing loans, prescribe uniform qualifications for appraisers;

"(2) use such qualifications in determining whether to approve an appraiser to make appraisals of the reasonable value of any property, construction, repairs, or alterations for the purposes of this chapter; and

"(3) in consultation with local representatives of institutions described in clause (1) of this subsection, develop and maintain lists of appraisers who are approved under clause (2) of this subsection to make appraisals for the purposes of this chapter.

"(b) The Administrator shall select appraisers from a list required by subsection (a)(3) of this section on a rotating basis to make appraisals for the purposes of this chapter.

"(c) The Administrator shall, upon request, furnish a copy of the appraisal made of property for the purposes of this chapter to the lender proposing to make the loan which is to be secured by such property and is to be guaranteed under this chapter.

"(d) If a lender—

"(1) has proposed to make a loan to be guaranteed under this chapter,

"(2) has been furnished a certificate of reasonable value of any property or of any construction, repairs, or alterations of property which is to be the security for such loan, and

"(3) within a reasonable period prescribed by the Administrator, has furnished to the Administrator an additional appraisal of the reasonable value of such property, construction, repairs, or alterations which was made by an appraiser selected by the lender from the list required by subsection (a)(3) of this section,

the Administrator shall consider both the initial appraisal and the additional appraisal and shall, if appropriate, issue a revised certificate of reasonable value of such property, construction, repairs, or alterations.

"(e)(1) In no case may a veteran be required to pay all or any portion of the cost of the additional appraisal described in subsection (d)(3) of this section.

"(2) If a veteran, within a reasonable period prescribed by the Administrator, has furnished to the Administrator an additional appraisal of the reasonable value of such property, construction, repairs, or alterations which was made by an appraiser selected by the veteran from the list required

by subsection (a)(3) of this section, the Administrator shall consider such appraisal, along with other appraisals furnished to the Administrator, and shall, if appropriate, issue a revised certificate of reasonable value of such property, construction, repairs, or alterations.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 1830 the following new item:

"1831. Appraisals.".

SEC. 408. FURNISHING INFORMATION TO REAL ESTATE PROFESSIONALS TO FACILITATE THE DISPOSITION OF PROPERTIES.

(a) IN GENERAL.—Subchapter III of chapter 37, as amended by section 407(a) of this Act, is further amended by adding at the end the following new section:

"§ 1832. Furnishing information to real estate professionals to facilitate the disposition of properties

"The Administrator shall furnish to real estate brokers and other real estate sales professionals information on the availability of real property for disposition under this chapter and the procedures used by the Veterans' Administration to dispose of such property.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 1831, as added by section 407(b) of this Act, the following new item:

"1832. Furnishing information to real estate professionals to facilitate the disposition of properties.".

SEC. 409. HOME LOAN ORIGINATION FEE.

It is the sense of the Congress that the Veterans' Administration loan origination fee should not be increased above its present level of one percent of the amount of the loan guaranteed.

PART B—NATIONAL CEMETERIES

SEC. 411. NATIONAL CEMETERY GRAVE MARKERS.

Section 1004(c) is amended—

(1) by striking out "Each" and inserting in lieu thereof "(1) Subject to paragraph (2), each"; and

(2) by adding at the end the following:

"(2) The grave markers referred to in paragraph (1) shall be upright for interments that occur on or after January 1, 1987, except that—

"(A) in the case of any cemetery scheduled to be closed by September 30, 1991, as indicated in the documents submitted by the Administrator to the Congress in justification for the amounts included for Veterans' Administration programs in the President's Budget for fiscal year 1987, the Administrator may provide for flat grave markers; and

"(B) in the case of any cemetery with a section which has flat markers on the date of the enactment of the Veterans' Benefits Improvement and Health-Care Authorization Act of 1986, the Administrator may continue to provide for flat grave markers in such section.".

SEC. 412. REPORTS ON THE NATIONAL CEMETERY SYSTEM.

(a) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act, the Administrator of Veterans' Affairs shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report on the National Cemetery System established by section 1000 of title 38, United States Code. The Administrator shall submit a second such report not later than 60 months after such date.

(b) CONTENTS.—Each report required by subsection (a) shall include—

(1) a plan for the operation of the National Cemetery System through the year 2000, including a description of anticipated general trends relating to the operation of the National Cemetery System between the years 2000 and 2020 and a discussion of the provisions of the plan which were developed in response to those trends;

(2) a list, in order of priority, of the 10 geographic areas in the United States in which the need for additional burial space for veterans is greatest;

(3) assessments of the desirability and feasibility of acquiring existing State veterans' cemeteries in the geographic areas identified on the list described in clause (2) and of the role of State veterans' cemeteries in such areas and generally in meeting the needs for burial space for veterans; and

(4) general plans (including projected costs, site location, and, if appropriate, necessary land acquisition) for any anticipated expansion of the National Cemetery System, including plans for meeting (A) the need for burial space for veterans in each geographic area identified on the list described in clause (2), and (B) the need for burial space for veterans in cemeteries other than cemeteries in the National Cemetery System in those areas.

SEC. 413. MEMORIAL AREAS IN ARLINGTON NATIONAL CEMETERY.

(a) IN GENERAL.—Chapter 24 is amended by adding at the end the following new section:

"§ 1009. Memorial areas in Arlington National Cemetery

"(a) The Secretary of the Army may set aside, when available, a suitable area or areas in Arlington National Cemetery, Virginia, to honor the memory of members of the Armed Forces and veterans—

"(1) who are missing in action;

"(2) whose remains have not been recovered or identified;

"(3) whose remains were buried at sea, whether by the member's or veteran's own choice or otherwise;

"(4) whose remains were donated to science; or

"(5) whose remains were cremated and whose ashes were scattered without interment of any portion of the ashes.

"(b) Under regulations prescribed by the Secretary, appropriate memorials or markers may be erected in Arlington National Cemetery to honor the memory of those individuals, or group of individuals, referred to in subsection (a) of this section.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"1009. Memorial areas in Arlington National Cemetery.".

SEC. 414. AUTHORITY TO ESTABLISH NATIONAL CEMETERIES.

(a) AUTHORITY.—The authority of the Administrator of Veterans' Affairs under chapter 24 of title 38, United States Code, to develop and acquire cemeteries as part of the National Cemetery System includes, but is not limited to, the authority to establish additional national cemeteries to serve the needs of veterans and their families in—

(1) San Francisco, California;
(2) Chicago, Illinois;
(3) Cleveland, Ohio;
(4) Pittsburgh, Pennsylvania;
(5) Dallas/Fort Worth, Texas;
(6) Miami, Florida;
(7) Seattle, Washington;
(8) Atlanta, Georgia;
(9) Phoenix/Tucson, Arizona;
(10) Birmingham, Alabama; and
(11) any other State in which a national cemetery is not available for the burial of veterans.

(b) LAND ACQUISITION.—The Administrator may acquire land necessary for a cemetery authorized by subsection (a) of this section by donation, purchase, condemnation, exchange of lands in the United States public domain, or otherwise.

TITLE V—ADMINISTRATIVE PROVISIONS

SEC. 501. CLARIFICATION OF REQUIREMENT FOR A DETAILED PLAN AND JUSTIFICATION FOR ADMINISTRATIVE REORGANIZATION.

Section 210(b)(2)(C) is amended by inserting at the end the following:

"(iii) The term 'detailed plan and justification' means, with respect to an administrative reorganization, a written report which, at a minimum—

"(I) specifies the number of employees by which each covered office or facility affected is to be reduced, the responsibilities of those employees, and the means by which the reduction is to be accomplished;

"(II) identifies any existing or planned office or facility at which the number of employees is to be increased and specifies the number and responsibilities of the additional employees at each such office or facility;

"(III) describes the changes in the functions carried out at any existing office or facility and the functions to be assigned to an office or facility not in existence on the date that the plan and justification are submitted pursuant to subparagraph (A) of this paragraph;

"(IV) explains the reasons for the determination that the reorganization is appropriate and advisable in terms of the statutory missions and long-term goals of the Veterans' Administration;

"(V) describes the effects that the reorganization may have on the provision of benefits and services to veterans and dependents of veterans (including the provision of benefits and services through offices and facilities of the Veterans' Administration not directly affected by the reorganization); and

"(VI) provides estimates of the costs of the reorganization and of the cost impact of the reorganization, together with analyses supporting those estimates.".

SEC. 502. COLLOCATION OF REGIONAL OFFICES AND MEDICAL CENTERS.

(a) IN GENERAL.—(1) Not later than March 1, 1987, the Administrator of Veterans' Affairs shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a plan, including a schedule, for collocating at least seven regional offices of the Veterans' Administration described in paragraph (3) with Veterans' Administration medical centers on the grounds of such medical centers. The plan and schedule shall provide for the collocations to be commenced and completed as soon as practicable.

(2) The plan required by paragraph (1) shall include—

(A) an analysis of the estimated costs and savings which would result from the collocations;

(B) the advantages and costs of furnishing personnel, supply, administration, and finance services and other supporting services jointly to regional offices of the Veterans' Administration and Veterans' Administration medical centers; and

(C) any other advantages and any disadvantages of such collocations relating to costs and the provision of benefits and services to veterans.

(3) The regional offices referred to in paragraphs (1) and (2) are regional offices of the Veterans' Administration which are not located at Veterans' Administration medical centers on the date of the enactment of this Act.

(b) LIMITATION.—The plan submitted pursuant to subsection (a) shall provide for the collocation of only a regional office and a medical center which are located, on the date of the enactment of this Act, in the same metropolitan area.

SEC. 503. EFFECTIVE DATE OF DISCONTINUANCE OF CERTAIN BENEFITS PAID TO INCOMPETENT INDIVIDUALS.

Section 3012 is amended by adding at the end the following new subsection:

"(c) The effective date of a discontinuance under section 3203(b)(1)(A) of this title of pension, compensation, or emergency officers' retirement pay by reason of hospital treatment or institutional or domiciliary care shall be the last day of the first month of such treatment or care during which the value of the veteran's estate, as determined under such section, equals or exceeds $1,500.".

SEC. 504. ADMINISTRATIVE DEBT COLLECTION BY OFFSET OF BENEFITS.

Section 3101 is amended—

(1) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively; and

(2) by inserting after subsection (b) the following new subsection (c):

"(c)(1) Notwithstanding any other provision of this section, the Administrator may, after receiving a request under paragraph (2) of this subsection relating to a veteran, collect by offset of any compensation or pension payable to the veteran under laws administered by the Veterans' Administration the uncollected portion of the amount of any indebtedness associated with the veteran's participation in a plan prescribed in subchapter I or II of chapter 73 of title 10.

"(2) If the Secretary concerned (as defined in section 101(5) of title 37) has tried under section 3711(a) of title 31 to collect an amount described in paragraph (1) of this subsection in the case of any veteran, has been unable to collect such amount, and has determined that the uncollected portion of such amount is not collectible from amounts payable by the Secretary to the veteran or that the veteran is not receiving any payment from the Secretary, the Secretary may request the Administrator to make collections in the case of such veteran as authorized in paragraph (1) of this subsection.

"(3)(A) A collection authorized by paragraph (1) of this subsection shall be conducted in accordance with the procedures prescribed in section 3716 of title 31 for administrative offset collections made after attempts to collect claims under section 3711(a) of such title.

"(B) For the purposes of subparagraph (A) of this paragraph, as used in the second sentence of section 3716(a) of title 31—

"(i) the term 'records of the agency' shall be considered to refer to the records of the department of the Secretary concerned; and

"(ii) the term 'agency' in clauses (3) and (4) shall be considered to refer to such department.

"(4) Funds collected under this subsection shall be credited to the Department of Defense Military Retirement Fund under chapter 74 of title 10.".

SEC. 505. DISCLOSURE OF FINANCIAL INFORMATION BY FIDUCIARIES.

Section 3202(b) is amended by inserting after the second sentence the following: "The Administrator may require the fiduciary, as part of such account, to disclose any additional financial information concerning the beneficiary (except for information that is not available to the fiduciary).".

TITLE VI—EXEMPTION OF CERTAIN PROGRAMS FROM BUDGET REDUCTION

SEC. 601. TREATMENT OF CERTAIN VETERANS' PROGRAMS UNDER BALANCED BUDGET AND EMERGENCY DEFICIT CONTROL ACT OF 1985.

(a) IN GENERAL.—(1) Chapter 1 is amended by adding at the end the following new section:

"§ 113. Treatment of certain programs under sequestration procedures

"(a) The following programs shall be exempt from sequestration or reduction under part C of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901 et seq.) or any other sequestration law and shall not be included in any report specifying reductions in Federal spending:

"(1) Benefits under chapter 21 of this title, relating to specially adapted housing and mortgage-protection life insurance for certain veterans with service-connected disabilities.

"(2) Benefits under section 907 of this title, relating to burial benefits for veterans who die as the result of a service-connected disability.

"(3) Benefits under chapter 39 of this title, relating to automobiles and adaptive equipment for certain disabled veterans and members of the Armed Forces.

"(4) Assistance and services under chapter 31 of this title, relating to training and rehabilitation for certain veterans with service-connected disabilities (but only with respect to fiscal year 1987).

"(5) Benefits under chapter 35 of this title, relating to educational assistance for survivors and dependents of certain veterans with service-connected disabilities (but only with respect to fiscal year 1987).

"(b) The following accounts of the Veterans' Administration shall be exempt from sequestration or reduction under part C of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901 et seq.) or any other sequestration law and shall not be included in any report specifying reductions in Federal spending:

"(1) The following life insurance accounts:

"(A) The National Service Life Insurance Fund authorized by section 720 of this title.

"(B) The Service-Disabled Veterans Insurance Fund authorized by section 722 of this title.

"(C) The Veterans Special Life Insurance Fund authorized by section 723 of this title.

"(D) The Veterans Reopened Insurance Fund authorized by section 725 of this title.

"(E) The United States Government Life Insurance Fund authorized by section 755 of this title.

"(F) The Veterans Insurance and Indemnity appropriation authorized by section 719 of this title.

"(2) The following revolving fund accounts:

"(A) The Veterans' Administration Special Therapeutic and Rehabilitation Activities Fund established by section 618(c) of this title.

"(B) The Veterans' Canteen Service revolving fund authorized by section 4204 of this title.

"(c)(1) A benefit under section 901, 902, 903, 906, or 908 of this title that is subject to reduction under a sequestration order or sequestration law shall be paid in accordance with the rates determined under the sequestration order or law (if any) in effect on the date of the death of the veteran concerned.

"(2) A benefit paid to, or on behalf of, an eligible veteran for pursuit of a program of education or training under chapter 30, 34, or 36 of this title that is subject to a sequestration order or a sequestration law shall be paid in accordance with the rates determined under the sequestration order or law (if any) in effect during the period of education or training for which the benefit is paid.

"(3) In implementation of a sequestration order or law with respect to each account from which a benefit described in paragraph (1) or (2) of this subsection is paid (including the making of determinations of the amounts by which such benefits are to be reduced), the total of the amounts (as estimated by the Administrator after consultation with the Director of the Congressional Budget Office) by which payments of such benefit will be reduced by reason of such paragraph after the last day of the period during which such order or law is in effect shall be deemed to be additional reductions in the payments of such benefit made, and in new budget authority for such payments, during such period.

"(d) In computing the amount of new budget authority by which a budget account of the Veterans' Administration is to be reduced for a fiscal year under a joint report of the Directors of the Office of Management and Budget and the Congressional Budget Office, or under an order of the President under part C of the Balanced Budget and Emergency Deficit Control Act of 1985, the base from which the amount of the reduction for such account is determined shall be established without regard to any amount of new budget authority in such account (determined under section 251(a)(6) of such Act) for any of the programs listed in subsection (a) of this section.

"(e) If a final order issued by the President pursuant to a law providing for the cancellation of loan guarantee commitments imposes a limitation on the total amount of loans that may be guaranteed under chapter 37 of this title in any fiscal year, the Administrator shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a monthly report (not later than the 10th day of each month during the remainder of such fiscal year following the issuance of such final order) providing the following information:

"(1) The total amount of the loans for which commitments of guarantees were made under such chapter during the preceding month.

"(2) The total amount of the loans for which commitments were made during the fiscal year through the end of such preceding month.

"(3) The Administrator's estimates as to the total amounts of the loans for which commitments would, in the absence of any limits on such commitments or guarantees, be made during (A) the month in which the report is required to be submitted, and (B) the succeeding months of the fiscal year.

"(f) This section applies without regard to any other provision of law (whether enacted before, on, or after the date of the enactment of this section) unless such Act expressly provides that it is enacted as a limitation to this section.

"(g) For the purposes of this section:

"(1) The term 'sequestration' means a reduction in spending authority and loan guarantee commitments generally throughout the Government under the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901 et seq.) or any other law.

"(2) The term 'sequestration law' means a law enacted with respect to a sequestration under the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901 et seq.) or any other law (under the procedures specified in that Act or otherwise).

"(3) The term 'sequestration order' means an order of the President issued under part C of such Act.".

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"113. Treatment of certain programs under sequestration procedures.".

(b) EFFECTIVE DATE.—Section 113 of title 38, United States Code (as added by subsection (a)), shall apply with respect to a sequestration order issued, or a sequestration law enacted, for a fiscal year after fiscal year 1986.

TITLE VII—TECHNICAL AMENDMENTS

SEC. 701. ELIMINATION OF GENDER-BASED LANGUAGE DISTINCTIONS IN TITLE 38.

Title 38 is amended as follows:

(1)(A) Section 102 is amended—

(i) by striking out subsection (b);

(ii) by striking out "(1)" after "(a)";

(iii) by striking out "(2)" before "Dependency" and inserting in lieu thereof "(b)";

(iv) by striking out "(A)" and "(B)" and inserting in lieu thereof "(1)" and "(2)", respectively; and

(v) by striking out "(3) For the purposes of this subsection" and inserting in lieu thereof "(C) For the purposes of this section,".

(B) The heading of section 102 and the item relating to that section in the table of sections at the beginning of chapter 1 are amended by striking out the semicolon and the last word.

(2) Section 103 is amended—

(A) in subsection (a)—

(i) by striking out "woman as the widow" and inserting in lieu thereof "person as the widow or widower";

(ii) by striking out "she" and inserting in lieu thereof "such person";

(iii) by striking out "him" and inserting in lieu thereof "the veteran";

(iv) by striking out "his" and inserting in lieu thereof "the veteran's"; and

(v) by striking out "legal widow" and inserting in lieu thereof "legal widow or widower";

(B) in subsection (b), by striking out "widow" and inserting in lieu thereof "surviving spouse";

(C) in subsection (c), by striking out "woman is or was the wife" and inserting in lieu thereof "person is or was the spouse";

(D) in subsection (d)(1), by striking out "widow of a veteran shall not bar the furnishing of benefits to her as the widow" and inserting in lieu thereof "surviving spouse of a veteran shall not bar the furnishing of benefits to such person as the surviving spouse";

(E) in subsection (d)(2)—

(i) by striking out "widow" each place it appears and inserting in lieu thereof "surviving spouse"; and

(ii) by striking out "her" and inserting in lieu thereof "such person"; and

(F) in subsection (d)(3)—

(i) by striking out "widow" each place it appears and inserting in lieu thereof "surviving spouse";

(ii) by striking out "man" and inserting in lieu thereof "person";

(iii) by striking out "herself" and inserting in lieu thereof "himself or herself";

(iv) by striking out "his wife" and inserting in lieu thereof "that person's spouse"; and

(v) by striking out "her" and inserting in lieu thereof "that person".

(3) Section 104(b) is amended by striking out "him" and inserting in lieu thereof "the Administrator".

(4) Section 105 is amended—

(A) in subsection (a)—

(i) by striking out "his" in the first sentence and inserting in lieu thereof "the person's"; and

(ii) by striking out "him" in the second sentence and inserting in lieu thereof "the person"; and

(B) in subsection (b), by striking out "service, or by absenting himself" in clause (1) and inserting in lieu thereof "service or by absenting himself or herself".

(5) Section 106 is amended—

(A) in subsection (b)(2), by striking out "his" and inserting in lieu thereof "the person's";

(B) in subsection (c)—

(i) by striking out "him" and inserting in lieu thereof "that individual";

(ii) by striking out "his" and inserting in lieu thereof "that individual's"; and

(iii) by striking out "he" and inserting in lieu thereof "that individual"; and

(C) in subsection (d)—

(i) by striking out "by him" in clause (2);

(ii) by striking out "he" each place it appears in the second sentence and inserting in lieu thereof "such individual"; and

(iii) by striking out "his" in the second sentence and inserting in lieu thereof "the".

(6) Section 107(a) is amended by striking out "his" in the last sentence and inserting in lieu thereof "such member's".

(7) Section 108(b) is amended by striking out "his" both places it appears and inserting in lieu thereof "that individual's".

(8) Section 109(b) is amended by striking out "he" in the second sentence and inserting in lieu thereof "such person".

(9) Section 210 is amended—

(A) by striking out "he" each place it appears and inserting in lieu thereof "the Administrator";

(B) in subsection (a), by striking out "He" and inserting in lieu thereof "The Administrator";

(C) in subsection (c)(3)(A), by striking out "widow" and inserting in lieu thereof "surviving spouse"; and

(D) in subsection (c)(3)(B), by striking out "him" and inserting in lieu thereof "the Administrator".

(10) Sections 212(a), 215, and 217(b) are amended by striking out "he" and inserting in lieu thereof "the Administrator".

(11) Section 213 is amended—

(A) by striking out "he" in the first sentence and inserting in lieu thereof "the Administrator"; and

(B) by striking out "his" in the second sentence and inserting in lieu thereof "the Administrator's".

(12) Section 219(a) is amended—

(A) by striking out "he" and inserting in lieu thereof "the Administrator"; and

(B) by striking out "him" and inserting in lieu thereof "the Administrator".

(13) Section 230(a) is amended by striking out "he" and inserting in lieu thereof "the Administrator".

(14) Section 233 is amended—

(A) by striking out "he" in subsection (a) and inserting in lieu thereof "the Administrator"; and

(B) in subsection (b), by striking out "when he determines" and inserting in lieu thereof "upon determining".

(15) Section 235 is amended by striking out "his" and inserting in lieu thereof "the President's".

(16) Section 236 is amended by striking out "his" and inserting in lieu thereof "the Administrator's".

(17) Section 241 is amended—

(A) by striking out "his" in paragraph (1) and inserting in lieu thereof "the veteran's"; and

(B) by striking out "he" in paragraph (2) and inserting in lieu thereof "the Administrator".

(18) Section 242(a) is amended by striking out "he" and inserting in lieu thereof "the Administrator".

(19) Section 244(5) is amended by striking out "his" and inserting in lieu thereof "the Administrator's".

(20) Section 602 is amended by striking out "his".

(21) Section 704 is amended—

(A) in subsection (d)—

(i) by striking out "his" each place it appears and inserting in lieu thereof "the insured's"; and

(ii) by striking out "he" each place it appears and inserting in lieu thereof "the insured"; and

(B) in subsection (e)—

(i) by striking out "his" and inserting in lieu thereof "the insured's"; and

(ii) by striking out "he" and inserting in lieu thereof "the Administrator".

(22) Section 705 is amended—

(A) by striking out "his" each place it appears and inserting in lieu thereof "the"; and

(B) by striking out "him" and inserting in lieu thereof "the insured".

(23) Section 707 is amended by striking out "his" in subsections (a) and (c) and inserting in lieu thereof "the insured's".

(24) Section 708 is amended by striking out "his" and inserting in lieu thereof "the insured's".

(25) Section 712 is amended—

(A) by striking out "his" each place it appears and inserting in lieu thereof "the insured's"; and

(B) by striking out "he" in the first sentence of subsection (d) and inserting in lieu thereof "the insured".

(26) Section 713 is amended by striking out "his" each place it appears and inserting in lieu thereof "the".

(27) Section 716(e) is amended by striking out "his" and inserting in lieu thereof "the insured's".

(28) Section 725 is amended—

(A) by striking out "he" each place it appears and inserting in lieu thereof "such person";

(B) by striking out "him" each place it appears and inserting in lieu thereof "the applicant"; and

(C) by striking out "his" in subsection (d)(3) and inserting in lieu thereof "the Administrator's".

(29) Section 742 is amended—

(A) in subsection (b)—

(i) by striking out "his" and inserting in lieu thereof "the insured's"; and

(ii) by striking out "he" and inserting in lieu thereof "the insured"; and

(B) in subsection (c)—

(i) by striking out "he" and inserting in lieu thereof "the insured";

(ii) by striking out "his term" and inserting in lieu thereof "the term";

(iii) by striking out "his failure"; and

(iv) by striking out "his control" and inserting in lieu thereof "the insured's control".

(30) Sections 743, 744(b), 745, 746, 747, and 748 are amended by striking out "his" and inserting in lieu thereof "the insured's".

(31) Section 750 is amended by striking out "in his lifetime or by his last will and testament" and inserting in lieu thereof "while alive or by last will".

(32) Section 752 is amended by striking out "his" each place it appears and inserting in lieu thereof "the".

(33) Section 759(a) is amended—

(A) by striking out "his" and inserting in lieu thereof "the applicant's"; and

(B) by striking out "he" and inserting in lieu thereof "the applicant".

(34) Section 760(a) is amended by striking out "his" and inserting in lieu thereof "the guardian's".

(35) Section 765 is amended—

(A) in paragraph (5)(B), by striking out "he" and inserting in lieu thereof "such person"; and

(B) in paragraph (9)—

(i) by striking out "his minority" and inserting in lieu thereof "the child's minority"; and

(ii) by striking out "his adoption" and inserting in lieu thereof "the child's adoption".

(36) Section 766 is amended—

(A) in subsection (c), by striking out "him" and inserting in lieu thereof "the Administrator"; and

(B) in subsection (d), by striking out "he" and inserting in lieu thereof "the Administrator".

(37) Section 767 is amended—

(A) in subsection (b)—

(i) by striking out "him" and inserting in lieu thereof "such member";

(ii) by striking out "he" each place it appears and inserting in lieu thereof "such member"; and

(iii) by striking out "his" and inserting in lieu thereof "such member's"; and

(B) in subsection (c)—

(i) by striking out "his" and inserting in lieu thereof "such member's"; and

(ii) by striking out "he" and inserting in lieu thereof "such member".

(38) Section 768 is amended—

(A) in subsection (a)(2)—

(i) by striking out "his"; and

(ii) by striking out "him" and inserting in lieu thereof "the member";

(B) in subsection (a)(3)—

(i) by striking out "his"; and

(ii) by striking out "him" and inserting in lieu thereof "the member"; and

(C) in subsection (b), by striking out "his" and inserting in lieu thereof "the".

(39) Section 769 is amended—

(A) in subsection (a)(1), by striking out "his" and inserting in lieu thereof "the member's";

(B) in subsection (a)(3), by striking out "him" and inserting in lieu thereof "the member";

(C) in subsection (a)(4)—

(i) by striking out "him" both places it appears and inserting in lieu thereof "the member"; and

(ii) by striking out "his" and inserting in lieu thereof "the member's";

(D) in subsection (b), by striking out "he" and inserting in lieu thereof "the Administrator";

(E) in subsection (d)(3), by striking out "his" and inserting in lieu thereof "the Administrator's"; and

(F) in subsection (e), by striking out "he" and inserting in lieu thereof "the Administrator".

(40) Section 770 is amended—

(A) by striking out "his" each place it appears in subsection (a) and inserting in lieu thereof "the insured's"; and

(B) by striking out "his" in subsection (e) and inserting in lieu thereof "the member's".

(41) Section 774 is amended by striking out "his" and inserting in lieu thereof "the Administrator".

(42) Section 776 is amended by striking out "him" and inserting in lieu thereof "the Administrator".

(43) Section 777 is amended—

(A) in subsection (a)—

(i) by striking out "his" both places it appears and inserting in lieu thereof "such person's"; and

(ii) by striking out "he" and inserting in lieu thereof "such person";

(B) in subsection (c)—

(i) by striking out "he" the first place it appears and inserting in lieu thereof "the Administrator"; and

(ii) by striking out "he" the second place it appears and inserting in lieu thereof "such member or former member";

(C) in subsection (d), by striking out "his" and inserting in lieu thereof "such person's";

(D) in subsection (e), by striking out "he" and inserting in lieu thereof "the insured"; and

(E) in subsection (g)—

(i) by striking out "his" and inserting in lieu thereof "the insured's"; and

(ii) by striking out "he" and inserting in lieu thereof "the Administrator".

(44) Section 781(b) is amended—

(A) by striking out "he" and inserting in lieu thereof "such person"; and

(B) by striking out "his" and inserting in lieu thereof "such person's".

(45) Section 783 is amended by striking out "his" and inserting in lieu thereof "such beneficiary's".

(46) Section 784(g) is amended by striking out "his" both places it appears and inserting in lieu thereof "the insured's".

(47) Section 787 is amended by striking out "himself or any other" and inserting in lieu thereof "any".

(48) Section 801(a) is amended by striking out "he" and inserting in lieu thereof "the Administrator".

(49) Section 806 is amended—

(A) by striking out "his" in subsection (b) and inserting in lieu thereof "the veteran's";

(B) by striking out "he" in subsection (c) and inserting in lieu thereof "the veteran";

(C) by striking out "his" in subsection (d) and inserting in lieu thereof "the veteran's";

(D) in subsection (g)—

(i) in paragraph (2)—

(I) by striking out "he" each place it appears and inserting in lieu thereof "the Administrator";

(II) by striking out "his" and inserting in lieu thereof "the Administrator's"; and

(III) by striking out "him" each place it appears and inserting in lieu thereof "the Administrator";

(ii) in paragraph (3), by striking out "he" and inserting in lieu thereof "the veteran"; and

(iii) in paragraph (5), by striking out "him" each place it appears and inserting in lieu thereof "the Administrator"; and

(E) in subsection (h)—

(i) by striking out "his" in the first sentence and inserting in lieu thereof "the Administrator's"; and

(ii) by striking out "his" in the second sentence and inserting in lieu thereof "the veteran's".

(50) Section 901(b) is amended by striking out "his" and inserting in lieu thereof "the veteran's".

(51) Section 904 is amended by striking out "his" each place it appears and inserting in lieu thereof "the veteran's".

(52) Section 1000(a) is amended—

(A) by striking out "servicemen" and inserting in lieu thereof "servicemembers"; and

(B) by striking out "To assist" and all that follows through "the Administrator" in the second sentence and inserting in lieu thereof "The Administrator".

(53) Section 1001 is amended by striking out "he" and inserting in lieu thereof "the Administrator".

(54) Section 1002 is amended—

(A) by striking out "he" each place it appears and inserting in lieu thereof "such member"; and

(B) by striking out "wife, husband," in paragraph (5).

(55) Section 1004 is amended—

(A) in subsection (d), by striking out "he" each place it appears and inserting in lieu thereof "the veteran";

(B) in subsections (b), (e), and (g), by striking out "he" and inserting in lieu thereof "the Administrator"; and

(C) by striking out "his" each place it appears and inserting in lieu thereof "the Administrator's".

(56) Section 1005 is amended—

(A) by striking out "his" in subsection (a) and inserting in lieu thereof "the Administrator's"; and

(B) by striking out "He" in subsection (c) and inserting in lieu thereof "The Administrator".

(57) Section 1006 is amended by striking out "he" and inserting in lieu thereof "the Administrator".

(58) Section 1007 is amended—

(A) by striking out "he" both places it appears and inserting in lieu thereof "the Administrator"; and

(B) by striking out "He" at the beginning of the second sentence and inserting in lieu thereof "The Administrator".

(59) The third sentence of section 1780(d)(2) is amended by striking out "serviceman" and inserting in lieu thereof "person".

(60) Section 2024(g) is amended by striking out "his" and inserting in lieu thereof "the".

(61) Section 3001(b)(1) is amended by striking out "widow or" each place it appears and inserting in lieu thereof "surviving spouse or".

(62) Section 3006 is amended by striking out "he" and inserting in lieu thereof "the Administrator".

(63) Section 3010(b)(1) is amended by striking out "his" and inserting in lieu thereof "the veteran's".

(64) Section 3012(b)(6) is amended by striking out "his" and inserting in lieu thereof "the payee's".

(65) Section 3020 is amended—

(A) in the third sentence of subsection (a)—

(i) by striking out "his" and inserting in lieu thereof "the payee's";

(ii) by striking out "he" and inserting in lieu thereof "the payee"; and

(iii) by striking out "him" and inserting in lieu thereof "the payee"; and

(B) in the first sentence of subsection (b)—

(i) by striking out "he" and inserting in lieu thereof "such person";

(ii) by striking out "widow" and inserting in lieu thereof "surviving spouse";

(iii) by striking out "she" both places it appears and inserting in lieu thereof "the surviving spouse";

(iv) by striking out "to her" and inserting in lieu thereof "to the surviving spouse"; and

(v) by striking out "by her" and inserting in lieu thereof "by the".

(66) Section 3021(a) is amended—

(A) by striking out "his"; and

(B) by striking out "His" in subparagraphs (A), (B), and (C) of paragraph (2) and inserting in lieu thereof "The veteran's".

(67) Section 3022 is amended by striking out "his" and inserting in lieu thereof "the payee's".

(68) Section 3101 is amended—

(A) by striking out "his or her" in the last sentence of subsection (a) and inserting in lieu thereof "a"; and

(B) by striking out "his" each place it appears in subsection (b) and inserting in lieu thereof "the beneficiary's".

(69) Section 3102 is amended—

(A) by striking out "his" in subsection (b) and inserting in lieu thereof "the veteran's"; and

(B) by striking out "his" both places it appears in subsection (c) and inserting in lieu thereof "the Administrator's".

(70) Section 3103 is amended—

(A) in subsection (a)—

(i) by striking out "he" and inserting in lieu thereof "such person"; and

(ii) by striking out "his" and inserting in lieu thereof "such officer's";

(B) in subsection (b)—

(i) by striking out "his" and inserting in lieu thereof "a person's";

(ii) by striking out "any person" and inserting in lieu thereof "that person"; and

(iii) by striking out "he" and inserting in lieu thereof "such person";

(C) in subsection (c)—

(i) by striking out "his" both places it appears and inserting in lieu thereof "the individual's"; and

(ii) by striking out "he" and inserting in lieu thereof "the individual"; and

(D) in the second sentence of subsection (e)(2), by striking out "his or her" and inserting in lieu thereof "the".

(71) Section 3104 is amended—

(A) in subsection (a)(1), by striking out "his" and inserting in lieu thereof "such person's";

(B) in subsection (b)—

(i) by striking out "widow" in paragraph (1) and inserting in lieu thereof "surviving spouse";

(ii) by striking out "his" in paragraph (1) and inserting in lieu thereof "such person's"; and

(iii) by striking out "he or she" in paragraph (3) and inserting in lieu thereof "such person"; and

(C) in subsection (c)—

(i) by striking out "his" and inserting in lieu thereof "any person's";

(ii) by striking out "to any person" and inserting in lieu thereof "to such person"; and

(iii) by striking out "he" and inserting in lieu thereof "such person".

(72) Section 3105 is amended—

(A) by striking out "he" and inserting in lieu thereof "such person"; and

(B) by striking out "his" and inserting in lieu thereof "such person's".

(73) Section 3106 is amended by striking out "his" and inserting in lieu thereof "the".

(74) Section 3108(c) is amended—

(A) by striking out "his" and inserting in lieu thereof "the Administrator's; and

(B) by striking out "he" and inserting in lieu thereof "the dependent".

(75) Section 3109 is amended—

(A) by striking out "his" each place it appears in subsection (a) and inserting in lieu thereof "such person's"; and

(B) by striking out "he" in subsection (b) and inserting in lieu thereof "such person".

(76) Section 3202 is amended—

(A) in subsection (a), by striking out "he" and inserting in lieu thereof "the Administrator";

(B) in subsection (b)—

(i) by striking out "his trust" in the first sentence and inserting in lieu thereof "the trust of such guardian, curator, conservator, or other person";

(ii) by striking out "his duly" in the first sentence and inserting in lieu thereof "the Administrator's";

(iii) by striking out "his" in the second and third sentences and inserting in lieu thereof "the Administrator's"; and

(iv) by striking out "himself" in the third sentence and inserting in lieu thereof "the Administrator";

(C) in subsection (d)—

(i) by striking out "his" in the second sentence and inserting in lieu thereof "the veteran's";

(ii) by striking out "his" in the third sentence and inserting in lieu thereof "the beneficiary's"; and

(iii) in the fourth sentence—

(I) by striking out "him" and inserting in lieu thereof "the beneficiary";

(II) by striking out "he" and inserting in lieu thereof "the beneficiary"; and

(III) by striking out "his" each place it appears and inserting in lieu thereof "the beneficiary's"; and

(D) in subsection (e), by striking out "his".

(77) Section 3203(e) is amended by striking out "his" and inserting in lieu thereof "the veteran's".

(78) Section 3303 is amended by striking out "his" and inserting in lieu thereof "the veteran's".

(79) Section 3401 is amended by striking out "he" and inserting in lieu thereof "such individual".

(80) Section 3404(b) is amended by striking out "he" and inserting in lieu thereof "the Administrator".

(81) Section 3405 is amended by striking out "him" and inserting in lieu thereof "to the claimant or beneficiary".

(82) Section 3501 is amended—

(A) by striking out "his" the first place it appears and inserting in lieu thereof "a claimant's"; and

(B) by striking out "his" the second, third, and fourth places it appears and inserting in lieu thereof "such fiduciary's".

(83) Section 3503 is amended—

(A) by striking out "his" in subsection (c) and inserting in lieu thereof "the veteran's"; and

(B) by striking out "he" each place it appears in subsection (d)(2) and inserting in lieu thereof "the Administrator".

(84) Section 3504(b) is amended—

(A) by striking out "his" and inserting in lieu thereof "the Administrator's"; and

(B) by striking out "he" and inserting in lieu thereof "the dependent".

(85) Section 4005 is amended—

(A) by striking out "his" each place it appears and inserting in lieu thereof "the claimant's"; and

(B) by striking out "him" and inserting in lieu thereof "the claimant or legal guardian".

(86) Section 4106(b) is amended—

(A) by striking out "him" and inserting in lieu thereof "such person"; and

(B) by striking out "he" and inserting in lieu thereof "such person".

(87) Section 4107(e)(5) is amended by striking out "her" and inserting in lieu thereof "the nurse's".

(88) Section 4110 is amended—

(A) by striking out "of his own choosing" in subsection (c) and inserting in lieu thereof "chosen by such person";

(B) in subsection (d)—

(i) by striking out "He" and inserting in lieu thereof "The Administrator"; and

(ii) by striking out "he" and inserting in lieu thereof "the Administrator"; and

(C) in subsection (e)—

(i) by striking out "he" and inserting in lieu thereof "the Administrator"; and

(ii) by striking out "him" and inserting in lieu thereof "the Administrator".

(89) Section 5101 is amended by striking out "his" each place it appears and inserting in lieu thereof "the".

(90) Section 5102 is amended—

(A) by striking out "he" each place it appears and inserting in lieu thereof "the Administrator";

(B) by striking out "his" and inserting in lieu thereof "the Administrator's"; and

(C) by striking out "He" and inserting in lieu thereof "The Administrator".

(91) Section 5103 is amended by striking out "his" each place it appears and inserting in lieu thereof "the".

(92) Section 5104 is amended—

(A) by striking out "he" each place it appears and inserting in lieu thereof "the Administrator"; and

(B) by striking out "his" each place it appears and inserting in lieu thereof "the Administrator's".

(93) Section 5201(a)(1) is amended by striking out "his" and inserting in lieu thereof "such person's".

(94) Section 5202 is amended—

(A) in the first sentence of subsection (b)—

(i) by striking out "his last" each place it appears and inserting in lieu thereof "such person's last";

(ii) by inserting "has personal property situated on such facility and" before "shall have designated";

(iii) by striking out "to whom he desires his personal property situated upon such facility to be delivered, upon the death of such veteran" and inserting in lieu thereof "to receive such property when such veteran, dependent or survivor dies,"; and

(iv) by striking out "him" and inserting in lieu thereof "the Administrator";

(B) in the second sentence of subsection (b)—

(i) by striking out "by the veteran" and inserting in lieu thereof "by such veteran, dependent, or survivor";

(ii) by striking out "if he has";

(iii) by striking out "his" and inserting in lieu thereof "the Administrator's";

(iv) by striking out "as provided in this subchapter," and inserting in lieu thereof "in writing delivered to the Veterans' Administration"; and

(v) by striking out "child, grandchild, mother, father, grandmother, grandfather, brother or sister" and inserting in lieu thereof "children, grandchildren, parents, grandparents, siblings";

(C) by striking out the third sentence of subsection (b);

(D) in the fourth sentence of subsection (b)—

(i) by striking out "his designee may in such case select the one to receive such pos-

session," and inserting in lieu thereof "the Administrator's designee may in such case deliver the property either jointly or separately in equal values, to those equally entitled thereto"; and

(ii) by striking out "in his discretion" and inserting in lieu thereof "in the discretion of the Administrator or the Administrator's designee"; and

(E) in subsection (c), by striking out "his" and inserting in lieu thereof "the Administrator's".

(95) Section 5203 is amended by striking out "his" and inserting in lieu thereof "such person's".

(96) Section 5204 is amended by striking out "his" each place it appears and inserting in lieu thereof "such person's".

(97) Section 5206 is amended by striking out "his" and inserting in lieu thereof "the owner's".

(98) Section 5207 is amended—

(A) by striking out "his" and inserting in lieu thereof "the Administrator's"; and

(B) by striking out "by him promulgated" and inserting in lieu thereof "prescribed by the Administrator".

(99) Section 5220 is amended—

(A) in subsection (a)—

(i) by striking out "surviving him any" and inserting in lieu thereof "any surviving";

(ii) by striking out "his" each place it appears and inserting in lieu thereof "the decedent's";

(iii) by striking out "he" and inserting in lieu thereof "such person"; and

(iv) by striking out "owned by him" and inserting in lieu thereof "owned by such person"; and

(B) in subsection (b), by striking out "his" and inserting in lieu thereof "such person's".

(100) Section 5221 is amended by striking out "he" and inserting in lieu thereof "such person".

(101) Section 5222 is amended—

(A) by striking out "he" and inserting in lieu thereof "the Administrator"; and

(B) by striking out "his" and inserting in lieu thereof "the Administrator's".

(102) Section 5223 is amended by striking out "his" each place it appears and inserting in lieu thereof "the decedent's".

(103) Section 5224 is amended—

(A) by striking out "his" each place it appears and inserting in lieu thereof "the Administrator's"; and

(B) by striking out "him" and inserting in lieu thereof "the Administrator".

(104) Section 5225 is amended by striking out "his" and inserting in lieu thereof "the Administrator's".

(105) Section 5226 is amended—

(A) by striking out "himself" and inserting in lieu thereof "such person";

(B) by striking out "his" in the second sentence and inserting in lieu thereof "the veteran's";

(C) by striking out "he" and inserting in lieu thereof "the Administrator"; and

(D) by striking out "his authorized" each place it appears, and inserting in lieu thereof "the Administrator's authorized".

SEC. 702. GENERAL TECHNICAL AMENDMENTS.

Title 38 is amended as follows:

(1) Section 101 is amended—

(A) by inserting "Army" before "National Guard" in paragraphs (22)(C), (23), and (27)(F); and

(B) by striking out "and the" in paragraph (31) and all that follows through "widower".

(2) Section 233(a) is amended by striking out "subparagraph (4)" and inserting in lieu thereof "paragraph (4) of this subsection".

(3) Section 235 is amended—

(A) by inserting "(a)" before "The Administrator";

(B) by indenting paragraphs (1) through (7) two ems;

(C) by inserting "Service" in paragraph (5) after "Foreign";

(D) by striking out "The foregoing authority" and inserting in lieu thereof "(b) The authority in subsection (a) of this section"; and

(E) by striking out "titles 5 and 22" and inserting in lieu thereof "title 5 and the Foreign Service Act of 1980 (22 U.S.C. 3901 et seq.)".

(4) Section 241 is amended—

(A) by inserting "The Administrator shall" after "(1)";

(B) by striking out "eligible and, in carrying" and inserting in lieu thereof "eligible. In carrying";

(C) by striking out "release;" and inserting in lieu thereof "release.";

(D) by inserting "The Administrator shall" after "(2)";

(E) by striking out "veterans; and" and inserting in lieu thereof "veterans.";

(F) by inserting "The Administrator shall" after "(3)"; and

(G) by striking out "clauses (1) and (2) above" and inserting in lieu thereof "paragraphs (1) and (2) of this section".

(5) Section 612(j) is amended—

(A) by striking out "pursuant to" and inserting in lieu thereof "under";

(B) by striking out "(voluntarily requesting" and inserting in lieu thereof "who voluntarily request";

(C) by striking out the parenthesis after "immunizations";

(D) by striking out "facility, utilizing" and inserting in lieu thereof "facility. Any such immunization shall be made using";

(E) by striking out "Administration," and all that follows through "to provide" and inserting in lieu thereof "Administration. For such purpose, notwithstanding any other provision of law, the Secretary may provide"; and

(F) by striking out "cost and the provisions of section" and inserting in lieu thereof "cost. Section".

(6) Section 612A(h)(3)(A)(i) is amended by striking out "the date of the enactment of this section" and inserting in lieu thereof "December 3, 1985,".

(7) Section 801(a) is amended—

(A) by striking out the comma after "veteran" the first place it appears; and

(B) by striking out "title, based on service after "April 20, 1898," and inserting in lieu thereof "title".

(8) Section 1411(a) is amended by inserting a comma after "of this section" in the matter preceding clause (1).

(9) Section 1841 is amended—

(A) by striking out "per centum" in paragraph (1) and inserting in lieu thereof "percent"; and

(B) by striking out "one hundred and eighty days" in paragraph (2) and inserting in lieu thereof "180 days".

(10) Section 1842 is amended by striking out "per centum" each place it appears and inserting in lieu thereof "percent".

(11) Section 1849 is amended by striking out "Effective for fiscal year 1982 and fiscal years thereafter, there" and inserting in lieu thereof "There".

(12) The item relating to section 4106 in the table of sections at the beginning of chapter 73 is amended to read as follows:

"4106. Period of appointments; promotions.".

(13) Section 4202(11) is amended by striking out "and without regard" and all that follows through "(7 U.S.C. 2240),".

(14) Section 4204 is amended by striking out ", amounts heretofore appropriated to carry out Public Law 636, Seventy-ninth Congress,".

(15) Section 5010(a)(1) is amended—

(A) by striking out "one hundred and twenty-five thousand and not less than one hundred thousand" and inserting in lieu thereof "125,000 and not less than 100,000"; and

(B) by striking out "ninety thousand" both places it appears and inserting in lieu thereof "90,000".

(16) Section 5073(a)(2) is amended—

(A) by striking out "twelve-month" each place it appears and inserting in lieu thereof "12-month"; and

(B) by striking out "per centum" each place it appears and inserting in lieu thereof "percent".

(17) Each subchapter heading is amended so as to be printed in all capital letters and in light-face type.

(18) The table of parts at the beginning of title 38 is amended by striking out "1501" in the item relating to part III and inserting in lieu thereof "1401".

SEC. 703. TECHNICAL AMENDMENTS TO PROVISIONS ENACTED BY VETERANS' BENEFITS IMPROVEMENT ACT OF 1984.

(a) AMENDMENTS TO PUBLIC LAW 98-543.—(1) Section 105 of the Veterans' Benefits Improvement Act of 1984 (Public Law 543) is amended by striking out "413" and inserting in lieu thereof "413(a)".

(2) Section 111(c)(1)(B) of such Act is amended by striking out "subsection (b)" and inserting in lieu thereof "subsection (c)(1)(B)".

(b) AMENDMENTS TO TITLE 38.—(1) Section 524 of title 38, United States Code, is amended—

(A) by striking out "subsection (d)" in subsection (a)(2) and inserting in lieu thereof "subsection (b)";

(B) by striking out "subsection (a)(1)" in subsection (b)(4) and inserting in lieu thereof "subsection (a)"; and

(C) in subsection (c)—

(i) by striking out "Notwithstanding subsection (c) of section 525 of this title, a veteran" and inserting in lieu thereof "A veteran";

(ii) by striking out "subsection (b)" the second place it appears and inserting in lieu thereof "subsection (b)(1)"; and

(iii) by striking out the period and inserting in lieu thereof "without regard to the date on which the veteran's entitlement to pension is terminated.".

(2) Section 525(a) of such title is amended by striking out "under section 521 of this title".

(3) The item relating to section 524 in the table of sections at the beginning of chapter 15 of such title is amended by inserting "program of" after "Temporary".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the Veterans' Benefits Improvement Act of 1984 (Public Law 98-543).

In lieu of the Senate amendment to the title of the bill, amend the title so as to read: "An Act to amend title 38, United States Code, to increase the rates of compensation and dependency and indemnity compensation for veterans and survivors, and to improve veterans' health-care, education, employment, housing, and national

cemetery programs, and for other purposes.".

Mr. MONTGOMERY (during the reading). Mr. Speaker, I ask unanimous consent that the Senate amendments and the House amendments to the Senate amendments be considered as read and printed in the RECORD.

The SPEAKER. Is there objection to the request of the gentleman from Mississippi?

There was no objection.

The SPEAKER. Is there objection to the initial request of the gentleman from Mississippi?

Mr. HAMMERSCHMIDT. Mr. Speaker, reserving the right to object, I yield to the distinguished chairman of the Committee on Veterans' Affairs in order to explain his request.

Mr. MONTGOMERY. Mr. Speaker, I appreciate the gentleman yielding to me and I appreciate his agreement with what we are doing here today. I am referring to the ranking member on our committee, JOHN PAUL HAMMERSCHMIDT.

As the gentleman knows, during this session of the Congress the House has passed 10 veterans' bills, most of them by voice vote. Last Tuesday, the other body passed an omnibus bill (S. 2422), containing many provisions similar to those passed by the House.

The proposed amendment to the Senate amendments contains most of the provisions previously passed by the House. The agreement we have reached with the other body is a reasonable compromise. Let me explain what we have agreed to.

DISABILITY COMPENSATION AND DEPENDENCY AND INDEMNITY COMPENSATION

The administration proposed a cost-of-living adjustment for service-connected disabled veterans equal to that given Social Security beneficiaries. The Social Security rate adjustment is based on changes in the Consumer Price Index. In the President's proposed fiscal year 1987 budget request submitted earlier this year, a 3.7-percent increase was anticipated for the indexed Social Security program and this was the amount requested for Veterans' Administration compensation and dependency and indemnity [DIC] programs.

In its report to the Committee on the Budget (Feb. 27, 1986), our committee recommended that the first concurrent budget resolution contain new budget authority and outlays for a 3.7-percent increase effective December 1, 1986. The resolution passed by the House included a 3.4-percent increase based on the then current economic assumptions. The conference agreement on the proposed budget for fiscal year 1987, adopted by both Houses, limited all Federal COLA's to not more than 2 percent.

The actual increase for Social Security programs will not be known until the latter part of October, following adjournment. Current projections, based on available data, indicate that the increase will be somewhere between 1.1 and 1.5 percent. The amendment we bring to the House today would provide for a 1.5-percent increase, effective December 1, 1986, for service-connected disabled veterans and for the widows and children of veterans who died of service-connected causes. This is a reasonable compromise and it will ensure that this most deserving class of citizens will not have their benefits eroded by inflation.

Mr. Speaker, current law provides that a veteran who loses one eye in service and later, from non-service-connected causes, loses the use of the other eye shall be paid benefits as if the loss of both eyes is service connected. The same principle is in current law for cases of severe kidney impairment. In both instances, Congress decided that the service-connected loss of sight of one eye, or the loss of use of one kidney was a direct causative factor in the ultimate resulting more severe disability. The established principle of "paired organ" impairment was later extended to total deafness in recognition of the additional disability attendant on the non-service-connected loss of a second paired organ when service connection has been established for the other organ.

The administration has proposed to include lung disabilities in the types of special consideration regarding payment of compensation in cases where veterans have suffered service-connected and non-service-connected loss, or loss of use, of a second paired organ. The proposed amendment includes this provision.

The amendment would also extend the "paired organ" principle to a veteran who has suffered the service-connected loss of one arm or leg and later suffers the non-service-connected loss of the paired extremity. According to officials at the Veterans' Administration, there are only some 65 such cases.

The amendment would also provide, on a prospective basis, that compensation payable under this "paired organ or extremity" provision would be subject to offset by any civil damages received as the result of legal actions based on the non-service-connected loss.

Mr. Speaker, the compromise agreement would add two medical conditions to the list of those for which service connection may be presumed if manifested to a compensable degree by veterans who were prisoners of war for at least 30 days. The additional conditions are organic residuals of hypothermia—frostbite—and arthritis due to trauma.

The committee has always been cognizant of the problems of former prisoners of war with regard to health problems related to the hardships endured during periods of captivity by enemy forces. We have learned that, in a limited number of cases, former prisoners of war have been unsuccessful in establishing their claims for the three conditions named in the House-passed bill. Normally, the conditions would become manifest and require treatment upon repatriation or shortly thereafter, and typically the Veterans' Administration has recognized the validity of the claims. In a few cases, the former prisoner of war did not assert his claim until several years after separation from service. In the absence of an intercurrent cause for these medical conditions, the bill would ensure the claims are honored.

Earlier this year when the House passed the former prisoner-of-war provisions in H.R. 4333, we also included provisions to add spastic colon—irritable bowel syndrome—to the list of so-called POW disabilities and to reduce, from 6 months to 90 days, the period of time that a former prisoner of war would have to have been held captive to qualify for VA-furnished treatment for a dental condition or dental disability. I am sorry to say that the dental provision was unacceptable to the other body and is not included in the compromise agreement we bring to you today.

I especially regret that the other body's proposed change relating to the spastic colon issue was unacceptable to us because, in our view, rather than liberalize the law for former POW's, the offer made to us would have made it more difficult for a former POW to qualify than for a veteran who was not a POW. The other body's proposal would have required that a veteran not only have a service-connected nervous condition but also that it be disabling to a compensable degree. We were willing to compromise with the other body in an effort to address and alleviate some of the hardships encountered by POW's having these disabilities; however, in good conscience we could not go along with changes which we think would make it more difficult for former POW's to qualify for benefits than for non-POW's. For this reason, we have reluctantly agreed to drop the spastic colon issue from this agreement.

HEALTH CARE AND MEDICAL FACILITIES

Mr. Speaker, title 2 of the proposed House amendment concerns Veterans' Administration health-care. There are a number of provisions in this title which in general, are intended to aid the VA in achieving more efficiency from its resources while maintaining the high quality of health care that is delivered for our veterans. The agreement reached with the other body is the result of discussions between members of the House and Senate Veterans' Affairs Committees on provisions of H.R. 4623, as amended, S. 2422. I

will only mention the major provisions contained in the proposed amendment and will direct my comments to those items which I believe are of most significance to my colleagues.

Mr. Speaker, I first want to mention a provision that was in the original version of S. 2422, but is not in the proposed amendment before us today; that is, a provision that would have modified the requirement that the VA operate and maintain 90,000 beds to include domiciliary as well as hospital and nursing home care beds. Under current law, the Administrator is required to operate and maintain a combined total of not less than 90,000 hospital beds and nursing homes beds. There are two major reasons why the proposed Senate revision to this provision is unwise: The rapid growth of the aging veteran population and the role of the VA as a contingent capacity to assist the Department of Defense in time of war or national emergency.

Substantial information concerning the magnitude of the need for health care services of veterans age 65 and over was projected in the fall of 1984 in the VA's report, "Caring for the older veteran." Survey data that formed the basis for the report indicated that there were 3 million veterans over the age of 65 in 1980—15 percent of the veteran population—that there would be 7.2 million in that age group in 1990; and that the number would peak at 9 million in the year 2000. It is clear that resources must increase over the next 20 years to meet the anticipated demand for services by this aging veteran population. The additional demand from the aging population will be levied on a VA medical care system which already is turning away each month over 35,000 nonservice-connected veterans needing care, according to the VA's "1985 Survey of Veterans' Demand for Medical Care at VA Facilities." The need for additional nursing home care beds is particularly critical. The adminstration did not request new nursing home construction in the fiscal 1987 budget, and this provision would have further deemphasized nursing home care by allowing domiciliary care beds to dilute the 90,000 operating bed minimum.

No one, of course, can predict when a war or national emergency might occur, but it appears that this provision allowing domiciliary beds to count toward the 90,000 bed limit would have encouraged the VA to abandon its responsibility to maintain its contingency capacity. Such a provision is totally unacceptable to this body. Further, I intend to actively pursue remedial measures in the next Congress to assure VA compliance with the 90,000 bed minimum.

The agreement reached with the Senate and contained in the proposed amendment would prohibit the administrator from taking any action to excess certain lands at the Sepulveda and West Los Angeles VA Medical Centers before January 1, 1988. Should the Administrator decide to declare the property excess to VA needs after such date, he would be required to submit a new notice to the Committees on Veterans' Affairs as required by section 5022(A)(2) of title 38, United States Code, and he would be prohibited from declaring the property excess until 180 days after such notice has been submitted to the Congress.

Mr. Speaker, I would have preferred the House provision that would have restricted the Administrator permanently. But the provision we have agreed to will give us time to examine more closely the needs of the medical facilities in the future. In the meantime our committee may ask for a detailed study of all VA properties to see what VA land OMB has in mind to excess during the next several years. I would hope the Administrator and the Office of Management and Budget might rethink its position on the excessing of the properties at West Los Angeles and Sepulveda. The current position of the administration makes no sense at all.

I am very pleased that the agreement we have reached with the other body would provide clear statutory authority for 3 years for the VA to furnish respite care in VA health facilities on a prearranged basis to chronically ill veterans. The purpose is to provide brief periods of rest to care givers in the veteran's household. This is the provision that we passed last year in the Veterans' Affairs Committee and in the House, but was lost in conference with the Senate. It is a good idea that was worth introducing again this year.

The proposed amendment would require the Administrator to submit an annual construction report "After Considering the Analysis and Recommendations of the Chief Medical Director." The Chief Medical Director is vested with the responsibility to provide complete medical and hospital service to our Nation's veterans by virtue of title 38, United States Code, section 4101, and he should have a dominant role in translating his program requirements into the preliminary medical facilities construction plans. The Chief Medical Director has traditionally developed the construction report, which is required to be submitted to the Congress, since he has the medical sensitivity to assess the clinical impact of such construction activities on the delivery of health care to veteran patients. In view of the growing demand for VA medical care by the rapidly expanding aging veteran population, as well as the ongoing needs of younger veterans, construction, replacement, alteration, and modification of facilities must be a high priority for the VA and especially for the Chief Medical Director.

This measure would extend for 3 years the authority for the State Veterans' Home Construction Grant Program. The bill would eliminate the "first-in/first-out" procedure for awarding grants and substitute a priority system. This system would give priority to grant applications in the following order: First, States that have appropriated money for the State share of a grant; second, States with no State home; third, need for extended care beds in the State; and fourth, States requesting funds for hospital beds. The bill would eliminate the prohibition against a State receiving more than one-third of funds appropriated in any fiscal year.

The proposed amendment would extend for 3 years the authority to make grants for the Veterans' Memorial Medical Center to provide health care for United States veterans in the Philippines and would require an annual report on the previous year's expenditures.

Mr. Speaker, the amendment would modify certain reports that are currently required in law: First, it would extend from 2 to 4 years the interval between reports on pay comparability for VA physicians and dentists in order to allow time for the reports to be produced; second, it would eliminate the reporting requirement concerning the exchange of medical information program since the program is no longer operating; and third, it would eliminate the required report on contract dental care as the program is too small to justify the costs of the report.

The amendment would require the VA to give, in prospectuses for new or replacement VA medical facilities, a written description of the consideration given to opportunities for VA/DOD sharing.

The amendment would require a registry of veterans who apply for compensation for radiation exposure after the date of enactment of this provision, of veterans who submit information for inclusion in the registry, and—to the extent feasible—other veterans.

This legislation would extend by 1 year the date by which the readjustment counseling program would be required to make a transition from a program providing services primarily in "storefront" facilities to a program providing counseling services primarily in VA medical facilities.

This legislation would modify the obligated service period requirement for part-time participants in the VA's health scholarship program to require that students serve 6 months as a full-time employee for each year scholarships were received.

The amendment would make permanent the VA's authority to designate certain VAMC's as regional medical education centers, would remove restrictions on training of other than direct medical care providers, would expand authority to provide training to non-VA personnel, if reimbursed, and would allow sharing arrangements between the VA and non-VA entities.

Finally, the proposed amendment would make changes in the Administrator's authority to administer the existing revolving fund for parking facility construction projects.

Mr. Speaker, there is a long, proud history of the VA in furnishing high quality medical care to our Nation's veterans. I am pleased to bring before this body these provisions which would maintain that heritage.

EDUCATION AND EMPLOYMENT

Mr. Speaker, included in the compromise agreement are certain changes in veterans' education and employment programs administered by the Veterans' Administration and the Department of Labor. Among other things, the compromise agreement contains the provisions of H.R. 2798, a bill passed by the House on June 17, 1986, which would prohibit discrimination in hiring because an individual is a member of a Reserve component of the Armed Forces. Since 1940, Congress has protected the citizen soldier who leaves employment to perform military duty by safeguarding the former servicemember's return to pre-service employment. Additionally, chapter 43 of title 38 provides that National Guard and Reserve members will not be denied retention in employment due to obligations as members of a Reserve component.

Current law, however, extends no protection to members of the Guard and Reserve against discrimination in initial employment because the job seeker is a member of a Reserve component. It was learned during hearings held by the Subcommittee on Education, Training, and Employment that, because this type of discrimination is not prohibited, there have been instances of employers refusing to hire reservists and guardsmen because of their military status. Former reservists cite this and other problems with civilian employers as the major reason for leaving Reserve service. Because the National Guard and Reserve are critical to our national defense, they must stay fully manned. This provision will be a big help in achieving that goal.

It is intended that the same principles that apply in discrimination cases involving already employed reservists and National Guardsmen under 38 United States Code 2021(b)(3) will apply in the new hire situation this amendment addresses. In the 1966 House hearings on what became 38 United States Code 2021(b)(3) (hearings on H.R. 11509 before Subcommittee No. 3 of the House Committee on Armed Forces, 89th Cong., 1st sess., Feb. 23, 1966), it was made clear that once a prima facie case of discrimination was established, the burden of proof was then placed on the employer to show that the discharge or other adverse action was for cause. The same shifting of the burden of proof will apply to new hire cases once a prima facie case is established; the employer will then have to prove that it would not have hired the reservists or National Guardsman even without regard to the military obligation based on good cause. See, e.g., *N.L.R.B.* v. *Transportation Management Corp.*, 462 U.S. 393 (1983) (National Labor Relations Act); *Blalock* v. *Metal Trades, Inc.* 775 F.2d 703, 712 (6th cir. 1985) (title VII of the Civil Rights Act of 1964).

Additionally, it should be noted that the implication in the Supreme Court's decision in *Monroe* v. *Standard Oil Co.*, 452 U.S. 549 (1981), that a violation of section 2021(b)(3) occurs only when the Reserve obligation is the sole motive in the adverse action taken by the employer, is totally inconsistent with the "but for" or "same decision" analysis discussed above. Such a concept would allow an employer to escape liability by simply asserting a reason which, by itself, could not justify the adverse action, but would make the action other than solely based on the military obligation. For example, if a company had a policy of discharging employees who were absent without cause five times in 6 months and discharged a reservist who had five absences, two of which were due to his military obligation, the discharge would not be "solely" because of this Reserve obligation, but it also could not stand on its own once the protected absences were omitted. See *Cook* v. *84 Lumber Co.*, 99 CCH labor cases para. 10,639, 115 LRRM 3462 (N.D. Ohio 1983).

Protection in their civilian employment of reservists and National Guardsmen has taken on particular importance at this time when necessary training no longer consists of only weekend and summer encampments. It is obvious from the spate of recent litigation involving extended training duties (see, e.g., *Anthony* v. *Basic American Foods, Inc.*, 600 F. supp. 352 (N.D. Cal. 1984); *Barber* v. *Gulf Publishing Co.*, 103 CCH labor cases para. 11,676, 122 LRRM 2344 (S.D. Miss. 1986), that reservists and National Guardsmen are facing increased pressure from civilian employers which includes refusal to hire, refusal to allow already hired employees to join the Reserves or National Guard, and refusal to grant leaves of absence for extended training duty. These refusals are all contrary to the spirit and intent of 2021(B)(3) as it is now being amended.

Finally, the compromise agreement would extend the Veterans' Readjustment Appointment (VRA) Program, which expired September 30, 1986, to December 31, 1989. This direct hiring authority has enabled over 250,000 veterans of the Vietnam era to initiate careers in the Federal Government.

HOUSING PROGRAMS

Mr. SPEAKER, title IV of the proposed amendment contains certain provisions affecting the VA Home Loan Guaranty Programs and the National Cemetery System.

Part A of the title IV of the amendment would make several changes in the way the Veterans' Administration administers its home loan programs. First, the amendment would modify the specially adapted Housing Grant Program. It would authorize housing grants to a veteran with service-connected blindness, or the service-connected loss or loss of use of both hands, to assist the veteran in the acquisition of a residence already adapted with special features determined by the Administrator to be necessary for the veteran by reason of the veteran's disability. The maximum amount of such grants would be equal to the lesser of the fair market value of the special features or $6,000.

Second, the agreement would require the Administrator to prescribe regulations which establish credit underwriting standards to be used in evaluating VA home loans, and standards to be used by lenders in obtaining credit information and processing VA home loans. The credit underwriting standards would include debt-to-income ratios, criteria for evaluating the reliability and stability of the veteran applicant's income, and procedures for ascertaining the monthly income required by the veteran to meet the anticipated loan payments.

As passed by the Senate, the credit underwriting standards would be required to be in accordance with the loan underwriting principles and application procedures generally accepted and used by commercial lending institutions. It should be noted, Mr. Speaker, and I want it clearly understood, that this provision is not contained in the compromise agreement. The VA Home Loan Program was never intended to be run like the private sector. Otherwise, hundreds of thousands of veterans who have been able to purchase their homes through the VA since World War II would not have been able to do so. VA home loan standards should not be as stringent as those in the private sector.

I would point out to my colleagues that on September 5, 1986, the VA on its own initiative, issued specific instructions to all loan guaranty officers on credit underwriting standards that are to be applied to future loans. Based on informal survey made by the

committee, it would appear the new standards for loans will have little or no impact in some areas of the country. However, two States, and one regional office in one of the larger States, reported that the new standards would reduce the number of loans made by as much as 30 percent for stick-built homes and 75 percent for manufactured or mobile homes. The committee will conduct extensive oversight activities during the first session of the 100th congress on VA home loan activities, with special emphasis on the new credit underwriting standards recently issued.

The agreement would authorize the Administrator to acquire the services of fee-basis attorneys, without the concurrence of the Attorney General, to exercise the right of the Federal Government to bring suit to foreclose a loan made or acquired by the VA, and to recover possession of any property acquired by the VA.

The agreement would require the Administrator to establish certain standards and procedures for appraisals of real property that would secure loans made or guaranteed by the VA.

The Administrator would also be required to furnish to real estate brokers and other real estate professionals information on the availability of property for disposition and the procedures used by the VA to dispose of such property.

Finally, the agreement expresses the sense of the Congress that the loan organization fee charged to the veteran for a VA home loan should not be increased above the current 1-percent level.

NATIONAL CEMETERIES

Mr. Speaker, part B of title IV of the proposed House amendment contains several provisions affecting the National Cemetery System.

First, upright grave markers would be required in all national cemeteries for interments which occur after January 1, 1987, with two exceptions. The requirement for upright markers would not apply to cemeteries closed or scheduled to close prior to September 30, 1991, as indicated in the materials accompanying the President's budget for fiscal year 1987. The Administrator would be permitted to continue to use flat markers in open sections of cemeteries where flat markers are currently being used, until the section is completed. When the section is completed, however, upright markers would be required thereafter.

In 1976, based upon a recommendation from the Advisory Committee on Cemeteries and Memorials, the Veterans' Administration adopted a policy of installing flat markers in regional cemeteries. On March 1, 1982, DMA Circular 40-82-01, expanded this policy to include existing national cemeteries. Currently, 70 percent of all markers being placed in national cemeteries are flat.

The House has twice passed legislation to change this policy. One of the reasons we believe the Veterans' Administration should revert to upright grave markers is because of the difficulty encountered by family members in locating flat grave markers in the Snow Belt areas. Flat markers are not visible for long periods of time in areas subject to heavy snowfall.

Since national cemeteries commemorate the sacrifices of those who served, instituting an upright headstone policy will serve to enhance the dignity and beauty traditionally associated with our national cemeteries.

Some concern has been expressed about the appearance of a cemetery if a section were to include both upright and flat markers. The agreement includes a provision to give the Administrator discretion to continue furnishing flat markers in order to complete a section before implementing the new upright marker policy. Additionally, this change in law will not affect cemeteries scheduled to close within 5 years.

Mr. Speaker, the amendment would also require the Administrator to submit two reports on the future of the National Cemetery System. The first report would be submitted 90 days after enactment of the proposed House amendment. Public Law 93-43, which established the National Cemetery System in 1973, offered virtually no direction regarding its structure; rather, it allowed for determination of the system structure at a later time, based on the recommendations of a 1974 VA study. Subsequently, the regional cemetery concept comprised of 10 standard Federal regions was adopted as an interim method of system expansion.

Interments in national cemeteries have generally increased each year since establishment; and during the next 15 years, veteran deaths in the Nation are expected to continue to increase annually. The projected peak in demand for burial space is estimated to occur between the years 2000 and 2015, at which time the age 65 and over veteran group will increase from its present level of about 4 million to about 9 million individuals.

Therefore, these reports outlining the future expansion needs of our national cemeteries are necessary to assure that we continue to meet the burial needs of this Nation's veterans.

Mr. Speaker, the conference agreement would allow the Secretary of the Army to set aside a suitable area in Arlington National Cemetery to honor the memory of members of the Armed Forces and veterans who are missing in action, whose remains have either not been recovered or identified, whose remains were buried at sea, or whose remains were cremated without interment. It should be noted that this provision parallels section 1003 of title 38 which requires the Administrator of Veterans' Affairs to set aside such areas in cemeteries in the National Cemetery System which are within the jurisdiction of the Veterans' Administration.

The last provision affecting the National Cemetery System would give the Administrator the authority to establish national cemeteries in the 10 areas of the country which have been identified as "most in need" as well as in any State where there is no open national cemetery. These areas include, but are not limited to: San Francisco, CA; Chicago, IL; Cleveland, OH; Pittsburgh, PA; Dallas/Forth Worth, TX; Miami, FL; Seattle, WA; Atlanta, GA; Phoenix/Tucson, AR; and Birmingham, AL.

ADMINISTRATIVE PROVISIONS

Title V of the compromise agreement would, among other things, require the Administrator to submit to the Committees on Veterans' Affairs no later than March 1, 1987, a plan and schedule for the collocation of at least seven regional offices on the grounds of VA medical centers. The agreement specifies that a regional office to be collocated must be located in the same metropolitan area as the medical center with which it would be collocated. The committees feel that moving some regional offices on to VA property will save thousands of dollars, and will make for a more efficient and timely delivery of services to veterans.

EXEMPTION OF CERTAIN PROGRAMS FROM BUDGET REDUCTIONS

Mr. Speaker, title VI of the bill would provide that certain programs for severely disabled veterans would be exempt from any future reductions as a result of any sequestration order pursuant to Public Law 99-177 or any other law. When this provision was orignally considered by the House as part of H.R. 5299, it included permanent protection for the VA Housing Program and the educational assistant programs for disabled veterans and the survivors of veterans who die of service-connected disabilities and to dependents of veterans with service-connected disabilities rated totally disabling. Unfortunately, the agreement with the Senate does not contain the House provisions.

It is my understanding that the leadership of the Senate Budget Committee objected to the exemption for the VA Home Loan Program, and we have agreed not to include that provision in the House amendment so that it will not be held up in the other body. In addition, the protection for the educational assistance programs described above are limited to 1 year, fiscal year 1987, at the Senate's insistence. Further, a provision which would have re-

solved a law suit pending between the Veterans' Administration and veterans who were denied loans on their VA insurance policies was also dropped at the insistence of the Senate.

What the agreement does provide is permanent future protection for the VA life insurance accounts, two revolving funds which are self-supporting, and the benefits for specially adapted housing, burial of a veteran who dies of a service-connected disability, and automobile and adaptive equipment for severely disabled veterans. The agreement also includes a provision which changes the manner in which a sequestration order applies to several VA benefit programs to make the manner in which any future reduction is applied fairer than the manner in which the 1986 sequestration order was applied.

TECHNICAL AMENDMENTS

Mr. Speaker, title VII contains the text of H.R. 5047 as it passed the House earlier this year. It makes a number of technical corrections to title 38, as well as eliminating hundreds of references to gender in that title. I am pleased that we were able to make this small contribution to further eliminating any gender distinction in the laws providing benefits to veterans.

Mr. Speaker, all of these provisions will benefit our Nation's veterans and their dependents and have been agreed to by the leadership of the Veterans' Affairs Committee on the other body.

I urge adoption of the amendments.

Mr. HAMMERSCHMIDT. Mr. Speaker, further reserving the right to object, I rise in strong support of the Veterans' Benefits Improvements and Health-Care Authorization Act of 1986. This comprehensive legislation has bipartisan support in both bodies of Congress, and reflects continuing efforts to update and improve veterans programs.

The House amendments to the Senate amendments to H.R. 5299, suggested by the distinguished chairman of the House Veterans' Affairs Committee, are a significant achievement in keeping veterans' benefits in step with the needs of our Nation's veterans both now and in the future. At the same time, the bill is within budget limitations and will enable the Veterans' Administration to operate more efficiently without spending more money.

Mr. Speaker, the House has passed separately in similar form most of the seven titles of this bill. The Senate brought our bills together as one large bill with amendments and passed it on September 30, 1986. We now propose to amend the amendments, and if the bill is passed, we are confident that the other body will accept the entire package.

H.R. 5299, twice amended, is much too lengthy for comment on every provision. While I will highlight certain of its provisions, I support the entire bill.

Because the inflationary rate for the past year has been quite low due to the overall strength of the economy, this legislation gives veterans and survivors receiving disability or death compensation a 1.5-percent cost of living allowance. The COLA will help these individuals to at least keep up with the average of certain indexed cost increases.

Benefits would be improved for former prisoners of war by adding residuals of frostbite and posttraumatic osteoarthritis to those disabilities for which there is a presumption of service-connection. Many prisoners of war lacked adequate clothing and shelter while in captivity and, as a result suffered frostbitten extremities, the residual effects of which can last throughout their lives. Many prisoners of war were severely beaten and have later developed arthritis of their injured body joints. Therefore, ample justification exists for this to become presumptive.

The bill would authorize the VA to provide respite care for service-connected veterans suffering from chronic illnesses, but who are well enough to be at home most of the time if cared for by their families or others. Respite care would give the veterans' usual caregivers an opportunity for a rest so that they would be able to continue providing care at home. The cost advantages to the Government and the benefit to the veteran are obvious.

While the Veterans' Administration is often thought of only in terms of veterans, it provides many benefits to their dependents and survivors as well. Some VA counseling services are authorized for families of veterans receiving VA health care, but under current law, the counseling stops if the veteran dies. This legislation would allow needed family counseling to continue for a limited period after the veteran's death when the death was unexpected or when the veteran was in a hospice program.

The VA's program of readjustment counseling centers for Vietnam veterans has been very successful and is in a transition phase in which moving some of the store front centers into permanent VA facilities is being planned. Unfortunately, one of the very basic reports, on which the transition is to be based, is going to be late. Therefore, the target date for completing the transition would be extended by H.R. 5299 for 1 year to October 1, 1989.

The United States has long provided certain medical care to Filipino veterans of our Armed Forces who, during World War II, fought against Japan. The authorization for the medical care in the Philippines would be extended until September 30, 1989. Also, reports on the use of Grant funds provided by our Government would be required to ensure that they are properly used.

At some VA medical centers, outpatients, visitors, volunteers, and doctors cannot find a place to park. This has caused major headaches for some medical facilities which, if not completely cured, would be greatly helped by a section of the bill authorizing the administration to construct or acquire parking facilities through use of a Treasury revolving fund and to charge parking fees to offset their cost.

The State veterans homes now receive Federal grants on a first-come/first-served basis, whether or not the need is the greatest or the State has put up its share of the funds when applying.

The bill would require that States which have made money available, which do not now have a State home, or which have the greater need for assistance be given priority. Thus, distribution of these Federal funds would be put on a fairer and needs-related basis.

The new GI bill, fathered by our distinguished chairman, SONNY MONTGOMERY, has been in operation only a short time and is already a smashing success. But few things are so good that they can't be improved.

Some suggestions of great merit have come to the attention of the committee and they have been included in this legislation. For example, apprenticeship and other on-the-job training would be included as a new G.I. bill benefit so that veterans who do not desire to pursue college-level education can still better themselves in a way consistent with the intent of the program.

Some members of our military Reserve Forces and National Guard have experienced employment discrimination because of their military status.

Surprisingly, the discrimination is not illegal. It should be stopped. Our bill would prohibit the discrimination by employers and give the men and women who loyally serve our country in the Reserves and National Guard an additional degree of protection in their civilian employment.

The committee has been very concerned about some quality controls and some outright fraud in the VA's Home Loan Guaranty Program. As a result, H.R. 5299, as amended, would require the Administrator to prescribe regulations to establish better credit underwriting standards for evaluating loan applications and better standards to be used by lenders in obtaining credit information and processing loans.

Finally, one of the most important provisions of this legislation would exempt certain programs from future

sequestration under Gramm-Rudman-Hollings.

Those programs which would be exempt either do not contribute to deficit reduction when sequestration is applied, or are programs which benefit seriously disabled service-connected veterans or their survivors. In order to obtain agreement with the other body, some exceptions to sequestration would be for fiscal year 1987 only, and hopefully these would be revisited in the next Congress for further extension.

A great deal of hard work by many Members has gone into this legislation. I especially commend the chairman of the Committee on Veterans' Affairs, Mr. MONTGOMERY, for leadership that is second to none in this Congress. The subcommittee chairmen, Mr. EDGAR, Mr. APPLEGATE, Mr. DASCHLE and Mr. SHELBY each deserve special recognition for their invaluable work in creating the various titles of this bill, and, of course, the subcommittee ranking members, Mr. HILLIS, Mr. SOLOMON, Mr. SMITH, and Mr. MCEWEN also deserve similar special recognition.

Mr. Speaker, H.R. 5299, as amended, deserves the vote of every Member of this body, because it would give or continue important benefits needed by America's veterans, and at the same time it is fiscally responsible. It is hard to do better than that. I strongly urge favorable consideration.

Mr. MONTGOMERY. Mr. Speaker, will the gentleman yield?

Mr. HAMMERSCHMIDT. I yield to the gentleman from Mississippi.

Mr. MONTGOMERY. I thank the gentleman for yielding further.

Mr. Speaker, with the adoption of the proposed amendment, the House will have completed its legislative agenda for this session of the Congress. It has been a good year for veterans and all Members should take much credit for the priority we have given to veterans and their dependents.

May I say to my distinguished colleague from Arkansas how much I appreciate the work he has done for so many years as ranking minority member of the full committee. My distinguished friend will most likely be the ranking minority member on another committee during the next Congress. But fortunately for all of us, the gentleman will continue to serve on the committee and veterans will benefit as a result of his continued service.

I would like to thank the gentleman for his leadership. He has always been nonpartisan, and his work on behalf of veterans is unequaled in the Congress. I'm personally grateful for the support he has given me during the 6 years I have served as chairman of the committee. The gentleman knows how much I appreciate this cooperation.

Mr. HAMMERSCHMIDT. I appreciate the kind words.

Mr. MCCAIN. Mr. Speaker, I rise in strong support of H.R. 5299, the Veterans Benefits Improvement and Health Care Authorization Act of 1986. And I want to acknowledge the hard work of the chairman of the House Committee on Veterans' Affairs, Representative MONTGOMERY, and the ranking minority leader on the committee, Mr. HAMMERSCHMIDT. It is through their diligent efforts that this legislation is before us.

H.R. 5299 addresses most of the major issues affecting our veteran community, but perhaps more importantly, its enactment will establish and implement several much needed programs.

As I travel throughout Arizona, meeting with veterans and speaking before numerous military groups, I hear one major concern voiced more than any other; the national cemetery system does not provide adequate burial facilities for a majority of the Nation's veterans. I am pleased to announce that with the passage of H.R. 5299, we will correct this inadequacy.

I have introduced or sponsored legislation to expand our Nation's cemetery system and to provide for the establishment of a national cemetery in Maricopa County. AZ, since March 1983. I am gratified the bill, H.R. 5299, has incorporated the major provisions of the bill I reintroduced on March 7, 1985, H.R. 1476.

Section 412 of H.R. 5299 calls for the orderly expansion of the national cemetery system by requiring the VA Administrator to submit to the Committees on Veterans' Affairs of the Senate and House a report on the construction and expansion of our national cemeteries. There are several items the legislation requires the report to include, with two major elements of vital importance to many veterans. The report is required to include a list, in order of priority, the 10 geographic areas in the United States in which the need for additional burial space for veterans is greatest, and an assessment of the desirability and feasibility of acquiring existing State veterans cemeteries in the geographic areas identified on the list. Because the bill has listed the Phoenix/Tucson area as No. 9, this measure moves my State, Arizona, one step closer to establishing a national veterans cemetery.

Mr. Speaker, there is no doubt that the current system required revision, and this legislation meets the needs of our veteran population. It also ensures peace of mind to the veteran who desires and deserves the honor of being buried in a national cemetery.

In closing, let me say that as a Member of Congress, I am committed to doing everything I can to see that the needs of our veteran community are met. That is why I support H.R. 5299, and I urge all of my colleagues to continue their efforts on behalf of our Nation's veterans.

Mr. MCEWEN. Mr. Speaker, as an original cosponsor of H.R. 5299, the Veterans' Benefits Improvements and Health-Care Authorization Act, I rise in strong support of this legislation. H.R. 5299 is an omnibus veterans bill which contains several measures which have been previously approved by the House of Representatives during this session.

Under the provisions of this measure, the House and Senate Committees on Veterans' Affairs have provided a 1.5-percent cost-of-living adjustment for America's disabled veterans and their families. This bill also provides for additional compensation benefits for former prisoners of war. There are also several provisions contained in this measure to improve health care services for veterans.

Mr. Speaker, H.R. 5299 would also exempt certain veterans programs from future sequestration under Gramm-Rudman-Hollings for next year. These programs which would be exempt do not contribute to deficit reduction when this process is applied. In addition, they are programs which benefit seriously service-connected disabled veterans or their survivors.

H.R. 5299 also makes refinements to the GI bill program which has been a considerable success as a recruitment tool of high quality Armed Forces personnel. The bill would make it illegal for businesses to discriminate against members of the National Guard and Military Reserve because of their military status. In my view, if we are to maintain a volunteer force to preserve our Nation's security, it is important that we provide these men and women protection in their civilian employment.

Mr. Speaker, H.R. 5299 would also make improvements in the VA National Cemetery System. Last June, the House of Representatives approved H.R. 4345, which I sponsored with my Ohio colleagues, to provide a national cemetery in or near Cleveland, OH. The Cleveland area currently ranks among the highest of the country most in need of a national cemetery. This bill was designed to meet the future cemetery needs of Ohio's veterans.

During the Senate's consideration of H.R. 4345, it amended the bill to establish national cemeteries in the 10 areas of the country which are most in need, as well as in any State where there is no open national cemetery. I am pleased that my colleagues have provided for these additional cemeteries. It is through our national cemeteries, more than anything else, that America pays tribute, not only to our war dead, but to all those who have served in the military.

Mr. Speaker, the distinguished chairman of our committee, SONNY MONTGOMERY, and our ranking minority member, JOHN PAUL HAMMERSCHMIDT, have worked extremely hard on this veterans bill, and I commend them for their joint leadership on this legislation. I urge my colleagues in the House to support this measure.

Mr. SOLOMON. Mr. Speaker, I would like to commend our distinguished chairman, Mr. MONTGOMERY, for the outstanding leadership he has shown in fashioning and perfecting the many provisions included in the seven titles of this legislation.

H.R. 5299 represents months of effort on the part of the various subcommittees of the House Veterans Affairs Committee. It includes provisions of various pieces of bipartisan legislation all of which have one aim—to improve the benefits for veterans who have earned the gratitude of this Nation because of their faithful service.

At the same time, H.R. 5299 maintains the committee's tradition of providing benefits in a fiscally responsible and efficient manner. The bill thus acknowledges this Nation's debt to its veterans while recognizing the limits posed by the national deficit.

Time does not permit me to mention all the outstanding provisions within this bill. As the ranking Republican on the Subcommittee on Compensation, Pension and Insurance, however, I would like to single out those provisions that provide a much needed 1.5 percent COLA for veterans and survivors receiving disability or death compensation.

The legislation also exempts from Gramm-Rudman sequestration benefits for seriously disabled service-connected veterans or their survivors for fiscal year 1987 only.

As chairman of the House Task Force on Prisoners and Missing in Southeast Asia, I would like also to point out that H.R. 5299 adds to the list of injuries presumed to be service connected for residuals of frostbite and posttraumatic osteoarthritis for former prisoners-of-war.

Last, I wish to commend the chairman and the distinguished ranking Republican on the committee, Mr. JOHN PAUL HAMMERSCHMIDT, for including apprenticeship and on the job training under the peacetime GI bill of rights.

Mr. HAMMERSCHMIDT, as many know, is stepping down as ranking member at the conclusion of this session. He will, of course, be staying on the committee, for which we are all grateful, just as we are grateful for the outstanding job he has done on behalf of veterans. H.R. 5299 is just a small part of his record and I commend him for it, and strongly urge its passage.

Mr. HAMMERSCHMIDT. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Mississippi?

There was no objection.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. MONTGOMERY. Mr. Speaker, I ask unanimous consent that all Member may have 5 legislative days in which to revise and extend their remarks on the legislation just considered.

The SPEAKER. Is there objection to the request of the gentleman from Mississippi?

There was no objection.

□ 1215

THE ANTIHATE CRIMES ACT OF 1986

(Mr. BIAGGI asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BIAGGI. Mr. Speaker, Recently the House under suspension passed H.R. 4980 which I would call the Antihate Crimes Act of 1986.

I was proud to be an original cosponsor of this bill as well as the author of the first bill introduced in the House to deal with this national scandal—my bill being sponsored in 1981.

The bill establishes first time specific Federal penalties against persons and or orgnizations convicted of crimes of violence and or vandalism against religious persons and or property.

It sets up graduated penalties incuding life imprisonment should death result from an act of violence and or vandalism.

The bill penalizes those who vandalize, deface or destroy religious property as well as those who assualt, harass or otherwise intimidate persons in the free exercise of their religion.

This is a growing national problem, but one that is underreported. Where reports do exist, the numbers are staggering. According to B'nai B'rith antisemitic crimes of violence and vandalism have been occuring at a rate of more then one a day over the past 3 years.

These include firebombings, cemetery desecrations and assualts.

Tragically no religion is exempt.

This is a proper extension of the Federal criminal law—only about one-third of the States have laws and to fail to act is to contribute to the continuation of these heinous crimes.

DODGING OBSTACLES IN THE MAD DASH TO ADJOURNMENT

(Mr. PORTER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PORTER. Mr. Speaker, opponents of Gramm-Rudman should feel pretty good today. Congress has once again successfully practiced the politics of delay and rendered absurd the dreaded CBO/OMB snapshot. In the mad dash to adjournment, this was an obstacle we had to dodge.

The snapshot is a paper tiger—it is a picture of the past rather than a guesstimate of the future. The snapshot uses last year's appropriations levels because none of the 13 spending bills has been enacted. The snapshot uses last year's entitlement outlay estimates because reconciliation has not been enacted. And the snapshot uses old revenue estimates because the tax reform bill has not been signed. And, of course, the snapshot itself is ridiculously optimistic because one of its parents is named Rosy Scenario.

So we can all relax. Yesterday's snapshot was the last snapshot. When we finish bidding up the CR in conference and bidding down whatever meager savings are in the reconciliation package we can go home and tell our constituents that we reduced the deficit. There will be no third snapshot to show that we are lying—that will not be clear until January.

PRESIDENT REAGAN EXHORTED TO STAND FIRM ON GRAIN PURCHASE AGREEMENTS

(Mr. ENGLISH asked and was given permission to address the House for 1 minute.)

Mr. ENGLISH. Mr. Speaker, later this week President Reagan will meet with Soviet leader Gorbachev in Reykjavik, Iceland. It is expected that their agenda will cover a broad range of issues which are important to both nations.

Last week, several congressional colleagues and I contacted President Reagan urging him to press the Soviets to live up to their promise to buy American grain.

Today, I am again urging the President to include the issue of United States-Soviet grain trade among the priority issues which the President and the General Secretary discuss.

During past years, the United States and Soviet Union have entered into grain sale agreements. Unfortunately, the Soviet Union has not lived up to its end of the agreement. The Soviet Union has repeatedly refused to purchase the grain which it has promised to purchase.

I am urging the President to put this issue on the table before Mr. Gorbachev and to stand firm in the United States demands that the Soviet Union live up to its grain purchase commitments. It is time that President Reagan stand up for the American farmer and take forceful action to boost our grain exports. We simply cannot tolerate the 40-percent decline in U.S. grain exports we have suffered since fiscal year 1981. If the Soviets won't live up to grain agreements, they won't live up to arms agreements.

VUCANOVICH SUPPORTS THE "NO INCREASE IN TAXES" PLEDGE

(Mrs. VUCANOVICH asked and was given permission to address the House for 1 minute and to revise and extend her remrks.)

Mrs. VUCANOVICH. Mr. Speaker, today I have signed the no increase in taxes pledge because I want to make sure that this Congress will not raise taxes next year or in the years to come in order to balance the budget. The way to balance the budget is to cut Federal spending, not increase taxes.

Mr. Speaker, I was one of the few to oppose the tax reform bill that passed this House because I did not believe it achieved many of the standards that I had set in order for me to support tax reform. However, I do support lower tax rates for individuals and by signing this pledge I want to ensure that these lower rates are not increased in order to reduce our Federal deficit. Many constituents may not know that

there are prominent Democrats here in the House who favor increasing taxes. If they have their way, we can expect a tax increase in the next Congress. Perhaps, their constituents are undertaxed; Nevadans certainly are not.

Raising taxes to cover excessive Federal spending is the short-term easy way out of what is really a monumental problem—unending and excessive Federal spending. Instead, we should be looking for creative ways to cut Federal spending and we should be rethinking the structure of some of the Government programs that have grown out of hand.

I have never voted for a tax increase since I came to this body in 1982 and I do not plan to change my strategy now. It is the right of the voters to know exactly where their Representative stands on tax increases. I hope all Members of this body will sign the no tax increase pledge so that the American taxpayer can be assured that their taxes will not be raised.

U.S. GOVERNMENT SPENDING TAX DOLLARS TO PUT AMERICANS OUT OF WORK

(Mr. KOLTER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. KOLTER. Mr. Speaker, in my one hand I have an article from the October 4 Washington Post, which details how unemployment in the United States has gone up to 7 percent in the month of September. The article also states that we lost 38,000 manufacturing jobs in the same month and that we have lost 200,000 manufacturing jobs in 1986.

In my other hand, I have an invitation to Expo Maquila 1986, which is sponsored by and which invitations were sent out by the U.S. Department of Commerce, to 120,000 American businesses. The purpose of this expo is to teach American companies how to transfer their manufacturing facilities to Mexico, how to ship the almost completely finished product back to the United States for final assembly, thereby avoiding the tariff on finished goods. The Commerce Department says that this expo will teach American companies how to maximize their profits by using low wage, low benefit Mexican labor to replace American labor.

It doesn't take an advanced degree to see that something is wrong here. Either the Commerce Department is not reading the Washington Post, or they just flat don't care about American jobs. If they did they wouldn't invite American companies to Acapulco to teach them how to use Mexican labor to replace American workers.

Mr. Speaker, I cannot believe that the U.S. Government is spending American tax dollars to put Americans out of work. I think we should all be outraged. I certainly am.

REQUEST FOR PERMISSION TO HAVE UNTIL MIDNIGHT TONIGHT OR ANY DAY THEREAFTER TO FILE CONFERENCE REPORT ON H.R. 5205, DEPARTMENT OF TRANSPORTATION AND RELATED AGENCIES APPROPRIATIONS, 1987

Mr. LEHMAN of Florida. Mr. Speaker, I ask unanimous consent that the managers may have until midnight tonight or any day thereafter to file a conference report on the bill (H.R. 5205) making appropriations for the Department of Transportation and related agencies for the fiscal year 1987, and for other purposes.

Mr. WALKER. Mr. Speaker, reserving the right to object, I do so to ask the gentleman from Florida whether or not this has been cleared with the minority.

Mr. LEHMAN of Florida. Mr. Speaker, if the gentleman will yield, it has been cleared and the minority has no problems with it.

Mr. WALKER. Further reserving the right to object, Mr. Speaker, it has been cleared with the minority on the committee. Was this discussed at all with the Republican leadership at this point?

Mr. LEHMAN of Florida. Mr. Speaker, if the gentleman will yield, I understand that the gentleman from Massachusetts [Mr. CONTE], the ranking member on the Appropriations Committee, has been notified and has no problems with it.

Mr. WALKER. I am wondering about whether or not it has been cleared with the minority leader and the minority whip at this point who are somewhat concerned about the scheduling for these appropriation bills as they come to the floor.

Mr. LEHMAN of Florida. That I cannot answer.

Mr. WALKER. Mr. Speaker, further reserving the right to object, I am informed by the floor staff here of the minority leader that this is something that he is totally unfamiliar with.

I wonder if the gentleman might withdraw his request, at least for the moment, until the gentleman from Illinois [Mr. MICHEL] has a chance to talk to the gentleman from Massachusetts [Mr. CONTE] about the bill.

Mr. LEHMAN. Mr. Speaker, I withdraw my unanimous consent request and will rise when we clear this matter.

The SPEAKER. The gentleman from Florida [Mr. LEHMAN] withdraws his unanimous consent request.

THERE IS NO DRUG BILL UNLESS IT HAS STRONG LAW ENFORCEMENT

(Mr. GEKAS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GEKAS. Mr. Speaker and Members of the House, the drug bill that was prepared and passed by the House of Representatives was a declaration of war against drugs. That goes without further explanation.

But now it is back in this Chamber and has been converted into a document of surrender. Why? Because the war on drugs that we declared here in the House contains stern law enforcement measures, including the death penalty, for drug dealers who would stop at nothing, who would kill, to continue their enterprise, and it contained reform of exclusionary rule which would allow certain evidence to get in that would help us convict these drug pushers, strong law enforcement measures.

Now what we are asked to do is to pass a bill that is back here in the House that contains no more weapons, but it is an abject surrender. It is a bill that would simply throw money at the problem. The American public and the Congress do not want to just throw money at this problem. It becomes a useless exercise in futility to do so.

□ 1225

There is no drug bill unless it has strong law enforcement. We intend to fight this on the beaches of the Rules Committee and in the streets of the Chamber and in the backyards of the legislature until we can get strong law enforcement in the drug bill. We will not give up.

MR. GORBACHEV SHOULD LIVE UP TO HIS AGREEMENT ON GRAIN SALES

(Mr. BEDELL asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BEDELL. Mr. Speaker, I am one of those who has sent a letter to the President urging him in his meeting in Iceland with Mr. Gorbachev to bring up the matter of our sales of grain to the Soviet Union.

However, I am one of those who would say that we better both try to make this work. We had testimony by the General Accounting Office before my subcommittee, and witnesses have looked at the recent offer of 4 million metric tons of grain to the Soviet Union in which there was a big announcement made that we were going to offer them this grain.

The GAO found that whereas with other export enhancement programs we offer truly competitive prices with

the Europeans, in this case we did not do so. We said we are going to take the average price in the world. I submit to you that if you are losing business to a merchant across the street because he is underselling you, the way you meet that is to meet his price. You do not say we are going to take the average price around town and even though it is higher than my competitors, expect my customers to come to me rather than that competitor.

I urge the President as he meets with Mr. Gorbachev to tell Mr. Gorbachev that we expect him to live up to his agreement but to also tell Mr. Gorbachev that we are going to offer him wheat at a competitive price and we are going to be truly competitive in the world market.

SAY NO TO DRUGS

(Mr. ROWLAND of Connecticut asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ROWLAND of Connecticut. Mr. Speaker while those of us in the Congress grapple with the drug abuse issue, the children at Wendell Cross School in Waterbury, CT, are taking action.

On Monday morning in observance of National Drug Awareness Day, Wendell Cross students from kindergarten to fifth grade took the pledge, the pledge to "Say No To Drugs." Taking this pledge is a shining example to other young people across this great Nation.

I participated in an education program with my young friends at Wendell Cross answering the call by the President and Mrs. Reagan to "say No to Drugs." These young people, along with the help of their principal, Mr. William Moriarty and the Wendell Cross PTA, are taking the lead in drug education.

So as we continue to debate the issue here in the Congress I thank the youngsters like those at Wendell Cross who are proudly displaying their "Say No To Drugs" pins. My friends, we are very proud of you. You are making our jobs here in the Congress that much easier. I want to congratulate you and wish you the best and keep up the fine work.

PRESS EXHORTED TO GIVE COVERAGE TO NUCLEAR TESTING

(Mrs. SCHROEDER asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. SCHROEDER. Mr. Speaker, there has been a lot in the press about the misinformation campaign carried on by the administration in Libya. I would also like to talk about the noninformation campaign carried on by the press about one of the most critical issues that we are looking at right now, and that is nuclear testing.

It has been amazing to me that over 180 communities in this country have passed resolutions saying there should be a Comprehensive Test Ban Treaty. It is amazing to me that over 139 people were arrested last September 30, this September 30, with Dr. Carl Sagan as their main leader and practically all of them doctors and other public health officials at the Nevada test site protesting the lack of a Comprehensive Test Ban Treaty.

Where were these items in the news? Well, Dr. Sagan and the 139 other people who got arrested got an entire inch in the Time magazine of this week and that is it. I think it is amazing the American people have stood so firm on testing. I think it is one of the most critical issues that we have. It is a historic moment. I hope we in the House make some progress on it, and I hope the press starts covering what is really going on beyond the beltway among the American people on this issue.

A WAGER IS OFFERED

(Mr. DORNAN of California asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DORNAN of California. Mr. Speaker, I knew that it would eventually come to this. Your 50 years of glorious service, sir, riding on Fenway Park, and of all Members, who should have that beautiful stadium in Anaheim where the California Angels play, than this humble Member from California with 14 years of Federal service.

Mr. Speaker, I know what a good team the Pink Sox are. I know that when they face those Angels, there will be some in New England that think they will prevail. But you know, Mr. Speaker, going back to your catechism, as FREDDY ST GERMAIN knows, that the Seraphim, the Cherubim, the Thrones, the Dominations, the Virtues, the Powers, the Principalities, and the Archangels will be on the side of their ninth order of celestial glory, those who inhabit the beautiful Anaheim Stadium.

Mr. ST GERMAIN. Mr. Speaker, will the gentleman yield?

Mr. DORNAN of California. I yield to the gentleman from Rhode Island.

Mr. ST GERMAIN. Let us make the record clear: It is the Red Sox. The Red Sox.

Mr. DORNAN of California. Excuse me, the Red Sox, sir. I stand corrected.

That pennant of the American League will not be flapping in some smoggy, fatty, wind breeze over Boston. We know that when the final game is over, and it may not even reach seven, that the team that carries the name of an entire State, the glorious Angels of California, sir, will be the victors.

Therefore, I offer you the following friendly wager: I know the gentleman only bets in a gentlemanly way, but these are extraordinary circumstances. Four cases of the biggest, juiciest oranges in the history of mankind from the beautiful Orange County against one, teeny, weeny, little lobster dinner, and you do not even have to be there to watch me eat it, sir.

One lobster dinner against four cases of oranges will be riding on the glory of the American League pennant. Good luck, Mr. Speaker, to you, the cradle of liberty, and all of New England, but that 40-knot breeze will be the orange-scented breezes of Orange County, CA, when victory is declared.

VOTE AGAINST CIVIL RICO

(Mr. CONYERS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. CONYERS. Mr. Speaker, I am saddened to have to part good company with the distinguished chairman of the Judiciary Committee, PETER RODINO, on Civil RICO. We were trying to work out a compromise and for reasons that I still do not know to this moment he has decided to bring this bill on suspension, a measure, H.R. 5445, that has never had 1 minute's hearing in any full or subcommittee in the Congress.

The so-called compromise knocks out treble damages for consumers, and weakens our fight against white-collar crime by providing only actual damages in business to business suits. If it comes up on suspension, which I hope it does not at least until we've had more time to consider its ramifications, I ask the Members to join with me in voting against it.

THE AMERICAN FARMERS DESERVE ATTENTION ON GRAIN SALES

(Mr. PENNY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PENNY. Mr. Speaker, the President has a busy agenda in Iceland this coming weekend. The all-important issue of arms control tops that agenda. The future of the world depends on progress in this regard, and all of us in America wish him success.

But we also encourage the President to raise the issue of grain sales to the Soviet Union. I know that the Trade Representative, Mr. Yeutter, Agriculture Secretary, Mr. Lyng and others have asked that this be added to the agenda. I have joined a number of my

colleagues in both the House and the Senate, both Democrats and Republicans, in urging that the grain sales issue be included as a discussion item.

American farmers are outraged that the Soviet Union has not lived up to its ageement in the past 2 years to make purchases of grain from the United States. We need for the President to pursue this issue in Iceland and to hammer out an agreement with Mr. Gorbachev that will result in a grain contract that will lead to real sales. The American farmers deserve the attention; Mr. President, put it on your agenda. We are waiting to see some results.

THE AMERICAN FARMER—AN ISSUE AT REYKJAVIK

(Mr. OBERSTAR asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. OBERSTAR. Mr. Speaker, on Saturday, President Reagan inaccurately accused the House of Representatives of undercutting his negotiating position at the upcoming meeting with General Secretary Gorbachev. That allegation is untrue.

Nothing in the House Defense bill ties the President's hands or in any way gives anything to the Soviets. What is true is that the administration's failure to insist that the Soviets live up to the grain agreement the President negotiated with them in 1983 is undercutting the American farmer. For the past 2 years, the Soviets have reneged on their promise to buy 4 million metric tons of wheat from the United States annually.

The President's reaction to the Soviets' clear violation of the grain agreement is a deafening silence. It stands in stark contrast to the President's denunciations of alleged Soviet violations of arms control agreements.

Mr. Speaker, we believe it is time for the President to get as tough with the Russians for violating their promise to buy American grain as he is for their arms control violations.

Last week, 38 Members of Congress, from 18 States, wrote the President, urging him to discuss the grain sale issue with the Soviets during the Iceland meeting.

Mr. President, today we urge you to put the American farmer on your agenda in Reykjavik and insist that the Soviets live up to their promises.

SOVIET LONG-TERM GRAIN AGREEMENT

(Mr. SLATTERY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SLATTERY. Mr. Speaker, this weekend President Reagan will be traveling to Iceland for talks with General Secretary Gorbachev. I urge the President, as a part of those meetings, to discuss Soviet compliance with the 1983 long-term grain agreement.

Under that agreement, the Soviets were to buy 4 million metric tons of wheat per year. In the last 2 years, they have failed to do so, purchasing only 150,000 tons of wheat last year.

American farmers need these sales. But the fact that the United States experienced a deficit in agriculture trade for the months of May, June, and July should be troubling to all Americans. Agriculture can, and should be a bright spot in an otherwise dismal U.S. trade picture.

I urge you, Mr. President, to remind the Soviets: Improving relations means more than simply striking new deals—it also means carrying through on old deals.

DO NOT FORGET THE AMERICAN FARMER

(Mr. BRUCE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BRUCE. Mr. Speaker, the purpose of this week's meeting in Iceland is to set up an agenda for a full-scale summit, which will be held in the United States next year.

Last week, I joined a number of my colleagues in writing to the President to inform him of what America's farmers want to see on that agenda. They want a discussion of the Soviets' failure to live up to its previous agreements to buy U.S. grain.

In my home State of Illinois, we export 40 percent of all the grain we raise, and in the last 5 years, we have lost 40 percent of our export markets. This has created economic instability for not only Illinois farmers, but for farmers throughout the United States.

Meanwhile, we have so much grain in storage that we have no place to put the grain we are harvesting right now throughout the Midwest. We expect the President to press Mr. Gorbachev to live up to Soviet agreements on arms control and human rights, but the Soviets must also live up to their 1983 economic agreement to purchase U.S. grain.

Mr. President, we ask you, do not forget America's farmers when you meet with Mr. Gorbachev.

CHANGE IN LEADERSHIP AT UNESCO

(Mr. SCHEUER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SCHEUER. Mr. Speaker, the announcement by the Director-General of UNESCO, Mr. M'Bow, that he will not run for another term comes as a sign of great relief and creates an opportunity for constructive change.

During his term, especially in the last few years, UNESCO has been racked with intrigue, controversy, and mismanagement of the most gross kind as documented by our own GAO. It has been plagued by financial, fiscal, programmatic, and personnel problems of the gravest kind.

With Mr. M'Bow off the scene, now we can get a first-class leader, hopefully from the Third World, who will set the ship aright and get it back on course.

The United States, Great Britain, and Singapore, who have left UNESCO, should rejoin the organization and play the significant leadership roles they were all playing once a new Director-General is chosen.

The United States was one of the great initial founders of UNESCO and gave it its impetus and strong leadership over the past generations since its founding in 1946, right after the end of World War II.

With this whole new change in leadership that will come, and with a first-class individual at the helm of UNESCO, the United States has a noble and constructive role to play in that organization.

THE PLEDGE FOR NO NEW TAXES

(Mr. WALKER asked and was given permission to address the House for 1 minute.)

Mr. WALKER. Mr. Speaker, the American family cannot afford additional taxes. We understand that when we passed the tax bill just recently, the tax reform bill, the American family got a bit of a break. But what they are fearful of now is liberal politicians who are going across the country telling the American people that they are fundamentally undertaxed; they need to pay more taxes in the future.

I think it is time that the American family get some guarantee from this Congress that their taxes are not going to go up; that we guarantee them that the rates that we set in the tax reform bill are going to stay solid; that we assure them that we are not going to try to tax away the deficit problem; that the deficit problem is going to be solved by us having the courage to reduce spending.

That is what the American people expect from politicians this year. That is what the American people, I think, should analyze this election on.

I would hope that the Members of Congress, before we leave here, will all take the pledge not to raise taxes in the 100th Congress. We need to tell the American people flatly, we will not raise your taxes in the next Congress.

71-059 O-87-33 (Pt. 20)

We in this body need to take the pledge; No new taxes.

GIVE "BUY AMERICAN" A CHANCE

(Mr. TRAFICANT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. TRAFICANT. Mr. Speaker, 38,000 manufacturing workers lost their jobs in America in September. Factory jobs have been declining yearly since the middle of 1984, and this year alone, they are down by 200,000.

In addition, the State of Ohio has the third highest unemployment rate of the large populace States. What is more discouraging, the two major municipalities in my district have the highest unemployment rate in the State of Ohio: Warren, OH, with a 14.8-percent unemployment rate, and the city of Youngstown still lingering over 13 percent.

Last month, I was successful in offering a "Buy American" amendment to the defense bill. It gave a 5-percent advantage to American firms if the product was made in America with American parts.

My concern today is the House-Senate conferees want to throw it out. If they do not throw it out, they want to exempt the NATO countries. If you exempt the NATO countries, who is left, the Soviet Union?

I liken what we are doing here in Washington and in Congress to what Nero did in Rome; he played the fiddle while that country burned. I think we should stand up today and win one for the home team called America. Let us handicap this so-called free trade business and give a chance to these 200,000 manufacturing workers who lost their jobs last year alone.

What is it going to take? Our American firms pay taxes and the people they hire, Americans, pay income taxes. These foreign firms do neither.

I am hoping the House-Senate conferees take a good look at this and provide the necessary language to protect our American workers in the years to come.

FREE OUR AMERICAN HOSTAGES

(Mr. DORGAN of North Dakota asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DORGAN of North Dakota. Mr. Speaker, Mr. Daniloff was returned from the Soviet Union after his arrest, and all of us are pleased with that. We think it is good news. We are happy for the Daniloff family and happy that that crisis was resolved.

But the family of Terry Anderson, Associated Press writer, asks the question: What about Terry Anderson and the other Americans who are today held hostage, kidnaped in Lebanon? Is as much being done to free them? Are we making the kind of effort we need to make to free these Americans who have been kidnaped and held hostage for, in some cases, over 2 years in Lebanon?

I think it is a legitimate question for those families to ask.

The President says it is entirely different. We do not know who has kidnaped Terry Anderson and the other Americans. Terry Waite, the representative, or the emissary of the Archbishop of Canterbury, knows. He can travel to Lebanon; he can talk to the folks who have kidnaped these Americans.

It seems to me that our Government should address this in a much more vigorous and much more aggressive way. It is not front page, I understand that. The Daniloff affair was front page, but these Americans who are being held hostage, I think, deserve America's best effort.

I hope the President will renew his efforts and do everything possible.

One final point: The gentleman from Pennsylvania was just in the well talking about his pledge on taxes and spending. I am going to be down on the floor today with a 1-hour special order. I want to ask these folks where precisely do they want to cut Federal spending? Do they want to cut defense? That is the biggest item? No, they want to increase defense. Do they want to cut Social Security; that is the second biggest item? No, they will say they do not want to cut Social Security, and besides, that is fully funded anyway and running a surplus this year. And the list goes on.

I am going to spend some time on the floor this afternoon in a special order asking those folks how to solve this fiscal problem with only spending cuts. It is simply not possible. We do need to trim Federal spending, but we should not believe that alone will solve the problem. It won't.

□ 1245

PERMISSION TO FILE CONFERENCE REPORT ON H.R. 5313, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT—INDEPENDENT AGENCIES APPROPRIATIONS, 1987

Mr. BOLAND. Mr. Speaker, I ask unanimous consent that the managers may have until midnight tonight to file a conference report on the bill (H.R. 5313) making appropriations for the Department of Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 1987, and for other purposes.

The SPEAKER pro tempore (Mr. KILDEE). Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

A FAILED POLICY IN CENTRAL AMERICA

(Mr. PANETTA asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PANETTA. Mr. Speaker, I have long felt that our policy in Central America is a failed policy, failed, wasteful and dangerous, but regardless of one's position on the Contra aid question the deaths yesterday of three Americans in Nicaragua I think raise very serious questions that the Congress needs answers to.

First, Who was on the plane? Were there military advisors? Who were these Americans who were on this flight to Nicaragua?

Second, What was on the plane? What supplies were there? Were they military supplies and were those military supplies in fact sponsored by this Government? We need the answer to that question.

And lastly, why was the plane over Nicaraguan airspace? That is the third question that needs to be responded to.

All this points at the last question, which is, where is our policy in Central America? There are four veterans who are fasting on the steps of the Capitol in opposition to the policy of this country in Central America. Surely they and the rest of the Nation need and deserve the answers to the questions that I have raised.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to the provisions of clause 5 of rule I, the Chair announces that he will postpone further proceedings today on each motion to suspend the rules on which a recorded vote or the yeas and nays are ordered, or on which the vote is objected to under clause 4 of rule XV.

Such rollcall votes, if postponed, will be taken after debate has been completed on all motions to suspend the rules.

TRUTH IN SAVINGS AND CREDIT CARD APPLICATIONS ACT

Mr. ST GERMAIN. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5613) to provide for the uniform disclosure of the rates of interest which are payable on savings accounts, to provide for detailed and uniform disclosures of information on interest rates and other fees in applica-

tions and solicitations for credit cards, and for other purposes, as amended.

The Clerk read as follows:

H.R. 5613

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Truth in Savings and Credit Card Applications Act".

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress hereby finds that economic stability would be enhanced, competition between depository institutions would be improved, and the ability of the consumer to make informed decisions regarding deposit accounts and credit card accounts would be strengthened if there was uniformity in the disclosure of terms and conditions on which—

(1) interest is paid and fees are assessed in connection with deposit accounts; and

(2) interest is charged and fees assessed for credit extended under credit card accounts.

(b) PURPOSES.—It is the purpose of this act to require the clear and uniform disclosure of—

(1) the rates of interest which—

(A) are payable on deposit accounts by depository institutions; and

(B) are chargeable for credit extended under credit card accounts; and

(2) the fees that are assessable against deposit accounts or credit card accounts,

so that consumers can make a meaningful comparison between the competing claims of depository institutions with regard to deposit accounts and the competing claims of credit card issuers with regard to credit card accounts.

TITLE I—TRUTH IN SAVINGS

SEC. 101. DISCLOSURE OF INTEREST RATES AND TERMS OF ACCOUNTS.

(a) IN GENERAL.—Except as provided in subsection (b), each advertisement, announcement, or solicitation initiated by any depository institution relating to any demand or interest-bearing account which includes any reference to a specific rate of interest payable on amounts deposited in such account, or to a specific yield or rate of earnings on amounts so deposited, shall state the following information in a clear and conspicuous manner:

(1) The annual percentage yield (which shall be noted in greater prominence than any other stated rate).

(2) The period during which such annual percentage yield is in effect.

(3) All minimum account balance and time requirements which must be met in order to earn the advertised yield (and, in the case of accounts for which more than 1 yield is stated, each annual percentage yield and the account minimum balance requirement associated with each such yield shall be in close proximity and have equal prominence).

(4) The minimum amount of the initial deposit which is required to open the account in order to obtain the yield advertised, if such minimum amount is greater than the minimum balance necessary to earn the advertised yield.

(5) The annual rates of simple interest.

(6) A statement that regular fees or other conditions could reduce the yield, if applicable.

(7) A statement that an interest penalty is required for early withdrawal, if applicable.

(8) In the case of a certificate of deposit or other account for which the stated date of maturity is less than 1 year, a statement of the effective percentage yield on the date of maturity.

(b) BROADCAST AND ELECTRONIC MEDIA AND OUTDOOR ADVERTISING EXCEPTION.—The Board may, by regulation, exempt advertisements, announcements, or solicitations made by any broadcast or electronic medium or outdoor advertising display not on the premises of the depository institution from any disclosure requirements described in paragraph (4), (5), or (6) of subsection (a) if the Board finds that any such disclosure would be unnecessarily burdensome.

(c) MISLEADING DESCRIPTIONS OF FREE OR NO-COST ACCOUNTS PROHIBITED.—No advertisement, announcement, or solicitation made by any depository institution may refer to or describe an account as a free or no-cost account if—

(1) in order to avoid fees or service charges for any period—

(A) a minimum balance must be maintained in the account during such period; or

(B) the number of transactions during such period may not exceed a maximum number; or

(2) any regular service fee, a fee for each transaction, or any similar charge is imposed with respect to such account.

(d) MISLEADING OR INACCURATE ADVERTISEMENTS, ETC., PROHIBITED.—No depository institution shall make any advertisement, announcement, or solicitation relating to a deposit account that is inaccurate or misleading or that misrepresents its deposit contracts.

SEC. 102. ACCOUNT SCHEDULE.

(a) IN GENERAL.—Each depository institution shall maintain a schedule of fees, charges, interest rates, and terms and conditions applicable to each class of accounts offered by the depository institution, in accordance with the requirements of this section and regulations which the Board shall prescribe. The Board shall specify, in regulations, which fees, charges, penalties, terms, conditions, and account restrictions must be included in a schedule required under this subsection. A depository institution need not include in such schedule any information not specified in such regulation.

(b) INFORMATION ON FEES AND CHARGES.—The schedule required under subsection (a) with respect to any account shall contain the following information:

(1) A description of all fees, periodic service charges, and penalties which may be charged or assessed against the account (or against the consumer in connection with such account), the amount of any such fees, charge, or penalty (or the method by which such amount will be calculated), and the conditions under which any such amount will be assessed.

(2) All minimum balance requirements that affect fees, charges, and penalties, including a clear description of how each such minimum balance is calculated.

(3) Any minimum amount required with respect to the initial deposit in order to open the account.

(c) INFORMATION ON INTEREST RATES.—The schedule required under subsection (a) with respect to any account shall include the following information:

(1) Any annual percentage yield.

(2) The period during which any such annual percentage yield will be in effect.

(3) Any annual rate of simple interest.

(4) The frequency with which interest will be compounded and credited.

(5) A clear description of the method used to determine the balance on which interest is paid.

(6) In the case of a certificate of deposit or other account for which the stated date of maturity is less than 1 year, a statement of the effective percentage yield on the date of maturity.

(7) The information described in paragraphs (1) through (4) with respect to any period after the end of the period referred to in paragraph (2) (or the method for computing any information described in any such paragraph), if applicable.

(8) Any minimum balance which must be maintained to earn the rates and obtain the yields disclosed pursuant to this subsection and a clear description of how any such minimum balance is calculated.

(9) A clear description of any minimum time requirement which must be met in order to obtain the yields disclosed pursuant to this subsection and any information described in paragraph (1), (2), (3), or (4) that will apply if any time requirement is not met.

(10) A statement, if applicable, that any interest which has accrued but has not been credited to an account at the time of a withdrawal from the account will not be paid by the depository institution or credited to the account by reason of such withdrawal.

(11) Any provision or requirement relating to nonpayment of interest, including any charge or penalty for early withdrawal, and the conditions under which any such charge or penalty may be assessed.

(d) OTHER INFORMATION.—The schedule required under subsection (a) shall include such other disclosures as the Board may determine to be necessary to allow consumers to understand and compare accounts, including frequency of interest rate adjustments, account restrictions, and renewal policies for time accounts.

(e) STYLE AND FORMAT.—Schedules required under subsection (a) shall be written in clear and plain language and be presented in a format designed to allow consumers to readily understand the terms of the accounts offered.

SEC. 103. DISCLOSURE REQUIREMENTS FOR CERTAIN ACCOUNTS.

The Board shall require, in regulations which the Board shall prescribe, such modification in the disclosure rquirements under this title relating to annual percentage yield as may be necessary to carry out the purposes of this title in the case of—

(1) accounts with respect to which determination of annual percentage yield is based on an annual rate of interest that is guaranteed for a period of less than 1 year;

(2) variable rate accounts;

(3) accounts which, pursuant to law, do not guarantee payment of a stated rate; and

(4) multiple rate accounts.

SEC. 104. DISTRIBUTION OF SCHEDULES.

(a) IN GENERAL.—A schedule required under section 102(a) for an appropriate account shall be—

(1) included in any regularly scheduled mailing to holders of that account which occurs not more than 90 days after the effective date of the initial regulations prescribed by the Board under this title, unless the depository institution has provided, before such effective date, a disclosure which meets the requirements of section 102;

(2) made available to any person upon request; and

(3) provided to any potential customer before an account is opened or a service is rendered.

(b) DISTRIBUTION IN CASE OF CERTAIN INITIAL DEPOSITS.—If—

(1) a depositor is not physically present at an office of a depository institution at the time an initial deposit is accepted with respect to an account established by or for such person; and

(2) the schedule required under section 102(a) has not been furnished previously to such depositor, the depository institution shall mail the schedule to the depositor at the address shown on the records of the depository institution for such account no later than 10 days after the date of the initial deposit.

(c) DISTRIBUTION OF NOTICE OF CERTAIN CHANGES.—If—

(1) any change is made in any term or condition which is required to be disclosed in the schedule required under section 102(a) with respect to any account; and

(2) the change may reduce the yield or adversely affect any holder of the account,

all account holders who may be affected by such change shall be notified and provided with a description of the change by mail at least 30 days before the change takes effect.

(d) DISTRIBUTION IN CASE OF ACCOUNTS ESTABLISHED BY MORE THAN 1 INDIVIDUAL OR BY A GROUP.—If an account is established by more than 1 individual or for a person other than an individual, any distribution described in this section with respect to such account meets the requirements of this section if the distribution is made to 1 of the individuals who established the account or 1 individual representative of the person on whose behalf such account was established.

SEC. 105. REGULATIONS.

(a) IN GENERAL.—Not later than 1 year after the date of the enactment of this title, the Board, after consultation with each agency referred to in section 106(a) and public notice and opportunity for comment, shall prescribe regulations to carry out the purpose and provisions of this title. The regulations so prescribed may contain such classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for any class of accounts as, in the judgment of the Board, are necessary or proper to carry out the purposes of this title, to prevent circumvention or evasion of the requirements of this title, or to facilitate compliance with the requirements of this title.

(b) MODEL FORMS AND CLAUSES.—

(1) IN GENERAL.—The Board shall publish model forms and clauses for common disclosures to facilitate compliance with this title. In devising such forms, the Board shall consider the use by depository institutions of data processing or similar automated machines.

(2) USE OF FORMS AND CLAUSES DEEMED IN COMPLIANCE.—Nothing in this title may be construed to require a depository institution to use any such model form or clause prescribed by the Board under this subsection. A depository institution shall be deemed to be in compliance with the disclosure provisions of this title if the depository institution—

(A) uses any appropriate model form or clause as published by the Board; or

(B) uses any such model form or clause and changes it by—

(i) deleting any information which is not required by this title; or

(ii) rearranging the format,

if in making such deletion or rearranging the format, the depository institution does not affect the substance, clarity, or meaningful sequence of the disclosure.

(3) PUBLIC NOTICE AND OPPORTUNITY FOR COMMENT.—Model disclosure forms and clauses shall be adopted by the Board after duly given notice in the Federal Register and an opportunity for public comment in accordance with section 553 of title 5, United States Code.

SEC. 106. ADMINISTRATIVE ENFORCEMENT.

(a) IN GENERAL.—Compliance with the requirements imposed under this title shall be enforced under—

(1) section 8 of the Federal Deposit Insurance Act, in the case of—

(A) national banks, by the Comptroller of the Currency;

(B) member banks of the Federal Reserve System (other than national banks), by the Board; and

(C) depository institutions described in clause (i), (ii), or (iii) of section 19(b)(1)(A) of the Federal Reserve Act (other than member banks of the Federal Reserve System) by the Board of Directors of the Federal Deposit Insurance Corporation;

(2) section 5(d) of the Home Owners' Loan Act of 1933, section 407 of the National Housing Act, and sections 6(i) and 17 of the Federal Home Loan Bank Act, by the Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation) in the case of depository institutions described in clause (v) or (vi) of section 19(b)(1)(A) of the Federal Reserve Act; and

(3) the Federal Credit Union Act, by the National Credit Union Administration Board with respect to depository institutions described in clause (iv) of section 19(b)(1)(A) of the Federal Reserve Act.

(b) ADDITIONAL ENFORCEMENT POWERS.—

(1) VIOLATION OF THIS TITLE TREATED AS VIOLATION OF OTHER ACTS.—For purposes of the exercise by any agency referred to in subsection (a) of its powers under any Act referred to in such subsection, a violation of a requirement imposed under this title shall be deemed to be a violation of a requirement imposed under that Act.

(2) ENFORCEMENT AUTHORITY UNDER OTHER ACTS.—In addition to its powers under any provision of law specifically referred to in subsection (a), each agency referred to in such subsection may exercise, for purposes of enforcing compliance with any requirement imposed under this title, any other authority conferred on it by law.

(c) REGULATIONS BY AGENCIES OTHER THAN THE BOARD.—The authority of the Board to issue regulations under this title does not impair the authority of any other agency referred to in subsection (a) to make rules regarding its own procedures in enforcing compliance with the requirements imposed under this title.

SEC. 107. CIVIL LIABILITY.

(a) CIVIL LIABILITY.—Except as otherwise provided in this section, any depository institution which fails to comply with any requirement imposed under this title or any regulation prescribed under this title with respect to any person is liable to such person in an amount equal to the sum of—

(1) any actual damage sustained by such person as a result of the failure;

(2)(A) in the case of an individual action, such additional amount as the court may allow, except that the liability under this subparagraph shall not be less than $100 nor greater than $1,000; or

(B) in the case of a class action, such amount as the court may allow, except that—

(i) as to each member of the class, no minimum recovery shall be applicable; and

(ii) the total recovery under this subparagraph in any class action or series of class actions arising out of the same failure to comply by the same depository institution shall not be more than the lesser of $500,000 or 1 percent of the net worth of the depository institution involved; and

(3) in the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court.

(b) CLASS ACTION AWARDS.—In determining the amount of any award in any class action, the court shall consider, among other relevant factors—

(1) the amount of any actual damages awarded;

(2) the frequency and persistence of failures of compliance;

(3) the resources of the depository institution;

(4) the number of persons adversely affected; and

(5) the extent to which the failure of compliance was intentional

(c) BONA FIDE ERRORS.—

(1) GENERAL RULE.—A depository institution may not be held liable in any action brought under this section for a violation of this title if the depository institution demonstrates by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

(2) EXAMPLES.—Examples of a bona fide error include clerical, calculation, computer malfunction and programming, and printing errors, except that an error of legal judgment with respect to a depository institution's obligation under this title is not a bona fide error.

(d) JURISDICTION.—Any action under this section may be brought in any United States district court, or in any other court of competent jurisdiction, within one year after the date of the occurrence of the violation involved.

(e) RELIANCE ON BOARD RULINGS.—No provision of this section imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Board, notwithstanding the fact that after such act or omission has occurred, such rule, regulation, or interpretation is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

SEC. 108. CREDIT UNIONS.

(a) IN GENERAL.—No regulation prescribed by the Board under this title shall apply directly with respect to any depository institution defined in clause (iv) of section 19(b)(1)(A) of the Federal Reserve Act.

(b) REGULATIONS PRESCRIBED BY THE NCUA.—Within 90 days of the effective date of any regulation prescribed by the Board under this title, the National Credit Union Administration Board shall prescribe a regulation substantially similar to the regulation prescribed by the Board taking into account the unique nature of credit unions and the limitations under which they may pay dividends on member accounts.

SEC. 109. EFFECT ON STATE LAW.

This title does not annul, alter, or affect the laws of any State relating to the disclo-

sure of information in connection with terms of deposit accounts, except to the extent that those laws are inconsistent with the provisions of this title, and then only to the extent of the inconsistency.

SEC. 110. DEFINITIONS.

For the purposes of this title—

(1) DEPOSITORY INSTITUTION.—The term "depository institution" has the meaning given such term in clauses (i) through (vi) of section 19(b)(1)(A) of the Federal Reserve Act.

(2) BOARD.—The term "Board" means the Board of Governors of the Federal Reserve System.

(3) ACCOUNT.—The term "account" means any account offered to 1 or more individuals or unincorporated association of individuals by a depository institution into which a customer deposits funds, including demand accounts, time accounts, negotiable order of withdrawal accounts, and share draft accounts.

(4) INTEREST.—The term "interest" includes dividends paid with respect to share draft accounts which are accounts within the meaning of paragraph (3).

(5) MULTIPLE RATE ACCOUNT.—The term "multiple rate account" means any account that has 2 or more annual rates of simple interest which take effect in succeeding periods and which are known at the time of disclosure.

(6) ANNUAL PERCENTAGE YIELD.—The term "annual percentage yield" shall be equal to the total amount of interest that would be received on a $100 deposit under the terms described in paragraphs (3) and (4) of section 102(c) over a year, expressed as a percentage calculated by a method which shall be prescribed by the Board in regulations.

TITLE II—TRUTH IN CREDIT CARD APPLICATIONS

SEC. 201. CREDIT CARD COST DISCLOSURE REQUIREMENTS.

(a) DISCLOSURE REQUIRED IN SOLICITATIONS BY CREDIT CARD ISSUERS AND IN APPLICATIONS FOR CREDIT CARDS.—Section 127 of the Truth in Lending Act (15 U.S.C. 1637) is amended by adding at the end thereof the following new subsections:

"(c) DISCLOSURE IN CREDIT CARD APPLICATIONS AND SOLICITATIONS.—

"(1) IN GENERAL—Any application to open a credit card account for any person under an open end consumer credit plan, and any solicitation by a creditor in which such creditor offers to open a credit card account for any person under any open end consumer credit plan without requiring such person to complete an application to open such account, shall contain the following information, to the extent applicable:

"(A) The annual percentage rate applicable to extensions of credit under such credit plan or, in the case of an extension of credit which is subject to a variable rate, the means for determining that rate.

"(B) If 1 or more periodic rates may be used to compute the finance charge, each such rate, the range of balances to which each such rate is applicable, and the corresponding annual percentage rate with respect to each such periodic rate.

"(C) Any annual or other fee imposed for the issuance or use of a credit card.

"(D) The period within which any credit extended under such credit plan must be repaid to avoid incurring a finance charge, and, if no such period is offered, such fact shall be clearly stated.

"(E) Any fixed or minimum charge, including a transaction fee (other than a transaction fee imposed in connection with a cash advance), if applicable, as determined by the Board.

"(2) SPECIAL RULE FOR 'TAKE-ONE' APPLICATIONS.—In the case of applications described in paragraph (1) which are distributed to commercial retail establishments and made available to the public in receptacles located in such establishments, such applications meet the requirements of paragraph (1) if—

"(A) the information required to be included in such applications under paragraph (1) is included and is accurate as of the date the applications are distributed to the commercial retail establishments;

"(B) each application contains a reference to the date on which the application is prepared for distribution to a commercial retail establishment; and

"(C) each application contains a statement, in a conspicuous and prominent location on the application, that—

"(i) the information contained in the application is subject to change; and

"(ii) the applicant should contact the creditor for information on any change in the information contained in the application since the application was distributed.".

(b) CERTAIN INFORMATION REQUIRED TO BE DISCLOSED IN TABULAR FORM.—Section 122 of such Act (15 U.S.C. 1632) is amended—

(1) in the third sentence of subsection (a), by striking out "Regulations" and inserting in lieu thereof "Except as provided in subsection (c), regulations"; and

(2) by adding at the end thereof the following new subsection:

"(c) TABULAR FORMAT REQUIRED FOR DISCLOSURES UNDER SECTION 127(c).—

"(1) IN GENERAL.—Any information which is required to be disclosed under paragraph (1) or (2) of section 127(c) in any solicitation or application shall be—

"(A) disclosed in the precise form and manner which the Board shall prescribe by regulations; and

"(B) placed in a conspicuous and prominent location on any application, solicitation, or other document or paper with respect to which such disclosure is required.

"(2) TABULAR FORMAT.—

"(A) FORM OF TABLE TO BE PRESCRIBED.—In the regulations prescribed under paragraph (1)(A) of this subsection, the Board shall require that the information referred to in paragraph (1) shall, to the extent the Board determines to be practicable and appropriate, be disclosed in the form of a table which—

"(i) contains clear and concise headings for each item of such information; and

"(ii) provides a clear and concise form for stating each item of information required to be disclosed under each such heading.

"(B) BOARD DISCRETION IN PRESCRIBING ORDER AND WORDING OF TABLE.—In prescribing the form of the table under subparagraph (A), the Board may—

"(i) list the items required to be included in the table in a different order than the order in which such items are set forth in paragraph (1) or (2) of section 127(c); and

"(ii) subject to subparagraph (C), employ terminology which is different than the terminology which is employed in section 127(c) if such terminology conveys substantially the same meaning.

"(C) GRACE PERIOD.—Either the heading or the statement under the heading which relates to the time period referred to in section 127(c)(1)(D) shall contain the term 'grace period'.".

(c) COORDINATION WITH OTHER LAWS.—Section 111 of the Truth in Lending Act (15 U.S.C. 1610) is amended—

(1) in subsection (a)(1), by striking out "Chapters 1, 2, and 3" and inserting in lieu thereof "Except as provided in subsection (e), chapters 1, 2, and 3"; and

(2) by adding at the end thereof the following new subsection:

"(e) CERTAIN CREDIT CARD APPLICATION DISCLOSURE PROVISIONS.—The provisions of section 127(c) shall supersede any provision of the law of any State relating to the disclosure of information in any credit card application or solicitation which is subject to the requirements of section 127(c), unless the law of the State explicitly requires the disclosure of such information in a credit card application or solicitation.".

(d) EFFECTIVE DATE.—Any regulation required to be prescribed by the Board under the amendments made by this section shall—

(1) take effect not later than the end of the 90-day period beginning on the date of the enactment of this title; and

(2) apply only with respect to applications, solicitations, and other material distributed after the end of the 90-day period beginning after the end of the period referred to in paragraph (1).

The SPEAKER pro tempore. Is a second demanded?

Mr. WYLIE. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Rhode Island [Mr. ST GERMAIN] will be recognized for 20 minutes and the gentleman from Ohio [Mr. WYLIE] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Rhode Island [Mr. ST GERMAIN].

Mr. ST GERMAIN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, for too long, the American consumer has been victimized by deceptive, confusing, and complex advertising about savings accounts.

H.R. 5613, reported by the Banking, Finance and Urban Affairs Committee on a 38-to-10 vote, remedies this situation and requires that financial institutions give their customers clear, precise information about the interest rates and other terms on all savings instruments.

The legislation also contains provisions which will require issuers of credit cards to inform the credit card applicant up front about all the terms of the credit card contract. Under current law, consumers are not told about the terms—interest rates, annual fees, method of billing, and similar items—until after the fact, after the card has already been issued and fees imposed.

Mr. Speaker, both the Truth in Savings and credit card provisions provide the consumer with essential information to make intelligent decisions in the marketplace.

Mr. Speaker, the House should put an end to the deceptive hide-and-seek games that financial institutions play

against their customers on savings accounts and credit cards.

The House has an opportunity today to send a very clear message that it wants the American consumer to be given the full truth on essential financial services.

Mr. WYLIE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 5613, the Truth in Savings and Credit Card Application Act. No one supports the goals of truth in savings more than I do. In fact, I introduced the first truth in savings provisions in this Congress, H.R. 15, on January 3, 1985. Those provisions which I introduced on January 3, 1985, were also contained in a substitute which I offered in the full Banking Committee markup last week. My substitute included very specific provisions regarding the disclosure of interest rates, account fees and charges, as well as the important terms and conditions relative to the use of credit cards.

I believe that the provisions of my substitute would be even favorable to consumers than those contained in the bill before us now. My proposal would provide precise and straightforward information in a clear and direct manner with no lengthy new regulations and complex requirements for both consumers and bankers to wade through.

I feel H.R. 5613 is unnecessarily complex and burdensome, as almost anyone who reads its 23½ pages will see, and we should not lose sight of the fact that the consumer will ultimately bear the cost of unnecessary paperwork.

This calls to mind a similar situation with reference to truth-in-lending legislation. I was a very strong supporter of truth-in-lending legislation years ago. After a time, it became clear that it was unnecessarily complex and overloaded the information circuit to the extent it frustrated the purpose of the legislation, because it was too difficult to understand.

We passed a truth-in-lending simplification act several years later with clear, precise language with model form language. The language is similar in form as that proposed in my substitute for this bill.

I regret that I will not be able to offer my substitute here on the House floor because of the restrictive procedures under which the bill was brought to the floor. My substitute, I think, was probably more doable this year. It is consistent with language more acceptable to Banking Committee members in the other body.

I do want to keep the process moving and this bill is the only vehicle to try to get truth-in-savings legislation passed this year.

I do want to commend the gentleman from California [Mr. LEHMAN] for his persistent and conscientious effort which brought this bill to the floor. I want to compliment the chairman of the full committee, Mr. ST GERMAIN because, without his help, we most certainly would not be here.

I would not want the consumer to be the victim of a parliamentary procedure and our time constraints. So I encourage, in the strongest possible terms, and "aye" vote on the bill before us today.

Mr. ST GERMAIN. Mr. Speaker, I yield 5 minutes to the author of the legislation, the gentleman from California [Mr. LEHMAN].

Mr. LEHMAN of California. Mr. Speaker, first of all, I would like to express my appreciation to Chairman ST GERMAIN and his staff for their support and cooperation in keeping the Truth in Savings and Credit Card Applications Act a high priority for the House Banking Committee and for moving this important disclosure legislation expeditiously.

I also want to express my gratitude to the ranking minority member, the gentleman from Ohio [Mr. WYLIE] for his contribution to this effort, which has been significant.

H.R. 5613 requires that financial institutions and other credit card issuers provide uniform and clear disclosure of interest rates, fees, terms, and conditions which affect deposit accounts and open-end credit card accounts. The disclosure requirements are simple and adequate without being burdensome. They will make all of us and our constituents more informed and better shoppers in what has become an increasingly complex, confusing, and competitive financial services marketplace.

While I support the credit card disclosure provisions included in title II by my good friend and colleague, CHUCK SCHUMER, I would like to confine my remarks to title I of the bill relating to truth in savings.

Mr. Speaker, during the 98th Congress, I introduced H.R. 5232, legislation to end some of the confusing and misleading advertising practices that financial institutions were using to solicit new customers, particularly for IRA accounts. Though we did not approve that original legislation, the House Banking Committee did have hearings on the issue and there was ample evidence to support the need for uniform advertising standards and more clear disclosure of the terms and conditions which can affect yields on deposit accounts.

Last year, I introduced H.R. 2282, more comprehensive advertising disclosure legislation, and have been joined by over 100 cosponsors. Hearings were held in June of this year, and, again, it was clear that voluntary industry efforts and regulatory action had not been enough to end the misleading, vague, and confusing advertising and disclosure practices. At the hearings, even a representative from the American Bankers Association was unable to determine the yield on a hypothetical account based on the ABA's voluntary guidelines.

The legislation before us today, H.R. 5613, is a reflection of the committee hearings, markups, and other communications which have been held with both regulatory and industry representatives during the past 3 years. Every effort to perfect truth-in-savings has been made and a number of technical changes recommended by the Federal Reserve have been incorporated into H.R. 5613 to make it a more practical and workable bill. The truth-in-savings disclosure requirements of H.R. 5613 end many of the misleading advertising practices by financial institutions and provide consumers with adequate disclosure of the terms and conditions which can affect the yield on their deposit investments.

Very simply, title I requires that financial institutions provide, among other things, clear and uniform disclosure of the following items: annual percentage yields; period the yield is in effect; interest rates; minimum deposit, time, and balance requirements, fees or penalties; and any other terms and conditions which could affect the yield of deposit accounts.

The bill provides that notice be given when the terms and conditions of an account are altered in a manner which would reduce the yield of that account. The legislation also grants the Federal Reserve with ample latitude and authority to fine-tune its rulemakings to take into account the many different circumstances and types of accounts offered by depository institutions.

Some very specific and technical issues continue to be raised with regard to some of the provisions of the truth-in-savings requirements, and I would like to take this opportunity to clarify the intent of the bill as they relate to some of these very technical concerns. First, the disclosure requirements are triggered only when a specific interest rate is mentioned in an advertisement, solicitation, or announcement initiated by the financial institution; and there is a partial exemption for electronic media advertising and billboard advertisements if the Federal Reserve Board finds the disclosure as burdensome.

Second, with regard to account schedules in section 102, the intent of the legislation is not to mandate that a single, master disclosure schedule be maintained; instead, it allows the financial institution the discretion to determine if a single, master disclosure schedule is more practical and desirable than separate disclosure schedules for each type or class of account offered. Furthermore, section 102 contains appropriate discretionary authority for the Federal Reserve to

take into account the various types and classes of accounts which financial institutions could conceivably offer.

Contrary to the substitute amendment which was offered in both subcommittee and full committee proceedings, title I takes into account the special problems associated with multiple and variable accounts, as well as accounts whose rates are guaranteed for less than 1 year. These accounts all pose unique problems in advertising and disclosure, and H.R. 5613 provides the Federal Reserve with the necessary authority to modify the basic disclosure requirements accordingly.

Section 104 provides for the distribution of disclosure schedules. There has been a concern expressed regarding accounts whose terms are less than 90 days and whose interest rates fluctuate and the requirement for 30-day advance notice in the event of any changes in terms and conditions or any change which might adversely affect the yield or account. The language in this section, as well as in section 102, are very clear that this 30-day notification requirement is triggered only if the terms and conditions are altered in such a manner to adversely affect the yield or account, so long as accounts whose terms are 90 days or less and which have fluctuating interest rates are clearly disclosed as such. For instance, a 30-day account whose interest rate fluctuates daily according to U.S. Treasury rates should be disclosed as such. Notification of change would be required if the financial institution changed the terms as previously disclosed and according to the requirements of the act.

Finally, there has been concern that these provisions do not apply to all similar deposit instruments offered by nondepository institutions. First, this issue posed a germaneness problem for the Banking Committee which does not have jurisdiction over all financial entities which offer similar deposit instruments. Second, similar instruments, especially those offered by securities companies, come under stringent advertising and disclosure requirements which are heavily regulated and enforced by the Securities and Exchange Commission. These requirements are more restrictive on advertising and a proposed new rulemaking would standardize the computation of mutual fund performance data in advertisements and disclosure literature. Finally, under SEC rules, advertisements must first be registered with the SEC. Clearly, in the absence of similar rulemaking and standardization by the banking regulatory agencies, some legislative relief to provide uniform disclosure on behalf of consumers is appropriate.

Clear and uniform disclosure of these conditions will allow consumers to comparison-shop for such routine deposit accounts as savings accounts, interest-bearing checking accounts, IRA's, and other deposit accounts offered by financial institutions. Consumers will finally have the necessary information to figure out for themselves what many financial institutions disclosed through vague, confusing, and misleading advertisements, or were unwilling to disclose at all.

Furthermore, these uniform disclosure requirements are no more stringent than those which other Federal agencies use in regulating the advertising of other financial products such as mutual funds and money market instruments.

Finally, the disclosure requirements of title I are similar in many respects with those already enacted into law by several States and are similar to the voluntary truth-in-savings guidelines of the American Bankers Association.

Mr. Speaker, H.R. 5613 is a simple disclosure concept whose time has finally come. I urge my colleagues to join me in suspending the rules and approving H.R. 5613.

Mr. WYLIE. Mr. Speaker, I yield 5 minutes to the gentleman from Connecticut [Mr. MCKINNEY].

Mr. MCKINNEY. Mr. Speaker, everyday in this country and in every paper and on every radio station and most TV stations, the sirens on the rock are beckoning to the seabound sailor looking for a place to put his money. You know, it is almost as if the little boy who went into the swamp to check the water level suddenly forgot why he had gotten there until there were alligators all around him.

The fact of the matter is that under present conditions, nobody will ever know where they are in this country, particularly the consumer.

One drives down I-95 in my district and sees great ads, "11.9 percent interest" in print that is bigger than your Honda. Sounds pretty good, and then you look down in the left-hand corner and there is a little squib with the fine print.

All we are trying to say with this bill is that with a Yale education, which I got somehow or other, or with a Harvard Business School education, you cannot figure out what you are getting, and we are saying, "Say it simply."

We are not against the banks. We are not against the credit card companies, but how or who without a calculator is a person to know?

□ 1300

What are we asking them to do in the Truth in Savings Act? We are asking that an average annual percentage yield is shown in greater prominence than any other rate during the period it is in effect; that any minimum balance or initial deposit requirements that are needed, the annual rate of simple interest, any penalties for early withdrawal, and other regular fees that could reduce the yield to the saver are stated plainly.

How many of our children, as in my case, have called up and said, "Daddy, I didn't get my interest this month on my checking account because for 1 day I went below the minimum balance. I didn't know—I deposited the money, and they took away a month's interest." We hear it all the time.

The fact of the matter is, if we are going to have unregulated banking, which the St Germain-Garn Act brought to us, good. But let us have a knowledgeable consumer able to pick what they want from the different choices: our aim is to have an educated consumer. Let us not have the financial institutions in this country behave like auto companies saying, "Come get your 2.9 percent," and then have you read the small print, which says, "Yes, maybe only for 2 years, or maybe only for 6 months."

That is not what we want for the American consumer in the fiduciary safeguarding savings and checking accounts.

Now, credit cards. Gee, I talked about the little boy in the swamp and the alligators and I went through the siren on the rock. Who can possibly figure out what a credit card is costing you? How are they computing interest? What are they doing? Nobody knows, believe me, and I admit I am the first not to know what formula they are using. I am just glad that somehow or other I hold out a piece of plastic and the storekeeper says, "Good, that's cash."

It could end up in the case of one of our biggest store chains being 21.4 percent. Come on. And in other instances, you see this wonderful sign, "We only charge 12 percent for our credit card interest." Uh-huh. And $75 a year fee, and a penalty for not paying on time, and who knows what other charges.

I support this legislation because I want the American consumers to know what they are paying. Only then will we have unregulated, free competition within the savings and credit card business. I beg all Members: help a confused American trying to find his way through the shoals of financial advertising.

Mr. ST GERMAIN. Mr. Speaker, I yield 4 minutes to the gentleman from New York [Mr. SCHUMER].

Mr. SCHUMER. Mr. Speaker, first let me thank the chairman of our committee for his leadership on this issue and on so many other issues that affect the consumer. It is second to none.

I would also like to thank my colleague, the gentleman from California, for providing the second part of this bill, the credit cards part of this bill, with the rowboat that the gentleman

from Connecticut talked about, so that we might get to shore. I would also like to thank my colleague, the gentleman from New York [Mr. BIAGGI], for his help and leadership on this issue of credit cards.

Mr. Speaker, there is something wrong in the credit card industry today, and that something wrong is very simple. It is called no competition, or very little competition. All the large issuers of credit cards, the large money center banks, seem to charge the same rate of interest, for some reason: 19.8 percent for this bank, 19.8 percent for that, 19.8 for this. As the cost of money has plummeted from 17 percent down to 12 percent down to 9 percent down to 6 percent, have credit card interest rates gone up? No, but have they gone down? No. They have stayed at that high level. That is the problem.

We hear from the many large and outstanding banking institutions of this country when they come talk to us about deregulation. "Let the market work." But in the credit card industry the market is not working. The Fed reported in July that credit card rates were at 18.32 percent. That is the average, and most of the big banks were at 19.8 percent. Unfair. Very unfair. It remains one of the old days when the three big automakers were all putting out the same type of car. Sure, they competed. They competed in color, they competed in advertising, but they did not compete in what the American people really wanted—a small, efficient car. They got run over.

That is what is happening in credit cards right now. There is no competition among the big, big issuers. This bill seeks to let the consumer know because they ought to know what rate they are paying, and there ought to be an incentive for those big issuers of credit cards to crack the market.

Let me give one illustration. In the same issue of Sports Illustrated, here was a credit card ad. They are advertising color, "The New Color of Clout." Can any member in the front of the room, the back of the room, see any rate advertised? No.

Some of the institutions say that they do not have room to advertise. Let us look at the same edition of Sports Illustrated. Auto loans, where there is lots of competition. What is the biggest thing in this ad? Not any of the words, but the number, which can be seen at the back of the room—5.5 percent.

What we are attempting to do in disclosure is very simple. We are attempting to get that market to work. Consumer, you want to pay almost usurious rates of interest? Before you sign up for a credit card, you are going to know. Banker, you want to lower your rates? You are going to have a competitive advantage, because all of America will know that you are at 12 percent when your competitors are having to say that they are at 19 percent.

This legislation is not the end-all and be-all in the credit card market, but it is a first step toward bringing the consumer the competition and lower rates that the consumer so very much deserves.

Several questions have come up regarding the interpretation of some of the language in H.R. 5613 regarding credit card disclosures. One of them relates to the disclosures that would be required in telephone solicitations. Under present retail practices, a telephone solicitor for a retailer will phone a prescreened potential credit cardholder and inquire if that person would like that retailer's credit card. If the person says "yes," the retailer sends a credit card to that person along with a contract containing the disclosures required under the Truth-in-Lending Act. Under the language of the bill, the disclosure requirements are not limited to written solicitations. Therefore, the telephone call would be considered a preapproved solicitation, which would be subject to the disclosure requirements contained in title II.

A second question relates to language added to the bill in committee by an amendment proposed by the gentleman from Tennessee [Mr. COOPER]. I supported this amendment, which greatly simplified the disclosure requirements contained in the bill. One aspect of this amendment requires some elaboration to clarify congressional intent. Mr. COOPER amended the bill so that it now requires disclosure of only two types of fees: first, the annual or membership fee, and second, any "fixed or minimum charge, including a transaction fee (other than for a cash advance), if applicable, as determined by the Fed."

Members of the credit card industry have pointed out that the language could be interpreted to require disclosure of a wider range of fees. Mr. COOPER and I discussed his amendment in advance, and we agreed that, in the case of this second type of fee, we only intended to cover an activity, or per transaction, fee for the purchase of goods and services, and any minimum finance charge, but not other fixed or minimum fees.

In lieu of an amendment on the floor or a colloquy, we trust that this statement will prevent any misunderstanding and will provide guidance when the appropriate regulatory bodies promulgate rules for implementing the legislation.

Mr. WYLIE. Mr. Speaker, I yield myself 1 minute.

Mr. Speaker, I would like to commend the gentleman from New York [Mr. SCHUMER] for his contribution to title II of the bill, Truth in Credit Card Applications, and for putting the issue in the forefront as far as the American people are concerned.

His title and the title that he has worked on does address some of the same concerns that I have had on disclosing interest rates on credit cards. Consumers do need to know and have a clear disclosure of the annual percentage rate, the annual fees, transaction charges, and so forth, and I think that there is unanimous consent on both sides that the consumer needs and deserves full disclosure to make the proper financial decisions that affect us all every day.

Mr. Speaker, I yield 3 minutes to the gentleman from Wisconsin [Mr. ROTH].

Mr. ROTH. Mr. Speaker, I rise in support of H.R. 5613. In particular, I rise in support of that portion of the legislation that establishes rules for the disclosure of information on credit card applications. We thank our chairman, the ranking member, the gentleman from California Mr. LEHMAN and Mr. SCHUMER for their diligent work with this issue.

On the first day of the second session, I introduced credit card interest rate and cost disclosure legislation, H.R. 4019. In the past few months I have been working with the gentleman from New York [Mr. SCHUMER] in developing language that is similar to that contained in H.R. 5613.

I do have concerns over a couple of the credit card provisions. First, the basic disclosure provisions are broader than I think necessary to protect the consumer. Further, I believe the legislation could be made less burdensome and more workable by applying different means of disclosure to applications mailed directly to the consumer and those contained in so-called take ones and catalogs and periodicals. These are problems that could be resolved when the legislation moves to the other body.

Despite these concerns, I consider this to be important legislation to protect the consumer, perhaps the most important proconsumer legislation this year.

H.R. 5613 enhances competition by giving the consumer an increased ability to shop around for a credit card that best suits his or her needs. It requires credit card companies to disclose in an abbreviated manner the cost of the card earlier in the application process.

This legislation deals with the widespread industry practice of force-feeding consumers credit cards through mass mailings of preapproved credit card applications. It also gives other potential credit card applicants information, up-front, on credit card costs.

The mass distribution of credit cards has two effects. First, people are accepting credit card applications without knowing exactly what they are buying. But also, some people are accepting obligations they cannot afford. The result is that good risks are forced to swallow the issuer's losses through higher interest rates and charges.

This legislation judges not whether interest rate charges and fees are too high or too low. It simply imposes clearer—and earlier—disclosure re-

quirements on credit care applications so that consumers can be in a better position to make informed decisions.

Surveys show that the large majority of consumers do not believe they do not get enough information before they make credit card choices. By giving people certain basic information, when they apply for credit cards and not after, we can solve this problem.

□ 1310

Mr. SCHUMER. Mr. Speaker, will the gentleman yield?

Mr. ROTH. I am happy to yield to the gentleman from New York.

Mr. SCHUMER. Mr. Speaker, I thank the gentleman for yielding and I thank him for his contribution in this legislation. He has worked with us long and hard and without bipartisanship on his behalf, as well as the gentleman from Ohio [Mr. WYLIE], the ranking minority Member's behalf. This bill would never have gotten out of the gate without their help. So I thank the gentleman from Wisconsin for his leadership.

Mr. ROTH. I thank my friend from New York for those comments and I yield back the balance of my time.

Mr. ST GERMAIN. Mr. Speaker, I yield such time as he may consume to the gentleman from Florida [Mr. LEHMAN].

PERMISSION TO FILE CONFERENCE REPORT ON H.R. 5205 DEPARTMENT OF TRANSPORTATION AND RELATED AGENCIES APPROPRIATIONS, 1987

Mr. LEHMAN of Florida. Mr. Speaker, I ask unanimous consent that the managers may have until midnight tonight to file a conference report on the bill (H.R. 5205) making appropriations for the Department of Transportation and Related Agencies for the fiscal year 1987, and for other purposes.

The SPEAKER pro tempore (Mr. KILDEE). Is there objection to the request of the gentleman from Florida?

Mr. WYLIE. Mr. Speaker, reserving the right to object, I happen to have been on the floor a little earlier when the gentleman had a colloquy with the gentleman from Pennsylvania [Mr. WALKER].

I ask the gentleman, has this been cleared with the minority?

Mr. LEHMAN of Florida. It has, Mr. Speaker.

Mr. WYLIE. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

Mr. ST GERMAIN. Mr. Speaker, I yield 1 minute to the gentleman from New York [Mr. LAFALCE].

Mr. LAFALCE. Mr. Speaker, H.R. 5613 is very positive legislation that represents a modest attempt to provide consumers with the disclosures they need to be able to effectively compare interest rate yields on savings accounts and interest rate and other charges on credit cards.

Title I of the bill pertains to deposit accounts, including savings accounts, IRA's, and other interest bearing accounts. The bill would require financial institutions to provide consumers with clear and uniform disclosure of the terms and conditions that affect the yield on their deposit accounts. For example, in their advertisements for deposit accounts, financial institutions would have to disclose the annual percentage yield, simple interest rate, minimum deposit required, and any fees and charges levied on the account. Similar information would have to be provided to consumers in a written schedule prepared by the financial institution. These simple and straightforward disclosure requirements would enable consumers to effectively compare deposit accounts offered by competing financial institutions.

Title II of the measure requires all credit card issuers to provide consumers with the information they need to be able to quickly and fairly compare the real charges involved in using a particular credit card. Specifically, H.R. 5613 mandates that credit card issuers disclose in any application for a card, or in any offer to obtain a card without filling out an application, the following information: The interest rate, annual fee, grace period, and any minimum or transaction fee on the card. These are the charges that affect consumers most directly and that will enable consumers to efficiently compare credit card charges. Moreover, disclosure of these simple terms will not be overly burdensome to the credit card industry.

A key benefit of the disclosures mandated by this legislation is that they will truly allow the marketplace to work. If consumers are provided the information they need in a clear and understandable format, they will be able to shop around for the best deals in savings accounts and credit cards. The institutions that persist in offering unreasonable terms and conditions simply will not get the business from consumers. In this way, the savings account and credit card industries will become more responsive to consumer demands and the competitive marketplace.

I urge my colleagues to support this proconsumer legislation. It is fair to both consumers and industry, it is straightforward, and it is needed. I strongly support the bill's passage.

Mr. WYLIE. Mr. Speaker, I yield 2 minutes to the gentleman from New York [Mr. GILMAN].

Mr. GILMAN. Mr. Speaker, I am pleased to join my colleagues, in strong support of H.R. 5613, the Truth in Savings and Credit Card Applications Act of 1986. I would like to commend the distinguished chairman from Rhode Island, Mr. ST GERMAIN the ranking minority member, the gentleman from Ohio, [Mr. WYLIE], the gentleman from California [Mr. LEHMAN], and the gentleman from New York [Mr. SCHUMER] for bringing this timely matter before us today.

Quite simply this legislation requires uniform disclosure: First, by depository institutions on interest rates payable on savings accounts; and second, credit card applications on interest rates and other fees. The measure mandates that each advertisement, announcement, or solicitation made by a despository institution regarding specific interest rate payable on any demand or interest-bearing account clearly state: The annual percentage yield; the minimum balance necessary to earn the advertised interest rate, any initial deposit requirements; the annual rate of simple interest. With regard to credit cards, the Truth in Savings and Credit Card Applications Act stipulates that any application or solicitation to open a credit card account must disclose the annual percentage rate applicable; each rate, range of balances to which each rate is applicable, and the corresponding annual percentage rate; and, any fees imposed for issuance of the card.

While these new regulations may sound simple, and they are, they will I believe, improve the ability of consumers to make informed decisions regarding their banking and credit card needs. All consumers, particularly older consumers, need readily understandable information from financial institutions about their accounts, service charges, fees, interest rates, terms and conditions. In addition, consumers need essential information relative to credit card accounts—this bill facilitates those charges and addresses these needs.

Accordingly, I urge my colleagues to support H.R. 5613, to insure that our constituents are receiving complete and accurate information regarding their banking and credit card activities.

Mr. ST GERMAIN. Mr. Speaker, I yield 2 minutes to the gentleman from Minnesota [Mr. VENTO], a member of the committee.

Mr. VENTO. Mr. Speaker, I rise in support and commend Chairman ST GERMAIN, a real consumer champion, and the major authors, Mr. LEHMAN and Mr. SCHUMER, of the measure being considered. This legislation provides a measure of basic fairness for any American consumer who has a savings account or uses credit cards. It requires banks, savings and loans, and retailers to inform consumers, in understandable terms, of such essential features as:

First, the interest to be earned on a savings account;

Second, the interest to be charged on credit card balances;

Third, any fees that can be assessed against a customer, including any annual or monthly fee for a credit card or a savings account; and

Fourth, the required minimum balance or any minimum payment.

The Truth in Savings Act will equip the American consumer with the essential information he or she needs to become a comparison shopper for banking and credit services.

In earlier days the passbook account was fairly standard at all institutions. Today, however, there is a dizzying array of factors to compare, including fixed rates, variable rates, minimum balances, transactions fees, and many others. The situation is even more confusing with credit cards. Credit card interest rates vary from 10 to 21 percent and annual fees range from 0 to $100. Certainly consumers need to choose the credit card that best suits his family's budget and lifestyle.

The fact is, however, that interest rates on credit cards have remained by and large unjustifiably high. While the rates paid to depositors have dramatically fallen in recent years, the rates charged on credit cards remain high. Unless Congress were to enact legislation to limit the amount of interest that can be charged on credit cards, the only pressure to lower credit card interest rates will come from competitive forces. This legislation will permit informed and educated consumers to compare the costs and choose the least expensive card, consequently pushing banks and retailers to bring interest rates down to reasonable levels, through competition.

Mr. Speaker, American families spend huge sums of money on credit card interest. Certainly, it would be far better spent if it was used for food or clothing rather than excessive interest costs for credit card debt. I believe this legislation will lead to lower credit card interest rates and higher savings account interest rates, and I believe this legislation is an appropriate action to help the American family make intelligent credit choices.

Mr. WYLIE. Mr. Speaker, I do think the case has been made and I would encourage all Members to support this legislation.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. ST GERMAIN. Mr. Speaker, I yield 2 minutes to the gentleman from New York [Mr. BIAGGI].

Mr. BIAGGI. Mr. Speaker, there is a fitting phrase to describe what we are doing here today with relation to credit cards in title II. "Half a loaf is better than none."

I would agree with my colleagues that the efforts of the gentleman from New York [Mr. SCHUMER] and his leadership in this disclosure provision will help consumers in their comparison shopping for credit cards, and that is something worth doing.

However, let's not kid the nearly 100 million credit card users in our country. Disclosure won't cure the greed that drives the credit card industry, and disclosure won't mean an end to exorbitant credit card interest rates.

No. We are indeed giving the American consumer only half a loaf here today, and we should be doing much more.

This bill ensures that credit card consumers will be told they'll be ripped off before it happens, but it does nothing to prevent the ripoff from occurring.

What this bill needs is a second component that would cap credit card rates at reasonable levels. I proposed such a cap nearly 2 years ago, and I would have liked to offer that proposal here today as an amendment. Unfortunately, this bill is being considered under a procedure that does not allow amendment.

I am opposed to dealing with such a vital issue in this manner, but as they say, "half a loaf is better than none," especially as the congressional clock winds down.

Mr. Speaker, last year credit card issuing banks amassed profits of $3.6 billion. This year, profits are expected to be even higher.

In fact, it's gotten to the point where the head of the American Bankers Association bank card division recently said: "Nothing draws a crowd like profits * * * suddenly it seems that everybody has a plan for issuing credit cards and reaping some of the profits."

And, just why is the credit card business a veritable money making machine? Consider that banks can borrow money from the Federal Reserve for 5.5 percent, but they charge their credit card customer 19 percent interest. That's almost a 300-percent markup, and that's a national disgrace.

Today, we are taking a small step in the right direction. This bill will help consumers find the few good credit card deals that do exist.

But, next year, I will push for major strides in credit card consumer protection when I reintroduce my bill to cap credit card interest rates.

Mr. ST GERMAIN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would like to conclude this debate by once again commending the gentleman from California [Mr. LEHMAN] and the gentleman from New York [Mr. SCHUMER] for their tireless efforts.

□ 1320

Certainly, there are many of us, I would say to the gentleman from New York [Mr. BIAGGI] who would like to have seen a cap; but let us not kid the American people; it is not in the cards, so to speak, to have a cap put on interest rates on credit cards at this point in time.

I will tell the gentleman that I will be very happy, as chairman of this committee, to do my utmost. I voted for a cap in the subcommittee, to put a cap on. All he has to do is to importune the other members of the Committee on Banking, convince them that a cap is in order, and I will see to it that that legislation is reported out.

We have to work with what we have got, I say to my colleague, and when you do not have the votes for a cap, you go along with this wonderful disclosure legislation, as authored by Mr. SCHUMER. I think it is absolutely fantastic. A cap would be better, sure; but unfortunately life is not perfect.

Mr. BIAGGI. Mr. Speaker, will the gentleman yield?

Mr. ST GERMAIN. I yield to the gentleman from New York.

Mr. BIAGGI. Mr. Speaker, first I would like to thank the gentleman for having yielded to me at the outset; and I am happy that—well, I knew that he voted for the cap, and I understand it is not in the cards at this point. We understand a formidable resistance in that area because no one imposes restrictions on profit in their own industry.

Clearly, the disclosure provision is an important one.

Mr. ST GERMAIN. It is a big step in the right direction.

Mr. BIAGGI. There is no question about that. It gives us a more informed consumer. There are some credit card issuers out there that do charge moderate rates; considerably less than many other banks.

My only comment really was, hopefully the future will be more productive in this area.

Mr. ST GERMAIN. We will continue to work together.

Mr. BIAGGI. We always have.

I thank the Chairman.

Mr. ST GERMAIN. Mr. Speaker, I implore the Members of the House to approve this legislation unanimously if at all possible.

Mr. HUBBARD. Mr. Speaker, I rise today in support of H.R. 5613, the Truth in Savings and Credit Card Applications Act, and urge its passage by the House of Representatives.

One week ago today, September 30, H.R. 5613 was approved by our House Banking, Finance and Urban Affairs Committee. The measure requires that consumers be provided adequate information on the terms of deposit accounts and credit cards so they can compare the services available to them. I say to my colleagues that this is important legislation. I believe that all citizens should be entitled to the disclosure of the essential terms of their deposit accounts or their credit cards.

Critics of the disclosure legislation state over and over again that Congress should let

competition work in this world of deregulation. History has proven that this has not happened in the credit card industry, though, and the Banking Committee approved the truth in savings and credit card bill by a vote of 38 yeas to 10 nays.

The credit card provisions of the bill require that any applications to open a credit card account for an open end consumer credit plan or any preapproved solicitation in which the issuer offers to open an account for a consumer shall contain certain important disclosures of information, such as the annual percentage rate applicable, whether periodic rates are used, and any grace period, among other items. The credit card provisions include all providers of retail credit, including financial institutions and companies like Sears, JC Penny and other retail establishments.

The savings provisions of H.R. 5613 require the disclosure of interest rates, terms of savings accounts, account schedules, and other important financial information.

Mr. Speaker, this is an opportunity for the House to pass meaningful legislation which will benefit millions of people across this Nation who utilize these types of financial services.

I urge the passage of H.R. 5613.

Mr. WORTLEY. Mr. Speaker, the Truth in Savings Act, H.R. 5613, is sound, practical legislation that will undoubtedly benefit consumers who must make decisions on where to place their hard-earned money.

The variation and sheer amount of account terms offered today can be numbing in its complexity. Consumers lacking a degree in finance find it increasingly difficult to compare accounts and chose the one most suitable for their needs. This hinders the workings of the free market which relies on honest competition. Standard disclosure rules, as provided for under this bill, will help consumers accurately compare account terms and select the accounts most suitable to their needs. Depository institutions will have to rely more on offering quality accounts instead of just fancy advertising.

As a member of the House Banking committee, and an original cosponsor of the Truth in Savings Act introduced by my friend and colleague from California, I was pleased that the legislation was expeditiously approved by a large majority of the committee. Necessary improvements to the legislation were made during subcommittee and full committee deliberations, and I believe the bill before us is a streamlined and effective approach to this whole issue.

The act would require banks and other financial institutions to fully disclose—in clear, understandable language—terms of the interest-earning accounts they offer. For instance, the annual yield, the method of calculating the interest, and any applicable fees would have to be disclosed. In addition, notification would be required if the terms and conditions of an account are altered in a manner which would reduce the yield of that account.

The act would also require issuers of credit cards—whether financial institutions or not—to disclose certain basic terms and conditions of the account in advertisements or solicitations for the cards. All too often, misleading advertisements have been circulated causing consumers to enter into financial agreements that they had no understanding of and later regret. Fees, interest rates, grace periods, and other vital information would have to be presented in a clear and uncertain manner.

This action will allow consumers to make better decisions and will increase the competition among credit card issuers. Such competition could lead to lower interest rates on credit cards which is a concern of many of my constituents.

Mr. Speaker, time is short. I urge the approval of this important consumer legislation so that it can be considered immediately by the other Chamber and the President.

Mr. ST GERMAIN. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. KILDEE). The question is on the motion offered by the gentleman from Rhode Island [Mr. ST GERMAIN] that the House suspend the rules and pass the bill, H.R. 5613, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. ST GERMAIN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks, and to include extraneous matter, on H.R. 5613, the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Rhode Island?

There was no objection.

BANKING STABILITY, HOUSING IMPROVEMENT, AND CONSUMER PROTECTION ACT OF 1986

Mr. ST GERMAIN. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5576) to provide for the stability of the domestic banking and thrift systems, to improve housing, to protect the American consumer of financial services, and for other purposes as amended.

The Clerk read as follows:

H.R. 5576

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Banking Stability, Housing Improvement, and Consumer Protection Act of 1986".

TITLE I—RECAPITALIZATION OF FSLIC

SEC. 1001. SHORT TITLE.

This title may be cited as the "Federal Savings and Loan Insurance Corporation Recapitalization Act of 1986".

SEC. 1002. FINANCING CORPORATION ESTABLISHED.

The Federal Home Loan Bank Act (12 U.S.C. 1421 et seq.) is amended by inserting after section 20 the following new section:

"SEC. 21. FINANCING CORPORATION.

"(a) ESTABLISHMENT.—Notwithstanding any other provision of law, the Board shall charter a corporation to be known as the Financing Corporation.

"(b) MANAGEMENT OF FINANCING CORPORATION.—

"(1) DIRECTORATE.—The Financing Corporation shall be under the management of a directorate composed of 3 members as follows:

"(A) The Director of the Office of Finance of the Federal Home Loan Banks (or the head of any successor to such office).

"(B) 2 members selected by the Chairman of the Federal Home Loan Bank Board from among the presidents of the Federal Home Loan Banks.

"(2) TERMS.—Each member appointed under paragraph (1)(B) shall be appointed for a term of 1 year.

"(3) VACANCY.—If any member leaves the office in which such member was serving when appointed to the Directorate—

"(A) such member's service on the Directorate shall terminate on the date such member leaves such office; and

"(B) the successor to the office of such member shall serve the remainder of such member's term.

"(4) EQUAL REPRESENTATION OF BANKS.—No president of a Federal Home Loan Bank may be appointed to serve an additional term on the Directorate until such time as the presidents of each of the other Federal Home Loan Banks have served as many terms on the Directorate as the president of such bank (before the appointment of such president to such additional term).

"(5) CHAIRPERSON.—The Chairman of the Federal Home Loan Bank Board shall select the chairperson of the Directorate from among the 3 members of the Directorate.

"(6) STAFF.—

"(A) NO PAID EMPLOYEES.—The Financing Corporation shall have no paid employees.

"(B) POWERS.—The Directorate may, with the approval of the Board, authorize the officers, employees, or agents of the Federal Home Loan Banks to act for and on behalf of the Financing Corporation in such manner as may be necessary to carry out the functions of the Financing Corporation.

"(7) ADMINISTRATIVE EXPENSES.—

"(A) IN GENERAL.—All administrative expenses of the Financing Corporation shall be paid by the Federal Home Loan Banks.

"(B) PRO RATA DISTRIBUTION.—The amount each Federal Home Loan Bank shall pay shall be determined by the Board by multiplying the total administrative expenses for any period by the percentage arrived at by dividing—

"(i) the aggregate amount the Board required such bank to invest in the Financing Corporation (as of the time of such determination) under paragraphs (4) and (5) of subsection (d) (as computed without regard to paragraph (3) or (6) of such subsection); by

"(ii) the aggregate amount the Board required all Federal Home Loan Banks to invest (as of the time of such determination) under such paragraphs.

"(C) ADMINISTRATIVE EXPENSES DEFINED.—For purposes of this paragraph, the term 'administrative expenses' does not include—

"(i) issuance costs (as such term is defined in subsection (g)(5)(A));

"(ii) any interest on (and any redemption premium with respect to) any obligation of the Financing Corporation; or

"(iii) custodian fees (as such term is defined in subsection (g)(5)(B)).

"(8) REGULATION BY BOARD.—The Directorate shall be subject to such regulations, orders, and directions as the Board may prescribe.

"(9) NO COMPENSATION FROM FINANCING CORPORATION.—Members of the Directorate shall receive no pay, allowances, or benefits from the Financing Corporation by reason of their service on the Directorate.

"(c) POWERS OF FINANCING CORPORATION.—The Financing Corporation shall have only the following powers, subject to the other provisions of this section and such regulations, orders, and directions as the Board may prescribe:

"(1) To issue nonvoting capital stock to the Federal Home Loan Banks.

"(2) To invest in any security issued by the Federal Savings and Loan Insurance Corporation under section 402(b) of the National Housing Act.

"(3) To issue debentures, bonds, or other obligations and to borrow, to give security for any amount borrowed, and to pay interest on (and any redemption premium with respect to) any such obligation or amount.

"(4) To impose assessments in accordance with subsection (f).

"(5) To adopt, alter, and use a corporate seal.

"(6) To have succession until dissolved.

"(7) To enter into contracts.

"(8) To sue and be sued in its corporate capacity, and to complain and defend in any action brought by or against the Financing Corporation in any State or Federal court of competent jurisdiction.

"(9) To exercise such incidental powers not inconsistent with the provisions of this section or section 402(b) of the National Housing Act as are necessary or appropriate to carry out the provisions of this section.

"(d) CAPITALIZATION OF FINANCING CORPORATION.—

"(1) PURCHASE OF CAPITAL STOCK BY HOME LOAN BANKS.—

"(A) IN GENERAL.—Each Federal Home Loan Bank shall invest in nonvoting capital stock of the Financing Corporation at such times and in such amounts as the Board may prescribe under this subsection.

"(B) PAR VALUE; TRANSFERABILITY.—Each share of stock issued by the Financing Corporation to a Federal Home Loan Bank shall have par value in an amount determined by the Board and shall be transferable only among the Federal Home Loan Banks in the manner and to the extent prescribed by the Board at not less than par value.

"(2) AGGREGATE DOLLAR AMOUNT LIMITATION ON ALL INVESTMENTS.—The aggregate amount of funds invested by all Federal Home Loan Banks in nonvoting capital stock of the Financing Corporation shall not exceed $3,000,000,000.

"(3) MAXIMUM INVESTMENT AMOUNT LIMITATION FOR EACH HOME LOAN BANK.—The cumulative amount of funds invested in nonvoting capital stock of the Financing Corporation by each Federal Home Loan Bank shall not exceed the aggregate amount of—

"(A) the sum of—

"(i) the reserves maintained by such bank on December 31, 1985, pursuant to the requirement contained in the first 2 sentences of section 16; and

"(ii) the undivided profits (as defined in paragraph (7)) of such bank on such date; and

"(B) the sum of—

"(i) the amounts required to be carried to reserves after December 31, 1985, pursuant to the requirement contained in the first 2 sentences of section 16; and

"(ii) the undivided profits of such bank accruing after such date.

"(4) PRO RATA DISTRIBUTION OF 1ST $1,000,000,000 INVESTED IN FINANCING CORPORATION BY HOME LOAN BANKS.—With respect to the first $1,000,000,000 which the Board may require the Federal Home Loan Banks to invest in capital stock of the Financing Corporation under this subsection, the amount which each Home Loan Bank (or any successor to such bank) shall invest shall be determined by the Board by applying to the total amount of such investment by all such banks the percentage appearing in the following table for each such bank:

"Bank	Percentage
Federal Home Loan Bank of Boston	1.8629
Federal Home Loan Bank of New York	9.1006
Federal Home Loan Bank of Pittsburgh	4.2702
Federal Home Loan Bank of Atlanta	14.4007
Federal Home Loan Bank of Cincinnati	8.2653
Federal Home Loan Bank of Indianapolis	5.2863
Federal Home Loan Bank of Chicago	9.6886
Federal Home Loan Bank of Des Moines	0.9301
Federal Home Loan Bank of Dallas	8.8181
Federal Home Loan Bank of Topeka	5.2706
Federal Home Loan Bank of San Francisco	19.9644
Federal Home Loan Bank of Seattle	6.1422

"(5) PRO RATA DISTRIBUTION OF AMOUNTS REQUIRED TO BE INVESTED IN EXCESS OF $1,000,000,000.—With respect to any amount in excess of $1,000,000,000 which the Board may require the Federal Home Loan Banks to invest in capital stock of the Financing Corporation under this subsection, the amount which each Federal Home Loan Bank (or any successor to such bank) shall invest shall be determined by the Board by multiplying such excess amount by the percentage arrived at by dividing—

"(A) the sum of the total assets (as of the most recent December 31) held by all insured institutions which are members of such bank; by

"(B) the sum of the total assets (as of such date) held by all insured institutions which are members of any Federal Home Loan Bank.

"(6) SPECIAL PROVISIONS RELATING TO MAXIMUM AMOUNT LIMITATIONS.—

"(A) IN GENERAL.—If the amount any Federal Home Loan Bank is required to invest in capital stock of the Financing Corporation pursuant to a determination by the Board under paragraph (5) (or under subparagraph (B) of this paragraph) exceeds the maximum investment amount applicable with respect to such bank under paragraph (3) at the time of such determination (hereinafter in this paragraph referred to as the 'excess amount')—

"(i) the Board shall require each remaining Federal Home Loan Bank to invest (in addition to the amount determined under paragraph (5) for such remaining bank and subject to the maximum investment amount applicable with respect to such remaining bank under paragraph (3) at the time of such determination) in such capital stock on behalf of the bank in the amount determined under subparagraph (B);

"(ii) the Board shall require the bank to subsequently purchase the excess amount of capital stock from the remaining banks in the manner described in subparagraph (C); and

"(iii) the requirements contained in subparagraphs (D) and (E) relating to the use of net earnings available for dividends shall apply to such bank until the bank has purchased all of the excess amount of capital stock.

"(B) ALLOCATION OF EXCESS AMOUNT AMONG REMAINING BANKS.—The amount each remaining Federal Home Loan Bank shall be required to invest under subparagraph (A)(i) is the amount determined by the Board by multiplying the excess amount by the percentage arrived at by dividing—

"(i) the amount of capital stock of the Financing Corporation held by such remaining bank at the time of such determination; by

"(ii) the aggregate amount of such stock held by all remaining banks at such time.

"(C) PURCHASE PROCEDURE.—The bank on whose behalf an investment in capital stock is made under subparagraph (A)(i) shall purchase, annually and at the issuance price, from each remaining bank an amount of such stock determined by the Board by multiplying the amount available for such purchases (at the time of such determination) by the percentage determined under subparagraph (B) with respect to such remaining bank until the aggregate amount of such capital stock has been purchased by the bank.

"(D) LIMITATION ON DIVIDENDS.—The amount of dividends which may be paid for any year by a bank on whose behalf an investment is made under subparagraph (A)(i) shall not exceed an amount equal to 1/2 of the net earnings available for dividends of the bank for the year.

"(E) TRANSFER TO ACCOUNT FOR PURCHASE OF STOCK REQUIRED.—Of the net earnings available for dividends for any year of a bank on whose behalf an investment is made under subparagraph (A)(i), such amount as is necessary to make the purchases of stock required under subparagraph (A)(ii) shall be placed in a reserve account (established in such manner as the Board shall prescribe by regulations) the balance in which shall be available only for such purchases.

"(F) NET EARNINGS AVAILABLE FOR DIVIDENDS DEFINED.—For purposes of this paragraph, the term 'net earnings available for dividends' means the net earnings of a bank for any period as computed after reducing the amount of earnings for such period by the amount required to be carried (for such period) to reserves maintained by such bank pursuant to the first two sentences of section 16 of this Act.

"(7) UNDIVIDED PROFITS DEFINED.—For purposes of paragraph (3), the term 'undivided profits' means retained earnings minus the sum of—

"(A) that portion required to be carried to reserves maintained pursuant to the first two sentences of section 16 of this Act; and

"(B) the dollar amounts held by the respective Federal Home Loan Banks in special dividend stabilization reserves on December 31, 1985 as determined under the following table:

"Bank	Dollar amount
Federal Home Loan Bank of Boston	$3.2 million

Federal Home Loan Bank of New York	7.7 million
Federal Home Loan Bank of Pittsburgh	5.2 million
Federal Home Loan Bank of Atlanta	12.3 million
Federal Home Loan Bank of Cincinnati	5.9 million
Federal Home Loan Bank of Indianapolis	37.4 million
Federal Home Loan Bank of Chicago	6.0 million
Federal Home Loan Bank of Des Moines	32.7 million
Federal Home Loan Bank of Dallas	45.0 million
Federal Home Loan Bank of Topeka	13.7 million
Federal Home Loan Bank of San Francisco	21.9 million
Federal Home Loan Bank of Seattle	33.6 million

"(e) OBLIGATIONS OF THE FINANCING CORPORATION.—

"(1) LIMITATION ON AMOUNT OF OUTSTANDING OBLIGATIONS.—The aggregate amount of obligations of the Financing Corporation which may be outstanding at any time (as determined by the Board) shall not exceed the greater of—

"(A) 5 times the amount of the nonvoting capital stock of the Financing Corporation which is outstanding at such time; or

"(B) the sum of the face amounts (principal payable at maturity) of securities described in subsection (g)(2) which are held at such time in the segregated account established pursuant to such subsection.

"(2) NET PROCEEDS TO BE INVESTED IN CAPITAL OF FSLIC.—Subject to such terms and conditions as may be approved by the Board, the net proceeds of any obligation issued by the Financing Corporation shall be used to—

"(A) purchase capital certificates or capital stock issued by the Federal Savings and Loan Insurance Corporation under section 402(b)(1)(A) of the National Housing Act; or

"(B) refund any previously issued obligation the net proceeds of which were invested in the manner described in subparagraph (A).

"(3) LIMITATION ON TERM OF OBLIGATIONS.—No obligation of the Financing Corporation may be issued which matures—

"(A) more than 30 years after the date of issue; or

"(B) after December 31, 2026.

"(4) INVESTMENT OF UNITED STATES FUNDS IN OBLIGATIONS.—Obligations issued under this section by the Financing Corporation with the approval of the Board shall be lawful investments, and may be accepted as security, for all fiduciary, trust, and public funds the investment or deposit of which shall be under the authority or control of the United States or any officer of the United States.

"(5) MARKET FOR OBLIGATIONS.—All persons having the power to invest in, sell, underwrite, purchase for their own accounts, accept as security, or otherwise deal in obligations of the Federal Home Loan Banks shall also have the power to do so with respect to obligations of the Financing Corporation.

"(6) NO FULL FAITH AND CREDIT OF THE UNITED STATES.—Obligations of the Financing Corporation and the interest payable on such obligations shall not be obligations of, or guaranteed as to principal or interest by, the Federal Home Loan Banks, the United States, or the Federal Savings and Loan Insurance Corporation and the obligations shall so plainly state.

"(7) TAX EXEMPT STATUS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), obligations of the Financing Corporation shall be exempt from tax both as to principal and interest to the same extent as any obligation of a Federal Home Loan Bank is exempt from tax under section 13.

"(B) EXCEPTION.—The Financing Corporation, like the Federal Home Loan Banks, shall be treated as an agency of the United States for purposes of the first sentence of section 3124(b) of title 31, United States Code (relating to determination of tax status of interest on obligations).

"(8) OBLIGATIONS ARE EXEMPT SECURITIES.—Notwithstanding paragraph (6), obligations of the Financing Corporation shall be deemed to be exempt securities (within the meaning of laws administered by the Securities and Exchange Commission) to the same extent as securities which are direct obligations of the United States or are guaranteed as to principal or interest by the United States.

"(f) ASSESSMENT AUTHORITY OF THE FINANCING CORPORATION.—

"(1) IN GENERAL.—The Financing Corporation may assess, with the approval of the Board, on each insured institution an assessment for each semiannual period equal to ½ of an amount not to exceed 1/12th of 1 percent of the aggregate amount of all accounts of insured members of such insured institution for the year in which such semiannual period occurs.

"(2) SUPPLEMENTAL ASSESSMENT AUTHORIZED.—Upon the unanimous vote of the Directorate that additional funds are needed to pay the interest on the obligations of the Financing Corporation because no other funds are available, the Financing Corporation may assess, with the approval of the Board and in addition to any assessment assessed under paragraph (1), on each insured institution an assessment for each semiannual period of ½ of an amount not to exceed 1/8th of 1 percent of the aggregate amount of all accounts of insured members of such insured institution for the year in which such semiannual period occurs.

"(3) TOTAL AMOUNT OF ASSESSMENTS MAY NOT EXCEED INTEREST AND FINANCING COSTS.—The aggregate amount of assessments assessed under paragraphs (1) and (2) with respect to any semiannual period may not exceed—

"(A) the aggregate amount of—

"(i) issuance costs (as such term is defined in subsection (g)(5)(A)) incurred with respect to obligations issued during such semiannual period;

"(ii) interest paid on (and any redemption premium paid with respect to) obligations of the Financing Corporation during such semiannual period; and

"(iii) custodian fees (as such term is defined in subsection (g)(5)(B)) incurred during such period; minus

"(B) the aggregate amount of any payments under subsection (g)(4) during such semiannual period.

"(4) PAYMENT TO FINANCING CORPORATION.—All assessments assessed under paragraph (1) or (2) shall be paid to the Financing Corporation.

"(g) USE AND DISPOSITION OF ASSETS OF THE FINANCING CORPORATION NOT INVESTED IN FSLIC.—

"(1) IN GENERAL.—Subject to such regulations, restrictions, and limitations as may be prescribed by the Board, assets of the Financing Corporation which are not invested in capital certificates or capital stock issued by the Federal Savings and Loan Insurance Corporation under section 402(b)(1)(A) of the National Housing Act shall be invested in—

"(A) direct obligations of the United States,

"(B) obligations, participations, or other instruments of, or issued by, the Federal National Mortgage Association or the Government National Mortgage Association;

"(C) mortgages, obligations, or other securities for sale by, or which have been disposed of by, the Federal Home Loan Mortgage Corporation under section 305 or 306 of the Federal Home Loan Mortgage Corporation Act; or

"(D) any other security in which it is lawful for fiduciary and trust funds to be invested under the laws of any State.

"(2) SEGREGATED ACCOUNT FOR ZERO COUPON INSTRUMENTS HELD TO ASSURE PAYMENT OF PRINCIPAL.—The Financing Corporation shall invest in, and hold in a segregated account, noninterest bearing instruments—

"(A) which are securities described in paragraph (1); and

"(B) the total of the face amounts (principal payable at maturity) of which is approximately equal to the aggregate amount of principal on the obligations of the Financing Corporation,

to assure the repayment of principal on obligations of the Financing Corporation.

"(3) DOLLAR AMOUNT LIMITATION ON INVESTMENT IN ZERO COUPON INSTRUMENTS FOR SEGREGATED ACCOUNT—The aggregate amount invested by the Financing Corporation under paragraph (2) shall not exceed $2,200,000,000 (as determined on the basis of the purchase price).

"(4) EXCEPTION FOR PAYMENT OF ISSUANCE COSTS, INTEREST, AND CUSTODIAN FEES.—Notwithstanding the requirements of paragraph (1), the assets of the Financing Corporation referred to in paragraph (1) which are not invested under paragraph (2) may be used to pay—

"(A) issuance costs;

"(B) any interest on (and any redemption premium with respect to) any obligation of the Financing Corporation; and

"(C) custodian fees.

"(5) DEFINITIONS.—For purposes of this subsection—

"(A) ISSUANCE COSTS.—The term 'issuance costs'—

"(i) means issuance fees and commissions incurred by the Financing Corporation in connection with the issuance or servicing of any obligation of the Financing Corporation; and

"(ii) includes legal and accounting expenses, trustee and fiscal and paying agent charges, costs incurred in connection with preparing and printing offering materials, and advertising expenses, to the extent that any such cost or expense is incurred by the Financing Corporation in connection with issuing any obligation.

"(B) CUSTODIAN FEES.—The term 'custodian fee' means—

"(i) any fee incurred by the Financing Corporation in connection with the transfer of any security to, or the maintenance of any security in, the segregated account established under paragraph (2); and

"(ii) any other expense incurred by the Financing Corporation in connection with the establishment or maintenance of such account.

"(h) MISCELLANEOUS PROVISIONS RELATING TO FINANCING CORPORATION.—

"(1) TREATMENT FOR CERTAIN PURPOSES.—The Financing Corporation shall be treated as a Federal Home Loan Bank for purposes of sections 13 and 23.

"(2) SUNSET PROVISION FOR BORROWING AUTHORITY.—No net new borrowing may be made by the Financing Corporation after December 31, 1996.

"(3) FEDERAL RESERVE BANKS AS DEPOSITARIES AND FISCAL AGENTS.—The Federal Reserve banks are authorized to act as depositaries for or fiscal agents or custodians of the Financing Corporation.

"(4) APPLICABILITY OF CERTAIN PROVISIONS RELATING TO GOVERNMENT CORPORATION.—Notwithstanding the fact that no government funds may be invested in the Financing Corporation, the Financing Corporation shall be treated, for purposes of sections 9105, 9107, and 9108 of title 31, United States Code, as a mixed-ownership Government corporation which has capital of the Government.

"(i) FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION INDUSTRY ADVISORY COMMITTEE.—

"(1) ESTABLISHMENT.—There is hereby established the Federal Savings and Loan Insurance Corporation Industry Advisory Committee (hereinafter in this subsection referred to as the 'Committee').

"(2) MEMBERSHIP.—

"(A) APPOINTMENT.—The Committee shall consist of 13 members selected as follows:

"(i) 1 member appointed by the Chairman of the Board from among individuals who are officers of insured institutions and who are not members of the Board or employees of the Board, the Federal Savings and Loan Insurance Corporation, or the Board of Directors of any Federal Home Loan Bank.

"(ii) 1 member elected from each Federal Home Loan Bank district (by the members of the Board of Directors of each such bank who were elected by the members of such bank) from among individuals who are officers of insured institutions.

"(B) TERMS.—Members shall be appointed or elected for terms of 1 year.

"(C) CHAIRPERSON.—The member appointed under subparagraph (A)(i) shall be the chairperson of the Committee.

"(D) VACANCIES.—Any vacancy on the Committee shall be filled in the manner in which the original appointment was made.

"(E) PAY AND EXPENSES.—Members of the Committee shall serve without pay but each member of the Committee shall be reimbursed, in such manner as the Board may prescribe by regulation, by the Federal Home Loan Bank which elected such member (and, in the case of the member appointed by the Chairman of the Board, by the Board) for expenses incurred in connection with attendance of such members at meetings of the Committee.

"(F) MEETINGS.—The Committee shall meet from time to time at the call of the chairperson or a majority of the members.

"(3) DUTIES OF THE COMMITTEE.—The duties of the Committee are as follows:

"(A) To review the reports and budgets prepared pursuant to section 402(k) of the National Housing Act and any other matter which the Board may present for the Committee's consideration.

"(B) To confer with the Board on the reports, budgets, and other matters reviewed under subparagraph (A).

"(C) To prepare written comments and recommendations for the Board and the Federal Savings and Loan Insurance Corporation with respect to the reports, budgets, and other matters reviewed under subparagraph (A) (which shall be submitted to the Board in a timely manner after each meeting).

"(4) ANNUAL REPORT.—

"(A) REQUIRED.—Not later than January 15 of each year, the Committee shall submit a report to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

"(B) CONTENTS.—The report required under subparagraph (A) shall describe the activities of the Committee during the preceding year and the reports and recommendations made by the Committee to the Board and the Federal Savings and Loan Insurance Corporation during such year.

"(5) REGULATIONS.—The Board shall prescribe such regulations as the Board determines to be appropriate to avoid conflicts of interest with respect to the disclosure to and use by members of the Committee of information relating to the Board, the Federal Savings and Loan Insurance Corporation, the Federal Home Loan Banks, and the Federal Asset Disposition Association.

"(6) FEDERAL ADVISORY COMMITTEE ACT DOES NOT APPLY.—The Federal Advisory Committee Act shall not apply to the Committee.

"(7) TERMINATION.—The Committee shall terminate when the Financing Corporation terminates under subsection (j).

"(j) TERMINATION OF THE FINANCING CORPORATION.—

"(1) IN GENERAL.—The Financing Corporation shall be dissolved, as soon as practicable, after the earlier of—

"(A) the date by which all stock purchased by the Financing Corporation in the Federal Savings and Loan Insurance Corporation has been retired; or

"(B) December 31, 2026.

"(2) BOARD AUTHORITY TO CONCLUDE THE AFFAIRS OF FINANCING CORPORATION.—Effective on the date of the dissolution of the Financing Corporation under paragraph (1), the Board may exercise, on behalf of the Financing Corporation, any power of the Financing Corporation which the Board determines to be necessary to settle and conclude the affairs of the Financing Corporation.

"(k) REGULATIONS.—The Board may prescribe such regulations as may be necessary to carry out the provisions of this section, including regulations defining terms used in this section.

"(l) DEFINITIONS.—For purposes of this section—

"(1) INSURED INSTITUTION.—The term 'insured institution' has the meaning given to such term by section 401(a) of the National Housing Act.

"(2) INSURED MEMBER.—The term 'insured member' has the meaning given to such term by section 401(b) of the National Housing Act.

"(3) DIRECTORATE.—The term 'Directorate' means the directorate established in the manner provided in subsection (b)(1) to manage the Financing Corporation.".

SEC. 1003. MIXED OWNERSHIP GOVERNMENT CORPORATION.

Section 9101(2) of title 31, United States Code, is amended by adding at the end thereof the following new subparagraph:

"(K) The Financing Corporation.".

SEC. 1004. RECAPITALIZATION OF FSLIC.

Section 402(b) of the National Housing Act (12 U.S.C. 1725(b)) is amended to read as follows:

"(b) ISSUANCE AND SALE OF CAPITAL CERTIFICATES AND STOCK TO FINANCING CORPORATION.—

"(1) AUTHORIZATION TO ISSUE.—

"(A) IN GENERAL.—Notwithstanding any other provision of law, the Corporation may issue—

"(i) nonredeemable capital certificates; and

"(ii) redeemable nonvoting capital stock.

"(B) REQUIREMENT RELATING TO AMOUNT OF STOCK.—The aggregate amount of stock issued by the Corporation under subparagraph (A)(ii) shall be equal to the aggregate amount of the investments made by the Federal Home Loan Banks in the capital stock of the Financing Corporation under section 21 of the Federal Home Loan Bank Act.

"(C) CERTIFICATES AND STOCK MAY BE SOLD ONLY TO FINANCING CORPORATION.—Capital certificates and stock issued under subparagraph (A) may be sold only to the Financing Corporation in the manner and to the extent provided in section 21 of the Federal Home Loan Bank Act and this subsection.

"(D) PROCEEDS OF SALE ARE PART OF PRIMARY RESERVE.—The proceeds of any sale of capital certificates or stock under this subparagraph shall be considered part of the primary reserve established by the Corporation pursuant to section 404(a).

"(E) NO DIVIDENDS.—The Corporation shall pay no dividends on any capital certificates or stock issued under this subparagraph.

"(2) EQUITY RETURN ACCOUNT.—

"(A) IN GENERAL.—The Corporation shall establish and maintain (until all capital certificates and stock issued under subparagraph (A) have been paid off and retired) an equity return account—

"(i) which shall consist only of amounts contributed in accordance with the requirements of subparagraph (B);

"(ii) which shall not be treated as reserves of the Corporation; and

"(iii) the earnings accruing in which shall be transferred in the manner provided in subparagraph (D).

"(B) CONTRIBUTIONS TO ACCOUNT.—

"(i) NO CONTRIBUTION IF RESERVES-TO-ACCOUNTS RATIO IS LESS THAN 0.5 PERCENT.—No contribution shall be made to the equity reserve account established pursuant to subparagraph (A) in any year in which the reserves-to-accounts ratio is less than 0.5 percent.

"(ii) ANNUAL CONTRIBUTIONS REQUIRED.—Except as provided in clause (i), the Corporation shall make contributions to the equity reserve account established pursuant to subparagraph (A)—

"(I) at the end of each year beginning after 1996 through the final payoff year (as defined in clause (vii)); and

"(II) in amounts determined under clauses (iii), (iv), (v), and (vi) of this subparagraph.

"(iii) AMOUNT OF PRIMARY CONTRIBUTION.—The primary contribution to the equity return account for any year for which a contribution is required to be made shall be the amount determined by dividing—

"(I) the aggregate amount of capital stock issued by the Corporation and purchased by the Financing Corporation under paragraph (1)(A); by

"(II) the number of years between the first year beginning after 1996 in which the reserves-to-accounts ratio is equal to or greater than 0.5 percent and the final payoff year (taking into account the first and last year described).

"(iv) AMOUNT OF ADDITIONAL CONTRIBUTION ALLOWED IF RESERVES-TO-ACCOUNTS RATIO DOES NOT EXCEED 1.25 PERCENT.—In any year in which the reserves-to-accounts ratio is equal to or greater than 1 percent but less than 1.25 percent, the Federal Home Loan Bank Board may require the Corporation to make an additional contribution of an amount not to exceed the amount determined by dividing—

"(I) the investment return amount (as defined in clause (viii)) computed at an annual compound rate not to exceed 6 percent; by

"(II) the number of years between the first year beginning after 1996 in which the reserves-to-accounts ratio was equal to or greater than 1 percent and the final payoff year (taking into account the first and last year described).

"(v) AMOUNT OF ADDITIONAL CONTRIBUTION ALLOWED IF RESERVES-TO-ACCOUNTS RATIO DOES NOT EXCEED 1.75 PERCENT.—In any year in which the reserves-to-accounts ratio is equal to or greater than 1.25 percent but less than 1.75 percent, the Federal Home Loan Bank Board may require the Corporation to make an additional contribution of an amount not to exceed the amount determined by dividing—

"(I) the investment return amount computed at an annual compound rate not to exceed 8 percent, minus the sum of any amounts contributed under clause (iv); by

"(II) the number of years between the first year beginning after 1996 in which the reserves-to-accounts ratio was equal to or greater than 1.25 percent and the final payoff year (taking into account the first and last year described).

"(vi) AMOUNT OF ADDITIONAL CONTRIBUTION ALLOWED IF RESERVES-TO-ACCOUNTS RATIO EXCEEDS 1.75 PERCENT.—In any year in which the reserves-to-accounts ratio is equal to or greater than 1.75 percent, the Federal Home Loan Bank Board may require the Corporation to make an additional contribution of an amount not to exceed the amount determined by dividing—

"(I) the investment return amount computed at an annual compound rate not to exceed 10 percent, minus the sum of any amounts contributed under clause (iv) or (v); by

"(II) the number of years between the first year beginning after 1996 in which the reserves-to-accounts ratio was equal to or greater than 1.75 percent and the final payoff year (taking into account the first and last year described).

"(vii) FINAL PAYOFF YEAR DEFINED.—For purposes of this subparagraph, the term 'final payoff year' means the year of maturity of the obligation of the Financing Corporation which, on January 1, 1997, has the longest remaining term to maturity of all the obligations of the Financing Corporation (under section 21 of the Federal Home Loan Bank Act) which are outstanding on such date.

"(viii) INVESTMENT RETURN AMOUNT.—For purposes of clauses (iv), (v), and (vi), the term 'investment return amount' means the amount which would be realized on the aggregate amount invested by the Financing Corporation in capital stock issued by the Corporation under paragraph (1) over the period of the investment if the return on the investment is computed at the rate described in subclause (I) of the respective clauses.

"(C) INVESTMENT OF AMOUNTS IN ACCOUNT.—Amounts accumulating in the equity return account may be invested in such manner as the Corporation determines.

"(D) TRANSFER OF EARNINGS TO PRIMARY RESERVE.—Earnings accruing on any investment (under subparagraph (C)) of amounts in the equity return account shall be transferred to the primary reserve account of the Corporation established pursuant to section 404(a) as such earnings are realized by the Corporation and shall not be treated as amounts in the account.

"(E) RETIREMENT OF CAPITAL STOCK USING BALANCE IN ACCOUNT.—Upon maturity of all obligations of the Financing Corporation under section 21 of the Federal Home Loan Bank Act, the Corporation shall payoff and retire any capital stock issued under paragraph (1)(A)(ii) using only amounts accumulated in the equity return account.

"(F) RESERVES-TO-ACCOUNTS RATIO DEFINED.—For purposes of this paragraph, the term 'reserves-to-accounts ratio' means, with respect to any year, the amount determined by dividing—

"(i) the amount of reserves of the Corporation (determined as of December 31 of the preceding year); by

"(ii) the aggregate amount of all accounts of all of its insured members (determined as of such date).

"(3) FINANCING CORPORATION DEFINED.—For purposes of this subsection, the term 'Financing Corporation' means the Financing Corporation established under section 21 of the Federal Home Loan Bank Act.

"(4) NO REDUCTION OR SUSPENSION OF INSURANCE PREMIUMS WHILE STOCK IS OUTSTANDING.—Notwithstanding any other provision of law, the provisions of subsections (b)(2), (d)(1)(B), and (g) of section 404 shall not apply as long as any share of capital stock issued under paragraph (1)(A)(ii) is outstanding.".

SEC. 1005. FSLIC AUTHORITY TO CHARGE PREMIUMS REDUCED BY AMOUNT OF FINANCING CORPORATION ASSESSMENTS.

Section 404 of the National Housing Act is amended by redesignating subsections (d) through (i) as subsections (e) through (j), respectively, and by inserting after subsection (c) the following new subsection:

"(d) AUTHORITY TO CHARGE PREMIUMS REDUCED BY AMOUNT OF FINANCING CORPORATION ASSESSMENTS.—Notwithstanding any other provision of this section, the sum of—

"(1) the amount of any premium required to be paid by any insured institution under subsection (b)(1); and

"(2) the amount of any premium authorized to be assessed by the Corporation under subsection (c) with respect to such institution,

for any period shall be reduced by the amount of any assessment paid for such period by such insured institution to the Financing Corporation pursuant to section 21(f) of the bell, 06260 09-23-86 Federal Home Loan Bank Act.".

SEC. 1006. MISCELLANEOUS PROVISIONS.

(a) FEDERAL HOME LOAN BANK DIVIDENDS.—Section 16 of the Federal Home Loan Bank Act (12 U.S.C. 1436) is amended by adding at the end thereof the following new subsection:

"(c) EXCEPTION IN CASE OF LOSSES IN CONNECTION WITH FINANCING CORPORATION STOCK.—

"(1) IN GENERAL.—Notwithstanding subsection (a) of this section, if—

"(A) a Federal Home Loan Bank incurs a chargeoff or an expense in connection with such bank's investment in the stock of the Financing Corporation under section 21;

"(B) the Board determines there is an extraordinary need for the member institutions of the bank to receive dividends; and

"(C) the bank has reduced all reserves (other than the reserve account required by the first 2 sentences of subsection (a)) to zero,

the Board may authorize such bank to declare and pay dividends out of undivided profits (as such term is defined in section 21(d)(7)) or the reserve account required by the first 2 sentences of subsection (a).

"(2) REQUIREMENTS OF SECTION 21 NOT AFFECTED.—Notwithstanding any payment of dividends by any Federal Home Loan Bank pursuant to an authorization by the Board under paragraph (1), the applicable provisions of section 21 shall continue to apply with respect to such bank, and to such bank's investment in the Financing Corporation, in the same manner and to the same extent as if such payment had not been made.".

(b) CONFORMING AMENDMENT.—Section 402(h) of the National Housing Act (12 U.S.C. 1725(h)) is amended—

(1) by striking out "After the effective date" and inserting in lieu thereof "(1) After the effective date"; and

(2) by adding at the end thereof the following new paragraph:

"(2) The first three sentences of paragraph (1) shall not apply to stock issued by the Corporation to the Financing Corporation under subsection (b)(1)(A).".

(c) LIMITATION ON SPECIAL ASSESSMENT.—Section 404(c) of the National Housing Act (12 U.S.C. 1727(c)) is amended—

(1) by striking out "(c) The Corporation" and inserting in lieu thereof "(c)(1) SPECIAL ASSESSMENT.—Subject to paragraph (2), the Corporation"; and

(2) by adding at the end thereof the following new paragraph:

"(2) LIMITATIONS ON AMOUNT OF ASSESSMENT.—The amount of any additional premium assessed by the Corporation against any insured institution under paragraph (1) in any of the following years shall not exceed the amount listed in connection with each such year in the following table (unless the Federal Home Loan Board determines that severe pressures on the Corporation exist which necessitate an infusion of additional funds):

"For year:	The amount of the additional premium may not exceed:
1987	5/48 of 1 percent of the total amount of the accounts of the insured members of such institution;
1988	1/12 of 1 percent of the total amount of the accounts of the insured members of such institution;
1989	1/16 of 1 percent of the total amount of the accounts of the insured members of such institution;

"For year:	The amount of the additional premium may not exceed:
1990	1/24 of 1 percent of the total amount of the accounts of the insured members of such institution;
1991	1/48 of 1 percent of the total amount of the accounts of the insured members of such institution."

(d) PRIORITY OF SECURED INTERESTS.—Section 10 of the Federal Home Loan Bank Act (12 U.S.C. 1430) is amended by adding at the end thereof the following new subsection:

"(e) PRIORITY OF CERTAIN SECURED INTERESTS.—Notwithstanding any other provision of law, any security interest granted to a Federal Home Loan Bank by any member of any Federal Home Loan Bank or any affiliate of any such member shall be entitled to priority over the claims and rights of any party (including any receiver, conservator, trustee, or similar party having rights of a lien creditor) other than the claims of secured parties that are secured by actual perfected security interests that would be entitled to priority under otherwise applicable law.".

(e) FSLIC REPORT REQUIREMENTS.—Section 402 of the National Housing Act is amended by adding at the end thereof the following new subsection:

"(k) REPORTS AND BUDGETS REQUIRED.—

"(1) QUARTERLY REPORTS AND BUDGETS.—Before the end of the 2-week period beginning on the first day of each calendar quarter, the Corporation shall complete a detailed written report and budget describing and explaining—

"(A) planned or anticipated activities and estimates of receipts and expenditures for such calendar quarter; and

"(B) the activities, receipts, and expenditures for the preceding calendar quarter.

"(2) SEMIANNUAL REPORT.—Before the end of the 30-day period beginning on the first day of each semiannual period, the Corporation shall complete a detailed written report and budget describing and explaining the activities, receipts, and expenditures for the preceding semiannual period.

"(3) SUBMISSION OF SEMIANNUAL REPORT TO CONGRESS.—The Corporation shall submit a copy of each semiannual report required under paragraph (2) to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

"(4) ACTIVITIES, ETC., OF FEDERAL ASSET DISPOSITION ASSOCIATION.—Activities, receipts, and expenditures of the Federal Asset Disposition Association (or any successor thereto) shall be included in any report or budget required under this subsection.

"(5) DEFINITIONS.—For purposes of this subsection—

"(A) ACTIVITIES.—The term 'activities' includes any activity engaged in with respect to any insured institution in financial difficulty.

"(B) SEMIANNUAL PERIOD.—The term 'semiannual period' means—

"(i) the period beginning on January 1 of any calendar year and ending June 30 of such year; and

"(ii) the period beginning on July 1 of any calendar year and ending December 31 of such year.".

(f) SECONDARY RESERVE.—Section 404 of the National Housing Act (12 U.S.C. 1727) is amended by striking out subsection (i) (as redesignated by section 1005).

TITLE II—FINANCIAL INSTITUTIONS EMERGENCY ACQUISITIONS

SEC. 2001. SHORT TITLE.

This title may be cited as the "Financial Institutions Emergency Acquisitions Amendments of 1986".

SEC. 2002. ASSISTED EMERGENCY ACQUISITIONS; FEDERAL DEPOSIT INSURANCE ACT AMENDMENTS.

(a) GENERAL PROVISIONS.—Section 13(f)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1823(f)(1)) is amended to read as follows:

"(f)(1) ASSISTED EMERGENCY INTERSTATE ACQUISITIONS.—

"(A) REGULATOR NOTICE TO THE CORPORATION.—Whenever the appropriate Federal banking agency, other than the Corporation, learns that an out-of-State bank or holding company is considering acquiring an insured bank in danger of closing which the appropriate Federal banking agency has reason to believe may qualify for acquisition under the interstate acquisition provisions of paragraph (3)(A), the appropriate Federal banking agency shall—

"(i) notify the Corporation of such pending acquisition;

"(ii) consult with the Corporation before taking any action with respect to such acquisition; and

"(iii) provide the Corporation with notice of any final action taken by the appropriate Federal banking agency with respect to such acquisition.

"(B) EMERGENCY POWERS MAY ONLY BE USED FOR AN ASSISTED ACQUISITION.—This subsection shall only apply with respect to an acquisition of an insured bank or a holding company by an out-of-State bank or holding company for which the Corporation provides assistance under subsection (c).".

(b) ALTERNATIVE MINIMUM SIZE LIMIT TEST.—

(1) CLOSED BANK WHICH HAS $500,000,000 IN ASSETS OR IS 1 OF THE 10 LARGEST BANKS IN A STATE.—Section 13(f)(2)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1823(f)(2)(A)) is amended by striking out "(2)(A) Whenever an insured bank with total assets of $500,000,000 or more (as determined from its most recent report of condition) is closed, the Corporation" and inserting in lieu thereof the following:

"(2) EMERGENCY ACQUISITIONS OF CLOSED INSURED BANKS.—(A) If an insured bank is closed and such insured bank—

"(i) has total assets of $500,000,000 or more; or

"(ii) is 1 of the 10 largest insured banks (in terms of total assets) in the State in which such bank is located,

the Corporation".

(2) INFORMATION TO BE PROVIDED TO STATE BANK SUPERVISOR.—Section 13(f)(2)(B)(i) of the Federal Deposit Insurance Act (12 U.S.C. 1823(f)(2)(B)(i)) is amended by adding at the end thereof the following new sentence: "In connection with such consultation, the Corporation shall provide the State bank supervisor with all relevant information available to the Corporation concerning all out-of-State banks or holding companies, or insured banks owned or controlled by out-of-State banks or holding companies, which have made offers with respect to the closed bank involved.".

(c) EMERGENCY ACQUISITIONS OF BANKS IN DANGER OF CLOSING.—Section 13(f)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1823(f)(3)) is amended to read as follows:

"(3) EMERGENCY ACQUISITIONS OF INSURED BANKS IN DANGER OF CLOSING.—

"(A) ACQUISITION OF INSURED BANKS IN DANGER OF CLOSING.—An out-of-State bank or holding company may acquire and retain the shares or assets of, or otherwise acquire and retain—

"(i) an insured bank in danger of closing which—

"(I) has total assets of $500,000,000 or more; or

"(II) is 1 of the 10 largest insured banks (in terms of total assets) in the State in which such bank is located; or

"(ii) 2 or more affiliated insured banks in danger of closing which have aggregate total assets of $500,000,000 or more, if the aggregate total assets of such banks is equal to or greater than 33 percent of the aggregate total assets of all affiliated insured banks.

"(B) ACQUISITION OF A HOLDING COMPANY OR OTHER BANK AFFILIATE.—If an out-of-State bank or holding company acquires 1 or more affiliated insured banks under subparagraph (A) the aggregate total assets of which is equal to or greater than 33 percent of the aggregate total assets of all affiliated insured banks, the out-of-State bank or holding company may also acquire and retain the shares or assets of, or otherwise acquire and retain, as part of the same transaction—

"(i) the holding company which controls the affiliated insured banks so acquired; or

"(ii) any other affiliated insured bank.

"(C) REQUEST FOR ASSISTANCE BY CORPORATE BOARD OF DIRECTORS.—The Corporation may assist an acquisition or merger authorized under subparagraph (A) only if the board of directors or trustees of each insured bank in danger of closing which is being acquired has requested in writing that the Corporation assist the acquisition or merger.

"(D) CERTAIN ACQUISITIONS AUTHORIZED AFTER ASSISTANCE IS PROVIDED.—Notwithstanding paragraph (1)(B), if—

"(i) at any time after April 15, 1986, the Corporation provides any assistance under subsection (c) to an insured bank; and

"(ii) at the time such assistance is granted, the insured bank, the holding company which controls the insured bank (if any), or any affiliated insured bank is eligible to be acquired by an out-of-State bank or holding company under this paragraph,

the insured bank, the holding company, and such other affiliated insured bank shall remain eligible to be acquired by an out-of-State bank or holding company under this paragraph as long as any portion of such assistance remains outstanding.

"(E) EXISTING LAW APPLIES WITH RESPECT TO APPROVAL OF ACQUISITION BY OTHER BANK REGULATORS.—Where otherwise lawfully required, an acquisition under this paragraph is subject to the same approval process by the primary Federal or State supervisor of each party to such acquisition as would be required if the acquisition were not an acquisition under this paragraph.

"(F) STATE BANK SUPERVISOR NOTIFICATION.—

"(i) NOTICE AND CONSULTATION.—Before taking any final action in connection with any acquisition under this paragraph, the Corporation shall notify and consult the State bank supervisor of the State in which the bank in danger of closing is chartered.

"(ii) RELEVANT INFORMATION REQUIRED TO BE PROVIDED.—In connection with any consultation under clause (i), the Corporation shall provide the State bank supervisor with all relevant information available to the

Corporation concerning all out-of-State banks or holding companies which have made offers to acquire the insured bank in danger of closing.

"(iii) REASONABLE OPPORTUNITY TO OBJECT.—The State bank supervisor referred to in clause (i) shall be given a reasonable opportunity, and in no event less than 48 hours after receiving notice, to object to the acquisition referred to in clause (i).

"(iv) UNANIMOUS VOTE OF FDIC BOARD REQUIRED TO OVERRIDE OBJECTION.—If the State bank supervisor files an objection to the acquisition with the Corporation during the period provided under clause (iii), the Corporation may provide the assistance in connection with such acquisition only if the Board of Directors approves such acquisition by a unanimous vote.

"(v) NOTICE TO STATE OF OVERRIDE.—The Board of Directors shall provide, as soon as practicable, written notice of any vote of approval under clause (iv) to the appropriate State bank supervisor as soon as practicable.".

(d) SPECIAL PROVISIONS APPLICABLE TO EMERGENCY ACQUISITIONS.—

(1) COORDINATION WITH CERTAIN STATE LAWS.—Section 13(f)(4) of the Federal Deposit Insurance Act (12 U.S.C. 1823(f)(4)) is amended—

(A) by redesignating clauses (i), (ii), and (iii) as subparagraphs (A), (B), and (C), respectively;

(B) by amending subparagraph (A) (as so redesignated) to read as follows:

"(A) ACQUISITIONS NOT SUBJECT TO CERTAIN OTHER LAWS.—Section 3(d) of the Bank Holding Company Act of 1956, any provision of State law, the constitution of any State, and section 408(e)(3) of the National Housing Act shall not apply so as to prohibit any acquisition under paragraph (2) or (3), except that an out-of-State bank may make such an acquisition only if such ownership is otherwise specifically authorized."; and

(C) by adding at the end thereof the following new subparagraphs:

"(D) SUBSEQUENT NONEMERGENCY ACQUISITIONS SUBJECT TO STATE LAW.—Any out-of-State bank holding company which acquires control of an insured bank in any State under paragraph (2) or (3) may acquire any other insured bank in such State to the same extent as a bank holding company whose insured bank subsidiaries' operations are principally conducted in such State may acquire any other insured bank, unless otherwise provided under the laws of such State.

"(E) CERTAIN STATE INTERSTATE BANKING LAWS INAPPLICABLE.—Any holding company which acquires control of any insured bank or holding company under paragraph (2) or (3) or subparagraph (D) of this paragraph shall not, by reason of such acquisition, be required under the law of any State to divest any other insured bank or be prevented from acquiring any other bank or holding company which is located in another State.

"(F) STATE IN WHICH HOLDING COMPANY SUBSIDIARIES' PRINCIPAL OPERATIONS ARE CONDUCTED.—For purposes of subparagraph (D), the State in which the operations of a holding company's insured bank subsidiaries are principally conducted is the State determined under section 3(d)(1) of the Bank Holding Company Act of 1956 with respect to such holding company.".

(2) REAFFIRMATION OF THE RULE THAT NO ASSISTANCE IS AUTHORIZED FOR NONBANK SUBSIDIARIES OF HOLDING COMPANIES.—Section 13(f) of the Federal Deposit Insurance Act (12 U.S.C. 1823(f)) is amended by adding at the end thereof the following new paragraph:

"(9) NO ASSISTANCE AUTHORIZED FOR NONBANK SUBSIDIARIES OF HOLDING COMPANIES.—The Corporation shall not provide any assistance to a subsidiary of a holding company which is not an insured bank in connection with any acquisition under this subsection.".

(3) REPORTS REQUIRED.—Section 13(f) of the Federal Deposit Insurance Act (12 U.S.C. 1823(f)) is amended by adding after paragraph (9) (as added by paragraph (2) of this subsection) the following new paragraph:

"(10) ANNUAL REPORTS.—

"(A) REQUIRED.—The Corporation shall transmit an annual report on the acquisitions under this subsection during the preceding year to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and to the Committee on Banking, Housing, and Urban Affairs of the Senate.

"(B) CONTENTS.—The report required under subparagraph (A) shall contain the following information:

"(i) The number of acquisitions under this subsection.

"(ii) A brief description of each such acquisition and the circumstances under which such acquisition occurred.

"(iii) The number of times an objection by a State bank supervisor was overruled by the Board of Directors under paragraph (2)(B)(iii) or (3)(F)(iv) and an explanation for such action by the Board of Directors.".

(4) DETERMINATION OF TOTAL ASSETS.—Section 13(f) of the Federal Deposit Insurance Act (12 U.S.C. 1823(f)) is amended by adding after paragraph (10) (as added by paragraph (3) of this subsection) the following new paragraph:

"(11) DETERMINATION OF TOTAL ASSETS.—For purposes of this subsection, the total assets of any insured bank shall be determined on the basis of the most recent report of condition of such bank which is available at the time of such determination.".

(e) BANK IN DANGER OF CLOSING DEFINED.—Section 13(f)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1823(f)(8)) is amended—

(1) by adding at the end thereof the following new subparagraph:

"(D) the term 'bank in danger of closing' means an insured bank with respect to which the appropriate Federal or State chartering authority certifies in writing that—

"(i) the bank is not likely to be able to meet the demands of its depositors or pay its obligations in the normal course of business and there is no reasonable prospect that the bank will be able to meet such demands or pay such obligations without potential losses to the Corporation; or

"(ii) the bank has incurred or is likely to incur losses that will deplete all or substantially all of its capital and there is no reasonable prospect for the replenishment of the bank's capital without potential losses to the Corporation;";

(2) by striking out "and" at the end of subparagraph (B); and

(3) by striking out the period at the end of subparagraph (C) and inserting in lieu thereof a semicolon.

(f) ACQUIRE DEFINED.—Section 13(f)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1823(f)(8)) is amended by adding after subparagraph (D) (as added by subsection (e) of this section) the following new subparagraph:

"(E) the term 'acquire' means to acquire, directly or indirectly, ownership or control through—

"(i) an acquisition of shares;

"(ii) an acquisition of assets or assumption of liabilities;

"(iii) a merger or consolidation; or

"(iv) any similar transaction;".

(g) AFFILIATED INSURED BANK DEFINED.—Section 13(f)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1823(f)(8)) is amended by adding after subparagraph (E) (as added by subsection (f) of this section) the following new subparagraph:

"(F) the term 'affiliated insured bank' means—

"(i) when used in connection with a reference to 1 insured bank, an insured bank which is a subsidiary of a holding company;

"(ii) when used in connection with a reference to a holding company, an insured bank which is a subsidiary of such holding company; and

"(iii) when used in connection with a reference to 2 or more insured banks, insured banks which are subsidiaries of the same holding company; and".

(h) SUBSIDIARY DEFINED.—Section 13(f)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1823(f)(8)) is amended by adding after subparagraph (F) (as added by subsection (g) of this section) the following new subparagraph:

"(G) the term 'subsidiary' has the meaning given to such term in section 2(d) of the Bank Holding Company Act of 1956.".

(i) TECHNICAL AND CONFORMING AMENDMENTS.—Section 13(f) of the Federal Deposit Insurance Act (12 U.S.C. 1823(f)) is amended—

(1) in paragraph (5), by striking out "to permit"; and

(2) in paragraph (6)(A)—

(A) by striking out "where the closed bank" and inserting in lieu thereof "where the bank"; and

(B) by striking out "in-State bank holding company" and inserting in lieu thereof "in-State holding company".

SEC. 2003. UNASSISTED EMERGENCY ACQUISITIONS; BANK HOLDING COMPANY ACT OF 1956 AMENDMENTS.

Section 3(d) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(d)) is amended—

(1) by striking out "(d) Notwithstanding any other provision of this section" and inserting in lieu thereof the following:

"(d)(1) IN GENERAL.—Notwithstanding any other provision of this section (other than paragraphs (2), (3), and (4) of this subsection)"; and

(2) by adding at the end thereof the following new paragraphs:

"(2) EMERGENCY ACQUISITIONS OF BANKS IN DANGER OF CLOSING.—Notwithstanding the constitution or laws of any State, a bank holding company may acquire and retain the shares or assets of, or otherwise acquire and retain—

"(A) a bank in danger of closing located in another State if such bank—

"(i) has total assets of $500,000,000 or more; or

"(ii) is 1 of the 10 largest insured banks (in terms of total assets) in such State; or

"(B) two or more affiliated banks in danger of closing located in another State which have aggregate total assets of $500,000,000 or more, if the aggregate total assets of such banks is equal to or greater than 33 percent of the aggregate total assets of all affiliated banks.

"(3) ACQUISITION OF ALL OR PART OF BANK HOLDING COMPANIES.—If any bank holding company acquires 1 or more affiliated banks under paragraph (2) the aggregate total assets of which is equal to or greater than 33 percent of the aggregate total assets of all affiliated banks, the acquiring bank holding company may also acquire and retain the shares or assets of, or otherwise acquire and retain, as part of the same transaction and notwithstanding the constitution or laws of any State—

"(A) the holding company which controls the affiliated banks so acquired; or

"(B) any other affiliated bank.

"(4) SUBSEQUENT NONEMERGENCY ACQUISITIONS SUBJECT TO STATE LAW.—A bank holding company which acquires the assets or shares of a bank in danger of closing under paragraph (2) may, notwithstanding the constitution or law of the State in which such bank is located, acquire any other insured bank in such State to the same extent as a bank holding company whose insured bank subsidiaries' operations are principally conducted in such State may acquire any other insured bank in such State, unless otherwise provided under the laws of such State.

"(5) CERTAIN STATE INTERSTATE BANKING LAWS INAPPLICABLE.—Any bank holding company which acquires control of any bank or bank holding company under paragraph (2), (3), or (4) shall not, by reason of such acquisition, be required under the law of any State to divest any other bank or be prevented from acquiring any other bank or bank holding company which is located in another State.

"(6) REQUEST FOR APPROVAL BY CORPORATE BOARD OF DIRECTORS.—The Board may approve an application under paragraph (2) or (3) to acquire the shares or assets of a bank in danger of closing or the bank holding company that controls such bank only if the board of directors or trustees of such bank or a bank holding company which controls such bank has requested in writing that the Board approve the application.

"(7) STATE BANK SUPERVISOR NOTIFICATION.—

"(A) NOTICE OF ACQUISITION DISCUSSIONS.—No bank in danger of closing and no bank holding company that controls any such bank may enter into any discussions relating to the acquisition of such bank under paragraph (2) unless—

"(i) the State bank supervisor for each State in which such bank or any affiliated bank is located has been notified of such proposed discussion; and

"(ii) the bank in danger of closing or the bank holding company that controls a bank in danger of closing has attempted to arrange an acquisition which does not require—

"(I) assistance from the Federal Deposit Insurance Corporation under section 13(c) of the Federal Deposit Insurance Act; and

"(II) the application of the emergency interstate acquisition provisions of paragraph (2).

"(B) APPLICATION REQUIREMENTS.—Any application submitted under paragraph (2) must include a statement by the bank in danger of closing or the bank holding company which controls such bank describing the efforts made by such bank or bank holding company to satisfy the requirements of subparagraph (A) and the reasons for the rejection of any proposal submitted by any potential acquirer other than the applicant.

"(C) NOTICE OF APPLICATION AND CONSULTATION.—Before approving any application for an acquisition of any bank in danger of closing under paragraph (2) or any affiliated bank, the Board shall consult the State bank supervisor of each State in which such bank or any affiliated bank is located.

"(D) REASONABLE OPPORTUNITY TO OBJECT.—Each State bank supervisor referred to in subparagraph (C) shall be given a reasonable opportunity, and in no event less than 48 hours after receiving notice, to object to the approval of an application under paragraph (2).

"(E) DISAPPROVAL REQUIRED IN CASE OF OFFER FOR ORDINARY ACQUISITION.—Except as provided in subparagraph (F), the Board shall not approve any application under paragraph (2) if, during the notice period provided in subparagraph (D), any State bank supervisor certifies to the Board that—

"(i) before notice was received by such supervisor under subparagraph (C), a person has offered or attempted to offer to acquire each of the banks in danger of closing in an acquisition which does not require—

"(I) assistance from the Federal Deposit Insurance Corporation under section 13(c) of the Federal Deposit Insurance Act; or

"(II) the application of the emergency interstate acquisition provisions of paragraph (2); and

"(ii) such person is, in the judgment of such State bank supervisor, likely to be able to—

"(I) secure all regulatory approvals necessary to consummate such acquisition promptly, and

"(II) comply with all applicable financial, managerial, and other regulatory requirements, including any requirement to recapitalize all such banks in danger of closing without impairing the financial resources of any acquiring person.

"(F) APPROVAL ALLOWED IF BOARD DISAGREES WITH STATE CERTIFICATION.—Notwithstanding subparagraph (E), the Board may approve, by an affirmative vote of not less than 5 members of the Board, an application with respect to which a certification was made under subparagraph (E) if the Board determines that the person certified by the State bank supervisor under such subparagraph does not—

"(i) have the financial resources necessary to obtain regulatory approval to acquire the bank or bank holding company to which such application relates (taking into account the financial resources which may be required to recapitalize all banks in danger of closing) without impairing the financial resources of the acquiring person; or

"(ii) meet other applicable regulatory requirements.

"(8) DEFINITIONS.—For purposes of this subsection—

"(A) BANK IN DANGER OF CLOSING.—The term 'bank in danger of closing' means a bank with respect to which the appropriate Federal or State chartering authority certifies in writing that—

"(i) the bank is not likely to be able to meet the demands of its depositors or pay its obligations in the normal course of business and there is no reasonable prospect for the bank to meet such demands or pay such obligations without potential losses to the Federal Deposit Insurance Corporation; or

"(ii) the bank has incurred or is likely to incur losses that will deplete all or substantially all of its capital and there is no reasonable prospect for replenishment of the bank's capital without potential losses to the Federal Deposit Insurance Corporation.

"(B) AFFILIATED BANK.—The term 'affiliated bank' means—

"(i) when used in connection with a reference to 1 bank, a bank which is a subsidiary of a bank holding company;

"(ii) when used in connection with a reference to a bank holding company, a bank which is a subsidiary of such holding company; and

"(iii) when used in connection with a reference to 2 or more banks, banks which are subsidiaries of the same bank holding company.

"(9) WAIVER OF CERTAIN NOTICE AND HEARING REQUIREMENTS.—If the Board receives a certification described in paragraph (8)(A) of this subsection or section 13(f)(8)(D) of the Federal Deposit Insurance Act from the appropriate Federal or State chartering authority that a bank is in danger of closing, the Board may—

"(A) dispense with the notice and hearing requirements of section 3(b) of this Act with respect to any application received by the Board relating to the acquisition of such bank, the bank holding company which controls such bank, or any other affiliated bank;

"(B) reduce the post-approval waiting period established under section 11 for such bank and any affiliated bank to 5 days; or

"(C) if the Board finds that immediate action is necessary to prevent the probable failure of any bank, eliminate the period referred to in subparagraph (B) for such bank and any affiliated bank.

"(10) DETERMINATION OF TOTAL ASSETS.—For purposes of paragraphs (2) and (3), the total assets of any bank shall be determined on the basis of the most recent report of condition of such bank which is available at the time of such determination.

"(11) ANNUAL REPORTS.—

"(A) REQUIRED.—The Board shall transmit an annual report on the applications under paragraph (2) or (3) during the preceding year to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and to the Committee on Banking, Housing, and Urban Affairs of the Senate.

"(B) CONTENTS.—The report required under subparagraph (A) shall contain the following information:

"(i) The number of applications approved by the Board under paragraph (2) or (3).

"(ii) A brief description of the acquisitions with respect to which such applications were made and approved.

"(iii) The number of times a certification by a State bank supervisor under paragraph (7)(E) was overruled by the Board under paragraph (7)(F) and an explanation for such action by the Board.".

SEC. 2004. WAIVER OF NOTICE REQUIREMENTS.

Section 4(c)(8) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)(8)) is amended by striking out the semicolon at the end and inserting in lieu thereof a period and the following new sentence: "If an application is filed under this paragraph in connection with an application by a bank holding company to acquire control of a bank in danger of closing, the bank holding company which controls such bank, or any other bank subsidiary of such holding company pursuant to section 3(d)(2) of this Act or section 13(f) of the Federal Deposit Insurance Act, the Board may dispense with the notice and hearing requirement of this paragraph and the Board may approve or deny the application under this paragraph without notice or hearing;".

SEC. 2005. SUNSET PROVISIONS.

(a) Section 141(a) of the Garn-St Germain Depository Institutions Act of 1982 (12 U.S.C. 1464 note) is amended by striking out "September 15, 1986" and inserting in lieu thereof "July 15, 1989".

(b) No amendment made by section 141(a) of the Garn-St Germain Depository Institutions Act of 1982, as in effect on September 14, 1986, to any other provision of law shall be deemed to have taken effect before the date of the enactment of this Act and any such provision of law shall be in effect as if no such amendment had taken effect before the date of the enactment of this Act.

(c) Effective upon July 15, 1989, the provisions of law amended by this Act or section 141(a) of the Garn-St Germain Depository Institutions Act of 1982 shall be amended to read as they would without such amendments or the application of subsection (b).

(d) The repeal or termination by subsection (c) of any amendment made by this Act shall have no effect on any action taken or authorized while such amendment was in effect.

(e) Section 206(a) of the Garn-St Germain Depository Institutions Act of 1982 (12 U.S.C. 1464 note) is amended by striking out "September 15, 1986" and inserting in lieu thereof "July 15, 1989".

(f) No amendment made by section 206(a) of the Garn-St Germain Depository Institutions Act of 1982, as in effect on September 14, 1986, to any other provision of law shall be deemed to have taken effect before the date of the enactment of this Act and any such provision of law shall be in effect as if no such amendment had taken effect before the date of the enactment of this Act.

TITLE III—EXPEDITED FUNDS AVAILABILITY

SEC. 3001. SHORT TITLE.

This title may be cited as the "Expedited Funds Availability Act".

SEC. 3002. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress hereby finds that—

(1) the writing and depositing of checks is an important element in the efficient operation of the American economy;

(2) many people rely on the rapid availability of funds deposited in their accounts for the basic necessities of life;

(3) notwithstanding the fact that depository institutions usually receive provisional credit from the Federal Reserve for checks they receive within one to two business days after such checks are deposited with them, many depository institutions have imposed inordinate delays on the availability of those funds to depositors;

(4) the incidence of returned checks, which depository institutions often use to justify their delayed funds availability policies, amount to approximately one percent of all checks written in the United States, and a substantial portion of these returned checks are paid on second presentment;

(5) with few exceptions, efforts by State governments, Federal agencies, and the financial industry have been unsuccessful in curbing the abuses which have been found in the area of delayed funds availability; and

(6) a coordinated Federal response is the most reasonable way to assure that depositors throughout the United States are treated fairly in gaining access to funds in their accounts.

(b) PURPOSE.—It is the purpose of this title to—

(1) adopt temporary, maximum time limits for the availability of funds deposited by check;

(2) replace those temporary time limits with standard availability ceilings within 3 years after the effective date of section 3004;

(3) require depository institutions to fully disclose their funds availability policies to depositors;

(4) permit States, and individual depository institutions, to adopt funds availability policies which allow depositors to gain access to funds earlier than prescribed by Federal law or regulation; and

(5) prescribe appropriate enforcement mechanisms to ensure compliance with the provisions of this title.

SEC. 3003. DEVELOPMENT OF PERMANENT EXPEDITED FUNDS AVAILABILITY SYSTEM.

(a) PERMANENT EXPEDITED FUNDS AVAILABILITY SYSTEM.—

(1) DEVELOPMENT REQUIRED.—The Board of Governors of the Federal Reserve System shall immediately begin to develop an expedited funds availability system which will meet the funds availability schedule established in subsection (b).

(2) TIME LIMIT ON IMPLEMENTATION.—The expedited funds availability system shall be implemented as soon as possible, but in no event later than 3 years after the effective date of section 3004.

(b) SCHEDULE.—

(1) AVAILABILITY OF LOCAL CHECKS.—Funds deposited in an account at a depository institution by checks drawn on a local originating depository institution and checks described in any subparagraph of section 3004(c)(2) shall be available for withdrawal not later than the start of the business day following the business day on which such checks were deposited.

(2) AVAILABILITY OF NONLOCAL CHECKS.—For all other checks, not more than three business days shall intervene between the business day on which such checks are deposited in an account at a depository institution and the business day on which the funds involved are available for withdrawal.

(c) REGULATIONS.—In connection with the establishment of the expedited funds availability system described in subsection (a), the Board shall consider (among other proposals) requiring, by regulation, that—

(1) the Federal Reserve banks and depository institutions shall take such actions as are necessary to automate the process of returning unpaid checks;

(2) each depository institution and Federal Reserve bank shall place its endorsement, and other notations specified in regulations of the Board, on checks in the positions specified in such regulations;

(3) within one business day after an originating depository institution is presented a check (for more than such minimum amount as the Board may prescribe)—

(A) such originating depository institution shall determine whether it will pay such check; and

(B) if such originating depository institution determines that it will not pay such check, such originating depository institution shall directly notify the receiving depository institution of such determination;

(4) regardless of where a check is cleared initially, all returned checks shall be eligible to be returned through the Federal Reserve System; and

(5) originating depository institutions shall be permitted to return unpaid checks directly to, and obtain reimbursement for such checks directly from, the receiving depository institution.

(d) CHECK RETURN; NOTICE OF NONPAYMENT.—No provision of this section shall be construed as requiring that, with respect to all checks deposited in a receiving depository institution—

(1) such checks be physically returned to such depository institution; or

(2) any notice of nonpayment of any such check be given to such depository institution within the times set forth in subsection (b).

(e) REPORTS.—

(1) IMPLEMENTATION PROGRESS REPORTS.—

(A) REQUIRED SEMIANNUALLY.—The Board shall transmit a report to both Houses of the Congress not later than 6 months after the date of the enactment of this Act and every 6 months thereafter until the schedule established in subsection (b) is implemented.

(B) CONTENTS OF REPORT.—Each such report shall describe the actions taken by the Board to achieve the schedule established in subsection (b).

(2) EVALUATION OF TEMPORARY SCHEDULE REPORT.—

(A) REPORT REQUIRED.—The Board shall transmit a report to both Houses of the Congress not later than 2 years after the date of the enactment of this Act regarding the effects the temporary schedules established under section 3004 have had on depository institutions and the public.

(B) CONTENTS OF REPORT.—Such report shall also assess the potential impact the implementation of the schedule established in subsection (b) will have on depository institutions and the public, including an estimate of the risks to and losses of depository institutions and the costs and benefits to consumers.

Such report shall also contain such recommendations for legislative or administrative action as the Board may determine to be necessary.

SEC. 3004. EXPEDITED FUNDS AVAILABILITY.

(a) NEXT BUSINESS DAY AVAILABILITY FOR CASH DEPOSITS; WIRE TRANSFERS.—Except as provided in section 3005, in any case in which—

(1) any cash is deposited in an account at a receiving depository institution staffed by individuals employed by such institution, or

(2) funds are received by a depository institution by wire transfer for deposit in an account at such institution,

such cash or funds shall be available for withdrawal not later than the business day after the business day on which such cash is deposited or such funds are received for deposit.

(b) CASH DEPOSITS AT AN ATM.—In any case in which cash is received at an automated teller machine for deposit in an account at a depository institution, such cash shall be available for withdrawal not later than the business day after the business day on which such cash is so received.

(c) FIRST YEAR SCHEDULE.—

(1) IN GENERAL.—Except as provided in subsection (f) and section 3005, funds deposited by check in an account at a depository institution before the end of the 1-year period beginning on the date this section takes effect shall be available for withdrawal not later than the business day provided in the applicable paragraph of this subsection.

(2) NEXT BUSINESS DAY AVAILABILITY.—Funds deposited in an account at a depository institution by check shall be available on the business day after the business day on which such funds are deposited in the case of—

(A) a check for not more than $100;

(B) a check deposited in a branch of a depository institution and drawn on another branch of the same depository institution if both such branches are located in the same check processing region or in the same State;

(C) a check which—

(i) is endorsed only by the person to whom it was issued; and

(ii) is drawn on the Treasury of the United States;

(D) a check which—

(i) is endorsed only by the person to whom it was issued;

(ii) is drawn on the treasury of a State;

(iii) is deposited in a receiving depository institution which is located in such State and is staffed by individuals employed by such institution; and

(iv) is deposited with a special deposit slip which indicates it is a check drawn on the treasury of a State;

(E) a check which—

(i) is endorsed only by the person to whom it was issued;

(ii) is drawn on the treasury of a unit of general local government;

(iii) is deposited in a receiving depository institution which is located in the same State as such unit of general local government and is staffed by individuals employed by such institution; and

(iv) is deposited with a special deposit slip which indicates it is a check drawn on the treasury of a unit of general local government; and

(F) a cashier's check, certified check, teller's check, or depository check which—

(i) is endorsed only by the person to whom it was issued;

(ii) is deposited in a receiving depository institution which is staffed by individuals employed by such institution; and

(iii) is deposited with a special deposit slip which indicates it is a cashier's check, certified check, teller's check, or depository check, as the case may be.

(3) AVAILABILITY OF LOCAL CHECKS.—Not more than 2 business days shall intervene between the business day on which funds are deposited in an account at a depository institution by a check drawn on a local originating depository institution and the business day on which such funds are available for withdrawal.

(4) AVAILABILITY OF NONLOCAL CHECKS.—Not more than 6 business days shall intervene between the business day on which funds are deposited in an account at a depository institution by a check drawn on a nonlocal originating depository institution and the business day on which such funds are available for withdrawal.

(d) SECOND AND THIRD YEAR SCHEDULE.—

(1) IN GENERAL.—Except as provided in subsection (f) and section 3005, funds deposited by check in an account at a depository institution during the second and third year after the effective date of this section shall be available for withdrawal not later than the business day provided in the applicable paragraph of this subsection.

(2) NEXT BUSINESS DAY AVAILABILITY.—Funds deposited in an account at a depository institution by a check described in any subparagraph of subsection (c)(2) shall be available for withdrawal as provided in such subsection.

(3) AVAILABILITY OF LOCAL CHECKS.—Not more than 1 business day shall intervene between the business day on which funds are deposited in an account at a depository institution by a check drawn on a local originating depository institution and the business day on which such funds are available for withdrawal.

(4) AVAILABILITY OF NONLOCAL CHECKS.—Funds deposited in an account at a depository institution by a check drawn on a nonlocal originating depository institution shall be available for withdrawal as provided in subsection (c)(4).

(e) TIME PERIOD ADJUSTMENTS.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the Board may, by regulation—

(A) shorten any time period established under subsection (c) or (d);

(B) extend by one business day any time period established under subsection (c) or (d), or shortened under paragraph (1), with respect to any deposit made at a shared or nonproprietary automatic teller machine; and

(C) extend by one business day any time period established under subsection (c) or (d), or shortened under paragraph (1), with respect to any deposit made at any depository institution described in clauses (ii) through (vi) of section 19(b)(1)(A) of the Federal Reserve Act.

(2) EXPIRATION AFTER 3 YEARS.—The authority contained in paragraph (1)(C) shall expire 3 years after the effective date of this section.

(f) SUBSECTION (c) AND (d) SCHEDULES SUPERSEDED BY SECTION 3003 SYSTEM.—If the expedited funds availability system established under section 3003(a) is implemented before the end of the 3-year period referred to in paragraph (2) of such section, the schedules established in subsections (c) and (d) (other than subsection (c)(2)) shall not apply after the date such system is implemented.

SEC. 3005. SAFEGUARD EXCEPTIONS.

(a) NEW ACCOUNTS.—In the case of any account established at a depository institution by a new depositor, the following provisions shall apply with respect to any deposit in such account during the 30-day period beginning on the date such account was established:

(1) NEXT BUSINESS DAY AVAILABILITY OF CASH ITEMS.—Except as provided in paragraph (3), in the case of—

(A) any cash deposited in such account;

(B) any funds received by such depository institution by wire transfer for deposit in such account; and

(C) any funds deposited in such account by cashier's check, certified check, teller's check, depository check, or traveller's check, such cash or funds shall be available for withdrawal on the business day after the business day on which such cash or funds are deposited or, in the case of a wire transfer, such funds are received for deposit.

(2) AVAILABILITY OF OTHER ITEMS.—In the case of any funds deposited in such account by a check (other than a check described in paragraph (1)(C)), the availability for withdrawal of such funds shall not be subject to the provisions of section 3003(b), 3004(c), or 3004(d).

(3) LIMITATION RELATING TO PARAGRAPH (1)(C) CHECKS IN EXCESS OF $5,000.—In the case of funds deposited in such account during such period by checks described in paragraph (1)(C) the aggregate amount of which exceeds $5,000—

(A) paragraph (1) shall apply only with respect to the first $5,000 of such aggregate amount; and

(B) not more than 8 business days shall intervene between the business day on which any such funds are deposited and the business day on which such excess amount shall be available for withdrawal.

(b) DEPOSITS BY CHECKS IN EXCESS OF $5,000.—In the case of funds deposited on any business day in an account at a depository institution by checks the aggregate amount of which exceeds $5,000, sections 3003(b), 3004(c), and 3004(d) shall apply only with respect to the first $5,000 of such aggregate amount.

(c) CHECKS REDEPOSITED AFTER INITIAL RETURN.—In the case of a check which was returned unpaid by the originating depository institution, sections 3003(b), 3004(c), and 3004(d) shall not apply to any subsequent redeposit of such check in an account at a depository institution.

(d) REPEATED OVERDRAFTS.—In any case in which, on three separate and distinct occasions within any 6-month period, any account (or successor account as defined by the Board, by regulation) of a depositor has been the subject of checks which were written by such depositor and which were in excess of the available funds in the account involved, sections 3003(b), 3004(c), and 3004(d) shall not apply to any such account for a period of 6 months following the last occasion involved.

(e) FOREIGN CHECKS.—Sections 3003(b), 3004(c), and 3004(d) shall not apply in any case in which a check is drawn on a depository institution, or an office of a depository institution, located outside of the United States.

(f) EMERGENCY CONDITIONS.—Subject to such regulations as the Board may prescribe, sections 3003(b), 3004(c), and 3004(d) shall not apply to amounts deposited in any receiving depository institution in the case of—

(1) any interruption of communication facilities;

(2) suspension of payments by another depository institution;

(3) any war; or

(4) any emergency condition beyond the control of the receiving depository institution,

if the receiving depository institution exercises such diligence as the circumstances require.

(g) PREVENTION OF FRAUD LOSSES.—

(1) IN GENERAL.—The Board may, by regulation or order, suspend the applicability of this title, or any portion thereof, to any classification of checks if the Board determines that—

(A) depository institutions are experiencing an unacceptable level of losses due to check-related fraud, and

(B) suspension of this title, or such portion of this title, with regard to the classification of checks involved in such fraud is necessary to diminish the volume of such fraud.

(2) SUNSET PROVISION.—No regulation prescribed or order issued under paragraph (1) shall remain in effect for more than 45 days (excluding Saturdays, Sundays, legal holidays, or any day either House of Congress is not in session).

(3) REPORT TO CONGRESS.—

(A) NOTICE OF EACH SUSPENSION.—Within 10 days of prescribing any regulation or issuing any order under paragraph (1), the Board shall transmit a report of such action to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(B) CONTENTS OF REPORT.—Each report under subparagraph (A) shall contain—

(i) the specific reason for prescribing the regulation or issuing the order;

(ii) evidence considered by the Board in making the determination under paragraph (1) with respect to such regulation or order; and

(iii) specific examples of the check-related fraud giving rise to such regulation or order.

(h) DOUBTFUL COLLECTABILITY.—In accordance with regulations of the Board, sections 3003(b), 3004(c), and 3004(d) shall not apply in instances where the receiving depository institution has reason to doubt the collectability of funds for a check (for example, suspicion of bankruptcy of the drawer of a check, suspicion of fraud): *Provided*, That sections 3003(b), 3004(c), and 3004(d) shall not apply to a check if the receiving depository institution reasonably believes that the drawer or drawee of the check has become, or is about to become, subject to bankruptcy, receivership, or when the receiving depository institution reasonably believes that a situation involving fraud or kiting exists. In such situations, the depository institution shall notify the drawer and drawee no later than the close of the next business day of the check when it takes action pursuant to this provision.

SEC. 3006. MISCELLANEOUS PROVISIONS.

(a) EFFECT ON POLICIES OF DEPOSITORY INSTITUTIONS.—No provision of this title shall be construed as—

(1) prohibiting a depository institution from making funds available for withdrawal in a shorter period of time than the period of time required by this title; or

(2) affecting a depository institution's right—

(A) to accept or reject a check for deposit;

(B) to revoke any provisional settlement made by the depository institution with respect to a check accepted by such institution for deposit;

(C) to charge back the depositor's account for the amount of such check; or

(D) to claim a refund of such provisional credit.

(b) REGULATORY RESPONSIBILITY OF BOARD FOR PAYMENT SYSTEM.—

(1) RESPONSIBILITY FOR PAYMENT SYSTEM.—In order to carry out the provisions of this title, the Board of Governors of the Federal Reserve System shall have the responsibility to regulate—

(A) any aspect of the payment system, including the receipt, payment, collection, or clearing of checks; and

(B) any related function of the payment system with respect to checks.

(2) REGULATIONS.—The Board shall prescribe such regulations as it may determine to be appropriate to carry out its responsibility under paragraph (1).

(c) AFTER-HOURS DEPOSITS.—For purposes of this title, any deposit which is made on a Saturday, Sunday, legal holiday, or after the close of business on any business day shall be deemed to have been made on the next business day.

(d) PROHIBITION ON FREEZING CERTAIN FUNDS IN AN ACCOUNT.—In any case in which a check is deposited in an account at a depository institution and the funds represented by such check are not yet available for withdrawal pursuant to this title, the depository institution may not freeze any other funds in such account (which are otherwise available for withdrawal pursuant to this title) solely because the funds so deposited are not yet available for withdrawal.

(e) EMPLOYEE TRAINING ON AND COMPLIANCE WITH THE REQUIREMENTS OF THIS TITLE.—Each depository institution shall—

(1) take such actions as may be necessary to fully inform each employee of such institution of the requirements of this title; and

(2) establish and maintain procedures reasonably designed to assure and monitor employee compliance with such requirements.

(f) AVAILABILITY AT START OF BUSINESS DAY.—Wherever any provision of this title requires that funds be available for withdrawal on any business day, such funds shall be available for withdrawal at the start of such business day.

SEC. 3007. EFFECT ON STATE LAW.

Any law or regulation of any State which requires that funds deposited or received for deposit in an account at a depository institution chartered by such State be made available for withdrawal in a shorter period of time than the period of time provided in this title or in regulations prescribed by the Board under this title shall—

(1) supersede the provisions of this title and any regulations by the Board to the extent such provisions relate to the time by which funds deposited or received for deposit in an account shall be available for withdrawal; and

(2) apply to all federally insured depository institutions located within such State.

SEC. 3008. PAYMENT OF INTEREST.

Notwithstanding any other provision of law, in any case in which funds are deposited in an interest-bearing account at a depository institution, interest shall accrue on such funds beginning not later than the business day on which the depository institution receives provisional credit for such funds, except that no provision of this title shall be construed as requiring the payment of interest on funds deposited by a check which is returned unpaid.

SEC. 3009. DISCLOSURE OF FUNDS AVAILABILITY POLICIES.

(a) NOTICE FOR NEW ACCOUNTS.—Before an account is opened at a depository institution, the depository institution involved shall provide written notice to the potential customer of the specific policy of such depository institution with respect to when a customer may withdraw funds deposited into the customer's account.

(b) PREPRINTED DEPOSIT SLIPS.—All preprinted deposit slips that a depository institution furnishes to its customers shall contain a summary notice, as prescribed by the Board in regulations, that deposited items may not be available for immediate withdrawal.

(c) MAILING OF NOTICE.—

(1) FIRST MAILING AFTER ENACTMENT.—In the first regularly scheduled mailing to customers occurring more than 30 days after the effective date of this section, each depository institution shall send a written notice containing the specific policy of such depository institution with respect to when a customer may withdraw funds deposited into such customer's account.

(2) SUBSEQUENT CHANGES.—Each time—

(A) a depository institution makes a significant change in the specific policy of such depository institution with respect to when a customer may withdraw funds deposited into such customer's account; or

(B) any period prescribed in section 3004(c) or 3004(d) is shortened or lengthened by the Board under section 3004(e),

such depository institution shall send a written notice to its customers of such change not less than 30 days before the date such change becomes effective.

(d) POSTING OF NOTICE.—

(1) SPECIFIC NOTICE AT MANNED TELLER STATIONS.—Each depository institution shall post, in a conspicuous place in each location where deposits are accepted by individuals employed by such depository institution, a specific notice which describes the time periods applicable to the availability of funds deposited in a customer's account.

(2) GENERAL NOTICE AT AUTOMATED TELLER MACHINES.—In the case of any automated teller machine at which any funds are received for deposit in an account at any depository institution, the Board shall prescribe, by regulations, that the owner or operator of such automated teller machine shall post a general notice that funds deposited in such machine may not be immediately available for withdrawal.

(e) NOTICE THAT FUNDS MAY BE AVAILABLE SOONER THAN REQUIRED.—Each written notice required under this section shall contain a statement, in such form as the Board may prescribe, that informs depositors that deposited funds may be available sooner than the time prescribed under the policy of the depository institution.

SEC. 3010. MODEL DISCLOSURE FORMS.

(a) DEVELOPMENT.—The Board may publish model disclosure forms and clauses for common transactions—

(1) to facilitate compliance with the disclosure requirements of this title; or

(2) to aid customers by utilizing readily understandable language.

(b) VOLUNTARY USE.—Nothing in this title requires the use by any depository institution of any model disclosure form or clause published by the Board under subsection (a).

SEC. 3011. PAYMENTS SYSTEM ADVISORY COUNCIL.

(a) ESTABLISHMENT.—(1) The Board shall establish a Payments System Advisory Council to advise and consult with the Board in the exercise of its functions under this title.

(2) In appointing the members of the Council, the Board shall seek to achieve a fair representation of the interests of depository institutions, consumers, commercial depositors, and the technology industries.

(b) GENERAL PROVISIONS.—(1) The Council shall meet from time to time at the call of the Board.

(2) Members of the Council who are not regular full-time employees of the United States shall, while attending meetings of the Council, be entitled to receive compensation at a rate fixed by the Board, but not exceeding $100 per day, including travel time.

(3) Such members may be allowed travel expenses, including transportation and subsistence, while away from their homes or regular place of business.

SEC. 3012. REGULATIONS.

(a) REGULATIONS.—The Board shall prescribe regulations—

(1) to carry out the provisions of this title;

(2) to prevent the circumvention or evasion of such provisions; and

(3) to facilitate compliance with such provisions.

(b) OVERRIDE OF UNIFORM COMMERCIAL CODE.—Except as provided in section 3007, this title and regulations prescribed under this title shall supersede any provision of the law of any State, including the Uniform Commercial Code as in effect in such State, which is inconsistent with this title or such regulations.

(c) CONSULTATION.—In prescribing regulations under subsection (a), the Board shall consult with the Payments System Advisory Council, the Comptroller of the Currency, the Board of Directors of the Federal De-

posit Insurance Corporation, the Federal Home Loan Bank Board, and the National Credit Union Administration Board.

SEC. 3013. ADMINISTRATIVE ENFORCEMENT.

(a) ADMINISTRATIVE ENFORCEMENT.—Compliance with the requirements imposed under this title, including regulations prescribed by and orders issued by the Board of Governors of the Federal Reserve System under this title, shall be enforced under—

(1) section 8 of the Federal Deposit Insurance Act in the case of—

(A) national banks, by the Comptroller of the Currency;

(B) member banks of the Federal Reserve System (other than national banks), by the Board of Governors of the Federal Reserve System; and

(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), by the Board of Directors of the Federal Deposit Insurance Corporation;

(2) section 5(d) of the Home Owners' Loan Act of 1933, section 407 of the National Housing Act, and section 17 of the Federal Home Loan Bank Act, by the Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation), in the case of any institution subject to any of those provisions; and

(3) the Federal Credit Union Act, by the National Credit Union Administration Board with respect to any Federal credit union or insured credit union.

(b) ADDITIONAL POWERS.—

(1) VIOLATION OF THIS TITLE TREATED AS VIOLATION OF OTHER ACTS.—For purposes of the exercise by any agency referred to in subsection (a) of this section of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this title shall be deemed to be a violation of a requirement imposed under that Act.

(2) ENFORCEMENT AUTHORITY UNDER OTHER ACTS.—In addition to its powers under any provision of law specifically referred to in subsection (a) of this section, each of the agencies referred to in such subsection may exercise, for purposes of enforcing compliance with any requirement imposed under this title, any other authority conferred on it by law.

(c) ENFORCEMENT BY THE BOARD.—

(1) IN GENERAL.—Except to the extent that enforcement of the requirements imposed under this title is specifically committed to some other Government agency under subsection (a) of this section, the Board of Governors of the Federal Reserve System shall enforce such requirements.

(2) ADDITIONAL REMEDY.—If the Board determines that—

(A) any depository institution which is not a depository institution described in subsection (a), or

(B) any other person subject to the authority of the Board under this title, including any person subject to the authority of the Board under section 3006(b) or 3009(d)(2),

has failed to comply with any requirement imposed by this title or by the Board under this title, the Board may issue an order prohibiting any depository institution, any Federal Reserve bank, or any other person subject to the authority of the Board from engaging in any activity or transaction which directly or indirectly involves such noncomplying depository institution or person (including any activity or transaction involving the receipt, payment, collection, and clearing of checks and any related function of the payment system with respect to checks).

(d) PROCEDURAL RULES.—The authority of the Board to prescribe regulations under this title does not impair the authority of any other agency designated in this section to make rules regarding its own procedures in enforcing compliance with requirements imposed under this title.

SEC. 3014. CIVIL LIABILITY.

(a) CIVIL LIABILITY.—Except as otherwise provided in this section, any depository institution which fails to comply with any requirement imposed under this title or any regulation prescribed under this title with respect to any person is liable to such person in an amount equal to the sum of—

(1) any actual damage sustained by such person as a result of the failure;

(2)(A) in the case of an individual action, such additional amount as the court may allow, except that the liability under this subparagraph shall not be less than $100 nor greater than $1,000; or

(B) in the case of a class action, such amount as the court may allow, except that—

(i) as to each member of the class, no minimum recovery shall be applicable; and

(ii) the total recovery under this subparagraph in any class action or series of class actions arising out of the same failure to comply by the same depository institution shall not be more than the lesser of $500,000 or 1 percent of the net worth of the depository institution involved; and

(3) in the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court.

(b) CLASS ACTION AWARDS.—In determining the amount of any award in any class action, the court shall consider, among other relevant factors—

(1) the amount of any actual damages awarded;

(2) the frequency and persistence of failures of compliance;

(3) the resources of the depository institution;

(4) the number of persons adversely affected; and

(5) the extent to which the failure of compliance was intentional.

(c) BONA FIDE ERRORS.—

(1) GENERAL RULE.—A depository institution may not be held liable in any action brought under this section for a violation of this title if the depository institution demonstrates by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

(2) EXAMPLES.—Examples of a bona fide error include clerical, calculation, computer malfunction and programming, and printing errors, except that an error of legal judgment with respect to a depository institution's obligation under this title is not a bona fide error.

(d) JURISDICTION.—Any action under this section may be brought in any United States district court, or in any other court of competent jurisdiction, within one year after the date of the occurrence of the violation involved.

(e) RELIANCE ON BOARD RULINGS.—No provision of this section imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Board of Governors of the Federal Reserve System, notwithstanding the fact that after such act or omission has occurred, such rule, regulation, or interpretation is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

SEC. 3015. DEFINITIONS.

For purposes of this title—

(1) the term "account" means any demand deposit account and any other similar transaction account at a depository institution;

(2) the term "Board" means the Board of Governors of the Federal Reserve System;

(3) the term "business day" means any day other than a Saturday, Sunday, or legal holiday;

(4) the term "cash" means United States coins and currency, including Federal Reserve notes;

(5) the term "cashier's check" means any check which—

(A) is drawn on a depository institution;

(B) is signed by an officer or employee of such depository institution; and

(C) is a direct obligation of such depository institution;

(6) the term "certified check" means any check with respect to which a depository institution certifies that—

(A) the signature on the check is genuine; and

(B) such depository institution has set aside funds which—

(i) are equal to the amount of the check; and

(ii) will be used only to pay such check;

(7) the term "check" means any negotiable demand draft drawn on or payable through a depository institution;

(8) the term "check processing region" means the geographical area served by a Federal Reserve bank check processing center or such larger area as the Board may prescribe by regulations;

(9) the term "Council" means the Payments System Advisory Council;

(10) the term "depository check" means any cashier's check, certified check, teller's check, and any other functionally equivalent instrument as determined by the Board of Governors of the Federal Reserve System;

(11) the term "depository institution" has the meaning given such term in clauses (i) through (vi) of section 19(b)(1)(A) of the Federal Reserve Act;

(12) the term "local originating depository institution" means any originating depository institution which is located in the same check processing region or in the same State as the receiving depository institution;

(13) the term "nonlocal originating depository institution" means any originating depository institution which is not a local depository institution;

(14) the term "originating depository institution" means the branch of a depository institution on which a check is drawn;

(15) the term "receiving depository institution" means the branch of a depository institution in which a check is first deposited;

(16) the term "State" means any State, the District of Columbia, the Commonwealth of Puerto Rico, or the Virgin Islands;

(17) the term "teller's check" means any check issued by a depository institution and drawn on another depository institution;

(18) the term "unit of general local government" means any city, county, town, township, parish, village, or other general purpose political subdivision of a State;

(19) the term "United States" means the several States, the District of Columbia, the

Commonwealth of Puerto Rico, and the Virgin Islands; and

(20) the term "wire transfer" has such meaning as the Board shall prescribe by regulations.

SEC. 3016. EFFECTIVE DATE.

(a) DATE OF ENACTMENT.—Sections 3001, 3002, 3003, 3010, 3011, 3012, 3015, and 3016 shall take effect on the date of the enactment of this Act.

(b) 90 DAYS AFTER DATE OF ENACTMENT.—Sections 3004, 3005, 3006, 3007, 3008, 3009, and 3013 shall take effect 90 days after the date of the enactment of this Act.

(c) 180 DAYS AFTER DATE OF ENACTMENT.—Section 3014 shall take effect 180 days after the date of the enactment of this Act.

(d) REGULATORY AUTHORITY OF THE BOARD.—Notwithstanding subsections (b) and (c), any provision of this title which authorizes the Board of Governors of the Federal Reserve System to prescribe regulations shall take effect on the date of the enactment of this Act.

TITLE IV—HOUSING AND COMMUNITY DEVELOPMENT

SEC. 4001. SHORT TITLE AND TABLE OF SECTIONS.

(a) SHORT TITLE.—This title may be cited as the "Housing Act of 1986".

(b) TABLE OF SECTIONS.—

Sec. 4001. Short title and table of sections.
Sec. 4002. Budget compliance.

Subtitle A—Program Extensions and Amendments

PART 1—GENERAL EXTENSION OF PROGRAMS

Sec. 4101. Extension of Federal Housing Administration mortgage insurance programs.
Sec. 4102. Extension of rehabilitation loan authority.
Sec. 4103. Extension of rural housing authorities.
Sec. 4104. Extension of flood and crime insurance programs.
Sec. 4105. Miscellaneous extensions.

PART 2—MORTGAGE INSURANCE AND SECONDARY MORTGAGE MARKET PROGRAMS

Sec. 4121. Limitation on Federal Housing Administration insurance premiums.
Sec. 4122. Prohibition of use of single family mortgage insurance by investors.
Sec. 4123. Eligibility for single family mortgage insurance.
Sec. 4124. Mortgage insurance on Hawaiian home lands and Indian reservations.
Sec. 4125. Refinancing mortgage insurance for hospitals, nursing homes, intermediate care facilities, and board and care homes.
Sec. 4126. Mortgage insurance for nursing homes, intermediate care facilities, and board and care homes.
Sec. 4127. Requirement of State approval for mortgage insurance for hospitals.
Sec. 4128. Increase in authority to insure adjustable rate single family mortgages.
Sec. 4129. Actions to reduce losses under single family mortgage insurance program.
Sec. 4130. Penalties for equity skimming.
Sec. 4131. Authority for Secretary to impose civil money penalties on mortgagees.
Sec. 4132. Home equity conversion mortgage insurance demonstration.
Sec. 4133. Limitation on amount to be insured under National Housing Act.
Sec. 4134. Applicability of certain loan insurance regulations.
Sec. 4135. Assurance of adequate processing of applications for loan and mortgage insurance.
Sec. 4136. Closing of any office prohibited before completion of certain studies.
Sec. 4137. Limitations on certain secondary mortgage market fees.

PART 3—COMMUNITY AND NEIGHBORHOOD DEVELOPMENT AND CONSERVATION PROGRAMS

Sec. 4141. City and county classifications.
Sec. 4142. Community development authorizations.
Sec. 4143. Treatment of certain model cities program funds.
Sec. 4144. Community development block grant public service activities.
Sec. 4145. Urban development action grant selection criteria.
Sec. 4146. Prohibition on use of urban development action grants for business relocations.
Sec. 4147. Use of urban renewal land disposition proceeds.
Sec. 4148. Urban homesteading.
Sec. 4149. Rehabilitation loan fees.
Sec. 4150. Neighborhood Reinvestment Corporation.
Sec. 4151. Neighborhood development demonstration program.
Sec. 4152. Park Central New Community Project.

PART 4—MISCELLANEOUS PROGRAM AMENDMENTS

Sec. 4161. Studies under national flood insurance program.
Sec. 4162. Fair housing initiatives program.
Sec. 4163. Collection of certain data.
Sec. 4164. Timely payment of subcontractors.
Sec. 4165. Solar Energy and Energy Conservation Bank.
Sec. 4166. Research authorization.
Sec. 4167. Manufactured housing construction and safety standards.

Subtitle B—Housing Assistance

PART 1—PROGRAMS UNDER UNITED STATES HOUSING ACT OF 1937

Sec. 4201. Lower income housing authorization.
Sec. 4202. Tenant rental contributions.
Sec. 4203. Grants for public housing development.
Sec. 4204. Limitation on public housing development and assurance of public housing quality standards.
Sec. 4205. Section 8 assistance.
Sec. 4206. Voucher demonstration program.
Sec. 4207. Payments for operation of lower income housing projects.
Sec. 4208. Grants for comprehensive improvement assistance.
Sec. 4209. Income eligibility for assisted housing.
Sec. 4210. Rental rehabilitation and development grants.
Sec. 4211. Public housing demolition and disposition.
Sec. 4212. Treatment of certain public housing development funds.
Sec. 4213. Public housing comprehensive grants.
Sec. 4214. Applicability of comparability limitation on rent adjustments in certain projects assisted under section 8.
Sec. 4215. Public housing resident management.
Sec. 4216. Public housing homeownership and management opportunities.

PART 2—MULTIFAMILY HOUSING MANAGEMENT AND PRESERVATION

Sec. 4221. Management and preservation of HUD-owned multifamily housing projects.
Sec. 4222. Acquisition of insured multifamily housing projects.
Sec. 4223. Tenant participation in multifamily housing projects.

PART 3—OTHER HOUSING ASSISTANCE PROGRAMS

Sec. 4241. Housing for the elderly and handicapped.
Sec. 4242. Housing for the handicapped.
Sec. 4243. Section 235 homeownership program.
Sec. 4244. Congregate services.
Sec. 4245. Procedures and policies for mandatory meal programs in assisted housing for the elderly.
Sec. 4246. Modifications of restriction on use of assisted housing by aliens.

Subtitle C—Rural Housing

Sec. 4301. Program authorizations.
Sec. 4302. Income levels for family eligibility.
Sec. 4303. Rural area classification.
Sec. 4304. Rural housing escrow accounts.
Sec. 4305. Study of mortgage credit in rural areas.
Sec. 4306. Definition of very low-income families.
Sec. 4307. Requirement of local consultation for domestic farm labor housing.
Sec. 4308. Procedures for reduction of interest credits.

Subtitle D—Shelter Assistance for the Homeless and Displaced

Sec. 4401. National Emergency Food and Shelter Board.
Sec. 4402. Continuation of national board of charities program.
Sec. 4403. Second stage housing for the homeless and displaced.
Sec. 4404. Emergency shelter grants.
Sec. 4405. Reports to Congress.
Sec. 4406. Definitions.

Subtitle E—Nehemiah Housing Opportunity Grants

Sec. 4501. Statement of purpose.
Sec. 4502. Definitions.
Sec. 4503. Assistance to nonprofit organizations.
Sec. 4504. Use of assistance.
Sec. 4505. Program requirements.
Sec. 4506. Terms and conditions of assistance.
Sec. 4507. Program selection criteria.
Sec. 4508. Distribution of assistance to nonprofit organizations.
Sec. 4509. Nehemiah Housing Opportunity Fund.
Sec. 4510. Annual report.
Sec. 4511. Regulations.
Sec. 4512. Authorization of appropriations.

Subtitle F—Preventing Fraud and Abuse in Department of Housing and Urban Development Programs

Sec. 4601. Disclosure of social security account number.
Sec. 4602. Definitions.

Subtitle G—Enterprise Zone Development

Sec. 4701. Designation of enterprise zones.
Sec. 4702. Evaluation and reporting requirements.

Sec. 4703. Interaction with other Federal programs.
Sec. 4704. Waiver or modification of housing and community development rules in enterprise zones.
Sec. 4705. Coordination of housing and urban development programs in enterprise zones.
Sec. 4706. Coordination with CDBG and UDAG programs.
Subtitle H—Assisted Housing Livability Improvements
Sec. 4801. Rent phase-in.
Sec. 4802. Portability of section 8 certificates and vouchers.
Sec. 4803. Incentives for public housing agency performance efficiency.
Sec. 4804. Provision of adequate replacement units in cases of demolition and disposition.
Sec. 4805. Prohibition of denial of section 8 certificates and vouchers to residents of public housing.
Sec. 4806. Deregulation of public housing agencies.
Sec. 4307. Effective date.

SEC. 4002. BUDGET COMPLIANCE.

(a) IN GENERAL.—This title and the amendments made by this title may not be construed to provide for new budget authority, budget outlays, or new entitlement authority, for fiscal year 1986 or 1987 in excess of the appropriate aggregate levels established by the concurrent resolution on the budget for such fiscal year for the programs authorized by this title and the amendments made by this title.

(b) DEFINITIONS.—For purposes of this section, the terms "budget authority", "budget outlays", "concurrent resolution on the budget", and "entitlement authority" have the meanings given such terms in section 3 of the Congressional Budget Act of 1974 (2 U.S.C. 622).

Subtitle A—Program Extensions and Amendments

PART 1—GENERAL EXTENSION OF PROGRAMS

SEC. 4101. EXTENSION OF FEDERAL HOUSING ADMINISTRATION MORTGAGE INSURANCE PROGRAMS.

(a) TITLE I INSURANCE.—Section 2(a) of the National Housing Act is amended by striking "September 30, 1986" in the first sentence and inserting "September 30, 1987".

(b) GENERAL INSURANCE.—Section 217 of the National Housing Act is amended by striking "September 30, 1986" and inserting "September 30, 1987".

(c) LOW AND MODERATE INCOME HOUSING INSURANCE.—Section 221(f) of the National Housing Act is amended by striking "September 30, 1986" in the fifth sentence and inserting "September 30, 1987".

(d) SECTION 235 HOMEOWNERSHIP.—

(1) ASSISTANCE PAYMENTS AUTHORITY.—Section 235(h)(1) of the National Housing Act is amended by striking "September 30, 1986" in the last sentence and inserting "September 30, 1987".

(2) INSURANCE AUTHORITY.—Section 235(m) of the National Housing Act is amended by striking "September 30, 1986" and inserting "September 30, 1987".

(3) HOUSING STIMULUS AUTHORITY.—Section 235(q)(1) of the National Housing Act is amended by striking "September 30, 1986" in the last sentence and inserting "September 30, 1987".

(e) CO-INSURANCE.—

(1) GENERAL AUTHORITY.—Section 244(d) of the National Housing Act is amended by striking "September 30, 1986" and inserting "September 30, 1987".

(2) RENTAL REHABILITATION AND DEVELOPMENT PROJECTS.—Section 244(h) of the National Housing Act is amended by striking "September 30, 1986" in the last sentence and inserting "September 30, 1987".

(f) GRADUATED PAYMENT AND INDEXED MORTGAGE INSURANCE.—Section 245(a) of the National Housing Act is amended by striking "September 30, 1986" in the last sentence and inserting "September 30, 1987".

(g) REINSURANCE CONTRACTS.—Section 249(a) of the National Housing Act is amended by striking "September 30, 1986" in the second sentence and inserting "September 30, 1987".

(h) ARMED SERVICES HOUSING INSURANCE.—

(1) CIVILIAN EMPLOYEES OF ARMED FORCES.—Section 809(f) of the National Housing Act is amended by striking "September 30, 1986" in the last sentence and inserting "September 30, 1987".

(2) DEFENSE HOUSING FOR IMPACTED AREAS.—Section 810(k) of the National Housing Act is amended by striking "September 30, 1986" in the last sentence and inserting "September 30, 1987".

(i) LAND DEVELOPMENT INSURANCE.—Section 1002(a) of the National Housing Act is amended by striking "September 30, 1986" in the last sentence and inserting "September 30, 1987".

(j) GROUP PRACTICE FACILITIES INSURANCE.—Section 1101(a) of the National Housing Act is amended by striking "September 30, 1986" in the last sentence and inserting "September 30, 1987".

SEC. 4102. EXTENSION OF REHABILITATION LOAN AUTHORITY.

Section 312(h) of the Housing Act of 1964 is amended by striking "September 30, 1986" and inserting "September 30, 1987".

SEC. 4103. EXTENSION OF RURAL HOUSING AUTHORITIES.

(a) RENTAL HOUSING LOAN AUTHORITY.—Section 515(b)(4) of the Housing Act of 1949 is amended by striking "September 30, 1986" and inserting "September 30, 1987".

(b) MUTUAL AND SELF-HELP HOUSING GRANT AND LOAN AUTHORITY.—Section 523(f) of the Housing Act of 1949 is amended by striking "September 30, 1986" and inserting "September 30, 1987".

SEC. 4104. EXTENSION OF FLOOD AND CRIME INSURANCE PROGRAMS.

(a) FLOOD INSURANCE.—

(1) GENERAL AUTHORITY.—Section 1319 of the National Flood Insurance Act of 1968 is amended by striking "September 30, 1986" and inserting "September 30, 1987".

(2) EMERGENCY IMPLEMENTATION.—Section 1336(a) of the National Flood Insurance Act of 1968 is amended by striking "September 30, 1986" and inserting "September 30, 1987".

(3) ESTABLISHMENT OF FLOOD-RISK ZONES.—Section 1360(a)(2) of the National Flood Insurance Act of 1968 is amended by striking "September 30, 1986" and inserting "September 30, 1987".

(4) LIMITATION ON PREMIUMS.—The premium rates charged for flood insurance under any program established pursuant to the National Flood Insurance Act of 1968 may not be increased during the period beginning on the date of the enactment of this Act and ending on September 30, 1987, by more than a prorated annual rate of 10 percent.

(b) CRIME INSURANCE.—

(1) GENERAL AUTHORITY.—Section 1201(b)(1) of the National Housing Act is amended by striking "September 30, 1986" in the matter preceding subparagraph (A) and inserting "September 30, 1987".

(2) CONTINUATION OF EXISTING CONTRACTS.—Section 1201(b)(1)(A) of the National Housing Act is amended by striking "September 30, 1986" and inserting "September 30, 1988".

(3) LIMITATION ON PREMIUMS.—The premium rates charged for crime insurance under any program established pursuant to part C of title XII of the National Housing Act may not be increased during the period beginning on the date of the enactment of this Act and ending on September 30, 1987, by more than a prorated annual rate of 10 percent.

SEC. 4105. MISCELLANEOUS EXTENSIONS.

(a) SECTION 202 INTEREST RATE LIMITATION.—Section 223(a) of the Housing and Urban-Rural Recovery Act of 1983 is amended by striking paragraph (2).

(b) HOME MORTGAGE DISCLOSURE ACT OF 1975.—Section 312 of the Home Mortgage Disclosure Act of 1975 is amended by striking "September 30, 1986" and inserting "September 30, 1988".

PART 2—MORTGAGE INSURANCE AND SECONDARY MORTGAGE MARKET PROGRAMS

SEC. 4121. LIMITATION ON FEDERAL HOUSING ADMINISTRATION INSURANCE PREMIUMS.

(a) IN GENERAL.—Section 203(c) of the National Housing Act is amended by striking the subsection designation and the first sentence and inserting the following:

"(c)(1)(A) The Secretary may fix premium charges for the insurance of mortgages or loans under the separate sections of this title, subject to the provisions of this paragraph.

"(B) The premium charge shall not be more than an amount equal to 3.8 percent of the principal obligation of the mortgage or loan, nor more than an amount equal to 0.25 percent per annum of the principal obligation of the mortgage or loan outstanding at any time without taking into account delinquent payments or prepayments, in the case of any mortgage or loan—

"(i) insured under this title and secured by a 1- to 4-family dwelling; or

"(ii) otherwise insured under any of the following provisions: subsection (b), subsection (h), subsection (i), subsection (n), subsection (k), section 220, section 220(h), section 221(d)(2), section 222, section 223(e), section 234, section 235, section 237, section 238(c), or section 240.

"(C) In the case of any mortgage or loan insured under this title that is not subject to subparagraph (B) or (D), the premium charge shall not be more than an amount equivalent to 1 percent per annum of the principal obligation of the mortgage or loan outstanding at any time, without taking into account delinquent payments or prepayments.

"(D) In the case of insurance under section 245, 247, 251, 252, or 253, or any other financing mechanism providing alternative methods for repayment of a mortgage or loan that is determined by the Secretary to involve additional risk—

"(i) the premium charges may be different from the premium charges for mortgages insured under other provisions of this section;

"(ii) the premium charges shall be fixed by the Secretary at a level not more than necessary to create reserves sufficient to meet anticipated claims based upon actuarial analysis and to compensate for actual administrative expenses, but for no other purpose; and

"(iii) the Secretary shall submit to the Congress not less than 90 days before any

increase in any such premium charge a certification that the increase is solely for the purpose specified in clause (ii).

"(E)(i) Except as provided in clause (ii), any reduced premium charge so fixed and computed may, in the discretion of the Secretary, also be made applicable in such manner as the Secretary shall prescribe to each insured mortgage or loan outstanding under the section or sections involved at the time the reduced premium charge is fixed.

"(ii) The amendments made to this paragraph by the Housing Act of 1986 shall not be applicable to the insurance of any mortgage or loan under this title pursuant to a commitment to insure entered into before the date of the enactment of such Act.".

(b) CONFORMING AMENDMENTS.—

(1) Section 203(c) of the National Housing Act is amended—

(A) by inserting "(2)" before the second sentence and redesignating such sentence as a paragraph (2);

(B) by inserting "(3)" before the third sentence and redesignating such sentence as a paragraph (3);

(C) by inserting "(4)" before the fourth sentence and redesignating such sentence as a paragraph (4); and

(D) in the last proviso, by redesignating clauses (1) and (2) as clauses (A) and (B), respectively.

(2) The first sentence of section 220(h)(5) of the National Housing Act is amended to read as follows: "The Secretary may fix premium charges for the insurance of home improvement loans under this subsection, subject to section 203(c)(1)(B).".

SEC. 4122. PROHIBITION OF USE OF SINGLE FAMILY MORTGAGE INSURANCE BY INVESTORS.

(a) IN GENERAL.—Section 203 of the National Housing Act is amended by inserting the following new subsection before subsection (h):

"(g)(1) The Secretary may insure a mortgage under this title that is secured by a 1- to 4-family dwelling, or approve a substitute mortgagor with respect to any such mortgage, only if the mortgagor is to occupy the dwelling as his or her principal residence or as a secondary residence, as determined by the Secretary.

"(2) The occupancy requirement established in paragraph (1) shall not apply to any mortgagor (or co-mortgagor, as appropriate) that is—

"(A) a public entity, as provided in section 214 or 247;

"(B) a private nonprofit or public entity, as provided in section 221(h) or 235(j);

"(C) an Indian tribe, as provided in section 248; or

"(D) a serviceperson who is unable to meet such requirement because of his or her duty assignment, as provided in section 216 or subsection (b)(4) or (f) of section 222.

"(3) For purposes of this subsection, the term 'substitute mortgagor' means a person who, upon the release by a mortgagee of a previous mortgagor from personal liability on the mortgage note, assumes such liability and agrees to pay the mortgage debt.".

(b) CONFORMING AMENDMENTS.—

(1) Section 203(b)(2) of the National Housing Act is amended—

(A) in the first sentence, by striking "(whether" and all that follows through "purposes)"; and

(B) in the second sentence, by striking the following: "to be occupied as a principal residence of the owner".

(2) Section 203(b) of the National Housing Act is amended by striking paragraph (8).

(3) Section 203(h) of the National Housing Act is amended by striking "is the owner and occupant and".

(4) Section 203(i) of the National Housing Act is amended—

(A) by striking the first proviso; and

(B) by striking "*further*" the first place it appears.

(5) The first sentence of section 203(o)(2) of the National Housing Act is amended by striking "occupant".

(6) The first sentence of section 203(p)(2) of the National Housing Act is amended by striking "owner-occupant" and inserting "owner".

(7) The fourth sentence of section 214 of the National Housing Act is amended by striking the following: "shall be the owner and occupant of the property or".

(8) Section 216 of the National Housing Act is amended—

(A) by striking "that the mortgagor be the occupant" and inserting "with respect to the occupancy of the mortgagor"; and

(B) by striking "occupy the property" each place it appears and inserting "meet such requirement".

(9) Section 220(d)(3)(A) of the National Housing Act is amended—

(A) by inserting "and" at the end of clause (i);

(B) by striking clauses (ii) and (iii);

(C) in clause (iv), by striking the following: "(except as provided in clause (iii))"; and

(D) by redesignating clause (iv) as clause (ii).

(10) Section 221(d)(2) of the National Housing Act is amended—

(A) by striking the colon at the end of subparagraph (A)(iv) and all that follows through "*Provided further,* That" the first place it appears, and inserting ", except that";

(B) by striking "*Provided,* That (i)" and all that follows through "(1) in" and inserting the following: "*Provided,* That (i)(1) in";

(C) by striking the penultimate proviso; and

(D) in the last proviso, by striking the following: ", if the mortgagor is the owner and occupant of the property such" and inserting "the".

(11) Section 221(d)(6)(ii) of the National Housing Act is amended by striking the following: "is an owner-occupant of the property and".

(12) The first sentence of section 221(h)(6) of the National Housing Act is amended by striking "and occupied".

(13) Section 221(h)(8) of the National Housing Act is amended by striking the following: "if one of the units is to be occupied by the owner".

(14) Subsections (b)(4) and (f) of section 222 of the National Housing Act are amended by inserting "as a principal residence" after "occupies the property" each place it appears.

(15) Section 223(a) of the National Housing Act is amended by inserting after "this Act," the first place it appears the following: "other than the limitation in section 203(g),".

(16) The first sentence of section 223(e) of the National Housing Act is amended by inserting after "title XI," the following: "other than the limitation in section 203(g),".

(17) Section 234(c) of the National Housing Act is amended by striking the fourth sentence.

(18) Section 235(i)(3)(A) of the National Housing Act is amended by striking the following: "one of the units of which is to be occupied by the owner and".

(19) Section 235(j)(6) of the National Housing Act is amended by striking the following: "if one of the units is to be occupied by the owner".

(c) REPEAL OF VACATION AND SEASONAL HOME INSURANCE PROGRAM.—Section 203 of the National Housing Act is amended by striking subsection (m).

(d) APPLICABILITY.—The amendments made by this section shall apply only with respect to—

(1) mortgages insured—

(A) pursuant to a conditional commitment issued on or after the date of the enactment of this Act; or

(B) in accordance with the direct endorsement program (24 CFR 200.163), if the approved underwriter of the mortgagee signs the appraisal report for the property on or after the date of the enactment of this Act; and

(2) the approval of substitute mortgagors, referred to in the amendment made by subsection (a), if the original mortgagor was subject to such amendment.

(e) TRANSITION PROVISIONS.—Any mortgage insurance provided under title II of the National Housing Act, as it existed immediately before the date of the enactment of this Act, shall continue to be governed (to the extent applicable) by the provisions specified in subsections (a) through (c), as such provisions existed immediately before such date.

SEC. 4123. ELIGIBILITY FOR SINGLE FAMILY MORTGAGE INSURANCE.

Section 203 of the National Housing Act is amended by adding at the end the following new subsection:

"(q)(1) Notwithstanding any other provision of this section or any other section of this title, the Secretary may insure and commit to insure, under subsection (b) as modified by this subsection, any mortgage secured by property located on land that—

"(A) is within the Allegany Reservation of the Seneca Nation of New York Indians; and

"(B) is subject to a lease entered into for a term of 99 years pursuant to the Act of February 19, 1875 (Chapter 90; 18 Stat. 330) and the Act of September 30, 1890 (Chapter 1132; 26 Stat. 558).

"(2) A mortgage shall be eligible for insurance under subsection (b) as modified by this subsection without regard to limitations in this title relating to marketability of title or any other statutory restriction that the Secretary determines is contrary to the purpose of this subsection.

"(3) The Secretary, in connection with any mortgage insured under subsection (b) as modified by this subsection, shall have all statutory powers, authority, and responsibilities that the Secretary has with respect to other mortgages insured under subsection (b), except that the Secretary may modify such powers, authority, or responsibilities if the Secretary determines such action to be necessary because of the special nature of the mortgage involved.

"(4) Notwithstanding section 202, the insurance of a mortgage under subsection (b) as modified by this subsection shall be the obligation of the Special Risk Insurance Fund created in section 238.".

SEC. 4124. MORTGAGE INSURANCE ON HAWAIIAN HOME LANDS AND INDIAN RESERVATIONS.

(a) APPLICABILITY OF MORTGAGE INSURANCE ON HAWAIIAN HOME LANDS.—Section

247(c)(1) of the National Housing Act is amended by inserting before the period at the end the following: "(or, in the case of an individual who succeeds a spouse or parent in an interest in a lease of Hawaiian home lands, such lower percentage as may be established for such succession under section 209 of the Hawaiian Homes Commission Act, 1920, or under the corresponding provision of the Constitution of the State of Hawaii adopted under section 4 of the Act entitled 'An Act to provide for the admission of the State of Hawaii into the Union', approved March 18, 1959 (73 Stat. 5))".

(b) MORTGAGE INSURANCE ON HAWAIIAN HOME LANDS AS OBLIGATIONS OF GENERAL INSURANCE FUND.—Section 247 of the National Housing Act is amended—

(1) by redesignating subsection (c) as subsection (d); and

(2) by inserting after subsection (b) the following new subsection:

"(c) Notwithstanding any other provision of this Act, the insurance of a mortgage using the authority contained in this section shall be the obligation of the General Insurance Fund established in section 519. The mortgagee shall be eligible to receive the benefits of insurance as provided in section 204 with respect to mortgages insured pursuant to this section, except that (1) all references in section 204 to the Mutual Mortgage Insurance Fund or the Fund shall be construed to refer to the General Insurance Fund; and (2) all references in section 204 to section 203 shall be construed to refer to the section under which the mortgage is insured.".

(c) MORTGAGE INSURANCE ON INDIAN RESERVATIONS AS OBLIGATIONS OF GENERAL INSURANCE FUND.—Section 248 of the National Housing Act is amended—

(1) in paragraphs (3) and (5) of subsection (f), by striking "insurance fund" each place it appears and inserting "General Insurance Fund";

(2) by redesignating subsections (f), (g), and (h) as subsections (g), (h), and (i), respectively; and

(3) by inserting after subsection (e) the following new subsection:

"(f) Notwithstanding any other provision of this Act, the insurance of a mortgage using the authority contained in this section shall be the obligation of the General Insurance Fund established in section 519. The mortgagee shall be eligible to receive the benefits of insurance as provided in section 204 with respect to mortgages insured pursuant to this section, except that (1) all references in section 204 to the Mutual Mortgage Insurance Fund or the Fund shall be construed to refer to the General Insurance Fund; and (2) all references in section 204 to section 203 shall be construed to refer to the section under which the mortgage is insured.".

SEC. 4125. REFINANCING MORTGAGE INSURANCE FOR HOSPITALS, NURSING HOMES, INTERMEDIATE CARE FACILITIES, AND BOARD AND CARE HOMES.

(a) STATE CERTIFICATION REQUIREMENT.—Section 223(f)(4)(D) of the National Housing Act is amended to read as follows:

"(D) such existing hospital has received such certification from the State in which the hospital is located as is comparable to the certification required for hospitals under section 242.".

(b) REFINANCING INSURANCE FOR NURSING HOMES, INTERMEDIATE CARE FACILITIES, AND BOARD AND CARE HOMES.—Section 223(f) of the National Housing Act (as amended by subsection (a) of this section) is further amended—

(1) in paragraph (1), by inserting after "existing hospital" the following: ", existing nursing home, existing intermediate care facility, or existing board and care home"; and

(2) in paragraph (4)—

(A) by inserting after "existing hospital" each place it appears the following: ", existing nursing home, existing intermediate care facility, or existing board and care home";

(B) by inserting after "the hospital" the following: ", nursing home, intermediate care facility, or board and care home"; and

(C) by inserting after "section 242" the following: "or for nursing homes, intermediate care facilities, or board and care homes insured under section 232, as the case may be".

(c) REGULATIONS.—The Secretary of Housing and Urban Development shall issue such regulations as may be necessary to carry out the amendments made by this section by not later than the expiration of the 90-day period following the date of the enactment of this Act.

SEC. 4126. MORTGAGE INSURANCE FOR NURSING HOMES, INTERMEDIATE CARE FACILITIES, AND BOARD AND CARE HOMES.

(a) INSURANCE FOR PUBLIC NURSING HOMES.—Section 232(b)(1) of the National Housing Act is amended by inserting "public facility," before "proprietary".

(b) REQUIREMENT OF STATE APPROVAL.—Section 232(d)(4)(A) of the National Housing Act is amended by adding at the end the following new sentence: "If the State agency is not empowered to provide a certification that there is a need for the home or facility or combined home and facility, the Secretary shall accept in lieu of such certification a feasibility study that (i) is prepared for the home or facility or combined home and facility in accordance with the principles established for feasibility studies by the American Institute of Certified Public Accountants; (ii) assesses on a marketwide basis the impact of the home or facility or combined home and facility on (and its relationship to) other health care facilities and services, the percentage of excess beds, demographic projections, alternative health care delivery systems, and the reimbursement structure of the home or facility or combined home and facility; (iii) demonstrates the need for and financial feasibility of the home or facility or combined home and facility; and (iv) includes a sensitivity analysis.".

(c) REGULATIONS.—The Secretary of Housing and Urban Development shall issue such regulations as may be necessary to carry out the amendments made by this section by not later than the expiration of the 90-day period following the date of the enactment of this Act.

SEC. 4127. REQUIREMENT OF STATE APPROVAL FOR MORTGAGE INSURANCE FOR HOSPITALS.

(a) IN GENERAL.—Section 242(d)(4) of the National Housing Act is amended by adding at the end the following new sentence: "If the State agency is not empowered to provide a certification that there is a need for the hospital, the Secretary shall accept in lieu of such certification a feasibility study that (A) is prepared for the hospital in accordance with the principles established for feasibility studies by the American Institute of Certified Public Accountants; (B) assesses on a marketwide basis the impact of the hospital on (and its relationship to) other health care facilities and services, the percentage of excess beds, demographic projections, alternative health care delivery systems, and the reimbursement structure of the hospital; (C) demonstrates the need for and financial feasibility of the hospital; and (D) includes a sensitivity analysis.".

(b) REGULATIONS.—The Secretary of Housing and Urban Development shall issue such regulations as may be necessary to carry out the amendment made by this section by not later than the expiration of the 90-day period following the date of the enactment of this Act.

SEC. 4128. INCREASE IN AUTHORITY TO INSURE ADJUSTABLE RATE SINGLE FAMILY MORTGAGES.

(a) IN GENERAL.—Section 251(c) of the National Housing Act is amended to read as follows:

"(c) The aggregate number of mortgages and loans insured under this section in any fiscal year may not exceed 20 percent of the aggregate number of mortgages and loans insured by the Secretary under this title during the preceding fiscal year.".

(b) CONFORMING AMENDMENTS.—

(1) Section 245(c) of the National Housing Act is amended in the last sentence by striking ", section 251,".

(2) Section 252(g) of the National Housing Act is amended—

(A) by striking the first comma and inserting "and"; and

(B) by striking ", and section 251".

SEC. 4129. ACTIONS TO REDUCE LOSSES UNDER SINGLE FAMILY MORTGAGE INSURANCE PROGRAM.

Section 203 of the National Housing Act (as amended by section 4123 of this Act) is further amended by adding at the end the following new subsections:

"(r) The Secretary shall take appropriate actions to reduce losses under the mortgage insurance program carried out under this section. Such actions shall include—

"(1) independent verification by the Secretary after loan approval of the ability of borrowers to pay, to be carried out by the least expensive method of verification—

"(A) with respect to not less than 10 percent of the mortgage applications submitted by each lender in both the direct endorsement and prior approval programs; and

"(B) with respect to not less than 20 percent of the mortgage applications involving properties located in units of general local government (as defined in section 102 of the Housing and Community Development Act of 1974) where the default rate on mortgages insured under this section exceeds 120 percent of the national default rate on such mortgages during the most recent 12-month period for which data are available;

"(2) an annual review by the Secretary of the rate of early serious defaults and claims, in accordance with subsection (t);

"(3) independent verification by the Secretary of all credit reports indicating no prior credit history;

"(4) independent verification by the Secretary of all appraisals involving investor-owned property that is acquired by the investor less than 12 months prior to the date of the mortgage application; and

"(5) requiring reviews of the credit standing of each person seeking to assume a mortgage insured under this section during the 24-month period following (A) the date on which the mortgage is endorsed for insurance; or (B) the date of a previous assumption of the mortgage.

"(s) In conducting field reviews of appraisals, the Secretary may not use the services of fee appraisers who are employed by the Secretary to appraise single-family dwell-

ings that are subject to mortgages insured under this title.

"(t)(1) To reduce losses in connection with mortgage insurance programs under this section, the Secretary shall review, not less than annually, the rate of early serious defaults and claims involving mortgagees approved under this section. On the basis of the review, the Secretary shall notify each mortgagee that, as determined by the Secretary, has an above-normal rate of early serious defaults and claims during the preceding year. In the notification, the Secretary shall require each mortgagee to submit a report, by a date determined by the Secretary, that contains (A) an explanation for the above-normal rate of early serious defaults and claims; (B) a plan for corrective action, both with respect to mortgages in default and the general mortgage-processing system of the mortgagee; and (C) the date by which the corrective action will be begun and completed. If the Secretary does not agree with the plan or schedule for implementation, a mutually agreeable plan and schedule shall be determined.

"(2) Failure of a mortgagee to submit a report acceptable to the Secretary by the date determined by the Secretary or to commence or complete the plan for corrective action by the date agreed upon by the Secretary may be cause for suspension of the mortgagee from participation in programs under this Act.".

SEC. 4130. PENALTIES FOR EQUITY SKIMMING.

(a) PURCHASE OF DWELLING SUBJECT TO LOAN IN DEFAULT.—Section 912 of the Housing and Urban Development Act of 1970 is amended—

(1) in paragraph (1), by inserting "(including condominiums and cooperatives)" after "dwellings";

(2) in paragraph (2), by inserting after "due" the following: ", regardless of whether the purchaser is obligated on the loan"; and

(3) in the matter following paragraph (3)—

(A) by striking "$5,000" and inserting "$250,000"; and

(B) by striking "three" and inserting "5".

(b) USE OF FUNDS DERIVED FROM PROPERTY SUBJECT TO LOAN IN DEFAULT.—Title II of the National Housing Act is amended by adding at the end the following new section:

"EQUITY SKIMMING PENALTY

"SEC. 254. Whoever, as an owner, agent, or manager, or who is otherwise in custody, control, or possession of property that is security for a mortgage note that is insured, acquired, or held by the Secretary pursuant to section 203, 207, 213, 220, 221(d)(3), 221(d)(4), 223(f), 231, 232, 234, 236, 238(c), 241, 242, 244, 608, or 810, or title XI, or is made pursuant to section 202 of the Housing Act of 1959, willfully uses or authorizes the use of any part of the rents, assets, proceeds, income or other funds derived from property covered by such mortgage note during a period when the mortgage note is in default or the project is in a nonsurplus cash position as defined by the regulatory agreement covering such property, for any purpose other than to meet actual or necessary expenses that include expenses approved by the Secretary if such approval is required under the terms of the regulatory agreement, shall be fined not more than $250,000 or imprisoned not more than 5 years, or both.".

"(c) CONFORMING AMENDMENTS.—Section 239 of the National Housing Act is amended—

(1) by striking "INSURED" in the section heading;

(2) by striking "(a)" after "SEC. 239."; and

(3) by striking subsection (b).

SEC. 4131. AUTHORITY FOR SECRETARY TO IMPOSE CIVIL MONEY PENALTIES ON MORTGAGEES.

(a) IN GENERAL.—Title II of the National Housing Act (as amended by section 4130 of this Act) is further amended by adding at the end the following new section:

"AUTHORITY FOR SECRETARY TO IMPOSE CIVIL MONEY PENALTIES ON MORTGAGEES

"SEC. 255. (a) IN GENERAL.—

"(1) Whenever a mortgagee approved under section 203 violates any of the requirements of this Act, as set forth in subsection (b), the Secretary may impose a civil money penalty on the mortgagee in accordance with the provisions of this section. This penalty shall be in addition to any available civil remedy or any other available civil or criminal penalty, and may be imposed whether or not the Secretary imposes other administrative sanctions.

"(2) The amount of the penalty may not exceed $1,000 for each violation, as determined by the Secretary, except that the maximum penalty for all violations by a particular mortgagee during any 1-year period shall not exceed $1,000,000. In the case of a continuing violation, as determined by the Secretary, each day shall constitute a separate violation.

"(b) VIOLATIONS FOR WHICH PENALTY MAY BE IMPOSED.—The Secretary may impose a civil money penalty under subsection (a) for any of the following violations by a mortgagee:

"(1) Unless expressly permitted by statute or regulation, transfer of a mortgage insured under section 203 to a mortgagee not approved by the Secretary.

"(2) Failure of a nonsupervised mortgagee, as defined by the Secretary—

"(A) to segregate all escrow funds received from a mortgagor for ground rents, taxes, assessments, and insurance premiums; or

"(B) to deposit such funds in a special account with a financial institution whose accounts are insured by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, or the National Credit Union Administration.

"(3) Use of escrow funds for any purpose other than the purpose for which such funds are received.

"(4) Submission to the Secretary of information that the mortgagee knew, or should have known, was false, in connection with any mortgage insured under section 203.

"(5) Hiring or retaining in employment an officer, director, principal, or employee with knowledge that, at the time of hire or while in employment (as appropriate), the person was under suspension or debarment by the Secretary.

"(6) Submission of a false certification to the Secretary.

"(7) Failure to comply with an amendment, certification, or condition of approval set forth—

"(A) on the application of a mortgagee for approval by the Secretary; or

"(B) on the notification by a mortgagee to the Secretary concerning establishment of a branch office.

"(8) Violation of any contract with the Secretary under section 203, any statute or implementing regulation that applies to the programs administered by the Secretary under section 203, or any other written instruction or communication that is issued under this Act and mailed, sent, or delivered to a mortgagee under section 203.

"(c) AGENCY PROCEDURES.—

"(1) The Secretary shall establish standards and procedures governing the imposition of civil money penalties under subsection (a). The standards and procedures—

"(A) shall provide for the imposition of a penalty only after the mortgagee has been given an opportunity for a hearing on the record by a hearing officer authorized by the Secretary to conduct hearings; and

"(B) may provide for—

"(i) use of an administrative entity to make the determination to impose a penalty, subject to a hearing if requested; and

"(ii) review of any determination or order, or interlocutory ruling, arising from a hearing.

"(2) In determining the amount of a penalty under subsection (a), the Secretary shall take into account the gravity of the offense, degree of culpability, any history of prior offenses, ability to pay, size of the business entity, effect upon ability to continue in business, and such other factors as the Secretary may determine in regulations to be appropriate.

"(3) The determination of the Secretary or order of the Secretary imposing a penalty under subsection (a) shall not be subject to review, except as provided in subsection (d).

"(d) JUDICIAL REVIEW OF AGENCY DETERMINATION.—After exhausting all administrative remedies established by the Secretary under subsection (c)(1), a mortgagee against whom the Secretary has imposed a civil money penalty under subsection (a) may obtain judicial review of the determination or order of the Secretary in the appropriate United States district court, as provided in chapter 7 of title 5, United States Code.

"(e) ACTION BY SECRETARY TO COLLECT PENALTY.—If any mortgagee fails to comply with the determination or order of the Secretary imposing a civil money penalty under subsection (a), after the determination or order is no longer subject to review as provided by subsections (c)(1) and (d), the Secretary may, acting through the General Counsel of the Department of Housing and Urban Development, bring an action in an appropriate United States district court to obtain a monetary judgment against the mortgagee and such other relief as may be available. The monetary judgment may, in the discretion of the court, include the attorneys fees and other expenses incurred by the Secretary in connection with the action. In an action under this subsection, the validity and appropriateness of the determination or order of the Secretary imposing the penalty shall not be subject to review.

"(f) SETTLEMENT BY SECRETARY.—The Secretary may compromise, modify, or remit any civil money penalty that may be, or has been, imposed under this section.

"(g) REGULATIONS.—The Secretary shall issue such regulations as may be necessary to carry out this section.

"(h) DEPOSIT OF PENALTIES IN INSURANCE FUNDS.—All civil money penalties collected under this section shall be deposited in the appropriate insurance fund or funds established in this Act, and shall be available for use to the extent approved in appropriation Acts.".

(b) APPLICABILITY.—The amendment made by subsection (a) shall apply only with respect to—

(1) violations that occur on or after the effective date of the regulations issued to carry out such amendment; or

(2) in the case of a continuing violation (as determined by the Secretary of Housing and Urban Development), any portion of the violation that occurs on or after such effective date.

SEC. 4132. HOME EQUITY CONVERSION MORTGAGE INSURANCE DEMONSTRATION.

Title II of the National Housing Act (as amended by sections 4130 and 4131 of this Act) is further amended by adding at the end the following new section:

"DEMONSTRATION PROGRAM OF INSURANCE OF HOME EQUITY CONVERSION MORTGAGES FOR ELDERLY HOMEOWNERS

"SEC. 256. (a) PURPOSE.—The purpose of this section is to authorize the Secretary to carry out a demonstration program of mortgage insurance designed—

"(1) to meet the special needs of elderly homeowners by reducing the effect of the economic hardship caused by the increasing costs of meeting health, housing, and subsistence needs at a time of reduced income, through the insurance of home equity conversion mortgages to permit the conversion of a portion of accumulated home equity into liquid assets;

"(2) to encourage and increase the involvement of mortgagees and participants in the secondary mortgage market in the making and servicing of home equity conversion mortgages for elderly homeowners; and

"(3) to require the evaluation of data to determine—

"(A) the extent of the need and demand among elderly homeowners for insured and uninsured home equity conversion mortgages;

"(B) the types of home equity conversion mortgages that best serve the needs and interests of elderly homeowners, the Federal Government, and lenders; and

"(C) the appropriate scope and nature of participation by the Secretary in connection with home equity conversion mortgages for elderly homeowners.

"(b) DEFINITIONS.—For purposes of this section:

"(1) The term 'elderly homeowner' and 'homeowner' mean any homeowner who is, or whose spouse is, at least 65 years of age or such higher age as the Secretary may prescribe.

"(2) The terms 'first mortgage', 'mortgage', 'mortgagee', 'mortgagor', and 'State' have the meanings given such terms in section 201.

"(3) The term 'home equity conversion mortgage' means a loan secured by a first lien on a property upon which there is located a dwelling designed principally for a 1-family residence that—

"(A) provides for monthly payments to the homeowner based upon accumulated equity;

"(B) may provide for a fixed or variable term or for future sharing, between the lender and the homeowner, of the equity or appreciation in the value of the dwelling;

"(C) provides that the loan shall become due on a specified date after disbursement of the full principal amount, or when a specified event (such as the sale of the dwelling or the death of the homeowner) occurs;

"(D) provides that the monthly payments required in the mortgage instrument shall be made directly by the lender to the homeowner;

"(E) provides that prepayment in whole or in part may be made without penalty at any time during the term of the loan; and

"(F) provides that the interest rate shall be fixed, as agreed upon by the mortgagor and the mortgagee at the origination of the mortgage.

"(c) INSURANCE AUTHORITY.—The Secretary may, upon application by a mortgagee, insure any home equity conversion mortgage eligible for insurance under this section and, upon such terms and conditions as the Secretary may prescribe, make commitments for the insurance of such mortgages prior to the date of their execution or disbursement to the extent that the Secretary determines such mortgages—

"(1) have promise for improving the financial situation or otherwise meeting the special needs of elderly homeowners;

"(2) will include appropriate safeguards for mortgagors to offset the special risks of such mortgages;

"(3) have a potential for acceptance in the private mortgage market; and

"(4) have a potential for purchase by a secondary market institution.

"(d) ELIGIBILITY REQUIREMENTS.—To be eligible for insurance under this section, a mortgage shall—

"(1) have been made to, and be held by, a mortgagee approved by the Secretary as responsible and able to service the mortgage properly;

"(2) have been executed by a mortgagor who—

"(A) qualifies as an elderly homeowner;

"(B) has received adequate counseling by a third party (other than the lender) as provided in subsection (g); and

"(C) meets any additional requirements prescribed by the Secretary;

"(3) be secured by a dwelling that is designed principally for a 1-family residence and is occupied by the mortgagor;

"(4) involve a principal obligation (including such initial service charges, appraisal, inspections, and other fees as the Secretary shall approve, and all interest to be deferred and added to the principal) that does not, on the date the mortgage is accepted for insurance, exceed whichever of the following is less:

"(A) 125 percent of the maximum dollar amount established by the Secretary under section 203(b)(2) for a 1-family residence; or

"(B) 90 percent of the appraised value of the property;

"(5) provide for a fixed interest rate, as agreed upon by the mortgagor and the mortgagee;

"(6) contain provisions for full satisfaction of the obligation satisfactory to the Secretary;

"(7) provide that, in the event of any foreclosure on the mortgage, the homeowner shall not be liable for any difference between the net amount of the remaining indebtedness of the homeowner under the mortgage and the amount recovered by the mortgagee from—

"(A) the foreclosure sale; or

"(B) the insurance benefits paid pursuant to subsection (e); and

"(8) contain such terms and provisions with respect to insurance, repairs, alterations, payment of taxes, default reserve, delinquency charges, foreclosure proceedings, anticipation of maturity, additional and secondary liens, and other matters as the Secretary may prescribe.

"(e) APPLICABILITY OF SECTION 204.—

"(1) Each mortgagee of a mortgage insured under this section shall be eligible to receive the benefits of insurance as provided in section 204(a) with respect to such mortgage, except that in the case of a mortgage providing for shared appreciation—

"(A) the insurance benefits shall not include the share of the mortgagee of the net appreciated value; and

"(B) the term 'original principal obligation of the mortgage' as used in section 204 shall not include the share of the mortgagee of the net appreciated value.

"(2) The provisions of subsections (b) through (k) of section 204 shall be applicable to mortgages insured under this section, except that—

"(A) all references in such subsections to the Mutual Mortgage Insurance Fund or the Fund shall be construed to refer to the General Insurance Fund; and

"(B) all references in such subsections to section 203 shall be construed to refer to this section.

"(f) DISCLOSURES BY MORTGAGEE.—The Secretary shall require each mortgagee of a mortgage insured under this section to make available to the homeowner—

"(1) at the time of the loan application, a written list of the names and addresses of third-party counselors who are approved by the Secretary as responsible and able to provide the counseling required in subsection (g); and

"(2) on an annual basis (but not later than January 31 of each year), a statement summarizing the total principal amount paid made to the homeowner under the loan secured by the mortgage, the total amount of deferred interest added to the principal, and the outstanding loan balance at the end of the preceding year.

"(g) COUNSELING SERVICES FOR MORTGAGORS.—The Secretary shall require the third-party counseling required in subsection (d)(2)(B)—

"(1) to be provided by counselors (other than the lender) who are approved by the Secretary as responsible and able to provide counseling to elderly homeowners; and

"(2) to include—

"(A) informing the elderly homeowner of options other than a home equity conversion mortgage that are available to the homeowner, including other housing, social service, health, and financial options;

"(B) informing the elderly homeowner of other home equity conversion options that are or may become available to the homeowner, such as sale-leaseback financing, deferred payment loans, and property tax deferral;

"(C) informing the elderly homeowner of all financial implications of entering into a home equity conversion mortgage, including any tax consequences, any effect on the eligibility of the homeowner for assistance under Federal and State programs, and any effect on the amount of such assistance;

"(D) informing the elderly homeowner of all the effects that entering into a home equity conversion mortgage will have on the estate and heirs of the homeowner;

"(E) providing any other information that the Secretary may require; and

"(F) providing the elderly homeowner with a written summary, acknowledged in writing by the mortgagor, of all of the information required in subparagraphs (A) through (E).

"(h) LIMITATION ON INSURANCE AUTHORITY.—No mortgage may be insured under this section after September 30, 1988, except pursuant to a commitment to insure issued on or before such date. The total number of mortgages insured under this section may not exceed 1,000.

"(i) ADMINISTRATIVE AUTHORITY.—The Secretary may—

"(1) enter into such contracts and agreements with Federal, State, and local agencies, public and private entities, and such other persons as the Secretary determines to be necessary or desirable to carry out the purposes of this section; and

"(2) make such investigations and studies of data, and publish and distribute such reports, as the Secretary determines to be appropriate.

"(j) PREEMPTION OF STATE LAW.—Mortgages insured and authorized under this section, and applicable regulations that contain or set forth provisions pertaining to sharing appreciation, increases in the outstanding balance after execution of the mortgage (including adding deferred interest to principal), disbursement of mortgage proceeds over an extended term, or setting of a due date in relation to the earliest of a specified event, shall not be subject to any constitution, statute, court decree, common law, rule, or public policy of a State that—

"(1) limits or prohibits sharing appreciation, increases in the outstanding balance after execution of the mortgage, or disbursement of mortgage proceeds over an extended time; or

"(2) requires that the term of the mortgage be fixed.

"(k) PROTECTION OF HOMEOWNER IN EVENT OF DEFAULT BY LENDER.—

"(1) Notwithstanding any other provision of law, and in order to further the purposes of the demonstration program authorized in this section, the Secretary shall take any action necessary—

"(A) to provide any mortgagor under this section with funds to which the mortgagor is entitled under the insured mortgage or ancillary contracts but that the mortgagor has not received because of the default of the party responsible for payment; and

"(B) to obtain repayment of disbursements provided under subparagraph (A) from any source.

"(2) Actions under paragraph (1) may include—

"(A) disbursing funds to the mortgagor from the General Insurance Fund;

"(B) accepting an assignment of the insured mortgage notwithstanding that the mortgagor is not in default under its terms, and calculating the amount and making the payment of the insurance claim on such assigned mortgage;

"(C) requiring a subordinate mortgage from the mortgagor at any time in order to secure repayments of any funds advanced or to be advanced to the mortgagor;

"(D) requiring a subrogation to the Secretary of the rights of any parties to the transaction against any defaulting parties;

"(E) imposing premium charges; and

"(F) preempting any State or local law that may prohibit or limit any of the actions described in subparagraphs (A) through (E).

"(l) SAFEGUARD TO PREVENT DISPLACEMENT OF HOMEOWNER AT END OF MORTGAGE TERM.—The Secretary may not insure a home equity conversion mortgage under this section unless such mortgage provides that, if the homeowner chooses to remain in the dwelling beyond the term of the mortgage, title to the dwelling shall be conveyed to the Secretary. At the option of the former homeowner, the Secretary shall allow the dwelling to be exclusively occupied by the former homeowner until the former homeowner voluntarily chooses to move. The Secretary may require the former homeowner to pay rent to the Secretary in an amount computed in accordance with section 3(a) of the United States Housing Act of 1937. For purposes of this subsection, the term 'homeowner' includes the spouse of a homeowner.

"(m) REPORT TO CONGRESS.—The Secretary shall evaluate the program authorized in this section and, not later than April 1, 1989, submit to the Congress a report setting forth the results of such evaluation. Such report shall—

"(1) describe the types of mortgages appropriate for inclusion in such program;

"(2) describe any restrictions in State or local law that require preemption under subsection (j) or (k) in order to continue such program;

"(3) describe any changes in the insurance programs under this title, or in other Federal regulatory provisions, determined to be appropriate;

"(4) describe any risk created by such program to mortgagors or the insurance programs under this title, and whether the risk is adequately covered by the premiums under the insurance programs;

"(5) evaluate whether such program has improved the financial situation or otherwise met the special needs of participating elderly homeowners;

"(6) evaluate whether such program has included appropriate safeguards for mortgagors to offset the special risks of such mortgages;

"(7) evaluate whether home equity conversion mortgages have a potential for acceptance in the private market; and

"(8) evaluate whether such program has increased secondary mortgage market activity with respect to home equity conversion mortgages.".

SEC. 4133. LIMITATION ON AMOUNT TO BE INSURED UNDER NATIONAL HOUSING ACT.

Section 531 of the National Housing Act is amended to read as follows:

"LIMITATION ON COMMITMENTS TO INSURE LOANS AND MORTGAGES

"SEC. 531. (a) The authority of the Secretary to enter into commitments to insure loans and mortgages under this Act shall be effective for any fiscal year only to such extent or in such amounts as are or have been provided in appropriation Acts for such fiscal year.

"(b) Notwithstanding any other provision of law and subject only to the absence of qualified requests for insurance, to the authority provided in this Act, and the limitation in subsection (a), the Secretary shall enter into commitments during each fiscal year to insure mortgages under this Act with an aggregate principal amount equal to the amount provided in appropriation Acts for such fiscal year.".

SEC. 4134. APPLICABILITY OF CERTAIN LOAN INSURANCE REGULATIONS.

(a) IN GENERAL.—Until December 31, 1986, any applicant for a loan insured under title I of the National Housing Act may (at the option of the applicant) have such application considered under—

(1) the regulations of the Department of Housing and Urban Development in effect on January 14, 1986; or

(2) the regulations published by the Department of Housing and Urban Development on October 25, 1985 (50 Fed. Reg. 43516 et seq.; relating to insurance of title I property improvement and manufactured home loans).

(b) REVIEW OF REGULATIONS.—Before December 31, 1986, the Secretary of Housing and Urban Development shall reopen the regulations referred to in subsection (a)(2) for public comment and take into consideration any comments received.

SEC. 4135. ASSURANCE OF ADEQUATE PROCESSING OF APPLICATIONS FOR LOAN AND MORTGAGE INSURANCE.

Title V of the National Housing Act is amended by adding at the end the following new section:

"ASSURANCE OF ADEQUATE PROCESSING OF APPLICATIONS FOR LOAN AND MORTGAGE INSURANCE

"SEC. 533. In order to ensure the adequate processing of applications for insurance of loans and mortgages under this Act, the Secretary shall maintain not less than 1 office in each State to carry out the provisions of this Act.".

SEC. 4136. CLOSING OF ANY OFFICE PROHIBITED BEFORE COMPLETION OF CERTAIN STUDIES.

Title V of the National Housing Act (as amended by section 4135 of this Act) is further amended by adding at the end the following new section:

"CLOSING OF ANY OFFICE PROHIBITED BEFORE COMPLETION OF CERTAIN STUDIES

"SEC. 534. The Secretary may not implement any proposal or determination to close any office maintained by the Secretary in any State (on or after October 1, 1985) to carry out the provisions of this Act until at least 30 days after the completion of any investigation, study, or review by any other Federal agency or department or any committee of either House of the Congress of the Secretary's proposal or determination to close the office.".

SEC. 4137. LIMITATIONS ON CERTAIN SECONDARY MORTGAGE MARKET FEES.

(a) FEDERAL NATIONAL MORTGAGE ASSOCIATION.—Section 304 of the Federal National Mortgage Association Charter Act is amended by adding at the end the following new subsection:

"(f) Except for fees paid pursuant to section 309(g), no fee or charge may be assessed or collected by the United States (including any executive department, agency, or independent establishment of the United States) on or with regard to the purchase, acquisition, sale, pledge, issuance, guarantee, or redemption of any mortgage, asset, obligation, trust certificate of beneficial interest, or other security by the corporation. No provision of this subsection shall affect the purchase of any obligation by the Secretary of the Treasury pursuant to subsection (c).".

(b) GOVERNMENT NATIONAL MORTGAGE ASSOCIATION.—Section 306(g) of Federal National Mortgage Association Charter Act is amended by adding at the end the following new paragraph:

"(3)(A) No fee or charge in excess of 6 basis points may be assessed or collected by the United States (including any executive department, agency, or independent establishment of the United States) on or with regard to any guaranty of the timely payment of principal or interest on securities or notes based on or backed by mortgages that are secured by 1- to 4-family dwellings and (i) insured by the Federal Housing Administration under title II of the National Housing Act; or (ii) insured or guaranteed under the Serviceman's Readjustment Act of 1944, chapter 37 of title 38, United States Code, or title V of the Housing Act of 1949.

"(B) The fees charged for the guaranty of securities or on notes based on or backed by mortgages not referred to in subparagraph (A), as authorized by other provisions of law, shall be set by the Association at a level not more than necessary to create reserves sufficient to meet anticipated claims based

upon actuarial analysis, and for no other purpose.

"(C) Fees or charges for the issuance of commitments or miscellaneous administrative fees of the Association shall remain at the level set for such fees or charges as of September 1, 1985, except that such fees or charges may be increased if reasonably related to the cost of administering the program, and for no other purpose.

"(D) Not less than 90 days before increasing any fee or charge under subparagraph (B) or (C), the Secretary shall submit to the Congress a certification that such increase is solely for the purpose specified in such subparagraph.".

(c) FEDERAL HOME LOAN MORTGAGE CORPORATION.—Section 306 of the Federal Home Loan Mortgage Corporation Act is amended by adding at the end the following new subsection:

"(i) Except for fees paid pursuant to section 303(c) or 306(c), no fee or charge may be assessed or collected by the United States (including any executive department, agency, or independent establishment of the United States) on or with regard to the purchase, acquisition, sale, pledge, issuance, guarantee, or redemption of any mortgage, asset, obligation, or other security by the Corporation. No provision of this subsection shall affect the purchase of any obligation by any Federal home loan bank pursuant to section 303(a).".

PART 3—COMMUNITY AND NEIGHBORHOOD DEVELOPMENT AND CONSERVATION PROGRAMS

SEC. 4141. CITY AND COUNTY CLASSIFICATIONS.

(a) METROPOLITAN CITY.—Section 102(a)(4) of the Housing and Community Development Act of 1974 is amended—

(1) in the second sentence, by striking "September 30, 1986" and inserting "September 30, 1986"; and

(2) by adding at the end the following new sentence: "Any city classified as a metropolitan city pursuant to the first or second sentence of this paragraph, and that no longer qualifies as a metropolitan city under such first or second sentence in a fiscal year beginning after fiscal year 1986, shall retain its classification as a metropolitan city for such fiscal year and the succeeding fiscal year, except that in such succeeding fiscal year (A) the amount of the grant to such city shall be 50 percent of the amount calculated under section 106(b); and (B) the remaining 50 percent shall be added to the amount allocated under section 106(d) to the State in which the city is located and the city shall be eligible in such succeeding fiscal year to receive a distribution from the State allocation under section 106(d) as increased by this sentence.".

(b) URBAN COUNTY.—Section 102(a)(6) of the Housing and Community Development Act of 1974 is amended—

(1) by inserting before the period at the end of the first sentence the following: ", or (D) has a current population in excess of 177,000, with more than 50 percent of the housing units of the area unsewered and with the unsewered housing units contributing to the degradation of an aquifer that has been declared a sole source aquifer by the Environmental Protection Agency";

(2) in the second sentence, by striking "September 30, 1986" and inserting "September 30, 1986"; and

(3) by adding at the end the following new sentence: "Any county classified as an urban county pursuant to the first or second sentence of this paragraph, and that no longer qualifies as an urban county under such first or second sentence in a fiscal year beginning after fiscal year 1986, shall retain its classification as an urban county for such fiscal year and the succeeding fiscal year, except that in such succeeding fiscal year (A) the amount of the grant to such an urban county shall be 50 percent of the amount calculated under section 106(b); and (B) the remaining 50 percent shall be added to the amount allocated under section 106(d) to the State in which the urban county is located and the urban county shall be eligible in such succeeding fiscal year to receive a distribution from the State allocation under section 106(d) as increased by this sentence.".

(c) CONSIDERATION OF CERTAIN COUNTIES AS CITIES UNDER URBAN DEVELOPMENT ACTION GRANT PROGRAM.—Section 119(n)(1) of the Housing and Community Development Act of 1974 is amended by adding at the end the following new sentence: "Such term also includes the counties of Kauai, Maui, and Hawaii in the State of Hawaii.".

SEC. 4142. COMMUNITY DEVELOPMENT AUTHORIZATIONS.

(a) COMMUNITY DEVELOPMENT BLOCK GRANTS.—Section 103 of the Housing and Community Development Act of 1974 is amended by inserting before the period at the end of the second sentence the following: "and such sums as may be provided in appropriation Acts for fiscal year 1987".

(b) DISCRETIONARY FUND.—

(1) Section 107(a) of the Housing and Community Development Act of 1974 is amended by inserting after the first sentence the following new sentence: "Of the total amount provided in appropriation Acts under section 103 for fiscal year 1987, such amounts as are provided in such Acts for this section may be set aside in a special discretionary fund for grants under subsection (b).".

(2) Section 107 of the Housing and Community Development Act of 1974 is amended—

(A) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively; and

(B) by inserting after subsection (b) the following new subsection:

"(c) Of the amount set aside for use under subsection (b) in any fiscal year, the Secretary shall, to the extent approved in appropriation Acts, make available not less than $2,500,000 in the form of grants to institutions of higher education, either directly or through areawide planning organizations or States, for the purpose of continuing programs in effect during fiscal year 1984 for providing assistance to economically disadvantaged and minority students who participate in community development work study programs and are enrolled in full-time graduate or undergraduate programs in community and economic development, community planning, or community management. Such grants may be made only to institutions of higher education receiving grants for such purpose under subsection (b) for fiscal year 1984, and may only be provided to such institutions in the same manner as such grants are provided during such fiscal year.".

(c) URBAN DEVELOPMENT ACTION GRANTS.—Section 119(a) of the Housing and Community Development Act of 1974 is amended in the last sentence by inserting after "1986," the following: "and such sums as may be provided in appropriation Acts for fiscal year 1987,".

SEC. 4143. TREATMENT OF CERTAIN MODEL CITIES PROGRAM FUNDS.

Notwithstanding any other provision of law or other requirement, the Secretary of Housing and Urban Development may not require the City of New Orleans in the State of Louisiana to pay any amount relating to ineligible costs incurred with respect to the model cities grant numbered ME-17-001 under title I of the Demonstration Cities and Metropolitan Development Act of 1966.

SEC. 4144. COMMUNITY DEVELOPMENT BLOCK GRANT PUBLIC SERVICE ACTIVITIES.

Section 105(a)(8) of the Housing and Community Development Act of 1974 is amended—

(1) by inserting "(A)" after "paragraph unless"; and

(2) by inserting before the semicolon at the end the following: "; or (B) the Secretary authorizes such unit of general local government to use more than 15 percent (but not more than the highest amount permitted to be used under subparagraph (A) by another unit of general local government located in the same metropolitan area) of the assistance received under this title for such activities following (i) a determination by such unit of general local government that the activities carried out using the amounts authorized under this subparagraph are appropriate to support proposed community development activities; and (ii) submission to the Secretary of a request for such authorization by such unit of general local government".

SEC. 4145. URBAN DEVELOPMENT ACTION GRANT SELECTION CRITERIA.

(a) PROJECT QUALITY CRITERIA.—Section 119(d)(1) of the Housing and Community Development Act of 1974 is amended—

(1) by inserting a dash before "(A)";

(2) by indenting subparagraphs (A) and (B) in the same manner as subparagraphs (C), (D), and (E), as inserted by this subsection;

(3) in subparagraph (A), by striking "as the primary criterion,";

(4) by striking "and" at the end of subparagraph (B); and

(5) by striking subparagraph (C) and inserting the following new subparagraphs:

"(C) the following other criteria:

"(i) the extent to which the grant will stimulate economic recovery by leveraging private investment;

"(ii) the number of permanent jobs to be created and their relation to the amount of grant funds requested;

"(iii) the proportion of permanent jobs accessible to lower income persons and minorities, including persons who are unemployed;

"(iv) the extent to which the project will retain jobs that will be lost without the provision of a grant under this section;

"(v) the extent to which the project will relieve the most pressing employment or residential needs of the applicant by—

"(I) reemploying workers in a skill that has recently suffered a sharp increase in unemployment locally;

"(II) retraining recently unemployed residents in new skills;

"(III) providing training to increase the local pool of skilled labor; or

"(IV) producing decent housing for low- and moderate-income persons in cases where such housing is in severe shortage in the area of the applicant;

"(vi) the impact of the proposed activities on the fiscal base of the city or urban

county and its relation to the amount of grant funds requested;

"(vii) the extent to which State or local government funding or special economic incentives have been committed; and

"(viii) the extent to which the project will have a substantial impact on physical and economic development of the city or urban county, the proposed activities are likely to be accomplished in a timely fashion with the grant amount available, and the city or urban county has demonstrated performance in housing and community development programs;

"(D) the failure of the city or urban county to receive a preliminary grant approval under this section—

"(i) on or after December 21, 1983; or

"(ii) during the 12-month period preceding the date on which applications are required to be submitted for the grant competition involved; and

"(E) whether the project will utilize 1 or more small business concerns owned and controlled by socially and economically disadvantaged individuals (as such term is defined in section 8(d) of the Small Business Act (15 U.S.C. 637(d)).

An application shall be considered to produce housing for low- and moderate-income persons under subparagraph (C)(v)(IV) only if such application proposes that—

"(i) not less than 51 percent of all funds available for the project shall be used for dwelling units and related facilities; and

"(ii) not less than 30 percent of all funds used for dwelling units and related facilities shall be used for dwelling units to be occupied by persons of low and moderate income, or not less than 20 percent of all dwelling units made available to occupancy using such funds shall be occupied by persons of low and moderate income, whichever results in the occupancy of more dwelling units by persons of low and moderate income.".

(b) SELECTION LIMITATIONS AND CRITERIA WEIGHT.—Section 119(d) of the Housing and Community Development Act of 1974 is amended by adding at the end the following new paragraphs:

"(3) The Secretary shall award points to each application as follows:

"(A) not more than 35 points on the basis of the factors referred to in paragraph (1)(A);

"(B) not more than 35 points on the basis of the factors referred to in paragraph (1)(B);

"(C) not more than 33 points on the basis of the factors referred to in paragraph (1)(C);

"(D)(i) 2 additional points on the basis of the factor referred to in paragraph (1)(D)(i); or

"(ii) 1 additional point on the basis of the factor referred to in paragraph (1)(D)(ii); and

"(E) not less than 1 additional point on the basis of the factor referred to in paragraph (1)(E).

"(4) The Secretary shall distribute grant funds under this section so that to the extent practicable during each funding cycle—

"(A) 65 percent of the funds is first made available utilizing all of the criteria set forth in paragraph (1); and

"(B) 35 percent of the funds is then made available solely on the basis of the factors referred to in subparagraphs (C), (D), and (E) of paragraph (1).

"(5)(A) For each fiscal year, the Secretary shall hold—

"(i) 3 competitions for grants under paragraph (1) for cities not described in the first sentence of subsection (i) (relating to small cities) and urban counties; and

"(ii) 3 competitions for cities described in the first sentence of subsection (i) (relating to small cities).

"(B) Each competition for grants described in any clause of subparagraph (A) shall be for an amount equal to the sum of—

"(i) approximately 1/3 of the funds available for such grants for the fiscal year;

"(ii) any funds available for such grants in any previous competition that are not awarded; and

"(iii) any funds available for such grants in any previous competition that are recaptured.

"(6) In determining the score to be awarded each of the criteria under subparagraphs (A) through (D) of paragraph (1) for applications for grants for urban counties, the Secretary shall compare such applications only with other applications for grants for urban counties.".

(c) ADDITIONAL CONSIDERATION.—Notwithstanding any provision of section 119 of the Housing and Community Development Act of 1974, for purposes of funding decisions made before October 15, 1986, the Secretary of Housing and Urban Development shall give additional consideration, equal to the points otherwise awarded under section 119(d)(1)(C) of the Housing and Community Development Act of 1974, as amended by this section, in the case of a project to be located in a city or urban county to which no grant under section 119 of such Act was made during the preceding 24-month period if such project has met the criteria for preliminary approval in the 3 consecutive funding cycles immediately preceding the date of the enactment of this Act.

(d) USE OF REPAID GRANT FUNDS.—Section 119(f) of the Housing and Community Development Act of 1974 is amended by adding at the end the following: "In any case in which the project proposes the repayment to the applicant of the grant funds, such funds shall be made available by the applicant for economic development activities that are or would be eligible activities under this section or section 104. The applicant shall annually provide the Secretary with a statement of the projected receipt and use of repaid grant funds during the next year together with a report acceptable to the Secretary on the use of such funds during the most recent preceding full fiscal year of the applicant.".

(e) NONDISCRIMINATION.—Section 119(r) of the Housing and Community Development Act of 1974 is amended to read as follows:

"(r) In utilizing the discretion of the Secretary when providing assistance and applying selection criteria under this section, the Secretary may not discriminate against applications on the basis of (1) the type of activity involved, whether such activity is primarily housing, industrial, or commercial; or (2) the type of applicant, whether such applicant is a city or urban county.".

(f) REPORTS OF COMPTROLLER GENERAL.—

(1)(A) Not later than the expiration of the 6-month period following the date of the enactment of this Act and every 3 years thereafter, the Comptroller General of the United States shall prepare and submit to the Congress a comprehensive report evaluating the eligibility standards and selection criteria applicable under section 119 of the Housing and Community Development Act of 1974.

(B) Such report shall evaluate in detail the standards and criteria specified in such section that measure the level or comparative degree of economic distress of cities and urban counties and the effect of the grants awarded on the basis of such standards and criteria on stimulating the maximum economic development activity.

(C) Such report shall also evaluate in detail the extent to which the economic and social data utilized by the Secretary in awarding grants under such section is current and accurate, and shall compare the data used by the Secretary with other available data. The Comptroller General shall make recommendations to the Congress on whether or not other data should be collected by the Federal Government in order to fairly and accurately distribute grants under such section based on the level or comparative degree of economic distress. The Comptroller General shall also make recommendations on whether or not existing data should be collected more frequently in order to ensure that timely data is used to evaluate grant applications under such section.

(2) Not later than the expiration of the 3-month period following the date of the final competition for grants for fiscal year 1986 under section 119 of the Housing and Community Development Act of 1974, the Comptroller General of the United States shall prepare and submit to the Congress a comprehensive report describing the effect of the amendments made by this section on—

(A) the targeting of grant funds to cities and urban counties having the highest level or degree of economic distress;

(B) the distribution of grant funds among regions of the United States;

(C) the number and types of projects receiving grants;

(D) the per capita funding levels for each city, urban county, or identifiable community described in subsection (p) of such section 119, receiving assistance under such section 119; and

(E) the stimulation of the maximum economic development activity.

(g) REGULATIONS.—The Secretary of Housing and Urban Development shall issue such regulations as may be necessary to carry out the amendments made by this section. Such regulations shall be published for comment in the Federal Register not later than 60 days after the date of the enactment of this Act. The provisions of subsection (c), and of section 119(d)(4) of the Housing and Community Development Act of 1974, shall take effect on the date of the enactment of this Act.

(h) APPLICABILITY.—The amendments made by this section shall be applicable to the making of urban development action grants that have not received the preliminary approval of the Secretary of Housing and Urban Development before the date on which final regulations issued by the Secretary under subsection (g) become effective. For the fiscal year in which the amendments made by this section become applicable, such amendments shall only apply with respect to the aggregate amount awarded for such grants on or after such effective date.

SEC. 4146. PROHIBITION ON USE OF URBAN DEVELOPMENT ACTION GRANTS FOR BUSINESS RELOCATIONS.

(a) IN GENERAL.—Section 119(h) of the Housing and Community Development Act of 1974 is amended—

(1) by inserting after the subsection designation the following: "(1) SPECULATIVE PROJECTS.—";

(2) by adding at the end of paragraph (1), as so redesignated, the following new sentence: "The provisions of this paragraph shall apply only to projects that do not have identified intended occupants."; and

(3) by adding at the end the following new paragraphs:

"(2) PROJECTS WITH IDENTIFIED INTENDED OCCUPANTS.—No assistance may be provided or utilized under this section for any project with identified intended occupants that is likely to facilitate—

"(A) a relocation of any operation of an industrial or commercial plant or facility or other business establishment—

"(i) from any city, urban county, or identifiable community described in subsection (p), that is eligible for assistance under this section; and

"(ii) to the city, urban county, or identifiable community described in subsection (p), in which the project is located; or

"(B) an expansion of any such operation that results in a reduction of any such operation in any city, county, or community described in subparagraph (A)(i).

"(3) SIGNIFICANT AND ADVERSE EFFECT.—The restrictions established in paragraph (2) shall not apply if the Secretary determines that the relocation or expansion does not significantly and adversely affect the employment or economic base of the city, county, or community from which the relocation or expansion occurs.

"(4) PROJECTS INCREASING MARKET SHARE OF NONDOMESTIC CORPORATION.—No assistance may be provided or utilized under this section for any project that the Secretary determines will be used to expand the market share of a nondomestic business entity in a manner that decreases the market share or operations of a domestic business entity.

"(5) DEFINITIONS.—(A) For purposes of this subsection, the term 'operation' includes any plant, equipment, facility, position, employment opportunity, production capacity, or product line.

"(B) For purposes of this subsection, the term 'domestic business entity' means any business entity not described in subparagraph (C).

"(C) For purposes of this subsection, the term 'nondomestic business entity' means any business entity—

"(i) more than 50 percent of the ownership of which is held by persons who are not citizens or permanent residents of the United States;

"(ii) that is controlled by persons who are not citizens or permanent residents of the United States; or

"(iii) that is a subsidiary of, or is controlled by, another business entity described in clause (i) or (ii).

"(6) REGULATIONS.—Not later than 60 days after the date of the enactment of the Housing Act of 1986, the Secretary shall issue such regulations as may be necessary to carry out the provisions of this subsection. Such regulations shall include specific criteria to be used by the Secretary in determining whether there is a significant and adverse effect under paragraph (3).".

(b) APPLICABILITY.—The amendments made by this section shall be applicable to urban development action grants that have not received the preliminary approval of the Secretary of Housing and Urban Development before the date of the enactment of this Act.

SEC. 4147. USE OF URBAN RENEWAL LAND DISPOSITION PROCEEDS.

Notwithstanding any other provision of law or other requirement, the City of Boston in the State of Massachusetts is authorized to retain any land disposition proceeds from the financially closed-out Government Center Urban Renewal Project (NO. MASS. R-35) not paid to the Department of Housing and Urban Development, and to use such proceeds in accordance with the requirements of the community development block grant program specified in title I of the Housing and Community Development Act of 1974. The City of Boston shall retain such proceeds in a lump sum and shall be entitled to retain and use all past and future earnings from such proceeds, including any interest.

SEC. 4148. URBAN HOMESTEADING.

The first sentence of section 810(k) of the Housing and Community Development Act of 1974 is amended by inserting before the period at the end the following: "and fiscal years 1986 and 1987".

SEC. 4149. REHABILITATION LOAN FEES.

Section 312(g) of the Housing Act of 1964 is amended by adding at the end the following new sentences: "No risk premium or loan fee may be assessed or collected by or for the Secretary or any other Federal agency on or with respect to a loan made under this section. Any person who pays any such premium or fee before the date of the enactment of the Housing Act of 1986 shall be reimbursed for the amount paid.".

SEC. 4150. NEIGHBORHOOD REINVESTMENT CORPORATION.

Section 608(a) of the Neighborhood Reinvestment Corporation Act is amended by inserting before the period at the end the following: "and fiscal years 1986 and 1987".

SEC. 4151. NEIGHBORHOOD DEVELOPMENT DEMONSTRATION PROGRAM.

Section 123(g) of the Housing and Urban-Rural Recovery Act of 1983 is amended by inserting before the period at the end the following: ", and such sums as may be provided in appropriation Acts for fiscal years 1986 and 1987".

SEC. 4152. PARK CENTRAL NEW COMMUNITY PROJECT.

(a) HOUSING ASSISTANCE.—Section 213 of the Housing and Community Development Act of 1974 is amended by adding at the end the following new subsection:

"(e) The Secretary shall enter into an annual contributions contract for a term of 180 months to obligate sufficient funds to provide assistance payments pursuant to section 8(b)(1) of the United States Housing Act of 1937 on behalf of 250 lower income families from budget authority made available in fiscal year 1986, and again on behalf of an additional 250 lower income families from budget authority made available for fiscal year 1987, so long as such families occupy properties in the Park Central New Community Project or in adjacent areas that are recognized by the unit of general local government in which such Project is located as being included within the Park Central New Town In Town Project. If a lower income family receiving assistance payments pursuant to this subsection ceases to qualify for assistance payments pursuant to the provisions of section 8 of such Act or of this subsection during the 180-month term of the annual contributions contract, assistance payments shall be made on behalf of another lower income family who occupies a unit identified in the previous sentence.".

(b) COMMUNITY DEVELOPMENT ASSISTANCE.—Section 107(a) of the Housing and Community Development Act of 1974 is amended by adding at the end the following new sentence: "Of the amount set aside for grants under subsection (b) for fiscal year 1986 (or fiscal year 1987 if there are insufficient funds for fiscal year 1986), $5,000,000 shall be made available by the Secretary for purposes of grants under subsection (b)(1) for the Park Central New Community Project.".

PART 4—MISCELLANEOUS PROGRAM AMENDMENTS

SEC. 4161. STUDIES UNDER NATIONAL FLOOD INSURANCE PROGRAM.

Section 1376(c) of the National Flood Insurance Act of 1968 is amended by inserting before the period at the end the following: "and fiscal years 1986 and 1987".

SEC. 4162. FAIR HOUSING INITIATIVES PROGRAM.

(a) IN GENERAL.—The Secretary of Housing and Urban Development (in this section referred to as the "Secretary") may make grants to, or (to the extent of amounts provided in appropriation Acts) enter into contracts or cooperative agreements with, State or local governments or their agencies, public or private nonprofit organizations or institutions, or other public or private entities that are formulating or carrying out programs to prevent or eliminate discriminatory housing practices, to develop, implement, carry out, or coordinate—

(1) programs or activities designed to obtain enforcement of the rights granted by title VIII of the Act of April 11, 1968 (commonly referred to as the Civil Rights Act of 1968), or by State or local laws that provide rights and remedies for alleged discriminatory housing practices that are substantially equivalent to the rights and remedies provided in such title VIII, through such appropriate judicial or administrative proceedings (including informal methods of conference, conciliation, and persuasion) as are available therefor; and

(2) education and outreach programs designed to inform the public concerning rights and obligations under the laws referred to in paragraph (1).

(b) PROGRAM ADMINISTRATION.—

(1) Not less than 30 days before providing a grant or entering into any contract or cooperative agreement to carry out activities authorized by this section, the Secretary shall submit notification of such proposed grant, contract, or cooperative agreement (including a description of the geographical distribution of such contracts) to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives.

(2) The Secretary shall provide to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives a quarterly report that summarizes the activities funded under this section and describes the geographical distribution of grants, contracts, or cooperative agreements funded under this section.

(c) REGULATIONS.—

(1) The Secretary shall issue such regulations as may be necessary to carry out the provisions of this section.

(2) The Secretary shall issue regulations governing the use of funds under this section for testing conducted by private organizations. Such regulations shall contain measures determined by the Secretary to be necessary to ensure that all such testing is

objective, reliable, and controlled. Such regulations shall guarantee the credibility and probative value of testing evidence and preclude, to the extent possible without infringing on rights and remedies provided by Federal fair housing laws, the misuse of the funds provided under this section. No such testing shall be funded under this section unless preceded by an allegation of a discriminatory housing practice made by a person not employed or affiliated with the organization conducting the test. No provision of this section or regulation issued under this section (A) shall have any application to testing other than testing conducted with funds provided under this section; or (B) may be construed to limit or otherwise restrict the use of facts secured through testing not funded under this section in any legal proceeding under Federal fair housing laws.

(3) Such regulations shall include provisions governing applications for assistance under this section, and shall require each such application to contain—

(A) a description of the assisted activities proposed to be undertaken by the applicant, together with the estimated costs and schedule for completion of such activities;

(B) a description of the experience of the applicant in formulating or carrying out programs to prevent or eliminate discriminatory housing practices;

(C) available information, including studies made by or available to the applicant, indicating the nature and extent of discriminatory housing practices occurring in the general location where the applicant proposes to conduct its assisted activities, and the relationship of such activities to such practices;

(D) an estimate of such other public or private resources as may be available to assist the proposed activities;

(E) a description of proposed procedures to be used by the applicant for monitoring conduct and evaluating results of the proposed activities; and

(F) any additional information required by the Secretary.

(4) Regulations issued under this subsection shall not become effective prior to the expiration of 90 days after the Secretary transmits such regulations, in the form such regulations are intended to be published, to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives.

(5) The Secretary shall not obligate or expend any amount under this section before the effective date of the regulations required under this subsection.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out the provisions of this section, including any program evaluations, such sums as may be provided in appropriation Acts for fiscal years 1986 and 1987. Any amounts appropriated under this section shall remain available until expended.

SEC. 4163. COLLECTION OF CERTAIN DATA.

The Secretary of Housing and Urban Development and the Secretary of Agriculture shall each collect, not less than annually, data on the racial and ethnic characteristics of persons eligible for, assisted, or otherwise benefiting under each community development, housing assistance, and mortgage and loan insurance and guarantee program administered by such Secretary. Such data may be collected on a building by building basis if the Secretary involved determines such collection to be appropriate.

SEC. 4164. TIMELY PAYMENT OF SUBCONTRACTORS.

It is the policy of the United States that each prime contractor of the Department of Housing and Urban Development should establish procedures to ensure the timely payment of amounts due pursuant to the terms of the subcontracts of such prime contractor.

SEC. 4165. SOLAR ENERGY AND ENERGY CONSERVATION BANK.

Section 522(a) of the Solar Energy and Energy Conservation Bank Act is amended by striking "fiscal year 1985" and inserting "fiscal years 1986 and 1987".

SEC. 4166. RESEARCH AUTHORIZATION.

The second sentence of section 501 of the Housing and Urban Development Act of 1970 is amended by inserting before the period at the end the following: "and fiscal years 1986 and 1987".

SEC. 4167. MANUFACTURED HOUSING CONSTRUCTION AND SAFETY STANDARDS.

Not later than the expiration of the 6-month period following the date of the enactment of this Act, the Secretary of Housing and Urban Development shall submit to the Congress a detailed report describing the fees collected by the Secretary during the 4-year period preceding the date of the enactment of this Act in connection with the inspection of manufactured homes under section 614 of the National Manufactured Housing Construction and Safety Standards Act of 1974. Such report shall include—

(1) the amount of such fees collected, the allocation of expenses, the costs of the program, and any available reserves;

(2) a detailed accounting of fees collected in accordance with section 620 of such Act;

(3) a detailed accounting of expenses authorized under section 620 of such Act and incurred in fiscal years 1983 through 1986, including descriptions of the use of inspection fees for—

(A) activities authorized under section 614 of such Act, including a breakdown of funds allocated for contractors of the Secretary to conduct monitoring, State administrative agencies, and other contracts issued in accordance with subsection (c) of such section;

(B) research, testing, development, and training activities under section 608(a) of such Act; and

(C) direct administration of such Act, including staff and travel;

(4) a detailed explanation of the expenditures described in paragraph (3) that are planned for fiscal years 1987 through 1989; and

(5) a detailed breakdown of expenditures of amounts appropriated under section 627 of such Act.

Subtitle B—Housing Assistance

PART 1—PROGRAMS UNDER UNITED STATES HOUSING ACT OF 1937

SEC. 4201. LOWER INCOME HOUSING AUTHORIZATION.

(a) AGGREGATE BUDGET AUTHORITY.—Section 5(c)(6) of the United States Housing Act of 1937 is amended by adding at the end the following new sentence: "The aggregate amount of budget authority that may be obligated for contributions contracts is increased by such sums as may be approved in appropriation Acts for fiscal years 1986 and 1987.".

(b) UTILIZATION OF BUDGET AUTHORITY.—Section 5(c)(7) of the United States Housing Act of 1937 is amended to read as follows:

"(7)(A) Any amount available for Indian housing under subsection (a) that is recaptured may be used only for such housing.

"(B) Any amount available for the conversion of a project to assistance under section 8(b)(1), if not required for such purpose, shall be used for assistance under section 8(b)(1).".

SEC. 4202. TENANT RENTAL CONTRIBUTIONS.

(a) REDUCTION OF RENTAL PAYMENTS FOR ELDERLY FAMILIES.—Section 3(a)(1) of the United States Housing Act of 1937 is amended by inserting before the semicolon the following: "(25 percent in the case of an elderly family)".

(b) PUBLIC HOUSING ECONOMIC RENT.—Section 3(a) of the United States Housing Act of 1937 is amended—

(1) by inserting "(1)" after "(a)";

(2) in the last sentence, by striking "A" and inserting the following: "Except as provided in paragraph (2), a";

(3) by redesignating paragraphs (1) through (3) as subparagraphs (A) through (C), respectively; and

(4) by adding at the end the following new paragraph:

"(2) Any public housing agency may provide that each family residing in a public housing project owned and operated by such agency shall pay as monthly rent an amount determined by such agency to be appropriate that does not exceed a maximum amount that—

"(A) is established by such agency and approved by the Secretary;

"(B) is not more than the amount payable as rent by such family under paragraph (1); and

"(C) is not more than (i) the average monthly amount of debt service and operating expenses attributable to dwelling units of similar size in public housing projects owned and operated by such agency; or (ii) the fair market rentals established in the housing area for dwelling units under section 8(b)(1).".

(c) UTILITY ALLOWANCE.—Section 3(c) of the United States Housing Act of 1937 is amended by adding at the end the following new paragraph:

"(4) The term 'rent' means—

"(A) the amount payable by a family to a public housing agency for shelter; and

"(B) in any case in which a family is required to make a separate payment to a public housing agency or a utility supplier based on actual utility consumption, an allowance established annually based on average actual utility consumption (excluding telephone service) for each size and type of dwelling unit.".

SEC. 4203. GRANTS FOR PUBLIC HOUSING DEVELOPMENT.

(a) AUTHORITY TO PROVIDE GRANTS.—Section 5(a) of the United States Housing Act of 1937 is amended to read as follows:

"(a)(1) The Secretary may make annual contributions to public housing agencies to assist in achieving and maintaining the lower income character of their projects. The Secretary shall embody the provisions for such annual contributions in a contract guaranteeing their payment. The contribution payable annually under this section shall in no case exceed a sum equal to the annual amount of principal and interest payable on obligations issued by the public housing agency to finance the development or acquisition cost of the lower income project involved. Annual contributions payable under this section shall be pledged, if the Secretary so requires, as security for obligations issued by a public housing agency to assist the development or acquisition of the project to which annual contributions

relate and shall be paid over a period not to exceed 40 years.

"(2) The Secretary may make contributions (in the form of grants) to public housing agencies to cover the development cost of public housing projects. The contract under which such contributions shall be made shall specify the amount of capital contributions required for each project to which the contract pertains, and that the terms and conditions of such contract shall remain in effect for a 40-year period.

"(3) The amount of contributions that would be established for a newly constructed project by a public housing agency designed to accommodate a number of families of a given size and kind may be established under this section for a project by such public housing agency that would provide housing for the comparable number, sizes, and kinds of families through the acquisition and rehabilitation, or use under lease, of structures that are suitable for lower income housing use and obtained in the local market.".

(b) CONFORMING AMENDMENTS.—

(1) Section 5 of the United States Housing Act of 1937 is amended—

(A) by striking "ANNUAL" in the section heading; and

(B) by striking "annual" in subsection (e)(2).

(2) Section 6 of the United States Housing Act of 1937 is amended by striking "annual" the first place it appears in the first sentence of subsection (g), and each place it appears in subsection (d) and the first sentence of each of subsections (a) and (c).

(3) Section 7 of the United States Housing Act of 1937 is amended by striking "annual" in the proviso in the first sentence.

(4) Section 9(a)(2) of the United States Housing Act of 1937 is amended—

(A) by striking "being assisted by an annual contributions contract authorized by section 5(c)" and inserting the following: "one developed pursuant to a contributions contract authorized by section 5"; and

(B) by striking "any such annual" and inserting "any such".

(5) Section 12 of the United States Housing Act of 1937 is amended by striking "annual".

(6) Section 14 of the United States Housing Act of 1937 is amended—

(A) by striking "receive assistance under section 5(c)" in subsection (c)(2) and inserting "assisted under section 5"; and

(B) by striking "annual" in each of paragraphs (2) and (4)(C) of subsection (d).

(7) Section 15 of the United States Housing Act of 1937 is amended by striking "with loans or debt service annual contributions" in clause (2).

(8) Section 16(b) of the United States Housing Act of 1937 is amended by striking "annual".

(9) Section 18(c) of the United States Housing Act of 1937 is amended by striking "annual contributions authorized under section 5(c)" and inserting "contributions authorized under section 5".

SEC. 4204. LIMITATION ON PUBLIC HOUSING DEVELOPMENT AND ASSURANCE OF PUBLIC HOUSING QUALITY STANDARDS.

Section 5 of the United States Housing Act of 1937 is amended by adding at the end the following new subsection:

"(j)(1) After the date of the enactment of the Housing Act of 1986, the Secretary may not make a funding reservation for a public housing agency for assistance in financing the development of public housing (other than for Indian families) unless—

"(A) the Secretary determines that additional amounts are required to complete the development of dwelling units for which amounts are obligated on or before such date;

"(B) for any fiscal year after fiscal year 1986, the public housing agency certifies to the Secretary that 90 percent of the public housing dwelling units of such agency are maintained at levels at least equal to the housing quality standards established by the Secretary under section 8(o)(6); or

"(C) the Secretary determines that such development is required to replace dwelling units that are disposed of or demolished by the public housing agency.

"(2) Any budget authority that is provided in appropriation Acts before the date of the enactment of the Housing Act of 1986, and is prohibited from obligation by reason of the provisions of paragraph (1), is authorized to be made available by appropriation Acts for fiscal year 1986 or 1987 for comprehensive improvement assistance under section 14 or 20 (in addition to other budget authority provided for such purpose under subsection (c)) and to remain available until utilized.".

SEC. 4205. SECTION 8 ASSISTANCE.

(a) CONTRACTS FOR EXISTING DWELLING UNITS.—The first sentence of section 8(b)(1) of the United States Housing Act of 1937 is amended by inserting ", which shall be for 15 years," after "annual contributions contracts".

(b) PUBLIC HOUSING AGENCY FEES.—

(1) Section 8(b) of the United States Housing Act of 1937 is amended by adding at the end the following new paragraph:

"(2) The method of calculation, the preliminary fee, and the percentage established for administrative fees paid to a public housing agency administering a contract under this subsection shall be the method of calculation, the preliminary fee, and the percentage established by the Secretary before January 1, 1985, and in effect on such date.".

(2) The amendment made by this subsection shall be applicable to administrative fees payable with respect to the administrative activities of a public housing agency after December 31, 1984.

(c) FAIR MARKET RENTALS.—Section 8(c)(1) of the United States Housing Act of 1937 is amended by inserting before the last sentence the following new sentence: "Each fair market rental in effect under this subsection shall be adjusted to be effective on October 1 of each year to reflect changes, based on the most recent available data trended so the rentals will be current for the year to which they apply, of rents for existing or newly constructed rental dwelling units, as the case may be, of various sizes and types in the market area suitable for occupancy by persons assisted under this section.".

SEC. 4206. VOUCHER DEMONSTRATION PROGRAM.

(a) USE OF VOUCHERS IN CONNECTION WITH RENTAL REHABILITATION.—The first sentence of section 8(o)(3) of the United States Housing Act of 1937 is amended—

(1) by striking "or" before "(C)"; and

(2) by inserting before the period at the end the following: ", or (D) a family residing in a project being rehabilitated under section 17 that is determined to be a lower income family at the time it initially receives assistance and whose rent after rehabilitation would exceed 30 percent of the monthly adjusted income of the family".

(b) USE OF VOUCHERS IN CONNECTION WITH COOPERATIVE AND MUTUAL HOUSING.—Section 8(o)(8) of the United States Housing Act of 1937 is amended by striking the following: "not to exceed 5 per centum of the amount of".

(c) OPERATION OF PROGRAM.—Section 8(o) of the United States Housing Act of 1937 is amended—

(1) in the first sentence of paragraph (1), by striking "In" and all that follows through ", the" and inserting "The";

(2) by striking paragraph (4);

(3) by redesignating paragraphs (5) through (8) as paragraphs (4) through (7), respectively; and

(4) in paragraph (5), as so redesignated by this subsection, by striking "an initial" and inserting "a".

(d) ADMINISTRATIVE EXPENSES.—Section 8(o) of the United States Housing Act of 1937 (as amended by subsection (c) of this section) is further amended by adding at the end the following new paragraph:

"(8) The assistance under this subsection that is retained by public housing agencies for administrative expenses shall be equal to the assistance under section 8(b) that is retained by such agencies for such expenses.".

SEC. 4207. PAYMENTS FOR OPERATION OF LOWER INCOME HOUSING PROJECTS.

(a) PERFORMANCE FUNDING SYSTEM.—Section 9(a) of the United States Housing Act of 1937 is amended—

(1) by striking the last sentence of paragraph (1); and

(2) by adding at the end the following new paragraph:

"(3)(A) For purposes of making payments under this section, the Secretary shall utilize a performance funding system that is substantially based on the system defined in regulations and in effect on the date of the enactment of the Housing Act of 1986 (as modified by this paragraph), and that establishes standards for costs of operation and reasonable projections of income, taking into account the character and location of the project and the characteristics of the families served, in accordance with a formula representing the operations of a prototype well-managed project. Such performance funding system shall be established in consultation with public housing agencies and their associations, be contained in a regulation promulgated by the Secretary prior to the start of any fiscal year to which it applies, and remain in effect for the duration of such fiscal year without change.

"(B) Under the performance funding system established under this paragraph—

"(i) in the first year that the reductions occur, any public housing agency shall share equally with the Secretary any cost reductions due to the differences between projected and actual utility rates attributable to actions taken by the agency which lead to such reductions;

"(ii) there shall be a formal review process for the purpose of providing such revisions to the allowable expense level of a public housing agency as necessary—

"(I) to correct inequities and abnormalities that exist in the base year expense level of such public housing agency;

"(II) to reflect changes in operating circumstances since the initial determination of such base year expense level; and

"(III) to ensure that the allowable expense limit accurately reflects the higher cost of operating the project in an economically distressed unit of local government and the lower cost of operating the project

in an economically prosperous unit of local government;

"(iii) public housing agencies shall be reimbursed for costs incurred that were beyond their control and the full extent of which were not taken into consideration in the original distribution of funds for the fiscal year involved;

"(iv) the estimate of the rental income for the next fiscal year of a public housing agency shall be based on the actual rent for the fourth, fifth, or sixth month prior to the beginning of the new fiscal year of the public housing agency; and

"(v) any revenues resulting from rental income or other income (excluding investment income) in excess of estimated revenues from such items may not be recaptured, used, or computed to reduce assistance provided under this section, unless such estimate—

"(I) was unreasonable according to regulations in effect when the estimate was made; or

"(II) was fraudulent and deceptive.".

(b) AUTHORIZATION OF APPROPRIATIONS.—Section 9(c) of the United States Housing Act of 1937 is amended by adding at the end the following new sentence: "There are authorized to be appropriated, for the purpose of providing annual contributions under this section, such sums as may be provided in appropriation Acts for fiscal year 1987.".

(c) TIME OF PAYMENT.—Section 9 of the United States Housing Act of 1937 is amended by adding at the end the following new subsection:

"(e) In the case of any public housing agency that submits its budget for any fiscal year of such agency to the Secretary in a timely manner in accordance with the regulations issued by the Secretary under this section, assistance to be provided to such agency under this section for such fiscal year shall commence not later than the 1st month of such fiscal year, and shall be paid in equal monthly or quarterly installments or in accordance with such other payment schedule as may be agreed upon by the Secretary and such agency.".

SEC. 4208. GRANTS FOR COMPREHENSIVE IMPROVEMENT ASSISTANCE.

(a) AUTHORITY TO PROVIDE GRANTS.—Section 14 of the United States Housing Act of 1937 is amended by adding at the end the following new subsection:

"(k) The Secretary may make contributions (in the form of grants) to public housing agencies under this section. The contract under which such contributions shall be made shall specify the amount of contributions required for each project to which the contract pertains, and that the terms and conditions of such contract shall remain in effect for a 20-year period.".

(b) CONFORMING AMENDMENTS.—

(1) Section 14(e) of the United States Housing Act of 1937 is amended by striking "annual".

(2) Section 14 of the United States Housing Act of 1937 is amended by inserting "or (k)" after "subsection (b)" each place it appears in subsections (c), (d), (e), (g), (h), and (i).

SEC. 4209. INCOME ELIGIBILITY FOR ASSISTED HOUSING.

Section 16 of the United States Housing Act of 1937 is amended to read as follows:

"INCOME ELIGIBILITY FOR ASSISTED HOUSING

"SEC. 16. Not more than 25 percent of the dwelling units that are available for occupancy under public housing annual contributions contracts and section 8 housing assistance payments contracts under this Act shall be available for leasing by lower income families other than very low-income families.".

SEC. 4210. RENTAL REHABILITATION AND DEVELOPMENT GRANTS.

(a) AUTHORIZATION OF APPROPRIATIONS.—Section 17(a) of the United States Housing Act of 1937 is amended by adding at the end the following new paragraph:

"(4) ADDITIONAL AUTHORIZATION.—There are authorized to be appropriated for rental rehabilitation and for development grants such sums as may be provided in appropriation Acts for fiscal years 1986 and 1987.".

(b) RENTAL DEVELOPMENT PROGRAM REQUIREMENTS.—Section 17(d)(4) of the United States Housing Act of 1937 is amended—

(1) in subparagraph (G), by striking "24 months" and inserting "36 months";

(2) by striking "and" at the end of subparagraph (G);

(3) by striking the period at the end of subparagraph (H) and inserting "; and"; and

(4) by adding at the end the following new subparagraph:

"(I) the owner of each assisted structure agrees to comply with the provisions of paragraph (8) until the 20-year period specified in paragraph (7) has ended.".

(c) APPLICABILITY.—The amendment made by subsection (b)(1) shall be applicable to all grantees, including grantees receiving notice of project selection before the date of the enactment of this Act.

SEC. 4211. PUBLIC HOUSING DEMOLITION AND DISPOSITION.

Section 18 of the United States Housing Act of 1937 is amended—

(1) in subsection (a)(1), by striking "or" after "purposes," and inserting "and"; and

(2) in subsection (b)—

(A) by striking "and" at the end of paragraph (1);

(B) by striking the period at the end of paragraph (2) and inserting "; and"; and

(C) by adding at the end the following new paragraph:

"(3) the public housing agency has developed a plan for the addition of public housing dwelling units in an aggregate number equal to the number of such units proposed to be demolished or disposed under such application, and the Secretary has agreed to provide funding for such plan if necessary, except that—

"(A) such 1-for-1 replacement requirement shall not apply if there is no local need for low-income housing; and

"(B) if necessary funding for public housing dwelling units is not available, dwelling units assisted with project-based assistance under section 8 may be substituted.".

SEC. 4212. TREATMENT OF CERTAIN PUBLIC HOUSING DEVELOPMENT FUNDS.

Notwithstanding any other provision of law or other requirement, no interest shall accrue on any excess funds advanced to the Housing Authority of the City of Pittsburgh, in the State of Pennsylvania, for development of the public housing project numbered PA-1-22. Any such interest that accrues before the date of the enactment of this Act shall be forgiven.

SEC. 4213. PUBLIC HOUSING COMPREHENSIVE GRANTS.

(a) FINDINGS.—The Congress hereby finds that—

(1) the condition of public housing projects financed under the United States Housing Act of 1937 is in some cases substandard, forcing many dwelling units to remain vacant, forcing many lower income families to live in substandard or dangerous living conditions, and preventing many others from obtaining decent, safe, and sanitary rental housing at an affordable rent as provided for under such Act;

(2) the Federal Government has a responsibility to help ensure the maintenance of public housing dwelling units in decent, safe, and sanitary condition, and to provide public housing agencies with funds sufficient to carry out such maintenance;

(3) the current comprehensive assistance improvement program has not provided public housing agencies the flexibility and responsibility essential for establishing priorities for capital improvement expenditures, assessing the relative needs of all public housing projects, and evaluating the relative advantages of repair, major maintenance, and capital replacement;

(4) the current comprehensive assistance improvement program has made it difficult for public housing agencies to plan capital improvements on a multiyear basis; and

(5) the current comprehensive assistance improvement program has resulted in unnecessary paperwork and delay, thereby increasing costs for capital improvements.

(b) PURPOSE.—It is the purpose of the amendments made by this section—

(1) to provide assistance on a reliable basis to public housing agencies to enable them to operate, upgrade, modernize, and rehabilitate public housing projects financed under the United States Housing Act of 1937 to ensure their continued availability as decent, safe, and sanitary rental housing at rents affordable to lower income families;

(2) to increase the reliability of Federal assistance for capital improvements in public housing projects;

(3) to significantly deregulate the program of Federal assistance for capital improvements in public housing projects;

(4) to provide increased opportunities and incentives for more efficient management of public housing projects; and

(5) to afford public housing agencies greater control in planning for the maintenance and improvement of public housing projects.

(c) COMPREHENSIVE GRANT PROGRAM.—The United States Housing Act of 1937 is amended by adding at the end the following new section:

"COMPREHENSIVE GRANT PROGRAM

"SEC. 20. (a) PURPOSE.—It is the purpose of this section to provide assistance to improve the physical condition of existing public housing projects and to upgrade their management and operation in order to contribute to their long-term physical and social viability and their continued availability to provide decent, safe, and sanitary living conditions for lower income families.

"(b) AUTHORITY TO PROVIDE FINANCIAL ASSISTANCE.—The Secretary may make available, and (to the extent of amounts provided in appropriation Acts) contract to make available, financial assistance to public housing agencies in accordance with the provisions of this section with respect to public housing (as defined in section 3(b)(1)) owned or operated by such agencies.

"(c) COMPREHENSIVE PLAN.—No financial assistance may be made available to a public housing agency under this section unless the Secretary approves a 5-year comprehensive plan submitted by the public housing agency on a date determined by the Secretary, except that the Secretary may provide such assistance if it is necessary to correct conditions that constitute an immediate threat to the health or safety of tenants. The comprehensive plan shall contain—

"(1) a comprehensive assessment of—

"(A) the current physical condition of each public housing project owned or operated by the public housing agency;

"(B) the physical improvements necessary for each such project to permit the project to be rehabilitated to a level at least equal to the minimum property standards established by the Secretary and in effect at the time of the preparation of the comprehensive plan; and

"(C) the replacement needs of equipment systems and structural elements that will be required to be met (assuming routine and timely maintenance is performed) during the 5-year period covered by the comprehensive plan;

"(2) a comprehensive assessment of the improvements needed to upgrade the management and operation of the public housing agency and of each such project so that decent, safe, and sanitary living conditions will be provided such projects, which assessment shall include at least an identification of needs related to—

"(A) the management, financial, and accounting control systems of the public housing agency that are related to such projects;

"(B) the adequacy and qualifications of personnel employed by the public housing agency (in the management and operation of such projects) for each category of employment; and

"(C) the adequacy and efficacy of—

"(i) tenant programs and services in such projects;

"(ii) the security of each such project and its tenants;

"(iii) policies and procedures of the public housing agency for the selection and eviction of tenants in such projects; and

"(iv) other policies and procedures of the public housing agency relating to such projects, as specified by the Secretary;

"(3) an analysis, made on a project-by-project basis in accordance with standards and criteria prescribed by the Secretary, demonstrating that completion of the improvements and replacements identified under paragraphs (1) and (2) will reasonably ensure the long-term physical and social viability of each such project at a reasonable cost;

"(4) an action plan for making the improvements and replacements identified under paragraphs (1) and (2) that are determined under the analysis described in paragraph (3) to reasonably ensure long-term viability of each such project at a reasonable cost, which action plan shall include at least a schedule, in order of priority, of the actions that are to be completed over a period of not more than 5 years from the date of approval of the comprehensive plan by the Secretary and that are necessary—

"(A) to make the improvements and replacements identified under paragraph (1) for each project expected to receive capital improvements or replacements; and

"(B) to upgrade the management and operation of the public housing agency and its public housing projects as described in paragraph (2);

"(5) a statement, to be signed by the chief local government official (or Indian tribal official, if appropriate), certifying that—

"(A) the comprehensive plan was developed by the public housing agency in consultation with appropriate local government officials (or Indian tribal officials, if appropriate) and with tenants of the housing projects eligible for assistance under this section, which shall include not less than 2 public hearings (i) at least 1 of which shall be held prior to the initial adoption of any plan by the public housing agency for use of such assistance, and afford tenants and interested parties an opportunity to summarize their priorities and concerns, to ensure their due consideration in the planning process of the public housing agency; and (ii) at least 1 of which shall be held prior to final submission of the plan to the Department of Housing and Urban Development for its approval, to provide tenants and other interested parties an opportunity to comment on the plan of action proposed by the public housing agency in its submission; and

"(B) the comprehensive plan is consistent with the assessment of the community of its lower income housing needs and that the unit of general local government (or Indian tribe, if appropriate) will cooperate in the provision of tenant programs and services (as defined in section 3(c)(2));

"(6) a statement, to be signed by the chief public housing official, certifying that the public housing agency will carry out the comprehensive plan in conformity with title VI of the Civil Rights Act of 1964, title VIII of the Act of April 11, 1968 (commonly known as the Civil Rights Act of 1968), and section 504 of the Rehabilitation Act of 1973;

"(7) a preliminary estimate of the total cost of the items identified in paragraphs (1) and (2), including a preliminary estimate of the costs that will be incurred during each year covered by the comprehensive plan; and

"(8) such other information as the Secretary may require.

"(d) REVIEW OF COMPREHENSIVE PLANS.—

"(1) STANDARD FOR APPROVAL.—The Secretary shall approve a comprehensive plan unless—

"(A) the comprehensive plan is incomplete;

"(B) on the basis of available significant facts and data pertaining to the physical and operational condition of the public housing projects of the public housing agency or the management and operations of the public housing agency, the Secretary determines that the identification by the public housing agency of needs is plainly inconsistent with such facts and data;

"(C) on the basis of the comprehensive plan, the Secretary determines that the action plan described in subsection (c)(4) is plainly inappropriate to meeting the needs identified in the comprehensive plan, or that the public housing agency has failed to demonstrate that completion of improvements and replacements identified under paragraphs (1) and (2) of subsection (c) will reasonably ensure long-term viability of 1 or more public housing projects to which they relate at a reasonable cost; or

"(D) there is evidence available to the Secretary that tends to challenge in a substantial manner any certification contained in the comprehensive plan.

"(2) SCHEDULE FOR APPROVAL.—The comprehensive plan shall be considered to be approved, unless the Secretary notifies the public housing agency in writing within 75 calendar days of submission that the Secretary has disapproved the comprehensive plan as submitted, indicating the reasons for disapproval and modifications required to make the comprehensive plan approvable.

"(e) ANNUAL STATEMENT.—

"(1) SUBMISSION.—Each public housing agency receiving assistance under this section shall submit to the Secretary, at a date determined by the Secretary, an annual statement of the activities and expenditures projected to be funded, in whole or in part, by such assistance during the immediately following fiscal year of the public housing agency. The annual statement shall include a certification by the public housing agency that the proposed activities and expenditures are consistent with the approved comprehensive plan of the public housing agency. The annual statement also shall include a certification that the public housing agency has provided the tenants of the public housing and other interested parties the opportunity to review the annual statement and comment on it, and that such comments have been taken into account in formulating the annual statement as submitted to the Secretary.

"(2) PROPOSED AMENDMENTS TO COMPREHENSIVE PLAN.—A public housing agency may propose an amendment to its comprehensive plan under subsection (c) in any annual statement. Any such proposed amendment shall be reviewed in accordance with subsection (d), and shall include a certification that (A) the proposed amendment has been made publicly available for comment prior to its submission; (B) tenants and other interested parties have been given sufficient time to review and comment on it; and (C) such comments have been taken into consideration in the preparation and submission of the amendment.

"(3) APPROVAL.—The Secretary shall approve the annual statement unless the Secretary determines that it is inconsistent with the comprehensive plan. The annual statement shall be considered to be approved, unless the Secretary notifies the public housing agency in writing before the expiration of the 75-day period following submission of the annual statement that the Secretary has disapproved the annual statement as submitted, indicating the reasons for disapproval and the modifications required to make the annual statement approvable. The annual statement shall be approved before the public housing agency receives any assistance under this section for the fiscal year to which the annual statement relates.

"(f) ANNUAL PERFORMANCE REPORTS; REVIEWS AND AUDITS.—

"(1) PERFORMANCE AND EVALUATION REPORTS.—Each public housing agency receiving assistance under this section shall submit to the Secretary, on a date determined by the Secretary, a performance and evaluation report concerning the use of funds made available under this section. The report of the public housing agency shall include an assessment by the public housing agency of the relationship of such use of funds made available under this section, as well as the use of other funds, to the needs identified in the comprehensive plan of the public housing agency and to the purposes of this section. The public housing agency shall certify that the report has been made available for review and comment by tenants and other interested parties prior to its submission to the Secretary.

"(2) REVIEWS BY SECRETARY.—The Secretary shall, at least on an annual basis, make such reviews as may be necessary or appropriate to determine whether each public housing agency receiving assistance under this section—

"(A) has carried out its activities under this section in a timely manner and in accordance with its comprehensive plan;

"(B) has a continuing capacity to carry out its comprehensive plan in a timely manner;

"(C) has satisfied, or has made reasonable progress towards satisfying, such performance standards as shall be prescribed by the Secretary, which shall include at least that the public housing agency shall—

"(i) maintain all occupied dwelling units in public housing projects eligible for assistance under this section at levels at least equal to the housing quality standards established by the Secretary under section 8(o)(6);

"(ii) maintain at least a 97 percent occupancy rate for all dwelling units in such projects; and

"(iii) maintain an operating reserve, as authorized under section 9(a), equal to at least 20 percent of the routine expenses in the operating budget of each year; and

"(D) has made reasonable progress in carrying out modernization projects approved under the provisions of section 14.

"(3) AUDITS OF FINANCIAL TRANSACTIONS.—Recipients of assistance under this section shall have an audit made in accordance with chapter 75 of title 31, United States Code. The Secretary, the Inspector General of the Department of Housing and Urban Development, and the Comptroller General of the United States shall have access to all books, documents, papers, or other records that are pertinent to the activities carried out under this section in order to make audit examinations, excerpts, and transcripts.

"(4) CORRECTIVE ACTION.—The comprehensive plan, any amendments to the comprehensive plan, and the annual statement shall, once approved by the Secretary, be binding upon the Secretary and the public housing agency. The Secretary may order corrective action only if the public housing agency does not comply with paragraph (1) or (2) or if an audit under paragraph (3) reveals findings that the Secretary reasonably believes require such corrective action. The Secretary may withhold funds under this section only if the public housing agency fails to take such corrective action after notice and a reasonable opportunity to do so. In administering this section, the Secretary shall, to the greatest extent possible, respect the professional judgment of the administrators of the public housing agency.

"(g) ELIGIBLE COSTS.—A public housing agency may use financial assistance received under subsection (b) only—

"(1) to undertake activities described in its approved comprehensive plan under subsection (c) or its annual statement under subsection (e);

"(2) to correct conditions that constitute an immediate threat to the health or safety of tenants, whether or not the need for such correction is indicated in its comprehensive plan or annual statement;

"(3) to prepare a comprehensive plan under subsection (c), including reasonable costs that may be necessary to assist tenants in participating in the planning process in a meaningful way, an annual statement under subsection (e), an annual performance and evaluation report under subsection (f)(1), and an audit under subsection (f)(3); and

"(4) to operate public housing projects consistent with the requirements that apply to amounts provided under section 9, except that not more than 20 percent of the funds secured under this section may be used for such purposes.

"(h) ALLOCATION OF ASSISTANCE.—The system for allocating assistance under section 14 in effect on May 21, 1985, shall remain in effect until the Congress, by law, establishes criteria for a formula or other allocation method to be used by the Secretary under this section in determining—

"(1) for each public housing agency, the amounts that are necessary to address current needs for capital improvements;

"(2) for each public housing agency, the amounts that are necessary to address the future needs for capital improvements through a replacement reserve; and

"(3) the relative needs of public housing agencies of different sizes for the amounts described in paragraphs (1) and (2).

"(i) ANNUAL REPORT.—The Secretary shall include in the annual report under section 8 of the Department of Housing and Urban Development Act a description of the allocation, distribution, and use of assistance under this section on a regional basis.

"(j) AUTHORIZATION OF APPROPRIATIONS.—

"(1) CURRENT NEEDS.—

"(A) There are authorized to be appropriated under this section to provide assistance for the current needs for capital improvements of public housing agencies such sums as may be provided in appropriation Acts for fiscal years 1987, 1988, and 1989.

"(B) Of the amounts appropriated under subparagraph (A), 3 percent shall be reserved by the Secretary to provide assistance to correct conditions in public housing agencies that constitute an immediate threat to the health or safety of tenants.

"(2) REPLACEMENT RESERVE.—There are authorized to be appropriated under this section to provide assistance for the future needs for capital improvements in replacement reserves for public housing agencies such sums as may be provided in appropriation Acts for fiscal years 1987, 1988, and 1989.

"(3) AVAILABILITY.—Any amount appropriated under this subsection shall remain available until expended.

"(k) REGULATIONS.—The Secretary may issue such regulations as are necessary to carry out the provisions of this section.".

(d) USE OF OPERATING ASSISTANCE.—Section 9(a)(1) of the United States Housing Act of 1937 is amended by inserting after the first sentence the following new sentence: "A public housing agency may also use any available amounts provided under this section in accordance with the purpose and requirements of section 20.".

(e) ASSISTANCE FOR PREPARATION OF COMPREHENSIVE PLANS.—Of the amounts approved in appropriation Acts for fiscal year 1986 for financial assistance under section 14 of the United States Housing Act of 1937, the Secretary shall provide such sums as may be reasonable and necessary to public housing agencies that request funds to prepare comprehensive plans under section 20(c) of the United States Housing Act of 1937, as added by this section.

(f) APPLICABILITY.—

(1) IN GENERAL.—The amendments made by subsections (c) and (d) shall be applicable in fiscal year 1987 and succeeding fiscal years, but in no event before the date of the enactment of the law referred to in section 20(h) of the United States Housing Act of 1937, as added by this section. Except as provided in paragraph (2), the provisions of section 14 of the United States Housing Act of 1937 shall continue to apply to amounts appropriated for any prior fiscal year to carry out such section 14.

(2) TRANSITION PROVISION.—Any amount obligated by the Secretary of Housing and Urban Development to a public housing agency under section 14 of the United States Housing Act of 1937 from amounts appropriated for any fiscal year beginning on or before the date of the enactment of the law referred to in section 20(h) of the United States Housing Act of 1937, as added by this section, shall be used for the purposes for which such amount was provided, or for purposes consistent with a comprehensive plan submitted by the public housing agency and approved by the Secretary under such section 20 as added by this section, as the public housing agency considers appropriate.

SEC. 4214. APPLICABILITY OF COMPARABILITY LIMITATION ON RENT ADJUSTMENTS IN CERTAIN PROJECTS ASSISTED UNDER SECTION 8.

(a) IN GENERAL.—The comparability limitation established under section 8(c)(2) of the United States Housing Act of 1937 on adjustments in the maximum monthly rents that may be charged under housing assistance payments contracts entered into under such section 8 shall not apply to the 122 projects assisted under such section 8 and developed and managed before March 1, 1985, by the Oregon Housing Division of the Oregon Department of Commerce.

(b) EXPIRATION.—The provisions of subsection (a) shall expire on whichever of the following occurs first:

(1) The date on which the Secretary of Housing and Urban Development and the Administrator of the Oregon Housing Division enter into an agreement on the comparability requirements that will apply to the projects described in subsection (a).

(2) The expiration of the 18-month period beginning on the date of the enactment of this Act.

SEC. 4215. PUBLIC HOUSING RESIDENT MANAGEMENT.

The United States Housing Act of 1937 (as amended by section 4213 of this Act) is further amended by adding at the end the following new section:

"PUBLIC HOUSING RESIDENT MANAGEMENT

"SEC. 21. (a) PURPOSE.—The purpose of this section is to establish a pilot program of resident management of public housing projects, as one means of improving existing living conditions in public housing projects, by providing increased flexibility for public housing projects that are managed by residents by—

"(1) permitting tenants to volunteer labor subject to existing statutory and contractual obligations of the public housing agency;

"(2) permitting the retention, and use for certain purposes, of any revenues exceeding operating and projects costs; and

"(3) providing funding, from amounts otherwise available, for technical assistance to promote formation and development of resident management entities.

"(b) PROGRAM REQUIREMENTS.—

"(1) RESIDENT COUNCIL.—As a condition of entering into a resident management program, the elected resident council of a public housing project shall approve the establishment of a resident management corporation. The resident management corporation and the resident council may be the same organization, if the organization complies with the requirements applicable to both the corporation and council. The corporation shall be a nonprofit corporation organized under the laws of the State in which the project is located, and the tenants of the project shall be the sole voting members of the corporation. If there is no elected resident council, a majority of the households of the public housing project shall approve the establishment of a resident council to determine the feasibility of

establishing a resident management corporation to manage the project.

"(2) PUBLIC HOUSING MANAGEMENT SPECIALIST.—The resident council of a public housing project, in cooperation with the public housing agency, shall select a qualified public housing management specialist to assist in determining the feasibility of, and to help establish, a resident management corporation and to provide training and other duties agreed to in the daily operations of the project.

"(3) BONDING AND INSURANCE.—Before assuming any management responsibility for a public housing project, the resident management corporation shall provide fidelity bonding and insurance, or equivalent protection, in accordance with regulations and requirements of the Secretary and the public housing agency. Such bonding and insurance, or its equivalent, shall be adequate to protect the Secretary and the public housing agency against loss, theft, embezzlement, or fraudulent acts on the part of the resident management corporation or its employees.

"(4) MANAGEMENT RESPONSIBILITIES.—A resident management corporation that qualifies under this section, and that supplies insurance and bonding or equivalent protection sufficient to the Secretary and the public housing agency, shall enter into a contract with the public housing agency establishing the respective management rights and responsibilities of the corporation and the public housing agency. Such contract may include specific terms governing management personnel and compensation, access to public housing project records, submission of and adherence to budgets, rent collection procedures, tenant selection and screening, tenant income verification, tenant eligibility determinations, tenant eviction, the acquisition of supplies and materials, and such other matters as may be appropriate. The contract shall be treated as a 'contracting out' of services and shall be subject to any provision of a collective bargaining agreement regarding 'contracting out' to which the public housing agency is subject.

"(5) ANNUAL AUDIT.—The books and records of a resident management corporation operating a public housing project shall be audited annually by a certified public accountant. A written report of each audit shall be forwarded to the public housing agency and the Secretary.

"(c) COMPREHENSIVE IMPROVEMENT ASSISTANCE.—Public housing projects managed by resident management corporations may be provided with comprehensive improvement assistance under section 14 or 20 for purposes of renovating such projects in accordance with such section. The Secretary shall issue regulations that provide public housing projects managed by resident management corporations with additional consideration in the allocation of comprehensive improvement assistance under section 14 to 20. If such renovation activities (including the planning and architectural design of the rehabilitation) are administered by a resident management corporation, the public housing agency involved may not retain, for any administrative or other reason, any portion of the assistance provided pursuant to this subsection.

"(d) WAIVER OF FEDERAL REQUIREMENTS.—

"(1) WAIVER OF REGULATORY REQUIREMENTS.—Upon the request of any resident management corporation and public housing agency, and after notice and an opportunity to comment is afforded to the affected tenants, the Secretary may waive any requirement established by the Secretary (and not specified in any statute) that the Secretary determines to unnecessarily increase the costs or restrict the income of a public housing project.

"(2) WAIVER TO PERMIT EMPLOYMENT.—Upon the request of any resident management corporation, the Secretary may, subject to applicable collective bargaining agreements, permit residents of such project to volunteer a portion of their labor.

"(3) REPORT ON ADDITIONAL WAIVERS.—Not later than 6 months after the date of the enactment of the Housing Act of 1986, the Secretary shall submit to the Congress a report setting forth any additional waivers of Federal law that the Secretary determines are necessary or appropriate to carry out the provisions of this section. In preparing the report, the Secretary shall consult with resident management corporations and public housing agencies.

"(4) EXCEPTIONS.—The Secretary may not waive under this subsection any requirement with respect to income eligibility for purposes of section 16, rental payments under section 3(a), tenant or applicant protections, employee organizing rights, or rights of employees under collective bargaining agreements.

"(e) OPERATING SUBSIDY AND PROJECT INCOME.—

"(1) CALCULATION OF OPERATING SUBSIDY.—Notwithstanding any provision of section 9 or any regulation under such section, and subject to the exception provided in paragraph (3), the portion of the operating subsidy received by a public housing agency under section 9 that is allocated to a public housing project managed by a resident management corporation shall not be less than the public housing agency per unit monthly amount provided in the previous year as determined on an individual project basis.

"(2) CONTRACT REQUIREMENTS.—Any contract for management of a public housing project entered into by a public housing agency and a resident management corporation shall specify the amount of income expected to be derived from the project itself (from sources such as rents and charges) and the amount of income funds to be provided to the project from the other sources of income of the public housing agency (such as operating subsidy under section 9, interest income, administrative fees, and rents).

"(3) CALCULATION OF TOTAL INCOME.—

"(A) Subject to subparagraph (B), the amount of funds provided by a public housing agency to a public housing project managed by a resident management corporation may not be reduced during the 3-year period beginning on the date of the enactment of the Housing Act of 1986 (or on any later date on which a resident management corporation is first established for the project).

"(B) If the total income of a public housing agency (including the operating subsidy provided to the public housing agency under section 9) is reduced or increased, the income provided by the public housing agency to a public housing project managed by a resident management corporation shall be reduced or increased in proportion to the reduction or increase in the total income of the public housing agency, except that any reduction in operating subsidy that occurs as a result of fraud, waste, or mismanagement by the public housing agency shall not affect the funds provided to the resident management corporation.

"(4) RETENTION OF EXCESS REVENUES.—

"(A) Any income generated by a public housing agency (other than investment income or rental income) that exceeds the income estimated for purposes of calculating operating subsidies according to the performance funding system established under section 9 shall be excluded in subsequent years in calculating operating subsidies.

"(B) Any income generated by a resident management corporation of a public housing project that exceeds the income estimated for purposes of this subsection shall be excluded in subsequent years in calculating (i) the operating subsidies provided to the public housing agency under section 9; and (ii) the funds provided by the public housing agency to the resident management corporation.

"(C) Any revenues retained by a public housing agency or resident management corporation under subparagraph (A) or (B) shall be used for purposes of improving the maintenance and operation of the public housing project, for establishing business enterprises that employ residents of public housing, or for acquiring additional dwelling units for lower income families.

"(f) RESIDENT MANAGEMENT TECHNICAL ASSISTANCE AND TRAINING.—

"(1) FINANCIAL ASSISTANCE.—To the extent budget authority is available for section 14 or 20, the Secretary shall provide financial assistance to up to 15 resident management corporations or resident councils that obtain, by contract or otherwise, technical assistance for the development of resident management entities, including the formation of such entities, the development of the management capability of newly formed or existing entities, the identification of the social support needs of residents of public housing projects, and the securing of such support.

"(2) LIMITATION ON ASSISTANCE.—The financial assistance provided under this subsection with respect to any public housing project may not exceed $100,000.

"(3) FUNDING.—Of the amounts available for financial assistance under section 14 or 20 for fiscal year 1987, the Secretary may use not more than $1,500,000 to carry out this subsection.".

SEC. 4216. PUBLIC HOUSING HOMEOWNERSHIP AND MANAGEMENT OPPORTUNITIES.

(a) IN GENERAL.—The United States Housing Act of 1937 (as amended by sections 4213 and 4215 of this Act) is further amended by adding at the end the following new section:

"PUBLIC HOUSING HOMEOWNERSHIP AND MANAGEMENT OPPORTUNITIES

"SEC. 22. (a) HOMEOWNERSHIP OPPORTUNITIES.—The families residing in each public housing project shall be provided with the opportunity to purchase the dwelling units in the project as follows:

"(1) FORMATION OF RESIDENT MANAGEMENT CORPORATION.—As a condition for public housing homeownership—

"(A) the adult residents of a public housing project shall have formed a resident management corporation in accordance with regulations and requirements of the Secretary; and

"(B) the resident management corporation shall have entered into a contract with the public housing agency establishing the respective management rights and responsibilities of the resident management corporation and the public housing agency.

"(2) HOMEOWNERSHIP ASSISTANCE.—

"(A) The Secretary shall provide comprehensive improvement assistance under sec-

tion 14 or 20 to public housing projects in which homeownership activities under this section are conducted in order to ensure that the physical condition, management, and operation of the projects are sufficient to permit and encourage homeownership by the families residing in the projects.

"(B) The Secretary, and the public housing agency owning and operating each public housing project, shall provide such training, technical assistance, and educational assistance as the Secretary determines to be necessary to prepare the families residing in the project, and any resident management corporation established under paragraph (1), for homeownership.

"(3) CONDITIONS OF PURCHASE.—

"(A) A resident management corporation may purchase all or part of a public housing project following a determination by the Secretary that—

"(i) the resident management corporation has been established in accordance with paragraph (1); and

"(ii) the resident management corporation is prepared to undertake the ownership, management, and maintenance of the project with continued assistance from the Secretary.

"(B) A family may purchase its dwelling unit directly from the public housing agency, if the Secretary determines that the purchase will not interfere with the rights of other families residing in the public housing project or harm the efficient operation of the project.

"(4) ANNUAL CONTRIBUTIONS.—Notwithstanding the purchase of all or part of a public housing project under this section, the Secretary shall continue to pay annual contributions with respect to the project. Such contributions may not exceed the maximum contributions authorized in section 5(a).

"(5) PURCHASE PRICE LIMITATION.—The price for any purchase under paragraph (3) shall be 25 percent of the fair market value of the property involved, as determined by the Secretary.

"(6) PURCHASE ARRANGEMENTS.—

"(A) A purchase under this section may be made under any of the following arrangements, at the option of the family or resident management corporation making the purchase:

"(i) Lease-purchase.

"(ii) Shared appreciation, except that not less than 50 percent of the future appreciation in the value of the property involved shall be reserved to the family or resident management corporation making the purchase.

"(iii) Cooperative ownership.

"(iv) Condominium ownership.

"(v) Purchase with amounts borrowed on the security of the property involved.

"(vi) Any other arrangement determined by the Secretary to be appropriate.

"(B) For purposes of assisting any purchase by a family or resident management corporation under this section, the public housing agency involved shall make a loan on the security of the property involved to the family or resident management corporation at a rate of interest equal to 70 percent of the market interest rate for conventional mortgages on the date on which the loan is made.

"(7) RECAPTURE AT TIME OF SALE.—If any purchaser of property under this section sells the property before the expiration of the 5-year period following the date of the purchase, the purchaser shall pay the following percentage of the sale price to the Secretary:

"(A) 75 percent, if the sale occurs during the 1st 1-year period following such date.

"(B) 60 percent, if the sale occurs during the 2d 1-year period following such date.

"(C) 45 percent, if the sale occurs during the 3d 1-year period following such date.

"(D) 30 percent, if the sale occurs during the 4th 1-year period following such date.

"(E) 15 percent, if the sale occurs during the 5th 1-year period following such date.

"(b) RESIDENT MANAGEMENT OPPORTUNITIES.—

"(1) IN GENERAL.—The families residing in each public housing project shall be provided with the opportunity to undertake the management, maintenance, educational, and cultural functions of the project.

"(2) MANAGEMENT ASSISTANCE.—The Secretary, and the public housing agency owning and operating the public housing project, shall provide such training, technical assistance, and educational assistance as may be necessary to prepare the resident management corporation established under subsection (a)(1) to undertake the management, maintenance, educational, and cultural functions of the project.

"(3) CONDITIONS OF RESIDENT MANAGEMENT.—A resident management corporation may undertake all or part of the management, maintenance, educational, and cultural functions of a public housing project following a determination by the Secretary that the resident management corporation is capable of undertaking such functions.

"(c) PROTECTION OF NONPURCHASING FAMILIES.—

"(1) EVICTION PROHIBITION.—No family residing in a dwelling unit in a public housing project may be evicted by reason of the sale of the project to a resident management corporation under this section.

"(2) RENTAL ASSISTANCE.—If any family resides in a dwelling unit in a public housing project purchased by a resident management corporation, and the family decides not to purchase the dwelling unit, the Secretary may offer to provide to the family a housing voucher determined by the Secretary to be appropriate to permit the family to continue to reside in the dwelling unit.

"(3) RELOCATION ASSISTANCE.—If any family resides in a dwelling unit in a public housing project in which other dwelling units are purchased under this section, and the family decides not to purchase the dwelling unit, the Secretary may offer—

"(A) to assist the family in relocating to a dwelling unit in another public housing project; or

"(B) to provide to the family a housing voucher determined by the Secretary to be appropriate to permit the family to obtain comparable alternative housing.

"(d) FINANCIAL ASSISTANCE.—

"(1) ASSISTANCE FOR PUBLIC HOUSING AGENCIES.—The Secretary shall provide to public housing agencies such financial assistance as the Secretary determines is necessary to permit such agencies to carry out the provisions of this section.

"(2) OPERATING SUBSIDY.—The operating subsidy for a project managed by a resident management corporation shall not be less than the public housing agency per unit monthly amount provided in the previous year. Such subsidy may not be reduced during the 3-year period beginning on the date on which the resident managed housing is transferred to resident ownership, except that if the total income of the public housing agency is reduced the income provided by the public housing agency to the resident owned project may be reduced in proportion to the total revenue reduction of the public housing agency.

"(e) ADDITIONAL HOMEOWNERSHIP AND MANAGEMENT OPPORTUNITIES.—

"(1) IN GENERAL.—No provision of this section may be construed to preclude the Secretary or any public housing agency from providing additional homeownership or resident management opportunities under section 5(h), section 6(c)(4)(D), or any other provision of this Act.

"(2) PURCHASE OF UNOCCUPIED UNITS.—Any qualified public housing resident or qualified applicant for public housing residence may purchase any unoccupied dwelling unit in a public housing project, subject to the conditions of this section.

"(f) REGULATIONS.—The Secretary shall issue such regulations as may be necessary to carry out the provisions of this section. Such regulations may establish any additional terms and conditions for homeownership or resident management under this section that are determined by the Secretary to be appropriate.

"(g) ANNUAL REPORT.—The Secretary shall annually submit to the Congress a report setting forth—

"(1) any need for the development of additional public housing dwelling units as a result of the sale of public housing dwelling units under this section;

"(2) recommendations of the Secretary for additional budget authority to carry out such development; and

"(3) recommendations of the Secretary to ensure decent homes and decent neighborhoods for lower income families.

"(h) LIMITATION.—Any authority of the Secretary under this section to provide financial assistance, or to enter into contracts to provide financial assistance, shall be effective only to such extent or in such amounts as are or have been provided in advance in appropriation Acts.".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on October 1, 1986, or the date of the enactment of this Act, whichever occurs later.

PART 2—MULTIFAMILY HOUSING MANAGEMENT AND PRESERVATION

SEC. 4221. MANAGEMENT AND PRESERVATION OF HUD-OWNED MULTIFAMILY HOUSING PROJECTS.

(a) GOALS.—Section 203(a) of the Housing and Community Development Amendments of 1978 is amended by striking "(a)" and all that follows through the semicolon at the end of paragraph (1) and inserting the following:

"(a) The Secretary of Housing and Urban Development (in this section referred to as the 'Secretary') shall manage and dispose of multifamily housing projects that are owned by the Secretary, or whose mortgages are delinquent or subject to a workout agreement and whose mortgages are held by, assigned to, or being foreclosed upon by the Secretary, in a manner that is consistent with the National Housing Act and this section and that will, in the least costly fashion among the reasonable alternatives available, further the goals of—

"(1) preserving so that they are available to and affordable by low- and moderate-income persons—

"(A) all units in multifamily housing projects that are formerly subsidized projects;

"(B) in multifamily housing projects owned by the Secretary, at least the units that are occupied by low- and moderate-income persons or vacant; and

"(C) in all other multifamily housing projects, at least the units that are, on the date of assignment, occupied by low- and moderate-income persons;".

(b) MANAGEMENT SERVICES.—Section 203(b)(2) of the Housing and Community Development Amendments of 1978 is amended by striking ", owned by the Secretary" and inserting "to which subsection (a) applies".

(c) MAINTAINING OF PROJECTS.—Section 203(c) of the Housing and Community Development Amendments of 1978 is amended to read as follows:

"(c) The Secretary shall—

"(1) to the greatest extent possible, maintain all occupied multifamily housing projects to which subsection (a) applies in a decent, safe, and sanitary condition;

"(2) to the greatest extent possible, maintain full occupancy in all such projects; and

"(3) maintain all such projects for purposes of providing rental or cooperative housing for the longest feasible period.".

(d) FINANCIAL ASSISTANCE.—Section 203 of the Housing and Community Development Amendments of 1978 is amended—

(1) by redesignating subsections (d) through (g) as subsections (e) through (h), respectively; and

(2) by inserting after subsection (c) the following new subsection:

"(d) In carrying out the goals specified in subsection (a)(1) the Secretary shall take 1 or both of the following actions:

"(1) Enter into contracts under section 8 of the United States Housing Act of 1937, to the extent budget authority is available for such section 8, with owners of multifamily housing projects that are acquired at foreclosure or after sale by the Secretary. Such contracts shall be attached to the project involved for a period of not less than 15 years. Such contracts shall be sufficient to assist all units that are occupied by lower income families eligible for assistance under such section 8 at the time of foreclosure or sale, as the case may be, and all units that are vacant at such time (which units shall be made available for such families as soon as possible). In order to make available to families any units in formerly subsidized projects that are occupied by persons not eligible for assistance under such section 8, but that subsequently become vacant, the contract shall also provide that when any such vacancy occurs the owner involved shall apply to the Secretary for additional assistance to the project involved under the same terms as the original assistance. The Secretary shall provide such contracts at contract rents that, consistent with subsection (a), provide for the rehabilitation of such project and do not exceed the most recently adjusted fair market rents for substantially rehabilitated units published by the Secretary in the Federal Register.

"(2) In accordance with the authority provided under the National Housing Act, provide purchase-money mortgages, reduce the selling price, or provide other financial assistance to the owners of multifamily housing projects that are acquired at foreclosure or after sale by the Secretary on terms that will ensure that, for a period of not less than 15 years (A) the project will remain available to and affordable by low- and moderate-income persons; and (B) such persons shall pay not more than the amount payable as rent under section 3(a) of the United States Housing Act of 1937.".

(e) DISPLACEMENT PROTECTION.—Section 203(e)(1) of the Housing and Community Development Amendments of 1978, as so redesignated in this section, is amended by inserting "or controlled" after "owned".

(f) LIMITATIONS ON CERTAIN LOAN AND MORTGAGE SALES.—Section 203 of the Housing and Community Development Amendments of 1978 is amended—

(1) by redesignating subsections (g) and (h), as so redesignated in this section, as subsections (h) and (i); and

(2) by inserting before such subsection (h) the following new subsection:

"(g) The Secretary may not approve the sale of any loan or mortgage held by the Secretary on any formerly subsidized project unless such sale is made as part of a transaction that will ensure that such project will continue to operate at least until the maturity date of such loan or mortgage in a manner that will provide rental housing on terms at least as advantageous to existing and future tenants as the terms required by the program under which the loan or mortgage was made or insured prior to the assignment of the loan or mortgage on such project to the Secretary.".

(g) FORMERLY SUBSIDIZED PROJECTS.—Section 203(h) of the Housing and Community Development Amendments of 1978, as so redesignated in this section, is amended—

(1) by inserting "(1)" after the subsection designation; and

(2) by adding at the end the following new paragraph:

"(2) For the purpose of this section, the term 'formerly subsidized project' means a multifamily housing project receiving any of the following assistance immediately prior to the assignment of the mortgage on such project to, or the acquisition of such mortgage by, the Secretary:

"(A) below market interest rate mortgage insurance under the proviso of section 221(d)(5) of the National Housing Act;

"(B) interest reduction payments made in connection with mortgages insured under section 236 of the National Housing Act;

"(C) rent supplement payments under section 101 of the Housing and Urban Development Act of 1965;

"(D) direct loans at below market interest rates, made under section 202 of the Housing Act of 1959 or section 312 of the Housing Act of 1964; or

"(E) housing assistance payments made under section 23 of the United States Housing Act of 1937 (as in effect before January 1, 1975) or section 8 of the United States Housing Act of 1937 (other than subsection (b)(1) of such section).".

SEC. 4222. ACQUISITION OF INSURED MULTIFAMILY HOUSING PROJECTS.

Section 207(k) of the National Housing Act is amended by inserting after the second sentence the following new sentence: "In determining the amount to be bid, the Secretary shall act consistently with the goal established in section 203(a)(1) of the Housing and Community Development Amendments of 1978.".

SEC. 4223. TENANT PARTICIPATION IN MULTIFAMILY HOUSING PROJECTS.

(a) APPLICABILITY.—Section 202(a) of the Housing and Community Development Amendments of 1978 is amended by inserting before the period at the end the following: "or section 202 of the Housing Act of 1959".

(b) NOTICE AND COMMENT.—Section 202(b)(1) of the Housing and Community Development Amendments of 1978 is amended—

(1) by striking "or" the third place it appears;

(2) by inserting after "alterations," the following: "transfer of physical assets, or application for capital improvements loan,"; and

(3) by striking "and the Secretary deems it appropriate" and inserting the following: "or where the Secretary proposes to sell a mortgage secured by a multifamily housing project".

(c) NONDISCRIMINATION AGAINST SECTION 8 CERTIFICATE HOLDERS.—Section 202(b)(2) of the Housing and Community Development Amendments of 1978 is amended by inserting before the semicolon at the end the following: ", and such owners may not refuse to lease any vacant dwelling unit in the project that rents for an amount not greater than the fair market rent for a comparable unit, as determined by the Secretary under section 8 of the United States Housing Act of 1937, to a holder of a certificate of eligibility under such section solely because of the status of such prospective tenant as a holder of such certificate".

PART 3—OTHER HOUSING ASSISTANCE PROGRAMS

SEC. 4241. HOUSING FOR THE ELDERLY AND HANDICAPPED.

The first sentence of section 202(a)(4)(B)(i) of the Housing Act of 1959 is amended—

(1) by striking "and" the first place it appears; and

(2) by inserting after "1984," the following: "and to such sums as may be approved in appropriation Acts for fiscal years 1986 and 1987,".

SEC. 4242. HOUSING FOR THE HANDICAPPED.

(a) FINDINGS AND PURPOSE.—

(1) The Congress hereby finds that—

(A) housing for nonelderly handicapped families is assisted under section 202 of the Housing Act of 1959 and section 8 of the United States Housing Act of 1937;

(B) the housing programs under such sections are designed and implemented primarily to assist rental housing for elderly and nonelderly families and are often inappropriate for dealing with the specialized needs of the physically impaired, the developmentally disabled, and the chronically mentally ill;

(C) the development of housing for nonelderly handicapped families under such programs is often more expensive than necessary, thereby reducing the number of such families that can be assisted with available funds;

(D) the program under section 202 of the Housing Act of 1959 can continue to provide direct loans to finance group residences and independent apartments for nonelderly handicapped families, but can be made more efficient and less costly by the adoption of standards and procedures applicable only to housing for such families;

(E) the use of the program under section 8 of the United States Housing Act of 1937 to assist rentals for housing for nonelderly handicapped families is time consuming and unnecessarily costly and, in some areas of the Nation, prevents the development of such housing;

(F) the use of the program under section 8 of the United States Housing Act of 1937 to assist rentals for housing for nonelderly handicapped families should be replaced by a more appropriate subsidy mechanism;

(G) both elderly and handicapped housing projects assisted under section 202 of the Housing Act of 1959 will benefit from an increased emphasis on supportive services and a greater use of State and local funds; and

(H) an improved program for nonelderly handicapped families will assist in providing shelter and supportive services for mentally ill persons who might otherwise be homeless.

(2) The purpose of this section is to improve the direct loan program under section 202 of the Housing Act of 1959 to ensure that such program meets the special housing and related needs of nonelderly handicapped families.

(b) HOUSING FOR HANDICAPPED FAMILIES.—(1) Section 202(h) of the Housing Act of 1959 is amended to read as follows:

"(h)(1) Of the amounts made available in appropriation Acts for loans under subsection (a)(4)(C) for any fiscal year commencing after September 30, 1985, not less than 15 percent shall be available for loans for the development costs of housing for handicapped families. If the amount required for any such fiscal year for approvable applications for loan under this subsection is less than the amount available under this paragraph, the balance shall be made available for loans under other provisions of this section.

"(2) The Secretary shall take such actions as may be necessary to ensure that—

"(A) funds made available under this subsection will be used to support a variety of methods of meeting the needs primarily of nonelderly handicapped families by providing a variety of housing options, ranging from small group homes to independent living complexes; and

"(B) housing for handicapped families assisted under this subsection will provide families occupying units in such housing with an assured range of services specified in subsection (f), will provide such families with opportunities for optimal independent living and participation in normal daily activities, and will facilitate access by such families to the community at large and to suitable employment opportunities within such community.

"(3)(A) In allocating funds under this subsection, and in processing applications for loans under this section and assistance payments under paragraph (4), the Secretary shall adopt such distinct standards and procedures as the Secretary determines appropriate due to differences between housing for handicapped families and other housing assisted under this section.

"(B) The Secretary may, on a demonstration basis, determine the feasibility and desirability of reducing processing time and costs for housing for handicapped families by limiting project design to a small number of prototype designs. Any such demonstration shall be limited to the 3-year period following the date of the enactment of the Housing Act of 1986, may only involve projects whose sponsors consent to participation in such demonstration, and shall be described in a report submitted by the Secretary to the Congress following completion of such demonstration.

"(4)(A) The Secretary shall, to the extent approved in appropriation Acts, enter into contracts with owners of housing for handicapped families receiving loans under, or meeting the requirements of, this section to make monthly payments to cover any part of the costs attributed to units occupied (or, as approved by the Secretary, held for occupancy) by lower income families that is not met from project income. The annual contract amount for any project shall not exceed the sum of the initial annual project rentals for all units and any initial utility and services allowances for such units, as approved by the Secretary. Any contract amounts not used by a project in any year shall remain available to the project until the expiration of the contract. The term of a contract entered into under this subparagraph shall be 240 months. The annual contract amount may be adjusted by the Secretary if the sum of the project income and the amount of assistance payments available under this subparagraph are inadequate to provide for reasonable project costs. In the case of an intermediate care facility in which there reside families assisted under title XIX of the Social Security Act, project income under this subparagraph shall include the same amount as if such families were being assisted under title XVI of the Social Security Act.

"(B) The Secretary shall approve initial project rentals for any project assisted under this subsection based on the determination of the Secretary of the total actual necessary and reasonable costs of developing and operating the project, taking into consideration the need to contain costs to the extent practicable and consistent with the purposes of the project and this section.

"(C) The Secretary shall require that, during the term of each contract entered into under subparagraph (A), all units in a project assisted under this subsection shall be made available for occupancy by lower income families, as such term is defined in section 3(b)(2) of the United States Housing Act of 1937. The rent payment required of a lower income family shall be determined in accordance with section 3(a) of such Act, except that the gross income of a family occupying an intermediate care facility assisted under title XIX of the Social Security Act shall be the same amount as if the family were being assisted under title XVI of the Social Security Act.

"(D) The Secretary shall coordinate the processing of an application for a loan for housing for handicapped families under this section and the processing of an application for assistance payments under this paragraph for such housing.".

(2) Section 202(d) of the Housing Act of 1959 is amended by adding at the end the following new paragraphs:

"(9) The term 'housing for handicapped families' means housing and related facilities to be occupied by handicapped families who are primarily nonelderly handicapped families.

"(10) The term 'nonelderly handicapped families' means elderly or handicapped families, the head of which (and spouse, if any) is less than 62 years of age at the time of initial occupancy of a project assisted under this section.".

(3) Section 202(c)(3) of the Housing Act of 1959 is amended by inserting after "section" the following: "and designed for dwelling use by 12 or more elderly or handicapped families".

(c) SUPPORTIVE SERVICES FOR ELDERLY AND HANDICAPPED FAMILIES.—Section 202(f) of the Housing Act of 1959 is amended—

(1) by inserting "(1)" after the subsection designation; and

(2) by adding at the end the following new paragraph:

"(2) Each applicant for a loan under this section for housing and related facilities shall submit with the application a supportive services plan describing—

"(A) the category or categories of families such housing and facilities are intended to serve;

"(B) the range of necessary services to be provided to the families occupying such housing;

"(C) the manner in which such services will be provided to such families; and

"(D) the extent of State and local funds available to assist in the provision of such services.".

(d) TERMINATION OF SECTION 8 ASSISTANCE.—On and after the first date that amounts approved in an appropriation Act for any fiscal year become available for contracts under section 202(h)(4)(A) of the Housing Act of 1959, as amended by subsection (b) of this section, no project for handicapped (primarily nonelderly) families approved for such fiscal year pursuant to section 202 of such Act shall be provided assistance payments under section 8 of the United States Housing Act of 1937, except pursuant to a reservation for a contract to make such assistance payments that was made before the first date that amounts for contracts under such section 202(h)(4)(A) became available.

(e) IMPLEMENTATION.—Not later than the expiration of the 120-day period following the date of the enactment of this Act, the Secretary of Housing and Urban Development shall, to the extent amounts are approved in an appropriation Act for use under section 202(h)(4)(A) of the Housing Act of 1959 for fiscal year 1986, publish in the Federal Register a notice of fund availability to implement the provisions of, and amendments made by, this section. The Secretary shall issue such rules as may be necessary to carry out such provisions and amendments for fiscal year 1987 and thereafter.

(f) EFFECTIVE DATE AND APPLICABILITY.—(1) Except as otherwise provided in this section, the provisions of, and amendments made by, this section shall not apply with respect to projects with loans or loan reservations made under section 202 of the Housing Act of 1959 before the implementation date under subsection (e).

(2) Notwithstanding paragraph (1), the Secretary may apply the provisions of, and amendments made by, this section to any project in order to facilitate the development of such project in a timely manner.

SEC. 4243. SECTION 235 HOMEOWNERSHIP PROGRAM.

The second sentence of section 235(h)(1) of the National Housing Act is amended—

(1) by striking "and" the last place it appears; and

(2) by inserting before the period at the end the following: ", and by such sums as may be approved in appropriation Acts for fiscal years 1986 and 1987".

SEC. 4244. CONGREGATE SERVICES.

Section 411(a)(6) of the Congregate Housing Services Act of 1978 is amended by inserting before the comma the following: "and fiscal years 1986 and 1987".

SEC. 4245. PROCEDURES AND POLICIES FOR MANDATORY MEAL PROGRAMS IN ASSISTED HOUSING FOR THE ELDERLY.

(a) EXEMPTIONS FROM MEAL PROGRAMS.—(1) REQUIRED EXEMPTIONS.—The owner of any assisted housing for the elderly that requires tenants to participate in a meal program shall grant a tenant an exemption from such participation if—

(A) the program cannot satisfactorily accommodate the special dietary or health needs of the tenant, as certified by the physician of the tenant;

(B) the program cannot satisfactorily accommodate the special diet or food practices of the tenant;

(C) participation in the program substantially interferes with the employment of the tenant; or

(D) participation in the program constitutes an unbearable financial hardship on the tenant, taking into consideration the cost to the tenant of meals not covered by the program and other necessary living costs remaining after payment of charges for the program.

(2) ADDITIONAL EXEMPTIONS.—The owner of any assisted housing for the elderly that requires tenants to participate in a meal program may grant a tenant an exemption from such participation for any additional reason determined by the owner to be appropriate.

(b) FINANCIAL ASSISTANCE.—The owner of any assisted housing for the elderly that requires tenants to participate in a meal program may, in lieu of granting an exemption under subsection (a)(1)(D), provide the tenant with financial assistance toward the cost of participation in the program.

(c) ACCEPTANCE OF FOOD STAMPS AS PAYMENT.—The owner of any assisted housing for the elderly that requires tenants to participate in a meal program shall accept food stamps toward payment for the meals included in such program.

(d) NOTICE AND RIGHT TO CONTEST.—

(1) The owner of any assisted housing for the elderly that requires tenants to participate in a meal program shall inform tenants of the exemptions listed under subsection (a)(1) and any additional exemptions determined by the owner to be appropriate under subsection (a)(2), as well as the right to appeal a denial of exemption pursuant to paragraph (2).

(2) The tenant shall have the right to appeal any denial of a request for exemption to the Secretary or his designee and the Secretary or his designee is authorized to hear and decide such appeals.

(3) Before taking any legal action to recover payment or evict any tenant for failure to participate in a required meal program, the owner of such a project shall comply with this subsection.

(e) DEFINITIONS.—For purposes of this section:

(1) The term "assisted housing" means housing that is assisted under section 202 of the Housing Act of 1959, section 236 of the National Housing Act, or section 8 of the United States Housing Act of 1937.

(2) The term "elderly" means any individual who is not less than 62 years of age or any family the head of which (or whose spouse) is not less than 62 years of age.

(f) REGULATIONS.—The Secretary of Housing and Urban Development shall issue such regulations as may be necessary to carry out this section.

SEC. 4246. MODIFICATION OF RESTRICTION ON USE OF ASSISTED HOUSING BY ALIENS.

(a) LIMITATION OF RESTRICTION TO NEW APPLICATIONS.—Section 214(a) of the Housing and Community Development Act of 1980 is amended—

(1) by inserting "(1)" after the subsection designation;

(2) by redesignating paragraphs (1) through (5) as subparagraphs (A) through (E), respectively; and

(3) by adding at the end the following new paragraph:

"(2) In the case of any family in which any member is a citizen of the United States, a national of the United States, or an alien resident of the United States described in any of the subparagraphs (A) through (E) of paragraph (1), the restriction established in this subsection shall not apply to—

"(A) the continued provision of any financial assistance commenced before the date of the enactment of the Housing Act of 1986;

"(B) the provision of any financial assistance pursuant to a conversion from any other financial assistance; or

"(C) the provision of any financial assistance to an individual displaced from a dwelling as a result of an activity of the Federal Government or an activity approved or assisted by the Federal Government.".

(b) RETENTION OF RESTRICTION ON NONIMMIGRANT STUDENT-ALIENS.—Section 214 of the Housing and Community Development Act of 1980 is amended—

(1) by redesignating subsection (b) as subsection (c); and

(2) by inserting after subsection (a) the following new subsection:

"(b) Notwithstanding any other provision of law, the Secretary of Housing and Urban Development may not make financial assistance available for the benefit of—

"(1) any alien who—

"(A) has a residence in a foreign country that such alien has no intention of abandoning;

"(B) is a bona fide student qualified to pursue a full course of study; and

"(C) is admitted to the United States temporarily and solely for purposes of pursuing such a course of study at an established institution of learning or other recognized place of study in the United States, particularly designated by such alien and approved by the Attorney General after consultation with the Department of Education of the United States, which institution or place of study shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant student (and if any such institution of learning or place of study fails to make such reports promptly the approval shall be withdrawn); and

"(2) the alien spouse and minor children of any alien described in paragraph (1), if accompanying such alien or following to join such alien.".

(c) CERTIFICATION AND DOCUMENTATION PROCEDURES.—Section 214 of the Housing and Community Development Act of 1980 (as amended by subsection (b) of this section) is further amended by adding at the end the following new subsection:

"(d) In carrying out this section, the Secretary of Housing and Urban Development shall require, as a condition of providing financial assistance for the benefit of any individual, that such individual—

"(1) declare in writing, under penalty of perjury, whether or not such individual is a citizen or national of the United States; and

"(2) if not a citizen or national—

"(A) declare in writing, under penalty of perjury, the immigration status of such individual, if such individual is not less than 62 years of age; or

"(B) provide such documentation regarding the immigration status of such individual as the Secretary may require by regulation.".

Subtitle C—Rural Housing

SEC. 4301. PROGRAM AUTHORIZATIONS.

(a) INSURANCE AND GUARANTEE AUTHORITY.—Section 513(a)(1) of the Housing Act of 1949 is amended to read as follows:

"(a)(1) The Secretary may, to the extent approved in appropriation Acts, insure and guarantee loans under this title during each of the fiscal years 1986 and 1987 in an aggregate amount not to exceed such sums as may be approved in appropriation Acts.".

(b) AUTHORIZATION OF APPROPRIATIONS.—Section 513(b) of the Housing Act of 1949 is amended to read as follows:

"(b) There are authorized to be appropriated for fiscal years 1986 and 1987, and to remain available until expended—

"(1) for grants under section 504, such sums as may be provided in appropriation Acts;

"(2) for purposes of section 509(c), such sums as may be provided in appropriation Acts;

"(3) such sums as may be provided in appropriation Acts to meet payments on notes or other obligations issued by the Secretary under section 511 equal to—

"(A) the aggregate of the contributions made by the Secretary in the form of credits on principal due on loans made pursuant to section 503; and

"(B) the interest due on a similar sum represented by notes or other obligations issued by the Secretary;

"(4) for financial assistance under section 516, such sums as may be provided in appropriation Acts;

"(5) for grants under section 523(f), such sums as may be provided in appropriation Acts;

"(6) for grants under section 533, such sums as may be provided in appropriation Acts; and

"(7) such sums as may be provided in appropriation Acts for the Secretary to administer the provisions of sections 235 and 236 of the National Housing Act and section 8 of the United States Housing Act of 1937.".

(c) RENTAL ASSISTANCE PAYMENT CONTRACTS.—Section 513(c) of the Housing Act of 1949 is amended to read as follows:

"(c) The Secretary, to the extent approved in appropriation Acts for fiscal years 1986 and 1987, may enter into rental assistance payment contracts under section 521(a)(2)(A) aggregating such sums as may be approved in appropriation Acts. Such authority as is approved in appropriation Acts shall be used by the Secretary to renew rental assistance payment contracts that expire during such fiscal year and to make additional rental assistance payment contracts for existing or newly constructed dwelling units.".

SEC. 4302. INCOME LEVELS FOR FAMILY ELIGIBILITY.

(a) IN GENERAL.—Section 501(b)(4) of the Housing Act of 1949 is amended by adding at the end the following new sentence: "Notwithstanding the preceding sentence, the maximum income levels established for purposes of this title for such families and persons in the Virgin Islands shall not be less than the highest such levels established for purposes of this title for such families and persons in American Samoa, Guam, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.".

(b) APPLICABILITY.—The amendment made by subsection (a) shall be applicable to any determination of eligibility for assistance under title V of the Housing Act of 1949 made on or after the date of the enactment of this Act.

SEC. 4303. RURAL AREA CLASSIFICATION.

Section 520 of the Housing Act of 1949 is amended by striking "September 30, 1986" in the last sentence and inserting "September 30, 1987".

SEC. 4304. RURAL HOUSING ESCROW ACCOUNTS.

Section 501(e) of the Housing Act of 1949 is amended by striking the first sentence

and inserting the following: "The Secretary shall, not later than 60 days after the date of the enactment of the Housing Act of 1986, establish procedures under which any borrower under this title may, at the option of the borrower, make periodic payments for the purpose of taxes, insurance, and such other necessary expenses as the Secretary determines to be appropriate.".

SEC. 4305. STUDY OF MORTGAGE CREDIT IN RURAL AREAS.

The Secretary of Housing and Urban Development shall conduct a study of the availability and use of funds for the purchase and improvement of residential real property in rural areas, particularly in communities that have populations of not more than 2,500 individuals. Not later than April 1, 1987, the Secretary shall submit to the Congress a detailed report setting forth the findings of the Secretary as a result of the study.

SEC. 4306. DEFINITION OF VERY LOW-INCOME FAMILIES.

Section 501(b)(4) of the Housing Act of 1949 (as amended by section 4302 of this Act) is further amended by adding at the end the following new sentence: "For purposes of assistance under section 502, the term 'very low-income families or persons' mean families and persons whose incomes do not exceed the applicable level established pursuant to the preceding sentences, or 50 percent of the statewide nonmetropolitan median income (as determined and adjusted by the Secretary of Housing and Urban Development in consultation with the Secretary of Agriculture), whichever amount is higher.".

SEC. 4307. REQUIREMENT OF LOCAL CONSULTATION FOR DOMESTIC FARM LABOR HOUSING.

(a) INSURED LOAN PROGRAM.—Section 514 of the Housing Act of 1949 is amended by adding at the end the following new subsection:

"(i) The Secretary may not insure a loan under this section (regardless of the number of units proposed to be included in the housing and related facilities involved) unless the application for the loan includes a certification that the applicant has consulted with the unit of general local government in which the housing and related facilities are to be located.".

(b) GRANT PROGRAM.—Section 516 of the Housing Act of 1949 is amended by adding at the end the following new subsection:

"(j) The Secretary may not provide financial assistance under this section (regardless of the number of units proposed to be included in the housing and related facilities involved) unless the application for the financial assistance includes a certification that the applicant has consulted with the unit or general local government in which the housing and related facilities are to be located.".

(c) APPLICABILITY.—The amendments made by this section shall apply only to applications submitted after the date of the enactment of this Act.

SEC. 4308. PROCEDURES FOR REDUCTION OF INTEREST CREDITS.

Section 521(a)(1)(B) of the Housing Act of 1949 is amended by adding at the end the following new sentence: "In the case of assistance provided under this subparagraph with respect to a loan under section 502, the Secretary may not reduce, cancel, or refuse to renew the assistance due to an increase in the adjusted income of the borrower if the reduction, cancellation, or nonrenewal will cause the borrower to be unable to reasonably afford the resulting payments required under the loan.".

Subtitle D—Shelter Assistance for the Homeless and Displaced

SEC. 4401. NATIONAL EMERGENCY FOOD AND SHELTER BOARD.

(a) ESTABLISHMENT.—There hereby is established in the Department of Housing and Urban Development a board to be known as the National Emergency Food and Shelter Board. It shall be the function of the Board to carry out the provisions of this subtitle.

(b) MEMBERSHIP.—The Board shall be composed of 7 members as follows:

(1) the Secretary of Housing and Urban Development, or the designee of the Secretary, who shall be the chairperson of the Board; and

(2) 6 members appointed by the Secretary from individuals who—

(A) have expertise in the provision of shelter and related services to the homeless; and

(B) are recommended by the organizations that are members of the national board of charities constituted under the emergency food and shelter program established in the Department of Housing and Urban Development-Independent Agencies Appropriations Act, 1986 (Pub. L. 99-160).

(c) TERM OF MEMBERSHIP.—

(1) IN GENERAL.—Each member of the Board described in subsection (b)(2) shall be appointed for a term of 2 years.

(2) VACANCIES.—Any vacancy in the Board occurring before the expiration of a term shall be filled in the manner in which the original appointment was made. Any member appointed to fill such a vacancy shall be appointed only for the remainder of such term.

(d) MEMBERS NOT FEDERAL EMPLOYEES.—The members of the Board shall not, by reason of their membership on the Board, be considered to be officers or employees of the Federal Government.

(e) PAY AND EXPENSES.—

(1) IN GENERAL.—Each member of the Board shall serve without pay, allowances, or benefits by reason of such service.

(2) TRAVEL EXPENSES.—Each member of the Board shall, while attending meetings of the Board or while engaged in duties relating to such meetings or in other activities of the Board under this subtitle, be allowed (except in the case of members of the Board who are officers or employees of the Federal Government) travel expenses while away from their homes or regular places of business, including per diem in lieu of subsistence, equal to that authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

(f) MEETINGS.—The Board shall meet not less than 3 times during each fiscal year, at the call of its chairperson or a majority of its members.

(g) STAFF AND OFFICES.—The Secretary shall provide the Board with such staff and office facilities as are necessary to ensure that the Board carries out its functions under this subtitle in an efficient and expeditious manner.

(h) TRANSFERS FROM NATIONAL BOARD OF CHARITIES.—Upon the appointment of members to the Board under subsection (b)—

(1) the national board of charities constituted under the emergency food and shelter program established in the Department of Housing and Urban Development-Independent Agencies Appropriations Act, 1986 (Pub. L. 99-160) shall cease to exist; and

(2) the personnel, property, records, and undistributed program funds of the national board of charities shall be transferred to the Board.

SEC. 4402. CONTINUATION OF NATIONAL BOARD OF CHARITIES PROGRAM.

(a) IN GENERAL.—The Board shall continue the emergency food and shelter program established in the Department of Housing and Urban Development-Independent Agencies Appropriations Act, 1986 (Pub. L. 99-160). Activities under such program may include repairs necessary to make emergency shelter facilities safe and sanitary and ensure compliance with local building and related codes.

(b) FUNDING.—Any amount transferred to the Board under section 4401(h)(2) shall be utilized by the Board to carry out this section.

(c) COORDINATION WITH TASK FORCE.—In carrying out this section, the Board shall coordinate activities with the Federal Interagency Task Force on Food and Shelter chaired by the Secretary of Health and Human Services, or any successor Federal task force established to deal with the problems of the homeless, to identify vacant and surplus Federal facilities that could be renovated or converted for use as emergency shelter facilities for the homeless.

SEC. 4403. SECOND STAGE HOUSING FOR THE HOMELESS AND DISPLACED.

(a) DEMONSTRATION PROGRAM.—

(1) IN GENERAL.—The Board shall carry out a demonstration program in accordance with the provisions of this section to determine the effectiveness of assisting nonprofit organizations in providing housing and supportive services for homeless persons.

(2) PURPOSES.—Such demonstration program shall be designed to determine—

(A) the cost of acquisition, rehabilitation, or acquisition and rehabilitation of existing structures for the provision of housing for homeless persons;

(B) the cost of operating such housing and providing supportive services to the residents of such housing;

(C) the social, financial, and other advantages of such housing and supportive services as an alternative to continued institutionalization of handicapped persons; and

(D) the social, financial, and other advantages of such housing and supportive services as a means of assisting homeless persons.

(b) ASSISTANCE TO NONPROFIT ORGANIZATIONS.—

(1) IN GENERAL.—The Board may provide the following assistance to any eligible nonprofit organization under the demonstration program established in this section:

(A) a non-interest-bearing advance equal to the aggregate cost of acquisition, rehabilitation, acquisition and rehabilitation, or leasing of an existing structure for use in the provision of housing and supportive services for homeless persons;

(B) annual payments for operating expenses of such housing, not to exceed 80 percent of the annual operating expenses of such housing; and

(C) technical assistance in establishing and operating such housing and providing supportive services to the residents of such housing.

(2) NONREPAYMENT OF ADVANCES.—Any advance provided under paragraph (1)(A) shall not be required to be repaid if the nonprofit organization involved utilizes the structure for which such advance is made, for not less than the 10-year period following initial occupancy of such housing—

(A) as housing for homeless persons in accordance with the provisions of this section; or

(B) as housing for lower income persons, if the Board determines that the structure is no longer required for use as housing for homeless persons.

(3) ASSISTANCE CONTRACTS.—The Board shall, to the extent approved in appropriation Acts, enter into a contract with each nonprofit organization receiving annual payments under paragraph (1)(B) to provide for the making of such payments for not more than a 2-year period.

(c) PROGRAM REQUIREMENTS.—

(1) APPLICATIONS.—Applications for assistance under this section shall be made in such form and in accordance with such procedures as the Board shall establish.

(2) SELECTION CRITERIA.—In selecting nonprofit organizations for assistance under this section, the Board shall consider—

(A) the ability of such nonprofit organization to develop and operate housing for homeless persons and to provide or coordinate supportive services for the residents of such housing;

(B) the extent to which such nonprofit organization will utilize innovative methods in providing housing and supportive services for homeless persons;

(C) the need for such housing and supportive services in the area to be served; and

(D) such other factors as the Board determines to be appropriate for purposes of carrying out the demonstration program established in this section in an effective and efficient manner.

(3) REQUIRED AGREEMENTS.—Each nonprofit organization receiving assistance under this section shall agree, with respect to each structure for which such assistance is provided—

(A) to conduct an assessment of the supportive services required by the residents of such structure;

(B) to employ a full-time residential supervisor with sufficient expertise to provide, or supervise the provision of, supportive services to the residents of such structure; and

(C) to comply with such other terms and conditions as the Board may establish for purposes of carrying out the demonstration program established in this section in an effective and efficient manner.

(4) OCCUPANT RENT.—Each homeless person residing in housing assisted under this section shall pay as rent an amount determined in accordance with the provisions of section 3(a) of the United States Housing Act of 1937.

(d) REGULATIONS.—

(1) IN GENERAL.—Not later than the expiration of the 120-day period following the date of the enactment of this Act, the Secretary shall issue such regulations as may be necessary to carry out the provisions of this section.

(2) ADVANCE CONSULTATION.—Before issuing regulations under this section, the Secretary shall consult with persons and entities having expertise with respect to the problems and needs of homeless persons or experience in providing housing or supportive services for such persons.

(e) FUNDING.—

(1) LIMITATION ON BUDGET AUTHORITY.—The aggregate amount of non-interest bearing advances and annual payments for operating expenses made by the Board under this section may not exceed such sums as are approved in appropriation Acts for each of the fiscal years 1986 and 1987. Such amount shall remain available until expended.

(2) DISBURSEMENT.—Any amount approved in an appropriation Act for this section shall be disbursed not later than the expiration of the 120-day period following the date of enactment of such Act.

SEC. 4404. EMERGENCY SHELTER GRANTS.

(a) GRANT ASSISTANCE.—The Board shall, to the extent of amounts approved in appropriation Acts, make grants to States and units of local government (and to private nonprofit organizations providing assistance to the homeless, in the case of grants made with reallocated amounts) in order to carry out activities described in subsection (c).

(b) ALLOCATION AND DISTRIBUTION OF ASSISTANCE.—

(1) IN GENERAL.—The Board shall allocate assistance under this section to metropolitan cities, urban counties, and States (for distribution to units of general local government in the States) in a manner that ensures that the percentage of the total amount available under this section for any fiscal year that is allocated to any State, metropolitan city, or urban county is equal to the percentage of the total amount available for section 106 of the Housing and Community Development Act of 1974 for the prior fiscal year that is allocated to such State, metropolitan city, or urban county.

(2) MINIMUM ALLOCATION REQUIREMENT.—If, under the allocation provisions applicable under this section, any metropolitan city or urban county will receive a grant of less than $30,000 for any fiscal year, such amount shall instead be allocated to the State in which such city or county is located and shall be included in the amount available for distribution to units of general local government in the State.

(3) DISTRIBUTIONS TO NONPROFIT ORGANIZATIONS.—Any unit of general local government receiving assistance under this section may distribute all or a portion of such assistance to private nonprofit organizations providing assistance to the homeless.

(4) REALLOCATION FUNDS.—

(A) The Board shall, not less than twice during each fiscal year, reallocate any assistance provided under this section that is unused or returned to the Board under subsection (e)(3).

(B) The Board shall provide such reallocation funds—

(i) to units of general local government demonstrating extraordinary need or large numbers of homeless individuals;

(ii) to private nonprofit organizations providing assistance to the homeless; and

(iii) to meet such other needs consistent with the purposes of this section.

(c) ELIGIBLE ACTIVITIES.—Assistance provided under this section may be used for—

(1) the following activities relating to emergency shelter for the homeless:

(A) renovation of buildings to be used as emergency shelters;

(B) provision of essential services, including services concerned with employment, health, drug abuse, or education, if—

(i) such services have not been provided by the unit of general local government during any section of the immediately preceding 12-month period; and

(ii) not more than 15 percent of the amount of any assistance to a unit of general local government under this section is used for activities under this paragraph; and

(C) maintenance, insurance, operation (other than staff), utilities, and furnishings; and

(2) the activities described in paragraph (1) for any second stage housing project replicating a second stage housing project operating effectively under section 4403 for a period of not less than 2 years.

(d) RESPONSIBILITIES OF GRANTEES.—

(1) SUBMISSION OF HOMELESS ASSISTANCE PLAN.—Following notification by the Board of eligibility for assistance under this section, each State, metropolitan city, and urban county shall submit to the Board a plan describing the proposed use of such assistance. The Board shall provide the appropriate amount of assistance to such State, metropolitan city, or urban county before the expiration of the 60-day period following the date of the submission of such plan, unless the Board determines before the expiration of such period that such plan is not in compliance with this section.

(2) MATCHING AMOUNTS.—

(A) Each grantee under this section shall be required to supplement the assistance provided under this section with an equal amount of funds from sources other than this subtitle. Each grantee shall certify to the Board its compliance with this paragraph, and shall include with such certification a description of the sources and amounts of such supplemental funds.

(B) In calculating the amount of supplemental funds provided by a grantee under this section, a grantee may include the value of any donated material or building, the value of any lease on a building, any salary paid to staff to carry out the program of the grantee, the value of the time contributed by volunteers to carry out the program of the grantee, and the value of services provided for the program.

(3) ADMINISTRATION OF ASSISTANCE.—Each grantee shall act as the fiscal agent of the Board with respect to assistance provided to such grantee.

(4) CERTIFICATIONS ON USE OF ASSISTANCE.—Each grantee shall certify to the Board that—

(A) it will maintain as a shelter for the homeless for not less than a 3-year period any building for which assistance is used under this section, or for not less than a 7-year period if such assistance is used for the substantial rehabilitation of such building;

(B) any renovation carried out with assistance under this section shall be sufficient to ensure that the building involved is safe and sanitary; and

(C) it will assist homeless individuals in obtaining—

(i) appropriate supportive services, including permanent housing, medical and mental health treatment, counseling, supervision, and other services essential for achieving independent living; and

(ii) other Federal, State, local, and private assistance available for such individuals.

(5) USE OF INTEREST ON ASSISTANCE.—Any interest received by any grantee under this section on assistance provided under this section shall be used in accordance with this section or returned to the Board for reallocation.

(e) ADMINISTRATIVE PROVISIONS.—

(1) REGULATIONS.—Not later than the expiration of the 30-day period following the date of the enactment of this Act, the Secretary shall by notice establish such requirements as may be necessary to carry out the provisions of this section. Such requirements shall not be subject to section 553 of title 5, United States Code, or section 7(o) of the Department of Housing and Urban Development Act. The Secretary shall issue regulations based on the initial notice

before the expiration of the 12-month period following the date of the enactment of this Act.

(2) INITIAL ALLOCATION OF ASSISTANCE.—Not later than the expiration of the 30-day period following the date of the enactment of a law providing appropriations to carry out this section, the Board shall notify each State, metropolitan city, and urban county of its allocation of assistance under this section. Such assistance shall be allocated and may be used notwithstanding any failure of the Secretary to issue regulations under paragraph (1).

(3) RECAPTURE OF UNUSED ASSISTANCE.—The Board shall deobligate or recapture any assistance provided under this section that is not used by the grantee within a reasonable period of time.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out the provisions of this section such sums as may be provided in appropriation Acts for each of the fiscal years 1986 and 1987. Any amount appropriated under this section shall remain available until expended.

SEC. 4405. REPORTS TO CONGRESS.

The Board shall submit to the Congress—

(1) not later than 3 months after the end of fiscal year 1986, an interim report summarizing the activities carried out under this subtitle during such fiscal year and setting forth any preliminary findings or conclusions of the Board as a result of such activities; and

(2) not later than 6 months after the end of fiscal year 1987, a final report summarizing all activities carried out under this subtitle and setting forth any findings, conclusions, or recommendations of the Board as a result of such activities.

SEC. 4406. DEFINITIONS.

For purposes of this subtitle:

(1) The term "Board" means the National Emergency Food and Shelter Board established in section 4401(a).

(2) The term "elderly person" means an individual who is not less than 62 years of age.

(3) The term "handicapped person" means an individual having a physical, psychological, or other impairment that substantially impedes the ability of such individual to live independently without supportive services.

(4) The term "homeless person" means an individual who—

(A) is a lower income person, elderly person, or handicapped person;

(B) lacks permanent housing; and

(C) in the case of assistance under section 4403, cannot live independently without supportive services.

(5) The term "housing for homeless persons" means a single- or multifamily structure suitable in design and size for the provision of housing and supportive services designed to encourage independence for homeless persons.

(6) The term "lower income person" means an individual whose income does not exceed 80 percent of the median income of the area involved.

(7) The term "nonprofit organization" means any governmental or private nonprofit entity that is approved by the Board as to financial responsibility.

(8) The term "operating expenses" means expenses incurred by a nonprofit organization for any program operating housing for homeless persons under section 4403 with respect to—

(A) the administration, maintenance, repair, and security of such housing;

(B) utilities, fuel, furnishings, and equipment for such housing;

(C) the conducting of the assessment required in section 4403(c)(3)(A); and

(D) the provision of supportive services to the residents of such housing.

(9) The term "Secretary" means the Secretary of Housing and Urban Development.

(10) The term "supportive services" means assistance in obtaining permanent housing, medical and psychological counseling and supervision, employment counseling, nutritional counseling, and such other services essential for maintaining independent living as the Board determines to be appropriate. Such term includes the provision of assistance to residents of housing for homeless persons in obtaining other Federal, State, and local assistance available for such persons, including mental health benefits, employment counseling, and medical assistance.

Subtitle E—Nehemiah Housing Opportunity Grants

SEC. 4501. STATEMENT OF PURPOSE.

It is the purpose of this subtitle—

(1) to encourage homeownership by families in the United States who are not otherwise able to afford homeownership;

(2) to undertake a concentrated effort to rebuild the depressed areas of the cities of the United States and to create sound and attractive neighborhoods; and

(3) to increase the employment of neighborhood residents.

SEC. 4502. DEFINITIONS.

For purposes of this subtitle:

(1) The term "Fund" means the Nehemiah Housing Opportunity Fund established in section 4509(a).

(2) The term "home" means any 1- to 4-family dwelling. Such term includes any dwelling unit in a condominium project or cooperative project consisting of not more than 4 dwelling units, any town house, and any manufactured home.

(3) The term "lower income families" has the meaning given such term in section 3(b)(2) of the United States Housing Act of 1937.

(4) The term "metropolitan statistical area" means a metropolitan statistical area as established by the Office of Management and Budget.

(5) The term "nonprofit organization" means a private nonprofit corporation, or other private nonprofit legal entity, that is approved by the Secretary as to financial responsibility.

(6) The term "Secretary" means the Secretary of Housing and Urban Development.

(7) The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

(8) The term "substantial rehabilitation" means—

(A) rehabilitation involving costs in excess of 60 percent of the maximum sale price of a home assisted under this subtitle in the market area in which it is located; or

(B) the rehabilitation of a vacant, uninhabitable structure.

(9) The term "unit of general local government" means any borough, city, county, parish, town, township, village, or other general purpose political subdivision of a State.

SEC. 4503. ASSISTANCE TO NONPROFIT ORGANIZATIONS.

(a) IN GENERAL.—The Secretary may provide assistance to nonprofit organizations to carry out Nehemiah housing opportunity programs in accordance with the provisions of this subtitle. Such assistance shall be made in the form of grants.

(b) APPLICATIONS.—Applications for assistance under this subtitle shall be made in such form, and in accordance with such procedures, as the Secretary may prescribe.

SEC. 4504. USE OF ASSISTANCE.

(a) IN GENERAL.—Any nonprofit organization receiving assistance under this subtitle shall use such assistance to provide loans to families purchasing homes constructed or substantially rehabilitated in accordance with a Nehemiah housing opportunity program approved under this subtitle.

(b) SPECIFIC REQUIREMENTS.—Each loan made to a family under this section shall—

(1) be secured by a second mortgage held by the Secretary on the property involved;

(2) be in an amount not exceeding $15,000;

(3) bear no interest; and

(4) be repayable to the Secretary upon the sale or other transfer of such property.

SEC. 4505. PROGRAM REQUIREMENTS.

(a) IN GENERAL.—Assistance provided under this subtitle may be used only in connection with a Nehemiah housing opportunity program of construction or substantial rehabilitation of homes.

(b) FAMILY NEED.—Each family purchasing a home under this subtitle shall—

(1) have a family income on the date of such purchase that is not more than 90 percent of the median income for a family of 4 persons in the metropolitan statistical area involved, except that in areas where such amount (90 percent of the area median income) is below 115 percent of the national median income, then 115 percent of the national median income will apply; and

(2) not have owned a home during the 3-year period preceding such purchase.

(c) DOWNPAYMENT.—

(1) Each family purchasing a home under this subtitle shall make a downpayment of not less than 10 percent of the sale price of such home, or of such greater amount determined by the nonprofit organization involved to be appropriate.

(2) Any downpayment made under this subsection shall accrue interest from the date on which such downpayment is made through the date of settlement, at a rate not less than the passbook rate. Such interest shall be paid by the nonprofit organization involved to the family purchasing the home for which such downpayment was made.

(d) LEASING PROHIBITION.—No family purchasing a home under this subtitle may lease such home.

SEC. 4506. TERMS AND CONDITIONS OF ASSISTANCE.

(a) LOCAL CONSULTATION.—No proposed Nehemiah housing opportunity program may be approved by the Secretary under this subtitle unless the nonprofit organization involved demonstrates to the satisfaction of the Secretary that—

(1) it has consulted with and received the support of residents of the neighborhood in which such program is to be located; and

(2) it has the approval of each unit of general local government in which such program is to be located.

(b) PROGRAM SCHEDULE.—Each nonprofit organization applying for assistance under this subtitle shall submit to the Secretary an estimated schedule for completion of its

proposed Nehemiah housing opportunity program, which schedule shall have been agreed to by each unit of general local government in which such program is to be located.

(c) MINIMUM PARTICIPATION.—No nonprofit organization receiving assistance under this subtitle may commence any construction or substantial rehabilitation (except with respect to homes to be constructed or substantially rehabilitated for the purpose of display) until not less than 25 percent of the homes to be constructed or substantially rehabilitated are contracted for sale to purchasers who intend to live in such homes and the required downpayments are made.

(d) FINANCIAL FEASIBILITY.—The Secretary may not provide any assistance under this subtitle to any nonprofit organization unless such nonprofit organization demonstrates the financial feasibility of its proposed Nehemiah housing opportunity program, including the availability of non-Federal public and private funds.

(e) HOME QUALITY AND LOCATION.—A Nehemiah housing opportunity program may be approved under this subtitle only if it provides that—

(1) the number of homes to be constructed or substantially rehabilitated under such program will not be less than whichever of the following is less:

(A) the greater of (i) 50 homes; or (ii) 0.25 percent of the number of existing dwelling units in the unit of general local government that provides the most assistance to such program; or

(B) 250 homes;

(2) each home constructed or substantially rehabilitated under such program will comply with—

(A)(i) applicable local building code standards; or

(ii) in any case in which there is not an applicable local building code, a nationally recognized model building code mutually agreed upon by the sponsoring nonprofit organization and the Secretary; and

(B) the energy performance requirements established under section 526 of the National Housing Act;

(3) all homes constructed or substantially rehabilitated under such program will be located in census tracts, or identifiable neighborhoods within census tracts, in which the median family income is not more than 80 percent of the median family income of the area in which such program is to be located, as such median family income and area are determined for purposes of assistance under section 8 of the United States Housing Act of 1937;

(4) all homes constructed or substantially rehabilitated under such program will be concentrated in a single neighborhood and located on contiguous parcels of land, except that if the unit of general local government in which the project is located certifies that such land cannot be made available for a program of the size required by paragraph (1), homes may be constructed in a single identifiable neighborhood if the program provides for construction or substantial rehabilitation of homes on not less than 20 percent of the lots in such neighborhood; and

(5) sales contracts entered into under such program will contain provisions requiring repayment of any loan made under this subtitle upon the sale or other transfer of the home involved, unless the Secretary approves a transfer of such home without repayment (in which case the second mortgage held by the Secretary on such home shall remain in force until such loan is fully repaid).

SEC. 4507. PROGRAM SELECTION CRITERIA.

(a) IN GENERAL.—In selecting Nehemiah housing opportunity programs for assistance under this subtitle from among eligible programs, the Secretary shall make such selection on the basis of the extent to which—

(1) non-Federal public or private entities will contribute land necessary to make each program feasible;

(2) non-Federal public and private financial or other contributions (including tax abatements, waivers of fees related to development, waivers of construction, development, or zoning requirements, and direct financial contributions) will reduce the cost of homes constructed or substantially rehabilitated under each program;

(3) each program will produce the greatest number of units for the least amount of assistance provided under this subtitle, taking into consideration the cost differences among different market areas;

(4) each program is located in a neighborhood of severe physical and economic blight (and, in determining the degree of physical blight, the Secretary shall consider the condition (but not age) of the housing, other buildings, and infrastructure, in the neighborhood of the proposed program);

(5) each program uses construction methods that will reduce the cost per square foot below the average construction cost in the market area involved; and

(6) each program provides for the involvement of local residents in the planning, and construction or substantial rehabilitation, of homes.

(b) EXCEPTION.—To the extent that non-Federal public entities are prohibited by the law of any State from making any form of contribution described in paragraph (1) or (2) of subsection (a), the Secretary shall not consider such form of contribution in evaluating such program.

(c) LOWER INCOME BENEFIT REQUIREMENT.—The Secretary shall require that a majority of the funds made available under this subtitle for use within any metropolitan statistical area shall be available only for assistance to families whose incomes do not exceed 95 percent of the higher of area median income or national median income.

SEC. 4508. DISTRIBUTION OF ASSISTANCE TO NONPROFIT ORGANIZATIONS.

(a) RESERVATION OF AMOUNTS.—Following the selection of any Nehemiah housing opportunity program for assistance under this subtitle, the Secretary shall reserve sufficient amounts in the Nehemiah Housing Opportunity Fund for such assistance.

(b) DISTRIBUTION OF ASSISTANCE.—Following the sale of any home constructed or substantially rehabilitated under a Nehemiah housing opportunity program selected for assistance under this subtitle, the Secretary shall provide to the sponsoring nonprofit organization an amount equal to the amount of the loan made to the family purchasing such home. Such amount shall be provided not more than 30 days after the sale of such home.

(c) MAXIMUM ASSISTANCE.—The assistance provided to any nonprofit organization under this subtitle may not exceed $15,000 per home.

SEC. 4509. NEHEMIAH HOUSING OPPORTUNITY FUND.

(a) ESTABLISHMENT.—There hereby is established in the Treasury of the United States a revolving fund, to be known as the Nehemiah Housing Opportunity Fund. The Fund shall be available to the Secretary, to the extent approved in appropriation Acts, for purposes of providing assistance under section 4503.

(b) ASSETS.—The Fund shall consist of—

(1) any amount appropriated under section 4512;

(2) any amount received by the Secretary under section 4504(b)(4); and

(3) any amount received by the Secretary under subsection (c).

(c) ADMINISTRATION.—Any amount in the Fund determined by the Secretary to be in excess of the amount currently required to carry out the provisions of this subtitle shall be invested by the Secretary in obligations of, or obligations guaranteed as to both principal and interest by, the United States or any agency of the United States.

SEC. 4510. ANNUAL REPORT.

The Secretary shall annually prepare and submit to the Congress a comprehensive report setting forth the activities carried out under this subtitle. Such report shall include—

(1) an analysis of the characteristics of the families assisted under this subtitle during the preceding year, including family size, number of children, family income, sources of family income, race, age, and sex;

(2) an analysis of the market value of homes purchased under this subtitle during the preceding year;

(3) an analysis of the non-Federal public and private financial or other contributions made during the preceding year to reduce the cost of homes constructed or substantially rehabilitated under each program;

(4) an analysis of the sales prices of homes under this subtitle during the preceding year;

(5) an analysis of the amounts of the grants made to programs under this subtitle during the preceding year; and

(6) any recommendations of the Secretary for modifications in the program established by this subtitle in order to ensure the effective implementation of such program.

SEC. 4511. REGULATIONS.

The Secretary shall issue such regulations as may be necessary to carry out the provisions of this subtitle. Any such regulations shall be issued in accordance with section 553 of title 5, United States Code, notwithstanding the provisions of subsection (a)(2) of such section.

SEC. 4512. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to carry out the provisions of this subtitle such sums as may be provided in appropriation Acts for fiscal years 1986 and 1987. Any amount appropriated under this section shall be deposited in the Nehemiah Housing Opportunity Fund, and shall remain available until expended.

Subtitle F—Preventing Fraud and Abuse in Department of Housing and Urban Development Programs

SEC. 4601. DISCLOSURE OF SOCIAL SECURITY ACCOUNT NUMBER.

As a condition of initial or continuing eligibility for participation in any program of the Department of Housing and Urban Development involving loans, grants, interest or rental assistance of any kind, or mortgage or loan insurance, and to ensure that the level of benefits provided under such programs is proper, the Secretary of Housing and Urban Development may require that an applicant or participant (including members of the household of an applicant or participant) disclose his or her social se-

curity account number or employer identification number to the Secretary.

SEC. 4602. DEFINITIONS.

For purposes of this subtitle, the terms "applicant" and "participant" shall have such meanings as the Secretary of Housing and Urban Development by regulation shall prescribe. Such terms shall not include persons whose involvement is only in their official capacity, such as State or local government officials or officers of lending institutions.

Subtitle G—Enterprise Zone Development

SEC. 4701. DESIGNATION OF ENTERPRISE ZONES.

(a) DESIGNATION OF ZONES.—

(1) DEFINITION.—For purposes of this section, the term "enterprise zone" means any area that—

(A) is nominated by 1 or more local governments and the State or States in which it is located for designation as an enterprise zone (in this section referred to as a "nominated area"); and

(B) the Secretary of Housing and Urban Development designates as an enterprise zone, after consultation with—

(i) the Secretaries of Agriculture, Commerce, Labor, and the Treasury, the Director of the Office of Management and Budget, and the Administrator of the Small Business Administration; and

(ii) in the case of an area on an Indian reservation, the Secretary of the Interior.

(2) NUMBER OF DESIGNATIONS.—

(A) IN GENERAL.—The Secretary of Housing and Urban Development may designate not more than 100 nominated areas as enterprise zones.

(B) MINIMUM DESIGNATION IN RURAL AREAS.—Of the areas designated under clause (i), not less than 33 percent or one-third shall be areas that—

(i) are within a local government jurisdiction or jurisdictions with a population of less than 50,000 (as determined under the most recent census data available);

(ii) are outside of a metropolitan statistical area (as designated by the Director of the Office of Management and Budget); or

(iii) that are determined by the Secretary, after consultation with the Secretary of Commerce, to be rural areas.

(3) AREAS DESIGNATED BASED SOLELY ON DEGREE OF POVERTY.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the Secretary shall designate the nominated areas with the highest average ranking with respect to the criteria set forth in subparagraphs (C), (D), and (E) of subsection (c)(3). For purposes of the preceding sentence, an area shall be ranked within each such criterion on the basis of the amount by which the area exceeds such criterion, with the area that exceeds such criterion by the greatest amount given the highest ranking.

(B) EXCEPTION WHERE INADEQUATE COURSE OF ACTION, ETC.—An area shall not be designated under subparagraph (A) if the Secretary determines that the course of action with respect to such area is inadequate.

(C) SEPARATE APPLICATION TO RURAL AND OTHER AREAS.—Subparagraph (A) shall be applied separately with respect to areas described in paragraph (2)(B) and to other areas.

(4) LIMITATION ON DESIGNATIONS.—

(A) PUBLICATION OF REGULATIONS.—Before designating any area as an enterprise zone, the Secretary shall prescribe by regulation not later than 4 months following the date of the enactment of this Act, after consultation with the officials described in paragraph (1)(B)—

(i) the procedures for nominating an area under paragraph (1)(A);

(ii) the parameters relating to the size and population characteristics of an enterprise zone; and

(iii) the manner in which nominated areas will be evaluated based on the criteria specified in subsection (d).

(B) TIME LIMITATIONS.—The Secretary shall designate nominated areas as enterprise zones only during the 24-month period beginning on the later of—

(i) the 1st day of the 1st month following the month in which the effective date of the regulations described in subparagraph (A) occurs; or

(ii) July 1, 1987.

(C) PROCEDURAL RULES.—The Secretary shall not make any designation under paragraph (1) unless—

(i) the local governments and the State in which the nominated area is located have the authority—

(I) to nominate such area for designation as an enterprise zone;

(II) to make the State and local commitments under subsection (d); and

(III) to provide assurances satisfactory to the Secretary that such commitments will be fulfilled;

(ii) a nomination therefor is submitted in such a manner and in such form, and contains such information, as the Secretary shall by regulation prescribe;

(iii) the Secretary determines that any information furnished is reasonably accurate; and

(iv) the State and local governments certify that no portion of the area nominated is already included in an enterprise zone or in an area otherwise nominated to be an enterprise zone.

(5) NOMINATION PROCESS FOR INDIAN RESERVATIONS.—In the case of a nominated area on an Indian reservation, the reservation governing body (as determined by the Secretary of the Interior) shall be deemed to be both the State and local governments with respect to such area.

(b) PERIOD FOR WHICH DESIGNATION IS IN EFFECT.—

(1) IN GENERAL.—Any designation of an area as an enterprise zone shall remain in effect during the period beginning on the date of the designation and ending on the earliest of—

(A) December 31 of the 24th calendar year following the calendar year in which such date occurs;

(B) the termination date designated by the State and local governments as provided for in their nomination pursuant to subsection (a)(4)(C)(ii); or

(C) the date the Secretary revokes such designation under paragraph (2).

(2) REVOCATION OF DESIGNATION.—The Secretary, after consultation with the officials described in subsection (a)(1)(B) and a hearing on the record involving officials of the State or local government involved, may revoke the designation of an area if the Secretary determines that the local government or the State in which it is located is not complying substantially with the State and local commitments pursuant to subsection (d).

(c) AREA AND ELIGIBILITY REQUIREMENTS.—

(1) IN GENERAL.—The Secretary may make a designation of any nominated area under subsection (a)(1) only if it meets the requirements of paragraphs (2) and (3).

(2) AREA REQUIREMENTS.—A nominated area meets the requirements of this paragraph if—

(A) the area is within the jurisdiction of the local government;

(B) the boundary of the area is continuous; and

(C) the area—

(i) has a population, as determined by the most recent census data available, of not less than—

(I) 4,000 if any portion of such area (other than a rural area described in subsection (a)(2)(B)(i)) is located within a metropolitan statistical area (as designated by the Director of the Office of Management and Budget) with a population of 50,000 or more; or

(II) 1,000 in any other case; or

(ii) is entirely within an Indian reservation (as determined by the Secretary of the Interior).

(3) ELIGIBILITY REQUIREMENTS.—For purposes of paragraph (1), a nominated area meets the requirements of this paragraph if the State and local governments in which it is located certify and the Secretary, after such review of supporting data as he deems appropriate, accepts such certification, that—

(A) the area is one of pervasive poverty, unemployment, and general distress;

(B) the area is located wholly within the jurisdiction of a local government that is eligible for Federal assistance under section 119 of the Housing and Community Development Act of 1974, as in effect on the date of the enactment of this Act;

(C) the unemployment rate, as determined by the appropriate available data, was not less than 1.5 times the national unemployment rate for that period;

(D) the poverty rate (as determined by the most recent census data available) for each populous census tract (or where not tracted, the equivalent county division as defined by the Bureau of the Census for the purpose of defining poverty areas) within the area was not less than 20 percent for the period to which such data relate; and

(E) the area meets at least 1 of the following criteria:

(i) Not less than 70 percent of the households living in the area have incomes below 80 percent of the median income of households of the local government (determined in the same manner as under section 119(b)(2) of the Housing and Community Development Act of 1974).

(ii) The population of the area decreased by 20 percent or more between 1970 and 1980 (as determined from the most recent census available).

(4) ELIGIBILITY REQUIREMENTS FOR RURAL AREAS.—For purposes of paragraph (1), a nominated area that is a rural area described in subsection (a)(2)(B) meets the requirements of paragraph (3) if the State and local governments in which it is located certify and the Secretary, after such review of supporting data as he deems appropriate, accepts such certification, that the area meets—

(A) the criteria set forth in subparagraphs (A) and (B) of paragraph (3); and

(B) not less than 1 of the criteria set forth in the other subparagraphs of paragraph (3).

(d) REQUIRED STATE AND LOCAL COMMITMENTS.—

(1) IN GENERAL.—No nominated area shall be designated as an enterprise zone unless the local government and the State in which it is located agree in writing that, during any period during which the area is an enterprise zone, such governments will follow a specified course of action designat-

ed to reduce the various burdens borne by employers or employees in such area. A course of action shall not be treated as meeting the requirements of this paragraph unless the course of action include provisions described in not less than 4 of the subparagraphs of paragraph (2).

(2) COURSE OF ACTION.—The course of action under paragraph (1) may be implemented by both such governments and private nongovernmental entities, may be funded from proceeds of any program administered by the Secretary of Housing and Urban Development or of any program administered by the Secretary of Agriculture under title V of the Housing Act of 1949, and may include, but is not limited to—

(A) a reduction of tax rates or fees applying within the enterprise zone;

(B) an increase in the level of public services, or in the efficiency of the delivery of public services, within the enterprise zone;

(C) actions to reduce, remove, simplify, or streamline paperwork requirements within the enterprise zone;

(D) involvement in the program by public authorities or private entities, organizations, neighborhood associations, and community groups, particularly those within the nominated area, including a written commitment to provide jobs and job training for, and technical, financial, or other assistance to, employers, employees, and residents of the nominated area;

(E) the giving of special preference to contractors owned and operated by members of any minority; and

(F) the gift (or sale at below fair market value) of surplus land in the enterprise zone to neighborhood organizations agreeing to operate a business on the land.

(3) RECOGNITION OF PAST EFFORTS.—In evaluating courses of action agreed to by any State or local government, the Secretary shall take into account the past efforts of such State or local government in reducing the various burdens borne by employers and employees in the area involved.

(4) PROHIBITION OF ASSISTANCE FOR BUSINESS RELOCATIONS.—

(A) IN GENERAL.—The course of action implemented under paragraph (1) may not include any action to assist—

(i) any establishment relocating from 1 area to another area; or

(ii) any subcontractor whose purpose is to divest, or whose economic success is dependent upon divesting, any other contractor or subcontractor of any contract customarily performed by such other contractor or subcontractor.

(B) EXCEPTION.—The limitations established in subparagraph (A) shall not be construed to prohibit assistance for the expansion of an existing business entity through the establishment of a new branch, affiliate, or subsidiary if the Secretary—

(i) finds that the establishment of the new branch, affiliate, or subsidiary will not result in an increase in unemployment in the area of original location or in any other area where the existing business entity conducts business operations; and

(ii) has no reason to believe that the new branch, affiliate, or subsidiary is being established with the intention of closing down the operations of the existing business entity in the area of its original location or in any other area where the existing business entity conducts business operations.

(e) DEFINITIONS.—For purposes of this section:

(1) GOVERNMENT.—If more than 1 government seeks to nominate an area as an enterprise zone, any reference to, or requirement of, this section shall apply to all such governments.

(2) LOCAL GOVERNMENT.—The term "local government" means—

(A) any county, city, town, township, parish, village, or other general purpose political subdivision of a State;

(B) any combination of political subdivisions described in subparagraph (A) recognized by the Secretary; and

(C) the District of Columbia.

(3) SECRETARY.—The term "Secretary" means the Secretary of Housing and Urban Development.

(4) STATE.—The term "State" includes Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and any other possession of the United States.

SEC. 4702. EVALUATION AND REPORTING REQUIREMENTS.

Not later than the close of the 4th calendar year after the year in which the Secretary of Housing and Urban Development first designates areas as enterprise zones, and at the close of each 4th calendar year thereafter, the Secretary shall prepare and submit to the Congress a report on the effects of such designation in accomplishing the purposes of this subtitle.

SEC. 4703. INTERACTION WITH OTHER FEDERAL PROGRAMS.

(a) COORDINATION WITH RELOCATION ASSISTANCE.—The designation of an enterprise zone under section 4701 shall not—

(1) constitute approval of a Federal or federally assisted program or project (within the meaning of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.)); or

(2) entitle any person displaced from real property located in such zone to any rights or any benefits under such Act.

(b) ENTERPRISE ZONES TREATED AS LABOR SURPLUS AREAS.—Any area that is designated as an enterprise zone under section 4701 shall be treated for all purposes under Federal law as a labor surplus area.

SEC. 4704. WAIVER OR MODIFICATION OF HOUSING AND COMMUNITY DEVELOPMENT RULES IN ENTERPRISE ZONES.

(a) IN GENERAL.—Upon the written request of the governments that designated and approved an area that has been designated as an enterprise zone under section 4701, the Secretary of Housing and Urban Development (or, with respect to any rule issued under title V of the Housing Act of 1949, the Secretary of Agriculture) may, in order to further the job creation, community development, or economic revitalization objectives of the zone, waive or modify all or part of any rule that the Secretary has authority to promulgate, as such rule pertains to the carrying out of projects, activities, or undertakings within the zone.

(b) LIMITATION.—No provision of this section may be construed to authorize the Secretary to waive or modify any rule adopted to carry out a statute or Executive order that prohibits, or the purpose of which is to protect persons against, discrimination on the basis of race, color, religion, sex, marital status, national origin, age, or handicap.

(c) SUBMISSION OF REQUESTS.—A request under subsection (a) shall specify the rule or rules to be waived or modified and the change proposed, and shall briefly describe why the change would promote the achievement of the job creation, community development, or economic revitalization objectives of the enterprise zone. If a request is made to the Secretary of Agriculture, the requesting governments shall send a copy of the request to the Secretary of Housing and Urban Development at the time the request is made.

(d) CONSIDERATION OF REQUESTS.—In considering a request, the Secretary shall weigh the extent to which the proposed change is likely to further job creation, community development, or economic revitalization within the enterprise zone against the effect the change is likely to have on the underlying purposes of applicable statutes in the geographic area that would be affected by the change. The Secretary shall approve the request whenever the Secretary finds, in the discretion of the Secretary, that the public interest that the proposed change would serve in furthering such job creation, community development or economic revitalization outweighs the public interest that continuation of the rule unchanged would serve in furthering such underlying purposes. The Secretary shall not approve any request to waive or modify a rule if that waiver or modification would—

(1) directly violate a statutory requirement; or

(2) be likely to present a significant risk to the public health, including environmental health or safety.

(e) NOTICE OF DISAPPROVAL.—If a request is disapproved, the Secretary shall inform the requesting governments in writing of the reasons therefor and shall, to the maximum extent possible, work with such governments to develop an alternative, consistent with the standards contained in subsection (d).

(f) PERIOD FOR DETERMINATION.—The Secretary shall discharge the responsibilities of the Secretary under this section in an expeditious manner, and shall make a determination on requests not later than 90 days after their receipt.

(g) APPLICABLE PROCEDURES.—A waiver or modification of a rule under subsection (a) shall not be considered to be a rule, rulemaking, or regulation under chapter 5 of title 5, United States Code. To facilitate reaching a decision on any requested waiver or modification, the Secretary may seek the views of interested parties and, if the views are to be sought, determine how they should be obtained and to what extent, if any, they should be taken into account in considering the request. The Secretary shall publish a notice in the Federal Register stating any waiver or modification of a rule under this section.

(h) EFFECT OF SUBSEQUENT AMENDMENT OF RULES.—In the event that the Secretary proposes to amend a rule for which a waiver or modification under this section is in effect, the Secretary shall not change the waiver or modification to impose additional requirements unless the Secretary determines, consistent with standards contained in subsection (d), that such action is necessary.

(i) EXPIRATION OF WAIVERS AND MODIFICATIONS.—No waiver or modification of a rule under this section shall remain in effect for a longer period than the period for which the enterprise zone designation remains in effect for the area in which the waiver or modification applies.

(j) DEFINITIONS.—For purposes of this section:

(1) RULE.—The term "rule" means—

(A) any rule as defined in section 551(4) of title 5, United States Code; or

(B) any rulemaking conducted on the record after opportunity for an agency

hearing pursuant to sections 556 and 557 of such title 5.

(2) SECRETARY.—The term "Secretary" means the Secretary of Housing and Urban Development or, with respect to any rule issued under title V of the Housing Act of 1949, the Secretary of Agriculture.

SEC. 4705. COORDINATION OF HOUSING AND URBAN DEVELOPMENT PROGRAMS IN ENTERPRISE ZONES.

Section 3 of the Department of Housing and Urban Development Act is amended by adding at the end the following new subsection:

"(d) The Secretary shall—

"(1) promote the coordination of all programs under the jurisdiction of the Secretary that are carried on within an enterprise zone designated pursuant to section 4701 of the Housing Act of 1986;

"(2) expedite, to the greatest extent possible, the consideration of applications for programs referred to in paragraph (1) through the consolidation of forms or otherwise; and

"(3) provide, whenever possible, for the consolidation of periodic reports required under programs referred to in paragraph (1) into 1 summary report submitted at such intervals as may be designated by the Secretary.".

SEC. 4706. COORDINATION WITH CDBG AND UDAG PROGRAMS.

It is the policy of the Congress that amounts provided under the community development block grant and urban development action grant programs under title I of the Housing and Community Development Act of 1974 shall not be reduced in any fiscal year in which the provisions of this subtitle are in effect.

Subtitle H—Assisted Housing Livability Improvements

SEC. 4801. RENT PHASE-IN.

Section 3 of the United States Housing Act of 1937 is amended by adding at the end the following new subsection:

"(d)(1) In any case in which the obtaining of employment by a resident of a dwelling unit assisted under this Act will result in an increase in the rent payable by the family of such resident under subsection (a), the public housing agency involved (or the Secretary, if no public housing agency is involved) may provide for a gradual increase in such rent to the full amount during a period of not more than 6 months.

"(2) For purposes of this subsection, the term 'employment' shall have such meaning as is determined to be appropriate by the public housing agency involved (or the Secretary, if no public housing agency is involved).".

SEC. 4802. PORTABILITY OF SECTION 8 CERTIFICATES AND VOUCHERS.

Section 8 of the United States Housing Act of 1937 is amended by adding at the end the following new subsection:

"(q)(1) Any family assisted under subsection (b) or (o) may continue to receive such assistance when such family moves to another eligible dwelling unit—

"(A) if such dwelling unit is within the same metropolitan statistical area as the dwelling unit from which the family moves; and

"(B) notwithstanding that such dwelling unit is not within the area of jurisdiction of the public housing agency having jurisdiction in the area of the dwelling unit from which the family moves.

"(2) The public housing agency having authority with respect to the dwelling unit to which a family moves under this subsection shall have the responsibility of carrying out the provisions of this subsection with respect to such family. If no public housing agency has authority with respect to the dwelling unit to which a family moves under this subsection, the public housing agency having authority with respect to the dwelling unit from which the family moves shall have such responsibility.

"(3) In providing assistance under subsection (b) or (o) for any fiscal year, the Secretary shall give consideration to any reduction in the number of resident families incurred by a public housing agency in the preceding fiscal year as a result of the provisions of this subsection.

"(4) The provisions of this subsection may not be construed to restrict any authority of the Secretary under any other provision of law to provide for the portability of assistance under this section.".

SEC. 4803. INCENTIVES FOR PUBLIC HOUSING AGENCY PERFORMANCE EFFICIENCY.

Section 9(a)(3) of the United States Housing Act of 1937 (as added by section 4207 of this Act) is further amended by adding at the end the following new subparagraph:

"(C) Under the performance funding system established under this paragraph (and notwithstanding any provision of subparagraph (B) to the contrary)—

"(i) funds received by any public housing agency from sources other than tenant rents or other tenant payments, investment income, or income earned from commercial leases or receipts, including any amounts recovered through litigation, shall not be counted as income in computing the allowable subsidy nor shall prior receipt of any such funds affect the allowable expense level; and

"(ii) any revenues resulting from rental income or other income (including investment income) in excess of estimated revenues from such items may not be recaptured, used, or computed to reduce assistance provided under this section, unless such estimate—

"(I) was unreasonable according to regulations in effect when the estimate was made; or

"(II) was fraudulent and deceptive.".

SEC. 4804. PROVISION OF ADEQUATE REPLACEMENT UNITS IN CASES OF DEMOLITION AND DISPOSITION.

Section 18(b) of the United States Housing Act of 1937 (as amended by section 4211 of this Act) is further amended—

(A) by striking "and" at the end of paragraph (2);

(B) by striking the period at the end of paragraph (3) and inserting "; and"; and

(C) by adding at the end the following new paragraph:

"(4) as an alternative to the requirements of paragraph (3), the public housing agency has developed a plan for the provision of an additional decent, safe, sanitary, and affordable dwelling unit for each public housing dwelling unit to be demolished or disposed under such application, which plan—

"(A) provides for the provision of such additional dwelling units through the acquisition of additional public housing dwelling units, the development of additional public housing dwelling units, the use of assistance under section 8 (excluding vouchers under section 8(o)), the acquisition or development of dwelling units assisted under a State or local government program that provides for project-based assistance comparable in terms of eligibility, contribution to rent, and length of assistance contract (not less than 15 years) to that available under section 8(b)(1), or any combination of such methods. Before approving any plan which calls for the use of assistance under section 8, the Secretary shall find that the supply of private rental housing actually available to those who would receive such assistance under the plan is sufficient for the total number of certificates and vouchers available in the community after implementation of the plan and that such supply is likely to remain available for the full 15-year term of the assistance. The Secretary shall base the required finding on objective information which shall include rates of participation by landlords in the section 8 program, size, conditions and rent levels of available rental housing as compared to section 8 standards, the supply of vacant existing housing with rents at or below the fair market rent or payment standard or the likelihood of adjusting the fair market rent or payment standard, and the extent of discrimination against the types of individuals or families to be served by the assistance;

"(B) is approved by the unit of general local government in which the project is located;

"(C) includes a reasonable plan for funding, which plan shall include the Secretary's agreement to commit the Federal funds necessary to carry out the plan;

"(D) includes a method of ensuring that the same number of individuals will be provided housing; and

"(E) provides for the payment of the relocation expenses of each tenant to be displaced and ensures that the rent paid by the tenant following relocation will not exceed the amount permitted under this Act.".

SEC. 4805. PROHIBITION OF DENIAL OF SECTION 8 CERTIFICATES AND VOUCHERS TO RESIDENTS OF PUBLIC HOUSING.

Section 8 of the United States Housing Act of 1937 (as amended by section 4802 of this Act) is further amended by adding at the end the following new subsection:

"(r) In selecting families for the provision of assistance under this section (including subsection (o)), a public housing agency may not consider whether a family resides in a public housing project, except in the case of a family being displaced as a result of major repairs, demolition, or disposition.".

SEC. 4806. DEREGULATION OF PUBLIC HOUSING AGENCIES.

Section 2 of the United States Housing Act of 1937 is amended—

(1) by inserting "(a)" after the section designation; and

(2) by adding at the end the following new subsection:

"(b)(1) To encourage efficient and effective administration of public housing by public housing agencies, to increase the amount of responsibility of these agencies for administering their public housing, and to minimize Federal involvement in the administration of public housing, the Secretary shall, whenever feasible, permit public housing agencies to carry out activities involved in the administration of public housing projects without prior review or approval by the Secretary.

"(2) The provisions of paragraph (1) shall not apply if—

"(A) the Secretary determines that there is a reasonable basis to conclude that prior review and approval of 1 or more specific activities is necessary to ensure efficient and effective conduct of the activity throughout the program;

"(B) the Secretary determines that there is a reasonable basis to conclude that prior review and approval is necessary with respect to a particular public housing agency due to such factors as its inexperience or poor performance in carrying out the same or related activities; or

"(C) prior review or approval by the Secretary is required by law.".

SEC. 4807. EFFECTIVE DATE.

The amendments made by this subtitle shall take effect on October 1, 1986, or the date of the enactment of this Act, whichever occurs later.

The SPEAKER pro tempore. Is a second demanded?

Mr. WYLIE. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Rhode Island [Mr. ST GERMAIN] will be recognized for 20 minutes and the gentleman from Ohio [Mr. WYLIE] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Rhode Island [Mr. ST GERMAIN].

Mr. ST GERMAIN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 5576—the Banking Stability, Housing Improvement and Consumer Protection Act of 1986—is an omnibus package of "must" legislation—must legislation for the consumer; musts for financial regulators and the Federal insurance funds; and musts for housing programs and community development efforts nationwide.

If the Congress fails to enact H.R. 5576 it invites chaos among the Nation's system of depository institutions, a loss of confidence across a wide spectrum of the American public, and potentially heavy drains on Federal insurance funds and the ultimate prospect of direct appropriations to replenish these funds.

If the Congress fails to enact H.R. 5576 it would shut down federally assisted housing programs administered by both the Department of Housing and Urban Development and the Farmers Home Administration. Everything from FHA insurance to programs for the elderly, housing to community development block grants, the urban development action grant [UDAG], and Housing Development Action Grant Program [HODAG] projects would be halted along with crime and flood insurance.

If Congress fails to enact H.R. 5576 it would abandon a commitment to begin to provide relief for the American consumer who has been hit with a myriad of new fees and unfair practices instituted by banks and other financial institutions. The bill would prevent banks from holding customer's checks and would require that the customer be given access to the deposited funds in a timely fashion. Under the present system, banks hold checks for inordinate periods of time—some times 2 to 3 weeks, even a month—and profit from the float before giving the customer access to his or her money. In the meantime, the customer is socked with huge bounced check fees even though a bona fide deposit has been made. In other cases, the banks hold the checks, fail to credit the amount to the customer's account and, thus, force the customer into an overline or overdraft line of credit at a high interest rate.

Both the check hold bill and the housing bill have previously passed the House. The check hold bill on a vote of 282 to 11 on January 23, 1986; the housing bill on a 340-to-36 vote on June 12, 1986. The Senate has failed to act and we have included these measures in H.R. 5576 in an effort to place these must items before the Senate again.

Titles I and II of the bill provide important new tools and funds for the Federal Deposit Insurance Corporation and the Federal Savings and Loan Insurance Corporation.

The bill provides for the recapitalization of FSLIC which insures approximately $800 billion in deposits in over 3,000 savings and loan institutions. The recap plan is an industry self-help effort and involves no taxpayer moneys.

The problems of FSLIC are well known. The FSLIC is trying to close or sell about 130 sick savings and loans with assets totaling $47.6 billion. FSLIC's reserves could fall to as low as $1 billion by the end of this year. The recapitalization plan is expected to raise between $12 and $15 billion for FSLIC on a long-term basis.

Title II contains the so-called regulators' bill which broadens the powers of the Federal banking agencies to deal with troubled commercial banks. The bill would expand the regulators' authority to merge failed banks interstate to include the authority to arrange such mergers for banks that are in danger of closing, as well as for those that have already been closed. The Federal Deposit Insurance Corporation has already dealt with over 100 bank failures this year and is anticipating as many as 160 failures for the year as a whole. The authority contained in title II is essential if the FDIC's costs are to be minimized and the insurance fund protected.

Mr. Speaker, H.R. 5576 passed the Banking, Finance and Urban Affairs Committee on a 47 to 1 vote. it should be passed by the House today by an overwhelming margin so that we can move this to the Senate with reasonable prospects for enactment before the end of the 99th Congress.

Mr. Speaker, the parliamentary situation in committee did not allow the offering of three amendments needed to complete and clarify title I, the FSLIC recapitalization. These are included in a committee amendment I am offering today which provides for: First, extending the net worth certificates to assist savings and loans under the Garn-St Germain Act of 1982; second, clarifying the use of thrift institutions' secondary reserves as it relates to the FSLIC recapitalization; and third, a phasedown of the special assessments on thrift institutions.

Committee members are in favor of these amendments which are part of a similar bill pending in the other body and I expect some accommodation can be made on these matters in any conference that may occur.

Mr. Speaker, I reserve the balance of my time.

Mr. WYLIE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in strong support of H.R. 5576. This bill was reported favorably by the Banking Committee on a 47 to 1 vote, as the chairman mentioned, and includes provisions which are critical to the continued stability of our Nation's thrift and banking systems.

Also included in H.R. 5576 are two bills which were previously passed by the House dealing with funds availability and housing. The chairman, the gentleman from Rhode Island [Mr. ST GERMAIN] has emphasized the extreme importance of this legislation today, and some of what I say will be repetitious, but it will serve to emphasize the importance I feel about this bill.

Title I of the bill before us provides for the recapitalization of the Federal Savings and Loan Insurance Corporation [FSLIC]. FSLIC insures about $800 billion in deposits at over 3,000 savings and loan institutions. The problems of some savings and loans are well known and documented. FSLIC needs additional resources to deal with these problems.

Federal Home Loan Bank Board Chairman Gray has stated that FSLIC is trying to solve the problems of about 130 sick S&L's with assets totaling $47.6 billion and that in 1987, it will have to resolve the problems of another 122 savings and loans with assets of $47.3 billion.

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With FSLIC's reserves at about $2.5 billion, and with the expectation that they will decline to about $1 billion by the end of the year, this recapitalization bill of FSLIC is needed if the problems are to be solved in a timely fashion.

The recapitalization plan is an industry self-help approach and does not involve taxpayer funds. Under the plan, $3 billion would be contributed to a special financing corporation by the 12 Federal home loan banks—

which are owned by their member S&L's. The moneys would come from the earned surplus of the banks. In turn, the financing corporation would leverage part of this amount to raise up to $15 billion by issuing long-term bonds in the private capital markets. The bonds would be secured by zero-coupon obligations bought by the corporation and equal at maturity to the total amount debt issued by the corporation. The proceeds of the bond sales to the public would be channeled to FSLIC for the resolution of problem cases.

Title II contains the so-called regulators' bill which expands the powers of the Federal banking agencies to deal with troubled commercial banks, as well as a provision extending the National Credit Union Administration's conservatorship authority for 3 years. The bill would expand the regulator's authority to arrange mergers of failing banks, or banks in danger of closing, if the bank has total assets of $500 million or more or is one of the 10 largest in the State.

Authority also would be provided for the interstate acquisition of all or part of a bank holding company if the total assets of the subsidiary troubled bank or banks is $500 million or more and equals 33 percent of the total banking assets of the holding company. A requirement that the relevant State supervisor be consulted is included and an April 15, 1989, sunset date for the authorities is provided.

The Federal Deposit Insurance Corporation has already dealt with over 100 bank failures this year and is anticipating as many as 160 failures by year end. The authority contained in this bill is essential if the FDIC's costs are to be minimized and the insurance fund protected.

Title III of H.R. 5576 limits the amount of time financial institutions can hold a customers' deposited check before freeing up the funds for withdrawal. This title, in the form of H.R. 2443, passed the House on January 23, 1986 by a vote of 282 to 11. No changes have been made in the bill that passed the House for the purposes of incorporating it into this omnibus package. Therefore I will refrain from providing a detailed description.

Title IV of H.R. 5576, otherwise known to all as H.R. 1, also passed the House on June 12, 1986 by a vote of 340 to 36. This title reauthorizes federally assisted housing and community development programs administered by HUD and the Farmers Home Administration. Again, this title is identical to a bill previously passed by the House.

Titles I and II, while they previously have not been considered by the full House are, as I said earlier, critical to the continued stability of our Nation's thrift and banking systems.

I would not like to see us go home without passing the FSLIC recapitalization and the regulators reform provisions. I am certain if considered separately, the full House would also overwhelmingly support these two measures.

Mr. Speaker, I urge my colleagues to do so now and to reaffirm their support for titles III and IV.

Mr. Speaker, I reserve the balance of my time.

The SPEAKER pro tempore (Mr. KILDEE). The gentleman from Ohio [Mr. WYLIE] has consumed 6 minutes.

Mr. ST GERMAIN. Mr. Speaker, I yield 1 minute to the gentleman from New York [Mr. LAFALCE].

Mr. LAFALCE. Mr. Speaker, I rise today in strong support of H.R. 5576, the Banking Stability, Housing Improvement and Consumer Protection Act of 1986. H.R. 5576 is good legislation, and it is, above all, responsible legislation. It represents a true, bipartisan consensus of the House Banking Committee, as is evidenced by the 47 to 1 vote in committee in favor of reporting this essential legislation to the House. It is a straightforward and honest measure that contains only the most important legislation that we must enact before adjournment this year. I am proud to have been one of the principal proponents of this legislation during its consideration by the House Banking Committee.

H.R. 5576 contains four titles: Title I contains the proposal originally submitted to Congress by the administration, as amended by the Subcommittee on Financial Institutions, to recapitalize the FSLIC; title II makes necessary and important changes to the emergency provisions of the Depository Institutions Act of 1982 to give the Federal regulators the additional flexibility they need to arrange for emergency acquisitions of troubled financial institutions; title III consists of the Expedited Funds Availability Act, or "check-hold" bill, as overwhelmingly passed by the House last January by a vote of 282-11; finally, title IV of the bill contains the text of H.R. 1, the Housing and Community Development Act, as passed by the House last June by a vote of 340 to 36.

I strongly urge my colleagues to vote in favor of this important measure. A vote for this bill is a vote to ensure the stability of our banking and thrift industries. By supporting H.R. 5576, you will reassure your constituents that the full faith and credit of the U.S. Government stands behind their deposits in our Nation's banks and thrifts. Best of all, however, titles I and II of the bill, which consist of the proposals to recapitalize the FSLIC and to provide Federal financial institutions regulators with additional flexibility to arrange for emergency acquisitions of troubled financial institutions, will not cost taxpayers one cent. Titles I and II of the bill involve no Government money and will have no negative impact on the Federal deficit. On the contrary, these bills will actually save money for the FSLIC and the FDIC over the next few years. The Congressional Budget Office has estimated that enactment of title I of the bill, recapitalizing the FSLIC, will save the FSLIC between $100 to $200 million annual over the next 3 years. Similarly, title II of the measure is expected to save the FDIC $100 to $200 million annually over the next 3 years. It is rare indeed for Congress to have the opportunity to enact legislation that is both positive and bipartisan, and yet will actually save money. Titles I and II of H.R. 5576 provide Members with that opportunity.

There are simply no reasons not to vote for this bill, and there are many, many reasons to vote in favor of it. It contains two titles that effectively shore up our Federal financial institution deposit insurance funds, and it contains important proconsumer and prohousing legislation. The following is a more detailed summary of each title of the bill.

Title I of H.R. 5576 provides for the recapitalization of the Federal Savings and Loan Insurance Corporation [FSLIC]. The FSLIC insures approximately $800 billion in consumer deposits held in over 3,000 savings and loan institutions. The problems of FSLIC have been well documented. Currently, the FSLIC is attempting to resolve financial problems in about 130 savings and loans. These savings and loans hold assets of approximately $47.6 billion. FSLIC's reserves, however, amount to only about $2½ billion right now, and they are expected to drop to only about $1 billion by the end of this year.

H.R. 5576 would provide FSLIC with approximately $15 billion of additional funding which, when added to its current reserves and anticipated income stream, will make available to the FSLIC between $22 and $25 billion over the next several years. These additional funds will be provided by a $3 billion capital contribution from the industry-owned Federal home loan banks, which contribution will in turn be used as security to obtain additional funds in the private capital markets. These funds will be injected into the FSLIC to be used to liquidate or arrange acquisitions of troubled thrift institutions.

This FSLIC recapitalization plan is a thrift-industry, self-help effort. The industry has committed itself to paying essential premium assessments over the next several years, which will ensure that the FSLIC recapitalization plan works. I cannot emphasize to my colleagues enough the importance of this legislation. If we do not act now to recapitalize the FSLIC, its problems

will only worsen. Indeed, a September 9 report by the General Accounting Office concludes that a failure by Congress to enact the FSLIC recapitalization proposal will result in substantially higher costs to FSLIC over the long run. I urge adoption of this crucial legislation.

Title II of H.R. 5576 contains the so-called regulators bill. This bill was presented to the Banking Committee by the Federal financial institutions regulators and represents their recommendations as to changes needed to enable them to more efficiently arrange cost-effective acquisitions and mergers of troubled banks and savings and loans. I should note, as well, that the regulators bill is very similar to legislation I introduced in April of this year that would have accomplished the same purposes as the regulators bill. I am proud to be a principal sponsor of this essential legislation. The regulators bill has been considered and amended by the Financial Institutions Subcommittee to take into account the concerns of various points of view in the banking and thrift industries. In short, it is a very reasonable consensus that serves a very real and essential purpose.

Briefly, the bill would permit acquisitions across State lines of both failed, and failing, banks. It would permit interestate acquisitions of failing banks that have $500 million or more in assets, or of the top 10 banks in a State. In addition, it would permit acquisitions of entire bank holding companies across State lines, provided a significant portion of a bank holding company's assets consist of failing bank assets.

This bill is designed to—and will—save money for the Federal Deposit Insurance Corporation [FDIC]. That is because it is generally much more cost effective for the FDIC to arrange for a private acquisition of a failing bank than to pay depositors the full insured amount of their deposits. The FDIC has already dealt with over 100 bank failures this year and is anticipating as many as 160 failures for the year as a whole. The changes made by title II of H.R. 5576 are absolutely essential if the FDIC's costs are to be minimized and the insurance fund protected.

Title III of the bill consists of the Expedited Funds Availability Act, or the so-called check-hold bill, as passed by the House last January by a vote of 282 to 11. Clearly, this title has the support of the overwhelming majority of the Members of the House. The Expedited Funds Availability Act is a proconsumer bill, and it addresses a problem many of our constituents have justifiably complained to us about. And, that is the unfair amount of time that some financial institutions hold customers' deposited checks before giving them access to their funds.

Under the Expedited Funds Act, financial institutions would be required to make available to consumers their deposited funds within specific time periods. Specifically, for the first 3 years of the bill, local checks could be withdrawn in 7 business days. After 3 years, financial institutions would have to permit consumers the right to their funds within 1 to 3 business days for all local and in-State checks, and within 4 business days for all out-of-State checks. In short, this title of H.R. 5576 is essential and positive proconsumer legislation. I urge my colleagues to adopt title III of H.R. 5576 as well as the other important titles of the bill.

Title IV of the bill consists of H.R. 1, the Housing and Community Development Act, as passed by the House in June by a vote of 340 to 36. This title is also noncontroversial in that it represents the consensus of House Republicans and Democrats on the housing bill. Title IV reauthorizes federally assisted housing and community development programs administered by HUD and the Farmers Home Administration. Title IV also extends the FHA-insuring authorities until September 1987, prohibits user fees on Fannie Mae and Freddie Mac, and reauthorizes vitally needed elderly and handicapped housing programs, as well as the Community Development Block Grant [CDBG] and Urban Development Action Grant [UDAG] Programs. Title IV also reauthorizes Federal flood and crime insurance programs, provides shelter assistance for the homeless, and creates 100 enterprise zones nationwide to stimulate investment and employment.

In conclusion, I cannot emphasize enough the importance of this legislation. It is an essential bill. It is a straightforward bill. It represents a bipartisan effort by the Banking Committee to enact necessary legislation this year. H.R. 5576 casts aside special interest infighting and forges a compromise that can be wholeheartedly endorsed and supported by all Members of the House. We cannot go home this year without recapitalizing the FSLIC. We cannot go home without giving the Federal bank and thrift regulators the necessary and reasonable authorities they have asked for to more efficiently and cost effectively do their job of stabilizing our financial institutions. Also, we should enact the housing bill and the check-hold bill this year to show our local governments and our constituents that we support essential housing and community development programs, and that we believe that the consumer deserves a fair break. I urge my colleagues to vote for this essential legislation.

Mr. WYLIE. Mr. Speaker, I yield 2 minutes to the gentleman from Virginia [Mr. PARRIS] who has been working very hard and diligently on this issue and knows the bill well.

Mr. PARRIS. Mr. Speaker, I thank the leadership for scheduling this matter on today's agenda.

Mr. Speaker, I rise in strong support of H.R. 5576, the omnibus legislation reported by the Banking Committee. The most important parts of this package are the emergency titles for our Federal deposit insurance funds, the FSLIC and the FDIC. The Banking Committee did not lose sight of the crucial need to enact these titles before we adjourn. Last week, we reported this legislation by a near-unanimous vote.

I want to briefly focus on the importance of the FSLIC recapitalization plan. Bank Board Chairman Ed Gray, in separate letters sent last week to Chairman ST GERMAIN and me, clearly warned this Congress that a crisis is nearing at the FSLIC unless we begin the process of recapitalizing FSLIC before we adjourn for the year. Chairman Gray's letters reveal the extent of FSLIC's shrinking reserves and ballooning obligations as of September 15, 1986. Those of us who have spoken out about FSLIC's ailing condition do not need to create a further parade of horribles. The facts speak for themselves.

By yearend, Chairman Gray projects that FSLIC's total reserves will have plummeted to $1.8 billion, a decline of almost two-thirds of FSLIC's $4.6 billion in reserves at the end of last year. The fund's primary or legally usable reserves will have dwindled to $1 billion.

As has already been said in this debate today, these meager reserves must protect $800 billion of deposits at 3,249 thrifts around the Nation.

FSLIC's reserve ratio, the amount of cash on hand for every $100 in insured deposits, is equally precarious.

It is enlightening to compare FSLIC's reserves with those of the FDIC and NCUA funds. In 1975, FSLIC had $1.50 protecting every $100 of insured deposits. By yearend the Bank Board estimates that the FSLIC reserve ratio will have plunged to 0.23 cents for every $100 of insured deposits. The reserve ratio for legally usable funds, according to Chairman Gray, will be 0.13 cents, less than one-tenth of the reserve ratio that existed just a little over 10 years ago.

Today, the reserve ratio of the FDIC and NCUA is roughly four times stronger than FSLIC's. The FDIC ended 1985 with approximately $1.20 protecting every $100 of insured deposits, while the NCUA fund is even stronger with a reserve ratio of $1.28.

Our concern about FSLIC's stability would not be so great if the fund were not faced with merging or liquidating 250 S&L's with $95 billion in assets

over the next 15 months. Surely, FSLIC will not take a total loss on these assets when it liquidates or sells their sick S&L's, but if its loss rate for every $1 worth of assets it takes over is a conservative 15 percent, that is a $14 billion loss over the next 15 months. FSLIC experienced a 49.8-percent insolvency loss in June when it closed five Louisiana thrifts and an 88-percent insolvency loss when it closed Presidio Savings & Loan last month. If the Government's loss turns out to be 30 cents per dollar, the cost grows to $29 billion.

Moreover, the horizon does not seem to be improving for the insolvent and unprofitable thrifts which pose such a great risk to the FSLIC. Chairman Gray reports that the 40 thrifts being run by the FSLIC in its management program lost $700 million in the 3 months of the second quarter of 1986 alone. On an annualized basis, that is $2.8 billion loss in this year alone. There are another 250 to 300 S&L's who continue to operate even though they are insolvent and losing money. Their annual losses range between $1.5 and $2 billion. Taken together, these insolvent and unprofitable thrifts are losing $11 million a day or $4 billion a year.

The real truth in savings today is that the FSLIC's reserves, which protect almost $1 trillion of American families' savings, are all but depleted, leaving the fund's regulators almost powerless to close down S&L's whose gambles are leading to greater insolvency every day they remain in business.

Last week Chairman Gray issued an unprecedented warning for a Federal insurance fund Chairman. He said in his letters to us that—

> Should the Congress fail to take action on the FSLIC legislation, now pending, and go home in October without having resolved the issues, depositor *perceptions* could be further weakened, possibly exacerbating the risk of a crisis of confidence in the thrift deposit insurance system. One need only recall the situations which developed in Ohio and Maryland. (Emphasis in original.)

For this Congress to run that risk is clearly unthinkable.

This recapitalization is, however, no panacea. No matter how the numbers are crunched, the Treasury recapitalization plan will not cover all of the present and future losses FSLIC has uncovered to date. There just isn't enough money in the plan. One private analyst concludes that the recap plan will fall at least $17 billion short of the $29 billion in current losses facing FSLIC.

Nevertheless, the Treasury plan is the only politically feasible alternative available to us. It is a reasonable beginning, given the record earnings of the entire thrift industry in 1985 and the benefits FSLIC has received from declining interest rates, but it is not the end of FSLIC's financial woes.

Continued dramatic inaction in the face of FSLIC's growing problems until a crisis of depositor confidence develops is an indefensible alternative. We all know that the GAO has informed us that if legislative gridlock were to continue, and 2 years from now we were still considering the FSLIC recap, we will have wasted another $1.4 billion of industry insurance premiums and quite possibly taxpayers' dollars as well. Congress might then be forced to act in a crisis atmosphere with few options except to merge the FSLIC into the FDIC. Such a merger would be undesirable from many perspectives.

For those reasons, and others, despite our misgivings, this body must approve the FSLIC recap plan and the regulators' bill today. The most important legislation we can pass this year on behalf of the American consumer of banking services is to provide for the needs of the Federal insurance funds protecting their life savings.

I urge my colleagues to support this bill.

Mr. ST GERMAIN. Mr. Speaker, I yield 1½ minutes to the gentleman from Kentucky [Mr. HUBBARD], a member of our committee.

Mr. HUBBARD. Mr. Speaker, I rise today in support of H.R. 5576, the Domestic Banking Stability, Housing Improvement and Consumer Protection Act of 1986, and urge its approval by the House.

On September 23, 1986, the headline on the front page of the Washington Post read, "FSLIC may be $26 billion short." Citing information contained in a letter to our colleague STAN PARRIS from Federal Home Loan Bank Board Chairman Edwin Gray, the article described the deteriorating condition of the Federal Savings and Loan Insurance Corporation, the FSLIC. During the next 15 months, the Federal Home Loan Bank Board expects the closure or sale of some 250 problem savings and loan institutions with assets totaling nearly $95 billion.

As of September 15, the FSLIC insurance fund was reported to have had $3.3 billion in reserves to pay out to depositors or buyers when ailing thrifts fail or are sold. By way of comparison, on December 31, 1985, it was reported that the FSLIC fund had $4.6 billion in reserves. It is clear that the Bank Board's expectations of assistance to 250 ailing savings and loans by the end of 1987 indicate that the day of reckoning is very near.

My point, Mr. Speaker, is that we need to pass the legislation necessary to recapitalize the Federal Savings and Loan Insurance Corporation before the adjournment of the 99th Congress. Indeed, I believe it is critical that this occur to avert the possibility of a catastrophe in the savings and loan industry.

This recapitalization of FSLIC is contained in title I of H.R. 5576. Title II of the bill provides for the broadening of Federal banking agencies' powers to deal with troubled commercial banks. Title III is the Expedited Funds Availability Act, a bill that this House passed on January 23, 1986, by a vote of 282 to 11. This title limits the amount of time a financial institution can hold a customer's deposited check before freeing up the funds for withdrawal. Title IV contains another House-passed bill, the Housing and Community Development Act, passed on June 12, 1986, by a vote of 340 to 36.

Although many of my constituents would have liked the approval of major and comprehensive banking legislation, say to close the nonbank bank loophole or to provide additional powers for banks, I urge my colleagues in the House to approve necessary legislation that will ultimately be passed by the Senate and eventually signed into law by the President.

I urge my colleagues to vote "yes" to pass H.R. 5576.

Mr. WYLIE. Mr. Speaker, I yield such time as he may consume to the gentleman from Wisconsin [Mr. ROTH].

Mr. ROTH. Mr. Speaker, I rise in support of H.R. 5576. To put it mildly, it's about time we considered this legislation. After months of delay at the committee level and a week's delay between the committee and the floor, we have precious little time to pass this legislation that is so critical to the safety and soundness of our financial institutions.

There are parts of this measure that are more important than others. Specifically, the FSLIC recapitalization proposal and the so-called regulators' bill are particularly critical.

Hearings before the Banking Committee showed just how serious the plight of the FSLIC really is. The FSLIC's assets at this point are somewhat less than $3 billion. Its potential liabilities, if it were to try and resolve all its problem cases, are anywhere from $15 billion to $26 billion. At the end of last year, a fifth of the FSLIC's 3,200 member institutions were losing a collective $10 million a day.

And deposits insured by the FSLIC are ultimately backed by the American taxpayers. In short, we have a disaster waiting to happen.

This legislation provides a means of recapitalizing the FSLIC. It is not a perfect solution. It doesn't address the problems that got the insurance fund into such deep problems, but does provide a way of resolving the industry's many basket cases.

The regulators bill represents an effort to increase the flexibility of banking regulators in dealing with the problems of failed or failing institu-

tions. While the Garn-St Germain act provides a means for the acquisition of failed institutions above a certain size threshold, many of us believe that interstate acquisitions of banks or bank holding companies should be made more attractive as a way of dealing with potential agriculture and energy bank crises.

Let us hope that this expanded emergency acquisitions authority will never be needed. But at least let us have it on the books in case it is needed.

I urge my colleagues to support H.R. 5576.

Mr. WYLIE. Mr. Speaker, I yield 2 minutes to the gentleman from Connecticut [Mr. MCKINNEY].

Mr. MCKINNEY. I thank the gentleman for yielding.

Mr. Speaker, I would like to clear up one or two points very briefly with the chairman of the committee, whom I congratulate for bringing this bill before us today.

One is: Though certain procedural matters were followed within the committee and certain votes were taken or other alternatives offered, there is no desire on the part of the chairman, is there, to forget that we still have the subject of the so-called South Dakota loophole?

Mr. ST GERMAIN. Mr. Speaker, will the gentleman yield?

Mr. MCKINNEY. I yield to the chairman of the committee.

Mr. ST GERMAIN. I thank the gentleman for yielding.

Mr. Speaker, I assure the gentleman from Connecticut I could not forget the existence of that problem. There was no substantive debate on the South Dakota provision and in the minds of a number of members the vote was primarily an attempt to develop the least controversial bill possible.

Mr. MCKINNEY. I thank the chairman very much. I assume that we will continue on in the next Congress to do something about this which has simply been left out because we have not had the legislative time to do it?

Mr. ST GERMAIN. As we say in New England, it is at this point merely in abeyance.

Mr. MCKINNEY. And I am also sure that the chairman will fight with our good colleagues in the other body across the hall to make sure that this is not a Gramm-Rudman Christmas tree, not the bearer of ornaments and little exceptions that our good colleagues might want to put on the bill when it comes back from conference?

Mr. ST GERMAIN. If the gentleman would yield further.

Mr. MCKINNEY. Yes, I do.

Mr. ST GERMAIN. May I interpolate what the gentleman is saying is that we do not intend to accept a whole basketful of additions from the Senate?

Mr. MCKINNEY. That is perfectly correct.

Mr. ST GERMAIN. With that I concur wholeheartedly.

Mr. MCKINNEY. And the chairman may be sure that he will have this senior Republican's backing in all of his efforts to keep all four titles in this package. Two titles are very important to the financial institutions, but the other two titles are just as important to the American people. Expedited Funds Availability, also known as the "Checkhold bill," and the Housing Act should remain a part of this banking package that we send to the President.

Mr. Speaker, this bill is vital. We have had plenty of explanations as to where FSLIC is at. We have been talking earlier about savings being known to the American people; it is going to do little good to pass a truth-in-savings law if in fact the thrifts cannot get their money and if in fact the American depositor loses his money.

We will have to go on in the next couple of Congresses to find out why some speculators feel that they can play with their depositors' money as if it were playing with some inheritance from a long-lost uncle.

But the fact of the matter is they do not seem to feel any fiduciary responsibility in parts of this country because Uncle Sam is there. We are there, we say we are there, and we have to be there, but we will not be if this bill is not passed.

All America wants a funds-availability bill. It is only fair that we know when the money deposited in a bank or a thrift is ours to use instead of being "lost" in the system. The House has passed this and it should become law.

America also expressed the fact that it wants a housing bill which is also part of this bill. This is the fourth time the House has passed a housing bill in this Congress. I hope the other body will join with us in addressing the housing crisis in this country by passing this bill.

The fourth title, the regulators bill, is an extension of the much-needed emergency acquisition authority to deal with the failed or failing financial institutions around the country. This, too, is vital to the continued stability of our financial institutions.

All four elements of this legislation have a common thread: There is a national problem which needs congressional action now. The House should reaffirm its commitment to the American people by passing this package and urging the other body to act on it as well.

Mr. ST GERMAIN. Mr. Speaker, I yield 2 minutes to the gentleman from Minnesota [Mr. VENTO] a member of the committee.

Mr. VENTO. Mr. Speaker, I rise in reluctant support of this Banking Stability, and Housing Improvement Consumer Protection Act of 1986 and commend the chairman for bringing it forward.

The fact is, Mr. Speaker, that some banks and financial institutions in this country are experiencing a severe problem. The varied Federal regulatory agencies and Federal deposit insurance agencies that we have established to provide stability and certainty are telling us and giving us signals that they need help, legislative help today and not tomorrow to effectively address these problems.

This legislation will provide an answer to that call for legislative help.

The fact is that our financial institutions are having problems not because they provided energy loans, not only because they provided international loans to various countries and other interests, not only because they provided farm loans, but in addition because they have become involved in irresponsible activities beyond these types of normal loan programs.

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The fact is that Congress must answer this call to preserve total economic stability.

I think at the onset that we all ought to recognize that most of our financial institutions, both banks and thrifts, are in good shape, and it is important to maintain as much certainty and as much predictability as we can to assist the U.S. economy. This legislation does that by providing additional authority to capitalize the FSLIC fund, and it does that further by providing some unusual powers to the regulators enhancing their ability to solve problems that some financial institutions are experiencing, in essence to override State regulation in a careful and measured way.

But in the process of providing Federal regulators with new powers to assist the interstate acquisition of troubled financial institutions, some serious questions arise with regard to undue concentration in banking and financial services. Unfortunately, during committee consideration of this legislation, the parliamentary situation precluded Mr. LEACH and I from offering an amendment to limit the size of institutions which would result from the emergency mergers and acquisitions permitted by this legislation. There is deep and broad concern in the Banking Committee and in Congress that simply relying upon the practice of selling troubled institutions to healthy financial institutions is at best a temporary expedient. Such a practice does nothing to improve the bad assets which causes the failure of the banks in the first place. Indeed it may threaten the financial soundness of the new merger.

In addition, reliance on this policy will inevitably lead to a situation

where we have much larger but considerably fewer banks in our Nation. This would erode the decentralized and diversified banking system and concentrate credit making decision in only a few hands. Certainly, this is not the direction in which we should move. Instead of reducing competition in banking, we should pursue policies which increase competition.

The recapitalization of FSLIC is needed at this time but I believe that a major cause of failure of savings and loans has not been addressed. Specifically, the FSLIC must be given increased flexibility to regulate the risky investments undertaken by State chartered savings and loans. Until the FSLIC fund can regulate the risk it insures, the financial situation of insurance funds will likely continue to be at risk.

Much of our attention has focused on the first two titles of this legislation, however, this legislation also contains important safeguards for American consumers. The funds availability legislation has already passed the House. Passage of this legislation again today demonstrates our resolve that in an age where advances in technology allows almost instantaneous transfer of funds, consumers should not have to wait a week or 10 days before they can write a check on the money they deposited in their financial institution.

Finally, this legislation authorizes many important housing programs. This will be the fourth time in the last 10 months that the House has passed the housing authorization. Our action today clearly shows that the House supports the 1 year extension of FHA insurance, the UDAG and CDBG program and the Section 202 Program which provides housing for the elderly and handicapped.

I especially want to bring to the attention of my colleagues the homeless assistance contained in this bill. It is an effort which has generated broad based bipartisan support. Clearly, we are fast approaching a national crisis in housing. For the homeless, the crisis is here. This legislation is an important step in coordinating local, State, and Federal efforts to meet the needs of the homeless. I want to commend my collegues for their assistance in what is really the first Federal program that will actually provide a place for the homeless to sleep.

Mr. Speaker, I would urge Members to vote for this measure.

Mr. WYLIE. Mr. Speaker, I yield 3 minutes to the gentleman from Ohio [Mr. GRADISON].

Mr. GRADISON. Mr. Speaker, the FSLIC capitalization included in the bill now before us has prompted this Member to burden his colleagues with a number of letters which are based on the premise that FSLIC needs help but that the solution developed by the Treasury has serious drawbacks.

The Banking Committee has recognized the seriousness of the situation and quite properly urges the House to act promptly in order to maintain public confidence in the savings and loan industry while dealing with the growing problem of financially troubled S&L's.

My attention was drawn to this bill initially because of the highly imaginative structure put together by the Treasury to assure "off-budget" accounting for the bonds to be issued by the new financing corporation. Having some experience in the savings and loan industry by virtue of serving for 5 years as chairman of 1 of the 12 regional banks, it seemed curious to me that the existing banks did not borrow, and then channel funds directly to the FSLIC—with legislation, if needed, to make this possible.

Were this an isolated matter of budgetary sleight-of-hand, I would not be in the well today, playing the role of a modern-day Jeremiah. But this is one of many measures, better known in our trade as "blue smoke and mirrors," used to make the deficit appear smaller than it is.

Whoever initially developed the FSLIC recapitalization plan deserves the imagination-in-budgeting award-of-the-year. The measure before us makes possible borrowing of $12 billion, and probably more, and the bill solemnly assures us that there is no Federal guarantee. But are we so naive as to believe that lenders will part with such large sums of money solely on the basis of future assessments from this troubled industry? Would the Federal Government ever permit a default on these bonds? I doubt it.

And do we think that the $12 billion or more can be borrowed with no impact on the credit markets? Clearly each of these borrowed dollars means $1 less for all other borrowers—public and private.

I acknowledge that a problem exists, but have serious questions about the proposed solution.

The $12 billion will be a drop in the bucket unless supervision of FSLIC-insured banks is tightened, and standards made more uniform throughout the country. In particular, thrift institutions with limited capital should be restrained from excessive reliance on short-term funds to finance long-term fixed-rate lending. Much of the problem today is the result of the Government not only permitting but indeed encouraging this kind of dangerous mismatch between assets and liabilities. If supervisory standards are not tightened and if interest rates move up again to the levels which prevailed so recently, this $12 billion will be as effective as a Band-Aid would be in treating a coronary.

This FSLIC bailout should be rejected for three reasons:

First, the amount raised is inadequate to deal with the problem of failing S&L's. It gives a sense of false security and assures that future Congresses will have to revisit this issue and come up with far more money. Even if the economy stays strong, some estimate losses closer to $30 billion than $15. And how high will this go if short-term rates rise again to level higher than current mortgage rates?

Second, it assumes that fees paid by healthy S&L's will be adequate to protect depositors of failing institutions. With a growing number of S&L's trying to get out of the S&L business, one is entitled to wonder how much value the S&L franchise will have in the long run. The FHLBB is trying to deal with this by charging exit fees or refusing exit altogether. When the crew tries to jump ship, we should anticipate a troubled voyage. At the very least, before this bill is passed, we should consider whether S&L's as currently structured—borrowing short and lending long—can survive in sufficient numbers to service and pay off $15 billion in bonds. This bill should not be passed without including reforms to minimize the chance of huge losses recurring in the future.

Third, this bailout is structured in gimmickry in order to pass muster for off-budget status.

Mr. Speaker, for these reasons I urge the defeat of this legislation.

Mr. ST GERMAIN. Mr. Speaker, I yield 1 minute to the gentleman from Delaware [Mr. CARPER], a member of the committee.

Mr. CARPER. Mr. Speaker, I thank the chairman for yielding this time to me.

Mr. Speaker, I rise in support of this legislation. It is no secret to any of us that the FSLIC is running dangerously low of funds. Those funds need to be replenished, and this bill does just that.

It is no secret to those of us in this Chamber that there are banks, particularly those in the Midwest and the Oil Patch, that simply need to be merged with, or acquired by, other banks. We have to provide the FDIC with emergency powers to enable those mergers and acquisitions to go forward. This bill does just that.

This body has previously acted on H.R. 1, the housing authorization bill, putting in place a housing policy for this country for the next year, which I think is a sound policy. We would reaffirm that policy by this vote today.

Finally, I think there are many of us who know that certain financial institutions throughout this country deny depositors reasonable access to their funds after deposits have been made. We want to make sure that customers

simply have reasonable access to those funds, while protecting the legitimate concerns of banks, thrifts, and credit unions. Again, this bill does just that.

I might also add a few comments pertaining to the income verification provisions in H.R. 1. It is my hope that those provisions in the bill may be modified in conference with the Senate to reflect a number of constructive comments, made in June 1986 at a Ways and Means Committee hearing on my original proposal, H.R. 4805. I plan to work closely with the conferees, when appointed, toward the end.

Mr. WYLIE. Mr. Speaker, I yield 2 minutes to the gentleman from Iowa [Mr. LEACH].

Mr. LEACH of Iowa. Mr. Speaker, I thank the gentleman for yielding this time to me.

Mr. Speaker, I would simply like to stress that I agree entirely with the premises of the gentleman from Ohio [Mr. GRADISON]. But I have come to a little different conclusion, that the only prudent thing for this Congress at this time is to adopt this legislation.

But it has to be understood it is a very modest step. It is delaying the inevitable. It is an interim solution that buys time, but very little else. What we have to do is underpin the capital base of the institutions, and they have to do this in the private sector, not in the public.

What we have in the industry is a two-tiered division in which those institutions that are well capitalized are making record profits, and those that are undercapitalized or have negative net worth are seeing record losses.

There has been much public discussion that the only way this Congress would consider this bill is if, in some way or another, a message was sent to the regulators that they had to operate meekly.

My view is the exact opposite. Regulators should be put on notice that they have to get tough, and by tough, real tough. The only way to avoid any sort of public bailout in the very near future of the whole savings and loan institutional infrastructure is if we have much tougher regulation and much stronger capitalization requirements.

Therefore, I think charters should be put in jeopardy. I think that asset growth should be halted for those institutions that refuse to deal with the capital replenishment issue.

If institutions cannot make it in today's ideal decelerating interest rate environment, it is very unlikely they are going to make it in the less than ideal circumstances that are likely to be confronted in the couple of years ahead.

Let me just conclude by saying that now is the time for the regulators to get tough and not to bow to the cries of wolf either in Congress or in the industry itself.

Mr. WYLIE. Mr. Speaker, I yield 2 minutes to the gentlewoman from New Jersey [Mrs. ROUKEMA].

Mrs. ROUKEMA. Mr. Speaker, I rise in strong support of H.R. 5576, the Banking Stability, Housing Improvement, and Consumer Protection Act of 1985. The two most important sections of this bill, the emergency interstate acquisitions bill, and the FSLIC recapitalization bill, are crucial pieces of legislation.

The former provision provides a mechanism for one of the most critical and urgently needed measure the recapitalization of the Federal Savings and Loan Insurance Corporation. Certain sectors of our financial industry have been hard hit by troubles in the agricultural and energy areas of our economy and the Federal regulators have told us that they will need additional funds to address this situation adequately. The financing corporation created by the bill will take on the burden of the raising the capital and issuing the debt rather than the Federal Government. After working closely with the Congressional Budget Office, this provision will provide the necessary additional revenue and, through the establishment of a new financing corporation established by this bill, will not add to our deficit.

The second provision provides greater flexibility to the Federal banking regulators to allow emergency interstate acquisitions of either failed or failing institutions. The bill raises the asset threshold for the use of this flexible policy tool, allowing the regulators to help larger banks without forcing them to close. The bill also changes the criteria for the use of this policy tool for those who meet the threshold by allowing the regulators to step in to rescue a failing institution rather than waiting until the institution closes its doors. This will ultimately save money for the insurance funds and ensure no interruption of services of institutions which can be rescued in this way. In addition to the monetary savings for the Federal insurance funds, it will provide greater assurance for depositors and all consumers who rely on safe and sound financial institutions. This will help alleviate the need for the insurance fund to step in and actually pay depositors off.

Mr. Speaker, I regret the process that has finally freed these bills from the Banking Committee because these bills deserve to be enacted on their own merit. For too long they were held hostage in an effort to force action on another bill that has long been stalled in the Rules Committee, H.R. 20, the nonbank-bank loophole closer. Whether you support or oppose closing the nonbank-bank loophole, most of us agree that the regulators' bill and the FSLIC recapitalization bill are too urgently needed to hold them hostage any longer. I hope that in the next Congress we can move on the merits of H.R. 20 and also legislation to close the South Dakota insurance loophole. However, emergency legislation of this type is not the best or appropriate arena.

I am very pleased that the Banking Committee last week agreed not to attach any other controversial provisions to this Banking Stability Act. However, there are other pressing questions facing the financial industry and today's action does not minimize our need to address questions like the nonbank-bank loophole closer, South Dakota insurance loophole closer, and other competitive issues. Therefore, it is my urgent hope that our distinguished chairman, the gentleman from Rhode Island, and the ranking member, the gentleman from Ohio, that we address the other significant challenges facing the financial industry quickly and responsibly in the next Congress rather than allowing the regulators and the courts to continue to set financial policy in this country.

In conclusion, I urge my colleagues to support this necessary legislation. The regulators must deal with troubled financial institutions efficiently and effectively. Safety and soundness requires prompt action.

Mr. Speaker, I am including at this point the letter from Mr. Penner which indicates and states there will be no net budget impact over time:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 26, 1986.

Hon. FERNAND J. ST GERMAIN,
Chairman, Committee on Banking, Finance and Urban Affairs, U.S. House of Representatives, Rayburn House Office Building, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed the Banking Stability, Housing Improvement, and Consumer Protection Act of 1986, as ordered reported by the House Committee on Banking, Finance and Urban Affairs on September 23, 1986.

CBO expects that this bill would result in a reduction in federal insurance costs to assist failing banks, savings and loans, and credit unions. With savings estimated to be between $100 million and $200 million annually over the next three years. In addition, while the recapitalization of the Federal Savings and Loan Insurance Corporation (FSLIC) would result in a cash infusion of an estimated $11 billion or more over the next several years, it is expected that all these funds would be used for assisting troubled savings and loans, thus having no net impact on the federal budget. Based on information from the Board of Governors of the Federal Reserve System, we estimate that the agency may incur administrative and enforcement costs of approximately $400,000 annually, and data processing and other costs of up to $30 million annually as a result of enactment of this legislation. These latter costs would be offset by fees paid by financial institutions.

This bill also incorporates the provisions of H.R. 1, the Housing Act of 1986, with only slight changes from the version passed by the House of Representatives on June 12, 1986. These provisions authorize, at such sums as may be appropriated, a number of housing and community development programs. The costs of these programs would depend largely on appropriation bills not yet enacted. In addition, the bill includes a number of direct spending provisions, including a rent roll-back for elderly and handicapped housing, an increase in management fees paid to public housing agencies, and extensions through 1987 of flood insurance, crime insurance, and Federal Housing Administration mortgage insurance programs. These direct spending effects are summarized in the following table.

DIRECT SPENDING—HOUSING AND COMMUNITY DEVELOPMENT PROGRAMS

[By fiscal year, in millions of dollars]

	1986	1987	1988	1989	1990	1991
Estimated direct spending:						
Budget authority	23	−125	209	162	36	13
Outlays		−1,112	633	540	533	519

The savings projected for the financial regulation provisions discussed above would apply both to current law and to the base used for determining sequestration under the Balanced Budget and Emergency Deficit Control Act of 1985 (the "Gradison base"). The budgetary effects shown above for the provisions of H.R. 1 are relative to current law. Relative to the Gradison base, which reflects 1987 activity of the FHA Fund, the housing and community development direct spending provisions of this bill would increase 1987 outlays by $468 million.

The budgetary effects of the various provisions of this bill are discussed in more detail below.

EXPANDED POWERS FOR REGULATORY AGENCIES

H.R. 5547 would extend and expand certain emergency provisions of the Garn-St Germain Act until July 15, 1989. These provisions would give the Federal Deposit Insurance Corporation (FDIC), the FSLIC, and the National Credit Union Share Insurance Fund additional alternatives for assisting failing and failed institutions, helping to reduce insurance costs to the agencies. Because of the great uncertainty regarding the level and cost of possible financial institution failures, and because the authority provided in these provisions is discretionary, it is difficult to estimate precisely the budget savings resulting from the three-year extension of these powers. Nevertheless, we expect the savings could be $100 million to $200 million annually over the next several years, because the bill would provide additional flexibility and options for resolving problem cases. The provisions likely to have the greatest budgetary effects include additional authority to approve interstate acquisition and to assist failing institutions and certain bank holding companies. The largest savings are expected to accrue to the FDIC.

FSLIC'S RECAPITALIZATION

H.R. 5547 would establish a new government-sponsored enterprise, a financing corporation that would invest in the FSLIC. The financing corporation would be capitalized by the Federal Home Loan Banks (FHLBanks), which would provide up to $3 billion to the corporation over the next several years. The financing corporation would issue debt securities in the private market that would raise about $11 billion or more, depending upon the leverage authorized, for investment in FSLIC non-voting common stock and non-redeemable capital certificates. To service the debt, the financing corporation could assess a premium on all insured institutions equal to the current regular assessment as well as the special assessment paid by members to the FSLIC. To the extent that the financing corporation levies this assessment, FSLIC assessments would be correspondingly reduced. In addition, a minimum of $800 million of the FHLBanks' investment in the financing corporation would be allocated to interest payments and insurance costs on the financing corporation's bonds.

We expect tht the cash infusion in the FSLIC would allow the agency to assist a large number of problem institutions that are currently insolvent. Thus, while the proposed capitalization would increase offsetting collections to the FSLIC, these collections would be used to increase FSLIC outlays for problem institutions, resulting in no net budget impact over time.

The CBO scoring of this proposal is based on the assumption that the financing corporation would be off-budget. This assumption, however, is a close call. On the one hand, it could be argued that on-budget treatment is appropriate, because by authorizing the financing corporation to levy and collect fees from insured institutions, the proposed statute would confer powers on a privately capitalized entity identical to those of a government agency, the FSLIC. Indeed, having obtained assessment power from the FSLIC, the financing corporation would have more quasi-governmental power than most federally-sponsored, wholesale, financial intermediaries. On the other hand, the financing corporation would not have a direct line of credit with the Treasury, as do most existing off-budget government-sponsored enterprises, and would be established and administered by the FHLBanks, which are off-budget. In the end, CBO based its assumption on the criterion adopted by the President's Commission on Budget Concepts in 1967, that "privately owned" entities should be off-budget.

HOUSING PROGRAMS

This bill incorporates the provisions of H.R. 1, the Housing Act of 1986, which reauthorizes a number of housing and community development programs. A copy of the CBO cost estimate for H.R. 1, as passed by the House of Representatives, is attached.

EXPEDITED FUNDS AVAILABILITY

H.R. 5547 would establish maximum time limits for the availability of funds deposited by check. It would require depository institutions to fully disclose their funds availability policies to depositors, and would authorize the Federal Reserve to administer and enforce the provisions of the bill.

To carry out its administrative and enforcement responsibilities, we expect that the Federal Reserve would spend about $400,000 in 1987 and each year thereafter. These costs to the federal government would be reflected in a reduced payment of the surplus income that the Federal Reserve makes each year to the Treasury, which appears as a revenue in the budget.

While the Federal Reserve is currently planning to spend about $10 million annually in an effort to expedite check processing activities, the additional requirements and deadlines outlined in H.R. 5547 would require the Federal Reserve to spend additional resources for this purpose. Because the various alternatives available to implement the legislation have not yet been fully developed or approved, it is not possible at this time to precisely estimate the amount of additional resources needed. Preliminary data suggest that costs of up to $20 million annually may be incurred for this purpose. These costs would be recovered from the private sector, however, resulting in no net costs to the federal government.

Enactment of this bill would not significantly affect the budgets of state or local governments.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely

RUDOLPH G. PENNER,
Director.

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Mr. ST GERMAIN. Mr. Speaker, I yield 1 minute to the gentleman from New York [Mr. SCHUMER].

Mr. SCHUMER. I thank the gentleman for yielding me this time.

Mr. Speaker, I would like to just make a point in reference to this package. It has been said that there is a crisis in the thrift industry and I do not dispute that. FSLIC has a record number of crippled institutions and the powers that the regulators have are not adequate. But just as there is a crisis in thrifts in different parts of this country, there is a housing crisis in this country.

I drove by the White House and the Executive Office Building last week in the evening and there were homeless people lying there and sleeping right under the eaves of the White House. That is because we have a housing crisis in this country.

If this administration thinks that it is going to pick and choose and say this crisis is one we must deal with, but this crisis is one we can ignore, I do not agree with that and I and many of my colleagues on this side of the aisle will do everything we can to stop that from happening.

The housing crisis is real. We have not passed a housing bill and signed it into law since 1983. We would be derelict in our responsibilities if we did not say that on the one hand we must solve the thrift crisis, on the other hand we must solve the housing crisis and force the administration to once and for all do it together.

Mr. ST GERMAIN. Mr. Speaker, I yield 1 minute to the gentleman from Connecticut [Mr. MORRISON].

Mr. MORRISON of Connecticut. I thank the gentleman for yielding me this time.

Mr. Speaker, I rise in support of this legislation and I want to very strongly support what the gentleman from New York has just said. We have a housing crisis in this country in so many of our districts. Certainly in my district in Connecticut we have hundreds upon hundreds of families homeless, families living in hotels and motels in con-

ditions that are absolutely deplorable and unacceptable.

We have to produce housing; we have to repair housing authority units that are no longer habitable and we need to replace housing authority units that are no longer usable. If we are not willing to take these steps we can expect to see this housing crisis grow.

This legislation which incorporates H.R. 1 gives this body a chance to reaffirm its action in support of that legislation and go to the Senate and make clear that we are serious about dealing with the housing crisis and that we intend that housing is a priority and that housing will be the law, not just a promise not kept.

Mr. WYLIE. Mr. Speaker, I yield 2 minutes to the gentleman from Texas [Mr. BARTLETT].

Mr. BARTLETT. I thank the gentleman for yielding me this time.

Mr. Speaker, I rise in strong support of this legislation, H.R. 5576. There are two items on this legislation that are of an emergency nature and there are two other items that have already been passed by an overwhelming support of this House.

This is presented as a package; it has four items. I would have preferred, and many of us would, to deal only with the emergency items on an individual basis and deal with the other items in the legislative process but that is not the way it has been presented and we heard today the fervor with which other Members feel on this subject.

I think that this is a fair presentation. It is urgent and necesary that we pass this bill as a package. The two items that are not of an emergency nature are nevertheless, by and large, not bad legislation; I think the housing bill itself is good legislation.

This legislation includes the FSLIC recapitalization. I do concur with the gentleman from Ohio [Mr. GRADISON] in part with saying that there are other major structural and long term reforms that need to be made in FSLIC but we have to do what is achievable in this remaining week. All reforms for the FSLIC and the Federal Home Loan Bank Board begin with adequate capital; with recapitalization. So this Congress is obligated, in order to avoid a crisis a future, to adopt the recapitalization in this session and early next session we can begin to take up, hopefully, the long-term reforms.

It also provides for expanded emergency acquisition authority, expedited funds availability, and a version of the housing bill as it passed the House floor which, while it is not perfect, it does contain a variety of excellent reforms which represent a major change in Federal housing policy. It is the first major housing reform bill to pass in a long time and perhaps by working with the other body we can achieve a consensus.

I do give my strong support and urge a "yes" vote for this needed emergency legislation.

Mr. WYLIE. Mr. Speaker, I have no further requests for time but I would urge in the strongest possible way a "yes" vote on this legislation which will provide stability in our thrift system and in our banking system.

Mr. Speaker, I yield back the balance of my time.

Mr. ST GERMAIN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I shall conclude the debate today on H.R. 5576. The legislation before us has four titles, as indicated: A title to recapitalize the FSLIC Insurance Fund; a title to allow for interstate acquisition of failed or failing financial institutions; title 3, the Expedited Funds Availability Act, and title 4, the Housing Act of 1986. Two of these titles have already passed the House.

The Expedited Funds Availability Act passed the House on January 23, 1986, by an overwhelming vote of 282 to 11. No action has been taken on this legislation by the other body.

H.R. 1, the Housing Act of 1985, passed the House on June 12, 1986, by the overwhelming margin of 340 to 36. No action has been taken on this legislation in the other body.

In combining the Expedited Funds Availability Act and the Housing Act and the other two titles of this bill which passed your Banking Committee on September 23, by an overwhelming vote of 47 to 1, your Banking Committee, and shortly this House, will again, in my opinion, overwhelmingly voice its support for enactment of an expedited funds availability bill, a housing bill, and two bills requested by the administration.

Your Banking Committee hopes to be in conference on this legislation with the Senate Banking Committee—on all four titles—I repeat, on all four titles.

The integrity of the House is at stake. More importantly, the public interest demands a meaningful conference on all four titles.

I commit to the Members of this body, as I know most if not all members of the Banking Committee do, that all four titles of this bill will be in conference and meaningful and viable legislation will be reported back to this House from this conference.

Excessive holds on consumer deposits are a national disgrace. The continued lack of minimal housing programs is totally reprehensible. Today I call on the House to speak again in unmistakable terms.

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Rhode Island [Mr. ST GERMAIN] that the House suspend the rules and pass the bill, H.R. 5576, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. ST GERMAIN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H.R. 5576, the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Rhode Island?

There was no objection.

METHANOL ENERGY POLICY ACT OF 1986

Mr. SHARP. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 3355) to develop a national methanol energy policy and to coordinate efforts to implement such policy, as amended.

The Clerk read as follows:

H.R. 3355

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Methanol Energy Policy Act of 1986".

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds and declares that—

(1) the achievement of long-term energy security for the United States is essential to the health of the national economy, the well-being of our citizens, and the maintenance of national security;

(2) the protection and improvement of the Nation's air quality is essential to our citizens' physical health;

(3) the displacement of energy derived from imported oil with domestically produced energy will contribute to an improved international trade balance for the United States and increased employment opportunities for our citizens;

(4) the Nation's security, environmental, and economic interests require that the Federal Government should assist a clean-burning, domestically produced transportation fuel to reach a threshold level of use at which it can successfully compete with petroleum-based fuels;

(5) methanol is the alternative liquid fuel with the best technological and economic prospect of displacing significant quantities of petroleum-based transportation fuel;

(6) there are proven coal reserves in the United States sufficient to provide methanol for transportation use for at least the next four hundred years;

(7) the use of methanol to displace gasoline and diesel fuel in the Nation's automobiles, trucks, and buses will signficantly reduce emission of regulated pollutants, reduce reliance on imported oil, and enhance the Nation's security; and

(8) the United States Department of Energy and the California Energy Commission have already established a base of information about methanol as a transportation fuel which this Act will further develop.

(b) PURPOSES.—The purposes of this Act are to provide—

(1) that the Federal Government shall—

(A) continue the development of a methanol demonstration program by increasing the purchases and use of methanol-powered passenger automobiles, light duty trucks, and buses;

(B) in cooperation with a commercial operator, establish a demonstration program for the operation of methanol-fueled diesel trucks;

(C) establish a pilot program for the operation of methanol-powered buses; in urban areas;

(D) assist State and local entities in purchasing methanol-powered buses.

(E) study the feasibility of a small, packaged, relocatable methane plant;

(F) study the air quality and human health effects associated with the use of significant amounts of methanol;

(G) remove disincentives to the use of methanol fuel;

(H) promote the availability and use of methanol fuel; and

(I) promote the manufacture and purchase of methanol-powered vehicles, and

(2) for the establishment of an Interagency Commission on Methanol to develop and coordinate the implementation of a national methanol energy policy.

SEC. 3. AMENDMENT OF ENERGY POLICY AND CONSERVATION ACT.

Title III of the Energy Policy and Conservation Act is amended by adding at the end the following new part:

"PART J—ENCOURAGING THE USE OF METHANOL

"SEC. 400AA. METHANOL DEMONSTRATION PROGRAM FOR FEDERAL VEHICLES.

"(a) DEPARTMENT OF ENERGY PROGRAM. The Secretary shall ensure, with the cooperation of other appropriate agencies and consistent with other Federal law, that of the total number of passenger automobiles and light duty trucks acquired for use by the Federal Government during the fiscal years ending September 30, 1989, September 30, 1990, September 30, 1991, and September 30, 1992, at least 5,000 each year shall be methanol-powered vehicles.

"(b) STUDIES.—The Secretary, in cooperation with the Administrator of the Environmental Protection Agency (hereafter in this part referred to as the 'Administrator') and the Administrator of the National Highway Traffic Safety Administration, shall conduct studies related to the methanol-powered vehicles acquired under subsection (a), including—

"(1) projects to demonstrate the performance of such vehicles,

"(2) an evaluation of the performance of such vehicles in cold weather,

"(3) a study of the fuel economy, safety, and emissions of such vehicles, and

"(4) a comparison of the operation and maintenance costs of such vehicles to the operation and maintenance costs of other passenger automobiles and light duty trucks.

"(c) METHANOL MADE AVAILABLE TO THE PUBLIC.—(1) At locations where vehicles acquired under subsection (a) are supplied with methanol, methanol shall, where practicable and appropriate, be offered for sale to the public for use in other vehicles, except in cases where security considerations require otherwise, and only until methanol is commercially available in the vicinity of such locations.

"(2) The requirement under paragraph (1) shall not apply after September 30, 1992.

"(d) FEDERAL AGENCY USE OF DEMONSTRATION VEHICLES.—(1) Upon the request of the head of any agency of the Federal Government, the Secretary shall ensure that such Federal agency be provided with vehicles acquired under subsection (a) to the maximum extent practicable.

"(2)(A) Funds appropriated under this section shall be applicable only to the portion of the cost of vehicles acquired under subsection (a) which extends the cost of comparable gasoline-powered vehicles.

"(B) The Secretary shall ensure, in accordance with subparagraph (A), that the cost to any Federal agency receiving a vehicle under paragraph (1) shall not exceed the cost to such agency of a comparable gasoline-powered vehicle.

"(3) Only one-half of the vehicles acquired under this section by an agency of the Federal Government shall be counted against any limitation under law, Executive order, or executive or agency policy on the number of vehicles which may be acquired by such agency.

"(4) Any Federal agency receiving a vehicle under paragraph (1) shall cooperate with studies undertaken by the Secretary under subsection (b).

"(e) DETAIL OF PERSONNEL.—Upon the request of the Secretary, the head of any Federal agency may detail, on a reimbursable basis, any of the personnel of such agency to the Department of Energy, to assist the Secretary in carrying out his duties under this section.

"(f) REPORTS.—(1) The Secretary shall submit semi-annual reports of the actions taken and findings made under this section to the Congress. The first such report shall be submitted no later than the last day of the second quarter beginning after the date of the enactment of this part. The last such report shall be submitted no later than September 30, 1992.

"(2) The last report referred to in paragraph (1) shall summarize all actions taken and findings made under this section.

"(g) EXEMPTIONS.—(1) Methanol vehicles acquired under this section shall not be counted in any calculation of the average fuel economy of the fleet of passenger automobiles acquired in a fiscal year by the United States.

"(2) The incremental cost of methanol vehicles acquired under this section over the cost of comparable nonmethanol vehicles shall not be applied to any calculation with respect to a limitation under law on the maximum cost of individual vehicles which may be acquired by the United States.

"(h) DEFINITIONS.—For purposes of this section—

"(1) the term 'methanol-powered vehicle' means passenger automobiles and light duty trucks designed to operate using a fuel composed of at least 85 percent methanol; and

"(2) the term 'acquired' means leased for a period of sixty continuous days or more, or purchased.

"(i) FUNDING.—(1) There is authorized to be appropriated for the fiscal year ending September 30, 1989, $10,000,000, for the fiscal year ending September 30, 1990, $8,000,000, for the fiscal year ending September 30, 1991, $5,000,000, and for the fiscal year ending September 30, 1992, $5,000,000, to carry out the purposes of this section.

"(2) The authority of the Secretary to obligate amounts to be expended under this section shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance by appropriation Acts.

"SEC. 400BB. METHANOL TRUCK DEMONSTRATION PROGRAM.

"(a) ESTABLISHMENT.—The Secretary, in cooperation with a commercial operator or operators of diesel trucks, shall establish a demonstration program for the operation of methanol fueled diesel trucks.

"(b) AVAILABILITY OF METHANOL.—At locations where trucks operating under the demonstration program established under subsection (a) are supplied with methanol, methanol shall, where practicable, be offered for sale to the public for use in other vehicles, except in cases where security considerations require otherwise, and only until methanol is commercially available in the vicinity of such locations.

"(c) REPORTS.—(1) The Secretary shall submit semi-annual reports of the actions taken and findings made under this section to the Congress. The first such report shall be submitted no later than the last day of the second quarter beginning after the date of the enactment of this part.

"(2) The last report submitted under paragraph (1) shall summarize all actions taken and findings made under this section.

"(d) FUNDING.—(1) There is authorized to be appropriated for the period encompassing the fiscal years ending September 30, 1988, September 30, 1989, September 30, 1990, and September 30, 1991, a total of $2,000,000 to carry out the purposes of this section.

"(2) The authority of the Secretary to obligate amounts to be expended under this section shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance by appropriation Acts.

"SEC. 400CC. METHANOL-POWERED BUS PILOT PROGRAM.

"(a) IN GENERAL.—The Administrator shall, during the fiscal year ending September 30, 1988, purchase, or assist in the acquisition of, at least five methanol-powered buses and shall arrange to demonstrate the use of such buses in urban settings for purposes of emissions and fuel economy testing.

"(b) TESTING AND REPORTING.—(1) The Administrator shall test the emissions levels and fuel economy of buses purchased under subsection (a), shall study the potential for problems described in section 400DD(c), and shall submit semi-annual reports of the actions taken and findings made under this section to the Congress.

"(2) The Administrator shall submit a final report summarizing all actions taken and findings made under this section to the Congress no later than December 31, 1990.

"(c) FUNDING.—There is authorized to be appropriated for the period encompassing the fiscal year ending September 30, 1988, September 30, 1989, September 30, 1990, and September 30, 1991, a total of $4,000,000 to carry out the purposes of this section.

"SEC. 400DD. REQUIREMENT THAT BUSES PURCHASED WITH FEDERAL FUNDS BE METHANOL-POWERED OR COMPRESSED NATURAL GAS-POWERED.

"(a) REQUIREMENT.—Notwithstanding any other provision of law, any State or political subdivision thereof which receives, after January 1, 1991, any Federal assistance to provide mass transportation to acquire motor vehicles designed to transport thirty

individuals or more for operation in a nonattainment area, as such term is defined in section 171(2) of the Clean Air Act, for any pollutant regulated by the Environmental Protection Agency with respect to mobile sources, shall acquire methanol-powered buses or compressed natural gas-powered buses with such assistance.

"(b) IMPLEMENTATION.—(1) The Secretary shall provide to each State or political subdivision thereof which acquires any methanol-powered bus or compressed natural gas-powered bus a supplemental grant equal to 100 percent of the amount, if any, by which the acquisition, operation, and maintenance costs of such methanol-powered bus or compressed natural gas-powered bus exceed the acquisition, operation, and maintenance costs of a comparable diesel-powered bus.

"(2) The Secretary shall promulgate regulations no later than January 1, 1990, to carry out the purposes of this subsection.

"(c) EXCEPTION.—The Secretary shall implement this section unless, as a result of the study under section 400CC(b) or, with respect to compressed natural gas-powered buses, as a result of any other relevant study, the Administrator finds by rule or order, after an opportunity for oral presentation is afforded interested persons, evidence of substantial—

"(1) operating and maintenance problems with vehicles studied;

"(2) increases in the cost, excluding all one-time startup, training, and conversion costs, of operation and maintenance of such vehicles as compared to gasoline and diesel-powered vehicles; or

"(3) increases in human health risks associated with exhaust emissions not regulated under the Clean Air Act.

"(d) DEFINITIONS.—For purposes of this section—

"(1) the term 'bus' means a vehicle which is designed to transport 30 individuals or more, and

"(2) the term 'mass transportation' means transportation which provides to the public general or special service (but not including schoolbuses or charter or sightseeing service) on a regular and continuing basis.

"(e) FUNDING.—There is authorized to be appropriated to carry out the purposes of this section such sums as may be necessary for each of the fiscal years ending September 30, 1991, September 30, 1992, and September 30, 1993.

"SEC. 400EE. METHANOL FUEL USE IN STATIONARY POWER GENERATION FACILITIES PROGRAM.

"(a) PROGRAM.—(1) The Secretary shall undertake a program of methanol fuel use in more than 1 oil-fired stationary power generation facility to demonstrate the technical feasibility and the economics of such methanol fuel use, and to examine the environmental, health, and safety issues relating to such methanol fuel use. The Secretary shall utilize existing regional programs in implementing this program.

"(2) The program undertaken under paragraph (1) shall terminate before October 1, 1992.

"(b) STUDIES.—The Secretary, in cooperation with the Administrator, shall conduct studies of methanol fuel use in oil-fired stationary power generation facilities under the program established under subsection (a), including—

"(1) the testing of plans and procedures to demonstrate the performance of such stationary facilities using methanol fuel in the full range of power output demands and in the full range of weather and temperature conditions;

"(2) a review of the operation and maintenance costs of such facilities; and

"(3) a review of the impact of methanol fuel use on the environment, health, and safety of the region.

"(c) REPORTS.—(1) The Secretary shall submit to the Congress semiannual reports on actions taken and findings made under this section during the period when the program undertaken under subsection (a) is in operation.

"(2) The Secretary shall submit to the Congress a final report, summarizing all actions taken and findings made under this section, within 6 months after the termination of the project under subsection (a)(2).

"SEC. 400FF. INTERAGENCY COMMISSION ON METHANOL.

"(a) ESTABLISHMENT.—There is established a commission to be known as the Interagency Commission on Methanol, which shall develop a national methanol energy policy and coordinate efforts to implement such policy.

"(b) MEMBERSHIP.—The Commission shall be composed of members as follows:

"(1) The Secretary of Energy, or the designee of the Secretary, who shall be the chairperson of the Commission;

"(2) the Secretary of Defense or the designee of such Secretary;

"(3) the Secretary of the Interior or the designee of such Secretary;

"(4) the Administrator of the Environmental Protection Agency or the designee of such Administrator;

"(5) the Secretary of Transportation or the designee of such Secretary;

"(6) the Postmaster General or the designee of the Postmaster General;

"(7) the Administrator of the General Services Administration or the designee of such Administrator;

"(8) the Administrator of the Occupational Safety and Health Administration or the designee of such Administrator; and

"(9) such other officers and employees of the Federal Government as may be appointed to the Commission by the Secretary.

"(c) OPERATIONS.—(1) The Commission shall meet as necessary to carry out the purposes of this section, at the call of the chairperson of the Commission.

"(2) One-third of the Commission shall constitute a quorum.

"(3) No member of the Commission shall receive additional pay, allowances, or benefits by reason of the service of such member on the Commission.

"(4) The Secretary shall provide the Commission with such staff and office facilities as the Secretary, following consultation with the Commission, considers necessary to permit the Commission to carry out its duties under this section.

"(d) DUTIES.—(1) The Commission shall study the following issues or ensure that such issues are studied:

"(A) The economics of the production and use of methanol as a transportation, boiler, and turbine fuel and the production, sale, and marketing of methanol-powered vehicles.

"(B) The production of methanol from domestic sources such as coal.

"(C) Suggestions submitted to the Commission, by individuals in the private sector, for promoting the use of methanol as a fuel for buses and other motor vehicles.

"(D) The ability of methanol to meet the military and nonmilitary transportation fuel needs of the United States during a time of general military mobilization.

"(E) The use of methanol for overfiring stationary boilers and peaking turbines, and for fuel cells.

"(F) Environmental, health, and safety issues relating to methanol and its combustion products and methanol-powered vehicles.

"(2) The Commission shall develop a long-term plan for the commercialization of methanol as an alternative fuel.

"(3) The Commission shall coordinate all Federal efforts with respect to methanol research and commercialization.

"(4)(A) The Commission shall ensure communication between representatives of all Federal agencies that are involved in methanol demonstration projects or that have an interest in such projects.

"(B) The Commission shall establish a clearinghouse for the exchange of information between parties working with or interested in working with methanol and related products.

"(e) PRIVATE SECTOR ADVISORY PANEL.—(1) The chairperson of the Commission shall, consistent with the Federal Advisory Committee Act, establish a private sector advisory panel to inform the Commission about methanol-related matters. Such chairperson shall appoint the members of the panel.

"(2) The members of the panel shall be persons employed in the private sector or by State or local government who are knowledgeable about methanol and its possible uses and the production of methanol and methanol-powered vehicles. Such members may not be full-time officers or employees of the Federal Government.

"(3) The panel shall meet at the call of the chairperson of the Commission.

"(f) DETAIL OF FEDERAL PERSONNEL.—Upon request of the Commission, the head of any Federal agency may detail, on a reimbursable basis, any of the personnel of such agency to the Commission to assist the Commission in carrying out its duties under this section.

"(g) REPORTS.—(1) The Commission shall, not later than September 30 of each of the years 1988, 1989, and 1990, submit an interim report to the Congress setting forth the actions taken and findings made by the Commission under subsection (d).

"(2) The Commission shall, not later than September 30, 1991, submit a final report to the Congress setting forth the actions taken and findings made by the Commission under subsection (d).

"(3) The results of any study or studies undertaken under subsection (d) shall be made available to the public at such times and in such manner as determined appropriate by the Secretary.

"(h) TERMINATION.—The Commission and the panel shall terminate upon submission of the final report of the Commission under subsection (g)(2).

"(i) DEFINITIONS.—For purposes of this section:

"(1) The term 'Commission' means the Interagency Commission on Methanol established in subsection (a).

"(2) The term 'methanol-powered vehicle' means a motor vehicle designed to operate using a fuel composed of not less than 85 percent methanol.

"(3) The term 'panel' means the private sector advisory panel established in subsection (e)(1).

"SEC. 400GG. STUDIES.

"(a) METHANOL STUDIES.—(1) The Secretary shall undertake a study of the comparative costs of methanol based on natural

gas, methanol based on coal, and methanol based on other resources. Such study shall include a study of various sizes of facilities for each resource, and shall—

"(A) identify the optimum size for obtaining maximum economies of scale;

"(B) identify the largest size feasible consistent with current and projected near-term demand for methanol; and

"(C) consider and quantify 'learning curve' benefits associated with the sequential construction of additional facilities.

"(2) In conducting studies under paragraph (1), the Secretary shall include a study of a packaged, nominally, 100 to 300 ton per day, relocatable natural gas to methanol plant that is capable of utilizing current domestic supplies of unutilized natural gas.

"(3) For purposes of this subsection, the term 'unutilized natural gas' means gas that is available in small remote fields and cannot be economically utilized in existing conventional natural gas pipelines, or gas the quality of which is so poor that extensive and uneconomic pretreatment is required prior to its introduction into the natural gas distribution system.

"(4) The Secretary shall submit a report containing the results of the studies undertaken under paragraph (1) to the Congress within one year after the date of the enactment of this part.

"(b) AIR QUALITY AND HEALTH STUDY.—(1) The Administrator shall prepare a comprehensive analysis with respect to the air pollutant emission, air quality impact, and human health risks, including toxicity to consumers at self-service fuel pumps, associated with the storage, distribution, and use of significant amounts of methanol as transportation fuel as compared to existing diesel and gasoline fuels. The Administrator shall include an analysis of the usefulness of methanol as a substitute transportation fuel to assist areas of the United States in attaining national ambient air quality standards prescribed under section 109 of the Clean Air Act.

"(2) The Administrator shall complete the comprehensive analysis required by paragraph (1) within two years after the date of the enactment of this part unless the Administrator explains in writing to the Congress why more time is necessary for its completion.

"(c) FUNDING.—There is authorized to be appropriated to carry out the purposes of this section $975,000 for the fiscal year ending September 30, 1988.".

SEC. 4. USE OF NONSTANDARD FUELS.

No guaranty or warranty with respect to any passenger automobile or light-duty truck acquired by the United States after October 1, 1987, shall be voided or reduced in effect by reason of the operation of such vehicle with any fuel for which a currently effective waiver has been issued by the Administrator of the Environmental Protection Agency under section 211(f) of the Clean Air Act (42 U.S.C. 7545(f)).

The SPEAKER pro tempore. Is a second demanded?

Mr. MOORHEAD. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Indiana [Mr. SHARP] will be recognized for 20 minutes and the gentleman from California [Mr. MOORHEAD] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Indiana [Mr. SHARP].

Mr. SHARP. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the bill is designed to promote the use of methanol as a transportation fuel and in other uses. Methanol is an alcohol fuel that can be made from domestic resources, including coal and natural gas. By replacing gasoline and diesel fuel in our auto, bus, and truck fleets, it can contribute to national energy security, improve air quality, reduce our trade deficit, and eventually provide significant new growth in the U.S. coal industry.

Despite today's low oil prices, we are likely to face another energy price increase sometime in the remainder of this century. It will occur as world demand for oil increases and world oil reserves outside of the Persian Gulf OPEC nations decline. When that happens, the gulf nations will be back in the driver's seat, and we could see economically devastating price increases like we saw in the 1970's.

The United States is the major user of oil in the world, and transportation is the major use of oil in this country. It stands to reason, then, that if we are to have a major effect on the demand side of this dismal scenario for the 1990's, we must reduce the demand for oil-based transportation fuel in the United States.

Methanol is an efficient fuel, used in race cars at the Indianapolis 500 because of its high performance and safety.

It is a clean fuel, producing fewer of the emissions regulated under the Clean Air Act than either gasoline or diesel fuel. And it can be a domestic fuel, produced from secure supplies of U.S. natural gas or coal.

The principal factor delaying its commercial adoption is what we have called the chicken-and-egg problem. Auto manufacturers do not want to mass produce cars for which fuel is not readily available, and fuel distributors do not want to stock a fuel for which there is no demand.

To help overcome this problem, the development of Government fleets, with fueling locations open to the general public, will be a useful step. It will also allow Detroit to advance and perfect the technology to a point at which large numbers of cars can be produced for sale to the public.

The cost of the bill is minimal relative to the potential gains in our trade balance, energy security, air quality, and employment. The bill authorizes 5,000 methanol cars per year to be purchased between fiscal year 1989 and 1992 within the numbers the Government would buy anyway. The only added cost is the incremental cost of a car produced in small numbers, which we estimate to be about $2,000 per car in the first year and less thereafter.

The bill also authorizes the appropriation of $2 million for a Department of Energy truck demonstration program to be run in cooperation with commercial operators, a 4-year pilot test program by EPA of at least five methanol buses.

Subject to satisfactory results from the pilot program, the bill requires that beginning in 1991, all buses purchased with Federal funds in Clean Air Act nonattainment areas be fueled with methanol or compressed natural gas.

Finally the bill establishes at no additional cost an Interagency Commission on Methanol to coordinate the Government's work in this area and requires various studies on the uses, costs, and any unresolved health and safety questions of methanol.

The bill as introduced had another important incentive for the commercialization of methanol. It provided for an incentive through the corporate average fuel efficiency ratings for manufacturers who produce methanol cars. In the closing days of the Congress we were unable to resolve a relatively small difficulty in this provision, and we have therefore dropped it from the bill. Along with other sponsors, I intend to continue work next year to try to enact this important incentive.

Mr. Speaker, this bill is a small step, but it can start us on a very worthwhile journey, a journey toward greater energy security and an improved balance of trade through reduced oil imports, toward cleaner air through reduced vehicle emissions, toward a healthier economy for some of our most depressed areas through a large new market for domestic coal. I urge my colleagues to adopt the bill.

SECTION-BY-SECTION ANALYSIS OF H.R. 3355

Section 1 contains the short title for H.R. 3355—Methanol Energy Policy Act of 1986.

Section 2 contains the findings and purposes.

The major Committee findings are that:

1. Methanol is the alternative liquid fuel with the best technological and economic prospect of displacing significant quantities of petroleum-based transportation fuel; and

2. The use of methanol to displace gasoline and diesel fuel in the nation's automobiles, trucks, and buses will significantly reduce emission of regulated pollutants, reduce reliance on imported oil, and enhance the nation's security.

Section 3 amends Title III of the Energy Policy and Conservation Act of 1975 by adding a new part, Part J—Encouraging the Use of Methanol—with the following sections:

Section 400AA requires the Secretary of Energy to ensure the purchase of at least 5,000 methanol-powered passenger cars and light duty trucks per year between FY89 and FY92.

The Secretary must submit semi-annual reports to Congress on the comparative performance, fuel economy, safety, emissions and costs of these vehicles to others.

Methanol must be made available to the public at the same locations where the government-acquired vehicles are supplied with methanol. This requirement is included to allow the private sector to develop experience with methanol vehicles without having to go to the expense or trouble of establishing their own fuel facilities. The intent of this provision is not for the government to become a fuel vendor, but for the government to assist in developing private sector experience with methanol until such time as it becomes commercially available.

Any government agency participating in the demonstration program shall not be required to pay more than the cost of a similar gasoline powered vehicle. The incremental cost of a methanol vehicle over that of a conventional vehicle will be paid by the Department of Energy with funds authorized by this bill. As an inducement to acquire these vehicles, one-half of the methanol vehicles acquired by an agency shall not be counted against any numerical limitations imposed on that agency. The vehicles acquired are exempt from meeting the federal fleet average fuel economy standards pursuant to the Motor Vehicle Information and Cost Savings Act and also from any limitation on the cost allowed for the purchasing of government vehicles.

Section 400AA authorizes appropriations of $10 million in FY89; $8 million in FY90; $5 million in FY91; $5 million in FY92 to carry out these provisions.

The authorization levels are based on prior work with methanol fleets which suggests that $2,000.00 per vehicle in incremental costs is the upper bound for a small methanol fleet. The authorization is reduced in the second, third and fourth years of the demonstration due to the learning curve effect and the lack of need to install fueling facilities once they are in place.

Methanol vehicles are not believed to be inherently more expensive than conventional vehicles. The extra cost of methanol vehicles is because of their current stature as specialty, limited production vehicles. When produced in quantities similar to gasoline vehicles, methanol vehicles actually have a potential for costing less than gasoline vehicles due to less costly emission control equipment.

In establishing these methanol fleets DOE is expected to encourage the participation of all major domestic auto manufacturers. The intent is to allow manufacturers to gain experience with methanol vehicles within controlled fleet operations prior to introduction of these vehicles as consumer products.

Section 400BB authorizes appropriations of $2 million to establish a demonstration program for the operation of methanol-fueled diesel trucks. This to be done by the Secretary of Energy in coordination with commercial operators.

The Secretary should consider both long-haul, 18-wheel interstate trucks as well as intra-city and intra-region delivery trucks. The Secretary is expected to select the application where methanol has the greatest potential for improving air quality and replacing oil-based fuels.

Section 400CC authorizes appropriations of $4 million for the Environmental Protection Agency (EPA) to establish a four year pilot program of at least 5 methanol-powered buses. The buses are to be used in urban areas and tested for emissions and fuel economy.

The Committee recognizes that there are already a few methanol bus demonstrations underway in diverse areas of the country. EPA does not necessarily have to establish its own demonstration program. It could choose to assist existing demonstrations. The Committee expects EPA to develop experience and knowledge that will be useful to the Urban Mass Transit Administration, and to the Secretary of Energy in considering waivers of requirements in Section 400DD.

Section 400DD requires that areas defined as non-attainment areas in the Clean Air Act must purchase methanol buses or compressed natural gas buses with Urban Mass Transit Administration (UMTA) funds starting in January 1, 1991. The Secretary of Energy can waive this requirement if he determines it is not feasible.

The intent of this section is to improve air quality. Methanol and compressed natural gas buses are intended for substitution if their use reduces the pollution from the gasoline or diesel buses they replace.

Such sums as necessary for Fiscal Years 91, 92, and 93 are authorized to cover the incremental costs of methanol buses over conventional buses.

The incremental, if any, cost of methanol or CNG buses over conventional buses is uncertain. EPA is expected to quantify this cost prior to FY91.

Section 400EE requires the Secretary of Energy to study and demonstrate methanol's use in oil-fired stationary boilers.

The intent of this section is to explore the use of methanol as a stationary boiler fuel. In many areas of the country and in particular New England, dependency on imported oil for boiler fuel represents a vulnerability to uncertain energy supplies. This study would give the Secretary important information necessary to promote the use of methanol. In addition, the Committee believes that the Secretary should utilize existing regional programs on the use of methanol as a stationary boiler fuel in order to conduct the study in a cost-effective manner.

Section 400FF establishes an Interagency Commission on Methanol to assist in the development of a national methanol policy and to coordinate efforts to implement such policy.

The composition of the Commission is intended to elicit a broad variety of views on the use of methanol. Officials in each department or agency which is a part of the Commission should be consulted for their views on methanol. Many department officials, including the Director of Alcohol Fuels, contribute much to the study of methanol, and their views should be solicited and reflected in the Commission's deliberations. The Commission shall review a variety of issues including the economics of the production and use of methanol as an alternative fuel, the promotion of methanol-powered vehicles, the environmental and safety aspects of methanol, and long-term planning for commercialization.

In 1985 the Committee received a report from the GAO identifying 65 projects or studies within the Federal government related to methanol. Many of the people operating these projects were not aware of the existence of other similar, related or complementary work elsewhere in the government. This Commission is specifically directly to coordinate all government work and projects related to methanol in an effort to maximize experience and benefit and minimize cost. States are expected to participate in the Committee to the extent any particular state wishes to do so.

Section 400FF also requires the Chairperson of the Commission to establish a Private Sector Advisory Panel to coordinate efforts of the industry with the Federal program.

The Commission must submit annual reports to Congress on the actions taken and findings made by the Commission. All studies undertaken by the Commission are to be made available to the public at an appropriate time determined by the Secretary.

Section 400GG requires the Secretary of Energy to submit a cost comparison study of natural gas-based methanol, coal-based methanol, and methanol from other resources, to include an evaluation of the various sizes of production facilities.

A study shall also be undertaken by the Secretary to determine the feasibility of a relocatable natural gas to methanol plant which is capable of using domestic supplies of unutilized natural gas.

This section also requires the EPA to prepare a comprehensive analysis on methanol versus gasoline or diesel fuel, with respect to emissions, air quality impact, and health risks associated with a significant amount of use of methanol as a transportation fuel.

Methanol is believed to be a uniquely efficient clean fuel. However, in comparison to the experience with oil based fuels, methanol has not had as extensive a review of all possible health and safety effects. This study is intended to consider any unresolved health or safety aspects associated with increased methanol use. The Committee is not aware of any major problem but does not want to inadvertently create a problem because of lack of critical scientific or health review.

A sum of $975,000 is authorized to be appropriated to conduct the studies required in this section.

Section 4 requires that any vehicles purchased by the Federal Government after October 1, 1987, be guaranteed or warranted to operate on all fuels approved by the Environmental Protection Agency.

This section does not create or require any new or additional warranties for Federal government vehicles. It simply requires that any guarantee that a vendor may offer cannot be voided as long as that vehicle runs on EPA approved fuels.

REFERENCE DOCUMENTS

Subcommittee on Fossil and Synthetic Fuels, Committee on Energy and Commerce, U.S. House of Representatives, "Methanol as an Automotive Fuel," Committee Print 98-S, February 1984.

Subcommittee on Fossil and Synthetic Fuels, Committee on Energy and Commerce, U.S. House of Representatives, "Methanol as a Transportation Fuel," Hearings, April 4, 1984, Serial No. 98-145.

Subcommittee on Fossil and Synthetic Fuels, Committee on Energy and Commerce, U.S. House of Representatives, "Methanol as an Alternate Transportation Fuel," Hearings, August 13 and September 24, 1982, Serial No. 97-181.

U.S. General Accounting Office, "Removing Barriers to the Methanol Fuel Projects, Coordination, and State Tax Incentives," GAO/RCED-84-36, October 27, 1983.

Letter Report, Acting Assistant Secretary of the Army for Research, Development and Acquisition to House Armed Services Committee, "The U.S. Army's Methanol Fueled Administrative Vehicle Program," October 8, 1985.

U.S. Department of Transportation, "The Transportation of Methanol by Pipeline," April 1985.

U.S. General Accounting Office, "Federal and State Methanol Fuel Projects, Coordination, and State Tax Incentives," B-217943, GAO/RCED-85-97, May 3, 1985.

CONGRESSIONAL BUDGET OFFICE

COST ESTIMATE

SEPTEMBER 30, 1986.

1. Bill number: H.R. 3355.

2. Bill title: Methanol Energy Policy Act of 1986.

3. Bill status: As ordered reported by the House Committee on Energy and Commerce, September 23, 1986.

4. Bill purpose: This bill amends the Energy Policy and Conservation Act by adding a new part to encourage the use of methanol. H.R. 3355 authorizes the Department of Energy (DOE) and the Environmental Protection Agency (EPA) to: acquire a fleet of methanol-powered vehicles for federal use, study methanol production technologies and the health effects of methanol use, and demonstrate the use of methanol in diesel trucks, buses, and in stationary power generation facilities. The bill establishes an inter-agency commission on methanol, chaired by the Secretary of Energy, to develop a national methanol energy policy and coordinate efforts to implement this policy. In addition, starting in 1991 this bill requires that buses purchased with federal funds in nonattainment areas (as defined in the Clean Air Act) must be powered by methanol or compressed natural gas (CNG) unless DOE determines that these buses would be uneconomical, present adverse health impacts, or have other operational problems.

H.R. 3355 authorizes a total of $28 million for fiscal years 1989 through 1992 to DOE to pay for the added cost of buying 5,000 methanol-powered vehicles each year, instead of comparable gasoline-powered vehicles. A total of $6 million is authorized for fiscal years 1988 through 1991 to conduct methanol-powered truck and bus demonstration programs. To conduct methanol production and health impact studies, $975,000 is authorized for fiscal year 1988.

5. Estimated cost to the Federal Government:

[By fiscal years, in millions of dollars]

	1987	1988	1989	1990	1991
Estimated authorization level	0.4	5.9	13.1	14.0	12.4
Estimated outlays	0.3	5.6	13.4	14.0	12.4

CBO cannot estimate the cost of using federal mass transit funds for purchase of methanol or CNG-powered buses beginning in 1991, and such costs are not included in the above table.

The costs of this bill fall within budget functions 270, 300, and 400.

BASIS OF ESTIMATE

CBO assumes that amounts authorized for methanol-powered vehicles, demonstration projects, and studies will be appropriated and spent at historical rates for similar activities.

H.R. 3355 authorizes $28 million to pay for the differential cost of acquiring 5,000 methanol vehicles a year for the federal fleet. CBO estimates that additional funds will be required for fiscal year 1989 through 1992 to establish methanol fueling stations, and for the expected additional costs of operating methanol vehicles. Based on information supplied by DOE and the California Energy Commission (CEC), CBO estimates that approximately $1 million will be needed annually in fiscal year 1989 through 1992 to set up methanol fueling facilities at an adequate number of existing gasoline service stations.

The future operating cost of gasoline and methanol-powered vehicles is uncertain. In the near term, CBO estimates that the cost to operate methanol vehicles will exceed the costs for gasoline-powered vehicles by approximately two cents per mile. This estimate is based on information from the CEC, which currently monitors the operation of over 500 methanol-powered vehicles in California. Operation of the federal fleet of methanol-powered vehicles called for by H.R. 3355 is estimated to cost $1.2 million more per year for 5,000 vehicles than comparable gasoline-powered vehicles.

H.R. 3355 directs the Secretary of Energy to demonstrate methanol fuel use in at least two oil-fired stationary power generation facilities. The cost of these demonstrations could vary widely depending on the type and size of the specific projects undertaken. CBO estimates that two methanol stationary power generation demonstration projects would cost $3.5 million, based on the cost of similar projects undertaken by the Electric Power Research Institute and the CEC.

We estimate that the activities of the Interagency Commission on Methanol will cost approximately $300,000 in fiscal year 1987, and a total of $3.5 million over the 1987-1991 period. These estimates reflect the cost of federal staff and supporting services for conducting policy development and coordination activities required by H.R. 3355, including the preparation and submission of annual reports to the Congress in fiscal years 1988 through 1991.

The bill's requirement for federal mass transportation funds to be used to purchase methanol or compressed natural gas-powered (CNG) buses would not result in any costs until fiscal year 1991. At that time, costs would be incurred only if the EPA's pilot program found methanol or CNG-powered buses to be a favorable alternative. CBO cannot predict the results of the methanol-powered bus pilot program. Furthermore, we cannot, determine how many new buses will be required in nonattainment areas in 1991. Therefore, CBO has not estimated the cost of this component of H.R. 3355.

CBO concludes, from information supplied by the Department of Transportation and industry experts, that methanol-powered buses can be expected to cost approximately $10,000-$15,000 above the cost of comparable diesel-powered buses in the near term. In recent years, about 2,500 diesel-powered buses have been purchased annually with federal funds.

6. Estimated cost to state and local governments: None.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Kim Cawley, Marge Miller, Pete Fontaine, and Deborah Reis (226-2860).

10. Estimate approved by: C. G. Nuckols,
(For James L. Blum,
Assistant Director
for Budget Analysis.)

□ 1405

Mr. MOORHEAD. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I want to commend my colleagues from the Committee on Energy and Commerce for their commitment to the development of methanol as a transportation fuel. I want to especially commend the gentleman from Indiana [Mr. SHARP], the gentleman from Massachusetts [Mr. MARKEY], and the gentleman from Michigan [Mr. DINGELL] for working so hard these last few years with me and the gentleman from California [Mr. DANNEMEYER], the gentleman from Ohio [Mr. OXLEY], the gentleman from Indiana [Mr. COATS], and other members of the committee, and with industry and Government organizations, to formulate the comprehensive Federal methanol energy policy represented in this bill.

I believe it is crucial that the Federal Government play an active role in promoting a new alternative transportation fuel to augment and perhaps eventually replace petroleum-based fuels.

All of the evidence that currently exists points to neat methanol as that new fuel. As we all know, methanol can be made from a variety of domestic feedstocks, thus reducing our dependence on foreign sources of energy.

It is also a very clean-burning fuel which may represent our only chance for areas such as southern California to ever meet the Clean Air Act's health-based ambient air quality standard for ozone. I am especially interested in the prospects of converting our urban bus fleet to methanol rather than diesel fuel. This would result in great benefits to the health of our urban residents.

Methanol is also compatible to our present transportation fuel distribution system and can be marketed at a price comparable to gasoline on a miles-per-gallon basis.

Again, I commend my colleagues for their work on this issue and I urge my colleagues to support this bill.

Mr. SHARP. Mr. Speaker, I yield 3 minutes to the distinguished gentleman from West Virginia [Mr. WISE], who has been one of the most persistent advocates of the development of methanol.

Mr. WISE. Mr. Speaker, I thank the chairman very much, and I thank the chairman and the ranking minority member for their efforts in moving this very important bill.

This bill is important to coal-producing areas—such as West Virginia—to natural gas-producing areas—such as West Virginia—and so many areas of the country that are dependent upon natural resource production. But it is also important to many other areas of the country that are concerned about

the environment; who are concerned about fuel efficiency; who are concerned about our balance-of-payments deficit.

This bill will do several things. First of all, it does have the potential to be a shot in the arm for natural gas- and coal-producing States, such as mine in West Virginia. It can reduce the foreign oil dependency that this country presently has, and unfortunately, that dependency is growing.

It can take much-needed steps to a cleaner environment, particularly in those areas where automotive pollution is a major environmental problem.

This bill directs the Federal Government to buy several thousand automobiles a year, powered by methanol, and so we begin to break the problem that has been in the marketplace of the automobile producers saying, "We do not see enough demand for our cars because there is not enough methanol out there to run them," and the methanol producers saying, "We do not see enough cars, therefore, we will not produce methanol."

This bill authorizes demonstration projects with trucks and buses that will run on methanol.

Mr. Speaker, right now, we are working with the Kanawha Regional Transportation Authority to have in West Virginia the first methanol-powered buses because we think in West Virginia, which produces so much coal, which produces so much natural gas, and which has much of the terrain and driving conditions that are good testing material for engines, we think we are a good place to do that kind of testing.

This bill also sets up a commission that will study exactly the best way and the most cost-effective ways to produce methanol from coal. We think that that is vital.

The price of gas may be low now at the pump, Mr. Speaker, but that is only a temporary situation. The fact of the matter is that that oil glut is going to burn off very quickly, and once again, we may be back in the situation where we have long gas lines.

This bill will go a long way toward producing methanol from natural gas or coal. Already private concerns are making methanol profitably from coal, and we think methanol has a bright future as a transportation fuel. We think that this bill will move it forward.

It is my hope that next year, Mr. Speaker, we will go even further, and that we can add in the CAFE language, that is, it would give an incentive to automotive producers to build methanol-powered engines, knowing that they can take that as a credit against the gasoline mileage standard that they presently have to meet.

I think this bill goes a long way and it certainly goes a long way toward helping a natural resource State, such as mine, so concerned about coal and natural gas.

I appreciate the chairman's efforts in moving this bill to the floor, and I urge its adoption.

Mr. SHARP. Mr. Speaker, I yield 4 minutes to the distinguished gentleman from Massachusetts [Mr. MARKEY], chairman of our sister subcommittee, the Subcommittee on Energy Conservation and Power, that shares jurisdiction with our subcommittee on this issue, and who has long been an advocate of action on this fuel.

Mr. MARKEY. Mr. Speaker, during this era of gas below $1 and the OPEC cartel in shambles, few people are focusing on energy conservation and alternative energy sources, such as methanol. However, the time to rebuild the barn is not during harvest season, but in the off-season when you have time to do it right. Today, we are trying to put in place a foundation for the development of an alternative fuel, methanol, and we are trying to do it right.

Methanol holds great potential as a fuel source for the future. It is cleanburning and therefore emits significantly less pollutants than other fuel sources. This helps solve the acid rain problem which is of particular interest to many Members of this body. Moreover, methanol can be made from our abundant supplies of coal and natural gas, which would increase the energy independence of America's transportation sector, and take full advantage of our Nation's abundant energy resources. For all of these reasons, it makes good energy sense to promote the use of methanol.

The bill before us is a modest step in the campaign to promote methanol use. I think no one should be mistaken: this bill is not a quantum leap toward a methanol-powered world in the year 2000. Frankly, that is not a leap which would be possible or even advisable at this point. But this bill does push us further along on the path toward constructing an environment friendly to methanol. The bill puts the Federal Government as purchaser in the position of creating demand for methanol vehicles. Furthermore, the bill will help us get vital information on the daily operation of methanol-powered cars, trucks, and buses by setting up pilot programs. Finally, the bill creates an interagency commission to coordinate the various Federal agencies now involved with methanol.

This bill, at least in its introduced form, was not without controversy. The provision which would create a fuel economy bonus system for methanol-capable cars presented problems for many of the supporters of the bill. I commend the gentleman from Indiana for his diligence in trying to resolve these legitimate differences. Alas, we were not successful in that endeavor, so before us today is a good bill which contains no fuel economy provisions. I think all parties wished that our differences could have been resolved, and we did not succeed for lack of trying. Finally, however, all sides came to the realization that the best strategy was to push ahead with what we agree on, and I agree with that reasoning.

In closing, Mr. Speaker, in terms of getting a bill passed this year, the hour is late and the time is short. I urge my colleagues to support this modest proposal. At a minimum, this bill enables us to lay another building block in our ongoing effort to build an edifice of national energy independence. The gentleman from Indiana should be commended for his leadership in this area.

□ 1415

Mr. Speaker, I would also like to commend at the same time the minority leadership on our committee, especially the gentleman from California [Mr. MOORHEAD], who along with the chairman of our subcommittee worked together to produce a consensus bill, and the full committee chairman, the gentleman from Michigan [Mr. DINGELL] who has helped to serve as the overall umbrella that has made this compromise proposal a good one, a solid one, and one that is going to help our country, and indeed push us toward that era of independence which we all seek that much more quickly.

Mr. MOORHEAD. Mr. Speaker, I yield such time as he may consume to the gentleman from Michigan [Mr. DINGELL].

Mr. DINGELL. Mr. Speaker, I thank my dear friend from California for yielding me this time.

I rise to urge my colleagues to support this legislation. It is good legislation, well thought out, and serves a broad and great public need.

I want to commend my colleague, the chairman of the subcommittee, the gentleman from Indiana [Mr. SHARP], and the gentleman from Massachusetts [Mr. MARKEY] who were responsible in major part for bringing this legislation to the House today.

I would like to also commend my very dear friend, the gentleman from California [Mr. MOORHEAD], and the gentleman from California [Mr. DANNEMEYER], who have worked very hard. The gentleman from California [Mr. DANNEMEYER] as the ranking member on the subcommittee was, of course, particularly inspiring in his leadership.

I also would like to recognize the labors of our old friend and colleague, now a Member of the other body, Senator BROYHILL, and, of course, the gen-

tleman from Oregon [Mr. WYDEN] for their particular labors on behalf of this bill.

This is a good bill. It is one that can help to encourage the use of methanol. I urge its adoption.

GENERAL LEAVE

Mr. SHARP. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H.R. 3355, the bill now under consideration.

The SPEAKER pro tempore (Mr. KILDEE). Is there objection to the request of the gentleman from Indiana?

There was no objection.

Mr. MOORHEAD. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. SHARP. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Indiana [Mr. SHARP] that the House suspend the rules and pass the bill, H.R. 3355, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

CIVIL RICO (RACKETEER INFLUENCED CORRUPT ORGANIZATIONS)

Mr. BOUCHER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5445) to amend chapter 96 of title 18, United States Code, as amended.

The Clerk read as follows:

H.R. 5445

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. PATTERN OF ILLICIT ACTIVITY.

(a) CHAPTER 96 HEADING.—The heading for chapter 96 of title 18, United States Code, is amended by striking out "RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS" and inserting in lieu thereof "PATTERN OF ILLICIT ACTIVITY".

(b) SECTION 1961.—Section 1961 of title 18, United States Code, is amended—

(1) in paragraph (1), by striking out "racketeering" the first place it appears and inserting "illicit" in lieu thereof;

(2) in paragraph (5), by striking out "racketeering" each place it appears and inserting "illicit" in lieu thereof'

(3) in paragraph (7), by striking out "racketeering" each place it appears and inserting "criminal" in lieu thereof; and

(4) in paragraph (8)—

(A) by striking out "racketeering" the first place it appears and inserting "illicit activity" in lieu thereof; and

(B) by striking out "racketeering" the second place it appears and inserting "criminal" in lieu thereof.

(c) SECTION 1962.—Section 1962 of title 18, United States Code, is amended by striking out "racketeering" each place it appears and inserting "illicit" in lieu thereof.

(d) SECTION 1963.—Paragraph (3) of section 1963(a) of title 18, United States Code, is amended by striking out "racketeering" and inserting "illicit" in lieu thereof.

(e) SECTION 1968.—Section 1968 of title 18, United States Code, is amended—

(1) in subsection (a), by striking out "a racketeering investigation" and inserting "an illicit activity investigation" in lieu thereof;

(2) in subsection (b), by striking out "racketeering" each place it appers and inserting "illicit activity" in lieu thereof;

(3) in subsection (c), by striking out "racketeering" each place it appears and inserting "illicit activity" in lieu thereof; and

(4) in subsection (f)—

(A) by striking out "racketeering" the first, second, and fifth places it appears and inserting "criminal" in lieu thereof;

(B) by striking out "racketeering" each other place it appears and inserting "illicit activity" in lieu thereof; and

(C) by striking out "racketeering" and inserting "illicit activity" in lieu thereof.

SEC. 2. CIVIL RECOVERY.

Subsection (c) of section 1964 of title 18, United States Code, is amended to read as follows:

"(c)(1)(A) A governmental entity whose business or property is injured by conduct in violation of section 1962 of this title may bring, in any appropriate United States district court, a civil action against the person who engaged in such conduct to recover threefold the actual damages that the governmental entity sustained by reason of such injury, and the costs of the civil action, including a reasonable attorney s fee.

"(B) A civil action under subparagraph (A) of this paragraph must be brought by—

"(i) the Attorney General, if the injury is to the business or property of a governmental entity of the United States;

"(ii) the chief legal officer of the State, if the injury is to the business or property of a governmental entity of the State; or

"(iii) the chief legal officer of a subdivision of a State, if the injury is to the business or property of the subdivision and if such officer is specifically authorized by statute of the State to bring actions under this subsection.

"(2) A person, other than a governmental entity, whose business or property is injured by conduct in violation of section 1962 of this title may bring, in any appropriate United States district court, a civil action against the person who engaged in the conduct and shall recover—

"(A) threefold the actual damages that such person whose property or business is injured sustained by reason of such injury, and the costs of the civil action, including a reasonable attorney's fee, if the person who engaged in the conduct was, with respect to such conduct, convicted of an illicit activity or of a violation of section 1962 of this title; or

"(B)(i) the actual damages that such person whose property or business is injured sustained by reason of such injury, and the costs of the civil action including a reasonable attorney's fee, and

"(ii) punitive damages of up to twice the actual damages if—

"(I) the person whose business or property is injured is a natural person and the injury occurred in connection with a purchase or lease, for personal or household use or investment, of a product, service, investment, or other property; or a contract for personal or household use or investment;

"(II) neither State nor Federal securities laws make available an express or implied remedy for the type of behavior on which the claim of the plaintiff is based; and

"(III) the defendant acted in wanton disregard of plaintiff's rights (but conduct of the defendant in good faith and in reliance upon a directly applicable regulatory action, approval, or interpretation of law by an authorized State agency is not in wanton disregard of plaintiff's rights for the purposes of this subclause).

"(3) In a civil action involving a claim for punitive damages under paragraph (2)(B) of this subsection, the trier of fact, in determining the amount of punitive damages, shall consider—

"(I) the degree of culpability of the defendant;

"(II) the vulnerability of the victim;

"(III) any history of similar conduct by the defendant;

"(IV) the benefits derived from the unlawful conduct by the defendant;

"(V) the number of persons victimized;

"(VI) any prior decision by a court or State or Federal agency as to whether the defendant violated applicable law or acted in bad faith; and

"(VII) any other factor the court deems to be an equitable consideration bearing on the appropriate amount of punitive damages.

"(4) For a civil action under paragraph (2) of this subsection seeking damages under subparagraph (B) of such paragraph (2), the term "pattern of illicit activity' requires at least two acts of illicit activity—

"(A) one of which occurred not more than five years after the prior act of illicit activity;

"(B) that are not so closely related in time and place that together the acts constitute a single episode; and

"(C) (for actions based on a violation of section 1962(c) of this title) each of which is related to the affairs of the enterprise.

"(5)(A) A civil action under this subsection may not be commenced after the latest of—

"(i) three years after the date the cause of action accrues;

"(ii) three years after the conduct causing injury to the plaintiff terminates; or

"(iii) two years after the date of the criminal conviction required for an action under paragraph (2)(A) of this subsection.

"(B) The period of limitation provided in subparagraph (A) of this paragraph on a cause of action does not run during the pendency of a government civil action or criminal case relating to the conduct upon which such cause of action is based.

"(6) As used in this subsection, the term 'governmental entity' means the United States or a State, and includes any department, agency, or government corporation of the United States or a State, any political subdivision of a State, and any enterprise for which a trustee has been appointed by a United States district court under section 1964(a) of this title (but only during the tenure of such trustee).

"(7) The court shall award a reasonable attorney's fee to a prevailing plaintiff in a cause of action under paragraph (2)(B) of this subsection.".

SEC. 3. FEDERAL RULES OF CIVIL PROCEDURES AMENDMENTS.

Rule 9(b) of the Federal Rules of Civil Procedure is amended—

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(1) in the caption, by inserting ", and Suits under 18 U.S.C. 1964(c)" after "Mind"; and

(2) by inserting after the first sentence the following: "In an action under 18 U.S.C. 1964(c), facts supporting the claim against each defendant shall be averred with particularity.".

SEC. 4. EFFECTIVE DATE.

(a) GENERAL RULE.—The amendments made by this Act shall apply to any civil action commenced after the date of enactment.

(b) EXCEPTION.—In any pending action under section 1964(c) of title 18, United States Code, in which a person would be eligible to recover only under paragraph (2)(B)(ii) of section 1964(c) as amended by this Act, if this Act had been enacted before the commencement of that action, the recovery of that person shall be limited to the recovery provided under such paragraph (2)(B)(ii), unless in the pending action—

(1) there has been a jury verdict or district court judgment, establishing the defendant's liability, or settlement has occurred; or

(2) the court determines that, in light of all the circumstances, such limitation of recovery would be clearly unjust.

The SPEAKER pro tempore. Is a second demanded?

Mr. CONYERS. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

Mr. CONYERS. Mr. Speaker, I object to the ordering of the second, and on that I demand tellers.

The SPEAKER pro tempore. Objection is heard.

The question is on ordering a second.

Tellers were ordered; and the Speaker pro tempore appointed as tellers Mr. BOUCHER and Mr. CONYERS.

The House divided, and the tellers reported that there were—yeas 6, nays 0.

Mr. CONYERS. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 371, nays 28, not voting 33, as follows:

[Roll No. 434]

YEAS—371

Abercrombie	Barton	Bonker
Ackerman	Bateman	Borski
Akaka	Bates	Bosco
Alexander	Bedell	Boucher
Anderson	Beilenson	Boulter
Andrews	Bennett	Boxer
Annunzio	Bentley	Brooks
Anthony	Bereuter	Broomfield
Applegate	Berman	Brown (CA)
Archer	Bevill	Brown (CO)
Armey	Biaggi	Bruce
Aspin	Bilirakis	Bryant
Atkins	Bliley	Burton (IN)
AuCoin	Boehlert	Bustamante
Badham	Boggs	Byron
Barnes	Boland	Callahan
Bartlett	Boner (TN)	Carper
Chandler	Hopkins	Oberstar
Chapman	Horton	Obey
Chappell	Howard	Olin
Chappie	Hubbard	Ortiz
Cheney	Huckaby	Owens
Clinger	Hughes	Oxley
Coats	Hunter	Packard
Cobey	Hutto	Panetta
Coble	Ireland	Parris
Coelho	Jacobs	Pashayan
Coleman (MO)	Jeffords	Pease
Coleman (TX)	Jenkins	Penny
Combest	Johnson	Pepper
Conte	Jones (NC)	Perkins
Cooper	Jones (TN)	Petri
Coughlin	Kaptur	Pickle
Courter	Kasich	Price
Coyne	Kastenmeier	Pursell
Craig	Kemp	Quillen
Daniel	Kildee	Rahall
Darden	Kleczka	Ray
Daschle	Kolbe	Regula
Daub	Kolter	Reid
Davis	Kostmayer	Richardson
de la Garza	Kramer	Ridge
DeLay	LaFalce	Rinaldo
Dellums	Lagomarsino	Roberts
Derrick	Lantos	Robinson
DeWine	Latta	Roe
Dickinson	Leach (IA)	Rogers
Dicks	Leath (TX)	Rose
DioGuardi	Lehman (CA)	Rostenkowski
Donnelly	Lent	Roth
Dorgan (ND)	Levine (CA)	Roukema
Dornan (CA)	Lewis (CA)	Rowland (CT)
Dowdy	Lewis (FL)	Rowland (GA)
Downey	Lightfoot	Roybal
Dreier	Lipinski	Rudd
Duncan	Livingston	Russo
Durbin	Loeffler	Sabo
Dwyer	Long	Saxton
Dyson	Lott	Schaefer
Early	Lowery (CA)	Scheuer
Eckart (OH)	Lowry (WA)	Schneider
Eckert (NY)	Lujan	Schroeder
Edgar	Luken	Schuette
Edwards (OK)	Lundine	Schulze
Emerson	Lungren	Schumer
English	Mack	Sensenbrenner
Erdreich	Madigan	Sharp
Evans (IA)	Manton	Shaw
Evans (IL)	Markey	Shelby
Fascell	Marlenee	Shumway
Fawell	Martin (IL)	Shuster
Fazio	Martin (NY)	Sikorski
Feighan	Martinez	Siljander
Fiedler	Matsui	Sisisky
Fields	Mazzoli	Skeen
Flippo	McCain	Skelton
Florio	McCandless	Slattery
Foley	McCloskey	Slaughter
Frank	McCollum	Smith (FL)
Franklin	McCurdy	Smith (IA)
Frenzel	McDade	Smith (NE)
Frost	McEwen	Smith (NJ)
Fuqua	McGrath	Smith, Denny (OR)
Gallo	McHugh	
Garcia	McKernan	Smith, Robert (NH)
Gaydos	McKinney	
Gekas	McMillan	Smith, Robert (OR)
Gephardt	Meyers	
Gibbons	Mica	Snowe
Gilman	Michel	Snyder
Gingrich	Mikulski	Solarz
Glickman	Miller (CA)	Solomon
Goodling	Miller (OH)	Spence
Gordon	Miller (WA)	Spratt
Gradison	Mineta	Staggers
Gray (IL)	Moakley	Stallings
Green	Molinari	Stangeland
Gregg	Mollohan	Stark
Guarini	Monson	Stenholm
Gunderson	Montgomery	Strang
Hall (OH)	Moody	Stratton
Hall, Ralph	Moorhead	Studds
Hamilton	Morrison (CT)	Stump
Hammerschmidt	Morrison (WA)	Sundquist
Hartnett	Mrazek	Sweeney
Hatcher	Murphy	Swift
Hefner	Murtha	Swindall
Hendon	Myers	Synar
Henry	Natcher	Tallon
Hertel	Neal	Tauke
Hiler	Nelson	Tauzin
Hillis	Nielson	Taylor
Holt	Nowak	Thomas (CA)
Thomas (GA)	Waldon	Wise
Torres	Walgren	Wolf
Torricelli	Walker	Wright
Traficant	Watkins	Wyden
Traxler	Waxman	Wylie
Udall	Weaver	Yates
Valentine	Weber	Yatron
Vander Jagt	Whitley	Young (AK)
Vento	Whittaker	Young (FL)
Visclosky	Whitten	Young (MO)
Volkmer	Wilson	Zschau
Vucanovich	Wirth	

NAYS—28

Bonior (MI)	Edwards (CA)	Mitchell
Carr	Foglietta	Porter
Clay	Ford (MI)	Rangel
Collins	Ford (TN)	Savage
Conyers	Gejdenson	Seiberling
Crane	Gonzalez	Towns
Crockett	Hawkins	Wheat
Dingell	Hayes	Wolpe
Dixon	Leland	
Dymally	Levin (MI)	

NOT VOTING—33

Barnard	Hoyer	Nichols
Breaux	Hyde	Oakar
Burton (CA)	Jones (OK)	Ritter
Campbell	Kanjorski	Rodino
Carney	Kennelly	Roemer
Dannemeyer	Kindness	St Germain
Fish	Lehman (FL)	Stokes
Fowler	Lloyd	Weiss
Gray (PA)	MacKay	Whitehurst
Grotberg	Mavroules	Williams
Hansen	Moore	Wortley

□ 1440

Messrs. BONIOR of Michigan, PORTER, DINGELL, LELAND, EDWARDS of California, TOWNS, and HAYES, changed their votes from "yea" to "nay."

Mr. HERTEL of Michigan changed his vote from "nay" to "yea."

So a second was ordered.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore (Mr. KILDEE). The gentleman from Virginia [Mr. BOUCHER] will be recognized for 20 minutes and the gentleman from Michigan [Mr. CONYERS] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Virginia [Mr. BOUCHER].

Mr. BOUCHER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, just over 1 year ago the effort to revise and reform the civil provisions of the Racketeer Influence and Corrupt Organizations Act commenced. The bill which is before the House today results from extensive negotiations and compromise between the business and labor communities and those who have been speaking on this issue for consumer interests.

The compromise measure significantly restricts the inappropriate use of the Federal racketeering laws in private civil litigation while retaining a very carefully crafted multiple damage remedy for governments and for individuals in those instances where a consumer remedy can be alleged and proven.

Civil RICO in its present form has caused serious problems. The RICO statute was first adopted in 1970. At that time it was intended to give the

Department of Justice a potent new weapon in the fight against organized crime. I think most observers would agree that on the criminal side of the statute, civil RICO has served that purpose quite well. However, with little debate or consideration of the consequences of its intended action. Congress added to RICO a private civil suit provision which is adorned with treble damages and with attorney's fees that make it virtually irresistible to any plaintiff who can allege a civil RICO injury.

□ 1450

Those pleading requirements are not at all hard to meet. In fact, RICO is so broad-based that virtually any party that has become embroiled in a commercial dispute becomes a candidate for a civil RICO case.

We all know that fraud allegations are commonly made in contract situations, and all that is needed under the current law to convert a simple contract dispute into a civil RICO case is the allegation that there was a contract and the additional allegation that either the mails or the telephones were used more than once in either forming or breaching the contract.

That constitutes either mail fraud or wire fraud, and that is sufficient to confer Federal civil RICO jurisdiction.

As a consequence of that, virtually every type of contract dispute has been turned into a RICO case. It has been used in domestic disputes between spouses and litigation between family members over inheritance rights, and in control controversies among church members. The State of Illinois has even used civil RICO to try to collect sales taxes from a merchant; and in what I suppose is the most bizzare case of all, a Federal court felt compelled to sustain a civil RICO case against FBI agents who had orchestrated an undercover sting operation.

It is truly hard to imagine a situation where the statute is being used in a more abusive way than in that factual context.

As long as the pleading requirements are met, the most basic disputes that are traditionally resolved under State law and in State courts can become and are increasingly becoming Federal cases to be litigated in Federal courts under the Federal RICO statute.

Mr. Speaker, a number of unfortunate consequences are flowing from this state of affairs. First, ordinary and reputable businessmen are being branded as racketeers simply because they become embroiled in a commercial dispute.

Second, the mere threat of bringing a civil RICO case can leverage a very substantial settlement on often less-than-substantial allegations from a businessman who desires to avoid being branded a racketeer and who is intimidated by the possibility of treble damages and attorneys fees being awarded in the event that he is not successful in the litigation.

Third, extensive use of civil RICO is supplanting other carefully crafted State and Federal remedies. This is a particular problem in the area of the Federal securities laws, where the acts of 1933 and 1934, carefully designed to control securities litigation, are being set aside by plaintiffs who act instead on the civil RICO provisions.

Finally, the federalization of thousands of mere commercial disputes, irrespective of the amount in controversy or the diversity of citizenship of the parties threatens to swamp a Federal judiciary that was never designed to handle this kind of case.

Now as one means of addressing these problems, I introduced legislation to restrict civil RICO only to those cases where a prior criminal conviction of the defendant had been obtained. Four Supreme Court justices about 1½ years ago were prepared to read that requirement into the present law.

That bill, H.R. 2943, drew wide and bipartisan support, achieving the cosponsorship of 158 Members of this Chamber.

Mr. Speaker, while I believe that the prior criminal conviction requirement is consistent with the original congressional intent in 1970 when RICO was enacted and is also good public policy, we have, in the spirit of compromise, crafted a RICO bill which is before the House today, which addresses the legitimate concerns of those who wish to preserve civil RICO as a remedy in consumer fraud cases.

Now to those of my colleagues who were originally supporters of H.R. 2943 and who today may view with some skepticism the retention of a consumer multiple damage remedy, I want to assure you that the bill before us significantly restricts the use of civil RICO; that the bill before us does not in any way expand upon current law and that in the give and take of negotiation and compromise, we have not lost sight of our original purpose.

As amended, H.R. 5445 includes the following provisions: The name of the statute is changed from "Racketeer Influenced and Corrupt Organizations Act" to "Pattern of Illicit Activity Act." The bill embodies a simple principle, of H.R. 2943, providing a treble damage civil cause of action if a criminal conviction of the defendant has been obtained.

The compromise bill also retains a treble damage civil remedy for the U.S. Department of Justice, for State attorneys general, and for the chief legal officer of political subdivisions where State legislation specifically authorizes the filing of the suit by those legal officers.

Throughout the debate on civil RICO reform, advocates have urged that the criminal side of the statute is an effective tool against organized crime. Therefore, we have endeavored in the course of constructing this compromise not to touch the criminal side of the statute. In no way will this legislation impede the Justice Department in its efforts to proceed against those who are involved in organized crime.

Mr. Speaker, all other RICO actions will be limited to single damages only with one significant exception: Individuals may recover under this measure punitive damages of up to twice actual damages if and only if the injury occurs in a consumer transaction. There is no express or implied remedy under the Federal or State securities laws, and the defendant's action evidenced a wanton disregard for the rights of the plaintiff.

Like most compromises, this bill does not bear the unqualified endorsement of all of the parties at interest. It does, however, provide substantial civil RICO reform. It will protect legitimate businesses and labor activities from unwarranted charges of racketeering. It will stop the undermining of more appropriate State and Federal remedies for particular injuries. It will remove the coercive threat of treble damages in mere commercial disputes. It will protect the Federal judiciary from a future flood of cases which are more appropriately handled in State courts, and it will provide a well-defined Federal consumer remedy which will address situations such as that presented in the case of Gregory versus Atlantic Permanemt Savings and Loan.

In short, Mr. Speaker, it is a good bill; it is one that I think deserves the support of our colleagues today.

Mr. Speaker, I reserve the balance of my time.

Mr. CONYERS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, to my colleagues I would like to indicate that this is an unhappy way to resolve a very important matter before the body. We have been concerned about fighting crime, particularly activities that deal with crime infiltration in the private sector. White-collar crime is one of the largest problems that we have in American law today.

This bill is a great improvement over previous drafts but still reduces our effectiveness to fight white-collar crime by depriving consumer and business remedies for victims swindled in crime and fraud schemes.

For over a year, many have been urging that I report other more radical proposals. Well, the surfacing of this bill by those very same people indicates to me that this would have been unwise then, and that they have

been asking for more constriction in the law than they could possibly need.

□ 1500

Still I oppose any weakening of the civil RICO remedies and want still to take care of its problems—which can be more simply accomplished. And I would have wanted this measure to come up in the regular course of business to be debated and possibly to have amendments offered.

Now I must tale a moment to explain to you the tortured course of how this measure came before the body today under the suspense calendar.

First of all, may I say that you may think that you are dealing with H.R. 5445 that is in the back of the room and that is being circulated. That is not the case. You are now dealing with the substitute amendment of H.R. 5445. You are not dealing with the measure that is being passed out because there are only several copies of this amended version that is now being floated through this body.

I happen to object to that procedure. I happen to feel that the Subcommittee on Criminal Justice, which did not report this bill nor ever seen it before, has not considered it. As a matter of fact the original bill was introduced on August 15, 1 day after the subcommittee reported a different civil RICO amendment.

Now, to make things more complicated, this amendment to the bill introduced after the subcommittee had reported and was discharged of responsibilities in full committee and has been circulated just now, just now. If anybody in this Chamber has an amended copy of H.R. 5445 with an amendment, raise your hand.

You do not have it because it is not circulated and it is not available. This is known as the closing-days-of-the-session-fast-shuffle. All rules are suspended. Nobody knows what is happening.

The chairman of the full committee, my friend and ally, Chairman RODINO, who propounded this, is not even here. So my colleague on the subcommittee is asked to run it through under suspension of the rules.

Does it fight crime? Does it strengthen the war against white-collar crime? The answer is, to all my fellow crime fighters, no.

What does it do for the $200 billion white-collar crime problem annually? It makes it less likely that a plaintiff can recover any damages beyond actual damages. Of course, the catch here—and lawyers have a way of working these things out, do we not—the catch here is that any business and many consumers victimized by a swindle or a fraud that is only limited to actual damages, as they are in this bill, is then in no way deterred. If all he or she has to do is pay back what he or she ripped off, he or she comes back to the same point that they were at in the beginning.

Now, some organized business interests who were before attempting to get a prior criminal conviction requirement, I think have conceded those efforts are too radical and insincere, and have come to a position a little more plausible. That is fine and dandy. Prosecutors and attorneys general came forward to the subcommittee to readily explain to anybody that had not figured it out, that they were hopelessly inundated with criminal matters and that there was no way that they would advocate limiting a civil remedy to criminal conviction because a very few relatively ever occur.

Now, what I am saying to you, ladies and gentlemen, this is known as the closing-day-fact-shuffle, "what you don't see, what you don't understand will be explained to you tomorrow in the Washington Post."

You will hear about it and say, "Hey, why did we weaken the white-collar crime effort?" Somebody is going to get up here today maybe and say, "Well, it was the best that we could do and we're tough enough on street crime." Baloney.

Well, I would like to suggest to you that we have all of the 100th Congress to do even maybe a little bit better.

So here we have not only a new bill different from the one the subcommittee had reported, but now amended just hours before with another bill, because all of the rules have been suspended.

I ask you in the name of strong civil enforcement against white-collar crime, to please consider, if you will, what is in this bill. It may be a little bit hard to do because you do not have a copy of it, it may be a little hard to do because nobody has seen it on the floor except the floor manager, myself, and the clerk; and if that is the way we are going to fight crime, by rationalizing that we cannot do any better, I say it is a sad day in the Congress.

It is one of the reasons that I urge that we close out the business of the House of Representatives, get back to our districts as fast as we can before this erosion continues on goodness knows what other half-baked measures will be squeezed.

I urge my colleagues to think about this matter carefully. If you can come to the conclusion that this strengthens the fight against white-collar crime, I will easily rationalize your support for this bill. But if you reach the conclusion that it does not, that it weakens the fight in an ever-widening war in which we are losing more and more money to big-time and small-time crooks, then I urge you to vote "no."

Please remember that this is amongst the most important remedies that a consumer victim has in Federal court.

He cannot follow a wrong-doing corporation or individual throughout a number of States to try to get his remedy State by State. It would be difficult, impractical and, as a matter of fact, unworkable.

What this does is begin to shave back a very important tool that was crafted in the fight against corrupt organizations and racketeering activities.

Now there has been some talk about what a "great boon" civil RICO is to lawyers. First of all, 83 percent of the analogous cases in antitrust are settled, they are never brought to trial. Most of civil RICO cases brought to trial, the Government won damages, and penalties for two-tenths of 1 percent on estimated fraud in 1984, and consumers also only receive a small fraction.

But in the meantime, there is an enormous amount of motions to which anyone who alleges a complaint would have to face before the defendants, especially if they are corporate defendants, in a RICO trial. It is not nearly as simple to litigate civil RICO as its been suggested.

The lawyers came before the subcommittee and told us that anybody that tells you civil RICO is a wonderful way to collect treble damages, I invite you to read the record. Lawyers pointed out very simply it is much easier getting $100 per hour sitting in your office, for sure, than to extensive involvement in a complex RICO case that may pay treble damages.

So what we are doing is we are acceding to the interests that are not that concerned about protecting consumers.

So I urge you to reject this amendment on procedural grounds. This is not the way we have to do it. If the bill is so good, why are we sneaking it through like this? If the bill is so good, why did we not bring it up in the full committee? I think my consumer reputation can stand scrutiny among anybody in this body. If this bill is so good, why did it get substituted at the last minute so that nobody here, including this gentleman in the well, knows precisely what we are dealing with?

So I urge you to reject this measure, and to approach the undeniably growing white-collar crime problem with the same zeal with which other crime is fought.

Mr. Speaker, I reserve the balance of my time.

Mr. BOUCHER. Mr. Speaker, I yield 1 minute to the gentleman from Texas [Mr. BRYANT].

Mr. BRYANT. I thank the gentleman for yielding.

Mr. Speaker, I would simply point out that those calling for reform of the RICO statute have not been insig-

nificant or unknown voices in our country: the Judicial Conference of the United States; Judge Abner Mikva, a progressive Member of this body before becoming a member of the District of Columbia Court of Appeals; the American Civil Liberties Union; most major labor and business organizations as well.

They did so for one reason and for one reason alone: the civil RICO statute came to be a tool of all people that bring litigation including commercial disputes of an ordinary nature, securities litigation, commercial contract disputes, tender-offer battles, banking transactions, disputed insurance claims, landlord and tenant disputes and complaints of disappointed bidders for franchises and companies; all of those have become grist for civil RICO actions.

It was widely known we needed a change in this legislation, and I point out that criminal RICO is unchanged by the bill before the House today.

Mr. BOUCHER. Mr. Speaker, I yield 1¼ minutes to the gentleman from California [Mr. EDWARDS].

Mr. EDWARDS of California. Mr. Speaker, this bill has had a long and difficult birth. I cannot compliment enough the gentleman from Michigan [Mr. CONYERS], chairman of the Judiciary Committee's Subcommittee on Criminal Justice, whose single efforts in insisting on comprehensive hearings and a wide range of expert witnesses on the bill have resulted in the legislation before us today, which is far better than the original bill that had some 150 cosponsors. His indefatigable resolve to keep the crucial RICO protections for otherwise defenseless victims enabled the careful compromise being considered today.

I also thank the chairman of the Judiciary Committee, Mr. RODINO, for his outstanding leadership on this legislation; and, I compliment the gentleman from Virginia [Mr. BOUCHER] for recognizing the need for change in the civil RICO law and working tirelessly to bring it about.

The bill before us recognizes the importance of a strong Federal remedy for pervasive criminal fraud by preserving this cause of action for all victims of such crimes.

In addition, it provides automatic treble damages for governmental entities and for persons injured by defendants who have been convicted of their crimes. Furthermore, and perhaps most important, the bill provides for punitive damages for consumers who have been injured by large scale criminal activity.

On the other hand, the bill also recognizes the potential for abuse of RICO by commercial entities who often have sufficient bargaining power to bring expensive and complex civil lawsuits without being able to collect damages over and above their actual damages. For these plaintiffs, the bill provides a Federal forum, but no punitive damages.

I would like to emphasize two additional points. First, the bill does not address the rules of respondeat superior. Second, the pattern definition in the bill should be interpreted to be consistent with footnote 14 in *Sedima, S.P.R.L.* v. *Imrex Co., Inc.*, 105 S. Ct. 3275 (1985).

I will vote for this legislation, which is a good balance, protecting innocent people from white collar crime and giving relief to the business community from possible abuse under the current law.

Mr. BOUCHER. Mr. Speaker, I yield 1 minute to the gentleman from California [Mr. BERMAN].

Mr. BERMAN. I thank the gentleman, and I thank the Speaker.

The present RICO law is unfair. It creates the specter, as the gentleman from Virginia has said, of racketeering and participation in organized crime for defendants who are sued under the civil RICO provisions. At the same time, as the gentleman from Michigan knows, I share his concern that the original bill to amend this law was far too restrictive and that even the bill that came out of the subcommittee went too far in that it restricted people who had causes of action that should be allowed in Federal courts. It kept them from proceeding under the civil RICO statute as amended.

This compromise is an excellent blend of what is good in the present situation and what the gentleman from Virginia has been trying to get at; it protects consumers, it restricts and eliminates frivolous suits, it provides effective punitive damages where they are justified as well as attorneys fees, and it does not do damage to the law of respondent superior by keeping the current interpretation in the present case law intact.

□ 1515

I believe the bill is worth supporting in its form, and I congratulate the gentleman from Virginia for his work.

Mr. BOUCHER. Mr. Speaker, I yield 1 minute to the gentleman from Ohio [Mr. FEIGHAN].

Mr. FEIGHAN. Mr. Speaker, I thank the gentleman for yielding this time to me.

Mr. Speaker, I rise in support of H.R. 5445. I think that this is an important amendment to the RICO statutes that will give relief to businesses, to labor organizations and individuals from the abuses, the many abuses, that have arisen under the civil RICO statutes, particularly in the past several years.

I think particularly this legislation will remove the extortionary of the civil RICO statutes, and it will also restrain now the flood of suits that are being brought into the Federal courts, "federalization," as the gentleman from Virginia has said, of suits that otherwise and disputes that otherwise should remain in the State courts.

This is a long-awaited compromise. Many Members of this House have been working on this compromise for several months. I think it is a thoughtful compromise. It is one that has been thoroughly scrutinized as well.

I think that we owe a real debt of gratitude to the gentleman from Virginia for the hard work that he has put in to developing this compromise over the past several months, one that will clearly bring, I think, the full support of representatives, affected representatives, of the business community, particularly in the financial sector, representatives of labor organizations, as well as the critical support which I believe it has from consumer groups representing individuals.

Mr. CONYERS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this measure is really weakening civil RICO, particularly as it deters fraud and white collar crime perpetuated by some businesses on other businesses. I was sort of inviting somebody to dispute me on that, but I suppose I will not get an argument on those merits today. The few colleagues of mine who are here and understand this bill know that is the truth, and that is, of course, why I oppose it.

I am prepared to concede for purposes of debate that maybe we should change civil RICO, I introduced several bills aimed at change and have always told interested Members that I would always be open to developing sensible approaches with them. But if we want to change civil RICO, we have plenty of opportunity to do so. There is no emergency that requires this be brought up under the suspension of the rules. There is absolutely nothing that requires that this bill be brought forward immediately.

This bill, while an important improvement over previous drafts, still may have numerous adverse consequences in the fight against the white collar crime. So the risk is, frankly, puzzling.

Mr. SWINDALL. Mr. Speaker, will the gentleman yield?

Mr. CONYERS. I yield to the gentleman from Georgia.

Mr. SWINDALL. Mr. Speaker, I would just like to say that while I certainly concede that this particular amendment weakens RICO, I think the pertinent is: In what respect, and what is the objective of RICO?

I think an ABA study of a task force really enlightens us on this. We find that 77 percent of all RICO actions are predicated on wire, mail and security, areas covered by other law. Only 7 percent target on crime figures. I think that is a significant point. RICO is too broad in its scope, and that is

the reason we feel an amendment is needed.

Mr. CONYERS. Mr. Speaker, I appreciate my colleague from the subcommittee making that point. It was a pleasure to yield to him for his thoughtful comments.

If I might respond, the simple fact of the matter is that criminal conspirators, Mafia, orgainzed crime and racketeer conspirators all use mail and wire to swindle as well.

So we have a little bit of a problem here. This is not a matter that all nice guys and individual people who have regular garden variety business disputes use RICO to sue under mail and wire fraud. What the problem is is that the big boys use mail and wire fraud, the organized people, the killers, the drug pushers. They use mail and wire, too, because obviously it is almost impossible to commit a white-collar crime without using those devices.

It is true that some of the garden variety type cases have crept into the matter, but that could be taken care of by other means without taking away the feature of treble damages as could most other civil RICO problems. It is the treble damages removal from the consumers and businesses that terribly disturbs me, because the consumer, for purposes of this discussion, is the little guy, the person who is deprived of even multiple damages when he can now demonstrate wanton behavior on the part of the defendant.

The other part of this equation is that business to business suits are constricted—if I understand this, and I am only going by hearsay since the amended bill was put in my hand only minutes ago—but business to business suits are limited to actual damage. Here we have a very serious problem with criminal justice and deterrence. The fact of the matter is that we now have taken the deterrent out of corporate swindles, because if you are limited to actual damages, why should you not go ahead. If you are sued, the worst that could happen is that you have to pay back the money that you cheated for. Further, businesses are not compensated, as they should be, for lost investment opportunities.

It would seem to me when I heard and recalled the level of rhetoric about fighting crime in this very chamber that this would raise the hackles of every congressional crime fighter within the sound of my voice. I am shocked that now, all of a sudden, those who wanted death to drug pushers, scrap the exclusionary rule, strengthening of sentences to deter street crime, and now when we get to the $200 billion a year swindles that are going on literally unchecked, we say let us weaken the law. There is a double standard: Use the Constitution to fight crime in the streets, go soft when fighting a $200 billion crime problem in the suits.

Mr. GEKAS. Mr. Speaker, will the gentleman yield?

Mr. CONYERS. I yield to the gentleman from Pennsylvania.

Mr. GEKAS. Mr. Speaker, I thank the gentleman for yielding to me.

Mr. Speaker, the gentleman will agree, I am sure, that the original intent of the RICO statute in which the gentleman from Michigan participated with respect to the debate thereon, and then, as I recall from what I have learned, cast a vote against it because of the fear of it going beyond its original purpose. That original intent, the gentleman will agree, is still intact; that is, to go after the racketeers, the Mafia figures and the organized crime figures so that we would have a weapon to attach against their wealth as well as their bodies for purposes of incarceration.

So the gentleman should feel satisfied that no matter what the gentleman disagrees with in this bill, that original purpose of RICO remains. In passage of this compromise today, that original grand purpose is still lodged in the law. It will permit our Justice Department and our State prosecutors and our U.S. attorneys and our task forces to go after the assets of the crime figures, the organized crime figures, the syndicates and all of that, which is the original purpose of RICO. But at the same time, the gentleman will agree, that those other things that gave the gentleman from Michigan pause in the first instance way back when RICO first came, how unforeseen consequences might come about, that it would reach out beyond the vision of the Members of Congress, beyond the organized crime syndrome, that has come full sway back to applaud the gentleman from Michigan that he was right when he first opposed RICO when it first came to the floor of the House. The gentleman was right, and the gentleman should join with us in supporting this bill.

Mr. CONYERS. Mr. Speaker, I thank the gentleman for reminding me of my earlier position in this measure. I will explain it to the gentleman later.

Mr. Speaker, I reserve the balance of my time.

Mr. BOUCHER. Mr. Speaker, I yield 1 minute to the gentleman from Connecticut [Mr. MORRISON].

Mr. MORRISON of Connecticut. Mr. Speaker, I thank the gentleman for yielding this time to me.

Mr. Speaker, I rise in support of this compromise.

I want to underscore that I think this is a good compromise. I think we have done something here that needed to be done.

There were instances of abuses under RICO, but the initial legislation proposed by the gentleman from Virginia went too far. The gentleman and I discussed it at the time. I think that this compromise does many of the things that I think are important.

It preserves the rights of consumers, first and foremost, and it preserves treble damages in a number of important instances in the area of conviction and by the use of public officials to enforce standards.

□ 1525

Fraud is a problem. The gentleman from Michigan is absolutely correct; fraud is a serious problem. But we can fight fraud at least as well under this new statutory set of definitions as we can today. The fact is that we will do better with a more credible and more effective statute than one that can be abused.

I commend those who have worked on this compromise and I hope this will be passed overwhelmingly.

Mr. BOUCHER. Mr. Speaker, I yield 1 minute to the gentleman from New York [Mr. SCHUMER].

Mr. SCHUMER. I thank the gentleman for yielding me this time.

Mr. Speaker, I commend the gentleman from Virginia and all those who have worked out a compromise on this issue. I come to it from a different place than many of my colleagues. It seems to me that any kind of statute that allows individual citizens who have justified private litigation among one another to then label that other side a racketeer, an extorter, someone who is from the underworld for the sole purpose of getting them to settle the suit is McCarthyism of the worst type.

The RICO law has allowed that. Many of my good friends, who I agree with on so many issues, have said, "Well, that is OK because the main people who are labeled, who are smeared in this way are corporations, or accountants or are a part of big establishment America." They have their civil liberties too, as far as I am concerned. The smear and McCarthyite tactic that this law presently allows is a bad tactic no matter who it is used against. I think that the provisions worked out by the gentleman from Virginia with the chairman of the committee and so many others eliminates that possibility. Thus, I am happy to support this legislation and hope that Congress will be more careful when enacting criminal statutes in the future that allow that kind of thing to happen.

Mr. BOUCHER. Mr. Speaker, I yield such time as he may consume to the gentleman from Florida [Mr. SMITH].

Mr. SMITH of Florida. I thank the gentleman for yielding to me.

Mr. Speaker, I rise in support of this legislation, strong support.

The SPEAKER pro tempore (Mr. KILDEE). The gentleman from Michigan [Mr. CONYERS] has 2 minutes remaining and the gentleman from Virginia [Mr. BOUCHER] has 4 minutes remaining.

Mr. BOUCHER. Mr. Speaker, I yield the balance of my time to the gentleman from Pennsylvania [Mr. GEKAS].

Mr. GEKAS. I thank the gentleman for yielding me this time.

Mr. Speaker, the time has come to pass this RICO reform bill. I urge all the Members to support it for a variety of reasons, not the least of which is that we may never have another opportunity to focus on what we consider to be the abuses in the original RICO statute.

I repeat, Mr. Speaker, because it is worthy of repetition, that the original purpose of the bill was to give an additional weapon to the government, as it were, to the prosecution, as it were, to move against the syndicates and racketeers and other crime figures and groupings which, perpetrating heinous crimes, were also amassing great gobs of wealth.

While these crime figures were amassing these great gobs of wealth and applying their wealth to the purchase of properties and other assets, sometimes beyond the reach of the prosecution and law enforcement agencies, civil RICO came into being, giving an additional tool to the prosecution to move after them in civil court. That purpose and that result is still part of the policy of law enforcement, especially on the Federal level. That is not changed at all.

As a matter of fact, greater focus is placed upon that by the passage of this bill than ever before because we isolate it now as one of the chief purposes of having civil RICO.

Now there began a series of events spanning over many, many years where creative attorneys at the bar were able to use the civil RICO statute once reserved and once preserved and once aimed at the syndicate racketeer-types of entities and individuals who began to use them against legitimate banks and savings institutions and insurance companies and accountants and lawyers and other small businessmen and small business entities who, all of a sudden, became targets of the same kind of suit as was once reserved to be used against crime figures, racketeers, syndicates involved in heinous criminal activity.

One thing led to another when once some kind of attempt was made to carry it to a higher court to gain definition of this, then came along the Sedima case. I ask the gentleman from Michigan to pay particular attention to what I am saying because I did to his remarks in our colloquy.

In the Sedima case, it was Justice Marshall, writing for the minority who said at that point, and I just paraphrase in my own language, that the original intent of the RICO statute is being thwarted by the results that are now coming from our Federal courts.

He was calling for the Congress to act and we are, in some measure, responding to that proclamation in the Sedima case by Supreme Court Justice Marshall and others in the Federal establishment, some of whom testified before our own committee.

Now, I am not totally happy with this bill; it does not go far enough. I am not perfectly happy with it. You have heard many of our colleagues say that on countless pieces of legislation; it happens to be the truth. This could be a better bill, but it goes far toward reform of RICO.

Mr. Speaker, I rise in support of H.R. 5445 with amendments.

In the legislative world there are no perfects and this bill, with its amendments, is an example. I support this legislation even though it is a far cry from the RICO reform measure that I originally cosponsored and which I have consistently championed throughout this Congress. When I began that effort I sought to ameliorate what I viewed as an abuse which had to be corrected. Sadder, but wiser, after my experience of nearly 2 years I am constrained to agree that this may be the best that this Congress can expect.

After nearly a year of hearings, the Criminal Justice Subcommittee finally in August of this year reported H.R. 5445. It did not make use of civil RICO contingent upon proof of a prior conviction as I had strongly advocated, but by lowering to actual damages what a plaintiff could receive under the statute in essence it remedied the worst possibilities of abuse. Today's amended version takes even that modest reform several steps backward—although stopping somewhat in advance of where we stand under current law.

My support is, therefore, grudging. House passage today will enable this bill to go forward to be corrected at the next legislative level. The choice that we today face has been necessitated by the unwarranted delay and demands for compromise to which this legislation has been subjected. I sincerely hope that this bill will now be permitted entrance onto that narrow bridge to the Senate, access to which has been blocked by the intransigence of so few.

I have made no secret of my misgivings concerning the new consumer fraud action which this legislation would authorize and the fear that with it our prescription for RICO reform will combine with the disease we sought to cure to create an even more resistant strain of abuse. Thus my hope that this provision of the amendment can be changed before it becomes law.

However, I reiterate that we are at the final hour of this Congress and if there is to be RICO reform, however slight, it must be accomplished through this vehicle. I, therefore, ask my colleagues to support passage under suspension of H.R. 5445 with amendments.

Mr. SWINDALL. Mr. Speaker, will the gentleman yield?

Mr. GEKAS. I yield to the gentleman from Georgia.

Mr. SWINDALL. I thank the gentleman for yielding to me.

Mr. Speaker, I would just like to approach this issue from an entirely different perspective. I think that we have all heard complaints back home about the skyrocketing cost of litigation and the reflective cost of insurance premiums. I think that what we are seeing here in the RICO litigation costs is being passed along to the overall costs of commercial insurance which is being passed on to consumers.

This is the type of abuse that needs to be corrected if we are genuinely concerned with tort reform.

□ 1535

Mr. CONYERS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would just like to point out to the ranking minority member of the subcommittee, who remembers that I voted against the original RICO bill, my vote against it was not based on civil RICO. At that time, it was an unknown sliver of words that nobody expected to amount to anything. As a fact, civil RICO did not begin to be used until the middle 1970's and the early 1980's.

Some of my fears still obtain. Every now and then, I see the mayor of the city of Detroit, and if you mention criminal RICO, you ought to move aside fast since he was the subject of one of the longest wiretaps by a friendly judge that laid it on him for a year or more because of alleged RICO violations.

The second point to my colleague, the gentleman from Georgia [Mr. SWINDALL], who is trying to save money, an effort I completely support is that it is fraud more than litigation which increases consumers insurance premiums—by $13 billion each year.

The final point I would like to make is about the title of this bill that my other friend, the gentleman from New York [Mr. SCHUMER], pointed out. He thought this was terrible to taint a beautiful, legitimate corporation. Well, I offered to take care of this problem with legislation I introduced changing to RICO name as I have offered to work on compromise legislation that would address the legitimate complaints. But this is precisely the problem. A few instances of abuse are cited in support of a bill that is not needed to work that abuse. That's bad

policy and it is why I, reluctantly oppose this bill.

Mr. BOUCHER. Mr. Speaker, will the gentleman yield?

Mr. CONYERS. I yield to the gentleman from Virginia, the floor manager of the bill.

Mr. BOUCHER. Mr. Speaker, I thank the gentleman for his courtesy in yielding the final minute of debate.

I would say to my colleagues that this is not a perfect bill, as many who have spoken on the matter have said, but it does constitute a significant improvement over current law.

It is going to prevent in the future legitimate businessmen from being branded as racketeers simply because they have become embroiled in a commercial dispute. It is going to remove the coercive threat of treble damages in mere contract cases that today are leveraging substantial settlements on less than substantial allegations.

It is going to prevent the undermining of more carefully crafted and tailored State and Federal remedies such as the Federal securities laws.

It is going to halt the federalization of thousands of mere contract cases that are more appropriately resolved in State courts, and it is going to provide an appropriate Federal consumer remedy in selected cases.

The bill is not a perfect product, but it is a good product of a very useful and constructive compromise. I very much urge its passage today.

Mr. RODINO. Mr. Speaker, I want to address two specific areas that were crucial to developing an agreement on the final language of the bill.

Particular attention was devoted to the application of the proposed amendments to pending cases. As amended, the act would apply prospectively to all cases initiated by the Government or by private persons who suffer injury resulting from conduct which formed the basis of a prior conviction under the act. In cases where there is no prior conviction for the conduct causing harm, the limitation of recovery contained in paragraph (2)(B)(i) applies except in two important situations. If a plaintiff makes the required showing in these two situations, he will also receive the full measure of treble damages afforded under section 1964 of the act.

The first exception carved out from the limitation on recovery involves pending cases where a jury verdict or district court judgment, establishing the defendant's liability, has occurred, or where a final settlement has been reached. Under this exception, the plaintiff is never subject to the actual damages limitation contained in paragraph (2)(B)(i). Thus, where litigants have sought redress for injury suffered under the act, and have progressed to the point where they have received a jury verdict or district judgment, the intention is to provide such plaintiffs with the full measure of treble damage relief as was available under the act at the time the suit was brought. This provision establishes a mandatory award of treble damages once the requisite showing has been made and is not subject to the discretion of the court. Finally, it is not necessary that the judgment be final in a pending case for treble damage recovery to apply. If, on the day of enactment, a jury verdict or district court judgment against the defendant has occurred, then plaintiffs become automatically entitled to treble damages when the judgment subsequently becomes final.

A second category of pending cases has been removed from the limitation on recovery provided that the plaintiff makes the necessary showing. Under this exception, a plaintiff may recover the full measure of treble damages for injury suffered under the act if he shows by a preponderance of the evidence that, in light of all the circumstances, it would be clearly unjust to limit recovery to that specified in paragraph (2)(B)(i) of section 1964(c). The language is explicit that a court should consider all relevant circumstances in making this equitable determination. The relevant circumstances that a court should consider include, but are not limited to, such factors as the date the suit was brought, the amount of expense and effort expended by the plaintiff sustaining the suit, and whether an alternative form of comparable relief is available to the plaintiff for the harm giving rise to the recovery under RICO. Where one or several of these factors are present, and a court determines that it would be clearly unjust to apply a limitation on recovery, then treble damage recovery should be granted to the plaintiff. For example, a court may find that it would be clearly unjust to deny a plaintiff a treble damage recovery where the suit was initiated several years before and where substantial pretrial discovery and motions practice has occurred. Thus, even though the litigation may not have advanced to either a jury verdict or district court judgment, a court in considering these circumstances may decide that it would be clearly unjust to deny the plaintiff treble damage recovery if he prevails on the substantial claims.

The second major area of agreement that should be emphasized concerns the doctrine of respondeat superior. In arriving at the final language of the RICO amendments, there was a conscious decision not to change or alter in any manner the doctrine of respondeat superior as it has heretofore been applied by the courts in RICO cases. Similarly, other aspects of civil RICO not specifically covered by the legislation are to be treated consistent with existing jurisprudence.

The following points should also be noted. The definition of the phrase "pattern of illicit activity" is meant to be interpreted in a manner consistent with that found in footnote 14 of *Sedima, S.P.R.L.* v. *Imrex Co., Inc.,* 105 S.Ct. 3275 (1985). Second, new subsection 1964(c)(2)(B)(ii)(II), defining persons who are eligible to recover punitive damages under the act, relates to the issue of whether a plaintiff has an express or implied remedy under Federal or State securities laws. It is intended that the burden of proof and the burden of persuasion for this aspect of the litigation rests with the defendant, since placing the burden on the plaintiff would require proof of a negative.

Mr. MATSUI. Mr. Speaker, I rise in support of H.R. 5445, the Racketeer Influenced and Corrupt Organization Act Amendments. Under the present civil RICO law a person who is injured in his business or property is able to recover treble damages and costs, including attorney's fees. Many cases which have nothing to do with organized crime or racketeering activities have been brought under the RICO statute because of the leverage created by the possibility of treble damages.

There is also the stigma associated with charges of racketeering. Some of my constituents have written to me, concerned with the manner in which this statute has been abused. These are solid citizens, pillars of the community, who have had their reputation placed in question by charges of racketeering.

Mr. Speaker, this is a good bill. It will replace treble damages with actual damages. It will replace racketeering terminology with illicit activity. These changes are needed and I ask the House to support this bill.

Mr. BOUCHER. Mr. Speaker, as the floor manager for H.R. 5445, I am pleased to explain the background for the substitute that is being offered to reform the civil provisions of the Racketeer Influenced and Corrupt Organizations [RICO] title of the Organized Crime Control Act of 1970. Since the bill and the substitute come before the House without a formal committee report, it is important to describe at some length what the compromise substitute is designed to accomplish.

H.R. 5445, as substituted, is the product of the 8 days of hearings held by the Subcommittee on Criminal Justice of the Judiciary Committee and months of negotiations. Although it is not as complete and comprehensive a solution to the problem of improper use of civil RICO as I had originally urged, I am pleased to support the approach reflected in the substitute.

Congress enacted RICO as part of the Organized Crime Control Act of 1970. Congress intended RICO to be one of the new arsenal of weapons provided by the Crime Control Act to aid in the Government's war against organized crime. In RICO, Congress sought to provide a mechanism to fight the infiltration of legitimate businesses by organized crime.

The bill as passed orignially by the Senate did not contain any private remedy. The House added a civil damage remedy that awards successful plaintiffs treble damages and attorney's fees. The House added that provision with little debate, although it too was described as an additional tool designed to inhibit the infiltration of legitimate business by organized crime. The Senate accepted this change without substantial debate.

Yet, as Justice Marshall writing for a four justice minority last year in *Sedima, S.P.R.L.* v. *Imrex Co.,* —— U.S. ——, 87 L.Ed.2d 346 (1985), noted, the civil RICO remedy inadvertently "quite simply revolutionizes private litigation." 87 L.Ed.2d at 362. As the Justice recognized, "nothing in the language of the State or the legislative history suggests that Congress intended either the federalization of State common law or the displacement of existing Federal remedies." 87 L.Ed.2d at 366. Yet, as the Supreme Court acknowledged in that decision, that is precisely what civil RICO has done. As the majority wrote in *Sedima,* "in its private civil version, RICO is evolving into something quite different from the original

conception of its enactors." 87 L.Ed.2d at 366.

This unintended revolution occurred because of RICO's broad language. Congress wrote the statute that way because it wanted the Federal enforcement authorities to have a big net from which organized criminals could not easily escape. However, Congress was counting on those enforcement officials to exercise their discretion wisely and to use this broad statute only against its intended targets. In fact, the Department drafted guidelines to confine the statute's use "to attack the activity which Congress most directly addressed—the infiltration of organized crime into the Nation's economy." United States Attorneys' Manual § 9–110.200.

Unfortunately, the restraint demonstrated by the Department of Justice has not been matched by private plaintiffs, and for a perfectly good reason. While the Government may exercise its discretion in the name of the overall public interest, creative private attorneys are duty-bound to bring all actions that serve their clients' interests and that reasonably fall within the reach of the law.

When it comes to civil RICO, they have discharged this duty with a vengeance. As every survey done to date of civil RICO cases has shown, very few, if any, cases have been brought against true organized criminals. This is understandable: one can hardly expect a private party to sue these menacing characters in civil court—for treble damages and attorney's fees no less—when the Government needs special devices, like the witness protection program, in order to bring successful criminal prosecutions. Instead, civil RICO has become the statute of choice in every sort of ordinary commercial dispute. Securities litigation, commercial contract disputes, tender offer battles, banking transactions, disputed insurance claims, landlord-tenant disputes, the complaints of disappointed bidders for franchises and companies have all become the gris for civil RICO actions.

For three reasons, civil RICO in its present form is an attractive substitute for the legal remedies specifically created to address the transaction in dispute. First, it permits plaintiffs to federalize disputes ordinarily handled under local law in local courts. Second, it permits plaintiffs to evade the standards carefully crafted under Federal and State regulatory systems, including, in Justice Marshall's words, "virtually eliminat[ing] decades of legislative and judicial development of private civil remedies under the Federal securities laws." 87 L.Ed.2d at 364. Third, it allows plaintiffs to raise the stakes significantly in these ordinary cases because a civil RICO claim carries with it the threat of treble damages, attorney's fees, and the opprobium of being labeled a "racketeer." As Justice Marshall concluded in examining the current situation created by civil RICO:

> Many a prudent defendant, facing ruinous exposure, will decide to settle even a case with no merit. It is thus not surprising that civil RICO has been used for extortive purposes, giving rise to the very evils that it was designed to combat. 87 L.Ed.2d at 365.

Under long-established causes of action, such as common law claims for fraud, the law is generally well-defined and well-settled, both as to the substantive offense and as to the circumstances under which punitive damages can be awarded. Such is not the case with civil RICO. This blunderbuss remedy is used to evade established standards and remedies. Its mischief comes from the fact that it leaves the ordinary defendant at sea facing enormous risks.

This is particularly true of RICO claims involving allegations of mail or wire fraud. Until now, these statutes only supported criminal prosecutions and not private actions, see, e.g., *Ryan* v. *Ohio Edison Co.,* 611 F.2d 1170, 1178 (6th Cir. 1979), and, mindful of that limitation, the courts have expanded the definition of fraudulent conduct reached by these statutes far beyond the clear standards worked out over hundreds of years in the States. Under this expansive concept of fraud, the courts have allowed the government to prosecute conduct "which fails to match the reflection of moral uprightness, of fundamental honesty, fair play and right dealing in the general and business life of members of society." *Blachy* v. *United States,* 380 F.2d 665, 671 (5th Cir. 1967) (internal quotation marks omitted). As Justice Marshall noted in his *Sedima* opinion, the "only restraining influence on the 'inexorable expansion of the mail and wire fraud statutes,' *United States* v. *Siegal,* 717 F2d, at 24 (Winter, J., dissenting in part), has been the prudent use of prosecutorial discretion." 87 L.Ed.2d at 363. In private civil RICO actions, of course, that restraining influence is absent, and the defendant faces an impossible evaluation of potential liability under the amorphous Federal fraud standard. To quote Justice Marshall again:

> In the context of civil RICO . . . the restraining influence of prosecutors is completely absent. . . . The civil RICO provision consequently stretches the mail and wire fraud statutes to their absolute limits and federalizes important areas of civil legislation that until now were solely within the domain of the states. 87 L.Ed.2d at 363, 364.

These problems will only grow and accelerate. Even prior to the Supreme Court decision in *Sedima,* a special ad hoc committee of the American Bar Association formed to study the use of civil RICO found that filings under the statute had grown exponentially during the early 1980s. See *Sedima,* 87 L.Ed.2d at 349 n. 1 (citing Report of the ABA Ad Hoc Civil RICO Task Force of the ABA Section of Corporation, Banking and Business Law 55 (1985)). In the wake of the *Sedima* decision, which turned aside the major impediments to civil RICO actions created by the courts, a virtual cottage industry has emerged, designed to teach lawyers how they can use RICO in virtually any sort of civil dispute. Seminars, reporting services, books and pamphlets appear almost weekly trumpeting the ways in which creative lawyers can call upon civil RICO to aide their clients' causes in ordinary commercial and other forms of civil disputes.

The serious disruption of Federal civil litigation that has already occurred has led a wide variety of individuals and groups to call for substantially reform of civil RICO. The American Bar Association, the New York Bar Association, the Bar of the City of New York, the American Civil Liberties Union, the Judicial Conference of the United States, the AFL–CIO, the United Steelworkers, the United Auto Workers, AFSCME, other major unions, the Chamber of Commerce, the National Association of Manufacturers, the Securities Industry Association, the American Institute of Certified Public Accountants, and other major business and professional organizations have all called for a major reform of civil RICO. In testimony before the Criminal Justice Subcommittee last fall, Judge Abner Mikva, who opposed the enactment of RICO as a Member of the House and who, as a member of the U.S. Court of Appeals for the District of Columbia Circuit, has seen the way RICO litigation has actually developed, stated:

> I confess that I used a substantial amount of hyperbole in trying to build opposition to the entire Act when it came up for Floor consideration. I stand amazed, however, to realize that my hyperbolic horrible examples of how far the law would reach pale into insignificance when compared to what has actually happened. The civil RICO provision's use as a weapon in various sorts of commercial disputes is, to my mind, both improper and an acute embarassment to all concerned.

In calling for substantial reform of civil RICO, Judge Mikva concluded that the "only losers will be the publishers of the special civil RICO services and a few hyper-aggressive lawyers who will have to find other ways to harass their opponents."

In Sedima, the Supreme Court laid responsibility at Congress' feet for correcting the problem created by Congress inadvertently in civil RICO: it wrote that the "defeat—if defeat it is—is inherent in the statute as written, and its correction must lie with Congress." 87 L.Ed.2d at 361. To answer that challenge, I introduced H.R. 2943, which would have amended civil RICO so that before a private party could call upon RICO's extraordinary remedies, the defendant would have first had to have been criminally convicted either of RICO itself or at least of one of the underlying so-called predicate acts. Most of the groups mentioned above—and Judge Mikva—endorsed that approach, and the bill garnered the cosponsorship of a majority of the Judiciary Committee members and a total of 150 Members.

I still believe that the prior-criminal-conviction requirement would be the best approach to reform of civil RICO. However, in an effort to respond to those who believe that such a requirement went too far in linking any private remedy to Government action, I participated in crafting the package of amendments that make up H.R. 5445, which was reported from the Criminal Justice Subcommittee on August 14. Since then, Members of the House have continued to work on a compromise that would go a long way toward solving the major abuses of civil RICO while retaining a civil RICO remedy for cases in which it may be important.

The substitute I offer today is the fruit of that effort. Let me outline the major features of the substitute and explain why I think they represent both substantial reform and significant protection for people victimized by ongoing criminal activity.

First, we have decided to leave intact and clarify the power of the U.S. Department of Justice and State attorneys general to bring

treble damage suits under the RICO statute when the Federal or State governments, or their subdivisions, have been injured by conduct that otherwise falls within RICO's prohibitions. In the extensive testimony that we received, there were few indications that either the Department of Justice or State attorneys general are abusing the broad language of the RICO statute to bring RICO cases if facts do not show real, persistent criminal activity. It is our expectation that these chief law enforcement officers will continue to exhibit the same kind of discerning judgment in decidiing when to use this special statute in the future.

The language of the substitute eliminates any doubt that may exist under current law as to the authority of the attorney general to sue on behalf of the United States under RICO's civil damages provisions. It also makes clear that, except as I shall explain in a moment, only the chief legal officer of a State may sue to obtain redress for injuries to the business or property of the State, including its departments, agencies, government corporations, and political subdivisions. We believe that the authority to sue for treble damages must be limited to the chief legal officer in order to avoid potential abuse of this powerful weapon.

This substitute, however, would also allow the chief legal officers of political subdivisions of States to sue for injuries to the business or property of the subdivision under certain limited circumstances. Before those officers could sue under this provision, their State legislatures will have to enact legislation specifically authorizing them to do so. Otherwise, only the chief legal officer of the State may bring suit on behalf of the political subdivision, if State law permits him to do so. In short, State law will control on the issue of who may bring civil RICO suits on behalf of cities, counties, and other State political subdivisions.

Apart from injuries to governmental entities, we have concluded that there is no general need to have a treble-damage remedy in cases otherwise covered by RICO. The last 16 years' experience with the statute has shown that RICO frequently overlaps other Federal and State remedies. In some of those remedies, Congress and the State legislatures have decided to authorize the award of multiple damages or punitive damages, and in others there are no such provisions. We have concluded that RICO should not generally displace the decisions that have been made in more carefully tailored statutes as to whether and when multiple damages should be awarded.

As the substitute is constructed, single damages would be the norm in RICO suits brought by any plaintiffs other than governmental entities. This includes, most importantly, the spate of business versus business suits in which RICO has enabled litigants to transform ordinary commercial controversies into treble damage claims, even though there are many other established legal remedies and indeed other Federal or State statutes that apply more directly to those disputes. If this bill becomes law, a plaintiff, generally speaking, no longer will be able to invoke Civil RICO in order to recover a larger award of damages than would otherwise be available.

There are two exceptions to this general principle. One is where the defendant has previously been convicted of certain criminal violations. It had been my recommendation that a prior criminal conviction should be a precondition to all civil RICO suits, but the compromise that we worked out for detrebling these suits uses the prior conviction as a way of determining that multiple damages are appropriate. In these cases, a plaintiff will be entitled to treble damages.

The other exception to the single-damage norm involves a category of cases that involves complaints by natural persons. These are cases in which an individual alleges that he or she was the victim of a persistent pattern of illicit activity, probably a fraud, in conjunction with the purchase of a consumer product or service. The subcommittee heard evidence indicating that there may be situations in which the victims of carefully organized scams directed at unsuspecting and highly vulnerable consumers may not be sufficiently deterred without the prospect of an award of damages beyond mere compensatory damages.

In addition, we heard evidence indicating that impoverished consumers who may be easily victimized may suffer kinds of intangible injury that mere compensatory damages for financial loss would not compensate adequately. We specifically intend that this remedy be available to individuals injured by the kind of conduct which was the basis of the case of *Gregory* v. *Atlantic Permanent Savings and Loan Association,* Civil Action No. 84-620-N (E.D.Va). For this reason, we decided to leave open the possibility that, in that kind of case, the trier of fact could award additional damages up to twice the amount of the actual financial loss suffered as a result of the pattern of illicit activity that injured the consumer.

These additional damages are termed punitive damages, and it is our expectation that the courts will be guided by the language of the statute and by the purpose for which this provision was inserted in determining when and to what extent a punitive damage award should be made. The statute states that, in order to trigger any award of punitive damages, the trier of fact must conclude that the defendant acted with "wanton disregard of the plaintiff's rights." This standard governing the assessment of punitive damages is not meant to imply that something less than proof of criminal intent is sufficient for a defendant to be found liable under civil RICO. Rather, the plaintiff must prove at least the level of criminal intent normally associated with the crimes that make up the "illicit activity" which is the predicate to RICO liability. However, without altering the existing requirements for proving liability under civil RICO, this punitive damage standard is designed to require proof of substantially greater culpability—a "wantonness" in the defendant's conduct—before any damages beyond actual damages are to be awarded.

The statute sets out one specific instance in which such "wanton" disregard cannot be found—when a defendant has acted in good faith reliance upon a directly applicable regulatory action, approval, or interpretation of law by an authorized State agency. Of course, it is hard to imagine a situation in which a defendant who has acted "in good faith" could still be found to have acted "in wanton disregard of the plaintiff's rights." But we desire to leave no doubt that a defendant is not to have additional damages assessed against him under the particular cricumstances described.

Once the threshold level of misbehavior that triggers the additional damages is reached, the trier of fact is to consider various factors that go to the viciousness and egregiousness of the defendant's conduct in deciding how large the additional award should be—up to double the actual damages. Obviously, we intend that the maximum additional award of double actual damages should be reserved for the most extreme cases of misconduct.

The statute lists some of the factors that are to be taken into account in making these determinations. In interpreting and applying these factors, the court and the trier of fact should recognize that a level of egregiousness beyond the ordinary must be demonstrated in order to support damages. For instances, the first factor, the "dagree of culpability" of the defendant, requires evidence that the defendant's culpability went significantly beyond what was required simply to trigger punitive damages ("wanton" disregard), let alone what was sufficient to justify a finding of liability.

Similarly, the second factor, the "degree of disparity of bargaining power" is not meant to support a large punitive damage award simply because the defendant has more bargaining power than the plaintiff. Rather, the punitive damage award should be significantly affected only if the disparity was so great that the defendant's actions were, in effect, unconscionable. The other factors should be interpreted and applied in a like manner.

In addition, the statute allows the "trier of fact" to consider any "equitable factor" that the court believes is relevant to the issue of additional damages. We expect the courts to play their traditional role in overseeing this process, in order to ensure that juries focus their consideration on factors that are truly relevant to an award of punitive damages.

We considered but decided not to address a procedural question raised by this potential for punitive damages, namely, how the punitive damage aspect of the case should be litigated. We considered a requirement that the evidence that would be relevant solely to deciding whether punitive damages should be awarded and, if so, in what amount, should not be discoverable before liability is established, or at least should not be presented at the trial before there has been a determination of liability. We recognize the possibility for heightened expense and prejudice if these two elements, basic liability and additional punitive damages, became intertwined.

We were particularly worried that plaintiffs would use the breadth of some of the factors that are to be considered in deciding the amount of punitive damages (once it has been shown that such an award is justified under the criteria set out in the preceding paragraph of the statute) to engage in wide-ranging discovery that wandered far beyond the specific allegations of the complaint, and to confuse the trial on the underlying liability issues. Obviously, we wish to avoid such a result, since it is precisely that sort of abuse, the threat of which tends to bludgeon defendants into inap-

propriate settlements, that reform of civil RICO is intended to combat.

Instead of adopting an iron-clad procedure for addressing this problem, we decided to leave it to the Federal trial judges to work out. They have ample authority under the Federal Rules of Civil Procedure to regulate the nature and order of pretrial discovery and to order severance of claims and bifurcation of proceedings when necessary to avoid such difficulties. We assume that the courts will exercise sound discretion in passing on requests for such regulation.

On the basis of the extensive testimony that we heard, we also decided to exclude one category of cases from possible punitive damage claims. This is the category of disputes to which the Federal or State securities laws would otherwise apply. According to the data presented to the subcommittee, many of the cases that have been brought under civil RICO basically have involved disputes about the sale of securities, including disputes about financial statements, as well as takeover battles for corporate control. Since Congress and the Federal courts have worked out a careful system of regulation of the securities markets over the past 50 years, and virtually all States have their own sets of regulations in this field, we concluded that there is no reason to preserve an opportunity to claim multiple damages under civil RICO in instances in which the Federal or State securities laws would otherwise regulate conduct.

This provision of the statute states that punitive damages are not available if State or Federal securities laws make available a remedy "for the type of behavior on which the claim of the plaintiff is based." This provision is designed to make clear that a clever plaintiff cannot plead around the limitation on punitive damages by simply recharacterizing what is really a securities fraud claim as a claim for mail or wire fraud. However a plaintiff chooses to characterize his claim, if the Federal or State securities laws make available a remedy for the "type" of behavior alleged, this exception to the availability of punitive damages applies.

This provision is also designed to insure that no punitive damages are available as long as the securities laws regulate the conduct, whether or not the plaintiff himself would have standing to press the claim and whether or not the plaintiff has lost his opportunity to bring the securities law case, through, for instance, the expiration of the limitations period. We intend to eliminate the use of civil RICO to evade the substantive and procedural limitations of the securities laws. As long as a case is based on behavior that falls within the reach of securities law regulation, a plaintiff may not use civil RICO to seek punitive damages.

Whether a plaintiff is attempting to do so, moreover, is a question of law for the court to decide and we hope, where possible, to decide early in the litigation. In most cases, the court should be able to tell from the face of the complaint whether the transaction or behavior at issue is the subject of Federal or State securities laws. If it is, then under new subsection 1964(c)(2)(B), the plaintiff may not seek or recover more than actual damages plus attorney's fees.

Several other features of the substitute deserve brief comment. Although we heard objections that the provision for the award of attorney's fees as part of the judgement in a RICO case was too sweeping a change from the "American Rule" that each party in a law suit bears his own costs, the substitute retains existing law on this subject. Thus, if a plaintiff brings civil RICO claim under any of the paragraphs that will be added or amended, attorney's fees may be awarded as part of costs when a judgment is entered for the plaintiff.

The bill also addresses, in one limited respect, an issue with which the federal courts have been grappling under civil RICO: the determination of when there has been a "pattern" of racketeering activity or, as it would be termed if the substitute becomes law, a "pattern of illicit activity." Taking their lead from footnote 14 of the majority opinion in the *Sedima* decision, 87 L.Ed.2d at 358–59 n. 14, the courts have been considering more carefully the meaning of the "pattern" requirement and whether the alleged acts demonstrate both sufficient "relatedness" and "continuity." See, e.g., *Northern Trust Bank/O'Hare, N.A.* v. *Inryco, Inc.,* 615 F. Supp. 828 (N.D. Ill. 1985); *Fleet Management Systems, Inc.* v. *Archer-Daniels-Midland Co.,* 627 F. Supp. 550 (C.D. Ill. 1986); *Allington* v. *Carpenter,* 619 F. Supp. 474 (C.D. Cal.1985).

Rather than attempt to freeze the judicial decisions on this subject, the compromise substitute allows the courts to continue to develop appropriate standards for deciding whether individual criminal violations are sufficiently related but distinct that they ought to be considered part of a "pattern" of criminal misbehavior rather than simply parts of what is essentially the same scheme or episode. Without attempting to define all of the factual components that may be important in determining in a particular case whether the incidents of alleged misconduct constitute a "pattern," the bill adds certain specific minimum standards without which there can be no pattern for purposes of a civil RICO suit.

Thus, although the definition of "pattern" in 18 U.S.C. § 1961 currently permits courts to find that there has been a pattern of illicit activity in either criminal or civil RICO cases if at least two acts of illicit activity occurred within 10 years of each other, the substitute would require that at least two such acts occur within 5 years of each other.

In addition, we specify in the substitute that if the alleged acts of illicit activity, although formally or technically divisible into separate crimes, are so closely related that they constitute essentially a single episode of criminality or a criminal scheme, the court may not find that there is a "pattern." If these minimum standards are met, the court then must decide, in accordance with the additional standards that the Federal courts are evolving, whether it is appropriate to treat the acts alleged as forming a "pattern" of criminal violations.

Another issue with which the Federal courts have been struggling that we have decided to address is the statute of limitations applicable to civil RICO actions. The current statute is silent on this issue, and thus the courts have been left to establish various limitation periods by "analogy." The substitute would establish a 3-year statute of limitations and it would be measured from the time the plaintiff's claims accrues.

There would be two exceptions to this application of the traditional and long-established principle of "accrual." First, if the injury to the plaintiff is a continuing one, the statute of limitations would not begin to run until the conduct causing the injury to the plaintiff has terminated. Second, where there has been a criminal conviction arising out of the conduct upon which the plaintiff would base his claim, the statute of limitations would run for 2 years beyond the date of the criminal conviction. In any event, a civil or criminal proceeding by the Federal Government relating to the conduct upon which the plaintiff's claim is based will toll the running of the statute of limitations. With those exceptions, we intend the courts to apply standard principles in determining when the plaintiff's action "accrued."

It is important to note that, under this provision, the limitations period runs from when the plaintiff's claim "accrues," not from the last act in an alleged pattern of illicit activity. One of the enormous difficulties currently created for defendants by RICO's unique structure—and one of its great attractions to those seeking to use the statute in ordinary civil disputes—is that it allows the plaintiff to reach back in time, with virtually no limitation, to seek redress for alleged injuries. As long as the plaintiffs can allege that later "acts" that occurred within the limitations period were part of the "pattern" of illicit activity, they can use civil RICO to seek redress for decades-old injuries. The effect is to leave defendants at risk for extremely long periods, theoretically without any end whatsoever.

If the limitations period were linked to the last act in an alleged "pattern," without regard to the accrual of the plaintiff's cause of action, potential defendants would remain open to suit indefinitely, and thus the provision would contradict the very notion of a limitations period. It is also unnecessary in order to protect the reasonable expectations of a potential claimant. Once the acts injuring the plaintiff have ceased, and his claim has "accrued," there is no good reason why he should not be obliged to move forward within the limitations period.

The substitute also contains an amendment to the Federal Rules of Civil Procedure, to require that every element of a civil RICO case is pleaded with particularity as to each defendant. The same policy reasons that support the other particularity requirements of rule 9(b) of the Federal Rules of Civil Procedure support this requirement for civil RICO claims. Civil RICO casts a wide net and provides extraordinary remedies, and will continue to do so even with the amendments included in this substitute proposal. Unfortunately, given the nature of this compromise, we have been unable to eliminate all of the incentives to misuse of the statute and all of the methods that permit that misuse. If a plaintiff is unable to specify the factual basis for his claim of persistent criminality each defendant, he should not be able to invoke this special statute.

We have decided not to address one difficult issue under civil RICO with which the

courts have struggled. We considered including a provision addressing the circumstances under which an organization should be held liable for acts of its employees and agents.

The trend in the law appears to be toward holding that there is no organizational liability under civil RICO absent the kind of active involvement of high management or policymaking officials that would support a finding that the organization actually participated as a principal in improper activities. See, e.g., *Schofield* v. *First Commodity Corp.*, 793 F.2d 28, 32-33 (1st Cir. 1986); *Haroco, Inc.* v. *American National Bank and Trust Co*, 747 F.2d 384, 401 (7th Cir. 1984); aff'd, —— U.S. ——, 87 L.Ed. 2d 437 (1985); *Ashley* v. *Shearson Lehman/American Express*, RICO Business Disputes Guide (CCH) ¶6272 at 5794 (C.D.Cal. 1986); *Minnesota Odd Fellows Home Foundation* v. *Engler & Budd Co.*, 630 F. Supp. 797, 800 (D. Minn. 1986); *Kredietbank N.V.* v. *Joyce Morris, Inc.*, RICO Business Disputes Guide (CCH) ¶6153 at 5355 (D.N.J. 1985).

This analysis takes into account the unique structure of civil RICO, whereby a "person" is held responsible for conducting the affairs of an "enterprise" improperly. It carries forth Congress' intent that organizations that are the instruments of misconduct by others should not themselves be punished under RICO. It also reflects the fact that civil RICO creates unprecedented liability by allowing private plaintiffs to charge defendants with the violation of criminal statutes. We are content for now, therefore, to allow the current trend in the law to continue without congressional action.

Finally, the bill addresses the question of the extent to which the changes made should affect pending cases. The approach taken by the bill is to make the various procedural changes applicable only to cases commenced after the date of enactment. The detrebling of the damages available in most RICO claims, however, would be effective immediately and would apply to most pending cases.

The proponents of reform have demonstrated that most of the pending suits seekng treble damages are pursuing a windfall that Congress never intended to authorize and now wants to prevent. Thus, if a claimant would not be eligible to recover more than single damages under the new standards that we are adopting, a claimant in a pending case should be in the same position. The decision to make detrebling effective immediately in most cases was a critical factor in convincing the House supporters of broader RICO reform to accept a compromise that does not require a prior criminal conviction as a precondition to every civil RICO suit. If, however, a private plaintiff in a pending case could recover punitive damages under the new standards, then he can continue to seek treble damages in his suit.

The bill includes two narrow exceptions to the general principle of immediate detrebling. If there has been a settlement, a jury verdict or a judgment awarding damages to the plaintiff prior to enactment of this bill, the law allowing recovery of treble damages would remain in effect for that case. In addition, preexisting law on the amount of damages recoverable would also apply if the court determines that it would be clearly unjust to apply the new law on damages. This standard is intended to be consistent with the general principle adopted by the Federal courts, as expressed in the 1974 Supreme Court decision in *Bradley* v. *Richmond School Board*, 416 U.S. 696 (1974), that changes in legislation apply immediately, unless there are unusual circumstances that make it plainly unjust to apply the new law to a pending case.

Here, we intend that a court will override the detrebling provision only in the extraordinary case. The fact that a plaintiff has had a claim pending or has conducted pretrial discovery, or does not have another multiple damage cause of action would be irrelevant. Rather, we merely mean to leave open the possibility that circumstances will exist that would justify extraordinary action by the court to permit an award of treble damages. One example of such a case would be one in which a plaintiff could establish that he had relied on the apparent availability of treble damages under civil RICO and had allowed the statute of limitations to run on some other casue of action for treble damages, for example, under the antitrust laws. Short of this kind of unfairness, we do not regard a claimant as having a vested interest in recovering more than his actual damages, plus attorney's fees, in a case that has not yet proceeded to settlement, jury verdict or the entry of judgment.

This compromise measure has been carefully worked out to deal with the main problems that have been demonstrated under civil RICO as it currently exists, and I urge the House to adopt it.

Mr. Speaker, the provisions of H.R. 5445, as amended, are as follows:

SECTION 1

Section 1 of the bill makes changes in terminology in 18 U.S.C. ch. 96, replacing "racketeering" and variants of that term with "illicit activity" or "criminal". Section 1(a) changes the heading of 18 U.S.C. ch. 96 to "Pattern of Illicit Activity." Section 1(b) makes terminology changes in 18 U.S.C. 1961, the definitions section for 18 U.S.C. ch. 96. Section 1(c) makes terminology changes in 18 U.S.C. 1962, which defines the criminal offenses in 18 U.S.C. ch. 96. Section 1(d) makes terminology changes in 18 U.S.C. 1968, the forfeiture provisions of 18 U.S.C. ch. 96.

SECTION 2

Section 2 of the bill amends 18 U.S.C. 1964(c), the treble damages action provision of 18 U.S.C. ch. 96. Section 2 of the bill rewrites section 1964(c) to (1) revise the damages recoverable in a civil action under section 1964(c); (2) provide a statute of limitation for section 1964(c) actions; and (3) define "pattern of illicit activity" (formerly "pattern of racketeering activity") for the purposes of certain actions under section 1964(c).

Section 1964(c), as amended, consists of six paragraphs. Paragraph (1)(A) of new section 1964(c) authorizes a governmental entity to sue a person who has engaged in conduct in violation of 18 U.S.C. 1962 and has thereby injured the business or property of the governmental entity.[1] If successful at trial, the governmental entity recovers damages of three times the actual damage to the business or property, plus costs[2] (including a reasonable attorney's fee). If the suit is settled by agreement of the parties, the settlement agreement governs as to attorney's fees. As at present, if the settlement agreement is silent on the matter, the governmental entity is responsible for payment of the attorney's fees it incurs.

New paragraph (1)(B) of section 1964(c) specifies who may bring a section 1964(c) action in the name of a governmental entity. If the suit is based upon injury to the business or property of the United States, paragraph (1)(B)(i) authorizes only the Attorney General of the United States to bring the action. If the suit is based upon injury to the business or property of a State, paragraph (1)(B)(ii) authorizes only the chief legal officer of the State to bring the action. If the suit is based upon injury to the business or property of a subdivision of a State, paragraph (1)(B)(iii) authorizes the chief legal officer of that subdivision to bring the action if the State has enacted legislation that specifically authorizes the chief legal officer of the subdivision to bring a section 1964(c) civil action.[3]

Paragraph (2) of new section 1964(c) authorizes civil actions by persons other than a governmental entity. Paragraph (2)(A) authorizes a person (other than a governmental entity) to sue another who has engaged in conduct in violation of 18 U.S.C. 1962 and has thereby injured the business or property of the person bringing the action. If the defendant in the suit has (with respect to the conduct in violation of 18 U.S.C. 1962) been convicted of an offense under 18 U.S.C. 1962 or of an illicit activity (formerly "racketeering activity"), then the plaintiff can recover treble damages and costs[4] (including a reasonable attorney's fee). If the suit is settled by agreement of the parties, the settlement agreement governs as to attorney's fees. As at present, if the settlement agreement is silent on the matter, the plaintiff must pay attorney's fees out of his or her own pocket.

A nongovernmental entity plaintiff who sues several defendants may not be able to recover treble damages from all of them, even if one or more of them has been convicted of a predicate act or of a violation of section 1962 with respect to the conduct alleged in the complaint, and even if the plaintiff alleges that the defendants were coconspirators or accomplices. Paragraph (2)(A) of new section 1964(c) authorized such a plaintiff to recover treble damages from a defendant only if that defendant has been convicted, with respect to the conduct alleged in the cause of action, of a predicate act or of a section 1962 offense. For example, assume that a nongovernmental entity plaintiff sues three defendants under new section 1964(c), alleging an injury caused by conduct in violation of section 1962(c). Defendant A has been convicted of the violation; defendant B was charged with the violation but was acquitted; and defendant C was not charged at all. The plaintiff has a cause of action for treble damages against defendant A under paragraph (2)(A) of section 1964(c), and an action for actual damages under paragrah (2)(B) against defendants B and C. Whether the plaintiff can recover punitive damages from defendants B and C depends upon whether the plaintiff can establish the conditions of paragraph (2)(B)(ii).

Paragraph (2)(B)(i) of new section 1964(c) authorizes a person (other than a govern-

Footnotes at end of article.

mental entity) to sue another who has engaged in conduct in violation of 18 U.S.C. 1962 and has thereby injured the business or property of the person bringing the action. If the plaintiff wins at trial, the plaintiff recovers actual damages and costs [5] (including a reasonable attorney's fee). If the suit is settled by agreement of the parties, the settlement agreement governs as to attorney's fees. As at present, if the settlement agreement is silent on the matter, the plaintiff must pay attorney's fees out of his or her own pocket.

Paragraph (2)(B)(ii) of new section 1964(c) authorizes certain plaintiffs to recover, in addition to actual damages and costs (including a reasonable attorney's fee), punitive damages under certain circumstances. To get punitive damages, the plaintiff must meet three conditions. First the plaintiff must be an individual (a "natural person") and the injury must have taken place in connection with the purchase or lease of a product, service, investment, or other property, for personal or household use or investment; or a contract for personal or household use or investment (paragraph (2)(B)(ii)(I)). Second, Federal or State securities laws must not provide an express or implied remedy for the type of behavior on which the plaintiff's claim is based (paragraph (2)(B)(ii)(II)). Third, the plaintiff must show that the defendant acted in wanton disregard of the plaintiff's rights (paragraph (2)(B)(II)(III)).[6] Paragraph (2)(B)(ii)(III) provides that a defendant who in good faith relies upon a directly applicable regulatory action by an authorized state agency cannot be found to have wantonly disregarded the plaintiff's rights.[7] If a plaintiff establishes the conditions set forth in paragraph (2)(B)(ii), then the plaintiff can recover punitive damages.

Paragraph (3) of new section 1964(c) sets forth matters that the trier of fact shall consider in determining the amount of punitive damages. The amount of punitive damages cannot exceed twice actual damages. In addition to considering the six factors, listed in subparagrahs (I) through (VI), the trier of fact also must consider "any other factor the court deems to be an equitable consideration bearing on the appropriate amount of punitive damages."

Paragraph (4) of new section 1964(c) supplements, for purposes of a civil action under new section 1964(c)(2), the definition of "pattern of illicit activity" in 18 U.S.C. 1961(5). Paragraph (4) provides that, in a suit under section 1964(2), the plaintiff must show, in addition to what section 1961(5) requires the plaintiff to show, that (1) one of the predicate acts pleaded occurred not more than 5 years after a prior predicate act pleaded; (2) the predicate acts are not so closely related in time and place as to constitute a single episode; and (3) if the plaintiff has alleged a violation of section 1962(c), each of the predicate acts is related to the affairs of the enterprise.[8]

Paragraph (5) of new section 1964(c) provides a statute of limitation for civil actions under section 1964(c). Paragraph (5)(A) provides that a section 1964(c) action cannot be brought after the latest of (1) 3 years after the date when the cause of action accrued; (2) 3 years after the date when the conduct causing injury to the plaintiff terminated; or (3) 2 years after the date of conviction of the defendant of an offense under section 1962 or of an illicit activity, if such conviction was for the conduct in violation of section 1962 upon which the claim of the plaintiff is based.

Paragraph (5)(B) provides that the time periods set forth in paragraph (5)(A) do not run while there is a criminal case or a civil action by a governmental entity pending against the defendant. This suspension does not apply to a cause of action, however, unless the conduct involved in the criminal case or governmental entity civil action is the conduct upon which the cause of action is based.

Paragraph (6) of new section 1964(c) defines the term "governmental entity" for the purposes of section 1964(c). The term "governmental entity" is defined to mean the United States or a State. The term includes any department, agency, or government corporation of the United States or a State; any political subdivision of a State; and any enterprise for which a trustee has been appointed by a United States district court under 18 U.S.C. 1964(a), but only during the time when such trustee is in control of the operations of the enterprise.

SECTION 3

Section 3 of the bill amends Rule 9(b) of the Federal Rules of Civil Procedure, which deals with the pleading of certain matters (fraud, mistake and condition of the mind). Section 3(1) of the bill amends the heading of Rule 9(b), and section 3(2) adds a new sentence to Rule 9(b). the new sentence requires that, in a section 1964(c) civil action, the plaintiff must, as to each defendant, plead with particularity the facts supporting the plaintiff's cause of action.

SECTION 4

Section 4 of bill deals with the effective date of the legislation. Section 4(a) provides that the amendments made by the legislation apply to civil actions begun after the date of enactment, except as provided in section 4(b).

Section 4(b) provides that a plaintiff who would be eligible only for actual damages, had the legislation been in effect when that plaintiff began an action under section 1964(c), can recover only actual damages unless in the plaintiff's pending action (1) there has been a jury verdict or a United States district court judgment that establishes the defendant's liability, or a settlement has occurred, or (2) the court, in light of the circumstances, determines that limiting the plaintiff's recovery to actual damages would be clearly unjust.

FOOTNOTES

[1] The term "governmental entity" is defined in paragraph (6) of new section 1964(c).

[2] The costs that the plaintiff can recover are set forth in 28 U.S.C. 1920.

[3] In the absence of such statutory authorization, the chief legal officer of the State must bring the action, assuming state law otherwise empowers him to do so.

[4] The costs that the plaintiff can recover are set forth in 28 U.S.C. 1920.

[5] The costs that the plaintiff can recover are set forth in 28 U.S.C. 1920.

[6] Merely showing that the defendant engaged in the illicit activity constituting a pattern of illicit activity does not establish that the defendant acted in wanton disregard of the plaintiff's rights. Equating commission of the acts of illicit activity with the requisite wantonness would render the requirement of paragraph (2)(B)(ii)(II) a nullity. The purpose of the wantonness requirement is to limit the award of punitive damages to exceptional circumstances.

[7] Paragraph (2)(B)(ii)(III) is not intended to limit the kinds of conduct that do not constitute wanton disregard of the plaintiff's rights. For example, the fact that the defendant acted in good faith could well preclude a finding that the defendant acted in wanton disregard of the plaintiff's rights within the meaning of paragraph (2)(B)(ii)(III).

[8] Section 1962(c) makes it an offense to conduct the affairs of an enterprise "through" a pattern of illicit (formerly "racketeering") activity. If a predicate act is not related to the affairs of an enterprise, it would not be possible for the defendant to conduct the enterprise's affairs "through" that predicate act. Because the other offenses set forth in section 1962 provide for different connections between the "enterprise" and the "pattern" of illicit activity, this new specific statutory standard would not apply to actions based on those other offenses.

Mr. Speaker, at this point I include a letter I received from the American Civil Liberties Union in support of H.R. 5445 in the RECORD.

AMERICAN CIVIL LIBERTIES UNION,
Washington, DC, October 7, 1986.

Representative RICK BOUCHER,
428 CHOB,
Washington, DC.

DEAR RICK: I write to you to express the strong support of the American Civil Liberties Union for the RICO reform legislation now before the House. We have not had the time to convey our views to all members of the House and would appreciate your stating on the floor our vigorous support for the legislation.

The ACLU believes that civil RICO goes far beyond the intent of the drafters of the legislation and that the legislation itself is far too broad and vague. We are concerned that the statute has been used in any number of inappropriate circumstances in which those subject to suit are placed at an unfair disadvantage.

We are particularly concerned about the recent and growing use of civil RICO against political groups. In some cases courts have refused to dismiss complaints against individuals who have engaged only in lawful political activity. Such actions can only serve to chill political participation. The requirement in the proposed legislation for particularized pleading should eliminate this danger by requiring the dismissal of suits against individual defendants who are not themselves accused of engaging in illegal activity included within RICO.

On behalf of the ACLU I want to commend you for the leadership you have taken on this issue and for your sensitivity to civil liberties concerns in drafting the legislation.

Sincerely yours,

MORTON H. HALPERIN.

The SPEAKER pro tempore. All time has expired.

The question is on the motion offered by the gentleman from Virginia [Mr. BOUCHER] that the House suspend the rules and pass the bill, H.R. 5445, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

ANTI-KICKBACK ENFORCEMENT ACT OF 1986

Mr. BROOKS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 4783) to strengthen the prohibition of kickbacks relating to subcontracts under Federal Government contracts, as amended.

The Clerk read as follows:

H.R. 4783

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Anti-Kickback Enforcement Act of 1986".

SEC. 2. (a) The Act entitled "An Act to eliminate the practice by subcontractors, under cost-plus-a-fixed-fee or cost reimbursable contracts of the United States, of paying fees or kick-backs, or of granting gifts or gratuities to employees of a cost-plus-fixed-fee or cost reimbursable prime contractors or of higher tier subcontractors for the purpose of securing the award of subcontracts or orders", approved March 8, 1946 (41 U.S.C. 51-54), is amended to read as follows:

"SHORT TITLE

"SECTION 1. This Act may be cited as the 'Anti-Kickback Act of 1986'.

"DEFINITIONS

"SEC. 2. As used in this Act:

"(1) The term 'contracting agency', when used with respect to a prime contractor, means any department, agency, or establishment of the United States which enters into a prime contract with a prime contractor.

"(2) The term 'kickback' means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to a prime contractor, prime contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

"(3) The term 'person' means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

"(4) The term 'prime contract' means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

"(5) The term 'prime contractor' means a person who has entered into a prime contract with the United States.

"(6) The term 'prime contractor employee' means any officer, partner, employee, or agent of a prime contractor.

"(7) The term 'subcontract' means a contract or contractual action entered into by a prime contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

"(8) The term 'subcontractor'—

"(A) means any person, other than the prime contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract; and

"(B) includes any person who offers to furnish or furnishes general supplies to the prime contractor or a higher tier subcontractor.

"(9) The term 'subcontractor employee' means any officer, partner, employee, or agent of a subcontractor.

"PROHIBITED CONDUCT

"SEC. 3. It is prohibited for any person—

"(1) to provide, attempt to provide, or offer to provide any kickback;

"(2) to solicit, accept, or attempt to accept any kickback; or

"(3) to include, directly or indirectly, the amount of any kickback prohibited by clause (1) or (2) in the contract price charged by a subcontractor to a prime contractor or a higher tier subcontractor or in the contract price charged by a prime contractor to the United States.

"CRIMINAL PENALTIES

"SEC. 4. Any person who knowingly and willfully engages in conduct prohibited by section 3 shall be imprisoned for not more than 10 years or shall be subject to a fine in accordance with title 18, United States Code, or both.

"CIVIL ACTIONS

"SEC. 5. (a)(1) The United States may, in a civil action, recover a civil penalty from any person who knowingly engages in conduct prohibited by section 3. The amount of such civil penalty shall be—

"(A) twice the amount of each kickback involved in the violation; and

"(B) not more than $10,000 for each occurrence of prohibited conduct.

(2) The United States may, in a civil action, recover a civil penalty from any person whose subcontractor or subcontractor employee violates section 3 by providing, accepting, or charging a kickback. The amount of such civil penalty shall be the amount of that kickback.

"(b) A civil action under this section shall be barred unless the action is commenced within 6 years after the later of (1) the date on which the prohibited conduct establishing the cause of action occurred, and (2) the date on which the United States first knew or should reasonably have known that the prohibited conduct had occurred.

"ADMINISTRATIVE OFFSETS

"SEC. 6. (a) A contracting officer of a contracting agency may offset the amount of a kickback provided, accepted, or charged in violation of section 3 against any moneys owed by the United States to the prime contractor under the prime contract to which such kickback relates.

"(b)(1) Upon direction of a contracting officer of a contracting agency with respect to a prime contract, the prime contractor shall withhold from any sums owed to a subcontractor under a subcontract of the prime contract the amount of any kickback which was or may be offset against that prime contractor under subsection (a).

"(2) Such contracting officer may order that sums withheld under paragraph (1)—

"(A) be paid over to the contracting agency; or

"(B) if the United States has already offset the amount of such sums against that prime contractor, be retained by the prime contractor.

"(3) The prime contractor shall notify the contracting officer when an amount is withheld and retained under paragraph (2)(B).

"(c) An offset under subsection (a) or a direction or order of a contracting officer under subsection (b) is a claim by the Government for the purposes of the Contract Disputes Act of 1978.

"(d) As used in this section, the term 'contracting officer' has the meaning given that term for the purposes of the Contract Disputes Act of 1978.

"CONTRACTOR RESPONSIBILITIES

"SEC. 7. (a) Each contracting agency shall include in each prime contract awarded by such agency a requirement that the prime contractor shall have in place and follow reasonable procedures designed to prevent and detect violations of section 3 in its own operations and direct business relationships.

"(b) Each contracting agency shall include in each prime contract awarded by such agency a requirement that the prime contractor shall cooperate fully with any Federal Government agency investigating a violation of section 3.

"(c)(1)(A) Whenever a prime contractor or subcontractor has reasonable grounds to believe that a violation of section 3 may have occurred, the prime contractor or subcontractor shall promptly report the possible violation in writing.

"(B) A contractor shall make the reports required by subparagraph (A) to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.

"(2) In the case of an administrative or contractual action to suspend or debar any person who is eligible to enter into contracts with the Federal Government, evidence that such person has supplied information to the United States pursuant to paragraph (1) shall be favorable evidence of such person's responsibility for the purposes of Federal procurement laws and regulations.

"INSPECTION AUTHORITY

"SEC. 8. For the purpose of ascertaining whether there has been a violation of section 3 with respect to any prime contract, the GeneralAccounting Office and the inspector general of the contracting agency, or a representative of such contracting agency designated by the head of such agency if the agency does not have an inspector general, shall have access to and may inspect the facilities and audit the books and records, including any electronic data or records, of any prime contractor or subcontractor under a prime contract awarded by such agency.".

(b) The title of such Act is amended to read as follows: "An Act to prohibit kickbacks relating to subcontracts under Federal Government contracts.".

SEC. 3. (a) Except as provided in subsection (b), the Anti-Kickback Act of 1986 (as set out in section 2(a)) shall take effect with respect to conduct described in section 3 of such Act which occurs on or after the date of the enactment of this Act.

(b) Subsections (a) and (b) of section 7 of the Anti-Kickback Act of 1986 (as set out in section 2(a)) shall take effect with respect to contract solicitations issued by an agency, department, or other establishment of the Federal Government on or after the date which is 90 days after the date of the enactment of this Act.

The SPEAKER pro tempore. Is there a second demanded?

Mr. HORTON. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Texas [Mr. BROOKS] will be recognized for 20 minutes and the gentleman from New York [Mr. HORTON] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Texas [Mr. BROOKS].

Mr. BROOKS. Mr. Speaker, H.R. 4783 is a complete rewrite of the Anti-Kickback Act enacted in 1946. That act was designed to eliminate the widespread practice during World War II of businesses making payments to Government prime contractors to obtain subcontracts or orders. These commercial bribes, or kickbacks, were passed on to the Government in the

cost of the prime contract or through the purchase of inferior goods. Kickbacks cost the Government tremendous amounts of money.

Unfortunately, it has become apparent that the 1946 act has not been effective in stopping kickback practices. Government contracting is still being plagued with kickbacks. The current law, as currently written, is too narrow and weak to accomplish its purpose.

H.R. 4783, sponsored by Representative BRYANT, is a total reworking of the Anti-Kickback Act which will broaden its application and increase its sanctions. It would amend the Anti-Kickback Act to clarify its meaning, expand its coverage and increase both its criminal and civil penalties.

In particular, it makes the following changes to the existing law:

The bill adds a definition section to the act to clarify the meaning of the terms "contracting agency," "kickback," "prime contract," "subcontractor," et cetera.

The bill specifies the exact prohibited conduct under the law as including both the payment, acceptance and inclusion of a kickback in the costs of the contract. The present law prohibits only the payment of kickbacks.

The bill broadens the scope of the Anti-Kickback Act to include kickbacks paid by independent sales representatives and general suppliers.

The bill expands the Anti-Kickback Act to include attempted as well as actual kickbacks.

The bill expands the Anti-Kickback Act to cover kickbacks in all contracts. Current law only covers negotiated contracts.

The bill increases both the criminal and civil penalties under the current act. The criminal penalties are increased from 2 years imprisonment and/or a $10,000 fine, to 10 years imprisonment and/or a $250,000 fine—$500,000 fine for corporations. Civil penalties are increased from recovery of the cost of the kickback to double the kickback plus a $10,000 fine in cases of knowing violations.

The bill imposes a vicarious, no fault type of liability for prime contractors or higher tier subcontractors when their subcontractors make kickbacks. This new form of liability is limited to the kickback amount.

The bill fixes the statute of limitations for civil actions under the act at 6 years.

The bill allows the Government to use administrative offsets to recover the costs of kickbacks.

The bill requires contractors to implement reasonable procedures to prevent and detect kickbacks.

The amendment offered today would make several changes to H.R. 4783 as it was reported out of the Government Operations Committee. None are of a controversial nature.

First, the amendment deletes the conclusive presumption language in the bill and replaces it with a direct provision attaching vicarious liability on a prime contractor or a higher tier subcontractor when their subcontrator engages in kickbacks. This liability is imposed regardless of actual demonstrated injury to the Government. The conclusive presumption section of H.R. 4783 operated to create this type of liability. By deleting the conclusive presumption section and including a new provision directly imposing this liability the substance of the act has not been changed. Conclusive presumptions are old and poor legal drafting style and the amendment deletes the conclusive presumption in the act to clarify and modernize the statute.

Second, the amendment would replace the administrative offset provision with a new, reworked section. The new provision would allow the offset to be made against moneys owed a prime contractor under the contract related to the kickback. H.R. 4783 would have allowed such offsets against any moneys owed to the prime contractor or subcontractors. The amendment also clarifies that offsets under the Anti-Kickback Act are to be governed by the terms of the Contract Disputes Act. The amendment makes clear that all the provisions of the Contract Disputes Act are applicable to these kickback offsets.

Further, it is intended that case law construing the Contract Disputes Act is completely applicable to these offsets. For example, it is intended that kickback offsets, because they are predicated on fraud charges, will be adjudicated in the U.S. Claims Court not a board of contract appeals, as required by case law.

In addition to these two changes, there are various minor technical changes made by the amendment to improve the act from a drafting standpoint.

Mr. Speaker, I reserve the balance of my time.

Mr. HORTON. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of this bill, H.R. 4783, the Anti-Kickback Enforcement Act of 1986, and am pleased to join, as a cosponsor of this bill with Chairman BROOKS, to urge its enactment. H.R. 4783 deals with the serious problem of kickbacks in Government contracting. Kickbacks are now illegal, but we learned during our hearing on this issue that they still go on, costing the taxpayers millions, if not billions of dollars in added costs of Government procurements.

The existing Anti-Kickback Act was enacted in 1946 just after World War II to deal with problems existing then. The bill we now consider would update and strengthen existing law to target the specific activities of those who engage in kickback schemes today.

The bill before the House today differs slightly from the bill as reported by the committee. The changes that have been made in that bill are technical in nature, and have been agreed to by the Department of Justice, which supports enactment of the bill we are considering. The bill is also supported by the Department of Defense, which must deal with a significant number of kickbacks in connection with defense procurements.

The Senate has already passed a very similar version of the bill, S. 2250, and I am hopeful that we can complete action on this before Congress adjourns.

I urge an "aye" vote on the motion to suspend the rules and pass this bill.

Mr. BROOKS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I submit for the RECORD a copy of a letter to myself from the gentleman from New Jersey [Mr. RODINO], chairman of the Committee on the Judiciary, in which he states that he is "satisfied that we have been able to resolve these concerns, and that you will offer an amendmented version of H.R. 4783 that reflects our discussions. Thus, I agree to waive the jurisdiction of the Judiciary Committee on this one instance so that this bill can be considered before Congress adjourns."

The letter follows:

Hon. Jack Brooks,
Chairman, Committee on Government Operations, House of Representatives, Washington, DC.

DEAR CHAIRMAN BROOKS: It is my understanding that you have requested that H.R. 4783 be placed on the Suspension Calendar for floor consideration today. This bill, the "Anti-kickback Enforcement Act of 1986" has been referred jointly to the Committee on Government Operations and the Committee on the Judiciary.

H.R. 4783 amends title 41, United States Code, sections 51-54. These sections of existing law fall within the jurisdiction of the Judiciary Committee because they involve civil and criminal penalties and claims against the United States.

Due to the short time remaining in this session, the Judiciary Committee has been unable to hold hearings on this bill and its Senate companion bill, S. 2250. However, this Committee worked closely with your Committee to resolve a number of concerns raised by the original version of these bills.

With best regards,
Sincerely,

PETER W. RODINO, Jr.,
Chairman.

Mr. HORTON. Mr. Speaker, will the gentleman yield?

Mr. BROOKS. I yield to the gentleman from Texas.

Mr. HORTON. Mr. Speaker, I just want to add that the Republicans on the Committee on the Judiciary joined in that waiver.

Mr. BROOKS. I believe that is correct.

□ 1545

I would say the Judiciary Committee has worked with us on the bill, especially the gentleman from Kansas [Mr. GLICKMAN], the subcommittee chairman.

Mr. Speaker, I yield such time as he may consume to the distinguished coauthor of the bill, an outstanding Member of Congress, the gentleman from Texas [Mr. BRYANT].

Mr. BRYANT. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, on behalf of myself and others, including Senator LEVIN, I want to express my sincere thanks to the gentleman from Texas [Mr. BROOKS], as well as to the gentleman from New Jersey [Mr. RODINO], and the gentleman from Kansas [Mr. GLICKMAN] for their hard work on this matter, especially the gentleman from Texas [Mr. BROOKS] for moving the bill forward.

Mr. Speaker, H.R. 4783, the Anti-Kickback Enforcement Act of 1986, brings the Federal antikickback law up to date with current Federal contracting and subcontracting practices, to put teeth back in this important law. The bill addresses the problem of kickbacks paid by subcontractors to employees of Government prime contractors in exchange for improper favorable treatment. Often these kickbacks occur without the knowledge of the management of the prime contractors, although more diligent supervision could in many cases have prevented them.

The practice has become so widespread—Justice Department witnesses have estimated that up to half the frontline employees of defense prime contractors are involved—that it is affecting the integrity of the entire contracting system. Subcontractors are often pressured to make payoffs in order to even be put on the qualifying lists to bid, and prime contractor employees have been offered money or other bribes to steer business toward or provide inside information to a particular subcontractor.

The amount of money at stake is enormous—in the defense industry alone, $47 billion of the $146 billion spent on procurement went to subcontractors. The top 10 defense prime contractors alone employ over 6,200 buyers and immediate supervisors who deal with subcontractors.

The prevalence of subcontracting kickback schemes drives honest subcontractors out of business and puts a premium on payola over price and quality. The taxpayer pays too much, and fails to get the assurance of quality that a subcontracting system with more integrity would provide.

Congress addressed this problem with the Anti-Kickback Act of 1946, 41 U.S.C. 51. But this statute is of little use to Federal prosecutors today. It is full of loopholes, limitations, and relics of a bygone contracting era that have not kept pace with changes in contracting practices. Only negotiated contracts are covered. Only kickbacks that are fully carried out are prohibited, and then only if they are paid in direct exchange for the actual award of the subcontract. And the penalties are too weak in today's terms to constitute much of a deterrence.

According to the Justice Department, despite the pervasiveness of kickback activity in Federal Government subcontracting, there have been only eight convictions under the Anti-Kickback Act during the past 5 years. Prosecutors typically resort to other laws, such as the mail fraud and conspiracy statutes, to prosecute persons involved in kickback schemes.

This is the impetus for the Anti-Kickback Enforcement Act of 1986: To bring the Anti-Kickback Act up to date, close the loopholes in it, and restore its usefulness as an effective tool for insuring integrity in the Federal subcontracting process. The bill broadens the antikickback law to apply to all Federal contracts. It prohibits attempted kickbacks as well as completed kickbacks. It expands the definition of kickback to prohibit payments to improperly obtain any type of favorable treatment in connection with a prime contract, including provision of inside information or acceptance of substandard merchandise. It raises the criminal penalties to more meaningful levels—up to $250,000 and 10 years in prison for individuals and up to $1 million for corporations. It increases the maximum the Government can recover in a civil action to twice the amount of the proven kickback plus $10,000. It requires prime contractors to report suspected kickback activity to the Government. And it requires, as a part of every Federal contract, that the prime contractor have in place and follow reasonable procedures designed to prevent and detect kickback schemes among its employees and in its direct business relationships.

The Senate Government Affairs Subcommittee on Oversight of Government Management held a hearing on the issue of subcontractor kickbacks on February 27 of this year. Senator CARL LEVIN introduced S. 2250 on March 26 and I introduced identical companion legislation, H.R. 4783, in the House on May 8. The Senate subcommittee held a hearing on S. 2250 June 11. The Senate passed it September 11.

S. 2250 has received strong support in the Senate. Every member of the Senate subcommittee is a cosponsor. The full Senate committee reported it without opposition. it passed the Senate by unanimous consent.

In the House, the Government Operations Subcommittee on Legislation and National Security held a hearing on the bill September 22 and reported it later that day. On September 23, the full Government Operations Committee ordered the bill reported. The report was filed October 3. Both the chairman and ranking minority member of the Government Operations Committee are cosponsors of the bill.

During Senate consideration, a number of changes were made in S. 2250, as a result of testimony from and consultations with the Department of Justice, the Department of Defense, the contracting industry, and the business community. Further changes were made during consideration by the House Government Operations Committee. Still further refinements have been made since the bill was reported by the Government Operations Committee, in consultations between myself, members of the House Government Operations and Judiciary Committees, and the Senate sponsor. These additional changes are incorporated in the substitute offered by Chairman BROOKS, on which we are voting today. I have been involved in shaping these changes, which have improved the bill considerably from its original form.

I would like to thank Chairman BROOKS and ranking minority member, FRANK HORTON of the Government Operations Committee, Chairman GLICKMAN and ranking minority member KINDNESS of the Judiciary Subcommittee on Administrative Law and Government Relations, and Chairman RODINO and ranking minority member FISH of the Judiciary Committee for their leadership and active help in bringing this bill before the House today.

Mr. Speaker, American taxpayers deserve the best assurance we can give them that their money is not being wasted. This legislation helps assure the integrity of the Federal contracting process, so that the Government will get a dollar's worth of equipment for every dollar it spends—and the suppliers of that equipment will be chosen for the quality and value of their merchandise, rather than for the kickbacks they are willing to pay.

Mr. GLICKMAN. Mr. Speaker, H.R. 4783, the Anti-Kickback Enforcement Act of 1986, is a bill designed to strengthen existing law on subcontractor kickbacks. The current law was enacted in 1946 and has not been amended in 25 years.

The current law is filled with loopholes, restrictive provisions, and antiquated terms. For example, the current law only applies to negotiated contracts, instead of all contracts. It does not apply to attempted kickbacks, but only to completed kickbacks.

The purpose of H.R. 4783 is to clarify the meaning of the act, and to expand its criminal and civil penalties.

In hearings, both before the Senate Governmental Affairs Committee and the House Gov-

ernment Operations Committee, witnesses pointed out that the payment of kickbacks in Government contracting is practically a way of life. The Department of Justice stated that the current law is practically useless for addressing this problem. In fact, the Department of Justice said they normally must use more general laws—like the mail fraud statute or the criminal section of the Tax Code—to prosecute individuals and companies who engage in kickbacks.

H.R. 4783 is a vast improvement over the current law and, I think, a very necessary piece of legislation.

I would like to compliment Congressman JOHN BRYANT of Texas, the sponsor of the bill for his hard work and diligence in pursuing this legislation. I would also like to compliment Chairman BROOKS of the Government Operations Committee for his leadership.

I urge my colleagues to support the bill, H.R. 4783, and urge its passage by the House.

Mr. HORTON. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. BROOKS. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. KILDEE). The question is on the motion offered by the gentleman from Texas [Mr. BROOKS] that the House suspend the rules and pass the bill, H.R. 4783, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

Mr. BROOKS. Mr. Speaker, I ask unanimous consent that the Committee on Government Operations and the Committee on the Judiciary be discharged from further consideration of the Senate bill (S. 2250) to strengthen the prohibition of kickbacks relating to subcontracts under Federal Government contracts, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 2250

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Anti-Kickback Enforcement Act of 1986".

SEC. 2. (a) The Act entitled "An Act to eliminate the practice by subcontractors, under cost-plus-a-fixed-fee or cost reimbursable contracts of the United States, of paying fees or kick-backs, or of granting gifts or gratuities to employees of a cost-plus-fixed-fee or cost reimbursable prime contractors or of higher tier subcontractors for the purpose of securing the award of subcontracts or orders", approved March 8, 1946 (41 U.S.C. 51-54), is amended to read as follows:

"SHORT TITLE

"SECTION 1. This Act may be cited as the 'Anti-Kickback Act of 1986'.

"DEFINITIONS

"SEC. 2. As used in this Act:

"(1) 'Contracting agency', when used with respect to a prime contractor, means any department, agency, or establishment of the United States which enters into a prime contract with a prime contractor.

"(2) 'Kickback' means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime contractor, prime contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or acknowledging favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

"(3) 'Person' means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

"(4) 'Prime contract' means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

"(5) 'Prime contractor' means a person who has entered into a prime contract with the United States.

"(6) 'Prime contractor employee' means any officer, partner, employee, or agent of a prime contractor.

"(7) 'Subcontract' means a contract or contractual action entered into by a prime contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

"(8) 'Subcontractor'—

"(A) means any person, other than the prime contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract; and

"(B) includes any person who offers to furnish or furnishes general supplies to the prime contractor or a higher tier subcontractor.

"(9) 'Subcontractor employee' means any officer, partner, employee, or agent of a subcontractor.

"PROHIBITED CONDUCT; PRESUMPTION THAT PROHIBITED CONDUCT OCCURRED

"SEC. 3. (a) It is prohibited for any person—

"(1) to pay, attempt to pay, or offer to pay any kickback;

"(2) to solicit, accept, or attempt to accept any kickback; or

"(3) to include, directly or indirectly, the amount of any kickback prohibited by clause (1) or (2) in the contract price charged by a subcontractor to a prime contractor or a higher tier subcontractor or in the contract price charged by a prime contractor to the United States.

"(b) In a civil suit or administrative action commenced under this Act, there shall be a conclusive presumption that the amount of any kickback paid or accepted in connection with a prime contract or subcontract in violation of subsection (a)(1) or (a)(2) has been included in the price of such contract and has been ultimately borne by the United States.

"CRIMINAL PENALTIES

"SEC. 4. (a) Any individual who knowingly engages in conduct prohibited by section 3(a) shall be fined not more than $250,000 or be imprisoned for not more than 10 years or both.

"(b) Any person (other than an individual) which knowingly engages in conduct prohibited by section 3(a) shall be fined not more than $1,000,000.

"CIVIL ACTIONS

"SEC. 5. (a)(1) The United States may bring a civil suit against any person who violates section 3(a).

"(2) In a civil brought under paragraph (1), the United States may recover—

"(A) in the case of a person who knowingly engages in conduct prohibited by section 3(a), an amount equal to the sum of—

"(i) twice the amount of each kickback involved in the violation; and

"(ii) not more than $10,000 for each occurrence of prohibited conduct; or

"(B) in any other case, the amount of each kickback involved in the violation.

"(b) A civil action under this section shall be barred unless the action is commenced within 6 years after the later of (1) the date on which the prohibited conduct establishing the cause of action occurred, and (2) the date on which the United States became aware or should reasonably have become aware that the prohibited conduct had occurred.

"ADMINISTRATIVE OFFSETS

"SEC. 6. (a) The United States may recover the amount of any kickback paid, accepted, or charged in violation of section 3(a) by offsetting such amount against any moneys owed by the United States—

"(1) to the prime contractor, prime contractor employee, subcontractor, or subcontractor employee which included such amount in a contract price; or

"(2) to the recipient or recipients of such kickback.

"(b)(1) Upon the written direction of the contracting officer for a prime contract, the prime contractor shall withhold from sums the prime contractor owes any subcontractor the amount of any kickback found to have been paid, accepted, or charged in violation of section 3(a).

"(2) Upon the written direction of the contracting officer for a prime contract, the prime contractor (A) shall pay all sums withheld under paragraph (1) to the contracting agency, or (B) shall retain such sums, if the United States has, by administrative offset under subsection (a), collected such sums from the prime contractor, and shall notify the contracting officer when the retention of funds has actually occurred.

"CONTRACTOR RESPONSIBILITIES

"SEC. 7. (a) Each contracting agency shall include in each prime contract awarded by such agency a requirement that the prime contractor shall have in place and follow reasonable procedures designed to prevent and detect violations of section 3(a) in its own operations and direct business relationships.

"(b) Each contracting agency shall include in each prime contract awarded by such agency a requirement that the prime contractor shall cooperate fully with any Federal Government agency investigating a violation of section 3(a).

"(c)(1)(A) Whenever a prime contractor or subcontractor has reasonable grounds to believe that a violation of section 3(a) may have occurred, the prime contractor or subcontractor shall promptly report the potential violation in writing.

"(B) A contractor shall make the reports required by subparagraph (A) to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.

"(2) In the case of an administrative or contractual action to suspend or debar any person who is eligible to enter into contracts with the Federal Government, evidence that such person has supplied information to the United States pursuant to paragraph (1) shall be favorable evidence of such person's responsibility for the purposes of Federal procurement laws and regulations.

"INSPECTION AUTHORITY

"SEC. 8. For the purpose of ascertaining whether there has been a violation of section 3(a) with respect to any prime contract, the General Accounting Office and the inspector general of the contracting agency, or a representative of such contracting agency designated by the head of such agency if the agency does not have an inspector general, shall have access to and may inspect the facilities and audit the books and records, including any electronic data or records, of any prime contractor or subcontractor under a prime contract awarded by such agency.".

(b) The title of such Act is amended to read as follows: "An Act to prohibit the paying or offering of kickbacks to any contractor or contractor employee in connection with Federal Government contracting actions.".

SEC. 3. (a) Except as provided in subsection (b), the Anti-Kickback Act of 1986 (as set out in section 2(a)) shall take effect with respect to conduct described in section 3(a) of such Act which occurs on or after the date of the enactment of this Act.

(b) Subsections (a) and (b) of section 7 of the Anti-Kickback Act of 1986 (as set out in section 2(a)) shall take effect with respect to contract solicitations issued by an agency, department, or other establishment of the Federal Government on or after the date which is 90 days after the date of the enactment of this Act.

MOTION OFFERED BY MR. BROOKS

Mr. BROOKS. Mr. Speaker, I offer a motion. The Clerk read as follows:

Mr. BROOKS moves to strike out all after the enacting clause of the Senate bill, S. 2250, and to insert in lieu thereof the provisions of H.R. 4783, as passed by the House.

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

A similar House bill (H.R. 4783) was laid on the table.

GENERAL LEAVE

Mr. BROOKS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in order to revise and extend their remarks on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to the provisions of clause 5 of rule I, the Chair will now put the question on each motion to suspend the rules on which further proceedings were postponed on Monday, October 6, 1986, in the order in which that motion was entertained.

Votes will be taken in the following order:

S. 2880, by the yeas and nays; and

H.R. 5215, by the yeas and nays.

The Chair will reduce to 5 minutes the time for the second electronic vote after the first vote in this series.

EXTENSION OF INTERSTATE TRANSFER DEADLINE

The SPEAKER pro tempore. The unfinished business is the question of suspending the rules and passing the Senate bill, S. 2880, as amended.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New Jersey [Mr. HOWARD] that the House suspend the rules and pass the Senate bill, S. 2880, as amended, on which the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 264, nays 147, not voting 21, as follows:

[Roll No. 435]

YEAS—264

Abercrombie	Conyers	Gaydos
Ackerman	Cooper	Gejdenson
Akaka	Courter	Gephardt
Alexander	Coyne	Gibbons
Anderson	Crockett	Gilman
Andrews	Daniel	Gingrich
Annunzio	Darden	Gonzalez
Anthony	Davis	Goodling
Applegate	de la Garza	Gordon
Aspin	Dellums	Gray (IL)
Atkins	Derrick	Gray (PA)
AuCoin	Dickinson	Green
Barnes	Dicks	Guarini
Bateman	DioGuardi	Hall (OH)
Bedell	Dixon	Hamilton
Bennett	Donnelly	Hammerschmidt
Bentley	Dorgan (ND)	Hatcher
Berman	Dowdy	Hawkins
Bevill	Downey	Hayes
Biaggi	Duncan	Hefner
Bliley	Durbin	Hillis
Boehlert	Dwyer	Horton
Boggs	Dymally	Howard
Boner (TN)	Dyson	Hoyer
Bonior (MI)	Early	Hughes
Bonker	Edgar	Hutto
Borski	Edwards (CA)	Ireland
Bosco	Emerson	Jeffords
Boucher	Erdreich	Jenkins
Boxer	Evans (IA)	Johnson
Brooks	Evans (IL)	Jones (NC)
Brown (CA)	Fascell	Jones (TN)
Bruce	Fazio	Kanjorski
Bustamante	Feighan	Kaptur
Callahan	Flippo	Kastenmeier
Carper	Florio	Kildee
Carr	Foglietta	Kolter
Chappell	Ford (MI)	LaFalce
Clay	Ford (TN)	Lantos
Clinger	Frank	Latta
Coelho	Frost	Leath (TX)
Coleman (MO)	Fuqua	Lehman (CA)
Collins	Gallo	Lehman (FL)
Conte	Garcia	Leland
Lent	Nowak	Snowe
Levin (MI)	Oakar	Snyder
Levine (CA)	Oberstar	Solarz
Lewis (CA)	Olin	Spence
Lipinski	Ortiz	Spratt
Lloyd	Owens	St Germain
Long	Packard	Staggers
Lowry (WA)	Panetta	Stangeland
Luken	Pashayan	Stark
Lundine	Penny	Stratton
MacKay	Pepper	Studds
Manton	Perkins	Swift
Markey	Pickle	Taylor
Martin (NY)	Price	Thomas (GA)
Martinez	Rahall	Torres
Matsui	Rangel	Torricelli
Mavroules	Regula	Towns
Mazzoli	Richardson	Traficant
McCandless	Rinaldo	Traxler
McCloskey	Robinson	Udall
McDade	Roe	Valentine
McEwen	Rogers	Vander Jagt
McGrath	Rose	Vento
McHugh	Rostenkowski	Visclosky
McKernan	Roukema	Volkmer
McKinney	Rowland (GA)	Waldon
Mica	Roybal	Walgren
Mikulski	Russo	Weaver
Miller (CA)	Sabo	Wheat
Mineta	Savage	Whitehurst
Mitchell	Saxton	Whitley
Moakley	Scheuer	Whittaker
Molinari	Schumer	Whitten
Mollohan	Seiberling	Wilson
Montgomery	Sharp	Wise
Moody	Shaw	Wolf
Morrison (CT)	Shelby	Wolpe
Mrazek	Shuster	Wortley
Murtha	Sikorski	Wright
Myers	Sisisky	Wyden
Natcher	Skelton	Yates
Neal	Smith (FL)	Young (AK)
Nelson	Smith (IA)	Young (FL)
Nichols	Smith (NJ)	Young (MO)

NAYS—147

Archer	Hartnett	Porter
Armey	Hendon	Pursell
Badham	Henry	Quillen
Bartlett	Hertel	Ray
Barton	Hiler	Reid
Bates	Holt	Ridge
Beilenson	Hopkins	Roberts
Bereuter	Hubbard	Roth
Bilirakis	Huckaby	Rowland (CT)
Boulter	Hunter	Rudd
Broomfield	Hyde	Schaefer
Brown (CO)	Jacobs	Schneider
Bryant	Kasich	Schroeder
Burton (IN)	Kemp	Schuette
Byron	Kleczka	Schulze
Carney	Kolbe	Sensenbrenner
Chandler	Kostmayer	Shumway
Chapman	Kramer	Siljander
Chappie	Lagomarsino	Skeen
Cheney	Leach (IA)	Slattery
Coats	Lewis (FL)	Slaughter
Cobey	Lightfoot	Smith (NE)
Coble	Livingston	Smith, Denny (OR)
Coleman (TX)	Loeffler	
Combest	Lott	Smith, Robert (NH)
Coughlin	Lowery (CA)	
Craig	Lujan	Smith, Robert (OR)
Crane	Lungren	
Daschle	Mack	Solomon
Daub	Madigan	Stallings
DeLay	Marlenee	Stenholm
DeWine	Martin (IL)	Strang
Dornan (CA)	McCain	Stump
Dreier	McCollum	Sweeney
Eckart (OH)	McCurdy	Swindall
Eckert (NY)	McMillan	Synar
Edwards (OK)	Meyers	Tallon
English	Michel	Tauke
Fawell	Miller (OH)	Tauzin
Fiedler	Miller (WA)	Thomas (CA)
Fields	Monson	Vucanovich
Fish	Moorhead	Walker
Franklin	Morrison (WA)	Watkins
Frenzel	Murphy	Waxman
Gekas	Nielson	Weber
Glickman	Obey	Williams
Gradison	Oxley	Wirth
Gregg	Parris	Wylie
Gunderson	Pease	Yatron
Hall, Ralph	Petri	Zschau

NOT VOTING—21

Barnard	Foley	Moore
Boland	Fowler	Ritter
Breaux	Grotberg	Rodino
Burton (CA)	Hansen	Roemer
Campbell	Jones (OK)	Stokes
Dannemeyer	Kennelly	Sundquist
Dingell	Kindness	Weiss

□ 1600

The Clerk announced the following pair:

On this vote:

Mr. Stokes and Mr. Barnard for, with Mr. Jones of Oklahoma against.

Messrs. GEKAS, BROOMFIELD, WEBER, DASCHLE, SCHAEFER, PARRIS, DEWINE, PURSELL, PEASE, RAY, PACKARD, and KASICH, Mrs. BYRON, Mr. KLECZKA, Mrs. HOLT, and Messrs. MORRISON of Washington, ROWLAND of Connecticut, McHUGH, BATES, JACOBS, and HERTEL of Michigan changed their votes from "yea" to "nay."

Messrs. MOLINARI, STANGELAND, RAHALL, GOODLING, PACKARD, McHUGH, GILMAN, LATTA, REGULA, and WILSON changed their votes from "nay" to "yea."

So (two-thirds not having voted in favor thereof) the motion was rejected.

The result of the vote was announced as above recorded.

□ 1610

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. KILDEE). Pursuant to the provisions of clause 5 of rule I, the Chair announces that he will reduce to a minimum of 5 minutes the period of time within which a vote by electronic device may be taken on the second motion to suspend the rules on which the Chair has postponed further proceedings.

AUTHORIZING CONSTRUCTION OF SALINITY RESEARCH LABORATORY AT RIVERSIDE, CA

The SPEAKER pro tempore. The unfinished business is the question of suspending the rules and passing the bill, H.R. 5215.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Texas [Mr. DE LA GARZA] that the House suspend the rules and pass the bill, H.R. 5215, on which the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 326, nays 85, not voting 21, as follows:

[Roll No. 436]

YEAS—326

Abercrombie	Anderson	Applegate
Ackerman	Andrews	Aspin
Akaka	Annunzio	Atkins
Alexander	Anthony	AuCoin
Badham	Gejdenson	Morrison (CT)
Barnes	Gephardt	Morrison (WA)
Bateman	Gibbons	Mrazek
Bates	Gilman	Murtha
Bedell	Gingrich	Myers
Beilenson	Glickman	Natcher
Bennett	Gonzalez	Neal
Bentley	Goodling	Nelson
Bereuter	Gordon	Nichols
Berman	Gray (IL)	Nowak
Bevill	Gray (PA)	Oakar
Biaggi	Green	Oberstar
Boehlert	Guarini	Obey
Boggs	Hall (OH)	Olin
Boner (TN)	Hall, Ralph	Ortiz
Bonior (MI)	Hamilton	Owens
Bonker	Hammerschmidt	Oxley
Borski	Hatcher	Packard
Bosco	Hawkins	Panetta
Boucher	Hayes	Parris
Boulter	Hefner	Pashayan
Boxer	Hertel	Pease
Brooks	Hillis	Penny
Brown (CA)	Horton	Pepper
Bruce	Howard	Perkins
Bryant	Hoyer	Pickle
Bustamante	Huckaby	Price
Byron	Hughes	Pursell
Carper	Hunter	Rangel
Carr	Hutto	Ray
Chandler	Ireland	Regula
Chapman	Jacobs	Reid
Chappell	Jeffords	Richardson
Chappie	Jenkins	Ridge
Clay	Johnson	Rinaldo
Clinger	Jones (NC)	Roberts
Coelho	Jones (TN)	Roe
Coleman (TX)	Kanjorski	Rogers
Collins	Kaptur	Rose
Combest	Kasich	Rostenkowski
Conte	Kastenmeier	Roukema
Conyers	Kemp	Rowland (CT)
Cooper	Kildee	Rowland (GA)
Courter	Kolter	Roybal
Coyne	Kostmayer	Russo
Crockett	Kramer	Sabo
Daniel	LaFalce	Savage
Darden	Lagomarsino	Saxton
Daschle	Lantos	Scheuer
Daub	Leath (TX)	Schneider
Davis	Lehman (CA)	Schroeder
de la Garza	Lehman (FL)	Schuette
Dellums	Leland	Schumer
Derrick	Lent	Seiberling
Dicks	Levin (MI)	Sharp
DioGuardi	Levine (CA)	Shumway
Dixon	Lewis (CA)	Sikorski
Donnelly	Lipinski	Sisisky
Dorgan (ND)	Lloyd	Skeen
Dornan (CA)	Loeffler	Skelton
Dowdy	Long	Slattery
Downey	Lowery (CA)	Smith (FL)
Dreier	Lowry (WA)	Smith (IA)
Duncan	Lujan	Smith (NE)
Durbin	Luken	Smith (NJ)
Dwyer	Lundine	Smith, Robert (OR)
Dymally	Lungren	Snowe
Dyson	MacKay	Snyder
Early	Madigan	Solarz
Eckart (OH)	Manton	Spence
Edgar	Markey	Spratt
Edwards (CA)	Marlenee	St Germain
Edwards (OK)	Martin (NY)	Staggers
Emerson	Martinez	Stallings
English	Matsui	Stangeland
Erdreich	Mavroules	Stark
Evans (IA)	Mazzoli	Stenholm
Evans (IL)	McCandless	Stratton
Fascell	McCurdy	Studds
Fazio	McDade	Swift
Feighan	McGrath	Synar
Fiedler	McHugh	Tallon
Fish	McKernan	Tauzin
Flippo	McKinney	Taylor
Florio	Mica	Thomas (CA)
Foglietta	Michel	Thomas (GA)
Foley	Mikulski	Torres
Ford (MI)	Miller (CA)	Torricelli
Ford (TN)	Mineta	Towns
Frank	Mitchell	Traficant
Franklin	Moakley	Traxler
Frost	Molinari	Udall
Fuqua	Mollohan	Valentine
Gallo	Montgomery	Vander Jagt
Garcia	Moody	Vento
Gaydos	Moorhead	Visclosky
		Volkmer
		Vucanovich
		Waldon
		Walgren
		Waxman
		Weaver
		Weber
		Wheat
		Whitley
		Whittaker
		Whitten
		Williams
		Wilson
		Wirth
		Wise
		Wolf
		Wolpe
		Wortley
		Wright
		Wyden
		Yates
		Yatron
		Young (AK)
		Young (FL)
		Young (MO)
		Zschau

NAYS—85

Archer	Gunderson	Petri
Armey	Hartnett	Porter
Bartlett	Hendon	Quillen
Barton	Henry	Rahall
Bilirakis	Hiler	Robinson
Bliley	Holt	Roth
Broomfield	Hopkins	Rudd
Brown (CO)	Hubbard	Schaefer
Burton (IN)	Hyde	Schulze
Callahan	Kleczka	Sensenbrenner
Carney	Kolbe	Shaw
Cheney	Latta	Shelby
Coats	Leach (IA)	Shuster
Cobey	Lewis (FL)	Siljander
Coble	Lightfoot	Slaughter
Coleman (MO)	Livingston	Smith, Denny (OR)
Coughlin	Lott	Smith, Robert (NH)
Craig	Mack	Solomon
Crane	Martin (IL)	Strang
DeLay	McCain	Stump
DeWine	McCollum	Sweeney
Dickinson	McEwen	Swindall
Eckert (NY)	McMillan	Tauke
Fawell	Meyers	Walker
Fields	Miller (OH)	Watkins
Frenzel	Miller (WA)	Whitehurst
Gekas	Monson	Wylie
Gradison	Murphy	
Gregg	Nielson	

NOT VOTING—21

Barnard	Fowler	Moore
Boland	Grotberg	Ritter
Breaux	Hansen	Rodino
Burton (CA)	Jones (OK)	Roemer
Campbell	Kennelly	Stokes
Dannemeyer	Kindness	Sundquist
Dingell	McCloskey	Weiss

Mr. STRANG changed his vote from "yea" to "nay."

So (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

□ 1620

FALSE CLAIMS AMENDMENTS ACT OF 1986

Mr. GLICKMAN. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 1562) to amend the False Claims Act, and title 18 of the United States Code regarding penalties for false claims, and for other purposes, with a Senate amendment to the House amendments thereto, and concur in the Senate amendment to the House amendments.

The Clerk read the title of the Senate bill.

The Clerk read the Senate amendment to the House amendments, as follows:

In lieu of the matter proposed to be inserted by the amendment of the House of Representatives to the text of the bill insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "False Claims Amendments Act of 1986".

SEC. 2. FALSE CLAIMS.

Section 3729 of title 31, United States Code, is amended—

(1) by striking the matter preceding paragraph (1) and inserting the following:

"(a) LIABILITY FOR CERTAIN ACTS.—Any person who—";

(2) in paragraph (1) by striking "Government or a member of an armed force" and inserting "United States Government or a member of the Armed Forces of the United States";

(3) in paragraph (2) by inserting "by the Government" after "approved";

(4) in paragraph (4)—

(A) by striking "public"; and

(B) by striking "in an armed force" and inserting "by the Government";

(5) in paragraph (5)—

(A) by striking "in an armed force" and inserting "by the Government"; and

(B) by striking "or" after the semicolon;

(6) in paragraph (6)—

(A) by striking "a member of an armed force" and inserting "an officer or employee of the Government, or a member of the Armed Forces,"; and

(B) by striking the period at the end of the paragraph and inserting "; or"; and

(7) by adding at the end of the subsection the following:

"(7) knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Government,

is liable to the United States Government for a civil penalty of not less than $5,000 and not more than $10,000, plus 3 times the amount of damages which the Government sustains because of the act of that person, except that if the court finds that—

"(A) the person committing the violation of this subsection furnished officials of the United States responsible for investigating false claims violations with all information known to such person about the violation within 30 days after the date on which the defendant first obtained the information;

"(B) such person fully cooperated with any Government investigation of such violation; and

"(C) at the time such person furnished the United States with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under this title with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into such violation;

the court may assess not less than 2 times the amount of damages which the Government sustains because of the act of the person. A person violating this subsection shall also be liable to the United States Government for the costs of a civil action brought to recover any such penalty or damages.

"(b) KNOWING AND KNOWINGLY DEFINED.—For purposes of this section, the terms 'knowing' and 'knowingly' mean that a person, with respect to information—

"(1) has actual knowledge of the information;

"(2) acts in deliberate ignorance of the truth or falsity of the information; or

"(3) acts in reckless disregard of the truth or falsity of the information,

and no proof of specific intent to defraud is required.

"(c) CLAIM DEFINED.—For purposes of this section, 'claim' includes any request or demand, whether under a contract or otherwise, for money or property which is made to a contractor, grantee, or other recipient if the United States Government provides any portion of the money or property which is requested or demanded, or if the Government will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded.

"(d) EXEMPTION FROM DISCLOSURE.—Any information furnished pursuant to subparagraphs (A) through (C) of subsection (a) shall be exempt from disclosure under section 552 of title 5.

"(e) EXCLUSION.—This section does not apply to claims, records, or statements made under the Internal Revenue Code of 1954.".

SEC. 3. CIVIL ACTIONS FOR FALSE CLAIMS.

Section 3730 of title 31, United States Code, is amended to read as follows:

"§ 3730. Civil actions for false claims

"(a) RESPONSIBILITIES OF THE ATTORNEY GENERAL.—The Attorney General diligently shall investigate a violation under section 3729. If the Attorney General finds that a person has violated or is violating section 3729, the Attorney General may bring a civil action under this section against the person.

"(b) ACTIONS BY PRIVATE PERSONS.—(1) A person may bring a civil action for a violation of section 3729 for the person and for the United States Government. The action shall be brought in the name of the Government. The action may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting.

"(2) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the Government pursuant to Rule 4(d)(4) of the Federal Rules of Civil Procedure. The complaint shall be filed in camera, shall remain under seal for at least 60 days, and shall not be served on the defendant until the court so orders. The Government may elect to intervene and proceed with the action within 60 days after it receives both the complaint and the material evidence and information.

"(3) The Government may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under paragraph (2). Any such motions may be supported by affidavits or other submissions in camera. The defendant shall not be required to respond to any complaint filed under this section until 20 days after the complaint is unsealed and served upon the defendant pursuant to Rule 4 of the Federal Rules of Civil Procedure.

"(4) Before the expiration of the 60-day period or any extensions obtained under paragraph (3), the Government shall—

"(A) proceed with the action, in which case the action shall be conducted by the Government; or

"(B) notify the court that it declines to take over the action, in which case the person bringing the action shall have the right to conduct the action.

"(5) When a person brings an action under this subsection, no person other than the Government may intervene or bring a related action based on the facts underlying the pending action.

"(c) RIGHTS OF THE PARTIES OF QUI TAM ACTIONS.—(1) If the Government proceeds with the action, it shall have the primary responsibility for prosecuting the action, and shall not be bound by an act of the person bringing the action. Such person shall have the right to continue as a party to the action, subject to the limitations set forth in paragraph (2).

"(2)(A) The Government may dismiss the action notwithstanding the objections of the person initiating the action if the person has been notified by the Government of the filing of the motion and the court has provided the person with an opportunity for a hearing on the motion.

"(B) The Government may settle the action with the defendant notwithstanding the objections of the person initiating the action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, such hearing may be held in camera.

"(C) Upon a showing by the Government that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the Government's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the person's participation, such as—

"(i) limiting the number of witnesses the person may call;

"(ii) limiting the length of the testimony of such witnesses;

"(iii) limiting the person's cross-examination of witnesses; or

"(iv) otherwise limiting the participation by the person in the litigation.

"(D) Upon a showing by the defendant that unrestricted participation during the course of the litigation by the person initiating the action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the person in the litigation.

"(3) If the Government elects not to proceed with the action, the person who initiated the action shall have the right to conduct the action. If the Government so requests, it shall be served with copies of all pleadings filed in the action and shall be supplied with copies of all deposition transcripts (at the Government's expense). When a person proceeds with the action, the court, without limiting the status and rights of the person initiating the action, may nevertheless permit the Government to intervene at a later date upon a showing of good cause.

"(4) Whether or not the Government proceeds with action, upon a showing by the Government that certain actions of discovery by the person initiating the action would interfere with the Government's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay such discovery for a period of not more than 60 days. Such a showing shall be conducted in camera. The court may extend the 60-day period upon a further showing in camera that the Government has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

"(5) Notwithstanding subsection (b), the Government may elect to pursue its claim through any alternate remedy available to the Government, including any administrative proceeding to determine a civil money penalty. If any such alternate remedy is pursued in another proceeding, the person initiating the action shall have the same rights

in such proceeding as such person would have had if the action had continued under this section. Any finding of fact or conclusion of law made in such other proceeding that has become final shall be conclusive on all parties to an action under this section. For purposes of the preceding sentence, a finding or conclusion is final if it has been finally determined on appeal to the appropriate court of the United States, if all time for filing such an appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

"(d) AWARD TO QUI TAM PLAINTIFF.—(1) If the Government proceeds with an action brought by a person under subsection (b), such person shall, subject to the second sentence of this paragraph, receive at least 15 percent but not more than 25 percent of the proceeds of the action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the action. Where the action is one which the court finds to be based primarily on disclosures of specific information (other than information provided by the person bringing the action) relating to allegations or transactions in a criminal, civil, or administrative hearing, in a congressional, administrative, or Government Accounting Office report, hearing, audit, or investigation, or from the news media, the court may award such sums as it considers appropriate, but in no case more than 10 percent of the proceeds, taking into account the significance of the information and the role of the person bringing the action in advancing the case to litigation. Any payment to a person under the first or second sentence of this paragraph shall be made from the proceeds. Any such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

"(2) If the Government does not proceed with an action under this section, the person bringing the action or settling the claim shall receive an amount which the court decides is reasonable for collecting the civil penalty and damages. The amount shall be not less than 25 percent and not more than 30 percent of the proceeds of the action or settlement and shall be paid out of such proceeds. Such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

"(3) If the Government does not proceed with the action and the person bringing the action conducts the action, the court may award to the defendant its reasonable attorneys' fees and expenses if the defendant prevails in the action and the court finds that the claim of the person bringing the actions was clearly frivolous, clearly vexations, or brought primarily for purposes of harassment.

"(e) CERTAIN ACTIONS BARRED.—(1) No court shall have jurisdiction over an action brought by a former or present member of the armed forces under subsection (b) of this section against a member of the armed forces arising out of such person's service in the armed forces.

"(2)(A) No court shall have jurisdiction over an action brought under subsection (b) against a Member of Congress, a member of the judiciary, or a senior executive branch official if the action is based on evidence or information known to the Government when the action was brought.

"(B) For purposes of this paragraph, 'senior executive branch official' means any officer or employee listed in section 201(f) of the Ethics in Government Act of 1978 (5 U.S.C. App.)

"(3) In no event may a person bring an action under subsection (b) which is based upon allegations or transactions which are the subject of a civil suit or an administrative civil money penalty proceeding in which the Government is already a party.

"(4)(A) No court shall have jurisdiction over an action under this section based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a congressional, administrative, or Government Accounting Office report, hearing, audit, or investigation, or from the news media, unless the action is brought by the Attorney General or the person bringing the action is an original source of the information.

"(B) For purposes of this paragraph, 'original source' means an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the Government before filing an action under this section which is based on the information.

"(f) GOVERNMENT NOT LIABLE FOR CERTAIN EXPENSES.—The Government is not liable for expenses which a person incurs in bringing an action under this section.

(g) FEES AND EXPENSES TO PREVAILING DEFENDANT.—In civil actions brought under this section by the United States, the provisions of section 2412(d) of title 28 shall apply.".

SEC. 4. ENTITLEMENT TO RELIEF FOR DISCRIMINATION BY EMPLOYERS AGAINST EMPLOYEES WHO REPORT VIOLATIONS.

Section 3730 of title 31, United States Code, as amended by section 3 of this Act, is further amended by adding at the end the following new subsection:

"(h) Any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by his or her employer because of lawful acts done by the employee on behalf of the employee or others in furtherance of an action under this section, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this section, shall be entitled to all relief necessary to make the employee whole. Such relief shall include reinstatement with the same seniority status such employee would have had but for the discrimination, 2 times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees. An employee may bring an action in the appropriate district court of the United States for the relief provided in this subsection.".

SEC. 5. FALSE CLAIMS PROCEDURE.

Section 3731 of title 31, United States Code, is amended by striking subsection (b) and inserting the following:

"(b) A civil action under section 3730 may not be brought—

"(1) more than 6 years after the date on which the violation of section 3729 is committed, or

"(2) more than 3 years after the date when facts material to the right of action are known or reasonably should have been known by the official of the United States charged with responsibility to act in the circumstances, but in no event more than 10 years after the date on which the violation is committed,

whichever occurs last.

"(c) In any action brought under section 3730, the United States shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

"(d) Notwithstanding any other provision of law, the Federal Rules of Criminal Procedure, or the Federal Rules of Evidence, a final judgment rendered in favor of the United States in any criminal proceeding charging fraud or false statements, whether upon a verdict after trial or upon a plea of guilty or nolo contendere, shall estop the defendant from denying the essential elements of the offense in any action which involves the same transaction as in the criminal proceeding and which is brought under subsection (a) or (b) of section 3730.".

SEC. 6. FALSE CLAIMS JURISDICTION; CIVIL INVESTIGATIVE DEMANDS.

(a) IN GENERAL.—Subchapter III of chapter 37 of title 31, United States Code, is amended by adding at the end the following new sections:

"§ 3732. False claims jurisdiction

"(a) ACTIONS UNDER SECTION 3730.—Any action under section 3730 may be brought in any judicial district in which the defendant or, in the case of multiple defendants, any one defendant can be found, resides, transacts business, or in which any act proscribed by section 3729 occurred. A summons as required by the Federal Rules of Civil Procedure shall be issued by the appropriate district court and served at any place within or outside the United States.

"(b) CLAIMS UNDER STATE LAW.—The district courts shall have jurisdiction over any action brought under the laws of any State for the recovery of funds paid by a State or local government if the action arises from the same transaction or occurrence as an action brought under section 3730.

"§ 3733. Civil investigative demands

"(a) IN GENERAL.—

"(1) ISSUANCE AND SERVICE.—Whenever the Attorney General has reason to believe that any person may be in possession, custody, or control of any documentary material or information relevant to a false claims law investigation, the Attorney General may, before commencing a civil proceeding under section 3730 or other false claims law, issue in writing and cause to be served upon such person, a civil investigative demand requiring such person—

"(A) to produce such documentary material for inspection and copying,

"(B) to answer in writing written interrogatories with respect to such documentary material or information,

"(C) to give oral testimony concerning such documentary material or information, or

"(D) to furnish any combination of such material, answers, or testimony.

The Attorney General may not delegate the authority to issue civil investigative demands under this subsection. Whenever a civil investigative demand is an express demand for any product of discovery, the Attorney General, the Deputy Attorney General, or an Assistant Attorney General shall cause to be served, in any manner authorized by this section, a copy of such demand upon the person from whom the discovery was obtained and shall notify the person to

whom such demand is issued of the date on which such copy was served.

"(2) CONTENTS AND DEADLINES.—

"(A) Each civil investigative demand issued under paragraph (1) shall state the nature of the conduct constituting the alleged violation of a false claims law which is under investigation, and the applicable provision of law alleged to be violated.

"(B) If such demand is for the production of documentary material, the demand shall—

"(i) describe each class of documentary material to be produced with such definiteness and certainty as to permit such material to be fairly identified;

"(ii) prescribe a return date for each such class which will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying; and

"(iii) identify the false claims law investigator to whom such material shall be made available.

"(C) If such demand is for answers to written interrogatories, the demand shall—

"(i) set forth with specificity the written interrogatories to be answered;

"(ii) prescribe dates at which time answers to written interrogatories shall be submitted; and

"(iii) identify the false claims law investigator to whom such answers shall be submitted.

"(D) If such demand is for the giving of oral testimony, the demand shall—

"(i) prescribe a date, time, and place at which oral testimony shall be commenced;

"(ii) identify a false claims law investigator who shall conduct the examination and the custodian to whom the transcript of such examination shall be submitted;

"(iii) specify that such attendance and testimony are necessary to the conduct of the investigation;

"(iv) notify the person receiving the demand of the right to be accompanied by an attorney and any other representative; and

"(v) describe the general purpose for which the demand is being issued and the general nature of the testimony, including the primary areas of inquiry, which will be taken pursuant to the demand.

"(E) Any civil investigative demand issued under this section which is an express demand for any product of discovery shall not be returned or returnable until 20 days after a copy of such demand has been served upon the person from whom the discovery was obtained.

"(F) The date prescribed for the commencement of oral testimony pursuant to a civil investigative demand issued under this section shall be a date which is not less than seven days after the date on which demand is received, unless the Attorney General or an Assistant Attorney General designated by the Attorney General determines that exceptional circumstances are present which warrant the commencement of such testimony within a lesser period of time.

"(G) The Attorney General shall not authorize the issuance under this section of more than one civil investigative demand for oral testimony by the same person unless the person requests otherwise or unless the Attorney General, after investigation, notifies that person in writing that an additional demand for oral testimony is necessary. The Attorney General may not, notwithstanding section 510 of title 28, authorize the performance, by any other officer, employee, or agency, of any function vested in the Attorney General under this subparagraph.

"(b) PROTECTED MATERIAL OR INFORMATION.—

"(1) IN GENERAL.—A civil investigative demand issued under subsection (a) may not require the production of any documentary material, the submission of any answers to written interrogatories, or the giving of any oral testimony if such material, answers, or testimony would be protected from disclosure under—

"(A) the standards applicable to subpoenas or subpoenas duces tecum issued by a court of the United States to aid in a grand jury investigation; or

"(B) the standards applicable to discovery requests under the Federal Rules of Civil Procedure, to the extent that the application of such standards to any such demand is appropriate and consistent with the provisions and purposes of this section.

"(2) EFFECT ON OTHER ORDERS, RULES, AND LAWS.—Any such demand which is an express demand for any product of discovery supersedes any inconsistent order, rule, or provision of law (other than this section) preventing or restraining disclosure of such product of discovery to any person. Disclosure of any product of discovery pursuant to any such express demand does not constitute a waiver of any right or privilege which the person making such disclosure may be entitled to invoke to resist discovery of trial preparation materials.

"(c) SERVICE; JURISDICTION.—

"(1) BY WHOM SERVED.—Any civil investigative demand issued under subsection (a) may be served by a false claims law investigator, or by a United States marshal or a deputy marshal, at any place within the territorial jurisdiction of any court of the United States.

"(2) SERVICE IN FOREIGN COUNTRIES.—Any such demand or any petition filed under subsection (j) may be served upon any person who is not found within the territorial jurisdiction of any court of the United States in such manner as the Federal Rules of Civil Procedure prescribe for service in a foreign country. To the extent that the courts of the United States can assert jurisdiction over any such person consistent with due process, the United States District Court for the District of Columbia shall have the same jurisdiction to take any action respecting compliance with this section by any such person that such court would have if such person were personally within the jurisdiction of such court.

"(d) SERVICE UPON LEGAL ENTITIES AND NATURAL PERSONS.—

"(1) LEGAL ENTITIES.—Service of any civil investigative demand issued under subsection (a) or of any petition filed under subsection (j) may be made upon a partnership, corporation, association, or other legal entity by—

"(A) delivering an executed copy of such demand or petition to any partner, executive officer, managing agent, or general agent of the partnership, corporation, association, or entity, or to any agent authorized by appointment or by law to receive service of process on behalf of such partnership, corporation, association, or entity;

"(B) delivering an executed copy of such demand or petition to the principal office or place of business of the partnership, corporation, association, or entity; or

"(C) depositing an executed copy of such demand or petition in the United States mails by registered or certified mail, with a return receipt requested, addressed to such partnership, corporation, association, or entity at its principal office or place of business.

"(2) NATURAL PERSONS.—Service of any such demand or petition may be made upon any natural person by—

"(A) delivering an executed copy of such demand or petition to the person; or

"(B) depositing an executed copy of such demand or petition in the United States mails by registered or certified mail, with a return receipt requested, addressed to the person at the person's residence or principal office or place of business.

"(e) PROOF OF SERVICE.—A verified return by the individual serving any civil investigative demand issued under subsection (a) or any petition filed under subsection (j) setting forth the manner of such service shall be proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand.

"(f) DOCUMENTARY MATERIAL.—

"(1) SWORN CERTIFICATES.—The production of documentary material in response to a civil investigative demand served under this section shall be made under a sworn certificate, in such form as the demand designates, by—

"(A) in the case of a natural person, the person to whom the demand is directed, or

"(B) in the case of a person other than a natural person, a person having knowledge of the facts and circumstances relating to such production and authorized to act on behalf of such person.

The certificate shall state that all of the documentary material required by the demand and in the possession, custody, or control of the person to whom the demand is directed has been produced and made available to the false claims law investigator identified in the demand.

"(2) PRODUCTION OF MATERIALS.—Any person upon whom any civil investigative demand for the production of documentary material has been served under this section shall make such material available for inspection and copying to the false claims law investigator identified in such demand at the principal place of business of such person, or at such other place as the false claims law investigator and the person thereafter may agree and prescribe in writing, or as the court may direct under subsection (j)(1). Such material shall be made so available on the return date specified in such demand, or on such later date as the false claims law investigator may prescribe in writing. Such person may, upon written agreement between the person and the false claims law investigator, substitute copies for originals of all or any part of such material.

"(g) INTERROGATORIES.—Each interrogatory in a civil investigative demand served under this section shall be answered separately and fully in writing under oath and shall be submitted under a sworn certificate, in such form as the demand designates, by—

"(1) in the case of a natural person, the person to whom the demand is directed, or

"(2) in the case of a person other than a natural person, the person or persons responsible for answering each interrogatory.

If any interrogatory is objected to, the reasons for the objection shall be stated in the certificate instead of an answer. The certificate shall state that all information required by the demand and in the possession, custody, control, or knowledge of the person to

whom the demand is directed has been submitted. To the extent that any information is not furnished, the information shall be identified and reasons set forth with particularity regarding the reasons why the information was not furnished.

"(h) ORAL EXAMINATIONS.—

"(1) PROCEDURES.—The examination of any person pursuant to a civil investigative demand for oral testimony served under this section shall be taken before an officer authorized to administer oaths and affirmations by the laws of the United States or of the place where the examination is held. The officer before whom the testimony is to be taken shall put the witness on oath or affirmation and shall, personally or by someone acting under the direction of the officer and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically and shall be transcribed. When the testimony is fully transcribed, the officer before whom the testimony is taken shall promptly transmit a copy of the transcript of the testimony to the custodian. This subsection shall not preclude the taking of testimony by any means authorized by, and in a manner consistent with, the Federal Rules of Civil Procedure.

"(2) PERSONS PRESENT.—The false claims law investigator conducting the examination shall exclude from the place where the examination is held all persons except the person giving the testimony, the attorney for and any other representative of the person giving the testimony, the attorney for the Government, any person who may be agreed upon by the attorney for the Government and the person giving the testimony, the officer before whom the testimony is to be taken, and any stenographer taking such testimony.

"(3) WHERE TESTIMONY TAKEN.—The oral testimony of any person taken pursuant to a civil investigative demand served under this section shall be taken in the judicial district of the United States within which such person resides, is found, or transacts business, or in such other place as may be agreed upon by the false claims law investigator conducting the examination and such person.

"(4) TRANSCRIPT OF TESTIMONY.—When the testimony is fully transcribed, the false claims law investigator or the officer before whom the testimony is taken shall afford the witness, who may be accompanied by counsel, a reasonable opportunity to examine and read the transcript, unless such examination and reading are waived by the witness. Any changes in form or substance which the witness desires to make shall be entered and identified upon the transcript by the officer or the false claims law investigator, with a statement of the reasons given by the witness for making such changes. The transcript shall then be signed by the witness, unless the witness in writing waives the signing, is ill, cannot be found, or refuses to sign. If the transcript is not signed by the witness within 30 days after being afforded a reasonable opportunity to examine it, the officer or the false claims law investigator shall sign it and state on the record the fact of the waiver, illness, absence of the witness, or the refusal to sign, together with the reasons, if any, given therefor.

"(5) CERTIFICATION AND DELIVERY TO CUSTODIAN.—The officer before whom the testimony is taken shall certify on the transcript that the witness was sworn by the officer and that the transcript is a true record of the testimony given by the witness, and the officer or false claims law investigator shall promptly deliver the transcript, or send the transcript by registered or certified mail, to the custodian.

"(6) FURNISHING OR INSPECTION OF TRANSCRIPT BY WITNESS.—Upon payment of reasonable charges therefor, the false claims law investigator shall furnish a copy of the transcript to the witness only, except that the Attorney General, the Deputy Attorney General, or an Assistant Attorney General may, for good cause, limit such witness to inspection of the official transcript of the witness' testimony.

"(7) CONDUCT OF ORAL TESTIMONY.—(A) Any person compelled to appear for oral testimony under a civil investigative demand issued under subsection (a) may be accompanied, represented, and advised by counsel. Counsel may advise such person, in confidence, with respect to any question asked of such person. Such person or counsel may object on the record to any question, in whole or in part, and shall briefly state for the record the reason for the objection. An objection may be made, received, and entered upon the record when it is claimed that such person is entitled to refuse to answer the question on the grounds of any constitutional or other legal right or privilege, including the privilege against self-incrimination. Such person may not otherwise object to or refuse to answer any question, and may not directly or through counsel otherwise interrupt the oral examination. If such person refuses to answer any question, a petition may be filed in the district court of the United States under subsection (j)(1) for an order compelling such person to answer such question.

"(B) If such person refuses to answer any question on the grounds of the privilege against self-incrimination, the testimony of such person may be compelled in accordance with the provision of part V of title 18.

"(8) WITNESS FEES AND ALLOWANCES.—Any person appearing for oral testimony under a civil investigative demand issued under subsection (a) shall be entitled to the same fees and allowances which are paid to witnesses in the district courts of the United States.

"(i) CUSTODIANS OF DOCUMENTS, ANSWERS, AND TRANSCRIPTS.—

"(1) DESIGNATION.—The Attorney General shall designate a false claims law investigator to serve as custodian of documentary material, answers to interrogatories, and transcripts of oral testimony received under this section, and shall designate such additional false claims law investigators as the Attorney General determines from time to time to be necessary to serve as deputies to the custodian.

"(2) RESPONSIBILITY FOR MATERIALS; DISCLOSURE.—(A) A false claims law investigator who receives any documentary material, answers to interrogatories, or transcripts of oral testimony under this section shall transmit them to the custodian. The custodian shall take physical possession of such material, answers, or transcripts and shall be responsible for the use made of them and for the return of documentary material under paragraph (4).

"(B) The custodian may cause the preparation of such copies of such documentary material, answers to interrogatories, or transcripts of oral testimony as may be required for official use by any false claims law investigator, or other officer or employee of the Department of Justice, who is authorized for such use under regulations which the Attorney General shall issue. Such material, answers, and transcripts may be used by any such authorized false claims law investigator or other officer or employee in connection with the taking of oral testimony under this section.

"(C) Except as otherwise provided in this subsection, no documentary material, answers to interrogatories, or transcripts of oral testimony, or copies thereof, while in the possession of the custodian, shall be available for examination by any individual other than a false claims law investigator or other officer or employee of the Department of Justice authorized under subparagraph (B). The prohibition in the preceding sentence on the availability of material, answers, or transcripts shall not apply if consent is given by the person who produced such material, answers, or transcripts, or, in the case of any product of discovery produced pursuant to an express demand for such material, consent is given by the person from whom the discovery was obtained. Nothing in this subparagraph is intended to prevent disclosure to the Congress, including any committee or subcommittee of the Congress, or to any other agency of the United States for use by such agency in furtherance of its statutory responsibilities. Disclosure of information to any such other agency shall be allowed only upon application, made by the Attorney General to a United States district court, showing substantial need for the use of the information by such agency in furtherance of its statutory responsibilities.

"(D) While in the possession of the custodian and under such reasonable terms and conditions as the Attorney General shall prescribe—

"(i) documentary material and answers to interrogatories shall be available for examination by the person who produced such material or answers, or by a representative of that person authorized by that person to examine such material and answers; and

"(ii) transcripts of oral testimony shall be available for examination by the person who produced such testimony, or by a representative of that person authorized by that person to examine such transcripts.

"(3) USE OF MATERIAL, ANSWERS, OR TRANSCRIPTS IN OTHER PROCEEDINGS.—Whenever any attorney of the Department of Justice has been designated to appear before any court, grand jury, or Federal agency in any case or proceeding, the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony received under this section may deliver to such attorney such material, answers, or transcripts for official use in connection with any such case or proceeding as such attorney determines to be required. Upon the completion of any such case or proceeding, such attorney shall return to the custodian any such material, answers, or transcripts so delivered which have not passed into the control of such court, grand jury, or agency through introduction into the record of such case or proceeding.

"(4) CONDITIONS FOR RETURN OF MATERIAL.—If any documentary material has been produced by any person in the course of any false claims law investigation pursuant to a civil investigative demand under this section, and—

"(A) any case or proceeding before the court or grand jury arising out of such investigation, or any proceeding before any Federal agency involving such material, has been completed, or

"(B) no case or proceeding in which such material may be used has been commenced within a reasonable time after completion of the examination and analysis of all docu-

mentary material and other information assembled in the course of such investigation, the custodian shall, upon written request of the person who produced such material, return to such person any such material (other than copies furnished to the false claims law investigator under subsection (f)(2) or made for the Department of Justice under paragraph (2)(B)) which has not passed into the control of any court, grand jury, or agency through introduction into the record of such case or proceeding.

"(5) APPOINTMENT OF SUCCESSOR CUSTODIANS.—In the event of the death, disability, or separation from service in the Department of Justice of the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony produced pursuant to a civil investigative demand under this section, or in the event of the official relief of such custodian from responsibility for the custody and control of such material, answers, or transcripts, the Attorney General shall promptly—

"(A) designate another false claims law investigator to serve as custodian of such material, answers, or transcripts, and

"(B) transmit in writing to the person who produced such material, answers, or testimony notice of the identity and address of the successor so designated.

Any person who is designated to be a successor under this paragraph shall have, with regard to such material, answers, or transcripts, the same duties and responsibilities as were imposed by this section upon that person's predecessor in office, except that the successor shall not be held responsible for any default or dereliction which occurred before that designation.

"(j) JUDICIAL PROCEEDINGS.—

"(1) PETITION FOR ENFORCEMENT.—Whenever any person fails to comply with any civil investigative demand issued under subsection (a), or whenever satisfactory copying or reproduction of any material requested in such demand cannot be done and such person refuses to surrender such material, the Attorney General may file, in the district court of the United States for any judicial district in which such person resides, is found, or transacts business, and serve upon such person a petition for an order of such court for the enforcement of the civil investigative demand.

"(2) PETITION TO MODIFY OR SET ASIDE DEMAND.—(A) Any person who has received a civil investigative demand issued under subsection (a) may file, in the district court of the United States for the judicial district within which such person resides, is found, or transacts business, and serve upon the false claims law investigator identified in such demand a petition for an order of the court to modify or set aside such demand. In the case of a petition addressed to an express demand for any product of discovery, a petition to modify or set aside such demand may be brought only in the district court of the United States for the judicial district in which the proceeding in which such discovery was obtained is or was last pending. Any petition under this subparagraph must be filed—

"(i) within 20 days after the date of service of the civil investigative demand, or at any time before the return date specified in the demand, whichever date is earlier, or

"(ii) within such longer period as may be prescribed in writing by any false claims law investigator identified in the demand.

"(B) The petition shall specify each ground upon which the petitioner relies in seeking relief under subparagraph (A), and may be based upon any failure of the demand to comply with the provisions of this section or upon any constitutional or other legal right or privilege of such person. During the pendency of the petition in the court, the court may stay, as it deems proper, the running of the time allowed for compliance with the demand, in whole or in part, except that the person filing the petition shall comply with any portions of the demand not sought to be modified or set aside.

"(3) PETITION TO MODIFY OR SET ASIDE DEMAND FOR PRODUCT OF DISCOVERY.—(A) In the case of any civil investigative demand issued under subsection (a) which is an express demand for any product of discovery, the person from whom such discovery was obtained may file, in the district court of the United States for the judicial district in which the proceeding in which such discovery was obtained is or was last pending, and serve upon any false claims law investigator identified in the demand and upon the recipient of the demand, a petition for an order of such court to modify or set aside those portions of the demand requiring production of any such product of discovery. Any petition under this subparagraph must be filed—

"(i) within 20 days after the date of service of the civil investigative demand, or at any time before the return date specified in the demand, whichever date is earlier, or

"(ii) within such longer period as may be prescribed in writing by any false claims law investigator identified in the demand.

"(B) The petition shall specify each ground upon which the petitioner relies in seeking relief under subparagraph (A), and may be based upon any failure of the portions of the demand from which relief is sought to comply with the provisions of this section, or upon any constitutional or other legal right or privilege of the petitioner. During the pendency of the petition, the court may stay, as it deems proper, compliance with the demand and the running of the time allowed for compliance with the demand.

"(4) PETITION TO REQUIRE PERFORMANCE BY CUSTODIAN OF DUTIES.—At any time during which any custodian is in custody or control of any documentary material or answers to interrogatories produced, or transcripts of oral testimony given, by any person in compliance with any civil investigative demand issued under subsection (a), such person, and in the case of an express demand for any product of discovery, the person from whom such discovery was obtained, may file, in the district court of the United States for the judicial district within which the office of such custodian is situated, and serve upon such custodian, a petition for an order of such court to require the performance by the custodian of any duty imposed upon the custodian by this section.

"(5) JURISDICTION.—Whenever any petition is filed in any district court of the United States under this subsection, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry out the provisions of this section. Any final order so entered shall be subject to appeal under section 1291 of title 28. Any disobedience of any final order entered under this section by any court shall be punished as a contempt of the court.

"(6) APPLICABILITY OF FEDERAL RULES OF CIVIL PROCEDURE.—The Federal Rules of Civil Procedure shall apply to any petition under this subsection, to the extent that such rules are not inconsistent with the provisions of this section.

"(k) DISCLOSURE EXEMPTION.—Any documentary material, answers to written interrogatories, or oral testimony provided under any civil investigative demand issued under subsection (a) shall be exempt from disclosure under section 552 of title 5.

"(l) DEFINITIONS.—For purposes of this section—

"(1) the term 'false claims law' means—

"(A) this section and sections 3729 through 3732; and

"(B) any Act of Congress enacted after the date of the enactment of this section which prohibits, or makes available to the United States in any court of the United States any civil remedy with respect to, any false claim against, bribery of, or corruption of any officer or employee of the United States;

"(2) the term 'false claims law investigation' means any inquiry conducted by any false claims law investigator for the purpose of ascertaining whether any person is or has been engaged in any violation of a false claims law;

"(3) the term 'false claims law investigator' means any attorney or investigator employed by the Department of Justice who is charged with the duty of enforcing or carrying into effect any false claims law, or any officer or employee of the United States acting under the direction and supervision of such attorney or investigator in connection with a false claims law investigation;

"(4) the term 'person' means any natural person, partnership, corporation, association, or other legal entity, including any State or political subdivision of a State;

"(5) the term 'documentary material' includes the original or any copy of any book, record, report, memorandum, paper, communication, tabulation, chart, or other document, or data compilations stored in or accessible through computer or other information retrieval systems, together with instructions and all other materials necessary to use or interpret such data compilations, and any product of discovery;

"(6) the term 'custodian' means the custodian, or any deputy custodian, designated by the Attorney General under subsection (i)(1); and

"(7) the term 'product of discovery' includes—

"(A) the original or duplicate of any deposition, interrogatory, document, thing, result of the inspection of land or other property, examination, or admission, which is obtained by any method of discovery in any judicial or administrative proceeding of an adversarial nature;

"(B) any digest, analysis, selection, compilation, or derivation of any item listed in subparagraph (A); and

"(C) any index or other manner of access to any item listed in subparagraph (A).".

(b) CLERICAL AMENDMENT.—The table of contents for chapter 37 of title 31, United States Code, is amended by adding after the item relating to section 3731 the following:

"3732. False claims jurisdiction.
"3733. Civil investigative demands.".

SEC. 7. CRIMINAL PENALTIES.

Section 287 of title 18, United States Code, is amended by striking "fined" and all that follows through "both" and inserting "imprisoned not more than five years and shall be subject to a fine in the amount provided in this title".

Mr. GLICKMAN (during the reading). Mr. Speaker, I ask unanimous

consent that the Senate amendment to the House amendment be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Kansas?

Mr. WALKER. Mr. Speaker, reserving the right to object, I am just trying to figure out what it is we are doing here. I could not hear which bill number it was that we were proceeding with.

Mr. Speaker, I yield to the gentleman from Kansas [Mr. GLICKMAN].

Mr. GLICKMAN. Mr. Speaker, this bill is called the False Claims Amendments Act of 1986. This is a bill which has already passed the House. The False Claims Amendment Act of 1986 is supported by the administration, has passed the other body, and is now coming back here with the Senate amendment which we are going to consider under unanimous consent. It has got the agreement of the minority and there is no objection by the administration.

Mr. WALKER. Mr. Speaker, I thank the gentleman for his explanation, and I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Kansas?

Mr. COBLE. Mr. Speaker, reserving the right to object, will the gentleman from Kansas [Mr. GLICKMAN] explain the amendment?

Mr. GLICKMAN. Mr. Speaker, in 1863, during the Civil War, the False Claims Act became law. This act, sometimes referred to as the "Abraham Lincoln Law," was enacted amid reports of widespread corruption and fraud in the sale of supplies and provisions to the union government during the Civil War. As originally enacted, the statute imposed civil and criminal liability for false claims against the Government.

Unfortunately, fraud against the U.S. Government did not end with the conclusion of the Civil War in 1865. However, the act has only been amended twice in 123 years: Amendments to the qui tam provisions were enacted in 1943, and in 1982, technical amendments were made during the recodification of title 31, where the civil false claims provisions are set forth in the United States Code. With this brief background of the False Claims Act, it is easy to understand why the current law is quite outdated.

On September 9, 1986, the House considered and passed H.R. 4827. The bill, S. 1562, now at the desk, and which we are considering this afternoon, is a compromise between the Senate and House bills. Several provisions in the two bills were different and required that a compromise be reached. The two major differences were the damages provision and the role of the qui tam plaintiff.

Under the House bill, damages were not less than $5,000 and not more than $10,000, as well as double damages, consequential damages and costs. The bill now before the House contains the same penalty of between $5,000 and $10,000, but provides for treble damages and deletes consequential damages. The bill also contains a provision which allows the court to assess not less than double damages if the defendant comes to the Government and reports the violation, and cooperates fully with the Government in the investigation.

The role of the qui tam plaintiff has been narrowed somewhat over the original House passed bill. Under the bill now at the desk, the qui tam plaintiff remains a party to the suit, but the court has discretion to limit the role of the qui tam plaintiff in the litigation. Among the limitations that the court can impose on the participation of the qui tam plaintiff are the calling of witnesses, cross-examination of witnesses and discovery. In fact, the court can stay discovery by the qui tam plaintiff, if the Government shows that it will interfere with another case on the same facts. This limitation can be imposed whether or not the Government enters the case.

I would also like to make it clear that while the Government may enter the case and proceed in an administrative forum, the qui tam plaintiff has the same rights as in the civil action, all of which is within the discretion of the presiding officer. I would also point out that it is not intended that the Government proceed against any person except in one forum or the other.

S. 1562, the False Claims Amendments Act of 1986, is a very important piece of legislation. The False Claims Act is the primary vehicle by which the Government prosecutes civil fraud. In 1986, with a deficit in the range of $200 billion, I think it is imminently important that we modernize this statute so that the Government has a workable law through which to prosecute fraud and recoup the losses suffered by the Government.

The bill S. 1562, now at the desk, is a reasonable compromise and necessary in order for this legislation to become law. I would like to thank all those Members who participated in working out this compromise and would specifically like to thank the gentleman from California [Mr. BERMAN].

I urge my colleagues to support the bill, S. 1562.

Mr. COBLE. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Kansas?

Mr. BERMAN. Mr. Speaker, reserving the right to object, under my reservation, I simply want to congratulate the gentleman from Kansas [Mr. GLICKMAN], the chairman of the subcommittee, for in a very brief period of time, in less than 9 months, taking an issue which had been laying around in Congress for several years and moving forward, negotiating with a variety of parties and putting together what I think will soon be seen as perhaps the most effective antifraud legislation we will have enacted in this session of Congress.

I also would like to point out that the final version of the bill, as amended, that is before us at this time preserves and strengthens the role of the person initiating the action even if the Government enters the case.

The law makes clear that this person, the qui tam plaintiff, will be a party to the action with all the rights and responsibilities that a party receives under the Federal Rules of Civil Procedure.

The court may impose some limitations on the party's full participation only if the Government meets its burden of establishing that the person's conduct has violated the following standards set forth in the act: Undue delay, repetitious, irrelevant, interference or harassment.

Mr. Speaker, I include the following legislative history for the RECORD.

LEGISLATIVE HISTORY

1. ROLE OF THE PARTY

The final version of the Bill preserves and strengthens the role of the person initiating the action even if the Government enters the case. The law makes clear that this person ("qui tam" plaintiff) will be a "party" to the action with all the rights and responsibilities that a party receives under the Federal Rules of Civil Procedure. The Court may impose some limitations on the party's full participation only if the Government meets its burden of establishing that the person's conduct has violated the following standards set forth in the Act: undue delay, repetitious, irrelevant, interference or harrassment. The term "interfere" with the government's ability to prosecute the case is intended to mean some specific action proposed by the qui tam plaintiff which will have the likely probability of significantly disrupting the government's prosecution of the case. Inconvenience or minor disruption will not meet this standard. Moreover, a certain amount of overlap and inefficiency is expected with the dual participation of both the government and the qui tam plaintiff on the same side, but it is an anticipated part of the trade-off to bring to bear an increased amount of legal resources on behalf of the government's interest.

The term "repetitious" refers to the situation where without good cause the qui tam plaintiff repeats what the government has already done. It is not intended to limit what the qui tam plaintiff may do because the government is planning on a similar litigation activity in the future.

"Undue delay" is most likely to be applied in the context of the trial itself rather than pre-trial activity. If the qui tam plaintiff, for example, proposes to call numerous witnesses whose testimony may have little pro-

bative value, the Court may limit such testimony. Also, the term "undue delay" requires a showing by the government that the significant delay that may be cause by the specific activity proposed by the qui tam plaintiff and objected to by the government will substantially outweigh any possible benefit that would be obtained for the plaintiff's case.

The law that we vote on today is intended to encourage a working partnership between both the Government and the qui tam plaintiff. The public will be well served by having more legal resources brought to bear against those who defraud the Government. The qui tam plaintiff's role should be curtailed only when counsel for the qui tam plaintiff either lacks the competence to participate or when the person conducts himself in such a way in the federal court proceedings that results in undercutting the Government's ability to prosecute the case.

Another reason for providing for this full party status is to keep pressure on the Government to pursue the case in a diligent fashion. Even the United States Government is not without financial limitations. It is not uncommon for Government attorneys to be overworked and underpaid given the demanding tasks and frequently overwhelming case loads they maintain. I do not say this to impune the ability or character of Government attorneys, but only to reflect the harsh reality of today's funding limitations of Government activities in all areas which include the budgets of the government's prosecuting agencies. If the government can pass a law that will increase the resources available to confront fraud against the government without paying for it with taxpayers' money, we are all better off. This is precisely what this law is intended to do: deputize ready and able people who have knowledge of fraud against the government to play an active and constructive role through their counsel to bring to justice those contractors who overcharge the government.

Settlement of Lawsuits

While the law enables the Government to enter into a settlement with the defendant, it does require Court review of that settlement to determine whether it is fair, adequate and reasonable under all the circumstances, the same test that courts now apply to the settlement of class action claims. The person initiating the action is given an opportunity to object to the settlement, including the development and presentation of evidence at a hearing, before the court makes its final determination as to fairness.

2. WHO MAY BRING SUCH AN ACTION?

The final bill has adopted the Senate version of who may file an action under the False Claims Act. Before the relevant information regarding fraud is publicly disclosed through various government hearings, reports and investigations which are specifically identified in the legislation or through the news media, any person may file such an action as long as it is filed before the government filed an action based upon the same information. Once the public disclosure of the information occurs through one of the methods referred to above, then only a person who qualifies as an "original source" may bring the action. A person is an original source if he had some of the information related to the claim which he made available to the government or the news media in advance of the false claims being publicly disclosed. This person has the right to bring an action after these disclosures are made public as long as it is filed before an action is commenced by the Government.

3. PERCENTAGE RECOVERY

The final bill adopts the House version of the percentage of recovery provided for the person initiating the action. If the Government comes into the case, the person is guaranteed a minimum of 15% of the total recovery even if that person does nothing more than file the action in federal court. This is in the nature of a "finder's fee" and is provided to develop incentives for people to bring the information forward. The person need do no more than this to secure an entitlement to a minimum 15%. In those cases where the person carefully develops all the facts and supporting documentation necessary to make the case and presents it in a thorough and detailed fashion to the Justice Department as required by law, and where that person continues to play an active and constructive role in the litigation that leads ultimately to a successful recovery to the United States Treasury, the Court should award a percentage substantially above 15% and up to 25%. The only exception to this minimum 15% recovery is in the case where the information has already been disclosed and the person qualifies as an "original source" but where the essential elements of the case were provided to the government or news media by someone other than the qui tam plaintiff. In that case, the court may award up to 10% of the total recovery to the qui tam plaintiff.

4. WHISTLEBLOWER PROTECTION

The whistleblower protection section of the bill is extremely important and is designed to protect the person from any retaliatory action taken by his employer. This section is intended to afford full protection to the employee if the retaliatory action is in any way connected to a person's activities pursuant to this law. It does not have to be the primary reason for the employer's actions. As long as the retaliatory action by the employer is motivated in part because of the person's actions under this law, then all the protection specified in that whistleblower section shall be applicable.

5. KNOWING AND KNOWINGLY DEFINED

The bill adopts the Senate version of the knowledge standard that must be found to establish liability under this Act. It expressly acknowledges that no proof of specific intent to defraud the government is required. There have been some erroneous court decisions that have misapplied the law in the past to require an intent to defraud. The language specified in this section of the law is intended to clarify what has been the law which has been properly interpreted in the case of *United States* v. *Cooperative Grain and Supply*, 476 F.2d 47, 56 (8th Cir. 1973). Subsection 3 of Section 3729(c) uses the term "reckless disregard of the truth or falsity of the information" which is no different than and has the same meaning as a gross negligence standard that has been applied in other cases. While the Act was not intended to apply to mere negligence, it is intended to apply in situations that could be considered gross negligence where the submitted claims to the Government are prepared in such a sloppy or unsupervised fashion that resulted in overcharges to the Government. The Act is also intended not to permit artful defense counsel to require some form of intent as an essential ingredient of proof. This section is intended to reach the "ostrich-with-his-head-in-the-sand" problem where government contractors hide behind the fact they were not personally aware that such overcharges may have occurred. This is not a new standard but clarifies what has always been the standard of knowledge required.

6. ATTORNEYS' FEES

This Act now expressly provides for the reasonable attorneys' fees to counsel for the person initiating the action. The term "reasonable attorneys' fees" is intended to incorporate the standard applied in the United States Supreme Court case of *Blum* v. *Stenson*, 104 U.S. 1051 (1984) where the court stated that attorneys fees should be paid at marketplace rates for all time reasonably spent. It is important, however, to draw a distinction between marketplace rates on a contingency case, such as a case filed under the False Claims Act, and marketplace rates paid by a client to an attorney where payment will be made on a previous (usually monthly) basis irrespective of the outcome of the matter. In those instances where attorneys' fees are paid on a monthly basis and not subject to any contingency, those market rates will be substantially below the marketplace rate which depend upon success for any payment and where payment does not come until after the case is concluded and all appeals are ended which can take years. Thus, a true marketplace rate in a False Claims Act case would be what competent counsel's expectations of an hourly rate would be at the time of the filing of the case understanding that payment will be made only after success is achieved, and only after the defendant is given the opportunity to challenge the amount requested, and where the judge or an appellate court may reduce the amount required, and where payment may not come until this process is concluded. In such cases, that rate would be substantially greater than a rate where payment was guaranteed on a monthly basis regardless of whether the case was won or lost. In that sense, the rates that should be applied here should be similar to those rates provided for in antitrust cases where there are similar contingencies.

ATTORNEY'S FEES AGAINST THE PARTY INITIATING THE ACTION

In order to deter frivolous and unfounded lawsuits under this Act, the law provides for very limited occasions when attorneys' fees can be awarded in favor of the Government contractors against the person initiating the action. In order for a court to award such fees, it must first determine that the lawsuit is totally without any merit whatsoever. The Court must also make an evaluation of the subjective motives of the person initiating the action and determine that it was vexatious, or brought for purposes of harassment. Thus, the Court must make two findings in order to award fees against the plaintiff initiating the action: the Court must find both that the case is wholly lacking in merit, and the person's motives for pursuing the case demonstrated extreme bad faith, and fit within one of those terms expressly provided for in that section.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Kansas?

There was no objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from Kansas?

There was no objection.

A motion to reconsider was laid on the table.

EXTENDING THE AUTHORITY OF THE SUPREME COURT POLICE

Mr. GLICKMAN. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 5362) to extend the authority of the Supreme Court Police to provide protective services for Justices and Court personnel, with a Senate amendment thereto, and concur in the Senate amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendment, as follows:

Page 1, after line 8, insert:

SEC. 2. (a) Section 105(a) of the Legislative Branch Appropriations Act, 1979 (2 U.S.C. 72a note), as reenacted by section 115 of the joint resolution entitled "Joint resolution making continuing appropriations for the fiscal year 1982, and for other purposes", approved October 1, 1981 (95 Stat. 963), is amended by striking out "September 30, 1986," and inserting in lieu thereof "February 28, 1987,".

(b) The amendment made by subsection (a) shall take effect on October 1, 1986.

Mr. GLICKMAN (during the reading). Mr. Speaker, I ask unanimous consent that the Senate amendment be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Kansas?

There was no objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from Kansas?

Mr. WALKER. Mr. Speaker, reserving the right to object, I am a little concerned about the number of bills that we are now beginning to run onto the floor by unanimous consent; and I understand that there have been clearances on them; but I am also understanding that we have a process underway that, where the majority may go to the Rules Committee and ask for the right for hand enrolling of bills so that they can be gotten down to the President quicker so that the situation can put the President in an additional bind; that we may in fact have the Rules Committee acting at the present time on a blanket waiver of the 3-day rule which will mean that we will not have sufficient time to consider a bunch of this legislation; it will be brought out here without having to comply with the 3-day rule.

I also understand that we now have under consideration a new short-term continuing resolution that will carry us over into next week. The Members have no idea what is going on here; we do not know what resolutions may be brought before us, and now we are faced with the prospect that, as we sit around waiting for all of these things to happen, we have unanimous-consent resolutions run out here on the floor in a steady stream.

Mr. Speaker, I am concerned. I do not know what the program is; I do not think very many Members of the House know what the program is; the rumor going around here today is that we are going to be here at least until the end of next week. A lot of us do not understand why that has to be, and if the fact is we are going to be around here until next week and we are going to have all the junk bins of the committees cleared out here on the floor during that period of time, this gentleman for one is not going to allow it to happen; and I am going to begin objecting to virtually all of the unanimous-consent requests that come out here regardless of whether they have been cleared or not.

I would hope that within the next few minutes we can get some kind of decision by the leadership to tell us what it is they have in mind for us, or we are going to stop this process of running bills out here that nobody knows what is in them and nobody knows just how the schedule is going.

I will not object to this particular request. I take the reservation only to say that if there are any more of them that come up today, they are not going to be passed out here by unanimous consent until we know the program.

Mr. Speaker, I withdraw my reservation of objection.

□ 1630

Mr. COBLE. Reserving the right to object, Mr. Speaker, if the gentleman from Kansas would explain the amendment, I think that would remove any cloud over this bill.

Mr. GLICKMAN. Mr. Speaker, will the gentleman yield?

Mr. COBLE. I yield to the gentleman from Kansas.

Mr. GLICKMAN. I thank the gentleman for yielding.

Mr. Speaker, let me say to my colleague from Pennsylvania [Mr. WALKER], since I am not a Member of the House leadership, I cannot respond to his question.

Maybe one day I will run for that position, but right now I am forced to deal with this particular bill, and I do not want to be a victim in this connection.

This is a bill that has passed the House already, extending the authorization of the Supreme Court Police to protect all of the justices including the two new ones whom the President just appointed and the Senate confirmed.

I think that is something we all want to do. In addition to that, the Senate has added an amendment requested by the Senate majority leader by which the duration of the Office of Classified National Security, which is under the Office of the Secretary of the Senate, is extended.

This is an office under the policy direction of the Senate majority leader. My senior Senator from Kansas has asked me to put this on the bill, and I see no problem with it. I think this bill is necessary.

The amendment attached to H.R. 5362 by the Senate extends the duration of the Office of Classified National Security which is under the Office of the Secretary of the Senate. This office is under the policy direction of the Senate majority leader, minority leader, and the chairman of the Committee on Rules and Administration of the Senate. The Office has the responsibility of safeguarding restricted data and classified information as any Senate committee may assign to it.

The authorization of this Office expired September 30, 1986. The amendment extends the duration until February 28, 1987, in order to allow the Senate majority and minority leaders to determine how and to what extent they want to upgrade this Office. The amendment is to become effective October 1, 1986.

This is a Senate housekeeping amendment, and I recommend that the House accept it.

Mr. COBLE. I thank the gentleman from Kansas.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore (Mr. KILDEE). Is there objection to the initial request of the gentleman from Kansas?

There was no objection.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. BOUCHER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H.R. 5445, a bill previously passed today by the House.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Virginia?

There was no objection.

GAY HEAD WAMPANOAG INDIAN CLAIMS SETTLEMENT ACT OF 1985

Mr. MOAKLEY. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 570 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 570

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House resolved into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 2868) to settle Indian land claims in the town of Gay Head, Massachusetts, and for

other purposes, and the first reading of the bill shall be dispensed with. All points of order against the consideration of the bill for failure to comply with the provisions of section 302(f) of the Congressional Budget Act of 1974, as amended, are hereby waived, and all points of order against the bill for failure to comply with the provisions of clause 5(a) of rule XXI are hereby waived. After general debate, which shall be confined to the bill and shall continue not to exceed one hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Interior and Insular Affairs, the bill shall be considered for amendment under the five-minute rule, and each section shall be considered as having been read. It shall be in order to consider two amendments to the bill if offered by Representative McCain of Arizona or his designee, one inserting a new title containing only the text of the bill H.R. 1915 as passed by the House, and one inserting a new title containing only the text of the bill H.R. 4174 as passed by the House, and all points of order against said amendments for failure to comply with the provisions of clause 7 of rule XVI are hereby waived. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit.

The SPEAKER pro tempore. The gentleman from Massachusetts [Mr. MOAKLEY] is recognized for 1 hour.

Mr. MOAKLEY. Mr. Speaker, I yield the customary 30 minutes to the gentleman from Missouri [Mr. TAYLOR], pending which I yield myself such time as I may consume.

Mr. Speaker, House Resolution 570 is an open rule providing for the consideration of the bill H.R. 2868, the settlement of Indian land claims within the town of Gay Head, MA.

The rule provides 1 hour of general debate, to be equally divided between the chairman and ranking minority member of the Committee on Interior and Insular Affairs. The rule waives points of order against the bill for failure to comply with the provisions of section 302(f) of the Congressional Budget Act.

Section 302(f) prohibits consideration of legislation providing discretionary new budget authority in excess of a committee's 302(b) allocation of such authority. Since the bill provides $1.5 million in direct spending for fiscal year 1987, and since the Committee on Interior and Insular Affairs has received no new discretionary budget authority for fiscal year 1987, the bill would violate section 302(f) of the Budget Act.

However, Mr. Speaker, the Committee on Interior and Insular Affairs will offer an amendment making the direct spending provisions subject to an appropriation, thereby making the waiver for the Budget Act violation purely technical in nature.

Mr. Speaker, the rule also waives points of order against the bill for failure to comply with the provisions of clause 5(a) of rule XXI, which prohibits appropriations in a legislative bill. Section 3(c) of the bill requires that the State of Massachusetts deposit matching funds into a Gay Head settlement fund and authorizes the Secretary of the Interior to spend those funds. Since this is considered an appropriation a waiver of Clause 5, of rule XXI is necessary.

In addition, the rule makes in order two amendments to be offered by Mr. MCCAIN of Arizona or his designee. The first amendment would consist of the text of H.R. 1915, which would amend the procedures of the Secretary of the Interior for approving or disapproving tribal constitutions. The second amendment would consist of the text of H.R. 4174, which would amend procedures for the granting of contracts to tribes under Indian self-determination.

The rule waives all points of order against the amendments for failure to comply with the provisions of clause 7 of rule XVI, which prohibits the offering of any nongermane amendment to the bill. The two amendments that will be offered by Mr. MCCAIN or his designee both passed the House but failed to be acted on by the other body, since both bills are regarded as being noncontroversial the Rules Committee decided to allow the bills to be attached to this legislation.

Finally, Mr. Speaker, the rule provides one motion to recommit.

Mr. Speaker, H.R. 2868 would allow the purchase and transfer of private lands within the town of Gay Head, MA to the Wampanoag Tribal Council of Gay Head. The bill authorizes $1.5 million for the establishment of a Gay Head Indian claims settlement fund, to provide for the purchase of some of these lands.

As I stated earlier in my statement, the Commonwealth of Massachusetts would also deposit $1.5 million in matching funds for a combined total of $3 million. The bill would make in order an out of court settlement reached by all concerned parties that in essence provides for the exchange of over 500 acres of land to the Wampanoag Tribe, provided that all Indian claims within the town of Gay Head are dropped.

Mr. Speaker, basically what this bill would do is protect the innocent land owners of Gay Head from possibly losing their land because of something that happened a long time ago and that they had no control over. With time running out of the remainder of this session I think it would be in the best interest of all that we pass this rule and pass H.R. 2868.

Mr. TAYLOR. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, House Resolution 570 is an open rule under which the House will consider legislation authorizing $1.5 million to settle Indian land claims in the town of Gay Head, MA.

The rule waives all points of order against consideration of the bill, H.R. 2868, which fails to comply with section 302(f) of the Budget Act. As reported, H.R. 2868 provides $1.5 million in direct spending in excess of the Interior Committee's discretionary budget authority for fiscal 1987.

Mr. Speaker, the Budget Act waiver should be considered as technical in nature, since the Interior Committee will offer an amendment making the direct spending provision subject to future appropriations, thus curing the Budget Act violation.

Mr. Speaker, the rule also waives clause 5(a) of rule XXI against H.R. 2868, because it violates the rule's prohibition against appropriations in a legislative bill. The waiver is included because of the direct spending provision. Since the Interior Committee plans to offer an amendment making this provision subject to future appropriations, thus curing the violation of the rule, the waiver should be considered technical in nature.

The rule makes in order two specified amendments, which will be offered by the Gentleman from Arizona, the chairman of the Republican Task Force on Indian Affairs.

The two McCain amendments deal with issues previously passed by the House. One of these, H.R. 1915, amends the procedures used by the Secretary of the Interior for approving or disapproving tribal constitutions. The other is similar to H.R. 4174, which amends the procedure for granting of contracts to tribes under the Indian Self-Determination Act.

Mr. Speaker, most of the Republican members of the Committee on the Interior oppose H.R. 2868, because it settles a legal suit by allowing the purchase and transfer of private land within the town of Gay Head, MA, to a group that has yet to be legally recognized as a tribe.

The lands in question are located on the western portion of Martha's Vineyard Island, and the ownership of them has been in dispute since 1974. Although H.R. 2868 follows an out-of-court settlement reached by all parties in 1983, the administration opposes the bill.

The bill requires a Federal contribution of $1.5 million to settle what the administration believes to be an invalid claim involving primarily non-Federal interests.

Mr. Speaker, I support this open rule since it allows the House to proceed in the normal legislative manner.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. MOAKLEY. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

The SPEAKER pro tempore. Pursuant to House Resolution 570 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 2868.

□ 1642

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 2868) to settle Indian land claims in the town of Gay Head, MA, and for other purposes, with Mr. JONES of Tennessee in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the first reading of the bill is dispensed with.

Under the rule, the gentleman from Arizona [Mr. UDALL] will be recognized for 30 minutes and the gentleman from Arizona [Mr. MCCAIN] will be recognized for 30 minutes.

The Chair recognizes the gentleman from Arizona [Mr. UDALL].

Mr. UDALL. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, H.R. 2868 is a bill which provides for the settlement of the claims of the Wampanoag Indians within the town of Gay Head, MA.

In 1974, the Wampanoag Indians of Gay Head filed a lawsuit against the town of Gay Head, alleging that in the 1870's, their lands were given away by the Commonwealth of Massachusetts to the town of Gay Head in violation of the 1790 Trade and Intercourse Act. This act required Federal approval for any transfer of Indian lands.

In 1983, the Indians, the town, the State of Massachusetts, and the non-Indian landowners of Gay Head reached a settlement to the lawsuit. Before this settlement agreement can become valid, it needs to be approved by Congress. H.R. 2868 implements this settlement agreement.

Under this settlement, the Indians would relinquish their claim to Gay Head, which consists of about 3,600 acres, and in return, would receive about 240 acres of lands currently held by the town of Gay Head and about 185 acres of land currently held by private parties. The United States and the State of Massachusetts would each contribute half of the funds necessary to purchase the private lands and the bill authorizes the appropriation of $1.5 million for this purpose.

Finally, in an attempt to get the endorsement of the administration, the committee adopted an amendment which provides that the provision of the bill will only become effective if and when the Secretary of the Interior decides to grant Federal recognition to the Gay Head Wampanoag Indians as an Indian tribe. The Gay Head Indians have filed a petition for Federal recognition as an Indian tribe with the Department of the Interior and a final secretarial decision is due by the end of the year.

Mr. Chairman, I believe that this is the last year that we will be able to enact this particular settlement. If the Gay Head Indians get federally recognized as an Indian tribe by the Secretary of the Interior before this legislation is passed, I believe that they may either decide to pursue the court case or ask for a higher priced settlement.

The congressional policy has been to encourage the parties to negotiate settlements to such Indian land claims so that innocent landowners are not forced to pay for mistakes made a long time ago. The parties in this case have done just that and I believe that they have reached a fair settlement. This lawsuit has been going on for 12 years now and I am afraid that if we do not pass this bill now, we would encourage such protracted litigation which only hurts the local landowners who have not committed any wrongs and now have to pay for past governmental mistakes. Mr. Chairman, this is a fair negotiated settlement which has been endorsed by all the parties in the litigation and I urge my colleagues to pass this bill.

Mr. Chairman, I reserve the balance of my time.

The CHAIRMAN. The gentleman from Arizona has consumed 2 minutes.

□ 1645

Mr. MCCAIN. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I would first like to recognize the efforts of the gentleman from Massachusetts [Mr. STUDDS] on this bill. The gentleman has been working diligently for at least 4 years that I know of on behalf of a small group of Indians, and I commend him for his dedication to it. I do not believe the bill would be on the floor at this time without his hard work with me and with other members of the Interior Committee.

Mr. Chairman. I rise to speak on the bill, H.R. 2868, the Gay Head band of Wampanoag Indians land settlement.

For many years the U.S. Government has tried to assist Indian tribes in settling disputes over land claims. Many mechanisms have been set up for this—the Indian Claims Commission, the U.S. Claims Court, suits in U.S. district court, and legislation before Congress to ratify negotiated settlement.

One of the first hurdles in any lawsuit for land claims by Indian tribes is the establishment that there is any entity which retained the legal right to the lands in question—namely a tribe. Mr. Speaker, H.R. 2868 is predicated on the fact that the existence of the tribe is questioned by the Department of the Interior—in this case we are voting to authorize a settlement before we even know if a tribe exists.

The Department of the Interior has made a preliminary finding that the group calling itself the Gay Head Wampanoag Tribal Council, Inc., is not the Gay Head Tribe of 100 or 200 years ago. The first criteria has not been met. This group is seeking a different result on appeal, but there is no recognized tribe at this time, and we owe it to this possible tribe and other Indian tribes to hold off any settlement until this threshold is met.

If there is a tribe, is this a good settlement for those Indian people, or are we just letting a group of non-Indians off the hook? I can't say, because the committee did not focus on the terms of the settlement. Who is to say that the entire town of Gay Head, MA, shouldn't be returned to the tribe, or possibly, as suggested by the administration, their claim has already been extinguished.

The fact is, without fully certifying that a tribe exists, and that it is a valid claim, we are authorizing 1.5 million Federal dollars to be matched by 1.5 million State dollars for the benefit of a group of people on Martha's Vineyard.

Mr. Chairman, I think it may be beneficial that we slow down, give the Interior Department a chance to conclusively decide if a tribe exists, and then negotiate. It might be better to wait another year before spending taxpayers' dollars. Therefore, I, like the administration, have concerns about this settlement at this time. However, I will not object to this bill because of the assurances I have received about the contingencies contained in the bill.

I also believe that we ought to give this legislation an opportunity to move forward.

Mr. Chairman, I reserve the balance of my time.

Mr. UDALL. Mr. Chairman, I yield 2 minutes to the distinguished author of the bill, the gentleman from Massachusetts [Mr. STUDDS].

Mr. STUDDS. Mr. Chairman, I want to take just one moment to thank the distinguished chairman of the Interior Committee, the gentleman from Arizona, and the other gentleman from Arizona who has just spoken, Mr. MCCAIN. I want to thank the gentleman for his kind personal words and for his faint praise for the legislation which has his—I cannot come up with

the right adjective to characterize the gentleman's support, but it is appreciated.

Mr. Chairman, both gentlemen who have spoken have summarized the substance of the issue and the contents of the bill. I just wish to say that initially the administration had two objections, and they were not without reason. One was that the initial proposal was that the entire cost of the proposed settlement be borne by the Federal Government. The administration countered that in its judgment, one-half of that cost ought reasonably to be borne by the State of Massachusetts.

We concurred, the State concurred; the State legislature has just enacted an appropriation of $1.5 million to cover its half of the settlement cost.

Second, the administration argued that we ought not to proceed with any settlement until the question of whether or not the tribe deserved Federal recognition as such had been resolved.

That we thought was not utterly without reason as well and, consequently, as both gentlemen who have previously spoken indicated, there is a contingency clause in this bill which says that this bill and the settlement shall not take effect until such time as Federal recognition is formally granted the tribe by the Department of the Interior.

I would also point out that I think the resolution embodied in this settlement is a fair and reasonable one for all sides, for the tribe, for the town, for the State and for the Federal Government. The potential liability for the Federal Treasury, should this litigation be protracted, is enormous. Land values in this part of the country are rising practically as we speak.

I think that for all concerned, and particularly in this instance speaking to Members' concerns for the Federal taxpayer, this is a bargain indeed.

I urge support for this bill.

Mr. Chairman, 12 years ago, the Wampanoag Indian Tribal Council filed suit in U.S. district court against the town of Gay Head, a small community on the island of Martha's Vineyard. This litigation was an attempt to reclaim public land transferred to the town in 1870 by the Commonwealth of Massachusetts, allegedly in violation of Federal law. Since that time, property titles in the town have been clouded, making it virtually impossible for residents to obtain mortgages.

After the lawsuit was filed, the parties engaged in a prolonged series of difficult negotiations. In November 1983, a settlement was adopted, with the overwhelming approval of tribe members and the concurrence of the town's voters, the Taxpayers Association and the Commonwealth of Massachusetts. Under this agreement, the town and State would convey 238 acres of public land to the tribal council, and the Federal Government would finance the purchase of an additional 175 acres. In return, all claims that the Wampanoag Tribe of Gay Head may have to land within the town or the State of Massachusetts would be extinguished.

H.R. 2868, which I introduced on June 25, 1985, provides the Federal approval necessary to implement this agreement. The Massachusetts Legislature has passed the required State implementing legislation, and, has approved a $1.5 million appropriation as the State's contribution toward settlement costs.

The bill has been amended to address two specific objections raised by the administration. One amendment requires the State of Massachusetts to pay for one-half the settlement costs. The Massachusetts Legislature, has, in fact, already enacted a $1.5 million appropriation as the State's contribution toward the overall $3 million cost. Another amendment makes enactment of the bill contingent on official Federal acknowledgement of the tribe by the Department of the Interior.

Mr. Chairman, like most such agreements, the settlement underlying this legislation is not 100 percent satisfactory to all parties. It is, however, far more desirable than the alternative—continued uncertainty, economic instability, and bitter controversy. The parties to this matter have acted, after protracted negotiations, to settle their differences. The Commonwealth of Massachusetts has done its share. It is now time for the Federal Government to act to resolve this longstanding problem. I urge passage of this bill.

Mr. McCAIN. Mr. Chairman, I have no further requests for time, and I yield back the balance of my time.

Mr. UDALL. Mr. Chairman, I have no further requests for time, and I yield back the balance of my time.

The CHAIRMAN. The Clerk will designate section 1.

Mr. UDALL. Mr. Chairman, I ask unanimous consent that the bill be printed in the RECORD and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

There was no objection.

The text of H.R. 2868 is as follows:

H.R. 2868

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Gay Head Wampanoag Indian Claims Settlement Act of 1985".

SEC. 2. CONGRESSIONAL FINDINGS AND DECLARATION OF POLICY.

The Congress hereby finds and declares that—

(1) there is pending before the United States District Court for the District of Massachusetts a lawsuit that involves Indian claims to certain public lands within the town of Gay Head, Massachusetts;

(2) the pendency of this lawsuit has resulted in severe economic hardships for the residents of the town of Gay Head by clouding the titles to much of the land in the town, including land not involved in the lawsuit;

(3) The Congress shares with the Commonwealth of Massachusetts and the parties to the lawsuit a desire to remove all clouds on titles resulting from such Indian land claim;

(4) the parties to the lawsuit and others interested in settlement of Indian land claims within the Commonwealth of Massachusetts executed a Settlement Agreement which, to become effective, requires implementing legislation by the Congress of the United States and the General Court of the Commonwealth of Massachusetts; and

(5) the town of Gay Head has agreed to contribute approximately 50 per centum of the land involved in this settlement.

SEC. 3. GAY HEAD INDIAN CLAIMS SETTLEMENT FUND.

(a) FUND ESTABLISHED.—There is hereby established within the Treasury of the United States a fund to be known as the "Gay Head Indian Claims Settlement Fund". Amounts in the fund shall be available to the Secretary to carry out the purposes of this Act.

(b) AUTHORIZATION FOR APPROPRIATION.—There is hereby authorized to be appropriate $3,000,000 for such fund to remain available until expended.

SEC. 4. APPROVAL OF PRIOR TRANSFERS AND EXTINGUISHMENT OF ABORIGINAL TITLE AND CLAIMS OF GAY HEAD INDIANS.

(a) APPROVAL OF PRIOR TRANSFERS.—Any transfer before the date of the enactment of this Act of land or natural resources now located anywhere within the United States from, by, or on behalf of the Wampanoag Tribal Council or the Gay Head Indians, or (2) any transfer before the date of the enactment of this Act by, from, or on behalf of any Indian, Indian nation, or tribe or band of Indians, of any land or natural resources located anywhere within the town of Gay Head, Massachusetts, including any transfer pursuant to any statute of the State, and the incorporation of the town of Gay Head, shall be deemed to have been made in accordance with the Constitution and all laws of the United States that are specifically applicable to transfers of land or natural resources from, by or on behalf of any Indian, Indian nation, or tribe or band of Indians (including the Trade and Intercourse Act of 1790, Act of July 22, 1790 (ch. 33, sec. 4, 1 Stat. 137), and all amendments thereto and all subsequent versions thereof). Any such transfer and any transfer in implementation of this Act, shall be deemed to have been made with the consent and approval of Congress as of the date of such transfer.

(b) EXTINGUISHMENT OF ABORIGINAL TITLE.—Any aboriginal title held by the Wampanoag Tribal Council, or Any other entity presently or at any time in the past known as the Gay Head Indians, to any land or natural resources the transfer of which is consented to and approved in subsection (a) is considered extinguished as of the date of such transfer.

(c) EXTINGUISHMENT OF CLAIMS ARISING FROM PRIOR TRANSFERS OR EXTINGUISHMENT OF ABORIGINAL TITLE.—Any claim (including any claim for damages for use and occupancy) by the Wampanoag Tribal Council, the Gay Head Indians, or any other Indian,

Indian nation, or tribe or band of Indians against the United States, any State or political subdivision of a State, or any other person which is based on—

(1) any transfer of land or natural resources which is consented to and approved in subsection (a), or

(2) any aboriginal title to land or natural resources the transfer of which is consented to and approved in subsection (b), is extinguished as of the date of any such transfer.

(d) PERSONAL CLAIMS NOT AFFECTED.—No provision of this section shall be construed to offset or eliminate the personal claim of any individual Indian which is pursued under any law of general applicability that protects non-Indians as well as Indians.

SEC. 5. CONDITIONS PRECEDENT TO FEDERAL PURCHASE OF SETTLEMENT LANDS.

(a) INITIAL DETERMINATION OF STATE AND LOCAL ACTION.—No action shall be taken by the Secretary under section 6 before the Secretary publishes notice in the Federal Register of the determination by the Secretary that—

(1) the Commonwealth of Massachusetts has enacted legislation which provides that—

(A) the town of Gay Head, Massachusetts, is authorized to convey to the Wampanoag Tribal Council the public settlement lands and the Cook lands subject to the conditions and limitations set forth in the Settlement Agreement,

(B) the settlement lands shall be exempt from taxation by the State or any political subdivision of the State to the extend provided in Settlement Agreement, and

(C) the Wampanoag Tribal Council shall have the authority, after consultation with appropriate State and local officials, to regulate any hunting by Indians on the settlement lands that is conducted by means other than firearms or crossbow to the extent provided in, and subject to the conditions and limitations set forth in, the Settlement Agreement; and

(2) the town of Gay Head, Massachusetts, has authorized the conveyance of the public settlement lands and the Cook Lands to the Wampanoag Tribal Council.

(b) RELIANCE UPON THE ATTORNEY GENERAL OF MASSACHUSETTS.—In making the findings required in subsection (a) of this section, the Secretary may rely upon the opinion of the Attorney General of the Commonwealth of Massachusetts.

SEC. 6. SECRETARY REQUIRED TO PURCHASE AND TRANSFER PRIVATE SETTLEMENT LANDS.

(a) NEGOTIATIONS AND SURVEY BY THE SECRETARY.—Within sixty days following the date of publication of findings under section 5(a), the Secretary shall enter into negotiations for the purchase of the private settlement lands on behalf of the tribe at the fair market value of such lands (determined without regard to pending Indian claims). The Secretary, during this time period, shall also cause a survey to be conducted to determine the precise acreage and boundaries of the settlement lands.

(b) ARBITRATION REQUIRED IN CASE OF FAILURE TO ESTABLISH PURCHASE PRICE.—If the Secretary and any owner of private settlement land are unable to agree on fair market value before the end of the ninety-day period beginning on the last day of the sixty-day period described in subsection (a), the fair market value of such land shall be determined by binding arbitration conducted in accordance with the rules and procedures of the American Arbitration Association.

(c) PURCHASE BY THE SECRETARY.—Within sixty days after the price and any other terms for the purchase of the private settlement land has been agreed to under subsection (a) or determined in accordance with subsection (b), as the case may be, the Secretary shall acquire all rights, title, and interest to such private settlement land.

(d) TRANSFER AND SURVEY OF LAND TO WAMPANOAG TRIBAL COUNCIL.—All rights, title, and interest to all private settlement land purchased by the Secretary under this section shall be transferred to the Wampanoag Tribal Council and shall be held by such council in accordance with the provisions of this Act, the Settlement Agreement and any other applicable laws.

(e) PROCEEDINGS AUTHORIZED TO ACQUIRE OR TO PERFECT TITLE.—The Secretary is authorized to commence such condemnation proceedings as the Secretary may determine to be necessary—

(1) to acquire or perfect any right, title, or interest in any private settlement land, and

(2) to condemn any interest adverse to any ostensible owner of such land.

SEC. 7. JURISDICTION OVER SETTLEMENT LANDS; RESTRAINT ON ALIENATION.

(a) LIMITATION ON INDIAN JURISDICTION OVER SETTLEMENT LANDS.—No Indian tribe or band may exercise any form of jurisdiction (whether or not such tribe or band is a federally recognized Indian tribe or band) over any part of the settlement lands, or any other land that may now or in the future be owned by or held in trust for such Indian entity in the town of Gay Head, Massachusetts, except to the extent provided in this Act, the State Implementing Act, or the Settlement Agreement.

(b) RESTRAINT ON ALIENATION.—

(1) IN GENERAL.—No right, title, or interest in any settlement land (other than the Cook lands and the West Basin Strip in accordance with paragraph 11 of the Settlement Agreement) may be sold, granted, or otherwise conveyed by the Wampanoag Tribal Council (or, in the case of private settlement land held by the Secretary pursuant to section 6(c) before the transfer of such land under section 6(d), by the Secretary) to any person other than any Indian tribe or tribal organization in Gay Head, Massachusetts, whose existence is subsequently acknowledged by the Secretary.

(2) PROHIBITED DISPOSITION WITHOUT LEGAL EFFECT.—No disposition and no attempt to make any disposition of settlement land to any person other than and Indian tribe or tribal organization referred to in subparagraph (1) shall have any effect in law or equity.

(3) SUBSEQUENT HOLDER BOUND TO SAME TERMS AND CONDITIONS.—Any tribe or tribal organization which acquires any settlement land from the Wampanoag Tribal Council shall hold title to such land subject to the same terms and conditions as are applicable to such lands when held by such council.

(b) RESERVATION OF RIGHT AND AUTHORITY RELATING TO SETTLEMENT LANDS.—No provision of this Act shall affect or otherwise impair—

(1) any authority to impose a lien or temporary seizure on the settlement lands as provided in the State Implementing Act,

(2) the authority of the Secretary to approve leases in accordance with the Act entitled "an Act to authorize the leasing of restricted Indian lands for public, religious, educational, recreational, residential, business, and other purposes requiring the grant of long-term leases." and approved August 9, 1955 (25 U.S.C. 415 and following), as such Act may have been or may be amended; or

(3) the legal capacity of the Wampanoag Tribal Council to grant or otherwise convey—

(A) the right to use the settlement lands to its members,

(B) any easement for public or private purposes in accordance with the laws of the Commonwealth of Massachusetts or the ordinances of the town of Gay Head, Massachusetts, or

(C) title to the West Basin Strip to the town of Gay Head, Massachusetts, pursuant to the terms of the Settlement Agreement.

SEC. 8. MISCELLANEOUS PROVISIONS.

(a) LIMITATION ON LIABILITY OF UNITED STATES TO WAMPANOAG INDIANS UNDER THIS ACT.—Subject to subsection (b), the United States shall have no duties or liabilities with respect to the Wampanoag Tribal Council or any settlement lands after the Secretary has completed any action required under this Act.

(b) RESERVATION OF INDIAN RIGHT TO FEDERAL RECOGNITION.—No provision of this Act shall be construed to affect—

(1) the right of any Indian entity in the town of Gay Head, Massachusetts, to petition the Secretary for Federal recognition of such entity as an Indian tribe, or

(2) the eligibility of such entity, or members of such entity, for services or benefits provided by the United States to federally recognized Indian tribes if the Secretary acknowledges the existence of such entity as an Indian tribe.

SEC. 9. DEFINITIONS.

For the purposes of this Act:

(1) COOK LANDS.—The term "Cook lands" means the lands described in paragraph (5) of the Settlement Agreement.

(2) GAY HEAD INDIANS.—The term "Gay Head Indians" means any Indian tribe, band, group, or nation whether or not considered an eligible recipient under the Indian Self-Determination and Education Assistance Act (Public Law 93-638) or under chapter 67 of title 31, United States Code, or otherwise federally recognized, known as the Gay Head Indians, Gay Head Tribe, Gay Head Wampanoag Tribe, or the Wampanoag Indians of Gay Head, or any other entity, person, or group of persons, or any predecessor or successor in interest or shareholder of any such tribe or entity, claiming or having tribal status, tribal land, or aboriginal title to any land or natural resources situated in whole or in part in the town of Gay Head, Massachusetts.

(3) LAND OR NATURAL RESOURCES.—The term "land or natural resources" means any real property or natural resources, or any interest in or right involving, any real property or natural resource, including but not limited to, minerals and mineral rights, timber and timber rights, water and water rights, and rights to hunt and fish.

(4) LAWSUIT.—The term "lawsuit" means the action entitled Wampanoag Tribal Council of Gay Head, and others versus Town of Gay Head, and others (C.A. No. 74-5826-McN (D. Mass.)).

(5) PRIVATE SETTLEMENT LANDS.—The term "private settlement lands" means approximately one hundred and seventy-five acres of privately held land described in paragraph 6 of the Settlement Agreement.

(6) PUBLIC SETTLEMENT LANDS.—The term "public settlement lands" means the lands described in paragraph (4) of the Settlement Agreement.

(7) SETTLEMENT LANDS.—The term "settlement lands" means the private settlement lands and the public settlement lands.

(8) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

(9) SETTLEMENT AGREEMENT.—The term "Settlement Agreement" means the document entitled "Joint Memorandum of Understanding Concerning Settlement of the Gay Head, Massachusetts, Indian Land Claims," executed as of November 22, 1983, and renewed thereafter by representatives of the parties to the lawsuit, and as filed with the Secretary of the Commonwealth of Massachusetts.

(10) STATE IMPLEMENTING ACT.—The term "State implementing act" means legislation enacted by the Commonwealth of Massachusetts conforming to the requirements of this Act and the requirements of the Massachusetts Constitution.

(11) TRANSFER.—The term "transfer" includes—

(A) any sale, grant, lease, allotment, partition, or conveyance,

(B) any transaction the purpose of which is to effect a sale, grant, lease, allotment, partition, or conveyance, or

(C) any eveny or events that resulted in a change of possession or control of land or natural resources.

(12) WEST BASIN STRIP.—The term "West Basin Strip" means a strip of land along the West Basin which the Wampanoag Tribal Council is authorized to convey, under paragraph (11) of the Settlement Agreement, to the town of Gay Head.

(13) WAMPANOAG TRIBAL COUNCIL.—The term "Wampanoag Tribal Council" means the Wampanoag Tribal Council of Gay Head, Incorporated.

SEC. 10. APPLICABILITY OF STATE LAW.

Except as otherwise expressly provided in this Act or in the State Implementing Act, the settlement lands and any other land that may now or hereafter be owned by or held in trust for any Indian tribe or entity in the town of Gay Head, Massachusetts, shall be subject to the civil and criminal laws, ordinances, and jurisdiction of the Commonwealth of Massachusetts and the town of Gay Head, Massachusetts.

SEC. 11. LIMITATIONS OF ACTION; JURISDICTION.

Notwithstanding any other provision of law, any action to contest the constitutionality or validity under law of this Act shall be barred unless the complaint is filed within sixty days following publication of the notice specified in section 5. Exclusive original jurisdiction over any such action and any proceedings under section 6(d) is hereby vested in the United States District Court of the District of Massachusetts.

SEC. 12. EFFECTIVE DATE.

The provisions of section 4 shall take effect upon the trasnfer of title to the settlement lands to the Wampanoag Tribal Council. The fact of such transfer, and the date thereof, shall be certified and recorded by the Secretary of the Commonwealth of Massachusetts. All other provisions of this Act shall take effect upon enactment.

COMMITTEE AMENDMENTS

The CHAIRMAN. The Clerk will report the committee amendments.

The Clerk read as follows:

Committee amendments: Page 3, line 11, delete "$3,000,000" and insert in lieu thereof "$1,500,000".

Page 3, after line 12, insert the following new subsection: "(c) STATE CONTRIBUTION REQUIRED.—Amounts may be expended from the fund only upon deposit by the State of Massachusetts into the fund of an amount equal to that amount to be expanded by the United States so that both the United States and the State of Massachusetts bear one half of the cost."

Page 4, line 20, before the word "any", insert the word "or".

Page 5, line 4, delete the words "Wampanoag Tribal Council" and insert in lieu thereof the phrase "Secretary to be held in trust for the Gay Head Indians".

Page 6, line 15, before the word "shall' insert the phrase "or the tribal governing body referred to in section 6(d) of this Act,".

Page 6, line 24, delete the words "Wampanoag Tribal Council" and insert the phrase "Secretary in trust for the Gay Head Indians".

Page 8, line 10, beginning with the word "shall" delete all through the period on line 13 and insert in lieu thereof the following: "and the title to public settlement lands conveyed by the Town of Gay Head shall be held in trust for the Gay Head Indians and is subject to this Act, the Settlement Agreement, and other applicable laws. The Wampanoag Tribal Council of Gay Head Indians, Inc., a corporation chartered by the state of Massachusetts, shall be the interim tribal governing body for administration of the settlement lands on behalf of the Gay Head Indians until a tribal governing body is established and recognized by the Secretary."

Page 10, line 16, delete "(b)" and insert in lieu thereof "(c)".

Page 11, line 16 through page 12, line 9, delete section 8 and renumber the subsequent sections accordingly.

Page 15, line 7, after the word "the" delete all through the period on line 8 and insert in lieu thereof the following: "the entity recognized by the Secretary as representing the Gay Head Indians."

Page 16 beginning on line 4, strike all through the period of line 9 and insert in lieu thereof the following: "This act (except section 4) shall take effect on publication in the Federal Register within one year of enactment of this act of a notice of the Secretary's acknowledgment under Part 83 of title 25, Code of Federal Regulations, that the Gay Head Indians exist as an Indian tribe. Section 4 shall take effect on the later of the foregoing date or on transfer of title to the settlement lands to the Secretary of the Interior to be held in trust for the Gay Head Indians or the tribe organized by those individuals who the Secretary of the Interior determines are Gay Head Indians descendants: Provided that, initial and future membership in the tribe shall be limited to Gay Head Indians descendants."

Mr. UDALL (during the reading). Mr. Chairman, I ask unanimous consent that the committee amendments be considered en bloc, and that they be considered as read and printed in the RECORD.

Mr. CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

There was no objection.

AMENDMENTS OFFERED BY MR. UDALL TO THE COMMITTEE AMENDMENTS

Mr. UDALL. Mr. Chairman, I offer two technical amendments to the committee amendments, and I ask unanimous consent that they be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

There was no objection.

The CHAIRMAN. The Clerk will report the amendments to the committee amendments.

The Clerk read as follows:

Amendments offered by Mr. UDALL to the committee amendments: On page 8, line 6, before the period insert "with such amounts as provided in appropriation Acts".

In the committee amendment beginning on page 8, line 10, through line 22, strike the sentence beginning on line 16 with the words "The Wampanoag Tribal Council" and all that follows through the period and insert the following in lieu thereof: "The Secretary shall provide for an interim governing body for administration of the settlement lands on behalf of the Gay Head Indians until a tribal governing body is established and recognized by the Secretary.".

Mr. UDALL (during the reading). Mr. Chairman, I ask unanimous consent that the amendments to the committee amendments be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

There was no objection.

Mr. UDALL. Mr. Chairman, one of the amendments is designed to bring the bill into compliance with the Budget Act, and the other amendment corrects a clerical omission in the committee amendments.

The CHAIRMAN. The question is on the amendments offered by the gentleman from Arizona [Mr. UDALL] to the committee amendments.

The amendments to the committee amendments were agreed to.

The CHAIRMAN. The question is on the committee amendments, as amended.

The committee amendments, as amended, were agreed to.

AMENDMENTS OFFERED BY MR. MC CAIN

Mr. McCAIN. Mr. Chairman, I offer amendments, and I ask unanimous consent that the amendments be considered en bloc, considered as read, and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

There was no objection.

The text of the amendments en bloc is as follows:

Amendments en bloc offered by Mr. MCCAIN: At the end of the bill, add the following new titles:

TITLE II

That this title may be cited as the "Indian Self-Determination Amendments of 1986."

SEC. 2. (a) The Congress finds that:

(1) the Indian Self-Determination and Education Assistance Act of 1975 (Public Law 93-638, 25 U.S.C. 450, et seq.), (the "Act") has furthered the development of local self-government and education opportunities for Indian tribes but its goals and progress have been impeded by lack of clarity and direction on the part of Federal agencies regarding their roles in implementing the Federal policy of Indian self-determination;

(2) the Federal responsibilities for welfare of Indian tribes demands effective self-government by Indian tribal communities; and

(3) additional legislation is necessary to assure that Indian tribes have an effective voice in the planning and implementation of programs for the benefit of Indians.

SEC. 3. Section 4 of the Act is amended as follows:

(1) In subsection (b), after the words "village corporation" add "or regional association."

(2) At the end of subsection (c), replace the semicolon by a colon and add the following: *"Provided,* That in areas where the Indian Health Service has no direct care facilities and the tribes are served by a tribal organization, such tribal organization shall be eligible to receive a contract under the authority of this Act if it has the approval of each tribe it proposes to serve.".

(3) Redesignate subsection (f) as subsection (e) and add the following new subsection:

"(f) 'Construction' means the planning, design, construction, repair, improvement, and expansion of buildings or facilities including, but not limited to, housing, sanitation, roads, schools, administration and health facilities, irrigation and agricultural works and water conservation, flood control, or port facilities.".

(4) Add the following new subsection (g):

"(g) 'Contract Support Costs' means reasonable costs for activities which must be carried on by a tribal organization as a contractor under the act to ensure compliance with the terms of the contract and prudent management but which (i) normally are not carried on by the respective secretary in his direct operation of the program or (ii) are provided by the Secretary in support of the contracted program from resources other than those under contract.".

SEC. 4. Subsection (a) of section 102 is amended by inserting the words "including construction programs" after the words "administer programs" and by inserting after the words "subsequent thereto" the following: "including (i) any program or portion thereof, including construction program, administered by the Secretary for the benefit of Indians for which appropriations are made to agencies other than the Department of the Interior, and (ii) any program, or portion thereof, for the benefit of Indians without regard to the agency or office of the Department of the Interior within which it is performed;".

SEC. 5. (a) Subsection (a) of section 103 of the Act is amended by inserting after the words "as amended" a comma and the following: "or any program, or portion thereof, which the Secretary is authorized to administer for the benefit of Indians including (i) any such program, or portion thereof for which appropriations are made to agencies other than the Department of Health and Human Services and (ii) any such program, or portion thereof, without regard to the agency or office within which it is performed within the Department of Health and Human Services".

(b) Subsection (c) of section 103 of the act is amended to read as follows:

"(c) Notwithstanding the provisions of section 2671, title 28, any tribal organization which has entered into a contract, grant or cooperative agreement with the Secretary of Health and Human Services shall be treated as an agency within the Department of Health and Human Services for purposes of the Federal Torts Claims Act with respect to any tort arising out of its performance of such contract, grant or cooperative agreement. For purposes of this subsection and the Federal Tort Claims Act, the Secretary of Health and Human Services is designated as the head of the agency within the meaning of section 2672, title 28.".

SEC. 6. Subsection (e) of section 105 of the act is amended by deleting the words "on or before December 31, 1985,".

SEC. 7. (a) Subsection (a) of section 106 of the act is amended by changing the period at the end thereof to a colon and adding the following: *Provided further,* That any request by an indian tribe or tribal organization for a waiver of such laws or regulations or other regulations of the appropriate Secretary shall be granted unless declined in accordance with the criteria provided in section 102 or 103 of this Act and under the procedures established by regulations for the declination of tribal requests under such sections.".

(b) Subsection (e) of section 106 of the Act is further amended by changing the period at the end of the sentence to a colon and inserting in lieu the following: *"Provided,* That at his discretion, the appropriate Secretary may transfer the title to the Indian tribe to any personal property found to be in excess to the need of the Bureau of Indian Affairs or Indian Health Service.".

SEC. 8. Section 106 of the Act is amended by changing subsection (h) to read as follows:

"(h)(1) The amount of funds provided under the terms of contracts entered pursuant to this Act shall be no less than the appropriate Secretary would have otherwise provided for his direct operation of the programs or portion thereof for the period covered by the contract: *Provided,* That—

"(i) for other than school or education programs, to such amount shall be added contract support costs which shall be negotiated with each contractor annually and which shall include costs attributable to all nonschool or noneducation programs for which the tribal organization has contracted pursuant to sections 102 and 103 of this Act, and

"(ii) for school and education programs, the Secretary of the Interior shall adopt regulations establishing a formula for determining the amount of administrative overhead costs necessary to sustain the administration of such programs. This formula shall among others, include such factors as school enrollment, education program scope, organizational and administrative plans, support services plan, size of facilities, size or area within the school's service area boundaries, isolation, unique regional costs, presence of noneducational programs, personnel training plan, and the allowable indirect costs standards. Funds for administrative overhead costs allocated by this formula shall be promptly added to each contract.

"(2) Once contract obligations are negotiated, the contract amount may be increased or decreased only with the consent of the contractor to reflect an increase or decrease in the level of appropriations.

"(3) Any savings in operation or administration of such contract shall be utilized to provide additional services or benefits under the contract and may be carried over to the succeeding fiscal year without any reduction in the funding to which the contractor is otherwise entitled. Grounds for declining to carry over such saving shall be limited to those grounds specified in section 102 and 103 of the Act.

"(4) At the request of any Indian tribe, the appropriate Secretary shall disclose the most current amount of funding planned, obligated and expended for any program, or portion thereof, administered for the benefit of such tribe down to the fourth level of each agency's accounting system.

"(5) The appropriate Secretary shall include in annual budget requests to the Congress a request for the funds necessary to provide contract support costs for all contracts anticipated in the fiscal period covered by the request and shall provide a supplemental report to the Congress on or before June 15 of each year identifying any deficiency of funds requested below estimated needs.".

SEC. 9. Section 106 of the Act is further amended by adding the following new subsection (i):

"(i) The appropriate Secretary shall insure the responsive and efficient consideration of tribal requests under sections 102, 103, and 104 of the Act by designating an official within the Bureau of Indian Affairs or the Indian Health Service, as appropriate, to supervise the review of applications and the negotiation, award and monitoring of contracts, grants or cooperative agreements by the appropriate agency. These two officials shall be charged with the duty to further the purposes of this Act. The appropriate Secretary shall also delegate to such official the authority to review, at the request of the contractors, decisions to decline such contract, grant or cooperative agreement applications subject to the right of any applicant to an appeal and hearing as provided in this Act.".

SEC. 10. Title I of the Act is amended by adding a new section 111 as follows:

"SEC. 111. (a) The appropriate Secretary shall designate officials who are not employed by the Bureau of Indian Affairs or the Indian Health Service for the purpose of conducting hearings in declination appeals.

"(b) Appeals and hearings on any declination to contract based on insufficient funding shall be conducted under the same procedures as apply in the case of other declinations.

"(c) The appropriate agency shall give notice of any disallowance of costs within 365 days of receiving any required audit report and shall provide for an appeal and hearing to the appropriate officials on any such disallowance. Any right of action or other remedy relating to any such disallowance shall be barred unless notice has been given within the designated period.".

SEC. 11. Title 1 of this Act is further amended by adding a new section 112 as follows:

"SEC. 112. All contracts, grants and cooperative agreements entered into or issued pursuant to this Act shall be subject to the Contract Dispute Act of 1978, Public Law 95-563.".

"SEC. 12. Title 1 of the Act is further amended by adding a new section 113 as follows:

"SEC. 113. Whenever an indrect cost rate is negotiated annually between a tribe or tribal organization and the cognizant Federal agency, that rate shall be applicable to all contracts and grants made with such tribe or tribal organization pursuant to sections 102, 103, and 104 of this Act. If not otherwise specifically prohibited by any other provisions of law, such rate shall be applicable to any other Federal program administered by such tribe or tribal organization, and each Federal agency responsible for such program shall apply such negotiated indirect cost rate and pay the full indirect

costs incurred by the tribe or tribal organization in connection with the administration of such program. Whenever, in any fiscal year, a tribe or tribal organization does not receive full payment of its indirect costs from any Federal, State, or other entity funding a program, such lack of full payment shall not be considered in determining the Federal indirect cost rate for the subsequent fiscal years.".

"SEC. 13. Section 8 of the Act is amended by adding after the period, the following sentence: "In the event such funds are obligated but not expended during such succeeding fiscal year they may be expended during the next succeeding fiscal year. If the funds are to be expended in the succeeding fiscal years for the purpose for which they were originally appropriated, contracted or granted, no additional justification of documentation of such purposes need be provided by the tribal organization to the agency as a condition of receiving and expending such funds. At least 80 per centum of such funds, as determined by the agency and the contractor or grantee, shall be made available on the first day of the succeeding fiscal year.".

TITLE III

SECTION 1. For the purpose of this Act, the term—

(a) "Secretary" means the Secretary of the Interior;

(b) "the Act" means the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), as amended; and

(c) "appropriate tribal request" means a request submitted by a tribal government under regulations prescribed by the Secretary.

SEC. 2. (a) The Secretary shall complete a formal technical and legal review of any tribal constitution proposed under the Act and call an election on the adoption of such constitution within one hundred and eighty days following the receipt of an appropriate tribal request for the election. Following completion of this review and prior to the requested election, the Secretary shall notify the tribe in writing whether the proposed constitution is inconsistent with Federal law.

(b) The Secretary shall complete a formal technical and legal review of any tribal request to amend a constitution or to adopt new or amended bylaws and call an election for approval of such proposal within ninety days following the receipt of an appropriate tribal request for the election. Following completion of this review and prior to the requested election, the Secretary shall notify the tribe in writing whether the proposal is inconsistent with Federal law. A complete revision of an existing tribal constitution shall be subject to review pursuant to subsection (a) of this section and shall not be considered an amendment.

SEC. 3. Following tribal adoption of a proposed constitution, bylaws or amendments at an election called under section 2 of this Act, the Secretary shall approve or disapprove such proposal within forty-five days after the election results are certified. If the Secretary does not approve or disapprove the proposed constitution, bylaws, or amendments within the specified forty-five-day period, such proposal shall be considered approved by the Secretary for the purposes of the Act and any provision of a tribal constitution requiring approval by the Secretary.

SEC. 4. Whenever the Secretary refuses to approve pursuant to section 16 of the Act, any tribal constitution or bylaws or amendments thereto or other tribal laws requiring his approval under such constitution and bylaws, he shall provide the tribe with a legal analysis explaining why such document is in violation of Federal law.

Mr. McCAIN. Mr. Chairman, under the rule, I am authorized to offer as an amendment two new titles consisting of the text of H.R. 1915 and H.R. 4174 as previously passed by the House. Since the rule was granted, some compromises have been made, and the amendment now offered covers both matters.

Mr. Chairman, I ask unanimous consent that they be considered en bloc, and that my modified amendment at the desk be considered in lieu of the text of H.R. 1915 and H.R. 4174.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

There was no objection.

The CHAIRMAN. The Clerk will report the modified amendment.

The Clerk read as follows:

Amendments en bloc offered by Mr. McCAIN as modified: Add the following new titles and renumber the bill accordingly, including designating the original text of H.R. 2868 as "Title I—Gay Head Wampanoag Indian Claims Settlement Act."

TITLE II—INDIAN SELF-DETERMINATION AMENDMENTS

SEC. 201. This act may be cited as the "Indian Self-Determination Amendments of 1986."

SEC. 202. (a) The Congress finds that:

(1) the Indian Self-Determination and Education Assistance Act of 1975, P.L. 93-638, 25 U.S.C. §§450, et. seq., (the "Act") has furthered the development of local self-government and education opportunities for Indian tribes but its goals and progress have been impeded by lack of clarity and direction on the part of Federal agencies regarding their roles in implementing the Federal policy of Indian self-determination;

(2) the Federal responsibility for welfare of Indian tribes demands effective self-government by Indian tribal communities; and

(3) additional legislation is necessary to assure that Indian tribes have an effective voice in the planning and implementation of programs for the benefit of Indians.

SEC. 203. Section 4 of the Act is amended as follows:

(1) At the end of subsection (c), replace the semi-colon by a colon and add the following:

"Provided, that, in areas where the Indian Health Service has no direct care facilities and the tribes are served by a tribal organization, such tribal organization shall be eligible to receive a contract under the authority of this Act if it has the approval of each tribe it proposes to serve.

(2) Redesignate subsection (f) as subsection (e) and add the following new subsection:

"(f) "Construction" means the planning, design, construction, repair, improvement, and expansion of buildings or facilities but not limited to, housing, sanitation, roads, schools, administration and health facilities, irrigation and agricultural works and water conservation, flood control, or port facilities.

(3) Add the following new subsection (g):

"(g) "Contract Support Costs" means reasonable costs for activities which must be carried on by a tribal organization as a contractor under the Act to ensure compliance with the terms of the contract and prudent management but which (i) normally are not carried on by the respective Secretary in his direct operation of the program or (ii) are provided by the Secretary in support of the contracted program from resources other than those under contract."

SEC. 204. Subsection (a) of section 102 is amended by inserting the words "including construction programs" after the words "administer programs" and by inserting after the words "subsequent thereto" the following:

"including (i) any program or portion thereof, including construction program, administered by the Secretary for the benefit of Indians for which appropriations are made to agencies other than the Department of the Interior, and (ii) any program, or portion thereof, for the benefit of Indians without regard to the agency or office of the Department of the Interior within which it is performed;"

SEC. 205. Subsection (a) of section 103 of the Act is amended by inserting after the words "as amended" the following:

"or any program, or portion thereof, which the Secretary is authorized to administer for the benefit of Indians including

(i) any such program, or portion thereof for which appropriations are made to agencies other than the Department of Health and Human Services and (ii) any such program, or portion thereof, without regard to the agency, or office within which it is performed within the Department of Health and Human Services",

SEC. 206. Subsection (e) of section 105 of the Act is amended by deleting the words "on or before December 31, 1988."

SEC. 207. (a) Subsection (a) of section 106 of the Act is amended by striking the period at the end thereof and adding the following: "Provided, further, that any request by an Indian tribe or tribal organization for a waiver of such laws or regulations or other regulations of the appropriate Secretary shall be granted unless declined in accordance with the criteria provided in section 102 or 103 of this Act and under the procedures established by regulations for the declination of tribal requests under such sections."

(b) Subsection (e) of section 106 of the Act is further amended by changing the period at the end of the sentence to a colon and inserting in lieu the following: *Provided*, That at his discretion, the appropriate Secretary may transfer the title to the Indian tribes, to any personal property found to be in excess to the need of the Bureau of Indian Affairs or Indian Health Service."

SEC. 208. Section 106 of the Act is amended by deleting subsection (h) and inserting in lieu the following new subsection (h):

(h)(1) The amount of funds provided under the terms of contracts entered pursuant to this Act shall be no less than the appropriate Secretary would have otherwise provided for his direct operation of the programs or portion thereof for the period covered by the contract: Provided, That, to such amount shall be added an amount for contract support costs which shall be determined annually in accordance with the reasonable costs incurred by contractors.

"(2) Contract amounts may be increased or decreased with the consent of the contractor or to reflect an increase or decrease in the level of appropriations.

"(3) Any savings in operation or administration of such contract shall be utilized to provide additional services or benefits under the contract and may be carried over to the succeeding fiscal year without any reduction in the funding to which the contractor is otherwise entitled. Grounds for declining to carry over such saving shall be listed to those grounds specified in sections 102 and 103 of the Act.

"(4) The appropriate Secretary shall include in annual budget requests to the Congress a request for the funds necessary to provide contract support costs for all contracts anticipated in the fiscal period covered at the request and shall provide a supplemental report to the Congress on or before June 15th of each year identifying any deficiency of funds requested below estimated needs."

SEC. 209. Title 1 of the Act is amended by adding a new section 111 as follows:

"SEC. 111. The appropriate agency shall give notice of any disallowance of costs within 365 days of receiving any required audit report and shall provide for an appeal and hearing to the appropriate officials on such job disallowance. Any right of action or other remedy relating to any such disallowance shall be barred unless notice has been given within the designated period.

SEC. 210. Title 1 of the Act is further amended by adding a new section 113 as follows: "Whenever an indirect cost rate is negotiated annually between a tribe or tribal organization and the cognizant federal agency, that rate shall be applicable to all contracts and grants made with such tribe or tribal organization pursuant to section 102, 103 and 104 of this Act. If not otherwise prohibited by any other provisions of law, such rate shall be applicable to any other federal program administered by such tribe or tribal organization, and each federal agency responsible for such program shall apply such negotiated indirect cost rate and pay the full indirect costs incurred by the tribe or tribal organization in connection with the administration of such program. Whenever, in any fiscal year, a tribe or tribal organization does not receive full payment of its indirect costs from any federal, state or other entity funding a program, such lack of full payment shall not be considered in determining the Federal indirect cost rate for the subsequent fiscal year.

SEC. 211. Section 8 of the Act is amended by adding after the period, the following sentence:

"In the event such funds are obligated but not expended during such succeeding fiscal year they may be expended during the next succeeding fiscal year. If the funds are to be expended in the succeeding fiscal years under contract or grant for the purpose for which they were originally contracted or granted, no additional justification or documentation of such purposes need be provided by the tribal organization to the agency as a condition of receiving and expending such funds.

TITLE III—TRIBAL CONSTITUTION AMENDMENTS

"SEC. 301. For the purpose of this Act, the term:

(a) "Secretary" means the Secretary of the Interior;

(b) "the Act" means the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), as amended; and

(c) "appropriate tribal request" means a request submitted by a tribal government under regulations prescribed by the Secretary.

SEC. 302. (a) The Secretary shall complete a formal technical and legal review of any tribal constitution proposed under the Act and call an election on the adoption of such constitution within 180 days following the receipt of an appropriate tribal request for the election. Following completion of this review and prior to the requested election, the Secretary shall notify the tribe in writing whether the proposed constitution is inconsistent with Federal law.

(b) The Secretary shall complete a formal technical and legal review of any tribal request to amend a constitution or to adopt new or amended bylaws and call an election for approval of such proposal within 90 days following the receipt of an appropriate tribal request for the election. Following completion of this review and prior to the requested election, the Secretary shall notify the tribe in writing whether the proposal is inconsistent with Federal law. A complete revision of an existing tribal constitution shall be subject to review pursuant to subsection (a) of this section and shall not be considered an amendment.

SEC. 303. Following tribal adoption of a proposed constitution, bylaws or amendments at an election called under section 2 of this Act, the Secretary shall prove or disapprove such proposal within 45 days after the election results are certified. If the Secretary does not approve or disapprove the proposed constitution, bylaws, or amendments within the specified 45-day period, such proposal shall be considered approved by the Secretary for the purposes of the Act and any provision of a tribal constitution requiring approval by the Secretary.

SEC. 304. Whenever the Secretary refuses to approve pursuant to section 16 of the Act, any tribal constitution or bylaws or amendments thereto or other tribal laws requiring his approval under such constitution and bylaws, he shall provide the tribe with a legal analysis explaining why such document is in violation of Federal law.

Mr. McCAIN. Mr. Chairman, this is a two-part amendment adding additional titles to H.R. 2868. Both titles are similar to legislation already passed by this body.

TITLE II—INDIAN SELF-DETERMINATION ACT AMENDMENTS

These provisions are modifications of the bill H.R. 4174 which passed this body earlier this year. The intent of the bill was to streamline procedures for Indian tribes and groups to be contractors under the Indian Self-Determination Act, known as 638 contracts. These provisions have been worked out with the administration and are acceptable to them.

TITLE III—TRIBAL CONSTITUTIONS

These provisions are identical to the bill H.R. 1915 as passed by this body earlier this year. Their intent is to provide the Secretary of the Interior with guidelines on the approval or disapproval of tribal constitutions or amendments to tribal constitutions. The administration has no objection to these provisions.

Mr. Chairman, it is unfortunate that because of complexities of the other body that two worthwhile bills would have to die in this session. I believe these provisions are important enough to add to this bill, which has already passed the other body.

□ 1655

Mr. UDALL. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I rise in support of the two McCain amendments. I see no objection to them. They are acceptable to our side.

Mr. Chairman, the committee adopted 11 amendments to this bill and I ask unanimous consent to consider these en bloc. These amendments incorporate suggestions which were made in order to meet some of the concerns of the administration. Many of the amendments are technical in nature.

Two of these amendments will resolve the major problems the administration had with this bill.

One amendment reduces the level of authorization to $1.5 million and makes the appropriation of these funds contingent on an equal amount of funds being contributed by the State of Massachusetts. The administration had stated that one-half of the contribution toward settlement should come from the local governments and this amendment accommodates this concern.

The other substantive amendment provides that the provisions of this bill will only become effective if and when the Secretary of the Interior decides to grant Federal recognition to the Wampanoag Indian Tribe of Gay Head. Currently the tribe has filed a petition for recognition as an Indian Tribe with the Secretary and a final secretarial decision is due by the end of the year.

This amendment addresses the concern of the administration that a settlement should not be enacted unless the Gay Head Indians can prove that they are indeed an Indian Tribe. Under the amendment, the provisions of the bill will not come in effect until the Secretary of the Interior determines that there is a Wampanoag Indian Tribe of Gay Head. I believe that these amendments, which have been endorsed by the tribe, greatly improve the bill and I urge my colleague to accept them.

Mr. MARLENEE. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I urge my colleagues to closely examine House Resolution 570. It seems to me that we talk about budget constraints on the one hand and yet we are altogether too happy to introduce legislation that is going to dig into the pockets of the taxpayer and pay some particular group.

In this case, it might be altogether very possible that we could do that here for the State of Massachusetts and some very wealthy individuals. I understand that they would like to

clear the title and that they would like to appropriate a certain amount of money. It says in this bill on page 1 and 2 that:

All points of order against the consideration of the bill for failure to comply with the provisions of section 302f of the Congressional Budget Act of 1974, as amended, are hereby waived and all points or order against the bill for failure to comply with the provisions of clause 5A of the Act are hereby waived.

It seems to me that we are bypassing the good intent of this Congress to restrain ourselves in spending and yet, at this time, right here, at this time we are about to try to settle claims in the State of Massachusetts for, among other people I am told, some of the Kennedy property up there, and it looks like to me that this is an effort to ramrod special interest legislation through this Congress without the consideration of the taxpayers or the budget.

The CHAIRMAN. The question is on the amendments, en bloc as modified, offered by the gentleman from Arizona [Mr. McCAIN].

The amendments, as modified, were agreed to.

AMENDMENT OFFERED BY MR. MC CAIN

Mr. McCAIN. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. McCAIN: On page 6, line 12, insert the following between "Settlement Agreement," and the word "and"

"provided that such taxation will only apply to lands which are zoned and utilized as commercial,".

Mr. McCAIN (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

There was no objection.

Mr. McCAIN. Mr. Chairman, the settlement lands are to be held in trust by the Secretary of the Interior. Primarily these are park lands and some lands that have housing potential. It is inconsistent with general law that Indian lands held for housing, ceremonial or tribal purposes. Commercial lands can be treated differently without unduly compromising general law.

Mr. Chairman, I believe that I have the agreement of my colleagues on this amendment, and I believe that it is noncontroversial.

Mr. UDALL. Mr. Chairman, will the gentleman yield?

Mr. McCAIN. I yield to the gentleman from Arizona.

Mr. UDALL. I thank the gentleman for yielding to me.

Mr. Chairman, the amendment of the gentleman from Arizona is acceptable to us.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Arizona [Mr. McCAIN].

The amendment was agreed to.

The CHAIRMAN. Are there further amendments to the bill?

If not, under the rule, the committee rises.

Accordingly the committee rose; and the Speaker pro tempore [Mr. GRAY of Illinois] having assumed the chair, Mr. JONES of Tennessee, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 2868) to settle Indian land claims in the town of Gay Head, MA, and for other purposes, pursuant to House Resolution 570, he reported the bill back to the House with sundry amendments adopted by the Committee of the Whole.

The SPEAKER pro tempore (Mr. GRAY of Illinois). Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment? If not, the Chair will put them en gros.

The amendments were agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. MARLENEE. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 217, nays 172, not voting 43, as follows:

[Roll No. 437]

YEAS—217

Abercrombie	Borski	Dicks
Ackerman	Bosco	Dixon
Akaka	Boucher	Donnelly
Alexander	Boxer	Dorgan (ND)
Anderson	Brooks	Downey
Andrews	Brown (CA)	Durbin
Annunzio	Bruce	Dwyer
Anthony	Bryant	Dymally
Applegate	Bustamante	Early
Aspin	Carney	Eckert (NY)
Atkins	Carper	Edgar
AuCoin	Coelho	Edwards (CA)
Barnes	Coleman (TX)	Erdreich
Bates	Collins	Evans (IL)
Bedell	Conte	Fascell
Beilenson	Conyers	Fazio
Bennett	Cooper	Feighan
Berman	Coyne	Flippo
Bevill	Crockett	Florio
Biaggi	Darden	Foglietta
Boehlert	Daschle	Foley
Boggs	Davis	Ford (MI)
Boner (TN)	de la Garza	Frank
Bonior (MI)	Dellums	Frost
Bonker	Derrick	Fuqua
Garcia	Matsui	Savage
Gejdenson	Mavroules	Scheuer
Gephardt	Mazzoli	Schneider
Gibbons	McCain	Schroeder
Gilman	McCloskey	Schumer
Gonzalez	McHugh	Seiberling
Gordon	McKernan	Shelby
Gray (IL)	McKinney	Sikorski
Gray (PA)	Miller (CA)	Smith (FL)
Green	Miller (WA)	Smith (IA)
Guarini	Mineta	Snowe
Hall (OH)	Mitchell	Solarz
Hamilton	Moakley	Spratt
Hatcher	Mollohan	St Germain
Hawkins	Moody	Stark
Hayes	Morrison (CT)	Stratton
Hertel	Mrazek	Studds
Horton	Murphy	Swift
Howard	Murtha	Synar
Hoyer	Natcher	Tauzin
Huckaby	Neal	Thomas (GA)
Jacobs	Nichols	Torres
Jeffords	Nowak	Towns
Johnson	Oakar	Traficant
Jones (NC)	Oberstar	Traxler
Jones (TN)	Obey	Udall
Kanjorski	Ortiz	Vander Jagt
Kaptur	Panetta	Vento
Kildee	Pease	Visclosky
Kolter	Penny	Waldon
Kostmayer	Pepper	Watkins
LaFalce	Perkins	Waxman
Lantos	Pickle	Wheat
Leath (TX)	Price	Whitley
Lehman (CA)	Quillen	Williams
Leland	Rahall	Wilson
Levin (MI)	Rangel	Wirth
Levine (CA)	Ray	Wise
Lipinski	Reid	Wolpe
Long	Richardson	Wortley
Lowry (WA)	Ridge	Wright
Luken	Roe	Wyden
Lundine	Rostenkowski	Yates
MacKay	Rowland (CT)	Yatron
Manton	Rowland (GA)	Young (AK)
Markey	Roybal	Young (MO)
Martin (NY)	Russo	
Martinez	Sabo	

NAYS—172

Archer	Fawell	Lujan
Armey	Fiedler	Lungren
Badham	Fields	Mack
Bartlett	Franklin	Madigan
Barton	Frenzel	Marlenee
Bentley	Gallo	Martin (IL)
Bereuter	Gaydos	McCandless
Bilirakis	Gekas	McCollum
Boulter	Gingrich	McCurdy
Brown (CO)	Glickman	McDade
Burton (IN)	Goodling	McEwen
Byron	Gradison	McGrath
Callahan	Gregg	McMillan
Carr	Gunderson	Meyers
Chandler	Hall, Ralph	Michel
Chapman	Hammerschmidt	Miller (OH)
Chappell	Hartnett	Molinari
Chappie	Hefner	Monson
Cheney	Hendon	Montgomery
Clinger	Henry	Moorhead
Coats	Hiler	Morrison (WA)
Cobey	Hillis	Myers
Coble	Holt	Nelson
Coleman (MO)	Hopkins	Nielson
Combest	Hubbard	Olin
Coughlin	Hunter	Oxley
Courter	Hutto	Packard
Craig	Ireland	Parris
Crane	Jenkins	Petri
Daniel	Kasich	Porter
Daub	Kleczka	Pursell
DeLay	Kolbe	Regula
Dickinson	Kramer	Rinaldo
Dingell	Lagomarsino	Ritter
DioGuardi	Latta	Roberts
Dornan (CA)	Leach (IA)	Robinson
Dowdy	Lent	Rogers
Dreier	Lewis (CA)	Roth
Duncan	Lewis (FL)	Roukema
Dyson	Lightfoot	Rudd
Eckart (OH)	Livingston	Saxton
Edwards (OK)	Lloyd	Schuette
Emerson	Loeffler	Schulze
English	Lott	Sensenbrenner
Evans (IA)	Lowery (CA)	Shaw

Shumway	Snyder	Thomas (CA)
Shuster	Solomon	Valentine
Siljander	Spence	Vucanovich
Sisisky	Staggers	Walker
Skeen	Stallings	Weber
Skelton	Stenholm	Whitehurst
Slattery	Strang	Whittaker
Slaughter	Stump	Whitten
Smith (NE)	Sweeney	Wolf
Smith (NJ)	Swindall	Wylie
Smith, Denny (OR)	Tallon	Young (FL)
Smith, Robert (NH)	Tauke	Zschau
	Taylor	

NOT VOTING—43

Barnard	Hansen	Roemer
Bateman	Hughes	Rose
Bliley	Hyde	Schaefer
Boland	Jones (OK)	Sharp
Breaux	Kastenmeier	Smith, Robert (OR)
Broomfield	Kemp	Stangeland
Burton (CA)	Kennelly	Stokes
Campbell	Kindness	Sundquist
Clay	Lehman (FL)	Torricelli
Dannemeyer	Mica	Volkmer
DeWine	Mikulski	Walgren
Fish	Moore	Weaver
Ford (TN)	Owens	Weiss
Fowler	Pashayan	
Grotberg	Rodino	

□ 1715

Messrs. GAYDOS, NELSON of Florida, and CHAPMAN changed their votes from "yea" to "nay."

Messrs. ROWLAND of Connecticut, WORTLEY, PICKLE, and MARTIN of New York changed their votes from "nay" to "yea."

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. UDALL. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H.R. 2868, the bill just passed.

The SPEAKER pro tempore (Mr. GRAY of Illinois). Is there objection to the request of the gentleman from Arizona?

There was no objection.

REQUEST FOR CONSIDERATION OF S. 2750, HOULTON BAND OF MALISEET INDIANS SUPPLEMENTARY CLAIMS SETTLEMENT ACT OF 1986

Mr. UDALL. Mr. Speaker, I ask unanimous consent that the Committee on the Interior and Insular Affairs be discharged from further consideration of the Senate bill (S. 2750) to establish a property tax fund for the Houlton Band of Maliseet Indians in furtherance of the Maine Indian Claims Settlement Act of 1980, and for other purposes, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arizona?

Mr. WALKER. Mr. Speaker, I object.

The SPEAKER pro tempore. Objection is heard.

CONFERENCE REPORT ON H.R. 3773, FEDERAL TECHNOLOGY TRANSFER ACT OF 1986

Mr. FUQUA. Mr. Speaker, I call up the conference report on the bill (H.R. 3773) to amend the Stevenson-Wydler Technology Innovation Act of 1980 to promote technology transfer by authorizing Government-operated laboratories to enter into cooperative research agreements and by establishing a Federal Laboratory Consortium for Technology Transfer within the National Science Foundation, and for other purposes.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Pursuant to the rule, the conference report is considered as having been read.

(For conference report and statement, see proceedings of the House of October 2, 1986.)

The SPEAKER pro tempore. The gentleman from Florida [Mr. FUQUA] will be recognized for 30 minutes, and the gentleman from New Mexico [Mr. LUJAN] will be recognized for 30 minutes.

The Chair recognizes the gentleman from Florida [Mr. FUQUA].

GENERAL LEAVE

Mr. FUQUA. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the conference report now under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

Mr. FUQUA. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I urge adoption of the conference report on H.R. 3773, the Federal Technology Transfer Act of 1986.

This bill gives us the opportunity to do something very positive about competitiveness, something very positive about getting the most out of our tax dollars. By changing the rules on how our Federal laboratories do business, this bill will aid our private sector in many ways at no extra cost to the taxpayers.

The conference report is not dramatically different from the original House-passed version of H.R. 3773. The bill has the same main themes. All federally owned, federally operated laboratories if their parent agency so desires, will be able to contract with private businesses, universities, local governments and others to solve problems of mutual interest. The Federal Laboratory Consortium [FLC] will be formally established at the National Bureau of Standards rather than at the National Science Foundation. However, the Federal Laboratory Consortium will still be the facilitator of the transfer of Federal inventions and ideas into the private sector that was envisioned in the House-passed bill. The bill in its present form still requires all agencies to setup programs to reward their most innovative researchers for their most exceptional contributions both to mission work and to the development of laboratory ideas with commercial potential.

What is new in the bill is a series of expansions, additions, and procedural modifications to the House-passed bill none of which are fundamental in nature. Additional minor responsibilities are given to the Secretary of Commerce and the Federal Laboratory Consortium for technology transfer. Inventors whose inventions produce royalties for the Government are now allowed to share in those royalties under one of two alternate plans. A small Federal Laboratory Consortium program of grants to local technology transfer organizations is established. The House-passed requirement of agency plans for implementation of the cooperative research authority is dropped in exchange for a series of preferences which accomplish the same purpose. The integrity of the House-passed bill has been preserved and H.R. 3773 indeed has been strengthened by the Senate's and conferees' careful review.

There is one specific subsection I feel could use some additional explanation beyond the statement of managers. The alternate section is intended to give agencies a great amount of leeway in setting up a program of rewarding inventors. Agencies are encouraged to experiment, to setup programs which they feel met their unique circumstances as long as the program includes both a lump sum payment to inventors each year royalties are received on the inventor's invention and also a percentage share of royalties when receipts exceed a level that is set by the agency. For instance, an agency in its discretion could setup a first year lump sum payment amount that is different from the amount paid in subsequent years or it could choose to make its largest lump sum payment to the inventor in the year of licensing rather than when royalties are received and have that payment count toward the requirement of 15 percent of royalties going to the inventor.

In closing, I urge my colleagues to endorse the work of your conference committee.

Mr. LUJAN. Mr. Speaker, I yield myself such time as I may consume.

I rise in strong support of accepting the conference report on H.R. 3773. One of the central themes running through our debates this Congress has

been the need to make the United States more competitive economically.

There are many steps that must be taken to achieve that improvement. One of the simplest and most obvious is making better commercial use of the unparalleled advances in basic science and engineering being made in this country.

One example should suffice to show the importance of this step. An article in last week's Wall Street Journal began as follows:

Clifford Hesseltine's experience as U.S. Government scientist was classic. He did some research on toxins, published results that caught the eye of industrialists with a problem, and won a Government citation for saving an industry.

The citation was the Third Order of the Rising Sun, bestowed on behalf of the Emperor of Japan, in recognition of Mr. Hesselltine's service to Japan's soy sauce brewing industry.

This bill is designed to prevent the recurrence of similar embarrassments in the future. It is the culmination of years of work, going back at least as far as the Packard Commission on Federal laboratories in 1982, which noted the untapped potential of Government laboratories to help American industry.

This bill attacks the problem in several ways. First, it allows Federal laboratories to work with industry, nonprofits, and other levels of government on research and commercialization of inventions. The bill replaces statutory hindrances to cooperation with statutory encouragement.

The bill recognizes the importance and fine work of the Federal laboratory consortium [FLC], the ad hoc organization of Federal labs that acts as a networking agent to promote technology transfer. It gives the consortium a basis in statute, a steady stream of income and a permanent home.

Finally, the bill gives Government employees an incentive to work on projects that have commercial potential.

Although agencies have the authority to make cash awards to innovative scientists, this authority has been little used. In the 31-year period between 1954 and 1985, for example, agencies other than NASA made only nine invention awards that required approval of the Office of Personnel and Management; that is, awards of more than $5,000 before 1978 and more than $10,000 since then.

This bill guarantees that Federal inventors will receive a share of the royalties from the licensing of their inventions. Agencies can either guarantee a 15-percent royalty share to each of their inventors, or can propose an alternative that will give the agencies greater flexibility in deciding how to reward inventors through a combination of lump-sum cash payments and royalty shares. However, under the alternative, total payments to all inventors must exceed 15 percent of an agency's royalty income.

Royalty payments were the stickiest issue in the conference. The Senate wanted to guarantee inventors a share of the royalties. The House wanted to ensure that agencies could tailor royalty payments to the peculiarities of their labs. This compromise fulfills both those goals.

The bill makes clear that royalties should also be used to reward other members of the laboratory team who help bring inventions to commercialization.

At long last, we have a bill that provides both the institutions and the individuals the incentives needed to put our more than 700 Federal labs to work for the American economy. I urge my colleagues to support this conference report.

□ 1730

Mr. LUJAN. Mr. Speaker, I yield such time as he may consume to the gentleman from Illinois [Mr. MICHEL].

Mr. MICHEL. Mr. Speaker, as one of the authors of H.R. 3773, the Federal Technology Transfer Act of 1985, I rise in support of the conference report and strongly urge its adoption.

The Federal Technology Transfer Act is designed to increase research cooperation between Federal laboratories and private entities, and would help clear the way for greater commercial use of the ideas and inventions resulting from such research.

At present, we have some 380 Federal laboratories, in such diverse fields as health, space, energy, agriculture and defense. They spend upwards of $17 billion a year, and employ one-sixth of the Nation's research workers.

Yet, despite this major effort, the National Governors' Association concludes in a recent report that "these national laboratories are far from having begun to realize their full potential as catalysts for close industry-university research cooperation or as collaborators in joint university/industry research."

This is particularly damaging when it comes to our competitive position in the world market. We all know what our trade deficit is. We all know how our position as world leader in the areas of technology, innovation, engineering, and manufacturing has been eroding. While there are many reasons for this, certainly one of the significant ones is the failure of our industry to consistently translate new technology into competitive products.

But while many companies may not be fully taking advantage of our Nation's research, foreign nations have no qualms in this regard. Much of the research which is not being used domestically is in fact being used abroad. Foreign countries have access to any research that is not patented or licensed for use in this country, and many foreign governments, particularly the Japanese, are taking full advantage of this.

This was brought home graphically to us in my own district, where they tell me that Japanese representatives are frequently seen prowling the halls of the agriculture research lab in Peoria looking for ideas. In fact, one of the scientists in that lab was awarded a medal by the Japanese Government for helping to solve some of their agriculture problems.

Now, I have no problem with our being a friendly neighbor, but when other nations use our research to better compete against us by developing products which they in turn often import back into the United States, I think that's going too far. It's time we take steps to turn this situation around, and that is what this bill is designed to do.

The Federal Laboratory Review Panel of the White House Science Council has recommended greater collaboration between Federal laboratories and industry. But if industry is to become involved and provide resources and capital, it must be able to protect its investment through patent and licensing rights. Without this protection, such investment and ultimate commercialization of a research product will not take place.

I became particularly aware of this problem, and undertook the introduction of this legislation as a result of a collaborative effort that is being undertaken in my hometown of Peoria.

The Peoria Economic Development Council is presently organizing an Agriculture Research and Development Consortium which would pull together a number of corporations involved in agriculture research along with the Department of Agriculture Regional Research Laboratory in Peoria and several universities for the purpose of undertaking combined research endeavors. It is also expected that venture capital will be provided to turn the research findings into usable commercial products. The potential for jobs and new business investment is considerable.

I should also mention that the Illinois Legislature has enacted legislation which provides $50 million in low-interest bond funds for agriculture research and development. This indicates the importance which the entire State of Illinois places on cooperative research endeavors. For this State program to become effective, Congress must enact this measure.

This bill will help us become more competitive in the world market, increase the use of federally funded research, and assist in the creation of additional jobs in this country.

The conference report represents a reasonable compromise between the House and Senate versions of the bill.

The most controversial area was the issue of whether a specified royalty percentage should be awarded to Federal inventors, as the Senate provided, or whether it should be left up to the laboratories—the House position. The conference report comes down closer to the Senate position, in that it goes with a 15-percent royalty sharing percentage for the inventor, but waives that provision if an agency chooses to develop its own plan for rewarding inventors.

Some business groups seem to feel that such a mandated royalty percentage would set a standard which the private sector would have to follow as well. I don't think that's the case. I know that's not the intent of the conferees. Besides, most businesses normally allow Government practices to be used as precedents only when it serves their own interests, so I think some of the expressions of concern in this regard ring a little hollow.

This is a good conference report which will enhance our Nation's competitive position, and I urge its adoption.

Mr. Speaker, I certainly want to compliment the chairman, the distinguished ranking member, and the gentleman from New York [Mr. LUNDINE], the gentleman from Florida [Mr. FUQUA], the gentleman from New Mexico [Mr. LUJAN], and the others who have been so helpful in getting this legislation moved through the Congress and finally to see its full fruition by way of the conference report.

Mr. LUJAN. Mr. Speaker, will the gentleman yield?

Mr. MICHEL. I yield to the gentleman from New Mexico.

Mr. LUJAN. Mr. Speaker, I just want to take this time to congratulate the gentleman on introducing this legislation. It is something that has been needed for a long, long time. That is the way to get technology out into the private sector and for the benefit of our citizens, and so I congratulate the gentleman on introducing this legislation.

Mr. MICHEL. I thank the gentleman. It was a pleasure for me to testify before the committee earlier in the year, and I just felt all along that as a government we really had our head in the sand by doing all this research for which I was responsible in part for helping to fund through the Appropriations Committee process for many years, and then seeing that research simply lying on the shelves, for what reason we do not know. Now we are bringing it together, hopefully to put it to good work, and I am very happy to see it all happen.

Mr. FUQUA. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would also like to join in my compliments to the distinguished minority leader for his efforts in bringing this bill about, and hopefully, as he elucidated in his comments, we will bring about, as a result of that, more information becoming available in the marketplace so that it can be commercialized.

I again congratulate the gentleman, and express my thanks for his support and help.

Mr. Speaker, I yield 3 minutes to the gentleman from New York [Mr. LUNDINE], a distinguished member of our committee.

Mr. LUNDINE. Mr. Speaker, I rise today to urge the adoption of the conference agreement accompanying H.R. 3773, the Federal Technology Transfer Act of 1986. This legislation is designed to promote technology transfer from the Federal laboratories and represents a reasonable compromise between the legislation passed by the House last year, and the measure adopted in the other body in August. It enjoys strong bipartisan support in both Houses and deserves our approval here today.

It is clear that if the United States is to regain its position in the international marketplace, we will have to do a better job of translating new technology into competitive products. One way the Federal Government can contribute to this process is by promoting more effective utilization of technology produced by Federal laboratories. The Federal Government funds approximately half of this country's total research and development and much of this work is performed in Government-owned laboratories. The President's Commission on Industrial Competitiveness agreed and recommended that the Federal Government manage its research and development with more concern for commercial application and competitiveness.

In my view, the Federal Technology Transfer Act takes a step in this direction by promoting more effective utilization of the technology produced by Federal laboratories and encouraging cooperative research agreements between government operated laboratories and industry. The scientific and engineering expertise, the technology base, and the facilities and equipment within these laboratories are valuable national resources. This legislation allows these resources to be more readily shared with private companies wishing to develop new products and with local governments in need of technical solutions to their problems.

First, H.R. 3773 would give Federal agencies clear authority to permit their laboratories to conduct cooperative research with universities, industry, industrial development organizations, units of State and local government and others. Interest in cooperative research is increasing especially from State and local technology transfer organizations. These relationships should be encouraged and easier access to Federal technology permitted.

These cooperative agreements would be subject to a few conditions as proposed in the House measure. In negotiating agreements, preference must be given to business units located in the United States which agree that products embodying inventions made under the cooperative research and development agreement will be manufactured substantially in the United States. I feel that taxpayer-supported Federal technology should be used to create jobs and income at home, not abroad. A small business preference is also included.

In addition, Federal laboratories would have the authority to negotiate patent rights and licensing agreements with the collaborating party in an agreement.

Second, to further promote technology transfer from the Federal laboratories, the proposal formally recognizes the Federal Laboratory Consortium for Technology Transfer. The consortium is currently an ad hoc organization of representatives from over 300 Federal laboratories representing 11 Federal agencies. It has been the principal body during the last decade for networking between Federal laboratories and for facilitating technology transfer from the Federal sector. The effectiveness of the Federal Laboratory Consortium has been limited only by the resources available to it as an ad hoc organization.

H.R. 3773 recognizes the important contributions being made by the Federal Laboratory Consortium and the need to enhance the consortium's capabilities. This is accomplished by providing a temporary source of funding for the FLC and a Washington presence within the National Bureau of Standards, not by altering the present nature of the consortium as an organization of technology transfer officials from throughout the Government.

Finally, the proposal will provide incentives for Federal laboratories and their employees. Agencies will share some of the royalties earned from Federal inventions with the scientists and engineers who created them and with their laboratories. At the same time, agencies will have some flexibility in designing their awards programs.

If this authority is used effectively, incentive awards programs will encourage creativity and innovation among scientists, engineers, and technical personnel of the Federal Government. They will also boost employees morale and productivity by making individuals aware that their contributions to technology transfer are important.

In conclusion, I believe that this country's ability to provide high quality jobs and a higher standard of living for ourselves and our children depends on how well we promote technological

innovation. The measure before us today is a step in the right direction. It will help put technology to work to create jobs and I strongly urge its adoption.

□ 1740

Mr. LUJAN. Mr. Speaker, I yield such time as he may consume to the gentleman from New York [Mr. BOEHLERT].

(Mr. BOEHLERT asked and was given permission to revise and extend his remarks.)

Mr. BOEHLERT. Mr. Speaker, I rise in strong support of this conference report. The Technology Transfer Act of 1986 is designed to improve our economic competitiveness by tapping the talent that has been somewhat bottled up in our 700 some-odd Federal labs.

The United States continues to be the world leader in scientific research, yet, disturbingly, we lag behind our allies in applying the fruits of our research. American science and technology has been more often transferred overseas than around the corner.

This bill should reverse that situation. It encourages Federal laboratories and their scientists to work more closely with private industry and to be sensitive to the commercial applications of their work.

The bill also would provide a permanent home and a predictable source of funding for the Federal Laboratory Consortium. This group has been doing an exemplary job of bringing Federal science to the outside would, despite the organization's fragile, ad hoc structure.

The House and Senate committee staffs have labored long and hard to hammer out a compromise that provides definite economic incentives to promote technology transfer, while allowing each laboratory to tailor the system to its needs.

Mr. Speaker, I think this conference report and the whole bill, the whole process demonstrates what positive can be accomplished through good, bipartisan cooperation. What we have before us today is a tribute to the innovativeness and to the tenacity of the distinguished minority leader, the gentleman from Illinois [Mr. MICHEL] and the gentleman from New York [Mr. LUNDINE] my colleague on the committee. We need this bill to help our economy and I urge my colleagues to support it.

Mr. WALGREN. Mr. Speaker, I rise to support acceptance of the conference report on H.R. 3773, the Federal Technology Transfer Act of 1986 and urge my colleagues to give this legislation their wholehearted support.

For most of the 20th century the United States has been the undisputed world leader in new product development. When we studied history as school children we learned of the many American inventors who came up with the products and processes that make up modern life. These Americans, often from humble beginnings through sweat and tenacity transformed an idea into a commercial product and sometimes into a major company bearing their name.

Recently, we have slipped. While we still are probably the most creative people in the world, we have lost something in the implementation phase. All too often an American invention, like the videocassette recorder, becomes a commercial reality overseas rather than here at home.

In H.R. 3773 we partially address this problem by making the national laboratories more available to American industry. One out of six American scientists and engineers works for the Federal Government in a Federal laboratory. These 700 laboratories with a combined budget of over $18 billion wrestle with every kind of scientific problem imaginable ranging from a better understanding of the basic laws of physics to the problems of modern manufacturing. Yet foreigners seem to be more aware of this gold mine of ideas than Americans do. Lab employees frequently tell us that while the Japanese are constantly at their doors, it is relatively unusual to find American companies looking to them for new ideas to develop.

H.R. 3773 looks to correct this problem in a number of ways. It authorizes all Federal laboratories, with their agency's consent, to enter into cooperative research arrangements with U.S. industry, universities, local governments, and other interested parties to solve problems of mutual interest. It enhances the position of technology transfer officers in the Federal laboratories with the goal of increasing the number and quality of ideas moved from the laboratories into the American private sector and into commercial development. It formalizes a voluntary association of Federal laboratories called the Federal Laboratory Consortium for Technology Transfer (FLC). FLC is given money through a set-aside to become a clearinghouse for businessmen with technical problems and to continue its present activities including teaching technology transfer officers to do their jobs better. H.R. 3773 also provides rewards to creative people in the laboratory for contributions to the mission of the laboratory and royalty sharing for inventors whose ideas bring income to the Government.

H.R. 3773 is clearly a significant step in the right direction and a bill we approved unanimously last year. Let's vote for a more competitive America by approving the conference report.

Mr. LUJAN. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. FUQUA. Mr. Speaker, I have no further requests for time, I yield back the balance of my time, and I move the previous question on the conference report.

The previous question was ordered.

The conference report was agreed to.

A motion to reconsider was laid on the table.

U.S. VETERANS PROTESTING U.S. POLICY IN NICARAGUA

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from West Virginia [Mr. RAHALL] is recognized for 5 minutes.

Mr. RAHALL. Mr. Speaker, this past weekend I visited with four dedicated and courageous U.S. citizens who have put their lives in danger to stand up for what they believe in. I had the honor of meeting with Mr. Charlie Liteky who is leading a group of four United States veterans in fasting on the steps of the Capitol to protest the President's immoral war in Nicaragua. I presented to him a letter I sent to the President, urging him to meet with these men and discuss his policy in Nicaragua.

My meeting was especially gratifying in that several students and faculty from Marshall University in Huntington, WV, traveled to Washington to be with Charlie and his fellow veterans who are fasting—George Mizo, Duncan Murphy, and Brian Willson. I was proud that my fellow West Virginians cared enough to come to Washington and show their support for this noble endeavor.

I had a very insightful visit with Charlie and want to take this opportunity to salute him and his colleagues for the stand they are taking. I hope that the President will take notice of these fine men and reconsider his ill-advised and immoral war in Nicaragua. As these men enter their 37th day of fasting, I hope that all of my colleagues will take a moment to think about what these men are trying to bring to the attention of the American people.

REPORT ON RESOLUTION PROVIDING FOR CONCURRING IN SENATE AMENDMENT TO H.R. 5484, DRUG ENFORCEMENT, EDUCATION, AND CONTROL ACT OF 1986

Mr. PEPPER, from the Committee on Rules, submitted a privileged report (Rept. No. 99-974) on the resolution (H. Res. 576) Providing for taking the bill (H.R. 5484) to strengthen Federal efforts to encourage foreign cooperation in eradicating illicit drug crops and in halting international drug traffic, to improve enforcement of Federal drug laws and enhance interdiction of illicit drug shipments, to provide strong Federal leadership in establishing effective drug abuse prevention and education programs, to expand Federal support for drug abuse treatment and rehabilitation efforts, and for other purposes, from the Speaker's table with the Senate amendment thereto and concurring in the Senate amendment, with an amendment, which was referred to the House Calendar and ordered to be printed.

REPORT ON RESOLUTION WAIVING CERTAIN POINTS OF ORDER AGAINST CONFERENCE REPORT ON H.R. 2005, SUPERFUND AMENDMENTS AND REAUTHORIZATION ACT OF 1986, AND AGAINST CONSIDERATION OF SUCH CONFERENCE REPORT

Mr. PEPPER, from the Committee on Rules, submitted a privileged report (Rept. No. 99-975) on the resolution (H. Res. 577) waiving certain points of order against the conference report on the bill (H.R. 2005) to amend title II of the Social Security Act and related provisions of law to make minor improvements and necessary technical changes, and against the consideration of such conference report, which was referred to the House Calendar and ordered to be printed.

TRIBUTE TO BISHOP ROBERT F. JOYCE

The SPEAKER pro tempore (Mr. MONTGOMERY). Under a previous order of the House, the gentleman from Vermont [Mr. JEFFORDS] is recognized for 5 minutes.

Mr. JEFFORDS. Mr. Speaker, Vermont has had many great leaders. One of them, Bishop Robert F. Joyce, Bishop of Burlington, the Catholic Diocese of Vermont, is celebrating his 90th birthday today.

The rugged character of Vermont living has produced many national leaders and treasures. Senator George D. Aiken being the latest. Ethan Allen an earlier one.

Yet, other great Vermonters have touched and changed the lives of tens of thousands without national notoriety. Bishop Joyce is one of them.

Through my father, I had the pleasure and opportunity to meet several of our exceptional leaders of a generation ago. One of them was Bishop Joyce. He and my father were close friends and Saturday night bridge partners. The opportunity to observe his incredible personality, kindness, and character made an indelible impression on me, and I hope made me a better person.

Even now when I'm passing through an area wanting to stop and see a friend but feeling I'm too hurried, I'll pause and say to myself, "Bishop Joyce would find the time"—and I do.

He is one of those rare individuals that when he walks into a room, everyone's spirits lift immediately. Not being a Catholic, I did not have the benefit of his Sunday sermons. However, I do attend the annual Labor Convention.

Each year, for many years, he would give a brief talk, or sermon, at that convention. Moving and humorous, his talk would cause those listening to pledge themselves to a better life. His extraordinary efforts in charitable drives always resulted in success.

He did not slow down upon retirement as bishop in 1972. He continued to serve as a parish priest, summer and winter. He continued to visit with people who needed a little extra attention either because they were not well or were suffering some personal loss. He always stopped by to visit my mother in her later years. He never says no to anyone who asks for his personal attention.

Bishop Joyce was born in Proctor, VT, in 1896 and graduated from the University of Vermont with Phi Beta Kappa honors. He was ordained in 1923 and, with the exception of a leave-of-absence to serve overseas as chaplain in the U.S. Army during World War II, Bishop Joyce spent his entire career in churches and schools in Vermont. He was consecrated Bishop of the statewide Roman Catholic Diocese of Burlington in 1957.

He served as Bishop of Burlington from 1957 until his retirement in 1972 during which time he attended the four sessions of Vatican Council II at Rome.

During that time Bishop Joyce has been a source of inspiration to me and many, many other Vermonters and he continues to assist many of us to this day, both spiritually and as a friend and confidant. He is never at a loss for a kind word or appropriate observation.

Each time I have the opportunity to visit with Bishop Joyce, as I was fortunate enough to do last week, I come away feeling special just to have been able to share a few moments with him. His astute and honest observations of current events are always thought provoking and oftentimes shed a much clearer light on issues of the day.

On the occasion of Bishop Joyce's 90th birthday, I want to wish him well, thank him for his many years of help and guidance and let him know I look forward to many more years of his friendship.

The President has joined in this celebration. Let me read his letter to Bishop Joyce.

The letter follows:

THE WHITE HOUSE,
Washington, October 6, 1986.

The Most Reverend ROBERT F. JOYCE,
243 North Prospect Street,
Burlington, VT.

DEAR BISHOP JOYCE: Nancy and I are delighted to congratulate you on your 90th birthday. We hope that your celebration is filled with every happiness.

As you reflect on a rich life of service to God and your fellowman, you must feel a tremendous sense of fulfillment. You have greatly enriched the lives you have touched and this special occasion gives us a chance to thank you for all the good you have done. May God bless you.

Sincerely,

RONALD REAGAN.

□ 1750

GENERAL PULASKI'S MEMORIAL DAY

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Illinois [Mr. ANNUNZIO] is recognized for 5 minutes.

Mr. ANNUNZIO. Mr. Speaker, October 11 marks the 207th anniversary of the day on which the great Polish patriot and military leader, Gen. Casimir Pulaski, gave his life in our fight for independence during the American Revolutionary War. Pulaski's name is known to all Americans, and to all people who value freedom, for he is remembered as a person whose selfless contributions and sacrifices personified the ideals which gave birth to our Nation.

Born in the province of Podolia in 1748, Casimir Pulaski became actively involved in the resistance to Russian encroachment on Polish independence during the years 1768 to 1772. Although his military activities met with some success, Pulaski was unable to prevent the partitioning of his beloved country of Poland, and he was forced into exile. However, his deep commitment to the ideals of freedom never wavered.

In 1777, Pulaski met Benjamin Franklin in Paris, where Franklin was so favorably impressed that he gave him a letter of introduction to Gen. George Washington, and Washington soon entrusted Pulaski with the grave responsibility of reorganizing the American cavalry forces. Pulaski accomplished this task with such skill that he was placed in command of these units, and proceeded to distinguish himself in every subsequent encounter with the enemy. Because of his meritorious efforts, the Continental Congress granted him a commission as brigadier general.

In 1779, in several fierce battles against the British in South Carolina, General Pulaski reinforced his reputation as a superior military commander. Sadly, however, on October 9, 1779, in a final act of bravery, Pulaski was mortally wounded while leading a valiant charge against the British during the Battle of Savannah, in Georgia, and he died 2 days later.

Gen. Casimir Pulaski was a man of extraordinary capabilities, and is representative of the numerous outstanding contributions that Americans of Polish descent have made to our country. His examples of sacrifice to our Nation, and his devotion to the cause of freedom are an inspiration to generations of Polish Americans, and to all people who cherish the precious blessings of liberty.

Mr. Speaker, I am proud to join with Americans of Polish descent in the 11th Congressional District of Illinois, which I am honored to represent, and Polish-Americans throughout this Nation, in commemorating the 207th anniversary of General Pulaski's heroic and inspiring sacrifice during the American Revolution.

THE DETENTION OF PJETER IVEZAJ IN YUGOSLAVIA

The SPEAKER pro tempore. Under a previous order of the House, the gen-

tleman from Illinois [Mr. CRANE] is recognized for 5 minutes.

Mr. CRANE. Mr. Speaker, in the wake of the release by the Soviet Union of American journalist Nicholas Daniloff, the fate of another American, currently on trial in Communist Yugoslavia, will be decided as soon as tomorrow. Mr. Pjeter Ivezaj, a Detroit area resident, was arrested in July while visiting relatives in Yugoslavia on charges of participating in a demonstration in front of the Yugoslav Embassy in Washington in 1981. The 1981 demonstration protested Yugoslav treatment of its Albanian citizens.

Although Mr. Ivezaj's case has not received nearly the same media coverage as that of the Daniloff case, the injustice that he is suffering is certainly no less than that experienced by Mr. Daniloff. To ensure the prompt release of Mr. Ivezaj, I would strongly urge the administration to exert the same pressure on the Yugoslav Government as was used on the Soviet Union. Diplomatic pressure in the form of expulsions of Yugoslav personnel at the United Nations and at their Embassy in Washington should be used, as well as economic pressure.

Specifically, I join with my colleagues on the Foreign Affairs Committee who have proposed to eliminate Yugoslavia's most favored nation [MFN] trading status until such time that Mr. Ivezaj is released. This MFN status allows Yugoslav goods to be imported into the United States at low tariff rates. I would further suggest that the United States should withhold additional Eximbank loans to Yugoslavia until this case is resolved.

The United States cannot idly sit by and allow its citizens to be persecuted in Communist countries. At the very least, until these countries recognize and protect the rights of American citizens, we must stop economically supporting them.

I call on the Yugoslav Government to secure the immediate release of Mr. Pjeter Ivezaj.

CHARLES E. KELLY MEDICAL CENTER

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Pennsylvania [Mr. EDGAR] is recognized for 5 minutes.

Mr. EDGAR. Mr. Speaker, I rise today to introduce legislation to name the Veterans' Administration Medical Center in Pittsburgh, PA, for Charles E. Kelly.

Charles Kelly was born in Pittsburgh on December 23, 1920, and died at the VA Medical Center there on January 11, 1985. He was a corporal in Company L, 143d Infantry, 36th Infantry Division during World War II. He was awarded the Congressional Medal of Honor for conspicuous gallantry and intrepidity at risk of life above and beyond the call of duty for an act of heroism which took place on September 13, 1943, near Altavilla, Italy.

Corporal Kelly voluntarily joined a patrol which located and neutralized enemy machinegun positions. After this hazardous duty, he volunteered to establish contact with a battalion of U.S. infantry which was believed to be located on Hill 315, a mile distant. He traveled over a route commanded by enemy observation and under sniper, mortar, and artillery fire; and later returned with the correct information that the enemy occupied Hill 315 in organized positions. Immediately thereafter, Corporal Kelly, again a volunteer patrol member, assisted materially in the destruction of two enemy machinegun nests under conditions requiring great skill and courage. Having effectively fired his weapon until all the ammunition was exhausted, he secured permission to obtain more at an ammunition dump.

Arriving at the dump, which was located near a storehouse on the extreme flank of his regiment's position, Corporal Kelly found that the Germans were attacking ferociously at this point. He obtained his ammunition and was given the mission of protecting the rear of the storehouse. He held his position through the night. The following morning, the enemy attack resumed. Corporal Kelly took a position at an open window of the storehouse. One machinegunner had been killed at this position and several other soldiers wounded. Corporal Kelly delivered continuous aimed and effective fire upon the enemy with his automatic rifle until the weapon locked from overheating. Finding another automatic rifle, he again directed effective fire upon the enemy until this weapon also locked. At this critical point, with the enemy threatening to overrun the position, Corporal Kelly picked up 60-millimeter mortar shells, pulled the safety pins, and used the shells as grenades, killing at least five of the enemy. When it became imperative that the house be evacuated, Corporal Kelly, despite his sergeant's injunctions, volunteered to hold the position until the remainder of the detachment could withdraw. As the detachment moved out, Corporal Kelly was observed deliberately loading and firing a rocket launcher from the window. He was successful in covering the withdrawal of the unit, and later in rejoining his own organization. Corporal Kelly's fighting determination and intrepidity in battle exemplify the highest tradition of the U.S. Armed Forces.

Mr. Speaker, to name the Pittsburgh Veterans' Administration Medical Center for Charles E. Kelly is a fitting tribute to his gallantry and a visible symbol of the appreciation of the citizens of Pittsburgh, as well as the whole State of Pennsylvania, for his bravery.

ORDER OF BUSINESS

Mr. LATTA. Mr. Speaker, I ask unanimous consent to vacate my 60-minute special order and to replace it with a 5-minute special order this evening.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

TRIBUTE TO THE HONORABLE THOMAS N. KINDNESS

The SPEAKER pro tempore (Mr. MONTGOMERY). Under a previous order of the House, the gentleman from Ohio [Mr. LATTA] will be recognized for 5 minutes.

Mr. LATTA. Mr. Speaker, several times in the past days we have risen to pay tribute to those among us who will soon take their leave of this body. Today I rise to pay tribute to one of my Ohio colleagues, TOM KINDNESS. TOM KINDNESS has an outstanding and enviable record as a public servant; city councilman, mayor of Hamilton, Ohio, State representative.

Since the day TOM came to Congress 12 years ago, I have had a great respect and admiration for him. TOM's service to the Congress of the United States, to the State of Ohio and to his district has been marked with competence, diligence, intellect, and dedication. TOM does his homework; he works hard; he gets the job done.

Every one of us who has worked with TOM appreciates his professionalism, but even more we appreciate his unfailing courtesy and, yes, his kindness.

The qualities of integrity, vision, dedication to principle, fairness, and respect for others are attributes which we admire, and we find them all in abundance in the person of TOM KINDNESS.

It is good to have this opportunity to express our admiration for TOM KINDNESS to wish him good luck and good health as his life takes a new direction. TOM has been one of the most highly esteemed Members of this House. We will miss him.

Mr. Speaker, at this time I yield to the gentleman from Mississippi, the minority whip.

Mr. LOTT. I thank the gentleman for yielding.

Mr. Speaker, I am going to miss TOM KINDNESS. However, there is no more outstanding individual who the House could send over to the other body to make them put their noses to the grindstone.

You see, TOM's training ground in the House has been the Judiciary Committee—that liberal bastion from which more law and order Congressmen have washed out than marines from boot camp at Camp Lejeune.

TOM not only survived the Judiciary Committee, but with a bulldog's refusal to let go, he made it work. When the regular process broke down, it was TOM who helped carryout the extraordinary procedures which forced landmark bankruptcy court legislation to the floor and eventually into law.

His tenacity brought the enactment of criminal code reform amendments and the gun control bill, and brought voluntary school prayer and compre-

hensive drug legislation to the floor for a vote.

In his 12 years as Ohio's Eighth District Congressman, TOM KINDNESS' modus operandi has been to keep his powder dry and his legislating effective and true.

He would rather pick a banjo than pound a podium, and prefers to conserve his hot air for his performances with the Capitol Hill Conservative Conservatory Band.

TOM KINDNESS' legacy in the House could be measured by our justice system's ability to apprehend and keep criminals off the streets.

But it will be the spirit of that energetic banjo player from Hamilton we will remember when we recall the hard work of the Gentleman from Ohio.

Mr. RUDD. Mr. Speaker, for 12 years TOM KINDNESS has represented his home State of Ohio with distinction in the House of Representatives. I am pleased to join with my colleagues tonight to honor him and also wish him well in his future endeavors.

As the second ranking minority member on the Government Operations Committee, TOM has played a key oversight role in Congress—since this important committee has primarily oversight responsibility over all activities of the Federal Government. This has placed TOM in a position where he has worked effectively to increase both the economy and efficiency of the Federal Government—and saved U.S. taxpayers millions of dollars.

Mr. Speaker, in his capacity on the Government Operations Committee, Congressman KINDNESS has performed admirably, and his efforts to reduce the cost of Government, while increasing its effectiveness, have served Ohio and all Americans well.

TOM KINDNESS has an equally impressive record as a hard-working legislator and effective member of the House Judiciary Committee. His expertise on constitutional questions is well-known and respected. And, I might add, his efforts in the fight against domestic and foreign drug trafficking will help to make our country and our children's future both safe and better.

Mr. Speaker, we will miss Congressman KINDNESS in this body. But I believe our loss in the House of Representatives will be the other body's gain—and for this I am grateful. Tonight I would like to salute the leadership ability and hard work of TOM KINDNESS. He is a great American, and interestingly, one fantastic banjo player. I hope to see him continue his active leadership and needed efforts for his State, our Nation, and the party, as he leaves this body at the end of the 99th Congress.

Mr. HORTON. Mr. Speaker, after 12 dedicated years, our colleague TOM KINDNESS is leaving the House Chamber to run for the U.S. Senate in Ohio. The loss of his legislative acumen will leave a large void in this body in general, and in the Government Operations Committee in particular.

As the ranking minority member of Government Operations, and as a member of that panel for the past 24 years, I have had the immense pleasure of working with TOM for the last 10 years on committee-related issues. TOM, the second ranking minority member, has been instrumental in guiding legislation through the committee on issues ranging from the Freedom of Information Act to the Omnibus Drug Act. He has served as the senior Republican on two different subcommittees, and has worked extremely well in the 99th Congress with GLENN ENGLISH, the Government Information, Justice, and Agriculture Subcommittee, chairman.

Those who know TOM realize that there is something very special about this gentleman. You'll never see TOM blow his own horn. You will, however, see him on the committee level probe and delve into issues many of his colleagues had not even considered. TOM has gained a reputation among those who testify before the Government Operations Committee as a brilliant orator with a knack for asking the right question.

History, I believe, will look kindly upon the gentleman from Ohio. As a senior member of the Judiciary Committee, he has consistently fought for States rights, continually asking whether a particular issue must be handled at the Federal rather than the State level. One of his ideas was a constitutional amendment that would establish a court of the States to hear cases dealing with Federal intrusion into State prerogatives. While this amendment has never really gathered steam, it shows TOM's dedication to the rights of States.

My wife Nancy and I wish TOM the very best in his race for the U.S. Senate, and the very best in all he endeavors. His leadership and assistance on the Government Operations Committee will be missed by Members and staff alike.

Mr. MILLER of Ohio. Mr. Speaker, the close of this session of Congress marks the end of a distinguished career in the U.S. House of Representatives for one of my closest friends, TOM KINDNESS. He's leaving the House after 12 years of dedicated service to the citizens of his Ohio congressional district. He leaves with the mark of his contributions clearly stamped on such monumental legislative efforts as the Omnibus Drug Act of 1986, the Privacy Act, Criminal Code Reform amendments, and the Freedom of Information Act.

I have known TOM as a friend and able legislative leader in this House and I've personally seen the progress we've enjoyed in Ohio on a variety of projects that can clearly be traced to his hard work and dedication to a particular issue. Financially strapped farmers in the Buckeye State have looked to TOM for leadership in working with the Farmers Home Administration [FmHA] and he has consistently responded to their needs and interests. As a result, Ohio's agriculture community is better for having had TOM KINDNESS at the front of the collective congressional effort for years.

We will miss him in the Chamber for several reasons, but most of all we will miss him as a true friend and dedicated colleague. We wish him the very best.

Mrs. HOLT. Mr. Speaker, when I was first introduced to TOM KINDNESS, I thought "What a wonderful name," and in the years since then I have learned that the name fits his character.

TOM KINDNESS is, indeed, a kind man. We respect him not only for his intellect, which is worth admiring, but also for his personal qualities.

He decided to leave the House of Representatives after six terms to run for the Senate. I suppose it was inevitable that he would try for statewide office after a career that has taken him from city councilman to mayor to State legislator to Member of the House of Representatives.

I am sure that all who have known TOM KINDNESS and worked with him in the House have a high regard for his good sense and accomplishments. He leaves the House with our affection and our best wishes, and our congratulations for the contributions he has made.

Mr. MONTGOMERY. Mr. Speaker, I want to join with my colleagues on both sides of the aisles in honoring Representative TOM KINDNESS for his 12 years of very dedicated service to the people of the Eighth District of Ohio and to this country.

TOM was certainly well qualified to serve in this great Chamber. He was a city councilman, mayor and State representative in the State of Ohio before being elected to the 94th Congress in 1974. He brought that experience and knowledge to Washington and he has been a very vital member of the Judiciary Committee, as well as the Government Operations Committee.

TOM can, and should, be proud of his years of service in this House. I am proud to have had the chance to serve with him.

Mr. SCHULZE. Mr. Speaker, TOM KINDNESS has been a dedicated and serious lawmaker for more than 20 years, serving the citizens of Hamilton on its city council and as mayor, and serving all Ohio residents as a member of the State house of represenatives and as a U.S. Representative. I know TOM KINDNESS, and I can tell you he's given those people representation of the highest caliber.

TOM is a man for detail when it comes to issues—he has to have all the facts. And when he makes a decision to support or oppose you, there's one thing of which you can be certain—he won't budge. A fence sitter he isn't. If he thinks you are wrong, by George, he'll take you on. If he thinks you are right, he backs you up all the way.

The people of Ohio generally, and of the Eighth District specifically, have been well represented since TOM was first elected to the House in 1974. He cares deeply about their problems and works tirelessly to help the manufacturing towns of Butler County, and the farming regions of Van Wert and Mercer Counties.

We are going to miss TOM KINDNESS, the serious student of the law and loyal Ohioan. We are also going to miss TOM KINDNESS, the fun-loving musician. TOM never turns down a friendly request to strum his banjo for a farewell or birthday party for a friend, and I know there have been many occasions where he's been asked to perform. Well, I can't play a farewell for you, TOM. I don't know how to strum or pluck a guitar or banjo. But I hope these words will sound as sincere without a musical background—farewell, good friend and peer. I wish you and Averil the very best in whatever you undertake. And I thank you for all you have given me in the way of friend-

ship and knowledge in our 12-year association.

Mr. SHUMWAY. Mr. Speaker, I appreciate having this opportunity to pay tribute to my friend and colleague, TOM KINDNESS, as he prepares to retire after 12 dedicated years of service in the Congress.

When I was a newly elected freshman Member, TOM was one of the senior Members who befriended me—something I am not likely ever to forget. Over the years, I came to rely upon his votes as wise and exemplary, befiting such a respected and responsible member of the Judiciary Committee. TOM KINDNESS has made his presence here known through his contributions to the crafting of some landmark measures, including the Freedom of Information Act, the Privacy Act, the Criminal Code Reform amendments and, most recently, the Omnibus Drug Act of 1986. His record has been marked by leadership, wisdom, and a profound commitment to human values and human needs.

To TOM, I say thank you for your friendship, your guidance, and your fine example. I will certainly miss you in the years to come, but I extend to you my most sincere best wishes for success and satisfaction in all of of your future endeavors.

Mr. GRADISON. Mr. Speaker, I want to thank my colleague and the dean of the Ohio delegation, DEL LATTA, for taking this special order in honor of TOM KINDNESS who will be retiring from the House of Represenatives at the conclusion of the 99th Congress.

I began my service in Congress in 1975. The freshman class that year also included TOM KINDNESS. He brought to the House a dedication already well known to the citizens of the Eighth Congressional District of Ohio. His career of public service began on the Hamilton City Council in 1965. From there, he was elected mayor of the city of Hamilton. In 1971, he was chosen to serve in the Ohio House of Representatives.

Since we came to Washington together, TOM has been a quiet and effective Member of the House. His work, particularly on the House Judiciary Committee, has revealed a consistent and principled view of the Consitiution that has earned the respect of other Members of this body.

Some say there are a number of "show horses" in the House who are merely interested in the public relations angle that can be gained from a position on a tough issue. TOM KINDNESS, by contrast, has shown himself to be a genuine "work horse," laboring diligently to represent the interests of the citizens of his district while keeping an eye on the general welfare of the Nation as a whole.

It is with sadness that I rise today to pay tribute to a man that I entered this Chamber with almost 12 years ago. TOM KINDNESS will be missed by all who have served with him.

Mr. BADHAM. Mr. Speaker, one of the great pleasures of my 10 years of service in this House has been my association with so many outstanding individuals who have dedicated themselves to ensuring the future security and prosperity of our Nation. It only follows, therefore, that there are feelings of loss and reminiscence when one of my long-time colleagues leaves Congress to pursue other interests.

My friend and colleague TOM KINDNESS is one such individual whose 12 years in this House has made a real difference through his service to his Ohio constituents and to our country.

During his time on the Judiciary Committee, TOM has never been reluctant to challenge the majority on issues about which he has strong convictions, such as the need to reduce the role of the Federal Government in the affairs of our individual 50 States. He has contributed significantly to such issues as the Freedom of Information Act, the Privacy Act, amendments to the Criminal Code and the Omnibus Drug Act of 1986.

For more than 20 years, TOM KINDNESS has put his own stamp on the political scene in a career that has spanned local, State, and now national Government. I will miss him here in the House but I wish him well in his future endeavors.

Mr. COURTER. Mr. Speaker, it is with great pleasure that I rise today to recognize my colleague, TOM KINDNESS, for his 12 years of dedicated service in the Congress.

His previous experience in law and State government earned him the reputation as a hard-working legislator. Since 1975 TOM has earned prestigious positions on various committees. He serves as the second ranking Republican on the Government Operations Committee, the ranking member on the Subcommittee on Government Information, Justice and Agriculture, and he is a six-term member of the Judiciary Committee.

To this end, TOM has made many contributions. He worked with the subcommittee to improve the fight against foreign and domestic drug trafficking. His efforts on the Judiciary Committee include successfully improving Government contracts law, and resolving the 1984 crisis in the bankruptcy court system. Equally important, TOM was a key player in the enactment of the Equal Access to Justice Act, was instrumental in the enactment of the Government in the Sunshine Act, and was an early advocate of the legislative veto.

TOM's hard work and dedication is an inspiration to us all. We will all miss his intelligence and sensitivity. I wish him all best wishes and continued success in his retirement.

Mr. HALL of Ohio. Mr. Speaker, I rise to pay tribute to my Ohio colleague, THOMAS N. KINDNESS, who is leaving the House of Representatives after 12 years of dedicated service.

TOM represents the Eighth District, which is adjacent to my own Third District. Because we both represent the Miami Valley, I have been privileged to work with him on matters of importance to the greater Dayton community. I have come to know TOM as a leader with a deep concern for his constituents and a rare diligence to duty.

Though we often use the word "gentlemen" with little discrimination around here, TOM was truly a gentleman in the best sense. This enhanced his ability to work well with Members of all political and ideological backgrounds and contributed to his effectiveness.

Though all House Members will surely miss TOM, I will particularly miss the working relationship that I have developed with our colleague from Ohio's Eighth District.

Mr. FUQUA. Mr. Speaker, I appreciate this time to tell TOM KINDNESS how much I believe he will be missed in the House. TOM and I serve together on the Government Operations Committee and I can truly say it has been a privilege to work and serve with him.

Although we sit on different sides of the aisle, we have joined together to work in committee and on the floor, for efforts we felt worthwhile. He is a tremendous ally and a worthy adversary. It is always better to have him as an ally, I can assure you of that.

I wish TOM the very best of luck in the years to come.

Mr. TRAFICANT. Mr. Speaker, I am pleased to have this opportunity to participate in this special order paying tribute to Representative THOMAS KINDNESS who is retiring from the House after 12 years of dedicated service—both to the people of the 8th Congressional District of Ohio and the Nation.

Since coming to Congress in January 1985, I have come to know TOM KINDNESS as a hard working and distinguished Member. He has also been a cooperative and effective member of the Ohio House delegation. In my 2 years in the House I have grown to respect TOM KINDNESS for his die-hard efforts to promote the well being of Ohio's farmers and I have had the pleasure to work with him on several initiatives in this area.

In addition to his long standing commitment to Ohio and the people of his district, TOM KINDNESS has been an effective legislator, contributing to the formulation and passage of many important initiatives over the past 12 years. TOM KINDNESS will be remembered for his excellent work as a member of the House Judiciary Committee and the House Government Operations Committee. His insightfulness and hard work contributed to the passage of important legislation such as the Freedom of Information Act, the Privacy Act, the Criminal Code Reform amendments, and the Omnibus Drug Act of 1986.

While many times standing on opposite sides of many issues, I respect TOM KINDNESS as a man of principle and integrity. I am especially grateful for his crucial support of my "Buy American" amendment to the fiscal year 1987 Defense Authorization bill. His vocal and timely support for this important amendment help pass this initiative which will greatly benefit American industry and American workers. TOM KINDNESS also had the foresight to support my bill to study the feasibility of constructing a waterway linking the Ohio River and Lake Erie. He recognizes the fact that we can ill-afford to ignore the great potential of this truly unprecedented water project. His support for this initiative is greatly appreciated and no doubt contributed to the unanimous approval of my study bill last week by the House Public Works and Transportation Committee.

Although I have been in the House of Representatives for only one term, I will miss TOM KINDNESS and the commitment to public service he brought to this institution. The Ohio delegation will miss his hard work and leadership, as I am sure the rest of the House will. In closing, Mr. Speaker, I would like to thank TOM KINDNESS for the work he has done and wish him and his family good health and happiness in the future.

Mr. BROWN of Colorado. Mr. Speaker, TOM KINDNESS of Ohio is leaving this body at the end of this session, and I want to join my colleagues in paying tribute to him and his many achievements as a Member of Congress during the past 12 years.

It was my great honor to serve with TOM during this Congress on the House Judiciary Subcommittee on Administrative Law, where he is the ranking Republican member. TOM also served on the House Government Operations Committee. During his tenure on these committees, TOM became involved with developing landmark legislation, including the Freedom of Information Act, the Privacy Act, the Criminal Code Reform amendments and the Omnibus Drug Act of 1986.

Born in Knoxville, TN in 1929, TOM went to high school in California and college at the University of Maryland and George Washington University. He settled in Hamilton, OH, where he became active in local affairs, serving with distinction as mayor and in the Ohio State Legislature. Elected to the 94th Congress, TOM has represented Ohio's 8th District in Washington since 1974.

We know TOM is seeking a seat in the other body, and I know all of us wish him well.

Mr. ENGLISH. Mr. Speaker, in politics as in life, the one thing that remains the same is that it all changes. Issues change, and people change. Several of my learned colleagues in these august Chambers will change after November, and some have announced they've changed already, one by challenging the incumbent from Ohio in "the other body."

That challenger is the gentlemen from Ohio, Mr. THOMAS KINDNESS, a colleague of mine in these chambers for many years where he has labored long and hard for the people he represents and the country as a whole.

Mr. KINDNESS steps down from this body after 12 years of service. For many of those years he has labored on the Subcommittee for Government Information Justice and Agriculture which has been dealing with the Nation's drug troubles and designing legislation to stem the flow of illegal dugs into this country.

The gentleman from Ohio displayed a tremendous zeal for delving into the work, and his time and effort are much appreciated. While naturally stopping short of issuing a ringing endorsement for a Republican challenger who covets the seat of a Democratic incumbent, we wish him continued success in his endeavors.

Mr. MATSUI. Mr. Speaker, I rise today to pay tribute to a colleague who is retiring at the end of this session, TOM KINDNESS of Ohio. From an outsiders perspective TOM and I might not appear to have a great deal in common. TOM is a Republican from the Midwest, I am a Democrat from the Far West. But TOM's qualities transcend partisan and regional boundaries. We served together on the Judiciary Committee where I was able to observe TOM's skill as a legislator. He is a man of integrity and conviction. He will be missed here and I wish him well.

Mr. ANNUNZIO. Mr. Speaker. I rise to join with my colleagues in the House of Representatives in paying tribute to Hon. THOMAS N. KINDNESS, who is retiring after 12 years of dedicated service to his constituents in the 8th Congressional District of Ohio.

Before coming to the House of Representatives, TOM KINDNESS served as a member of the Hamilton, Ohio City Council for three terms, and as mayor of the city of Hamilton for two terms. He also served for two terms as a Representative in the Ohio State Legislature.

Elected to the 94th Congress in 1974, TOM KINDNESS has distinguished himself as the ranking minority member of the Subcommittee on Administrative Law and Government Relations of the House Judiciary Committee, and as a member of the Subcommittee on Courts, Civil Liberties, and the Administration of Justice. His activities as the ranking minority member of the Subcommittee on Government Information, Justice and Agriculture of the House Government Operations Committee are most worthy of recognition, and during his tenure in the Congress, he played an important role in the passage of the Freedom of Information Act and the Privacy Act.

TOM KINDNESS is a Congressman of compassion, courage, and patriotism, who has provided exemplary service to his constituents, and to our Nation.

Mr. Speaker, I extend to TOM KINDNESS my best wishes for continued success in all of his future endeavors in devotion to the highest principles.

GENERAL LEAVE

Mr. LATTA. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the subject of my special order.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States was communicated to the House by Mrs. Emery, one of his secretaries, who also informed the House that on the following dates the President approved and signed bills and joint resolutions of the House of the following titles:

On October 1, 1986:

H.J. Res. 743. Joint resolution making continuing appropriations for the fiscal year 1987, and for other purposes;

H.R. 3358. An act to reauthorize the Atlantic Striped Bass Conservation Act, and for other purposes; and

H.R. 3622. An act to reorganize the Department of Defense and strengthen civilian authority in the Department of Defense, to improve the military advice provided to the President, the National Security Council, and the Secretary of Defense, to place clear responsibility on the commanders of the unified and specified combatant commands for the accomplishment of missions assigned to those commands and ensure that the authority of those commanders is fully commensurate with that responsibility, to increase attention to the formulation of strategy and to contingency planning, to provide for more efficient use of defense resources, to improve joint officer management policies, otherwise to enhance the effectiveness of military operations and improve the management and administration of the Department of Defense, and for other purposes.

On October 3, 1986:

H.R. 5480. An act to extend the expiration date of the Defense Production Act of 1950 and to authorize appropriations for purposes of such act.

On October 6, 1986:

H.J. Res. 710. Joint resolution to designate the week beginning October 12, 1986, as "National Children's Television Awareness Week"; and

H.R. 4260. An act to provide the Small Business Administration continuing authority to administer a program for small innovative firms, and for other purposes.

UPDATE ON THE NO-TAX-INCREASE PLEDGE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Georgia [Mr. GINGRICH] is recognized for 60 minutes.

Mr. GINGRICH. Mr. Speaker, I want to talk again this evening as we have for several evenings on the campaign which has been led by Americans for Tax Reform to get Members of Congress and candidates for the Congress to agree to pledge not to raise the tax rates in the 100th Congress.

As many of my colleagues know, there is a very aggressive campaign being developed across the country by Americans for Tax Reform to encourage the American people to ask their Congressmen and candidates for the congressional offices and senatorial offices to pledge now before the election that they will not raid the American family's pocketbook and the American family's budget with tax increases during 1987 and 1988.

The essence of the pledge is very simple: candidates are being asked to pledge that they will not raise the personal rate above 15 percent and above 28 percent and will not raise the corporate rate above 34 percent. In short, that they will keep the tax rates that we have just passed in the recently passed reform bill at the level that is in the bill, and will do it for the next 2 years.

This would, of course, require, absolutely require that the U.S. Congress look at spending as the primary way to control the deficit rather than raising your taxes.

It raises a very fundamental issue for the American people and for candidates for public office.

Is the correct answer to the deficit for the Congress to decide that it cannot control spending and so it is going to raise your taxes and force you to control your family budget because we cannot control the Federal budget? Or is the correct answer to hire Congressmen and Senators who are willing to come up here and work hard enough and work long enough and work smart enough so that they can

control the Federal spending so that you do not have to squeeze your family budget to pay higher and higher taxes?

This is the no-tax pledge which many of my colleagues will remember we began last week, I believe on Thursday, and in the very first hour we had six or seven Members who came in and signed. We now have above 30 who have signed. In a minute I will read their names.

We expect over the next few days to get fully 150 or 180 Members signing this pledge.

Out across America I have been told there are already over 100 candidates for the U.S. Congress who have signed the no-tax-increase pledge.

The pledge is very simple; it says I pledge to oppose any effort to increase tax rates from the 15 and 28 percent rates for individuals and the 34 percent top rate for businesses and to oppose any further reduction or elimination of deductions and credits unless matched dollar for dollar by further reducing tax rates.

In other words, the basic income tax should be set here in a way in which you can count on your Congress not raising your taxes and lowering your take-home pay. There is a second pledge which we have not had anyone agree to sign yet, which is the "Walter Mondale truth-in-taxing pledge." This pledge simply says, "Like Walter Mondale, I am telling you there will be a tax increase in the next Congress, taxes will go up."

We think it is fair for the average American to ask anyone who is running for public office, to walk up to him and say, "Look, I am earning a living, I am concerned about take-home pay. I am concerned about how much my family will have to spend in 1987 and 1988. Are you willing to take the no-tax-increase pledge or do you want to take the Walter Mondale tax increase pledge?"

The choice is very simple. I think any politician who says, "Oh, I really don't like either one of them," automatically ought to have a strike against him because if they are not willing to tell you that they will not raise taxes, there is a pretty good chance they will raise taxes. We say this because we know here in the House that a number of leading Democrats have already come out for tax increases. The chairman of the Democratic conference in the House has said he favors tax increases; the majority leader said he thinks there have to be tax increases; the chairman of the Ways and Means Committee, which is the committee which writes tax law, has said he wants to see tax increases; the current Speaker has indicated he thinks we should tax people more, the people are not taxed enough.

The question is very simple: when Democrat after Democrat in the House leadership calls for tax increases, there should be some question whether or not in fact that is not a signal for the Democrats next year, if they have a chance, will raise taxes.

Now, there are some Democrats who are not for raising taxes. At least two Democrats have agreed to sign the no-tax-increase pledge.

The Americans for Tax Reform are making a very concerted effort to encourage Democrats to come out and say they will not go along with their leadership, that they will oppose tax increases. But I have to tell you it is a very difficult thing for them to do.

We have here today, if I might just mention, DUNCAN HUNTER of California, TOM DELAY of Texas, BOB MCEWEN of Ohio, JOE BARTON of Texas, DON SUNDQUIST of Tennessee, ROBERT DORNAN of California, DAVE MONSON of Utah, BOB LAGOMARSINO—a member of the Republican leadership—from California, JIM KOLBE of Arizona, TRENT LOTT, the Republican whip, have all signed the no-tax-increase pledge, have all indicated that they are not willing to raise taxes in the next Congress.

I might mention, as I think is obvious to my colleagues, you have a very broad range of States and regions that are involved.

I would be delighted to yield to my colleague from North Dakota. I will go back later and add in the other two lists of names. I yield to the gentleman.

Mr. DORGAN of North Dakota. I appreciate the gentleman yielding.

Does the gentleman have a chart up there that contains a pledge on deficits? For example, are you folks in the minority pledging that you will not accept higher deficits? Or are you simply pledging no taxes?

Mr. GINGRICH. Well, we would be very glad to join with you in a pledge which says we will fight to control domestic spending, but go ahead.

Mr. DORGAN of North Dakota. Let me understand. When we started this debate last week, and I want to follow it through because I am trying to understand what your pledge is other than October, being in an even-numbered year, that is the miracle of democracy called an election, the pledge just happens to come during an election cycle of pledging no new taxes. We are a country that this year will have a $230 billion deficit. That is an operating deficit. That is on top of a $2.1 trillion debt, up $1.2 trillion just in the last 6 years.

So, you are pledging no new taxes. I do not think any of us in the House of Representatives, Democrats or Republicans, liberals or conservatives, like taxes. I do not know of anybody that likes taxes.

The question is, What kind of a fiscal policy works to get us toward a balanced budget?

Now, you are not only pledging no new taxes, but are you pledging to move us toward a balanced budget? Because if so, I would like to talk about how we get there.

Mr. GINGRICH. Well, I personally would be willing to pledge to move toward a balanced budget. I think Gramm-Rudman was a serious effort when it first came in and if the court had not ruled out sequestering, it would still be a serious effort toward a balanced budget. I voted for Gramm-Rudman.

Mr. DORGAN of North Dakota. Let me ask you: as I understand the premise of your fiscal policy, it would be that we will have, A, spending restraint generally; B, no new taxes; and C, revenue growth.

Mr. GINGRICH. I think the gentleman has clearly understood the central beliefs of our fiscal policy.

Mr. DORGAN of North Dakota. Now, revenue growth, I always hear people talk about how we ought to treat the Federal budget like a family budget. It seems to me that if the family is sitting around the table deciding what kind of a house can they afford to buy, the head of the family or the person with the pocketbook, either spouse, is not going to say to the other one, "Well, we can buy something that is much larger than you think because we are going to grow into this thing. We should buy based on some notion of an income that is well above today's income. We are going to experience growth."

I mean, families do not do that. Families buy based on what they earn.

Mr. GINGRICH. If my friend would yield, I think it is clear many American families, in fact particularly if they have a reasonably good guess, that next year "I will get a 6-percent pay raise," many families in fact precisely do things based on that.

When I was a graduate student, and I hoped someday to earn more money, I did not realize what they paid college teachers. I thought I had growth, but it did not turn out to be that way because they do not pay college teachers that much.

But I think you would find back home in North Dakota many people, particularly, for example, if they work for a larger corporation that has a scale where you can reasonably expect some kind of promotion, that they say, "Well, I think over the next 3 years we will be able to do a little better."

Mr. DORGAN of North Dakota. The only point I would make there is we embarked on that in 1981 with the notion that if we cut taxes, we would actually get more revenue.

Mr. GINGRICH. And if we froze spending.

Mr. DORGAN of North Dakota. Yes. I just do not happen to think that works. I think it is betting on the "come" in a way that is injurious to this country and its fiscal policy and probably leads to higher not lower deficits.

But what I would like to ask more precisely—I brought over a list of what we spend money on. I thought it would be useful for us to go through here and analyze if we have a fiscal policy that says absolutely no new revenue and if we have a fiscal policy that has this $230 billion in debt this year as an operating budget, then where do we make the cuts?

□ 1815

Mr. GINGRICH. No, not absolutely new revenue; absolutely no tax increases. I like more revenue from economic growth and better jobs.

Mr. DORGAN of North Dakota. All right, no new tax increases, but we have a $230 billion a year operating deficit. So the question is: How do we get that deficit down? What incremental chunk of the solution comes from growth, that is revenue growth, as the gentleman defines it, and what incremental chunk comes from actually reducing the expenditures of slightly over $1 trillion a year?

And then what I would like to talk about a little bit is, where do we get the expenditure reductions? I would like to go through them and see where we agree, if we agree. What part of this process is incremental growth, that is betting on the come, and what part is actual budget restraints?

Mr. DELAY. Mr. Speaker, will the gentleman yield?

Mr. GINGRICH. I yield to the gentleman from Texas.

Mr. DELAY. Mr. Speaker, I would like to ask the gentleman in the well, have the revenues gone down since 1981?

Mr. GINGRICH. No. I think they have gone up. I think our colleague, the gentleman from North Dakota, would admit that revenues went up after the tax cuts, revenues have gone up with economic growth and there have been 12 million new jobs created.

Mr. DELAY. So the argument that, because we had tax cuts in 1981, we cut our revenues and our revenues have gone down, is just fallacious. That is not the case. Our revenues have gone up. Our spending has increased 10 times ever since 1981.

Mr. GINGRICH. I do not think the increase was that. But I think the gentleman from Texas is essentially right, that revenues to the Federal Government, the amount of money that we take in, has gone up every year, and the amount of spending has gone up faster. If I had a graph or a chart right here, you would see one line down here for revenue and another line for spending. Spending, I think, has gone up faster than revenue every year in the eighties.

The gentleman on the Ways and Means Committee might tell us, is it not true that revenue went up every year?

Mr. DORGAN of North Dakota. The gentleman was being charitable when the gentleman said "essentially correct." It is not essentially correct.

The fact is that spending has not increased tenfold. It has not increased nearly that much. The largest increase in spending, of course, is the $150 billion in defense over the last 6 years.

While it is true that revenues have increased since 1981, it is also true that every single revenue estimate made from 1981 forward has missed its mark because revenues have not reached any of the estimate. They have been far lower than every single revenue estimate made from 1981 forward has missed its mark because revenues have not reached any of the estimates. They have been far lower than every single estimate. So the fact is revenues have not reached estimates. That has been our biggest problem.

Mr. GINGRICH. Revenues have been higher every year.

Mr. DORGAN of North Dakota. Yes, but they have consistently been lower than all of the estimates. That is the important thing.

Mr. DELAY. Mr. Speaker, if the gentleman will yield so I may answer, I may have been mistaken saying tenfold. That is an overexaggeration. Spending has doubled in that amount of time, and all these cuts that the Democrats keep talking about, that we have made these devastating cuts ever since 1981, is just not true. We have increased spending many, many times every year that we come to this Congress, much higher than the increase in revenue. It has nothing to do with cutting revenues; it has to do with spending.

Mr. WALKER. Mr. Speaker, will the gentleman yield?

Mr. GINGRICH. I yield to the gentleman from Pennsylvania.

Mr. WALKER. Mr. Speaker, I think that we also need to recognize that in the same period of time, in that 6-year period of time, that the gentleman from North Dakota refers to where spending for defense was $1.5 trillion, and we hear that figure repeated over and over again, that that is the problem, social welfare spending in that same period of time was $2.9 trillion. So that we in fact had almost double the amount of money spent for social welfare in that 6-year period as we did in the defense area.

There are a number of areas where that has expanded enormously, including, for instance, in agriculture, where we have expanded very, very rapidly the amount of money being spent, and in terms of percentages, by a far larger percentage than we expanded in the defense area, for example.

Mr. DORGAN of North Dakota. Mr. Speaker, will the gentleman yield?

Mr. GINGRICH. I yield to the gentleman from North Dakota.

Mr. DORGAN of North Dakota. Mr. Speaker, I thank the gentleman for yielding to me.

The answer is in the numbers. I mean the numbers are quite clear. We are spending about $300 billion in budget authority on defense. We are spending about $200 billion on Social Security. Incidentally, Social Security is fully funded, and this year is running a surplus. We are spending about $140 billion on interest on the debt, and about $100 billion on Medicaid and Medicare. Those are the biggest items in the Federal budget, those four, with defense the biggest. And defense happens to have increased by $150 billion in the last 6 years.

My only lament is that no one around here had the guts to say we need more security for America, so, my fellow Americans, I am going to have to ask you to pay for it. Noboby had the guts to do that. The result was we did not cut Social Security as some might have liked. I would not have liked that. But we did not make comparable cuts in the domestic side, the gentleman is right. We did not make $150 billion a year cuts on the domestic side to come up with an even budget, although we pared down in many areas on the domestic side and held it down. We instead increased defense by $150 billion, and nobody was asked to pay for it. That is the budget dilemma we are in today.

Mr. DELAY. Mr. Speaker, will the gentleman yield?

Mr. GINGRICH. I yield to the gentleman from Texas.

Mr. DELAY. I think it is interesting to note at this point, especially when people try to make the point that the reason we have a deficit is defense spending, it is incredible to me that if you look back under the Kennedy era, in the sixties—and please do not hold me to the exact figures because I did not expect to come here with these figures—but the point is still the same. Back then the defense spending was about 47 percent of the total budget, and social spending was about 29 percent of the total budget.

Today if we pass this continuing resolution, defense spending will be about 29 percent of the total budget, and social spending will reach over 50 percent of the total budget.

So it is not this runaway defense spending that is causing the deficit. In fact, today, we have not even reached the amount of defense spending that was projected by Jimmy Carter himself.

So it is not runaway defense spending. That is again trying to twist what

is really going on here. It is our social spending that we have not pared down. We continue to increase, and the numbers do speak for themselves.

If you would just look at how much we have increased spending every year, just last year over $47 billion, you cannot say that we are cutting budgets. You cannot cut a budget when you spend more than you did last year. It just does not happen. You might pick out a few here and a few there and say, "We cut that budget." But when you look at our total spending, we do not cut budgets around here.

Mr. SWINDALL. Mr. Speaker, will the gentleman yield?

Mr. GINGRICH. I yield to the gentleman from Georgia.

Mr. SWINDALL. Mr. Speaker, I just wanted to respond further to that point, because I have heard it so frequently in the last several weeks with respect to defense. I would like to just make a number of points.

The first point is that the Democratic nominee for President in 1984 made the categorical statement that anything less than a 3-percent real growth in defense would seriously jeopardize our Nation's security. It is significant that in the last 2 years we have had a real freeze in defense.

The second point was the point that the gentleman from Texas was making, and that comparing the budgets in relative terms, not using dollars because dollars, simply because of our inflationary policies, really do not mean that much in terms of comparison, but let us look at percentage of GNP.

Under the Kennedy administration before Vietnam, before we were embroiled in Vietnam, we were spending 10 percent of GNP on defense. Currently we spend 7 percent of GNP on defense.

One other point that I think is very significant is except for 1969, the last year incidentally that we balanced the Federal budget and World War I and World War II, we never spent at the Federal level more than 20 percent of GNP. Today we spend nearly 25 percent of GNP at the Federal level.

My point is the deficit can only be attributed to the growth in the Federal Government above and beyond historical spending levels of about 20 percent of GNP. That growth obviously has not occurred in defense. It obviously has occurred in the various entitlement programs, and therein lies the problem.

The reason I came over here, and this is unrelated to where you are now in the debate, but as I was watching on television, I heard the gentleman from Georgia mention various reasons that perhaps people would not be inclined to sign the no tax pledge. I found some interesting language that I would categorize perhaps as even a Freudian slip in the conference report on the tax reform bill.

Under the conference agreement with respect to long-term capital gains treatment, the following statement is made:

> The current statutory structure for capital gains is retained in the Code to facilitate reinstatement of a capital gains rate differential if there is a future tax rate increase.

I say it is a Freudian slip because this fits hand in glove with what the chairman of the Ways and Means Committee has been saying for some time, and that is we are going to have to have a tax increase. I think that this document speaks for itself.

Mr. GINGRICH. What page is that on? I am curious.

Mr. SWINDALL. That is a good question. It is on page 2–106, I believe. It is under the conference agreement, paragraph A.

Again, I would just have to say that it had to be a Freudian slip. They were so already looking forward to this tax increase that they could not resist the temptation of writing into the conference report their anticipation of that tax increase.

Mr. GINGRICH. So that is the preemptive tax act, in a sense. They are already setting up a structure to make it easy.

Mr. SWINDALL. Absolutely.

Mr. GINGRICH. Mr. Speaker, I yield to the gentleman from North Dakota.

□ 1825

Mr. DORGAN of North Dakota. Just a couple of points. If one is going to compare John F. Kennedy's spending versus 1982 spending, you have to make comparisons that are fair.

In the early 1960's, as the gentleman probably knows, Social Security was not part of the Unified Federal Budget, so you cannot make a comparison between a 1962 budget and a 1984 budget.

Mr. WALKER. If the gentleman will yield, those figures are based upon a melding together of Social Security, so that they are exactly similar figures. They are precisely similar figures; the figures used by the gentleman from Texas.

Mr. DORGAN of North Dakota. Well, they are not precise figures if you are talking about 47 or 49 percent; that is wrong. I am just saying it is wrong. It is something that is demonstrable.

Mr. GINGRICH. OK. Some time this week, hopefully by tomorrow, we will pull together the figures and we will enter them in the RECORD.

Mr. DORGAN of North Dakota. If the gentleman will yield, I do think the other gentleman's expression of percent of gross national product is valid. I do not have any problem with that.

The security problems in this country come not from a freeze at $300 billion budget authority per year for the Defense Department, it comes from $800 toilet seats and $7,000 coffeemakers and that sort of baloney. We need better management down there to make this country secure down at the Pentagon.

Mr. GINGRICH. I am fascinated; I think I know where you are going. I just want to say to you in advance, although I think I have some reputation as a conservative, I helped found the Military Reform Caucus because I agree with you and I am convinced the Congress will reform the Pentagon as long as we can raise taxes and avoid the problem of managing the Government.

Mr. DORGAN of North Dakota. If the gentleman will yield, that gets to the problem of where I really want to go and why I came over when I saw you with your pledge.

You pledge no new taxes. That might be fine, although, as I said the other day, my preference would have been in the tax bill and I made it known that you take half the money from closing loopholes and instead of using all the money from closing loopholes to drive down rates, let us take half the money and use half the money to drive down the deficit. It would have been a far better approach. But the President said "no." His tax increase, exactly. Getting the freeloaders to pay taxes is a tax increase as defined by this administration. I find that bizzarre to say the least.

What I hope we could probably do inasmuch as you say no new revenues, that means you get this problem solved two ways: A, restraint in spending, and B, through growth, or as I call it, "Wishbone Economics."

Let us talk about restraint in spending. Three hundred billion dollars on defense. Folks on your side are going to want to cut that? My guess you would say no. In fact, the President wants to increase it $35 billion. That is the biggest item of the budget.

Mr. GINGRICH. I think we have a majority in the Republican conference for not giving him the increases he wants, period.

Mr. DORGAN of North Dakota. But, the point is on the biggest part of the budget would you favor restraint? Would you favor a cut? Would you favor an increase? Where would you be on that on your side of the aisle.

Mr. GINGRICH. I would favor some kind of freeze until we have the budget balanced.

Mr. WALKER. If the gentleman will yield, I think on our side of the aisle that we are very definitely for restraint in defense spending. But we think that there ought to be the same kind of restraint shown in other areas

of the budget as we have been willing to show so far in defense.

The problem is that we hear all the talk from the other side about restraining defense and that is the only place they are willing to do anything in the budget. The rest of the places, we continue to pile it on. We came out here with a budget reconciliation bill the other day that actually added $1.8 billion of spending. Every time we face up to these crucial problems of dealing with the budget and none of that $1.8 billion has been defense; it was in other programs. It was in nondefense items.

Mr. MACK. If the gentleman will yield, I apologize for coming in late, so correct me if I am wrong: Have we already passed beyond the point of whether people are going to sign the pledge to hold the line on the marginal tax rates passed in the Tax Reform bill, and now we are into the all-important area of where we are going to reduce the spending? Is that what is happening?

Mr. GINGRICH. No. The gentleman from North Dakota has raised a very legitimate question, which is, if I may: Those of us who claim to be fiscal conservatives and say we will not raise taxes have an obligation to explain how we get to a balanced budget.

Mr. MACK. If the gentleman will yield, may I react to that and say to the gentleman that I think this side has for at least the last 4 years been not only willing but has explained how they would go about the process. I think what we need to do is find out from the gentleman where they are going to raise taxes.

I keep hearing that apparently we cannot do it on the spending side. I would like to hear where he would do it as far as raising taxes, if that would be a legitimate question.

Mr. DORGAN of North Dakota. If the gentleman will yield, I did not come to the floor to suggest a tax increase, although I happen to think we need an increase in revenue to solve this problem. I think the approach as described by you will not solve the problem. I would be glad to describe some of the alternatives to do that.

I do not want you to get off the point. You say that you have stood around here for 4 years willing to cut spending to solve the deficit problem. I am saying that is baloney. The fact is, there have not been, from either side of the aisle, suggestions in expenditure cuts that relate anywhere near to solving a $230 billion a year Federal deficit and I think you know that.

Mr. WALKER. If the gentleman will yield, I think that is just wrong and the National Taxpayers Union has done a pretty good job of detailing who is for spending money and who is for saving money.

They look at every one of the spending votes and what it shows is that some of us have compiled a pretty good record of voting against spending; of being willing to vote against the spending measures out here so that we do in fact save the money. The fact is, that if you look at the liberals in this body, most of them are voting to spend us blind and if you look at the conservatives in the body, most of them are willing to vote to save the money. They are actually willing to cast the votes to reduce the spending.

I would say to the gentleman that as far as this gentleman is concerned, I have cast the votes to reduce spending.

Mr. DORGAN of North Dakota. If the gentleman will yield, I wonder if you could describe to me the weighting of those votes in the National Taxpayer Union Guide. If you would answer me this question: Are those votes weighted by the size of the expenditure, or is it not true that a $35,000 vote weighs exactly the same in that index as a $300-billion vote on the defense bill? Is that not the case?

Mr. WALKER. If the gentleman would yield, let me tell what the National Taxpayers Union says. They said that they have analyzed every vote that affects the amount of Federal spending by including every vote concerning Federal spending, "NTU's analysis gives a truly unbiased picture of congressional spending attitudes."

That seems to me to be fair. Every vote is analyzed and we look at the votes and try to decide who is spending what. I would say to the gentleman in that regard the other night we had one of those votes. Two hundred one to 200 on whether or not we were going to vote for the single biggest spending bill in the history of the world. I would say to the gentleman that when that vote shows up in this particular guide next year, my guess is that his side of the aisle is not going to do very well and this side of the aisle is going to do pretty well because there were only 15 Republicans who voted against it and the Democrats passed it. That is the single biggest bill going. It seems to me that will probably be weighted as a spending vote but it should be weighted as a spending vote; it was an absolute monster, no one should have voted for that bill.

Mr. DORGAN of North Dakota. If the gentleman will yield, let me record then for the gentleman that his answer was "yes," in response to my question. The way they rate their votes, the way they rank their votes is that a $35,000 expenditure vote ranks the same as a vote on the DOD bill.

Mr. WALKER. If the gentleman will yield, let me quote from the National Taxpayers Union: "This year, for the first time, we have assigned weights to spending votes reflecting the degree to which each vote affects the amount of Federal spending. The NTU staff and 42 Members of Congress participated in assigning weights to the votes."

Mr. DORGAN of North Dakota. If the gentleman will yield, I appreciate the NTU making that change then. That comes as a result of my approach and others suggesting that a vote for a $35,000 item in Oregon ought not to be weighted the same as a vote for a $300 billion DOD project.

Incidentally, I cast the same kind of vote on the resolution last week as you did. I voted against it for a bunch of reasons. I think it is the wrong way to legislate. I do not think it is right thing to do around here.

The question I am trying to ask is: Where do you cut spending to get the $230 billion solution. I am not here saying, "Yes, I think we ought to have a big tax increase." I do not like a tax increase at all. But I do not like a pledge for a deficit either, and I do not like spending 80 cents for a dollar's worth of government and charging 20 cents to the grandkids. I like solutions and I want to find out what your solution is.

Mr. GINGRICH. Let me ask you one question first. There is a premise which you make I am really confused by because of my own history in this place.

When Reagan bought a tax increase in 1982, and I think all of us fought it pretty vehemently, we kept saying to him, "They are not going to keep their deal," and if you remember at the time, the rhetoric was, and he went on national TV and he said, "We have made a deal. For every $1 in tax increase, there is going to be a $3 cut in spending.

□ 1835

Mr. DORGAN of North Dakota. I believe that Senator DOLE said that was not true. That was not a deal.

Mr. GINGRICH. The President of the United States campaigned on it for weeks and weeks, and nobody slowed him down when they were running over us with the tax increase.

When they were done passing the bills that year, it turned out there was a $1 spending increase for every $1 tax increase.

The lessons those of us on the Republican side of the aisle have drawn from this is that the current Congress, the current liberal Democratic leadership on this side, and frankly, some people on the other side of the building, cannot bring themselves to control spending.

If we were to pass your tax increase, and then I concede that it would probably be a modest tax increase; I was trying to calculate, if we had taken half of the money from the loopholes that were closed in the tax reform bill, I think it would have been at least a $60 billion tax increase.

Mr. DORGAN of North Dakota. That is correct.

Mr. GINGRICH. Let us say we had a modest $60 billion tax increase, my concern is that a $60 billion tax increase would, in fact, lead to $60 billion in higher spending. I do not trust the current generation of politicians in this building because everything I have seen about them in terms of their propensity to spend more money is that given any possible loophole, they will wiggle out. In fact, we talked in 1984 about wiggle room, so you could pass a tax increase. Several of us helped write a platform that stomped the wiggle room out of the platform because we wanted no tax increase to force the crisis you are describing.

Mr. DORGAN of North Dakota. I understand the point the gentleman is making. What you are saying is that the solution has to come out of spending cuts. I am saying about half of this Federal spending is spending that your side loves, and the other half is loved by this side of the aisle. I do not know where the gentleman is going to get those spending cuts.

I would like to go down the budget and try to understand where they are going to come from.

Mr. GINGRICH. Let me ask the gentleman a question. I think you would find much more agreement than you might expect on a number of issues here: Military procurement, military bases that are open that are nonsense because, as I think a distinguished Member of your party from Michigan put in an amendment at one point to protect Indian forts in Michigan. Probably they would be nice as national historical parks, but I doubt very much that we need Indian forts in Michigan at the present time.

What would you guess, just as an off-the-cuff estimation from a fairly sophisticated Washington observer, is the percentage of waste in the Pentagon today, out of that $300 billion that you mentioned?

What percent would you guess of that $300 billion in Pentagon spending is waste?

Mr. DORGAN of North Dakota. I do not know. My guess is $30 to $40 billion.

Mr. GINGRICH. Let us take the low figure, $30 billion, which is not trivial. I guess what I would suggest is that if we in the Congress set as our goal specific legislative changes to just get two-thirds of it, $20 billion, out of the defense budget that is in specific definable waste, not just let us cut the same Pentagon that is wasting and now we are going to waste, but with $280 billion, not $300 billion. That does not get you anything. That just gets you a smaller, thinner military with the same guys wasting the same way.

But let us say we pass that.

Mr. DORGAN of North Dakota. Let us say that that cannot get passed. I think you know that and I know that.

Mr. GINGRICH. Sure, but in terms of an alternative tax increase to a $60 billion tax increase.

Second, I offered last year, largely at the recommendation of my good friend from Pennsylvania, the Reagan work fair plan. Now, work fair seems to have had a pretty dramatic impact on cutting spending in a number of States.

I suspect that in the agricultural Midwest, work fair is a relatively popular idea, that able-bodied adults ought to earn money; they should not be given money.

Work fair might save what, 10 percent of the current welfare budget?

Mr. DORGAN of North Dakota. It is a very small part of the Federal budget. I support work fair and think that some of the reforms that have been made in some of these areas have been very productive in recent years.

Mr. GINGRICH. Let us say we only save another $600 million or $1 billion.

Third example: I am a very big supporter of home health care. I think one of this Nation's goals should be to minimize hospital days and maximize the opportunity for people to be taken care of at home, for people not to have to go to a nursing home, to be able to be in their own environment and in their own neighborhood.

Again, certainly in terms of Medicare and Medicaid, not a trivial change, as I think my colleague knows because of his service on the committee, just doing something as simple as going to outpatient cataract surgery is a significant change. It is a change at the margin, but it is a significant change.

I suspect in health care, which is in many ways one of the most rapidly growing sectors in this society, you could easily save several billion dollars a year if you were to accelerate the transition to that kind of home health care and hospice and other kinds of innovations, again, with a lot of institutional resistance. Here I am talking about natural Republican allies.

Mr. DORGAN of North Dakota. I think those precise kinds of changes are now being forced in the Medicare system. I think that most Members on the Committee on Ways and Means will agree, my colleagues certainly will, that we have been forced to make some very serious changes in Medicare because of the reconciliation process.

What I want to say is that I agree with what the gentleman is saying, but you are talking about minnows, and I am talking about a whale here.

Mr. GINGRICH. I am just saying that if you collect enough minnows, they add up to a medium-sized whale after a while.

Mr. WALKER. Mr. Speaker, will the gentleman yield?

Mr. GINGRICH. I yield to the gentleman from Pennsylvania.

Mr. WALKER. Mr. Speaker, there are a number of areas. We could take a look at the fact that we are paying on the food side in two different ways. We pay for the Food Stamp Program at about $12 billion a year. We are paying for $25 billion worth of farm subsidies and growing massive surpluses which we are then paying to warehouse.

Why do we not go to some sort of a commodities program where we distribute some of the things that we are already paying for out through the food chain, and instead of giving people food stamps and so on, allow them to take commodities that we have already paid for instead of paying for it through food stamps? Why not have a commodities-based program?

You probably could save several billions of dollars. That is not a small item; it is a fairly big item that ends up being put into the system for savings.

There are a number of other things. Once again, that would cause a great amount of discussion and a lot of complaints from the welfare state people in this country, but the fact is that it is one of those kinds of things where we are paying on two different sides of the issue, and not getting any benefit for the taxpayer.

The taxpayer knows that if we want to talk about fraud in the military, the Food Stamp Program has been one of the most fraudulent programs we have run in the Government.

Mr. GINGRICH. I think the point I make to my friend is that if this Congress were to decide to devote its 100th Congress to fundamentally rethinking and overhauling the Federal Government, and if we could save in that process, $100 to $110 billion, and that would be nickle and diming it; that would mean closing down some military bases; it would mean changing the procurement process pretty radically. It would mean a lot of changes in health care, rethinking the work fair program, but if we could do that, and if we could, at the same time, and I think that downward slope—and we would not do it all in one year; I am not suggesting that.

I happen to think you cannot get a balanced budget in 1 year. We have defined for ourselves an impossible problem so we can shrug our shoulders and walk off. But I think you can pass changes in the next 2 years that clearly move you down to, say, half the current deficit.

If, at that point, we discover that economic growth at the same time is taking up most of the rest of the deficit, then when we start campaigning in 1988, we can have a whole new dialog.

Then it might make some sense to talk about tax increases.

What bothers me is why would you talk about tax increases before you force the Congress to thoroughly inch-by-inch overhaul the Federal Government? Why should we take a dollar out of the pockets of our friends back home because we have not got the energy and the drive and the determination to save that dollar up here?

Mr. DELAY. Mr. Speaker, will the gentleman yield?

Mr. GINGRICH. I yield to the gentleman from Texas.

Mr. DELAY. Mr. Speaker, I would like to answer the gentleman's question. I think there is a new way of raising taxes in the Nation. It was exemplified in Texas not too recently. We just got through with 2 special sessions in order to raise taxes.

The Democrat leadership, including the Democratic Governor, went on a dog and pony show clear across the State before they called this special session to raise taxes to convince the media, No. 1, that we needed the tax increases to pay for the downturn in revenues that was going on in the State of Texas.

They did an excellent job of convincing the media, who, in turn, wrote editorials, all kinds of articles, praising these men because here we are in an election year, these men are suggesting that we raise taxes in an election year, while at the same time, they were just setting us up for a tax increase when they did not even start to look at where they could cut spending.

□ 1845

The same thing is happening here. They are statesmen, they are called by the media. Our Democrat leadership has been quoted time and time again on this floor calling for a tax increase before an election. They must be statesmen. It must be so horrible, our condition, but we must have a tax increase because these guys must be dummies or they must be right, because they are coming right before an election calling for a tax increase, so they must be right. It is a setup.

This is the new way of raising taxes. They get the media calling these politicians statesmen. They get the media saying, "Oh, we've got to have it because we can't cut these programs."

That is what is happening to us right now. I can see it happening.

Mr. GINGRICH. Let me ask a question of the gentleman from Texas [Mr. DELAY]. In the gentleman's judgment, is Texas going to be better of with a tax increase?

Mr. DELAY. Absolutely not. They did not even look at spending before they came out with a tax increase.

Here we are almost in a depression, in Houston I know we are in a depression. Our revenues in agriculture have gone down. Our revenues in oil and gas have gone down. All our revenues have gone down, and the first thing the politician, the liberal welfare state politician does when revenue goes down is call for tax increases.

When the House held out against tax increase, all the House wanted to do in the Texas Legislature was to go back to the previous year's spending, cut the increases in spending. That would have gotten us through the first of the year in the loss of revenue, just going back to freezing these budgets and not increasing the way that the Democrats in Texas wanted to increase spending in Texas.

That was thrown right out the window. And what did we end up with? We ended up with some modest spending cuts and a huge tax increase.

Mr. GINGRICH. How big was the tax increase that the Democrats passed in Texas?

Mr. DELAY. Well, the gentleman has asked a question that I am not prepared to answer because I will be called on if I do not come up with the exact number.

We raised gas taxes by 5 cents a gallon and we raised sales taxes by 1⅛ cents.

Mr. DORGAN of North Dakota. Mr. Speaker, will the gentleman yield?

Mr. GINGRICH. I am glad to yield to the gentleman from North Dakota.

Mr. DORGAN of North Dakota. It always comes back to this, the liberal welfare Democrats. I mean, that is such baloney.

What we have here are two groups of thought. One says let us pay for what we spend and if there is the will of the Congress, the House and the Senate, then let us spend less, but that will does not exist. It does not exist in the other body and it does not exist here.

In the absence of that, what the gentleman is saying is let us borrow more.

Now, by God, somebody has got to stand up someday and say from $900 billion to $2.1 trillion debt in 6 years is fundamentally irresponsible and you cannot wish your way out of it. You cannot wiggle your way out of it. You cannot talk your way out of it.

Somehow, somebody has to pay the darn bills.

Now, I do not apologize for a second being from the party that says we ought to have a Medicare Program, we ought to have a Social Security Program, we ought to have an REA Program to bring electricity to the farms. We have done a lot of awfully good things in this country because on this side of the aisle we have said yes, it should be done, and many people of the gentleman's side of the aisle said no all along the way until it was done and they discovered it was right.

I do not apologize for that at all. We built an awfully good strong country.

What I am embarrassed about is the fiscal policy that has gotten us to the point where we have a $230 billion debt.

The solution? The gentleman says two things. The gentleman says, first, let us have some growth in our system. We will count on, we will gamble on some growth, and second, let us restrain spending.

I am saying the solution is let us do a bunch of things. I think we need to restrain spending. I think we need to peruse as we have, incidentally, pretty successfully the Grace Commission reports. We have implemented many of them.

I think we ought to develop an oil import fee. One example that I think is very important to this country is an oil import fee, which I would like to discuss with the gentleman perhaps; but I think we ought to do a series of things which include closing even more tax loopholes and using that as designated revenue to drive down the Federal deficit.

I think we ought to get on board to describe to the Federal Reserve Board some relaxation of money policy. We have the highest real interest rates we have had for a long time, even now. A 1- or 2-percent reduction in interest rates in addition to the current Fed level would be very helpful to this country.

There are a lot of things we can do that can solve this problem. I am just saying that the no tax pledge sounds great; but frankly, I do not think we ought to pledge anything. I think we ought to be willing to do everything necessary to get rid of this deficit one way or the other, because the American people do not deserve a government that spends 80 cents, borrows 20 cents, for a dollar's worth of government. That does not make any sense.

Mr. GINGRICH. Let me ask the gentleman two questions before I yield to my friend from Illinois. I just have to ask these.

First of all, since the gentleman has courageously pointed out that we should not spend more than we take in, does that mean that over the last 6 years the gentleman would have raised taxes $1.2 trillion? I mean, if it is going to be pay as you go, we would have had to raise taxes $1.2 trillion.

Mr. DORGAN of North Dakota. Well, look, I would not have supported a doubling of the defense budget in the last 6 years. In fact, I have not voted for that.

It seems to me whatever we decide to spend, we have to be prepared to pay for it, and if you do not like the sound of that, then we ought not to be here. We ought not to be spending this money. There is not the will at this point.

The President sends us a budget. This year he says, "I want to spend slightly over $1 trillion." That is the President. That is not me.

Now, what the gentleman seems to be saying to me is that this President is not very conservative. He is probably a lot more liberal than I am, the gentleman says, and therefore we could probably spend $100 billion a year less than this President suggests.

I submit that this guy is pretty conservative. When he says $1 trillion, which he said this fiscal year, I mean, that probably gets pretty close to bedrock, does it not?

Mr. GINGRICH. But in all fairness, the President sends up a budget, and I think, frankly, he does the wrong thing. He sends up a budget for this Congress. He does not send up the budget, I do not think Ronald Reagan particularly likes the budgets he sends up here, but he looks at a liberal Democratic House. He looks at the other body which is controlled in terms of real votes by moderate Republicans and liberal Democrats. It is not controlled by the conservative Republicans.

Mr. DORGAN of North Dakota. So the Senate is not Republican?

Mr. GINGRICH. The Senate in terms of ideology has a very shaky majority. I think as we are discovering in the continuing resolution on many spending bills, the other body is not as enthusiastic for conservatism as Reagan is, as some of us and most of our colleagues are; but let me carry this a stage further.

Tell us, because I am fascinated, given our experience, and maybe some people think there was not a deal, but by George, I will go back as our friend from Texas said and get the clippings on this one; the President said in public and was not contradicted by a single liberal during the tax increase fight of 1982, this is $3 spending cuts for every dollar of tax increases.

Why should anybody on the Republican side of the aisle, listening to five Members of the gentleman's leadership talk about raising taxes, who have any belief that that will be part of a true package, as opposed to just one more chance to raise spending?

Mr. DORGAN of North Dakota. If we want to go back to 1982 and look what was said, go back and look at the President's projected budget in 1982 for 1986 and look at what they expected the revenue to be in 1986. That will describe the difference between today's Federal deficit and what it would have been had they gotten the revenue they expected.

I mean, the fact is what was said in 1982 is not something that we ought to worry much about when we are trying to decide how to solve the Federal deficit problem in 1986.

Mr. GINGRICH. Except as a question of behavior. I am suggesting that the liberal Democrat in this House, and frankly an occassional pork barrel Republican, will cheerfully rush their way through and spend every dime the American people give them, that if we raise taxes—and I guess I am sympathizing with what the gentleman is saying, I think even if the gentleman's plan passed, it would not slow the deficit down. We would just raise taxes $60 billion and spend $60 billion.

Mr. DORGAN of North Dakota. But if that is the case, when the gentleman receives additional revenue from this illusory growth, you know, that is the growth revenue, does that not fit the same criteria if that is new money that the Government gets?

Mr. GINGRICH. Yes. In fact, what we have been doing, we have been spending about 25 percent more. We are a little bit like a younger couple, and my older daughter fits this. I hope she is not listening, because she will get mad at me. My older daughter right now is 23 and just out of college. Her salary is going up and her ability to spend is going up a little bit faster than her salary. She just bought a car over the weekend and was showing it to me and I was wondering exactly what she was doing.

The U.S. Congress behaved like my 23-year-old daughter, in that they were cheerfully spending. This Congress has been spending 11 percent more money when it has been earning 6 percent more through growth.

Mr. DORGAN of North Dakota. Listen, the Congress has simply followed the President's budget and we have done even a little better from time to time. The President sends us a budget and he says, "Friends, let's have a $180 billion deficit this year."

So we say, "OK, we'll play in your stadium. We just want to quibble a little bit about the yard lines."

We have followed the President's lead. Now, we have switched some money around. We have not given him $335 billion in defense this year. We perhaps funded some domestic programs slightly higher than he would have liked; but the Budget Office indicated some while ago that if we had adopted all the President's provisions, that is all of them starting from day one, including defense, all the interest, all the increase, rather, that he wanted in defense, all the foreign aid that he wanted, and incidentally, this year he has just recently threatened to veto the continuing resolution because we are not increasing foreign aid, he is upset about that. If we had followed all his recommendations, we would be spending more right now than we are now spending.

I mean, I do not understand what the gentleman is saying. We are following the gentleman's President's lead and that leads us to the biggest deficit in history. That is all I am saying.

Mr. CRANE. Mr. Speaker, will the gentleman yield?

Mr. GINGRICH. I am glad to yield to the gentleman from Illinois.

Mr. CRANE. Mr. Speaker, first of all, I want to commend the gentleman again for focusing attention on what to me is the overriding issue of the day and that is the question of taxation and spending. The truth of the matter is that we are not undertaxed as a people. The fact is taxes are at merely an all-time high, higher in fact than they were in World War II, and there is no excuse for it.

The fact is over the previous 4 years spending has been going up at approximately a 10-percent rate. Revenues have been going up at about a 9-percent rate. The cost of living has been going up at under a 4-percent rate; so there is no way anyone can rationalize the levels of spending, with one possible exception.

If my colleague from Georgia will permit me to direct a question to my colleague from North Dakota, what is the first and foremost responsibility of the National Government?

Mr. GINGRICH. I yield to the gentleman from North Dakota.

Mr. DORGAN of North Dakota. Well, to provide for the safety and welfare and security of this country.

Mr. CRANE. Security, to protect life, liberty, and property. At the local level, if I can ask the gentleman to yield further, at the local level it is police and fire protection. Living in an unincorporated wilderness as our forebears were when they moved west of the mountains, the first thing they ultimately did when they formed communities was to hire a sheriff. Once they hired a sheriff, they had a government.

Mr. DORGAN of North Dakota. But they did not give them a gold-plated shotgun.

Mr. CRANE. It is not a question of giving them a gold-plated shotgun, and we can have honest debates as to the magnitude of defense we need to guarantee security, but I would argue that when in doubt one should err on the side of being overprotected rather than underprotected, as we learned to our dismay going into World War II.

But let me get back to the point of the no tax pledge. I think the no tax pledge, if we can get a consensus on that, that puts us within a degree of discipline that forces us finally to address the question of spending and that question of spending has not been addressed.

I would like to elaborate on what the gentleman from Pennsylvania said earlier about the National Taxpayers Union ratings. This is the only totally objective rating of this body. It takes every aspect of spending from welfare to weapons, from missiles to mortgage subsidies. In fact, 42 Members of Congress participated in the weighting of these votes based upon the appropriate distinction that the gentleman said they failed to make in previous ratings

of equating all spending votes. They do not do that anymore.

Mr. DORGAN of North Dakota. Mr. Speaker, if the gentleman will yield, could the gentleman ask the organization to provide us all with the names of those who participated and helped to weight these?

Mr. CRANE. They would be more than happy to.

Mr. DORGAN of North Dakota. Is that a bipartisan group?

Mr. CRANE. Yes. It is bipartisan, Democrats and Republicans. Let me give the gentleman the address of the organization, because I would urge our colleagues, Mr. Speaker, to get copies of the NTU ratings and to participate.

It is the National Taxpayers Union, 325 Pennsylvania Avenue SE., Washington, DC 20003.

Mr. DORGAN of North Dakota. The gentleman will acknowledge that in previous years prior to this year their votes were ranked not by the magnitude of expenditure, in fact in a recent year I say they ranked a $23,000 expenditure in Oregon, which is a very tiny little bill to deal with an individual in equity in Oregon, exactly the same as they ranked the nearly $300 billion DOD bill.

Mr. CRANE. To be sure, and that was the deficiency of the methodology until this past year.

Now, what is interesting about the change in methodology is that it was because of the weighting of votes and this includes votes that have outyear spending levels in contrast to maybe a one-shot deal this year. The interesting revelation, and I do not think one can stress this point enough when you get into this debate, is that the Democratic average in the House of Representatives is 34 percent.

Now, high scores indicate fiscal responsibility. Low scores indicate profligacy.

Now, 34 percent is the House average. I will say to the credit of the gentleman from North Dakota that he is 9 points above that.

The Republican average for the House of Representatives is 56 percent and if you look over on the scores in the other body, the Democratic average is 31 percent and the Republican average is 58 percent.

What this new rating by weighting has done is to pull our Democratic colleagues up because they tend to vote against the defense budget more frequently than Republicans do and it has tended to pull the Republican score down because we vote for the defense budget and when you weight those, that is going to have a heavier impact than the scores previously indicated.

But for all of that, if you take the 10 percent of this body that have the most profligate voting records, you will not find a single Republican there. If you take conversely the 10 percent most fiscally responsible Members of this body, you will not find a single Democrat there.

There is a profound difference between our two parties on the question of spending.

□ 1900

My only point about this tax pledge, if we go along with the pledge of no increase in taxes, then we have accepted the fact that we are going to work on the budget deficit not by contemplating resorting to new taxes, but we are going to argue about how we arrive at that goal by splitting our differences, say, our side on defense, other Members on the social issues, the social spending.

I would remind Members, though, that if we take constant dollars, because some like to talk about the defense component of the budget, if we take constant dollars, 1964 dollars, from 1964 to 1984 defense spending increased by 14 percent, and nondefense spending during that same period increased over 400 percent.

So I think that in terms of trying to achieve a balance, we can see where the excesses have been. We acknowledge that it is a problem. I never thought that I would live long enough to hear the leadership on the gentleman's side express concern over deficits, because traditionally that was part and parcel of their platform, deficit spending was a stimulus to the economy until it got totally out of control, as it is today.

What we should all do is take that no-tax pledge, and I submit that tomorrow we are going to have an opportunity, when Superfund comes up here, with its excessive levels of expenditure, to indicate whether it is going to go down its merry way and continue to spend like drunken sailors, which BOB DOLE says is an insult to drunken sailors—at least they are spending their own money.

We are going to have an opportunity to make the decision as to what we want to do on tax increases, because that is going to be a very staggering tax increase that will be proposed before this Chamber tomorrow.

I would hope that our colleagues would join our distinguished colleague from Georgia, and if not signing the pledge, at least voting that way when we have this opportunity tomorrow before this body adjourns.

Mr. DORGAN of North Dakota. Mr. Speaker, will the gentleman yield?

Mr. GINGRICH. I am glad to yield to the gentleman from North Dakota.

Mr. DORGAN of North Dakota. Mr. Speaker, just one more, and then I will take leave. The gentleman has provided me with an opportunity to have ample discussion with a number of his brethren.

The gentlemen already have that pledge down at the White House. The President took out his Clint Eastwood pen and in his unique way said, "Go ahead and make my day." What he said is clearly that he would veto any new revenues. That is what has persuaded the Congress not to do anything. Even closing loopholes and using part of that revenue to drive down the deficit has not been considered, the Speaker has made that clear, because of the President's admonition.

So the pledge, while coming in October of an even-numbered year, makes interesting discussion. The pledge is already in existence, and it is done by someone much more powerful and effective than the several of us here. Ronald Reagan has made that pledge with his pen.

The reason that I came to the floor, and I wanted to get to a more lengthy discussion of precisely where we would deal with the expenditure side, and we did not do that, I would like someday to come down with a chart that says, "Here is the six major categories of public spending at the Federal level." Where do we cut to reconcile a $230 billion deficit?

Mr. friend, the gentleman from Illinois [Mr. CRANE], said that he has not ever heard anybody on this side of the aisle talk about deficits. We ain't never had deficits like like this in the history of the country. These are giant deficits compared to the old $20 billion, $30 billion, $40 billion-a-year deficits. They are not deficits that just reflect some sort of short-term economic difficulty, they are structural deficits that result from an imbalance in our fiscal policy, and we have to reconcile that.

Because the gentleman is saying that it can be reconciled or should be reconciled or will be reconciled with spending cuts, I assume that that is where the gentleman finally comes down, because even the growth revenues will be subject to the same propensity as he indicated new taxes would be subject to, that is, being spent by somebody before they are able to be used to reduce the deficit.

If the gentelman finally comes down to the notion that only through spending cuts can we resolve the Federal deficit problem, then I want to spend some time going with him category by category to understand precisely where we solve that problem on the spending-cut side. I am willing to exercise great spending restraint, but I do not personally think that it is possible to reconcile a $230 billion problem in that manner.

Mr. GINGRICH. Mr. Speaker, let me ask the gentleman something very fundamental. My good friend from Pennsylvania just reported to me, if I understand him correctly, that we have $857 billion in revenue projected this year by the congressional budget resolution. That is for fiscal year 1987.

The SPEAKER pro tempore (Mr. MONTGOMERY). The time of the gentleman from Georgia [Mr. GINGRICH] has expired.

EXTENDING SBA PILOT PROGRAMS UNDER SECTION 8 OF THE SMALL BUSINESS ACT—VETO MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 99-276)

The SPEAKER pro tempore laid before the House the following veto message from the President of the United States.

To the House of Representatives:

I am returning herewith without my approval H.R. 2787, Title I of this bill would reauthorize and extend through September 30, 1988, two Small Business Administration [SBA] pilot programs, and Title II would authorize the appropriation of $10 million for the establishment of a new Technology Transfer Institute in Bridgeport, Connecticut.

The appropriation authorization of $10 million for a new Federally assisted project is inappropriate and unwarranted at a time when there is a critical need to operate within severe budgetary constraints and to fund adequately higher priority programs. Although the stated purpose of the proposed Institute would be to "revitalize the competitiveness of small business industry in America, particularly in the international marketplace, and to serve as a regional demonstration center transferring emerging technology . . . ," it is not clear that the Institute would provide the best means to accomplish this goal.

Additionally, in light of current budgetary constraints, it is particularly unfortunate that the bill accords special treatment to a specific institution and does not require selection on a competitive basis. Selecting recipients competitively helps to ensure that the taxpayers' money is spent on projects that address an acknowledged need and demonstrate the greatest promise of success. Legislative provisions that accord special treatment to certain applicants or, as here, identify the sole recipient of assistance are particularly objectionable. I am concerned also that the Institute, proposed as a "regional demonstration center," would set an undesirable precedent for the noncompetitive establishment of additional regional centers, without a demonstrated need for a Federal role in this area.

Finally, I note that Title I of the bill would unnecessarily extend two SBA pilot programs. The goal of the pilot procurement program can be accomplished under existing authorities. The extension of the surety bond waiver program provided in Title I has proved unnecessary, as no waivers have been requested since the program was first authorized in 1978.

RONALD REAGAN.

THE WHITE HOUSE, *October 7, 1986.*

The SPEAKER pro tempore. The objections of the President will be spread at large upon the Journal, and the message and the bill will be printed as a House document.

PARLIAMENTARY INQUIRY

Mr. WALKER. Reserving the right to object, Mr. Speaker, I do so to make a parliamentary inquiry as to what the intention of the Chair is to do with the message that has just been read.

The SPEAKER pro tempore (Mr. MONTGOMERY). It has not been possible to contact the chairman of the committee, and the Chair will ask unanimous consent that further consideration of the veto message be postponed until Wednesday, October 8, 1986. No prejudice would be held against any party.

Mr. WALKER. Mr. Speaker, a further parliamentary inquiry. If we were to object to the laying of the message on the table, would the message then be referred to committee?

The SPEAKER pro tempore. The Chair's purpose would be to postpone until tomorrow without any prejudice against any party, and then action could be taken tomorrow, whatever the House would do.

Mr. WALKER. Further reserving the right to object, Mr. Speaker, and with a further parliamentary inquiry, would it be in order to move to refer the matter to committee?

The SPEAKER pro tempore. Would the gentleman state his parliamentary inquiry?

Mr. WALKER. Mr. Speaker, the parliamentary inquiry is whether or not it would be in order to move at this point to refer the message from the President to committee.

The SPEAKER pro tempore. That motion would be in order, and the Chair assumes objection to the Chair's unanimous consent request to postpone further consideration.

Mr. WALKER. Mr. Speaker, I move to refer the veto message of the President to the Committee on Small Business.

The SPEAKER pro tempore. First let the Chair put the question by unanimous consent. Is there objection to the request of the gentleman from Pennsylvania?

Mr. SEIBERLING. Mr. Speaker, I object.

The SPEAKER pro tempore. Objection is heard.

Mr. WALKER. I moved, Mr. Speaker.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Pennsylvania [Mr. WALKER].

Mr. SEIBERLING. Mr. Speaker, I make the point of order that a quorum is not present

Mr. Speaker, I withdraw my point of order.

□ 1910

The SPEAKER pro tempore (Mr. MONTGOMERY). The motion is agreed to.

The message will be referred to the Committee on Small Business.

THE NO TAX INCREASE PLEDGE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Pennsylvania [Mr. WALKER] is recognized for 60 minutes.

Mr. WALKER. Mr. Speaker, I would like to begin by yielding to the gentleman from Georgia [Mr. GINGRICH] who was about to make a point when his time ran out. I would be happy to yield to the gentleman to allow him to finish his statement.

Mr. GINGRICH. Mr. Speaker, I would say for people who want to know just how well the House can be run on occasion, the gentleman from Mississippi clearly eliminated about half of my sentence right there as he brought my time to an end.

But the point I was going to make was very simply we had $857 billion in revenue projected for this fiscal year. Over the last 6 years we have had a 22-percent increase in revenues. That is, the amount of money the Federal Government has been getting has gone up 22 percent over the last 6 years.

Now what that means, and what I was going to ask our friend from North Dakota who unfortunately had to leave, but I hope to ask him tomorrow——

Mr. WALKER. 22.9 percent.

Mr. GINGRICH. 22.9 percent

Mr. WALKER. Almost 23 percent.

Mr. GINGRICH. What that means is if we had economic growth over the next 5 or 6 years, and we simply kept the budget at $1 trillion, within 6 years we would have a balanced budget without any tax increase.

The challenge, it seems to me, that that poses to Members of the House is very simple. We should rethink the Pentagon, rethink health care, go from welfare to work-fare, take those steps necessary to restructure the Federal Government so that every year we can deliver goods and services without an increase in spending, and within 5 years, without a single dollar in tax increase, just by doing what we know—this is not pie in the sky, we know historically what we did in the last 6 years. So we do not have to do anything magic, we simply have to match the record of the last 6 years. And that was, by the way, a period of declining inflation, a period when revenues were going up at a relatively slower rate.

So I was simply going to ask my good friend from North Dakota, given that by his own estimate there is $30 billion in waste in defense, is it not better to spend our time finding $20 billion of waste rather than finding $20 billion in the pockets of people back home to take out of their family budget? And if we found year-by-year smarter and better and more efficient and more effective ways of doing business for the Federal Government, then 5 years from now spending a trillion dollars a year—the other point I was going to make to our friend from North Dakota was very simply a trillion, not a billion now, but a trillion dollars a year is not chicken feed. This is real money. This is a big budget, and surely the Government of the United States should be doable for $1 trillion a year. So I was simply going to say if we kept it at $1 trillion a year, in a sense this is the other side of the no tax increase pledge is the coin that says $1 trillion is enough money, I think I can manage the Federal Government. I do not need more than a trillion of your dollars to manage your Government, and I think that is why I feel ethically and morally and philosophically comfortable saying that I am going to take the no tax increase pledge, because I am confident that my job from the Sixth District of Georgia is to control spending rather then to raise taxes.

Mr. WALKER. I think the gentleman makes an excellent point. I think we need to also focus on the fact that if, as we looked at that 23-percent increase in revenue, we ought to also focus on the fact that in that same period of time since 1981 spending has increased by 39.4 percent. So if you have a 17-percent differential, if you take the 23-percent increase or 22-percent increase in revenues and you look at a 39- to 40-percent increase in spending, it is that 17-percent differential there that causes some real problems, that even if we would just keep spending to the revenue increase we could begin to reduce deficits markedly, even if we were only spending as much as we took in in increased revenues and we could substantially reduce deficits.

It seems to me that that 23-percent increase in spending over a period of 5 or 6 years certainly would not be that out of line.

Mr. MACK. Mr. Speaker, will the gentleman yield?

Mr. WALKER. I will be glad to yield to the gentleman from Florida.

Mr. MACK. Mr. Speaker, let me, if I could, take a moment to kind of refocus where we are. I am constantly amazed at the difficulty some of our colleagues have in coming forward and agreeing to sign this pledge. I think maybe there is a misunderstanding or maybe the message has gone out wrong.

All we are saying to people is that we want them, by signing this pledge, and by signing on to the resolution that the gentleman from Pennsylvania has proposed, we are saying that the Members of the 99th Congress, and those who want to be in the 100th Congress, are saying to the American people that we are going to hold at the tax rates, hold at the tax rates that were established in the tax reform bill that we just passed several weeks ago.

Mr. WALKER. And that the President has not signed yet.

Mr. MACK. That is exactly right. That is all we are saying, that since you voted for an increase, or voted for the tax reform package which included rates of 15 and 28 percent to individuals and 34 percent for corporations that we want you to make a pledge that you are going to hold those rates through the 100th Congress, no more. I do not think that is tying somebody's hands. That is not casting a statement that ties every particular alternative that one could come up with.

All we are saying is, tell the people in your district that you are willing to hold the tax rates at the level that you passed in the tax reform bill in the 99th Congress.

Mr. WALKER. Let me say to the gentleman that my guess is the reason why so many of our colleagues react so vehemently to this kind of a device is because those who are the proponents of the liberal welfare state, those who spend us blind in this body, recognize that this really is a challenge to their spending. They recognize that when you tell Members that you are going to take a pledge not to raise taxes, they recognize that since what they do is spend away, as the gentleman from Georgia has pointed out, since they spend away all the tax increases, this really is a challenge to their spending habits. So they recognize in this pledge that we really are nailing them down, and my guess is that that is the reason why they really do not want to discuss the pledge.

Mr. MACK. But again, let us focus on how narrow this pledge in essence is. I mean, I wish it were broader. But this pledge says, in essence all they will do is hold the line exactly where they were when they passed tax reform in this Congress.

Mr. GINGRICH. If the gentleman will yield, I think the thing that is fascinating is what the gentleman from Georgia, [Mr. SWINDALL], brought over here and we are entering in the RECORD in my special order earlier, which is that apparently in the committee report on the tax reform bill, there is language concerning capital gains rates where they are keeping the capital gains rates in the Tax Code. Specifically, the language says so that in the future, if they want to raise rates, they can reinstate the capital gains tax.

I find it phenomenal that the Democrats made sure that we already kept in place, it is sort of a safety value, they have already kept in place the ability to turn right around in 1987 and raise the tax rates, and thereby raise taxes on people, having cleared away a lot of the deductions which people used to shelter money from the tax increase.

So I think we do have to worry about the fact that it makes perfect sense that five leading Democrats in the House have called for tax increases already, and that we can expect the Tax Code is being rewritten in such a way that if we do not get enough Members to sign the No-Tax-Increase Pledge that the warning is already out there, and I think every citizen who is concerned about taxes and concerned about their family budget should ask the incumbent or the candidate in their district: Will you sign a No-Tax-Increase Pledge? Will you help Americans for tax reform, draw the line and keep the rates at 15 and 28 percent for individuals and 34 percent for corporations?

□ 1920

Because the die is already cast and the warning is already there, and leading national Democrats were already saying, "Let's get this election over with and we'll raise taxes."

Mr. WALKER. Mr. Speaker, the gentleman from California [Mr. HUNTER] has asked me to yield, and let me yield to him because he was the very first one to sign the No Tax Pledge here; the very first name on the No Tax Pledge is none other than DUNCAN HUNTER of California.

Mr. HUNTER. Mr. Speaker, I think it is important to reiterate the reason why we are doing this. We did not bring this up as something to occupy our time in these last several weeks while we wait to thrash out a few issues before we go home. The reason we are doing this is because of the statements that were discovered and have been seen on national media by us and by the American people recently, to the effect that Democrat leaders believe that there must be a tax increase in the near future.

I would go back to those statements, Mr. Speaker. Let me just report a couple of them:

"Everyone knows that we will eventually need a tax increase. The increase in revenue should come through higher progressive rates on income."

That is the honorable chairman of the Committee on Ways and Means, the gentleman from Illinois [Mr. ROSTENKOWSKI] as reported by the Washington Post on September 4 of this year.

I must say that statements like that have sent a shudder through the ranks of American taxpayers who thought that somehow this tax reform package, which eliminated, incidentally, a number of deductions that they had counted on in the past, brought with it also stable, lower rates that would be adhered to in the future.

The point is that a number of these taxpayers have been rendered naked, if you will, compared to their previous status where they had substantial deductions; they were counting on the good faith of the American Congress not to raise their taxes now that deductions have been eliminated.

Yet statements like that have been made. The question I have for the gentleman is, I see his no tax pledge that has been signed by 30 Members of the House of Representatives; and I see the Mondale truth-in-taxing pledge—and I have to admit that Candidate Mondale, at the San Francisco convention, really did lay it on the line. He said: "I honestly am for more taxes, and I'll tell it like it is," and he said that "I will raise taxes if elected."

It appears to me that Mr. ROSTENKOWSKI is saying precisely the same thing, and I have not seen any denials by Democrat leaders subsequent to statements like that and similar statements by the chairman of the Democrat conference and by the Speaker of the House, the Honorable TIP O'NEILL.

My question is, have any Democrat leaders come forth since we have been offering this no tax pledge and the Mondale truth-in-taxing pledge for signature, and stated that they will not work for tax increases on the American people.

Mr. WALKER. Well, I would say to the gentleman that I am not aware that we have had anybody out here to make those kinds of claims; and I think I have been here for most of the time that we have held these special orders.

I have heard no one retract those past claims that they were going to raise taxes; and the fact is that if you will look there at the Mondale truth-in-taxing pledge, it says, like Walter Mondale, I am telling you there will be a tax increase in the next Congress; taxes will go up. We have not had anybody come out here and sign that, either. I guess we should have had that particular pledge on the floor of the Democratic Convention—maybe a few people would have signed it there, but I guess nobody wanted to tell the truth like Walter Mondale did.

Mr. CRANE. Mr. Speaker, if the gentleman will yield further, I guess my feeling is—and I know the gentleman from Florida [Mr. MACK] wishes to speak on this also—the point is, Walter Mondale was honest in that he told the American people before the election that he would raise taxes. He told them before election.

My point is, if Democrat leaders in this House or in the Senate intend to raise taxes and have some meaning when they tell these national forums that there must be a tax increase and really mean that, then I think that they have an obligation to stand before the American people in this forum or other forums, and say precisely that: "We intend to raise taxes," to resolve this question that now is throughout America, because of statements that have been made.

Mr. MACK. Mr. Speaker, will the gentleman yield?

Mr. WALKER. I will be glad to yield to the gentleman from Florida [Mr. MACK].

Mr. MACK. Mr. Speaker, I would like to follow up on the comments of the gentleman from California [Mr. HUNTER] in pointing out the truth in taxing.

Let me tell you how I sense it tying into many comments that have been made around Washington for the past year. There have been a lot of attacks on the President, saying that he has failed to come forward with the proper leadership role in solving the deficit problem; and we hear that over and over and over again.

As the gentleman reported a moment ago, some of the comments by the Democratic leadership about the need to raise taxes. All we are asking them to do is to tell us how they would raise them. That is all.

If there is a concern on their part that there has not been leadership, I would suggest—and they well know this—that this body is controlled by the Democrats. They have every right and opportunity to come down to the floor of the House and propose and present a proposal that indicates how they are going to solve the deficit problem. If they say that it is gong to be on the tax side, fine, let us see it. The gentleman from North Dakota [Mr. DORGAN] indicated earlier; we ought to be willing to pay for these things, not borrow but we ought to pay for them.

That is fine. His party is the one that has supported the majority of the spending; let us hear. Let us get the leadership position, let us hear how they are going to raise taxes. That is all we are trying to focus on here.

Very narrowly, we are saying: Those people who supported tax reform and said that the rates were going to be 28, 15, and 34, ought to sign a pledge saying that we are going to hold those rates in the 100th Congress; and those that do not want to sign it, just tell us then how they plan to raise taxes.

It is very simple, very straightforward, not complicated.

Mr. HUNTER. And the people have a right to know.

Mr. MACK. Again, one of the comments that was made after the 1984 election was that President Reagan did not come forward with an agenda. He did not tell the American people where he was going to make these reductions.

In 1984, I thought it was fairly clear. The American people responded and said, "We agree with President Reagan, no tax increases." So we had an election in 1984 at the Presidential level that said there will be no increases in taxes; and I would suggest that what we need in 1986 at the congressional level is a debate over taxes.

Let us find out if Members of the Congress are for or against raising taxes.

Mr. WALKER. Mr. Speaker, I thank the gentleman, and I think what we ought to do is read the names of the people who have signed the no tax pledge already in this session of Congress. There are about 30 people who have already indicated that they are prepared to take the no tax pledge; and as we have pointed out, the Walter Mondale truth-in-taxing pledge does not have many adherents at this point, it has none, but the people who have signed the no tax pledge I think are significant because they come from all across the country.

They show how the groundswell for this idea is coming from all across the country. We have DUNCAN HUNTER of California who, as I pointed out earlier, signed first; CONNIE MACK of Florida; myself from Pennsylvania; TOM DELAY of Texas; NEWT GINGRICH from Georgia; LARRY CRAIG of Idaho; BOB MCEWEN of Ohio; MIKE STRANG of Colorado; JERRY SOLOMON from New York; JOE BARTON from Texas; PHIL CRANE from Illinois; BILL DANNEMEYER from California; DON SUNDQUIST from Tennessee; JIM SENSENBRENNER from Wisconsin; BILL SCHUETTE from Michigan; BOB DORNAN from California; JOHN PORTER from Illinois; DEAN GALLO from New Jersey; DAVE MONSON from Utah; DAN COATS from Indiana; VIN WEBER from Minnesota; BOB LAGOMARSINO from California; LARRY HOPKINS from Kentucky; DAN DANIEL from Virginia; JIM KOLBE from Arizona; HANK BROWN from Colorado; BOB STUMP from Arizona; TRENT LOTT from Mississippi; PAT SWINDALL from Georgia; STAN PARRIS from Virginia—a group that covers a broad geographic spectrum; a bipartisan group who have come forward and said that we are making a No Tax Pledge and they make that pledge very openly.

It seems to me, Mr. Speaker, that what we need to hear from all Members of Congress is where they stand on this vital issue; because it will be a key issue in the upcoming Congress. To suggest that this will not be an issue that will not be dealt with in the

next Congress is to suggest the ridiculous.

This is very definitely an issue that Members will confront in the next Congress. The American people have the right to know where their Congressman stands on taxes in the 100th Congress.

That is precisely what we are attempting to find out here; and the Members who take the pledge are telling Members precisely where they stand.

Mr. MACK. Mr. Speaker, will the gentleman yield?

Mr. WALKER. I yield to the gentleman.

Mr. MACK. Let me indicate to you why I think there is a fair degree of silence on the other side at this point.

Mr. Speaker, if you will recall some of the discussions we got into over the last couple of years, raising this same question, where would you raise the taxes if in fact that is what your response is, that you feel that we solve the problem by raising taxes.

They typically said to us, well, they would switch more of the tax burden onto business, onto corporations. They said to us that, "What we would do is we would close loopholes; we would make sure that there was a minimum personal tax and a minimum tax on corporations."

The point that I am raising is those things have occurred. Where are they going to raise taxes now? There has already been the shift; we have paid for that by closing other loopholes and we have reduced marginal rates. Where are they going to raise the taxes now?

I would suggest to you they do not have an answer, other than going back and raising the tax rates, the marginal tax rates; and that is why they do not want to sign that pledge.

Mr. WALKER. Mr. Speaker, I think the gentleman is absolutely correct. I think the American people had better be very, very cautious of anybody who is suggesting a revenue increase, a tax increase as a way of solving the deficit. It is going to come out of the hides of the working families in this country.

Mr. GINGRICH. Mr. Speaker, will the gentleman yield?

Mr. WALKER. I yield to the gentleman.

Mr. GINGRICH. Mr. Speaker, I want to suggest two reasons that the Democrats are not rushing out here to defend their tax increase pledge.

□ 1930

The first is I think the average Democrat knows that it is very unpopular to say to people back home, "I am going to raise your taxes, you are going to have less money for your family budget, and not as much in your take-home pay, but vote for me anyway." I think they know that it is smart to duck and hope that they can get reelected and not raise the issue and that next year they can pass tax increases and hope people will forget by 1988. There is a second reason that I first noticed the other week on the floor of the House when a colleague of ours from the industrial Midwest got up and was complaining because the Republican National Committee was trying to purge dead voters from voting rolls. The argument this Member was making was it was clearly unfair and biased for the Republican National Committee to want dead voters kicked off voting rolls.

I thought back to the great days of the Chicago machine, the tradition of people who voted 10, 20, 30 years after they died, as one man said, "Just because they're dead doesn't mean they are not citizens." And I suddenly realized that if you were a true Democrat in the tradition of voting dead people and you were objecting to the Republican National Committee purging dead people from the rolls, you would not have any reason to come down here and tell us you are going to raise taxes because you intend to use the votes of the dead to raise taxes on the living.

I think there is a very deep machine tradition in the Democratic Party that says, "why go tell those citizens anything? We want the money for our Government so we can reward our allies so we can get reelected, and in a close election we will either steal it," as was done in the case of the McIntyre seat in Indiana, "and we will simply coerce the election and not allow the people who are alive to win or, if necessary, we will vote a few thousand people who are not there." Some of the people are complaining about who the Republican National Committee are purging are people who registered by a vacant lot, people who moved out of the district 5 years ago, people who are dead. You can understand why a politician whose first line of defense is dead voters and nonvoters would not feel it necessary to engage us in a debate to appeal to live voters because in fact they do not intend to ever worry the live voters with the details.

Mr. WALKER. If the gentleman would yield, it seems to me I just saw a letter come across my desk the other day about the fact that the one seat that the Republican Party has already won down in Louisiana, that already the chairman of the Democratic Congressional Campaign Committee is thinking of challenging that election because some dead voters were purged off the rolls just before the election, and now he claims that was unfair and caused a victory down there, and we may have another challenge in the House of a seat based upon exactly the premise that the gentleman has just described. It does in fact fit a pattern.

Mr. GINGRICH. And if I might comment in terms of how machine Democrats work and why they feel cheerful about raising taxes without telling us, and in that sense I would say to my friend from Florida maybe they learned their lesson from Walter Mondale. Maybe they decided that the problem was not that Mondale wanted to raise taxes, the problem was that he was too honest up front and he said it too early. But in the case of the Louisiana seat, right now I understand the margin is 1,400 votes. It is not like Indiana, where we have had 8 votes or 30 votes or 13 votes or 20 votes, it is 1,400 votes. And what they are arguing about is in part purging both Democrats and Republicans who either moved out of the district or in fact were deceased.

Now, I only raise this only partially facetiously because there is a fundamental difference in what we are arguing about. One of the reasons I think that many of the younger Republicans feel very secure in going to the country and talking about a no-tax-increase pledge is that we are convinced that as the country thinks about the question whether you should control Government spending and eliminate waste in Government or you should raise taxes, that the country is with us. One of the reasons I think that relatively few Democrats are willing to debate that issue is that they are convinced in their heart that the country is with us.

So, their hope is to just duck the whole debate, avoid the question, hope that nobody back home noticed what their leadership said, and that five leading Democrats have called for a tax increase, and just hope the whole thing blows over by November. I think the challenge to the American people in terms of protecting their own pocketbook is just to make sure that the candidates in their district either sign the no-tax-increase pledge or sign the Walter Mondale truth-in-taxing pledge. But I think at every town hall meeting, every debate, every public forum voters should ask the candidates for local office, "Are you willing to sign the no-tax-increase pledge?" and if they have not signed it, the voters ought to be warned that their family budget may be in danger if that candidate wins.

Mr. WALKER. If I understand the gentleman correctly, I think what he is suggesting is that by the time the voter walks into the voting booth in November, he ought to at least have one question answered for himself, and that is: "Is the candidate I am about to vote for committed to keeping my taxes down? Committed to no tax increase?" We are trying to give him an opportunity to have that information at hand, and if he does not have that information at hand, he is putting himself in great danger, particularly his family's budget in great danger.

Mr. GINGRICH. If the gentleman will yield, I think he is explicitly and clearly taking the risk that his family budget and his take-home pay will be less next year and that he is sending a signal to Washington: "Don't worry about waste in Government, don't worry about controlling spending, just go ahead and raise taxes."

So I think the voter has an obligation to learn now who is going to raise your taxes and who is not rather than wonder next year what happened and what went wrong.

Mr. WALKER. I thank the gentleman and I yield to the gentleman from Florida.

Mr. MACK. I think the gentleman from Georgia is right on target.

The comment that he made that maybe some of the Democrats have learned the lesson from 1984, that is that the American people really are opposed to raising taxes and want to see spending reduced says to me if they really learned the lesson, they would sign the pledge and if the pledge has not been signed, it ought to be a clear indication to the voter in the district that they do in fact believe taxes ought to be raised and that people back home ought to ask them how they are going to do it.

Mr. GINGRICH. If the gentleman will yield to me for a second, I will just say to him the point I was making was the lesson most Democrats learned was to keep their mouth shut. It is not that they do not plan to raise taxes, they just do not want to talk about it. Their analysis of Walter Mondale was not that Walter Mondale was wrong to want to raise taxes, he was wrong to say it. Most of the liberal Democrats I know want to raise taxes. They would chase tax increases about as fast as a fox would chase a hen. They just do not want to tell anybody back home that they are eager and panting heavily and they want to run after that tax increase the second they get back here in 1987. But they would like to not talk about taxes until 1987 because they think Walter Mondale was too honest and was a little bit dumb, if you will pardon me—I do not mean that he has a low I.Q.—but just that he did not show good sense in that he actually told the American people he would take money out of their family budget, raise their taxes.

So I think a lot of the liberal Democrats have learned not the lesson that America does not want taxes, it was the lesson "I had better sneak my tax increase through quietly so nobody notices me and gets mad at me."

Mr. MACK. I thank the gentleman, and I thank the gentleman for yielding.

Mr. WALKER. I think it would be well at this point to note that the gentleman from Texas, [Mr. COMBEST] has just come forward and signed the no-tax pledge as well. So that is another name added to the list yet tonight. We are gradually building up quite a list of people.

I would also announce that at this point we have a bipartisan group of over 93 that have signed on to the resolution that I have introduced. So that is a growing list that is approaching being a quarter of the House that has signed on to that particular pledge.

So I think that it demonstrates that there are a number of Members around here who are willing to come forward and I think it is well for the American people to make certain that their Member of Congress is among those who are talking this pledge.

The question is not for the Member of Congress really, the question is for that citizen, because it is that citizen who will pay the bill for those who do not sign the pledge and go on and do what some people around here predict will be done, and that is that our taxes are raised.

We will continue this discussion in the days ahead, and I think we will have more people join us in the no-tax pledge.

But for the moment, I yield back the balance of my time.

SUPPORT GROWS FOR OCCUPATIONAL DISEASE NOTIFICATION MEASURE

The SPEAKER pro tempore. (Mr. SEIBERLING). Under a previous order of the House, the gentleman from Pennsylvania [Mr. GAYDOS] is recognized for 30 minutes.

Mr. GAYDOS. Mr. Speaker, as we wind down toward the end of the 99th Congress, it has become increasingly evident that our opportunity to enact H.R. 1309, the High Risk Occupational Disease Notification and Prevention Act, into law, has passed us by.

When I introduced this bill on February 27, 1985, I thought we had an excellent chance of taking it all the way to the President's desk. I truly believed that we were well on our way toward winning another battle in the never-ending war against those workplace-related diseases that cause about 100,000 worker deaths each year and nearly 400,000 cases on newly disabled workers annually.

But, it is not to be this year. As we moved the bill through my Subcommittee on Health and Safety as well as the Subcommittee on Labor Standards, it was clear that in spite of all the groups that supported the effort—health and environmental organizations such as the American Cancer Society, the American Lung Association, the Sierra Club, Health Research Group of Public Citizen, and virtually all of the American labor movement, there was a strong voice of opposition from industry and this administration.

As the hearing process ended and through the markup process in both subcommittees and in the full committee as well, it was evident that the opposition's tactics were to dely action for as long as possible, propose to offer a wide range of amendments aimed at destroying the bill and, finally, to distribute information to the Members of Congress that were off the mark.

Throughout the entire time, I have tried to keep the record straight in terms of what H.R. 1309 does and does not do.

Today, though, rather than use my words to answer the misconceptions being bandied about by the opposition to H.R. 1309, I thought I would read into the RECORD some letters from persons who helped us develop the bill and who have commented on it.

The letters I have with me today are from Public Citizen, the American Cancer Society, the Association of University Environmental Health Science Centers, the Mount Sinai Medical Center, the Association of University Programs in Occupational Health and Safety, and the Ohio OSHA/Environmental Network. In addition, I have a letter signed by 16 industrial hygenists who have taken exception to the testimony by a spokesman for the American Industrial Hygenists Association at one of the hearings on H.R. 1309 and another letter from a nursing student who is concerned about the health of all Americans.

These letters, as I noted earlier, focus on the importance of the bill, its need, and respond to some of the misconceptions being spread about.

I hope all of my colleagues will take the time to read these letters so they might make themselves even more aware of the necessity for H.R. 1309. After reading the letters, perhaps they will be ready to join me next year when I reintroduce the bill in the 100th Congress.

JANUARY 7, 1986.

Hon. JOSEPH M. GAYDOS,
Chairman, Subcommittee on Health and Safety, Rayburn House Office Building, Washington, DC.

DEAR CONGRESSMAN GAYDOS: As industrial hygienists committed to safe and healthy workplaces, we support the High Risk Occupational Disease Notification and Prevention Act of 1985 (H.R. 1309), although with some modifications. We see its potential to provide information which could lead to prevention or treatment of disease, to provide some incentive to employers to abate hazards, and to advance the principle of workers' rights to information about risks they face on the job.

We are distressed that the American Industrial Hygiene Association, of which nine of the signatories are members, has gone on record against the Bill. We wish to let the Congress know that there are many industrial hygienists, including AIHA members, who take a different view, one which we consider to be fully supportive of working people's rights and health.

The most disturbing part of AIHA's testimony is the assertion that the OSHA Hazard Communication Standard will pro-

vide adequate risk information to workers, and make H.R. 1309 superfluous, and that the OSHAct has taken care of workplace health and safety. Regardless of one's evaluation of the Hazard Communication Standard, it addresses a different need than does H.R. 1309—identifying current hazardous exposures, not past risks—and so does not render 1309 superfluous. Furthermore judging from the record of OSHA under the current Administration, we cannot expect aggressive enforcement of the useful provisions of this Standard, or of other OSHA standards.

The AIHA's criticism of H.R. 1309 for referring to harmful substances, rather than to the broader concept of multifactorial risk, can only have come from a misreading of the Bill. Section 4 of the Bill spells out the target populations as those at risk of "disease associated with hazardous occupational exposures," and directs the Risk Assessment Board to identify such populations from "studies of agents, processes or jobs that may be toxic based upon epidemilogic and clinical observations of human populations, or animal and laboratory studies. . ." Clearly, since the first two listed sources of information are existing disease (not exposure information), other risk factors besides single substance exposure will be automatically taken into account. We would add that the Hazard Communication Standard has the weakness which the AIHA wrongly ascribes to the Bill: it provides information only on isolated substances, not on their use or combined effects with other substances or other risk factors.

We do agree with one point of AIHA's criticism of the Bills' concept of risk: AIHA points out that occupations do change, and that studies which identify work-related disease may reflect obsolete processes or exposure situations. We therefore agree with AIHA that industrial hygiene field studies should be added to the list of information sources for targeting populations in Section 4(b)(2)(A).

We disagree with AIHA's criticism of the Bill for not being preventive. The AIHA dismisses the Bill because it does "not accomplish the task of protecting the individual that the framers . . . seek." While we fully support prevention as the best remedy for exposure, we point out that prevention is the province of the OSHA Act, not of a post-exposure notification law. The AIHA testimony goes on to describe an ideal scenario in which companies employ industrial hygienists and physicians to prevent and treat disease. While we agree this is ideal, it is far from present realities. Such a scenario might come about with vigorous and well funded OSHA enforcement. The lack of H.R. 1309 however, will not make it happen, nor will the Bill preclude companies from abating hazards, OSHA from enforcing its Act, or Congress from passing other preventive legislation.

We are concerned that the Bill does not spell out adequate provisions for dealing with some potentially damaging consequences of notification on workers' physical and mental well being. Workers who learn that their chronic disease may have an occupational origin, cannot be expected to have improved chances of receiving Workers' Compensation under the Bill, especially in states with restrictive statutes of limitation. For those whose chronic diseases are not treatable or curable, the impact could be primarily negative. Even those workers who may benefit from the opportunity to seek abatements, change jobs or get early medical intervention, may need counselling for themselves or their families to help deal with the new knowledge risk. Thus it is crucial that provision be in place via the ERCs or other resources for both medical and psychological aid before notification is carried out. The current language of H.R. 1309 only mentions that existing ERCs will be selected and some training and equipment will be provided to them. It seems likely that an expanded network of facilities and resources will be needed.

Not only does the Bill fail to specify or establish resources to meet these needs, but the provisions for even directing workers to medical and social services are minimal: (1) they are absent in the goals statement; (2) they are relegated to development of educational programs in the list of research topics (and they are the last item on the list); and (3) they are the last item in the Content of Notification (of risk) and are limited in that list to "name and address of the nearest Occupational and Environmental Health Center . . ."

In summary, we want to go on record in support of H.R. 1309, with some modifications, and to deplore the action of the AIHA in testifying against the Bill.

Respectfully submitted,

Sonia Berg, Carol Berman, Buck Cameron, Fran Conrad, Diana Crowder, Jeffrey R. Jones, Barbara Materna, Bradley Prezant, Elise Pechter Morse, Margaret Quinn, Venetia Runion, Scott P. Schneider, Noah Seixas, Patrice Sutton, (I.H. student), James L. Weeks, and Rishard R. Youngstrom.

OHIO OSHA/ENVIRONMENTAL NETWORK,
Akron, OH, February 26, 1986.

Re High Risk Occupational Disease Notification and Prevention Act of 1985 (H.R. 1309).

Hon. JOSEPH M. GAYDOS,
Committee on Education and Labor, House of Representatives, Rayburn House Office Building, Washington, DC.

DEAR REPRESENTATIVE GAYDOS: Currently, in the United States there is no established national program for identifying, notifying, counseling, and medically monitoring worker populations at risk of occupational disease. Yet, a number of identifiable worker populations are at high risk of developing diseases because of hazardous occupational exposures, but tragically these workers have never been told of the risk they face.

Thousands of toxic substances and physical agents are in wide industrial and commercial use in the United States. Approximately 11 million workers are exposed to known carcinogens, and some 100,000 workers die and one million more are disabled each year from occupational diseases caused by hazardous exposures.

The Ohio OSHA/Environmental Network believes workers have a basic and fundamental right to know that they have been exposed to an occupational hazard and are at risk of contracting an occupational disease. Through early detection, the staggering human and financial costs of occupational disease treatment can be substantially reduced.

Passage of H.R. 1309 would:

Expand federal research efforts to further identify and define worker populations at risk of occupational disease and improve the means of medical surveillance for employees exposed to occupational hazards.

Establish a federal program to identify and notify individual workers at risk of occupational induced disease and to counsel them appropriately on appropriate medical surveillance procedures.

Authorize and direct the certification of occupational and environmental health centers among existing health-care facilities and provide for ongoing medical surveillance of workers at high risk of occupational disease.

Establish a set of protections for workers against discrimination on the basis of the identification and notification of occupational disease risk.

Create an insurance incentive for the early detection and treatment of occupational disease.

As a member of the House Committee on Education and Labor, we urge you to cosponsor and lend continuing support for passage of H.R. 1309.

Sincerely,

FRANK D. MARTINO,
Labor Co-Chair.
STEPHEN H. SEDAM,
Environmental Co-Chair.

ASSOCIATION OF UNIVERSITY PROGRAMS IN OCCUPATIONAL HEALTH & SAFETY,
New York, NY, September 26, 1986.

Hon. JOSEPH M. GAYDOS,
Chairman, Committee on Education and Labor, U.S. House of Representatives, Rayburn House Office Building, Washington, DC.

DEAR CONGRESSMAN GAYDOS: I am writing you in my capacity as President of the Association of University Programs in Occupational Health and Safety (AUPOHS). AUPOHS is a voluntary national organization comprised of the Directors of the fourteen Educational Resource Centers across the United States supported by the National Institute for Occupational Safety and Health. The Educational Resource Centers are the primary resource in the United States for training physicians, nurses, industrial hygienists and safety specialists for careers in occupational health and safety.

At the semi-annual meeting of AUPOHS, which was held on September 16 and 17, 1986 in Chapel Hill, North Carolina, the Directors of the Educational Resource Centers voted overwhelmingly to support H.R. 1309, the High Risk Occupational Disease Notification and Prevention Act of 1986.

The Directors of the Educational Resource Centers believe that passage of the High Risk Notification Act would constitute an essential step in the prevention of occupational disease in this country. This Bill, if enacted into law, could have a substantial impact in reducing the annual toll of disease, disability, and death which affects American workers as the result of workplace exposures.

Additionally, the Directors of the Educational Resource Centers examined the feasibility and costs associated with the worker notification procedures proposed in the Bill. We have concluded that the types of notification proposed are feasible. This same conclusion was reached recently by the Board of Scientific Counselors of the National Institute for Occupational Safety and Health.

Past efforts at worker notification, such as the National Cancer Institute's notification of workers exposed to asbestos several years ago, demonstrate that proper notification can be an economical procedure. Indeed, early notification can save costs through the prevention of disease which, if un-

checked, would result in high costs from hospitalization, lost wages and premature death.

We have considered the argument that the OSHA Hazard Communication Standard (29 CFR 1910.1200) is sufficient to accomplish the goals proposed in the Bill. In our opinion this argument is seriously flawed in several respects. First, the OSHA Hazard Communication Standard pertains only to current and future workers. By contrast, H.R. 1309 aims at providing information to all workers past, present and future. Second, the Hazard Communication Standard is intended to provide workers with information pertaining to the chemical nature and hazards of the substances with which they work; that is a laudable goal. By contrast, however, H.R. 1309 is aimed at providing workers with information pertaining to their personal health status and health risks, in addition to information concerning their chemical exposures. Third, major categories of workers such as retirees, former workers, farm workers, workers in service industries, and workers employed by state and local government are excluded from the OSHA Hazard Communication Standard, as it now stands.

In summary, the Directors of Educational Resource Centers, strongly support H.R. 1309. We would be pleased to testify on behalf of this important legislation

Sincerely

PHILIP J. LANDRIGAN, M.D.,
President.

THE MOUNT SINAI MEDICAL CENTER,
New York, NY, July 24, 1986.

DEAR REPRESENTATIVE: I am writing to seek your support for major legislation to prevent cancer and other occupational diseases: H.R. 1309/S. 2050—The High Risk Occupational Disease Notification and Prevention Act. I believe enactment of the legislation is critical to the goal of disease prevention.

A recent well-publicized study published on May 8, 1986 in the New England Journal of Medicine confirmed what many scientists and physicians have been saying: that cancer is caused, by and large, by agents in our environment, and that to reduce the number of cancer deaths (more than 400,000 this year), we must direct our efforts and resources towards prevention rather than the almost total reliance on treatment of cancer once it appears.

Until 1960, cancer was viewed by many as one among a number of diseases of life which occurred inevitably with age. Two concurrent experiences changed that perspective, First, statistics from different countries showed varying cancer rates. For example, higher levels of stomach cancer existed in Japan than in our country. Colon cancer was found to be high in the U.S., uncommon in Rumania. There were many more examples, all of which had two possible explanations. Either there was something different about the populations in these countries, or there was something different about the way they lived.

Secondly, in a series of occupational circumstances, various chemicals, dusts and radiation were found to cause cancer. Liver cancer was found in Louisville, Niagara Falls, Midland and South Charleston from exposure to vinyl chloride; benzidine in dye plants produced bladder cancer; mesothelioma followed asbestos exposure; benzene, chromium, bischloromethyl ether, betanapthylamine, arsenic, and others were found to cause cancer in mine, factory and refinery workers.

Thus, as early as 1965, there was growing appreciation that most cancers were environmental in origin. More than 20 years later, this realization has been confirmed and reconfirmed a thousand times. To reiterate what has become a virtual truism—cancer is a disease more easily prevented than cured. The question is, how?

The Congress has taken the first steps: the regulatory apparatus to prevent environmental disease by preventing exposure is in place. The laws, and the agencies to implement these laws, exist. Only the will is needed to put them to use.

The second step has not been taken and is long overdue. When our regulatory efforts are too little or too late, and exposure has unhappily occurred, there is still often time to prevent the disease. Even before disease actually appears, a chain of events takes place during the incubation ("latency") period that can often be broken. And, if disease does occur, if we detect it early enough, we often are able to reduce suffering and prolong life.

To take that second step requires that those exposed (workers) be informed that they are at risk, and directed to appropriate resources for medical assistance and counseling. Also, there needs to be adequate resources in place that are prepared to accept a responsibility that may extend over the entire life of the worker (and sometimes his family).

Congress now has the opportunity to take action on behalf of millions of workers already known by the government to be at serious risk of cancer and other occupational diseases. The necessary elements for intelligently, efficiently and cost effectively preventing disease are embodied in the High Risk Occupational Disease Notification and Prevention Act, currently pending before the House of Representatives and the United States Senate.

We can prevent much (although unfortunately, not all) cancer if we identify, notify and assist these American workers who have been exposed to carcinogens and other toxic agents in the past and who in, the coming 5, 10, or 15 years, are at risk of occupational disease. This the crux of the High Risk legislation. At present, there is no established national program to notify current and former employees at identified risk from toxic exposures so that appropriate counseling and medical surveillance can begin to protect their health. In addition to identification, notification and counseling, the High Risk bill calls for expanded federal research, training and education to further identify and define worker populations at risk and to improve the means of medical surveillance.

The bill also authorizes and directs certification of occupational and environmental health centers among existing health-care facilities to provide technical support to local medical communities for ongoing medical surveillance of workers at risk. It creates an insurance incentive for the early detection and treatment of occupational disease while establishing a set of protections for workers against discrimination on the basis of their identification and notification status.

With respect to this sizable share of cancers and other diseases arising from workplace hazards, the prospects for successful intervention are promising. It is all the more disconcerting, therefore, that people at high risk are not being sought out, informed and helped to help themselves. The cancers of the 1990s and the 21st Century are being initiated now and we are doing very little to prevent them. We should not abandon to unnecessary death and disease thousands of working men and women—and sometimes their children.

Your support for the High Risk Occupational Disease Notification and Prevention Act can make a tremendous advance towards the prevention of cancer and other work-related diseases.

Respectfully yours,

IRVING J. SELIKOFF,
Professor Emeritus, Mt. Sinai School of Medicine of the City University of New York.

ASSOCIATION OF UNIVERSITY ENVIRONMENTAL HEALTH SCIENCES CENTERS,
New York, NY, September 8, 1986.

DEAR MEMBER OF CONGRESS: I am compelled to write to you on a matter of urgent public interest. It is vital to the health of America's working population that Congress move promptly on passage of the High Risk Occupational Disease Notification and Prevention Act (H.R. 1309/S. 2050).

The need for medical intervention for the millions of identified worker populations at high risk of exposure to toxic hazards on the job is indisputable.

What has been disputed is the feasibility of notifying these worker populations. As the former director of the National Cancer Institute (NCI), I can attest to the fact that such a program can be implemented in an efficient and cost effective manner.

During my tenure at NCI, at the cost of pennies per worker, we sent millions of recipients of social security checks a simple printed notification recommending that they seek medical counseling if they had been exposed to asbestos during the course of their working life.

Thousands of physicians had been prepared in advance to assist their patients and thousands of patient calls and clinic visits were made. Smoking cessation and other intervention programs were instituted for workers and their families. I feel certain that thousands of lives were saved or prolonged as a result of this program.

The feasibility of notification has been further substantiated through a number of smaller demonstration projects which included the same components called for in the High Risk Bill: identification, notification, medical surveillance and counseling.

Precedent is on our side. But time is not. Every day that we delay, millions of American workers move one day closer to early death and disability. We can halt that process by acting to implement a program that is medically sound, administratively possible, and economically effective.

Respectfully yours,

ARTHUR C. UPTON, M.D.,
Professor and Chairman, Environmental Medicine, President, AUEHSC.

AMERICAN CANCER SOCIETY,
New York, NY, April 19, 1986.

Congressman JOSEPH M. GAYDOS,
Rayburn House Office Building, Washington, DC.

DEAR CONGRESSMAN GAYDOS: The Public Issues Committee of the American Cancer Society recently met and reviewed H.R. 1309, the High Risk Occupational Disease Notification and Prevention Act. After careful consideration, the Committee recommended and the ACS Board of Directors

subsequently approved a statement of support for your legislation.

The American Cancer Society is strongly committed to cancer prevention. We believe this legislation is a step towards implementation of knowledge gained in the last few years regarding the effects of occupational disease exposure on workers. Enactment of your legislation will help prevent and modify risks of occupationally induced cancer. The American Cancer Society will support H.R. 1309 and its companion bill S. 2050, and will work to secure passage of this vitally important health legislation.

Sincerely,

CHARLES A. LEMAISTRE, M.D.,
President.

PUBLIC CITIZEN,
Washington, DC, May 22, 1986.

Representative JOSEPH M. GAYDOS,
Chairman, Health and Safety Subcommittee, U.S. House of Representatives, Longworth House Office Building, Washington, DC.

DEAR REPRESENTATIVE GAYDOS: We are writing to you to reiterate our support for H.R. 1309, the High Risk Occupational Disease Notification and Prevention Act of 1985. Workers have a fundamental right and need to know that they are exposed to hazardous chemicals on the job and are at risk of developing an occupational disease. H.R. 1309 would establish a federal program to notify individual workers that they are at increased risk, thereby providing potentially life-saving information to workers by facilitating early diagnosis and treatment of occupational disease.

Last November, we testified at the House hearings on H.R. 1309 that this bill is urgently needed to notify hundreds of thousands of workers who may not realize that they are at increased risk of occupational disease. Public Citizen Health Research Group (HRG) had released a list in January 1985 of 253 worksites where studies by the National Institute for Occupational Safety and Health (NIOSH) have identified over 200,000 workers who are at potentially increased risk of cancer, respiratory disease, and other serious work-related illnesses. Although scientists and doctors at NIOSH advocate notifying these workers individually of their increased risk, NIOSH has not done so because it has been unable to obtain the necessary funding.

At the hearings, we also cited statistics from the published literature demonstrating that NIOSH, or any other government agency, cannot simply assume that workers are currently receiving this kind of notification. For example, workers at the Augusta Chemical Company who were exposed to dangerous levels of betanaphthylamine (BNA)—a known bladder carcinogen—were not aware of the hazardous nature of their exposures or the accompanying risks. Although a pilot screening project detected bladder cancer in 13 out of 1,385 screened workers, and 36 additional test results were suggestive of pre-cancerous changes in the bladder, the pilot study also found that these workers were largely unaware of the risks they faced: 42 percent of workers who were notified of their risks as part of a pilot notification project had never heard of BNA; 74 percent of the workers were unaware that BNA is harmful; of the 26 percent of workers who knew prior to notification that BNA is harmful, most had learned about this only after they had developed symptoms such as blood in their urine, often a sign of bladder cancer.[1]

These statistics demonstrate a clear need for legislation that provides for mandatory work notification. We continue to support H.R. 1309 and again we extend our offer to assist the Subcommittee in any way possible.

Sincerely,

SIDNEY M. WOLFE, M.D.,
Director.
LORI ABRAMS,
Staff Researcher.
NANCY DRABBLE,
Director, Public Citizen Congress Watch.

NOVATO, CA, *November 22, 1985.*

Hon. Congressman GAYDOS,
The House of Representatives, The Capitol, Washington, DC.

DEAR CONGRESSMAN GAYDOS: It is now apparent that many hazardous substances are continually used in certain occupational settings, which has contributed to a significant number of workers acquiring diseases or suffering death. Thus, HR 1309 the High Risk Occupational Disease Notification and Prevention Act of 1985 has great pertinence. This bill should be regarded with high priority and urgency for it deals with basic human needs necessary for survival, namely safety and health.

HR 1309 has significant relevance to certain health care professionals, especially operating room personnel such as anesthetists. Employee anesthesia gas exposure has been linked with various forms of cancer. And Nitrous oxide (N_2) exposure has produced myeloneuropathy and interference with vitamin B_{12} metabolism. Many studies have also proven a greater incidence of hepatic and renal disease among anesthetists. Thus, numerous studies have shown that anesthesia gas exposure is associated with significant health risks. Furthermore, a survey involving more than 40,000 medical professionals, showed that women exposed to an operating room environment during the first trimester of pregnancy and the preceding year faced a risk of spontaneous abortion 1.3 to 2 times greater than unexposed personnel. Other risks to unborn children of exposed women include a two times greater risk of stillbirths, lower birth weights, and birth defects particularly in the cardiovascular and musculoskeletal systems.

Passage of HR 1309 or a similar bill would allow for enactment of stringent policies and procedures regarding occupational hazards. Specific issues, such as constitution of an acceptable anesthetizing environment and determination of maximum safe gas exposure levels could be resolved through extended research. More global issues, such as identification, notification and treatment of high-risk or diseased populations would also be enacted.

Currently, the Occupational Safety and Health Administration (OSHA) has announced its final rule on hazard information which imposes on certain employers the duty to disclose health hazard information. However, this rule plays only a limited role in risk prevention since its effectiveness is dependent on worker initiative, OSHA inspection and the extent to which proprietary claims limit disclosures. Since many cohorts of workers are largely unaware of their current exposure to hazardous substances in the work place this OSHA rule is of minimal value to them.

As an advocate for basic human rights and a future nurse anesthetist I feel this issue is of paramount importance. I hope that you also realize the value and urgency of enacting these stringent safety measures to provide for our basic human needs.

Respectfully yours,

ESTHER WANNENMACHER.

[1] Schulte, P.A., Ringen, K., Hemstreet, G.P., et al. Risk Assessment of a Cohort Exposed to Aromatic Amines: Initial Results. JOM 27(2): 115–121, 1985.

□ 2005

That concludes, Mr. Speaker, just a few of the many, many letters that I received as chairman of the committee in support of the pending legislation.

I wish to emphasize for the record in closing that we are talking about an expenditure in the bill of $25 million, miniscule in comparison to what we are spending on foreign aid, what we spend in the military when we have waste for the so-called curvature of the toilet seats that cost something in the neighborhood of $2,000 and things of that nature.

Absurdity, yet, but practically, I think it is a very nominal amount to ask. We have evidence, and I am going to present it next year when we debate this bill, that is indisputable. This information that we talk about can be readily made available to the worker; it can be done in a timely fashion; it can be done effectively; and it can be done with cost prudence.

We have had expert witnesses who have already notified 200,000 workers from the Centers for Disease Control down in Atlanta, and they talked about a charge of sometimes 50 cents, and sometimes maybe as high as $20. But the overall charge is acceptable when you take into consideration what is prevented. The diagnosis is made in an early time of the life; misery and suffering that are protected against.

Also, for the employers of this country and the manufacturers and business generally under our laissez-faire philosophy, they, in the long run, will save substantial money. I do not care what you say, and logic dictates, and it is only factual, proven repeatedly, that if a person has a disease, although it is not discovered now and he is suffering from it, eventually, under the Workmen's Compensation Act, he is going to be suing that employer, and he is going to be paid, and paid substantial sums.

As the Cancer Society has been so explicit and affirmative in their written communication to me supporting this bill, they say you have got to prevent it. All the millions, hundreds of millions of dollars, that have been contributed to the Cancer Society, they conclude that you cannot cure cancer today; you have to prevent it.

So in preventing it, we are talking about those employers and businesses where they are going to be in a position, by prevention, which we think is inherent in the bill, to delay and hope-

fully eliminate and eradicate the workmen's compensation claims.

□ 2015

I do not care what you say, again it is substantiated by the legal profession that that claim is going to come about and that this bill because of notification is not going to increase those claims. Those claims are there. It is a matter of potency. They are going to come about and if you catch them later, the awards are going to be higher and the awards are going to be more expensive.

I conclude by saying unequivocally that business does have an awful lot of items to consider and a big load to carry in going into business and carrying it on. We are trying to help them. This will not hurt them.

I implore my colleagues in the House to read carefully the pertinent information which I will make available at the beginning of the year. I will make it as informative as I can, stripped of all emotion, and be as practical as I can and hopefully they will be in a position to support us on this timely legislation which is so needed and which will save the country and save the individuals involved and save the employers substantial funds and all at very limited cost. We are asking for $25 million. That is small compared to our other expenditures.

A TRIBUTE TO THE HONORABLE TOM LOEFFLER

The SPEAKER pro tempore (Mr. SEIBERLING). Under a previous order of the House, the gentleman from Texas [Mr. ARCHER] is recognized for 60 minutes.

Mr. ARCHER. Mr. Speaker, it is with a sense of great personal loss—and irony—that I stand here tonight to join with TOM LOEFFLER's colleagues in the House in bidding goodbye to this fine statesman.

Irony, because if I'd ever stopped to think about it, it wouldn't have occurred to me that someday I'd be here witnessing TOM's retirement.

Personal loss, because when TOM leaves this Chamber for the last time as a Member of Congress I'll deeply miss the day-to-day contact with a close friend who has enriched my life.

Since the earliest days following his election to the House of Representatives in 1978, TOM has made his mark on this body. His energy, principles, and devotion to his constituents and this institution earned him the position of leadership he now holds. He has set a high standard for others to follow.

TOM LOEFFLER has represented his congressional district, and his State, with honor, integrity, and dedication. No one could ask more of a Member of the House of Representatives than what he has given of himself.

It's only fitting that the reason for his retirement was a strong desire to return home and serve the people of his State in another capacity. Although the fates of the ballot box have dictated at least a postponement of that desire's fulfillment, I have no doubt that we'll be hearing plenty more from this Texan from the hill country.

When the 100th Congress convenes in January, I know there will come a time when I'll pick up the phone to call him for help or counsel as I have on so many occasions over the years only to realize part-way through dialing his Longworth Building extension.

TOM, you know I'm going to miss you. We all wish you well; and I have a strong feeling Texas and this country when they need you most will find you available once again.

Mr. COMBEST. Mr. Speaker, will the gentleman yield?

Mr. ARCHER. I yield to the gentleman from Texas.

Mr. COMBEST. Mr. Speaker, it is with great pride and great loss that I rise today to pay tribute to a fine Texan and a good friend, the Honorable TOM LOEFFLER.

TOM and I go back to the days when we both worked for former U.S. Senator John Tower in Washington. Having worked side by side, first as Senate aides and later in the Halls of Congress, TOM has been a true friend.

TOMMY LOEFFLER has served this body well with "true Texas pride" and distinction. Since his election to the U.S. Congress in 1978, TOM has been at the forefront of legislative victories. An outstanding legislator, TOM's ability to work with both sides of the aisle effectively has benefited both the 21st District of Texas and this Nation. He has demonstrated in abundance the true bipartisanship and statesmanship that is the essence of this Nation's greatness.

A member of the Appropriations and Budget Committees, TOM has devoted himself to his work and to the people he represents. When you visit his sprawling congressional district, it doesn't take long to see that TOMMY LOEFFLER is a legend in his own time in west Texas. His constituents describe him as "a man of his word," "a hard worker," and a "true leader."

TOM is a unique kind of American success story who never forgot where he came from. His Texas roots run deep, reflecting his love of the land and its people. A fourth-generation Texan, he's always believed that with hard work, determination, and the ability to dream you could make a difference. And he has made a difference—the kind of difference that only those devoted to unselfish public service can make.

TOM has been instrumental in helping pass crucial pieces of legislation, yet he's always been there for his constituents and for his colleagues in Congress.

TOM personifies the highest standards of integrity and unselfish devotion to public service. As your friend and your colleague, I will miss you. What is our loss, is Texas' gain.

Mr. LEWIS of California. Mr. Speaker, will the gentleman yield?

Mr. ARCHER. I yield to the gentleman who is in the Republican leadership, the gentleman from California [Mr. LEWIS].

Mr. LEWIS of California. Mr. Speaker, may I say to the gentleman from Texas [Mr. ARCHER] that I appreciate my colleague from Texas yielding, who I have the privilege of spending this time with this evening talking about a friend whom we have all shared during the time we have served here together.

I come from California. I served there for a number of years in the California Legislature. I have always remembered on one of the major government buildings just across the street from the capitol, a saying, a statement that comes from one of the early pioneers of our State that is inscribed to say, "Give me men to meet our mountains."

Texas is a very special place. I have visited Texas many times, but perhaps my most exciting time there was following the Republican National Convention, going to TOM's family ranch and had a chance to see your State and enjoy your people at home.

I must tell you that my remarks this evening are remarks that come from the heart. I do not even intend to revise and extend my remarks later, for I want to let TOM know that this is just the way I feel about him.

"Give me men to meet our mountains" is an apt phrasing for what has been described as man's most challenging profession, that of politics. Above and beyond all other things I could say about TOM LOEFFLER, I would like the people to know that he is among the finest of politicians. That is his profession. He carries it out as well as any person I have ever met in public affairs.

Beyond that, we came to the Congress together. He is one of my classmates in the class of 1978.

We served also on the Appropriations Committee together and also in the Republican leadership. With that level of activity, we have had an opportunity to get to know each other extremely well.

One of the most fundamental elements to having our system work, whether Democrat or Republican, is to have both parties and the business of public affairs attract people of great quality. None that I have experienced in public life compare with TOM LOEFFLER. He first and foremost is an individual who cares about people. I mean,

you can feel it when you talk to him about an emotional issue. You can touch his heartstrings easily. I have seen him on the verge of more than emotion on more than one occasion when dealing with a national interest or people's difficulties.

Most important to me in politics, we need people whose word is good, and TOM LOEFFLER's word is his bond, and nothing can be more important when you are carrying out the business of compromise that makes our profession possible.

Most important to me, TOM has a sense for a thing called loyalty and he knows what friendship means.

When you combine friendship with loyalty, you have the best of relationships.

I do not believe this is the last we will see of TOM LOEFFLER. In my judgment, the contributions he was making here in the House put him clearly on a pathway that could have led to the Speakership of this House. He chose instead to go home to serve his people at home, but he will be back, whether in the House of Representatives or perhaps in some other body around this place or impacting public affairs down another avenue, he is going to impress us more and more as time goes on.

I do not believe that any of us are losing a friend as a result of his leaving the House. We lose a great deal in terms of quality of leadership, but he is going to be there for advice and counsel and effect.

TOM LOEFFLER, all of us want you to know we think you are a great guy and among men if we can love one another, we love TOM LOEFFLER.

Mr. ARCHER. Mr. Speaker, I thank the gentleman from California.

I would add that when that type of accolade comes to a Texan from a Californian, it is truly memorable.

Mr. FIELDS. Mr. Speaker, will the gentleman yield?

Mr. ARCHER. I am happy to yield to the gentleman from Texas.

Mr. FIELDS. Mr. Speaker, let me first of all say that I appreciate the gentleman from Houston taking this special time tonight to talk about a special friend of all of us, TOM LOEFFLER. Of course, we are here tonight to honor TOMMY LOEFFLER. For me, TOMMY has been a mother hen. He has been a father confessor. He has been a confidant; but more than anything he has been a friend. If I could underscore that in my verbiage, I would underscore that friendship.

The people of his district in west Texas should be extremely proud of the service that has come from TOM LOEFFLER.

I think about TOMMY on several different occasions. I think about when I first came to Congress in 1981 and was sworn in. I guess I was as green as they come to Washington and for me TOMMY was a shepherd. He tried to guide me in the direction of the right committee assignments. He took the time to counsel me on staff selection. He took the time that a young Congressman needs from someone who has been here and has experienced what Congress and Washington have to offer. He was the master for me and I was the apprentice, so to speak.

I think he has done that for every Member to some degree in our delegation and for that we all say thank you, TOMMY.

I also think of TOMMY in 1981 and 1982 when we as Republicans began to steer a new direction for this country in terms of reducing spending and reducing taxes. When I think of TOM LOEFFLER, I think about the aisle that is to my immediate left. We refer to this as the aisle. The people on the other side of the aisle are Democrats if you stand on the Republican side of the aisle. I think of this aisle because I can remember vote after vote after vote in those crucial months where TOMMY LOEFFLER stood in the aisle, basically on the last two rows on the Democratic side and worked with a group of Texas Congressmen called the Boll Weevils. That was something that TOMMY LOEFFLER did not get much credit for, but TOMMY helped provide the margin for the President's victory by working with those particular individuals.

I will just always remember the frenzied atmosphere as we would see the votes come to one or two people and TOMMY would go over to the computer and he would see how the different Texas Members voted, how other conservative Boll Weevils voted, and he would run over and talk with them and tell them how important this was and that the President was counting on their support and even more, that the people from their congressional districts were counting on them to provide that real change of direction for our country; so anytime I walk that aisle or I look over at that aisle I am going to think about that important work that TOMMY LOEFFLER did in 1981 and 1982 in particular, but during his entire tenure in Congress, because he has been glue many times to build the coalitions that the President has needed to pass important legislation on the floor of this House.

I am also going to think of TOMMY LOEFFLER anytime I think about our Nation's space program, because earlier this year those of us in Houston got a real scare. We thought that many of the important functions of the Johnson Space Center in Houston were going to be transferred. Well, TOMMY sits on a very important committee and he sits there because his colleagues on the Republican side of the aisle have great confidence in him and they placed him on the Appropriations Committee; so when we began to experience those problems with NASA in Houston, we turned to TOMMY LOEFFLER to carry an amendment for us in the Appropriations Committee that basically said that the NASA Administrator could not transfer people or programs without the express authorization of Congress, which in a sense means that Johnson can continue in its functions and those functions will not be transferred to some other city, that there will not be a diminishment of power and influence and functions at that space center in Houston, and for that TOM LOEFFLER deserves the thanks of all of us in Texas, but particularly those of us who represent the metropolitan Houston area.

We are all going to miss TOMMY. We are going to miss his cowboy boots. We are going to miss his belt buckle that he tells us he won calf roping. We are going to miss his smile.

I will have to be candid. I am not going to miss his University of Texas ring that he so prominently displays; but Texas is going to miss TOM LOEFFLER. I am going to personally miss his work. I am going to miss his friendship and I am going to miss his valued counsel.

Again, I appreciate the gentleman from Houston [Mr. ARCHER] calling this special order tonight.

□ 2030

Mr. ARCHER. I thank the gentleman for his comments. We have all shared so much with TOM over the years, and I suppose that each of us has a little different perspective on it, and for his own feelings about that, I yield to the gentleman from Dallas [Mr. BARTLETT].

Mr. BARTLETT. Mr. Speaker, I thank the gentleman from Houston for yielding, and I do thank him, as we all do, for taking out this special order. We each have our own special and very high feelings for TOM LOEFFLER, our colleague and our friend, and as I listened to what the others have said, it strikes me as to how terribly similar our thoughts and our praise are for TOM LOEFFLER.

It is difficult to describe in words, and when I first began thinking about this, when the gentleman announced the special order, and sat down to try to focus my thoughts on what TOM LOEFFLER has meant to this Congress and has meant to this country and has meant to the State of Texas and has meant to me as a Member of Congress, it is difficult to describe that in words, but as I think it through, it seems to me that TOM LOEFFLER in terms of impact on my congressional life has had singularly the most profound impact on my life as a Member of Congress, and I detect and I know it to be true that he has had that level of impact on virtually every Member that

he has touched and worked with as a Member.

When I first came here—it was in 1982—TOM was already a veteran. He had been here since 1978. He did not have to—I was a new Member in a rather small class—and yet TOM took me under his wing. I arrived and asked for his help, and he extended not only his help but his friendship and his guidance in those 4 years that we have served together. I cannot remember a single instance of ever asking TOM for his help or his advice or his assistance in something that was good for Texas in which he said anything but not only "yes," but a very enthusiastic "yes."

By the time I arrived, TOM was already a member of the leadership around here. He was the chief deputy whip. He was a man who was respected from California to Maine, and everything in between, and he was already someone who provided leadership, as he does today, in the House of Representatives.

As I think through the career of TOM LOEFFLER, three characteristics or three facets seem to have the most impact on me, and they are very similar to what has previously been said in his impact on other Members of Congress, and it occurs to me that these are the three facets of a TOM LOEFFLER service that are all related, and that they are similar to the impact that he has had on other Members' congressional lives.

It is hard to know where one stops and the other begins, but I would separate it into teacher, legislator, and friend. First, teacher—maybe the word "counselor" is a more descriptive word—as Congressman ARCHER talks about the times that he would pick up the telephone. We all memorized that extension number of TOM LOEFFLER early on. We all discovered—I did on my first day—where TOM generally sits on the floor when we come for votes or the floor debates so that we could be certain to be able to ask just the right question.

He did not offer his teaching or his counseling in any sort of a formal way, but it was always direct, it was always candid, and it seems to me over those 4 years of being taught that it was always right. TOM LOEFFLER always had a way of going just to the heart of the matter, discovering just the correct way to thread the eye of the needle.

He taught me first, I think, as I started, I sat down and I read and I got an understanding of the written rules of the House, and I shared some of my questions on the written rules of the House with TOM. I quickly discovered that I did not have to read them at all, because TOM LOEFFLER had virtually memorized them.

Then he told me that those written rules of the House were far less important than the unwritten rules of the House, which is what really gets things done, and it is TOM LOEFFLER who has those unwritten rules of the House virtually memorized.

The times are frequent that I would come to him and ask him how to do something, and he would always answer, "Oh, yes, you can do that, and here's the way you can do it." Or he would say, "Yes, you can do that," but sometimes he would say, "But you don't want to do it that way, because the price that you'd pay would be too high."

Then he would say, "But if you want to accomplish that goal for your constituents or the people of Texas, here's a better way to accomplish it. Yes, you can accomplish that, and here are three different procedures by which you can accomplish it, and I recommend the third one." Then he would say, "Oh, by the way, let me help. Let me give you a hand in getting that done."

In my first month here I had a lesson in persistence which I will never forget. Perhaps the chief unwritten rule of this House—or the second, the first being courtesy and friendship—but the second is persistence—that is to say, never give up on a good idea, on something that needs to be done, and you can get something accomplished.

By luck of a series of circumstances, TOM was filling in—was not even a permanent member, but was filling in—as a member of the executive committee of the Committee on Committees. After they had met and after the Republican Conference had met and voted, and after everything was ratified, about 30 minutes before the final bell was rung for the final ratification of the committee assignments, I remember TOM called, and he said, "I think you got good committee assignments, STEVE, but I figured out a way that we can get you a little better."

A little better. He did not have to do that. We sat down, and he talked about his strategy and put it into effect. Twenty minutes later, it was in fact in effect, and my constituents thereby, through his efforts, had the committee assignments that they had sought.

He never offered his advice or his counsel unless it was asked. His favorite bit of advice, that he probably used three times today and four times yesterday, and will a dozen times tomorrow, is that, "You can get a lot done around here if you really don't care who gets the credit," and TOM LOEFFLER has always been in the credit-sharing or the credit-giving-away business.

As a legislator, then, TOM LOEFFLER may well be the most natural, gifted legislator that this body has seen in a long, long time. He undoubtedly will be known as and is known around here as one of the most superb, able legislators in terms of legislative skills that this body has ever seen.

He makes it seem so easy. He does it with a smile on his face, but he always comes up with just the right tactic, just the right strategy, to implement a national policy that is in the national interest, but to implement it with a Texas perspective. So you can hear him on the floor saying to other Members, "I'll take care of that; leave it to me. I'll get it done." Then he does get it done.

He is a technician first class, but he is a technician of substantial principle. TOM LOEFFLER, as he would work through tax bills, would always understand how that tax bill would affect the individual average working man and woman in his district. As he would attempt to reduce spending, he would have a clear understanding as to who pays for that spending. And in areas of national security TOM would keep first and foremost the protection of the future of this country.

As a friend, and he has 434 friends in the House of Representatives, he has been a friend and a close friend since the day I arrived. He never betrayed a confidence of me or anyone else, and he is someone who will and always has and always will stick with you.

TOM LOEFFLER is young in chronological age; he is old in the ways of politics and government and public service in the legislature. I hope that he is not finished with public service, and I do not believe that he is. I believe that there will be a call from an electorate one day, perhaps one day soon, in which an electorate and a group of constituents in Texas will say to TOM LOEFFLER, "We need your service again." And on that day, it is my hope that TOM LOEFFLER holds himself out for public service and sets out to serve his constituents as he so ably has and will again.

Mr. ARCHER. I thank the gentleman for his comments.

Mr. ARMEY. Mr. Speaker, will the gentleman yield?

Mr. ARCHER. I yield to the gentleman from Texas.

Mr. ARMEY. I thank the gentleman for yielding.

Mr. Speaker, I would like to first express my gratitude to the gentleman for taking this special order, and, incidentally, for his fine leadership for our delegation from Texas.

I was on my way to a dinner meeting when one of my aides reminded me that we were doing this this evening. I had him turn the car around, and I wanted to stop by for a moment to just add my sentiments here with the rest of us.

TOM LOEFFLER is precise, he is concise, he is nice, and I will miss him. I know that Texas is going to be lucky to have him back, but we will miss him

here, and I hope that TOM has many happy trails out in west Texas. Thank you again.

□ 2040

Mr. ARCHER. I thank the gentleman.

I am happy to yield to my neighbor to the southwest [Mr. DELAY].

Mr. DELAY. Mr. Speaker, I thank the gentleman from my hometown, Houston, for taking this special order. I do not know of any other man that should have, and I am glad he did.

I have so much to say about TOM LOEFFLER, but we have a line back here that wants to talk about TOMMY, and what he has done for his district and for Texas and for this Nation.

I just want to take a few minutes to go over some things that personally have happened between TOM LOEFFLER and I. It shows what kind of a man he is, what kind of love he has for his district and for Texas and this Nation.

The first time that I ever met TOM LOEFFLER was in 1979. I was invited to come to the Mason County roundup to visit TOM LOEFFLER'S cousin. I had never met TOM LOEFFLER, but I had always admired him and heard a lot about him and was looking forward to meeting him.

Well, this gentleman rides his horse, and especially a horse named Liberty, and he rode into the rodeo arena on his own horse, in a grand entry, in a white shirt and his boots and his hat, and more than most politicians would do, he backed up into the roping chute and came out and roped the calf, got off that calf and walked out of the arena and started at one end of the grandstand and shook every hand in that grandstand. Now most of us do that, we shake hands. But very few of us know every man and woman by name, first name and last, and not only their first name and last name, but their children's names and what their children are doing. TOM LOEFFLER loves his district so much and the hill country so much that he knows I think everybody in that district, knows what they are doing and has a genuine concern for what the feelings of his district and the people of his district are, and what their wants are. He loves Texas.

I could go on and on about what he has done in this body and what he has done back home for Texas, giving up a very prominent seat right here that could have lead to the speakership if we ever take over this body. But he chose to go home and offer himself as Governor of the State of Texas. Unfortunately, the people, the Republicans of Texas did not recognize what TOM LOEFFLER could offer to that State and turned him down as Governor of Texas.

But I see him coming back. He has not lost any love for Texas because of that election. He is there and he is already looking at positions in Texas that will help him further his will and concern for Texas. That goes for his Nation too.

I have watched in a very short period of time what TOM LOEFFLER has done for his Nation here as deputy whip of this body and of our side of the aisle. I do not know of a man that has the energy level that that fellow has got. I have walked into his office and he has got two or three things going on at the same time and he is able to keep each one of them in perspective and work super hard for this Nation.

But more importantly than anything is TOM LOEFFLER'S influence on me. When I came here, even though I knew TOM, probably not as good a friend then as I am now of TOM'S, I did not know of one man in this House that had more concern over what happened to TOM DELAY and what would happen to him in this body. He took me by the hand and walked me through the procedures, and walked me through what needed to be done. Every time I needed an answer to a question, no matter how trivial it was, I knew that I just had to dial up his number and TOM would be available to answer my question, no matter how busy he was and what was going on in the leadership or what was going on in the House.

He impressed me greatly, and I think this points out the kind of man he is. He impressed me greatly with his ability to work with both sides of the aisle. He did not meet a man he did not like. He did not meet a man or woman that he could not work with, and he worked both sides of the aisle as if this was one House. Coming from the Texas Legislature, where that happens a lot, where partisanship does not really get into the battle of what the issue is, TOM LOEFFLER was my kind of guy.

He will continue to lead. TOM LOEFFLER will be a man that will be involved in Texas and the politics of Texas. He is already looking forward to what is going to happen in this election. He is looking forward to 1988 and the elections in the future.

I just hope TOM LOEFFLER finds a place to come back and serve the people of Texas and this Nation, and I know he will because the people of Texas will miss him, and I know I will miss him because he is a true friend. He is a friend that we will miss. We will miss you, TOMMY, and we hope you will come back.

Mr. ARCHER. Mr. Speaker, I thank the gentleman for his comments.

I yield to the gentleman from Ennis, TX, Mr. BARTON.

Mr. BARTON of Texas. Mr. Speaker, I thank my collegue in the House for yielding to me. It is a real pleasure to be here to participate in this special order under your leadership as the dean of the Texas delegation, and you are to be commended for asking us to participate.

My first concrete memory of Congressman TOM LOEFFLER was in Washington, DC, in the fall of 1983 when I was thinking about running for Congress, had not yet made the decision, and came to Washington the day after the Grenada invasion and I met with the gentleman in the well, Congressman ARCHER, in his office for about 2 hours. I met with Congressman FIELDS in his office for about an hour, and I met with Congressman BARTLETT and Congressman GRAMM, and my last meeting of the day was with Congressman LOEFFLER. He was not able to meet me over in his office. He was on the floor as the deputy whip and arranging some of the caucuses that were going on. We met over in the Rayburn Room. I had known TOM before that in Texas, but I had never really sat down and talked to him.

I asked him for his advice as to what I should do to try to be successful as a Congressman, or try to be successful if I determined to run for Congress, I should say. He said, "Joe, let me tell you one thing. If you really want to be a Congressman, when you leave this town today you should not show up again in Washington until it is time to be sworn in. You are not going to get elected up here, you are going to get elected by getting out in your district and meeting people and talking to people and asking them for your support." And he said, "if you will do that every day between now and the election, you will be successful," like I was in my first run.

That made an impression on me. That was good commonsense advice, and I went back to Texas, and worked hard. It got to the last part of the campaign and the Washington Post came out and said that there was one true thing in the Texas congressional races, and that was that my opponent was going to be the next Congressman for the Sixth Congressional District. Usually, when the Washington Post says something, you tend to give it some credibility.

So one day the phone rang and it was TOM LOEFFLER, and he said that he had just read the Post and he thought that was not the case, and was there something that he could do to help. And I said, well, there is something you could do to help me and I named four or five things, one of which was for him to come down and campaign for me. And he did do that. He spent, in fact, 2 full days with me, as I recall, campaigning.

Then something else happened. We started receiving financial contributions in the mail from people that I have never heard of, and they were from San Antonio, TX, and Houston, TX, and each of them had a little note

on it that TOM LOEFFLER asked me to send this, he said you needed some help.

I noticed going through my campaign files a week or two ago, looking at the campaign contributors who had contributed last time and had not contributed this time, how many of them there were that TOM LOEFFLER had asked to help me.

□ 2050

I guess there are three things about TOM that impress me. One he is a man of his word. If TOM LOEFFLER tells you something you can bank on it; if he tells you he will do it you can count on it. He does not say things that he does not mean. His word has got absolute integrity. That is a commodity that you need to be successful, not only in the U.S. Congress, but in any endeavor.

Two, if the job needs doing, TOM LOEFFLER is willing to do it himself. He does not ask other people to do things that he is not willing to do. I think the fact that he would come down and campaign for me 2 years ago is an indication of that.

Three, as several of my other colleagues have indicated, TOM LOEFFLER is unselfish. He does not care who gets the credit as long as the job gets done. That was the case on the Loeffler amendment on the Appropriations Committee that we all worked so hard on, on the Johnson Space Center; and one could go on and on and on.

Because of that, Mr. Speaker, he has been successful in the Congress, and he is going to be successful in Texas.

To sum up why I am such a fan of TOM LOEFFLER boils down to this: There are two kinds of people. There are showdown people and showup people. A showup person is the kind of guy, when things are going pretty well and there is not any pressure and you ask him to come by or do something, they will show up; but many times when they show up they will try to show you up.

When times get tough and you need some real help, a showup person is not around. They have got "better things to do." A showdown person, on the other hand, is somebody you can count on. You know that if it comes to a showdown, and you have got a showdown person on your side, you do not have to keep looking over behind your back and wonder where they are and what they are going to do.

TOM LOEFFLER is a showdown person. When the chips are down and the job needs to be done, you have got to count on somebody; he is going to be there.

He has been here, in the U.S. Congress for the last 8 years; he is going back to Texas not to retirement but to a bright future. He is a leader in our State. He will continue to be a leader. His best days are ahead of him, not behind him. I am proud to call TOM LOEFFLER my friend and colleague, and I plan to be with him if there is ever an occasion that he needs a showdown person on his side.

Again, I commend the gentleman from Texas [Mr. ARCHER] for holding this special order. I coud say many more things about TOM LOEFFLER, but there are others who wish to speak. We are missing him up here, but he is going to be a big asset for us and our State and be a leader for many, many years to come.

Mr. ARCHER. Mr. Speaker, I thank the gentleman for his contribution, and I yield to the gentleman from the pandhandle [Mr. BOULTER].

Mr. BOULTER. Mr. Speaker, I really appreciate the opportunity that my friend from Houston has given all of us to say how much we are going to miss TOM and what he has meant to us.

TOM LOEFFLER has meant so much to me personally that it is going to be hard to put into words. One thing I have experienced here, in my first term in Congress, is that everybody is friendly. We get into arguments in the well, and on issues, but everybody is friendly, and also everybody is very, very willing to give all sorts of advice.

We have all got to admit that advice flows freely around here. One thing about TOM LOEFFLER, not only is he friendly but he was always willing to perform deeds and acts of friendship; and you know that does have a price with it; because time is a very valuable commodity to all of us; and when you go out and do something for a friend in this body, then it takes time that you could be using for something else.

I will never forget that, in many instances TOM LOEFFLER has expended a great deal of time for me; but even before being sworn in, I told TOM of a very, very important water project in my district that I really needed his help on; the Holiday Creek project in Wichita Falls.

As a member of the Appropriations Committee and as a leadership person in the House, TOM has really been very helpful, and instrumental in bringing this project along further than it has ever gotten in the last 10 years.

TOM even went to Wichita Falls with me to hold a hearing on the subject of Holiday Creek. He has been very helpful on many other matters, also.

Mr. Speaker, TOM is not just willing to give advice; he is willing to actually get down in the trenches with you.

So I just want to say how much TOM has meant to me and how much I am going to miss him; what a wonderful friend and adviser he is. I think that TOM LOEFFLER is a man with very rare, God-given talents, and he is willing, in an unselfish manner, to expend those talents and invest those talents in behalf of others, in behalf of his beloved Texas and his beloved America.

That is why he ran for Governor in the Republican primary. Look at what he had to give up as chief deputy whip, as a person in a leadership role. It has been mentioned that if our party gets a majority in this House, he would be in line for speakership.

Yet he is willing to give up all of that and to make the sacrifice that he made when he ran for Governor. TOM is the kind of person, when he sees a need, if he thinks he can fill that need, he is going to be in there, trying to do something about it. That is the way we should all be.

If I had anybody that I wanted to model myself after as a Congressman, it would be TOM LOEFFLER, and I am going to miss him very, very deeply.

Mr. ARCHER. Mr. Speaker, I thank the gentleman for his contribution, and I yield to the gentleman from Wharton, Mr. SWEENEY.

Mr. SWEENEY. I thank the gentleman for yielding to me and let me add my thanks to that of those of our colleagues from Texas for your thoughtfulness and consideration in holding this special order on behalf of TOM LOEFFLER.

Mr. Speaker, it is ironic that I stand here after only knowing TOM for roughly 2 years, in the presence of so many of you who have known him for so long. Surely it is difficult for my comments to measure up to those you have offered, BILL, or that JACK FIELDS or STEVE BARTLETT, many of those who have known TOM for so long. Your comments by nature of your relationship, the length of your relationship, to TOM have much more import and significance.

By the same token, I guess the irony is, in many ways, that it is those of us who are just coming to Congress that will miss TOM the most.

Those of us who never had the opportunity to benefit from his leadership for the length of time that so many others here have. Those of us who had not had the opportunity to get to know him as well and get to learn as much under his hand or by his side, as many other Members of Congress have done.

I can say in the period of time that I have known TOM LOEFFLER that he is a distinctively Texan Congressman. JACK FIELDS joked earlier about his boots and his University of Texas ring.

Beyond that, in a more serious vein, TOM LOEFFLER in many ways epitomizes what so many people think of when they think of Texas; having group up in a small rural west Texas town; having grown up in the Hill Country of Texas; having worked on a ranch; having been a high school local football hero and having gone on to play college ball for one of the Nation's premiere college teams.

In addition to that, dedicating as much of his life and his career as he has to service to his country and service to his community and to his State.

It was the noted Texas historian, J. Frank Dobey who said, "Location is the better part of destiny." In so many ways, I am certain that TOM LOEFFLER's destiny is deeply rooted in his Texas heritage, his west Texas roots and his Texas family.

So it came as no surprise to some of us to see that after 8 years, 8 long years in Congress, that TOM LOEFFLER began looking toward home. Just as surely as he has made a contribution to his community back home, he has left an indelible mark here on the U.S. Congress, a mark that I know so many people will miss; and from a freshman's very fresh perspective, I would add, contributions in ways that we will never really be able to benefit from; and that is the greatest loss to those of us who are just coming into this body.

Once again, I thank the gentleman from Texas [Mr. ARCHER] for having the consideration to hold this special order. I am glad to have had a chance just to participate.

Mr. ARCHER. Mr. Speaker, I thank the gentleman for his contribution, and I am happy to yield to the gentleman from California [Mr. HUNTER]

Mr. HUNTER. Mr. Speaker, I thank the dean of the Texas delegation for allowing me to participate, and I do not have prepared remarks, but I had the opportunity of getting to know TOM LOEFFLER when I first came to Congress as a freshman in 1980; came in with Ronald Reagan; and I shortly thereafter identified TOM as being a guy who is really an architect of that great bipartisan consensus and support for the President of the United States that helped us put through the tax cuts in 1981, the budget cuts, and to start rebuilding America's defenses.

TOM LOEFFLER was straightforward, he was honest; he represents, as Mr. SWEENEY said, a great many of the trademarks that people think of as trademarks of Texas: They are down to Earth, and they tell it exactly like it is, and when they give their word you can count on it, you can take it to the bank.

□ 2100

TOM LOEFFLER represents a piece of Texas that is very near and dear to my heart because it is the land that my mother's family came from. My great-grandfather, John Duncan Young, was born in Plum Creek in 1856 but ultimately moved out to the Big Bend country and settled in Alpine, TX. My "Granny" Mac was 104 when she passed away in Marfa, TX, was a great person whom I had great, great affection for and who also represented the independence and the strength that people think of as prime characteristics of Texan people.

So the cities and town of Alpine, Marfa, Marathon, and other parts of the Big Bend are very dear to my heart.

Since knowing TOM, I have had the opportunity to go back with him and to meet a number of people from that area and to kind of revisit my childhood where I used to travel out from California, because part of our family did go wrong, they went to California, but we are trying to make up for it.

We had an opportunity to go back and revisit some of those places, and I still go back year after year and meet people and work with people who TOM LOEFFLER introduced me to.

So let me just give a tribute to a great Texan. I want to give a tribute to all the Texans because it is the Texas delegation, Republican and Democrat, that really made this President's first term successful to a very large degree.

I am reminded of my own delegation in California, where we have 45 Congressmen, and on practically every issue that is of importance to this Nation and to this President, every Democrat votes against the President and every Republican votes for him.

In Texas we had, I think, the best spirit of bipartisan support for President Ronald Reagan, who I think will go down in history as the great President of the 20th century, maybe competing a little bit with Teddy Roosevelt for that honor.

I want to thank all of the Texans for letting me talk and giving my little opinion here.

Incidentally, my opinion and a dollar will get you a cup of coffee. But I think TOM LOEFFLER is bound for great heights as a leader of Texas, and I think you are going to see him back in the political arena winning some major elections in the near future.

Thank you a lot for letting me talk.

Mr. ARCHER. I thank the gentleman from California for his contribution.

I agree with the gentleman. Texas has many fine Congressman on both sides of the aisle, and the glue that has tended to pull us together rather than divide us has been TOM LOEFFLER in the years that he has been in this body. He has made a yeoman contribution to that. As we have heard from all of the speakers tonight, he is a man's man.

He, in my opinion, in the years that I have served in the Congress is the closest thing to BARRY GOLDWATER that Texas has ever produced, and I say that as an ultimate compliment to my friend, TOM LOEFFLER.

He is competitive, and I guess he has had that all of his life. Certainly when he played on the University of Texas national championship football team, he had to learn competitiveness. That has stayed with him.

But as he has competed, he has always been the friend of his competitor. He is always the one who knocks you down and then reaches down to help you up again.

I watched Walter Payton do that several times recently in a football game, and I have always admired that quality in an individual. But to just be competitive is not the end to end all in this body. You have to be effective, too. TOM LOEFFLER has been effective.

He has stood by principle on the issues, but he has made good things happen. He certainly has, from the standpoint of the 10 Republican Congressman, continued regularly to pull us together, as so many of his colleagues have said; he has always been there for all of us.

I suppose that in this accolade to him, which will not be the final accolade to TOM LOEFFLER, we can say, "We wish you well, Godspeed."

Mr. Speaker, I yield back the balance of my time.

Mr. MICHEL. Mr. Speaker, few individuals walk these hallways with as much respect from their fellow colleagues as my dear friend and compatriot, the gentleman from Texas, TOM LOEFFLER.

The gentleman has distinguished himself among his peers as someone special. He shares an honored place with some of the greatest legislators to serve in this body in recent years. He brought to the House a special knack for politics, a special talent for legislating, and a special feeling for this place and those who occupy it.

TOM was the one we in the leadership always called upon to accomplish the extraordinary. He was asked to handle the delicate, the difficult and the demanding tasks. And he always came through, Texas style.

My days with TOM go back to his service in the Senate, as an aide to Senator John Tower, and his tenure at the White House, trying to get President Ford's programs through the Congress. He gained our respect and admiration then and he holds it today, in greater degree than ever.

When he came to Congress from Hunt, TX, and the 21st District 2 years following Jerry Ford's defeat, we were all quick to recognize that the gentleman had a future.

The public cannot fully appreciate what TOM has done for his district, his State, and his country. The tasks he peformed for us, the courage he demonstrated in taking positions and sticking to them, and the doggedness with which he sought after his goals and ours, were seldom in public view and TOM seldom advertised. He worked quietly, without fanfare, without consideration for personal reward or recognition. He cared little for who got the credit for what was done, only that it got done.

I was terribly disappointed when TOM decided to run for Governor of Texas, but I certainly respected his decision. I knew as we all do that TOM LOEFFLER would make a first-class

Chief Executive, and we also knew how much he missed his home and his Texas.

His loss was Texas' loss.

His departure from this House will be a loss for us, for the House and for the Nation. Few are filled with such potential for leadership.

I'll miss working with him. I'll miss sharing a toast with him now and then. I'll miss watching him rise to new heights in leadership and legislative skill. We will all miss having his keen judgment, his tremendous political insight, and his Texas size personality and sense of humor.

TOM, we wish you the best and we know we'll be hearing from you in years to come, because your leadership abilities will continue to serve the people of Texas, whether in public or private life.

Mr. LOTT. Mr. Speaker, I am pleased to join in this special order by the gentleman from Texas [Mr. ARCHER] to honor his fellow Texan and my good friend and chief deputy whip, TOM LOEFFLER.

All of us, on both sides of the aisle, will miss TOM in the 100th Congress. Yes, TOM is a good partisan, and my right hand as Republican whip; but, he is also respected on the Democratic side as a personable, straight-shooting, straight-talking Member who has helped build the bipartisan bridges that are so often necessary around this House to complete the people's business.

TOM was so good at bipartisan outreach and bridge-building, in fact, that it became one of his key duties when I appointed him as an assistant deputy whip in 1981, and then as the chief deputy whip 2 years later. TOM honed those skills as a congressional liaison aide with the Ford administration—first with the Federal Energy Administrtion and then the White House.

Following the Ford administration, TOM returned to his native Kerr County, TX, where he established himself as a rancher and lawyer. When the incumbent Congressman from the 21st Congressional District, Democrat Bob Kruger, decided to run for the Senate, TOM announced for the seat and easily won the primary. He went on to win the general election by 57 percent of the vote, and has won by comfortable margins in each succeeding election—77 percent in 1980, 75 percent in 1982, and 81 percent in 1984. This is clear testimony to the fact that TOM has not only been a respected and successful leader within the House, but has been a beloved and valued Representative by the people of the 21st District. I know of no Member who has fought harder, and, I might add, more successfully, than TOM has for his district and his State. There is a fierce sense of pride and loyalty that took root in his native soil, and God help anyone who tries to stand in the way of TOM doing right by his State.

In the House, TOM has particularly distinguished himself not only as a valued member of the Republican leadership, but as a member of the Appropriations and Budget Committees. His service has been marked by diligence, intelligence, and energy. When TOM sets his mind to something, he sticks with it and sees it through, usually to a successful completion as a result of his efforts. He persists and he preseveres. I know these are traits he will carry with him as he resumes the practice of law in Texas. And I am sure they will help catapult him to even greater political heights in the future.

TOM, we're going to miss you greatly in the House. But I know we'll be hearing a lot from you in the future. You're still a young man and you still have a lot of summits to conquer. I know you'll be up to the challenges, and that our country will be the better for your tackling them. God's speed, TOM.

Mr. WOLF. Mr. Speaker, I am pleased to join with my colleagues in this special order to honor our fellow colleague, TOM LOEFFLER of Texas, as he nears the end of 8 years of distinguished service in Congress.

It has been an honor to serve in this House with TOM LOEFFLER and as his colleague on the Appropriations Committee. He has succeeded in Congress by building bipartisan coalitions through a quiet and effective style which has gained him the respect of Members from both sides of the aisle.

I have had the pleasure of knowing TOM and his family for many years and worked with him in Federal service before we were both elected to Congress. After receiving his law degree from the University of Texas, he came to Capitol Hill to work for Texas Republican Senator John Tower and from there, went on to work in the Ford administration.

He has been an influential Member of the House, working to foster the conservative principles in which he believes, while fighting for the best interests of his Texas constituents.

I salute TOM LOEFFLER as a man of principle and integrity who has served the people of this Nation and the 21st District of Texas effectively and admirably since being elected to the House in 1978. He has been a valued colleague and an outstanding public servant and I wish him continued success as he returns to the private practice of law.

Ms. SNOWE. Mr. Speaker, I am pleased that the gentleman from Texas [Mr. ARCHER] has made the effort to take this special order to honor my friend and colleague, Congressman TOM LOEFFLER. This is, indeed, a richly deserved salute.

TOM and I were both elected for the first time back in 1978. And, as a classmate of his here in the House, I've seen first hand the enormous skills, talents, and understanding he has brought to bear in fulfilling his responsibilities. His performance during these 8 years has not only advanced the interests of his Texas constituents, but also the ideas he holds for the betterment of our Nation as a whole.

In doing so, TOM has given a great boost to those of us who are his Republican colleagues in the House. I hope that TOM never forgets that his work has been of consquence; that though we entered the House together in the bleakest days of the 1970's, he is now leaving in the reinvigorated age of Republican ideas and ideals. TOM's role in this transformation is one in which he can take great pride.

Beyond being a classmate, I've had the great privilege to work with TOM in our Republican whip organization, serving as deputy whip to his chief deputy whip under our Republican whip, TRENT LOTT. TOM's effectiveness as chief deputy whip, I believe, is perhaps the clearest example of his abilities. After all, he has had to practice the art of politics on the toughest crowd possible—other politicians. That he has done so brilliantly illustrates his great skill, but also the extent to which he is respected and well liked by his colleagues in the House.

These attributes also surface in the efforts he has made to keep the lines open between House Republicans and the White House. To a great degree, TOM has been able to communicate to the administration the concerns and problems we have had; and, at the same time, to inform us of the administration's own concerns. Again, although this is a more complex effort than it would seem, with the trust he has gained as a man of integrity, TOM has been able to bridge gaps that otherwise might have undermined the effectiveness of Republican policy.

We shall sorely miss TOM LOEFFLER's capacity for achievement when the 100th Congress convenes next January. The House will seem somewhat out of sorts with the absence of my classmate when we take the oath of office anew. But I have extraordinary confidence that we will still see the imprint of TOM LOEFFLER on the issues, policies, and strategies of this Nation. His great service to his fellow Texans and people across the Nation—even in Maine—is a proud record that is yet at its beginning.

So, Mr. Speaker, I would like to wish my friend and our colleague well; I look forward to hearing of and seeing the still great steps he will take once he leaves this body; and I wish him only the best of fortune as he takes that journey.

Mr. LOWERY of California. Mr. Speaker, the tall Texan put out the word, "this is war." My reply to Congressman TOM LOEFFLER was, "strap on your six-gun." We never crossed pistols but there was little doubt in the Appropriations Committee that we were on opposite sides of the issue of drilling for oil off the coast of California. To Californians it is an environmental issue. In Texas, it is economics.

But whether working with TOM on the same or opposite side of a question, his leadership and effectiveness came through. His quick sense of humor made him easy to work with and his legislative abilities made him an indispensable ally and a worthy opponent.

In a State known for mavericks, TOM broke out of the herd at the start of his congressional career as the first Republican ever to represent the 21st District of Texas in Washington. The 26 counties in that district cover an area larger than Pennsylvania. To represent an area that diverse required knowledge, skill, and a multifaceted personality.

TOM has a law degree, the fine-honed timing and skills of a former Longhorn football player, and the background of having served as chief legislative counsel to Senator John Tower and as a congressional liaison aide in the Ford White House.

But perhaps being a fourth generation Texan who grew up on a ranch gave him the round-up capabilities that made him a natural as chief deputy whip.

Certainly, TOMMY will be missed by his constituents and his colleagues. Yet, I will miss him more than most, for it was under his tute-

lage that I began learning the ropes on the Military Construction Subcommittee.

TOM is retiring from Congress but there is little doubt that his State again will claim him for public service. In Texas, it is economics. You don't let an asset fall into disuse.

Mr. LATTA Mr. Speaker, I rise today to pay tribute to our admired colleague and my personal friend, TOM LOEFFLER, upon his retirement from the House of Representatives.

TOM has worked closely with me on the House Budget Committee taking the message to the people of the United States that it is the commitment of the Republican Party to balance the Federal budget and to reduce Federal spending. His contributions on the House Appropriations Committee have been remarkably consistent, reflecting his well-thought out and sincere conservatism.

As a Member of Congress, TOM LOEFFLER represents the qualities which serve to enhance the image and reputation of the House of Representatives. As this Congress closes, TOM is completing 8 dedicated years of service in which he has maintained a well-deserved reputation for honesty and hard work.

As he leaves the House of Representatives and returns to his native Texas, I wish TOM the best of good fortune in all of his endeavors. And considering his youth, experience, and ambition, I would say that the future of TOM LOEFFLER should be bright.

Mr. SCHULZE. Mr. Speaker, I am pleased to be able to pay tribute to our esteemed colleague, the Congressman from much of Texas, TOM LOEFFLER. While his departure will be a loss to us all, I am sure that my colleagues share my sentiment that Texas will be richer with TOM'S return to the ranch country he loves so much.

There is a lot I could say about Congressman LOEFFLER. His dedication to this country and his leadership, instrumental in securing the tax reductions of the early 1980's, have earned him a considerable measure of respect among his peers. TOM'S ability to work with Democrats and independents and his knowledge of the legislative process propelled him into the Republican leadership ranks where he is currently chief deputy whip.

I am grateful to have had the opportunity to work with such a competent and intelligent legislator. Although he only turned 40 years old last month, TOM has demonstrated the wisdom and consideration of a seasoned statesman. His work on the Budget and Appropriations Committees had been exemplary and I know that, though he is leaving this body, we will soon see TOM LOEFFLER again, leading his fellow Texans into the future.

Mr. MILLER of Ohio. Mr. Speaker, I want to take this opportunity to join with the many friends and colleagues of TOM LOEFFLER in paying appropriate tribute to a man who has meant so much, and contributed such a great deal to the work of the U.S. Congress.

I have considered TOM a true friend and able legislator for the years we've served together in this body. I have consistently been impressed by his knowledge of important legislation and his willingness to share his astute observations with others. He never lost sight of the region he represented in Congress and he worked to translate the working of this House into the benefits for those in his district, and in Texas and across the Nation as a whole.

He leaves us to return to his beloved Texas to resume his law practice. His record as an outstanding Representative will stand long after he has departed from Congress and I, for one, will remember his good work and conscientious representation as an example for all of us who remain to serve.

TOM, we wish you the very best and we thank you for giving us the benefit of your wisdom, leadership, and dedication.

Mr. YATES. Mr. Speaker, I very much appreciate having this opportunity to pay tribute to my friend TOM LOEFFLER. TOM has served on the Interior Appropriations Subcommittee, which I chair, for a number of years now. He has made very real contributions to the work of the committee and I thank him for his diligence and hard work. The Appropriations Committee and the House are going to miss TOM and his boots. Those boots, I might say, are going to be hard to fill. I wish him every possible success as he returns to Texas and his new endeavors.

Mr. DICKS. Mr. Speaker, I want to join my many colleagues in bidding farewell to Congressman TOM LOEFFLER, who will be leaving the House with the adjournment of the 99th Congress.

To begin with, I would like to say that the House of Representatives will miss the vigor that this articulate young Texan has brought to our Chamber during his last 8 years in office. He has truly been one of the bright lights of his party's generation in Congress, and I am convinced that his star will continue to shine long after he departs the House.

It has been my pleasure to serve with TOM LOEFFLER on both the Interior and Military Construction Subcommittees of Appropriations. While we have not always agreed on the issues, TOM has always taken the time to discuss those differences and to seek reasonable areas of compromise. Though he is an extremely articulate spokesperson for his cause and for his party, it is his willingness to work with both sides of the aisle that has made TOM most effective in representing the people of Texas' 21st District. His gentlemanly manner has produced results and, certainly, it has earned our respect.

While we will miss TOM here in the House, I am sure that his commitment to public service will endure. I join all of my colleagues in the House of Representatives in extending our best wishes to TOM as he begins a new chapter in his political career.

Mr. MONTGOMERY. Mr. Speaker, I want to join with Mr. BILL ARCHER and our other colleagues in paying tribute to the gentleman from Texas, TOM LOEFFLER. In just a short period of time, TOM has already built an impressive list of accomplishments, including his work as counsel to the Commerce Department and as a staff counsel to former Senator John Tower. In addition, TOM served as special legislative assistant to former President Gerald Ford.

TOM'S leadership abilities have enabled him to become a key player on the other side of the aisle here in the Congress. He also served with distinction on two of our most vital committees, Appropriations and Budget.

TOM LOEFFLER is an outstanding American and has served the 21st District of Texas very well since his election in 1978. I am sure we will hear from TOM again on the political scene, somewhere down the line and I wish him the very best.

Mr. SHUMWAY. Mr. Speaker, It is a pleasure to have this opportunity to recognize the fine record of service of our friend and colleague, TOM LOEFFLER, to express appreciation for all that he has contributed to this House, and to wish him all the best of luck in his future endeavors.

TOM and I entered Congress in the same freshman class, a bond which will always be remembered. He rapidly distinguished himself as a knowledgeable, capable legislator, and he has always served the people of his district, the State of Texas, and our great Nation with devotion and diligence. I know that I speak for all Members of this body in saying that TOM LOEFFLER will be missed, and that his efforts will be remembered.

To TOM and his family, I extend my most sincere best wishes for continued success, as well as my thanks for his friendship, and for the privilege of having been able to work with him in the Congress.

Mr. BADHAM. Mr. Speaker, it has been a great honor for me to be associated with my colleague TOM LOEFFLER. TOM'S loyalty and work within the Republican Party cannot go unnoticed. Although TOM has worked mostly behind the scenes, he has been very instrumental in helping to achieve many important items of the Reagan agenda.

TOM served as chief deputy whip as well as liaison to our colleagues across the aisle, thus, helping to build consensus and support for conservative policies and legislative goals.

TOM has been a key player in his work on the Budget and Appropriations Committees contributing greatly to the 1981 Reagan budget victories.

In his four terms in the House, TOM has gained the respect and appreciation of his colleagues for his abilities, hard work, and dedication.

Those of us on Capitol Hill as well as his constituents will miss TOM greatly, however, I am sure that he will continue to serve the community and the Nation in the years to come.

Again, in the past 8 years, I have had the highest regard for TOM and I wish him well.

Mr. ROGERS. Mr. Speaker, I want to commend the gentleman from Texas [Mr. ARCHER] for reserving this time to talk about someone I greatly admire and whom this Congress will sorely miss—my friend TOM LOEFFLER.

TOM LOEFFLER has been a special friend of mine since I first came to Congress in 1981. Several years ago, I had the pleasure of welcoming TOM in my own district when he spoke to our Fifth District Lincoln Club. And it was obvious that his keen understanding of Congress and of people translated immediately to an audience of Kentuckians. My people warmly received TOM that night, and I think they got a glimpse of why I have respected and admired TOM for these many years.

TOM also served with me on the Appropriations Committee, and I know that there were

several occasions where his aid and guidance have helped me and my constituents with problems we faced. His ability to compromise and work out difficult problems is one I try to aspire to myself.

But TOM is also a honest man who has worked hard for many years to represent his district and his State. His fierce pride in Texas truly mirrors the size of that fine State. He has served Texas and his district well, and I know that he will leave large shoes to fill for his replacement.

Mr. Speaker, I know that all of us will miss the dedication and ability of TOM LOEFFLER. He has been an outstanding public servant and a good friend for many of us here tonight. I want to again thank Mr. ARCHER for arranging this time to speak, and I want to express my deepest thanks to TOM and his family the very best in the years ahead, and I know that he will do an outstanding job in his new endeavors.

Mr. RUDD. Mr. Speaker, I am very pleased to honor Congressman TOM LOEFFLER tonight. Knowing him during his 7 years of service in the House of Representatives, I can say with all sincerity and conviction, TOM LOEFFLER is a great patriot, a skilled legislator, a forceful and effective advocate for President Reagan and conservative principles, and a recognized leader in my party. He will be sorely missed when he leaves this body at the end of the 99th Congress.

Congressman LOEFFLER, you may be interested to learn, represents the sprawling 21st Congressional District in Texas, which is larger than the State of Pennsylvania. It is one of the most geographically and culturally diverse districts in the Nation. In fact, my own Fourth Congressional District in Arizona has some similar qualities, which have made the job of representing its constituents in Congress both challenging and rewarding. TOM LOEFFLER has served his district, his State, and his Nation exceedingly well.

Mr. Speaker, the House of Representatives will miss the service, skills, and camaraderie of TOM LOEFFLER. However, I am convinced the future activities and endeavors of this great American will continue to demonstrate his leadership abilities, abundant energies, and his long-range vision for his State and the Nation.

Mr. HORTON. Mr. Speaker, not many of my colleagues know this, but I am a Texan. I was born in Cuero, TX, not far from San Antonio. I still consider myself part-Texan, and many of my closest friends in the House today are from Texas. One such man, who we will lose at the end of the 99th Congress, is TOM LOEFFLER. TOM made an unsuccessful bid for Governor of the Lone Star State.

TOM came to us back in 1978, but immediately made his presence known. He earned spots on two of the most important committees in the House, Budget and Appropriations. From those positions, he was a staunch supporter of the Republican position. Many called him a protege of my friend and our leader. BOB MICHEL. Had he continued his stint in the House, few doubt that he would have become a national leader, perhaps replacing even BOB MICHEL.

TOM was a major force in the 1981 Reagan budget and tax cut, which he helped to engineer. He also has been a friend to the many agricultural interests in Texas and across the country.

He began his political career in Washington with Senator JOHN TOWER, and moved in the Ford Administration. Shortly thereafter, he went back to Texas and was the only Republican to gain one of the eight open seats in Texas in 1978.

It is with great respect and no small degree of sadness that I say farewell to the gentleman from Texas. His leadership, his energy, and his dedication to principle are traits we will all miss. My wife Nancy and I wish he and his wife Kathy the very best in what I am sure will be a very bright future.

Mr. BOLAND. Mr. Speaker, I want to thank my colleague from Texas for giving the House an opportunity to pay tribute to Congressman TOM LOEFFLER.

I have had the privilege of serving with TOM on the Appropriations Committee, and working with him on the Subcommittee on the Department of Interior and Related Agencies. The committee has no more dedicated nor effective member, and we will miss the skill and commonsense which TOM brought to the many difficult issues with which we deal. In particular, I believe that the members of the Interior subcommittee will miss the enthusiasm with which TOM approached the disparate program responsibilities of that body. While the development of a sound energy policy was one of TOM'S special interests on the subcommittee, routinely made valuable contributions in areas like the operation of the National Park System, the preservation of our national cultural heritage, and the proper discharge of our trust relationship with our native American population. In all of his work on the committee, TOM sought to ensure that Federal resources were only committed to programs that would address national needs in a manner that reflected the sacrifices by which those resources were generated. No one could ask for more from a member of the Appropriations Committee.

Mr. Speaker, the people of the United States were well served by TOM'S presence in the Congress. He is a young man of exceptional ability, and I hope that he soon will return to public life. I want to wish him the best as he and his family return to Texas and I look forward to the day when he resumes his political career.

Mr. STENHOLM. Mr. Speaker, I am pleased to rise and join my colleagues in paying a special tribute to a special friend—a good neighbor in the best sense of the word—the Honorable TOM LOEFFLER of the 21st District of Texas.

I have become closely acquainted with TOM LOEFFLER over the past few years. As fellow Texans, he and I came up here together as Members of the freshman class of the 96th Congress. And even though we sat on opposite sides of these aisles, we often worked with each other on trying to reach the same legislative goals.

Our districts border each other and it has been my pleasure to have him as a neighbor. Just like the friend in the neighborhood that you can always count on in the time of need, TOM has been there to offer his help or his service, lend an ear or give a hand.

In the past 8 years, I have come to know TOM as a tough legislator and talented leader. He also has been a trustworthy colleague and a true friend.

TOM is an excellent example of a good politician. He possesses the right characteristics to be a representative of the people. His word was his bond in the true, west Texas custom. He has done an excellent job of representing the people of his district. He has made many tough leadership decisions, but each time he knew when to listen to his constituency and to his conscience. Importantly, he had the wisdom to meld the inputs of all three.

TOM also has done a splendid job in working within this body. He knew when to be partisan and when to be bipartisan. In a town too often divided by party lines, TOM LOEFFLER knew when to sit near the middle of the aisle. I admire and appreciate all he has done to help make this a better House.

I have sat many times in this Chamber and watched TOM work the floor, as well as work with him. He did so with great skill and courage, and always in the best interest of his district, his State, and his country. The 21st District, Texas, and America are better off today because of his efforts. We will miss his dedication and desire to serve our country.

TOM, we wish you well in your endeavors as you return home to our great State. I am both honored and proud to count myself among your friends. Good luck, neighbor. I know you will succeed in any field you pursue.

Mr. LAGOMARSINO. Mr. Speaker, at the close of the 99th Congress, we will say farewell to our esteemed colleague, the Honorable TOM LOEFFLER, who will be returning to private life in his home State of Texas after 8 years of distinguished public service.

Through my work with TOM on the House Republican leadership, I have come to know he is a dedicated and conscientious public servant. The first Republican to be elected from the 21st District of Texas, TOM became a real force not only in the Republican Party but also in the House of Representatives. He has served as vice chairman of the Republican Campaign Committee, chief deputy whip of the Republican Party, and has held seats on the House Budget Committee, the Appropriations Committee, and the Energy and Commerce Committee.

I commend TOM LOEFFLER because in the spirit of true representation, he has been not only a leader, but also has been a servant—serving his constituents, State, and Nation with pride. His presence will be missed in the House of Representatives and in the Nation's Capital. I salute Congressman TOM LOEFFLER and I wish him the best of happiness and success.

Mr. FUQUA. Mr. Speaker, I appreciate this opportunity to say a few words about TOM LOEFFLER'S service in Congress. TOM, through his dedicated efforts, has had an impact on both the Appropriations Committee and the Budget Committee. He has been a champion of the efforts to hold the line on Government spending and we are better off for his efforts.

It is always difficult for younger Members to have an impact on legislative decisionmaking but TOM, because of his character, was

always respected and his advice sought on important matters.

I take this time to wish him the very best of luck in the years to come.

Mr. BROWN of Colorado. Mr. Speaker, I rise to join my colleagues in paying tribute to the gentleman from Texas, TOM LOEFFLER, who will be leaving this body with the close of the 99th Congress.

As many of you know, TOM will be returning to Texas to resume the private practice of law. As one of the most able, dedicated, and respected Members of this House, TOM will be sorely missed here in this Chamber.

Born in Fredericksburg, TX, in 1946, TOM is a product of the University of Texas, where he received his undergraduate degree and his juris doctorate. A rancher and a lawyer, TOM came to Washington as legal counsel to the Department of Commerce and then to former U.S. Senator John Tower of Texas.

After a short stint at the Federal Energy Administration, TOM moved to the White House, where he served as special assistant for legislative affairs for President Gerald Ford.

In 1978, TOM was elected to the 96th Congress. This session he is chief deputy Republican whip.

I join my colleagues in wishing TOM well as he resumes his legal career. He is an individual of exceptional intelligence and integrity who will continue to contribute to our Nation in the future.

Mr. COURTER. Mr. Speaker, I rise today with mixed emotions. On the one hand, I am proud to speak on behalf of TOM LOEFFLER, who is retiring at the end of this Congress. On the other hand, I am sad that we will be losing such an able-bodied individual and friend.

TOM came to Congress with a knowledge of the legislative process, having served as chief legislative counsel to Senator Tower and special assistant for legislative affairs under President Ford. This knowledge led to entry in the leadership where he was appointed to the Republican leadership team at the beginning of his second term. TOM also serves as chief deputy whip, the third ranking Republican on the House floor. As chief deputy whip, TOM was instrumental in passing President Reagan's New Beginning in 1981–82.

TOM LOEFFLER has a rare talent that enables him to work successfully with Democrats and Independents alike. He will certainly be hard to replace. I wish him all the best of the future.

GENERAL LEAVE

Mr. ARCHER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the subject of my special order.

The SPEAKER pro tempore (Mr. SEIBERLING). Is there objection to the request of the gentleman from Texas?

There was no objection.

CONFERENCE REPORT ON H.R. 5205

Mr. LEHMAN of Florida, submitted the following conference report and statement on the bill (H.R. 5205) making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 1987, and for other purposes.

CONFERENCE REPORT (H. REPT. 99-976)

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 5205) making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 1987, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its amendments numbered 7, 9, 24, 25, 32, 33, 37, 40, 47, 50, 51, 55, 60, 64, 65, 68, 69, 70, 72, 77, 78, 80, 82, 89, 90, 97, 100, 101, 102, 104, 105, 107, 108, 109, 110, 111, 112, 113, 116, 118, 119, 120, 121, 125, and 126.

That the House recede from its disagreement to the amendments of the Senate numbered 5, 10, 12, 13, 14, 22, 26, 27, 28, 29, 30, 35, 36, 41, 42, 59, 66, 75, 84, 87, 91, 92, 93, 95, 96, 99, and 106, and agree to the same.

Amendment numbered 4:

That the House recede from its disagreement to the amendment of the Senate numbered 4, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$65,500,000*; and the Senate agree to the same.

Amendment numbered 8:

That the House recede from its disagreement to the amendment of the Senate numbered 8, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$209,000,000*; and the Senate agree to the same.

Amendment numbered 11:

That the House recede from its disagreement to the amendment to the Senate numbered 11, and agree to the same with an amendment, as follows:

In lieu of the matter stricken and inserted by said amendment, insert: *$64,400,000*; and the Senate agree to the same.

Amendment numbered 16:

That the House recede from its disagreement to the amendment of the Senate numbered 16, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$2,783,000,000*; and the Senate agree to the same.

Amendment numbered 17:

That the House recede from its disagreement to the amendment of the Senate numbered 17, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$621,168,000*; and the Senate agree to the same.

Amendment numbered 21:

That the House recede from its disagreement to the amendment of the Senate numbered 21, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$804,584,000*; and the Senate agree to the same.

Amendment numbered 34:

That the House recede from its disagreement to the amendment of the Senate numbered 34, and agree to the same with an amendment, as follows:

Restore the matter stricken by said amendment amended to read as follows:

RAILROAD-HIGHWAY CROSSINGS DEMONSTRATION PROJECTS

For necessary expenses of certain railroad-highway crossings demonstration projects as authorized by section 163 of the Federal-Aid Highway Act of 1973, as amended, to remain available until expended, $11,750,000, of which $7,833,333 shall be derived from the Highway Trust Fund.

And the Senate agree to the same.

Amendment numbered 38:

That the House recede from its disagreement to the amendment of the Senate numbered 38, and agree to the same with an amendment, as follows:

In lieu of the matter stricken and inserted by said amendment, insert: *$19,515,000*; and the Senate agree to the same.

Amendment numbered 39:

That the House recede from its disagreement to the amendment of the Senate numbered 39, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$1,600,000*; and the Senate agree to the same.

Amendment numbered 45:

That the House recede from its disagreement to the amendment of the Senate numbered 45, and agree to the same with an amendment, as follows:

Restore the matter stricken by said amendment, amended to read as follows:

In lieu of the sum named, insert *$8,000,000*; and the Senate agree to the same.

Amended numbered 48:

That the House recede from its disagreement to the amendment of the Senate numbered 48, and agree to the same with an amendment, as follows:

Restore the matter stricken by said amendment, amended to read as follows:

In lieu of the sum named, insert *$6,200,000*; and the Senate agree to the same.

Amendment numbered 49:

That the House recede from its disagreement to the amendment of the Senate numbered 49, and agree to the same with an amendment, as follows:

Restore the matter stricken by said amendment, amended to read as follows:

In lieu of the sum named, insert *$10,000,000*; and the Senate agree to the same.

Amendment numbered 52:

That the House recede from its disagreement to the amendment of the Senate numbered 52, and agree to the same with an amendment, as follows:

Restore the matter stricken by said amendment, amended to read as follows:

In lieu of the second sum named, insert *$4,800,000*; and the Senate agree to the same.

Amendment numbered 53:

That the House recede from its disagreement to the amendment of the Senate numbered 53, and agree to the same with an amendment, as follows:

Restore the matter stricken by said amendment, amended to read as follows:

In lieu of the second sum named, insert *$2,000,000*; and the Senate agree to the same.

Amendment numbered 54:

That the House recede from its disagreement to the amendment of the Senate numbered 54, and agree to the same with an amendment, as follows:

Restore the matter stricken by said amendment, amended to read as follows:

In lieu of the sum named, insert *$2,000,000*; and the Senate agree to the same.

Amendment numbered 56:

That the House recede from its disagreement to the amendment of the Senate numbered 56, and agree to the same with an amendment, as follows:

Restore the matter stricken by said amendment, amended to read as follows:

In lieu of the sum named, insert *$2,500,000*; and the Senate agree to the same.

Amendment numbered 58:

That the House recede from its disagreement to the amendment of the Senate numbered 58, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$89,222,000*; and the Senate agree to the same.

Amendment numbered 61:

That the House recede from its disagreement to the amendment of the Senate numbered 61, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$34,172,000*; and the Senate agree to the same.

Amendment numbered 62:

That the House recede from its disagreement to the amendment of the Senate numbered 62, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$41,484,000*; and the Senate agree to the same.

Amendment numbered 63:

That the House recede from its disagreement to the amendment of the Senate numbered 63, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$19,387,000*; and the Senate agree to the same.

Amendment numbered 67:

That the House recede from its disagreement to the amendment of the Senate numbered 67, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$16,150,000*; and the Senate agree to the same.

Amendment numbered 71:

That the House recede from its disagreement to the amendment of the Senate numbered 71, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$26,875,000*; and the Senate agree to the same.

Amendment numbered 79:

That the House recede from its disagreement to the amendment of the Senate numbered 79, and agree to the same with an amendment, as follows:

In lieu of the matter stricken and inserted by said amendment, insert: *$602,000,000, including all unexpended balances available from "Conrail workforce reduction" as of September 30, 1986*; and the Senate agree to the same.

Amendment numbered 81:

That the House recede from its disagreement to the amendment of the Senate numbered 81, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$6,500,000*; and the Senate agree to the same.

Amendment numbered 83:

That the House recede from its disagreement to the amendment of the Senate numbered 83, and agree to the same with an amendment, as follows:

Restore the matter stricken by said amendment amended to read as follows: , *of which not to exceed $600,000 shall be available for the Office of the Administrator*; and the Senate agree to the same.

Amendment numbered 86:

That the House recede from its disagreement to the amendment of the Senate numbered 86, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$1,002,500,000*; and the Senate agree to the same.

Amendment numbered 88:

That the House recede from its disagreement to the amendment of the Senate numbered 88, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$201,119,500*; and the Senate agree to the same.

Amendment numbered 94:

That the House recede from its disagreement to the amendment of the Senate numbered 94, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$27,200,000*; and the Senate agree to the same.

Amendment numbered 98:

That the House recede from its disagreement to the amendment of the Senate numbered 98, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$6,500,000*; and the Senate agree to the same.

The committee of conference report in disagreement amendments numbered 1, 2, 3, 6, 15, 18, 19, 20, 23, 31, 43, 44, 46, 57, 73, 74, 76, 85, 103, 114, 115, 117, 122, 123, 124, 127, 128, and 129.

WILLIAM LEHMAN,
WILLIAM H. GRAY III,
BOB CARR,
RICHARD J. DURBIN,
ROBERT J. MRAZEK,
MARTIN OLAV SABO,
JAMIE L. WHITTEN,
LARRY COUGHLIN,
SILVIO O. CONTE,
CARL PURSELL,
FRANK R. WOLF,
Managers on the Part of the House.

MARK ANDREWS,
THAD COCHRAN,
JAMES ABDNOR,
ALFONSE M. D'AMATO,
LAWTON CHILES,
JOHN C. STENNIS,
ROBERT C. BYRD,
FRANK R. LAUTENBERG,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 5205) making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 1987, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report.

TITLE I—DEPARTMENT OF TRANSPORTATION

OFFICE OF THE SECRETARY

SALARIES AND EXPENSES

Amendment No. 1: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

In lieu of the matter stricken and inserted by said amendment, insert the following: *; $950,000 for the Immediate Office of the Secretary, $470,000 for the Immediate Office of the Deputy Secretary, $5,300,000 for the Office of the General Counsel, $7,462,000 for the Office of the Assistant Secretary for Policy and International Affairs, $2,090,000 for the Office of the Assistant Secretary for Budget and Programs, $2,475,000 for the Office of the Assistant Secretary for Governmental Affairs, $21,930,000 for the Office of the Assistant Secretary for Administration, $1,400,000 for the Office of the Assistant Secretary for Public Affairs, $750,000 for the Executive Secretariat, $390,000 for the Contract Appeals Board, $1,260,000 for the Office of Civil Rights, $478,000 for the Office of Commercial Space Transportation, $1,750,000 for the Office of Essential Air Service, $565,000 for Regional Representatives, and $3,730,000 for the Office of Small and Disadvantaged Business Utilization*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement establishes the following distribution:

	Appropriation	Positions
Immediate Office of the Secretary	$950,000	14
Immediate Office of the Deputy Secretary	470,000	10
General Counsel	5,300,000	115
Policy and International Affairs	7,462,000	156
Budget and Programs	2,090,000	42
Governmental Affairs	2,475,000	54
Administration	21,930,000	173
Public Affairs	1,400,000	30
Executive Secretariat	750,000	23
Contract Appeals Board	390,000	5
Office of Civil Rights	1,260,000	24
Office of Commercial Space Transporation	478,000	9
Office of Small and Disadvantaged Business Utilization	3,730,000	14
Office of Essential Air Service	1,750,000	34
Regional Representatives	565,000	12

The conference agreement includes $400,000 to develop an automated international aviation tariff filing system. The conferees expect a small pilot system to be in place by the end of the fiscal year. The conferees also expect the Department to consider the imposition of user fees to cover the administrative costs of its tariff filing responsibilities.

The conferees are concerned that in recent airline defaults, airline passengers have been left without protection against the failure of airlines to honor outstanding tickets. The conferees therefore direct the Secretary to conduct a study of various methods for providing protection to airline passengers who have purchased tickets for flights that are cancelled because of the commencement of a case in bankruptcy by or against an air carrier. The Secretary shall submit a report to the House and Senate Committees on Appropriations on the results of such study, including recommendations, not later than six months after the date of the enactment of this Act.

TRANSPORTATION PLANNING, RESEARCH, AND DEVELOPMENT

Amendment No. 2: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate that conforms the heading.

Amendment No. 3: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

In lieu of the matter stricken and inserted by said amendment, insert the following: *$3,999,000, of which $650,000 shall be derived from unobligated balances of "Salaries and expenses"*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement distributes these funds as follows:

	Allocation
Personnel compensation and benefits	$1,700,000
Policy office positions	(24)
Commercial space office positions	(1)
Long-range strategic transportation planning study (Sec. 321(b))	250,000
Commercial space contracts	650,000
Essential air service options study (Sec. 321(c))	750,000
Planning, research and development contracts	500,000
Travel and administrative costs	149,000

WORKING CAPITAL FUND

Amendment No. 4: Limits obligations to $65,500,000 instead of $64,500,000 as proposed by the House and $66,500,000 as proposed by the Senate.

PAYMENTS TO AIR CARRIERS

Amendment No. 5: Appropriates $30,000,000 as proposed by the Senate instead of $21,000,000 as proposed by the House.

COAST GUARD

OPERATING EXPENSES

Amendment No. 6: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

In lieu of the sum proposed by said amendment, insert the following: *$1,755,000,000*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The problem of oil spills into restricted coastal waterways is a matter of continuing concern to the conferees. The conferees expect the Coast Guard to conduct a study of oil spill prevention in restricted waterways, and report to the Congress on its findings within one year. This study should be conducted in fiscal year 1987, using available funds. This study should focus on a series of recent major spills occurring in the Delaware River, review the causes of these spills, and recommend steps for preventing their repetition. Included for consideration should be modifications in tanker construction and operation standards, crew training, locale familiarization requirements, improvements in navigation aids, and other approaches with the potential for reducing the likelihood of discharges of oil in restricted waterways.

ACQUISITION, CONSTRUCTION, AND IMPROVEMENTS

Amendment No. 7: Conforms heading.

Amendment No. 8: Appropriates $209,000,000 instead of $101,850,000 as proposed by the House and $251,700,000 as proposed by the Senate.

The conference agreement assumes the availability of an additional $32,500,000 from delayed or cancelled acquisition, construction, and improvement projects. The total program level of $241,500,000 is distributed as follows:

Vessels	$160,000,000
Aircraft	5,600,000
Command, Control and Communications	5,500,000
Shore facilities	45,000,000
Aids to Navigation	3,400,000
Administration	22,000,000

Amendment No. 9: Deletes $32,500,000 rescission proposed by the Senate.

ALTERATION OF BRIDGES

The conferees direct the Coast Guard to expedite alterations on the Willamette River Bridge in Portland, Oregon.

RESERVE TRAINING

Amendment No. 10: Conforms heading.

Amendment No. 11: Appropriates $64,400,000 instead of $63,857,000, including $5,000,000 to be derived by transfer, as proposed by the House and $65,000,000 as proposed by the Senate.

The conference agreement provides for a selected reserve of 12,750 personnel instead of 12,500 personnel as proposed by the House and 13,000 personnel as proposed by the Senate.

RESEARCH, DEVELOPMENT, TEST, AND EVALUATION

Amendment No. 12: Appropriates $20,000,000 as proposed by the Senate instead of $20,100,000 as proposed by the House.

The conference agreement includes $100,000 to continue the maritime fire and safety association grant.

BOAT SAFETY

Amendment No. 13: Appropriates $30,000,000 for liquidation of obligations for recreational boating safety assistance as proposed by the Senate instead of $15,000,000 as proposed by the House.

Amendment No. 14: Limits obligations for recreational boating safety assistance to $30,000,000 as proposed by the Senate instead of $15,000,000 as proposed by the House.

FEDERAL AVIATION ADMINISTRATION

OPERATIONS

Amendment No. 15: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate that conforms the heading.

Amendment No. 16: Appropriates $2,783,000,000 instead of $2,769,300,000 as proposed by the Senate and $2,797,447,000 as proposed by the House.

The conference agreement includes the following amounts:

Operation of air traffic control system	$1,222,451,000
Installation and materiel services	184,573,000
Maintenance of air traffic control system	752,815,000
Administration of aviation standards	307,937,000
Development direction	9,031,000
Administration of airports program	26,181,000
Human resources management	208,343,000
Direction, staff, and supporting services	71,669,000

The conferees expect that any potential shortfalls in safety programs resulting from this distribution will be promptly reported to the House and Senate Committees on Appropriations.

The conference agreement includes 100 air traffic control positions and 185 flight service station positions above the Senate levels. The conferees also have provided 8 traffic management coordinator positions instead of 16 positions as proposed by the Senate. The conferees expect the FAA to assign these positions to airports in the Washington, D.C. area and to report by March 31, 1987, on the impact these personnel have had on reducing air traffic delays and whether it would be cost effective to continue and/or expand this concept to other tower facilities.

The conferees have agreed to the House level for aviation safety inspector personnel.

Amendment No. 17: Provides that $621,168,000 of the amount provided for operations shall be derived from the Airport and Airway Trust Fund instead of $500,000,000 as proposed by the Senate and $691,048,000 as proposed by the House.

Amendment No. 18: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate that establishes a minimum air traffic controller on-board employment level of 15,000 personnel by September 30, 1987. In establishing a minimum air traffic control staffing level, the conferees do not intend that the FAA be limited to the 15,000 personnel level. The conferees expect the FAA to make every reasonable effort to reach the 15,100 staffing level funded in the conference agreement.

Amendment No. 19: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

Restore the matter stricken by said amendment, amended to read as follows: *or for a pilot test of contractor maintenance: Provided further, That the immediately preceding proviso shall not prohibit the augmentation of the existing field maintenance workforce if it is determined to be essential for the safe operation of the air traffic control system*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

Amendment No. 20: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate providing for an extension of the FAA's reemployed annuitant authority from December 31, 1986, to December 31, 1987, and providing transfer authority of up to $10,000,000 to fund such employment. The conferees expect this authority to provide for up to 300 employees.

FACILITIES AND EQUIPMENT

(AIRPORT AND AIRWAY TRUST FUND)

Amendment No. 21: Appropriates $804,584,000 instead of $772,684,000 as proposed by the Senate and $828,000,000 as proposed by the House.

The conference agreement includes the following amounts:

Air route traffic control centers	$282,495,000
Airport traffic control towers and terminal equipment	247,646,600
Flight service stations	48,916,100
Air navigation facilities	66,629,500
Housing, utilities and miscellaneous facilities	142,515,000
Aircraft	9,091,300
Development, test, and facilities	7,290,000

The conferees expect the FAA to comply with the project distributions outlined in House Report 99-696 as modified by Senate Report 99-423 with the following adjustments:

Automation support at centers	+32,000,000
Advanced automation system/design competition phase	+36,540,800
Air route traffic control centers (unspecified)	+12,500,000
Traffic management system	−14,500,000
Waukegan Regional Airport tower	+1,900,000
NEXRAD	+5,000,000
Airport traffic control towers and terminal equipment (unspecified)	+12,500,000
Mobile control towers	−1,925,000
Automated weather observing systems	−20,054,500
Retrofit remote radio control system for visual aid facilities	−3,055,600
National radio communications system	−6,300,000
System engineering and integration support	−10,000,000
Test equipment	−4,094,000
Computer based instruction	−2,300,000
Unmanned building improvements	−2,000,000
Land purchases	−1,024,700
Development, test and evaluation	−3,287,000

The conferees recognize that delays in some projects might necessitate adjustments to the above allocations and expect these adjustments, if required, to be accomplished through the normal reprogramming process.

The conferees have approved $32,000,000 for software support at the air route traffic control centers during fiscal year 1987. The conferees recognize the urgent requirement for on-site automation specialists to perform software maintenance on real time air traffic control computer systems. However, the conferees are concerned about the high cost per work year under the existing contract and do not expect the options on this contract to be exercised unless the FAA determines that this is the most cost effective method of performing the required software maintenance.

The conference agreement includes a total of $98,366,800 for the design competition phase of the advanced automation system program. In addition, the conferees direct that the FAA reserve not less than $75,323,600 for this program. The funds to be reserved are derived from the following accounts:

Fiscal years 1983 and 1984 appropriations for aircraft program (excluding funds for the light twin flight inspection aircraft)	$38,753,600
Fiscal year 1986 appropriations proposed to be reprogrammed for flight service station modernization (Model 2) and remote radar weather display systems	11,570,000
Fiscal year 1987 appropriations for air route traffic control centers and airport traffic control towers and terminal equipment (unspecified increases to Senate level)	25,000,000

The conferees direct that these funds be reserved until the FAA has presented and the House and Senate Committees on Appropriations have approved a revised advanced automation system acquisition program.

Under the conference agreement no fiscal year 1987 appropriations is provided for the microwave landing system (MLS) program. The conferees direct that no further procurement activity be initiated until the House and Senate Committees on Appropriations have had the opportunity to hold hearings to determine the status of the MLS program and have approved funding for the procurement of additional systems.

Amendment No. 22: Provides that $10,000,000 shall be available to continue the airway science curriculum program as proposed by the Senate instead of $5,000,000 as proposed by the House. The conference agreement includes $3,000,000 for the University of North Dakota and $2,000,000 for Florida Memorial College.

Amendment No. 23: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate requiring universities or colleges receiving airway science program funds to have an airway science curriculum that is recognized by the FAA.

Amendment No. 24: Inserts language proposed by the House providing $3,914,000 to construct an experimental computer-based airway and aviation management facility at the Center for Research and Training in Information-based Aviation and Transportation Management at Barry University.

RESEARCH, ENGINEERING, AND DEVELOPMENT

(AIRPORT AND AIRWAY TRUST FUND)

Amendment No. 25: Appropriates $141,700,000 as proposed by the House instead of $142,000,000 as proposed by the Senate. The conference agreement includes a $600,000 increase over the budget request for airport security and weapons detection research as proposed by the Senate.

GRANTS-IN-AID FOR AIRPORTS

(LIQUIDATION OF CONTRACT AUTHORIZATION)

(AIRPORT AND AIRWAY TRUST FUND)

Amendment No. 26: Conforms heading.

Amendment No. 27: Appropriates $860,000,000 for liquidation of obligations incurred for airport planning and development as proposed by the Senate instead of $800,000,000 as proposed by the House.

Amendment No. 28: Limits obligations for airport planning and development, and noise compatibility planning and programs to $1,000,000,000 as proposed by the Senate instead of $1,017,200,000 as proposed by the House.

In addition to the specific projects identified in the House and Senate Committee reports, the conferees direct that priority consideration also be accorded to Sacramento Metropolitan Airport, California; Evansville-Dress Regional Airport, Indiana; and Natchez-Adams County Airport, Mississippi.

The conferees direct the FAA to comply with the expectation in the House report, in which the Senate report concurred, that applications for discretionary funds, under the 1982 Airport and Airway Improvement Act, from Philadelphia International Airport/Northeast Philadelphia Airport receive high priority consideration.

Amendment No. 29: Deletes $50,000,000 rescission of unobligated contract authority proposed by the House.

CONSTRUCTION, METROPOLITAN WASHINGTON AIRPORTS

Amendment No. 30: Appropriates $7,000,000 as proposed by the Senate instead of $50,000,000 to be derived from the Airport and Airway Trust Fund as proposed by the House.

AIRCRAFT PURCHASE LOAN GUARANTEE PROGRAM

Amendment No. 31: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate appropriating $13,516,000, together with such sums as may be necessary for the payment of interest, to repay borrowings from the Secretary of the Treasury.

FEDERAL HIGHWAY ADMINISTRATION

LIMITATION ON GENERAL OPERATING EXPENSES

Amendment No. 32: Limits operating expenses to $202,750,000 as proposed by the House instead of $204,660,000 as proposed by the Senate.

The conferees reiterate the directive in the House report (99-696) to study ways to improve access from I-95 to the Liberty City area of Dade County, Florida. The conferees also reiterate the directive in the Senate report (99-423) reserving $310,000 for advanced welding research at the Oregon Graduate Center.

Amendment No. 33: Provides that $39,288,000 shall remain available until expended as proposed by the House instead of $41,288,000 as proposed by the Senate.

RAILROAD-HIGHWAY CROSSINGS DEMONSTRATION PROJECTS

Amendment No. 34: Appropriates $11,750,000 instead of $23,500,000 as proposed by the House.

The conference agreement includes the following amounts:

Lincoln, Nebraska	$2,000,000
Augusta, Georgia	2,000,000
Brownsville, Texas	750,000
Lafayette, Indiana	3,500,000
Springfield, Illinois	3,500,000

FEDERAL-AID HIGHWAYS (LIMITATION ON OBLIGATIONS)

(HIGHWAY TRUST FUND)

Amendment No. 35: Limits obligations for the federal-aid highways and highway safety construction programs to $13,000,000,000 as proposed by the Senate instead of $13,125,000,000 as proposed by the House.

The conference agreement includes the following allocations of interstate transfer-highways discretionary funds:

Arizona	$930,747

California	2,000,000
Colorado	25,728,769
Connecticut	18,000,000
Illinois	43,000,000
Indiana	3,000,000
Iowa	4,904,696
Maryland	29,498,203
Minnesota	9,500,000
Nebraska	3,016,410
New Jersey	12,974,915
Ohio	15,000,000
Oregon	12,301,612
Pennsylvania	14,850,000
Virginia	6,400,000

The conferees expect that in the event the final contract authority established for the interstate transfer-highway program is different from the level assumed by the conferees, proportionate adjustments shall be made to each area allocation.

FEDERAL-AID HIGHWAYS (LIQUIDATION OF CONTRACT AUTHORIZATION)

(HIGHWAY TRUST FUND)

Amendment No. 36: Appropriates $13,130,000,000 to liquidate contract obligations as proposed by the Senate instead of $13,036,000,000 as proposed by the House.

MOTOR CARRIER SAFETY

Amendment No. 37: Conforms heading.

Amendment No. 38: Appropriates $19,515,000 instead of $19,515,000 to be derived from the Highway Trust Fund as proposed by the Senate and $20,447,000 as proposed by the House.

Amendment No. 39: Provides that $1,600,000 shall remain available until expended instead of $1,300,000 as proposed by the House and $1,900,000 as proposed by the Senate.

Amendment No. 40: Provides that not to exceed $1,532,000 shall be available for "Limitation on general operating expenses" as proposed by the House.

MOTOR CARRIER SAFETY GRANTS

(HIGHWAY TRUST FUND)

Amendment No. 41: Conforms heading.

Amendment No. 42: Deletes appropriation of $18,000,000 to liquidate contract authorizations and $50,000,000 limitation on obligations for motor carrier safety grants proposed by the House.

Amendment No. 43: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

In lieu of the sum named in said amendment, insert: *$16,269,000*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

ACCESS HIGHWAYS TO PUBLIC RECREATION AREAS ON CERTAIN LAKES

Amendment No. 44: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

In lieu of the matter proposed by said amendment, insert the following:

ACCESS HIGHWAYS TO PUBLIC RECREATION AREAS ON CERTAIN LAKES

Notwithstanding any other provision of law, there is appropriated $5,000,000 for necessary expenses of certain access highway projects, as authorized by section 155, title 23, United States Code, to remain available until expended: Provided, That $1,700,000 shall be made available for a project in Morton County, North Dakota and $469,000 shall be made available for the Rice Lake Project in Ward County, North Dakota, which shall be considered eligible for funding.

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

BALTIMORE-WASHINGTON PARKWAY

(HIGHWAY TRUST FUND)

Amendment No. 45: Appropriates $8,000,000 instead of $9,000,000 as proposed by the House.

WASTE ISOLATION PILOT PROJECT ROADS

Amendment No. 46: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate appropriating $10,000,000.

AIRPORT-HIGHWAY DEMONSTRATION PROJECT

Amendment No. 47: Appropriates $1,887,000 as proposed by the House.

EXPRESSWAY GAP CLOSING DEMONSTRATION PROJECT

Amendment No. 48: Appropriates $6,200,000 instead of $13,900,000 as proposed by the House.

INTERMODAL URBAN DEMONSTRATION PROJECT

(HIGHWAY TRUST FUND)

Amendment No. 49: Appropriates $10,000,000 instead of $11,000,000 as proposed by the House.

HIGHWAY SAFETY AND ECONOMIC DEVELOPMENT DEMONSTRATION PROJECTS

(HIGHWAY TRUST FUND)

Amendment No. 50: Inserts permanent authorizing language, including a permanent exemption from any limitation on obligations for Federal-aid highways and highway safety construction programs, and appropriates $10,000,000 as proposed by the House.

AIRPORT ACCESS DEMONSTRATION PROJECT

(HIGHWAY TRUST FUND)

Amendment No. 51: Appropriates $4,000,000 as proposed by the House.

HIGHWAY SAFETY IMPROVEMENT DEMONSTRATION PROJECT

(HIGHWAY TRUST FUND)

Amendment No. 52: Inserts permanent authorizing language, including a permanent exemption from any limitation on obligations for Federal-aid highways and highway safety construction programs, and appropriates $4,800,000 instead of $7,000,000 as proposed by the House.

HIGHWAY-RAILROAD GRADE CROSSING SAFETY DEMONSTRATION PROJECT

(HIGHWAY TRUST FUND)

Amendment No. 53: Inserts permanent authorizing language, including a permanent exemption from any limitation on obligations for Federal-aid highways and highway safety construction programs, and appropriates $2,000,000 instead of $3,000,000 as proposed by the House.

NUCLEAR WASTE TRANSPORTATION SAFETY DEMONSTRATION PROJECT

(HIGHWAY TRUST FUND)

Amendment No. 54: Appropriates $2,000,000 instead of $4,000,000 as proposed by the House.

THEODORE ROOSEVELT BRIDGE CAPACITY IMPROVEMENTS

(HIGHWAY TRUST FUND)

Amendment No. 55: Appropriates $1,500,000 as proposed by the House.

AIRPORT ACCESS HIGHWAY DEMONSTRATION PROJECT

(HIGHWAY TRUST FUND)

Amendment No. 56: Appropriates $2,500,000 instead of $5,000,000 as proposed by the House.

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

OPERATIONS AND RESEARCH

Amendment No. 57: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate that conforms the heading.

Amendment No. 58: Appropriates $89,222,000 instead of $81,448,000 as proposed by the Senate and $93,600,000 as proposed by the House.

The conference agreement includes the following distribution:

	Program level	Positions
Rulemaking	$7,191,000	88
Enforcement	11,600,000	101
Highway safety	[1] 21,448,000	174
Research and analysis	[2] 48,600,000	141
General administration	[3] 7,660,000	88
Office of the administrator	[4] 2,583,000	48

[1] Includes $3,651,000 derived from section 402 grant program.
[2] Includes $5,000,000 derived from by transfer that shall be applied to the $10,000,000 provided for the Center for Injury Control grants.
[3] Includes $907,000 derived from section 402 grant program.
[4] Includes $302,000 derived from section 402 grant program.

Within the funds provided, the conference agreement includes $4,625,000 to continue an occupant protection information program. These funds are to be distributed as follows:

Preparation and distribution of educational materials on passive restraint systems including the dissemination of information regarding successful airbag test results	$1,000,000
Education/enforcement projects to increase safety belt usage only in states with mandatory safety belt use laws	2,000,000
(a) Concentrated programs combining education and enforcement modeled after a successful insurance industry-sponsored project in Elmira, New York	(1,000,000)
(b) State-wide and state-administered initiatives to enforce mandatory use and child restraint laws	(500,000)
(c) Assistance to states for programs in which police personnel train other police personnel on the most effective methods of enforcing safety belt and child restraint laws	(400,000)
(d) Targeted public awareness activities on safety belt and child restraint laws through hospitals, the medical community, and schools	(100,000)
Other safety belt usage and passive restraint education efforts	1,625,000

The conferees direct the NHTSA administrator to submit to the House and Senate

Committees on Appropriations a detailed fiscal year 1987 spending plan for the occupant protection information program by November 15, 1986. This plan should be project-specific. Included in this report shall be an assessment of the administrator's use of section 403 funds under the Motor Vehicle Information and Cost Savings Act to provide consumers with information on how to retrofit their cars with lap-shoulder safety belts in the back seat.

The conference agreement also includes: $100,000 above the budget request to retest cars under the new car assessment program; $75,000 above the budget request for Dade County, Florida, emergency medical services improvements; $250,000 above the budget request for national driver register implementation; and $2,000,000 for Project TEAM and related efforts.

The conferees also wish to emphasize the importance of and the necessity for the National Highway Traffic Safety Administration to conduct a study on light trucks and vans that assesses the magnitude and nature of the safety problems associated with these vehicles. Light trucks and vans have been exempted from major safety standards including roof crush resistance, head restraints, high mounted rear brake lights, and passive restraints. The conferees expect that NHTSA will conduct this study according to the directions contained in the House report (99-696) and will submit its report as specified on April 15, 1987.

The conferees reiterate the Senate's direction to NHTSA to place a high priority on programs to enhance proper use of child restraint systems. As part of this effect, NHTSA should undertake at least one statewide pilot program to test intensified child restraint use public education and enforcement activities. Such program should be patterned after an insurance industry-sponsored project for safety belt use encouragement in New York. The conferees expect NHTSA to contract with a non-profit, private sector organization that has substantial experience in promoting child restraint use to undertake this project.

Amendment No. 59: Provides $5,000,000 by transfer as proposed by the Senate instead of $2,000,000 as proposed by the House.

Amendment No. 60: Provides that the $5,000,000 transfer in amendment No. 59 shall be derived from "Payments to air carriers" as proposed by the House instead of "Section 408, Alcohol safety incentive grants" as proposed by the Senate.

Amendment No. 61: Provides that $34,172,000 shall be derived from the Highway Trust Fund instead of $28,822,000 as proposed by the Senate and $37,742,000 as proposed by the House.

Amendment No. 62: Provides that $41,484,000 shall remain available until expended instead of $34,598,000 as proposed by the Senate and $44,268,000 as proposed by the House.

Amendment No 63: Provides that $19,387,000 of the amount available until expended shall be derived from the Highway Trust Fund instead of $12,717,000 as proposed by the Senate and $21,637,000 as proposed by the House.

Amendment No. 64: Inserts language proposed by the House requiring that $10,000,000 of the amount provided for "Operations and research" shall be available only for the purpose of implementing the recommendations of the 1985 National Academy of Sciences report on trauma research.

HIGHWAY TRAFFIC SAFETY GRANTS

(LIQUIDATION OF CONTRACT AUTHORIZATION)

(HIGHWAY TRUST FUND)

Amendment No. 65: Conforms heading.

Amendment No. 66: Appropriates $127,000,000 for liquidation of contract authorizations as proposed by the Senate instead of $122,000,000 as proposed by the House.

Amendment No. 67: Limits alcohol safety incentive grant obligations to $16,150,000 instead of $14,400,000 as proposed by the House and $17,900,000 as proposed by the Senate.

Amendment No. 68: Limits funds available for administering the provisions of 23 U.S.C. 402 to $4,860,000 as proposed by the House instead of $4,900,000 as proposed by the Senate.

Amendment No. 69: Rescinds $5,000,000 from the unobligated balances of the alcohol safety incentive grants program as proposed by the House.

FEDERAL RAILROAD ADMINISTRATION

OFFICE OF THE ADMINISTRATOR

Amendment No. 70: Conforms heading.

Amendment No. 71: Appropriates $26,875,000 instead of $26,750,000 as proposed by the House and $27,000,000 as proposed by the Senate.

The conference agreement is distributed as follows:

	Program level
Local rail service assistance	$10,000,000
Washington Union Station	4,600,000
Contractual support	775,000
Salaries and expenses	11,500,000

Of the discretionary funds available for local rail service assistance, the conferees direct that funds be reserved for the following projects in the amounts specified:

Detroit and Mackinac Railway	$800,000
Western Massachusetts rail rehabilitation	1,000,000
Central Illinois Shippers Corporation	350,000
Housatonic Railroad (Connecticut)	1,200,000
Dodge City-Ford-Bucklin Railroad	1,000,000

Amendment No. 72: Inserts the word "and" as proposed by the House.

Amendment No. 73: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

In lieu of the matter proposed by said amendment, insert the following: *: Provided, That, notwithstanding any other provision of law, up to $500,000 of the funds appropriated in fiscal year 1986 for discretionary local rail service assistance grants under "Rail service assistance" shall be made available only for the rail rehabilitation needs of the Mississippian Railroad*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

RAILROAD SAFETY

Amendment No. 74: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

In lieu of the matter stricken and inserted by said amendment, insert the following: *$27,050,000, of which $1,350,000 shall remain available until expended*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement includes the following amounts:

Federal enforcement	$22,050,000
(Positions)	(379)
Automated track inspection	[1] (1,000,000)
Safety regulations/administration	3,650,000
(Positions)	(64)
State grants	1,350,000

[1] To be derived from carryover funds.

The conferees reiterate the views expressed in the Senate report (99-423) regarding the reallocation of the inspector workforce. The conferees expect the Federal Railroad Administrator to take these views under advisement and report to the House and Senate Committees on Appropriations by no later than February 1, 1987, on plans to reallocate inspectors according to those guidelines.

RAILROAD RESEARCH AND DEVELOPMENT

Amendment No. 75: Appropriates $9,581,000 as proposed by the Senate instead of $9,800,000 as proposed by the House.

The conferees have agreed to provide $510,000 to continue advanced welding research at the Oregon Graduate Center, including $200,000 from the Research and Special Programs Administration and $310,000 from the Federal Highway Administration. Because the funds appropriated for this initiative in fiscal year 1986 through the Federal Railroad Administration have not yet been obligated, the conferees have not provided additional FRA funds at this time. The conferees expect, however, that the fiscal year 1988 budget request will include sufficient funds to carry out this initiative fully, and that these funds will be included in a single account in the upcoming budget request.

Amendment No. 76. Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate requiring that $200,000, together with funds appropriated for fiscal year 1986 and intended for such purposes, be available to support the development of cooperative efforts between states, railroads, community groups, and other public service groups to reduce accidents at grade crossings.

NORTHEAST CORRIDOR IMPROVEMENT PROGRAM

Amendment No. 77: Appropriates $16,962,000 as proposed by the House instead of $11,962,000 as proposed by the Senate.

The conference agreement distributes these funds as follows:

Warren Street bridge	$3,600,000
New York tunnels: electrical/mechanical	4,800,000
Concrete ties, CWR, undercutting	3,062,000
Boston South Station Phase I cost overruns	5,500,000

The $5,500,000 provided for Boston South Station Phase I cost overruns shall represent the final federal appropriation for such overruns.

CONRAIL LABOR PROTECTION

Amendment No. 78: Deletes language proposed by the Senate transferring all unobligated balances in the "Conrail workforce reduction" account in excess of $4,565,000 to

Amtrak and requiring Conrail to pay its own labor protection costs upon exhaustion of appropriate funds.

GRANTS TO THE NATIONAL RAILROAD PASSENGER CORPORATION

(INCLUDING TRANSFER OF FUNDS)

Amendment No. 79: Provides a total of $602,000,000, including an estimate $7,209,000 derived by transfer, for Amtrak operations, capital improvements, and labor protection costs instead of $591,000,000 as proposed by the Senate and $602,000,000 together with $11,000,000 derived by transfer as proposed by the House.

Amendment No. 80: Deletes language proposed by the Senate that transfers such sums that are available from "Conrail workforce reduction" as of September 30, 1986, in excess of $4,565,000.

REDEEMABLE PREFERENCE SHARES

Amendment No. 81: Authorizes the issuance and sale of fund anticipation notes and the expenditure of proceeds therefrom in additional amounts not to exceed $6,500,000 instead of $4,000,000 as proposed by the Senate and $9,000,000 as proposed by the House.

The conference agreement includes the following amounts:

Tri-Country commuter rail—	
Dade County metrorail connection	$4,000,000
Central Vermont Railroad	2,500,000

The conferees expect that, after complying with the above listed allocations and those allocations governing previous fiscal year appropriations, the Secretary shall give priority consideration to the Dodge City-Ford-Bucklin Railroad project.

CONRAIL COMMUTER TRANSITION ASSISTANCE

Amendment No. 82: Appropriates $5,000,000 as proposed by the House.

URBAN MASS TRANSPORTATION ADMINISTRATION

ADMINISTRATIVE EXPENSES

Amendment No. 83: Limits funds for the office of the administrator to $600,000 instead of $560,000 as proposed by the House. The conferees expect all salaries and expenses associated with the immediate offices of the administrator, deputy administrator, and executive director to be financed from this account.

RESEARCH, TRAINING, AND HUMAN RESOURCES

Amendment No. 84: Appropriates $17,400,000 as proposed by the Senate instead of $17,600,000 as proposed by the House. The conferees reiterate the directive contained in the fiscal year 1986 conference report (House Report 99-450) regarding the continuation of the cold weather technology program with the existing educational institution as grantee.

FORMULA GRANTS

Amendment No. 85: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

In lieu of the matter proposed, insert the following: *: Provided, That notwithstanding any other provision of law, before apportionment of these funds, $16,900,000 shall be made available for the purposes of section 18 of the Urban Mass Transportation Act of 1964, as amended: Provided further, That, notwithstanding any other provision of law, of the funds provided under this Act for formula grants, no more than $847,044,097 may be used for operating assistance under section 9(k)(2) of the Urban Mass Transportation Act of 1964, as amended: Provided further, That, notwithstanding any other provision of law, of the amount available for operating assistance under this Act, no more than $563,505,567 may be used for operating assistance in urbanized areas with a population of 1,000,000 or more*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

DISCRETIONARY GRANTS

(HIGHWAY TRUST FUND)

Amendment No. 86: Limits obligations to $1,002,500,000 instead of $990,000,000 as proposed by the Senate and $1,015,000,000 as proposed by the House.

The conference agreement includes the following amounts:

Bus and bus facilities	$140,000,000
Rail modernization and extensions	410,000,000
New systems and new extensions	365,000,000
Portland (light rail)	(1,300,000)
Seattle (bus tunnel)	(67,870,000)
Miami (circulator)	(12,000,000)
Santa Clara (light rail)	(18,450,000)
Atlanta (rail construction)	(91,080,000)
Los Angeles (rail construction)	(107,920,000)
Houston (busways)	(47,000,000)
St. Louis (light rail)	(12,830,000)
Denver (busway)	(6,550,000)
Planning	45,000,000
Elderly and handicapped	35,000,000
Innovative techniques and technology introduction	7,500,000

The conferees direct that priority consideration be given to discretionary bus grant applications from the Montachusett Area Regional Transit Authority, Massachusetts; Juneau, Alaska; and Buffalo, New York. The conferees also direct that $40,000,000 of the rail modernization allocation to the New York MTA be made available solely for the extension and completion of full electrified service on the Long Island Railroad's Port Jefferson line east of Northport, the funds to be part of New York's historical share of rail modernization funds.

The conferees direct that San Francisco Muni's capacity improvements to the Embarcadero Station from the existing terminus to a surface turnback facility in the vicinity of Harrison Street shall be considered a rail modernization project. The conferees continue to support this project.

The conference agreement includes $5,000,000 for the rural transportation assistance program as specified in Senate Report 99-423.

LIQUIDATION OF CONTRACT AUTHORIZATION

HIGHWAY TRUST FUND

Amendment No. 87: Appropriates $1,100,000,000 for the liquidation of obligations incurred in carrying out section 21(a)(2) of the Urban Mass Transportation Act of 1964, as amended, as proposed by the Senate instead of $950,000,000 as proposed by the House.

INTERSTATE TRANSFER GRANTS—TRANSIT

The conferees have agreed to the following discretionary allocations:

Sacramento	$2,924,517
Chicago	55,166,906
Boston	18,000,000
New Jersey	1,558,954
New York City	11,000,000
Cleveland	10,400,000
Indianapolis	949,623

The conferees recognize that delays in some regions' projects might necessitate adjustments to the above allocations. The conferees expect these adjustments, if required, to be accomplished through the normal reprogramming process.

WASHINGTON METRO

Amendment No. 88: Appropriates $201,119,500 instead of $185,000,000 as proposed by the Senate and $217,239,000 as proposed by the House.

SAINT LAWRENCE SEAWAY DEVELOPMENT CORPORATION

LIMITATION ON ADMINISTRATIVE EXPENSES

Amendment No. 89: Limits administrative expenses to $1,925,000 as proposed by the House instead of $1,990,000 as proposed by the Senate.

EISENHOWER LOCK REPAIR

Amendment No. 90: Appropriates $2,000,000 as proposed by the House.

RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION

RESEARCH AND SPECIAL PROGRAMS

Amendment No. 91: Appropriates $19,950,000 as proposed by the Senate instead of $20,800,000 as proposed by the House.

The conference agreement includes the following funding and staffing distribution:

	Appropriation
Operations	$13,400,000
Research and development	2,050,000
Natural gas and hazardous liquid pipeline safety grants-in-aid	4,500,000

Office	*Positions*
Administrator	5
Chief Counsel	8
Program management and administration	15
Aviation information management	11
Emergency transportation	10
Hazardous materials	77
Pipeline safety	47
Transportation Systems Center	527

Amendment No. 92: Provides that, of the funds appropriated, $4,500,000 shall be available for natural gas and hazardous liquid pipeline safety grants-in-aid as proposed by the Senate instead of $5,000,000 as proposed by the House.

Amendment No. 93: Provides that $6,550,000 shall remain available until expended as proposed by the Senate instead of $7,265,000 as proposed by the House.

OFFICE OF THE INSPECTOR GENERAL

SALARIES AND EXPENSES

Amendment No. 94: Appropriates $27,200,000 instead of $27,000,000 as proposed by the Senate and $27,770,000 as proposed by the House.

TITLE II—RELATED AGENCIES

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

SALARIES AND EXPENSES

Amendment No. 95: Appropriates $1,890,000 as proposed by the Senate instead of $1,975,000 as proposed by the House. The conferees agree that the Board should study the feasibility of employing cooperative research to expedite completion of the reserved sections of the minimum guidelines and requirements for accessible design and that UMTA should contract for a study of the costs to society of not providing spe-

cialized transportation services to the elderly and handicapped.

INTERSTATE COMMERCE COMMISSION

SALARIES AND EXPENSES

Amendment No. 96: Provides a total of $46,855,000 of which an estimated $53,000 shall be derived by transfer as proposed by the Senate instead of a total of $47,953,000 including $53,000 by transfer as proposed by the House.

The conference agreement includes the following amounts:

Chairman	$500,000
(staff years)	(7)
Commissioners	1,700,000
(staff years)	(24)
Satellite offices	1,000,000
(staff years)	(16)
Secretary	3,550,000
(staff years)	(85)
General Counsel	1,810,000
(staff years)	(27)
Proceedings	8,450,000
(staff years)	(130)
Hearings	455,000
(staff years)	(6)
Special Counsel	920,000
(staff years)	(15)
Transportation analysis	2,430,000
(staff years)	(30)
Accounts	4,820,000
(staff years)	(75)
Traffic	3,300,000
(staff years)	(75)
Compliance and Consumer Assistance	13,300,000
(staff years)	(218)
Managing Director	4,620,000
(staff years)	(82)

The conferees expect the Interstate Commerce Commission to use normal reprogramming procedures should it propose to deviate in any way from the staffing allocations or by more than five percent from the funding allocations listed above.

PANAMA CANAL COMMISSION

OPERATING EXPENSES

Amendment No. 97: Appropriates $409,770,000 as proposed by the House instead of $410,000,000 as proposed by the Senate.

DEPARTMENT OF THE TREASURY

OFFICE OF THE SECRETARY

INVESTMENT IN FUND ANTICIPATION NOTES

Amendment No. 98: Appropriates $6,500,000 instead of $4,000,000 as proposed by the Senate and $9,000,000 as proposed by the House.

UNITED STATES RAILWAY ASSOCIATION

ADMINISTRATIVE EXPENSES

Amendment No. 99: Appropriates $2,200,000 as proposed by the Senate instead of $2,297,000 as proposed by the House.

TITLE III—GENERAL PROVISIONS

Amendment No. 100: Restores language proposed by the House prohibiting any change in the current Federal status of the Transportation Systems Center and the Turner-Fairbank Highway Research Center.

Amendment Nos. 101 and 102: Conform section numbers.

Amendment No. 103: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

In lieu of the matter stricken by said amendment, insert the following:

(e) Notwithstanding any other provision of law, funds previously made available and unobligated for the "Auto Pedestrian Separation Demonstration Project" shall be available to the State of North Dakota for use on the 45th Street interchange in Fargo, North Dakota, and such funds transferred shall remain available until expended.

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

Amendment Nos. 104 and 105: Conform section numbers.

Amendment No. 106: Limits funds for the expenses of the Department of Transportation advisory committees to $750,000 as proposed by the Senate instead of $725,000 as proposed by the House.

Amendment Nos. 107, 108 and 109: Conform section numbers.

Amendment No. 110: Restores language proposed by the House releasing the City of Linden, New Jersey, from the terms, conditions, reservations and restrictions contained in the deed dated February 27, 1947.

Amendment Nos. 111 and 112: Conform section numbers.

Amendment No. 113: Restores language proposed by the House requiring the FAA to include the address of each organization against which an enforcement action was taken during fiscal year 1986 in the agency's report on operation and maintenance inspection and certification programs.

Amendment No. 114: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

In lieu of the matter stricken and inserted by said amendment, insert the following: *assessed and closed*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The House bill required a report on civil penalties assessed and the Senate bill required a report on civil penalties closed. The conference agreement requires reports on both actions.

Amendment No. 115: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate requiring a study of the impact on small and remote communities of the discontinuation of essential air service subsidies.

Amendment No. 116: Conforms section number.

Amendment No. 117: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

Restore the matter stricken by said amendment, amended to read as follows:

SEC. 323. The Secretary of Transportation shall enter into negotiations with the City of Philadelphia, Pennsylvania, for an amendment to the full funding contract in effect with regard to the Center City Commuter Connection (UMTA Project No. PA-03-0013): Provided, That the Secretary shall commence negotiations with the appropriate local authorities to enter into such agreement no later than 30 days after enactment of this section and shall conclude an agreement no later than 90 days after enactment of this section: Provided further, That the agreement shall provide for the reimbursement of the Federal share of extraordinary costs incurred by the City on the project, including, but not limited to, existing eminent domain damages, a reasonable estimate of anticipated eminent domain damages, and costs that the City incurred pursuant to the Northeast Corridor Improvement Project and the Northeast Rail Service Act of 1981.

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement requires the Secretary of Transportation to execute an amendment to the full funding contract for the Center City Commuter Tunnel in Philadelphia, Pennsylvania. The amendment must include the federal share of costs incurred by the City in complying with requirements imposed by the Northeast Corridor Improvement Project and the Northeast Rail Service Act of 1981. The City has identified these costs in its submissions to the Department of Transportation. The amendment must also cover both existing and anticipated eminent domain charges. The City has also enumerated those costs.

The conferees take note that the City of Philadelphia first applied to UMTA for reimbursement of extraordinary costs in August 1983 and that committee report language urging UMTA to settle the City's claims has not produced the desired result.

The conferees also urge UMTA to resolve as quickly as possible the City's claim for removal of a $4.7 million audit exception placed on the project.

Amendment No. 118: Restores language proposed by the House defining "Maxi-cube" vehicles.

Amendment No. 119: Restores language proposed by the House prohibiting the use of funds for a study involving access by a causeway or bridge across the wetlands of San Francisco Bay to U.S. Highway 880.

Amendment Nos. 120 and 121: Conform section numbers.

Amendment No. 122: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate that deletes House language and inserts new language regarding the conditioning of transit grants on private sector involvement.

The House included bill language that states none of the funds in this Act shall be used to enforce any rules, policies, or guidelines that seek to delay transit grants or condition their award on the means that providers of transit service are selected.

The conferees reiterate the position taken in last year's statement of the managers accompanying the continuing appropriations for fiscal year 1986, that the extent of private sector involvement in the provision of public transit is best decided at the local level, that there should be no quotas affecting local programs, and that conditioning funding on a certain level of involvement is not consistent with the Urban Mass Transportation Act of 1964, as amended.

The conferees have included bill language which makes it clear that no funds under this Act could be used to restrict or infringe upon the ability of recipients of Federal transit funds to select, through a competitive process, service providers or to contract with private entities for the provision of services. UMTA has established an expedited process for the quarterly release of its formula funds. At the same time, the conferees encourage recipients of Federal transit funds to consider the benefits of putting transit services out to competitive bid. This provision would make it clear that recipients would be free to determine for themselves if services could be competitively bid and contracted out to private operators.

The conferees believe that any UMTA policy statements on private sector participation, such as those of October 1984 and

January 1986, should not exceed UTMA statutory responsibilities under sections 3(e), 8(e), and 9(f) of the UMT Act of 1964, as amended.

Section 3(e) of the UMT Act of 1964, as amended, states that "no financial assistance shall be provided under this act [for taking over private companies or providing service in competition with or supplementary to an existing private company] . . . unless . . . the Secretary finds that such program, to the maximum extent feasible, provides for the participation of private mass transportation companies".

Section 8(e) states that "the plans and programs required by this section shall encourage to the maximum extent feasible the participation of private enterprise".

Section 9(f) states that "each recipient shall . . . (2) develop a proposed program of projects concerning activities to be funded in consultation with interested parties, including private transportation providers . . . and (3) publish a proposed program of projects in such a manner to afford . . . private transportation providers . . . an opportunity to examine its content and to submit comments on the proposed program of projects and on the performance of the recipient".

UMTA's Office of Private Sector Initiatives should be primarily a source of information to facilitate private sector involvement in urban mass transit. The conferees do not believe that this office should be regulating the local transit planning or decisionmaking process or giving priority to or otherwise basing the release or allocation of Federal assistance on the nature of the local planning or decisionmaking process, or the decisions made at the local level as to the provision of mass transit services or functions, and has included a general provision to that effect.

The conferees firmly believe that the final decision regarding provision of service rests with the grantee. In addition, changes or modifications to the above cited sections can be accomplished only through the legislative process in considering the basic enabling legislation in which these sections are found. Section 327 emphasizes that it is not the intent to supercede or override the existing statutory provisions relating to the private sector—sections 3(e), 8(e), and 9(f) of the Urban Mass Transportation Act of 1964, as amended. Nor is it the intent of the section to affect or limit the administrator's existing authority to allocate funds under the section 3 discretionary program. Rather, in an effort to respond to concerns that UMTA has overstepped its legal authority by explicitly conditioning section 9 grants on private sector involvement, it is the intent of the conferees to make clear that such a conditioning of formula grants cannot occur. The conferees want to be certain that UMTA does not exceed its current statutory authority as it implements its private sector initiatives.

Amendment No. 123: Reported in disagreement.

Amendment No. 124: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

Restore the matter stricken by said amendment, amended to read as follows:

SEC. 329. The Secretary of Transportation is authorized to transfer appropriated funds under "Office of the Secretary, salaries and expenses": Provided, That no appropriation shall be increased or decreased by more than 3 per centum by all such transfers: Provided further, That any such transfer shall be reported to the Committees on Appropriations.

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

Amendment No. 125: Restores language proposed by the House prohibiting landing rights of South African aircraft.

Amendment No. 126: Restores language proposed by the House regarding the suitability for employment of air traffic controllers who participated in the 1981 strike. The language provides that air traffic controllers whose appointments were terminated on account of the strike shall not, as a class, be considered unsuitable for appointment or reinstatement in the Federal Aviation Administration.

Amendment No. 127: Rported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

In lieu of the section number "323" insert: *332*

The managers of the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

Amendment No. 128: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

In lieu of the section number "324" insert: *333*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

Amendment No. 129: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

In lieu of the section number "325" insert: *334*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

CONGRESSIONAL DIRECTIVES

The conferees agree that the language and allocations set forth in House Reports 99-696 and 99-831 or Senate Reports 99-423 and 99-500 shall be complied with unless specifically addressed to the contrary in the statement of the managers.

CONFERENCE TOTAL—WITH COMPARISONS

The total new budget (obligational) authority for the fiscal year 1987 recommended by the Committee of Conference, with comparisons to the fiscal year 1986 amount, the 1987 budget estimates, and the House and Senate bills for 1987 follow:

New budget (obligational) authority, fiscal year 1986	$10,146,976,569
Budget estimates of new (obligational) authority, fiscal year 1987	7,014,514,569
House bill, fiscal year 1987	10,284,900,569
Senate bill, fiscal year 1987	10,197,746,569
Conference agreement, fiscal year 1987	10,253,373,069
Conference agreement compared with:	
New budget (obligational) authority, fiscal year 1986	+106,396,500
Budget estimates of new (obligational) authority, fiscal year 1987	+3,238,858,500
House bill, fiscal year 1987	−31,527,500
Senate bill, fiscal year 1987	+55,626,500

WILLIAM LEHMAN,
WILLIAM H. GRAY III,
BOB CARR,
RICHARD J. DURBIN,
ROBERT J. MRAZEK,
MARTIN OLAV SABO,
JAMIE L. WHITTEN,
LARRY COUGHLIN,
SILVIO O. CONTE,
CARL PURSELL,
FRANK R. WOLF,
Managers on the Part of the House.

MARK ANDREWS,
THAD COCHRAN,
JAMES ABDNOR,
ALFONSE M. D'AMATO,
LAWTON CHILES,
JOHN C. STENNIS,
ROBERT C. BYRD,
FRANK R. LAUTENBERG,
Managers on the Part of the Senate.

CONFERENCE REPORT ON H.R. 5313

Mr. BOLAND submitted the following conference report and statement on the bill (H.R. 5313) making appropriations for the Department of Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year September 30, 1987, and for other purposes:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 5313) making appropriations for the Department of Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 1987, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its amendments numbered 2, 20, 28, 31, 40, 41, 42, 47, 48, 53, 58, and 59.

That the House recede from its disagreement to the amendments of the Senate numbered 4, 9, 11, 18, 19, 26, 29, 34, 36, 37, 38, 43, 45, 52, 55, 56, 57, 60, and 61, and agree to the same.

Amendment numbered 3:

That the House recede from its disagreement to the amendment of the Senate numbered 3, and agree to the same with an amendment, as follows:

In lieu of the matter stricken and inserted by said amendment insert *$1,350,000,000*; and the Senate agree to the same.

Amendment numbered 6:

That the House recede from its disagreement to the amendment of the Senate numbered 6, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$150,000,000,000*; and the Senate agree to the same.

Amendment numbered 12:

That the House recede from its disagreement to the amendment of the Senate numbered 12, and agree to the same with an amendment, as follows:

In lieu of the matter stricken and inserted by said amendment insert *$17,000,000*; and the Senate agree to the same.

Amendment numbered 16:

That the House recede from its disagreement to the amendment of the Senate numbered 16, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$34,100,000*; and the Senate agree to the same.

Amendment numbered 17:

That the House recede from its disagreement to the amendment of the Senate numbered 17, and agree to the same with an amendment, as follows:

Restore the matter stricken by said amendment, amended to read as follows: *Provided further, That none of these funds shall be available after August 31, 1987, for any Commissioners' offices located in the Logan Building*; and the Senate agree to the same.

Amendment numbered 22:

That the House recede from its disagreement to the amendment of the Senate numbered 22, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$7,500,000*; and the Senate agree to the same.

Amendment numbered 25:

That the House recede from its disagreement to the amendment of the Senate numbered 25, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$1,411,300,000*; and the Senate agree to the same.

Amendment numbered 35:

That the House recede from its disagreement to the amendment of the Senate numbered 35, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$1,900,000*; and the Senate agree to the same.

Amendment numbered 39:

That the House recede from its disagreement to the amendment of the Senate numbered 39, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$262,000,000*; and the Senate agree to the same.

Amendment numbered 44:

That the House recede from its disagreement to the amendment of the Senate numbered 44, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$3,091,700,000*; and the Senate agree to the same.

Amendment numbered 46:

That the House recede from its disagreement to the amendment of the Senate numbered 46, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$3,317,000,000*; and the Senate agree to the same.

Amendment numbered 49:

That the House recede from its disagreement to the amendment of the Senate numbered 49, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$1,406,150,000*; and the Senate agree to the same.

Amendment numbered 51:

That the House recede from its disagreement to the amendment of the Senate numbered 51, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$76,500,000*; and the Senate agree to the same.

Amendment numbered 54:

That the House recede from its disagreement to the amendment of the Senate numbered 54, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$9,411,817,000*; and the Senate agree to the same.

The committee of conference report in disagreement amendments numbered 1, 5, 7, 8, 10, 13, 14, 15, 21, 23, 24, 27, 30, 32, 33, 50, 62, and 63.

EDWARD P. BOLAND,
BOB TRAXLER,
LOUIS STOKES,
LINDY BOGGS,
BILL BONER,
ALAN MOLLOHAN,
JAMIE L. WHITTEN,
BILL GREEN,
LAWRENCE COUGHLIN,
JERRY LEWIS,
SILVIO O. CONTE,
Managers on the Part of the House.

MARK O. HATFIELD,
LOWELL P. WEICKER, Jr.,
PAUL LAXALT,
ALFONSE M. D'AMATO,
JAMES ABDNOR,
PETE V. DOMENICI,
PATRICK LEAHY,
JOHN STENNIS,
J. BENNETT JOHNSTON,
FRANK R. LAUTENBERG,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 5313) making appropriations for the Department of Housing and Urban Development, and sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 1987, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report.

TITLE I—DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Amendment No. 1: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

In lieu of the matter stricken and proposed by said amendment, insert the following:

(INCLUDING RESCISSION)

The amount of contracts for annual contributions, not otherwise provided for, as authorized by section 5 of the United States Housing Act of 1937, as amended (42 U.S.C. 1437c), and heretofore approved in appropriations Acts, is increased by $601,259,278: Provided, That such amount of contracts for annual contributions is further increased by such amounts as may be necessary to permit the obligation of budget authority heretofore provided in appropriations Acts and carried over into fiscal year 1987: Provided further, That the budget authority obligated under contracts for annual contributions shall be increased above amounts heretofore provided in appropriations Acts by $7,805,668,000: Provided further, That any part of the amount of the increase in budget authority provided for in the immediately foregoing proviso that is available under this Act for public housing development and acquisition costs or which is to be used for amendments for such costs, shall be available as an appropriation of funds, to remain available until expended, for grants, which are hereby authorized in lieu of loans under section 4(a) of the United States Housing Act of 1937 (42 U.S.C. 1437b), and which the Secretary may make on substantially the same terms (except for repayment unless repayment is a properly imposed sanction) as those heretofore set forth in annual contributions contracts for loans and annual contributions: Provided further, That during 1987 and thereafter, any amounts of budget authority which are carried over from a prior year, or which are otherwise available for obligation, and which are available for public housing development and acquisition costs, together with any amounts of budget authority which are to be used for amendments for such costs, in accordance with any Act, shall also be made available as an appropriation of funds for grants, under the same terms as those applying under the immediately preceding proviso: Provided further, That of the budget authority provided herein, $137,938,000 shall remain available until expended for assistance in financing the development or acquisition cost of public housing for Indian families; $1,436,940,000 shall be available as an appropriation of funds, to remain available until expended, for modernization of existing public housing projects pursuant to section 14 of such Act (42 U.S.C. 1437l); $1,602,786,540 shall be for assistance for projects developed for the elderly or handicapped under section 202 of the Housing Act of 1959, as amended (12 U.S.C. 1701q); $790,950,000 shall be for the section 8 existing housing program (42 U.S.C. 1437f); $716,287,500 shall be for the section 8 moderate rehabilitation program (42 U.S.C. 1437f); $1,025,000,000 shall be available for the housing voucher program under section 8(o) of the United States Housing Act of 1937, as amended (42 U.S.C. 1437f), for use, notwithstanding the limitations in section 8(o)(1) of such Act that the Secretary conduct a demonstration, and in section 8(o)(4) of such Act that the Secretary use substantially all authority in connection with certain programs, in connection with the rental rehabilitation program under section 17 of such Act and for any other purposes as determined by the Secretary; $200,000,000 shall be available as an appropriation of funds, to remain available until September 30, 1989, only for rental rehabilitation grants pursuant to section 17(a)(1)(A) of the United States Housing Act of 1937, as amended (42 U.S.C. 1437o); and $99,550,000 shall be available as an appropriation of funds, to remain available until September 30, 1989, only for development grants pursuant to section 17(a)(1)(B) of the United States Housing Act of 1937, as amended (42 U.S.C. 1437o): Provided further, That with respect to grants as authorized by section 17(a)(1)(B) of the United States Housing Act of 1937 (42 U.S.C. 1437o) which are made using funds made available under this paragraph, notwithstanding the rental housing vacancy rate criteria of the third and sixth sentences of section 17(d)(2) of such Act, no unit of general local government shall be eligible for such a grant unless the percentage of rental dwelling units within its jurisdiction which are vacant is less than the na-

tional percentage of rental dwelling units that are vacant and a percentage of rental dwelling units within its jurisdiction which are vacant for more than two months is less than the national percentage of dwelling units that are vacant for more than two months, except that the housing vacancy criteria specified in this paragraph shall not apply to grants authorized by the seventh sentence of such section 17(d)(2): Provided further, That of the $7,805,668,000 of budget authority provided herein, $200,000,000 shall remain available until expended for assistance in financing the development or acquisition cost of public housing (other than for Indian families) and for major reconstruction of obsolete public housing projects (other than for Indian families), and an amount equal to the amounts of budget authority which have been reserved or obligated for such purpose in a prior year and which are recaptured during fiscal year 1987 (not including such amounts as may be recaptured from amounts heretofore obligated for such assistance for Indian families, and amounts that become available for rescission pursuant to section 4(c)(3) of the United States Housing Act of 1937 (42 U.S.C. 1437b)) shall also be made available as an appropriation of funds for such purpose: Provided further, That any part of the $200,000,000 and the recaptured amount referred to in the immediately foregoing proviso may in the discretion of the Secretary, based on applications submitted by public housing authorities, be used for new construction or major reconstruction of obsolete public housing projects (other than for Indian families): Provided further, That an amount equal to the amounts of budget authority which have been reserved or obligated for assistance in financing the development or acquisition cost of public housing for Indian families and which have been recaptured (not including amounts that become available for rescission pursuant to section 4(c)(3) of the United States Housing Act of 1937 (42 U.S.C. 1437b)), in addition to other amounts of budget authority specified for such purpose under this Act, shall be made available as an appropriation of funds, to remain available until expended for grants for such development or acquisition cost of public housing for Indian families: Provided further, That an amount equal to the amounts of budget authority which have been reserved or obligated for assistance for modernization of existing public housing projects pursuant to section 14 of such Act (42 U.S.C. 1437l) and which are recaptured (not including amounts that become available for rescission pursuant to section 4(c)(3) of the Act (42 U.S.C. 1437b)) or which are carried over from a prior year or are otherwise available for obligation, shall be made available as an appropriation of funds, to remain available until expended, for grants for modernization of existing public housing projects: Provided further, That none of the amounts available for obligation in 1987 shall be subject to the provisions of section 213(d) of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 1439): Provided further, That all amounts of budget authority (and contract authority) equal to the amounts of budget authority (and contract authority) reserved or obligated for programs under section 8 of the United States Housing Act of 1937, as amended (42 U.S.C. 1437f), which are recaptured during fiscal year 1987 shall be rescinded.

Amounts of funds for rental rehabilitation grants as authorized by section 17(a)(1)(A) of the United States Housing Act of 1937 and for development grants as authorized by section 17(a)(1)(B) of such Act (42 U.S.C. 1437o) that were appropriated under this heading in the Department of Housing and Urban Devevelopment-Independent Agencies Appropriation Act, 1985 (Public Law 98-371, 98 Stat. 1213, 1215, amending Public Law 98-45, 97 Stat. 219, 220), to become available in part during fiscal year 1984, and in part on October 1, 1984, shall remain available for obligation until September 30, 1987; and the balance of the amounts of funds for rental rehabilitation grants and for development grants, that were appropriated under this heading in the Department of Housing and Urban Development-Independent Agencies Appropriations Act, 1986 (Public Law 99-160, 99 Stat. 909), to be available during fiscal year 1986, which remains following sequestration under the President's order of February 1, 1986, pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985 (Public Law 99-177; H. Doc. 99-160, 99th Cong. 2d Sess., pages 462-463), shall remain available until September 30, 1988: Provided, That the foregoing extensions of the periods of availability for the respective amounts of funds shall apply only to amounts which are recaptured, and section 17(b)(4) of the United States Housing Act of 1937 (relating to reallocations of fund amounts for rental rehabilitation) shall not apply to the respective amounts for rental rehabilitation grants: Provided further, That section 17(d)(4)(G) of such Act is amended by inserting before the semicolon the following: "(36 months after notice in the case of projects for which funding notices were issued prior to July 23, 1985)".

Section 17(f) of the United States Housing Act of 1937 is amended by adding at the end of the following new sentence: "This subsection shall not apply to requirements relating to rents imposed on a structure as a condition of receiving financial assistance under a program of the State of New York for the rehabilitation of the structure if (1) the dollar amount of the State financial assistance (including the principal amount of loans) exceeds the dollar amount of financial assistance provided for the structure under this section, and (2) the structure is privately owned by (A) a person or family whose income does not exceed 80 percent of the median income for the metropolitan statistical area where the structure is located (or the county, if located outside such an area), or (B) a not-for-profit corporation or charitable organization which has as one of its primary purposes the improvement of housing for such persons, or by a wholly owned subsidiary of such a corporation or organization.".

The method of calculation, the preliminary fee, and the percentage established for administrative fees paid to a public housing agency administering a contract under this heading shall be the method of calculation, the preliminary fee, and the percentage established by the Secretary as of September 30, 1986.

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The committee of conference has included a total of $244,712,000 for public housing project rehabilitation and new construction. In making these funds available, the conferees are encouraging maximum flexibility by permitting the public housing authorities to apply either for total rehabilitation of existing unoccupied housing projects or apply for additional new units.

In this connection, the conferees direct that the Department issue a notice of funding availability which grants appropriate housing authorities the option of requesting additional units either through new construction or through project rehabilitation. In providing funding for public housing construction in fiscal year 1986, the conference committee specifically limited the project rehabilitation option to 20 percent of the total of funds provided. For fiscal year 1987 no such percentage limitation is applied. However, the conferees want to make clear that the local public housing authorities should be given maximum flexibility in determining what public housing requirements are most essential for that authority and that locality. It is expected that these funds will make available approximately 2,500 new or rehabilitated public housing units.

The conferees expect the Department and the Office of Management and Budget to adhere to the 1987 program detailed in the following table. The Department is expected to continue to utilize the regular reprogramming procedure if any changes are required to the agreed upon program contained in the table.

ANNUAL CONTRIBUTIONS FOR ASSISTED HOUSING FY 1987—GROSS RESERVATIONS

	Units	Cost	Contract authority	Term	Budget authority
Recaptures	NA	NA	$14,400,400	NA	$264,362,000
Rescission of section 8 recaptures	NA	NA	−12,225,000	NA	−199,100,000
New authority	NA	NA	601,259,278	NA	7,805,668,000
Total available	NA		603,434,678		7,870,930,000
Public housing:					
Indian housing	2,000	$68,969	NA	NA	137,938,000
Indian housing recaptures	NA	NA	NA	NA	20,550,000
Public housing development/reconstruction	NA	NA	NA	NA	[1] 200,000,000
Development/reconstruction recaptures	NA	NA	NA	NA	[2] 44,712,000
Amendments	NA	NA	NA	NA	58,900,000
Lease adjustments	NA	NA	NA	NA	16,300,000
Modernization	NA	NA	NA	NA	[3] 1,436,940,000

ANNUAL CONTRIBUTIONS FOR ASSISTED HOUSING FY 1987—GROSS RESERVATIONS—Continued

	Units	Cost	Contract authority	Term	Budget authority
Subtotal, public housing	2,000				1,915,340,000
Section 8:					
Section 202:					
Section 202	12,000	6,678	80,139,327	20	1,602,786,540
Section 202 amendments	NA	NA	11,000,000	20	220,000,000
Subtotal, section 202	12,000		91,139,327		1,822,786,540
Housing vouchers:					
Free-standing and rental rehabilitation	50,000	4,100	205,000,000	5	1,025,000,000
Section 8 opt outs	1,000	4,100	4,100,000	5	20,500,000
Public housing demolitions	2,500	4,100	10,250,000	5	51,250,000
Voucher PHA fees	NA	470	25,145,000	5	125,725,000
Subtotal, vouchers	53,500		244,495,000		1,222,475,000
Certificates	10,000	5,273	52,730,000	15	790,950,000
Moderate rehabilitation	7,500	6,367	47,752,500	15	716,287,500
Loan management	10,000	3,751	37,510,000	5	187,550,000
Property disposition	3,000	5,039	15,117,000	15	226,755,000
Amendments:					
New/sub. rehabilitation	NA	NA	500,000	20	10,000,000
Existing housing	NA	NA	70,000,000	5	350,000,000
Loan management	NA	NA	39,890,851	7	279,235,960
Moderate rehabilitation	NA	NA	3,000,000	10	30,000,000
Property disposition	NA	NA	1,300,000	15	20,000,000
Subtotal, amendments	NA	NA	114,690,851		689,235,960
Subtotal, section 8	96,000	NA	603,434,678		5,656,040,000
Total, public housing and section 8	98,000	NA	603,434,678		7,571,380,000
Section 17 development	NA	NA	NA		99,550,000
Section 17 rehabilitation	NA	NA	NA		200,000,000
Total use of authority	NA	NA	603,434,678		7,870,930,000

[1] To be used for project development or major reconstruction.
[2] Represents estimated public housing recaptures to be available to augment new funds for project development or reconstruction. Amount is estimated and will vary depending on amount of recaptures.
[3] In addition, modernization recaptures are to be available as appropriation for modernization grants.

Amendment No. 2: Appropriates $3,400,000 for congregate services as proposed by the House, instead of $3,000,000 as proposed by the Senate.

Amendment No. 3: Appropriates $1,350,000,000 for payments for operation of low-income housing projects, instead of $1,300,000,000 as proposed by the House and $1,400,000,000 as proposed by the Senate. In addition to these funds, it is estimated that approximately $175,000,000 will be available as a carryover from fiscal year 1986. When these monies and the estimated carryover are taken together with the fiscal year 1987 recommendation, the total should be more than sufficient to meet actual performance funding system (PFS) requirements.

The committee of conference directs that any funds available in 1987 over and above PFS requirements *shall* be made available to PHAs for increased liability insurance expenditures not reflected in the base PFS formula. In that connection, while the committee of conference recognizes that insurance costs have substantially impacted local public housing authorities, the conferees believe that both the Department and the PHAs should work to establish some type of maximum liability "cap". The conference committee expects that the Department will report by June 30, 1987 under what conditions the above noted excess funds have been distributed for insurance premiums.

Amendment No. 4: Appropriates $3,500,000 for housing counseling assistance as proposed by the Senate, instead of $4,000,000 as proposed by the House.

Amendment No. 5: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

In lieu of the sum proposed by said amendment, insert the following: *$100,000,000,000.*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

Amendment No. 6: Establishes the 1987 limitation on Government National Mortgage Corporation commitments for guarantees of mortgage-backed securities at $150,000,000,000, instead of $132,500,000,000 as proposed by the House and $160,000,000,000 as proposed by the Senate.

Amendment No. 7: Reported in technical disagreement. The managers on the part of the House will offer to recede and concur in the amendment of the Senate exempting the neighborhood development demonstration from the administrative expense ceiling.

Amendment No. 8: Reported in technical disagreement. The managers on the part of the House will offer to recede and concur in the amendment of the Senate earmarking $2,000,000 to be made available to carry out a neighborhood development demonstration. With respect to the Secretary's Discretionary Fund, the conferees agree that $56,000,000 shall be available. Of the increase, $3,000,000 is earmarked for the Community Work Study program and $6,000,000 is for technical assistance. The Committees will consider reprogramming requests to shift funds for high priority special projects.

Amendment No. 9: Makes a technical change in referencing the authorizing legislation.

REHABILITATION LOAN FUND

Because the Department delayed allocating 1986 Section 312 funds until late August, local agencies did not have time to process loan applications by the September 30 deadline. As a result, agencies could not approve all meritorious projects in 1986. The Department is therefore directed to continue to process 1986 loan applications during 1987. In addition, the Committee expects OMB and HUD to make 1987 Section 312 funds available upon enactment of this Act.

Amendment No. 10: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

Restore the matter stricken by said amendment, amended to read as follows:

During 1987 and each succeeding fiscal year, any city within a metropolitan area shall be considered to be a metropolitan city under section 102(a)(4) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(4)) if such city—

(1) was entitled to a grant of a hold-harmless amount under section 106(h) of such Act as such section was in effect prior to the enactment of Public Law 96-399;

(2) had, according to the 1980 decennial census, a population of 36,957; and

(3) received a preliminary grant approval on March 8, 1984, for an urban development action grant under section 119 of the Housing and Community Development Act of 1974.

A city which qualifies as a metropolitan city pursuant to paragraphs (1), (2), and (3) of this section shall be eligible in fiscal year 1987 for a grant under section 106(b)(1) of the Housing and Community Development Act of 1974, as amended, notwithstanding the provisions of section 102(d) of such Act: Provided, That any such city which had entered into a cooperation agreement to include its population in that of an urban county, as provided in section 102(a)(6)(B)(ii) of such Act, shall only be eligible for such a grant if both the city and urban county mutually agree to terminate such cooperation agreement for such fiscal year.

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

Amendment No. 11: Appropriates $225,000,000 for urban development action grants as proposed by the Senate, instead of $275,000,000 as proposed by the House.

Amendment No. 12: Appropriates $17,000,000 for research and technology, instead of $16,173,000 as proposed by the House and $18,000,000 as proposed by the Senate, and deletes language proposed by the Senate extending the availability of funds.

The conferees agree that $300,000 is specifically earmarked to study private financing mechanisms and public/private alternatives for developing housing for persons with disabilities. The Department should seek a nonprofit group broadly representative of the disability community to conduct this study and to provide technical assistance, information dissemination, and outreach activities to encourage such development.

Amendment No. 13: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows: *and during 1987, notwithstanding any other provision of law, the Department of Housing and Urban Development shall maintain an average employment of at least 1,270 for Public and Indian Housing Programs, $647,385,000*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

In addition to the $15,738,000 increase in the FHA transfer, the committee of conference is in agreement with the following changes from the budget estimate for the appropriation:

+$20,667,000 for 534 staff years to support the recommended program levels.

+$5,000,000 for approximately 140 staff years to begin rebuilding the public housing program.

−$300,000 and 7 staff years in departmental management.

+$1,000,000 for the Housing Assistance Council.

Amendment No. 14: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate prohibiting the closing of any HUD field office in 1987 and requiring the re-opening of any HUD field office closed in the past twelve months.

Amendment No. 15: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate establishing the eligibility for the counties of Maui, Kauai, and Hawaii in the urban development actions grants program.

TITLE II—INDEPENDENT AGENCIES

Consumer Product Safety Commission

Amendment No. 16: Appropriates $34,100,000 for salaries and expenses, instead of $34,452,000 as proposed by the House and $33,000,000 as proposed by the Senate. The conferees agree to the following changes from the budget request.

−$500,000 and 9 FTE from the two vacant Commissioners' offices and Congressional affairs.

+$400,000 and 9 FTE for substantive staff in the hazard programs,

+$600,000 to complete the study on cigarette fire safety, including $50,000 additional for travel costs of the technical review committee,

+$100,000 for additional rent expenses in the Logan Building,

+$485,000 and 2 FTE for indoor air research. The Commission should submit its research plan to the Committees on Appropriations by January 1, 1988.

+$15,000 for miscellaneous expenses related to co-location of CPSC offices, including any costs associated with holding special hearings in the downtown area.

Amendment No. 17: Restores language proposed by the House and stricken by the Senate limiting payments for rent in the Logan Building, amended to substitute August 31, 1987 for March 31, 1987. The conferees agree that the co-location of all CPSC Headquarters offices will enhance efficiency and improve operations at the Commission. To give the Commission adequate time to assure an orderly transition, the statutory deadline proposed by the Administration and included in the House bill has been delayed from March 31 to August 31. However, the conferees support the Senate report's position that this move should be accomplished at the earliest feasible date and that CPSC should submit its plan to the Committees on Appropriations by December 31, 1986.

Department of Defense—Civil

Cemeterial Expenses, Army

Amendment No. 18: Appropriates $15,783,000 for salaries and expenses as proposed by the Senate, instead of $6,701,000 as proposed by the House. The conferees' agreement includes funding for a parking garage for the permanent visitors' center with the understanding the Army will initiate a parking rate for the use of the facility commensurate with a sixteen-year payback period.

Environmental Protection Agency

Amendment No. 19: Appropriates $701,107,000 for salaries and expenses as proposed by the Senate, instead of $696,047,000 as proposed by the House. The conferees agree to the following changes from the budget request:

−$1,500,000 and 25 FTE from research and development,

+$6,000,000 and 100 FTE for the drinking water and groundwater programs,

+$4,500,000 and 75 FTE for enforcement activities,

+$1,500,000 and 25 FTE for the hazardous waste program,

+$1,200,000 and 20 FTE for radon to be evenly divided between mitigation research and field activities related to the national survey, technical assistance and information dissemination,

+$360,000 and 6 FTE for ozone studies,

+$300,000 and 5 FTE for studies on climate change,

+$200,000 and 3 FTE for regulatory development for designated hazardous air pollutants,

+$600,000 and 10 FTE for reviews of high priority active ingredients.

With respect to the issue of EPA regulations on gasoline vapor emissions, the conferees urge that the proposed rulemaking be published as soon as possible. The background information discussed in the House report should be provided to the Congress concurrently with the Agency's submission of the proposed regulations for publication in the Federal Register.

Amendment No. 20: Appropriates $202,500,000 for research and development as proposed by the House, instead of $200,434,000 as proposed by the Senate. The conferees agree on the following changes from the budget request:

−$3,934,000 as a general reduction to be applied at the Administrator's discretion,

+$3,000,000 for the Health Effects Institute. The major portion of the preceding general reduction was taken to offset this specific earmarking, even though EPA indicated these funds were included in the base. The conferees believe that HEI's mission and the special nature of its co-funding with the automobile industry require that funds be explicitly identified in future budget justifications. The Agency is directed to prepare the 1988 and subsequent budget justifications in this manner.

+$3,000,000 for exploratory research of which at least $1,500,000 shall be dedicated to studies of ozone depletion and climate change, as long as peer review finds sufficient proposals to be fundable,

+$2,500,000 for the hazardous waste management center,

+$1,000,000 for total exposure assessment studies,

+$1,300,000 for radon mitigation research,

+$1,000,000 for Great Lakes research,

+$300,000 for targeted indoor air research,

+$1,000,000 for drinking water and ground water research,

+$300,000 for a desert ecology study, and

+$300,000 for arctic research.

Amendment No. 21: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

In lieu of the sum proposed by said amendment, insert the following: *$582,685,000, of which $50,000,000 shall be available for the purposes of the Asbestos School Hazards Abatement Act of 1984, as amended, including not more than $2,500,000 for administrative expenses and not more than $5,000,000 to defray the costs of reinspections of schools for asbestos as required by law or regulation, with all of such funds*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The committee of conference is in agreement on the following changes from the budget request:

−$3,300,000 from underground tank state grants,

+$10,000,000 for water quality state grants,

+$5,000,000 for public water system state grants,

+$1,000,000 for underground injection control state grants,

+$3,000,000 for hazardous waste state grants for employee training,

+$1,000,000 for the comprehensive RCRA training initiative,

+$6,000,000 for drinking water standards and guidelines,

+$1,800,000 for operator training,

+$2,600,000 for the Rural Water Association,

+$1,000,000 for academic training targeted to professional training of state staff,

+$3,000,000 for estuary studies to be allocated at the discretion of the Administrator. The conferees are in agreement that up to $1,000,000 may be made available for studies in Long Island Sound conducted by NOAA. These funds, however, shall only be made available after the EPA Administrator and the Long Island Sound Management Committee determine that NOAA's research plan is consistent with the objectives of the overall research plan and of sufficient priority to justify funding.

+$5,000,000 for ozone and climate studies.
+$300,000 for NESHAPS.
+$500,000 to expand and accelerate the national radon survey.
+$4,500,000 for Clean Lakes. No grants shall be awarded or funds obligated prior to June 1, 1987, unless this program has been reauthorized.
+$500,000 for Great Lakes monitoring.
+$50,000,000 for asbestos in schools. Bill language has been included to provide that up to $5,000,000 of these funds may be available as assistance to schools or states to subsidize the costs of reinspections as required by either law or regulation. The conferees feel strongly that these reinspections should be done in a thorough, *consistent* manner so as to identify asbestos containing materials which present a significant health concern. To this end, EPA should develop the necessary standards, criteria and mechanisms to assure the quality, reliability and consistency of reinspections.

Bill language has been included to permit up to $2,500,000 to be available for administrative costs. Of these funds, $1,200,000 is for state and local inspector training, $500,000 is for additional inspections by Senior Environmental Employees (SEE) personnel, $300,000 is to complete the asbestos abatement efficacy study, and the remaining funds are for other administrative expenses. The conferees remain concerned over the quality and safety of abatement work and urge EPA to continue efforts in the training and certification area, with a minimum of $200,000 provided to each of the pilot centers in 1987. In this regard, the conferees expect EPA to continue to apply contractor certification requirements at least as stringent as those in effect in fiscal year 1986. The Agency is also urged to place a high priority on completing the air monitoring study currently underway. Finally, the conferees direct that EPA either accelerate the grant solicitation process or fund high priority applications already on hand so as to award all grants by April 1, 1987. This schedule should permit schools to undertake and complete abatement work during the 1987 summer recess.

The committee of conference urges the Administrator to examine whether there is significant value in a public education program which focuses on how the activities of individuals can contribute to controlling and reducing non-point source pollution. This review should be undertaken as a high priority and the Administrator's views should be forwarded to the Committees on Appropriations as early as possible, but no later than November 15, 1986.

Amendment No. 22: Appropriates $7,500,00 for buildings and facilities, instead of $5,000,000 as proposed by the House and $9,500,000 as proposed by the Senate.

Amendment No. 23: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

In lieu of the matter inserted by said amendment, insert the following: *of which $2,000,000 shall be for construction of a laboratory addition at the Environmental Research Center at the University of Nevada, Las Vegas, and $500,000 shall be for renovation of research facilities at the Edison, New Jersey Complex*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conferees agree that these funds should be used to add or renovate space used solely for research purposes.

Amendment No. 24: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

In lieu of the matter inserted by said amendment, insert the following:

ADVANCES TO TRUST FUNDS

For payment, as repayable advances to the Hazardous Substance Response Trust Fund, when specifically authorized by the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, and to the Leaking Underground Storage Tank Trust Fund, as authorized by the Superfund Amendments and Reauthorization Act of 1986, borrowed funds as may be necessary to carry out the purposes of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, and section 205 of the Superfund Amendments and Reauthorization Act of 1986.

LEAKING UNDERGROUND STORAGE TANK TRUST FUND

For necessary expenses to carry out Leaking Underground Storage Tank cleanup activities authorized by section 205 of the Superfund Amendments and Reauthorization Act of 1986, $50,000,000, to remain available until expended: Provided, That no more than $7,000,000 shall be available for administrative expenses.

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conferees want to make clear that the repayable advance language will only provide advances from the general fund of the Treasury if such advances are specifically authorized in legislation including additional Superfund taxing authority. The $1,461,300,000 appropriated in this bill for Superfund and the Leaking Underground Storage Tank program can be obligated only to the extent that funds are made available from new tax revenues.

The conferees intend that the $7,000,000 administrative expense limitation be used to provide 85 FTE to administer the Leaking Underground Storage Tank program. It is important that this program be put in place as rapidly as possible to develop guidelines, negotiate cooperative agreements, and undertake corrective actions and enforcement activities.

Amendment No. 25: Appropriates $1,411,300,000 from the Hazardous Substance Response Trust Fund, instead of $861,300,000 as proposed by the House and $1,650,000,000 as proposed by the Senate.

Amendment No. 26: Deletes language proposed by the House and stricken by the Senate withholding the availability of funds for obligation until released in a subsequent appropriations Act.

Amendment No. 27: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

In lieu of the matter inserted by said amendment, insert the following: *Provided further, That none of the funds appropriated under this heading shall be available for sections 311(d), 111(n)(3), 111(b) or 111(c)(2) of CERCLA, as amended, or sections 118(l) or 118(o) of the Superfund Amendments and Reauthorization Act of 1986: Provided further, That, notwithstanding section 111(m) of CERCLA, as amended, or any other provision of law, not to exceed $30,000,000 of the funds appropriated under this heading shall be available to the Agency for Toxic Substances and Disease Registry to carry out activities described in sections 111(c)(4), 104(i), 111(c)(14), and 118(f) of the Superfund Amendments and Reauthorization Act of 1986: Provided further, That of the amounts appropriated under this heading in Public Law 99-160, $600,000,000 are rescinded*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conferees have included bill language to speficially prohibit use of the Superfund to finance certain activities authorized by the Superfund Amendments and Reauthorization Act. The specific exclusions apply to the Gulf Coast Research Center, the Pacific Northwest Research Center, the additional 5 to 10 university research centers, and Natural Resource Damage Claims. The conferees believe that until the Agency evaluates and defines specific research requirements, the Superfund should be reserved for higher priority site-related activities affecting public health and safety.

The conferees are aware that a number of sections in the Superfund amendments authorize activities which are not eligible for funding under the Superfund. In such cases, the conferees want to make clear that such activities are only eligible for funding under the base program and should compete with other program priorities. In particular the conferees note that section 118(k) and Title IV of the Superfund amendments, dealing with radon and indoor air quality, are not germane to nor eligible for funding under the Superfund program.

The conferees are fully aware that the new Superfund legislation charges EPA with sweeping new responsibilities. It requires the Agency to move toward alternative technologies and permanent solutions to site problems and, at the same time, sets ambitious mandatory schedules. The involvement of both State and local governments in site cleanup are greatly increased, as well as public participation in the remedial process. The new legislation broadens removal authorities and establishes enforcement procedures for negotiating settlements with responsible parties. The law also provides for a larger EPA role in cleanup actions at Federal facilities. It expands the research and development authorities to evaluate alternative and innovative technologies, conduct health effects research, and support increased site-related research. In addition, the Agency must provide additional resources to support contracting, information and personnel needs.

In the 1986 appropriation, the Committee added 100 FTE above the requested level of 1,716 for the Superfund program. The increase in the 1987 administrative expense limitation of $135,000,000 is intended to cover an additional 600 FTE, for a total of 2,416 FTE. The Committee expects that OMB and EPA will take all steps necessary to fill these positions as expeditiously as possible—assuming the program is reauthorized and funds are available for obligation in the Superfund Trust Fund.

The conferees have also included language which establishes a $30,000,000 ceiling on 1987 funds for the Agency for Toxic Substances and Disease Registry (ATSDR). This action sets aside the legislative requirement that the ATSDR receive a minimum of $50,000,000 from the Superfund Trust Fund. The conferees note that ATSDR obligated only $12,000,000 in 1985 and $9,000,000 in 1986. The $30,000,000 ceiling in 1987 should provide adequate resources to

expand ATSDR activities and permit the EPA Adminstrator an opportunity to make recommendations on future funding requirements.

Finally, the conferees urge the EPA Administrator to examine carefully the role of the technical assistance grants authorized under section 117 of the Act. The conferees believe these grants are appropriate and will fill a critical void in certain situation. Howevers, questions remain over what criteria will govern decisions to make such grants, how local groups will be selected, and what activities will be made eligible. The conferees believe the purpose of these grants should be to facilitate decisions on site cleanup actions and expect EPA to prepare these regulations with that goal in mind. Finally, the conferees understand that under the Superfund amendments, no technical assistance grants can be made until regulations have been promulgated. The Agency is urged to accelerate this rulemaking.

Amendment No. 28: Restores language proposed by the House and stricken by the Senate increasing the administrative expense limitation by $135,000,000.

Amendment No. 29: Deletes language proposed by the House and stricken by the Senate concerning advanced treatment reviews and funding availability. Language pertaining to these issues is included in amendment number 30.

Amendment No. 30: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

In lieu of the matter inserted by said amendment, insert the following: *of which $600,000,000 shall be made available and derived from sums previously appropriated for this purpose in Public Law 99-190: Provided, That availability of funds made available under this section shall not be limited to phases or segments of previously funded projects: Provided further, That allocation of the sums made available under this section shall be in accordance with the formula in effect on October 1, 1984: Provided further, That of the funds appropriated in this paragraph $1,200,000,000 shall not become available until the enactment of a subsequent appropriations Act authorizing obligation of such funds: Provided further, That none of these funds may be used for any project providing treatment more stringent than secondary, unless the project has been reviewed in accordance with the Environmental Protection Agency's advance treatment review policy*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate. Bill language has been included to restrict the availability of $1,200,000,000 of the 1987 construction grants appropriation. The conferees agree that these funds will not be released until enactment of a subsequent appropriations bill after this program is reauthorized in the Clean Water Act amendments. Language concerning advanced treatment reviews proposed by the House and stricken by Senate amendment number 29 has also been restored.

Amendment No. 31: Deletes language proposed by the Senate earmarking construction grants funding for Clark County, Nevada.

Amendment No. 32: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment with an amendment making a technical change as follows:

In lieu of the matter inserted by the Senate amendment, insert the following: *: Provided further, That no unit of government shall receive less in 1987 than it received in 1985 under sections 205(g) and 205(j) of the Federal Water Pollution Control Act*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

Amendment No. 33: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment making technical changes as follows:

ADMINISTRATIVE PROVISION

Not to exceed $5,000,000 of the funds collected by the Environmental Protection Agency pursuant to 31 U.S.C. 9701 for quality assurance mandatory services and for quality assurance materials shall hereafter be credited to the appropriation which incurred the costs therefor and shall be available for the purposes of that appropriation.

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

EXECUTIVE OFFICE OF THE PRESIDENT

Amendment No. 34: Appropriates $800,000 for the Council on Environmental Quality as proposed by the Senate, instead of $670,000 as proposed by the House. The conferees expect that these funds will be used to augment the Council's technical and scientific staff.

Amendment No. 35: Appropriates $1,900,000 for the Office of Science and Technology Policy, instead of $1,671,000 as proposed by the House and $2,217,000 as proposed by the Senate.

FEDERAL EMERGENCY MANAGEMENT AGENCY

Amendment No. 36: Appropriates $120,000,000 for disaster relief as proposed by the Senate, instead of $175,000,000 as proposed by the House. The conferees agree to the lower appropriation level due to an unobligated balance carried forward from fiscal year 1986 of approximately $200,000,000. Expeditious consideration in a subsequent appropriations bill will be given should additional sums be necessary.

Amendment No. 37: Deletes language proposed by the House and stricken by the Senate transferring $5,385,000 of disaster relief funds to the salaries and expenses appropriation for the direct and indirect costs of approximately 90 disaster assistance employees. The conference agreement provides funding for approximately 90 disaster assistance positions in the salaries and expenses appropriation.

Amendment No. 38: Appropriates $124,000,000 for salaries and expenses as proposed by the Senate, instead of $118,507,000 as proposed by the House. The increase of $5,493,000 above the budget request provides for the disaster assistance employees formerly funded from the disaster relief account.

The conferees agree to the following staffing changes from the budget estimate:

+16 FTE for the Disaster Relief Administration.

+10 FTE for the radiological emergency preparedness program.

+6 FTE to administer the emergency food and shelter program.

+8 FTE for the hazardous materials program.

+20 FTE for the United States Fire Administration.

−60 FTE to be applied at the Agency's discretion to programs other than those with aforementioned increases.

Amendment No. 39: Appropriates $262,000,000 for emergency management planning and assistance, instead of $250,743,000 as proposed by the House and $273,800,000 as proposed by the Senate.

The committee of conference is in agreement with the following changes from the budget estimate:

+$13,123,000 for the civil defense program. This amount includes $18,000 for State and local direction, control and warning; $666,000 for training and education; and $12,439,000 for telecommunications and warning, with $7,234,000 for the national radio system and $5,205,000 to be evenly allocated among the three components of the FEMA Switched Network.

+$500,000 for the radiological emergency preparedness program.

−$10,000,000 from the government preparedness program.

+$767,000 for the Emergency Management Institute.

+$1,667,000 for the National Fire Academy.

+$5,200,000 for the U.S. Fire Administration.

Amendment No. 40: Restores language proposed by the House and stricken by the Senate transferring $9,300,000 to the salaries and expenses appropriation for administrative costs of the insurance programs and $45,200,000 to the emergency management planning and assistance appropriation for flood plain management activities, including $4,720,000 for the purchase of property program, from the National Flood Insurance Fund.

Amendment No. 41: Deletes language proposed by the Senate limiting 1987 costs from the National Flood Insurance Fund to not to exceed $9,300,000 for administrative expenses of the insurance programs and $45,200,000 for flood plain management activities.

Amendment No. 42: Restores language proposed by the House and stricken by the Senate appropriating $70,000,000 for the emergency food and shelter program with the funds distributed through the Federal Emergency Management Agency.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Amendment No. 43: Appropriates $1,750,000 for the Office of Consumer Affairs as proposed by the Senate, instead of $1,000,000 as proposed by the House. The committee of conference is in agreement that the highest priority should be placed on the Consumer Information Catalog and that the historical level of at least $300,000 should be provided for distribution of that and other OCA publications through the Consumer Information Center.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Amendment No. 44: Appropriates $3,091,700,000 for research and development instead of $3,020,700,000 as proposed by the House and $3,122,100,000 as proposed by the Senate. The following table displays the pertinent changes from the revised fiscal year 1987 budget request:

[Dollars in millions]

Project or activity	Revised request	Conference
Space transportation capability development	$507.5	$471.5
IUS airborne supt. equipment replacement	36.0	0
Space science and applications	1,465.0	1,550.0
Upper atmospheric research satellite	121.2	141.2
TOPEX	29.0	19.0
Advanced communications technology satellite	0	77.0
Shuttle infrared telescope facility	2.0	0
Space research and technology	180.2	185.2
Transatmospheric research and technology	35.0	40.0

The $2,000,000 reduction in the space science and applications research and analysis function shall be taken from Phase B studies for the shuttle infrared telescope facility. The $5,000,000 added to space research and technology shall be combined with an additional $5,000,000 and made available for the enhanced flight telerobotics program as outlined in the plan submitted to the Committees on July 22, 1986. These funds may be used by the space research and technology office or the space station office at the agency's discretion.

Amendment No. 45: Deletes language proposed by the House and stricken by the Senate concerning the transfer of personnel from the Johnson Space Center and limiting space station Phase C/D development funds.

Finally, in the research and development account, the conferees are "capping" the 1987 amounts for a number of programs. In accordance with the agreement as outlined in a letter from NASA to the Committees dated August 9, 1984, these "caps" may not be exceeded without the approval of the Committees on Appropriations:

(1) Space Station—$260,000,000

(2) Upper Stages—$166,100,000

(3) Hubble Space Telescope—$96,000,000

(4) Venus Radar Mapper (Magellan)—$70,000,000

(5) Ocean Topography Experiment (TOPEX)—$19,000,000

(6) Galileo—$77,000,000.

Amendment No. 46: Appropriates $3,317,000,000 for space flight control and data communications, instead of $3,038,000,000 as proposed by the House and $3,624,000,000 as proposed by the Senate. The changes from the revised fiscal year 1987 request are as follows:

[Dollars in millions]

Project or activity	Revised request	Conference
Shuttle production and capability development	$1,134.4	$884.4
Orbiter	461.0	211.0
Space shuttle operations	1,345.7	1,602.7
Space and ground networks	862.9	829.9
Space network (replacement TDRSS)	407.3	374.3

The level provided for space shuttle operations assumes a split of the Air Force payment for shuttle services ($531,000,000) with $266,000,000 carried in the 1987 HUD-Independent Agencies Appropriations Bill and $265,000,000 in the Department of Defense Appropriations Bill. In addition, a general reduction of $9,000,000 may be applied at the agency's discretion.

Amendment No. 47: Deletes language proposed by the Senate delaying the availability of funds. The funds provided in lieu of the Air Force payment in this bill are available for obligation upon enactment.

Amendment No. 48: Appropriates $166,300,000 for construction of facilities as proposed by the House, instead of $174,300,000 as proposed by the Senate.

NATIONAL SCIENCE FOUNDATION

Amendment No. 49: Appropriates $1,406,150,000 for research and related activities, instead of $1,333,300,000 as proposed by the House and $1,479,000,000 as proposed by the Senate.

Amendment No. 50: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows: *not more than $85,060,000 shall be available for astronomical sciences: Provided further, That of the funds appropriated in this Act, or from funds appropriated previously to the Foundation,*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The Foundation may make reductions at its discretion, subject to approval of an operating plan, with the following exceptions:

The budget request for visiting professorships for women, research improvement in minority institutions, and minority research centers of excellence shall be maintained at the level of $10,990,000.

The budget request of $133,660,000 for ocean sciences shall be maintained at that level.

The budget request of $35,000,000 for global geosciences shall be maintained at that level.

The budget request of $85,060,000 for astronomical sciences shall be maintained at that level.

Also, the conferees urge that consideration be given to funding the advanced scientific computing activity at the maximum extent possible.

In view of the reduction recommended from the original budget request, the committee of conference has placed a limitation on funding for astronomical sciences to ensure that this program does not receive a disproportionately higher share of the Foundation's appropriation.

The Committees were advised by the NSF that in fiscal year 1986 a total of $500,000 would be made available to the International Institute for Applied Systems Analysis (IIASA). Those funds have not been awarded to date. Therefore, the conferees direct that $500,000 of fiscal year 1986 moneys be made available immediately and that an additional $500,000 be allocated to IIASA in fiscal year 1987.

Amendment No. 51: Establishes the limitation on program development and management at not more than $76,500,000 from 1987 and previously appropriated funds, instead of $75,000,000 from 1987 and previously appropriated funds as proposed by the House and $78,000,000 from 1987 funds as proposed by the Senate.

NEIGHBORHOOD REINVESTMENT CORPORATION

Amendment No. 52: Appropriates $19,000,000 for payment to the Neighborhood Reinvestment Corporation as proposed by the Senate, instead of $18,669,000 as proposed by the House.

SELECTIVE SERVICE SYSTEM

Amendment No. 53: Appropriates $26,128,400 for salaries and expenses as proposed by the House, instead of $27,000,000 as proposed by the Senate.

VETERANS ADMINISTRATION

Amendment No. 54: Appropriates $9,411,817,000 for medical care, instead of $9,488,612,000 as proposed by the House and $9,240,176,000 as proposed by the Senate.

The conference agreement of $9,411,817,000 for medical care reflects the following changes from the budget request:

+$396,159,000 for 8,848 FTE to maintain the current hospital staffing level of 193,941.

+$2,115,000 for 100 FTE to fund implementation of third-party reimbursement and means test legislation. This increase will provide a total of $3,675,000 and 199 FTE to implement these legislative changes. Any additional personnel needed for this effort can be absorbed within the administrative support ceiling or supplemental funds can be requested.

−$72,000,000 to be taken at the VA's discretion in non-personnel areas so as not to affect the number of patients treated. Areas of consideration in achieving such savings include those outlined in the Senate report.

The budget requests $10,000,000 for beneficiary travel in 1987. The conferees agree that any proposal to increase funds for this activity would be subject to normal reprogramming procedures.

The amount of funding is specifically intended to support 194,140 full-time equivalent employees (FTEEs) with the understanding that, in accordance with established Congressional practice, any additional pay costs necessary to support that FTEE level will be borne by the VA, using funds made available by this measure, funds made available through the enactment of supplemental appropriations, or through absorption of the costs, or some combination thereof. This FTEE level does not include common service FTEEs.

Amendment No. 55: Appropriates $189,915,000 for medical and prosthetic research as proposed by the Senate, instead of $193,915,000 as proposed by the House.

The amount of funding is specifically intended to support 4,413 full-time equivalent employees (FTEEs) with the understanding that, in accordance with established Congressional practice, any additional pay costs necessary to support that FTEE level will be borne by the VA, using funds made available by this measure, funds made available through the enactment of supplemental appropriations, or through absorption of the costs, or some combination thereof. This FTEE level does not include common services FTEEs.

Amendment No. 56: Appropriates $41,194,000 for medical administration and miscellaneous operating expenses as proposed by the Senate, instead of $41,694,000 as proposed by the House.

This amount of funding is specifically intended to support 591 full-time equivalent employees (FTEEs) with the understanding that, in accordance with established Congressional practice, any additional pay costs necessary to support that FTEE level will be borne by the VA, using funds made available by this measure, funds made available through the enactment of supplemental appropriations, or through absorption of the costs, or some combination thereof. This FTEE level does not include common services FTEEs.

Amendment No. 57: Appropriates $760,000,000 for general operating expenses as proposed by the Senate, instead of $763,531,000 as proposed by the House.

Amendment No. 58: Restores language proposed by the House and stricken by the Senate providing that the St. Paul Insurance Center shall not be closed in fiscal year 1987, instead of blocking closure until July 1, 1987 as proposed by the Senate.

Amendment No. 59: Appropriates $382,708,000 for construction, major projects as proposed by the House, instead of $291,000,000 as proposed by the Senate.

The approved major construction projects are the same as carried in House Report 99-731. The conferees agree that four projects added above the budget estimate are unique and require early initiation. These include funds for the construction of the New York City VA medical center outpatient and clinical addition and alterations project; site acquisition funds for a new medical center in Palm Beach County, Florida; design funds for a replacement medical center in Pittsburgh (Aspinwall Division), Pennsylvania; and design funds for a 120-bed nursing home care unit/parking structure in New Orleans, Louisiana. The conferees note that the funding for the design of the New York project was approved by the Administration and funded in fiscal year 1985. The conferees have provided the funds to complete the project. Similarly the conferees note that the VA's most recent five-year medical facility construction needs assessment identifies design funds for Pittsburgh (Aspinwall) and site acquisition funds for Palm Beach County as required in 1987. Pittsburgh was ranked fifth in importance nationally and Palm Beach County was ranked ninth in importance nationally, and the conferees direct that the funding for these projects be initiated in fiscal year 1987. The conferees also note that the City of New Orleans is exploring innovative methods to expedite the 120-bed nursing home project earlier than the scheduled fiscal year 1989 start in design. This proposal could permit the reduction of almost $15,000,000 in the cost of the facility and the conferees agree to expedite the project in order to effect the savings.

Amendment No. 60: Appropriates $80,000,000 for construction, minor projects as proposed by the Senate, instead of $65,562,000 as proposed by the House.

Amendment No. 61: Establishes the limitation on expenses of the Office of Facilities at not more than $38,000,000 as proposed by the Senate, instead of not more than $37,885,000 as proposed by the House.

Amendment No. 62: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

In lieu of the matter proposed in said amendment, insert the following:

Appropriations available to the Veterans Administration for "Parking garage revolving fund" may be increased by a transfer from "Construction, major" and "Construction, minor" not to exceed 10 per centum of the appropriation so augmented.

Such sums may be transferred from the "Compensation and pensions" appropriation to the "Medical care" appropriation as may be necessary to provide for increased pay costs to maintain an average employment of 194,140 in the "Medical care" appropriation.

Average employment for administrative support in fiscal year 1987 in the "Medical care" appropriation shall not exceed 37,700.

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conferees assume that employee pay will be increased in 1987. To ensure that sufficient funds are available to maintain the recommended hospital staffing level, a transfer provision has been included in the bill. The language provides for the transfer of such sums as may be necessary to provide for increased pay costs to maintain an average employment of 194,140. Any funds absorbed for increased pay costs are to come from non-personnel areas that will not reduce the number of patients treated.

Medical care employment has increased in the last two years by two percent, from 190,297 in 1984 to 194,347 estimated in 1986. However, administrative support staffing has increased over the same period by more than six percent, from 35,738 in 1984 to an estimated 38,044 in 1986. At the same time, direct medical care staffing has increased by one percent, from 128,506 in 1984 to an estimated 129,824 in 1986. To control the number of administrative support staffing in 1987, a limitation of 37,700 on such personnel has been included in the bill.

TITLE V—SHELTER PROGRAMS

Amendment No. 63: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

In lieu of the matter proposed by said amendment, insert the following:

TITLE V—SHELTER PROGRAMS

PART A—GENERAL PROVISIONS

SEC. 501. SHORT TITLE.

This title may be cited as the "Homeless Housing Act of 1986".

SEC. 502. DEFINITIONS.

For the purpose of this title—

(1) the term "homeless" means families and individuals who are poor and have no access to either traditional or permanent housing;

(2) the term "local government" means a unit of general purpose local government;

(3) the term "locality" means the geographical area within the jurisdiction of a local government;

(4) the term "private nonprofit organization" means a secular or religious organization described in section 501(c) of the Internal Revenue Code of 1954 which is exempt from taxation under subtitle A of such Code, and which has an accounting system and a voluntary board, and which practices nondiscrimination in the provision of assistance;

(5) the term "Secretary" means the Secretary of Housing and Urban Development;

(6) the term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, or any territory or possession of the United States;

(7) the term "homeless person" means a homeless person who is capable within a reasonable amount of time of living independently;

(8) the term "housing for homeless persons" means a structure suitable for the provision of housing and supportive services in an appropriate group setting;

(9) the term "recipient" means any governmental or private nonprofit entity that is approved by the Secretary as to financial responsibility;

(10) the term "operating costs" means expenses incurred by a recipient operating housing for homeless persons under this part with respect to—

(A) the administration, maintenance, repair, and security of such housing;

(B) utilities, fuel, furnishings, and equipment for such housing;

(C) the conducting of the assessment required in section 513(c)(2); and

(D) the provision of supportive services to the residents of such housing; and

(11) the term "supportive services" means assistance in obtaining permanent housing, medical and psychological counseling and supervision, employment counseling, nutritional counseling, and such other services essential for maintaining independent living as the Secretary determines to be appropriate. Such term includes the provision of assistance to residents of housing for homeless persons in obtaining other Federal, State, and local assistance available for such persons, including mental health benefits, employment counseling, and medical assistance.

PART B—TRANSITIONAL HOUSING DEMONSTRATION PROGRAM

SEC. 511. ESTABLISHMENT OF DEMONSTRATION PROGRAM.

(a) IN GENERAL.—The Secretary shall carry out a program in accordance with the provisions of this part to develop innovative approaches for providing transitional housing and supportive services for homeless persons, focusing on those capable of moving into independent living.

(b) PURPOSES.—The demonstration program carried out under this part shall be designed to determine—

(1) the cost of acquisition, rehabilitation, acquisition and rehabilitation, or leasing of existing structures for the provision of housing for homeless persons;

(2) the cost of operating such housing and providing supportive services to the residents of such housing; and

(3) the social, financial, and other advantages of such housing and supportive services as a means of assisting homeless persons.

SEC. 512. TYPES OF ASSISTANCE.

(a) IN GENERAL.—The Secretary may provide the following assistance under the demonstration program established in this part:

(1) a non-interest-bearing advance, in an amount not to exceed $200,000, of the aggregate cost of acquisition, rehabilitation, or acquisition and rehabilitation of an existing structure for use in the provision of housing and supportive services for homeless persons, whichever is less;

(2) annual payments for operating costs of such housing, not to exceed 75 percent of the annual operating costs of such housing; and

(3) technical assistance in establishing and operating such housing and providing supportive services to the residents of such housing.

(b) NONREPAYMENT OF ADVANCES.—Any advance provided under subsection (a)(1) shall not be required to be repaid if the recipient involved utilizes the structure for which such advance is made as housing for homeless persons in accordance with the provisions of this part for not less than the 10-year period following initial occupancy of such housing, or if the Secretary determines that such structure is no longer needed for use as transitional housing and approves the use of such structure for another charitable purpose, for the remainder of such 10-year period. If the applicant fails to comply with the conditions for waiver of repayment, the applicant shall repay to the Secretary in cash the full amount of the advance received on such terms as may be prescribed by the Secretary.

SEC. 513. PROGRAM REQUIREMENTS.

(a) APPLICATIONS.—Applications for assistance under this part shall be made in such form and in accordance with such procedures as the Secretary shall establish.

(b) SELECTION CRITERIA.—In selecting recipients for assistance under this part, the Secretary shall consider—

(1) the ability of the applicant to develop and operate housing for homeless persons and to provide or coordinate supportive services for the residents of such housing;

(2) the innovative quality of the proposal in providing housing and supportive services in a manner which facilities the transition to independent living;

(3) the need for such housing and supportive services in the area to be served; and

(4) such other factors as the Secretary determines to be appropriate for purposes of carrying out the demonstration program established by this part in an effective and efficient manner.

(c) REQUIRED AGREEMENTS.—Each recipient under this part shall agree, with respect to each structure for which such assistance is provided—

(1) to operate transitional housing assisting residents in the transition to independent living and limiting the stay of individual residents to a period to be established by the Secretary;

(2) to conduct an assessment of the supportive services required by the residents of such structure;

(3) to employ a full-time residential supervisor with sufficient expertise to provide, or supervise the provision of, supportive services to the residents of such structure;

(4) to utilize such structure as housing for homeless persons in accordance with the provisions of this part for not less than the 5-year period following initial occupany of such housing;

(5) to monitor and report to the Secretary on the progress of homeless persons assisted; and

(6) to comply with such other terms and conditions as the Secretary may establish for purposes of carrying out the demonstration program established in this part in an effective and efficient manner.

(d) OCCUPANT RENT.—Each homeless person residing in housing assisted under this part shall pay as rent an amount determined in accordance with the provisions of section 3(a) of the United States Housing Act of 1937.

SEC. 514. GUIDELINES.

(a) IN GENERAL.—Not later than the expiration of the 180-day period following the date of enactment of this Act, the Secretary shall issue such guidelines as may be necessary to carry out the provisions of this part.

(b) ADVANCE CONSULTATION.—Before issuing guidelines under this section, the Secretary shall consult with persons and entities having expertise with respect to the problems and needs of homeless persons or experience in providing housing or supportive services for such persons.

(c) PUBLICATION.—Guidelines established under subsection (a) shall be published annually and whenever modified in the Federal Register. The Secretary shall be subject to the procedural rulemaking requirements of subchapter II of chapter 5 of title 5, United States Code.

SEC. 515. REPORTS TO CONGRESS.

The Secretary shall submit to the Congress—

(1) not later than 3 months after the end of fiscal year 1987, an interim report summarizing the activities carried out under this part during such fiscal year and setting forth any preliminary findings or conclusions of the Secretary as a result of such activities; and

(2) not later than 6 months after the end of fiscal year 1988, a final report summarizing all activities carried out under this part and setting forth any findings, conclusions, or recommendations of the Secretary as a result of such activities.

SEC. 516. LIMITATION ON BUDGET AUTHORITY.

The aggregate amount of non-interest bearing advances and annual payments for operating expenses made by the Secretary under this part in fiscal year 1987 may not exeed $5,000,000 from the amount made available under section 526. Such amount shall remain available until expended.

PART C—EMERGENCY SHELTER GRANTS PROGRAM

SEC. 521. GRANT ASSISTANCE.

The Secretary shall, to the extent of amounts approved in appropriations Acts under section 526, make grants to States, units of local government, and to private nonprofit organizations providing assistance to the homeless in order to carry out activities described in section 525.

SEC. 522. ALLOCATION AND DISTRIBUTION OF ASSISTANCE.

(a) IN GENERAL.—The Secretary shall allocate assistance under this part to metropolitan cities, urban counties, and States (for distribution to units of general local government in the States) in a manner that ensures that the percentage of the total amount available under this part for any fiscal year that is allocated to any State, metropolitan city, or urban county is equal to the percentage of the total amount available for section 106 of the Housing and Community Development Act of 1974 for such prior fiscal year that is allocated to such State, metropolitan city, or urban county.

(b) MINIMUM ALLOCATION REQUIREMENT.—If, under the allocation provisions applicable under this part, any metropolitan city or urban county would receive a grant of less than $30,000 for any fiscal year, such amount shall instead be reallocated to the State.

(c) DISTRIBUTIONS TO NONPROFIT ORGANIZATIONS.—Any unit of general local government receiving assistance under this part may distribute all or a portion of such assistance to private nonprofit organizations providing assistance to the homeless.

(d) REALLOCATION OF FUNDS.—

(1) The Secretary shall, not less than twice during each fiscal year, reallocate any assistance provided under this part that is unused or returned or which becomes available under subsection (b).

(2) The Secretary shall provide such reallocation funds—

(A) to units of general local government demonstrating extraordinary need or large numbers of homeless individuals;

(B) to private nonprofit organizations providing assistance to the homeless; and

(C) to meet such other needs consistent with the purposes of this part.

SEC. 523. ELIGIBLE ACTIVITIES.

Assistance provided under this part may be used for the following activities relating to emergency shelter for the homeless:

(1) renovation, major rehabilitation, or conversion of buildings to be used as emergency shelters;

(2) provision of essential services, including services concerned with employment, health, drug abuse, or education, if—

(A) such services have not been provided by the unit of general local government during any part of the immediately preceding 12-month period; and

(B) not more than 15 percent of the amount of any assistance to a unit of general local government under this part is used for activities under this paragraph; and

(3) maintenance, operation (other than staff), insurance, utilities, and furnishings.

SEC. 524. RESPONSIBILITIES OF GRANTEES.

(a) SUBMISSION OF HOMELESS ASSISTANCE PLAN.—Following notification by the Secretary of eligibility for assistance under this part, each State, metropolitan city, and urban county shall submit to the Secretary a plan describing the proposed use of such assistance. The Secretary shall provide the appropriate amount of assistance to such State, metropolitan city, or urban county before the expiration of the 60-day period following the date of the submission of such plan, unless the Secretary determines before the expiration of such period that such plan is not in compliance with this part.

(b) MATCHING AMOUNTS.—

(1) Each grantee under this part shall be required to supplement the assistance provided under this part with an equal amount of funds from sources other than this part. Each grantee shall certify to the Secretary its compliance with this paragraph, and shall include with such certification a description of the sources and amounts of such supplemental funds.

(2) In calculating the amount of supplemental funds provided by a grantee under this part, a grantee may include the value of any donated material or building, the value of any lease on a building, any salary paid to staff to carry out the program of the grantee, and the value of the time and services contributed by volunteers to carry out the program of the grantee at a rate determined by the Secretary.

(c) ADMINISTRATION OF ASSISTANCE.—Each grantee shall act as the fiscal agent of the Secretary with respect to assistance provided to such grantee.

(d) CERTIFICATIONS ON USE OF ASSISTANCE.—Each grantee shall certify to the Secretary that—

(1) it will maintain as a shelter for the homeless for not less than a 3-year period any building for which assistance is used under this part, or for not less than a 10-year period if such assistance is used for the major rehabilitation or conversion of such buildings;

(2) any renovation carried out with assistance under this part shall be sufficient to ensure that the building involved is safe and sanitary; and

(3) it will assist homeless individuals in obtaining—

(A) appropriate supportive services, including permanent housing, medical and mental health treatment, counseling, supervision, and other services essential for achieving independent living; and

(B) other Federal, State, local, and private assistance available for such individuals.

SEC. 525. ADMINISTRATIVE PROVISIONS.

(a) REGULATIONS.—Not later than the expiration of the 60-day period following the date of enactment of this Act, the Secretary shall by notice establish such requirements as may be necessary to carry out the provisions of this part. Such requirements shall be subject to section 553 of title 5, United States Code. The Secretary shall issue requirements based on the initial notice before the expiration of the 12-month period following the date of enactment of this Act.

(b) INITIAL ALLOCATION OF ASSISTANCE.—Not later than the expiration of the 60-day period following the date of enactment of a law providing appropriations to carry out this part, the Secretary shall notify each

State, metropolitan city, and urban county that is to receive a direct grant, of its allocation of assistance under this part. Such assistance shall be allocated and may be used notwithstanding any failure of the Secretary to issue requirements under subsection (a).

SEC. 526. APPROPRIATIONS FOR PARTS B AND C.

There are authorized to be appropriated and there are hereby appropriated to the Department of Housing and Urban Development for fiscal year 1987, $15,000,000 to remain available until expended to carry out part B and this part.

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

CONFERENCE TOTAL—WITH COMPARISONS

The total new budget (obligational) authority for the fiscal year 1987 recommended by the Committee of Conference, with comparisons to the fiscal year 1986 amount, the 1987 budget estimates, and the House and Senate bills for 1987 follow:

New budget (obligational) authority, fiscal year 1986	$58,147,383,984
Budget estimates of new (obligational) authority, fiscal year 1987	46,488,047,000
House bill, fiscal year 1987	54,006,168,700
Senate bill, fiscal year 1987	53,678,039,800
Conference agreement, fiscal year 1987	53,577,802,700
Conference agreement compared with:	
New budget (obligational) authority, fiscal year, 1986	−4,569,581,284
Budget estimates of new (obligational) authority, fiscal year 1987	+7,089,755,700
House bill, fiscal year 1987	−428,366,000
Senate bill, fiscal year 1987	−100,237,100

EDWARD P. BOLAND,
BOB TRAXLER,
LOUIS STOKES,
LINDY BOGGS,
BILL BONER,
ALAN MOLLOHAN,
JAMIE L. WHITTEN,
BILL GREEN,
LAWRENCE COUGHLIN,
JERRY LEWIS,
SILVIO O. CONTE,
Managers on the Part of the House.

MARK O. HATFIELD,
LOWELL P. WEICKER, Jr.,
PAUL LAXALT,
ALFONSE M. D'AMATO,
JAMES ABDNOR,
PETE V. DOMENICI,
PATRICK LEAHY,
JOHN STENNIS,
J. BENNETT JOHNSTON,
FRANK R. LAUTENBERG,
Managers on the Part of the Senate.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. COMBEST) to revise and extend their remarks and include extraneous material:)

Mr. GINGRICH, for 60 minutes, on October 8, 9, and 10.

Mr. WALKER, for 60 minutes, on October 8, 9, and 10.

Mrs. BENTLEY, for 60 minutes, on October 8 and 9.

Mr. CRANE, for 5 minutes, today.

(The following Members (at the request of Mr. HOYER) to revise and extend their remarks and include extraneous material:)

Mr. ANNUNZIO, for 5 minutes, today.

Mr. EDGAR, for 5 minutes, today.

Mr. FRANK, for 60 minutes, today.

Mr. FRANK, for 60 minutes, on October 8.

Mr. FRANK, for 60 minutes, on October 9.

Mrs. BYRON, for 60 minutes, on October 9.

Mr. DORGAN of North Dakota, for 60 minutes, on October 8.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Members (at the request of Mr. COMBEST) and to include extraneous matter:)

Mr. CLINGER.

Mr. GILMAN in three instances.

Mr. YOUNG of Alaska.

Mr. WOLF.

Mr. TAUKE.

Mr. LOWERY of California.

Mr. SOLOMON.

Mr. ROGERS.

Mr. MICHEL in two instances.

Mr. SNYDER.

(The following Members (at the request of Mr. HOYER) and to include extraneous matter:)

Mr. DYSON.

Mr. FLORIO.

Mr. SKELTON.

Mrs. BOXER.

Mr. SCHEUER.

Mr. RICHARDSON.

Mr. LIPINSKI.

Mr. UDALL.

Mr. ROSTENKOWSKI.

Mr. HUBBARD.

Mr. LELAND.

Mr. MRAZEK.

Mr. MAVROULES.

Mr. FEIGHAN.

Mr. HAWKINS.

Ms. OAKAR.

Mr. MOAKLEY.

SENATE BILL REFERRED

A bill of the Senate of the following title was taken from the Speaker's table and, under the rule, referred as follows:

S. 1577. An act to transfer title, control, and custody of certain lands near Aiken, SC, from the U.S. Department of Agriculture to the U.S. Department of Energy; to the Committee on Agriculture.

ENROLLED BILLS AND JOINT RESOLUTIONS SIGNED

Mr. ANNUNZIO, from the Committee on House Administration, reported that that committee had examined and found truly enrolled bills and joint resolutions of the House of the following titles, which were thereupon signed by the Speaker:

H.R. 4216. An act to provide for the replacement of certain lands within the Gila Bend Indian Reservation, and for other purposes;

H.R. 4545. An act to authorize appropriations for the American Folklife Center for fiscal year 1987, 1988, and 1989, and for other purposes;

H.R. 5430. An act to amend the Gila River Pima-Maricopa Indian Community judgment distribution plan;

H.R. 5522. An act to authorize the release to museums in the United States of certain objects owned to the U.S. Information Agency;

H.J. Res. 210. Joint resolution designating the Study Center for Trauma and Emergency Medical Systems at the Maryland Institute for Emergency Medical Services Systems at the University of Maryland as the "Charles McC. Mathias, Jr., National Study Center for Trauma and Emergency Medical Systems";

H.J. Res. 588. Joint resolution commemorating January 28, 1987, as a National Day of Excellence in honor of the crew of the space shuttle *Challenger*;

H.J. Res. 617. Joint resolution to designate the week beginning September 21, 1986, as "National Adult Day Care Center Week"; and

H.J. Res. 686. Joint resolution to designate August 12, 1987, as "National Civil Rights Day."

SENATE ENROLLED BILLS AND JOINT RESOLUTIONS SIGNED

The SPEAKER announced his signature to enrolled bills and joint resolutions of the Senate of the following titles:

S. 1965. An act to reauthorize and revise the Higher Education Act of 1965, and for other purposes;

S. 2884. An act to amend the Fair Labor Standards Act of 1938 to require that wages based on individual productivity be paid to handicapped workers employed under certificates issued by the Secretary of Labor;

S.J. Res. 280. Joint resolution designating the month of November 1986 as "National Alzheimer's Disease Month";

S.J. Res. 385. Joint resolution to designate October 23, 1986, as "National Hungarian Freedom Fighters Day"; and

S.J. Res. 406. Joint resolution to designate October 4, 1986, as "National Outreach to the Rural Disabled Day."

ADJOURNMENT

Mr. ARCHER. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 9 o'clock and 5 minutes p.m.), the House adjourned until tomorrow, Wednesday, October 8, 1986, at 10 a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

4307. A letter from the Assistant Secretary, Science and Education, Department of Agriculture, transmitting the plan for the second 5-year period (1986-90), for implementing the Renewable Resources Extension Program, pursuant to 16 U.S.C. 1606(c); to the Committee on Agriculture.

4308. A letter from the Deputy Assistant Secretary of Defense (Administration), transmitting notification of the Defense Logistics Agency's intent to exercise the provision for exclusion of the clause concerning examination of records by the Comptroller General from a proposed contract with the Sultan of Oman's Air Force, an agency of the Omani Government, pusuant to 10 U.S.C. 2313(c); to the Committee on Armed Services.

4309. A letter from the Deputy Assistant Secretary of Defense (Administration), transmitting notification of the Defense Logistics Agency's intent to exercise the provision for exclusion of the clause concerning examination of records by the Comptroller General from a proposed contract with the National Services Project Organization, an agency of the Egyptian Government, pursuant to 10 U.S.C. 2313(c); to the Committee on Armed Services.

4310. A letter from the Secretary of Education, transmitting a copy of final regulations for the Carl D. Perkins Scholarship Program, pursuant to 20 U.S.C. 1232(d)(1); to the Committee on Education and Labor.

4311. A letter from the Comptroller General of the United States, transmitting notification that he has appointed William J. Gainer to the Commission on Education of the Deaf; to the Committee on Education and Labor.

4312. A letter from the Assistant Secretary (Legislative Affairs), Department of the Treasury, transmitting an analysis of U.S. portfolio investment abroad during 1985, together with a similar analysis as of December 31, 1984, with comparisons to earlier years, pursuant to 22 U.S.C. 3103(c)(2); to the Committee on Foreign Affairs.

4313. A letter from the Chairman, Securities and Exchange Commission, transmitting a report of the Commission's activities under the Government in the Sunshine Act for calendar year 1985, pursuant to 5 U.S.C. 552b(j); to the Committee on Government Operations.

4314. A letter from the Deputy Assistant Secretary for Health Operations and Director, Office of Management, Department of Health and Human Services, transmitting a copy of the report of the PHS commissioned corps retirement system for the plan year ending September 30, 1985, pursuant to 31 U.S.C. 9503(a)(1)(B); to the Committee on Government Operations.

4315. A letter from the Administrator, General Services Administration, transmitting a report summarizing and analyzing the reports submitted by executive agencies showing the amount of personal property furnished to non-Federal recipients during fiscal year 1985, pursuant to the act of June 30, 1949, chapter 288, section 202(e) (90 Stat. 2455); to the Committee on Government Operations.

4316. A letter from the Chief Justice, Supreme Court of the United States, transmitting a copy of the reports of the proceedings of the Judicial Conference of the United States, held in Washington, DC, on March 12 and 13, 1986, and the special session held on June 30, 1986, pursuant to 28 U.S.C. 331; to the Committee on the Judiciary.

4317. A letter from the Treasurer, Jewish War Veterans, U.S.A., National Memorial, Inc., transmitting the annual audit report for the fiscal year ended March 31, 1986, pursuant to Public Law 88-504, section 3 (36 U.S.C. 1103); to the Committee on the Judiciary.

4318. A letter from the Acting Secretary of State, transmitting the third report on the situation in El Salvador discussing four key concerns relative to El Salvador's embattled democracy: dialog between the Government and the insurgents, civilian authority over the military, judicial reform, and land reform, covering the period from April 1, 1986 to September 30, 1986, pursuant to Public Law 99-83, section 702(c) (99 Stat. 238); jointly, to the Committees on Appropriations and Foreign Affairs.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. HAWKINS: Committee on Education and Labor. H.R. 700. A bill to restore the broad scope of coverage and to clarify the application of title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and title VI of the Civil Rights Act of 1964; with an amendment (Rept. 99-963 Pt. 2). Referred to the Committee of the Whole House on the State of the Union.

Mr. BROOKS: Committee on Government Operations. Report on substandard CPA audits of Federal financial assistance funds: The public accounting profession is failing the taxpayers (Rept. 99-970). Referred to the Committee of the Whole House on the State of the Union.

Mr. UDALL: Committee on Interior and Insular Affairs. S. 2320. An act to amend an act to add certain lands on the Island of Hawaii to Hawaii Volcanoes National Park, and for other purposes (Rept. 99-971). Referred to the Committee of the Whole House on the State of the Union.

Mr. DINGELL: Committee on Energy and Commerce. H.R. 4392. A bill to amend the Public Health Service Act to provide Federal financial assistance for the control of plague (Rept. 99-972). Referred to the Committee of the Whole House on the State of the Union.

Mr. PEPPER: Committee on Rules. House Resolution 576. Resolution providing for concurring in the Senate amendment to the bill H.R. 5484, to strengthen Federal efforts to encourage foreign cooperation in eradicating illicit drug crops and in halting international drug traffic, to improve enforcement of Federal drug laws and enhance interdiction of illicit drug shipments, to provide strong Federal leadership in establishing effective drug abuse prevention and education programs, to expand Federal support for drug abuse treatment and rehabilitation efforts, and for other purposes; with an amendment. (Rep. 99-974). Referred to the House Calendar.

Mr. DERRICK: Committee on Rules. House Resolution 577. Resolution; waiving certain points of order against the conference report on H.R. 2005 to amend title II of the Social Security Act and related provisions of law to make minor improvements and necessary technical changes, and against the consideration of such conference report (Rept. 99-975). Referred to the House Calendar.

Mr. LEHMAN of Florida: Committee of Conference. Conference report on H.R. 5205. (Rept. 99-976). Ordered to be printed.

Mr. BOLAND: Committee of conference. Conference report on H.R. 5313 (Rept. 99-977). Ordered to be printed.

REPORTED BILLS SEQUENTIALLY REFERRED

Under Clause 5 of rule X, bills and reports were delivered to the Clerk for printing, and bills referred as follows:

Mr. JONES of North Carolina: Committee on Merchant Marine and Fisheries. H.R. 5406. A bill to provide for Coast Guard drug interdiction and law enforcement; with an amendment; referred to the Committee on the Judiciary for a period ending not later than October 10, 1986, for consideration of such portions of the bill and amendment as fall within that committee's jurisdiction pursuant to clause 1(m) of rule X (Rept. 99-973, Pt. 1). Ordered to be printed.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. RICHARDSON:

H.R. 5654. A bill to establish a United States Boxing Corporation, and for other purposes; jointly, to the Committees on Education and Labor, and Energy and Commerce.

By Mr. CARPER (for himself Mr. ANDREWS, and Mr. DREIER of California):

H.R. 5655. A bill to prevent fraud and abuse in programs administered by the Secretary of Housing and Urban Development by authorizing the Secretary to obtain and verify certain information from applicants and participants in such programs, and for other purposes; jointly, to the Committees on Banking, Finance and Urban Affairs, and Ways and Means.

By Mr. CARR:

H.R. 5656. A bill to amend the Internal Revenue Code of 1954 to allow individuals to direct that part or all of their income tax refunds be contributed to a trust fund established for the relief of domestic and international hunger, and to establish a commission to oversee the distribution of such contributions; jointly, to the Committees on Ways and Means, and Education and Labor.

By Mr. EDGAR (for himself, Mr. COYNE, Mr. WALGREN, Mr. GAYDOS, Mr. MCDADE,, Mr. MURTHA, Mr. MURPHY, Mr. KOLTER, Mr. RIDGE, Mr. KANJORSKI, Mr. GRAY of Pennsylvania, Mr. CLINGER, Mr. BORSKI, Mr. FOGLIETTA, Mr. KOSTMAYER, and Mr. YATRON):

H.R. 5657. A bill to designate the Veterans' Administration Medical Center located in Pittsburgh, PA, as the "Charles E. Kelly

Veterans' Administration Medical Center"; to the Committee on Veterans' Affairs.

By Mr. LOWRY of Washington (for himself and Mr. MILLER of Washington):

H.R. 5658. A bill to amend the definition of "vessel of the United States" in the Magnuson Fishery Conservation and Management Act; to the Committee on Merchant Marine and Fisheries.

By Mr. LUKEN (for himself, Mr. WYDEN, and Mr. MARKEY):

H.R. 5659. A bill to amend the Energy Reorganization Act of 1974 to provide protection against discrimination for certain employees; jointly, to the Committees on Energy and Commerce, Interior and Insular Affairs, and Science and Technology.

By Mr. RICHARDSON:

H.R. 5660. A bill to direct the Attorney General to conduct a study into the history of Spanish and Mexican land grants in the area of northern New Mexico; to the Committee on the Judiciary.

By Mr. SCHEUER (for himself Mr. BATES, Mr. FRANK, Mr. MONSON, Mr. WILSON, Mr. ATKINS, Mr. HANSEN, Mr. EDWARDS of California, Mr. ANDREWS, and Mr. LEHMAN of Florida):

H.R. 5661. A bill to amend the Federal Aviation Act of 1958 to prohibit smoking on board passenger-carrying aircraft on domestic flights; to the Committee on Public Works and Transportation.

By Mr. YOUNG of Alaska:

H.R. 5662. A bill requiring American ownership and construction of commercial fishing industry vessels; to the Committee on Merchant Marine and Fisheries.

By Mr. OBERSTAR (for himself, Mr. ALEXANDER, Mr. COELHO, Mr. STALLINGS, Mr. BRUCE, Mr. DURBIN, Mr. GRAY of Illinois, Mr. EVANS of Illinois, Mr. MCCLOSKEY, Mr. BEDELL, Mr. GLICKMAN, Mr. SLATTERY, Mr. PENNY, Mr. SKELTON, Mr. VOLKMER, Mr. WILLIAMS, Mr. DORGAN of North Dakota, Mr. ENGLISH, Mr. WATKINS, Mr. MCCURDY, Mr. DASCHLE, Mr. STENHOLM, and Mr. OBEY):

H. Con. Res. 405. Concurrent resolution providing that the President, at his meeting with General Secretary Gorbachev in Reykjavik, Iceland, insist that the Soviet Union comply with the U.S.-U.S.S.R. long-term grain agreement; to the Committee on Foreign Affairs.

By Mr. GEKAS:

H. Res. 578. Resolution expressing the support of the House of Representatives for the President as he prepares to meet with Soviet General Secretary Gorbachev in Reykjavik, Iceland, and expressing its hope that these presummit discussions will promote freedom, stability, and peace throughout the world; to the Committee on Foreign Affairs.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. DUNCAN:

H.R. 5663. A bill for the relief of John W. Ruth, Sr.; to the Committee on the Judiciary.

H. Res. 579. Resolution to refer the bill (H.R. 5663) for the relief of John W. Ruth, Sr.; to the chief judge of the U.S. Claims Court; Committee on the Judiciary.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 230: Mr. ABERCROMBIE.

H.R. 1875: Mr. HUGHES, Mr. REID, Mr. ABERCROMBIE, Mr. MICA, Mr. SUNDQUIST, and Mr. WILLIAMS.

H.R. 1877: Mr. LELAND, Mr. WILLIAMS, Mr. YOUNG of Alaska, Mr. TAUZIN, Mr. GILMAN, Mr. SIKORSKI, Mr. HYDE, Mr. SYNAR, and Mr. LIPINSKI.

H.R. 3842: Mr. DERRICK, Mr. CAMPBELL, Mr. LEHMAN of California, Mr. PERKINS, Mr. FAWELL, Mr. ENGLISH, Mr. WILLIAMS, and Mr. MADIGAN.

H.R. 4450: Mr. ROBINSON.

H.R. 4573: Mrs. MARTIN of Illinois.

H.R. 4756: Mr. YATES and Mr. MINETA.

H.R. 4762: Mrs. ROUKEMA and Mr. MAVROULES.

H.R. 4828: Mr. FIELDS.

H.R. 4911: Mr. WOLPE.

H.R. 5130: Mr. HILER, Mr. COBEY, and Mr. HENRY.

H.R. 5165: Mr. AKAKA, Mr. BIAGGI, Mrs. BURTON of California, Mr. CLAY, Mr. IRELAND, Mrs. KENNELLY, Mrs. SCHROEDER, and Mr. BRYANT.

H.R. 5264: Mr. COBLE.

H.R. 5385: Mr. DANNEMEYER.

H.R. 5443: Mr. ANDERSON.

H.R. 5457: Mr. PENNY, Mr. CARPER, Mr. RANGEL, Mr. EDWARDS of California, and Mr. LEVIN of Michigan.

H.R. 5485: Mr. DANIEL.

H.R. 5499: Mr. WEBER.

H.R. 5501: Mr. MCEWEN.

H.R. 5527: Mr. EDWARDS of Oklahoma, Mr. WATKINS, and Mr. FRANKLIN.

H.R. 5549: Mr. MARLENEE and Mr. LEHMAN of California.

H.R. 5563: Mr. TAUKE, Mr. DORGAN of North Dakota, and Mr. PENNY.

H.R. 5586: Mr. KOSTMAYER, Mr. BARNES, Mr. FUSTER, Mr. MAZZOLI, Mr. WHITEHURST, Mr. SHAW, Mr. ATKINS, Ms. KAPTUR, Mr. HUGHES, Mr. WOLPE, Mr. BEVILL, Mr. MRAZEK, Mr. KILDEE, and Mr. LANTOS.

H.R. 5587: Mrs. BOXER, Ms. MIKULSKI, Mr. TRAFICANT, and Mr. WILSON.

H.R. 5596: Mr. SCHAEFER.

H.R. 5600: Mr. DOWDY of Mississippi, Mr. FRANKLIN, Mr. BARNARD, Mr. APPLEGATE, Mr. EDWARDS of California, Mr. DUNCAN, Mr. RICHARDSON, and Mr. LOWERY of California.

H.R. 5607: Mr. COOPER.

H.R. 5632: Mr. WHITTAKER.

H.R. 5642: Mr. SENSENBRENNER.

H.J. Res. 410: Mr. FISH.

H.J. Res. 612: Mr. FISH and Mr. BEILENSON.

H.J. Res. 638: Mr. MAZZOLI, Mr. BROOMFIELD, Mr. CHAPPIE, Mr. HAMMERSCHMIDT, Mr. MARTINEZ, Mr. MCKINNEY, Mr. HOYER, Mr. WEISS, Mr. HUGHES, Mr. SPENCE, Mr. CONTE, Mr. ATKINS, Mr. HALL of Ohio, Mr. MILLER of Ohio, Mr. MONTGOMERY, Mr. PORTER, Mr. LAFALCE, Mr. DANIEL, Mrs. ROUKEMA, Mr. ABERCROMBIE, Mr. YATRON, Mr. MOORE, Mr. RANGEL, Mr. SABO, Mr. SPRATT, Mr. STOKES, Mr. TAYLOR, Mr. SKELTON, Mr. BLAZ, Mr. LEWIS of California, Mr. JONES of North Carolina, Mr. BROWN of California, Mr. SHUMWAY, Mr. MARTIN of New York, Mr. SCHEUER, Mr. BENNETT, Mr. PERKINS, Mr. SWINDALL, Mr. CARNEY, Mrs. BENTLEY, Mr. COUGHLIN, Mr. COURTER, Mr. DANNEMEYER, Mr. YOUNG of Missouri, Mr. IRELAND, Mr. BONIOR of Michigan, Mr. HERTEL of Michigan, Mr. QUILLEN, Mr. RUDD, Mr. MOLINARI, and Mr. JENKINS.

H.J. Res. 651: Mr. RIDGE and Mr. EVANS of Iowa.

H.J. Res. 688: Mr. WEAVER, Mr. BRYANT, and Mr. STOKES.

H.J. Res. 693: Mr. KILDEE, Mr. HOPKINS, Mr. AKAKA, Mr. YATES, Mr. MACKAY, Mr. LOWRY of Washington, Mr. BLAZ, Mr. BONIOR of Michigan, Mr. DANIEL, Mr. GORDON, Mr. CAMPBELL, Mr. GEPHARDT, Mr. GREGG, Mr. HARTNETT, Mr. KANJORSKI, Mr. LUKEN, Mr. JENKINS, Mr. DICKS, Mr. EDGAR, Mr. HERTEL of Michigan, Mr. WISE, Mr. LEWIS of California, Mr. LEWIS of Florida, Mr. MCKINNEY, Mr. MCEWEN, Mr. MCCLOSKEY, Mr. HANSEN, Mr. MOORE, Mr. MURPHY, Mr. MURTHA, Mr. ORTIZ, Mr. CHANDLER, Mr. FAUNTROY, Mr. LOEFFLER, Mr. JEFFORDS, Mrs. MARTIN of Illinois, Mr. MARKEY, Mr. MACK, Mr. MITCHELL, Mr. MOORHEAD, Mr. DONNELLY, Mr. DORGAN of North Dakota, Mr. RALPH M. HALL, Mr. ZSCHAU, Mr. FLORIO, Mr. TRAFICANT, Mr. SHUMWAY, Mr. TRAXLER, Mr. YOUNG of Alaska, Mr. UDALL, Mr. PRICE, Mr. THOMAS of Georgia, Mr. RINALDO, Mr. FOGLIETTA, Mr. STALLINGS, Mr. SUNIA, Mr. MCHUGH, Mr. FLIPPO, Mr. DINGELL, Mr. FRANKLIN, Mr. CALLAHAN, Mr. SNYDER, Mr. COURTER, Mr. YATRON, Mr. WEAVER, Mr. FOWLER, Mr. WHITLEY, Mr. QUILLEN, Mr. MORRISON of Connecticut, Mr. PERKINS, Mr. KOLTER, Mr. LUNDINE, Mr. ERDREICH, Mrs. KENNELLY, Mr. MCGRATH, Mr. COLEMAN of Texas, Mrs. COLLINS, Mr. CHENEY, Mr. PEPPER, Mr. LEACH of Iowa, Mr. NOWAK, Mr. GEJDENSON, Mr. GINGRICH, Mr. OLIN, Mr. WOLPE, Mr. DAVIS, Mr. COBLE, Mr. BLILEY, and Mr. GUARINI.

H.J. Res. 709: Mr. FUSTER.

H.J. Res. 729: Mr. LAGOMARSINO, Mrs. HOLT, Mr. SMITH of Florida, Mr. HOWARD, Mr. BONER of Tennessee, Mr. HORTON, Mr. MINETA, Mr. FAZIO, Mr. FEIGHAN, Mr. MATSUI, Mr. FUQUA, Mr. ROE, Mr. GREEN, Mr. WHITTAKER, Mr. ABERCROMBIE, Mr. MRAZEK, Mr. MARTINEZ, Mr. DORNAN of California, Mr. HUGHES, Mr. LEVINE of California, Mr. CARNEY, Mr. GUARINI, Mr. BEDELL, and Mr. BRYANT.

H.J. Res. 733: Mr. BARTLETT, Mr. MCKERNAN, Mr. PICKLE, Mr. SMITH of New Hampshire, Mr. CHANDLER, and Mr. HAYES.

H.J. Res. 737: Mr. SHAW, Mr. KILDEE, Mr. MINETA, Mr. BEVILL, Mr. SHUMWAY, Mr. BEDELL, Mr. LEVINE of California, Mr. RANGEL, Mr. TORRICELLI, Mr. MARTINEZ, Mr. HERTEL of Michigan, Mrs. LONG, and Mr. LOTT.

H.J. Res. 740: Mr. LOWERY of California, Mr. PANETTA, Mr. TORRICELLI, Mr. KRAMER, Mr. MCKERNAN, Mr. MCHUGH, Mr. GRAY of Illinois, Mr. COELHO, Mr. PRICE, Mr. WEAVER, Mr. RINALDO, Mrs. LONG, Mr. BEDELL, Mr. LOWRY of Washington, Mr. DANNEMEYER, Mr. HARTNETT, Mr. BONIOR of Michigan, Mr. BOLAND, Mr. MILLER of Washington, Mr. KOSTMAYER, Mr. ARCHER, Mr. COURTER, Mr. JONES of Tennessee, Mr. BORSKI, Mr. DICKS, Mr. RITTER, Mr. HAMMERSCHMIDT, Mr. COYNE, Mr. HOYER, Mr. MARKEY, Mr. DIOGUARDI, Mrs. COLLINS, Mr. ERDREICH, Mr. MCCLOSKEY, Mr. HAYES, Mr. MINETA, Mr. GEPHARDT, and Mr. DANIEL.

H.J. Res. 745: Mr. BIAGGI, Mr. EARLY, Mr. STALLINGS, Mr. CRAIG, and Mr. SHELBY.

H. Con. Res. 233: Mr. PENNY.

H. Con. Res. 334: Mr. BILIRAKIS, Mr. WEAVER, and Ms. OAKAR.

H. Con. Res. 351: Mr. BOLAND, Mr. LOTT, and Mr. ABERCROMBIE.

H. Con. Res. 378: Mr. BEREUTER.

H. Res. 469: Mr. TORRICELLI.

H. Res. 573: Mr. MCCANDLESS, Mr. DANNEMEYER, Mr. GEKAS, Mr. RAY, Ms. FIEDLER, Mr. DUNCAN, Mr. CLINGER, Mr. BROWN of

Colorado, Mr. BROOMFIELD, Mr. TAUKE, Mr. SHAW, Mr. LEWIS of Florida, Mr. MONSON, Mr. ROBERTS, Mr. GALLO, Mr. MCMILLAN, Mr. CHENEY, Mr. MICHEL, Mr. ROBINSON, Mr. FRANKLIN, Mr. NIELSON of Utah, Mr. DIOGUARDI, Mr. PURSELL, Mr. EDWARDS of Oklahoma, Mr. CALLAHAN, Mr. STUMP, Mr. FIELDS, Mr. KOLBE, Mr. ROWLAND of Connecticut, Mr. ECKERT of New York, Mr. KEMP, Mr. WEBER, Mr. LUNGREN, Mr. THOMAS of California, Mr. COURTER, Mr. PETRI, Mr. SPENCE, Mr. HILER, Mr. COBLE, Mr. HAMMERSCHMIDT, Mr. COBEY, Mr. BARTLETT, Mr. QUILLEN, Mr. SHUSTER, Mr. SNYDER, Mr. DREIER of California, Mr. LEWIS of California, Mr. MOORHEAD, Mr. DORNAN of California, Mrs. VUCANOVICH, Mr. OXLEY, Mr. STRANG, Mr. CRAIG, Mr. SUNDQUIST, Mr. LATTA, Mr. SKEEN, Mr. SCHAEFER, Mr. HOPKINS, Mr. COMBEST, Mr. BILIRAKIS, Mr. LIVINGSTON, Mr. BOULTER, Mr. SAXTON, Mr. MCCAIN, Mr. MCKERNAN, Mr. DELAY, Mr. SILJANDER, Mr. LAGOMARSINO, Mrs. BENTLEY, Mr. LOTT, Mr. MILLER of Ohio, Mr. HYDE, Mr. STANGELAND, Mr. EMERSON, Mr. RIDGE, Mr. WHITTAKER, Mrs. HOLT, Mr. HENDON, Mr. MCEWEN, Mr. SENSENBRENNER, Mr. GRAY of Illinois, Mr. SWINDALL, and Mr. DANIEL.

PETITIONS, ETC.

Under clause 1 of rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

491. By the SPEAKER: Petition of the council city of Oberlin, OH, relative to apartheid in South Africa; to the Committee on Foreign Affairs.

492. Also, petition of the Lieutenant Governor, State of Tennesee, relative to the proposed changes in power rates of the Tennessee Valley Authority; to the Committee on Public Works and Transportation.

EXTENSIONS OF REMARKS

MILITARY CHARTER SAFETY

HON. CHARLES E. BENNETT

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Monday, October 6, 1986

Mr. BENNETT. Mr. Speaker, I rise today to address the important issue of military charter safety. Included in this year's Defense Authorization Act are strong safety standards for military charters. The House passed these landmark safety standards in August. Now we are in conference with the Senate on this issue.

This legislation grew out of a great tragedy. Almost a year has gone by since 248 brave soldiers from the 101st Airborne Division died during the crash of their charter jet in Gander, NF. This legislation is an attempt to stop similar tragedies from occurring.

Mr. Senator, two weekends ago in Fort Campbell, KY, a monument was erected commemorating the brave soldiers who died in the Arrow Air crash. It is a beautiful statue of a proud soldier.

I believe even a better monument to these men would be strong safety standards enacted into law this year. Only this kind of monument can prevent future tragedies such as the one at Gander.

The most vital requirement calls for preflight safety inspections of all military charter aircraft. This requirement would make the Defense Department accept responsibility for the safety of the one and a half million servicemen and women it orders to fly charter aircraft annually.

This is a simple requirement, yet the Defense Department opposes it because it does not want to accept this important responsibility. The DOD has written a letter to all conferees, urging the elimination of the charter inspection provision.

The Defense Department's letter says it is "adamantly opposed to a 100-percent inspection requirement" for military charter aircraft. They contend they will be unable to "get DOD qualified inspectors to a remote location to inspect" these aircraft.

But the DOD fails to understand the amendment's language. It does not say inspectors have to be DOD personnel. In this instance it would be perfectly acceptable and practical to have qualified contract personnel of FAA personnel inspect aircraft. This is allowed by the legislative history of the provision. During hearings in the Armed Services Committee, the use of contract personnel or FAA personnel for inspections was discussed at length.

The Pentagon says that the Federal Aviation Administration inspection responsibilities should not be taken over by a DOD program. The Defense Department is just blowing smoke. It knows that the FAA is understaffed and cannot do this job alone.

All along the Pentagon has wanted only a partial inspection program. They say that only a random inspection program is reasonable, while inspecting all charter airplanes is not. Well, before the Gander crash, the DOD was randomly inspecting charter aircraft—about 10 percent of all flights. The FAA, we are told, was also conducting some inspections.

This form of random inspection program allowed Arrow Air to fly faulty aircraft and allowed 248 servicemen to die. I fail to see how random inspections constitute a reasonable inspection program.

The Defense Department contends its opposition to this requirement is "not a dollar issue" but rather "an issue of reasonableness." But I think it is reasonable and affordable to inspect aircraft, especially when the lives of American servicemen and women are at stake. Assistant Secretary of Defense Wade has told the Armed Services Committee that he could do these inspections, but it would cost about $10 million.

Inspections are important and necessary. I believe an inspection would have grounded the Arrow Air jet that crashed, and saved the lives of its passengers and crew. I include for the record a copy of a short history of the Arrow Air jet that crashed. It explains why inspections are necessary and illustrates some of the mechanical problems of this ill-fated aircraft.

Mr. Speaker, the Congress should commemorate the soldiers who died by proving that their tragic death did not go unnoticed and that we will do all we can to avert future, senseless accidents.

ANALYSIS OF THE ARROW AIR CRASH

I. An inspection of the Arrow Air jet which picked up 248 troops of the 101st Airborne Division in Cairo would have revealed the following defects:

Duct tape had been placed around the edges of interior windows and an emergency exist door.

A broken coffee maker in the rear galley had been leaking for two months, sending a thin stream of water down the aisle. The floor was wet and squishy underfoot.

Seats would not stay in an upright position.

Oxygen masks fell down during takeoffs and landings.

Those were the obvious problems. When the aircraft arrived in Cairo 18 hours late, the troops had noticed these mechanical deficiencies and asked flight attendants what mechincal failures had detained their flight for so long. There were other, more serious malfunctions going unattended on the aircraft that inspections over time would have revealed.

A temperature gauge was broken, giving a false reading of engine temperature. (Maintenance crews for the airline in Miami knew about the broken gauge, but did not say anything because the plane was due to go in for servicing at the end of the week.)

The plane was performing sluggishly, and burning about 800 pounds more fuel per hour than it should have.

A cargo door on the plane had to be pried open with a fire axe and a pocket knife by the crew in Cairo.

A panel was missing in the plane's fuselage that should have been protecting the plane's sensitive lines from being struck by moving baggage.

The No. 4 engine, which was due to be replaced after just 88 more hours of flight, was burning 40 degrees hotter than it should have.

The plane had been regularly consuming huge quantities of hydraulic fluid for the past several months.

There was a slight "ratcheting" and restriction in the movement of the flight control column, which regulates the plane's ascents and descents. [Source: "101st Airborne's Ill-fated Journey," Flightline, 9/5/86.]

II. Regular inspections would have found the following:

July 28, 1985: Arrow Air tail number 950 "aborted a takeoff at Toledo, Ohio because flames were seen spewing from the rear of the number three engine. This incident may have been due to a compressor stall." On board were 250 Air National Guardsmen from Ohio, Kentucky, Michigan, and Wisconsin.

November 15, 1985: The tail of the same aircraft struck the runway on takeoff from Grand Rapids, Michigan. Improper weight and balance procedures were used. The takeoff was aborted and damage to the tail skid occurred. This damage was not entered into the aircraft maintenance log, and the pilot failed to ascertain the extent of damage prior to subsequent takeoff.

July and August 1985: A contract mechanic who serviced Arrow Air aircraft at McCord AFB, Washington refused to sign the maintenance log because of the poor condition of this particular aircraft. During routine servicing the number three engine required ten quarts of oil, and the oil was seen accumulated in the cell of the engine. He also found corrosive water leaking from the toilet system into the belly of the aircraft and insufficient cargo bulkhead, potentially allowing cargo to shift in the cargo bay while in flight. The mechanic testified he had never seen an FAA inspector during his tenure as a mechanic for several different maintenance companies.

March 4, 1984: An Arrow Air pilot complained to an FAA inspector at Logan Airport in Boston. Aside from complaining about Arrow's policies regarding excessive flight-time for air crews, he pointed out severe maintenance problems. He spoke of a "continuing company policy of not fixing maintenance items for prolonged periods, and pencil whipping (falsified recordkeeping) maintenance discrepancies throughout the system." The pilot stated that on "most Arrow aircraft the first level of built-in safety redundancy in aircraft systems was for all practical purposes virtually eliminated due to the numerous open write-ups and very few things are fixed." [Investigations Subcommittee Report on Military Charters]

III. The Defense Department's own review of military charter policies concluded "the ramp inspection enhances the quality assur-

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

ance process." It went to recommend the use of ramp inspections. [Defense Department's Passenger Policies and Procedures Review.]

BOYS AND GIRLS CLUB LEADER HONORED

HON. BARNEY FRANK

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Monday, October 6, 1986

Mr. FRANK. Mr. Speaker, on September 24, 1986, family and friends gathered at a testimonial party for William Hawkins. For over 30 years Bill worked at the Thomas Chew Memorial Boys and Girls Club in Fall River, the last 14 years of which he served as executive director. Bill will be missed by all who frequented this great facility. I would like to share with you this article that appeared in the Fall River Herald News about Bill Hawkins in recognition of all the help he has given the youngsters of Greater Fall River by providing them, in his words, "a place to call their own."

COMMUNITY HONORS WILLIAM HAWKINS FOR SERVICE TO BOYS' AND GIRLS' CLUB

(By Curt Brown)

When William Hawkins was working as a juvenile officer in the city's police department, he never imagined how his life would be changed when the late Tom Welch asked him to work for him at the Boys' Club.

Now, 30 years later, Bill is retired from the Thomas Chew Memorial Boys' and Girls' Club, having served for the past 14 years as executive director.

His former co-workers, family and friends honored him Wednesday night at a testimonial/retirement party, recognizing him for all the help he has given the youngsters of Greater Fall River by providing them, in his words, with "a place to call their own.

"I think 30 years is long enough for anyone. It's just time to step down," he said, discussing his retirement in an interview at his Jefferson Street home.

"You know you're not going back, but it takes awhile to realize you have free time and you don't have the responsibility of running the club," he commented.

"Oh yes, you're going to miss it. You have to miss something you've done for 30 years," he added.

He said he has not given any thoughts to his retirement plans, but he anticipates visiting his son in Orlando, Fla., and brother in Pasadena, Calif. "I'm sure I will do something. I'm just not going to sit around the house, but what it will be I don't know," he reported. "Right now, this is just a nice, relaxing change."

He said he believes he will have "to take up golf" to satisfy two of his six children who are avid golfers.

His career with the club began in 1956 when Welch, the founder of the organization, asked him to head the junior division. Having worked at the summer camp for a couple of years and having been a member as a youngster, Hawkins said he took "a leave of absence" from the police department, "and that was it.

"I just liked it," he said of the Boys' Club job. "I didn't dislike the other job. I thought this was more interesting."

Hawkins said he felt "comfortable" right from the start with his new job, and "never regretted" leaving the police department. In fact, right after he started working at the club, he was offered a job as a state probation officer, which he also refused.

He maintains the club is, and should always be, a place for all the youngsters in the area. "When you have that many people, you have to have something for everyone," he said. "Not just basketball courts, but also a game room to make the child feel you belong."

The manner in which he has conducted himself during his years with the club have left some lasting impressions with his former workers. Al Correia, Hawkins' successor, called him "one of the kindest, gentlest individuals" he has known.

"It's just his way of looking at things," Correia continued. "He reminds me of Tom Welch, one of the finest people I've ever known."

Hawkins is a believer in the community's need for a strong boys' and girls' club that fulfills some of the needs of the youth in the area. "Society has changed. I don't think the needs of the kids have changed. Kids still need a place to go and call their own," he said.

The club has always been "a place that belonged to the kids. They don't have to do any particular thing. They could just come and not do anything," he said.

"There's nothing wrong with gangs as long they are supervised," he added.

"It's been a real bargain to the community," he said of the club. "No one is turned away because they don't have membership dues. The board has its own fund to pay for those who can't pay the fees."

CITIZENSHIP REQUIREMENT NEEDS CLARIFICATION

HON. BILL FRENZEL

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Monday, October 6, 1986

Mr. FRENZEL. Mr. Speaker, I rise today to bring to the attention of the Congress and the American public a letter which outlines the complexities of a frequently misunderstood citizenship requirement. Published in the July 1, 1986 edition of the International Herald Tribune, this information will hopefully help Americans abroad assure U.S. citizenship for their children. I am also hopeful that it will help the Congress recognize a citizenship requirement that needs clarification, and possibly revision.

[From the International Herald Tribune, July 1, 1986]

THE CHILD'S AMERICAN CITIZENSHIP ISN'T AUTOMATIC

Sherry Buchanan is to be commended for her excellent treatment of a complex subject ("Some Dual Nationals Double Their Trouble While Some Halve It," June 26.) However, she mentions one point about transmitting U.S. citizenship to children which must be amplified to be accurate. She states that "children born abroad of one U.S. parent and one foreigner are automatically American."

Under Subsection 301(g) of the Immigration and Nationality Act, when a child (1) is born abroad and (2) only one of its parents is a U.S. citizen, the child is American at birth only if the American parent lived in the United States for 10 years prior to the child's birth and five of those years followed the 14th birthday.

About 90 percent of the time it turns out that the American parent has fulfilled his requirement, so the child is quickly documented as a U.S. citizen. The apparent ease gives the impression that the child was "automatically" American. Actually, there is nothing automatic about it.

In about 10 percent of the cases the U.S. citizen parent has not fulfilled the 10-year requirement and American citizenship is denied to the child. Each year, worldwide, some 4,000 children of Americans are deemed "ineligible" to be U.S. citizens. Sadly, all too often, an affected parent learns about the 10-year requirement only when he or she has failed to fulfill it—at which time it is too late. The U.S. residency must have taken place before the child's birth.

It is a dismaying surprise to bring one's baby to a U.S. consular office for a passport and find that one does not "qualify" to transmit U.S. citizenship. Insult is added to injury for those who fall short of the 10 years' residency by only a few months or even weeks, or for the American parent who spent more than 10 years living in the United States but less than five of them after age 14.

Over the years, the Association of Americans Resident Overseas (AARO), in conjunction with other organizations representing Americans abroad, has been working to inform the U.S. Congress and the public of the need to lessen the requirements of Subsection 301(g). Several bills are now pending in Congress, and there is reason to hope that action might be taken to improve the situation in the relatively near future. To buttress this cause, AARO is building a file of case histories of failure to transmit U.S. citizenship. Persons wanting information or wishing to contribute case histories should contact AARO, 49 rue Pierre Charron, 75008 Paris.

MICHAEL ADLER,
Chairman, AARO Citizenship Committee.

INTRODUCTION OF H.R. 5653

HON. HENRY A. WAXMAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, October 6, 1986

Mr. WAXMAN. Mr. Speaker, today I am introducing H.R. 5653, a bill to amend the Controlled Substances Act to place artificially produced growth hormones in schedule II of that act.

Human growth hormones produced by using recombinant DNA technology truly represent a modern scientific miracle.

Children whose bodies do not produce sufficient growth hormone are known as pituitary dwarfs. Growth hormone from cadavers greatly improved their prospects of attaining a more nearly normal adult height, but the supply was always limited. And, that source of the hormone is no longer available since it was found to be contaminated with a deadly slow virus. Thus, the recent approval by the Food and Drug Administration of a genetically engineered human growth hormone has restored hope to the children who need it.

Unfortunately, it appears that the potentially limitless supply of human growth hormone has brought with it the possibility of serious abuse. A growing number of physicians and public

health specialists are concerned about the reported use of growth hormone by athletes. And, as the article from the distinguished journal Science, which is reprinted below, points out, growth hormone may soon be used to treat obesity, to make tall children taller, to make normal children tall, and to slow the aging process—all without scientific evidence that the drug would be either safe or effective for such uses, and without time for society to consider the ethical implications of doing so.

Mr. Speaker, I believe that it would be a terrible mistake to allow this drug to be abused in this way. Artificially produced human growth hormone was approved by the FDA for one and only one use: the long-term treatment of children who have growth failure due to a lack of adequate endogenous growth hormone secretion. This bill will not in any way hinder the use of the drug for that purpose, nor would it impede scientific research on the appropriateness of other uses. But it would apply all the recordkeeping, distribution, security and other requirements of schedule II substances to this drug. This would permit patterns of use of the drug to be traced, and would make physicians realize the seriousness of prescribing human growth hormone.

Growth hormone is not the same type of drug that is ordinarily regulated as a schedule II substance, but it presents its own unique potential for serious abuse. Regulating the drug in this way is a reasonable step to take to protect against the abuse of this wonderful product, while assuring that its proper use will not in any way be impeded.

Mr. Speaker, I ask unanimous consent that a copy of the bill and the article from Science be printed in the RECORD at this point.

H.R. 5653

A bill to amend the Controlled Substances Act to place artificially produced growth hormones in schedule II of that Act

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SCHEDULING.

Schedule II of section 202 of the Controlled Substances Act (21 U.S.C. 812) is amended by adding at the end the following:

"(d) Somatrem and any other artificially produced growth hormone.".

SEC. 2. AUTHORITY OF ATTORNEY GENERAL.

The Attorney General may not, under section 201 of the Controlled Substances Act (21 U.S.C. 811), remove an artificially produced growth hormone from schedule II of the Controlled Substances Act.

[From Science, Volume 234, Oct. 3, 1986]

NEW GROWTH INDUSTRY IN HUMAN GROWTH HORMONE?

RESEARCHERS PREDICT THAT HUMAN GROWTH HORMONE WILL SOON BE USED TO MAKE SHORT CHILDREN TALLER AND, POSSIBLY, HELP DIETERS LOSE FAT AND MAKE AGING PEOPLE LOOK YOUNG

(By Gina Kolata)

In the near future, say investigators who study human growth, it is almost certain that many affluent parents of short children will have their children treated with human growth hormone as a matter of course. The children then might grow up to be "appropriately" tall. And there is also a likelihood that obese people will take growth hormone when they diet so that they will lose fat and not muscle tissue. Growth hormone may even be used to retard aging—it may prevent wrinkles and the sort of fat distribution that occurs in old people. Athletes are already taking the drug, obtaining it on the black market, because there is evidence that it may help build muscle. "It is really Brave New World", says James Tanner of the Institute of Child Health at the University of London.

Biotechnology companies and pharmaceutical firms are gearing up to produce large quantities of human growth hormone using recombinant DNA technology. It is a sure bet, said participants at a recent meeting on human growth,* that the companies are not just planning to market the drug for the treatment of pituitary dwarfs, who until now have been the only legitimate recipients of human growth hormone. "Obviously," says Barry Sherman of Genentech, "there aren't that many short kids to treat."

These potential new markets for growth hormone give many researchers pause. They are concerned that the hormone will never be properly tested in clinical trials and they worry about the ethics of what John Parks of Emory University School of Medicine calls "cosmetic endocrinology." Nonetheless, it may be impossible to stanch the flow of growth hormone. "We are now moving from an era in which there were too many patients chasing too little growth hormone to an era in which there will be too much growth hormone chasing too few patients," says Tanner. Genentech, currently the sole supplier of human growth hormone, estimates that the obesity market alone is worth billions of dollars per year.

Growth hormone is produced by the pituitary gland in the brain and it stimulates the liver to produce somatomedins—hormones that are very similar in structure to insulin and that stimulate bones to grow. Children and adolescents produce large quantities of growth hormone, and adults normally produce very little of it. But researchers believe that the hormone's primary purpose may not be to stimulate growth at all.

Children who are malnourished produce excessive amounts of growth hormone, yet they do not grow. Adults, who normally do not make measurable quantities of the hormone, begin producing much more of it when they fast or when they are stressed. Runners, for example, synthesize measurable amounts of growth hormone. Researchers suspect that growth hormone's principal function may be to conserve muscle tissue at the expense of fat tissue during times of stress. "Growth hormone is the hormone of fasting just as insulin is the hormone of feasting," says Robert Blizzard of the University of Virginia Medical Center. "Insulin increases fat storage and growth hormone mobilizes fat from fat cells." This is the reason that biotechnology companies are eyeing it as a drug for dieters.

Growth hormone also may play a role in aging. Old people make much less of the hormone than younger people. Moreover, says Blizzard, "children who are growth-hormone-deficient age prematurely. A 30-year-old growth-hormone-deficient patient frequently looks 45. They have premature wrinkling and frequently have a fat distribution that is similar to that of old people. It is logical to postulate that some of the changes of aging are related to the fact that growth hormone is not around to the extent that it originally was."

Pituitary dwarfs have been receiving human growth hormone for decades—but only recently has it been possible to produce it cheaply and in large enough quantities to allow the testing of hypotheses about its uses for short children who are not dwarfs and for the obese and the aging.

Growth hormone used to be obtained directly from the pituitaries of cadavers, and children who were judged growth-hormone-deficient would receive three injections of it a week to make them grow. The National Hormone and Pituitary Program processed as many as 50,000 pituitaries a year, supplying the growth hormone derived from them to 3500 children and adolescents. Another 2300 patients obtained human growth hormone from Serono Labs and KabiVitrum, pharmaceutical companies that also got the hormone from human pituitaries. Because the hormone was so difficult to obtain, it was always, in short supply and, says Michael Thorner of the University of Virginia Medical School, the criteria for deciding whom to treat were quite stringent. The idea, he explains, was to be sure that "every child who received growth hormone was growth-hormone-deficient, not that every child who was growth-hormone-deficient received growth hormone."

About 1½ years ago, a catastrophe occurred and, as a result, the distribution of pituitary-derived human growth hormone was summarily halted (Science, 7 June 1985, p. 1176). In March of 1985, federal officials learned that three people who had been treated with the hormone in the 1960's and 1970's died in 1985 of Creutzfeld-Jakob disease, a very rare disease that results in dementia and death and that is caused by mysterious particles, called slow viruses, that live in brain tissue. The most likely reason that those people developed Creutzfeld-Jakob disease is that they received growth hormone extracted from pituitaries of other Creutzfeld-Jakob victims and these pituitaries contained infectious slow virus particles.

But in the fall of 1985, the Food and Drug Administration gave its approval to a genetically engineered version of human growth hormone, produced by Genentech, and the hormone was back in distribution again. Because the Genentech growth hormone is manufactured in bacteria, no human pituitaries are needed, and the Creutzfeld-Jakob threat is gone. The Genentech growth hormone costs about as much as the hormone from pituitaries—$10,000 a year for three injections a week—but health insurance companies pay for it when children are judged to need it.

Now KabiVitrum and Lilly are testing their own genetically engineered human growth hormone. For the first time, it looks like the rigid criteria for receiving it will be abandoned and it seems likely that the price will drop as well. Growth hormone treatment, say Tanner and others, may become as accepted as orthodontia. Among the new questions facing investigators now, says Thorner, is, "How do you tell if a child is growth-hormone-deficient or not?"

There is, says Thorner, no sharp cutoff between growth hormone deficiency and growth hormone sufficiency. Moreover, there is some evidence that taller children make more growth hormone than children who are at the short end of normal. So the decision that a child is growth-hormone-de-

*The International Workshop on Advances in Research on Human Growth was held on 14 to 16 September and sponsored by the National Institute of Child Health and Human Development.

ficient depends, at least in part, on how tall you want that child to grow.

The sociology literature is full of data on the advantages of being tall. Executives and bank presidents are taller than average. Bishops tend to be taller than priests. In fact, says Tanner, each inch of height is worth several thousand dollars a year in income.

Well aware of the social and economic advantages of height, parents of short children are starting to pressure researchers to make their children taller. And some of the children are not even particularly short. S. Douglas Frasier of the University of California in Los Angeles tells of a father who brought his boy in to be tested for possible growth hormone deficiency. Frasier's colleague told the father that there was no cause for concern—the boy's predicted adult height was five feet seven inches. At that point the father roared, "That's absolutely unacceptable!"

Maria New of New York Hospital-Cornell Medical Center says that even girls are not satisfied unless they are tall. "For the first time in my life, I am seeing girls who want to be taller. The social acceptance of tallness in women used to be negative. Now it is positive."

Of course, when researchers make analogies between growth hormone therapy and orthodontia, they are assuming that the treatment works, that any child who receives growth hormone will grow up taller. And many at the meeting are convinced it does work. They argue that given enough growth hormone, any child will grow. The only question is the dose. As evidence, they point to pituitary giants, whose pituitaries pour out enormous quantities of growth hormone and who frequently end up more than 7 feet tall. So, in testing growth hormone therapy for children who are short, but not pituitary dwarfs, these investigators believe it unneccessary, even possibly unethical, to have a placebo-treated control group.

The clinical trials that are now under way in the United States, England, Switzerland, and Japan are designed so that the children serve as their own controls. In a typical study, one group of short children will receive growth hormone for 6 months, then be untreated for 6 months. Another group will be untreated for 6 months, then receive growth hormone for 6 months. The treatment will be considered effective if the children start to grow more rapidly and their predicted adult heights increase when they take the hormone.

But Gordon Cutler of the National Institute of Child Health and Human Development takes strong exception to this method of assessing growth hormone's effectiveness, and a few others agree. "Cutler is absolutely right," says Ron Rosenfeld of Stanford University Medical Center.

First of all, Cutler says, it is not so clear that any child will grow, given enough growth hormone. We need a placebo-controlled clinical trial to find out and the only way to do that is to give one group of children injections of growth hormone and the other injections of placebo and then wait to see which children, on the average, grow taller.

Among the reasons why you cannot argue from the example of pituitary giants that growth hormone will work, according to Cutler, is that giants are exposed to growth hormones for much longer times and at times that may be crucial for it to be effective. Most giants are born making too much growth hormone, whereas most doctors do not diagnose a child as destined to be short until age 2 at the earliest, and some children are not diagnosed until they are 9 or 10. Yet, says Cutler, that first couple of years of life with huge amounts of growth hormone may be absolutely essential for the hormone to work.

There are some hints that children treated with growth hormone may actually reach puberty earlier than untreated children and so stop growing earlier. It is possible that growth hormone-treated short children will end up even shorter than they would otherwise have been. Giants do not go through puberty, says Cutler, which is one reason why they grow so tall.

A placebo-treated group, rather than simply an untreated control group, is necessary in a clinical trial because it may well be that the extra attention a child gets when he is injected three times a week influences growth. Or it may be that the implication that something is wrong with the child will affect his growth. The fact is, says Cutler, that "the brain controls growth." Virtually every known neurotransmitter has some effect on controlling the release of growth hormone. Emotions affect growth—abused children, for example, may not grow. "Who's to say there aren't placebo effects?" Cutler asks. "How can you possibly be sure that if you stick a needle in a child's skin three times a week that you won't affect growth?" The data from the current studies, says Cutler, "will never convince me."

In answer to those who say a placebo-controlled trial would never get past an institutional review board and, even if it did, you would never get volunteers, Cutler responds that his group had permission from the National Institutes of Health ethics review board for just such a study and had enrolled 30 families, all of which understood that they could get growth hormone outside the study and all of which decided to participate, largely for altruistic reasons. But the study was never begun because, just when it was about to start, the Creutzfeld-Jakob cases were discovered and growth hormone was pulled from distribution. Cutler would very much like to start his study again.

Other studies, such as obesity and aging studies, are even less advanced. And, chances are, growth hormone, like so much else in medicine, will be used without a truly scientific evaluation. Yet, says Tanner, "all of us, in our hearts, believe it will work. But, in many ways, I rather think it would be better if it did not."

HAMMOND CASTLE: A NATIONAL TREASURE

HON. NICHOLAS MAVROULES

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Monday, October 6, 1986

Mr. MAVROULES. Mr. Speaker, I would like to call to the attention of my colleagues one of New England's and the Nation's little known treasures, Hammond Castle Museum, nestled in Gloucester, MA, which is in my sixth congressional district.

The castle is named after its founder, John Hays Hammond, Jr., who was well known for creating more patents than any other American with the exception of Thomas Edison. Hammond's creations included invention of the radar and refinement of the FM band. Perhaps Hammond's most entertaining creation was the home he wanted fashioned after the medieval architecture he had seen during his travels to Europe. The castle was built between 1926 and 1929 and is a magnificent replica of the artistic and cultural elements associated with the medieval era.

The castle was the private residence of Hammond until his death in 1965. But he wanted to share the beauty of this haven which he ensured be open to the public. Hammond once said, "You can read history, you can visit a hundred museums containing their handiwork, but nothing can reincarnate their spirit except to walk through rooms where this was lived and through the scenes that were the background of historical lives. It is a marvelous thing, this expression of human ideals in walls and windows."

This expression of human ideals is indeed vivid in this American castle. Several unique and distinct features make this remarkable castle a spectacle of awe for visitors. First, there is the spectacular 8,200 pipe organ, the largest organ ever designed for a private residence. This great attraction is often the center of attention at concert performances, particularly during the Christmas season when candlelight tours are a popular attraction.

Then there is the intricate and exquisite artwork seen in a collection of Roman, Renaissance, and medieval pieces within the Great Hall Room, the largest room in the castle. The 15th century fireplace is complimented by a reproduction of Duccio's Madonna and the stained glass windows glow in brilliant color. These windows were patterned after "La Belle Vierriere," from Chartres Cathedral.

On the castle grounds is a breathtaking courtyard, adorned with marble colums, Romanesque and Gothic doorways, and a garden filled with beautiful plants. Finally, a visit to the rooftop offers a scenic view of the Atlantic coastline.

Indeed, the Hammond Castle museum is a fine example of the artworks associated with the medieval era. A place that allows its visitors a chance to experience a faraway time that cannot only be read in history books, but visualized in a realistic way. Plans are now underway for a 1988 celebration in which the museum will commemorate the 100th birthday of Hammond.

INTRODUCING STATE NUCLEAR SAFETY PARTICIPATION ACT

HON. EDWARD J. MARKEY

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Monday, October 6, 1986

Mr. MARKEY. Mr. Speaker, I am today introducing legislation that will extend to the Governors of the States certain stipulated authority regarding the regulation of the safety of nuclear powerplants. This bill will permit Governors to veto the licensing of new nuclear powerplants when they find that the operation of such plants is contrary to the interests of their State. The bill also would prohibit licensing unless a Governor certifies that State and local emergency plans have been tested, approved, and are ready for implementation.

The American people elect their Governors, who are regularly accountable to them. It's time we let those Governors participate in the regulation of nuclear safety, instead of leaving it all up to the five appointees at the Nuclear Regulatory Commission [NRC] in Washington. The NRC has never permanently denied a license to any nuclear plant regardless of how serious the problems may be. The Governors should have some recourse from this excessively laissez faire attitude toward the regulation of nuclear safety.

The Nation's Governors have the traditional responsibility for protecting the health and safety of their citizens. There's no reason why they should be excluded from participating in the regulation of nuclear safety, especially in light of the threat of nuclear accidents like Chernobyl. Governors should be permitted to veto a plant's operation if they judge the dangers too great.

Under the bill, the NRC would have to notify a Governor of its intent to license a nuclear plant 60 days before issuing a license. Governors could veto the plant's license if they found that "the operation of any such facility would be contrary to the best interests of such State."

Similarly, the NRC couldn't issue an operating license unless the Governor of every State within 10 miles of the facility certifies to the Commission in writing that emergency plans have been approved, tested, and are ready to be implemented.

The bill would also permit States to set and enforce radiation protection standards for nuclear facilities as long as those standards were at least as stringent as those set by the Federal Government.

It's time for the so-called New Federalism to include the regulation of nuclear safety. If a Governor finds that emergency planning for a nuclear accident is impossible or impracticable, as Governor Cuomo has found for the Shoreham nuclear plant in New York and Governor Dukakis has found for the Seabrook plant in Massachusetts, then the Nuclear Regulatory Commission could not license such a plant.

This legislation reflects the concerns of many of the Nation's Governors, as reflected in a recent resolution put forth within the National Governors' Association. That resolution explicitly advocated extending to the Governors certain rights and responsibilities regarding the regulation of the safety of nuclear facilities within their States. This bill addresses those concerns directly by providing an initial vehicle to accomplish those objectives.

We are building a congressional consensus around this legislation now so that it will gain momentum for passage next year. I intend to focus attention on this legislation during upcoming hearings.

INFANT MORTALITY RATE: WHY HAS U.S. PROGRESS BEEN HALTED?

HON. FORTNEY H. (PETE) STARK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, October 6, 1986

Mr. STARK. Mr. Speaker, the United States now ranks 17th in the world in infant mortality rates. In some cities like our Nation's capital, the infant mortality rate is said to rival various Third World nations like Cuba, Costa Rica, and Martinique, according to the latest figures issued by UNICEF.

We, as a Nation, are constantly striving to be the best. We are No. 1 in athletics, technology, the arts, and even production of beer. Yet, we lag behind in perhaps the area most important to us as human beings, the care of our infants. Out of every 1,000 births, 11 will not make it to their first birthday.

Since World War II, our country has made great progress in lowering the infant mortality rate, from a high of 47 of 1,000 in 1940 to 11.2 of 1,000 in 1982. Yet, the rate of decline has slowed abruptly in recent years.

While advances in medical technology have done a great deal in lowering infant mortality rates in this country, the major problem facing today's infants is low birth weights. Infants of low birth weight, less than 2,500 grams, are 40 times as likely to die during their first 4 weeks than infants of normal birth weights. However, low birth weights can be avoided through proper prenatal care.

It is not surprising to learn that cutbacks in programs for women and children have contributed significantly in the change of trend in the infant mortality rates of this country. High cost of medical care coupled with the lack of insurance for many women, have made prenatal care a luxury that many cannot afford. Over 10 percent of all black women in this Nation fail to see a physician until their last trimester of pregnancy.

Through expansion of public education, nutritional programs, and Medicaid we can, once again, be on the road to lowering our infant mortality rate.

Instead, the priorities of this administration lie in cutting domestic spending to free up funds for our nuclear arsenal, or to support "freedom fighters" in Nicaragua. Too much of our money goes for weapons to other nations, increasing the chances of conflict, while at home we fail to give our infants a fighting chance.

TEACHER APPRECIATION

HON. E. CLAY SHAW, JR.

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Monday, October 6, 1986

Mr. SHAW. Mr. Speaker, I introduced House Joint Resolution 635, a resolution that recognizes and honors our Nation's teachers. This resolution was inspired both by Jhoon Rhee, founder of the Institute of Tae Kwon Do, Inc., who has written an excellent essay entitled "Let's Honor Our Teachers by Observing a Teacher's Day," and by Christa McAuliffe the schoolteacher who was a member of the crew for the space shuttle *Challenger*.

In his essay, Jhoon Rhee suggests that the basic principle of respect for teachers, to be embodied in a teacher's day, would restore discipline in our Nation's classrooms. Christa McAuliffe brought the love of learning and the yearning for knowledge to life in the hearts of our Nation's children by her endeavor to become the first teacher in space.

As this teacher appreciation resolution is currently on its way to the White House for signature, I believe this is an appropriate time to share an excerpt from Jhoon Rhee's inspirational essay with my colleagues:

We all remember from childhood that from those teachers whom we respected the most, we learned the most. Nobody wants to learn from someone for whom they have no respect. In this observation, the first foundation for learning is the student's respect for the teacher . . . America only needs to instill discipline in their children once again. The school teachers have to be motivated through more respect and proper social recognition, which in turn will influence students to once again respect their teachers.

THE 150TH ANNIVERSARY OF MONTPELIER, IN

HON. DAN BURTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Monday, October 6, 1986

Mr. BURTON of Indiana. Mr. Speaker, as the representative from the Sixth District of the great State of Indiana, I am proud to congratulate the citizens of Montpelier, IN, on their 150th anniversary.

Montpelier is a small community, located in central Indiana in the northeast corner of Blackford County along the high banks of the Salamonie River. Montpelier was founded in 1836 by Abel Baldwin.

Abel Baldwin from Montpelier, VT, dreamed of going west. He was fairly well off, sold his farm, and brought his eight kids and his brothers and sisters here. Apparently, a lot of people from Vermont came with him. Baldwin died about 5 or 6 years after settling in Montpelier. It was his son-in-law, John Cook, who surveyed the city. The city was named and designed after Montpelier, VT.

In 1870, with a population of 231, Montpelier was incorporated under the law as a town.

The city is best known as the "Oil Boom" town. In 1887, Montpelier's era of prosperity was made possible with the discovery of natural gas and crude oil. One of the wells drilled around Montpelier proved to be a "gusher", producing over 500 barrels per day. The discovery of oil in Montpelier boosted the population to over 5,000.

Montpelier became a full-fledged, chartered city in 1895.

There is little in Montpelier today to recall that the city was once an "Oil Boom" town. Yet, one very important vestige of that time remains and once again plays a vital role in the community life. The landmark is the building which once housed the offices of the Ohio

Oil Co. It was here the Marathon Co. was formed and it is said that over $1 million changed hands in this office every week for several years. This structure is now the Montpelier Community Building providing a home for the Montpelier Historical Society and a gathering place for civic and social activities. Since May 1985, it has also served as a backdrop for one of Montpelier's most intriguing new residents—a 25-foot fiberglass Indian given to the city by Chief Larry Godfroy, hereditary chief of the Miami Nation of Indians of Indiana. Montpelier has long felt a special connection to this Indian tribe because of the town's proximity to LaPetite Prairie, also known as the Godfroy Reserve. This statue has given the city recognition and is our most photographed citizen.

Even though Montpelier today is a small community with a population of approximately 2,000, it is an active city. The citizens of Montpelier are proud of this community and work together to achieve common goals.

In 1981, the Brass Latch opened which is the culture center for Montpelier and is used continually throughout the year. Local talented artists and many other artists around the area come to study, work, and display their artwork.

In 1985, a group of local citizens restored the old race track which, during the 1920's and 1930's, was the fastest half-mile race track for horses in Indiana. This restoration enriched the town both for entertainment and economic reasons.

Montpelier was a winner of the Indiana Association of Cities and Towns Achievement Award in 1985 and was also selected as an "associate city" in the 1986 Indiana Main Street Program. The city is included in the "Hoosier 88" project.

This year, 1986, is Montpelier's 150th birthday. A 10-day sesquicentennial celebration was held which was a very special and memorable occasion for the city. Gathered in activities, tours, and a special reception were executives and mayors of Montpellier, France; Montpelier, Quebec, Canada; Montpelier, ND; Montpelier, VT; Montpelier, LA, and Montpelier, IN. This was a unique achievement and one that will be remembered for years to come.

The mayor often writes in his weekly newspaper column that "One can make a difference," and this is especially true for Montpelier through the care and concern its citizens show to make Montpelier successful.

DR. HIGGINSON'S COMMENTS

HON. ROD CHANDLER

OF WASHINGTON

IN THE HOUSE OF REPRESENTATIVES

Monday, October 6, 1986

Mr. CHANDLER. Mr. Speaker, during the summer, Dr. Irving Selikoff wrote to several Members of Congress seeking their support of H.R. 1309, the High Risk Occupational Disease Notification and Prevention Act.

In his correspondence, Dr. Selikoff cited various scientific and medical studies. Having no medical background, I asked Dr. John Higginson at Georgetown University Medical Center to comment on Dr. Selikoff's letter. I chose Dr. Higginson because he is the founding director of the International Agency for Research on Cancer [IARC] and is very knowledgeable in cancer epidemiology and the causative factors in cancer. I urge you to read Dr. Higginson's comments.

COMMENTS ON BILLS H.R. 1309–S. 2050

(Dr. John Higginson, M.D., Institute for Health Policy Analysis, Georgetown University Medical Center)

While the Bills cover all occupational chronic disease, my comments are confined to cancer. Their objective to reduce significantly the burden of such cancer deaths and related medical costs is to be applauded. The issue is whether the legislative procedures recommended represent the most effective public health options.

BURDEN OF CANCER RELATED TO OCCUPATION IN THE UNITED STATES

This is a complex issue. Today experienced epidemiologists consider the best estimates to be those of Doll and Peto [1] which were commissioned by the Office of Technology Assessment to which reference should be made.

In brief, Doll and Peto tentatively attribute a "best estimate" of 17,000 of 400,000 or 4% of total cancers per annum to occupational exposures. They believe that one-quarter or one-half of this total can be attributed to asbestos and they state that 11,000 cases probably occur in the lung. In view of the magnitude of these cancers, Doll and Peto recommend a large scale study to determine the interactions between occupation and smoking. The observation has significant implications in evaluating the benefits of notification, early diagnosis and intervention. They also conclude that the minimum proportion of all current U.S. cancer deaths attributable to occupation can hardly be less than 2% or 3% of the total, at least 8,000 deaths.

Estimates are available from other industrial countries which can be extrapolated to the United States experience. Studies in England indicate patterns similar to U.S. estimates. However, such studies emphasize that much of the significant inequalities in occupational cancers are due to factors other than chemical exposures. In Finland, Helmmincki and Vainio calculate from exposure data that approximately 0.5% or less of all cancers may be related to occupation. Hirayama in a 15-year followup study of 200,000 individuals in Japan attributes less than 1% to occupational exposure. These differences suggest that the problem of occupational cancer in the U.S. may be worse than elsewhere—a point clearly requiring objective validation.

Although the proportion of occupational cancers in the United States may appear comparatively small, they are probably heavily concentrated in small population groups. All agree that such morbidity, although lower than implied in the background material, should be reduced to the minimum feasible. However, although many studies have been carried out on a range of occupations, we still lack good data as to those workplaces and population groups at greatest risk, for these reasons.

1. Problems of the 30% Threshold As a Marker of Workplace Exposure

Although the 30% approach appears to offer a simple solution to the evaluation of a place of employment, in practice it reflects a highly complex situation. Employment inequalities must be interpreted in the context of: 1) statistical limitations; 2) limitations of exposure data essential to the developing causal relationships; and 3) other factors which cause major inequalities between employed populations.

2. Statistical Problems

If, as many believe, the greatest number of cancers due to exposure occur within plants with small workforces and poor working conditions, epidemiological studies will be complex. For small numbers, there are difficulties in determining whether 30% represents a real or random increase. (The occurrence of one case instead of 0.5 expected, while theoretically a 100% increase, is meaningless.) Further, it must be determined whether the increase is due only to a chemical exposure or to other confounding variables, such as smoking habits, economic conditions, lifestyle or ethnic mix. These points should be defined carefully before legislating a single statistical figure as a triggering mechanism. The problems of small samples are compounded if accurate data on suspected exposures are not available, which is mostly likely to be true in small plants. Yet to confine studies to large, well run and more easily studied plants and to ignore the possibly larger burden in small plants would be wrong. Exposures as well as disease patterns may vary widely according to the size of plants and other influencing factors.

MEASUREMENT OF EXPOSURES

The Interagency Committee on Chemical Carcinogenesis stated that measurement of exposures is the least satisfactory portion of risk assessment at the present time. Doll and Peto recommend a specific study on lung cander, a major part of U.S. occupational cancer burden, to analyze the most important causal components and their interactions.

Thus patterns of cancer today reflect past exposures, which may be very different today. Accurate measurement of exposure is an essential component of any cancer prevention plan based on identification and reduction of high risks. Unfortunately, exposure today are best defined and usually best controlled in large plants with good industrial hygiene and safety departments and often contrast with small workplaces with limited technical competence in this areas, e.g., service stations. This problem has been studied by industrial hygienists in many countries, but solutions are difficult and complicated. The use of a material does not necessarily reflect exposure levels which may be very enormously between plants and occupational subgroups. Thus, a statement based only employment history may be meaningless. To further classify an occupation simplistically, i.e., fitter, without reference to place of work and lifestyle will produce many uncertainties. Surrogate measures for exposures are being developed, for example, in Canada and should be examined.

In most industrial countries including the United States, there has been a marked improvement in workplaces—a point that Dr. Selikoff has made both to the press and to scientific meetings. It is not accurate to say that nothing has changed as is stated in the background to the Bills.

NEW TECHNIQUE

In addition to analytic chemical approaches, considerable research is being carried out on markers indicative of past or present ex-

[1] "The Causes of Cancer," Richard Doll and Richard Peto, Oxford University Press, 1981.

posures to possible carcinogens, e.g., DNA adducts. Such methods are as yet insufficiently developed to permit utilization on a large scale, and more research is urgently needed. This limitation equally applied to potential biochemical markers of pre-neoplastic damage. The Bills should define more clearly what is implied by notification to a chemical as there may be considerable discrepancies in exposure, so that risks ranging considerably in magnitude are not treated equally but adequately prioritized.

3. Factors Influencing Inequalities in the Workplace in the United States

Studies in modern industrial states, including England, Canada and the United States, show significant inequalities of health patterns between workplaces including cancer. In the United Kingdom, job-related inequalities not due to exposure are believed to explain approximately 80% to 90% of workplace differences. If so, such factors complicate the interpretation of a simple 30% difference between occupations. For example, many large industrial plants in the United States show only 80% to 90% of the normal cancer rate, which is not due to a healthy-worker effect, but probably reflects more stable and better paid workforces. Such good rates, however, imply that there are many other employed groups within the country with significantly worse experiences. Any legislative action on occupation should emphasize the latter. For example, great variations exist in cancer rates between different ethnic and religious groups within the United States. Appendix 1 gives the overall cancer morbidity and mortality rates for the Bay Area in California. Both rates in black males are almost twice that of the Japanese. Such variations are reflected in the workplace, so that black male workers in this area clearly merit intensive investigation as being at much higher risk than Japanese or white workers. Such differences are not addressed in the Bills.

The control population to be utilized for the calculation of a 30% increase is described as that of the normal population within the United States. As indicated, this includes many subgroups of individuals with a wide range of health and cancer experiences. Thus, it is preferable to compare a particular workshop with the local population rather than with the general population. If not, real increases or decreases in cancer incidence may be missed. The above limitation and caveats, especially sample size, have important negative implication for the monitoring and surveillance proposals of the Bills.

PREVENTION OF CANCERS DUE TO WORKPLACE EXPOSURES

It is a basic principle for reducing cancer due to chemical exposure in the workplace that unnecessarily high exposures to carcinogens be controlled. If a 30% increase in cancer can be related to a chemical exposure such an observation indicates that a hazard already exists which should be addressed immediately. Such hazards should not be permitted to continue due to overly optimistic expectations based on intervention and early diagnosis. In this context the Bills may prove deleterious in misdirecting efforts to less effective options.

EFFECTIVENESS OF EARLY DIAGNOSIS AND EDUCATION

It is fundamental to the success of the Bills that notification of previous exposures to hazardous substances and early diagnosis will have a significant impact in preventing large numbers of cancer deaths and substantially reducing medical costs. Much research has been done on this subject.

Early diagnosis has been effective in breast and cervix cancers in most countries and possibly stomach cancers in Japan. Few, if any, of these cancers are due to occupational exposures. The only industrial cancer where some success has been reported is bladder. Unfortunately, early diagnosis has shown little success for lung cancers, including asbestos-related cancers, which comprise three-fifths of occupationally related cancers, which comprise three-fifths of occupationally related cancers in the U.S. (see Doll and Peto). While emphasis on no-smoking programs within the workplace may be especially effective for asbestos workers, they should be equally applied to the entire employed population.

It is implied that adequate treatment methodology exists to intervene effectively in cancer during the latent period, including identification of pre-neoplastics lesions. Identification of pre-neoplastic changes in an individual may, however, require use of intervention methods which may not of themselves be without risk or controversy. Chemoprevention is still in its infancy. I do not believe that at present effective techniques to do so exist for most occupational related cancers, except possibly skin. If such techniques exist, they should be made equally available to all employed persons irrespective of their workplace, especially those at high risk such as smokers and black workers. Personally, I believe the situation has not changed significantly since I set up the Asbestos Cancer Subcommittee of the UICC in 1964.

There is serious concern as to the justification of informing a person that he may be at an increased risk of cancer, unless there is the possibility of offering an immediate benefit, especially where the risk may be trivial or non-existent. Such knowledge without benefit may cause unnecessary suffering, anxiety, frustration or antagonism against society either by the individual or the community. Does such knowledge merit compensation if it causes ill health? I do not know. The "right to know" implies not only mere knowledge of an exposure, but also the degree of risk, whether insignificant or substantial. This implies a much more sophisticated and technical approach than that proposed. For these reasons the benefits of notification should be carefully reevaluated.

CONCLUSIONS

For the reasons above, I do not believe that the proposed organizational structure will be as effective as anticipated in reducing cancer deaths and medical costs. I suggest that techniques are not at present available to make intervention during the latent period of cancer effective and that more research is necessary. Premature overreliance on such approaches could be harmful if it directed attention away from controlling exposures.

Further, due to uncertainty as to the database on occupational cancer and the marked inequalities in health in the U.S., expecially affecting certain minorities, the new organizational structures proposed may not be targeted to occupations or worksites at highest risk.

Congress has mandated previously that NCHS/NIOSH and the Bureau of Labor Statistics combine epidemiology studies to develop adequate statistics on this subject. (See DHHS (PHS) Publication No. 81-1275.) This report is due in 1988, the request was made in the Inter-Governmental Relations and Human Resources Subcommittee of the House Committee on Governmental Operations, and the Employment and Housing Subcommittee of the House Committee on Education and Labor and cover many of the deficiencies raised earlier. I have heard that these studies which have progressed considerably, are now handicapped by lack of funds and may not be completed due to default. I would suggest that this report be awaited in order to assure that any control measures be targeted most effectively.

Lastly, I should reemphasize my view that the most effective approach to the reduction of occupational disease including cancer is through control of unnecessary high exposures. However, without discussing the economics, in allocating national resources and selecting options for better public health, cancer should not be considered in isolation from the competing claims of social security, medicare, and geriatric services, etc., whose impact on American health have been enormous. Thus, the question can be raised as to whether it is sound public health policy in the absence of better data to direct control activities of this type only to one segment of the community and not to black workers or smokers, or whether a total approach should be envisaged.

APPENDIX 1 [1]

	Male	Female
Morbidity rates [2]		
White	395	346
Black	474	290
Chinese	325	283
Japanese	222	224
Mortality rates		
White	216	149
Black	278	155
Chinese	194	128
Japanese	131	87

Skin tumors (excluding melanoma) not included.

[1] Surveillance, Epidemiology, and End Results: Incidence and Mortality Data, 1973-1977, (1981). National Cancer Institute Monograph No. 57 (J.L. Young, C.L. Percy, A.J. Asire, eds.), DHHS (NIH) Pub. No. 81-2330, Bethesda, MD.

[2] San Francisco-Oakland, 1973-77, Annual age adjusted cancer rates.

TRIBUTE TO JOHN F. SYSTMA

HON. SHERWOOD L. BOEHLERT

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, October 6, 1986

Mr. BOEHLERT. Mr. Speaker, I would like to take this opportunity to recognize a truly outstanding citizen of the labor movement, John F. Systma. John is being honored on October 8 in Cooperstown, NY by the company he has been associated with for 46 years, the New York Susquehanna and Western Railroad. For 16 of those years John Systma was an engineman on the Susquehanna, as well as a locomotive engineer in the Army during World War II. For the last three decades he has been a leader in the national rail labor movement, serving from 1976 to 1986 as president of the Brotherhood of Locomotive Engineers.

The history of America and her railroads is intertwined. Ground was broken for the first railroad, the Baltimore and Ohio, in 1830. At the groundbreaking ceremony, a signer of the Declaration of Independence, Charles Carroll, stated:

"I consider this among the most important acts of my life, second only to that of signing the Declaration of Independence, if even second to that."

The employees of the railroads were in the forefront of the labor movement. The Brotherhood of Locomotive Engineers was formed in 1863. During the last 30 years of that 123 year BLE history, John Systma has been a guiding force. During his tenure in office the railroad industry underwent enormous change. Through it all, the BLE remained a strong and vital force. On a national basis, there are few unions in America that can boast achieving better wages or benefits for their membership than the BLE.

John Systma joined the Susquehanna in 1940 and after a distinguished career it is altogether fitting that he be honored by the people of the Susquehanna. It is interesting to note that in the 1970's the Susquehanna, like most railroads in the Northeast was mired in bankruptcy. Eventually the 35 mile carrier was ordered into liquidation by a bankruptcy judge. The Susquehanna was bought by the Delaware Otsego Corp. Today, 5 years later the Susquehanna operates 400 miles of railroad in New Jersey and New York and provides growing competition to the vast Conrail system and is profitable. The Susquehanna is a corporate success story and John Systma, who ranks as No. 1 engineer on that railroad, is a human success story. John Systma leaves behind a stronger company, a stronger industry, and a stronger union. Perhaps that's the most anyone can say about one man's career. My colleagues and I wish him every success in his retirement.

THE FUTURE OF NUCLEAR POWER

HON. GEORGE E. BROWN, JR.

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, October 6, 1986

Mr. BROWN of California. Mr. Speaker, the accident at the Chernobyl nuclear powerplant in the Soviet Union has raised some pressing questions about the fate of the nuclear industry in the United States. Many experts feel that traditional nuclear power technology is inherently hazardous, and that incremental changes in nuclear powerplant safety will not be enough to avoid a Chernobyl-scale disaster in the future.

In an enlightening article printed in Fall 1986 Issues In Science and Technology magazine, Harold M. Agnew and Thomas A. Johnston identify the need for making fundamental changes in nuclear energy technology. The article, entitled "Chernobyl: The Furture of Nuclear Power," suggests building a new generation of nuclear plants that can provide a higher level of safety. I was so impressed by this article that I have asked that it be printed in the CONGRESSIONAL RECORD following this statement. I recommend that my colleagues take the time to review this work.

I have the utmost respect for Harold M. Agnew and Thomas A. Johnston. I have had the pleasure of being in close association with Mr. Agnew for a number of years now, and I am always impressed by his work.

Mr. Speaker, I am submitting the above mentioned article to be printed in the RECORD for the benefit of the membership.

CHERNOBYL: THE FUTURE OF NUCLEAR POWER

(By Harold M. Agnew and Thomas A. Johnston)

PROLOGUE

The accident at Chernobyl has provoked a worldwide reassessment of nuclear power. Critics of nuclear power have reasserted their contention that the technology is inherently hazardous. Proponents have conceded that public confidence in reactor safety has been shaken anew and must be restored if the nuclear industry is to survive and achieve its great potential.

Some nuclear power advocates contend that greater safety and the restoration of public confidence can best be achieved by the incremental addition of new safety systems on existing reactors and better training and supervision of plant operators. In this article, nuclear physicist Harold M. Agnew and nuclear engineer Thomas A. Johnston argue that the incremental approach may have been effective in the past but that more fundamental changes in nuclear technology are now required. They advocate a new generation of technically advanced and passively safe nuclear plants, such as the Modular High Temperature Gas-Cooled Reactor (MHTGR) now under development in the United States, which is designed to shut itself down in the event of a problem without the intervention of human operators or powered safety systems.

Harold M. Agnew received a B.A. in chemistry from the University of Denver and an M.A. and Ph.D. in physics from the University of Chicago. He worked with Enrico Fermi on the first nuclear fission chain reaction at the University of Chicago and in 1943 joined the Los Alamos laboratory and worked on development of the atomic bomb. He later served as director of the Los Alamos Scientific Laboratory and as president of GA Technologies Inc. Thomas A. Johnston received a B.S. in chemical engineering from Case Institute of Technology in 1950 and a certificate in nuclear engineering from Oak Ridge School of Reactor Technology in 1957. He is now vice president for power reactor program development at GA Technologies Inc.

Neither the detailed sequence of events that resulted in the accident at the Chernobyl nuclear power plant nor the total cost measured in loss of life, capital investment, and productive capability will be known for some time. Already, however, the events at Chernobyl are causing a reevaluation of nuclear power in the United States and throughout the world that goes well beyond what occurred after the 1979 accident at the Three Mile Island reactor site.

These reevaluations are likely to have a profound effect on the future development of nuclear power. Public concerns that were heightened by sensationalized reporting of the Three Mile Island incident have been further strengthened by news of the grim tragedy in the Soviet Union. Restoration of public confidence in the safety of nuclear energy will require changes in technology that are fundamental and not simply bureaucratic.

Significantly, even within the nuclear community, where the technical and design differences between the Chernobyl reactor and the far safer commercial reactors in the West are fully appreciated, there is a readiness to examine new approaches to achieving an even greater level of safety than currently exists.

There are two approaches for developing safer reactors. The first is to continue to pursue the incremental improvements—undertaken following the accident at Three Mile Island—in the design, licensing, and operation of reactors. The creation of the Nuclear Safety Analysis Center and the Institute for Nuclear Power Operations and the installation of additional safety systems and controls on existing reactors have certainly improved the professionalism, performance, and safety of nuclear power operations across the board. Designs being developed for advanced commercial light-water reactors will incorporate further improvements.

This incremental approach has been effective, as the exemplary safety record of U.S. plants shows. What is less certain is whether this approach will continue to satisfy a concerned public and concerned shareholders and financial institutions, and whether it will be acceptable to the technical community if a safer alternative is available.

The second approach is to develop a new generation of nuclear plants that can provide a higher level of safety based on inherent and passive features that can be readily understood by and demonstrated to the public. One example is the Modular High Temperature Gas-Cooled Reactor (MHTGR) currently under development in the United States with Department of Energy (DOE) support. Other concepts are the Swedish-designed Process Inherent Ultimately Safe Reactor (PIUS) and two small Liquid Metal Reactors (LMRs) sponsored by DOE in the United States. Unfortunately, many in the nuclear industry have been reluctant in the past to support such technically advanced and passively safe systems, because of the mistaken assumption that acknowledging the possibility of an improved system would mean abandoning the huge investment in existing reactors and perhaps restructuring the nuclear industry.

In the event of a problem, the MHTGR is designed to shut itself down without the help of human intervention or powered systems. The MHTGR uses refractory-coated fuel particles, helium gas as a coolant, and inert solid graphite as the moderator and core structural material. Each of the fuel particles consists of a microsphere of uranium oxycarbide encapsulated with a multiple layering of pyrolytic carbon and silicon carbide that serves as a barrier and pressure vessel to retain fission products. The refractory coatings are stable at temperatures higher than those possible in the most severe accident. The coated particles are bonded together into finger-sized fuel elements that are sealed in large graphite blocks.

The graphite core, including the fuel-element blocks and reflector blocks and supports, is a large mass whose thermal inertia prevents any rapid changes in overall system temperature. Graphite actually gains in strength at temperatures up to 4500 degrees Fahrenheit, which is beyond the extremes that could be reached in even a full-scale accident. The helium-gas coolant for the MHTGR is inert and cannot enter into a chemical reaction with the graphite, the fuel particles, or any of the system components. There is no metal cladding around the fuel, and thus no metal to melt and react with water to form a potentially explosive hydrogen mixture, such as occurred at Chernobyl and was a concern at Three Mile Island.

In achieving the goal of passive safety, three engineering design features are also key in the MHTGR. First, the ratio of uranium fuel, thorium, and graphite in the core has been balanced so that the reactor will have a large negative temperature coefficient. This means that if the temperature of the reactor rises significantly above its normal operating level, the physics of the core is such that the nuclear reaction will shut down without the intervention of control systems.

Second, the rating of the core has been limited to less than 350 megawatts thermal (equivalent to production of about 150 megawatts of electrical power), about one-eighth the rating of the largest of today's commercial reactors. This smaller size minimizes the amount of heat that must be dealt with in the event of an accident. At the same time, the annular geometry of the core optimizes the surface-to-volume ratio to create a natural conduction and radiation path from the core to the surface of the reactor's steel containment vessel. In the event of an accident, enough heat can be removed from the core without pumps to maintain the core temperature below the temperatures at which the fuel particles would lose integrity.

The third key engineering feature is the installation of the reactor vessel in a confining silo below ground level. This ensures that even if all the normal cooling systems fail or the system geometry is disturbed by an earthquake, the earth is available as a last-ditch heat sink. The silo installation has an additional advantage: even if large multiple openings appeared in the reactor vessel and all the helium-gas coolant escaped, exposing hot graphite to the air, the ensuring fire would be limited by the amount of air contained within the silo. Because of the unique high-temperature characteristics of the refractory-coated fuel, no significant release of fission products would occur during such an event.

Thus, through the combination of inherent properties, engineered features, and scientific physical principles, the MHTGR provides safety that is both inherent and passive. In the worst of circumstances, the heat generated within the core during an accident would be passively removed by conduction, radiation, and natural convection to the surrounding earth without the release of radioactivity that would endanger the public or require evacuation from the area around the plant site. This factor alone simplifies the siting of nuclear power plants.

The basic technologies for such inherently and passively safe reactors have been demonstrated in the United States and West Germany. What is required is a joint effort by government and the private sector to incorporate these technologies in a prototype plant that would demonstrate its inherent safety to all interested constituencies: nuclear regulators, financial institutions, utilities, and, most important, the public. The relatively small size of the plant components would permit factory production and subsequent delivery to the power plant site. As a consequence, design certification by the Nuclear Regulatory Commission would allow units to be delivered on a predetermined schedule without bureaucratic delays.

Clearly, in light of the increasing worldwide demand for electrical energy in the decades ahead, diminishing fossil fuel supplies coupled with growing environmental concerns (ranging from acid rain to detrimental levels of carbon dioxide in the atmosphere) mean an increased dependence on nuclear energy. Developing countries will need inherently safer nuclear power systems because of limited availability of skilled technicans required to operate current reactors. Smaller systems will be preferred because developing countries cannot absorb large increments of electrical power. Consequently, the export market for inherently and passively safe nuclear power plants in the 150-megawatt electrical range would be excellent.

For some years there has been an active and successful program of cooperation between the United States and the Soviet Union in the field of fusion power. In view of the Chernobyl plant disaster, there is all the more reason to consider the political, social, and economic advantages of a joint program to develop a second-generation nuclear power system.

As tragic as the accident at the Chernobyl power plant was, it may provide an opportunity for the world to reexamine existing nuclear power systems objectively and to allow the introduction of passive and inherently safe systems in the future.

CELEBRATING THE 100TH BIRTHDAY OF THE LATE GENERALISSIMO CHIANG KAI-SHEK

SPEECH OF

HON. FOFO I.F. SUNIA

OF AMERICAN SAMOA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 2, 1986

Mr. SUNIA. Mr. Speaker, I rise to join my colleagues in this House in wishing the President of the Republic of China, Chiang Ching-kuo, warmest regards as his country prepares to celebrate on the 31st of this month the 100th anniversary of the birth of his father, the late President of the Republic of China, Generalissimo Chiang Kai-shek.

For over 60 years, the Generalissimo served the cause of republicanism in Asia. He supported the events leading to the abdication on February 12, 1912, of the last Emperor of the Manchu dynasty, Hsuan T'ung (1906–67). In 1918, Chiang Kai-shek joined forces with Sun Yat-sen (1866–1925), the leader of the Chinese Nationalist Party. Their goal was to bring unity to the dispersed peoples of their vast nation.

After Sun Yat-sen's death, power in China increasingly concentrated in the hands of its military commander, Chiang Kai-shek. The long-awaited expedition to unite China in July 1926 enhanced the Generalissimo's position. The success of his armies was phenomenal. On April 12, 1926, Chiang Kai-shek's troops destroyed the Chinese Communist Party organization and labor movement in Shanghai. Six days later, he established his own government in Nanking. By April 1928, the Generalissimo was in command of an expedition in the northern regions of China. Peking fell to his forces in June 1928, and Chiang Kai-shek secured the adherence of the Manchurian leadership as well. With consummate skill, the Generalissimo balanced the cliques, factions, and forces of the Chinese Government in Nanking.

Full scale aggression by the Axis Powers began in China on July 7, 1937 near Peking. In November 1937 the Axis took Shanghai and the following month Nanking. By the end of 1938 the Axis controlled the northern and central regions of China and its main coastal cities. Chiang Kai-shek's government withdrew to western China, where Chungking served as its capital during the war.

Chiang Kai-shek served as a loyal and devoted friend to the Allied Powers in the Second World War. Many Americans remember his assistance and Madame Chiang's at the Cairo Conference of 1943, where they consulted Franklin Delano Roosevelt and Sir Winston Churchill.

On April 5, 1975, when the Generalissimo died, we in this country and those from other nations who fought bravely for the ideals we all hold so dear lost a valiant champion.

SHARI L. LEVINE WINS NATIONAL COMPETITION

HON. ROBERT J. MRAZEK

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, October 6, 1986

Mr. MRAZEK. Mr. Speaker, I rise today to call the attention of my colleagues to the remarkable academic achievement of one of my constituents, Shari L. Levine of Dix Hills, Long Island.

Shari, a student at Half Hollow Hills East High School in Dix Hills, recently was named as New York's winner in the national World of Water Youth Competition, sponsored jointly by the National Marine Education Association, the Smithsonian Institution, the National Forum on Biodiversity and Oceans 1986. She competed with more than 2,000 other students on Long Island for the honor, as well as hundreds more from New York State.

Shari, 14, began her research on the American pond snail while still a student at Burr's Lane Junior High School. Her project was entitled "The Shelter and Substance Preference of Physa Fontinalis," and it demonstrated for the first time that the pond snail has a definite plant preference (a dislike of Ludwigia Natans) and that they migrate away from a filter in a home aquarium. This knowledge is expected to help aquarium enthusiasts as they strive to establish a well integrated biomass in their aquariums.

It is instructive to note, Mr. Speaker, that Shari accomplished her studies without the assistance of supervising scientists. She does credit the teacher in charge of independent scientific research, Mr. Ray McGraime, and her principal, Mr. Harold Hoffman, for their role in channeling her scientific creativity.

The daughter of Mr. and Mrs. Rich Heimer of Dix Hills, Shari plans to continue her research on the American pond snail. For the edification of my colleagues, I include today a copy of Shari's winning abstract. I wish Shari the best of luck in her academic career and offer my sincere congratulations for the honor she has received and which she so richly deserves:

ABSTRACT

SHELTER AND SUSTENANCE PREFERENCE OF PHYSA FONTINALIS

DEFINITION OF THE PROBLEM

Physa fontinalis, the American Pond Snail, is a small, herbivorous, freshwater snail (2mm.-10mm.) that is, inadvertently, often brought into an aquarium on plants or with live food. The object of the experiment is to determine, from among several popular aquarium plants, those that the American Pond Snails seek for shelter and sustenance. The underlying purpose of the research is to provide aquarists with information regarding the desirability of stocking an aquarium with plants that will be attractive, but not attract, nuisance snails.

THE FOLLOWING HYPOTHESES WERE TESTED

Hypothesis 1: Physa fontinalis have a definite plant preference.

Hypothesis 2: Physa fontinalis migrate toward the plants furthest from the filter.

CONDENSED SUMMARY OF FINDINGS

Plant variety	Mean	Median	Plant location	Mean
Cabomba	39.037	41.00	Left	34.389
Elodea	45.148	44.50	Middle	33.685
Ludwigia	15.778	15.00	Right	31.222

The Cabombas and Elodeas show a quasi-normal distribution for snail preferences. The Ludwigia environment is not preferred.

CONCLUSIONS

Hypothesis 1 was verified. Physa fontinalis do indicate a definite avoidance for certain aquarium plants.

Hypothesis 2 was verified. The pull of the filter creates a current such that the upstream direction is furthest from the filter, and the snails continue to prefer to migrate upstream.

ROUKEMA HELPS REDEDICATE PARK RIDGE DEPOT

HON. MARGE ROUKEMA

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Monday, October 6, 1986

Mr. ROUKEMA. Mr. Speaker, well over 100 years ago the railroad was expanding north through Bergen County, NJ. A group of ambitious, enterprising residents of Park Ridge organized themselves and constructed a Victorian-style depot and architectural gem. The citizens donated the structure to the railroad on the condition that all trains passing through Park Ridge would stop at the depot.

That was in 1871 and was a major event in the development of Park Ridge. For years this wonderful building symbolized the best of Park Ridge.

Unfortunately, over time the depot was neglected and eventually fell out of use. It was not until 1980 that the spirit of voluntarism and civic pride from a century before brought another group of citizens together to restore the building to the grandeur it had previously enjoyed.

Many volunteers pitched in and contributed to the effort. Many businesses gave money and material. Many local people gave their labor. The attention to history and detail was masterful. One local paint company, for example, studied old paint chips to determine the precise color of the original paint. It then produced a special mix and reproduced the color exactly.

The renovation was a major undertaking. The building required a new foundation and new floors, windows had to be rebuilt, and moulding had to be reconstructed.

The renovation of this depot helped to spur the revitalization of the Depot Square area and, indeed, the entire business district. There is tremendous community pride over this project, and rightly so.

On October 11 we will rededicate the building, and thereby honor an entire community and its commitment to excellence. We will also honor the memory of the late Kathryn Short, who passed away recently and who contributed so much as treasurer of the Park Ridge Railroad Station Restoration Association. She would have been justifiably proud. And we will also honor Mr. George Peed, who, more than any other individual, led the effort to restore this beautiful architectural structure to prominence. Mr. Peed is an artist of considerable accomplishment who took on this restoration project, and I know the community is very grateful for his leadership and the countless hours he contributed.

Residents of Park Ridge for decades to come will look at their lovely depot and they will thank George Peed, and the many other good citizens of Park Ridge who had the vision to save and restore what was best in their community.

JOHN GIORVAS

HON. NORMAN Y. MINETA

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, October 6, 1986

Mr. MINETA. Mr. Speaker, I would like to ask you and my distinguished colleagues to join me in paying tribute to a courageous man. John Giorvas and 13 others have never really been given official recognition for their heroic efforts on September 8, 1923. He and the 13 others are the civilian heroes of the tragedy at Honda Point, the U.S. Navy's worst peacetime disaster which occurred off Point Pedernales in Santa Barbara County.

At dawn on September 8, 1923, a fleet of 15 destroyers left San Francisco for San Diego on a high-speed endurance run. The trip was designed to show which ships were ready for high-speed battle operations and which required improved maintenance and upkeep methods or, possibly, new officers or new skippers.

All went well until the ships neared Honda Point, or what was commonly called "Devil's Jaw" because of its formidable reputation as a graveyard for many large and small ships. With poor visibility due to dense fog, and lacking the sophisticated communications and navigational equipment that are on the ships of today, the USS *Delphy*, leadship for the Navy's 11th Destroyer Squadron, miscalculated and made a sweeping left turn at top speed for what officers thought was the mouth of the Santa Barbara Channel. Within minutes, the ships began crashing against the rocks and one another. Others suffering the same fate as the USS *Delphy* were the USS *S.P. Lee*, USS *Young*, USS *Woodbury*, USS *Nicholas*, USS *Fuller*, and USS *Chauncey*. Of the 769 men aboard the seven ships, 23 were lost and 200 were injured.

John Giorvas, the foreman at the Southern Pacific Section House on Honda mesa, was the first person to discover the wreckage in the dense fog. Knowing that it wasn't a one-man job, John went back to get his 13-man crew to help. They were in the water for 4 hours pulling men out and bringing them ashore.

It is most unfortunate that these civilian heroes only received letters from the Navy Department, Secretary of the Navy, Members of Congress, and president of Southern Pacific Railroad. Therefore, I ask you, Mr. Speaker, and my colleagues to join me in honoring John Giorvas posthumously and his fellow heroes for their efforts. Even though it has taken 63 years to receive official recognition, we thank them. And for the Giorvas family, they can be confident that our country is most grateful for John Giorvas' contributions and accomplishments. And I am pleased to have Arthur Giorvas, John's son, living in Santa Clara, one of the cities I have the honor of representing in the U.S. Congress.

IRON OVERLOAD DISEASES

HON. DAN MICA

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Monday, October 6, 1986

Mr. MICA. Mr. Speaker, Gov. Bob Graham has proclaimed September 21, 1986 as Iron Overload Awareness Day.

The Governor, along with members of Iron Overload Diseases Association, hopes to alert our State's residents to the dangers of a common, deadly, often undetected disease.

Five in a thousand people are genetically susceptible to hemochromatosis, the most common of the iron storage diseases. In Florida that's an estimated 55,000 people. Nationwide, 1,190,640 people are estimated to carry two genes for chromatosis.

Thirteen percent of the population are estimated to carry the single gene. In Florida that's 1,430,000. Nationwide, 30,956,640 are carriers of the single gene.

The disease is caused by the most abnormal gene.

Hemachromatosis is deadly. It kills unless found and treated early. Fortunately, the disease is easy to find and easily managed when it is detected in time and when it is adequately treated.

Unfortunately, the disease is often missed, for two reasons. First, the iron causes body damage that leads to other diseases that cover up the underlying excess iron—arthritis, impotence, heart disease, cirrhosis, diabetes, or cancer. The second reason is more important: misconceptions about the role of iron in human health and the dangerous misconception that hemochromatosis is rare.

When doctors don't suspect iron overload they don't look for it; when doctors don't look for iron overload they don't find it.

Individuals who will die this year from hemochromatosis will be dying more from ignorance than from disease. That fact makes awareness the key to saving lives.

On September 21, 1986 we were asked to begin looking at iron in its true light.

For more information you can contact Iron Overload Diseases Association, 224 Datura Street, Suite 912, West Palm Beach, FL 33401, phone (305) 659-5616.

NEW HAVEN'S MARZULLO FAMILY; A PROUD TRADITION

HON. BRUCE A. MORRISON

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Monday, October 6, 1986

Mr. MORRISON of Connecticut. Mr. Speaker, October is the month in which we celebrate Columbus Day and the immigrant tradition which made our country great. In New Haven, CT, which I represent, we are celebrating another anniversary this year which perfectly exemplifies that proud tradition—the 80th anniversary of Marzullo's Italian Pastry Shop in New Haven, which has been operated by members of the Marzullo family since it was opened in 1906.

This New Haven Italian family's strength and perserverance offers us all a perfect example of how Italian-Americans have enriched our great Nation with their hard work, independent spirit, and belief in our American system. Today, I rise to honor the Marzullo family and, in particular, the late Giuseppe and Agata Rosilia Mercugliano-Marzullo.

Immigrating to New York City in 1904 from Naples, Italy, Giuseppe and Agata Marzullo truly believed in the promise of America. Giuseppe, a pastry maker, worked for 2 years at $2 per week in Italian bakeries, including New Yorks's still-famous Ferrara's Italian Bakery, before he moved to New Haven in 1906 and started his own pastry business in a garage in the Wooster Street neighborhood. Baking his pastries in the garage oven and selling them door to door and on Wooster Street corners, the Marzullos saved enough money to move into larger commercial quarters and finally realized the dream of buying a building to house their business. They sustained their small business throughout World Wars I and II and the Great Depression.

Together, Giuseppe and Agata raised nine children, who in the tradition of their parents, have continued to enrich our community. Six of their nine children also have opened their own businesses in New Haven and nearby towns including an insurance firm, an electrical engineering company, and two other bakeries. Emelia Marzullo-Esposito and Louis Marzullo coown and operate the original pastry shop today.

Many third generation members of the family have also become independent New Haven business owners. Others, with benefit of higher educations made possible from the family businesses, have entered the medical, educational, religious, and technical professional communities of Connecticut. I know that 35 great grandchildren of Giuseppe and Agata Marzullo will continue this family tradition of hard work and community service.

Mr. Speaker, I want all my colleagues to share my pride in the accomplishments of Giuseppe and Agata Marzullo and their family and the spirit they represent.

IS THE NEW GI BILL WORKING? ASK THE ARMY

HON. G.V. (SONNY) MONTGOMERY

OF MISSISSIPPI

IN THE HOUSE OF REPRESENTATIVES

Monday, October 6, 1986

Mr. MONTGOMERY. Mr. Speaker, I'd like to take this opportunity to share with my colleagues some recent, impressive statistics regarding the new GI bill. Our military services are continuing to experience high participation rates under this new education program which went into effect a little over a year ago. Particularly impressive are the most recent figures provided by the U.S. Army. These statistics show that as of July 31, 1986, 72.4 percent of Army enlistees enrolled in the new GI bill and, during the month of July, 82.6 percent of all eligible soldiers signed up. More than 164,000 recruits servicewide are participants.

The impressive participating rate of Army recruits reflects the enthusiasm with which the Army is implementing the new GI bill and the Army commitment to the use of this program as an enlistment incentive. The Army's commitment to advertising the new GI bill is significant and will be repaid many times over by the steady stream of high quality accessions this program is bringing into the Army. All those in the Army who have contributed to the effective implementation of the new GI bill are to be congratulated.

There's no doubt about it. The new GI bill is popular, successful, and absolutely essential for manning our Armed Forces. I think everyone will agree with me that this new program has already proven to be a valuable recruitment incentive for the Army as well as the other armed services.

UTILITY PROGRAM SERVES MICHIGAN

HON. BOB CARR

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Monday, October 6, 1986

Mr. CARR. Mr. Speaker, today I rise to recognize the Nation's premier utility damage prevention program. MISS DIG, a one call utility communication system, recently received its 3 millionth call while serving all of Michigan's 83 counties.

Any contractor or private property owner who is planning an excavation, can contact the MISS DIG system with information about the project. This information is entered into a computer and teletyped to all participating utilities serving that location. Those utilities will then stake out their lines with color-coded markers and will meet with contractors of large jobs to discuss excavation plans.

MISS DIG began in 1978 with a pilot program in four townships bordering Detroit and spread rapidly until its service encompassed the entire State. At first only underground telephone, telegram, gas, electric, sewer, and storm lines and drains were included in the program. From 1977-79, MISS DIG added coverage of overhead electric lines and in recent years underground television cable systems have joined the program.

MISS DIG was initiated by five of Michigan's utility companies, Michigan Bell, Detroit Edison, Michigan Consolidated Gas, General Telephone and Consumer's Power. In 1982, a subsidiary of Consumer's Power Utility Systems, Inc., was established to operate the system.

There are now more than 500 participating utilities in the MISS DIG Program. An average of 1,500 calls are received each day at the call center in Pontiac, MI. The center is staffed by 22 operators with 19 phone lines to handle the toll-free number which is in operation 24 hours a day.

In 1974 the Michigan Legislature recognized the importance of the program when it approved Public Act 53 which required that any contractor or private individual using power equipment to excavate notify the MISS DIG system.

The MISS DIG program has been an outstanding example of State and local government units working in cooperation with municipal utilities and private contractors to protect lives, prevent injuries, and save millions of dollars in property damage.

RULE ON THE CONFERENCE REPORT ON H.R. 2005, SUPERFUND AMENDMENTS AND REAUTHORIZATION ACT OF 1986

HON. DAN ROSTENKOWSKI

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 7, 1986

Mr. ROSTENKOWSKI. Mr. Speaker, I wish to serve notice to my colleagues that, pursuant to the rules of the Democratic caucus, I have been instructed by the Committee on Ways and Means to seek less than an open rule for the consideration by the House of Representatives of the conference report accompanying H.R. 2005, Superfund Amendments and Reauthorization Act of 1986.

ADULT ILLITERACY: READ ALL ABOUT IT

HON. MARIO BIAGGI

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 7, 1986

Mr. BIAGGI. Mr. Speaker, the Literacy Volunteers of New York City is a nonprofit organization dedicated to assisting the over 1 million adults in our city who cannot read. This organization, with over 300 volunteers, helps over 700 students "who simply want to improve the quality of their lives." This program concentrates on those people who cannot read above the fifth grade level, or even more tragically, those who cannot read at all.

Both one-on-one and small group instruction is provided to those adults enrolled in this

program. The services are unique in that they encourage students to read material suited to their own interests, thus increasing the pleasure and enjoyment one receives from reading.

Unfortunately, the Literacy Volunteers of New York City has a long waiting list for instruction. Although they are of great help in addressing the problem of adult illiteracy in New York City, much more needs to be done—both in New York and across the entire country. The costs to society—in terms of welfare and unemployment payments and, even more importantly, underproductivity—are enormous. With the help of organizations such as the Literacy Volunteers of New York City, a lucky few are receiving help. For the benefit of my colleagues, I wish to insert the text of an article which recently appeared in People magazine describing the case of Fran DeBlasio, a woman of 36 who sought assistance and can now read and write at junior high school level. I commend her for her spirit, her courage, and her determination. I also wish to acknowledge the fine work of the Literacy Volunteers of New York City, who have helped Fran and hundreds of others in our city as well. The text of the article follows:

By the time I reached junior high school I could read a little, but not very much. Whenever I was asked to read aloud in class, I felt terrible. I was afraid and nervous. I tried to tell myself, "Fran, you're smart. You have something up there." But I was confused and didn't know where to turn. My parents had separated when I was young and my mother supported me and my two brothers by working as a cleaning lady. She was a traditional Italian woman who always told us how important it was to get a good education. But even after she went to my school to try to find out why I was having problems, nothing changed.

I was going to public school in a working-class neighborhood in Manhattan. When I had to take written tests, I scribbled down some answers. I almost always flunked, but they still passed me on to the next grade anyway. When I told my teachers I was scared I wouldn't be able to keep up, they all gave me the same story: "Go home this summer and study hard on your vacation. If you work hard, you'll do better next year." But the impression I really had was they thought I was just too stupid to learn and would drop out sooner or later anyway. It's as if everyone just wanted to pass the buck and get rid of me as quickly as possible. No one ever tried to give me any special help with my reading and there weren't any experts at the school who knew how to teach people who didn't catch on right away. They just made me feel it was all my fault—that I didn't try hard enough. Meanwhile, I felt rejected and alone. Very alone. I get so angry when I think about that now.

Even though I had never been a discipline problem, in the seventh grade they put me in a class for kids who were troublemakers or wise guys. It was total chaos. All day, the teacher yelled at the students and they yelled back. It was no good for learning.

High school was worse. I went to an all-girl school where a lot of the kids were tough. Fights broke out almost every day. I was too frightened to use the john because girls had been attacked there, sometimes sexually attacked by other girls. When I turned 17, I couldn't take it anymore and quit. I figured, "What's the difference? I'm not learning anything anyway."

After quitting school, I didn't know what to do. Babysitting was one of the few jobs I could handle. I also worked at an amusement park in New Jersey taking tickets for kiddie rides. Once I went to apply for a city job. I didn't understand most of the application, so I asked to take it home. But she said I had to fill it out there. I said, "Never mind. I don't want this job anyway," and ran out. I didn't want to be a bum, but I was very afraid of being rejected.

Trying to get a driver's license was impossible because I knew I couldn't pass the written test. Even simple street directions were a problem because I was not able to read signs. At the same time, I was ashamed to tell my friends I couldn't read, so I bluffed a lot. I memorized landmarks in order to get around. Since I couldn't understand the menus at restaurants, I learned to be a good actress. I asked my friends, "What are you having? What looks good?" Sometimes at parties, people wanted to play games like Scrabble and I had to fake a headache. When people talked about the books they were reading—maybe a best-seller—I'd say, "I read sports books," because sports was one of the few subjects I could talk about.

By the time I was 25, my reading had improved slightly from studying the sports pages of the newspaper. Then a friend helped me fill out an application to work in the mail distribution department of a bank and—I couldn't believe it—I got the job. I had a tough time at first, learning to tell the difference between hundreds of different names. But my boss was very helpful. I learned to do the job well and began to feel much better about myself.

In June 1985, after ten years on the job, I was offered a promotion to assistant supervisor, but I was terrified because the new position involved a lot of paperwork. Luckily, a friend told me about Literacy Volunteers and arranged for me to meet with Barbara Greenfield, one of the coordinators of the program. When I told Barbara about my fears of taking on the new position, she volunteered to tutor me during her own free time. I was stunned that someone would go out of her way to help me like that. When I walked out of her office, I felt born again.

Within a few months, I joined a small reading group which meets for two-hour sessions three times a week. When I first began, I would read a passage 25 times and not know what it meant. Or I would get hung up on one word for a half hour without getting the sense of a whole sentence. But during one session a few weeks later, one of my tutors asked me questions about something I read and I suddenly realized I was giving her the answers. She said, "Fran, you understand!" I said, "Holy Christ! This is me. I can read."

The tutors also encouraged me to write. At first I had trouble putting down a single sentence, but before long I was writing stories and even poetry. I particularly like to write about my family. At a special meeting of my reading group one night, I recited a story I had written on my birthday about my mother, who died three years ago. When I finished everyone had tears in their eyes. I've written other pieces about my grandfather, who is 90 years old and lives with me. When he was in the hospital for a stroke three months ago, I sat with him every day and wrote about my feelings.

Things that once seemed impossible are now fun. I've read books about George Washington and Babe Ruth. I'm studying for my high school equivalency exam and my driver's license test. I recently went to see an opera and was able to read an English translation of the story that they projected above the stage. Wow, that made me feel good! Even watching TV is different. Now I can read the ads. I understand street signs, menus, all those things. It's like a great burden has been lifted off my back.

Recently, I've confessed to my friends about the problem I always had reading. One very close friend I used to play softball with moved to Florida several years ago and kept writing to me. She didn't know I couldn't write back, so she called me one time to ask why she hadn't received any letters from me. I said, "Oh, I'm just not very good about writing." I was ashamed to tell her the whole truth, so I had a friend write a letter for me. A few months ago, I wrote her a letter in my own handwriting and explained my problem. I told her how much I was learning and how exciting it was to finally be able to read. She wrote back and said, "I'm very proud of you. Very proud. I'm glad you told me." She understood.

THE NORTHERN NEW MEXICO LAND GRANT BILL

HON. BILL RICHARDSON

OF NEW MEXICO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 7, 1986

Mr. RICHARDSON. Mr. Speaker, today I am introducing a bill to address a longstanding controversy in the Third Congressional District of New Mexico—the status of ownership of land grant lands. Originally granted by Spain and Mexico to Hispanic settlers in territories which later became part of the United States, these land grants to individuals and communities were the backbone of social and economic life in Hispanic northern New Mexico. Hispanic land tenure in this region was characterized by some private agricultural landholding constrained by various collective conditions, combined with communal pasturage and woodlands. Once this territory was taken over by the United States, this pattern of communal ownership and use made the Hispanic of northern New Mexico an easy target for land-hungry speculators, businessmen, and lawyers. Actions taken on title to these lands over the course of the past several centuries has had adverse consequences for the local Hispanics which continue to this day.

There have been a number of times in the history of the land grants when grantees have been the subject of unscrupulous activities by opportunistic attorneys and even the U.S. Government, in efforts to gain title to the land grant lands. Unfortunately, to the detriment of the local Hispanic communities in my district, these unscrupulous efforts have been all too successful. When the areas first came under the jurisdiction of the United States, for example, there was a scramble for the most promising lands. The swift rise in land values encouraged a number of dishonest schemes, including fabricated claims, forged focuments and professional witnesses, who, for a fee, would swear to anything. More recently, questionable land grant land acquisition by the Forest Service during the first part of this century has placed further limitations on the al-

ready strapped Hispanic residents of northern New Mexico.

The loss of the land grant lands has, in effect, destroyed the small-scale agricultural and economic base of northern New Mexico. People who once relied on access to communal lands for ranching, farming, and timbering have been deprived of their livelihoods. Destruction of the land grant way of life threatens the very fabric of Hispanic culture in northern New Mexico.

The land grant heirs have serious questions about the ways in which the lands have passed from the original grantees to present-day owners. Allegations of fraud and skullduggery abound. The Congress, over the past century, has made several attempts at resolving land grant disputes in the region. Unfortunately, most of these attempts have resulted in the further erosion of the local Hispanic land base in northern New Mexico, as bureaucrats and "businessmen" schemed to obtain the lands for their own benefit. Land grant heirs are now frequently without land and without any economic base. They cannot even afford to have the legal history of the land grants examined to ascertain their rights to the land.

The bill I am introducing today directs the Attorney General to conduct a 2-year study into the legal history of the Spanish and Mexican land grants in northern New Mexico. This study is to examine the chain of title of ownership, as well as to investigate the conditions under which the lands were transferred, including investigating possible fraud. At the end of the 2-year period, the Attorney General is to report back to the Congress on the results of this study. Further congressional action could then be based on this report.

I believe that investigating the legal history of land grant ownership is an important step toward resolving this situation. The land grant heirs need to know clearly their rights to the land as they fight for their economic future with agencies such as the U.S. Forest Service. Until these disputes are resolved and clear legal title is determined, the small-scale agricultural people of northern New Mexico will not be able to reestablish their economic base through timbering, ranching, and farming. The residents of northern New Mexico deserve to have access to the lands which can be determined to be legally theirs. This bill will help them to determine their rights to the land grant lands. I hope that this bill is given serious and prompt consideration by my colleagues. Thank you.

JAMES T. LEWIS TO RECEIVE NORTHERN VIRGINIA COMMUNITY FOUNDATION'S HIGHEST AWARD

HON. FRANK R. WOLF

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 7, 1986

Mr. WOLF. Mr. Speaker, on October 25, 1986, the Northern Virginia Community Foundation [NVCF] will present its Founder's Award to James T. Lewis of McLean, VA, at its annual dinner.

My colleague from northern Virginia, Representative STAN PARRIS, joins me today in recognizing the achievements of Mr. Lewis and saluting the Northern Virginia Community Foundation in its work for the betterment of northern Virginia. The NVCF is a community, tax-exempt organization established in 1978 by a group of northern Virginia citizens. The foundation's funds are used to support arts, education, health care, youth oriented programs, and civic improvements for the benefit of citizens living and working in northern Virginia.

The Founder's Award, NVCF's most prestigious award, is given annually for outstanding community service and dedication to the betterment of northern Virginia and to promote awareness of the significance of individual action in improving the quality of life for all persons in the community.

This year's recipient, James T. Lewis, is the chairman of the board and president of James T. Lewis Enterprises, Ltd., a major commercial construction firm, and is a founding partner of the law firm, Lewis, Mitchell & Moore. Lewis has served the northern Virginia community through numerous civic programs including the International Children's Festival and Gala, the RACE Against MS and the American Heart Association's "Cardiac Arrest."

His current community positions include vice president and board member of the Tysons Transportation Association [Tytran], an organization dedicated to the improvement of transportation in Tysons Corner; a director of the Fairfax County Council of the Arts; president of the McLean Citizens Foundation; chairman of the Community Development Bureau of the Greater Washington Board of Trade; and member of the Fairfax County Chamber of Commerce.

With his strong personal influence for good in the northern Virginia community, James T. Lewis is a deserving recipient of the 1986 Founder's Award and Representative PARRIS and I offer our congratulations on behalf of the citizens of northern Virginia.

GILMAN SUPPORTS FARM CREDIT ACT AMENDMENTS

HON. BENJAMIN A. GILMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 7, 1986

Mr. GILMAN. Mr. Speaker, I rise in strong support of H.R. 5635, the Farm Credit Act Amendments of 1986. As a cosponsor of the original legislation, I would like to commend the chairman of the Subcommittee on Conservation, Credit, and Rural Development, the gentleman from Tennessee [Mr. JONES], and its ranking minority member, the gentleman from Missouri [Mr. COLEMAN], for the leadership they have provided in bringing this important measure before us.

The largest lender to agriculture in this country is the private, cooperatively owned Farm Credit System [FCS]. Unfortunately, the FCS is facing a bleak financial outlook. Last year, the FCS lost $2.7 billion, the largest loss ever recorded for a financial institution. During the first 6 months of 1986, it lost another $968 million. In addition to these huge losses, the FCS also holds over $7.5 billion in nonaccrual loans out of a total of $61.5 billion in outstanding loans.

We all know that U.S. agriculture is suffering from 5 years of continuing depressed commodity prices and eroding farmland values. The consequences are obvious and potentially devastating. The FCS financial viability is in jeopardy unless we in Congress act promptly and responsibly.

H.R. 5635 is a bipartisan measure designed to alleviate the immediate pressures on the FCS and its farmer, rancher and cooperative borrowers, and give the FCS and its regulator, the Farm Credit Administration, the tools necessary to work out these critical problems over an extended period of time. This measure provides that FCS banks could, subject to approval by the FCA, reduce the cost of their borrowed money, without affecting returns to holders of System bonds, by steps including refinancing long-term debt on which they are currently paying high interest rates or capitalizing their excess interest costs. The costs involved could be amortized by System banks and paid over a period of up to 20 years. H.R. 5635 also allows FCS institutions to amortize over a period of up to 20 years the unusual loan losses they have suffered in recent years, subject to FCA approval. Finally, this bill permits FCS institutions, subject to FCA approval, to determine interest rates charged to their borrowers in order to keep the System competitive with other private agricultural lenders.

Mr. Speaker, I believe it is imperative that we act to preserve the FCS as a stable and affordable source of agricultural credit. My own farm credit district, the Springfield district, is one of the financially soundest of the districts, and they have endorsed this well-constructed legislation, as have all the others. I would also like to point out to my colleagues that this bill accomplishes its goals at no cost at all to taxpayers. Accordingly, I urge my colleagues to help preserve the Farm Credit System and assist our farmers by supporting H.R. 5635, the Farm Credit Act Amendments of 1986.

L.J. "LUD" ANDOLSEK: PUBLIC SERVANT

HON. ROBERT H. MICHEL

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 7, 1986

Mr. MICHEL. Mr. Speaker, on December 31, L.J. "Lud" Andolsek completes his final term as president of the National Association of Retired Federal Employees [NARFE]. Unlike the U.S. Civil Service Commission where Lud served for 14 years under four Presidents, NARFE has a two-term limit of 2 years each on its presidency. Even so, he has been president for an unprecedented 5 years, having put in a year filling the unexpired term of the late Michael C. Nave who retired in 1981. Lud was named by the executive board to fill that vacancy.

At that time he was National Secretary of NARFE, a position to which he was elected at

the 16th National Convention of NARFE in Albuquerque, NM, late in 1980.

In his 6 years with NARFE, the membership has grown from 400,000 to 500,000, most of which is active at the grassroots of all 50 States plus Puerto Rico, Guam, Panama, and the Philippine Islands.

Lud's career in public service actually started 50 years ago on January 2, 1936, back in Minnesota when he gave up his job as hockey coach at St. Cloud State Teacher's College to join the fledgling National Youth Administration [NYA] as a project supervisor. He rose quickly as NYA district director, State field representative, and finally area director.

After military service in World War II, Lud eventually moved on to Washington, DC in January 1951 as administrative assistant to our former colleague John A. Blatnik representing the 8th District of Minnesota in the U.S. Congress.

In April 1963, he accepted appointment as one of the three U.S. Civil Service Commissioners after the Senate had confirmed his nomination by John F. Kennedy. He served as Vice Chairman under Kennedy and under his successor, President Lyndon Johnson. President Nixon reappointed Lud to a second term in May 1969, and he was reappointed to a third term by President Gerald Ford in June 1975.

Among the many cherished citations he has received during his long career are the Distinguished Alumni Award from St. Cloud University in 1973, the VFW Gold Medal of Merit, and the AMVETS Silver Helmet as the Civil Servant of the Year in 1966.

Lud has been married for 41 years to the former Regina A. Burnett, who served in the U.S. Army as a nurse and was retired as a first lieutenant. They have one daughter, Dr. Kathryn Andolsek of Durham, North Carolina, and a grandson, Brendon, who addresses grandpa as a pa.

We salute a fine gentleman and a great public servant on this golden anniversary of his devoted labors.

H.R. 3653, PRICE-ANDERSON AMENDMENTS ACT OF 1986

HON. MORRIS K. UDALL

OF ARIZONA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 7, 1986

Mr. UDALL. Mr. Speaker, yesterday I introduced the Price-Anderson Amendments Act of 1986, which will revise and extend the liability and indemnification provisions governing commercial nuclear powerplants, nuclear research programs, and civilian nuclear activities conducted on behalf of the Federal Government by private contractors.

I introduced similar legislation, H.R. 3653, nearly a year ago. The Subcommittee on Energy and the Environment and the full Committee on Interior and Insular Affairs spent the better part of 7 months considering and amending H.R. 3653 before reporting it favorably in May. In August, the Committee on Energy and Commerce and the Committee on Science and Technology, to which H.R. 3653 was sequentially referred, also favorably reported the bill. Since that time my colleagues on these three committees and I have worked long and hard to resolve the differences between the versions of H.R. 3653 reported by the three committees. Last week, Senator STAFFORD and Senator MCCLURE, the chairmen of the two Senate committees with jurisdiction over the Price-Anderson Act, took part also in these discussions.

We came very close to resolving the differences between the three House and two Senate committees last week. Only one or two major issues remained.

Mr. Speaker, the bill I introduced yesterday is the culmination of the many weeks of discussions between the committees. I cannot claim it resolves all the issues inherent in this complex legislation to everyone's satisfaction; it does not. But it takes the compromise bill developed by the three House committees and adds to it some, but not all, of the changes sought by the Senate committees. In my judgment, it is a fair and reasonable bill which merits bipartisan support in both Chambers.

The original Price-Anderson Act was enacted almost 30 years ago. It has not kept pace with the times. If there were a nuclear accident at a Federal nuclear facility under the current law, the public could only count on about $500 million in compensation. If there were a nuclear accident at a commercial nuclear powerplant under the current law, the public could only count on about $665 million in compensation.

The bill I introduced would increase the amount of assured compensation for both nuclear powerplant accidents and Government contractor accidents almost tenfold, to about $6.5 billion. In addition, the bill would provide a strong commitment that the Federal Government will provide full and prompt compensation to the public for amounts exceeding that limit. Many Members wanted much higher liability limits or even unlimited liability. Other Members argued just as strenuously for much lower amounts. The $6.5 billion limit is a compromise, but a fair and reasonable one that has earned our support.

If Congress fails to act, plants covered under the current law would continue to be covered, but only at the current compensation levels. Future nuclear powerplants, Government contractors, or universities would not be eligible to receive coverage after August 1, 1987.

Mr. Speaker, although we did not work out all of our differences, the members of all three House committees have invested considerable time and effort in this legislation. This compromise bill fairly resolves the complex issues inherent in this area. It occupies the middle ground between the contending forces on these issues and is one which I can support wholeheartedly. With these comments, I ask the support of the House for this bill which I will recommend that the Rules Committee make in order for consideration as original text of H.R. 3653 for purpose of limited amendment to resolve those remaining issues.

I include a brief summary of the bill in the RECORD:

SUMMARY OF COMPROMISE PRICE-ANDERSON BILL

1. Primary Layer of Financial Protection.—Utilities are required to maintain as much insurance as is commercially available—currently $160 million.

2. Secondary Layer of Financial Protection.—The standard deferred premium is raised from $5 million under current law to $63 million (but no more than $10 million per year).

The NRC is authorized to establish maximum aggregate deferred premiums that may be charged any licensee in one year (to prevent undue hardship to utilities based upon factors such as multiple reactors, impact on ratepayers, impact on cash flow, and reactor shutdown.) Any amounts over the annual maximum would be required to be paid in subsequent years, with interest.

3. Aggregate Liability for Power Plants.—About $6.5 billion ($160 million first layer, plus $63 million times 101 plants in the second layer). This amount will increase as additional plants are licensed.

4. Inflation Adjustment.—The NRC is required to review the impact of inflation every 5 years and to recommend the appropriate adjustment to the Congress. No adjustment would take effect unless enacted by the Congress.

5. NRC Borrowing Authority.—NRC is authorized to borrow funds to pay claims if claims emerge at a rate that exceeds payments from deferred premiums or if necessary to guarantee defaulted premiums. Borrowing is subject to appropriations. In the case of funds borrowed to pay defaulted premiums which can not be recovered from the defaulting utility, the funds shall be repaid from the Treasury.

6. Third Layer of Financial Protection.—(a) Whenever damages are likely to exceed the aggregate limitation on liability, the President is required to submit to the Congress one or more compensation plans which individually or collectively provide for full, equitable, and efficient compensation for all valid claims. Congress would determine what constitutes "full" compensation.

(b) The Congress is committed to taking whatever action it determines necessary to provide for full and prompt compensation to compensate valid claims exceeding the aggregate limitation on liability.

(c) Upon enactment of the bill, the President is required to establish a commission on catastrophic nuclear accidents to study the appropriate means for fully compensating victims of a catastrophic accident that exceeds the amount of aggregate liability and to report appropriate recommendations to the Congress within two years.

7. Aggregate Liability for Other NRC Licensees.—Current law is preserved for NRC licensees other than large power reactors.

Nonprofit educational institutions will continue to be eligible for federal indemnities in excess of $250,000, up to $500 million. Liability will continue to be limited to $500 million.

8. Aggregate Liability for DOE Contractors.—The liability of all DOE contractors (waste and non-waste) is tied to the maximum aggregate liability for commercial power plants—about $6.5 billion with 101 commerical reactors licensed. This amount will increase as new commercial reactors are licensed but will not decrease as commercial reactors are decommissioned.

9. Additional Assurance of Full Compensation for Waste Contractors.—The aggregate

liability for DOE contractors involved in waste activities would be limited initially to about $6.5 billion. However, if Congress does not enact a compensation plan providing full and prompt compensation within one year after the President submits a plan, then the $6.5 billion limitation would be waived. Congress would determine what constitutes "full and prompt" compensation. The result would be unlimited liability, but only if Congress has failed to provide full compensation through a compensation plan. This scheme would apply only to waste accidents.

10. Indemnification of DOE Contractors.—DOE is required to indemnify all contractors to the full extent of the contractors' liability.

11. Source of Funds for Waste Accidents.—DOE shall pay up to $6.5 billion out of the Nuclear Waste Fund to compensate claims arising out of a nuclear waste accident involving waste activities under the Nuclear Waste Policy Act. Compensation for all other waste accidents would be paid out of the Treasury.

12. Suits Against the United States.—Suits would be permitted against the United States under the Price-Anderson Act only where the claim arises from the physical handling of nuclear waste by a DOE employee. In these cases, DOE would have the same status as a DOE contractor. All other suits against the Government must be brought under the Federal Tort Claims Act.

13. Waiver of Sovereign Immunity.—Waiver of sovereign immunity for nuclear incidents arising from nuclear waste activities would be treated the same as such waivers for extraordinary nuclear occurrences.

14. Litigation Costs.—Reasonable litigation costs would be paid out of insurance, deferred premium, and indemnity funds, but only under court supervision, and only if the court determines that such costs are reasonable and equitable and that the party applying for payment has not attempted to unreasonably delay the prompt settlement or adjudication of the claims.

15. Length of Extension.—The NRC and DOE's authority to enter into indemnity agreements with their licensees and contractors, respectively, would be extended for 10 years.

16. Statute of Limitations.—Suit need only be instituted within 3 years from the date the claimant first knew, or reasonably could have known, of the injury.

17. Illegal Diversion.—Current law is preserved. (Sabotage at a licensed facility or on an intended transportation route is covered; accidents arising from nuclear material stolen and diverted from a facility or intended transportation route are not.)

18. Precautionary Evacuations.—Price-Anderson coverage extended to liability resulting from precautionary evacuations, including reasonable costs incurred by state and local governments.

19. Punitive Damages.—Courts would be barred from awarding punitive damages where the Federal Government would have to pay. This is consistent with the Federal Tort Claims Act's prohibition against punitive damages against the Government. Current law on punitive damage awards against commercial licensees is preserved.

20. Federal Jurisdiction.—Consolidates all claims arising out of any nuclear incident, not just extraordinary nuclear occurrences, in Federal court.

21. Caseload Management Panel.—The federal court in which Price-Anderson claims are consolidated may appoint a special caseload management panel to assist in managing cases.

22. Sale-leaseback Agreements.—Clarifies that licensee-lessees, not passive investor-lessors are liable for payment of Price-Anderson assessments.

23. Effective Date.—The provisions of the Act establishing a presidential commission on catastrophic accidents and providing for consolidation of claims would be effective upon enactment. All other provisions would take effect on August 1, 1987.

SOURCES OF THE DEFICIT

HON. AUGUSTUS F. HAWKINS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 7, 1986

Mr. HAWKINS. Mr. Speaker, the size of the Federal deficit continues to be a source of concern to many Members of Congress and to the citizens of the United States. In spite of this fact, and the news that the Federal deficit for fiscal year 1986 will probably top $230 billion, the Congress went ahead and approved a tax reform package that will be revenue neutral over the next 5 years. Congress will undoubtedly face some very difficult spending decisions next year because of this course of action. Much will be made of the cost of spending on social programs and the contributions they make toward this mounting deficit. Fortunately, there are sources of information available which help to debunk the myth that spending on programs which benefit the people of our great Nation contributes in any significant way to this massive deficit. One of those sources comes from Interfaith Action for Social Justice, a coalition of 25 Protestant, Jewish, Roman Catholic, and ecumenical agencies which analyzes public policy issues, offers recommendations and prepares and distributes materials. One of their recent publications which I found useful was a report entitled, "Hard Choices: Federal Budget Priorities in the Gramm-Rudman-Hollings Era." The report was authored by Bob Greenstein of the Center on Budget and Policy Priorities on behalf of Interfaith Action for Economic Justice. The following is an excerpt from the report:

SOURCES OF THE DEFICIT

The large deficits we face are relatively recent. During the 1960's, the average deficit was only about $5 billion a year. During the 1970's, the highest point the deficit ever reached was $74 billion in 1976. In 1980, just before the Reagan Administration took office, the deficit again stood at $74 billion.

By 1982, however, the deficit had jumped to $128 billion, and by 1983 it hit $208 billion. From 1981 to 1983, the deficit nearly tripled.

Since 1983, the deficit has remained in the $200 billion range, reaching a record high of $212 billion last year.

WHY HAS THIS OCCURRED?

Although attempts are made periodically to blame these large increases in the deficit on the policies of the 1960's and 1970's, such efforts do not withstand scrutiny. Analyses by the Congressional Budget Office (CBO), the House Budget Committee, and Martin Feldstein, former chairman of President Reagan's Council of Economic Advisors, all come to the same conclusion—the big increase in the deficit since 1981 is due to the large military buildup of recent years and to the extensive tax cuts enacted in 1981. Domestic programs have not contributed to the increase in the deficit during this period; rather, they have restrained the growth in the deficit, because they have been reduced.

The CBO analysis, issued in February 1985, found that if the budget and tax policies in effect when the Reagan Administration took office had been continued rather than changed, the deficit last year would have been about $80 billion rather than $212 billion. CBO found that approximately $130 billion of the FY 1985 deficit—or well over half—was due to policy changes since 1981.

CBO then examined these policy changes in an effort to pinpoint the specific causes of the deficit increase. The finding: all of the deficit increase was due to defense spending increases and tax cuts. Cuts in social programs served to reduce the deficit, but these cuts were more than offset by the tax and defense policy changes. Specifically, CBO found that, for fiscal year 1985, the defense and tax policies (along with increases in interest payments caused by these policies) added $167 billion to the federal deficit, while the domestic cuts reduced the deficit by $38 billion. The net result was a deficit $129 billion larger than it would have been without the budget, tax, and defense policies of the past several years.

Similar conclusions were reached by Martin Feldstein in an analysis presented to a gathering of economists in late 1983. Feldstein observed that domestic spending changes had helped reduce the deficit, as CBO later noted. The large increases in the deficit during the 1980's, he explained, were due to increases in defense spending, the tax cuts, and higher interest payments on the debt (which in turn were largely caused by the increase in the national debt resulting from the tax and defense policies).

Finally, a February 1986 House Budget committee analysis provides current data to nail down this point. The Budget Committee found that the deficit grew from 2.6% of the U.S. Gross National Product (GNP) in FY 1981 to a projected 5% of GN.P. in FY 1986. The deficit thus increased by an amount nearly equal to 2.4% of the G.N.P., or some $98 billion.

During this period, military spending rose from 5.3% of G.N.P. in 1981 to 6.4% in 1986—a 1.1 percentage point increase. According to the Budget Committee analysis, the military buildup has, by itself been responsible for nearly half of the deficit increase (some $48 billion).

A still larger increase in the deficit came from the tax cuts of recent years. Federal tax revenues equaled 20.1% of G.N.P. in 1981 but have declined to 18.6% of G.N.P. in 1986. This drop in revenues, in an amount equal to 1.5% of G.N.P., has added $64 billion to the deficit, the Budget Committee reported.

Higher interest payments, resulting from the increase in the national debt caused by the defense and tax policies, added a further $41 billion to the deficit, the Budget Committee's figures show. Interest payments on the debt rose from 2.3% of G.N.P. in 1981 to 3.3% in 1986.

Thus the military and tax policies (along with the associated increase in interest payments) added a total of $153 billion to the federal deficit for FY 1986.

Offsetting about a third of this increase were the cuts made in domestic programs.

Domestic spending fell from 15.1% of G.N.P. in 1981 to 13.8% in 1986, thereby reducing the deficit by some $55 billion. As a result, the net increase in the deficit for FY 1986 came to $98 billion, the Budget Committee found.

IMMIGRATION REFORM

HON. BILL LOWERY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 7, 1986

Mr. LOWERY of California. Mr. Speaker, immigration reform is long overdue as any of my constituents can attest to. This Nation's border has more holes in it than a 10,000 pound slab of swiss cheese! The situation has reached crisis proportions and the citizens in my district of San Diego are demanding action.

The Immigration and Naturalization Service estimates that 4 million illegal aliens will cross our border in this year alone. As my colleague from San Diego, Mr. PACKARD, noted, this equates to an additional eight congressional districts. That's eight new districts in 1 year to represent this massive influx of people.

The situation in San Diego and other border communities is critical. Crime, drug use, and the need for emergency health services have all increased due to the illegal alien invasion. Mr. Speaker, it is an invasion and this Congress, this year, should address this most important issue.

To my "inland" colleagues who represent districts not as dramatically impacted as border districts, I caution you that this invasion will affect your district, and sooner than you may anticipate.

This House has failed in two attempts to adopt a rule for H.R. 3810. Many believe that immigration reform is dead for yet another Congress. This need not be so. I urge the leadership of this House to work with all interested parties in drafting a fair rule that will allow the House to work its will on a number of critical issues associated with immigration reform.

Mr. Speaker, the San Diego Union editorial, dated October 2, 1986, provides an excellent commentary on the magnitude of this problem and deplorable lack of congressional action on this issue. I ask unanimous consent to include the entirety of the Union editorial at this point in the RECORD.

Mr. Speaker, hope springs eternal, and in the immortal words of Yogi Berra: "It ain't over till it's over." There is still time for this Congress to pass meaningful immigration reform legislation. I urge this body to act now on this most pressing problem facing our Nation.

[From the San Diego Union, Oct. 2, 1986]

LAST CHANCE?

This nation's borders are as porous as the proverbial sieve.

As many as 12 million illegal immigrants now live in the United States, and their ranks increase daily with the relentless procession of those who evade apprehension by the undermanned U.S. Border Patrol. Many of them live in unspeakable squalor, lurking in the shadows of a society content to exploit cheap labor. Meanwhile, most Americans agree that something must be done to stem the rising tide of illegal immigration.

Why then, is the 99th Congress about to adjourn without enacting a comprehensive immigration-reform bill? For the same reason that it has failed to do so during the last four years—the lawmakers simply lack the political will to get the job done.

Consider, for example, the most recent retreat on Capitol Hill. The Simpson-Rodino Omnibus Immigration Act was sidetracked last Friday, when the House rejected the rule setting the terms for debate on the proposal. Thus the parliamentary squabble leaves the legislation in limbo as the lawmakers turn to more pressing matters such as passing a huge appropriations bill in order to keep printing those government checks.

Does this mean that immigration reform is doomed for yet a fourth time in as many years? Almost, but not quite. Rep. Peter Rodino, D-N.J., says the bill is dead because he has no plans to revive it. On the other hand, Sen. Alan Simpson, R-Wyo., is pondering whether to attach the Senate-approved bill to a House measure pending in the Senate.

Such a move makes sense. To begin with, it would prod the House to consider the bill anew. Which isn't to say that the Democratic-controlled House will accept the Senate's guest-worker provision allowing 350,000 temporary workers to harvest perishable crops. But continued dialogue could produce a House/Senate conference committee where the respective differences could be composed.

The immigration-reform bill could also be saved if the House Rules Committee would revise its debate rules. The lawmakers could then reconsider the measure and reject Rep. Dan Lungren's farm-labor alternative along with the flawed Schumer-Berman amendment that would grant legal residence—and ultimately citizenship—to undocumented immigrants who had worked on farms last year for at least 60 days. Minus these controversial provisions, the legislation might be approved by the full House and prompt a conference committee to reconcile the differences with the Senate version.

In either event, the legislation most likely to be approved at this late date is a scaled-down version that contains only employer sanctions and legalization provisions. Granted, the growers would object to the absence of a guest-worker program. It should be noted, however, that the proposed employer sanctions only affect future hires. Moreover, many of the undocumented workers already here might be eligible to stay, under a new law. Finally, the Senate bill streamlines the process whereby growers may recruit guest workers if U.S. labor is unavailable to pick crops.

We prefer the inclusion of Sen. Pete Wilson's guest-worker provision, which would ensure a ready supply of workers to pick this country's perishable crops. Nevertheless, our overriding concern at this point is that Congress pass a law that begins to address the immigration problem. Otherwise there is going to be a backlash in this country that could result in American troops being stationed along the U.S.-Mexico border.

Unfortunately such an extreme seems inevitable so long as Congress refuses to reform an immigration policy that is inadequate to deal with a problem clearly out of control.

FOUR VETERANS FAST TO SAVE LIVES IN NICARAGUA

HON. BARBARA BOXER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 7, 1986

Mrs. BOXER. Mr. Speaker, most of my colleagues are probably aware that for the past few weeks four Vietnam veterans have been fasting to draw attention to our policy of promoting war in Nicaragua. You may have seen them each afternoon on the east steps of the Capitol.

I am submitting their statement for the RECORD, so that everyone will know their purpose.

I believe that the courage of these men is truly an inspiration for all of us who strive for peace, not only in Central America, but all over the world.

I hope that all of my colleagues will take a moment to read and ponder their statement.

WE RISK DEATH TO SAVE LIVES

We are four veterans of war who are fasting open-endedly as our expression of a deeply felt desire to do everything and anything we can—even giving up our lives—to stop the war with Nicaragua.

Three of us have traveled to Nicaragua and intimately felt the compassion and deep spiritual beauty of the Nicaraguan people—and the pain, the brutality, and the indiscriminate terrorism inflicted upon them by the U.S.-sponsored contras. All of us recognize the hypocrisy of our government's explanation of the "situation" there.

We arrived at our commitment to fast independently of one another. But, in each of us, that choice was born out of our direct experiences with war. As veterans we will not remain silent while so many people, indifferent to the suffering of others, lead us into another, and another, and another Vietnam. We identify with the suffering our government inflicts upon the Nicaraguan people and our fast is simply an offering of our lives in the hope of saving their lives.

By our slow starvation, we want to make visible the effects of our government's policy on an entire nation. However, like the people of Nicaragua, our hearts and souls are overflowing with a love for life.

Fasting is our prayer, it is hope—without assurances. We will offer our lives when the time comes, if we feel this can help to bring about an end to the war.

We've come to the realization that fasting is a mysterious, day-by-day process, and our decision must remain a private one, between ourselves and our God with whom we seek guidance.

We are praying for a change in the hearts and minds of those who act in complicity with our government's policies of death. We are praying for a new commitment for peace, which might escalate into an unstoppable, non-violent resistance to this illegal, immoral, and insane war. We are praying to strengthen, to guide and thank all of you who are already working to stop this war.

Ducan Murphy, Fayetteville, AR, veteran: WW II, began: 9/15/86; Brian Willson, Chelsea, VT, veteran: Vietnam, began: 9/15/86; Charlie Liteky, San Francisco, CA, veteran: Vietnam, began: 9/1/86; George Mizo, Boston, MA, veteran: Vietnam, began: 9/1/86.

SENATE—*Wednesday, October 8, 1986*

(Legislative day of Monday, October 6, 1986)

The Senate met at 9 a.m., on the expiration of the recess, and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray.

We know that God works in everything for good to them that love Him, to those who are called according to His purpose.—Romans 8:28.

Gracious God, perfect in mercy, justice, truth, and love, move upon the minds and hearts of the Senators this day that Your will may be done in this place as it is in Heaven. Time passes relentlessly—inexorably—much business remains to be done—compounded by the painful burden of the impeachment trial. Grant to the Senate, loving God, a special dispensation of grace and wisdom that the rough places may be made smooth—the crooked places straight—and the joy of the Lord fill this place. To the glory of Your matchless name. Amen.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The distinguished and able majority leader, Senator ROBERT DOLE of Kansas is recognized.

Mr. DOLE. Mr. President, I thank the Presiding Officer, the distinguished senior Senator from South Carolina, Senator THURMOND.

SCHEDULE

Mr. DOLE. Mr. President, under the standing order, the leaders will have 10 minutes each. We will have routine morning business up until 9:30. At 9:30, the Senate will resume the impeachment proceedings in closed session. The question is on the remaining motion of the respondent. That motion is limited to 2 hours. Therefore, a vote could occur by 11:30 a.m. on the remaining motion or it could be divided into different parts and there could be more than one vote.

Following the vote on the motion, the Senate can be expected to either resume legislative session or to continue in executive session to discuss the Articles of Impeachment. Votes can be expected during Wednesday's session.

I know we have a lot of noncontroversial matters we hope to take care of today. I do not anticipate a late session this evening, but I will be in touch with the distinguished minority leader and Members on each side as soon as we know.

(Mr. GORTON assumed the chair.)

SENATOR CHARLES "MAC" MATHIAS OF MARYLAND

Mr. DOLE. Mr. President, on Monday I began a series of tributes to retiring Senators. Today, as the Senate continues with the first impeachment trial in 50 years, I want to offer my special thanks to one of them—"MAC" MATHIAS—who has carried out his duties as chairman of the Impeachment Trial Committee with diligence and dignity.

This was a difficult task to assume, but "MAC" has more than risen to the occasion. And I am certain, that when the Senate has completed action on this impeachment trial, it will have done so in the most appropriate and correct way. And this is due, in large measure, to the hard work of Senator MATHIAS.

Chairing this special committee, however, is only one of many tasks "MAC" MATHIAS has successfully tackled during his 18 years in the Senate. And I came to the Senate at the same time as Senator MATHIAS and I know him very well. I am certainly going to miss his wisdom and his work in the U.S. Senate.

Senator MATHIAS has been a strong and relentless voice on behalf of civil rights for all our citizens. Having worked with "MAC" on the Voting Rights Act and many other civil rights issues, I know how committed he is to creating a nation blind to differences in race, color, and creed.

As chairman of the Judiciary Committee's Patents Subcommittee, he has introduced and pushed through many bills ensuring that the patent laws keep pace with emerging technologies.

And although the name "MAC" MATHIAS may not be familiar to the millions of Americans who are now watching the Senate on television, without his leadership as chairman of the Senate Rules Committee, the screen would probably be blank. "MAC" was one of the chief architects and guiding forces behind the rules changes that have allowed us to broadcast floor proceedings.

So, Mr. President, I again want to express my gratitude to "MAC" for the fine work he has done as chairman of the Impeachment Trial Committee. This is only the last in a long series of personal achievements in the Senate he can turn to with pride. At this point I ask unanimous consent to have printed in the RECORD an article from the October 6 New York Times on Senator MATHIAS called Still a Distinctive Voice, But Soon An Echo.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the New York Times, Oct. 6, 1986]

STILL A DISTINCTIVE VOICE, BUT SOON AN ECHO

(By Linda Greenhouse)

WASHINGTON, Oct. 5.—These were to have been quiet months for Mac Mathias, a time for reflection and for winding down a public career after four terms in the House of Representatives and three in the Senate.

But the winding down will have to wait. Senator Charles McC. Mathias Jr., Republican of Maryland, has been operating at full speed and fully in character.

He played a key role in stripping a death penalty provision from the Senate's anti-drug bill, leading a group of moderate Republicans who threatened a filibuster if the leadership did not drop the death penalty and other provisions limiting the rights of criminal defendants.

As chairman of the special Senate committee overseeing the impeachment trial of Federal District Judge Harry E. Claiborne, he presided as the committee spent seven days taking evidence to present to the full Senate. Preparing for the first Senate impeachment trial in 50 years proved to be virtually a full-time job for weeks.

A CENTER OF GRAVITY

In the midst of the impeachment hearings, Senator Mathias broke with his party and voted against the confirmation of William H. Rehnquist as Chief Justice.

In short, Senator Mathias is doing everything he ever did, except run again. He has been a center of gravity for the beleaguered but never quite vanquished band of liberal Republicans, and his retirement at 64 years of age means the loss of one of the Senate's distinctive voices.

He has paid a price for that distinction. It cost him a leadership role when the Republicans captured the Senate in 1980. He was in line to become chairman of the Judiciary Committee, a cherished goal. But the leadership permitted Senator Strom Thurmond, the South Carolina Republican, to move over from the Armed Services Committee, claim the Judiciary chairmanship, and place that crucial committee safely in conservative hands.

Senator Mathias never spoke publicly about his frustration. But his mild manner conceals a taste and talent for political infighting. He has had a last laugh, of sorts, in the closing weeks of the session this year, effectively killing a much-heralded bill sponsored by Senator Thurmond to restrict lobbying by former Government officials.

An interview the other day found Senator Mathias in a mellow frame of mind, ready

to take the long view of the current plight of liberal Republicans.

"When you see how the parties have shifted around over the years, you realize that everything is always in a state of flux," he said. "The Midwest used to be the center of Republican liberalism. Now it's the other way around. I won't be here when the tide comes in again, but it will, I'm convinced."

But with the tide out, there has been a lot of work to do. He said he has been "almost continually engaged in defensive projects" protecting civil rights and liberties against conservative initiatives. Much of this work, he said, has been of the "low profile" sort, such as using the Senate rules to keep threatening legislation from the floor. "You've got to keep a constant tension, or things could slip back pretty fast," he said.

The year since he announced that he would not seek a fourth term has been "less different than I thought it would be," he said. Freed from having to worry about the voters' approval, he found that his freedom was nonetheless not complete. "The constraints that do operate are just about as strong, when you get down to it," he said. He defined those constraints as "worrying about the susceptibilities of people, about not being abrasive or reckless."

But if Senator Mathias has not wanted to offend people, he has not minded annoying them now and then in the course of speaking his mind. He created a small furor with a 1981 article in Foreign Affairs Magazine, "Ethnic Groups and Foreign Policy," in which he wrote that lobbying by ethnic groups including the "potent Israel lobby" was sometimes "harmful to the public interest."

He spent three weeks traveling in the Middle East earlier this year. An article he wrote this summer in Foreign Policy Magazine, calling for renewed United States attention to the region, drew considerably less notice, perhaps because of his impending retirement.

In the article, as with his votes, he supported arms sales to moderate Arab states and called for increased pressure on Israel to reverse its settlement policy in the West Bank.

"Washington has never linked aid to Israel with Israeli cooperation," he wrote, "but it is contrary to historical experience for one country indefinitely to help finance policies carried out by another country that conflict so fundamentally with the donor's values and policies."

He also said: "If the United States favors self-determination in Manila and Managua, it can hardly oppose it in Jericho."

In the interview, Senator Mathias said, "I'd be happier if I could say I was wrong" about his conclusion that the United States was rapidly squandering any opportunity to influence the course of events in the Middle East.

He played a major role in developing the Senate's South African sanctions bill, pushing successfully in the Foreign Relations Committee for broader sanctions than the chairman, Richard G. Lugar, originally proposed. He was not successful, however, in his effort this year to cut off covert aid to the rebels in Angola.

HE'S A GREAT FIGURE

After he retires, Senator Mathias, in addition to practicing law, will teach at the School of Advanced International Studies at Johns Hopkins University.

The range of the Senator's interests were represented at a testimonial dinner this summer, held to endow the new Charles McC. Mathias Scholarship Fund at the school. Those who toasted the guest of honor included Sir Oliver Wright, then the British Ambassador, and Benjamin L. Hooks, executive director of the National Association for the Advancement of Colored People, who declared: "Thank God for this Senator."

"He's a great figure, the best Republican friend civil rights has had," Joseph Rauh, a veteran Washington civil rights lawyer, said in an interview. However, Senator Mathias angered Mr. Rauh and some other civil rights leaders by not announcing his opposition to Justice Rehnquist's confirmation until hours before the Senate vote—too late, in Mr. Rauh's view, to be helpful.

"I'm aware of how they feel," Senator Mathias said, adding that he exercised "my independent judgment" on a question that, for him, was a close one. "The question was not should Rehnquist be on the Court, after all," he said. "The question was should he change chairs."

POW/MIA FLAG RESOLUTION

Mr. DOLE. Mr. President, on Friday September 19, during "POW/MIA Recognition Day" ceremonies on Capitol Hill, I pledged that we would never forget the sacrifices of our brave soldiers unaccounted for and still missing. I also assured the families of our POW's and MIA's that we would never rest until we have a full accounting of all our missing servicemen. In recognition of the courage and dedication of these special families to keep the POW/MIA issue alive and atop national priority, today I am introducing legislation to display the National League of Families POW/MIA flag in the Capitol rotunda. This symbol will serve to further raise the American consciousness on this critical national issue, and my legislation will mandate that the National League of Families flag remain on display until a satisfactory accounting of our POW's and MIA's has been made.

Mr. President, the display of this flag is the least we can do for our servicemen and their families.

I hope that we could take action on this resolution before the Congress adjourns this year. I invite my colleagues to join in this small but very significant effort to indicate our concern for those who are still unaccounted for.

RECOGNITION OF THE ACTING MINORITY LEADER

The PRESIDING OFFICER. The acting Democratic leader is recognized.

Mr. PROXMIRE. Mr. President, I ask unanimous consent that the time of the minority leader be reserved for his use later today.

The PRESIDING OFFICER. Without objection, it is so ordered.

SENATOR CHARLES "MAC" MATHIAS

Mr. PROXMIRE. Mr. President, I wish to join the majority leader in paying tribute to "MAC" MATHIAS. "MAC" MATHIAS is really a marvelous human being as well as a great Senator. I served with him very closely when he was on the Appropriations Committee. He left the committee a couple of years ago, but we served together on the committee as the chairman and ranking member. I will never forget his compassion, his courage, and his marvelous, unusual sense of humor. He is a fine person. We are going to miss him very, very much in the Senate, but I am sure he is going to have very many productive years in the future.

ARMS CONTROL: THE ESSENTIAL STEP TO BUDGET REDUCTION

Mr. PROXMIRE. Mr. President, let us keep one simple fact about arms control clearly in mind. Arms control saves money. It saves big money. It can literally save tens of billions maybe even a hundred billion dollars a year. In a few years it can save a trillion dollars. No one who is sincerely interested in holding down the Federal deficit can ignore the plain truth that the present unlimited, go-for-broke arms race represents a colossal burden on the American people. No one can ignore the fact that military spending has been increasing over the past 5 years far more rapidly than any other phase of Government spending. And with the vastly expensive "star wars" coming on, it is obvious to anyone with eyes to see and a brain to think that the increase in military spending is just beginning.

So what do we do? Obviously, national security is the first responsibility of the Federal Government. We do not live in a Sunday school world. We cannot confuse Mikhail Gorbachev with Mother Teresa. It is a sad but critical fact of life that in this nuclear world we need a credible nuclear deterrent. What does that mean? That means we need the capability to retaliate if the Soviet Union should hit this country with a pre-emptive strike. There must be no doubt in the minds of Soviet leaders that if they hit this country with a nuclear strike our nuclear retaliation would utterly destroy the Soviet Union as an organized society. That deterrent capability is costly.

We also need the conventional military arsenal, the ships, the tanks, the planes, and the trained and ready personnel to defend against any conventinal attack without resort to nuclear weapons. This too takes many billions of dollars under any circumstances.

Now consider the cost of the present arms race. The superpowers face each other. Each side bristles with multibillion dollar military arsenals. If the United States develops advanced nu-

clear weapons, the Soviets spend whatever is necessary to match us. If the Soviets move ahead with their MIRV'd intercontinental ballistic missiles, so do we regardless of cost. We build up our Navy at immense cost. They respond by building up their Navy at vast expense. The superpowers do not try to match each other weapon-for-weapon. The superpowers match each other in overall military capability. In this system and military initiative by the Soviets means a corresponding, off setting military initiative by the United States. And vice versa. The cost is enormous.

Is national security advanced by this mindless, live-of-its-own, arms race? No way. The level of potential violence is immensely increased. The potential catastrophe becomes ever worse. The arms race makes war more, not less likely.

This Senator has rarely heard arms control discussed as a money saving strategy. It should be. Consider achieving our national security objectives by winning an arms race on the one hand with using arms control to achieve them on the other. For instance, how can we most surely insure the credibility of our nuclear deterrent? Should we constantly vie with the Soviets to build ever more powerful, more accurate, more penetrating and far more costly nuclear weapons, or should we negotiate a verifiable, mutual arms control agreement establishing the current standoff that has convinced both Secretary Gorbachev and President Reagan that a nuclear war must never be fought because it can never be won.

Some would argue that from the standpoint of national security we should forget arms control. On the basis of the documented record most Americans and most Members of the Congress would disagree with that. But with respect to the cost of the alternatives, no one can disagree. The option of relying on an arms race is immensely costly. The option of relying on arms control will certainly cost far less. And no one can dispute it.

Exactly the same principle applies to a biological warfare arms race as compared to an arms control agreement. It would apply to an antisatellite arms race compared to an arms control agreement to outlaw biological warfare. Could we apply the principle to the number of military personnel deployed on both sides by the Soviet Union and the United States? Why not? Of course, we could. How about naval ships? And tanks? And planes? The same principle applies throughout.

This is not to say that both superpowers will not need substantial military forces. They will. It is certainly not to say that the arms control agreements will be easy to negotiate. They will not. No matter how carefully arms control agreements are negotiated, they are not fool proof. But in every case arms control saves money and in this technological, military world that means an immense proportion of the economic resources of both sides. Here is a situation where arms control agreements clearly and conspicuously serve the great interest of both the United States and the Soviet Union. Arms control very likely can enhance the national security of both countries. It almost certainly can advance the cause of world peace. None of this is certain. What is certain is that arms control will cost less, billions less.

Arms control can free enormous resources of both sides for positive and constructive purposes. Is it any wonder that Marshall Shulman, this country's most respected and eminent expert on the Soviet Union, has said that in the 40 years he has been studying the U.S.S.R. he has never seen a time when the Soviet Union is so conspicuously anxious to negotiate arms control agreements.

MYTH OF THE DAY

Mr. PROXMIRE. Mr. President, my myth of the day is that our current unemployment rate of 7 percent indicates that labor markets are strong and that the job situation is at least fairly good for the remaining 93 percent of the labor force.

The fact is that by merely looking at the unemployment level of 8.2 million one misses substantial and unsettling weaknesses in our national job markets.

One of the major distortions is that people who are working part-time as a result of their being unable to find full-time work are still counted as being employed. There are approximately 5.5 million Americans who are working part-time for economic reasons. At this month's Joint Economic Committee hearing on the unemployment situation, Dr. Janet L. Norwood, the Commissioner of the Bureau of Labor Statistics, commented that the "figure is a very serious one. It is extraordinarily high and it has not declined in recent months."

It is also important to note that the involuntary part-time work force grew 60 percent between 1979 and 1985, from 3.5 million to 5.5 million.

Another large group of workers who are suffering because of current labor market conditions but are not counted as unemployed are the 1.2 million discouraged workers. These are individuals who want to work but did not look for work because they believed that they could not find any.

The number of discouraged workers has been essentially unchanged for more than a year.

Another group of American workers whose problems in the job market are not reflected in the unemployment statistics are those workers who lose their jobs and after a period of unemployment find new positions but at a lower salary or wage. While overall national statistics are not available, a Bureau of Labor Statistics' study indicated that a substantial proportion of those job-losers surveyed were forced to take lower-paying jobs. Judging by this study, it would be fair to say that during the first half of this decade, several million Americans were forced to trade down because of the lack of job opportunities at their previous pay level.

In addition, part of the reason for the growing retirement rate for men under 65 years of age may well be accepting a pension rather than a demotion or even outright dismissal.

When we include the growth of all these groups ranging from involuntary part-time workers to forced retirees, it is clear that the unemployment rate all by itself is a less reliable indicator of current labor market conditions than it was in the past and that current labor market conditions are far weaker than indicated by that single statistic.

I yield the floor.

ROUTINE MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order there will now be a period for the transaction of routine morning business not to extend beyond the hour of 9:30 a.m. with statements therein limited to 5 minutes each.

The Senator from Montana.

Mr. BAUCUS. Mr. President, I thank the Chair.

PROMINENT PERSONS ON AGRICULTURE

Mr. BAUCUS. Mr. President, we all know that U.S. agriculture is teetering on the brink of a deep recession. In fact it is so precarious that many in America wonder what the solution is going to be. We have not been in the situation where the dire straits faced in agriculture have been as great as they are today.

For example, last year 1 out of 2 farmers in the United States had a negative income. And the value of farmland in America has now dropped in many parts of America by as much as 50 percent.

At the same time, farmers plunged into debt. Total agriculture debt reached $212 billion in 1985; it is now larger than the Latin American debt. And 50 percent of these ag loans are in danger of default.

Many banks in the Farm Belt are nearly as desperate as farmers. A bad year on the farm will again mean the collapse of many local banks.

And this depression in turn threatens the existence of entire farm communities. In many parts of America, the loss of farms and banks means that stores, companies, and entire communities disappear.

This economic crisis on the farm not only hurts agriculture States like my own, but also the entire Nation. In short, the farm crisis is a national crisis.

The point I want to make today is that this national crisis is really an international crisis.

Mr. President, we cannot settle the farm crisis alone. We can only solve it by working with other countries.

We must recognize that we have been thrust into an international agricultural economy—and we cannot turn back the clock.

Exports now account for $1 out of every $3 earned by the U.S. farmer; by 2000, that figure will reach 1 in 2.

What is basic is that we are dependent on global agricultural trade.

But, today the conditions for global agricultural trade are horrible. The chief problem is massive global oversupply in grains.

We now have enough wheat in storage to provide every man, woman, and child on Earth with seven loaves of bread. If all the corn held in storage were put in a bin surrounding the Washington, DC Mall, it would reach 155 feet above the 555-foot Washington Monument.

Agricultural trade is a multilateral problem and a multilateral solution is the best way to address the underlying problem.

To help address the problems being encountered in the world market for agricultural commodities, I am calling today for the formation of a prominent persons group on international agricultural trade.

This group would consist of elected officials, experienced policymakers, and other prominent persons from nations with a significant interest in global agricultural trade.

This group should explore several problems.

First, the group could complement the ongoing GATT negotiations by addressing how the countries of the world can discipline subsidies and trade barriers that distort free agricultural trade.

Second, the group could address how the countries of the world can resolve problems not addressed in the new GATT round. For example, the group should address how to increase distribution of agricultural products to needy areas of the world, how to increase third world purchasing power, and otherwise increase world demand.

Third, the group could address ways to help the farm economies of participating nations adjust to greater discipline in subsidies. The adjustment to freer trade will not be easy for many countries. All countries owe it to their farmers to create the conditions for a painless adjustment.

Ben Franklin, addressing his fellow patriots, once said, "Gentlemen, we must all hang together, or surely we will all hang separately."

Mr. President, that phrase may capture the situation we face in international agricultural trade today. We can continue to engage in a subsidy war that makes farmers increasingly dependent on Government supports and drains our national budgets, or we can develop coordinated solutions that promise to reduce the vast global oversupply that threatens us all.

We need to begin exploring multilateral solutions that offer a long-term solution to the problem.

The development of a prominent persons group on agricultural trade would be a first, good step in that direction.

DIAL-A-PORN

Mr. DECONCINI. Mr. President, I rise to discuss an unfortunate incident which raises questions about some of the practices of this body. Recently, a Member of this body inserted a number of legal briefs into the CONGRESSIONAL RECORD in order to document his position in opposition to dial-a-porn. In so doing, material was inserted into the RECORD which disgraces the Senate.

I oppose dial-a-porn services and have cosponsored S. 1090 which seeks to provide greater controls on these "services." I vehemently oppose pornography and have cosponsored several bills—S. 554, S. 1742, and S. 2398—which seek to constitutionally protect society, and especially children, from the filth of pornographers. However, inserting legal briefs which contained explicit material simply panders to the exploiters and undermines the anti-pornography cause. I understand my colleague has indicated that the insertion of this material was an error and he was unaware of its contents. Nevertheless, he believes its publication may help focus people's attention on the problem. I am sorry, Mr. President, there is no way on Earth that the publication of this lewd material can help anybody. And its presence in a federally printed document is an embarrassment.

I have been assured that this material will be expunged from the permanent RECORD. Unfortunately that RECORD will not come out for 5 years. In the meantime 22,000 copies of this federally sanctified filth is in libraries across this Nation for our schoolchildren to read. Children, being as curious as they are, will no doubt read this particular edition of the CONGRESSIONAL RECORD.

I hope that this accident can serve as a lesson to my colleagues that we must exercise vigilance in reviewing the documents we insert in the RECORD. Pandering to the pornographers is inexcusable and that is what we have done.

DR. JOHN BRADEMAS' REMARKS ON U.S. FOREIGN POLICY

Mr. DECONCINI. Mr. President, 2 months ago Dr. John Brademas, president of New York University, traveled to Salzburg, Austria to deliver an address on "Congressional Politics, Special Interests and Foreign Policy." As you may know, John Brademas served in Congress for 22 years before his selection as president of NYU. He is well known and will be long remembered as a champion of educational programs, a fighter for the rights of the handicapped, and for the pivotal role he played in the Turkish arms embargo in 1974.

John Brademas selected this topic because it was one of his major preoccupations during his tenure in Congress. His remarks reflect his customary expertise, well-reasoned insight, and respect for the constitutional and institutional powers of Congress. I believe that my colleagues will benefit from reading this speech and I ask unanimous consent that it be printed at this point in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

CONGRESSIONAL POLITICS, SPECIAL INTERESTS AND FOREIGN POLICY

(A lecture by Dr. John Brademas, president, New York University, at the Salzburg seminar)

There are two reasons I am pleased to have been invited to take part in this seminar.

Beyond the splendors of Salzburg, the Seminar offers me an opportunity to renew many acquaintances: Dick Gardner, James Reston, Lloyd Cutler, Warren Christopher, Brad Morse—all distinguished figures in American life whose thoughts and actions have enriched and enlivened political discourse in our country and, indeed, the world.

Second, I am glad to have the chance to talk about a subject that was a major preoccupation of mine during my service in Congress—the role of Congress in the making and conduct of American foreign policy.

My remarks will, in fact, be largely based on my experience as a Member for twenty-two years of the United States House of Representatives.

This morning I shall comment on the powers of Congress in foreign affairs and how those powers have been used over the last decade and a half.

I must note for the non-Americans here that the resurgence of Congress as an active player in American foreign policy in recent years has been accompanied by a spirited debate over the legitimacy of that role. And one component of that debate is the issue of "special interest," including so-called "ethnic group", involvement, in foreign policy making. I shall address this particular topic in the concluding part of my talk.

THE CONTEXT: THE AMERICAN POLITICAL SYSTEM

Let me begin by stepping back, as it were, to look at the American political system as a whole. For basic to an understanding of the place of Congress in foreign affairs is the recognition of three fundamental ingredients.

First, ours is a separation-of-powers Constitution. Second, our political parties are decentralized and relatively undisciplined. To these two traditional dimensions must now be added a third—a change in recent years in the nature of Congress itself, especially in the House of Representatives.

Let me turn to the first of these characteristics. People know the phrase, "separation of powers," from the American Constitution, but too few—even among knowledgeable observers—truly understand its meaning. Some seem to think that a President asks and Congress gives.

But this is not what our Founding Fathers intended, and Congress has in recent years reaffirmed the principle of separation of powers by reasserting its place as a co-equal branch in the system.

AN INVITATION TO STRUGGLE

Here I must observe that tensions between and among our three branches of government are built into the very structure of the American system. In respect of the subject of today's discussion, I remind you of the words of a distinguished historian, Edwin S. Corwin. The Constitution of the United States, Corwin said nearly forty years ago, is "an invitation to struggle for the privilege of directing American foreign policy."

Here let me also remind you that the Constitution designates the President Commander in Chief of the armed forces, specifies that he shall receive ambassadors, and empowers him, with the advice and consent of the Senate, to make treaties and to appoint ambassadors. These are, in effect, the only powers the Constitution assigns to the President that relate specifically to foreign affairs.

What about Congress?

Congress is empowered by the Constitution to provide and maintain a navy, declare war, define and punish piracies and felonies committed on the high seas and offenses against the laws of nations, and to appropriate money.

In short, the Constitution gives ultimate power over foreign commerce, military preparedness and war to Congress, permits one-third plus one members of the Senate to prevent treaties from taking effect, and requires Senate approval of ambassadors before they can take office.

The role of Congress in foreign policy is then hardly a junior one.

I must mention as well still another complicating factor in the relationship between the two branches: Presidents and Congresses are elected separately.

The President, each of 100 Senators and each of 435 Representatives has his own mandate and his own responsibility to the people. Here I note that none of the three—President, Senator or Representative—is elected by the same constituency, holds office for the same period of time or has responsibility identical with either of the others.

Moreover, unlike a parliamentary system, our chief executive is not chosen from among the legislative majority and, indeed, need not even belong to the same party. This is, of course, the situation today, with a Republican in the White House, Republicans in control of the Senate and Democrats, the House of Representatives.

WEAK POLITICAL PARTIES

Let me turn to the second factor—in addition to the separation of powers—important in distinguishing the American political system from that of most other democratic nations. Discussing an active role for "Congress" assumes a Congress acting with a single mind. But this is often far from the case, chiefly because in the United States, our political parties are not highly disciplined.

On the other hand, our two major parties have made possible durable coalitions of diverse but broadly compatible interests.

Moreover, perhaps because of their internal diversity, American political parties have historically served as instruments for developing consensus across a wide spectrum of issues. In a country so large in size and with such a variety of differences of region, religion, race, ethic origin and economic interest, this is a crucial role. Political scientists tell us that party identification no longer means much for many Americans. In recent years there has been a decline in the number of those who identify with or have strong commitments to one of the two parties as well as a growth in the proportion of those who switch their party loyalty as they shift their vote for different candidates. Meanwhile, in Congress, although the level of party affiliation remains high, the degree of party discipline does not.

As a former House Majority Whip, I speak on this point with authority and not as the scribes. In the House of Representatives, the majority party has a fairly elaborate organization today of over fifty whips—all Democratic Members of Congress—simply to find out how their Democratic colleagues intend to vote—and, should they prove indecisive, recalcitrant, hostile or in some cases, negotiable, seek to persuade them to support their party's leadership.

There are many reasons for the decline of party in America.

The increased availability of television has enabled members of Congress to bypass the traditional local party organizations and go directly to the people for support.

The sheer complexity of the United States contributes to the difficulty of holding members of Congress of the same party together on issues, both foreign and domestic.

As the institution of party recedes from its primacy in our political system, it is more and more being supplanted by special interest groups. And more and more of these concentrate on a single issue to the exclusion of all others—abortion, for example, or gun control or school busing—and attack or support a congressional candidate not on the basis of his or her overall record but of fealty to the issue group's position on its overriding preoccupation.

Companion to this development has been the proliferation of Political Action Committees, or PACs, that raise and distribute substantial sums of campaign money to candidates for the U.S. House and Senate, thereby further weakening the pull of party loyalty on matters both foreign and domestic.

THE NEW CONGRESS

There is yet a third factor that has altered the functioning of contemporary American politics and foreign policymaking. I refer to the new composition and new style of the post-Vietnam, post-Watergate Congress

The members of today's House and Senate are significantly different from those who served there when I first went to Congress twenty-seven years ago.

The newer members—and I speak more knowledgeably of the House—are young, intelligent, well-educated, very hard working, and they are skeptical.

Neither the White House nor the House Leadership can prevail by edict or command. To convince Members today, it is necessary to rely on reason and persuasion.

But there are still other factors that characterize today's House of Representatives and that contribute to its already fragmented nature. The decline in the rule of seniority, under which the Member of the majority party with most years of service on a committee automatically and without challenge became chairman, is an illustration. The corresponding rise in influence of subcommittee chairman—and I was one for ten years and so know whereof I speak—means that authority is still more widely dispersed in the House.

The decline of party and the more diffuse power structure of the House make all the more complicated the task not only of the President but of the Leaders of the House in putting together majorities on any legislation.

THE DECLINE AND RESURGENCE OF CONGRESS

Now here I think it essential to stress to a European audience a fundamental difference between a parliamentary democracy and the American way of governing.

Most of you have been reared in a parliamentary culture and, therefore, instinctively think of the executive branch as "the Government." That's not the way Americans think.

We are accustomed to a "split screen" view, so to speak, of our political system, with the President, or the Administration—notice that we do not even say "the Government"!—occupying one part of the screen and Congress, another.

One or another branch has at various points in our history occupied the limelight but at no time has the other completely left the stage.

The result of our constitutional arrangements and political practices has been a process, nearly two centuries long, of conflict and accommodation, dispute and detente, between these two institutions. In fact, one branch of our government invades the sphere of the other so often that we do not have a complete separation of powers at all but rather, as Richard Neustadt of Harvard puts it, "separated institutions sharing powers."

The alternating currents of power that flow between the White House and Capitol Hill have, throughout our history, charged and, on occasion, electrified, the conduct of foreign policy.

The early days of the Republic offer ample evidence of presidential initiative in foreign affairs. From Jefferson to Lincoln, one finds examples of secret negotiations with foreign powers, covert plans for annexation of territories, dispatches of vessels and troops—all without prior congressional approval.

Following the Civil War, the United States entered a period characterized by Woodrow Wilson as "congressional government," but the Spanish American War, as national emergencies often do, brought the President to the fore again.

The height of congressional assertiveness in foreign affairs, in this century at least, was reached in the interregnum between the two World Wars when Congress,

through neutrality legislation, sought to keep the U.S. on an isolationist path.

Pearl Harbor shattered forever the view of an America free of "entangling alliances" and altered once more the relationship between the branches. The postwar period was one of rare collaboration, with Congress prepared to accept presidential leadership in building a new international order, and the President equally ready to acknowledge the imperative of congressional participation.

But power slipped precipitously away from Congress after 1950, for in that year, without any congressional declaration of war, President Truman ordered American forces into combat in Korea. For the next two decades—as Vietnam replaced Korea—Congress displayed little determination to defend its prerogatives and, in effect, delegated its war-making power to the executive.

If the war in Southeast Asia represented the nadir of congressional influence over foreign policy, it also marked the beginning of the end of presidential carte blanche. For the people of the United States, and their elected representatives in Congress, came to realize that the supposed advantages inherent in the conduct of foreign policy had not prevented but had, in fact, contributed to a long and tragic involvement in Vietnam and then Laos and Cambodia.

"The Federalist Papers" listed several characteristics of the Presidency as "especially advantageous . . . to the conduct of diplomacy." They were: "unity, secrecy of decision, dispatch, superior sources of information."

During the Presidencies of both Lyndon Johnson and Richard Nixon, each of these traits was dangerously distorted.

The "secrecy" of executive branch decision-making enabled the Vietnam War to be entered into by stealth and carried on by repeated deception of both Congress and the American people.

The "unity" of executive branch action was purchased at the cost of shutting out those who held divergent views.

The "superior sources of information" uniquely available to the executive proved time and again during the course of the war to be incorrect, self-deluding or deliberately misleading.

And the "dispatch" with which the executive sought to operate meant, in its most dangerous days, under Nixon, an effective claim of unlimited authority to employ the armed forces, without congressional approval or even consultation.

Had the lessons of Vietnam not been enough to stimulate a resurgent Congress, we soon learned that the retreat of the Nixon White House behind an ever-widening cloak of secrecy and pretensions of "national security" permitted a "Watergate." This wide range of abuses in which the legitimate organs of government were subverted to personal, partisan and criminal ends spurred Congress to still more vigorous scrutiny of presidential decision-making and a renewed commitment to a far more active role for the legislative branch.

Congress bestirred itself to resume its responsibilities as a serious partner in the constitutional order with a series of actions, including:

The War Powers Resolution of 1973, which restrains the power of the President unilaterally to commit American combat troops abroad;

The establishment of congressional surveillance over the covert activities of the CIA;

The application of the legislative veto to arms sales;

The termination of existing presidential emergency authority and establishment of congressional review for future declarations of emergency; and

The Budget Act of 1974 to restrict presidential impoundment of monies appropriated by Congress and to set up a congressional budget mechanism to determine spending priorities.

THE ISSUE OF PRESIDENTIAL LEADERSHIP

Now I have noted several facets of the American political system—separated powers, weak parties, a new configuration of forces in Congress—that shape the involvement of the first branch of government in foreign affairs and help set the parameters of the struggle between the legislature and the executive in determining and carrying out U.S. foreign policy.

And I have at least indicated how, after Vietnam and Watergate, Congress has reasserted its authority in vigorous fashion.

You will not be surprised to learn that this revitalization of Capitol Hill has spurred sharp criticism. One of the most thoughtful of these critics is my friend and fellow Democrat, Lloyd Cutler, who spoke to us yesterday.

In an important article in the journal, Foreign Affairs, in the Fall of 1980, Mr. Cutler asserted, accurately, that the very nature of the American political system—checks and balances, the decline of party, the rise of single-issue groups and all of the other factors I have been discussing—have meant that Presidents have been unable, in his words, to do what Prime Ministers in parliamentary democracies do—"form a Government."

Mr. Cutler, drawing especially on his experience as Counsel to President Carter in 1979 and '80, expresses again and again in his essay deep frustration that American Presidents have been repeatedly prevented from, in his view, "carrying out their overall program, foreign and domestic."

Allow me, speaking as a child of Congress and not of the executive branch, to tell you, however, how delighted I am that this has been the case and to express my fervent hope that it will continue to be!

For I do not want American Presidents to be able to "carry out their overall programs"!

Nor, moreover, do I think the American people do. Otherwise, how can one explain how the American electorate can choose a Republican President and at the same time a House of Representatives controlled by the Democratic Party.

The fact is, I hope he will allow me to remark, that within months of the publication of Mr. Cutler's essay, President Reagan, despite the Democratic majority in the House, was able to win approval from both bodies of Congress of his two principal policy objectives—a huge cut in income taxes and a huge increase in defense spending.

That we have today a Federal deficit of over $200 billion a year is in large part the consequence of the fact that during the first two years of his presidency, Congress was not more obstructionist of Mr. Reagan's policies.

RECENT EVENTS REVIEWED

Because we meet in August of 1986, in the fifth year of the Reagan presidency, I invite you to look at a few examples of the role of Congress in foreign policy during the Reagan years—and in doing so, to ask yourself if you would want the President's program to prevail in Congress . . . or even to be voted on!

Take the Philippines. President Reagan was obviously a staunch advocate of Marcos, with Vice President Bush visiting Manila to embrace him as a champion of "democracy."

It was not the President but Democrats and Republicans in Congress, sparked by Congressman Stephen Solarz of Brooklyn, who signalled support of Mrs. Aquino and prepared the way for Marcos' ouster. Ronald Reagan was dragged kicking and screaming into endorsing a policy initiated on Capitol Hill. Which course would you have preferred?

Or take South Africa. Following the passage in June by the House of a tough economic sanctions bill, President Reagan spoke last month of what he called the "folly" of sanctions and won warm praise from the Botha government. Members of the president's own party in the Senate sharply attacked Mr. Reagan's position and have urged him to change it. Whose view do you believe makes more sense in terms even of the American national interest—Reagan's or that of Congress?

Over the past year, Congress has twice thwarted the Reagan plea to send $100 million in military aid to the Contras in Nicaragua and in mid-July, the President won a victory on this issue in the House by the narrowest of margins. The Senate must still act and several Senators, of both parties, are threatening a filibuster. Are you really satisfied that Mr. Reagan is correct in his Central American policy and that congressional skepticism is misplaced?

Mr. Reagan's Star Wars plan for a space-based defense system has generated widespread criticism on the part of both Republicans and Democrats on Capitol Hill, and his demands for still more money for the so-called Strategic Defense Initiative have provoked serious bipartisan opposition there.

Another arena in which the Reagan stance has produced hostile reaction on the part of Members of Congress of both parties is, of course, arms control. Mr. Cutler says he wants a President to have his "overall program" considered by Congress. Putting aside the question of whether assuring a vote is a good idea or not, just what is Ronald Reagan's program on controlling of nuclear arms? After five and a half years, it is still difficult to know.

And as everyone here is aware, it has not been Congress that has blocked an arms agreement with the Soviet Union. President Reagan has simply not been able to get his own Administration in order. It is no secret that Secretary of State Shultz and Secretary of Defense Weinberger are at odds on this crucial issue in American foreign policy, as on others.

Another illustration of a major problem on which Congress has been taking the lead and overriding Administration objections—in my view, fortunately—is the organization of decision-making for defense policy. Last May, the Senate overwhelming approved legislation designed by two of the Senate's most respected members, Republican Barry Goldwater and Democrat Sam Nunn, to reorganize the Pentagon. A key feature, which was opposed by Secretary Weinberger, of the legislation aims at reducing inter-service conflict by strengthening the Chairman of the Joint Chiefs of Staff.

Now I cite these instances of congressional differences with the Reagan Administration in foreign policymaking in order to under-

score two simple facts that are too often overlooked by those who would unshackle what they call the "fragile" presidency from limits imposed by Congress.

First, congressional involvement often produces better policies than the executive can produce on its own.

Second, congressional involvement can prevent calamitous policies.

If you ask me if I am saying that American Presidents ought not to be completely trusted, I reply, "That's right. The Founding Fathers knew what they were doing."

Let me make my point this way. If the Congress of the United States were today to behave like the House of Commons in the U.K.—enabling the executive to be sure of obtaining a vote on its overall program and, moreover, to be sure of winning approval of it—what, in the arena of foreign affairs, could we expect?

Here are a few realistic possibilities:

One, the United States would move even closer to military intervention in Central America, perhaps sending troops to Nicaragua. That fear, by the way, is exactly what the U.S. Ambassador to Honduras, recently removed from his post, expressed last month in an interview with the Washington Post.

Second, Marcos would still be in business in the Philippines and the United States would be giving still greater encouragement to Pinochet in Chile, Chun in South Korea and Botha in South Africa.

Third, U.S. defense budgets, already massive by peacetime standards, would be far larger, with hundreds of billions earmarked for Star Wars research and development.

Fourth, with President Reagan's insisting on still higher defense spending but opposing increased tax revenues, Federal deficits would rise still higher, with ominous consequences not only for the American domestic economy but for economies the world over.

Fifth, Cold War rhetoric would heat up and the prospect of serious arms control agreements with the Soviet Union would wither away.

In my judgement, one could appropriately make the following generalization about the place of Congress in foreign policy during the Reagan years. Congress, obviously not always effectively, has nonetheless insisted that Mr. Reagan's impulses to ideology be tempered by a pragmatic concern for the national interest.

In a brilliant analysis in his forthcoming book, entitled, "The Cycles of American History" Arthur Schlesinger, Jr., makes the case that Ronald Reagan has led a "boarding party of ideologues" on to the ship of American foreign policy. The hallmark of the Reagan approach has been isolationism cloaked in unilateralism.

"No Administration since the Second World War," says Schlesinger, "so systematically scorned the United Nations, defied the World Court, overrode the interest of allies, dismissed negotiations with adversaries."

The silver lining, notes Schlesinger, is that the Reagan world view is definitely not shared by the leaders of Congress, including the Republican leaders, nor broadly speaking, by American public opinion.

If, as Schlesinger would have it, Reagan's foreign policy remains a struggle between bark and bite, we may take some comfort in the fact that both Republicans and Democrats in the Congress of the United States have shown the will and capacity to pull a few teeth when necessary.

Now having shown that this Congress and this President—like most of their predecessors—have been engaged in continuous struggle over foreign policy, I want to turn to consideration of the broader question: what ought to be the place of Congress is this respect?

A ROLE FOR THE FIRST BRANCH: DIMENSIONS OF CONGRESSIONAL INFLUENCE

There are several dimensions to the legitimate exercise of legislative power in the foreign policy domain. Congress asserts itself—as it is empowered by the Constitution to do—in the international arena through: confirming or denying appointments; controlling appropriations; passing laws and approving treaties; and conducting general oversight and monitoring the executive branch in the implementation of the laws.

In the post-Vietnam era, as I have demonstrated, Congress has resumed an activist role in foreign policy and done so across a broad front of issues and using a diversity of instruments. I cite not only the advice and consent function of the Senate. Over the last decade and a half, Congress has grown increasingly adept and aggressive in voting restrictive laws and amendments; in extracting policy advantages in return for appropriations, in placing conditions on the use of money once granted and demanding period review of conditions once imposed.

These are a few major examples in addition to the ones I have already noted, the War Powers Resolution and the legislative veto on arms sales:

The Jackson-Vanik amendment in 1974, linking expanded trade with the Soviet Union to more liberal Soviet emigration policy;

The arms embargo against Turkey, of which I shall say more in a moment, following the Turkish invasion of Cyprus in 1974;

The 1974 Hughes-Ryan and 1976 Clark Amendments to strengthen congressional oversight of covert activities by the CIA; and

The 1978 Nuclear Nonproliferation Act forbidding export of nuclear materials to nations without adequate safeguards.

Now this expanded congressional role has not gone uncriticized. Some of the complaints have focused on the substance of the actions taken by Congress on a given issue—and I think such criticism is perfectly proper. For what the House of Representatives and Senate do or do not do in foreign affairs should be just as open to attack as is the President.

But other criticisms have focused on the legitimacy of a congressional role in foreign policy decisions. I trust I have made clear that the Constitution itself contemplates several responsibilities for Congress in foreign affairs. What I want rather to do is address one specific charge against Congress that springs not from constitutional but from institutional sources. Let me explain.

I speak of the assertion that government officials who are subject to the pressures of electoral politics, i.e., Senators and Representatives, who to remain in office must seek support from various constituencies, ought not to have significant influence on foreign affairs. And I speak still more particularly of the contention of some observers that among these constituencies are ethnic groups and that these groups have exercised too much influence over Congress in the shaping of our foreign policy.

Allow me to discuss with you one of the most notable recent instances of what has been called "ethnic group" involvement in foreign affairs—the action of Congress in the fall of 1974 in legislating an embargo on U.S. arms to Turkey, an action that followed the Turkish invasion in the summer of that year of the Republic of Cyprus.

THE TURKISH ARMS EMBARGO: A PERSONAL PERSPECTIVE

You will recall that on August 14, 1974, some 40,000 Turkish troops, equipped with arms supplied by the United States, invaded the island of Cyprus. Within a few days, two-fifths of that small country was occupied by Turkish military forces.

A tide of 200,000 Greek-Cypriot refugees, 40 percent of the Greek-Cypriot population, flooded southward. In addition to lacking shelter, the refugees suffered shortages of food, clothing, medicine and other necessities.

Beyond all this, the brutality of the Turks was horrifying. Reports from various sources, including the United Nations, testified to a reign of terror. Turkish troops engaged in systematic killing of civilians, rape, torture, looting and plunder.

As I have said, the Turkish military forces were equipped with weapons supplied by the United States Government. Yet under American law, no country receiving arms from the United States is permitted to use them for other than defensive purposes.

American law says, moreover, that if U.S. arms are used by a recipient nation for aggression, all further arms must be immediately terminated. The law, to reiterate, mandates a halt to further shipments.

Because the then President of the United States, Gerald Ford, and the then Secretary of State, Henry Kissinger, refused to enforce the clear requirement of American law and cut off additional arms to Turkey, several of us in Congress acted.

The position of the group with which I was identified was that the laws of our land must be enforced, and because the executive branch of our government willfully refused to do so, we organized an effort to impose an arms embargo on Turkey.

Beyond my own role, the leaders of this movement were the then Representative, now Senator, Paul Sarbanes of Maryland, and the late Benjamin Rosenthal of New York in the House, and Thomas Eagleton of Missouri in the Senate.

You should also know that I was the first native born American of Greek origin ever elected to Congress while Paul Sarbanes was the first elected to the Senate.

I am also constrained to tell you that in my own Indiana congressional district of approximately half a million constituents, I do not believe there were five hundred citizens of voting age of Greek extraction.

Moreover, although there was in those days much talk of a "Greek lobby", the truth is that there were only a handful of Americans of Greek descent in Congress at the time—5 out of 535, to be exact!

That my colleagues and I were able to win this struggle was, in my view, in large measure because of the effectiveness of our principal argument, namely our insistence that the laws of the land must be respected, even by Presidents and Secretaries of States.

You must also remember that all these events occurred only a few days and weeks following the resignation in disgrace of President Richard Nixon, in effect, for his failure to obey the law.

There was nonetheless another reason for our success in winning the Turkish arms embargo fight in 1974, and that was the support for our cause generated across the country by Americans of Greek and Armenian origin and by others.

For our position to prevail required, I have since concluded, both persuasive moral and legal arguments within Congress—which we had—and effective political advocacy outside Congress, which we also had.

Here I must make some further comments that I hope are not self-serving. Those of us, like Paul Sarbanes and John Brademas, both Members of Congress of Greek origin, took the positions we did on Cyprus and arms for Turkey not because we were Greeks but because we were Americans.

To make my point more clearly, I should tell you that both Sarbanes and I had been sharply and openly critical of the military junta that ruled Greece for seven years with, I may say, the support of Presidents of both our political parties.

I remember very well testifying before the House Foreign Affairs Committee in strong opposition to an Administration proposal to continue to send U.S. military aid to the Greek dictatorship. I also remember being much criticized by a number of Greek-American leaders because I was so vocally against U.S. arms for the land of my father's birth.

My response was—and still is—that our commitment as Americans must be to free and democratic political institutions and that we must oppose those who would suppress human liberties and impose totalitarian values. At the least, the United States should not be sending military aid to NATO member states governed by dictatorships.

So I was in opposition to the policies of two Republican Presidents—Nixon and Ford—and two Democratic Presidents—Johnson and Carter—with respect to Greece, Turkey and Cyprus.

And as we meet in August of 1986, I respectfully suggest that the results of the policies of those four Presidents with regard to those three countries have not exactly been roaring successes for the United States.

Exactly twelve years after the invasion, Cyprus remains divided, over one-third of the island occupied by Turkish troops, a source of ongoing bitterness between Greece and Turkey. In Ankara, Turkish political leaders intensify their rhetorical threats against Greece while in Athens, Prime Minister Papandreou continues to raise American hackles.

In my judgment, the U.S. national interest and that of our NATO allies would have been far better served if the course that some of us in the so-called "Greek lobby" had urged been followed.

U.S. policy in the eastern Mediterranian continues to this day, in my view, to be plagued by an unwillingness to take seriously the basic principles set forth in the Preamble to the NATO Charter, namely, ". . . to safeguard the freedom, common heritage and civilization of their peoples, founded on the principles of democracy, individual liberty and the rule of law."

Now I have spoken of the impact of Greek-Americans on foreign policy because the example I have given you is the one I know best.

Obviously, in considering the subject of ethnic group influence on foreign policy, one must think of the American Jewish community and their allies and how their activities affect what our government does and says in the Middle East.

Increasingly, too, black Americans are making their voices heard on such issues as U.S. policy in South Africa.

Hispanic Americans, I trust to no one's surprise, are giving more and more attention to actions in Washington that touch on Mexico, Cuba, Central and South America.

And not only do Members of Congress pay attention to these ethnic groups but so do Presidents—and would be Presidents.

Only last month, for example, watching television, I saw President Reagan campaigning in Florida where he praised a Republican Senator up for re-election by saluting her support of Radio Marti. That there are lots of Cuban-American voters in Florida may possibly have crossed the mind of the President's political managers!

Also last month, a New York newspaper article carried the following lead sentence: "Vice President George Bush walks through the Old City of Jerusalem and cameras whirr." The report went on to say, "Bush . . . hopes his performance on film in Israel will translate to Jewish votes back home."

You will understand, therefore, why I am not much moved by assertions that Members of Congress alone among public officials pay attention to "ethnic" considerations on foreign policy matters!

After all, as we meet in Salzburg, can anyone be astonished that Jewish Americans and many others—like me—showed such a deep interest in the election of an Austrian President and that we were almost uniformly dismayed at the result?

In genuinely free and democratic societies, every aspect of the lives and interests of people can have an impact on electoral outcomes and so on public policies. That there should be questioning and criticism of whether those interests—ethnic religious, economic, geographic, racial, sex, class—improperly affect policy is in large part what elections—and democratic government—are all about.

CONCLUSION

Let me sum up what I have tried to say.

I have spoken of how, in the American political system, a separation-of-powers Constitution, weak party arrangements and changing forces on Capitol Hill shape what Congress does in foreign policy.

I gave some examples of congressional engagement in foreign affairs during the Reagan Administration.

I then illustrated the role of ethnic groups in the making of foreign policy.

I have insisted that, whether viewed through the prism of consititutional authority or actual policy consequences, there should be no quarrel with the right of the Congress of the United States to be involved in both the design and the implementation of the foreign policy of the United States.

I conclude by identifying what I believe to be the major benefits of such congressional participation. I see four.

First, Members of Congress who are effectively consulted by the executive in the making of foreign policy can be vital in educating their constituencies. As that great American patriot, Averell Harriman, whose passing last month we mourn, once said, "No foreign policy will stick unless the American people are behind it. And unless Congress understands it, the American people aren't going to understand it."

The second benefit is this: Legislators who are consulted can often enligthen the President with respect both to the substance of the issues and the views of their own constituencies.

Third, Members who are consulted can help prevent or correct missteps of the executive branch in what is ultimately the life-or-death arena of public policy, foreign affairs. It is worth remembering that officials of the executive branch, even elected ones—and there are but two—are not always, to be as gentle about it as possible, correct in their assessments of our national interest.

And finally, Senators and Congressmen who are consulted are, as a simple matter of human nature, more likely to support the President's ultimate decision on a given issue.

Let me add only this: that at a time when some despair of the American system of government and of the role of Congress within it, *I* do not. For I believe that, given our large, restless, complex society, the American democracy will continue to flourish and that the American Congress will continue to nourish it.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

IMPEACHMENT OF JUDGE HARRY E. CLAIBORNE

COURT OF IMPEACHMENT

The PRESIDING OFFICER. Under the previous order, the hour of 9:30 a.m. having arrived, the Senate will now proceed in closed session to consider the remaining motions of the respondent.

(At 9:38 a.m., the doors of the Chamber were closed. The proceedings of the Senate were held in closed session until 12:14 p.m., at which time the following occurred:)

OPEN SESSION

(At 12:14 p.m., the doors of the Chamber were opened, and the Senate resumed open session.)

(During the closed session there was a call of the roll, Quorum No. 15.)

The respondent and his counsel were seated at the table assigned to them in the well of the Senate to the left of the Chair.

□ 1220

The VICE PRESIDENT. The Senate will be in order.

The majority leader.

The Senate will please be in order.

The majority leader.

Mr. DOLE. Mr. President, I ask unanimous consent to proceed for 1 minute.

The VICE PRESIDENT. The quorum call is in process.

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The VICE PRESIDENT. Without objection, it is so ordered.

Mr. DOLE. I renew my request.

The VICE PRESIDENT. Is there objection to the majority leader's request?

Mr. RIEGLE. We ask Members to take their seats so the majority leader can he heard.

The PRESIDING OFFICER. Without objection, the majority leader is recognized and the Senate will be in order.

Mr. DOLE. Mr. President, first I ask the motion be read.

The PRESIDING OFFICER. The clerk will read the motion.

The assistant legislative clerk read as follows:

Motion by Mr. DOLE that the Senate not hear additional witnesses in this case.

Mr. DOLE. Let me state just very briefly: It seems after all the debate we had in closed session—it was a very good debate on all sides of the issue—that we have to determine whether or not we are going to have to reopen and have a trial or not have a trial.

The only way we can do that is vote on the motion whether to hear witnesses; that is the only purpose of the motion. And I wanted to have that explanation so the Members will be aware.

Mr. LEVIN. Mr. President, will the Senator yield for a question?

Mr. DOLE. Yes.

Mr. LEVIN. Does this mean any additional witnesses?

Mr. DOLE. That is right.

The PRESIDING OFFICER. The question is on the motion, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from North Dakota [Mr. ANDREWS], the Senator from Alabama [Mr. DENTON], the Senator from Utah [Mr. GARN], the Senator from Florida [Mrs. HAWKINS], the Senator from Pennsylvania [Mr. HEINZ], the Senator from Idaho [Mr. SYMMS], and the Senator from Connecticut [Mr. WEICKER] are necessarily absent.

I further announce that, if present and voting, the Senator from Pennsylvania [Mr. HEINZ] would vote "no."

The PRESIDING OFFICER (Mr. HECHT). Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 61, nays 32, as follows:

[Rollcall Vote No. 334]

(Dole motion that the Senate not hear witnesses—Court of Impeachment—Judge H.E. Claiborne)

YEAS—61

Abdnor	Goldwater	Nickles
Armstrong	Gore	Nunn
Bentsen	Gorton	Pell
Biden	Gramm	Pressler
Boren	Grassley	Proxmire
Boschwitz	Harkin	Quayle
Bradley	Hart	Roth
Broyhill	Hollings	Rudman
Bumpers	Johnston	Sarbanes
Byrd	Kassebaum	Simon
Chafee	Kasten	Simpson
Cochran	Kennedy	Specter
Cohen	Kerry	Stafford
Danforth	Lautenberg	Stennis
Dixon	Leahy	Thurmond
Dodd	Lugar	Trible
Dole	Mathias	Wallop
Domenici	Mattingly	Wilson
Durenberger	McClure	Zorinsky
Eagleton	McConnell	
Ford	Mitchell	

NAYS—32

Baucus	Hatfield	Metzenbaum
Bingaman	Hecht	Moynihan
Burdick	Heflin	Murkowski
Chiles	Helms	Packwood
Cranston	Humphrey	Pryor
D'Amato	Inouye	Riegle
DeConcini	Laxalt	Rockefeller
Evans	Levin	Sasser
Exon	Long	Stevens
Glenn	Matsunaga	Warner
Hatch	Melcher	

NOT VOTING—7

Andrews	Hawkins	Weicker
Denton	Heinz	
Garn	Symms	

So the motion was agreed to.

□ 1240

Mr. DOLE. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

LEGISLATIVE SESSION

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate now return to legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

Thereupon at 12:39 p.m., the Senate resumed legislative session.

Mr. BYRD. Mr. President, may we have order in the Senate?

The PRESIDING OFFICER. The Senate will be in order. Would the Senators please take their chairs? The Senate is not in order.

Mr. DOLE. Mr. President, may we have order.

The PRESIDING OFFICER. The Senate is not in order. The majority leader has requested order. Will Senators please take their seats?

The majority leader.

ORDER OF PROCEDURE

Mr. DOLE. Mr. President, let me indicate to all my colleagues, nearly everyone is on the floor, that we hope to reach some agreement, but not right now, for debate in closed session on the Articles of Impeachment which would start sometime tomorrow morning, and hopefully start voting at about 2 o'clock in the afternoon. So I indicate that in case Members want to have some input with either the minority or majority leader.

For the balance of the day, we have a number of matters that we can complete this afternoon. I imagine there are 10, 15, 20 different minor pieces of legislation that we can do without rollcalls. I am advised there could be one rollcall on one, could be more than one, but I have been advised one so far that could take place. I do not see any reason for a late night session. So unless something develops either in the continuing resolution or unless the drug bill comes over here today, it may be that we would want to consider that. But as matters stand now we will be dealing with a lot of routine wrap-up type material. There could be at least one vote that I am aware.

Mr. BYRD. Mr. President, would the distinguished majority leader yield?

Mr. DOLE. I am happy to.

Mr. BYRD. Would it be possible to have the rollcall vote on the items which the distinguished majority leader alluded to fairly early in the afternoon so that once that is disposed of Senators would not be expected to have a rollcall vote?

Mr. DOLE. We will try to work that out with our colleagues. Again, it could be that the drug bill will come over. That may be subject to amendment in addition to debate if the House completes action by early afternoon.

Mr. BYRD. Mr. President, may we have order in the Senate?

The PRESIDING OFFICER. The Senate is not in order. Would Senators please take their seats?

The minority leader.

Mr. BYRD. I think it is important that all Senators have some idea as to what still lies in store for the Senate before sine die adjournment. And I am sure the distinguished majority leader is probably not in much better position than I am to outline what the situation is from the standpoint of the clock and the calendar. But I do know that the continuing resolution is still to be decided upon. There is the extension of the debt limit. The Senate passed the debt limit extension with 26 amendments, sent it over to the House, the House will be, I would assume, sending a debt limit back, a clean one and in that event, I also assume that there would be some action on the Gramm-Rudman legislation again.

There is also the drug bill which the distinguished majority leader has already mentioned. There is the reconciliation bill which has not been finalized. So there are a good many pieces of legislation still remaining. They are must legislation. They constitute "must" legislation.

I could also see some several rollcall votes involved in the debt limit that is still up ahead. Just what the drug bill will present to the Senate remains to be seen. I think what I am saying is today is Wednesday. And I cannot assure anyone on this side of the aisle nor can I assure myself that the Senate is going to complete its business this week.

I hope that is not the case. But to a considerable extent, we are now waiting on the House. The House has the debt limit in its court. The House has the continuing resolution in its court. The House has the drug bill in its court. The House has the reconciliation measure. Well, that is, I suppose,

in conference. But all of these things and next Monday is a very important religious holiday.

Having said that, I now would yield to the majority leader to see what he might have to say.

Mr. DOLE. I do not have any good news either, I say to the distinguished minority leader. I understand we have been pretty much on the floor for the past day and a half. I hear rumors from the other side of the Capitol that the Speaker has had a press conference, that the President has indicated he would not sign a CR that goes beyond Friday, midnight. The Speaker has indicated, well, if you want a lame-duck session, that is all right with me. These are all rumors. So I am going to meet with the Speaker later this afternoon. And I do not say it critically, but the House, it just happens, has some of the matters that we need to deal with.

The Appropriations Committee chairman is here. He could probably fill us in on the CR. Senator GOLDWATER has been working on the defense portion. But I would like to complete our work sometime Friday or Saturday of this week.

Mr. DIXON. Would the leader yield?

Mr. DOLE. I am happy to yield.

Mr. DIXON. May I say to the majority leader, and I think I speak for other Senators who are up for reelection this year, I have no problem with staying here, may I say, until the work is done. I am sure my friend from Indiana recognizes our obligation to do that. But a lot of us now, beginning this week, are canceling whole weeks of things, that we have made commitments about. I have no problem with that. I realize that is our obligation to do that. But I wonder whether the majority leader, and minority leader, and others might consider working straight through until we finish.

For instance, if we do not conclude by Friday rather than taking off this weekend and then coming back again next week, I am speaking only for myself, but I suspect other similarly situated Senators who are up for reelection would feel the same. I would like to get it over with and get back home on what little time I have left, and entreat the people of my State to consider just one more time poor old ALAN DIXON. [Laughter.]

Mr. DOLE. Right. I think that is a good suggestion—every one the Senator has made there. [Laughter.]

But again it may not be within our control. It may be that the House may not be able to do it. If we are going to try to do it this week, I learned around here once you come back on Monday or Tuesday of any week, you are here all week. So if we come back next Tuesday, we will be here next Saturday. It seems to me we had better try to complete action this week.

Let me yield to the Senator from Arizona.

Mr. GOLDWATER. I thank the majority leader.

I thought I might just give a report to the Senate on the situation involving the military authorization bill. Ever since the recess, we have been in daily conference with the House. As all of you know, this is a very complicated situation, not just from the military or equipment standpoint, but also and for the first time a political standpoint.

I think, Mr. President, that we have about reached the end of the road. We are going to have a final meeting of the Senate Armed Services Committee at 3 o'clock at which time we are going to have to make up our minds whether or not we can get any further with the House. If we do not, there will be no bill. If we do, there will be a bill.

I just wanted to make that report.

Mr. DOLE. I thank the Senator from Arizona.

I am prepared to yield the floor. I do not have any answers.

I am happy to yield to the Senator from Massachusetts.

Mr. KENNEDY. Mr. President, in the list of unfinished business, I would like to draw the attention of the majority leader to the martial arts bill that is supported by all of the law enforcement agencies.

□ 1250

We passed it unanimously through the Senate Judiciary Committee with Republican and Democratic support. It was virtually unanimous. I would like to get the attention of the majority leader to see if that, too, can be considered as one of the measures that perhaps can go through.

Mr. DOLE. I am advised that there are a couple of problems on this side. Let me see if I can find them.

Mr. LEAHY. Will the Senator yield for hardly a question but a suggestion?

Mr. DOLE. I yield.

Mr. LEAHY. Like Illinois, Vermont is beautiful this time of year and I do want to see the foliage and other matters. I, too, will stay here until the work is done. I also agree with the comment of the Senator from Kansas that we could come in on Tuesday to finish on Tuesday but it will be Saturday before we are done.

I am wondering if we are anywhere near finishing with the continuing resolution, the debt limit, and whatnot, to be able to enter into unanimous-consent agreements for a time certain, or to negotiate something, a time certain for a final vote. That does bring an artificial time limit. That might make it possible for Tuesday or Wednesday of next week, that it actually could be done at that time. We as Senators on both sides of the aisle, and I am obviously one, do have campaigns, as the Senator from Kansas does, and he shares perhaps the same concern as the Senator from Vermont. We all share concern to have our voters see us and hear us and tell us what they think of us. While it may be more comfortable to stay here, we should get home.

We are rearranging things at home. If we say we have to be here for 3 or 4 days, whatever we have to go, 24 hours a day is fine, but it is the uncertainty facing us.

Mr. DOLE. I certainly appreciate the statement of the Senator from Vermont. We would very much like to finish our business. As soon as I visit with the Speaker I will be back to visit with the distinguished minority leader. It would seem to me if we cannot do it this week, we ought to try to structure something to come back here next Wednesday and vote on things and not keep everybody here on Tuesday, Thursday, Friday, and Saturday. Some of the polls indicate that we do better when we are not here.

Mr. METZENBAUM. I did not hear all the discussion, but I might remind the majority leader that for many of us Monday is the holiest day of the years in our religion.

I would hope that past practice regarding any votes will protect those of us who many not be here.

Mr. DOLE. We certainly want to accommodate that request and I am sure we will. We have not made a final statement. Also I have been advised by Senator D'AMATO and Senator DECONCINI that it is important to them, also.

Mr. BYRD. If the distinguished majority leader could indulge one more question, it is with regard to the item to which the majority leader addressed himself earlier saying there might be a rollcall vote. I wonder if we can determine that with some certitude soon and let our colleagues know.

Mr. DOLE. I have just spoken to the distinguished Senator from Oregon, the chairman of the Appropriations Committee, who has been tied up almost around the clock on the continuing resolution, addressing the concerns of Members on both sides of the aisle.

He would like to proceed with that now, if possible, because he does have commitments throughout the afternoon starting at 2 o'clock. I am not certain what the legislation is but it has something to do with the Columbia Gorge.

Mr. HATFIELD. If the leader will yield, I will say to the majority and minority leaders that this is the issue to which the majority leader referred, establishing a reservation for the Columbia River Gorge. It has been agreed to by the two Senators from Washington and the two Senators from Oregon, as reported by the committee. I would say I would like to propose unanimous consent that the

Senate now turn to that bill, the Columbia River Gorge, the national scenic area, that we get that up and get it disposed of.

I would only say that if we cannot do it at this point in time we will have to have a vote or something later on in the day when I can get out of the CR conference which begins at 2 o'clock. I do not ask the Senate to accommodate my personal schedule so much as that of the committee.

If the leader will permit at this time, I would like to ask that unanimous consent and if people want to be here on the floor to discuss the bill we can set it aside after we call it up and find a time that would be convenient for people to come and discuss it, even maybe have a time agreement and get the vote early on and get it out of the way.

Mr. BYRD. Mr. President, I am advised by the staff that we have just been presented with a substitute and that we are having to run a hot line on the substitute now. We have not had time enough to do that. I hope the distinguished Senator from Oregon would not press his request for the moment.

Mr. HATFIELD. Is the Senator saying a hot line is being run on this particular issue?

Mr. BYRD. The staff received the substitute just a little while ago and the substitute has to be cleared.

Mr. HATFIELD. I would certainly yield to the request and not press my unanimous consent.

Hopefully, can the Senator give me some indication about the time required for the hot line so that I can sort of figure the rest of my schedule, about how long it will take to run the hot line?

Mr. BYRD. I cannot say. I hope it will not take too long. The bill has been on the calendar for some time but suddenly we are presented with a substitute. When presented with a substitute, we do not know what is new in the substitute. We have to contact the various Senators who are involved to clear the unanimous-consent request with them. That will take a little time.

Mr. HATFIELD. I will say to the Senator to at least allay a little bit of the initial fear, by using the term substitute it may indicate all new material, but this has been on a continuing basis with the Democratic staff of the committee and the Republican staff of the committee, accommodating different Senators on both sides of the committee. This is not a substitute as a surprise, but this is a substitute only on the basis of evolving provisions which has been on a working basis with staff and members.

Mr. EVANS. Will the Senator yield?

Mr. HATFIELD. Yes.

Mr. EVANS. The Senator is correct in terms of the evolution of this bill, which has had very strong staff involvement from both sides of the Energy Committee. Early on Monday there was a final product produced that had been the result of a significant amount of work with the administraton, with those who have been the advocates of this bill, and that has been distributed. The most recent substitute, I think, the Democratic leader has been talking about is one which was finalized last night which only has four rather insubstantial changes to clarify and to carry out some responsibilities that others thought should be in the bill.

There is certainly not a significant change. The heart of the bill, virtually all of the bill, has been in everyone's hands since early Monday morning. We can identify where those last changes are that will be presented as a substitute.

Mr. BYRD. We will proceed to run this by Senators on this side and as soon as we possibly can make a determination which we will make available to the Senators.

Mr. HATFIELD. I thank the Senator. I will stand by to get the results of the hotline just as quickly as possible. As I say, we must pursue the CR. We are locked into that in a conference with the House. Hopefully between now and the time that is scheduled, we can complete that hotline and I can get the bill called up. Then, as I say, if any other Senator would like to set it aside for a short period of time so people can come to the floor, in no way would I want the Senate to rush this through. This has been with us for a number of years. This does seem to be the last opportunity the Senate will have to act on this bill.

□ 1300

Hopefully the House will then have it to consider, and whether their schedule will permit it to be adopted I do not know. But at least I would like to get this business completed out of the Senate before we go sine die, and this seems to be the most appropriate day for that. So, I would be happy to cooperate with the Democratic leader and withhold the unanimous-consent request. Again, I would like to emphasize the longer we wait, then the later the vote will occur, because I am told there will be a request that we have a rollcall vote. I am very anxious to get that completed today, and I will yield the floor at this time awaiting the results of the Democratic hotline.

Mr. BYRD. Mr. President, I thank the distinguished Senator. We will certainly go about our business expeditiously to see if we can give our Senators on this side of the aisle a chance to see the substitute. We would like to try to clear it and we will make every effort to do so. We will certainly let the distinguished Senator know what we are able to determine as soon as we can.

Mr. COCHRAN. Mr. President, I have been asked by the majority leader to inquire of the distinguished minority leader if we could transact some business that we understand has been cleared for passage; some bills and other items.

Mr. BYRD. Will the distinguished Senator yield?

Mr. COCHRAN. I will be happy to yield to the distinguished minority leader.

Mr. BYRD. If we could have just a few minutes in which to organize our material so that we will be synchronized over here with the legislation as it appears piece by piece on the distinguished acting Republican leader's desk. Will the Senator suggest the absence of a quorum?

Mr. COCHRAN. Mr. President, I will be happy to indulge the minority leader that way. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BENTSEN. Mr. President, I ask unanimous consent that the order of the quorum call be rescinded.

The PRESIDING OFFICER (Mr. SIMPSON). Without objection, it is so ordered.

EPIC AND THE DRUG FIGHT

Mr. BENTSEN. Mr. President, scarcely a week ago the Members of this body passed by a 97-to-2 vote a comprehensive package of initiatives designed to strengthen our effort against the flood of illegal drugs that are now sweeping the Nation. That measure is now in conference with the House, and I am hopeful that before this session ends, we will have a drug bill to send to the President. This will be good news indeed.

I recently learned, though, that the Office of Management and Budget is proposing an action that might have the unintended effect of diluting our effort against drugs by disrupting one of the most successful of our current operations. I am talking about EPIC, [El Paso Intelligence Center], which is the Drug Enforcement Administration's national repository for information about the smuggling of drugs, weapons, and aliens.

What is being proposed by OMB is the relocation of EPIC from El Paso, TX, to the Washington, DC, area. The reason given is the need for proper security for the sensitive information being funneled into EPIC. I do not believe this is a good reason to disrupt the fine work that is being done at EPIC.

As a member of the Select Committee on Intelligence, I am well aware of

the sensitive nature of some of the information that is fed into EPIC. I fully understand the need for its security. But such security can be provided by locating EPIC on Fort Bliss, where a properly secured and restricted facility can be operated under conditions appropriate to the classification level of information being used there.

I have today sent a letter to Attorney General Meese protesting the proposal to move EPIC out of the El Paso area. It makes no sense to me to take something which by all accounts works extremely well and spend the money to move it halfway across the country and have to employ and train an entirely new group of employees to do the job that EPIC now does so well.

In the Senate version of the anti-drug bill there is a $15 million earmark for an All Source Intelligence Center, funded by the Drug Enforcement Administration out of its fiscal year 1987 appropriation. What I have suggested to the Attorney General is that this new center be located with EPIC at Fort Bliss.

The difference between EPIC and the All Source Center is one of emphasis, and not of substance. EPIC concentrates on providing information that can be used directly by law enforcement authorities in building and prosecuting cases against drug, alien, and weapons smugglers.

The All Source Intelligence Center would be aimed primarily at drug interdiction efforts, using all of the intelligence resources available at the national level. This center has been described, I believe accurately, as "an enhanced EPIC." It makes sense to me that this new center should be located with the proven model—EPIC itself—and that they both be located in the El Paso area. As I told the Attorney General in my letter, if we do anything with such a successful operation as EPIC, we ought to beef it up, not move it out.

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Mr. BENTSEN. Mr. President, I suggest the absence of a quorum.

Mr. COCHRAN. Mr. President, will the Senator withhold?

Mr. BENTSEN. I am delighted to withhold.

THE CALENDAR

Mr. COCHRAN. Mr. President, I am advised that the distinguished acting minority leader may be prepared now to proceed to items which have been cleared for action by the Senate. I inquire of the acting Democratic leader if that is correct.

Mr. MELCHER. Mr. President, that is correct.

CALENDAR NO. 808—LAND TRANSFER IN HUNTLEY, MONTANA

Mr. MELCHER. Let me point out before we start that one of the items on the calendar is Calendar Order No. 808, which involves a land transfer in Huntley, MT. Because the communities there are unincorporated, Huntley is unincorporated, it is necessary to pass legislation making that transfer. We have twice, in this Congress and in the last Congress, perfected a bill to make that transfer. In the last Congress, it was passed and found after it was passed by the House and the Senate that there was an error in the survey. The survey was not properly done. So it was necessary to introduce a new bill.

In this Congress, we have reached the point where the bill has passed the House, has been approved by the Senate Energy and Natural Resources Committee and is not on the calendar for final action by this body.

Strangely enough, it is caught up in a web of bills that have been objected to by some Members on this side of the aisle. We are seeking to find out what the problem is and hope that the next time we deal with these types of bills on unanimous consent, it will be cleared.

I thank the chairman.

Mr. COCHRAN. Mr. President, I thank the distinguished acting leader. That item has been cleared for action on this side of the aisle.

Mr. President, I inquire of the acting minority leader if he is in a position to pass any of the following calendar items: No. 752, No. 917, No. 934, No. 996, No. 1048, No. 1075, No. 1076, No. 1077, No. 1078, No. 1079, No. 1080, and No. 1081.

Mr. MELCHER. Mr. President, will the Senator yield to me?

Mr. COCHRAN. I am happy to yield to the Senator.

Mr. MELCHER. I am pleased to say to my colleague that yes, we are in a position, having cleared all those calendar items, to proceed to them immediately.

Mr. COCHRAN. Mr. President, I ask unanimous consent that the calendar items just identified be considered en bloc and passed en bloc and all committee-reported amendments be considered agreed to en bloc.

The PRESIDING OFFICER. Is there objection?

Mr. MELCHER. Mr. President, may I tell my colleague that all of these bills are agreeable to be passed en bloc and we urge immediate acceptance of them.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. COCHRAN. Mr. President, I move to reconsider the vote by which the measures were agreed to.

Mr. MELCHER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

REQUIREMENT FOR ANNUAL REPORT ON MANAGEMENT OF THE EXECUTIVE BRANCH OF THE GOVERNMENT

The Senate proceeded to consider the bill (S. 2004) to require the President to submit to the Congress an annual report on the management of the executive branch of the Government, which had been reported from the Committee on Governmental Affairs, with an amendment:

On page 3, strike line 8, through and including line 22, and insert the following:

"'(c) any significant and identifiable impact of the initiative on agency operations;"

So as to make the bill read:

S. 2004

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Government Management Report Act of 1986".

SEC. 2. (a)(1) Chapter 11 of title 31, United States Code, is amended by adding at the end thereof the following new section:

"§ 1115. Annual management report

"(a) With each budget of the United States Government submitted under section 1105 of this title, the President shall submit to the Congress a report on the management of the executive branch of the Government with respect to the most recently completed fiscal year, the current fiscal year, and the fiscal year for which the budget is submitted. Each such report shall include—

"(1) an overview of the general management improvement goals of the President for the executive branch of the Government during such fiscal years;

"(2) a summary of the management problems and issues for the executive branch of the Government, and the major management improvement initiatives and accomplishments for the executive branch of the Government, involving—

"(A) program delivery systems;

"(B) human resources management;

"(C) productivity;

"(D) information resources management;

"(E) financial management;

"(F) procurement and grants management;

"(G) property management; and

"(H) any other relevant subject areas; and

"(3) for each initiative summarized in paragraph (2), a description, where feasible and appropriate, of—

"(A) the purpose of the initiative;

"(B) the progress and problems in the implementation of the initiative; and

"(C) any significant and identifiable impact of the initiative on agency operations;

"(4) proposals for legislative or other action to improve the management or organization of the executive branch of the Government, including proposals to remove statutory impediments to the improvement of the management of the executive branch of the Government; and

"(5) a summary of each significant new management policy for the executive branch of the government which has been adopted or which is planned for the current fiscal year or the fiscal year for which the budget is submitted, and a discussion of the reasons for such policy.".

(2) The analysis for chapter 11 of such title is amended by adding at the end thereof the following:

"1115. Annual management report.".

(b) Section 719 of such title is amended—

(1) by redesignating subsections (g) through (i) as subsections (h) through (j), respectively; and

(2) by inserting after subsection (f) the following new subsection:

"(g) Within 90 days after the President has submitted a report under section 1115 of this title, the Comptroller General shall prepare and transmit to the Congress a statement analyzing such report. The statement shall include—

"(1) an evaluation of the items contained in such report which the Comptroller General considers to be of particular interest to the Congress;

"(2) a specification of any questions or issues raised by such report which the Comptroller General considers to require further clarification;

"(3) an analysis of the extent to which such report complies with the requirements of section 1115 of this chapter; and

"4) recommendations, if any, for improvement of the management or organization of the executive branch of the Government, including modification or repeal of statutory impediments to efficient and effective management.".

The committee amendment was agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

REAPPOINTMENT OF DAVID C. ACHESON TO THE BOARD OF REGENTS OF THE SMITHSONIAN INSTITUTION

The joint resolution (H.J. Res. 517) providing for reappointment of David C. Acheson as citizen regent of the Board of Regents of the Smithsonian Institution, was considered, ordered to a third reading, read the third time, and passed.

CONSOLIDATED FEDERAL FUNDS REPORT AMENDMENTS

The bill (H.R. 3168) to require the Director of the Office of Management and Budget to prepare an annual report consolidating the available data on the geographic distribution of Federal funds, and for other purposes, was considered.

Mr. MOYNIHAN. Mr. President, I rise today in support of H.R. 3168, the Consolidated Federal Funds Report Amendments of 1986.

This bill would extend through fiscal year 1990 a requirement that an annual report detailing the flow of funds from the Federal Government to each State, county, and municipality be published within 6 months of the end of each fiscal year.

In each of the last 10 years I have published a report on the impact of the Federal budget on New York State. The introduction to the 1977 report stated:

I hope to begin a series to be issued once a year in July tracing the ups and downs of Federal expenditures for the previous fiscal year. It is time we started keeping track.

There is a rule of sorts concerning public issues: You rarely do much about a problem until you learn to measure it. That was my object.

When I began, I found that the national statistics were in disarray. For example, in compilations of Federal outlays by State, New York was variously depicted as receiving just over half the interest paid on the national debt, and just under half of foreign aid.

For the period 1976–80, the most complete accounting of the regional incidence of Federal expenditures was made by the Community Services Administration, which tabulated expenditures for all Federal programs by county and State. Budget cuts by the current administration eliminated the Community Services Administration in 1982, and with it the only source of data on regional impacts of the Federal budget.

I was an original cosponsor of S. 2386, introduced on April 15, 1982, which provided for the establishment of a new system to collect data on the geographic distribution of Federal funds. Public Law 97-326 required that the Bureau of the Census in the Department of Commerce develop a system to collect and release geographic data beginning with fiscal year 1981.

The Bureau of the Census now reports all Federal expenditures on a State basis, except amounts that cannot be distributed by State and territory. Such amounts include net interest on the Federal Government debt, international payments and foreign aid, and expenditures for selected agencies, such as the Central Intelligence Agency and the National Security Agency.

H.R. 3168 would continue this series of reports, and, in fact, would strengthen the reporting requirements of some Federal agencies. The data included in the annual reports will be consistent with that of fiscal years 1981–85, and will be better for the changes included in H.R. 3168.

It is of vital importance that this series of data, begun in fiscal year 1981, be continued. We cannot know how the Federal Government affects the State and regional economies unless such data is available.

● Mr. DURENBERGER. Mr. President, I rise today in support of H.R. 3168, the Consolidated Federal Funds Report Amendments of 1985. The bill is a straightforward reauthorization of a very valuable document—the Consolidated Federal Funds Report or CFFR. The CFFR Provides important information on Federal outlays to individual States, counties, cities, and congressional districts. The categories include grants to State and local governments and individuals, cooperative agreements, loans, salaries, contracts, and so forth.

The CFFR pulls together this data from many different sources and agencies and presents it is a clear and consistent format—a format useful both to administrators and managers in Federal agencies and to those of us here on the Hill who want a clear understanding of the distribution and impact of Federal aid. The report is also useful at the State and local level where managers and planners rely heavily on the CFFR in developing their budgets and assessing the proposed impact of Federal policy changes.

The CFFR is the only complete source of information on Federal aid distribution. Prepared by OMB and Census, the report has received favorable comments from every quarter. GAO and OMB are anxious to continue its production and have endorsed this reauthorization.

Since the Consolidated Federal Funds Report Program began in 1983, the Administration has funded it through reimbursements made to the Bureau of the Census by the participating agencies. Although section 6207 authorizes appropriations for the CFFR, the administration intends to continue to fund this program using the current reimbursement mechanism. It is my understanding that both the House and Senate are in agreement that this approach should continue to be used in the spirit of cooperation among the participating agencies.

I should also note that I am offering a set of technical amendments to the bill. These amendments are noncontroversial and have been agreed to by the House managers of the bill.

The Consolidated Federal Funds Report Amendments of 1986 will reauthorize a report which will produce information of value to Federal, State, and local governments across the country. I urge its immediate passage.●

The bill (H.R. 3168) was ordered to a third reading, read the third time, and passed.

NATIONAL COUNCIL ON ACCESS TO HEALTH CARE ACT

The Senate proceeded to consider the bill (S. 1620) to amend title XVIII of the Social Security Act to establish the National Council on Access to Health Care, and for other purposes, which had been reported from the Committee on Governmental Affairs,

with an amendment to strike out all after the enacting clause, and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "National Council on Access to Health Care Act".

SEC. 2. FINDINGS.

The Congress finds that—

(1) society has an obligation to assure that all individuals have equitable access to health care services;

(2) significant reform is taking place in the financing and delivery of health care services;

(3) numerous Federal, State, and private entities have recognized the advantages of current reform in the health care system;

(4) many public decisions regarding the financing of health care are being made in the context of grave budgetary constraints and may have long-range implications for access to, and quality of, health care services; and

(5) in order to avoid serious adverse consequences of the problems atttendant to health care systems reform and the constrained budgetary environment, there is a compelling need to develop governmental policies at the Federal, State, and local levels to address the challenges presentend by a rapidly changing health care system.

SEC. 3. NATIONAL COUNCIL ON ACCESS TO HEALTH CARE.

(a) Establishment of Council.—

(1) Membership.—

(A) There is established the National Council on Access to Health Care (in this section referred to as the "Council") which shall be composed of fifteen members as follows:

(i) nine members who are distinguished in their representation of one or more of the following fields or constituencies: the elderly and other health care consumers, medical ethics, health insurance, labor, business, law, and the social sciences;

(ii) three members who are distinguished in the practice of medicine or direct patient care; and

(iii) three members who are distinguished in health care administration or health care financial management.

(B) The members of the Council shall be appointed by a joint congressional panel on access to health care, which shall be composed of six members of the Senate, appointed by the President pro tempore of the Senate (upon the recommendation of the Majority Leader and the Minority Leader of the Senate), and six members appointed by the Speaker of the House of Representatives (upon the recommendation of the Majority Leader and the Minority Leader of the House of Representatives). A vacancy on the panel shall be filled in the same manner as the original appointment.

(c) The Secretary of Health and Human Services, the Secretary of Defense, the Secretary of Agriculture, the Director of the Office of Science and Technology Policy, the Administrator of Veterans' Affairs, and the Director of the National Science Foundation shall each designate an individual to provide liaison with the Council. Other Federal agencies may also designate individuals for such purpose.

(D) A vacancy on the Council shall be filled in the same manner as the original appointment.

(2) TERMS.—Members shall be appointed for the life of the Council.

(3) CHAIRMAN.—The Council shall elect a Chairman from among its members.

(4) MEETINGS.—Nine members of the Council shall constitute a quorum for business, but a lesser number may conduct hearings. The Council shall meet at the call of the Chairman or at the call of a majority of its members.

(5) COMPENSATION.—

(A) Members of the Council shall each be entitled to received the daily equivalent of the annual rate of basic pay in effect for grade GS-18 of the General Schedule for each day (including traveltime) during which they are engaged in the actual performance of the duties of the Council.

(B) While away from their homes or regular places of business in the performance of services for the Council, members of the Council shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5 of the United States Code.

(b) DUTIES OF THE COUNCIL.—

(1) STUDIES.—

(A) The council shall undertake advisability studies of the—

(1) development of a national health care policy to address the issues of access and quality;

(ii) mechanisms for assigning priorities to the use of public health care resources;

(iii) ethical and legal bases for such a policy and such priorities;

(iv) demographic, economic, societal, cultural, and aging trends of the United States population and the effects of such trends on the Nation's health needs and health care system;

(v) differences, if any, in the quality and availability of health care services for various economic and geographic segments of the population;

(vi) current procedures and mechanisms designed to ensure the quality and availability of health care services to all individuals;

(vii) capital and operating costs of health care services;

(viii) efficient and effective use of existing health care resources;

(ix) appropriate numbers of health care personnel in the various professions and in various geographic regions;

(x) mechanisms for integrating alternative health care services with traditional acute and long-term care facilities and services;

(xi) proper role of Federal and State governments and others in the financing, delivering, supervising, and planning of health services; and

(xii) appropriateness of any other matter which relates to the development or implementation of a national health care policy and which is consistent with the purposes of this Act.

(B) The Council shall determine the priority and order of the studies required under subparagraph (A). In undertaking the studies, the Council shall coordinate locally sponsored and funded grassroots miniconferences, to be held in such numbers and at such locations throughout the country as it shall deem advisable, in order to solicit advice, comments, suggestions, and recommendations from interested individuals, organizations, and the general public. The Council, either as a whole or divided into as many hearing committees as it may so choose, shall convene and conduct a series of hearings in at least the 10 Federal regions of the country for the purpose of receiving the public testimony and reports from the grassroots miniconferences. The Council shall determine how such meetings shall be organized and what criteria shall be established to determine participants in the grassroots miniconferences and hearings. At the conclusion of these public forums, the Council shall publish the recommendations heard and shall give serious consideration to them in its final policy recommendations.

(C) In order to avoid duplication of effort, the Council shall, in lieu of or as part of any study or investigation conducted under subparagraph (A), use a study or investigation conducted by another entity if the Council sets forth its reasons for such use.

(2) REPORTS TO CONGRESS.—Upon the completion of each investigation or study undertaken or utilized by the Council under this subsection, the Council shall report its findings including any recommendations for legislation or administrative action to the Congress.

(3) ANNUAL REPORTS.—Annually on the anniversary of the date of the enactment of this Act, the Council shall report to the members of the joint congressional panel on access to health care appointed under subsection (a)(1)(B) the results of its efforts undertaken prior to such date. The third such report shall constitute the final report of the Council and shall include its final recommendations.

(4) PUBLICATION.—The Council shall publish and disseminate to the public information with respect to its activities.

(c) ADMINISTRATIVE PROVISIONS.—

(1) HEARINGS.—The Council may, for the purpose of carrying out this section, hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Council may deem advisable.

(2) PERSONNEL.—

(A) The Council may appoint and fix the pay of such staff personnel as it deems desirable. Such personnel shall be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

(B) The Council may procure temporary and intermittent services to the same extent as is authorized by section 3109(b) of title 5, United States Code, but at rates for individuals not to exceed the daily equivalent of the annual rate of basic pay in effect for grade GS-18 of the General Schedule.

(C) Upon request of the Council, the head of any Federal agency (including the Office of Technology Assessment) is authorized to detail, on a reimbursable basis, any of the personnel of such agency to the Council to assist it in carrying out its duties under this section.

(3) CONTRACTS.—The Council, in performing its duties and functions under this section, may enter into contracts with appropriate public or private entities. The authority of the Council to enter into such contracts is effective for any fiscal year only to such extent or in such amounts as are provided in advance in appropriation Acts.

(4) INFORMATION.—

(A) The Council may secure directly from any Federal agency information necessary to enable the council to carry out this section. Upon request of the Chairman of the Council, the head of such agency shall furnish such information to the Council.

(B) The Council shall not disclose any information reported to or otherwise obtained by the Council which is exempt from disclosure under section 552 of title 5, United

States Code, by reason of paragraph (4) or (6) of subsection (b) of such section.

(5) SUPPORT SERVICES.—The Administrator of General Services shall provide to the council on a reimbursable basis such administrative support services as the council may request.

(6) DEFINITION.—For purposes of this subsection, the term "Federal agency" means an authority of the Government of the United States but does not include the Congress, the courts of the United States, the government of the Commonwealth of Puerto Rico, the government of the District of Columbia, or the government of any territory or possession of the United States.

(d) AUTHORIZATION OF APPROPRIATIONS.—To carry out the provisions of this section, there are authorized to be appropriated $1,000,000 for each of the fiscal years 1987, 1988, and 1989.

(e) TERMINATION.—The Council shall be subject to the Federal Advisory Committee Act; except that, under section 14(a)(1)(B) thereof, the Council shall terminate on the date that is three years after the date of the enactment of this Act.

SEC. 4. APPOINTMENTS.

(a) PANEL.—The President pro tempore of the Senate and the Speaker of the House of Representatives shall initially appoint members to the joint congressional panel on access to health care not later than 30 days after the date of the enactment of this Act.

(b) COUNCIL.—The joint congressional panel on access to health care shall initially appoint members of the National Council on Access to Health Care not later than 60 days after the date of the enactment of this Act.

The committee amendment was agreed to.

Mr. SIMON. Mr. President, I am pleased to support S. 1620, the National Council on Access to Health Care. This bill, sponsored by my colleague Senator DURENBERGER and myself, provides a framework for beginning the important and necessary national debate on the future of health care in this country.

I believe the goal of this council, to provide some solid and reasonable recommendations to ensure greater access to quality health care for all Americans, is a worthy one. Even though the United States spends a greater percentage of its GNP on health care than most other industrial nations, we still find nearly 33 million persons who have no medical insurance.

Who are these individuals who are least likely to have access to adequate health care? Those without access are the low-income persons who are not eligible for Medicaid, the working poor, the unemployed, seasonally employed, and self-employed. In addition, often middle-income individuals are denied coverage because of chronic illnesses such as diabetes, heart disease, multiple sclerosis, and mental illness. A 1983 study by the National Center for Health Statistics indicates that nearly 20 percent of blacks, Cuban Americans, and Puerto Ricans were uninsured and that 30 percent of all Mexican Americans did not have access to health care coverage. Finally, perhaps one of the most staggering figures relates to young adults and children. An increasing percentage of 19- to 24-year-olds are not covered all or part of each year, and nearly half of uninsured children live with a parent who is insured but whose policy doesn't cover dependents.

It is time we take a good long look at our total health care system. Some people would attribute the current crisis over the uninsured to the rise in unemployment or the changes in the financing of health care which has reduced the ability or willingness of employers or health-care providers to absorb some of the costs. Given the budget deficit, we are beginning to observe struggles between those needing assistance over the limited resources available. The important problem of resource availability is central in any discussions of access to health care.

A national council such as the one in this legislation is critical to addressing the relationship between resource availability and access to care for all of those across the life span. The unique contribution of this council will be to explore the needs of all age, gender, racial, and ethnic groups. In contrast to a special interest focus group which might place all energy on one entity, this council will address the larger coordinated picture of our health policy across generations.

The council needs to explore the issues of increasing costs and possible declining services; prioritizing our investment in necessary services; identifying recipients who are not supported by our health care system; and encouraging and promoting creative answers to these issues.

I believe the National Council on Access to Health Care offers the opportunity to bring together those representing a broad cross-section in interests in the delivery of health care. The development of recommendations through a bipartisan effort will be maximal in improving our health care delivery system. The importance of involving, through grassroots efforts, many individuals in local and regional conferences is recognized in this legislation.

Mr. President, I am pleased that we are passing this important piece of legislation today. It underscores the need to act now to develop a health-care policy that not only responds to consumers and providers but is financially feasible. I hope that our colleagues in the House will follow our suit and pass their bill establishing the council before we adjourn.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed.

The title was amended so as to read "A bill to establish a National Council on Access to Health Care".

SENATE OFFICIAL MAIL EXPENDITURES

The resolution (S. Res. 500) managing the expenditure of funds for Senate official mail during fiscal year 1987, was considered.

Mr. FORD. Mr. President, on October 1, the first day of fiscal year 1987, the Committee on Rules and Administration voted to continue a reform the Senate instituted in fiscal year 1986. I refer to Senate Resolution 500, Calendar No. 1048, an original measure that I sponsored in committee. Senate Resolution 500 continues the allocation of official mail funds, which was begun in fiscal year 1986 by Senate Resolution 374, the resolution that Senator MATHIAS and I, together with Senators GARN, CRANSTON, DECONCINI, LUGAR, BRADLEY, GLENN, HELMS and PELL cosponsored in March of this year. The new resolution, Senate Resolution 500, incorporates an amendment proposed in committee by Senator STEVENS to accommodate the special needs of Senators from small States by providing a floor similar to that provided in the paper allowance. Provision is also made for Senators-elect and departing Senators, which it was not necessary to do in Senate Resolution 374.

Mr. President, I ask unanimous consent that a section-by-section analysis of Senate Resolution 500, a comparison of Senate Resolution 500 and Senate Resolution 374, and a tabulation of hypothetical allocations under Senate Resolution 500 be printed in the RECORD at the conclusion of my remarks.

The reasons for continuing to manage our mail costs are as great or greater than they were in March of this year. Fiscal austerity is still the mandate we are under. The requirements of the Gramm-Rudman-Hollings deficit reduction mechanism are still in effect. Are we going to go back to the days when we treated our mail like a "sacred cow?" Or are we going to continue to accept the same kind of fiscal restraint that the American people are demanding and we, in turn, are bringing to reality in the various money bills that we have been working on so hard in the past weeks? Senators might say, "I didn't get enough." Every person who is looking to the Government for help with housing, or food, or medical care, or with keeping the family farm can say the same thing. Every agency head, every bureau chief, every project manager, throughout the Government can say the same thing. So I hope the Senate will remember that deficit reduction begins at home and will take this step to ensure that official mail costs are not exempt from control.

I have some information to share with the Senate about the fiscal year 1986 results. We will not have the official bill from the Postal Service for another 6 weeks, so what we say here is

subject to correction. But the indications from the internal accounting system are that Senate Resolution 374 was a success. According to the service department's figures, as of the week ending September 26, 1986, the Senate had spent only $6.1 million out of the $13.1 million available as of May 22, 1986. That is, the Senate spent only 47 percent of the total funds available for the 4 months covered by Senate Resolution 374. The breakdown of that total between Senators and other offices is as follows: Senators, overall, spent about 4 percent of the total allocated to them. Out of an initial amount of $12.4 million, there is $6.6 million remaining. Other offices, overall, spent about 17 percent of the total allocated to them. Out of an initial amount of $654 thousand, there is $540 thousand remaining.

It is obvious from the statistics that many Senators took positive steps to restrain their mailings, and we know from the questions and comments from staff that, even though this was a burden on some staff, that it was taken seriously and complied with to a high degree. It is interesting to observe that, as of September 19, 26 Senators and 30 other offices had 90 percent or more of their allocations remaining. A few Senators ran over and more good faith offers to repay the official mail account, but it does not seem that it would be necessary to require such repayment at this time, given the overall surplus in the Senate portion. If we were running close to the limit, in the aggregate, repayments by individual Senators might well be necessary.

The figures also indicate that committee mail is much less than 4 percent of the total, as we had previously thought, and there seems to be as much disparity among committees and other offices as there is among Senators. Out of 43 offices, 13 used none of their allocations, 17 used less than 10 percent, and others used all or almost all of theirs. Finally, I want to mention that based on conversation with staff of several offices, we will be looking at revisions to the accounting provisions that allow offices to estimate the mail sent directly from their offices instead of using actual piece counts.

In closing, Mr. President, I want to thank our colleagues and compliment them for their responsible response and their frugality. Senators can be proud of having saved almost $7 million, which would otherwise have been added to the deficit. It is obvious now that the Senate can do this without disruption and it is also obvious that this is an effective way of managing this scare resource. I urge Senators to vote in favor of the resolution.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SECTION-BY-SECTION ANALYSIS OF S. RES. 500

The resolution covers only the Senate and applies only to fiscal year 1987. The special needs of Senators-elect, of departing Senators, and of Senators from small States are accommodated.

Section 1 contains definitions of terms.

Section 2(a) states that Senate offices shall not incur mail costs in excess of the amounts allocated by the resolution.

Section 2(b) states the rules for allocating postal funds among Senate offices.

Section 2(b)(1) states that the amount for the Senate shall be one-half of the amount appropriated for the House and the Senate.

Sections 2(b)(2) through 2(b)(8) set forth the rules for determining the amounts for office groups, as follows:

Sec. 2(b)(2)—Offices other than Senators.
Sec. 2(b)(3)—Senators-elect.
Sec. 2(b)(4)—Newly-elected Senators.
Sec. 2(b)(5)—Senators whose terms of service will end on January 3 (other than retiring Senators).
Sec. 2(b)(6)—Retiring Senators.
Sec. 2(b)(7)—Reserved for contingencies.
Sec. 2(b)(8)—All other Senators.

The amounts in sections 2(b)(2) through 2(b)(7) shall be the amounts determined by the Rules Committee to be necessary for each group. The amount for all other Senators, Sec. 2(b)(8), is the starting amount less the amounts determined to be necessary for the other groups. This will be by far the largest amount.

Sections 2(b)(9) through s(b)(14) set forth the rules for allocating the amounts determined for office groups among individual members of the groups, as follows

Sec. 2(b)(9)—Offices other than Senators.
Sec. 2(b)(10)—Senators-elect.
Sec. 2(b)(11)—Newly elected Senators.
Sec. 2(b)(12)—Senators whose terms of service will end on January 3, 1987 (other than retiring Senators).
Sec. 2(b)(13)—Retiring Senators.
Sec. 2(b)(14)—All other Senators.

The total for committees and other offices is allocated among such offices according to the proportion that the annual budget of each office is of the total of the budgets of all such offices. The totals for groups of Senators are allocated among the individual Senators in each group according to the proportion that the population of the State represented by each Senator is of the total population represented by all Senators in the group. The special needs of Senators from small States are accomodated by providing a floor similar to that provided in the paper allowance regulations. Senators who would receive less than $100,000 under the allocation based on population are entitled to additional funds from the amount set aside for contingencies, up to a total allocation of $100,000.

Section 3 urges the House to adopt similar cost controls.

Section 4 directs the Rules Committee to prescribe record-keeping systems. Based on the experience under S. Res. 374, the record keeping system could be simplified by using monthly estimates of mail sent directly from Senate offices rather than actual counting.

Section 5 directs the Rules Committee to prescribe a procedure for transferring allocation among Senate offices, and requires the publication of information on such transfers in the Secretary's semi-annual report.

Section 6 directs the Rules Committee to study further improvements in the Senate's procedures for managing the costs of official mail.

COMPARISON OF S. RES. 500 AND S. RES. 374

The resolution covers only the Senate and applies only to fiscal year 1987. The special needs of Senators-elect, of departing Senators, and of Senators from small States are accommodated.

Section 1 contains definitions of terms.

Comparison.—(1) The definitions are in section 4 in S. Res. 374. (2) A definition for "Senate office" is added and the phrase "Senate office" is used throughout the draft resolution. "Senate office" includes Senators, committees, and other offices authorized by statute to use the frank.

Section 2(a) states that Senate offices shall not incur mail costs in excess of the amounts allocated by the resolution.

Comparison.—Same as S. Res. 374.

Section 2(b) states the rules for allocating postal funds among Senate offices.

Comparison.—See details below.

Section 2(b)(1) states that the amount for the Senate shall be one-half of the amount appropriated for the House and the Senate.

Comparison.—Same as S. Res. 374.

Section 2(b)(2) through 2(b)(8) set forth the rules for determining the amounts for office groups, as follows:

Sec. 2(b)(2)—Offices other than Senators.
Sec. 2(b)(3)—Senators-elect.
Sec. 2(b)(4)—Newly-elected Senators.
Sec. 2(b)(5)—Senators whose terms of service will end on January 3 (others than retiring Senators).
Sec. 2(b)(6)—Retiring Senators.
Sec. 2(b)(7)—Reserved for contingencies.
Sec. 2(b)(8)—All other Senators.

Comparison.—(1) Offices other than Senators were not specifically mentioned in S. Res. 374. (2) Senators-elect and Senators whose terms will end were not provided for. (3) Contingencies were not provided for.

The amounts in sections 2(b)(2) through 2(b)(7) shall be the amounts determined by the Rules Committee to be necessary for each group. The amount for all other Senators, Sec. 2(b)(8), is the starting amount less the amounts determined to be necessary for the other groups. This will be by far the largest amount.

Sections 2(b)(9) through s(b)(14) set forth the rules for allocating the amounts determined for office groups among individual members of the groups, as follows.

Sec. 2(b)(9)—Offices other than Senators.

Comparison.—Allocated on basis of office budget. Joint Committee on the Library, which has no budget and no staff (staff is provided by the Rules Committee) will be charged to the Rules allocation. Joint Taxation, which is funded by the House, is not included in the allocation.

Sec. 2(b)(10)—Senators-elect.

Comparison.—Allocated on population ratio basis.

Sec. 2(b)(11)—Newly elected Senators.

Comparison.—Allocated on population ratio basis.

Sec. 2(b)(12)—Senators whose terms of service will end on January 3, 1987 (other than retiring Senators).

Comparison.—Allocated on population ratio basis.

Sec. 2(b)(13)—Retiring Senators.

Comparison.—Allocated on population ratio basis.

Sec. 2(b)(14)—All other Senators.

Comparison.—Same as S. Res. 374. Allocated on population ratio basis.

The total for committees and other offices is allocated among such offices according to

the proportion that the annual budget of each office is of the total of the budgets of all such offices. The totals for groups of Senators are allocated among the individual Senators in each group according to the proportion that the population of the State represented by each Senator is of the total population represented by all Senators in the group. The special needs of Senators from small States are accommodated by providing a floor similar to that provided in the paper allowance regulations. Senators who would receive less than $100,000 under the allocation based on population are entitled to additional funds from the amount set aside for contingencies, up to a total allocation of $100,000.

Section 3 urges the House to adopt similar cost controls.

Comparison.—Same as S. Res. 374.

Section 4 directs the Rules Committee to prescribe record-keeping systems. Based on the experience under S. Res. 374, the record keeping system could be simplified by using monthly estimates of mail sent directly from Senate offices rather than actual counting.

Comparison.—New provision. Record-keeping is implicit in any allocation requirement, but this makes it explicit. The reporting requirements might be able to be simplified, based on experience under S. Res. 374.

Section 5 directs the Rules Committee to prescribe a procedure for transferring allocation among Senate offices, and requires the publication of information on such transfers in the Secretary's semi-annual report.

Comparison.—New Provision. Transfers are not inconsistent with the idea of managing the resources to avoid a deficit in the overall amount.

Section 6 directs the Rules Committee to study further improvements in the Senate's procedures for managing the costs of official mail.

Comparison.—New Provision.

Attachment A

Funds for official mail:	*Amount*
Appropriated for fiscal year 1987	91,423,000
Available for Senate (½ of total)	45,711,500
Set-aside for committees and officers (5 percent)	2,285,575
Set-aside for Senators (1 percent)	457,115
Set-aside for departing Senators (1 percent)	457,115
Set-aside for contingencies (10 percent)	4,571,150
Available for Senators	37,940,545

NOTE.—The above set-asides and the detail figures that follow are for illustrative purposes only. Actual amounts may vary because of the following differences: (1) the set-asides are estimates in advance of determinations pursuant to the resolution, and (2) utilization by all eligible Senators of the additional amount from the contingent fund is assumed.

Senator:	State	State population as of July 1, 1985	State population as percentage of total population	Senators' postage times population percentage	Additional amount from contingent fund	Total allocation
Abdnor	South Dakota	780,000	0.15	56,406	43,594	100,000
Andrews	North Dakota	685,000	.14	54,573	45,427	100,000
Armstrong	Colorado	3,231,000	.68	257,411	0	257,411
Baucus	Montana	826,000	.17	65,807	34,193	100,000
Bentsen	Texas	16,370,000	3.44	1,304,185	0	1,304,185
Biden	Delaware	622,000	.13	49,554	50,446	100,000
Bingaman	New Mexico	1,450,000	.30	115,520	0	115,520
Boren	Oklahoma	3,301,000	.69	262,988	0	262,988
Boschwitz	Minnesota	4,193,000	.88	334,053	0	334,053
Bradley	New Jersey	7,562,000	1.59	602,458	0	602,458
Bumpers	Arkansas	2,359,000	.50	187,940	0	187,940
Burdick	North Dakota	685,000	.14	54,573	45,427	100,000
Byrd	West Virginia	1,936,000	.41	154,240	0	154,240
Chafee	Rhode Island	968,000	.20	77,120	22,880	100,000
Chiles	Florida	11,366,000	2.39	905,520	0	905,520
Cochran	Mississippi	2,613,000	.55	208,176	0	208,176
Cohen	Maine	1,164,000	.24	92,735	7,265	100,000
Cranston	California	26,365,000	5.54	2,100,478	0	2,100,478
D'Amato	New York	17,783,000	3.73	1,416,757	0	1,416,757
Danforth	Missouri	5,029,000	1.06	400,656	0	400,656
DeConcini	Arizona	3,187,000	.67	253,906	0	253,906
Denton	Alabama	4,021,000	.84	320,350	0	320,350
Dixon	Illinois	11,535,000	2.42	918,984	0	918,984
Dodd	Connecticut	3,174,000	.67	252,870	0	252,870
Dole	Kansas	2,450,000	.51	195,190	0	195,190
Domenici	New Mexico	1,450,000	.30	115,520	0	115,520
Durenberger	Minnesota	4,193,000	.88	334,053	0	334,053
Eagleton	Missouri	5,029,000	1.06	400,656	0	400,656
East	North Carolina	6,255,000	1.31	498,331	0	498,331
Evans	Washington	4,409,000	.93	351,262	0	351,262
Exon	Nebraska	1,606,000	.34	127,949	0	127,949
Ford	Kentucky	3,726,000	.78	296,847	0	296,847
Garn	Utah	1,645,000	.35	131,056	0	131,056
Glenn	Ohio	10,744,000	2.26	855,966	0	855,966
Goldwater	Arizona	3,187,000	.67	253,906	0	253,906
Gore	Tennessee	4,762,000	1.00	379,385	0	379,385
Gorton	Washington	4,409,000	.93	351,262	0	351,262
Gramm	Texas	16,370,000	3.44	1,304,185	0	1,304,185
Grassley	Iowa	2,884,000	.61	229,766	0	229,766
Harkin	Iowa	2,884,000	.61	229,766	0	229,766
Hart	Colorado	3,231,000	.68	257,411	0	257,411
Hatch	Utah	1,645,000	.35	131,056	0	131,056
Hatfield	Oregon	2,687,000	.56	214,071	0	214,071
Hawkins	Florida	11,366,000	2.39	905,520	0	905,520
Hecht	Nevada	936,000	.20	74,570	25,430	100,000
Heflin	Alabama	4,021,000	.84	320,350	0	320,350
Heinz	Pennsylvania	11,853,000	2.49	944,319	0	944,319
Helms	North Carolina	6,255,000	1.31	498,331	0	498,331
Hollings	South Carolina	3,347,000	.70	266,653	0	266,653
Humphrey	New Hampshire	998,000	.21	79,510	20,490	100,000
Inouye	Hawaii	1,054,000	.22	83,971	16,029	100,000
Johnston	Louisiana	4,481,000	.94	356,998	0	356,998
Kassebaum	Kansas	2,450,000	.51	195,190	0	195,190
Kasten	Wisconsin	4,775,000	1.00	380,420	0	380,420
Kennedy	Massachusetts	5,822,000	1.22	463,834	0	463,834
Kerry	Massachusetts	5,822,000	1.22	463,834	0	463,834
Lautenberg	New Jersey	7,562,000	1.59	602,458	0	602,458
Laxalt	Nevada	936,000	.20	74,570	25,430	100,000
Leahy	Vermont	535,000	.11	42,623	57,377	100,000

	State	State population as of July 1, 1985	State population as percentage of total population	Senators' postage times population percentage	Additional amount from contingent fund	Total allocation
Levin	Michigan	9,088,000	1.91	724,034	0	724,034
Long	Louisiana	4,481,000	.94	356,998	0	356,998
Lugar	Indiana	5,499,000	1.15	438,101	0	438,101
Mathias	Maryland	4,392,000	.92	349,907	0	349,907
Matsunaga	Hawaii	1,054,000	.22	83,971	16,029	100,000
Mattingly	Georgia	5,976,000	1.25	476,103	0	476,103
McClure	Idaho	1,005,000	.21	80,068	19,932	100,000
McConnell	Kentucky	3,726,000	.78	296,847	0	296,847
Melcher	Montana	826,000	.17	65,807	34,193	100,000
Metzenbaum	Ohio	10,744,000	2.26	855,966	0	855,966
Mitchell	Maine	1,164,000	.24	92,735	7,265	100,000
Moynihan	New York	17,783,000	3.73	1,416,757	0	1,416,757
Murkowski	Alaska	521,000	.11	41,508	58,492	100,000
Nickles	Oklahoma	3,301,000	.69	262,988	0	262,988
Nunn	Georgia	5,976,000	1.25	476,103	0	476,103
Packwood	Oregon	2,687,000	.56	214,071	0	214,071
Pell	Rhode Island	968,000	.20	77,120	22,880	100,000
Pressler	South Dakota	708,000	.15	56,406	43,594	100,000
Proxmire	Wisconsin	4,775,000	1.00	380,420	0	380,420
Pryor	Arkansas	2,359,000	.50	187,940	0	187,940
Quayle	Indiana	5,499,000	1.15	438,101	0	438,101
Riegle	Michigan	9,088,000	1.91	724,034	0	724,034
Rockefeller	West Virginia	1,936,000	.41	154,240	0	154,240
Roth	Delaware	622,000	.13	49,554	50,446	100,000
Rudman	New Hampshire	998,000	.21	79,510	20,490	100,000
Sarbanes	Maryland	4,392,000	.92	349,907	0	349,907
Sasser	Tennessee	4,762,000	1.00	379,385	0	379,385
Simon	Illinois	11,535,000	2.42	918,984	0	918,984
Simpson	Wyoming	509,000	.11	40,552	59,448	100,000
Specter	Pennsylvania	11,853,000	2.49	944,319	0	944,319
Stafford	Vermont	535,000	.11	42,623	57,377	100,000
Stennis	Mississippi	2,613,000	.55	208,176	0	208,176
Stevens	Alaska	521,000	.11	41,508	58,492	100,000
Symms	Idaho	1,005,000	.21	80,068	19,932	100,000
Thurmond	South Carolina	3,347,000	.70	266,653	0	266,653
Trible	Virginia	5,706,000	1.20	454,592	0	454,592
Wallop	Wyoming	509,000	.11	40,552	59,448	100,000
Warner	Virginia	5,706,000	1.20	454,592	0	454,592
Weicker	Connecticut	3,174,000	.67	252,870	0	252,870
Wilson	California	26,365,000	5.54	2,100,478	0	2,100,478
Zorinsky	Nebraska	1,606,000	.34	127,949	0	127,949
Total		476,226,000	100.0	37,940,545	922,007	38,862,552

Funds for official mail:

	Amount
Appropriated for fiscal year 1987	91,423,000
Available for Senate (½ of total)	45,711,500
Set-aside for committees and officers (5 percent)	2,285,575

NOTE.—Amounts on this page and the detail amounts on the following page are for illustrative purposes only. The amount to be set aside for committees and other offices pursuant to the resolution has not yet been determined.

COMMITTEES AND OTHER OFFICES

	1986 budget (thousands)	Adjustments	Adjusted amount	Adjusted amount as percentage of total	Percentage times postage
The Vice President	$1,112		1,112	1.63	37,361
The President pro tempore	149		149	.22	5,006
Majority leader	555		555	.82	18,647
Minority leader	555		555	.82	18,647
Majority whip	209		209	.31	7,022
Minority whip	209		209	.31	7,022
Majority conference	581		581	.85	19,520
Minority conference	581		581	.85	19,520
Secretary to majority conference	91		91	.13	3,057
Secretary to minority conference	91		19	.13	3,057

COMMITTEES AND OTHER OFFICES—Continued

	1986 budget (thousands)	Adjustments	Adjusted amount	Adjusted amount as percentage of total	Percentage times postage
Secretary for the majority	440		440	.65	14,766
Secretary for the minority	440		440	.65	14,766
Agriculture	1,263		1,263	1.86	42,434
Appropriations	4,000		4,000	5.88	134,391
Armed Services	2,097		2,097	3.08	70,455
Banking	1,613		1,613	2.37	54,193
Budget	2,874		2,874	4.22	96,560
Commerce	3,218		3,218	4.73	108,118
Energy	2,329		2,329	3.42	78,249
Environment	2,267		2,267	3.33	76,166
Finance	2,154		2,154	3.17	72,370
Foreign Relations	2,365		2,365	3.48	79,459
Governmental Affairs	4,313		4,313	6.34	144,907
Judiciary	4,125		4,125	6.06	138,591
Labor	4,326		4,326	6.36	145,344
Rules	1,194		1,194	1.76	40,116
Small Business	900		900	1.32	30,238
Veterans' Affairs	862		862	1.27	28,961
Aging	1,042		1,042	1.53	35,009
Ethics	450		450	.66	15,119
Indian Affairs	791		791	1.16	26,576
Intelligence	1,864		1,864	2.74	62,626

COMMITTEES AND OTHER OFFICES—Continued

	1986 budget (thousands)	Adjustments	Adjusted amount	Adjusted amount as percentage of total	Percentage times postage
Joint Economic Committee	2,644		2,644	3.89	88,833
Joint Committee on Printing	919		919	1.35	30,876
Joint Committee on the Library	0		0	0	0
Joint Committee on Taxation	3,705	3,705	0	0	0
Democratic Policy Committee	974		974	1.43	32,724
Republican Policy Committee	974		974	1.43	32,724
Legislative Counsel	1,437		1,437	2.11	48,280
Legal Counsel	565		565	.83	18,983
Secretary of the Senate	7,637		7,637	11.23	256,586
Sergeant at Arms	90,511	86,693	3,819	5.61	128,293
Total	158,425	90,398	68,028	100.00	2,285,575

The resolution (S. Res. 500) was agreed to, as follows:

S. RES. 500

Resolved, That for purposes of this resolution—

(1) the term "franked mail" has the meaning given to such term by section 3201(4) of title 39, United States Code;

(2) the term "mass mailing" is a mass mailing (as defined in section 3210(a)(6)(E) of such title) which is to be mailed as franked mail; and

(3) the term "official mail costs" means the equivalent of—

(A) postage on, and fees and charges in connection with, mail matter sent through the mail under the franking privilege; and

(B) those portions of the fees and charges to be paid for handling and delivery by the Postal Service of Mailgrams considered as franked mail under section 3219 of such title.

(4) the term "Senate office" means the Vice President of the United States, a United States Senator, a United States Senator-elect, a committee of the Senate, the Joint Committee on Printing, the Joint Economic Committee, an officer of the Senate, or an office of the Senate authorized by section 3210(b)(1) of title 39 of the United States Code to send franked mail.

Sec. 2. (a) Notwithstanding any provision of law or of the Standing Rules of the Senate, the total amount which may be incurred by a Senate office for official mail cost for fiscal year 1987 shall not exceed the amount allocated to such Senate office for such period by the Committee on Rules and Administration in accordance with this resolution.

(b) As soon as practicable after this resolution is agreed to, the Committee on Rules and Administration shall determine—

(1) The total amount to be allocated for official mail costs for the Senate, which shall be one-half of the total amount appropriated for official mail costs for the Senate and the House of Representatives for fiscal year 1987.

(2) The total amount necessary for official mail costs for FY87 for Senate offices other than Senators and Senators-elect.

(3) The total amount necessary for the official mail costs for Senators-elect for the period beginning on November 5, 1986, and ending on January 3, 1987, provided, however, that such amount shall not include amounts for unsolicited mass-mail.

(4) The total amount necessary for the official mail costs of newly elected Senators for the period January 3, 1987 through September 30, 1987, provided, however, that such amount shall not exceed three-fourths of the amount that such Senators would receive for a full fiscal year.

(5) The total amount necessary for the official mail costs for Senators whose service as Senators will end on January 3, 1987 (except Senators whose retirement from the Senate was announced prior to October 1, 1986) for the period beginning on November 5, 1986, and ending April 3, 1987, provided, however, that not more than one-sixth of the amount such Senators would receive for a full fiscal year shall be available for the period November 5, 1986, through January 3, 1987, and that no amounts shall be provided for unsolicited mass-mailings for the period January 3, 1987, through April 3, 1987.

(6) The total amount necessary for the official mail costs for Senators whose retirement from the Senate was announced prior to October 1, 1986, for the period October 1, 1986, and ending on April 3, 1987, provided, however, that not more than one-fourth of the amount such Senator would receive for the full fiscal year shall be available for the period October 1, 1986, through January 3, 1987, and that no amounts shall be provided for unsolicited mass-mailings for the period January 3, 1987, through April 3, 1987.

(7) The total amount necessary to be reserved for contingencies, which shall not exceed ten percent of the amount determined pursuant to paragraph A.

(8) The total amount available for allocation to Senators other than Senators whose terms of service as a Senator will begin or end on January 3, 1987, which shall be the amount determined pursuant to paragraph (1) minus the sum of the amounts determined pursuant to paragraphs (2) through (7).

(9) The allocation to a Senate office (other than a Senator or a Senator-elect) for fiscal year 1987, which shall be an amount equal to the product of the amount determined pursuant to paragraph (2) multiplied by the ratio that the official funds provided to such office bears to the sum of the official funds provided to all such offices, except that for purposes of this paragraph the funds provided to the Sergeant at Arms shall be considered to be equal to one-half of the funds provided to the Secretary of the Senate and provided further that the official mail costs of the Joint Committee on the Library shall be charged to the amount allocated to the Committee on Rules and Administration.

(10) The allocation of a Senator-elect for official mail costs for that portion of fiscal year 1987 beginning on the date of the election of such Senator-elect and ending with the date such Senator-elect is appointed to the Senate, which shall be an amount equal to the product of the total amount determined pursuant to paragraph (3) multiplied by the ratio that the population of the State represented by the Senator-elect bears to the total population of States represented by Senators-elect.

(11)(A) Subject to the exception of subparagraph (B) of this paragraph, the allocation of a newly elected Senator for official mail costs for the period January 3, 1987, through September 30, 1987, which shall be an amount equal to the product of the total amount determined pursuant to paragraph (4), multiplied by the ratio that the population of the State represented by such Senator bears to the total population of the States represented by such Senators.

(B) Any Senator whose allocation pursuant to subparagraph (A) of this paragraph is less than $75,000 shall be granted such sums from the contingent fund provided for in section 2(b)(7) to bring such Senator's total allocation up to but not to exceed $75,000 upon request of such Senator to the Committee on Rules and Administration. Funds shall be withheld in the contingent fund during each fiscal year for the use of Senators referred to in this paragraph until each such Senator has indicated the total additional sums, if any, that will be needed by such Senator.

(12) The allocation of a Senator whose service as a Senator will end on January 3, 1987 (except a Senator who announced his retirement prior to October 1, 1986) for official mail costs for the period November 5, 1986, through April 3, 1987, which shall be an amount equal to the product of the total amount determined pursuant to paragraph (5), multiplied by the ratio that the population of the State represented by such Senator bears to the total population of the States represented by such Senators.

(13) The allocation of a Senator whose retirement from the Senate was announced prior to October 1, 1986, for official mail costs for the period October 1, 1986, through April 3, 1987, which shall be an amount equal to the product of the total amount determined pursuant to paragraph (6), multiplied by the ratio that the population of the State represented by such Senator bears to the total population of the States represented by such Senators.

(14)(A) Subject to the exception in subparagraph of this paragraph, the allocation of a Senator whose term of service as a Senator does not begin or end on January 3, 1987, for official mail costs for fiscal year 1987, which shall be an amount equal to the product of the total amount determined pursuant to paragraph (8), multiplied by the ratio that the population of the State represented by such Senator bears to the total population of the States represented by such Senators.

(B) Any Senator whose allocation pursuant to subparagraph (A) of this paragraph is less than $100,000 shall be granted such sums from the contingent fund provided for in section 2(b)(7) to bring such Senator's total allocation up to but not to exceed $100,000 upon request of such Senator to the Committee on Rules and Administration. Funds shall be withheld in the contingent fund during each fiscal year for the use of Senators referred to in this paragraph until each such Senator has indicated the total additional sums, if any, that will be needed by such Senator.

(c) In determining official mail costs, and in making the allocations of Senate offices under this resolution, the Committee on Rules and Administration shall consult with the Postmaster General of the United States.

Sec. 3. The Senate urges the House of Representatives to limit the amounts which may be expanded by Members of the House of Representatives, Delegates, Resident Commissioners, and committees, officers, and offices of the House of Representatives in a manner which is similar to the limitations on the expenditure of such amounts which are applicable to Senators during fiscal year 1987.

Sec. 4. The Committee on Rules and Administration shall prescribe a record keeping system to be used by Senate offices to ensure that the amounts allocated to such offices are not exceeded.

Sec. 5. The Committee on Rules and Administration shall prescribe a procedure whereby portions of an allocation made to a Senate office may be transferred to another Senate Office, provided that each such transfer shall be approved by the Committee on Rules and Administration and that no Senate office shall acquire a total amount in excess of the amount that the office could use with the paper officially allotted to such office. The amount of each transfer together with the name of the transferring office, the name of the receiving office, and the date of the transfer shall be set fourth in the semi-annual Report of the Secretary of the Senate, immediately following the tabulation of Senators' quarterly mass-mail costs.

Sec. 6. During the first session of the 100th Congress, the Committee on Rules and Administration shall study the feasibility of revising the manner in which funds for official mail cost are appropriated, expended, and accounted for and shall report its findings and recommendations to the Senate. Such study shall consider the feasi-

bility of providing official mail funds to Senate offices as part of their official office expenses accounts and the use of postage meters or other mail handling machinery to more accurately account for the postage costs of each Senate office. The Committee on Rules and Administration may employ consultants in conducting the study required by this section.

RELIEF OF STEVEN McKENNA

The bill (H.R. 1598) for the relief of Steven McKenna, was considered, ordered to a third reading, read the third time, and passed.

RELIEF OF BOBBY LOCHAN

The bill (S. 334) for the relief of Bobby Lochan, was considered, ordered to be engrossed for a third reading, read the third time, and passed; as follows:

S. 334

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, in the administration of the Immigration and National Act, Bobby Lochan shall be held and considered to have been lawfully admitted to the United States for permanent residence as of the date of the enactment of this Act upon payment of the required visa fees. Upon the granting of permanent residence to such alien as provided for in this Act, the Secretary of State shall instruct the proper officer to reduce by the proper number, during the current fiscal year or the fiscal year next following, the total number of immigrant visas and conditional entries which are made available to natives of the country of the alien's birth under section 203(a) of the Immigration and Nationality Act or, if applicable, the total number of immigrant visas and conditional entries which are made available to natives of the country of the alien's birth under section 202(e) of such Act.

RELIEF OF SUZY HUF HUI CHANG, LEE LO LIN, AND LEE JUO JUI

The bill (S. 521) for the relief of Suzy Huf Hui Chang and Lee Lo Lin and Lee Juo Jui, was considered, ordered to be engrossed for a third reading, read the third time, and passed; as follows:

S. 521

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, for the purposes of the Immigration and Nationality Act, Suzy Huf Hui Chang and Lee Lo Lin and Lee Juo Jui, her children, shall be held and considered to have been lawfully admitted to the United States for permanent residence as of the date of enactment of the Act upon payment of the required visa fees. Upon granting of permanent residence to such aliens as provided for in this Act, the Secretary of State shall instruct the proper officer to reduce by three numbers, during the current fiscal year next following, the total number of immigrant visas and conditional entries which are made available to natives of the country of the aliens' birth under section 203(a) of the Immigration and Nationality Act, or if applicable, from the total number of such visas and entries which are made available to such natives under section 202(e) of such Act.

RELIEF OF DENISE GLENN

The bill (S. 1076) for the relief of Denise Glenn, was considered, ordered to be engrossed for a third reading, read the third time, and passed; as follows:

S. 1076

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, notwithstanding section 241(a)(11) of the Immigration and Nationality Act (8 U.S.C. 1251(a)(11)) or any other provision of such Act, in the administration of such Act, Denise Glenn shall be held and considered to have been lawfully admitted to the United States for permanent residence as of the date of enactment of this Act upon payment of the required visa fee. Upon the granting of permanent residence to such alien as provided for in this Act, the Secretary of State shall instruct the proper officer to reduce by the proper number, during the current fiscal year or the fiscal year next following, the total number of immigrant visas which are made available to natives of the country of the alien's birth under section 203(a) of the Immigration and Nationality Act or, if applicable, the total number of immigrant visas which are made available to natives of the country of the alien's birth under section 202(e) of such Act.

RELIEF OF OLGA SELLARES BARNEY AND HER CHILDREN

The bill (S. 1212) for the relief of Olga Sellares Barney and her children Christian Sellares Barney, Kevin Sellares Barney, and Charles Sellares Barney, was considered, ordered to be engrossed for a third reading, read the third time, and passed; as follow:

S. 1212

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, in the administration of the Immigration and Nationality Act, Olga Sellares Barney and her children Christian Sellares Barney, Kevin Sellares Barney, and Charles Sellares Barney shall be held and considered to have been lawfully admitted to the United States for permanent residence as of the date of the enactment of this Act upon payment of the required visa fees. Upon the granting of permanent residence to such aliens as provided for in this Act, the Secretary of State shall instruct the proper officer to reduce by the proper number, during the current fiscal year or the fiscal year next following, the total number of immigrant visas which are made available to natives of the country of the alien's birth under section 203(a) of the Immigration and Nationality Act or, if applicable, the total number of immigrant visas which are made available to natives of the country of the aliens' birth under section 202(e) of such Act.

RELIEF OF SUENG HO JANG AND SUENG IL JANG

The bill (H.R. 5016) for the relief of Sueng Ho Jang and Sueng Il Jang, was considered, ordered to a third reading, read the third time, and passed.

RELIEF OF GODA FAMILY

The bill (S. 1534) for the relief of Masayoshi Goda, his wife Nobuko Goda, and their children Maki Goda and Eri Goda, was considered, ordered to be engrossed for a third reading, read the third time, and passed; as follows:

S. 1534

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, in the administration of the Immigration and Nationality Act, Masayoshi Goda, his wife Nobuko Goda, and their childern Maki Goda and Eri Goda shall be held and considered to have been lawfully admitted to the United States for permanent residence as of the date of the enactment of this Act upon payment of the required visa fees. Upon the granting of permanent residence to such aliens as provided for in this Act, the Secretary of State shall instruct the proper officer to reduce by the proper number, during the current fiscal year or the fiscal year next following, the total number of immigrant visas which are made available to natives of the country of the aliens' birth under section 203(a) of the Immigration and Nationality Act or, if applicable, the total number of immigrant visas which are made available to natives of the country of the aliens' birth under section 202(e) of such Act.

IMMUNOSUPPRESSIVE DRUG THERAPY ACT

Mr. COCHRAN. Mr. President, I ask unanimous consent that the Senate turn to Calendar No. 812, S. 2536, dealing with immunosuppressive drugs.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The clerk will state the bill by title.

The assistant legislative clerk read as follow:

A bill (S. 2536) to provide for block grants to States to pay the costs of immunosuppressive drugs for organ transplant patients.

The Senate proceeded to consider the bill, which has been reported from the Committee on Labor and Human Resources with amendments, as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets, and the parts of the bill intended to be inserted are shown in italics.)

S. 2536

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Immunosuppressive Drug Therapy Act of 1986".

FINDINGS

SEC. 2. The Congress finds and declares that—

(1) new immunosuppressive drug therapies have made cadaver organ transplants increasingly successful;

(2) approximately 25 percent of individuals needing organ transplants have no private insurance coverage for immunosuppressive drugs and are not eligible for coverage for such drugs under the Medicaid program;

(3) the use of immunosuppressive drug therapy could result in savings in medical costs, since—

(A) the cost of hemodialysis is between $18,000 and $25,000 per patient per year;

(B) the cost of immunosuppressive drug therapy is between $5,000 and $7,000 per patient during the first year of therapy; and

(C) the cost of a successful renal transplant is between $25,000 and $35,000 per patient during the year in which the transplant is performed, $6,000 per patient during the first year after the year in which the transplant is performed, $4,800 per patient during the second year after the year in which the transplant is performed, and $2,900 per patient in the third year after the year in which the transplant is performed; and

(4) under the Medicaid program, 43 States and the District of Columbia provide coverage for immunosuppressive drug therapy.

ESTABLISHMENT OF BLOCK GRANT PROGRAM

SEC. 3. Title XIX of the Public Health Service Act is amended by adding at the end thereof the following new part:

"PART C—IMMUNOSUPPRESSIVE DRUG THERAPY BLOCK GRANT

"DEFINITIONS

"SEC. 1921. For purposes of this part—

"(1) the term 'eligible patient' means an organ transplant patient who is not eligible to receive reimbursement for the total cost of immunosuppressive drug therapy under title XVIII of the Social Security Act, under the State's medicaid plan under title XIX of such Act, or under private insurance;

"(2) the term 'immunosuppressive drug therapy' means drugs and biologicals which are to be used for the purpose of preventing the rejection of transplanted organs and tissues and which can be administered by the transplant patient; and

"(3) the term 'transplant center' means a transplant center certified by a State under the laws and regulations of such State.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 1922. For the purpose of allotments to States to carry out this part, there are authorized to be appropriated $15,000,000 for each of the fiscal years 1987, 1988, and 1989.

"ALLOTMENTS

"SEC. 1923. (a)(1)(A) From amounts appropriated under section 1922 for [each of the fiscal years 1987 and 1988,] *fiscal year 1987,* the Secretary shall allot to each State an amount which bears the same ratio to the total amount appropriated under such section for such fiscal year as the number of individuals having end-stage renal disease in the State in [the immediately preceding] fiscal year *1986* bears to the total number of such individuals in the United States in such [preceding] fiscal year (as determined by the Secretary), except as provided in paragraph (2).

["(B) From amounts appropriated under section 1922 for fiscal year 1989, the Secretary shall allot to each State an amount which bears the same ratio to the total amount appropriated under such section for such fiscal year as the total number of eligible patients in the State bears to the total number of eligible patients in the United States.]

"(B) From amounts appropriated under section 1922 for each of the fiscal years 1988 and 1989, the Secretary shall allot to each State for each such fiscal year an amount which bears the same ratio to the total amount appropriated under such section for such fiscal year as the total number of eligible patients in the State bears to the total number of eligible patients in the United States, except as provided in paragraph (2).

"(2) Notwithstanding paragraph (1), the allotment of any State in any fiscal year under this subsection shall not be less than $50,000. If, under paragraph (1), the allotment of any State in any fiscal year will be less than $50,000, the Secretary shall increase the allotment of such State to $50,000 and shall proportionately reduce the allotments of all other States whose allotment exceeds $50,000 in a manner that will insure that the allotment of each State in such fiscal year is at least $50,000.

"(b) To the extent that all the funds appropriated under section 1922 for a fiscal year and available for allotment in such fiscal year are not otherwise allotted to States because—

"(1) one or more States have not submitted an application or description of activities in accordance with section 1926 for such fiscal year;

"(2) one or more States have notified the Secretary that they do not intend to use the full amount of their allotment; or

"(3) some State allotments are offset or repaid under section 1906(b)(3) (as such section applies to this part pursuant to section 1926(d));

such excess shall be allotted among each of the remaining States in proportion to the amount otherwise allotted to such States for such fiscal year without regard to this [subsection.] *subsection, except as provided in section 1927.*

"PAYMENTS UNDER ALLOTMENTS TO STATES

"SEC. 1924. (a) For each fiscal year, the Secretary shall make payments, as provided by section 6503(a) of title 31, United States Code, to each State from its allotments under section 1923 from amounts appropriated for that fiscal year.

"(b) Any amount paid to a State for a fiscal year and remaining unobligated at the end of such year shall remain available for the next fiscal year to such State for the purposes for which it was made.

"USE OF ALLOTMENTS

"SEC. 1925. (a)(1) Except as provided in subsections (b) and (c), amounts paid to a State under section 1924 from its allotment under section 1923 for any fiscal year shall be used by the State to provide immunosuppressive drug therapy for eligible patients.

"(2) A State may use amounts paid to the State under section 1924 from its allotment under section 1923 to provide immunosuppressive drug therapy for eligible patients—

"(A) by purchasing the drugs and biologicals for such therapy and distributing such drugs and biologicals to transplant [centers or eligible patients;] *centers;*

"(B) by certifying that an individual is an eligible patient for purposes of this part and by reimbursing a transplant center for the costs of immunosuppressive drug therapy provided by such center to such individual; *or*

"(C) by any other method prescribed by the Secretary by regulation (other than the method described in subsection (b)(1)).

"(3) A State may require an eligible patient to whom immunosuppressive drug therapy is provided with amounts paid to the State under this part to make copayments for part of the costs of such therapy, without regard to section 1916 of the Social Security Act.

"(b) A State may not use amounts paid to it under section 1924 to—

"(1) make direct payments to organ transplant patients; or

"(2) satisfy any requirement for the expenditure of non-Federal funds as a condition for the receipt of Federal funds.

"(c) Not more than 10 percent of the total amount paid to any State under section 1924 from its allotment under section 1923 for any fiscal year may be used for administering the funds made available under section 1924. The State will pay from non-Federal sources the remaining costs of administering such funds.

"APPLICATION AND DESCRIPTION OF ACTIVITIES; REQUIREMENTS

"SEC. 1926. (a) In order to receive an allotment for a fiscal year under section 1923, each State shall submit an application to the Secretary. Each such application shall be in such form and submitted by such date as the Secretary shall require. Each such application shall contain assurances that the State will meet the requirements of subsection (b).

"(b) As part of the annual application required by subsection (a), the chief executive officer of each State shall—

"(1) certify that the State agrees to use the funds allotted to the State under section 1923 in accordance with the requirements of this part;

"(2) agrees to cooperate with Federal investigations undertaken in accordance with section 1907 (as such section applies to this part pursuant to subsection (d) of this section); and

"(3) certify that the State agrees that Federal funds made available under section 1924 for any period will be so used as to supplement and increase the level of State, local, and other non-Federal funds that would in the absence of such Federal funds be made available for the activities for which funds are provided under that section and will in no event supplant such State, local, and other non-Federal funds.

The Secretary may not prescribe for a State the manner of compliance with the requirements of this subsection.

"(c) The chief executive officer of a State shall, as part of the application required by subsection (a), also prepare and furnish the Secretary (in accordance with such form as the Secretary shall provide) with a description of the intended use of the payments the State will receive under section 1924 for the fiscal year for which the application is submitted, including information on the programs and activities to be supported. The description shall be made public within the State in such manner as to facilitate comment from any person (including any Federal or other public agency) during development of the description and after its transmittal. The description shall be revised (consistent with this section) throughout the year as may be necessary to reflect substantial changes in the programs and activities assisted by the State under this part, and any revision shall be subject to the requirements of the preceding sentence.

"(d) Except where inconsistent with the provisions of this part, the provisions of section 1903(b), section 1906(a), paragraphs (1) through (5) of section 1906(b), and sections 1907, 1908, and 1909 shall apply to this part

in the same manner as such provisions apply to part A of this title.

"(e) Each annual report submitted by a State to the Secretary under section 1906(a) (as such section applies to this part pursuant to subsection (d) of this section) with respect to its activities under this part shall contain—

"(1) a specification of the number of eligible patients in the State receiving immunosuppressive drug therapy with amounts paid to the State under this part;

"(2) a description of the amount of any copayment required by the State under section 1925(a)(3); and

"(3) a certification that amounts paid to the State under this part are being used in accordance with the provisions of this [part.".] *part.*

"IMMUNOSUPPRESSIVE DRUG THERAPY FOR PATIENTS IN STATES WHICH DO NOT APPLY FOR ALLOTMENTS

"SEC. 1927. (a) If a State does not submit an application for an allotment under section 1926 for a fiscal year or does not qualify for such an allotment for such fiscal year, the Secretary may use an amount which—

"(1) is from amounts appropriated under section 1922 for such fiscal year; and

"(2) is equal to the State's allotment under section 1923(a) for such fiscal year,

to provide immunosuppressive drug therapy to eligible patients in such State in accordance with subsection (b). Before providing such therapy in such State under this section, the Secretary shall consult with the chief executive officer of the State and appropriate local officials.

"(b) Under subsection (a), the Secretary may provide immunosuppressive drug therapy to eligible patients in a State—

"(A) by purchasing the drugs and biologicals for such therapy and distributing such drugs and biologicals to transplant centers;

"(B) by certifying that an individual is an eligible patient for purposes of this part and by reimbursing a transplant center for the costs of immunosuppressive drug therapy provided by such center to such individual; or

"(C) by any other method prescribed by the Secretary by regulation (other than the method described in section 1925(b)(1)).".

REPORT

SEC. 4. Within 24 months after the date of enactment of this Act, the Secretary of Health and Human Services shall prepare and transmit to the Congress a report concerning the impact of part C of title XIX of the Public Health Service Act (as added by section 3 of this Act). The report shall contain—

(1) a description of the effect of the program established under such part on organ transplants in the United States;

(2) an analysis of the effects of such program on the costs of organ transplants and renal dialysis;

(3) an analysis of the extent to which amounts paid to States under such part are used for purposes other than the purposes specified by such part, including an analysis of the extent to which drugs and biologicals purchased with such amounts are provided to individuals who are not eligible patients under such part; and

(4) such recommendations as the Secretary considers appropriate, including recommendations as to whether financial assistance under such program should be continued during fiscal years after fiscal year 1989.

MEDICAID PROVISION

SEC. 5. (a) Section 1902(a)(10) of the Social Security Act is amended in the matter following subparagraph (D)—

(1) by striking out "and" at the end of subclause (III) and inserting in lieu thereof a comma; and

(2) by inserting before the semicolon at the end thereof the following: ", and (V) the making available of immunosuppressive drug therapy (or immunosuppressive drugs) to individuals who have received organ transplants shall not, by reason of this paragraph (10), require the making available of any other type of drug or the making available of any drugs for other individuals".

(b) The amendments made by subsection (a) shall apply to drugs furnished after the date of [the] enactment of this Act.

Mr. COCHRAN. Mr. President, I ask unanimous consent that the committee amendments be considered en bloc.

The PRESIDING OFFICER. Without objection, it is so ordered.

The committee amendments were considered en bloc and agreed to en bloc.

Mr. HATCH. Mr. President, recently a group of high school students from North Carolina had the unique privilege of talking to President Reagan. As usually is the case with young people, the session produced a mix of topics, silly and serious. But one curious youngster asked the President a simple, straightforward question: What do you like most about being President?

If ever a question could open up a wide range of responses, that was it. Imagine the joys and privileges of being one of the most powerful individuals on Earth: The pomp and circumstance, rubbing shoulders with the great men and women of the day, the cheering crowds, the knowledge that legions of men, women, machinery could and would move at your command, even the majestic view of The Mall from the back porch.

But what was the President's answer? He recalled a little baby who needed a transplant—a transplant he helped facilitate—and he remembered being able to see that little girl come to the White House, hale and hearty. "It's things like that," said the President, "that let you go home feeling 10 feet tall."

The leader of a nation of 230 million people, the richest on Earth, with all the triumphs and challenges and opportunities that position affords, finds his greatest joy and satisfaction in helping provide the gift of life to a precious little girl.

I had a hand in saving little Keilie Burrell's life as well—in addition to arranging that meeting with the President—and the whole thing makes me feel good, too.

In 1984, nearly 8,000 patients received organ transplants—and that number is expected to grow as the technology improves and more people decide to donate organs for transplants.

But one-quarter of those eligible, by medical criteria, have no insurance to cover the cost of the miracle immunosuppressive drugs that have made transplants possible. These drugs, which keep the body from rejecting the new organ, are extremely costly. In fact, cyclosporine, the most effective, costs $5,000 a year for a typical transplant patient. And in most cases, if the patient cannot afford the immunosuppressive drugs, the patient is not considered a candidate for the transplant.

In other cases, transplants are performed but the patient must depend on cheaper, less effective drugs that can increase the chance of rejection by up to 50 percent.

The real irony of the current situation is that in cases of kidney disease, passing up a transplant is not only unnecessary—it actually costs the taxpayers money. The Federal Government currently pays for dialysis under the End Stage Renal Disease Program, which until recently was the only option for chronic renal disease. And as expensive as immunosuppressive drugs are, they don't even begin to approach the cost of dialysis, which ranges from $18,000 to $25,000 a year.

Because of the high cost of dialysis, the ESRD Program has skyrocketed from a $200 million program to a $2 billion program in just 10 years. The emergence of kidney transplants as a viable therapy is helping turn back the rising tide of ESRD expenditures.

My friends and colleagues, we have an opportunity not only to express the same compassion President Reagan demonstrated in helping people like Keilie Burrell obtain the precious gift of life—but we may save some Federal tax money as well.

I have introduced, with the support of Senator KENNEDY and Senator NICKLES, and the Committee on Labor and Human Resources has reported, legislation to accomplish both these ends. S. 2536, the Immunosuppressive Drug Therapy Act of 1986, provides $15 million over 3 years in the form of grants to States to purchase these self-administered drugs.

All organ transplant patients whose immunosuppressive drugs are not fully covered by existing private or public programs are eligible for assistance, but the extent of assistance may be based on the patient's ability to pay. States may require patients to pay part of the cost of their immunosuppressive drugs, but we anticipate that States in establishing copayments will take into account the financial resources of recipients.

States may either purchase the drugs and make them available to certified transplant centers for distribution, reimburse the centers for drugs provided eligible patients, or select an alternative course of action approved

by the Secretary of Health and Human Services. One thing State governments may not do is use this funding to supplant other spending. This legislation is intended to fill gaps in current coverage to help patients not being helped, not to become a substitute source of funding for patients already covered.

Mr. President, I am aware that health care proposals of this kind may induce a different kind of medical problem—they may set a few hearts fluttering among my cost-conscious colleagues in this Gramm-Rudman-Hollings era. I want to provide a little bedside reassurance on this score.

First of all, unlike many programs which start as little acorns and grow into mighty money trees, this program is not open-ended. It sets specific funding levels for a specific number of years. We've anticipated that because of changes in what private insurance pays for and the interest in a Federal catastrophic care program, this program may not be needed in its original form or in any form in a few years. Therefore, we have directed the Secretary to report back to us in 2 years on the effectiveness of, and need for, this program.

But more important, as I pointed out earlier, this program will help to bring down the cost of a rapidly growing Federal program, the End Stage Renal Disease Program.

We are facing a busy last few weeks in this session. We shall address weighty matters like deficits and the debt limit. We shall vote on a tax reform bill that might reshape our economy, and on the nominations of two men who will influence our entire society from the Bench. We'll fight over the size and shape and scope of the arsenal that will defend freedom for years to come. We shall debate our role in the fate of people and nations flung far across the world, from Nicaragua to South Africa to Afghanistan.

But today, my friends, we can do something we can really feel good about—we can not only save money, we can save precious lives like that of little Keilie Burrell. And I believe President Reagan has put it into perspective for us: Nothing we can do is more important.

I urge my colleagues to join me and Senators KENNEDY and NICKLES in passing this legislation.

Mr. GORE. Mr. President, I ask unanimous consent that I be allowed to place a statement in the RECORD prior to a vote on this bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GORE. Mr. President, we must not let another Congress adjourn without addressing the serious problems many transplant patients face gaining access to essential immunosuppressive drug therapy.

Immunosuppressive drugs are the most dramatic advance in perhaps the most exciting field in modern medicine. Quite simply, immunosuppressive drugs make transplants work. Without the drugs, a transplant patient's body is likely to reject a new organ.

Unfortunately, immunosuppressive drugs are not cheap. Three years ago, in hearings on the transplant issue in the House, my committee found that many patients passed up a kidney transplant not because the operation is too expensive, since Medicare pays for the operation, but because they cannot afford the postoperative treatment. With Medicare refusing to pay for outpatient drugs, as many as 30 percent of those who need transplants forgo them. Others go through the operation, then must make do with less effective substitutes for more effective immunosuppressive drugs.

In fact, doctors often advise kidney patients who cannot afford new immunosuppressive drugs such as cyclosporine not to have a transplant. These patients remain on dialysis because Medicare will pay for it. Over time, the Government ends up spending far more on dialysis than it would cost to provide each patient the transplant and access to immunosuppressive drugs.

Several legislative proposals have been introduced to solve this problem. One by the Senator from Utah, Mr. HATCH, which is before us now, would provide block grants to States.

I have also introduced a bill, S. 2540, that would require the Government to purchase immunosuppressive drugs and distribute them to transplant centers around the country that meet minimum standards to assure quality of care. The House backed this approach in 1984, by a vote of 396 to 6. It has received the endorsement of the Task Force on Organ Transplantation and the strong backing of every major transplant group in the country.

Yet another approach, introduced by Congressmen DOUG WALGREN and HENRY WAXMAN, is currently being considered as part of this year's Budget Reconciliation Act. It would provide 12 months' coverage for immunosuppressive drugs to Medicare beneficiaries as a part B benefit.

A fourth approach, not yet part of any bill, but perhaps the best approach for the patient, would legislatively add the cost of these drugs to the two DRG's for transplantation. This approach combines what I believe are the best aspects of S. 2540 and the Walgren/Waxman approach. It provides the simplest and most sensible method for paying for these drugs, with the assurance that the transplant center will be able to closely monitor the immunosuppressive therapy. Too often organs are lost following successful surgery when proper monitoring, best performed by the transplant center, is not done.

Coverage for immunosuppressive drugs was left out of the National Organ Transplant Act of 1984 only after the administration and Senate conferees promised to abide by the recommendations of a transplant task force. After careful examination of this issue, the task force endorsed coverage last October. We are still waiting for the administration to keep its promise.

Mr. President, it just doesn't make any sense for Government to spend more to provide less—or to offer to save people's lives only to deny them what they need to go on living. It's time Congress forced the administration to take a close look at the tragedy of its transplant policy.

The PRESIDING OFFICER. Are there further amendments? If there be no further amendments to be proposed, the question is on the engrossment and the third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed.

Mr. COCHRAN. I move to reconsider the vote by which the bill was passed.

Mr. MELCHER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

BUDGET ACT WAIVER

Mr. COCHRAN. Mr. President, I ask unanimous consent that the Senate turn to Calendar No. 697, Senate Resolution 425, the budget waiver to accompany S. 2216.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The resolution will be stated by title.

The assistant legislative clerk read as follows:

A Senate resolution (S. Res. 425) to waive section 303(a) of the Congressional Budget Act, with respect to the consideration of S. 2216, designating September 17, 1987, the bicentennial of the sigining of the Constitution of the United States, as "Constitution Day.",

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution was considered and agreed to as follows:

S. RES. 425

Resolved, That pursuant to section 303(c) of the Congressional Budget Act of 1974, section 303(a) of that Act is waived with respect to consideration of S. 2216, as reported, designating September 17, 1987, the bicentennial of the signing of the Constitution of the United States, as "Constitution Day".

A waiver of section 303(a) is necessary because S. 2216, as reported, provides new entitlement authority first effective during FY 1987 before the concurrent resolution on the budget for fiscal year 1987 has been

agreed to. The entitlement authority results from premium pay for employees who work on the holiday.

DESIGNATION OF CONSTITUTION DAY

Mr. COCHRAN. I ask unanimous consent that the Senate turn to the consideration of Calendar No. 631, S. 2216.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 2216) to designate September 17, 1987, the bicentennial of the signing of the Constitution of the United States as Constitution Day and to make such day a legal public holiday.

The Senate proceeded to consider the bill.

AMENDMENT NO. 3256

(Purpose: To designate September 17 of every year as "Constitution Day" and to establish such day as a legal public holiday with certain limitations)

Mr. COCHRAN. I send an amendment to the desk in behalf of Mr. HATCH and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Mississippi [Mr. COCHRAN], for Mr. HATCH, proposes an amendment numbered 3256.

At the end of the bill, add the following new section:

SEC. . (a) Section 6103 of title 5, United States Code, is amended—

(1) by inserting in subsection (a) immediately after the item relating to Labor Day, the following new item: "Constitution Day, September 17.";

(2) by striking out "For" in subsection (b) and inserting in lieu thereof "Except as provided for in subsection (d), for"; and

(3) by adding at the end thereof the following new subsection:

"(d) For purposes of statutes relating to pay and leave of employees, Constitution Day shall not be observed as a legal public holiday in calendar years beginning after December 31, 1987.".

(b) The amendments made by this section shall apply to calendar years beginning after December 31, 1987.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3256) was agreed to.

Mr. THURMOND. Mr. President, I strongly support S. 2216, establishing September 17, 1987, as "Constitution Day" and proclaiming that day as a one-time national holiday commemorating the Bicentennial of the United States Constitution.

Over the years, our Government has chosen to observe, through annual national holidays, a number of great leaders and great events in our Nation's history. I cannot imagine an occasion of greater historical significance to the people of the United States than the 200th birthday of its unique and unparalleled Constitution.

Mr. President, the bicentennial provides an opportunity for our citizens to gain a new appreciation of the vital role which the Constitution has played in making the United States the greatest country in the world. Establishment of a one-time holiday, by underscoring the significance of the Constitution, should stimulate many of our citizens to study and analyze its origin and meaning.

I am honored to be a member of the Commission on the Bicentennial of the United States Constitution. The Commission, under the leadership of its chairman, Chief Justice Warren Burger, is working with Federal entities, with the States and local communities, and with numerous nonpublic entities, to ensure that our observance of the bicentennial is meaningful. The Commission has strongly endorsed the one-time holiday proposed by this legislation, and believes that it will greatly enhance our bicentennial celebration.

Mr. President, I am hopeful that my colleagues in the Senate will support this important initiative. A one-time holiday would be an excellent way to observe 200 years of democracy under a document which, in my view, is the greatest that modern man has ever penned for the governing of a people.

Mr. STEVENS. Mr. President, to me there is no day more worthy of celebration than the day the U.S. Constitution was signed. I am, therefore, pleased to be the sponsor of S. 2216, making September 17, 1987, a one-time national holiday—Constitution Day.

Even more than the signing of the Declaration of Independence, the signing of the Constitution by the Constitutional Convention marked the beginning of our Nation. That Convention, representing a loose confederation of former British colonies, and empowered to redraft the Articles of Confederation, went beyond their charge and instead drew up the blueprint of the most successful government in history. When the framers of our Constitution sent their new document out to what would become the States for it to be ratified our country's life began.

There have been amendments to our Constitution but the basic form of our Government has remained unchanged. The balance between our three branches has not only proved successful in our country; it has set a standard by which other countries have measured their own governments.

It is only appropriate that we celebrate the 200th anniversary of our Constitution with all the energy we can muster. This is more than just another day for parades and parties: it is an opportunity to reflect on the history of our Nation, and the great concepts which have made us what we are today. However, while it is important that we think about the wisdom embodied in the Constitution, it is just as important that we do have parades to celebrate the bicentennial. This national celebration is the best way to convince Americans to think of ways to commemorate the founding of our Government.

The original proposal embodied in this bill—a one-time national holiday—has been improved by Senator HATCH's amendment to make a permanent day of observance for our Constitution. If there is any day which deserves special recognition in this country, it is the anniversary of the signing of our Constitution.

Mr. THURMOND. Mr. President, in section 3 of this legislation, it is stated that September 17, 1987, shall be treated as if it were a legal public holiday under section 6103(a) of title 5, United States Code, for purposes of any law. There apparently have been some who have questioned, in other contexts, whether the Federal Rules of Civil Procedure are laws.

I want to make clear that it is the understanding of this Senator that under S. 2216, the terms "any other law" as used in section 3 is intended to include the Federal Rules of Civil Procedure.

I ask the distinguished sponsor of the bill (Mr. STEVENS) if his understanding of this language is the same as mine.

Mr. STEVENS. Mr. President, I agree fully with my colleague that the terms "any other law" are intended in this instance to include the Federal Rules of Civil Procedure.

Mr. THURMOND. Mr. President, I thank the Senator for his response.

The PRESIDING OFFICER. Are there further amendments? There being no further amendments, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and to be read a third time.

The bill was read the third time, and passed, as follows;

S. 2216

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

FINDINGS

SECTION 1. The Congress finds that—

(1) the United States Constitution is the cornerstone of our system of Government under law;

(2) September 17, 1987, commemorates the bicentennial of the signing of the United States Constitution;

(3) the bicentennial of the signing of the United States Constitution serves as a reminder and a celebration of the rights, privileges, and responsibilities of citizenship;

(4) the United States Constitution signifies the importance of the rule of law and affirms our dedication to freedom and justice; and

(5) the United States Constitution provides the framework for our law, our spirit, and our beliefs as a Nation.

DESIGNATION

SEC. 2. September 17, 1987, is designated as "Constitution Day".

TREATMENT AS A LEGAL PUBLIC HOLIDAY

SEC. 3. September 17, 1987, shall be treated as if it were a legal public holiday under section 6103(A) of title 5, United States Code, for purposes of—

(1) any statute relating to pay or leave of employees (as defined by section 2105 of title 5, United States Code);

(2) section 2(d) of the joint resolution entitled "Joint resolution to codify and emphasize existing rules and customs pertaining to the display and use of the flag of the United States of America", approved June 22, 1942 (36 U.S.C. 174(d));

(3) section 15(a) of the Federal Contested Election Act (2 U.S.C. 394(a)); and

(4) any other law.

SEC. 4. (a) Section 6103 of title 5, United States Code, is amended—

(1) by inserting in subsection (a) immediately after the item relating to Labor Day, the following new item: "Constitution Day, September 17.";

(2) by striking out "For" in subsection (b) and inserting in lieu thereof "Except as provided for in subsection (d), for"; and

(3) by adding at the end thereof the following new subsection:

"(d) For purposes of statutes relating to pay and leave of employees, Constitution Day shall not be observed as a legal public holiday in calendar years beginning after December 31, 1987.".

(b) The amendments made by this section shall apply to calendar years beginning after December 31, 1987.

Mr. COCHRAN. I move to reconsider the vote by which the bill was passed.

Mr. MELCHER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

INDIAN HEALTH CARE AMENDMENTS OF 1986

Mr. COCHRAN. I ask unanimous consent that the Senate turn to the consideration of Calendar No. 995, H.R. 1426.

The PRESIDING OFFICER. Without objection, the clerk will state the bill by title.

The assistant legislative clerk read as follows:

A bill (H.R. 1426) to authorize and amend the Indian Health Care Improvement Act, and for other purposes.

The Senate proceeded to consider the bill.

AMENDMENT NO. 3257

(Purpose: To make technical amendments, to provide for health education, and for other purposes)

Mr. COCHRAN. Mr. President, in behalf of Senator ANDREWS, I send an amendment to the desk in the nature of a substitute and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Mississippi [Mr. COCHRAN] for Mr. ANDREWS, proposes an amendment numbered 3257.

Mr. COCHRAN. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SHORT TITLE; TABLE OF CONTENTS

SECTION 1. This Act may be cited as the "Indian Health Care Amendments of 1986".

TABLE OF CONTENTS

Sec. 1. Short title; table of contents.
Sec. 2. References.

TITLE I—INDIAN HEALTH MANPOWER

Sec. 101. Health professions recruitment program for Indians.
Sec. 102. Health professions preparatory scholarship program.
Sec. 103. Indian Health Service extern programs.
Sec. 104. Indian health professions scholarship program.
Sec. 105. Continuing education allowances.
Sec. 106. Native Hawaiian health professions scholarship program.
Sec. 107. Community health representatives.

TITLE II—HEALTH SERVICES

Sec. 201. Improvement of Indian health status.
Sec. 202. Catastrophic health program.
Sec. 203. Health promotion and disease prevention.
Sec. 204. Reimbursement of certain expenses.

TITLE III—HEALTH FACILITIES

Sec. 301. Consultation; closure of facilities; reports.
Sec. 302. Safe water and sanitary waste disposal facilities.
Sec. 303. Use of non-Service funds for renovation.
Sec. 304. Bethel, Alaska, hospital.

TITLE IV—ACCESS TO HEALTH SERVICES

Sec. 401. Grants and contracts with tribal organizations.
Sec. 402. Medicare provisions.
Sec. 403. Medicaid provisions.
Sec. 404. Demonstration program.

TITLE V—URBAN INDIAN HEALTH SERVICES

Sec. 501. Revision of program.
Sec. 502. Urban Indian organization.

TITLE VI—ORGANIZATIONAL IMPROVEMENTS

Sec. 601. Management information system.

TITLE VII—MISCELLANEOUS PROVISIONS

Sec. 701. Leasing and other contracts.
Sec. 702. Health education.
Sec. 703. Arizona as a contract health service delivery area.
Sec. 704. Eligibility of California Indians.
Sec. 705. California as a contract health service delivery area.
Sec. 706. Contract health facilities.
Sec. 707. National Health Service Corps.
Sec. 708. Health services for ineligible persons.
Sec. 709. Infant and maternal mortality; fetal alcohol syndrome.
Sec. 710. Contract health services for the Trenton Service Area.
Sec. 711. Indian health service and Veterans' Administration health facilities and services sharing.
Sec. 712. Navajo alcohol rehabilitation demonstration program.
Sec. 713. Reallocation of base resources.
Sec. 714. Provision of services in Montana.
Sec. 715. Severability.

TITLE VIII—NATIVE AMERICAN DIABETES PREVENTION AND CONTROL

Sec. 801. Short title.
Sec. 802. Findings and purpose.
Sec. 803. Definitions.
Sec. 804. Study on diabetes among native Americans.
Sec. 805. Diabetes care program.
Sec. 806. Data collection and analysis.
Sec. 807. Research.
Sec. 808. Regulations.
Sec. 809. Authorization of appropriations.

REFERENCES

SEC. 2. Except as otherwise specifically provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or a repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Indian Health Care Improvement Act (25 U.S.C. 1601, et seq.).

TITLE I—INDIAN HEALTH MANPOWER

HEALTH PROFESSIONS RECRUITMENT PROGRAM FOR INDIANS

SEC. 101. Subsection (c) of section 102 (25 U.S.C. 1612(c)) is amended to read as follows:

"(c) There are authorized to be appropriated for the purpose of carrying out the provisions of this section—

"(1) $550,000 for fiscal year 1987,
"(2) $600,000 for fiscal year 1988,
"(3) $650,000 for fiscal year 1989, and
"(4) $700,000 for fiscal year 1990.".

HEALTH PROFESSIONS PREPARATORY SCHOLARSHIP PROGRAM

SEC. 102. (a) Section 103 (25 U.S.C. 1613) is amended by striking out subsection (d) and inserting in lieu thereof the following:

"(d) The Secretary shall not deny scholarship assistance to an eligible applicant under this section solely on the basis of the applicant's scholastic achievement if such applicant has been admitted to, or maintained good standing at, an accredited institution.

"(e) There are authorized to be appropriated for the purpose of carrying out the provisions of this section—

"(1) $3,000,000 for fiscal year 1987,
"(2) $3,700,000 for fiscal year 1988,
"(3) $4,400,000 for fiscal year 1989, and
"(4) $5,100,000 for fiscal year 1990.".

(b) Subsection (c) of section 103 is amended by striking out "expenses" and inserting in lieu thereof "expenses of a grantee while attending school full time".

INDIAN HEALTH SERVICE EXTERN PROGRAMS

SEC. 103. Subsection (d) of section 105 (25 U.S.C. 1614) is amended to read as follows:

"(d) There are authorized to be appropriated for the purpose of carrying out the provisions of this section—

"(1) $300,000 for fiscal year 1987,
"(2) $350,000 for fiscal year 1988,
"(3) $400,000 for fiscal year 1989, and
"(4) $450,000 for fiscal year 1990.".

INDIAN HEALTH PROFESSIONS SCHOLARSHIP PROGRAM

SEC. 104. (a) Section 104 is amended to read as follows:

"INDIAN HEALTH PROFESSIONS SCHOLARSHIPS

"SEC. 104. (a) In order to provide health professionals to Indian communities, the Secretary, acting through the Service and in accordance with this section, shall make scholarship grants to Indians who are enrolled full time in schools of medicine, osteopathy, podiatry, psychology, dentistry, veterinary medicine, nursing, optometry, public health, and allied health professions. Such scholarships shall be designated Indian Health Scholarships and shall be made in accordance with section 338A of the Public Health Service Act (42 U.S.C. 2541), except as provided in subsection (b) of this section.

"(b)(1) The Secretary, acting through the Service, shall determine who shall receive scholarships under subsection (a) and shall determine the distribution of such scholarships among such health professions on the basis of the relative needs of Indians for additional service in such health professions.

"(2) An individual shall be eligible for a scholarship under subsection (a) in any year in which such individual is enrolled full time in a health profession school referred to in subsection (a).

"(3) The active duty service obligation prescribed under section 338B of the Public Health Service Act (42 U.S.C. 254m) shall be met by a recipient of an Indian Health Scholarship by service—

"(A) in the Indian Health Service;

"(B) in a program conducted under a contract entered into under the Indian Self-Determination and Education Assistance Act;

"(C) in a program assisted under title V of this Act; or

"(D) in the private practice of the applicable profession if, as determined by the Secretary, in accordance with guidelines promulgated by the Secretary, such practice is situated in a physician or other health professional shortage area and addresses the health care needs of a substantial number of Indians.

"(c) For the purpose of this section, the term 'Indian' has the same meaning given that term by subsection (c) of section 4 of this Act, including all individuals described in clauses (1) through (4) of that subsection.

"(d) There are authorized to be appropriated for the purpose of carrying out the provisions of this section—

"(1) $5,100,000 for fiscal year 1987,

"(2) $6,000,000 for fiscal year 1988,

"(3) $7,100,000 for fiscal year 1989, and

"(4) $8,234,000 for fiscal year 1990.".

(b) Section 338G of the Public Health Service Act (42 U.S.C. 254r) is repealed.

CONTINUING EDUCATION ALLOWANCES

SEC. 105. Subsection (b) of section 106 (25 U.S.C. 1615 (b)) is amended to read as follows:

"(b) There are authorized to be appropriated for the purpose of carrying out the provisions of this section—

"(1) $500,000 for fiscal year 1987,

"(2) $526,300 for fiscal year 1988,

"(3) $553,800 for fiscal year 1989, and

"(4) $582,500 for fiscal year 1990.".

NATIVE HAWAIIAN HEALTH PROFESSIONS SCHOLARSHIP PROGRAM

SEC. 106. The Public Health Service Act (42 U.S.C. 201, et seqq.) is amended by inserting after section 338G the following new section:

"SEC. 338H. NATIVE HAWAIIAN HEALTH SCHOLARSHIPS.

"(a) Subject to the availability of funds appropriated under the authority of subsection (d), the Secretary shall provide scholarship assistance to students who—

"(1) meet the requirements of section 338A(b), and

"(2) are Native Hawaiians.

"(b) The scholarship assistance provided under subsection (a) shall be provided under the same terms and subject to the same conditions, regulations, and rules that apply to scholarship assistance provided under section 338A.

"(c) For purposes of this section, the term 'Native Hawaiian' means any individual who is—

"(1) a citizen of the United States, and

"(2) a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii, as evidenced by—

"(A) genealogical records,

"(B) Kupuna (elders) or Kama'aina (long-term community residents) verification, or

"(C) birth records of the State of Hawaii.

"(d) There are authorized to be appropriated $1,800,000 for fiscal year 1988, and for each fiscal year thereafter, for the purpose of funding the scholarship assistance provided under subsection (a).".

COMMUNITY HEALTH REPRESENTATIVES

SEC. 107. Title I is amended by adding at the end thereof the following new section:

"COMMUNITY HEALTH REPRESENTATIVE PROGRAM

"SEC. 107. (a) Under the authority of the Act of November 2, 1921 (25 U.S.C. 13), popularly known as the Snyder Act, the Secretary shall maintain a Community Health Representative Program under which the Service—

"(1) provides for the training of Indians as health paraprofessionals, and

"(2) uses such paraprofessionals in the provision of health care to Indian communities.

"(b) The Secretary, acting through the Community Health Representative Program of the Service, shall—

"(1) provide a high standard of paraprofessional training to Community Health Representatives to ensure that the Community Health Representatives provide quality health care to the Indian communities served by such Program,

"(2) in order to provide such training, develop a curriculum that—

"(A) combines education in the theory of health care with supervised practical experience in the provision of health care,

"(B) provides instruction and practical experience in health promotion and disease prevention activities, particularly—

"(i) nutrition,

"(ii) physical fitness,

"(iii) weight control,

"(iv) cessation of tobacco smoking,

"(v) stress management,

"(vi) control of alcohol and drug abuse (including prevention of fetal alcohol syndrome),

"(vii) control of high blood pressure,

"(viii) prevention of lifestyle-related accidents,

"(ix) prevention and management of hearing and vision problems, and

"(x) prevention of diabetes, and

"(C) provides instruction in the latest and most effective social, educational, and behavioral approaches to the establishment and maintenance of good health habits,

"(3) develop a system which identifies the needs of Community Health Representatives for continuing education in health care, health promotion, and disease prevention and develop programs that meet the needs for such continuing education,

"(4) develop and maintain a system that provides close supervision of Community Health Representatives,

"(5) develop a system under which the work of Community Health Representatives is reviewed and evaluated, and

"(6) ensure that the provision of health care, health promotion, and disease prevention activities are consistent with the traditional health care practices and cultural values of the Indian tribes served by such Program.".

TITLE II—HEALTH SERVICES

IMPROVEMENT OF INDIAN HEALTH STATUS

SEC. 201. (a) Section 201 (25 U.S.C. 1621) is amended to read as follows:

"IMPROVEMENT OF INDIAN HEALTH STATUS

"SEC. 201. (a) The Secretary is authorized to expend funds which are appropriated pursuant to subsection (j), through the Service, for the purposes of—

"(1) raising the health status of Indians to zero health resources deficiency,

"(2) eliminating backlogs in the provision of health care services to Indians,

"(3) meeting the health needs of Indians in an efficient and equitable manner, and

"(4) augmenting the ability of the Service to meet the following health service responsibilities:

"(A) clinical care (direct and indirect) including clinical eye and vision care;

"(B) preventive health;

"(C) dental care (direct and indirect);

"(D) mental health, including community mental health services, inpatient mental health services, dormitory mental health services, therapeutic and residential treatment centers, and training of traditional Indian practitioners;

"(E) emergency medical services;

"(F) treatment and control of, and rehabilitative care related to, alcoholism and drug abuse (including fetal alcohol syndrome) among Indians;

"(G) home health care;

"(H) community health representatives; and

"(I) maintenance and repair.

"(b)(1) Any funds appropriated pursuant to subsection (j) shall not be used to offset or limit any appropriations made to the Service under the Act of November 2, 1921 (25 U.S.C. 13), popularly known as the Snyder Act, or any other provision of law.

"(2) Funds which are appropriated pursuant to subsection (j) may be allocated to, or used for the benefit of, any Indian tribe which has a health resources deficiency level at level I or II only if a sufficient amount of funds have been appropriated pursuant to subsection (j) to raise all Indian tribes to health resources deficiency level II.

"(3)(A) Funds appropriated pursuant to subsection (j) may be allocated on a service unit basis but such allocation shall be made in a manner which ensures that the requirement of paragraph (2) is met. The funds allocated to each service unit under this subparagraph shall be used by the service unit (in accordance with paragraph (2)) to raise the deficiency level of each tribe served by such service unit.

"(B) The apportionment of funds allocated to a service unit under subparagraph (A) among the health service responsibilities de-

scribed in subsection (a)(4) shall be determined by the Service in consultation with the affected Indian tribes.

"(c) For purposes of this section—

"(1) The health resources deficiency levels of an Indian tribe are as follows:

"(A) level I—0 to 20 percent health resources deficiency;

"(B) level II—21 to 40 percent health resources deficiency;

"(C) level III—41 to 60 percent health resources deficiency;

"(D) level IV—61 to 80 percent health resources deficiency; and

"(E) level V—81 to 100 percent health resources deficiency.

"(2) The term 'health resources deficiency' means a percentage determined by dividing—

"(A) the excess, if any, of—

"(i) the value of the health resources that the Indian tribe needs, over

"(ii) the value of the health resources available to the Indian tribe, by

"(B) the value of the health resources that the Indian tribe needs.

"(3) The health resources available to an Indian tribe include health resources provided by the Service as well as health resources used by the Indian tribe, including services and financing systems provided by any Federal programs, private insurance, and programs of State or local governments.

"(4) Under regulations, the Secretary shall establish procedures which allow any Indian tribe to petition the Secretary for a review of any determination of the health resources deficiency level of such tribe.

"(d)(1) Programs administered by any Indian tribe or tribal organization under the authority of the Indian Self-Determination and Education Assistance Act shall be eligible for funds appropriated pursuant to subsection (j) on an equal basis with programs that are administered directly by the Service.

"(2) If any funds allocated to a tribe or service unit under the authority of this section are used for a contract entered into under the Indian Self-Determination and Education Assistance Act, a reasonable portion of such funds may be used for health planning, training, technical assistance, and other administrative support functions.

"(e) The Secretary, acting through the Service, shall expend directly or by contract not less than 1 percent of the funds appropriated pursuant to subsection (j) for research in the areas of health service responsibilities set out in subparagraphs (A) through (H) of subsection (a)(4). Indian tribes and tribal organizations contracting with the Service under the authority of the Indian Self-Determination and Education Assistance Act shall be given an equal opportunity to compete for, and receive, such research funds.

"(f) By no later than the date that is 60 days after the date of enactment of the Indian Health Care Amendments of 1986, the Secretary shall submit to the Congress the current health services priority system report of the Service for each Indian tribe or service unit, including newly recognized or acknowledged tribes. Such report shall set out—

"(1) the methodology then in use by the Service for determining tribal health resources deficiencies, as well as the most recent application of that methodology;

"(2) the level of health resources deficiency for each Indian tribe served by the Service;

"(3) the amount of funds necessary to raise all Indian tribes served by the Service below health resources deficiency level II to health resources deficiency level II;

"(4) the amount of funds necessary to raise all tribes served by the Service below health resources deficiency level I to health resources deficiency level I;

"(5) the amount of funds necessary to raise all tribes served by the Service to zero health resources deficiency; and

"(6) an estimate of—

"(A) the amount of health service funds appropriated under the authority of this Act, or any other Act, including the amount of any funds transferred to the Service, for the preceding fiscal year which is allocated to each service unit, Indian tribe, or comparable entity;

"(B) the number of Indians eligible for health services in each service unit or Indian tribe; and

"(C) the number of Indians using the Service resources made available to each service unit or Indian tribe.

"(g)(1) The Secretary, acting through the Service and in conjunction with each Indian tribe, shall annually update the tribal specific health plans which were developed as part of the plan required under section 703. The updating of such plans shall be carried out in accordance with the methodology submitted to the Congress under subsection (f), as modified through consultation with the Indian tribe to which such plan relates.

"(2) The Secretary shall submit to Congress an annual report on the health services priority system of the Service by no later than 60 days after the date the President submits to the Congress the budget required under section 1105 of title 31, United States Code, for any fiscal year beginning after September 30, 1988. Such report shall be based on the updated tribal specific health plans described in paragraph (1) and shall include information on any change in the methodology used by the Service since the submission of the report required under subsection (f) or since the previous submission of the report required under this section.

"(h)(1) The President shall include with the budget submitted under section 1105 of title 31, United States Code, for each fiscal year a separate statement which—

"(A) specifies the amount of funds requested to carry out the provisions of this section for such fiscal year, and

"(B) specifies the total amount obligated or expended in the most recently completed fiscal year to carry out subsection (g) and to carry out each of the subparagraphs of subsection (a)(4).

"(2) Funds appropriated under authority of this section for any fiscal year shall be included in the base budget of the Service for the purpose of determining appropriations under this section in subsequent fiscal years.

"(i) Nothing in this section is intended to diminish the primary responsibility of the Service to eliminate existing backlogs in unmet health care needs, nor are the provisions of this section intended to discourage the Service from undertaking additional efforts to achieve parity among Indian tribes.

"(j) There are authorized to be appropriated for the purpose of carrying out the provisions of this section—

"(1) $18,000,000 for fiscal year 1988,

"(2) $19,000,000 for fiscal year 1989, and

"(3) $19,000,000 for fiscal year 1990.

Any funds appropriated under the authority of this subsection shall be designated as the 'Indian Health Care Improvement Fund'.".

(b) Section 4 (25 U.S.C. 1603) is amended by striking out subsections (i), (j), and (k), and by inserting in lieu thereof the following new subsections:

"(i) 'Area office' means an administrative entity including a program office, within the Indian Health Service through which services and funds are provided to the service units within a defined geographic area.

"(j) 'Service unit' means—

"(1) an administrative entity within the Indian Health Service, or

"(2) a tribe or tribal organization operating health care programs or facilities with funds from the Service under the Indian Self-Determination and Education Assistance Act,

through which services are provided, directly or by contract, to the eligible Indian population within a defined geographic area.".

CATASTROPHIC HEALTH PROGRAM

SEC. 202. Title II is amended by adding at the end thereof the following new section:

"CATASTROPHIC HEALTH EMERGENCY FUND

"SEC. 202. (a)(1) There is hereby established an Indian Catastrophic Health Emergency Fund (hereafter in this section referred to as the 'Fund') consisting of—

"(A) the amounts deposited under subsection (d), and

"(B) the amounts appropriated under subsection (e).

"(2) The Fund shall be administered by the Secretary, acting through the central office of the Service, solely for the purpose of meeting the extraordinary medical costs associated with the treatment of victims of disasters or catastrophic illnesses who are within the responsibility of the Service.

"(3) The Fund shall not be allocated, apportioned, or delegated on a service unit, area office, or any other basis.

"(4) No part of the Fund or its administration shall be subject to contract or grant under any law, including the Indian Self-Determination and Education Assistance Act.

"(b) The Secretary shall, through the promulgation of regulations consistent with the provisions of this section—

"(1) establish a definition of disasters and catastrophic illnesses for which the cost of treatment provided under contract would qualify for payment from the Fund;

"(2) provide that a service unit shall not be eligible for reimbursement for the cost of treatment from the Fund until its cost of treating any victim of such catastrophic illness or disaster has reached a certain threshold cost which the Secretary shall establish at not less than $10,000 or not more than $20,000;

"(3) establish a procedure for the reimbursement of the portion of the costs incurred by—

"(A) service units or facilities of the Service, or

"(B) whenever otherwise authorized by the Service, non-Service facilities or providers,

in rendering treatment that exceeds such threshold cost;

"(4) establish a procedure for payment from the Fund in cases in which the exigencies of the medical circumstances warrant treatment prior to the authorization of such treatment by the Service; and

"(5) establish a procedure that will ensure that no payment shall be made from the Fund to any provider of treatment to the extent that such provider is eligible to receive payment for the treatment from any other Federal, State, local, or private source

of reimbursement for which the patient is eligible.

"(c) Funds appropriated under subsection (e) shall not be used to offset or limit appropriations made to the Service under authority of the Act of November 2, 1921 (25 U.S.C. 13), popularly known as the Snyder Act, or any other law.

"(d) There shall be deposited into the Fund—

"(1) all reimbursements to which the Service is entitled from any Federal, State, local, or private source (including third party insurance) by reason of treatment rendered to any victim of a disaster or catastrophic illness who is within the responsibility of the Service, and

"(2) all funds recovered under the authority of Public Law 87-693 (42 U.S.C. 2651, et seq.), popularly known as the Medical Care Recovery Act, by reason of such treatment.

"(e) There are authorized to be appropriated for the purpose of carrying out the provisions of this section—

"(1) $10,000,000 for fiscal year 1987, and

"(2) for each of the fiscal years 1988, 1989, and 1990, such sums may be necessary to restore the Fund to a level of $10,000,000 for such fiscal year.

Funds appropriated under the authority of this subsection shall remain available until expended.".

HEALTH PROMOTION AND DISEASE PREVENTION

SEC. 203. (a) The Congress finds that—

(1) health promotion and disease prevention activities will—

(A) improve the health and well being of Indians, and

(B) reduce the expenses for medical care of Indians,

(2) health promotion and disease prevention activities should be undertaken by the coordinated efforts of Federal, State, local, and tribal governments, and

(3) in addition to the provision of primary health care, the Indian Health Service should provide health promotion and disease prevention services to Indians.

(b) Section 4 (25 U.S.C. 1603), as amended by section 201(b) of this Act, is further amended by adding at the end thereof the following new subsections:

"(k) 'Health promotion' includes—

"(1) cessation of tobacco smoking,

"(2) reduction in the misuse of alcohol and drugs,

"(3) improvement of nutrition,

"(4) improvement in physical fitness,

"(5) family planning, and

"(6) control of stress.

"(l) 'Disease prevention' includes—

"(1) immunizations,

"(2) control of high blood pressure,

"(3) control of sexually transmittable diseases,

"(4) prevention and control of diabetes,

"(5) pregnancy and infant care (including prevention of fetal alcohol syndrome),

"(6) control of toxic agents,

"(7) occupational safety and health,

"(8) accident prevention,

"(9) fluoridation of water, and

"(10) control of infectious agents.".

(c) Title II (25 U.S.C. 1621, et seq.), as amended by section 202 of this Act, is further amended by adding at the end thereof the following new section:

"HEALTH PROMOTION AND DISEASE PREVENTION SERVICES

"SEC. 203. (a) The Secretary, acting through the Service, shall provide health promotion and disease prevention services to Indians.

"(b) The Secretary shall include in each report which is required under section 201(g) an evaluation of—

"(1) the health promotion and disease prevention needs of Indians identified in tribal specific health plans,

"(2) the health promotion and disease prevention activities which would best meet such needs,

"(3) the internal capacity of the Service to meet such needs, and

"(4) the resources which would be required to enable the Service to undertake the health promotion and disease prevention activities necessary to meet such needs.

"(c) Under regulations, the Secretary shall require that each Indian tribe include within any tribal specific health plan that such tribe is required to submit to the Secretary a comprehensive plan developed by such tribe for health promotion and disease prevention among members of such tribe.

"(d) By no later than the date that is 1 year after the date of enactment of the Indian Health Care Amendments of 1986, the Secretary, acting through the Service, shall—

"(1) develop from tribal specific health plans a comprehensive plan for the provision by the Service of health promotion and disease prevention services to Indians, and

"(2) establish a schedule for the provision of health promotion and disease prevention services by the Service.

"(e)(1) The Secretary shall establish at least 1 demonstration project (but no more than 4 demonstration projects) to determine the most effective and cost-efficient means of—

"(A) providing health promotion and disease prevention services,

"(B) encouraging Indians to adopt good health habits,

"(C) reducing health risks to Indians, particularly the risks of heart disease, cancer, stroke, diabetes, anxiety, depression, and lifestyle-related accidents,

"(D) reducing medical expenses of Indians through health promotion and disease prevention activities,

"(E) establishing a program—

"(i) which trains Indians in the provision of health promotion and disease prevention services to members of their tribe, and

"(ii) under which such Indians are available on a contract basis to provide such services to other tribes, and

"(F) providing training and continuing education to employees of the Service, and to paraprofessionals participating in the Community Health Representative Program, in the delivery of health promotion and disease prevention services.

"(2) The demonstration project described in paragraph (1) shall include an analysis of the cost effectiveness of organizational structures and of social and educational programs that may be useful in achieving the objectives described in paragraph (1).

"(3)(A) The demonstration project described in paragraph (1) shall be conducted in association with at least one—

"(i) health profession school,

"(ii) allied health profession or nurse training institution, or

"(iii) public or private entity that provides health care.

"(B) The Secretary is authorized to enter into contracts with, or make grants to, any school of medicine or school of osteopathy for the purpose of carrying out the demonstration project described in paragraph (1).

"(C) For purposes of this paragraph, the term 'school of medicine' and 'school of osteopathy' have the respective meaning given to such terms by section 701(4) of the Public Health Service Act (42 U.S.C. 292a(4)).

"(4) The Secretary shall submit to Congress a final report on the demonstration project described in paragraph (1) within 60 days after the termination of such project.

"(5) The demonstration project described in paragraph (1) shall be established by no later than the date that is 12 months after the date of enactment of the Indian Health Care Amendments of 1986 and shall terminate on the date that is 30 months after the date of enactment of such Amendments.

"(6) There are authorized to be appropriated $500,000 for the purpose of carrying out the provisions of this subsection, such sum to remain available without fiscal year limitation.

"(f)(1)(A) The Secretary shall, acting through the Public Health Service, establish in the State of Hawaii, as a demonstration project, a Native Hawaiian Program for Health Promotion and Disease Prevention for the purpose of exploring ways to meet the unique health care needs of Native Hawaiians.

"(B) The demonstration program that is to be established under subparagraph (A) shall—

"(i) provide necessary preventive-oriented health services, including health education and mental health care,

"(ii) develop innovative training and research projects,

"(iii) establish cooperative relationships with the leadership of the Native Hawaiian community,

"(iv) ensure that a continuous effort is made to establish programs which can be of direct benefit to other Native American people, and

"(v) assure a comprehensive effort to reduce the incidence of diabetes among Native Hawaiians.

"(C) The Secretary is authorized to enter into contracts with Native Hawaiian organizations for the purpose of assisting the Secretary in meeting the objectives of the demonstration program that is to be established under subparagraph (A).

"(2)(A) In fulfillment of the objective set forth in paragraph (1)(B)(v), the Secretary shall enter into a contract with a Native Hawaiian organization to conduct a study to determine—

"(i) the incidence of diabetes among Native Hawaiians;

"(ii) activities which should be undertaken—

"(I) to reduce the incidence of diabetes among Native Hawaiians,

"(II) to provide Native Hawaiians with guidance in the prevention, treatment, and control of diabetes,

"(III) to provide early diagnosis of diabetes among Native Hawaiians, and

"(IV) to ensure that proper continuing health care is provided to Native Hawaiians who are diagnosed as diabetic.

"(B) The Secretary shall enter into a contract with a Native Hawaiian organization for the purposes of preparing an inventory of all health care programs (public and private) within the State of Hawaii that are available for the treatment, prevention, or control of diabetes among Native Hawaiians.

"(C) By no later than the date that is 2 years after the date of enactment of this Act, the Native Hawaiian organization with whom the Secretary has entered into a contract, shall prepare and transmit to the Secretary a report describing the determinations made under subparagraph (A), con-

taining the inventory prepared under subparagraph (B), and describing the research activities conducted under this subsection. The Secretary shall submit the report to the Congress and the President.

"(3)(A) By no later than the date that is 3 years after the date of enactment of this Act, the Secretary shall enter into a contract with a Native Hawaiian organization for the purpose of implementing a program designed—

"(i) to establish a diabetes control program;

"(ii) to screen those Native Hawaiian individuals that have been identified as having a high risk of becoming diabetic;

"(iii) to effectively treat—

"(I) newly diagnosed diabetics in order to reduce further complications from diabetes,

"(II) individuals who have a high risk of becoming diabetic in order to reduce the incidence of diabetes, and

"(III) short-term and long-term complications of diabetes;

"(iv) to conduct for Federal, State, and other Native Hawaiian health care providers (including Native Hawaiian community health outreach workers), training programs concerning current methods of prevention, diagnosis, and treatment of diabetes and related complications among Native Hawaiians;

"(v) to determine the appropriate delivery to Native Hawaiians of health care services relating to diabetes;

"(vi) to develop and present health education information to Native Hawaiian communities and schools concerning the prevention, treatment, and control of diabetes; and

"(vii) to ensure that proper continuing health care is provided to Native Hawaiians who are diagnosed as being diabetic.

"(B) The Secretary shall enter into a contract with a Native Hawaiian organization for the purpose of—

"(i) promoting coordination and cooperation between all health care providers in the delivery of diabetes related services to Native Hawaiians; and

"(ii) encouraging and funding joint projects between Federal programs, State health care facilities, community health centers, and Native Hawaiian communities for the prevention and treatment of diabetes.

"(C)(i) The Secretary shall enter into a contract with a Native Hawaiian organization for the purpose of establishing a model diabetes program to serve Native Hawaiians in the State of Hawaii.

"(ii) The Secretary shall enter into a contract with a Native Hawaiian organization for the purpose of developing and implementing an outreach program to ensure that the achievements and benefits derived from the activities of the model diabetes program established under clause (i) are applied in Native Hawaiian communities to assure the diagnosis, prevention, and treatment of diabetes among Native Hawaiians.

"(D) The Secretary shall submit to the Congress an annual report outlining the activities, achievements, needs, and goals of the Native Hawaiian diabetes care program established under this paragraph.

"(4) The Secretary shall enter into a contract with a Native Hawaiian organization, for the purpose of developing a standardized system to collect, analyze, and report data regarding diabetes and related complications among Native Hawaiians. Such system shall be designed to facilitate dissemination of the best available information on diabetes to Native Hawaiian communities and health care professionals.

"(5) The Secretary shall enter into a contract with a Native Hawaiian organization for the purpose of—

"(A) conducting research concerning the causes, diagnosis, treatment, and prevention of diabetes and related complications among Native Hawaiians, and

"(B) coordinating such research with all other relevant agencies and units of the government of the State of Hawaii and the Department of Health and Human Services which conduct research relating to diabetes and related complications.

"(6) The Secretary shall submit to the Congress an annual report on the status and accomplishments of the projects established under this subsection during each of the fiscal years 1988, 1989, and 1990.

"(7)(A) The Secretary shall include in any contract which the Secretary enters into with any Native Hawaiian organization under this subsection such conditions as the Secretary considers necessary to ensure that the objectives of such contract are achieved.

"(B) The Secretary shall develop procedures to evaluate compliance with, and performance of, contracts entered into by Native Hawaiian organizations under this subsection.

"(C) The Secretary shall conduct an annual onsite evaluation of each Native Hawaiian organization which has entered into a contract under this subsection for purposes of determining the compliance of such organization with, and evaluating the performance of such organization under, such contract.

"(D) If, as a result of the evaluations conducted under subparagraph (C), the Secretary determines that a Native Hawaiian organization has not complied with or satisfactorily performed a contract entered into under this subsection, the Secretary shall, prior to renewing such contract, attempt to resolve the areas of noncompliance or unsatisfactory performance and modify such contract to prevent future occurrences of such noncompliance or unsatisfactory performance. If the Secretary determines that such noncompliance or unsatisfactory performance cannot be resolved and prevented in the future, the Secretary shall not renew such contract with such organization and is authorized to enter into a contract under this subsection with another Native Hawaiian organization that serves the same population of Native Hawaiians which is served by the Native Hawaiian organization whose contract is not renewed by reason of this subparagraph.

"(E) In determining whether to renew a contract entered into with a Native Hawaiian organization under this subsection, the Secretary shall—

"(i) review the records of the Native Hawaiian organization, and

"(ii) shall consider the results of the onsite evaluations conducted under subparagraph (C).

"(F) All contracts entered into by the Secretary under this subsection shall be in accordance with all Federal contracting laws and regulations except that, in the discretion of the Secretary, such contracts may be negotiated without advertising and need not conform to the provision of the Act of August 24, 1935 (40 U.S.C. 270a, et seq.).

"(G) Payments made under any contract entered into under this subsection may be made in advance, by means of reimbursement, or in installments and shall be made on such conditions as the Secretary deems necessary to carry out the purposes of this subsection.

"(H) Notwithstanding any other provision of law, the Secretary may, at the request or consent of a Native Hawaiian organization, revise or amend any contract entered into by the Secretary with such organization under this subsection as necessary to carry out the purposes of this subsection, except that whenever such organization requests retrocession of any contract entered into under this subsection, such retrocession shall become effective upon a date specified by the Secretary that is not more than 120 days after the date of the request by such organization or at such later date as may be mutually agreed to by the Secretary and such organization.

"(I)(i) For each fiscal year during which a Native Hawaiian organization receives or expends funds pursuant to a contract entered into under this subsection, such organization shall submit to the Secretary a quarterly report on—

"(I) activities conducted by the organization under the contract,

"(II) the amounts and purposes for which Federal funds were expended, and

"(III) such other information as the Secretary may request.

"(ii) The reports and records of any Native Hawaiian organization which concern any contract entered into under this subsection shall be subject to audit by the Secretary and the Comptroller General of the United States.

"(J) The Secretary shall allow as a cost of any contract entered into under this subsection the cost of an annual private audit conducted by a certified public accountant.

"(K) The authority of the Secretary to enter into contracts under this subsection shall be to the extent, and in amounts, provided for in appropriation Acts.

"(8) For purposes of this subsection—

"(A) The term 'Native Hawaiian' means any individual who—

"(i) is a citizen of the United States,

"(ii) is a resident of the State of Hawaii, and

"(iii) is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii, as evidenced by—

"(I) genealogical records,

"(II) Kupuna (elders) or Kama'aina (long-term community residents) verification, or

"(III) birth records of the State of Hawaii.

"(B) The term 'Native Hawaiian organization' means any organization—

"(i) which serves and represents the interests of Native Hawaiians,

"(ii) which is recognized by the Office of Hawaiian Affairs of the State of Hawaii and E Ola Mau for the purpose of planning, conducting, or administering programs (or portion of programs) authorized under this Act for Native Hawaiians, and

"(iii) in which Native Hawaiian health professionals significantly participate in the planning, management, monitoring, and evaluation of health services.

"(9) There are authorized to be appropriated $750,000 for each of the fiscal years 1988, 1989, 1990, and 1991, for the purpose of carrying out the provisions of this subsection.".

REIMBURSEMENT OF CERTAIN EXPENSES

SEC. 204. Title II, as amended by section 203(c), is further amended by adding at the end thereof the following new sections:

"REIMBURSEMENT FROM CERTAIN THIRD PARTIES OF COSTS OF HEALTH SERVICES

"SEC. 204. (a) The United States shall have the right to recover the reasonable expenses incurred by the Secretary in providing health services, through the Service, to any individual to the same extent that such individual, or any nongovernmental provider of such services, would be eligible to receive reimbursement or indemnification for such expenses if—

"(1) such services had been provided by a nongovernmental provider, and

"(2) such individual had been required to pay such expenses and did pay such expenses.

"(b) Subsection (a) shall provide a right of recovery against any State, or any political subdivision of a State, only if the injury, illness, or disability for which health services were provided is covered under—

"(1) workers' compensation laws, or

"(2) a no-fault automobile accident insurance plan or program.

"(c) No law of any State, or of any political subdivision of a State, and no provision of any contract entered into or renewed after the date of enactment of the Indian Health Care Amendments of 1986, shall prevent or hinder the right of recovery of the United States under subsection (a).

"(d) No action taken by the United States to enforce the right of recovery provided under subsection (a) shall affect the right of any person to any damages (other than damages for the cost of health services provided by the Secretary through the Service).

"(e) The United States may enforce the right of recovery provided under subsection (a) by—

"(1) intervening or joining in any civil action or proceeding brought—

"(A) by the individual for whom health services were provided by the Secretary, or

"(B) by any representative or heirs of such individual, or

"(2) instituting a separate civil action, after providing to such individual, or to the representative or heirs of such individual, notice of the intention of the United States to institute a separate civil action.

"CREDITING OF REIMBURSEMENTS

"SEC. 205. (a) Notwithstanding any provision of law other than this section, all funds received into the Treasury of the United States by reason of the provision of health services by the Service, including—

"(1) amounts paid under section 713(b)(1)(B), and

"(2) recoveries made under—

"(A) section 204, or

"(B) Public Law 87-693 (42 U.S.C. 2651, et seq.), popularly known as the Medical Care Recovery Act,

shall be credited to the reimbursable account of the Indian Health Service in the Treasury of the United States and shall remain available until expended.

"(b) Subsection (a) shall not apply to any amounts described in section 202(d).".

TITLE III—HEALTH FACILITIES

CONSULTATION; CLOSURE OF FACILITIES; REPORTS

SEC. 301. Section 301 (25 U.S.C. 1631) is amended to read as follows:

"CONSULTATION; CLOSURE OF FACILITIES; REPORTS

"SEC. 301. (a) Prior to the expenditure of, or the making of any firm commitment to expend, any funds appropriated for the planning, design, construction, or renovation of facilities pursuant to the Act of November 2, 1921 (25 U.S.C. 13), popularly known as the Snyder Act, the Secretary, acting through the Service, shall—

"(1) consult with any Indian tribe that would be significantly affected by such expenditure for the purpose of determining and, whenever practicable, honoring tribal preferences concerning size, location, type, and other characteristics of any facility on which such expenditure is to be made, and

"(2) ensure, whenever practicable, that such facility meets the standards of the Joint Commission on Accreditation of Hospitals by not later than 1 year after the date on which the construction or renovation of such facility is completed.

"(b)(1) Notwithstanding any provision of law other than this subsection, no Service hospital or other outpatient health care facility of the Service, or any portion of such a hospital or facility, may be closed if the Secretary has not submitted to the Congress at least 1 year prior to the date such hospital or facility (or portion thereof) is proposed to be closed an evaluation of the impact of such proposed closure which specifies, in addition to other considerations—

"(A) the accessibility of alternative health care resources for the population served by such hospital or facility;

"(B) the cost effectiveness of such closure;

"(C) the quality of health care to be provided to the population served by such hospital or facility after such closure;

"(D) the availability of contract health care funds to maintain existing levels of service; and

"(E) the views of the Indian tribes served by such hospital or facility concerning such closure.

"(2) Paragraph (1) shall not apply to any temporary closure of a facility or of any portion of a facility if such closure is necessary for medical, environmental, or safety reasons.

"(c) The President shall include with the budget submitted under section 1105 of title 31, United States Code, for each of the fiscal years 1988, 1989, and 1990, program information documents for the construction of 10 Indian health facilities which—

"(1) comply with applicable construction standards, and

"(2) have been approved by the Secretary.

"(d)(1) The Secretary shall submit to the Congress an annual report which sets forth—

"(A) the current health facility priority system of the Service,

"(B) the planning, design, construction, and renovation needs for the 10 top-priority inpatient care facilities and the 10 top-priority ambulatory care facilities (together with required staff quarters),

"(C) the justification for such order of priority,

"(D) the projected cost of such projects, and

"(E) the methodology adopted by the Service in establishing priorities under its health facility priority system.

"(2) The first report required under paragraph (1) shall be submitted by no later than the date that is 180 days after the date of enactment of the Indian Health Care Amendments of 1986 and, beginning in 1988, each subsequent annual report shall be submitted by the date that is 60 days after the date on which the President submits the budget to the Congress under section 1105 of title 31, United States Code.

"(3) In preparing each report required under paragraph (1) (other than the initial report), the Secretary shall—

"(A) consult with Indian tribes and tribal organizations including those tribes or tribal organizations operating health programs or facilities under any contract entered into with the Service under the Indian Self-Determination and Education Assistance Act, and

"(B) review the needs of such tribes and tribal organizations for inpatient and outpatient facilities, including their needs for renovation and expansion of existing facilities.

"(4) For purposes of this subsection, the Secretary shall, in evaluating the needs of facilities operated under any contract entered into with the Service under the Indian Self-Determination and Education Assistance Act, use the same criteria that the Secretary uses in evaluating the needs of facilities operated directly by the Service.

"(5) The Secretary shall ensure that the planning, design, construction, and renovation needs of Service and non-Service facilities which are the subject of a contract for health services entered into with the Service under the Indian Self-Determination and Education Assistance Act are fully and equitably integrated into the development of the health facility priority system.

"(e) All funds appropriated under the Act of November 2, 1921 (25 U.S.C. 13), for the planning, design, construction, or renovation of health facilities for the benefit of an Indian tribe or tribes shall be subject to the provisions of sections 103 and 104(b) of the Indian Self-Determination Act.".

SAFE WATER AND SANITARY WASTE DISPOSAL FACILITIES

SEC. 302. Section 302 (25 U.S.C. 1632) is amended to read as follows:

"SAFE WATER AND SANITARY WASTE DISPOSAL FACILITIES

"SEC. 302. (a) The Congress hereby finds and declares that—

"(1) the provision of safe water supply systems and sanitary sewage and solid waste disposal systems is primarily a health consideration and function;

"(2) Indian people suffer an inordinately high incidence of disease, injury, and illness directly attributable to the absence or inadequacy of such systems;

"(3) the long-term cost to the United States of treating and curing such disease, injury, and illness is substantially greater than the short-term cost of providing such systems and other preventive health measures;

"(4) many Indian homes and communities still lack safe water supply systems and sanitary sewage and solid waste disposal systems; and

"(5) it is in the interest of the United States, and it is the policy of the United States, that all Indian communities and Indian homes, new and existing, be provided with safe and adequate water supply systems and sanitary sewage waste disposal systems as soon as possible.

"(b)(1) In furtherance of the findings and declarations made in subsection (a), Congress reaffirms the primary responsibility and authority of the Service to provide the necessary sanitation facilities and services as provided in section 7 of the Act of August 5, 1954 (42 U.S.C. 2004a).

"(2) The Secretary, acting through the Service, is authorized to provide under section 7 of the Act of August 5, 1954 (42 U.S.C. 2004a)—

"(A) financial and technical assistance to Indian tribes and communities in the establishment, training, and equipping of utility organizations to operate and maintain Indian sanitation facilities;

"(B) ongoing technical assistance and training in the management of utility organizations which operate and maintain sanitation facilities; and

"(C) operation and maintenance assistance for, and emergency repairs to, tribal sanitation facilities when necessary to avoid a health hazard or to protect the Federal investment in sanitation facilities.

"(3) Notwithstanding any other provision of law—

"(A) the Secretary of Housing and Urban Affairs is authorized to transfer funds appropriated under the Housing and Community Development Act of 1974 (42 U.S.C. 5301, et seq.) to the Secretary of Health and Human Services, and

"(B) the Secretary of Health and Human Services is authorized to accept and use such funds for the purpose of providing sanitation facilities and services for Indians under section 7 of the Act of August 5, 1954 (42 U.S.C. 2004a).

"(c) Beginning in fiscal year 1988, the Secretary, acting through the Service, shall develop and begin implementation of a 10-year plan to provide safe water supply and sanitation sewage and solid waste disposal facilities to existing Indian homes and communities and to new and renovated Indian homes.

"(d) The financial and technical capability of an Indian tribe or community to safely operate and maintain a sanitation facility shall not be a prerequisite to the provision or construction of sanitation facilities by the Secretary.

"(e) The provisions of this section shall not diminish the primary responsibility of the Indian family, community, or tribe to establish, collect, and utilize reasonable user fees, or otherwise set aside funding, for the purpose of operating and maintaining sanitation facilities.

"(f) Programs administered by Indian tribes or tribal organizations under the authority of the Indian Self-Determination and Education Assistance Act shall be eligible for—

"(1) any funds appropriated pursuant to subsection (h), and

"(2) any funds appropriated for the purpose of providing water supply or sewage disposal services,

on an equal basis with programs that are administered directly by the Service.

"(g)(1) The Secretary shall submit to the Congress an annual report which sets forth—

"(A) the current Indian sanitation facility priority system of the Service;

"(B) the methodology for determining sanitation deficiencies;

"(C) the level of sanitation deficiency for each sanitation facilities project of each Indian tribe or community;

"(D) the amount of funds necessary to raise all Indian tribes and communities to a level I sanitation deficiency; and

"(E) the amount of funds necessary to raise all Indian tribes and communities to zero sanitation deficiency.

"(2) The first report required under paragraph (1) shall be submitted by no later than the date that is 180 days after the date of enactment of the Indian Health Care Amendments of 1986 and, beginning in 1988, each subsequent annual report shall be submitted by the date that is 60 days after the date on which the President submits the budget to the Congress under section 1105 of title 31, United States Code.

"(3) In preparing each report required under paragraph (1) (other than the initial report), the Secretary shall consult with Indian tribes and tribal organizations (including those tribes or tribal organizations operating health care programs or facilities under any contract entered into with the Service under the Indian Self-Determination and Education Assistance Act) to determine the sanitation needs of each tribe.

"(4) The methodology used by the Secretary in determining sanitation deficiencies for purposes of paragraph (1) shall be applied uniformly to all Indian tribes and communities.

"(5) For purposes of this subsection, the sanitation deficiency levels for an Indian tribe or community are as follows:

"(A) level I is an Indian tribe or community with a sanitation system—

"(i) which complies with all applicable water supply and pollution control laws, and

"(ii) in which the deficiencies relate to routine replacement, repair, or maintenance needs;

"(B) level II is an Indian tribe or community with a sanitation system—

"(i) which complies with all applicable water supply and pollution control laws, and

"(ii) in which the deficiencies relate to capital improvements that are necessary to improve the facilities in order to meet the needs of such tribe or community for domestic sanitation facilities;

"(C) level III is an Indian tribe or community with a sanitation system which—

"(i) has an inadequate or partial water supply and a sewage disposal facility that does not comply with applicable water supply and pollution control laws, or

"(ii) has no solid waste disposal facility;

"(D) level IV is an Indian tribe or community with a sanitation system which lacks either a safe water supply system or a sewage disposal system; and

"(E) level V is an Indian tribe or community that lacks a safe water supply and a sewage disposal system.

"(6) For purposes of this subsection, any Indian tribe or community that lacks the operation and maintenance capability to enable its sanitation system to meet pollution control laws may not be treated as having a level I or II sanitation deficiency.

"(h)(1) There are authorized to be appropriated for each of the fiscal years 1988, 1989, and 1990, $3,000,000 for the purpose of providing funds necessary to implement the responsibilities of the Service described in subsection (b)(2).

"(2) In addition to the amount authorized under paragraph (1), there are authorized to be appropriated for each of the fiscal years 1988, 1989, and 1990, $850,000 for the purpose of providing 30 new full-time equivalents for the Service which shall be used to carry out the responsibilities of the Service described in subsection (b)(2).".

USE OF NON-SERVICE FUNDS FOR RENOVATION

SEC. 303. (a) Section 305 (25 U.S.C. 1634) is amended to read as follows:

"EXPENDITURE OF NON-SERVICE FUNDS FOR RENOVATION

"SEC. 305. (a) Notwithstanding any other provision of law, the Secretary is authorized to accept any major renovation or modernization by any Indian tribe of any Service facility, or of any other Indian health facility operated pursuant to a contract entered into under the Indian Self-Determination and Education Assistance Act, including—

"(1) any plans or designs for such renovation or modernization, and

"(2) any renovation or modernization for which funds appropriated under any Federal law were lawfully expended,

but only if the requirements of subsection (b) are met. but only if the requirements of subsection (b) are met.

"(b) The requirements of this subsection are met with respect to any renovation or modernization if the renovation or modernization—

"(1) does not require or obligate the Secretary to provide any additional employees or equipment,

"(2) is approved by the appropriate area director of the Service, and

"(3) is administered by the Indian tribe in accordance with the rules and regulations prescribed by the Secretary with respect to construction or renovation of Service facilities.

"(c) A renovation or modernization shall not be authorized by this section if such renovation or modernization would require the diversion of funds appropriated to the Service from any project which has a higher priority under the health facility priority system of the Service.

"(d) If any Service facility which has been renovated or modernized by an Indian tribe under this section ceases to be used as a Service facility during the 20-year period beginning on the date such renovation or modernization is completed, such Indian tribe shall be entitled to recover from the United States an amount which bears the same ratio to the value of such facility at the time of such cessation as the value of such renovation or modernization (less the total amount of any funds provided specifically for such facility under any Federal program that were expended for such renovation or modernization) bore to the value of such facility at the time of the completion of such renovation or modernization.".

(b) The paragraph relating to administrative provisions of the Health Services Administration under the heading "Department of Health and Human Services" in title II of the matter contained in section 101(c) of Public Law 98-473 (98 Stat. 1864) is amended by striking out the sixth proviso.

BETHEL, ALASKA, HOSPITAL

SEC. 304. Title III is amended by adding at the end thereof the following new section:

"BETHEL, ALASKA, HOSPITAL

"SEC. 306. (a) If a final administrative ruling by the Department of the Interior holds that the Bethel Native Corporation is entitled to conveyance under the Alaska Native Claims Settlement Act of the title to the real property described in subsection (d)(1), such ruling shall be subject to judicial review.

"(b) The Secretary is authorized to enter into an agreement with Bethel Native Corporation for an exchange of the real property described in subsection (d)(1) for—

"(1) the lands described in subsection (d)(2), or

"(2) any other Federal property which Bethel Native Corporation would have been able to select under the Alaska Native Claims Settlement Act.

"(c) If an agreement for the exchange of land is not entered into under subsection (b) by the date that is 90 days after the date of the ruling described in subsection (a), the Secretary shall purchase the lands described in subsection (d)(1) at fair market value.

"(d)(1) The real property referred to in subsection (a) is United States Survey Numbered 4000, other than the lands described in paragraph (2).

"(2) The lands referred to in subsection (b)(1) are the lands identified as tracts A and B in the determination AA-18959 of the Bureau of Land Management issued on September 30, 1983, pursuant to the Alaska Native Claims Settlement Act.".

TITLE IV—ACCESS TO HEALTH SERVICES

GRANTS AND CONTRACTS WITH TRIBAL ORGANIZATIONS

SEC. 401. (a) Section 404 (25 U.S.C. 1622) is amended—

(1) by striking out "and" at the end of subsection (a)(2) and inserting in lieu thereof "or", and

(2) by striking out "shall include, but are not limited to," in subsection (b) and inserting in lieu thereof "may include, as appropriate,", and

(3) by adding "or" at the end of subsection (b)(3).

(b) Subsection (c) of section 404 (25 U.S.C. 1622(c)) is amended to read as follows:

"(c) There are authorized to be appropriated for the purpose of carrying out the provisions of this section—

"(1) $2,000,000 for fiscal year 1988,

"(2) $500,000 for fiscal year 1989, and

"(3) $500,000 for fiscal year 1990.".

MEDICARE PROVISIONS

SEC. 402. (a) Section 1880 of the Social Security Act is amended—

(1) in subsection (a), by striking out "A hospital or skilled nursing facility" and inserting in lieu thereof "A provider of services (as defined in section 1861(u)) or a rural health clinic (as defined in section 1861(aa)(2))";

(2) in subsection (a), by striking out "hospitals or skilled nursing facilities (as the case may be)" and inserting in lieu thereof "facilities of that type";

(3) in subsection (b), by striking out "a hospital or skilled nursing facility" and inserting in lieu thereof "a provider of services or a rural health clinic";

(4) in subsection (b), by striking out "hospitals or skilled nursing facilities (as the case may be)" and inserting in lieu thereof "facilities of that type";

(5) in subsection (c), by striking out "any hospital or skilled nursing facility" and inserting in lieu thereof "any provider of services or rural health clinic";

(6) in subsection (c), by striking out "hospitals and skilled nursing facilities" each place it appears and inserting in lieu thereof in each instance "providers of services and rural health clinics"; and

(7) in subsection (d), by striking out "hospitals and skilled nursing facilities" and "hospitals and facilities", and inserting in lieu thereof in each instance "providers of services (as defined in section 1861(u)) and rural health clinics (as defined in section 1861(aa)(2))".

(b) Section 1880(c) of the Social Security Act is further amended—

(1) by inserting after the first sentence the following: "In making payments from such fund, the Secretary shall ensure that each service unit of the Indian Health Service receives at least 50 percent of the amounts to which the providers and rural health clinics of the Indian Health Service, for which such service unit makes collections, are entitled by reason of this section, if such amount is necessary for the purpose of making improvements in such providers and rural health clinics in order to achieve compliance with the conditions and requirements of this title."; and

(2) by striking out "The preceding sentence" and inserting in lieu thereof "This subsection".

(c) The amendments made by this section shall apply to services performed on or after the date of the enactment of this Act.

MEDICAID PROVISIONS

SEC. 403. (a) Section 1911 of the Social Security Act is amended by striking out "or skilled nursing facility" each place it appears and inserting in lieu thereof in each instance "skilled nursing facility, or any other type of facility which provides services of a type otherwise covered under the State plan".

(b) Section 1911 of the Social Security Act is amended by adding at the end thereof the following new subsections:

"(c) The Secretary is authorized to enter into agreements with the State agency for the purpose of reimbursing such agency for health care and services provided in Service facilities to Indians who are eligible for medical assistance under the State plan.

"(d) Notwithstanding any other provision of law, payments to which any facility of the Indian Health Service (including a hospital, intermediate care facility, skilled nursing facility, or any other type of facility which provides services of a type otherwise covered under the State plan) is entitled under a State plan approved under this title by reason of this section shall be placed in a special fund to be held by the Secretary and used by him (to such extent or in such amounts as are provided in appropriation Acts) exclusively for the purpose of making any improvements in the facilities of such Service which may be necessary to achieve compliance with the applicable conditions and requirements of this title. In making payments from such fund, the Secretary shall ensure that each service unit of the Indian Health Service receives at least 50 percent of the amounts to which the facilities of the Indian Health Service, for which such service unit makes collections, are entitled by reason of this section, if such amount is necessary for the purpose of making improvements in such facilities in order to achieve compliance with the conditions and requirements of this title. This subsection shall cease to apply when the Secretary determines and certifies that substantially all of the health facilities of such Service in the United States are in compliance with such conditions and requirements.".

(c) Subsections (b) and (c) of section 402 (42 U.S.C. 1396j, note) are repealed.

(d) The amendments made by this section shall apply to services performed on or after the date of the enactment of this Act.

DEMONSTRATION PROGRAM

SEC. 404. Title IV is amended by adding at the end thereof the following new section:

"DEMONSTRATION PROGRAM FOR DIRECT BILLING OF MEDICARE, MEDICAID, AND OTHER THIRD PARTY PAYORS

"SEC. 405. (a) The Secretary shall establish a demonstration program under which Indian tribes, tribal organizations, and Alaska Native health organizations, which are contracting the entire operation of an entire hospital or clinic of the Service under the authority of the Indian Self-Determination and Education Assistance Act, shall directly bill for, and receive payment for, health care services provided by such hospital or clinic for which payment is made under title XVIII of the Social Security Act (medicare), under a State plan for medical assistance approved under title XIX of the Social Security Act (medicaid), or from any other third-party payor. The Federal medical assistance percentage under the medicaid program shall continue to be 100 percent for purposes of the demonstration program.

"(b)(1) Each hospital or clinic participating in the demonstration program described in subsection (a) shall be reimbursed directly under the medicare and medicaid programs for services furnished, without regard to the provisions of sections 1880(c) and 1911(d) of the Social Security Act and section 713(b)(2)(A) of this Act, but all funds so reimbursed shall first be used by the hospital or clinic for the purpose of making any improvements in the hospital or clinic that may be necessary to achieve or maintain compliance with the conditions and requirements applicable generally to facilities of such type under the medicare or medicaid program. Any funds so reimbursed which are in excess of the amount necessary to achieve or maintain such conditions or requirements shall be used—

"(A) solely for improving the health resources deficiency level of the Indian tribe, and

"(B) in accordance with the regulations of the Service applicable to funds provided by the Service under any contract entered into under the Indian Self-Determination and Education Assistance Act.

"(2) The amounts paid to the hospitals and clinics participating in the demonstration program described in subsection (a) shall be subject to all auditing requirements applicable to programs administered directly by the Service and to facilities participating in the medicare and medicaid programs.

"(3) The Secretary shall monitor the performance of hospitals and clinics participating in the demonstration program described in subsection (a), and shall require such hospitals and clinics to submit reports on the program to the Secretary on a quarterly basis (or more frequently if the Secretary deems it to be necessary).

"(4) Notwithstanding sections 1880(c) and 1911(d) of the Social Security Act, no payment may be made out of the special fund described in sections 1880(c) or 1911(d) of the Social Security Act for the benefit of any hospital or clinic participating in the demonstration program described in subsection (a) during the period of such participation.

"(c)(1) In order to be considered for participation in the demonstration program described in subsection (a), a hospital or clinic must submit an application to the Secretary which establishes to the satisfaction of the Secretary that—

"(A) the Indian tribe or Alaska Native health organization contracts the entire operation of the Service facility;

"(B) the facility is eligible to participate in the medicare and medicaid programs under sections 1880 and 1911 of the Social Security Act;

"(C) the facility meets any requirements which apply to programs operated directly by the Service; and

"(D) the facility is accredited by the Joint Commission on Accreditation of Hospitals, or has submitted a plan, which has been approved by the Secretary, for achieving such accreditation prior to October 1, 1988.

"(2) From among the qualified applicants, the Secretary shall, prior to October 1, 1987, select no more than 4 facilities to partici-

pate in the demonstration program described in subsection (a). The demonstration program described in subsection (a) shall begin by no later than October 1, 1989, and end on September 30, 1993.

"(d)(1) Upon the enactment of the Indian Health Care Amendments of 1986, the Secretary, acting through the Service, shall commence an examination of—

"(A) any administrative changes which may be necessary to allow direct billing and reimbursement under the demonstration program described in subsection (a), including any agreements with States which may be necessary to provide for such direct billing under the medicaid program; and

"(B) any changes which may be necessary to enable participants in such demonstration program to provide to the Service medical records information on patients served under such demonstration program which is consistent with the medical records information system of the Service.

"(2) Prior to the commencement of the demonstration program described in subsection (a), the Secretary shall implement all changes required as a result of the examinations conducted under paragraph (1).

"(3) Prior to October 1, 1988, the Secretary shall determine any accounting information which a participant in the demonstration program described in subsection (a) would be required to report.

"(e) The Secretary shall submit a final report at the end of fiscal year 1993, on the activities carried out under the demonstration program described in subsection (a) which shall include an evaluation of whether such activities have fulfilled the objectives of such program. In such report the Secretary shall provide a recommendation, based upon the results of such demonstration program, as to whether direct billing of, and reimbursement by, the medicare and medicaid programs and other third-party payors should be authorized for all Indian tribes and Alaska Native health organizations which are contracting the entire operation of a facility of the Service.

"(f) The Secretary shall provide for the retrocession of any contract entered into between a participant in the demonstration program described in subsection (a) and the Service under the authority of the Indian Self-Determination and Education Assistance Act. All cost accounting and billing authority shall be retroceded to the Secretary upon the Secretary's acceptance of a retroceded contract.".

TITLE V—URBAN INDIAN HEALTH SERVICES

REVISION OF PROGRAM

SEC. 501. Title V (25 U.S.C. 1651, et seqq.) is amended to read as follows:

"TITLE V—HEALTH SERVICES FOR URBAN INDIANS

"PURPOSE

"SEC. 501. The purpose of this title is to encourage the establishment of programs in urban centers to make health services more accessible to urban Indians.

"CONTRACTS WITH URBAN INDIAN ORGANIZATIONS

"SEC. 502. Under authority of the Act of November 2, 1921 (25 U.S.C. 13), popularly known as the Snyder Act, the Secretary, through the Service, shall enter into contracts with urban Indian organizations to assist such organizations in the establishment and administration, within the urban centers in which such organizations are situated, of programs which meet the requirements set forth in this title. The Secretary, through the Service, shall include such conditions as the Secretary considers necessary to effect the purpose of this title in any contract which the Secretary enters into with any urban Indian organization pursuant to this title.

"CONTRACTS FOR THE PROVISION OF HEALTH CARE OR REFERRAL SERVICES

"SEC. 503. (a) Under authority of the Act of November 2, 1921 (25 U.S.C. 13), popularly known as the Snyder Act, the Secretary, through the Service, shall enter into contracts with urban Indian organizations for the provision of health care or referral services for urban Indians residing in the urban centers in which such organizations are situated. Any such contract shall include requirements that the urban Indian organization successfully undertake to—

"(1) determine the population of urban Indians residing in the urban center in which such organization is situated who are or could be recipients of health care or referral services;

"(2) determine the current health status of urban Indians residing in such urban center;

"(3) determine the current health care needs of urban Indians residing in such urban center;

"(4) identify all public and private health services resources within such urban center which are or may be available to urban Indians;

"(5) determine the use of public and private health services resources by the urban Indians residing in such urban center;

"(6) assist such health services resources in providing services to urban Indians;

"(7) assist urban Indians in becoming familiar with and utilizing such health services resources;

"(8) provide basic health education, including health promotion and disease prevention education, to urban Indians;

"(9) establish and implement manpower training programs to accomplish the referral and education tasks set forth in clauses (6) through (8) of this subsection;

"(10) identify gaps between unmet health needs of urban Indians and the resources available to meet such needs;

"(11) make recommendations to the Secretary and Federal, State, local, and other resource agencies on methods of improving health service programs to meet the needs of urban Indians; and

"(12) where necessary, provide, or enter into contracts for the provision of, health care services for urban Indians.

"(b) The Secretary, through the Service, shall by regulation prescribe the criteria for selecting urban Indian organizations to enter into contracts under this section. Such criteria shall, among other factors, include—

"(1) the extent of unmet health care needs of urban Indians in the urban center involved;

"(2) the size of the urban Indian population in the urban center involved;

"(3) the accessibility to, and utilization of, health care services (other than services provided under this title) by urban Indians in the urban center involved;

"(4) the extent, if any, to which the activities set forth in subsection (a) would duplicate—

"(A) any previous or current public or private health services project in an urban center that was or is funded in a manner other than pursuant to this title; or

"(B) any project funded under this title;

"(5) the capability of an urban Indian organization to perform the activities set forth in subsection (a) and to enter into a contract with the Secretary under this section;

"(6) the satisfactory performance and successful completion by an urban Indian organization of other contracts with the Secretary under this title;

"(7) the appropriateness and likely effectiveness of conducting the activities set forth in subsection (a) in an urban center; and

"(8) the extent of existing or likely future participation in the activities set forth in subsection (a) by appropriate health and health-related Federal, State, local, and other agencies.

"CONTRACTS FOR THE DETERMINATION OF UNMET HEALTH CARE NEEDS

"SEC. 504. (a) Under authority of the Act of November 2, 1921 (25 U.S.C. 13), popularly known as the Snyder Act, the Secretary, through the Service, may enter into contracts with urban Indian organizations situated in urban centers for which contracts have not been entered into under section 503. The purpose of a contract under this section shall be the determination of the matters described in subsection (b)(1) in order to assist the Secretary in assessing the health status and health care needs of urban Indians in the urban center involved and determining whether the Secretary should enter into a contract under section 503 with the urban Indian organization with which the Secretary has entered into a contract under this section.

"(b) Any contract entered into by the Secretary under this section shall include requirements that—

"(1) the urban Indian organization successfully undertake to—

"(A) document the health care status and unmet health care needs of urban Indians in the urban center involved; and

"(B) with respect to urban Indians in the urban center involved, determine the matters described in clauses (2), (3), (4), and (8) of section 503(b); and

"(2) the urban Indian organization complete performance of the contract within one year after the date on which the Secretary and such organization enter into such contract.

"(c) The Secretary may not renew any contract entered into under this section.

"EVALUATIONS; CONTRACT RENEWALS

"SEC. 505. (a) The Secretary, through the Service, shall develop procedures to evaluate compliance with, and performance of, contracts entered into by urban Indian organizations under this title. Such procedures shall include provisions for carrying out the requirements of this section.

"(b) The Secretary, through the Service, shall conduct an annual onsite evaluation of each urban Indian organization which has entered into a contract under section 503 for purposes of determining the compliance of such organization with, and evaluating the performance of such organization under, such contract.

"(c) If, as a result of the evaluations conducted under this section, the Secretary determines that an urban Indian organization has not complied with or satisfactorily performed a contract under section 503, the Secretary shall, prior to renewing such contract, attempt to resolve with such organization the areas of noncompliance or unsatisfactory performance and modify such contract to prevent future occurrences of such

noncompliance or unsatisfactory performance. If the Secretary determines that such noncompliance or unsatisfactory performance cannot be resolved and prevented in the future, the Secretary shall not renew such contract with such organization and is authorized to enter into a contract under section 503 with another urban Indian organization which is situated in the same urban center as the urban Indian organization whose contract is not renewed under this section.

"(d) In determining whether to renew a contract with an urban Indian organization under section 503, or whether to enter into a contract with an urban Indian organization under section 503 which has completed performance of a contract under section 504, the Secretary shall review the records of the urban Indian organization, the reports submitted under section 507, and, in the case of a renewal of a contract under section 503, shall consider the results of the on-site evaluations conducted under subsection (b).

"OTHER CONTRACT REQUIREMENTS

"SEC. 506. (a) Contracts with urban Indian organizations entered into pursuant to this title shall be in accordance with all Federal contracting laws and regulations except that, in the discretion of the Secretary, such contracts may be negotiated without advertising and need not conform to the provisions of the Act of August 24, 1935.

"(b) Payments under any contracts pursuant to this title may be made in advance or by way of reimbursement and in such installments and on such conditions as the Secretary deems necessary to carry out the purposes of this title.

"(c) Notwithstanding any provision of law to the contrary, the Secretary may, at the request or consent of an urban Indian organization, revise or amend any contract entered into by the Secretary with such organization under this title as necessary to carry out the purposes of this title, except that whenever an urban Indian organization requests retrocession of the Secretary for any contract entered into pursuant to this title, such retrocession shall become effective upon a date specified by the Secretary not more than one hundred and twenty days from the date of the request by the organization or at such later date as may be mutually agreed to by the Secretary and the organization.

"(d) In connection with any contract entered into pursuant to this title, the Secretary may permit an urban Indian organization to utilize, in carrying out such contract, existing facilities owned by the Federal Government within the Secretary's jurisdiction under such terms and conditions as may be agreed upon for the use and maintenance of such facilities.

"(e) Contracts with urban Indian organizations and regulations adopted pursuant to this title shall include provisions to assure the fair and uniform provision to urban Indians of services and assistance under such contracts by such organizations.

"REPORTS AND RECORDS

"SEC. 507. (a) For each fiscal year during which an urban Indian organization receives or expends funds pursuant to a contract entered into pursuant to this title, such organization shall submit to the Secretary a quarterly report including—

"(1) in the case of a contract under section 503, information gathered pursuant to clauses (10) and (11) of subsection (a) of such section;

"(2) information on activities conducted by the organization pursuant to the contract;

"(3) an accounting of the amounts and purposes for which Federal funds were expended; and

"(4) such other information as the Secretary may request.

"(b) The reports and records of the urban Indian organization with respect to a contract under this title shall be subject to audit by the Secretary and the Comptroller General of the United States.

"(c) The Secretary shall allow as a cost of any contract entered into under section 503 the cost of an annual private audit conducted by a certified public accountant.

"LIMITATION ON CONTRACT AUTHORITY

"SEC. 508. The authority of the Secretary to enter into contracts under this title shall be to the extent, and in an amount, provided for in appropriation Acts.".

URBAN INDIAN ORGANIZATION

SEC. 502. Subsection (h) of section 4 (25 U.S.C. 1603(h)) is amended by inserting "urban" after "governed by an".

TITLE VI—ORGANIZATIONAL IMPROVEMENTS

MANAGEMENT INFORMATION SYSTEM

SEC. 601. (a) Title VI is amended to read as follows:

"TITLE VI—INDIAN HEALTH SERVICE

"MANAGEMENT INFORMATION SYSTEM; ACCESS TO PATIENT'S RECORDS

"SEC. 601. (a)(1) The Secretary shall establish an automated management information system for the Service.

"(2) The information system established under paragraph (1) shall include—

"(A) a financial management system,

"(B) a patient care information system for each area served by the Service,

"(C) a privacy component that protects the privacy of patient information held by, or on behalf of, the Service, and

"(D) a services-based cost accounting component that provides estimates of the costs associated with the provision of specific medical treatments or services in each area office of the Service.

"(3) By no later than September 30, 1988, the Secretary shall submit a report to Congress setting forth—

"(A) the activities which have been undertaken to establish an automated management information system,

"(B) the activities, if any, which remain to be undertaken to complete the implementation of an automated management information system, and

"(C) the amount of funds which will be needed to complete the implementation of a management information system in the succeeding fiscal years.

"(b)(1) The Secretary shall provide each Indian tribe and tribal organization that provides health services under a contract entered into with the Service under the Indian Self-Determination Act automated management information systems which—

"(A) meet the management information needs of such Indian tribe or tribal organization with respect to the treatment by the Indian tribe or tribal organization of patients of the Service, and

"(B) meet the management information needs of the Service.

"(2) The Secretary shall reimburse each Indian tribe or tribal organization for the part of the cost of the operation of a system provided under paragraph (1) which is attributable to the treatment by such Indian tribe or tribal organization of patients of the Service.

"(3) The Secretary shall provide systems under paragraph (1) to Indian tribes and tribal organizations providing health services in California by no later than September 30, 1988.

"(c) Notwithstanding any other provision of law, each patient shall have reasonable access to the medical or health records of such patient which are held by, or on behalf of, the Service.".

(b) The amendment made by subsection (a) shall take effect on the date of enactment of this Act.

TITLE VII—MISCELLANEOUS PROVISIONS

LEASING AND OTHER CONTRACTS

SEC. 701. Section 704 (25 U.S.C. 1674) is amended—

(1) by striking out "Notwithstanding", and inserting in lieu thereof "(a) Notwithstanding", and

(2) by adding at the end thereof the following new subsection:

"(b) The Secretary may enter into leases, contracts, and other legal agreements with Indian tribes or tribal organizations which hold—

"(1) title to;

"(2) a leasehold interest in; or

"(3) a beneficial interest in (where title is held by the United States in trust for the benefit of a tribe);

facilities used for the administration and delivery of health services by the Service or by programs operated by Indian tribes or tribal organizations to compensate such Indian tribes or tribal organizations for costs associated with the use of such facilities for such purposes. Such costs include rent, depreciation based on the useful life of the building, principal and interest paid or accrued, operation and maintenance expenses, and other expenses determined by regulation to be allowable.".

HEALTH EDUCATION

SEC. 702. (a) Section 706 (25 U.S.C. 1676) is amended to read as follows:

"HEALTH EDUCATION

"SEC. 706. (a)(1) By no later than the date that is 1 year after the date of enactment of the Indian Health Care Amendments of 1986, the Secretary of the Interior and the Secretary of Health and Human Services shall enter into an agreement to coordinate the efforts of the Department of the Interior and the Department of Health and Human Services in health promotion, disease prevention, and health education among Indian youth.

"(2) The agreement required under paragraph (1) shall—

"(A) establish minimum health outcome objectives for schools operated by the Bureau of Indian Affairs and schools operated under contract with the Bureau of Indian Affairs,

"(B) provide for special emphasis on the identification and coordination of available resources and programs to combat alcohol and drug abuse among Indian youth through education, counseling, and referral services,

"(C) provide authority for personnel of the Service to conduct training seminars on health promotion, disease prevention, and health education for teachers in such schools,

"(D) recognize the role of tribally controlled community colleges, departments of health education at universities and col-

leges, and schools of the health professions in providing training on health promotion, disease prevention, and health education to teachers in such schools, and

"(E) provide for inclusion of tribal representatives in such training.

"(3) A memorandum of the agreement entered into under paragraph (1) shall be published in the Federal Register by no later than the date that is 30 days after the date on which such agreement is entered into by the Secretary of the Interior and the Secretary of Health and Human Services.

"(b)(1) The health outcome objectives that are required to be established under the agreement entered into under subsection (a)(1) shall serve as guidelines for the development of health education programs in schools operated by the Bureau of Indian Affairs and in schools operated under contract with the Bureau of Indian Affairs. Such health outcome objectives and guidelines shall prescribe the minimum objectives that such programs must achieve.

"(2) The Secretary of the Interior may establish critical job elements for personnel employed by the Department of the Interior which condition the continued employment of such personnel on achievement of specific objectives the Secretary of the Interior determines to be necessary to assure that health education programs designed to meet, at a minimum, the health outcome objectives established under the agreement entered into under subsection (a)(1) are incorporated into the curricula of schools operated by the Bureau of Indian Affairs and schools operated under contract with the Bureau of Indian Affairs.

"(c) The Secretary of Health and Human Services shall encourage the involvement of parents of Indian youth, and other interested members of Indian tribes, in training seminars on health promotion, disease prevention, and health education that are conducted by the Secretary of Health and Human Services pursuant to the agreement entered into under subsection (a)(1) by providing timely notice of such seminars to schools operated by the Bureau of Indian Affairs and to schools operated under contract with the Bureau of Indian Affairs.

"(d) The Secretary of Health and Human Services may elect to include in contracts the Secretary of Health and Human Services enters into with urban Indian health care programs a requirement that such programs provide health promotion, disease prevention, and health education to the Indian communities served by such programs.

"(e) The Secretary of Health and Human Services may elect to include in contracts the Secretary of Health and Human Services enters into with any tribal organization under the authority of the Indian Self-Determination and Education Assistance Act a requirement that the tribal organization provide health promotion, disease prevention, and health education to the communities served by the tribal organization.".

(b) Section 4 (25 U.S.C. 1603), as amended by section 203(b) of this Act, is further amended by adding at the end thereof the following:

"(m) 'Health education' includes, but is not limited to—

"(1) personal health,

"(2) mental and emotional health,

"(3) consumer health,

"(4) environmental health,

"(5) community health,

"(6) dental health, and

"(7) education in—

"(A) the cessation of smoking,

"(B) the hazards of smoking,

"(C) the hazards of alcohol and drug abuse,

"(D) nutrition,

"(E) safety and the prevention of accidents,

"(F) the prevention and control of disease, and

"(G) family life matters.".

ARIZONA AS A CONTRACT HEALTH SERVICE DELIVERY AREA

SEC. 703. (a) Subsection (a) of section 708 (25 U.S.C. 1678 (a)) is amended—

(1) by striking out "1984" and inserting in lieu thereof "1989", and

(2) by striking out "Indians in such State" and inserting in lieu thereof "members of federally recognized Indian tribes of Arizona".

(b) Section 708 (25 U.S.C. 1678(c)) is amended by striking out subsection (c).

ELIGIBILITY OF CALIFORNIA INDIANS

SEC. 704. Section 709 (25 U.S.C. 1679) is amended to read as follows:

"ELIGIBILITY OF CALIFORNIA INDIANS

"SEC. 709. (a) The following California Indians shall be eligible for health services provided by the Service:

"(1) Any Member of a federally recognized Indian tribe.

"(2) Any descendant of an Indian who was residing in California on June 1, 1852, but only if such descendant—

"(A) is living in California,

"(B) is a member of the Indian community served by a local program of the Service, and

"(C) is regarded as an Indian by the community in which such descendant lives.

"(3) Any Indian who holds trust interests in public domain, national forest, or Indian reservation allotments in California.

"(4) Any Indian in California who is listed on the plans for distribution of the assets of California rancherias and reservations under the Act of August 18, 1958 (72 Stat. 619), and any descendant of such an Indian.

"(b) Nothing in this section may be construed as expanding the eligibility of California Indians for health services provided by the Service beyond the scope of eligibility for such health services that applied on May 1, 1986.

"(c) Paragraph (4) of subsection (a) shall not apply after September 30, 1988.".

CALIFORNIA AS A CONTRACT HEALTH SERVICE DELIVERY AREA

SEC. 705. Section 710 (25 U.S.C. 1680) is amended to read as follows:

"CALIFORNIA AS A CONTRACT HEALTH SERVICE DELIVERY AREA

"SEC. 710. The State of California, excluding the counties of Alameda, Contra Costa, Los Angeles, Marin, Orange, Sacramento, San Francisco, San Mateo, Santa Clara, Kern, Merced, Monterey, Napa, San Benito, San Joaquin, San Luis Obispo, Santa Cruz, Solano, Stanislaus, and Ventura shall be designated as a contract health service delivery area by the Service for the purpose of providing contract health services to Indians in such State.".

CONTRACT HEALTH FACILITIES

SEC. 706. Title VII is amended by adding at the end thereof the following new section:

"CONTRACT HEALTH FACILITIES

"SEC. 711. The Service shall provide funds for health care programs and facilities operated by tribes and tribal organizations under contracts with the Service entered into under the Indian Self-Determination and Education Assistance Act—

"(1) for the maintenance and repair of clinics owned or leased by such tribes or tribal organizations,

"(2) for employee training,

"(3) for cost-of-living increases for employees, and

"(4) for any other expenses relating to the provision of health services,

on the same basis as such funds are provided to programs and facilities operated directly by the Service.".

NATIONAL HEALTH SERVICE CORPS

SEC. 707. Title VII, as amended by section 706 of this Act, is further amended by adding at the end thereof the following new section:

"NATIONAL HEALTH SERVICE CORPS

"SEC. 712. The Secretary of Health and Human Services may remove a member of the National Health Service Corps from a health facility operated by a tribe or tribal organization under a contract with the Service entered into under the Indian Self-Determination and Education Assistance Act only if the Secretary has provided written notice of such removal or withdrawal to such tribe or tribal organization at least 60 days before the date on which such contract is entered into or renewed.".

HEALTH SERVICES FOR INELIGIBLE PERSONS

SEC. 708. (a) Title VII, as amended by section 707 of this Act, is further amended by adding at the end thereof the following new section:

"HEALTH SERVICES FOR INELIGIBLE PERSONS

"SEC. 713. (a)(1) Any individual who—

"(A) has not attained 19 years of age,

"(B) is the natural or adopted child, stepchild, foster-child, legal ward, or orphan of an eligible Indian, and

Fees collected pursuant to this subsection shall be available for expenditure within such facility for not to exceed one fiscal year after the fiscal year in which collected.

"(C) is not otherwise eligible for the health services provided by the Service,

shall be eligible for all health services provided by the Service on the same basis and subject to the same rules that apply to eligible Indians until such individual attains 19 years of age. The existing and potential health needs of all such individuals shall be taken into consideration by the Service in determining the need for, or the allocation of, the health resources of the Service. If such an individual has been determined to be legally incompetent prior to attaining 19 years of age, such individual shall remain eligible for such services until one year after the date such disability has been removed.

"(2) Any spouse of an eligible Indian who is not an Indian, or who is of Indian descent but not otherwise eligible for the health services provided by the Service, shall be eligible for such health services if all of such spouses are made eligible, as a class, by an appropriate resolution of the governing body of the Indian tribe of the eligible Indian. The health needs of persons made eligible under this paragraph shall not be taken into consideration by the Service in determining the need for, or allocation of, its health resources.

"(b)(1)(A) The Secretary is authorized to provide health services under this subsection through health facilities operated directly by the Service to individuals who reside within the service area of a service

unit and who are not eligible for such health services under any other subsection of this section or under any other provision of law if—

"(i) the Indian tribe (or, in the case of a multi-tribal service area, all the Indian tribes) served by such service unit requests such provision of health services to such individuals, and

"(ii) the Secretary and the Indian tribe or tribes have jointly determined that—

"(I) the provision of such health services will not result in a denial or diminution of health services to eligible Indians, and

"(II) there is no reasonable alternative health facility or services, within or without the service area of such service unit, available to meet the health needs of such individuals.

"(B) In the case of health facilities operated under a contract entered into under the Indian Self-Determination and Education Assistance Act, the governing body of the Indian tribe or tribal organization providing health services under such contract is authorized to determine whether health services should be provided under such contract to individuals who are not eligible for such health services under any other subsection of this section or under any other provision of law. In making such determinations, the governing body of the Indian tribe or tribal organization shall take into account the considerations described in subparagraph (A)(ii).

"(2)(A) Persons receiving health services provided by the Service by reason of this subsection shall be liable for payment of such health services under a fee schedule prescribed by the Secretary which, in the judgment of the Secretary, results in reimbursement in an amount not less than the actual cost of providing the health services. Notwithstanding section 1880(c) or 1911(d) of the Social Security Act or any other provision of law, fees collected under this subsection, including medicare or medicaid reimbursements under titles XVIII and XIX of the Social Security Act, shall be credited to the account of the facility providing the service and shall be used solely for the provision of health services within that facility. Fees collected under this subsection shall be available for expenditure within such facility for not to exceed one fiscal year after the fiscal year in which collected.

"(B) Health services may be provided by the Secretary through the Service under this subsection to an indigent person who would not be eligible for such health services but for the provisions of paragraph (1) only if an agreement has been entered into with a State or local government under which the State or local government agrees to reimburse the Service for the expenses incurred by the Service in providing such health services to such indigent person.

"(3)(A) In the case of a service area which serves only one Indian tribe, the authority of the Secretary to provide health services under paragraph (1)(A) shall terminate at the end of the fiscal year succeeding the fiscal year in which the governing body of the Indian tribe revokes its concurrence to the provision of such health services.

"(B) In the case of a multi-tribal service area, the authority of the Secretary to provide health services under paragraph (1)(A) shall terminate at the end of the fiscal year succeeding the fiscal year in which at least 51 percent of the number of Indian tribes in the service area revoke their concurrence to the provision of such health services.

"(c) The Service may provide health services under this subsection to individuals who are not eligible for health services provided by the Service under any other subsection of this section or under any other provision of law in order to—

"(1) achieve stability in a medical emergency,

"(2) prevent the spread of a communicable disease or otherwise deal with a public health hazard,

"(3) provide care to non-Indian women pregnant with an eligible Indian's child for the duration of the pregnancy through post partum, or

"(4) provide care to immediate family members of an eligible person if such care is directly related to the treatment of the eligible person.

"(d) Hospital privileges in health facilities operated and maintained by the Service or operated under a contract entered into under the Indian Self-Determination and Education Assistance Act may be extended to non-Service health care practitioners who provide services to persons described in subsection (a) or (b). Such non-Service health care practitioners may be regarded as employees of the Federal Government for purposes of section 1346(b) and chapter 171 of title 28, United States Code (relating to Federal tort claims) only with respect to acts or omissions which occur in the course of providing services to eligible persons as a part of the conditions under which such hospital privileges are extended.

"(e) For purposes of this section, the term 'eligible Indian' means any Indian who is eligible for health services provided by the Service without regard to the provisions of this section.".

INFANT AND MATERNAL MORTALITY; FETAL ALCOHOL SYNDROME

SEC. 709. Title VII, as amended by section 708 of this Act, is further amended by adding at the end thereof the following new section:

"INFANT AND MATERNAL MORTALITY; FETAL ALCOHOL SYNDROME

"SEC. 714. (a) By no later than January 1, 1988, the Secretary shall develop and begin implementation of a plan to achieve the following objectives by January 1, 1992:

"(1) reduction of the rate of Indian infant mortality in each area office of the Service to the lower of—

"(A) twelve deaths per one thousand live births, or

"(B) the rate of infant mortality applicable to the United States population as a whole;

"(2) reduction of the rate of maternal mortality in each area office of the Service to the lower of—

"(A) five deaths per one hundred thousand live births, or

"(B) the rate of maternal mortality applicable to the United States population as a whole; and

"(3) reduction of the rate of fetal alcohol syndrome and fetal alcohol effect associated with maternal consumption of alcohol to the lower of—

"(A) one per one thousand live births, or

"(B) the rate of fetal alcohol syndrome and such fetal alcohol effect applicable to the United States population as a whole.

"(b) The President shall include with the budget submitted under section 1105 of title 31, United States Code, for each fiscal year a separate statement which specifies the total amount obligated or expended in the most recently completed fiscal year to achieve each of the objectives described in subsection (a).".

CONTRACT HEALTH SERVICES FOR THE TRENTON SERVICE AREA

SEC. 710. Title VII, as amended by section 709 of this Act, is further amended by adding at the end thereof the following new section:

"CONTRACT HEALTH SERVICES FOR THE TRENTON SERVICE AREA

"SEC. 715. (a) The Secretary, acting through the Service, is directed to provide contract health services to members of the Turtle Mountain Band of Chippewa Indians that reside in the Trenton Service Area of Divide, McKenzie, and Williams counties in the State of North Dakota and the adjoining counties of Richland, Roosevelt, and Sheridan in the State of Montana.

"(b) Nothing in this section may be construed as expanding the eligibility of members of the Turtle Mountain Band of Chippewa Indians for health services provided by the Service beyond the scope of eligibility for such health services that applied on May 1, 1986.".

INDIAN HEALTH SERVICE AND VETERANS' ADMINISTRATION HEALTH FACILITIES AND SERVICES SHARING

SEC. 711. Title VII, as amended by section 710 of this Act, is further amended by adding at the end thereof the following new section:

"INDIAN HEALTH SERVICE AND VETERANS' ADMINISTRATION HEALTH FACILITIES AND SERVICES SHARING

"SEC. 716. (a) The Secretary shall examine the feasibility of entering into an arrangement for the sharing of medical facilities and services between the Indian Health Service and the Veterans' Administration and shall, in accordance with subsection (b), prepare a report on the feasibility of such an arrangement and submit such report to the Congress by no later than September 30, 1989.

"(b) The Secretary shall not take any action under subchapter IV of part VI of title 38, United States Code, which would impair—

"(1) the priority access of any Indian to health care services provided through the Indian Health Service;

"(2) the quality of health care services provided to any Indian through the Indian Health Service;

"(3) the priority access of any veteran to health care services provided by the Veterans' Administration;

"(4) the quality of health care services provided to any veteran by the Veterans' Administration;

"(5) the eligibility of any Indian to receive health services through the Indian Health Service; or

"(6) the eligibility of any Indian who is a veteran to receive health services through the Veterans' Administration.

"(c) Nothing in this section may be construed as creating any right of a veteran to obtain health services from the Indian Health Service.".

NAVAJO ALCOHOL REHABILITATION DEMONSTRATION PROGRAM

SEC. 712. Title VII, as amended by section 711, is further amended by adding at the end thereof the following new section:

"NAVAJO ALCOHOL REHABILITATION DEMONSTRATION PROGRAM

"SEC. 717. (a) The Secretary shall make grants to the Navajo tribe to establish a demonstration program in the city of Gallup, New Mexico, to rehabilitate adult

Navajo Indians suffering from alcoholism or alcohol abuse.

"(b) The Secretary, acting through the National Institute on Alcohol Abuse and Alcoholism, shall evaluate the program established under subsection (a) and submit a report on such evaluation to the appropriate committees of Congress by January 1, 1990.

"(c)(1) There is authorized to be appropriated for the purposes of this section $400,000 for each of the fiscal years 1988, 1989, and 1990.

"(2) Not more than 10 percent of the funds appropriated under paragraph (1) for any fiscal year may be used for administrative purposes.".

REALLOCATION OF BASE RESOURCES

SEC. 713. (a) Notwithstanding any other provision of law, any allocation of the base resources of the Indian Health Service for fiscal year 1987 that—

(1) differs from the allocation of the base resources of the Indian Health Service that was made for fiscal year 1985, and

(2) affects more than 3 percent of the base resources of the Indian Health Service for fiscal year 1987,

may be implemented only after the Secretary of Health and Human Services has met the requirements of subsection (b) with respect to such reallocation.

(b) The Secretary of Health and Human Services meets the requirements of this subsection with respect to any reallocation of base resources described in subsection (a) when the Secretary of Health and Human Services has submitted to the Congress—

(1) a written statement certifying that the Secretary of Health and Human Services has held consultations regarding such reallocation of base resources with the Indian tribes and tribal organizations affected by such reallocation; and

(2) a report on the proposed change in allocation of base resources, including the reasons for the change and its likely effects.

PROVISION OF SERVICES IN MONTANA

SEC. 714. (a) The Secretary of Health and Human Services, through the Indian Health Service, shall provide services and benefits for Indians in Montana in a manner consistent with the terms of the decision of the United States District Court for the District of Montana in *McNabb* v. *Heckler*, et al, No. CV-83-051-GF (D. Mont.), as decided on January 27, 1986, without regard to any stay or subsequent action.

(b) This section shall be effective until the end of the sixth month after any final decision of a court of competent jurisdiction modifying or reversing the district court decision described in subsection (a).

(c) The provisions of this section shall not be considered to be an expression of the sense of the Congress on the merits of the district court decision described in subsection (a).

SEVERABILITY

SEC. 715. If any provision of this Act, any amendment made by this Act, or the application of such provision or amendment to any person or circumstances is held to be invalid, the remainder of this Act, the amendments made by this Act, and the application of such provision to persons or circumstances other than those to which it is held invalid shall not be affected thereby.

TITLE VIII—NATIVE AMERICAN DIABETES PREVENTION AND CONTROL

SHORT TITLE

SEC. 801. This title may be cited as the "Native American Diabetes Prevention and Control Act of 1986".

FINDINGS AND PURPOSE

SEC. 802. (a) The Congress finds that—

(1) the incidence of diabetes among Native Americans is significantly higher than in other population groups within the United States;

(2) in several Indian tribes over 40 percent of the adults have diabetes compared with approximately 3 percent of the overall United States adult population;

(3) diabetes has become the second leading reason for outpatient visits by Native Americans to Indian Health Service facilities nationwide;

(4) serious complications of diabetes, such as kidney failure, hypertension, amputation, and blindness, are increasing in frequency among Native Americans;

(5) health care costs for treatment of diabetes and related complications among Native Americans will increase significantly in the long term unless the Department of Health and Human Services—

(A) determines the cause of diabetes among Native Americans,

(B) develops early diagnosis, treatment, and prevention programs to reduce the incidence of diabetes among Native Americans, and

(C) trains, or provides for the training of, Federal and Native American health care providers in the diagnosis, treatment, and control of diabetes and related complications;

(6) a Model Diabetes Control Program exists within the Indian Health Service, consisting of seven project sites which serve only 10 percent of the Indian Health Service patients; and

(7) outreach services and the conveyance of effective treatment strategies from the model project sites need to be implemented.

(b) The purposes of this title are—

(1) to broaden the research program of the Department of Health and Human Services relating to diabetes and related complications among Native Americans;

(2) to strengthen the efforts of the Indian Health Service for the treatment of diabetes through the implementation of a program for the prevention and control of diabetes and related complications on each Indian Reservation and for each Alaskan Native Village; and

(3) to achieve a reduction in the incidence of diabetes among Native American populations to a rate comparable to that of the general United States population.

DEFINITIONS

SEC. 803. For purposes of this title—

(1) The term "Native American" means any—

(A) Indian, or

(B) member of an Alaska Native village (within the meaning of section 3 of the Alaska Native Claims Settlement Act).

(2) The term "Secretary" means the Secretary of Health and Human Services.

(3) The term "area office" means an administrative entity within the Indian Health Service through which services and funds are provided to the service units within a defined geographic area.

(4) The term "service unit" means—

(A) an administrative entity within the Indian Health Service, or

(B) an Indian tribe or tribal organization operating health care programs or facilities with funds from the Indian Health Service under the Indian Self-Determination Act,

through which services are provided, directly or by contract, to the eligible Indian population within a defined geographic area.

STUDY ON DIABETES AMONG NATIVE AMERICANS

SEC. 804. (a) The Secretary shall determine—

(1) the incidence of diabetes among Native Americans;

(2) activities the Indian Health Service should take—

(A) to reduce the incidence of diabetes among Native Americans,

(B) to provide Native Americans with guidance in the prevention, treatment, and control of diabetes,

(C) to provide early diagnosis of diabetes among Native Americans, and

(D) to ensure that proper continuing health care is provided to Native Americans who are diagnosed as diabetic; and

(3) the fiscal impact to the Federal Government of treating the long-term complications of diabetes based upon the existing prevalence and incidence of diabetes among Native Americans.

(b) The Secretary shall prepare an inventory of all health care programs and resources (public and private) within the United States that are available for the treatment, prevention, or control of diabetes among Native Americans.

(c) Within 18 months after the date of enactment of this Act, the Secretary shall prepare and transmit to the President and the Congress a report describing the determinations made under subsection (a), containing the inventory prepared under subsection (b), and describing the research activities conducted under this title.

DIABETES CARE PROGRAM

SEC. 805. (a) Within 18 months after the date of enactment of this Act, the Secretary shall implement a program designed—

(1) to strengthen and expand the diabetes control program of the Indian Health Service;

(2) to screen each individual who receives services from the Indian Health Service for diabetes and for conditions which indicate a high risk that the individual will become diabetic;

(3) to enable all service units of the Indian Health Service to treat effectively—

(A) newly diagnosed diabetics in order to reduce future complications from diabetes,

(B) individuals who have a high risk of becoming diabetic in order to reduce the incidence of diabetes, and

(C) short-term and long-term complications of diabetes;

(4) to conduct, for Federal, tribal, and other Native American health care providers (including community health representatives), training programs concerning current methods of prevention, diagnosis, and treatment of diabetes and related complications among Native Americans;

(5) to determine the appropriate delivery to Native Americans of health care services relating to diabetes;

(6) to develop and present health education information to Native American communities and schools concerning the prevention, treatment, and control of diabetes; and

(7) to ensure that proper continuing health care is provided to Native Americans who are diagnosed as diabetic.

(b) The Secretary shall—

(1) promote coordination and cooperation between all health care providers in the delivery of diabetes related services; and

(2) encourage and fund joint projects between Federal and tribal health care facilities and Native American communities for the prevention and treatment of diabetes.

(c)(1) The Secretary shall continue to maintain each of the following model diabetes clinics which are in existence on the date of enactment of this Act:

(A) Claremore Indian Hospital in Oklahoma;

(B) Fort Totten Health Center in North Dakota;

(C) Sacaton Indian Hospital in Arizona;

(D) Winnebago Indian Hospital in Nebraska;

(E) Albuquerque Indian Hospital in New Mexico;

(F) Terry, Princeton, and Old Town Health Centers in Maine; and

(G) Bellingham Health Center in Washington.

(2) Within 2 years after the date of enactment of this Act, the Secretary shall establish and maintain a model diabetes clinic in each of the following locations:

(A) the Navajo Reservation;

(B) the Papago Reservation;

(C) Montana; and

(D) Minnesota.

(3) The Secretary shall develop and implement an outreach program to ensure that the achievements and benefits derived from the activities of the model diabetes clinics maintained under this section are used by all service units of the Indian Health Service in the diagnosis, prevention, and treatment of diabetes among Native Americans.

(d)(1) The Secretary shall maintain appropriate personnel within the Indian Health Service to develop and implement the provisions of this title and to manage and coordinate the diabetes care program of the Indian Health Service.

(2) The Secretary shall employ in each area office of the Indian Health Service at least one diabetes control officer who shall coordinate and manage on a full-time basis the diabetes care program of the Indian Health Service in the area served by such area office.

(e) The Secretary shall submit to the Congress an annual report outlining the activities, achievements, needs, and future goals of the diabetes care program of the Indian Health Service.

DATA COLLECTION AND ANALYSIS

SEC. 806. The Secretary shall develop and maintain a comprehensive standardized system within the Indian Health Service to collect, analyze, and report data regarding diabetes and related complications among Native Americans. Such system shall be designed to facilitate dissemination of the best available information on diabetes to Native American communities and health care professionals. Such system shall be operational within 2 years after the date of enactment of this Act.

RESEARCH

SEC. 807. The Secretary shall require each agency and unit of the Department of Health and Human Services which conducts research relating to diabetes—

(1) to give special attention to research concerning the causes, diagnosis, treatment, and prevention of diabetes and related complications among Native Americans; and

(2) to coordinate such research with all other agencies and units of the Department of Health and Human Services which conduct research relating to diabetes and related complications.

REGULATIONS

SEC. 808. The Secretary may prescribe such regulations as may be necessary to carry out the provisions of this title.

AUTHORIZATION OF APPROPRIATIONS

SEC. 809. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this title.

Mr. ANDREWS. Mr. President, I rise on this historic occasion to thank my colleagues for their sincere and dedicated efforts in support of improving the health status of all native Americans. It has been a long journey to this proud day, as the Senate acts to reauthorize the Indian Health Care Improvement Act, after 4 years of concerted action to achieve this significant goal.

As my colleagues doubtless know, despite the laudatory achievements of the Indian Health Service in reducing infant mortality and increasing the lifespan of American Indians and Alaska Natives, native Americans today still suffer a lower health status than any other segment of the American population. The alarmingly high incidence of diabetes, hypertension, heart disease, and premature death amongst our native people is testament to the pressing need for legislation that will allow the important work of the Indian Health Service to continue, and that will one day assure that the native people of this country are restored to the good health they once enjoyed.

This legislation represents my personal commitment, and that of many of my colleagues on the Indian Affairs Committee and in the Senate, to assure that this Nation's first Americans will have the opportunity to see their younger generations grow up and prosper in a healthy environment, so that they may become the leaders of tomorrow and the future.

Mr. MELCHER. Mr. President, I ask unanimous consent that I may be a cosponsor of the Andrews amendment in the nature of a substitute.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MELCHER. Mr. President, I have a statement concerning the bill, particularly one title that deals with Indian diabetes. For purposes of establishing the congressional intent, I want to read this portion.

In addition, the intent of this title is to: Require the Secretary to develop and implement a program or programs to teach Indian tribes, communities, and schools the essentials of recognizing diabetes, its prevention, control and treatment.

Furthermore, it is the intent of this title that the Secretary shall expeditiously—within 18 months—develop diagnosis methods and implement programs for broad scale diagnostic tests within Indian communities and tribes.

Mr. President, I rise today in support of the Indian Health Care Improvement Act Amendments of 1986.

First enacted in 1976, the Indian Health Care Improvement Act represented the first congressional efforts to specify the type of health care Congress expected the Indian Health Service to deliver to native American people. Prior to that time, Indians relied on funding for health care through the 1921 Snyder Act. The new act added authority for the Federal Government to provide scholarship assistance to Indians in the health professions, to provide better clinical patient care, dental care, alcohol abuse treatment, mental health services, and programs for Indians who were forced by reservation economic conditions to relocate to urban areas.

Despite major gains in Indian health made over the last 30 years, real problems remain. Indians still suffer the lowest health status of all American citizens. Indian infants still die at a rate far above the national average and tuberculosis among Indians is six times the national average.

Mr. President, I believe the bill before us today will more effectively focus the vast resources of the Department of Health and Human Services to benefit Indian health. Briefly, title I continues the scholarship assistance program and makes the very beneficial community health representative program a permanent program of IHS; title II provides for the elimination of the deficiency backlogs in health care delivery; title III provides for construction of facilities and for the new 10-year plan for safe water, sewer, and disposal facilities; title IV expands the number of IHS facilities that would be eligible for Medicare and Medicaid reimbursement; and title V authorizes the urban program.

In addition, the bill contains a new section to attack diabetes among the Indian population. The new section embodies the language of a bill I introduced that was reported favorably in May of this year by the Indian Affairs Committee. The measure is based on investigative work conducted by the committee which included site visits to the Navajo and Pima reservations and a comprehensive telephone survey. The statistics show that, while the incidence of diabetes among the general population is about 3 percent, among some native American Indian groups, as high as 40 percent may be afflicted with the disease. The survey also revealed the following:

Diabetes is the second leading reason for outpatient visits to IHS hospitals and clinics; the diabetes mortality rate for native Americans is 19 percent at an average age of 45 to 65 years, compared with a 9-percent mortality rate for other ethnic groups; among native Americans, there are

higher numbers of cases of hypertension, amputation, blindness, cataract formation, retinopathies and end stage renal failure, all serious complications of diabetes; and there are indications of a higher incidence among native Americans of insulin resistance, the cause of which is still not known.

In response to these startling findings, this measure was drafted to broaden the current research on diabetes among Indians and to strengthen the efforts of the Indian Health Service to prevent and treat the disease and its complications. Under the proposed amendment, the Indian Health Service will determine with more precision the incidence of diabetes among native Americans, will assess the current IHS response, and will determine what is needed to improve that response. Based on that information, IHS will then begin to implement programs for screening all IHS patients for diabetes, with particular attention to high-risk groups. The amendment also calls for education and training of IHS workers in prevention, diagnosis, and treatment of diabetes.

There are seven diabetes centers now operated by IHS, and the bill directs that centers be established in four additional areas of the country that are served by IHS area offices. The measure also contains important information collection and dissemination provisions to improve knowledge about the extent of the problem and the kinds of responses that work best to reduce the incidence of the disease as well as its often devastating consequences.

This section of the bill represents a very modest, if not conservative approach to attacking a disease that is significantly higher among Indians than the rest of Americans and that is so often dire in its consequences.

The bill also includes an amendment very important in my State of Montana and, I suspect, in many other States as well. In Montana, for the past several years, the IHS, because of a shortage of funds, has begun to identify county medical benefits as an alternate resource which they feel should be tapped before IHS funds are used to treat indigent Indians. In Montana, this has created a severe financial burden on several counties which have Indian lands within their boundaries.

The only mechanism these counties have for establishing indigent medical funds is the mill levy on property taxes. Since reservations and other Indian trust lands are not taxable, the IHS should not force indigent Indians who live on nontaxable trust lands to exhaust county medical benefits before they come to IHS for benefits.

This entire issue is now in the Federal courts. The case, McNabb versus Heckler, was brought on behalf of an indigent Indian child in Roosevelt County, MT, who had been denied benefits by both the county and the IHS. The Montana Federal district court decided that the Federal Government is the primary, not residual, supplier of medical care to Indians on trust lands.

While I agree with the district court decision, the provision included as part of the bill before us now does not pretend to resolve the issue with any finality. It merely stipulates that, while the case is under appeal by the Government to higher Federal courts, the IHS shall continue to provide health benefits to Indians in Montana in a manner consistent with the holding in McNabb. The provision is only effective for 6 months following a final court decision and is not to be considered an expression of the Congress on the merits of the case.

In closing, it is clear to me that this legislation is important to assure that Indian health care continues to make real gains and that we continue to maintain a clear Federal responsibility. Our treaties, our statutes, and our moral commitments to our first Americans have been to provide quality health care. We have a long way to go in fulfilling that commitment, but this bill is an important step in that process.

□ 1320

Mr. BINGAMAN. Mr. President, I am very pleased that the Senate is finally considering S. 277, the Indian Health Care Amendments of 1986. I applaud the efforts of the Senator from North Dakota [Mr. ANDREWS] and the Senator from Montana [Mr. MELCHER] in working hard to reach an accommodation so that we may move this important legislation. I also thank the majority leader and the minority leader for their efforts in scheduling this matter. There has been tremendous interest in getting this bill before the Senate. I was pleased to join with 31 of my colleagues who cosigned a letter urging Senate consideration of S. 277. I ask unanimous consent that this letter be printed in its entirety at the conclusion of my remarks.

Congress has not passed a reauthorization bill for Indian health since 1980. During this 6-year period, we have seen some health improvement at the community level but we cannot ignore the reports documenting the continuing need. The recent Office of Technology Assessment's Indian health care study and the Secretary of Health and Human Services Task Force report on black and minority health have both detailed the lower health status of Indian people. Both reports point to improvements that need to be made. S. 277 puts the Senate on record that the health status of Indians is a public health priority and reauthorization of these programs is imperative.

Mr. President, the amendment before us is an amendment in the nature of a substitute filed by Mr. ANDREWS on August 4, 1986. I support this amendment because it includes several provisions of special importance: section 106, which continues and improves the Community Health Representative Program; section 203 which establishes a Health Promotion and Disease Prevention Service; and section 701, which establishes a health education component. I thank the chairman and the ranking member for their acceptance of these sections.

Sections 106 and 203 were provisions that I proposed in my legislation, S. 400, the Indian Health Promotion and Disease Prevention Act. Last June the Indian Affairs Committee, at my request, held a hearing on S. 400 in Gallup, NM, chaired by my colleague from Arizona [Mr. DECONCINI]. The testimony from Indian leaders, health care professionals, health educators, local and State providers, all voiced support for a prevention component in the Indian Health Service. Although the Indian Health Service has engaged in traditional prevention activity to combat contagious disease, the diseases now confronting Indians and the population-at-large are chronic, degenerative disease. Many of our most serious health problems are directly related to unhealthy behavior—smoking, overeating, lack of exercise, and abuse of alcohol and drugs—prompting the U.S. Surgeon General, in his 1979 report "Healthy People," to call for a renewed national commitment to disease prevention and health promotion. These new sections I have added to S. 277 are fully intended to be carried out in that call for action.

The best community intervention depends on local outreach. Section 106 of S. 277 expands and improves the Community Health Representative Program. Community health representatives are health educators and health promoters. It continues the program with quality training and a rigorous curriculum for these paraprofessionals. Continuing education, evaluation, and incorporation of traditional health care practices and cultural values are also added. I believe the community health representative's role in health promotion and disease prevention is reinforced under this new section and also under section 204.

Section 204 establishes a health promotion and disease prevention service within the Indian Health Service. It requires that the IHS develop a comprehensive plan for health promotion and disease prevention activity and outlines how and when those goals will be reached. This plan I view as extremely beneficial, for it would be a benchmark to measure IHS progress against the goals it would establish in

the comprehensive plan. I envision it similar to objectives for the Nation, except, in this instance, it would be objectives for the American Indian.

Section 204 also establishes a communitywide health promotion project. The purpose of this demonstration project is to determine the most effective and cost efficient means of providing health promotion services. According to IHS, the leading causes of hospital admissions are injuries and poisonings, digestive and respiratory system diseases, and pregnancy complications. Community health education can reduce these admissions. It is my hope that this project will be a model that will be replicated in other Indian communities as a way to promote community health.

Finally, a new section was added at my urging and in cooperation with Senator ANDREWS, to direct the Secretary of Health and Human Services and the Secretary of Interior to enter into an agreement to coordinate health promotion, disease prevention, and health education among Indian youth. In the recently passed antidrug bill, an Indian Alcohol and Substance Abuse Prevention and Treatment Act was incorporated into that legislation. Section 701 of S. 277 complements the alcohol and drug education portions of that legislation because it mandates health education in the Bureau of Indian Affairs and community-controlled schools. Health education as defined in S. 277 includes alcohol and drug abuse. I understand that these departments have entered into some type of cooperative arrangement regarding alcohol and drug abuse but that it is not broad enough to include health education. Therefore, section 701 assures the broadest prevention possible.

Mr. President, I believe that we have a long overdue bill. I urge the quickest action possible. Last Congress the administration vetoed this necessary legislation. Every attempt has been made by those concerned to work with the administration to reach a suitable compromise. It is my hope we will not be faced with another veto. Certainly, the Indian communities do not want this, nor do they deserve another veto. And I, as a Senator who represents a large Indian constituency, would find a veto at this time unconscionable.

I ask unanimous consent to have a letter in connection with this matter printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
Washington, DC, September 30, 1986.

Hon. ROBERT DOLE,
Senate Majority Leader, U.S. Senate, Washington, DC.

Hon. ROBERT C. BYRD,
Senate Minority Leader, U.S. Senate, Washington, DC.

DEAR SENATORS DOLE AND BYRD: We are writing to urge you to bring before the Senate H.R. 1426, the Indian Health Care Improvement Act Amendments of 1986. The House of Representatives overwhelmingly voted for its passage September 18, by a vote of 308 to 70. Given the serious need and overwhelming support for this measure, we ask that you schedule time for consideration and final passage on this legislation before we adjourn.

The Senate Select Committee on Indian Affairs favorably reported its version, S. 277, on May 2, 1985. The bill as reported omitted two provisions that formed the basis of the President's veto last Congress: a demonstration program in the State of Montana and a congressionally-appointed study commission on elevation of the Indian Health Service within the Department of Health and Human Services. In further consideration of the Administration's concerns, Senator Andrews on August 4, 1986, filed an amendment in the nature of a substitute. We believe that this final version best represents a well-reasoned compromise that is fair to all parties concerned, particularly to the Indian tribes. We believe that this substitute amendment will be acceptable to the Administration.

The Indian people have not had a reauthorization of the Indian Health Care Improvement Act since 1980. It is imperative that the Senate bring up this critical legislation because the health status of American Indians will not improve substantially unless Congress directs and supports such efforts. As we fail to act, we receive reports on the low health status of American Indians. The Office of Technology Assessment's Indian Health Care study and the Secretary of Health and Human Services Task Force Black and Minority Health report have recently been issued on this subject.

We request your favorable consideration to schedule H.R. 1426 at your earliest convenience so that the Senate may have an opportunity to consider this necessary legislation.

Sincerely,

Jeff Bingaman, Peter Domenici, John Stennis, Quentin Burdick, George Mitchell, Dave Durenberger, Rudy Boschwitz, Daniel Inouye, Bill Bradley, Thad Cochran, Edward Kennedy, Malcolm Wallop, Spark Matsunaga, Mark Hatfield, Chic Hecht, Carl Levin, John Chafee, John Kerry, David Boren, Bob Packwood, Edward Zorinsky, Don Nickles, Larry Pressler, Paul Simon, Ted Stevens, Dennis DeConcini, John Glenn, Daniel Evans, Daniel Moynihan, Donald Riegle, Bill Cohen, and Alfonse D'Amato.

Mr. CRANSTON. Mr. President, I rise in support of the Indian Health Care Improvement Act Amendments of 1986. As a cosponsor of S. 277, I am very pleased that the Senate is about to vote on this important measure.

The Indian Health Care Improvement Act was first enacted in 1976 in order to bring the health status of American Indians and Alaska Natives to a level equal to that of the general population in the United States. Although there has been improvement in the last 10 years, an April 1986 Office of Technology Assessment report found that Indians still suffer from mortality rates that are higher than the national average.

Mr. President, Congress has already spoken once in favor of reauthorizing this program. In 1984, the Indian Health Care Improvement Act amendments were passed by both the Senate and the House, only to be vetoed by President Reagan. I understand that the administration would now agree to the Senate version of the legislation. That measure would ensure that our commitment to improving the health and welfare of American Indians is not broken and should become law.

Mr. President, I am particularly pleased that this legislation includes a provision that is very important to California Indians. Specifically, section 709 of S. 277 as reported would codify current Indian Health Service practice and policy with regard to determining California Indian eligibility for IHS services, to include:

First, members of federally recognized tribes; second, descendants of Indians who lived in California on June 1, 1852, who are members of the Indian community now served by the IHS, and who are regarded as Indians by their communities; third, Indians holding certain trust interests; and fourth, Indians listed on certain plans for distribution of California rancherias and reservations, and their dependents.

About 75,000 of California's 210,000 Indians meet one of those criteria and are currently eligible for IHS services.

This provision would ensure that those 75,000 individuals could continue to receive vital health services at IHS clinics. Contrary to what some have contended, it would not expand eligibility. In fact, section 709(b) states, "Nothing in this section may be construed as expanding the eligibility of California Indians for health services provided by the Service beyond the scope of eligibility for such health services that applied on May 1, 1986." The provision would provide only that current policies be continued.

Mr. President, I was very concerned that when the House of Representatives debated H.R. 1426, the House version of this legislation, just a few weeks ago, it adopted an amendment offered by Representative MCCAIN which would radically restrict current eligibility criteria. The House amendment would require that a California Indian must be a member of a federally recognized tribe in order to be eligible for IHS-provided services. No other criteria would be considered in determining eligibility.

This restriction would result in the termination of coverage for 53,000

rural California Indians who are now eligible for IHS services. This is 70 percent of these Indians currently eligible.

Mr. President, I am pleased that the Senate bill includes the provision codifying current policies in this regard, which is vitally important to assuring continued eligibility for California Indians and I strongly urge the conferees to see that it is retained in negotiations with the House on this bill.

Mr. President, I urge all my colleagues to support this important legislation as reported by the Select Committee on Indian Affairs.

The PRESIDING OFFICER. Are there further amendments? If not, the question is on agreeing to the substitute.

The substitute amendment (No. 3257) was agreed to.

Mr. COCHRAN. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. MELCHER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The question is on the engrossment of the amendment and the third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read a third time, and passed.

Mr. COCHRAN. Mr. President, I ask unanimous consent that calendar No. 140, S. 277, the Senate companion bill, be indefinitely postponed.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENTS TO NATURAL GAS PIPELINE SAFETY ACT OF 1968 AND HAZARDOUS LIQUID PIPELINE SAFETY ACT OF 1979

Mr. COCHRAN. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of H.R. 2092, the pipeline safety bill, now being held at the desk.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 2092) to amend the Natural Gas Pipeline Safety Act of 1968 and the Hazardous Liquid Pipeline Safety Act of 1979, to authorize appropriations for fiscal year 1987, and for other purposes.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. DANFORTH. Mr. President, I would like to express my support for H.R. 2092, which amends the Natural Gas Pipeline Safety Act of 1968 and the Hazardous Liquid Pipeline Safety Act of 1979, to authorize appropriations for the 1987 fiscal year.

During 1985, the Senate passed S. 813, to provide pipeline safety authorizations for fiscal years 1986 and 1987. In the absence of House action, the fiscal year 1986 Budget Reconciliation Act was amended to include a 1-year funding authority for the pipeline safety programs, and to establish a system of fees to recover the Federal costs associated with such programs.

The legislation we are considering today would authorize a total funding authority of $9,200,000 in 1987 for pipeline safety programs. Included within this amount is a redistribution of funds in order to slightly increase the State grants-in-aid program. However, the total authorizations level is not out of line with the $9,248,000 the Senate approved in S. 813. Also, I would point out that all Federal funds for pipeline safety programs are provided through user fees, and thus do not contribute to the Federal budget deficit.

H.R. 2092 does contain a section which was not contained in S. 813. Section 3 would require the Secretary of Transportation to issue regulations requiring the operator of pipeline facilities to report to the Secretary and the appropriate State officials any condition that constitutes a hazard to life or property, or any safety-related condition that causes or has caused a significant change in or restriction in the operation of the pipeline facilities.

This provision, which was written with the cooperation of the Department of Transportation [DOT] and the pipeline industry, is intended to provide necessary information to State and Federal officials to permit prompt investigation, and to allow appropriate remedial actions to be taken expediently in order to ensure the safety of those living near pipelines.

While I support H.R. 2092 as passed by the House, at this time I am unable to recommend to our Senate colleagues that they endorse report language by members of the House Energy and Commerce Committee which would direct DOT to commence immediate implementation of recommendations arising from the findings of their Subcommittee on Oversight and Investigations.

It is not a matter of agreement or disagreement with the findings of the subcommittee or the intentions of our House colleagues. Instead, it is a matter of timeliness and appropriateness. Any substantive position on these findings must await Senate hearings on these and other matters relating to pipeline safety planned for the upcoming Congress.

In exceptional cases where Congress has failed to legislate, or Federal agencies have failed to respond, it may be appropriate to use report language, instead of legislation, as a vehicle through which to hasten implementation of new policies. This is not such a case.

Congress is willing to act should there be a need. Should it become evident that legislation is required to address any of the concerns raised by the House, I am confident that the responsible committees will act accordingly. With this in mind, I would recommend that DOT consider the House recommendations and be prepared to comment on the feasibility of implementing them when the subject arises during future Senate Commerce Committee hearings.

Mr. President, having clarified the Senate's views with regard to requirements contained in the House report on H.R. 2092, I urge my colleagues to support passage of this legislation.

The bill was ordered to be read a third time, was read the third time, and passed.

Mr. COCHRAN. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. MELCHER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

NATIONAL CHILD IDENTIFICATION AND SAFETY INFORMATION DAY

Mr. COCHRAN. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of House Joint Resolution 438, National Child Identification and Safety Information Day, which is now being held at the desk.

The PRESIDING OFFICER. The joint resolution will be stated by title.

The assistant legislative clerk read as follows:

A joint resolution (H.J. Res. 438) to designate October 31, 1986, as "National Child Identification and Safety Information Day."

The PRESIDING OFFICER. Is there objection to the present consideration of the joint resolution?

There being no objection, the Senate proceeded to consider the joint resolution.

Mr. HATCH. Mr. President, I rise today in support of a joint resolution which would designate October 31, 1986, as "National Child Identification and Safety Information Day."

I believe this joint resolution is appropriate action given the large number of missing children in the United States each year. As cosponsors of this legislation, Members of Congress will be indicating that they believe missing children to be a serious yet controllable problem, given the proper precautions—teaching children safety information.

This legislation will emphasize the need to provide our children with intensive education. It is vitally important that parents take the time to

carefully explain to their children how to be cautious and how to handle potentially dangerous situations. This legislation is also intended to challenge parents to compile an identification file on each of their children. This would assist authorities in locating a missing child. This is prevention in its best form.

My own peaceful State of Utah was horrified by the case of six missing children in 1983, all of whom were later found dead. Out of this crisis, a continuing child protection effort envolved. The Utah Parent-Teacher Association was the first to swing into action. They were presented in the schools by local law-enforcement agencies. Parents reinstated "parent watch," to patrol streets during hours when children are going to and from school. With the assistance of the Utah Association of Women, the PTA promoted "McGruff House" posters to be placed in windows telling a child in trouble refuge and help.

Town meetings have been sponsored by law enforcement agencies, county and city governments, PTA's and Utah Association of Women to formulate and instruct parents in preventative measures and appropriate actions to take should the need arrive.

In addition, the Utah Association of Women organized a new committee with the sole responsibility of developing, coordinating, and promoting child safety. Volunteers dispersed child identification packets, which were produced by Friends of Child Find. The kit includes identification instructions, precautionary measures, procedures to take when a child is missing, and guidelines for identifying a suspect and an automobile. When this type of information is really available, the police can expedite the speedy location of a missing child.

The Utah Association of Women also organized groups of women to lobby the Utah State Legislature for stronger kidnaping legislation. Partially due to their encouragement, the State Department of Public Safety renewed intensive training of police kidnap procedures.

Further, the Department of Public Safety, with the support of the Utah Association of Women and the PTA, began cracking down on juvenile protection violators. This law prohibits leaving a child in a situation that could prove harmful to the child.

The Utah initiative cannot bring back these six children any more than like efforts in the rest of the country could bring back any of the 1.3 million kids missing each year. However, the States that react in this manner will have safer playgrounds and streets for their children.

I would like to commend Congressman LUNGREN who introduced this joint resolution in the House of Representatives and for choosing Halloween as the designated day—a day each year when parents are most acutely aware of the potential dangers facing their children.

The joint resolution was ordered to be read a third time, was read the third time, and passed.

Mr. COCHRAN. Mr. President, I move to reconsider the vote by which the joint resolution was passed.

Mr. MELCHER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. COCHRAN. Mr. President, I ask unanimous consent that the Senate companion bill, introduced by Senator HATCH today, be indefinitely postponed.

The PRESIDING OFFICER. Without objection, it is so ordered.

RELIEF OF SURVIVORS OF CHRISTOPHER ENEY

Mr. COCHRAN. Mr. President, I ask unanimous consent that the Senate now turn to H.R. 2574, for the relief of the survivors of Christopher Eney, now being held at the desk.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 2574) for the relief of the survivors of Christopher Eney.

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 3258

(Purpose: To provide that Christopher Eney be treated as a public safety officer within the meaning of the Omnibus Crime Control and Safe Streets Act of 1968)

Mr. COCHRAN. Mr. President, I send an amendment to the desk in behalf of Senator THURMOND and ask that it be considered.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Mississippi [Mr. COCHRAN] for Mr. THURMOND, proposes an amendment numbered 3258.

Mr. COCHRAN. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 1, line 7, beginning with "who" strike out all through line 8, and insert in lieu thereof "covered by the Act as of".

Mr. THURMOND. Mr. President, I offer an amendment today to H.R. 2574, a private relief bill for the survivors of Christopher Eney. This bill would allow the survivors of the late U.S. Capitol Police Sergeant, Christopher Eney to apply for death benefits under the Omnibus Crime Control and Safe Streets Act of 1968, as amended on October 1, 1984, to include U.S. public safety officers. The amendment I offer today deletes the determination clause of the bill, that Sergeant Eney "died as the direct and proximate result of a personal injury sustained in the line of duty," and deems him to have been covered by the act as of October 1, 1984, thereby allowing the determination to be made by the Bureau of Justice Assistance as statutorily authorized.

Sergeant Eney was a U.S. Capitol Police Officer assigned with the duty to protect Members of Congress, their staffs, and support personnel when he was accidentally shot and killed during a training exercise on August 24, 1984. This was just 37 days before the date of enactment of the Public Safety Officers' Death Benefits Payments provision, as amended to include public safety officers of the United States.

I urge my colleagues to adopt this legislation as amended, to allow Mrs. Eney and her two young daughters to file a claim with the Bureau of Justice Assistance for benefits under the act.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3258) was agreed to.

Mr. COCHRAN. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. MELCHER. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. If there be no further amendment to be proposed, the question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read a third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

So the bill (H.R. 2574), as amended, was passed.

Mr. COCHRAN. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. MELCHER. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

OMNIBUS VETERANS BENEFITS AND PROGRAM IMPROVEMENT

Mr. COCHRAN. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on H.R. 5299.

The PRESIDING OFFICER laid before the Senate the amendment of the House of Representatives to the bill amendment of the Senate to the bill (H.R. 5299) to amend title 38, United States Code, to provide a 2-percent increase in the rates of compensation and of dependency and indemnity

compensation [DIC] paid by the Veterans' Administration, and for other purposes.

(The amendment of the House is printed in the RECORD of October 7, 1986, beginning at page 29200.)

Mr. MURKOWSKI. Mr. President, I am pleased to rise to ask the Senate to adopt H.R. 5299 as amended, the Veterans' Benefits Improvements and Health-Care Authorization Act of 1986. This act includes provisions derived from bills which have passed either the House or the Senate in 1985 and 1986, including provisions from S. 1887, which passed the Senate in December 1985, and S. 2422 which passed the Senate in September 1986. The provisions of the bill now before the Senate reflect the conscientious dedication and hard work of many Members of both bodies.

Mr. President, veterans' legislation has long enjoyed a reputation for cooperation between the two bodies of the Congress and across partisan lines. I am proud that the compromise agreement before us today continues this tradition.

TITLE I

Title I of the compromise agreement addresses the compensation awarded to veterans with service-connected disabilities and the survivors of those who die in service or due to a service-connected disability. Few Americans have given more for our Nation than these veterans and their survivors. They remain our highest priority.

The Senate-passed bill would have provided these veterans and survivors with a cost-of-living adjustment [COLA], effective December 1, 1986, equal to that received by Social Security recipients. The compromise agreement would provide a COLA of 1.5 percent. I would prefer to provide a COLA linked to the actual change in the cost of living rather than to ask the Congress to estimate what adjustment would be needed to offset anticipated increases. Such a link to the actual change in the cost of living would ensure our veterans fair and equitable protection from inflation. While the compromise agreement does not provide such a direct link, a 1.5-percent increase is generally consistent with the increase expected by the Congressional Budget Office.

In addition to a COLA, title I addresses the concerns of veterans who are former POW's. Both the House and the Senate have passed legislation which would allow the VA to provide compensation for service-connected disabilities in the case of former POW's with residuals of frostbite and posttraumatic osteoarthritis, even if there is no record of these conditions during the veteran's service. I am disappointed that we were unable to resolve our differences with the House on all the issues involved in a similar provision for former POW's suffering from irritable bowel syndrome. Considerable interest in and help on this provision was provided by my distinguished colleague from Pennsylvania, Senator HEINZ. The original Senate provision was introduced by the Senate's President pro tempore and longtime committee member, Senator STROM THURMOND.

TITLE II

Mr. President, title II of H.R. 5299 contains 21 individual provisions related to VA health care programs and administration, and the VA's medical facility planning and construction program. I would like to take this opportunity to highlight several provisions which originated in the Senate-passed veterans' health care legislation, S. 2422, and which have been incorporated into this final measure.

The first two provisions of title II would make the greatest contribution toward promoting the continued independence of elderly veterans by enhancing VA programs and services so that these veterans could live at home or in the community as long as possible without being institutionalized.

First, elderly veterans would benefit from the new VA authority to provide respite care services to a veteran suffering from a chronic illness and who is residing primarily at home. Second, a clarification of what is considered to be a veteran's home would also benefit aging veterans by authorizing the VA to provide home health services to a veteran in any setting where the veteran is residing, including community residential facilities. I believe these provisions, which were contained in S. 2422, to be valuable additions to the VA's continuum of health-care services.

The compromise agreement contains several provisions which would address the very real problem of the VA's aging medical facilities. Two of these provisions would encourage further the use of and reliance on additional acute and long-term care options to supplement the VA's own in-house capacity to provide health-care services to our Nation's veterans. First, H.R. 5299 would require the VA to consider VA-Department of Defense sharing agreements prior to the planning of future VA construction projects. This pragmatic approach would serve to minimize the duplication of valuable health-care resources in certain geographic areas and provide for the use of scarce construction funds in other parts of the country where construction and renovation of existing facilities are urgently needed. It would also accelerate the process by which eligible veterans would have access to VA health-care services without having to wait until a lengthy construction process is completed. Second, the compromise agreement modifies the State Veterans' Home Grants Program to require a prioritization methodology for providing grants for the construction of State Veterans' Home facilities. I believe this methodology and the other technical amendments related to this program would serve to more fairly allocate scarce dollars to enhance the VA's ability to provide long-term care services in a cost-effective manner.

Mr. President, there are many other important provisions in this title which I will not highlight at this time. However, I will add that I am extremely disappointed that two Senate provisions were not accepted by the House. The first would have provided the VA with the discretionary authority to provide community-based psychiatric residential and other treatment to eligible chronically mentally ill veterans. This provision would have expanded the VA's authority to provide mental health treatment services to include the needs of those veterans for whom placement in the community is difficult if not for the existence of a comprehensive and coordinated community-based treatment program designed for their particular needs. According to the National Institute of Mental Health, 1 percent of the entire U.S. population suffers from schizophrenia. That number is comparable to the number of persons in this country afflicted with Alzheimer's disease and also with epilepsy. Two-thirds of those who are victims of schizophrenia are chronically mentally ill. A horrifying statistic is that approximately 25 percent of this group ends up living on the streets, many in the large cities of this Nation. It has been estimated that a significant number of these chronically mentally ill street people are veterans. I, therefore, greatly regret that the compromise agreement does not include this additional community-based authority. I believe that a systematic effort by the VA to plan for and meet, on a nationwide basis, the needs of chronically mentally ill veterans would greatly contribute to the commendable efforts by other public and private sector groups to address the difficult challenge of meeting the needs of this population.

The compromise agreement does include a requirement that the VA report to Congress on the use of its existing contract authorities and the new home health services authority—contained in section 202 of this legislation—to provide community-based care for chronically mentally ill veterans. The committees have also noted in the explanatory statement accompanying the bill, that they strongly support the VA's plans to implement in the Northeastern States a pilot program similar to that envisioned by the Senate provision. Though I would have preferred to see the Senate provision accepted in its entirety, in the true spirit of compromise and in the

hope that the VA will proceed expeditiously with the pilot program, I agreed to the reporting requirement only. It is important to work toward appropriate deinstitutionalization of chronically mentally ill patients. Such goals cannot be accomplished without ongoing community-based treatment and services. I look forward to monitoring the VA's pilot effort which will include the substantive aspects of my provision.

The second Senate provision which was not included in the final package was a pilot program to provide health-related services in the home for veterans who, but for these services, would have to live in a nursing home. Many of us have had the experience of watching a loved one become ill and then disabled as a result of the illness. For example, a stroke victim unable to use his hands for bathing, dressing, eating, and other essential daily activities can no longer live independently in the community without some assistance. In those cases the individual can never go home without such help. Therefore, the primary purpose of the pilot program would have been to enable those veterans, who because of medical illness or disabilities need daily living assistance to continue to reside at home. This is the second consecutive year that the Senate has passed this provision and the House has refused to accept it. The House's objections are that these are not traditional medical services, but I continue to believe that this approach is an appropriate medical intervention. To deny this assistance would guarantee the unfortunate result of confining these veterans to a nursing home in spite of the fact that institutionalization is not medically indicated. Many in-house VA health-care programs currently do have health-related components. Next year, I would hope that the House would reach the same conclusion as I have, that an expanded capacity to provide health-related services would be completely consistent with the VA's mission and existing practice and, most importantly, that providing these services would be the most humane and medically sound course of action.

Mr. President, I would like to note that as part of last year's House-Senate compromise on H.R. 505, ultimately enacted as Public Law 99-166, the committees agreed to request that the VA explore the need of the VA's patient population—particularly elderly veterans and chronically mentally ill veterans—for noninstitutional care services and the kinds of services that would be needed. I look forward to receiving the results of this review. I ask unanimous consent that a copy of the June 20, 1986, joint letter be printed at this point in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

CONGRESS OF THE UNITED STATES,
Washington, DC, June 20, 1986.

Hon. THOMAS K. TURNAGE,
Administrator of Veterans' Affairs, Washington, DC.

DEAR TOM: We are writing to follow up on certain issues raised during consideration of H.R. 505, the legislation that was signed into law on December 3, 1985, as Public Law 99-166, the Veterans' Administration Health-Care Amendments of 1985. Specifically, we are writing to request that you conduct two reviews and evaluations. The first of these would involve a review of the VA's patient population—particularly elderly veterans and chronically mentally ill veterans—who are currently receiving care in VA facilities (i.e., hospitals, nursing homes, or domiciliary facilities) to determine what percentage, if any, of the patients could receive needed care in noninstitutional settings if appropriate alternatives were available. The second review would be of the types of health and health-related services and alternative health-care settings that would enable veterans to avoid the institutional care that the VA would otherwise furnish them.

As you know, H.R. 505, as passed by the Senate on July 30, 1985, would have required the VA, among other things, to conduct pilot programs to address these issues. In lieu of legislation requiring the VA to conduct these pilot programs, we agreed to request that you undertake these reviews.

We believe that such reviews which might help to enhance the treatment options for currently institutionalized VA patients and to avoid institutionalization for other VA patients would be most timely in light of the increasing number of elderly veterans, the growing demand for nursing home care among those veterans, the limited availability and high costs of institutional long-term care, and the increasing reliance in the community on alternatives to institutional care. It is our desire that the VA examine its current patient populations and alternative settings for health-related services—such as personal care, homemaker and nutrition services, and transportation—for veterans who have physical or mental-health disabilities that impair their ability to perform activities of daily living. Such services would be aimed at enabling veterans at risk of institutionalization to maintain their independence and reside at home or in the community (for example, in community residential-care homes) as long as possible.

With specific regard to alternatives to institution-based mental health services, the VA General Counsel's office on September 13, 1985, advised that the General Counsel had concluded, in earlier opinions, that the VA has the authority under current law to furnish halfway-house care as part of VA hospital care and to contract for halfway-house care for certain service-connected and other veterans and that the VA apparently has authority to contract for the medical services component of this type of care to treat certain veterans' chronic mental illness disabilities. In light of the General Counsel's views regarding the existing authority, we are requesting that, in addition to the reviews of the VA's chronically mentally ill patient population and the alternative treatment settings, such as community-based-halfway-house care, for these patients, you provide us with a report on the VA's use of the existing authorities.

The report should include any efforts, including issuance of guidance or directives for VA medical centers, which have been made to encourage the use of such authorities. The report should also include the number and geographical distribution of veterans with chronic mental illness disabilities who are currently being furnished care in psychiatric residential-treatment centers or halfway-house facilities for the care of mental illness (not including veterans living in community residential-care homes) by the VA and, the number and geographic distribution of such centers or facilities currently in operation in the United States and those with which the VA has contracts. Obstacles to the VA's exercise of these authorities to enter into contracts with these centers and facilities and actions, if any, planned by the VA to overcome these obstacles should be part of the report. Special note should be taken of the findings of the VA Inspector General ("Audit of VA Psychiatric Inpatient Care", September 30, 1985) that a significant percentage of VA psychiatric inpatients could be treated more appropriately in alternative treatment programs.

We are looking forward to your cooperation in this request.

Sincerely,

FRANK H. MURKOWSKI,
Chairman.
ALAN CRANSTON,
Ranking Minority Member.
Committee on Veterans' Affairs, U.S. Senate.

G.V. (SONNY) MONTGOMERY,
Chairman.
JOHN PAUL HAMMERSCHMIDT,
Ranking Minority Member.
Committee on Veterans' Affairs, U.S. House of Representatives.

Mr. President, I am very pleased that the compromise includes the Senate provision to establish a system of paid parking in the VA. The Senate Appropriations Committee has made it very clear that they would view with disfavor any request for construction funds to build new parking facilities absent the implementation of a paid parking program. The compromise would reauthorize the construction of parking facilities at VA medical facilities, would require the VA to implement a paid parking system at medical facilities at which substantial new parking garage construction occurs, and would require that a parking garage revolving fund be utilized for appropriations for the construction of parking garages and for the deposit of receipts from parking fees collected, and for expenditures for substantial parking garage construction.

Providing parking availability at VA medical facilities is essential and even critical at some locations. It is an integral part of the delivery of medical care. However, funding for direct medical care must receive priority when funding is limited. The establishment of this provision, along with an appropriation of $30 million into the parking revolving fund, the appropriation of which has been recommended by

the Senate Appropriations Committee, will begin this process of adding needed new parking facilities and requiring the users to share the costs. This provision would exempt many individuals from parking fees, particularly veterans and other eligible individuals who seek treatment at a VA medical facility and volunteer workers. All parking fees would be reasonable and the bill encourages the VA Administrator when setting the fees to take into consideration factors such as employee salaries and visitors of long-term care patients.

Mr. President, the compromise includes a provision relating to the excessing of certain land owned by the VA in West Los Angeles and Sepulveda, CA. The administration proposed that the VA excess a number of acres at two California VA medical facilities which have not been used for the benefit of veterans nor are planned to be used for the benefit of veterans in the foreseeable future. There was significant opposition to this proposed exessing by local and State California officials and members of the California delegation in the Senate as well as Chairman Montgomery in the House Veterans' Affairs Committee. The House-passed bill would have prohibited the excessing of any VA land in Sepulveda or West Los Angeles. The Senate Committee rejected such a proposal on a tie vote.

Mr. President, I strongly believe that the Congress should not interfere with the VA's flexibility to manage its resources and that it should remain within the discretion of agency and department heads as to the land needed for our Government's programs. The Veterans' Administration, as any Government agency, would have the right to purchase any land should it determine an expansion of VA space to be necessary. In the case of West Los Angeles and Sepulveda, the land has been vacant for many years with no plans for its usage. Currently the land is being used for public recreation facilities or not at all.

In order to reach a compromise on this measure, I have agreed to an 18-month waiting period before the VA could excess this land. The compromise would also require that the Administrator provide additional notice of his intent to declare this land excess. It is important to note that the number of acres the Administrator intends to excess has been reduced significantly from the original General Services Administration proposal. In light of more recent reevaluation of the situation, I would hope that in the next 18 months, this situation can be worked out to everyone's satisfaction.

TITLE III

Mr. President, subtitle A of title III has 21 sections which make many improvements in the education benefit programs available to veterans and in the administration of those programs. I am particularly pleased the compromise agreement addresses an inequitable situation faced by many students enrolled in noncollege degree courses. Taken from S. 1887 as passed by the Senate, this provision is based on S. 1207, first introduced by the distinguished President pro tempore of the Senate and my distinguished colleague on the committee, Senator THURMOND. Under current law, VA students enrolled in college degree and noncollege degree courses must meet different standards for training time and attendance. In general, noncollege degree students must attend more class hours per week than college degree students in order to receive the same amount of benefits. This situation is particularly unfair when the same school requires the same classes for both college and noncollege degree programs. The compromise agreement would allow non-college-degree students to receive benefits on the same basis as degree-seeking students for individual college credit classes taken as part of their program or if they are enrolled in non-college-degree programs at fully accredited colleges offering a degree for substantially the same classes.

Mr. President, veterans' education programs have a long and distinguished record of success. Since World War II both veterans and the Nation have reaped the benefit of the education and training these benefits have made possible. Many of the concepts and procedures found in the law and regulations governing both veteran students, and the schools and institutions that train them, evolved from the veterans' education programs established during World War II. In the 40 years since then, the concepts and methods of education and training have also evolved. In many cases, they have evolved in parallel with veterans' training programs. In some cases they have not. The distinction drawn between non-college- and college-degree courses just discussed is one such case. There are others, where new and innovative forms of instruction, programs, educational objectives, and schools have been developed. Education in America has changed a great deal since 1944 and the VA has done a commendable job of keeping abreast of these developments. The Congress and the VA have, however, worked within a framework now over 40 years old.

I am pleased the compromise agreement contains a provision authored by me which would establish a commission on veterans' education to review the state of education in America today and evaluate how veterans' education programs can best respond to the changes which have taken place in students, schools, and teaching since the Congress first laid the foundation upon which the veterans' education programs of today have been built. It is my hope that the Commission will thoroughly examine education and education programs with impartial eyes and provide the VA and Congress with the fresh unbiased evaluation and recommendations we will need in order to ensure that the next 40 years of veterans' education is as successful as the last 40.

TITLE IV

Mr. President, one of my highest priorities since becoming chairman of the Senate Veterans' Affairs Committee has been to improve the administration of the VA's Home Loan Guaranty Program. I am extremely pleased that the House accepted all the major loan guaranty provisions included in my bill, S. 1887. The compromise agreement includes a provision which would require the VA to prescribe regulations establishing credit underwriting standards including debt-to-income ratios. These standards would be used to better determine whether a veteran qualifies for the housing loan for which he is applying and are intended to be more in keeping with the standards generally applied within the commercial lending community. This important VA benefit must not be tarnished by allowing a veteran to be victimized. Unfortunately, that is the result when a veteran is approved for a loan which he cannot afford, and on which he is likely to default at a later date.

The compromise agreement includes a provision derived from S. 1887 which woud require the VA to identify and document the contributing factors which have led to the dramatic increase in defaults on VA-guaranteed loans in recent years. The VA needs statistics upon which they can rely in order to bring the home loan program out of the red.

The compromise agreement also contains important provisions to address some of the problems which exist with appraisals of VA properties. In addition to statutorily requiring standards to be met by VA fee basis appraisers, the compromise agreement also would provide prospective lenders and veteran purchasers an opportunity to contest VA appraisals, and a further opportunity to have additional appraisals considered. I believe that this approach provides a more effective system of checks and balances for an area of the housing industry which has been plagued with problems in recent years. The compromise also includes a mandate to increase the communication between the VA and the real estate community in an effort to facilitate the disposition of VA held properties.

The compromise agreement does not include my provision from S. 1887 which would require the VA to initiate a pilot program to determine the desir-

ability and feasibility of contracting out the property management and disposition functions of the program. The House and Senate committees agreed not to enact this program because the VA is currently taking steps to examine the possibility of implementing my provision administratively.

Mr. President, I do regret that the House would not accept my provision from S. 2422 which would have prohibited the VA from acquiring property unless it could have been determined that such property was likely to have been sold within 12 months after the date of foreclosure at a price which would have made it economically advantegous to the Federal Government to acquire it. There exists a very real problem in the VA regarding its policy on property acquisition. To illustrate this problem, I would like to include in the RECORD a recent article which appeared in an Indiana newspaper which describes some of these problems. Mr. President, I ask unanimous consent that article be printed at this point in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Hammond (IN) Times, Sept. 15, 1986]

RED TAPE STALLS REMOVAL OF EYESORE

Jim Magurany and his family are exactly the kind of people that Calumet City needs to keep if it's going to prosper.

At 38, Magurany is a fairly young family man. And he's a concerned homeowner, one who's invested a lot of time, sweat and money to improve his house on Lincoln Place.

But Magurany doesn't plan to stick around. Not after getting the runaround for nearly two years, when all he wanted to do was remove an eyesore from his neighborhood.

"As soon as my youngest daughter is through with high school, I'm moving out of this city," he said. "I'm sorry now that I did what I did to my house."

Magurany didn't always have that kind of attitude. His story is an example of how the bumbling bureaucrats in the federal government are one of the biggest causes of housing deterioration and declining property values to some south suburbs.

About a year and a half ago, Magurany started trying to buy a vacant house at 1494 Lincoln Place, just a couple of doors away from his home.

The house, which is owned by the U.S. Veterans' Administration through foreclosure, was in disrepair at the time. But Magurany, who built his own home, thought it could be salvaged.

He wanted to buy and fix the house so he could resell it or rent it. He figured he could improve the neighborhood, help the value of his own home and make a little money for his effort.

He contacted the VA in May 1985, and was told to call back in October. When October rolled around, he started calling. And calling. And calling.

He couldn't get inside to inspect the house. He couldn't even get the VA to listen to a bid on the property.

"I was offering these people cash money," he said. "Now they're going to have to pay to have it torn down—if they have it torn down."

Jim Scott of the VA, who used to handle the Lincoln Place property, said the VA wouldn't sell because it has too much "integrity" to unload such a dilapidated house.

Magurany was well aware the house wasn't going to be on next month's cover of "Better Homes and Gardens." But Scott said the VA didn't want a buyer coming back later to complain that he'd been taken.

"The sale may not be as simple as it appears to be," Scott said. Of course, nothing is simple for the federal government.

But another VA official who's now handling this case said his agency blew it by not putting the house on the market.

Realty specialist Richard Bauman said the VA coudln't try to sell the house until Oct. 31, 1985, when the old owner's rights expired. But someone was "lax" by not trying to sell after that, he said.

"It was never listed for sale, and we just don't know why," he said.

Bauman said the VA has gotten demolition bids. Now the Washington office—which apparently knows what's best for a house hundreds of miles away—will decide whether the home should be razed, or whether it's still structurally sound and can be sold as a handyman's special.

But even if the VA decides to try to sell the house, Magurany isn't interested anymore. He said the holes in the roof caused too much water damage while the VA was trying to figure out what to do.

"Now it really is an eyesore. It's beyond repair," he said. "They couldn't pay me to take it anymore."

Now, Magurany and the rest of his neighbors just want someone to tear down the building, which is a blight on an otherwise tidy block of homes. They point their fingers at city officials for not taking action sooner, but the city really isn't to blame.

The building department condemned the house in January and has sent the VA three letters ordering it to demolish the structure. Building Inspector David Gawlinski said the neighborhood's alderman, Carmen (Sam) Pignatiello, has been in his office several times to ask that something be done. And the city issued the VA a citation ordering it to appear in housing court, but nobody from the agency showed up.

As much as they'd like to, city officials can't just drive a bulldozer down Lincoln Place and plow under the rumbling house. Not unless the VA agrees or the city gets a court order, neither of which have happened.

Bauman said demolition could take place this month. Or if the VA decides to try to sell and the city agrees, he said, the home could be put on the market next month.

Or, knowing the feds, it may be several more months.

Whatever happens, it may not be soon enough for Magurany, who figures he'd only be able to get about two-thirds of the value of his home if he sells it because of the eyesore two doors away.

"I'm going to be real happy in two years to get that and get out," he said. "I can see what the future of this city is going to be."

The VA takes title to the vast majority of property in cases of foreclosure regardless of the ultimate cost to the Government. My proposal would have provided a mechanism to help curb this problem. It is my hope that the House will reconsider this issue in the future.

TITLE VI

Mr. President, the compromise agreement includes a provision which would provide for several exemptions should there be a sequester under the Gramm-Rudman-Hollings law. I have been informed that this provision is one which the administration strongly opposes and has implied that if it were contained in the compromise a veto would be considered. I wish to emphasize that I think a rejection of the entire bill for these provisions would be not only entirely inappropriate, but a very unfortunate decision on the part of the administration. When the Congress first enacted Gramm-Rudman-Hollings, certain exemptions were made for veterans' programs that affect those service-connected veterans and those in need of medical care. COLA's were completely exempted and medical care was partially protected. The intent of Gramm-Rudman-Hollings is to reduce the deficit. The inadvertent result in veterans' programs was to sequester amounts from certain revolving funds in which no appropriated funds are involved and to reduce important but very small programs for veterans with service-connected disabilities.

I believe that this was a result of oversight and certainly not a part of the Gramm-Rudman-Hollings intent. This compromise would exempt from any future sequestration various life insurance accounts, the VA special therapeutic and rehabilitation activities revolving fund and the veterans' canteen revolving fund. Under the compromise, exemption from any future sequestration would be provided for two VA programs which were designed in conjunction with the VA compensation program for severely disabled veterans—a program of specially adapted housing that provides grants to enable veterans to adapt their home to allow for wheelchairs or other devices to help them live more independently, and the automobile grant and the auto adaptive assistance program to allow veterans to drive in spite of spinal cord injuries, amputations, or other severely disabling conditions. The amount of money involved in these programs is extremely small but the benefit is extraordinarily high. A veteran who is eligible for automotive adaptive equipment and has this benefit reduced under a sequester may find that he or she is unable to purchase adaptive equipment and therefore may be precluded from driving an automobile. For a veteran with a severe disability, this limitation on mobility is an extremely isolating, problematic limitation.

Mr. President, under the compromise burial benefits for veterans who have died as a result of a service-con-

nected disability would be permanently exempted. The compromise would provide a 1-year exemption from sequestration under Gramm-Rudman-Hollings for two additional programs. These programs include vocational rehabilitation and counseling for veterans with service-connected disabilities and education benefits for the dependents and survivors of veterans who died on active duty or of their service-connected disabilities. This 1-year exemption is provided with the exemption that the committees review comprehensively these entire programs in the next Congress. Further, if there should be a sequester after fiscal year 1987 affecting the Home Loan Guaranty Program, the VA would be required to submit to the Veterans' Affairs Committees a monthly report on current and projected loan activity levels for that year. This would allow the Congress to monitor the level of loan activity and act, if necessary, to raise the level of credit extension authority to ensure that the VA could continue to make its Loan Guaranty commitments during that fiscal year.

CONCLUSION

Mr. President, in conclusion I want to express my sincere thanks to my distinguished colleague from California, Senator ALAN CRANSTON, the ranking minority member of the Veterans' Affairs Committee, and the other committee members for their valuable contributions as the comprehensive veterans' benefits and health-care package has made its way through the legislative process. And I extend also my warm thanks to my friend and counterpart, House Veterans' Affairs Commitee Chairman, G.V. "SONNY" MONTGOMERY and the ranking minority member of that committee, JOHN PAUL HAMMERSCHMIDT. Their cooperation throughout the development of this legislation is greatly appreciated.

In addition, it is important to note the hours of dedicated legislative and administrative support of the committees' majority and minority staffs which have helped to make this legislation a reality. I am grateful to my own professional staff, ably lead by my chief counsel and staff director Anthony Principi with the assistance of Julie Susman, Kathleen McTighe, Cynthia Alpert, Chris Yoder, Brian Bonnet, Lisa Moore, and Bill Laahs, and our chief clerk Becky Hucks, Jody Sanders, Judith Boertlein, Daphne Howard, Anne Patterson, and our dedicated and hard working printer, Roy Smith. I want to extend a very special thank you to Kay Eckhardt who retired in June after 16 years of service to the Veterans' Affairs Commitee. This bill was the last she worked on. Her sparkle and dedication are missed by us all. The counsel and cooperation of the Senate minority staff—Jonathan Steinberg, minority chief counsel and staff director, Edward Scott, William Brew, Babette Polzer, Nancy Billica, Ingrid Post, and Charlotte Hughes—have been excellent. And the advice and hard work of the House committee staff including Mack Fleming, chief counsel and staff director, Pat Ryan, Jack McDonell, Victor Raymond, Arnold Moon, Charlie Peackarsky, Jill Cochran, Gloria Royce, and Rufus Wilson, minority counsel and staff director, and Kingston Smith have been of the highest caliber.

I want to express my deepest admiration for JOHN PAUL HAMMERSCHMIDT, who after 13 years as ranking minority member on the House Veterans' Affairs Committee, will give up that post to become the ranking Republican on the Public Works Committee. Congressman HAMMERSCHMIDT has served for 20 years on the Veterans' Affairs Committee. He has demonstrated great dedication to our Nation's veterans and has worked especially hard to ensure that the VA medical care system is the Nation's finest. He and Chairman MONTGOMERY came to the Veterans' Affairs Committee at the same time and the close working relationship they have is extraordinary. I am greatful for the contributions of this fine legislator. I am very pleased that he will continue to serve on the committee and to be the ranking member on the Hospitals and Health Subcommittee.

Mr. President, I believe the compromise agreement is a fair and equitable one, worked out in good faith by all parties involved. I urge my colleagues to join me in supporting this measure.

Mr. President, I submit the House/Senate explanatory statement which has been prepared in lieu of the joint statement which would accompany a conference report and ask that it appear in the RECORD.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

EXPLANATORY STATEMENT ON THE PROPOSED COMPROMISE AGREEMENT ON H.R. 5299, THE PROPOSED "VETERANS' BENEFITS IMPROVEMENT AND HEALTH-CARE AUTHORIZATION ACT OF 1986"

This document explains provisions of various measures (listed below) passed by the Senate and House of Representatives and the provisions of a compromise agreement between the Senate and House Committees on Veterans' Affairs on those provisions, which will be offered as a proposed House amendment to H.R. 5299 as amended and passed by the Senate on September 30, 1986. The differences between these various bills and the provisions of the compromise agreement are noted below, except for clerical corrections, conforming changes made necessary by the compromise agreement, and minor drafting, technical, and clarifying changes.

The bills referred to above are as follows:

H.R. 2343, the proposed "Veterans' Compensation Benefits Amendments of 1985", as passed by the House on May 20, 1985 (hereinafter referred to as "H.R. 2343").

H.R. 2344, the proposed "Veterans' Housing and Memorial Affairs Amendments of 1985", as passed by the House on May 20, 1985 (hereinafter referred to as "H.R. 2344").

S. 1887, the proposed "Veterans' Compensation and Benefits Improvement Act of 1985", as passed by the Senate on December 2, 1985 (hereinafter referred to as "S. 1887").

H.R. 4345, a bill to authorize the establishment of a national cemetery in or near Cleveland, Ohio, as passed by the House on June 10, 1986 (hereinafter referred to as "H.R. 4345").

H.R. 2798, a bill to prohibit discrimination against members of the Reserves in hiring, as passed by the House on June 17, 1986 (hereinafter referred to as "H.R. 2798").

H.R. 4384, a bill to modify the authority for veterans' readjustment appointments, as passed by the House on June 17, 1986 (hereinafter referred to as "H.R. 4384").

H.R. 5047, a bill to eliminate gender-based language distinctions in title 38, as passed by the House on August 4, 1986 (hereinafter referred to as "H.R. 5047").

H.R. 5299, the proposed "Veterans' Compensation Amendments of 1986" as passed by the House on August 4, 1986 (hereinafter referred to as "H.R. 5299").

H.R. 4333, a bill to create presumptions of service connection for certain disabilities of former prisoners of war, as passed by the House on August 6, 1986 (hereinafter referred to as "H.R. 4333").

H.R. 4623, the proposed "Veterans' Health-Care Amendments of 1986", as passed by the House on August 6, 1986 (hereinafter referred to as "H.R. 4623").

S. 1887, as amended and passed by the House on August 15, 1986 (hereinafter referred to as "House-passed S. 1887").

H.R. 4345, as amended and passed by the Senate on September 20, 1986 (hereinafter referred to as the "Senate amendment to H.R. 4345").

S. 2422, the proposed "Omnibus Veterans' Benefits Improvement and Health Care Authorization Act of 1986", the text of which was agreed to by the Senate on September 30, 1986, as an amendment to H.R. 5299 (hereinafter referred to as "S. 2422").

TITLE I—DISABILITY COMPENSATION AND DEPENDENCY AND INDEMNITY COMPENSATION

PART A—RATE INCREASES

DISABILITY COMPENSATION

H.R. 5299 (sections 101–103) would amend chapter 11 of title 38, United States Code, relating to compensation for service-connected disability, to increase the basic rates of service-connected disability compensation for veterans, the rates payable for certain severe disabilities, the dependents' allowances payable to veterans rated 30-percent or more disabled, and the annual clothing allowance for certain disabled veterans. The House bill would increase such rates and allowances by 2 percent. S. 2422 (section 101), in a freestanding provision, would require the Administrator of Veterans' Affairs to adjust these rates by the same percentage as that provided to Social Security recipients and VA pension beneficiaries effective December 1, 1986. Both the House and the Senate bills would require that increases be rounded to the nearest dollar and would be effective December 1, 1986.

The compromise agreement (sections 101 through 103) would, if a Social Security increase is granted effective December 1, 1986, amend chapter 11 to increase, effective De-

cember 1, 1986, such rates and allowances by 1.5 percent, with increases rounded to the nearest dollar.

The Committees note that the first concurrent Budget Resolution for fiscal year 1987, approved by the Congress on June 27, 1986, assumes a Social Security cost-of-living adjustment of 2 percent. The most recent economic assumption of the Congressional Budget Office released in August 1986, relating to the Consumer Price Index from the third quarter of fiscal year 1985 through the third quarter of fiscal year 1986, anticipates an increase of 1.3 percent. The Committees agreed that an increase of 1.5 percent in these rates and allowances and the DIC rates would provide an increase consistent with their assesment of the likely increase in the cost of living.

DEPENDENCY AND INDEMNITY COMPENSATION

H.R. 5299 (sections 104 through 106) would amend chapter 13 of title 38, relating to dependency and indemnity compensation for service-connected deaths, to increase, effective December 1, 1986, rates of dependency and indemnity compensation (DIC) payable to the surviving spouses and children of veterans whose deaths were service connected. The House bill would increase such rates by 2 percent. The Senate bill (section 101 of S. 2422), in a freestanding provision, would require the Administrator of Veterans' Affairs to adjust the rates by the same percentage as that provided to Social Security recipients and VA pension beneficiaries effective December 1, 1986. Both the House and Senate bills would require that increases be rounded to the nearest dollar and would be effective December 1, 1986.

The compromise agreement (sections 104 through 106) would, if a Social Security increase is granted effective December 1, 1986, amend chapter 13 to increase, effective December 1, 1986, such rates by 1.5 percent, with increases rounded to the nearest dollar.

IMPROVED BENEFITS FOR FORMER PRISONERS OF WAR

Both H.R. 4333 and S. 2422 (section 102) would amend section 312(b) of title 38, relating to disabilities of former prisoners of war which are presumed to be service connected for purposes of disability compensation if they become 10 percent disabling, even though there is no record of the disability during the veterans' service. The House bill would add the organic residuals of hypothermia, spastic colon, and arthritis due to trauma to the list of disabilities which are presumed to be service connected and would amend section 612(b)(1)(G) of title 38, relating to dental care for a former prisoner of war, to reduce, from 6 months to 90 days, the period a former prisoner of war must have been detained or interned in order to receive the dental services specified in section 612(b)(1). The Senate bill would add the residuals of frostbite (in the case of veterans held in conditions where frostbite was possible), post-traumatic osteoarthritis, and, in the case of former POW's with a service-connected, compensable psychiatric condition, irritable bowel syndrome to the list of disabilities which are presumed to be service connected.

The compromise agreement (section 108) contains the Senate provision except that the reference to irritable bowel syndrome is deleted.

SPECIAL CONSIDERATION FOR LOSS OF PAIRED ORGANS OR EXTREMITIES

H.R. 2343 (section 3), but no Senate bill, would amend section 360 of title 38, relating to special consideration of certain non-service-connected disabilities as service-connected when the service-connected loss of one organ is combined with the non-service-connected loss of the paired organ. Under current law a veteran with service-connected blindness in one eye, loss or loss of use of a kidney, or total deafness in one ear, who also suffers the non-service-connected blindness, total deafness, or loss or loss of use of a kidney in the matched organ will receive compensation as though the loss of both is service connected. In the case of kidneys, the service-connected loss must severely involve the other kidney and the combined disability must result in total disability.

The House bill would add the following disabilities to the conditions given this special consideration: First, lungs, if the service-connected disability is at least 50 percent disabling and permanent; and, second, the service-connected loss of a hand or foot when matched with the non-service-connected loss of the paired hand or foot. In addition, in the case of kidneys, the House bill would eliminate the current requirement that the combined disability be total, and require only that there be involvement between the service-connected and non-service-connected loss or loss of use. The House bill would also repeal section 314(t) of title 38, which provides special monthly compensation to veterans with the service-connected loss or loss of use of an extremity when combined with the non-service-connected loss of the paired extremity and provides that an increase in compensation paid under section 314(t) be withheld in the case of a veteran who receives a judicial award or a non-judicial settlement for damages for the non-service-connected disability.

The compromise agreement (section 109) contains these provisions with an amendment making applicable to all awards made under section 360 after the date of enactment a provision similar to the provision in section 314(t) requiring withholding of the increase where the veteran has received a judicial award or a non-judicial settlement. This withholding provision would, by virtue of its reenactment in section 360, apply continuously to "paired extremity" cases (currently awarded under section 314(t).

TAXATION OF COMPENSATION

Both H.R. 2343 (section 4) and S. 1887 (section 108) would express the sense of the Congress that payments to veterans as compensation for service-connected disabilities remain exempt from Federal income tax. The House bill would also urge the President to reject taxation of compensation as part of any proposal for tax reform.

The compromise agreement does not contain this provision.

The Committees note that neither the President's tax reform proposal nor H.R. 3838, the Tax Reform Act of 1986 passed by the Congress in September 1986, provide for the taxation of compensation.

TITLE II—HEALTH CARE AND MEDICAL FACILITIES

PART A—HEALTH-CARE PROGRAMS

RESPITE CARE PILOT PROGRAM

Both H.R. 4623 (section 2) and S. 2422 (section 203) contain provisions relating to the provision of respite care for certain veterans.

The House bill would amend section 610 of title 38, relating to eligibility for hospital, nursing home, and domiciliary care, and section 612 of title 38, relating to eligibility for outpatient care, to authorize the Administrator to provide respite care to certain veterans. Under the House bill, the Administrator would be authorized to provide respite care, defined as hospital care, nursing home care, or hospital-based home care furnished on an intermittent or temporary basis, to a veteran who is suffering from a chronic illness and who is receiving care at home or in a hospice program.

The Senate bill would amend subchapter II of chapter 17 of title 38, relating to eligibility for hospital, nursing home or domiciliary care and medical treatment, to add a new section 620C to authorize the Administrator to conduct a pilot program, during the period October 1, 1986, through September 30, 1990, under which the VA could furnish respite care services to any veteran who has a service-connected disability which is compensable in degree and who is receiving VA medical services. Under the Senate bill, respite care is defined as hospital or nursing home care which (1) is of limited duration, (2) is furnished in a VA facility on an intermittent basis to a veteran who is suffering from a chronic illness and who resides primarily at home, (3) is intended to help the veteran continue to reside at home, and (4) does not adversely affect the range of services, the quality of care, or the priorities for care furnished to other veterans. The Administrator would be required, if the pilot program were implemented, to evaluate the medical and health-related efficacy and cost-effectiveness of furnishing respite care and submit to the Committees by February 1, 1990, a report on the experience under the program.

The compromise agreement (section 201) would amend subchapter II of chapter 17 of title 38, relating to hospital, nursing home, and domiciliary care and medical treatment, to provide the Administrator with the authority during the period October 1, 1986, through September 30, 1989, to furnish respite care services to veterans otherwise eligible for VA hospital, nursing home, or domiciliary care. Under the compromise agreement, the definition of respite care would follow the first three criteria of the Senate bill and, as under the Senate bill, the Administrator would be required to submit, by February 1, 1989, to the Committees a report on the implementation of this authority.

The Committees emphasize that the provision of respite care services is not intended to affect adversely the range of services, the quality of care, or the priorities for care furnished to other veterans.

HOME HEALTH SERVICES

S. 2422 (section 201), but not the House bill, would amend section 601 of title 38, which sets forth definitions for purposes of chapter 17 of title 38, relating to VA health-care eligibility, to specify that, in the case of a veteran who is not residing in either a VA facility or in the veteran's home, the term "home health services" includes services furnished to a veteran in any setting in which the veteran is residing but does not include the furnishing of any structural improvements or alterations in such setting. The Senate bill would also, in a freestanding provision, restate the VA's existing authority to contract for home health services. The Administrator would be required to submit, 6 months after the date of enactment, a report to Congress on the current and proposed use of these authorities.

The compromise agreement (section 202) is derived from this provision. It permits the Administrator to furnish home health services in any setting in which the eligibile vet-

eran is residing. The compromise prohibits the provision of such services in a manner so as to relieve a contractual obligation to provide such services and the furnishing of structural improvements or alterations in any setting other than the veteran's home.

The Committees understand that the services provided under this authority may include the training, by home health services providers, of veterans receiving home health services to enable such veterans to live more independently. Such training may include training in personal care, nutrition, cooking, and other matters.

The Committees intend that where a VA home health services team finds it necessary to furnish a veteran in a contract facility with services that the facility is expected to furnish in the normal course (such as general nursing services furnished in a community nursing home), the VA consider seeking a reduction in the per diem it is paying for that patient or review the advisability of continuing to place veterans in that facility.

CONTINUATION OF CERTAIN COUNSELING SERVICES FOR A DECEASED VETERAN'S FAMILY MEMBERS

S. 2422 (section 206), but not the House bill, would further amend section 601 of title 38, relating to the definition of "medical services" for the purposes of VA health care, to authorize the VA, in cases in which a veteran's family members were receiving counseling or other mental health services from the VA in connection with the veteran's care and the veteran dies unexpectedly or while participating in a VA hospice program, to continue to furnish such counseling services for up to 6 months after the veteran's death.

The compromise agreement (section 203) contains this provision with an amendment specifying that the counseling may be furnished for "a limited period of time" following the veteran's death and also authorizing such services for family members of veterans who were receiving counseling prior to the veteran's death when the veteran was receiving services similar to hospice services.

The Committees note that the VA would be authorized to offer such services after a veteran's death only to family members who had been in a formal counseling relationship with the VA prior to the veteran's death.

TRANSITION PERIOD FOR READJUSTMENT COUNSELING CENTERS

Both H.R. 4623 and S. 2422 include provisions relating to the status of the VA's readjustment counseling program which is carried out pursuant to section 612A of title 38. H.R. 4623 (section 3) would extend by 1 year, until September 30, 1989, the date by which the Administrator would be required to complete a one-year transition of the readjustment counseling program, as required by section 612A(g), from a program offered primarily in free-standing facilities, known as "Vet Centers", to a program offered primarily in VA medical facilities. The House bill would also extend by 1 year, until April 1, 1988, the date by which the VA is required to have completed and sent to the Congress a report on an evaluation of the effectiveness of readjustment counseling services and would extend by 1 year, until July 1, 1988, the date by which the VA is required to have completed and sent to the Congress a report on the plans for the required one-year transition of the readjustment counseling program.

S. 2422 (section 210) would extend the transition period from 1 to 2 years, ending on September 30, 1989, and require that the transition be carried out gradually over the 2-year period. The Senate bill would also extend by 1 year, to October 1, 1987, the deadline for a report on the study, as mandated by Public Law 98-160, of the prevalence and incidence in Vietnam veterans of post-traumatic stress disorder (PTSD) and other post-war psychological problems. In light of the change in the due date for the report on the study, the Senate bill would also modify the two reporting requirements described above to specify that, if the results of the PTSD study are not available by the due dates of those studies (April 1, and July 1, 1987), they are to be prepared and submitted taking into consideration whatever information from the study is then available. The Senate bill would further amend the April 1, 1987, study provision to require the Administrator to provide an evaluation as to whether or not veterans of other wars have needs that would be met by services offered under section 612A. The Senate bill would also add to section 612A(g) a new report from the Administrator to be submitted to the two Committees on Veterans' Affairs by February 1, 1989, on the experience under the first year of the transition, together with any recommendations for change to the transition requirement.

The compromise agreement (section 204) contains a provision derived from these provisions. Under the agreement, the transition period would be extended from 12 months to 24 months ending on September 30, 1989, and the transition would be required to be gradual. The agreement also would modify the two reporting requirements described above to specify that, if the report, as mandated under Public Law 98-160, of the prevalence and incidence of post-traumatic stress disorder and other post-war psychological problems in Vietnam veterans is not completed by the due dates, the reports are to be prepared and submitted taking into account whatever information from that study is then available. The agreement would further require the Administrator, not later than February 1, 1989, to submit to the Committees a report on the experience under as much of the transition as was carried out prior to September 30, 1988, including such recommendations, if any, as the Administrator considers appropriate in light of that experience.

EFFECT OF PAYMENT FOR THERAPEUTIC AND REHABILITATION ACTIVITIES ON PENSION ENTITLEMENT

S. 1887 (section 503), but not the House bill, would amend section 618 of title 38, relating to therapeutic and rehabilitative activities, to exclude any remuneration provided to individuals as a result of their participation in such activities, from being considered as income in determining eligibility for, or monthly rates of, non-service-connected disability pension paid under Chapter 15 of title 38.

The compromise agreement (section 205) is derived from this provision and would identify funds received by such individuals as a result of their participation in therapeutic or rehabilitative activities carried out under section 618 as "distributions" and provide that, for purposes of chapter 15 of title 38, these distributions be considered as donations from public or private relief organizations which under section 503(a)(1) of title 38 are not considered income for pension purposes.

The Committees expect that the VA will implement this provision in such a way as to not reduce the therapeutic and rehabilitative value of participation in the program to the veteran and will not alter any VA regulation, directive, policy, or practice relating to paying veterans for their participation in these activities.

CONTRACTS AND GRANTS FOR MEDICAL CARE FOR UNITED STATES VETERANS IN THE REPUBLIC OF THE PHILIPPINES

Both H.R. 4623 (section 4) and S. 2422 (section 208) would amend section 632 of title 38, relating to the furnishing of medical care to veterans in the Republic of the Philippines, to extend for 3 years, from October 1, 1986, through September 30, 1989, the VA's existing authority to contract with the Veterans Memorial Medical Center (VMMC) in Manila for the care and treatment of United States veterans in the Republic of the Philippines and would extend the VA's authority to make grants of up to $500,000 annually to the VMMC for the replacement and upgrading of its equipment and the rehabilitation of the physical plant and facilities. Under the Senate bill, any grants would be required to be made semiannually at six-month intervals. The VA would be required to submit to the Committees a report on the use and expenditure of the grant funds provided in the most recent 6-month period prior to providing any additional funds for the subsequent 6-month period.

The compromise agreement (section 206) contains a provision derived from these provisions which would extend the VA's authorities by 3 years. The compromise agreement would require the Administrator to submit to the Committees by February 1, 1987, 1988, and 1989, reports on the previous fiscal year's expenditures of the grant funds and would ratify any action taken by the Administrator in contracting for the care and treatment of veterans in the Philippines during the period from October 1 to the date of enactment.

PART B—HEALTH-CARE ADMINISTRATION

ENFORCEMENT OF STATE AND LOCAL TRAFFIC LAWS BY VETERANS' ADMINISTRATION POLICE OFFICERS

S. 2422 (section 211), but not the House bill, would amend section 218 of title 38, relating to laws and regulations enforced by VA police officers on VA property, to provide the Administrator with the authority to enter into agreements with state and local governments pursuant to which VA police officers would be able to enforce State and local traffic laws by issuing citations for any violations of these laws occurring on VA property.

The compromise agreement (section 211) contains this provision.

REGIONAL MEDICAL EDUCATION CENTERS

H.R. 4623 (section 7), but not the Senate bill, would amend section 4121 of title 38, relating to the designation of the VA medical centers as Regional Medical Education Centers (RMEC) for the continuing medical education and training of VA health care personnel, so as to make the RMEC program permanent. The House bill would also delete the current requirement that RMEC training be conducted only on an "in-residence" basis and would clarify that RMEC training may be made available to other than direct-care providers, such as counseling psychologists and vocational rehabilitation specialists who are not technically direct care providers. The House bill would also allow the Administrator to enter into reciprocal training agreements for RMEC

training with public and nonprofit private entities and would delete the current provision which requires that the VA be "fully reimbursed" for training provided to non-VA personnel and provide instead for giving credit for any other type of contribution by the organization sponsoring such participants.

The compromise agreement (section 212) contains this provision with an amendment permitting reimbursement in the form of reciprocal training of other than direct-care providers.

PERIOD OF OBLIGATED SERVICE UNDER SCHOLARSHIP PROGRAM

H.R. 4623 (section 8), but not the Senate bill, would amend section 4142(e) of title 38, relating to the obligated-service agreement which each participant in the VA's Health Professional Scholarship program must execute, so as to change the method of calculating the period of obligated service required for part-time student-participants by requiring 6 months of service as a full-time employee for each calendar year or part of a calendar year in which the participant received scholarship support.

The compromise agreement (section 213) contains this provision.

PERIOD OF APPOINTMENT OF CERTAIN TEMPORARY AND PART-TIME HEALTH-CARE PERSONNEL

A. Temporary and part-time appointments

S. 2422 (section 216), but not the House bill, would amend section 4114(a) of title 38, relating to temporary full-time appointments and part-time appointments, to authorize the Administrator, under certain circumstances, to make temporary and part-time appointments for more than 1 year of certified or registered respiratory therapists, licensed physical therapists, and licensed practical or vocational nurses.

The compromise agreement (section 214(a)) contains this provision.

B. Licensure of Psychologists

S. 2422 (section 213), but not the House bill, would amend section 4105(a) of title 38, relating to the qualifications of Department of Medicine and Surgery employees, to provide the Administrator with the authority to waive the licensure or internship requirements, or both, for VA research psychologists who are to have no direct patient-care responsibilities.

The compromise agreement (section 214(b)) contains a provision derived from this provision. The compromise agreement would amend section 4114(d) of title 38, relating to temporary full-time and part-time appointments, to provide the Administrator with the authority to waive the licensure requirements for VA psychologists employed on a less-than-permanent, full-time basis in a research or academic position or in a position with no direct responsibility for the care of patients.

The Committees stress that no psychologists employed by the VA pursuant to this authority are to have any patient-care responsibilities.

REPORT ON NATIONAL DRUG FILE

S. 2422 (section 217), but not the House bill, contains a provision requiring the Administrator to report to the Committees within 90 days on the VA's plans to establish and maintain a national drug file.

The compromise agreement (section 215) contains this provision.

STUDY OF VIETNAM-ERA VETERANS PSYCHOLOGICAL PROBLEMS

S. 2422 (section 210), but not the House bill, would amend section 102 of Public Law 98-160 regarding the study of Vietnam veterans' post-war psychological problems by requiring the Administrator to pay an appropriate stipend to each individual participating in the study in order to promote the participation of a sufficient number of study subjects.

The compromise agreement (section 216) contains this provision.

PART C—FACILITY CONSTRUCTION AND PLANNING

CONSIDERATION OF SHARING DEPARTMENT OF DEFENSE FACILITIES

S. 2422 (section 222), but not the House bill, would amend section 5004 of title 38, relating to the Committees' approval of the construction of VA facilities, to require the Administrator to describe in any prospectus submitted to the Committees in which the construction of a new or replacement facility is proposed what consideration was given to VA-DoD health-care resources sharing as a full or partial alternative to the new or replacement medical facility.

The compromise agreement (section 221) contains this provision with an amendment adding a requirement that the VA give consideration to VA-DoD sharing arrangements before initiating any major VA construction project.

ANNUAL REPORT ON FACILITIES CONSTRUCTION

H.R. 4623 (section 9), but not the Senate bill, would amend section 5007(a) of title 38, relating to the Administrator's annual report on the construction, replacement, alteration, and operation of medical facilities, to require that that report be based upon the plans and recommendations of the Chief Medical Director.

The compromise agreement (section 222) contains a provision derived from this provision requiring that, before submitting the report, the Administrator consider the analysis and recommendations of the Chief Medical Director.

The Committees believe that the Chief Medical Director should have a major role in the VA medical facility construction planning process and sufficient staff resources to carry out this important function. The Committees note that the Chief Medical Director, with the support of the Department of Medicine and Surgery facilities planning staff, has traditionally developed the construction report to Congress.

PARKING FACILITIES

S. 2422 (section 221), but not the House bill, would amend section 5009 of title 38, relating to parking facilities at VA medical facilities. Under the Senate bill, the VA would be required to establish and collect reasonable parking fees at all parking facilities used in connection with a VA medical facility where a garage is constructed, acquired or altered at a cost of more than $500,000 (or leased for more than $100,000/year), and opens or is completed after September 30, 1986. Paid parking would be discretionary at all other VA medical facilities. Where a fee schedule is established, all individuals would be charged for parking, except for veterans and other eligible individuals seeking treatment, volunteer workers, and employees covered by certain existing union contracts that prohibit the charging of parking fees. Where mandated, fees would be required to recover, at a minimum, the operation and maintenance costs of all parking facilities at a VA medical facility.

The Senate bill would authorize the appropriation of funds into a parking revolving fund to finance parking facility construction, alteration, acquisition, and operation and maintenance costs. After September 30, 1986, the source of funds to be expended for construction, alteration, or acquisition of a garage would be limited to the revolving fund, except for construction planning costs and construction projects for which funds were appropriated prior to fiscal year 1987, which would continue to be funded from construction appropriation accounts. Operation and maintenance costs would be funded from either the revolving fund or from the medical care appropriation account. The Senate bill also would provide transition provisions for employees covered by collective bargaining agreements that, on the date of enactment of the bill, prohibit the VA from charging parking fees.

The compromise agreement (section 223) contains this provision with the following modifications: References to the charging of minimum fees sufficient to recover operation and maintenance costs of parking facilities and the authorization of appropriations to, the expenditure of funds from, and the establishment of a separate checking account in, the revolving fund for operation and maintenance costs for parking facilities, are deleted. The provision which would mandate paid parking is also modified so that paid parking would be required only where parking facilities are built with funds from the parking revolving fund.

The Committees have received information from the Veterans' Administration in connection with the VA's draft proposal for a paid parking program at certain VA medical centers that it intends, if Congress requires some paid parking, to establish a minimal monthly parking fee of $20 per parking space for its employees. This proposal is premised on the VA's intent not to charge visitors a fee for parking. The Committees want to emphasize that section 5009 of title 38 as revised by the compromise provision would not exempt visitors from being charged fees for parking where a fee-parking program would be established, because the Committees feel that the costs of fee parking should be shared by visitors, as well as employees. The Committees also emphasize that the VA is authorized to adjust the rates to be established in fee schedules prescribed by the VA to take into account the special circumstances of frequent visitors to long-term patients, the desirability of encouraging employee car/van pools, varying employee pay levels, and night and weekend parking.

REVISION OF STATE VETERANS' HOME CONSTRUCTION GRANT PROGRAM

Both H.R. 4623 (section 10) and S. 2422 (section 223) would amend section 5033 of title 38, relating to the State Veterans' Home construction grant program, to extend for 3 years, through September 30, 1989, the authorization of appropriations for grants to States for the construction, renovation, or acquisition of State Veterans' Home facilities. The House bill would authorize appropriations of $50 million for fiscal year 1987; $60 million for fiscal year 1988; and $65 million for fiscal year 1989. The Senate bill would authorize such sums as may be necessary for the program. The House bill would also remove the restriction in current law (section 5035(d)(2) of title 38) that a State may receive no more than one-third of the amount appropriated in any fiscal year for grants for State home facili-

ties. Further, the House bill would require that priority be given State home grant applications from States which have appropriated sufficient funds for the State share of the project for which grant application is made and from States which have no State home.

The Senate bill would eliminate the basis for a VA interpretation that curent law requires the VA to use a "first-in/first-out" basis for awarding the grants and require the Administrator to prescribe regulations specifying a methodology to prioritize State home grant applications. The Senate bill would also repeal the authority for grants for the expansion of State home hospital facilities and (section 209) specify that VA State home per diem payments are not third party liabilities for Medicaid program purposes.

The compromise agreement (section 224), which is derived from these provisions, would extend for 3 years, through September 30, 1989, the authority for the appropriation of "such sums as are necessary" for State home facility grants; would remove the restriction that a State may receive no more than one-third of the amount appropriated for grants in any one fiscal year; and would eliminate the basis for a VA interpretation that current law requires grants to be awarded in order of the date on which applications are received. The agreement would also require that, effective July 1, 1987, the Administrator award grants according to a list of approved grant applications, in priority order, established as of July 1 of each year for awards to be made for the subsequent fiscal year. The priorities would be required to be as follows: First, applications for which the State portions of the funding for the projects have been appropriated and are available; second, applications from States that do not have any State home fa cilities; third, applications from States that have the greatest need for nursing home or domiciliary beds as determined by criteria and procedures specified by the Administrator in regulations; and, fourth, applications meeting any other criteria as determined by the Administrator and specified in regulations. Also, under the compromise agreement, a grant for a hospital-expansion project could be awarded only after all nursing home and domiciliary projects are funded. The Administrator would be required to prescribe regulations, not later than April 1, 1987, for the implementation of the State Home provisions in the compromise agreement.

The Committees intend that a State be considered to meet the requirement for the first priority (having appropriated funds) if sufficient funds have been made available by the State so that construction or acquisition of the facility may proceed upon the approval of the grant without further action by the State in providing funding for the project. In addition, the Committees note that they intend no change in the implementation of present paragraph (2) of section 5035(b) of title 38 (paragraph (5) of section 5035(b) as proposed to be amended) regarding deferral of a current fiscal year approval of an application when the State has not provided adequate financial support for construction of the project by July 1.

PART D—MISCELLANEOUS

MODIFICATION OF CERTAIN REPORTING REQUIREMENTS

Both H.R. 4623 and S. 2422 would repeal or modify certain provisions of title 38, requiring reports to be submitted to the Congress or the President by the Administrator of Veterans' Affairs. The House bill (section 6) would extend from 2 to 4 years the interval between VA reports on pay comparability for VA physicians and dentists required under section 4117(g)(2) of title 38. The Senate bill would extend that interval from 2 to 3 years. The House bill (section 14) would repeal the requirement under section 612(b)(4) of title 38 for the Administrator to report on contract dental expenditures. The Senate bill would eliminate this report for any year for which the information on expenditures for this program is included in the VA portion of the President's budget. The House and Senate bills would delete the requirement, in section 5057 of title 38, of a report on the exchange of medical information program authorized under section 5054 of title 38. The Senate bill, but not the House bill, would eliminate the report required under section 201(c)(3) of title 38 on equitable relief.

The compromise agreement (section 231) contains the House provision on the special pay report and the Senate provision on the contract dental care report and would eleminate the requirement for a report on the VA's exchange of medical information program. The agreement does not contain the Senate provision to eliminate the reporting requirement concerning equitable relief.

IONIZING RADIATION REGISTRY

Both H.R. 4623 (section 11) and S. 2422 (section 212) contain provisions requiring the Administrator to establish and maintain an "Ionizing Radiation Registry" which would include the names of veterans who were exposed to ionizing radiation during their participation in the U.S. atmospheric nuclear weapons test program or the occupation of Hiroshima or Nagasaki after World War II and who apply for VA health care or compensation (or whose survivors apply for dependency and indemnity compensation (DIC) based on such exposure). Under both bills, the Registry would include certain medical data, compensation claims data, and radiation dose estimate information related to each veteran listed in the Registry. The Administrator would be required to compile and consolidate for inclusion in the Registry information from the Department of Medicine and Surgery, Department of Veterans' Benefits, Defense Nuclear Agency, and other relevant VA or Department of Defense offices.

The compromise agreement (section 232) contains this provision.

The Senate bill, but not the House bill, would specify that, unless a veteran or the veteran's survivor makes a specific request, the Administrator is not required to include in the Registry the name of any veteran who applied for VA health-care services or filed a claim for compensation or whose survivor filed a claim for DIC prior to the date of enactment.

Under the compromise agreement, the Administrator would be required to include, to the extent feasible, the name of any veteran who may have been exposed to ionizing radiation even though the veteran applied for health-care services or compensation benefits (or the veteran's survivors filed a DIC claim) prior to the date of enactment and did not request that his or her name be included in the Registry.

The House bill, but not the Senate bill, would require the Administrator to conduct outreach to provide those veterans exposed to ionizing radiation with information regarding the Registry.

The compromise agreement does not contain this provision.

It is the Committees' intent, however, that the Administrator exercise his authority under section 241 of title 38 to provide outreach services to these veterans to provide them with information about the Registry.

REQUIREMENT FOR MEDICARE HOSPITALS TO PARTICIPATE IN VETERANS' ADMINISTRATION CONTRACT HEALTH-CARE PROGRAM

S. 2422 (section 214), but not the House bill, would amend section 1866(a)(1) of the Social Security Act, relating to the terms to which hospitals must agree in order to receive Medicare payment for inpatient care provided to Medicare beneficiaries, to add a requirement that, for inpatient care provided in connection with hospital admissions after January 1, 1987, such hospitals accept as payment for VA fee-basis patients amounts to be determined by the Secretary of Health and Human Services and the Administrator of Veterans' Affairs. The Secretary of Health and Human Services would be required to report to the Congress periodically on the number of hospitals that, as a result of this new requirement, terminate their eligibility to receive Medicare payments and the Administrator of Veterans' Affairs would be required to report by April 1, 1987, to the Veterans' Affairs Committees regarding the implementation of this new provision. Thereafter, the Secretary and Administrator would be required to notify the Committees if a hospital's eligibility to receive Medicare payments were, as a result of this new requirement, to be terminated. In H.R. 3500, the House-passed legislation which became the Consolidated Omnibus Budget Reconciliation Act of 1985, now Public Law 99-272, section 10024 contained similar provisions without the requirement for joint regulations.

The compromise agreement (section 233) contains this provision with a revised effective date of June 30, 1987. The Committees expect the Administrator and the Secretary to work together to ensure that payment amounts are adequate.

PROHIBITION AGAINST EXCESSING CERTAIN VETERANS' ADMINISTRATION PROPERTIES

H.R. 4623 (section 13), but not the Senate bill, would prohibit the Administrator from declaring as excess or taking any other action to dispose of certain specified real property located at two VA medical centers in California. The House bill would also provide that if any of the property is under the jurisdiction of another federal agency on the date of enactment the property must be transferred back to the VA.

The compromise agreement (section 234) is derived from this provision. The compromise agreement would render ineffective any VA action taken before January 1, 1988, in connection with declaring the properties as excess, or with transferring them, relinquishing the VA's interest in them, or disposing of them.

REPORT ON TREATMENT AND SERVICES FOR CHRONICALLY MENTALLY ILL VETERANS

S. 2422 (section 202), but not the House bill, would amend subchapter II of chapter 17 of title 38, relating to hospital, nursing home, and domiciliary care and medical treatment, to add a new section 620B to provide the Administrator with the authority to contract for care and treatment and rehabilitative services in halfway houses, therapeutic communities, psychiatric residential treatment centers, and other community-based treatment facilities for certain eligible veterans suffering from chronic mental ill-

ness. A veteran would be eligible to receive such care if, at the time of referral to a contract facility, the veteran (1) were receiving VA hospital, nursing home or domiciliary care for a chronic mental illness disability, or (2) had a service-connected disability rated at 50 percent or more and has a chronic mental illness disability. The Administrator would be required to approve the quality and effectiveness of the program in a facility before referring veterans to it and to designate a VA health-care employee to provide case-management services for each veteran receiving care under this authority. The Administrator would also be authorized to provide in-kind assistance to a contract facility provided that the VA were reimbursed for the assistance. The Administrator would be required, 3 years after the date of enactment, to submit to the Committees a report on the experience under these authorities.

The compromise agreement is generally derived from this provision. The compromise agreement (section 235) requires the Administrator to submit, not later than December 15, 1987, a report to the Committees on the implementation of the VA's existing contract care authorities and the VA's expanded home health services authority (section 202 of the compromise agreement) for eligible chronically mentally ill veterans.

The Committees support the VA's development of a demonstration project in Region 1 of VA's Department of Medicine and Surgery to provide, when medically appropriate and otherwise feasible, community-based treatment services for eligible chronically mentally ill veterans and expect that the report required by the compromise agreement will include information about the implementation of such a demonstration project. The Committees note that in a June 20, 1986, letter they requested the VA, among other things, to conduct two reviews and evaluations. The first would involve a review of the VA's patient population, particularly elderly veterans and chronically mentally ill veterans, currently receiving services in VA facilities to determine what percentage, if any, of the patients could receive needed care in noninstitutional settings if appropriate alternatives were available. The second review would be of the types of health and health-related services and alternative health-care settings that would enable veterans to avoid the institutional care that the VA would otherwise furnish them. The Committees direct the Administrator to take into account the findings of the reviews and evaluations in implementing the contract care and home health services authorities.

DESIGNATION OF VETERANS' ADMINISTRATION MEDICAL CENTER IN PHOENIX, ARIZONA

S. 1887 section 511, but no House bill, would name the Veterans' Administration Medical Center in Phoenix, Arizona, the "Carl T. Hayden Veterans' Administration Medical Center".

The compromise agreement (section 236) contains this provision.

PROVISIONS NOT INCLUDED

DISCIPLINARY BOARDS FOR MEDICAL PERSONNEL

H.R. 4623 (section 5), but not the Senate bill, would amend section 4110(a) of title 38, relating to disciplinary boards for medical personnel, to limit the use of such boards to cases involving proposed disciplinary actions involving (1) suspensions exceeding 14 calendar days, (2), demotions involving a loss of grade or pay, or (3) discharges of employees.

The compromise agreement does not contain this provision.

PILOT PROGRAM ON HOSPITAL MANAGEMENT EFFICIENCY

H.R. 4623 (section 12), but not the Senate bill, would require the Administrator to carry out a 3-year pilot program under which the directors of 5 medical centers, to be selected by the Administrator in consultation with the Committees on Veterans' Affairs of the Senate and House of Representatives, would have the authority to waive or alter laws or regulations, specified in each case by the directors, relating to the operation of VA medical centers. The Administrator would be required to submit to the Congress annual reports on the program.

The compromise agreement does not contain this provision.

OUTPATIENT CLINIC, NEW JERSEY

H.R. 4623 (section 16), but not the Senate bill, would require the Administrator to establish and operate a VA outpatient clinic in central or southern New Jersey.

The compromise agreement does not contain this provision.

PILOT PROGRAM OF NONINSTITUTIONAL ALTERNATIVES TO INSTITUTIONAL CARE

S. 2422 (section 204), but not the House bill, would require the Administrator to conduct a 4-year pilot program, at not less than 5 nor more than 10 demonstration projects, under which veterans eligible for and otherwise in need of VA hospital, nursing home, or domiciliary care, would instead receive care, including health-related services from non-VA entities, in non-institutional settings. Priority for participation in the program would be accorded to veterans with service-connected disabilities, to veterans who are 65 or older, to veterans who are totally and permanently disabled, to veterans who, by reason of blindness in both eyes, have only light perception or are in need of regular aid and attendance, and to veterans who are suffering from dementia, including Alzheimer's disease. The VA would be required to provide case-management services for all veteran-participants.

The compromise provision does not contain this provision.

SERVICES TO OVERCOME SERVICE-CONNECTED DISABILITY AFFECTING PROCREATION

S. 2422 (section 205), but not the House bill, would amend section 601 of title 38, relating to the definition of "medical services" for purposes of VA health care, to provide the Administrator with the authority to furnish medical services to a service-connected veteran or the spouse of a service-connected veteran to achieve pregnancy in cases in which the veteran's service-connected disability causes the veteran's inability to procreate.

The compromise agreement does not contain this provision.

The Committees note that the House Committee intends to explore the need for such authority in hearings next year.

ELIGIBILITY FOR DOMICILIARY CARE

S. 2422 (section 207), but not the House bill, would amend section 610(b) of title 38, relating to eligibility for domiciliary care, to provide the VA with the authority to provide such care to veterans who are in need of domiciliary care for the purpose of receiving treatment or rehabilitation and who either have a service-connected disability or are incapacitated from earning a living and have no adequate means of support.

The compromise agreement does not contain this provision.

ORGANIZATION OF THE DEPARTMENT OF MEDICINE AND SURGERY

S. 2422 (section 215), but not the House bill, would amend section 4103(a) of title 38, relating to the organization and staffing of the Office of the VA's Chief Medical Director, to establish one new position in that office (a second Associate Deputy Chief Medical Director), to allow new flexibility in the appointment of health-care professionals other than physicians to positions in that office, and to require that appointees to positions in that office be qualified in the administration of health services.

The compromise agreement does not contain this provision.

The Committees note that the House Committee intends to pursue this issue in hearings next year.

TITLE III—EDUCATION AND EMPLOYMENT

PART A—EDUCATION

APPRENTICESHIP OR OTHER ON-JOB TRAINING UNDER THE NEW GI BILL

S. 1887 (section 201), but no House bill, would amend section 1402 of title 38, relating to the definition of a program of education for purposes of chapter 30 of that title, the New GI Bill, to permit individuals training under the New GI Bill to pursue programs of apprenticeship or other on-job training. During the first 12 months of a veteran's participation on such training, the veterans' training allowance would be paid in an amount equal to the full amount of the veteran's educational assistance allowance. For such training pursued beyond that 12-month period the allowance would be paid at the rate of one-half of the full amount of the educational assistance allowance. The Veteran's entitlement would be charged based on the amount of the allowance paid.

The compromise agreement (section 301) contains this provision with an amendment to provide that benefits are paid at 75 percent of the full-time rate during the first six months of training, 55 percent of the full-time rate during the second six months of training, and 35 percent of the full-time rate during any subsequent months of training.

The Committees note that section 101 of H.R. 3747, the proposed "Veterans' Education Amendments of 1986," as ordered reported by the House Committee on Veterans' Affairs, on July 29, 1986, contained a comparable provision.

EDUCATIONAL ASSISTANCE FOR CORRESPONDENCE COURSES UNDER THE NEW GI BILL

S. 1887 (section 203), but no House bill, would amend section 1434 of title 38, relating to the administration of the New GI Bill program, to permit individuals training under the New GI Bill to pursue a program of education through home study.

The compromise agreement (section 302) contains this provision.

ADVISORY COMMITTEE AMENDMENTS CONCERNING NEW GI BILL; PROVISIONS RELATING TO REDUCTION OF PAY

S. 1887 (section 204), but no House bill, would amend section 1792 of title 38, relating to the VA's advisory committee on education, to add to the responsibilities of the committee responsibility for making recommendations to the Administrator with respect to the New GI Bill.

The compromise agreement (section 304) contains this provision with an amendment

to name the committee the "Veterans' Advisory Committee on Education." The naming provision is derived from section 104 of H.R. 3747, the proposed "Veterans' Education Amendments of 1986," as ordered reported by the House Committee on Veterans' Affairs on July 29, 1986, which would similarly expand the responsibilities of the advisory committee.

S. 2422 (section 113), but no House bill, would further amend section 1792 of title 38, to delete a requirement that the advisory committee include representatives of veterans of World War II and the Korean Conflict.

The compromise agreement does not contain this provision.

In addition, the compromise agreement (section 303) contains a provision clarifying that the difference between the amount of basic pay received by a participant in the New GI Bill and the basic pay received by other new servicemembers shall revert to the Treasury and shall not be considered as ever having been received by the new GI Bill participant or to have been within the participant's control. This provision would take effect with respect to reductions made after December 31, 1985, and is derived from section 103 of H.R. 3747, relating to the establishment of a New GI Bill Educational Assistance Fund, as ordered reported by the House Committee on Veterans' Affairs on July 29, 1986.

CERTIFICATION UNDER NEW GI BILL

For a discussion of this provision in the compromise agreement (section 305), see discussion of section 319, below.

BAR TO DUPLICATION OF BENEFITS

S. 2422 (section 112), but no House bill, would amend present section 1433(a)(1) of title 38, relating to the bar to duplication of VA educational assistance paid to a veteran eligible for benefits under the New GI Bill, to extend the bar to prohibit a veteran from concurrently receiving benefits under that program of educational assistance and under the Hostage Relief Act of 1980.

The compromise agreement (section 306) contains this provision with an amendment that would require individuals who serve in the Selected Reserve and who establish eligibility for benefits under the New GI Bill and under a program of educational assistance established under chapter 106 of title 10, United States Code, to elect under which program of benefits service is to be credited. This amendment is derived from section 106 of H.R. 3747, as ordered reported by the House Committee on Veterans' Affairs on July 29, 1986. The Committees note that section 110 of H.R. 3747 contains a provision comparable to the Senate provision.

ADJUSTMENT OF DELIMITING PERIOD FOR INDIVIDUALS ENTITLED TO CERTAIN COMBINED BENEFITS

S. 1887 (section 202), but no House bill, would amend section 1411(a)(1)(B) of title 38, relating to the period of time in which benefits earned under the New GI Bill may be used, to provide that, in the cases of individuals who are eligible for educational assistance under both the Vietnam-era GI Bill (chapter 34 of title 38) and the New GI Bill and who had left active duty after December 31, 1976, and reentered prior to the enactment of the New GI Bill on October 19, 1984, the delimiting periods for their use of the combined form of chapter 30/chapter 34 benefits (under section 1415(b) of title 38) would be reduced by the amount of time they had been out of the service.

The compromise agreement (section 307) contains this provision.

WORK-STUDY ALLOWANCE UNDER THE NEW GI BILL AND THE POST-VIETNAM ERA VETERANS' EDUCATIONAL ASSISTANCE PROGRAM

S. 1887 (section 205), but no House bill, would further amend section 1434 of title 38 and also amend section 1641 of title 38, relating to the administration of the Post-Vietnam Era Veterans' Educational Assistance Program (VEAP) (chapter 32), and section 1685, relating to the VA's work-study program, so as to permit veterans training under the New GI Bill or VEAP to participate in the work-study program.

The compromise agreement (section 308) contains this provision.

TERMINATION OF ENROLLMENTS IN THE POST-VIETNAM ERA VETERANS' EDUCATIONAL ASSISTANCE PROGRAM

The House amendment to S. 1887, as passed by the House on August 15, 1986, would amend chapter 32 of title 38, the Post-Vietnam Era Veterans' Eucational Assistance Program (VEAP), to terminate that program for new enrollments, effective July 1, 1985.

The compromise agreement (section 309) contains this provision with an amendment providing that, notwithstanding the termination of VEAP, any individual on active duty in the Armed Forces who was eligible to enroll in VEAP on June 30, 1985, may enroll in this program prior to April 1, 1987, and requiring the Department of Defense to notify servicemembers, to the maximum extent feasible, of this extended opportunity for participation in VEAP.

ON-JOB TRAINING UNDER THE POST-VIETNAM ERA VETERANS' EDUCATIONAL ASSISTANCE PROGRAM

S. 1887 (section 206), but no House bill, would amend various provisions of chapter 32 of title 38, relating the VEAP, and add to that chapter a new section 1633, entitled "Apprenticeship or other on-job training", to permit individuals training under VEAP to pursue programs of apprenticeship or other on-job training with benefits paid in a manner similar to that proposed for under the New GI Bill (see discussion of section 301, above).

The compromise agreement (section 310) contains this provision with an amendment relating to the rate at which benefits are to be paid to conform with the manner in which benefits are to be paid for this type of training under the New GI Bill (see the same discussion).

DURATION OF AND LIMITATIONS ON ENTITLEMENT TO POST-VIETNAM ERA VETERANS' EDUCATIONAL ASSISTANCE

S. 1887 (section 207), but no House bill, would amend seciton 1632 of title 38, relating to the delimiting period for the use of VEAP benefits, to provide, in the case of a veteran who has been prevented from initiating or completing a program of education under VEAP because of a physical or mental disability not the result of the veteran's own misconduct, for the extension of the basic 10-year delimiting period by an amount of time equal to the amount of time that the disability prevented the veteran from pursuing a program of education.

The compromise agreement (section 311) contains this provision.

EDUCATIONAL AND VOCATIONAL COUNSELING

S. 1887 (section 208), but no House bill, would amend section 1663 of title 38, relating to educational and vocational counseling under various VA educational assistance programs, to require that veterans rated incompetent by the VA be provided with educational and vocational counseling prior to their selection of a program of education or training under chapter 30, 32, or 34.

The compromise agreement (section 312) contains this provision.

DELIMITING PERIOD UNDER THE SURVIVORS' AND DEPENDENTS' EDUCATIONAL ASSISTANCE PROGRAM

S. 1887 (section 209), but no House bill, would amend section 1712 of title 38, relating to the period of time during which benefits may be paid to an eligible spouse under the Survivors' and Dependents' Educational Assistance Program (chapter 35), to allow an eligible spouse to elect, subject to the Administrator's approval, a date for beginning the 10-year period of chapter 35 eligibility that is earlier than the date on which the VA made the eligibility determination but not earlier than the date of the event that created the spouse's eligibility.

The compromise agreement (section 313) contains this provision.

ELIMINATION OF THE REQUIREMENTS FOR AN EDUCATION PLAN FOR SURVIVORS AND DEPENDENTS

S. 1887 (section 210), but no House bill, would amend section 1720 of title 38, relating to educational and vocational counseling for survivors and dependents training under the chapter 35 program, to delete the requirement that an educational plan be submitted by a parent or guardian on behalf of a child before benefits are awarded to the child.

The compromise agreement (section 314) contains this provision.

MEASUREMENT OF CERTAIN NONCOLLEGE DEGREE COURSES

S. 1887 (section 211), but no House bill, would amend section 1788 of title 38, relating to the measurement of courses as full time or part time for the purposes of payment of VA educational assistance allowances, to permit measurement in a manner comparable to courses or individual classes that are part of programs leading to a standard college degree of both (1) a non-college degree program that is offered by an accredited institution of higher learning and is in the same general field with predominantly the same curriculum as a degree program offered by the same institution, and (2) individual classes leading to a standard college degree that are required as part of a non-college degree program.

The compromise agreement (section 315) contains this provision with an amendment permitting only courses offered by a fully-accredited institution to be measured in this manner.

PAYMENT OF EDUCATIONAL ASSISTANCE FOR CERTAIN LESS-THAN-HALF-TIME TRAINING

S. 1887 (section 212), but no House bill, would amend section 1780 of title 38, relating to payment of VA educational assistance allowances for less-than-half-time training, to require that payment of educational assistance allowances for less-than-half-time training he made not later than the end of—rather than during—the month following the month in which an enrollment certification is received.

The compromise agreement (section 316) contains this provision.

PROHIBITION ON BENEFITS UNDER MORE THAN ONE EDUCATIONAL ASSISTANCE PROGRAM

S. 1887 (section 213), but no House bill, would amend section 1781(b) of title 38, relating to certain restrictions on educational

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assistance benefits, to bar concurrent receipt of benefits for different programs of education pursued under two or more VA-administered educational assistance programs.

The compromise agreement (section 317) contains this provision.

The Committees note that section 110 of H.R. 3747 contains a provision comparable to the Senate provision.

REPORTING REQUIREMENTS FOR EDUCATIONAL INSTITUTIONS

S. 1887 (section 214), but no House bill, would amend section 1784 of title 38, relating to certain reporting requirements applicable to educational institutions under VA educational assistance programs, to permit the institutions to delay until the end of the term, quarter, or semester in submitting the certification of the enrollment of eligible VA students in the case of independent study pursued on a less-than-half-time basis, when there is no feasible means for the institution to monitor changes in or termination of enrollments.

The compromise agreement (section 318) contains this provision with an amendment requiring an educational institution to notify veterans at the time of enrollment if such a procedure is being used.

PHOHIBITION OF A TERM-BY-TERM CERTIFICATION REQUIREMENT

S. 1887 (section 215), but no House bill, would further amend section 1784 of title 38 to prohibit the implementation of any requirement that an educational institution certify the enrollment of VA students every term or semester for purposes of receipt of VA educational assistance.

The compromise agreement contains (section 319) this provision.

The compromise agreement (section 305) also amends section 1434 of title 38, relating to program administration under the New GI Bill, to conform to this prohibition. This amendment is derived from section 105 of H.R. 3747, as ordered reported by the House Committee on Veterans' Affairs on July 29, 1986, which would prohibit the VA from requiring monthly certifications of enrollments of VA students under the New GI Bill.

COMMISSION TO ASSESS VETERANS' EDUCATION POLICY

S. 1887 (section 216), but no House bill, would establish a Commission on Veterans' Education Policy (with representatives of the education community, the VA, the VA's Advisory Committee on Education, and the Congress) to study, and to submit within 18 months a report on, issues relating to the administration of VA educational assistance programs, including, but not limited to (1) the need for distinctions between certificate and degree courses, (2) measurement of the pursuit of training, (3) the vocational value of correspondence training, and (4) innovative and nontraditional programs of education.

The compromise agreement (section 320) contains this provision with an amendment requiring that the members of the Committee be appointed by March 1, 1987, and that the Commission's study and report include consideration of courses that result in the achievement of continuing educational units.

TECHNICAL AND CLERICAL AMENDMENTS

S. 1887 (section 217) would make a series of minor technical amendments to provisions of title 38 relating to VA programs of educational assistance.

The compromise agreement (section 321) contains these provisions with an amendment adding certain other technical amendments. The latter amendments are derived from section 110 of H.R. 3747, as ordered reported by the House Committee on Veterans' Affairs on July 29, 1986.

PART B—EMPLOYMENT AND OTHER PROGRAMS

EMPLOYMENT RIGHTS OF CERTAIN INDIVIDUALS

H.R. 2798, but no Senate bill, would amend section 2021(b)(3) of title 38, relating to retention in employment or promotion of individuals who are members of a Reserve component of the Armed Forces, to provide protection against discrimination for such members in initial employment.

The compromise agreement (section 331) contains this provision.

VETERANS' READJUSTMENT APPOINTMENTS

H.R. 4384 and S. 2422 (section 104) would amend section 2014(b) of title 38, relating to veterans' readjustment appointments, to extend the authority for such appointments. H.R. 4384 would extend the authority through December 31, 1991. S. 2422 would extend the authority through September 30, 1988. In addition, H.R. 4384 would increase the maximum grade level at which appointments may be made from GS-9 to GS-11, eliminate the 14-year education limitation applicable to Vietnam-era veterans who do not have a service-connected disability, and provide that a service-connected disabled veteran of the Vietnam era who has more than 14 years of education shall be given preference for an appointment over other Vietnam-era veterans who have more than 14 years of education.

The compromise agreement (section 332) contains a provision extending the authority for veterans' readjustment appointments for 3 years and 3 months, through December 31, 1989, with no further changes in the program.

EXTENSION OF PROGRAM OF INDEPENDENT LIVING SERVICES AND ASSISTANCE

S. 2422 (section 103), but no House bill, would amend section 1520(a) of title 38, relating to the VA's pilot program of independent living services and assistance, to extend the program for 3 years (fiscal years 1987 through 1989) for veterans who have service-connected disabilities so severe that achievement of a vocational goal is *currently* not reasonably feasible, make certain conforming changes, and require the Administrator to provide statistical data to the Committees on Veterans' Affairs, not later than February 1, 1989, regarding participation in the program by veterans during fiscal years 1987 and 1988, along with any recommendations for administrative or legislative action.

The compromise agreement (section 333) contains this provision. In addition, the compromise agreement would remove the word "pilot" from the title of the program.

TITLE IV—HOUSING PROGRAMS AND NATIONAL CEMETERIES

PART A—HOUSING

SPECIALLY ADAPTED HOUSING

Both S. 1887 (section 301) and H.R. 2344 (section 5) would amend sections 801 and 802 of title 38, relating to specially adapted housing grants for certain disabled veterans, to provide that such grants are also to be made to eligible disabled veterans (with service-connected blindness or loss of use of both hands) to assist in the acquisition of a residence already adapted with special features determined by the Administrator to be necessary for the veteran by reason of the veteran's disability. The maximum amount of such grants would be equal to the lesser of the fair market value of the special features or $6,000.

The compromise agreement (section 401) contains this provision.

CREDIT UNDERWRITING AND LOAN PROCESSING STANDARDS

S. 1887 (section 302), but no House bill, would amend section 1810 of title 38, relating to loans guaranteed by the VA for the purchase or construction of a home, to require the Administrator to prescribe regulations—which establish credit underwriting standards to be used in evaluating VA home loans, and standards to be used by lenders in obtaining credit information and processing VA home loans. Under the Senate bill, the Administrator would be required to establish credit underwriting standards that include debt-to-income ratios, criteria for evaluating the reliability and stability of the veteran applicant's income, and procedures for ascertaining the monthly income required by the veteran to meet the anticipated loan payments. Such standards would be required to be in accordance with the loan underwriting principles and application procedures generally accepted and used by commercial lending institutions with respect to loans with comparable security arrangements. Lenders making VA-guaranteed loans would be required to certify that the loan was made in compliance with the credit information and loan processing standards established by the Administrator. The Senate bill would provide for a civil penalty (the greater of twice the VA's loss or an amount up to $10,000) to be paid by any lender who knowingly and willfully makes a false certification with respect to compliance with these standards. The Administrator would be given the authority to waive the credit underwriting standards if the Administrator determines that a veteran applicant is a satisfactory credit risk. Finally, under the Senate bill, the Administrator would be prohibited from making loans for the purchase of a property unless the purchaser meets the credit underwriting standards established for VA-guaranteed loans.

The compromise agreement (section 402) contains these provisions with an amendment deleting the requirement for credit standards for VA-guaranteed loans to be the same as those used by lending institutions for non-VA loans with comparable security arrangements.

FORECLOSURE INFORMATION

S. 1887 (section 304), but no House bill, would amend section 1816 of title 38, relating to procedures on default on VA-guaranteed home loans, to require additional action by the Administrator and holder of a VA-guaranteed loan. Under the Senate bill, the holder of a VA-guaranteed loan would be required to promptly notify the Administrator of any failure of the veteran to make, in full, 2 monthly payments. The Administrator would then be required to notify the veteran of the new requirement that the holder of a loan in default initiate foreclosure proceedings within 15 days after the veteran has failed to make, in full, 4 monthly payments. The Senate bill would also relieve the VA of liability for interest accrued on a loan in default between the time when foreclosure proceedings were required to have been initiated and such time as they are. Finally, under the Senate bill, the Administrator would be required to identify the common factors contributing to defaults on VA-guaranteed loans and include find-

ings in this regard in the VA's annual report to Congress.

The compromise agreement (section 403) is derived from the Senate bill.

The compromise agreement would require the Administrator to identify the common factors contributing to defaults on VA-guaranteed loans and include findings in this regard in the VA's annual report to the Congress and require a separate analysis, and reporting thereon, of delinquent loans which had previously been assumed by another party. except that the provision relating to the identification and reporting of common factors contributing to defaults on VA-guaranteed loans is amended to require separate analysis, and reporting thereon, of delinquent loans which had previously been assumed by another party.

COMPETITIVE CONTRACTING REQUIREMENTS

S. 1877 (section 305), but no House bill, would amend section 1820(b) of title 38, relating to contract requirements for services and supplies, to conform the threshold amount at which contracts must be formally advertised to the amount specified in section 5 of title 41, United States Code.

The compromise agreement (section 404) contains this provision.

AUTHORITY TO TRANSFER FUNDS

S. 1887 (section 305), but no House bill, would amend section 1823 of title 38, relating to the Direct Loan Revolving Fund (DLRF), to require the Secretary of the Treasury to transfer from the DLRF to the Loan Guaranty Revolving Fund such funds as the Administrator determines are not needed in the DLRF, and to require the Administrator to notify Congress when such transfers take place.

The compromise agreement (section 405) contains this provision.

USE OF ATTORNEYS IN HOME LOAN FORECLOSURES

S. 1887 (section 307), but no House bill, would amend section 1830(a) of title 38, relating to the use of attorneys in court, to authorize the Administrator to acquire the services of fee-basis attorneys, without the concurrence of the Attorney General, to exercise the right of the Federal government to bring suit to foreclose a VA-guaranteeed loan and/or to recover possession of any property acquired by the VA.

The compromise agreement (section 406) contains this provision.

APPRAISALS

S. 1887 (section 308), but no House bill, would further amend chapter 37 of title 38 to add a new section 1831, relating to value appraisals of property that would secure loans made or guaranteed by the VA. Under the Senate bill, the Administrator would be required to prescribe standardized examinations and qualifications to be used in determining whether to approve an appraiser to make appraisals on a fee-basis for the VA. The Administrator would also be required to consult locally with representatives of the mortgage lending community for the purposes of developing and maintaining lists of appraisers approved to appraise property for the VA, and to select appraisers on a rotating basis for that purpose. After an appraisal is performed, the Administrator would be required to provide a copy of the appraisal report to the prospective lender before issuing a Certificate of Reasonable Value (CRV) for that property. Under the Senate bill, the lender would have the option of requesting a second appraisal to be performed by an approved VA fee-basis appraiser of the lender's choice which would be required to be considered by the Administrator prior to the issuance of a CRV. Finally, the Senate bill would require the Administrator to establish fee limitations for appraisals that are not below the prevailing market rates.

The compromise agreement (section 407) is derived from these provisions. Under the compromise agreement, the Administrator, after consultation with representatives of the mortgage lending community, would be required to prescribe uniform qualifications to be met by appraisers performing appraisals for the VA. The compromise agreement contains the provisions concerning the development and maintenance of the lists of approved appraisers, and the rotating selection process. The agreement also contains the provision allowing for a second appraisal to be furnished to the Administrator by the proposed lender, but prohibits the cost of such appraisal to be incurred by the prospective veteran purchaser. The compromise provides that the veteran be afforded the same opportunity at the veteran's expense to provide the Administrator with an additional appraisal performed by an approved VA appraiser. Under the compromise agreement, the VA would issue a CRV after the initial appraisal is performed, and if, within a specified length of time prescribed by the Administrator, a second appraisal is provided to the VA, the Va would consider the appropriateness of issuing a revised CRV. Finally, the provision relating to minimum fees to be paid to appraisers is deleted.

The Committees note that nothing in this provision is intended to change current law, or VA regulations or practices, with respect to the VA's use of its own staff appraisers.

FURNISHING INFORMATION TO REAL ESTATE PROFESSIONALS TO FACILITATE THE DISPOSITION OF PROPERTIES

S. 1887 (section 309), but no House bill, would further amend chapter 37 of title 38 to add a new section 1832 requiring the Administrator to furnish to real estate brokers and other real estate professionals information on the availability of property for disposition and the procedures used by the VA to dispose of such property.

The compromise agreement (section 408) contains this provision.

HOME LOAN ORIGINATION FEE

H.R. 2344 (section 6), but no Senate bill, expresses the sense of the Congress that the 1-percent loan origination fee currently charged under section 1829 of title 38 to veterans using their VA loan guaranty entitlement should not be increased as has been proposed by the Administration.

The compromise agreement (section 409) contains a provision derived from this provision. Under the compromise agreement, the Congress makes no findings with regard to the 1-percent loan origination fee and simply expresses the sense of the Congress that the fee should not be increased above the 1-percent level. The agreement also reflects that current law calls for section 1829 of title 38 to sunset on October 1, 1987.

LOAN GUARANTY AMOUNT

S. 1887 (section 303), but no House bill, would amend sections 1810 and 1811 of title 38, relating to the maximum amount of loan-guaranty entitlement available to eligible veterans, to increase such entitlement from $27,500 to $33,500.

The compromise agreement does not contain this provision.

TASK FORCE ON PROPERTY MANAGEMENT AND DISPOSITION

S. 1887 (section 310), but no House bill, would require the Administrator to establish a task force for the purpose of developing effective methods for the exchange of information between the VA and the real estate community on efficient property management and disposition and to advise the Administrator on ways to improve the manner in which the VA manages and disposes of property.

The compromise agreement does not contain this provision.

The Committees recognize that the VA is currently working to establish more effective property management and disposition practices and intend to closely monitor its efforts.

PROPERTY MANAGEMENT AND DISPOSAL PILOT PROGRAM

S. 1887 (section 311), but no House bill, contains a provision relating to a property management and disposition pilot program. Under the Senate bill, the Administrator would be required to contract with one or more commercial organizations for the purpose of determining the effectiveness, feasibility and desirability of contracting with such organizations to manage and dispose of VA-acquired property.

The compromise agreement does not contain this provision.

The Committees recognize that the VA is currently taking steps to examine the possibility of implementing such a program.

ACQUISITION OF FORECLOSED PROPERTIES

S. 2422 (section 111), but no House bill, would amend section 1816 of title 38, relating to procedures on default and foreclosure, to prohibit the Administrator from accepting conveyance of the title to a property securing a VA-guaranteed loan which has been foreclosed unless the Administrator determines that the VA is likely to be able to sell such property within 12 months after the date of foreclosure at a price which is economically advantageous to the government.

The compromise agreement does not contain this provision.

However, the Committees did receive from the Congressional Budget Office an estimate of the cost of implementing such a provision. The CBO estimate indicated that the provision would be cost effective, and for that reason the Committees intend to monitor the VA's property acquisition practices and to request the Congressional Budget Office to undertake an economic assessment of the VA's current practice in this regard and of the effects of such a provision.

NATIONAL CEMETERY GRAVE MARKERS

Both S. 1887 (section 401) and H.R. 2344 (section 3) would amend section 1004 of title 38, United States Code, relating to the administration of the National Cemetery System, to specify what types of grave markers are to be used. The House bill would require that, with respect to markers for the graves of persons who die after September 30, 1985, all markers in National Cemeteries be upright except where a request is made for a flat marker; in the case of such request, the individual would be buried in cemetery sections required to be designated for graves with flat markers. The House bill would also provide that during the period October 1, 1985, through December 31, 1985, the Administrator could waive the requirement for upright markers in the

cases of individuals being buried during that period in a cemetery having no section designated for graves with upright markers and could deny requests for flat markers in a cemetery having no section designated for flat markers. Finally, the House bill would require that, not later than January 1, 1986, the Administrator designate in each National Cemetery an area where flat markers are to be used and an area where upright markers are to be used.

The Senate bill would generally require that after June 30, 1986, all new markers in National Cemeteries be flat, but would require that (1) the Administrator designate space in each National Cemetery (except for those established before January 1, 1986, in which upright markers have never been used) for the use of upright markers, and (2) in the case of an individual who dies after July 1, 1986, an upright marker be used if a request were made for one and space were available in a designated section.

The compromise agreement (section 411) would require upright markers in all National Cemeteries for interments which occur after January 1, 1987, with two exceptions. First, the requirement for upright markers would not apply to cemeteries closed or scheduled to close prior to September 30, 1991, as indicated in the VA materials submitted in justification of the President's budget for fiscal year 1987. Second, the compromise would permit the Administrator to continue to furnish flat markers in an open section where flat markers are being used on the date of enactment, until the section is completed.

REPORTS ON THE NATIONAL CEMETERY SYSTEM

Both S. 1887 (section 402) and H.R. 2344 (section 2) would amend section 1000 of title 38, relating to the National Cemetery System, to require certain reports on the system. The House bill would require the Administrator to submit an annual report which would be required to include a 5-year plan for National Cemetery construction and expansion, a list of 10 areas in which the need for additional burial space for veterans is the greatest, and general plans for expansion of the system. The Senate bill would require the Administrator to submit two reports (one 18 months and one 60 months after enactment) on the National Cemetery System and to include in each a plan for operation of the system through the year 2000, trends through the year 2020, a list of 10 areas in which the need for additional burial space for veterans is the greatest, and general plans for any anticipated expansion of the system.

The compromise agreement (section 412) follows the Senate provision with the first report required within 90 days after the date of enactment.

MEMORIAL AREAS IN ARLINGTON NATIONAL CEMETERY

S. 1887 (section 403), but no House bill, would amend chapter 75 of title 10, United States Code, to authorize the Secretary of the Army to place memorials in Arlington National Cemetery to honor the memory of certain service members and veterans, otherwise eligible for burial in Arlington National Cemetery, whose remains are not available for interment.

The compromise agreement (section 413) contains a provision adding this authority to chapter 24 of title 38.

AUTHORITY TO ESTABLISH NATIONAL CEMETERIES

Both H.R. 4345 and the Senate amendment to H.R. 4345 contained provisions relating to the establishment of certain national cemeteries. The House bill would authorize the Administrator to establish a national cemetery in or near Cleveland, Ohio. The Senate amendment would specify that the existing authority of the Administrator under chapter 24 of title 38 to develop and acquire cemeteries includes, but is not limited to, the authority to establish new national cemeteries to serve the needs of veterans and their families in 10 specified regions of the United States as well as in any State where there is no open national cemetery.

The compromise agreement (section 414) contains the Senate amendment.

ESTABLISHMENT OF A NATIONAL CEMETERY IN NORTHERN CALIFORNIA

H.R. 2344 (section 4), but no Senate bill, would require the Administrator to accept a donation of a certain tract of land in Merced County, California, and to establish a National Cemetery on such land.

The compromise agreement does not contain this provision.

The Committees note that the Administrator has decided administratively to take these actions.

TITLE V—ADMINISTRATIVE PROVISIONS

CLARIFICATION OF REQUIREMENT FOR A DETAILED PLAN AND JUSTIFICATION FOR ADMINISTRATIVE REORGANIZATION

S. 1887 (section 501), but no House bill, would amend section 210(b)(2) of title 38, relating to the manner in which the VA may undertake certain administrative reorganizations, to provide a definition of the "detailed plan and justification" which the VA must provide to the Congress before the VA is permitted to implement certain administrative reorganizations.

The compromise agreement (section 501) contains this provision.

COLLOCATION OF REGIONAL OFFICES AN MEDICAL CENTERS

S. 1887 (section 506), but no House bill, would require the VA to submit a plan and timetable for the collocation as soon as practicable of 7 DVB regional offices to the grounds of VA Medical Centers. The VA would be required to report to the Congress on the costs and savings, advantages and disadvantages of such collocations. The report could also include an assessment of the advantages, disadvantages, and costs of combining regional offices located near each other.

The compromise agreement (section 502) contains this provision except that the plan must be submitted by March 1, 1987, the regional offices to be collocated must be located in the same metropolitan area as the Medical Center with which they would be collocated, and the authority for the VA report to assess the advantages and disadvantages of combining regional offices located near each other is deleted.

EFFECTIVE DATE OF DISCONTINUANCE OF CERTAIN BENEFITS PAID TO INCOMPETENT INDIVIDUALS

S. 1887 (section 504), but no House bill, would amend section 3203(b)(1)(A) of title 38, relating to the interruption of benefit payments to incompetent institutionalized veterans without dependents due to the size of their estates. The Senate bill would increase, from $1500 to $6000, the amount allowed in such a veteran's estate before payment of compensation or pension would be interrupted. Under the Senate provision, interrupted benefit payments would be resumed when the value of the estate falls to $2000 rather than the $500 provided by current law.

The compromise agreement (section 503) is derived from this provision. The compromise agreement would amend section 3203 to make interruption of benefits effective on the first day of the month following the institutionalization of such an incompetent veteran without dependents.

ADMINISTRATIVE DEBT COLLECTION BY OFFSET OF BENEFITS

S. 2422 (section 116), but no House bill, would amend section 3101 of title 38, relating to the non-assignability of benefits payable by the VA and limitations on the collection of debts by offset or otherwise, to permit the VA to collect, by means of offset from compensation or pension, certain overpayments in military retired or retainer pay, or overpayments resulting from participation in the Survivor Benefit Plan (SBP) or Retired Serviceman's Family Protection Plan (RSEPP). Such collection would be limited to veterans who would be in receipt of military retired or retainer pay were it not for their election to waive retired or retainer pay in order to receive VA disability compensation. The military service department must attempt collection and determine the debt to be uncollectable before requesting VA collection by means of offset.

The compromise agreement (section 504) contains this provision with an amendment limiting it to debts resulting from a retired servicemembers' failure to make required SBP or RSFPP payments.

The Committees note that, while the compromise agreement does not provide for collection of debts in retired or retainer pay accounts, such a provision would be reconsidered if submitted by the Administration as part of a package also providing for collection by the Department of Defense of debts owed by servicemembers or retirees to the VA as well as collection by the VA of debts owed to the Department of Defense.

DISCLOSURE OF FINANCIAL INFORMATION BY FIDUCIARIES

Both H.R. 5299 (section 201) and S. 2422 (section 114) would amend section 3202(b) of title 38, relating to financial information provided to the VA by fiduciaries entrusted with the management of the veterans' benefits of incompetent or minor beneficiaries, to make clear that the VA may suspend payments to a fiduciary who fails to provide the VA an accounting of all the funds and assets of the beneficiary which are known to the fiduciary.

The compromise agreement (section 505) contains this provision.

LOCATION OF VA REGIONAL OFFICES

H.R. 2343 (section 2), but no Senate bill, would require the VA to maintain at least one VA regional Office in each state to process claims for disability and death compensation, pension, and educational benefits and to process applications for home loans.

The compromise agreement does not contain this provision.

The Committees note that this provision was initiated in response to an Administration proposal to consolidate the 58 current regional offices into 3 central locations. This consolidation proposal is apparently no longer under consideration, but the Committees express the view that a future proposal for such a consolidation would be viewed with disfavor.

DEFINITION OF ACTIVE DUTY STATUS FOR NATIONAL GUARD OPERATIONAL DUTY

H.R. 2343 (section 6), but no Senate bill, would amend section 101(22)(c) of title 38, relating to the definition of "active duty", to expand the definition of "active duty", for purposes of eligibility for benefits provided by title 38, to include active duty for training performed for operational purposes by National Guard members in Active Guard and Reserve and Active Duty Support status.

The compromise agreement does not contain this provision.

DEFINITION OF THE VIETNAM ERA

S. 1887 (section 502), but no House bill, would amend the definition of the Vietnam era in section 101(29) of title 38 to add the period from February 21, 1961, through August 4, 1964, in the case of veterans who served in the Republic of Vietnam during that period.

The compromise agreement does not contain this provision.

WAIVER OF WAITING PERIOD FOR ADMINISTRATIVE REORGANIZATION

S. 2422 (section 115) would waive the waiting period prescribed by present section 210(b)(2) of title 38—which provides, in part, that the VA may not in any fiscal year implement certain administrative reorganizations unless the Administrator, not later than the date on which the President submits the budget for that year, provides a report containing a detailed plan and justification for the reorganization—with respect to a reorganization involving the transfer of the Presidential Memorial Certificates (PMC) program from the VA's Office of Administration to the VA's Department of Veterans' Benefits (DVB) and of the Audio Visuals Service (AVS) from the VA's Office of Administration to the Office of the Associate Deputy Administrator for Public and Consumer Affairs.

The compromise agreement does not contain this provision.

The Committees note that on October 1, 1986, the VA transfer of the PMC program to DVB occurred and that, on September 26, 1986, the VA notified the Committees that it had decided to postpone the transfer of the AVS.

TITLE VI—EXEMPTION OF CERTAIN PROGRAMS FROM BUDGET REDUCTION

TREATMENT OF CERTAIN VETERANS' PROGRAMS UNDER BALANCED BUDGET AND EMERGENCY DEFICIT CONTROL ACT OF 1985

H.R. 5299 (section 202), but no Senate bill, would add two new sections to title 38, United States Code, to exempt from across-the-board reductions under the Balanced Budget and Emergency Deficit Control Act of 1985, Public Law 99-177, or any other law requiring those kinds of general reductions, certain veterans' benefit programs, principally those available to veterans with service-connected disabilities. The House bill, effective with respect to fiscal year 1987 and subsequent fiscal years, would exempt from any such "sequestration" reduction under Public Law 99-177 the following VA benefits payable as the result of a disability which was incurred or aggravated during military service or a death resulting from a service-connected cause:

1. Specially adapted housing benefits and mortgage protection life insurance for veterans who require special accommodations in their home as a result of a service-connected disability.

2. Burial benefits for veterans who die as a result of a service-connected disability.

3. Grants for automobiles and adaptive equipment to permit veterans with severe disabilities to acquire or operate motor vehicles.

4. Vocational rehabilitation assistance for certain veterans with service-connected disabilities.

5. Educational benefits payable to dependents of veterans with service-connected disabilities rated totally disabling and to survivors of veterans who die of service-connected causes. The House bill would provide that the amounts for the payment of these exempted benefits would be excluded in the computation of the amount to be sequestered from an account from which any of the above benefits are paid.

The House bill would also exempt from sequestration, effective with respect to fiscal year 1986 and subsequent fiscal years, VA home loan guaranties and insurance policy loans under the various VA-administered life insurance programs. In addition, the House bill would exempt, effective with respect to fiscal year 1987 and subsequent fiscal years, the VA Special Therapeutic Rehabilitation Activities Fund and the Canteen Service Revolving Fund from any mandatory reduction under Public Law 99-177.

With respect to two programs, GI Bill education assistance and non-service-connected burial benefits, for which no exemption is proposed, the House bill would modify the manner in which any sequestration would be carried out in fiscal year 1987 or subsequent fiscal years. Instead of sequestration reductions being made in all payments made while a sequester order is in effect, as under current law, the reductions would be made in payments for education or training pursued, and for deaths that occurred, during the period that the order is in effect.

The compromise agreement (section 601) contains these provisions with an amendment limiting to only fiscal year 1987 the exemptions for vocational rehabilitation and survivors' and dependents' education benefits; postponing to fiscal year 1987 the effective date for the exemption for insurance policy loans; deleting the exemption for VA home loan guaranties; and requiring that, in the event of a sequester affecting the home loan guaranty program, the VA submit to the Committees a monthly report on the guaranty program's current and projected activity levels during the fiscal year involved. With the exception of the fiscal year 1987 exemption for dependents' and survivors' education benefits, S. 2885 as reported on September 27, 1986, by the Senate Committee contained provisions to exempt the same programs, as well as a provision to require the loan guaranty report.

In conjunction with the provision linking sequestration reductions in the non-exempt programs to the period during which the event giving rise to the payment occurred rather than the period during which payment is made, the compromise agreement would require that the amounts of the reductions which would occur after the end of the sequester period be counted in determining the benefit reductions required in order to satisfy the sequestration.

TITLE VII—MISCELLANEOUS

H.R. 5047, but no Senate bill, would amend various provisions of title 38 and other provisions of law to eliminate gender-based language distinctions and make technical corrections.

The compromise agreement (title VII) contains these provisions.

The Committees note that none of the amendments to eliminate gender-based language distinctions are intended to have a substantive effect.

Mr. CRANSTON. Mr. President, as the ranking minority member of the Committee on Veterans' Affairs, I am pleased to rise in support of the pending House amendment to the Senate amendment to H.R. 5299, the proposed Veterans' Benefits Improvements and Health Care Authorization Act of 1986. This amendment embodies a compromise agreement that has been reached by the House and Senate Veterans' Affairs Committee on 13 measures and contains an extraordinary number of provisions.

Mr. President, each of the provisions of the compromise agreement is described authoritatively in the explanatory statement developed by the two Committees on Veterans' Affairs that the chairman of the House committee [Mr. MONTGOMERY] will be inserting in the RECORD to be associated with his remarks during House debate on this measure and which will be inserted in substantively identical form as part of our record of consideration of this measure. Because of that detailed explanation of the provisions of the compromise agreement, which I fully endorse as my intent regarding this legislation, I will at this time discuss only certain elements of the measure.

COMPENSATION COST-OF-LIVING INCREASE

First, Mr. President, I am pleased that title I of the compromise agreement would provide for a 1.5-percent cost-of-living increase in the rates of disability compensation for veterans who suffer from service-connected disabilities and in the rates of dependency and indemnity compensation [DIC] for the survivors of veterans who have died from service-connected causes. The VA's service-connected compensation program is at the very heart of our system of veterans' benefits. The committee has consistently attached the highest priority to the needs of service-connected disabled veterans and the survivors of those who have made the ultimate sacrifice. The more than 2.2 million veterans who suffer from disabilities resulting from their service and the 340,000 survivors of those who died from service-connected disabilities are and will remain my number one priority.

As Members may know, the Senate has in the past consistently taken the position that the percentage rate of VA compensation and DIC cost-of-living adjustments [COLA's] should be equal to the COLA percentage provided for Social Security and VA pension benefits, effective December 1, 1986. However, since the percentage of the Social Security COLA is not yet known, the compromise agreement

provides for a 1.5-percent COLA—with the provision that such a COLA would not be effective if no Social Security COLA is paid in 1986—in lieu of the 2-percent COLA approved by the House or the COLA "triggering provision" approved by the Senate. We adopted this percentage in light of the estimates on August 15 by the Congressional Budget Office that the Social Security COLA will be .08 percent and by the Office of Management and Budget that it will be 1.3 percent.

SENSE OF THE CONGRESS REGARDING MAINTAINING TAX EXEMPT STATUS OF DISABILITY COMPENSATION

Mr. President, one provision which is not included in the compromise agreement is one derived with modifications from Senate Concurrent Resolution 20 which would declare that it is the sense of the Congress that any payments by the VA to veterans as compensation for service-connected disabilities should remain exempt from Federal income taxation.

On February 26, together with Chairman MURKOWSKI, and Senators MITCHELL, STAFFORD, SPECTER, and SASSER, I introduced Senate Concurrent Resolution 20. A total of 51 Senators—including 11 members of the committee—have joined in support of this resolution, including: Senators MATSUNAGA, PRESSLER, THURMOND, PRYOR, HAWKINS DECONCINI, ROCKEFELLER, GORE, SARBANES, BINGAMAN, ABDNOR, BURDICK, HOLLINGS, BOREN, BUMPERS, DODD, TRIBLE, PELL, HEFLIN, DOMENICI, CHILES, GARN, ANDREWS, BOSCHWITZ, COCHRAN, MATTINGLY, WILSON, WARNER, SYMMS, LEAHY, BRADLEY, NICKLES, ZORINSKY, SIMON, GRAMM, GLENN, LAUTENBERG, KENNEDY, HEINZ, KERRY, STENNIS, DENTON, FORD, CHAFEE, and STEVENS.

VA disability compensation benefits are paid to individuals who have service-connected disabilities. The benefit levels for veterans under the service-connected disability compensation program have, traditionally, been provided on a tax-exempt, wage-replacement scale, based on the average earning impairment caused by the disability.

In November 1984, the Department of the Treasury originally recommended the termination of the tax-exempt status of these benefits. This proposal was subsequently rejected by the President in submitting his tax reform package to the Congress on May 29, 1985. The tax reform legislation recently sent to the President for approval does not contain any such proposal.

In view of the broad support for retaining the tax-exempt status of disability compensation payments and the fact that no such proposal was or appears to be likely to be given serious consideration in the future, this provision was not included in the compromise agreement. However, I want to stress that if in the future such a proposal is again made, I will do everything I can to see that it is rejected.

TITLE II—HEALTH CARE AND FACILITIES

Mr. President, title II of the compromise agreement reflects a compromise agreed to between the two Veterans' Affairs Committees on two VA health-care measures—H.R. 4623 and title II of S. 2422—after extensive discussions and negotiations. The provisions of title II of the compromise agreement, if enacted, will help to maintain and improve the quality, effectiveness, and efficiency of health care services provided by the Veterans' Administration to eligible veterans.

BACKGROUND

Mr. President, title II of the compromise agreement is the culmination of the legislative process for S. 2388, which I introduced on April 30, 1986. I refer my colleagues and others with an interest in the background and development of S. 2388 to my introductory remarks on this measure—beginning on page 27311 of the RECORD for April 30, 1986—and to my remarks at the time of Senate action on S. 2422, which begin on page S14358 of the RECORD for September 30, 1986.

Mr. President, I am very grateful to our committee chairman [Mr. MURKOWSKI] and the chairman [Mr. MONTGOMERY] and ranking minority member [Mr. HAMMERSCHMIDT] of our counterpart committee in the House and to the chairman of the House committee's Hospitals and Health Care Subcommittee [Mr. EDGAR] for their cooperation in the development of the compromise agreement on the health provisions and particularly for their generally favorable consideration of provisions from S. 2388.

RESPITE CARE

Section 201 of the compromise agreement, which is derived from section 203 of S. 2422 which in turn was derived from section 7 of S. 2388, would authorize the VA to carry out, in fiscal years 1987 through 1989, a program of respite care under which the VA would furnish hospital or nursing home care for short, intermittent periods to veterans otherwise receiving care at home. In addition, if the VA were to utilize this authority, there would be a requirement that the agency carry out a study of the health efficacy and cost-effectiveness of furnishing such care and report to the two Committees on Veterans' Affairs on the results of that study.

Mr. President, the ultimate goal of respite care, which is a relatively new form of care, is to help maintain an individual in his or her home as long as possible before having to resort to institutional care. It is widely agreed at this point that, where medically feasible, maintaining a person at home is not only better for the person's overall health status but is also a far more efficient and cost-effective way to meet certain individuals' health-care needs. The theory of respite care is that, by providing scheduled relief for the primary personal-care giver—who is most often the spouse or child of the person who is receiving care—it will be possible to maintain the person in need of care at home for a longer period of time.

I note that the compromise agreement does not contain a provision that had been included in the Senate-passed measure; namely, an express limitation permitting respite care only in situations where providing such care would not, as determined by the head of the VA facility concerned, "adversely affect the range of services, the quality of care, or the established priorities for care furnished to other veterans seeking care" at that VA facility. This limitation was designed to ensure that the use of this type of care does not substantially disrupt the conduct of other programs. In developing the compromise agreement, it was felt that it was not necessary to include this limitation in the legislation itself. However, our colleagues on the House committee agreed generally with our intent with regard to the underlying policy and the explanatory statement includes a statement reiterating that policy as part of congressional intent.

Mr. President, I am very pleased that my colleagues on both the Senate and House committees have agreed to the need to provide the VA with the authority to carry out a program of respite care, and I look forward to maintaining active oversight of the VA to ensure that this important form of care is utilized effectively and properly.

VIETNAM VETERANS READJUSTMENT COUNSELING ISSUES

Mr. President, section 204 of the compromise agreement contains provisions relating to the VA's readjustment counseling program for Vietnam veterans which were derived from provisions of a floor amendment that I authored in the Senate-passed bill. I am most grateful to my colleagues on both committees for agreeing to accept these provisions.

As the author of the underlying provisions, I want to explain how they are expected to be implemented and also describe briefly some of the changes from the provision that passed the Senate.

First, the compromise agreement contains my proposal to extend from 1 to 2 years the transition period—the period beginning on October 1, 1987, during which the program is to undergo a transition from a program providing services primarily through the Vet Centers—store front facilities located apart from other VA health care facilities—to a program providing such services primarily through VA health

care facilities. In this regard, I note that, since the enactment in 1983 of Public Law 98-160, eligibilty for readjustment counseling is permanent; the only issue that remains open is how that service will be provided.

In addition to extending the transition period, the compromise agreement would amend this transition requirement so as to require that it be carried out only gradually, on a phased basis, over the full 2-year period. These changes in the length and speed of the transition should permit a much more thoughtful, careful change in the nature of the program than would be possible under a 1-year transition.

As I stated when the amendment was before the Senate on September 30, I think that this is an extremely useful and important change in terms of the administration of this program and the best interests of the veterans served by it.

The compromise agreement also contains the provisions I proposed to modify two report requirements that are set forth in current law.

The first of these reports, which is due on April 1, 1987, would be required to set forth the Administrator's evaluation of the VA's effectiveness in meeting the readjustment needs of Vietnam-era veterans and his opinion on whether the VA should go forward with the transition effort as in current law or whether there should be some modification to that mandate. The second report, which is due on July 1, 1987, would set forth the Administration's plan for accomplishing the transition away from the primarily Vet Center approach.

These two report requirements would be modified by the compromise agreement so that, if, as appears likely, the results of a comprehensive study, as mandated by section 102 of Public Law 98-160, of the prevalence and incidence among Vietnam veterans of post-traumatic-stress disorder—PTSD—and other postwar psychological problems in readjusting after their service are not available at the time these reports are due, the reports will be submitted taking into consideration whatever information from that post-war-psychological-problems study is then available.

That study, which was due to be submitted to the Congress by October 1 of this year, has been delayed to a significant degree. In a May 12, 1986, letter transmitting proposed legislation to the Congress, the Veterans' Administration noted that the private contractors who are carrying out the study for the VA "have experienced delays in the study's design and initiation". In view of those delays, the VA proposed moving the due date for the report on the study back 1 year, to October 1, 1987.

Subsequently, staff of the two committees met with representatives of the VA and the study contractor, Research Triangle Institute, Inc., of North Carolina, to review various problems and allegations that had arisen about the scope and conduct of the study. Thereafter, the chairmen and ranking minority members of both the House and Senate Committees on Veterans' Affairs wrote to the Office of Technology Assessment asking OTA to convene a panel to review the situation and make recommendations. OTA did that and on September 5 issued a report to the committees recommending some major alterations in the study personnel and VA supervisory relationship. The committees are awaiting the VA's response to the OTA recommendations at this time. But it is our firm conviction that the VA must act expeditiously to put the study back on track and to complete it swiftly and surely.

I continue to believe that this study is vital and must be considered in the course of any Vet Center transition effort. In light of those concerns, I proposed, and the Senate passed, a provision which would have delayed the due date of the PTSD study report by 1 year, to October 1, 1987, but by 1 year only. In recommending that extension, I expressed the view that many of the problems that led to the delay of the study could not have been anticipated or avoided. At the same time, however, I stressed my very strong view that the study must be completed by next October. Any further delay beyond that point will have the very unfortunate effect of substantially reducing the extent to which the study results will be able to be taken into account in a meaningful way during the ongoing discussions on the future of the readjustment counseling program.

I regret that the establishment of this new deadline was not agreed to by our colleagues in the House and is not, therefore, in the compromise agreement. On October 3, 1986, I wrote to the Administrator of Veterans' Affairs, Thomas Turnage, to urge that the agency complete its review of the OTA analysis, take appropriate corrective action, and then resume the study as expeditiously as possible.

The compromise agreement also contains a provision, derived from the Senate-passed measure, to add a new required report from the Administrator to the committees on the readjustment counseling program. This report, which would be due by February 1, 1989, 16 months after the transition period begins, would report on the experience under the first year of the transition and would include any recommendations for legislative or administrative action that the Administrator considers appropriate in light of that experience. This report, which should, of course, also take into account information from the PTSD study, will, I believe, be particularly important to the Congress. The proposed due date for this report, 16 months into a 2-year transition, makes it most timely in the consideration of any mid-course corrections in the transition effort as well as generally useful in our ongoing efforts to review, assess, and plan for the future of the VA's readjustment counseling program.

With further reference to the PTSD/post-war-psychological-problems study, I note that under current law, section 102(b) of Public Law 98-160, the Administrator, in preparing the report on that study, is required to provide information to the two Veterans' Affairs Committees regarding the capacity of the VA to provide treatment to the number of veterans identified in the study to be suffering from post-war psychological problems. This reporting requirement clearly contemplates a discussion of the capacity and projected capacity of the readjustment counseling program, including the extent to which the agency should maintain a substantial Vet Center capacity. Thus, the Administrator, in preparing this report, should review the April and July 1987 reports on the future of the readjustment counseling program and the transition requirement and the transition plan and advise the committees of any changes in the policies set forth in those reports that are appropriate based on the final outcome of the PTSD study.

If that material is not included in the final report on the study, I certainly will seek it immediately from the Administrator.

I regret the omission from the compromise agreement of the provision from the Senate-passed bill that would have required the Administrator, in the April 1, 1987, report to make recommendations as to whether or not veterans of other wars have needs that could be met by services provided under the readjustment counseling program authority and on whether eligibility for such services should be extended to those veterans. Despite the fact that this was the second time the Senate has passed measures calling for such an evaluation and report—the first time was in August 1984 when the Senate passed the text of S. 2514 as an amendment to H.R. 5618—our colleagues in the House were unwilling to accept the report addition. I continue to remain concerned that there may be a generally unappreciated need for the type of assistance that can best be provided for more veterans in an informal and nonbureaucratic way through the VA's readjustment counseling program as would have been reported on in this study and believe that failure

to investigate that possibility is shortsighted and unfortunate.

Mr. President, I ask unanimous consent that my October 3, 1986 letter to the Administrator of Veterans' Affairs on the PTSD/post-war-psychological-problems study, which I described earlier, be reprinted at this point in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
COMMITTEE ON VETERANS' AFFAIRS,
Washington, DC, October 3, 1986.

Hon. THOMAS K. TURNAGE,
Administrator of Veterans' Affairs, Washington, DC.

DEAR TOM, I am writing with reference to the Staff Paper prepared by the Health Program of the Office of Technology Assessment entitled "Review of the Progress of the National Vietnam Veterans' Readjustment Study". A copy of this document was previously provided to you by Chairman Murkowski in a September 11, 1986, letter.

I view the comprehensive study mandated by section 102 of Public Law 98-160 as vitally important and believe that information developed in the course of that study and the study results must be considered during the course of the deliberations on the future course of the VA's Readjustment Counseling program, including, of course, decisions relating to the transition of the Vet Center program.

Thus, I believe it is critical that the VA act expeditiously to put that study back on track and to complete it swiftly and surely. Before that can happen, however, the concerns and recommendations raised in the OTA Staff Paper must be addressed.

I urge you, therefore, to complete you review and analysis of the OTA effort as soon as possible and thereafter to advise the two Veterans' Affairs Committees of your views and intentions in light of the OTA analysis.

Thank you for your continuing cooperation and assistance.

Sincerely,

ALAN CRANSTON,
Ranking Minority Member.

CONTINUATION OF CERTAIN COUNSELING SERVICES FOR A DECEASED VETERAN'S FAMILY MEMBERS

Mr. President, under current law, the VA provides mental health counseling and certain other services to the family members of a veteran when doing so is necessary for the effective treatment of the veteran. This authority, which I authored in 1976, is relied on most often in connection with veterans receiving general mental health services, veterans receiving readjustment counseling through the VA's Vet Center Program, veterans receiving care and training in VA Blind Rehabilitation Centers, and various VA programs which provide care to terminally ill veterans. All indications that I have received are that providing family counseling in cases like these has been of great importance in the agency's efforts to assist the veterans who are receiving care.

Unfortunately, under current law, family members lose their eligibility for further counseling at the time of the veteran's death, the very time when they may be in the greatest need of assistance from a professional who knew the veteran, is familiar with the family members' relationships with the veteran, and has established rapport and trust with them.

To correct this situation so that family members can receive bereavement counseling from someone with whom they have already developed a supportive relationship, I introduced legislation, section 4 of S. 2388, to authorize the VA to continue to furnish, for up to 6 months following the veteran's death, appropriate mental health assistance, in the form of such counseling, to family members who were receiving it before the death of the veteran when the veteran's death was unexpected or when the veteran died while participating in a VA hospice program.

I am very pleased to note that a provision derived from that provision is included as section 203 of the compromise bill.

HOME HEALTH SERVICES

Mr. President, I am pleased to note that section 202 of the compromise agreement contains a provision, derived from section 201 of S. 2422, which will provide the VA with the authority to provide home health services to veterans in places of residence other than the veteran's home. This provision will reverse an opinion from the VA's general counsel which held that home health services can only be provided in a veteran's actual home and could not, therefore, be provided in a halfway house, board-and-care facility, or other community-based facility where the veteran might be residing, at such times as the VA would otherwise believe providing home health services would be beneficial. Without debating the validity of the general counsel's opinion, it seems clear that limiting the availability of home health care services in this way is short sighted and counterproductive and would lead, in the end, to the agency being required to provide more expensive inpatient treatment to a veteran whose needs could have been addressed in a noninstitutional setting. I am pleased to have been able to help develop this provision and that it is included in the compromise agreement.

THERAPEUTIC AND REHABILITATION ACTIVITIES

Mr. President, I am truly delighted to note the presence in the compromise agreement of a provision I have long advocated. Section 205, which is derived from section 503 of S. 1887 which in turn was derived from section 6 of my legislation, S. 6, introduced in January 1985, would specify that any funds provided to veterans for participation in certain VA work therapy programs, which I will describe in a moment, will be considered as donations from public or private relief organizations which, under section 503(a)(1) of title 38, United States Code, are not considered as income for purposes of VA pension programs.

Mr. President, under section 618 of title 38, United States Code, the VA operates, in the Department of Medicine and Surgery, therapeutic and rehabilitation programs under which VA patients—either inpatients, residents in domiciliary facilities, or outpatients—selected for such programs perform services for which they receive a small payment. These programs are known commonly as incentive therapy [IT] and compensated work therapy [CWT] programs.

According to the VA, participants in IT programs are assigned duties within the treating VA medical center or domiciliary as patient messengers, grounds workers, and building management assistants and paid, out of appropriated funds, hourly wages ranging from a nominal amount to half the minimum wage. Patients in CWT programs, according to the VA, learn work habits and/or vocational skills by working on projects under VA contracts with private industry or other sources and are paid wages by the private entity under those contracts commensurate with wages paid in the community for work of the same quality and quantity. Both programs are designed to promote self-sufficiency in the participants by developing increased feelings of self-worth and socialization skills, prevention of depression and regressive behavior, and acquisition of prevocational skills in order to reduce dependence on long-term VA hospitalization and other support from Federal, State, and local government sources.

Mr. President, in 1983, the VA's Department of Medicine and Surgery, in response to a VA inspector general audit, instituted a program of income verification pursuant to which VA medical facilities, effective approximately January 1, 1984, began to inform appropriate VA regional offices of the Department of Veterans' Benefits of the amounts that veteran participants in the IT and CWT programs were receiving. For the participants in those programs who were receiving VA pension, this change resulted in a change in their pension eligibility. An August 27, 1985, report of the Controller General, which I had requested and which is entitled "Impact of Offsetting Earnings From VA's Work Therapy Programs From Veterans' Pensions," found that:

[a]lthough the number of veterans affected by the work therapy/pension offset is small, the offset has had detrimental effects on those veterans and on the work therapy programs themselves.

Mr. President, section 205 of the compromise agreement would address this problem by amending section 618

of title 38 to provide expressly that any funds received by veterans as a result of their participation in IT or CWT programs will be regarded as distributions and that, for the purposes of chapter 15 of title 38, such distributions will be considered as donations from public or private relief organizations which, as I noted a moment ago, are not counted as income for the purpose of VA pension programs.

This provision should reverse the situation found by the GAO and as demonstrated in submissions to our committee over the past few years, suggesting that counting such remuneration as income for pension purposes is acting as a significant disincentive to veterans' participation in these two programs which, in turn, is having an adverse effect on their successful rehabilitation.

Mr. President, I have a longstanding, very strong personal interest in the IT and CWT programs and am very grateful to our colleagues in the House for their openmindedness on this matter in working with us to correct the damage done to these programs.

Now, I urge the VA to return to an active and aggressive implementation of these therapeutic programs.

IONIZING RADIATION REGISTRY

Mr. President, I am pleased to note that the compromise agreement, in section 232, would require the VA to establish an ionizing radiation registry. This registry, which is based on both House- and Senate-passed provisions, should prove to be an important new tool in the ongoing efforts to respond to the concerns of veterans exposed to radiation as a result of their participation in the nuclear weapons test program or of service in Japan shortly after the nuclear bombs ended World War II.

As a result of my service on the Veterans' Affairs Committee, I have a longstanding and very deep interest in issues relating to the concerns of these veterans and their survivors. I chaired the first hearings in the Senate on this matter in 1979 and have actively pursued getting the Federal Government to shoulder its proper responsibilities vis-a-vis these veterans and their survivors—who were deliberately exposed to ionizing radiation by that Government. In this regard, I have authored, and the Congress has enacted, legislation to provide health care to radiation-exposed veterans for conditions not caused by another factor; legislation to require the VA to develop, through a process allowing for public participation, special regulations prescribing uniform standards and guidelines for resolving claims for VA compensation benefits; and legislation calling for a major study of the health of veterans exposed to nuclear test radiation.

The requirement that the VA establish a registry offers a potentially useful way to bring together information that has been generated by these various initiatives and from other sources. Once collected and made available, such information should assist the VA and the Congress in our efforts in this area.

Mr. President, there is one point with respect to the establishment of the registry that I want to note, namely the obligation on the VA's part to put into the registry information about veterans who sought, prior to the enactment of this legislation, VA benefits or services in connection with exposure to radiation.

Because significant reservations were raised by the agency about its ability to collect all of the information that is mandated to be entered into the registry in the case of veterans who sought benefits and services at some time in the past, the provision in the compromise bill requires only that information on such veterans be included to the "extent feasible."

Mr. President, although I personally would have preferred a more stringent requirement in this area so as to attempt to have the registry be as comprehensive as possible, I am satisfied that the provision in the compromise agreement provides a basis for information to be entered into the registry regarding all veterans exposed to radiation who have sought VA benefits and services and, with the best efforts of the agency and of veterans organizations—especially those organizations that have as their principal focus the concerns of veterans exposed to radiation—I believe that it will be possible to have sufficient information entered into the registry.

Finally, I note our committee's position—as set forth on page 58 of the committee's report, Senate Report No. 99-444, accompanying S. 2422—that, although the registry will provide the VA with access to aggregated data relating to the health status of those veterans who are included in the registry, such information "cannot be generalized to the population of exposed veterans as a whole."

SENATE-PASSED PROVISIONS NOT INCLUDED IN THE COMPROMISE AGREEMENT

Mr. President, as I noted earlier, title II of the compromise agreement represents a compromise between a House-passed and a Senate-passed health bill. As is true in most compromises, a number of provisions were dropped from each bill in reaching agreement on the final legislation. Of the Senate-passed provisions which are not included in the measure as it comes before the Senate today, there are three in particular that I want to highlight briefly at this point.

TREATMENT AND REHABILITATION FOR CHRONICALLY MENTALLY ILL VETERANS

Mr. President, section 202 of S. 2422, as passed by the Senate, had the general goal of meeting the health care needs of certain veterans—those suffering from chronic mental illnesses—in other than traditional institutional settings. Regrettably, this provision is not in the legislation as it comes before the Senate today.

As reported by our committee and passed by the Senate, this provision was one of those that was the result of extensive collaboration between the chairman and me. This provision, which was derived from section 102 of S. 876 as reported by our committee and passed by the Senate as an amendment to H.R. 505 last year, would have given the Administrator the authority to contract for care and treatment and rehabilitative services in halfway houses, therapeutic communities, psychiatric residential treatment centers, and other community-based treatment facilities for certain veterans suffering from chronic mental illness—those whose are currently being furnished VA institutional care for such disabilities or those who have service-connected disabilities rated at 50 percent or more disabling who are also suffering from chronic mental illness, with priorities afforded to veterans with service-connected disabilities.

Mr. President, I believe that this was a very desirable proposal and I greatly regret that we could not convince the House to accept it. It would have enabled the VA to provide certain chronically mentally ill veterans with an additional, necessary option for care which is not now but clearly should be provided by the VA to provide the best form of care to these veterans.

Mr. President, I note that the compromise agreement does contain a provision relating to the VA's response to the needs of veterans suffering from chronic mental illness disabilities. The bill would require the Administrator to submit a report to the two Veterans' Affairs Committees by December 15, 1987, on the VA's use of existing authority to contract with community-based facilities for the treatment of such veterans and to furnish home health services to such veterans in settings other than the veteran's home. This report should yield valuable information on the current state of activity within the VA and should, therefore, serve as a basis for further legislative action at some future date, if appropriate.

PILOT PROGRAM OF NONINSTITUTIONAL ALTERNATIVES TO INSTITUTIONAL CARE

S. 2422 as passed by the Senate included provisions in section 204 that were derived from section 8 of S. 2388, which I introduced on April 30, that would have required the VA to conduct a 4-year pilot program at not less than 5 nor more than 10 demonstration sites to evaluate noninstitutional alternatives to institutional care. The provision was first passed by the

Senate as section 103 of S. 876 as reported and at that point represented a collaboration between Chairman MURKOWSKI and me on provisions in bills we had earlier introduced in 1985, S. 6 and S. 876.

Under this pilot program in the Senate-passed bill, the VA would have provided certain veterans with medical, rehabilitative, and other health services and, by contract with non-VA entities, with health-related services. Priority would have been accorded to veterans with service-connected disabilities; veterans 65 years of age or older; veterans who are totally and permanently disabled; veterans who, by reason of blindness in both eyes, have only light perception and are in need of regular aid and attendance; and veterans who are suffering from Alzheimer's disease or another form of dementia. These health and health-related services would have been furnished in noninstitutional settings—such as a veteran's home or a board-and-care home—with the goal of avoiding institutional care, such as in a hospital, nursing home, or domiciliary facility, for the participants in the program.

Mr. President, I am very disappointed that our colleagues in the House were unwilling to accept this provision. Both Chairman MURKOWSKI and I, along with the other members of our committee, are convinced that the VA must take steps now to develop new, noninstitutional approaches for addressing the health care needs of veteran patients, particularly in light of the rapid increase in the number of veterans age 65 and older who may be turning to the VA for needed care in the months and years ahead.

I will continue to explore options to enhance the VA's activity in this area and note that, although the provisions from the Senate-passed measure are not included in the legislation as it comes before the Senate today, the chairman [Mr. MONTGOMERY] and the ranking minority member [Mr. HAMMERSCHMIDT] of the House committee joined with Chairman MURKOWSKI and me in a joint oversight letter to the VA earlier this year in which we sought to acquire more information on the extent to which eligible veterans could benefit from noninstitutional care and on the VA's ongoing efforts to provide such care to eligible veterans as well as on the VA's efforts with respect to veterans suffering from chronic mental illness disabilities. Once the VA's response to that letter is received and analyzed, it may become possible to gain support for legislation to enhance the agency's efforts in this area.

SERVICES TO OVERCOME SERVICE-CONNECTED DISABILITY AFFECTING PROCREATION

Finally, Mr. President, I also regret very much that the legislation as it comes before the Senate does not any longer include a provision—included in my bill, S. 2388, and in S. 2422 as passed by the Senate—which would have authorized the VA to furnish services to help a veteran or a veteran's spouse achieve pregnancy in cases in which the veteran's service-connected disability causes the veteran's inability to procreate.

Mr. President, had this provision been enacted, it would have corrected what I believe is a significant misinterpretation of current law by the VA. As a result of my work on behalf of a woman veteran who had a service-connected disability which prevented her from becoming pregnant, I became aware of the fact that the VA does not believe that it has legal authority under current law to provide services to help overcome such a disability. In that case, the veteran was seeking an in vitro fertilization procedure. I did my utmost to convince the VA that the authority in current law to furnish medical services and rehabilitation services to eligible veterans would allow the agency to provide appropriate services to help that veteran and other veterans in similar circumstances overcome their service-connected disabilities that leave them unable to procreate. However, I was not successful.

Because I did not believe that the VA's legal interpretation of its existing authority was correct, I introduced this provision in order to remove any doubts that may exist on this issue. It is most unfortunate that this legislation was not agreed to in the compromise agreement. I am pleased to note, however, that the House committee has indicated that it intends to conduct hearings on this issue and to consider it further during the next Congress.

EDUCATION AND EMPLOYMENT AMENDMENTS

Mr. President, I want to mention briefly a number of the myriad provisions contained in the compromise agreement relating to education and employment in which I have a particular interest, including a number of provisions derived from legislation, S. 1887, which was passed by the Senate last December.

ON-JOB TRAINING AND THE NEW GI BILL

Mr. President, section 301 of the compromise agreement is derived from section 201 of S. 1887 which in turn contained provisions derived from S. 962, which Senator COHEN and I introduced on April 22, 1985, and which is cosponsored by Senators MITCHELL, BUMPERS, and ROCKEFELLER, to permit veterans training under the chapter 30 program, the "new GI bill," to use their benefits for VA on-job training and apprenticeship programs.

The new GI bill was enacted in 1984 by virtue of amendments made by title VII of the Department of Defense Authorization Act, 1985—Public Law 98-525. The program is designed to assist the Armed Forces in recruiting and retaining high quality men and women and became effective with respect to individuals entering the Armed Forces on or after July 1, 1985.

Under current law, benefits under the chapter 34 Vietnam-era GI bill may be used for pursuit of apprenticeship or other on-job training. A veteran in apprenticeship or other on-job training under chapter 34 receives a monthly training assistance allowance during the training period. The employer, who must meet certain specified requirements relating to the nature and content of the training program, is required to pay the veteran wages equal to the wages of other similarly situated employees. No payments are made to the employer. Current law, however, does not permit chapter 30 benefits to be paid for this type of training.

Mr. President, I believe that OJT and apprenticeship programs offer a valuable alternative means for veterans to use their GI bill benefits and that individuals training under veterans' educational assistance programs should have the widest possible array of choices available to them. Thus, I am delighted that the compromise agreement would make such programs available to veterans training under the new GI bill, as well as, based on an administration proposal included, at my request, in section 206 of the S. 1887 and retained in section 310 of the compromise agreement, to veterans training under the chapter 32, Post-Vietnam Era Veterans' Educational Assistance Program, popularly known as VEAP.

HOME STUDY COURSES AND THE VA'S ADVISORY COMMITTEE ON EDUCATION

Sections 302 and 304 which are derived from sections 203 and 204 of S. 1887—which were in turn derived from S. 1509, which I introduced on July 26, 1985, with Senator COHEN and which is cosponsored by Senators BUMPERS, MITCHELL, and PRYOR—would permit new GI bill benefits to be used for home-study and would add responsibility for monitoring the new GI bill program to the responsibilities of the VA's Advisory Committee on Education.

As a result of the provisions included in the compromise agreement, individuals who earn educational assistance benefits under the new GI bill will be able to use those benefits for programs of education pursued through home study—formerly referred to as "correspondence courses." As I have noted, I have long felt that individuals training under veterans' educational assistance programs should have the widest possible array of choices available to them. Although I recognize that there may have been some abuses in the seventies of the home-study authority under the chapter 34 program,

this type of training may be the only available way for some individuals—such as those who live in geographically remote areas, those whose work or family responsibilities preclude regular classroom attendance, or those who are on activie duty. I firmly believe that the opportunity to pursue a program or education through home study should be made available for these and other individuals.

Many institutions offering home-study courses have devoted tremendous amounts of time and effort into developing quality programs of education and training. The courses offered through this mode of study cover a vast range of subjects—from the study of telephone installation and repair to language courses to computer programming. The opportunities for learning about and training in new careers that are available to individuals through home-study programs are virtually limitless.

WORK-STUDY UNDER THE NEW GI BILL

In addition, section 308 of the compromise agreement is derived from section 205 of S. 1887 and my suggestion to permit economically disadvantaged individuals training under the "new GI bill" program or the chapter 32 VEAP program to participate in the VA's work-study program. As the original author in 1972 of the VA's work-study program for disadvantaged, full-time veteran students, I am delighted with this provision.

The VA's veteran-student services program is conducted under section 1685 of title 38, enacted in 1971, and is popularly known as the VA's Work-Study Program. This program offers opportunities for full-time veteran-students to earn additional amounts of money to supplement their educational assistance allowances. Specifically, a full-time student enrolled under chapter 31, vocational rehabilitation for service-connected disabled veterans, or chapter 34, the Vietnam-era GI bill, of title 38 may be paid at the minimum hourly wage for up to 250 hours a semester in return for certain services. These services must be in connection with VA outreach efforts, the preparation of and processing of necessary papers and documents at educational institutions or VA regional offices, the provision of hospital and domiciliary care and medical treatment through VA facilities, or other activities that the Administrator determines appropriate. In determining which veteran-students should be offered the opportunity to participate in this program, the Administrator is required to take into account the veteran's needs for augmentation of the educational or subsistance allowance, the availability of transportation, and the motivation of the veteran. In addition, priority is given to veteran-students who have service-connected disabilities rated at 30 percent or more.

At present, only veterans who are training under chapter 31 or chapter 34 of title 38 are eligible to participate in the VA's work-study program. Neither the chapter 32 VEAP Program nor the new GI bill program offers this form of assistance to veteran-students.

I firmly believe that this program is an important one—not only for the economically disadvantaged individual veteran-student who is in need of the additional assistance in order to participate in a full-time program of education, but also for the VA as well as the educational institutions which benefit from the services provided by the work-study veteran-students. Thus, I am delighted that section 308 of the compromise agreement would amend both chapters 30 and 32 in order to permit full-time veteran-students training under those programs to have access to the program.

NEW GI BILL DELIMITING PERIOD

Section 311 of the compromise agreement is derived from section 202 of S. 1887 and represents an amendment I proposed to amend the new GI bill to correct an inequity that would exist in the cases of individuals who were made eligible, by the enacted Department of Defense Authorization Act, 1986, Public Law 99-145, both for the chapter 34 Vietnam-era GI bill and for the new GI bill and who had left the service and reentered prior to the enactment of the new GI bill—October 19, 1984.

In 1984, in connection with the enactment of the new GI bill, Congress included provisions to allow an individual who has eligibility for chapter 34 GI bill benefits and who had remained on active duty since December 31, 1976, to establish, by remaining on active duty for a minimum of 2 years after June 30, 1985—the opening date of the new GI bill—eligibility for a combined benefit equal to benefits under the chapter 30 program plus one-half of the value of the individual's remaining chapter 34 benefits. This combination approach was included as a means of inducing continued service by individuals who might otherwise have left the service in order to use their benefits.

Following the enactment of Public Law 98-525, it was brought to my attention that there were a small number of individuals who, although on active duty on the date of which the new GI bill was enacted, would not be eligible for these combined benefits because, prior to that date, they had left the service for some period of time. Since the purpose of these combined benefits was to permit individuals to remain on active duty and still utilize their earned benefits, the Senate Armed Services Committee proposed in S. 1160, Department of Defense Authorization Act, 1986, and the Senate approved, a provision that would permit these individuals to establish eligibility for the combined benefits. Subsequently, this provision was enacted in Public Law 99-145.

Although I am sympathetic to the need to make provision for those individuals who had a break in service prior to the enactment of the new GI bill, I believe that to provide the same nature and amount of relief from the 1989 termination date to these individuals as is provided to those who remained continuously on active duty during the period from December 31, 1976, through October 19, 1984, is not equitable. That is why I proposed when H.R. 752 was before our committee in 1985 that we take a somewhat different approach—permit the Secretary of Defense, in order to enhance the recruitment of former service personnel, to offer new GI bill benefits to prior-service personnel who had a break in service of 90 days of more. The Senate Committee agreed in section 2(a) of H.R. 752 as reported, Senate Report 99-96. No action, however, was taken by the Senate on this measure.

The compromise agreement, based on section 202 of S. 1887 would provide that the 10-year delimiting period of such an individual would be reduced by the amount of time that the individual had not been on active duty during the period from December 31, 1976, to October 19, 1984, because during such a period such an individual would have had the opportunity during a break in active duty to utilize VA educational assistance benefits.

PROHIBITION OF TERM-BY-TERM CERTIFICATION REQUIREMENT

Section 319 of the compromise agreement is derived from section 215 of S. 1887 and would prohibit the implementation of any requirement for the submission of term-by-term enrollment certifications for any educational assistance benefits administered by the VA under chapter 30, 32, 34, 35, or 36 of title 38. This provision would invalidate an OMB proposal which would, if implemented, be extraordinarily costly and time consuming for the VA and the educational institutions and would delay GI bill payments to hundreds of thousands of veterans. We are now finally going to put this issue to rest.

The issue of term-by-term certifications has been around for a very long time and, because of OMB's prodding, has refused to go away. In 1984, the Senate approved the provision I proposed in S. 2736 to delay the implementation of any such requirement. However, that provision was not enacted in light of the fact that it was understood that the VA's Advisory Committee on Education was reviewing the issue and that no action would be taken on the matter until that committee had made a recommendation to

the Administrator. It thus appeared that implementation of this ill-advised proposal would not go forward. This year, despite the fact that the Advisory Committee recommended to the Administrator that a term-by-term enrollment certification requirement not be implemented, rumors persist that such a requirement may indeed be imposed. According to the VA, if term-by-term certifications are required almost 2.2 million additional certifications will need to be processed in fiscal years 1987 through 1990.

COMMISSION ON VETERANS' EDUCATION POLICY

Section 320 of the compromise agreement is derived from section 216 of S. 1887 which is based on a suggestion I made to establish a Commission on Veterans' Education Policy. This Commission would be comprised of representatives of the education community and veterans' service organizations, to be selected based on their expertise in pertinent fields, as well as ex officio representatives of the VA and the Congress. The purpose of the Commission would be to assist in identifying problem areas that need to be explored and in developing possible solutions to some longstanding, complex issues involving the VA's administration of education, benefits.

The system developed for the administration of educational assistance benefits under title 38 is a complex and confusing one. Much of the basis for the practices, policies, and provisions of law pertaining to the system derives from the VA's and the Congress' experience with administration of benefits from the World War II and Korean GI bills. Through the years, the system has remained relatively unchanged although some changes have been made to reflect new developments in education philosophy and practices.

The present system may not reflect the most efficient, cost-effective, and suitable approach to the provision of educational assistance benefits. I believe that consideration should be given to making appropriate revisions in policies, practices, and provisions in law in order to improve protection not only on the interests of the Federal Government but also of individuals training under title 38 and of institutions offering programs of education. Clearly, since VA administration of educational benefits will be with us for some time—under the existing chapter 34 Vietnam-era GI bill, as well as under the Chapter 32 VEAP Program and the chapter 30 new GI bill—this Commission could be very helpful in terms of identifying problem areas that need to be explored and presenting possible solutions to some longstanding, complex issues, including the need for distinctions between certificate and degree courses, measurement of pursuit of training, the vocational value of correspondence training, and innovative and nontraditional programs of education.

VETERANS' READJUSTMENT APPOINTMENT AUTHORITY

Mr. President, section 332 of the compromise agreement contains a provision derived from my bill, S. 2304, which I introduced on April 15, to extend for 3 additional years and 3 months—until December 31, 1989—the authority set forth in section 2014(b) of title 38 for veterans readjustment appointments—VRA's. On September 30, during the Senate's consideration of S. 2422/H.R. 5299, I discussed the provisions of section 104 of S. 2422 which were derived from my proposal to extend the VRA authority. This discussion appears at page S14359 of the CONGRESSIONAL RECORD of September 30, 1986.

The VRA authority, which expired on September 30, 1986, permits certain disability Vietnam-era veterans and educationally disadvantaged Vietnam-era veterans to be given excepted appointments in the Federal civil service. Since the inception of this very successful program in 1970, VRA's have provided employment opportunities for over a quarter of a million veterans, and I am delighted that the compromise agreement will provide for this valuable and effective program to continue to be available to meet the needs of Vietnam veterans.

INDEPENDENT LIVING SERVICES PROGRAM

In addition, section 333 of the compromise agreement embodies an agreement which the committees reached on an extension of the VA's program for independent living services for severely disabled veterans receiving assistance under chapter 31. The compromise agreement would extend the authority for this potentially important and valuable program for 3 fiscal years in lieu of making the program permanent as I had proposed in section 12 of S. 2388, the proposed Veterans' Administration Health-Care Programs Extension and Improvements Act of 1986, which I introduced on April 30, 1986. In addition, the compromise agreement would eliminate the characterization of the program as a pilot. On September 30, I also discussed this program and my proposal at length, and my remarks on this issue appear at page 27311 of the CONGRESSIONAL RECORD for the day.

This program can play an important role in the lives of seriously disabled veterans in terms of assisting them in achieving maximum independence, and I am pleased that, as a result of the provisions in the compromise agreement, the Administrator will continue to be able to provide this type of service and assistance to seriously disabled service-connected veterans.

VA HOUSING ISSUES

INTER-FUND TRANSFER AUTHORITY

Section 405 of the compromise agreement is derived from section 306 of S. 1887 which was based on my suggestion to provide permanent authority to transfer funds from the Direct Loan Revolving Fund [DLRF] to the Loan Guaranty Revolving Fund [LGRF].

From its inception in 1944 until 1961, the VA's Home-loan guaranty program was funded through appropriations (totalling $730 million) to the VA's readjustment benefits account. In 1962, the LGRF was established for the dual purposes of paying program costs and receiving program collections. In only 6 of the years since 1962 has the LGRF operated at a surplus. In 11 of the years since 1962, infusions of outside funds were necessary, and until fiscal year 1984 these were achieved through transfers from the unobligated balances of the DLRF. The total amount of such transfers exceeded $1.8 billion.

The DLRF was originally established in 1950 to provide direct VA loans to veterans living in remote, rural areas where commercial lending sources were not available. Because the direct loan program charges interest on its loans, in much the same fashion as a private mortgage lender, it eventually began to accumulate a surplus. The program was closed, effective in March 1981, for all loans other than those made in connection with specially adapted housing grants to severely disabled veterans because private credit had become generally available in all areas of the country. Accordingly, the number of new direct loans made by the VA has declined from a high of nearly 28,000 in fiscal year 1960 to a projected total of 9 in the current fiscal year.

Concurrently, the VA has been implementing an Administration-wide policy of selling Federal assets, such as the VA's portfolio of outstanding direct loans, wherever feasible, to reduce the budget deficit. Nearly the entire direct loan portfolio has now been sold. Thus, substantial unobligatged balances in the DLRF are not likely to be available for transfer to the LGRF in the future.

In 1985, the administration proposed, in connection with its fiscal year 1986 budget submission, that the authority to transfer funds from the DLRF to the LGRF—an authority historically included in annual; appropriations measures—not be provided in the future "so as to reflect the true cost of the guaranty program".

I do not believe that eliminating the VA's authority to transfer funds from the DLRF to the LGRF is necessary in order for the true cost of the VA's Home-Loan Guaranty Program to be made known or properly assessed. Ac-

cording to the VA's fiscal year 1987 budget, the VA plans to transfer $125 million fom the DLRF to the LGRF in fiscal year 1987 and there is, even with this transfer, projected to be an unobligated balance in the DLRF at the end of fiscal year 1987 of slightly more than $40 million. Since these funds are future unobligated balances would seem not to be needed to support the direct loan program, I belive the Administrator should have the flexibility to transfer funds to the LGRF to the extent that the funds are not needed for the direct loan program.

Fortunately, the HUD-Independent Agencies Appropriations Act for Fiscal Year 1986, enacted as Public Law 99-160, included the transfer authority, as do the House and Senate versions of this year's VA appropriations legislation, H.R. 5315, and section 101(g) of House Joint Resolution 738, the fiscal year 1987 continuing resolution. However, in order to ensure that this authority be withheld, the compromise agreement would make the authority permanent.

VA HOME-LOAN GUARANTY INCREASE

Mr. President, I deeply regret that the compromise agreement does not include provisions derived from S. 9, the proposed "Veterans' Administration Housing Program Amendments of 1985," which was introduced on my behalf on January 3, 1985, and which is cosponsored by Senator DECONCINI, to increase, from $27,500 to $35,000, the maximum VA home-loan guaranty. Based on my proposal, as well as a proposal made by the chairman of the committee, the Senate approved an increase in the guaranty to $33,500 in section 303 of S. 1887. This would have been the first increase in the guaranty in over 5 years. Unfortunately, despite my best efforts to persuade the House of the merit of this proposal, the House would not agree to it and it is not included in the compromise agreement.

VA ADMINISTRATIVE REORGANIZATIONS

Section 501 of the compromise agreement which is derived from section 501 of S. 1887—which in turn is derived from S. 1397, the proposed "Veterans' Administration Reorganization Act of 1985," which I introduced on June 27 1985, and which is cosponsored by Senators MATSUNAGA, DECONCINI, and ROCKEFELLER—would provide necessary clarification in section 210(b)(2) of title 38 regarding the detailed plan and justification that the VA is required to provide to Congress with respect to certain substantial proposed reorganizations in advance of implementing them.

Mr. President, as Members may recall, on February 1, 1985, the Administrator submitted to the committee letters giving notice of the VA's decision to close down a wide range of VA activities at its 59 Department of Veterans' Benefits regional offices and to consolidate those activities into 3 processing centers. The Administrator stated that his letters were submitted in accordance with section 210(b)(2). That section provides, in part, that the VA may not in any fiscal year implement a reorganization involving a more than 10-percent reduction in the number of full-time equivalent employees at any VA facility with more than 25 employees unless the Administrator, not later than the date on which the President submits the budget for that year, provides "a report containing a detailed plan and justification for the reorganization."

This proposal and the lack of detail in the letter raised questions—many of which still remain unanswered—regarding the impact of the proposed consolidation on the furnishing of various types of benefits and services to veterans and their dependents as well as on the employees affected. Also, Mr. President, the opinion was expressed in both the Senate and the House—by myself and the chairman and ranking minority member of the House Committee on Veterans' Affairs—that the February letter was so lacking in detail as not to constitute a valid section 210(b)(2) "detailed plan and justification." In an undated opinion—issued in 1985—addressing this issue, the Acting General Counsel of the Veterans' Administration declined to state whether it did or did not.

Thus, Mr. President, the provisions of section 501 of the compromise agreement would define precisely—in almost exactly the way S. 1397 proposed—what type of information a detailed plan and justification for a proposed reorganization must contain.

PARKING FACILITIES AT VA MEDICAL CENTERS

With respect to the provisions of section 221 of the compromise agreement relating to parking facilities at VA Medical Centers, I wish to note that these provisions are already well on the way to contributing to producing a satisfactory solution to a very difficult situation at a number of VA facilities. Since the time when Congress appropriated the funds in July 1983 for construction of a 120-bed nursing home care unit and parking structure at the VA's Medical Center in San Francisco, construction of that project has been stymied by an impasse over VA parking structures that has developed in the appropriation process. This has prevented a dreadful parking problem at that facility from being resolved through the construction of an adequate parking garage. In addition, much-needed parking facilities proposed by the VA for VA Medical Centers in Durham, NC, Syracuse, NY, and Philadelphia, PA—for which the VA sought funding in fiscal year 1986—were denied by the Appropriations Committees last year.

The approach proposed in the compromise agreement represents our efforts to resolve this very complex and controversial problem in an equitable and effective fashion. Specifically, the bill would provide that future funding for the construction or acquisition of parking facilities would be drawn from a revolving fund, which has been authorized by law since 1979 but not yet established. Fees that would be required to be collected at medical centers with new parking garages built or acquired with revolving fund money, and other parking fees that the Administrator would continue to have the discretion to charge at other facilities, would be deposited in the revolving fund. As is the case under current law, no fees would be permitted to be charged for a vehicle being used for the transportation of a veteran patient; in addition, no fees would be permitted for vehicles transporting volunteers who work at VA facilities.

Mr. President, I wish to point out that, as discussed in the explanatory statement which accompanies this measure, visitors to VA medical centers would not be exempt from parking fees. However, it is our intention that the Administrator should, when establishing the fees to be charged, take into account special circumstances, such as frequent visits to long-term patients, as well as the desirability of encouraging employee car/van pools, varying employee pay levels, and night and weekend parking.

Mr. President, in this regard, I am delighted to note that both bodies have approved—the House in H.R. 5313, the HUD-Independent Agencies Appropriation Act, 1987, as passed by the House on September 12, 1986, and the Senate in House Joint Resolution 738, the fiscal year 1987 continuing resolution as passed by the Senate on October 3 incorporating the Senate Appropriations Committee's reported version of H.R. 5313—an appropriation of $26 million for the revolving fund. That appropriation, combined with a provision in both measures for transferring from the VA's major construction account to the revolving fund the $4 million previously appropriated, for fiscal year 1984, for the construction of a parking facility in San Francisco, would give the VA a $30 million fund from which to draw to begin constructing parking garages designed to ease intolerable parking situations at various medical centers. I also note that the Senate measure includes a provision, which I had urged the committee to adopt, authorizing the Administrator to increase the revolving-fund appropriation by up to 10 percent by means of transfer from the VA's major or minor construction accounts.

Both the House and Senate Appropriations Committees included in their committee reports—House Report No. 99-731, page 64, and Senate Report

No. 487, page 95—a statement of their expectation that the San Francisco parking garage will be constructed from the new parking facility revolving fund. This construction project should be able to begin in fiscal year 1987. I will be urging that a sufficient amount in the revolving fund be allocated for the project—either from the $30 million expected to be placed in the fund by the appropriations measure or by an additional transfer from the construction accounts if the discretionary transfer provision is enacted—to enable the VA to proceed with the urgently needed 4-deck structure rather than the 2-deck structure that the VA so inadvisably settled for in its initial proposal in 1983.

MORATORIUM ON EXCESSING OF VA PROPERTIES IN SOUTHERN CALIFORNIA

Mr. President, I want to note my delight with the provisions of section 234 of the compromise agreement which would impose a moratorium, through June 1988, on the excessing of certain VA properties in southern California. This is an issue on which I have worked long and hard, and, although I am not completely happy with the outcome, it is a satisfactory one.

When the Senate originally passed S. 2442/H.R. 5299 on September 30, I noted in my statement appearing on page S 14361 of the CONGRESSIONAL RECORD, that when the committee marked up that legislation on June 26, I had proposed an amendment dealing with the administration's ill-advised proposal to excess certain lands at the VA medical centers in southern California—Sepulveda and West Los Angeles. My amendment was derived from S. 2141, which I had introduced on March 5, 1986, with Senators MATSUNAGA, DECONCINI, MITCHELL, and ROCKEFELLER. It would have prohibited the Administrator from taking any action to declare as excess to the needs of the VA, to transfer to another Federal agency, or otherwise to relinquish any VA interest in, any portion of those parcels of land. My amendment failed in committee on a 5-to-5 vote.

Mr. President, for reasons that I outlined in detail during the floor debate on S. 2422/H.R. 5299 and that I will not reiterate now, I have not been able to identify any significant gain to be achieved by supporting the administration's proposal beyond it resulting, at some distant point in time, in possibly increased revenues to the Federal Government. And it seems clear that the proceeds of any sales—especially in the case of West Los Angeles, where tremendous barriers to development exist—would be far, far less than the administration has projected. This possibility of revenue is far outweighed by the community and veteran organization opposition, the depressed value and condition of the land, its current open space zoning, and the fact that the administration has not demonstrated convincingly that the land could not be used for such purposes as a State nursing home, veterans' recreation, cemetery expansion, or sharing with medical schools.

Mr. President, although the Senate committee failed to approve my amendment regarding this land excessing proposal, the House approved a provision in H.R. 4623 to prohibit this land excessing and sale from occurring. After extensive discussions about this issue involving myself and the chairman of the Veterans' Affairs Committee in the other body, Mr. MONTGOMERY, who authored the House-passed prohibition, and our committee chairman in the Senate, Mr. MURKOWSKI, we were able to develop a compromise to prohibit the VA from proceeding with its plan to dispose of these lands.

Basically, Mr. President, section 234 of the compromise agreement would prohibit the Administrator from taking any action before January 1, 1988, in connection with declaring the properties as excess, or with transferring them, relinquishing the VA's interest in them, or disposing of them, and would nullify any such action taken prior to that date.

Under the compromise agreement, the VA would thus be permitted to do nothing to dispose of these properties until July 1988 since, by rendering without effect any actions taken prior to January 1, 1988, in that connection, the compromise agreement would nullify the February 5, 1986, notice submitted by the Administrator under section 5022(a)(2) of title 38 and the June 7, 1986, letters to the committees modifying that notice. Under current law, section 5022(a)(2) of title 38, VA land cannot be declared excess and transferred to GSA until the expiration of a 180-day period beginning on the date that the VA submits to the Veterans' Affairs Committee a report of the facts concerning the proposed transaction. Thus, if the VA should wish to propose the excessing of any of these approximately 155 acres in the future, the earliest on which it could submit a new section 5022(a)(2) notice would be January 1, 1988.

Although I and the other members of the southern California congressional delegation, of course, had wanted a total prohibition on the sale of the land, the Senate committee was evenly divided on that. The compromise agreement breaks that deadlock. It also ensures that this issue won't again threaten the communities involved until the second half of 1988, at the earliest.

This is good news for California's veterans, Los Angeles commuters, West Los Angeles and Sepulvada neighbors and children, and the city and county of Los Angeles.

In 1988, Mr. President, if the administration is still persisting in this ill-conceived and shortsighted proposal, we will again do battle.

EXEMPTIONS FROM SEQUESTRATION

Mr. President, section 601 of the compromise agreement contains provisions derived from section 202 of H.R. 5299 as passed by the House on August 4, 1986, and similar to provisions in S. 2885 as reported by our committee on September 27, 1986, to exempt certain VA benefits from across-the-board sequestration reductions under the Gramm-Rudman law, part C of title II of Public Law 99-177, or similar budget-reduction legislation.

First VA benefits that are provided on the basis of a service-connected death or disability—other than compensation and DIC, which section 255(b) of Gramm-Rudman has already exempted—would be made exempt from sequestration. These programs are specially adapted housing grants and mortgage protection life insurance, burial benefits for those who die as a result of service-connected disability, rehabilitation services and assistance, automobile and adaptive-equipment benefits, and educational assistance for the dependents and survivors of certain service-connected disabled veterans. However, the exemptions would be limited to just 1 year, fiscal year 1987, in the cases of the VA's rehabilitation program and educational assistance for the dependents and survivors.

The exemptions for service-connected benefits are fully consistent with the exemptions Congress has already provided for compensation and for DIC because of the high priority that we accord to benefits for service-connected disabled veterans and their dependents. In the cases of the rehabilitation program and dependents' and survivors' educational assistance, the fiscal year 1987 exemptions will afford Congress the opportunity to consider pursuing further extensions next year.

Second, the compromise agreement would provide permanent exemptions for two self-sustaining VA revolving funds—the Special Therapeutic and Rehabilitative Activities Fund and the Canteen Service Revolving Fund. Sequestration of these funds, for which no appropriations are made, achieves no deficit reduction and or any other useful purpose. Even the administration supports these two exemptions.

Third, the agreement would exempt insurance policy loans made to veterans under the terms of their VA-administered policies. As in the case of the revolving funds, sequestration of these so-called cash-value or reserve-value loans does not contribute to the deficit-reduction goal of the Gramm-Rudman legislation. Moreover, it has long been my position that the exemption in section 255(g)(2) of that law for

the "[p]rior legal obligations of the Government" under certain budget accounts, expressly including the seven applicable VA insurance accounts, applies to the VA's preexisting obligations under these insurance policies. Accordingly, I joined with the distinguished chairman of our committee, Mr. MURKOWSKI, and chairman and ranking minority member of the House Committee on Veterans' Affairs, Messrs. MONTGOMERY and HAMMERSCHMIDT, in sending to the Comptroller General an April 15 letter requesting that he review his determination that these loans are required to be sequestered. In his July 29 response, the Comptroller General noted that the matter was in litigation, in a case that the Paralyzed Veterans of America brought challenging sequestration of the loans, and, for that reason, declined to state his views.

However, the Comptroller General advised that he asked the Directors of the Office of Management and Budget and the Congressional Budget Office for their views on the matter. The Comptroller General received a June 4 response from the OMB General Counsel, who took the position that Gramm-Rudman required the President's sequestration order to be consistent with the Comptroller General's report and made no provision for the Comptroller General or the President to make any corrections at that point. I am unaware of any support in the Gramm-Rudman legislative history for the rather amazing notion implicit in the OMB General Counsel's letter that Congress intended to confer on the Comptroller General the power, by misinterpreting the law, to force the President to violate the law.

The CBO General Counsel, in his May 29 response, stated that he agreed with the VA General Counsel's February 14 opinion—which was subsequently withdrawn—that the insurance policy loans should not have been sequestered.

Mr. President, copies of all of the foregoing correspondence were printed in the report accompanying S. 1885, Senate Report No. 99-494.

The disparate views of OMB and CBO are reflected in their August 20, 1986, Gramm-Rudman joint report for fiscal year 1987. In that report, OMB proposed sequestration of the loans and CBO proposed that they be considered exempt.

I believe that it clearly is time to end this dispute. It is serving no one's interest, neither taxpayers, who realize no savings from sequestration of the loans, nor veteran policyholders, who are precluded from obtaining the loans they bargained for in purchasing the insurance and paying their premiums. Litigation over these issues is unlikely to produce a swift resolution and could take years. Thus, I believe that the proposed exemption should be enacted.

Regarding the VA home loan guaranty program, for which the House proposed a permanent exemption in H.R. 5299, I note that in negotiations with the House we reached a tentative agreement on a 1-year exemption for VA home loan guaranties. However, in light of the strong opposition of the Senate Budget Committee to this particular exemption, it was agreed to delete this exemption in order to ensure prompt action on this important legislation before the end of the 99th Congress.

In the absence of the exemption, I am pleased to note that the compromise agreement includes the Senate provision I had proposed requiring monthly VA reports on the level of loan guaranty activity during any fiscal year in which sequestration occurs. These reports would enable the committees to monitor the program and, if necessary, recommend in a timely fashion legislation to prevent interruption of the issuance of guaranties—as almost happened this past fiscal year—that might result from the projections of loan guaranty activity levels on which the sequestration is based turning out to be too low.

Mr. President, as my colleagues are aware, twice during the past 7 months it was necessary for Congress hastily to pass legislation—Public Law 99-255, enacted on March 7, and Public Law 99-322, enacted on May 23—to raise the sequestration cap on VA loan guaranty commitments because accurate up-to-date information regarding the program had not been available. The reporting requirement in the compromise agreement is designed to ensure that the VA maintains the new monitoring system that it implemented last spring and, when a sequestration is in effect, that it share with the committees the information developed by that system and provide them with projections based on the most current data.

The compromise also includes a House provision modifying the manner in which sequestration reductions in certain nonexempt entitlement payments, specifically GI Bill education assistance and non-service-connected burial benefits, would be made. Instead of the reductions being made in all payments made while a sequester order is in effect, as is the case under current law, and as occurred in the fiscal year 1986 sequestration, the reductions would be made in payments for training pursued and for deaths that occur while the order is in effect.

In this connection, I am pleased that, on my initiative, the compromise contains a provision that would prevent the foregoing provision from requiring larger cuts in the veterans' benefit payments involved than a sequester order would impose in other nondefense programs. Thus, the compromise would provide for the VA to be credited, in the implementation of a sequestration, with the amounts of the savings it achieves through the reductions it made, by virtue of the House provision, in payments made after the end of the sequestration period for training pursued or deaths occurring during that period.

Finally, Mr. President, I also note that the compromise agreement contains the provision, derived from similar provisions in both the House bill, H.R. 5299, and the Senate Committee bill, S. 2885, requiring that, where exempted benefits are paid from an account out of which nonexempted benefits also are paid, amounts for the payment of exempted benefits be excluded in the computation of the amount to be sequestered from the account.

To illustrate, the compromise agreement proposes exemptions for benefits that comprise approximately one quarter of the funds in the VA's readjustment benefits account. Simply exempting those benefits from sequestration could have the effect, in the event of sequestration, of requiring that funds in the account for nonexempt benefits be cut by a greater percentage in order for the percentage cut in the overall account to be the same as is generally applied to other nondefense accounts. If the benefits in this account that are proposed for exemption had been exempt in fiscal year 1986, in order for the overall reduction in the account to have been at the same percentage, 4.3 percent, as the general reduction required by Gramm-Rudman in nondefense accounts, the nonexempt benefits in the account would have been required to be reduced by approximately 5.8 percent, or about $10 million more than they actually were, under the fiscal year 1986 sequestration. The compromise agreement would avoid such an inequitable result.

CONCLUSION

Mr. President, in closing I want to express my thanks and deep appreciation to the distinguished chairman and ranking minority member of the House Committee on Veterans' Affairs, Mr. MONTGOMERY and Mr. HAMMERSCHMIDT, as well as the chairman of the Senate committee, Mr. MURKOWSKI, for their cooperation and courtesies.

I want to especially at this time also to thank the minority staff of the Veterans' Affairs Committee, Bill Brew, Babette Polzer, Nancy Billica, Charlotte Hughes, Ingrid Post, Ed Scott, and Jon Steinberg, for their fine work on this bill over the last weeks, months, and year. My gratitude also goes to the Senate majority staff, Cindy Alpert, Chris Yoder, Brian Bonnet, Lisa Moore, Julie Susman,

and Tony Principi, for their hard work and cooperation on this measure.

I also wish to note the as always fine contributions of the staff of the House Committee on Veterans' Affairs, particularly, Jack McDonell, Vic Raymond, Charlie Peckarsky, Arnold Moon, Jill Cochran, Kingston Smith, Pat Ryan, Mack Fleming, and Rufus Wilson, in working with us to reach agreement on this very complicated omnibus measure.

Mr. President, I am delighted that we have been able, once again, to develop a truly bipartisan measure that will fulfill our commitment to ensure that compensation and DIC benefits for this Nation's service-connected-disabled veterans and the survivors of those who have died from service-connected causes are protected from the effects of inflation, that will help to maintain and improve the quality and efficiency of health-care services provided to eligible veterans, and that will provide needed safeguards for and improvements in VA programs.

Mr. President, I urge the Senate to approve unanimously the pending legislation.

Mr. DECONCINI. Mr. President, as a member of the Senate Veterans Affairs Committee which helped to draft this legislation, I rise in strong support of the conference report on H.R. 5299, the Veterans Benefits Improvement and Health-Care Authorization Act of 1986. I am particularly pleased that this omnibus package includes many of the provision of legislation which I introduced in May, S. 2423, to exempt certain VA programs for disabled veterans from future sequestration under the Gramm-Rudman-Hollings Act. I was disappointed, however, that the VA Home Loan Guaranty Program was not included as one of the exemptions in this bill. It is my understanding that there had been tentative agreement to include the VA Home Loan Guaranty Program among the exemptions to Gramm-Rudman-Hollings for 1 year. However, due to the strong opposition of the Senate Budget Committee, that provision was dropped in order to insure expeditious passage of this legislation. I understand the position of the Senate Budget Committee that any exemptions to Gramm-Rudman-Hollings decreases the size of the sequester pot thereby increasing the sequester amount for the remaining programs, projects and activities subject to sequester. However, subjecting the VA Home Loan Guaranty Program to sequester does not make good sense to this Senator. The loan origination fee for VA-guaranteed loans is 1 percent of the loan amount. If the amount of loan activity is capped, the origination fee would be lost for loan activity which would obviously occur absent the cap. Thus, in fiscal year 1987, if the baseline estimate for VA-guaranteed loans were $20 billion, a 15-percent sequestration applied to VA-guaranteed loans would mean a $3 billion reduction in loans and, as a result, a nearly $30 million increase in the deficit. If we are trying to reduce the budget deficit, subjecting the VA Home Loan Guaranty Program to sequester runs counter to that objective.

As my colleagues will recall, Congress has been called upon twice this year to raise the loan ceiling for this program so the VA could continue to process loans for veterans. Should we reach the loan ceiling again next year, we will, I am certain, act legislatively to increase that level in an expeditious manner. It simply does not make good sense to this Senator to continually reinvent the wheel. The veterans of this country and the work of Congress would be better served by granting this program an exemption from Gramm-Rudman-Hollings.

Despite my strong feelings on this issue, there were simply too many other provisions in the bill which are essential for veterans, including a cost of living increase for disabled veterans and numerous improvements in health care services, to delay its enactment.

There are two other provisions included in this legislation which are of great interest to Arizona Veterans. Last year, at the request of employees at the Phoenix VA Medical Center, I introduced legislation to rename that facility as the Carl T. Hayden VA Medical Center. The employees believed that it was important for the center to have an identity of which they could all be proud. As I am sure you are all aware, Carl Hayden was Arizona's first Representative to Congress and served in Congress for close to 50 years. As chairman of the Senate Appropriations Committee for 14 years, he played a crucial role in the establishment of and funding for the Phoenix VA Medical Center. I can think of no finer name to associate with the Phoenix VA Medical Center than of Carl Hayden and am pleased that my proposal has been incorporated in this bill.

Additionally, this bill includes a provision authorizing the establishment of 10 new national cemeteries in areas "most in need," including Arizona. There is probably no issue on which the veterans of Arizona are more united than the establishment of a national cemetery in our State, I am gratified that this bill puts us one step closer to that goal.

Mr. President, I would like to thank the chairmen and ranking minority members of the Senate and House Committees on Veterans Affairs, Senators CRANSTON and MURKOWSKI and Representatives MONTGOMERY and HAMMERSCHMIDT for the hours of time that they and their staffs have spent in fashioning this outstanding bill. Their dedication to improving and enhancing benefits for the veterans of this Nation deserves our recognition and thanks.

Mr. COCHRAN. Mr. President, I move to concur in the House amendment.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Mississippi.

The motion was agreed to.

Mr. COCHRAN. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. MELCHER. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

CONTRACTS FOR CERTAIN LEGAL SERVICES

Mr. COCHRAN. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 209.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 209) entitled "An Act to amend chapter 37 of title 31, United States Code, to authorize contracts retaining private counsel to furnish legal services in the case of indebtedness owed the United States", do pass with the following amendments:

Strike out all after the enacting clause, and insert:

SECTION 1. CONTRACTS FOR CERTAIN LEGAL SERVICES.

Section 3718 of title 31, United States Code, is amended—

(1) by redesignating subsections (b), (c), and (d) as subsections (d), (e), and (f), respectively;

(2) in subsection (d), as redesignated by paragraph (1), by inserting "or (b)" after "subsection (a)";

(3) in subsection (e), as redesignated by paragraph (1)—

(A) by striking out "(b)" and inserting in lieu thereof "(d)"; and

(B) by inserting "or (b)" after "(a)"; and

(4) by inserting after subsection (a) the following new subsections:

"(b)(1)(A) The Attorney General may make contracts retaining private counsel to furnish legal services, including representation in negotiation, compromise, settlement, and litigation, in the case of any claim of indebtedness owed the United States. Each such contract shall include such terms and conditions as the Attorney General considers necessary and appropriate, including a provision specifying the amount of the fee to be paid to the private counsel under such contract or the method for calculating that fee. The amount of the fee payable for legal services furnished under any such contract may not exceed the fee that counsel engaged in the private practice of law in the area or areas which the legal services are furnished typically charge clients for furnishing legal services in the collection of claims of indebtedness, as determined by the Attorney General, considering the amount, age, and nature of the indebtedness and whether the debtor is an individual or a business entity. If the Attorney General makes a contract for legal services to be fur-

nished in any judicial district of the United States under the first sentence of this paragraph, the Attorney General shall use his best efforts to obtain, from among attorneys regularly engaged in the private practice of law in such district, at least four such contracts for legal services with private individuals or firms in such district. Nothing in this subparagraph shall relieve the Attorney General of the competition requirements set forth in title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 and following).

"(B) The Attorney General shall use his best efforts to enter into contracts under this paragraph with law firms owned and controlled by socially and economically disadvantaged individuals, so as to enable each agency to comply with paragraph (3).

"(2) The head of an executive or legislative agency may, subject to the approval of the Attorney General, refer to a private counsel retained under paragraph (1) of this subsection claims of indebtedness owed the United States arising out of activities of that agency.

"(3) Each agency shall use its best efforts to assure that not less than 10 percent of the amounts of all claims referred to private counsel by that agency under paragraph (2) are referred to law firms owned and controlled by socially and economically disadvantaged individuals. For purposes of this paragraph—

"(A) the term 'law firm owned and controlled by socially and economically disadvantaged individuals' means a law firm that meets the requirements set forth in clauses (i) and (ii) of section 8(d)(3)(C) of the Small Business Act (15 U.S.C. 637(d)(3)(C) (i) and (ii)) and regulations issued under those clauses; and

"(B) 'socially and economically disadvantaged individuals' shall be presumed to include these groups and individuals described in the last paragraph of section 8(d)(3)(C) of the Small Business Act.

"(4) Notwithstanding section 516, 518(b), 519, and 547(2) of title 28, a private counsel retained under paragraph (1) of this subsection may represent the United States in litigation in connection with legal services furnished pursuant to the contract entered into with that counsel under paragraph (1) of this subsection.

"(5) As contract made with a private counsel under paragraph (1) of this subsection shall include—

"(A) a provision permitting the Attorney General to terminate either the contract or the private counsel's representation of the United States in particular cases if the Attorney General finds that such action is for the convenience of the Government;

"(B) a provision stating that the head of the executive or legislative agency which refers a claim under the contract retains the authority to resolve a dispute regarding the claim, to compromise the claim, or to terminate a collection action on the claim; and

"(C) a provision requiring the private counsel to transmit monthly to the Attorney General and the head of the executive or legislative agency referring a claim under the contract a report on the services relating to the claim rendered under the contract during the month and the progress made during the month in collecting the claim under the contract.

"(6) Notwithstanding the fourth sentence of section 803(6) of the Fair Debt Collection Practices Act (15 U.S.C. 1692a(6)), a private counsel performing legal services pursuant to a contract made under paragraph (1) of this subsection shall be considered to be a debt collector for the purposes of such Act.

"(7) Any counterclaim filed in any action to recover indebtedness owed the United States which is brought on behalf of the United States by private counsel retained under this subsection may not be asserted unless the counterclaim is served directly on the Attorney General or the United States Attorney for the judicial district in which, or embracing the place in which, the action is brought. Such service shall be made in accordance with the rules of procedure of the court in which the act is brought.

"(c) The Attorney General shall transmit to the Congress an annual report on the activities of the Department of Justice to recover indebtedness owed the United States which was referred to the Department of Justice for collection. Each such report shall include a list, by agency, of—

"(1) the total number and amounts of claims which were referred for legal services to the Department of Justice and to private counsel under subsection (b) during the 1-year period covered by the report;

"(2) the total number and amount of those claims referred for legal services to the Department of Justice which were collected or were not collected or otherwise resolved during the 1-year period covered by the report; and

"(3) the total number and amount of those claims referred for legal services to private counsel under subsection (b)—

"(A) which were collected or were not collected or otherwise resolved during the 1-year period covered by the report;

"(B) which were not collected or otherwise resolved under a contract terminated by the Attorney General during the 1-year period covered by the report; and

"(C) on which the Attorney General terminated the private counsel's representation during the 1-year period covered by the report without terminating the contract with the private counsel under which the claims were referred.".

SEC. 2. REPORT BY ATTORNEY GENERAL.

Not later than 180 days after the date of the enactment of this Act, the Attorney General of the United States shall transmit to the Congress a report on the actions taken under section 3718(b) of title 31, United States Code (as added by section 1 of this Act).

SEC. 3. PILOT PROGRAM.

The Attorney General shall carry out subsections (b) and (c) of section 3718 of title 31, United States Code (as added by section 1 of this Act), through a pilot program in each of at least 5 and not more than 10 judicial districts selected by the Attorney General.

SEC. 4. REGULATIONS.

The Attorney General shall issue regulations to carry out this Act and the amendments made by section 1 of this Act. The Attorney General shall submit the regulations to the Congress at least 60 days before they become effective.

SEC. 5. TERMINATION.

This Act and the amendments made by section 1 of this Act shall be in effect for a period of three years, beginning on the date on which regulations become effective under section 4.

SEC. 6. AUDIT BY COMPTROLLER GENERAL.

(a) CONTENTS OF AUDIT.—The Comptroller General of the United States shall, at the end of the 3-year period referred to in section 5, conduct an audit of the actions of the Attorney General under subsection (b) of section 3718 of title 31, United States Code (as added by section 1 of this Act), under the pilot program referred to in section 3. The Comptroller General shall determine the extent of the competition among private counsel to obtain contracts awarded under such subsection, the reasonableness of the fees provided in such contracts, the diligence and efforts of the Attorney General to retain private counsel in accordance with the provisions of such subsection, and the results of the debt collection efforts of private counsel retained under such contracts.

(b) REPORT TO CONGRESS.—After completing the audit under subsection (a), the Comptroller General shall transmit to the Congress a report on the findings and conclusions resulting from the audit.

Amend the title so as to read: "An Act to amend section 3718 of title 31, United States Code, to authorize contracts retaining private counsel to furnish legal services in the case of indebtedness owed the United States.".

Mr. COCHRAN. Mr. President, I am pleased to support final passage of S. 209, the Federal Debt Recovery Act, which was passed with amendments by the House of Representatives on Monday, September 29.

Earlier this year, the Senate approved and sent S. 209 to the House for its consideration following hearings held before the Subcommittee on Energy, Nuclear Proliferation, and Government Processes, which I chair.

Enactment of this legislation, which authorizes the Department of Justice to enter into contracts with private counsel to provide legal services in connection with the collection of nontax delinquent debt, reflects the continuing commitment of the Congress and the administration to reduce the staggering amount of delinquent debt owed to the U.S. Government and the taxpayers.

Under this legislation, private attorneys would be retained on a contingency fee basis or other fee basis to litigate and collect nontax debts owed to the Federal Government, and they would be paid from the proceeds collected. If no moneys are collected in the case, no fee would be paid. This proposal to facilitate the collection of delinquent debt will require no appropriation from the Treasury to implement it. Since the debt that would be assigned to these attorneys is currently going uncollected, any amounts collected would be additional revenue.

I have reviewed the House amendments to the bill and believe that the changes that have been suggested by the House Judiciary Committee are acceptable. Let me mention two of these changes.

First, instead of the broad authority of the Senate-passed bill, S. 209 now establishes a 3-year pilot program in 5 to 10 judicial districts. The Justice Department is required to use its best efforts to obtain at least four contracts for legal services in each district where

this authority is used and to retain law firms owned by socially and economically disadvantaged individuals. Second, each agency referring claims to private counsel is directed to use its best efforts to assure that not less than 10 percent of the claims are referred to law firms owned and controlled by socially and economically disadvantaged individuals.

I would add that nothing in this bill is intended to detract from the services currently provided by third-party collectors pursuant to contracts with the Government to provide debt collection services authorized under the provisions of the Debt Collection Act of 1982. Debt collection services may employ all normal collection procedures to collect debts owed to the Government as long as they are in conformance with all Federal and State laws and regulations and with contract provisions.

Mr. President, this legislation will add teeth to the collection process and will supplement the work being done now by collection agencies. Collection agencies will be able to improve their collections for the Government by more effectively using the threat of litigation. The Department of Justice will be able to reduce its backlog of pending debt cases. It is an important initiative which can greatly enhance the Federal Government's ability to recover debts owed to the United States.

Mr. ROTH. Mr. President, I am pleased to add my support to final passage of S. 209, the Debt Recovery Act of 1986. This legislation will make it possible for the Justice Department to contract with private attorneys to aid in the recovery of debts owed the United States. I want to congratulate my colleagues, Senators AL D'AMATO and THAD COCHRAN, who have worked so diligently to secure enactment of this important bill.

The amount of delinquent debt owed the United States is staggering. The Office of Management and Budget reported earlier this year that nearly $20 billion in nontax delinquent debts were owed to the United States. Of that amount, more than $6 billion was more than 6 years old. Our failure to recover these amounts on a timely basis seriously impairs the Government's chances of ever collecting. We cannot continue to permit these debts to go uncollected with annual deficits exceeding $200 billion and a national debt of $2 trillion. We must recover every cent that is owed to the United States from those who have the ability to pay.

This bill must be considered only a first step. It authorizes only a pilot program for a limited period in only a portion of the total judicial districts. Assuming all goes well—and we will have a General Accounting Office report evaluating this experiment—we will need to move expeditiously to make the program both permanent and nationwide. My Governmental Affairs Committee has also reported another major initiative in title V of the Federal Management Improvement and Cost Control Act to strengthen our debt collection efforts. The Senate should act promptly on this legislation as well.

Mr. President, the efficient and effective management of government is a foremost concern to Senator COCHRAN, myself, and other members of the Governmental Affairs Committee. Debt collection has been high on our agenda for the past several years. This bill represents one more small but significant step toward that goal, and I urge its approval by the Senate.

Mr. D'AMATO. Mr. President, I am delighted by the action of the House of Representatives in passing S. 209 on September 29, 1986. Senate approval of S. 209, as amended in the House, and its subsequent enactment fulfills my commitment to this legislation that extended throughout this and the preceding Congress.

S. 209 passed the Senate on March 19, 1986. It authorizes the Attorney General to enter into contracts with private sector attorneys to represent the heads of Federal agencies in the collection of nontax indebtedness owed the United States.

The Department of Justice is generally responsible for conducting our Government's litigation, including Federal debt collection. However, as of July 31, 1985, there were 92,978 delinquent debt cases pending at the Department of Justice, 16,581—18 percent—of which were over 4 years old. As the Senate Report—99-256—which accompanied my bill reads:

> At a time when drug trafficking and violent crime continue to increase dramatically, the limited resources of the Justice Department should be directed to those priority cases. S. 209 will authorize the Department of Justice to utilize the experience and expertise available in the private sector to litigate debt cases and significantly improve the Government's ability to cost-effectively collect delinquent debts.

This legislation makes available to the Government the services of attorneys who have demonstrated competency, experience, and reliability in the handling of collection accounts. Private counsel, moreover, also must have extensive experience with post-judgment remedies and process and have the financial motivation to pursue vigorously the collection of debt.

The need for private counsel to assist the Department of Justice attorneys in debt collection litigation was emphasized by then Assistant Attorney General Paul McGrath when he testified in 1983 before the Senate Subcommittee on Energy, Nuclear Proliferation and Government Processes:

> Short of enormously increasing the size of the U.S. Attorneys' offices, the only viable solution is to retain private firms to handle the overflow of this massive influx of cases.

Enactment of this legislation I have sponsored is particularly timely as we continue the difficult task of reducing the Federal deficit. There is an enormous amount of money owed the United States which will more readily be collected, thereby making it more likely we can achieve those goals without reducing the funding of many very desirable domestic programs designed to support and protect our neediest citizens.

S. 209, which amends and builds on a section of the Debt Collection Act of 1982, 31 U.S.C. 3718, that authorizes the head of a Federal agency to contract with private sector debt collection firms to recover indebtedness owed the United States—makes reference to the fact that contracts between the Attorney General and private counsel may provide for the private counsel to represent the Federal Government in the negotiation, compromise, and settlement of claims. Under this same section of existing law, the head of a Federal agency also can provide in a contract with a debt collection firm for the latter to represent the agency in the prelitigation negotiation, compromise, and settlement of a referred claim and to transfer all the documents related to the claim to private counsel retained by the Attorney General to whom claims have been referred by the Federal agency should legal services be required. Any final settlement of a referred claim, however, remains subject to the approval of the head of the Federal agency that referred the claim.

The involvement of private attorneys in the collection of Federal debt is intended to complement the role of the private sector debt collection firms as provided for by the Debt Collection Act of 1982. Following the enactment of S. 209, recalcitrant debtors will discover that timely litigation will result from unexcused failure to repay their delinquent debt. Once debtors are aware that the Government is intent on litigating to the fullest to recover money owed to it, they can be expected to respond to diligent collection efforts. The following excerpt from the Senate committee report—S. 209—recognizes the continuing need for the Federal Government to utilize all effective collection services and techniques available:

> The authority to refer cases directly to private counsel, subject to the approval of the Attorney General, is not intended to imply that Federal agencies should bypass the use of private collection agencies as provided in Public Law 97-365. Government agencies should increasingly use private collection services, report delinquent debtors to credit reporting bureaus, charge interest, and other credit management tools. Litiga-

tion should be used as a final collection tool after other attempts to collect have failed. All collection activity, from start to finish, must be pursued promptly.

I conclude my remarks by expressing my great appreciation to Senators ROTH and COCHRAN, Representative JIM MOODY, the House sponsor of companion legislation, and to Congressmen GLICKMAN and KINDNESS for their special support of this much needed legislation. I also thank Congressman RODINO for his efforts to improve Federal debt collection.

Mr. President, I urge the immediate passage of S. 209.

Thank you, Mr. President.

Mr. COCHRAN. Mr. President, I move that the Senate concur in the House amendment.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Mississippi.

The motion was agreed to.

Mr. COCHRAN. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. MELCHER. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

SURFACE FREIGHT FORWARDER DEREGULATION ACT

Mr. COCHRAN. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 1124.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 1124) entitled "An Act to amend title 49, United States Code, to reduce regulation of surface freight forwarders, and for other purposes", do pass with the following amendment: Strike out all after the enacting clause, and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Surface Freight Forwarder Deregulation Act of 1986".

SEC. 2. PURPOSE.

This Act is part of the continuing effort by Congress to reduce burdensome and unnecessary government regulations and to ensure the competitiveness and efficacy of transportation services of surface freight forwarders in the United States.

SEC. 3. FINDINGS.

The Congress finds that—

(1) a safe, sound, and competitive surface freight forwarder industry is important to the national transportation system;

(2) the statutes governing Federal regulation of the freight forwarder industry are outdated and must be revised to reflect present and future transportation needs and realities;

(3) protective regulation has resulted in anticompetitive pricing and has restricted the range of price and service options available to shippers;

(4) in order to reduce the uncertainty experienced by the Nation's transportation industries, the Interstate Commerce Commission's remaining responsibilities for the regulation of surface freight forwarders should be eliminated in accordance with this Act; and

(5) legislative and resulting change should be implemented with the least amount of disruption consistent with achieving the reforms enacted.

SEC. 4. DEFINITIONS.

Section 10102 of title 49, United States Code, is amended as follows:

(1) COMMON CARRIER.—In paragraph (4), insert "household goods" before "freight forwarder".

(2) FREIGHT FORWARDER.—In paragraph (9), after and below subparagraph (C), insert the following new sentence: "Such term does not include a person using transportation of an air carrier subject to the Federal Aviation Act of 1958.".

(3) HOUSEHOLD GOODS FREIGHT FORWARDER.—Redesignate paragraphs (12) through (30), and any references thereto, as paragraphs (13) through (31), respectively, and insert after paragraph (11) the following new paragraph:

"(12) 'household goods freight forwarder' means a freight forwarder of one or more of the following items: household goods, unaccompanied baggage, or used automobiles.".

SEC. 5. INTERSTATE COMMERCE COMMISSION ADMINISTRATION.

(a) NOTICE OF REMOVAL OF OPERATING RESTRICTIONS.—Section 10328(b)(2) of title 49, United States Code, is amended by inserting "household goods" before "freight forwarder".

(b) SERVICE OF NOTICE IN COMMISSION PROCEEDINGS.—Section 10329 of title 49, United States Code, is amended—

(1) in subsection (a)(2) by inserting "household goods" before "freight forwarder";

(2) in subsection (c)(3) by inserting "household goods" before "freight forwarder" each place it appears; and

(3) in subsection (d) by inserting "household goods" before "freight forwarder".

SEC. 6. JURISDICTION.

(a) LIMITATION ON JURISDICTION OVER PROCUREMENT OF MOTOR VEHICLE TRANSPORTATION.—Section 10521(a) of title 49, United States Code, is amended by inserting after "transportation" the second place it appears ", except by a freight forwarder (other than a household goods freight forwarder),".

(b) EXEMPT MOTOR VEHICLE TRANSPORTATION.—Section 10523 of title 49, United States Code, is amended—

(1) in subsection (a)(1)(B)(iii) by inserting "household goods" before "freight forwarder";

(2) in subsection (a)(1)(C) by inserting "household goods" before "freight forwarder";

(3) in subsection (a)(2) by inserting "household goods" before "freight forwarder";

(4) in subsection (b)(1)(B)(iv) by inserting "household goods" before "freight forwarder"; and

(5) in subsection (b)(2) by inserting "household goods" before "freight forwarder" each place it appears.

(c) LIMITATION ON GENERAL JURISDICTION OVER FREIGHT FOWARDERS.—Section 10561 of title 49, United States Code, is amended by inserting "household goods" before "freight forwarder" each place it appears.

(d) EXEMPT FREIGHT FORWARDER SERVICE.—(1) Section 10562 of title 49, United States Code, is repealed.

(2) The section analysis of chapter 105 of title 49, United States Code, is amended by striking "10562. Exempt freight forwarder service." and inserting in lieu thereof "10562. Repealed.".

SEC. 7. RATES, TARIFFS, AND VALUATIONS.

(a) AUTHORITY TO ENTER INTO CONTRACTS WITH CERTAIN CARRIERS.—Section 10703(a)(4)(E) of title 49, United States Code, is amended by inserting "household goods" before "freight forwarder".

(b) AUTHORITY OF COMMISSION.—Section 10704 of title 49, United States Code, is amended—

(1) in subsection (b)(1)(C) by inserting "household goods" before "freight forwarder";

(2) in subsection (b)(3) by inserting "household goods" before "freight forwarder" and "freight forwarding, respectively".

(c) RATE AGREEMENTS; ANTI-TRUST LAWS.—Section 10706 of title 49, United States Code, is amended—

(1) in subsection (a)(2)(A) by striking "(c)(1)(B)-(E)" and inserting in lieu thereof "(d)(1)(B)-(E)"; and

(2) in subsection (d)(1)(E) by striking "Freight" and inserting in lieu thereof "Household goods freight".

(d) INVESTIGATION AND SUSPENSION OF RATES.—Section 10708 of title 49, United States Code, is amended—

(1) in subsection (d)(1) by inserting "household goods" before "freight forwarder"; and

(2) in subsection (d)(2) by inserting "household goods" before "before "freight forwarders" each place it appears.

(e) SPECIAL PASSENGER RATES.—Section 10722(d)(2) of title 49, United States Code, is amended by inserting "household goods" before "freight forwarder".

(f) SPECIAL RATES.— Section 10725 of title 49, United States Code, is amended—

(1) in subsection (b) by inserting "household goods" before "freight forwarders"; and

(2) in subsection (c) by inserting "household goods" before "freight forwarder".

(g) RATES AND LIABILITY BASED ON VALUE.—Section 10730 of title 49, United States Code, is amended—

(1) in the last sentence of subsection (a) by inserting "by a household goods freight forwarder" after "Commission" the first place it appears; and

(2) in subsection (b)—

(A) by inserting "or a freight forwarder" after "title" the first place it appears,

(B) by inserting " ,with respect to a motor carrier," after "including" , and

(C) by inserting "or freight forwarder" after "carrier" the last 5 places it appears.

(h)—PROHIBITION AGAINST DISCRIMINATION.—Section 10741(c) of title 49, United States Code, is amended by inserting "household goods" before "freight forwarder" each place it appears.

(i) PAYMENT OF RATES.—Section 10743(b)(2) of title 49, United States Code, is amended by inserting "household goods" before "freight forwarder".

(j) LIMITATION ON USE OF COMMON CARRIERS.— (1) Section 10749(b) of title 49, United States Code, is amended by inserting "household goods" before "freight forwarder" each place it appears.

(2) The heading of section 10749 of title 49, United States Code, is amended by inserting "household goods" before "freight forwarders".

(3) The item relating to section 10749 in the section analysis of chapter 107 of title 49, United States Code, is amended by inserting "household goods" before "freight forwarders".

(k) GENERAL TARIFF REQUIREMENTS.—Section 10762(a)(2) of title 49, United States Code, is amended by inserting "household goods" before "freight forwarder".

(l) TRAFFIC AGREEMENTS.—

(1) HOUSEHOLD GOODS FREIGHT FORWARDERS.—Section 10766 of title 49, United States Code, is amended by inserting "household goods" before "freight forwarder" each place it appears.

(2) CONTINUING AUTHORITY OF DEREGULATED FREIGHT FORWARDERS TO CONTRACT.—Section 10766 of title 49, United States Code, is further amended by redesignating subsection (c), and any reference thereto, as subsection (d) and by inserting after subsection (b) the following new subsection:

"(c) AUTHORITY OF FREIGHT FORWARDERS TO ENTER INTO CONTRACTS.—A freight forwarder (other than a household goods freight forwarder) providing service which, on the day before the date of the enactment of the Surface Freight Forwarder Deregulation Act of 1986, would have been service subject to the jurisdiction of the Commission under subchapter IV of chapter 105 of this title may contract with—

"(1) a rail carrier,

"(2) a water common carrier providing transportation subject to the Shipping Act, 1916 (46 U.S.C. App. 801-842) or the Intercoastal Shipping Act, 1933 (46 U.S.C. App. 843-848),

"(3) a motor common carrier providing transportation subject to the jurisdiction of the Commission under subchapter II of such chapter,

"(4) a motor contract carrier of property providing transportation subject to the jurisdiction of the Commission under such subchapter II, and

"(5) a shipper.".

SEC. 8. LICENSING.

(a) PERMITS.—(1) Section 10923 of title 49, United States Code, is amended by inserting "household goods" before "freight forwarder" each place it appears.

(2) The heading of section 10923 of title 49, United States Code, is amended by inserting "household goods" before "freight forwarders".

(3) The item relating to section 10923 in the section analysis of chapter 109 of title 49, United States Code, is amended by inserting "household goods" before "freight forwarders".

(b) EFFECTIVE PERIODS OF PERMITS.—Section 10925 of title 49, United States Code, is amended by inserting "household goods" before "freight forwarder" each place it appears.

(c) TRANSFERS OF PERMITS.—Section 10926 of title 49, United States Code, is amended by inserting "household goods" before "freight forwarders" each place it appears.

"(d) SECURITY.—(1) Section 10927(c)(1) of title 49, United States Code, is amended by inserting "household goods" before "freight forwarders" each place it appears.

(2) Section 10927(c)(2) of title 49, United States Code, is amended—

(A) by inserting "household goods" before "freight forwarders" the first place it appears,

(B) by inserting "or a freight forwarder" after "permit", and

(C) by striking "under this subtitle".

(e) LIMITATIONS ON PERMITS.—Section 10930(b) of title 49, United States Code, is amended by inserting "household goods" before "freight forwarder" each place it appears.

(f) AUTHORIZING ABANDONMENT OF SERVICE.—(1) Section 10933 of title 49, United States Code, is amended by inserting "household goods" before "freight forwarder" each place it appears.

(2) The heading of section 10933 of title 49, United States Code, is amended by inserting "household goods" before "freight forwarder".

(3) The item relating to section 10933 in the section analysis of chapter 109 of title 49, United States Code, is amended by inserting "household goods" before "freight forwarder".

SEC. 9. OPERATIONS OF CARRIERS.

(a) PROVIDING TRANSPORTATION AND SERVICE.—Section 11101(b) of title 49, United States Code, is amended by inserting "household goods" before "freight forwarders".

(b) SERVICE.—(1) Section 11127 of title 49, United States Code, is amended by inserting "household goods" before "freight forwarder" and "freight forwarders" each place they appear.

(2) The heading of section 11127 of title 49, United States Code, is amended by inserting "household goods" before "freight forwarders".

(3) The item relating to section 11127 in the section analysis of chapter 111 of title 49, United States Code, is amended by inserting "household goods" before "freight forwarders".

(c) REPORTS AND RECORDS.—Section 11141(1) of title 49, United States Code, is amended by inserting "household goods" before "freight forwarder".

SEC. 10. FINANCE.

(a) LIMITATION ON OWNERSHIP OF OTHER CARRIERS.—Section 11323 of title 49, United States Code, is amended by inserting "household goods" before "freight forwarder" each place it appears.

(b) CONFORMING AMENDMENTS.—(1) The heading of section 11323 of title 49, United States Code, is amended by inserting "household goods" before "freight forwarders".

(2) The item relating to section 11323 in the section analysis of chapter 113 of title 49, United States Code, is amended by inserting "household goods" before "freight forwarders".

SEC. 11. FEDERAL-STATE RELATIONS.

(a) ICC AUTHORITY OVER INTERSTATE TRANSPORTATION.—Section 11501 of title 49, United States Code, is amended—

(1) in subsection (a) by striking "carrier" and inserting in lieu thereof "household goods freight forwarder"; and

(2) by adding at the end thereof the following new subsection:

"(g) PREEMPTION OF STATE REGULATION OF FREIGHT FORWARDERS.—

"(1) GENERAL RULE.—Subject to paragraph (2) of this subsection, no State or political subdivision thereof and no interstate agency or other political agency of two or more States shall enact or enforce any law, rule, regulation, standard, or other provision having the force and effect of law relating to interstate rates, interstate routes, or interstate services of any freight forwarder.

"(2) CONTINUATION OF HAWAII'S AUTHORITY.—Nothing in this subsection and the amendments made by the surface Freight Forwarder Deregulation Act of 1986 shall be construed to affect the authority of the State of Hawaii to continue to regulate a motor carrier operating within the State of Hawaii.".

(b) STATE AUTHORITY TO ENJOIN ABANDONMENTS.—Section 11505(b) of title 49, United States Code, is amended by inserting "household goods" before "freight forwarder".

SEC. 12. ENFORCEMENT: INVESTIGATIONS, RIGHTS, AND REMEDIES.

(A) GENERAL AUTHORITY.—(1) Section 11701(a) of title 49, United States Code, is amended by striking "or broker" each place it appears and inserting in lieu thereof ", broker or freight forwarder".

(2) Section 11701(b) of title 49, United States Code, is amended by inserting ", or freight forwarder" before the period at the end of the first sentence.

"(b) RIGHTS AND REMEDIES OF INJURED PERSONS.—Section 11705 of title 49, United States Code, is amended—

(1) in subsection (a) by inserting "or a freight forwarder" after "title";

(2) in subsection (b)(1)—

(A) by inserting "or a freight forwarder" after "title" the first place it appears, and

(B) by inserting "or the applicable freight forwarder rate, as the case may be" after "title" the second place it appears; and

(3) in subsection (b)(3) by inserting "or a freight forwarder" after "title".

(c) LIMITATION ON COURT ACTIONS.—Section 11706(a) of title 49, United States Code, is amended—

(1) by inserting "or a freight forwarder" after "title"; and

(2) by inserting "or freight forwarder" after "carrier" the second place it appears.

(d) LIABILITY UNDER RECEIPTS AND BILLS OF LADING.—Section 11707(a) of title 49, United States Code, is amended.

(1) in paragraph (1)—

(A) by inserting "and a freight forwarder" after "title" the first place it appears,

(B) by inserting "or freight forwarder" after "carrier" the first place it appears in the second sentence,

(C) by inserting ", except in the case of a freight forwarder," after "and" in the third sentence, and

(D) by inserting "or freight forwarder" after "carrier" in the fourth sentence; and

(2) in paragraph (2) by striking "subject to this subtitle".

(e) PRIVATE ENFORCEMENT OF LICENSES.—(1) Section 11708(a) of title 49, United States Code, is amended by inserting "household goods" before "freight forwarder".

(2) The heading of section 11708 of title 49, United States Code, is amended by inserting "household goods" before "freight forwarder".

(3) The item relating to section 11708 in the section analysis of chapter 117 of title 49, United States Code, is amended by inserting "household goods" before "freight forwarder".

SEC. 13. CIVIL AND CRIMINAL PENALTIES.

(a) ADDITIONAL RATE AND DISCRIMINATION VIOLATIONS.—Section 11904(d)(1) of title 49, United States Code, is amended by inserting "household goods" before "freight forwarder" each place it appears.

(b) ABANDONMENT OF SERVICE.—(1) Section 11908 of title 49 United States Code, is amended by inserting "household goods" before "freight forwarder" each place it appears.

(2) The heading of section 11908 of title 49, United States Code, is amended by inserting "household goods" before "freight forwarder".

(3) The item relating to section 11908 in the section analysis of chapter 119 of title 49, United States Code, is amended by inserting "household goods" before "freight forwarder".

(c) RECORDKEEPING AND REPORTING VIOLATIONS.—Section 11909(d) of title 49, United States Code, is amended by inserting "household goods" before "freight forwarder" each place it appears.

(d) UNLAWFUL DISCLOSURE OF INFORMATION.—Section 11910(a)(4) of title 49, United States Code, is amended by inserting "household goods" before "freight forwarder" each place it appears.

SEC. 14. LIMITATION ON STATUTORY CONSTRUCTION.

Nothing in this Act (including any amendment made by this Act) shall be construed to limit or otherwise affect the authority of the Secretary of Transportation to regulate a freight forwarder and [the transportation the freight forwarder uses] (whether or not such transportation is provided by a carrier subject to the jurisdiction of the Interstate Commerce Commission under chapter 105 of title 49, United States Code).

SEC. 15. EFFECTIVE DATE.

This Act shall take effect 60 days after the date of the enactment of this Act.

Mr. DANFORTH. Mr. President, on November 4, 1985, the Senate passed the Surface Freight Forwarder Deregulation Act of 1985 (S. 1124). The House has passed and sent to us an amended version of the Senate bill. The House version is virtually identical to the bill the Senate passed last November. I recommend that we pass without change S. 1124 as amended by the House.

Mr. President, this legislation would deregulate the portion of the surface freight forwarding industry that deals with general commodities transportation. This bill is aimed at strengthening the financial health of the industry, which in turn will enable these freight forwarders to compete more effectively with other transportation services.

In recent months, I have expressed my concerns about deregulation of the trucking industry. While I support generally the concept of deregulation, I am concerned that we must ensure that the trucking industry has recovered from the economic recession of the early 1980's and the effects of the 1980 regulatory reforms before pursuing deregulation any further. I also want to evaluate carefully the effects of trucking deregulation on organized labor.

S. 1124, however, presents a different case. Unlike some sectors of the trucking industry, the general commodities surface freight forwarding industry wants to be deregulated; in fact, this segment of the freight forwarding industry maintains that it must be deregulated in order to be able to compete effectively with other transportation services. Further, S. 1124 deals only with surface freight forwarders; the legislation does not deregulate any other type of transportation. This measure would eliminate much of the current Interstate Commerce Commission [ICC] and State economic regulation of general commodity surface freight forwarders.

Mr. President, the differences between the Senate and House versions of S. 1124 are largely technical in nature. Section 4 of the Senate version defines the deregulated surface freight forwarders as including all those who deal in general commodities, but not those who forward household goods. Deregulated freight forwarders are given maximum flexibility in choosing how to arrange transportation of goods in their charge. Section 4 of the House version uses different language to accomplish the same goals.

Section 11 of the Senate version eliminate State regulation of general commodities freight forwarders. Section 11 of the House version accomplishes that goal and also includes language to continue Hawaii's authority to regulate motor carriers other than freight fowarders.

Section 12 of S. 1124 deals with ICC enforcement. The House version contains a provision clarifying the ICC's authority to investigate on its own or upon complaint matters related to its remaining authority over general commodities freight forwarders. That authority is limited to supervising the filing of securities and claims concerning damages or overcharges. With respect to overcharges, section 12 of the House version gives a person claiming he was overcharged by a freight forwarder 3 years to bring suit rather than the 2 years provided in the Senate version.

Finally, the House version has a section 14 titled, "Limitation on Statutory Construction," which did not appear in the Senate version. This section makes it clear that existing Department of Transportation [DOT] safety regulations continue to cover all freight forwarders regardless of whether they are regulated by the ICC. Section 14 does not in any way expand DOT authority over matters not now in its jurisdiction. Specifically, it does not provide for any new DOT economic regulation of freight forwarders.

In sum, I believe these House provisions are acceptable and are, for the most part, refinements of the Senate version of S. 1124.

Mr. President, I want to commend Senator PACKWOOD for his efforts in guiding this legislation through the Senate, and to encourage my colleagues to vote for S. 1124 as amended by the House.

Mr. PACKWOOD. Mr. President, on May 14, 1985, I introduced the Surface Freight Forwarder Deregulation Act of 1985 (S. 1124). The Senate passed S. 1124 on November 4, 1985. This legislation was designed to significantly reduce the regulatory burden on a vital sector of our Nation's transportation system: surface freight forwarders of general commodities. The House has now passed S. 1124 with some technical amendments. I urge all my colleagues to vote for the House version of S. 1124.

In the last several years, we have seen major regulatory reform of the interstate trucking, rail, and bus industries. The authority of the Interstate Commerce Commission [ICC] over these industries has been reduced substantially. Surface freight forwarders, for the most part, have not had the benefit of any corresponding reduction in their regulatory burden. This creates competitive problems for freight forwarders in two ways. First, freight forwarders' major competitors—other transportation intermediaries such as shippers' associations, shipper agents, and brokers—are subject to far fewer regulatory restrictions. Because of this disparity in the degree of regulation, the share of freight traffic handled by freight forwarders is decreasing while their competitors' share is increasing. In fact, according to testimony presented to the Surface Transportation Subcommittee by the Department of Transportation, freight forwarders have lost half of their business since 1978 and they are at a distinct disadvantage now.

Second, the underlying modes of transportation employed by freight forwarders are far less regulated than the surface freight forwarders themselves. The majority of surface freight forwarders' traffic moves via trailer-on-flatcar [TOFC]; this type of rail service was deregulated by the ICC following enactment of the Staggers Rail Act of 1980. The railroads therefore are able to raise or lower rates at a moment's notice. Surface freight forwarders, however, who are the largest users of TOFC service, must publish rates with a notice period; these forwarders cannot respond to TOFC rate changes in a timely manner. This same problem holds true with motor carriers, although to a lesser degree.

Mr. President, surface freight forwarders who deal with general commodities say that they must be deregulated in order to survive. Representatives of this industry testified before the Surface Transportation Subcommittee that while deregulation will not ensure the success of the surface freight forwarding industry or its survival, the industry will be guaranteed to not survive without deregulation.

S. 1124, the Surface Freight Forwarder Deregulation Act of 1985, removes the needless ICC regulations which hamper the operations of surface freight forwarders. This legislation removes ICC entry rate regulation over general commodities freight forwarders and eliminates antitrust immunity for collective ratemaking activities in this sector of the freight forwarding industry. The reforms in S. 1124 are intended to improve the financial health and competitive viabili-

ty of the surface freight forwarder industry. By removing these regulatory impediments, freight forwarder service will become more efficient and competitive, which will make available a greater variety of price and service options to shippers.

Mr. President, I wish to note that this legislation is not total deregulation. While S. 1124 recognizes the importance of giving general commodities freight forwarders the freedom to compete effectively, this bill also recognizes the need for shippers to retain important protections. For this reason, S. 1124 retains Federal regulation with respect to cargo liability and claims settlement procedures. During the Surface Transportation Subcommittee's hearing on S. 1124, various shipper organizations stressed the need for such continued regulation to ensure that freight forwarders are responsible for any loss or damage they create, as are other carriers by statute. Therefore, the provisions of section 11707(a) of the Interstate Commerce Act, the Carmack amendment, remain applicable to general commodities freight forwarders. Further, S. 1124 retains the statute of limitations contained in section 11706 of the Interstate Commerce Act within which shippers can file for overcharges by freight forwarders and other carriers. S. 1124 also continues to allow general commodities freight forwarders to establish rates under which the liability of the carrier is limited to a value established by written declaration of the shipper or by written agreement between the carrier and shipper if that value would be reasonable under the circumstances surrounding that transportation. Lastly, S. 1124 retains the ICC's authority to require all freight forwarders to file with the Commission a bond, insurance policy, or other type of security to pay for the loss of or damage to property.

Mr. President, this is not controversial legislation. It is supported by the administration, the ICC, shipper groups and the general commodities freight forwarders themselves. S. 1124 relieves the general commodities freight forwarding industry from the burden of needless Federal regulation. This legislation does not deregulate any transportation mode other than general commodities freight forwarders. I am anxious to pursue further deregulation, especially in the motor carrier industry. Any further deregulation of other transportation modes will be undertaken in separate legislation, however, such as my bill the Trucking Competition Act of 1986 (S. 2240).

Mr. President, this legislation will benefit the general commodities freight forwarding industry, which in turn will improve our Nation's overall transportation system. I urge my colleagues to join me in voting for S. 1124 as amended by the House.

Mr. COCHRAN. Mr. President, I move that the Senate concur in the House amendment.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Mississippi.

The motion was agreed to.

Mr. COCHRAN. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. MELCHER. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

FEDERAL EMPLOYEES RETIREMENT SYSTEM

Mr. COCHRAN. Mr. President, I ask unanimous consent that the Senate now turn to the consideration of H.R. 5626, technical corrections in the Federal employees retirement system which was just received from the House.

The PRESIDING OFFICER (Mr. STAFFORD). The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 5626) to make technical corrections in the Federal Employees' Retirement Act of 1986, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

The PRESIDING OFFICER. The bill is before the Senate and open to amendment. If there be no amendment to be offered, the question is on the third reading and passage of the bill.

The bill (H.R. 5626) was ordered to a third reading, was read the third time, and passed.

Mr. COCHRAN. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. MELCHER. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

GREEK INDEPENDENCE DAY

Mr. COCHRAN. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on Senate Joint Resolution 308.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the resolution from the Senate (S.J. Res. 308) entitled "Joint resolution designating March 25, 1986, as 'Greek Independence Day: A National Day of Celebration of Greek and American Democracy'", do pass with the following amendments:

Page 2, line 3, strike out "March 25, 1986, is designated", and insert *March 25, 1987, is designated as*

In the third clause of the preamble, strike out "March 25, 1986, makes the one hundred and sixty-fifth", and insert: *March 25, 1987, marks the 166th*

Amend the title so as to read: "Joint resolution to designate March 25, 1987, as 'Greek Independence Day: A National Day of Celebration of Greek and American Democracy'.".

Mr. COCHRAN. Mr. President, I move that the Senate concur in the House amendment.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Mississippi.

The motion was agreed to.

Mr. COCHRAN. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. MELCHER. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

□ 1330

Mr. COCHRAN. Mr. President, I thank the distinguished acting minority leader for his cooperation and assistance in the passage of these items.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. LEVIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded and that I be allowed to proceed as though in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE PJETER IVEZAJ CASE

Mr. LEVIN. Mr. President, I have been advised by United States Ambassador to Yugoslavia John Scanlon that, although Pjeter Ivezaj of Sterling Heights, MI, has been convicted of violating Yugoslav law and has been sentenced to several years in prison, the Ambassador is very optimistic that the case will be satisfactorily resolved, and in a matter of days. That means Pjeter is going to be able to leave Yugoslavia if that optimism is indeed well founded, which we hope it is. The Ambassador's optimism is based upon discussions he has had with officials in Yugoslavia at the highest level.

It should be pointed out, Mr. President, that the only evidence against Mr. Ivezaj that was brought forward at his trial that was held in Titograd, Yugoslavia, was his participation in a demonstration in 1981 in Washington—activity he had every right to engage in as a U.S. citizen. He also acknowledged at the trial that he had attended—about 8 years ago, when he was a student—what he thought were social meetings of an organization the Yugoslav Government regards as hostile. But those meetings were in the United States—specifically, in Michigan—and he testified that he stopped

going to the meetings when it became evident they were political.

An appeal of Mr. Ivezaj's sentence has already been instituted. The sentence does not become effective until the appeal process is completed. And Ambassador Scanlan has instructed the U.S. consul who monitored the trial in Titograd to remain there until the matter is satisfactorily resolved. The Ambassador has informed the Yugoslav Government that he has so instructed our consul.

On the basis of what I have been told, I am optimistic that notwithstanding the conviction and sentencing of Mr. Ivezaj, the outcome of this deplorable case will be positive. It would appear that the pressure applied from here has been effective.

I have talked with Senator RICHARD LUGAR, chairman of the Senate Foreign Relations Committee, about a review of this case, and, in particular, of the way the Yugoslav Government appears to have ignored the civil liberties of Mr. Ivezaj and the right of the U.S. Government to visit him in jail prior to his trial.

This is the newest information that we have on a case which I spoke to our colleagues about last Monday. Hopefully, the next report will be of Mr. Ivezaj's release.

I thank the Chair and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. PACKWOOD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE CONCURRENT RESOLUTION

Mr. PACKWOOD. Mr. President, I have had many Senators ask me about the so-called concurrent resolution—not to be confused with the continuing resolution, the concurrent resolution—which is, for lack of a better term, a little tag bill that is following the major tax bill. That resolution has passed the House. It has 30 to 40 noncontroversial provisions in it and 2 to 3 provisions of some substance.

In the Senate there are about 25 to 30 States affected in one way or the other by technical mistakes in the tax bill, and I mean genuinely technical.

I would be willing to bring up the concurrent resolution if I could have some kind of a unanimous consent agreement that it is not going to be used as a second go-around to attempt to get everything that everyone did not get on the tax bill. I have had at least 8 to 10 Senators tell me that they plan to attempt to use it and will engage in extended debate if they do not get what they want on the concurrent resolution.

What this means, Mr. President, is that genuine technical mistakes—typing mistakes that were made by tired typists at 2, 3, 4 a.m. in the morning when they had been working 12, 13, 14 hours—that are in the tax bill and need to be corrected will not be corrected.

I can give you one specific example. There is a company called Cimarron Coal. There was a transition rule granted for it in the Senate version of the tax bill when it passed the Senate. It was not in the House bill. In conference, we decided, both the House and Senate decided, to drop it, that they would not get the transition rule. There was no argument about it. In the tax bill, as it passed, the transition rule for Cimarron Coal is there. Now, I do not want the stockholders of Cimarron Coal to take heart on the assumption next year it will not be corrected. But it is a mistake that should be corrected now.

Multiply that by 20 or 30 times and you see the problem we have. You have many, many projects that will not go forward if this concurrent resolution does not pass, because they cannot be sure of what may happen next year, even if both the chairman of the Ways and Means Committee, Chairman ROSTENKOWSKI, and I assure them that we will try to pass something early next year.

All I can say is I am sympathetic to the many Senators who have talked with me about the problem. I have a problem in the tax bill that I would like to correct. But, at this late stage in the session, I do not think it is the desire of the majority leader and it is not my desire to, in essence, relitigate the entire tax bill again.

So, unless we can get some agreement, probably a unanimous-consent agreement or, at a minimum, a time agreement, there will be no concurrent resolution and all of the errors that we would like to correct, technical errors, that we would like to correct, in all the projects that will be affected will simply have to go abegging until next year.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

□ 1400

The PRESIDING OFFICER (Mr. GRASSLEY). The Chair in his capacity as a Senator from Iowa asks unanimous consent that the order for the quorum call be rescinded.

Without objection, it is so ordered.

APPOINTMENT TO THE PRESIDENT'S EXPORT COUNCIL

The PRESIDING OFFICER. The Chair, on behalf of the Vice President, appoints to the President's Export Council in accordance with Executive Order 12131 signed by the President on May 4, 1979, and extended by executive order 12551, February 21, 1986, the Honorable MARK ANDREWS of North Dakota.

APPOINTMENT TO THE COMMISSION ON EDUCATION OF THE DEAF

The PRESIDING OFFICER. The Chair, on behalf of the President pro tempore, appoints to the Commission on Education of the Deaf in accordance with section 301(b)(1)(D) of Public Law 99-371, Dr. Frank Bowe, of New York, and Mr. Peter B. Greenough, of New York.

Mr. HATFIELD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE CALENDAR

Mr. DOLE. Mr. President, as I understand we can do a number of these en bloc. I will read the calendar numbers.

Calendar No. 1009, Calendar No. 738, Calendar No. 755, Calendar No. 808, Calendar No. 937, Calendar No. 940, Calendar No. 1011, Calendar No. 993, Calendar No. 969 and Calendar No. 947.

Mr. BYRD. Mr. President, let me just make sure. Mr. President, the following calendar orders have been cleared on this side: 738, 755, 808, 937, 940, 947, 969, 993, 1009, 1011.

Mr. President, those items have been cleared for taking up en bloc and adopted en bloc. And also with the understanding that immediately thereafter the Senate will go to calendar order No. 936, S. 767 to require amendments, and then with the further proviso that the Senate go to Calendar No. 850. S. 2055, with only one amendment thereto.

Mr. DOLE. I thank the distinguished minority leader.

I ask unanimous consent that the calendar items just identified be considered en bloc, and passed en bloc, and that all committee reported amendments and preambles and title amendments be considered and agreed to en bloc.

The PRESIDING OFFICER. Without objection, it is so ordered.

RELEASE OF RESTRICTIONS ON PREVIOUSLY CONVEYED PROPERTY

The Senate proceeded to consider the bill (H.R. 1593) to direct the Secretary of the Interior to release on behalf of the United States certain restrictions in a previous conveyance of land to the town of Jerome, AZ, which had been reported from the Committee on Energy and Natural Resources with an amendment:

On page 2, line 5, strike "4978894", and insert in lieu there of "497894".

So as to make the bill read:

H.R. 1593

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the Secretary of the Interior shall release, by quitclaim deed or other good and sufficient instrument, on behalf of the United States, with respect to the land described in subsection (b) which was conveyed by the United States to the town of Jerome, Arizona, by a patent numbered 497894, all conditions on such patent which required that such land be used for cemetery or park purposes.

(b) The land referred to in subsection (a) which was conveyed to the town of Jerome, Arizona, on November 8, 1915, by a patent numbered *497894,* is all of the southeast quarter of the southeast quarter of section 30, township 16 north, range 3 east of the Gila and Salt River meridian, Arizona, containing forty acres.

The amendments were agreed to.

The amendments were ordered to be engrossed, the bill was read the third time, and passed.

CONVEYANCE OF CERTAIN LANDS TO FLAGSTAFF, AZ

The Senate proceeded to consider the bill (S. 567) to convey Forest Service land to Flagstaff, AZ, which had been reported from the Committee on Energy and Natural Resources, with an amendment to strike out all after the enacting clause, and insert the following:

That (a) subsection (b)(1) of section 1 of Public Law 96-581, relating to land conveyances in the State of Arizona, is amended by striking out "Any conveyances" and inserting in lieu thereof "Except as provided in subsection (c), any conveyances".

(b) Subsection (c) of section 1 is amended to read as follows:

"(c)(1) Of the tract of land described in subsection (a) of this section, the Secretary shall offer to sell at the fair market value as determined on December 23, 1980, to the Flagstaff Medical Regional Center, Flagstaff, Arizona, not to exceed 18.25 acres immediately adjacent to said Flagstaff Medical Regional Center and shall convey, without consideration, except for administrative costs associated with the preparation of title and legal description, to the city of Flagstaff, Arizona, 134.57 acres, under special use permit in effect on the date of enactment of this Act to the city of Flagstaff.

"(2) Title to any real property acquired by the city of Flagstaff pursuant to this section shall revert to the Untied States if the city attempts to convey or otherwise transfer ownership of any portion of such property to any other party or attempts to encumber such title, or if the town permits the use of any portion of such property for any purpose incompatible with the purposes specified in paragraph (3) of this section.

"(3) Real property conveyed to the city of Flagstaff pursuant to this section shall be used for public open space, park and recreational purposes.

"(4) Except for any land to be conveyed to the Flagstaff Medical Regional Center and the city of Flagstaff, the Secretary shall solicit public offers for the remaining lands and improvements authorized under subsection (a) of this section. All offers shall be publicly opened at the time and place stated in the solicitation in accordance with the administrative requirements of the Secretary. The Secretary shall consider price and land values before entering into agreements or land exchanges with any party whose offer conforming to the solicitation notice is determined by the Secretary to be the most advantageous to the Government. Notwithstanding any other provision of this act, the Secretary may reject any offer if the Secretary determines that such rejection is in the public interest.".

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

CONVEYANCE OF CERTAIN FEDERAL LANDS

The bill (H.R. 3005) to direct the Secretary of the Interior to convey certain lands, withdrawn by the Bureau of Reclamation for townsite purposes, to the Huntley Project, Irrigation District, Ballantine, MT, was considered, ordered to a third reading, read the third time, and passed.

HENNEPIN CANAL NATIONAL HERITAGE CORRIDOR ACT

The Senate proceeded to consider the bill (S. 977) to establish the Hennepin Canal National Heritage Corridor in the State of Illinois and for other purposes, which had been reported from the committee on Energy and Natural Resources, with an amendment to strike out all after the enacting clause, and insert the following:

SHORT TITLE

SECTION 1. This Act may be cited as the "Hennepin Canal National Heritage Corridor Act".

FINDINGS; PURPOSE

SEC. 2. (a) FINDINGS.—The Congress makes the following findings:

(1) the Hennepin Canal and Parkway comprise the longest manmade waterway corridor in Illinois, built between 1890 and 1907 by the United States Army Corps of Engineers and operated by the corps for commercial navigation as part of an inland waterway between 1907 and 1951;

(2) the Canal was conveyed to the State of Illinois in 1970 under an agreement that Federal funds would be made available for restoration and rehabilitation;

(3) the Illinois Department of Conservation has completed a Hennepin Canal State Trail Master Management Plan for the total rehabilitation of the Canal;

(4) the majority of the Canal is listed in the National Register of Historic Places as a National Historic District offering a unique example of America's historic canals and early canal construction technology, including locks, aqueducts, highway and railroad bridges, dams, culverts, banks, seepage ditches, canal houses, and service buildings; and

(5) the Canal will join with the Illinois and Michigan Canal National Heritage corridor to form a statewide National Heritage Corridor across the width of the State of Illinois which will be used to preserve our historic heritage and to promote tourism in an area experiencing persistent high levels of unemployment and economic displacement.

(b) PURPOSE.—It is this purpose of the Act to recognize, develop, retain, and enhance, for the benefit of present and future generations, the cultural, historical, natural, recreational, and tourism resources of the Canal.

ESTABLISHMENT; BOUNDARIES

SEC. 3. (a) ESTABLISHMENT.—There is established in the State of Illinos the Hennepin Canal National Heritage Corridor.

(b) BOUNDARIES.—The Canal shall consist of those lands owned by the State of Illinois which are within the Canal area generally described in the "Hennepin Canal State Trail Master Management Plan", approved February 28, 1983, and filed and available for public inspection in the offices of the State of Illinois Department of Conservation.

DEFINITION

SEC. 4. For purposes of this Act the term "Canal" means the Hennepin Canal National Heritage Corridor, as generally described in section 3(b).

Mr. SIMON. Mr. President, I rise to join my friend and colleague from Illinois in support of this legislation.

Last year Senator DIXON and I introduced S. 977 to establish the Hennepin Canal National Heritage Corridor in the State of Illinois. Congressman EVANS deserves credit for his leadership in the House on this.

Approximately 350,000 people visit the canal each year for fishing, boating, hiking, and bicycling, just to name a few of the many recreational opportunities offered by the Hennepin canal. It is clear that with Federal and State support, the canal would accommodate far more than one-third of a million annual visits.

The canal will join with the Illinois and Michigan Canal National Heritage Corridor to complete the National Heritage Corridor across the width of the State of Illinois. This opportunity for economic development is much needed in western Illinois. Both temporary and permanent jobs will be available in areas like Rock Island County that are presently experiencing real unemployment rates above 11 percent. The canal would also be developed according to the Hennepin Canal State Trail Master Management Plan created by the Illinois Department of Conservation. This plan would utilize the Youth Conservation Corps

to assist in clearing and restoring the banks and right-of-way.

Some have referred to the canal as a "diamond in the rough." I fully agree. I would remind my colleagues that we in Illinois do not have the Rocky Mountains or the Nez Perce National Forest. Nor have we been blessed with the simple beauty of the Shenandoahs or the Monongahela National Forest. But we do have prairies and a land rich in history and heritage. We have come to appreciate and preserve those natural resources.

Mr. DIXON. Mr. President, I am proud to sponsor S. 977, along with my friend from Illinois, PAUL SIMON, authorizing the Hennepin Canal National Heritage corridor.

The legislation gives national recognition to the Hennepin Canal State Trail by establishing it as the Hennepin Canal National Heritage corridor.

My colleagues may recall a similar bill which was passed a few years ago, creating the first National Heritage corridor along the Illinois and Michigan canal in my State.

As one of the authors of the I and M Canal bill, I am pleased to report that the project has exceeded our expectations. The public and private sectors are working together on many conservation, recreation, and economic revitalization projects.

Illinois' rich history is once again the basis for another project, the Hennepin Canal National Heritage corridor, which I hope will provide the same kind of impetus for cooperative, multiuse development along the 96-mile corridor. It is not only important for our State, but also for the Nation as well.

The majority of the canal is now listed on the National Register of Historic Places as a national historic district. Today, as a popular recreational corridor featuring trail and water base opportunities, it annually attracts one-third of a million visitors.

Situated in rural northwestern Illinois, the canal is a T-shaped, manmade waterway corridor some 96 miles in length, becoming the natural connection between the Illinois and Mississippi Rivers. Formally known as the Illinois and Mississippi canal, it was built by the U.S. Army Corps of Engineers between 1890 and 1907, was operated for navigation as a component of our inland waterway system until 1951, and was conveyed to the department of conservation of the State of Illinois for recreational use in 1970.

A national designation would recognize the area's significance to our Nation's history. Implementing the plan will be a partnership of local and State interests—historical societies, industrialists, conservation and recreation groups, and State and local governments.

Last year, Representative LANE EVANS appointed a 13-member citizens task force on the Hennepin Canal, consisting of individuals representing historic and environmental preservation, recreation, tourism, economic development, agricultural, business, and labor interests. Representative EVANS charged the task force with recommending the best way to preserve and redevelop the canal for recreational use, with an eye toward local economic benefits. It is my hope that we can all continue to work together to make this project a reality.

The Hennepin, although somewhat physically modified, remains essentially intact, providing a unique case study of America's historic canals. The technology has provided a basis for more modern waterways.

The Hennepin Canal covers four counties and 21 civil townships in northern Illinois. Although adjacent land use is predominantly agricultural, numerous urban communities of varying size also dot the canal corridor. The canal is readily accessible to both local and regional populations via a well-developed highway network. A number of public and private entities in the canal area provide additional outdoor recreational opportunities.

On August 1, 1970, the State of Illinois assumed full ownership of the Hennepin Canal, and has since operated it primarily under the jurisdiction of the department of conservation, as a recreational corridor affording a variety of water and trail-related outdoor recreational opportunities. The redevelopment of the canal continued through mutual efforts of the department of conservation and the U.S. Army Corps of Engineers.

Current usage of the canal includes such activities as sport fishing, pleasure boating, nature studying, and camping. All of these, in conjunction with an abundance of natural habitat and beauty, will provide an attraction for new businesses, tourism, and recreational activities. Image and quality of life are among major considerations for industries staying in an area or moving into a locality.

National recognition is important to the project for the prominence that a national designation can bring to the area. The Nation should be proud to have a place of such historic meaning, natural beauty and community commitment. Designation as a National Heritage corridor is an appropriate step to take.

The project has the support of the State of Illinois, the people who reside along the 96 miles of the canal, businesses in the area, and historic preservation and recreation groups, all of whom will be lending a hand in various efforts—financial, technical, and physical—to establish this area as a model for others to follow.

This legislation is an example of what cooperation by mutual, diverse interests can do to improve a region.

It is my hope that enacting this legislation will mean not only a new recreational and historic site, but also the creation of many new jobs. There will be jobs associated with improvements along the canal, but also increased tourism and business activity.

Illinois has lagged way behind in the economic recovery that many other States are experiencing. Last month, Illinois had an official unemployment rate of 8.3 percent—477,000 people out of work. The rates in the four counties along the Hennepin for August were 11.9 percent in Rock Island, 10.9 percent in Henry, 7.6 percent in Bureau and 8.6 percent in Whiteside. Needless to say, with that many people out of work, any new jobs that would be created through the National Heritage corridor would be very, very welcome.

It is my hope that the House will be able to consider this legislation prior to adjournment. A companion bill, sponsored by Representative EVANS and the entire Illinois delegation, is pending in the Interior and Insular Affairs Committee. I am grateful to the distinguished chairman of the Energy and Natural Resources Committee for reporting the bill this year, and to the distinguished chairman of the Subcommittee on Public Lands and Reserved Water for holding a hearing earlier this year.

I thank my colleagues on both sides of the aisle for their support of this legislation and urge the adoption of S. 977.

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

CONTINENTAL SCIENTIFIC DRILLING AND EXPLORATION ACT

The bill (S. 1026) to direct the cooperation of certain Federal entities in the implementation of the Continental Scientific Drilling Program, was considered, ordered to be engrossed for a third reading, read the third time, and passed; as follows:

S. 1026

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Continental Scientific Drilling and Exploration Act".

PURPOSES

SEC. 2. The purpose of this Act is to—

(1) implement section 323 of the joint resolution entitled "Joint Resolution making continuing appropriations for the fiscal year 1985, and for other purposes", approved October 12, 1984 (Public Law 98-473; 98 Stat. 1875) which supports and encourages the development of a national Continental Scientific Drilling Program;

(2) enhance fundamental understanding of the composition, structure, dynamics, and evolution of the continental crust, and how such processes affect natural phenomena such as earthquakes, volcanic eruptions,

transfer of geothermal energy, distribution of mineral deposits, the occurrence of fossil fuels, and the nature and extent of aquifers;

(3) advance basic earth sciences research and technological development;

(4) obtain critical data regarding the earth's crust relating to isolation of hazardous wastes; and

(5) develop a long-range plan for implementation of the Continental Scientific Drilling Program.

FINDINGS

SEC. 3. Congress finds that—

(1) because the earth provides energy, minerals, and water, and is used as a storage medium for municipal, chemical, and nuclear waste, an understanding of the processes and structures in the earth's crust is essential to the well being of the United States;

(2) there is a need for developing long-range plans for a United States Continental Scientific Drilling Program; and

(3) the Continental Scientific Drilling Program would enhance—

(A) understanding of the crustal evolution of the earth and the mountain building processes;

(B) understanding of the mechanisms of earthquakes and volcanic eruptions and the development of improved techniques for prediction;

(C) understanding of the development and utilization of geothermal and other energy sources and the formation of and occurrence of mineral deposits;

(D) understanding of the migration of fluids in the earth's crust for evaluation of waste contamination and the development of more effective techniques for the safe subsurface disposal of hazardous wastes;

(E) understanding and definition of the size, source, and more effective use of aquifers and other water resources; and

(F) evaluation and verification of surface geophysical techniques needed for exploring and monitoring the earth's crust.

IMPLEMENTATION OF CONTINENTAL SCIENTIFIC DRILLING PROGRAM

SEC. 4. The Secretary of the Department of Energy, the Secretary of the Department of the Interior through the United States Geological Survey, and the Director of the National Science Foundation shall implement the policies of section 323 of the joint resolution entitled "Joint Resolution making continuing appropriations for the fiscal year 1985, and for other purposes", approved October 12, 1984 (Public Law 98-473; 98 Stat. 1875) by—

(1) taking such action as necessary to assure an effective, cooperative effort in furtherance of the Continental Scientific Drilling Program of the United States;

(2) taking all reasonable administrative and financial measures to assure that the Interagency Accord on Continental Scientific Drilling continues to function effectively in support of such program;

(3) assuring the continuing effective operation of the Interagency Coordinating Group to further the objectives of such program;

(4) taking such action to assure that the Interagency Coordinating Group receives appropriate cooperation from any Federal agency that can contribute to the objectives of such program, without adversely affecting any program or activity of such agency; and

(5) acting through the Interagency Coordinating Group, preparing and submitting to the Congress, within one hundred and eighty days after the enactment of this Act a report describing—

(A) long and short-term policy objectives and goals of the United States Continental Scientific Drilling Program;

(B) projected schedules of desirable scientific and engineering events that would advance United States objectives in the Continental Scientific Drilling Program;

(C) to the extent and for the duration that the Interagency Coordinating Group deems practicable, maximum, minimum, and intermediate levels of resources and funding that would be required by each participating Federal agency to carry out events pursuant to subparagraphs (A) and (B) at the various levels of effort;

(D) the scientific, economic, technological, and social benefits expected to be realized through the implementation of such program at each level described in subparagraph (C);

(E) a recommended course for interaction with the international community in a cooperative effort to achieve the goals and purposes of this Act;

(F) the extent of participation or interest shown to date in the Continental Scientific Drilling Program by—

(i) any other governmental agency;

(ii) any academic institution;

(iii) any organization in the private sector; and

(iv) any governmental or other entity in the international community;

(G) a plan to develop beneficial cooperative relationships among the entities mentioned in subparagraph (F), to the extent that the Interagency Coordinating Group deems practicable; and

(H) any other information or recommendations that the Interagency Coordinating Group deems appropriate.

Mr. PRESSLER. Mr. President, on behalf of myself and the 14 cosponsors of S. 1026, the Continental Scientific Drilling and Exploration Program, I urge my Senate colleagues to approve this important legislation. The Continental Scientific Drilling Program [CSDP] is an important national scientific endeavor that is vital to the understanding of the geologic evolution of the Earth and the economic value of its structure. This is an issue which I believe parallels in importance our efforts in the space program.

The CSDP is designed to resolve basic questions concerning the dynamics, structures, properties, and evolution of the Earth's crust that require samples and measurements from drill holes. By increasing the basic understanding of the Earth, an effective program has practical daily applications in areas dealing with oil, gas, coal, and geothermal energy sources. The drilling program will also aid in the development of better technologies related to mineral resource development, water resource management, and a better understanding of natural hazards such as earthquakes, volcanic eruptions, and the disposal of hazardous wastes.

Mr. President, I believe a brief legislative history will provide my colleagues with a better understanding of the provisions of this bill and how we arrived at this juncture.

In the fall of 1984, I introduced a resolution setting forth the policy goals of CSDP and putting the Congress on record in support of its implementation. The resolution was accepted as an amendment to the fiscal year 1985 continuing resolution and signed into law on October 12, 1984. The following April I introduced the bill currently before us, S. 1026. As of today, we have 15 cosponsors from both sides of the aisle, including Senators DURENBERGER, MATSUNAGA, MOYNIHAN, HEINZ, DOMENICI, NICKLES, BINGAMAN, STEVENS, BENTSEN, WARNER, MURKOWSKI, DIXON, SIMON, ABDNOR, and GRAMM.

In July, the Subcommittee on Natural Resources Development and Production held hearings on this important bill. Under the able guidance of the subcommittee chairman, Senator WARNER, the hearing examined many of the technical aspects of implementing the program and provided an opportunity to gauge the depth and breadth of support for CSDP. I would like to thank Senator WARNER and his staff for all their assistance in holding the hearing and in guiding this bill through the committee. I participated in that hearing, which I believe provides an excellent basis for, and justification of, this legislation.

Mr. President, let me highlight just briefly what the bill does. In setting forth the purposes and findings, it highlights some of the most fundamental benefits to be derived from the program. Section 4 contains the operative language. In essence, it encourages the continuation of the cooperative effort that has been going on for many years between the Departments of Interior and Energy and the National Science Foundation. The Interagency Coordinating Group referred to in the legislation has been in existence for roughly 3 years. Perhaps most importantly, Section 4 directs the Interagency Coordinating Group to prepare and submit to Congress a plan of action for the implementation of CSDP. In essence, we are asking them to tell us how long it would take, how much it costs, and what specific benefits we can expect to gain from a Continental Scientific Drilling Program.

Mr. President, the United States has a lot of catching up to do in the deep drilling area. The Soviet Union and many of our European counterparts are far ahead of us in developing this important scientific technology.

This bill is brief. Its language is self-explanatory. It would require no additional funding. I want to emphasize that point to allay any budgetary concerns on the part of my colleagues. The adminstration has been very supportive of the effort. Finally, I know of no opposition to this bill. This is a very important measure which I urge my colleagues to support.

MEMORIAL DEDICATED TO THE PROMOTION OF UNDERSTANDING, KNOWLEDGE, OPPORTUNITY, AND EQUALITY FOR ALL PEOPLE

The joint resolution (H.J. Res. 666) expressing the sense of Congress in support of a commemorative structure within the National Park System dedicated to the promotion of understanding, knowledge, opportunity, and equality for all people, was considered, ordered to a third reading, read the third time, and passed.

The preamble was agreed to.

CONSENT TO AN AMENDMENT TO THE HAWAIIAN HOMES COMMISSION ACT

The joint resolution (H.J. Res. 17) to consent to an amendment enacted by the legislature of the State of Hawaii to the Hawaiian Homes Commission Act, 1920, was considered, ordered to a third reading, read the third time, and passed.

BLACKSTONE RIVER VALLEY NATIONAL HERITAGE CORRIDOR ACT

The Senate proceeded to consider the bill (S. 1374) to establish the Blackstone River Valley National Heritage Corridor in Massachusetts and Rhode Island, which had been reported from the Committee on Energy and Natural Resources, with an amendment to strike out all after the enacting clause, and insert the following:

SHORT TITLE

SECTION 1. This Act may be cited as the "Blackstone River Valley National Heritage Corridor Act of 1985."

FINDINGS AND PURPOSE

SEC. 2. (a) FINDINGS.—The Congress makes the following findings:

(1) The Blackstone River Valley has significance as the cradle of the American Industrial Revolution. The valley was the first to experience widespread use of waterpower for industry. Independent entrepreneurs developed the Rhode Island system of manufacturing, employing families in the making of textiles, and other industrial goods.

(2) Because of the influence of Roger Williams and, later, the growth of transportation networks and the textile industry, the Blackstone Valley developed great ethnic and religious diversity. The cultural heritage of these groups is still preserved in the villages and cities of the Blackstone Valley.

(3) There are many historic buildings, structures, and districts remaining in the Blackstone Valley which represent the history of the birth and growth of the textile industry and the transportation revolution from land to water to railroad. In Rhode Island, there are 26 National Register Districts, including the Blackstone Canal and 13 mill villages, and 89 structures listed in the National Register. Massachusetts has 7 National Register Districts and 57 structures listed in the National Register.

(4) The Corridor was once one of the most heavily industrialized regions of the Nation and has potential for further economic expansion and modernization. The area in which the corridor is located is currently experiencing high rates of unemployment and industrial migration. Establishment of the corridor as provided in this Act may provide the stimulus required to retain existing industry and to provide further industrial growth and commercial revitalization.

(5) Despite efforts by the State, political subdivisions of the State volunteer associations and private business, the cultural, historical, natural, and recreational resources of the corridor have not realized full potential. Their value will be enhanced with assistance from the Federal Government.

(b) PURPOSE.—The purpose of this Act is to retain, enhance, and interpret, for the benefit and inspiration of present and future generations, the cultural, historical, recreational, and economic resources of the corridor, where feasible, consistent with industrial and economic growth.

DEFINITIONS

SEC. 3. For purposes of this Act—

(1) the term "Commission" means the Blackstone River Valley National Heritage Corridor Commission established in section 5;

(2) the term "corridor" means the Blackstone River Valley National Heritage Corridor established in section 4(a);

(3) the term "plan" means the Cultural Heritage Plan submitted to the Secretary by the Commission pursuant to section 9; and

(4) the term "Secretary" means the Secretary of the Interior.

ESTABLISHMENT OF NATIONAL HERITAGE CORRIDOR

SEC. 4. (a) ESTABLISHMENT.—To carry out the purposes of this Act, there is established the Blackstone River Valley National Heritage Corridor.

(b) BOUNDARIES.—The boundaries of the corridor shall be determined by the Commission, in consultation with the Governor of Massachusetts and the Governor of Rhode Island.

(c) ADMINISTRATION.—The corridor shall be administered in accordance with the provisions of this Act.

ESTABLISHMENT OF BLACKSTONE RIVER VALLEY NATIONAL HERITAGE CORRIDOR COMMISSION

SEC. 5. There is established a commission to be known as the Blackstone River Valley National Heritage Corridor Commission which shall carry out the duties specified in section 9.

ORGANIZATION OF COMMISSION

SEC. 6. (a) MEMBERSHIP.—The Commission shall be composed of nineteen members appointed by the Secretary as follows:

(1) the Director of the National Park Service, ex officio, or a delegate;

(2) six individuals nominated by the Governors of Rhode Island and Massachusetts and appointed by the Secretary, who shall be: the Department of Environmental Management Directors from Rhode Island and Massachusetts, the State Historic Preservation Officers from Massachusetts and Rhode Island, and the Department of Economic Development Directors from Massachusetts and Rhode Island;

(3) four representatives of local government from Massachusetts and four from Rhode Island nominated by the Governor of their State and appointed by the Secretary, to represent the interests of local government;

(4) two individuals, nominated by the Governor of Massachusetts and two individuals nominated by the Governor of Rhode Island appointed by the Secretary, to represent other interests each Governor deems appropriate.

A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

(b) TERMS.—Members of the Commission shall be appointed for terms of three years.

(c) COMPENSATION.—Members of the Commission shall receive no pay on account of their service on the Commission, but while away from their homes or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5, United States Code.

(d) CHAIRPERSON.—The chairperson of the Commission shall be elected by the members of the Commission.

(e) QUORUM.—(1) Ten members of the Commission shall constitute a quorum, but a lesser number may hold hearings.

(2) Any member of the Commission may vote by means of a signed proxy exercised by another member of the Commission, but any member so voting shall not be considered present for purposes of establishing a quorum.

(3) The affirmative vote of not less than ten members of the Commission shall be required to approve the budget of the Commission.

(f) MEETINGS.—The Commission shall meet at least quarterly at the call of the chairperson or ten of its members. Meetings of the Commission shall be subject to section 552b of title 5, United States Code (relating to open meetings).

STAFF OF COMMISSION

SEC. 7. (a) DIRECTOR AND STAFF.—(1) The Commission shall have a Director who shall be appointed by the Commission and who shall be paid at a rate not to exceed the minimum rate of basic pay payable for level GS-13 of the General Schedule.

(2) The Commission may appoint up to two additional staff personnel and may pay such staff at rates not to exceed the minimum rate of basic pay payable for level GS-13 of the General Schedule. Such staff may include specialists in areas such as interpretation, historic preservation, recreation, conservation, commercial and industrial development and revitalization, financing, and fundraising.

(3) Except as otherwise provided in this subsection, such Director and staff—

(A) shall be appointed subject to the provisions of title 5, United States Code, governing appointments in the competitive service; and

(B) shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

(b) EXPERTS AND CONSULTANTS.—Subject to such rules as may be adopted by the Commission, the Commission may procure temporary and intermittent services to the same extent as is authorized by section 31009(b) of title 5, United States Code, but at rates determined by the Commission to be reasonable.

(c) STAFF OF OTHER AGENCIES.—(1) Upon request of the Commission, the head of any Federal agency may detail, on a reimbursable basis, any of the personnel of such agency to the Commission to assist the

Commission in carrying out the Commission's duties under section 9.

(2) The Commission may accept the services of personnel detailed from the State or any political subdivision of the State and may reimburse the State or such political subdivision for such services.

POWERS OF COMMISSION

SEC. 8. (a) HEARINGS.—(1) The Commission may, for the purpose of carrying out this Act, hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Commission considers appropriate.

(2) The Commission may not issue subpenas or exercise any subpena authority.

(b) POWERS OF MEMBERS AND AGENTS.—Any member or agent of the Commission, if so authorized by the Commission, may take any action which the Commission is authorized to take by this Act.

(c) ADMINISTRATIVE SUPPORT SERVICES.—The Administrator of General Services shall provide to the Commission, on a reimbursable basis, such administrative support services as the Commission may request.

(d) MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(e) USE OF FUNDS TO OBTAIN MONEY.—The Commission may use its funds to obtain money from any source under any program or law requiring the recipient of such money to make a contribution in order to receive such money.

(f) GIFTS.—(1) Except as provided in subsection (g)(2)(B), the Commission may, for purposes of carrying out its duties, seek, accept, and dispose of gifts, bequests, or donations of money, personal property, or services, received from any source.

(2) For purposes of section 170(c) of the Internal Revenue Code of 1954, any gift to the Commission shall be deemed to be a gift to the United States.

(g) ACQUISITION OF REAL PROPERTY.—(1) Except as provided in paragraph (2) and except with respect to any leasing of facilities under subsection (c), the Commission may not acquire any real property or interest in real property.

(2) Subject to paragraph (3), the Commission may acquire real property, or interests in real property, in the corridor—

(A) by gift or devise; or

(B) by purchase from a willing seller with money which was given or bequeathed to the Commission on the condition that such money would be used to purchase real property, or interests in real property, in the corridor.

(3) Any real property or interest in real property acquired by the Commission under paragraph (2) shall be conveyed by the Commission to an appropriate public or private land managing agency, as determined by the Commission. Any such conveyance shall be made—

(A) as soon as practicable after such acquisition;

(B) without consideration; and

(C) on the condition that the real property or interest in real property so conveyed is used for public purposes.

(h) COOPERATIVE AGREEMENTS.—For purposes of carrying out the plan, the Commission may enter into cooperative agreements with the State of Massachusetts and the State of Rhode Island, with any political subdivision of each State, or with any person. Any such cooperative agreement shall, at a minimum, establish procedures for providing notice to the Commission of any action proposed by the State of Massachusetts and the State of Rhode Island, such political subdivision, or such person which may affect the implementation of the plan.

(i) ADVISORY GROUPS.—The Commission may establish such advisory groups as the Commission deems necessary to ensure open communication with, and assistance from, the State of Massachusetts and the State of Rhode Island, political subdivisions of the State of Massachusetts and the State of Rhode Island, and interested persons.

DUTIES OF COMMISSION

SEC. 9. (a) PREPARATION OF PLAN.—Within one year after the Commission conducts its first meeting, it shall submit a Cultural Heritage Plan to the Secretary for review and approval for 90 days. The plan shall be based on existing State plans, but shall coordinate those plans and present a unified historic preservation and interpretation plan for the corridor. The plan shall—

(1) define the boundaries of the National Heritage Corridor;

(2) provide an inventory which includes any property in the corridor which should be preserved, restored, managed, developed, mintained, or acquired because of its national historic or cultural significance;

(3) establish standards and criteria applicable to the construction, preservation, restoration, alteration, and use of all properties within the corridor; and

(4) develop an historic interpretation plan to interpret the history of the valley.

(b) IMPLEMENTATION OF PLAN.—(1) After review and approval of the plan by the Secretary as provided in subsection (a), the Commission shall implement the plan. In implementing the plan, the Commission shall give priority to actions which assist in—

(A) preserving and interpreting the historic resources of the valley;

(B) completing State and local parks in the corridor; and

(C) supporting public and private efforts in economic revitalization consistent with the goals of the Cultural Heritage Plan.

(2) Priority actions to be carried out under paragraph (1) shall include—

(A) assisting the States in appropriate preservation treatment of the Blackstone Canal;

(B) assisting the States in designing, establishing, and maintaining visitor centers and other interpretive exhibits in the corridor;

(C) encouraging private landowners adjacent to the canal or river to retain or reestablish, where possible, vegetative, or other buffers as specified in the State park plans;

(D) assisting in the enhancement of public awareness of an appreciation for the historical and architectural and geological resources and sites in the corridor;

(E) assisting the State or any local government or any nonprofit organization in the restoration of any historic building in the corridor;

(F) encouraging, by appropriate means, enhanced economic and industrial development in the corridor consistent with the goals of the plan;

(G) encouraging local governments to adopt land use policies consistent with the goals of the State park and the plan and to take actions to implement those policies; and

(H) ensuring that clear, consistent signs identifying access points and sites of interest is put in place.

TERMINATION OF COMMISSION

SEC. 10. (a) TERMINATION.—Except as provided in subsection (b), the Commission shall terminate on the day occurring five years after the date of the enactment of this Act.

(b) EXTENSION.—The Commission may be extended for a period of not more than five years beginning on the day referred to in subsection (a) if, not later than one hundred and eighty days before such day—

(1) the Commission determines such extension is necessary in order to carry out the purpose of this Act;

(2) the Commission submits such proposed extension to the Committee on Interior and Insular Affairs of the House of Representatives and to the Committee on Energy and Natural Resources of the Senate; and

(3) the Governor of Massachusetts, the Governor of Rhode Island, and the Secretary each approve such extension.

DUTIES OF THE SECRETARY

SEC. 11. (a) PURPOSE.—To carry out the purpose of this Act, the Secretary shall—

(1) assist the Commissioin in preparing the Cultural Heritage Plan; and

(2) design and fabricate interpretive materials based on the Cultural Heritage Plan including—

(A) guide brochures for exploring the heritage story of the valley by automobile, train, bicycle, boat, or foot;

(B) visitor displays (including video presentations) at several locations well distributed along the corridor, including both indoor and outdoor displays; and

(C) a mobile display depicting the heritage story to be used in the park, public buildings, libraries, and schools.

(b) TECHNICAL ASSISTANCE.—The Secretary shall, upon request of the Commission, provide technical assistance to the Commission in carrying out its duties described in section 9, including recommendations concerning appropriate preservation treatment, adaptive re-use, potential strategies for funding, private investors, and tax advantages of rehabilitation of historic structures.

(c) DETAILS FROM INTERIOR.—For each fiscal year of the life of the Commission, the Secretary shall detail to the Commission, on a nonreimbursable basis up to two employees of the Department of the Interior to enable the Commission to carry out its duties under section 9.

DUTIES OF OTHER FEDERAL ENTITIES

SEC. 12. Any Federal entity conducting or supporting activities directly affecting the corridor shall—

(1) consult with the Secretary and the Commission with respect to such activities;

(2) cooperate with the Secretary and the Commission in carrying out their duties under this Act and, to the maximum extent practicable, coordinate such activities with the carrying out of such duties; and

(3) to the maximum extent practicable, conduct or suppport such activities in a manner which the Commission determines will not have an adverse effect on the corridor.

AUTHORIZATION OF APPROPRIATIONS

SEC. 13. (a) There is authorized to be appropriated, annually for the next five fiscal years—

(1) to the Commission a sum not to exceed $500,000 to carry out the Commission's duties under this Act; and to be used by the Commission for—

(A) leasing buildings and land;

(B) renovating or restoring structures to serve as visitors centers or interpretive facilities for the heritage corridor; and

(C) preserving the Blackstone Canal and its associated structures; and

(2) to the Secretary a sum not to exceed $75,000 to carry out the Secretary's duties described in Sec. 11(c) and to carry out the Secretary's other duties under this Act.

(b) Any sums appropriate under this section shall remain available until expended.

THE BLACKSTONE RIVER VALLEY NATIONAL HERITAGE CORRIDOR ACT

Mr. CHAFEE. Mr. President. I rise today in strong support of S. 1374, a bill which I introduced last year along with Senators PELL, KENNEDY, and KERRY, to establish the Blackstone River Valley National Heritage Corridor in Rhode Island and Massachusetts. This bill provides national recognition to the Blackstone River Valley, the cradle of the American industrial revolution.

This legislation was revised in order to address concerns raised by members of the Committee on Energy and Natural Resources, and was consequently approved unanimously by that committee on September 18. I believe the bill, in its present form, is a model of fiscal restraint and realistic goals.

The purpose of this measure is to preserve for the benefit and inspiration of present and future generations the cultural, historical, recreational and economic resources of the Blackstone River Valley corridor. This bill is not only important to the States of Rhode Island and Massachusetts, but to the Nation as well.

The mills, villages, transportation networks, and social history of the settlers of the Blackstone River Valley tell the story of the industrialization of 18th and 19th century America. From the Blackstone Valley an appreciation of the larger national patterns of industrial development may be gained.

The Blackstone Valley illustrates several historical themes which are at present underrepresented in the National Park System. Three factors distinguish the Blackstone Valley from other industrial regions. The valley is the first industrial region in the United States. The first widespread use of waterpower for industry occurred along the Blackstone River. And lastly, the Rhode Island system of manufacturing developed here.

The water power potential of the river and its waterfalls played an important part in the development of the Blackstone Valley. In 1793, an event occurred that would change the history of America. In that year Samuel Slater constructed the first waterpowered mill in Pawtucket along the banks of the Blackstone. The American industrial revolution was born.

As the industrial revolution took hold, entrepreneurs looked for ways to move their goods more cheaply. Construction of the Providence to Worcester Canal began in 1823 and was completed in 1828. The construction of the Providence to Worcester railroad along the river made the canal uncompetitive, and the Blackstone Canal quickly lost its prominence. However the impact of the canal on the development of Providence, Worcester, and the towns and villages of the valley was considerable.

In 1983, Congress requested that the National Park Service assess the national significance of the Blackstone River corridor. The National Park Service prepared a report, "Conservation Options" to address future options to conserve the Blackstone Valley corridor. The draft report suggests the development of an interstate heritage protection plan complimented by an expanded level of Federal recognition, support and technical assistance.

The legislation takes account of the recommendations of the National Park Service, and builds upon the research and the efforts of the Departments of Environmental Management in Rhode Island and Massachusetts, the Rhode Island Blackstone Citizen's Advisory Committee and other interested parties. This bill provides national recognition for the corridor, lending distinction to this important project.

This legislation will establish a commission to develop a unified historic preservation and interpretation plan for the corridor in Rhode Island and Massachusetts. The Commission will operate for 5 years and will assist in the marketing and implementation of the plan. For example, the Commission will assist in the restoration of historic buildings, the preservation of the canal, or the reconstruction of the towpath. It will assist in the establishment, design and maintenance of the visitors centers. The operating budget for the Commission will not exceed $500,000 per year.

The Commission will be composed of 19 members, including the Director of the National Park Service, the director of the Department of Environmental Management of Rhode Island and Massachusetts, the directors of the Departments of Economic Development for the two States, four representatives of local government from each State appointed by their Governors to represent local interests, and two individuals from each State to represent the States' interest.

The Department of the Interior will provide technical support to the Commission. Two employees from the Department of the Interior will be assigned to the Commission to enable it to carry out its responsibilities. A sum not to exceed $75,000 is authorized to be appropriated to the Secretary to carry out the Secretary's duties regarding these two employees.

National designation helps to assure that the cultural, historical, natural, and recreational resources of the corridor realize full potential. We can help to establish a legacy of the past as well as develop a vision for the future of the valley. With our assistance today the vision of a renewed Blackstone Valley and Park will become a reality.

I urge my colleagues to join with Senator PELL and myself in supporting this important and worthwhile bill.

"BIRTHPLACE OF THE INDUSTRIAL REVOLUTION" RECEIVES APPROPRIATE NATIONAL RECOGNITION

Mr. PELL. Mr. President, I am enthusiastic about the goals of S. 1374, the Blackstone River Valley Heritage Corridor Act, and I would like to thank my colleague, the junior Senator from Rhode Island [Mr. CHAFEE] for the excellent work he has done in advancing this important measure.

We have worked hard to arrive at this important stage and we have been encouraged by the interest and enthusiasm of Rhode Islanders, particularly residents and officials representing Blackstone Valley.

This is an an exciting step toward the completion of a project that we envisioned several years ago, when I initiated the first meeting of Rhode Island and Massachusetts officials to discuss plans with the National Park Service.

We take a great deal of pride in the fact that America's industrial revolution was born on the banks of the Blackstone, and we want to take whatever steps necessary to preserve this historic legacy for posterity. The Blackstone River is our link not only to the past, but to the future.

S. 1374 authorizes Federal assistance for this important task. That key Federal support will help Rhode Island and Massachusetts develop this heritage corridor and protect examples of our Nation's early industrial development.

The Blackstone River Valley Heritage Corridor includes the Blackstone Canal, built in the 1820's, which connected Providence, Rhode Island, with Worcester, Massachusetts, a distance of forty five miles.

This canal became a major trade route and the Blackstone Valley flourished while the canal tied together the mills and businesses that fed our industrial revolution.

The most important point we can make about the Blackstone River Valley Heritage Corridor is that by preserving and highlighting our pioneering industrial past, we can foster a better future and an increasing sense of pride for our citizens.

That was the vision I had back in the spring of 1983. It was then I initiated the first meeting of the National Park Service, the Rhode Island and Massachusetts Departments of Environmental Management and repre-

sentatives of congressional delegations from both Rhode Island and Massachusetts to coordinate plans for the Blackstone River.

The people of Rhode Island clearly support our effort to develop a heritage corridor. They passed the Heritage Bond Issue in November 1985, which provides $1 million for land acquisition and development of the park system.

Clearly, the desire and commitment are there to create a heritage corridor that would preserve and highlight an important part of our national history.

The birthplace of the American industrial revolution is well worth preserving and we, in the Federal level, should do what we can to support that effort on the State and local levels.

When we look at historic battlefields and Indian forts throughout America, we should not overlook one of our most important battles—the economic battle of the industrial revolution.

We owe it to ourselves, to our children and to our children's children to make sure that battle site is preserved and that we learn from its lessons.

Mr. KERRY. I am very pleased with the impending passage of S. 1374, a bill which established the Blackstone River Valley National Heritage Corridor in Massachusetts and Rhode Island. The first place in the young United States to experience the widespread utilization of waterpower, the Blackstone River Valley is considered to be the birthplace of our industrial revolution and offers an ideal location for this planned linear park system which is to link historic sites from Worcester to Providence.

Upon completion of the Blackstone Canal in the early 1800's the region underwent rapid development. The canal connected Worcester to Providence over a distance of approximately forty five miles and provided an efficient means of transporting both industrial and agricultural products into and out of the area. Wood and cotton manufacturing industries continued to flourish when the railroad system replaced the canal in the mid-1800's, providing the region with an even more effective network of transportation.

Today much of the industry has vanished but the structures and deep-rooted heritage still remain. This bill provides the mechanism to preserve this heritage for all Americans to enjoy. It allows the story to be told of how the mills and transportation networks along with the people who worked throughout the Blackstone River Valley, helped bring about our industrialization which transformed our country from a relatively backwoods nation into the leading world power which we are today. The legislation establishes a partnership among the National Park Service, the Commonwealth of Massachusetts, and the State of Rhode Island, making the Blackstone River Valley National Heritage Corridor a reality. Now both those living within the valley and those who live elsewhere will be able to partake in the cultural, natural, and recreational resources of the Blackstone Valley's riverways, parks, and industrial relics. As a result of this legislation, a once flourishing area will receive the impetus necessary for this region to thrive once again.

I commend Senator CHAFEE for introducing such an important piece of legislation and, along with my cosponsors, Senators KENNEDY and PELL, I would like to express my pleasure at the upcoming adoption of S. 1374, the Blackstone River Valley National Heritage Corridor Act of 1985.

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

APOSTLE ISLANDS NATIONAL LAKESHORE

A bill (H.R. 2182) to authorize the inclusion of certain additional lands within the Apostle Islands National Lakeshore.

Mr. KASTEN. Mr. President, I rise in support of the inclusion of Long Island in the Apostle Islands National Lakeshore. Adding this parcel to the national lakeshore will provide better protection to one of the most important wetlands in the entire Great Lakes basin as well as enhance many educational, recreational, and inspirational opportunities for the public.

Long Island is one of the Nation's finest and most fragile ecosystems. This rare and beautiful environment provides a wide range of biologic, historic, educational, scientific, and recreational opportunities. Its features are of national significance and have long been a priority for protection by the Wisconsin Natural Areas Preservation Council.

Long Island is also one of the most significant migration routes for many species of birds. It is one of the best shore birding areas in the State. In fact, this sand spit is the home of the piping plover, a Federal endangered species. The island also hosts a rich variety of vegetation.

Long Island is historically as well as biologically significant. It was once the heart of early fur trading for the entire region. The first major lighthouse in western Lake Superior is on this island. In addition, Long Island has substantial ecological, cultural, and religious importance to various Indian tribes.

Special knowledge and skills are needed to manage these resources. The island currently faces substantial risks due to vandalism and destruction. Only 37.5 percent of Long Island is privately owned. Despite responsible stewardship by private landowners, the island as a whole is not being managed effectively. The Park Service will be able to provide this additional protection.

Various groups contacted me during the past year and expressed concern over the acquisition of a delicate ecosystem such as Long Island without the adoption of a carefully considered stewardship plan. All apparently wanted to protect the island, but there was no consensus concerning the proper mechanism. We have all worked together and have reached a consensus plan. We have achieved a balance of increased recreational use of the island with the preservation of the island's fragile resources.

I am proud to have played an important role in facilitating this consensus among environmental groups, landowners, Indian tribes, and local and county interests regarding prudent management of Long Island. All interested parties agree that the primary goal must be to protect the natural and cultural resources on Long Island. The secondary goal should be the development of human use and visitation patterns which are compatible with such protection

The discussions regarding Long Island's stewardship also led to the negotiation of a protection program for areas adjacent to Long Island. This program will protect the Kakogan Slough-Chequamegon Point lands which fall outside of the legislation's boundaries. The Wisconsin DNR and local Indian tribes will work toward better management of the bald eagle, patrolling of areas that may potentially affect the unique wild rice beds, and guarding the region from invading plants.

Therefore, Mr. President, I wholeheartedly support this effort and I urge the immediate adoption of this important legislation. Thank you.

Mr. PROXMIRE. Mr. President, I am extremely pleased that the Senate is considering S. 1019, my bill that adds Long Island to the Apostle Islands National Lakeshore in Lake Superior. Congressman OBEY introduced the bill in the House where it passed last December. House cosponsors include Congressmen MOODY, PETRI, KLECZKA, KASTENMEIER, ASPIN, and SENSENBRENNER while Senator KASTEN cosponsored it in the Senate.

Passage of S. 1019 pays tribute to former Senator Gaylord Nelson who sponsored the original Apostles legislation in 1970 and finished his plan for the lakeshore. His persuasive testimony before the Senate Energy and Natural Resources helped convince the committee that Long Island deserves inclusion in the Apostles.

The Apostle Islands chain consists of 22 islands located on Lake Superior, 20 of which currently form the national lakeshore. Only Long Island and Mad-

eleine Island, which includes substantial State and private ownership, are not included.

A 2½-mile-long sand spit, Long Island contains unique shorebird habitat. Two endangered bird species, the piping plover and the common tern, call the island their home as do 25 other bird species.

Long Island's waters contain historic shipwrecks and two scenic lighthouses perch on her shores.

Inclusion of Long Island in the lakeshore will protect these precious resources and allow sound management by the National Park Service.

The bill enjoys widespread support in Wisconsin and representatives of the Nature Conservancy, Sierra Club, Sigurd Olson Institute, Wilderness Society, State of Wisconsin and National Audubon Society all testified on its behalf in House or Senate hearings.

I thank the members of the Energy and Natural Resources Committee for their support of this effort to preserve one of Wisconsin's natural treasures.

The PRESIDING OFFICER. The bill is before the Senate and open to amendment. If there be no amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed.

DEEP SEABED HARD MINERALS RESOURCES ACT AUTHORIZATION

The bill (H.R. 4212) to provide for the reauthorization of the Deep Seabed Hard Mineral Resources Act, and for other purposes, was considered, ordered to a third reading, read the third time, and passed.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the various bills and joint resolutions were passed.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ACCESS ACROSS CERTAIN FEDERAL LANDS IN THE STATE OF ARKANSAS

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate turn to the consideration of Calendar Order No. 936, S. 767, dealing with Federal land access.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 767) to direct the Secretary of the Interior to permit access across certain Federal lands in the State of Arkansas, and for other purposes.

There being no objection, the Senate proceeded to the consideration of the bill.

AMENDMENT NO. 3259

Mr. BUMPERS. Mr. President, I send an amendment to the desk, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Arkansas [Mr. BUMPERS] proposes an amendment numbered 3259.

Mr. BUMPERS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 2, after line 9, insert the following new subsection: (d)(1) The owners of the private residential property identified in subsection (c) shall pay an annual fee to the Secretary of the Interior for the access provided pursuant to this Act.

(2) Any fee collected shall be fair and reasonable and shall be in an amount necessary to cover the administrative costs associated with granting of such access, including the issuance of annual permits: *Provided* that in no event shall the fee collected pursuant to this subsection exceed $100 per annum.

Mr. BUMPERS. Mr. President, this was an amendment that was agreed to in the committee and drafted after the committee passed the bill out.

Mr. DOLE. Mr. President, we have no objection to the amendment.

Senator MCCLURE, as I understand it, has approved the amendment.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from Arkansas.

The amendment (No. 3259) was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and the third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

So the bill (S. 767), as amended, was passed as follows:

S. 767

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) Notwithstanding any other provision of law, the Secretary of the Interior shall permit access across the Buffalo National River (hereinafter referred to as "the park") to certain privately owned lands outside the park boundary along a route known locally as the "Old Springtown Road" as depicted on a map entitled "Old Springtown Road Access", dated March 1985, and available for inspection in the Office of the Superintendent, Buffalo National River.

(b) The Secretary shall permit such access across the park solely for the purpose of providing to the owners (as of March 1, 1985) reasonable ingress and egress to the private residential property depicted on the map referenced in subsection (a).

(c) The Secretary shall promulgate such regulations as he deems necessary to ensure that such access does not unreasonably diminish the scenic, historic, and other values for which the park was established.

(d)(1) The owners of the private residential property identified in subsection (a) shall pay an annual fee to the Secretary of the Interior for the access provided pursuant to this Act.

(2) Any fee collected shall be fair and reasonable and shall be in an amount necessary to cover the administrative costs associated with granting of such access, including the issuance of annual permits: *Provided,* That in no event shall the fee collected pursuant to this subsection exceed $100 per annum.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the bill as amended, was passed.

Mr. BUMPERS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

□ 1430

THE COLUMBIA GORGE NATIONAL SCENIC AREA

The PRESIDING OFFICER. The Senator from Oregon.

Mr. HATFIELD. Mr. President, I ask unanimous consent that the Senate now turn to the consideration of Calendar No. 850, S. 2055, the Columbia Gorge National Scenic Area bill.

Mr. BYRD. Mr. President, reserving the right to object, and I shall not object, it is my understanding there will only be one amendment.

Mr. HATFIELD. The Senator is correct. If this unanimous-consent request is agreed to, I will send to the desk under unanimous consent a committee amendment as a substitute.

The PRESIDING OFFICER. Is there objection?

Mr. BYRD. Mr. President, I remove my reservation.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 2055) to establish the Columbia Gorge National Scenic Area, and for other purposes.

The PRESIDING OFFICER. Without objection, the Senate will proceed to its immediate consideration.

The Senate proceeded to consider the bill which had been reported by the Committee on Energy and Natural Resources, with an amendment in the nature of a substitute.

Mr. HATFIELD. Mr. President, I ask unanimous consent to withdraw the committee-reported substitute.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 3260

Mr. HATFIELD. Mr. President, I send to the desk an amendment on behalf of Senators EVANS, MCCLURE, and myself, in the nature of a substitute.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Oregon [Mr. HATFIELD], for himself, Mr. EVANS, and Mr. MCCLURE, proposes an amendment numbered 3260.

Mr. HATFIELD. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike out all after the enacting clause and insert the following in lieu thereof:

"SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

This Act may be referred to as the "Columbia River Gorge National Scenic Area Act."

TABLE OF CONTENTS

Sec. 1. Short title and table of contents.
Sec. 2. Definitions.
Sec. 3. Purposes.
Sec. 4. Establishment of the Scenic Area.
Sec. 5. The Columbia River Gorge Commission.
Sec. 6. The Scenic Area Management Plan.
Sec. 7. Administration of the Scenic Area.
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Sec. 12. Old Columbia River Highway.
Sec. 13. Tributary Rivers and Streams.
Sec. 14. Implementation Measures.
Sec. 15. Enforcement.
Sec. 16. Authorization of Appropriations.
Sec. 17. Savings Provisions.
Sec. 18. Severability.

SEC. 2. DEFINITIONS.

As used in this Act, the term—

(a) "adversely affect" or "adversely affecting" means, except as used in section 15; a reasonable likelihood of more than moderate adverse consequences for the scenic, cultural, recreation or natural resources of the Scenic Area, the determination of which is based on—

(1) the context of a proposed action;

(2) the intensity of a proposed action, including the magnitude and duration of an impact and the likelihood of its occurrence;

(3) the relationship between a proposed action and other similar actions which are individually insignificant but which may have cumulatively significant impacts; and

(4) proven mitigation measures which the proponent of an action will implement as part of the proposal to reduce otherwise significant affects to an insignificant level.

(b) "agricultural lands" means lands designated as agricultural lands pursuant to section 6 of this Act.

(c) "Commission" means the Columbia River Gorge Commission established pursuant to section 5 of this Act.

(d) "Counties" means Hood River, Multnomah, and Wasco Counties, Oregon; and Clark, Klickitat, and Skamania Counties, Washington.

(e) "Dodson/Warrendale Special Purchase Unit" means the Dodson/Warrendale Special Purchase Unit established pursuant to section 4 of this Act.

(f) "Forest lands" means lands designated as forest lands pursuant to section 6 of this Act.

(g) "Indian tribes" means the Nez Perce Tribe, the Confederated Tribes and Bands of the Yakima Indian Nation, the Confederated Tribes of the Warm Springs of Oregon, and the Confederated Tribes of the Umatilla Indian Reservation.

(h) "interim guidelines" means any interim guidelines developed by the Secretary pursuant to section 10 of this Act, and any amendment, revision, or variance.

(i) "Land use ordinance" or "ordinance" means any ordinance adopted by a county or by the Commission pursuant to this Act, and includes any amendment to, revision of, or variance from such ordinance.

(j) "major development actions" means any of the following:

(1) subdivisions, partitions and short plat proposals;

(2) permits for siting or construction outside Urban Areas of multi-family residential, industrial or commercial facilities, except the upgrade of existing electric transmission facilities and such facilities as are included in the recreation assessment;

(3) the exploration, development and production of mineral resources unless such exploration, development or production can be conducted without disturbing the surface of any land within the boundaries of a special management area or is for sand, gravel and crushed rock used for the construction, maintenance or reconstruction of roads within the special management areas used for the production of forest products; and

(4) permits for siting or construction within a special management area of any residence or other related major structure on any parcel of land less than forty acres in size.

(k) "Management Plan" means the Scenic Area Management Plan adopted pursuant to section 6 of this Act.

(l) "Open Spaces" means unimproved lands not designated as agricultural lands or forest lands pursuant to section 6 of this Act and designated as open space pursuant to section 6 of this Act. Open spaces include—

(1) scenic, cultural, and historic areas;

(2) fish and wildlife habitat;

(3) lands which support plant species that are endemic to the Scenic Area or which are listed as rare, threatened or endangered species pursuant to State or Federal Endangered Species Acts;

(4) ecologically and scientifically significant natural areas;

(5) outstanding scenic views and sites;

(6) water areas and wetlands

(7) archaeological sites, Indian burial grounds and village sites, historic trails and roads and other areas which are culturally or historically significant;

(8) potential and existing recreation resources; and

(9) federal and state wild, scenic, and recreation waterways.

(m) "recreation assessment" means the recreation assessment adopted pursuant to section 6 of this Act.

(n) "residential development" means the permitting for siting or construction of any residence or other related major structure.

(o) "Scenic Areas" means the Columbia River Gorge National Scenic Area established pursuant to section 4 of this Act.

(p) "Secretary" means the Secretary of Agriculture.

(q) "Special Management Areas" means areas within the Scenic Area established pursuant to section 4 of this Act.

(r) "States" means the States of Oregon and Washington.

(s) "Urban Areas" means those areas within the Scenic Area identified as urban areas on the map referred to in section 4(e) of this Act or within the boundaries of an Urban Area as revised pursuant to section 4(f).

SEC 3. PURPOSES.

The purposes of this Act are—

(a) to establish a national scenic area to protect and enhance the scenic, cultural, recreation and natural resources of the Columbia River Gorge; and

(b) to protect and enhance the economy of the Columbia River Gorge by recognizing compatible historic economic pursuits such as agriculture and forestry and by encouraging future economic development to occur in existing urban areas.

SEC. 4. ESTABLISHMENT OF THE SCENIC AREA.

(a) NATIONAL SCENIC AREAS.—(1) there is hereby established the Columbia River Gorge National Scenic Area.

(2) The boundaries of the Scenic Area shall be generally depicted on the map entitled "Boundary Map, Columbia River Gorge National Scenic Area," numbered NSA-001 sheets 1 and 2, and dated September 1986, which shall be on file and available for public inspection in the offices of the Commission and of the Chief, Forest Service.

(b) SPECIAL MANAGEMENT AREAS.—(1) The following areas within the boundaries of the Scenic Area are hereby designated "Special Management Areas": Gates of the Columbia River Gorge; Wind Management; Burdoin Mountain; and Rowena.

(2) The boundaries of the Special Management Areas designated in this section—

(A) shall be generally depicted on the map entitled "Special Management Areas, Columbia River Gorge National Scenic Area", numbered SMA-002 sheets 1 through 17, and dated September 1986, which shall be on file and available for public inspection in the offices of the Commission and of the Chief, Forest Service; and

(B) shall include all islands within the boudaries of the Scenic Area.

(c) REVISION OF SPECIAL MANAGEMENT AREA BOUNDARIES.—The Secretary, in consultation with the Commission, may make minor revisions in the boundaries of Special Management Areas after publication of notice to that effect in the Federal Register and submission of notice thereof to the Committee on Energy and Natural Resources of the United States Senate and the Committees on Agriculture and Interior and Insular Affairs of the United States House of Representatives. Such notice shall be published and submitted at least sixty days before the revision is made. Notice of final action regarding such revision shall also be published in the Federal Register.

(D) DODSON WARRENDALE SPECIAL PURCHASE UNIT.—(1) There is hereby established the Dobson/Warrendale Special Purchase Unit.

(2) The boundaries of the Dodson/Warrendale Special Purchase Unit shall be generally depicted on the map entitled "Dodson/Warrendale Special Purchase Unit, Columbia River Gorge National Scenic Area", numbered SPU-003 sheet 1, and dated September 1986, which shall be on file and available for public inspection in

the offices of the Commission and of the Chief, Forest Service.

(e) URBAN AREAS.—(1) The following cities and towns are hereby designated as "Urban Areas": Cascade Locks, Hood River, Mosier; and The Dalles, Oregon; and Bingen, Carson, Dallesport, Home Valley, Lyle, North Bonneville, Stevenson, White Salmon, and Wishram, Washington.

(2) The boundaries of Urban Areas shall be generally depicted on the map entitled, "Urban Areas, Columbia River Gorge National Scenic Area", numbered UA-004 sheets 1 through 11, and dated September 1986, which shall be on file and available for public inspection in the offices of the Commission and of the Chief, Forest Service. The boundaries of Urban Areas designated in this subsection may be revised pursuant to the provisions of this section.

(f) REVISION OF URBAN AREA BOUNDARIES.—(1) Upon application of a county and in consultation with the Secretary, the Commission may make minor revisions to the boundaries of any Urban Area identified in subsection 4(e) of this section. A majority vote of two-thirds of the members of the Commission, including a majority of the members appointed from each State, shall be required to approve any revision of Urban Area boundaries.

(2) The Commission may revise the boundaries of an Urban Area only if it finds that—

(A) a demonstrable need exists to accommodate long-range urban population growth requirements or economic needs consistent with the management plan;

(B) revision of Urban Area boundaries would be consistent with the standards established in section 6 and the purposes of this Act;

(C) revision of Urban Area boundaries would result in maximum efficiency of land uses within and on the fringe of existing Urban Areas; and

(D) revision of Urban Area boundaries would not result in the significant reduction of agricultural lands, forest lands, or open spaces.

SEC. 5. THE COLUMBIA RIVER GORGE COMMISSION.

(a) ESTABLISHMENT AND MEMBERSHIP OF THE COMMISSION.—(1) To achieve the purposes of this Act and to facilitate cooperation among the States of Oregon and Washington, and with the United States of America, the consent of Congress is given for an agreement described in this Act pursuant to which, within one year after the date of enactment of this Act—

(A) the States of Oregon and Washington shall establish by way of an interstate agreement a regional agency known as the Columbia River Gorge Commission. The Commission shall carry out its functions and responsibilities in accordance with the provisions of this Act and shall not be considered an agency or instrumentality of the United States for the purpose of any Federal law;

(B) the States of Oregon and Washington shall provide to the Commission and the counties under State law the authority to carry out their respective functions and responsibilities in accordance with the provisions of this Act through incorporation as State law by specific reference the provisions of this Act; and

(C) the States of Oregon and Washington shall appoint members of the Commission as provided in clauses (I) through (III), subject to applicable State law: *Provided*, That the Governor of either State may extend the time for appointment of Commission members ninety days to provide more time for the States and counties to make such appointments. Membership of the Commission shall be as follows:

(i) six members, comprised of one resident from each of the following counties: Hood River, Multnomah, and Wasco Counties, Oregon, and Clark, Klickitat, and Skamania Counties, Washington, to be appointed by the governing body of each of the respective counties: *Provided*, That in the event the governing body of a county fails to make such appointment, the Governor of the State in which the county is located shall appoint such member;

(ii) three members who reside in the State of Oregon, to be appointed by the Governor of Oregon;

(iii) three members who reside in the State of Washington, to be appointed by the Governor of Washington; and

(iv) one ex officio, nonvoting member who shall be an employee of the Forest Service, to be appointed by the Secretary.

(2) The agreement shall take effect and the Commission may exercise its authorities pursuant to the agreement upon the appointment of four initial members from each State, subject to applicable State law, and the date of such an agreement shall be the date of establishment of the Commission. Such agreement is hereby consented to by the Congress.

(3) Either State or any county may fill any vacancy occurring prior to the expiration of the term of any member originally appointed by that State or county. Each member appointed to the Commission shall serve a term of four years, except that, with respect to members initially appointed pursuant to paragraph (1)(C)(i), each Governor shall designate one member to serve for a term of five years and one to serve for a term of six years, and one member from each State initially appointed pursuant to paragraph (1)(C)(ii) and (iii) shall be designated by the Governor to serve a term of five years, and one to serve a term of six years. Neither the Governors nor the governing bodies of any of the counties may appoint Federal, State, or local elected or appointed officials to the Commission.

(4) A majority of the members of the Commission shall constitute a quorum. The members of the Commission shall select from among themselves a Chairman by majority vote of the members appointed from each state.

(5) Except for the ex-officio member appointed pursuant to paragraph (1)(C)(iv), the members and officers and employees of the Commission shall not be officers or employees of the United States for any purpose. The Commission shall appoint, fix compensation for, and assign and delegate duties to such officers and employees as the Commission deems necessary to fulfill its functions under this Act. The compensation of Commission members shall be fixed by State law. The compensation of Commission members, officers, and employees and the expenses of the Commission shall be paid from funds provided to the Commission by the State.

(b) APPLICABLE LAW.—For the purposes of providing a uniform system of laws, which, in addition to this Act, are applicable to the Commission, the Commission shall adopt regulations relating to administrative procedure, the making of contracts, conflicts-of-interest, financial disclosure, open meetings of the Commission, advisory committees, and disclosure of information consistent with the more restrictive statutory provisions of either State. Regulations applicable to financial disclosure under this subsection shall be applied to members of the Commission without regard to the duration of their service on the Commission or the amount of compensation received for such service. No contract, obligation, or other action of the Commission shall be an obligation of the United States or an obligation secured by the full faith and credit of the United States.

(c) ASSISTANCE TO THE COMMISSION.—Upon the request of the Commission, the Secretary and other Federal agencies are authorized to provide information, personnel, property, and services on a reimbursable basis, and the Secretary is authorized to provide technical assistance on a nonreimbursable basis, to the Commission to assist it in carrying out its functions and responsibilities pursuant to this Act.

(d) ADVISORY COMMITTEES.—The Commission shall establish voluntary technical and citizen advisory committees to assist the Commission in carrying out its functions and responsibilities pursuant to this Act.

SEC. 6. THE SCENIC AREA MANAGEMENT PLAN.

(a) STUDIES.—Within one year after the date the Commission is established, it shall, in cooperation with the Secretary, complete the following studies for use in preparing the management plan:

(1) RESOURCE INVENTORY.—The Commission shall complete a resource inventory. The resource inventory shall—

(A) document all existing land uses, natural features and limitations, scenic, natural, cultural, archaeological and recreation and economic resources and activities: *Provided*, That the location of any Indian burial grounds, village sites, and other areas of archaeological or religious significance shall not be made public information and such information shall be used for administrative purposes only; and

(B) incorporate without change the resource inventory developed by the Secretary pursuant to section 8 of this Act for the Special Management Areas.

(2) ECONOMIC OPPORTUNITY STUDY.—The Commission shall complete a study to identify opportunities to enhance the economies of communities in the Scenic Area in a manner consistent with the purposes of this Act.

(3) RECREATION ASSESSMENT.—The Commission shall complete an assessment of recreation resources and opportunities for enhancement of these resources. The recreation assessment shall—

(A) designate the location and specify the construction of an interpretive center or other appropriate facility, to be located in the State or Oregon, and of a conference center or other appropriate facility, to be located in the State of Washington;

(B) identify areas within the scenic area that are suitable for other public use facilities, including but not limited to educational and interpretive facilities, campsites, picnic areas, boat launch facilities and river access areas; and

(C) subject to the treaty and other rights of Indian tribes, designate areas to provide increased access for recreation purposes to the Columbia River and its tributaries; and

(D) incorporate without change the recreation assessment developed by the Secretary pursuant to section 8 of this Act for the Special Management Areas;

(b) LAND USE DESIGNATIONS.—Within two years after the Commission is established, it shall develop land use designations for the

use of non-federal lands within the Scenic Area. The land use designations shall—

(1) be based on the results of the resource inventory developed pursuant to subsection (a)(1) of this section, and consistent with the standards established in subsection (d) of this section;

(2) designate those lands used or suitable for the production of crops, fruits or other agricultural products or the sustenance of livestock as agricultural lands;

(3) designate lands used or suitable for the production of forest products as forest lands;

(4) designate lands suitable for the protection and enhancement of open spaces;

(5) designate areas in the Scenic Area outside special Management Areas used or suitable for commercial development: *Provided*, That such designation shall encourage, but not require, commercial development to take place in Urban Areas and shall take into account the physical characteristics of the areas in question and their geographic proximity to transportation, commercial, and industrial facilities and other amenities;

(6) designate areas used or suitable for residential development, taking into account the physical characteristics of the areas in question and their geographic proximity to transportation and commercial facilities and other amenities; transportation and commercial facilities and other amenities; and

(7) incorporate without change the designation of Urban Areas established in section 4(e) of this Act.

(c) ADOPTION OF THE MANAGEMENT PLAN.—Within three years after the date the Commission is established, it shall adopt a management plan for the Scenic Area. The Commission shall adopt the management plan by a majority vote of the members appointed, including at least three members from each State. The management plan shall—

(1) be based on the results of the resource inventory developed pursuant to subsection (a)(1) of this section;

(2) include land use designations developed pursuant to subsection (b) of this section;

(3) be consistent with the standards established in subsection (d) of this section;

(4) incorporate without change the management direction for the use of Federal lands within and the land use designations for the special management areas adopted by the Secretary pursuant to section 8 of this Act; and

(5) include guidelines for the adoption of land use ordinances for lands within the Scenic Area. The guidelines—

(A) shall incorporate without change the guidelines for the development of Special Management Area land use ordinances developed by the Secretary pursuant to section 8 of this Act; and

(B) shall not apply to Urban Areas designated in section (4e) of this Act.

(d) STANDARDS FOR THE MANAGEMENT PLAN.—The management plan and all land use ordinances and interim guidelines adopted pursuant to this Act shall include provisions to—

(1) protect and enhance agricultural lands for agricultural uses and to allow, but not require, conversion of agricultural lands to open space, recreation development or forest lands;

(2) protect and enhance forest lands for forest uses and to allow, but not require, conversion of forest lands to agricultural lands, recreation development or open spaces;

(3) protect and enhance open spaces;

(4) protect and enhance public and private recreation resources and educational and interpretive facilities and opportunities, in accordance with the recreation assessment adopted pursuant to subsection (a) of this section;

(5) prohibit major development actions in Special Management Areas, except for partitions or short plats which the Secretary determines are desirable to facilitate land acquisitions pursuant to this Act;

(6) prohibit industrial development in the Scenic Area outside Urban Areas;

(7) require that commercial development outside Urban Areas take place without adversely affecting the scenic cultural, recreation, or natural resources of the Scenic Area;

(8) require that residential development outside Urban Areas take place without adversely affecting the scenic, cultural, recreation, and natural resources of the Scenic Area; and

(9) require that the exploration, development and production of mineral resources, and the reclamation of lands thereafter, take place without adversely affecting the scenic, cultural, recreation and natural resources of the Scenic Area.

(e) AGENCY CONSULTATION AND PUBLIC INVOLVEMENT.—The Secretary and the Commission shall exercise their responsibilities pursuant to this Act in consultation with Federal, state and local governments having jurisdiction within the Scenic Area or expertise pertaining to its administration and with Indian tribes. The Secretary and the Commission shall conduct public hearings and solicit public comment prior to final adoption of the management plan and the Commission shall conduct public hearings and solicit public comment prior to final adoption of land use ordinances. The Commission and the appropriate county shall promptly notify the Secretary, the States, local governments and Indian tribes of all proposed major development actions and residential development in the Scenic Area.

(f) CONCURRENCE OF THE MANAGEMENT PLAN.—

(1) REVIEW BY THE SECRETARY.—Upon adoption of the management plan, the Commission shall promptly submit the plan to the Secretary for review. If the Secretary agrees with the Commission that the management plan is consistent with the standards established in this section and the purposes of this Act, the Secretary shall concur to that effect. Should the Secretary fail to act on the proposed plan within ninety days, the Secretary shall be deemed to have concurred on the management plan.

(2) DENIAL OF CONCURRENCE.—If concurrence is denied, the Secretary shall state the reasons for finding the plan is inconsistent with the standards established in this section or the purposes of this Act, and shall submit to the Commission suggested modifications to the management plan to make it consistent with such standards and the purposes of this Act.

(3) COMMISSION RECONSIDERATION.—Within one hundred twenty days after receipt of notification of non-concurrence, The Commission shall—

(A) revise and resubmit the plan to the Secretary; or

(B) by a vote of two-thirds of its membership, including a majority of the members appointed from each State, reject the suggested modifications of the Secretary and adopt a management plan consistent with the provisions of this section and the purposes of this Act.

(g) REVISION OF THE PLAN.—No sooner than five years after adoption of the management plan, but at least every ten years, the Commission shall review the management plan to determine whether it should be revised. The Commission shall submit any revised management plan to the Secretary for review and concurrence, in accordance with the provisions of this section for adoption of the management plan.

(h) AMENDMENT OF THE PLAN.—If the Commission determines at any time that conditions within the Scenic Area have significantly changed, it may amend the management plan. The Commission shall submit amendments to the management plan to the Secretary for review, in accordance with the provisions of this section for adoption of the management plan.

SEC. 7. ADMINISTRATION OF THE SCENIC AREA.

(a) MANAGEMENT OF THE SCENIC AREA.—The non-federal lands within the Scenic Area shall be administered by the Commission in accordance with the management plan and this Act.

(b) ADOPTION OF SCENIC AREA LAND USE ORDINANCES.—

(1) Within sixty days of initial receipt of the management plan, each county shall submit to the Commission a letter stating that it proposes to adopt a land use ordinance consistent with the management plan. If any county fails to submit such letter or fails to adopt a land use ordinance as provided in this section, the Commission shall carry out the requirements of subsection (c) of this section.

(2) Within two hundred seventy days of receipt of the management plan, each county shall adopt a land use ordinance consistent with the management plan, and thereafter may adopt an amendment, revision or variance to a land use ordinance at any time. Each county upon adoption of a land use ordinance shall promptly submit the ordinance to the Commission.

(3) APPROVAL BY COMMISSION.—(A) Within ninety days after receipt of a land use ordinance, the Commission, by majority vote including at least three members from each state, shall approve the ordinance unless it determines the ordinance is inconsistent with the management plan. Should the Commission fail to act within sixty days, the ordinance shall be deemed to be approved.

(B) If approval is denied, the Commission shall state the reasons for finding the ordinance is inconsistent with the management plan, and shall submit to the county suggested modifications to the ordinance to make it consistent with the management plan.

(C) Each county shall have ninety days after it receives recommendations from the Commission to make modifications designed to eliminate the inconsistencies and to resubmit the ordinance to the Commission for approval. The Commission shall have sixty days to approve or disapprove the resubmitted ordinance. Any resubmitted ordinance shall become effective upon approval. Should the Commission disapprove the resubmitted ordinance, it shall promptly resubmit the ordinance for reconsideration. Should the Commisson fail to act within sixty days, the ordinance shall be deemed to be approved.

(c) COMMISSION LAND USE ORDINANCES.—(1) Within ninety days after making a determination that a county has failed to comply with the provisions of this section, the Commission shall make and publish a land use

ordinance setting standards for the use of non-Federal lands in such county within the boundaries of the National Scenic Area, excluding Urban Areas identified in section 4(e) of this Act. The ordinance shall have the object of assuring that the use of such non-Federal lands is consistent with the management plan. The ordinance may differ amongst the several parcels of land within the boundaries of the Scenic Area. The ordinance may from time to time be amended by the Commission.

(2) SUBSEQUENT COMPLIANCE.—In the event the Commission has promulgated regulations pursuant to this section, a county may thereafter upon written notice to the Commission elect to adopt a land use ordinance, in which event it shall comply with the provisions of this section for adoption of a land use ordinance. Upon approval of a land use ordinance by the Commission it shall supercede any regulations for the county developed by the Commission, subject to valid existing rights.

(d) CONSTRUCTION OF FACILITIES.—The Secretary is hereby authorized to design, construct, operate and maintain such facilities as are included in the recreation assessment.

SEC. 8. ADMINISTRATION OF THE SPECIAL MANAGEMENT AREAS.

(a) ADMINISTRATION OF FEDERAL LANDS.—(1) The Secretary shall administer Federal lands within the Special Management Areas in accordance with this Act and other laws, rules and regulations applicable to the national forest system. The Secretary shall allow for the construction of roads and the management, utilization and harvest of timber on Federal lands within the Special Management Areas, subject to Forest Service visual resource management guidelines. The Secretary shall utilize lands acquired through exchange in calculating the allowable sales quantity on the Gifford Pinchot and Mt. Hood National Forests.

(b) WITHDRAWAL OF FEDERAL LANDS.—Subject to valid existing rights, all Federal lands located in the Special Management Areas are hereby withdrawn from all forms of entry, appropriation or disposal under the public land laws, from location, entry and patent under the mining laws of the United States, and from disposition under all laws pertaining to mineral and geothermal leasing: *Provided*, That the Secretary may allow the exploration, development or production of sand, gravel and crushed rock as necessary to construct, maintain, or reconstruct roads in the Special Management Areas.

(c) RESOURCE INVENTORY.—The Secretary shall complete a resource inventory for the special management areas consistent with the process and substance of the inventory prescribed by section 6(a)(1) of this Act.

(d) RECREATION ASSESSMENT.—Within two years after the date of enactment of this Act, the Secretary shall complete an assessment of recreation resources in the Special Management Areas and opportunities for enhancement of these resources. The recreation assessment shall—

(1) identify areas within the Special Management Areas suitable for designation by the Commission pursuant to section 6 of this Act for the construction of an interpretive center or other appropriate facility, to be located in the State of Oregon, and of a conference center or other appropriate facility, to be located in the State of Washington;

(2) identify areas within the Special Management Areas suitable for other public use facilities, including but not limited to educational and interpretive facilities, campsites, picnic areas, boat launch facilities and river access areas; and

(3) subject to the treaty or other rights of Indian tribes, identify areas with the Special Management Areas suitable for use to increase access for recreation purposes to the Columbia River and its tributaries.

(e) LAND USE DESIGNATIONS.—Within three years after the date of enactment of this Act, the Secretary shall develop land use designations for the Special Management Areas. The land use designations shall be—

(1) based on the resource inventory prepared by the Secretary pursuant to this section; and

(2) consistent with the standards established in section 6 of this Act.

(f) GUIDELINES FOR LAND USE ORDINANCES.—(1) Within three years after the date of enactment of this Act, the Secretary shall, in consultation with the Commission, develop guidelines to assure that non-Federal lands within the Special Management Areas are managed consistent with the standards in section 6 and the purposes of this Act. The Secretary shall promptly transmit the guidelines to the Commission for inclusion in the management plan. The guidelines shall require that management, utilization, and disposal of timber, and exploration, development, and production of sand, gravel and crushed rock for the construction, maintenance or reconstruction of roads used to manage or harvest forest products on non-federal lands within the special management areas take place without adversely affecting the scenic, cultural, recreation and natural resources of the Scenic Area.

(h) ADOPTION OF SPECIAL MANAGEMENT AREA LAND USE ORDINANCES.—(1) Within sixty days of receipt of the management plan, each county shall submit to the Commission a letter stating that it proposes to adopt a land use ordinance consistent with the management plan. If any county fails to submit a letter as provided in this subsection, or fails to adopt a land use ordinance as provided in this section, the Commission shall carry out the requirements of subsection (l) of this section.

(2) Within two hundred seventy days of receipt of the management plan, each county shall adopt a special management area land use ordinance consistent with the management plan, and thereafter may adopt an amendment, revision or variance to a land use ordinance at any time. Each county upon adoption of a special management area land use ordinance shall promptly submit the adopted ordinance to the Commission.

(i) REVIEW BY THE COMMISSION.—(1) The Commission shall review the Special Management Area land use ordinance received from each county, and within ninety days after receipt shall make a tentative determination as to whether the ordinance is consistent with the management plan. If the Commission makes a tentative determination that the land use ordinance is consistent with the management plan, the Commission shall send the ordinance to the Secretary for concurrence.

(2) If the Commission makes a tentative determination that the land use ordinance is inconsistent with the management plan, the Commission shall state the reasons for the determination and shall return the ordinance to the appropriate county with suggested modifications required for consistency with the management plan.

(3) Each county shall have ninety days after it is notified by the Commission to make modifications designed to eliminate the inconsistencies and to resubmit the ordinance to the Commission for tentative determination of consistency. The Commission shall have sixty days to make a tentative consistency determination on the resubmitted ordinance. If found consistent, the land use ordinance shall be transmitted by the Commission to the Secretary for concurrence that the ordinance is consistent with the management plan. If the Commission finds the resubmitted ordinance inconsistent, the Commission shall adopt an ordinance pursuant to subsection (l) of this section.

(j) CONCURRENCE BY THE SECRETARY.—(1) Upon receipt of a Special Management Area land use ordinance from the Commission, the Secretary shall notify the public of such receipt and shall, within ninety days thereafter, concur with the Commission's tentative determination of consistency with the management plan unless the Secretary determines the ordinance is inconsistent. Any ordinance submitted to the Secretary shall become effective upon notification of concurrence. Should the Secretary fail to act within ninety days, the Secretary shall be deemed to have concurred with the Commission's tentative consistency determination.

(2) DENIAL OF CONCURRENCE.—If concurrence is denied, the Secretary shall state the reasons therefor and shall submit to the Commission suggested modifications to the land use ordinances to make them consistent with the management plan and the purposes of this Act.

(k) COMMISSION RECONSIDERATION.—Within one hundred twenty days after receipt of notification of non-concurrence by the Secretary, the Commission shall resubmit the land use ordinances to the appropriate county. Such county shall, within ninety days, reconsider and revise the ordinance and resubmit the ordinance to the Commission for reconsideration in accordance with the provisions of this section. Should the Secretary again deny concurrence, the Commission shall either prepare a land use ordinance for such county pursuant to subsection (l) of this section or, by a two-thirds vote of the membership of the Commission including a majority of the members appointed from each State, determine that the ordinance is consistent with the management plan.

(l) COMMISSION ORDINANCES.—Within ninety days after making a determination that a county has failed to comply with the provisions of subsection (h) of this section, the Commission shall make and publish an ordinance setting standards for the use of non-Federal lands of such county within the boundaries of the Special Management Areas. The ordinances shall have the object of assuring that the use of such lands is consistent with the management plan. The ordinances may differ amongst the several parcels of land within the boundaries of the Special Management Areas. The ordinances may from time to time be amended by the Commission.

(2) The Commission shall promptly submit the ordinance to the Secretary. The Secretary shall, within ninety days after receipt of the ordinance from the Commission, concur with the tentative determination that the land use ordinance is consistent with the management plan unless a determination of inconsistency is made. Any ordinance submitted to the Secretary shall

become effective upon concurrence. Should the Secretary fail to concur within ninety days, the land use ordinance shall be effective.

(3) If concurrence is denied, the Secretary shall state the reasons for finding the ordinance is inconsistent with the management plan, and shall submit to the Commission suggested modifications to the ordinance to make it consistent with the plan.

(4) The Commission shall have ninety days after it receives recommendations from the Secretary to make modifications designed to eliminate the inconsistencies and to resubmit the ordinance to the Secretary for concurrence. The Secretary shall have sixty days to concur with the resubmitted ordinance. Any resubmitted ordinance shall become effective upon concurrence by the Secretary. Should the Secretary deny concurrence for the resubmitted ordinance, the Secretary shall state the reasons therefor and shall promptly resubmit the ordinance for reconsideration. Should the Secretary fail to concur within sixty days, the ordinance shall be deemed effective.

(5) Within one hundred twenty days after receipt of notification of non-concurrence, the Commission shall—

(A) revise and resubmit the land use ordinance to the Secretary; or

(B) revise and resubmit the land use ordinance to the Secretary; or

(C) by a vote of two-thirds of its membership, including a majority of the members appointed from each State, reject the suggested modifications of the Secretary and adopt a land use ordinance consistent with the provisions of this section and the purposes of this Act.

(m) SUBSEQUENT COMPLIANCE.—In the event the Commission has adopted an ordinance pursuant to this section, the affected county may thereafter, upon written notice to the Commission and to the Secretary, elect to adopt a Special Management Area land use ordinance, in which event it shall comply with the provisions of this section for adoption of special management area land use ordinances. Upon concurrence of such land use ordinances by the Secretary they shall supercede any special management area land use ordinances for the county developed by the Commission, subject to valid existing rights.

(n) EFFECT OF SECRETARY'S NON-CONCURRENCE.—If the Secretary does not concur in any land use ordinance approved or adopted by the Commission pursuant to this section, the availability of certain funds to the relevant county shall be governed by section 16(b) of this Act.

(o) SPECIAL RULES.—Any ordinance adopted pursuant to this section shall not apply to any parcel or parcels of land within any special management area at the expiration of three years after the date such ordinance is adopted and a landowner makes a bona fide offer to sell at fair market value or otherwise convey such parcel or parcels to the Secretary, unless the affected landowner agrees to an extension of an ordinance: *Provided*, an offer shall not be considered bona fide if the landowner refuses consideration equal to the fair market value as appraised in accordance with the Uniform Appraisal Standards for Federal Land Acquisitions (Interagency Land Acquisition Conference, 1973). Lands for which an ordinance is suspended pursuant to this subsection shall be subject to the relevant Scenic Area Land use ordinance adopted pursuant to section 7 of this Act.

SEC. 9. LAND ACQUISITION.

(a) ACQUISITION AUTHORIZED.—(1) The Secretary is authorized to acquire any lands or interests therein within the Special Management Areas and the Dodson/Warrendale Special Purchase Unit which the Secretary determines are needed to achieve the purposes of this Act: *Provided*, That any lands, water, or interests therein owned by either State or any political subsivision thereof may be acquired only by donation or exchange.

(2) Lands within the State of Oregon acquired by the Secretary pursuant to this Act shall become part of the Mount Hood National Forest. Lands within the State of Washington acquired by the Secretary pursuant to this section shall become part of the Gifford Pinchot National Forest. All lands acquired by the Sectretary pursuant to this Act shall be subject to the laws and regulations pertaining to the National Forest System and this Act.

(b) LIMITATIONS ON EMINENT DOMAIN.—

(1) Where authorized in subsection (a) of this section to acquire land or interests therein without the consent of the owner, the Secretary shall—

(A) acquire only such land or interests therein as is reasonably necessary to accomplish the purposes of this Act; and

(B) do so only in cases where all reasonable efforts to acquire with the consent of the owner such lands, or interests therein, have failed.

(2) Notwithstanding the provisions of subsection (a) of this section, the Secretary may not acquire without the consent of the owner of such lands or interests therein which—

(A) on the date of enactment of this Act, were used primarily for educational, religious, or charitable purposes, single-family residential purposes, farming, or grazing so long as the existing character of that use is not substantially changed or permitted for change;

(B) are located in counties with land use ordinances in which the Secretary has concurred pursuant to section 8 of this Act, unless such lands are being used, or are in imminent danger of being used, in a manner incompatible with such ordinances;

(C) are within the boundaries of the Dodson/Warrendale Special Purchase Unit; or

(D) are owned by an Indian tribe, held in trust by the United States for an Indian tribe or member of an Indian tribe, or otherwise administered by the United States for the benefit of an Indian tribe or member of an Indian tribe.

(c) HARDSHIP CASES.—In exercising authority to acquire lands pursuant to this section the Secretary shall give prompt and careful consideration to any offer made by any person or entity owning any land, or interest in land, within the boundaries of a Special Management Area. In considering such offer, the Secretary shall take into consideration any hardship to the owner which might result from any undue delay in acquiring the property.

(d) LAND EXCHANGES.—(1) The Secretary is authorized and directed, in conformance with the provisions of this section, to acquire by exchange any parcel of unimproved forest land at least forty acres in size within the boundaries of this Special Management Areas—

(A) owned by the State of Washington or Hood River County, Oregon, if, after final adoption of the management plan but within one hundred eighty days thereafter, the state or county offers to the United States such parcel of forest land; or

(B) owned by any private forest land owner if, after enactment of this Act but within one hundred and eighty days after final adoption of the management plan, such private forest land owner offers to the United States such parcel of forest land.

(2) In exercising this authority to acquire forest lands pursuant to this subsection, the Secretary may accept title to such lands and convey to the owner Federally owned lands deemed appropriate by the Secretary within the States of Oregon and Washington, regardless of the State in which the transferred lands are located. Forest lands exchanged pursuant to this subsection shall be of approximately equal value: *Provided*, That the Secretary may accept cash from or pay cash to the grantor in such an exchange in order to equalize minor differences in the values of the properties exchanged: *Provided further*, That the Secretary may reserve in any conveyance pursuant to this subsection such easements, subsurface rights, and any other interests in land deemed necessary or desirable: *Provided further*, That the valuation of lands exchanged shall be determined in terms of forest uses for timber.

(3) It is the intention of Congress that land exchanges pursuant to this subsection shall be completed no later than five years after the date of enactment of this Act. No later than sixty days after the enactment of this Act, and every one hundred eighty days thereafter, the Secretary shall report in writing to the Committee on Energy and Natural Resources of the United States Senate and the Committees on Agriculture and Interior and Insular Affairs of the United States House of Representatives, on the status of negotiations with owners of non-Federal lands to effect the exchanges authorized by this subsection.

(4) In the event that exchanges authorized by this section leave the State of Washington Department of Natural Resources, Hood River County, Oregon, or any private forest land owner with ownership of an uneconomic remnant of forest land contiguous to a Special Management Area, the Secretary is authorized to acquire such forest lands as if they were within the boundaries of a Special Management Area.

(5) The following-described federal lands and interests therein are hereby identified as candidate lands for exchanges conducted pursuant to this section: *Provided*, That the determination of which candidate lands will be exchanged, and in what sequence, shall be at the discretion of the Secretary. Subject to valid existing rights, such lands are hereby withdrawn from all forms of entry or appropriation or disposal under the public land laws, and from location, entry and patent under the United States mining law, and from disposition under all laws pertaining to mineral and geothermal leasing and all amendments thereto until the Secretary determines such lands are no longer needed to complete exchanges authorized by this section: *Provided*, That such period shall not extend beyond five years:

GIFFORD PINCHOT NATIONAL FOREST

Section	Township	Range
Wind River-Panther Creek Area:		
35	4N	7E
36	4N	7E
Approximately 430 acres.		
South Swift Area:		
13	6N	5E
23	6N	5E

GIFFORD PINCHOT NATIONAL FOREST—Continued

Section	Township	Range
17	6N	6E
18	6N	6E
Approximately 1,920 acres.		
National Area:		
6	14N	7E
7	14N	7E
18	14N	7E
30	14N	7E
Approximately 2,560 acres.		
Buck Creek-Willard Area:		
16	3N	9E
1	4N	9E
2	4N	9E
3	4N	9E
10	4N	9E
11	4N	9E
12	4N	9E
15	4N	9E
21	4N	9E
22	4N	9E
26	4N	9E
27	4N	9E
28	4N	9E
29	4N	9E
30	4N	9E
31	4N	9E
32	4N	9E
33	4N	9E
34	4N	9E
35	4N	9E
6	4N	10E
7	4N	10E
5	5N	10E
6	5N	10E
7	5N	10E
8	5N	10E
9	5N	10E
30	5N	10E
31	5N	10E
32	5N	10E
Approximately 14,460 acres.		

SIUSLAW NATIONAL FOREST

Section	Township	Range
East Beaver Area:		
33	2S	9W
34	2S	9W
2	3S	9W
3	3S	9W
4	3S	9W
8	3S	9W
9	3S	9W
17	3S	9W
Approximately 3,056 acres.		

WILLAMETTE NATIONAL FOREST

Section	Township	Range
Ida-McCoy Area:		
21	10S	6E
28	10S	6E
Approximately 680 acres.		

MOUNT HOOD NATIONAL FOREST

Section	Township	Range
Estacada Area:		
15	4S	5E
Approximately 560 acres.		
Hood River Area:		
4	1N	9E
36	1N	10E
31	1N	11E
2	1S	9E
3	1S	9E
4	1S	9E
5	1S	9E
6	1S	9E
Approximately 5,800 acres.		
Zig-Zag Area:		
22	2S	7E
29	2S	7E
Approximately 280 acres.		
Total acreage, 29,743.		

(e) BOUNDARIES.—For the purposes of section 7 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-9), the boundaries of the Special Management Areas and the Dodson/Warrendale Special Purchase Unit shall be treated as if they were within the boundaries of the Mt. Hood or Gifford Pinchot National Forests as of January 1, 1965.

SEC. 10. INTERIM MANAGEMENT.

(a) INTERIM GUIDELINES.—(1) Within one hundred eighty days after the date of enactment of this Act, the Secretary shall develop interim guidelines for the Scenic Area outside Urban Areas to identify land use activities which are inconsistent with this Act and to govern the authority to acquire land without the consent of the owner provided by subsection (b) of this section. The Secretary shall promptly notify the public of adoption of the interim guidelines and transmit the guidelines to each county. Guidelines adopted by the Secretary pursuant to this subsection shall remain in effect for each county until the Secretary has developed guidelines for the Special Management Areas pursuant to section 8 of this Act and the land use ordinances prescribed by section 7 are in effect.

(b) INTERIM ACQUISITION AUTHORITY AND INJUNCTIVE RELIEF.—Prior to the concurrence by the Secretary of land use ordinances prescribed by section 8 of this Act and the approval by the Commission of land use ordinances prescribed by section 7 of this Act, the following authorities are granted:

(1) The Secretary may acquire any land or interest therein by condemnation which is being used or threatened to be used in a manner inconsistent with the purposes for which the Scenic Area was established and which will cause or is likely to cause impacts adversely affecting the scenic, cultural, recreation, and natural resources of the Scenic Area: *Provided*, That no lands or interests therein can be acquired by condemnation pursuant to this section if used in the same manner and for the same purposes as used on the effective date of this Act, unless such land is used for or interest is in the development and production of sand, gravel, or crushed rock, or disposal of refuse.

(2) Upon or after the commencement of any action for condemnation pursuant to this subsection, the Secretary, acting through the Attorney General of the United States, may apply to the appropriate United States District Court for a temporary restraining order or injunction to prohibit the use of any property within the scenic area, but outside of urban areas, which will cause or is likely to cause impacts adversely affecting the scenic, cultural, recreation and natural resources of the scenic area or is otherwise inconsistent with the purposes for which the Scenic Area was established. During the period of such order or injunction, the Secretary shall diligently and in good faith negotiate with the owner of the property to assure that, following termination of the order or injunction, the inconsistent use is abated or the adverse effect is mitigated.

(c) REVIEW OF DEVELOPMENT ACTION.—Prior to the effective date of a land use ordinance for each county pursuant to section 7 of this Act, and concurrence of the Secretary on a land use ordinance for each county pursuant to section 8 of this Act, the Commission shall review all proposals for major development actions and new residential development in such county in the Scenic Area, except Urban Areas. The Commission shall allow major development actions and new residential development only if it determines that such development is consistent with the standards contained in section 6 and the purpose of this Act.

SEC. 11. ECONOMIC DEVELOPMENT.

(a) ECONOMIC DEVELOPMENT PLAN.—Based on the Economic Opportunity Study and other appropriate information, each State, in consultation with the counties and the Commission, shall develop a plan for economic development projects for which grants under this section may be used in a manner consistent with this Act.

(b) FUNDS PROVIDED TO STATES FOR GRANTS.—Upon certification of the management plan, and receipt of a plan referred to in subsection (a) of this section, the Secretary shall provide $5,000,000 to each State which each State shall use to make grants and loans for economic development projects that further the purposes of this Act.

(c) CONDITIONS OF GRANTS.—Each State making grants under this section shall require as a condition of a grant that—

(1) all activities undertaken under the grant are certified by the Commission as being consistent with the purposes of the Act, the management plan, and land use ordinances adopted pursuant to this Act;

(2) grants and loans are not used to relocate a business from one community to another;

(3) grants and loans are not used for program administration; and

(4) grants and loans are used only in counties which have in effect land use ordinances found consistent by the Commission and concurred on by the Secretary pursuant to section 8 of this Act.

(c) REPORT.—Each State shall—

(1) prepare and provide the Secretary with an annual report to the Secretary on the use of the funds made available under this section;

(2) make available to the Secretary and to the Commission, upon request, all accounts, financial records, and other information related to grants and loans made available pursuant to this section; and

(3) as loans are repaid, make additional grants and loans with the money made available for obligation by such repayments.

SEC. 12. OLD COLUMBIA RIVER HIGHWAY.

The Oregon Department of Transportation shall, in consultation with the Secretary and the Commission, the State of Oregon and the counties and cities in which the Old Columbia River Highway is located, prepare a program and undertake efforts to preserve and store the continuity and historic integrity of the remaining segments of the Old Columbia River Highway for public use as a National Historic Road, including recreation trails to connect intact and usable segments.

SEC. 13. TRIBUTARY RIVERS AND STREAMS.

(a) WATER RESOURCES PROJECTS.—The following rivers and streams shall be subject to the same restrictions on the licensing, permitting, and exempting from licensing and the construction of water resource projects as provided for components of the National Wild and Scenic Rivers System pursuant to section 7(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1278(a));

(1) any tributary river or stream to the Columbia River not designated in subsections (c) or (d) of this section or otherwise specified in this subsection which flows in whole or in part through a Special Management Area, unless the construction of a water resources project would not have a direct and adverse effect on the scenic, cultural, recreation, and natural resources of the Scenic Area;

(2) any river or river segment which flows in whole or in part through the Scenic Area and which is established pursuant to State law as a wild, scenic, or recreation river or which is under study pursuant to State law for the potential inclusion in any such State protected river system, unless such project or projects meet terms and conditions set by State agencies exercising administration over such river or river segment;

(3) the Wind River, Washington, for a period not less than three yars following the later of—

(A) final approval of the Gifford Pinchot National Forest Plan, adopted pursuant to the National Forest Management Act of 1976 (Act of October 22, 1976, P.L. 94-588, as amended) (16 U.S.C. 1600 et seq.); or

(B) submittal by the Secretary of a report to the President on the suitability or nonsuitability for addition to the national wild and scenic rivers system and a report by the President to the Congress of recommendations and proposals with respect to the designation of such river under the Wild and Scenic Rivers Act;

(4) the Hood River, Oregon, for a period not to exceed twenty years from the date of enactment of this Act, if such facility impounds or diverts water other than by means of a dam or diversion existing as of date of enactment of this Act; and

(5) the segment of the Little White Salmon, Washington, from the Willard National Fish Hatchery to its confluence with the Columbia River if such facility impounds or diverts water other than by means of a dam or diversion existing as of date of enactment of this Act.

(b) The provisions of subsection (a) shall not apply to those portions of tributary rivers or streams to the Columbia River which flow through or border on Indian Reservations. Nothing in this section shall apply to or affect any segment of any river designated as a wild and scenic river under section 3 of the Wild and Scenic Rivers Act (16 U.S.C. 1274) or any river designated for study under section 5 of such Act (16 U.S.C. 1276);

(c) WILD AND SCENIC RIVER DESIGNATIONS.—Section 3(a) of the Wild and Scenic Rivers Act (Public Law 90-542, Act of October 2, 1968, 82 Stat. 910, as amended) is further amended by adding the following new subsections:

"( ) Klickitat, Washington: The segment from its confluence with Wheeler Creek, Washington, near the town of Pitt, Washington, to its confluence with the Columbia River; to be classified as a recreation river and to be administered by the Secretary of Agriculture.

( ) White Salmon, Washington: The segment from its confluence with Gilmer Creek, Washington, near the town of B Z Corner, Washington to its confluence with Buck Creek, Washington; to be classified as a scenic river and to be administered by the Secretary of Agriculture.".

(d) WILD AND SCENIC RIVER STUDIES.—Section 5(a) of the Wild and Scenic Rivers Act (Public Law 90-542, Act of October 2, 1968, 82 Stat. 910, as amended) is further amended by adding the following new subsections:

"( ) Klickitat, Washington: The segment from the southern boundary of the Yakima Indian Reservation, Washington, as described in the Treaty with the Yakimas of 1855 (12 Stat. 951), and as acknowledged by the Indian Claims Commission in Yakima Tribe of Indians v. U.S., 16 Ind. Cl. Comm. 536 (1966), to its confluence with the Little Klickitat River, Washington: *Provided*, That said study shall be carried on in consultation with the Yakima Indian Nation and shall include a determination of the degree to which the Yakima Indian Nation should participate in the preservation and administration of the river segment shoud it be proposed for inclusion in the Wild and Scenic Rivers system.

( ) White Salmon, Washington: The segment from its confluence with Trout Lake Creek, Washington, to its confluence with Gilmer Creek, Washington, near the town of B Z Corner, Washington.".

SEC. 14. IMPLEMENTATION MEASURES.

(a) ASSISTANCE TO COUNTIES.—The Secretary shall provide technical assistance on a nonreimbursable basis to counties for the development of land use ordinances prescribed by sections 7 and 8 of this Act: *Provided*, That in the event a county fails to obtain approval by the Commission for a land use ordinance within three years after the date technical assistance is first provided under this subsection for the development of a land use ordinance, the Secretary shall terminate all technical assistance for any participation in the development of such ordinance.

(b) PAYMENT OF TIMBER RECEIPTS.—(1) Notwithstanding the provisions of the last paragraph under the heading "Forest Service" of the Act of May 23, 1908 (c. 192, 35 Stat. 251, as amended; 16 U.S.C. 500), and of section 13 of the Act of March 1, 1911 (c. 186, 36 Stat. 961, as amended; 16 U.S.C. 500), that portion of which is paid under such provisions to the State of Oregon with respect to the special management areas within the Mt. Hood National Forest, the Gates of the Columbia Gorge Special Management Area, Mount Hood National Forest, and to the State of Washington with respect to the Special Management Areas within the Gifford Pinchot National Forest—

(A) not less than 50 percent shall be expended for the benefit of the public schools of the country which has adopted implementation measures pursuant to this Act; and

(B) the remainder shall be expended for the benefit of public roads or any public roads or any public purposes of any county which has adopted implementation measures pursuant to this Act.

(2) Paragraph (1) of this subsection shall not apply—

(A) to any amount paid by the Secretary of the Treasury under the provisions of law referred to in subsection (b)(1) at the end of any fiscal year ending before the date of enactment of this Act; or

(B) for a particular county, if the county does not have in effect a land use ordinance which has been found consistent by the Commission and concurred on by the Secretary pursuant to section 8 of this Act.

(c) PAYMENTS TO LOCAL GOVERNMENTS.—(1) Subject to section 16(B) of this Act, in the case of any land or interest therein acquired by the Secretary pursuant to section 9, which was subject to local real property taxes within the five years preceding such acquisition and which is located in a county which has in effect a land use ordinance which has been found consistent by the Commission and concurred on by the Secretary pursuant to section 8, the Secretary is authorized and directed to make annual payments to the county in which such lands are located in an amount equal to one per centum of the fair market value of such land or interest therein on the date of acquisition by the Secretary.

(2) Notwithstanding paragraph (1) of this subsection, any payment made for any fiscal year to a county pursuant to this subsection shall not exceed the amount of real property taxes assessed and levied on such property during the last full fiscal year before the fiscal year in which such land or interest therein was acquired by the Secretary.

(3) No payment shall be made under this subsection with respect to any land or interest therein after the fifth full fiscal year beginning after the first fiscal year in which such a payment was made with respect to such land or interest therein.

(d) FEDERAL AND STATE CONSISTENCY.—Except as otherwise provided in this Act, Federal and State agencies having responsibilities within the Scenic Area shall—

(1) exercise such responsibilities consistent with the provisions of this Act; and

(2) shall make no new expenditures or provide new financial assistance in the Scenic Area which are inconsistent with the provisions of this Act.

(e) TRANSFER OF PUBLIC LANDS.—Subject to valid existing rights, all public lands within the Scenic Area administered by the Secretary of the Interior through the Bureau of Land Management are hereby transferred without consideration to the jurisdiction of the Secretary to be managed as National Forest lands in accordance with the provisions of this Act.

SEC 15. ENFORCEMENT.

(a) ADMINISTRATIVE REMEDIES.—

(1) COMMISSION ORDERS.—The Commission shall monitor activities of counties pursuant to this Act and shall take such actions as it determines are necessary to ensure compliance.

(2) APPEAL TO THE COMMISSION.—Any person or entity adversely affected by any final action or order of a county relating to the implementation of this Act may appeal such action or order to the Commission by filing with the Commission within thirty days of such action or order, a written petition requesting that such action or order be modified, terminated, or set aside.

(3) CIVIL PENALTIES.—Any person or entity who willfully violates the management plan or any land use ordinance, any implementation measure or any order issued by the Commission pursuant to this Act may be assessed a civil penalty by the Commission not to exceed $10,000 for each violation. No penalty may be assessed under this subsection unless such person or entity is given notice and opportunity for a public hearing with respect to such violation. The Commission may compromise, modify, or remit, with or without conditions, any penalty imposed under this subsection, taking into consideration the nature and seriousness of the violation and the efforts of the violator to remedy the violation in a timely manner.

(b) JUDICAL REMEDIES.—

(1) CIVIL ACTIONS TO ENFORCE ACT.—(A) Except as otherwise limited by this Act, the Attorney General of the United States may, at the request of the Secretary, institute a civil action for an injunction or other appropriate order to prevent any person or entity from utilizing lands within the special management areas in violation of the provisions of this Act, interim guideline adopted or other action taken by the Secretary pursuant to this Act.

(B) The Commission, or, at the request of the Commission, or the Attorney General of Oregon or Washington, may institute a civil action for an injunction or other appropriate order to prevent any person or entity

from utilizing lands within the Scenic Area outside Urban Areas in violation of the provisions of this Act, the management plan, or any land use ordinance or interim guideline adopted or other action taken by the Commission or any county pursuant to this Act.

(2) CITIZENS SUITS.—Any person or entity adversely affected may commence a civil action action to compel compliance with this Act—

(A) against the Secretary, the Commission or any county where there is alleged a violation of the provisions of this Act, the management plan or any land use ordinance or interim guideline adopted or other action taken by the Secretary, the Commission, or any county pursuant to or Commission under this Act; or

(B) against the Secretary, the Commission, or any county where there is alleged a failure of the Secretary, the Commission or any county to perform any act or duty under this Act which is not discretionary with the Secretary, the Commission or any county.

(3) LIMITATION OF BRINGING OF CITIZENS SUITS.—No action may be commenced—

(A) under paragraph (2)(A) of this subsection—

(i) prior to sixty days after the plaintiff has given notice in writing of the alleged violation to the Secretary, to the Commission, and to the county in which the violation is alleged to have occurred; or

(ii) if the Attorney General of the United States, or the Attorney General of Oregon or Washington, has commenced and is diligently prosecuting a civil action of the same matter pursuant to paragraph (1) of this subsection to require compliance with the management plan or any regulations, guidelines, or standards issued or other actions taken by the Secretary, the Commission, or any county pursuant to this Act: *Provided*, That in any such action any person or entity otherwise entitled to bring an action pursuant to paragraph (2) of this subsection may intervene as a matter of right; or

(iii) which challenges the consistency of the draft management plan with the purposes and standards of this Act or with other applicable law prior to the certification or adoption of the Management Plan pursuant to section 6 of this Act; or

(B) under paragraph (2)(B) of this subsection prior to sixty days after the plaintiff has given notice in writing of such action to the Secretary, the Commission, and to the county in which the failure to perform any act or duty pursuant to this Act is alleged: *Provided*, That such action may be brought immediately after such notification where the violation or order complained of constitutes an imminent threat to the health or safety of the plaintiff or would immediately affect a legal interest of the plaintiff.

(4) JUDICIAL REVIEW.—Any person or entity adversely affected by—

(A) any final action or order of a county, the Commission, or the Secretary relating to the implementation of this Act;

(B) any land use ordinance or interim guideline adopted pursuant to this Act; or

(C) any appeal to the Commission pursuant to this section; or

(D) any civil penalty assessed by the Commission pursuant to paragraph (a)(3) of this subsection

may appeal such action or order by filing in any of the courts specified in paragraph (5) of this subsection, within sixty days after the date of service of such order or within sixty days after such action is taken, a written petition requesting such action, order, land use ordinance, interim guideline, or appeal taken to the Commission be modified, terminated, or set aside.

(5) FEDERAL COURT JURISDICTION.—The United States districts courts located in the States of Oregon and Washington shall have jurisdiction over—

(A) any criminal penalty imposed pursuant to 16 U.S.C. 551 or any other applicable law for violation of any order, regulation or other action taken by the Secretary pursuant to this Act;

(B) any civil action brought against the Secretary pursuant to this section; or

(C) any appeal of any order, regulation, or other action of the Secretary taken pursuant to paragraph (4) of this subsection.

(6) STATE COURT JURISDICTION.—The state courts of States of Oregon and Washington shall have jurisdiction—

(A) to review any appeals taken to the Commission pursuant to subsection (a)(2) of this section;

(B) over any civil action brought by the Commission pursuant to subsection (b)(1) of this section or against the Commission, a State, or a county pursuant to subsection (b)(2) of this section;

(C) over any appeal of any order, regulation, or other action of the Commission or a county taken pursuant to paragraph 4 of this subsection; or

(D) any civil penalties assessed by the Commission pursuant to subsection (a)(3) of this section.

SEC. 16. AUTHORIZATION OF APPROPRIATIONS.

(a) AUTHORIZATIONS.—There are authorized to be appropriated such sums as are described below:

(1) for the purpose of acquisition of lands, water, and interests therein pursuant to this Act: $40,000,000: *Provided*, That of this amount no more than $10,000,000 shall be available to acquire lands and interests therein pursuant to section 10;

(2) for the purpose of construction of an interpretive center to be located in the State of Oregon, and a conference center or other appropriate facility to be located in the State of Washington: $10,000,000;

(3) for the purpose of providing payments to local governments pursuant to section 14(c): $2,000,000;

(4) for restoration and reconstruction of the Old Columbia River Highway, Oregon, out of the Highway Trust Fund (other than the Mass Transit Account): $2,800,000: *Provided*, That the funds authorized to be appropriated pursuant to this subsection shall be available for obligation in the same manner and to the same extent as if such funds were apportioned under Chapter 1 of Title 23, United States Code; and

(5) for the purpose of providing economic development grants pursuant to section 11: $5,000,000 for each State: *Provided*, That funds authorized to be appropriated pursuant to this paragraph shall be available for the acquisition of lands and interests therein pursuant to section 10 if, at the expiration of three years, the States have failed to carry out their respective functions pursuant to section 5 of this Act.

(b) AVAILABILITY OF FUNDS.—Funds appropriated under clauses (2) through (5) shall not be made available for any county which does not have in effect a land use ordinance which has been found to be consistent by the Commission and concurred on by the Secretary as consistent with the management plan pursuant to section 8 of this Act.

SEC. 17. SAVINGS PROVISIONS.

(a) Nothing in this Act shall—

(1) except as provided in section 9(e)(6), affect or modify any provision of Federal or State law or regulation or county ordinance which are more protective of the scenic, cultural, recreation, or natural resources of the Scenic Area;

(2) affect or modify any treaty or other rights of any Indian tribe;

(3) except as provided in section 13(c), authorize the appropriation or use of water by any Federal, State, or local agency, Indian tribe, or any other entity or individual;

(4) except as provided in section 13(c), affect the rights or jurisdictions of the United States, the States, Indian tribes or other entities over waters of any river or stream or over any ground water resource or affect or interfere with transportation activities on any such river or stream;

(5) except as provided in section 13(c), alter, establish, or affect the respective rights of United States, the States, Indian tribes, or any person with respect to any water or water-related right;

(6) alter, amend, repeal, interpret, modify, or be in conflict with any interstate compact made by the States;

(7) affect or modify the ability of the Bonneville Power Administration to operate, maintain, and modify existing transmission facilities;

(8) affect lands held in trust by the Secretary of the Interior for Indian tribes or individual members of Indian tribes or other lands acquired by the Army Corps of Engineers and administered by the Secretary of the Interior for the benefit of Indian tribes and individual members of Indian tribes;

(9) affect the laws, rules and regulations pertaining to hunting and fishing under existing state and federal laws and Indian treaties;

(10) affect the authorities of the Secretary under the Federal Power Act (16 U.S.C. 797) or the Wild and Scenic Rivers Act (16 U.S.C. 1271 et seq.);

(11) require any revision or amendment of any forest plan adopted pursuant to the National Forest Management Act of 1976 ((Act of October 22, 1976, P.L. 94-588, as amended) (16 U.S.C. 1600 et seq.)); or

(12) establish protective perimeters or buffer zones around the Scenic Area or each Special Management Area. The fact that activities or uses inconsistent with the management directives for the Scenic Area or Special Management Areas can be seen or heard from these areas shall not, of itself, preclude such activities or uses up to the boundaries of the Scenic Area or Special Management Areas.

(b) Except for the offsite disposal of excavation material, nothing in this Act shall be construed to affect or modify the responsility of the U.S. Army Corps of Engineers to improve navigation facilities at Bonneville Dam pursuant to Federal law.

(c) Except for the management, utilization, or disposal of timber resources on non-Federal lands within the pecial Management Areas, nothing in this Act shall affect the rights and responsibilities of non-Federal timber land owners under the Oregon and Washington Forest Practices Acts or any county regulations which under applicable State law supercede such Acts.

(d) Mandatory language in this Act respecting the powers and responsibilities of the Commission shall be interpreted as conditions precedent to Congressional consent to the interstate compact described in section 5 of this Act.

(e) In the event the States of Washington and Oregon fail to comply with the provi-

sions of section 5 of this Act, the Secretary shall not be obligated to take actions which are predicated upon the establishment of the Commission.

(f)(1) Actions by the Secretary pursuant to subsections (f), (g), and (h) of section 6; subsections (f), (j), (k) and (l) of section 8; section 9; and subsection (a) and (b)(2) of section 10 shall neither be considered major Federal actions significantly affecting the quality of the environment under section 102 of the National Environmental Policy Act (42 U.S.C. 4332) nor require the preparation of an environmental assessment in accordance with that Act.

(2) Except as provided in paragraph (1) of this subsection, nothing in this Act shall expand, restrict, or otherwise alter the duties of the Secretary under the National Environmental Policy Act.

SEC. 18. SEVERABILITY.

(A) If any provision of this Act or the application thereof to any person, State, Indian tribe, entity, or circumstance is held invalid, neither the remainder of this Act, nor the application of any provisions herein to other person, States, Indian tribes, entities, or circumstances, shall be affected thereby.".

Mr. HATFIELD. Now, Mr. President, I ask unanimous consent to withdraw the name of Senator MCCLURE as a cosponsor of this amendment and only include Senator EVANS and myself.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HATFIELD. Mr. President, this is commonly referred to as the Columbia River Gorge bill which will seek to create a national scenic area for this very unique part of our country.

Mr. President, S. 2055, is the culmination of over 6 years of legislative work. Fashioned by my colleagues, Senators EVANS, PACKWOOD, GORTON, and myself, it is the product of countless hours of discussion, debate, and argument, and—ultimately—consensus. This bill is a landmark example of consensus politics at its best.

For over 50 years, the Columbia River Gorge has been a central focus in the lives of Oregonians and Washingtonians. It is the location of some of the most wondrous scenic vistas in North America as well as the home of over 44,000 people. The hundreds of millions of dollars worth of commercial activity which occurs there has contributed to the area's attractive livability. Unfortunately, the Columbia Gorge also is in the bull's-eye for some who would develop it in a way that would destroy forever the very qualities which make the gorge a supremely special place in a land blessed with abundant, but ever-threatened natural wonders.

The Columbia River Gorge National Scenic Area Act is designed to establish a partnership between the Federal Government, the States of Oregon and Washington, and the nearly 50 units of local government within the Columbia Gorge for the purpose of protecting and enhancing this beautiful part of our two States.

This partnership will provide a workable management framework for the gorge among Clark, Skamania, and Klickitat Counties in Washington, Multnomah, Hood River, and Wasco Counties in Oregon, a reformed and strengthened Columbia Gorge Commission, and the Forest Service.

I want to address at the outset, Mr. President, a fundamental premise of this bill: The Federal Government will not be forcing Columbia Gorge residents from their homes and businesses. Powers of condemnation by the Federal Government have been restricted specifically. There will be no acquisition in the gorge by the Federal Government of lands which are used for educational, religious, or charitable purposes, or of single-family residences, farms, or grazing areas so long as the existing use of that land is not changed substantially. This language is clear, the principle is clear, and I want to underscore it at this point in the record.

Perhaps at this time, Mr. President, it would be appropriate for me to summarize the major elements of the legislation.

The Columbia Gorge will be managed as a single geographical unit, and this management scheme will reflect the area's economic, environmental, social, geologic, cultural, and recreational diversity. Under this arrangement, three distinct management classifications will be established.

There will be four special managment areas (SMA's), containing lands of exceptional scenic, cultural, natural, and recreational values suitable for special Federal supervision.

A second classification will contain lands outside the special management areas which are of outstanding scenic and natural beauty, but which balances the needs of the local inhabitants and economies with environmental protection.

Finally, there are 13 designated urban areas which are comprised of currently incorporated cities and other areas, and are so developed as to make regulation under the act unnecessary. In Oregon, these urban areas generally were established by following the urban growth boundaries established under the State's land use planning laws.

Under the National Scenic Area Act, a cooperative management plan will be developed that will include an inventory of resources, land use designations, guidelines for the adoption of implementing ordinances, and a recreation development plan. Land use designations and provisions will be included for agricultural and forest land, open space, scenic and historic areas, and commercial and residential uses.

In keeping with our goal of balancing protection of the gorge's values with the need to continue appropriate development, industrial development will be restricted to designated urban areas. Major development actions such as subdivisions, short plats, multifamily residences, and commercial facilities will not be allowed in the SMA's.

The gorge bill also recognizes and protects the significant qualities of the tributary rivers and streams within the national scenic area. Hydroelectric development projects on tributary rivers or streams in the national scenic area are allowed only if the projects do not adversely affect scenic and recreational resources.

S. 2055 designates the lower segment of the White Salmon River as a scenic river and the lower portion of the Klickitat River as a recreation river under the Wild and Scenic River Act. Furthermore, it sets aside for study the upper portion of the White Salmon River to its confluence with Trout Lake Creek and the upper portion of the Klickitat River to the boundary of the Yakima Indian Reservation.

In Oregon, the bill prohibits hydroelectric development on State designated wild, scenic, or recreation rivers or river segments that flow through the national scenic area. This will directly affect segments of both the Deschutes and Sandy Rivers which are included in the Oregon Scenic Waterway System. This legislation does not, as some have asserted, require the termination of existing hydroelectric service provided by facilities on the Hood River, although construction of any new impoundments on the segment of the Hood River within the scenic area will be prohibited for a period of 20 years.

While I am on the subject of hydroelectric facilities, I want to note that the bill's savings provisions specify that the Bonneville Power Administration's ability to operate, maintain, or modify existing transmission facilities will not be altered, provided that such activities do not create visual or otherwise adverse environmental impacts. We do not want to impair the BPA's work in terms of replacing or adding substation equipment, power system controls, system protection, and communications systems.

It also is important to provide the BPA with the opportunity to make minor transmission tower modifications, replacements, or additions, so long as such actions do not create significant visual or otherwise adverse problems. I am delighted that the agency has expressed to me its willingness to work with the Forest Service and the new Gorge Commission in applying state-of-the-art technology in order to make the BPA's upgraded facilities compatible with the scenic area and the purposes of the act.

At this point, Mr. President, I would like to address another issue that has

stirred some interest in my home State of Oregon.

As my colleagues are aware, the timber industry plays a critical role in our economy, not only in Oregon, but throughout the Pacific Northwest. Over one-third of all Oregonians are employed in primary or secondary jobs by the forest products industry.

The question has arisen whether S. 2055 will eliminate hundreds of jobs in Oregon and Washington by reducing the amount of timber harvested in the Columbia Gorge. The answer to that is: No, it will not.

As I have said earlier, this bill reflects a careful effort to balance the environmental needs of the gorge with its economic needs. The Secretary is directed to employ multiple-use management techniques in the SMA's in a way that will allow continued timber harvesting which is consistent with the scenic, natural, recreation, and other values being protected.

Further, in scenic area lands outside the SMA's, our bill makes clear that the Gorge Commission is to prepare a resource inventory based upon existing land uses and to develop a management plan which provides for the preservation and enhancement of existing forest land uses. The savings provisions clearly state that timber harvest practices in the scenic area will continue to be governed by the Oregon and Washington Forest Practices Acts, or applicable county regulations, and will not be the subject of potential Federal regulations by the Gorge Commission. This provision was specifically included to avoid the imposition of an additional overlay of regulation on timber management practices within the scenic area.

S. 2055 does not do all that some would like it to do, and it does more than others would prefer. But, I have said before and I will say again, I regard this legislation as being one of the premier pieces of consensus legislation in the area of natural resource law. It provides the strong protection that this nationally significant area needs to maintain its existing character; it fully and formally recognizes and protects the rights and privileges of the thousands of people who live and work there; and, finally, it establishes a workable partnership between the Federal Government and State and local jurisdictions in order to manage the Columbia Gorge in the best way possible.

We want the people of this great Nation to be able to appreciate the breathtaking sunsets seen from Crown Point; to be able to relax at destination resorts in the gorge that may be built; to experience, first hand, the thrill and excitement of sailboating and windsurfing at Hood River or The Dalles; and to provide access for the young, the physically disadvantaged, and the elderly to places previously reached only by the most hardy individuals.

Mr. President, I also want to thank the many individuals and groups who contributed to the process which created this bill, from the environmental organizations, the public bodies such as the county courts and commissions, my friends from the Oregon and Washington congressional delegations—Representatives AUCOIN, WEAVER, BONKER, and MORRISON—the two Governors, my good friends, Governors Atiyeh and Gardner, and their staffs, and to the other interested groups and individuals who contributed so mightly to this process. Last but not least, I also want to thank my colleagues Senators PACKWOOD, EVANS, and GORTON for their willingness to work together on this difficult issue these past several months.

This legislation may mark the beginning of a new concept in natural resource protection. In essence, S. 2055 represents a forging ahead into new and largely uncharted territory in terms of the parameters it provides for the protection of environmentally sensitive areas. The Columbia River Gorge National Scenic Area Act of 1986 is a bold and innovative vehicle which recognizes that a median position between little or no Federal protection for a scenically important area on the one hand, and wilderness or national park designation on the other, is both prudent and necessary in this age. Just because a beautiful area such as the Columbia River Gorge is inhabited and its residents are involved in economic pursuits should not automatically exclude it from being considered worthy of strong resource protection. As economic and developmental pressures continue to threaten our important natural areas from coast to coast, it no doubt will become necessary for the Congress to devise and implement new methods of providing strong and effective safeguards which will accommodate the many competing forces which are inherent.

Our democratic system allows us to be flexible and respond in an effective way to our changing world. A day hardly goes by in this body where new ground is not broken, and today is no exception to that rule. True progress is made only when we push our ideas and thoughts into new dimensions, and this legislation represents one such example of that creative process.

Finally, Mr. President, I want to mention that I fully support the content of the section by section analysis of this bill which was prepared by Senators GORTON and EVANS and will appear in today's RECORD following the printing text of the legislation. This analysis clearly and accurately explains the legislative intent of S. 2055.

Mr. PACKWOOD addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. PACKWOOD. Mr. President, today I am joining Senators HATFIELD, GORTON, and EVANS in sponsoring an amendment in the nature of a substitute to S. 2055, the Columbia Gorge National Scenic Area Act. This bill is the result of several official House and Senate hearings and extensive public workshops and meetings with interested parties. The bill has been carefully crafted to protect the scenic and natural values of the gorge, while preserving the rights of the thousands of people which live in the area.

My legislative efforts to protect the gorge began in 1982, when I first introduced a bill to create a national scenic area. Today, I am pleased that all four Senators of Oregon and Washington have joined forces to develop a true consensus proposal.

Our bill would establish a national scenic area along the Columbia River Gorge in Washington and Oregon from the Sandy River on the west, to the Deschutes River on the east, encompassing approximately 270,000 acres. The islands of the gorge have been included to ensure protection of the sensitive wildlife habitats. The area would be managed under a two-tiered scheme in which the most critical lands identified in the bill are managed by the Forest Service, remaining lands by a 13-member bi-State Commission. There would be four special management areas—gates of the Columbia Gorge, Wind Mountain, Burdoin Mountain, and Rowena—including some 108,000 acres of the total area. The Oregon communities of Cascade Locks, Hood River, Mosier, the Dalles, and the Washington communities of Bingen, Carson, Dallesport, Home Valley, Lyle, North Bonneville, Stevenson, White Salmon, and Wishram are designated as urban areas and are excluded from the Forest Service and bi-State commission planning process.

The most critical and sensitive lands in the gorge are situated within four special management areas administered by the Forest Service. These areas include many of the lands scheduled for subdivisions or other developments which would destroy the scenic integrity of the gorge. The Forest Service will have the authority to acquire lands within these areas. It cannot, however, use condemnation if the land is used primarily for educational, religious, charitable, residential, farming or grazing on the date the bill is enacted. Therefore, subsequent conversion of farmland into residential use is not exempt. The natural jewels of the gorge are situated within the special management areas. These lands represent the spectrum of ecosystems and landscapes found in the gorge. The Forest Service should work

with the commission and other governmental agencies, including the National Park Service, to develop a management plan to protect these areas.

Management of the remaining lands is the responsibility of the 13-member bi-State commission, comprised of individuals appointed by the six gorge counties, the Governors of Oregon and Washington and a nonvoting ex officio member appointed by the Forest Service. The Commission's charge is to design a management plan for the scenic area lands, excluding the designated urban areas. The intent of the plan is to guide residential, commercial, and industrial development into areas suitable for development without adversely affecting the scenic and natural resources of the gorge.

This two-tiered management scheme will provide for both local and Federal involvement in management of this spectacular area. The planning and management of the gorge is currently fragmented among numerous agencies and governments; a coordinated approach to management and planning will provide much needed direction for protection and management of the gorge.

Designation of the Columbia River Gorge as a national scenic area will draw nationwide attention to this natural treasure. Of particular importance to Oregon, is the restoration of the Columbia River Highway, protection of the Sandy and Hood Rivers and the establishment of the Rowena special management area.

The Columbia River Highway was constructed between 1913 and 1922 and was one of the most important tourist attractions in the gorge for many years. Reopening of the highway would be a walk back in history and provide new hiking and biking opportunities in the gorge.

The Sandy and Hood Rivers are certainly an integral part of the gorge. In these streams the Columbia River salmon find spawning habitat and many wildlife and botanical species flourish. Kayaking and other water sports are increasingly popular along these rivers. Inclusion of the Sandy River from the mouth of the Sandy River to Dabney State Park will aid in controlling residential developments along the Sandy River. The State of Oregon has recognized the importance of the Sandy by designating a 12-mile segment of the river as an Oregon State scenic waterway.

The bill will impose a moratorium on the development of new hydro projects on the Hood River for 20 years. This will protect the valuable salmon and steelhead habitat. The Hood is known regionwide as one of most productive fisheries resources. The Federal Government has spent nearly $1 million to enhance and protect fisheries resources throughout the tributaries of the gorge. This legislation will complement the efforts of other Federal agencies in protecting the fish and wildlife resources of the gorge. The gates of the Columbia Gorge and the Rowena special management areas represent the range of landscapes in the gorge from the towering Douglas fir forests to the Oak Savanna landscapes and spectacular wildflowers of the Rowena plateau. These two special management areas in Oregon will provide visitors and residents alike an opportunity to enjoy the varied landscapes of the gorge.

After 5 years of working on gorge protection legislation I am pleased to bring before the Senate a true consensus bill. It has been a lengthy and sometimes heated process to develop this bill. The Senate now has an opportunity to preserve and protect for future generations the Columbia River Gorge, a national treasure. Mr. President, I urge the Senate to act expeditiously in approving this legislation.

Mr. EVANS addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mr. EVANS. Mr. President, I rise today to urge passage of S. 2055, the Columbia Gorge National Scenic Area Act of 1986. This bill, which I introduced this year with Senators GORTON, PACKWOOD, and HATFIELD, will create a unique partnership of local and State governments and the Federal Government to protect and enhance the outstanding scenic, cultural, recreational, and natural resources of the Columbia River Gorge.

The Columbia Gorge is located between the States of Oregon and Washington. It was formed over many thousands of years as the Columbia River cut through the Cascade Mountain Range. The beauty of this spectacular canyon is breathtaking. Waterfalls cling to mountainsides. Giant cliffs and rocks stand out as sentinels against the wind and rain. The great Columbia River moves silently and smoothly toward its destined meeting with the Pacific Ocean. The peaks of Mount St. Helens, Mount Adams, and Mount Hood loom as reminders of the fiery prehistoric past.

The fantastic beauty of Columbia Gorge has beckoned mankind for over 11,000 years. In ancient times Chinookan and Sahaptian Indians hunted its mountains and fished along the river's edge. For centuries the Columbia River has been a major center of commerce and trade. The Columbia Gorge remains an area of commercial and economic importance to the Pacific Northwest and the Nation as a whole.

Millions visit the Columbia River Gorge each year. The many scenic viewpoints, highways, and trails found in the Columbia River Gorge are heavily used by residents of the area as well as by visitors from around the Pacific Northwest, the Nation, and the world. Thousands live there permanently. In fact, the character of much of the Columbia Gorge landscape has been maintained and enhanced by existing rural communities.

The botanical diversity of the Columbia River Gorge—ranging from the sagebrush and grasslands of the East to the lush rain forests of the West—is unique, and is due in part to the diverse climate of the area. Many threatened and endangered species of fish and wildlife live there. Tributary streams of the Columbia River within the Columbia Gorge contain important anadromous fish resources which are of benefit to the Pacific Northwest and the Nation.

Competing economic uses of the Columbia River Gorge are intense. These include development of Federal hydroelectric power facilities, highways, ports, navigation and industrial facilities, surface mining, residential and commercial development, farming, and timber harvest. The existing local, State, and Federal planning and regulatory authorities lack sufficient resources to provide for the multiple goals of growth management, development of public recreational facilities and protection of the unique scenic, cultural, recreation, and natural resources of the Columbia Gorge.

Under S. 2055, a dual approach will be used to develop a single management strategy. The bill gives congressional consent to an interstate compact between Oregon and Washington to create the Columbia Gorge Commission. The Commission will have primary responsibility for planning for the Columbia Gorge National Scenic Area. The Commission will develop a comprehensive management plan for the national scenic area, in accordance with the guidelines set forth in the legislation. The bill also gives the U.S. Forest Service a role in the management of approximately 112,000 acres of land with outstanding scenic, cultural, recreational, and natural resource value. Together they will result in a unified strategy for land management.

There are a diverse and sometimes competing array of interests in the gorge. Some are national in scope, some regional, some State and some local. Members of the Commission will be appointed by the Governors of Oregon and Washington and will develop a management plan which balances the local, State, and regional interests. The national interest is protected through the guidelines of the Federal legislation and the involvement of the Forest Service in management of truly special areas. Of course, no legislation to establish a national scenic area in the Columbia Gorge would be successful without the active participation and support of local governments. Consequently, the bill relys on counties to develop implementation

measures to effectuate the land management plan.

We have attempted to resolve the more intense land-use conflicts through a judicious land acquisition scheme. The Secretary of Agriculture is authorized to acquire lands within the special management areas. The Secretary is encouraged, however, to acquire less-than-fee interests in land such as conservation and scenic easements. Furthermore, the Secretary's inherent power of eminent domain is greatly restricted. Specifically, the Secretary is prohibited from acquiring single-family residences, farms, and grazing areas and lands used for educational, religious, or charitable purposes. Finally, the legislation requires that the Secretary take into consideration any hardship to a willing seller of land which might result from any undue delay in acquiring the property.

We recognize that acquisitions may have an adverse impact on the tax base of gorge counties. To lessen the impact, S. 2055 establishes the special management areas as a unit of the National Forest System. Inclusion of acquired lands within the National Forest System will increase the ratio of Federal timber receipts going to gorge counties. The bill allows counties to use timber receipts attributable to Federal acreage within the national scenic area for purposes beyond those allowed generally. Furthermore, the bill directs the Secretary to acquire forest lands through exchange. And we are actively discussing with the Washington Department of Natural Resources the possibility of three-way exchanges to lessen further the impact on the counties' tax bases.

Mr. President, there are many who strongly support Federal legislation to protect the Columbia Gorge. There are many who vigorously oppose it. Yet we all share a common love for its compelling beauty. We must work together to protect the pastoral environment of this unique area, to preserve its scenic beauty, and the lifestyle of its residents for generations to come.

Mr. President, let me take a minute or two to express my gratitude to the many people who have worked for so many years to come to this moment on the Senate floor.

Senator PACKWOOD has been a long, long time advocate of this legislation, as has Senator HATFIELD, of Oregon. Senator GORTON, my senior colleague from the State of Washington, has labored long and hard for this legislation. And yet I think all of us would agree that those who are the unsung heroes who have no chance to speak on the floor but who have worked sometimes the night through to get us to this point, are those of our staffs and the committee staffs who have done such a remarkable job.

I know that my senior Senator would recognize her as well, but I would like to express particular thanks to Sara Schreiner, of Senator GORTON's staff, and an overwhelming sense of gratitude on my part to the young man sitting on my left, Joe Mentor, of my staff, who has been responsible as much as anyone for the details and the nuances of this legislation which is now before us.

Mr. President, I ask unanimous consent that a letter dated October 6, 1986, addressed to Senator GORTON from Mr. George S. Dunlop, Assistant Secretary Natural Resources and Environment, Department of Agriculture; a memorandum from the Portland area director of the Bureau of Indian Affairs, dated October 6, 1986; a letter signed by the president or representatives of five environmental organizations; and an article from the October 4 issue of the National Journal, all be printed in the RECORD at this point.

There being no objection, the amendment material was ordered to be printed in the RECORD, as follows:

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, DC, October 6, 1986.

Hon. SLADE GORTON,
U.S. Senate,
Washington, DC.

DEAR SENATOR GORTON: In testimony before the Senate Energy and Natural Resources Committee, June 17, 1986, the Department of Agriculture indicated that USDA is not opposed to the concept of a Columbia River Gorge National Scenic Area. However, we did express strong opposition to S. 2055 on the basis of three concerns: inappropriate Federal role vis-a-vis the States and counties in the regulation of private lands in the Gorge; excessive Federal costs; and the difficulty (indeed, the impossibility) of the Department administering the provisions in the bill should it be enacted into law.

In our letter of September 25, we again stated our concern with the pending Columbia Gorge National Scenic Area legislation and our hopes that changes could be made to resolve those concerns. We appreciate your response to our request. The meetings with staff have been effective in developing amendments that will substantially improve the legislation.

Our most serious previous concern was the relationship of the Secretary of Agriculture to State and local governments in the regulation of private lands. The proposed amendment would place the Commission, established under State law, in the role of direct interaction with local government. At the same time, the Secretary, in the special management areas that contain the vast bulk of Federal ownership, would retain a role in helping to develop guidelines for use by the Commission and local government. In addition, the Secretary would have an additional review role after the Commission and local government have developed regulations. This approach makes it clear that the Secretary consults with and provides advice to the Commission, while the Commission that would be established under State law deals with the counties. The Commission would retain authority to override Secretarial recommendations.

The amendment goes a long way toward addressing our objections to those provisions in the bill which some have described as tantamount to Federal land use zoning.

Another major concern was the cost of the legislation. The potential cost of this legislation has been reduced by placing caps on most of the spending authorizations in the bill and by a clarification that acquisition of land in the special management areas would emphasize exchange as the preferred method of acquisition, that condemnation would only be used as a last resort under unusual circumstances, and that the use of purchase would be deemphasized. Retention of private lands within special management areas would be clearly appropriate if use is in accordance with local ordinances developed pursuant to the Act. These and other changes are directed toward reducing costs. It is our preliminary estimate that five-year costs under the amendment could be considerably less than $100 million. However, as reduced as these costs may be from the original proposal, they do constitute significant new spending authorities.

Finally, through detailed review of the provisions of the Act, appropriate amendments have been developed to significantly clarify and improve the workability of the legislation.

While concerns over cost have not been resolved, the legislation has significantly reduced these potential costs and has been substantially improved in response to the other major problems we previously identified—the inappropriate Federal role in local matters and workability.

We thank you for the constructive and helpful approach shown by you and your staff, and appreciate the opportunity to have worked with you.

Sincerely,

GEORGE S. DUNLOP,
Assistant Secretary,
Natural Resources and Environment.

[Memorandum]

OCTOBER 6, 1986.

Reply to Attention of: Portland Area Director.

Subject: Senate Bill 2055.

To: Congressional and Legislative Affairs, Attention: Marge Wilkins, Code 120, Room 4637.

I have reviewed a "brief critique" background paper, dated September 29, 1986, listing ten points of concern in the Administration's general opposition to S. 2055; the Columbia River Gorge Bill. The Department of Agriculture makes many references to the complexity of the Bill and assumes if the Bill were adopted that effective administration would be impossible and subject to extensive litigation and that Indian rights would be enhanced. I am unable to find such a reference in the Bill.

I agree this Bill, in its current form, is complex. However, given comprehensive guidelines it could be effectively administered. I believe there has been extensive efforts by all participants to include definitions and specific provisions to facilitate administrative actions. Ultimately provisions serve to reduce the potential for extensive litigation.

Language in Point number ten of this "brief critique" speculates: the overall effect might be to create new bases for claims by Indians." It is my observation that language contained in the most recent draft serves to protect Indian rights and further would preclude a need for new claims, either treaty or resource related. Retaining an option for the Department of the Army to acquire ad-

ditional "In Lieu Sites" would be consistent with a 1939 agreement; it would not constitute a basis for new claims by Indian Tribes with treaty rights to take fish.

The "brief critique" continues in point ten stating that a single disclaimer can adequately protect Indian rights. Many activities such as land acquisition and "In Lieu Sites" management are not treaty right issues. Instead these are Department of the Interior trust responsibilities to be maintained and administered in the interest of Indians and Indian Tribes through a series of Congressional directives, active Federal court orders, Federal regulations and interagency agreements. Including specific provisions to protect the Tribes unique relationship with the Federal government throughout the Bill will help guide future decision makers in a manner to avoid litigation and administrative questions or "gray areas."

I believe specific language addressing trust responsibility issues should remain in S. 2055. I further believe such language will assist the United States in fulfilling our trust responsibility to Treaty Indian Tribes.

OCTOBER 6, 1986.

DEAR SENATOR: As you may know, the four Senators from Oregon and Washington have reached an agreement on the long-standing issue of protection for one of our nation's most remarkable natural treasures, the Columbia River Gorge. This agreement, reached by Senators Hatfield, Packwood, Gorton, and Evans, concludes over six years of legislative efforts to resolve an extremely complicated issue.

This agreement, embodied in S. 2055, as amended, creates a National Scenic Area, a unique management system which provides significant protection for the Gorge's world class scenic and natural resources (extolled years ago by Meriwether Lewis and William Clark), while safeguarding the rights of local landowners.

We of the conservation community feel that this agreement is an excellent compromise for one of the most significant environmental preservation issues of this Congress. We urge you to support it.

Sincerely,

American Rivers Conservation Council.
National Audubon Society.
National Parks and Conservation Association.
Sierra Club.
The Wilderness Society.

COMPROMISING

(By Rochelle L. Stanfield)

The towering cliffs and plunging waterfalls that line the Columbia River Gorge on the Washington-Oregon border "really do take the breath away," exclaimed an eastern conservationist who is no stranger to scenic beauty. "When I first saw the gorge, my initial reaction was: Why didn't they get it protected 50 years ago?"

"They" tried. Since 1937, citizens groups, state study commissions and federal parks officials have been pushing for federal protection of the 85-mile long Columbia River Gorge. Not only is the gorge spectacularly beautiful but it also contains prehistoric Indian structures, campsites that were used by Lewis and Clark, one of the earliest highways and other natural and historic sites that have caught preservationists' fancies over the years. But interstate politics, local opposition and a host of other complications have always stymied the protection efforts.

But preservationists are still trying. This year, they may succeed. Friends of Columbia Gorge, a conservation group headquartered in Portland, Ore., has been holding nonstop meetings with interested Members of Congress to try to patch together a compromise Columbia River Gorge National Scenic Area bill (S. 2055).

Whatever the outcome of the latest legislative campaign, the long-running battle for the gorge teaches important lessons about the nature and direction of conservation politics.

Lesson one is a reminder—for idealistic conservationists who have refused to take no for an answer—that the day of massive federal park acquisitions is over, probably forever. For decades, Columbia Gorge protagonists tried to get the federal government simply to buy the land as a national park. Now, they don't even ask.

Even though a moratorium on park acquisitions imposed in the early years of the Reagan Administration didn't last, large land purchases are no longer feasible. It's more than just the multimillion dollar price tag in an era of multibillion dollar budget deficits. Much of the land isn't for sale. Some of it is owned by private parties, including 13 towns and cities within the boundaries of the gorge. Other portions that the federal government owns—such as the hydroelectric power facility at Bonneville and The Dalles dams—aren't available for conversion into a park. In fact, about 50 federal, state and local government agencies have authority over different parts of the gorge.

Lesson two, a corollary of lesson one, is that few large scenic tracts remain unclaimed. When President Grant created Yellowstone National Park as the first national park in 1872, millions of acres of untouched natural beauty were there for the choosing. Little, if any, land in the lower 48 states is now so unfettered. Any proposals to preserve the gorge run headlong into plans—equally justifiable to many who live there—to make use of it. Local developers have residential development plans for parts of the gorge that are adjacent to the urban areas. The timber industry has logging plans for the forest lands owned by the Forest Service.

Lesson three is that lessons one and two don't necessarily mean that special scenic, natural or historic places have to be abandoned. Federal, state and local officials, along with private groups, are working out ingenious ways to protect these sites while permitting late-20th century civilization to proceed unimpeded by conservationists' rules.

The Columbia River Gorge bill is the latest is a series of efforts to tailor protective regulations to the needs and politics of a particular area. The bill would set up a three-tiered arrangement under which the federal government would protect 108,000 acres designated as "special management areas," a bistate commission appointed by the governors of Oregon and Washington would manage 140,000 acres in which development would be controlled, and the 28,000 acres already in the hands of cities and towns would be exempted from any kind of control.

This would be a variation on such innovative partnerships as the Pinelands National Reserve in New Jersey, which relies on state zoning rules to prohibit or limit development in sensitive parts of the 1 million-acre area and encourage it in others. Similarly, the 225,000-acre Santa Monica Mountains National Recreation Area combines federal, state and private ownership to set various levels of protection and development. In Florida, the campaign to save the Everglades ecosystem is based upon another version of federal, state and private conservation efforts.

The President's Commission on America's Outdoors in struggling to develop a scheme for the national stewardship of all parks and other natural areas. At the center of the commission's vision of the future are what the commission tentatively calls "greenway systems." These are pieces of territory that have been used for various purposes in the past and that the commission believes can be turned into natural or recreational areas. They include utility corridors, old railroad rights-of-way and scenic roads and highways.

While conservationists are enthusiastic about the reuse of abandoned facilities—there's new organization called Rails to Trails that has been set up solely to seek conversion of abandoned rail lines to nature trails—they are skeptical of a scheme that emphasizes reycling used sites rather than preserving pristine areas.

In the Columbia River Gorge, the conservationists are trying to accomplish a variety of goals at once—to save some relatively untounched natural areas, preserve historically important manmade structures, provide for recreational activities and allow for some economic development. No single model will work on a national scale, but the creativity of combining objectives could serve as a model for those developing a national program.

If the Columbia Gorge bill doesn't pass this year, a different version undoubtedly will be sewn together next year by conservationists, local development interests and the politicians. And if that fails, the various forces that have been sparring since 1937 are unlikely to give up. Lesson four is that these people don't quit.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Mr. President, I am delighted to join with my distinguished colleague from the State of Washington and my two very distinguished colleagues from the State of Oregon in sponsoring this legislation today.

As each has said, it is a culmination of effort which has extended over many years, more, actually, than any of us have served in this body.

Without the spirit of Senator PACKWOOD and the diligence and hard work of Senator HATFIELD and EVANS who are both members of the Committee on Energy and Natural Resources, we would not have reached this point.

This is a bill which is controversial in both of our States. It is also a bill which I think is very much needed. It is one which has required very careful crafting to represent both the interests of those who would preserve a magnificent natural resource, the Columbia Gorge, and those who live in that gorge and make their living therein, who have very real rights which must be respected.

It would be remiss of me also not to thank the distinguished Senators from Idaho and Wyoming who are now on

the floor, each of whom has had some serious reservations about the bill and some of the philosophic directions contained in it, but, nonetheless, who have been willing to work with us and to allow it to come to the floor and be passed by the Senate.

Mr. PRESIDENT. The Columbia River Gorge is a spectacular canyon where the Columbia River cuts through the Cascade Mountains and divides the States of Oregon and Washington. It includes abundant natural resources, including dramatic waterfalls and geologic formations. It is also the home and workplace for more than 40,000 people, many of whom are descendents from early homesteaders.

The Columbia Gorge holds a unique place in the development of this country, and of the early history of the Pacific Northwest. It was the gateway for early traders, explorers and pioneers. The gorge and the Columbia River continue to have an important position in the economy of the entire Pacific Northwest. Today, we seek to recognize the national significance of the Columbia Gorge.

When my colleagues and I introduced this bill, we said we wanted legislation that would be a consensus of all the interests in the gorge. This legislation is as close to a consensus as possible. We have worked closely with the Forest Service, the environmental community, timberlandowners, both States, local citizens, and other Members of this body. We have certainly not pleased everyone, but this bill represents the most equitable compromise we could fashion. It provides strong measures needed to protect and enhance the natural resources of the gorge, and it will protect the rights of the 40,000 people who call the gorge home.

The focus of the legislation is on prudent planning for the management and development of the resources—both natural and cultural—in the gorge. This would be accomplished by creating a partnership among the States of Oregon and Washington, the six counties the scenic area encompasses, and the Forest Service.

Mr. President, this legislation is important to the States of Washington and Oregon, as evidenced by the unanimous support of the bill by the four Senators. We have all put in years of work on this issue to find an effective, equitable solution. We have found one, and I hope my other colleagues in this Chamber will support the passage of this bill.

Mr. President, I ask unanimous consent that a joint statement, section-by-section analysis of the bill, be placed in the record following the text of the bill. The content and analysis in the statement is fully supported by all the sponsors of the bill, Senator EVANS, Senator HATFIELD, Senator PACKWOOD, and myself.

There being no objection, the section-by-section analysis was ordered to be printed in the RECORD, as follows:

COLUMBIA RIVER GORGE NATIONAL SCENIC AREA ACT—SECTION-BY-SECTION ANALYSIS

SECTION 2: DEFINITIONS

Defines major terms used in the bill.

The definition for "adversely affect" draws in part upon the regulations used by the Council of Environmental Quality issued pursuant to the National Environmental Policy Act. The inclusion of mitigation measures in the definition, however, is indicative that this determination is separate and distinct from any determination of affect on the human environment under the National Environmental Policy Act.

"Major development actions" are defined to be any further divisions of land, including short plats, subdivisions, and partitions; permits for the siting or construction of multifamily residential, industrial or commercial facilities, and single-family residences on parcels less than 40 acres; and the exploration, development and production of mineral resources. There are four exceptions to the definition. "Major development action" does not include the upgrade of existing electric transmission facilities, facilities that are identified in the recreation assessment, the exploration, development and production of mineral resources that can be done without disturbing the surface of the Special Management Areas, and the exploration, development and production of sand, gravel and crushed rock for the construction, maintenance or reconstruction of roads used for the production of forest products.

"Open space" includes: Scenic, cultural and historic areas, fish and wildlife habitat, lands which support endemic plant species, and rare, threatened or endangered species, ecologically and scientifically significant natural areas, outstanding scenic views and sites, water areas and wetlands, archaeological sites, potential and existing recreation sites, and approved Federal and State wild, scenic and recreation waterways.

SECTION 3: PURPOSES

The purpose of the Act is to protect and enhance the scenic, cultural, recreation and natural resources of the Columbia Gorge and to protect and enhance the economy of the Columbia River Gorge by protecting historical economic pursuits, such as agriculture and forestry, and by encouraging future economic growth to occur in the Urban Areas. It is also anticipated that economic growth that is compatible with the purpose of protecting the scenic, natural, cultural and recreation resources in the Scenic Area will occur in the Scenic Area.

SECTION 4: ESTABLISHMENT OF THE SCENIC AREA

Establishes the Columbia River Gorge National Scenic Area in Washington and Oregon, including 4 Special Management Areas within the boundaries of the Scenic Area: Gates of the Columbia River Gorge, Wind Mountain, Burdoin Mountain, and Rowena. Designates 13 Urban Areas, which are excluded from the management of the Scenic Area: *Washington:* Bingen, Carson, Dallesport, Home Valley, Lyle, North Bonneville, Stevenson, White Salmon, Wishram, *Oregon:* Cascade Locks, Hood River, Mosier, The Dalles. The Special Management Areas will also include all islands within the boundaries of the Scenic Area. Establishes the Dodson/Warrendale Special Purchase Unit in Oregon. The maps depicting the boundaries will be on file with both the Commission and the Forest Service.

The Special Management Areas are those areas of particular concern because of their outstanding scenic and natural resource qualities. The Special Management Areas also include those areas that are most threatened by destructive development. The Forest Service is allowed to make minor revisions in the boundaries of the Special Management Areas for technical and other necessary corrections, but is required to consult with the Columbia River Gorge Commission as changes in the boundaries will affect the management area of the Commission.

The boundaries of the Urban Areas were drawn to include areas that are presently in urban use as well as allowances for necessary growth. The boundaries of the Urban Areas can be revised by the Columbia River Gorge Commission if it makes the specific findings of a demonstrable need to accomodate anticipated growth, that the revision is consistent with the standards in Section 6 of the Act, that the revision will result in the maximum efficiency of land uses within and on the fringe of existing Urban Areas, and that the revisions will not make significant reductions in agricultural, forest, or open space lands. A majority vote of the members appointed from each State, (two-thirds of the members of the Commission), are required to approve any revisions to Urban Area boundaries.

As outlined in subsequent sections of the Act, the management of the Scenic Area will be based on a two-tiered approach. The Columbia River Gorge Commission will have management authority in the Scenic Area lands outside of the Special Management Areas and the Urban Areas, the Forest Service will have management authority on the lands inside the Special Management Areas. The Urban Areas are excluded from Scenic Area management and from any provisions of the Act except for the provision in Section 11 relating to economic development grants.

SECTION 5: ESTABLISHMENT OF THE COLUMBIA RIVER GORGE COMMISSION

Congressional consent is given to the establishment of the bi-state compact to establish the Columbia River Gorge Commission, which will manage the non-federal lands in the Scenic Area. This compact must be ratified by both states, and both states must legislatively adopt the specific provisions of the Act for Congressional consent to be valid.

The Commission is required to be appointed within one year. The Governor of either state may request a 90-day extension. Membership of the Commission will be composed of twelve voting and one non-voting members: one voting member to be appointed by the governing body of each county, three voting members to be appointed by each Governor, and one, non-voting, ex officio member to be appointed by the U.S. Forest Service.

The appointment of four initial members from each state will constitute an agreement of the states to establish a Commission. The appointment of four initial members from each state will be the effective date of the establishment of the Commission. This will ensure that the Commission can begin to function despite some delays in appointing all the Commission members. If any county fails to appoint a member, the Governor of that state is authorized to appoint the member.

The Commission members will serve staggered terms and none of the voting members may be federal, state, or local elected or appointed officials. The states of Oregon and Washington will be responsible for establishing and paying the salaries of the Commission members and the employees pursuant to the laws of the member's state.

The Commission must adopt a uniform set of laws relating to administrative procedure and the functioning of the Commission. In order to ensure that the Commission members are following the laws of his or her own state, the Commission is directed to adopt the law of either Washington or Oregon, whichever is more restrictive in scope. A majority of the appointed members of the Commission will constitute a quorum.

Upon the request of the Commission, the Forest Service and other federal agencies, such as the National Park Service, are authorized to provide information, personnel, and property to assist the Commission in carrying out its responsibilities under the Act. The Commission must reimburse the agency that provides this type of assistance. The Forest Service is authorized to provide technical assistance to the Commission on a nonreimbursable basis.

The Commission should be able to draw upon the already established expertise of the Forest Service and other agencies. The Commission must establish a voluntary citizens advisory committee. This will ensure that the public will be involved in helping to develop the management plan, and that concerned individuals will have a meaningful opportunity to contribute to the development of the plan.

SECTION 6: THE SCENIC AREA MANAGEMENT PLAN

The Commission must complete a series of studies within one year after it is established. All studies must be done in cooperation with the Forest Service. The studies include a resource inventory, an economic opportunity study and a recreation assessment.

The resource inventory will identify and document all existing land uses, natural features and limitations, and scenic, natural, cultural, archaeological, recreation, and economic resources. The Commission will develop the resource inventory for the Scenic Area and the Forest Service will develop the resource inventory for the Special Management Areas.

The resource inventory will serve as the basis for the land use designations that will be developed by both the Commission and the Forest Service. The inventory should utilize, to the greatest extent possible, already existing data that has been collected due to the requirements of other laws and regulations to avoid duplicating data collecting efforts. The resource inventory will document Indian burial grounds and other lands traditionally used for religious and ceremonial purposes. Because of the possibility of vandalism to those sites, the Commission and the Secretary are required to keep that information confidential.

The Commission is required to complete an analysis of economic opportunities for local communities. The economic analysis should identify areas for economic growth that will both bolster weak local economies and be consistent with protecting and enhancing the scenic, recreational, natural and cultural resources of the Scenic Area.

The Commission will complete an assessment of the recreational resources in the Scenic Area and the opportunities for enhancing and developing those resources. The recreation assessment should be used by both the Commission and the Forest Service to identify appropriate sites and facilities to encourage tourist visitation to the Gorge, and to take advantage of the abundant resources in the area. Included in the assessment will be an identification of the areas to construct recreational facilities including such facilities as an interpretive center in Oregon and a conference center in Washington. The Forest Service is required to complete a similar recreation assessment for the Special Management Areas. The management plan will incude the Recreation Assessment completed by the Commission and the Forest Service.

Within two years of the date the Commission is established, the Commission will develop land use designations for the Scenic Area. The Forest Service will do the same for the Special Management Areas. The resource inventory will control, to a great extent, which land use designation is appropriate. The Commission and the Secretary should also take into consideration the anticipated needs of the Scenic Area when developing land use designations. The land use designations must specifically include: agricultural and forest lands, open space, commercial development, and residential development. The management plan will incorporate the land use designations developed by both the Commission and the Forest Service.

Provisions in the management plan must conform to certain standards outlined in the Act that will control where and to what extent land use activities will be permitted in the Scenic Area and the Special Management Areas. certain designated land uses, such as agricultural and forest land, and open space, must be protected and enhanced in both the Scenic area and the Special Management Areas. The management plan can allow the conversion of one of these uses to the other, e.g., it can allow open space to be converted to farm or forest land, but it cannot require the conversion of one of those land uses to another. For example, land that is used for the protection of forest crops, cannot be required in the management plan to be converted to open space.

The management plan must protect recreational resources, both public and private, as well as educational and interpretive facilities throughout the Scenic Area and the Special Management Areas. One of the goals of the Act is to enhance the recreation potential of the area. This includes protecting and developing areas such as river access points, trails, campgrounds, and picnic areas.

The management plan cannot allow industrial development in the Scenic Area outside the Urban Areas. It would be incompatible with the goals of the Scenic Area to have land uses such as large industrial manufacturing and processing plants and facilities in the middle of the scenic area. Industrial plants and facilities are appropriate in the Urban Areas, and the management plan will encourage industrial development in the Urban Areas. It is intended that small scale manufacturing, such as cottage-type industries, will be considered to be commercial development under the Act.

The management plan will allow commercial development in the Scenic area outside the Special Management Areas so long as it does not adversely affect the resource values that are protected under the Act. Some commercial development, for example, tourist facilities, hotels, and restaurants, is compatible with the objectives of the Act and, therefore, would be appropriate in the Scenic Area outside the Special Management Areas. Commercial development may be conducted in a manner that will mitigate adverse impacts on the Scenic Area and would be permissible.

Traditional commercial uses of land, such as timber harvesting and agricultural operations will continue to be allowed. The savings provision in Section 17 clarifies that timber harvest practices on non-federal land in the Scenic Area will continue to be governed by the Oregon or Washington Forest Practices Act or any county regulations which under applicable state law supercede those Acts, and will not be subject to additional forest practice regulations by the Commission. In taking any action to upgrade the facilities of the Bonneville Power Administration, including upgrading transmission lines, the Bonneville Power Administration will apply state of the art technology to reduce the potential adverse impacts on protected resources.

The management plan will allow residential development in the Scenic Area, so long as it does not adversely affect the resources that are protected under the Act. There are some areas that will be suitable for residential growth in the Scenic Area because of their geographic proximity to developed areas, transportation corridors, commercial facilities and other amenities. The management plan may require reasonable mitigation measures, such as vegetative screening or neutral paint tones, that will reduce potential adverse impacts of residential development in the Scenic Area to insignificant levels.

The management plan will allow for the exploration, development and production of mineral resources, such as oil and gas development, and surface mining for sand, gravel and crushed rock, in the Scenic Area. These activities cannot be conducted in a manner that adversely affects the resources that the Act seeks to protect. The management plan should require reasonable mitigation measures to reduce potential significant adverse affects to make the activity permissible. The management plan will require that land used for mineral resource development or production that disturbs the surface be reclaimed.

The management plan will prohibit certain activities, termed major development actions, in the Special Management Areas. The further subdivision of land will be prohibited in the Special Management Areas, except for subdivisions that are desirable to facilitate a land acquisition by the Forest Service. If the Forest Service would like to acquire only a portion of a landowner's parcel of land, or the landowner would only like to offer a portion of his or her parcel, that is a permissible subdivision of land.

Also prohibited in the Special Management Areas are permits for the siting or construction of multi-family residential, commercial or industrial facilities, and permits for the siting or construction of a single family residence on a parcel of land less than 40 acres in size. Permits for the upgrade of existing electric transmission facilities, and facilities that are identified in the recreation assessment are permitted in the Special Management Areas so long as the construction will not adversely affect the resources protected under the Act.

Mineral resource exploration, development or production will be prohibited in the Special Management Areas except in two cases. If the exploration, development or production can be conducted without disturbing the surface of the Special Manage-

ment Areas, it will be permitted. Additionally, the management plan will allow for the exploration, development or production for sand, gravel or crushed rock, to be used in connection with forest management activities, or the utilization, harvest or disposal of forest products, within the Special Management Areas.

Within three years, the management plan must be adopted by the Commission by a majority vote, with at least three members from each state voting to adopt the plan. This will ensure that the interests of both states will be equally represented when the plan is adopted. The Secretary and the Commission must conduct public hearings and solicit public comment prior to the adoption of their management plan. Indian tribes, the Secretary, states, and local governments, should be notified by the county and the Commission of all proposed major development actions.

The plan must be submitted to the Secretary of Agriculture for review and concurrence that the plan is consistent with the Act. It is anticipated that the Forest Service will be very involved in the developmental stages of the management plan. This review process will allow the Forest Service an additional opportunity to comment on the plan as adopted by the Commission.

If the Forest Service concurs, it will notify the Commission that the plan is consistent with the Act. The Forest Service will be deemed to have concurred if the Forest Service does not act within ninety days. If the Forest Service does not concur, the plan must be resubmitted to the Commission with proposed modifications. The Commission can either accept the changes and revise the plan, or vote to reject the modifications and adopt a plan that is consistent with the Act. The final vote of the Commission must be by a dual majority vote of the members from each state, or four out of the six Commissioners from each state.

The management plan will be periodically revised by the Commission. This revision cannot occur sooner than five years after the final adoption of the management plan, but it must be revised at least every 10 years. The Commission may determine at any time that situations in the Scenic Area have changed so significantly that it is necessary to amend the plan. Amendments and revisions to the plan shall be adopted by the Commission and reviewed by the Forest Service in the same manner that the initial plan is adopted and reviewed.

SECTION 7: ADMINISTRATION OF THE SCENIC AREA

The Commission is responsible for the administration of non-federal land in the Scenic Area outside the boundaries of the Special Management Areas. Every county in the Scenic Area is required to enact a land use ordinance to effectuate the provisions of the management plan and the intent of the Act.

Upon receiving the management plan, each county must send a letter confirming its intent to adopt a land use ordinance consistent with the management plan. Within 270 days of receiving the management plan, each county must submit an adopted land use ordinance to the Commission for review. Insofar as an already existing ordinance complies with the requirements of the Act, it may be incorporated into the land use ordinance to be submitted to the Commission. The Commission must review and approve the ordinance, unless the Commission finds that the ordinance is inconsistent with the Act. If an ordinance is disapproved by the Commission, it must be resubmitted to the county for revision with suggested modifications to make the ordinance consistent.

If the Commission determines that a county has failed to enact an ordinance, the Commission must devise and adopt a land use ordinance, the Commission must devise and adopt a land use ordinance for that county. The ordinance adopted by the Commission must ensure that the use of non-federal land is consistent with the management plan. Upon written notice, a county may subsequently elect to adopt a land use ordinance. A subsequently adopted ordinance will supersede an ordinance promulgated by the Commission. This ordinance must be submitted to the Commission for review and approval.

Authorization is given to the Forest Service to construct, operate and maintain in the Scenic Area any appropriate recreation facilities that are identified in the recreation assessment.

SECTION 8: ADMINISTRATION OF SPECIAL MANAGEMENT AREAS

The Forest Service will manage the federal lands in the Special Management Areas in accordance with all laws and regulations that are applicable to the national forest system, including the National Forest Management Act and the National Environmental Policy Act. Forest management on federal land in the Special Management Areas will be subject to the present guidelines for Visual Resource Management as promulgated by the Forest Service.

It is fully intended that the harvest, utilization and disposal of the timber resource will continue on forest lands in the Special Management Areas. Any forest lands acquired by the Forest Service as a result of an exchange must be included in the calculation of the allowable harvest level for that national forest. Federal lands in the Special Management Areas are withdrawn from further mineral entry, subject to valid existing rights.

The Forest Service will complete a resource inventory which will be done in conjunction with the resource inventory of the Commission. The Forest Service should utilize to the greatest extent practicable, data collected pursuant to other applicable laws and regulations to avoid a duplication of effort.

The Forest Service will complete a recreation assessment within two years of the date of enactment of the Act in conjunction with the Commission. The recreation assessment will identify appropriate areas to construct recreation facilities such as educational, interpretive, and tourist facilities. The recreation assessment will specifically identify sites for the location of interpretive, conference, or other appropriate facilities in Oregon and Washington.

Within 3 years of the date of enactment of the Act, the Forest Service will develop land use designations for the Special Management Areas. The land use designations will be based primarily on the resource inventory, but may also take into consideration anticipated needs in the Special Management Areas.

Within 3 years of enactment, the Forest Service must develop guidelines that will ensure that the use of non-federal land in the Special Management Areas will be consistent with the Act. These guidelines will be submitted to the Commission for inclusion in the management plan. The guidelines will allow timber harvesting in the Special Management Areas, and require, among other things, that timber harvesting activities and surface mining for sand, gravel and crushed rock for roads that are necessary for forest management activities, not adversely affect the resources that are protected under the Act. The guidelines may use the published guidelines for Visual Resource Management for forest management activities, such as timber harvesting and road construction, on non-federal land to mitigate potential adverse affects on the scenic, natural, recreation and cultural resources in the Special Management Areas. Such guidelines may include using contour cuts or longer rotations to achieve a visual quality objective. It would not be necessary to require visual resource management for forest management activities that are outside of the viewshed, or are on the back side of a bluff.

Within 60 days of receipt of the management plan, each county will send the Commission a letter affirming its intent to adopt a land use ordinance that is consistent with the management plan. Within 270 days of receipt of the final management plan, each county will adopt a land use ordinance consistent with the management plan and the guidelines promulgated by the Forest Service.

The Commission will review each land use ordinance submitted by the counties and either make a tentative determination that the land use ordinance is consistent with the management plan, or determine that it is inconsistent. A determination of inconsistency will result in the Commission returing the ordinance to the county, with recommended modifications to make it consistent. The county will revise and resubmit the ordinance to the Commission for a second tentative determination of consistency.

If the Commission makes a tentative determination that the ordinance is consistent, the Commission will submit the ordinance to the Forest Service for its concurrence. The Forest Service will review the findings of the Commission. If the Forest Service disagrees with the Commission's findings, the ordinance will be returned to the county, with recommended modifications to make the ordinance consistent with the management plan. Upon concurrence by the Forest Service with the findings of the Commission, the ordinance will become effective.

If a county never sends a letter of intent to the Commission, or, if, the Commission has reviewed an ordinance for the second time and again finds the ordinance inconsistent, the Commission must determine that the county has failed to comply with the Act and will promulgate a land use ordinance for that county to assure that the use of non-federal land in the Special Management Areas is consistent with the management plan. The Secretary must review the Commission's ordinance and concur that it is consistent with the management plan for the ordinance to become effective.

If the Secretary does not concur that an ordinance promulgated by a county that has been submitted twice to the Secretary for review, or by the Commission, is consistent; the Commission may choose to revise and resubmit to the Forest Service an ordinance that will be consistent, or adopt the ordinance by a two-thirds vote of the majority of the members from each state. The ordinance will become effective upon the vote of the Commission, or final concurrence by the Forest Service.

If a county has not complied with this section, it may elect to comply at a later point, subject to the same procedures outlined

above. A subsequently adopted ordinance that the Forest Service determines is consistent with the Act, will supercede the Commission's ordinance.

There are two effects of not adopting an ordinance that the Forest Service concurs is consistent with the Act. Certain funds that are authorized under the Act will not be expended for any county that does not have an effective land use ordinance in which the Forest Service has concurred is consistent with the management plan. These funds include: $10 million for the construction of an interpretive center in Oregon and a conference center or other appropriate facility, in Washington, $2 million for additional payments to counties for land that is acquired by the Forest Service, $5 million economic development grant money that is provided to each state, and funding for the reconstruction of the Old Columbia River Scenic Highway. Additionally, the authority of the Forest Service to acquire land without the consent of the owner will be suspended for any county that has an effective land use ordinance that has the concurrence of the Forest Service.

The effect of a land use ordinance that is adopted pursuant to this section will not apply to any parcel of land that is offered for sale to the Forest Service at the time the ordinance is adopted, if the Forest Service does not acquire the land within three years. The parcel will be subject to the land use ordinance adopted for the Scenic Area. The offer will not be considered bona fide if the landowner refuses to accept consideration that is equal to the fair market value as appraised in accordance with the Uniform Appraisal Standards for Federal Land Acquisitions.

SECTION 9: LAND ACQUISITIONS

The Secretary is authorized to acquire any lands or lesser interests in the Special Management Areas and the Dodson/Warrendale Special Purchase Unit which the Forest Service determines are necessary to achieve the purposes of the Act. Lands may only be acquired from a state or other political subdivision by donation or exchange. Land acquired within Oregon will become part of the Mount Hood National Forest, and lands acquired within Washington will become part of the Gifford Pinchot National Forest.

The Secretary may use condemnation in the Special Management Areas to acquire land or interests therein, except that condemnation cannot be used to acquire single-family residential homes, farmland or grazing land, or lands used for educational, religious or charitable purposes, so long as the existing character of that use is not substantially changed or permitted for change. The exemption applies to the use as existing on the date of enactment. A change from one exempted use to another exempted use will not necessarily mean that the exemption will continue. For example, unless the use is permitted for change or the change in use is not substantial, a conversion, such as grazing land to residential use, would not be an exempted use.

The Secretary may use condemnation only after every effort has been made to acquire the property otherwise. The Secretary must consider any hardships that would result to a landowner from undue delay in acquiring the property. The Secretary's authority to use condemnation in a Special Management Area is terminated for any county that has a land use ordinance that the Secretary has concurred is consistent with the management plan.

The Secretary is directed to complete exchange of timberland, at least 40 acres in size, in the Special Management Areas. The State of Washington and Hood River County cannot offer timberland for exchange until the management plan is adopted, and must do so within 180 days of adoption of the plan. A private timberland owner can offer timberlands for exchange anytime after the date of enactment of the Act but within 180 days of the adoption of the management plan. Timberland exchanges will be for approximately equal value. Exchange must be completed within 5 years.

The Secretary is authorized to acquire small parcels outside the SMA's if an acquisition would result in an uneconomic remnant outside the boundaries of the Special Management Areas. A list of candidate lands are included from which the Forest Service is directed to exchange. The candidate lands are withdrawn from further entry until the exchanges are completed, but in no event, for a period longer than five years.

Once a county has adopted a land use ordinance for the Special Management Areas, the use of acquisition by the Forest Service will be deemphasized. It is intended that the county's land use ordinance will adequately address concerns about land use activities on non-federal lands. Under all circumstances, condemnation would only be used as a last resort.

SECTION 10: INTERIM MANAGEMENT

Six months after the date of enactment, the Forest Service must develop and adopt interim management guidelines for the entire Scenic Area, outside the Urban Areas, to identify land uses that are inconsistent with the Act. These guidelines will be used to guide the Forest Service's interim acquisition authority.

Until a county has an effective land use ordinance that the Commission has approved pursuant to Section 7 or the Forest Service has concurred is consistent with the management plan pursuant to Section 8, the Forest Service will have the authority to initiate a condemnation proceeding and temporarily enjoin land use activities that are inconsistent with the Act or will adversely affect the scenic, natural, cultural and recreation resources in the Scenic Area. During the period the temporary injunction is in effect, the Secretary should negotiate with the landowner to try to mitigate the inconsistent land use activity or to reach an agreement about acquisition of the property.

The Secretary will also have the authority to acquire, including acquisition without the consent of the owner, lands or interests in land, that are in danger of being used in a manner that is inconsistent with the Act or that will adversely affect the resources that are protected by the Act.

The Forest Service may not acquire land through condemnation that is being used in the same manner as it was used on the date of enactment, unless that land is used for a garbage dump or is used for the development and production of sand, gravel, and crushed rock. The authority of the Forest Service to acquire lands or interests in the Special Management Areas without the consent of the owner is terminated for any county that has a land use ordinance that the Forest Service concurs is consistent with the management plan, pursuant to the provisions of Section 8.

Prior to the concurrence of the Forest Service of the consistency of a land use ordinance adopted pursuant to Section 8, or approval by the Commission of a land use ordinance pursuant to Section 7 of the Act, the Commission must review and approve all proposals for major development actions and new residential development in the Scenic Area, including the Special Management Areas.

It is intended that all lands acquired by the Forest Service in the Scenic Area, outside the Special Management Areas, will be disposed of by the Forest Service in accordance with the laws and regulations pertaining to the disposal of land. The Forest Service must retain a conservation easement on all lands it disposes. If the Secretary acquires a lesser interest, the Forest Service should retain the interest required to assure that the land is used in a manner that is consistent with the Act.

SECTION 11: ECONOMIC DEVELOPMENT

Each state must develop a plan for economic development projects for the grants authorized pursuant to this section. The economic development plan should utilize the information and analysis contained in the economic opportunity study completed pursuant to Section 6.

The Forest Service will provide $5 million to each state for economic development projects that will further the purposes of the Act. It is anticipated that the grant money will be used to develop tourist facilities, such as restaurants and hotels, and recreation facilities, such as campgrounds, river access areas, and picinic areas. No money will be available for a county that does not have an effective land use ordinance that the Forest Service has concurred is consistent with the management plan.

SECTION 12: OLD COLUMBIA RIVER HIGHWAY

The Oregon Department of Transportation, in consultation with the Forest Service and the Commission, is required to develop a program for the preservation and restoration of the Old Columbia River Scenic Highway, Oregon.

SECTION 13: TRIBUTARY RIVERS AND STREAMS

The provisions of Section 7(a) of the Wild and Scenic Rivers Act will apply to certain segments of rivers within the boundaries of the Scenic Area, including: any tributary river to the Columbia Gorge flowing through a Special Management Area, any state designated wild and scenic river, the Wind River for a period not to exceed three years after the adoption of the final Gifford Pinchot Forest Plan and the submission by the Secretary of certain reports retaining to the suitability of the Wind River for classification under the Wild and Scenic Rivers Act, the Hood River for a period of 20 years, and a segment of the Little White Salmon River extending from the Willard Fish Hatchery to its confluence with the Columbia River.

A section of the White Salmon River is designated as a scenic river under the Wild and Scenic Rivers Act. A section of the Klickitat River is designated as a recreation river under the Wild and Scenic Rivers Act. Wild and Scenic River studies are called for on the upper portion of the White Salmon and the Klickitat Rivers. The study of the Klickitat River must be conducted in cooperation with the Yakima Indian Nation.

SECTION 14: IMPLEMENTATION MEASURES

The Forest Service must provide technical assistance to counties for the development of land use ordinances required under Sections 7 and 8 of the Act. If a county does not obtain approval of the land use ordinances

within 3 years after the assistance is given, the assistance will be terminated.

Provides that of the money paid to the counties under the timber receipt program, 50% must go to fund public schools and 50% may be expended for any public purpose. This provision only applies if a county has a land use ordinance that the Forest Service has concurred is consistent with the management plan.

The Forest Service is required to make payments to the counties of 1% of fair market value of acquired lands for a period of five years from the date of acquisition. This provision only applies if a county has a land use ordinance that the Forest Service has concurred is consistent with the management plan.

Federal and state agencies are required to exercise their responsibilities in a manner that is consistent with the Act and they should not make new expenditures of money that are inconsistent with provisions of the Act. Consistency should be measured in terms of the provisions in the Act considered in their entirety. It is possible that an expenditure may be inconsistent with one provision and consistent with another and be a permissible expenditure.

Certain federal expenditures or assistance are not to be treated as inconsistent with the Act. These include: funds appropriated for construction or purchase prior to November 1, 1986; a legally binding commitment made before November 1, 1986; payments to the states pursuant to the Act of May 23, 1908 (c. 192, 35 Stat. 251; 16 U.S.C. 500), Section 13 of the Act of March 1, 1911 (c. 186, 36 Stat. 961; 16 U.S.C. 500); the Mineral Lands Leasing Act of 1920, chapter 69 of Title 31 (relating to payments in Lieu of Taxes for entitlement land); the Act of June 9, 1916 (39 Stat. 218); and the Act of Feb. 26, 1919 (40 Stat. 1179); expenditures for the maintenance of existing channel improvements and related structures; the maintenance, replacement, reconstruction, or repair of publicly owned or operated roads, structures, or facilities; military activities that are essential to national security, projects for the study, management, protection, and enhancement of fish and wildlife resources and habitats, including but not limited to, acquisition of fish and wildlife habitats and stabilization projects for fish, wildlife and recreation projects; the establishment, operation, and maintenance of air and water navigation aids and devices and for access thereto; projects under the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-4 through 11) and the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.); scientific research, including but not limited to aeronautical, atmospheric, space, geologic, marine, fish and wildlife and other research, development, and applications; assistance for emergency actions essential to the savings of lives and the protection of property and the public health and safety, and nonstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore natural stabilization systems.

SECTION 15: ENFORCEMENT

The Commission is required to monitor actions of the counties and to take whatever actions the Commission deems necessary to enforce the Act. This provision requires the Commission to take aciton, but the Commission retains its discretion to decide what is the optimal course of action to pursue.

Any final decision or order of a county may be appealed to the Commission. Civil penalties may be issued under state law against anyone who willfully violates the management plan or any land use ordinance adopted pursuant to the Act.

The Forest Service, Commission, or the Attorneys General of Oregon, Washington, or the United States, may institute a civil action against any person or entity to enforce the Act, the management plan and any land use ordinance adopted under the Act, in the appropriate court of jurisdiction. The Secretary can only issue an injunction against an individual pursuant to its authorities under Section 10 of the Act.

A right of civil action is provided to compel action to enforce the Act for a person who is adversely affected by an action of the Secretary, Commission or county that is in violation of the Act, or by a failure on the part of the Secretary, Commission or county to perform a compulsory duty. 60 days notice must be given prior to instituting a civil action. No civil action may be commenced if the Attorney General for Oregon, Washington, or the United States is pursuing prosecution of the violation. Nor may a civil action be commenced which challenges the consistency of the management plan prior to the certification or adoption of the management plan.

Provides for judicial review of any final action or order of a county, the Commission or the Secretary for adversely affected parties. Defines federal and state court jurisdiction to clarify which actions constitute federal actions and which actions are state actions. Federal courts have jurisdiction over actions appealing an order of the Secretary, civil actions against the Secretary, or the imposition of criminal penalties resulting from a decision of the Secretary or a violation of an order of the Secretary. The states of Oregon and Washington have jurisdiction to review appeals taken to the Commission, any civil action brought by the Commission, or any civil penalties assessed by the Commission.

SECTION 16: AUTHORIZATIONS

$40 million is authorized for land acquisitions in the Special Management Areas. No more than $10 million can be expended for acquisitions of lands and interests pursuant to the Forest Service's interim acquisition authority in Section 10 without further legislative action.

The following authorizations cannot be appropriated for any county which does not have a land use ordinance in which the Forest Service has concurred is consistent with the management plan:

$5 million is authorized for economic development grants to each state, however, if the states fail to establish the Commission within 3 years, this grant money will be available for interim acquisitions of lands and interests;

$10 million is authorized for the construction of an interpretive center in Oregon and a conference center in Washington;

$2.8 million is authorized for the reconstruction of the Old Columbia Scenic River Highway out of the Highway Trust Fund;

$2 million is authorized to provide payments to counties.

SECTION 17: SAVINGS PROVISIONS

Nothing in the Act will:

affect any federal or state law or regulation which is more protective of the resources protected by the Act;

affect the rights of Indian tribes;

affect the appropriation or use, including the transportation activities on any river or stream, of water, including ground water resources, by any entity or individual, and the jurisdiction or rights of the United States, Indian Tribes, or other state or local entities or individuals, except as provided in Section 13(c) of the Wild and Scenic River Act, nothing in this Act shall affect existing water or water-related rights;

affect any interstate compacts made by the states;

affect the Bonneville Power Administration's ability to operate, maintain and modify existing transmission facilities. In addition to normal operation and maintenance activities, Bonneville must have unencumbered access to its facilities to perform routine system modifications for the purpose of solving operational problems, improving efficiency, and taking advantages of advances in technology or power transmission facilities;

affect the rights and responsibilities under the Pacific Northwest Electric Power Planning and Conservation Act, Corps of Engineers Bonneville Locks project (except the disposal of dredge spoils), the Washington and Oregon Forest Practices Acts, and the hunting and fishing laws and regulations of the states;

require a revision or amendment under the National Forest Management Act;

establish a protective perimeter around the Special Management Areas of the Scenic Area.

The mandatory language in the Act constitute the conditions to which the Congress consents to the interstate compact establishing the bi-state commission. Both states must adopt the compact by specifically incorporating the provisions of this Act. If the Columbia Gorge Commission is never formed, the Secretary is not required to take any actions that require the establishment of the Commission.

Specific actions required in the Act of the Forest Service are not deemed to be major federal actions under the National Environmental Policy Act and therefore, an environmental impact statement nor an environmental assessment will be required.

SECTION 18: SEVERABILITY

Invalidation of one section of the Act has no applicability to the validity of the remainder of the Act.

Mr. HATFIELD. Mr. President, I ask unanimous consent that Senator PACKWOOD, of Oregon, and Senator GORTON, of Washington, be listed as original cosponsors of the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Is there further discussion?

Mr. WALLOP addressed the Chair.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. WALLOP. Mr. President, many of us have worked for this piece of legislation, a lot of very difficult work. It has changed a great deal from the moment it was introduced, a very great deal. It is to my amazement that it is really much closer to be satisfactory than it was. In fact, it was completely an intolerable piece of legislation as it pertained to the concepts of Federal zoning, which I think are offensive to most Americans.

I still rise in opposition to it. I will not seek to delay it. I will not seek to have votes on it. But I cannot let it go without some comment.

Mr. President, this bill was reported by the Committee on Energy and Natural Resources on August 14, 1986, without a committee report and with the understanding that negotiations would take place that would approximate the work normally done in committee to refine, amend, improve and define the bill.

In an effort to assist the sponsors of the legislation and recognizing that the administration through the Forest Service and the Justice Department had many objections to the legislation; I sent those agencies a letter on August 25, 1986, asking them to define the specifics of their objections and had them begin a series of meetings with committee staff and then with the staffs of the sponsoring Senators, my distinguished colleagues from Washington and Oregon.

Mr. President. I wish to thank those representatives of the Forest Service, Department of Justice, committee staff and personal staff for the many days and long hours of hard work to improve this bill. I report to you that this bill before you has been improved over the bill as reported.

However, Mr. President, I have several reservations that if the Commission as authorized in this bill is not established as set forth in section 5, the Secretary's interim acquisition authority will in fact become permanent. I suggest that is a dangerous proposition. In other words if the States of Washington and Oregon do not enact the required legislation, what happens? As I read it the only limitation on the Secretary's authority to acquire pursuant to the bill, is one of a limit on the authorization for appropriation of $10 million. As we all know an increase in appropriations above authorization levels becomes a legal and lawful new level of authorization. So in effect, we have the possibility of the States of Oregon and Washington not playing but the Secretary has to forever if the money holds out.

Mr. President, let me describe the scenic area. The designation of scenic area is the all encompassing designation, the boundaries of the scenic area encompass four special management areas. These SMA's are primarily federally owned. The scenic area also a special purchase unit and the following cities and towns are hereby designated as "Urban Area": Cascade Locks, Hood River, Mosier, and The Dalles, OR; and Bingen, Carson, Dallesport, Home Valley, Lyle, North Bonneville, Stevenson, White Salmon, and Wishram, WA.

The approximate acreage of the scenic area is 226,000 acres excluding the cities and towns.

□ 1440

The percentage of Federal ownership of land in the scenic areas excluding the urban areas is 20 percent. If that interim authority becomes the norm, the potential acquisition burden becomes intolerable in an era when dollars are short and the present backlog is huge, somewhere above $3 billion. We have to ask what we are doing adding to that burden. And the consequence of it is that Americans who own property will suffer in effect a taking, the same taking that has happened to Americans all over the country as Congress exercises its appetite to preserve and its distaste for funding that appetite.

I would ask any of the sponsors if they could assure me that their States will enact requisite legislation and indeed become the partners contemplated?

Mr. EVANS. Will the Senator yield?

Mr. WALLOP. I am happy to yield for a response to my question.

Mr. EVANS. Of course, I do not think any one of us can guarantee what our State legislatures will do. But I can guarantee to the Senator from Wyoming that I will make every effort, once I get out of here and get back home, to work to accomplish precisely that. As some of those who are the most ardent advocates of the Columbia Gorge will attest, from the very beginning of my work on this legislation I have been concerned about the proper balance between the rights of the private property owners in that area and the very strong need and desire to preserve that rather unique area.

I think it would be inappropriate for the area to continue under what is now designated as an interim stage. I will do everything I can personally to convince my legislature in the State of Washington to act favorably on the legislation. And I would even go further, that if there is no inclination by the legislatures of either Oregon or Washington to complete their legislation and to engage fully in this act, then I, for one, would be willing to come back and see what further steps we might want to take. I agree with the Senator from Wyoming, that it would be inappropriate to by inaction translate an interim stage into what would become permanent management of the area. Consequently, I would be willing to work with the Senator from Wyoming to seek whatever changes are necessary.

Mr. GORTON. Will the Senator yield?

Mr. WALLOP. I will be happy to yield.

Mr. GORTON. I join completely in the statement made by the Senator from Washington and to point out that while obviously neither of us—and I expect neither of the Senators from Oregon—can make a guarantee or an assurance, the drive for this kind of legislation in our States has been very high. There is no downside, no discernible downside for acquiescence and for approval of this Commission on the part of the State legislature. It would seem to me to be almost a matter of course that they would be created, and created promptly.

Mr. WALLOP. The Senator would agree with me though, that were it not to be the case, it is a rather simple proposition to transfer what is contemplated as an obligation of the States of Oregon and Washington to a Federal obligation?

Mr. GORTON. Under the terms of this legislation, that is the case, but it is simply because we believe that our legislatures will cooperate that we have not seriously considered that as an alternative.

Mr. WALLOP. I thoroughly understand that and I am not suggesting that there is something devious on the part of the delegation and I appreciate that assurance.

Mr. EVANS. If the Senator will yield further, I might add that I suspect it would be terribly difficult—and I would defer to the senior Senator from Oregon, the chairman of the Appropriations Committee—to get appropriations on any kind of continuing basis if we continue to operate in that interim stage and that that in itself would have a strong dampening effect. But I would also say that the Governor of the State of Washington has indicated very strong support for this legislation. I believe that he enjoys a certain amount of popularity in our own State. Both houses of the legislature at least currently are under the control of his party. I suspect that that also indicates pretty clear sailing on our side.

Mr. HATFIELD. May I just comment, the last time such an appropriation of that magnitude took place was for Mount St. Helens and I do not anticipate that is going to happen.

Mr. WALLOP. But the problem goes beyond the question of whether there is some appropriations. That is in fact the problem because, given the interim authority of the Secretary, that land then becomes subject to what is in effect a Federal designation of its nature and character which eliminates the rights of free property of the people who own it. So the lack of the appropriation is even more dangerous than the increased addition to the burdent of the national debt from this Senator's perspective, which is why I want, and I am glad to receive the assurances of the Senators from those States that they will work to see their legislature enter their share of this cost.

I have a couple of other questions as follows, if the Senators will indulge me. When the Gorge Commission prepares its management plan for the scenic area, is the Commission required to classify as forest land all land presently used or suitable for the

production of forest products? In other words, does the Gorge Commission in the opinion of the Senators have any power to classify private forest lands in any other category such as scenic?

Mr. GORTON. I will attempt to answer the question of the distinguished Senator from Wyoming that under the statute it is our belief and intention that the Commission in dealing with forest land must classify it as forest land and not for some other purpose, and I will try to give a reference to that, if I can.

Section 6(B) states:

Within 2 years after the commission is established, it shall develop land use designations for the use of non-Federal lands within the scenic areas. The land use delegation shall—

Then I drop down to subsection 3:

Designate lands used or suitable for the production of forest products as forest lands.

Mr. WALLOP. So it is the Senator's opinion the bill does not give the Commission the ability to designate private-held forest lands as scenic or some other category?

Mr. GORTON. My answer to that question will be that it does not, it may allow, but not require, the conversion of forest lands to agricultural lands, recreational development or open spaces.

Mr. WALLOP. I understand that it may allow it. The Senator can understand my concern.

Mr. GORTON. But it may not require it.

Mr. WALLOP. Or that it lay some designation on it that would preclude its use as forest land, private forest land.

Mr. GORTON. I believe that the concerns of the Senator are fully met.

Mr. WALLOP. In view of the savings clause of section 17 which makes timber harvest practices in the scenic area subject to the Oregon and Washington Forest Practices Acts, does the Gorge Commission have any authority under its zoning power to regulate timber harvest practices in the scenic area?

Mr. EVANS. The answer I believe to that question is, outside of the special management areas, no. They would go under the Oregon and Washington Forest Practices Acts and both of those acts I believe—I know the Washington Act at least does—have certain special requirements for timber harvesting in environmentally sensitive areas quite aside from this legislation to ensure that environmental valves would be protected.

Mr. WALLOP. I understand that State forest practices of each State will apply, but the question is that in the scenic areas, does the Gorge Commission—in the scenic areas, not the special management—have any authority under its zoning power to regulate timber harvest practice or is that the province of the State or States?

Mr. EVANS. I think it is only the conversion of the land, but if it remains all forest land in our State, it is subject to the State Forest Practices Act.

Mr. GORTON. I think the simple answer to the Senator's question is "no."

□ 1450

Mr. McCLURE. When the Senator refers to forest lands subject to the State practices, that should not be read to include a reference to the national forest lands?

Mr. WALLOP. No.

Mr. McCLURE. The Senator is talking about non-Federal lands in that context?

Mr. WALLOP. Of course.

Mr. McCLURE. Certainly, the sponsors of the bill will agree that the national forest lands are subject only to the management by the Federal agencies, and the Commission is specifically bound by the Federal Land Management so far as the forest lands are concerned.

Mr. GORTON. The Senator is correct.

Mr. WALLOP. Within the special management areas, will the Forest Service be authorized to permit timber harvesting consistent with multiple-use management of the National Forest System?

Mr. HATFIELD. Yes.

Mr. PACKWOOD. Yes.

Mr. EVANS. I would add to that that they would, but, again, they have the provision I believe currently in the law that will allow them to take special care or concern for the scenic area and the forest practices that would be consistent with that.

Mr. WALLOP. I again thank the sponsors, the Senators from Oregon and the Senators from Washington, for their efforts—and they have been real efforts—to correct the deficiencies in the bill and to work with the administration on the corrections.

Let me say that in my expression of lack of support for the bill, I do not ask for a rollcall. As do the Senators from Oregon and every other State, I wish some day to see this veil of tears ended and see what the life beyond the beltway is like.

I must vote "no" on this bill because of the lack of sunset of the Secretary's interim land acquisition authority; the lack of balance in a State-Federal partnership; the potential costs to the United States of $75 million at a minimum, double or triple that if the States do not act; and, finally, although direct Federal land use zoning has been removed, a heavy-handed Federal club and carrot system is in place.

For these reasons, I do not support this legislation.

I thoroughly understand the reasoning and passion of the Senators from Oregon and Washington on that. Though it is easy at this late date to stand in the way of a piece of legislation, I thank them very much for coming the distance they did come to alleviate the concerns I have expressed from the beginning.

Mr. McCLURE. Mr. President, I appreciate the concerns expressed by the Senator from Wyoming, because I share many of those concerns.

I also express my thanks to the Senators from Washington and Oregon for working with us to try to remove as much as is possible all those concerns.

I do have some questions with respect to the meaning of this legislation, and I would appreciate a response from the sponsor of the bill.

Before doing so, I want to make one correction for the RECORD—a minor correction, perhaps.

The amendment we have by way of a substitute is not a committee amendment. It has not been approved by the committee. The bill was approved by the committee, but the amendment has not been through the committee, although I believe that the committee, in approving the original bill, would have been eager to approve it, because in my view, it was an improvement. My understanding of the amendment being offered is that it eliminates any suggestion or implication that any action by the Secretary could be interpreted or construed to be Federal zoning of non-Federal lands.

Mr. EVANS. That is correct.

Mr. McCLURE. Is it correct that if any court should interpret any provision of this measure to be Federal zoning, that would be unconstitutional?

Mr. EVANS. That issue would not arise, as there is no authority, either explicit or implicit, in this measure for the Federal Government to usurp the police power of the State on zoning.

Mr. McCLURE. I will state for the record my major concern and go a step further than the Senator from Wyoming did.

Under the Constitution, the police powers were reserved to the States. Under a uniform line of cases—over 65 years, I believe—the courts have almost uniformly said that zoning is an exercise of police power. In my judgment, therefore, zoning to be exercised by the Federal Government would be an unconstitutional exercise of power reserved to the States.

My understanding is that it is the role of the Secretary to concur in the consistency determination of the Commission on whether ordinances meet the objectives of this act. This is not approval in the sense of the Federal Government promulgating these ordi-

nances, but, rather, is a review in the sense of an ongoing partnership.

Do I state that correctly?

Mr. EVANS. The Senator is correct. The review and considered judgment of the Secretary is important to ensure that this unique partnership works. I would like to reassure the Senator that concurrence is not a Federal usurpation of the authorities exercised by the Commission pursuant to State law.

Mr. McCLURE. Am I correct that when the savings clause requires the States to enact all the mandatory provisions included in the act, it includes not only the establishment of the Commission, but also the authority of the Commission to exercise land use authorities normally reserved to the counties, if necessary, the authority to promulgate regulations and enforce them, the authority to impose penalties and the conferral of necessary jurisdiction on the State courts to entertain whatever actions are set forth in this legislation, and the authority for all other non-Federal functions set forth in this act?

Mr. EVANS. The Senator is correct. The agreement of the United States in section 5 is predicated on a faithful adherence to and an enactment by the States of Washington and Oregon of all provisions of this act, as enumerated by the Senator including the delegation or conferral of all authorities set forth in this measure, as a matter of State law.

Mr. McCLURE. A moment ago, there was a brief colloquy with respect to the role of the Forest Service in determining management of Federal lands within the boundaries of the national forests. Reference was made to the fact that the Forest Service is responsible for the management of Forest Service lands. Obviously, they consult with the local and State authorities in development of those plans. Again, we are visualizing in this bill a partnership action and a partnership relationship.

There is, however, in section 8(A)(1) of the substitute a reference to Forest Service visual resource management guidelines. Does this legislation fix those guidelines as they are at the present, or is it the earlier reference to the guidelines, however, they may be altered in the future?

Mr. EVANS. It is this Senator's belief that it would apply to the Forest Service visual resource management guidelines as they exist now and as they might be approved over time.

Mr. McCLURE. And as they might be changed. So that the Forest Service has the authority to make whatever changes they deem necessary under the statutory mandates to them for management of the public lands, keeping in mind that they interact with the Commission and seek to fulfill the objectives of this act as well as the other managerial responsibilities they have.

Mr. HATFIELD. I think page 17, section 8, subsection (A) answers that, in which reference is made to the laws, rules, and regulations applicable to the National Forest System. So I assume that as those laws, rules, and regulations may change or evolve, so would those regulations within that area.

□ 1500

Mr. McCLURE. I would understand it in the same manner.

Mr. EVANS. If the Senator will yield, I add further while I think it is important to allow the Forest Service to continue to change, modify, and improve their visual forestry guidelines, it certainly is the intent of this legislation, the very nature of the special management areas we are talking about, that particular care be paid to scenic values and their relationship to forest management.

If at some time in the future, it became apparent that the Forest Service had changed those radically downward and were paying little or no attention to visual quality guidelines, I am certain that whoever was then serving in the Senate would come forward and attempt to either change this legislation or to ensure that the kind of protection that is being sought under this legislation is not torn apart by future regulatory powers of the Forest Service.

Mr. McCLURE. I understand that, but there is no attempt here in this instance to invade the management discretion of the Forest Service with respect to the forest lands.

Mr. EVANS. That is correct, in an attempt to lock into Federal law what happens to exist today in terms of regulations.

Mr. McCLURE. Or even to say that the visual guidelines are the only guidelines they are responsible for with respect to the management of those Federal lands?

Mr. EVANS. That is correct. They are subject to all other management requirements for the national forests.

Mr. McCLURE. What is the relationship between the Commission and the Corps of Engineers? The Corps of Engineers has responsibilities in this area. Will the Corps of Engineers still maintain their freedom to make their decisions within this area, or are they in some manner going to be managed by the Commission.

Mr. HATFIELD. We do not change basically the authority or the power of the Bonneville Power Administration or the other agencies, including the Forest Service, in this legislation. They would continue, in effect, doing what they are doing.

Mr. EVANS. The Corps of Engineers would still maintain their authority to make decisions in the area of their responsibility. They would, however, be required by this legislation to act in a manner consistent with this legislation, with the exceptions mentioned in the bill. Precisely what activities are consistent is a matter that is in their judgment.

Mr. HATFIELD. That is correct, and, as mentioned, they would be expected to review, in general, the conformance functions they had been performing and reviewing, and other factors which would be affected or impacted by the decisions.

Mr. McCLURE. I have in mind, of course, such things as barge traffic that is up and down that river. That is important to my State as well as to yours.

Mr. EVANS. If the Senator will yield, I am certain that that kind of thing would not interfere in any respect that I am aware of with the carrying out of this act, but it does require that the Federal and State agencies having responsibilities within the scenic area shall exercise such responsibilities consistent with the provisions of this act and then giving a savings clause they will act under. Obviously, they will retain all their current responsibilities but the admonition is to act consistent with this act.

Mr. McCLURE. The question is whether or not if there is a conflict between a judgment of what is consistent and what is not, the corps, for instance, would have the authority to make that determination of whether they were acting in a consistent way.

Mr. HATFIELD. If the Senator will yield, you have on page 41 some precise things relating to the transportation system on the Columbia River. In section 17, subsection (A)(4), the intent there is to not restrict—or as the last sentence of the paragraph reads—"or interfere in transportation activities on any such river or stream."

Mr. McCLURE. I am getting at the question of who has the authority to make the decision. If I understand, you expect the corps to pay due deference and give due deference to the decisions of the Commissioner in the management of this area but the responsibility is still the corps.

Mr. HATFIELD. Exactly.

I say to the Senator as one who fought for the navigation and development of the river, including the Bonneville lock, which is the key to the increased navigation of that river, I in no way intend this to impede the potential that that river has in the field of transportation.

Now that we have slack water navigation in Lewiston, ID, that enhances further the potential.

Mr. EVANS. I might add to the remarks of the Senator from Oregon that in the savings provisions there is an explicit clause making clear that, with the exception of the offsite dis-

posal of excavation material, the improvement of navigation facilities of Bonneville locks is clearly left to the Corps of Engineers.

Mr. McCLURE. When you make a specific reference and not a general reference, then the court will interpret that you meant to include the specific reference but did not include the general.

I am satisfied with the answers the Senators have given me.

You have a similar kind of a problem with respect to decisions with respect to highways. The Federal Government has authority and responsibility with respect to highways as do the State governments that are involved.

Highway locations, constructions, and management are a bifurcated responsibility, partly State and partly Federal.

If I understand, this act will not change the responsibilities of the State or Federal agencies with the exception of the admonition to attempt to be sensitive to the management objectives in this area.

Mr. HATFIELD. The Senator is correct.

Mr. McCLURE. There are a whole list of such questions. The Soil Conservation Service, as an example, has authorities and responsibilities under USDA. I would understand that their authorities and responsibilities are not changed.

Mr. HATFIELD. The Senator is correct.

Mr. McCLURE. They still operate under existing statutes.

The same thing would be true with respect to BLM and management of the BLM lands, and they lie within the area.

Mr. HATFIELD. The Senator is correct.

Mr. McCLURE. The same thing would be true with respect to fisheries whether it be the Fish and Wildlife Services of the marine fisheries.

Mr. HATFIELD. The Senator is correct.

Mr. McCLURE. Or the obligations we have under the Canadian-United States Salmon Treaty.

Mr. HATFIELD. The Senator is correct.

Mr. McCLURE. The same thing, I assume, although this gets a little more pointed perhaps, with respect to the Department of Housing and Urban Development.

Mr. HATFIELD. The Senator is correct.

Mr. McCLURE. There is not going to be a backdoor attempt to control their activities with respect to lending or management decisions in HUD.

Mr. HATFIELD. The Senator is correct.

Mr. McCLURE. I wonder if the Senator from Washington would agree.

Mr. EVANS. I believe that the Senator's interpretation is true except that obviously while the Department of Housing and Urban Development has many responsibilities in the field of housing, they are also subject to local zoning and responsibilities which come quite explicitly under the control of the act.

Mr. McCLURE. Obviously where the State is authorizing through this, as I understand it, what we expect the State will do is to delegate to the Commission whatever State authority there is with respect to local zoning that is subject to State law. To the extent that local zoning is done pursuant to State law and the exercise of State police power, it would affect the decisions of HUD just as any other local zoning would.

Mr. EVANS. The Senator is correct.

It is the hope at least of this Senator that we will be successful in the entire process to the extent that the counties in the areas ultimately will carry out their responsibilities because they have successfully followed the act and have as a result assumed those zoning responsibilities directly rather than through the Commission.

Mr. HATFIELD. Mr. President, will the Senator yield?

Mr. McCLURE. I am happy to yield.

Mr. HATFIELD. I would like to make an inquiry. As the Senator knows, the House of Representatives and the Senate Appropriations Committee have been attempting now for 2 days to get a conference agreement on the continuing resolution. We were scheduled to begin that conference about 7 minutes ago.

I would like to be on the floor when this historic piece of legislation passes. At the same time, I would be very happy to absent myself from the floor if the Senator from Idaho would then set aside this legislative matter before us, so that we could get a time certain when I could be on the floor to add my raspy voice in affirmative response to the Chair on all those who favor the bill.

Mr. McCLURE. I might say to the Senator I have no further questions. I have a brief statement and I will be very brief in that statement.

Mr. HATFIELD. I thank the Senator.

Mr. McCLURE. The Senator, of course, has great responsibilities as chairman of the Appropriations Committee, and I sympathize with the difficulty of being two places at once. I would only observe to the Senator, in attempting to carry out my responsibility under his direction as chairman of one of the subcommittees under his leadership, I had a meeting scheduled at 2:30. So I am not 7 minutes late; I am 37 minutes late. I hope the House conferees are still there when I get there so we can complete that perhaps.

Mr. President, I nearly always on matters of management of Federal lands within a State defer to the desires and wishes of Senators in that State.

I have no hesitancy in saying that the major questions that I have about this legislation do not deal with that because I think the Senators from Washington and Oregon have both responsibilities and the unique opportunity to represent their citizens in determining what those management decisions ought to be.

□ 1510

I am not second-guessing that. They ordinarily defer to me with respect to the management decisions within my State, and I appreciate that. And I think there is a working relationship that is durable and enduring because it is right and enables us to work together.

At the same time, I expect that other Senators from time to time will raise questions if indeed policy judgments affect national policy in a unique way, even though only applying in a local way.

For that reason I feel compelled to express serious reservations about this measure. While I am pleased to have received the assurances that this legislation does not have Federal zoning, it does chart new waters which I do not think the Federal Government should venture into.

The amendment which is being offered is a vast improvement over the measure which was reported by the Energy and Natural Resources Committee and that measure, in turn, was a significant improvement over earlier versions. As the measure now stands, it still is sufficiently troubling that I will vote against it. I am particularly troubled by several provisons, although I understand why they are included.

I am troubled over the interim guidelines which could go on forever. I am concerned that despite the limitation on authorizations contained in the bill, the Federal Government could potentially be acquiring vast acreages forever if the States refuse to act. As chairman of the Interior and Related Agencies Subcommittee on Appropriations, I have dealt with too many emergency appropriations for acquisition despite the lack of an authorization increase. Some originate here and some originate in the other body. The limitation is only as good as our collective willingness to abide by it and history does not comfort me.

I am bothered that this entire measure does not sunset within a reasonble time if the States do not perform their end of the bargain. When we authorize memorials we set a time limit for the private parties to perform their end of the arrangement. When we pass constitutional amendments, the States are normally given 7 years to

come up with the necessary ratifications. It seems to me that there should be an end to the Federal exposure if the States of Oregon and Washington do not have the will to perform their end of this partnership.

While I am happy to hear that this bill does not contain Federal zoning, it does have several provisions which may very well be constitutional, but are bad policy. The measure contains a provision during the interim period in which the Secretary of Agriculture is to promulgate guidelines for land use throughout the scenic area. The guidelines are required under this legislation to prohibit industrial development outside the urban areas even if such activity is otherwise permitted under applicable State law and even if that activity poses no direct threat to Federal lands or resources.

This may not be zoning since the guidelines cannot be enforced through injunctive relief, but they will have a chilling effect since a violation will trigger the Federal power of eminent domain. In the absence of any effort by the States or counties to use their own police powers, I think it is unwise.

If the States do not have the will to regulate the use of private property in this area, Federal Government should not step in, issue guidelines for such uses, and condemn lands willy-nilly for whatever some Federal official considers a violation. The possibilities for abuse are frightening. The broad discretion in establishing guidelines and interpreting what may or may not be a violation could enable Federal officials to threaten private landowners with condemnation for actions as minor as choosing the wrong color paint because it violates the scenic character of the area.

While I am going to vote against this measure, I do want to acknowledge the efforts which the delegation from Washington and Oregon have made to improve this measure. This measure would not be before the Senate if it were not for the efforts of Senators GORTON, EVANS, HATFIELD, and PACKWOOD. I especially want to acknowledge the efforts of Joe Mentor of Senator EVANS' staff. This is a remarkably improved bill and I do not in any way want my concern to be viewed as a lack of appreciation for the time and work which went into it. Had there been a sunset on the entire bill and on the interim guidelines if the States failed to perform their part, and if the Secretary's acquisition authority had been limited to the special management area and conditioned on some effort by local government to exercise their inherent police powers, I would have voted for this bill as a unique experiment for this area. Without those changes I must oppose the enactment of the bill.

Mr. HATFIELD. Mr. President, I just want to take 1 or 2 minutes here to indicate that I appreciate the Senator from Wyoming and the Senator from Idaho, our colleagues on the committee and the chairman of the subcommittee and the chairman of the full committee, for bringing up these matters to detail out some concerns that they have. I would say that they have sharpened the focus of this bill and it has been a fine contribution.

But I also would like to say that I wish everyone could stand on Crown Point and view the river, up the river and down the river, on both sides of the river, and see that vast, unique piece of creation. And from that location at Crown Point, you cannot determine landownership. It does not stand out unless it is not in harmony with that great natural creation, and then it stands out in great contradiction.

So, whereas we have been focusing upon the components of this legislation, I hope we do not lose the big picture, and the big picture is that we are taking action here and it is very significant not for the State of Washington and Oregon alone, but for, I believe, the entire Nation.

Mr. President, before the motion is made to bring this bill to final passage, I want to momentarily comment on the wonderful staff work which went into the development of this consensus legislation.

Special thanks goes to the professional staff of the Energy and Natural Resources Committee. Without the competence and guidance of Frank Cushing, Gary Ellsworth, Jim Beirne, Mike Harvey, and Tom Williams, this complex bill would not be before us today.

I want to draw particular attention to the work of Tony Bevinetto of the subcommittee staff. He somehow managed to get through the scores and scores of bill drafts and offer his expertise to and improve the proposals and move them closer to the point where we now find ourselves: with a bill that is fair and sensible and reflects the concerns of all parties. I have known Tony for quite some time and he has always been up to the task, even when he finds himself caught in between the strong sentiments of dueling committee members. So, to all of these gentlemen, I extend my gratitude, as well as to the staffs of the proponents of this measure.

Finally, I want to make special mention of a former member of my staff, Tom Imeson. Tom has been involved in this issue for the past several years, and has always made himself available to me and my present staff. His expertise on this subject has been invaluable.

Mr. President, we have reached, I hope, that moment of truth when we are going to make a very important decision here.

Mr. EVANS. Mr. President, if I could just take 1 minute to not only endorse what the Senator from Oregon has said but to pay particular credit to the chairman of the committee, the Senator from Idaho, and the chairman of the subcommittee, the Senator from Wyoming, who I think showed rather remarkable assistance and help for their colleagues, even though they have expressed quite clearly their concerns about this legislation. I know I share the gratitude of all of the other Members from Oregon and Washington and ultimately the people of the two States in believing that, as a result of what you have allowed to happen, all people in the Northwest and the Nation will benefit.

The PRESIDING OFFICER (Mr. NICKLES). Is there further debate on the amendment?

If not, the question is on agreeing to the amendment of the Senator from Oregon [Mr. HATFIELD].

The amendment (No. 3260) was agreed to.

Mr. McCLURE. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. PACKWOOD. I move to lay that motion on the table.

Mr. SYMMS. Mr. President, I join my distinguished senior colleague, Senator McCLURE in opposition to S. 2055. I've long enjoyed the beauty of the Columbia River Gorge. It's a beautiful area. It has retained that beauty under the present system of private and public ownership with private land use largely controlled by local zoning regulations. I see no justification for establishing a more powerful Federal presence. It won't, in my judgment, result in better use or management of the resources.

Mr. President, I've had numerous telegrams from people living in the gorge. These telegrams, admittedly not a large sample, without exception oppose S. 2055 in strong terms. One telegram warns of job losses and mill closures, another states that two-thirds of the local people oppose the gorge legislation. I'm told the Skamania County Republican Party strongly opposes this bill. One resident says its selling 41,000 residents down the river. Several mention the millions of dollars that this legislation will cost.

Mr. President, I will not support legislation that increases Federal control over peoples lives unless I'm convinced that it is necessary and needed. In this case I'm convinced of just the opposite. This bill should be defeated.

The PRESIDING OFICER. If there be no further amendment to be proposed, the question is on the engrossment and the third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, shall it pass?

So the bill (S. 2055), as amended, was passed.

Mr. GORTON. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. EVANS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

HONORING PRINCESS BERNICE PAUAHI BISHOP

Mr. INOUYE. Mr. President, I call up my resolution, Senate Resolution 495, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A resolution (S. Res. 495) to honor Princess Bernice Pauahi Bishop.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Hawaii?

There being no objection, the Senate proceeded to consider the resolution.

□ 1520

Mr. INOUYE. Mr. President, this is a resolution honoring Princess Bernice Pauahi Bishop, a member of the Hawaiian royal family and founder of the Kamehameha Schools.

She was a beloved Hawaiian princess—the last direct descendant of the royal lineage of the Kamehamehas. She was the great-granddaughter of Kamehameha the Great, the warrior king who brought the Hawaiian Islands under one rule and ushered in an era of swift and sure justice and one of lasting peace. Yet, to this gentle woman would be accorded the tribute of "the last and best of the Kamehamehas."

On the last day of October 1883, a year before she died, Princess Bernice Pauahi Bishop affixed her seal to her will. The bulk of her estate which consisted of approximately one-half million acres of ancestral crown lands was to be applied to the endowment and maintenance of what were to be known as the Kamehameha Schools. The major beneficiaries of her estate were to be the children of Hawaiian ancestry.

In order to appreciate her dream—her vision as manifested in her will—one must understand the turmoil and troubles of her day. During her lifetime, she witnessed the decimation of her native Hawaiian population of 400,000 to fewer than 45,000. She witnessed the displacement of her people by the rapid expansion and acceptance of Western legal, political, and economic systems completely foreign to the Hawaiians.

She saw a foreign concept of land ownership abruptly and tragically alienate her people from their ancestral homelands. Never was so much change demanded of a people in such a short span of time. All this she witnessed and against this physical and social deterioration of her people she staked her legacy of education.

On November 4, 1887, 3 years after the death of the princess, the Kamehameha School for Boys was dedicated with a student enrollemt of 37 boys and five teachers. Ninety-nine years later, having graduated more than 12,000 Hawaiian children, Kamehameha Schools for Boys and Girls have an enrollment of 2,773 with 183 faculty members.

Today, there are 31 educational programs at Kamehameha Schools, ranging from providing education to boarding students, financial assistance to students, to providing cultural programs and lecture series to the community at large. These programs also include all classes from kindergarten to 12th grade.

Initially providing vocational education, Kamehameha Schools have evolved into a college preparatory institution of academic excellence. Of the graduating class of 1986, a class of 359 graduates, 323 have made arrangements to enroll in colleges and universities. I might note that among her distinguished alumni is the first elected Congressman of native Hawaiian ancestry, the Honorable DANIEL K. AKAKA.

As we approach the centennial celebration of the founding of the Kamehameha Schools for Boys and Girls, we would be remiss if we did not give tribute to both its founders. For, together with the trusteeship established by the princess' will, her husband, Charles Reed Bishop, joined his personal fortune and endeavors to make his wife's dream for her people a reality.

Princess Pauahi was never to see her dream realized in her lifetime. However, one can speculate that the reality of the Kamehameha Schools as they exist today would fill her with immense pride in the academic achievements of her students; in the remarkable leadership her graduates have displayed in the Hawaii community and abroad; in the renaissance of a proud Hawaiian heritage that her students have generated and supported; and in the noble principles and discipline that her students carry with them as exemplified by the princess.

On his deathbed, Kamenhameha V. asked Bernice Pauahi Paki Bishop to become his successor to the throne of the Hawaiian kingdom. Of her refusal, it has been written:

Refusing a crown, she lived that which she was—crowned. Refusing to rule her people, she did what was better, she served them and in no way so grandly as by her example.

Princess Pauahi served the native people of Hawaii as their monarch in all but formal title. In recognition of her noble achievements on behalf of the Hawaiian people, I urge the Senate to approve this resolution honoring Princess Bernice Pauahi Paki Bishop.

Mr. President, I am pleased to advise the Senate that this resolution now has 27 cosponsors and it has been cleared by the chairman of the Committee on the Judiciary, the distinguished Senator from South Carolina [Mr. THURMOND]. I ask that it be accepted.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution (S. Res. 495) was agreed to.

The preamble was agreed to. The resolution with its preamble is as follows:

S. RES. 495

Whereas Princess Bernice Pauahi Paki was born December 19, 1831, to High Chiefess Laura Konia, the granddaughter of Kamehameha I, and her husband, High Chief Abner Kuho'oheihei Paki of the Kiwala'o and Kamehameha Nui lineages;

Whereas Princess Pauahi was the great-granddaughter and last direct descendant of King Kamehameha I, who united the Hawaiian Islands under one ruler;

Whereas Bernice Pauahi married Charles Reed Bishop, a New York native whose immense success as a businessman and governmental advisor in Hawaii, attest to the trust and esteem in which both native and foreign communities held him;

Whereas Princess Pauahi Bishop declined the request of King Kamehameha V to assume the Crown of the Hawaiian Kingdom following his death, that she might better serve her people while living among them;

Whereas, Mrs. Bishop was regarded as the noblest example of womanhood and served as the salutary bridge between her Hawaiian people and the Westerners in Hawaii, and whose home was the center of unpretentious, yet elegant, hospitality to her people and foreigners alike;

Whereas Mr. Bishop, before her death, was moved by the alarming decline in number and condition of her people, and was determined to find ways that she could best help succeeding generations of the Hawaiian children that she would never know;

Whereas Mrs. Bishop saw that a good education was the key to the future success of her people, and therefore willed her entire estate to the founding and maintaining of the Kamehameha Schools;

Whereas it is by her explicit instructions that all assets inherent in or accruing from her estate be used to the utmost advantage of her beneficiaries for as long as resources permit;

Whereas Mrs. Bishop's selfless giving of her ancestral lands and properties to the benefit of her people has provided unequaled learning opportunities to thousands of Hawaiian children for more than 100 years;

Whereas the Kamehameha Schools/Bernice Pauahi Bishop Estate accepted its first students in 1887, and has since educated more than 12,000 graduated, who have es-

tablished themselves in careers and occupations in communities around the world, bringing honor and pride to the Schools/Estate and and Hawaii;

Whereas on the 150th anniversary of her birth, Mrs. Bishop was honored by the Governor of the State of Hawaii with a proclamation that December, 1981, was to be Bernice Pauahi Bishop Month in Hawaii; and

Whereas it is appropriate and fitting that on the centennial anniversary of Kamehameha Schools/Bishop Estate Bernice Pauahi Bishop be acknowledged by all to be one of the greatest humanitarians in Hawaiian history: Now, therefore, be it

Resolved, That the United States Senate does hereby recognize Bernice Pauahi Bishop as one of the great humanitarians in United States History.

Mr. INOUYE. I move to reconsider the vote by which the resolution was agreed to.

Mr. WALLOP. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. WALLOP. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HARKIN. I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

□ 1530

Mr. HARKIN. Mr. President, I ask unanimous consent that I be permitted to proceed as if in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE FIRST POW IN CENTRAL AMERICA

Mr. HARKIN. Mr. President, on Tuesday morning, most of us read with a great deal of surprise the news of the shooting down Sunday of a C-123 cargo plane and the capture by the Nicaraguan Government of an American citizen, Eugene Hasenfus. Hasenfus, age 35 of Marinette, WI, was carrying tags, I understand, identifying him as a U.S. military adviser in El Salvador. However, Hasenfus' wife Sally, in a phone call, claims that he worked for the Central Intelligence Agency.

Secretary Shultz and the CIA have totally disassociated themselves from Hasenfus or any part of the operation that brought a C-123 plane, filled with a cargo of Soviet-made AK-47's, ammunition, and grenades over Nicaraguan air space. Despite these disclaimers, Assistant Secretary of State Elliott Abrams has called Hasenfus and his dead companions "heroes." Heroes or "spooks" or "freedom fighters" or "willing victims" of a continuing plan by this administration and the CIA to violate the law. By the law, Mr. President, I refer to section 105 of Public Law 99-169 which prohibits the CIA from providing any support other than sharing intelligence to the Contras.

This entire incident raises a number of serious issues which I believe should be answered fully before Congress decides to approve the next installment of the Contra aid program that is pending in the continuing resolution expected to come to this floor later this week.

First, has the administration and the Central Intelligence Agency specifically violated section 105 of Public Law 99-169? Was the CIA directly or indirectly involved in this or in any other operation which involved shipping of arms to the Contras?

Second, one of the pilots on the plane is alleged to have carried identification linking him to Southern Air Transport. This plane service, located in Miami, has had a long history of association with the CIA. Up until the mid 1970's, Southern Air, along with a number of small airlines like Air America, Air Asia, and Civil Air Transport, operated as an air charter service for the Central Intelligence Agency. They were indeed CIA proprietaries.

A July 1984 CBS report linked the CIA to small private airlines flying military supplies to the Contras. That story cited an April 9, 1983, flight of Southern Air Transport, which carried several tons of small arms from Miami to a Honduran military base.

Mr. President, was this flight conducted by Southern Air Transport? Has Southern Air flown other missions on behalf of the CIA for the Contras? Was the Hasenfus mission contracted out with the CIA? Who financed the Hasenfus mission? Where, Mr. President, did the C-123 originate? It is said that it flew from Illoponga Air Base in El Salvador, prior to being shot down over Nicaragua, but where indeed did it originate? Did it originate in the United States? If so, where in the United States? Who loaded this aircraft full of Soviet made AK-47's, grenades, and other munitions? If it started, I submit, Mr. President, in the United States, that raises very serious questions about who indeed authorized this flight.

Third, did the CIA know about the Hasenfus flight beforehand? Did it know who was on the mission's crew? Did it know its flight plan? Did it know the contents of the plane? And did it assist in any way with charting the flight path of this mission?

Fourth, the news report stated that Hasenfus and one of his crew carried dogtags identifying them as U.S. military advisers. Is there any truth to this story? If so, where did they get the dogtags? Furthermore, it is reported that the plane, after leaving Miami, stopped off at the Illopango air base in El Salvador. Did any U.S. military personnel, CIA agents, or contract employees of the CIA have any contact with the plane or its crew after it landed at Illopango? It seems hard to believe, Mr. President, that a C-123, loaded down as it was, was able to land at Illopango where we have military advisers, where I hear there are Central Intelligence Agency personnel, somehow it could land there and refuel and do whatever it does and take off again without either the CIA or the U.S. military knowing about it.

Fifth, is the Justice Department planning to conduct an investigation into the possible association between the Central Intelligence Agency and the Hasenfus flight and into possible violations of the law? Was the Hasenfus mission, which was transporting a shipment of arms to a force waging war against a country with which we maintain diplomatic relations, a violation of the Neutrality Act? Is an investigation under way into this charge? In other words, if this plane did in fact originate in the United States, if in fact arms were loaded on that plane destined to ship those arms to a force waging war against a country with which we maintain diplomatic relations, then I submit, Mr. President, that is a violation of the Neutrality Act. Will the Justice Department investigate and prosecute those responsible?

Mr. President, Congress and the American public deserve answers to all of these questions. I believe these denials by the CIA and the State Department are inadequate. This administration cannot cavalierly flaunt the law and in the process be part of a scheme that risks the lives of American citizens. We have seen over the last few days more and more disinformation from the administration—a swap that is not a swap, a summit that is not a summit, and now we see disinformation coming out in the newspapers, in the media about a campaign waged to distort and lie about Qadhafi and about what our intentions are with respect to Mr. Qadhafi and the nation of Libya.

Mr. President, Eugene Hasenfus is the first POW in this administration's war against Nicaragua. Make no mistake about it, he is a prisoner of war—the first I submit of many that will be coming as soon as this administration gets its hands on the nearly $1 billion that will be provided to carry out this war with the Contras against Nicaragua—$100 million in direct aid, $300 million, plus the use of the CIA contingency fund.

Mr. President, we have just witnessed in Nicaragua what I predicted a long time ago we would see more and more happening as soon as this money is provided. I said on the floor of the Senate, when we were debating the advisability of providing this Contra aid,

that we better get the body bags ready.

□ 1540

Well, Mr. Hasenfus is alive. He will undoubtedly stand trial in Nicaragua for whatever crimes he may have committed in and over the airspace of Nicaragua. His three companions, all Americans, are dead. How many more? How many more will die in that war, both Americans and Nicaraguans? Needlessly die, when, in fact, we have the tools of peace at hand if only this administration would follow through with its commitment with the accords and with the peace process that has started in Central America? We would then not be having any more of these casualties in Nicaragua.

Mr. President, I submit that the story that we just saw of the downing of the C-123 is just the first of many that we will see in the next year. We can stop it before it is too late.

The funding of the Contras passed this body by a mere four votes. I think many Senators who voted for it perhaps now may be having a change of heart or change of mind, seeing that perhaps the CIA or at least this administration is willing to, with a wink and a nod, permit soldiers of fortune and others to wage their own private war with the Contras against Nicaragua, perhaps, as I say, in violation of the Neutrality Act.

There are a lot of questions raised by the downing of the C-123. I do not believe that any of the money that is in the continuing resolution that will go to the Contras should be released until we get answers to these questions: Was the CIA involved? Were these individuals on this flight part of the CIA, either directly or indirectly? Was this done with the knowledge and the acquiescence of the U.S. military? Did, in fact, the White House know, and how much did they know, about this operation in Nicaragua?

We need answers to these questions. We need answers to these questions before another dollar of our taxpayers' money goes to fund this dirty little war in Central America.

Mr. President, as I said, Mr. Hasenfus is the first prisoner of war. I might also add, Mr. President, that Hasenfus in German means rabbit foot.

Well, for Mr. Hasenfus, and I believe for the administration, for all those who want to conduct and carry out this dirty little war, their luck has just run out.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

□ 1630

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

REPRESENTATION BY SENATE LEGAL COUNSEL

Mr. DOLE. Mr. President, I send a resolution to the desk for myself and the distinguished minority leader and ask for its immediate consideration. It is a resolution relating to the authority of the Senate legal counsel to defend the Senate in a pending court action relating to the impeachment proceedings against Judge Claiborne.

The PRESIDING OFFICER. The resolution will be stated by title.

Mr. DOLE. I ask unanimous consent that the clerk read the resolution.

The PRESIDING OFFICER. Without objection, it is so ordered.

The assistant legislative clerk read as follows:

A Senate resolution (S. 501) directing the Senate legal counsel to represent the defendants in *Harry E. Claiborne* v. *United States Senate, et al.* (D.D.C.).

Whereas, Judge Harry E. Claiborne, the respondent in an impeachment trial now pending in the Senate, has filed a civil action against the United States Senate; George Bush, President of the Senate; Strom Thurmond, President pro tempore; Robert Dole, Majority Leader; and Robert C. Byrd, Minority Leader, seeking an injunction against the Senate's deliberation and final action on the articles of impeachment;

Whereas, pursuant to section 703(a) and 704(a) of the Ethics in Government Act of 1978, 2 U.S.C. 288b(a) and 288c(a) (1982), the Senate may direct its Counsel to defend the Senate and its Members and officers in civil actions relating to their official responsibilities: Now, therefore, be it

Resolved, That the Senate Legal Counsel is directed to represent the defendants in the case of *Harry E. Claiborne* v. *United States Senate, et al.*, C.A. No. 86-2780 (D.D.C.).

Mr. DOLE. Mr. President, we have just learned that Judge Harry E. Claiborne, the respondent in the impeachment trial currently in progress in the Senate, has today filed a civil action in the U.S. District Court for the District of Columbia, seeking an immediate injunction against the Senate's completion of the impeachment trial. Judge Claiborne is asserting in court that the Senate's adoption of Senate Resolution 481, which authorized appointment of the Impeachment Trial Committee, pursuant to Senate Impeachment Rule XI, to hear testimony and certify an evidentiary record for the Senate's use in this proceeding, and the Senate's determination today not to hear witnesses in open Senate, violates the Constitution. Judge Claiborne has named the U.S. Senate; GEORGE BUSH, President of the Senate; STROM THURMOND, President pro tempore; ROBERT C. BYRD, minority leader; and myself as defendants and is applying for an immediate temporary restraining order, enjoining the Senate from proceeding to deliberate and vote on the pending articles of impeachment.

This resolution would direct the Senate legal counsel to represent the defendants in this action to protect the Senate's sole power under the Constitution to try impeachments.

The PRESIDING OFFICER. Is there further debate on the resolution? If not, the question is on agreeing to the resolution.

The resolution (S. Res. 501) was agreed to. The preamble was agreed to.

The resolution with its preamble is as follows:

S. RES. 501

Whereas, Judge Harry E. Claiborne, the respondent in an impeachment trial now pending in the Senate, has filed a civil action against the United States Senate; George Bush, President of the Senate; Strom Thurmond, President pro tempore; Robert Dole, Majority Leader; and Robert C. Byrd, Minority Leader, seeking an injunction against the Senate's deliberation and final action on the articles of impeachment;

Whereas, pursuant to section 703(a) and 704(a) of the Ethics in Government Act of 1978, 2 U.S.C. 288b(a) and 288c(a) (1982), the Senate may direct its Counsel to defend the Senate and its Members and officers in civil actions relating to their official responsibilities: Now, therefore, be it

Resolved, That the Senate Legal Counsel is directed to represent the defendants in the case of *Harry E. Claiborne* v. *United States Senate, et al.*, C.A. No. 86-2780 (D.D.C.).

Mr. DOLE. I move to reconsider the vote by which the resolution was agreed to.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

EXECUTIVE CALENDAR

Mr. DOLE. Mr. President, I inquire of the distinguished minority leader if he is in a position to confirm any or all of the following nominations on the Executive Calendar: Nos. 1067, 1068, 1069, 1070, 1071, 1072, 1073, 1074 under the International Atomic Energy Agency; 1079, 1080, 1081, 1082, 1083, 1084, 1085, 1086, 1087, 1088, 1089, 1090, 1091, 1092, 1094, 1096, 1097, 1098, 1100; and 1102 through 1122 under the military; and all nominations placed on the secretary's desk except Edwin Corr.

Mr. BYRD. If the distinguished majority leader will indulge me momentarily.

Mr. DOLE. Yes, Mr. President.

□ 1640

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. SIMPSON). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

□ 1700

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. MCCONNELL). Without objection, it is so ordered.

Mr. DOLE. Mr. President, in my unanimous-consent request on the Executive Calendar, I would add Calendar No. 1047 and Calendar No. 1051, and I would remove Calendar No. 1102 and Calendar No. 1103.

The PRESIDING OFFICER. Is there objection?

Mr. BYRD. Mr. President, the nominations identified by the distinguished majority leader have been cleared by all Members on this side. We are ready to proceed with the consideration and confirmation thereof.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE. Mr. President, I thank the distinguished minority leader. I also thank the distinguished senior Senator from Virginia, Senator WARNER, for trying to work out another nomination. I appreciate his cooperation on Calendar Nos. 1047 and 1051. We did, as I indicate, remove Calendar Nos. 1102 and 1103, and we will try to do those later in the week.

EXECUTIVE SESSION

Mr. DOLE. I ask unanimous consent that the Senate go into executive session to consider the nominations just identified and that they be considered en bloc and confirmed en bloc.

The PRESIDING OFFICER. Without objection, it is so ordered.

There being no objection, the Senate proceeded to the consideration of executive business.

The nominations confirmed are as follows:

DEPARTMENT OF AGRICULTURE

W. Kirk Miller, of Wisconsin, to be Administrator of the Federal Grain Inspection Service.

FARM CREDIT ADMINISTRATION

Jim R. Billington, of Oklahoma, to be a member of the Farm Credit Administration Board, Farm Credit Administration, for a term of two years.

UNITED STATES COMMISSION ON PUBLIC DIPLOMACY

Heshey Gold, of California, to be a member of the United States Commission on Public Diplomacy for a term expiring July 1, 1987.

UNITED STATES ADVISORY COMMISSION ON PUBLIC DIPLOMACY

Herbert Schmertz, of New York, to be a member of the United States Advisory Commission on Public Diplomacy for a term expiring April 6, 1988.

Edwin J. Feulner, Jr., of Virginia, to be a member of the United States Advisory Commission on Public Diplomacy for a term expiring July 1, 1988.

E. Robert Wallach, of California, to be a member of the United States Advisory Commission on Public Diplomacy for a term expiring July 1, 1988.

Richard M. Scaife, of Pennsylvania, to be a member of the United States Advisory Commission on Public Diplomacy for a term expiring July 1, 1988.

UNITED STATES INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Thomas R. Blank, of Delaware, to be an Assistant Administrator of the Agency for International Development,

Richard E. Bissell, of Virginia, to be an Assistant Administrator of the Agency for International Development.

INTERNATIONAL ATOMIC ENERGY AGENCY

The following-named persons to be the Representative and Alternate Representatives of the United States of America to the Special Session and the Thirtieth Session of the General Conference of the International Atomic Energy Agency:

Representative: John S. Herrington.

Alternate Representatives: Richard T. Kennedy, Bruce Chapman, Lee M. Thomas, Lando W. Zech, Jr.

THE JUDICIARY

Douglas H. Ginsburg, of the District of Columbia, to be United States District Judge for the District of Columbia Circuit.

Bruce M. Selya, of Rhode Island, to be United States Circuit Judge for the First Circuit.

James R. Spencer, of Virginia, to be United States District Judge for the Eastern Circuit of Virginia.

Patrick J. Duggan, of Michigan, to be United States District Judge for the Eastern District of Michigan.

Alex T. Howard, Jr., of Alabama, to be United States District Judge for the Southern District of Alabama.

Joseph F. Anderson, Jr., of South Carolina, to be United States District Judge for the District of South Carolina.

John Paul Wiese, of Virginia, to be a Judge of the United States Claims Court for a term of fifteen years.

DEPARTMENT OF JUSTICE

George L. McBane, of North Carolina, to be United States Marshal for the Middle District of North Carolina for the term of four years.

George MacKenzie Rast, of Florida, to be a Commissioner of the United States Parole Commission for a term of six years.

Donald Ray Melton, of Arkansas, to be United States Marshal for the Eastern District of Arkansas for the term of 4 years.

Robert L. Barr, Jr., of Georgia, to be United States Attorney for the Northern District of Georgia for the term of four years.

J. William Roberts, of Illinois, to be United States Attorney for the Central District of Illinois for the term of four years.

DEPARTMENT OF TRANSPORTATION

John W. Melchner, of Maryland, to be Inspector General, Department of Transportation.

EXPORT-IMPORT BANK OF THE UNITED STATES

Simon C. Fireman, of Massachusetts, to be a Member of the Board of Directors of the Export-Import Bank of the United States for the remainder of the term expiring January 20, 1987.

NATIONAL INSTITUTE OF BUILDING SCIENCES

Fred E. Hummel, of California, to be a member of the Board of Directors of the National Institute of Building Sciences for a term expiring September 7, 1989.

EXECUTIVE OFFICE OF THE PRESIDENT

Robert P. Bedell, of Virginia, to be Administrator for Federal Procurement Policy.

UNITED STATES POSTAL SERVICE

John N. Griesemer, of Missouri, to be a governor of the U.S. Postal Service for the term expiring December 8, 1995.

ENVIRONMENTAL PROTECTION AGENCY

Vaun A. Newill, of New Jersey, to be an Assistant Administrator of the Environmental Protection Agency.

THE JUDICIARY

John L. Napier, of South Carolina, to be a judge of the U.S. Claims Court for a term of fifteen years.

IN THE AIR FORCE

The following-named officer for appointment to the grade of general on the retired list pursuant to the provisions of title 10, United States Code, section 1370:

To be general

Gen. Robert W. Bazley, [redacted] FR, U.S. Air Force.

The following-named officer, under the provisions of title 10, United States Code, section 601, to be assigned to a position of importance and responsibility designated by the President under title 10, United States Code, section 601:

To be general

Lt. Gen. Jack I. Gregory, [redacted] FR, U.S. Air Force.

The following-named officer for appointment to the grade of lieutenant general on the retired list pursuant to the provisions of title 10, United States Code, section 1370:

To be lieutenant general

Lt. Gen. Carl H. Cathey, [redacted], U.S. Air Force.

The following-named officer, under the provisions of title 10, United States Code, section 601, to be assigned to a position of importance and responsibility designated by the President under title 10, United States Code, section 601:

To be lieutenant general

Maj. Gen. Aloysius G. Casey, [redacted] FR, U.S. Air Force.

The following-named officer, under the provision of title 10, United States Code, Section 601, to be assigned to a position of importance and responsibility designated by the President under title 10, United States Code, section 601:

To be lieutenant general

Maj. Gen. Thomas G. McInerney, [redacted] FR, U.S. Air Force.

The following-named officer, under the provisions of title 10, United States Code, section 601, to be assigned to a position of importance and responsibility designated by the President under title 10, United States Code, section 601:

To be lieutenant general

Maj. Gen. Craven C. Rogers, Jr., [redacted] FR, U.S. Air Force.

The following-named officer, under the provisions of title 10, United States Code, section 601, to be assigned to a position of importance and responsibility designated by the President under title 10, United States Code, section 601:

To be lieutenant general

Maj. Gen. Claudius E. Watts III, xxx-xx-x... xxx-...FR, U.S. Air Force.

The following-named officer, under the provisions of title 10, United States Code, section 601, to be assigned to a position of importance and responsibility designated by the President under title 10, United States Code, section 601:

To be lieutenant general

Lt. Gen. Casper T. Spangrud, xxx-xx-xxxx xxx-...FR, U.S. Air Force.

The following-named officer for appointment to the grade of general on the retired list pursuant to the provisions of title 10, United States Code, section 1370:

To be general

Gen. Richard L. Lawson, xxx-xx-xxxx FR, U.S. Air Force.

The following-named officer, under the provisions of title 10, United States Code, section 601, to be assigned to a position of importance and responsibility designated by the President under title 10, United States Code, section 601:

To be general

Lt. Gen. Thomas C. Richards, xxx-xx-xx... xxx-...FR, U.S. Air Force.

The following-named officer, under the provisions of title 10, United States Code, section 601, to be assigned to a position of importance and responsibility designated by the President under title 10, United States Code, section 601:

To be lieutenant general

Lt. Gen. James R. Brown, xxx-xx-xxxx FR, U.S. Air Force.

The following-named officer, under the provisions of title 10, United States Code, section 601, to be assigned to a position of importance and responsibility designated by the President under title 10, United States Code, section 601:

To be lieutenant general

Maj. Gen. Robert C. Oaks, xxx-xx-xxxx xxx-...FR, U.S. Air Force.

The following officer under the provisions of section 8019, title 10, United States Code, for appointment as chief, Air Force Reserve:

To be chief, Air Force Reserve

Maj. Gen. Roger P. Scheer, xxx-xx-xxxx xxx-...FV, Air Force Reserve.

IN THE ARMY

The following-named officers for appointment in the Regular Army of the United States to the grade indicated under the provisions of title 10, United States Code, sections 611(a) and 624:

To be brigadier general

Col. William J. Meehan II, xxx-xx-xxxx, U.S. Army.
Col. Neal T. Jaco, xxx-xx-xxxx, U.S. Army.
Col. William J. Mullen III, xxx-xx-xxxx, U.S. Army.
Col. Craig A. Hagan, xxx-xx-xxxx, U.S. Army.
Col. Frank A. Partlow, Jr. xxx-xx-xxxx, U.S. Army.
Col. Edison E. Scholes, xxx-xx-xxxx, U.S. Army.
Col. Philip Y. Browning, Jr., xxx-xx-xxxx, U.S. Army.
Col. Gerald H. Putman, xxx-xx-xxxx, U.S. Army.
Col. Sidney Shachnow, xxx-xx-xxxx, U.S. Army.
Col. Henry F. Drewfs, Jr. xxx-xx-xxxx, U.S. Army.
Col. James D. Starling, xxx-xx-xxxx, U.S. Army.
Col. Marc A. Cisneros, xxx-xx-xxxx, U.S. Army.
Col. Paul E. Menoher, Jr. xxx-xx-xxxx, U.S. Army.
Col. Arthur E. Williams, xxx-xx-xxxx, U.S. Army.
Col. Robert L. Ord III, xxx-xx-xxxx, U.S. Army.
Col. Waldo D. Freeman, Jr., xxx-xx-xxxx, U.S. Army.
Col. Theodore G. Stroup, Jr., xxx-xx-xxxx, U.S. Army.
Col. John F. Sobke, xxx-xx-xxxx, U.S. Army.
Col. John P. Herrling, xxx-xx-xxxx, U.S. Army.
Col. James A. Musselman, xxx-xx-xxxx, U.S. Army.
Col. James B. Taylor, xxx-xx-xxxx, U.S. Army.
Col. Ronald H. Griffith, xxx-xx-xxxx, U.S. Army.
Col. Charles R. Hansell, xxx-xx-xxxx, U.S. Army.
Col. Floyd L. Runyon, xxx-xx-xxxx, U.S. Army.
Col. Samuel E. Ebbesen, xxx-xx-xxxx, U.S. Army.
Col. James R. Ellis, xxx-xx-xxxx, U.S. Army.
Col. Peter T. Berry, xxx-xx-xxxx, U.S. Army.
Col. Walter J. Bryde, xxx-xx-xxxx, U.S. Army.
Col. Walter B. Moore, xxx-xx-xxxx, U.S. Army.
Col. Terence M. Henry, xxx-xx-xxxx, U.S. Army.
Col. Joseph T. Ellis, xxx-xx-xxxx, U.S. Army.
Col. Larry R. Capps, xxx-xx-xxxx, U.S. Army.
Col. James T. Scott, xxx-xx-xxxx, U.S. Army.
Col. Ernest J. Harrell, xxx-xx-xxxx, U.S. Army.
Col. Donald L. Scott, xxx-xx-xxxx, U.S. Army.
Col. Dennis V. Crumley, xxx-xx-xxxx, U.S. Army.
Col. Jerry R. Rutherford xxx-xx-xxxx, U.S. Army.
Col. John E. Miller, xxx-xx-xxxx, U.S. Army.
Col. Frank Cunningham III, xxx-xx-xxxx, U.S. Army.
Col. Paul T. Weyrauch, xxx-xx-xxxx, U.S. Army.
Col. Jon D. Collins, xxx-xx-xxxx, U.S. Army.
Col. Jay M. Garner, xxx-xx-xxxx, U.S. Army.
Col. David L. Cole, xxx-xx-xxxx, U.S. Army.
Col. John M. Thomson, xxx-xx-xxxx, U.S. Army.
Col. Eugene L. Daniel, xxx-xx-xxxx, U.S. Army.
Col. David Bramlett, xxx-xx-xxxx, U.S. Army.
Col. Alfred J. Mallette, xxx-xx-xxxx, U.S. Army.
Col. Joseph Raffiani, Jr. xxx-xx-xxxx, U.S. Army.
Col. Thomas W. Robison, xxx-xx-xxxx, U.S. Army.
Col. John H. Tilelli, Jr., xxx-xx-xxxx, U.S. Army.
Col. Paul J. Vanderploog, xxx-xx-xxxx, U.S. Army.
Col. Clyde A. Hennies, xxx-xx-xxxx, U.S. Army.
Col. John P. Otjen xxx-xx-xxxx, U.S. Army.
Col. Henry H. Shelton, xxx-xx-xxxx, U.S. Army.
Col. Barry J. Sottak xxx-xx-xxxx, U.S. Army.
Col. Robert L. Stewart, xxx-xx-xxxx, U.S. Army.
Col. George A. Bombel, xxx-xx-xxxx, U.S. Army.

The Army National Guard of the U.S. officers named herein for appointment as Reserve Commissioned Officers of the Army, under the provisions of title 10, United States Code, sections 593(a), 3385, and 3392:

To be major general

Brig. Gen. Ronald Bowman, xxx-xx-xxxx
Brig. Gen. Robert L. Blevins, xxx-xx-xxxx

To be brigadier general

Col. William A. Hornsby, xxx-xx-xxxx
Col. Louis C. Addison, xxx-xx-xxxx
Col. Peter E. Genovese, xxx-xx-xxxx
Col. Richard S. Schneider, xxx-xx-xxxx
Col. Kenneth E. Wallace, xxx-xx-xxxx
Col. Robert H. Wedinger, xxx-xx-xxxx
Col. Thomas H. Alexander, xxx-xx-xxxx
Col. George M. Borst, xxx-xx-xxxx
Col. William S. Christy, xxx-xx-xxxx
Col. Paul G. Durbin, xxx-xx-xxxx
Col. George T. Glenn, xxx-xx-xxxx
Col. Robert L. Gooderl, xxx-xx-xxxx
Col. John M. Paden, xxx-xx-xxxx
Col. Thomas R. Sprenger, xxx-xx-xxxx
Col. Thomas T. Thompson, xxx-xx-xxxx
Col. John W. Carlson, xxx-xx-xxxx
Col. Wade R. Hedgecoke, xxx-xx-xxxx
Col. Philip G. Randich, xxx-xx-xxxx
Col. Thomas D. Schulte, xxx-xx-xxxx
Col. Clinton V. Willis, Jr., xxx-xx-xxxx
Col. Jacob J. Krull, xxx-xx-xxxx

The following-named U.S. Army Reserve officer for appointment to the grade of brigadier general as a Reserve Commissioned Officer of the Army under the provision of title 10, United States Code, sections 593(a) and 3384:

To be brigadier general

Col. Raymond C. Bonnabeau, Jr., xxx-xx-x... xxx-...

The following-named officers for appointment to the grade indicated, under the provisions of title 10, United States Code, section 601(a), in conjunction with their assignment to positions of importance and responsibility, designated as such by the President under title 10, United States Code, section 601(a):

To be general

Lt. Gen. James J. Lindsay, xxx-xx-xxxx, U.S. Army.

To be lieutenant general

Maj. Gen. John W. Foss, xxx-xx-xxxx, U.S. Army.

IN THE NAVY

The following-named Rear Admirals (Lower Half) of the United States Navy for promotion to the permanent grade of Rear Admiral, pursuant to title 10, United States Code, section 624, subject to qualifications therefor as provided by law:

MEDICAL CORPS

To be rear admiral

Robert Paul Caudill, Jr.
Henry James Tipp Sears.
James K. Summitt.

The following-named officer, under the provisions of title 10, United States Code, section 5150, to be reappointed as chief of Naval Research.

To be chief of Naval Research

Rear Adm. John B. Mooney, Jr., xxx-xx-xx... xxx-.../1120, U.S. Navy.

NOMINATIONS PLACED ON THE SECRETARY'S DESK IN THE AIR FORCE, ARMY, MARINE CORPS, NAVY, SENIOR FOREIGN SERVICE

Air Force nominations beginning Maj. Michael G. Beadle, xxx-xx-xxxx and ending Maj. Lloyd Y. Uto xxx-xx-xxxx which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of September 10, 1986.

Air Force nominations beginning John L. Adams, and ending Randall T. Zorn which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of September 10, 1986.

Air Force nominations beginning Rudy C. Abeyta, and ending Phillip A. Zuzolo, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of September 10, 1986.

Air Force nomination of Lawrence L. Vandiford, which was received by the Senate and appeared in the CONGRESSIONAL RECORD of September 16, 1986.

Air Force nominations beginning Barry W. Christen, and ending Erwin R. Zundel, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of September 16, 1986.

Air Force nominations beginning Maj. Russell V. Gatlin, xxx-xx-xxxx and ending Maj. Gene T. Bushey, xxx-xx-xxxx, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of September 16, 1986.

Air Force nominations beginning Dennis O. Abbey, and ending David G. Wood, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of September 18, 1986.

Army nominations beginning Wylie A. Abercrombie, and ending Jack Posnikoff, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of September 10, 1986.

Army nominations beginning Arthur J. Bland, and ending Swarnalatha Prasanna, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of September 16, 1986.

Army nomination of Diana S. Stepanik, which was received by the Senate and appeared in the CONGRESSIONAL RECORD of September 22, 1986.

Army nominations beginning Priscilla M. Alston, and ending Sheryl A. Zunich, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of September 22, 1986.

Army nominations beginning Michael H. Abbott, and ending Sidna P. Wimmer, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of September 22, 1986.

Army nominations beginning Jerry W. Black, and ending Charles R. Wolf III, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of September 24, 1986.

Army nomination of Thomas G. Tecec, which was received by the Senate and appeared in the CONGRESSIONAL RECORD of September 30, 1986.

Marine Corps nominations beginning Felipe Torres, and ending Paul C. Ziegenfuss, Jr., which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of September 18, 1986.

Marine Corps nominations beginning Ronnie A. Crawford, and ending Blayne H. Spratlin, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of September 23, 1986.

Marine Corps nominations beginning Peter J. Burner, and ending Bruce H. Norton, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of October 3, 1986.

Navy nominations beginning Robin L. Adams, and ending Stephen F. Serkies, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of September 10, 1986.

Navy nominations beginning Leland Sinclair Barratt III, and ending Dick Dean Turnwall, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of September 10, 1986.

Navy nominations beginning James T. Bergeron, and ending Francis M. Wnek, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of September 11, 1986.

Navy nominations beginning David L. Neel, and ending John G. Twomey, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of October 3, 1986.

NOMINATION OF ALEX T. HOWARD

Mr. HEFLIN. Mr. President, I would like to commend Alex Howard on his nomination to be a Federal district judge for the Southern District of Alabama.

Alex Howard attended both the University of Alabama and Auburn University for his undergraduate studies, but World War II interrupted his education. He entered the Army in June 1943 and fought bravely for our country in Europe. Alex came home from World War II a second lieutenant and entered Vanderbilt University's Law School.

Since graduating from Vanderbilt in 1950, Alex Howard has acquired 35 years of legal experience in the private practice of law. Alex has engaged in an extremely broad general practice with an emphasis in litigation—and during the last couple of years he has specialized in admiralty law litigation. His practice has been equally divided between the Federal courts and State courts. These legal skills should enable Alex to serve well the people of Alabama.

I believe strongly that if we desire for our society to be bound by the rule of law, then we must exercise extreme caution in choosing those individuals who will be interpreters of that law. An old proverb states that "a good judge conceives quickly, judges slowly." It is my firm belief that in Alex Howard the President has found an individual who will do both.

But, my support of Alex Howard is not based solely on his vast legal experience, for it takes more than pure knowledge to make a good judge. Alex has also been active in his community. He is a founder and director of both the Family Counseling Service and the Epilepsy Foundation in Mobile. Further, he has made time throughout his legal career to do pro bono work for the less fortunate members of his community. This nominee brings a wealth of well-rounded experience to the bench.

A Federal district court judge can have a profound impact on the lives of the people who reside in his district and beyond. I believe Alex Howard, who has been found unanimously "well qualified" by the American Bar Association, understands the enormous responsibility with which he has been entrusted. Further, I know he will serve both the Federal judiciary and the men and women of the Southern District of Alabama with distinction.

NOMINATION OF J. WILLIAM ROBERTS

Mr. DIXON. Mr. President, I am proud to stand in support of the nomination of my friend Bill Roberts to the position of U.S. attorney for the Central District of Illinois.

I have known Bill for a number of years. He has distinguished himself throughout his public life: as assistant U.S. attorney for the Central District of Illinois, as first assistant State's attorney in Sangamon County and in his current position as State's attorney in Sangamon County of Illinois.

Bill's experiences and commonsense provide him an excellent background for the position of U.S. States attorney. He is a person of unquestioned integrity, high intelligence, and extreme ability. I recommend him without reservation and am proud to stand in his support.

NOMINATION OF DOUGLAS GINSBURG

Mr. MATHIAS. Mr. President, I congratulate Douglas Ginsburg on receiving the President's nomination to a position on the U.S. Court of Appeals for the District of Columbia Circuit. The record before the Judiciary Committee indicates that he has the intellect and experience to serve with distinction on the court.

Although this nomination is not itself controversial, it presents once again the controversy over the selection of judges for the Federal courts of the District of Columbia. Since, unfortunately, the District of Columbia is not represented in the Senate, the people of the District do not share in the opportunity enjoyed by citizens of the 50 States to participate through their elected representatives in the process of selecting nominees to the Federal courts. Similarly, the District of Columbia Bar has substantially less input than its sister organizations in the selection of judges before whom its members practice in conducting Federal litigation.

Paul L. Friedman, president of the D.C. Bar, underscored these concerns in testimony presented to the Judiciary Committee on this nomination. As he pointed out, this is not a new problem. "No President has thought it important," Mr. Friedman testified, "even to consider the local ties of any of his nominees to the Federal appel-

late court here. Knowledge of the District of Columbia and its laws and commitment to the district and its people all seem to have been irrelevant * * *. With no Senatorial courtesy—indeed, no Senator at all—to play a role, Presidents and attorneys general for half a century have appointed whomever they chose from wherever they happened to hail to the D.C. Circuit." But if the problem is not new, it has assumed new proportions in recent years. As Mr. Friedman noted in his testimony, "the D.C. Circuit * * * is now a court consisting of only one person who is a product of the local legal community and no one with significant trial experience."

The D.C. Bar has expressed its concern about this problem on several occasions in recent years. I share the concern. The argument is made that the D.C. circuit is a national rather than merely a regional court, and that therefore a nominee's ties to the local jurisdiction are unimportant. There is something to this argument, but not as much as some of its proponents would have us believe. The D.C. circuit does hear many cases, particularly appeals from agency action, which have arisen elsewhere and have little connection with the District. But it also hears many cases, both criminal and civil, on appeal from the U.S. District Court for the District of Columbia. Much of this part of its caseload is functionally indistinguishable from the docket of a regional circuit court of appeals, whose judges are selected with substantial input from the bars of the affected States.

I hope that this administration, and its successors, will give serious consideration to two ways of resolving this difficulty. First, in future appointments, more consideration should be given to the many skilled and talented members of the D.C. Bar, particularly those with substantial experience in litigation before the courts of the District of Columbia. There is no shortage of D.C. lawyers with the qualifications to serve with distinction on the D.C. circuit, following in the tradition of Judges Harold Leventhal, E. Barrett Prettyman, and other distinguished jurists.

Second, a mechanism should be developed to give the D.C. Bar—and other local organizations—more input into the process of selecting judges for the D.C. circuit. The investigations of nominees made by the Standing Committee on the Federal Judiciary of the American Bar Association do not fully meet this need, since they take place only after a tentative decision has been taken to nominate a particular individual. The bench and bar of the District of Columbia deserve the same opportunity as their brethren in the 50 States to assist the Senate in advising who should be nominated, as well as in consenting to a nomination once it is made.

The ultimate solution to this problem is one I have long supported: a constitutional amendment that would give the District of Columbia full voting representation in the Senate. But until that happens, I urge the President and the Attorney General to work with the lawyers and citizens of the District of Columbia to find ways to ameliorate this long-standing difficulty.

NOMINATION OF ROBERT BEDELL

Mr. COHEN. Mr. President, today I rise in support of the nomination of Robert Bedell to be Administrator of the Office of Federal Procurement Policy [OFPP].

Last month, I chaired Mr. Bedell's confirmation hearing before the Governmental Affairs Committee and found him to be an excellent candidate for the Administrator position. He was articulate, forthcoming with his answers, and clearly knowledgeable of the procurement statutes.

As my colleagues may know, Congress established the OFPP in 1974 to provide overall direction and coordination of Federal procurement policy and reform. In 1983, Senator CHILES and I sponsored legislation—and virtually shed blood—to reauthorize this small but critical office.

For the past 2 years, however, the OFPP has been without a Presidentially appointed Administrator needed to provide the leadership and direction for the Office to operate effectively. I believe that Mr. Bedell will provide that much-needed leadership, as his qualifications and experience at OMB make him well-suited for the job.

That's not to say, though, that the job will be an easy one. Historically, the OFPP Administrator often has found himself or herself to be in the eye of a hurricane, trying to resolve the conflicting demands of the major procuring agencies: the Department of Defense, NASA, and the General Services Administration. An effective Administrator, in keeping with the purpose of the Office, must also provide Congress with impartial advice on procurement legislation.

In short, balancing these often competing needs is difficult, but I am confident that Mr. Bedell will meet the challenge. I, therefore, urge my colleagues to support his nomination.

NOMINATION OF JOSEPH F. ANDERSON, JR.

Mr. THURMOND. Mr. President, I am very pleased today to recommend Mr. Joseph F. Anderson, Jr., for confirmation as U.S. district judge for the district of South Carolina. Mr. Anderson was born in Augusta, GA. In 1972 he graduated from Clemson University with a bachelor of arts degree and received the Norris Medal for being the best all around student in his graduating class. He also won the Hughes Award for being the top Reserve Officers' Training Corps graduate in the entire United States. He received the Algernon Sidney Sullivan Award which is given for outstanding service to Clemson University. Mr. Anderson then entered the University of South Carolina School of Law and in 1975 received his juris doctorate degree. He graduated No. 1 in his law school class and received both the Claude Sapp Award and the Cy Young Award; these awards for the outstanding graduate are voted on by the students and faculty, respectively. From 1975–76 Mr. Anderson served as a law clerk to Judge Clement F. Haynesworth, Jr., of the U.S. Court of Appeals for the fourth circuit. He has been in the private practice of law since 1976 in Edgefield, SC. His practice which has included civil trial litigation before both State and Federal courts and several administrative agencies has also included a significant amount of criminal litigation. In 1978 he was honorably discharged from the U.S. Army Active Reserve. Since 1981 Mr. Anderson has distinguished himself as a member of the South Carolina House of Representatives.

Mr. Anderson is an oustanding lawyer. He has the ability, intellect, integrity, and judicial temperament to serve with distinction as a Federal district court judge. He has always been a respected leader among his peers and has discharged his responsibilities in an exemplary manner. Mr. Anderson is held in high esteem, not only by legislators, judges, and lawyers, but also by the people of the district he represents.

Mr. Anderson's sound philosophy and keen sense of justice are reflected in his service to the people of South Carolina. He will be a decided asset to the Federal bench. And I know he will render outstanding service to our Nation as a member of the esteemed district court of South Carolina.

I was very pleased to recommend Mr. Anderson to President Reagan, and I urge my colleagues to vote in favor of Joe F. Anderson, Jr. for the position of district court judge for the district of South Carolina.

NOMINATION OF JOHN L. NAPIER

Mr. THURMOND. Mr. President, it gives me great pleasure to recommend to the Senate Mr. John L. Napier, President Reagan's nominee to be a judge for the U.S. claims court. Mr. Napier was born in Bennettsville, SC in 1949. He received his undergraduate degree from Davidson College in 1969. Mr. Napier then entered the University of South Carolina School of Law and in 1972 received his juris doctorate degree. After the graduation from law school Mr. Napier worked in several capacities in the U.S. Senate. From 1972 to 1973, he served as my legislative assistant and as minority counsel for the Judiciary Committee's Admin-

istrative Practice and Procedure Subcommittee. From 1973 to 1976, Mr. Napier served with distinction as minority counsel and professional staff member for the Senate Veterans' Affairs Committee. From 1976 to 1978, he was my chief legislative assistant and legal counsel, as well as minority counsel, for the Judiciary Committee's Antitrust and Monopoly Subcommittee. In 1977, Mr. Napier served a special assignment as the chief Republican counsel to the U.S. Senate Special Committee on Official Conduct. This was the committee which wrote the code of ethics for the Senate and its employees.

In 1978, Mr. Napier entered into the private practice of law with the firm of Goldberg, Cottingham & Easterling in Bennettsville, SC. In 1980, he was elected to the U.S. House of Representatives from the Sixth District of South Carolina. During his tenure in Congress he served on the Agriculture Committee and the Veterans' Affairs Committee and was appointed an assistant regional whip. In 1983, Mr. Napier returned to private practice in South Carolina and is now a partner in the law firm of Napier & Jennings in Bennettsville, SC. Mr. Napier has a Martindale-Hubbell rating of "av".

During his 14 years as a lawyer Mr. Napier has had the opportunity to use his legal skills as a legislative assistant, a private practitioner, and as a legislator. I believe this experience will be most valuable to him in the position to which he has been nominated. He is a man of ability, integrity, and independence. Mr. Napier is a dedicated and trustworthy individual whose commitment to law is highly regarded and whose outstanding record speaks for itself. He has the experience and the judicial temperament to become an outstanding jurist. It was with considerable pride that I recommended Mr. Napier to President Reagan for this very important position, and I urge my colleagues to vote in favor of John Napier for the position of U.S. claims court judge.

NOMINATION OF ALEX T. HOWARD, JR. TO SERVE AS JUDGE FOR THE U.S. DISTRICT COURT, SOUTHERN DISTRICT OF ALABAMA

Mr. DENTON. Mr. President, I rise in strong support of Alex T. Howard, Jr., of Mobile, who is President Reagan's nominee to serve as District Court judge for the Southern District of Alabama. Mr. Howard comes to us highly qualified to serve as a district court judge.

Mr. President, after combat duty in the European theater in World War II, Alex Howard attended the University of Alabama. He went on to attend law school at Vanderbilt University and was graduated in 1950. After graduation, he served as a U.S. probation officer for the Southern District of Alabama.

In June 1951, Alex Howard became associated with the Mobile law firm of McCorvey, Turner, Rogers, Johnstone & Adams. In 1957, he was made a partner and has practiced to date with that firm, which now does business under the name of Johnstone, Adams, Howard, Bailey & Gordon. During his tenure with the firm he has worked in a variety of areas, but has developed an expertise in admiralty law with an emphasis on litigation. He has also been involved to a significant extent in general litigation, including product liability, aviation, and contract law.

Mr. President, this committee has taken an exceedingly close look at all the facets of what it takes to make an excellent Federal judge. In particular, we have stressed a nominee's professional competence, personal integrity, and fidelity to the Constitution. Alex Howard has all of these.

Our analysis of a nominee's professional competence has covered such areas as length, breadth, and depth of legal experience, writing skills, and contributions to legal scholarship. Alex Howard's record is a stellar one in terms of his legal experience, and is exemplary of the kind of background we look for in Federal judicial nominees. In fact, the American Bar Association, in evaluating Alex Howard's qualifications, unanimously found him to be "well-qualified."

In his over 35 years of private practice, Alex Howard has served as sole, chief or associated counsel in well over 500 cases, with approximately 150 of those cases being tried to verdict or judgment. Many of the cases involved various types of litigation, both Federal and State, covering hundreds of depositions, thousands of hours of discovery, and numerous briefs, motions, and pleadings.

Without precise figures, it has been speculated that Alex Howard probably has argued more cases in the Federal Courts of Appeal than any other lawyer in Mobile County.

Alex Howard is a fellow in the International Society of Barristers and has served as a U.S. delegate to several international maritime conventions.

A second criterion, Mr. President, a nominee's personal integrity, must be closely measured when he is being considered for a Federal judgeship. In word and in deed, Alex Howard's integrity is of the highest order.

The third and certainly not the least criterion by which we should evaluate a candidate for a judgeship is that person's fidelity to the Constitution and to legal precedent. Alex Howard has been committed to an even application of the law without imposing his personal views on a decision. Furthermore, he believes in the principle of judicial restraint, realizing that a balance of power can only be maintained when the judicial branch adheres to its job as interpreter of the law and avoids the temptation to legislate.

Mr. President, apart from his distinguished service at the bar, Alex Howard has given much of his time to community service. He has served as a trustee of Dauphin Way United Methodist Church; president of Child and Family Service of Mobile County; as incorporator and director of the Family Counselling Center of Mobile; and as incorporator and director of the Mobile Chapter of Epilepsy Foundation.

Alex Howard has also held every major office in the Mobile Bar Association, serving as president in 1973.

Mr. President, I urge my colleagues to confirm this extraordinary and highly qualified gentleman to be a U.S. district judge for the southern district of Alabama.

Thank you, Mr. President.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the nominations were confirmed.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

□ 1710

Mr. DOLE. Mr. President, I ask unanimous consent that the President be immediately notified that the Senate has given its consent to these nominations.

The PRESIDING OFFICER. Without objection, it is so ordered.

LEGISLATIVE SESSION

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate resume the consideration of legislative business.

The being no objection, the Senate resumed the consideration of legislative business.

SCHEDULE

Mr. DOLE. Mr. President, we are waiting now for a 2-day extension of the continuing resolution, which should be coming over from the House, and we hope to act on the Iceland defense treaty. We would like to do that today, if we possibly can. It is not yet on the calendar, but it is something that the President would like to take with him when he leaves tomorrow morning. So if we can work that out, we would like to do it.

In any event, we do have the 2-day continuing resolution from the House.

We also would like to get an agreement on the debate on the Articles of Impeachment.

Beyond that, I do not know of anything else we will do today. It is an opportunity to complete our work, I hope, by 6 p.m.

Mr. BYRD. Mr. President, do I correctly understand the distinguished

majority leader to indicate that there may still be a rollcall vote today—on the continuing resolution, perhaps?

Mr. DOLE. Yes, that would be possible. I understand that it is coming over here with an amendment on PATCO, on the air controllers who were fired, and that could create a small problem or a large problem.

Mr. BYRD. So, all Senators on both sides are urged not to leave as yet?

Mr. DOLE. Yes. I encourage our colleagues on each side to check with the Cloakroom. If we do have a vote, we will do it as quickly as we can. I know that a number of Members have obligations away from the Capitol this evening.

□ 1720

Mr. President, I want to propound a unanimous-consent agreement on the impeachment proceedings.

I ask unanimous consent that at 10 a.m. on Thursday, October 9, 1986—Mr. President, I withhold that request.

Mr. COCHRAN. Mr. President, will the majority leader yield for a question?

Mr. DOLE. I am happy to yield.

FARM CREDIT SYSTEM LEGISLATION

Mr. COCHRAN. Mr. President, on August 15 I introduced legislation to try to give more flexibility to member banks of the Farm Credit System. Hopefully, I think this could lead to lower interest rates for a lot of borrowers from the Farm Credit System.

There has been some concern expressed about whether or not this could lead to an early need for Federal monetary assistance for the system.

I was happy to be able to receive an analysis, from a New York firm, which has not been solicited by me or my staff, which indicates that this bill, and I quote, "seems a logical and favorable step toward reducing and delaying the FCS needs for assistance from the Treasury."

This is encouraging news, Mr. President, and I hope will support the notion that this is legislation which ought to be approved by this Congress before we go out of session.

Mr. President, on August 15, 1986, I introduced the Farm Credit System Borrower Interest Rate Relief Act, S. 2770. The purpose of this bill is to provide the opportunity for competitive interest rates for the farmer, rancher, and cooperative borrowers of the Farm Credit System [FCS]. With today's much lower cost of funds allowing lower interest rates, I believe every effort must be made to assure FCS rates, I believe every effort must be made to assure FCS borrowers equal access to competitively priced loans. To the extent that competitive rates are lower than current FCS rates, any reduction will not only preserve FCS market share, but also conserve FCS capital and slow the rate of loan losses.

Recognizing that FCS is currently burdened with a very high-cost bond portfolio, competitive interest rates are not possible for a large number of borrowers without developing a means for FCS to lower its operating cost. After considerable debate among many groups, including representatives of the administration, the House, and the Senate, a plan has been developed to allow FCS an opportunity to work out of its current financial situation without Federal financial assistance. The plan can be referred to as a FCS self-help initiative. Basically, the plan involves FCS amortizing capital losses over 20 years rather than absorbing the total amount during the year in which the losses occur.

Mr. President, since a question has been raised about the impact of this plan, because it deviates from generally accepted accounting principles, on the cost of bonds sold by FCS, I would like to have the following analysis printed in the RECORD. The analysis was prepared by L.F. Rothschild, Unterberg, Towbin, Inc., members of all leading exchanges and located at 55 Water Street, New York, NY. In part, the analysis concludes:

Our investment conclusion is that the plan would be neutral for FCS bond prices . . . We are less concerned with the accounting treatment of FCS losses under the new act than the reality of the problems the FCS currently faces . . . The time when the FCS might ultimately require Federal financial assistance will be postponed, and the additional breathing space the act provides improves the FCS' chances of surviving independently.

Mr. President, I am hopeful legislation can be passed by Congress this session allowing FCS to implement this plan. I urge all Senators to support this legislation, currently included in the Omnibus Budget Reconciliation Act, providing FCS a self-help alternative to Federal financial assistance.

Mr. President, I ask unanimous consent to have printed in the RECORD a copy of this analysis.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

THE FARM CREDIT SYSTEM PROPOSES TO USE DEFERRED LOSS ACCOUNTING

(By Allerton Smith)

The Farm Credit System (FCS) has proposed a new plan which would allow it to both lower its cost of loans to farm borrowers and delay indefinitely its anticipated request for Federal financial assistance. The plan is to defer losses, which while questionable from a strict accounting viewpoint, will achieve several important and productive ends for the FCS. Our investment conclusion is that the plan would be neutral for FCS bond prices, since the short term costs are at least matched by the long term benefits. We are less concerned with the accounting treatment of FCS losses under the new act than the reality of the problems the FCS currently faces. Any reduction in the rate of interest charged its borrowers will not only preserve FCS market share, but also conserve FCS capital and slow the rate of loan losses. The time when the FCS might ultimately require federal financial assistance will be postponed, and the additional breathing space the act provides improves the FCS' chances of surviving independently. Since the FCS can fund the losses with cash raised in the capital markets, this solution is workable, and the ends certainly justify the means.

The proposal is the Farm Credit System Borrower Interest Rate Relief Act of 1986. The FCS has issued a large volume of high coupon, long term non-callable debt over the last several years. As a consequence, the FCS average cost of funds is 10.6%, which is far above competing financial institutions. In addition, the FCS has high overhead expense. All these costs are passed through to FCS farmer-borrowers which makes rates on FCS loans non-competitive with other financial institutions. The market share of the FCS has eroded because of this differential in rates; FCS loans outstanding have fallen to $61.5 billion at June 30, 1986 from $66.6 billion at December 31, 1985, and $78.4 billion at December 31, 1984.

The FCS had asked the Farm Credit Administration (its regulator) to allow it to lower the rate it charged on its loans, but the FCA refused on the grounds that lending at a negative spread would speed the erosion of FCS capital. The new proposal would take the rate setting power out of the hands of the FCA and place it with the 37 district banks of the FCS. This change, since it is endorsed by the Congress, would not stand in the way of any future needed financial assistance.

The new act would allow the FCS to charge a competitive rate to its borrowers and capitalize the difference between the actual cost of its funds and the prevailing market rate. The capitalized interest would be amortized as an expense over twenty years. Alternatively, the FCS could defease the high coupon bonds and capitalize the premium, also using a twenty year amortization.

In addition the FCS could, upon approval from the FCA, capitalize their annual provision for loan losses, which was in excess of one-half of one percent of loans outstanding, and amortize it over twenty years.

The FCS stands to have its operating losses reduced by up to $1 billion annually under the proposal. While the deferred loss treatment is not in accordance with generally accepted accounting principles it is not uncommon in regulatory reporting for the thrift industry. This process would reduce the market erosion the System is experiencing and reduce the debt service requirements on many farmers. The System's capital would be conserved by the retention of borrowers (since they supply the funds for the FCS Capital Stock and Participation Certificates) and market share would be maintained by competitive rates. In addition, a reduction in the rate of interest charged to the FCS farmer/borrowers would help prevent many marginal farmers from defaulting, thus reducing FCS loan write-offs.

Last week before Congress H. Brent Beesley, Chief Executive of the Farm Credit Corporation of America discussed the System's future financial prospects. He reported that a projected System loss of $1.7 billion for 1986 compares to a loss of $2.7 bil-

lion recorded for the year ending December 31, 1985. In addition, System projections reflect losses of $1.1 billion in 1987 and $600 million in 1988. The System's surplus is projected to decline to $1.7 billion by year-end 1986, to $600 million by year-end 1987 and to a negative $100 million at December 31, 1988. Beesley cautioned that there are many uncertainties surrounding these projections. Changes in such factors as general interest-rate levels, federal farm programs, land values and commodity prices could alter the projected results significantly. At the same time the General Accounting Office projected FCS losses of $2.9 billion in 1986, which would reduce surplus to $354 million. It seems clear that without a drastic change in either the farm economy or the accounting system used by the FCS, federal aid would be needed soon.

While it is not certain that this measure would be sufficient for the FCS to avoid requesting Federal financial assistance, it reduces the amount of assistance that might ultimately be needed. The FCS management is fighting to avoid the need to request assistance, and to minimize the amount of assistance that might be requested. This new proposal seems a logical and favorable step towards reducing and delaying the FCS needs for assistance from the Treasury.

Mr. COCHRAN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

□ 1730

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

UNANIMOUS-CONSENT AGREEMENT

Mr. DOLE. Mr. President, I am now in a position to propound a unanimous-consent request. I ask unanimous consent that at 10 a.m. on Thursday, October 9, 1986, the Senate resume the impeachment proceedings against Judge Harry E. Claiborne and the time between 10 a.m. and 3 p.m. be equally divided. I further ask unanimous consent that at no earlier than 2 p.m. and no later than 3 p.m. the Senate proceed to vote on each of the following questions: How vote you, Senator, guilty or not guilty on articles I through IV? And those votes would occur separately.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

EXECUTIVE SESSION

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate go into executive session.

The PRESIDING OFFICER. Without objection, it is so ordered.

TREATY BETWEEN THE UNITED STATES AND ICELAND TO FACILITATE THEIR DEFENSE RELATIONSHIP—TREATY DOC. 99-31

Mr. DOLE. Mr. President, I ask unanimous consent that the United States-Icelandic Treaty on the carriage of military cargo be advanced through its various parliamentary steps, including the presentation of the resolution of ratification.

The PRESIDING OFFICER. Is there objection?

Mr. BYRD. Mr. President, reserving the right to object, and there will be no objection on this side, it is our feeling on this side that, in view of the fact the President is going to Iceland tomorrow, it would be good for the President to be able to take with him the news that this treaty has been taken up and the resolution of ratification approved by the Senate.

Mr. DOLE. Mr. President, let me thank the distinguished minority leader. As he might recall, this was raised at the breakfast with the President yesterday morning and we indicated we would try to accommodate his request.

Mr. BYRD. He expressed the hope that that could be done.

The PRESIDING OFFICER. Without objection, the treaty will be considered as having passed through its various parliamentary stages up to and including the presentation of the resolution of ratification, which the clerk will state.

The legislative clerk read as follows:

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Treaty between the United States of America and the Republic of Iceland to Facilitate Their Defense Relationship, with related Memorandum of Understanding, signed at New York City on September 24, 1986.

Mr. WARNER. Mr. President, I am very pleased that, at long last, the Senate has given its advice and consent to the treaty between the United States of America and the Republic of Iceland to facilitate their defense relationship, with its related memorandum of understanding, as signed at New York on September 24. This treaty confirms and strengthens our defense relationship with a vital NATO ally, and removes a problem which has been an irritant to those relations.

I have supported the goals of this treaty for some time, and most recently renewed my efforts at the specific request of the present U.S. Ambassador to Iceland, Nicholas Ruwe. Ambassador Ruwe and I have been acquaintances for many years, and I am grateful for his valuable, professional, insights on the importance of this treaty to both nations.

Iceland's strategic position in the North Atlantic Ocean makes its friendship and cooperation absolutely essential to any workable NATO Atlantic strategy. Since the execution in 1951 of a defense agreement between the United States and Iceland, entered into at NATO's request, Iceland has provided air and naval bases of the utmost value to the collective security of all of NATO. This treaty provides a limited exception to U.S. cargo preference laws to allow Icelandic cargo lines to compete for the carriage of military cargo between the two nations. It is a specific response to a unique strategic situation, and does not represent a change in U.S. law or in the administration's attitude toward the cargo preference statutes.

I am proud to salute Iceland as a United States ally. I had the privilege of working with its defense leaders during my tenure, 1972-74, as Secretary of the Navy. This Nation preserves a unique tradition of Norse culture and stubborn adherence to political and cultural independence. It is the home of the world's oldest continuous parliament, which has sat for over a millenium. It is presently the cynosure of world attention as the location of the meeting between President Reagan and General Secretary Gorbachev. I look forward to a continuation of our close relationship, which has proven to be strategically mutually beneficial.

Again, I want to pay tribute to Ambassador Ruwe's constructive role in the furtherance of this treaty. His contributions to the unity and effectiveness of the NATO alliance are of the highest order, and will, I am sure, loom larger in the future, as this treaty brings our two nations closer together. Ambassador Ruwe is a credit to American diplomacy.

Mr. PELL. Mr. President, the Committee on Foreign Relations reported the treaty between the United States of America and the Republic of Iceland to facilitate their defense relationship this afternoon at its weekly business meeting and recommended that the Senate give its advice and consent to ratification. Obviously with the Government of Iceland planning to serve as the gracious host of this weekend's presummit meeting between President Reagan and General Secretary Gorbachev it is particularly appropriate that the United States ratify this treaty with Iceland in order to remove a source of friction which has existed between our two countries since 1984.

This agreement supersedes United States cargo preference laws for military cargos to Iceland only. Instead, it will permit both United States and Icelandic shippers to bid competitively for the right to carry such cargo between the United States and Iceland. This agreement was carefully crafted to ensure that the treaty does not

appear to establish a precedent for the weakening of the 1904 Cargo Preference Act—an act which is preceived to be a very important protection for the United States cargo industry. The administration has committed itself to the overall integrity of the 1904 act, and assured the committee that the treaty will be implemented in such a way that the existing United States-flag service in the Iceland trade would not be disadvantaged.

I believe that the treaty is in the interest of the United States and Iceland. I am pleased that President Reagan will be able to personnally deliver the good news of Senate action on this matter to the Government of Iceland. I urge my colleagues to give their advise and consent to ratification.

Mr. DOLE. Mr. President, the question is now on the resolution of ratification. I ask for a division vote.

THE PRESIDING OFFICER. The question is on agreeing to the resolution of ratification. A division has been requested.

All those in favor will stand and be counted.

Those opposed by a like sign.

Two-thirds of the Senators present and voting having voted in the affirmative, the resolution of ratification is agreed to.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the resolution of ratification was agreed to.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DOLE. Mr. President, again I thank the distinguished minority leader for his cooperation.

Mr. BYRD. Mr. President, the distinguished majority leader is welcome.

LEGISLATIVE SESSION

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate return to legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER OF PROCEDURE

Mr. DOLE. Mr. President, I understand the only thing we can do for the balance of this day is to handle the 2-day continuing resolution. The distinguished chairman of the Appropriations Committee is here.

I would yield to the chairman of the Appropriations Committee.

□ 1750

FURTHER CONTINUING APPROPRIATIONS FOR THE FISCAL YEAR 1987

Mr. HATFIELD. Mr. President. I believe the continuing resolution for 2 days is at the desk?

The PRESIDING OFFICER. That is correct.

Mr. HATFIELD. I would like the Chair to lay it before the Senate.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered. The clerk will report.

The legislative clerk read as follows:

A resolution (H.J. Res. 748) making further continuing appropriations for the fiscal year 1987, and for other purposes.

The Senate proceeded to consider the joint resolution.

Mr. HATFIELD. Mr. President, this measure provides another 2 days of spending authority for the Federal Government in the absence of the enactment of regular appropriations bills. It was just passed by the House this afternoon, and is necessary because existing spending authority expires at midnight tonight.

The spending levels for the 13 appropriations bills embraced by this joint resolution are:

The spending rates established by the conference agreements on Labor-HHS, legislative, HUD, and Transportation;

Current rate for foreign assistance and defense;

The lower of the House or Senate passed bills, or the lower of the House bill or current rate in the absence of Senate passage, for Agriculture, Commerce, District of Columbia, Energy and Water, Interior, military construction, and Treasury.

An additional provision has been added earmarking $100,000 in available funds for the development of a comprehensive plan on drug abuse. I believe this is a minor matter that the Senate can accept.

This measure has been cleared on both sides of the aisle and I would move its adoption.

The PRESIDING OFFICER. The joint resolution is before the Senate and open to amendment. If there be no amendment to be offered, the question is on the third reading and passage of the joint resolution.

The resolution (H.J. Res. 748) was ordered to a third reading, was read the third time, and passed.

Mr. HATFIELD. Mr. President, I move to reconsider the vote by which the joint resolution was passed.

Mr. BYRD. Mr. President, I move to lay the motion to reconsider on the table.

The motion to lay on the table was agreed to.

Mr. HATFIELD. I thank the Democratic leader for his assistance in this action.

Mr. BYRD. I thank the distinguished Senator for his patience.

Mr. HATFIELD. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

□ 1800

Mr. HATFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. GRAMM). Without objection, it is so ordered.

REFERRAL OF BILL FOR RELIEF OF SPALDING & SON, INC., OF GRANTS PASS, OR

Mr. HATFIELD. Mr. President, I am going to propound a unanimous-consent request which has been cleared by the committee chairman and both sides of the aisle and also the ranking member of the committee.

I ask unanimous consent that the Committee on the Judiciary be discharged from further consideration of Senate Resolution 458, for the relief of Spalding & Son, Inc., and I ask for its immediate consideration.

The PRESIDING OFFICER. Is there objection?

Mr. BYRD. Mr. President, there is no objection to the Senate's moving to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report.

The assistant legislative clerk read as follows:

A resolution (S. Res. 458) referring the bill for the relief of Spalding & Son, Inc., to the Chief Judge of the United States Claims Court.

The PRESIDING OFFICER. Without objection, the Senate will proceed to its immediate consideration.

The Senate proceeded to consider the resolution.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution (S. Res. 458) was agreed to, as follows:

S. RES. 458

Resolved, That the bill (S. 294) for the relief of Spalding and Son, Inc. of Grants Pass, Oregon, together with all accompanying papers, is hereby referred to the United States Claims Court pursuant to sections 1492 and 2509 of title 28, United States Code. The Claims Court shall proceed expeditiously with the same in accordance with the provisions of said sections, and report to the Senate at the earliest practicable date, giving such findings of fact and conclusions of law as shall be sufficient to inform the Congress of the nature and character of the demand as a claim legal or equitable against the United States, and the amount, if any, legally or equitably due from the United States to Spalding and Son, Inc.

Mr. HATFIELD. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HATFIELD. Mr. President, I want to thank Chairman GRASSLEY of

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the subcommittee, Senator THURMOND, the chairman of the full committee, and Senator BIDEN, the ranking member, for assisting us in this matter. The subcommittee has been particularly helpful in taking this action. The parliamentary study decided that this was the best way to handle the matter.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

TRANSFER OF CERTAIN AIRPORT PROPERTY

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Senate now turn to the consideration of Calendar No. 981, H.R. 4492, dealing with an airport property at Algona, IA.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 4492) to permit the transfer of certain airport property in Algona, Iowa.

The PRESIDING OFFICER. Without objection, the Senate will proceed to its immediate consideration.

The Senate proceeded to consider the bill.

Mr. HARKIN. Mr. President, H.R. 4492 concerns the transfer of 10 acres of land from the airport owned by the city of Algona to the Iowa National Guard. The National Guard will use the land to build a new armory.

The National Guard's present accommodations are inadequate for both proper training and suitable parking. The new facility would allow for the expansion of the unit's size and for more adequate training. In exchange for this transfer of the airport property, the National Guard would in turn convey to the city the existing National Guard Armory. The Guard's present facility is simply inadequate for the Guard's need. The land on which the new armory is to be built is currently being used as farmland.

The bill is necessary because the land was provided to Algona under a requirement that the land not be transferred or sold without the city receiving fair market value which is to be used for the betterment of the airport. Since the present armory is on the Kossuth County Fairgrounds in the city of Algona, that land will be of little value to anyone except to the city and the people of the area. But, there is a clear public purpose in allowing the city to make this transfer which will not harm the airport and will improve the local National Guard unit.

It should be noted that Public Law 94-243, passed in 1976, allowed for the release of deed restrictions for the purpose of using a parcel of airport land for an industrial park. I believe that benefiting the National Guard is worthwhile and I urge that the Senate pass the bill allowing the city of Algona to complete this transaction.

Mr. GRASSLEY. Mr. President, I ask for third reading.

The PRESIDING OFFICER. If there be no amendment to be proposed, the question is on third reading and passage.

The bill (H.R. 4492) was ordered to a third reading, was read the third time, and passed.

Mr. GRASSLEY. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BYRD. Mr. President, I move to lay the motion to reconsider on the table.

The motion to lay on the table was agreed to.

ORDER OF PROCEDURE

Mr. DOLE. Mr. President, I am advised that the 2-day resolution we passed could well be vetoed by the President because of the PATCO provision involving air traffic controllers. I also understand that the House may send us another 2-day CR with that language removed.

Mr. President, I do not anticipate any more votes this evening. I do not want to keep other Members here while we are waiting for the CR. I guess we could advise Members that we do not anticipate any additional votes this evening. If a vote did become necessary, we would notify Senators and give them ample time to return.

Would that be fair enough?

Mr. BYRD. I think it would be fair and I think the Members on both sides would appreciate that.

Mr. DOLE. I will alert Members that tomorrow morning at 10 o'clock we will be on the impeachment proceedings. We would like to have some time tomorrow for Senators to make statements with reference to retiring Members. We can devote some time in the afternoon to that.

We would also like to take up the reconciliation tomorrow and the drug bill tomorrow afternoon.

It seems to me that it is going to be impossible to complete our work this week. I did visit with the Speaker. I have been advised that even if they reached agreement tonight on the CR, it is such a massive instrument it would take at least until next Monday or Tuesday to enroll it.

What we would hope to do, if we can, would be to do what we can by tomorrow evening—hopefully do the drug bill and the reconciliation bill, if we can do that and finish the impeachment proceedings and whatever other work we can do—not be here on Friday, Saturday, Sunday, or Monday, but be back on Tuesday and hope to complete the action of the Senate and the House no later than Wednesday at midnight.

Mr. BYRD. Would this involve the debt ceiling?

Mr. DOLE. The debt ceiling and the CR.

Mr. BYRD. I would think a word of caution might be well spoken here.

Words fitly spoken are like apples of gold in pictures of silver.

In dealing with the CR and debt ceiling, I will keep my fingers crossed.

The distinguished majority leader, I think, has outlined what I think is a reasonable approach, certainly with respect to tomorrow's business, and then on tomorrow we will try to ascertain what the outlook is for next week. I should think the way he has outlined it, it is a practicable approach. I personally thank him.

Mr. DOLE. The distinguished minority leader is correct. He has had more experience than I. We are never quite certain what can happen. The debt ceiling and the CR are very big issues, and they could arouse considerable debate. I am not certain what will be on the debt ceiling when it returns from the House. Maybe there will be nothing on it, a clean debt ceiling bill, which might not be too easy to pass.

We are going to try to complete our work as quickly as we can. I know a number of colleagues on both sides are running for reelection and would like to leave as early as possible. In fact, last week would have been a little late for some.

We hope if we can complete our work tomorrow on the matters I mentioned, and not be here Friday, Saturday, Sunday, or Monday, we will come back on Tuesday with at least the hope of completing our work on Wednesday. I am advised by the Speaker they really want to complete this action on Wednesday because some of their Members have to be gone on Thursday of next week. So that would make it a little difficult.

Mr. BYRD. They are running a little bit of a risk sending the debt limit at the last minute, with their Members leaving.

Mr. DOLE. As I understand, they may be willing to send the debt limit over before then.

Mr. BYRD. I thank the majority leader.

Mr. DOLE. Mr. President, I believe there are a few matters we can dispose of.

RELIEF OF MARLBORO COUNTY GENERAL HOSPITAL CHARITY OF BENNETTSVILLE, SC

Mr. DOLE. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 1895.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 1985) entitled "An Act for the relief of Marlboro County General Hospital Charity, of Bennettsville, South Carolina", do pass with the following amendment:

Strike out all after the enactment clause, and insert:

SECTION 1. LIABILITY UNDER THE PUBLIC HEALTH SERVICE ACT.

(a) IN GENERAL.—If—

(1) the Hospital Corporation of America and the Marlboro County General Hospital Charity of Bennettsville, South Carolina, enter into an agreement with the Secretary of Health and Human Services within 12 months of the date of enactment of this Act which meets the requirements of section 2, and

(2) the Secretary of Health and Human Services certifies to Congress that the requirements of such section have been fulfilled,

Marlboro County General Hospital Charity of Bennettsville, South Carolina, and the Hospital Corporation of America shall each be relieved of all liability under section 609 of the Public Health Service Act resulting from the sale of Marlboro County General Hospital, Inc., also known as Marlboro County General Hospital, of Bennettsville, South Carolina, the predecessor in interest of Marlboro County General Hospital Charity, to the Hospital Corporation of America.

(b) LIABILITY—

(1) During the 6-month period beginning on the date of the enactment of this Act Marlboro County General Hospital Charity of Bennettsville, South Carolina, and the Hospital Corporation of America shall each not be subject to the interest penalty described in section 609(c)(2)(A) of such Act for the sale referred to in subsection (a).

(2) If such an agreement is not entered into within one year of the date of the enactment of this Act, the Secretary of Health Services shall take such action as may be necessary to recover from Marlboro County General Hospital of Bennettsville, South Carolina, and the Hospital Corporation of America the amount the United States is entitled to recover under section 609 of such Act for the sale referred to in subsection (a).

SEC. 2. AGREEMENT REQUIREMENTS.

The agreement referred to in subsection (a) shall contain the following requirements:

(1) Under the agreement Marlboro County General Hospital Charity shall establish and maintain an irrevocable trust in the amount described in section 609(d)(1)(A)(i) of the Public Health Service Act.

(2) The principal and interest of the trust described in paragraph (1) shall only be used to pay for medically necessary services provided at Marlboro Park Hospital by the Hospital Corporation of America at no charge to individuals unable to pay for such services. For purposes of this paragraph, an individul shall be considered unable to pay for medically necessary services if such individual (A) has an income below 100 percent of the nonfarm income official poverty line defined by the Office of Management and Budget (and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size of such individual's family, and (B) does not have private health insurance coverage and is not eligible for assistance under title XVIII of the Social Security Act, a Medical Assistance Plan approved under title XIX os such Act, or any other public indigent medical care program.

(3) The Hospital Corporation of American shall at Marlboro Park Hospital—

(A) not deny needed medical services to persons unable to pay for such medical services,

(B) participate, if qualified, in the program under title XVIII of the Social Security Act and a Medical Assistance Plan approval under title XIX of such Act, and in any other public indigent program in South Carolina,

(C) treat all individuals in need of medical care who are eligible, or may be eligible, for assistance under a program described in subparagraph (B) irrespective of whether such individuals have a personal physician with admitting privileges at Marlboro Park Hospital, and

(D) notify each individual seeking medical care in writing of the availability of reimbursement under paragraph (2) for charges and services.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. DOLE. Mr. President, I move that the Senate concur in the House amendment.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

□ 1810

SECOND-CLASS RATES OF POSTAGE

Mr. DOLE. Mr. President, I ask unanimous consent that the Governmental Affairs Committee be discharged from further consideration of S. 2723, dealing with second-class rates of postage, and I ask for its immediate consideration.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 2723) to amend title 39 of the United States Code to restore limited circulation second-class rates of postage for copies of a publication mailed to counties adjacent to the county of publication, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 3262

(Purpose: To restore limited circulation second-class rates of postage during Fiscal Year 1987 for copies of a publication mailed to counties adjacent to the county of publication, and for other purposes)

Mr. DOLE. Mr. President, I send an amendment to the desk in the nature of a substitute on behalf of Senators STEVENS, ABDNOR, ANDREWS, BURDICK, PRYOR, ROCKEFELLER, MURKOWSKI, GRASSLEY, GORE, SIMON, HAWKINS, DANFORTH, DENTON, and BYRD, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Kansas [Mr. DOLE], for Mr. STEVENS, Mr. ABDNOR, Mr. ANDREWS, Mr. BURDICK, Mr. PRYOR, Mr. ROCKEFELLER, Mr. MURKOWSKI, Mr. GRASSLEY, Mr. GORE, Mr. SIMON, Mrs. HAWKINS, Mr. DANFORTH, Mr. DENTON, and Mr. BYRD, proposes an amendment numbered 3262.

Mr. DOLE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 1, line 3, strike all after the enacting clause and insert in lieu thereof the following:

That for the fiscal year ending September 20, 1987, the Postal Service shall restore the minimum charge per piece most recently applicable under section 3626 and former section 4358(g) of title 39, United States Code, for publications mailing fewer than five thousand copies outside the county of publication, except that such charge shall apply only to so many of such copies as are addressed for delivery within counties adjacent to the county of publication.".

SEC. 2. Section 3626(g) of title 39, United States Code, is amended by adding at the end thereof the following:

"(3) In the administration of this section within any State or territory which has not organized itself into county (or parish) subdivisions, copies of a publication addressed for delivery within the entire State or territory shall be deemed addressed for delivery within the county of publication within the meaning of former section 4358(a)-(c) of this title.".

Mr. STEVENS. Mr. President, today I am offering an amendment in the form of a substitute to S. 2723. The substitute will partially restore the "out-of-county" limited circulation postal rates for newspapers and other publications but only as is the case in the original bill, S. 2723, to subscribers in adjoining counties.

S. 2723, which I introduced last month, did much the same as the substitute I am offering today. However, there are two major differences. The language in this substitute is a simple 1-year authorization narrowly confined to the counties surrounding the county in which a newspaper is published. Second, this substitute language leaves off the provision limiting

the number of subsidized subscriptions allowed under the in-county rate.

Rural newspapers have had three postal rate increases this year alone. One of those increases was caused by the elimination of the limited circulation or out-of-county rate category. A problem resulting from the abolishment of this category was brought to our attention by my good friend, Congressman GENE TAYLOR from Missouri. He reminded us that in many rural areas, roads intertwine and criss-cross county lines, thus creating an administrative nighmare for both the Postal Service and the newspaper publisher when trying to determine which subscriber is entitled to the subsidized rate and which is not.

The burden placed on the Postal Service as they try to solve this new Rubik's Cube of whose newspaper subscription is subsidized and whose is not, undoubtedly adds significant administrative costs of the Postal Service. The substitute amendment would significantly reduce that problem. In addition, by limiting the reauthorization of this category to adjoining counties, we are confining our help to the local rural newspapers.

As I said in my comments on August 6, we have learned of many problems caused by the total elimination of this category. The amendment will correct those problems and still save millions of dollars. Although this solution would cost approximately $9.3 million, the cost of the original category was approximately $40 million over the entire fiscal year; thus, we are still saving over $30 million.

I also want to emphasize the other major difference over the previously introduced bill, S. 2723. The substitute amendment does not have a ceiling on the number of subsidized in-county newspaper subscriptions.

It is my hope that because this is just a 1-year authorization and the category has been so narrowly defined, plus the fact that we have eliminated the cap, we can proceed with consideration of the amendment quickly. Both Senator WILLIAM ROTH, Chairman of the Governmental Affairs Committee, and Senator TOM EAGLETON, ranking member of the Governmental Affairs Committee, have agreed to discharge the Governmental Affairs Committee of S. 2723. They agree to this substitute language in order that we can proceed promptly will a bill so the House of Representatives may have an opportunity to pass this legislation before adjournment.

Mr. BYRD. Mr. President, I ask unanimous consent that my name be added as a cosponsor of this legislation.

The PRESIDING OFFICER. Without objection, it is so ordered.

Is there further debate on the amendment? If not, the question is on agreeing to the amendment in the nature of a substitute of the Senator from Alaska, and others.

The amendment (No. 3262) was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and the third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 2723

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the fiscal year ending September 30, 1987, the Postal Service shall restore the minimum charge per piece most recently applicable under section 3626 and former section 4358(g) of title 39, United States Code, for publications mailing fewer than five thousand copies outside the county of publication, except that such charge shall apply only to so many of such copies as are addressed for delivery within counties adjacent to the county of publication.

SEC. 2. Section 3626(g) of title 39, United States Code, is amended by adding at the end thereof the following:

"(3) In the administration of this section within any State or territory which has not organized itself into county (or parish) subdivisions, copies of a publication addressed for delivery within the entire State or territory shall be deemed addressed for delivery within the county of publication within the meaning of former section 4358(a)-(c) of this title.".

Mr. DOLE. Mr. President, I move to reconsider the vote by which the bill, as amended, was passed.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

MARITIME PROGRAM OF THE DEPARTMENT OF TRANSPORTATION AND THE FEDERAL MARITIME COMMISSION

Mr. DOLE. Mr. President, I now ask unanimous consent that the Senate turn to the consideration of Calendar No. 855, H.R. 4175, dealing with the Maritime Commission.

The PRESIDING OFFICER. Is there objection?

Mr. BYRD. There is no objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

There being no objection, the Senate proceeded to consider the bill (H.R. 4175) to authorize appropriations for fiscal year 1987 for certain maritime programs of the Department of Transportation and the Federal Maritime Commission, which had been reported from the Committee on Commerce, Science, and Transportation, with an amendment to strike out all after the enacting clause, and insert the following:

That funds are authorized to be appropriated for the use of the Maritime Administration for fiscal year 1987 as follows:

(1) for payment of obligations incurred for operating-differential subsidy, not to exceed $320,000,000;

(2) for expenses necessary for research and development activities, not to exceed $3,500,000; and

(3) for expenses necessary for operations and training activities, not to exceed $64,693,000, including not to exceed—

(A) $29,413,000 for maritime education and training expenses, including not to exceed $19,278,000 for maritime training at the Merchant Marine Academy at Kings Point, New York, $9,000,000 for financial assistance to State maritime academies, and $1,135,000 for expenses necessary for additional training;

(B) $9,566,000 for national security support capabilities, including not to exceed $8,048,000 for Reserve Fleet expenses and $1,518,000 for emergency planning operations; and

(C) $25,714,000 for other operations and training expenses.

SEC. 2. Funds are authorized to be appropriated for the use of the Federal Maritime Commission in the amount of $11,940,000 for fiscal year 1987.

SEC. 3. (a) Section 1304(g) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1295c(g)) is amended—

(1) in paragraph (1)(B), by striking "and" the second time it appears;

(2) in paragraph (1), by striking subparagraph (C) and inserting in lieu thereof the following:

"(C) paid by the Secretary for the first academic year to the individual in a lump sum of $1,200 after its successful termination and at a time during the second academic year when the individual enters into an agreement accepting midshipman and enlisted reserve status as required under paragraph (2); and

"(D) paid by the Secretary for the following academic years as the Secretary shall prescribe while the individual is attending the academy.";

(3) in paragraph (2), by striking "apply for midshipman" and substitute "accept midshipman and enlisted reserve"; and

(4) in paragraph (3)(D), by striking "to apply for an appointment as,".

(b) The amendments made by this section shall apply only with respect to individuals who commence attendance at a State maritime academy in accordance with section 1304 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1295c) after the date of enactment of this Act.

SEC. 4. Section 1103 of the Merchant Marine Act, 1936 (46 U.S.C. 1273) is amended by adding at the end thereof the following new subsection:

"(g) For the purpose of sequestration under the Balanced Budget and Emergency Deficit Control Act of 1985 (Public Law 99-177), in each fiscal year 1986 and 1987, a $325,000,000 obligation ceiling is imposed for new guaranteed loan commitments under this section. The total of guaranteed obligations may not exceed the outstanding authorized level provided in subsection (f) of this section.".

SEC. 5. The sum of $1,000,000, if available, is authorized to be reprogrammed, from the sum of $9,350,000 previously appropriated for the replacement of a State maritime academy training ship and for fuel, for the general administration and operation of the Maritime Administration for fiscal year 1987.

SEC. 6. Section 5 of the Act entitled "An Act to authorize the documentation of cer-

tain vessels as vessels of the United States, and for other purposes", approved October 7, 1980 (46 App. U.S.C. 1121-1) is amended by striking "until June 30, 1987.".

SEC. 7. Section 1303(b) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1295b(b)) is amended by striking paragraph (7) and inserting in lieu thereof the following:

"(7)(A) The Secretary may annually permit, until September 30, 1995, upon approval of the Secretary of State, up to six additional individuals from the Republic of Panama to receive instruction at the Academy, in addition to those individuals appointed under paragraphs (3), (4), (5), and (6).

"(B) The Secretary shall insure that the Republic of Panama shall reimburse the Secretary for the cost of such instruction (including the same allowances as received by cadets at the Academy appointed from the United States) as determined by the Secretary.

"(C) Any individual receiving instruction at the Academy under this paragraph shall be subject to the same rules and regulations governing admission, attendance, discipline, resignation, discharge, dismissal, and graduation as cadets at the Academy appointed from the United States.

"(8) An individual appointed as a cadet under paragraph (3), or receiving instruction under paragraph (4), (5), (6), or (7), is not entitled to hold a license authorizing service on a merchant marine vessel of the United States solely by reason of graduation from the Academy.".

The amendment was agreed to.

The amendment was ordered to be engrossed, the bill was read the third time, and passed.

AMENDMENT NO. 3263

(Purpose: To delete provision providing an obligation ceiling)

Mr. DOLE. Mr. President, I send an amendment to the committee substitute to the desk on behalf of Senator STEVENS.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Kansas [Mr. DOLE], for Mr. STEVENS, proposes an amendment numbered 3263. On page 7 strike lines 14 through 23 and redesignate subsequent sections accordingly.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from Alaska.

The amendment (No. 3263) was agreed to.

AMENDMENT NO. 3264

(Purpose: To strike section relating to instruction of citizens of the Republic of Panama, and for other purposes)

Mr. DOLE. Mr. President, I send a second amendment on behalf of Mr. STEVENS to the desk, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Kansas [Mr. DOLE], for Mr. STEVENS, proposes an amendment numbered 3264.

Mr. DOLE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 6, line 19, insert "complete" immediately after "first", and on line 20, insert "of attendance" immediately after "year".

On page 7, strike line 13 and insert in lieu thereof the following: "beginning with the entering class of calendar year 1986.".

On page 8, strike all from line 10 through line 7 on page 9:

Mr. STEVENS. Mr. President, I am offering today H.R. 4175, a bill to authorize appropriations for fiscal year 1987 for the Maritime Administration [MarAd] and the Federal Maritime Commission [FMC]. This legislation was reported without objection by the Senate Committee on Commerce, Science, and Transportation. In addition, I am offering a number of technical amendments which have been cleared by the committee.

The bill authorizes appropriations of $388,193,000 for MarAd for fiscal year 1987. This amount is consistent with the President's request, but H.R. 4175 distributes funds among programs differently than the administration's proposal so as to permit an adequate level of funding for State maritime academies.

H.R. 4175 also authorizes $11,940,000 for the FMC, and is equal to the President's budget request. In addition, it includes amendments relating to: First, the student incentive pay program; second, the Title XI Loan Guarantee Program; third, the reprogramming of previously appropriated funds to the general administration and operation account of MarAd; and fourth, the transportation of coal in the coastwise trade.

One amendment deletes section 7 as reported by the committee. Section 7 would permit up to six individuals from the Republic of Panama to attend the Merchant Marine Academy. The authority has already been granted in previous legislation and is no longer necessary.

The other amendments make technical corrections to section 3 relating to the Student Incentive Payment Program. The effective date is modified to clarify that the changes in the program do apply to the entering class of 1986 and that each participant in the program must complete a full academic year of attendance in order to be eligible for such payments.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from Alaska.

The amendment (No. 3264) was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendments to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

H.R. 4175

Resolved, That the bill from the House of Representatives (H.R. 4175) entitled "An Act to authorize appropriations for fiscal year 1987 for certain maritime programs of the Department of Transportation and the Federal Maritime Commission", do pass with the following amendment:

Strike out all after the enacting clause and insert:

That funds are authorized to be appropriated for the use of the Maritime Administration for fiscal year 1987 as follows:

(1) for payment of obligations incurred for operating-differential subsidy, not to exceed $320,000,000;

(2) for expenses necessary for research and development activities, not to exceed $3,500,000; and

(3) for expenses necessary for operations and training activities, not to exceed $64,693,000, including not to exceed—

(A) $29,413,000 for maritime education and training expenses, including not to exceed $19,278,000 for maritime training at the Merchant Marine Academy at Kings Point, New York, $9,000,000 for financial assistance to State maritime academies, and $1,135,000 for expenses necessary for additional training;

(B) $9,566,000 for national security support capabilities, including not to exceed $8,048,000 for Reserve Fleet expenses and $1,518,000 for emergency planning operations; and

(C) $25,714,000 for other operations and training expenses.

SEC. 2. Funds are authorized to be appropriated for the use of the Federal Maritime Commission in the amount of $11,940,000 for fiscal year 1987.

SEC. 3. (a) Section 1304(g) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1295c(g)) is amended—

(1) in paragraph (1)(B), by striking "and" the second time it appears;

(2) in paragraph (1), by striking subparagraph (C) and inserting in lieu thereof the following:

"(C) paid by the Secretary for the first complete academic year of attendance to the individual in a lump sum of $1,200 after its successful termination and at a time during the second academic year when the individual enters into an agreement accepting midshipman and enlisted reserve status as required under paragraph (2); and

"(D) paid by the Secretary for the following academic years as the Secretary shall prescribe while the individual is attending the academy.";

(3) in paragraph (2), by striking "apply for midshipman" and substitute "accept midshipman and enlisted reserve"; and

(4) in paragraph (3)(D), by striking "to apply for an appointment as,".

(b) The amendments made by this section shall apply only with respect to individuals who commence attendance at a State mari-

time academy in accordance with section 1304 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1295c) beginning with the entering class of calendar year 1986.

SEC. 4. The sum of $1,000,000, if available, is authorized to be reprogrammed, from the sum of $9,350,000 previously appropriated for the replacement of a State maritime academy training ship and for fuel, for the general administration and operation of the Maritime Administration for fiscal year 1987.

SEC. 5. Section 5 of the Act entitled "An Act to authorize the documentation of certain vessels as vessels of the United States, and for other purposes", approved October 7, 1980 (46 App. U.S.C. 1121-1) is amended by striking "until June 30, 1987.".

Mr. DOLE. Mr. President, I move to reconsider the vote by which the bill, as amended, was passed.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

EMPLOYMENT OPPORTUNITIES FOR DISABLED AMERICANS ACT

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate turn to the consideration of Calendar 955, S. 2209, dealing with section 1619 of the Social Security Act.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

There being no objection, the Senate proceeded to consider the bill (S. 2209) to make permanent and improve the provisions of section 1619 of the Social Security Act, which authorizes the continued payment of SSI benefits to individuals who work despite severe medical impairment; to amend such act to require concurrent notification of eligibility for SSI and Medicaid benefits and notification to certain disabled SSI recipients of their potential eligibility for benefits under section 1619; to provide for a GAO study of the effects of such section's work incentive provisions; and for other purposes, which had been reported from the Committee on Finance, with an amendment to strike out all after the enacting clause, and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Employment Opportunities for Disabled Americans Act".

SEC. 2. PERMANENT AUTHORIZATION OF PROGRAM OF BENEFITS UNDER SECTION 1619.

Section 201(d) of the Social Security Disability Amendments of 1980 (42 U.S.C. 1382h note) is amended by striking out ", but shall remain in effect only through June 30, 1987".

SEC. 3. ELIGIBILITY OF CERTAIN DISABLED OR BLIND INDIVIDUALS FOR BENEFITS DURING INITIAL TWO MONTHS IN CERTAIN INSTITUTIONS.

(a) IN GENERAL.—Section 1611(e)(1) of the Social Security Act (42 U.S.C. 1382(e)(1)) is amended—

(1) in subparagraph (A) by striking out "and (D)" and inserting in lieu thereof "(D), and (E)"; and

(2) in subparagraph (B) by inserting "(subject to subparagraph (E))" after "shall be payable"; and

(3) by adding at the end thereof the following new subparagraphs:

"(E) Notwithstanding subparagraphs (A) and (B), any individual who—

"(i)(I) is an inmate of a public institution, the primary purpose of which is the provision of medical or psychiatric care, throughout any month as described in subparagraph (A), or

"(II) is in a hospital, extended care facility, nursing home, or intermediate care facility throughout any month as described in subparagraph (B),

"(ii) was eligible under section 1619 (a) or (b) for the month preceding such month, and

"(iii) under an agreement of the public institution or the hospital, extended care facility, nursing home, or intermediate care facility is permitted to retain any benefit payable by reason of this subparagraph,

may be an eligible individual or eligible spouse for purposes of this title (and entitled to a benefit determined on the basis of the rate applicable under subsection (b)) for the month referred to in subclause (I) or (II) of clause (i) and, if such subclause still applies, for the succeeding month.

"(F) An individual who is an eligible individual or an eligible spouse for a month by reason of subparagraph (E) shall not be treated as being eligible under section 1619 (a) or (b) for such month for purposes of clause (ii) of such subparagraph.".

(b) MEDICAID STATE PLAN REQUIREMENT.—Section 1902 of the Social Security Act (42 U.S.C. 1396a) is amended by adding at the end the following new subsection:

"(l) Notwithstanding any provision of subsection (a) to the contrary, a State plan under this title shall provide that any supplemental security income benefits paid by reason of section 1611(e)(1)(E) to an individual who—

"(1) is eligible for medical assistance under the plan, and

"(2) is in a hospital, skilled nursing facility, or intermediate care facility at the time such benefits are paid,

will be disregarded for purposes of determining the amount of any post-eligibility contribution by the individual to the cost of the care and services provided by the hospital, skilled nursing facility, or intermediate care facility.".

SEC. 4. IMPROVEMENTS TO SECTION 1619 PROGRAM.

(a) CASH BENEFITS.—Section 1619(a) of the Social Security Act (42 U.S.C. 1382h(a)) is amended to read as follows:

"(a)(1) Any individual who was determined to be an eligible individual (or eligible spouse) by reason of being under a disability and was eligible to receive benefits under section 1611 (or a federally administered State supplementary payment) for a month and whose earnings in a subsequent month exceed the amount designated by the Secretary ordinarily to represent substantial gainful activity shall qualify for a monthly benefit under this subsection for such subsequent month (which shall be in lieu of any benefit under section 1611) equal to an amount determined under section 1611(b)(1) (or, in the case of an individual who has an eligible spouse, under section 1611(b)(2)), and for purposes of title XIX shall be considered to be receiving supplemental security income benefits under this title, for so long as—

"(A) such individual continues to have the disabling physical or mental impairment on the basis of which such individual was found to be under a disability; and

"(B) the income of such individual, other than income excluded pursuant to section 1612(b), is not equal to or in excess of the amount which would cause him to be ineligible for payments under section 1611 and such individual meets all other non-disability-related requirements for eligibility for benefits under this title.

"(2) The Secretary shall make a determination under paragraph (1)(A) with respect to an individual not later than 12 months after the first month for which the individual qualifies for a benefit under this subsection.".

(b) CONTINUING BENEFITS UNDER TITLE XIX.—Section 1619(b) of such Act is amended—

(1) in paragraph (1) by striking out "continues to meet" and inserting in lieu thereof "meets",

(2) in paragraph (4) by striking out "benefits under this title and title XIX" and inserting in lieu thereof "benefits under this title (including any federally administered State supplementary payments), benefits under title XIX, and publicly funded attendant care services (including personal care assistance),",

(3) by redesignating paragraphs (1) through (4) as subparagraphs (A) through (D), respectively,

(4) by striking out the matter preceding subparagraph (A) (as redesignated by paragraph (3)) and inserting in lieu thereof the following:

"(b)(1) For purposes of title XIX, any individual under age 65 who was determined to be a blind or disabled individual eligible to receive a benefit under section 1611 or any federally administered State supplementary payment for a month and who in a subsequent month is ineligible for benefits under this title (and for any federally administered State supplementary payments) because of his or her income shall, nevertheless, be considered to be receiving supplemental security income benefits for such subsequent month provided that the Secretary determines under regulations that—", and

(5) by adding at the end thereof (after and below subparagraph (D), as so redesignated) the following new paragraphs:

"(2)(A) Determinations made under paragraph (1)(D) shall be based on information and data updated no less frequently than annually.".

"(B) In determining an individual's earnings for purposes of paragraph (1)(D), there shall be excluded from such earnings an amount equal to the sum of any amounts which are or would be excluded under clauses (ii) and (iv) of section 1612(b)(4)(B) (or under clauses (ii) and (iii) of section 1612(b)(4)(A)) in determining his or her income.".

(c) REVIEW PROCESS FOR CERTAIN INDIVIDUALS.—

(1) Section 1631 of such Act (42 U.S.C. 1383) is amended—

(A) in subsection (e)(1)(A) by striking out "subparagraph (B)" and inserting in lieu thereof "subparagraph (B) and subsection (j)", and

(B) by adding at the end thereof the following new subsection:

"Application and Review Requirements for Certain Individuals

"(j)(1) Notwithstanding any provision of section 1611 or 1619, any individual who—

"(A) was an eligible individual (or eligible spouse) under section 1611 or was eligible for benefits under or pursuant to section 1619, and

"(B) who, after such eligibility, is ineligible for benefits under or pursuant to both such sections for a period of 12 consecutive months,

may not thereafter become eligible for benefits under or pursuant to either such section until the individual has reapplied for benefits under section 1611 and been determined to be eligible for benefits under such section.

"(2)(A) Notwithstanding any provision of section 1611 or section 1619, any individual who was eligible for benefits pursuant to section 1619(b), and who—

"(i)(I) on the basis of the same impairment on which his or her eligibility under such section 1619(b) was based becomes eligible for benefits under section 1611 or 1619(a) for a month that follows a period during which the individual was ineligible for benefits under sections 1611 and 1619(a), and

"(II) has earned income (other than income excluded pursuant to section 1612(b)) for any month in the 12-month period preceding such month that is equal to or in excess of the amount that would cause him or her to be ineligible for payments under section 1611(b) for that month (if he or she were otherwise eligible for such payments); or

"(ii)(I) on the basis of the same impairment on which his or her eligibility under such section 1619(b) was based becomes eligible under section 1619(b) for a month that follows a period during which the individual was ineligible under section 1611 and section 1619, and

"(II) has earned income (other than income excluded pursuant to section 1612(b)) for such month or for any month in the 12-month period preceding such month that is equal to or in excess of the amount that would cause him or her to be ineligible for payments under section 1611(b) for that month (if he or she were otherwise eligible for such payments);

shall, upon becoming eligible (as described in clause (i)(I) or (ii)(I)), be subject to a prompt review of the type described in section 1614(a)(5).

"(B) If the Secretary determines pursuant to a review required by subparagraph (A) that the impairment upon which the eligibility of an individual is based has ceased, does not exist, or is not disabling, such individual may not thereafter become eligible for a benefit under or pursuant to section 1611 or section 1619 until the individual has reapplied for benefits under section 1611 and been determined to be eligible for benefits under such section.".

(2) Section 1619 of such Act (as amended by subsections (a) and (b) of this section) is further amended—

(A) in subsection (a) by striking out "Any individual" and inserting in lieu thereof "Except as provided in section 1631(j), any individual", and

(B) in subsection (b) by striking out "For purposes of" and inserting in lieu thereof "Except as provided in section 1631(j), for purposes of".

(3) Section 1611 of such Act (42 U.S.C. 1382) is amended by adding at the end thereof the following new subsection:

"Application and Review Requirements for Certain Individuals

"(i) For application and review requirements affecting the eligibility of certain individuals, see section 1631(j).".

(d) CONFORMING AMENDMENTS.—

(1) Section 1611(e) of such Act (42 U.S.C. 1382(e)) is amended by striking out paragraph (4).

(2) Section 1614(a)(3) of such Act (42 U.S.C. 1382c(a)(3)) is amended—

(A) in subparagraph (D) by striking out ", except for purposes of subparagraph (F) or paragraph (4),", and

(B) by striking out subparagraph (F), and by redesignating subparagraphs (G) and (H) as subparagraphs (F) and (G), respectively.

(3)(A) Section 1614(a) of such Act (as amended by paragraph (2)) is further amended by striking out paragraph (4) and by redesignating paragraph (5) as paragraph (4).

(B) Section 1631(j)(2)(A) of such Act (as added by subsection (c)) is amended by striking out "section 1614(a)(5)" and inserting in lieu thereof "section 1614(a)(4)".

SEC. 5. NOTIFICATIONS TO APPLICANTS AND RECIPIENTS.

Section 1631 of the Social Security Act (42 U.S.C. 1383) (as amended by section 4) is further amended by adding at the end thereof the following new subsection:

"Notifications to Applicants and Recipients

"(k) The Secretary shall notify an individual receiving benefits under section 1611 on the basis of disability or blindness of his or her potential eligibility for benefits under or pursuant to section 1619—

"(1) at the time of the initial award of benefits to the individual under section 1611 (if the individual has attained the age of 18 at the time of such initial award), and

"(2) at the earliest time after an initial award of benefits to an individual under section 1611 that the individual's earned income for a month (other than income excluded pursuant to section 1612(b)) is $200 or more, and periodically thereafter so long as such individual has earned income (other than income so excluded) of $200 or more per month.".

SEC. 6. LOSS OF SSI BENEFITS UPON ENTITLEMENT TO CHILD'S INSURANCE BENEFITS BASED ON DISABILITY.

(a) IN GENERAL.—Section 1634 of the Social Security Act (42 U.S.C. 1383c) is amended by adding at the end thereof the following new subsection:

"(c) If any individual who has attained the age of 18 and is receiving benefits under this title on the basis of blindness or a disability which began before he or she attained the age of 22—

"(1) becomes entitled, on or after the effective date of this subsection, to child's insurance benefits which are payable under section 202(d) on the basis of such disability or to an increase in the amount of the child's insurance benefits which are so payable, and

"(2) ceases to be eligible for benefits under this title because of such child's insurance benefits or because of the increase in such child's insurance benefits,

such individual shall be treated for purposes of title XIX as receiving benefits under this title so long as he or she would be eligible for benefits under this title in the absence of such child's insurance benefits or such increase.".

(b) STATE DETERMINATIONS.—Any determination required under section 1634(c) of the Social Security Act with respect to whether an individual would be eligible for benefits under title XVI of such Act in the absence of children's benefits (or an increase thereof) shall be made by the appropriate State agency.

(c) CONFORMING CHANGE.—Section 1920(a)(2) of such Act (42 U.S.C. 1396s(a)(2)) is amended—

(1) by inserting "(A)" before "Section", and

(2) by adding after and below subparagraph (A) the following new subparagraph:

"(B) Section 1634 of this Act (relating to individuals who lose eligibility for SSI benefits due to entitlement to child's insurance benefits under section 202(d) of this Act).".

SEC. 7. MEDICAID ELIGIBILITY FOR CERTAIN RECIPIENTS OF CASH BENEFITS UNDER SECTION 1619.

(a) IN GENERAL.—Section 1619(b) of the Social Security Act (42 U.S.C. 1382h(b)) (as amended by section 4) is further amended by adding at the end thereof the following new paragraph:

"(3) In the case of a State that exercises the option under section 1902(f), any individual who—

"(A)(i) qualifies for a benefit under subsection (a), or

"(ii) meets the requirements of paragraph (1); and

"(B) was eligible for medical assistance under the State plan approved under title XIX in the month immediately preceding the first month in which the individual qualified for a benefit under such subsection or met such requirements,

shall remain eligible for medical assistance under such plan for so long as the individual qualifies for a benefit under such subsection or meets such requirements.".

(b) CONFORMING AMENDMENT.—Section 1902(f) of such Act (42 U.S.C. 1396a(f)) is amended by striking out "subsection (e)" and inserting in lieu thereof "subsection (e) and section 1619(b)(3)".

SEC. 8. EFFECTIVE DATES.

(a) PERMANENT AUTHORIZATION.—The amendment made by section 2 shall become effective on the date of the enactment of this Act.

(b) PROGRAM MODIFICATIONS.—

(1) Except as provided in paragraph (2), the amendments made by sections 3, 4, 5, 6, and 7 shall become effective on July 1, 1987.

(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the requirements imposed by the amendments made by section 3(b) and section 7 of this Act, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet such additional requirements until 60 days after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act.

The title was amended so as to read: "A bill to make permanent and improve the provisions of section 1619 of the Social Security Act, and for other purposes.".

HISTORY OF THE PROGRAM

Mr. DOLE. Mr. President, on June 9, 1980, the Social Security Disability Amendments of 1980 were signed into law. Among the provisions within these amendments was the so-called section 1619 program: special SSI benefits and a continuation of Medicaid for the working disabled. This 3-year demonstration was scheduled to cease at the end of 1983. In 1984, because

congressional action had not been finalized, the Social Security Administration continued the section 1619 program administratively under its demonstration project authority. Public Law 98-460, the Social Security Disability Reform Amendments of 1984, extended the authority of section 1619 through June 30, 1987, once again on a temporary basis.

PURPOSE OF SECTION 1619

Section 1619(a) allows SSI recipients to continue to receive SSI cash payments after they begin engaging in substantial gainful activity [SGA] up to the income disregard "break-even point", currently $757 per month plus the State supplementary payment in those States where such payment is provided. Section 1619(b) extends Medicaid coverage to individuals whose cash benefits have stopped if their continuation is needed in order to assure that the individual can continue to work.

In 1979, when I introduced this modification of the Social Security Act along with a number of my distinguished colleagues, we were responding to the desire of persons with disabilities to obtain both a measure of economic independence and dignity. We knew then, as we know now, that employment is the key factor in the successful integration of disabled adults in community life.

WHY WE NEED SECTION 1619

A report based on the recent Lou Harris survey of 1,000 disabled Americans reveals some significant, but shocking, data:

Two-thirds of all disabled Americans, between age 16 and 64, are not working.

Only one in four disabled adults work full-time.

Working disabled persons are more satisfied with life, and have better self-perceptions, than those who are nonworking.

TOWARD ECONOMIC INDEPENDENCE

There are, of course, many reasons why persons with disabilities face difficulty in entering and succeeding in the competitive work force. Legislation alone will not provide the outline for the long-term economic survival and happiness of handicapped persons throughout this country. Disabled persons are similarly disenfranchised due to: lack of appropriate training, inadequacies of our public transportation system, and the fears and attitudes of employers who fail to recognize the productive potential of handicapped applicants.

Mr. President, in 1980 we took a major step in addressing the important issue of the disincentive factor connected with the supplemental security income program. But disabled persons, their parents, and their guardians have often been reluctant to consider work under the section 1619 program because they know that it is temporary. Recent Social Security data indicates that there are currently 816 persons participating in 1619(a) and 7,954 in 1619(b). There are, however, over 2.6 million disabled SSI recipients.

Clearly section 1619 has had its positive effects but it has not lived up to our expectations or reached the number of recipients anticipated. By making this provision permanent, and by initiating several improvements in the program, increasing numbers of individuals will be able to call upon these provisions as a stepping stone to gain competitive employment.

The cost effectiveness of this program seems evident, since the high costs of Government Social Security and welfare benefits can be greatly reduced by providing work options for the disabled. While current data on the 1619 program is somewhat inconclusive, I am confident that future assessments will validate significant Federal savings due to program participation.

Persons with disabilities want to work and participate meaningfully in their society. The Employment Opportunities for Disabled Americans Act provides them a chance to reach this goal without jeopardizing their economic security or medical coverage.

Finally, Mr. President, I would like to thank both members and staff of the Senate Finance Committee and the House Ways and Means Committee for all their hard work and cooperation. Thanks should also go to the Social Security Administration for their support of this important initiative.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendments to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute.

The committee amendment was agreed to.

The bill was ordered to be engrossed for a third reading and was read the third time.

□ 1820

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of H.R. 5595, the House companion bill.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 5595) to amend title XVI of the Social Security Act to make necessary improvements in the SSI program with the objective of assuring that such program (including the work incentive provisions in section 1619 of such Act) will more realistically and more equitably reflect the needs and circumstances of applicants and recipients thereunder.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. DOLE. Mr. President, I move to strike all after the enacting clause and insert the text of S. 2209, as amended.

The PRESIDING OFFICER. Without objection, it is so ordered.

The PRESIDING OFFICER. The question is on the engrossment of the amendment and the third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time, and passed, as follows:

H.R. 5595

Resolved, That the bill from the House of Representatives (H.R. 5595) entitled "An Act to make permanent and improve the provisions of section 1619 of the Social Security Act, which authorizes the continued payment of SSI benefits to individuals who work despite severe medical impairment; to amend such Act to require concurrent notification of eligibility for SSI and medicaid benefits and notification to certain disabled SSI recipients of their potential eligibility for benefits under such section 1619; to provide for a GAO study of the effects of such section's work incentive provisions; and for other purposes", do pass with the following amendments:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Employment Opportunities for Disabled Americans Act".

SEC. 2. PERMANENT AUTHORIZATION OF PROGRAM OF BENEFITS UNDER SECTION 1619.

Section 201(d) of the Social Security Disability Amendments of 1980 (42 U.S.C. 1382h note) is amended by striking out ", but shall remain in effect only through June 30, 1987".

SEC. 3. ELIGIBILITY OF CERTAIN DISABLED OR BLIND INDIVIDUALS FOR BENEFITS DURING INITIAL TWO MONTHS IN CERTAIN INSTITUTIONS.

(a) IN GENERAL.—Section 1611(e)(1) of the Social Security Act (42 U.S.C. 1382(e)(1)) is amended—

(1) in subparagraph (A) by striking out "and (D)" and inserting in lieu thereof "(D), and (E)"; and

(2) in subparagraph (B) by inserting "(subject to subparagraph (E))" after "shall be payable"; and

(3) by adding at the end thereof the following new subparagraphs:

"(E) Notwithstanding subparagraphs (A) and (B), any individual who—

"(i)(I) is an inmate of a public institution, the primary purpose of which is the provision of medical or psychiatric care, throughout any month as described in subparagraph (A), or

"(II) is in a hospital, extended care facility, nursing home, or intermediate care facility throughout any month as described in subparagraph (B),

"(ii) was eligible under section 1619 (a) or (b) for the month preceding such month, and

"(iii) under an agreement of the public institution or the hospital, extended care facility, nursing home, or intermediate care fa-

cility is permitted to retain any benefit payable by reason of this subparagraph,

may be an eligible individual or eligible spouse for purposes of this title (and entitled to a benefit determined on the basis of the rate applicable under subsection (b)) for the month referred to in subclause (I) or (II) of clause (i) and, if such subclause still applies, for the succeeding month.

"(F) An individual who is an eligible individual or an eligible spouse for a month by reason of subparagraph (E) shall not be treated as being eligible under section 1619 (a) or (b) for such month for purposes of clause (ii) of such subparagraph.".

(b) MEDICAID STATE PLAN REQUIREMENT.—Section 1902 of the Social Security Act (42 U.S.C. 1396a) is amended by adding at the end the following new subsection:

"(l) Notwithstanding any provision of subsection (a) to the contrary, a State plan under this title shall provide that any supplemental security income benefits paid by reason of section 1611(e)(1)(E) to an individual who—

"(1) is eligible for medical assistance under the plan, and

"(2) is in a hospital, skilled nursing facility, or intermediate care facility at the time such benefits are paid,

will be disregarded for purposes of determining the amount of any post-eligibility contribution by the individual to the cost of the care and services provided by the hospital, skilled nursing facility, or intermediate care facility.".

SEC. 4. IMPROVEMENTS TO SECTION 1619 PROGRAM.

(a) CASH BENEFITS.—Section 1619(a) of the Social Security Act (42 U.S.C. 1382h(a)) is amended to read as follows:

"(a)(1) Any individual who was determined to be an eligible individual (or eligible spouse) by reason of being under a disability and was eligible to receive benefits under section 1611 (or a federally administered State supplementary payment) for a month and whose earnings in a subsequent month exceed the amount designated by the Secretary ordinarily to represent substantial gainful activity shall qualify for a monthly benefit under this subsection for such subsequent month (which shall be in lieu of any benefit under section 1611) equal to an amount determined under section 1611(b)(1) (or, in the case of an individual who has an eligible spouse, under section 1611(b)(2)), and for purposes of title XIX shall be considered to be receiving supplemental security income benefits under this title, for so long as—

"(A) such individual continues to have the disabling physical or mental impairment on the basis of which such individual was found to be under a disability; and

"(B) the income of such individual, other than income excluded pursuant to section 1612(b), is not equal to or in excess of the amount which would cause him to be ineligible for payments under section 1611 and such individual meets all other non-disability-related requirements for eligibility for benefits under this title.

"(2) The Secretary shall make a determination under paragraph (1)(A) with respect to an individual not later than 12 months after the first month for which the individual qualifies for a benefit under this subsection.".

(b) CONTINUING BENEFITS UNDER TITLE XIX.—Section 1619(b) of such Act is amended—

(1) in paragraph (1) by striking out "continues to meet" and inserting in lieu thereof "meets",

(2) in paragraph (4) by striking out "benefits under this title and title XIX" and inserting in lieu thereof "benefits under this title (including any federally administered State supplementary payments), benefits under title XIX, and publicly funded attendant care services (including personal care assistance),",

(3) by redesignating paragraphs (1) through (4) as subparagraphs (A) through (D), respectively,

(4) by striking out the matter preceding subparagraph (A) (as redesignated by paragraph (3)) and inserting in lieu thereof the following:

"(b)(1) For purposes of title XIX, any individual under age 65 who was determined to be a blind or disabled individual eligible to receive a benefit under section 1611 or any federally administered State supplementary payment for a month and who in a subsequent month is ineligible for benefits under this title (and for any federally administered State supplementary payments) because of his or her income shall, nevertheless, be considered to be receiving supplemental security income benefits for such subsequent month provided that the Secretary determines under regulations that—", and

(5) by adding at the end thereof (after and below subparagraph (D), as so redesignated) the following new paragraphs:

"(2)(A) Determinations made under paragraph (1)(D) shall be based on information and data updated no less frequently than annually.".

"(B) In determining an individual's earnings for purposes of paragraph (1)(D), there shall be excluded from such earnings an amount equal to the sum of any amounts which are or would be excluded under clauses (ii) and (iv) of section 1612(b)(4)(B) (or under clauses (ii) and (iii) of section 1612(b)(4)(A)) in determining his or her income.".

(c) REVIEW PROCESS FOR CERTAIN INDIVIDUALS.—

(1) Section 1631 of such Act (42 U.S.C. 1383) is amended—

(A) in subsection (e)(1)(A) by striking out "subparagraph (B)" and inserting in lieu thereof "subparagraph (B) and subsection (j)", and

(B) by adding at the end thereof the following new subsection:

"Application and Review Requirements for Certain Individuals

"(j)(1) Notwithstanding any provision of section 1611 or 1619, any individual who—

"(A) was an eligible individual (or eligible spouse) under section 1611 or was eligible for benefits under or pursuant to section 1619, and

"(B) who, after such eligibility, is ineligible for benefits under or pursuant to both such sections for a period of 12 consecutive months,

may not thereafter become eligible for benefits under or pursuant to either such section until the individual has reapplied for benefits under section 1611 and been determined to be eligible for benefits under such section.

"(2)(A) Notwithstanding any provision of section 1611 or section 1619, any individual who was eligible for benefits pursuant to section 1619(b), and who—

"(i)(I) on the basis of the same impairment on which his or her eligibility under such section 1619(b) was based becomes eligible for benefits under section 1611 or 1619(a) for a month that follows a period during which the individual was ineligible for benefits under sections 1611 and 1619(a), and

"(II) has earned income (other than income excluded pursuant to section 1612(b)) for any month in the 12-month period preceding such month that is equal to or in excess of the amount that would cause him or her to be ineligible for payments under section 1611(b) for that month (if he or she were otherwise eligible for such payments); or

"(ii)(I) on the basis of the same impairment on which his or her eligibility under such section 1619(b) was based becomes eligible under section 1619(b) for a month that follows a period during which the individual was ineligible under section 1611 and section 1619, and

"(II) has earned income (other than income excluded pursuant to section 1612(b)) for such month or for any month in the 12-month period preceding such month that is equal to or in excess of the amount that would cause him or her to be ineligible for payments under section 1611(b) for that month (if he or she were otherwise eligible for such payments);

shall, upon becoming eligible (as described in clause (i)(I) or (ii)(I)), be subject to a prompt review of the type described in section 1614(a)(5).

"(B) If the Secretary determines pursuant to a review required by subparagraph (A) that the impairment upon which the eligibility of an individual is based has ceased, does not exist, or is not disabling, such individual may not thereafter become eligible for a benefit under or pursuant to section 1611 or section 1619 until the individual has reapplied for benefits under section 1611 and been determined to be eligible for benefits under such section.".

(2) Section 1619 of such Act (as amended by subsections (a) and (b) of this section) is further amended—

(A) in subsection (a) by striking out "Any individual" and inserting in lieu thereof "Except as provided in section 1631(j), any individual", and

(B) in subsection (b) by striking out "For purposes of" and inserting in lieu thereof "Except as provided in section 1631(j), for purposes of".

(3) Section 1611 of such Act (42 U.S.C. 1382) is amended by adding at the end thereof the following new subsection:

"Application and Review Requirements for Certain Individuals

"(i) For application and review requirements affecting the eligibility of certain individuals, see section 1631(j).".

(d) CONFORMING AMENDMENTS.—

(1) Section 1611(e) of such Act (42 U.S.C. 1382(e)) is amended by striking out paragraph (4).

(2) Section 1614(a)(3) of such Act (42 U.S.C. 1382c(a)(3)) is amended—

(A) in subparagraph (D) by striking out ", except for purposes of subparagraph (F) or paragraph (4),", and

(B) by striking out subparagraph (F), and by redesignating subparagraphs (G) and (H) as subparagraphs (F) and (G), respectively.

(3)(A) Section 1614(a) of such Act (as amended by paragraph (2)) is further amended by striking out paragraph (4) and by redesignating paragraph (5) as paragraph (4).

(B) Section 1631(j)(2)(A) of such Act (as added by subsection (c)) is amended by striking out "section 1614(a)(5)" and inserting in lieu thereof "section 1614(a)(4)".

SEC. 5. NOTIFICATIONS TO APPLICANTS AND RECIPIENTS.

Section 1631 of the Social Security Act (42 U.S.C. 1383) (as amended by section 4) is further amended by adding at the end thereof the following new subsection:

"Notifications to Applicants and Recipients

"(k) The Secretary shall notify an individual receiving benefits under section 1611 on the basis of disability or blindness of his or her potential eligibility for benefits under or pursuant to section 1619—

"(1) at the time of the initial award of benefits to the individual under section 1611 (if the individual has attained the age of 18 at the time of such initial award), and

"(2) at the earliest time after an initial award of benefits to an individual under section 1611 that the individual's earned income for a month (other than income excluded pursuant to section 1612(b)) is $200 or more, and periodically thereafter so long as such individual has earned income (other than income so excluded) of $200 or more per month.".

SEC. 6. LOSS OF SSI BENEFITS UPON ENTITLEMENT TO CHILD'S INSURANCE BENEFITS BASED ON DISABILITY.

(a) IN GENERAL.—Section 1634 of the Social Security Act (42 U.S.C. 1383c) is amended by adding at the end thereof the following new subsection:

"(c) If any individual who has attained the age of 18 and is receiving benefits under this title on the basis of blindness or a disability which began before he or she attained the age of 22—

"(1) becomes entitled, on or after the effective date of this subsection, to child's insurance benefits which are payable under section 202(d) on the basis of such disability or to an increase in the amount of the child's insurance benefits which are so payable, and

"(2) ceases to be eligible for benefits under this title because of such child's insurance benefits or because of the increase in such child's insurance benefits,

such individual shall be treated for purposes of title XIX as receiving benefits under this title so long as he or she would be eligible for benefits under this title in the absence of such child's insurance benefits or such increase.".

(b) STATE DETERMINATIONS.—Any determination required under section 1634(c) of the Social Security Act with respect to whether an individual would be eligible for benefits under title XVI of such Act in the absence of children's benefits (or an increase thereof) shall be made by the appropriate State agency.

(c) CONFORMING CHANGE.—Section 1920(a)(2) of such Act (42 U.S.C. 1396s(a)(2)) is amended—

(1) by inserting "(A)" before "Section", and

(2) by adding after and below subparagraph (A) the following new subparagraph:

"(B) Section 1634 of this Act (relating to individuals who lose eligibility for SSI benefits due to entitlement to child's insurance benefits under section 202(d) of this Act).".

SEC. 7. MEDICAID ELIGIBILITY FOR CERTAIN RECIPIENTS OF CASH BENEFITS UNDER SECTION 1619.

(a) IN GENERAL.—Section 1619(b) of the Social Security Act (42 U.S.C. 1382h(b)) (as amended by section 4) is further amended by adding at the end thereof the following new paragraph:

"(3) In the case of a State that exercises the option under section 1902(f), any individual who—

"(A)(i) qualifies for a benefit under subsection (a), or

"(ii) meets the requirements of paragraph (1); and

"(B) was eligible for medical assistance under the State plan approved under title XIX in the month immediately preceding the first month in which the individual qualified for a benefit under such subsection or met such requirements,

shall remain eligible for medical assistance under such plan for so long as the individual qualifies for a benefit under such subsection or meets such requirements.".

(b) CONFORMING AMENDMENT.—Section 1902(f) of such Act (42 U.S.C. 1396a(f)) is amended by striking out "subsection (e)" and inserting in lieu thereof "subsection (e) and section 1619(b)(3)".

SEC. 8. EFFECTIVE DATES.

(a) PERMANENT AUTHORIZATION.—The amendment made by section 2 shall become effective on the date of the enactment of this Act.

(b) PROGRAM MODIFICATIONS.—

(1) Except as provided in paragraph (2), the amendments made by sections 3, 4, 5, 6, and 7 shall become effective on July 1, 1987.

(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the requirements imposed by the amendments made by section 3(b) and section 7 of this Act, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet such additional requirements until 60 days after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DOLE. Mr. President, I ask unanimous consent that S. 2209 be indefinitely postponed.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE. Mr. President, I ask unanimous consent that the committee-reported title amendment to S. 2209 be considered agreed to for H.R. 5595.

The PRESIDING OFFICER. Without objection, it is so ordered.

DOMESTIC VOLUNTEER SERVICE ACT AMENDMENTS—CONFERENCE REPORT

Mr. DOLE. Mr. President, I submit a report of the committee of conference on H.R. 4116 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4116) to extend the Volunteers in Service to America (VISTA) program under the Domestic Volunteer Service Act of 1973, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by all of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of October 2, 1986.)

(By request of Mr. DOLE, the following statement was ordered to be printed in the RECORD:)

● Mrs. HAWKINS. Mr. President, I urge my Senate colleagues to join me in supporting the conference report to H.R. 4116, legislation to reauthorize the Domestic Service Volunteer Act. ACTION was established in 1971 as the Federal agency for volunteer service. It has been very successful in its mission to advocate, promote, and support the voluntary efforts of citizens and public and private organizations in solving vital problems confronting the poor, the disabled, the elderly, and youth with special needs.

The VISTA Program, Volunteers in Service to America, strives to alleviate poverty by enabling individuals to perform meaningful and constructive volunteer service. VISTA volunteers direct their efforts at problems of hunger, homelessness, illiteracy, unemployment, drug and alcohol abuse, domestic violence and child abuse, and the needs of low-income seniors and the handicapped. VISTA's efforts in literacy have been particularly useful; 591 VISTA volunteers are assigned to 117 projects in 40 States to address illiteracy and illiteracy-related problems.

This conference report contains provisions which authorize the creation of a VISTA Literacy Corps. The Literacy Corps is established to foster the establishment of literacy projects in the community and help create a solid base organizational structure once VISTA assistance is ended. The conference agreement authorizes $13 million over the next 3 years for a VISTA Literacy Corps. The new authorized funding will be allocated at a level of $2 million for fiscal year 1987, $3 million for fiscal year 1988 and $5 million for fiscal year 1989. In addition, $1 million is authorized annually to fund the one-on-one tutoring provision authorized under section 109(d), but the conferees intend that these funds not be expended unless and until both the VISTA part A and the basic Literacy Corps Program authorized under 109(c) have been funded. The conferees also intend that the new Literacy Corps activities authorized under this act be used to supplement, not supplant the level of literacy services currently being undertaken by VISTA. The exception to this provision requiring that the Literacy Corps funds sup-

plement existing VISTA literacy efforts would be in a fiscal year in which the services provided under part A are reduced, then the services provided under the Literacy Corps provision could be reduced proportionately.

The Older American Volunteer Programs, which include Senior Companions, Foster Grandparents, and the Retired Senior Volunteer Program, provide opportunities for older citizens to utilize their skills and talents while serving their communities. Last year over 400,000 older volunteers served the ill, the frail, the isolated elderly and the young people who are emotionally, mentally, or physically disabled.

The conference agreement includes a significant expansion of the Foster Grandparent and Senior Companion Programs. The conferees have agreed to permit individuals who do not meet the income criteria for these two older American volunteer programs if they are willing to serve without stipend. The agreement contains several provisions designed to ensure that this authority does not divert financial resources away from the low-income volunteer who serves with a stipend. The authority is available only in those communities where the option of volunteering through a Retired Senior Volunteer Program [RSVP] is not available. The decision to utilize volunteers serving without stipend is completely up to the director of the local volunteer program and the program cannot be penalized for their decision not to utilize such volunteers. The conference agreement directs that additional administrative costs associated with the volunteers serving without stipend come from the director's gift fund, section 224 contributions in excess of the required match or contributions from the volunteers; and not from Federal appropriations.

During the conference between the House and the Senate, it was agreed to delete the provisions in the Senate bill which reauthorized the National Voluntary Service Advisory Council. Although the conference report is silent on this issue, there was widespread agreement on the part of both House and Senate conferees that any advisory council for the agency that is created pursuant to section 9(c) of the Federal Advisory Committee Act, have membership that includes individuals who have served as volunteers as well as individuals who have been served by programs and projects funded by ACTION.

The conference agreement amends currently law regarding evaluations by the ACTION agency. The conferees have agreed to require these evaluations every 3 years instead of every 2 years. The conference agreement does call for two new evaluations. The first is an evaluation of the impact of the new provisions regarding volunteers serving without stipend on the older American volunteer programs. That evaluation is intended to be carried out in conjunction with the ongoing evaluation of the older American volunteer programs. The second evaluation relates to impact of volunteer services on frail and disabled elderly. This evaluation, which was first suggested by the Senator from Ohio [Mr. GLENN] was agreed to by the House conferees with the understanding that the evaluation is dependent upon the availability of sufficient appropriations and not disrupt ongoing evaluations.

Mr. President, the final conference document on H.R. 4116, does not include a provision suggested by Representative MCCANDLESS. The issue that Representative MCCANDLESS sought to address by his amendment is a valid one. I agree that institutionalized mentally retarded adults could benefit from the services provided by Foster Grandparents. Indeed, in 1984, the Congress enacted provisions that permitted Foster Grandparents to continue to serve mentally retarded clients who passed their 21st birthday while enrolled in the program. My objection to the amendment and the modifications that were suggested during conference is that it expands the eligible pool of individuals who could be served by the Foster Grandparent Program without providing additional funding for these services. Today there are many children in need, including mentally retarded children, who desire a foster grandparent who we are unable to serve because of limited financial resources. As much as I would like to expand the Foster Grandparent Program so that their services are available to mentally retarded adults, I am not willing to divert services from children. However, I believe that Representative MCCANDLESS has raised a very important issue that we need to pursue. I plan to hold hearings on this issue in the 100th Congress to explore ways in which we can expand services without diverting resources from children in need.

Mr. President, I want to take this opportunity to praise the efforts of our hard working staffs. Because this is the closing days of the 99th Congress, we are considering a variety of important bills. The same Members who were conferees on this bill, were also conferees on the Higher Education Act, the Rehabilitation Act Amendments, or the Job Training Partnership Act Amendments. Our staff members have labored long into the night in order to develop this conference agreement. In particular I would like to thank Nancy Taylor, Betsy Brand, and Robin Rushton of the majority staff; and Marsha Renwanz, Tom Rollins, Debbie Curtis, Marilyn Yeager, and Judy Wagoner of the minority staff of the Senate Labor and Human Resources Committee. The staff representing the House conferees, especially Susan Wilhelm, Gray Garwood, Carol Lamb, and David Esquith, also deserve our thanks for developing a conference agreement that makes significant reforms in the Domestic Volunteer Service Act.

Mr. President, I urge my colleagues to support the conference agreement on H.R. 4116.●

Mr. HATCH. Mr. President, I appreciate the opportunity to voice my support for H.R. 4116, the reauthorization of the Domestic Service Volunteer Act. I especially want to express my appreciation to Senator HAWKINS, chairman of the Subcommittee on Children, Families, Drugs and Alcoholism for her leadership on this issue.

This legislation makes some innovative and creative adjustments that improves the ACTION Agency's ability to broaden its scope of volunteer work and I urge all my Senate colleagues to join me with their support.

Let me point out some of the minor changes in the productive local programs supported by the ACTION Agency. The Older American Volunteer Programs have been strengthened by providing opportunities for older citizens to utilize their skills and talents to serve their communities. The Foster Grandparent and Senior Companion Programs have been expanded and will allow individuals who do not meet the income criteria to serve without a stipend but will also insure that this authority does not divert financial resources away from the low-income volunteer who serves with a stipend. This authority is only available to those communities where the option of volunteering is not available and is discretionary to the director of the local volunteer program.

In addition, the conferees have agreed to require two new evaluations. The first will study the impact of the provision to allow volunteers to serve without a stipend and the second will evaluate the impact of volunteer services on frail and disabled elderly. It is the conferees' intention that these new evaluations not disrupt ongoing evaluations and be contingent upon the availability of sufficient appropriations.

The VISTA Program has been improved by providing for a Literacy Corps that will supplement the level of literacy services currently being provided by VISTA. VISTA volunteers will continue to work in communities to help reduce poverty in America.

Senator HAWKINS and her staff are to be commended for their efforts to improve these programs. I want to particularly recognize the staff work done by Robin Rushton, counsel to the subcommittee. I also appreciate

the fine work done by all those who worked in conference.

Again Mr. President, I ask and urge my colleagues to recognize our efforts to improve these programs and support the conference agreement on H.R. 4116.

Mr. GRASSLEY. Mr. President, I am pleased to see that the committee of conference on H.R. 4116, the Domestic Volunteer Service Act Amendments of 1986, have reached an agreement on this important legislation.

While this measure was under consideration in the Senate Committee on Labor and Human Resources, much discussion revolved around the wisdom of expanding the Foster Grandparent and Senior Companion Programs to include nonstipended, non-low-income volunteers. I believe that it is important to provide volunteer opportunities to all those wishing to serve our elderly, and youngsters with special needs, the disabled, and those in poverty. However, I proposed in committee and the committee accepted, that evaluations be conducted to determine the impact of enrolling nonstipended volunteers on the clients whom they serve, and on the low-income, stipended volunteers. I believe that such evaluations are vital to ensure the integrity of these worthwhile programs. I commend my colleagues for agreeing to expand the Foster Grandparent and Senior Companion Programs to include a large pool of untapped volunteers, while setting into place a mechanism to make sure that all volunteers, whether stipended or nonstipended, are treated equitably, and that the client population continues to receive services of high quality.

Mr. QUAYLE. Mr. President, I rise in support of the conference report to accompany H.R. 4116, the Domestic Volunteer Service Act Amendments of 1986. This legislation will extend for an additional 3 years important Volunteer Programs under the ACTION Agency.

Programs administered by ACTION include the Volunteers in Service to America [VISTA] Program and the Older American Volunteer Programs—which include the Foster Grandparent Program [FGP], the Senior Companion Program [SCP], and the Retired Senior Volunteer Program [RSVP].

ACTION Programs are directed toward reducing poverty, helping the physically and mentally disabled and assisting with a variety of other community service activities. They also support demonstration projects testing and promote voluntarism in the public and private sectors.

Probably the best known program under ACTION is the Foster Grandparent Program which is designed to provide part-time volunteer opportunities for low-income persons, age 60 years or older, to provide supportive services to children with physical, mental, emotional, or social disabilities. Foster grandparents are placed with nonprofit sponsoring agencies such as schools, hospitals, day care centers, and institutions for the mentally or physically handicapped.

The Senior Companion Program provides basically the same services for the frail elderly and enables low-income elderly to help others less fortunate with small tasks and to provide companionship.

One of the major changes in the ACTION Program made by H.R. 4116 is to permit the Director of ACTION to enroll nonstipended volunteers in the Foster Grandparent Program and the Senior Companion Program. This change would allow older individuals who do not meet the income criteria to be enrolled in these programs if there is no Retired Senior Volunteer Program in that community or if the RSVP does not serve the frail elderly or disadvantaged children.

The bill contains several provisions to ensure that the nonstipended volunteers will neither adversely affect the low-income stipended volunteers nor limit the success of these programs. It also prohibits Federal appropriations from being diverted to pay for any administrative expenses associated with the supervision of the nonstipended volunteer and prohibits using participation in this program as a criteria for a subsequent grant award.

Additional language in the bill prohibits nonstipended volunteers from receiving a stipend or reimbursement for expenses other than transportation or other out-of-pocket expenses. Furthermore, nonstipended volunteers cannot replace stipended volunteers in any program or project.

With these protections, I believe that permitting nonstipended volunteers to serve in the FGP and SCP will strengthen both programs. Many older citizens are anxious to become part of these volunteer programs, but some are denied the chance to serve because they are not classified as low-income. With the budgetary restrictions on the funding for many programs, the new changes in H.R. 4116—allowing nonstipended individuals to serve as foster grandparents or as senior companions—will not adversely affect the quality of the existing FGP's, or SCP's, but will add to the number of committed and hard-working volunteers.

Volunteers are at the heart of many successful and necessary community programs. I am confident that there are many individuals who would want to serve in the ACTION Program but have, until now, been excluded because they did not meet the low-income eligibility criteria. Our communities have so many needs and it only makes sense to open these programs to all who want to volunteer to help others.

H.R. 4116 also creates a VISTA Literacy Corps and encourages projects to address the problem of illiteracy in our Nation. The Literacy Corps would supplement on-going local and State efforts and would place volunteers in projects in schools, libraries, community centers, and job training sites. This new emphasis in the VISTA programs underscores the Federal commitment to the elimination of illiteracy.

Finally, this bill does contain modest increases in the authorization levels for the Foster Grandparent and Senior Companion Programs, ensures that the VISTA programs will be maintained at their current service hours level, with slight increases.

H.R. 4116 is a balanced bill, with important changes to improve and expand the volunteer programs in our Nation. I urge my colleagues to support the conference report to accompany the Domestic Volunteer Service Act Amendments of 1986.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The conference report was agreed to.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

THE DRUG BILL

Mr. LEVIN. Mr. President, will the majority leader yield?

Mr. DOLE. I am happy to yield the floor.

Mr. LEVIN. The majority leader indicated that he expects the drug bill to be coming over tomorrow.

Mr. DOLE. It has arrived. As I understand it, it is in the Chamber.

Mr. LEVIN. Does the Senator hope to dispose of the drug bill tomorrow? When I heard that, I thought in all fairness I should let the majority leader know that there is a number of people on both sides of the aisle who would want to debate that bill, once we know what is in it, based on what we understand. So I doubt very much that that bill can be disposed of in 1 day. A number of changes have been made, according to what we read. In all candor, I must let the majority leader know that there could be lengthy debate on that bill.

Mr. DOLE. We are in the process, I say to the Senator from Michigan, of going through it page by page—it is over 700 pages—lookng at the changes between the House-amended version and the Senate-passed bill, and we will have that information available tomorrow.

□ 1820

If that were the case, if it did take, it would probably mean we would be here on Friday. That would be the only change.

Mr. LAUTENBERG. Will the majority leader yield for another question?

Mr. DOLE. I am happy to yield.

SUPERFUND

Mr. LAUTENBERG. I was not here and I do not know any mention was made of the Superfund action. The conference report, I believe, was acted upon in the House today.

Everybody is aware of the fact that there is a veto threat pending.

I wonder whether the majority leader has found out anything that would indicate to the contrary or, if not, what possibilities exist for consideration of that in terms of the Senate having an opportunity to act on it if there is a veto.

Mr. DOLE. I must say I have no information on that. It would be my hope the President would sign the bill, and I indicated that privately and publicly. I know other Senators are circulating a letter, I think some 70 or more Senators and a number of House Members, indicating that wish.

The House did take action on the conference report today. I am not certain it has gone to the White House.

If the President does intend to veto it, I hope he would do so quickly so we would have time to respond to that veto before we leave here hopefully on next Wednesday.

Mr. LAUTENBERG. I am sure the majority leader is aware there is a letter initiated by myself and the senior Senator from California directed to the majority leader requesting that perhaps the Senate stay in pro forma until disposal is made by the President of the Superfund bill so we can act to override.

I am encouraged by the majority leader's further declaration that he is encouraging the signing of that bill, but this is just to alert the majority leader to the fact that the letter is on its way and a lot of our colleagues are signing it encouraging us to be here in the event of a veto.

Mr. DOLE. Again, I have not spoken directly to the President, but in my contacts, it is my understanding there may be some flexibility. If there were some assurances from certain Members of Congress on not increasing the amount next year and the next year and the next year, then I think that would certainly have a bearing on whether or not it should be signed. I hope those assurances could be given.

Mr. LAUTENBERG. I have one other question of the majority leader. Was Monday scheduled for votes after sundown? Was that suggested?

Mr. DOLE. It is virtually certain there will be no Monday session.

Mr. LAUTENBERG. I thank the leader.

Mr. BYRD. Mr. President, the continuing resolution that will be coming over from the House was a stripped-down one late today. It would provide only funds for tomorrow.

Mr. DOLE. Tomorrow and Friday, to Friday midnight.

Mr. BYRD. If the Senate were out until next Tuesday with the House, presumably, what about the days of Saturday, Sunday, and Monday, with Monday being a legal holiday. Is it presumed that there would be no CR necessary to prepare for the operation of Government during that weekend and the holiday?

Mr. DOLE. As I understand, there is an opinion that if we would be in, the Government could function through the weekend. I do not know what we would do on Tuesday. It would be my recommendation that if it is obvious that we are not going to complete our work Friday midnight before we leave here, and it now appears it may not be until Friday, if we extend that CR, and we will have another CR until Wednesday midnight the following week.

Mr. BYRD. I thank the majority leader.

Mr. DOLE. Mr. President, I understand there is one additional minor item we can take care of now, House Joint Resolution 749.

Mr. BYRD. All right.

HAND ENROLLMENT OF CERTAIN ITEMS

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate now turn to the consideration of House Joint Resolution 749 calling for the hand enrollment of certain items.

The PRESIDING OFFICER. The joint resolution will be stated by title.

The assistant legislative clerk read as follows:

A joint resolution (H.J. Res. 749) waiving the printing on parchment of certain enrolled bills and joint resolutions during the remainder of the second session of the Ninety-ninth Congress.

There being no objection, the Senate proceeded to consider the joint resolution.

The PRESIDING OFFICER. The joint resolution is before the Senate and open to amendment. If there be no amendment to be offered, the question is on the third reading and passage of the joint resolution.

The joint resolution (H.J. Res. 749) was ordered to a third reading, was read the third time, and passed.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the joint resolution was passed.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

HUMAN RIGHTS RESOLUTION

Mr. SIMON. Mr. President, will the majority leader yield?

Mr. DOLE. I yield.

Mr. SIMON. Mr. President, I understand we may have a human rights resolution here shortly.

Mr. DOLE. That is in process. We have one drafted. I am not certain it has been cleared.

Mr. SIMON. I see. So it may come up tomorrow.

Mr. DOLE. I hope it will come up this evening rather than leaving it to 9 o'clock in the morning. I believe it will. I hope it would be satisfactory to the minority leader, the Senator from Illinois, and others.

Mr. SIMON. If the majority leader has no objection, I have just received a copy of it here and if I could just take 3 minutes right now.

Mr. DOLE. I believe it is in the clearance process. If we can clear it on both sides, I am certain we can take it up later this evening.

Mr. SIMON. I am sure there will be no objection.

I simply want to say I think it is important that the Senate go on record in this regard and that somehow we have to move ahead in this area of human rights. It is an area that is bad public relations for the Soviets. It denies people just simple human dignity.

If I can just give a personal illustration. Within the last 24 hours, we have had two couples, married Illinois citizens, who have been reunited. One of them is here in Washington now, Roman Kuperman is here with his wife and baby. He was not able to be here when his baby was born. We gave him his first hamburger in our office today. I do not know if it was good Texas meat, Mr. President, or not. It may have been from Kansas or West Virginia. I hope it was from Illinois.

But Fran Pergericht and her husband, Roman Kuperman, had to go through this misery for 5 years for no reason whatsoever.

The other case is Simon Levin. Yesterday he saw his 9-year-old son for the first time. You know, governments should not stand in the way of people getting together and the Soviet policy is just not humanitarian. It is bad public relations for them.

I just hope we can move ahead in this whole human rights area.

Mr. RIEGLE. Will the Senator yield before he moves off that topic?

Mr. SIMON. I am pleased to yield to my colleague.

Mr. RIEGLE. I thank the Senator from Illinois.

Mr. President, I wish to thank the Senator from Illinois for the important leadership he has been giving to families that have been separated, where we have family members in the Soviet Union that have been kept in

by the government who, in the past, has prevented these families from being reunited.

The family you just mentioned, the Simon Levin family, is one that has a particular meaning to me, as you know, because several years ago, when I had the chance to be in the Soviet Union, I met with Mrs. Levin at that time and I met the young son who is now 9 years old, Mark, who the father had never seen.

I met with the mother and son that night in a hotel room in Moscow and we talked about the terrible heartache of the son having never known the father, the father having never had a chance to see his son. And all these years of forced separation came to an end today when I saw on the morning news that she had gotten out with the son and they had met in Vienna, I believe it was.

Mr. SIMON. That is correct.

Mr. RIEGLE. And they are coming now to the United States.

So that is a wonderfully happy ending of this story of separation and the beginning of their lives together.

I think two points occur to this Senator. One is, I, for one, am very appreciative that this family has been reunited. I feel, after sending numerous letters and communications and delivering a letter in person to Chairman Andropov, who was in charge at that time in the Soviet system, that I appreciate the fact that these appeals have finally been heard and this individual family has been reunited. So I am grateful for that and I appreciate that decision by the Soviet authorities.

By the same token, we have many other families who are still separated by virtue of official decision. I hope that in due course we could see a similar decision made in those cases to allow those families to be reunited. I think it is essential that be done. I think it helps the relationships on a bilateral basis when that is done.

I hope we would see other examples of this forthcoming in addition to the Orlov case and others that are currently in the news. Hopefully, we will see that day arrive sometime quite soon.

I thank the Senator for yielding.

Mr. SIMON. I thank my colleague from Michigan. Let me also commend him for his interest and concern in this whole area.

If this weekend the President and Secretary Gorbachev were to sign an arms agreement—and I recognize that is not going to happen—but even if it should, there is so much distrust and misunderstanding between our two people, it is doubtful how long it could last.

Now, I hope we can move ahead with an arms control agreement. But we also have to build understanding and trust between our two people. And every time they keep two people who are married—and with Simon Levin, I had the same experience. Here you and I, strangers, really, were walking in, seeing his son, being with his son, and Simon Levin would show me pictures of his son but never had seen his son. Well, that just should not happen.

Let me add, there is one other case that I think my colleague from Michigan, as well as my colleague from Maryland, Senator SARBANES, are aware of.

Naum Meiman is now 75 years old. His wife has had four cancer operations. His wife's name is Inna. He is now the only survivor of the Helsinki watch group still in Moscow. He has asked to emigrate. They want to come back to the West so that his wife can get decent cancer treatment.

It is a small gesture for the Soviets to let them go. I hope they will do it.

I understand we are about ready for the resolution. I hope we pass this resolution which goes beyond simply the human rights issue. It goes to Afghanistan and there are a couple of other issues on which I am in agreement with the resolution, also. But I am pleased the leadership on both sides is sponsoring this. I know that it has the unanimous support of all Members of the Senate.

Mr. SARBANES. Will the Senator yield briefly?

Mr. SIMON. I am pleased to yield to my colleague from Maryland.

Mr. SARBANES. Mr. President, I want to commend the Senator from Illinois for his leadership in this area. I, like many of my colleagues here in the Senate and also our colleagues in the House, have met with separated families and have been deeply touched by just the human dimensions of this problem. The Senator from Illinois has strongly emphasized that. He has achieved notable success in reuniting a number of families. The effort continues.

I join with him in making the very basic point that the Soviet Union ought to respond to what are the most basic of humanitarian concerns. After all, family is, in itself, a significant Russian tradition, as well, and they should understand, and, I think, in instances do understand, the importance of bringing these families together.

I am pleased that is going to be an item on the agenda, as the President has indicated, when he meets the General Secretary in Iceland.

□ 1830

I think it should be on the agenda and I think it is part and parcel of any effort at improving the relationships between the countries and needs a response in the area of human rights which, after all, goes to fundamental questions of basic human values and basic human decency.

I commend the Senator for his effort.

Mr. SIMON. Mr. President, I thank my colleague from Maryland. I appreciate his leadership in this area, also. I think it is important that we adopt this resolution so that there is no misunderstanding on the part of the Soviet leadership that the American people, as embodied in this Senate, want to make clear our united stand on this issue.

I thank the leadership on both sides for moving ahead on this. I believe the majority leader wants to speak at this time, so I yield back the floor.

The PRESIDING OFFICER. The majority leader.

Mr. DOLE. Mr. President, I thank my colleagues who have spoken on this issue. I understand that the resolution has been cleared and that it is being offered in a bipartisan way, as it should be, by myself and the distinguished minority leader, Senator PELL, Senator SIMON, and Senator BOSCHWITZ, Senator CHAFEE, and we are attempting to contact Senator LUGAR. I assume there are other Members who wish to cosponsor the resolution.

SUPPORT OF THE PRESIDENT'S AGENDA AT REYKJAVIK, ICELAND

Mr. DOLE. Mr. President, I send the resolution to the desk and ask for its immediate consideration. I also ask unanimous consent that it be read.

The PRESIDING OFFICER. Is there objection? Without objection, the resolution will be stated.

The assistant legislative clerk read as follows:

A Senate resolution (S. Res. 502) supporting the President's intention to include arms control, human rights and regional issues as priority items on the agenda at the pre-summit meeting in Reykjavik, Iceland, October 11-12.

S. RES. 502

Whereas President Reagan and Soviet General Secretary Gorbachev have agreed to meet in Reykjavik, Iceland, on October 11 and 12 for a meeting preparatory to a hoped for U.S.-Soviet summit;

Whereas both sides have indicated arms control will be one principal focus of the Reykjavik discussions;

Whereas President Reagan has also expressed his determination to pursue aggressively in Reykjavik questions of Soviet violations of human rights and regional conflicts;

Whereas the Soviet Union continues to violate the basic human rights of its citizens and other people within Soviet territory, by refusing emigration to hundreds of thousands of its citizens; imprisoning political and religious dissidents; inhumanely preventing the reunification of divided couples and divided families; restricting access to medical care outside the Soviet Union for seriously ill Soviet citizens; and other ongoing human rights violations;

Whereas these actions of the Soviet Union violate internationally recognized standards of humane conduct and international agree-

ments to which the Soviet Union has agreed, including the Helsinki Final Act of 1975, the International Covenants on Human Rights of 1973 and the United Nations Universal Declaration of Human Rights of 1948;

Whereas the Soviet Union continues to interfere in the sovereign internal affairs of Afghanistan and other nations around the world: Now therefore be it

Resolved, That the Senate:

(1) Offers its support and best wishes to the President as he prepares for his meetings with General Secretary Gorbachev in Reykjavik.

(2) Endorses the President's stated intention to pursue aggressively with General Secretary Gorbachev the major issues in contention between the United States and the Soviet Union, to include human rights and regional conflicts, as well as arms control.

(3) Specifically encourages the President to:

(a) Pursue the full range of arms control questions now being negotiated with the Soviet Union, so as to maximize the prospects for progress on these matters, consistent with the national security needs of the nation, in the forseeable future;

(b) Emphasize to General Secretary Gorbachev the importance of demonstrable progress in Soviet adherence to internationally recognized standards of human rights, as an important element of overall U.S.-Soviet relations; and

(c) Press for an end to Soviet aggressive behavior around the world and for the prompt removal of Soviet combat forces from Afghanistan.

Mr. DOLE. Mr. President, I believe the resolution speaks for itself and requires no lengthy explanation. I would like to add the distinguished chairman of the Foreign Relations Committee [Mr. LUGAR] as a cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE. It does offer the support and best wishes of the Senate to the President as he prepares for his Reykjavik meetings with Secretary General Gorbachev. It puts the Senate firmly on record in support of the President's determination that this not be a one-issue summit.

MANY ISSUES ON PRESIDENT'S AGENDA

Arms control issues will be one focus of the Reykjavik meetings, as they should be. We all hope that the two leaders will be able to find a formula for bringing us closer together on at least some of these issues, without compromising our own national security needs. That is one important reason for holding this presummit.

But it is not the only reason. We have a great many other things on our agenda, especially human rights matters and regional conflicts such as Afghanistan. The President had pledged to bring up these issues prominently in his talks with Gorbachev. Strong support for this resolution should help convince Gorbachev that the President speaks for a united and determined country on these issues.

HUMAN RIGHTS CONCERNS

Human rights concerns are at the core of our problems with the Soviet Union. Until Soviet performance on these matters dramatically improves, our overall relations with Moscow will continue to be seriously and adversely affected. Fundamental principles and human lives are at stake. Moreover, until the Soviets display a willingness to meet minimum international standards of humane conduct, and to live up to their word and their signature on the many international agreements on human rights they have signed, it is hard to argue that any other international commitments they make, or other agreements they sign, have much value.

SOVIET AGGRESSION THREATENS WORLD PEACE

Similarly, the President is determined to press Gorbachev hard on the matter of Soviet aggression and adventurism around the globe, which threatens U.S. interests and regional and world peace. Afghanistan is the prime case in point. Until the Soviets reverse their reckless course—a course which has taken them from invasion, to occupation, to the savage butchery of a people and a culture—then there will be no peace in Afghanistan and no security for any of the countries in that region. Until the Soviets stop their support of aggression and subversion elsewhere around the globe—in Southeast Asia, the Middle East, southern Africa and Central America—then we are not going to be able to achieve any broad, permanent reduction of tensions or find any path to a more secure future for us all.

These are the messages of this resolution, and the messages that I know the President intends to take with him to Reykjavik. I urge all Senators to signal support for the President and endorsement of these themes by cosponsoring and voting for this resolution.

Mr. BYRD. Mr. President, I join with the distinguished majority leader, and all of the other 98 Senators, in urging support for this resolution. There will not be a rollcall vote on it, but this resolution is unanimously supported by the Senate.

This resolution emphasizes the high priority the Senate assigns to there being a full discussion at the Iceland summit of all the major issues which divide the two superpowers: arms control, regional conflicts such as Afghanistan, and human rights. Since the President's stated summit priorities mirror those expressed by the Senate in this resolution, this measure further strengthens the President's hand as he meets Soviet General Secretary Gorbachev.

In essence, this measure says to the President, "Mr. President, just remember that there are 100 Senators, Republicans and Democrats, sitting there with you, on your side of the table, as you look across at Mr. Gorbachev. There are 100 Senators—representing 240 million Americans of all ages, from all walks of life, and of all races, and representing all the 50 States of this great Nation—there supporting you. You are not there alone. You are not there just with your contingent from the White House, your department heads; you have 100 Senators and the American people with you there. So keep that in mind."

Senator SIMON is to be commended for his role in focusing the Senate's attention on the importance of human rights matters as part of the summit framework. He authored the original resolution which is the foundation for the human rights provisions of the measure now before us, and he coordinated the difficult effort to obtain 44 cosponsors to that original legislation.

The Senator from Illinois is an outspoken and effective champion of human rights, and he continues to be a leader in organizing American criticism against the injustices and repression which comprise the abysmal, Soviet human rights record.

The resolution now before us condemns Soviet human rights abuses and urges the President to emphasize to General Secretary Gorbachev the importance of demonstrable progress in Soviet adherence to internationally recognized standards of human rights.

Mr. President, the presummit meeting this weekend in Iceland comes at a time when real progress is due in the United States-Soviet relationship.

This meeting is an opportunity for the leaders of the two superpowers to put behind them the tensions caused by the unjustified Soviet detention of journalist Nicholas Daniloff. It is an opportunity for President Reagan and General Secretary Gorbachev to promote peace by making progress to narrow that differences between the United States and the Soviet Union.

Both leaders bear a heavy responsibility to make such progress, a responsibility made more burdensome by certain political constituencies in each country which oppose improvement in United States-Soviet relations under any circumstances.

The desire for reasonable resolutions to the differences between the United States and the Soviet Union is shared by the vast majority of Americans.

Mr. President, when the President succeeds at a summit meeting in advancing the cause of peace, and succeeds in helping to resolve the differences between the United States and the Soviet Union, all Americans benefit. Not only do all Americans benefit, but when the President carries this message to Reykjavik and looks across the table at the General Secetary, Mr. Gorbachev, and knows that he has the firm, solid support of 100 Senators and Members of this Congress and of the

American people, it also helps those who are detained in the Soviet Union, and it helps the people in Afghanistan and other countries whose human rights are also being taken away, who are being deprived of their homes, who are being driven out of their homelands, who are seeing their families perish, who are seeing a scorched earth policy implemented by the Soviet Union. Can you imagine that—in this day and time at nearly the close of the 20th century—what we see occurring in Afghanistan? Children are being boobytrapped by toys dropped from the air. Is that the Soviet style of disarmament—children with arms blown off from picking up boobytrapped toys?

Mr. President, the President of the United States goes to the Iceland summit with full moral support, knowing that he is right, and there is no much strength in the knowledge that one is right.

Mr. President, all Americans want to see the President succeed, and he goes with our best wishes.

Again, I compliment the Senator from Illinois, the majority leader, and all Senators who have joined in cosponsoring this resolution. I yield the floor.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution (S. Res. 502) was agreed to.

Mr. DOLE. I move to reconsider the vote by which the resolution was agreed to.

Mr. SIMON. I move to lay that motion on the table.

The PRESIDING OFFICER. The motion to lay on the table was agreed to.

Mr. DOLE. Mr. President, I ask that a number of additional Senators be listed as cosponsors and I will provide that list.

There being no objection, the list of additional cosponsors was ordered to be printed in the RECORD, as follows:

Senators Abdnor, Armstrong, Boschwitz, Broyhill, Chafee, Danforth, Domenici, Durenberger, Gorton, Gramm, Grassley, Hatch, Hawkins, Hecht, Heinz, Helms, Humphrey, McConnell, Moynihan, Murkowski, Nickles, Pressler, Quayle, Sarbanes, Specter, Symms, Thurmond, Trible, and Wilson.

INTERNATIONAL NEGOTIATIONS TO PROTECT THE OZONE LAYER

Mr. CHAFEE. Mr. President, on June 10 and 11 of this year the Subcommittee on Environmental Pollution held hearings on the issues of ozone depletion, the greenhouse effect and climate change. We heard from a distinguished panel of scientists who delivered their message with remarkable clarity and unanimity.

Their message, and the conclusion I have come to after reviewing other sources, is this: The continued use of chlorofluorocarbons [CFC's] is likely to lead to depletion of the Earth's protective stratospheric ozone layer. The effects of this depletion will strike at the very core of everyone's health and environmental well-being. I do not mean just the health of all Americans. I mean the health of everyone on this Earth. Increased skin cancers, suppression of the immune response system, reduced crop yields, and loss of aquatic species are just some of the dangers that lie ahead if we fail to act.

In the few months since those hearings, the news from the scientific community has only added to my concern. More sophisticated computer models of our atmosphere show that future depletion at latitudes that include the northern United States and much of Europe. In addition, preliminary data from a NASA satellite shows that a hole may also be occurring over the Arctic during the spring season—similar to but smaller than the one known to exist over the Antarctic—and a small but significant reduction in global stratospheric ozone levels may have occurred during the past several years.

While we recognize that many scientific uncertainties remain, we must also recognize our responsibility to act in a prudent manner to safeguard the well-being of our planet and its inhabitants.

In has now been over 12 years since the first warning about the dangers of CFC's and ozone depletion. A considerable body of scientific evidence has reinforced that warning. Do we continue to expand our reliance on CFC's while we wait for even more evidence, further placing in jeopardy the very future of our planet, or do we act now to safeguard the ozone layer for our and future generations?

Given the magnitude of the health and environmental risks involved, a plan that leads to the eventual elimination of ozone-depleting chemicals from global commerce is the only acceptable solution. Limited growth or maintenance of current levels of use are unacceptable.

Efforts to preserve our ozone layer transcend narrow interests. It does not apply just to certain sections of the United States or indeed to the United States. It applies to the whole world. We must all accept responsibility for preserving our Earth's basic life support systems.

Now, where do we as Americans find CFC's? Well, we used to find them in aerosol cans but the CFC's have been taken out of them. Where we find CFC's now is in refrigeration units, whether it be in our refrigerators or air conditioners in our automobiles, homes, business firms and factories. We also find them being used as solvents to clean computer chips and as a foam blowing agent. Even those fancy new egg cartons and MacDonald hamburger containers are made with CFC's.

What actions are being taken to limit the global use of ozone-depleting CFC's? Substantial progress has recently occurred within the United States and abroad. For example, in late July 1986, the Senate ratified the Vienna Convention for the Protection of the Ozone Layer. This framework treaty provides a basis for negotiations of specific measures to limit CFC emissions.

Recent statements by the trade group representing producers and users of CFC's suggest that they are increasingly aware of the risks from continued use of these chemicals and are willing to accept some form and level of limits.

Environmental groups and the public have also grown more aware of these risks and more vocal in their call for action.

Because of the global nature of this problem, any final solution will require the involvement of all nations.

This is not a U.S. problem. This is not a Western Europe problem. This is not an industrial nation problem. It is a global problem.

Negotiations begin on December 1 of this year under the auspices of the United Nations Environment Program. Thank goodness we have this part of the United Nations. The United States must continue its strong leadership role in pressing for a strong protocol which leads to the eventual phaseout of fully halogenated CFC's.

My preference, of course, is for the nations of the world to reach such an agreement at the Diplomatic Conference scheduled for April 1987. Nevertheless, if it appears that this round of negotiations is not likely to produce a strong protocol phasing-out fully halogenated CFC's, as Members of Congress, it is my firm conviction, we would have to reassert our role as national decisionmakers and move legislation foward to require unilateral action—that is solely on the part of the United States—leading to the phaseout of such CFC's.

I recognize that unilateral action has both advantages and disadvantages. It would provide an early incentive for our domestic industry to begin work on producing alternative chemicals which would not adversely affect the ozone layer and could be used to replace CFC's. In other words, by passing legislation in the United States, we would get the jump on other nations, which I am convinced are going to have to take action. It is my understanding that such chemical substitutes are possible, but would take approximately 5 years to develop and would cost consumers a few pennies more. This seems like a small price to pay for protecting the important strat-

ospheric ozone layer. By moving toward the development of these safer chemicals now, our industry would get the jump on its competition abroad.

To protect our environment and our domestic industry in the near term, I would also propose to include in legislation a provision which some call trade barriers. To me, a prohibition on the importation of products that are made with or contain material that could not be used in this country is not a trade barrier, it is a legitimate means of protecting our environment. So, if we move to ban CFC's, we have a perfect right in my judgment to ban the importation of products that have CFC's in them. For example, let's consider a Japanese automobile with an air-conditioner that contains and relies upon a particular form of chlorofluorocarbons. If we ban the use of such CFC's in our automobiles here, clearly we can ban them from importation. This is not a trade barrier. It is a legitimate means of protecting our environment, indeed the environment of the world. Call it what one will, countries that wish to trade with us will have to abide by our rules for protecting our environment.

I as an individual and as chairman of the Environmental Pollution Subcommittee will closely follow the progress of the upcoming UNEP negotiations and will postpone proposing legislation calling for a phaseout of fully halogenated CFC's in products made in or imported into this country. However, if it appears that these negotiations are not likely to produce a strong protocol which leads to the elimination of such CFC's from global commerce, I intend to press for legislation, present the legislation, move it forward in the subcommittee, move it out of the full committee, and move it through this Senate—legislation banning or strictly limiting CFC's in a timeframe that permits the development of substitutes. I will do that following the return of Congress in January.

TWO OUTSTANDING PUBLIC SERVANTS

Mr. SARBANES. Mr. President, we will soon see the departure from office of two of Maryland's outstanding elected officials, each of whom has made tremendous contributions to our State and our Nation. I am proud to call Congressman MICHAEL BARNES and Montgomery County Executive Charles Gilchrist not only close colleagues but good personal friends as well.

While both of these outstanding public servants will be leaving elected office, those of us who know them well recognize that neither will leave public life. MIKE BARNES will continue to make major contributions to the public good. Charles Gilchrist will continue to serve people through his study for the clergy in the Episcopal Church.

Recently, the Montgomery Journal asked Mr. Gilchrist to assess Congressman BARNES' many contributions to the people of his district. No one doubts for 1 minute Mr. Gilchrist's prediction that MIKE BARNES' "commitment and talent for public leadership will not let him rest long."

Mr. President, I ask unanimous consent that County Executive Gilchrist's perceptive article be included in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Montgomery Journal, Sept. 23, 1986]

LIKE JOE DIMAGGIO, MIKE BARNES MADE IT ALL LOOK SO EASY

The Montgomery Journal asked County Executive Charles Gilchrist, a political and personal friend of U.S. Representative Michael Barnes, to assess Barnes' contribution to Montgomery County.

(By Charles W. Gilchrist)

Mike Barnes will return to distinguished public service. His commitment and his talent for public leadership will not let him rest long.

Thousands of us thank him for his initial legacy at the end of this term of Congress. I see it in two gigantic equal parts: a brilliant talent, and a spirit that is infestious.

Mike was unknown before 1978. Now he is a leader of international stature. The range of his achievement boggles the mind. And he made it look so easy—like Joe DiMaggio.

Mike's leadership against excessive military aid to the Contras ensures him a prominent and honorable place in the history of American foreign policy. Whether or not one agrees with him—and I join millions who do—the position he articulated will prevent the American people from sliding unwittingly into a tragic morass.

On the national scene, more than any single individual Mike is responsible for the assault against drunk driving that is saving thousands of lives. These are just examples of a lasting national legacy.

In this county and metropolitan region his contribution has been huge, often behind the scenes. He is largely responsible for holding Montgomery County Metrorail fares in line. Countless economic and community leaders, and thousands of ordinary people received his effective personal attention, and that of his superb staff.

He disproved the fiction that national leadership is incompatible with solid local and constituent service.

Mike Barnes took controversial stands, but always retained the respect and admiration of both sides. His evenhanded goodwill was as responsible for his advance as his pure ability.

In our county we saw this phenomenal combination of controversy and unity in Mike's leadership of the Democratic Party. (Remember, he was the first Democrat elected here in 20 years.) Among the controversial stands he took were his support of Sen. Kennedy against President Carter and the early endorsement of Walter Mondale, Carter's vice president.

Those positions would have cast most politicians as factionalists (we are connoisseurs of that in Montogomery County Democratic politics). But, with honest conviction and open good will, Mike emerged from intraparty warfare as a downright unifier. Remarkably, he earned his reputation as a statesman in the trenches, not above the fray.

This range of success would be impossible without strong reserves of character and temperment. Mike's devotion to his family is a big part of him. And people know Mike is a friend in need. I shall never forget his strong and public support for me during those trying days of "liquorgate" when that support seemed risky.

Mike came through his battles and helped others through theirs, because he puts things in the larger context of public purpose. He is active in the Democratic Party, for instance, because he believes in political parties as institutions for peaceful democratic change worldwide.

Mike Barnes' star has risen in the halls and back rooms of Congress, not because he likes its trappings, but because he believes in its promise of freedom for us and for people everywhere.

All of this has brought Mike to unemployment in January—however temporary that unemployment may be. Why? A person of unlimited ability, accustomed to richly deserved accolades, has been through a rough period. Indeed, that Joe DiMaggio virtuosity seemed at times to hurt Mike as a candidate for the Senate. A newspaper that once described him as the best congressional representative in all of Virginia and Maryland endorsed someone else. The good will and mutual respect, the demeanor of a gentleman, that led him to success, inexplicably seemed a liability during the campaign.

Yet the reasons for Mike's indelible contribution stood out even in this difficult campaign. He believes in the United States Senate, and traded a safe upward career in the House for what he called a "daring adventure"—to reach the Senate. Many heads have shaken in sad remorse, mine included. "Why did Mike do it?" etc.

Well, he did it because he wanted to. More important he wanted to because, in this cynical age, Mike believes what he learned in school and observed in his heroes of American politics. He shares and exemplifies the American spirit.

His view of politics as a daring adventure is indeed infectious, and it works. Mike Barnes has just begun to prove that.

PERFORMING ARTS LABOR RELATIONS AMENDMENTS

Mr. PELL. Mr. President, as many of my colleagues know, this Congress has not focused to any great extent on legislation that assists the American worker, and I regret very much that this has been the case.

Earlier in this Congress, I introduced S. 670, the performing arts labor relations amendments to the National Labor Relations Act. This bill provides basic employment protection to a very special group of employees who, for many years, have worked without the benefit of Federal safeguards. These employees are performing artists and, in particular, musicians who have never been covered by the important protections of the Taft-Hartley Act.

An overwhelming majority of performing artists travel from one employment engagement to another

without any guarantee of continued employment, standardized wages or benefits and who have no real opportunity to bargain for these benefits. Through the 1970's the National Labor Relations Board ruled that performing artists, specifically musicians, were independent contractors and, therefore, not accorded the protections given to other employees. This ruling has made it impossible for these hard-working individuals to bargain collectively with promoters, managers, booking agents and other employers.

S. 670 allows musicians to negotiate the terms of their contracts and set the conditions for their employment. It will help regulate the special conditions which currently permit the performing artists to be exploited by some unscrupulous agents and agencies. They will be able to bargain for health benefits, salaries, hours of work, and other items that are and have been accepted as standard matters for collective bargaining in other fields and industries.

It is unfair, Mr. President, that performing artists who work in one of the most competitive fields have no protection under the Federal labor laws of this Nation. Performing artists as individuals have little leverage to strike a fair bargain with their employers or promoters because their employment is often of such a temporary nature. This bill grants the coverage of the labor laws to those employees who needs them the most so that they can secure the employment protections that are so necessary.

Mr. President, since I introduced this legislation there has been some misunderstanding about this bill and a great deal of misinformation circulated about it. I regret this very much because musicians, like all other workers, should have these important basic privileges. But in the last few weeks, I have been heartened by the support the bill has gathered. There are now 38 Senators solidly supporting the bill and, if given a few more weeks, I am sure a majority of the Senate would be cosponsoring this long overdue legislation.

The American Federation of Musicians has worked long and hard to secure these protections for its members. Mr. Ned H. Guthrie, the national legislative director of the Federation and himself a fine musician, has worked tirelessly to achieve this simple but very crucial change in the current law. He knows as well as anyone that this law was never intended to discriminate against musicians and yet this is exactly the situation we are facing today.

I intend to remain actively committed to this legislation until such time that our performing artists are treated as fairly as other workers are in our country's labor law. I would ask my colleagues who are yet cosponsors of this bill to give it renewed and serious consideration.

Mr. BYRD. Mr. President, I thank my colleague from Rhode Island [Mr. PELL], for bringing up the subject of S. 670, the Performing Arts Labor Relations Amendments.

I would like to take this opportunity to commend my good friend and fellow West Virginian, Mr. Ned H. Guthrie, who is the national legislative director of the American Federation of Musicians, for his diligent and persistent efforts on behalf of this bill, as well as other matters of concern to the professional musicians represented by his association.

Musicians everywhere can be proud of the representation he is giving them, and they may rest assured that their interests are being carefully attended to by Ned.

I am sure that his good efforts will continue, even though the 2d session of the 99th Congress is expected soon to come to an end. I am sure he will be trying again next year.

Mr. METZENBAUM. Mr. President, for too long, musicians have been the victims of a cruel injustice in American labor law. The National Labor Relations Act, which entitles millions of their fellow Americans to engage in collective bargaining, has been used to deny musicians the fruits of the collective-bargaining process.

Most professional musicians today work on a short-term basis, moving from job to job with little hope of sustained job security. Thousands of these men and women travel the country like vagabonds, working for a week or two at a night club in one town, a hotel in a second, a restaurant in a third. These performing artists should be permitted to protect and improve their livelihoods through the same collective bargaining process that has been available to others for 50 years.

S. 670 would allow musicians to negotiate the terms of their contracts and set the conditions for their employment. Its enactment into law is long overdue. I deeply regret that meaningful debate on this bill has been so delayed that action is no longer possible in this Congress.

I will do all that I can in support of the efforts of the distinguished Senator from Rhode Island in the next session. With the help of musicians throughout the country, and the special assistance of Ned Guthrie, the energetic and capable national legislative director of the American Federation of Musicians, we will make this law a reality.

Mr. EXON. Mr. President, as a cosponsor of S. 670, the performing arts labor relations amendments, I am disappointed that the Senate will likely not have an opportunity this year to consider this important legislation.

Thousands of Americans make their living in the performing arts and S. 670 would extend to them certain privileges and rights now enjoyed by working people in other professions. The National Labor Relations Board has ruled that these artists are independent contractors, thus making it impossible for them to bargain collectively with promoters, managers, and employers. S. 670 would simply make it possible for performing artists to bargain collectively for the basic terms and conditions of their employment.

Mr. President, performing artists represent a unique industry. Most travel from one engagement to another with no guarantee of job security. Under current law, the musician who works in a nightclub, hotel, or restaurant, is an independent contractor and has no right to bargain collectively on the terms of his appearance. Meanwhile, the waiters, bartenders, and others who work in the same nightclub, hotel, or restaurant, have all the rights and protections of Federal labor law.

S. 670 currently has 38 cosponsors—both Democrats and Republicans. I commend Senator PELL for his leadership on this issue and pledge to work with him and other colleagues on this most important legislation in the 100th Congress.

Mr. MATHIAS. Mr. President, as the 99th Congress draws to a close, I find myself looking back at what has been accomplished. By and large, I think we have accomplished a great deal. However, it is unfortunate that several measures deserving our attention must die with the 99th Congress. One such bill is S. 670, the performing arts labor relations amendments.

Since I added my name as a cosponsor of S. 670, I have benefitted from its phone calls and literature I have received from opponents and proponents of this bill. I am not persuaded by the arguments of those who oppose the bill that it is a form of compulsory unionism. At the time, although I believe that performing artists and musicians deserve to have the same basic collective bargaining rights as other American workers, I am not convinced that S. 670, in its present form, represents the perfect solution to the problem.

But as my colleagues are aware, the first draft of any measure is far from perfect. The perfecting of a bill can only occur if the legislative process is allowed to work its will. Hearings are the essential first step. They provide the opportunity for those who have a stake in this legislation, especially the musicians, to let their views be known. Once this step is taken, negotiations can begin to reach a middle ground that is acceptable to all interested parties. Ultimately, successful negotiations will provide the basis for a solution to the problem. In the case of S. 670, this process has been forestalled.

Thirty-seven of my colleagues, Republicans and Democrats, are cosponsoring S. 670. I hope that this testament of strong bipartisan support will encourage the Members of the 100th Congress, particularly the members of the Senate Labor Committee, to take a serious look at this issue. Until we act, the fate of these musicians remains unresolved.

Mr. STAFFORD. Mr. President, I rise in support of S. 670 the performing arts labor relations amendments and to associate myself with remarks of my friend and distinguished colleague from Rhode Island.

I cosponsored this legislation because I believe that all Americans should have the right to bargain collectively for the terms and conditions of their employment. Performing artists in this Nation do not enjoy the full protection of our Nation's labor laws. Therefore, S. 670 is a much needed legislation.

It is unfortunate that there is not enough time left in this Congress to bring S. 670 to the Senate for consideration. Hopefully when the 100th Congress convenes in January of next year we will be able to move this legislation to its enactment into law.

Mr. ROCKEFELLER. Mr. President, for many years there have been disturbing stories about mistreatment of musicians in the workplace. For example:

A 10-piece dance orchestra, based in Harlan, KY, plays one-nighters throughout the Cumberland Gap tri-state area. The band is booked to play an outdoor dance at Bigstone Gap, VA. After driving 3 hours—6 round trip—the band arrives at the job site only to find no customers, no dance, and no pay for the booked band. The date—May 1930.

A West Virginia-based orchestra is booked by a large well-known insurance company to play for a gathering of its nationwide sales directors at a West Virginia resort. After providing dinner music and doing a stage show, the orchestra returns home—130 mile trip. They contact the life insurance company for whom they had performed, and are told that the contract had been made with the agent, the agent paid, and it is now the responsibility of the orchestra leader to collect the money. The orchestra is never paid. The date—March 1958.

A West Virginia promoter rents a coliseum for a country show. He hires three separate country bands out of Kentucky, Tennessee, and Indiana. All of these groups appeared on the television show Hee-Haw, and the Grand Ole Opry. The bands travel to West Virginia, give a good performance, are given their paychecks, and board their buses for home. Upon arrival the band leaders deposit their checks, only to find that the producer of the show has stopped payment. In an effort to collect the money, it was discovered that a check on which payment is stopped was not covered under this State's bad check law, and was viewed only as a decision not to pay a bill. The bands are never paid. The date—November 1975.

Story after story like those stated above have come to my attention; they have occurred for many years, and they continue to happen even today across the country. Musicians usually enjoy only short-term employment with particular employers or purchasers of their services. They often move from job to job with little hope of sustained employment security with any one purchaser of their services. Indeed, many professional musicians are forced to practice their profession in a nomadic fashion, traveling from city to city, frequently working only a week or two at any one location in night clubs, restaurants, and hotels across the country.

The Performing Arts Labor Relations Act, S. 670, was introduced to help correct problems confronting musicians who choose to join a union, and to establish clearly who is the employer of their services. The proposed bill would amend the definition of the term "employer" under the National Labor Relations Act, as well as the definition of the term "employee." At present, the term "employee" is currently defined expressly to exclude "any individual having the status of an independent contractor." Consequently, the band members are employees of the leader, who is the employer, and the purchasers are not required to bargain collectively with the labor union representing the musician. This has led to numerous cases of contracts canceled without proper notice, bands who do not get paid for their performances, musicians at the mercy of unscrupulous booking agents who take advantage of them, and musical groups dissolving, disgusted with the problems that they frequently encounter. I cosponsored this bill because I believe that performing artists should have the right to negotiate the terms of their employment, and that those contracts deserve to be honored.

S. 670 would extend to performers' unions exemptions similar to those provided the construction and garment industries in sections 8(e) and 8(f) of the National Labor Relations Act. These sections were included in the National Labor Relations Act because of certain special characteristics of the construction and apparel industries. In these industries, employment is usually short term, often involving frequent travel and different employers. The entertainment industry, which shares some of these characteristics, was not orginally given an exemption because it was not covered by Federal labor laws when sections 8(e) and 8(f) were enacted.

Mr. President, I have been disturbed by misinformation being circulated recently about S. 670. Like other Members, I have received mail in opposition to this bill from State colleges and universities. These schools are being frightened by groups lobbying against the bill; they are told that they will face economic pressure, such as picketing; be forced to deal only with union musicians; and bear responsibility for withholding and payroll taxes. However, they have not been told that the National Labor Relations Act has always excluded from the definition of the term "employer" any State or political subdivision thereof. This same exclusion applies to church-operated schools. Therefore, this legislation would have no bearing on such institutions.

In addition, owners of establishments providing live entertainment are being told that they will be forced to hire only union bands and/or orchestras if this legislation passes. Since an employer will retain the option to choose whether or not he wants to voluntarily enter into a prehire agreement, no one would be forced to use union bands and the musician will still retain the right to choose whether he wants union representation.

Information being circulated states that a small or one-time employer will be adversely affected by this legislation. However, the coverage of the National Labor Relations Act applies only to employers whose activities affect interstate commerce. A small employer whose business does not affect commerce—such as the "father of the bride" or the local fire department or civic organization—is not now covered by the NLRA, and therefore would not be affected by the proposed bill. Even if the employer's business does affect commerce, it is not covered unless it meets the monetary standards established by the NLRA.

Purchasers are being told that S. 670 will change the Tax Code, making them responsible for withholding taxes from the musicians they employ. However, the provisions in this bill are limited to proposed amendments to the National Labor Relations Act and contain no proposed language affecting the Internal Revenue Code or any other aspect of the tax law.

Mr. President, similar legislation has been introduced in both the House and Senate over the last decade, but has never reached the floor for consideration. The concerns brought to us as legislators, by a segment of society that has contributed so much for so long, still exist.

As of today, 38 Senators have shown their support for this legislation by cosponsoring S. 670. It is my hope that this Congress will recognize the need to grant performing artists who desire

the protection of a union the same rights under the law that other workers currently enjoy.

I urge my colleagues to take a serious look at S. 670, and to add their support to this long overdue legislation.

TRIBUTE TO SOUTH CAROLINA STATE REPRESENTATIVE TOM MANGUM

Mr. THURMOND. Mr. President, I was deeply shocked and saddened to learn of the recent passing of my valued friend and distinguished South Carolina State Representative Tom Mangum of Lancaster.

A 29-year veteran of the South Carolina House of Representatives, Tom was best known for his leadership of the powerful house ways and means committee, which he had chaired since 1977.

A quiet, unassuming, yet totally accessible legislator, his knowledge of the budgetary system is one reason South Carolina is one of the most fiscally sound States in the Union.

His committee chairmanship and seat on the budget and control board were not the only symbols of Tom's influence over the State's financial matters. He also served as vice chairman of the tax study commission, first vice chairman of the capitol bond improvements commission and as well as being a member of the joint bond review committee, the joint appropriations review committee, the ETV commission, the parks, tourism and trade commission, the State retirement board and various other committees.

A beloved resident of Lancaster, SC, Tom was a member of First United Methodist Church and the Lancaster Lions Club. He was on the board of directors of the Palmetto Savings & Loan Association in Lancaster and was a Mason and a Shriner. He was honored with the naming of the Tom G. Mangum Bridge, the Tom G. Mangum Building, which houses the local vocational rehabilitation department facility, and the Tom Mangum Endowment Fund.

Born in 1916 in Chesterfield County to Inglis Parks and Sara Lou Funderburke Mangum, he attended both the University of South Carolina and Wingate College. He was a retired merchant and real estate agent and a veteran of World War II.

I remember Tom Mangum as a conservative leader, respected by his colleagues and dedicated to controlling State spending. He had a genuine concern for his fellow South Carolinian's tax dollars and his wisdom in fiscal matters will be sorely missed in the State house.

I would like to extend my deepest sympathy to his lovely wife, Louise, and their four daughters, Mrs. Richard Hagins, Mrs. Lee C. Thomas, Mrs. Mike Brewer, and Mrs. Lanneau Lide.

Tom Mangum will be remembered as a true statesman and patriot, and I consider myself fortunate to have had the pleasure of his friendship for many years.

Mr. President, I ask unanimous consent that articles from the Lancaster News and a transcript of the funeral service conducted by Rev. William R. Kinnett and Rev. Bruce C. Bryant be printed in the RECORD immediately following my remarks.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Lancaster (SC) News, Oct. 6, 1986]

TOM GIBSON MANGUM

It can be logically argued that Tom Mangum was the greatest state representative in Lancaster County's history. He served almost 30 years in the House and rose to one of the half-dozen most powerful positions in state government.

Mr. Mangum was chairman of the House Ways and Means Committee and as such was afforded a seat on the State Budget and Control Board. He was considered by many, including Governor Dick Riley, to be an expert in state financial matters. Because of this expertise, Mr. Mangum played a key role in the transformation of South Carolina from a backward, rural state to one that has improved dramatically over the past two decades. As Gov. Riley said in a Sunday interview, Mr. Mangum's "signature" has been on every piece of important legislation since 1977 when he was elevated to the chairmanship of Ways and Means by his colleagues.

But it was not only on the state level that Mr. Mangum excelled. Here in Lancaster County, monuments to his work will last for generations and maybe forever. He is the person most responsible for our five vocational schools. He was successful in getting more than $1 million in state funding for the University of South Carolina—Lancaster's ultra-modern Health, Physical and Community Education Center. The endowment established in his name recently at the university will enable many Lancaster County students to pursue a college education. Water lines, road improvement—which was one of his first campaign issues—new bridges, and new schools all had his supporting hand.

All these accomplishments were trademarks of Tom Mangum the professional. He was doing his job to the best of his ability. But in some ways they really did not capture the essence of the man. Though nearly every day of his life, Mr. Mangum, in one way or the other, came into contact with the most powerful people in the state, he was happiest when he was with his family, old friends or watching his beloved Gamecocks play football.

In many ways this identity with the simpler things of life was responsible for much of his success. It makes no difference how competent or brilliant a politician is. If he isn't re-elected, his political career is over. Tom Mangum never forgot this fact. Whenever he would get home and unlock those doors to his "office" on North Main Street, the sound of the key turning was like telepathy all over the county. People would come in a steady stream, some just to chat, others to see him on business and still others needing help with some problem.

And Tom Mangum always helped, whether it was speeding the notoriously slow wheels of state government, helping some disabled or senior citizen with a Social Security problem or writing a letter of recommendation for some youngster trying to get into medical or law school. This was probably the aspect of being a public official that Mr. Mangum enjoyed best. He sincerely loved to help people. And his constituency responded. He was for them and he was one of them. There are verifiable cases of folks getting out of their sick beds to vote for Tom Mangum. It is difficult to think of a higher compliment being paid to a politican.

People often said of Mr. Mangum that when he said something he meant it. If he said he was going to help, the promise was like an oath to him. And he followed through. There's an Old West expression for such a man. It's about the highest praise a person can receive when it is said "He's a man who will close the gate." It means that no detail is too small for his attention. That was Mr. Mangum. Whether it was working on a $2.7 billion state budget or helping a down-and-out person with his Social Security, Tom Mangum "closed the gate."

Lancaster County and the state of South Carolina are poorer today because of Mr. Mangum's death. But we are all richer for his 30 years of service. The Lancaster News mourns his death along with the community and we offer our deepest sympathy to his family.

[From the Lancaster (SC) News, Oct. 6, 1986]

COLLEAGUES EXPRESS SORROW

(By Charles E. Moore)

Shock, sorrow and disbelief were ways many of Rep. Tom Mangum's friends described their reactions to his death.

"I always considered Tom Mangum indestructible, almost immortal," said Dr. James B. Holderman, president of the University of South Carolina and one of Mangum's closest friends.

"I saw him at breakfast Thursday at the University and told him how good he looked," Holderman said. "Tom Mangum was a great friend of the university, to me personally and of the whole state. I am going to miss him."

Holderman called Mangum a "very wise" man, who always had the best interests of the state and his district at heart.

"We have done a lot of things in my nine years at the university because of Tom Mangum," he said, "Tom was probably the best friend the university had in the House."

University of South Carolina-Lancaster Dean John R. Arnold buttressed Holderman's remarks.

"He was a tremendous asset to USC-L," Arnold said. "He loved the University."

Earlier this year the Tom G. Mangum Scholarship Endowment was established at USC-L. Its original goal was $125,000, a figure that has been surpassed by Mangum's friends.

"I am so thankful that Tom saw to it that the scholarship was established," Arnold said. "His name will live on for generations through the young people whose opportunities for higher education will continue. I'll miss him especially."

Mangum was active in the movement to establish USC-L in the late 1950s. Since the

school was established in 1959, he had often helped spearhead efforts to improve it. He was instrumental is arranging more than $1 million in state funds used to pay construction costs of the USC-L Physical Education Center that opened in 1981.

"He was a tremendous help," said Arnold. "He was always available."

In Mangum's memory, classes at USC-L between 1:15 and 5 p.m. today were cancelled.

Governor Dick Riley said in a Sunday interview that news of Mangum's death shocked him.

"It just stunned me," he said. "I had a close working relationship with Tom because of our work on the state Budget and Control Board. We spent literally hundreds of hours together. He always tried to do what he could to protect the state's financial position—not to get on the easy-money, easy-spend route."

Riley said Mangum deserves much of the credit for the state's financial stability because of his conservative approach to spending.

"Tom Mangum is going to be seriously missed. His influence on the floor of the House, the Ways and Means Committee was that 'We must be careful rather than sorry about expenditues.' "

Riley said that no one in state government understood the financial side of state government better than Mangum.

"He was an expert. And if you don't understand the budget, you don't understand state government because virtually every decision involves money. Tom Mangum was a solid money person."

Riley said that Mangum's "signature" was on virtually everything that happened in state government.

"Tom was also very sensitive in representing his county. He kept a careful eye on things at home. He was very interested in the University of South Carolina at Lancaster, vocational training and in vocational rehabilitation. He was very interested in putting handicapped people to meaningful work. Tom Mangum will be terribly missed."

Crandall Bowles, president of The Springs Company, said of Mangum, "Probably no other individual has done as much for Lancaster County in the last few years. As a family we have been interested in Lancaster County for many years, and we certainly have a lot of gratitude for the hard work and support he has given the county. The county will especially miss his ability to cut through the red tape and get things done."

Mangum's deskmate in the House, Rep. William D. Boan, of Kershaw, said the loss to Lancaster County will be "immeasurable."

"We must go on," Boan said. "But the loss is going to be felt by everyone in Lancaster County. He was my friend. You don't sit beside someone for four years and not get to know them well. He knew everybody in state government.

"His biggest trademark to me were the individuals he helped.

"For me, personally, it was quite an adventure to have the Ways and Means Committee Chairman and a Budget and Control Board member as a deskmate. A lot of the younger members would come up to me and ask me to speak to Tom on their behalf. He will be missed in a big way."

Sen. Caldwell T. "Red" Hinson, of Lancaster, said Mangum's death was unexpected and it was a shock.

"He's been a public servant for quite a number of years. By the seniority he had, he was in a position to be an asset," Hinson said.

No one will be able to step into Mangum's position and be able to help the county in the same way he did, Hinson said.

"The county will be in an awkward position for some time." he said.

Judge Don Rushing, of the 6th Judicial District, said that Mangum was a good friend and his death was a great loss for him and in the county.

Rushing served four years in the S.C. Senate, 1980–84, and considered Mangum a mentor.

"Politically, he was one of the people who encouraged me to run for the senate. When I was in the General Assembly, I relied on him for a great deal of advice," he said.

Rushing said Mangum was a great man and his loss would affect the county for years.

Charles Bundy, a Lancaster resident who is chairman of the S.C. Parks, Recreation, and Tourism Commission, said he had lost a great ally and close personal friend.

"It was just terrible news," Bundy said. "I was startled first, then I began to think about what he had meant to his state and county and how much he loved them both.

"We at PRT always found him a tremendous ally. He was always interested in the parks system and did so much to help in that area."

Bundy said even though he had known Mangum for many years, he was still in for a surprise when he became a member of PRT in 1978 before he became chairman in 1983.

"I saw how much others looked up to him and sought his advice," Bundy said. One of Mangum's best friends in the House was Rep. Marion Carnell, D-Ware Shoals. The two had served together since 1961.

"It was just a pleasure to work with him. He knew where he was all the time. You never had a doubt about Tom. He was a quiet person, but when he talked other House members paid attention. You could always depend on him to come up with what was best.

"Not just his area, his district, has lost. The whole state has lost. He was a true conservative and made sure that money was spent in the right direction.

County Council Chairman, Mary Barry said Mangum's death was especially unexpected to her since she and Lancaster County Superintendent of Schools Ernest Mathias talked with Mangum Friday concerning the school debt.

"On Friday morning he was in a very outgoing and jovial mood. Mr. Mangum was very interested in helping us find a way to finance one or two high schools here and we spent the morning talking about that," Mr. Barry said.

She said they also spent part of the morning discussing what to her was Mangum's "pet project," extending the water lines up Highway 521 to the North Carolina state line.

"The most active program that I was aware of, that may not reach fruition as soon as he would like, is the extension of the water lines up Highway 521. He was pushing for those to be funded and installed as rapidly as possible," Mrs. Barry said.

She said it is questionable now whether the water lines will reach the state line as soon as Mangum would have liked.

"He looked good. He was interested in those projects he thought were worthwhile in the county and to find out Saturday morning that he had suddenly died was a tremendous shock." Mrs. Barry said.

The loss of Mangum's influence in Columbia will be a tremendous loss to the county, she said.

"Money is very scarce. Mr. Mangum being in his position on the Budget Control Board and the Ways and Means Committee was able to watch out for Lancaster. Now that he is gone we have not only lost a man of considerable influence, we are also left with little seniority representation from our other members," she said.

Lancaster City Mayor Joe Shaw said the entire Lancaster community has lost a great leader.

"To me, as far as I'm concerned, he was one of the State's outstanding legislators," Shaw said.

Shaw said Mangum was always accessible and he did not know who could replace him.

"When we wanted him to look into something for us, instead of us calling him back and checking with him, he'd call you. And 99 percent of the time he'd have results. He will be missed, I'll tell you that," Shaw said.

Mangum recently secured more than $225,000 to help the city extend water lines to the county airport next to where Aeroquip Corporation is locating, Shaw said.

"I classify him as one of the great representatives of his people and the state," he said.

Bennett Gunter, former superintendent of Indian Land Area Schools, said he was at the post office when county councilmember Lindsay Pettus told him about Mangum's death.

"It was just a tremendous shock to hear it. Tom meant more to us at Indian Land than words could ever express. A true friend, a person who was always interested in the people of Lancaster County and he will be greatly missed," Gunter said.

Although Mangum helped put through numerous projects for the county, Gunter said that one of chief importance to Indian Land was the vocational school.

"Had it not been for Tom, we could never have built the vocational school. He assisted us with state money in order to get that," he said.

Mangum was also responsible for getting funding for the Bicentennial Amphitheater that was recently dedicated at Andrew Jackson State Park, Gunter said.

Gunter gave Mangum the credit for getting water lines extended to the northern end of the county. Even now a water tank near his home is under construction, he said.

"There's so many little things that he did from day to day to touch so many people's lives. It would just go on and on the total impact that he's had on this county," he said.

Gunter said if he had to sum it up in one sentence, it would be that "I have lost a true friend."

Dr. Paul Shaw, superintendent of Lancaster Area City Schools, said that Mangum was always ready to help out the school system and always available for a discussion of the school system's problems.

"I think back to the numerous things that he's done for the county and the numerous scholarships that he's gotten. He will certainly be missed," Shaw said.

Ernest Mathis, superintendent of Lancaster County Schools, said his personal reaction upon hearing of Mangum's death was a feeling of sadness and a sense of loss.

Concerning the Lancaster County School District, Mathis said it has "lost a valiant supporter, an untiring benefactor and a good friend."

Tucker Jackson, director of the Lancaster Vocational Schools, said he was shocked, dismayed and heartbroken when he heard of Mangum's death.

Jackson said that with Mangum's death, he lost a close, personal friend as well as a fellow educator.

"I don't know of any man that I've been associated with in the last 25 or 30 years that's done more for education that Tom Mangum has. He's the type of individual who always had time to talk to you about your problems that you had," Jackson said.

Mangum never forgot the working man. He knew the value of a dollar and he tried to run state government using strong fiscal responsibility, Jackson said.

State vocational education has lost a friend, Jackson said.

"If a child was not able to succeed in academic areas, Tom always provided the necessary funds to make sure that everyone received the proper education they were supposed to have," he said.

Jackson said he worked closely with Mangum to establish vocational education schools in the county, the result of which is five schools for vocational purposes.

"If it hadn't been for him, there wouldn't be the four institutions in Lancaster that are there now, actually five because we got the vocational rehabilitation center here," he said.

Mangum possessed the best qualities that are not found in a textbook, Jackson said. They are the qualities that are learned through the "hard knocks" of life that set him apart from others, Jackson said.

"He will be greatly missed and it will be a decade or two before anybody will be able to come along and replace Tom in the stature that he was in," Jackson said.

He said that Mangum was an uncommon man who was modest about his success and that he was interested only in getting projects accomplished for the good of the people of Lancaster County and the state.

[First United Methodist Church, Oct. 6, 1986]

FUNERAL OF THOMAS GIBSON MANGUM

Organ Voluntary: (Let the people remain standing thru the Psalm 23).

Words of grace.

Prayer.

Psalm 23, in unison:

The Lord is my shepherd, I shall not want;
he makes me lie down in green pastures.
He leads me beside still waters, he restores my soul.
He leads me in paths of righteousness for his name's sake.
Even though I walk through the valley of the shadow of death,
I fear no evil;
for thou art with me;
thy rod and thy staff,
they comfort me.
Thou preparest a table before me in the presence of my enemies;
thou anointest my head with oil, my cup overflows.
Surely goodness and mercy shall follow me all the days of my life;
and I shall dwell in the house of the Lord forever.

Anthem: For All Saints, Chancel Choir.

Psalm 100.

John 14.

Matthew 25.

Witness to the word.

Pastoral prayer.

Hymn 49: Now Thank We All Our God, Nun Danket.

Now thank we all our God with heart and hands and voices,
Who wondrous things hath done, in whom his world rejoices;
Who, from our mothers' arms, hath blessed us on our way
With countless gifts of love, and still is ours today.
O may this bounteous God through all our life be near us,
With every joyful hearts and blessed peace to cheer us;
And keep us in his grace, and guide us when perplexed,
And free us from all ills in this world and the next.
All praise and thanks to God the Father now be given,
The Son, and him who reigns with them in highest heaven,
The one eternal God, whom earth and heaven adore;
For thus it was, is now, and shall be evermore. Amen.

Benediction.

Organ voluntary.

Congregation Standing

Ministers: William R. Kinnett, Bruce C. Bryant.

Organist: David C. Ratchford.

FUNERAL OF THOMAS GIBSON MANGUM, FIRST UNITED METHODIST CHURCH, LANCASTER, SC, WILLIAM R. KINNETT, PASTOR, OCTOBER 6, 1986

Matthew 25:31–40.

Witness to the man and to the word.

We have read this passage from Matthew today because it came to the mind of family members during the past few hours. It came to their minds because so many people came to them and shared with them so many ways Tom Mangum had helped them. Many of these were events were not known to the family before this. They cut across the grain of the prosperous and the poor, the young and the old, black and white.

Their experience in these last hours has confirmed my experience. It is the same sort of experience we have had as we have moved around Lancaster since Saturday. I must admit that this is an awesome gathering. Methodists do not come to church like this on Sunday morning. More than that, represented in this room are people of influence and power in our state. I am not above being impressed by that.

Many of you could recount in greater detail the accomplishments of our brother in Christ, Tom Mangum. You, no doubt, have recalled stories about him and his role as a powerful figure in the South Carolina House of Representatives. I had been the pastor of this church for a few months before I realized that the quiet figure who sat back there under the edge of the balcony was the Chairman of the Ways and Means Committee. I have enough of the hero worshiper in me that I was awed a little knowing that he was listening to me. With the passing of almost five years I have come to realize that this powerful man was a very human . . . a very approachable person . . . who set you at ease as you talked to him and as he talked with you with a simple directness and candor. Any notion of pretense soon left and you knew you were dealing with another human being who understood his own humanity. It was freeing to talk with him.

Yesterday afternoon I asked his daughters to talk to me abut their father. I heard the kinds of things folks have been saying about their good fathers for generations. "Get a good education." "Take care of your good name." I heard about shopping trips to buy dresses and about a plaque that reads "God Bless Pa Pa Who Gives Me Peanuts." I learned about a fair father who had no favorites. There were stories about hand-me-down clothes, and a father and mother who were devoted to one another. I heard them remember how much he liked a good steak (especially one he cooked himself). One could imagine, with them, a cot near a window at the beach and feel the soft breeze and hear the ocean breakers. I heard them remember a favorite game of solitaire. I guess even then he was dealing with figures which he did so well. Together we remembered that his last disappointment was to miss the South Carolina-Nebraska Game on Saturday.

Many of you could tell much more of his role in the life of our great state. You have felt the weight of his support for things he believed in, and you have felt the weight of his opposition to things he did not believe in. I think if Tom were listing life's great gifts at the top would be the name of Louise . . . followed by four daughters eight granddaughters and two grandsons.

But there is another scene of this man's life that none of has been privileged to witness. It took place just a short time ago when he and the Son of Man talked. Recall with me our text, "Then the King will say to those at his right hand, 'Come, O blessed of my Father, inherit the kingdom prepared for you from the foundation of the world; for I was hungry and you gave me food, I was thirsty and you gave me drink, I was a stranger and you welcomed me, I was naked and you clothed me, I was sick and you visited me, I was in prison and you came to me." (Matthew 25:34–36 Revised Standard Version) and Tom answered, "When did I see you hungry and feed you? "I remember some of those others, but when did I see you?" Like all the righteous he was surprised, as we are, when we find that we have been faithful.

I would remind you that this passage, about the last judgment, follows two very familiar parables that Jesus told. One about the ten maidens, five of whom were prepared at the coming of the bridegroom, and five who were not. He also told the parable of the talents, how some who had great talents used them with great effectiveness, and how some with lesser talents used them with equal effectiveness, and how some simply sat upon their talents. These parables speak to us of a time of accountability.

The time of our accountability comes as surely as Tom Mangum's has come. The question for us is, "Will that great cloud of witnesses rise up on our behalf and remember when we did a good thing?" Many talk about judgment as being something terrible. Terrible it is in the sense that it is beyond our comprehension. The New Testament teaches us, particularly the Gospels, that it need not be so. "The Judgment" is a time of accountability. It is not a time to be feared for those who have gone about the business of being . . . and of doing . . . and of refraining from doing . . . and of living each day as a sacred trust given by the same God who at some time in the future will call us to put it aside and be counted.

Good friends we have been blessed by this man. Thanks be to God. And now let us claim for him and for ourselves the prom-

ises of the God and Father of our Lord Jesus Christ.

DEPARTMENT OF LABOR STUDY ON U.S. LABOR LAW AND FUTURE OF LABOR-MANAGEMENT COOPERATION

Mr. HATCH. Mr. President, on June 16, 1986, the Department of Labor initiated a comprehensive long-term study entitled the "Laws Project" to examine whether Federal labor laws and procedures impede labor-management cooperation and, therefore, should be amended to remove those impediments. The project is described as a critical step in achieving the laudable goal of Secretary of Labor William E. Brock "to increase the ability of Americans to compete successfully in domestic and world markets through labor-management cooperation."

Under the direction of Deputy Under Secretary of Labor for Management Relations, Stephen I. Schlossberg, the laws project is intended to develop a consensus among academics, practitioners and experts in the labor-management field on policy recommendations regarding whether greater labor-management cooperation can be achieved through interpretation or modification of current laws, traditions and practices. A report entitled "U.S. Labor Law and the Future of Labor Management Cooperation"—hereinafter report—issued at the initiation of the project sets its theme, identifies the areas to be examined, invites comments, and makes rather clear the desired outcome of the project.

I know of no one who would take issue with Secretary Brock's goal of increasing America's competitiveness in the world marketplace by encouraging greater labor-management cooperation. What is questionable, however, is whether the problems currently blocking our achievement of this goal can be overcome by focusing almost exclusively on a style of labor-management cooperation which is basically unique to the automotive industry.

In announcing the formation of the laws project, Secretary Brock said:

> An adversarial relationship between labor and management is no longer affordable. Where labor and management work together there are great payoffs—for the worker, the enterprise and the economy. Our legal framework should promote cooperation and problem solving, not impede them. (Department of Labor Press Release, "Labor Department Launches Study of Legal Impediments to Labor-Management Cooperation", June 16, 1986.)

There is no question that major portions of the business community and labor, both organized and unorganized, would endorse the Secretary's views. There has been intense interest in recent years in developing new forms of cooperative working arrangements, ones that encourage a greater flow of positive ideas between employees and management that make the business enterprise function more efficiently. With foreign producers capturing a growing number of American markets, employers and employees in unionized settings in particular are finding it necessary to shed their traditional adversarial roles in favor of working more closely with one another to keep the business competitive. A Labor Department initiative to determine what steps government might take to encourage this positive trend, therefore, would be lauded by many.

TRADITIONAL COOPERATION SYSTEMS

Employee participation programs, however, are not universally supported. Officials at the AFL-CIO, for example, have frequently expressed their skepticism about employee participation mechanisms such as "works councils" or union membership on boards of directors or supervisory boards. They argue that the running of the enterprise is the responsibility of management and that the best means of resolving problems is through the collective-bargaining process. As AFL-CIO Secretary-Treasury Thomas R. Donahue stated in 1982, "I believe deeply in a conflict theory of labor relations as the soundest basis for worker representation, worker participation and worker gains."—AFL-CIO press release, "Labor Looks at Quality of Worklife Programs," July 7, 1982.

A substantial number of employers also are hesitant to become involved in employee participation programs. The collective-bargaining process confines negotiations to wages, hours, and working conditions. These employers are concerned that directing or authorizing union participation in essential product, process, financial and capital deployment matters could limit management flexibility to take steps deemed necessary to maintain the viability of the business.

The employee participation programs found most often in this country involve a formalized process in which teams of employees and supervisors share ideas regarding changes in business operations. Such arrangements have a variety of names, including quality of worklife programs, quality circles, employee involvement, voluntary cooperative efforts, and work teams. They share a common characteristic, however—a conscious blurring of the traditional line between employees and managers in order to encourage greater employee participation in designing policies and procedures that will improve the effectiveness of the organization. Nonetheless, in most existing cooperative programs, except for decisions involving relatively narrow areas, final authority over whether to adopt proposed changes still rests with management.

The authors were unable to find any substantive legal authority prohibiting traditional cooperative systems. In fact, they freely acknowledge that current NLRB and court opinions offer no real impediment.

Nonetheless, the authors still suggest that the law be amended to address what they believe may be potential problems. For example, they suggest that the law should require full disclosure to a union of corporate financial data, yet cite no provision or court decision preventing an employer in a cooperative setting from doing so voluntarily. They also question whether existing law may make it difficult for union representatives to serve on corporate boards, receive compensation for such service or fly on corporate aircraft. Again, no judicial decisions are cited which demonstrate that current law might impede such practices. I doubt that a majority in Congress would agree that such speculative concerns warrant opening up Federal labor law statutes and all the problems inherent in such a process.

EUROPEAN COOPERATIVE SYSTEMS

In contrast with conventional American employee participation programs described above, are the schemes that have been either proposed or implemented in Western Europe. These are typically well-articulated demands for "industrial democracy," "codetermination" or other forms of broad power-sharing arrangements between unions and management. Under a typical codetermination approach, which several European countries have accepted, management authority is shared equally between management and labor.

West Germany has been in the forefront of such programs. There, very large companies use a two-tiered board system. A supervisory board, which has control over broad company policies, elects members to a management board which is responsible for the day-to-day operation of the company. Employees are represented on the supervisory board and, in most instances, there are an equal number of labor and shareholder members, except that the elected chairman, who has the power to cast the deciding vote, is always a shareholder representative.

Neither labor nor management in West Germany seems happy with the present system, however. Unions are seeking full parity on the supervisory boards, giving the employee representatives equal number and equal power. Conversely, European employers have become increasingly concerned with the level of decisionmaking authority exercised by the work councils and the difficulty they have in implementing basic decisions regarding the direction of the enterprise. Recently, many employers have shown a marked interest in this country's experience regarding

job creation, the formation of new businesses, business restructuring approaches, and our ability to cope with changing markets—all of which they feel, codetermination plans tend to impede.

In the United States, the United Auto Workers [UAW] have been on the leading edge of negotiating embryonic forms of codetermination programs. Its most noteworthy successes have been to place a UAW president on the Chrysler board of directors and negotiating a collective-bargaining agreement requiring a program of codetermination at GM's Saturn plant. It should be stressed, however, that giving union representatives coequal status with a company's management is the rare exception in the United States, not the norm, and where found, it is typically being tried on an experimental basis.

THE COOPERATION SYSTEM ENVISIONED BY THE AUTHORS

While no precise definition of labor-management cooperation is found in the report, several statements and opinions expressed by the authors indicate that they would prefer a labor-management system closely resembling the Saturn agreement mentioned above. They appear to advocate the following as necessary elements of a complete labor-management cooperation program:

1. Equal Partners.—Union representatives should become equal partners with management in the operation of the business enterprise. (Report at 2, 12)

2. Required Bargaining of All Management Decisions.—Management should be required to bargain with the union over any subject matter of the union's choosing. (Report at 25)

3. Financial Disclosure.—Management should be required to divulge any and all financial and other corporate records to the union on demand. (Report at 23, 24)

4. Executive Perquisites.—If labor representatives are to be equal partners with management, then they should be accorded such perquisites as directors' fees and use of corporate aircraft. (Report at 26, 27)

5. Union Representation on Boards of Competing Corporations.—Labor and antitrust laws should be amended to permit representatives of the same union to become directors of competing companies. (Report at 28, 29)

6. Unions of Management Employees.—The NLRA should be amended to insure that union representatives who become managers of the enterprise will not lose their status as union members under the NLRA nor be barred from engaging in collective bargaining with other managerial employees. (Report at 13-16)

1. EQUAL PARTNERS

The Department of Labor has repeatedly praised the unusual collective-bargaining agreement negotiated between General Motors and the United Auto Workers Union for the Saturn project. The authors of the report note that under the agreement, "no GM policy will be made without the approval of the United Auto Workers," and predict that the agreement is a preview of what successful labor relations will look like in the year 2000.

The agreement recognizes the union as the exclusive bargaining representative at Saturn and does provide the company with more flexibility in work rules than it employs at its other facilities. It was signed prior to the actual hiring of any individuals who will be covered by the agreement. Instead, the union and the company made several important decisions for the employees.

The authors of the report make quite clear their concern that existing law may impede such agreements in the future. They indicate their concern that, despite the Department's strong support of labor-management cooperation, the Supreme Court may take a different view. Attention is given to the Court's decision in *First National Maintenance Corp.* v. *N.L.R.B.*, 452 U.S. 666, 676, (1981) where the court held that:

> Congress had no expectation that the elected union representative would become an equal partner in the running of the business enterprise in which the union members are employed.

It is true that existing law is not premised on the assumption that labor and management should be equal partners in the management of a company, nor, as the authors appear to suggest, that unions be provided virtual veto authority over all employer decisions. Instead the following statement by the Court in the First National Maintenance, case still reflects a majority opinion:

> Management must be free from the constraints of the bargaining process to the extent essential for the running of a profitable business. (452 U.S. at 678, 679.)

Nonetheless, there is nothing in existing law that would bar a voluntary agreement between a company and a union that both be equal partners in the running of the enterprise. Nor, under existing law, is there any provision which would prohibit a company from giving a union full and complete veto authority. What is not possible is to use current law to require or order a company to make a union an equal partner.

2. REQUIRED BARGAINING OF ALL MANAGEMENT DECISIONS

In order to expedite resolution of labor disputes, Federal labor law governs the types of issues considered appropriate for collective bargaining. Bargaining subjects are classified as either mandatory or permissive based in large part on whether they are part of the employment relationship. For example, wages, hours and working conditions are considered to be mandatory subjects, while issues such as advertising; product type and design; or financing are treated as permissive subjects. While the law permits the parties to discuss any subject, it only requires bargaining over those considered to be mandatory and a union cannot strike and the company cannot lock out employees for failing to bargain over permissive subjects.

The authors would eliminate this distinction, contending that by doing so, both employees and unions would be assured that any issue relevant to the employment relationship would, at the behest of either side, receive full and fair discussion and consideration. (Report at 25.)

There are, however, sound reasons for maintaining this distinction. If all subjects were mandatory, a union could force a company to negotiate over virtually any issue of the union's choosing, from the composition of the company's board of directors to the banks in which the company deposits its funds, from deciding whether to continue a failing product line to selecting suppliers and subcontractors. Moreover, under the First National Maintenance decision referenced above, an employer must bargain with the union only over the effects of a plant closing. Obviously, adoption of the authors' suggestion would require bargaining over not just the effects but the actual decision to close the plant.

3. FINANCIAL DISCLOSURE

Under a 30-year-old Supreme Court ruling, *NLRB* v. *Truitt Mfg. Co.*, an employer is not required to comply with every demand made by a union to disclose information. Instead, it is obligated to turn over only that information necessary or relevant to the union in discharging its function as bargaining representative.

The authors assert that a substantial flow of information to the unions is a necessary element of a successful cooperative program, and that traditional collective bargaining encourages employers to limit the flow of such information. They argue that the Truitt decision may teach employers to avoid candor and communication.

If the authors are correct in assuming that employers are extremely reluctant to provide all the necessary financial information to the union and that such provision is an essential element of a successful cooperative program, then one is left with an inevitable conundrum. The solution implicit in the report is to compel provision of the necessary data. Yet again, given the authors' assumption about employer reluctance, it is difficult to see how such a requirement will encourage employer participation in programs voluntarily unless, of course, such participation is also made compulsory.

4. EXECUTIVE PERQUISITES

If one believes that labor representatives should be equal partners with management, it is not surprising one

might also believe that union officials should receive certain perquisites traditionally reserved for a company's senior managers. The authors of the report assert that a possible impediment to full "labor-management cooperation" is the fact that that union representatives who sit on corporate boards of directors may be barred from collecting directors fees because of existing prohibitions in the Labor-Management Relations Act. (Report at 26.) Although there is no record that the Government has sought to bar union collection of such fees, the authors believe the law should be amended to avoid any such possibility.

Similarly, the authors describe as a pressing need for reconsideration those provisions of the National Labor Relations Act that might result in legal challenges to union representative's using corporate aircraft. (Report at 27, 28.) The report says that with the growing interest in Japanese management approaches:

> An American automaker may soon wish to transport some company and union officials in a corporate jet to view firsthand examples of innovative and successful operations taking place in Japan and other countries. (*Id.*)

According to the authors, such travel by corporate jet might be construed as violating the criminal provisions of the Taft-Hartley Act. It is hard to believe that joint air flights are really one of the major impediments to more harmonious labor relations. One can only wonder if those labor officials who are interested in obtaining such perquisites might be more comfortable on the other side of the bargaining table.

5. ELECTION OF UNION OFFICIALS TO THE BOARDS OF COMPETING CORPORATIONS

Placing union members on corporate boards is an important first step in the authors' codetermination scheme. Yet, they would not stop there. Instead, they take issue with the legal concerns that have arisen when union officials seek seats on the boards of competing corporations. (Report at 28.)

No one would argue that permitting a Chrysler executive to sit on the board of Ford and American Motors would be a clear conflict of interest. Yet, the authors of the report suggest that union representatives should be able to sit on the boards of direct competitors. Fortunately, our antitrust laws have to date served as a strong deterrent to this imprudent, impractical and potentially divisive possibility.

6. UNIONS OF MANAGEMENT EMPLOYEES

Under present labor law, employees who are considered to be managerial employees are not covered by the National Labor Relations Act. Although free to join unions and bargain collectively if the employer is willing to accept the arrangement, management is not required to recognize or bargain with unions made up of supervisors and managers. This policy has been reaffirmed by Congress without hesitation each time the NLRA has been amended because of the obvious inconsistency in requiring one level of management to bargain with another.

A substantial portion of the report, however, is devoted to the Supreme Court's decision in *NLRB* v. *Yeshiva University,* which held that the university's faculty were managerial employees and, therefore, not covered by the National Labor Relations Act. An association of faculty members was not recognized as a union by the Court because the faculty was "in effect, substantially and pervasively operating the enterprise." (444 U.S. 672, 679 (1980).)

The authors assert that the Yeshiva decision jeopardizes the desired method of operation in an ideal cooperation plan, and, if extended, could cast doubt upon the most innovative features of the Saturn, NUMMI and Pontiac Fiero relationships. (Report at 14.)

The authors argue that "the Yeshiva case is troubling because it is at war with the idea of consensus between professional employees and their administrators—and, by analogy, other employee-employer relationships as well." (Report at 15.) Others would say, however, that the decision is based on the valid belief that groups of employees exercising management responsibilities should not be competing with one another, but be working together on the same side for the common good. In addition, there is a basic inconsistency in the author's suggestion that by prohibiting employees whose duties result in their "substantially and pervasively operating the enterprise" to organize, the law denies them the opportunity to have substantial input regarding company operations. How can they be denied input in running the enterprise if they are, in fact, running the enterprise?

When all of these elements are taken together, it would seem that the central thesis of the report is that true labor-management cooperation can be achieved, but only if union representatives become equal partners with the company's management in substantive decisionmaking and compensation. If the authors believe that cooperative programs should continue to be voluntary, then the recent experience involving the Saturn agreement would offer no contrary precedent.

If, however, the authors seek a more compulsory program—one that would require by law that unions be provided veto authority over all operational decisions, that there be full disclosure of any records requested by the union, that there be a blurring of most distinctions between management and labor, and that special status be granted unions under our antitrust laws—then many of their complaints become more valid and understandable.

THE FUTURE OF UNIONS UNDER LABOR-MANAGEMENT COOPERATION PROGRAMS

The report does raise several important questions regarding the future of unions. If the traditional labor setting is transformed into teams of employees who share management responsibility, does the union in its traditional sense cease to exist? The authors analysis of the *Yeshiva* decision in particular epitomizes the dichotomy of their apparent answer to this basic question. On the one hand, the report emphasizes that while the history of labor relations in our country has been characterized by confrontation, a new approach to employee relations is badly needed in view of increasing foreign competition. They state that:

> We should emphasize mutuality rather than militancy and seek to advance a new ordering of labor relations which aligns manager and worker on the same side—working together for the common good.

On the other hand, they speak of employees who, under current law, are found to have a substantial voice in managing the company and therefore cannot belong to the union as being "lost to the cause." These people, according to the report, "possess the potential to be the important leaders of the future on the side of the worker." One wonders just what the authors actually desire—all working together, two separate sides, or all working together on the side of the worker.

The traditional role of a labor representative has been to negotiate the best possible wages, hours and working conditions, including restrictive work rules, for the members of the union. In doing so, the representative is under no obligation to consider the economic condition of the company or the effect of the demands being made on the long-term health of the enterprise. Consideration of necessary changes in this tradition is noticeably absent from the report.

Perhaps one question which the authors may choose to address in the near future is the degree to which labor unions themselves might impede labor-management cooperation. There is a strong body of opinion that highly stratified job classification systems and restrictive work rules significantly impede the ability of a company to restructure itself quickly to meet the threat of foreign competition. No mention of this impediment is made in the report, however. Also, would it not be appropriate for the laws project to address work rules in several industries which are hopelessly outdated or the problem of picket line violence. A clear first step in any labor-management cooperative plan would seem to be simply keeping the parties from physically destroying one another. These are but a few of the issues that a bal-

anced study of this kind would be expected to address.

Moreover, an assumption that seems to run throughout the discussion of the Supreme Court's decision in Yeshiva is that labor-management cooperation—employees sharing decisionmaking authority with management—can only occur in a union setting. In other words, there cannot be labor-management cooperation without organized labor. Such an assumption, however, does not take into account the fact that only one American employee in five is represented by a union and that there are probably more employee involvement programs being conducted in nonunion settings than in unionized workplaces. If it is the authors' thesis that employees should be given far greater management responsibilities, does it really make any difference whether they remain union members or not? In sum, it would seem that if the report were sincerely interested in increasing labor-management cooperation, it would not be such a strong advocacy piece for only one kind of cooperative program.

CONCLUSION

The authors' attempt to raise as an issue worthy of comprehensive study whether existing law and practices contain impediments to labor-management cooperation. As is well documented by the report, however, the impediments that it identifies are more theoretical than real. Existing law and its enforcement would not appear to present any significant obstacles to companies and unions interested in developing voluntary joint participation programs giving employees and union representatives a greater voice in management decisionmaking.

If, however, labor-management cooperation is defined as a legal requirement that union representatives be placed on an equal footing with company officers, it seems clear that existing industrial practice and the law would need to be thoroughly revised. Existing law does not give unions a veto over management decisions; it does not require companies to bargain with the union over any issue of the union's choosing; it does not permit unions to strike over any issue of their choosing; it does not require employers to disclose all corporate financial data to unions on demand; and, it does not permit union officials to sit on the boards of competing corporations. Whether true labor-management cooperation—and the ability of U.S. companies to compete in global markets—would be enhanced by such legal requirements is highly questionable.

Finally, it is noteworthy that the changes in current practices suggested by the report virtually all deal with major concessions that employers would be forced to make. Scant attention is given to changes that organized labor could or should consider in helping to reduce the traditional divisions between labor and management interests. A Department of Labor initiative to encourage greater labor-management cooperation in the American workplace would be an important task for the Department to take in view of our country's need to remain competitive in a world economy. A project of this kind that starts off by addressing only union concerns, however, may have difficulty achieving the balance necessary for it to be given serious consideration once it is completed.

DECISIONS BASED ON CONVICTIONS

Mr. THURMOND. Mr. President, I would like to bring to the attention of my colleagues an excellent article which recently appeared in the Greenville News & Piedmont in Greenville, SC.

The author of this essay, Judge C. Bruce Littlejohn, is the retired chief justice of the Supreme Court of South Carolina and a distinguished circuit judge. In his 35 years of service on the bench, he has earned a reputation as an outstanding lawyer, scholar, and jurist.

In the following article, Judge Littlejohn proves himself to be a realist, in touch with the difficult legal questions of the day, and an idealist, who understands the intangible nature of their resolution.

I believe his essay offers some insights into our role as legislators. We are challenged, as fair lawmakers, to make sound decisions and often called upon to defend them. Yet, many times the issues are not black and white, the details are not clear, and we are forced to vote on our convictions.

Mr. President, I ask unanimous consent that the following article be printed in the RECORD, for I think my colleagues will benefit from the thoughts of this outstanding public servant and my good friend.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Greenville (SC) News & Piedmont, Sept. 7, 1986]

MOST DECISIONS THROUGHOUT LIFE HAVE TO BE BASED ON CONVICTIONS

(By C. Bruce Littlejohn)

In the trial of a case, it is important to establish which party has the burden of proof. Many cases are won or lost because the party who had the burden of proof simply did not carry it. If the party which bears the burden of proof fails, the other side wins the case.

In recent years, beginning about 1984, the Supreme Court of the United States has spoken loud and clear on the burden-of-proof issue. It has virtually abolished presumptions in criminal cases. For many years, judges charged the law to the jury and told them that malice would be implied from the use of a deadly weapon. This is no longer a proper charge. The United States Supreme Court has held such a charge tends to shift the burden of proof to the defendant where it should not be.

In debate relative to public issue, I am sometimes amused at the arguments which people make. The academicians are particularly good at it. For example:

One who is opposed to capital punishment will say: "It has not been demonstrated that capital punishment deters crime."

One who is in favor of wide distribution of pornographic material will say: "It has not been demonstrated that the dissemination of pornographic material encourages or increases crime."

Professors at the law school will say: "It has not been demonstrated that students who prepare themselves for a career at the law at the undergraduate level by studying such things as public speaking, English composition, United States history and accounting make better lawyers than those who do not study in these areas."

These assertions attempt to shift the burden of proof. In each instance, the person who makes the assertion in effect says: "I have declared the ultimate result; now if you contend otherwise, take the burden of proof and show me that I am mistaken."

These things involve matters which cannot be proved as a mathematical equation might be proved, or as a chemical formula might be proved. Inasmuch as such things cannot be proved with certainty, those who make "it has not been demonstrated" assertions boast that they have won the debate. This is far from the truth.

Most of the decisions we make at the law and throughout life are based not on proof but on convictions. For example, a law suit will be settled. The parties cannot prove it is a good settlement, but they have a conviction that the settlement is a proper one. One undertakes a new business not because he can prove it will be successful but because he has a conviction. One enters into a marriage contract not because he can prove that the marriage will be successful but because he has a conviction.

Any person who does not have the courage of his convictions should not undertake the practice of law. I would retain capital punishment not because I can prove that it deters crime but because I have a conviction that it deters some wrongful killings. Now I appreciate the fact that capital punishment will not stop all murders, but have a conviction that it will prevent some wrongful kilings, and I am content with that conviction.

I cannot prove that distribution of pornographic material encourages people to commit sexual crimes and violate other laws, but I have a conviction that this is true.

I cannot prove with mathematical certainty that students who prepare themselves to go to law school and for a career at the law by studying prelaw subjects at the undergraduate level are better prepared than those who do not, but I have a conviction that this is true.

And so my message to you is, do not let people who would say "it has not been demonstrated" shift the burden of proof to you. Most of your decisions throughout life have to be based on convictions. Convictions grow out of knowledge. Facts when accumulated serve as a basis for convictions. Historians can oftentimes prove facts. Dreamers and planners must proceed on the basis of con-

victions. It is they who have made the country great.

Mr. DOLE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. TRIBLE). Without objection, it is so ordered.

MESSAGES FROM THE HOUSE

ENROLLED BILLS AND JOINT RESOLUTIONS SIGNED

At 11:38 a.m., a message from the House of Representatives, delivered by Mr. Berry, one of its reading clerks, announced that the Speaker has signed the following enrolled bills and joint resolutions:

S. 426. An act to amend the Federal Power Act to provide for more protection to electric consumers;

S. 2062. An act to designate the Federal Building and United States Courthouse to be constructed and located in Newark, New Jersey, as the Martin Luther King, Jr., Federal Building and United States Courthouse";

S. 2069. An act to make certain amendments to the Job Training Partnership Act;

S. 2788. An act to designate the Federal building located in San Diego, California, as the "Jacob Weinberger Federal Building";

H.R. 5166. An act to designate certain lands in the Cherokee National Forest in the State of Tennessee as wilderness areas, and for other purposes;

H.J. Res. 555. Joint resolution to designate the week beginning November 24, 1986, as "National Family Caregivers Week";

H.J. Res. 671. Joint resolution designating 1987 as the "Year of the Reader" and

H.J. Res. 741. Joint resolution to designate March 1987, as "Developmental Disabilities Awareness Month."

The enrolled bills and joint resolutions were subsequently signed by the President pro tempore [Mr. THURMOND].

At 3:19 p.m., a message from the House of Representatives, delivered by Mr. Berry, one of its reading clerks, announced that the House disagrees to the amendments of the Senate to the bill (H.R. 5234) making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1987, and for other purposes; it agrees to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and appoints Mr. YATES, Mr. MURTHA, Mr. DICKS, Mr. BOLAND, Mr. AUCOIN, Mr. BEVILL, Mr. WHITTEN, Mr. REGULA, Mr. MCDADE, Mr. LOEFFLER, and Mr. CONTE as managers of the conference on the part of the House.

The message also announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 3773) to amend the Stevenson-Wydler Technology Innovation Act of 1980 to promote technology transfer by authorizing Government-operated laboratories to enter into cooperative research agreements and by establishing a Federal Laboratory Consortium for Technology Transfer within the National Science Foundation, and for other purposes.

The message further announced that the House has passed the bill (S. 2250) to strengthen the prohibition of kickbacks relating to subcontracts under Federal Government contracts; with an amendment, in which it requests the concurrence of the Senate.

The message also announced that the House agrees to the amendment of the Senate to the bill (H.R. 5362) to extend the authority of the Supreme Court Police to provide protective services for Justices and Court personnel.

The message further announced that the House agrees to the amendment of the Senate to the amendment of the House to the bill (S. 1562) to amend the False Claims Act, and title 18 of the United States Code regarding penalties for false claims, and for other purposes.

The message also announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 2868. An act to settle Indian land claims in the town of Gay Head, MA, and for other purposes; and

H.R. 5215. An act to authorize the construction by the Secretary of Agriculture of a salinity laboratory at Riverside, CA.

At 5:15 p.m., a message from the House of Representatives, delivered by Mr. Berry, one of its reading clerks, announced that the House agrees to the amendment of the Senate to the bill (H.R. 5484) to strengthen Federal efforts to encourage foreign cooperation in eradicating illicit drug crops and in halting international drug traffic, to improve enforcement of Federal drug laws and enhance interdiction of illicit drug shipments, to provide strong Federal leadership in establishing effective drug abuse prevention and education programs, to expand Federal support for drug abuse treatment and rehabilitation efforts, and for other purposes; with an amendment, in which it requests the concurrence of the Senate.

The message also announced that the House disagrees to the amendment of the Senate to the bill (H.R. 4613) to reauthorize appropriations to carry out the Commodity Exchange Act, and to make technical improvements in that act; it agrees to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and appoints the following as managers of the conference on the part of the House:

Ordered, That Mr. DE LA GARZA, Mr. FOLEY, Mr. JONES of Tennessee, Mr. STENHOLM, Mr. TALLON, Mr. MADIGAN, Mr. COLEMAN of Missouri, and Mr. EMERSON be appointed as conferees for consideration of the entire House bill and Senate amendment thereto.

As additional conferees only for consideration of section 406 of the Senate amendment, and modifications committed to conference: Mr. WHITLEY and Mr. SCHUETTE.

As additional conferees only for consideration of sections 407 and 501 of the Senate amendment, and modifications committed to conference: Mr. HUCKABY and Mr. STANGELAND.

As additional conferees only for consideration of section 407 of the Senate amendment, and modifications committed to conference from the Committee on Ways and Means: Mr. ROSTENKOWSKI, Mr. GIBBONS, Mr. DOWNEY of New York, Mr. JENKINS, Mr. GEPHARDT, Mr. DUNCAN, Mr. CRANE, and Mr. FRENZEL.

As additional conferees only for consideration of section 503 of the Senate amendment, and modifications committed to conference: Mr. ROSE and Mr. HOPKINS.

The message further announced that the House has passed the following joint resolutions, in which it requests the concurrence of the Senate:

H.J. Res. 748. Joint resolution making further continuing appropriations for the fiscal year 1987, and for other purposes; and

H.J. Res. 749. Joint resolution waiving the printing on parchment of certain enrolled bills and joint resolutions during the remainder of the second session of the Ninety-ninth Congress.

ENROLLED BILLS AND JOINT RESOLUTION SIGNED

At 7:18 p.m., a message from the House of Representatives, delivered by Mr. Berry, one of its reading clerks, announced that the Speaker has signed the following enrolled bills and joint resolution:

H.R. 3773. An act to amend the Stevenson-Wydler Technology Innovation Act of 1980 to promote technology transfer by authorizing Government-operated laboratories to enter into cooperative research agreements by establishing a Federal Laboratory Consortium for Technology Transfer within the National Bureau of Standards, and for other purposes;

H.R. 4718. An act to amend title 18, United States Code, to provide additional penalties for fraud and related activities in connection with access devices and computers, and for other purposes;

H.R. 5362. An act to extend the authority of the Supreme Court Police to provide protective services for Justices and Court personnel;

H.R. 5548. An act to amend the Export-Import Bank Act of 1945; and

H.J. Res. 635. Joint resolution to designate the school year of September 1986 through May 1987 as "National Year of the Teach-

er" and January 28, 1987, as "National Teacher Appreciation Day."

At 8:08 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the amendments of the Senate to the bill (H.R. 2005) to amend title II of the Social Security Act and related provisions of law to make minor improvements and necessary technical changes.

The message also announced that the House has passed the following joint resolution, in which it requests the concurrence of the Senate:

H.J. Res. 750. Joint resolution making further continuing appropriations for the fiscal year 1987, and for other purposes.

MEASURES REFERRED

The following bills, previously received from the House of Representatives, were read the first and second times by unanimous consent, and referred as indicated:

H.R. 628. An act for the relief of John M. Gill; to the Committee on the Judiciary.

H.R. 1330. An act for the relief of Marsha D. Christopher; to the Committee on the Judiciary.

H.R. 2682. An act for the relief of Jean DeYoung; to the Committee on the Judiciary.

H.R. 3860. An act for the relief of Joyce G. McFarland; to the Committee on the Judiciary.

H.R. 4706. An act for the relief of Rick Hangartner, Russell Stewart, and David Walden; to the Committee on the Judiciary.

H.R. 4779. An act for the relief of Allen H. Platnick; to the Committee on the Judiciary.

MEASURES PLACED ON THE CALENDAR

The following bill was read the first and second times by unanimous consent, and placed on the calendar:

H.R. 2868. An act to settle Indian land claims in the town of Gay Head, Massachusetts, and for other purposes.

The Committee on Energy and Natural Resources was discharged from the further consideration of the following bill, which was placed on the calendar:

S. 2676. A bill to provide for the settlement of water rights claims of the La Jolla, San Pascual, Pauma, and Pala Bands of Mission Indians in San Diego County, California, and for other purposes.

ENROLLED BILLS PRESENTED

The Secretary of the Senate reported that on today, October 8, 1986, she had presented to the President of the United States the following enrolled bills:

S. 426. An act to amend the Federal Power Act to provide for more protection to electric consumers;

S. 2962. An act to designate the Federal Building and United States Courthouse to be constructed and located in Newark, New Jersey, as the "Martin Luther King, Jr., Federal Building and United States Courthouse";

S. 2069. An act to make certain amendments to the Job Training Partnership Act; and

S. 2788. An act to designate the Federal building located in San Diego, California, as the "Jacob Weinberger Federal Building".

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-3819. A communication from the Director of the Congressional Budget Office and the Director of the Office of Management and Budget, Executive Office of the President, transmitting jointly, pursuant to law, the revised Sequestration Report for Fiscal Year 1987; to the Temporary Joint Committee on Deficit Reduction.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. THURMOND, from the Committee on the Judiciary:

Report to accompany the bill (S. 2323) to exempt certain activities from provisions of the antitrust laws (Rept. No. 99-535).

By Mr. ANDREWS, from the Select Committee on Indian Affairs, with an amendment in the nature of a substitute and an amendment to the title:

H.R. 3214: A bill to provide for the use and distribution of funds awarded to the Cow Creek Band of Umpqua Indians in United States Claims Court docket numbered 53-81L, and for other purposes (Rept. No. 99-536).

By Mr. THURMOND, from the Committee on the Judiciary, with amendments:

S. 397: A bill to amend the Sherman Act and the Clayton Act to modify the application of such Acts to international commerce.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. LUGAR, from the Committee on Foreign Relations:

Treaty Doc. 99-31. Treaty Between the United States and Iceland to Facilitate Their Defense Relationship (Exec. Rept. No. 99-27).

James Edward Nolan, Jr., of Maryland, to be Director of the Office of Foreign Missions, with the rank of Ambassador. (New Position.)

Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.

Nominee: James E. Nolan, Jr.

Post: Director, Office of Foreign Missions.

Contributions, amount, date, donee.

1. Self: 1982, $50.00, 7/29/82, Montgomery County Republicans; $100.00, 1/16/82, Maryland Republicans; $25.00, 9/27/82, Republican Central Committee of Maryland.

1983, $100.00, 1/21/83, Maryland Republicans.

1984, $500.00, 10/18/84, Maryland Republicans (Md. Victory 84).

1985, $500.00, 1/13/85, Maryland Republicans.

1986, $200.00, 5/23/86, Republican State Central Committee; $500.00, 6/21/86, Friends of Connie Morella.

2. Spouse: N/A.

3. Children and spouses names: N/A.

4. Parents names: Dr. James E. Nolan, none. Mrs. Helen S. Nolan, none.

5. Grandparents names: N/A.

6. Brothers and spouses names: N/A.

7. Sisters and spouses names: Joan Nolan O'Donnell (Sister) none. Thomas J. O'Donnell (Brother-in-Law) none.

Donald K. Petterson, of California, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the United Republic of Tanzania.

Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.

Nominee: Donald K. Petterson.

Post: Tanzania.

Contributions, amount, date, donee.

1. Self: None.

2. Spouse: Julieta R. Petterson, none.

3. Children and spouses names: Susan Petterson, none. Julie Petterson. none John Petterson, none. Brian Petterson, none.

4. Parents names: Mr. and Mrs. W.H. Petterson, none.

5. Grandparents: names: John Petterson, deceased. Augusta Petterson, deceased. Melvin McIntyre, deceased. Carolyn McIntyre, deceased.

6. Brothers and spouses names: Mr. and Mrs. W. J. Petterson, 1982, Reagan for President. $25. Mr. and Mrs. R. L. Petterson, none.

7. Sisters and spouses names: N/A.

Walter Edward Stadtler, of New York, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States to the People's Republic of Benin.

Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.

Nominee: Walter Edward Stadtler.

Post: Ambassador to Benin.

Contributions, amount, date, donee.

1. Self: None.

2. Spouse: None.

3. Children and spouses names: Fiona P., Walter E. and Catriona M. Stadtler, none.

4. Parents names: Paula Stadtler, none; Walter Stadtler Sr. (deceased), Magdalene and Robert Macdonald (both deceased).

5. Grandparents names; Katharina and Franz X. Nagl (deceased), Lena and Christian Stadtler, (deceased), Elizabeth and David Wallace (deceased), Davina and James Macdonald (deceased).

6. Brothers and spouses names: None. I have no brothers, nor does my wife.

7. Sisters and spouses names: None, I have no sisters, nor does my wife.

Edward Joseph Perkins, of Oregon, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Am-

bassador Extraordinary and Plenipotentiary of the United States of America to the Republic of South Africa.

Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.

Nominee: Edward Joseph Perkins.

Post: Pretoria.

Contributions, amount, date, donee.

1. Self: None.

2. Spouse: None.

3. Children and spouses names: Katherine Karla, none; Sarah Elizabeth, none.

4. Parents names: Edward Perkins, Sr., none (deceased); Tiny Estella Holmes, none.

5. Grandparents names: Nathan Noble (deceased), none; Sarah Noble (deceased), none.

6. Brothers and spouses names: None.

7. Sisters and spouses names: None.

Jorge L. Mas, of Florida, to be a member of the Advisory Board for Radio Broadcasting to Cuba for a term expiring August 12, 1989; and

Frank E. Young, of Maryland, to be representative of the United States on the Executive Board of the World Health Organization.

(The above nominations were reported with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. LONG:

S. 2913. A bill to provide a uniform system for, and to eliminate restrictions on, the imposition, collection, and administration by States of State and local sales and use taxes on sales in interstate commerce; to the Committee on Finance.

By Mr. HATCH (for himself, Mrs. HAWKINS, Mr. NICKLES, Mr. ABDNOR, Mr. DOLE, Mr. THURMOND, Mr. STAFFORD, Mr. CHILES, Mr. NUNN, Mr. MURKOWSKI, Mr. WARNER, Mr. STENNIS, Mr. ZORINSKY, Mr. GARN, Mr. ROCKEFELLER, Mr. DECONCINI, Mr. DANFORTH, Mr. BRADLEY, Mr. METZENBAUM, Mr. GRASSLEY, Mr. TRIBLE, Mr. SPECTER, Mr. INOUYE, Mr. EAGLETON, Mr. HUMPHREY, and Mr. SIMON):

S.J. Res. 424. A joint resolution to designate October 31, 1986 as "National Child Identification and Safety Information Day"; read the first time and indefinitely postponed.

By Mr. HEFLIN:

S.J. Res. 425. A joint resolution designating the square dance as the national folk dance of the United States for 1986; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. DOLE (for himself and Mr. BYRD):

S. Res. 501. A resolution directing the Senate Legal Counsel to represent the defendants in "Harry E. Claiborne v. United States Senate, et al." (D.D.C.); considered and agreed to.

By Mr. DOLE (for himself, Mr. BYRD, Mr. LUGAR, Mr. PELL, Mr. SIMON, Mr. ABDNOR, Mr. ARMSTRONG, Mr. BOSCHWITZ, Mr. BROYHILL, Mr. CHAFEE, Mr. DANFORTH, Mr. DOMENICI, Mr. DURENBERGER, Mr. GORTON, Mr. GRAMM, Mr. GRASSLEY, Mr. HATCH, Mrs. HAWKINS, Mr. HECHT, Mr. HEINZ, Mr. HELMS, Mr. HUMPHREY, Mr. MCCONNELL, Mr. MOYNIHAN, Mr. MURKOWSKI, Mr. NICKLES, Mr. PRESSLER, Mr. QUAYLE, Mr. SARBANES, Mr. SPECTER, Mr. SYMMS, Mr. THURMOND, Mr. TRIBLE, and Mr. WILSON):

S. Res. 502. A resolution supporting the President's intention to include arms control, human rights and regional issues as priority items on the agenda at the presummit meeting in Reykjavik, Iceland, October 11-12; considered and agreed to.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. LONG:

S. 2913. A bill to provide a uniform system for, and to eliminate restrictions on, the imposition, collection, and administration by States of State and local sales and use taxes on sales in interstate commerce; to the Committee on Finance.

SYSTEM FOR STATE USE OF STATE AND LOCAL SALES AND USE TAXES

● Mr. LONG. Mr. President, I am introducing a bill that would expand the power of State and local governments to impose their sales and use taxes on interstate sales of goods and services. Almost 20 years ago, the Supreme Court held that a State may not require an out-of-State vendor to collect and remit the State's taxes unless that vendor has a sufficient "nexus" with that State. Under the Court's ruling, a sufficient "nexus" requires more than the solicitation of sales and the taking of orders from within the State.

The Court's ruling was based on the commerce clause of the Constitution which reserves to the Congress the power to regulate and control interstate commerce. It is my belief that the Congress should exercise that power in favor of the States in cases where a State seeks to require collection and remission of its sales tax by an out-of-State vendor that regularly solicits business in the State and has significant sales in that State. This bill would accomplish that result. I believe that such legislation is needed both to ensure to the States a source of revenue of which they are entitled and to eliminate the competitive advantage over local vendors enjoyed by out-of-State vendors who can sell goods to local residents free of sales tax. The need for this legislation is more marked after passage of the tax reform bill, which makes many State funding mechanisms less attractive and makes sales taxes nondeductible.

This bill would give a State the power to require collection of sales and use taxes by a vendor if the sale's destination is in that State; the vendor engages in "regular and systematic solicitation" of consumers in that State; and, the vendor had more than $100,000 annual gross sales—or over $25,000 taxable sales—with respect to that State.

This bill contains numerous provisions to lessen the burden placed on affected out-of-State vendors. For example, local sales and use taxes cannot be covered unless they are collected and administered by the State and are uniform as to rate and base throughout the State; the State must publish its tax rates for any calendar year by September 30 of the preceding year; and a vendor cannot be required to account for sales geographically within a State. In addition, the vendor cannot be required to file more than one quarterly return with the State.

There have been some concerns raised that legislation like this, while permissible under the commerce clause, might nonetheless violate the due process clause of the Constitution. I believe that constitutional concerns should not be taken lightly and should be resolved quickly. Thus, my bill provides an expedited procedure for judicial determination of its constitutionality.

Mr. President, obviously this bill cannot be considered before I retire from the Senate. I believe this issue must be addressed. I hope that the measure I am introducing today will serve as the basis for hearings and further deliberation in the Senate during the 100th Congress.●

By Mr. HEFLIN:

S.J. Res. 425. Joint resolution designating the square dance as the national folk dance of the United States for 1986; to the Committee on the Judiciary.

DESIGNATING THE SQUARE DANCE AS THE NATIONAL FOLK DANCE FOR 1986

● Mr. HEFLIN. Mr. President, since the pioneer days of early America, families in towns and communities across the Nation have gathered together on a regular basis to participate in a social occasion called the square dance. People of all ages have met in barns, in dance halls, in outdoor arenas and on public lots to dance to the voice of the caller, and the tune of the fiddle. Checkered shirts, blue jeans, straw hats, and ruffled skirts are the standard uniform. The dance, the music, and the celebration fills those who participate with a great sense of history, and of tradition—because the square dance is uniquely American.

In times past and present people have joined together to celebrate with their families and friends at a square

dance. It is truly a part of our national heritage. For this reason, I am now introducing legislation which would recognize this dance which is common to most Americans by proclaiming the square dance as the National Folk Dance for 1986.

Today there are approximately 8,500 square dance clubs across America, with more than 6 million dancers. The square dance has always enjoyed a great support from people of all ages, and now it deserves the recognition that this commemorative legislation would give. While temporary, this resolution, nevertheless, encourages and reaffirms the sense of history and tradition that square dancing provides—to say nothing of the fun. It will help the young and the old share together in a part of our common bond that exists throughout the country.

An identical resolution (H.J. Res. 316) has been introduced in the House of Representatives and has 219 cosponsors. A similar resolution—Public Law 97-188—was adopted by the 97th Congress which designated the square dance as the National Folk Dance for 1982 and 1983. I urge my colleagues to join me in commemorating the square dance. I am hopeful that we can pass this resolution before the end of this legislative year.●

ADDITIONAL COSPONSORS

S. 519

At the request of Mr. EVANS, the names of the Senator from Arizona [Mr. DECONCINI], the Senator from Montana [Mr. MELCHER], and the Senator from Colorado [Mr. HART] were added as cosponsors of S. 519, a bill to require a study of the compensation and related systems in executive agencies, and for other purposes.

S. 2014

At the request of Mr. LEVIN, the name of the Senator from Minnesota [Mr. DURENBERGER] was added as a cosponsor of S. 2014, a bill to amend title 5, United States Code, to strengthen the protections available to Federal employees against prohibited personnel practices, and for other purposes.

S. 2209

At the request of Mr. DOLE, the name of the Senator from Nebraska [Mr. EXON] was added as a cosponsor of S. 2209, a bill to make permanent and improve the provisions of section 1619 of the Social Security Act, which authorizes the continued payment of SSI benefits to individuals who work despite severe medical impairment; to amend such act to require concurrent notification of eligibility for SSI and Medicaid benefits and notification to certain disabled SSI recipients of their potential eligibility for benefits under such section 1619; to provide for a GAO study of the effects of such section's work incentive provisions; and for other purposes.

S. 2781

At the request of Mr. EVANS, the name of the Senator from Delaware [Mr. BIDEN] was added as a cosponsor of S. 2781, a bill to amend the Energy Policy and Conservation Act with respect to energy conservation standards for appliances.

SENATE JOINT RESOLUTION 112

At the request of Mr. PELL, the names of the Senator from Utah [Mr. HATCH], the Senator from Tennessee [Mr. GORE], the Senator from Rhode Island [Mr. CHAFEE], the Senator from Massachusetts [Mr. KENNEDY], the Senator from Minnesota [Mr. DURENBERGER], and the Senator from Missouri [Mr. EAGLETON] were added as cosponsors of Senate Joint Resolution 112, a joint resolution to authorize and request the President to call a White House Conference on Library and Information Services to be held not later than 1989, and for other purposes.

SENATE JOINT RESOLUTION 372

At the request of Mr. TRIBLE, the name of the Senator from Nevada [Mr. LAXALT] was added as a cosponsor of Senate Joint Resolution 372, a joint resolution authorizing establishment of a memorial to honor America's astronauts.

SENATE JOINT RESOLUTION 388

At the request of Mr. LEVIN, the names of the Senator from North Carolina [Mr. BROYHILL], and the Senator from South Dakota [Mr. ABDNOR] were added as cosponsors of Senate Joint Resolution 388, a joint resolution designating the week beginning January 4, 1987, as "National Bowling Week."

SENATE CONCURRENT RESOLUTION 147

At the request of Mr. CRANSTON, the name of the Senator from Tennessee [Mr. SASSER] was added as a cosponsor of Senate Concurrent Resolution 147, a concurrent resolution to express the sense of the Congress that the monkeys known as the Silver Spring Monkeys should be transferred from the National Institutes of Health to the custody of Primarily Primates, Inc., animal sanctuary in San Antonio, TX.

SENATE CONCURRENT RESOLUTION 154

At the request of Mr. D'AMATO, the names of the Senator from Pennsylvania [Mr. SPECTER], and the Senator from New Mexico [Mr. DOMENICI] were added as cosponsors of Senate Concurrent Resolution 154, a concurrent resolution concerning the Soviet Union's persecution of members of the Ukrainian and other public Helsinki Monitoring Groups.

SENATE RESOLUTION 495

At the request of Mr. INOUYE, the names of the Senator from South Dakota [Mr. ABDNOR], the Senator from North Dakota [Mr. ANDREWS], the Senator from Texas [Mr. BENTSEN], the Senator from Oklahoma [Mr. BOREN], the Senator from North Dakota [Mr. BURDICK], the Senator from New York [Mr. D'AMATO], the Senator from Alabama [Mr. DENTON], the Senator from Illinois [Mr. DIXON], the Senator from Missouri [Mr. EAGLETON], the Senator from Nebraska [Mr. EXON], the Senator from Arizona [Mr. GOLDWATER], the Senator from Tennessee [Mr. GORE], the Senator from Washington [Mr. GORTON], the Senator from South Carolina [Mr. HOLLINGS], the Senator from Kansas [Mrs. KASSEBAUM], the Senator from Wisconsin [Mr. KASTEN], the Senator from Massachusetts [Mr. KERRY], the Senator from New Jersey [Mr. LAUTENBERG], the Senator from Michigan [Mr. LEVIN], the Senator from Hawaii [Mr. MATSUNAGA], the Senator from Montana [Mr. MELCHER], the Senator from Georgia [Mr. NUNN], the Senator from Rhode Island [Mr. PELL], the Senator from Arkansas [Mr. PRYOR], the Senator from West Virginia [Mr. ROCKEFELLER], the Senator from Virginia [Mr. TRIBLE], and the Senator from California [Mr. WILSON] were added as cosponsors of Senate Resolution 495, a resolution to honor Princess Pauahi Bishop.

SENATE RESOLUTION 501—AUTHORIZING REPRESENTATION BY THE SENATE LEGAL COUNSEL

Mr. DOLE (for himself and Mr. BYRD) submitted the following resolution; which was considered and agreed to:

S. RES. 501

Whereas, Judge Harry E. Claiborne, the respondent in an impeachment trial now pending in the Senate, has filed a civil action against the United States Senate; George Bush, President of the Senate; Strom Thurmond, President pro tempore; Robert Dole, Majority Leader; and Robert C. Byrd, Minority Leader, seeking an injunction against the Senate's deliberation and final action on the articles of impeachment;

Whereas, pursuant to section 703(a) and 704(a) of the Ethics in Government Act of 1978, 2 U.S.C. 288b(a) and 288c(a) (1982), the Senate may direct its Counsel to defend the Senate and its Members and officers in civil actions relating to their official responsibilities; Now, therefore, be it

Resolved, That the Senate Legal Counsel is directed to represent the defendants in the case of *Harry E. Claiborne* v. *United States Senate, et al.*, C.A. No. 86-2780 (D.D.C).

SENATE RESOLUTION 502—RELATING TO THE PRESIDENT'S AGENDA FOR THE PRE-SUMMIT MEETING IN REYKJAVIK, ICELAND

Mr. DOLE (for himself, Mr. BYRD, Mr. LUGAR, Mr. PELL, Mr. SIMON, Mr. ABDNOR, Mr. ARMSTRONG, Mr. BOSCHWITZ, Mr. BROYHILL, Mr. CHAFEE, Mr. DANFORTH, Mr. DOMENICI, Mr. DURENBERGER, Mr. GORTON, Mr. GRAMM, Mr. GRASSLEY, Mr. HATCH, Mrs. HAWKINS, Mr. HECHT, Mr. HEINZ, Mr. HELMS, Mr.

HUMPHREY, Mr. MCCONNELL, Mr. MOYNIHAN, Mr. MURKOWSKI, Mr. NICKLES, Mr. PRESSLER, Mr. QUAYLE, Mr. SARBANES, Mr. SPECTER, Mr. SYMMS, Mr. THURMOND, Mr. TRIBLE, and Mr. WILSON submitted the following resolution; which was considered and agreed to:

S. RES. 502

Whereas President Reagan and Soviet General Secretary Gorbachev have agreed to meet in Reykjavik, Iceland, on October 11 and 12 for a meeting preparatory to a hoped for U.S.-Soviet summit;

Whereas both sides have indicated arms control will be one principal focus of the Reykjavik discussions;

Whereas President Reagan has also expressed his determination to pursue aggressively in Reykjavik questions of Soviet violations of human rights and regional conflicts;

Whereas the Soviet Union continues to violate the basic human rights of its citizens and other people within Soviet territory, by refusing emigration to hundreds of thousands of its citizens; imprisoning political and religious dissidents; inhumanely preventing the reunification of divided couples and divided families; restricting access to medical care outside the Soviet Union for seriously ill Soviet citizens; and other ongoing human rights violations;

Whereas these actions of the Soviet Union violate internationally recognized standards of humane conduct and international agreements to which the Soviet Union has agreed, including the Helsinki Final Act of 1975, the International Convenants on Human Rights of 1973 and the United Nations Universal Declaration of Human Rights of 1948;

Whereas the Soviet Union continues to interfere in the sovereign internal affairs of Afghanistan and other nations around the world; Now therefore be it:

Resolved, That the Senate:

(1) Offers its support and best wishes to the President as he prepares for his meetings with General Secretary Gorbachev in Reykjavik.

(2) Endorses the President's stated intention to pursue aggressively with General Secretary Gorbachev the major issues in contention between the United States and the Soviet Union, to include human rights and regional conflicts, as well as arms control.

(3) Specifically encourages the President to:

(a) Pursue the full range of arms control questions now being negotiated with the Soviet Union, so as to maximize the prospects for progress on these matters, consistent with the national security needs of the nation, in the forseeable future;

(b) Emphasize to General Secretary Gorbachev the importance of demonstrable progress in Soviet adherence to internationally recognized standards of human rights, as an important element of overall U.S.-Soviet relations; and

(c) Press for an end to Soviet aggressive behavior around the world and for the prompt removal of Soviet combat forces from Afghanistan.

AMENDMENTS SUBMITTED

DESIGNATION OF CONSTITUTION DAY

HATCH AMENDMENT NO. 3256

Mr. COCHRAN (for Mr. HATCH) proposed an amendment to the bill (S. 2216) to designate September 17, 1987, the bicentennial of the signing of the Constitution of the United States as "Constitution Day," and to make such day a legal public holiday; as follows:

At the end of the bill, add the following new section:

Sec. ——. (a) Section 6103 of title 5, United States Code, is amended—

(1) by inserting in subsection (a) immediately after the item relating to Labor Day, the following new item: "Constitution Day, September 17.";

(2) by striking out "For" in subsection (b) and inserting in lieu thereof "Except as provided for in subsection (d), for"; and

(3) by adding at the end thereof the following new subsection:

"(d) For purposes of statutes relating to pay and leave of employees, Constitution Day shall not be observed as a legal public holiday in calendar years beginning after December 31, 1987.".

(b) The amendments made by this section shall apply to calendar years beginning after December 31, 1987.

INDIAN HEALTH CARE IMPROVEMENT ACT AMENDMENTS

ANDREWS (AND MELCHER) AMENDMENT NO. 3257

Mr. COCHRAN (for Mr. ANDREWS, for himself, and Mr. MELCHER) proposed an amendment to the bill (H.R. 1426) to authorize and amend the Indian Health Care Improvement Act, and for other purposes, as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SHORT TITLE; TABLE OF CONTENTS

SECTION 1. This Act may be cited as the "Indian Health Care Amendments of 1986".

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Sec. 701. Leasing and other contracts.
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Sec. 703. Arizona as a contract health service delivery area.
Sec. 704. Eligibility of California Indians.
Sec. 705. California as a contract health service delivery area.
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Sec. 707. National Health Service Corps.
Sec. 708. Health services for ineligible persons.
Sec. 709. Infant and maternal mortality; fetal alcohol syndrome.
Sec. 710. Contract health services for the Trenton Service Area.
Sec. 711. Indian health service and Veterans' Administration health facilities and services sharing.
Sec. 712. Navajo alcohol rehabilitation demonstration program.
Sec. 713. Reallocation of base resources.
Sec. 714. Provision of services in Montana.
Sec. 715. Severability.
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Sec. 801. Short title.
Sec. 802. Findings and purpose.
Sec. 803. Definitions.
Sec. 804. Study on diabetes among native Americans.
Sec. 805. Diabetes care program.
Sec. 806. Data collection and analysis.
Sec. 807. Research.
Sec. 808. Regulations.
Sec. 809. Authorization of appropriations.

REFERENCES

SEC. 2. Except as otherwise specifically provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or a repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Indian Health Care Improvement Act (25 U.S.C. 1601, et seq.).

TITLE I—INDIAN HEALTH MANPOWER

HEALTH PROFESSIONS RECRUITMENT PROGRAM FOR INDIANS

SEC. 101. Subsection (c) of section 102 (25 U.S.C. 1612(c)) is amended to read as follows:

"(c) There are authorized to be appropriated for the purpose of carrying out the provisions of this section—

"(1) $550,000 for fiscal year 1987,
"(2) $600,000 for fiscal year 1988,
"(3) $650,000 for fiscal year 1989, and
"(4) $700,000 for fiscal year 1990.".

HEALTH PROFESSIONS PREPARATORY SCHOLARSHIP PROGRAM

SEC. 102. (a) Section 103 (25 U.S.C. 1613) is amended by striking out subsection (d) and inserting in lieu thereof the following:

"(d) The Secretary shall not deny scholarship assistance to an eligible applicant under this section solely on the basis of the applicant's scholastic achievement if such applicant has been admitted to, or maintained good standing at, an accredited institution.

"(e) There are authorized to be appropriated for the purpose of carrying out the provisions of this section—
"(1) $3,000,000 for fiscal year 1987,
"(2) $3,700,000 for fiscal year 1988,
"(3) $4,400,000 for fiscal year 1989, and
"(4) $5,100,000 for fiscal year 1990.".

(b) Subsection (c) of section 103 is amended by striking out "expenses" and inserting in lieu thereof "expenses of a grantee while attending school full time".

INDIAN HEALTH SERVICE EXTERN PROGRAMS

SEC. 103. Subsection (d) of section 105 (25 U.S.C. 1614) is amended to read as follows:

"(d) There are authorized to be appropriated for the purpose of carrying out the provisions of this section—
"(1) $300,000 for fiscal year 1987,
"(2) $350,000 for fiscal year 1988,
"(3) $400,000 for fiscal year 1989, and
"(4) $450,000 for fiscal year 1990.".

INDIAN HEALTH PROFESSIONS SCHOLARSHIP PROGRAM

SEC. 104. (a) Section 104 is amended to read as follows:

"INDIAN HEALTH PROFESSIONS SCHOLARSHIPS

"SEC. 104. (a) In order to provide health professionals to Indian communities, the Secretary, acting through the Service and in accordance with this section, shall make scholarship grants to Indians who are enrolled full time in schools of medicine, osteopathy, podiatry, psychology, dentistry, veterinary medicine, nursing, optometry, public health, and allied health professions. Such scholarships shall be designated Indian Health Scholarships and shall be made in accordance with section 338A of the Public Health Service Act (42 U.S.C. 2541), except as provided in subsection (b) of this section.

"(b)(1) The Secretary, acting through the Service, shall determine who shall receive scholarships under subsection (a) and shall determine the distribution of such scholarships among such health professions on the basis of the relative needs of Indians for additional service in such health professions.

"(2) An individual shall be eligible for a scholarship under subsection (a) in any year in which such individual is enrolled full time in a health profession school referred to in subsection (a).

"(3) The active duty service obligation prescribed under section 338B of the Public Health Service Act (42 U.S.C. 254m) shall be met by a recipient of an Indian Health Scholarship by service—

"(A) in the Indian Health Service;

"(B) in a program conducted under a contract entered into under the Indian Self-Determination and Education Assistance Act;

"(C) in a program assisted under title V of this Act; or

"(D) in the private practice of the applicable profession if, as determined by the Secretary, in accordance with guidelines promulgated by the Secretary, such practice is situated in a physician or other health professional shortage area and addresses the health care needs of a substantial number of Indians.

"(c) For the purpose of this section, the term 'Indian' has the same meaning given that term by subsection (c) of section 4 of this Act, including all individuals described in clauses (1) through (4) of that subsection.

"(d) There are authorized to be appropriated for the purpose of carrying out the provisions of this section—
"(1) $5,100,000 for fiscal year 1987,
"(2) $6,000,000 for fiscal year 1988,
"(3) $7,100,000 for fiscal year 1989, and
"(4) $8,234,000 for fiscal year 1990.".

(b) Section 338G of the Public Health Service Act (42 U.S.C. 254r) is repealed.

CONTINUING EDUCATION ALLOWANCES

SEC. 105. Subsection (b) of section 106 (25 U.S.C. 1615 (b)) is amended to read as follows:

"(b) There are authorized to be appropriated for the purpose of carrying out the provisions of this section—
"(1) $500,000 for fiscal year 1987,
"(2) $526,300 for fiscal year 1988,
"(3) $553,800 for fiscal year 1989, and
"(4) $582,500 for fiscal year 1990.".

NATIVE HAWAIIAN HEALTH PROFESSIONS SCHOLARSHIP PROGRAM

SEC. 106. The Public Health Service Act (42 U.S.C. 201, et seq.) is amended by inserting after section 338G the following new section:

"SEC. 338H. NATIVE HAWAIIAN HEALTH SCHOLARSHIPS.

"(a) Subject to the availability of funds appropriated under the authority of subsection (d), the Secretary shall provide scholarship assistance to students who—
"(1) meet the requirements of section 338A(b), and
"(2) are Native Hawaiians.

"(b) The scholarship assistance provided under subsection (a) shall be provided under the same terms and subject to the same conditions, regulations, and rules that apply to scholarship assistance provided under section 338A.

"(c) For purposes of this section, the term 'Native Hawaiian' means any individual who is—
"(1) a citizen of the United States, and
"(2) a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii, as evidenced by—
"(A) genealogical records,
"(B) Kupuna (elders) or Kama'aina (long-term community residents) verification, or
"(C) birth records of the State of Hawaii.

"(d) There are authorized to be appropriated $1,800,000 for fiscal year 1988, and for each fiscal year thereafter, for the purpose of funding the scholarship assistance provided under subsection (a).".

COMMUNITY HEALTH REPRESENTATIVES

SEC. 107. Title I is amended by adding at the end thereof the following new section:

"COMMUNITY HEALTH REPRESENTATIVE PROGRAM

"SEC. 107. (a) Under the authority of the Act of November 2, 1921 (25 U.S.C. 13), popularly known as the Snyder Act, the Secretary shall maintain a Community Health Representative Program under which the Service—
"(1) provides for the training of Indians as health paraprofessionals, and
"(2) uses such paraprofessionals in the provision of health care to Indian communities.

"(b) The Secretary, acting through the Community Health Representative Program of the Service, shall—
"(1) provide a high standard of paraprofessional training to Community Health Representatives to ensure that the Community Health Representatives provide quality health care to the Indian communities served by such Program,
"(2) in order to provide such training, develop a curriculum that—
"(A) combines education in the theory of health care with supervised practical experience in the provision of health care,
"(B) provides instruction and practical experience in health promotion and disease prevention activities, particularly—
"(i) nutrition,
"(ii) physical fitness,
"(iii) weight control,
"(iv) cessation of tobacco smoking,
"(v) stress management,
"(vi) control of alcohol and drug abuse (including prevention of fetal alcohol syndrome),
"(vii) control of high blood pressure,
"(viii) prevention of lifestyle-related accidents,
"(ix) prevention and management of hearing and vision problems, and
"(x) prevention of diabetes, and
"(C) provides instruction in the latest and most effective social, educational, and behavioral approaches to the establishment and maintenance of good health habits,
"(3) develop a system which identifies the needs of Community Health Representatives for continuing education in health care, health promotion, and disease prevention and develop programs that meet the needs for such continuing education,
"(4) develop and maintain a system that provides close supervision of Community Health Representatives,
"(5) develop a system under which the work of Community Health Representatives is reviewed and evaluated, and
"(6) ensure that the provision of health care, health promotion, and disease prevention activities are consistent with the traditional health care practices and cultural values of the Indian tribes served by such Program.".

TITLE II—HEALTH SERVICES

IMPROVEMENT OF INDIAN HEALTH STATUS

SEC. 201. (a) Section 201 (25 U.S.C. 1621) is amended to read as follows:

"IMPROVEMENT OF INDIAN HEALTH STATUS

"SEC. 201. (a) The Secretary is authorized to expend funds which are appropriated pursuant to subsection (j), through the Service, for the purposes of—
"(1) raising the health status of Indians to zero health resources deficiency,
"(2) eliminating backlogs in the provision of health care services to Indians,
"(3) meeting the health needs of Indians in an efficient and equitable manner, and
"(4) augmenting the ability of the Service to meet the following health service responsibilities:
"(A) clinical care (direct and indirect) including clinical eye and vision care;
"(B) preventive health;
"(C) dental care (direct and indirect);
"(D) mental health, including community mental health services, inpatient mental health services, dormitory mental health services, therapeutic and residential treat-

ment centers, and training of traditional Indian practitioners;

"(E) emergency medical services;

"(F) treatment and control of, and rehabilitative care related to, alcoholism and drug abuse (including fetal alcohol syndrome) among Indians;

"(G) home health care;

"(H) community health representatives; and

"(I) maintenance and repair.

"(b)(1) Any funds appropriated pursuant to subsection (j) shall not be used to offset or limit any appropriations made to the Service under the Act of November 2, 1921 (25 U.S.C. 13), popularly known as the Snyder Act, or any other provision of law.

"(2) Funds which are appropriated pursuant to subsection (j) may be allocated to, or used for the benefit of, any Indian tribe which has a health resources deficiency level at level I or II only if a sufficient amount of funds have been appropriated pursuant to subsection (j) to raise all Indian tribes to health resources deficiency level II.

"(3)(A) Funds appropriated pursuant to subsection (j) may be allocated on a service unit basis but such allocation shall be made in a manner which ensures that the requirement of paragraph (2) is met. The funds allocated to each service unit under this subparagraph shall be used by the service unit (in accordance with paragraph (2)) to raise the deficiency level of each tribe served by such service unit.

"(B) The apportionment of funds allocated to a service unit under subparagraph (A) among the health service responsibilities described in subsection (a)(4) shall be determined by the Service in consultation with the affected Indian tribes.

"(c) For purposes of this section—

"(1) The health resources deficiency levels of an Indian tribe are as follows:

"(A) level I—0 to 20 percent health resources deficiency;

"(B) level II—21 to 40 percent health resources deficiency;

"(C) level III—41 to 60 percent health resources deficiency;

"(D) level IV—61 to 80 percent health resources deficiency; and

"(E) level V—81 to 100 percent health resources deficiency.

"(2) The term 'health resources deficiency' means a percentage determined by dividing—

"(A) the excess, if any, of—

"(i) the value of the health resources that the Indian tribe needs, over

"(ii) the value of the health resources available to the Indian tribe, by

"(B) the value of the health resources that the Indian tribe needs.

"(3) The health resources available to an Indian tribe include health resources provided by the Service as well as health resources used by the Indian tribe, including services and financing systems provided by any Federal programs, private insurance, and programs of State or local governments.

"(4) Under regulations, the Secretary shall establish procedures which allow any Indian tribe to petition the Secretary for a review of any determination of the health resources deficiency level of such tribe.

"(d)(1) Programs administered by any Indian tribe or tribal organization under the authority of the Indian Self-Determination and Education Assistance Act shall be eligible for funds appropriated pursuant to subsection (j) on an equal basis with programs that are administered directly by the Service.

"(2) If any funds allocated to a tribe or service unit under the authority of this section are used for a contract entered into under the Indian Self-Determination and Education Assistance Act, a reasonable portion of such funds may be used for health planning, training, technical assistance, and other administrative support functions.

"(e) The Secretary, acting through the Service, shall expend directly or by contract not less than 1 percent of the funds appropriated pursuant to subsection (j) for research in the areas of health service responsibilities set out in subparagraphs (A) through (H) of subsection (a)(4). Indian tribes and tribal organizations contracting with the Service under the authority of the Indian Self-Determination and Education Assistance Act shall be given an equal opportunity to compete for, and receive, such research funds.

"(f) By no later than the date that is 60 days after the date of enactment of the Indian Health Care Amendments of 1986, the Secretary shall submit to the Congress the current health services priority system report of the Service for each Indian tribe or service unit, including newly recognized or acknowledged tribes. Such report shall set out—

"(1) the methodology then in use by the Service for determining tribal health resources deficiencies, as well as the most recent application of that methodology;

"(2) the level of health resources deficiency for each Indian tribe served by the Service;

"(3) the amount of funds necessary to raise all Indian tribes served by the Service below health resources deficiency level II to health resources deficiency level II;

"(4) the amount of funds necessary to raise all tribes served by the Service below health resources deficiency level I to health resources deficiency level I;

"(5) the amount of funds necessary to raise all tribes served by the Service to zero health resources deficiency; and

"(6) an estimate of—

"(A) the amount of health service funds appropriated under the authority of this Act, or any other Act, including the amount of any funds transferred to the Service, for the preceding fiscal year which is allocated to each service unit, Indian tribe, or comparable entity;

"(B) the number of Indians eligible for health services in each service unit or Indian tribe; and

"(C) the number of Indians using the Service resources made available to each service unit or Indian tribe.

"(g)(1) The Secretary, acting through the Service and in conjunction with each Indian tribe, shall annually update the tribal specific health plans which were developed as part of the plan required under section 703. The updating of such plans shall be carried out in accordance with the methodology submitted to the Congress under subsection (f), as modified through consultation with the Indian tribe to which such plan relates.

"(2) The Secretary shall submit to Congress an annual report on the health services priority system of the Service by no later than 60 days after the date the President submits to the Congress the budget required under section 1105 of title 31, United States Code, for any fiscal year beginning after September 30, 1988. Such report shall be based on the updated tribal specific health plans described in paragraph (1) and shall include information on any change in the methodology used by the Service since the submission of the report required under subsection (f) or since the previous submission of the report required under this section.

"(h)(1) The President shall include with the budget submitted under section 1105 of title 31, United States Code, for each fiscal year a separate statement which—

"(A) specifies the amount of funds requested to carry out the provisions of this section for such fiscal year, and

"(B) specifies the total amount obligated or expended in the most recently completed fiscal year to carry out subsection (g) and to carry out each of the subparagraphs of subsection (a)(4).

"(2) Funds appropriated under authority of this section for any fiscal year shall be included in the base budget of the Service for the purpose of determining appropriations under this section in subsequent fiscal years.

"(i) Nothing in this section is intended to diminish the primary responsibility of the Service to eliminate existing backlogs in unmet health care needs, nor are the provisions of this section intended to discourage the Service from undertaking additional efforts to achieve parity among Indian tribes.

"(j) There are authorized to be appropriated for the purpose of carrying out the provisions of this section—

"(1) $18,000,000 for fiscal year 1988,

"(2) $19,000,000 for fiscal year 1989, and

"(3) $19,000,000 for fiscal year 1990.

Any funds appropriated under the authority of this subsection shall be designated as the 'Indian Health Care Improvement Fund'.".

(b) Section 4 (25 U.S.C. 1603) is amended by striking out subsections (i), (j), and (k), and by inserting in lieu thereof the following new subsections:

"(i) 'Area office' means an administrative entity including a program office, within the Indian Health Service through which services and funds are provided to the service units within a defined geographic area.

"(j) 'Service unit' means—

"(1) an administrative entity within the Indian Health Service, or

"(2) a tribe or tribal organization operating health care programs or facilities with funds from the Service under the Indian Self-Determination and Education Assistance Act,

through which services are provided, directly or by contract, to the eligible Indian population within a defined geographic area.".

CATASTROPHIC HEALTH PROGRAM

SEC. 202. Title II is amended by adding at the end thereof the following new section:

"CATASTROPHIC HEALTH EMERGENCY FUND

"SEC. 202. (a)(1) There is hereby established an Indian Catastrophic Health Emergency Fund (hereafter in this section referred to as the 'Fund') consisting of—

"(A) the amounts deposited under subsection (d), and

"(B) the amounts appropriated under subsection (e).

"(2) The Fund shall be administered by the Secretary, acting through the central office of the Service, solely for the purpose of meeting the extraordinary medical costs associated with the treatment of victims of disasters or catastrophic illnesses who are within the responsibility of the Service.

"(3) The Fund shall not be allocated, apportioned, or delegated on a service unit, area office, or any other basis.

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"(4) No part of the Fund or its administration shall be subject to contract or grant under any law, including the Indian Self-Determination and Education Assistance Act.

"(b) The Secretary shall, through the promulgation of regulations consistent with the provisions of this section—

"(1) establish a definition of disasters and catastrophic illnesses for which the cost of treatment provided under contract would qualify for payment from the Fund;

"(2) provide that a service unit shall not be eligible for reimbursement for the cost of treatment from the Fund until its cost of treating any victim of such catastrophic illness or disaster has reached a certain threshold cost which the Secretary shall establish at not less than $10,000 or not more than $20,000;

"(3) establish a procedure for the reimbursement of the portion of the costs incurred by—

"(A) service units or facilities of the Service, or

"(B) whenever otherwise authorized by the Service, non-Service facilities or providers,

in rendering treatment that exceeds such threshold cost;

"(4) establish a procedure for payment from the Fund in cases in which the exigencies of the medical circumstances warrant treatment prior to the authorization of such treatment by the Service; and

"(5) establish a procedure that will ensure that no payment shall be made from the Fund to any provider of treatment to the extent that such provider is eligible to receive payment for the treatment from any other Federal, State, local, or private source of reimbursement for which the patient is eligible.

"(c) Funds appropriated under subsection (e) shall not be used to offset or limit appropriations made to the Service under authority of the Act of November 2, 1921 (25 U.S.C. 13), popularly known as the Snyder Act, or any other law.

"(d) There shall be deposited into the Fund—

"(1) all reimbursements to which the Service is entitled from any Federal, State, local, or private source (including third party insurance) by reason of treatment rendered to any victim of a disaster or catastrophic illness who is within the responsibility of the Service, and

"(2) all funds recovered under the authority of Public Law 87-693 (42 U.S.C. 2651, et seq.), popularly known as the Medical Care Recovery Act, by reason of such treatment.

"(e) There are authorized to be appropriated for the purpose of carrying out the provisions of this section—

"(1) $10,000,000 for fiscal year 1987, and

"(2) for each of the fiscal years 1988, 1989, and 1990, such sums may be necessary to restore the Fund to a level of $10,000,000 for such fiscal year.

Funds appropriated under the authority of this subsection shall remain available until expended.".

HEALTH PROMOTION AND DISEASE PREVENTION

SEC. 203. (a) The Congress finds that—

(1) health promotion and disease prevention activities will—

(A) improve the health and well being of Indians, and

(B) reduce the expenses for medical care of Indians,

(2) health promotion and disease prevention activities should be undertaken by the coordinated efforts of Federal, State, local, and tribal governments, and

(3) in addition to the provision of primary health care, the Indian Health Service should provide health promotion and disease prevention services to Indians.

(b) Section 4 (25 U.S.C. 1603), as amended by section 201(b) of this Act, is further amended by adding at the end thereof the following new subsections:

"(k) 'Health promotion' includes—

"(1) cessation of tobacco smoking,

"(2) reduction in the misuse of alcohol and drugs,

"(3) improvement of nutrition,

"(4) improvement in physical fitness,

"(5) family planning, and

"(6) control of stress.

"(l) 'Disease prevention' includes—

"(1) immunizations,

"(2) control of high blood pressure,

"(3) control of sexually transmittable diseases,

"(4) prevention and control of diabetes,

"(5) pregnancy and infant care (including prevention of fetal alcohol syndrome),

"(6) control of toxic agents,

"(7) occupational safety and health,

"(8) accident prevention,

"(9) fluoridation of water, and

"(10) control of infectious agents.".

(c) Title II (25 U.S.C. 1621, et seq.), as amended by section 202 of this Act, is further amended by adding at the end thereof the following new section:

"HEALTH PROMOTION AND DISEASE PREVENTION SERVICES

"SEC. 203. (a) The Secretary, acting through the Service, shall provide health promotion and disease prevention services to Indians.

"(b) The Secretary shall include in each report which is required under section 201(g) an evaluation of—

"(1) the health promotion and disease prevention needs of Indians identified in tribal specific health plans,

"(2) the health promotion and disease prevention activities which would best meet such needs,

"(3) the internal capacity of the Service to meet such needs, and

"(4) the resources which would be required to enable the Service to undertake the health promotion and disease prevention activities necessary to meet such needs.

"(c) Under regulations, the Secretary shall require that each Indian tribe include within any tribal specific health plan that such tribe is required to submit to the Secretary a comprehensive plan developed by such tribe for health promotion and disease prevention among members of such tribe.

"(d) By no later than the date that is 1 year after the date of enactment of the Indian Health Care Amendments of 1986, the Secretary, acting through the Service, shall—

"(1) develop from tribal specific health plans a comprehensive plan for the provision by the Service of health promotion and disease prevention services to Indians, and

"(2) establish a schedule for the provision of health promotion and disease prevention services by the Service.

"(e)(1) The Secretary shall establish at least 1 demonstration project (but no more than 4 demonstration projects) to determine the most effective and cost-efficient means of—

"(A) providing health promotion and disease prevention services,

"(B) encouraging Indians to adopt good health habits,

"(C) reducing health risks to Indians, particularly the risks of heart disease, cancer, stroke, diabetes, anxiety, depression, and lifestyle-related accidents,

"(D) reducing medical expenses of Indians through health promotion and disease prevention activities,

"(E) establishing a program—

"(i) which trains Indians in the provision of health promotion and disease prevention services to members of their tribe, and

"(ii) under which such Indians are available on a contract basis to provide such services to other tribes, and

"(F) providing training and continuing education to employees of the Service, and to paraprofessionals participating in the Community Health Representative Program, in the delivery of health promotion and disease prevention services.

"(2) The demonstration project described in paragraph (1) shall include an analysis of the cost effectiveness of organizational structures and of social and educational programs that may be useful in achieving the objectives described in paragraph (1).

"(3)(A) The demonstration project described in paragraph (1) shall be conducted in association with at least one—

"(i) health profession school,

"(ii) allied health profession or nurse training institution, or

"(iii) public or private entity that provides health care.

"(B) The Secretary is authorized to enter into contracts with, or make grants to, any school of medicine or school of osteopathy for the purpose of carrying out the demonstration project described in paragraph (1).

"(C) For purposes of this paragraph, the term 'school of medicine' and 'school of osteopathy' have the respective meaning given to such terms by section 701(4) of the Public Health Service Act (42 U.S.C. 292a(4)).

"(4) The Secretary shall submit to Congress a final report on the demonstration project described in paragraph (1) within 60 days after the termination of such project.

"(5) The demonstration project described in paragraph (1) shall be established by no later than the date that is 12 months after the date of enactment of the Indian Health Care Amendments of 1986 and shall terminate on the date that is 30 months after the date of enactment of such Amendments.

"(6) There are authorized to be appropriated $500,000 for the purpose of carrying out the provisions of this subsection, such sum to remain available without fiscal year limitation.

"(f)(1)(A) The Secretary shall, acting through the Public Health Service, establish in the State of Hawaii, as a demonstration project, a Native Hawaiian Program for Health Promotion and Disease Prevention for the purpose of exploring ways to meet the unique health care needs of Native Hawaiians.

"(B) The demonstration program that is to be established under subparagraph (A) shall—

"(i) provide necessary preventive-oriented health services, including health education and mental health care,

"(ii) develop innovative training and research projects,

"(iii) establish cooperative relationships with the leadership of the Native Hawaiian community,

"(iv) ensure that a continuous effort is made to establish programs which can be of direct benefit to other Native American people, and

"(v) assure a comprehensive effort to reduce the incidence of diabetes among Native Hawaiians.

"(C) The Secretary is authorized to enter into contracts with Native Hawaiian organizations for the purpose of assisting the Secretary in meeting the objectives of the demonstration program that is to be established under subparagraph (A).

"(2)(A) In fulfillment of the objective set forth in paragraph (1)(B)(v), the Secretary shall enter into a contract with a Native Hawaiian organization to conduct a study to determine—

"(i) the incidence of diabetes among Native Hawaiians;

"(ii) activities which should be undertaken—

"(I) to reduce the incidence of diabetes among Native Hawaiians,

"(II) to provide Native Hawaiians with guidance in the prevention, treatment, and control of diabetes,

"(III) to provide early diagnosis of diabetes among Native Hawaiians, and

"(IV) to ensure that proper continuing health care is provided to Native Hawaiians who are diagnosed as diabetic.

"(B) The Secretary shall enter into a contract with a Native Hawaiian organization for the purposes of preparing an inventory of all health care programs (public and private) within the State of Hawaii that are available for the treatment, prevention, or control of diabetes among Native Hawaiians.

"(C) By no later than the date that is 2 years after the date of enactment of this Act, the Native Hawaiian organization with whom the Secretary has entered into a contract, shall prepare and transmit to the Secretary a report describing the determinations made under subparagraph (A), containing the inventory prepared under subparagraph (B), and describing the research activities conducted under this subsection. The Secretary shall submit the report to the Congress and the President.

"(3)(A) By no later than the date that is 3 years after the date of enactment of this Act, the Secretary shall enter into a contract with a Native Hawaiian organization for the purpose of implementing a program designed—

"(i) to establish a diabetes control program;

"(ii) to screen those Native Hawaiian individuals that have been identified as having a high risk of becoming diabetic;

"(iii) to effectively treat—

"(I) newly diagnosed diabetics in order to reduce further complications from diabetes,

"(II) individuals who have a high risk of becoming diabetic in order to reduce the incidence of diabetes, and

"(III) short-term and long-term complications of diabetes;

"(iv) to conduct for Federal, State, and other Native Hawaiian health care providers (including Native Hawaiian community health outreach workers), training programs concerning current methods of prevention, diagnosis, and treatment of diabetes and related complications among Native Hawaiians;

"(v) to determine the appropriate delivery to Native Hawaiians of health care services relating to diabetes;

"(vi) to develop and present health education information to Native Hawaiian communities and schools concerning the prevention, treatment, and control of diabetes; and

"(vii) to ensure that proper continuing health care is provided to Native Hawaiians who are diagnosed as being diabetic.

"(B) The Secretary shall enter into a contract with a Native Hawaiian organization for the purpose of—

"(i) promoting coordination and cooperation between all health care providers in the delivery of diabetes related services to Native Hawaiians; and

"(ii) encouraging and funding joint projects between Federal programs, State health care facilities, community health centers, and Native Hawaiian communities for the prevention and treatment of diabetes.

"(C)(i) The Secretary shall enter into a contract with a Native Hawaiian organization for the purpose of establishing a model diabetes program to serve Native Hawaiians in the State of Hawaii.

"(ii) The Secretary shall enter into a contract with a Native Hawaiian organization for the purpose of developing and implementing an outreach program to ensure that the achievements and benefits derived from the activities of the model diabetes program established under clause (i) are applied in Native Hawaiian communities to assure the diagnosis, prevention, and treatment of diabetes among Native Hawaiians.

"(D) The Secretary shall submit to the Congress an annual report outlining the activities, achievements, needs, and goals of the Native Hawaiian diabetes care program established under this paragraph.

"(4) The Secretary shall enter into a contract with a Native Hawaiian organization, for the purpose of developing a standardized system to collect, analyze, and report data regarding diabetes and related complications among Native Hawaiians. Such system shall be designed to facilitate dissemination of the best available information on diabetes to Native Hawaiian communities and health care professionals.

"(5) The Secretary shall enter into a contract with a Native Hawaiian organization for the purpose of—

"(A) conducting research concerning the causes, diagnosis, treatment, and prevention of diabetes and related complications among Native Hawaiians, and

"(B) coordinating such research with all other relevant agencies and units of the government of the State of Hawaii and the Department of Health and Human Services which conduct research relating to diabetes and related complications.

"(6) The Secretary shall submit to the Congress an annual report on the status and accomplishments of the projects established under this subsection during each of the fiscal years 1988, 1989, and 1990.

"(7)(A) The Secretary shall include in any contract which the Secretary enters into with any Native Hawaiian organization under this subsection such conditions as the Secretary considers necessary to ensure that the objectives of such contract are achieved.

"(B) The Secretary shall develop procedures to evaluate compliance with, and performance of, contracts entered into by Native Hawaiian organizations under this subsection.

"(C) The Secretary shall conduct an annual onsite evaluation of each Native Hawaiian organization which has entered into a contract under this subsection for purposes of determining the compliance of such organization with, and evaluating the performance of such organization under, such contract.

"(D) If, as a result of the evaluations conducted under subparagraph (C), the Secretary determines that a Native Hawaiian organization has not complied with or satisfactorily performed a contract entered into under this subsection, the Secretary shall, prior to renewing such contract, attempt to resolve the areas of noncompliance or unsatisfactory performance and modify such contract to prevent future occurrences of such noncompliance or unsatisfactory performance. If the Secretary determines that such noncompliance or unsatisfactory performance cannot be resolved and prevented in the future, the Secretary shall not renew such contract with such organization and is authorized to enter into a contract under this subsection with another Native Hawaiian organization that serves the same population of Native Hawaiians which is served by the Native Hawaiian organization whose contract is not renewed by reason of this subparagraph.

"(E) In determining whether to renew a contract entered into with a Native Hawaiian organization under this subsection, the Secretary shall—

"(i) review the records of the Native Hawaiian organization, and

"(ii) shall consider the results of the onsite evaluations conducted under subparagraph (C).

"(F) All contracts entered into by the Secretary under this subsection shall be in accordance with all Federal contracting laws and regulations except that, in the discretion of the Secretary, such contracts may be negotiated without advertising and need not conform to the provision of the Act of August 24, 1935 (40 U.S.C. 270a, et seq.).

"(G) Payments made under any contract entered into under this subsection may be made in advance, by means of reimbursement, or in installments and shall be made on such conditions as the Secretary deems necessary to carry out the purposes of this subsection.

"(H) Notwithstanding any other provision of law, the Secretary may, at the request or consent of a Native Hawaiian organization, revise or amend any contract entered into by the Secretary with such organization under this subsection as necessary to carry out the purposes of this subsection, except that whenever such organization requests retrocession of any contract entered into under this subsection, such retrocession shall become effective upon a date specified by the Secretary that is not more than 120 days after the date of the request by such organization or at such later date as may be mutually agreed to by the Secretary and such organization.

"(I)(i) For each fiscal year during which a Native Hawaiian organization receives or expends funds pursuant to a contract entered into under this subsection, such organization shall submit to the Secretary a quarterly report on—

"(I) activities conducted by the organization under the contract,

"(II) the amounts and purposes for which Federal funds were expended, and

"(III) such other information as the Secretary may request.

"(ii) The reports and records of any Native Hawaiian organization which concern any contract entered into under this subsection shall be subject to audit by the Secretary and the Comptroller General of the United States.

"(J) The Secretary shall allow as a cost of any contract entered into under this subsection the cost of an annual private audit conducted by a certified public accountant.

"(K) The authority of the Secretary to enter into contracts under this subsection shall be to the extent, and in amounts, provided for in appropriation Acts.

"(8) For purposes of this subsection—

"(A) The term 'Native Hawaiian' means any individual who—

"(i) is a citizen of the United States,

"(ii) is a resident of the State of Hawaii, and

"(iii) is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii, as evidenced by—

"(I) genealogical records,

"(II) Kupuna (elders) or Kama'aina (long-term community residents) verification, or

"(III) birth records of the State of Hawaii.

"(B) The term 'Native Hawaiian organization' means any organization—

"(i) which serves and represents the interests of Native Hawaiians,

"(ii) which is recognized by the Office of Hawaiian Affairs of the State of Hawaii and E Ola Mau for the purpose of planning, conducting, or administering programs (or portion of programs) authorized under this Act for Native Hawaiians, and

"(iii) in which Native Hawaiian health professionals significantly participate in the planning, management, monitoring, and evaluation of health services.

"(9) There are authorized to be appropriated $750,000 for each of the fiscal years 1988, 1989, 1990, and 1991, for the purpose of carrying out the provisions of this subsection.".

REIMBURSEMENT OF CERTAIN EXPENSES

SEC. 204. Title II, as amended by section 203(c), is further amended by adding at the end thereof the following new sections:

"REIMBURSEMENT FROM CERTAIN THIRD PARTIES OF COSTS OF HEALTH SERVICES

"SEC. 204. (a) The United States shall have the right to recover the reasonable expenses incurred by the Secretary in providing health services, through the Service, to any individual to the same extent that such individual, or any nongovernmental provider of such services, would be eligible to receive reimbursement or indemnification for such expenses if—

"(1) such services had been provided by a nongovernmental provider, and

"(2) such individual had been required to pay such expenses and did pay such expenses.

"(b) Subsection (a) shall provide a right of recovery against any State, or any political subdivision of a State, only if the injury, illness, or disability for which health services were provided is covered under—

"(1) workers' compensation laws, or

"(2) a no-fault automobile accident insurance plan or program.

"(c) No law of any State, or of any political subdivision of a State, and no provision of any contract entered into or renewed after the date of enactment of the Indian Health Care Amendments of 1986, shall prevent or hinder the right of recovery of the United States under subsection (a).

"(d) No action taken by the United States to enforce the right of recovery provided under subsection (a) shall affect the right of any person to any damages (other than damages for the cost of health services provided by the Secretary through the Service).

"(e) The United States may enforce the right of recovery provided under subsection (a) by—

"(1) intervening or joining in any civil action or proceeding brought—

"(A) by the individual for whom health services were provided by the Secretary, or

"(B) by any representative or heirs of such individual, or

"(2) instituting a separate civil action, after providing to such individual, or to the representative or heirs of such individual, notice of the intention of the United States to institute a separate civil action.

"CREDITING OF REIMBURSEMENTS

"SEC. 205. (a) Notwithstanding any provision of law other than this section, all funds received into the Treasury of the United States by reason of the provision of health services by the Service, including—

"(1) amounts paid under section 713(b)(1)(B), and

"(2) recoveries made under—

"(A) section 204, or

"(B) Public Law 87-693 (42 U.S.C. 2651, et seq.), popularly known as the Medical Care Recovery Act,

shall be credited to the reimbursable account of the Indian Health Service in the Treasury of the United States and shall remain available until expended.

"(b) Subsection (a) shall not apply to any amounts described in section 202(d).".

TITLE III—HEALTH FACILITIES

CONSULTATION; CLOSURE OF FACILITIES; REPORTS

SEC. 301. Section 301 (25 U.S.C. 1631) is amended to read as follows:

"CONSULTATION; CLOSURE OF FACILITIES; REPORTS

"SEC. 301. (a) Prior to the expenditure of, or the making of any firm commitment to expend, any funds appropriated for the planning, design, construction, or renovation of facilities pursuant to the Act of November 2, 1921 (25 U.S.C. 13), popularly known as the Snyder Act, the Secretary, acting through the Service, shall—

"(1) consult with any Indian tribe that would be significantly affected by such expenditure for the purpose of determining and, whenever practicable, honoring tribal preferences concerning size, location, type, and other characteristics of any facility on which such expenditure is to be made, and

"(2) ensure, whenever practicable, that such facility meets the standards of the Joint Commission on Accreditation of Hospitals by not later than 1 year after the date on which the construction or renovation of such facility is completed.

"(b)(1) Notwithstanding any provision of law other than this subsection, no Service hospital or other outpatient health care facility of the Service, or any portion of such a hospital or facility, may be closed if the Secretary has not submitted to the Congress at least 1 year prior to the date such hospital or facility (or portion thereof) is proposed to be closed an evaluation of the impact of such proposed closure which specifies, in addition to other considerations—

"(A) the accessibility of alternative health care resources for the population served by such hospital or facility;

"(B) the cost effectiveness of such closure;

"(C) the quality of health care to be provided to the population served by such hospital or facility after such closure;

"(D) the availability of contract health care funds to maintain existing levels of service; and

"(E) the views of the Indian tribes served by such hospital or facility concerning such closure.

"(2) Paragraph (1) shall not apply to any temporary closure of a facility or of any portion of a facility if such closure is necessary for medical, environmental, or safety reasons.

"(c) The President shall include with the budget submitted under section 1105 of title 31, United States Code, for each of the fiscal years 1988, 1989, and 1990, program information documents for the construction of 10 Indian health facilities which—

"(1) comply with applicable construction standards, and

"(2) have been approved by the Secretary.

"(d)(1) The Secretary shall submit to the Congress an annual report which sets forth—

"(A) the current health facility priority system of the Service,

"(B) the planning, design, construction, and renovation needs for the 10 top-priority inpatient care facilities and the 10 top-priority ambulatory care facilities (together with required staff quarters),

"(C) the justification for such order of priority,

"(D) the projected cost of such projects, and

"(E) the methodology adopted by the Service in establishing priorities under its health facility priority system.

"(2) The first report required under paragraph (1) shall be submitted by no later than the date that is 180 days after the date of enactment of the Indian Health Care Amendments of 1986 and, beginning in 1988, each subsequent annual report shall be submitted by the date that is 60 days after the date on which the President submits the budget to the Congress under section 1105 of title 31, United States Code.

"(3) In preparing each report required under paragraph (1) (other than the initial report), the Secretary shall—

"(A) consult with Indian tribes and tribal organizations including those tribes or tribal organizations operating health programs or facilities under any contract entered into with the Service under the Indian Self-Determination and Education Assistance Act, and

"(B) review the needs of such tribes and tribal organizations for inpatient and outpatient facilities, including their needs for renovation and expansion of existing facilities.

"(4) For purposes of this subsection, the Secretary shall, in evaluating the needs of facilities operated under any contract entered into with the Service under the Indian Self-Determination and Education Assistance Act, use the same criteria that the Secretary uses in evaluating the needs of facilities operated directly by the Service.

"(5) The Secretary shall ensure that the planning, design, construction, and renovation needs of Service and non-Service facilities which are the subject of a contract for health services entered into with the Service under the Indian Self-Determination and Education Assistance Act are fully and equitably integrated into the development of the health facility priority system.

"(e) All funds appropriated under the Act of November 2, 1921 (25 U.S.C. 13), for the planning, design, construction, or renovation of health facilities for the benefit of an Indian tribe or tribes shall be subject to the provisions of sections 103 and 104(b) of the Indian Self-Determination Act.".

SAFE WATER AND SANITARY WASTE DISPOSAL FACILITIES

SEC. 302. Section 302 (25 U.S.C. 1632) is amended to read as follows:

"SAFE WATER AND SANITARY WASTE DISPOSAL FACILITIES

"SEC. 302. (a) The Congress hereby finds and declares that—

"(1) the provision of safe water supply systems and sanitary sewage and solid waste disposal systems is primarily a health consideration and function;

"(2) Indian people suffer an inordinately high incidence of disease, injury, and illness directly attributable to the absence or inadequacy of such systems;

"(3) the long-term cost to the United States of treating and curing such disease, injury, and illness is substantially greater than the short-term cost of providing such systems and other preventive health measures;

"(4) many Indian homes and communities still lack safe water supply systems and sanitary sewage and solid waste disposal systems; and

"(5) it is in the interest of the United States, and it is the policy of the United States, that all Indian communities and Indian homes, new and existing, be provided with safe and adequate water supply systems and sanitary sewage waste disposal systems as soon as possible.

"(b)(1) In furtherance of the findings and declarations made in subsection (a), Congress reaffirms the primary responsibility and authority of the Service to provide the necessary sanitation facilities and services as provided in section 7 of the Act of August 5, 1954 (42 U.S.C. 2004a).

"(2) The Secretary, acting through the Service, is authorized to provide under section 7 of the Act of August 5, 1954 (42 U.S.C. 2004a)—

"(A) financial and technical assistance to Indian tribes and communities in the establishment, training, and equipping of utility organizations to operate and maintain Indian sanitation facilities;

"(B) ongoing technical assistance and training in the management of utility organizations which operate and maintain sanitation facilities; and

"(C) operation and maintenance assistance for, and emergency repairs to, tribal sanitation facilities when necessary to avoid a health hazard or to protect the Federal investment in sanitation facilities.

"(3) Notwithstanding any other provision of law—

"(A) the Secretary of Housing and Urban Affairs is authorized to transfer funds appropriated under the Housing and Community Development Act of 1974 (42 U.S.C. 5301, et seq.) to the Secretary of Health and Human Services, and

"(B) the Secretary of Health and Human Services is authorized to accept and use such funds for the purpose of providing sanitation facilities and services for Indians under section 7 of the Act of August 5, 1954 (42 U.S.C. 2004a).

"(c) Beginning in fiscal year 1988, the Secretary, acting through the Service, shall develop and begin implementation of a 10-year plan to provide safe water supply and sanitation sewage and solid waste disposal facilities to existing Indian homes and communities and to new and renovated Indian homes.

"(d) The financial and technical capability of an Indian tribe or community to safely operate and maintain a sanitation facility shall not be a prerequisite to the provision or construction of sanitation facilities by the Secretary.

"(e) The provisions of this section shall not diminish the primary responsibility of the Indian family, community, or tribe to establish, collect, and utilize reasonable user fees, or otherwise set aside funding, for the purpose of operating and maintaining sanitation facilities.

"(f) Programs administered by Indian tribes or tribal organizations under the authority of the Indian Self-Determination and Education Assistance Act shall be eligible for—

"(1) any funds appropriated pursuant to subsection (h), and

"(2) any funds appropriated for the purpose of providing water supply or sewage disposal services,

on an equal basis with programs that are administered directly by the Service.

"(g)(1) The Secretary shall submit to the Congress an annual report which sets forth—

"(A) the current Indian sanitation facility priority system of the Service;

"(B) the methodology for determining sanitation deficiencies;

"(C) the level of sanitation deficiency for each sanitation facilities project of each Indian tribe or community;

"(D) the amount of funds necessary to raise all Indian tribes and communities to a level I sanitation deficiency; and

"(E) the amount of funds necessary to raise all Indian tribes and communities to zero sanitation deficiency.

"(2) The first report required under paragraph (1) shall be submitted by no later than the date that is 180 days after the date of enactment of the Indian Health Care Amendments of 1986 and, beginning in 1988, each subsequent annual report shall be submitted by the date that is 60 days after the date on which the President submits the budget to the Congress under section 1105 of title 31, United States Code.

"(3) In preparing each report required under paragraph (1) (other than the initial report), the Secretary shall consult with Indian tribes and tribal organizations (including those tribes or tribal organizations operating health care programs or facilities under any contract entered into with the Service under the Indian Self-Determination and Education Assistance Act) to determine the sanitation needs of each tribe.

"(4) The methodology used by the Secretary in determining sanitation deficiencies for purposes of paragraph (1) shall be applied uniformly to all Indian tribes and communities.

"(5) For purposes of this subsection, the sanitation deficiency levels for an Indian tribe or community are as follows:

"(A) level I is an Indian tribe or community with a sanitation system—

"(i) which complies with all applicable water supply and pollution control laws, and

"(ii) in which the deficiencies relate to routine replacement, repair, or maintenance needs;

"(B) level II is an Indian tribe or community with a sanitation system—

"(i) which complies with all applicable water supply and pollution control laws, and

"(ii) in which the deficiencies relate to capital improvements that are necessary to improve the facilities in order to meet the needs of such tribe or community for domestic sanitation facilities;

"(C) level III is an Indian tribe or community with a sanitation system which—

"(i) has an inadequate or partial water supply and a sewage disposal facility that does not comply with applicable water supply and pollution control laws, or

"(ii) has no solid waste disposal facility;

"(D) level IV is an Indian tribe or community with a sanitation system which lacks either a safe water supply system or a sewage disposal system; and

"(E) level V is an Indian tribe or community that lacks a safe water supply and a sewage disposal system.

"(6) For purposes of this subsection, any Indian tribe or community that lacks the operation and maintenance capability to enable its sanitation system to meet pollution control laws may not be treated as having a level I or II sanitation deficiency.

"(h)(1) There are authorized to be appropriated for each of the fiscal years 1988, 1989, and 1990, $3,000,000 for the purpose of providing funds necessary to implement the responsibilities of the Service described in subsection (b)(2).

"(2) In addition to the amount authorized under paragraph (1), there are authorized to be appropriated for each of the fiscal years 1988, 1989, and 1990, $850,000 for the purpose of providing 30 new full-time equivalents for the Service which shall be used to carry out the responsibilities of the Service described in subsection (b)(2).".

USE OF NON-SERVICE FUNDS FOR RENOVATION

SEC. 303. (a) Section 305 (25 U.S.C. 1634) is amended to read as follows:

"EXPENDITURE OF NON-SERVICE FUNDS FOR RENOVATION

"SEC. 305. (a) Notwithstanding any other provision of law, the Secretary is authorized to accept any major renovation or modernization by any Indian tribe of any Service facility, or of any other Indian health facility operated pursuant to a contract entered into under the Indian Self-Determination and Education Assistance Act, including—

"(1) any plans or designs for such renovation or modernization, and

"(2) any renovation or modernization for which funds appropriated under any Federal law were lawfully expended,

but only if the requirements of subsection (b) are met.

"(b) The requirements of this subsection are met with respect to any renovation or modernization if the renovation or modernization—

"(1) does not require or obligate the Secretary to provide any additional employees or equipment,

"(2) is approved by the appropriate area director of the Service, and

"(3) is administered by the Indian tribe in accordance with the rules and regulations prescribed by the Secretary with respect to construction or renovation of Service facilities.

"(c) A renovation or modernization shall not be authorized by this section if such renovation or modernization would require the diversion of funds appropriated to the Service from any project which has a higher priority under the health facility priority system of the Service.

"(d) If any Service facility which has been renovated or modernized by an Indian tribe under this section ceases to be used as a Service facility during the 20-year period beginning on the date such renovation or modernization is completed, such Indian tribe shall be entitled to recover from the United States an amount which bears the same ratio to the value of such facility at the time of such cessation as the value of such renovation or modernization (less the total amount of any funds provided specifically for such facility under any Federal program that were expended for such renovation or modernization) bore to the value of such facility at the time of the completion of such renovation or modernization.".

(b) The paragraph relating to administrative provisions of the Health Services Administration under the heading "Department of Health and Human Services" in title II of the matter contained in section 101(c) of Public Law 98-473 (98 Stat. 1864) is amended by striking out the sixth proviso.

BETHEL, ALASKA, HOSPITAL

SEC. 304. Title III is amended by adding at the end thereof the following new section:

"BETHEL, ALASKA, HOSPITAL

"SEC. 306. (a) If a final administrative ruling by the Department of the Interior holds that the Bethel Native Corporation is entitled to conveyance under the Alaska Native Claims Settlement Act of the title to the real property described in subsection (d)(1), such ruling shall be subject to judicial review.

"(b) The Secretary is authorized to enter into an agreement with Bethel Native Corporation for an exchange of the real property described in subsection (d)(1) for—

"(1) the lands described in subsection (d)(2), or

"(2) any other Federal property which Bethel Native Corporation would have been able to select under the Alaska Native Claims Settlement Act.

"(c) If an agreement for the exchange of land is not entered into under subsection (b) by the date that is 90 days after the date of the ruling described in subsection (a), the Secretary shall purchase the lands described in subsection (d)(1) at fair market value.

"(d)(1) The real property referred to in subsection (a) is United States Survey Numbered 4000, other than the lands described in paragraph (2).

"(2) The lands referred to in subsection (b)(1) are the lands identified as tracts A and B in the determination AA-18959 of the Bureau of Land Management issued on September 30, 1983, pursuant to the Alaska Native Claims Settlement Act.".

TITLE IV—ACCESS TO HEALTH SERVICES

GRANTS AND CONTRACTS WITH TRIBAL ORGANIZATIONS

SEC. 401. (a) Section 404 (25 U.S.C. 1622) is amended—

(1) by striking out "and" at the end of subsection (a)(2) and inserting in lieu thereof "or", and

(2) by striking out "shall include, but are not limited to," in subsection (b) and inserting in lieu thereof "may include, as appropriate,", and

(3) by adding "or" at the end of subsection (b)(3).

(b) Subsection (c) of section 404 (25 U.S.C. 1622(c)) is amended to read as follows:

"(c) There are authorized to be appropriated for the purpose of carrying out the provisions of this section—

"(1) $2,000,000 for fiscal year 1988,

"(2) $500,000 for fiscal year 1989, and

"(3) $500,000 for fiscal year 1990.".

MEDICARE PROVISIONS

SEC. 402. (a) Section 1880 of the Social Security Act is amended—

(1) in subsection (a), by striking out "A hospital or skilled nursing facility" and inserting in lieu thereof "A provider of services (as defined in section 1861(u)) or a rural health clinic (as defined in section 1861(aa)(2))";

(2) in subsection (a), by striking out "hospitals or skilled nursing facilities (as the case may be)" and inserting in lieu thereof "facilities of that type";

(3) in subsection (b), by striking out "a hospital or skilled nursing facility" and inserting in lieu thereof "a provider of services or a rural health clinic";

(4) in subsection (b), by striking out "hospitals or skilled nursing facilities (as the case may be)" and inserting in lieu thereof "facilities of that type";

(5) in subsection (c), by striking out "any hospital or skilled nursing facility" and inserting in lieu thereof "any provider of services or rural health clinic";

(6) in subsection (c), by striking out "hospitals and skilled nursing facilities" each place it appears and inserting in lieu thereof in each instance "providers of services and rural health clinics"; and

(7) in subsection (d), by striking out "hospitals and skilled nursing facilities" and "hospitals and facilities", and inserting in lieu thereof in each instance "providers of services (as defined in section 1861(u)) and rural health clinics (as defined in section 1861(aa)(2))".

(b) Section 1880(c) of the Social Security Act is further amended—

(1) by inserting after the first sentence the following: "In making payments from such fund, the Secretary shall ensure that each service unit of the Indian Health Service receives at least 50 percent of the amounts to which the providers and rural health clinics of the Indian Health Service, for which such service unit makes collections, are entitled by reason of this section, if such amount is necessary for the purpose of making improvements in such providers and rural health clinics in order to achieve compliance with the conditions and requirements of this title."; and

(2) by striking out "The preceding sentence" and inserting in lieu thereof "This subsection".

(c) The amendments made by this section shall apply to services performed on or after the date of the enactment of this Act.

MEDICAID PROVISIONS

SEC. 403. (a) Section 1911 of the Social Security Act is amended by striking out "or skilled nursing facility" each place it appears and inserting in lieu thereof in each instance "skilled nursing facility, or any other type of facility which provides services of a type otherwise covered under the State plan".

(b) Section 1911 of the Social Security Act is amended by adding at the end thereof the following new subsections:

"(c) The Secretary is authorized to enter into agreements with the State agency for the purpose of reimbursing such agency for health care and services provided in Service facilities to Indians who are eligible for medical assistance under the State plan.

"(d) Notwithstanding any other provision of law, payments to which any facility of the Indian Health Service (including a hospital, intermediate care facility, skilled nursing facility, or any other type of facility which provides services of a type otherwise covered under the State plan) is entitled under a State plan approved under this title by reason of this section shall be placed in a special fund to be held by the Secretary and used by him (to such extent or in such amounts as are provided in appropriation Acts) exclusively for the purpose of making any improvements in the facilities of such Service which may be necessary to achieve compliance with the applicable conditions and requirements of this title. In making payments from such fund, the Secretary shall ensure that each service unit of the Indian Health Service receives at least 50 percent of the amounts to which the facilities of the Indian Health Service, for which such service unit makes collections, are entitled by reason of this section, if such amount is necessary for the purpose of making improvements in such facilities in order to achieve compliance with the conditions and requirements of this title. This subsection shall cease to apply when the Secretary determines and certifies that substantially all of the health facilities of such Service in the United States are in compliance with such conditions and requirements.".

(c) Subsections (b) and (c) of section 402 (42 U.S.C. 1396j, note) are repealed.

(d) The amendments made by this section shall apply to services performed on or after the date of the enactment of this Act.

DEMONSTRATION PROGRAM

SEC. 404. Title IV is amended by adding at the end thereof the following new section:

"DEMONSTRATION PROGRAM FOR DIRECT BILLING OF MEDICARE, MEDICAID, AND OTHER THIRD PARTY PAYORS

"SEC. 405. (a) The Secretary shall establish a demonstration program under which Indian tribes, tribal organizations, and Alaska Native health organizations, which are contracting the entire operation of an entire hospital or clinic of the Service under the authority of the Indian Self-Determination and Education Assistance Act, shall directly bill for, and receive payment for, health care services provided by such hospital or clinic for which payment is made under title XVIII of the Social Security Act (medicare), under a State plan for medical assistance approved under title XIX of the Social Security Act (medicaid), or from any other third-party payor. The Federal medical assistance percentage under the medicaid program shall continue to be 100 percent for purposes of the demonstration program.

"(b)(1) Each hospital or clinic participating in the demonstration program described in subsection (a) shall be reimbursed directly under the medicare and medicaid programs for services furnished, without regard to the provisions of sections 1880(c) and 1911(d) of the Social Security Act and section 713(b)(2)(A) of this Act, but all funds so reimbursed shall first be used by the hospital or clinic for the purpose of making any improvements in the hospital or clinic that may be necessary to achieve or maintain compliance with the conditions and requirements applicable generally to facilities of such type under the medicare or medicaid program. Any funds so reimbursed which are in excess of the amount necessary to achieve or maintain such conditions or requirements shall be used—

"(A) solely for improving the health resources deficiency level of the Indian tribe, and

"(B) in accordance with the regulations of the Service applicable to funds provided by the Service under any contract entered into under the Indian Self-Determination and Education Assistance Act.

"(2) The amounts paid to the hospitals and clinics participating in the demonstration program described in subsection (a) shall be subject to all auditing requirements applicable to programs administered directly by the Service and to facilities participating in the medicare and medicaid programs.

"(3) The Secretary shall monitor the performance of hospitals and clinics participating in the demonstration program described in subsection (a), and shall require such hos-

pitals and clinics to submit reports on the program to the Secretary on a quarterly basis (or more frequently if the Secretary deems it to be necessary).

"(4) Notwithstanding sections 1880(c) and 1911(d) of the Social Security Act, no payment may be made out of the special fund described in sections 1880(c) or 1911(d) of the Social Security Act for the benefit of any hospital or clinic participating in the demonstration program described in subsection (a) during the period of such participation.

"(c)(1) In order to be considered for participation in the demonstration program described in subsection (a), a hospital or clinic must submit an application to the Secretary which establishes to the satisfaction of the Secretary that—

"(A) the Indian tribe or Alaska Native health organization contracts the entire operation of the Service facility;

"(B) the facility is eligible to participate in the medicare and medicaid programs under sections 1880 and 1911 of the Social Security Act;

"(C) the facility meets any requirements which apply to programs operated directly by the Service; and

"(D) the facility is accredited by the Joint Commission on Accreditation of Hospitals, or has submitted a plan, which has been approved by the Secretary, for achieving such accreditation prior to October 1, 1988.

"(2) From among the qualified applicants, the Secretary shall, prior to October 1, 1987, select no more than 4 facilities to participate in the demonstration program described in subsection (a). The demonstration program described in subsection (a) shall begin by no later than October 1, 1989, and end on September 30, 1993.

"(d)(1) Upon the enactment of the Indian Health Care Amendments of 1986, the Secretary, acting through the Service, shall commence an examination of—

"(A) any administrative changes which may be necessary to allow direct billing and reimbursement under the demonstration program described in subsection (a), including any agreements with States which may be necessary to provide for such direct billing under the medicaid program; and

"(B) any changes which may be necessary to enable participants in such demonstration program to provide to the Service medical records information on patients served under such demonstration program which is consistent with the medical records information system of the Service.

"(2) Prior to the commencement of the demonstration program described in subsection (a), the Secretary shall implement all changes required as a result of the examinations conducted under paragraph (1).

"(3) Prior to October 1, 1988, the Secretary shall determine any accounting information which a participant in the demonstration program described in subsection (a) would be required to report.

"(e) The Secretary shall submit a final report at the end of fiscal year 1993, on the activities carried out under the demonstration program described in subsection (a) which shall include an evaluation of whether such activities have fulfilled the objectives of such program. In such report the Secretary shall provide a recommendation, based upon the results of such demonstration program, as to whether direct billing of, and reimbursement by, the medicare and medicaid programs and other third-party payors should be authorized for all Indian tribes and Alaska Native health organizations which are contracting the entire operation of a facility of the Service.

"(f) The Secretary shall provide for the retrocession of any contract entered into between a participant in the demonstration program described in subsection (a) and the Service under the authority of the Indian Self-Determination and Education Assistance Act. All cost accounting and billing authority shall be retroceded to the Secretary upon the Secretary's acceptance of a retroceded contract.".

TITLE V—URBAN INDIAN HEALTH SERVICES

REVISION OF PROGRAM

SEC. 501. Title V (25 U.S.C. 1651, et seq.) is amended to read as follows:

"TITLE V—HEALTH SERVICES FOR URBAN INDIANS

"PURPOSE

"SEC. 501. The purpose of this title is to encourage the establishment of programs in urban centers to make health services more accessible to urban Indians.

"CONTRACTS WITH URBAN INDIAN ORGANIZATIONS

"SEC. 502. Under authority of the Act of November 2, 1921 (25 U.S.C. 13), popularly known as the Snyder Act, the Secretary, through the Service, shall enter into contracts with urban Indian organizations to assist such organizations in the establishment and administration, within the urban centers in which such organizations are situated, of programs which meet the requirements set forth in this title. The Secretary, through the Service, shall include such conditions as the Secretary considers necessary to effect the purpose of this title in any contract which the Secretary enters into with any urban Indian organization pursuant to this title.

"CONTRACTS FOR THE PROVISION OF HEALTH CARE OR REFERRAL SERVICES

"SEC. 503. (a) Under authority of the Act of November 2, 1921 (25 U.S.C. 13), popularly known as the Snyder Act, the Secretary, through the Service, shall enter into contracts with urban Indian organizations for the provision of health care or referral services for urban Indians residing in the urban centers in which such organizations are situated. Any such contract shall include requirements that the urban Indian organization successfully undertake to—

"(1) determine the population of urban Indians residing in the urban center in which such organization is situated who are or could be recipients of health care or referral services;

"(2) determine the current health status of urban Indians residing in such urban center;

"(3) determine the current health care needs of urban Indians residing in such urban center;

"(4) identify all public and private health services resources within such urban center which are or may be available to urban Indians;

"(5) determine the use of public and private health services resources by the urban Indians residing in such urban center;

"(6) assist such health services resources in providing services to urban Indians;

"(7) assist urban Indians in becoming familiar with and utilizing such health services resources;

"(8) provide basic health education, including health promotion and disease prevention education, to urban Indians;

"(9) establish and implement manpower training programs to accomplish the referral and education tasks set forth in clauses (6) through (8) of this subsection;

"(10) identify gaps between unmet health needs of urban Indians and the resources available to meet such needs;

"(11) make recommendations to the Secretary and Federal, State, local, and other resource agencies on methods of improving health service programs to meet the needs of urban Indians; and

"(12) where necessary, provide, or enter into contracts for the provision of, health care services for urban Indians.

"(b) The Secretary, through the Service, shall by regulation prescribe the criteria for selecting urban Indian organizations to enter into contracts under this section. Such criteria shall, among other factors, include—

"(1) the extent of unmet health care needs of urban Indians in the urban center involved;

"(2) the size of the urban Indian population in the urban center involved;

"(3) the accessibility to, and utilization of, health care services (other than services provided under this title) by urban Indians in the urban center involved;

"(4) the extent, if any, to which the activities set forth in subsection (a) would duplicate—

"(A) any previous or current public or private health services project in an urban center that was or is funded in a manner other than pursuant to this title; or

"(B) any project funded under this title;

"(5) the capability of an urban Indian organization to perform the activities set forth in subsection (a) and to enter into a contract with the Secretary under this section;

"(6) the satisfactory performance and successful completion by an urban Indian organization of other contracts with the Secretary under this title;

"(7) the appropriateness and likely effectiveness of conducting the activities set forth in subsection (a) in an urban center; and

"(8) the extent of existing or likely future participation in the activities set forth in subsection (a) by appropriate health and health-related Federal, State, local, and other agencies.

"CONTRACTS FOR THE DETERMINATION OF UNMET HEALTH CARE NEEDS

"SEC. 504. (a) Under authority of the Act of November 2, 1921 (25 U.S.C. 13), popularly known as the Snyder Act, the Secretary, through the Service, may enter into contracts with urban Indian organizations situated in urban centers for which contracts have not been entered into under section 503. The purpose of a contract under this section shall be the determination of the matters described in subsection (b)(1) in order to assist the Secretary in assessing the health status and health care needs of urban Indians in the urban center involved and determining whether the Secretary should enter into a contract under section 503 with the urban Indian organization with which the Secretary has entered into a contract under this section.

"(b) Any contract entered into by the Secretary under this section shall include requirements that—

"(1) the urban Indian organization successfully undertake to—

"(A) document the health care status and unmet health care needs of urban Indians in the urban center involved; and

"(B) with respect to urban Indians in the urban center involved, determine the matters described in clauses (2), (3), (4), and (8) of section 503(b); and

"(2) the urban Indian organization complete performance of the contract within one year after the date on which the Secretary and such organization enter into such contract.

"(c) The Secretary may not renew any contract entered into under this section.

"EVALUATIONS; CONTRACT RENEWALS

"SEC. 505. (a) The Secretary, through the Service, shall develop procedures to evaluate compliance with, and performance of, contracts entered into by urban Indian organizations under this title. Such procedures shall include provisions for carrying out the requirements of this section.

"(b) The Secretary, through the Service, shall conduct an annual onsite evaluation of each urban Indian organization which has entered into a contract under section 503 for purposes of determining the compliance of such organization with, and evaluating the performance of such organization under, such contract.

"(c) If, as a result of the evaluations conducted under this section, the Secretary determines that an urban Indian organization has not complied with or satisfactorily performed a contract under section 503, the Secretary shall, prior to renewing such contract, attempt to resolve with such organization the areas of noncompliance or unsatisfactory performance and modify such contract to prevent future occurrences of such noncompliance or unsatisfactory performance. If the Secretary determines that such noncompliance or unsatisfactory performance cannot be resolved and prevented in the future, the Secretary shall not renew such contract with such organization and is authorized to enter into a contract under section 503 with another urban Indian organization which is situated in the same urban center as the urban Indian organization whose contract is not renewed under this section.

"(d) In determining whether to renew a contract with an urban Indian organization under section 503, or whether to enter into a contract with an urban Indian organization under section 503 which has completed performance of a contract under section 504, the Secretary shall review the records of the urban Indian organization, the reports submitted under section 507, and, in the case of a renewal of a contract under section 503, shall consider the results of the on-site evaluations conducted under subsection (b).

"OTHER CONTRACT REQUIREMENTS

"SEC. 506. (a) Contracts with urban Indian organizations entered into pursuant to this title shall be in accordance with all Federal contracting laws and regulations except that, in the discretion of the Secretary, such contracts may be negotiated without advertising and need not conform to the provisions of the Act of August 24, 1935.

"(b) Payments under any contracts pursuant to this title may be made in advance or by way of reimbursement and in such installments and on such conditions as the Secretary deems necessary to carry out the purposes of this title.

"(c) Notwithstanding any provision of law to the contrary, the Secretary may, at the request or consent of an urban Indian organization, revise or amend any contract entered into by the Secretary with such organization under this title as necessary to carry out the purposes of this title, except that whenever an urban Indian organization requests retrocession of the Secretary for any contract entered into pursuant to this title, such retrocession shall become effective upon a date specified by the Secretary not more than one hundred and twenty days from the date of the request by the organization or at such later date as may be mutually agreed to by the Secretary and the organization.

"(d) In connection with any contract entered into pursuant to this title, the Secretary may permit an urban Indian organization to utilize, in carrying out such contract, existing facilities owned by the Federal Government within the Secretary's jurisdiction under such terms and conditions as may be agreed upon for the use and maintenance of such facilities.

"(e) Contracts with urban Indian organizations and regulations adopted pursuant to this title shall include provisions to assure the fair and uniform provision to urban Indians of services and assistance under such contracts by such organizations.

"REPORTS AND RECORDS

"SEC. 507. (a) For each fiscal year during which an urban Indian organization receives or expends funds pursuant to a contract entered into pursuant to this title, such organization shall submit to the Secretary a quarterly report including—

"(1) in the case of a contract under section 503, information gathered pursuant to clauses (10) and (11) of subsection (a) of such section;

"(2) information on activities conducted by the organization pursuant to the contract;

"(3) an accounting of the amounts and purposes for which Federal funds were expended; and

"(4) such other information as the Secretary may request.

"(b) The reports and records of the urban Indian organization with respect to a contract under this title shall be subject to audit by the Secretary and the Comptroller General of the United States.

"(c) The Secretary shall allow as a cost of any contract entered into under section 503 the cost of an annual private audit conducted by a certified public accountant.

"LIMITATION ON CONTRACT AUTHORITY

"SEC. 508. The authority of the Secretary to enter into contracts under this title shall be to the extent, and in an amount, provided for in appropriation Acts.".

URBAN INDIAN ORGANIZATION

SEC. 502. Subsection (h) of section 4 (25 U.S.C. 1603(h)) is amended by inserting "urban" after "governed by an".

TITLE VI—ORGANIZATIONAL IMPROVEMENTS

MANAGEMENT INFORMATION SYSTEM

SEC. 601. (a) Title VI is amended to read as follows:

"TITLE VI—INDIAN HEALTH SERVICE

"MANAGEMENT INFORMATION SYSTEM; ACCESS TO PATIENT'S RECORDS

"SEC. 601. (a)(1) The Secretary shall establish an automated management information system for the Service.

"(2) The information system established under paragraph (1) shall include—

"(A) a financial management system,

"(B) a patient care information system for each area served by the Service,

"(C) a privacy component that protects the privacy of patient information held by, or on behalf of, the Service, and

"(D) a services-based cost accounting component that provides estimates of the costs associated with the provision of specific medical treatments or services in each area office of the Service.

"(3) By no later than September 30, 1988, the Secretary shall submit a report to Congress setting forth—

"(A) the activities which have been undertaken to establish an automated management information system,

"(B) the activities, if any, which remain to be undertaken to complete the implementation of an automated management information system, and

"(C) the amount of funds which will be needed to complete the implementation of a management information system in the succeeding fiscal years.

"(b)(1) The Secretary shall provide each Indian tribe and tribal organization that provides health services under a contract entered into with the Service under the Indian Self-Determination Act automated management information systems which—

"(A) meet the management information needs of such Indian tribe or tribal organization with respect to the treatment by the Indian tribe or tribal organization of patients of the Service, and

"(B) meet the management information needs of the Service.

"(2) The Secretary shall reimburse each Indian tribe or tribal organization for the part of the cost of the operation of a system provided under paragraph (1) which is attributable to the treatment by such Indian tribe or tribal organization of patients of the Service.

"(3) The Secretary shall provide systems under paragraph (1) to Indian tribes and tribal organizations providing health services in California by no later than September 30, 1988.

"(c) Notwithstanding any other provision of law, each patient shall have reasonable access to the medical or health records of such patient which are held by, or on behalf of, the Service.".

(b) The amendment made by subsection (a) shall take effect on the date of enactment of this Act.

TITLE VII—MISCELLANEOUS PROVISIONS

LEASING AND OTHER CONTRACTS

SEC. 701. Section 704 (25 U.S.C. 1674) is amended—

(1) by striking out "Notwithstanding", and inserting in lieu thereof "(a) Notwithstanding", and

(2) by adding at the end thereof the following new subsection:

"(b) The Secretary may enter into leases, contracts, and other legal agreements with Indian tribes or tribal organizations which hold—

"(1) title to;

"(2) a leasehold interest in; or

"(3) a beneficial interest in (where title is held by the United States in trust for the benefit of a tribe);

facilities used for the administration and delivery of health services by the Service or by programs operated by Indian tribes or tribal organizations to compensate such Indian tribes or tribal organizations for costs associated with the use of such facilities for such purposes. Such costs include rent, depreciation based on the useful life of the building, principal and interest paid or accrued, operation and maintenance expenses, and other expenses determined by regulation to be allowable.".

HEALTH EDUCATION

SEC. 702. (a) Section 706 (25 U.S.C. 1676) is amended to read as follows:

"HEALTH EDUCATION

"SEC. 706. (a)(1) By no later than the date that is 1 year after the date of enactment of the Indian Health Care Amendments of 1986, the Secretary of the Interior and the Secretary of Health and Human Services shall enter into an agreement to coordinate the efforts of the Department of the Interior and the Department of Health and Human Services in health promotion, disease prevention, and health education among Indian youth.

"(2) The agreement required under paragraph (1) shall—

"(A) establish minimum health outcome objectives for schools operated by the Bureau of Indian Affairs and schools operated under contract with the Bureau of Indian Affairs,

"(B) provide for special emphasis on the identification and coordination of available resources and programs to combat alcohol and drug abuse among Indian youth through education, counseling, and referral services,

"(C) provide authority for personnel of the Service to conduct training seminars on health promotion, disease prevention, and health education for teachers in such schools,

"(D) recognize the role of tribally controlled community colleges, departments of health education at universities and colleges, and schools of the health professions in providing training on health promotion, disease prevention, and health education to teachers in such schools, and

"(E) provide for inclusion of tribal representatives in such training.

"(3) A memorandum of the agreement entered into under paragraph (1) shall be published in the Federal Register by no later than the date that is 30 days after the date on which such agreement is entered into by the Secretary of the Interior and the Secretary of Health and Human Services.

"(b)(1) The health outcome objectives that are required to be established under the agreement entered into under subsection (a)(1) shall serve as guidelines for the development of health education programs in schools operated by the Bureau of Indian Affairs and in schools operated under contract with the Bureau of Indian Affairs. Such health outcome objectives and guidelines shall prescribe the minimum objectives that such programs must achieve.

"(2) The Secretary of the Interior may establish critical job elements for personnel employed by the Department of the Interior which condition the continued employment of such personnel on achievement of specific objectives the Secretary of the Interior determines to be necessary to assure that health education programs designed to meet, at a minimum, the health outcome objectives established under the agreement entered into under subsection (a)(1) are incorporated into the curricula of schools operated by the Bureau of Indian Affairs and schools operated under contract with the Bureau of Indian Affairs.

"(c) The Secretary of Health and Human Services shall encourage the involvement of parents of Indian youth, and other interested members of Indian tribes, in training seminars on health promotion, disease prevention, and health education that are conducted by the Secretary of Health and Human Services pursuant to the agreement entered into under subsection (a)(1) by providing timely notice of such seminars to schools operated by the Bureau of Indian Affairs and to schools operated under contract with the Bureau of Indian Affairs.

"(d) The Secretary of Health and Human Services may elect to include in contracts the Secretary of Health and Human Services enters into with urban Indian health care programs a requirement that such programs provide health promotion, disease prevention, and health education to the Indian communities served by such programs.

"(e) The Secretary of Health and Human Services may elect to include in contracts the Secretary of Health and Human Services enters into with any tribal organization under the authority of the Indian Self-Determination and Education Assistance Act a requirement that the tribal organization provide health promotion, disease prevention, and health education to the communities served by the tribal organization.".

(b) Section 4 (25 U.S.C. 1603), as amended by section 203(b) of this Act, is further amended by adding at the end thereof the following:

"(m) 'Health education' includes, but is not limited to—

"(1) personal health,

"(2) mental and emotional health,

"(3) consumer health,

"(4) environmental health,

"(5) community health,

"(6) dental health, and

"(7) education in—

"(A) the cessation of smoking,

"(B) the hazards of smoking,

"(C) the hazards of alcohol and drug abuse,

"(D) nutrition,

"(E) safety and the prevention of accidents,

"(F) the prevention and control of disease, and

"(G) family life matters.".

ARIZONA AS A CONTRACT HEALTH SERVICE DELIVERY AREA

SEC. 703. (a) Subsection (a) of section 708 (25 U.S.C. 1678 (a)) is amended—

(1) by striking out "1984" and inserting in lieu thereof "1989", and

(2) by striking out "Indians in such State" and inserting in lieu thereof "members of federally recognized Indian tribes of Arizona".

(b) Section 708 (25 U.S.C. 1678(c)) is amended by striking out subsection (c).

ELIGIBILITY OF CALIFORNIA INDIANS

SEC. 704. Section 709 (25 U.S.C. 1679) is amended to read as follows:

"ELIGIBILITY OF CALIFORNIA INDIANS

"SEC. 709. (a) The following California Indians shall be eligible for health services provided by the Service:

"(1) Any Member of a federally recognized Indian tribe.

"(2) Any descendant of an Indian who was residing in California on June 1, 1852, but only if such descendant—

"(A) is living in California,

"(B) is a member of the Indian community served by a local program of the Service, and

"(C) is regarded as an Indian by the community in which such descendant lives.

"(3) Any Indian who holds trust interests in public domain, national forest, or Indian reservation allotments in California.

"(4) Any Indian in California who is listed on the plans for distribution of the assets of California rancherias and reservations under the Act of August 18, 1958 (72 Stat. 619), and any descendant of such an Indian.

"(b) Nothing in this section may be construed as expanding the eligibility of California Indians for health services provided by the Service beyond the scope of eligibility for such health services that applied on May 1, 1986.

"(c) Paragraph (4) of subsection (a) shall not apply after September 30, 1988.".

CALIFORNIA AS A CONTRACT HEALTH SERVICE DELIVERY AREA

SEC. 705. Section 710 (25 U.S.C. 1680) is amended to read as follows:

"CALIFORNIA AS A CONTRACT HEALTH SERVICE DELIVERY AREA

"SEC. 710. The State of California, excluding the counties of Alameda, Contra Costa, Los Angeles, Marin, Orange, Sacramento, San Francisco, San Mateo, Santa Clara, Kern, Merced, Monterey, Napa, San Benito, San Joaquin, San Luis Obispo, Santa Cruz, Solano, Stanislaus, and Ventura shall be designated as a contract health service delivery area by the Service for the purpose of providing contract health services to Indians in such State.".

CONTRACT HEALTH FACILITIES

SEC. 706. Title VII is amended by adding at the end thereof the following new section:

"CONTRACT HEALTH FACILITIES

"SEC. 711. The Service shall provide funds for health care programs and facilities operated by tribes and tribal organizations under contracts with the Service entered into under the Indian Self-Determination and Education Assistance Act—

"(1) for the maintenance and repair of clinics owned or leased by such tribes or tribal organizations,

"(2) for employee training,

"(3) for cost-of-living increases for employees, and

"(4) for any other expenses relating to the provision of health services,

on the same basis as such funds are provided to programs and facilities operated directly by the Service.".

NATIONAL HEALTH SERVICE CORPS

SEC. 707. Title VII, as amended by section 706 of this Act, is further amended by adding at the end thereof the following new section:

"NATIONAL HEALTH SERVICE CORPS

"SEC. 712. The Secretary of Health and Human Services may remove a member of the National Health Service Corps from a health facility operated by a tribe or tribal organization under a contract with the Service entered into under the Indian Self-Determination and Education Assistance Act only if the Secretary has provided written notice of such removal or withdrawal to such tribe or tribal organization at least 60 days before the date on which such contract is entered into or renewed.".

HEALTH SERVICES FOR INELIGIBLE PERSONS

SEC. 708. (a) Title VII, as amended by section 707 of this Act, is further amended by adding at the end thereof the following new section:

"HEALTH SERVICES FOR INELIGIBLE PERSONS

"SEC. 713. (a)(1) Any individual who—

"(A) has not attained 19 years of age,

"(B) is the natural or adopted child, stepchild, foster-child, legal ward, or orphan of an eligible Indian, and

Fees collected pursuant to this subsection shall be available for expenditure within such facility for not to exceed one fiscal year after the fiscal year in which collected.

"(C) is not otherwise eligible for the health services provided by the Service,

shall be eligible for all health services provided by the Service on the same basis and subject to the same rules that apply to eligible Indians until such individual attains 19 years of age. The existing and potential health needs of all such individuals shall be taken into consideration by the Service in determining the need for, or the allocation of, the health resources of the Service. If such an individual has been determined to be legally incompetent prior to attaining 19 years of age, such individual shall remain eligible for such services until one year after the date such disability has been removed.

"(2) Any spouse of an eligible Indian who is not an Indian, or who is of Indian descent but not otherwise eligible for the health services provided by the Service, shall be eligible for such health services if all of such spouses are made eligible, as a class, by an appropriate resolution of the governing body of the Indian tribe of the eligible Indian. The health needs of persons made eligible under this paragraph shall not be taken into consideration by the Service in determining the need for, or allocation of, its health resources.

"(b)(1)(A) The Secretary is authorized to provide health services under this subsection through health facilities operated directly by the Service to individuals who reside within the service area of a service unit and who are not eligible for such health services under any other subsection of this section or under any other provision of law if—

"(i) the Indian tribe (or, in the case of a multi-tribal service area, all the Indian tribes) served by such service unit requests such provision of health services to such individuals, and

"(ii) the Secretary and the Indian tribe or tribes have jointly determined that—

"(I) the provision of such health services will not result in a denial or diminution of health services to eligible Indians, and

"(II) there is no reasonable alternative health facility or services, within or without the service area of such service unit, available to meet the health needs of such individuals.

"(B) In the case of health facilities operated under a contract entered into under the Indian Self-Determination and Education Assistance Act, the governing body of the Indian tribe or tribal organization providing health services under such contract is authorized to determine whether health services should be provided under such contract to individuals who are not eligible for such health services under any other subsection of this section or under any other provision of law. In making such determinations, the governing body of the Indian tribe or tribal organization shall take into account the considerations described in subparagraph (A)(ii).

"(2)(A) Persons receiving health services provided by the Service by reason of this subsection shall be liable for payment of such health services under a fee schedule prescribed by the Secretary which, in the judgment of the Secretary, results in reimbursement in an amount not less than the actual cost of providing the health services. Notwithstanding section 1880(c) or 1911(d) of the Social Security Act or any other provision of law, fees collected under this subsection, including medicare or medicaid reimbursements under titles XVIII and XIX of the Social Security Act, shall be credited to the account of the facility providing the service and shall be used solely for the provision of health services within that facility. Fees collected under this subsection shall be available for expenditure within such facility for not to exceed one fiscal year after the fiscal year in which collected.

"(B) Health services may be provided by the Secretary through the Service under this subsection to an indigent person who would not be eligible for such health services but for the provisions of paragraph (1) only if an agreement has been entered into with a State or local government under which the State or local government agrees to reimburse the Service for the expenses incurred by the Service in providing such health services to such indigent person.

"(3)(A) In the case of a service area which serves only one Indian tribe, the authority of the Secretary to provide health services under paragraph (1)(A) shall terminate at the end of the fiscal year succeeding the fiscal year in which the governing body of the Indian tribe revokes its concurrence to the provision of such health services.

"(B) In the case of a multi-tribal service area, the authority of the Secretary to provide health services under paragraph (1)(A) shall terminate at the end of the fiscal year succeeding the fiscal year in which at least 51 percent of the number of Indian tribes in the service area revoke their concurrence to the provision of such health services.

"(c) The Service may provide health services under this subsection to individuals who are not eligible for health services provided by the Service under any other subsection of this section or under any other provision of law in order to—

"(1) achieve stability in a medical emergency,

"(2) prevent the spread of a communicable disease or otherwise deal with a public health hazard,

"(3) provide care to non-Indian women pregnant with an eligible Indian's child for the duration of the pregnancy through post partum, or

"(4) provide care to immediate family members of an eligible person if such care is directly related to the treatment of the eligible person.

"(d) Hospital privileges in health facilities operated and maintained by the Service or operated under a contract entered into under the Indian Self-Determination and Education Assistance Act may be extended to non-Service health care practitioners who provide services to persons described in subsection (a) or (b). Such non-Service health care practitioners may be regarded as employees of the Federal Government for purposes of section 1346(b) and chapter 171 of title 28, United States Code (relating to Federal tort claims) only with respect to acts or omissions which occur in the course of providing services to eligible persons as a part of the conditions under which such hospital privileges are extended.

"(e) For purposes of this section, the term 'eligible Indian' means any Indian who is eligible for health services provided by the Service without regard to the provisions of this section.".

INFANT AND MATERNAL MORTALITY; FETAL ALCOHOL SYNDROME

SEC. 709. Title VII, as amended by section 708 of this Act, is further amended by adding at the end thereof the following new section:

"INFANT AND MATERNAL MORTALITY; FETAL ALCOHOL SYNDROME

"SEC. 714. (a) By no later than January 1, 1988, the Secretary shall develop and begin implementation of a plan to achieve the following objectives by January 1, 1992:

"(1) reduction of the rate of Indian infant mortality in each area office of the Service to the lower of—

"(A) twelve deaths per one thousand live births, or

"(B) the rate of infant mortality applicable to the United States population as a whole;

"(2) reduction of the rate of maternal mortality in each area office of the Service to the lower of—

"(A) five deaths per one hundred thousand live births, or

"(B) the rate of maternal mortality applicable to the United States population as a whole; and

"(3) reduction of the rate of fetal alcohol syndrome and fetal alcohol effect associated with maternal consumption of alcohol to the lower of—

"(A) one per one thousand live births, or

"(B) the rate of fetal alcohol syndrome and such fetal alcohol effect applicable to the United States population as a whole.

"(b) The President shall include with the budget submitted under section 1105 of title 31, United States Code, for each fiscal year a separate statement which specifies the total amount obligated or expended in the most recently completed fiscal year to achieve each of the objectives described in subsection (a).".

CONTRACT HEALTH SERVICES FOR THE TRENTON SERVICE AREA

SEC. 710. Title VII, as amended by section 709 of this Act, is further amended by adding at the end thereof the following new section:

"CONTRACT HEALTH SERVICES FOR THE TRENTON SERVICE AREA

"SEC. 715. (a) The Secretary, acting through the Service, is directed to provide contract health services to members of the Turtle Mountain Band of Chippewa Indians that reside in the Trenton Service Area of Divide, McKenzie, and Williams counties in the State of North Dakota and the adjoining counties of Richland, Roosevelt, and Sheridan in the State of Montana.

"(b) Nothing in this section may be construed as expanding the eligibility of members of the Turtle Mountain Band of Chippewa Indians for health services provided by the Service beyond the scope of eligibility for such health services that applied on May 1, 1986.".

INDIAN HEALTH SERVICE AND VETERANS' ADMINISTRATION HEALTH FACILITIES AND SERVICES SHARING

SEC. 711. Title VII, as amended by section 710 of this Act, is further amended by adding at the end thereof the following new section:

"INDIAN HEALTH SERVICE AND VETERANS' ADMINISTRATION HEALTH FACILITIES AND SERVICES SHARING

"SEC. 716. (a) The Secretary shall examine the feasibility of entering into an arrangement for the sharing of medical facilities and services between the Indian Health Service and the Veterans' Administration and shall, in accordance with subsection (b), prepare a report on the feasibility of such an arrangement and submit such report to

the Congress by no later than September 30, 1989.

"(b) The Secretary shall not take any action under subchapter IV of part VI of title 38, United States Code, which would impair—

"(1) the priority access of any Indian to health care services provided through the Indian Health Service;

"(2) the quality of health care services provided to any Indian through the Indian Health Service;

"(3) the priority access of any veteran to health care services provided by the Veterans' Administration;

"(4) the quality of health care services provided to any veteran by the Veterans' Administration;

"(5) the eligibility of any Indian to receive health services through the Indian Health Service; or

"(6) the eligibility of any Indian who is a veteran to receive health services through the Veterans' Administration.

"(c) Nothing in this section may be construed as creating any right of a veteran to obtain health services from the Indian Health Service.".

NAVAJO ALCOHOL REHABILITATION DEMONSTRATION PROGRAM

SEC. 712. Title VII, as amended by section 711, is further amended by adding at the end thereof the following new section:

"NAVAJO ALCOHOL REHABILITATION DEMONSTRATION PROGRAM

"SEC. 717. (a) The Secretary shall make grants to the Navajo tribe to establish a demonstration program in the city of Gallup, New Mexico, to rehabilitate adult Navajo Indians suffering from alcoholism or alcohol abuse.

"(b) The Secretary, acting through the National Institute on Alcohol Abuse and Alcoholism, shall evaluate the program established under subsection (a) and submit a report on such evaluation to the appropriate committees of Congress by January 1, 1990.

"(c)(1) There is authorized to be appropriated for the purposes of this section $400,000 for each of the fiscal years 1988, 1989, and 1990.

"(2) Not more than 10 percent of the funds appropriated under paragraph (1) for any fiscal year may be used for administrative purposes.".

REALLOCATION OF BASE RESOURCES

SEC. 713. (a) Notwithstanding any other provision of law, any allocation of the base resources of the Indian Health Service for fiscal year 1987 that—

(1) differs from the allocation of the base resources of the Indian Health Service that was made for fiscal year 1985, and

(2) affects more than 3 percent of the base resources of the Indian Health Service for fiscal year 1987,

may be implemented only after the Secretary of Health and Human Services has met the requirements of subsection (b) with respect to such reallocation.

(b) The Secretary of Health and Human Services meets the requirements of this subsection with respect to any reallocation of base resources described in subsection (a) when the Secretary of Health and Human Services has submitted to the Congress—

(1) a written statement certifying that the Secretary of Health and Human Services has held consultations regarding such reallocation of base resources with the Indian tribes and tribal organizations affected by such reallocation; and

(2) a report on the proposed change in allocation of base resources, including the reasons for the change and its likely effects.

PROVISION OF SERVICES IN MONTANA

SEC. 714. (a) The Secretary of Health and Human Services, through the Indian Health Service, shall provide services and benefits for Indians in Montana in a manner consistent with the terms of the decision of the United States District Court for the District of Montana in *McNabb* v. *Heckler*, et al, No. CV-83-051-GF (D. Mont.), as decided on January 27, 1986, without regard to any stay or subsequent action.

(b) This section shall be effective until the end of the sixth month after any final decision of a court of competent jurisdiction modifying or reversing the district court decision described in subsection (a).

(c) The provisions of this section shall not be considered to be an expression of the sense of the Congress on the merits of the district court decision described in subsection (a).

SEVERABILITY

SEC. 715. If any provision of this Act, any amendment made by this Act, or the application of such provision or amendment to any person or circumstances is held to be invalid, the remainder of this Act, the amendments made by this Act, and the application of such provision to persons or circumstances other than those to which it is held invalid shall not be affected thereby.

TITLE VIII—NATIVE AMERICAN DIABETES PREVENTION AND CONTROL

SHORT TITLE

SEC. 801. This title may be cited as the "Native American Diabetes Prevention and Control Act of 1986".

FINDINGS AND PURPOSE

SEC. 802. (a) The Congress finds that—

(1) the incidence of diabetes among Native Americans is significantly higher than in other population groups within the United States;

(2) in several Indian tribes over 40 percent of the adults have diabetes compared with approximately 3 percent of the overall United States adult population;

(3) diabetes has become the second leading reason for outpatient visits by Native Americans to Indian Health Service facilities nationwide;

(4) serious complications of diabetes, such as kidney failure, hypertension, amputation, and blindness, are increasing in frequency among Native Americans;

(5) health care costs for treatment of diabetes and related complications among Native Americans will increase significantly in the long term unless the Department of Health and Human Services—

(A) determines the cause of diabetes among Native Americans,

(B) develops early diagnosis, treatment, and prevention programs to reduce the incidence of diabetes among Native Americans, and

(C) trains, or provides for the training of, Federal and Native American health care providers in the diagnosis, treatment, and control of diabetes and related complications;

(6) a Model Diabetes Control Program exists within the Indian Health Service, consisting of seven project sites which serve only 10 percent of the Indian Health Service patients; and

(7) outreach services and the conveyance of effective treatment strategies from the model project sites need to be implemented.

(b) The purposes of this title are—

(1) to broaden the research program of the Department of Health and Human Services relating to diabetes and related complications among Native Americans;

(2) to strengthen the efforts of the Indian Health Service for the treatment of diabetes through the implementation of a program for the prevention and control of diabetes and related complications on each Indian Reservation and for each Alaskan Native Village; and

(3) to achieve a reduction in the incidence of diabetes among Native American populations to a rate comparable to that of the general United States population.

DEFINITIONS

SEC. 803. For purposes of this title—

(1) The term "Native American" means any—

(A) Indian, or

(B) member of an Alaska Native village (within the meaning of section 3 of the Alaska Native Claims Settlement Act).

(2) The term "Secretary" means the Secretary of Health and Human Services.

(3) The term "area office" means an administrative entity within the Indian Health Service through which services and funds are provided to the service units within a defined geographic area.

(4) The term "service unit" means—

(A) an administrative entity within the Indian Health Service, or

(B) an Indian tribe or tribal organization operating health care programs or facilities with funds from the Indian Health Service under the Indian Self-Determination Act,

through which services are provided, directly or by contract, to the eligible Indian population within a defined geographic area.

STUDY ON DIABETES AMONG NATIVE AMERICANS

SEC. 804. (a) The Secretary shall determine—

(1) the incidence of diabetes among Native Americans;

(2) activities the Indian Health Service should take—

(A) to reduce the incidence of diabetes among Native Americans,

(B) to provide Native Americans with guidance in the prevention, treatment, and control of diabetes,

(C) to provide early diagnosis of diabetes among Native Americans, and

(D) to ensure that proper continuing health care is provided to Native Americans who are diagnosed as diabetic; and

(3) the fiscal impact to the Federal Government of treating the long-term complications of diabetes based upon the existing prevalence and incidence of diabetes among Native Americans.

(b) The Secretary shall prepare an inventory of all health care programs and resources (public and private) within the United States that are available for the treatment, prevention, or control of diabetes among Native Americans.

(c) Within 18 months after the date of enactment of this Act, the Secretary shall prepare and transmit to the President and the Congress a report describing the determinations made under subsection (a), containing the inventory prepared under subsection (b), and describing the research activities conducted under this title.

DIABETES CARE PROGRAM

SEC. 805. (a) Within 18 months after the date of enactment of this Act, the Secretary shall implement a program designed—

(1) to strengthen and expand the diabetes control program of the Indian Health Service;

(2) to screen each individual who receives services from the Indian Health Service for diabetes and for conditions which indicate a high risk that the individual will become diabetic;

(3) to enable all service units of the Indian Health Service to treat effectively—

(A) newly diagnosed diabetics in order to reduce future complications from diabetes,

(B) individuals who have a high risk of becoming diabetic in order to reduce the incidence of diabetes, and

(C) short-term and long-term complications of diabetes;

(4) to conduct, for Federal, tribal, and other Native American health care providers (including community health representatives), training programs concerning current methods of prevention, diagnosis, and treatment of diabetes and related complications among Native Americans;

(5) to determine the appropriate delivery to Native Americans of health care services relating to diabetes;

(6) to develop and present health education information to Native American communities and schools concerning the prevention, treatment, and control of diabetes; and

(7) to ensure that proper continuing health care is provided to Native Americans who are diagnosed as diabetic.

(b) The Secretary shall—

(1) promote coordination and cooperation between all health care providers in the delivery of diabetes related services; and

(2) encourage and fund joint projects between Federal and tribal health care facilities and Native American communities for the prevention and treatment of diabetes.

(c)(1) The Secretary shall continue to maintain each of the following model diabetes clinics which are in existence on the date of enactment of this Act:

(A) Claremore Indian Hospital in Oklahoma;

(B) Fort Totten Health Center in North Dakota;

(C) Sacaton Indian Hospital in Arizona;

(D) Winnebago Indian Hospital in Nebraska;

(E) Albuquerque Indian Hospital in New Mexico;

(F) Terry, Princeton, and Old Town Health Centers in Maine; and

(G) Bellingham Health Center in Washington.

(2) Within 2 years after the date of enactment of this Act, the Secretary shall establish and maintain a model diabetes clinic in each of the following locations:

(A) the Navajo Reservation;

(B) the Papago Reservation;

(C) Montana; and

(D) Minnesota.

(3) The Secretary shall develop and implement an outreach program to ensure that the achievements and benefits derived from the activities of the model diabetes clinics maintained under this section are used by all service units of the Indian Health Service in the diagnosis, prevention, and treatment of diabetes among Native Americans.

(d)(1) The Secretary shall maintain appropriate personnel within the Indian Health Service to develop and implement the provisions of this title and to manage and coordinate the diabetes care program of the Indian Health Service.

(2) The Secretary shall employ in each area office of the Indian Health Service at least one diabetes control officer who shall coordinate and manage on a full-time basis the diabetes care program of the Indian Health Service in the area served by such area office.

(e) The Secretary shall submit to the Congress an annual report outlining the activities, achievements, needs, and future goals of the diabetes care program of the Indian Health Service.

DATA COLLECTION AND ANALYSIS

SEC. 806. The Secretary shall develop and maintain a comprehensive standardized system within the Indian Health Service to collect, analyze, and report data regarding diabetes and related complications among Native Americans. Such system shall be designed to facilitate dissemination of the best available information on diabetes to Native American communities and health care professionals. Such system shall be operational within 2 years after the date of enactment of this Act.

RESEARCH

SEC. 807. The Secretary shall require each agency and unit of the Department of Health and Human Services which conducts research relating to diabetes—

(1) to give special attention to research concerning the causes, diagnosis, treatment, and prevention of diabetes and related complications among Native Americans; and

(2) to coordinate such research with all other agencies and units of the Department of Health and Human Services which conduct research relating to diabetes and related complications.

REGULATIONS

SEC. 808. The Secretary may prescribe such regulations as may be necessary to carry out the provisions of this title.

AUTHORIZATION OF APPROPRIATIONS

SEC. 809. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this title.

RELIEF OF THE SURVIVORS OF CHRISTOPHER ENEY

THURMOND AMENDMENT NO. 3258

Mr. COCHRAN (for Mr. THURMOND) proposed an amendment to the bill (H.R. 2574) for the relief of the survivors of Christopher Eney, as follows:

On page 1, line 7, beginning with "who" strike out all through line 8, and insert in lieu thereof "covered by the Act as of".

ACCESS ACROSS CERTAIN FEDERAL LANDS IN ARKANSAS

BUMPERS AMENDMENT NO. 3259

Mr. BUMPERS proposed an amendment to the bill (S. 767) to direct the Secretary of the Interior to permit access across certain Federal lands in the State of Arkansas, and for other purposes, as follows:

On page 2, after line 9, insert the following new subsection: (d)(1) The owners of the private residential property identified in subsection (c) shall pay an annual fee to the Secretary of the Interior for the access provided pursuant to this Act.

(2) Any fee collected shall be fair and reasonable and shall be in an amount necessary to cover the administrative costs associated with granting of such access, including the issuance of annual permits: *Provided* that in no event shall the fee collected pursuant to this subsection exceed $100 per annum.

COLUMBIA GORGE NATIONAL SCENIC AREA

HATFIELD (AND OTHERS) AMENDMENT NO. 3260

Mr. HATFIELD (for himself, Mr. PACKWOOD, Mr. EVANS, and Mr. GORTON) proposed an amendment to the bill (S. 2055) to establish the Columbia Gorge National Scenic Area, and for other purposes, as follows:

Strike out all after the enacting clause and insert the following in lieu thereof:

"SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

This Act may be referred to as the "Columbia River Gorge National Scenic Area Act."

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Sec. 1. Short title and table of contents.
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Sec. 10. Interim Management.
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Sec. 17. Savings Provisions.
Sec. 18. Severability.

SEC. 2. DEFINITIONS.

As used in this Act, the term—

(a) "adversely affect" or "adversely affecting" means, except as used in section 15; a reasonable likelihood of more than moderate adverse consequences for the scenic, cultural, recreation or natural resources of the Scenic Area, the determination of which is based on—

(1) the context of a proposed action;

(2) the intensity of a proposed action, including the magnitude and duration of an impact and the likelihood of its occurrence;

(3) the relationship between a proposed action and other similar actions which are individually insignificant but which may have cumulatively significant impacts; and

(4) proven mitigation measures which the proponent of an action will implement as part of the proposal to reduce otherwise significant affects to an insignificant level.

(b) "agricultural lands" means lands designated as agricultural lands pursuant to section 6 of this Act.

(c) "Commission" means the Columbia River Gorge Commission established pursuant to section 5 of this Act.

(d) "Counties" means Hood River, Multnomah, and Wasco Counties, Oregon; and Clark, Klickitat, and Skamania Counties, Washington.

(e) "Dodson/Warrendale Special Purchase Unit" means the Dodson/Warrendale Special Purchase Unit established pursuant to section 4 of this Act.

(f) "Forest lands" means lands designated as forest lands pursuant to section 6 of this Act.

(g) "Indian tribes" means the Nez Perce Tribe, the Confederated Tribes and Bands of the Yakima Indian Nation, the Confederated Tribes of the Warm Springs of Oregon, and the Confederated Tribes of the Umatilla Indian Reservation.

(h) "interim guidelines" means any interim guidelines developed by the Secretary pursuant to section 10 of this Act, and any amendment, revision, or variance.

(i) "Land use ordinance" or "ordinance" means any ordinance adopted by a county or by the Commission pursuant to this Act, and includes any amendment to, revision of, or variance from such ordinance.

(j) "major development actions" means any of the following:

(1) subdivisions, partitions and short plat proposals;

(2) permits for siting or construction outside Urban Areas of multi-family residential, industrial or commercial facilities, except the upgrade of existing electric transmission facilities and such facilities as are included in the recreation assessment;

(3) the exploration, development and production of mineral resources unless such exploration, development or production can be conducted without disturbing the surface of any land within the boundaries of a special management area or is for sand, gravel and crushed rock used for the construction, maintenance or reconstruction of roads within the special management areas used for the production of forest products; and

(4) permits for siting or construction within a special management area of any residence or other related major structure on any parcel of land less than forty acres in size.

(k) "Management Plan" means the Scenic Area Management Plan adopted pursuant to section 6 of this Act.

(l) "Open Spaces" means unimproved lands not designated as agricultural lands or forest lands pursuant to section 6 of this Act and designated as open space pursuant to section 6 of this Act. Open spaces include—

(1) scenic, cultural, and historic areas;

(2) fish and wildlife habitat;

(3) lands which support plant species that are endemic to the Scenic Area or which are listed as rare, threatened or endangered species pursuant to State or Federal Endangered Species Acts;

(4) ecologically and scientifically significant natural areas;

(5) outstanding scenic views and sites;

(6) water areas and wetlands

(7) archaeological sites, Indian burial grounds and village sites, historic trails and roads and other areas which are culturally or historically significant;

(8) potential and existing recreation resources; and

(9) federal and state wild, scenic, and recreation waterways.

(m) "recreation assessment" means the recreation assessment adopted pursuant to section 6 of this Act.

(n) "residential development" means the permitting for siting or construction of any residence or other related major structure.

(o) "Scenic Areas" means the Columbia River Gorge National Scenic Area established pursuant to section 4 of this Act.

(p) "Secretary" means the Secretary of Agriculture.

(q) "Special Management Areas" means areas within the Scenic Area established pursuant to section 4 of this Act.

(r) "States" means the States of Oregon and Washington.

(s) "Urban Areas" means those areas within the Scenic Area identified as urban areas on the map referred to in section 4(e) of this Act or within the boundaries of an Urban Area as revised pursuant to section 4(f).

SEC 3. PURPOSES.

The purposes of this Act are—

(a) to establish a national scenic area to protect and enhance the scenic, cultural, recreation and natural resources of the Columbia River Gorge; and

(b) to protect and enhance the economy of the Columbia River Gorge by recognizing compatible historic economic pursuits such as agriculture and forestry and by encouraging future economic development to occur in existing urban areas.

SEC. 4. ESTABLISHMENT OF THE SCENIC AREA.

(a) NATIONAL SCENIC AREAS.—(1) there is hereby established the Columbia River Gorge National Scenic Area.

(2) The boundaries of the Scenic Area shall be generally depicted on the map entitled "Boundary Map, Columbia River Gorge National Scenic Area," numbered NSA-001 sheets 1 and 2, and dated September 1986, which shall be on file and available for public inspection in the offices of the Commission and of the Chief, Forest Service.

(b) SPECIAL MANAGEMENT AREAS.—(1) The following areas within the boundaries of the Scenic Area are hereby designated "Special Management Areas": Gates of the Columbia River Gorge; Wind Management; Burdoin Mountain; and Rowena.

(2) The boundaries of the Special Management Areas designated in this section—

(A) shall be generally depicted on the map entitled "Special Management Areas, Columbia River Gorge National Scenic Area", numbered SMA-002 sheets 1 through 17, and dated September 1986, which shall be on file and available for public inspection in the offices of the Commission and of the Chief, Forest Service; and

(B) shall include all islands within the boundaries of the Scenic Area.

(c) REVISION OF SPECIAL MANAGEMENT AREA BOUNDARIES.—The Secretary, in consultation with the Commission, may make minor revisions in the boundaries of Special Management Areas after publication of notice to that effect in the Federal Register and submission of notice thereof to the Committee on Energy and Natural Resources of the United States Senate and the Committees on Agriculture and Interior and Insular Affairs of the United States House of Representatives. Such notice shall be published and submitted at least sixty days before the revision is made. Notice of final action regarding such revision shall also be published in the Federal Register.

(D) DODSON WARRENDALE SPECIAL PURCHASE UNIT.—(1) There is hereby established the Dobson/Warrendale Special Purchase Unit.

(2) The boundaries of the Dodson/Warrendale Special Purchase Unit shall be generally depicted on the map entitled "Dodson/Warrendale Special Purchase Unit, Columbia River Gorge National Scenic Area", numbered SPU-003 sheet 1, and dated September 1986, which shall be on file and available for public inspection in the offices of the Commission and of the Chief, Forest Service.

(e) URBAN AREAS.—(1) The following cities and towns are hereby designated as "Urban Areas": Cascade Locks, Hood River, Mosier; and The Dalles, Oregon; and Bingen, Carson, Dallesport, Home Valley, Lyle, North Bonneville, Stevenson, White Salmon, and Wishram, Washington.

(2) The boundaries of Urban Areas shall be generally depicted on the map entitled, "Urban Areas, Columbia River Gorge National Scenic Area", numbered UA-004 sheets 1 through 11, and dated September 1986, which shall be on file and available for public inspection in the offices of the Commission and of the Chief, Forest Service. The boundaries of Urban Areas designated in this subsection may be revised pursuant to the provisions of this section.

(f) REVISION OF URBAN AREA BOUNDARIES.—(1) Upon application of a county and in consultation with the Secretary, the Commission may make minor revisions to the boundaries of any Urban Area identified in subsection 4(e) of this section. A majority vote of two-thirds of the members of the Commission, including a majority of the members appointed from each State, shall be required to approve any revision of Urban Area boundaries.

(2) The Commission may revise the boundaries of an Urban Area only if it finds that—

(A) a demonstrable need exists to accommodate long-range urban population growth requirements or economic needs consistent with the management plan;

(B) revision of Urban Area boundaries would be consistent with the standards established in section 6 and the purposes of this Act;

(C) revision of Urban Area boundaries would result in maximum efficiency of land uses within and on the fringe of existing Urban Areas; and

(D) revision of Urban Area boundaries would not result in the significant reduction of agricultural lands, forest lands, or open spaces.

SEC. 5. THE COLUMBIA RIVER GORGE COMMISSION.

(a) ESTABLISHMENT AND MEMBERSHIP OF THE COMMISSION.—(1) To achieve the purposes of this Act and to facilitate cooperation among the States of Oregon and Washington, and with the United States of America, the consent of Congress is given for an agreement described in this Act pursuant to which, within one year after the date of enactment of this Act—

(A) the States of Oregon and Washington shall establish by way of an interstate agreement a regional agency known as the Columbia River Gorge Commission. The Commission shall carry out its functions and responsibilities in accordance with the provisions of this Act and shall not be considered an agency or instrumentality of the United States for the purpose of any Federal law;

(B) the States of Oregon and Washington shall provide to the Commission and the counties under State law the authority to carry out their respective functions and responsibilities in accordance with the provisions of this Act through incorporation as State law by specific reference the provisions of this Act; and

(C) the States of Oregon and Washington shall appoint members of the Commission as provided in clauses (I) through (III), subject to applicable State law: *Provided*, That the Governor of either State may extend

the time for appointment of Commission members ninety days to provide more time for the States and counties to make such appointments. Membership of the Commission shall be as follows:

(i) six members, comprised of one resident from each of the following counties: Hood River, Multnomah, and Wasco Counties, Oregon, and Clark, Klickitat, and Skamania Counties, Washington, to be appointed by the governing body of each of the respective counties: *Provided,* That in the event the governing body of a county fails to make such appointment, the Governor of the State in which the county is located shall appoint such member;

(ii) three members who reside in the State of Oregon, to be appointed by the Governor of Oregon;

(iii) three members who reside in the State of Washington, to be appointed by the Governor of Washington; and

(iv) one ex officio, nonvoting member who shall be an employee of the Forest Service, to be appointed by the Secretary.

(2) The agreement shall take effect and the Commission may exercise its authorities pursuant to the agreement upon the appointment of four initial members from each State, subject to applicable State law, and the date of such an agreement shall be the date of establishment of the Commission. Such agreement is hereby consented to by the Congress.

(3) Either State or any county may fill any vacancy occurring prior to the expiration of the term of any member originally appointed by that State or county. Each member appointed to the Commission shall serve a term of four years, except that, with respect to members initially appointed pursuant to paragraph (1)(C)(i), each Governor shall designate one member to serve for a term of five years and one to serve for a term of six years, and one member from each State initially appointed pursuant to paragraph (1)(C)(ii) and (iii) shall be designated by the Governor to serve a term of five years, and one to serve a term of six years. Neither the Governors nor the governing bodies of any of the counties may appoint Federal, State, or local elected or appointed officials to the Commission.

(4) A majority of the members of the Commission shall constitute a quorum. The members of the Commission shall select from among themselves a Chairman by majority vote of the members appointed from each state.

(5) Except for the ex-officio member appointed pursuant to paragraph (1)(C)(iv), the members and officers and employees of the Commission shall not be officers or employees of the United States for any purpose. The Commission shall appoint, fix compensation for, and assign and delegate duties to such officers and employees as the Commission deems necessary to fulfill its functions under this Act. The compensation of Commission members shall be fixed by State law. The compensation of Commission members, officers, and employees and the expenses of the Commission shall be paid from funds provided to the Commission by the State.

(b) APPLICABLE LAW.—For the purposes of providing a uniform system of laws, which, in addition to this Act, are applicable to the Commission, the Commission shall adopt regulations relating to administrative procedure, the making of contracts, conflicts-of-interest, financial disclosure, open meetings of the Commission, advisory committees, and disclosure of information consistent with the more restrictive statutory provisions of either State. Regulations applicable to financial disclosure under this subsection shall be applied to members of the Commission without regard to the duration of their service on the Commission or the amount of compensation received for such service. No contract, obligation, or other action of the Commission shall be an obligation of the United States or an obligation secured by the full faith and credit of the United States.

(c) ASSISTANCE TO THE COMMISSION.—Upon the request of the Commission, the Secretary and other Federal agencies are authorized to provide information, personnel, property, and services on a reimbursable basis, and the Secretary is authorized to provide technical assistance on a nonreimbursable basis, to the Commission to assist it in carrying out its functions and responsibilities pursuant to this Act.

(d) ADVISORY COMMITTEES.—The Commission shall establish voluntary technical and citizen advisory committees to assist the Commission in carrying out its functions and responsibilities pursuant to this Act.

SEC. 6. THE SCENIC AREA MANAGEMENT PLAN.

(a) STUDIES.—Within one year after the date the Commission is established, it shall, in cooperation with the Secretary, complete the following studies for use in preparing the management plan:

(1) RESOURCE INVENTORY.—The Commission shall complete a resource inventory. The resource inventory shall—

(A) document all existing land uses, natural features and limitations, scenic, natural, cultural, archaeological and recreation and economic resources and activities: *Provided,* That the location of any Indian burial grounds, village sites, and other areas of archaeological or religious significance shall not be made public information and such information shall be used for administrative purposes only; and

(B) incorporate without change the resource inventory developed by the Secretary pursuant to section 8 of this Act for the Special Management Areas.

(2) ECONOMIC OPPORTUNITY STUDY.—The Commission shall complete a study to identify opportunities to enhance the economies of communities in the Scenic Area in a manner consistent with the purposes of this Act.

(3) RECREATION ASSESSMENT.—The Commission shall complete an assessment of recreation resources and opportunities for enhancement of these resources. The recreation assessment shall—

(A) designate the location and specify the construction of an interpretive center or other appropriate facility, to be located in the State or Oregon, and of a conference center or other appropriate facility, to be located in the State of Washington;

(B) identify areas within the scenic area that are suitable for other public use facilities, including but not limited to educational and interpretive facilities, campsites, picnic areas, boat launch facilities and river access areas; and

(C) subject to the treaty and other rights of Indian tribes, designate areas to provide increased access for recreation purposes to the Columbia River and its tributaries; and

(D) incorporate without change the recreation assessment developed by the Secretary pursuant to section 8 of this Act for the Special Management Areas;

(b) LAND USE DESIGNATIONS.—Within two years after the Commission is established, it shall develop land use designations for the use of non-federal lands within the Scenic Area. The land use designations shall—

(1) be based on the results of the resource inventory developed pursuant to subsection (a)(1) of this section, and consistent with the standards established in subsection (d) of this section;

(2) designate those lands used or suitable for the production of crops, fruits or other agricultural products or the sustenance of livestock as agricultural lands;

(3) designate lands used or suitable for the production of forest products as forest lands;

(4) designate lands suitable for the protection and enhancement of open spaces;

(5) designate areas in the Scenic Area outside special Management Areas used or suitable for commercial development: *Provided,* That such designation shall encourage, but not require, commercial development to take place in Urban Areas and shall take into account the physical characteristics of the areas in question and their geographic proximity to transportation, commercial, and industrial facilities and other amenities;

(6) designate areas used or suitable for residential development, taking into account the physical characteristics of the areas in question and their geographic proximity to transportation and commercial facilities and other amenities; transportation and commercial facilities and other amenities; and

(7) incorporate without change the designation of Urban Areas established in section 4(e) of this Act.

(c) ADOPTION OF THE MANAGEMENT PLAN.—Within three years after the date the Commission is established, it shall adopt a management plan for the Scenic Area. The Commission shall adopt the management plan by a majority vote of the members appointed, including at least three members from each State. The management plan shall—

(1) be based on the results of the resource inventory developed pursuant to subsection (a)(1) of this section;

(2) include land use designations developed pursuant to subsection (b) of this section;

(3) be consistent with the standards established in subsection (d) of this section;

(4) incorporate without change the management direction for the use of Federal lands within and the land use designations for the special management areas adopted by the Secretary pursuant to section 8 of this Act; and

(5) include guidelines for the adoption of land use ordinances for lands within the Scenic Area. The guidelines—

(A) shall incorporate without change the guidelines for the development of Special Management Area land use ordinances developed by the Secretary pursuant to section 8 of this Act; and

(B) shall not apply to Urban Areas designated in section (4e) of this Act.

(d) STANDARDS FOR THE MANAGEMENT PLAN.—The management plan and all land use ordinances and interim guidelines adopted pursuant to this Act shall include provisions to—

(1) protect and enhance agricultural lands for agricultural uses and to allow, but not require, conversion of agricultural lands to open space, recreation development or forest lands;

(2) protect and enhance forest lands for forest uses and to allow, but not require, conversion of forest lands to agricultural lands, recreation development or open spaces;

(3) protect and enhance open spaces;

(4) protect and enhance public and private recreation resources and educational and interpretive facilities and opportunities, in accordance with the recreation assessment adopted pursuant to subsection (a) of this section;

(5) prohibit major development actions in Special Management Areas, except for partitions or short plats which the Secretary determines are desirable to facilitate land acquisitions pursuant to this Act;

(6) prohibit industrial development in the Scenic Area outside Urban Areas;

(7) require that commercial development outside Urban Areas take place without adversely affecting the scenic cultural, recreation, or natural resources of the Scenic Area;

(8) require that residential development outside Urban Areas take place without advesely affecting the scenic, cultural, recreation, and natural resources of the Scenic Area; and

(9) require that the exploration, development and production of mineral resources, and the reclamation of lands thereafter, take place without adversely affecting the scenic, cultural, recreation and natural resources of the Scenic Area.

(e) AGENCY CONSULTATION AND PUBLIC INVOLVEMENT.—The Secretary and the Commission shall exercise their responsibilities pursuant to this Act in consultation with Federal, state and local governments having jurisdiction within the Scenic Area or expertise pertaining to its administration and with Indian tribes. The Secretary and the Commission shall conduct public hearings and solicit public comment prior to final adoption of the management plan and the Commission shall conduct public hearings and solicit public comment prior to final adoption of land use ordinances. The Commission and the appropriate county shall promptly notify the Secretary, the States, local governments and Indian tribes of all proposed major development actions and residential development in the Scenic Area.

(f) CONCURRENCE OF THE MANAGEMENT PLAN.—

(1) REVIEW BY THE SECRETARY.—Upon adoption of the management plan, the Commission shall promptly submit the plan to the Secretary for review. If the secretary agrees with the Commission that the management plan is consistent with the standards established in this section and the purposes of this Act, the Secretary shall concur to that effect. Should the Secretary fail to act on the proposed plan within ninety days, the Secretary shall be deemed to have concurred on the management plan.

(2) DENIAL OF CONCURRENCE.—If concurrence is denied, the Secretary shall state the reasons for finding the plan is inconsistent with the standards established in this section or the purposes of this Act, and shall submit to the Commission suggested modifications to the management plan to make it consistent with such standards and the purposes of this Act.

(3) COMMISSION RECONSIDERATION.—Within one hundred twenty days after receipt of notification of non-concurrence, The Commission shall—

(A) revise and resubmit the plan to the Secretary; or

(B) by a vote of two-thirds of its membership, including a majority of the members appointed from each State, reject the suggested modifications of the Secretary and adopt a management plan consistent with the provisions of this section and the purposes of this Act.

(g) REVISION OF THE PLAN.—No sooner than five years after adoption of the management plan, but at least every ten years, the Commission shall review the management plan to determine whether it should be revised. The Commission shall submit any revised management plan to the Secretary for review and concurrence, in accordance with the provisions of this section for adoption of the management plan.

(h) AMENDMENT OF THE PLAN.—If the Commission determines at any time that conditions within the Scenic Area have significantly changed, it may amend the management plan. The Commission shall submit amendments to the management plan to be the Secretary for review, in accordance with the provisions of this section for adoption of the management plan.

SEC. 7. ADMINISTRATION OF THE SCENIC AREA.

(a) MANAGEMENT OF THE SCENIC AREA.—The non-federal lands within the Scenic Area shall be administered by the Commission in accordance with the management plan and this Act.

(b) ADOPTION OF SCENIC AREA LAND USE ORDINANCES.—

(1) Within sixty days of initial receipt of the management plan, each county shall submit to the Commission a letter stating that it proposes to adopt a land use ordinance consistent with the management plan. If any county fails to submit such letter or fails to adopt a land use ordinance as provided in this section, the Commission shall carry out the requirements of subsection (c) of this section.

(2) Within two hundred seventy days of receipt of the management plan, each county shall adopt a land use ordinance consistent with the management plan, and thereafter may adopt an amendment, revision or variance to a land use ordinance at any time. Each county upon adoption of a land use ordinance shall promptly submit the ordinance to the Commission.

(3) APPROVAL BY COMMISSION.—(A) Within ninety days after receipt of a land use ordinance, the Commission, by majority vote including at least three members from each state, shall approve the ordinance unless it determines the ordinance is inconsistent with the management plan. Should the Commission fail to act within sixty days, the ordinance shall be deemed to be approved.

(B) If approval is denied, the Commission shall state the reasons for finding the ordinance is inconsistent with the management plan, and shall submit to the county suggested modifications to the ordinance to make it consistent with the management plan.

(C) Each county shall have ninety days after it receives recommendations from the Commission to make modifications designed to eliminate the inconsistencies and to resubmit the ordinance to the Commission for approval. The Commission shall have sixty days to approve or disapprove the resubmitted ordinance. Any resubmitted ordinance shall become effective upon approval. Should the Commission disapprove the resubmitted ordinance, it shall promptly resubmit the ordinance for reconsideration. Should the Commisson fail to act within sixty days, the ordinance shall be deemed to be approved.

(c) COMMISSION LAND USE ORDINANCES.—(1) Within ninety days after making a determination that a county has failed to comply with the provisions of this section, the Commission shall make and publish a land use ordinance setting standards for the use of non-Federal lands in such county within the boundaries of the National Scenic Area, excluding Urban Areas identified in section 4(e) of this Act. The ordinance shall have the object of assuring that the use of such non-Federal lands is consistent with the management plan. The ordinance may differ amongst the several parcels of land within the boundaries of the Scenic Area. The ordinance may from time to time be amended by the Commission.

(2) SUBSEQUENT COMPLIANCE.—In the event the Commission has promulgated regulations pursuant to this section, a county may thereafter upon written notice to the Commission elect to adopt a land use ordinance, in which event it shall comply with the provisions of this section for adoption of a land use ordinance. Upon approval of a land use ordinance by the Commission it shall supercede any regulations for the county developed by the Commission, subject to valid existing rights.

(d) CONSTRUCTION OF FACILITIES.—The Secretary is hereby authorized to design, construct, operate and maintain such facilities as are included in the recreation assessment.

SEC. 8. ADMINISTRATION OF THE SPECIAL MANAGEMENT AREAS.

(a) ADMINISTRATION OF FEDERAL LANDS.—(1) The Secretary shall administer Federal lands within the Special Management Areas in accordance with this Act and other laws, rules and regulations applicable to the national forest system. The Secretary shall allow for the construction of roads and the management, utilization and harvest of timber on Federal lands within the Special Management Areas, subject to Forest Service visual resource management guidelines. The Secretary shall utilize lands acquired through exchange in calculating the allowable sales quantity on the Gifford Pinchot and Mt. Hood National Forests.

(b) WITHDRAWAL OF FEDERAL LANDS.—Subject to valid existing rights, all Federal lands located in the Special Management Areas are hereby withdrawn from all forms of entry, appropriation or disposal under the public land laws, from location, entry and patent under the mining laws of the United States, and from disposition under all laws pertaining to mineral and geothermal leasing: *Provided*, That the Secretary may allow the exploration, development or production of sand, gravel and crushed rock as necessary to construct, maintain, or reconstruct roads in the Special Management Areas.

(c) RESOURCE INVENTORY.—The Secretary shall complete a resource inventory for the special management areas consistent with the process and substance of the inventory prescribed by section 6(a)(1) of this Act.

(d) RECREATION ASSESSMENT.—Within two years after the date of enactment of this Act, the Secretary shall complete an assessment of recreation resources in the Special Management Areas and opportunities for enhancement of these resources. The recreation assessment shall—

(1) identify areas within the Special Management Areas suitable for designation by the Commission pursuant to section 6 of this Act for the construction of an interpretive center or other appropriate facility, to be located in the State of Oregon, and of a conference center or other appropriate facility, to be located in the State of Washington;

(2) identify areas within the Special Management Areas suitable for other public use

facilities, including but not limited to educational and interpretive facilities, campsites, picnic areas, boat launch facilities and river access areas; and

(3) subject to the treaty or other rights of Indian tribes, identify areas with the Special Management Areas suitable for use to increase access for recreation purposes to the Columbia River and its tributaries.

(e) LAND USE DESIGNATIONS.—Within three years after the date of enactment of this Act, the Secretary shall develop land use designations for the Special Management Areas. The land use designations shall be—

(1) based on the resource inventory prepared by the Secretary pursuant to this section; and

(2) consistent with the standards established in section 6 of this Act.

(f) GUIDELINES FOR LAND USE ORDINANCES.—(1) Within three years after the date of enactment of this Act, the Secretary shall, in consultation with the Commission, develop guidelines to assure that non-Federal lands within the Special Management Areas are managed consistent with the standards in section 6 and the purposes of this Act. The Secretary shall promptly transmit the guidelines to the Commission for inclusion in the management plan. The guidelines shall require that management, utilization, and disposal of timber, and exploration, development, and production of sand, gravel and crushed rock for the construction, maintenance or reconstruction of roads used to manage or harvest forest products on non-federal lands within the special management areas take place without adversely affecting the scenic, cultural, recreation and natural resources of the Scenic Area.

(h) ADOPTION OF SPECIAL MANAGEMENT AREA LAND USE ORDINANCES.—(1) Within sixty days of receipt of the management plan, each county shall submit to the Commission a letter stating that it proposes to adopt a land use ordinance consistent with the management plan. If any county fails to submit a letter as provided in this subsection, or fails to adopt a land use ordinance as provided in this section, the Commission shall carry out the requirements of subsection (l) of this section.

(2) Within two hundred seventy days of receipt of the management plan, each county shall adopt a special management area land use ordinance consistent with the management plan, and thereafter may adopt an amendment, revision or variance to a land use ordinance at any time. Each county upon adoption of a special management area land use ordinance shall promptly submit the adopted ordinance to the Commission.

(i) REVIEW BY THE COMMISSION.—(1) The Commission shall review the Special Management Area land use ordinance received from each county, and within ninety days after receipt shall make a tentative determination as to whether the ordinance is consistent with the management plan. If the Commission makes a tentative determination that the land use ordinance is consistent with the management plan, the Commission shall send the ordinance to the Secretary for concurrence.

(2) If the Commission makes a tentative determination that the land use ordinance is inconsistent with the management plan, the Commission shall state the reasons for the determination and shall return the ordinance to the appropriate county with suggested modifications required for consistency with the management plan.

(3) Each county shall have ninety days after it is notified by the Commission to make modifications designed to eliminate the inconsistencies and to resubmit the ordinance to the Commission for tentative determination of consistency. The Commission shall have sixty days to make a tentative consistency determination on the resubmitted ordinance. If found consistent, the land use ordinance shall be transmitted by the Commission to the Secretary for concurrence that the ordinance is consistent with the management plan. If the Commission finds the resubmitted ordinance inconsistent, the Commission shall adopt an ordinance pursuant to subsection (l) of this section.

(j) CONCURRENCE BY THE SECRETARY.—(1) Upon receipt of a Special Management Area land use ordinance from the Commission, the Secretary shall notify the public of such receipt and shall, within ninety days thereafter, concur with the Commission's tentative determination of consistency with the management plan unless the Secretary determines the ordinance is inconsistent. Any ordinance submitted to the Secretary shall become effective upon notification of concurrence. Should the Secretary fail to act within ninety days, the Secretary shall be deemed to have concurred with the Commission's tentative consistency determination.

(2) DENIAL OF CONCURRENCE.—If concurrence is denied, the Secretary shall state the reasons therefor and shall submit to the Commission suggested modifications to the land use ordinances to make them consistent with the management plan and the purposes of this Act.

(k) COMMISSION RECONSIDERATION.—Within one hundred twenty days after receipt of notification of non-concurrence by the Secretary, the Commission shall resubmit the land use ordinances to the appropriate county. Such county shall, within ninety days, reconsider and revise the ordinance and resubmit the ordinance to the Commission for reconsideration in accordance with the provisions of this section. Should the Secretary again deny concurrence, the Commission shall either prepare a land use ordinance for such county pursuant to subsection (l) of this section or, by a two-thirds vote of the membership of the Commission including a majority of the members appointed from each state, determine that the ordinance is consistent with the management plan.

(l) COMMISSION ORDINANCES.—(1) Within ninety days after making a determination that a county has failed to comply with the provisions of subsection (h) of this section, the Commission shall make and publish an ordinance setting standards for the use of non-Federal lands of such county within the boundaries of the Special Management Areas. The ordinances shall have the object of assuring that the use of such lands is consistent with the management plan. The ordinances may differ amongst the several parcels of land within the boundaries of the Special Management Areas. The ordinances may from time to time be amended by the Commission.

(2) The Commission shall promptly submit the ordinance to the Secretary. The Secretary shall, within ninety days after receipt of the ordinance from the Commission, concur with the tentative determination that the land use ordinance is consistent with the management plan unless a determination of inconsistency is made. Any ordinance submitted to the Secretary shall become effective upon concurrence. Should the Secretary fail to concur within ninety days, the land use ordinance shall be effective.

(3) If concurrence is denied, the Secretary shall state the reasons for finding the ordinance is inconsistent with the management plan, and shall submit to the Commission suggested modifications to the ordinance to make it consistent with the plan.

(4) The Commission shall have ninety days after it receives recommendations from the Secretary to make modifications designed to eliminate the inconsistencies and to resubmit the ordinance to the Secretary for concurrence. The Secretary shall have sixty days to concur with the resubmitted ordinance. Any resubmitted ordinance shall become effective upon concurrence by the Secretary. Should the Secretary deny concurrence for the resubmitted ordinance, the Secretary shall state the reasons therefor and shall promptly resubmit the ordinance for reconsideration. Should the Secretary fail to concur within sixty days, the ordinance shall be deemed effective.

(5) Within one hundred twenty days after receipt of notification of non-concurrence, the Commission shall—

(A) revise and resubmit the land use ordinance to the Secretary; or

(B) by a vote of two-thirds of its membership, including a majority of the members appointed from each State, reject the suggested modifications of the Secretary and adopt a land use ordinance consistent with the provisions of this section and the purposes of this Act.

(m) SUBSEQUENT COMPLIANCE.—In the event the Commission has adopted an ordinance pursuant to this section, the affected county may thereafter, upon written notice to the Commission and to the Secretary, elect to adopt a Special Management Area land use ordinance, in which event it shall comply with the provisions of this section for adoption of special management area land use ordinances. Upon concurrence of such land use ordinances by the Secretary they shall supercede any special management area land use ordinances for the county developed by the Commission, subject to valid existing rights.

(n) EFFECT OF SECRETARY'S NON-CONCURRENCE.—If the Secretary does not concur in any land use ordinance approved or adopted by the Commission pursuant to this section, the availability of certain funds to the relevant county shall be governed by section 16(b) of this Act.

(o) SPECIAL RULES.—Any ordinance adopted pursuant to this section shall not apply to any parcel or parcels of land within any special management area at the expiration of three years after the date such ordinance is adopted and a landowner makes a bona fide offer to sell at fair market value or otherwise convey such parcel or parcels to the Secretary, unless the affected landowner agrees to an extension of an ordinance: *Provided*, an offer shall not be considered bona fide if the landowner refuses consideration equal to the fair market value as appraised in accordance with the Uniform Appraisal Standards for Federal Land Acquisitions (Interagency Land Acquisition Conference, 1973). Lands for which an ordinance is suspended pursuant to this subsection shall be subject to the relevant Scenic Area Land use ordinance adopted pursuant to section 7 of this Act.

SEC. 9. LAND ACQUISITION.

(a) ACQUISITION AUTHORIZED.—(1) The Secretary is authorized to acquire any lands or interests therein within the Special Management Areas and the Dodson/Warrendale Special Purchase Unit which the Secretary determines are needed to achieve the purposes of this Act: *Provided,* That any lands, water, or interests therein owned by either State or any political subsivision thereof may be acquired only by donation or exchange.

(2) Lands within the State of Oregon acquired by the Secretary pursuant to this Act shall become part of the Mount Hood National Forest. Lands within the State of Washington acquired by the Secretary pursuant to this section shall become part of the Gifford Pinchot National Forest. All lands acquired by the Secretary pursuant to this Act shall be subject to the laws and regulations pertaining to the National Forest System and this Act.

(b) LIMITATIONS ON EMINENT DOMAIN.—

(1) Where authorized in subsection (a) of this section to acquire land or interests therein without the consent of the owner, the Secretary shall—

(A) acquire only such land or interests therein as is reasonably necessary to accomplish the purposes of this Act; and

(B) do so only in cases where all reasonable efforts to acquire with the consent of the owner such lands, or interests therein, have failed.

(2) Notwithstanding the provisions of subsection (a) of this section, the Secretary may not acquire without the consent of the owner lands or interests therein which—

(A) on the date of enactment of this Act, were used primarily for educational, religious, or charitable purposes, single-family residential purposes, farming, or grazing so long as the existing character of that use is not substantially changed or permitted for change;

(B) are located in counties with land use ordinances in which the Secretary has concurred pursuant to section 8 of this Act, unless such lands are being used, or are in imminent danger of being used, in a manner incompatible with such ordinances;

(C) are within the boundaries of the Dodson/Warrendale Special Purchase Unit; or

(D) are owned by an Indian tribe, held in trust by the United States for an Indian tribe or member of an Indian tribe, or otherwise administered by the United States for the benefit of an Indian tribe or member of an Indian tribe.

(c) HARDSHIP CASES.—In exercising authority to acquire lands pursuant to this section the Secretary shall give prompt and careful consideration to any offer made by any person or entity owning any land, or interest in land, within the boundaries of a Special Management Area. In considering such offer, the Secretary shall take into consideration any hardship to the owner which might result from any undue delay in acquiring the property.

(d) LAND EXCHANGES.—(1) The Secretary is authorized and directed, in conformance with the provisions of this section, to acquire by exchange any parcel of unimproved forest land at least forty acres in size within the boundaries of this Special Management Areas—

(A) owned by the State of Washington or Hood River County, Oregon, if, after final adoption of the management plan but within one hundred eighty days thereafter, the state or county offers to the United States such parcel of forest land; or

(B) owned by any private forest land owner if, after enactment of this Act but within one hundred and eighty days after final adoption of the management plan, such private forest land owner offers to the United States such parcel of forest land.

(2) In exercising this authority to acquire forest lands pursuant to this subsection, the Secretary may accept title to such lands and convey to the owner Federally owned lands deemed appropriate by the Secretary within the States of Oregon and Washington, regardless of the State in which the transferred lands are located. Forest lands exchanged pursuant to this subsection shall be of approximately equal value: *Provided,* That the Secretary may accept cash from or pay cash to the grantor in such an exchange in order to equalize minor differences in the values of the properties exchanged: *Provided further,* That the Secretary may reserve in any conveyance pursuant to this subsection such easements, subsurface rights, and any other interests in land deemed necessary or desirable: *Provided further,* That the valuation of lands exchanged shall be determined in terms of forest uses for timber.

(3) It is the intention of Congress that land exchanges pursuant to this subsection shall be completed no later than five years after the date of enactment of this Act. No later than sixty days after the enactment of this Act, and every one hundred eighty days thereafter, the Secretary shall report in writing to the Committee on Energy and Natural Resources of the United States Senate and the Committees on Agriculture and Interior and Insular Affairs of the United States House of Representatives, on the status of negotiations with owners of non-Federal lands to effect the exchanges authorized by this subsection.

(4) In the event that exchanges authorized by this section leave the State of Washington Department of Natural Resources, Hood River County, Oregon, or any private forest land owner with ownership of an uneconomic remnant of forest land contiguous to a Special Management Area, the Secretary is authorized to acquire such forest lands as if they were within the boundaries of a Special Management Area.

(5) The following-described federal lands and interests therein are hereby identified as candidate lands for exchanges conducted pursuant to this section: *Provided,* That the determination of which candidate lands will be exchanged, and in what sequence, shall be at the discretion of the Secretary. Subject to valid existing rights, such lands are hereby withdrawn from all forms of entry or appropriation or disposal under the public land laws, and from location, entry and patent under the United States mining law, and from disposition under all laws pertaining to mineral and geothermal leasing and all amendments thereto until the Secretary determines such lands are no longer needed to complete exchanges authorized by this section: *Provided,* That such period shall not extend beyond five years:

GIFFORD PINCHOT NATIONAL FOREST

Section	Township	Range
Wind River-Panther Creek Area:		
35	4N	7E
36	4N	7E
Approximately 430 acres.		
South Swift Area:		
13	6N	5E
23	6N	5E
17	6N	6E
18	6N	6E
Approximately 1,920 acres.		

GIFFORD PINCHOT NATIONAL FOREST—Continued

Section	Township	Range
National Area:		
6	14N	7E
7	14N	7E
18	14N	7E
30	14N	7E
Approximately 2,560 acres.		
Buck Creek-Willard Area:		
16	3N	9E
1	4N	9E
2	4N	9E
3	4N	9E
10	4N	9E
11	4N	9E
12	4N	9E
15	4N	9E
21	4N	9E
22	4N	9E
26	4N	9E
27	4N	9E
28	4N	9E
29	4N	9E
30	4N	9E
31	4N	9E
32	4N	9E
33	4N	9E
34	4N	9E
35	4N	9E
6	4N	10E
7	4N	10E
5	5N	10E
6	5N	10E
7	5N	10E
8	5N	10E
9	5N	10E
30	5N	10E
31	5N	10E
32	5N	10E
Approximately 14,460 acres.		

SIUSLAW NATIONAL FOREST

Section	Township	Range
East Beaver Area:		
33	2S	9W
34	2S	9W
2	3S	9W
3	3S	9W
4	3S	9W
8	3S	9W
9	3S	9W
17	3S	9W
Approximately 3,056 acres.		

WILLAMETTE NATIONAL FOREST

Section	Township	Range
Ida-McCoy Area:		
21	10S	6E
28	10S	6E
Approximately 680 acres.		

MOUNT HOOD NATIONAL FOREST

Section	Township	Range
Estacada Area:		
15	4S	5E
Approximately 560 acres.		
Hood River Area:		
4	1N	9E
36	1N	10E
31	1N	11E
2	1S	9E
3	1S	9E
4	1S	9E
5	1S	9E
6	1S	9E
Approximately 5,800 acres.		
Zig-Zag Area:		
22	2S	7E
29	2S	7E
Approximately 280 acres.		
Total acreage, 29,743.		

(e) BOUNDARIES.—For the purposes of section 7 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-9), the boundaries of the Special Management Areas and the Dodson/Warrendale Special Purchase Unit shall be treated as if they were within the boundaries of the Mt. Hood

or Gifford Pinchot National Forests as of January 1, 1965.

SEC. 10. INTERIM MANAGEMENT.

(a) INTERIM GUIDELINES.—(1) Within one hundred eighty days after the date of enactment of this Act, the Secretary shall develop interim guidelines for the Scenic Area outside Urban Areas to identify land use activities which are inconsistent with this Act and to govern the authority to acquire land without the consent of the owner provided by subsection (b) of this section. The Secretary shall promptly notify the public of adoption of the interim guidelines and transmit the guidelines to each county. Guidelines adopted by the Secretary pursuant to this subsection shall remain in effect for each county until the Secretary has developed guidelines for the Special Management Areas pursuant to section 8 of this Act and the land use ordinances prescribed by section 7 are in effect.

(b) INTERIM ACQUISITION AUTHORITY AND INJUNCTIVE RELIEF.—Prior to the concurrence by the Secretary of land use ordinances prescribed by section 8 of this Act and the approval by the Commission of land use ordinances prescribed by section 7 of this Act, the following authorities are granted:

(1) The Secretary may acquire any land or interest therein by condemnation which is being used or threatened to be used in a manner inconsistent with the purposes for which the Scenic Area was established and which will cause or is likely to cause impacts adversely affecting the scenic, cultural, recreation, and natural resources of the Scenic Area: *Provided*, That no lands or interests therein can be acquired by condemnation pursuant to this section if used in the same manner and for the same purposes as used on the effective date of this Act, unless such land is used for or interest is in the development and production of sand, gravel, or crushed rock, or disposal of refuse.

(2) Upon or after the commencement of any action for condemnation pursuant to this subsection, the Secretary, acting through the Attorney General of the United States, may apply to the appropriate United States District Court for a temporary restraining order or injunction to prohibit the use of any property within the scenic area, but outside of urban areas, which will cause or is likely to cause impacts adversely affecting the scenic, cultural, recreation and natural resources of the scenic area or is otherwise inconsistent with the purposes for which the Scenic Area was established. During the period of such order or injunction, the Secretary shall diligently and in good faith negotiate with the owner of the property to assure that, following termination of the order or injunction, the inconsistent use is abated or the adverse effect is mitigated.

(c) REVIEW OF DEVELOPMENT ACTION.—Prior to the effective date of a land use ordinance for each county pursuant to section 7 of this Act, and concurrence of the Secretary on a land use ordinance for each county pursuant to section 8 of this Act, the Commission shall review all proposals for major development actions and new residential development in such county in the Scenic Area, except Urban Areas. The Commission shall allow major development actions and new residential development only if it determines that such development is consistent with the standards contained in section 6 and the purpose of this Act.

SEC. 11. ECONOMIC DEVELOPMENT

(a) ECONOMIC DEVELOPMENT PLAN.— Based on the Economic Opportunity Study and other appropriate information, each State, in consultation with the counties and the Commission, shall develop a plan for economic development projects for which grants under this section may be used in a manner consistent with this Act.

(b) FUNDS PROVIDED TO STATES FOR GRANTS.—Upon certification of the management plan, and receipt of a plan referred to in subsection (a) of this section, the Secretary shall provide $5,000,000 to each State which each State shall use to make grants and loans for economic development projects that further the purposes of this Act.

(c) CONDITIONS OF GRANTS.—Each State making grants under this section shall require as a condition of a grant that—

(1) all activities undertaken under the grant are certified by the Commission as being consistent with the purposes of the Act, the management plan, and land use ordinances adopted pursuant to this Act;

(2) grants and loans are not used to relocate a business from one community to another;

(3) grants and loans are not used for program administration; and

(4) grants and loans are used only in counties which have in effect land use ordinances found consistent by the Commission and concurred on by the Secretary pursuant to section 8 of this Act.

(c) REPORT.—Each State shall—

(1) prepare and provide the Secretary with an annual report to the Secretary on the use of the funds made available under this section;

(2) make available to the Secretary and to the Commission, upon request, all accounts, financial records, and other information related to grants and loans made available pursuant to this section; and

(3) as loans are repaid, make additional grants and loans with the money made available for obligation by such repayments.

SEC. 12. OLD COLUMBIA RIVER HIGHWAY.

The Oregon Department of Transportation shall, in consultation with the Secretary and the Commission, the State of Oregon and the counties and cities in which the Old Columbia River Highway is located, prepare a program and undertake efforts to preserve and store the continuity and historic integrity of the remaining segments of the Old Columbia River Highway for public use as a National Historic Road, including recreation trails to connect intact and usable segments.

SEC. 13. TRIBUTARY RIVERS AND STREAMS.

(a) WATER RESOURCES PROJECTS.—The following rivers and streams shall be subject to the same restrictions on the licensing, permitting, and exempting from licensing and the construction of water resource projects as provided for components of the National Wild and Scenic Rivers System pursuant to section 7(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1278(a));

(1) any tributary river or stream to the Columbia River not designated in subsections (c) or (d) of this section or otherwise specified in this subsection which flows in whole or in part through a Special Management Area, unless the construction of a water resources project would not have a direct and adverse effect on the scenic, cultural, recreation, and natural resources of the Scenic Area;

(2) any river or river segment which flows in whole or in part through the Scenic Area and which is established pursuant to State law as a wild, scenic, or recreation river or which is under study pursuant to State law for the potential inclusion in any such State protected river system, unless such project or projects meet terms and conditions set by State agencies exercising administration over such river or river segment;

(3) the Wind River, Washington, for a period not less than three years following the later of—

(A) final approval of the Gifford Pinchot National Forest Plan, adopted pursuant to the National Forest Management Act of 1976 (Act of October 22, 1976, P.L. 94-588, as amended) (16 U.S.C. 1600 et seq.); or

(B) submittal by the Secretary of a report to the President on the suitability or nonsuitability for addition to the national wild and scenic rivers system and a report by the President to the Congress of recommendations and proposals with respect to the designation of such river under the Wild and Scenic Rivers Act;

(4) the Hood River, Oregon, for a period not to exceed twenty years from the date of enactment of this Act, if such facility impounds or diverts water other than by means of a dam or diversion existing as of date of enactment of this Act; and

(5) the segment of the Little White Salmon, Washington, from the Willard National Fish Hatchery to its confluence with the Columbia River if such facility impounds or diverts water other than by means of a dam or diversion existing as of date of enactment of this Act.

(b) The provisions of subsection (a) shall not apply to those portions of tributary rivers or streams to the Columbia River which flow through or border on Indian Reservations. Nothing in this section shall apply to or affect any segment of any river designated as a wild and scenic river under section 3 of the Wild and Scenic Rivers Act (16 U.S.C. 1274) or any river designated for study under section 5 of such Act (16 U.S.C. 1276);

(c) WILD AND SCENIC RIVER DESIGNATIONS.—Section 3(a) of the Wild and Scenic Rivers Act (Public Law 90-542, Act of October 2, 1968, 82 Stat. 910, as amended) is further amended by adding the following new subsections:

"( ) Klickitat, Washington: The segment from its confluence with Wheeler Creek, Washington, near the town of Pitt, Washington, to its confluence with the Columbia River; to be classified as a recreation river and to be administered by the Secretary of Agriculture.

( ) White Salmon, Washington: The segment from its confluence with Gilmer Creek, Washington, near the town of B Z Corner, Washington to its confluence with Buck Creek, Washington; to be classified as a scenic river and to be administered by the Secretary of Agriculture.".

(d) WILD AND SCENIC RIVER STUDIES.—Section 5(a) of the Wild and Scenic Rivers Act (Public Law 90-542, Act of October 2, 1968, 82 Stat. 910, as amended) is further amended by adding the following new subsections:

"( ) Klickitat, Washington: The segment from the southern boundary of the Yakima Indian Reservation, Washington, as described in the Treaty with the Yakimas of 1855 (12 Stat. 951), and as acknowledged by the Indian Claims Commission in Yakima Tribe of Indians v. U.S., 16 Ind. Cl. Comm. 536 (1966), to its confluence with the Little Klickitat River, Washington: *Provided*, That said study shall be carried on in consultation with the Yakima Indian Nation

and shall include a determination of the degree to which the Yakima Indian Nation should participate in the preservation and administration of the river segment shoud it be proposed for inclusion in the Wild and Scenic Rivers system.

( ) White Salmon, Washington: The segment from its confluence with Trout Lake Creek, Washington, to its confluence with Gilmer Creek, Washington, near the town of B Z Corner, Washington.".

SEC. 14. IMPLEMENTATION MEASURES.

(a) ASSISTANCE TO COUNTIES.—The Secretary shall provide technical assistance on a nonreimbursable basis to counties for the development of land use ordinances prescribed by sections 7 and 8 of this Act: *Provided*, That in the event a county fails to obtain approval by the Commission for a land use ordinance within three years after the date technical assistance is first provided under this subsection for the development of a land use ordinance, the Secretary shall terminate all technical assistance for any participation in the development of such ordinance.

(b) PAYMENT OF TIMBER RECEIPTS.—(1) Notwithstanding the provisions of the last paragraph under the heading "Forest Service" of the Act of May 23, 1908 (c. 192, 35 Stat. 251, as amended; 16 U.S.C. 500), and of section 13 of the Act of March 1, 1911 (c. 186, 36 Stat. 961, as amended; 16 U.S.C. 500), that portion of which is paid under such provisions to the State of Oregon with respect to the special management areas within the Mt. Hood National Forest, the Gates of the Columbia Gorge Special Management Area, Mount Hood National Forest, and to the State of Washington with respect to the Special Management Areas within the Gifford Pinchot National Forest—

(A) not less than 50 percent shall be expended for the benefit of the public schools of the country which has adopted implementation measures pursuant to this Act; and

(B) the remainder shall be expended for the benefit of public roads or any public roads or any public purposes of any county which has adopted implementation measures pursuant to this Act.

(2) Paragraph (1) of this subsection shall not apply—

(A) to any amount paid by the Secretary of the Treasury under the provisions of law referred to in subsection (b)(1) at the end of any fiscal year ending before the date of enactment of this Act; or

(B) for a particular county, if the county does not have in effect a land use ordinance which has been found consistent by the Commission and concurred on by the Secretary pursuant to section 8 of this Act.

(c) PAYMENTS TO LOCAL GOVERNMENTS.—(1) Subject to section 16(B) of this Act, in the case of any land or interest therein acquired by the Secretary pursuant to section 9, which was subject to local real property taxes within the five years preceding such acquisition and which is located in a county which has in effect a land use ordinance which has been found consistent by the Commission and concurred on by the Secretary pursuant to section 8, the Secretary is authorized and directed to make annual payments to the county in which such lands are located in an amount equal to one per centum of the fair market value of such land or interest therein on the date of acquisition by the Secretary.

(2) Notwithstanding paragraph (1) of this subsection, any payment made for any fiscal year to a county pursuant to this subsection shall not exceed the amount of real property taxes assessed and levied on such property during the last full fiscal year before the fiscal year in which such land or interest therein was acquired by the Secretary.

(3) No payment shall be made under this subsection with respect to any land or interest therein after the fifth full fiscal year beginning after the first fiscal year in which such a payment was made with respect to such land or interest therein.

(d) FEDERAL AND STATE CONSISTENCY.—Except as otherwise provided in this Act, Federal and State agencies having responsibilities within the Scenic Area shall—

(1) exercise such responsibilities consistent with the provisions of this Act; and

(2) shall make no new expenditures or provide new financial assistance in the Scenic Area which are inconsistent with the provisions of this Act.

(e) TRANSFER OF PUBLIC LANDS.—Subject to valid existing rights, all public lands within the Scenic Area administered by the Secretary of the Interior through the Bureau of Land Management are hereby transferred without consideration to the jurisdiction of the Secretary to be managed as National Forest lands in accordance with the provisions of this Act.

SEC 15. ENFORCEMENT.

(a) ADMINISTRATIVE REMEDIES.—

(1) COMMISSION ORDERS.—The Commission shall monitor activities of counties pursuant to this Act and shall take such actions as it determines are necessary to ensure compliance.

(2) APPEAL TO THE COMMISSION.—Any person or entity adversely affected by any final action or order of a county relating to the implementation of this Act may appeal such action or order to the Commission by filing with the Commission within thirty days of such action or order, a written petition requesting that such action or order be modified, terminated, or set aside.

(3) CIVIL PENALTIES.—Any person or entity who willfully violates the management plan or any land use ordinance, any implementation measure or any order issued by the Commission pursuant to this Act may be assessed a civil penalty by the Commission not to exceed $10,000 for each violation. No penalty may be assessed under this subsection unless such person or entity is given notice and opportunity for a public hearing with respect to such violation. The Commission may compromise, modify, or remit, with or without conditions, any penalty imposed under this subsection, taking into consideration the nature and seriousness of the violation and the efforts of the violator to remedy the violation in a timely manner.

(b) JUDICAL REMEDIES.—

(1) CIVIL ACTIONS TO ENFORCE ACT.—(A) Except as otherwise limited by this Act, the Attorney General of the United States may, at the request of the Secretary, institute a civil action for an injunction or other appropriate order to prevent any person or entity from utilizing lands within the special management areas in violation of the provisions of this Act, interim guideline adopted or other action taken by the Secretary pursuant to this Act.

(B) The Commission, or, at the request of the Commission, or the Attorney General of Oregon or Washington, may institute a civil action for an injunction or other appropriate order to prevent any person or entity from utilizing lands within the Scenic Area outside Urban Areas in violation of the provisions of this Act, the management plan, or any land use ordinance or interim guideline adopted or other action taken by the Commission or any county pursuant to this Act.

(2) CITIZENS SUITS.—Any person or entity adversely affected may commence a civil action action to compel compliance with this Act—

(A) against the Secretary, the Commission or any county where there is alleged a violation of the provisions of this Act, the management plan or any land use ordinance or interim guideline adopted or other action taken by the Secretary, the Commission, or any county pursuant to or Commission under this Act; or

(B) against the Secretary, the Commission, or any county where there is alleged a failure of the Secretary, the Commission or any county to perform any act or duty under this Act which is not discretionary with the Secretary, the Commission or any county.

(3) LIMITATION OF BRINGING OF CITIZENS SUITS.—No action may be commenced—

(A) under paragraph (2)(A) of this subsection—

(i) prior to sixty days after the plaintiff has given notice in writing of the alleged violation to the Secretary, to the Commission, and to the county in which the violation is alleged to have occurred; or

(ii) if the Attorney General of the United States, or the Attorney General of Oregon or Washington, has commenced and is diligently prosecuting a civil action of the same matter pursuant to paragraph (1) of this subsection to require compliance with the management plan or any regulations, guidelines, or standards issued or other actions taken by the Secretary, the Commission, or any county pursuant to this Act: *Provided*, That in any such action any person or entity otherwise entitled to bring an action pursuant to paragraph (2) of this subsection may intervene as a matter of right; or

(iii) which challenges the consistency of the draft management plan with the purposes and standards of this Act or with other applicable law prior to the certification or adoption of the Management Plan pursuant to section 6 of this Act; or

(B) under paragraph (2)(B) of this subsection prior to sixty days after the plaintiff has given notice in writing of such action to the Secretary, the Commission, and to the county in which the failure to perform any act or duty pursuant to this Act is alleged: *Provided*, That such action may be brought immediately after such notification where the violation or order complained of constitutes an imminent threat to the health or safety of the plaintiff or would immediately affect a legal interest of the plaintiff.

(4) JUDICIAL REVIEW.—Any person or entity adversely affected by—

(A) any final action or order of a county, the Commission, or the Secretary relating to the implementation of this Act;

(B) any land use ordinance or interim guideline adopted pursuant to this Act; or

(C) any appeal to the Commission pursuant to this section; or

(D) any civil penalty assessed by the Commission pursuant to paragraph (a)(3) of this subsection

may appeal such action or order by filing in any of the courts specified in paragraph (5) of this subsection, within sixty days after the date of service of such order or within sixty days after such action is taken, a written petition requesting such action, order, land use ordinance, interim guideline, or

appeal taken to the Commission be modified, terminated, or set aside.

(5) FEDERAL COURT JURISDICTION.—The United States districts courts located in the States of Oregon and Washington shall have jurisdiction over—

(A) any criminal penalty imposed pursuant to 16 U.S.C. 551 or any other applicable law for violation of any order, regulation or other action taken by the Secretary pursuant to this Act;

(B) any civil action brought against the Secretary pursuant to this section; or

(C) any appeal of any order, regulation, or other action of the Secretary taken pursuant to paragraph (4) of this subsection.

(6) STATE COURT JURISDICTION.—The state courts of States of Oregon and Washington shall have jurisdiction—

(A) to review any appeals taken to the Commission pursuant to subsection (a)(2) of this section;

(B) over any civil action brought by the Commission pursuant to subsection (b)(1) of this section or against the Commission, a State, or a county pursuant to subsection (b)(2) of this section;

(C) over any appeal of any order, regulation, or other action of the Commission or a county taken pursuant to paragraph 4 of this subsection; or

(D) any civil penalties assessed by the Commission pursuant to subsection (a)(3) of this section.

SEC. 16. AUTHORIZATION OF APPROPRIATIONS.

(a) AUTHORIZATIONS.—There are authorized to be appropriated such sums as are described below:

(1) for the purpose of acquisition of lands, water, and interests therein pursuant to this Act: $40,000,000: *Provided,* That of this amount no more than $10,000,000 shall be available to acquire lands and interests therein pursuant to section 10;

(2) for the purpose of construction of an interpretive center to be located in the State of Oregon, and a conference center or other appropriate facility to be located in the State of Washington: $10,000,000;

(3) for the purpose of providing payments to local governments pursuant to section 14(c): $2,000,000;

(4) for restoration and reconstruction of the Old Columbia River Highway, Oregon, out of the Highway Trust Fund (other than the Mass Transit Account): $2,800,000: *Provided,* That the funds authorized to be appropriated pursuant to this subsection shall be available for obligation in the same manner and to the same extent as if such funds were apportioned under Chapter 1 of Title 23, United States Code; and

(5) for the purpose of providing economic development grants pursuant to section 11: $5,000,000 for each State: *Provided,* That funds authorized to be appropriated pursuant to this paragraph shall be available for the acquisition of lands and interests therein pursuant to section 10 if, at the expiration of three years, the States have failed to carry out their respective functions pursuant to section 5 of this Act.

(b) AVAILABILITY OF FUNDS.—Funds appropriated under clauses (2) through (5) shall not be made available for any county which does not have in effect a land use ordinance which has been found to be consistent by the Commission and concurred on by the Secretary as consistent with the management plan pursuant to section 8 of this Act.

SEC. 17. SAVINGS PROVISIONS.

(a) Nothing in this Act shall—

(1) except as provided in section 9(e)(6), affect or modify any provision of Federal or State law or regulation or county ordinance which are more protective of the scenic, cultural, recreation, or natural resources of the Scenic Area;

(2) affect or modify any treaty or other rights of any Indian tribe;

(3) except as provided in section 13(c), authorize the appropriation or use of water by any Federal, State, or local agency, Indian tribe, or any other entity or individual;

(4) except as provided in section 13(c), affect the rights or jurisdictions of the United States, the States, Indian tribes or other entities over waters of any river or stream or over any ground water resource or affect or interfere with transportation activities on any such river or stream;

(5) except as provided in section 13(c), alter, establish, or affect the respective rights of United States, the States, Indian tribes, or any person with respect to any water or water-related right;

(6) alter, amend, repeal, interpret, modify, or be in conflict with any interstate compact made by the States;

(7) affect or modify the ability of the Bonneville Power Administration to operate, maintain, and modify existing transmission facilities;

(8) affect lands held in trust by the Secretary of the Interior for Indian tribes or individual members of Indian tribes or other lands acquired by the Army Corps of Engineers and administered by the Secretary of the Interior for the benefit of Indian tribes and individual members of Indian tribes;

(9) affect the laws, rules and regulations pertaining to hunting and fishing under existing state and federal laws and Indian treaties;

(10) affect the authorities of the Secretary under the Federal Power Act (16 U.S.C. 797) or the Wild and Scenic Rivers Act (16 U.S.C. 1271 et seq.);

(11) require any revision or amendment of any forest plan adopted pursuant to the National Forest Management Act of 1976 ((Act of October 22, 1976, P.L. 94-588, as amended) (16 U.S.C. 1600 et seq.)); or

(12) establish protective perimeters or buffer zones around the Scenic Area or each Special Management Area. The fact that activities or uses inconsistent with the management directives for the Scenic Area or Special Management Areas can be seen or heard from these areas shall not, of itself, preclude such activities or uses up to the boundaries of the Scenic Area or Special Management Areas.

(b) Except for the offsite disposal of excavation material, nothing in this Act shall be construed to affect or modify the responsility of the U.S. Army Corps of Engineers to improve navigation facilities at Bonneville Dam pursuant to Federal law.

(c) Except for the management, utilization, or disposal of timber resources on non-Federal lands within the pecial Management Areas, nothing in this Act shall affect the rights and responsibilities of non-Federal timber land owners under the Oregon and Washington Forest Practices Acts or any county regulations which under applicable State law supercede such Acts.

(d) Mandatory language in this Act respecting the powers and responsibilities of the Commission shall be interpreted as conditions precedent to Congressional consent to the interstate compact described in section 5 of this Act.

(e) In the event the States of Washington and Oregon fail to comply with the provisions of section 5 of this Act, the Secretary shall not be obligated to take actions which are predicated upon the establishment of the Commission.

(f)(1) Actions by the Secretary pursuant to subsections (f), (g), and (h) of section 6; subsections (f), (j), (k) and (l) of section 8; section 9; and subsection (a) and (b)(2) of section 10 shall neither be considered major Federal actions significantly affecting the quality of the environment under section 102 of the National Environmental Policy Act (42 U.S.C. 4332) nor require the preparation of an environmental assessment in accordance with that Act.

(2) Except as provided in paragraph (1) of this subsection, nothing in this Act shall expand, restrict, or otherwise alter the duties of the Secretary under the National Environmental Policy Act.

SEC. 18. SEVERABILITY.

(A) If any provision of this Act or the application thereof to any person, State, Indian tribe, entity, or circumstance is held invalid, neither the remainder of this Act, nor the application of any provisions herein to other person, States, Indian tribes, entities, or circumstances, shall be affected thereby.".

FEDERAL TELECOMMUNICATIONS POLICY ACT

DANFORTH AMENDMENT NO. 3261

(Ordered referred to the Committee on Commerce, Science, and Transportation.)

Mr. DANFORTH submitted an amendment intended to be proposed by him to the bill (S. 2565) to ensure the orderly and competitive development of the telecommunications industry, as follows:

On page 2, insert the following after line 3:

"SEC. 102. FINDINGS.

"The Congress finds that—

"(1) the Federal Communications Commission is the appropriate Federal entity for overseeing and regulating the telecommunications industry;

"(2) universal service, including access to, and usage of, the local telephone network by individuals must be preserved at fair and reasonable rates;

"(3) the primary objective of the Federal Communications Commission shall be to preserve the universal availability of affordable telephone service;

"(4) Wherever possible and consistent with affordable, universal availability of telephone service, competition rather than regulation should be relied upon;

"(5) the Nation's domestic and international telecommunications industry is a vital national resource which is critical to meeting the needs of national defense and security and emergency preparedness and to maintaining the economic competitiveness and technological leadership of the United States;

"(6) the Nation will benefit from the promotion of innovation, efficiency, competition and competitiveness in the telecommunications industry;

"(7) the Nation will benefit from an open world trading system for telecommunications equipment and determinations made regarding the future diversification of local telephone companies must be consistent

with United States objectives to obtain access to foreign markets;

"(8) local telephone companies should be permitted to diversify so long as there is no substantial possibility that local ratepayers would bear the economic burden of such diversification and there is no substantial possibility that the local telephone company could use its monopoly power to impede competition in the market it seeks to enter; and

"(9) the ability of a telephone company to place the economic burden of diversification on the local ratepayer is diminished if a choice of telecommunications service providers is available to the ratepayer.".

On page 2, strike line 5 through 8 and insert in lieu thereof the following:

"SEC. 201. AUTHORITY OF THE COMMISSION.

"(a) In addition to any other authority which the Federal Communications Commission may exercise under this title, in the event the Commission grants a petition filed pursuant to section 202 of this title by a Class I local telephone company, Class II local telephone company, a parent of a Class II local telephone company, or a dominant interexchange carrier, the Commission shall have authority over the petitioner and the competitive affiliate for which authority was granted pursuant to section 202 of this title, for the purpose of—

"(1) barring anticompetitive practices between a petitioner and any competitive affiliate; and

"(2) ensuring that the economic risks associated with a competitive service or activity for which authority is granted pursuant to section 202 of this title are not borne by local ratepayers.".

On page 2, line 9, insert "(b)" immediately before "Within".

On page 2, insert the following immediately after line 21:

"(a) 'Affiliate' or 'affiliates' means any organization or entity in which, directly or indirectly, a Class I local telephone company, a Class II local telephone company, a dominant interexchange carrier, or a parent company of a Class II local telephone company has any ownership or equity interest or control.";

on page 2, line 22, strike "(a)" and insert in lieu thereof "(b)"; and on page 3, line 1, strike "(b)" and insert in lieu thereof "(c)", on line (9), strike "(c)" and insert in lieu thereof "(d)", and on line 24, strike "(d)" and insert in lieu thereof "(e)".

On page 3, insert the following immediately after line 25:

"(f) 'Competitive affiliate' means any affiliate engaged in a competitive business for which authority was granted pursuant to section 202 of this title.";

on page 4, line 1, strike "(e)" and insert in lieu thereof "(g)", on line 6, strike "(f)" and insert in lieu thereof "(h)", on line 15, strike "(g)" and insert in lieu thereof "(i)", and on line 22, strike "(h)" and insert in lieu thereof "(j)"; on page 5, line 1, strike "(i)" and insert in lieu thereof "(k)", on line 14, strike "(j)" and insert in lieu thereof "(l)", on line 17, strike "(k)" and insert in lieu thereof "(m)", and on line 22, strike "(l)" and insert in lieu thereof "(n)"; and on page 6, line 6, strike "(m)" and insert in lieu thereof "(o)", and on line 10, strike "(n)" and insert in lieu thereof "(p)".

On page 3, line 22, insert "local" immediately after "a".

On page 4, line 16, insert "or Class I local telephone companies" immediately after "carriers".

On page 5, line 4, insert "or serving area" immediately after "area".

On page 6, line 1, insert "transmission, with or without benefit of any closed" immediately after "electromagnetic".

On page 6, strike all from line 18 through line 5 on page 7; on page 7, line 6, strike "(b)" and insert in lieu thereof "(a)"; on page 8, line 12, strike "(c)" and insert in lieu thereof "(b)"; on page 9, line 9, strike "(d)" and insert in lieu thereof "(c)", on line 17, strike "(e)" and insert in lieu thereof "(d)", and on line 22, strike "(f)" and insert in lieu thereof "(e)".

On page 7, line 13, insert a comma immediately after "to".

On page 8, lines 5-6, strike "or other nonaffiliated interexchange carrier".

On page 10, strike lines 8 through 11, on line 12, strike "(b)" and insert in lieu thereof "(a)", and on line 17, strike "(c)" and insert in lieu thereof "(b)"; on page 12, line 11, strike "(d)" and insert in lieu thereof "(c)"; on page 13, line 22, strike "(e)" and insert in lieu thereof "(d)"; on page 14, line 24, strike "(f)" and insert in lieu thereof "(e); on page 15, line 4, strike "(g)" and insert in lieu thereof "(f)", and on line 15, strike "(h)" and insert in lieu thereof "(g)"; on page 16, line 23, strike "(i)" and insert in lieu thereof "(h)"; and on page 17, line 3, strike "(j)" and insert in lieu thereof "(i)", on line 16, strike "(k)" and insert in lieu thereof "(j)", and on line 22, strike "(l)" and insert in lieu thereof "(k)".

On page 10, line 13, insert "(or its successor or successors)" immediately after "carrier".

On page 12, line 16, strike "receive" and insert in lieu thereof "receipt".

On page 13, line 10, insert "as of the date of these regulations" immediately before the semi-colon.

On page 14, strike lines 9 through 15 and insert in lieu thereof the following:

"'(c) a point or points within an exchange area of a Class I local telephone company,

if the Class II local telephone company exchange or serving area(s) and the IOC serving area have been associated with the Class I local telephone company exchange as of the date of these regulations; and".

On page 15, line 3, strike "service" and insert in lieu thereof "services".

On page 16, strike lines 6 through 22 and insert in lieu thereof the following:

"'(3) a point or points within an exchange area of a Class I local telephone company,

if the Class II local telephone company exchange or serving area(s) and the IOC serving area have been associated with the Class I local telephone company exchange area as of the date of these regulations or thereafter, shall not be interexchange telecommunications: *And provided further*, that, with the approval of the Commission, a Class II local telephone company may associate the serving areas of other IOCs with its exchange or serving areas, and in such cases telecommunications between a point or points within the Class II local telephone company exchange or serving area and a point or points within the associated IOC serving area shall also not be interexchange telecommunications.".

On page 18, line 6, strike "Each" and insert in lieu thereof "Subject to the provisions of this section, each".

On page 18, line 14, strike "each" and insert in lieu thereof "every".

On page 19, line 10, insert a comma immediately after "nationwide".

On page 20, line 21, strike "with the Commission".

On page 21, strike all from "Except" on line 11 through "notwithstanding" on lines 12-13 and insert in lieu thereof "Notwithstanding".

On page 23, line 17, insert "(1)" immediately after "(f)"; and on page 24, insert immediately after line 11 the following:

"'(2) if, by January 1, 1994, any Class I local telephone company has not recovered the costs of equal access and network reconfiguration, inclusive of financing costs, through the collection of access charges from the interexchange carriers for such purposes in accordance with paragraph (1), the dominant interexchange carrier shall reimburse such Class I local telephone company in the amount of any remaining deficit. On December 31, 1988, or the end of the equal access construction program, whichever is earlier, all Class I local telephone companies shall submit to the Commission a preliminary accounting of the costs of providing equal access and network reconfiguration, and the associated revenues, in a manner prescribed by the Commission. If the Class I local telephone companies and the dominant interexchange carrier are able to report to the Commission on or before December 31, 1994, of their agreement that all such costs have been recovered, the dominant interexchange carrier shall be discharged from further obligation with respect to the costs of equal access and network reconfiguration.".

On page 24, line 13, insert "(a)" immediately before "No"; and insert the following immediately after line 24:

"'(b) Each Class I local telephone company shall notify the Commission at least thirty days before making a significant change in its existing procedures for ensuring compliance with subsection (a) of this section.".

On page 25, line 7, strike "products" and insert in lieu thereof "equipment".

On page 25, line 12, insert "actually" immediately before "regulated".

On page 25, line 16, strike "a" the second place it appears and insert in lieu thereof "the".

On page 26, strike all from "Except" on line 15 through "of" on line 19 and insert in lieu thereof the following: "For so long as multifunction facilities are shared, through leasing or otherwise,".

On page 26, line 22, strike "collectively".

On page 27, line 1, strike "collectively".

On page 27, insert the following immediately after line 5:

"' (c) The Commission shall have the authority to establish network standards and may convene a board with industry representatives for that purposes.".

On page 27, line 21, insert "or affiliate or Class I local telephone company or affiliate" immediately after "carrier".

On page 28, strike lines 7 through 11; and on page 27, line 21, strike "(1)".

On page 28, strike all from "Except" on line 17 through "the" the second place it appears on line 18, and insert in lieu thereof "The".

On page 29, line 7, insert "or" immediately after "officers,".

On page 31, line 2, strike "nor" and insert in lieu thereof "or officer or employee".

On page 32, line 12, strike "carrier" and insert in lieu thereof "service provider".

On page 33, line 18, strike "carrier" and insert in lieu thereof "service provider".

On page 33, line 24, strike "therefore" and insert in lieu thereof "thereof".

On page 35, strike all from "Each" on line 12 through line 14 and insert in lieu thereof

"(1) As part of its obligation to provide nondiscriminatory access to interexchange carriers, each Class II local telephone company shall,".

On page 35, strike all from "or" on line 25 through "access" on line 2 on page 36.

On page 36, line 12, strike "the date of these regulations" and insert in lieu thereof "January 1, 1987".

On page 36, line 24, strike "changes" and insert in lieu thereof "changed".

On page 37, line 24, strike "of" and insert in lieu thereof "or".

On page 40, line 11, strike "for" the second place it appears and insert in lieu thereof "of".

On page 40, strike lines 24–25 and insert in lieu thereof " '(3) Notwithstanding".

On page 41, line 3, strike "on" and insert in lieu thereof "of".

On page 43, line 13, insert the following immediately before the period:", if the tariffs filed for such less-than-equal access reflect the lesser cost, if any, of such access as compared to the exchanged access provided to a dominant interexchange carrier or an IOC".

On page 44, line 16, strike "State" and insert in lieu thereof "States".

On page 44, line 18, strike "Hawaii and Alaska" and insert in lieu thereof "Alaska and Hawaii".

On page 44, strike all after "services" on line 20 through "regulations" on line 22.

On page 46, line 8, strike "and" the third place it appears and insert in lieu thereof "or".

On page 48, line 1, insert "only" immediately before "upon".

On page 48, line 1, strike "by a" and insert in lieu thereof "by the petitioning".

On page 48, lines 6–7, strike "the Commission relieves".

On page 48, line 7, insert "is relieved" immediately after "company".

On page 48, line 15, strike "Class I" and insert in lieu thereof "Class II".

On page 50, insert the following immediately after line 8:

"SEC. 202. WAIVER, MODIFICATION OR REPEAL OF RESTRICTIONS.

"(a)(1) After the date on which regulations are promulgated under section 201 of this title, any Class I local telephone company, Class II local telephone company, any parent of a Class II local telephone company, or dominant interchange carrier or other entity that was subject to the decrees entered in *United States* v. *Western Electric Co.*, No. 82-0192 (D.D.C.) or *United States* v. *GTE Corporation*, No. 83-1298 (D.D.C.) may file with the Commission a petition for a waiver, modification, or repeal of line-of-business restrictions imposed by regulations promulgated under section 201 of this title and a plan demonstrating its proposed compliance with the requirements of, and regulations promulgated pursuant to, this section. The Commission shall promptly publish a notice of the petition in the Federal Register and, not later than 180 days after the filing of such petition and plan, enter an order granting or denying such petition. The Commission shall grant the petition and approve such plan, if the Commission has promulgated the regulations required under this section and made the determinations specified in paragraph (2) of this subsection. The Commission's order shall make specific findings regarding the compliance or noncompliance of the petitioner's plan with the provisions of this section. In the event the petition for waiver, modification or repeal is denied, the petitioner may file an amended plan demonstrating its proposed method of compliance with the requirements of this title and regulations promulgated pursuant to this section, and the Commission shall enter an order approving or disapproving the amended plan within 90 days after its filing. Such order shall make specific findings regarding the compliance or noncompliance of the petitioner's amended plan with the provisions of this section.

"(2) The Commission shall grant a petition and approve a plan, or amended plan, filed pursuant to paragraph (1) of this subsection if the Commission has promulgated the regulations required under this section and, after notice and an opportunity for a hearing, the Commission affirmatively determines that—

"(A) the economic risks associated with the proposed competitive business would not be borne by local ratepayers; and

"(B) permitting the petitioner to enter the competitive market would be in the public interest.

"(b)(1) In determining under subsection (a) of this section whether permitting a company to enter a market would be in the public interest, the Commission shall consider a number of factors, including the goal of universal, affordable local telephone access and usage, the promotion of United States trade benefits, competitiveness and employment, the fostering of domestic competition, and the implications for national security.

"(2) In considering the potential effects on competition under paragraph (1) of this subsection, the Commission shall consult with the Attorney General and the Secretary of Commerce regarding whether there is a substantial possibility that the petitioner could use its monopoly power to impede competition in the market it seeks to enter.

"(3) In considering the potential effects on United States trade benefits, competitiveness and employment under paragraph (1) of this subsection, the Commission shall consult with the Secretary of Commerce, the United States Trade Representative and other appropriate executive branch agencies that they may designate as to whether there is a substantial possibility that granting the petition would have an adverse effect on the United States balance of trade, trade policy objectives, competitiveness and employment.

"(4) In considering the potential effects on national security under paragraph (1) of this subsection, the Commission shall consult with the Secretary of Defense as to whether there is a substantial possibility that granting the petition would have an adverse effect on national security.

"(5) The executive agencies with which the Commission consults under this subsection shall provide their findings and recommendations to the Commission within 60 days after the Commission publishes a notice of the petition in the Federal Register.

"COMMISSION REGULATIONS FOR ALL COMPETITIVE VENTURES

"(c)(1) Prior to granting any waiver, modification or repeal under this title, the Commission shall promulgate regulations to ensure that ratepayers are not unfairly burdened by the entry of a petitioner into a competitive line of business and that the petitioner could not unjustly or unreasonably discriminate against competitors.

"(2) TRANSFER OF ASSETS.—Prior to granting any petition for waiver, modification or repeal under this Act, the Commission shall promulgate regulations which provide for the transfer of assets between a petitioner and its competitive affiliates only at fair market value. The Commission may create a board, which may include Federal and State regulators and representatives of the telecommunications industry, for the purpose of determining the value of such transferred assets, if the Commission determines that such a board would be necessary to obtain an objective evaluation of transferred assets and guard against cross-subsidization through undervaluation of transferred assets.

"(3) NETWORK INFORMATION.—Prior to granting any petition for waiver, modification or repeal under this title, the Commission shall promulgate regulations requiring the nondiscriminatory disclosure of information regarding network engineering and changes to the petitioner's network. Such regulations shall, at a minimum, prohibit the petitioner from directly or indirectly providing to, or using for the benefit of, the petitioner any non-public network information and require that any such disclosure of non-public network information be made in the same form and on the same terms and conditions to competitors as it is to the petitioner's competitive affiliates.

"(4) COMMERCIAL INFORMATION.—Prior to granting any petition for waiver, modification or repeal under this title, the Commission shall promulgate regulations which provide for the disclosure, on a nondiscriminatory basis, of proprietary information regarding customers of the petitioner's regulated telecommunications services and any commercial information acquired by the petitioner in its provision of regulated telecommunications services that would provide an unfair competitive advantage to its competitive affiliate. The Commission's regulations shall, at a minimum, prohibit the petitioner from directly or indirectly providing to, or using for the benefit of, any competitive affiliate any such non-public customer proprietary information of the petitioner. The Commission may require that specific categories of information, including directory listing and similar information, shall be made generally available at the same time at reasonable, nondiscriminatory charges, terms and conditions.

"(5) NETWORK ACCESS AND INTERCONNECTION.—Prior to granting any petition for waiver, modification or repeal under this title, the Commission shall promulgate regulations which require the nondiscriminatory provision of telephone network access and interconnection by a petitioner to its competitive affiliate and other competitors. Such regulations shall, at a minimum—

"(A) prohibit unreasonable discrimination in the charges, terms and conditions for access and interconnection to the telephone network of a petitioner;

"(B) require Class I local telephone companies and Class II local telephone companies to comply with the equal access requirements specified in section 201 of this title; and

"(C) specify that, if a petitioner's competitive activity or service uses the regulated telecommunications services of the petitioner in providing its competitive service, it shall do so under tariff and at prices no lower and terms and conditions no more favorable than those applicable to those regulated telecommunications services that are made available to nonaffiliated competitors.

"(6) ACCOUNTING.—Prior to granting any petition for waiver, modification or repeal under this title, the Commission shall promulgate regulations regarding accounting

requirements and the allocation of the costs and revenues of petitioners and their regulated and competitive affiliates, and the allocation of costs and revenues to regulated and competitive activities. Such regulations shall, at a minimum, provide that—

"(A) telephone service shall not, directly or indirectly, cross-subsidize a new competitive activity or service for which petitions are granted;

"(B) no costs attributable to a competitve activity or service shall be assigned to, or recovered by charges for, telephone service;

"(C) all costs and revenues shall be allocated fully and fairly between regulated and competitive activities and services;

"(D) no costs for investment or expansion, or costs related to such investment or expansion (including costs for depreciation or maintenance) necessary to satisfy the demand for competitive activities or services (including peak demand) shall be assigned to, or recovered by charges for, telephone service;

"(E) the relative use of facilities by regulated and competitive activities shall be taken into account in determining the allocation of costs that cannot be assigned directly to telephone services or competitive activities or services; and

"(F) if a competitive activity or service is discontinued, any resources and investment allocated to such activity or service shall not be reallocated for use in telephone services, except upon a showing by the petitioner that such use will benefit the customers of telephone services.

"(7) FINANCING.—Prior to granting a petition for waiver, modification or repeal under this title, the Commission shall promulgate regulations regarding the financing of competitive affiliates. The Commission's regulations shall require competitive affilates to obtain ther own debt financing on their credit and shall prohibit any entity affiliated with a petitioning telephone company to guarantee the debt associated with a competitive venture in a manner that would permit a creditor, on default, to have recourse to the assets of the local telephone company.

"(8) STRUCTURAL SEPARATIONS.—Prior to granting a petition for waiver, modification or repeal under this title, the Commission shall determine whether structural separations will be required or whether non-structural safeguards will be adequate to ensure that the petitioner cannot engage in cross-subsidization of its competitive business or engage in anticompetitive behavior.

"COMMISSION REGULATIONS FOR MANUFACTURING OF TELECOMMUNICATIONS EQUIPMENT

"(d)(1) In addition to the regulations required by subsection (c) of this section, the Commission shall promulgate regulations that relate specifically to the manufacturing of telecommunications equipment by Class I local telephone companies.

"(2) PROCUREMENT.—Prior to granting any waiver, modification or repeal under this title, the Commission shall promulgate regulations which, in the case of the manufacture of telecommunications equipment, require open and competitive procurement of telecommunications equipment by Class I local telephone companies on a fair and nondiscriminatory basis. The Commission shall be authorized to require a petitioning telephone company to—

"(A) purchase a particular percentage of its requirement of telecommunications equipment from nonaffiliated sources; and

"(B) offer for sale to nonaffiliates all or a portion of the telecommunications equipment manufactured, designed or financed by the petitioner or an affiliate of the petitioner, at prices no greater, and on terms and conditions no less favorable, than the prices, terms and conditions extended to the petitioner or its affiliates. The Commission shall consult with the Attorney General and the United States Trade Representative in promulgating regulations regarding procurement of telecommunications equipment.

"COMMISSION REGULATIONS FOR INFORMATION SERVICES

"(e)(1) In addition to the regulations required by subsection (c) of this section, the Commission shall promulgate regulations that relate specifically to information services and ensure that network access and other interconnections are provided on a nondiscriminatory basis by the petitioner to all providers of information services.

"COMMISSION REGULATIONS FOR ELECTRONIC PUBLISHING

"(2) In addition to the regulations promulgated under subsection (c) of this section regarding all competitive ventures and paragraph (1) of this subsection regarding information services in general, the Commission shall impose specific prerequisites and safeguards relating to petitions to provide electronic publishing services over the petitioner's own transmission facilities. Those regulations shall specify that no petition filed by a Class I local telephone company for waiver, modification or repeal of the electronic publishing services restriction shall be granted unless the Class I telephone company has fewer than 75 percent of the total number of customers of exchange services in the exchange area it serves. The Commission's regulations shall specify that no petition by a dominant interexchange carrier for waiver, modification or repeal of the electronic publishing services restriction shall be granted before August 24, 1989, and unless the petitioner has fewer than 75 percent of the total number of customers of interexchange services.

"COMMISSION'S REGULATIONS FOR INTEREXCHANGE SERVICES

"(3)(A) In addition to the regulations required by subsection (c) of this section, the Commission shall promulgate regulations pertaining to interexchange services provided by Class I telephone companies or their affiliates. Such regulations shall specify that, before a petition for waiver, modification or repeal of the restrictions on the provision of interexchange services by Class I telephone companies is granted, the petitioning Class I local telephone company must have complied with all equal access obligations specified in section 201 of this title.

"(B) Prior to granting any petition by a Class I local telephone company for waiver, modification or repeal of the interexchange services restriction, the Commission shall, in accordance with section 553 of title 5, United States Code, promulgate regulations to define and implement equal access. Such equal access regulations shall provide that exchange access shall be deemed to be equal access only if it is technically and operationally equivalent to the exchange access provided to a dominant interexchange carrier.

"SEC. 203. ACTIVITIES OF PETITIONERS.

"If the Commission grants a petition for waiver, modification or repeal to a petitioner under section 202 of this title, the petitioner or its affiliates shall not engage in activities in any line of business with respect to which such petition for waiver, modification or repeal was granted, unless such activities are in accordance with the provisions of this title.

"SEC. 204. AUDIT AND EXAMINATION BY COMMISSION.

"(a) The Commission regularly shall conduct audits and examinations of each company that has been granted a petition for waiver, modification or repeal under this title, and its affiliates, to ensure that such petitioner and affiliates are in full and continuing compliance with the provisions of this title, the Commission's regulations, and conditions imposed in connection with any petition for waiver, modification or repeal of a line-of-business restriction granted under this title.

"(b) The Commission may request information from the telephone company to which a petition was granted under this title, or any of its affiliates, regarding the conduct of business between the telephone company and any affiliate in order to enforce the provisions of this title and Commission regulations promulgated pursuant to this title.

"SEC. 205. PENALTIES, FORFEITURES AND WITHDRAWAL OF AUTHORITY.

"(a)(1) Any person who is determined by the Commission, in accordance with paragraph (2) or (3) of this subsection, to have violated willfully or repeatedly any provision of this title, or any rule, regulation, or order issued by the Commission under this title, shall be liable to the United States for a forefeiture penalty.

"(2) The amount of any forefeiture penalty determined under this subsection shall not exceed $2,000 for each violation. Each day of a continuing violation shall constitute a separate offense, but the total forfeiture penalty which may be imposed under this subsection for a violation of this Act and which is set forth in the notice or the notice of aparent liability issued under this subsection shall not exceed $500,000.

"(3)(A) At the discretion of the Commission, a forfeiture penalty may be determined against a person under this subsection after notice and an opportunity for a hearing before the Commission or an administrative law judge of the Commission, in accordance with section 554 of title 5, United States Code. Any person against whom a forfeiture penalty is determined under this paragraph may obtain review of such penalty pursuant to section 402(a) of the Communications Act of 1934 (47 U.S.C. 402(a)).

"(B) If any person fails to pay an assessment of a forfeiture penalty determined under subparagraph (A) of this paragraph after such penalty has become a final and unappealable order or after the appropriate court has entered final judgment in favor of the Commission, the Commission shall refer the matter of the Attorney General of the United States, who shall recover the amount assessed in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the forfeiture penalty shall not be subject to review.

"(4) Except as provided in paragraph (3) of this subsection, no forfeiture penalty shall be imposed under this subsection against any person unless and until—

"(A) the Commission issued a notice of apparent liability, in writing, with respect to such person;

"(B) such notice has been received by such person, or until the Commisson has sent such notice to the last known address of

such person, by registered or certified mail; and

"(C) such person is granted an opportunity to show, in writing, within such reasonable period of time as the Commission prescribes by rule or regulation, why no such forfeiture penalty should be imposed.

Such notice shall identify each specific provision, term, and condition of this title or any regulation issued under this title which such person apparently violated. Such notice shall set forth the nature of the violation charged against such person and the facts upon which such charge is based, and shall state the date on which such violation occurred. Any forfeiture penalty imposed under this paragaraph shall be recoverable pursuant to section 504(a) of the Communications Act of 1934 (47 U.S.C. 504(a)).

"(c) The amount of any penalty imposed under subsection (b) of this section shall not be included in the calculation of rates of regulated telephone services.

"SEC. 206. FEDERAL-STATE JOINT BOARD.

"The Commission shall convene a Joint Board under section 410(c) of the Communications Act of 1934 (47 U.S.C. 410(c)) regarding the establishment and implementation of principles of cost assignment and allocation to be used by the Commission in promulgating regulations under section 202 of this title.

"SEC. 207. STATE JURISDICTION.

"Nothing in this title shall be deemed to modify the authority conferred pursuant to section 152(b) of the Communications Act of 1934 (47 U.S.C. 152(b)).

"SEC. 208. JUDICIAL REVIEW.

"Any determination of the Commission under this title shall be subject to judicial review in accordance with chapter 7 of title 5, United States Code, except that the reviewing court shall hold unlawful and set aside any such determination only if such determination is found to be unsupported by substantial evidence on the record considered as a whole.

"SEC. 209. APPLICABILITY.

"Nothing in this title shall be construed to provide any immunity from the antitrust laws of the United States.".

On page 50, line 9, strike "SEC. 202." and insert in lieu thereof "SEC. 209.".

On page 50, line 18, strike "order or impose" and insert in lieu thereof "order, impose or seek".

On page 50, line 19, strike "title" and insert in lieu thereof "titles IV and".

On page 50, line 19-20, strike "subchapter" and insert in lieu thereof "subchapters IV and".

On page 50, strike all from line 22 through line 15 on page 51.

On page 51, line 16, strike "SEC. 204." and insert in lieu thereof "SEC. 210.".

● Mr. DANFORTH. Mr. President, today I am introducing a package of amendments to S. 2565, the Federal Telecommunications Policy Act of 1986. S. 2565, introduced by Senator DOLE, would shift the forum for the AT&T and GTE consent decrees from the Federal court to the Federal Communications Commission [FCC].

I agree with Senator DOLE that the FCC is the proper forum in which the issues raised by these decrees should be addressed. We must not, however, replace the unfettered discretion of a Federal court with the unfettered discretion of a Federal agency.

Therefore, I believe my amendments are needed to give the FCC guidance in setting telecommunications policy. First and foremost, Congress must ensure that local telephone service is available universally at affordable rates. Congress also must ensure that decisions regarding the diversification of telephone companies reflect a number of factors, such as effects on universal and affordable telephone service, trade, and competition.

My amendments would require the FCC to consult with other expert agencies before allowing telephone companies to enter new markets. These amendments also would provide safeguards for ratepayers and competition. These amendments prohibit the telephone companies from cross-subsidizing their competitive business with revenues from local telephone service and from discriminating against competitors. The FCC is required by these amendments to devise an accounting and cost allocation system and to adopt other regulations to ensure that ratepayers do not bear the costs of competitive activities and services.

I think this is a balanced package of amendments and that it is a big step in the right direction. These amendments do not contain all the answers, however. In particular, I am troubled by leaving competitors with little recourse other than the antitrust laws if competitive abuses do occur. History tells us that antitrust suit take years and years to reach final resolution and often are too cumbersome to be an effective check on anticompetitive behavior. I would like, if possible, to devise a faster, more effective, remedy. This might be done by giving the FCC additional authority, by tightening up some existing procedures, or it might be accomplished in some other way. I am very concerned about this problem, and I am open to suggestions on this and other matters.●

RESTORATION OF CERTAIN POSTAL RATES

STEVENS AMENDMENT NO. 3262

Mr. DOLE (for Mr. STEVENS, for himself, Mr. ABDNOR, Mr. ANDREWS, Mr. BURDICK, Mr. PRYOR, Mr. ROCKEFELLER, Mr. MURKOWSKI, Mr. GRASSLEY, Mr. GORE, Mr. SIMON, Mrs. HAWKINS, Mr. DANFORTH, Mr. DENTON, and Mr. BYRD) proposed an amendment to the bill (S. 2723) to amend title 39 of the United States Code to restore limited circulation second-class rates of postage for copies of a publication mailed to counties adjacent to the county of publication, and for other purposes, as follows:

On page 1, line 3, strike all after the enacting clause and insert in lieu thereof the following:

"That for the fiscal year ending September 30, 1987, the Postal Service shall restore the minimum charge per piece most recently applicable under section 3626 and former section 4358(g) of title 39, United States Code, for publications mailing fewer than five thousand copies outside the county of publication, except that such charge shall apply only to so many of such copies as are addressed for delivery within counties adjacent to the county of publication.".

SEC. 2. Section 3626(g) of title 39, United States Code, is amended by adding at the end thereof the following:

"(3) In the administration of this section within any State or territory which has not organized itself into county (or parish) subdivisions, copies of a publication addressed for delivery within the entire State or territory shall be deemed addressed for delivery within the county of publication within the meaning of former section 4358(a)-(c) of this title.".

MARITIME PROGRAMS AUTHORIZATION

STEVENS AMENDMENT NOS. 3263 AND 3264

Mr. DOLE (for Mr. STEVENS) proposed an amendemnt to the bill (H.R. 4175) to authorize appropriations for fiscal year 1987 for certain maritime programs of the Department of Transportation and the Federal Maritime Commission; as follows:

AMENDMENT No. 3263

On page 7, strike lines 14 through 23, and redesignate subsequent sections accordingly.

AMENDMENT No. 3264

On page 6, line 19, insert "complete" immediately after "first", and on line 20, insert "of attendance" immediately after "year".

On page 7, strike line 13 and insert in lieu thereof the following: "beginning with the entering class of calendar year 1986.".

On page 8, strike all from line 10 through line 7 on page 9:

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON FOREIGN RELATIONS

Mr. WALLOP. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday afternoon, October 8, to conduct a business meeting to consider the following:

I. The Committee will vote on the following nominations:

Elinor Greer Constable, of New York, a career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Kenya.

Helen Marie Taylor, of Virginia, to be U.S. Representative to the Forty-first Session of the U.N. General Assembly.

Noel Gross, of New Jersey, to be Alternate Representative to the Forty-first Session of the U.N. General Assembly.

Jorge L. Mas, to be a Member of the Advisory Board for Radio Broadcasting to Cuba for a term expiring August 12, 1989.

James Edward Nolan, of Maryland, to be Director of the Office of Foreign Missions, with the rank of Ambassador. (New Position)

Edward Joseph Perkins, of Oregon, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of South Africa.

Donald K. Petterson, of California, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Tanzania.

Walter Edward Stadtler, of New York, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Benin.

Frank E. Young, of Maryland, Commissioner of the Food and Drug Administration, to be U.S. Representative to the World Health Organization.

II. The Committee will consider the Bermuda Tax Treaty, Treaty Document 99-30, Tax Convention with the United Kingdom on behalf of Bermuda. (Tentative)

III. The Committee will consider H.J. Res. 67, a resolution calling for a wildlife sanctuary for humpback whales in the West Indies.

IV. The Committee will consider the U.S./Icelandic Treaty on the Carriage of Military Cargo, Treaty Document 99-31.

V. The Committee will consider Bilateral Investment Treaties with the following countries: (Tentative)

Treaty Doc. 99-14, Panama; Treaty Doc. 99-16, Haiti; Treaty Doc. 99-18, Morocco; Treaty Doc. 99-22, Cameroon; Treaty Doc. 99-24, Egypt.

Treaty Doc. 99-15, Senegal; Treaty Doc. 99-17, Zaire; Treaty Doc. 99-19, Turkey; Treaty Doc. 99-23, Bangladesh; Treaty Doc. 99-25, Grenada.

VI. The Committee will consider Treaty Document 99-12, the 1984 Protocols Amending the Civil Liability and Fund Conventions on Oil Pollution Damage.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

IDAHOANS AID AFGHAN FREEDOM FIGHTERS

● Mr. MCCLURE. Mr. President, it is an honor for me to share with my colleagues an inspirational program being enthusiastically supported by the people of Idaho.

The Center for the Study of Market Alternatives is an educational organization whose mission is to advance the principles of freedom and free enterprise. This freedom must be extended to all people of the world, and its importance is shared through seminars, news columns, a library, and lectures. CSMA has been the Idaho springboard for Project Wounded, an altruistic effort to provide medical care for Afghan people who have been injured in their country's struggle against Soviet domination.

It was after a lecture on conditions in Nicaragua that the seeds for Project Wounded were sown in Idaho. Lawrence Reed, the speaker, had finished sharing his observations while in that country, when he was approached by a young polish refugee. Wojciech Modelski told of the strong sentiment on behalf of the Afghan freedom fighters in his native Poland. Many of his friends were in Polish prisons because of their support for these brave people, and before he left Poland, Mr. Modelski made a pledge to his friends that he would find help for the Afghan victims of Soviet atrocities. He heard that there was a program in the United States that provided medical care, and he enlisted the help of the Center for the Study of Market Alternatives in finding such aid.

Research led the CSMA to the Committee for a Free Afghanistan, and its director, Mary Spencer, who is the original founder of Project Wounded. With her advice, Idaho State Representative Elizabeth Allan shouldered the task of contacting Idaho hospitals, doctors volunteers, and donors. In a short time she had enlisted the help of four hospitals; St. Luke's and St. Alphonsus in Boise, Boise West in Caldwell, and Mercy Medical Center in Nampa. Two dozen doctors gladly volunteered—not one doctor or hospital refused. Idaho Frozen Food in Twin Falls, ID, provided a translator who speaks fluent Farsi.

In early September, plans to bring six wounded Afghans to Idaho were in place. However, these plans were altered to respond to an emergency request to treat a top Afghan commander who had been injured by a land mine. Project Wounded's first patient, he arrived on September 16. He was followed by the other group, which included a 3-year-old child.

As the Afghan patients are treated, they are released into private homes. As their health permits, they visit local schools to speak to students. One 15-year-old boy will be visiting a local elementary school that has been raising money for the Afghan Freedom Fighters.

Similar projects are being started in Colorado Springs, Colorado; Norwalk, Ohio; and Twin Falls, Idaho. These projects and the selfless support they engender raise awareness of Soviet atrocities, and pressure the Soviets to stop. The Voice of America recently interviewed representatives of CSMA, and their notable work has been shared with VOA listeners in 42 countries.

Mr. President, I know that my colleagues will find the following newspaper account inspirational, and I ask that three articles be printed in the RECORD at this point.

The articles follow:

[From the Idaho Statesman, Sept. 23, 1986]

PROJECT HELPS INJURED AFGHAN REBEL FIGHTERS

A quiet exercise in people-helping-people is going on in the Treasure Valley—and it's something we all can be proud of.

Project Wounded—which provides free medical care for Afghan fighters and refugees—brought its first patient to Idaho last week, to St. Alphonsus Regional Medical Center in Boise. Later this month, six more Afghan patients, including a 3-year-old burned when her village was bombed, will be brought to Idaho. Some will go to St. Al's, some to St. Luke's Regional Medical Center in Boise, some to West Valley Medical Center in Caldwell and some to Mercy Medical Center in Nampa.

This humanitarian program is operating nationwide. Locally, it is being administered by the Center for the Study of Market Alternatives in Caldwell.

Idaho's first Project Wounded patient was Afghan rebel commander Mohammed Arsala, who was injured by a land mine. Last week, Mr. Arsala underwent eye surgery at St. Al's, and is due to receive an artificial leg.

St. Al's and its physicians are donating their services, and even the commander's artificial leg is being donated, by the American Orthopedics and Prosthetics Organization. The other three hospitals also are donating their services, and state officials, local businesses and private citizens also are pitching in.

Of course, there's nothing new to the spirit of giving we're seeing now. Hospitals often provide free services to charity cases—St. Al's alone does close to $800,000 worth of such work a year. And Idahoans are used to digging down deep to help those in need.

But Project Wounded is more than just another instance of charity care.

After all, needy U.S. patients who require medical treatment but can't afford it can seek help from a number of different programs, including Medicaid. And citizens who need shelter and food can avail themselves of a number of different social programs.

But for people like Mr. Arsala, coming from a war-torn land with few resources, those options don't exist. He and his fellow victims of war truly must rely on the kindness of strangers.

Project Wounded still needs more help, according to Rep. Elizabeth Allan, R-Caldwell, the coordinator. Those needs include more translators, donations to defray costs, and housing, shelter and food for the translators and the patients. Anyone who would like to help can contact Rep. Allan at the CSMA in Caldwell. The phone number is (208) 454-1984.

[From the Idaho Statesman, Oct. 1, 1986]

AFGHAN REBELS HELPED HALF A WORLD AWAY—AT BOISE HOSPITALS

(By David Ensunsa)

Five of Afghanistan's anti-Communist insurgents and a 3-year-old child arrived in Boise on Tuesday for medical treatment for injuries suffered as long as three years ago.

The six are being helped as part of Project Wounded, created in August 1984 to provide medical care for sick or wounded Afghans who are fighting Soviet and government troops. Cmdr. Mohammed Arsala, an officer with the rebel army who arrived in Boise on Sept. 16, was the first Afghan patient brought to Idaho.

The six will be taken to Treasure Valley hospitals for free medical treatment and will be housed with families in the Boise area.

Project Wounded Director Mary Spencer, who accompanied the group to Boise, said treatment will take from six weeks to three months, depending on individual needs.

During a news conference Tuesday, Project Wounded officials introduced the Afghans and described their injuries.

Elizabeth Allan, representing the Center for the Study of Market Alternatives, which is sponsoring Project Wounded in Idaho, said the Afghan's last names would not be released because officials feared Communists would retaliate against their families.

The Afghans include:

Shama, 3, who will be taken to St. Luke's Regional Medical Center for treatment. Shama was disfigured and burned severely on her face, abdomen and left arm five months ago when she was hit by a firebomb.

Shama's father carried her for four days before reaching the nearest hospital in Pakistan. She will undergo plastic surgery and skin grafts, Spencer said.

Abdul, 32, who will be taken to St. Alphonsus Regional Medical Center. He was shot in the left leg during combat three years ago and received first aid three days later. Spencer said he has had no medical treatment since then. His injury, however, has not dampened his spirits.

"We want to go back and free Afghanistan," the bearded Abdul said through an interpreter. "We will fight as long as we can breathe."

Spinkay, 15, who will be taken to West Valley Medical Center, Caldwell. He was carrying a message to an Afghan camp 2½ years ago when he ran over a land mine. He has multiple fractures in his right arm.

Jan, 22, who will be taken to Mercy Medical Center in Nampa. A victim of a bomb blast three years ago, his vision has been impaired by shrapnel.

Amin, 22, who will be taken to West Valley Medical Center. He also was injured in a bomb blast three years ago. His fractured left knee still requires treatment.

Ghulum, 18, who will be taken to Mercy Medical Center. His right hip was fractured when he was shot.

Spencer said she hopes U.S. hospitals can receive from 20 to 40 patients a month. Since Project Wounded's inception, 120 have been brought to the states and 90 more are on a waiting list.

"We're hoping this can be an on-going program, but we need help from the community to meet the costs," Alan said.

[From the Idaho Statesman, Oct. 3, 1986]

TINY AFGHAN RECOVERS

(By Julie Stutts)

Curled up on her father's lap—her brown hair against his chest—tiny Shaima blinked her wide brown eyes at the bright lights and cameras.

Shaima is one of seven Afghans receiving free medical treatment from four Boise Valley hospitals through Project Wounded. The program aids sick and wounded Afghans who are fighting Soviet and government troops in their homeland.

Shy, 3-year-old Shaima met the media at a news conference Thursday afternoon at St. Luke's Regional Medical Center.

She was burned severely during a Soviet firebomb attack on her village, said her father, Kahn, speaking through interpreter Sayed Najibi of Twin Falls.

Fear of retaliation against the patients and their families back home prevents program officials from releasing the Afghans' last names and hometowns, said Liz Allan, state director for Project Wounded.

The firebombing occurred at noon about five months ago while Kahn, a former farmer, was away from home. Shaima's 5-year-old brother was killed in the attack, Kahn said.

"A total of six children and two adults were killed," Kahn said. "The village was completely destroyed. Shaima lost all of her hair."

Kahn said his family—which includes his wife, Shaima, and a 13-month-old baby—"didn't know what to do or where to go."

They ended up walking four days through a mountainous region to reach Pakistan, Allan said. Shaima did not receive any medical treatment until the family got to Pakistan.

It took Shaima, her father and four other Afghans, three days to reach Boise traveling by air—almost as long as it took to walk to Pakistan.

On Wednesday, Shaima's pediatrician Dr. Ralph Higer examined her and determined she was suffering from non-contagious malaria and a cold. He also assessed the severity of burns on the left side of her body and face.

"She was a little fearful at first, but that was only natural," Higer said. "But she is more used to us and was playing earlier today."

Next week, Shaima will receive plastic surgery from Dr. David Becker on her frail left arm, Higer said. The scars from the third-degree burns the child suffered do not appear to cause her pain now, he said.

"The surgery will give her mobility for her arm," Higer said. It will probably take about three weeks to recover from the surgery, he said. Becker said he will not be operating on the child's facial scars because she is too young for facial surgery.

Higer said he has found Kahn to be very helpful and friendly.

"He's trying to teach me nice phrases in his own language," Higer said.

Shaima, seeming very attached to her father, remained on his lap during the entire news conference. About 15 minutes into the interview, her eyelids started to droop and she fell asleep.

Dressed in dark olive-colored clothing, with a patch of an American flag and a kholah hat embroidered with golden-colored thread, Kahn cheerfully talked about his daughter.

"Everyday she is happy and playing," he said through the interpreter. Kahn, who works part time as a handyman to support his family, is also a soldier who has fought against Soviet and government troops.

Since Project Wounded began in August 1984, 120 people have been brought to the U.S. from Afghanistan for medical treatment and 90 are on a waiting list, project director Mary Spencer said earlier.

The project is designed to provide medical care for sick or wounded Afghans who are fighting Soviet or government troops.●

BUDGET RECONCILIATION CONFERENCE REPORT

● Mr. PRYOR. Mr. President, the budget reconciliation conference report contains provisions designed to relieve the financial crisis of the Farm Credit System.

This cooperative System operates nationwide under Federal law—the Farm Credit Act of 1971. It has been a major financier of agriculture for 70 years. As of June 30, 1986, it had a total amount of loans outstanding of $61.5 billion. In common with much of the agriculture sector, it is experiencing severe financial stress. Last year, the System posted the largest annual loss of any financial institution in history, nearly $2.7 billion. For the first 6 months of 1986, it lost another $968 million, and there is little reason to believe this trend has yet to run its course. The arms of the System that loan to farmers are carrying more than $7.5 billion in nonaccrual loans that are not considered fully collectible. They hold another $5 billion in other high risk loans. Reserves of the System are rapidly shrinking.

The primary sources of the System's financial problems are first, high costs of its borrowings in the public money markets, and second, loan losses described above. Further, in part because of the refusal or the delay on the part of the System's Federal regulator—the Farm Credit Administration—in approving the establishment of interest rates at levels that are competitive with rates of other commercial lenders, there has been a flight of some of the System's best borrowers to other lenders. These factors have combined to produce an urgent financial crisis for the System.

The provisions contained in this legislation will not solve the System's problems; they will, however, alleviate them. They will permit the System to continue to function as a viable lending institution. And they impose no burden on the Federal Treasury.

In summary, this legislation would—

First, allow System institutions, like other financial institutions in this Nation, to set interest rates on their loans without prior approval of the Federal regulator; and

Second, permit System institutions, with the prior approval of FCA and under such conditions as the agency may prescribe, to capitalize both its costs of funds and its loan losses that exceed normal levels and to amortize those capitalized amounts over a period of up to 20 years.

Use of these tools by the System are expected to have several beneficial results. The System would be able to adjust its interest rates to more competitive levels, enabling it to retain its borrowers and provide them some much-needed interest relief. The System would also be in a position to absorb, over up to 20 years, the excessive financing costs and loan losses which, if required to be recognized currently, would bring it to the brink of financial disaster.

I would reiterate, Mr. President, that farmers have a keen interest in

this legislation because it affects the interest rates they will pay on loans from System institutions. The bill returns to System board of directors the establishment of interest rates on such loans; the Farm Credit Administration will no longer have prior approval over such rates. As the policy statement in the legislation puts it, borrowers from System institutions are to derive "the greatest benefit practicable from" the measure. It may well not be possible for the System to provide farmers dramatic interest rate relief, but given the situations many of them face, "every little bit helps." While FCA will retain broad authority to ensure the soundness and safety of the System, it is not to use this authority in a "back door" method to require System institutions to charge interest rates that are noncompetitive and exceed rates generally charged by other commercial lenders on similar loans.

The legislation recognizes that these newly authorized accounting approaches I have referred to would deviate from generally accepted accounting practices [GAAP] that the System was required to adopt by legislation enacted only a year ago. But this limited departure from GAAP will give the System vitally needed breathing space to meet its excessive costs and losses over time. It will postpone—and hopefully avoid altogether—the need to provide the System Federal financial assistance.

Mr. President, given all of these circumstances I have referred to, it is vital that measures be adopted before this session ends that will give the System some practical, workable tools to alleviate the most pressing causes of its financial stress—and to do so without any impact on the Federal budget.●

ABORTION AND INFORMED CONSENT: MARYLAND

● Mr. HUMPHREY. Mr. President, Ila Ryan from Maryland has contributed this letter as a warning to other women who are not adequately informed about the true nature and risks of abortions, and who are not told of the nature of the unborn child.

Just as importantly, Ila warns the husbands of these women, that the fathers too are ensnared in the conspiracy of secrecy surrounding abortion, and that they will also be gravely affected by the abortion.

The psychological and physical health of American women is being threatened over 4,100 times a day—every time a woman walks uninformed or misinformed into an abortion clinic. I urge my colleagues to support informed consent requirements, such as those in my bill S. 2791, for all women considering abortion.

I ask that the letter be printed in the RECORD.

The letter follows:

MAY 30, 1986.

DEAR SENATOR HUMPHREY: As a woman who has had some abortions, and survived the physical and emotional trauma associated with abortion, I am delighted in your efforts to introduce the informed consent for abortion bill, at the federal level. I heartily agree with such a bill.

Women today undergoing an abortion do so in a great degree of ignorance. They are not informed of the truth concerning the abortion procedure or the baby they are carrying. Any surgical procedure and the anesthesia performed in any hospital in the United States today has a total explanation and description of the procedure, risks and possible complications given to the patient, and the patient must sign an operative permit acknowledging that they understand such explanation, not so with abortion. They need to know infection and hemorrhage and many complications still happen which can lead to the death of the mother. We already know abortion leads to the death of the baby. They need to know the long-term emotional trauma that follows abortion. Many women today are turning to alcohol, drugs, eating disorders to bury the pain that follows abortion. Many other psychological problems arise as a result of their abortion. They must be warned.

They need to know the facts about the fetal development and how the baby is growing inside of them and what abortion does to this baby. Many women would not have chosen abortion and suffered its consequences, had they known the truth about their babies. It is not just a blob of tissue or product of conception, it is a living, growing human being, and abortion kills it.

I would like to emphasize the fact that the father of the baby needs to be informed of what can happen to his baby and the mother of his child. The conspiracy of secrecy that surrounds abortion has robbed the men of this nation of their position as decision makers for their families, and as heads of their households. Men undergo the same guilt and shame as the women following an abortion, if they are at all involved with the mother of the baby.

I once again praise you for your efforts in the passage of this informed consent bill. May God help you. I would also expect and encourage Senators Mathias and Sarbanes, our senators from Maryland, to support this bill.

In His Service,

MS. ILA C. RYAN.
Bowie, MD.●

EUGENE S. SOSNICK/RECIPIENT—LORILLARD CITIZENSHIP AWARD

● Mr. CRANSTON. Mr. President, I am very pleased to be given the honor of calling attention here to the accomplishments of Eugene S. Sosnick, chairman and president of Capital Cigar and Candy Co., and recipient of the 1986 Lorillard Citizenship Award as "the individual who has contributed the most to his community and best represents outstanding citizenship." The hardest part about explaining Gene's accomplishments is knowing where to start.

First, he and his family have built the second largest tobacco and candy distributorship in the Golden State. Gene has also contributed his time and his leadership abilities as a member of the board of the National Association of Tobacco Distributors and president and chairman of the Board of the California Association of Tobacco and Candy Distributors.

Over 30 years ago, Gene was an outstanding college athlete. He has never forgotten the importance of athletics in building character. For several years he volunteered as assistant coach of the Sacramento State University basketball team. In memory of his brother, he established the Peter Sosnick Memorial Basketball Scholarship Fund at the University of the Pacific. Gene also raised corporate funds to build a recreational facility for the Max Baer Playground in Sacramento.

Gene's charitable contributions are legion. He has made a gift of the Sosnick Research Laboratory for Diseases of the Eye at Technion University in Israel, and also established the Sosnick Perpetual Scholarship Fund at the same school. His gift to Israel of the Sosnick School, to perpetuate the memory of his late father and brother, is a preschool for children of working parents in the city of Ashkalon.

Locally, Gene has served three terms as chairman of the Board of the Sacramento Chapter of the Saints and Sinners, a charitable organization that raises money for community events and needy causes. In addition, Gene's been a sponsor of such Sacramento organizations as the Crocker Art Museum, the Mercy Hospital Foundation, the Albert Einstein Home for the Aged, and the Sacramento Symphony. Gene is also a life member of the city of hope.

It is easy to see that finding a place to stop listing Gene Sosnick's accomplishments is just as difficult as knowing where to start. Gene's efforts have enhanced his business, his industry, his community and the lives of thousands of people who will never know him. I extend my most heartfelt congratulations to my friend Gene Sosnick on being presented with the Lorillard Citizenship Award—he richly deserves this recognition.●

MEDIA COVERAGE OF THE AFGHAN WAR

● Mr. HUMPHREY. Mr. President, after the Holocaust of World War II, free peoples everywhere vowed "never again." Never again would we stand by and abide the crime of genocide. Now, 40 years later, we have gone back on that pledge. The Soviet Union continues today to ravage Afghanistan, in a systematic attempt to dismantle a culture and obliterate a nation. Meanwhile, the free nations of the world have done little to protest—much less to prevent—this most gruesome of international crimes.

A major part of the problem is the low level of media coverage devoted to the war in Afghanistan. According to a major study conducted by the Congressional Research Service, the three major news networks' evening news coverage focusing on Afghanistan totaled a mere 52.3 minutes in all of 1985.

CBS's 30.2 minutes were followed by NBC'S 11.3. ABC trailed with 10.8 minutes of evening news Afghanistan focus coverage and did not even see fit to broadcast one such story in the first 8 months of 1985. Eleven minutes of reporting on the genocide of a people and the devastation of their land!

The scanty American news coverage of the Afghan War is even more outrageous, considering that the horrible statistics continue to mount since the Soviet invasion in 1979. With a prewar population of approximately 15 million, Afghanistan is now home to fewer than 10 million Afghans. Over 1 million have been killed or wounded. Nearly 5 million more, the world's largest refugee population, are in exile in Pakistan, Iran, and elsewhere.

And now, in a move reminiscent of so many genocides of years past, the Kabul regime has announced plans to resettle up to 300,000 Afghans.

Footage and reliable information on the war is without a doubt difficult to obtain. Journalists are intimidated from entering the country by direct threats and violence. One American journalist, Mr. Charles Thornton, was killed in a Soviet ambush last year. The fact remains, however, that access to Afghanistan is possible and that many brave reporters have succeeded in bringing the war to the world's attention. Footage of the war exists, but for some reason is rarely broadcast on the nightly news.

The latest United Nations report on the human rights situation in Afghanistan warns of genocide. The American Congress has requested that the Secretary of State determine whether Soviet actions in Afghanistan constitute this most heinous of international crimes. The European Parliament has observed that the Soviet Union is "banking on the fact that the West will ultimately accept this type of inhuman warfare and occupation. Afghanistan is to be turned into a completely dependent satellite State of the Soviet Union." Don't the American people deserve better coverage of this horrible war than they get from 52 minutes of network coverge a year?

"Never Again," we promised. Well, Mr. President, "again" is now, and the Soviet Union is committing genocide in Afghanistan. Americans are a compassionate people, a people who are known to carry the torch of freedom and human rights. But they haven't been stirred to take up the cause of Afghanistan, because they don't know the facts. Following the publication of a short article last winter in Reader's Digest, which drew attention to only a few of the ongoing Soviet atrocities against the Afghan people, my office was flooded with thousands of letters from around the country. Most of the letters asked, "What can we do?" and "Why don't we see any news coverage of this incredible story?" The American people care, and they want the truth.

I hope our media will take a long, hard look at what's happening in Afghanistan, and will decide to present the facts—fairly, accurately, and objectively. This great Nation's resources have barely been tapped to aid the very compelling human cause of Afghan freedom.

I ask that the following study be included in the RECORD.

The study follows:

INTRODUCTION

BACKGROUND

A perceived insufficiency of news media coverage of the Soviet Union's military occupation of Afghanistan has long been a concern for some observers. Reporting events from Afghanistan has proven difficult ever since Western journalists were barred from that country shortly after it was invaded by Soviet troops in late December 1979. During the ensuing years, on-the-scene reporting of the Afghanistan conflict has come for the most part from a small number of correspondents operating in Afghanistan clandestinely to avoid Soviet capture.[1]

Some contend it is vital for the news media to keep the American public informed of developments in Afghanistan notwithstanding the difficulties entailed in covering that conflict. Three aspects of the struggle in Afghanistan are cited as sufficient reasons for giving the story a continuing prominence in the news: First, it is argued that the eventual outcome of the Afghanistan conflict will have serious implications for the United States' strategic interests in the Middle East and the Persian Gulf region [2] and second, that international opinion can affect that outcome by keeping political pressure on the Soviets to abandon their attempt to subjugate Afghanistan.[3] Third, it is maintained, the magnitude of human suffering occasioned by the war has been so great as to compel our Nation's attention on moral grounds.[4] In assessment of one commentator, "genocide" being committed by the Soviets in Afghanistan makes it important that the television networks especially provide comprehensive coverage of what is happening in Afghanistan.[5] Despite the serious difficulties for the networks in filming the Afghanistan conflict first-hand, it has been argued that they should find some way to cover a story as important as this.[6]

Yet, in the view of certain observers, U.S.-based news organizations have come almost to ignore completely the on-going struggle between the Soviets and the Afghan resistance. "U.S. news media assign such a low priority to the region," one journalist maintains, "that many Americans remain unaware that a war is being fought there." [7] Television network coverage of Afghanistan in particular has come under criticism; a writer asserted recently that while the Soviets for six years have been "waging a war of annihilation against Afghan freedom fighters," the volume of American television coverage "must rank somewhere down along with coverage of Belize and the Seychelles." [8] In June 1985, an official of the Board of International Broadcasting expressed concern to a congressional hearing about possible American indifference to Afghanistan's plight; he placed much of the blame on the television networks, "because that is where most Americans get their news." In his view, the networks' coverage of events in Afghanistan has been "sporadic, at best." [9]

From the networks' standpoint, however, the adequacy of television coverage of Afghanistan is seen from a different perspective. During this report's preparation, news executives at the ABC, CBS and NBC television networks were contacted and asked to respond to the complaints, noted above, of insufficient network reporting of the Afghanistan conflict. Each executive defended as appropriate, under the circumstances, the over-all extent of network coverage given to Afghanistan. Each network news organization, it was said, would have preferred affording greater coverage to Afghanistan developments but was seriously hampered from doing so over the years by a lack of reliable information from Afghanistan—a problem attributed to an inability to report from the scene. Without new information to report, one editor explained, a network was hard-pressed to cover Afghanistan regularly in the evening news, particularly when a "huge glut" of domestic stories of high audience interest were competing for the program's 22 minutes of news time. Because of barriers to journalists' entry to Afghanistan, it was asserted, weeks or even months might pass during which there would be little Afghanistan news to report. Working against greater coverage, one news executive also said, not only were the time, difficulty and risks involved in gaining access to Afghanistan but the relatively small yield of new information that a reporter might acquire while operating clandestinely in only one part of Afghanistan, isolated and cut off from developments elsewhere.

If regular coverage of Afghanistan is to be provided, one news executive stressed, it is important that network reporters be in Afghanistan to witness events, check rumors, and pursue stories first-hand. Each network executive expressed the desire to open a news bureau in Afghanistan, or at least assign a correspondent to regularly cover events there, and predicted a substantial increase in the amount of network Afghanistan coverage if such access were ever allowed.

PURPOSE AND SCOPE OF THIS REPORT

Against this backdrop, the purpose of the following pages is to provide a precise measure of the extent to which the television networks have covered Afghanistan events in recent years.[10]

Specifically, this report examines the nature and extent of Afghanistan news as presented on the regular evening news programs of the three major commercial television networks—ABC, CBS and NBC—from 1980 through 1985. It seeks to identify within these six years the networks' weekday and weekend evening news programs which discussed Afghanistan developments.

At the outset, the limited scope of this report should be clearly underscored: The

Footnotes at end of article.

report examines the Afghanistan news coverage of three television network news programs only—ABC World News Tonight, CBS Evening News, and NBC Nightly News. It does not account for any other Afghanistan coverage provided by the networks in special news broadcasts, in news magazine or other documentary programs, in morning or late night network newscasts, or in news briefs featured between entertainment programs. Nor does it examine the news programs of other television networks such as Cable News Network and the Public Broadcasting Service.

The report draws upon program log information contained in *Television News Index and Abstracts* published monthly by Vanderbilt University's Television News Archive in Nashville, Tennessee. From Vanderbilt program records, CRS research identified news segments which mentioned Afghanistan, the amount of air time given each segment, the network presenting the segment, and the date of broadcast. Also noted for each segment was whether the Afghanistan conflict was the central news element (if so, it was classified as Afghanistan "focus story" material) or was merely mentioned in connection with other news. The set of all Afghanistan stories discovered through the *Television News Index and Abstracts*, and the sub-set of Afghanistan "focus stories," were then analyzed. Based on this analysis, the following report discusses how news coverage by the three networks has varied over the 1980–85 period.

In a first section of the report, annual patterns of network Afghanistan coverage are measured by four different standards: (1) amount of air time, in minutes and seconds, devoted to stories focusing on the Afghanistan conflict; (2) number of stories focusing on the Afghanistan conflict; (3) average length, in minutes and seconds, of stories which focused on the Afghanistan conflict; and (4) number of stories mentioning Afghanistan. Annual totals show whether, according to a particular measuring standard, individual networks or the networks as a group provided more or less coverage of Afghanistan events in certain years than in others.

A second section examines the networks' coverage more closely, measuring the time and number of stories afforded to the Afghanistan conflict each month. We see here in exactly which months the networks provided the greatest and least amounts of Afghanistan coverage during the 1980–85 period, and precisely how much coverage during these months was given to Afghanistan. This section identifies similar monthly patterns by the networks as a group, either in providing extensive or negligible coverage of Afghanistan. Also noted are months or series of months when one network's Afghanistan coverage was markedly greater or less than of the other two networks. This section further identifies specific news events which received extensive coverage on all three networks as well as the subject matter of special news reports on Afghanistan presented exclusively by one network.

A final section discusses several factors which appear to have influenced the extent of network coverage of the Afghanistan conflict during the 1980–85 period. These include:

The restrictions placed on reporters' access to Afghanistan a few weeks after the Soviet invasion (which are still in effect);

The diminishing news value over time of almost any story which initially receives intensive network coverage;

The competition for air time on a network's news program posed by other stories unrelated to Afghanistan;

A tendency of network news programs to favor the presentation of news stories on which dramatic filmed material is available over other stories;

Seasonal changes in Afghanistan's weather conditions which have affected the level of military activity there.

Three appendices are attached to this report: Appendix A gives a fuller explanation of research methods and of criteria used to identify "focus stories" and to measure other aspects of network coverage of Afghanistan. Appendix B comprises graphic summaries of annual data on Afghanistan. Appendix C presents the monthly data on which this analysis is based.

The Six Years of Coverage Compared

Amount of air time devoted to afghanistan "focus stories"

In amount of air time devoted to stories focusing on Afghanistan, 1980 far surpassed each of the years to follow, both from a three-network as well as from an individual network standpoint. The three-network level of coverage was fairly consistent in the years 1981–85, at a level much lower than that of 1980; in contrast, the annual totals of each individual network during this period fluctuated greatly.

The networks as a group

The amount of air time which the networks together afforded to stories focusing on Afghanistan in 1980 dwarfed the extent of their coverage in each of the subsequent five years. Indeed, 1980 "focus" coverage was roughly twice the amount of the time totals for the next five years combined. An average of 204.7 minutes per network was devoted to Afghanistan for the year—17.1 minutes per network monthly.[11]

The amount of three-network coverage of Afghanistan from 1981 to 1985 was at a much lower level. The high point of this period was 1984, when an average of 28.2 minutes per network was afforded to Afghanistan coverage that year—a monthly average of 2.4 minutes.[12] The low point was 1982; that year's network average was 17.1 minutes of Afghanistan coverage—1.4 minutes of coverage per network monthly.[13]

The precise amounts of time afforded to Afghanistan "focus stories" by the networks as a group for each of the six years are indicated and illustrated in graph 1 of appendix B. These annual figures show that, although the amount of time the networks have afforded the Afghanistan story has been relatively constant over the last five years (1981–85), it may, from another perspective, be regarded as negligible, particularly when compared with the large amount of time afforded Afghanistan in 1980 or when seen as a tiny fraction of the amount of news time available in the news programs over the course of a year.

Individual networks

During the six years studied, CBS led the other networks in amount of time devoted to Afghanistan every year. During the period 1981–85, CBS's largest amount of Afghanistan coverage (44.8 minutes) came in 1983, while the least (22.3 minutes) was presented in 1982.[14] Only once during 1981–85 did an annual total for ABC and NBC exceed CBS's 1982 low.[15] Annual totals for seconds of Afghanistan "focus" coverage for each of the networks during the years 1980–85 are illustrated in graph 2 of appendix B. (For precise numbers of seconds of coverage for a particular year, see table 1 in appendix C.)[16]

Number of Afghanistan "focus stories"

A six-year overview of Afghanistan "focus" coverage by the networks as a group reveals a relatively large number of stories in 1980, a sharp drop-off in number in 1981, a further decline in number in 1982, and then a levelling-off for the years 1983–85, with their numbers roughly the same as for 1982. The individual six-year profile of each network, however, shows a similar trend only for the years 1980–81, where an extraordinary number of stories was afforded by each network followed by a sharp drop in number the next year. In the years after 1981, the annual number of Afghanistan stories of each network fluctuates greatly.

The networks as a group

During the first year of conflict, in keeping with the crisis aura of the story, the three networks altogether devoted 281 stories to Afghanistan, or an average of 93.7 stores per network. The individual network average, thus, was roughly eight stories per month. This monthly average by itself is misleading, however, as a closer examination of the totals for individual months reveals that the bulk of the year's stories were broadcast in January and February.[17]

In 1981 the networks as a group broadcast 48 stories focusing on some aspect of the Afghanistan conflict, or only 17.1 percent as many broadcast as the year before. This constituted an average of exactly 16 stories per network for the year versus 93.7 the previous year; the monthly average in 1981 was barely more than one story per network.[18]

Once again in 1982 there was a decline in the number of Afghanistan stories. The 31 stories on the Afghanistan conflict were roughly two-thirds the number the networks as a group presented the year earlier. Since 1982, the number of stories per year for the networks has remained relatively constant—32 in 1983, 35 in 1984 and 29 in 1985. From 1982–85, the average annual number of stories per network ranged between 11.7 to 9.7, or less than one story a month per network over the four-year period.

Individual networks

In 1980 each network broadcast more stories devoted to the Afghanistan conflict than it would during the next five years combined. Of all ABC Afghanistan stories broadcast in the years 1980–85, its 1980 concentration of such stories constituted 68.2 percent (103 of 151 stories it broadcast in the six-year period). NBC was next (86 stories in 1980, or 62.8 percent of all 137 stories broadcast), followed by CBS (92 stories, or 54.8 percent of 168).

That CBS has provided more coverage of the Afghanistan conflict in the long-term than has ABC or NBC is suggested by figures for 1983–85. During this period, CBS broadcast 48 Afghanistan "focus" stories as opposed to 29 for NBC and 19 for ABC.[19]

Average length of afghanistan "focus stories"

The networks as a gorup

During the six years studied, the three-network average length of stories devoted to Afghanistan was slightly more than two minutes (121.8 seconds).[20] Interestingly, the highest group average story length for the three networks was registered not in 1980 (the year of the most stories and greatest amount of airtime devoted to Afghanistan)

but in 1984—when story lengths averaged 144.9 seconds (2.4 minutes).[21]

Individual networks

The six-year average story length for each network conforms closely with the three-network average of 121.8 seconds. ABC's was the lowest at 113.6 seconds, NBC's was a bit higher at 119.7 seconds, while CBS's was the highest at 130.9 seconds. Average story lenghts for each network, however, fluctuated widely from year to year, as shown by graph 6 in appendix B of this report.[22]

STORIES MENTIONING AFGHANISTAN

Certain patterns noted above for amount of time and number of "focus stories" have parallels in statistics for all stories mentioning Afghanistan. The following statistics for Afghanistan "mention stories" represent the total number of stories falling in either one fo two categories: (1) stories mentioning Afghanistan without having it as their central focus; and (2) Afghanistan "focus stories." It should be noted that this number, as it is based on identification from the Vanderbilt abstracts, might undercount to a small degree the actual number of stories on the evening news programs in which Afghanistan was explicitly mentioned. Only an examination of the complete texts of what was said on the news programs would assure identification of every segment which contained references to Afghanistan. Such an examination, however, was not possible for purposes of this report, given the research time and costs which obtaining and reviewing complete program texts would have entailed.

The networks as a group

The same six-year pattern exists for Afghanistan "mention stories" as for stories focusing primarily on the Afghan conflict. The three-network total of 556 stories for the first year, 1980, constitutes well over half of all network stories mentioning Afghanistan. In 1981 there was a precipitous drop-off to 140 stories—only 25.2 per cent as many as the previous year's total. The yearly total again dropped significantly in 1982, to 63 stories, and roughly remained at this level for the next three years.[23]

Individual networks

When ranked according to total number of stories mentioning Afghanistan for the full six-year period, ABC leads with 342 stories, followed by CBS's 323 and NBC's 285.

In recent years, however, CBS has presented more stories mentioning Afghanistan than have the other two networks. The total number of such stories for CBS in 1983–85 was 76, compared with 59 for ABC and 56 for NBC.[24]

The totals for Afghanistan "mention stories" take on more meaning when viewed in conjunction with the six-year totals for Afghanistan "focus stories." During the 1980–85 period, the portion of ABC's 342 stories with Afghanistan as their focus was less than the corresponding share for CBS and NBC; conversely, the proportion of ABC's stories mentioning the Afghanistan conflict in the context of other news stories was greater than the corresponding share for CBS and NBC. Putting this another way, ABC was more included than the other two networks to refer to the Afghanistan conflict in the context of some other story in the news. CBS and NBC, however, were more disposed to treating Afghanistan as the central focus of a story.[25]

[1] Writing in 1984, a journalist observed that at most, "there are only a dozen journalists, generally European, inside the country during the 'fighting season'—April to October." Dameyer, Christina. Covering Afghanistan: A Reporter's Notebook. Columbia Journalism Review, v. 23, September/October 1984. p. 43–46. See also Girardet, Edward. Soviets Step Up War Against Reporters in Afghanistan. Christian Science Monitor, Oct. 23, 1984. p. 1, 16.

[2] For example, Ben Wattenberg, vice chairman of the Board for International Broadcasting, urged more television network coverage of the Afghanistan conflict, among other reasons, because it was "perhaps the most important moral and geopolitical situation going on in the world today." Statement in: U.S. Congress. Congressional Task Force on Afghanistan. Hearing on Effective Public Diplomacy. June 17, 1985. Transcript. p. 32.

A similar assessment of the conflict's serious nature, it might be noted, came from the nation's Chief Executive himself a month after the Soviet move into Afghanistan. President Jimmy Carter, in his January 23, 1980, State of the Union address, stated that the region threatened by Soviet troops in Afghanistan was "of great strategic importance." He warned against an "attempt by any outside force to gain control of the Persian Gulf region," which he said would "be regarded as an assault on the vital interests of the United States" and "repelled by any means necessary, including military force." U.S. President, 1977–81 (Carter). The State of the Union, Jan. 23, 1980. Weekly Compilation of Presidential Documents, v. 16, Jan. 28, 1980. p. 197.

[3] Wattenberg, Congressional Task Force on Afghanistan, p. 32, 33. Wattenberg maintained that if the networks provided the American viewers with more than sporadic news coverage of tragedies occurring in Afghanistan, there would be a "proper degree of outrage and disgust" and greater pressure brought to bear on the Soviets "to end this genocide."

[4] Various organizations including the United Nations Commission on Human Rights, Amnesty International, and Helsinki Watch, have released reports documenting human rights violations on a massive scale inflicted on the Afghan people by the Soviets and the Soviet-controlled Afghan government. See, for instance: Tears, Blood and Cries: Human Rights, in Afghanistan since the Invasion, 1979–1984. A Report from Helsinki Watch. December 1984. 212 p.

Another aspect of human suffering has been the massive exodus of Afghans from their country. By the beginning of 1986, between 4 to 5 million Afghans (or roughly one-third of Afghanistan's prewar population) were believed to have fled their country to Pakistan, Iran or other nations. The displaced Afghans were said by international relief officials to represent one half of the world's total estimated refugee population. Girardet, Edward. Afghan Refugees: Making Pakistan Home. Christian Science Monitor, Jan. 3, 1986. p. 7.

[5] Wattenberg, Congressional Task Force on Afghanistan, p. 32.

[6] A commentator in the *Christian Science Monitor* notes, for instance, that when the South African government in late 1985 imposed a nearly total ban on television coverage of violence in that country, the networks adjusted, without greatly reducing their amount of coverage, by "offering more context and perspective, using graphics and interviews to illustrate tensions that their cameras cannot record." The writer suggested that "If that can be done with stories such as South Africa, maybe it can yet be done with stories like Afghanistan." Hughes, John. Afghanistan. Christian Science Monitor, Feb. 3, 1986. p. 12.

A more skeptical view, however, is that the Afghanistan conflict simply does not lend itself to extensive television network coverage. In this vein, one observer writes, "The Russians' systematic attempt to depopulate Afghanistan is rarely the stuff of TV coverage. The only way to cover that war would be to invite the experts to air their views, and 'talking heads' spell death in the ratings wars." Kirp, David L. Banning Cameras. Christian Science Monitor, Nov. 13, 1985. p. 18.

[7] Damayer, Christina. Covering Afghanistan: A Reporter's Notebook. Columbia Journalism Review, v. 23, September/October 1984. p. 46.

[8] Hughes, Afghanistan, p. 12.

[9] Wattenberg, Congressional Task Force on Afghanistan, p. 32, 33.

[10] The television networks' coverage of the earliest months of the Afghanistan crisis has been examined in two separate studies. See: Kern, Montague. The Invasion of Afghanistan: Domestic vs. Foreign Stories, in Adams, William C. Television Coverage of the Middle East. Norwood, N.J., Ablex Publishing Corp., 1981. p. 106–27; and Larson, James F. Television's Window on the World: International Affairs Coverage on the U.S. Networks. Norwood, N.J., Ablex Publishing Corp., 1984. p. 51–92.

Kern analyzed the content of all stories dealing with the Afghanistan crisis broadcast on the evening news programs of CBS and NBC between December 21, 1979 and January 21, 1980. She used the Vanderbilt University publication, *Television News Index and Abstracts*, to identify the stories and then analyzed the stories based on videotape viewing.

Larson analyzed a random sample of weekday evening news programs broadcast on all three networks—ABC, CBS and NBC—from 1972 through 1981, relying primarily on program information available in the *Television News Index and Abstracts*. He analyzed the networks' total international news coverage, measuring the amount of coverage afforded to every nation in the world, including Afghanistan.

[11] The 1980 three-network total was 36,850 seconds, or 614.2 minutes.

[12] The over-all coverage of the three networks for the year was 5080 seconds, or 84.7 minutes.

[13] The over-all coverage of the three networks for the year was 3080 seconds, or 51.3 minutes.

[14] The CBS 1982 and 1983 totals in "focus" coverage were 1240 seconds and 2685 seconds respectively.

[15] ABC and NBC surpassed the 1982 CBS total in 1984, when they afforded 22.7 minutes (1360 seconds) and 29.7 minutes (1780 seconds) to Afghanistan respectively.

[16] The annual patterns of coverage by each network varied considerably. Each network, after extensive coverage of more than 200 minutes of Afghanistan "focus" coverage in 1980, reduced its level of such coverage drastically the next year. In the years, 1981–85, all three networks fluctuated greatly in the amount of coverage they afforded Afghanistan. As already noted, CBS's annual totals ranged from a 1982 low of 22.3 minutes to a 1983 high of 44.8 minutes.

ABC and NBC, meanwhile, devoted more than 1200 seconds (20 minutes) to Afghanistan coverage some years, but other years less than 600 seconds (10 minutes). The sharpest movement downward was registered by NBC in 1983, when stories focusing on the Afghanistan conflict for the entire year accounted for a total of only 190 seconds—3.2 minutes.

[17] The sharp drop-off after February 1980 is examined in more detail in this report's second section, which discusses monthly variations in network coverage.

[18] The precise number of Afghanistan "focus stories" broadcast by the networks as a group for each of the six years is indicated and illustrated in graph 3 of appendix B.

[19] See graph 4, appendix B, for a graphic illustration of the annual number of "focus stories" broadcast by individual networks during the years 1980–85. For precise numbers of "focus stories" for a particular year, see table 2 in appendix C.

[20] This was computed by dividing the total seconds of "focus" coverage of the three networks combined for the six-year period (55,560 seconds) by the six-year total of "focus stories" for the three networks (456 stories).

[21] The networks' group average story length for each of the six years is indicated and illustrated graphically in graph 5, appendix B. These averages were computed by dividing the total seconds of group "focus" coverage for each year by the total number of "focus stories" presented altogether by the three networks in that year.

Except in the case of 1981, annual average story lengths deviated from the six-year average by no more than 23 seconds. In 1981, the average length of an Afghanistan "focus story" was only 81.3 seconds, 40.5 seconds below the six-year average.

[22] The greatest disparity for a network in yearly average story length was between CBS's 1981 average of 82.8 seconds and its 1984 average of 175.5—a difference of 92.7 seconds, or more than a minute and a half. The smallest yearly average, 27.1 seconds, was registered by NBC in 1983, the only instance in the six years studied in which a network's average story length for Afghanistan was less than one minute.

These yearly averages were computed by dividing the total number of seconds of "focus" coverage of a given network for a particular year (listed in table 1 of Appendix C) by the total number of "focus sto-

ries" broadcast by the network in that year (indicated in table 2).

[23] The total number of stories mentioning Afghanistan which were broadcast altogether by the networks for each of the six years are listed and illustrated in graph 7, appendix B.

[24] See graph 8 of appendix B for a graphic comparison of the annual number of stories mentioning Afghanistan broadcast by the individual networks during the years 1980–85. See table 3, appendix C for the precise numbers.

[25] Specifically, ABC's 151 "focus stories" for the six-year period constituted 44.2 per cent of all stories it reported mentioning Afghanistan, CBS's 168 "focus stories" were 52.0 per cent of its over-all Afghanistan total, and NBC's 137 "focus" stories were 48.1 per cent of all the stories it broadcast referring to Afghanistan.

In the three most recent years of the period studied, 1983–85, the percentage of all ABC stories mentioning Afghanistan which focused primarily on the conflict declined further, to 32.2 per cent. (The total number of 1983–85 stories by ABC focusing on Afghanistan was 19, or 32.2 per cent of 50 stories during this period which mentioned Afghanistan.)

During the same three years, 51.8 per cent of all NBC stories mentioning Afghanistan also had it as their focus, while this inclination by CBS was even more pronounced, with 63.2 per cent of its "mentioning stories" focusing on the Afghanistan conflict. (The total number of NBC's 1983–85 stories focusing on Afghanistan was 29, or 51.8 per cent of 56 stories mentioning the conflict there. The corresponding figure for CBS was 48, or 63.2 per cent of 76 stories mentioning Afghanistan.)

Apparent Factors Influencing Extent of Afghanistan Coverage

A variety of factors may have influenced the extent of television coverage of Afganistan. Among them are restricted access to Afghanistan, the diminishing news value of the story over time, competition from other stories for air time, network, preferences for stories with film material, and seasonal changes in Afghanistan's weather. Each of these is discussed below.

Restricted Access to Afghanistan

A major factor affecting the networks' long-term coverage of the Afghanistan conflict has been their restricted access to that country. Television journalists who had been covering the first weeks of the Soviet occupation were ordered out of the country on January 17, 1980 for "creating incidents." [1] Since then the Soviet-backed Afghan government has refusal to grant visas to reporters who previously had visited Afghanistan with the resistance.[2] During almost the entire six-year period examined, from February 1980 onward, nearly all network on-the-scene film coverage of Afghanistan was secured either through clandestine assignment of network personnel to Afghanistan or from European or Canadian correspondents bringing back film from that country.

The Vanderbilt abstracts reveal that official expulsion of correspondents in January 1980 had an almost immediate impact on the nature of the networks' coverage, with the number of on-the-scene reports from Afghanistan thereafter falling dramatically. Illustrative of this was the difference between CBS's January 1980 and February 1980 coverage. Of 37 Afghanistan "focus" stories presented in January (when networks had done mostly their own filming), 15 contained film material from Afghanistan. Of 22 Afghanistan "focus" stories presented in February, however, only two contained film of Afghanistan.

Diminishing News Value of a Story Over Time

Also apparent from the program information researched was that the news value of the Afghanistan crisis diminished with the passage of time. As developments in Afghanistan from week to week, and month to month, took on a certain sameness to faraway news organizations barred from the scene, and as the struggle became a protracted one with no early end in sight, network coverage dropped, from the extraordinarily high levels of January and February 1980, to usually negligible amounts in the months and years that followed. To the extent that network news values reflect a "coupe and earthquakes syndrome," [3] network interest in a remote military conflict might be expected to wane after two months of extensive news coverage.

Nonetheless, if a story such as Afghanistan might gradually decline in news value for being "the same old story," a major new development might be expected to push it back up on the news scale. Such, we have seen, occurred to the Afghanistan conflict in June 1980. After two to three months of decline, network coverage of Afghanistan rose sharply when President Carter used a trip to Western Europe as a platform for voicing repeated criticisms of the Soviets in Afghanistan. Also occurring that month, and even more out of the ordinary, was Moscow's announcement of a planned partial withdrawal of troops from Afghanistan.[4] When the news value of these developments subsided, however, network coverage of the Afghanistan story in the months to follow again reverted to a low level, in large part it might be argued, due to the sameness of the story over time.

Other Stories Competing for Air Time

Another factor affecting the extent of network news coverage of Afghanistan during the 1980–85 period was the competition for air time by other news stories unrelated to Afghanistan. Ironically this factor might have been demonstrated most tellingly in 1980, the year of most Afghanistan coverage; that year, two other news stories, the Iran hostage crisis and the Presidential election campaign, provided especially stiff competition for air time. Unlike the Afghanistan crisis, which receded as a dominant news story on the evening programs after a few months, the hostage crisis and election campaign (from the early primaries to the November election) were treated as major and often lead stories throughout the entire year. Occupying large blocks of time on a typical evening news program, these stories limited the room available for Afghanistan reportage.

Network Preferences for Stories With Film Material

The extent of Afghanistan coverage also may be seen as being influenced by the tendency of network news programs, with all other things being equal, to favor the presentation of a story with visually interesting film material over another story without. As already noted, obstacles were placed in the way of obtaining up-to-date filmed reports when network correspondents were expelled from Afghanistan in January 1980.

Various instances were noted earlier in which one network presented a lengthy story on a particular aspect of the Afghanistan conflict. It might be surmised, in many of those instances, that a principal factor influencing a network's presentation was the availability to that network of exclusive film material. A story presented on ABC's evening news on August 13, 1984, as an example, illustrates the apparent importance of vivid film footage in securing air time for Afghanistan coverage.

The story, 190 seconds in length, examined the morale of Soviet troops in Afghanistan, showing film footage of three Soviet defectors being interviewed. This was the only Afghanistan "focus story" presented on ABC's evening news program that month. ABC presented no "focus" coverage of the Afghanistan conflict in the preceding two months (June-July 1984) nor in the three ensuing months (September-November 1984). In other words, the August 13 report on Soviet morale "stands out" in what otherwise would be for ABC a full six-month period in 1984 without any Afghanistan "focus" coverage. There appeared to be no particular military or diplomatic event of importance which induced ABC to present this relatively long, 190-second story. The only newsworthy event, it might be argued, was that the network obtained interesting, exclusive footage.

Seasonal Changes in Afghanistan's Weather

One major news aspect of the Soviet presence in Afghanistan—the war between Soviet troops and the mujahideen—is influenced by the seasonal weather changes in Afghanistan. Over the course of the war, the level of military activity has tended to be less during the harsh winter months of November through March than during what is referred to in Afghanistan as the "fighting season" of April through October. With less news generated by warfare during the winter months, the coverage patterns of the networks' news programs during the course of a year might be expected to vary accordingly. In fact, as we have seen,[5] three periods in which the networks' coverage was almost totally lacking (January through March, in the years 1983–85), fell within the winter season. On the other hand, as we have also seen,[7] another long period of negligible network coverage (April though October, 1982) coincided precisely with Afghanistan's "fighting season."

The seasonal factor, while affecting the level of military activity in Afghanistan, presumably would have much less of a bearing on other news aspects of the Afghanistan conflict. Hence, while the absence of network coverage for long periods might be an accurate reflection of a lull in the war, it would not necessarily reflect other developments of possible news value, such as efforts to reach a diplomatic settlement ending the conflict or the continuing problems and suffering of the Afghan refugees.

Also, as has been shown,[8] the winter season factor was offset many times by the networks' inclination each December to present extensive "anniversary" coverage marking the Soviet's December 1979 invasion of Afghanistan.●

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[1] Kern, The Invasion of Afghanistan, p. 110.

[2] Girardet, Soviets Step Up War Against Reporters in Afghanistan, p. 16. "Even when journalists are allowed in," Girardet noted, "their movements are restricted to the area around Kabul, the Afghan capital. Only occasionally have Westerners been able to go to other government-occupied towns."

[3] Rosenblum, Mort. Coups and Earthquakes: Reporting the World to America. New York, Harper Colophone Books, 1979. Quoted in Larson, Television's Window on the World, p. 18.

[4] See above, p. 23.

[5] See above, p. 32.

[7] See above, p. 31.

[8] See above, p. 28–30.

TRIBUTE TO GLENN BLACK

● Mr. PRYOR. Mr. President, I rise today to pay tribute to the distinguished career of fellow Arkansan Glenn Black, who is retiring as executive vice president of the Arkansas Retail Merchants Association after 14 years of outstanding service to our State on behalf of retail merchants. Glenn relied upon more than 20 years of experience in owning and operating retail variety stores in Arkansas to become an effective spokesman and leader in State and Federal issues concerning the retailing industry.

There can be no greater reward for such dedication and commitment to one's professional endeavors than the recognition and gratitude of one's peers. For that reason, Mr. President, I ask that the tribute paid to Glenn Black by Charles McDonald, executive director of the Alabama Retail Association at the American Retail Federation's National Conference of State Retail Association Executives, in Orlando, FL on September 23 be printed in the RECORD.

The material follows:

A TRIBUTE TO GLENN BLACK, EXECUTIVE VICE PRESIDENT, ARKANSAS RETAIL MERCHANTS ASSOCIATION, GIVEN BY CHARLES MCDONALD

My role tonight is to do honor to Glenn Black who will retire this year as executive vice president of the Arkansas Retail Merchants Association. But before I do this, I want Glenn's wife, Ruth Black, to stand so we can also properly thank her for her devotion to Glenn * * * for her own work for nine years with ARMS * * * and mostly because we love her.

It has been my pleasure to know Glenn and Ruth Black since 1972, when he joined the State Retail Association family. While Glenn has had a distinguished career in association work, he also had a productive and creative life before ARMA.

As a retailer for 20 years, he owned and operated clothing and variety stores in several Arkansas towns.

As an insurance agent, where he earned the prestigious designation of CLU, he was vice president of an insurance company where he was responsible for agent training, supervising field management, and development of brokerage operations.

As a student, he did work at LSU, at Purdue, at the American college and at his alma mater, Hendrix College.

So you see, Glenn brought much to ARMA and to State retail association work and he gave much to ARMA and to his members, and to his fellow State association colleagues.

His legislative triumphs are a model for all of us:

passage of a constitution amendment to eliminate A 10 percent interest ceiling;

and passage of legislation to allow recovery of sales tax on bad debts;

and defeat after defeat of bottles bills;

and passage of worker's compensation and unemployment compensation laws advantageous to retailers;

and defeat of polygraph bills;

and passage of all current bad check and shoplifting bills that exist in Arkansas law today;

and defeat of advertising tax bills;

and passage of generic drug substitution bills;

and defeat of mandatory unit and item pricing bills;

and the list goes on and on. . . .

Yes, Glenn Black has contributed. Arkansas is a better State because he lived and worked and dedicated himself to the free market system; to democratic government and to retailers.

So I ask you to please join me in applause as I ask Glenn Black to come to the podium to receive our symbol of recognition for a job well done.●

THE PERFORMING ARTS LABOR RELATIONS AMENDMENTS

● Mr. GLENN. Mr. President, I am proud to be a cosponsor of S. 670, the Performing Arts Labor Relations Amendments. This legislation would allow musicians and other performers in lounges, clubs, and restaurants to bargain collectively with employers in order to establish minimum standards and working conditions.

This legislation is long overdue. Performing artists are frequently employed for short-term engagements in an extraordinarily competitive field. This leaves them with little leverage or time to negotiate with employers. Elementary fairness requires that they be granted the authority to bargain collectively.

They do not have that authority under current law. The National Labor Relations Board has propounded the view that performing artists, musicians in particular, are independent contractors and are therefore not covered by the labor protections of the Taft-Hartley Act. This interpretation, which has been upheld by the courts, precludes musicians working short-term engagements in hotels, clubs, and other like establishments from negotiating minimum standards as a group.

Mr. President, this bill is simple in its approach and direct in its goal. It recognizes the unique characteristics of the music industry and it would therefore provide performing artists with the same basic labor protections that workers in other industries, such as construction and garment workers, have enjoyed for many years.

This legislation is narrow in scope. The amendment would have no bearing on the determination of employer/employee relationships for Federal tax purposes. It would not in any way change the Internal Revenue, unemployment, or Social Security status of purchasers, contractors, or musicians.

The only effect of this amendment would be to grant musicians working in hotels, restaurants, lounges, and catering establishments the same rights under Federal labor law which the other employees in these establishments have enjoyed for years.

In sum, Mr. President, these performers provide entertainment and enjoyment for millions of Americans, many of whom already enjoy the right to organize and bargain collectively under the National Labor Relations Act. Particularly in light of the difficult circumstances facing performers, America's musicians deserve no less.●

ALUMNI CELEBRATES 40TH ANNIVERSARY OF FULBRIGHT PROGRAM

● Mr. DIXON. Mr. President, 40 years ago, on August 1, 1946, President Harry S. Truman signed the Fulbright Act into law. Freshman Senator J. Willam Fulbright of Arkansas had introduced his bill in the 79th Congress, in September 1945, to authorize the utilization of the proceeds from sales of surplus war property for "the promotion of international good will through the exchange of students in the fields of education, culture, and science."

Senator Fulbright's rewarding experience at Oxford University as a Rhodes scholar and memories of the troublesome issues raised in Congress and public opinion between the United States and the European belligerents over the reparations and debts of the First World War induced him when the Second World War ended, as he later explained, to attempt a novel approach to healing the latest wounds of war. "It was a combination of these two thoughts which led me to introduce the legislation to try to make use of the results of that war to improve the cultural relations in an area in which we could do the most for promoting better international relations."

The act's description was innocuous: "to amend the Surplus Property Act of 1944 to designate the Department of State as the disposal agency for surplus property outside the United States, its Territories and possession, and for other purposes." The "other purposes" constituted a peculiar postwar blend of housekeeping and peacemaking. It would be prudent housekeeping for the Nation to divest itself of surplus war properties by sales for nonconvertible currencies instead of demanding repayments in scarce U.S. dollars. The transactions were formulated to use part of the proceeds of the sales to endow international education by enabling Americans to study, teach, or undertake research in other countries, and permit citizens of those countries to travel to the United States to learn more about Americans.

The post-World War II Academic Exchange Program came into operation as the result of the Fulbright Act of 1946. Isaiah's directive to beat swords into plowshares would find its expression in this measure. Yet, even Senator Fulbright himself would have been hard pressed in 1946 to anticipate the development of the Fulbright Program into a worldwide system of international education and cultural ex-

changes, as it has done, or the wide variety of achievements destined to be accomplished under its heading. He could scarcely have imagined that his own surname would become a common noun to signify a particular kind of prestigious scholarship in a great many languages, nor that holders of these grants would henceforth become known to themselves and each other as "Fulbrighters," nor that a Fulbright Alumni Association comprised of former American Fulbrighters would endeavor to carry on the work he had begun, together with similarly constituted and likeminded organizations in more than a dozen other Fulbright nations.

The Fulbright Alumni Association was born in Philadelphia on the 27th of February 1977. The idea for the Association sprouted amidst the reunions held in April and May of 1976 to celebrate the Nation's bicentennial and the 30th Anniversary of the Fulbright Program. These reunions were held at conferences under the auspices of the Board of Foreign Scholarships, which supervises the Fulbright programs of mutual educational and cultural exchange, assisted by cooperating bodies public and private.

A strong conviction grew out of these encounters among former Fulbrighters that their experiences abroad had enabled them to acquire insights and contacts of a kind which were potentially valuable to the larger society. It was also felt that their insights and contacts had gone largely untapped.

Now, on October 16, 1986, the Fulbright Association of Chicago will celebrate the 40th anniversary of the Fulbright International Educational Exchange Program at a luncheon in the world-famous Trading Room of the Art Institute of Chicago.

Prominent Fulbright alumni include Derek Bok, president of Harvard University, opera singer Anna Moffo, Senator DANIEL MOYNIHAN, writer Joseph Heller, and Chicagoans Hanna Gray, president of the University of Chicago, Daniel Boorstin, now Librarian of Congress, journalist Georgie Anne Geyer, Rolf Weil, president of Roosevelt University, Richard Thomas, president, First National Bank of Chicago, historian William McNeill, and international law professor Cherif Bassiouni.

Mayor Washington will proclaim October 16 as Fulbright Day in Chicago. The luncheon speakers include Bill Kurtis, journalist and author, Senator PAUL SIMON, Dr. Hanna Gray, and Geogrie Ann Geyer. Also attending will be Fulbright scholars from abroad now in the Chicago area, the consuls-general of the Midwest, and presidents of area universities and colleges.

Special exhibits of Fulbrighters' art will be on display at the art institute. An architectural tour of Chicago, and a tour of the Newberry Library will follow the luncheon. Then the ninth annual meeting of the Fulbright Alumni Association will be held on Friday and Saturday, October 17 and October 18, 1986, hosted by Northern Illinois University DeKalb, IL. The meeting will also celebrate the 40th anniversary of the initiation of the Fulbright Program and will focus on the future of international education in general, and the Fulbright Program in particular.

As we commemorate this bright occasion, we recall one Fulbright professor's reflections: "In my view, the Fulbright legacy is the most solid achievement of U.S. foreign policy and diplomacy. It is an enduring monument to cross-national understanding and world peace. And as we celebrate worldwide the Fulbright program's 40th anniversary, it is imperative that we pause and reflect on its lasting message to humanity; tha scholarship and friendship are eternal bonds across the cultures that know no barrier of time and distance."●

"JUST SAY NO" CLUB—TIOGUE SCHOOL, COVENTRY, RI

● Mr. CHAFEE. Mr. President, I am proud today to pay tribute to the first official "Just Say No" Club formed in the State of Rhode Island, at the Tiogue Elementary School in Coventry. The model for this "Just Say No" Club was established in Oakland, CA less than 2 years ago, and thousands of clubs have been formed across the Nation.

Early in September, 60 fifth and sixth grade students of the Tiogue Elementary School united to make a pledge to adopt a drug-free lifestyle. I congratulate these youngsters for their commitment to remain substance-free, and commend the efforts of Jane Viti, school nurse-teacher, who organized the club.

Our greatest potential for success in the battle against drug and alcohol abuse is in equipping our young people with the strength and knowledge to resist the temptation to experiment with these harmful substances. The "Just Say No" Club, with its primary focus on prevention, is a wonderful model program for all our Nation's children. Through activities like this, they can help pave the way for a drug-free society in the years ahead.

I urge my colleagues, as they make plans to return to their home States after Congress adjourns, to encourage their young constituents to form "Just Say No" Clubs and to take the pledge of the club. The words are simple, but the promise they hold for the future of our youth and our country is profound. The pledge states:

I know who I am, and I know that I want to stay healthy and happy. I can stand up for myself and stick to my decision to live a drug-free life. I can ask for support from my friends and my family. I pledge to say "no"! to drugs and alcohol. I can help others to say no to drugs and alcohol.

We are very fortunate that the children of Tiogue Elementary School and many others throughout our Nation have had the courage to make the "just say no" pledge. Let us join with them and spread the message to say "no" to drugs and alcohol.●

NAUM AND INNA MEIMAN: TEMPERED JOY

● Mr. SIMON. Mr. President, I am pleased to report the arrival, from the Soviet Union, of Mr. Roman Kuperman. Roman Kuperman, a Soviet citizen, has been married to American citizen Frances Pergericht for more than 4 years. Their daughter, Natalie, was born in March. Roman's release is a positive step for human rights and I am happy for this wonderful family.

Unfortunately, I must report that my two good friends Naum and Inna Meiman are still held against their will in the Soviet Union. These brave dissidents continue to face the threat of Inna's death everyday. Inna has had four cancerous tumors removed from her neck. The Soviet doctors feel there is nothing more they can do for her fifth and most recent tumor. Fortunately, there is experimental treatment available to Inna in the West.

I implore the Soviet Union to allow the Meimans to emigrate to Israel.●

MACEDONIA AFRICAN METHODIST EPISCOPAL CHURCH'S 175TH ANNIVERSARY

● Mr. D'AMATO. Mr. President, I rise today to call congressional attention to a milestone in the history of the Macedonia African Methodist Episcopal Church of Long Island, NY. This year marks the 175th anniversary of this church.

The African Methodist Episcopal Church has the great distinction of being the oldest, predominatly black, religious institution on Long Island. The African Methodist Society, forerunner of the present Macedonia Church, was formed back in 1811. It was the third religious organization in Flushing, and the present church building is located in essentially the same place as was the first church building.

The fact that this church has not moved in 175 years is a testament to its stability in its surrounding community. Since 1811, members of this church have reached out and been involved in all aspects of community life: social, economic, educational, political, and religious.

I commend the Macedonia African Methodist Episcopal Church, Mr. President, for its 175 years of successful service and commitment to the sur-

rounding community. It is my hope that it survives at least 175 more successful years in the future.●

JOB SKILLS

● Mr. GORE. Mr. President, recently, legislation cleared the Congress to designate October 12–18, 1986, as National Job Skills Week. The American Society for Training and Development [ASTD], an organization which represents training and development professionals concentrated mainly in the Fortune 1,000 companies, was a strong supporter of the resolution to establish this week. I would like to commend to the attention of my colleagues a statement prepared by ASTD about National Job Skills Week and about the increasingly important role training is going to play in keeping our workforce productive and our country competitive.

The statement follows:

NATIONAL JOB SKILLS WEEK, OCTOBER 12–18

The American Society for Training and Development (ASTD) is pleased that Congress has designated October 12–18, 1986 as National Job Skills Week. The designation is historic for it is the first time that Congress has chosen to focus national attention on the contribution that training makes to our economy.

National Job Skills Week sets the stage for looking at training provided by companies and for highlighting public job training provided for the disadvantaged and dislocated. It is an opportunity to look at the successes of the Job Training Partnership Act and the best practices in the private sector. And it is a time to ask how we can build better linkages between public job training efforts and employer needs.

Today, we see training moving up on the national priority list largely because employers, educators, economists and national policymakers are increasingly aware of the role it plays in keeping our workforce productive and our industries competitive. There is a definitive link between productivity and training and it is generally acknowledged that a well-skilled workforce is essential if American business is to remain a competitive player in the world marketplace.

That's one reason that employer investment in training is growing. Currently, an estimated $30 billion a year is spent on formal training and another $180 billion on informal training. To put this in perspective, consider that this combined amount is roughly equivalent to the entire national investment in elementary, secondary and higher education.

In addition to focusing attention on the contribution that training currently makes, National Job Skills Week will be a time to examine the demographic and technological trends that will drive training and human resource decisions for the rest of this century.

Demographic projections for the next fifteen years portend a shortage of entry level workers. This small labor pool will compel employers to increase training investments for they will have to "make" new employees, rather than selecting the best from an abundant field. This will mean an opportunity for the less advantaged in our society; but this opportunity must be seized by the institutional networks that have been constructed.

The public job training system and employers must forge a symbiotic relationship that relies on the principal of supplier (public training) and consumer (employer). This is a move forward from public sector training efforts geared to sporadic "placing" of the disadvantaged in jobs toward a regularized supply system that delivers human capital to employers.

The emphasis that the Job Training Partnership Act places on cooperation and partnership is a good, strong beginning. But it must be enhanced.

The second part of the equation driving future training decisions will be technological change. The pace of such change has quickened in recent years as the American economy struggles to keep pace with worldwide competition. This accelerated pace demands renewed emphasis on the nation's technical training systems. A skilled workforce is the key that unlocks the promise of new technology.

It is both timely and appropriate that Americans should pause in October to reflect on these issues. Collectively and individually we must be aware and ready to meet the changes that are ahead.●

SALUTE TO BETTY DANIELSON

● Mr. DURENBERGER. Mr. President, no matter what happens, no matter how circumstances change, some people remain friends forever. Betty Danielson may be retiring, but we will not lose her as a dedicated friend to the United Way and the State of Minnesota. Retirement just adds a new dimension to a giving relationship which spans 39 years.

Betty went to work with the United Way in 1947, after a 2-year stint as a caseworker with Family Services in St. Paul.

At Big Sisters, Betty put her master's thesis in action. Her theory was that there were many things that volunteers could do as well as social workers, which would free up social workers to do other work. She secured Federal funding and started a Social Work Associates Program where volunteers were assigned responsibility for girls in the Big Sister Program.

"These women carried out work I felt was equal to and sometimes superior to the work of our staff," Betty said. Later the program was implemented by the Junior League and Lutheran Social Service.

About the same time, she was asked to help start a social work department at Bethel College. Betty's family ties to Bethel were strong. Her father had been the college's first dean and she and her brothers had all attended Bethel.

"Of course I said yes," Betty said. "I began by teaching introduction to social work. I used to teach on the way to work and on the way home. Gradually we added one course after another." Betty taught off and on for 25 years and continues as an adjunct professor in the social work department. Bethel honored Betty with its first Alumna of the Year Award in 1976.

In 1969, after 22 years at Big Sisters, Betty moved to the Community Health and Welfare Council of Hennepin County.

I had been thinking about doing something else, just about that time Omar Schmidt (then executive director of the Health and Welfare Council) asked if I'd be interested in being a family and child welfare planning consultant. I said yes right on the spot.

At the Health and Welfare Council Betty worked with volunteers to conduct studies on day care needs in Hennepin County and services available for battered women, among other projects.

"Within 10 years I think there were about 80 studies done by the Health and Welfare Council," Betty said. The switch from running a direct service to being behind the scenes, planning community needs, was a good one for Betty.

It was very enjoyable because I was able to help bring to bear resources that would make changes in the problems I'd seen as a social worker. As a planner, I could affect changes in the decision making process for funding.

When the Health and Welfare Council merged with United Way in 1977, Betty became United Way's allocations director. She later became planning director and was recently director of agency relations.

I've enjoyed working with volunteers—staffing committees, studies and panels. The thing that has pleased me most is watching men and women whose ideas were strongly judgmental about the poor, the AFDC mother or kids in trouble—watching them change over a period of time and become advocates for the people they formerly condemned.

Volunteers have taught me infinitely more than I've taught them. I always felt I got the best of the deal in working with volunteers.

After 39 years, Betty says, "I'd do it all over again and maybe even with more enthusiasm because there is so much more challenge now. There's so many things to do and so many more resources to do it with."

What's ahead for Betty? She plans to expand her already busy volunteer schedule with Bethel College and the World Mission Program.

"I was an M.K.—missionary's kid," Betty says. "I suppose if there's piece of my heart anywhere it's over there up in the northeast part of India near the Himalayan Range."

Betty credits her parents with instilling a deep sense of service and compassion for others.

It (growing up in India) gave us a breadth of understanding of other people. You could never look at people and problems in the same way after you had that experience.

Betty has spent most of her vacations going back to India or other countries overseas. In 1976, she taught

at the Chinese University in Hong Kong and on other trips has consulted with community health and welfare leaders. On each trip, she takes medicines and candies for her friends in Burma. Her friend Barbara Adams called Betty the "godmother of the entire Burmese Baptist community. They love her and look forward to other visits."

"I think Minneapolis is the most wonderful place on Earth, but I could never view this world as just Minneapolis," she says. "Travel lets you see another part of the world and people's lives. Your life is enriched many times over again. I've lived and worked all over the world but I always come back to Minneapolis—even in spite of the snow and ice."●

TRIBUTE TO MARGE CARPENTER

● Mr. DURENBERGER. Mr. President, on her last day as director of United Way's Community Resource Division and as director of United Way's First Call for Help, Marge Carpenter was involved with helping a young family whose baby was dying of Lou Gehrig's disease. They were losing their third child to the disease, and the mother desperately wanted to have her mother with her. Friends and relatives had managed to pull together about half of the airfare needed, but there was no money for the rest.

As Marge talked, her face was creased with concern: "This is a terrible situation. We're going to help, but oh, that poor family."

Marge's concern and love has touched thousands during her 33 years in the information and referral business. It's a Carpenter family tradition.

As a child in Fairmont, MN, Marge candied eggs in her father's grocery store—

My father always put sacks of candy for the kids in the farmer's egg crates before they took them home. My grandfather did the same thing before him. You know, a few years back, I met someone in Hudson, WI who asked me if I was "that" Carpenter. I never forgot it.

Marge's mother, Bess Carpenter, and her sister, Mary Jean Campbell have continued the family tradition in the Fairmont area. Campbell, now retired, was director of the Martin County American Red Cross.

Marge toyed with the idea of going into social work, but entered the University of Minnesota to study personnel and marketing. Her education was interrupted by World War II. She served as a member of the Women's Army Corps in New Guinea keeping troop statistics in the adjutant general's office. After the war, she completed her bachelor's degree at the University of Minnesota and went to work as a market researcher at Brown & Bigelow.

"There again I was lucky," Marge says. After 5 years at the company, her boss urged her to take a vocational test at the university and think about whether she really wanted to be in market research.

"Social work came out very high," Marge said, "so I applied for a job at the Hennepin County Welfare Department and I got it."

Two years later, on April 1, 1953, her career with United Way began. She went to work as the assistant director of community information and referral service of the Community Chest and Council of the Greater Minneapolis Area. Five years later, she had completed her master's degree and was its director.

Today United Way's First Call for Help is considered one of the best informational and referral services in the country. Under Marge's direction, there have been many "firsts" for the service.

"The participation of volunteers was a real breakthrough," Marge said. "We could never offer the services that we do today without volunteers." United Way's First Call for Help is one of the few informational and referral services in the country to use volunteers.

Community resources were listed in a single loose-leaf notebook when Marge started in 1953, and she and one other staff person served between 3,000 and 4,000 people a year.

"Now look at what we've got," she says. "There are over 2,000 resources on our computer." In 1984, 16 professional staff and some 300 volunteers were able to provide information and referral services to almost 130,000 people using that computerized resource file.

Other firsts include a message relay service for the deaf, a 24-hour information and referral service, and the publishing of a directory of community services. She helped integrate Ramsey County and other St. Paul area resources into First Call for Help resource file. Carrier Alert, a program checking up on seniors and other homebound persons, was instituted in cooperation with the National Association of Letter Carriers and the U.S. Postal Service. And, a safer area for children traveling alone was created at the airport travelers aid offices. The list goes on.

Despite all the changes in how services are provided, Marge notes few changes in the type of problems experienced by people.

Marge says:

The requests for financial assistance have increased over the past years because of the economy, but basically the calls we get are from people with the same questions and problems, needing the same kinds of services and counseling they did 25-30 years ago. Technology has helped us in that we've been able to give people better information and are able to serve more people.

That technology, put to good use by staff and volunteers, increased the number of people helped by United Way's First Call for Help almost 400 percent during Marge Carpenter's tenure as its director. But, FCFH has not become a bureaucratic operation.

Marge explains the underlying operating philosophy in this way:

Everybody should be treated with dignity. We cannot judge other people. If someone has a need, they should be treated as a human being with a problem. We empathize, sympathize and try to do what we're here for—to connect them with service which can help.

I firmly believe everybody has a right to know what is there for them whether they're rich or poor. What good does it do to have all these agencies and resources if people don't know about them?

United Way's First Call for Help is so respected throughout the county that it has become a model for United Way of America. Marge has served as a consultant on information and referral to the States of Minnesota, South Dakota, and New York; Pilot City Regional Center in Minneapolis; and numerous other public agencies. She has been a guest lecturer at the University of Minnesota, Hamline University, Bethel College, Macalester College, and the College of St. Thomas.

As a member of Minnesota Social Service Association, a United Way participating agency, Marge has served both as a member and chairperson of every committee. She served on the board of governors for 15 years and is a past vice president. In 1983 that organization honored her with its Distinguished Service Award.

Marge has been honored by Physicians Health Plan of Minnesota where she was a board member from 1974 to 1984. In addition, she is a past member of the Minnesota Memorial Blood Bank and past secretary, vice president, and bulletin editor of the National Association of Social Workers.

In 1985, Marge was named to the board of directors of the Alliance of Information and Referral Systems, Inc., an organization which she also helped found.

Despite Marge's own advice to her staff and volunteers to "forget about the job and not get attached to people and their problems," a few special people immediately jump to mind, when Marge is asked about people she's been able to help over the years.

I can remember Emma. She said she was calling from a closet. Her husband had had a butcher shop and made quite a bit of money. After he died, a young couple had befriended her and they took all her money and frightened her half to death. We got her in touch with Legal Aid and were able to help her straighten everything out.

Then there was Bernice. She and her husband and little girl were going to North Dakota and it was a day like today (bitter cold). She didn't have a coat. I gave her my coat—took it off the coat rack and gave it to

her. I can still remember what it looked like too! I've heard from her several times since, but I never saw her again.

Marge looked a little wistful, "You're not supposed to get attached—and I'm the worst of all."

Her advice for those who will carry on is simple, "Care a lot and be flexible."

"I'm proudest of the attitude of the staff and volunteers," Marge says. "We have credibility because people care."

So do you, Marge. So do you. Thank you for 33 years of caring.●

TRIBUTE TO DENNIS CAVANAUGH

● Mr. DURENBERGER. Mr. President, I rise in tribute to a man who exemplifies the entrepreneurial spirit that is a vital part of our Nation's tradition.

Dennis Cavanaugh began as a yard clerk for the Soo Line and worked his way up through the ranks to become that company's chairman and chief executive officer. He has earned the profound respect from both labor and fellow management. Unafraid to take risks and full of enthusiasm, he has instituted bold plans for expansion of the Soo Line. Mr. Cavanaugh is a man who recognizes the value of renewed and continual progress.

Not a man to rest in the face of constant success, Dennis Cavanaugh need never worry about keeping up with the times. Indeed, the times could only benefit by keeping up with him.

In closing, I ask that the following article from the Minneapolis Star & Tribune of March 30, 1986, be included in the RECORD.

The article follows:

HE'S AWAKENING SOO LINE TO THE FUTURE OF RAILROADS

(By John J. Oslund)

The Soo Line Railroad, a historically well-operated if somewhat somnolent transportation company, is waking up to the rigors of railroading in a regulation-free environment and Dennis Miles Cavanaugh is the guy blowing reveille.

By all accounts, the Soo Line and Chairman Cavanaugh, a longtime Soo employee, have a full day ahead of them.

The Soo line's acquisition last year of the Milwaukee Road doubled the railroad's size and richly diversified its customer base. But, unhappily, it also wiped out the Soo's 23-year record for consistent profitability. Anticipating the Soo's $8.7 million net loss for 1985, Forbes Magazine recently pronounced that the Soo lost by winning the Milwaukee Road from rival Chicago & North Western.

"We did not lose by winning," said Cavanaugh. "In the short term, it's going to be a son of a gun. In the long term, it's going to be the best thing we could have done. Capacity in this industry is shrinking. Ease of entry into this business is almost impossible. The franchise is becoming more valuable."

Cavanaugh's points are indisputable. Still, there are many long days ahead for the Soo Line, which over the years has earned a reputation for running a pretty good railroad, but that's about all.

And in today's deregulated transportation marketplace, merely running a good railroad is not enough, said William Smith, a transportation consultant and adviser to Cavanaugh.

Although he's spent most of his career with Soo Line, Cavanaugh does not think like your typical railroad executive, observers say. A 48-year-old Irish Catholic from northeast Minneapolis, Cavanaugh was schooled by the Benedictine brothers of St. John's Preparatory School in Collegeville, Minn., before graduating from the University of Minnesota.

Like St. Benedict—among the first of the outward-looking Christian clerics—Canvanaugh serves as the link between the insular attitudes of the past and the new age.

"He has a broad vision," said Fred Beier, associate dean of the University of Minnesota School of Management. "He is not tied to business as usual"

The Soo Line—56 percent owned by Canadian Pacific Rail, Inc.—has been slow to respond to the marketing freedom that accompanied deregulation in 1980.

The acquisition of the Milwaukee Road, which was nursed back from bankruptcy by a court-appointed receiver, is a very big step toward reducing the Soo's traditional reliance on lumber, export grain and potash shipments.

The Milwaukee Road's "sprint trains" between Minneapolis and Chicago carry piggyback trailers for a variety of customers, including United Parcel Service, one of the nation's largest trucking companies. With a more diverse population of shippers, particularly east and south of Chicago, the Soo Line will not be as dependent on the farm economy, Cavanaugh said.

But the merger was essentially an end-on-end combination, so there wasn't a great deal of duplication of facilities and, therefore, not as great an opportunity for cost savings.

Yet costs must be reduced, Cavanaugh said. So far, the growing pains have been felt most keenly by the railroad's unions. When the two companies merged in February 1985, there were about 8,400 workers. Attrition, layoffs and early retirements have reduced that number to about 7,800. By next year, another 800 jobs could be gone.

Although union leaders are not happy about the layoffs, they don't condemn the reasoning behind the reductions nor the man who is making them.

I've known Dennis since he was a yard clerk," said Ed Barsness, general chairman of the Brotherhood of Locomotive Engineers. "His dad was a yard master. He (Dennis) knows railroading; you can talk to him. I'd rather be dealing with him than a lot of other managements across the country."

Guy Western, general chairman of the Brotherhood of Maintenance of Way Employees, faults Soo management for what he calls foot-dragging on job protection agreements. Western's union has been hit particularly hard by the layoffs. But he harbors no animosity toward Cavanaugh.

"I think he's a fine fellow," said Western. "I wouldn't mind playing golf with him—if I played golf. It's gratifying to us that there is a guy who came up through the ranks . . . not just another lawyer."

Faults such as high management turnover, turf battles and missteps in policy-seeing and negotiations are common in organizations undergoing dramatic change, the union leaders say, and Soo Line is no exception. But Cavanaugh as taken steps to get things settled.

Cavanaugh has hired Robert Gilmore, a marketing expert from Canadian Pacific, as the railroad's president, and Earl Currier, a former Burlington Northern operations executive, as Soo Line executive vice president of operations. Both are outsiders with no allegiances to the old Soo or Milwaukee Road styles of management, Barsness said.

These appointments also have freed Cavanaugh to brainstorm. He is described by insiders and outsiders as an untiring idea machine and a risk taker whose only significant weakness is perhaps an overabundance of enthusiasm.

"He's thinking about some things that a lot of railroad executives aren't thinking about," said Snith, a former vice president of transportation for General Mills.

Cavanaugh has empaneled an informal cabinet of outside advisers that includes Smith, Beier and A. Scheffer Lang, a former professor at the Massachusetts Institute of Technology and a former head of the Federal Railroad Administration.

"He values a different perspective," said Beier of Cavanaugh. Does he need people he can bounce his ideas off? People who are not afraid to tell him he's crazy? "I think that's part of it, yeah," said Beier.

"I think he is viewed by the company as someone who is able to lead. (But) sometimes he has to be slowed down because he sees so many things at once."

For example, despite the unfinished business of merging the two railroads, Cavanaugh in February launched a new project called Lake States Transportation Co. as a separate business unit that reports to his office.

Lake States, which is a collection of about 2,000 miles of track in Minnesota, Wisconsin, Michigan and Illinois, is the Soo Line's equivalent of General Motors' Saturn project—an experiment that might point the way to the company's future.

The unit will operate independently of the Soo Line's primary 6,000-mile track system and will seek to provide total transportation services—not just rail service—to customers around the Upper Great Lakes. While it is too early to tell how successful Lake States will be, the experiment is another example of Cavanaugh's determination to reshape the Soo Line.

During his nearly 30 years with the company, starting as an inventory clerk, Cavanaugh has watched the industry change. But the future for railroading won't be found in its history. Despite his background, Cavanaugh is not wedded to the rails.

"As far as just trains, to me that's too narrow a perspective of what I see in the business," he said. "We are looking at ourselves as a production company doing something more than just running trains. It's going to require an entire change in our organizational structure and the kinds of people we hire.

"We are going to gear ourselves to do more for the shipper. We can go out and contract with trucks, with barges, with other railroads. We can put the packages together. Some of it will move on the Soo Line, some of it won't. We'll cover a broad spectrum."

As for the short term, Cavanaugh said the Soo Line will return to profitability this year, and he makes no apologies for the decision to acquire the Milwaukee Road.

"We had to acquire more property, have more access to gateways, broader customer

base," he said. "The scenario of doing nothing said that it would be devastating. That outcome was worse than the risk of acquisition and taking on this debt." (Interest expense alone rose fourfold in 1985 to $37 million on the approximately $379 million in longterm debt.)

"That's what management gets paid for, anticipating what the company's future requirements are going to be, evaluating them, making a decision, getting commitment, and getting on with it.

"And for Christ's sake, looking back isn't terribly productive—unless you want to learn before doing your next one. No, I haven't shed any tears.".●

TRIBUTE TO JOHN J. GERMAIN

● Mr. DURENBERGER. Mr. President, this past month the State of Minnesota lost a valued friend with the passing of John J. Germain.

John was not a great statesman or a national celebrity; he was an American. He came to Collegeville, MN, late in life and it was there that he found a home.

He was a model to all of us. At the age of 52, John recieved his bachelor's degree in history from St. John's University in Collegeville, MN. At an age when most people begin to plan for retirement, John began a new career by aiding in the education of the students of St. John's University. John had a great influence on everyone he came in contact with.

Because of his outstanding dedication and service to the youth of Minnesota and the country, I ask the following funeral homily for John J. Germain, given by Julian G. Plante be included in the RECORD.

The homily follows:

FUNERAL HOMILY FOR JOHN J. GERMAIN, BY JULIAN G. PLANTE, SEPTEMBER 10, 1986, ST. JOHN'S ABBEY CHURCH, COLLEGEVILLE

Some time ago John Germain told me, with unconcealed satisfaction, that he had lived more than half his life in association with Saint John's. In preparing these remarks I checked out the details and learned that, although 41 of his nearly 87 years were spent on the East coast, he lived 45 years in Minnesota—between 1917 and 1922 and again between 1946 and 1986.

1899—John Joseph Germain was born in the Williamsburg section of Brooklyn, New York in 1899; the exact date of his birth is still questionable. Family traditions indicated two birth dates and a baptismal certificate indicate still another one. John decided to go the middle way and chose December 23. His father was an itinerant musician, born in Wales of English extraction, and his mother of Irish parentage. Throughout his life he remained partial to his English and Irish heritage. John's father died shortly after his birth.

1900–1901—When John was 18 months old his mother died. He was taken to Long Island City and cared for by his grandmother, Frances Crosby Quinn, until her death in 1904.

1904–1915—A friend of the Quinn family, Bridget Whalen, widow of Civil War veteran, John Whalen, took him in her charge in Amityville, Long Island, where he lived until 1915. John steadfastly maintained that he had no knowledge of the "Amityville Horror" or of those involved who—after all, came there only in 1970.

1915–1916—In 1915 he went to work for Poor's Manual—forerunner of today's Standard and Poor's Register, and worked at miscellaneous other jobs.

1917–1922—In 1917 John enrolled at Saint John's University. He came to Saint John's with a strong recommendation of academic promise from our own Father Gerard Spielman, O.S.B., who was pastor of our church there, the Church of St. Kilian, in Farmingdale, Long Island. Moreover John's brother, Fr. Aidan Germain, O.S.B., was also a monk of the Abbey at the time. In 1922 he completed his second year of college and in July of that year he entered the novitiate at Saint John's. In the following October, as his classmate, Father Oliver Kapsner recalls it, John just stood up one day and announced to his fellow novices "I'm leaving. I'm sure I am in the right church but in the wrong pew". I might add that John Germain's other classmates were Fathers Dunstan Tucker, Conrad Diekmann, Marcellus Leisen, Mr. Tom Mulrooney and Mr. Simmer.

1922–1928—After leaving the novitiate in 1922, John returned to Brooklyn where he obtained employment as a Doorman in St. John's College (now St. John's University, operated by the Vincentian Fathers). After various other jobs, John joined the staff of the Police Journal, eventually becoming its Editor, a position which he held until 1928.

1928–1930—He then journeyed to Washington, D.C., where he worked for the Army and Navy Journal from 1928–1930.

1930–1933—After a period of unemployment,

1933–1940—John returned to Brooklyn in 1933 and rejoined the Police Journal as Editor, a position he held until 1940.

1940–1941—In about 1940, John moved to New York City and worked in a variety of jobs, primarily as Editor of the Retail Meat Dealers trade publication.

1941–1944—Having been a Reserve Officer, he was called to active duty with the Army air forces in the south, mainly Miami Beach. He was discharged in 1944.

1944–1945—Between 1944 and 1945 he worked as an interviewer for the American Red Cross and as an Editor of a journal for a beauty and barber supply retailer's association.

1946–1948—Then, in 1946 on the death of his brother, Fr. Aidan, who died of leukemia as an Army chaplain in Texas, John returned to Saint John's University and was employed half days each in the bookstore under Father Fabian Wegleitner and in the library under Father Benjamin Stein.

1949–1951—After two years he resumed his college career at Saint John's completing a Bachelor's degree in history in 1951. His major paper in history, as Father Vincent Tegeder recalls, was on Heinrich der Löwe, the 12th century Duke of Saxony and Bavaria. Among his most vivid and cherished memories were his teachers at Saint John's—Gilbert Winkelmann, Wilfred Partika and Placid Wingerter for Latin; Justin Luetmer and Basil Stegmann (vivid, I gathered, but not so much cherished) in Greek; Boniface Hain, Innocent and Norbert Gertken for German; Gerardo Sastre in Spanish; Athanase Meyer, Cuthbert Goeb and Alphonse Sausen in History; Polycarp Hansen and Gilbert W. in Math; Hilary Dörfler and Severin Gertken for Science; Ulrich Berte, Alexius Hoffmann and Virgil Michel in English; Lambert Weckkwerth, Alcuin Deutsch and Ulrich B. in Religion.

1951–1972—After receiving his baccalaureate degree, John was employed as a library assistant at Saint John's and then as cataloguer, a position from which he retired after twenty years.

1972–1978—From January 1972 until April 1978, he worked part-time as a cataloguer of printed materials for the Hill Monastic Manuscript Library.

1978–1986—In April 1978, he became ill and was confined to St. Raphael's Health Center; on May 25, 1978, he took up residence at Waite Park Nursing Home; and on August 21, 1978, he moved to St. Benedict's Center, St. Cloud, where he lived until he was hospitalized just last Friday, September 5, 1986.

John, as all of us knew him remember, was what we might call a character, exhibiting any number of eccentricities; not least among them was his absentmindedness. I know that John would not mind my characterization of him in this way. In an effort to explain his forgetfulness, he would regularly reply "I have a good memory but it doesn't last long." His wit and his sense of humor were with him right up to the end.

John was a man of broad interests. He was well-read in history and literature. The classics of English and American literature were deeply engrained in him. Only two weeks ago while I was visiting him he was reciting by heart, in a vigorous voice, poetry that he had committed to memory years before.

He possessed a natural instinct for research and a keen curiosity and their origins. He remained fascinated with his project on Romance lexicography and etymology which he worked on until his sight would no longer permit it. Neither time nor ennui dimmed his enthusiasm for language study. Although he laid aside the study of French a few months ago, he continued his pursuit of Spanish to the end. Indeed he regularly used a Spanish edition of the Bible for his daily Scripture reading.

John was a gentleman, fiercely loyal to his natural family, his adopted family of Saint John's, to the Church, and to his country. He took the responsibilities of citzenship seriously.

Though something of a loner, he always enjoyed the fellowship of close friends, for example, that of the late Leo Lauer, Jim and Cecelia Trobec, Chuck Wenzel, Fathers Berthold Ricker, Don LeMay and Martin Schirber, Wim and Vonnie Ibes and more recently, Cathy Dang. He relished the visits of his cousins, Sr. Margaret and Sr. Clara, and his nieces from the East. He was a faithful correspondent and, until 1978, a regular diarist. He used all these occasions to communicate thoughtfully and to exercise his master of the English language.

John has not gone to the Lord. He lived a long and upright life. May his soul through the goodness and mercy of God rest in peace.●

THE JEWISH FUND FOR JUSTICE

● Mr. MOYNIHAN. Mr. President, this week throughout the world, Jews are observing the holiest week of their religious year. I can think of no more appropriate time to cite the efforts of a new American Jewish organization whose work reflects the passion for justice which is so central to the Jewish tradition.

The Jewish Fund for Justice is a national foundation which supports ef-

forts to combat poverty and social injustice in the United States. By making grants in the name of the American Jewish community to people who are trying to escape the cycle of poverty, JFJ confirms the longstanding commitment of American Jews to justice and opportunity for all people.

In its first 2 years, JFJ has made 20 grants to community organizations in every region of the country, establishing partnerships with inner city youth, family farmers, working women, senior citizens, and many others. One of those grants has an especially unique dimension: in the Painted Desert of Arizona, JFJ is supporting the efforts of Navajo Indian farmers to adapt the drip irrigation and arid farming techniques that have been so successful in Israel. Israeli agronomist David Mazigh spent nearly 2 years working with the Navajos, and his successor, Ron Scherzer, recently began his own 2-year stay on the reservation.

This extraordinary partnership has brought a dramatic increase in the Navajos' crop production; with Israeli expertise and American Jewish support, the Navajos have taken a great step forward in their pursuit of greater economic security and self-sufficiency. I wish to commend all of those who have made this project such a success, and I ask that the following Jewish Telegraphic Agency report on the project be printed in the RECORD.

The report follows:

[From the Jewish Telegraphic Agency, Sept. 2, 1986]

AN ISRAELI HELPS GREEN THE BARREN PAINTED DESERT

(By Marlene Goldman)

NEW YORK, September 1.—Two years ago, American Navajo Indians doubted the promise of David Mazigh, an Israeli agronomist who said he could transform areas of the barren Painted Desert in Arizona into fertile stretches of farmland.

But Mazigh allayed the Navajos' disbelief by producing fields of corn, potatoes, melons and other fruits and vegetables on experimental farms across Navajo reservations in Azizona. He earned their respect so much so that they named him Nihikaoojeeh, a Navajo word meaning "one who comes to help us," and insisted on honoring him at a farewell party last week on a Navajo farm he founded 60 miles northesast of Flagstaff.

Between 75 and 100 Navajos and dignitaries joined the celebration, including Peterson Zah, chairman of the Navajo Tribal Council, and Wilma Mankiller, principal chief of the Cherokee Nation in Oklahoma. The feast featured samples of Mazigh's hard labor—onions, tomatoes, melons, squash, potatoes and corn—and the Navajos presented him with gifts.

"Mazigh was very special and was not afraid to dig into the earth with his hands," said Lois Roisman, executive director of the Washington-based Jewish Fund for Justice, a national Jewish foundation which funds efforts that promote social and economic justice in the United States.

"He worked from dawn till dusk, side by side with the Navajos, and they treated him like a brother," she added.

'TODAY I FEEL LIKE AN INDIAN'

These impoverished American Indians extended their gratitude fo Mazigh with turquoise Indian jewelry and a Navajo blanket. But the occasion was not completely joyous, as it marked the close of Mazigh's two-year stay.

While Mazigh returns to his position in Israel as director of the Avdat Experimental Farm on the Sde Boker campus of Ben Gurion University of the Negev, his replacement, Ron Scherzer, a 36-year-old expert in field crops and fish pond culture, will move his family from Kibbutz Sde Boker to the Navajo Nation for two years.

Mazigh, originally from Tunisia and living in Navajos. "Today I feel like an Indian," he told that JTA. In the first year working on the reservations, he was not accepted and it was only after testing the first zucchini that the Navajos considered the project a success.

When Mazigh first arrived in early 1985, he said that the Navajos didn't even know what Israel is. They could not understand why the Jewish people wanted to help them. "I told them Jews believe you love other people as you love yourself. This is my religion," he explained. "I think they understood."

The Navajos, whose 170,000 members comprise the largest of the 424 Native American tribes, are among the poorest people in the world. They were totally ignorant about the basics of farming technique, according to Mazigh. "They didn't know to give the crops water every day,' he said, "We needed to teach them slowly."

INTRODUCES ISRAELI METHOD OF DRIP IRRIGATION

Mazigh introduced to the American Indians drip irrigation, the method used by Israelis in the Negev to utilize every scarce drop of water. When the Indians first saw the thin, plastic tubing, now covering a total of 240,000 feet, with holes every two feet from which a mixture of water and fertilizer is carried to the plant's roots, they nicknamed it "zhini baachee," meaning little black intestines.

During the first year, October 1984–85, 12 acres were planted on a pilot basis in three communities—Birdsprings, Leupp and Sandsprings—in the Little Colorado River Valley in northeastern Arizona. These communities had sought help from the Seventh Generation Fund, established in 1977 to assist tribal economic development.

Mazigh tested some 120 different varieties of fruits, vegetables and grains, including 14 varieties of watermelon, pineapple, papaya, avocado, pepper, cabbage, almond and his personal favorite, pistachois. He is known as the "Pistachio king" in Israel for his success with the crop.

This year's project was expanded to 40 acres in five communities, working with 30 families. The crops have been narrowed down to corn, potatoes, squash and melons. "Our success was very important for these people who don't have much food," Mazigh said.

IMPRESSED BY ISRAELI METHODS

The idea of looking to Israel to aid the Navajos was the brainchild of Jacques Seronde, program director of the Seventh Generation Fund, "I was inspired by the book 'The Negev: Challenge of the Desert,' by Michael Avenari," Seronde told the JTA. Seronde was impressed how the Israelis conquered the Negev by using runoff water and envisioned success using similar methods in the arid region inhabited by the Navajos.

Seronde, who is married to an Indian woman and whose grandfather was the late Christian Herter, a former Secretary of State in the Eisenhower Administration, has lived and worked with the Navajos since 1970. He travelled to the Negv in 1981 to study drip irrigation at Ben Gurion University's Blaustein Institute for Desert Research, where he met Mazigh. When Seronde returned to Flagstaff, he convinced tribal and community officials to create the "Navajo Experimental Farm Program."

Grants were obtained from the Jewish Fund for Justice and the Ford Foundation, and Mazigh, who was on sabbatical leave, was recruited. "What he brought was a big heart, a willingness to work hard and a great deal of technical and social knowledge," Seronde said.

The farms started by Mazigh are comparable to the Israeli moshav, according to Seronde. "It's a cooperative village where families live independently and each works a plot of ground, but they cooperate for purchasing fertilizer, and tractors and in marketing produce," he added.

The success of the Israeli-modeled family agriculture has attracted the interest of Pueblo, Lakota, Shoshone, Hopi, and other Native Americans. The Seventh Generation Fund, Jewish Fund for Justice and Ben Gurion University intend to expand the program further in 1986–87.

WILL TRY TO SEND INDIANS TO ISRAEL

During the winter, Seronde hopes to be able to send Native Americans to Israel because he believes it is "important for people here to see what has been done in Israel." He also plans to introduce Israeli expertise to fisheries in the north and livestock in the High Plains.

"The social and economic conditions are disastrous on reservations and I feel there is a good chance we can adapt the Israeli model to meet Native American needs," Seronde said.

He believes the Navajos and other American Indians are now willing to accept help from Jews and Israelis because they have presented a visible solution. So far, Seronde has met his initial goals with the project. "The Israelis have added green to the palate of the Painted Desert," he said.●

IDA NUDEL'S LONG WHITE NIGHT

● Mr. D'AMATO. Mr. President, I rise today to reiterate my concern for the well-being of Ida Nudel, a genuine champion of human rights in the Soviet Union. For more than 15 years now, Ida has sought permission to emigrate to Israel. Through her personal struggle, she has come to symbolize the plight of the Jewish community in the U.S.S.R.

Sometimes referred to as the "guardian angel," because of her efforts on behalf of other dissidents, Nudel first applied for an exit visa in 1971. Her request was denied on the ground that, as an economist, she had access to state secrets. After 7 years and numerous refusals, Ida demonstrated her frustration by hanging a sign from her apartment window which read, "KGB Give Me a Visa to Israel." Shortly after the incident she was arrested by the Soviet secret police, charged with

"malicious hooliganism" and sentenced to 4 years in internal exile. Upon completion of her sentence, Ida was informed by authorities that she would never be granted an exit visa and that she would not be allowed to return to her home in Moscow. Today she lives as a prisoner of conscience in Bendery, a closed city off limits to foreigners.

Despite years of harassment, exile, and failing health, Ida continued to speak out on behalf of those denied basic human rights by the Soviet Government. An estimated 400,000 Soviet Jews have, like Ida Nudel, expressed their desire to emigrate. At the same time, the number of those issued exit visas has fallen off to little more than a trickle. Thus far this year, only 541 Soviet Jews have been allowed to leave, down from 51,000 in 1979. The mistreatment of Soviet Jewry violates both the spirit and the letter of the Helsinki Final Act.

As Chairman of the Commission on Security and Cooperation in Europe, I intend to raise these egregious violations of human rights when I address representatives at the Vienna CSCE followup meeting later this year. The United States must continue to press the Soviets to live up to the commitments they made in Helsinki. As Nudel said in a recent interview, "The Soviets signed it. They agreed to fulfill it. So do it!"

Mr. President, I ask that the complete text of this interview be printed in the RECORD.

The text follows:

IDA NUDEL'S LONG WHITE NIGHT

Ida Nudel, in her 15th year as a leader of the movement to free Soviet Jews from their Russian Communist masters, managed to elude her KGB shadows for a few days at the beginning of June, emerging suddenly among friends in Leningrad, on her first visit there in years. It was an act that reflected both defiance and desperation. The woman who is considered the soul of the Jewish emigration movement remains obsessed with the desire to live in Israel, and though she is considered as selfless as ever—aiding prisoners of conscience, or sheltering evacuees from the Chernobyl region—it is felt that she herself cannot wait any longer, that the Jewish people and the Israeli government must somehow rescue her immediately, or she will not be able to survive.

At the same time, she is concerned that the entire movement, though revitalized by a new generation of refuseniks, may be in jeopardy, as the Soviet regime continues to pursue a neo-Stalinist line on "the Jewish question."

Nudel, whom her friends describe as "a city person," has been living in semi-exile in the small rural Moldavian town of Bendery since her release from four years of Siberian exile in 1982. She is a cosmopolitan soul among simple, provincial people, many of them Jews who are too afraid even to talk to her. At 55, her bespectacled face is a map of where she has been and what she has gone through; cracked country lips, a furrowed intelligent brow, black hair streaked with grey, penetrating Gloria Swanson eyes, and an aura that alternates between massive strength and obvious vulnerability.

She is warm, inspiring and indomitable, yet the wear and tear of Soviet persecution is evident. It is the nature of secret police to be cruel, and until now, they have been unrelenting in hounding and tormenting the frail refusenik, who suffers from a diseased heart. "I cannot wait anymore," she says. "Take me out. I want Israel now!"

About a month before her visit to Leningrad, she had tried unsuccessfully to leave Bendery for a trip to Tbilisi to say goodbye to her close friends Isai and Grigory Goldshtein the long-time refuseniks who had finally gotten permission to go to Israel. She got as far as the Kishinev airport, where a militia detective pointed his umbrella at her and commanded his men: "This woman. Take her!"

As they hustled her into a waiting car, they demanded: "Keep silent!" Nudel would remark later: "Everything in the Soviet Union must be kept quiet." They warned her not to try again: "It is in your interest not to go."

Nevertheless, she tried again the next morning, by bus from Bendery. A green Volga packed with KGB men trailed the bus until it reached the town limits. Local militiamen, who towered over the diminutive refusenik, wrestled her out of the bus. "Big strong men—it was really funny, if it wasn't so depressing," recalled Nudel, who has an eye for the farcical and the tragic.

Ida Nudel is an actress, too, with a dramatic voice and manner; and in the view of those who know her, she is a seer, one who looks deeply into her own soul, drawing upon a treasure of self-knowledge. In the course of conversation, she displays a wide range of emotions on her face, from intense concentration, to melancholia, to joy of life. She smiles broadly, and the silver crowns of her teeth reflect the light.

My initial meeting with her lasted 10 hours, as she talked deep into the white night: in June in Leningrad, the sun still shines at midnight, a strange phenomenon that disturbs the equilibrium, confusing one's sense of time. Ida Nudel unburdened herself in the first such interview she has managed to give in years. It took place in a boxy little flat inside a vast grey complex of hundreds of identical apartments, like innumerable other projects that surround the great Soviet cities and house millions of worker bees. Our host, checking for surveillance, frequently parted the curtains to look out the window, which was clouded with salty residue from the Baltic sea air. The KGB men, most of whom look like they belong in a "B" movie, were not yet in evidence—it would take them a whole day to pick up her trail again.

Leningrad, the "Window on the West" built by Peter the Great, is the city of Pushkin, Dostoevsky, and, of course, the Communist deity, V.I. Lenin. The inner city, much of it built by the architect Rastrelli, has a Venice-like quality. But to Ida Nudel and the other refuseniks, it is a precinct of hell—there's nothing quaint or redeeming or "European" in the evil empire. Only Israel, or their dream of Israel, is beautiful in their eyes.

So the great Russian culture leaves them cold. Ida, as a teenager, had read Pushkin and Lermontov to the Soviet nation on the radio. And then, suddenly, at age 17, she wasn't a Russian anymore. Early on, she came to understand that the ancient history of the Jews of Russia was over, that the Exile was over, that the Jews had to leave Russia forever.

One of her favourite ballads, by the late Vladimir Visotsky (the USSR's Bob Dylan), is about an animal surrounded by hunters, and the "red line" around him. "He knows, through the milk of his mother, that it is forbidden to go through that line," Nudel said, as she recalled an episode during her Siberian exile. An article had appeared in the local press about the Zionist enemy, mentioning Ida Nudel as one of the foremost villains. The next day, as she walked through the woods on her way back to her cabin, she was followed by five men.

She could hear them talking about her, but blocked out their actual words, "I could only hear them on an animal level—I listened to their tone, to know whether they were really angry or not. Visotsky's song repeated in my heart all that day, because it was my own situation. If you are followed, you feel hounded. This feeling applies to all who are surrounded and persecuted. These men were angry about this woman with the clever eyes . . . but they didn't attack me. I didn't turn around. Just kept walking, until I was out of the woods . . ."

In Siberia, she was under constant surveillance throughout her four-year term. When she was released in March 1982, she had the legal right to live in Moscow or anywhere else she chose, and to be registered there—all Soviet citizens must be registered in the town or city where they reside. But Nudel, like her friends Anatoly Shcharansky and Vladimir Slepak (the latter received a five-year term in exile at the same time that she was sentenced to four years for "anti-Soviet activity") was regarded as a primary enemy of the people. And the Soviet authorities flaunt their own laws whenever they feel called upon to do so.

When she got to her home in Moscow after the rigours of Siberia, they gave her 72 hours to get out. They never said how long the ban would last. She tried to register in seven towns outside the 100-kilometer zone around greater Moscow. It was a nightmare. For example, she thought she would get permission to live in Strunino near Alexandzov, where her friend Mark Nashpitz, who had also been in Siberian exile, was living (Nashpitz was permitted to emigrate to Israel last year); but despite his efforts to help her, she was expelled. After four days in the town, the police and KGB came, took the book of registration from the home where she was staying, and threatened the woman who owned the house, as well as her son. "Why are you registering this terrible woman?" one KGB agent asked, as he removed Nudel's name from the book.

Wherever she went, it was the same. Every time, after four days, when the KGB reviewed the registration lists in every hamlet of the USSR, she would be expelled. "I began to understand how popular I was with the KGB." She tried again, this time in the Baltic republics, where she had some cousins—in Riga, for example. But she was in a state of homelessness that would last for half a year. And she felt like a hunted animal.

"I went to Tartu in Estonia, where a friend I helped in prison camp now lived. He wrote to me and said he would try to get me registered there. I had no registration stamp in my internal passport, the document that all Soviet citizens over age 16 must carry." That was the mark, or non-mark, of Cain.

"I only had my friend's post-office box address, and I arrived late at night in the little town, I was very weak from my exile, and carried an outsized, very heavy suitcase. I was absolutely exhausted, suffering from

heart disease and carrying that suitcase, which was bigger than I am. I went to a rooming house, and the clerk gave me a registration card, which I duly filled out. then she wanted to check my passport. When she found that I wasn't registered, she said, 'You're not registered anywhere. How's that possible? Get out of here right now, or I'll call the militia'. She became very pale, and went out to call the police."

"I left immediately, walking to the bus station. It was closed, and there was no place to wait. I walked very slowly to a little square with benches. Physically, I was absolutely exhausted, and very depressed. Some people were lying on the benches. I watched the police come by and roust them, shouting at them to move on. I wondered, my God, what should I do? I came across a longdistance telephone station and asked a woman clerk there if I could sit and wait to make my call. She said okay. But after an hour, she told me, 'We're closing now. We're closing the door. Get out of here."

"I went back to the bus station, but there was no place to stay. The police roust homeless people, the drunks and whores who are at the bottom of society—in prison, they're called 'ex-intelligentsia.' I went with some of them and found a place to rest. I was numb. But I couldn't stand it among them after half an hour, and didn't know what to do. That's what it means not to have registration, not to have that stamp in you internal passport. I told myself in my heart that never again would I go to a town where I didn't know there was someone to give me shelter . . .

"This incident was just one of many which exhausted my soul. A human being is really very limited in his power. I was suffering from my heart problems—the left and right sides must be synchronized, and the left side of my heart was blocked. It is a very painful condition, and stress made it worse. It hurt most at night when I lay in bed, especially between 3 and 4 a.m. The emotional and physical effort increased the pain in my heart."

She didn't know where to go, but she knew where not to go—the Ukraine, virulently anti-Semitic, was dangerous for a well-known refusenik, and "not for me"; nor did Byelorussia, where she knew no one, offer a haven. She tried again elsewhere in the Baltic states, the three countries annexed by the Soviet empire in the World War II era. But the KGB warned prospective hosts—including the father of former prisoners Sylva and Israel Zalmanson—that she would never be allowed to register there.

Then, when she was about to abandon hope after six months of wandering around the Soviet Union, she received a message from a man in Bendery, Moldavia, who had sent her packages while she was in exile. Somehow, he managed to have her register in the town of 100,000, some 200 kilometers north of the Black Sea and east of the Romanian border.

Nevertheless, after four days, she was pushed into a police car and brought before the town's police chief, a big man who shouted and stamped his feet, demanding to know how she had managed to be registered in his town.

"I just sat there as he ranted at me, until the storm subsided. He was calmed by my personality. I said, 'Look at you. You're a man. You have a gun. You have many aides here who can kill me. Why are you shouting?' My manner, and my spirit, were my only weapons. "Why are you afraid of me?' I asked him. He was no fool. He calmed down, and turned toward the window. A big, very strong man who had shouted hysterically at a small woman. But I had bested him, and he knew it, and he let me go."

Nudel attributes some of her stronger qualities to her parents and her upbringing. She was born in 1931 in Novorossiysk on the Black Sea. Her father was "highly energetic and charming and kind and communicative," and both parents were very loving to her and her sister, Ilana (who now lives in Rehovot). Her father was in charge of the labour force at a cement factory, and was devoted to his work. When Ida was one month old, a flood threatened the factory, and both her parents ran out to help save the plant's equipment, leaving her in a cradle on the bed. They didn't realize that the flood waters also threatened their small hut. When they returned home, they found their daughter floating around the room. "It was good timing. . . . That's where my devotedness comes from, my father. He was a very devoted man."

Fifty years later, she is back in the Black Sea region, living in the primitive conditions she had known as a child. Only this is much worse: Bendery is limbo. "I don't live there spiritually. I don't live in the Soviet Union in my spirit. I wish the Russian people well, but I want all Jews to understand: it was our fate before to live here. But now we have a country of our own, at last."

Bendery has a population of about 100,000, but it is more a big village than a town, with small, individual houses, which are rare in the big cities. Before the big wave of Jewish emigration that peaked in 1979, there were about 15,000 Jews in the town. Now there are some 8,000 Jews: tailors, shoemakers and craftsmen, whose children are teachers or engineers. There are 40 refusenik families, but Nudel has contact with only two of them—the Liebermans and the Royaks. Everyone else is afraid.

She lives with her collie dog in a peasant hut of two small rooms. It took two years to make it livable: piping in cold water, bringing in electricity. When she first settled in, Nudel thought that she would be able to change the lives of her Jewish neighbours, by applying her formidable energies to the task. "I thought I could change the mood of the Jews of Bendery. I tried, and these two families tried with me—they were born there, know the town. I organized a Hanukka celebration, including a musical show and a talk on Jewish history. The kids dressed up in blue and white and held candles while I told them something of the story of our people. It was a very simple show, and the kids were very happy.

Then the police came, and intimidated the 30 people there, telling them what the consequences would be at their places of work—it's harder for the Jews of small towns. After that day, when I met people who had been at the celebration, they pretended not to know me. It was the end of my short career in Bendery. I understood. I could do nothing. I kept trying, but it was fruitless. I don't stop with one disappointment. I'm stubborn and devoted to my ideas. I tried for two years to influence the people there. But they are afraid. They are simple people, and they have reason to be afraid."

When Nudel went to Bendery she knew what a great gulf separated her from the local Jews. She was a famous person, with supporters around the world—in Siberia, she got 12,000 letters from people in 51 countries. She knew she had the sympathy of many more people. "I'm safe, secure in my heart. But the Jews of Bendery don't have this feeling, this inner security." They do not feel that anyone in the West is at all interested in their fate, and they do not want to get involved with "the troublemaker." Nudel is virtually isolated, not allowed to travel. Actress Jane Fonda visited her in April 1983—even the Kremlin could not say no to her—but when former vice-presidential candidate Geraldine Ferraro attempted to visit Nudel last year, she was denied permission.

It took Nudel almost two years to recover physically from the strain of Siberian exile and the six-month nightmare that followed. Given her frail condition, the house chores in Bendery were excrutiating for her: she had to bring water inside, dump the dirty water outside, carry coal. Like all Soviet citizens, she had to spend hours waiting in long queues to buy food, or anything else. But it was the chores that took the biggest toll. "It took me many hours to do this housework. I'd feel my heart pounding into my body. Pain . . .

"Westerners just do not comprehend the complicated Soviet life, how depressing it is, how much time and energy the Soviet system demands. It took me a year to get gas to warm my house. And I was *lucky*!"

She has continued to write and to send packages to the refuseniks who were imprisoned by the Soviet regime on trumped-up charges. Her efforts to keep up-to-date on their conditions of servitude were undiminished. There is no more important work in the Jewish movement, according to other refuseniks. Information is the only weapon the Jews have. And the prisoners are at the forefront of the movement. When Ida found that a prisoner was ill, she would send telegrams to doctors, get the information to refusenik circles in Moscow or Lenigrad and thence to the West. She has received hundreds of letters from prisoners, and one of her dreams is to publish a book of these letters. "They tell it all. They give you an idea of their inner lives, how their Jewishness has evolved and how it changes, and how the support is going on." She has never stopped being involved.

But she feels she has lost touch with the day-to-day developments in the movement. "I was exiled, and still live in exile. They punished me severely by cutting me off, I don't know most of the young refuseniks, but I have some understanding of the situation." (in the next few days in Leningrad, she would visit many of the new generation of refuseniks, as well as veteran movement people.)

"I do know that the Jewish soul is awakening here again. There is a special spirit of dignity and identity. Part of it is a reaction to the malicious anti-Semitism that is vented in the newspapers and on television, and young Jews feel it. Years ago, Jews had to suppress their wounded heart. But now—in the big cities, because the situtation is different there—you can see that Jewish people are more dignified and proud, speak openly about being a Jew. It's especially true of the youth, between the ages of 12 and 15, the time when you become your own self.

Some children feel only guilt when confronted by the anti-Jewish venom on television, but I think most of the youth will choose to pursue their Jewish identity. It's a new life, unusual, fantastic! All of us, Russians as well, lead a double life in the Soviet Union. We lead a secret life. Now these young Jews totally reject the colourless, an-

noying Soviet life. Their Jewish identity makes life suddenly so interesting."

She believes that the question of whether the movement will continue to grow and to succeed in the goal of repatriation—these jews regard themselves as Israelis held captive in an authoritarian land—depends entirely on the West. "Otherwise, the movement will be lost. People in the West must protest against every persecution, against every attempt to suppress our movement. No one can understand just how powerful our movement can be, but it depends completely on support from the West."

Like most of the 35 refuseniks I spoke to during a 15-day visit to the USSR Ida Nudel spoke glowingly of President Reagan. (When she told Jane Fonda how much she admired Reagan and hoped for his reelection, the liberal actress held her finger to her mouth and whispered "shhh—the intellectuals would never understand that.") Nudel urges a tough, no-nonsense line when dealing with the Kremlin. Referring to the Helsinki accords (the 1975 agreement on European security, cooperation and human rights), Nudel said: "The Soviets signed it. They agreed to fulfill it. So do it! If they don't do it, how can the U.S. trust their word on more complicated agreements? Helsinki is the key and always will be. The West should not sign any accords on arms or anything else until the Soviets show a willingness to abide by the Helsinki agreement."

She thinks that the Kremlin would strongly resist any attempts by the West to abrogate the agreement because of Soviet non-compliance with the human rights questions, which include the basic human right to emigrate. "You can say to the Soviets, 'If you don't want to fulfill the accords, then take back your signature.' But they'll never take it back, because the first and second parts are so important to them—so the demand must be: Then fulfill the third basket." [The political aspects of the accords recognize Soviet hegemony over Eastern Europe territories. The third basket concerns human rights.]

She feels that there should be a conference to discuss the question of abrogating the accords unless the Soviets comply with all three baskets. The Reagan administration and Congress should call this conference, perhaps with the participation of all 35 signatories. But she is not sanguine about the chances for any action. The West continually appeases the Kremlin, in her view.

"The Soviets never do anything without testing the waters first. They throw a bone to see how the dog will react. If they get the desired reaction, they'll throw the bone further each time. The West more or less kept silent when the KGB put Sakharov on a plane [sending him to exile in Gorky]. If there had been a strong, universal reaction, the Soviets would have given in. Something similar occurred when they decided to cut off emigration. It started in Kharkov in the Ukraine, when they said that, 'Only people with immediate relatives abroad will be allowed out.' The West was silent. When there was no reaction to what they did in Kharkov, they applied this rule to the whole USSR.

"You must understand, it's like a different planet here. . . . After Chernobyl, it has become obvious that our life on earth depends on making this society more open. Otherwise, tomorrow, nobody knows what will happen. If emigration is open, this society will change.

She advocates a high-pressure campaign in the West, and says she is in complete agreement with the approach pursued by Anatoly (Natan) Shcharansky. "We were together many years. We shared opinions on many things. Because of our common understanding, we were very close. He understands my place in the movement—as a former prisoner, he understands."

Like Shcharansky, Nudel was deeply involved with the dissident movement, the Helsinki Watch Group led by Yuri Orlov, Alexander Ginzburg and others. "I was with the Helsinki people, and know them better than some Jews. I agreed entirely with them. Shcharansky was absolutely right when he stressed the connection between the Jewish movement and the dissident movement. If you don't think like the authorities, you are a dissident. If you're not loyal to the system you're a dissident. . . . [The dissident leaders were imprisoned in 1978, the same year that Nudel, Shcharansky and Slepak, all of whom supported the human rights movement, were also sentenced.]

The only solace Ida Nudel gets is from her writing—letters to some 30 people, prisoners and members of their families. It takes almost all of her time. She had just lost contact with some of her correspondents, and was worried about them, for instance: Leonid Shrayer, a refusenik serving three years in Izyaslav, Ukraine, for "anti-Soviet activity."

Ida also works in her garden, growing her own vegetables and tending fruit trees, all of which were affected by the Chernobyl radiation. Immediately after the nuclear disaster, she took in five children evacuated from Kiev, Jews and non-Jews.

The refuseniks want to get out and now. Ida Nudel, after 15 years of struggle, is the epitome of this desperate desire. In short, she has had it.

"I think only how to escape from this place. I've gone through thousands of clashes with the KGB. What can I say more? Take me out I cannot wait anymore. I want Israel now!"

But in her mind, she has made a "Schindler's list" of who shoud get out first, and her own name is not at the top. Her list begins with the 21 prisoners of conscience, with the ailing Yuli Edelstein, and with Yosef Begun, and the others: Moshe Abramov, Yevgeny Yakir, Ya'acov Levin, Nadezhda Fradkova, Zachar Zunshyne, Alexander Cholimyansky, Yoseph Zissels, Yaacov Rozenberg, Leonid Volvosky, Yoseph Berenstein, Roald Zelichonik, Vladimir Brodsky, Vladimir Lifshits, Betzalel Shalolashvili, Alexei Magarik, Lev Shefer.

Then come the people who have served in prison or in exile, like Vladimir and Masha Slepak, and herself. Then refuseniks with boys approaching army age (once inducted into the army, Jews, though they do not carry rifles or engage in anything but manual labour, are said by the Soviet authorities to have had access to "state secrets," and can be denied emigration visas for five, 10, even 15 years.)

Then come the families with three children or more, and the most activist refuseniks. Then the rest of the refuseniks (no one knows the number, but it is estimated that there are as many as 400,000 who want to emigrate), followed by the rest of Soviet Jewry (according to the Soviet census, there are about two million Jews; but Nudel and other activists say there are three to four million Jews in the USSR, a large number of whom were intermarried and registered themselves as "Russians" or "Ukrainians" in order to ease their lives).

"I daydreamed that they asked me, 'Who goes out?' I thought about it a lot." What can people in the West do? "Rally public opinion, press for government declarations, make films and write books, send letters to refuseniks and to the Soviet government. Deluge them. Approach French, German and Japanese businessmen who trade with the Soviet Union, get them to each ask for one person, one family. It has to be done on a personal level. If the businessman works at it, he'll succeed. You need very devoted people, you need many people like Isai Goldshtein. Make an animated film—the grotesque story of how I escaped this town for a few days. Make people understand the situation. Make posters. Make it so you laugh and cry. The Soviets are very sensitive, and they're afraid to be laughed at. Find people who can finance these activities."

She speaks with semi-professional authority when she suggests making an animated film (she thought her friend Felix Kandel, a writer and former refusenik now in Israel, could do "the perfect script"). When Nudel was in Siberia, she made a film about her life there that has been seen around the world, and remains one of the most moving and impressive shorts ever made. In the winter of 1978–1979, Yevgeny Tzirlin and Boris Chernobylsky had planned to travel to the Jewish village of Ilyinka—a forebidden place, because all of the Jews there had applied to go to Israel—and to make a documentary. Tzirlin visited Nudel in Siberia first, and said he wanted to practise with his camera.

"Why practise? Let's make a film," she told him. She wrote the scenario which he translated into English. "We worked all day, shooting film in my very little room where I lived with my dog. it was very cold, the snow blowing and churning outside, I said 'Zenya, if we lose this moment, we are both fools. Stand up and get to work.' The weather was so miserable that no man or beast braved the out-of-doors. We shot film all day. In the last scene, I sat on my cot and looked into my soul—I turned my face to the camera and looked directly at my future audience to tell each one of them: 'But if you forget us, all this suffering is in vain.' "

Tzirlin left the next day, and managed to smuggle the film to the West. "Months later, I start getting letters from England, 'Ida, it's not in vain. Five thousand people in a London church saw it, and many wept. Now, its seven years later. I'm very, very tired. And I say it again. "If you forget us, all this suffering is in vain.' "●

CAMPAIGN FINANCE REFORM

Mr. BOREN. Mr. President, as the 99th Congress comes to a close, I wish to discuss for apparently the final time in this session, the volatile issue of campaign finance reform.

It is important for us to review the action of the Senate on this issue. After all, perhaps no aspect of the integrity of this situation is more crucial than the openness, fairness, and participation in our election system.

For the first time in 9 years, the U.S. Senate took a vote on a major change in our campaign finance laws. Not since 1977—when S. 926 was debated and had three cloture votes taken—has major changes to the Federal

Election Campaign Act been on the agenda of the Senate.

Mr. President, the actions on S. 1806, as an amendment to S. 655, show a tremendous move of support for sweeping changes to bring back our system of financing campaigns to the directly accountable, grassroots level.

We have likewise seen widespread support from around the country. Well over 400 editorials in 291 newspapers in 45 States have come out in support of the Boren-Goldwater bill to limit the financial influence of PAC's.

People all over the Nation have written their representatives in the House and Senate in support of this legislation as well.

The news media has shown increasing interest in exposing the correlations between PAC contributions and legislative behavior.

All of us see that when a fourfold increase of campaign costs occurs in just 8 years, it can't be healthy for the country. We see that when narrow, special interests contributions constitute over 50 percent of the finances of one-third of our Congress, it can't be healthy for the country. And, finally, the people of this country see that when their Representatives or Senator doesn't feel compelled to depend directly on them at the grassroots level for their campaign support, but instead on narrow interest PAC's based in Washington, that it can't be healthy for the country.

I fully believe that the election cycle in which we are currently engaged, will be a further impetus for this movement. The costs of these campaigns are out of control. Additionally, early statistics show an increase in the PAC receipts for Senate candidates alone having increased by 53 percent.

This kind of support is sure to aid the battle we began on October 2, 1985, when I announced my intention to attach my PAC legislation as an amendment on the floor of the Senate.

My colleagues will recall that we were able to get a test vote on December 3, not on the substance of the proposal, but on a tabling motion.

In fact, we came close enough in gathering supportive votes to potentially prevail on an up or down vote. Afraid of appearing to be against badly needed campaign finance reform, the opponents threw in the towel by voting not to table, thus appearing to be for the bill and having the convenience of its not being finalized by a vote on final passage.

In the second session of the Congress, hearings were held on the bill, both in January and March, thanks to the leadership of the retiring chairman of the Rules and Administration Committee, Senator CHARLES MATHIAS.

Finally, by August, a vote of 69 to 30 approved the amendment's being added to S. 655. A time agreement was constructed to put us on the road to further amendment and final passage, but objections were lodged by opponents which killed the prospects for final passage this year.

Mr. President, the vast public interest, the increasing reports in the media which heighten suspicions and question integrity of the Congress, as well as the vote August 12 by the Senate, clearly show us that something should be done, something must be done, and something will be done.

While action cannot be expected in the dusk of the 99th Congress, hopefully a renewed spirit of urgency, compromise and resolve can set the stage for passage of a comprehensive bill in the 100th Congress.

And if not then, let me make very clear that so long as I serve in this body, I will do all I can to see that reform is made in the area of campaign finance.

I want my colleagues to know of my interest to expand and modify my legislation. I have never held out any presumption that my bill is the ultimate answer to cries for reform of our campaign process. Indeed, many in this body have provided leadership and initiative in forwarding their ideas for reform. Many—who see and experience the depth of this "crisis of liberty," as Senator GOLDWATER refers to it—rightfully believe that we must go much further in overhauling the system.

I salute all those who have introduced and pushed for the varied approaches of campaign finance reform in this Congress. Moreover, I invite them to join with me in seeking the legislative solution which will somehow get a grip on the massively increasing costs of campaigns, bring small individual donors back into the system, and return lost public confidence in the Congress. This is an issue which deserves our attention and needs our action.

At the same time, I want to assure my colleagues—those who have supported and opposed my legislation—that on the first day of the convening of the 100th Congress, I will reintroduce my legislation.

Further, I will continue with the same resolve to retain this issue on the national agenda.

Finally, Mr. President, I wish to thank all those who have contributed so much to this debate: the cosponsors of the bill, their staff members who have given so much time and work on the issue, the various public interest groups which have supported this cause, the 69 Senators who voted in support of the legislation, the Rules Committee chairman, the Rules Committee staff, the opponents of the bill who have contributed constructive arguments, the 291 editorial boards at newspapers around the country which publicized their support of the Boren-Goldwater bill, and most certainly the thousands and thousands of citizens who have called, visited, and written us supporting this reform.

Mr. President, with these ingredients, I am optimistic about the ultimate success for campaign finance reform. We must not tire in our efforts until the task is completed. We have an obligation to our fellow Americans and the future generation to preserve and protect the integrity of the election process.●

MAYO CLINIC MAKES ITS HEALTH CARE MORE ACCESSIBLE

● Mr. DURENBERGER. Mr. President, since 1978, I have been working to "deregulate" health care in this country and create incentives for governmental and private sector reforms that would lead to a value-sensitive health care system.

These procompetition initiatives aim to reduce health care cost increases by making the consumer, patient, and third party payers into prudent purchasers. I have long believed that health providers competing to reach an increasingly well-informed consumer would actually improve access and quality, not the opposite as some critics have claimed.

Mr. President, a recent article in the Wall Street Journal, which I submit for the record, demonstrates that competition for patients encourages reaching out to the public, being "user friendly," and making high quality care widely available. The Mayo Clinic, which is based in my home State of Minnesota, and is known worldwide for its high quality care, has opened a satellite in Jacksonville, FL, making their care accessible to residents of Florida, as well as nearby Georgia, South Carolina, and Alabama. The facility is already booked for 6 months, even before opening.

The new facility has improved the options available to consumers. Consumers have always had the right to choose, but now they have more outlets and different kinds of organizations to choose from.

I ask unanimous consent that this article regarding the Mayo Clinic satellite be printed in the RECORD.

NEW MAYO CLINIC IN FLORIDA IS FIRST LINK IN NATIONWIDE CHAIN TO CHALLENGE HMO'S

(By Richard Gibson)

JACKSONVILLE, Fla.—The Mayo Clinic, the oldest and largest private group practice of doctors in the world, is going national.

The famed Rochester, Minn., clinic is opening a satellite health-care facility here Monday, the initial link in a network that could speed the trend toward control of medical services by large companies and institutions.

In expanding, Mayo is also pitting its size, wealth and reputation against the rising influence of health-maintenance organiza-

tions, or HMOs, which provide care under prepaid fees. Mayo administrators believe HMOs sacrifice quality to cost-cutting and turn physicians into employees.

"We're determined to play a leadership role for physician-directed medicine," says W. Eugene Mayberry, the chairman of Mayo's board of governors.

MORE REVENUE, MORE JOBS

But Mayo had other reasons for wanting to expand. With a huge budget to maintain, it needs new revenue sources. Its medical school has been graduating far more doctors than it could hire; satellite clinics will mean more jobs. And as its traditionally Midwestern patients have retired to warmer climes, many found it difficult to travel far for treatment.

"The biggest risk we could take would be for us to think that the world will always beat a path to our door," says Dr. Mayberry.

Next spring Mayo plans to open a second clinic near Phoenix. If the first two succeed, a nationwide network will follow. So far, the clinic here is off to an impressive start. It has been booked up for six months even before opening, with patients from nearly half the states.

"We're so inundated with requests for appointments I don't think we'll ever dust off our marketing plan," says D. Thane Cody, the new clinic's chief executive.

And if success comes, imitators are sure to follow. As yet, Mayo is the only big-name private clinic to put up its own building and bring in its own doctors, but others are testing new markets by affiliating with local medical centers.

In the short run, the new competition may drive down health care costs. Indeed, some predict a bruising battle between HMOs and group practices like Mayo. But big-clinic expansion could also squeeze hospitals that don't affiliate with them and push more neighborhood doctors into groups. Fearing a loss of business for its members, the Florida Medical Association tried to keep Mayo out. "It's the corporatizing of American medicine," says a Jacksonville eye surgeon. But other Florida doctors are taking the invasion in stride.

Initially, the clinic here will have only 35 doctors, a small fraction of the nearly 850 physicians and medical scientists in Rochester. Plans call for an eventual hospital on the 140-acre site, nestled among rural pines and palmettos; until then doctors will perform surgery at St. Luke's Hospital eight miles away. While the Jacksonville clinic will have heart and brain specialists and will use lasers to unclog blood vessels, Mayo takes pains to make clear that the staff also will perform such routine procedures as removing earwax.

"We're not just a court of last appeal, or just for the wealthy," say Dr. Cody. "People don't realize they can make their own appointments."

From the start, though, the Jacksonville Mayo will be more than just another white-tiled clinic. A satellite-based audio-visual system will let the Florida doctors consult with colleagues in Rochester as color cameras focus on a patient in special examination rooms. The clinic will also include a "wellness center" to cope with stress, smoking and other health risks.

Mayo figures it can reduce costs because its doctors are salaried; it says they aren't tempted to pad bills with unnecessary tests and treatment as fee-based physicians might be.

Some local doctors doubt that. "Our cost nowadays are so regimented by the government that anybody else won't have a significant impact," says Gordon Ira, chief of medicine at St. Luke's. But in response to Mayo's move, some local doctors are nonetheless taking steps to keep their practices attractive. One ophthalmologist offers advice to newspaper readers. Others are starting marketing efforts or seeking shelter in group practices.

But other doctors here don't seem upset by challenges from the North. "Personally, I don't see any threat," says Linden Blount, a Humana Inc. family practitioner in Orange Park. "I can't see that they're going after the colds and bumps."

SCRAMBLE FOR TURF

In any case, much of the fight will be among competing invaders. Indeed, a scramble is under way to stake out turf in Florida, which has become one of medicine's hottest markets. Boston's Joslin Diabetes Center, in what could be the start of a major franchising effort, is affiliating with a Jacksonville medical center. And the Cleveland Clinic, another large group practice, says "all indications are very favorable" for a satellite clinic near Fort Lauderdale.

What's more, says Paul Ellwood, a health-care consultant, the invaders have a good chance at success. "With advertising and the marketing of individual superstar doctors, organizations can create name recognition in a matter of months."

Mayo has already proved it has clout in Florida. The legislature exempted Mayo's doctors from a law requiring license applicants to pass written exams. In doing so, it brushed aside complaints from local doctors, who said the state was licensing organizations rather than individuals.

In fact, the greatest danger in expanding may come from within, if quality control suffers. Administrators say they will counter that by keeping the clinic closely tied with Rochester.

They say they're more concerned with finding other ways of capitalizing on the clinic's fame. Mayo already publishes a health-care newsletter with a circulation of 200,000. Educational programs are under consideration, as are Mayo brand medicines. Cortisone, a widely used arthritic painkiller, was developed at Mayo but released for use without royalties. That won't happen again, administrators say.

Such thinking may sound commercial, but Dr. Mayberry says fresh attitudes are essential. "The Mayo Clinic has got to change," he says. "There's a lot of worry about medicine today."●

THE FULBRIGHT PROGRAM

● Mr. SIMON. Mr. President, on October 2, Senator RUDMAN and I agreed on a compromise solution to fix the shortfall in Fulbright exchange funding. I am satisfied that the arrangement worked out will not alter programming decisions, and will not diminsh the numbers of grants awarded.

The budget authority for the USIA Educational and Cultural Exchanges is now set at $145 million for fiscal year 1987, but only $120 million will be appropriated. Beginning October 1, 1987—the first day of fiscal year 1988—the remaining $25 million in budget authority will become available for fiscal year 1987 programs.

This is not an ideal way of doing things. But I believe this compromise is sound given our budgetary realities and the problem of transferring funds from one bill to another.

Mr. President, I would like to share with my colleagues a quotation from one of the great historians of our age, Arnold Toynbee. He wrote in 1971: "Along with the Marshall Plan, the Fulbright Program is one of the really generous and imaginative things that have been done since World War II." I agree wholeheartedly.

In the September 1986 edition of USIA World, the lead article commemmorates the 40th anniversary of the Fulbright Program. Among the more prominent Fulbrighters are our distinguished colleagues, Senator MOYNIHAN and Representative DONALD PEASE; composer Aaron Copland; writer Norman Podhoretz; Liabrarian of Congress and author Daniel Boorstin; and Nobel Laureates like Hans Bethe, Charles Townes, and Wassily Leontief.

Clearly, this program represents a tremendous windfall to our Nation for a relatively modest cost. We need to support it and plan for its future growth. It is an excellent investment in international understand and peacemaking.

I ask that "The Fulbright Legacy" by Martin J. Manning be printed in the RECORD.

The article follows:

THE FULBRIGHT LEGACY: 40 YEARS OF EDUCATIONAL EXCHANGE

(By Martin J. Munning)

The Fulbright Program's 40th anniversary this year is being observed through special events at home and abroad (see "Fulbright Program Approaches 40th Anniversary." May-June USIA World). This important occasion highlights the Fulbright Program's role over the years in fostering international understanding by breaking down cultural barriers.

Administered by USIA under policy guidelines established by the Board of Foreign Scholarships, the program is funded by the U.S. and 27 other nations. More than 155,000 persons have participated in the Fulbright Program since it began, many rising to positions of leadership in government, academia, the media, and the arts.

Famous American Fulbrighters are legion, including:

Nobel Prize winners-Hans Bethe, Felix Bloch, Emilio Segre and Charles Townes (physics); Joshua Lederberg and Rosalyn Yalow, (biology/medicine); Milton Friedman, Wassily Leontief, and James Tobin (economics);

Historians—Henry Steele Commager, Daniel Boorstin, Oscar Handlin, John Hope Franklin, and G. Vann Woodward;

Sociologists—Alex Inkeles, Seymour Martin Lipset, David Riesman;

Composers—Aaron Copland, Virgil Thompson, Lukas Foss;

Writer-critics—Alfred Kazin, Michael Harrington, Norman Podhoretz, Leslie Fiedler;

University presidents—Hanna Gray, Chicago; Derek Bok, Harvard; Frank Hereford, Virginia; John W. Oswald, Pennsylvania State;

Members of Congress—Daniel Patrick Moynihan, Donald J. Pease;

Astronaut (and former senator—Harrison H. Schmitt; and,

Opera singers—Eveylyn Lear and Anna Moffo.

The evolution of the Fulbright Program is an interesting story about which volumes have been written. Here are a few highlights.

IN RETROSPECT

Prior to World War II, American cultural relations with the outside world consisted largely of the "grand tours" of a handful of citizens who had the money and the cosmopolitan tastes to travel abroad. After the war ended, a new approach was essential to reflect the fact that America's cultural isolation was over and the American people were now intimately involved with the world beyond their frontiers.

In 1946, the Fulbright Program was established under legislation introduced by Senator J. William Fulbright of Arkansas. Fulbright had come to believe that if citizens of one nation knew and understood those of other nations, "they might," he said, "develop a capacity for empathy, a distaste for killing other men, and an inclination for peace."

One of Senator Fulbright's reasons for sponsoring an educational exchange program came from his experience as a Rhodes scholar at Oxford, which opened "new vistas of learning for which I have been grateful all my life."

The Fulbright Act, mandating a peacetime international exchange program, was signed into law by President Truman on August 1, 1946. Congress passed the bill with a minimum of controversy, primarily due to the fact that no congressional appropriations were requested for the program. Immediate financing was to come through agreements with foreign governments for the use of currencies acquired through surplus property disposals after World War II. Cooperation between private groups and the government were to be encouraged in funding and implementing the exchanges, with the resources of one supplementing the activities of the other.

Continuing authorization for the program came through the U.S. Information and Educational Exchange Act of 1948 (popularly known as Smith-Mundt), which provided supplementary appropriations to cover all administrative costs of the program both in the U.S. and abroad, and the Mutual Educational and Cultural Exchange Act of 1961 (Fulbright-Hays), which coincided with the establishment of the Bureau of Educational and Cultural Affairs in the State Department "to increase mutual understanding between the people of the United States and people of other countries . . . and thus to assist in the development of friendly, sympathetic, and peaceful relations between the United States and the other countries of the world."

IN USIA'S DOMAIN

With the creation of USIA in 1953, the responsibility for the Fulbright Program remained in the State Department, although the program was administered abroad by USIA. In 1978, with the merger of USIA and the State Department's Bureau of Educational and Cultural Affairs (CU) as the U.S. International Communication Agency, the new agency received full Fulbright Program responsibility.

By the 1970s, funding for the exhcanges, judged in constant dollars, had dropped by more than 57 percent from its 1960s highs. Since 1982, during the last five years, that trend has been reversed. The 1986 budget of $94 million represents nearly a two-fold increase over 1982 funding.

Among the exchange programs under the Fulbright umbrella are:

The American Scholar Program under which American scholars and professionals lecture and conduct research in more than 100 countries;

Pre-doctoral fellowships for American and for foreign graduate students;

Scholar-in-Residence Program grants to foreign scholars invited by U.S. institutions to lecture for an academic year or term;

The Fulbright Teacher Exchange Program involving exchange of American elementary and secondary school teachers with teachers abroad;

The Hubert Humphrey North-South Fellowship Program, which brings outstanding mid-level professionals in public service from developing nations to the U.S. for a year of university study and work-related practical experience; and,

The University Affiliations Program, which seeks to establish enduring partnerships between the U.S. and foreign colleges and universities through the exchanges of faculty and staff.

HISTORICAL LEGACY

Materials documenting the historical legacy of the Fulbright Program are at the University of Arkansas. In 1983, USIA presented the records of the former Bureau of Educational and Cultural Affairs History Office to the university. Nearly one million Fulbright documents and other CU History Office records related to the program are housed in the Special Collections Division of the university's main library, where they complement Sen. Fulbright's personal papers.

The collection includes documents on policy and program development, oral histories of individuals prominent in development of the academic exchange program, history of the East-West Center, official minutes of the U.S. Government Advisory Committee on International Book and Library Programs, materials on artistic and sports teams sent abroad, "brain drain" material, material on U.S.-USSR exchanges, material on educational exchange programs by country (with country proposals), material on American Specialists such as John Steinbeck, William Faulkner, Gene Kelly, Edward Albee, and Kirk Douglas, 1978 reorganization materials, program proposals of the binational Fulbright Commissions, and statements by government officials on the educational exchange program.

The Arkansas collection is open to researchers. The author can make arrangements for USIA employees who wish to borrow material from the collection.●

VETERANS FAST FOR LIFE IN NICARAGUA

● Mr. LEAHY. Mr. President, 2 weeks ago I spoke on this floor about four American veterans who are fasting in protest of United States aid to the Contra rebels in Nicaragua. Since that time, the country's attention has turned to other important events—the release of Nicolas Daniloff, South Africa sanctions, the Iceland Summit.

But for Charlie Litkey, Duncan Murphy, George Mizo, and Brain Willson there has been only one concern—peace in Nicaragua. Not the dizzying pain of hunger they feel, not the everyday concerns of family, friends, and careers that occupy most of our thoughts. These men want peace. They "want it so bad," as Brian Willson explains it, that they "will do anything for it."

Mr. President, I wonder how many Senators even know that a minute's walk from this Chamber, four American veterans are engaged in one of the most courageous and moving protests I have witnessed.

These men are prepared to die on the steps of the Capitol, if that is what it takes to inspire a renewed commitment by the American people to stop this country from fighting a war in Nicaragua. Three of them risked their lives for this country in the most unpopular war in our history. Today they are fasting to stop another senseless war before it begins.

I am concerned that these men may die before many Americans even know why they are fasting.

Charlie Litkey, a Catholic priest who won the Congressional Medal of Honor for singlehandedly saving the lives of 20 American soldiers in Vietnam, has taken only water for 28 days.

Brian Willson of Chelsea, VT, an Air Force captain in Vietnam, lawyer and leader of several veterans organizations, has been told by doctors that he can expect to live only 40 days without food. He is in the 19th day of his fast.

Duncan Murphy drove a World War II ambulance from North Africa to the liberation of Belsen concentration camp. He, too, has fasted for 19 days.

George Mizo, awarded a Purple Heart in Vietnam, is in his 38th day, and has lost 38 pounds.

The decision to fast was a personal one, and I express no judgment on that decision. But I have spoken to them and have been moved by their courage, their sincerity, and the depth of their commitment to do what they can to stop this illegal war. These men have seen the horrors of war firsthand. They have been to Nicaragua. They have seen how our policy there is turning the people of the tiny, desperate country against the United States.

During the past 5 years they have each done all the things we urge our constituents to do when they feel strongly about an issue. They wrote the President. They wrote their Senators and Representatives. They came to speak to us at our offices. They wrote to the newspapers, and spoke at public meetings. They voted.

Despite all their efforts, and the efforts of millions of other Americans who oppose U.S. military involvement in Central America, Congress voted against popular will to give another $100 million to the Contras.

That vote was deeply disappointing to these men, and to all of us who advocate a peaceful solution to the conflict in Nicaragua. But it also strengthened their determination to lead this country away from war. It convinced them to fast for life in Nicaragua.

After 38 days without food, their seriousness should not be questioned. This is no publicity stunt. They are risking death to inspire the American public to demonstrate a new commitment to bring peace to Central America.

The thousands of letters they have received and the visits by a handful of Senators and Representatives have bolstered their spirits, but they want to reach as many people as possible in the remaining days they have.

They spend each afternoon on the steps of the Capitol talking about their fast. They are not asking others to endorse their methods, but rather to demonstrate a renewed commitment to stop the killing in Central America. To get on with a policy that is worthy of the United States.

I was heartened to see so many people at yesterday's press conference for the fasters. However, I was very disappointed that I could find no mention of the veterans' eloquent statements in the newspapers. I again urge Senators to stop and meet these men on the Capitol steps. I urge members of the press to give them the immediate attention they deserve. The American people should know what these men are asking of them, and why they believe so passionately that peace in Nicaragua is worth risking their lives for.●

MINORITY ENTERPRISE DEVELOPMENT WORK

● Mr. BROYHILL. Mr. President, the President of the United States has proclaimed this week "Minority Enterprise Development Week, 1986." In his proclamation President Reagan said: "* * * we must do everything in our power to continue providing the widest possible economic opportunity for all Americans."

Yesterday I had the opportunity to talk to two gentlemen from my State of North Carolina who are here in Washington during Minority Enterprise Development Week to be awarded for their outstanding work for minority businesses. Marion "Rex" Harris and Larnie Horton of International & Domestic Development Corp. in Fayetteville, NC, have been named National Minority Advocate of the Year by the U.S. Small Business Administration.

These two gentlemen have been working to get minorities into salaried and nonsalaried jobs in Government and the private sector through their business endeavors. I would like to congratulate these fine businessmen whose work in North Carolina has been exactly what President Reagan called for in his proclamation. They have done everything in their power to provide the widest possible economic opportunity for North Carolinians.

That is the way to increase the economic opportunity for minorities. Minority businesses play an important role in providing jobs and training for many American workers.

In North Carolina minority businesses have made tremendous contributions to the State's economy. But we must continue expanding opportunities to ensure strong growth in these businesses. Minority businesses have opened doors and created jobs for many North Carolinians. These companies have made contributions that have helped generate the managerial and technological developments and the skilled and experienced work force necessary to continue strengthening and building North Carolina's economy.

The North Carolina Association of Minority Small Businesses has awarded its Minority Small Business Person of the Year award to a gentleman who is the epitome of the American businessman—Mr. Frank R. Anderson. Mr. Anderson is the president of Custom Molders, Inc., a small business in Durham, NC. Custom Molders manufactures injection molded engineering grade thermoplastics.

During its 10 years in business, Custom Molders has grown from a fledgling company with 2 full-time employees and but $125,000 in sales in 1977 to a booming business with 18 full-time employees and over $3,400,000 total sales last year. Mr. Anderson and Custom Molders have established a sound reputation for emphasizing quality assurance while manufacturing to customer specifications. Ford Motor Co. recognized Custom Molder's commitment to quality work by presenting them its Q-1 quality award.

Custom Molders has recently expanded its plant facilities from 15,000 square feet to 33,000 square feet. Despite the slowdowns and obstacles presented by construction requirements, the firm continues to achieve outstanding growth. The industrial revenue bond Custom Molders used to finance the expansion was the first received by a North Carolina minority-owned business.

Custom Molders' employment practices could be followed by every small business throughout the country. Its staff is from a variety of cultural backgrounds and the company employs a number of disadvantaged women who are heads of households. Twelve employees have been with the company for 5 years. These individuals were once considered unemployable before they learned their skills at Custom Molders.

Mr. Anderson's accomplishments do not end when he leaves the office. He is extremely active in his community and was chosen "Man of the Year 1986" by Union Baptist Church in Durham. Mr. Anderson serves as director of the Durham Minority Business Development Association and serves as North Carolina Alcoholic Beverages Commissioner. He is also active in local politics.

I congratulate Mr. Anderson on his achievements as a businessman and also commend the Association of Small Minority Businessmen for recognizing its members who are forerunners in the business community. It is important for us to continue to award excellence in business and to encourage our minority small business persons to continue to work to ensure that our free enterprise system will remain competitive and prosperous.

Last week Samuel R. Pierce, Jr., Secretary of Housing and Urban Development, visited the North Carolina Association of Minority Businesses to kick off its commemoration of Minority Enterprise Development Week.

I would like to share a portion of Secretary Pierce's remarks with you.

The minority business community is a vital member of a national partnership—an important part of our free enterprise system.

In more ways than one, you're doing a job that needs doing.

The North Carolina Association of Minority Businesses, and others like you, have proved, and are proving, that minority business is good business. You've helped to overcome a negative attitude that has persisted for far too long.

You know the attitude. It suggests that minority firms are less competent than nonminorities. It suggests that minority firms are given business, but nonminorities earn their business.

I don't believe we give anyone our business who doesn't earn it. That just doesn't make sense. It's condescending. And, it's bad business.

When I conduct business with a minority firm, I expect performance and product that is competitive or better—and I usually get it.

Of course, a great many people don't realize that members of the minority business community are as competent and competitive as nonminorities. They fail to understand that minority capabilities, in fact, are quite often superior. They've had to be. We've had to substantially out perform others just to overcome bigotry and prejudice.

That's not a complaint. It's just a fact of life. It's a fact that the minority business person can use to advantage.

No, we don't give business to minority firms. However, it does make sense to open up opportunities to them, though. And, that's what we do. It enhances competition. It expands our options. And, because they are minority firms, it helps correct past discrimination.

Minority business is good business. It's your business. It's America's business. With your help, we're going to keep a growing business.

Secretary Pierce's remarks about minority business in America are so true. The success of our free enterprise system affirms that opportunity for all Americans is essential to our economic well-being. Our citizens should be judged on the content of their character and be able to advance according to merit and achievement.●

TRIBUTE TO MERLE HEDLAND

● Mr. DURENBERGER. Mr. President, today it is my pleasure to join the Minnesota Association of Wheat Growers and Minnesota Wheat Research and Promotion Council in recognizing their executive director, Merle Hedland, who will be leaving Minnesota and the wheat industry to assume a new position.

The wheat growers of Minnesota have been fortunate to have such an individual on their staff to carry out their wishes.

I have known Merle and worked with him for many years. He's an individual who has worked countless hours in making sure the wheat grower's voice was heard when any issue was raised which would affect them. While Merle will be leaving Minnesota and the wheat industry, his endeavors will continue to ensure that the voice of the wheat growers will be heard from the grassroots level.

Mr. President, because of the outstanding contributions Merle Hedland has made to the wheat growers of Minnesota and this country. I ask that the attached tribute be printed in the CONGRESSIONAL RECORD.

The tribute is as follows:

A TRIBUTE TO MERLE HEDLAND

On November 1, 1986, the wheat industry bids farewell to an outstanding leader. Merle Hedland, executive director of the Minnesota Association of Wheat Growers and Minnesota Wheat Research and Promotion Council, has worked with the wheat industry since 1968, and the impact he has made—the issues, the action, and the results—will affect the industry even after he has moved on.

Merle Hedland has an impressive track record as a national and international leader. Following his graduation from North Dakota State University in 1968, Hedland began his career at the North Dakota State Wheat Commission. In 1974 he moved on to work for Great Plains Wheat Inc., and in 1977 was promoted to vice president responsible for the administration and operation of Great Plains Wheat export market development program through offices in the Netherlands, Egypt, Morocco, Chile and Guatemala.

Following the merger of Great Plains Wheat Inc., and Western Wheat Association in 1980, which created U.S. Wheat Associates, Merle assumed the position of executive vice president for foreign operations and chief operating officer with U.S. Wheat Associates. In that capacity, he supervised the operations of U.S. Wheat overseas market development program conducted from their 11 foreign offices located in Africa, Asia, Europe, Latin America and the Middle East. In addition, Merle coordinated wheat market development programs with USDA's foreign agriculture service, and assisted the U.S. Agriculture Export Development Council with projects and programs affecting all market development organizations.

In June of 1980, Merle Hedland came to Minnesota, bringing a wide range of talent and expertise, to head up the Minnesota Wheat Growers and Minnesota Wheat Council. The high profile, and highly political nature of these two organizations required a person who could maintain a steady aggressiveness, tempered with sensitivity to people, events and the political consequences of these actions. Merle Hedland possessed all of these things.

During his tenure in Minnesota, Merle was instrumental in development of the Northern Crops Institute (NCI). Located on the campus of NDSU, NCI is an international meeting and learning center for Crop producers in the four state region of North Dakota, Minnesota, South Dakota and Montana; and promotes new and expended foreign and domestic markets for those crops through specialized training courses and technical services.

Merle can also be credited with help in developing the wheat export trade education committee (WETEC). Formed in 1984 through a great effort of the various state wheat councils, U.S. Wheat Associates and the National Association of Wheat Growers, WETEC's objective is to educate and inform decision makers in Washington as to the benefits of a healthy wheat export sector. One of the most recent activities of WETEC was a congressional staff tour through the wheat areas of the nation. Activities such as these allow for those involved with the government process to see, first hand, what is happening in the countryside and to meet the people that their decisions directly impact.

In addition, Merle's perseverance and dedication can be marked by his work with the state leadership in drafting an improved commodities promotion act for the state of Minnesota's commodity organizations. Merle always has stood for wheat. If it was good for wheat, he was for it, and worked hard with those who supported it. If it was bad for wheat, he was against it, but he would work with both sides to develop an acceptable alternative.

Always non-partisan, Merle could be relied on to furnish hard and clear facts to those who requested information, whether or not they liked what they heard, but never with the intention of making political hay or setting up political figures. As a matter of fact, Merle did countless favors for those in public office. He often supplied political figures with grass roots feeling in the countryside.

After all, isn't that what an administrator's position really is suppose to be—one who takes his direction from the grassroots and helps project that knowledge to the national and international leadership for his organization. Merle rarely stepped into the limelight himself. He believed when the work was done that people would be proud to say "We did it ourselves".

But it is time for Merle's turn in the spotlight. For the record, therefore, the Minnesota Association of Wheat Growers and Minnesota Wheat Research and Promotion Council would like to acknowledge Merle Hedland's national and international leadership in the wheat industry, and to express appreciation for his sincere dedication to his profession and to those he represented, and to wish him well in his future ventures. Leadership exemplified in true Minnesota spirit and Minnesota is proud. Thank you, Merle Hedland, for that leadership.●

RETIREMENT OF TED SHEEDY, SUPERVISOR, COUNTY OF SACRAMENTO

● Mr. CRANSTON. Of the many things Californians have to be proud of, one of the greatest is our history of superior local governments.

Effective and efficient local governments do not just happen. They can only be the result of long hours of hard work by dedicated civic leaders. These leaders must know their communities and their fellow citizens; they must be accessible and responsive; they must be capable of compromise and foresight. If you add all of these qualities together and add large measures of energy and excitement, you will have a successful civic leader.

You will also have Joseph E. "Ted" Sheedy, supervisor of the the First District of the County of Sacramento.

Ted was first elected to the board of supervisors in 1970. At the time of his election, he was the youngest county supervisor in the State. In his 16 years as a supervisor, Ted served as chairman of the board three times—in 1973, 1980, and 1983.

Being county supervisor is a full-time job in Sacramento. I think it can be said that Ted takes that responsibility very seriously. In addition to representing his county over the years on numerous commissions, associations, and task forces, Ted also established the first county consumer protection bureau in California; he introduced a comprehensive prevailing wage rate ordinance for Sacramento County; he drafted a comprehensive ordinance to control noise pollution in the Sacramento urban area; he fought to preserve minimum flows in the American River; he introduced the toughest financial disclosure law in California for local elected officials; he worked to develop a master plan for bicycle pathways in the county; and he introduced a nondisposable container ordinance for Sacramento County.

Ted Sheedy is retiring from the Board of Supervisors of the County of Sacramento at the end of this year. As I hope I have made clear in these remarks, he has made significant contributions to his community. He has secured his place in California's history of dedicated civic leaders. He will be missed.●

FURTHER CONTINUING APPROPRIATIONS FOR THE FISCAL YEAR 1987

Mr. DOLE. Mr. President, I ask unanimous consent the Senate now turn to the consideration of House

Joint Resolution 750, the CR extension, through October 10.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The clerk will report.

The bill clerk read as follows:

A resolution (H.J. Res. 750), making further continuing appropriations for the fiscal year 1987, and for other purposes.

The Senate proceeded to consider the joint resolution.

Mr. DOLE. Mr. President, House Joint Resolution 750 is identical to House Joint Resolution 748 passed earlier today, with the significant exception that this joint resolution removes the provision pertaining to air traffic controllers. The President has made it very clear that he will veto House Joint Resolution 748 as passed earlier today because it incorporated by reference a provision in the conference agreement on H.R. 5205, the fiscal year 1987 Transportation appropriations bill, on the rehiring of former air traffic controllers. We passed House Joint Resolution 748 earlier today knowing that the President would take that position. We hope that his position on this issue will demonstrate his seriousness about various provisions in the continuing resolution now in conference, and help Senator HATFIELD and his colleagues in obtaining an agreement on that continuing resolution that will be acceptable to the President and to the Congress.

It is my understanding, and it is the hope of most of us, and I understand also the President, we can complete action on the CR by Friday night as far as working out the differences with Members of the House and Members of the Senate, so at least all we would have to do next week is the conference report.

The PRESIDING OFFICER. The joint resolution is before the Senate and open to amendment. If there be no amendment to be offered, the question is on the third reading and passage of the joint resolution.

The resolution (H.J. Res. 750) was ordered to a third reading, was read the third time, and passed.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the joint resolution was passed.

Mr. BYRD. Mr. President, I move to lay the motion on the table.

The motion to lay on the table was agreed to.

ORDER IN CLAIBORNE VERSUS U.S. SENATE

Mr. DOLE. Mr. President, I would like to insert in the RECORD at this point an order from the District Court for the District of Columbia in response to a suit filed earlier today by Judge Claiborne.

He was seeking a temporary restraining order of the Senate taking additional action. The court ordered that:

The plaintiff's motion for a temporary restraining order be denied. It is further ordered that the above-entitled action is hereby dismissed.

I ask unanimous consent that the order be included in the RECORD.

There being no objection, the order was ordered to be printed in the RECORD, as follows:

[United States District Court for the District of Columbia]

HARRY E. CLAIBORNE, Plaintiff, v. UNITED STATES SENATE, et al., Defendants.

(Civil Action No. 86-2780)

ORDER

Upon consideration of plaintiff's motion for a temporary restraining order, the arguments advanced by counsel at a hearing this date, and in accordance with the reasons stated by the Court at the hearing on plaintiff's motion for a temporary restraining order, it is this 8th day of October, 1986

Ordered that plaintiff's motion for a temporary restraining order be and it is hereby denied; and is further

Ordered that the above-entitled action be and it is hereby dismissed.

TRUTH IN MILEAGE ACT

Mr. DOLE. I understand the Senator from Nebraska has a small bill he would like us to take care of.

Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 475.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 475) entitled "An Act to amend the Motor Vehicle Information and Cost Savings Act to require certain information to be filed in registering the title of motor vehicles, and for other purposes", do pass with the following amendments:

Strike out all after the enacting clause, and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Truth in Mileage of 1986".

SEC. 2. MOTOR VEHICLE ODOMETER MODIFICATIONS.

(a) TRANSFERS OF MOTOR VEHICLES.—Section 408 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1988) is amended by adding at the end the following:

"(d)(1)(A) Any motor vehicle the ownership of which is transferred may be licensed for use in any State unless the transferee, in submitting an application to a State for the title upon which such license will be issued, includes with such application the transferor's title and, if that title contains the space referred to in paragraph (2)(A)(iii), a statement, signed and dated by the transferor, of the mileage disclosure required under subsection (a).

"(B) This paragraph shall not apply to any transfer of ownership of a motor vehicle which has not been licensed before the transfer.

"(2)(A) Any motor vehicle the ownership of which is transferred may not be licensed for use in any State unless the title which is issued by the State to the transferee following such transfer—

"(i) is set forth by means of a secure printing process (or other secure process);

"(ii) indicates the mileage disclosure required to be made under subsection (a); and

"(iii) contains a space for the transferee to disclose (in the event of a future transfer) the mileage at the time of such future transfer and to sign and date such disclosure.

"(B) The requirements of subparagraph (A) shall not be construed to require a State to verify, or preclude the State from verifying, the mileage information contained in the title.

"(e)(1) In the case of any leased motor vehicle, the rules under subsection (a) shall require written disclosure regarding mileage to be made by the lessee to the lessor upon the lessor's transfer of ownership of the leased motor vehicle.

"(2) Under such rules, the lessor of a leased motor vehicle shall provide written notice to the lessee regarding—

"(A) such mileage disclosure requirements, and

"(B) the penalties for failure to comply with them.

"(3) The lessor shall retain the disclosures made by any lessee with respect to any motor vehicle under paragraph (1) for a period of at least 4 years following the date the lessor transfers that vehicle.

"(4) For purposes of this section, if the lessor transfers ownership of any leased motor vehicle without obtaining possession of such vehicle, the lessor may, in lieu of the disclosure required by subsection (a), indicate on the title the mileage disclosed by the lessee under paragraph (1) unless the lessor has reason to believe that such disclosure by the lessee does not reflect the actual mileage of the vehicle.

"(f)(1) The requirements of subsections (d) and (e)(1) respecting the disclosure of motor vehicle mileage when motor vehicles are transferred or leased shall apply in a State unless the State has in effect alternate motor vehicle mileage disclosure requirements approved by the Secretary. The Secretary may promulgate regulations establishing procedures for the consideration and approval of such alternate requirements.

"(2) The Secretary shall approve alternate motor vehicle mileage disclosure requirements submitted by a State unless the Secretary determines that such requirements are not consistent with the purpose of the disclosure required by subsection (d) or (e), as the case may be.

"(g) If any motor vehicle is sold at an auction, the auction company which conducts such auction shall establish and maintain for a period of at least 4 years following the date of such sale the following records:

"(1) The name of the most recent owner of the motor vehicle (other than the auction company) and the name of the buyer of the motor vehicle.

"(2) The vehicle identification number of the motor vehicle required under title VI of this Act or the National Traffic and Motor Vehicle Safety Act of 1966.

"(3) The odometer reading on the date on which the auction company took possession of the motor vehicle.".

(b) DEFINITIONS.—Section 402 of the Motor Vehicle Information and Cost Sav-

ings Act (15 U.S.C. 1982) is amended by adding at the end the following:

"(6) The term 'title' means the certificate of title or other document issued by the State indicating ownership.

"(7) The term 'leased motor vehicle' means any motor vehicle which is leased to a person for a term of at least 4 months by a lessor who has leased 5 or more vehicles in the past 12 months.

"(8) The term 'auction company' means any person who takes possession (whether through consignment or bailment or through any other arrangement) of a motor vehicle owned by another person for purposes of selling such motor vehicle at an auction.".

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), subsections (d), (e), (f), and (g) of section 408 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1988), as added by subsection (a) of this section, shall apply with respect to motor vehicles which are transferred after the date 30 months after the date of the enactment of this Act.

(2) REVISION OF STATE LAWS TO CONFORM TO AMENDMENTS.—

(A) TECHNICAL ASSISTANCE.—The Secretary of Transportation shall, upon application, assist a State in revising its laws to comply with the requirements of section 408(d) (1) and (2) of the Motor Vehicle Information and Cost Savings Act.

(B) EXTENSION OF TIME.—If any State requires time, in addition to the period prescribed by paragraph (1) of this subsection, to revise its laws to achieve such compliance, the Secretary may, upon the request of such State, grant, by notice published in the Federal Register, the State such reasonable additional time as the Secretary determines is necessary to achieve such compliance. The Secretary shall include in the Federal Register notice the reasons for granting additional time. In granting additional time, the Secretary shall ensure that the State is making reasonable efforts to achieve such compliance.

(3) MOTOR VEHICLE DEFINED.—For purposes of this subsection, the term "motor vehicle" has the same meaning as when used in the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1901 and following).

SEC. 3 VIOLATION OF ODOMETER REQUIREMENTS.

(a) CIVIL PENALTY.—Section 412(a) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1990b) is amended by striking out "$1,000" and inserting in lieu thereof "$2,000".

(b) CRIMINAL PENALTY.—Section 413(a) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1990c) is amended by striking out "not more than one year," and inserting in lieu thereof "not more than three years,".

Amend the title so as to read: "An Act to amend section 408 of the Motor Vehicle Information and Cost Savings Act to strengthen, for the protection of consumers, the provisions respecting disclosure of motor vehicle mileage when motor vehicles are transferred.".

Mr. EXON. Mr. President, I am very pleased that the Senate is about to consider S. 475, the odometer fraud bill which I introduced last year. It was unanimously approved by the Senate in 1985, and was passed by the House of Representatives on October 6. While there were some minor changes made in this legislation by the other body, the bill will provide the basis under which we can begin to eliminate odometer tampering in the Nation.

As my colleagues know, the act of rolling back odometers is one of the biggest frauds perpetrated against consumers in the Nation each year. Odometer fraud illegally adds an average of $750 to the cost of each such used car. The National Highway Traffic Safety Administration estimates that odometer fraud costs consumers in excess of $2 billion annually. It is further estimated that there are some 3 million odometers tampered with each year; the average rollback being somewhere near 30,000 miles per vehicle occurring predominantly on high-mileage vehicles.

The bill before the Senate today strengthens present laws by establishing a traceable record or "paper trail" by requiring mileage readings be recorded at the time of vehicle transfer following a sale. In addition, companies leasing vehicles on long-term contracts will be required to disclose their mileage when sold. Auction houses will also be required to maintain mileage records on used vehicles they sell. The bill also prohibits vehicles from being registered in any State unless the mileage can be verified.

To strengthen the enforcement provisions of this legislation, maximum fines for violators have been increased from $1,000 to $2,000 per offense.

Mr. President, odometer fraud has and is a difficult crime to detect, but this bill will set forth steps which will certainly assist in identifying automobiles which have been tampered with as well as the party or parties involved with this type of fraud.

Finally, Mr. President, I wish to take this opportunity to thank the chairman and ranking member of the Commerce Committee, Senator DANFORTH and Senator HOLLINGS for their support of this bill. I also wish to thank the cosponsors of this legislation who have been firm in their resolve to see this important consumer bill enacted into law. I would be remiss if I did not also mention the distinguished chairman of the House Energy and Commerce Committee, Mr. DINGELL, who agreed with me that this was an important piece of legislation and moved this bill through the House of Representatives.

I urge adoption of S. 475 by the Senate.

Mr. DOLE. Mr. President, I move that the Senate concur in the House amendments.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

Mr. DOLE. I move to reconsider the vote on the motion.

Mr. BYRD. Mr. President, I move to table the motion to reconsider.

The motion to lay on the table was agreed to.

□ 2015

ORDERS FOR THURSDAY

RECESS UNTIL 9 A.M.

Mr. DOLE. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in recess until the hour of 9 a.m. on Thursday, October 9, 1986.

The PRESIDING OFFICER. Without objection, it is so ordered.

STATEMENTS REGARDING RETIRING SENATORS

Mr. DOLE. Mr. President, following the recognition of the two leaders under the standing order of 10 minutes each, I ask unanimous consent that the time remaining until the hour of 10 a.m. be used by Senators to make statements concerning our six retiring colleagues.

The PRESIDING OFFICER. Without objection, it is so ordered.

RESUME IMPEACHMENT PROCEEDINGS

Mr. DOLE. Mr. President, at 10 a.m. by previous agreement, the Senate will resume the impeachment proceedings. The time between 10 a.m. and 3 p.m. will be divided between the majority and minority leaders or their designees. The vote will come no earlier than 2 p.m. and no later than 3 p.m. At that time, the Senate will proceed to vote on each of the following questions: "How vote you, Senator, guilty or not guilty?" That will be on articles I through IV. The votes will occur separately.

Following the impeachment proceedings, the Senate could be asked to consider any executive or legislative items cleared for action.

Mr. President, I know the drug bill is here. I assume we can take that up. Also, there is some hope we can move on the reconciliation conference report by early evening.

Is there anything else?

Mr. BYRD. I have nothing else.

Mr. DOLE. I thank the distinguished minority leader for his help throughout the day.

RECESS UNTIL TOMMORROW AT 9 A.M.

Mr. DOLE. Mr. President, there being no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in recess until the hour of 9 a.m., Thursday, October 9, 1986.

The motion was agreed to, and the Senate, at 8:15 p.m., recessed until Thursday, October 9, 1986, at 9 a.m.

CONFIRMATIONS

Executive nominations confirmed by the Senate October 8, 1986:

DEPARTMENT OF AGRICULTURE

W. Kirk Miller, of Wisconsin, to be Administrator of the Federal Grain Inspection Service.

FARM CREDIT ADMINISTRATION

Jim R. Billington, of Oklahoma, to be a Member of the Farm Credit Administration Board, Farm Credit Administration, for a term of 2 years.

U.S. COMMISSION ON PUBLIC DIPLOMACY

Hershey Gold, of California, to be a Member of the U.S. Commission on Public Diplomacy for a term expiring July 1, 1987.

U.S. ADVISORY COMMISSION ON PUBLIC DIPLOMACY

Herbert Schmertz, of New York, to be a Member of the U.S. Advisory Commission on Public Diplomacy for a term expiring April 6, 1988.

Edwin J. Feulner, Jr., of Virginia, to be a Member of the U.S. Advisory Commission on Public Diplomacy for a term expiring July 1, 1988.

E. Robert Wallach, of California, to be a Member of the U.S. Advisory Commission on Public Diplomacy for a term expiring July 1, 1988.

Richard M. Schaife, of Pennsylvania, to be a Member of the U.S. Advisory Commission on Public Diplomacy for a term expiring July 1, 1988.

U.S. INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Thomas R. Blank, of Delaware, to be an Assistant Administrator of the Agency for International Development.

Richard E. Bissell, of Virginia, to be an Assistant Administrator of the Agency for International Development.

INTERNATIONAL ATOMIC ENERGY AGENCY

The following-named persons to be the representative and alternate representatives of the United States of America to the special session and the 30th session of the General Conference of the International Atomic Energy Agency:

Representative:
John S. Herrington.
Alternate Representatives:
Richard T. Kennedy.
Bruce Chapman.
Lee M. Thomas.
Lando W. Zech, Jr.

DEPARTMENT OF TRANSPORTATION

John W. Melchner, of Maryland, to be inspector general, Department of Transportation.

EXPORT-IMPORT BANK OF THE UNITED STATES

Simon C. Fireman, of Massachusetts, to be a Member of the Board of Directors of the Export-Import Bank of the United States for the remainder of the term expiring January 20, 1987.

NATIONAL INSTITUTE OF BUILDING SCIENCES

Fred E. Hummel, of California, to be a Member of the Board of Directors of the National Institute of Building Sciences for a term expiring September 7, 1989.

EXECUTIVE OFFICE OF THE PRESIDENT

Robert P. Bedell, of Virginia, to be Administrator for Federal Procurement Policy.

U.S. POSTAL SERVICE

John N. Griesemer, of Missouri, to be a Governor of the U.S. Postal Service for the term expiring December 8, 1995.

ENVIRONMENTAL PROTECTION AGENCY

Vaun A. Newill, of New Jersey, to be an Assistant Administrator of the Environmental Protection Agency.

The above nominations were approved subject to the nominees' commitments to respond to requests to appear and testify before any duly constituted committee of the Senate.

THE JUDICIARY

Douglas H. Ginsburg, of the District of Columbia, to be U.S. circuit judge for the District of Columbia.

Bruce M. Selya, of Rhode Island, to be U.S. circuit judge for the first circuit.

James R. Spencer, of Virginia, to be U.S. district judge for the Eastern District of Virginia.

Patrick J. Duggan, of Michigan, to be U.S. district judge for the Eastern District of Michigan.

Alex T. Howard, Jr., of Alabama, to be U.S. district judge for the Southern District of Alabama.

Joseph F. Anderson, Jr., of South Carolina, to be U.S. district judge for the District of South Carolina.

John Paul Wiese, of Virginia, to be a judge of the U.S. Claims Court for a term of 15 years.

DEPARTMENT OF JUSTICE

George L. McBane, of North Carolina, to be U.S. marshal for the Middle District of North Carolina for the term of 4 years.

George MacKenzie Rast, of Florida, to be a Commissioner of the U.S. Parole Commission for a term of 6 years.

Donald Ray Melton, of Arkansas, to be U.S. marshal for the Eastern District of Arkansas for the term of 4 years.

Robert L. Barr, Jr., of Georgia, to be U.S. attorney for the Northern District of Georgia for the term of 4 years.

J. William Roberts, of Illinois, to be U.S. attorney for the Central District of Illinois for the term of 4 years.

THE JUDICIARY

John L. Napier, of South Carolina, to be a judge of the U.S. Claims Court for a term of 15 years.

IN THE AIR FORCE

The following-named officer for appointment to the grade of general on the retired list pursuant to the provisions of title 10, United States Code, section 1370:

Gen. Robert W. Bazley, xxx-xx-xxxx FR, U.S. Air Force.

The following-named officer, under the provisions of title 10, United States Code, section 601, to be assigned to a position of importance and responsibility designated by the President under title 10, United States Code, section 601:

To be general

Lt. Gen. Jack I. Gregory, xxx-xx-xxxx FR, U.S. Air Force.

The following-named officer for appointment to the grade of lieutenant general on the retired list pursuant to the provisions of title 10, United States Code, section 1370:

Lt. Gen. Carl H. Cathey, xxx-xx-xxxx, U.S. Air Force.

The following-named officer, under the provisions of title 10, United States Code, section 601, to be assigned to a position of importance and responsibility designated by the President under title 10, United States Code, section 601:

To be lieutenant general

Maj. Gen. Aloysius G. Casey, xxx-xx-xxxx xxx-... FR, U.S. Air Force.

The following-named officer, under the provision of title 10, United States Code, section 601, to be assigned to a position of importance and responsibility designated by the President under title 10, United States Code, section 601:

To be lieutenant general

Maj. Gen. Thomas G. McInerney, xxx-xx-x... xxx-... FR, U.S. Air Force.

The following-named officer, under the provisions of title 10, United States Code, section 601, to be reassigned to a position of importance and responsibility designated by the President under title 10, United States Code, section 601:

To be lieutenant general

Maj. Gen. Craven C. Rogers, Jr., xxx-xx-x... xxx-... FR, U.S. Air Force.

The following-named officer, under the provisions of title 10, United States Code, section 601, to be assigned to a position of importance and responsibility designated by the President under title 10, United States Code, section 601:

To be lieutenant general

Maj. Gen. Claudius E. Watts III, xxx-xx-x... xxx-... FR, U.S. Air Force.

The following-named officer, under provisions of title 10, United States Code, section 601, to be reassigned to a position of importance and responsibility designated by the President under title 10, United States Code, section 601:

To be lieutenant general

Lt. Gen. Casper T. Spangrud, xxx-xx-xxxx xxx-... FR, U.S. Air Force.

The following-named officer for appointment to the grade of general on the retired list pursuant to the provisions of title 10, United States Code, section 1370:

Gen. Richard L. Lawson, xxx-xx-xxxx FR, U.S. Air Force.

The following-named officer, under the provisions of title 10, United States Code, section 601, to be assigned to a position of importance and responsibility designated by the President under title 10, United States Code, section 601:

To be general

Lt. Gen. Thomas C. Richards, xxx-xx-xxxx xxx-... FR, U.S. Air Force.

The following-named officer, under the provisions of title 10, United States Code, section 601, to be reassigned to a position of importance and responsibility designated by the President under title 10, United States Code, section 601:

To be lieutenant general

Lt. Gen. James R. Brown, xxx-xx-xxxx FR, U.S. Air Force.

The following-named officer, under the provisions of title 10, United States Code, section 601, to be assigned to a position of importance and responsibility designated by the President under title 10, United States Code, section 601:

To be lieutenant general

Maj. Gen. Robert C. Oaks, xxx-xx-xxxx xxx-... FR, U.S. Air Force.

The following officer under the provisions of section 8019, title 10, United States Code, for appointment as chief, Air Force Reserve:

Maj. Gen. Roger P. Scheer, xxx-xx-xxxx xxx-... FV, Air Force Reserve.

IN THE ARMY

The following-named officers for appointment in the Regular Army of the United States to the grade indicated under the provisions of title 10, United States Code, sections 611(a) and 624:

To be brigadier general

Col. William J. Meehan II, [redacted], U.S. Army.
Col. Neal T. Jaco, [redacted], U.S. Army.
Col. William J. Mullen III, [redacted], U.S. Army.
Col. Craig A. Hagan, [redacted], U.S. Army.
Col. Frank A. Partlow, Jr., [redacted], U.S. Army.
Col. Edison E. Scholes, [redacted], U.S. Army.
Col. Philip Y. Browning, Jr., [redacted], U.S. Army.
Col. Gerald H. Putman, [redacted], U.S. Army.
Col. Sidney Shachnow, [redacted], U.S. Army.
Col. Henry F. Drewfs, Jr., [redacted], U.S. Army.
Col. James D. Starling, [redacted], U.S. Army.
Col. Marc A. Cisneros, [redacted], U.S. Army.
Col. Paul E. Menoher, Jr., [redacted], U.S. Army.
Col. Arthur E. Williams, [redacted], U.S. Army.
Col. Robert L. Ord III, [redacted], U.S. Army.
Col. Waldo D. Freeman, Jr., [redacted], U.S. Army.
Col. Theodore G. Stroup, Jr., [redacted], U.S. Army.
Col. John F. Sobke, [redacted], U.S. Army.
Col. John P. Herrling, [redacted], U.S. Army.
Col. James A. Musselman, [redacted], U.S. Army.
Col. James B. Taylor, [redacted], U.S. Army.
Col. Ronald H. Griffith, [redacted], U.S. Army.
Col. Charles R. Hansell, [redacted], U.S. Army.
Col. Floyd L. Runyon, [redacted], U.S. Army.
Col. Samuel E. Ebbesen, [redacted], U.S. Army.
Col. James R. Ellis, [redacted], U.S. Army.
Col. Peter T. Berry, [redacted], U.S. Army.
Col. Walter J. Bryde, [redacted], U.S. Army.
Col. Walter B. Moore, [redacted], U.S. Army.
Col. Terence M. Henry, [redacted], U.S. Army.
Col. Joseph T. Ellis, [redacted], U.S. Army.
Col. Larry R. Capps, [redacted], U.S. Army.
Col. James T. Scott, [redacted], U.S. Army.
Col. Ernest J. Harrell, [redacted], U.S. Army.
Col. Donald L. Scott, [redacted], U.S. Army.
Col. Dennis V. Crumley, [redacted], U.S. Army.
Col. Jerry R. Rutherford, [redacted], U.S. Army.
Col. John E. Miller, [redacted], U.S. Army.
Col. Frank Cunningham III, [redacted], U.S. Army.
Col. Paul T. Weyrauch, [redacted], U.S. Army.
Col. Jon D. Collins, [redacted], U.S. Army.
Col. Jay M. Garner, [redacted], U.S. Army.
Col. David L. Cole, [redacted], U.S. Army.
Col. John M. Thomson, [redacted], U.S. Army.
Col. Eugene L. Daniel, [redacted], U.S. Army.
Col. David Bramlett, [redacted], U.S. Army.
Col. Alfred J. Mallette, [redacted], U.S. Army.
Col. Joseph Raffiani, Jr., [redacted], U.S. Army.
Col. Thomas W. Robison, [redacted], U.S. Army.
Col. John H. Tilelli, Jr., [redacted], U.S. Army.
Col. Paul J. Vanderploog, [redacted], U.S. Army.
Col. Clyde A. Hennies, [redacted], U.S. Army.
Col. John P. Otjen, [redacted], U.S. Army.
Col. Henry H. Shelton, [redacted], U.S. Army.
Col. Barry J. Sottak, [redacted], U.S. Army.
Col. Robert L. Stewart, [redacted], U.S. Army.
Col. George A. Bombel, [redacted], U.S. Army.

The Army National Guard of the United States officers named herein for appointment as Reserve commissioned officers of the Army, under the provisions of title 10, United States Code, sections 593(a), 3385, and 3392:

To be major general

Brig. Gen. Ronald Bowman, [redacted]
Brig. Gen. Robert L. Blevins, [redacted]

To be brigadier general

Col. William A. Hornsby, [redacted]
Col. Louis C. Addison, [redacted]
Col. Peter E. Genovese, [redacted]
Col. Richard S. Schneider, [redacted]
Col. Kenneth E. Wallace, [redacted]
Col. Robert H. Wedinger, [redacted]
Col. Thomas H. Alexander, [redacted]
Col. George M. Borst, [redacted]
Col. William S. Christy, [redacted]
Col. Paul G. Durbin, [redacted]
Col. George T. Glenn, [redacted]
Col. Robert L. Gooderl, [redacted]
Col. John M. Paden, [redacted]
Col. Thomas R. Sprenger, [redacted]
Col. Thomas T. Thompson, [redacted]
Col. John W. Carlson, [redacted]
Col. Wade R. Hedgecoke, [redacted]
Col. Philip G. Randich, [redacted]
Col. Thomas D. Schulte, [redacted]
Col. Clinton V. Willis, Jr., [redacted]
Col. Jacob J. Krull, [redacted]

The following-named U.S. Army Reserve officer for appointment to the grade of brigadier general as a Reserve commissioned officer of the Army under the provision of title 10, United States Code, Sections 593(a) and 3384:

Col. Raymond C. Bonnabeau, Jr., [redacted]

The following-named officers for appointment to the grade indicated, under the provisions of title 10, United States Code, section 601(a), in conjunction with their assignment to positions of importance and responsibility, designated as such by the President under title 10, United States Code, section 601(a):

To be general

Lt. Gen. James J. Lindsay, [redacted], U.S. Army.

To be lieutenant general

Maj. Gen. John W. Foss, [redacted], U.S. Army.

IN THE NAVY

The following-named rear admirals (lower half) of the U.S. Navy for promotion to the permanent grade of rear admiral, pursuant to title 10, United States Code, section 624, subject to qualifications therefor as provided by law:

MEDICAL CORPS

Robert Paul Caudill, Jr.
Henry James Tipp Sears.
James K. Summitt.

The following-named officer, under the provisions of title 10, United States Code, section 5150, to be reappointed as Chief of Naval Research.

Rear Adm. John B. Mooney, Jr., [redacted]/1120, U.S. Navy.

IN THE AIR FORCE

Air Force nominations beginning Maj. Michael G. Beadle, [redacted] and ending Maj. Lloyd Y. Uto, [redacted] which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of September 10, 1986.

Air Force nominations beginning John L. Adams, and ending Randall T. Zorn, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of September 10, 1986.

Air Force nominations beginning Rudy C. Abeyta, and ending Phillip A. Zuzolo, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of September 10, 1986.

Air Force nomination of Lawrence L. Vandiford, which was received by the Senate and appeared in the CONGRESSIONAL RECORD of September 16 , 1986.

Air Force nominations beginning Barry W. Christen, and ending Erwin R. Zundel, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of September 16, 1986.

Air Force nominations beginning Maj. Russell V. Gatlin, [redacted] and ending Maj. Gene T. Bushey, [redacted] which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of September 16, 1986.

Air Force nominations beginning Dennis O. Abbey, and ending David G. Wood, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of September 18, 1986.

IN THE ARMY

Army nominations beginning Wylie A. Abercrombie, and ending Jack Posnikoff, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of September 10, 1986.

Army nominations beginning Arthur J. Bland, and ending Swarnalatha Prasanna, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of September 16, 1986.

Army nomination of Diana S. Stepanik, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of September 22, 1986.

Army nominations beginning Priscilla M. Alston, and ending Sheryl A. Zunich, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of September 22, 1986.

Army nominations beginning Michael H. Abbott, and ending Sidna P. Wimmer which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of September 22, 1986.

Army nominations beginning Jerry W. Black, and ending Charles R. Wolf III, which nominations were received by the

Senate and appeared in the CONGRESSIONAL RECORD of September 24, 1986.

Army nomination of Thomas G. Tecec, which was received by the Senate and appeared in the CONGRESSIONAL RECORD of September 30, 1986.

IN THE MARINE CORPS

Marine Corps nominations beginning Felipe Torres, and ending Paul C. Ziegenfuss, Jr., which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of September 18, 1986.

Marine Corps nominations beginning Ronnie A. Crawford, and ending Blayne H. Spratlin, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of September 23, 1986.

Marine Corps nominations beginning Peter J. Burner, and ending Bruce H. Norton, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of October 3, 1986.

IN THE NAVY

Navy nominations beginning Robin L. Adams, and ending Stephen F. Serkies, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of September 10, 1986.

Navy nominations beginning Leland Sinclair Barratt III, and ending Dick Dean Turnwall, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of September 10, 1986.

Navy nominations beginning James T. Bergeron, and ending Francis M. Wnek, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of September 11, 1986.

Navy nominations beginning David L. Neel, and ending John G. Twomey, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of October 3, 1986.

HOUSE OF REPRESENTATIVES—*Wednesday, October 8, 1986*

The House met at 10 a.m.

Rev. Charles A. Mallon, permanent deacon, Holy Family Church, Mitchellville, MD, offered the following prayer:

Praise the Lord! Praise God in His sanctuary; praise God in His mighty firmament! Praise Him in His mighty deeds; praise Him according to His exceeding greatness!—Psalm 150:1-2.

Father we pray for the cessation of all wars, acts of terrorism, and all violence performed under the pretense of justice, we pray for the pre-summit talks in Iceland. We pray for the release of hostages. We pray for a time of world healing, that will allow personal and economic freedoms to spread throughout the world. We pray for those seeking public office in the November elections. And we pray for farmers who have suffered both drought and flooding. We pray for all the unemployed. And finally we pray for the Members of this Congress that Your wisdom will assist them in resolving these our public petitions.

We ask all of this through the intercession of Jesus Christ, Your Son, who lives and reigns with You and the Holy Spirit, one God, world without end. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

Mr. SENSENBRENNER. Mr. Speaker, pursuant to clause 1, rule I, I demand a vote on agreeing to the Speaker's approval of the Journal.

The SPEAKER. The question is on the Chair's approval of the Journal.

The question was taken; and the Speaker announced that the ayes appeared to have it.

Mr. SENSENBRENNER. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 260, nays 116, answered "present" 1, not voting 55, as follows:

[Roll No. 438]

YEAS—260

Abercrombie	Foley	Murphy
Ackerman	Ford (TN)	Murtha
Akaka	Frank	Myers
Anderson	Franklin	Natcher
Andrews	Frost	Nelson
Annunzio	Fuqua	Nichols
Anthony	Gaydos	Nielson
Applegate	Gejdenson	Nowak
Archer	Gephardt	Oakar
Aspin	Gilman	Obey
Atkins	Glickman	Olin
AuCoin	Gonzalez	Ortiz
Barnes	Gordon	Packard
Bateman	Green	Panetta
Bates	Guarini	Parris
Bedell	Hall (OH)	Pease
Beilenson	Hall, Ralph	Pepper
Bennett	Hamilton	Perkins
Berman	Hammerschmidt	Petri
Bevill	Hansen	Pickle
Biaggi	Hartnett	Price
Boland	Hatcher	Pursell
Boner (TN)	Hefner	Quillen
Bonior (MI)	Hertel	Rahall
Bonker	Hillis	Rangel
Bosco	Horton	Ray
Boucher	Howard	Regula
Boxer	Hoyer	Reid
Brooks	Hubbard	Richardson
Broomfield	Huckaby	Robinson
Brown (CA)	Hughes	Rodino
Bruce	Hutto	Roe
Bryant	Hyde	Rose
Bustamante	Jeffords	Rostenkowski
Byron	Jenkins	Rowland (GA)
Callahan	Johnson	Roybal
Carper	Jones (NC)	Rudd
Carr	Jones (TN)	Russo
Chappell	Kaptur	Sabo
Clinger	Kastenmeier	Scheuer
Coelho	Kemp	Schulze
Coleman (TX)	Kennelly	Schumer
Collins	Kildee	Sharp
Combest	Kolter	Shelby
Conyers	Kostmayer	Shumway
Cooper	LaFalce	Sisisky
Coyne	Leath (TX)	Skelton
Crockett	Lehman (CA)	Slattery
Daniel	Lehman (FL)	Smith (FL)
Darden	Leland	Smith (IA)
Daschle	Levin (MI)	Smith (NJ)
Davis	Levine (CA)	Snyder
de la Garza	Lipinski	Solarz
Dellums	Long	Spence
Derrick	Lowry (WA)	Spratt
Dicks	Lujan	St Germain
DioGuardi	Luken	Staggers
Dixon	Lungren	Stallings
Donnelly	MacKay	Stokes
Dorgan (ND)	Markey	Stratton
Dornan (CA)	Martinez	Studds
Dowdy	Matsui	Sweeney
Downey	Mavroules	Swift
Duncan	Mazzoli	Synar
Durbin	McCain	Tallon
Dwyer	McCloskey	Tauzin
Dymally	McCollum	Taylor
Early	McCurdy	Thomas (GA)
Eckart (OH)	McDade	Torres
Eckert (NY)	McHugh	Towns
Edgar	McKinney	Traficant
Edwards (CA)	Mica	Traxler
English	Miller (CA)	Udall
Erdreich	Miller (WA)	Valentine
Evans (IL)	Mineta	Vento
Fascell	Moakley	Visclosky
Fazio	Mollohan	Waldon
Feighan	Montgomery	Walgren
Fish	Moody	Watkins
Flippo	Morrison (CT)	Waxman
Florio	Morrison (WA)	Weaver
Foglietta	Mrazek	Wheat
Whitehurst	Wise	Wylie
Whitley	Wolpe	Yates
Whitten	Wortley	Yatron
Wilson	Wright	Young (MO)
Wirth	Wyden	

NAYS—116

Armey	Gunderson	Roberts
Badham	Hawkins	Rogers
Bartlett	Henry	Roth
Barton	Hiler	Roukema
Bereuter	Holt	Rowland (CT)
Billirakis	Hopkins	Saxton
Bliley	Hunter	Schaefer
Boehlert	Ireland	Schroeder
Boulter	Jacobs	Schuette
Brown (CO)	Kolbe	Sensenbrenner
Burton (IN)	Kramer	Shaw
Chandler	Lagomarsino	Shuster
Chappie	Latta	Sikorski
Cheney	Leach (IA)	Skeen
Clay	Lent	Slaughter
Coats	Lewis (CA)	Smith, Denny (OR)
Cobey	Lewis (FL)	
Coble	Lightfoot	Smith, Robert (NH)
Coleman (MO)	Lloyd	
Conte	Loeffler	Smith, Robert (OR)
Coughlin	Lott	
Courter	Mack	Snowe
Craig	Madigan	Solomon
Dannemeyer	Marlenee	Stangeland
Daub	Martin (IL)	Stenholm
DeLay	Martin (NY)	Strang
DeWine	McCandless	Stump
Dickinson	McEwen	Sundquist
Dreier	McGrath	Swindall
Emerson	McMillan	Tauke
Evans (IA)	Meyers	Thomas (CA)
Fawell	Michel	Vucanovich
Fiedler	Miller (OH)	Walker
Fields	Molinari	Weber
Frenzel	Monson	Whittaker
Gallo	Moorhead	Wolf
Gekas	Oxley	Young (AK)
Gingrich	Pashayan	Young (FL)
Gradison	Penny	Zschau
Gregg	Ridge	

ANSWERED "PRESENT"—1

Livingston

NOT VOTING—55

Alexander	Gray (IL)	Oberstar
Barnard	Gray (PA)	Owens
Bentley	Grotberg	Porter
Boggs	Hayes	Rinaldo
Borski	Hendon	Ritter
Breaux	Jones (OK)	Roemer
Burton (CA)	Kanjorski	Savage
Campbell	Kasich	Schneider
Carney	Kindness	Seiberling
Chapman	Kleczka	Siljander
Crane	Lantos	Smith (NE)
Dingell	Lowery (CA)	Stark
Dyson	Lundine	Torricelli
Edwards (OK)	Manton	Vander Jagt
Ford (MI)	McKernan	Volkmer
Fowler	Mikulski	Weiss
Garcia	Mitchell	Williams
Gibbons	Moore	
Goodling	Neal	

□ 1015

So the Journal was approved.

The result of the vote was announced as above recorded.

PERSONAL EXPLANATION

Mr. KLECZKA. Mr. Speaker, I was unavoidably detained for this morn-

ing's session. Had I been here I would have voted "aye" on rollcall No. 438.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Hallen, one of its clerks, announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 5548) "An act to amend the Export-Import Bank Act of 1945."

The message also announced that the Senate agrees to the amendments of the House to the bill (S. 816) "An act to establish the Pine Ridge Wilderness and Soldier Creek Wilderness in the Nebraska National Forest in the State of Nebraska, and for other purposes."

OUR HOSTAGES ARE WAITING

(Mr. MINETA asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MINETA. Mr. Speaker, for more than 2½ years we have had hostages in Lebanon. For most of that time, the families of these hostages have languished in despair, ignored by the administration.

So far three hostages have been released, but it is clear that the administration had nothing to do with the release. Not a thing.

The TWA hijack victims were speedily released due to administration pressure. Nick Daniloff has also gained his freedom. But Terry Anderson, David Jacobson, and Thomas Sutherland remain captive somewhere in Lebanon.

The President gets angry at the suggestion that he has not done enough to bring the hostages home. Yet, after 2½ years, he admits that he has not even succeeded in contacting the captors.

Our hostages in Lebanon deserve the same attention and the same herculean effort as the other Americans who have been held as captives.

Mr. President, bring the hostages home.

□ 1025

WHAT KIND OF INSANITY?

(Mr. LOTT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LOTT. Mr. Speaker, how many of you would like to know what the schedule is going to be for the next few days? How many of you would like to know when we are going to get out of here for this year? How many of you want to be in session working on arms control issues next March? How many of you want to be here for a lameduck session? How many of you want to be in session next Friday? How many of you want to be in session next Wednesday?

Mr. Speaker, let us put up the brick wall right now. Let us stop this thing. Let us stop giving extensions. Let us stop pushing it over until the next week and the next week; we will never get out of here.

We should not give another 1-week extension on the continuing resolution. It should not go more than 1 or 2 more days. In fact, I am not going to vote for any more continuing resolution extensions. Let us stop this thing.

What is the issue? We are trying to tie the President's hands on arms control issues while he is going to Iceland to meet with Gorbachev. What kind of insanity is that? But if that is the kind of water you Members want to walk out into, to tie this place up over arms control issues because you think the water is going to be warm, come on in, because it is going to be over your head.

LET US DEVELOP A TRADE POLICY THAT DOES NOT MEAN MOVING OUT OF THE UNITED STATES

(Mr. JENKINS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. JENKINS. Mr. Speaker, on December 3 through December 5 a United States-sponsored seminar will be held in Acapulco, Mexico, to persuade United States manufacturers that the way for them to compete in the world marketplace is to move their operations out of the United States.

I cannot believe that this administration's trade policy has been reduced to the point of total surrender. I cannot believe that this administration is actually writing, at the American taxpayers' expense, 40,000 American businesses, encouraging them and telling them how to move their operations out of the United States into foreign countries.

To say the least, this is a unique and unusual strategy. We have decided to charge toward our own goal post. Unfortunately, if this strategy does not work, and I do not think it shall work, the loss will not be a mere ball game, it will be thousands of American jobs.

I would hope that this House and the other body would begin to take matters into its own hands and develop a trade policy that does not mean moving out of the United States.

THE HOUSE DEMOCRATIC LEADERSHIP SHOULD NOT HANDCUFF THE PRESIDENT PRIOR TO THE ICELAND MEETING

(Mr. GINGRICH asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GINGRICH. Mr. Speaker, the House Democratic leadership is making a fundamental mistake in attempting to negotiate with the President of the United States 2 days before he negotiates with the head of the Soviet Union.

It is basically wrong for the U.S. Congress to try to tie the hands of the President on his way to a meeting with Gorbachev. I think that we in America, altogether, on a nonpartisan basis, should encourage our President to go to Iceland with all of the cards in the deck, and it is wrong for the House Democratic leadership to attempt to take some of those cards out of the deck before he gets to Iceland.

I would urge the President to veto any short continuing resolution; I would urge the President to insist that we pass a continuing resolution with no foreign policy handcuffs in it. I would urge him to face down the House Democratic leadership and say flatly: He will go to the American people for the President of the United States to have the right to deal with the Soviet dictator without being handcuffed by the House Democrats.

FUNCTIONAL ILLITERACY

(Mr. WALDON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WALDON. Mr. Speaker, I rise today to introduce a resolution expressing the sense of this House on one of the most critical challenges facing America—that of functional illiteracy.

The statistics are alarming—almost 80 million adult Americans are judged to be functionally illiterate or to function with only marginal competency, and over 2 million persons join the pool of functional illiterates each year.

This deplorable situation not only threatens economic progress, it impairs our national security, it undermines the integrity of our democracy, and it exacts a toll in needless human suffering.

The resolution I am introducing today calls upon the President to acknowledge the urgency of this problem by directing the formation of a National Task Force on the Problem of Functional Illiteracy.

This resolution will place this House on record in recognizing functional illiteracy as a corrosive force that is silently eroding the social infrastructure of our Nation.

In the words of Thomas Jefferson, "if a nation expects to be ignorant and free . . . it expects what never was and never will be."

WHITE HOUSE SUPPORT URGED FOR SUPERFUND

(Mrs. ROUKEMA asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. ROUKEMA. Mr. Speaker, today the House will approve the Superfund conference report.

We come to this point after an unnecessarily protracted and contentious legislative battle. By my calculations this battle on Superfund has extended over 3 years.

That it has taken so long for us to resolve these issues defies belief. These are literally life and death issues for our people and for the environment. The health of present and future generations are in jeopardy—neighborhoods uninhabitable, people cannot use tap water because of degradation of water supplies—and the problems multiply.

There is no need to repeat the arguments in support of reauthorization and funding. This has been done at length during these 3 years. The overwhelming approval votes in both the House and the other body are evidence that the case has been well made.

But I do now plead with President Reagan.

Mr. President, you have been a great leader. The hallmark of your Presidency has been your vision and your understanding of basic values. I ask you now—listen to the anxiety and concern in the voices of the American people who in poll after poll show they understand that degradation of the environment is irreversible. That there is no price tag that can be attached to the human toll of death and suffering that we invite by inaction. The people know that.

We are not a people who know the price of everything and the value of nothing. The people know the value of a clean environment is priceless.

Society will pay—either now or later—and the toll on human health and the economic costs will only be greater.

Mr. President, listen to the experts, listen to the voices of the people.

□ 1035

NOT THE TIME TO BURDEN STATE AND LOCAL GOVERNMENTS

(Mr. FRANK asked and was given permission to address the House for 1 minute.)

Mr. FRANK. Mr. Speaker, I would just say parenthetically that to be accused of preventing Ronald Reagan from reaching an arms control agreement is a little bit like being accused of preventing Ghandi from eating a steak dinner. I see no evidence that it was going to happen anyway.

But what I want to address today is the question of Medicare coverage for State and local employees. We have done some things in these last few weeks that have had an unfortunate effect on the ability of State and local governments to provide needed services to people.

Revenue sharing, because of that foolish Gramm-Rudman law, has been terminated; I hope only temporarily. Sales tax deductions have been cut back. There have been unfortunate restrictions in the use of tax-exempt bonds.

To impose on those States which do not now choose to follow it, a requirement that all the employees go under Medicare, either right away or within a 2- or 3-year phase-in period, would further burden local and State governments. It is not sensible fiscally to say we are going to reduce the Federal deficit by increasing deficits at the State and local level.

It is not saving taxpayers' money simply to shift money from the Federal level to the State and local.

I hope that the reconciliation bill will not put that further burden on State and local governments. If it does, many of us are going to have to vote against it because this is not the time to further burden State and local governments.

QUALIFICATIONS FOR TEACHERS

(Mr. BILIRAKIS asked and was given permission to address the House for 1 minute and to extend his remarks.)

Mr. BILIRAKIS. Mr. Speaker, do you think our Nation's schoolteachers should be able to solve sixth grade math problems?

Should they be able to discern the definitions of such basic words as "greed," "aspect," "envoy," and "power?"

I think they should, but should such simple questions determine whether a person is qualified to be a teacher? Certainly not. Yet, these are the kinds of questions that appear on some teacher certification exams.

As one teacher remarked after taking the exam, "Heaven help our children if teachers currently in the system would feel threatened by this test."

Mr. Speaker, we don't want to threaten our teachers, but to challenge them—challenge them to be the best they can be.

I am not convinced that tests like the one I mentioned are the answer. Rather, I would like to see truly tough continuing education requirements implemented by teachers for teachers and a process to include strong developmental evaluation. Also, I would like to see curriculum basics reinstituted as well as measures to get parents involved in their children's education.

That is the road to success—and what our children deserve.

PRICEFIXING BY THE OPEC NATIONS

(Mr. SMITH of Florida asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SMITH of Florida. Mr. Speaker, at this very moment, they are at it again. The OPEC nations are about to come to an agreement which will, in fact, raise the price of oil per barrel to $19, raising it up almost 100 percent from its low level of almost $10 just a short month or month and a half ago.

We have seen, over, and over, and over, how the Arabs do what, in effect, is illegal in this country, and that is fix prices. When are we going to learn? When are we going to strengthen our domestic oil-producing capability? When are we going to fill our strategic petroleum reserve? When are we going to reject these terrible tactics of bleeding the American consumer by virtue of illegal practices by the OPEC nations?

They have us, and they have us good, and we keep playing into their hands. It is time for this administration to act, to reject this fashion of doing business, to tell the OPEC nations once and for all that we are going to reject the way they do their business, not buy their oil, and have American producers and American jobs be saved for a change.

AMERICAN HOSTAGES IN YUGOSLAVIA

(Mr. BURTON of Indiana asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BURTON of Indiana. Mr. Speaker, a young man from Yugoslavia, an Albanian named Peter Avasi, came to the United States a few years ago. He became an American citizen. He was upset at the plight of his fellow countrymen from Yugoslavia and he demonstrated before the State Department here in the United States in 1981 against the human rights violations of the Yugoslavian Government.

This year, he went back home to visit his relatives, his ancestors. While he was there, the Yugoslavian Government arrested him and yesterday he was sentenced to 7 years in jail. An American citizen was sentenced to 7 years in jail for demonstrating against human rights violations before the State Department here in the United States of America.

That is unthinkable. We should do something about that. I think we

should reverse or revoke the most-favored-nation status of Yugoslavia; we should take their Yugo cars which are in our ports right now and either dump them in the ocean or send them back until they release this young man and two other Americans who are languishing in their prisons.

It is not right. American citizens should feel safe anywhere in the world. They should not have to worry about secret police tactics employed by the Communists in Yugoslavia.

APPOINTMENT OF CONFEREES ON H.R. 5234, DEPARTMENT OF THE INTERIOR AND RELATED AGENCIES APPROPRIATIONS ACT, 1987

Mr. YATES. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 5234) making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1987, and for other purposes, with Senate amendments thereto, disagree to the Senate amendments, and agree to the conference asked by the Senate.

The SPEAKER pro tempore (Mr. ANNUNZIO). Is there objection to the request of the gentleman from Illinois? The Chair hears none and, without objection, appoints the following conferees: Messrs. YATES, MURTHA, DICKS, BOLAND, AUCOIN, BEVILL, WHITTEN, REGULA, MCDADE, LOEFFLER, and CONTE.

There was no objection.

WE CAN CHANGE AMERICAN BEHAVIOR ON DRUGS

(Mr. SCHEUER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SCHEUER. Mr. Speaker, as we have learned from the recent debate on the massive drug bill that both Houses of Congress have passed, our Nation's near total reliance on law enforcement for the eradication of drugs in the field, for the interdiction of drugs at our borders, and for the control of drugs in our central cities has been an almost total failure.

The time has come for us to understand that in addition to law enforcement, we must start a massive comprehensive education effort to change the behavior of the American people, particularly youth, as far as these poisonous, addictive drugs are concerned.

We can do it? Of course we can do it. We have had massive changes in behavior in our country in the last 10 years that boggled the mind. Nobody would have expected it.

Just ask the tobacco companies, for example, who have been forced to diversify their holdings and who have seen literate college graduates, the educated among us, drastically reduce their smoking.

Just ask the cheese and beef and cattle producers, the dairy industry across the country, about the devastating effects of a new health consciousness and the determination to consume less fat.

We know we can change behavior. We have to get on with the job.

Just ask the alcohol brewers and distillers, who have started producing and marketing nonalcoholic beverages as alcohol consumption declines and antidrunk driving campaigns and alcohol-free teenage discos proliferate.

Mr. Speaker, these examples are only a few of the many I could cite where behavior was modified because a powerful incentive was present. That incentive is the desire to extend, enhance, and protect life.

Using this same incentive, we can change the attitudes of Americans about drugs.

But it will require a massive commitment of leadership at every level of our society: schools, churches, social organizations, the workplace, the media and, above all, the parents.

We know we can change behavior. We just have to get on with the job.

A UNITED AMERICA BEHIND PRESIDENT REAGAN

(Mr. WALKER asked and was given permission to address the House for 1 minute.)

Mr. WALKER. Mr. Speaker, when the President negotiates with our Soviet adversaries, he should have a united America behind him. That is why it is so unseemly having the President having to negotiate with congressional liberals before he negotiates with Gorbachev.

Several weeks ago, this House adopted major elements of the Soviet arms control agenda. Now, even in the face of summitry, House liberals want the President bound to those positions which he opposes, and which weaken his hand. America ought to be dealing from strength, not appeasing Soviet policy positions.

America deserves a strong President, acting with strength in Iceland, with all of America behind him.

AMERICA'S POSITION ON ARMS CONTROL

(Mr. ABERCROMBIE asked and was given permission to address the House for 1 minute.)

Mr. ABERCROMBIE. Mr. Speaker, I find it very unfortunate that mention has been made this morning over and over again of the President's upcoming trip to the minisummit in Iceland.

It has been the clear position of the House of Representatives, not just for the past few weeks, not just for the past few months, but for many, many, many months that arms control must be an essential part of the position of the United States of America.

□ 1045

To say that the President of the United States has his hands tied is simply to refute the logic of what is necessary with respect to the constitutional efforts that are being made by the House of Representatives and the U.S. Senate.

It is unfair to the people of the United States to put them into the position in which arms control becomes a pawn in a political game just shortly before an election which is going to take place.

It is equally unfair to castigate people in terms of being liberals or conservatives.

I am wearing on my arm today a band given to me by four veterans who are now fasting for their lives trying to get the message out across this country that what we need is peace and not rhetoric.

The best thing that can be done by those who want to support the President in going to Iceland is to see to it that the division that takes place in this country between the legislative body and the executive body is respected. The President should respect the position of the House of Representatives in terms of arms control and take that with him to Iceland.

CONSTITUTION DAY IN THE SOVIET UNION: A JOKE

(Mr. PORTER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PORTER. Mr. Speaker, today is an important day in the Soviet Union. Today, the leaders of that country will stand together and celebrate their Constitution. In the Soviet Union, Mr. Speaker, today is Constitution Day.

During the upcoming presummit President Reagan should ask Mr. Gorbachev what they celebrated on their Constitution Day. Did they celebrate their religious freedoms, their open and free press, or how about their representative Government? They probably patted themselves on the back for being so kind to allow Mr. Orlov and Mr. Daniloff to go free. In fact, I'll bet the Soviets toasted to the fact that their country has a Constitution which allows the leaders to deprive citizens basic human rights merely by claiming that to do so is in the State's interest.

After President Reagan has listened to this, he should sit the General Secretary down, and tell him that some liberties are so fundamental that they are beyond government intervention. He should suggest to Mr. Gorbachev

that enough is enough. The big lie must end. That if the Soviet Union wishes to talk seriously about mutual cooperation, it had better begin to honor in practice the human rights that are recognized by the words of its own Constitution.

AMERICAN WORKERS AND AMERICAN CONSUMERS

(Mr. TRAFICANT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. TRAFICANT. Mr. Speaker, there are a couple news articles I would like to share with the Congress today. The first one was in USA Today. It was last week and stated that a Texas factory in Dallas-Fort Worth, they had raided that factory and found 244 illegal aliens who were working there for minimum wages.

The significant point I want to make is that only 30 people in the whole factory were not arrested. If 244 are making minimum wages, what are the other 30 making?

Second of all, there was an announcement in the Washington Times that China will now be building the Wang computers. Under joint venture relationship, Wang computers of Boston have worked out a deal to have the people in Shanghai now building those computers.

Now, finally I see an article in the same paper that says that the administration is concerned that they bring out our trade legislation. What they are going to do is hurt the American consumer.

Mr. Speaker, we have a trade deficit approaching $180 billion. We have exported nearly every manufacturing job we have and now the administration is saying that if we make some effort to protect the American industrial infrastructure, we are going to hurt the American consumer.

Somebody should let the President know that the American consumer happens to be the American worker and if you do not have a job, you are not going to buy anything. Those who will have a job, the way things are going, will buy a product that is made overseas.

I think it is high time this President starts holding to those voluntary restraint agreements, not letting the law be broken.

I hope the Congress will stand by that.

THE ICELANDIC CHESS MATCH SHOULD END IN A DRAW

(Mr. GEKAS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GEKAS. Mr. Speaker, the meeting that is about to unfold in Iceland is the second United States-Soviet summit to occur in Iceland. The first was held in 1972 between the United States and the Soviets in the form of Bobby Fisher and Boris Spassky, the two chess masters of the world.

Now, we hope that the chess match that is about to unfold in Iceland ends in a draw, with progress, rather than to have either side proclaim a victory.

What could be very unfortunate would be that if the Congress persists in leaving in the continuing resolution those foreign policy anecdotes that are in there, that the Congress of the United States will be acting as an unwitting pawn for the Russian master. That is why it is important that we as a Congress unshackle the President of the United States and allow him to at least come to a match in which he can deal with all the pieces at his disposal.

AMERICAN HOSTAGES

(Mr. PEASE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PEASE. Mr. Speaker, I rise as others have this morning to call attention to the fact that we still have six hostages in Lebanon being held by terrorist forces and to say that President Assad of Syria was very helpful earlier this summer in securing the release of Father Jenco.

We are currently, and when I say currently I mean the gentleman from California [Mr. DORNAN] and I, are currently circulating a letter among our colleagues asking President Assad for his continued cooperation in freeing the remaining six hostages. We cannot forget those six. We need to keep them uppermost in mind.

I commend the gentleman from California [Mr. DORNAN] for his efforts and urge you to join us in signing this letter.

ANOTHER HOSTAGE IN YUGOSLAVIA

(Mr. DORNAN of California asked and was given permission to address the House for 1 minute.)

Mr. DORNAN of California. Mr. Speaker, I want to join my colleague and classmate from the 1976 election, the gentleman from Ohio [Mr. PEASE], on this issue of our hostages in Lebanon.

It appears from a hearing going on in the Foreign Affairs Committee, the Subcommittee on Human Rights, that we now have hostages in Yugoslavia just as much as we have hostages, six of them, held illegally by kidnappers in Beirut. The hostage in Yugloslavia, there are three, but the one who has been sentenced to prison for 7 years, Peter Evezai, was arrested for demonstrating here in the United States peacefully about human rights violations in Albania, the darkest, least penetrable country on the face of the Earth. Albania makes North Korea and Communist China look like California by comparison. No one gets in or out of Albania, and to peaceably demonstrate here on human rights and then to be sentenced to 7 years in prison in Yugoslavia is absolutely unconscionable.

So I ask all my colleagues to follow the leadership on both sides of the aisle, sign this letter for our hostages in Beirut. I will give you a bracelet with one of the six names on it if you would like to wear it during our break.

OMNIBUS DRUG ENFORCEMENT, EDUCATION, AND CONTROL ACT OF 1986

Mr. PEPPER. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 576 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 576

Resolved, That upon the adoption of this resolution the House shall be considered to have taken from the Speaker's table the bill (H.R. 5484) to strengthen Federal efforts to encourage foreign cooperation in eradicating illicit drug crops and in halting international drug traffic, to improve enforcement of Federal drug laws and enhance interdiction of illicit drug shipments, to provide strong Federal leadership in establishing effective drug abuse prevention and education programs, to expand Federal support for drug abuse treatment and rehabilitation efforts, and for other purposes, with the Senate amendment thereto, and to have concurred in the Senate amendment with an amendment inserting in lieu thereof the text contained in a bill to be introduced on Wedensday, October 8, 1986, by Representative Wright of Texas.

The SPEAKER pro tempore (Mr. ANNUNZIO). The gentleman from Florida [Mr. PEPPER] is recognized for 1 hour.

Mr. PEPPER. Mr. Speaker, for purpose of debate only, I yield the customary 30 minutes to the gentleman from Tennessee [Mr. QUILLEN], pending which I yield myself such time as I may consume.

Mr. Speaker, House Resolution 576 provides that upon its adoption, the House shall be considered to have passed with an amendment, the Senate amendment to H.R. 5484, the Omnibus Drug Enforcement, Education, and Control Act of 1986. The vote which will occur on the rule is a vote to return the bill to the other body with an amendment to the Senate amendment. The amendment consists of the texts of H.R. 5664 introduced today by the majority leader, Representative WRIGHT of Texas, and consists of a bipartisan leadership agreement on the Federal response to the devastating drug abuse crisis which is facing our Nation.

The leadership on both sides of the aisle of this House have responded to the Senate position by proposing an acceptable drug abuse prevention and education bill which incorporates important narcotics control provisions included in both the House and Senate versions of the bill. That is the bill which would be adopted as the House amendment with the adoption of this rule.

Mr. Speaker, the procedure under which we are now operating is an unusual one. Members of the House have not had the opportunity to examine the bill which contains the House amendment which is proposed. Yet the severity of the problem of drug abuse in our Nation and the nearness of the final adjournment of Congress call for unusual and swift action.

The House fully debated the drug bill disposing of 24 amendments including one amendment which consisted of the proposals of 11 Members. The leadership has considered the actions adopted by the House in crafting their proposal which the rule would pass. Unless we take swift action, the attempts by the 99th Congress to address the drug problem will have been in vain. The best efforts of our 12 committees are included in the Omnibus Drug Act. The bill will help to eradicate sources where drugs are grown abroad or at home. .

It will strengthen our ability to interdict and interrupt the flow of supplies coming into this country by providing equipment and materiel to the DEA, the Coast Guard, and the Customs Service; it will provide needed tools for law enforcement in our country and establish educational programs to reach out to our young people regarding the realities of drug use.

It will promote compassionate rehabilitative services for those who have fallen into the slavery of drug addiction.

Mr. Speaker, I must urge my colleagues—in the strongest terms—to adopt this rule, send the House position on to the other body, and provide for our Government the resources and authority it needs in order to address our Nation's drug epidemic.

Mr. QUILLEN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the majority leader, Mr. WRIGHT, and the minority leader, Mr. MICHEL, have done a fine job in working out the compromise on this measure. When the rule is adopted, the Wright amendment and the bill, itself, are considered to be adopted.

I think that is a good procedure at this late hour of this session, and there is absolutely nothing wrong with it. The Wright compromise restores the death penalty. I think that is a fine part of the compromise. The compromise embraces many things in the House measure. But most of all, we want the drug traffickers to understand that this House is very serious, that those who would profit by damaging the lives of others will receive all the punishment that they deserve, so that justice may be done and they may pay the penalty for their profiteering.

I would urge the adoption of this rule so that we can proceed to the other measures before us.

Mr. Speaker, I yield 3 minutes to the gentleman from Pennsylvania [Mr. GEKAS].

Mr. GEKAS. I thank the Speaker and I thank the gentleman for yielding.

Mr. Speaker, I urge adoption of the rule. To the Members of the House of Representatives I say that the declaration of war on drugs officially is rendered here and now today. Until this moment there was an air of uncertainty as to whether the Congress of the United States was willing to undertake the strictest of measures in order to enforce this war on drugs. I am happy to see that the conferees and the leadership on both sides saw the wisdom imposed upon them, really, by the will of the American people to get tough on drug dealers. The inclusion of the death penalty for those individuals who, as drug kingpins, will stop at nothing to further their enterprise is exactly what is required as weaponry in this war on drugs. We have, as a society, the obligation to hold the death penalty over the heads of those who would kill at random to make sure that their enterprise, their criminal enterprise, their drug syndicates, remain intact.

So where once we were at an apprehensive station in our quest for law enforcement in the war on drugs, today we can proclaim that the House of Representatives and the other body later will adopt the ultimate penalty for the ultimate crime.

The drug kingpin will kill a Federal judge, the drug kingpin will kill a law enforcement officer, the drug kingpin would kill a drug law enforcement officer. These are cases that are already lodged in the sad history of our country in this regard.

It is, then, appropriate for our American public to enact, as it will today, the ultimate penalty for that scum of the Earth, the death penalty where appropriate.

I thank the gentleman for yielding, and I yield back the balance of my time.

Mr. PEPPER. Mr. Speaker, I yield 5 minutes to the distinguished chairman of the Select Committee on Narcotics Abuse and Control, the gentleman from New York [Mr. RANGEL].

Mr. RANGEL. Mr. Speaker, I rise in support of this amendment and congratulate the majority leader as well as the minority leader in working with the standing committees to put together for the first time a comprehensive package that actually deals with this serious crisis that our Nation finds itself in.

Normally our standing committees jealously guard their jurisdictions. Yet, because of the emergency nature of the crisis that we face in our country and indeed internationally, we were able to come together last September with an omnibus bill.

Of course, both in the House bill and in the Senate bill there were provisions that caused a great deal of controversy. For the most part, we set aside those controversial issues and even when we deal with the question of the death penalty, it has been drawn in the most narrow terms that could be possible. And even though I wished this was not a part of the overall package, certainly it was the will of this House that it be included.

I think, however, that the most important thing that we should look at is that we are making history. We are giving this House and indeed the other body an opportunity to be actively engaged not in talking about the problems that we are facing but in having a comprehensive program that the administration would have to embrace, and certainly, working together, we would have really struck at least our first blow against this crime that is being committed against humanity.

We will for the first time be able to say that those troops that we have on the front lines of this great battle, the local and State law enforcement officials, are not out there battling this battle alone. As most of you know, we have 24,000 drug enforcement agents today, the same number that we had in 1974, and the people that are out there fighting against this $100 billion industry we will be sending a message to them that help is on the way. It is easy to talk about urinalysis and testing, but the thing that is just as important, if not more important, is to be able to go in partnership with the educators at the local and State levels to provide an educational tool to prevent our kids from using drugs and for those who are abusing their minds and bodies to be able to say that the Federal Government, for the first time, will be providing resources for treatment and rehabilitation.

When we deal with our international friends, the law will provide now that not only would we be able to cut our favorable treatment to nations that are not cooperating and deny them military, technical and economic assistance, but we have in this bill the opportunity to provide them with the resources for substitute crops so that they will be able to preserve their fragile democracies and economies in their cooperation with the United States and other nations who are

fighting this great problem throughout the world.

We have to give assistance to our Customs Service, Coast Guard, indeed the Department of Justice so that we will be able to say that we have left no stone unturned.

We have increased the penalties for those people who have been investigated and apprehended and convicted of crime.

So it seems to me that what we are saying is that we will be passing this amendment, by passing this rule, we will be reaffirming the commitment that we made last month and sending over to the other body a great opportunity for this House and the other body to say that we fired the first shot, as other speakers have said.

□ 1145

I only hope that the bipartisan effort that has been demonstrated in this House is well received on the other side and indeed the administration. It gives us an opportunity to return home to our constituents and not to say that we acted or reacted to political pressure, but to say that we responded to the needs that our constituents have brought to our attention, we have responded to their demands that the Federal Government do something, and we have done it by not saying that we have all of the answers. We have done it with a piece of legislation that allows us to go into partnership with local and State officials to work out a way in which we can better serve our Nation, in a way in which we can really cut this cancer from out side.

Mr. Speaker, I congratulate the Rules Committee, because what they have done is to serve as that monitor to bring all of the committees together and to work out the controversial aspects that we had in the bill to give us this one opportunity before we go back home to say that we have a comprehensive drug bill and that the House voted to support it.

Mr. QUILLEN. Mr. Speaker, I yield 2 minutes to the gentleman from Tennessee [Mr. DUNCAN].

Mr. DUNCAN. Mr. Speaker, I support these further House amendments to the Senate amendments to H.R. 5484, the Omnibus Drug Act of 1986.

The Ways and Means provisions, dealing primarily with the Customs Service drug interdiction and enforcement programs, represent very little change from the original House bill. There was general consensus among the two congressional bodies, the administration and the business community as to these improvements in our efforts against illegal drugs.

These amendments include, and thus preserve, one of the most important of the House provisions. I am referring to the requirement that the President take action against drug source nations by denying preferential tariff treatment or cancelling special trade benefits under the generalized system of preferences [GSP] and the Caribbean Basin Initiative [CBI].

These amendments add a further weapon to the President's trade arsenal by allowing him to adjust quota allocations, especially for sugar, to the detriment of those countries that do not cooperate with the United States in stopping the flow of drugs across international borders. We have the largest market in the world, and our ability to restrict trade benefits can provide important leverage to improve the enforcement efforts of potential drug source nations.

Finally, these amendments accept the Senate authorization levels for new Customs Service drug programs. It is only about $60 million lower than the earlier House bill, but remains well above the fiscal year 1986 figures. This significant authorization represents a strong commitment to winning the war against drugs while at the same time recognizing our fiscal responsibilities.

Mr. Speaker, the amendments in the Ways and Means jurisdiction represent acceptable gains over the earlier House version and I hope we can approve them today and look forward to the President's signature on one of the most important pieces of legislation achieved by this Congress.

Mr. PEPPER. Mr. Speaker, I yield such time as he may consume to the gentleman from New Jersey [Mr. FLORIO].

Mr. FLORIO. Mr. Speaker, I am pleased to join my colleagues in supporting far-reaching compromise legislation to combat the terrible epidemic of drug abuse and drug trafficking that is threatening our society. I would like to go over several of the key provisions of this bipartisan legislation to promote awareness of the drug problem and seek solutions. I have met with New Jersey community and law enforcement leaders in southern New Jersey and look forward to working with them in addressing this area.

Recently, I walked through a public housing unit in Camden, NJ, and I was shocked to witness drug deals going on before our eyes, without any concern about the danger of arrest. Unfortunately, the drug culture has become something that we tend to accept in the ghetto and, over the years, enforcement of our law has been lax. Let us do away, however, with the perception that drug abuse is a problem of the inner city, the ghetto, the public housing projects only. It is a problem that cuts across socioeconomic lines and does not discern between race, age, gender, and financial worth. It challenges our future by attacking our youth and impeding progress.

Drug abuse can be found in our more affluent schools and we have fast become aware of the damage it causes as promising young athletes, such as Len Bias, fall victim to the horrors of drug abuse. The tragedies of drug abuse have ruined lives, families, careers, and futures.

We only need to look at the figures to realize what we are facing. Over one-tenth of the U.S. population has tried cocaine, while one in five Americans have used some type of illicit drug. Over 4,500 tons of illicit drugs are available to the American public—4,500 tons that can easily be sold on our streets, in the office and workplace, and on our playgrounds and in our schools. Children as young as 8 years old are being introduced to crack.

Drug abuse is clearly a national problem that pleads for the national solution proposed in the Omnibus Drug Act. This legislation combats drug abuse on a variety of fronts. It funds efforts to eradicate drug crops in foreign countries and allows the use of Armed Forces personnel in these efforts. It responds to the problem of drug smuggling by reinforcing the Customs Service and the Coast Guard in their efforts to interdict drugs at our borders. The legislation further strengthens penalties for drug crimes and puts teeth in our legal system.

Not only does this bill attack the root of the problem but it also addresses the causes of drug abuse and seeks to help those who have fallen victim to addiction. We have authorized $250 million in grants to the States, based on the schoolage population of each State, for drug abuse education and prevention programs. With these education programs, we are ensuring that our schools have the tools and the talent to combat substance abuse from the elementary school level.

I am proud of the provisions that my Commerce Subcommittee and Mr. WAXMAN'S Health Subcommittee included dealing with treatment and prevention, and focusing on drug abuse among our athletes. States will receive $190 million in grants for treatment and rehabilitation programs and substance abuse prevention programs. These valuable funds will boster State and local efforts to not only prevent drug abuse but also treat and rehabilitate those who are victims of drug abuse and continue to feed our drug problem. By seeking to help drug abusers, we are hoping to eliminate the demand for drugs.

The death of Len Bias, a promising young athlete at the University of Maryland, focused our attention on drug abuse among athletes. Athletes, I might add, serve as role models for our children and drug abuse in that community enhances the popularity of drugs. The House version included a provision I supported to create an advisory Commission on the Comprehensive Education of Intercollegiate Athletics to give Congress recommendations for addressing drug abuse among athletes. This compromise version incorporates the duties of such a commission into the responsibilities of the White House Conference on Drug Abuse which is authorized with this bill. By ending drug abuse among college and university athletes we will be able to show our young people that drugs are a dead-end street.

Drug and alcohol abuse is costing our Nation $176 billion a year in treatment and support costs and costs for reduced productivity. We cannot put a price on the large loss of lives and the effects on our Nation's children—our future. I am pleased with this decisive action and I hope that the Senate will act

quickly to consider this bill and ensure that it becomes law this year.

Mr. PEPPER. Mr. Speaker, I yield 3 minutes to the gentleman from Illinois [Mr. ROSTENKOWSKI].

Mr. ROSTENKOWSKI. Mr. Speaker, I rise today in strong support of H.R. 5484, as amended. The amendments included in this bill will make this a stronger and more effective weapon in attacking the insidious drug problem our Nation faces today. The Committee on Ways and Means made a number of technical improvements in the provisions of subtitle B of title III as passed by the Senate to make it more similar to title III of House-passed H.R. 5484 and deleted several extraneous provisions, including a provision relating to sugar sanctions and two tax provisions.

The bill, as amended, provides an authorization for the U.S. Customs Services of $1.06 billion which includes an additional $175 million devoted to drug enforcement activities. Although this figure, which has been worked out with our Senate counterparts on the Committee on Finance, is somewhat lower than the authorization level included in the House bill, it represents a significant increase over the amount authorized for drugs in the Senate-passed bill. I believe that this level of funding will permit Customs to acquire the manpower and equipment it needs to wage a more effective campaign against drugs.

This bill would also restore the House provision relating to the Customs forefeiture fund, which would make the fund more effective in defraying the costs of drug-related investigations. Finally, this bill includes the House version of a provision which allows the President to deny preferential trade status to nations which are the source of illegal drugs if they refuse to cooperate in arresting illegal drug traffic. Appended to this statement is a detailed description of the Ways and Means amendments to the Senate-passed drug bill.

Mr. Speaker, the drug problem has reached crisis proportions and we must move quickly to give the administration the necessary tools to address the problem. H.R. 5484, as amended, does this in a comprehensive manner and I urge my colleagues to support it.

DESCRIPTION OF HOUSE AMENDMENT TO WAYS AND MEANS PROVISIONS OF SENATE DRUG BILL

Senate amendment	House amendment
Section:	
3101	No change.
3111	Minor change clarifying that "controlled substances" are to be treated as prohibited merchandise, but not all prohibited merchandise is a controlled substance.
3112	Technical correction to paragraph (c) inserting "or the Virgin Islands" after "United States".
3113	Changes "willfully" to "intentionally" in paragraph (c) and merges subparagraphs (1) and (2) therein since "controlled substances" are already treated as prohibited merchandise pursuant to section 3111. Adds "sea stores" exception to paragraph (d).
3114	No change.
3115	Substantially identical. Phrase "Except as otherwise authorized by the Secretary" inserted in paragraphs (a), (c), and (d).
3116	No change.
No provision.	New section 3117 (formerly section 308 of House bill) added relating to examination of books and witnesses. Language was worked out with Joint Industry Group and Customs Service.
3117	Identical, except renumbered as section 3118.
3118	Identical, except renumbered as section 3119.
3119	Renumbered as section 3120. Civil and criminal penalties provisions are split into separate paragraphs with an intent requirement for criminal penalties.
3120	Renumbered as section 3121. An additional exception is provided for merchandise contained "on the person". "Controlled substances" is changed to "prohibited merchandise" in paragraph (c). A new paragraph (e) is added regarding costs and expenses of seizure.
3121	Identical, except renumbered as section 3122.
3122	Substantially identical. Renumbered as section 3123. "Shall" changed to "may".
3123	Renumbered as section 3124. Otherwise, substantially identical.
3124	Substantially identical. Renumbered as section 3125.
3125	Identical, except renumbered as section 3126.
3126	Renumbered as section 3127. Paragraph (1) is amended by deleting the phrase "related to controlled substances."
3127	Renumbered as section 3128.
3128	House provision (section 322) inserted as new section 3131 in lieu of Senate provision on commercial cover. This language was worked out with House Judiciary Committee to ensure uniformity with similar provisions applying to FBI, DEA, etc.
1152	House Customs Forfeiture Fund provisions inserted as new section 3142 in lieu of Senate provisions in section 1152.
3131	Renumbered as section 3151.
3132	Renumbered as section 3152.
3133	Renumbered as section 3153.
3134	To be added without change.
3141	Renumbered as section 3161.
3006	Deleted. New Customs authorization levels added in new section 3141 providing an additional $175 million for drug enforcement activities (House bill had proposed an additional $236.6 million; Senate bill $115.9 million).
2002	Delete Senate proposed section 481(h)(1)(c) requiring the denial of GSP and CPI benefits to major drug producing and drug-transit countries and adds new Title IX (formerly sections 371–377 of House bill) providing for denial of trade benefits to uncooperative drug source nations.

DESCRIPTION OF HOUSE AMENDMENT TO WAYS AND MEANS PROVISIONS OF SENATE DRUG BILL—Continued

OTHER WAYS AND MEANS AMENDMENTS

1. Delete sections 5001 and 7624 relating to tax issues.

2. Delete Helms sugar amendment (Title IX of Senate amendment).

3. Delete provision relating to Customs volunteers.

Mr. QUILLEN. Mr. Speaker, I yield 4 minutes to the gentleman from California [Mr. LUNGREN].

Mr. LUNGREN. Mr. Speaker, I am delighted to be able to stand here today and witness what even a few months ago seemed to be inconceivable. Legislation which had in many cases been mothballed in the various committees—most notably the Judiciary Committee—for some unexplained reason was to borrow a phrase, "born again." Not that I am ungrateful. Far from it. The discovery of the need to address the drug problem in our country will be judged by its ultimate content rather than the mechanics of how it came about.

We are facing a problem that has infected virtually all segments of our society. Whether it be our schools, the Armed Forces, professional sports, the entertainment industry or the executive suite, too many Americans are "getting high." We thus find ourselves confronted with a problem that is no longer limited to a counter cultural phenomena. We have all too often seen the drug consumption habits of the baby boom generation escalate from pot to cocaine commensurate with one's movement up the socioeconomic ladder.

Drugs are not some mysterious plague which happens to be creeping north from the tropics of Latin America. There would not be an illegal drug trade were it not for the fact that a demand exists in this country for mind altering substances. As Colombian drug lord Roberty Suarez Gomez boasts, his fortune was derived from the "depravity of the yanquis."

I am therefore encouraged that this legislation will serve as a message that the Federal Government is serious about the threat posed to our society by drug abuse. As a Californian, I am most pleased that this legislation contains provisions based on my designer drug bill introduced 1½ years ago that will attack the underground chemical "witch doctors" who would unleash on our young people some of the most potent substances in the world.

In addition, the bill contains important language based on legislation introduced by my colleague from Florida, [Mr. MCCOLLUM], on money laundering, which attacks the very lifeblood of the drug trade.

Who woud have thought a few months ago that we would be acting to provide a death penalty for those most obscene crimes where human life is snuffed out in connection with a drug offense? While my colleague from California [Mr. HUNTER], was told only weeks ago that it would be necessary to wait until the 100th Congress before his drug penalty legislation would be considered, tough minimum mandatory sentences passed out of our Crime Subcommittee were added as an element of this omnibus package.

This legislation is no small accomplishment. And although I am somewhat disappointed that reform of the exclusionary rule is not part of the final package, I understand the problem in making that a part of it at this point in time.

I should just point out that 2 years ago the Senate passed by about a 72-to-20 margin this legislation. We have it on the floor at this time. In my opinion, it has far greater impact on the drug trade and the death penalty, but I understand why we cannot have it at this time.

I would hope that in the next Congress we will not have those who will stand in the way of having this considered. It is a fundamental reform of the court system that is necessary for the criminal justice system across the board, but has an even more important impact on drug cases because of

the significant number of drug cases that are thrown out because of search and seizure problems.

□ 1155

I salute Members on both sides of the aisle for making this a bipartisan effort finally, and I thank them for their help. This is long overdue; it is going to help the American people. Most assuredly, it is going to help the young people of America.

Mr. PEPPER. Mr. Speaker, I yield 2½ minutes to the gentleman from Oregon [Mr. WYDEN].

Mr. WYDEN. I thank the gentleman for yielding me this time.

Mr. Speaker, I rise in support of this rule and feel it is an excellent bill. I was very involved in the development of the part of this legislation to extend the career criminal provisions to drug dealers.

Mr. Speaker, I would like to engage the distinguished majority leader, if I might, in a colloquy.

Mr. Leader, with regard to section 3111, it defines controlled substances as merchandise which cannot be imported without a license or permit. As I read this legislation, legitimate goods, which are controlled by quotas or other legal restrictions could be included in this definition.

As I understand it, Mr. Leader, it would not be your intent to include these kinds of legal and legitimate goods in the restrictions under this bill.

Mr. WRIGHT. If the gentleman will yield, it emphatically is not the intent of the authors of this legislation to include that kind of merchandise under the terms of the bill. The focus of this bill is to attack the importers of illegal substances, not legitimate importers. The intent was not to include legal merchandise under the definition of controlled substances.

The intent of this legislation is to control the importation and trafficking of illegal drugs into this country and within this country. That is its purpose. That is what the bill deals with.

Mr. WYDEN. One other question, if I might, just very briefly, that would be your view with respect to customs practices as well, Mr. Leader, that the customs law with respect to legitimate goods would not be changed as well?

Mr. WRIGHT. That clearly is the intent of this legislation. You have pointed out a problem that was never intended by the drafters of this bill. Search and seizure authority should be narrowly drawn and it is certainly not the intent of the sponsors that imports of legitimate goods who might technically violate some customs law through simple negligence should be treated on a par with the importers of illegal drugs.

Mr. WYDEN. I thank the leader for his graciousness. I think it is an excellent bill. I urge its passage.

Mr. QUILLEN. Mr. Speaker, I yield 3 minutes to the gentleman from California [Mr. LEWIS].

Mr. LEWIS of California. I thank the gentleman for yielding me this time.

Mr. Speaker, I rise in support of this very, very important piece of legislation. I want to share with my colleagues my own personal view that this is perhaps one of the more significant demonstrations of what the House is able to do about important changes in the law if they move toward those changes by way of a bipartisan effort.

I have become involved in the legislation because I had a task force dealing with the war on drugs on my side of the aisle. JIM WRIGHT has provided the leadership on his side of the aisle in our effort to put together a bipartisan package.

The way the initial bill moved from the House, there was a clear reflection of that bipartisan work. The bill was structured in the form from the Rules Committee that allowed a number of amendments to take place on the floor, and as a result of those amendments, the bill reflected two basic thrusts. The first was a reflection of our very real concern that to deal with the war on drugs we have got to be able to impact the demand side of drugs on our society. The need for educational efforts, rehabilitation efforts, treatment programs, et cetera.

On the other side, the second thrust involved the very real concern of many Members that in order to effectively impact where drugs come from, those who traffic in drugs and those who use it that one must be willing to be tough on the repeat offender. So there were changes in the bill that provided for such considerations as significant adjustments in the exclusionary rule. We provided for the death penalty under certain circumstances for people who are repeat violators in our war on drugs.

It was very apparent that the House was concerned about those who sell drugs in or around school campuses in America. The law was very tough. The Senate took out a number of provisions that we were concerned about and as the bill has come back to us, this rule limits most of those tough portions of the bill.

As we have the bill before us today, however, while I am very concerned about the fact that the exclusionary rule is not affected by this bill, the inclusion of the death penalty is a very significant item that indicates to those who would traffic in drugs out there that if they are going to be in that business they are going to have to pay the piper eventually.

Mr. Speaker, this is not an ideal bill from my perspective but it is a significant change in the law; it is a step forward in our war on drugs in our society. I urge my colleagues to support the measure.

Mr. PEPPER. Mr. Speaker, I yield 3 minutes to the gentleman from New Jersey [Mr. HUGHES].

Mr. CLAY. Mr. Speaker, will the gentleman yield?

Mr. HUGHES. I yield to the gentleman from Missouri.

Mr. CLAY. I thank the gentleman for yielding time to me.

Mr. Speaker, I rise in opposition to the rule.

When will the Members of this body stop playing petty politics with serious societal problems? Today we are deliberating a crucial piece of legislation designed to fight the pervasive use of drugs in this Nation. When the bill was unanimously voted out of several House committees, it was a realistic bipartisan effort to launch a preemptive strike against those who deal in illegal trafficking of narcotics.

But, Mr. Speaker, when the busybodies of this House finished kibitzing with trite amendments, the end product resembled a game of Trivial Pursuits. The original bill was carefully crafted to interdict, arrest, and prosecute those merchants of death who engage in drug smuggling and distribution. It was also mindful of basic constitutional protections against excessive Government intrusion into the lives of individuals. The House, in its imagined infallible wisdom, attached amendments to impose capital punishment; authorize use of the military to deploy equipment and personnel of the Armed Forces, for the first time, to enforce civilian laws; and waive constitutional protections against illegal search and seizures.

Today, this bill is before us again after the Senate has stripped it of these sinister assaults on the U.S. Constitution. I hope, Mr. Speaker, cooler heads in this body will quiet the raging storm of misguided solutions, some with suspect motives, which threaten to kill our effort to combat drug trafficking, by insisting on their nongermane, irrelevant additions. Hopefully, we will accept the Senate version of this bill and avoid applying 16th-century solutions to 21st-century problems.

I urge my colleagues to defeat the rule and reject inclusion of the death penalty in this legislation.

Mr. HUGHES. I thank the gentleman for yielding me this time.

Mr. Speaker, seven bills developed by the Subcommittee on Crime make up the lion's share of title I of this package. Those bills were carefully developed since the beginning of this Congress by the Subcommittee on Crime, which I chair, and were reported by the Judiciary Committee. Those provisions of this title were not hastily developed for this bill but reflect careful consideration by the Crime Subcommittee.

Those provisions, building upon the Comprehensive Drug Penalty Act which we wrote in the last Congress,

provides appropriately stiff penalties that will seriously hurt the organizers of drug trafficking syndicates.

The Designer Drug Enforcement Act builds upon the emergency scheduling authority to control designer drugs which the Crime Subcommittee developed in the last Congress. This title will close the loopholes that have permitted criminal chemists to manufacture and distribute deadly designer drugs. This will be a very strong deterrent to the next generation of dangerous drugs in their tracks.

We have created, for the first time, a crime of money laundering, that will enable us to prosecute the henchmen of drug traffickers who specialize in laundering their enormous criminal profits. This is a profoundly important new law enforcement tool that will enable us to wipe out those who are bankrolling major drug deals.

We have agreed to the penalties in the bill from the other body that are even higher than the tough mandatory prison sentences for career drug traffickers in our bill.

We have strengthened the Armed Career Criminal Act by expanding its coverage to drug crimes and violent crimes other than just robbery and burglary.

We have provided mandatory sentences for those who sell drugs to juveniles or sell drugs at or near schools.

From the other body, we have taken a provision making it a crime to operate a crack house or a stash house for drugs.

We have authorized calling a White House Conference on Drug Abuse and Control to develop an effective national strategy to combat drug abuse in the 1980's.

We have provided vitally needed assistance to State and local drug enforcement activities. The bill has a 75-25 matching grant program for State and local units of government to beef up drug enforcement. We have provided for $350 million for the next 3 fiscal years.

We have provided authorization for almost 400 more drug enforcement agents to investigate drug traffickers. We are increasing the DEA-State-and-local drug task forces by 50 percent from 34 cities to 49 cities. We are providing 362 new positions for the Diversion Control Program which addresses the traffic in drugs which cause two-thirds of the deaths and injuries due to drug abuse, legitimate prescription drugs.

We are authorizing 200 additional assistant U.S. attorneys to take them to trial, and we have provided for $140 million for the construction of new prisons so that judges will have a place to sentence over 2,200 drug traffickers to long terms of imprisonment.

We have modified further the provisions adopted by the other body concerning the use of the military for the enforcement of the drug laws. This expands the role of the military in a sensible fashion, far preferable to the extreme and unworkable approach of the amendment we adopted on the floor of the House during initial consideration.

Mr. Speaker, there often is a lot of discussion about sending signals to drug traffickers. This bill doesn't just send signals; this bill provides major new tools for prosecuting drug traffickers. Tackling this problem requires a balanced approach. We must have adequate resources for crop eradication, for interdiction, for domestic enforcement and investigation, for financial investigations, for the U.S. attorneys for prosecution, for the Bureau of Prisons, and above all for education and for treatment. This bill does not do all that I would want to see done. But it is a good bill.

I urge the passage of this bill.

□ 1205

Mr. QUILLEN. Mr. Speaker, I yield 2 minutes to the gentleman from California [Mr. ZSCHAU].

Mr. ZSCHAU. Mr. Speaker, I thank the gentleman for yielding this time to me.

Mr. Speaker, I rise in strong support of this legislation. I believe that this bill will be a major improvement in our arsenal against the war on drugs.

We use that phrase "war on drugs" because drugs are a threat to the future of this country and our security. Drugs are destroying the minds and bodies of our young people and unraveling our social fabric. The threat that drugs pose to our future has to be met with a sense of urgency and strong commitment.

This legislation expresses both, a sense of urgency and a strong commitment. It recognizes, in addition, that the war on drugs has to be fought on several battlefronts. It recognizes that we have to educate our young people to make drugs socially unacceptable and, thereby, curtail the demand for drugs.

This bill recognizes that drugs emanate from sources outside this country and that we have to take action to eradicate drugs in those countries where they originate and through which they're transported. It also recognizes that we have to interdict them at our borders, to stop the inflow of drugs coming into our country. I might add, parenthetically, that the immigration reform legislation which we may yet consider this week will help prevent drugs from entering the country.

Finally, this bill makes clear that those who are ruining the lives of our children and risking the future of this country will pay the price. This bill increases the risk to the drug pushers by tough mandatory sentences, including the death penalty.

Vote for this rule, pass this legislation, and make it clear that with respect to drugs, Congress just says "no."

Mr. PEPPER. Mr. Speaker, for purposes of debate only, I yield 1 minute to the able gentleman from Rhode Island [Mr. ST GERMAIN].

Mr. ST GERMAIN. Mr. Speaker, it is well established that the international crime syndicates depend on access to the legitimate financial institutions of this Nation. The President's Commission on Organized Crime, in its testimony before the Banking Subcommitteee on Financial Institutions confirmed that drug dealers have to have access to financial institutions in order to carry out the illicit sales of drugs in the United States, conservatively estimated to be between $50 and $75 billion each year.

Title I, subsection H of the omnibus drug bill, slams the door shut on the use of banks and other financial institutions to launder funds derived from drug trafficking. This section of the bill which is, in essence, H.R. 5176 as reported by the Banking Committee on July 22, 1986, by a vote of 47 to 0:

It subjects to criminal liability anyone who willfully structures a transaction in order to evade the reporting requirements of the Bank Secrecy Act;

It authorizes the seizure and forfeiture of cash, or property related to such cash, for any individual who willfully structures a transaction;

It authorizes the seizure and forfeiture of cash, or property related to such cash, for any individual who willfully evades the reporting requirements;

It enhances the detection and prevention of money laundering schemes by improving regulatory agencies' supervision over financial institutions;

It requires the banking agencies to conduct thorough investigations of individuals and others acquiring financial institutions;

It provides the Secretary of the Treasury with civil summons authority to assist in carrying out Bank Secrecy Act responsibilities;

It provides a substantial increase in criminial penalties by increasing the maximum $500,000 under current law to up to $1,000,000 for an individual and up to $5,000,000 for a financial institution.

Mr. Speaker, the banking title of the omnibus drug bill is primarily designed to detect and prevent drug traffickers from using financial institutions for their ill-gotten profits.

The Banking Committee has had a longstanding interest—since at least 1970—in pursuing this subject. The Banking Committee conducted extensive hearings within the past year into violations of the Bank Secrecy Act provisions. Just recently, we began to

hear rumbling from the banking community concerning certain provisions of the banking title contained in this bill. These rumblings are totally without merit and again indicate that industry's tendency to avoid its legitimate responsibilities and to look the other way when drug traffickers walk into the doors of their banks to deposit their profits.

This legislation demands that the banking industry not only do more than pay lip service in fighting the epidemic drug crisis that pervades this country. Now is their opportunity to show good faith—to do less is unconscionable.

Mr. Speaker, I am pleased to say that we have had the full cooperation of other committees in working out our banking title. We wish to especially thank the Ways and Means and the Judiciary Committees for their cooperation in this effort.

Mr. QUILLEN. Mr. Speaker, I yield 2 minutes to the gentleman from Ohio [Mr. WYLIE].

Mr. WYLIE. Mr. Speaker, I appreciate the gentleman from Tennessee yielding this time to me.

Mr. Speaker, I rise in strong support of the Omnibus Drug Enforcement, Education, and Control Act of 1986, and in particular, I strongly support the language in the amendment offered today that establishes new requirements and procedures in order to combat money laundering. The House Banking Committee reported this legislation last July by an overwhelming vote of 47 to 0. I would recognize the role of Chairman ST GERMAIN for keeping this section of the bill a truly bipartisan effort.

Of utmost concern to the Banking Committee is the fact that drug traffickers are using our Nation's financial institutions to launder the phenomenal profits generated from drug sales—profits estimated to exceed $80 billion annually. While the language adopted by the Senate does an admirable job of addressing the problem of money laundering, I believe that our provisions are superior in several respects.

How will the Banking Committee's title to this omnibus antidrug bill help in the fight against drugs? By stopping the practice of money laundering through our Nation's financial institutions, we will hurt the drug traffickers where they care the most—in their pocketbooks. Money laundering, wrong in itself, masks other crimes. We must use all reasonable means at our disposal to stop crime and I believe this bill goes a long way toward this goal.

Mr. QUILLEN. Mr. Speaker, I yield 2 minutes to the gentleman from Florida [Mr. MCCOLLUM].

Mr. MCCOLLUM. Mr. Speaker, I certainly support this rule and support this omnibus drug package. I think that it is an excellent work product, but I do not think we ought to kid ourselves. It is not perfect. No one piece of legislation, as some of us have stated a number of times in this debate, is going to solve the drug issue. We have a drug war that has to be waged. It is going to be long; it is going to be difficult; it is going to be taxing on everybody, including all of the American people who are required, in order for us to succeed, to do everything they can in their own communities to stop the demand side of this drug equation.

This bill does have some major features in it, though, that are more than worth supporting. The new money-laundering legislation that is in here creates a new crime that will, for the first time, allow Federal prosecutors to get at those big narcotics dealers and Colombian kingpins where it really hurts, in their pocketbooks.

It is going to allow, for the first time, the prosecution for knowingly engaging in a financial transaction and carrying money into a banking institution or transferring it out of the country when you know that it came from an illegal drug source.

I think that is a major step forward in the right direction.

There are many other things that can be gone over, but let me, for a moment, concentrate on what is not in here because we, as a Congress, have to come back and address some of these next time in the next Congress.

In the initial bill that went to the other body out of this body, we had enough funds in here over 3 years to build 17 new Federal correctional institutions. Sadly, when the legislation came back from one other body, there was only enough funding for one more new one.

We have got enough funding now in what is going back under this rule today for 2 more new ones, but that is 15 short of anybody's reasonable estimate of putting us anywhere close to the number of prisons necessary in the Federal system to take care of the minimum mandatory sentences under this bill and under the new guidelines that will be coming out next spring for all criminal matters.

So, we as a Congress have to worry about that. I also think that there is too much money and imbalance in this bill on the side of giving to local law enforcement, considering the fact that we have not done all that we should be doing in funding the Federal first.

It is always a question of priorities in this body, but we need to get on with it. I strongly support the passage of this legislation.

Mr. PEPPER. Mr. Speaker, for purposes of debate only, I yield 2 minutes to my colleague, the gentleman from Florida [Mr. SMITH].

Mr. SMITH of Florida. Mr. Speaker, I think that we are facing again today another historic vote for us. This is a uniquely good bill. Yes, it is not the exact bill that the House originally passed, but it is close. It is, to a large degree, most of what the House wanted, with some small exceptions. They are important exceptions, but they are not the major portions of the bill.

I must remind my colleagues again that for years, some of us have been out there: my good friend, the gentleman from New York [Mr. RANGEL], a lot of the Members from south Florida, a lot of the Members, the majority leader, telling the country about the scourge of drugs.

We have had help over the last few years. The gentleman from Oklahoma [Mr. ENGLISH] has helped the people in south Florida. The gentleman from New Jersey [Mr. HUGHES] and the chairman of the Subcommittee on Crime, the gentleman from Florida [Mr. FASCELL], all of these who have been involved in trying to formulate a total overall policy.

□ 1215

This is a unique opportunity to make that total overall drug policy come true. As the chairman of the International Task Force Against Drugs on Foreign Affairs, we have had a good portion of input in this bill. We are very proud of what is in the bill that this rule will allow to come to the floor. It is important. It concentrates our efforts from experiences over the years, and what is very important is that it integrates the foreign policy options with all the other options on drug awareness, drug rehabilitation, drug interdiction, and drug law enforcement.

For the first time ever we address the five legs against drug trafficking and against drugs: Eradication at the source, interdiction on the high seas, law enforcement at home, including prisons; rehabilitation and education, which has been so sorely lacking. We have all that in this bill.

The American people are now aware, painfully aware, maybe due to crack and designer drugs, that this is the time to act. We have been criticized for not having acted and then we get criticized for acting. Now is the time to do what we must do and if we do it, we will make a dent on the war against drugs.

Mr. QUILLEN. Mr. Speaker, I yield 1 minute to the gentleman from Virginia [Mr. PARRIS].

Mr. PARRIS. Mr. Speaker, I thank the gentleman for yielding this time.

Mr. Speaker, as a member of the Select Committee on Narcotics Abuse and Control and as a member of the Drug Task Force which had a part in crafting the original drug legislation, I rise in strong support of this amendment.

I regret that the Hunter amendment which was removed from this package, the posse comitatus, is improved, but it is not as effective in my view as that amendment would have been.

I also regret that the House version of the exclusionary rule was dropped from this compromise package; but on the whole I think it is a good bill. I urge its support.

Mr. QUILLEN. Mr. Speaker, I yield 2 minutes to the gentleman from California [Mr. HUNTER].

Mr. HUNTER. Mr. Speaker, I thank the gentleman for yielding this time.

Let me say that I am going to support this package, but I want to remind my colleagues in the House that we voted for an interdiction package that would use military assets to establish radar coverage of the southern border now. The facts are that we will see 300,000 pounds of cocaine flown in to our children in the next 12 months, primarily across the southern border.

The package that we have provides for Aerostat balloons ultimately, but six E-2's now going to domestic agencies will help a little bit, but those balloons will not be built, according to their manufacturer, until approximately 1988.

Over the next 12 months we can expect 300,000 pounds of cocaine to come across.

I would join with my colleague, the gentleman from California [Mr. LUNGREN] who saw his clear exclusionary rule provision omitted from that, to say that we will continue to work on this, because the only way we can interdict narcotics coming across the southern border of the United States is to have radar coverage. We have no radar coverage.

In my State of California, Customs has never caught by aerial interdiction a single drug plane, although dozens come across every night.

I am sorry to see that the leadership excluded the provision that provides for radar coverage across the southern border. It was supported by the full House. I hope we can make up for that shortly.

I want to commend my colleague, the gentleman from Arkansas, Mr. TOMMY ROBINSON, for working so hard on that particular amendment.

Mr. PEPPER. Mr. Speaker, for purposes of debate only, I yield 2 minutes to be able gentleman from Ohio [Mr. TRAFICANT].

Mr. TRAFICANT. Mr. Speaker, I rise today in support of the rule, but I have a word of caution for the Congress. As we look back historically over the drug issue, it was basically confined to the poverty sections of this country and basically Congress had overlooked it. Once it hit the suburban areas, everybody took the fanciful issue of drugs to heart and now today we are going to do something.

What we are doing today certainly is not perfect, but it is much better.

My word of caution is basically this. As we rise and the penalties raise in this Congress today, so will the profits and so will many more people who continue to traffic in drugs. Let us not kid ourselves.

The thing I am concerned about is that we are not going to stop drug abuse and this tremendous problem with legislation alone. We have to start dealing with the cause that bring drug abuse to the forefront; unemployment, poverty, those specific issues of illiteracy and the situation now where many people have no financial opportunity in this country.

For us to believe that we are going to wave the magic wand today and stamp out drugs is not true. So I am hoping that today we will set ourselves on a course where we will look at the holistic problem and develop programs to counter unemployment and poverty. Without doing that, we will have failed, because for every action there is an equal and opposite reaction.

We are taking the penalties up and we are making the profits go up. Let us not kid ourselves.

We have to stop that ground swell and deal with the rudimentary problems that I believe have much to do with the overall situation with drugs.

I am hoping that we make that commitment, that the select committee will continue to deal with those areas and look into those areas of national industrial policy, unemployment, that have much to do with these social problems that we find ourselves targeting with specific legislation.

Mr. QUILLEN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, let us make no mistake about it. This is a tough antidrug bill and the message is crystal clear to all the traffickers, all the dealers, all those people who participate. We must end the drug trade for the benefit of all the American people and this is a beginning and a good beginning and we will succeed.

Mr. Speaker, I yield 4 minutes to the gentleman from New York [Mr. GILMAN].

Mr. GILMAN. Mr. Speaker, I rise in strong support of the rule governing the House amendment to the Senate amendment to H.R. 5484, the Omnibus Drug Enforcement, Education, and Control Act of 1986, which represents a practical compromise between the House and Senate versions to combat narcotics trafficking and drug abuse.

We are all aware of the severity of the impact of narcotics trafficking and drug abuse on our Nation—a narcotics affliction which has reached epidemic proportions both here in our Nation and overseas. Drug trafficking just in the United States alone has reached a staggering $120 billion activity in untaxed dollars.

The drug cancer confronting our Nation has afflicted every city, town, and school district in our Nation, jeopardizing the health of men, women, and children from every walk of life: the young and the elderly, the rich and the poor; no racial, ethnic, or religious group has gone unscathed; no geographic area is immune to the drug traffickers.

As the ranking minority member of the House Select Committee on Narcotics Abuse and Control and as a senior member of our Foreign Affairs Committee, I can report that every foreign leader that we have met with has contended that if the United States did not have a drug problem, the producing nations would not be supplying deadly drugs to our citizens. But, in reality that assertion is without merit, for drug producing nations have become victim nations and victim nations have become producing nations.

Under the omnibus drug bill, for the first time, we are proposing to provide significant resources to help reduce the demand for drugs. For example, out of a budget of $18 billion, the Department of Education currently devotes a paltry $3 million to drug education. Under the omnibus drug bill, $250 million would be authorized in grants to the States to help to more effectively educate our citizens to the dangers of drug abuse; $324 million would be authorized to the Department of Health and Human Services for treatment and rehabilitation efforts. On the supply side, $350 million would be authorized to assist State and local law enforcement agencies to combat the drug traffickers; $140 million to construct Federal prison facilities. Additional funds would be authorized for our international narcotics control effort and for our Federal law enforcement authorities.

Mr. Speaker, I want to commend our distinguished leaders from both sides of the aisle: Speaker O'NEILL, Majority Leader WRIGHT; our Republican leader, Mr. MICHEL; the distinguished gentleman from California, Mr. LEWIS, chairman of our Republican Drug Task Force; the distinguished chairman of our Narcotics Select Committee, the chairman from New York, Mr. RANGEL, the chairmen and ranking minority members of the 12 standing committees and all of my colleagues on both sides of the aisle for their hard work, dedication, and efforts in helping us enact legislation that will send a strong message to the drug traffickers, that this Congress truly intends to provide adequate resources to our frontline troops who daily combat narcotics trafficking and drug abuse.

Mr. Speaker, let us not adjourn this Congress without enacting an omnibus drug bill. We have worked too hard and too long on this legislation to let it

slip through our hands during the closing days of this Congress. Moreover, the health of our citizens and the security of our institutions demand that we take legislative action to help contain this plague on all mankind. Accordingly, I urge my colleagues to fully support this rule.

Mr. PEPPER. Mr. Speaker, for purposes of debate only, I yield 2 minutes to the able gentleman from Oklahoma [Mr. ENGLISH].

Mr. ENGLISH. Mr. Speaker, there are several sections in the bill we are now considering that amend the Freedom of Information Act. I was somewhat surprised several days ago when I learned that the Senate had chosen this method of amending the FOIA. We have tried for some time to develop an acceptable set of FOIA amendments and have been unable to reach any agreement.

I would not have chosen this time or this bill for these amendments, but I am pleased to say that, viewed together, the changes proposed by the Senate represent an overall improvement in the FOIA.

There are two major sets of changes in the Senate bill. The first set relates to law enforcement. The changes to the seventh exemption relating to law enforcement records are based on proposals in S. 774 from the 98th Congress. The three so-called Glomar provisions are taken from a bill negotiated by my subcommittee staff with the Justice Department.

Together, these law enforcement amendments make only modest changes to the FOIA. For the most part, the changes to the seventh exemption only codify existing law. Except for a slight expansion of exemptions (7)(E) and (7)(F), no information that is subject to disclosure today will be withholdable under the revised seventh exemption.

The three so-called Glomar exclusions will expand the amount of information that is subject to withholding. However, the expansion is slight, precisely defined, and fully justified. For records regarding ongoing investigations, informants, foreign intelligence, counterintelligence, and international terrorism, the FBI will be able to withhold information on the existence of such records in cases where disclosure of the existence of the records will reveal information that should be protected. No substantive records that are disclosable today will be subject to withholding under these exclusions.

I am pleased to learn that these very modest provisions will solve the problems confronting law enforcement agencies. The small scope of the reforms confirms my previously stated views that the broad complaints from the law enforcement community about the negative effects of the FOIA were greatly exaggerated. Had the Justice Department limited its legislative proposals to these minor changes, we could have reached agreement on FOIA reform years ago.

The second set of changes involves the fee and fee waiver structure of the FOIA. The language is taken from a bill—H.R. 6414—that I introduced during the 98th Congress along with TOM KINDNESS, ranking minority member on the Government Information, Justice, and Agriculture Subcommittee.

While I am not in complete agreement with the Senate changes to this proposal, I am pleased with several important features. First, fees for requests by the news media are minimal. Second, the concept of news media is very expansive and includes a broad range of those in the business of publishing or disseminating Government information. Third, the standard for fee waivers is broader than current law and will require the granting of more fee waivers. Finally, although public interest groups do not fall within the most favorable fee category, all public interest groups—regardless of their status or identity or function—will be able to qualify for fee waivers and thereby obtain documents without charge if their requests meet the standard for waivers.

We have made several technical and minor changes to the FOIA provisions as passed by the Senate. We have also included a transition provision to clarify the bill's effect on pending requests. Other changes were considered, but any substantive questions that may have surrounded the Senate language have been resolved by the statement made by Senator LEAHY in the CONGRESSIONAL RECORD of September 30, 1986. I fully concur in that statement. I consider that Senator LEAHY's statement—and the statement made here today by Mr. KINDNESS and myself—reflect the intent of the Congress in making these changes to the FOIA. It is unnecessary, therefore, to amend the text of the bill since the intent has been so clearly stated.

In order to clarify the intent and purpose of the amendments for the benefit of our colleagues in the House, TOM KINDNESS—ranking minority member of the Government Information, Justice, and Agriculture Subcommittee—and I have jointly put together written explanatory materials that would have been included in a committee report. My statement includes an explanation of the fee waiver provisions.

SUMMARY OF HOUSE CHANGES TO THE FREEDOM OF INFORMATION ACT AMENDMENTS IN THE ANTI DRUG ABUSE ACT OF 1986

(1) The two Freedom of Information Act sections have been reorganized into four sections (§ §1801-1804), including a short title. Wording, cross references, and typographical errors have been corrected.

(2) An effective date provision has been added as section 1804. The law enforcement provisions become effective upon enactment and are fully applicable to all requests in process or in litigation. The fee and fee waiver provisions become effective 90 days after enactment. Once effective, these fee provisions are fully applicable to all requests in process or in litigation, except that no review costs can be charged to any requests made before an agency adopts regulations on or after the effective date.

(3) The exclusion for foreign intelligence, counterintelligence and international terrorism contains two bracketed references defining these terms. These references are unnecessary or inappropriate and have been deleted. This is a technical change, and the definitions referenced in the Senate version are intended to remain applicable.

(4) In the revision to exemption (7)(C) relating to withholding or records on privacy grounds, the words "could reasonably be expected to" are deleted and the word "would" is included. This change makes the privacy standard in the law enforcement exemption consistent with the existing standard in exemption 6.

(5) A limitation on "review costs" has been added to clarify that only direct costs incurred during initial examination can be charged but that review costs may not include any costs in resolving issues of law or policy

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ANALYSIS OF THE FEES AND FEE WAIVERS AMENDMENTS TO THE FREEDOM OF INFORMATION ACT INCLUDED IN THE ANTI-DRUG ABUSE ACT OF 1986 (H.R. 5484)

H.R. 5484 includes several provisions amending the Freedom of Information Act. The new language changes the rules governing fees and fee waivers for requests made under the FOIA.

Each agency is required to promulgate regulations specifying the schedule of fees and establishing procedures and guidelines for determining when such fees should be waived or reduced. Agency fee schedules must conform to guidelines promulgated by OMB.

There are three categories of requests for purposes of assessing fees. First, when records are requested for commercial use, fees shall be limited to reasonable standard charges for document search, duplication, and review. This provision allows the charging of review costs for the first time under the FOIA, but review costs may only be charged to commercial users. A commercial user is one who seeks information solely for a private, profit making purpose. higher fees for commercial users will recover more of the costs of processing requests when one business uses the FOIA to seek information about another under circumstances in which there are no public interest aspects to the disclosure.

Except for requests that fall within the second category, requests from a for-profit corporation or its representative may be presumed to be for commercial use unless the requester can demonstrate that the request qualifies for a more favorable fee schedule. A request from a public interest group, nonprofit organization, labor union, library, or similar organization, or a request from an individual may not be presumed to be for commercial use unless the nature of the request suggests that the information is being sought solely for a private, profit making purpose. The public redissemination of documents or information obtained from the government is specifically intended not to be treated as a commercial use regardless of the identity or status of the requester.

Agency regulations must include procedures whereby a requester can determine its status for purposes of fee categories and can supply adequate justification at the time the request is made. Agency procedures and requirements must be simple, reasonable, and limited. Sworn or notarized statements may not be routinely required. An agency may not conduct an extensive proceeding to determine the status of a requester. Doubts should be resolved in favor of the requester. If there are multiple requesters, the status of the most favorable requester is controlling. Whenever possible, processing of a request should continue while the proper fee category is being determined.

The House amendment adds a provision limiting review costs to the direct costs incurred during the initial examination of a document for the purposes of determining whether the documents must be disclosed. Also, the House version provides that review costs may not include any costs incurred in resolving issues of law and policy that may be raised in the course of processing a request. Once a document has been reviewed in response to a request—whether from a commercial requester or otherwise—no charge may be imposed on any subsequent requester for reviewing that document.

A similar limitation on review costs was included in H.R. 6414 (98th Congress), in the bill (S. 774) that passed the Senate in the 98th Congress, and in a draft bill that was the subject of negotiations with the Justice Department earlier this year. See the discussion of review costs in Senate Report 98-221. The omission of the review cost limitation in the Senate bill was probably inadvertent.

Second, when records are not sought for commercial use and are requested by (a) an educational or noncommercial scientific institution whose purpose is scholarly or scientific research, or (b) a representative of the news media, fees shall be limited to reasonable standard charges for document duplication. A request made by a professor or other member of the professional staff of an educational or scientific institution should be presumed to have been made by the institution. A request by a reporter or other person affiliated with a newspaper, magazine, television or radio station, or other entity that is in the business of publishing or otherwise disseminating information to the public qualifies under this provision.

When a requester who is a representative of the news media has provided basic identification of his or her status (such as a request filed on news media letterhead; display of press credentials; or reasonable assurance that the information is being sought for public dissemination), the request must be treated under the second fee category. Free lance writers and book authors who can demonstrate that their work is likely to be published also qualify under the second fee category.

No definition of "news media" has been included in the bill. It is difficult to write a comprehensive definition. "News media" obviously includes traditional newspapers such as the Washington Post, New York Times, Daily Oklahoman, and Journal of Commerce. Similarly, magazines, newsletters; television, radio, and other broadcasters; and book publishers also automatically qualify as traditional news media. Reporters, columnists, and writers whose work is published in any of these outlets also qualify.

The purpose of low fees for the news media is to further the availability of nonexempt information in government files to the public. Therefore, other vendors of information from agency files to public users also qualify as news media, even though the means of dissemination may not include standard newspaper or magazine formats. For example, a computerized information service that provides subscribers with access to information obtained from the government qualifies as news media under the FOIA because the services furthers the availability of government information to the public in the same way that a traditional newspaper does. Requests from these other information vendors whose dissemination functions are similar to that of newspapers and broadcasters must be treated in the same fashion.

The bill provides that most favorable fee provision for those in the information dissemination business because the use of the FOIA for public dissemination of information in government files is in the public interest. Wide dissemination of government information supports public knowledge and oversight of government activities. The fact that a newspaper, publisher, information vendor, or author seeks to make a profit through publication does not affect the public interest nature of the disclosure.

The republication or dissemination of government information by a private concern is in the public interest just as much as the original distribution by the agency that prepared the information. The public benefits directly from broader availability of the information. In addition, the private dissemination actually saves the government effort and money that would otherwise be expended in providing the information to the public. In short, therefore, disseminating information to the public is not intended to be a commercial use under the bill.

This broad understanding of "news media" will allow information to be readily disclosed by an agency whenever a newspaper or other news media has determined that there is an interest in the information. The FOIA is intended to foster the free market in ideas and information. Nonexempt government information compiled at taxpayers expense should be widely available so that the benefits of the information can be shared. Easy and inexpensive access to government information by news media will prevent agencies from monopolizing information distribution and from controlling public debate in any way. This is also the policy behind the provision of the Copyright Act that prevents the federal government from copyrighting information. See also the discussion of copyright issues in House Report 99-560.

It is not the role of government agencies to determine whether information is newsworthy. That is the responsibility of the news media. In the long run, it will be better and more efficient if agencies provide disclosable information to the news media without the costly, unnecessary battles over fees that have been a familiar feature in FOIA history. See the discussion of the first twenty years of the FOIA in House Report 99-832.

If a qualifying requester seeks information both for public dissemination and for a commercial or other use, the requester retains full entitlement to the favorable rates for dissemination. For example, a request from a public interest group falls under the third fee category. However, a request from reporter or writer for a general circulation magazine published by the public interest group would qualify under the second fee category for news media. A request for information that is sought for possible publication is still a request from the news media even though the public interest group might also want the information for other purposes. This will keep fees from becoming an unnecessary barrier to disclosure and will keep agencies from inquiring unnecessarily into all intended uses of the information that is being sought.

Third, for all other requesters, fees are limited to reasonable standard charges for document search and duplication. This is current law. Most requests from individuals will fall under this category. However, a request from an individual for Privacy Act files pertaining to himself or herself will continue to be governed by the limited fees permitted under that Act.

All of the fees chargeable to any requester may be waived or reduced if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. This change is specifically intended to remove from further debate or consideration the erroneous standards included in the January 1983 Justice Department fee waiver guidelines. Those guidelines have been heavily criticized by both House and Senate Committees as being inconsistent with the letter and the spirit of the FOIA. See the discussion of fee waivers in Senate Report 98-221 and in House Report 99-832. While legislative action to overturn the fee waiver guidelines is probably unnecessary, the opportunity to clarify the law is welcome.

House action today on fee waivers is consistent with the view expressed in House Report 99-832 that current practices with respect to fee waivers are too restrictive and that legitimate requests for fee waivers are being improperly denied because of the 1983 Justice Department guidelines.

The new fee waiver standard provides that waivers must be granted when a requester is seeking information on a subject relating to the manner in which a government agency is carrying out its operations or the manner in which an agency program affects the public. A requester is likely to contribute significantly to public understanding if the information disclosed is new; supports public oversight of agency operations, including the quality of agency activities and the effect of agency policy or regulations on public health or safety; or otherwise confirms or clarifies data on past or present operations of the government.

Any requester, regardless of its identity or status under other provisions of the FOIA can qualify for a fee waiver. Even a commercial requester can qualify for a fee waiver if the standard is met, but a commerical requester seeking information about a competitor will not normally be able to meet the standard.

As with the fee waiver standard that is superseded, the new fee waiver standard should be liberally construed in order to encourage full and complete disclosure of information in the possession of the government that does not require withholding for a public or private interest. The new standard is specifically intended to make it easier for more requesters, especially noncommercial requesters, to qualify for fee waivers. Anyone who qualifies under the existing standard will also qualify under the new language.

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The requirement that the information will "contribute significantly" to public understanding should be objectively evaluated. For example, in *Better Government Association* v. *Department of State*, 780 F.2d 86 (D.C. Cir. 1986), a public interest organization sought access to information about the money spent by U.S. embassies entertaining visiting dignitaries. The State Department refused to grant a fee waiver, but this is precisely the sort of information that would qualify for a fee waiver under both the existing and the new standard.

The phrase "operations and activities of the government" should be broadly construed. It can encompass requests for historical documents and for information relating to foreign policy and national defense. Also, agencies deal with private entities on a wide range of regulatory, enforcement, procurement, and other activities. Records which illuminate that relationship indicate how the agency is carrying out its mission. It may be impossible to understand an agency's activities or operations unless records submitted by those being regulated or otherwise affected by agency policies are available. Thus, records submitted to an agency can qualify for a fee waiver when disclosure of the information reflects on agency operations and activities.

The deletion of the current language requiring fee waivers only when "furnishing the information can be considered as primarily benefiting the general public" is intended to emphasize that a request can qualify for a fee wavier even if the issue is not of interest to the public-at-large. Public understanding is enhanced when information is disclosed to the subset of the public most interested, concerned, or affected by a particular action or matter.

The bill includes several general limitations on the imposition of fees by agencies. The purpose of these limitations is to prevent agencies from using procedural ploys over fees to discourage requesters or delay the disclosure of information.

First, fee schedules can only provide for the recovery of direct costs of search, duplication, or review. This is the current limitation extended to include the newly permitted charges for review costs.

Second, no fee may be charged if the routine costs of collecting and processing of the fee allowable under the FOIA are likely to equal or exceed the amount of the fee. For example, a request for a 110 page document would not be charged a fee because no charges are applicable to the first 100 pages and the charges for the remaining ten pages would normally be waived under this provision.

Third, except for requests for commercial use that are subject to review charges, an agency may not charge any requester for the first two hours of search time or for the first one hundred pages of duplication. A requester may not file multiple requests at the same time each seeking portions of a large document solely in order to avoid payment of all fees. However, if requests are made more than thirty calendar days apart, each request must be treated separately. Multiple requests filed at the same time on unrelated matters cannot be treated as a single request for purposes of this provision.

Fourth, on agency may require advance payment of any fee unless the requester has previously failed to pay fees in a timely fashion or unless the agency has determined that the fee will exceed $250. This is to prevent agencies from imposing an advance payment requirement in order to harass or discourage requesters.

The fee schedules in the FOIA do not supersede fees chargeable under a statute that specifically provides for setting of a level of fees for particular types of records. This provision does not change current law. The new language simply clarifies that statutes setting specific alternative bases for recovering dissemination costs can supersede FOIA fees. An example of a qualifying statute is 44 U.S.C. § 1708 (1982) which allows the Public Printer to set charges at cost plus a fifty percent surcharge to recover indirect costs. However, the User Fee Statute, 31 U.S.C. § 9701 does not qualify under new subparagraph (4)(A)(vi) of the FOIA because it is does not establish a specific level of fees. Similarly, the statute governing the National Library of Medicine, 42 U.S.C. § 275 et seq. (1982), is too general to qualify under the new FOIA subparagraph. A more extensive discussion of fees for government information, can be found in House Report 99-560 which is incorporated here in its entirety by reference.

In any action brought by a requester regarding the waiver of fees, the court shall determine the matter de novo, except that the court's review of the matter shall be limited to the record before the agency. The purpose of this provision is to allow the courts to exercise independent judgment on the issue of whether a requester is entitled to a fee waiver.

Finally, it is apparent that the effect of the changes in fee and fee waiver policies will be to increase use of the FOIA by the press and by public interest and other nonprofit organizations as well. An increase in government oversight by these groups with less interference in the disclosure process by the political or bureaucratic processes of government is fully intended. It also seems likely that the use of the FOIA by businesses for purely commercial purposes may decrease as a result of higher fees. If this happens, it will be an unintended side effect of higher charges.

Mr. KINDNESS. Mr. Speaker, I was naturally suspicious—but not surprised—when I learned that the other body had included amendments to the Freedom of Information Act in its version of the antidrug legislation. Nevertheless, I believe that those amendments—as perfected in the version of the bill before us today—maintain an appropriate balance between disclosure and confidentiality necessary for the proper fulfillment of Government functions.

I have served since 1979 as ranking minority member of the Government Operations Subcommittee on Government Information, which has legislative jurisdiction over the Freedom of Information Act. During that time, the subcommittee has reviewed several particular concerns about the operation of the act, including the handling of requests for information held by Federal law enforcement agencies and for information submitted by private businesses to Federal agencies, as well as the assessment and waiver of fees upon disclosure of Government information.

Because those concerns reflected the tension between disclosure and confidentiality inherent in the act, I have believed that successful legislative revision of the act would require a comprehensive measure that addressed each of these several concerns. I had hoped that the Government Operations Committee would be able to present such legislation to the House this year. The chairman and I authorized negotiations involving our staff with representatives of the Department of Justice, the press, and public interest groups. A draft bill was developed from those negotiations which contained provisions similar to those before us today in the Anti-Drug Abuse Act. But, the Justice Department encountered opposition from other executive branch agencies to the bill and the subcommittee decided not to proceed with a comprehensive reform bill. Instead, it recommended and the Government Operations Committee reported to the House a bill revising the process by which agencies handle requests for confidential business information. That bill, H.R. 4862, was passed by the House under suspension of the rules on September 22, 1986, and, I remain hopeful that the other body will pass it before the end of this session.

The Freedom of Information Act amendments contained in the Anti-Drug Abuse Act before the House today are addressed to the handling of requests for law enforcement information and to the assessment and waiver of fees on any FOIA request. These amendments have been derived from House and Senate proposals developed over the past 5 years. In brief summary, the provisions contained in the bill before us, and their legislative sources, are as follows:

Section 1801 states that these amendments may be cited as the "Freedom of Information Reform Act of 1986."

Section 1802 contains two subsections: Subsection (a) revises the law enforcement records exemption of the act—the seventh exemption—to bring its terms more into conformity with original congressional intent and accurate judicial interpretations of its terms. Subsection (a) was passed by the other body in the 98th Congress as section 10 of S. 774 and, a slightly modified version was included in the draft bill developed earlier this year by the Government Information Subcommittee.

Subsection (b) adds a new provision to the act, authorizing law enforcement agencies to treat certain law enforcement records as not subject to the act under certain limited circumstances in order to prevent the mere response to a FOIA request from serving as a tipoff to the subject of an investigation or from identifying an informant. This provision was included in the draft bill developed earlier this year by the Government Information Subcommittee, and a version of subsection (b)(2) was included in section 10 of S. 774.

Section 1803 rewrites existing law on the assessment and waiver of fees. Current law permits agencies to charge fees for the search for and duplication of records responsive to a FOIA request and, it requires a waiver of those fees when disclosure of the information can be considered as primarily benefiting the general public. Section 1803 specifies in greater detail than curent law the types of fees that can be charged to particular requesters and, it contains a more specific test for waiver of fees. Through these provisions, it is hoped that longstanding controversies over the assessment of fees and the grant of fee waivers may be resolved. The source of section 1803 is the fee and waiver provision of H.R. 6414, a bill I cosponsored with subcommittee Chairman ENGLISH which

was introduced at the end of the 98th Congress.

Section 1804 provides two effective dates: Section 1802 will take effect upon enactment and will apply to all pending requests and litigation. Section 1803 will take effect 90 days after enactment except that the authority to issue regulations will be effective upon enactment and all such regulations must be promulgated within 90 days of enactment; in addition, section 1803 will apply to all requests and litigation pending 90 days after enactment, except that review charges may not be applied before the effective date or before the agency has finally issued its regulations.

The chairman of the Subcommittee on Government Information, the gentleman from Oklahoma [Mr. ENGLISH], has already provided to the House a detailed explanation of section 1803, the new fee and fee waiver provisions. Before continuing with a detailed explanation of the law enforcement record provisions contained in section 1802, I would like to commend and congratulate him for his good work on the Anti-Drug Abuse Act generally. For the past 4 years, he has, in addition to overseeing the operation of the Freedom of Information Act, conducted regular oversight of the executive branch's efforts to interdict drug smugglers. Like the Freedom of Information Act, the effort to interdict drug smugglers raises a number of controversial issues. At times we have disagreed on how best to address and resolve those controversies; but his ultimate goals have been worthy of support. So, I congratulate him and I hope that the Congress will enact this legislation.

ANALYSIS OF THE LAW ENFORCEMENT RECORDS AMENDMENTS TO THE FREEDOM OF INFORMATION ACT INCLUDED IN THE ANTI-DRUG ABUSE ACT OF 1986 (H.R. 5484)

Much of the impetus for adjustment of the provisions of the Freedom of Information Act which affect the handling of requests for information maintained by law enforcement agencies comes from the concerns expressed by Federal Bureau of Investigation Director William Webster in congressional testimony that the act is exploited by organized crime figures attempting to learn whether they are targets of investigative law enforcement activities, as well as the identities of informants.

While some have disputed the extent of such activity, it is clear that strict compliance with the terms of the act can, in certain limited circumstances, create problems for law enforcement agencies in terms of their ability to conduct investigations and protect the identity of informants. The amendments to the Freedom of Information Act contained in the Anti-Drug Abuse Act are designed to deal with these particularized law enforcement problems.

Section 1802(a) of H.R. 5484 amends subsection (b)(7) of the FOIA to modify the scope of the exemption for law enforcement records, codify certain judicial interpretations, and clarify congressional intent with respect to the agency's burden in demonstrating the probability of harm from disclosure.

The language of those amendments is identical with one exception explained below to that proposed in section 10 of S. 774, proposed FOIA reform legislation which passed the Senate, but was not acted upon in the House, during the 98th Congress. The meaning and intended effect of the amendments was carefully explained in the report of the Senate Judiciary Committee on S. 774 (S. Rept. 98–221), the relevant portion of which is set out below:

SECTION 10: LAW ENFORCEMENT RECORDS

Section 10 of S. 774 would amend paragraph (b)(7) of the FOIA to modify the scope of the exemption for law enforcement records, codify certain explanatory caselaw, and clarify Congressional intent with respect to the agency's burden in demonstrating the probability of harm from disclosure.

Under current law, an agency may invoke the (b)(7) exemption to withhold "investigatory records complied for law enforcement purposes" to the extent that disclosure of such records would interfere with enforcement proceedings; deprive a person of a right to a fair trial or an impartial adjudication; constitute an unwarranted invasion of personal privacy; disclose the identiy of a confidential source or, in certain cases, information provided only by a confidential source; disclose investigative techniques and procedures; or, endanger the life or physical safety of law enforcement personnel.

The Committee finds, based upon testimony of the FBI and other federal law enforcement agencies, that this exemption, in practice, has created problems with respect to the disclosure of sensitive non-investigative law enforcement materials, premature disclosure of investigative activities, and the protection of confidential sources. Although Exemption 7 currently attempts to protect confidential informants and investigations, this protection can be compromised when small pieces of information, insignificant by themselves, are released and then pieced together with other previously released information and the requester's own personal knowledge to complete a whole and accurate picture of information that should be confidential and protected, such as an information's identity.

S. 774 would make the following changes in Exemption (b)(7) to address these problems:

Substitute "records or information" for "investigatory records" as the threshold qualification for the exemption: This amendment would broaden the scope of the exemption to include "records or information compiled for law enforcement purposes," regardless of whether they may be investigatory or noninvestigatory. It is intended to ensure that sensitive law enforcement information is protected under Exemption 7 regardless of the particular format or record in which the record is maintained. Cf. FBI v. Abramson, 456 U.S. 615 (1982). It should also resolve any doubt that law enforcement manuals and other non-investigatory materials can be withheld under (b)(7) if they were compiled for law enforcement purposes and their disclosure would result in one of the six recognized harms to law enforcement interests set forth in the subparagraphs of the exemption. See contra, *Sladek* v. *Bensinger*, 605 F.2d 899 (5th Cir. 1979) (Exemption 7 is not applicable to DEA agents Manual because manual "was not compiled in the course of a specific investigation"), *Cox* v. *Department of Justice*, 576 F.2d 1302 (8th Cir. 1978) (Exemption 7 does not apply to DEA manual that "contains no information compiled in the course of an investigation.") The Committee amendment, however, does not affect the threshold question of whether "records or information" withheld under (b)(7) were "compiled for law enforcement purposes." This standard would still have to be satisfied in order to claim the protection of the (b)(7) exemption. See, e.g., *FBI* v. *Abramson*, supra.

Substitute "could reasonably be expected to" for "would" as a standard for the risk of harm with respect to (b)(7)(A) interference with enforcement proceedings, (b)(7)(C) unwarranted invasions of personal privacy, (b)(7)(D) disclosure of the identity of a confidential source, and (b)(7)(F) endanger the life or physical safety of any natural person: This amendment is intended to clarify the degree of risk of harm from disclosure which must be shown to justify withholding records under any of these subparagraphs. The FBI and other law enforcement agencies have testified that the current "would" language in the exemption places undue strictures on agency attempts to protect against the harms specified in Exemption 7's subparts.

This burden of proof is troubling to some agencies in the context of showing that a particular disclosure "would" interfere with an enforcement proceeding. Moreover, as the FBI has testified, it is particularly vexing with respect to whether production of requested records "would" disclose the identity of a confidential source, substantially contributing to the asserted "perception" problem of sources doubting the FBI's ability to protect their identities from disclosure through FOIA. The "could reasonably be expected to" standard has been effectively used in the protection of national security sources under provisions of the National Security Act of 1947, 50 U.S.C. § 403(d)(3). It recognizes the lack of certainty in attempting to predict harm, but requires a standard of reasonableness in that process, based on an objective test.

Including State, local and foreign agencies or authorities and private institutions within the meaning of "confidential source": This amendment is intended to codify the caselaw in which the weight of judicial interpretation has held that "confidential source" protection under (b)(7)(D) is applicable to entities, as well as natural persons, that furnished information to an agency on a confidential basis. See, e.g., *Lesar* v. *Dept. of Justice*, 636 F.2d 472 (D.C. Cir. 1980), *Church of Scientology* v. *Dept. of Justice*, 612 F.2d 417 (9th Cir. 1979), *Nix* v. *U.S.*, 572 F.2d 998 (4th Cir. 1978); *Keeney* v. *FBI*, 630 F.2d 114 (2d Cir. 1980).

Delete "only" from the second clause of (b)(7)(D); Courts interpreting the second clause of (b)(7)(D) have occasionally stumbled over the meaning of the word "only" in the context of deciding whether confidential information furnished by a confidential source in a criminal investigation or a lawful national security intelligence investigation may be withheld. Compare. e.g., *Radowich* v. *U.S. Attorney, District of Maryland*, 501 F. Supp. 284 (D. Md. 1980), rev'd 658 F.2d 957 (4th Cir. 1981) (Winter, C.J. Dissenting) with *Nix* v. *United States*, 572 F.2d 998 (4th Cir. 1978). A literal reading of the provision would appear to indicate that confidential information is exempt only if it has been "furnished" to the agency "only by the confidential source," which is to say, apparently, that the confidential information would not be exempt if it has also been furnished to the agency by some other source or means.

By deleting the word "only", the Committee intends to make clear that, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal

investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished by a confidential source is exempt, regardless of whether it might also have been obtained from another source.

Delete "investigative" and add "guidelines" to (b)(7)(E): This amendment, like the deletion of "investigatory" from the exemption's threshold language, is intended to facilitate the protection of non-investigatory materials under the exemption. In this case, it is intended to make clear that "techniques and procedures for law enforcement investigations and prosecutions" can be protected, regardless of whether they are "investigative" or non-investigative. The Committee, however, reemphasizes the intention of the conferees on the 1974 amendments which first created (b)(7)(E) that the subparagraph does not authorize withholding of routine techniques and procedures already well known to the public, such as ballistics tests, fingerprinting, and other scientific tests or commonly-known techniques and procedures. See H.R. Rep. No. 93-1380, 93d Cong., 2d Sess. 12 (1974). The amendment also expands (b)(7)(E) to permit withholding of "guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law." This is intended to address some confusion created by the D.C. Circuit's en banc holding in *Jordan* v. *U.S. Dept. of Justice,* 591 F.2d 753 (D.C. Cir. 1978), denying protection for prosecutorial discretion guidelines under the (b)(2) exemption. The Committee intends that agencies and courts will consider the danger of creating "secret law" together with the potential for aiding lawbreakers to avoid detection or prosecution. In so doing, the Committee was guided by the "circumvention of the law" standard that the D.C. Circuit established in its en banc decision in *Crooker* v. *BATF,* 670 F.2d 1051 (D.C. Cir. 1981) (en banc) (interpreting Exemption 2).

The Congressional Research Service of the Library of Congress recently analyzed the proposed amendments regarding the substitution of "could reasonably be expected to" for "would" in several of the subparagraphs in (b)(7), as well as the change in language to include State, local, and foreign agencies and private institutions within the meaning of "confidential source" under subparagraph (b)(7)(D). Its conclusions, as indicated in the two memoranda set out at the conclusion of Senator LEAHY'S statement of September 30, 1986 (CONGRESSIONAL RECORD, page S 14299), were that in both instances the proposed changes in statutory language substantially reflect current judicial interpretations and would not appreciably alter the meaning of the affected provisions in their practical application.

The House bill includes a minor amendment to exemption (7)(C) relating to withholding of records on privacy grounds. The words "could reasonably be expected to" are replaced with the word "would." This change maintains the current language and retains the consistency with the privacy standard in exemption 6.

Because exemption (7)(C) and exemption 6 are nearly identical, it would be inappropriate to make any changes that increase the difference between these two privacy standards. It is already easier to withhold law enforcement information on privacy grounds under exemption (7)(C) than it is to withhold other information under exemption 6. An additional adjustment, however slight, is unnecessary.

The Senate bill also amends existing exemption (7)(E) to permit the withholding of guidelines for investigations or prosecutions if disclosure could reasonably be expected to risk circumvention of the law. This is a reasonable standard, but it has to be interpreted with some care.

Where prosecutorial guidelines are widely known among prosecutor's staffs, it will be difficult to make the case that disclosure will risk circumvention of the law. Any assistant U.S. attorney who establishes a private practice will know the guidelines and will be able to use the otherwise nonpublic guidelines to further that practice. Since this use by former prosectuors cannot be effectively prevented, a broad interpretation of the new exemption (7)(E) will only enhance the practice of former prosecutors rather than protect any important law enforcement interest.

Where prosecutorial guidelines are changed temporarily or there are other circumstances where there is no risk of public disclosure from other sources, then exemption (7)(E) may be used to withhold provided that disclosure can reasonably be expected to risk circumvention of the law.

Section 1802(b) of H.R. 5484 amends the FOIA so that criminal law enforcement agencies, in certain circumstances, are not required to acknowledge the existence of: First, records concerning an ongoing and undisclosed criminal investigation; second, informant records maintained under an informant's name or personal identifier; or third, classified records of the FBI pertaining to foreign intelligence, counterintelligence, or international terrorism investigations, in response to a FOIA request.

This provision provides criminal law enforcement authorities the ability to avoid confirmation of the investigatory status of specific individuals or incidents in responding to FOIA requests. It is a narrow and specific statutory authority for criminal law enforcement agencies to act on the principle that "an agency may refuse to confirm or deny the existence of records where to answer the FOIA inquiry would cause harm cognizable under an FOIA exemption." *Gardels* v. *CIA.,* 689 F.2d 1100, 1103 (D.C. Cir. 1982), citing *Phillippi* v. *CIA,* 546 F.2d 1009, 1012 (D.C. Cir. 1976), the so-called Glomar case.

Although Federal courts have generally recognized that the FOIA exemption scheme permits an agency to withhold the fact of the existence or nonexistence of specific records when disclosure of that fact itself cause the harm that a specific exemption is intended to avoid, the Director of the FBI requested specific statutory authority to exercise this right so that there would be no ambiguity regarding its propriety. (See, e.g., Hearings on the Freedom of Information Reform Act Before a Subcommittee of the House Committee on Government Operations, 98th Cong., 2d Sess. 906–910 (1984) (responses of William H. Webster)).

Subsection (b) of section 1802 sets forth the criteria for three specific circumstances in which criminal law enforcement agencies would not be required to acknowledge the existence of agency records in response to an FOIA request.

The first circumstance, provided under paragraph (1) of subsection (b), permits agencies to refuse to acknowledge the existence of records when their disclosure would interfere with a criminal law enforcement proceeding under exemption (b)(7)(A), and there is reason to believe that the subject of the investigation or proceeding is not aware of its pendency. While the agency is thus able to prevent a "tipoff" of investigatory activity to someone using the FOIA to find out if such activity is underway, its authority to do so is narrowly drawn and closely circumscribed. It cannot, for example, refuse to acknowledge requested records under this authority unless the records concern a criminal, rather than civil, law enforcement proceeding and would already be exempt from disclosure by virtue of exemption (b)(7)(A).

Moreover, its authority to refuse to acknowledge such records under this provision exists only so long as there is reason to believe that the subject of the proceeding is not aware of its existence. Thus the provision gives agencies no new substantive withholding authority, since it does not apply to records that are not already exempt from disclosure, and it would not be available to an agency when there is reason to believe that the subject of an investigation or proceeding is aware of its pendency.

The law enforcement agencies carry the burden of demonstrating the subject's unawareness of proceedings, inasmuch as requesters will lack access to sufficient information to carry that burden, as a rule. However, certain publicly demonstrable facts will carry a heavy presumption of the subject's awareness which the agencies must rebut with clear and convincing evidence if records are to remain outside the scope of the act. Among those facts are: public statements by law enforcement officials relating to an ongoing or contemplated investigation; returns of subpoenas and search warrants against subjects or other persons from whom the subject could reasonably be expected to learn of the subpoenas or search warrants; public statements by subjects or persons associated with subjects; arrests of subjects or persons associated with subjects; grand jury investigations of which subjects and/or the general public are aware and any other incident or statement that brings the existence of an investigation to public attention.

The second circumstance where an agency is not required to acknowledge the existence of specific requested documents concerns FOIA requests for informant records maintained by a criminal law enforcement agency under an informant's name or personal identifier. The authority provided under subsection 1802(a)(2), however, is limited to those instances in which the request for such informant records is from a third party who specifically requests them by the informant's name or personal identifier. Moreover, an agency must acknowledge the existence or nonexistence of such records when the informant's status as an informant has been "officially confirmed."

In referring to a similar provision in S. 774, the Senate Judiciary Committee noted the obvious limitations of the exclusion authority thus permitted: "Where the requester is the informant himself, or a third party who describes the responsive records without reference to the informant's name or personal identifier, the records are subject to ordinary consideration under the provisions of the FOIA." (S. Rept. 98–221 at 25.)

The third so-called Glomar provision under section 1802 applies to classified FBI records pertaining to foreign intelligence or counterintelligence—as defined in Executive Order 12333—or international terrorism—as defined in the Foreign Intelligence Surveillance Act—but only to the extent that the fact of the existence of such records itself remains properly classified information. Like the first part of this section, subparagraph (a)(3) permits nonconfirmation of the investigatory status of specific individuals or incidents in the context of activities regarding foreign intelligence, counterintelligence or international terrorism. But it gives no new substantive withholding authority since it applies only to FBI records that are properly classified as national security information and, therefore, already exempt from disclosure pursuant to exemption (b)(1) of the FOIA.

Agency actions pursuant to these provisions, like agency determinations to withhold acknowledged records pursuant to subsection (b) of the FOIA, are subject to de novo judicial review. The manner in which the Federal courts will review agency refusals to acknowledge or deny the existence of records under these provisions has already been well-established in the leading "glomarization" case involving the CIA. *Gardels* v. *CIA,* 689 F. 2d 1100 (D.C. Cir. 1982) and *Phillippi* v. *CIA,* 546 F.2d 1009 (D.C. Cir. 1976).

In effect, to paraphrase the D.C. Circuit, the situation is as if the requester had requested and been refused permission to see a document which says either "Yes, we have records related to the subject of the request" or "No, we do not have any such records." 546 F. 2d at 1012.

When the agency's position is that it can neither confirm nor deny the existence of the requested records, there are no relevant documents for the court to examine other than the affidavits which explain the agency's refusal. Therefore, to fulfill its congressionally imposed obligation to make a de novo determination of the propriety of a refusal to provide information in response to an FOIA request, the district court may have to examine classified affidavits in camera and without participation by plaintiff's counsel.

Before adopting such a procedure, however, the district court should attempt to create as complete a public record as is possible. This would require the agency to provide a public affidavit explaining in as much detail as is possible the basis for its claim that it can be required neither to confirm nor to deny the existence of the requested records. The agency's arguments should then be subject to testing by the requester, who should be allowed to seek appropriate discovery when necessary to clarify the agency's position or to identify the procedures by which that position was established. Only after the issues have been identified by this process should the district court, if necessary, consider arguments or information which the agency is unable to make public. Id. at 1013.

If the district court should decide that the agency's refusal to confirm or deny the existence of the requested records is unjustified, the standard Vaughn procedures, including preparation of a detailed index to the requested records, if any, would then apply. (Id. at 1013–1014, n.7)

Of course, the extent to which the agency can neither confirm nor deny the existence of particular records is limited by otherwise available "official confirmation" of the facts which this response is intended to avoid revealing. See Id. at 1014 text and notes 9–12, where the Government was forced to retreat from its original refusal to confirm or deny any involvement with the *Glomar Explorer* by its disclosures in a tax case.

The requester's discovery can focus on the relationship between confirmation or denial of the existence of records and the disclosure which the agency seeks to prevent, as well as the process by which the agency seeks to prevent, as well as the process by which it was determined that confirming or denying the existence of the requested records would cause that disclosure. (Id. at 1014, n. 12.)

Agencies are required to maintain records in such a manner as to ensure that in processing FOIA requests, such publicly demonstrable facts are a part of the administrative deliberation over the status of records. Requesters who present such publicly demonstrable facts to an agency are to receive due consideration or reconsideration of their requests within the administrative process. A showing by a requester that an agency had in its possession such publicly demonstrable facts, but withheld records from normal search and review processes without justification will raise a strong inference of an arbitrary and capricious withholding under 5 U.S.C. 552(a)(4)(F).

It is important to note that the provisions in section 1802 regarding law enforcement records were derived from a draft bill which was the subject of negotiations between the Department of Justice, and the House Government Operations Subcommittee on Government Information, Justice, and Agriculture earlier this year. During the course of these negotiations, the Department agreed that their implementation, as now provided by section 1802, would require that a notice of the authority to refuse to confirm the existence of requested records be included in every FOIA response by agencies permitted to exercise such authority. The other body adopted this provision with the explicit understanding of the amendment's sponsors that such notice would be required.

The intention of the sponsors was that the notice to be included as a standard paragraph in responses to all FOIA requests to such agencies would be similar, if not identical to, the following language negotiated between the Department of Justice and the House subcommittee:

Requesters should be aware that in certain circumstances, pursuant to 5 U.S.C. 552(c), criminal law enforcement agencies are not required to acknowledge the existence of (1) records concerning an ongoing and undisclosed criminal investigation; (2) informant records maintained under an informant's name or personal identifier; or, (3) classified records of the FBI pertaining to foreign intelligence, counterintelligence or international terrorism investigations, in response to a FOIA request. Actions pursuant to 5 U.S.C. 552(c), like agency determinations to withhold acknowledged records pursuant to 5 U.S.C. 552(b), are subject to de novo judicial review.

Mr. QUILLEN. Mr. Speaker, I yield 2 minutes to the gentleman from New York [Mr. SCHEUER], and I am happy to go across the aisle to do that.

Mr. SCHEUER. Mr. Speaker, I thank the gentleman very much for yielding this time.

I want to congratulate the majority leadership, the Speaker, the majority leader, the gentleman from Texas [Mr. WRIGHT], especially the gentleman from New York [Mr. RANGEL], the chairman of this committee who has done such a superb job.

I especially want to thank my colleague, the gentleman from New York, [Mr. BEN GILMAN], who has served on this committee with me for the last 15 years or so and has rendered an absolutely outstanding level of able, dedicated, conscientious and informed service on that committee.

This is a truly nonpartisan effort, a brilliant example of how well this two-party House can work when it sets its mind to it. I congratulate all concerned on both sides of the aisle.

I am particularly pleased that this bill represents more than an effort at enhanced law enforcement, because we have seen that can never be the whole answer. We know that eradication is helpful. We must keep up our efforts to stamp out the crops in the fields. We know that interdiction at the borders is essential. We know that control in our cities is an effort that we must continue; but the fact is that it has not solved the problem.

We know now and we have been informed by tough law enforcement officials at the Federal, State, and local levels, that if we want to turn off this awful curse that has blighted our land, we have got to change behavior among the youth of America through a comprehensive drug education program.

□ 1230

Mr. PEPPER. Mr. Speaker, for purposes of debate only, I yield 1 minute to the able gentleman from California [Mr. PANETTA].

Mr. PANETTA. Mr. Speaker, I rise to support the rule on the bill before us. I particularly want to discuss a provision which will provide needed nutrition assistance to the homeless. Many of those whom this provision would assist are victims of drug abuse. In 1984, the Department of Health and Human Services estimated that from one-half to two-thirds of the homeless population suffered from a combina-

tion of drug or alcohol abuse and mental illness.

This amendment will allow homeless persons to give, on a voluntary, noncompulsory basis, some of their food stamps to emergency shelters and soup kitchens that provide them with meals. In addition, private food establishments would be allowed to contract with the States to provide food to the homeless at reduced prices.

To ensure that homeless persons are not requested to contribute excessive amounts of food stamps, the voluntary payment may not exceed the average cost of the food contained in the meal provided by the shelter.

A similar provision was approved by the other body on September 27, 1986. The amendment was introduced by the chairman of the Senate Budget Committee and sponsored by a coalition of Republicans and Democrats in that body, including the majority leader. The version before us today includes several technical corrections, the most significant of which is a provision clarifying that homeless individuals cannot be required to purchase meals with food stamps.

This homeless provision is an important addition to our arsenal in the fight against drug abuse and hunger. In these days of budgetary constraints, it is a particularly welcome addition because the Congressional Budget Office estimates no cost to the provision.

By approving this, we will build on an important reform which we obtained last year in the Food Security Act of 1985—Public Law 99-198. That law required homeless persons to be allowed to apply for food stamps. Since by definition a homeless person does not have a kitchen in which to prepare meals, this provision gives the homeless the option to pay for their meals at homeless centers.

This provision also shows how we can get public and private agencies to work together to develop ways to address the problem of substance abuse and hunger. Neither of these difficult social problems can be solved simply through Government programs or private efforts.

To the extent homeless persons who are receiving food stamps elect to pay for their meals, they not only help the homeless shelters through their contributions but they help themselves by participating in a community of sharing. The glue that holds us together is the commitment which we share with each other. This provision plays a small part in helping the homeless reenter with dignity this community of shared commitment.

Mr. QUILLEN. Mr. Speaker, I yield 1 minute to the gentleman from Idaho [Mr. CRAIG].

Mr. CRAIG. Mr. Speaker, I thank the gentleman for yielding time to me.

Mr. Speaker, I think that my colleagues here in the House today have sensed the urgency of this legislation and its importance at a time when this Nation faces what under any description has to be called a national crisis.

Many of us who live in rural Western States, rural conservative Western States, oftentimes find ourselves thinking that we are exempt from the problems of the big city. That is simply not the case. In the past several years the kinds of drug busts that have occurred in my State of Idaho that involved heroin and cocaine have shocked the populace of that State. They did not believe that it existed in Idaho.

Mr. Speaker, it exists in Idaho, it exists in every State in the Nation, and it has to be our No. 1 social problem. Enforcement of trafficking is one thing, but the education of our citizenry, the education of our young people, is clearly a major thrust of this legislation, and it must be.

If we cannot slow the demand, we will never stop it. If you do not think that you have a problem in your schools, ask your children. They will tell you that it is there; they will tell you who to get it from.

Mr. PEPPER. Mr. Speaker, for purposes of debate only, I yield 1 minute to the able gentleman from New York [Mr. BIAGGI].

Mr. MICHEL. Mr. Speaker, will the gentleman yield?

Mr. BIAGGI. I yield to the gentleman from Illinois.

Mr. MICHEL. Mr. Speaker, I rise in support of this rule.

Mr. Speaker, I will not take much time because so very much has been said about this bill and our fight against drugs.

Let me just state that I find it disturbing that the posse comitatus and the exclusionary rule amendments are not included in this bill.

I believe the fight against drugs has to be comprehensive if it is to be effective. These amendments added useful weapons to the arsenal of drug fighters.

The death penalty provision is, in my view, a necessary part of society's defense against this scourge and I'm glad it is in the bill.

The bill before us deserves our support. We have moved in a classic pattern: public outcry, congressional recognition of that outcry, swift legislative action and now, a final legislative package.

Critics complain that we acted in haste. The only honest answer to that question is, yes, we did act in haste. We should have been gradually strengthening the war against drugs. But we didn't.

So we have this bipartisan legislation and we all hope it can do something useful.

But as I said during the original debate on this bill:

The ultimate cure for the drug epidemic must come from within the heart of each individual faced with the temptation of taking drugs. It is ultimately a problem of character, of willpower, of family and community concern and personal pride.

The home is the first line of defense. The fight against drugs will be won in discussions in our living rooms, not in judgments in our court rooms. The Government, for all its power, is but one small part of this fight.

I still believe that.

There are two ways you can look at fighting drugs.

You can look at it from the top down—from a national viewpoint, in which a national policy is needed. This legislation provides that policy.

But you can also look at it from the community up—hundreds and thousands of communities and private groups and churches and social action groups, one by one, fighting against drugs in their own way, all across America.

The community-based part of the battle can be helped by our efforts. But our work can't be seen as a substitute for community-based effort.

If Government and communities work together, if the Government and the family share a common goal, if churches and voluntary associations and lawmakers share the same vision of a drug-free society and work to get it—then we will begin to see success.

I support this bill, not because it is the answer to drug abuse, but because it is an important part of the answer.

It is up to the people of the United States, working together, as families, in private and volunteer groups, to set the standards by which a drug-free society can be realized.

Mr. BIAGGI. Mr. Speaker, I rise in support of this rule. This antidrug legislation signals the start of an all-out war against drugs, and that is a war worth fighting.

I want to express particular support for a provision in this act that will ban the ballistic knife—a new type of superknife that has a detachable blade which can be propelled up to 30 feet at the push of a button.

This deadly weapon poses a special threat to police because it can penetrate their bullet-resistant vests, and because its ordinary appearance can lull an officer into a false sense of security.

The knife provisions in the drug bill are identical to my bill, H.R. 4711, which has the bipartisan cosponsorship of more than 90 House Members. This measure has received no formal opposition.

It is especially appropriate that this ballistic knife ban is contained in the antidrug bill. In fact, it was during a New York City drug raid that this weapon was first discovered, and police officials are concerned it will become a tool of the trade in the drug industry if left unchecked.

Mr. PEPPER. Mr. Speaker, for purposes of debate only, I yield my remaining time to the gentleman from Texas [Mr. WRIGHT], who deserves the honor and the gratitude of this House for the magnificent leadership which he has given in putting together this package and carrying it toward conclusion.

Mr. WRIGHT. Mr. Speaker, I thank the chairman of the Committee on Rules for that kind comment, and at the outset I should like to express my appreciation to Members on both sides of the aisle, including the minority leadership, the gentleman from Illinois [Mr. MICHEL] and others who have worked diligently with him along with Members of the majority to create a truly responsive answer to the drug crisis.

This is a good bill. It is not only a long bill, it is a strong bill. It is a comprehensive bill. It is in every sense of the word a bipartisan effort. In that respect it probably epitomizes the legislative process at its best. It distills into one vehicle a comprehensive attack upon this menace which has come more and more to invade the streets of our cities and our very homes and the schools attended by our children.

America demanded a response. America demanded a vigorous response, and that is what this bill represents. It approaches the problem on four principal points.

First, we provide the tools for America to help other countries eradicate the sources of this illicit menace that has come more and more to threaten our youth.

Second, we provide to our law enforcement agencies, the Drug Enforcement Administration, the U.S. Customs Service, and the Coast Guard, for them effectively to interdict shipments of these deadly drugs coming into our country. We provide planes, we provide radar, we provide all the equipment that we can set in motion at this short time.

Third, we provide tools and effective punishments to assist in the enforcement of the laws that already exist. Part of this is in the form of sure and swift and certain punishment to deter those who would gain ill-gotten treasure at the loss of American life and leave in their wake broken lives and broken dreams and broken hopes and broken youth.

We have made it an absolute certainty that those who are convicted a second time of this offense will have minimum sentences that cannot be reduced, and we have made it a punishable offense by death for those who at the very top garner their ill-gotten gain on the lives of other people and build great empires of evil wealth upon the fallen prey who have been victimized by this deadly menace.

Then in the final analysis we provide education. As the gentleman from New York [Mr. SCHEUER] has said, we seek to change habits, we seek hereby to change behavior, we seek to dry the market, we seek to educate the youth, to reach them before these temptatious emissaries of evil are able to reach them with their deadly temptations.

In all of these ways I believe that we have provided a bill, together with the funding necessary to set it in motion, to begin a true national policy that amounts to a war on drugs.

No, this bill alone will not win the war. This is not the end. This struggle undoubtedly will be with us for the rest of this decade, perhaps for the rest of this century. Be that as it may, I believe that for the first time we have provided the tools and the impetus and the direction which will at least begin to stop losing ground in this war against drugs and begin to gain ground.

□ 1240

To that end I commend to you this rule and this bill and I urge a strong, overwhelming vote, bipartisan, as the bill itself deserves in order that we may send it to the other body with the overwhelming endorsement of this House.

Mr. DORNAN of California. Mr. Speaker, the proposed Superfund amendments contain provision for Government-sponsored health assessments for those facilities on the national priority list. I support this provision because I believe it to be essential that we determine the potential relationship between human health effects and hazardous substances at those listed facilities. However, it is also essential that these health assessments be used for the purposes and in the manner in which they were designed, that is, as a preliminary evaluation not as conclusive evidence of any relationship between a specific chemical and the health of any specific individual. Let us make certain that our intent is not misunderstood to encompass the broader use of providing a basis for determining the legal rights or remedies of individuals or groups of individuals. This is not our intent. These studies are not intended to provide a basis for legal action. Rather they are a first step toward a better understanding of the potential relationships between chemicals in the environment and public health.

The purpose of these health assessments is to determine whether a more detailed understanding of the relevant facts is required. Use of health studies data for other purposes and without recognition of its limitations holds the potential for clouding rather than clarifying our understanding of the possible relationships between human health and chemicals in the environment. This result would be counter to the intent of Congress in enacting the health authorities provisions.

My concern is based on three major points. First, discrimination between health effects which are a result of exposure to hazardous substances and health effects which are a result of genetic, dietary, occupational, or other factors is very difficult given our current knowledge and understanding. Second, limited available data prevents definitive determination of toxicity levels in chemical mixtures as they would likely appear at sites on the national priorities list. Current data is generally based only on analyses of pure chemicals in concentrated form. And third, current data on health effects in extrapolated from toxicity studies using animals. As we are all aware, this extrapolation is not a certain science.

The possible use of these studies for determining individual rights and remedies in litigation is inappropriate in light of their many scientific limitations. Consequently, these health studies should be used only for the purposes which are clearly stated in the health authorities section of this bill. With that caution I heartily endorse the inclusion of the health authorities section in the bill.

Mr. ALEXANDER. Mr. Speaker, drug abuse is the Nation's most serious domestic problem. Drugs enslave our children, drain the economy, and rob our Nation of its human vitality.

A comprehensive policy against drug abuse is essential. This national policy must include education, prevention, and rehabilitation, in cooperation with State and local law enforcement agencies. Also, stiffer penalties are needed against drug traffickers—including the death penalty for organized drug traffickers.

Nearly 1 month ago, the House passed its version of the omnibus drug enforcement bill. In that month without final action, billions of dollars in illegal drugs have flowed into this country and untold lives have been ruined. We can wait no longer * * * Congress must declare war on drugs and rid America of the cancer which eats away at the very soul of our Nation.

I support the conference report.

Mr. OXLEY. Mr. Speaker, I rise in support of this modified version of the antidrug bill passed earlier by the Senate.

Passage of this bill is essential to our efforts to win the war against drugs. As my colleagues and I on the House Select Committee on Narcotics Abuse and Control have been saying for quite some time now, we must attack both the supply and demand sides of the drug crisis. This bill is tailored to deal with both.

The legislation addresses the supply problem on several fronts, including:

Much tougher penalties for drug offenses, including imposition of the death penalty for so-called drug kingpins who commit murders in the course of a continuing illegal narcotics business, minimum mandatory prison sentences, and sharply increased fines for major drug traffickers, and stiffer penalties for money laundering whereby drug dealers are able to make and conceal vast sums of money.

Beefed-up support for the Coast Guard and the Customs Service, both of which have been woefully understaffed and unable to apprehend more than a small percentage of drug smugglers, especially along the United States-Mexican border.

Significantly increased support for State and local enforcement agencies in the form of grants to fight drug trafficking within their jurisdictions.

Use of the military to supplement and complement local law enforcement efforts to interdict drugs and of military technology and equipment, such as fast-flying aircraft and weather balloons, for detection purposes. I did not support the House's efforts to order the President—the Commander in Chief—to deploy the military for this or any other pur-

pose, and I am pleased to see that this version of the bill takes a much more reasonable approach.

The bill also contains a number of key provisions aimed at reducing the demand for drugs in this country. They include:

Major increases in support to States for the development and operation of drug abuse education and prevention programs in elementary and secondary schools. We now know that young people are tempted to abuse drugs as early as the fourth grade. This bill will enable us to get the word out early and help prevent young people from endangering their lives with drugs.

Improved support for community-based substance abuse prevention, treatment and rehabilitation programs.

Overall, I approve of this modified omnibus antidrug bill. I am disappointed that it no longer includes the expansion of the exclusionary rule from the original House-passed version, but I think we all recognize that a bill this far reaching is bound to have some provisions we like better than others. We cannot permit the drug crisis to continue to escalate any further, however, and I urge my colleagues to join me in voting "yes" on H.R. 5484.

Mr. WALGREN. Mr. Speaker, the Congress is doing the right thing in giving drug abuse addiction and trafficking priority attention, and I am pleased to have been a part of the development of this legislation. Drug abuse should be attacked on every front and the bill before us, with concepts from both the House and Senate, includes several important steps.

Every parent, indeed every citizen, has to be concerned about drug abuse. We have to worry because, day in and day out we put ourselves into other peoples' hands, and are exposed to the destructive actions of others.

I want to highlight two amendments I developed in the process of Commerce Committee consideration which are now included in the final bill. One was an amendment that directs States to give special attention to young people in treatment programs. Studies show that by their midtwenties four out of five young people have used an illicit drug. And despite heightened publicity about the hazards of cocaine use and several tragic incidents, in 1985 only a substantial majority of 12th grade students believed there is no real risk in using cocaine—a figure reflecting practically no change since 1978. My amendment would focus our resources at the point where our efforts have the greatest leverage—young people.

A second amendment I authored would require the Secretary of Health and Human Services to contract with the Institute of Medicine to develop a report on: First, the extent to which public and private insurance and other payment sources cover drug and alcohol treatment; and second, the adequacy of such coverage. Information on health insurance coverage of drug rehabilitation is hard to come by. Drug and alcohol rehabilitation can be lengthy and expensive. Many people assume their insurance policy covers drug rehabilitation, but they quickly learn it is quite limited. If treatment programs are not covered or if coverage is limited, people cannot get cured. We need to be adding incentives to cure, not disincentives. This study will be a step toward determining whether we have to improve coverage and if so how much.

The bill also includes continued support for research on alcohol and drug abuse and addiction. The National Institute on Drug Abuse with its $65 million budget conducts research on the causes and cure of addiction. NIDA is increasing knowledge of the effects of drugs on human beings. Both physical and psychological. Certainly the first step toward eradicating drug and alcohol abuse is understanding it. The Nation must have a strong research program underlying our eradication efforts.

This bill also includes important new penalties for those trafficking in illegal drugs, and new efforts to stem the production and flow of drugs from foreign countries. The bill would require the President to withhold aid from foreign countries that do not cooperate with U.S. efforts to reduce drug trafficking. And the bill increases the Coast Guard and Customs effort to stop illegal drugs from entering this country.

Drug abuse is a wide-ranging problem in our society and calls for wide-ranging efforts. The bill we are sending to the President today represents a bipartisan "pulling together" in Congress of the many segments of government that must respond.

This bill represents several concrete steps toward effectively combining our resources to prevent drug abuse.

Mr. DE LUGO. Mr. Speaker, I rise in support of the Omnibus Drug Enforcement, Education, and Control Act of 1986. By its terms, this bill recognizes that discussions of deficits and budget control must be setaside in the face of a situation which has become epidemic and which will have the greater impact on our future if not confronted today.

As leaders and Representatives we must tackle the problem that has left homes in this country stunned and broken. We must recognize today, that drug abuse will destroy this country unless we move forcefully to bring it under control.

The problem is not less critical in the U.S. Virgin Islands than in the country at large. Apart from being used as a transshipment point for drugs and weapons, an alarming amount of the cocaine, marijuana, and heroin destined for the mainland is distributed in the territory.

Out of its limited resources, the local government has established a narcotics strike force. Unfortunately, the strike force is underfunded to the point of futility. Funding included in the proposal before this body today can radically improve the contribution the Virgin Islands can make to stemming the flow of drugs into this country. The $3 million targeted for drug enforcement in the territory will assure that the waters are patrolled by radar equipment and boats, it will allow the strike force to increase its manpower, it will mean that the Virgin Islands are no longer fair game in the drug transport chain.

Another important aspect of the proposal are the funds targeted for drug abuse prevention in the Virgin Islands. Certain organizations have demonstrated their success in helping youngsters in the local community, and the $1 million targeted for drug prevention in the territory will allow these organizations to broaden their reach.

Equally important is the inclusion of the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and Puerto Rico in national enforcement and education programs. I am particularly encouraged by the authority granted to Federal enforcement officials to employ the services of local enforcement officials. This assures that local expertise will be incorporated into the Federal effort, and that redundancy and conflict may be reduced.

This is solid, timely legislation. I urge my colleagues to vote in favor of passage.

Mr. DAUB. Mr. Speaker, the menace that illegal drugs poses to our Nation and to our families has become acutely highlighted. The deaths of prominent athletes due to drug use, the destruction of lives by new and more dangerous drugs such as crack and the ever growing threat to our children from drug abuse, have all raised this issue to the national spotlight.

The omnibus drug package, H.R. 5484, that the House is considering today is a bipartisan effort to deal with the grave drug problem confronting this Nation. I am pleased to have contributed to this effort by authoring three provisions of H.R. 5484 during consideration of the drug package in the Ways and Means Committee. These provisions will prohibit the importation of drug paraphernalia; authorize a low altitude detection system to combat the problem of low flying aircraft at our borders; and increase fines and penalties associated with the importation of heroin, cocaine, PCP and LSD.

In a further effort to strengthen the "war on drugs," I offered a successful amendment to the original House version of H.R. 5484 to ensure that an aviation pilot who participates in the transportation by aircraft of controlled substances will never legally fly again. Current law mandates that a pilot violating a State or Federal narcotic law can have his license revoked by the Federal Aviation Administration for a maximum of 5 years. My amendment would have amended the Aviation Drug-Trafficking Control Act of 1984 to require that the FAA Administrator shall not issue an airman certificate to any pilot who has violated a State or Federal narcotic law associated with aviation.

I regret that the leadership did not include this amendment—which has already been considered and accepted by the House—in the version of H.R. 5484 we are considering today. A large portion of the illegal drugs entering this country do so by air, and this amendment would have gone a long way toward reducing this problem by sending a strong signal to pilots participating in aviation related drug trafficking.

Mr. LUNDINE. Mr. Speaker, I rise in opposition to this rule which would allow for the House's agreement to its amendments to the Senate's drug bill. I am extremely disappointed with this compromise as it does not include funding for military interdiction, but does include the death penalty for drug-related murders.

Since interdiction is the key to ending the flow of illegal drugs into this country, it is my

belief that it should be the first function of the Federal Government. While I am sensitive to the opposition's arguments against interdiction, I am not convinced we can keep drugs out of this country unless we are willing to deploy our military forces.

I was very pleased when the House required the President to deploy U.S. military forces at our borders within 30 days of enactment of its drug bill. This so-called compromise eliminates this provision as well as all the DOD and Coast Guard funding for drug interdiction, and only requires the military to take an inventory of its drug interdiction resources and to develop a plan for using these resources. These provisions are much too weak given the magnitude of our Nation's drug problem, and I simply cannot support them.

Furthermore, I object to the inclusion of the death penalty in this compromise bill. I voted for the House bill in spite of the objectionable death penalty and exclusionary rule provisions because, frankly, I thought that they would be filibustered in the other body and ultimately dropped. I am surprised and disappointed that the death penalty provision survived in the conference report. For this reason, if I had another chance to vote on the House bill, I may not have supported it.

While I cannot support this compromise drug bill for the reasons I have already stated, I still believe that this country need to wage a serious war on illegal drugs. Three things need to be emphasized at all levels of government, interdiction, education, and treatment, and law enforcement.

One example of the need for more emphasis in these areas is the fact that people seeking treatment for drug rehabilitation, have to wait for services. To me this is ludicrous and inexcusable.

In my home State of New York, drug abuse is a particularly serious problem. With a combination of forces working against drugs, we can lick this problem in New York, in Florida, in California, and in all the towns and cities across this country.

While I regret that I cannot support this bill, I am confident that we will make significant strides to fight the drug problem over the next year and hope I can continue to play an active role in the fight.

Mr. UDALL. Mr. Speaker, subtitle A of title V of the bill is the U.S. Insular Areas Drug Abuse Act of 1986 and is similar to the provisions which passed the House September 10. The differences between this part of the substitute and the original bill are essentially that provisions to which the Reagan administration objected have been deleted. The primary purposes of this subtitle are to authorize assistance to improve drug law enforcement and for drug abuse prevention and treatment programs in the U.S. territories and commonwealths.

The U.S. insular areas are, in a very real sense, the Nation's borders in the Caribbean and the Pacific. Puerto Rico is actually within U.S. customs territory and, although the other insular areas are not, they are U.S. territory for many purposes.

This means that drugs smuggled into the territories and commonwealths are much more easily transported to the States than are shipments from foreign points. Consequently, narcotics traffickers are using the U.S. insular areas as a significant entry point for illegal drug shipments.

Of course, drugs are brought into these islands both for transshipment and for local consumption. Local marketing has led to very high levels of drug abuse and violent crimes.

These problems are particularly acute in Puerto Rico and the Virgin Islands, which are closest to the U.S. mainland. The rates of violent crime, much of it drug related, range to two and three times the national average.

American Samoa, Guam, and the Northern Mariana Islands are farther from the States. Still, on-island drug abuse, crime, and smuggling problems are at relatively high levels in these islands as well.

This legislation would authorize assistance that the insular governments need for their own efforts to cope with drug abuse. It has been developed with our colleagues from the insular areas—RON DE LUGO of the Virgin Islands, FOFO SUNIA of American Samoa, JAIME FUSTER of Puerto Rico, and BEN BLAZ of Guam as well as the representative of the Northern Mariana Islands, Froilan Tenorio—to provide specifically what each of their islands need most for their programs to combat drug abuse.

Unlike the original bill that passed the House, however, this portion of the substitute would not dedicate more direct Federal resources to the insular drug problem. Because of opposition from the Reagan administration, almost all of the provisions intended to have Federal agencies assign more law enforcement manpower and equipment to the insular areas have been deleted. Although these provisions have been deleted we still, however, urge administration agencies to assign the additional agents and equipment needed to the insular areas.

The one provision for an increased Federal effort that has not been deleted, however, relates to the stationing of a Coast Guard patrol vessel in St. Croix in the Virgin Islands. We cannot agree with the administration that vessels assigned to St. Thomas or the eastern end of Puerto Rico are adequate for patrolling St. Croix's waters.

One provision for an increased Federal effort that has been added relates to the stationing of an aerostat over Puerto Rico. As was expressed in the debate on the original bill, the radar surveillance that it would provide over the Commonwealth—as well as the Virgin Islands—is vital.

Other provisions for increased Federal efforts which have been added would authorize the Department of Health and Human Services to provide technical assistance, training, and equipment to insular governments for public and private sector drug abuse prevention and treatment programs. This assistance would be in addition to resources provided by the Department of Justice for drug abuse law enforcement.

Consistent with the intent of the original bill, the substitute clarifies that we expect $700,000 in assistance to be provided American Samoa for these purposes, $1 million to be provided Guam, and $250,000 to be provided the Northern Mariana Islands. Retained provisions authorize $7.8 million in assistance for Puerto Rico and $4 million for the Virgin Islands.

Finally, Mr. Speaker, I want to express a concern about the allocation formula for the territories in section 4002 of this legislation, a provision of the Alcohol and Drug Abuse Prevention and Treatment Act of 1986. The original bill that passed the House set-aside 0.25 percent of the allotments for States under this program for the territories; this substitute effectively sets aside about half that amount.

I understand that the chairman of the Subcommittee on Health and Environment, our colleague HENRY WAXMAN, agrees with me that this formula may not provide adequate funding for the territories. Along with the insular representatives, we will work together to rectify this deficiency.

One way to address the program would be to provide additional prevention and treatment technical assistance to the insular areas under both titles IV and V of this legislation. Another way would be to adjust the formula in title XIX of the Public Health Service Act in future consideration of this legislation or in reconsideration of that act next year.

Mr. RICHARDSON. Mr. Speaker, I rise in support of this agreement on H.R. 5484. The epidemic of drug abuse sweeping this country must be brought under control. This agreement, although not as strong as the House-passed version of the omnibus drug bill, is the cornerstone of the war on drugs. It is an important initiative and one which is worthy of our support. The future of the young people of this Nation is dependent upon the success of these antidrug endeavors—we must all work together to conquer this drug abuse monster which threatens to destroy our very future.

I am very pleased to see that an entire section of this bill has been devoted to the drug and alcohol related problems of American Indians. There is absolutely no question that alcoholism and drug abuse on Indian reservations is having tragic consequences for all native Americans. Data collected in New Mexico shows that American Indian adults in alcohol and drug treatment programs overwhelmingly report starting to use alcohol at a very early age. Alcohol and drug use and abuse reverberates throughout all facets of life on and around reservations. Health care and social welfare statistics indicate that the major problem for American Indians is substance abuse—alcohol and drug abuse are responsible for most of the emergency admissions to Indian Health Service facilities. They are also responsible for the vast majority of social welfare problems being experienced by American Indian families. Alcohol and drug abuse are destroying the traditions and ways of life of this country's native Americans. New initiatives are essential to stop the widespread abuse of alcohol and drugs in Indian country.

Included in the programs for American Indians is one which is very important to the people of my district—the Navajo Alcoholism Rehabilitation Demonstration Program, to be situated in Gallup, NM. This pilot project is an innovative one. Designed as a model alcoholism rehabilitation program, this project will have an immediate positive impact on members of the Navajo Tribe, as well as on community members in the Gallup area. The sig-

nificance of this project extends beyond its benefits in my district. Combing traditional and modern methods, the Gallup Navajo Alcoholism Rehabilitation Demonstration Project will serve as a model for alcoholism rehabilitation projects for other tribes.

I have great hopes for the success of this project. It will function as a combined effort between the Navajo Tribe and Friendship Services of Gallup and will utilize the resources and facilities of both parties. The Navajo Tribe has assured me that they are willing to work with Friendship Services to ensure the success of this project. As this project is for the direct benefit of Navajos, I sincerely hope that every effort will be made to include Navajos at all levels in this project. I am confident that this project will be the beginning of a fruitful partnership between the Navajo Tribe and Friendship Services. I urge my colleagues to support the Gallup Navajo Alcoholism Rehabilitation Demonstration Program, as well as the agreement on H.R. 5484, the necessary and important omnibus drug bill.

Mr. EDWARDS of California. Mr. Speaker, the comprehensive drug bill before the House includes many provisions that will improve our efforts to halt the flow of illegal drugs into this country. Moreover, it has substantial components on education and rehabilitation, which law enforcement professionals believe are the only really effective solution to the drug problem.

As originally put together, the bill had no provisions that would seriously infringe the civil or constitutional rights of our citizens. However, in response to what can only be called election-year hysteria, a number of unwarranted and constitutionally suspect amendments were added, amendments that would have authorized the expanded use of the military to enforce the drug laws, created a death penalty, and allowed illegally seized evidence to be used in Federal courts.

The other body displayed considerable courage and stripped out those troublesome amendments. I am pleased to say that today the House is showing good sense in receding to the Senate on two of those issues. It is unfortunate that the death penalty is unconstitutional.

I would like to say a few words regarding the forfeiture provisions in this bill. Under the money laundering provisions, criminal forfeiture in money laundering cases would be governed by the forfeiture provisions of the Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended by the Comprehensive Forfeiture Act of 1984. The bill also will allow for the first time the forfeiture of substitute assets. I would like to stress that nothing in these forfeiture provisions is intended to interfere with a person's sixth amendment right to counsel of choice or to the effective assistance of counsel. This is consistent with the interpretation of numerous Federal courts, including *United States* v. *Rogers,* 602 F. Supp. 1332 (D.Colo. 1985); *United States* v. *Badalamenti*, 614 F. Sup. 194 (S.D. N.Y. 1985); *United States* v. *Ianniello,* S 85 Cr. 115 (S.D.N.Y. September 3, 1985); *United States* v. *Reckmeyer,* 631 F. Supp. 1191 (E.D. Va 1986); *United States* v. *Bassett,* 632 F. Supp. 1303 (D.Md. 1986).

Mr. FASCELL. Mr. Speaker, since there will be no conference report or statement of managers on this legislation, I would like to take this opportunity to include in the RECORD an explanation of the provisions in the House substitute in title II over which the Foreign Affairs Committee has jurisdiction, in particular those provisions which contain significant differences from the Senate amendment.

The House substitute provides a short title for title II, the International Narcotics Control Act of 1986. In section 2002, we maintain the requirement that funds authorized and appropriated for the international narcotics control account which exceed the President's fiscal year 1987 request may be obligated only if the President submits a budget request for those additional funds. That increase now totals $45 million because we acceded to the Senate's desire that $10 million for narcotics aircraft procurement be provided in new funds instead of earmarked out of current grant military assistance funds [MAP], as H.R. 5484 provided. We did clarify that the $10 million shall be used primarily for procuring aircraft which will be available for use throughout the Latin American region. I believe this requirement is crucial to building on our current efforts to encourage a regional response to the drug problem in Latin America. In this connection, let me note that we have also retained, in section 2004 an earmark of $2 million in International Military Education and Training funds [IMET] for education and training in the operation and maintenance of aircraft used in narcotics control interdiction and eradication efforts. It is our intention that this training be provided in support of the regional effort in Latin America.

We have also maintained our requirement that any aircraft provided to a foreign country for narcotics-related purposes shall be provided only on a lease or loan basis, and that detailed records shall be maintained on the use of these aircraft. Hearings conducted by the Committee's Task Force on International Narcotics have demonstrated that such restrictions are prudent if we are to maintain adequate accountability over the use of our funds.

The Senate amendment contained a major rewrite of section 481(h) of the Foreign Assistance Act which ties foreign aid to performance on narcotics control issues. We have accepted this provision with minor modifications, as well as new reporting requirements and restrictions contained in section 2006 which deal with countries that are particularly uncooperative with U.S. narcotics control efforts.

Section 2010 of the House substitute represents perhaps the most significant difference from the Senate amendment. This section amends the so-called Mansfield amendment, which prohibits U.S. officials from being present at drug arrest actions overseas. H.R. 5484 contained a carefully crafted provision which allowed U.S. officials to be present at such actions in a foreign country if the Secretary of State determined that it would be in the national interest and would not harm U.S. relations. The Senate amendment went much further, allowing the President to waive virtually any restrictions on the activities of U.S. officials, and in fact would have permitted DEA agents to make arrests in foreign countries. We have therefore retained the original House language, but have included a Senate provision relating to exemptions for maritime law enforcement operations with the agreement of the host country. I would note that it is our intention that the authority granted to the Secretary of State in this section be delegated to the U.S. Ambassador in each country.

We have accepted the Senate amendment relating to restrictions on aid to Bolivia with some minor changes. While we salute the Paz Extenssoro government for its cooperation in "Operation Blast Furnace", we continue to hope that more significant progress can be made on the eradication front. We have therefore maintained the requirement in current law that the Government of Bolivia develop a comprehensive plan for country-wide eradication of illicit coca production before economic support funds and military assistance are made available for fiscal year 1987. Given the demonstrated willingness of the Bolivian government to cooperate on narcotics control issues, I do not anticipate that this requirement will prove onerous. We have also included language expressing our desire that the new program agreement being negotiated between the Government of Bolivia and the Government of the United States contain numerical eradication targets no less than the 1983 agreements which have now expired. Our intention in including this provision is to encourage meaningful and substantive eradication targets without setting any particular number in the law. The terms of the 1983 agreements are sufficiently flexible to accommodate this intention.

The Senate included several provisions relating to Mexico, which we have accepted. We also added two provisions contained in H.R. 5484. The first relates to the need for effective prosecution in bringing to justice those responsible for the torture-murder of DEA agent "Kiki" Camarena in 1985 and the recent torture of DEA agent Victor Cortez in August 1986. Continuing hearings by the task force on these cases has documented a depressing lack of progress in prosecuting the guilty parties. The other provision was included at the request of the chairman of the Agriculture Committee and relates to the possibility of a crop substitution program in Mexico.

While the Senate amendment included part of the House-passed initiatives to combat narco-terrorism, it failed to include two important provisions which we have reinstated in the House substitute. The first addresses the need for protection of Latin American officials who are increasingly the targets of violent narcoterrorist attacks, particularly in Colombia. We have expressed our desire that administration of justice funds be used to help protect those who have put their lives on the line by helping us in the fight against narcotics. The second provision expresses the sense of the Congress that existing authorities be used to offer an information reward on Jorge Luis Ochoa Vasquez, a notorious Colombian drug kingpin who recently escaped judicial proceedings in that country.

The final significant difference from the Senate amendment relates to the role of the intelligence community in our antinarcotics efforts overseas. At the request of the executive branch, we have deleted a Senate provision on this subject with the understanding that the

cost of aerial surveys on foreign narcotics production will henceforth be borne by appropriate Federal agencies instead of from the very limited budget of the Bureau of International Narcotics Matters at the State Department.

Mr. Speaker, the changes contained in the House substitute in the foreign affairs area are quite modest. They have the support of our minority. I urge my colleagues to support this important legislation.

Mr. WAXMAN. Mr. Speaker, I want to express my support for the rule making in order the House amendment to H.R. 5484, the Omnibus Drug Enforcement, Education, and Control Act of 1986. The proposal reflects a legitimate compromise between the House- and Senate-passed drug abuse control initiatives.

Recent actions by the Congress reflect a bipartisan determination to get serious about curtailing the incidence and impact of drug and alcohol abuse. The legislation before us is the most comprehensive attempt by any Congress to tackle this problem. The legislation provides a significant increase in Federal resources to combat the public health and law enforcement consequences of drug abuse.

Equally important, the legislation recognizes that the abuse of alcohol, particularly among the young, has a significant public health impact and must be addressed in a comprehensive national drug abuse policy. The legislation takes note that the abuse and addiction to alcohol, like the abuse or addiction to licit and illicit drugs, requires the attention of every parent, school official and health professional.

The legislation before us is urgently needed. The extent of alcohol and drug abuse among the young, indeed among all population groups, is significant. Americans are using illicit drugs and abusing alcohol and prescription medicines in greater numbers than ever before. We know this from the mortality statistics. We know this from admissions to hospital emergency rooms. We know this from reports of drug treatment centers forced to turn patients away for lack of space.

Mr. Speaker, in 1986 we have reached a point at which children are coming into contact with drugs and alcohol at frighteningly young ages. To parents the age of 13 signals the beginning of young person's teenage years. It also signals an age at which our children will be exposed to and in too many cases, pressured to use drugs. The results of this use can be catastrophic.

In his August 4 address to the Nation, President Reagan called for "a national crusade against drugs." In the address the President said:

> All the confiscation and law enforcement in the world will not cure this plague as long as it is kept alive by public acquiescence * * *. We must now go beyond efforts aimed only at affecting the supply of drugs; we must affect not only supply, but *demand*.

On September 15 the President announced the administration's proposed initiatives for achieving a "Drug-Free America." Additional funds were proposed to assist States in expanding the number of treatment programs available for those in need. Additional funds were proposed to expand research into better understanding what forms of treatment work best. Additional funding was proposed to assist in the development of community-based drug abuse prevention programs.

Mr. Speaker, I'm pleased to say that the public health control initiatives authorized in title IV of the pending legislation reflect the goals and principles embodied in the President's proposal. There are differences—most notably in the level of funding—but that is not a surprise. What is important is that the Congress and the administration are of one mind in recognizing the importance of demand reduction—of reducing public willingness to abuse drugs.

It is increasingly clear that law enforcement alone cannot effectively deal with a public health crisis as complex and intractable as drug abuse.

The legislation before us carries forward on the President's call for a fundamental change in public attitudes toward drugs. If we are to have any chance of fundamentally affecting the incidence of drug abuse in this country, we must affect demand. The legislation before us will place increased priority upon the prevention of drug and alcohol abuse. It will provide additional funds to open up treatment programs. It will hopefully end the specter of waiting lists which have paralyzed the treatment programs in so many areas of the country.

Since 1980, Federal support for alcohol and drug abuse treatment and prevention services has declined by 45 percent. We currently spend $230 million for support of State drug and alcohol abuse prevention and treatment programs. The proposal before us will reverse this trend. The legislation authorized an additional $200 million in Federal support for drug and alcohol treatment and prevention programs. Each State will be eligible to receive a portion of these additional funds to increase the availability of treatment services and initiate community-based prevention programs.

Additional funds for treatment will be allocated in accordance with a formula which considers a State's relative population and per capita income. In this regard, the Subcommittee on Health and the Environment worked closely with the Intergovernmental Relations Group of the General Accounting Office's Human Resources Division in developing the most equitable formulas for allocating funds to the States under this legislation. On behalf of the subcommittee, I want to express our appreciation for the timely and expert guidance this talented agency provided to our efforts.

Mr. Speaker, at this time I want to note the priority and importance placed by this legislation upon the prevention of alcohol and drug abuse. Six initiatives characterize this effort.

First, existing drug and alcohol abuse prevention programs within the Department of Health and Human Services are consolidated into a new Agency for Substance Abuse Prevention [ASAP]. The ASAP will be located within the Alcohol, Drug Abuse and Mental Health Administration. These activities are currently underfunded, lacking direction and have suffered in recent years from administrative neglect.

Second, the ASAP will initiate a clinical training program to train health professionals in better understanding the symptoms and proper treatment of drug and alcohol abuse as well as to assure the availability of qualified drug and alcohol abuse treatment counselors.

Third, the ASAP is charged with the development of model, innovative community-based programs to discourage alcohol and drug abuse among young people. The agency's work in this area will aid communities in developing programs to discourage the abuse of drugs and alcohol in their neighborhoods.

Fourth, the legislation establishes a President's Media Commission on Alcohol and Drug Abuse Prevention. This new Commission will bring together the creative talents and ingenuity of our Nation's communications industries for the purpose of developing new programs and national strategies for disseminating information to prevent alcohol and drug abuse. The active participation of television media, radio media, motion picture media, cable communications media, print media, recording industry, advertising industry, business community, and professional sports organizations will be instrumental in developing an effective national campaign to discourage the use of alcohol and drugs. I want to acknowledge the leadership and contribution of the chairman of the Subcommittee on Telecommunications, Consumer Protection and Finance, the gentleman from Colorado [Mr. WIRTH], in the development of this important provision.

Fifth, the legislation requires the President to convene a White House Conference on Drug Abuse and Control. One of the principal purposes of the conference will be to review the impact of drug abuse on American education with particular attention to the role of colleges and universities in discouraging the illegal use of drugs by student athletes. The gentleman from Ohio [Mr. LUKEN] is a senior member of the Subcommittee on Health and the Environment and has been active in focusing attention upon the relationship between drug abuse by student athletes and college athletic and educational policies. This is an important issue because the actions of student athletes are often viewed as role models for other students. I want to commend the gentleman from Ohio for his concern and commitment to focusing national attention and the attention of the academic community on this serious problem.

Finally, $47.5 million is authorized for a block grant program to assist States in developing and implementing substance abuse prevention programs at the State and local level. The block grant program will be administered by the Agency for Substance Abuse Prevention.

The principal feature of title IV is the authorization of $228 million for activities to reduce the demand for drugs.

The $228 million would be allocated among four priority areas.

First, $142.5 million in assistance to States through a block grant for drug and alcohol abuse treatment. These additional funds will permit States to expand their drug abuse treatment systems and eliminate the waiting lists of drug abusers seeking treatment.

Second, $47.5 million in assistance to States through a block grant for drug and alcohol abuse prevention. This is the first time the Federal Government has ever committed

large resources to develop a national drug and alcohol abuse prevention policy.

Third, $28 million for better administration and coordination of substance abuse prevention programs at the national level through establishment of the Agency for Substance Abuse Prevention. These programs would include development of public service announcements, prevention literature, providing technical assistance to States and localities, and supporting clinical training of health professionals including drug and alcohol abuse counselors.

Fourth, $10 million for development and evaluation of drug and alcohol abuse treatment programs to determine which forms of treatment work best.

Mr. Speaker, title IV of the legislation also contains a number of other provisions which I would like to note.

Part III of title IV contains provisions relating to the Alcohol, Drug Abuse and Mental Health Administration and the reauthorization of expiring drug and alcohol abuse research programs. The provisions of part III reflect the provisions of H.R. 5259, the "Alcohol, Drug Abuse and Mental Health Amendments of 1986," which were passed by the House on September 16, 1986, and reported by the Committee on Energy and Commerce on August 15, 1986 (House Committee Report 99–802). With the exception of minor, technical or conforming amendments, part III is identical to H.R. 5259 with the following exceptions.

First, expiring drug and alcohol abuse research activities are extended through fiscal year 1987 at a level of "such funds as may be necessary." The original House bill (H.R. 5259) extended the authorization of appropriations for 3 fiscal years.

Second, the composition of advisory councils for the ADAMHA are revised to increase from six to nine the number of appointed members with health and scientific backgrounds.

Part IV of title IV will strengthen Federal quality control and manufacturing standards for infant formula. The provisions were originally contained in the Senate amendment to H.R. 5484 and enjoy the support of consumer groups and the infant formula industry. Mr. Speaker, at this time I want to praise the efforts of the senior Senator from Ohio, HOWARD METZENBAUM, for his tireless efforts to assure that infant formula meets the highest standards of safety and nutritional quality. These provisions were included in the Senate bill through the efforts of the distinguished chairman of the Senate Committee on Labor and Human Resources, ORRIN HATCH and the ranking minority member of that committee, EDWARD KENNEDY. They and Senator METZENBAUM deserve special recognition for their personal commitment to assuring the nutritional quality of infant forumla.

Mr. Speaker, section 4045 of the legislation closes a loophole in Federal drug abuse law and stops the sale of "Poppers," a widely abused drug known by chemists as alkyl nitrites, which are often sold to the public under the pretense of being a room odorizer. While the substance is sold as a room odorizer, it is widely used as an inhalant for its euphoric effect. Section 4045 of the legislation requires the Food and Drug Administration to treat alkyl nitrites and their isomers as a "drug" unless the alkyl nitrites and their isomers are not manufactured, processed, distributed or sold for use by individuals.

Mr. Speaker, I urge support for the legislation and, without objection, request the following explanation of several provisions in title IV be printed in the RECORD at this point.

ANALYSIS OF H.R. 5481—TITLE FOUR—DEMAND REDUCTION

SECTION 4001. SHORT TITLE

The first section cites the Act as "Alcohol and Drug Abuse Prevention and Treatment Act of 1986."

PART 1—FINANCIAL ASSISTANCE TO STATES AND COMMUNITIES

Section 4002 adds a Part C—"Emergency Substance Abuse Treatment and Prevention" to Title XIX of the Public Health Service Act. The new Part C contains four new sections 1921–1926.

Section 1921 (Authorization of Appropriations) authorizes $228 million in Fiscal Year 1987 for the allotments authorized under section 1914 and 1925, treatment program evaluations under section 1923, and the activities of the Agency for Substance Abuse Prevention.

Section 1922 (Agency for Substance Abuse Prevention) provides that of funds appropriated for the purposes specified in Section 1921, $28 million shall be made available for the Agency for Substance Abuse Prevention (ASAP). The ASAP is established by Section 507 of the Public Health Service Act as amended by Section 4003 of this legislation. The legislation requires that the Secretary allocate the first $28 million appropriated under Section 1921 for support of national activities sponsored by the ASAP. All funds appropriated in excess of $28 million must be allocated pursuant to sections 1923, 1924 and 1925.

Section 1923 (Treatment Program Evaluations) provides that five percent of funds appropriated under section 1921 and which remain after funds are made available under section 1922 shall be used by the Secretary, acting through the Alcohol, Drug Abuse and Mental Health Administration, to develop and evaluate alcohol and drug abuse treatment programs to determine the most effective forms of treatment.

Section 1924 (Allotments for Treatment Services for Alcohol and Drug Abuse)

Subsection (a) provides that three-fourths of funds appropriated under section 1921 and available for allotment under section 1924 shall be allotted to each state for the purpose of providing alcohol and drug abuse treatment and rehabilitation services. Funds will be allotted to each state pursuant to a formula prescribed by the Secretary of Health and Human Services. The formula will be based equally on the population of each state (ages 15–65) and on the population of each state (ages 15–65) weighed by its relative per capita income.

The General Accounting Office (GAO) worked closely with the Congress in devising the formula which the Secretary should use to allocate funds under this section.

The formula allocates available funds to states based on two factors: (1) the population at risk, and (2) a relative income factor which provides relatively more aid to low income states. The population at risk for a state is defined as the number of state residents ages 15 through 64 as reported by the Bureau of the Census for the most recent year in their Current Populations Reports, Series P-25. The relative income factor for a state is defined as the ratio of its total personal income per person at risk to the corresponding income per person at risk for all states. The date for total personal income is defined as the most recent three year average of state personal income as reported by the Department of Commerce in the Survey of Current Business.

The population data is as reported for July 1, 1984 by the Bureau of the Census, and total personal income is as reported by the Department of Commerce for 1982 through 1984. The 0.5 weight attached to the relative income factor determines the extent to which funds are targeted to low income states. A weight of zero would result in a formula based exclusively on the population at-risk factor.

Due to inadequacies in reporting age specific population data for the U.S. territories and Puerto Rico, the legislation requires the Secretary to allocate 1.5% of appropriations available for allotment under this section to the Commonwealth of Puerto Rico, the Virgin Islands, the Northern Mariana Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands on the basis of a formula established on the relative populations of such areas.

Funds paid to a state under this Section would be available only for Fiscal Year 1987. Funds allotted under this section are intended to deal with an emerging drug abuse crisis which requires the training of treatment counselors and expansion of treatment services in response to increased demand. Allotments under this authority are intended to supplement, rather than supplant existing federal, state or local funding of drug treatment programs. In the event a state is unable to effectively use the funds available through this allotment during fiscal year 1987, unexpended funds will be returned to the Treasury or allocated proportionately to other states for use in Fiscal Year 1987.

Subsection (b) provides that funds allotted to a state shall be used to provide treatment and rehabilitation services for persons suffering from drug abuse. States should place priority on expansion or development of treatment programs suitable to the needs of young people who are most at risk of drug abuse and addiction. In addition, states should provide patients in drug and alcohol treatment access to vocational training, job counseling, and education equivalency programs.

Section 1925 provides that one-fourth of funds appropriated under Section 1921 and available for allotment shall be allotted to each state for the purpose of developing and administering a community-based substance abuse prevention program. Appropriations are allotted to states pursuant to a formula prescribed by the Secretary of Health and Human Services which is based upon the relative population of each state in the age group of 5 through 24. In developing a formula for allocation of funds under this section, the Congress worked closely with the General Accounting Office in selecting the formula most indicative of a state's need for substance abuse prevention services.

The formula for making allocations to states for substance abuse prevention programs is based on a state's relative share of the population at risk. The at-risk population is defined as the number of state residents between the ages of 5 and 24, as reported by the Bureau of the Census, for the most recent year in their Current Population Reports, Series P-25. With respect to

making allotments to Puerto Rico and the territories, the legislation requires the Secretary to allocate 1.5% of appropriations available for allotment under this section in the basis of a formula established on the relative total populations of such areas. The following Table shows each state's approximate trial allotment, calculated by multiplying its percentage share of the U.S. population aged 5 through 24 by a $50 million appropriation level. The population data is as reported for July 1, 1984 by the Bureau of the Census. The allocations to Puerto Rico, and other U.S. Possessions and Trust Territories are based on their July 1, 1984 estimated resident populations relative to the total resident population of this sub-group.

TABLE 1.—STATE ALLOTMENTS FOR SUBSTANCE ABUSE PREVENTION GRANTS

[Appropriation equals $50,000,000]

States	Trial allotment	Share of total
Alabama	$867,946.97	1.74
Alaska	118,477.42	.24
Arizona	637,648.16	1.28
Arkansas	493,877.80	.99
California	5,198,363.36	10.40
Colorado	668,931.52	1.34
Connecticut	627,664.10	1.26
Delaware	131,123.89	.26
District of Columbia	119,808.63	.24
Florida	1,994,813.70	3.99
Georgia	1,302,586.06	2.61
Hawaii	224,973.98	.45
Idaho	222,311.57	.44
Illinois	2,414,143.91	4.83
Indiana	1,190,099.06	2.38
Iowa	600,374.36	1.20
Kansas	500,533.83	1.00
Kentucky	810,039.46	1.62
Louisiana	1,018,373.36	2.04
Maine	241,614.07	.48
Maryland	905,220.76	1.81
Massachusetts	1,172,127.77	2.34
Michigan	1,977,508.01	3.96
Minnesota	877,265.42	1.75
Mississippi	599,708.76	1.20
Missouri	1,032,351.03	2.06
Montana	172,391.31	.34
Nebraska	336,795.37	.67
Nevada	181,709.76	.36
New Hampshire	203,674.67	.41
New Jersey	1,496,276.67	2.99
New Mexico	321,486.49	.64
New York	3,569,631.59	7.14
North Carolina	1,319,891.75	2.64
North Dakota	147,098.37	.29
Ohio	2,261,055.10	4.52
Oklahoma	689,565.23	1.38
Oregon	526,492.37	1.05
Pennsylvania	2,341,593.12	4.68
Rhode Island	193,025.02	.39
South Carolina	740,816.70	1.48
South Dakota	150,426.39	.30
Tennessee	989,752.41	1.98
Texas	3,527,698.57	7.06
Utah	414,670.98	.83
Vermont	111,155.79	.22
Virginia	1,198,086.31	2.40
Washington	883,921.45	1.77
West Virginia	402,024.52	.80
Wisconsin	1,013,048.53	2.03
Wyoming	109,824.58	.22
Total	49,250,000.00	98.50

TABLE 1.1.—SUBSTANCE ABUSE PREVENTION ALLOCATION OF SET-ASIDE ($750,000) AMONG U.S. POSSESSIONS AND TERRITORIES

	Allotment	Share set aside
Possessions and trust territories:		
Puerto Rico	$667,310.92	88.97
American Samoa	7,203.69	.96
Northern Marianas	3,795.71	.51
Guam	24,447.65	3.26
Virgin Islands	21,937.58	2.93
Trust Territories	25,304.75	3.37
Total	750,000.00	100.0

Note.—Trust territories consist of: Marshall Islands, Palau Island, and the Federated States of Micronesia. Population estimates for the trust territories are for July 1, 1983. Population estimates for Pureto Rico and other possessions are for July 1, 1984. Set aside amount allocated on the basis of each possession's resident population relative to the total population of the possessions and trust territories. States' allocations made on the basis of age cohort population estimates for July 1, 1984. Methodology of allocation formulae are explained in GAO's information report "Substance Abuse—Description of Proposed State Allotment Grant Formulas," September 1986, GAO/HRD–86–140FS. Population estimates obtained from the Bureau of the Census, Washington, DC.

Subsection (b) provides that states must utilize allotments for four activities.

(1) Developing a state substance abuse prevention education program.

(2) Developing community-based substance abuse prevention activities among school-aged children which will make the use of drugs unattractive to such children.

(3) Development of educational programs relating to the risks presented by alcohol and drug abuse to pregnant women and children.

(4) Development of an education program relating to the risks of Acquired Immune Deficiency syndrome among individuals who use drugs intravenously and relating to the transmittal of acquired immune deficiency syndrome from pregnant women to unborn children.

There is a critical need for public information and education programs by state governments to warn intravenous drug abusers of the dangers of Acquired Immune Deficiency Syndrome (AIDS). Recent reports from the Public Health Service have said that more than a quarter of a million Americans will die of AIDS within the next five years. Other recent reports from the Centers for Disease Control have shown that an increasing number of those cases are among IV drug abusers. Many Americans—both drug abusers and people who are sexual partners of drug abusers—are unaware of the dangers of spread of the disease and will expose themselves to it, resulting in fatal illness, extended treatment costs, and lost productivity. States should use this authority to develop direct and accessible information programs about the nature of the disease's transmissibility and about prevention of drug abuse and needle-sharing. There is also concern over the growing number of pediatric AIDS cases, which are principally infants born to mothers who are IV drug abusers. These children are born terminally ill, are difficult to find care for, and are very expensive to treat. It is intended that materials be developed by the states regarding the special AIDS risks that IV drugs pose to pregnant women and their children.

Funds allotted under this section are intended to support programs that will supplement school-based substance abuse prevention/education activities. Subtitle B of Title Four ("Drug-Free Schools and Communities Act of 1986") authorize funds for specific drug and alcohol abuse education programs directed at the nation's schools. Prevention programs supported by the state through this section should be compatible with activities within the secondary school system, and give priority for non-school based prevention programs. These programs can include but are not limited to literature distribution, media campaign, clearinghouse activities, speaker's bureau, scouting organizations, YMCA–YWCA, or other after-school, community-based alternatives.

Section 1926.—(General Provisions)

Subsection (a) provides that in order to receive an allotment under section 1924 or 1925 each State must transmit an application to the Secretary. Each application must contain a plan for the use of the amount paid to the State under its allotment in accordance with this section and sections 1924 and 1925. In addition, each application must include a separate statement which includes:

A description of the manner in which programs and activities conducted with payments under the allotment will be coordinated with other public and private programs and activities directed toward individuals who abuse alcohol and drugs.

Assurances that the State will consult with local governments and public and private entities, including community-based organizations, involved in the provision of services for the prevention and treatment of alcohol abuse and drug abuse.

Assurances that payments made to the State under its allotment will supplement and not supplant any State or local expenditures for the prevention and treatment of alcohol and drug abuse that would have been made in the absence of such payments.

Subsection (b) provides that funds allotted to states under Part C may not be used to (1) provide inpatient hospital services; (2) make cash payments to intended recipients of health services; (3) purchase or improve land, purchase, construct, or permanently improve (other than minor remodeling) any building or other facility, or purchase major medical equipment; (4) satisfy any requirement for the expenditure of non-federal funds as a condition for receipt of federal funds; (5) pay administrative costs; or (6) provide finanacial assistance to any entity, other than a public or nonprofit private entity.

Subsection (c) provides that provisions of Title XIX, Part B, which are not inconsistent with subsection 1926(a) or sections 1924 or 1925, shall apply with respect to allotments made under sections 1924 and 1925. For example, Part B requires that states allocate a percentage of their allotments to mental health services. This restriction would not apply as it is in direct conflict with the provisions of section 1924 and 1925 which specify the purposes for which allotments are to be used. Section 1917 of Part B requires that states prepare and submit an annual report to the Secretary on its use of funds. Although an annual report is not specifically mentioned in Part C, subsection 1926(c) is intended to extend the requirements of section 1917 to funds appropriated under Part C.

PART II.—AGENCY FOR SUBSTANCE ABUSE PREVENTION

Section 4003 adds a new Section 507 to Part A of Title V of the Public Health Service Act. Subsection (a) provides for the establishment of an Agency for Substance Abuse Prevention (ASAP) within the Alcohol, Drug Abuse, and Mental Health Administration. The ASAP shall be headed by a Director appointed by the Secretary from individuals with extensive experience or academic qualifications in the prevention of drug and alcohol abuse. Subsection (b) specifies the responsibilities and jurisdiction of the ASAP. These responsibilities include:

(1) Sponsorship of regional workshops on drug and alcohol abuse prevention;

(2) Coordination of the findings of research sponsored by agencies of the U.S. Public Health Service on the prevention of drug and alcohol abuse;

(3) Development of effective drug and alcohol abuse prevention literature (including literature on the adverse effects of cocaine free base);

(4) Prepare for distribution documentary films and public service announcements for television and radio to educate the public concerning the dangers to health resulting

from the consumption of alcohol and drugs and, to the extent feasible, use appropriate private organizations and business concerns in the preparation of such announcements;

(5) Dissemination of prevention materials among states, political subdivisions and school systems in cooperation with the Secretary of Education;

(6) Support of clinical training programs for substance abuse counselors and other health professionals;

(7) Development of educational materials to reduce the risk of acquired immune deficiency syndrome among intravenous drug abusers;

(8) Administer the state substance abuse prevention allotment program established under Section 1924 of the Public Health Service Act (as established in Section 4002 of this legislation).

(9) Support development of model, innovative community-based programs to discourage alcohol and drug abuse among young people.

The Director of ASAP will be responsible for administering the Department's drug and alcohol abuse prevention and education programs and coordinating these activities with those of other federal agencies such as the Department of Education.

A special provision has been made in the legislation for the development of education materials to reduce the spread of the AIDS epidemic among intravenous drug abusers and their sexual partners. The Centers for Disease Control (CDC) has begun efforts to develop innovative education projects for AIDS information, and the ASAP should work cooperatively with CDC to develop similar projects and materials for specific use with IV drug abusers and potential drug abusers and their sexual partners.

Subsection (c) directs the Secretary to establish a clearinghouse for alcohol and drug abuse information to assure the widespread dissemination of such information to the general public.

PART III.—ADAMHA AND RELATED PROVISIONS

Section 4011.—Short title and reference

Subsection (a) cites the short title of Part III as the "Alcohol, Drug Abuse and Mental Health Amendments of 1986."

Subsection (b) provides that whenever an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to the Public Health Service Act.

Section 4012.—Technical revision of ADAMHA

Section 4012 revises Section 501 of the Act to make several necessary technical amendments and to clarify the structure and administrative components of the Alcohol, Drug Abuse and Mental Health Administration. The only provision not reflecting current law is a provision (501(j)) to authorize the administrator of ADAMHA to establish technical and scientific peer review groups to assure the quality of research supported by the three national research institutes. This change is necessary to permit the Administrator of ADAMHA to more efficiently establish peer review groups and appoint the members of such groups, based on the research priorities of the agency. It would provide a solid statutory basis for providing compensation to members of federal advisory committees and reduce the paperwork burden associated with renewal of peer review groups as required by the Federal Advisory Committee Act.

The remaining provisions reflect current law.

Section 4013.—National Institute of Mental Health

Section 4013 amends Section 504(c) [42 U.S.C. 290aa-3(c)] to require the Director of the National Institute of Mental Health to give priority to programs for training and research on the mental health needs of the elderly. The 1978 President's Commission on Mental Health found that while 15 percent of the overall population is at risk for mental illness, 20-25 percent of the elderly are at risk. Traditionally, it was believed that the elderly suffer from inevitable, irreversible senility, but much of what was thought to be senility is now understood to be an acute mental health problem. Increased emphasis in this area is necessary in order to better understand the mental health problems of the elderly, to prevent misdiagnoses, and to improve training and services.

Section 4014.—Advisory councils

Subsection (a) technically revises the statutory authority establishing advisory councils for the National Institute on Alcohol Abuse and Alcoholism, the National Institute on Drug Abuse and the National Institute of Mental Health. The section revises the composition requirements of the advisory councils to provide that of the 12 appointed members, 9 shall be representatives of the health and scientific disciplines (including public health and behavioral or social sciences) relevant to the activities of the respective institute for which the council is established.

Subsection (b) makes necessary technical and conforming amendments and provides for the orderly transition of advisory council membership to the configuration required by the provisions of subsection (a).

Section 4015.—Public health emergencies

Section 4015 amends title V of the Public Health Service Act to authorize the Administrator of ADAMHA to expedite research on a disease or disorder determined by the Secretary to constitute a public health emergency. This authority is similar to authority granted the Director of the National Institutes of Health by Public Law 99-158, the "Health Research Extension Act of 1985."

Section 4016.—Peer review

Section 4016 amends section 507(b) [42 U.S.C. 290aa-5(a)] to clarify the responsibility of the ADAMHA to seek peer review of application for research contracts. The Congress has long recognized the invaluable role of peer review in ensuring high quality in the research activities funded and conducted by NIH. Peer review of research contracts should not be limited to review at the concept development phase but include contract applications just as is currently the policy with respect to applications for research grants. It is expected that peer review by nonfederal employees will provide for more careful scrutiny of contracting practices by the research institutes of ADAMHA. It is not intended that peer review of contracts for research resources, such as the purchase of laboratory equipment, materials and supplies used in the conduct or support of research, as required by section 507.

Section 4017.—National Alcohol Research Centers

Section 4017 amends section 511(b) [National Alcohol Research Centers] to remove the restriction on the use of funds for the rental of land or a building necessary to the operation of a National Alcohol Research Center. This provision is necessary to clarify Congressional intent that the payment of rent is a legitimate indirect cost for research institutes which receive assistance under this section. Research institutions that do not own their own buildings or are not affiliated with colleges or universities are placed at a distinct competitive disadvantage if the costs of rent are not permitted as a legitimate indirect cost.

Section 4018.—Research authorization

Section 4018 extends the authorization of appropriations for alcohol and drug abuse research sponsored by the National Institute on Alcohol Abuse and Alcoholism (NIAAA) and the National Institute on Drug Abuse (NIDA). The legislation affirms the Congress' commitment to maintaining a strong federal research base in biomedical and behavioral research related to the abuse of alcohol and drugs. Increased support for the research programs of NIAAA and NIDA are the nation's most effective means of improving the effectiveness of prevention and treatment services and thereby reduce the enormous cost of alcohol and drug abuse on the economy.

The legislation extends the authorization of appropriations for drug and alcohol abuse research through Fiscal Year 1987 at a level of "such funds as may be necessary." There is growing concern that the specific research needs between the alcohol abuse, drug abuse and mental health disciplines of ADAMHA may vary greatly from year to year. It is difficult to estimate and project the specific funding needs for these activities several years in the future. Although the House would have preferred a reauthorization of three fiscal years as contained in H.R. 5259, the Senate incorporated a single year extension into its omnibus drug abuse legislation. Accordingly, the House has deferred to the Senate request for a one year reauthorization. Section 4018 will assure NIAAA and NIDA ample budgetary authority in Fiscal Year 1987 consistent with available appropriations.

Section 4019.—Suicide

Section 4019 amends section 504 of the Public Health Service Act to require the Director of the National Institute of Mental Health to develop, publish and make information available to the public respecting the causes of suicide and the means of preventing suicide—particularly among youth. The Director is required to report to the House Committee on Energy and Commerce and the Senate Committee on Labor and Human Resources annually on the effectiveness of the Institute's activities.

Section 4020.—Animals in research

Section 4020 amends Part A of title V of the Public Health Service Act to clarify that the laboratory animal care protections that apply to research conducted by the National Institutes of Health will also apply to research conducted by the ADAMHA. Section 11 requires that (1) the Administrator establish guidelines to assure the proper care and treatment of laboratory animals; (2) institutions conducting animal research through the ADAMHA establish animal care committees; and (3) applicants for ADAMHA grants, contracts or cooperative agreements involving research on animals provide assurances that they will comply with applicable animal care guidelines. The proposal is consistent with similar provisions contained in

P.L. 99-158 which apply to the National Institutes of Health.

Section 4021.—Block grants

Section 4021 revises the statutory authority for the Alcohol and Drug Abuse and Mental Health Services Block Grant to change from 1984 to 1985 the base year used for calculating a state's minimum allotment. In 1984, the Congress changed the ADM block grant allotment formula to reflect an allocation based upon the relative population and per capita income of the states. As a result, those states that had historically not received an equitable share of block grant funds received a funding increase in Fiscal Year 1985.

The effect of the proposal is to assure that if funding for the ADM block grant is reduced in future years, all reductions will be allocated equally among the states based upon a state's allotment received in Fiscal Year 1985. The effect of not changing the baseyear would be to require those states, which have historically received a disproportionately low share of block grant allotments relative to their population, to bear a greater share of any funding reductions that may occur in the future.

Sec. 4022.—Technical amendments

Subsections (a) and (b) corrects a statutory reference and grammatical error.

Subsection (c) provides the Director of the National Institute of Mental Health clear statutory authority to make grants to and enter into cooperative agreements and contracts with public and nonprofit entities for research on mental illness. The legislation provides the Director of NIMH statutory authority already granted to the Directors of NIAAA and NIDA.

Section 4023.—Alcoholism and alcohol abuse treatment study

Subsection (a) directs the Secretary, acting through the National Institute on Alcohol Abuse and Alcoholism, to arrange for the conduct of a study to:

(1) Critically review available research knowledge and experience in the United States and other countries regarding alternative approaches and mechanisms (including statutory and voluntary mechanisms) for the provision of alcoholism and alcohol abuse treatment and rehabilitative services;

(2) Assess available evidence concerning comparative costs, quality, effectiveness, and appropriateness of alcoholism and alcohol abuse treatment and rehabilitation service alternatives;

(3) Review the state of financing alternatives available to the public, including an analysis of policies and experiences of third party insurers and state and municipal governments; and

(4) Consider and make recommendations for policies and programs of research, planning, administration, and reimbursement for the treatment and rehabilitation of individuals suffering from alcoholism and alcohol abuse.

Subsection (b) specifies that the study described in subsection (a) is to be conducted by the National Academy of Sciences subject to the Academy's consent. The study will be carried out by the NAS's National Research Council (NRC) through its Commission on Behavioral and Social Sciences and Education.

The legislation provides for a review by the National Research Council of available research on the cost, quality, effectiveness, availability and appropriateness of alcohol treatment and rehabilitation services. The availability of treatment and rehabilitation services for alcoholism and alcohol abuse is becoming increasingly important to the nation's health care system. The study should analyze the extent of coverage for alcoholism and alcohol abuse rehabilitation by third party insurers, Medicare, Medicaid and other reimbursement or coverage programs. In addition, the study is intended to assess available evidence on the adequacy of these programs in rehabilitating patients. The study should include recommendations for providing adequate coverage for rehabilitating individuals suffering from alcoholism and alcohol abuse.

For several years the National Research Council of the National Academy of Sciences has prepared several studies relating to ways of preventing alcoholism and alcohol abuse. The NRC study can build upon the academic foundation and technical expertise established in its preparation of the prevention studies "Alcohol and Public Policy: Beyond the Shadow of Prohibition", "Toward Prevention of Alcohol Problems: Government, Business, and Community Action" and "Alcohol in America: Taking Action to Prevent Abuse."

Section 4045.—Alkyl nitrites

Section 4045 of the legislation provides that alkyl nitrites and their isomers shall be regulated under the Federal Food, Drug and Cosmetic Act and treated as a drug when sold directly to the public.

The purpose of this section is to prevent the continued abuse of alkyl nitrite inhalants known to drug abuse experts as "Poppers." These substances are sold over-the-counter in many States and municipalities. They are commonly used as drugs of abuse by children, teenagers and adults. The National Institute on Drug Abuse's 1985 High School Survey of Drug Use Among American High School Students reports that 8% of High School Seniors reported use of amyl and butyl nitrites. Although a number of States have taken action to ban or restrict the sale of these products, regulation is uneven and difficult to enforce.

The scientific literature documents that alkyl nitrite inhalants can cause severe health effects including headaches, delirium, confusion and in some cases death.

Alkyl nitrites are principally sold to consumers as so-called "room odorizers". Despite their sale under the pretense of a room odorizer, there is ample evidence that these products are marketed and purchased solely for their euphoric effect.

In light of the risk of injury presented to the public from the use of these products, they should be subject to federal regulation by the Food and Drug Administration. Amyl nitrite is already classified by the Food and Drug Administration as a drug and its sale is restricted by prescription. By classifying alkyl nitrite inhalants and their isomers as drugs, section 4045 requires that manufacturers of "poppers" demonstrate to the FDA that these products are safe and effective for use as inhalants. It is anticipated that the FDA will apply the provisions of Section 505 of the Federal Food, Drug and Cosmetic Act to applications from manufacturers seeking approval to sell products containing alkyl nitrites or their isomers to the public. Section 4045 is not intended to authorize FDA regulation of the industrial use of alkyl nitrites for purposes such as the processing of film.

Mr. McKERNAN. Mr. Speaker, I rise in support of the rule and in support of the drug enforcement, education, and control measure before us today. We are taking a step in the right direction in providing this Nation with an effective coordinated drug policy that attacks the drug abuse problem in this country.

We have for too long in this country, failed to recognize the magnitude and persistence of this problem. We are truly facing an epidemic which has become particularly alarming, not only because of the number of people who regularly use some form of illicit drug, but because of the new groups of people who are being tangled in the web of drug abuse. Tragically, drug use is spreading to lower and lower age groups. If left unchecked, the drug crisis we have at hand will increase by exponential proportions.

It is clear to us that in many areas of drug abuse, we have waited too long—perhaps even the provisions of this bill will not adequately address drug interdiction, enforcement, and education issues sufficiently to stem the tide. But we must attempt to contain the problem. We must expand our attack on the drug crisis beyond stepped up law enforcement and interdiction before the trend which has become frighteningly similar in many communities of this country engulfs them all. We need a two-pronged attack to combat drug abuse—we need to confront both the supply and demand to win the war on drugs, and I believe that the enforcement and education aspects of this bill provide us a vehicle to begin this endeavor. Therefore, Mr. Speaker, I support the measure before us and urge my colleagues to join me in the battle against drug abuse in this country.

Mrs. LLOYD. Mr. Speaker, I rise today in strong support of the rule for further consideration of the omnibus drug bill of 1986.

This legislation is an affirmation of the strongest intent of the U.S. Congress to declare war on drugs. This is a comprehensive package which must be embraced to strike a serious blow against this $100 billion industry. Although there are differences between the House and Senate versions of the bill, This compromise was crafted to embrace the best provisions of each bill.

This legislation preserves most of the critical House provisions including increased penalties for drug-related offenses and adequate funding for the Coast Guard and Customs Service. The measure includes language contained in the House bill. But not in the Senate version, that authorizes the use of the death penalty for persons who knowingly cause the death of another during a continuing criminal enterprise. It instructs the Defense Department to complete an inventory of equipment, intelligence, and personnel which could be made available for drug interdiction activities and to develop a plan for the use of such assistance. It also contains language similar to that in the House bill which clarifies standards for the use of military personnel in drug interdiction activities abroad.

I believe that this bill will be a major improvement in our arsenal in the war against drugs and that its enactment will send a signal to the world that drug activity will no longer be tolerated within our borders. I urge my colleagues to join with me in strongly supporting this legislation.

Mr. VENTO. Mr. Speaker, I rise in support of the conference report to H.R. 5484, the

Omnibus Drug Enforcement, Education, and Control Act of 1986 with a reservation.

Let me say first of all that most of the substantive provisions of this legislation represent a solid attempt to address the serious problems related to drug abuse which are prevalent in our country today. Drug abuse is a problem which cuts across all social and economic lines and is a clear and present threat to the health and well-being of our society. This measure represents a bipartisan consensus on how to attack this problem.

This measure provides $350 million over 3 years in Federal grants to State and local governments for drug-related law enforcement activities. It also provides authorization for $234 million for drug abuse treatment, and $250 million over a 3-year period for drug abuse education and prevention programs. This is an important commitment which is but a first step in what must be a concerted, cooperative effort between the Federal Government and State and local governments and law enforcement agencies in coming to grips with this problem.

I must express my opposition, however, to the provision in this legislation permitting the imposition of the death penalty. I voted against the Gekas amendment to the bill when it was considered last month and wish to restate my opposition to this provision which is not essential to this legislation.

I believe that there are several very serious problems with the death penalty provision in this legislation, not the least of which is that it may well be unconstitutional. The distinguished chairman of the Judiciary Committee, Mr. RODINO, previously pointed out some of the problems. First, the amendment allows the imposition of the death penalty against a defendant regardless of whether the defendant actually killed the victim, attempted to kill the victim, or intended that the victim be killed. Second, it is not at all clear what "conduct during the course of a continuing criminal enterprise" is. Third, this provision would permit the death sentence to be imposed on the basis of information presented at the sentencing hearing regardless of its admissibility under the rules of evidence governing admissibility at criminal trials. Finally, the provision may unconstitutionally subject a defendant to "double jeopardy" since it requires remanding a case rather than vacating the sentence where the death sentence is not affirmed on appeal.

Mr. Speaker, in my view, it would have been preferable for Congress to have passed a comprehensive drug bill which did not contain a provision with such flaws. There is no argument that many individuals involved in illegal drug trafficking have often committed other heinous and reprehensible crimes against their victims. However, I believe that this provision weakens rather than strengthens what is otherwise a commendable bipartisan effort to address this serious problem in an effective manner.

Mr. LEVINE of California. Mr. Speaker, this is an historic occasion—the passage of comprehensive legislation to combat the scourge of illicit drug use which is infesting our Nation. According to the National Institute on Drug Abuse, the United States has the highest rate of teenage drug abuse of any industrialized nation in the world. With this legislation, we are establishing a comprehensive policy in the war on drugs.

This legislation provides for new education programs to teach and warn our children about the dangers involved with drug use, treatment programs for those enmeshed in drug addiction, additional support for Federal law enforcement efforts against drug pushers, and stiffer penalties for drug trafficking. I am very pleased to see these provisions in this legislation.

Also included in this bill are two provisions which I sponsored—a ban on the mail order sales of drug paraphernalia, and a ban on the interstate sale of alkyl nitrite inhalers, or "poppers."

I am very pleased that Congress is acting decisively to put an end to the importation and mail order sale of drug paraphernalia. The open and legal sale of drug paraphernalia glamorizes and legitimizes the use of dangerous and addictive drugs. Advertisements touting drug paraphernalia ignore the serious consequences of drug abuse—health risks, addiction, progression to stronger drugs—and instead paint only a rosy picture that drug use is a normal, acceptable, enjoyable and safe activity. There is an additional danger, especially for young people, who would be justified in believing that if drug paraphernalia can be advertised and sold openly through the mails, then society is not really serious about the risks of drug use, about enforcing drug laws. It is time to make it clear that drug use is not acceptable—not acceptable at all. Society will not allow a few manufacturers to profit from paraphernalia sales, at the expense of victims of drug abuse.

Thirty-eight States and the District of Columbia have addressed this problem by banning or restricting drug paraphernalia sales. However, in spite of the State and local efforts, paraphernalia sales continue. Drug paraphernalia dealers are selling through the mails the same items they can no longer sell at the corner record store. Mail order drug paraphernalia sellers deliberately circumvent State and local law enforcement efforts to control the sale of paraphernalia and fight drug abuse. My legislation provides for prison terms of up to 3 years and fines of up to $100,000 for drug paraphernalia peddlers. In addition, my language provides for the seizure and forfeiture of drug paraphernalia sold in violation of the law.

The legal sale of "poppers" is another important issue addressed by this bill. Poppers, the street name for alkyl nitrite inhalants, are sniffed or inhaled by teens and adults for a quick rush or high. Poppers are marketed as "room odorizers" or "liquid incense" to avoid FDA regulation. In fact, they actually have a foul smell which make them undesirable for their stated purpose. In reality, these products are used as affordable, legally obtainable drugs. Poppers are marketed in record stores and head shops, which cater to a teenage clientele, and in some bars and bookstores.

A number of studies have examined the health consequences of nitrite inhalent use. Side effects include: facial dermatitis, eye irritation, delirium, confusion, headaches, nausea, vertigo, weakness, tolerance, profound hypotension, and transient electrocardiographic changes. A more serious side effect of poppers use is methemoglobinemia, an impairment of the blood to carry oxygen to the brain and tissues. Methemoglobinemia, induced by the ingestion of poppers has resulted in the death of a Washington, DC, man in 1980.

Several States and locales including Connecticut, Georgia, Massachusetts, Tennessee, Utah, Delaware, Arkansas, and Maryland have laws banning or restricting sales of various alkyl nitrite products. It is time that these dangerous products also receive Federal Government regulation. I am very pleased that this bill takes that step.

Drug abuse is one of the most serious problems facing our Nation. It is a drain on our economy. It contributes to violent crime. It ruins the lives of our young people. I want to commend the House leadership and Members on both sides of the House who have joined forces to craft this important legislation.

Mr. RODINO. Mr. Speaker, it is important that Congress take responsible and effective action to address the current drug problem, and this bill contains many provisions that will improve Federal laws. It includes seven bills reported by the Committee on the Judiciary, which I chair, and many other provisions on which the committee has worked many long hours in conjunction with other committees. It is therefore with great regret that I will have to vote against it.

I do so not because I oppose most of the provisions in the bill. In fact, I strongly support most of them. Rather, I do so because of one provision—the death penalty provision.

I oppose the death penalty provision in the bill for several very important reasons. First, there is a threatened Senate filibuster of any drug bill which contains a death penalty. With little time remaining in this Congress, we can't afford to take the chance that this vital legislation will be derailed. The death penalty is one of the most divisive and difficult issues in this country. As President Reagan has recently stated,

> The drug issue is too important, and we want to approach it with a consensus of the American people so it does not get embroiled in a side issue such as the death penalty.

Second, the death penalty provision in the bill will actually drain the resources the Federal Government will otherwise have available to combat the drug problem. All 37 States that have a death penalty authorize capital punishment for virtually the same crime covered by the death penalty provision of this bill. The bill will require the Federal Government to spend millions of dollars prosecuting offenses that are now handled by the States. These capital cases require both complex trials and lengthy appeals and are consequently many times more expensive than noncapital criminal cases. A recent study pegs the cost at $1.8 million for trial and first appeals alone. Time and money spent duplicating State efforts cannot then be spent in areas where the Federal Government can make a unique contribution, which is the driving force of this bill. In those States that do not have a death penalty for crimes covered by this amendment, Congress would be usurping those States' prerog-

ati to determine punishment under their own cr nal laws.

nird, the death penalty provision of the bill is seriously flawed because it fails to meet the andards for imposition of the death penalty et out by the Supreme Court in several recen cases. It unconstitutionally authorizes dea as punishment for conduct that results in the death of an individual, regardless of whether the accused actually killed the victim, attempted to kill the victim, or intended that the victim be killed. This broad application of the death penalty is contrary to two recent Supreme Court decisions, and is exacerbated by the failure to provide adequate guidance in distinguishing those offenses that are punishable by death from those that are not. In fact, a death sentence that was imposed on the basis of language quite similar to that in the amendment was overturned by the Supreme Court in *Godfrey* v. *Georgi*, 446 U.S. 420 (1980).

Moreover, the death penalty provision of the bill would permit a death sentence to be imposed on the basis of "information presented regardless of its admissibility under the rules governing the admissibility of evidence at criminal trials." The use of such unreliable of evidence would create a level of uncertainty that should not be tolerated in capital cases.

Finally, the appellate review provision may subject the defendant to double jeopardy by requiring the appellate court to remand the case, rather than vacating the death sentence, in all cases in which the death sentence is not affirmed, again contrary to two recent Supreme Court cases.

For these reasons, I must oppose the bill.

Mr. PEPPER. Mr. Speaker, I have no further requests for time, and I move the previous question on the resolution.

The previous question was ordered.

The SPEAKER pro tempore (Mr. ANNUNZIO). The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. WALKER. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 391, nays 23, not voting 18, as follows:

[Roll No. 439]

YEAS—391

Abercrombie	Barton	Boland
Akaka	Bateman	Boner (TN)
Alexander	Bates	Bonior (MI)
Andrews	Beilenson	Bonker
Annunzio	Bennett	Borski
Anthony	Bentley	Bosco
Applegate	Bereuter	Boulter
Archer	Berman	Boxer
Armey	Bevill	Brooks
Aspin	Biaggi	Broomfield
Atkins	Bilirakis	Brown (CA)
AuCoin	Bliley	Brown (CO)
Badham	Boehlert	Bruce
Bartlett	Boggs	Bryant
Burton (IN)	Guarini	Miller (CA)
Bustamante	Gunderson	Miller (OH)
Byron	Hall (OH)	Miller (WA)
Callahan	Hall, Ralph	Mineta
Campbell	Hamilton	Moakley
Carper	Hammerschmidt	Molinari
Carr	Hansen	Mollohan
Chandler	Hartnett	Monson
Chapman	Hatcher	Montgomery
Chappie	Hawkins	Moody
Cheney	Hefner	Moorhead
Clinger	Hendon	Morrison (CT)
Coats	Henry	Morrison (WA)
Cobey	Hertel	Mrazek
Coble	Hiler	Murphy
Coelho	Hillis	Murtha
Coleman (MO)	Holt	Myers
Coleman (TX)	Hopkins	Natcher
Combest	Horton	Neal
Conte	Howard	Nelson
Cooper	Hoyer	Nichols
Coughlin	Hubbard	Nielson
Courter	Huckaby	Nowak
Coyne	Hughes	Oakar
Craig	Hunter	Oberstar
Crane	Hutto	Obey
Daniel	Hyde	Olin
Dannemeyer	Ireland	Ortiz
Darden	Jacobs	Owens
Daschle	Jeffords	Oxley
Daub	Jenkins	Packard
Davis	Johnson	Panetta
de la Garza	Jones (NC)	Parris
DeLay	Jones (TN)	Pashayan
Derrick	Kanjorski	Pease
DeWine	Kaptur	Penny
Dickinson	Kasich	Pepper
Dicks	Kastenmeier	Perkins
Dingell	Kemp	Petri
DioGuardi	Kennelly	Pickle
Dixon	Kolbe	Porter
Donnelly	Kolter	Price
Dorgan (ND)	Kostmayer	Pursell
Dornan (CA)	Kramer	Quillen
Dowdy	LaFalce	Rahall
Downey	Lagomarsino	Rangel
Dreier	Lantos	Ray
Duncan	Latta	Regula
Durbin	Leach (IA)	Reid
Dwyer	Leath (TX)	Richardson
Dymally	Lehman (CA)	Ridge
Dyson	Lehman (FL)	Rinaldo
Early	Leland	Ritter
Eckart (OH)	Lent	Roberts
Eckert (NY)	Levin (MI)	Robinson
Edgar	Levine (CA)	Roe
Edwards (OK)	Lewis (CA)	Rogers
Emerson	Lewis (FL)	Rostenkowski
English	Lightfoot	Roth
Erdreich	Lipinski	Roukema
Evans (IA)	Livingston	Rowland (CT)
Evans (IL)	Lloyd	Rowland (GA)
Fascell	Loeffler	Rudd
Fawell	Long	Russo
Fazio	Lott	Saxton
Feighan	Lowery (CA)	Schaefer
Fiedler	Lujan	Scheuer
Fields	Luken	Schroeder
Fish	Lungren	Schuette
Flippo	Mack	Schulze
Florio	MacKay	Schumer
Foglietta	Madigan	Seiberling
Foley	Manton	Sensenbrenner
Ford (MI)	Markey	Sharp
Ford (TN)	Marlenee	Shaw
Franklin	Martin (IL)	Shelby
Frenzel	Martin (NY)	Shumway
Frost	Matsui	Shuster
Fuqua	Mavroules	Sikorski
Gallo	Mazzoli	Siljander
Garcia	McCain	Sisisky
Gaydos	McCandless	Skeen
Gejdenson	McCloskey	Skelton
Gekas	McCollum	Slattery
Gephardt	McCurdy	Slaughter
Gibbons	McDade	Smith (FL)
Gilman	McEwen	Smith (IA)
Gingrich	McGrath	Smith (NE)
Glickman	McHugh	Smith (NJ)
Goodling	McKernan	Smith, Denny (OR)
Gordon	McKinney	Smith, Robert (NH)
Gradison	McMillan	Smith, Robert (OR)
Gray (IL)	Meyers	Snowe
Gray (PA)	Mica	Snyder
Green	Michel	Solarz
Gregg	Mikulski	Solomon
		Spence
		Spratt
		St Germain
		Staggers
		Stallings
		Stangeland
		Stark
		Stenholm
		Strang
		Stratton
		Studds
		Stump
		Sundquist
		Sweeney
		Swift
		Swindall
		Synar
		Tallon
		Tauke
		Tauzin
		Taylor
		Thomas (CA)
		Thomas (GA)
		Torres
		Torricelli
		Towns
		Traficant
		Traxler
		Udall
		Valentine
		Vander Jagt
		Vento
		Visclosky
		Volkmer
		Vucanovich
		Waldon
		Walgren
		Walker
		Watkins
		Waxman
		Weber
		Whitehurst
		Whitley
		Whittaker
		Whitten
		Williams
		Wilson
		Wirth
		Wise
		Wolf
		Wolpe
		Wortley
		Wright
		Wyden
		Wylie
		Yates
		Yatron
		Young (AK)
		Young (FL)
		Young (MO)
		Zschau

NAYS—23

Ackerman	Edwards (CA)	Rodino
Anderson	Frank	Roybal
Bedell	Gonzalez	Sabo
Clay	Hayes	Savage
Collins	Kildee	Stokes
Conyers	Lowry (WA)	Weaver
Crockett	Lundine	Wheat
Dellums	Mitchell	

NOT VOTING—18

Barnard	Chappell	Martinez
Barnes	Fowler	Moore
Boucher	Grotberg	Roemer
Breaux	Jones (OK)	Rose
Burton (CA)	Kindness	Schneider
Carney	Kleczka	Weiss

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Mr. SOLARZ changed his vote from "nay" to "yea."

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Mr. KLECZKA. Mr. Speaker, I was unavoidably detained for this morning's session. Had I been here I would have voted "aye" on rollcall No. 439.

PERSONAL EXPLANATION

Mr. MARTINEZ. Mr. Speaker, during rollcall 439 I was unavoidably detained and I was not able to make the vote. Had I been here, I would have voted "yes." I deeply regret my absence because this is an important vote and I would like to reaffirm my strong support for that landmark legislation.

The SPEAKER pro tempore (Mr. MURTHA). Pursuant to House Resolution 576, the House is considered to have concurred in the Senate amendment with an amendment to H.R. 5484.

(For the text of the Senate amendment, consisting of H.R. 5484 as passed by the Senate on September 30, 1986, see page S15205 of the proceedings of the Senate of Monday, October 6, 1986.)

The text of the House amendment to the Senate amendment to H.R. 5484 is as follows:

House amendment to Senate amendment to H.R. 5484:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Anti-Drug Abuse Act of 1986".

SEC. 2. TABLE OF CONTENTS.

Sec. 1. Short title.
Sec. 2. Table of contents.
Sec. 3. Compliance with Budget Act.

TITLE I—ANTI-DRUG ENFORCEMENT

Subtitle A—Narcotics Penalties and Enforcement Act of 1986

Sec. 1001. Short title.
Sec. 1002. Controlled Substances Act penalties.
Sec. 1003. Other amendments to the Controlled Substances Act.
Sec. 1004. Elimination of special parole terms.
Sec. 1005. Amendment to the Comprehensive Crime Control Act of 1984.
Sec. 1006. Miscellaneous technical amendments.

Subtitle B—Drug Possession Penalty Act of 1986

Sec. 1051. Short title.
Sec. 1052. Penalty for simple possession.

Subtitle C—Juvenile Drug Trafficking Act of 1986

Sec. 1101. Short title.
Sec. 1102. Offense.
Sec. 1103. Technical amendments.
Sec. 1104. Manufacturing a controlled substance within 1,000 feet of a college.
Sec. 1105. Imprisonment.

Subtitle D—Assets Forfeiture Amendments Act of 1986

Sec. 1151. Short title.
Sec. 1152. Department of Justice Asset forfeiture fund.
Sec. 1153. Substitute assets.

Subtitle E—Controlled Substance Analogue Enforcement Act of 1986

Sec. 1201. Short title.
Sec. 1202. Treatment of Controlled Substance Analogues.
Sec. 1203. Definition.
Sec. 1204. Clerical Amendment.

Subtitle F—Continuing Drug Enterprise Act of 1986

Sec. 1251. Short title.
Sec. 1252. Increased penalties.
Sec. 1253. Continuing criminal enterprise enhanced penalties.

Subtitle G—Controlled Substances Import and Export Act Penalties Enhancement Act of 1986

Sec. 1301. Short title.
Sec. 1302. Enhanced penalties.

Subtitle H—Money Laundering Control Act of 1986

Sec. 1351. Short title.
Sec. 1352. New offense for laundering of monetary instruments.
Sec. 1353. Amendments to the Right to Financial Privacy Act.
Sec. 1354. Structuring transactions to evade reporting requirements prohibited.
Sec. 1355. Seizure and civil forfeiture of monetary instruments and related provisions.
Sec. 1356. Compliance authority for Secretary of the Treasury and related matters.
Sec. 1357. Penalty provisions.
Sec. 1358. Monetary transaction recordkeeping and reporting amendments.
Sec. 1359. Banking regulatory agency supervision of recordkeeping systems.
Sec. 1360. Change in Bank Control Act amendments.
Sec. 1361. Change in Savings and Loan Control Act amendments.
Sec. 1362. Amendments to definitions.
Sec. 1363. International information exchange system; study of foreign branches of domestic institutions.
Sec. 1364. Effective dates.
Sec. 1365. Predicate Offenses.
Sec. 1366. Forfeiture.
Sec. 1367. Severability clause.

Subtitle I—Armed Career Criminals

Sec. 1401. Short title.
Sec. 1402. Expansion of predicate offenses for armed career criminal penalties.

Subtitle J—Authorization of Appropriations for Drug Law Enforcement

Sec. 1451. Authorization of appropriations.

Subtitle K—State and Local Narcotics Control Assistance

Sec. 1551. Short title.
Sec. 1552. Bureau of Justice Assistance drug grant programs.

Subtitle L—Study on the Use of Existing Federal Buildings as Prisons

Sec. 1601. Study required.

Subtitle M—Narcotics Traffickers Deportation Act

Sec. 1751. Amendment to the Immigration and Nationality Act.

Subtitle N—Freedom of Information Act

Sec. 1801. Short title.
Sec. 1802. Law enforcement.
Sec. 1803. Fees and Fee waivers.
Sec. 1804. Effective dates.

Subtitle O—Prohibition on the Interstate Sale and Transportation of Drug Paraphernalia

Sec. 1821. Short title.
Sec. 1822. Offense.
Sec. 1823. Effective date.

Subtitle P—Manufacturing Operations

Sec. 1841. Manufacturing operation.

Subtitle Q—Controlled Substances Technical Amendments

Sec. 1861. Duties of Director of Administrative Office and authorizations.
Sec. 1862. Amendment to section 608 of the Tariff Act.
Sec. 1863. Amendments to section 616 of the Tariff Act.
Sec. 1864. Cross reference corrections.
Sec. 1865. Warrants relating to seizure.
Sec. 1866. Minor technical amendments.
Sec. 1867. Modification of cocaine definition for purposes of Schedule II.
Sec. 1868. Authority of Attorney General to enter into contracts with State and local law enforcement agencies.
Sec. 1869. Authority of Attorney General to deputize State and local law enforcement officers for controlled substances enforcement.
Sec. 1870. Clarification of isomer definition.

Subtitle R—Precursor and essential chemical review

Sec. 1901. Precursor and essential chemical review.

Subtitle S—Improved Drug Crime Reporting

Sec. 1921. Improved drug crime reporting.

Subtitle T—White House Conference on Drug Abuse and Control

Sec. 1931. Short title.
Sec. 1932. Establishment of the Conference.
Sec. 1933. Purpose.
Sec. 1934. Responsibilities of the Conference.
Sec. 1935. Conference participants.
Sec. 1936. Administrative provisions.
Sec. 1937. Final report and follow-up actions.

Subtitle U—Death Penalty for Certain Offenses

Sec. 1951. Death penalty for certain continuing criminal enterprise offenses.

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Sec. 2002. Additional funding for international narcotics control assistance and regional cooperation.
Sec. 2003. Aircraft provided to foreign countries for narcotics control purposes: Retention of title and records of use.
Sec. 2004. Pilot and aircraft maintenance training for narcotics control activities.
Sec. 2005. Restrictions on the provision of United States assistance.
Sec. 2006. Development of herbicides for aerial coca eradication.
Sec. 2007. Review of effectiveness of international narcotics control assistance program.
Sec. 2008. Extradition to the United States for narcotics-related offenses.
Sec. 2009. Foreign policy arrest actions.
Sec. 2010. Issuance of diplomatic passports for Drug Enforcement Administration Agents abroad.
Sec. 2011. Information-sharing so that visas are denied to drug traffickers.
Sec. 2012. Conditions on assistance for Bolivia.
Sec. 2013. Narcotics control efforts in Mexico.
Sec. 2014. Reports and restrictions concerning certain countries.
Sec. 2015. Combating narcoterrorism.
Sec. 2016. Interdiction procedures for vessels of foreign registry.
Sec. 2017. Information relating to illicit narcotics activities abroad.
Sec. 2018. Assessment of narcotics trafficking for Africa.
Sec. 2019. Policy toward multilateral development banks.
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Sec. 13013. Recovery of civil damages.
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Sec. 14001. Study and Report.
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SEC. 3. COMPLIANCE WITH BUDGET ACT.

Notwithstanding any other provision of this Act, any spending authority and any credit authority provided under this Act shall be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts. For purposes of this Act, the term "spending authority" has the meaning provided in section 401(c)(2) of the Congressional Budget Act of 1974 and the term "credit authority" has the meaning provided in section 3(10) of the Congressional Budget Act of 1974.

TITLE I—ANTI-DRUG ENFORCEMENT

Subtitle A—Narcotics Penalties and Enforcement Act of 1986

SEC. 1001. SHORT TITLE.

This subtitle may be cited as the "Narcotics Penalties and Enforcement Act of 1986".

SEC. 1002. CONTROLLED SUBSTANCES ACT PENALTIES.

Section 401(b)(1) of the Controlled Substances Act (21 U.S.C. 841(b)(1)) is amended—

(1) by redesignating subparagraph (C) as subparagraph (D); and

(2) by striking out subparagraphs (A) and (B) and inserting the following in lieu thereof:

"(1)(A) In the case of a violation of subsection (a) of this section involving—

"(i) 1 kilogram or more of a mixture or substance containing a detectable amount of heroin;

"(ii) 5 kilograms or more of a mixture or substance containing a detectable amount of—

"(I) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

"(II) cocaine, its salts, optical and geometric isomers, and salts of isomers;

"(III) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

"(IV) any compound, mixture, or preparation which contains any quantity of any of the substance referred to in subclauses (I) through (III);";

"(iii) 50 grams or more of a mixture or substance described in clause (ii) which contains cocaine base;

"(iv) 100 grams or more of phencyclidine (PCP) or 1 kilogram or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);

"(v) 10 grams or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

"(vi) 400 grams or more of a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide or 100 grams or more of a mixture or substance containing a detectable amount of any analogue of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide; or

"(vii) 1000 kilograms or more of a mixture or substance containing a detectable amount of marihuana;

such person shall be sentenced to a term of imprisonment which may not be less than 10 years or more than life and if death or serious bodily injury results from the use of such substance shall be not less than 20 years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $4,000,000 if the defendant is an individual or $10,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after one or more prior convictions for an offense punishable under this paragraph, or for a felony under any other provision of this title

or title III or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment which may not be less than 20 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or $8,000,000 if the defendant is an individual or $20,000,000 if the defendant is other than an individual, or both. Any sentence under this subparagraph shall, in the absence of such a prior conviction, impose a special parole term of at least 5 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 10 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this subparagraph. No person sentenced under this subparagraph shall be eligible for parole during their term of imprisonment imposed therein.

"(B) In the case of a violation of subsection (a) of this section involving—

"(i) 100 grams or more of a mixture or substance containing a detectable amount of heroin;

"(ii) 500 grams or more of a mixture or substance containing a detectable amount of—

"(I) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

"(II) cocaine, its salts, optical and geometric isomers, and salts of isomers;

"(III) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

"(IV) any compound, mixture, or preparation which contains any quantity of any of the substance referred to in subclauses (I) through (III);";

"(iii) 5 grams or more of a mixture or substance described in clause (ii) which contains cocaine base;

"(iv) 10 grams or more of phencyclidine (PCP) or 100 grams or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);

"(v) 1 gram or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

"(vi) 40 grams or more of a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide or 10 grams or more of a mixture or substance containing a detectable amount of any analogue of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide; or

"(vii) 100 kilograms or more of a mixture or substance containing a detectable amount of marihuana;

such person shall be sentenced to a term of imprisonment which may not be less than 5 years and not more than 40 years and if death or serious bodily injury results from the use of such substance shall be not less than 20 years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $2,000,000 if the defendant is an individual or $5,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after one or more prior convictions for an offense punishable under this paragraph, or for a felony under any other provision of this title or title III or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment which may not be less than 10 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or $4,000,000 if the defendant is an individual or $10,000,000 if the defendant is other than an individual, or both. Any sentence imposed under this subparagraph shall, in the absence of such a prior conviction, include a special parole term of at least 4 years in addition to such term of imprisonment and shall, if there was such a prior conviction, include a special parole term of at least 8 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this subparagraph. No person sentenced under this subparagraph shall be eligible for parole during their term of imprisonment.

"(C) In the case of a controlled substance in schedule I or II except as provided in subparagraphs (A), (B), and (D), such person shall be sentenced to a term of imprisonment of not more than 20 years and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not less than twenty years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $1,000,000 if the defendant is an individual or $5,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after one or more prior convictions for an offense punishable under this paragraph, or for a felony under any other provision of this title or title III or other law of a State, the United States or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 30 years and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or $2,000,000 if the defendant is an individual or $10,000,000 if the defendant is other than an individual, or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a special parole term of at least 3 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 6 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under the provisions of this subparagraph which provide for a mandatory term of imprisonment if death or serious bodily injury results, nor shall a person so sentenced be eligible for parole during the term of such a sentence.".

SEC. 1003. OTHER AMENDMENTS TO THE CONTROLLED SUBSTANCES ACT.

(a) Section 401 of the Controlled Substances Act (21 U.S.C. 841) is further amended as follows:

(1) In subsection (b), paragraph (1)(D), as redesignated, is amended by—

(A) striking out "a fine of not more than $50,000" and inserting in lieu thereof "a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $250,000 if the defendant is an individual or $1,000,000 if the defendant is other than an individual";

(B) striking out "a fine of not more than $100,000" and inserting in lieu thereof "a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or $500,000 if the defendant is an individual or $2,000,000 if the defendant is other than an individual"; and

(C) inserting "except in the case of 100 or more marihuana plants regardless of weight," after "marihuana," the first place it appears.

(2) In subsection (b), paragraph (2) is amended by striking out "a fine of not more than $25,000" and inserting in lieu thereof "a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $250,000 if the defendant is an individual or $1,000,000 if the defendant is other than an individual", and by striking out "a fine of not more than $50,000" and inserting in lieu thereof "a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or $500,000 if the defendant is an individual or $2,000,000 if the defendant is other than an individual".

(3) In subsection (b), paragraph (3) is amended by striking out "a fine of not more than $10,000" and inserting in lieu thereof "a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $100,000 if the defendant is an individual or $250,000 if the defendant is other than an individual", and by striking out "a fine of not more than $20,000" and inserting in lieu thereof "a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or $200,000 if the defendant is an individual or $500,000 if the defendant is other than an individual".

(4) In subsection (b), paragraph (4) is amended by striking out "1(C)" and inserting "1(D)" in lieu thereof.

(5) In subsection (b), paragraph (5) is amended to read as follows:

"(5) Any person who violates subsection (a) of this section by cultivating a controlled substance on Federal property shall be imprisoned as provided in this subsection and shall be fined any amount not to exceed—

"(A) the amount authorized in accordance with this section;

"(B) the amount authorized in accordance with the provisions of title 18, United States Code;

"(C) $500,000 if the defendant is an individual; or

"(D) $1,000,000 if the defendant is other than an individual;

or both.".

(6) Subsection (d) is amended by striking out "a fine of not more than $15,000" and inserting in lieu thereof "a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $250,000 if the defendant is an individual or $1,000,000 if the defendant is other than an individual".

(b) Section 102 of the Controlled Substances Act (21 U.S.C. 802) is amended—

(1) by inserting the following new paragraph after paragraph (24):

"(25) The term 'serious bodily injury' means bodily injury which involves—

"(A) a substantial risk of death;

"(B) protracted and obvious disfigurement; or

"(C) protracted loss or impairment of the function of a bodily member, organ, or mental faculty."; and

(2) by renumbering the following paragraphs accordingly.

SEC. 1004. ELIMINATION OF SPECIAL PAROLE TERMS.

(a) The Controlled Substances Act and the Controlled Substances Import and Export Act are amended by striking out "special parole term" wherever it appears and inserting "term supervised release" in lieu thereof.

(b) The amendments made by this section shall take effect on the date of the taking effect of section 3583 of title 18, United States Code.

SEC. 1005. AMENDMENT TO THE COMPREHENSIVE CRIME CONTROL ACT OF 1984.

(a) Subsection (a) of section 224 of the Comprehensive Crime Control Act of 1984 is amended—

(1) by inserting "and" after the semicolon in paragraph (4); and

(2) by striking out paragraphs (1), (2), (3), and (5) and redesignating the other paragraphs accordingly.

(b) Section 224 of the Comprehensive Crime Control Act of 1984 is amended—

(1) by striking out subsection (b); and

(2) by redesignating subsection (c) as subsection (b).

(c) Section 225 of the Comprehensive Crime Control Act of 1984 is amended to read as follows:

"Sec. 225. Section 1515 of the Controlled Substances Import and Export Act (21 U.S.C. 960) is amended by repealing subsection (c).".

SEC. 1006. MISCELLANEOUS TECHNICAL AMENDMENTS.

(a)(1) Subsection (a) of section 3583 of title 18, United States Code, is amended by inserting ", except that the court shall include as a part of the sentence a requirement that the defendant be placed on a term of supervised release if such a term is required by statute" after "imprisonment" the second place it appears.

(2) Subsection (b) of section 3583 of title 18, United States Code, is amended by striking out "The" and inserting in lieu thereof "Except as otherwise provided, the".

(3) Subsection (c) of section 3583 of title 18, United States Code, is amended—

(A) so that the catchline reads as follows: "Modification of conditions or revocation.";

(B) in paragraph (2) by striking out "or" after the semicolon;

(C) in paragraph (3) by striking out "title," and inserting "title; or" in lieu thereof; and

(D) by inserting the following new paragraph after paragraph (3):

"(4) revoke a term of supervised release, and require the person to serve in prison all or part of the term of supervised release without credit for time previously served on postrelease supervision, if it finds by a preponderance of the evidence that the person violated a condition of supervised release, pursuant to the provisions of rule 32.1 of the Federal Rules of Criminal Procedure that are applicable to probation revocation and to the provisions of applicable policy statements issued by the Sentencing Commission.".

(4) The amendments made by this subsection shall take effect on the date of the taking effect of section 3583 of title 18, United States Code.

(b) Paragraph (3) of section 994(a) of title 28, United States Code, is amended by inserting "and revocation of supervised release" after "supervised release".

(c) Section 511 of title II of the Comprehensive Drug Abuse Prevention Act of 1978 (21 U.S.C. 881) is amended—

(1) in subsection (f) by inserting "or II" after "I" each place it appears;

(2) by redesignating subsection (f) as subsection (f)(1); and

(3) by inserting the following new paragraph after subsection (f)(1) as so redesignated:

"(2) The Attorney General may direct the destruction of all controlled substances in schedule I or II seized for violation of this title under such circumstances as the Attorney General may deem necessary.".

Subtitle B—Drug Possession Penalty Act of 1986

SEC. 1051. SHORT TITLE.

This subtitle may be cited as the "Drug Possession Penalty Act of 1986".

SEC. 1052. PENALTY FOR SIMPLE POSSESSION.

Section 404 of the Controlled Substances Act (21 U.S.C. 844) is amended to read as follows:

"PENALTY FOR SIMPLE POSSESSION

"SEC. 404. (a) It shall be unlawful for any person knowingly or intentionally to possess a controlled substance unless such substance was obtained directly, or pursuant to a valid prescription or order, from a practitioner, while acting in the course of his professional practice, or except as otherwise authorized by this title or title III. Any person who violates this subsection may be sentenced to a term of imprisonment of not more than 1 year, and shall be fined a minimum of $1,000 but not more than $5,000, or both, except that if he commits such offense after a prior conviction under this title or title III, or a prior conviction for any drug or narcotic offense chargeable under the law of any State, has become final, he shall be sentenced to a term of imprisonment for not less than 15 days but not more than 2 years, and shall be fined a minimum of $2,500 but not more than $10,000, except, further, that if he commits such offense after two or more prior convictions under this title or title III, or two or more prior convictions for any drug or narcotic offense chargeable under the law of any State, or a combination of two or more such offenses have become final, he shall be sentenced to a term of imprisonment for not less than 90 days but not more than 3 years, and shall be fined a minimum of $5,000 but not more than $25,000. The imposition or execution of a minimum sentence required to be imposed under this subsection shall not be suspended or deferred. Further, upon conviction, a person who violates this subsection shall be fined the reasonable costs of the investigation and prosecution of the offense, including the costs of prosecution of an offense as defined in sections 1918 and 1920 of title 28, United States Code, except that this sentence shall not apply and a fine under this section need not be imposed if the court determines under the provision of title 18 that the defendant lacks the ability to pay.

"(b)(1) If any person who has not previously been convicted of violating subsection (a) of this section, any other provision of this subchapter or subchapter II of this chapter, or any other law of the United States relating to narcotic drugs, marihuana, or depressant or stimulant substances, is found guilty of a violation of subsection (a) of this section after trial or upon a plea of guilty, the court may, without entering a judgment of guilty and with the consent of such person, defer further proceedings and place him on probation upon such reasonable conditions as it may require and for such period, not to exceed one year, as the court may prescribe. Upon violation of a condition of the probation, the court may enter an adjudication of guilt and proceed as otherwise provided. The court may, in its discretion, dismiss the proceedings against such person and discharge him from probation before the expiration of the maximum period prescribed for such person's probation. If during the period of his probation such person does not violate any of the conditions of the probation, then upon expiration of such period the court shall discharge such person and dismiss the proceedings against him. Discharge and dismissal under this subsection shall be without court adjudication of guilt, but a nonpublic record thereof shall be retained by the Department of Justice solely for the purpose of use by the courts in determining whether or not, in subsequent proceedings, such person qualifies under this subsection. Such discharge or dismissal shall not be deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime (including the penalties prescribed under this part for second or subsequent convictions) or for any other purpose. Discharge and dismissal under this section may occur only once with respect to any person.

"(2) Upon the dismissal of such person and discharge of the proceedings against him under paragraph (1) of this subsection, such person, if he was not over twenty-one years of age at the time of the offense, may apply to the court for an order to expunge from all official records (other than the nonpublic records to be retained by the Department of Justice under paragraph (1)) all recordation relating to his arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. If the court determines, after hearing, that such person was dismissed and the proceedings against him discharged and that he was not over twenty-one years of age at the time of the offense, it shall enter such order. The effect of such order shall be to restore such person, in the contemplation of the law, to the status he occupied before such arrest or indictment or information. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.

"(c) As used in this section, the term 'drug or narcotic offense' means any offense which proscribes the possession, distribution, manufacture, cultivation, sale, transfer, or the attempt or conspiracy to possess, distribute, manufacture, cultivate, sell or transfer any substance the possession of which is prohibited under this title.".

Subtitle C—Juvenile Drug Trafficking Act of 1986

SEC. 1101. SHORT TITLE.

This subtitle may be cited as the "Juvenile Drug Trafficking Act of 1986".

SEC. 1102. OFFENSE.

Part D of the Controlled Substances Act is amended by adding after section 405A a new section as follows:

"EMPLOYMENT OR USE OF PERSONS UNDER 18 YEARS OF AGE IN DRUG OPERATIONS

"SEC. 405B. (a) It shall be unlawful for any person at least eighteen years of age to knowingly and intentionally—

"(1) employ, hire, use, persuade, induce, entice, or coerce, a person under eighteen years of age to violate any provision of this title or title III; or

"(2) employ, hire, use, persuade, induce, entice, or coerce, a person under eighteen years of age to assist in avoiding detection or apprehension for any offense of this title or title III by any Federal, State, or local law enforcement official.

"(b) Any person who violates subsection (a) is punishable by a term of imprisonment up to twice that otherwise authorized, or up to twice the fine otherwise authorized, or both, and at least twice any special parole term otherwise authorized for a first offense. Except to the extent a greater minimum sentence is otherwise provided, a term of imprisonment under this subsection shall not be less than one year.

"(c) Any person who violates subsection (a) after a prior conviction or convictions under subsection (a) of this section have become final, is punishable by a term of imprisonment up to three times that otherwise authorized, or up to three times the fine otherwise authorized, or both, and at least three times any special parole term otherwise authorized for a first offense. Except to the extent a greater minimum sentence is otherwise provided, a term of imprisonment under this subsection shall not be less than one year.

"(d) Any person who violates section 405B(a) (1) or (2)

"(1) by knowingly providing or distributing a controlled substance or a controlled substance analogue to any person under eighteen years of age; or

"(2) if the person employed, hired, or used is fourteen years of age or younger,

shall be subject to a term of imprisonment for not more than five years or a fine of not more than $50,000, or both, in addition to any other punishment authorized by this section.

"(e) In any case of any sentence imposed under this section, imposition or execution of such sentence shall not be suspended and probation shall not be granted. An individual convicted under this section of an offense for which a mandatory minimum term of imprisonment is applicable shall not be eligible for parole under section 4202 of title 18, United States Code, until the individual has served the mandatory term of imprisonment required by section 401(b) as enhanced by this section.

"(f) Except as authorized by this title, it shall be unlawful for any person to knowingly or intentionally provide or distribute any controlled substance to a pregnant individual in violation of any provision of this title. Any person who violates this subsection shall be subject to the provisions of subsections (b), (c), and (e).".

SEC. 1103. TECHNICAL AMENDMENTS.

(a) Section 401(b) of the Controlled Substances Act (21 U.S.C. 841(b)) is amended by striking out "or 405A" and inserting in lieu thereof ", 405A, or 405B".

(b) Section 401(c) of the Controlled Substances Act (21 U.S.C. 841(c)) is amended by striking out "405A" each place it appears and inserting in lieu thereof ", 405A, or 405B".

"405B. Employment of minors in controlled substance trafficking.".

SEC. 1104. MANUFACTURING A CONTROLLED SUBSTANCE WITHIN 1000 FEET OF A COLLEGE.

(a) Section 405A of the Controlled Substances Act (21 U.S.C. 845a) is amended by inserting "or manufacturing" after "distributing" wherever it appears and by striking out "a public or private elementary or secondary school" wherever it appears and inserting in lieu thereof "a public or private elementary, vocational, or secondary school or a public or private college, junior college, or university".

(b) Section 405A(a) of the Controlled Substances Act (21 U.S.C. 845a(a)) is amended by striking out "involving the same controlled substance and schedule".

(c) Section 405A(b) of the Controlled Substance Act (21 U.S.C. 845a(b)) is amended by striking out "(1) by" and all that follows through the end and inserting the following in lieu thereof:

"(1) by the greater of (A) a term of imprisonment of not less than three years and not more than life imprisonment or (B) a term of imprisonment of up to three times that authorized by section 401(b) of this title for a first offense, or a fine up to three times that authorized by section 401(b) of this title for a first offense, or both, and (2) at least three times any special parole term authorized by section 401(b) of this title for a first offense.".

SEC. 1105. IMPRISONMENTS.

(a) Section 405(a) of the Controlled Substances Act (21 U.S.C. 845(a)) is amended by adding the following at the end thereof: "Except to the extent a greater minimum sentence is otherwise provided by section 401(b), a term of imprisonment under this subsection shall be not less than one year.".

(b) Section 405(b) of the Controlled Substances Act (21 U.S.C. 845(b)) is amended by adding the following at the end thereof: "Except to the extent a greater minimum sentence is otherwise provided by section 401(b), a term of imprisonment under this subsection shall be not less than one year. The mandatory minimum sentencing provisions of this paragraph shall not apply to offenses involving 5 grams or less of marihuana.".

(c) Section 405A(a) of the Controlled Substances Act (21 U.S.C. 845a(a)) is amended by adding the following at the end thereof: "Except to the extent a greater minimum sentence is otherwise provided by section 401(b), a term of imprisonment under this subsection shall be not less than one year. The mandatory minimum sentencing provisions of this paragraph shall not apply to offenses involving 5 grams or less of marihuana.".

Subtitle D—Assets Forfeiture Amendments Act of 1986

SEC. 1151. SHORT TITLE.

This subtitle may be cited as the "Department of Justice Assets Forfeiture Fund Amendments Act of 1986".

SEC. 1152. DEPARTMENT OF JUSTICE ASSET FORFEITURE FUND.

(a) Subsection (c)(1) of section 524 of title 28, United States Code, is amended—

(1) by inserting at the end of subparagraph (A) the following:

"such payments may also include those, made pursuant to regulations promulgated by the Attorney General, that are necessary and direct program-related expenses for the purchase or lease of automatic data processing equipment (not less than ninety percent of which use will be program-related), training, printing, contracting for services directly related to the processing of and accounting for forfeitures, and the storage, protection, and destruction of controlled substances;";

(2) by inserting after subparagraph (A) the following new subparagraph and redesignating the subsequent subparagraphs accordingly:

"(B) the payment of awards for information or assistance directly relating to violations of the criminal drug laws of the United States."; and

(3) by amending newly designated subparagraph (F) of paragraph (1) to read as follows:

"(F) for equipping for drug law enforcement functions any Government owned or leased vessels, vehicles, and aircraft available for official use by the Drug Enforcement Administration, the Federal Bureau of Investigation, the Immigration and Naturalization Service, or the United States Marshals Service; and".

(b) Section 524(c)(4) of title 28, United States Code, is amended by striking out "remaining after the payment of expenses for forfeiture and sale authorized by law" and inserting in lieu thereof ", except all proceeds of forfeitures available for use by the Secretary of the Treasury or the Secretary of the Interior pursuant to section 11(d) of the Endangered Species Act (16 U.S.C. 1540(d)) or section 6(d) of the Lacey Act Amendments of 1981 (16 U.S.C. 3375(d))".

SEC. 1153. SUBSTITUTE ASSETS.

(a) Section 1963 of title 18 is amended by adding at the end thereof a new subsection, as follows:

"(n) If any of the property described in subsection (a), as a result of any act of omission of the defendant—

"(1) cannot be located upon the exercise of due diligence;

"(2) has been transferred or sold to, or deposited with, a third party;

"(3) has been placed beyond the jurisdiction of the court;

"(4) has been substantially diminished in value; or

"(5) has been commingled with other property which cannot be divided without difficulty;

the court shall order the forfeiture of any other property of the defendant up to the value of any property described in paragraphs (1) through (5).".

(b) Section 413 of title II of the Comprehensive Drug Abuse Prevention and Control Act of 1975 is amended—

(1) by redesignating subsection "(p)" as subsection "(q)"; and

(2) by adding a new subsection (p) as follows:

"(p) If any of the property described in subsection (a), as a result of any act or omission of the defendant—

"(1) cannot be located upon the exercise of due diligence;

"(2) has been transferred or sold to, or deposited with, a third party;

"(3) has been placed beyond the jurisdiction of the court;

"(4) has been substantially diminished in value; or

"(5) has been commingled with other property which cannot be divided without difficulty;

the court shall order the forfeiture of any other property of the defendant up to the value of any property described in paragraphs (1) through (5).".

Subtitle E—Controlled Substance Analogue Enforcement Act of 1986

SEC. 1201. SHORT TITLE.

This subtitle may be cited as the "Controlled Substance Analogue Enforcement Act of 1986".

SEC. 1202. TREATMENT OF CONTROLLED SUBSTANCE ANALOGUES.

Part B of the Controlled Substances Act is amended by adding at the end the following new section:

"TREATMENT OF CONTROLLED SUBSTANCE ANALOGUES

"SEC. 203. A controlled substance analogue shall, to the extent intended for human consumption, be treated, for the purposes of this title and title III as a controlled substance in schedule I.".

SEC. 1203. DEFINITION.

Section 102 of the Controlled Substances Act (21 U.S.C. 802) is amended by adding at the end thereof the following:

"(31)(A) Except as provided in subparagraph (B), the term 'controlled substance analogue' means a substance—

"(i) the chemical structure of which is substantially similar to the chemical structure of a controlled substance in schedule I or II; and

"(ii)(I) which has a stimulant, depressant, or hallucinogenic effect on the central nervous system; or

"(II) with respect to a particular person, which such person represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance.

"(B) Such term does not include—

"(i) a controlled substance;

"(ii) any substance for which there is an approved new drug application;

"(iii) with respect to a particular person any substance, if an exemption is in effect for investigational use, for that person, under section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) to the extent conduct with respect to such substance is pursuant to such exemption; or

"(iv) any substance to the extent not intended for human consumption before such an exemption takes effect with respect to that substance.".

SEC. 1204. CLERICAL AMENDMENT.

The table of contents of the Comprehensive Drug Abuse Prevention and Control Act of 1970 is amended by inserting after the item relating to section 202 the following new item:

"Sec. 203. Treatment of controlled substance analogues.".

Subtitle F—Continuing Drug Enterprise Act of 1986

SEC. 1251. SHORT TITLE.

This subtitle may be cited as the Continuing Drug Enterprises Act of 1986".

SEC. 1252. INCREASED PENALTIES.

Section 408(a) of the Controlled Substances Act (21 U.S.C. 848(a)) is amended—

(1) by striking out "to a fine of not more than $100,000," and inserting in lieu thereof "to a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $2,000,000 if the defendant is an individual or $5,000,000 if the defendant is other than an individual,"; and

(2) by striking out "to a fine of not more than $200,000," and inserting in lieu thereof "to a fine not to exceed the greater of twice the amount authorized in accordance with the provisions of title 18, United States Code, or $4,000,000 if the defendant is an individual or $10,000,000 if the defendant is other than an individual,".

SEC. 1253. CONTINUING CRIMINAL ENTERPRISE ENHANCED PENALTIES.

Section 408 of the Controlled Substances Act (21 U.S.C. 848) is further amended—

(1) by redesignating subsections (b) and (c) as subsections (d) and (e), respectively; and

(2) by inserting the following new subsections after subsection (a);

"(b) Any person who engages in a continuing criminal enterprise shall be imprisoned for life and fined in accordance with subsection (a), if—

"(1) such person is the principal administrator, organizer, or leader of the enterprise or is one of several such principal administrators, organizers, or leaders; and

"(2)(A) the violation referred to in subsection (d)(1) involved at least 300 times the quantity of a substance described in subsection 401(b)(1)(B) of this Act, or

"(B) the enterprise, or any other enterprise in which the defendant was the principal or one of several principal administrators, organizers, or leaders, received $10 million dollars in gross receipts during any twelvemonth period of its existence for the manufacture, importation, or distribution of a substance described in section 401(b)(1)(B) of this Act."

Subtitle G—Controlled Substances Import and Export Penalties Enhancement Act of 1986

SEC. 1301. SHORT TITLE.

(a) Section 1010(b) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)) is amended—

(1) by redesignating paragraph (3) as paragraph (4); and

(2) by striking out paragraphs (1) and (2) and inserting the following in lieu thereof:

"(1) In the case of a violation of subsection (a) of this section involving—

"(A) 1 kilogram or more of a mixture or substance containing a detectable amount of heroin;

"(B) 5 kilograms or more of a mixture or substance containing a detectable amount of—

"(i) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

"(ii) cocaine, its salts, optical and geometric isomers, and salts or isomers;

"(iii) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

"(iv) any compound, mixture, or preparation which contains any quantity of any of the substances referred to in clauses (i) through (iii);

"(C) 50 grams or more of a mixture or substance described in subparagraph (B) which contains cocaine base;

"(D) 100 grams or more of phencyclidine (PCP) or 1 kilogram or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);

"(E) 10 grams or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

"(F) 400 grams or more of a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide or 100 grams or more of a mixture or substance containing a detectable amount of any analogue of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide; or

"(G) 1000 kilograms or more of a mixture or substance containing a detectable amount of marihuana;

the person committing such violation shall be sentenced to a term of imprisonment of not less than 10 years and not more than life and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not less than 20 years and not more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $4,000,000 if the defendant is an individual or $10,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after one or more prior convictions for an offense punishable under this subsection, or for a felony under any other provision of this title or title II or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not less than 20 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or $8,000,000 if the defendant is an individual or $20,000,000 if the defendant is other than an individual, or both. Any sentence under this paragraph shall, in the absence of such a prior conviction, imposed a special parole term of at least 5 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 10 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this paragraph. No person sentenced under this paragraph shall be eligible for parole during their term of imprisonment.

"(2) In the case of a violation of subsection (a) of this section involving—

"(A) 100 grams or more of a mixture or substance containing a detectable amount of heroin;

"(B) 500 grams or more of a mixture or substance containing a detectable amount of—

"(i) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

"(ii) cocaine, its salts, optical and geometric isomers, and salts or isomers;

"(iii) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

"(iv) any compound, mixture, or preparation which contains any quantity of any of the substances referred to in clauses (i) through (iii);

"(C) 5 grams or more of a mixture or substance described in subparagraph (B) which contains cocaine base;

"(D) 10 grams or more of phencyclidine (PCP) or 100 grams or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);

"(E) 1 gram or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

"(F) 40 grams or more of a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide or 10 grams or more of a mixture or substance containing a detectable

amount of any analogue of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide; or

"(G) 100 kilograms or more of a mixture or substance containing a detectable amount of marihuana;

the person committing such violation shall be sentenced to a term of imprisonment of not less than 5 years and not more than 40 years and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not less than twenty years and not more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $2,000,000 if the defendant is an individual or $5,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after one or more prior convictions for an offense punishable under this subsection, or for a felony under any other provision of this title or title II or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not less than 10 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or $4,000,000 if the defendant is an individual or $10,000,000 if the defendant is other than an individual, or both. Any sentence imposed under this paragraph shall, in the absence of such a prior conviction, include a special parole term of at least 4 years in addition to such term of imprisonment and shall, if there was such a prior conviction, include a special parole term of at least 8 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this paragraph. No person sentenced under this paragraph shall be eligible for parole during the term of imprisonment.

"(3) In the case of a violation under subsection (a) of this section involving a controlled substance in schedule I or II, the person committing such violation shall, except as provided in paragraphs (1), (2), and (4), be sentenced to a term of imprisonment of not more than 20 years if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not less than twenty years and not more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $1,000,000 if the defendant is an individual or $5,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after one or more prior convictions for an offense punishable under this subsection, or for a felony under any other provision of this title or title II or other law of a State, the United States or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 30 years and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or $2,000,000 if the defendant is an individual or $10,000,000 if the defendant is other than an individual, or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a special parole term of at least 3 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 6 years in addition to such term of imprisonment. Notwithstanding the prior sentence, and notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under the provisions of this paragraph which provide for a mandatory term of imprisonment if death or serious bodily injury results, nor shall a person so sentenced be eligible for parole during the term of such a sentence.".

(b) Section 1010(b)(4) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)(4)), as redesignated, is amended—

(1) by striking out ", except as provided in paragraph (4)";

(2) by striking out "fined not more than $50,000" and inserting in lieu thereof "fined not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $250,000 if the defendant is an individual or $1,000,000 if the defendant is other than an individual"; and

(3) by inserting "except in the case of 100 or more marihuana plants regardless of weight," after "marihuana,".

Subtitle H—Money Laundering Control Act of 1986

SEC. 1351. SHORT TITLE.

This subtitle may be cited as the "Money Laundering Control Act of 1986".

SEC. 1352. NEW OFFENSE FOR LAUNDERING OF MONETARY INSTRUMENTS.

(a) Chapter 95 of title 18, United States Code, is amended by adding at the end thereof the following:

"§1956. Laundering of monetary instruments

"(a)(1) Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity, knowing that the transaction is designed in whole or in part—

"(A) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

"(B) to avoid a transaction reporting requirement under State or Federal law;

shall be sentenced to a fine of not more than $1,000,000 if the offender is an individual or $5,000,000 if the offender is a person other than an individual, or twice the value of the property involved in the transaction, whichever is greater, or imprisonment for not more than twenty years, or both.

"(2) Whoever transports or attempts to transport a monetary instrument or funds from a place in the United States to or through a place outside the United States or to a place in the United States from or through a place outside the United States, knowing that the monetary instrument or funds involved in the transportation represent the proceeds of some form of unlawful activity and knowing that such transportation is designed in whole or in part—

"(A) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

"(B) to avoid a transaction reporting requirement under State or Federal law,

shall be sentenced to a fine of $1,000,000 if the offender is an individual or $5,000,000 if the offender is a person other than an individual, or twice the value of the monetary instrument or funds involved in the transportation, whichever is greater, or imprisonment for not more than twenty years, or both.

"(b) Whoever conducts or attempts to conduct a transaction described in subsection (a)(1), or a transportation described in subsection (a)(2), is liable to the United States for a civil penalty of not more than the greater of—

"(1) the value of the property, funds, or monetary instruments involved in the transaction; or

"(2) $10,000.

"(c) As used in this section—

"(1) the term 'knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity' means that the person knew the property involved in the transaction represented proceeds from some form, though not necessarily which form, of activity that constitutes a felony under State or Federal law, regardless of whether or not such activity is specified in paragraph (7);

"(2) the term 'conducts' includes initiating, concluding, or participating in initiating, or concluding a transaction;

"(3) the term 'transaction' includes a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected;

"(4) the term 'financial transaction' means a transaction involving the movement of funds by wire or other means or involving one or more monetary instruments, which in any way or degree affects interstate or foreign commerce, or a transaction involving the use of a financial institution which is engaged in, or the activities of which affect, interstate or foreign commerce in any way or degree;

"(5) the term 'monetary instruments' means coin or currency of the United States or of any other country, travelers' checks, personal checks, bank checks, money orders, investment securities in bearer form or otherwise in such form that title thereto passes upon delivery, and negotiable instruments in bearer form or otherwise in such form that title thereto passes upon delivery;

"(6) the term 'financial institution' has the definition given that term in section 5312(a)(2) of title 31, United States Code, and the regulations promulgated thereunder;

"(7) the term 'specified unlawful activity' means—

"(A) any act or activity constituting an offense listed in section 1961(1) of this title except an act which is indictable under the Currency and Foreign Transactions Reporting Act;

"(B) with respect to a financial transaction occurring in whole or in part in the United States, an offense against a foreign nation involving the manufacture, importation, sale, or distribution of a controlled substance (as such term is defined for the purposes of the Controlled Substances Act);

"(C) any act or acts constituting a continuing criminal enterprise, as that term is

defined in section 408 of the Controlled Substances Act (21 U.S.C. 848); or

"(D) an offense under section 152 (relating to concealment of assets; false oaths and claims; bribery), section 215 (relating to commissions or gifts for procuring loans), any of sections 500 through 503 (relating to certain counterfeiting offenses), section 511 (relating to securities of States and private entities), section 543 (relating to smuggling goods into the United States), section 641 (relating to public money, property, or records), section 656 (relating to theft, embezzlement, or misapplication by bank officer or employee), section 666 (relating to theft or bribery concerning programs receiving Federal funds), section 793, 794, or 798 (relating to espionage), section 875 (relating to interstate communications), section 1201 (relating to kidnaping), section 1203 (relating to hostage taking), section 1344 (relating to bank fraud), or section 2113 or 2114 (relating to bank and postal robbery and theft) of this title, section 38 of the Arms Export Control Act (22 U.S.C. 2778), section 2 (relating to criminal penalties) of the Export Administration Act of 1979 (50 U.S.C. App. 2401), section 203 (relating to criminal sanctions) of the International Emergency Economic Powers Act (50 U.S.C. 1702), or section 3 (relating to criminal violations) of the Trading with the Enemy Act (50 U.S.C. App. 3).

"(d) Nothing in this section shall supersede any provision of Federal, State, or other law imposing criminal penalties or affording civil remedies in addition to those provided for in this section.

"(e) Violations of this section may be investigated by such components of the Department of Justice as the Attorney General may direct, and by such components of the Department of the Treasury as the Secretary of the Treasury may direct, as appropriate. Such authority of the Secretary of the Treasury shall be exercised in accordance with an agreement which shall be entered into by the Secretary of the Treasury and the Attorney General.

"(f) There is extraterritorial jurisdiction over the conduct prohibited by this section if—

"(1) the conduct is by a United States citizen or, in the case of a non-United States citizen, the conduct occurs in part in the United States; and

"(2) the transaction or series of related transactions involves funds or monetary instruments of a value exceeding $10,000.

"§1957. Engaging in monetary transactions in property derived from specified unlawful activity

"(a)(1) Except as provided in paragraph (2), whoever, in any of the circumstances set forth in subsection (d), knowingly engages or attempts to engage in a monetary transaction in criminally derived property derived from specified unlawful activity shall be punished as provided in subsection (b).

"(2) This subsection does not apply to a monetary transaction to the extent such transaction involves bona fide fees an attorney accepts for representing a client in a criminal investigation or any proceeding arising therefrom.

"(b)(1) Except as provided in paragraph (2), the punishment for an offense under this section is—

"(A) a fine of not more than $1,000,000 or imprisonment for not more than 20 years, or both, if the offender is an individual; and

"(B) a fine of not more than $5,000,000, if the offender is a person other than an individual.

"(2) The court may impose an alternate fine to that imposable under paragraph (1) of not more than twice the amount of the criminally derived property involved in the transaction.

"(c) In a prosecution for an offense under this section, the Government is not required to prove the defendant knew that the offense from which the criminally derived property was derived was specified unlawful activity.

"(d) The circumstances referred to in subsection (a) are—

"(1) that the offense under this section takes place in the United States or in the special maritime and territorial jurisdiction of the United States; or

"(2) that the offense under this section takes place outside the United States and such special jurisdiction, but the defendant is a United States person (as defined in section 3077 of this title, but excluding the class described in paragraph (2)(D) of such section).

"(e) Violations of this section may be investigated by such components of the Department of Justice as the Attorney General may direct, and by such components of the Department of the Treasury as the Secretary of the Treasury may direct, as appropriate. Such authority of the Secretary of the Treasury shall be exercised in accordance with an agreement which shall be entered into by the Secretary of the Treasury and the Attorney General.

"(f) As used in this section—

"(1) the term 'monetary transaction' means the deposit, withdrawal, transfer, or exchange, in or affecting interstate or foreign commerce, of funds or a monetary instrument (as defined for the purposes of subchapter II of chapter 53 of title 31) by, through, or to a financial institution (as defined in section 5312 of title 31);

"(2) the term 'criminally derived property' means any property constituting, or derived from, proceeds obtained from a criminal offense; and

"(3) the term 'specified unlawful activity' has the meaning given that term in section 1956 of this title.".

(b) The table of sections at the beginning of chapter 95 of title 18 is amended by adding at the end the following new items:

"1956. Laundering of monetary instruments".

"1957. Engaging in monetary transactions in property derived from specified unlawful activity".

SEC. 1353. AMENDMENTS TO THE RIGHT TO FINANCIAL PRIVACY ACT.

(a) CLARIFICATION OF RIGHT OF FINANCIAL INSTITUTIONS TO REPORT SUSPECTED VIOLATIONS.—Section 1103(c) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3403(c)) is amended by adding at the end thereof the following new sentences: "Such information may include only the name or other identifying information concerning any individual or account involved in any suspected illegal activity, and a description of the nature of the suspected illegal activity, sufficient to enable the Government authority to obtain access to or copies of such information pursuant to law. No information provided under this subsection may include financial records or, except to the extent provided in the preceding sentence, information identified with, or identifiable as being derived from, the financial record of any particular customer. Such information may be so disclosed notwithstanding the constitution of any State or any State or local law.".

(b) FINANCIAL RECORDS OF INSIDERS.—Section 1113 of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3413) is amended by adding at the end thereof the following new subsection:

"(l) CRIMES AGAINST FINANCIAL INSTITUTIONS BY INSIDERS.—Nothing in this title shall apply when a financial institution or supervisory agency provides any financial record of any officer, director, employee, or controlling shareholder (within the meaning of subparagraph (A) or (B) of section 2(a)(2) of the Bank Holding Company Act of 1956 or subparagraph (A) or (B) of section 408(a)(2) of the National Housing Act) of such institution to the Attorney General of the United States, to a State law enforcement agency, or, in the case of a possible violation of subchapter II of chapter 53 of title 31, United States Code, to the Secretary of the Treasury if there is reason to believe that such record is relevant to a possible violation by such individual of—

"(1) any law relating to crimes against financial institutions or supervisory agencies by directors, officers, employees, or controlling shareholders of financial institutions; or

"(2) any provision of subchapter II of chapter 53 of title 31, United States Code.".

(c) PROTECTION FROM LIABILITY.—Section 1117(c) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3417(c)) is amended—

(1) by inserting "or providing in good faith a notification referred to in section 1103(c)" after "authority"; and

(2) by inserting "or notification" after "such disclosure".

(d) NONDISCLOSURE ORDER.—Section 1113(i) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3413(i)) is amended by adding at the end the following: "A court may, for a cause shown that would justify delay in notice under section 1109, issue an order precluding, for such time as the court deems appropriate, the recipient of a grand jury subpoena for financial records from notifying any other person (except the recipient's attorney) of the existence of the subpoena.".

SEC. 1354. STRUCTURING TRANSACTIONS TO EVADE REPORTING REQUIREMENTS PROHIBITED.

(a) IN GENERAL.—Subchapter II of chapter 53 of title 31, United States Code (relating to records and reports on monetary instruments transactions) is amended by adding at the end thereof the following new section:

"§5324. Structuring transactions to evade reporting requirement prohibited

"No person shall for the purpose of evading the reporting requirements of section 5313(a) with respect to such transaction—

"(1) cause or attempt to cause a domestic financial institution to fail to file a report required under section 5313(a);

"(2) cause or attempt to cause a domestic financial institution to file a report required under section 5313(a) that contains a material omission or misstatement of fact; or

"(3) structure or assist in structuring, or attempt to structure or assist in structuring, any transaction with one or more domestic financial institutions.".

(b) CLERICAL AMENDMENT.—The table of sections for chapter 53 of title 31, United States Code, is amended by adding at the end thereof the following new item:

"5324. Structuring transactions to evade reporting requirement prohibited.".

SEC. 1355. SEIZURE AND CIVIL FORFEITURE OF MONETARY INSTRUMENTS AND RELATED PROVISIONS.

(a) CUSTOMS AUTHORITY TO CONDUCT SEARCHES AT BORDER.—Section 5317(b) of title 31, United States Code, is amended to read as follows:

"(b) SEARCHES AT BORDER.—For purposes of ensuring compliance with the requirements of section 5316, a customs officer may stop and search, at the border and without a search warrant, any vehicle, vessel, aircraft, or other conveyance, any envelope or other container, and any person entering or departing from the United States.".

(b) FAILURE TO REPORT EXPORT OR IMPORT OF MONETARY INSTRUMENT.—The first sentence of section 5317(c) of title 31, United States Code (relating to seizure and forfeiture of monetary instruments in foreign commerce) is amended to read as follows: "If a report required under section 5316 with respect to any monetary instrument is not filed (or if filed, contains a material omission or misstatement of fact), the instrument and any interest in property, including a deposit in a financial institution, traceable to such instrument may be seized and forfeited to the United States Government.".

(c) SEIZURE AND CIVIL FORFEITURE OF MONETARY INSTRUMENTS INVOLVED IN STRUCTURED TRANSACTION VIOLATION.—Section 5317 of title 31, United States Code, is amended by adding at the end thereof the following new subsection:

"(d) SEIZURE AND CIVIL FORFEITURE OF MONETARY INSTRUMENTS INVOLVED IN STRUCTURED TRANSACTION VIOLATION.—

"(1) IN GENERAL.—Any—

"(A) United States coins or currency (or such other monetary instrument as the Secretary of the Treasury may prescribe by regulation) involved in any knowing violation of section 5313(a) or 5324; and

"(B) interest in property, including a deposit in a financial institution, traceable to such coins or currency (or other monetary instrument),

may be seized and forfeited to the United States Government in the manner provided in subchapter C of chapter 75 of the Internal Revenue Code of 1954.

"(2) EXCEPTION.—Paragraph (1) shall not apply if the owner of the property or the interest in property otherwise subject to seizure and forfeiture under paragraph (1) is—

"(A) a bona fide purchaser for value who took without notice of the violation;

"(B) a depository institution (as such term is defined in section 19(b)(1)(A) of the Federal Reserve Act); or

"(C) a financial institution regulated by the Securities and Exchange Commission.

"(3) HOLDS ON PROPERTY HELD BY FINANCIAL INSTITUTIONS.—Any United States coins or currency (and such other monetary instruments as the Secretary of the Treasury may prescribe by regulation) and any other interest in property, including any deposit, which is in the possession or custody of any financial institution shall be held by such financial institution for a period of 10 days upon receipt of notice from the Secretary (in such form and in such manner as the Secretary shall prescribe) of—

"(A) the Secretary's determination that there is probable cause to believe that such coin or currency, instrument, or other interest in property is subject to forfeiture under paragraph (1); and

"(B) the Secretary's intent to seize such coin or currency, instrument, or other property under this subsection.

"(4) SEIZURE OF PROPERTY HELD BY FINANCIAL INSTITUTIONS.—Upon a showing by the Secretary of the Treasury that there is probable cause to believe that any coin or currency, monetary instrument, or other interest in property, including any deposit, which is in the possession or custody of any financial institution is subject to forfeiture under paragraph (1), the district court of the United States for the district in which such property is held may issue an order authorizing the Secretary to seize such property.

"(5) LIABILITY OF FINANCIAL INSTITUTION TO THE UNITED STATES FOR FAILURE TO COMPLY.—Any financial institution which—

"(A) receives a notice under paragraph (3) with respect to any property or interest in property; and

"(B) after receipt of such notice, fails or refuses to hold, without reasonable cause, such property or interests until the earlier of—

"(i) the expiration of the 10-day period described in paragraph (3); or

"(ii) the presentation by the Secretary of a court order issued under paragraph (4),

shall be liable to the United States for an amount which is equal to the value of the property or interests which such institution failed or refused to hold.".

(d) TECHNICAL AND CONFORMING AMENDMENTS TO INTERNAL REVENUE CODE OF 1954.—

(1) Section 7302 of the Internal Revenue Code of 1954 (relating to property used in violation of internal revenue laws) is amended by adding at the end thereof the following new sentence: "The second and fourth sentences are hereby extended to coins, currency, and other monetary instruments (and to interests in property traceable to such instruments) seized pursuant to section 5317 of title 31, United States Code.".

(2) The heading for such section 7302 is amended by inserting "OR TITLE 31, UNITED STATES CODE" after "REVENUE LAWS".

(3) Section 7321 of the Internal Revenue Code of 1954 (relating to authority to seize property subject to forfeiture) is amended by inserting "and any coins, currency, or other monetary instrument (and any interest in property traceable to such instrument) subject to forfeiture under section 5317 of title 31, United States Code," after "this title".

(4) Section 7327 of the Internal Revenue Code of 1954 (relating to applicability of customs laws) is amended by inserting "and to forfeitures of coins, currency, and other monetary instruments (or interests in property traceable to such instruments) incurred or alleged to have been incurred under section 5317 of title 31, United States Code (except that, in the case of forfeitures under such section 5317, the customs laws shall apply only to the extent such laws are not inconsistent with any applicable provision of such section)" before the period.

(5) Section 7608(b)(1) of the Internal Revenue Code of 1954 (relating to authority of internal revenue enforcement officers to enforce certain internal revenue laws) is amended—

(A) by striking out "internal revenue laws or" and inserting in lieu thereof "internal revenue laws,"; and

(B) by inserting ", or any provision of section 5317 of title 31, United States Code, relating to seizures and forfeitures of coins, currency, and other monetary instruments (and interests in property traceable to such instruments)" after "responsible".

(6) Section 7608(b)(2) of the Internal Revenue Code of 1954 (relating to functions authorized to be performed by internal revenue enforcement officers) is amended—

(A) by adding at the end thereof the following new subparagraph:

"(D) to make seizures of coins, currency, and other monetary instruments (and interests in property traceable to such instruments) subject to forfeiture under section 5317 of title 31, United States Code.";

(B) by striking out "and" at the end of subparagraph (B); and

(C) by striking out the period at the end of subparagraph (C) and inserting in lieu thereof "; and".

(7) The item relating to section 7302 in the table of sections for part I of subchapter C of chapter 75 of the Internal Revenue Code of 1954 is amended by inserting "or title 31, United States Code" after "revenue laws".

SEC. 1356. COMPLIANCE AUTHORITY FOR SECRETARY OF THE TREASURY AND RELATED MATTERS.

(a) SUMMONS POWER.—Section 5318 of title 31, United States Code, is amended—

(1) by inserting "(a) GENERAL POWERS OF SECRETARY.—" before "The Secretary of the Treasury";

(2) in paragraph (1), by inserting "except as provided in subsection (b)(2)," before "delegate";

(3) by striking out "and" at the end of paragraph (2);

(4) by inserting after paragraph (2) the following new paragraphs:

"(3) examine any books, papers, records, or other data of financial institutions relevant to the recordkeeping or reporting requirements of this subchapter;

"(4) summon a financial institution, an officer or employee of a financial institution (including a former officer or employee), or any person having possession, custody, or care of the reports and records required under this subchapter, to appear before the Secretary of the Treasury or his delegate at a time and place named in the summons and to produce such books, papers, records, or other data, and to give testimony, under oath, as may be relevant or material to an investigation described in subsection (b); and";

(5) by redesignating paragraph (3) as paragraph (5); and

(6) by adding at the end the following new subsections:

"(b) LIMITATIONS ON SUMMONS POWER.—

"(1) SCOPE OF POWER.—The Secretary of the Treasury may take any action described in paragraph (3) or (4) of subsection (a) only in connection with investigations for the purpose of civil enforcement of violations of this subchapter, section 21 of the Federal Deposit Insurance Act, section 411 of the National Housing Act, or chapter 2 of Public Law 91-508 (12 U.S.C. 1951 et seq.) or any regulation under any such provision.

"(2) AUTHORITY TO ISSUE.—A summons may be issued under subsection (a)(4) only by, or with the approval of, the Secretary of the Treasury or a supervisory level delegate of the Secretary of the Treasury.

"(c) ADMINISTRATIVE ASPECTS OF SUMMONS.—

"(1) PRODUCTION AT DESIGNATED SITE.—A summons issued pursuant to this section may require that books, papers, records, or other data stored or maintained at any place be produced at any designated location in any State or in any territory or other place subject to the jurisdiction of the United States not more than 500 miles distant from any place where the financial institution operates or conducts business in the United States.

"(2) FEES AND TRAVEL EXPENSES.—Persons summoned under this section shall be paid the same fees and mileage for travel in the

United States that are paid witnesses in the courts of the United States.

"(3) NO LIABILITY FOR EXPENSES.—The United States shall not be liable for any expense, other than an expense described in paragraph (2), incurred in connection with the production of books, papers, records, or other data under this section.

"(d) SERVICE OF SUMMONS.—Service of a summons issued under this section may be by registered mail or in such other manner calculated to give actual notice as the Secretary may prescribe by regulation.

"(e) CONTUMACY OR REFUSAL.—

"(1) REFERRAL TO ATTORNEY GENERAL.—In case of contumacy by a person issued a summons under paragraph (3) or (4) of subsection (a) or a refusal by such person to obey such summons, the Secretary of the Treasury shall refer the matter to the Attorney General.

"(2) JURISDICTION OF COURT.—The Attorney General may invoke the aid of any court of the United States within the jurisdiction of which—

"(A) the investigation which gave rise to the summons is being or has been carried on;

"(B) the person summoned is an inhabitant; or

"(C) the person summoned carries on business or may be found,

to compel compliance with the summons.

"(3) COURT ORDER.—The court may issue an order requiring the person summoned to appear before the Secretary or his delegate to produce books, papers, records, and other data, to give testimony as may be necessary to explain how such material was compiled and maintained, and to pay the costs of the proceeding.

"(4) FAILURE TO COMPLY WITH ORDER.—Any failure to obey the order of the court may be punished by the court as a contempt thereof.

"(5) SERVICE OF PROCESS.—All process in any case under this subsection may be served in any judicial district in which such person may be found.".

(b) AMENDMENTS RELATING TO EXEMPTIONS GRANTED FOR MONETARY TRANSACTION REPORTING REQUIREMENTS.—Section 5318 of title 31, United States Code, is amended by adding after subsection (e) (as added by subsection (a) of this section) the following new subsections:

"(f) REVIEW OF EXEMPTIONS.—In any case in which there is a change in management or control of a financial institution, the Secretary of the Treasury shall review each currently outstanding exemption granted by such institution under subsection (a)(5) not later than 30 days after the date such change in management or control occurs.

"(g) WRITTEN AND SIGNED STATEMENT REQUIRED.—No person shall qualify for an exemption under subsection (a)(5) unless the relevant financial institution—

"(1) prepares and maintains a statement which—

"(A) describes in detail the reasons why such person is qualified for such exemption; and

"(B) contains the signature of such person; and

"(2) certifies to the Secretary that such person is qualified for such exemption.".

(c) CONFORMING AMENDMENTS.—

(1) Sections 5321 and 5322 of title 31, United States Code, are each amended by striking out "5318(2)" each place such term appears and inserting in lieu thereof "5318(a)(2)".

(2) The heading of section 5318 of title 31, United States Code, is amended to read as follows:

"§ 5318. Compliance, exemptions, and summons authority".

(d) CLERICAL AMENDMENT.—The table of sections for chapter 53 of title 31, United States Code, is amended by striking out the item relating to section 5318 and inserting in lieu thereof the following:

"5318. Compliance, exemptions, and summons authority.".

SEC. 1357. PENALTY PROVISIONS.

(a) CIVIL MONEY PENALTY FOR STRUCTURED TRANSACTION VIOLATION.—Section 5321(a) of title 31, United States Code, is amended by adding at the end thereof the following new paragraph:

"(4) STRUCTURED TRANSACTION VIOLATION.—

"(A) PENALTY AUTHORIZED.—The Secretary of the Treasury may impose a civil money penalty on any person who knowingly or with reckless disregard for a duty imposed by section 5324 violates any provision of section 5324.

"(B) MAXIMUM AMOUNT LIMITATION.—The amount of any civil money penalty imposed under subparagraph (A) shall not exceed the amount of the coins and currency (or such other monetary instruments as the Secretary may prescribe) involved in the transaction with respect to which such penalty is imposed.

"(C) COORDINATION WITH FORFEITURE PROVISION.—The amount of any civil money penalty imposed by the Secretary under subparagraph (A) shall be reduced by the amount of any forfeiture to the United States under section 5317(d) in connection with the transaction with respect to which such penalty is imposed.".

(b) INCREASE IN AMOUNT OF PENALTY FOR FINANCIAL INSTITUTIONS.—Section 5321(a)(1) of title 31, United States Code, is amended—

(1) by striking out "$10,000" and inserting in lieu thereof "the greater of the amount (not to exceed $100,000) involved in the transaction or $25,000"; and

(2) by striking out "section 5315" each place such term appears and inserting in lieu thereof "sections 5314 and 5315".

(c) CLARIFICATION OF "STATE OF MIND" STANDARD.—Section 5321(a)(1) of title 31, United States Code, is amended by striking out "willfully violating" and inserting in lieu thereof "who knowingly or with reckless disregard for a duty imposed by this subchapter violates".

(d) SEPARATE CIVIL MONEY PENALTY FOR VIOLATION OF SECTION 5314.—Section 5321(a) of title 31, United States Code, is amended by inserting after paragraph (4) (as added by subsection (a) of this section) the following new paragraph:

"(5) FOREIGN FINANCIAL AGENCY TRANSACTION VIOLATION.—

"(A) PENALTY AUTHORIZED.—The Secretary of the Treasury may impose a civil money penalty on any person who knowingly or with reckless disregard for a duty imposed by section 5314 violates any provision of section 5314.

"(B) MAXIMUM AMOUNT LIMITATION.—The amount of any civil money penalty imposed under subparagraph (A) shall not exceed—

"(i) in the case of violation of such section involving a transaction, the greater of—

"(I) the amount (not to exceed $100,000) of the transaction; or

"(II) $25,000; and

(ii) in the case of violation of such section involving a failure to report the existence of an account or any identifying information required to be provided with respect to such account, the greater of—

"(I) an amount (not to exceed $100,000) equal to the balance in the account at the time of the violation; or

"(II) $25,000.".

(e) SEPARATE CIVIL MONEY PENALTY FOR NEGLIGENT VIOLATION OF SUBCHAPTER.—Section 5321(a) of title 31, United States Code, is amended by inserting after paragraph (5) (as added by subsection (d) of this section) the following new paragraph:

"(6) NEGLIGENCE.—The Secretary of the Treasury may impose a civil money penalty of not more than $500 on any financial institution which negligently violates any provision of this subchapter or any regulation prescribed under this subchapter.".

(f) EXTENSION OF TIME LIMITATIONS FOR ASSESSMENT OF CIVIL PENALTY.—Section 5321(b) of title 31, United States Code, is amended to read as follows:

"(b) TIME LIMITATIONS FOR ASSESSMENTS AND COMMENCEMENT OF CIVIL ACTIONS.—

"(1) ASSESSMENTS.—The Secretary of the Treasury may assess a civil penalty under subsection (a) at any time before the end of the 6-year period beginning on the date of the transaction with respect to which the penalty is assessed.

"(2) CIVIL ACTIONS.—The Secretary may commence a civil action to recover a civil penalty assessed under subsection (a) at any time before the end of the 2-year period beginning on the later of—

"(A) the date the penalty was assessed; or

"(B) the date any judgment becomes final in any criminal action under section 5322 in connection with the same transaction with respect to which the penalty is assessed.".

(g) AMENDMENTS TO CRIMINAL PENALTY FOR CERTAIN OFFENSES.—Section 5322(b) of title 31, United States Code, is amended—

(1) by striking out "illegal activity involving transactions of" and inserting in lieu thereof "any illegal activity involving";

(2) by striking out "$500,000" and inserting in lieu thereof "$1,000,000 if the person is an individual (and not more than $5,000,000 in any other case)"; and

(3) by striking out "5 years" and inserting in lieu thereof "10 years".

(h) CONFORMING AMENDMENT.—Section 5321(c) of title 31, United States Code, is amended by striking out "section 5317(b)" and inserting in lieu thereof "subsection (c) or (d) of section 5317".

SEC. 1358. MONETARY TRANSACTION RECORDKEEPING AND REPORTING AMENDMENTS.

(a) AMENDMENTS RELATING TO REPORTS ON EXPORTS OR IMPORTS OF MONEY.

(1) CLOSELY RELATED EVENTS.—Section 5316 of title 31, United States Code, is amended by adding at the end the following new subsection:

"(d) CUMULATION OF CLOSELY RELATED EVENTS.—The Secretary of the Treasury may prescribe regulations under this section defining the term 'at one time' for purposes of subsection (a). Such regulations may permit the cumulation of closely related events in order that such events may collectively be considered to occur at one time for the purposes of subsection (a).".

(2) INCHOATE OFFENSE.—Section 5316(a)(1) of title 31, United States Code, is amended—

(A) by striking out "or attempts to transport or have transported,", and

(B) by inserting ", is about to transport," after "transports".

(3) TECHNICAL AND CONFORMING AMENDMENT.—Section 5316(a)(2) of title 31, United States Code, is amended by striking out "$5,000" and inserting in lieu thereof "$10,000".

(b) SECRETARY AUTHORIZED TO REQUIRE RECORDKEEPING FOR DOMESTIC COIN AND CUR-

RENCY TRANSACTIONS.—Subchapter II of chapter 53 of title 31, United States Code (relating to records and reports on monetary instruments transactions) is amended by adding after section 5324 (as added by section 1354(a) of this subtitle) the following new section:

"§ 5325. Records of certain domestic coin and currency transactions

"(a) RECORDS AUTHORIZED TO BE REQUIRED UNDER PARTICULAR CIRCUMSTANCES.—Under such circumstances as the Secretary of the Treasury may prescribe by regulation, the Secretary may issue an order requiring any domestic financial institution—

"(1) to obtain such information as the Secretary may describe in such order concerning—

"(A) any transaction in which such financial institution is involved for the payment, receipt, or transfer of United States coins or currency (or such other monetary instruments as the Secretary may describe in such order) in amounts or denominations of $3,000 or more; and

"(B) any other person participating in such transaction;

"(2) to maintain a record of such information for such period of time as the Secretary may require; and

"(3) to file a report with respect to any transaction described in paragraph (1)(A) in the manner and to the extent specified in the order.

"(b) RECORDS REQUIRED FOR CERTAIN CASH TRANSACTIONS INVOLVING MORE THAN $3,000.—

"(1) IN GENERAL.—Whenever a domestic financial institution issues or sells a bank check, cashier's check, traveler's check, or money order in connection with a transaction which involves United States coins or currency in amounts or denominations of more than $3,000, such financial institution shall—

"(A) prepare and maintain, on a form prescribed by the Secretary of the Treasury, a record containing the information described in paragraph (2) with respect to each such transaction;

"(B) obtain any information which is necessary for such record from the person to whom such check or money order is issued or sold; and

"(C) obtain the signature of such person on such record.

"(2) INFORMATION REQUIRED TO BE OBTAINED FOR RECORD.—The record required to be prepared under paragraph (1) with respect to any transaction shall contain the following information:

"(A) The identity of the person to whom a check or money order described in paragraph (1) is issued or sold.

"(B) The date, amount, number, and type of such check or money order.

"(C) The method of payment for such check or money order by the person to whom such check or money order is issued or sold.

"(D) The aggregate amount of checks or money orders described in paragraph (1) which were issued or sold to or on behalf of such person (by any financial institution) on the business day on which such transaction occurs, to the extent such aggregate amount exceeds $10,000.

"(E) The name of the payee of such check or money order.

"(F) Such other information as the Secretary may prescribe.

"(3) REPORT REQUIRED IN CERTAIN CASES.—

"(A) IN GENERAL.—If, in the case of a transaction with respect to which a record is required to be prepared by a financial institution under paragraph (1)—

"(i) the aggregate amount described in paragraph (2)(D) is greater than $10,000; or

"(ii) the person to whom a check or money order described in paragraph (1) is issued or sold refuses to provide the information necessary to determine such aggregate amount,

the transaction shall be treated as a transaction with respect to which a report is required to be filed under section 5313(a).

"(B) RECORD REQUIRED TO BE FILED WITH REPORT.—The record prepared under paragraph (1) shall be filed with the report required under subparagraph (A) of this paragraph.

"(C) NOTICE OF FAILURE TO PROVIDE AGGREGATE AMOUNT.—If a report is required under this paragraph because the person described in subparagraph (A)(ii) refused to provide the information required for purposes of paragraph (2)(D), the report shall include a notice of such refusal.".

(c) INFORMATION REQUIREMENTS.—Subchapter II of chapter 53 of title 31, United States Code, is amended by adding after section 5325 (as added by subsection (b) of this section) the following new section:

"§ 5326. Information requirements

"In each case in which a person is required to provide any information to a domestic financial institution or other person under any provision of this subchapter or any regulation prescribed under this subchapter, the information provided by such person shall be complete and accurate with respect to all material facts.".

(d) CLERICAL AMENDMENT.—The table of sections for chapter 53 of title 31, United States Code (as amended by section 1354(b)), is amended by adding at the end thereof the following new items:

"5325. Records of certain domestic coin and currency transactions.
"5326. Information requirements.".

SEC. 1359. BANKING REGULATORY AGENCY SUPERVISION OF RECORDKEEPING SYSTEMS.

(a) INSURED BANKS.—

(1) IN GENERAL.—Section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) is amended by adding at the end thereof the following new subsection:

"(s) COMPLIANCE WITH MONETARY TRANSACTION RECORDKEEPING AND REPORT REQUIREMENTS.—

"(1) COMPLIANCE PROCEDURES REQUIRED.—Each appropriate Federal banking agency shall prescribe regulations requiring insured banks to establish and maintain procedures reasonably designed to assure and monitor the compliance of such banks with the requirements of subchapter II of chapter 53 of title 31, United States Code.

"(2) EXAMINATIONS OF BANK TO INCLUDE REVIEW OF COMPLIANCE PROCEDURES.—

"(A) IN GENERAL.—Each examination of an insured bank by the appropriate Federal banking agency shall include a review of the procedures required to be established and maintained under paragraph (1).

"(B) EXAM REPORT REQUIREMENT.—The report of examination shall describe any problem with the procedures maintained by the insured bank.

"(3) ORDER TO COMPLY WITH REQUIREMENTS.—If the appropriate Federal banking agency determines that an insured bank—

"(A) has failed to establish and maintain the procedures described in paragraph (1); or

"(B) has failed to correct any problem with the procedures maintained by such bank which was previously reported to the bank by such agency,

the agency shall issue an order in the manner prescribed in subsection (b) or (c) requiring such bank to cease and desist from its violation of this subsection or regulations prescribed under this subsection.".

(2) CIVIL MONEY PENALTIES FOR FAILURE TO MAINTAIN COMPLIANCE PROCEDURES.—Section 8(i)(2)(i) of the Federal Deposit Insurance Act (12 U.S.C. 1818(i)(2)(i)) is amended by striking out "subsection (b) or (c)" and inserting in lieu thereof "subsection (b), (c), or (s)".

(3) PENALTIES FOR FAILURE TO COMPLY WITH CERTAIN RECORDKEEPING REQUIREMENTS.—Section 21 of the Federal Deposit Insurance Act (12 U.S.C. 1829b) is amended by adding at the end thereof the following new subsection:

"(j) CIVIL AND CRIMINAL PENALTIES.—

"(1) CIVIL PENALTY.—Any insured bank and any director, officer, or employee of an insured bank who knowingly or with reckless disregard for any duty imposed by any regulation prescribed under subsection (b) of this section violates any such regulation shall be liable to the United States for a civil penalty of not more than $10,000. Any penalty imposed under this paragraph shall be assessed, mitigated, and collected in the manner provided in subsections (b) and (c) of section 5321 of title 31, United States Code.

"(2) CRIMINAL PENALTY.—Whoever knowingly violates subsection (b) of this section or any regulation prescribed under such subsection shall be fined not more than $250,000 or imprisoned for not more than 5 years, or both.".

(b) INSTITUTIONS REGULATED BY THE BANK BOARD.—

(1) IN GENERAL.—Section 5(d) of the Home Owners' Loan Act of 1933 (12 U.S.C. 1464(d)) is amended by adding at the end thereof the following new paragraph:

"(16) COMPLIANCE WITH MONETARY TRANSACTION RECORDKEEPING AND REPORT REQUIREMENTS.—

"(A) COMPLIANCE PROCEDURES REQUIRED.—The Board shall prescribe regulations requiring associations to establish and maintain procedures reasonably designed to assure and monitor the compliance of such associations with the requirements of subchapter II of chapter 53 of title 31, United States Code.

"(B) EXAMINATIONS OF ASSOCIATIONS TO INCLUDE REVIEW OF COMPLIANCE PROCEDURES.—

"(i) IN GENERAL.—Each examination of an association by the Board shall include a review of the procedures required to be established and maintained under subparagraph (A).

"(ii) EXAM REPORT REQUIREMENT.—The report of examination shall describe any problem with the procedures maintained by the association.

"(C) ORDER TO COMPLY WITH REQUIREMENTS.—If the Board determines that an association—

"(i) has failed to establish and maintain the procedures described in subparagraph (A); or

"(ii) has failed to correct any problem with the procedures maintained by such association which was previously reported to the association by the Board,

the Board shall issue an order in the manner prescribed in paragraph (2) or (3) requiring such association to cease and desist from its violation of this paragraph or regulations prescribed under this paragraph.".

(2) CIVIL MONEY PENALTIES FOR FAILURE TO MAINTAIN COMPLIANCE PROCEDURES.—Section 5(d)(8)(B)(i) of the Home Owners' Loan Act of 1933 (12 U.S.C. 1464(d)(8)(B)(i)) is

amended by striking out "paragraph (2) or (3)" and inserting in lieu thereof "paragraph (2), (3), or (16)".

(c) INSURED THRIFT INSTITUTIONS.—

(1) IN GENERAL.—Section 407 of the National Housing Act (12 U.S.C. 1730) is amended by adding at the end thereof the following new subsection:

"(s) COMPLIANCE WITH MONETARY TRANSACTION RECORDKEEPING AND REPORT REQUIREMENTS.—

"(1) COMPLIANCE PROCEDURES REQUIRED.—The Corporation shall prescribe regulations requiring insured institutions to establish and maintain procedures reasonably designed to assure and monitor the compliance of such institutions with the requirements of subchapter II of chapter 53 of title 31, United States Code.

"(2) EXAMINATIONS OF INSTITUTIONS TO INCLUDE REVIEW OF COMPLIANCE PROCEDURES.—

"(A) IN GENERAL.—Each examination of an insured institution by the Corporation shall include a review of the procedures required to be established and maintained under paragraph (1).

"(B) EXAM REPORT REQUIREMENT.—The report of examination shall describe any problem with the procedures maintained by the insured institution.

"(3) ORDER TO COMPLY WITH REQUIREMENTS.—If the Corporation determines that an insured institution—

"(A) has failed to establish and maintain the procedures described in paragraph (1); or

"(B) has failed to correct any problem with the procedures maintained by such institution which was previously reported to the institution by the Corporation,

the Corporation shall issue an order in the manner prescribed in subsection (e) or (f) requiring such institution to cease and desist from its violation of this subsection or regulations prescribed under this subsection.".

(2) CIVIL MONEY PENALTIES FOR FAILURE TO MAINTAIN COMPLIANCE PROCEDURES.—Section 407(k)(3)(A) of the National Housing Act (12 U.S.C. 1730(k)(3)(A)) is amended by striking out "subsection (e) or (f) of this section shall forefit" and inserting in lieu thereof "subsection (e), (f), or (s) of this section shall forfeit".

(3) PENALTIES FOR FAILURE TO COMPLY WITH CERTAIN RECORDKEEPING REQUIREMENTS.—Section 411 of the National Housing Act (12 U.S.C. 1730d) is amended by adding at the end thereof the following new sentence: "The penalties provided in subsection (j) of section 21 of the Federal Deposit Insurance Act for violations of any regulation prescribed under subsection (b) of such section shall apply with respect to any violation of any regulation prescribed under this section which corresponds to the regulation prescribed under such subsection (b).".

(d) INSURED CREDIT UNIONS.—

(1) IN GENERAL.—Section 206 of the Federal Credit Union Act (12 U.S.C. 1786) is amended by adding at the end thereof the following new subsection:

"(q) COMPLIANCE WITH MONETARY TRANSACTION RECORDKEEPING AND REPORT REQUIREMENTS.—

"(1) COMPLIANCE PROCEDURES REQUIRED.—The Board shall prescribe regulations requiring insured credit unions to establish and maintain procedures reasonably designed to assure and monitor the compliance of such credit unions with the requirements of subchapter II of chapter 53 of title 31, United States Code.

"(2) EXAMINATIONS OF CREDIT UNIONS TO INCLUDE REVIEW OF COMPLIANCE PROCEDURES.—

"(A) IN GENERAL.—Each examination of an insured credit union by the Board shall include a review of the procedures required to be established and maintained under paragraph (1).

"(B) EXAM REPORT REQUIREMENT.—The report of examination shall describe any problem with the procedures maintained by the credit union.

"(3) ORDER TO COMPLY WITH REQUIREMENTS.—If the Board determines that an insured credit union—

"(A) has failed to establish and maintain the procedures described in paragraph (1); or

"(B) has failed to correct any problem with the procedures maintained by such credit union which was previously reported to the credit union by the Board,

the Board shall issue an order in the manner prescribed in subsection (e) or (f) requiring such credit union to cease and desist from its violation of this subsection or regulations prescribed under this subsection.".

(2) CIVIL MONEY PENALTIES FOR FAILURE TO MAINTAIN COMPLIANCE PROCEDURES.—Section 206(k)(2)(A) of the Federal Credit Union Act (12 U.S.C. 1786(k)(2)(A)) (as in effect on September 1, 1986) is amended by striking out "subsection (e) or (f)" and inserting in lieu thereof "subsection (e), (f), or (q)".

SEC. 1360. CHANGE IN BANK CONTROL ACT AMENDMENTS.

(a) ADDITIONAL REVIEW TIME.—

(1) INITIAL EXTENSION AT DISCRETION OF AGENCY.—The first sentence of section 7(j)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1817(j)(1)) is amended by striking out "or extending up to another thirty days" and inserting in lieu thereof "or, in the discretion of the agency, extending for an additional 30 days".

(2) ADDITIONAL EXTENSIONS IN CASE OF INCOMPLETE OR INACCURATE NOTICE OR TO CONTINUE INVESTIGATION.—The second sentence of section 7(j)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1817(j)(1)) is amended to read as follows: "The period for disapproval under the preceding sentence may be extended not to exceed 2 additional times for not more than 45 days each time if—

"(A) the agency determines that any acquiring party has not furnished all the information required under paragraph (6);

"(B) in the agency's judgment, any material information submitted is substantially inaccurate;

"(C) the agency has been unable to complete the investigation of an acquiring party under paragraph (2)(B) because of any delay caused by, or the inadequate cooperation of, such acquiring party; or

"(D) the agency determines that additional time is needed to investigate and determine that no acquiring party has a record of failing to comply with the requirements of subchapter II of chapter 53 of title 31, United States Code.".

(b) DUTY TO INVESTIGATE APPLICANTS FOR CHANGE IN CONTROL APPROVAL.—Section 7(j)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1817(j)(2)) is amended—

(1) by striking out "(2)" and inserting in lieu thereof "(2)(A) NOTICE TO STATE AGENCY.—"; and

(2) by adding at the end thereof the following new subparagraphs:

"(B) INVESTIGATION OF PRINCIPALS REQUIRED.—Upon receiving any notice under this subsection, the appropriate Federal banking agency shall—

"(i) conduct an investigation of the competence, experience, integrity, and financial ability of each person named in a notice of a proposed acquisition as a person by whom or for whom such acquisition is to be made; and

"(ii) make an independent determination of the accuracy and completeness of any information described in paragraph (6) with respect to such person.

"(C) REPORT.—The appropriate Federal banking agency shall prepare a written report of any investigation under subparagraph (B) which shall contain, at a minimum, a summary of the results of such investigation. The agency shall retain such written report as a record of the agency.".

(c) PUBLIC COMMENT ON CHANGE OF CONTROL NOTICES.—Section 7(j)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1817(j)(2)) is amended by adding after subparagraph (C) (as added by subsection (b) of this section) the following new subparagraph:

"(D) PUBLIC COMMENT.—Upon receiving notice of a proposed acquisition, the appropriate Federal banking agency shall, within a reasonable period of time—

"(i) publish the name of the insured bank proposed to be acquired and the name of each person identified in such notice as a person by whom or for whom such acquisition is to be made; and

"(ii) solicit public comment on such proposed acquisition, particularly from persons in the geographic area where the bank proposed to be acquired is located, before final consideration of such notice by the agency, unless the agency determines in writing that such disclosure or solicitation would seriously threaten the safety or soundness of such bank.".

(d) INVESTIGATIONS AND ENFORCEMENT.—Section 7(j) of the Federal Deposit Insurance Act (12 U.S.C. 1817(j)) is amended—

(1) by redesignating paragraphs (15) and (16) as paragraphs (16) and (17), respectively; and

(2) by inserting after paragraph (14) the following new paragraph:

"(15) INVESTIGATIVE AND ENFORCEMENT AUTHORITY.—

"(A) INVESTIGATIONS.—The appropriate Federal banking agency may exercise any authority vested in such agency under section 8(n) in the course of conducting any investigation under paragraph (2)(B) or any other investigation which the agency, in its discretion, determines is necessary to determine whether any person has filed inaccurate, incomplete, or misleading information under this subsection or otherwise is violating, has violated, or is about to violate any provision of this subsection or any regulation prescribed under this subsection.

"(B) ENFORCEMENT.—Whenever it appears to the appropriate Federal banking agency that any person is violating, has violated, or is about to violate any provision of this subsection or any regulation prescribed under this subsection, the agency may, in its discretion, apply to the appropriate district court of the United States or the United States court of any territory for—

"(i) a temporary or permanent injunction or restraining order enjoining such person from violating this subsection or any regulation prescribed under this subsection; or

"(ii) such other equitable relief as may be necessary to prevent any such violation (including divestiture).

"(C) JURISDICTION.—

"(i) The district courts of the United States and the United States courts in any territory shall have the same jurisdiction and power in connection with any exercise of any authority by the appropriate Federal

banking agency under subparagraph (A) as such courts have under section 8(n).

"(ii) The district courts of the United States and the United States courts of any territory shall have jurisdiction and power to issue any injunction or restraining order or grant any equitable relief described in subparagraph (B). When appropriate, any injunction, order, or other equitable relief granted under this paragraph shall be granted without requiring the posting of any bond.".

SEC. 1361. CHANGE IN SAVINGS AND LOAN CONTROL ACT AMENDMENTS.

(a) ADDITIONAL REVIEW TIME.—

(1) INITIAL EXTENSION AT DISCRETION OF AGENCY.—The first sentence of section 407(q)(1) of the National Housing Act (12 U.S.C. 1730(q)(1)) is amended by striking out "or extending up to another thirty days" and inserting in lieu thereof "or, in the discretion of the Corporation, extending for an additional 30 days".

(2) ADDITIONAL EXTENSIONS IN CASE OF INCOMPLETE OR INACCURATE NOTICE OR TO CONTINUE INVESTIGATION.—The second sentence of section 407(q)(1) of the National Housing Act (12 U.S.C. 1730(q)(1)) is amended to read as follows: "The period for disapproval under the preceding sentence may be extended not to exceed 2 additional times for not more than 45 days each time if—

"(A) the Corporation determines that any acquiring party has not furnished all the information required under paragraph (6);

"(B) in the Corporation's judgment, any material information submitted is substantially inaccurate;

"(C) the Corporation has been unable to complete the investigation of an acquiring party under paragraph (2)(B) because of any delay caused by, or the inadequate cooperation of, such acquiring party; or

"(D) the Corporation determines that additional time is needed to investigate and determine that no acquiring party has a record of failing to comply with the requirements of subchapter II of chapter 53 of title 31, United States Code.".

(b) DUTY TO INVESTIGATE APPLICANTS FOR CHANGE IN CONTROL APPROVAL.—Section 407(q)(2) of the National Housing Act (12 U.S.C. 1730(q)(2)) is amended—

(1) by striking out "(2)" and inserting in lieu thereof "(2)(A) NOTICE TO STATE AGENCY.—"; and

(2) by adding at the end thereof the following new subparagraphs:

"(B) INVESTIGATION OF PRINCIPALS REQUIRED.—Upon receiving any notice under this subsection, the Corporation shall—

"(i) conduct an investigation of the competence, experience, integrity, and financial ability of each person named in a notice of a proposed acquisition as a person by whom or for whom such acquisition is to be made; and

"(ii) make an independent determination of the accuracy and completeness of any information described in paragraph (6) with respect to such person.

"(C) REPORT.—The Corporation shall prepare a written report of any investigation under subparagraph (B) which shall contain, at a minimum, a summary of the results of such investigation. The Corporation shall retain such written report as a record of the Corporation.".

(c) PUBLIC COMMENT ON CHANGE OF CONTROL NOTICES.—Section 407(q)(2) of the National Housing Act (12 U.S.C. 1730(q)(2)) is amended by adding after subparagraph (C) (as added by subsection (b) of this section) the following new subparagraph:

"(D) PUBLIC COMMENT.—Upon receiving notice of a proposed acquisition, the Corporation shall, within a reasonable period of time—

"(i) publish the name of the insured institution proposed to be acquired and the name of each person identified in such notice as a person by whom or for whom such acquisition is to be made; and

"(ii) solicit public comment on such proposed acquisition, particularly from persons in the geographic area where the institution proposed to be acquired is located, before final consideration of such notice by the Corporation,

unless the Corporation determines in writing that such disclosure or solicitation would seriously threaten the safety or soundness of such institution.".

(d) INVESTIGATIONS AND ENFORCEMENT.—Section 407(q) of the National Housing Act (12 U.S.C. 1730(q)) is amended—

(1) by redesignating paragraphs (16) and (17) as paragraphs (17) and (18), respectively; and

(2) by inserting after paragraph (15) the following new paragraph:

"(16) INVESTIGATIVE AND ENFORCEMENT AUTHORITY.—

"(A) INVESTIGATIONS.—The Corporation may exercise any authority vested in the Corporation under paragraph (2) or (3) of subsection (m) in the course of conducting any investigation under paragraph (2)(B) or any other investigation which the Corporation, in its discretion, determines is necessary to determine whether any person has filed inaccurate, incomplete, or misleading information under this subsection or otherwise is violating, has violated, or is about to violate any provision of this subsection or any regulation prescribed under this subsection.

"(B) ENFORCEMENT.—Whenever it appears to the Corporation that any person is violating, has violated, or is about to violate any provision of this subsection or any regulation prescribed under this subsection, the agency may, in its discretion, apply to the appropriate district court of the United States or the United States court of any territory for—

"(i) a temporary or permanent injunction or restraining order enjoining such person from violating this subsection or any regulation prescribed under this subsection; or

"(ii) such other equitable relief as may be necessary to prevent any such violation (including divestiture).

"(C) JURISDICTION.—

"(i) The district courts of the United States and the United States courts in any territory shall have the same jurisdiction and power in connection with any exercise of any authority by the Corporation under subparagraph (A) as such courts have under paragraph (2) or (3) of subsection (m).

"(ii) The district courts of the United States and the United States courts of any territory shall have jurisdiction and power to issue any injunction or restraining order or grant any equitable relief described in subparagraph (B). When appropriate, any injunction, order, or other equitable relief under this paragraph shall be granted without requiring the posting of any bond.".

SEC. 1362. AMENDMENTS TO DEFINITIONS.

(a) DEFINITION OF MONETARY INSTRUMENTS INCLUDES SUCH OTHER TRANSFERS AS THE SECRETARY MAY PRESCRIBE.—Section 5312(a)(3) of title 31, United States Code (defining monetary instruments) is amended—

(1) by adding at the end thereof the following new subparagraph:

"(C) as the Secretary may prescribe by regulation, any transfer of funds.";

(2) by striking out "and" at the end of subparagraph (A); and

(3) by striking out the period at the end of subparagraph (B) and inserting in lieu thereof "; and".

(b) UNITED STATES AGENCIES INCLUDES THE POSTAL SERVICE.—Section 5312(a)(2)(U) of title 31, United States Code (defining financial institutions) (as redesignated by subsection (a)) is amended by inserting before the semicolon at the end the following: ", including the United States Postal Service".

(c) UNITED STATES INCLUDES CERTAIN TERRITORIES AND POSSESSIONS.—Section 5312(a)(5) of title 31, United States Code, is amended by inserting "the Virgin Islands, Guam, the Northern Mariana Islands, American Samoa, the Trust Territory of the Pacific Islands," after "Puerto Rico".

SEC. 1363. INTERNATIONAL INFORMATION EXCHANGE SYSTEM; STUDY OF FOREIGN BRANCHES OF DOMESTIC INSTITUTIONS.

(a) DISCUSSIONS ON INTERNATIONAL INFORMATION EXCHANGE SYSTEM.—The Secretary of the Treasury, in consultation with the Board of Governors of the Federal Reserve System, shall initiate discussions with the central banks or other appropriate governmental authorities of other countries and propose that an information exchange system be established to assist the efforts of each participating country to eliminate the international flow of money derived from illicit drug operations and other criminal activities.

(b) REPORT ON DISCUSSIONS REQUIRED.—Before the end of the 9-month period beginning on the date of the enactment of this Act, the Secretary of the Treasury shall prepare and transmit a report to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on the results of discussions initiated pursuant to subsection (a).

(c) STUDY OF MONEY LAUNDERING THROUGH FOREIGN BRANCHES OF DOMESTIC FINANCIAL INSTITUTIONS REQUIRED.—The Secretary of the Treasury, in consultation with the Attorney General and the Board of Governors of the Federal Reserve System, shall conduct a study of—

(1) the extent to which foreign branches of domestic institutions are used—

(A) to facilitate illicit transfers of coins, currency, and other monetary instruments (as such term is defined in section 5312(a)(3)) of title 31, United States Code) into and out of the United States; and

(B) to evade reporting requirements with respect to any transfer of coins, currency, and other monetary instruments (as so defined) into and out of the United States;

(2) the extent to which the law of the United States is applicable to the activities of such foreign branches; and

(3) methods for obtaining the cooperation of the country in which any such foreign branch is located for purposes of enforcing the law of the United States with respect to transfers, and reports on transfers, of such monetary instruments into and out of the United States.

(d) REPORT ON STUDY OF FOREIGN BRANCHES REQUIRED.—Before the end of the 9-month period beginning on the date of the enactment of this Act, the Secretary of the Treasury shall prepare and transmit a report to the Committee on Banking, Finance and Urban Affairs and the Committee on the Judiciary of the House of Representatives and

the Committee on Banking, Housing, and Urban Affairs and the Committee on the Judiciary of the Senate on the results of the study conducted pursuant to subsection (c).

SEC. 1364. EFFECTIVE DATES.

(a) The amendments made by sections 1354, 1358(b), and 1358(c) shall apply with respect to transactions for the payment, receipt, or transfer of United States coins or currency or other monetary instruments completed after the end of the 3-month period beginning on the date of the enactment of this Act.

(b) The amendments made by sections 1355(b), 1355(c), and 1357(a) shall apply with respect to violations committed after the end of the 3-month period beginning on the date of the enactment of this Act.

(c) The amendments made by section 1357 (other than subsection (a) of such section) shall apply with respect to violations committed after the date of the enactment of this Act.

(d) Any regulation prescribed under the amendments made by section 1358(a) shall apply with respect to transactions completed after the effective date of such regulation.

(e) The regulations required to be prescribed under the amendments made by section 1359 shall take effect at the end of the 3-month period beginning on the date of the enactment of this Act.

(f) The amendments made by sections 1360 and 1361 shall apply with respect to notices of proposed acquisitions filed after the date of the enactment of this Act.

SEC. 1365. PREDICATE OFFENSES.

(a) Subsection (b) of section 1952 of title 18, United States Code, is amended by striking out "or" before "(2)", and by striking out the period at the end thereof and inserting in lieu thereof the following: ", or (3) any act which is indictable under subchapter II of chapter 53 of title 31, United States Code, or under section 1956 or 1957 of this title.".

(b) Subsection (1) of section 1961 of title 18, United States Code, is amended by inserting "section 1956 (relating to the laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity)," after "section 1955 (relating to the prohibition of illegal gambling businesses),".

(c) Subsection (1) of section 2516 of title 18, United States Code, is amended in paragraph (c) by inserting "section 1956 (laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity)," after "section 1955 (prohibition of relating to business enterprises of gambling),".

SEC. 1366. FORFEITURE.

(a) Title 18 of the United States Code is amended by adding after chapter 45 a new chapter 46 as follows:

"CHAPTER 46—FORFEITURE

"Sec.
"981. Civil Forfeiture.
"982. Criminal Forfeiture.

"§ 981. Civil forfeiture

"(a)(1) Except as provided in paragraph (2), the following property is subject to forfeiture to the United States:

"(A) Any property, real or personal, which represents the gross receipts a person obtains, directly or indirectly, as a result of a violation of section 1956 or 1957 of this title, or which is traceable to such gross receipts.

"(B) Any property within the jurisdiction of the United States, which represents the proceeds of an offense against a foreign nation involving the manufacture, importation, sale, or distribution of a controlled substance (as such term is defined for the purposes of the Controlled Substances Act), within whose jurisdiction such offense or activity would be punishable by death or imprisonment for a term exceeding one year and which would be punishable by imprisonment for a term exceeding one year if such act or activity had occurred within the jurisdiction of the United States.

"(C) Any coin and currency (or other monetary instrument as the Secretary of the Treasury may prescribe) or any interest in other property, including any deposit in a financial institution, traceable to such coin or currency involved in a transaction or attempted transaction in violation of section 5313(a) or 5324 of title 31 may be seized and forfeited to the United States Government. No property or interest in property shall be seized or forfeited if the violation is by a domestic financial institution examined by a Federal bank supervisory agency or a financial institution regulated by the Securities and Exchange Commission or a partner, director, officer or employee thereof."

"(2) No property shall be forfeited under this section to the extent of the interest of an owner or lienholder by reason of any act or emission established by that owner or lienholder to have been committed without the knowledge of that owner or lienholder.

"(b) Any property subject to forfeiture to the United States under subsection (a)(1)(A) or (a)(1)(B) of this section may be seized by the Attorney General or, with respect to property involved in a violation of section 1956 or 1957 of this title investigated by the Secretary of the Treasury, may be seized by the Secretary of the Treasury, and any property subject to forfeiture under subsection (a)(1)(C) of this section may be seized by the Secretary of the Treasury, in each case upon process issued pursuant to the Supplemental Rules for certain Admiralty and Maritime Claims by any district court of the United States having jurisdiction over the property, except that seizure without such process may be made when—

"(1) the seizure is pursuant to a lawful arrest or search; or

"(2) the Attorney General or the Secretary of the Treasury, as the case may be, has obtained a warrant for such seizure pursuant to the Federal Rules of Criminal Procedure, in which event proceedings under subsection (d) of this section shall be instituted promptly.

"(c) Property taken or detained under this section shall not be repleviable, but shall be deemed to be in the custody of the Attorney General or the Secretary of the Treasury, as the case may be, subject only to the orders and decrees of the court or the official having jurisdiction thereof. Whenever property is seized under this subsection, the Attorney General or the Secretary of the Treasury, as the case may be, may—

"(1) place the property under seal;

"(2) remove the property to a place designated by him; or

"(3) require that the General Services Administration take custody of the property and remove it, if practicable, to an appropriate location for disposition in accordance with law.

"(d) For purposes of this section, the provisions of the customs laws relating to the seizure, summary and judicial forfeiture, condemnation of property for violation of the customs laws, the disposition of such property or the proceeds from the sale of this section, the remission or mitigation of such forfeitures, and the compromise of claims (19 U.S.C. 1602 et seq.), insofar as they are applicable and not inconsistent with the provisions of this section, shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under this section, except that such duties as are imposed upon the customs officer or any other person with respect to the seizure and forfeiture of property under the customs laws shall be performed with respect to seizures and forfeitures of property under this section by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General or the Secretary of the Treasury, as the case may be.

"(e) Notwithstanding any other provision of the law, except section 3 of the Anti Drug Abuse Act of 1986, the Attorney General or the Secretary of the Treasury, as the case may be, is authorized to retain property forfeited pursuant to this section, or to transfer such property on such terms and conditions as he may determine to—

"(1) any other Federal agency; or

"(2) any State or local law enforcement agency which participated directly in any of the acts which led to the seizure or forfeiture of the property.

The Attorney General or the Secretary of the Treasury, as the case may be, shall ensure the equitable transfer pursuant to paragraph (2) of any forfeited property to the appropriate State or local law enforcement agency so as to reflect generally the contribution of any such agency participating directly in any of the acts which led to the seizure or forfeiture of such property. A decision by the Attorney General or the Secretary of the Treasury pursuant to paragraph (2) shall not be subject to review. The United States shall not be liable in any action arising out of the use of any property the custody of which was transferred pursuant to this section to any non-Federal agency. The Attorney General or the Secretary of the Treasury may order the discontinuance of any forfeiture proceedings under this section in favor of the institution of forfeiture proceedings by State or local authorities under an appropriate State or local statute. After the filing of a complaint for forfeiture under this section, the Attorney General may seek dismissal of the complaint in favor of forfeiture proceedings under State or local law. Whenever forfeiture proceedings are discontinued by the United States in favor of State or local proceedings, the United States may transfer custody and possession of the seized property to the appropriate State or local official immediately upon the initiation of the proper actions by such officials. Whenever forfeiture proceedings are discontinued by the United States in favor of State or local proceedings, notice shall be sent to all known interested parties advising them of the discontinuance or dismissal. The United States shall not be liable in any action arising out of the seizure, detention, and transfer of seized property to State or local officials.

"(f) All right, title, and interest in property described in subsection (a) of this section shall vest in the United States upon commission of the act giving rise to forfeiture under this section.

"(g) The filing of an indictment or information alleging a violation of law which is also related to a forfeiture proceeding under this section shall, upon motion of the United States and for good cause shown, stay the forfeiture proceeding.

"(h) In addition to the venue provided for in section 1395 of title 28 or any other provision of law, in the case of property of a defendant charged with a violation that is the basis for forfeiture of the property under this section, a proceeding for forfeiture under this section may be brought in the judicial district in which the defendant owning such property is found or in the judicial district in which the criminal prosecution is brought.

"(i) In the case of property subject to forfeiture under subsection (a)(1)(B), the following additional provisions shall, to the extent provided by treaty, apply:

"(1) Notwithstanding any other provision of law, except section 3 of the Anti Drug Abuse Act of 1986, whenever property is civilly or criminally forfeited under the Controlled Substances Act, the Attorney General may, with the concurrence of the Secretary of State, equitably transfer any conveyance, currency, and any other type of personal property which the Attorney General may designate by regulation for equitable transfer, or any amounts realized by the United States from the sale of any real or personal property forfeited under the Controlled Substances Act to an appropriate foreign country to reflect generally the contribution of any such foreign country participating directly or indirectly in any acts which led to the seizure or forfeiture of such property. The foreign country shall, in the event of a transfer of property or proceeds of sale of property under this subchapter, bear all expenses incurred by the United States in the seizure, maintenance, inventory, storage, forfeiture, and disposition of the property, and all transfer costs. The payment of all such expenses, and the transfer of assets pursuant to this paragraph, shall be upon such terms and conditions as the Attorney General may, in his discretion, set. Transfers may be made under this subsection during a fiscal year to a country that is subject to paragraph (1)(A) of section 481(h) of the Foreign Assistance Act of 1961 (relating to restrictions on United States assistance) only if there is a certification in effect with respect to that country for that fiscal year under paragraph (2) of that section.

"(2) The provisions of this section shall not be construed as limiting or superseding any other authority of the United States to provide assistance to a foreign country in obtaining property related to a crime committed in the foreign country, including property which is sought as evidence of a crime committed in the foreign country.

"(3) A certified order or judgment of forfeiture by a court of competent jurisdiction of a foreign country concerning property which is the subject of forfeiture under this section and was determined by such court to be the type of property described in subsection (a)(1)(B) of this section, and any certified recordings or transcripts of testimony taken in a foreign judicial proceeding concerning such order or judgment of forfeiture, shall be admissible in evidence in a proceeding brought pursuant to this section. Such certified order or judgment of forfeiture, when admitted into evidence, shall constitute probable cause that the property forfeited by such order or judgment of forfeiture is subject to forfeiture under this section and creates a rebuttable presumption of the forfeitability of such property under this section.

"(4) A certified order or judgment of conviction by a court of competent jurisdiction of a foreign country concerning an unlawful drug activity which gives rise to forfeiture under this section and any certified recordings or transcripts of testimony taken in a foreign judicial proceeding concerning such order or judgment of conviction shall be admissible in evidence in a proceeding brought pursuant to this section. Such certified order or judgment of conviction, when admitted into evidence, creates a rebuttable presumption that the unlawful drug activity giving rise to forfeiture under this section has occurred.

"(5) The provisions of paragraphs (3) and (4) of this subsection shall not be construed as limiting the admissibility of any evidence otherwise admissible, nor shall they limit the ability of the United States to establish probable cause that property is subject to forfeiture by any evidence otherwise admissible.

"(j) For purposes of this section—

"(1) the term 'Attorney General' means the Attorney General or his delegate; and

"(2) the term 'Secretary of the Treasury' means the Secretary of the Treasury or his delegate.

"§ 982. Criminal forfeiture

"(a) The court, in imposing sentence on a person convicted of an offense under section 1956 or 1957 of this title shall order that the person forfeit to the United States any property, real or personal, which represents the gross receipts the person obtained, directly or indirectly, as a result of such offense, or which is traceable to such gross receipts.

"(b) The provisions of subsections 413 (c) and (e) through (o) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853 (c) and (e)—(o)) shall apply to property subject to forfeiture under this section, to any seizure or disposition thereof, and to any administrative or judicial proceeding in relation thereto, if not inconsistent with this section.".

(b) The chapter analysis of part I of title 18, United States Code, is amended by inserting after the item for chapter 45 the following:

"46. Forfeiture ..... 961".

SEC. 1367. SEVERABILITY CLAUSE.

If any provision of this subtitle or any amendment made by this Act, or the application thereof to any person or circumstances is held invalid, the provisions of every other part, and their application, shall not be affected thereby.

Subtitle I—Armed Career Criminals

SEC. 1401. SHORT TITLE.

This subtitle may be cited as the "Career Criminals Amendment Act of 1986".

SEC. 1402. EXPANSION OF PREDICATE OFFENSES FOR ARMED CAREER CRIMINAL PENALTIES.

(a) IN GENERAL.—Section 924(e)(1) of title 18, United States Code, is amended by striking out "for robbery or burglary, or both," and inserting in lieu thereof "for a violent felony or a serious drug offense, or both,".

(b) DEFINITIONS.—Section 924(e)(2) of title 18, United States Code, is amended by striking out subparagraph (A) and all that follows through subparagraph (B) and inserting in lieu thereof the following:

"(A) the term 'serious drug offense' means—

"(i) an offense under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or the first section or section 3 of Public Law 96-350 (21 U.S.C. 955a et seq.), for which a maximum term of imprisonment of ten years or more is prescribed by law; or

"(ii) an offense under State law, involving manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), for which a maximum term of imprisonment of ten years or more is prescribed by law; and

"(B) the term 'violent felony' means any crime punishable by imprisonment for a term exceeding one year that—

"(i) has as an element the use, attempted use, or threatened use of physical force against the person of another; or

"(ii) is burglary, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another.".

Subtitle J—Authorization of Appropriation for Drug Law Enforcement

SEC. 1451. AUTHORIZATION OF APPROPRIATIONS.

(a) There is authorized to be appropriated for fiscal year 1987 for the Department of Justice for the Drug Enforcement Administration, $60,000,000; except, that notwithstanding section 1345 of title 31, United States Code, funds made available to the Department of Justice for the Drug Enforcement Administration in any fiscal year may be used for travel, transportation, and subsistence expenses of State, county, and local officers attending conferences, meetings, and training courses at the FBI Academy, Quantico, Virginia.

(b) The Drug Enforcement Administration of the Department of Justice is hereby authorized to plan, construct, renovate, maintain, remodel and repair buildings and purchase equipment incident thereto for an All Source Intelligence Center.

(c) There is authorized to be appropriated for fiscal year 1987 for the Department of Justice for the Federal Prison System, $168,000,000, of which $140,000,000 shall be for the construction of Federal penal and correctional institutions and $28,000,000 shall be for salaries and expenses.

(d) There is authorized to be appropriated for fiscal year 1987 for the Judiciary for Defender Services, $18,000,000.

(e) There is authorized to be appropriated for fiscal year 1987 for the Judiciary for Fees and Expenses of Jurors and Commissioners, $7,500,000.

(f) There is authorized to be appropriated for fiscal year 1987 for the Department of Justice for the Office of Justice Assistance, $2,000,000 to carry out a pilot prison capacity program.

(g) There is authorized to be appropriated for fiscal year 1987 for the Department of Justice for support of United States prisoners in non-Federal Institutions, $2,000,000.

(h) There is authorized to be appropriated for fiscal year 1987 for the Department of Justice for the Offices of the United States Attorneys, $31,000,000.

(i) There is authorized to be appropriated for fiscal year 1987 for the Department of Justice for the United States Marshals Service, $20,000,000.

(j) Authorizations of appropriations for fiscal year 1987 contained in this section are in addition to those amounts contained in H.R. 5161, as reported to the Senate by the Committee on Appropriations on September 3, 1986.

(k) In addition to any other amounts that may be authorized to be appropriated for fiscal year 1987, the following sums are authorized to be appropriated to procure secure voice radios:

Federal Bureau of Investigation .. $4,000,000

Secret Service..... 5,000,000.

(l) This section may be cited as the "Drug Enforcement Enhancement Act of 1986".

Subtitle K—State and Local Narcotics Control Assistance

SEC. 1551. SHORT TITLE.

This subtitle may be cited as the "State and Local Law Enforcement Assistance Act of 1986".

SEC. 1552. BUREAU OF JUSTICE ASSISTANCE DRUG GRANT PROGRAMS.

(a) Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3712 et seq.) is amended—

(1) by redesignating part M as part N,

(2) by redesignating section 1301 as section 1401, and

(3) by inserting after part L the following new part:

"Part M—Grants for Drug Law Enforcement Programs

"FUNCTION OF THE DIRECTOR

"SEC. 1301. The Director shall provide funds to eligible States and units of local government pursuant to this part.

"DESCRIPTION OF DRUG LAW ENFORCEMENT GRANT PROGRAM

"SEC. 1302. The Director is authorized to make grants to States, for the use of States and units of local government in the States, for the purpose of enforcing State and local laws that establish offenses similar to offenses established in the Controlled Substances Act (21 U.S.C. 801 et seq.), and to—

"(1) provide additional personnel, equipment, facilities, personnel training, and supplies for more widespread apprehension of persons who violate State and local laws relating to the production, possession, and transfer of controlled substances and to pay operating expenses (including the purchase of evidence and information) incurred as a result of apprehending such persons;

"(2) provide additional personnel, equipment, facilities (including upgraded and additional law enforcement crime laboratories), personnel training, and supplies for more widespread prosecution of persons accused of violating such State and local laws and to pay operating expenses in connection with such prosecution;

"(3) provide additional personnel (including judges), equipment, personnel training, and supplies for more widespread adjudication of cases involving persons accused of violating such State and local laws, to pay operating expenses in connection with such adjudication, and to provide quickly temporary facilities in which to conduct adjudications of such cases;

"(4) provide additional public correctional resources for the detention of persons convicted of violating State and local laws relating to the production, possession, or transfer of controlled substances, and to establish and improve treatment and rehabilitative counseling provided to drug dependent persons convicted of violating State and local laws;

"(5) conduct programs of eradication aimed at destroying wild or illicit growth of plant species from which controlled substances may be extracted;

"(6) provide programs which identify and meet the needs of drug-dependent offenders; and

"(7) conduct demonstration programs, in conjunction with local law enforcement officials, in areas in which there is a high incidence of drug abuse and drug trafficking to expedite the prosecution of major drug offenders by providing additional resources, such as investigators and prosecutors, to identify major drug offenders and move these offenders expeditiously through the judicial system.

"APPLICATIONS TO RECEIVE GRANTS

"SEC. 1303. To request a grant under section 1302, the chief executive officer of a State shall submit to the Director an application at such time and in such form as the Director may require. Such application shall include—

"(1) a statewide strategy for the enforcement of State and local laws relating to the production, possession, and transfer of controlled substances;

"(2) a certification that Federal funds made available under section 1302 of this title will not be used to supplant State or local funds, but will be used to increase the amounts of such funds that would, in the absence of Federal funds, be made available for drug law enforcement activities;

"(3) a certification that funds required to pay the non-Federal portion of the cost of each program and project for which such grant is made shall be in addition to funds that would otherwise be made available for drug law enforcement by the recipients of grant funds;

"(4) an assurance that the State application described in this section, and any amendment to such application, has been submitted for review to the State legislature or its designated body (for purposes of this section, such application or amendment shall be deemed to be reviewed if the State legislature or such body does not review such application or amendment within the 60-day period beginning on the date such application or amendment is so submitted); and

"(5) an assurance that the State application and any amendment thereto was made public before submission to the Bureau and, to the extent provided under State law or established procedure, an opportunity to comment thereon was provided to citizens and to neighborhood and community groups.

Such strategy shall be prepared after consultation with State and local officials whose duty it is to enforce such laws. Such strategy shall include an assurance that following the first fiscal year covered by an application and each fiscal year thereafter, the applicant shall submit to the Director or to the State, as the case may be, a performance report concerning the activities carried out pursuant to section 1302 of this title.

"REVIEW OF APPLICATIONS

"SEC. 1304. (a) The Bureau shall provide financial assistance to each State applicant under section 1302 of this title to carry out the programs or projects submitted by such applicant upon determining that—

"(1) the application or amendment thereto is consistent with the requirements of this title; and

"(2) before the approval of the application and any amendment thereto the Bureau has made an affirmative finding in writing that the program or project has been reviewed in accordance with section 1303 of this title.

Each application or amendment made and submitted for approval to the Bureau pursuant to section 1303 shall be deemed approved, in whole or in part, by the Bureau not later than sixty days after first received unless the Bureau informs the applicant of specific reasons for disapproval.

"(b) Grant funds awarded under section 1302 of this title shall not be used for land acquisition or construction projects, other than penal and correctional institutions.

"(c) The Bureau shall not finally disapprove any application, or any amendment thereto, submitted to the Director under this section without first affording the applicant reasonable notice and opportunity for reconsideration.

"ALLOCATION AND DISTRIBUTION OF FUNDS UNDER FORMULA GRANTS

"SEC. 1305. (a) Of the total amount appropriated for this part in any fiscal year, 80 per centum shall be set aside for section 1302 and allocated to States as follows:

"(1) $500,000 shall be allocated to each of the participating States.

"(2) Of the total funds remaining after the allocation under paragraph (1), there shall be allocated to each State an amount which bears the same ratio to the amount of remaining funds described in this paragraph as the population of such State bears to the population of all the States.

"(b)(1) Each State which receives funds under subsection (a) in a fiscal year shall distribute among units of local government, or combinations of units of local government, in such State for the purposes specified in section 1302 of this title that portion of such funds which bears the same ratio to the aggregate amount of such funds as the amount of funds expended by all units of local government for criminal justice in the preceding fiscal year bears to the aggregate amount of funds expended by the State and all units of local government in such State for criminal justice in such preceding fiscal year.

"(2) Any funds not distributed to units of local government under paragraph (1) shall be available for expenditure by the State involved.

"(3) For purposes of determining the distribution of funds under paragraph (1), the most accurate and complete data available for the fiscal year involved shall be used. If data for such fiscal year are not available, then the most accurate and complete data available for the most recent fiscal year preceding such fiscal year shall be used.

"(c) No funds allocated to a State under subsection (a) or received by a State for distribution under subsection (b) may be distributed by the Director or by the State involved for any program other than a program contained in an approved application.

"(d) If the Director determines, on the basis of information available to it during any fiscal year, that a portion of the funds allocated to a State for that fiscal year will not be required or that a State will be unable to qualify or receive funds under section 1302 of this title, or that a State chooses not to participate in the program established under such section, then such portion shall be awarded by the Director to urban, rural, and suburban units of local government or combinations thereof within such State giving priority to those jurisdictions with greatest need.

"(e) Any funds allocated under subsection (a) that are not distributed under this section shall be available for obligation under section 1309 of this title.

"REPORTS

"SEC. 1306. (a) Each State which receives a grant under section 1302 of this title shall submit to the Director, for each year in which any part of such grant is expended by a State or unit of local government, a report which contains—

"(1) a summary of the activities carried out with such grant and an assessment of the impact of such activities on meeting the needs identified in the State strategy submitted under section 1303 of this title;

"(2) a summary of the activities carried out in such year with any grant received under section 1309 of this title by such State; and

"(3) such other information as the Director may require by rule.

Such report shall be submitted in such form and by such time as the Director may require by rule.

"(b) Not later than ninety days after the end of each fiscal year for which grants are made under section 1302 of this title, the Director shall submit to the Speaker of the House of Representatives and the President pro tempore of the Senate a report that includes with respect to each State—

"(1) the aggregate amount of grants made under sections 1302 and 1309 of this title to such State for such fiscal year;

"(2) the amount of such grants expended for each of the purposes specified in section 1302; and

"(3) a summary of the information provided in compliance with paragraphs (1) and (2) of subsection (a).

"EXPENDITURE OF GRANTS; RECORDS

"SEC. 1307. (a) A grant made under section 1302 of this title may not be expended for more than 75 per centum of the cost of the identified uses, in the aggregate, for which such grant is received to carry out any purpose specified in section 1302, except that in the case of funds distributed to an Indian tribe which performs law enforcement functions (as determined by the Secretary of the Interior) for any such program or project, the amount of such grant shall be equal to 100 per centum of such cost. The non-Federal portion of the expenditures for such uses shall be paid in cash.

"(b) Not more than 10 per centum of a grant made under section 1302 of this title may be used for costs incurred to administer such grant.

"(c)(1) Each State which receives a grant under section 1302 of this title shall keep, and shall require units of local government which receive any part of such grant to keep, such records as the Director may require by rule to facilitate an effective audit.

"(2) The Director and the Comptroller General of the United States shall have access, for the purpose of audit and examination, to any books, documents, and records of States which receive grants, and of units of local government which receive any part of a grant made under section 1302, if in the opinion of the Director or the Comptroller General, such books, documents, and records are related to the receipt or use of any such grant.

"STATE OFFICE

"SEC. 1308. (a) The chief executive of each participating State shall designate a State office for purposes of—

"(1) preparing an application to obtain funds under section 1302 of this title; and

"(2) administering funds received under such section from the Director, including receipt, review, processing, monitoring, progress and financial report review, technical assistance, grant adjustments, accounting, auditing, and fund disbursements.

"(b) An office or agency performing other functions within the executive branch of a State may be designated to carry out the functions specified in subsection (a).

"DISCRETIONARY GRANTS

"SEC. 1309. The Director is authorized to made grants to public agencies and private nonprofit organizations for any purpose specified in section 1302 of this title. The Director shall have final authority over all grants awarded under this section.

"APPLICATION REQUIREMENTS

"SEC. 1310. (a) No grant may be made under section 1309 of this title unless an application has been submitted to the Director in which the applicant—

"(1) sets forth a program or project which is eligible for funding pursuant to section 1309 of this title; and

"(2) describes the services to be provided, performance goals, and the manner in which the program is to be carried out.

"(b) Each applicant for funds under section 1309 of this title shall certify that its program or project meets all the requirements of this section, that all the information contained in the application is correct, and that the applicant will comply with all the provisions of this title and all other applicable Federal laws. Such certification shall be made in a form acceptable to the Director.

"ALLOCATION OF FUNDS FOR DISCRETIONARY GRANTS

"SEC. 1311. Of the total amount appropriated for this part in any fiscal year, 20 per centum shall be reserved and set aside for section 1309 of this title in a special discretionary fund for use by the Director in carrying out the purposes specified in section 1302 of this title. Grants under section 1309 may be made for amounts up to 100 per centum of the costs of the programs or projects contained in the approved application.

"LIMITATION ON USE OF DISCRETIONARY GRANT FUNDS

"SEC. 1312. Grant funds awarded under section 1309 of this title shall not be used for land acquisition or construction projects.".

(b)(1) Subsections (a) and (b) of section 401 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3741) are each amended by striking out "part E" and inserting in lieu thereof "parts E and M".

(2) Section 801(b) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3782(b)) is amended by striking out "parts D and E" and inserting in lieu thereof "parts D, E, and M".

(3) Section 802(b) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3783(b)) is amended by inserting "or M" after "part D".

(4) Section 808 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3789) is amended by inserting "or 1308, as the case may be," after "section 408".

(5) The table of contents of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended by striking out the items relating to part M and section 1301, and inserting in lieu thereof the following new items:

"PART M—GRANTS FOR DRUG LAW ENFORCEMENT PROGRAMS

"Sec. 1301. Function of the Director.
"Sec. 1302. Description of drug law enforcement grant program.
"Sec. 1303. Applications to receive grants.
"Sec. 1304. Review of applications.
"Sec. 1305. Allocation and distribution of funds under formula grants.
"Sec. 1306. Reports.
"Sec. 1307. Expenditure of grants; records.
"Sec. 1308. State office.
"Sec. 1309. Discretionary grants.
"Sec. 1310. Application requirements.
"Sec. 1311. Allocation of funds for discretionary grants.
"Sec. 1312. Limitation on use of discretionary grant funds.

"PART N—TRANSITION—EFFECTIVE DATE—REPEALER

"Sec. 1401. Continuation of rules, authorities, and proceedings.".

(c) Section 1001 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3793) is amended—

(1) in subsection (a)—

(A) in paragraph (3) by striking out "and L" and inserting in lieu thereof "L, and M",

(B) by redesignating paragraph (6) as paragraph (7), and

(C) by inserting after paragraph (5) the following new paragraph:

"(6) There are authorized to be appropriated $350,000,000 for fiscal year 1987, $350,000,000 for fiscal year 1988, and $350,000,000 for fiscal year 1989, to carry out the programs under part M of this title.", and

(2) in subsection (b) by striking out "and E" and inserting in lieu thereof ", E, and M".

Subtitle L—Study on the Use of Existing Federal Buildings as Prisons

SEC. 1601. STUDY REQUIRED.

(a) Within 90 days of the date of enactment of this Act, the Secretary of Defense shall provide to the Attorney General—

(1) a list of all sites under the jurisdiction of the Department of Defense including facilities beyond the excess and surplus property inventories whose facilities or a portion thereof could be used, or are being used, as detention facilities for felons, especially those who are a Federal responsibility such as illegal alien felons and major narcotics traffickers;

(2) a statement of fact on how such facilities could be used as detention facilities with detailed descriptions on their actual daily percentage of use; their capacities or rated capacities; the time periods they could be utilized as detention facilities; the cost of converting such facilities to detention facilities; and, the cost of maintaining them as such; and

(3) in consultation with the Attorney General, a statement showing how the Department of Defense and the Department of Justice would administer and provide staffing responsibilities to convert and maintain such detention facilities.

(b) Copies of the report and analysis required by subsection (a) shall be provided to the Congress.

Subtitle M—Narcotics Traffickers Deportation Act

SEC. 1751. AMENDMENT TO THE IMMIGRATION AND NATIONALITY ACT.

(a) Section 212(a)(23) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(23)) is amended—

(1) by striking out "any law or regulation relating to" and all that follows through "addiction-sustaining opiate" and inserting in lieu thereof "any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802))"; and

(2) by striking out "any of the aforementioned drugs" and inserting in lieu thereof "any such controlled substance".

(b) Section 241(a)(11) of such Act (8 U.S.C. 1251(a)(11)) is amended by striking out "any law or regulation relating to" and all that follows through "addiction-sustaining opiate" and inserting in lieu thereof "any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section

102 of the Controlled Substances Act (21 U.S.C. 802))".

(c) The amendments made by subsections (a) and (b) of this section shall apply to convictions occurring before, on, or after the date of the enactment of this section, and the amendments made by subsection (a) shall apply to aliens entering the United States after the date of the enactment of this section.

(d) Section 287 of the Immigration and Nationality Act (8 U.S.C. 1357) is amended by adding at the end the following new subsection:

"(d) In the case of an alien who is arrested by a Federal, State, or local law enforcement official for a violation of any law relating to controlled substances, if the official (or another official)—

"(1) has reason to believe that the alien may not have been lawfully admitted to the United States or otherwise is not lawfully present in the United States,

"(2) expeditiously informs an appropriate officer or employee of the Service authorized and designated by the Attorney General of the arrest and of facts concerning the status of the alien, and

"(3) requests the Service to determine promptly whether or not to issue a detainer to detain the alien, the officer or employee of the Service shall promptly determine whether or not to issue such a detainer. If such a detainer is issued and the alien is not otherwise detained by Federal, State, or local officials, the Attorney General shall effectively and expeditiously take custody of the alien.".

(e)(1) From the sums appropriated to carry out this Act, the Attorney General, through the Investigative Division of the Immigration and Naturalization Service, shall provide a pilot program in 4 cities to establish or improve the computer capabilities of the local offices of the Service and of local law enforcement agencies to respond to inquiries concerning aliens who have been arrested or convicted for, or are the subject to criminal investigation relating to, a violation of any law relating to controlled substances. The Attorney General shall select cities in a manner that provides special consideration for cities located near the land borders of the United States and for large cities which have major concentrations of aliens. Some of the sums made available under the pilot program shall be used to increase the personnel level of the Investigative Division.

(2) At the end of the first year of the pilot program, the Attorney General shall provide for an evaluation of the effectiveness of the program and shall report to Congress on such evaluation and on whether the pilot program should be extended or expanded.

Subtitle N—Freedom of Information Act

SEC. 1801. SHORT TITLE.

This subtitle may be cited as the "Freedom of Information Reform Act of 1986".

SEC. 1802. LAW ENFORCEMENT.

(a) EXEMPTION.—Section 552(b)(7) of title 5, United States Code, is amended to read as follows:

"(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) would constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;".

(b) EXCLUSIONS.—Section 552 of title 5, United States Code, is amended by redesignating subsections (c), (d), and (e) as subsections (d), (e), and (f) respectively, and by inserting after subsection (b) the following new subsection:

"(c)(1) Whenever a request is made which involves access to records described in subsection (b)(7)(A) and—

"(A) the investigation or proceeding involves a possible violation of criminal law; and

"(B) there is reason to believe that (i) the subject of the investigation or proceeding is not aware of its pendency, and (ii) disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings,

the agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of this section.

"(2) Whenever informant records maintained by a criminal law enforcement agency under an informant's name or personal identifier are requested by a third party according to the informant's name or personal identifier, the agency may treat the records as not subject to the requirements of this section unless the informant's status as an informant has been officially confirmed.

"(3) Whenever a request is made which involves access to records maintained by the Federal Bureau of Investigation pertaining to foreign intelligence or counterintelligence, or international terrorism, and the existence of the records is classified information as provided in subsection (b)(1), the Bureau may, as long as the existence of the records remains classified information, treat the records as not subject to the requirements of this section.".

SEC. 1803. FEES AND FEE WAIVERS.

Paragraph (4)(A) of section 552(a) of title 5, United States Code, is amended to read as follows:

"(4)(A)(i) In order to carry out the provisions of this section, each agency shall promulgate regulations, pursuant to notice and receipt of public comment, specifying the schedule of fees applicable to the processing of requests under this section and establishing procedures and guidelines for determining when such fees should be waived or reduced. Such schedule shall conform to the guidelines which shall be promulgated, pursuant to notice and receipt of public comment, by the Director of the Office of Management and Budget and which shall provide for a uniform schedule of fees for all agencies.

"(ii) Such agency regulations shall provide that—

"(I) fees shall be limited to reasonable standard charges for document search, duplication, and review, when records are requested for commercial use;

"(II) fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research; or a representative of the news media; and

"(III) for any request not described in (I) or (II), fees shall be limited to reasonable standard charges for document search and duplication.

"(iii) Documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

"(iv) Fee schedules shall provide for the recovery of only the direct costs of search, duplication, or review. Review costs shall include only the direct costs incurred during the initial examination of a document for the purposes of determining whether the documents must be disclosed under this section. Review costs may not include any costs incurred in resolving issues of law or policy that may be raised in the course of processing a request under this section. No fee may be charged by any agency under this section—

"(I) if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee; or

"(II) for any request described in clause (ii)(II) or (III) of this subparagraph for the first two hours of search time or for the first one hundred pages of duplication.

"(v) No agency may require advance payment of any fee unless the requester has previously failed to pay fees in a timely fashion, or the agency has determined that the fee will exceed $250.

"(vi) Nothing in this subparagraph shall supersede fees chargeable under a statute specifically providing for setting the level of fees for particular types of records.

"(vii) In any action by a requester regarding the waiver of fees under this section, the court shall determine the matter de novo: Provided, That the court's review of the matter shall be limited to the record before the agency.".

SEC. 1804. EFFECTIVE DATES.

(a) The amendments made by section 1802 shall be effective on the date of enactment of this Act, and shall apply with respect to any requests for records, whether or not the request was made prior to such date, and shall apply to any civil action pending on such date.

(b)(1) The amendments made by section 1803 shall be effective 90 days after the date of enactment of this Act, except that regulations to implement such amendments shall be promulgated by such 90th day.

(2) The amendments made by section 1803 shall apply with respect to any requests for records, whether or not the request was made prior to such date, and shall apply to any civil action pending on such date, except that review charges applicable to records requested for commercial use shall not be applied by an agency to requests made before the effective date specified in paragraph (1) of this subsection or before the agency has finally issued its regulations.

Subtitle O—Prohibition on the Interstate Sale and Transportation of Drug Paraphernalia

SEC. 1821. SHORT TITLE.

This subtitle may be cited as the "Mail Order Drug Paraphernalia Control Act".

SEC. 1822. OFFENSE.

(a) It is unlawful for any person—

(1) to make use of the services of the Postal Service or other interstate conveyance as part of a scheme to sell drug paraphernalia;

(2) to offer for sale and transportation in interstate or foreign commerce drug paraphernalia; or

(3) to import or export drug paraphernalia.

(b) Anyone convicted of an offense under subsection (a) of this section shall be imprisoned for not more than three years and fined not more than $100,000.

(c) Any drug paraphernalia involved in any violation of subsection (a) of this section shall be subject to seizure and forfeiture upon the conviction of a person for such violation. Any such paraphernalia shall be delivered to the Administrator of General Services, General Services Administration, who may order such paraphernalia destroyed or may authorize its use for law enforcement or educational purposes by Federal, State, or local authorities.

(d) The term "drug paraphernalia" means any equipment, product, or material of any kind which is primarily intended or designed for use in manufacturing, compounding, converting, concealing, producing, processing, preparing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of the Controlled Substances Act (title II of Public Law 91-513). It includes items primarily intended or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, hashish oil, PCP, or amphetamines into the human body, such as—

(1) metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;

(2) water pipes;

(3) carburetion tubes and devices;

(4) smoking and carburetion masks;

(5) roach clips: meaning objects used to hold burning material, such as a marihuana cigarette, that has become too small or too short to be held in the hand;

(6) miniature spoons with level capacities of one-tenth cubic centimeter or less;

(7) chamber pipes;

(8) carburetor pipes;

(9) electric pipes;

(10) air-driven pipes;

(11) chillums;

(12) bongs;

(13) ice pipes or chillers;

(14) wired cigarette papers; or

(15) cocaine freebase kits.

(e) In determining whether an item constitutes drug paraphernalia, in addition to all other logically relevant factors, the following may be considered:

(1) instructions, oral or written, provided with the item concerning its use;

(2) descriptive materials accompanying the item which explain or depict its use;

(3) national and local advertising concerning its use;

(4) the manner in which the item is displayed for sale;

(5) whether the owner, or anyone in control of the item, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;

(6) direct or circumstantial evidence of the ratio of sales of the item(s) to the total sales of the business enterprise;

(7) the existence and scope of legitimate uses of the item in the community; and

(8) expert testimony concerning its use.

(f) This subtitle shall not apply to—

(1) any person authorized by local, State, or Federal law to manufacture, possess, or distribute such items; or

(2) any item that, in the normal lawful course of business, is imported, exported, transported, or sold through the mail or by any other means, and primarily intended for use with tobacco products, including any pipe, paper, or accessory.

SEC. 1823. EFFECTIVE DATE.

This subtitle shall become effective 90 days after the date of enactment of this Act.

Subtitle P—Manufacturing Operations

SEC. 1841. MANUFACTURING OPERATION.

(a) Part D of the Controlled Substances Act is amended by adding at the end thereof the following new section:

"ESTABLISHMENT OF MANUFACTURING OPERATIONS

"SEC. 416. (a) Except as authorized by this title, it shall be unlawful to—

"(1) knowingly open or maintain any place for the purpose of manufacturing, distributing, or using any controlled substance;

"(2) manage or control any building, room, or enclosure, either as an owner, lessee, agent, employee, or mortgagee, and knowingly and intentionally rent, lease, or make available for use, with or without compensation, the building, room, or enclosure for the purpose of unlawfully manufacturing, storing, distributing, or using a controlled substance.

"(b) Any person who violates subsection (a) of this section shall be sentenced to a term of imprisonment of not more than 20 years or a fine of not more than $500,000, or both, or a fine of $2,000,000 for a person other than an individual.".

(b) Section 405A of the Controlled Substances Act is amended—

(1) in subsection (a) by inserting after "section 401(a)(1)" the following: "or section 416"; and

(2) in subsection (b) by inserting after "section 401(a)(1)" the following: "or section 416".

Subtitle Q—Controlled Substances Technical Amendments

SEC. 1861. DUTIES OF DIRECTOR OF ADMINISTRATIVE OFFICE AND AUTHORIZATIONS.

(a) SHORT TITLE.—This section may be cited as the "Drug and Alcohol Dependent Offenders Treatment Act of 1986".

(b) PERMANENT AMENDMENT RELATING TO DUTIES OF DIRECTOR OF ADMINISTRATIVE OFFICE.—(1) The section of title 18, United States Code, that is redesignated section 3672 by section 212(a) of the Comprehensive Crime Control Act of 1984 is amended by adding at the end thereof:

"He shall have the authority to contract with any appropriate public or private agency or person for the detection of and care in the community of an offender who is an alcohol-dependent person, or an addict or a drug-dependent person within the meaning of section 2 of the Public Health Service Act (42 U.S.C. 201). This authority shall include the authority to provide equipment and supplies; testing; medical, educational, social, psychological, and vocational services; corrective and preventive guidance and training; and other rehabilitative services designed to protect the public and benefit the alcohol dependent person, addict, or drug dependent person by eliminating his dependence on alcohol or addicting drugs, or by controlling his dependence and his susceptibility to addiction. He may negotiate and award such contracts without regard to section 3709 of the Revised Statutes (41 U.S.C. 5).

"He shall pay for presentence studies and reports by qualified consultants and presentence examinations and reports by psychiatric or psychological examiners ordered by the court under subsection (b) or (c) of section 3552, except for studies conducted by the Bureau of Prisons.".

(2) The amendment made by this section shall take effect on the date of the taking effect of such redesignation.

(c) INTERIM AMENDMENT RELATING TO DUTIES OF DIRECTOR OF ADMINISTRATIVE OFFICE.—The second paragraph of section 4255 of title 18, United States Code, is amended to read as follows:

"The Director of the Administrative Office of the United States Courts shall have the authority to contract with any appropriate public or private agency or person for the detection of and care in the community of an offender who is an alcohol-dependent person, or an addict or a drug-dependent person within the meaning of section 2 of the Public Health Service Act (42 U.S.C. 201). Such authority includes the authority to provide equipment and supplies; testing; medical, educational, social, psychological, and vocational services; corrective and preventive guidance and training; and other rehabilitative services designed to protect the public and benefit the alcohol dependent person, addict, or drug dependent person by eliminating that person's or addict's dependence on alcohol or addicting drugs, or by controlling that person's or addict's dependence and susceptibility to addiction. Such Director may negotiate and award such contracts without regard to section 3709 of the Revised Statutes of the United States (41 U.S.C. 5).".

(d) REAUTHORIZATION OF CONTRACT SERVICES.—Section 4(a) of the Contract Services for Drug Dependent Federal Offenders Act of 1978 is amended—

(1) by striking out "and $6,000,000" and inserting "$6,500,000" in lieu thereof; and

(2) by striking out the two periods at the end and inserting in lieu thereof "; $12,000,000 for the fiscal year ending September 30, 1987; $14,000,000 for the fiscal year ending September 30, 1988; and $16,000,000 for the fiscal year ending September 30, 1989.".

SEC. 1862. AMENDMENT TO SECTION 608 OF THE TARIFF ACT.

(a) Section 608 of the Tariff Act of 1930 (19 U.S.C. 1608) is amended by striking out "$2,500" and inserting in lieu thereof "$5,000".

(b) Section 608 of such Act, as enacted by Public Law 98-473, is repealed.

SEC. 1863. AMENDMENTS TO SECTION 616 OF THE TARIFF ACT.

(a) Subsection (c) of section 616 of the Tariff Act of 1930 (19 U.S.C. 1616a(c)) as enacted by Public Law 98-573 is amended by inserting "any other Federal agency or to" after "property forfeited under this Act to".

(b) Section 616 of such Act, as enacted by Public Law 98-473, is repealed.

SEC. 1864. CROSS REFERENCE CORRECTIONS.

Section 413 of the Controlled Substances Act (21 U.S.C. 853) is amended—

(1) in subsection (c) and in the second subsection (h), by striking out "subsection (o)"

and inserting "subsection (n)" in lieu thereof;

(2) in subsection (f) by striking out "subsection (f)" and inserting "subsection (e)" in lieu thereof;

(3) in subsection (i)(1), by striking out "this chapter" and inserting "this title" in lieu thereof; and

(4) by redesignating the second subsection (h) as subsection (k).

SEC. 1865. WARRANTS RELATING TO SEIZURE.

Subsection (b) of section 511 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 881(b)) is amended—

(1) by striking out "or criminal" after "Any property subject to civil";

(2) in paragraph (4), by striking out "or criminal" after "is subject to civil"; and

(3) by adding the following at the end thereof:

"The Government may request the issuance of a warrant authorizing the seizure of property subject to forfeiture under this section in the same manner as provided for a search warrant under the Federal Rules of Criminal Procedure.".

(b) Subsection (i) of section 511 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 881(i)) is amended by inserting ", or a violation of State or local law that could have been charged under this title or title III," after "title III".

SEC. 1866. MINOR TECHNICAL AMENDMENTS.

(a) Section 403(a)(2) of the Controlled Substances Act (21 U.S.C. 843(a)(2)) is amended by striking out the period at the end and inserting a semicolon in lieu thereof.

(b) Section 405A(b) of the Controlled Substances Act (21 U.S.C. 845a(b)) is amended by striking out "special term" and inserting "term of supervised release" in lieu thereof.

(c) Section 405A(c) of the Controlled Substances Act (21 U.S.C. 845a(c)) is amended by striking out "section 4202" and inserting "chapter 311" in lieu thereof.

(d) Section 1008(e) of the Controlled Substances Import and Export Act (21 U.S.C. 958(e)) is amended by striking out "section" the first place it appears and inserting "sections" in lieu thereof.

(e) Section 1010(b)(3) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)(3)) is amended by striking out ", except as provided in paragraph (4)".

(f) The table of contents for the Comprehensive Drug Abuse Prevention and Control Act of 1970 is amended—

(1) by inserting after the item relating to section 405 the following:

"Sec. 405A. Manufacture or distribution in or near schools.
"405B. Employment of minors in controlled substance trafficking.";

and

(2) by inserting after the item relating to section 414 the following:

"Sec. 415. Alternative fine.".

SEC. 1867. MODIFICATION OF COCAINE DEFINITION FOR PURPOSES OF SCHEDULE II.

Subsection (a)(4) of schedule II of section 202(c) the Controlled Substances Act (21 U.S.C. 812) is amended to read as follows:

"(4) Coca leaves (except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed); cocaine, its salts, optical and geometric isomers, and salts of isomers; and ecgonine, its derivatives, their salts, isomers, and salts of isomers.".

SEC. 1868. AUTHORITY OF ATTORNEY GENERAL TO ENTER INTO CONTRACTS WITH STATE AND LOCAL LAW ENFORCEMENT AGENCIES.

Section 503(a) of the Controlled Substances Act (21 U.S.C. 873(a)) is amended—

(1) by striking out "and" at the end of paragraph (5);

(2) by striking out the period at the end of paragraph (6) and inserting in lieu thereof "; and"; and

(3) by adding at the end thereof the following:

"(7) notwithstanding any other provision of law, enter into contractual agreements with State and local law enforcement agencies to provide for cooperative enforcement and regulatory activities under this title.".

SEC. 1869. AUTHORITY OF ATTORNEY GENERAL TO DEPUTIZE STATE AND LOCAL LAW ENFORCEMENT OFFICERS FOR CONTROLLED SUBSTANCES ENFORCEMENT.

Section 508 of the Controlled Substances Act (21 U.S.C. 878) is amended—

(1) by inserting "(a)" before "Any officer or employee";

(2) by inserting after "Drug Enforcement Administration" the following: "or (with respect to offenses under this title or title III) any State or local law enforcement officer"; and

(3) by adding at the end thereof the following new subsection:

"(b) State and local law enforcement officers performing functions under this section shall not be deemed Federal employees and shall not be subject to provisions of law relating to Federal employees, except that such officers shall be subject to section 3374(c) of title 5, United States Code.".

SEC. 1870. CLARIFICATION OF ISOMER DEFINITION.

The second and third sentences of section 102(14) of the Controlled Substances Act (21 U.S.C. 802(14)) are each amended by striking out "the" after "the term 'isomer' means" and inserting in lieu thereof "any".

Subtitle R—Precursor and Essential Chemical Review

SEC. 1901. PRECURSOR AND ESSENTIAL CHEMICAL REVIEW.

(a) STUDY AND REPORT.—The Attorney General shall—

(1) conduct a study of the need for legislation, regulation, or alternative methods to control the diversion of legitimate precursor and essential chemicals to the illegal production of drugs of abuse; and

(2) report all findings of such study to Congress not later than the end of the 90th day after the date of enactment of this subtitle.

(b) CONSIDERATIONS.—In conducting such study the Attorney General shall take into consideration that—

(1) clandestine manufacture continues to be a major source of narcotic and dangerous drugs on the illegal drug market;

(2) these drugs are produced using a variety of chemicals which are found in commercial channels and which are diverted to illegal uses;

(3) steps have been taken to deny drug traffickers access to key precursor chemicals, including that—

(A) P2P, a precursor chemical used in the production of amphetamines and methamphetamines was administratively controlled in schedule II of the Controlled Substances by the Drug Enforcement Administration;

(B) a variety of controls were placed on piperidine, the precursor for phencyclidine, by the Psychotropic Substance Act of 1978; and

(C) the Drug Enforcement Administration has maintained a voluntary system in cooperation with chemical industry to report suspicious purchases of precursors and essential chemicals; and

(4) despite the formal and voluntary systems that currently exist, clandestine production of synthetic narcotics and dangerous drugs continue to contribute to drug trafficking and abuse problems in the United States.

Subtitle S—Improved Drug Crime Reporting

SEC. 1921. IMPROVED DRUG CRIME REPORTING.

(a) The Congress—

(1) finds that—

(a) The Bureau of Justice Statistics currently conducts one of the largest public opinion survey programs in the world, the National Crime Survey;

(B) this survey, conducted by the Census Bureau, involves detailed field surveys of 60,000 households and more than 100,000 individuals who are interviewed twice a year to measure the amount of crime actually occurring (crime victimization), as opposed to that reported to police through the uniform crime reporting system;

(C) currently the National Crime Report does not gather data involving drug abuse or victimization;

(D) further, the Bureau of Justice Statistics does not act as a clearinghouse for the gathering of data generated by Federal, State, local enforcement and together criminal justice agencies on their drug enforcement activities; and

(E) to obtain a comprehensive understanding of the dimensions of our crime problems and enforcement activities, one must sift through the annual reports of numerous agencies; and

(2) based on findings in paragraph (1) the purpose of this subtitle is to create a comprehensive and timely data base of the dynamics of the drug crisis.

(b)(1) The Bureau of Justice Statistics, in cooperation with the Federal Bureau of Investigation and other Federal enforcement agencies as well as other Federal, State, and local statistics gathering groups, shall compile and publish comprehensive data on drug trafficking and abuse.

(2) For purposes of carrying out the provisions of paragraph (1), the authorization for the Bureau of Justice Statistics for fiscal year 1987 is increased by $3,000,000.

Subtitle T—White House Conference on Drug Abuse and Control

SEC. 1931. SHORT TITLE.

This subtitle may be cited as the "White House Conference on Drug Abuse and Control Act".

SEC. 1932. ESTABLISHMENT OF THE CONFERENCE.

There is established a conference to be known as "The White House Conference on Drug Abuse and Control". The members of the Conference shall be appointed by the President.

SEC. 1933. PURPOSE.

The purposes of the Conference are—

(1) to share information and experiences in order to vigorously and directly attack drug abuse at all levels, local, State, Federal, and international;

(2) to bring public attention to those approaches to drug abuse education and prevention which have been successful in curbing drug abuse and those methods of treatment which have enabled drug abusers to become drug free;

(3) to highlight the dimensions of the drug abuse crisis, to examine the progress made

in dealing with such crisis, and to assist in formulating a national strategy to thwart sale and solicitation of illicit drugs and to prevent and treat drug abuse; and

(4) to examine the essential role of parents and family members in preventing the basis causes of drug abuse and in successful treatment efforts.

SEC. 1934. RESPONSIBILITIES OF THE CONFERENCE.

The Conference shall specifically review—

(1) the effectiveness of law enforcement at the local, State, and Federal levels to prevent the sale and solicitation of illicit drugs and the need to provide greater coordination among such programs;

(2) the impact of drug abuse upon American education, examining in particular—

(A) the effectiveness of drug education programs in our schools with particular attention to those schools, both public and private, which have maintained a drug free learning environment;

(B) the role of colleges and universities in discouraging the illegal use of drugs by student-athletes; and

(C) the relationship between drug abuse by student-athletes and college athletic policies, including eligibility and academic requirements, recruiting policies, athletic department financing policies, the establishment of separate campus facilities for athletes, and the demands of practice and lengthy playing seasons;

(3) the extent to which Federal, State, and local programs of drug abuse education, prevention, and treatment require reorganization or reform in order to better use available resources and to ensure greater coordination among such programs;

(4) the impact of current laws on efforts to control international and domestic trafficking of illicit drugs.

(5) the extent to which the sanctions in section 481 of the Foreign Assistance Act of 1961 (22 U.S.C. 2291) have been, or should be, used in encouraging foreign states to comply with their international responsibilities respecting controlled substances; and

(6) the circumstances contributing to the initiation of illicit drug usage, with particular emphasis on the onset of drug use by youth.

SEC. 1935. CONFERENCE PARTICIPANTS.

In order to carry out the purposes and responsibilities specified in sections 1933 and 1934, the Conference shall bring together individuals concerned with issues relating to drug abuse education, prevention, and treatment, and the production, trafficking, and distribution of illicit drugs. The President shall—

(1) ensure the active participation in the Conference of the heads of appropriate executive and military departments, and agencies, including the Attorney General, the Secretary of Education, the Secretary of Health and Human Services, Secretary of Transportation, and the Director of ACTION;

(2) provide for the involvement in the Conference of other appropriate public officials, including Members of Congress, Governors of States, and Mayors of Cities;

(3) provide for the involvement in the Conference of private entities, especially parents' organizations, which have been active in the fight against drug abuse; and

(4) provide for the involvement in the Conference of individuals distinguished in medicine, law, drug abuse treatment and prevention, primary, secondary, and post-secondary education, and law enforcement.

SEC. 1936. ADMINISTRATIVE PROVISIONS.

(a) All Federal departments, agencies, and instrumentalities shall provide such support and assistance as may be necessary to facilitate the planning and administration of the Conference.

(b) The President is authorized to appoint and compensate an executive director and such other directors and personnel for the Conference as the President may consider advisable, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 52 of such title relating to classification and General Schedule pay rates.

(c) Upon request by the executive director, the heads of the executive and military departments are authorized to detail employees to work with the executive director in planning and administering the Conference without regard to the provisions of section 3341 of title 5, United States Code.

(d) Each participant in the Conference shall be responsible for the expenses of such participant in attending the Conference, and shall not be reimbursed for such expenses from amounts appropriated to carry out this subtitle.

SEC. 1937. FINAL REPORT AND FOLLOW-UP ACTIONS.

(a) FINAL REPORT.—No later than six months after the effective date of this Act, the Conference shall prepare and transmit a final report to the President and to Congress, pursuant to sections 1933 and 1934. The report shall include the findings and recommendations of the Conference as well as proposals for any legislative action necessary to implement such recommendations.

(b) FOLLOW-UP ACTIONS.—The President shall report to the Congress annually, during the 3-year period following the submission of the final report of the Conference, on the status and implementation of the findings and recommendations of the Conference.

Subtitle U—Death Penalty for Certain Offenses

SEC. 1951. DEATH PENALTY FOR CERTAIN CONTINUING CRIMINAL ENTERPRISE DRUG OFFENSES.

(a) ELEMENTS OF OFFENSE.—Section 408(a) of the Controlled Substances Act (21 U.S.C. 848(a)) is amended—

(1) by striking out "(a) Any" and inserting "(a)(1) Except as otherwise provided in this section, any" in lieu thereof;

(2) by striking out "; except that if" and inserting ". If" in lieu thereof; and

(3) by adding at the end the following:

"(2) If an individual intentionally engages in conduct during the course of a continuing criminal enterprise and thereby knowingly causes the death of any other individual, the individual so engaging shall be subject to the death penalty in accordance with this section.".

(b) PROCEDURE APPLICABLE WITH RESPECT TO THE DEATH PENALTY.—Section 408 of the Controlled Substances Act is amended by adding at the end the following:

"HEARING REQUIRED WITH RESPECT TO THE DEATH PENALTY

"(f) A person shall be subjected to the penalty of death for any offense under this section only if a hearing is held in accordance with this section.

"NOTICE BY THE GOVERNMENT IN DEATH PENALTY CASES

"(g)(1) Whenever the Government intends to seek the death penalty for an offense under this section for which one of the sentences provided is death, the attorney for the Government, a reasonable time before trial or acceptance by the court of a plea of guilty, shall sign and file with the court, and serve upon the defendant, a notice—

"(A) that the Government in the event of conviction will seek the sentence of death; and

"(B) setting forth the aggravating factors which the Government will seek to prove as the basis for the death penalty.

"(2) The court may permit the attorney for the Government to amend this notice for good cause shown.

"HEARING BEFORE COURT OR JURY

"(h)(1) When the attorney for the Government has filed a notice as required under subsection (f) and the defendant is found guilty of or pleads guilty to an offense under subsection (a)(2), the judge who presided at the trial or before whom the guilty plea was entered, or any other judge if the judge who presided at the trial or before whom the guilty plea was entered is unavailable, shall conduct a separate sentencing hearing to determine the punishment to be imposed. The hearing shall be conducted—

"(A) before the jury which determined the defendant's guilt;

"(B) before a jury impaneled for the purpose of the hearing if—

"(i) the defendant was convicted upon a plea of guilty;

"(ii) the defendant was convicted after a trial before the court sitting without a jury;

"(iii) the jury which determined the defendant's guilt has been discharged for good cause; or

"(iv) after initial imposition of a sentence under this section, redetermination of the sentence under this section is necessary; or

"(C) before the court alone, upon the motion of the defendant and with the approval of the Government.

"(2) A jury impaneled pursuant to paragraph (1)(B) shall consist of 12 members, unless, at any time before the conclusion of the hearing, the parties stipulate with the approval of the court that it shall consist of any number less than 12.

"PROOF OF AGGRAVATING AND MITIGATING FACTORS

"(i) Notwithstanding rule 32(c) of the Federal Rules of Criminal Procedure, when a defendant is found guilty of or pleads guilty to an offense under subsection (a)(2), no presentence report shall be prepared. In the sentencing hearing, information may be presented as to any matter relevant to the sentence and shall include matters relating to any of the aggravating or mitigating factors set forth in subsections (l) and (m), or any other mitigating factor. Where information is presented relating to any of the aggravating factors set forth in subsection (m), information may be presented relating to any other aggravating factor. Information presented may include the trial transcript and exhibits if the hearing is held before a jury or judge not present during the trial. Any other information relevant to such mitigating or aggravating factors may be presented by either the Government or the defendant, regardless of its admissibility under the rules governing admission of evidence at criminal trials, except that information may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury. The Government and the defendant shall be permitted to rebut any information received at the hearing and shall be given fair opportunity to present argument as to the adequacy of the information to establish the existence of any of the aggravating or mitigating factors, and as to appropriateness in that case of imposing a sentence of death. The Government shall

open the argument. The defendant shall be permitted to reply. The Government shall then be permitted to reply in rebuttal. The burden of establishing the existence of any aggravating factor is on the Government, and is not satisfied unless established beyond a reasonable doubt. The burden of establishing the existence of any mitigating factor is on the defendant, and is not satisfied unless established by a preponderance of the information.

"RETURN OF FINDINGS

"(j) The jury, or if there is no jury, the court, shall consider all the information received during the hearing. It shall return special findings identifying any mitigating factors, and any aggravating factors set forth in subsection (m), found to exist. If one of the aggravating factors set forth in subsection (m)(1) and another of the aggravating factors set forth in subsection (m) is found to exist, a special finding identifying any other aggravating factor may be returned. A finding of any aggravating or mitigating factor by a jury shall be made by unanimous vote. If an aggravating factor set forth in subsection (m)(1) is not found to exist or an aggravating factor set forth in subsection (m)(1) is found to exist but no other aggravating factor set forth in subsection (m) is found to exist, the court shall impose a sentence, other than death, authorized by law. If an aggravating factor set forth in subparagraph (m)(1) and one or more of the other aggravating factors set forth in subsection (m) are found to exist, the jury, or if there is no jury, the court, shall then consider whether the aggravating factors found to exist sufficiently outweigh any mitigating factor or factors found to exist, or in the absence of mitigating factors, whether the aggravating factors are themselves sufficient to justify a sentence of death. Based upon this consideration, the jury by unanimous vote, or if there is no jury, the court, shall return a finding as to whether a sentence of death is justified.

"IMPOSITION OF SENTENCE

"(k) Upon a finding that a sentence of death is justified, the court shall sentence the defendant to death. Otherwise the court shall impose a sentence, other than death, authorized by law.

"MITIGATING FACTORS

"(l) In determining whether a sentence of death is to be imposed on a defendant, the following mitigating factors shall be considered but are not exclusive:

"(1) The defendant was less than 18 years of age at the time of the crime.

"(2) The defendant's capacity to appreciate the wrongfulness of the defendant's conduct or to conform the defendant's conduct to the requirements of law was significantly impaired, but not so impaired as to constitute a defense to the charge.

"(3) The defendant was under unusual and substantial duress, although not such duress as constitutes a defense to the charge.

"(4) The defendant is punishable as a principal (as defined in section 2(a) of title 18 of the United States Code) in the offense, which was committed by another, but the defendant's participation was relatively minor, although not so minor as to constitute a defense to the charge.

"(5) The defendant could not reasonably have foreseen that the defendant's conduct in the course of the commission of the offense resulting in death for which the defendant was convicted, would cause, or would create a grave risk of causing, death to any person.

"AGGRAVATING FACTORS

"(m) If the defendant is found guilty of or pleads guilty to an offense under subsection (a)(2), the following aggravating factors shall be considered but are not exclusive:

"(1) The defendant—

"(A) intentionally killed the victim;

"(B) intentionally inflicted serious bodily injury which resulted in the death of the victim; or

"(C) intentionally engaged in conduct intending that the victim be killed or that lethal force be employed against the victim, which resulted in the death of the victim.

"(2) The defendant has been convicted of another Federal offense, or a State offense resulting in the death of a person, for which a sentence of life imprisonment or a sentence of death was authorized by statute.

"(3) The defendant has previously been convicted of two or more State or Federal offenses punishable by a term of imprisonment of more than one year, committed on different occasions, involving the infliction of, or attempted infliction of, serious bodily injury upon another person.

"(4) The defendant has previously been convicted of two or more State or Federal offenses punishable by a term of imprisonment of more than one year, committed on different occasions, involving the distribution of a controlled substance.

"(5) In the commission of the offense or in escaping apprehension for a violation of subsection (a)(1), the defendant knowingly created a grave risk of death to one or more persons in addition to the victim of the offense.

"(6) The violation of this chapter in relation to which the conduct described in subsection (a)(2) occurred was a violation of section 405.

"(7) The defendant committed the offense in an especially heinous, cruel, or depraved manner.

"(8) The defendant procured the commission of the offense by payment, or promise of payment, of anything of pecuniary value.

"(9) The defendant committed the offense as consideration for the receipt, or in the expectation of the receipt, of anything of pecuniary value.

"(10) The defendant committed the offense against a judge, a law-enforcement officer, or an employee of a penal or correctional institution, while that victim was performing official duties or because of that victim's status as a public servant of the United States, or a State or political subdivision of the United States. For purposes of this paragraph the term 'law-enforcement officer' means a public servant authorized by law to conduct or engage in the prevention, investigation, or prosecution of an offense.

"INSTRUCTION TO JURY ON RIGHT OF THE DEFENDANT TO JUSTICE WITHOUT DISCRIMINATION

"(n) In any hearing held before a jury under this section, the court shall instruct the jury that in its consideration of whether the sentence of death is justified it shall not consider the race, color, national origin, creed, or sex of the defendant. The jury shall return to the court a certificate signed by each juror that consideration of race, color, national origin, creed, or sex of the defendant was not involved in reaching his or her individual decision.

"SENTENCING IN CAPITAL CASES IN WHICH DEATH PENALTY IS NOT SOUGHT OR IMPOSED

"(o) If a person is convicted for an offense under subsection (a)(2) and the court does not impose the penalty of death, the court may impose a sentence of life imprisonment without the possibility of parole.".

"APPEAL IN CAPITAL CASES

"(p)(1) In any case in which the sentence of death is imposed under this section, the sentence of death shall be subject to review by the court of appeals upon appeal by the defendant. Notice of appeal must be filed within the time prescribed for appeal of judgment in section 2107 of title 28 of the United States Code. An appeal under this section may be consolidated with an appeal of the judgment of conviction. Such review shall have priority over all other cases.

"(2) On review of the sentence, the court of appeals shall consider the record, the evidence submitted during the trial, the information submitted during the sentencing hearing, the procedures employed in the sentencing hearing, and the special findings returned under this section.

"(3) The court shall affirm the sentence if it determines that—

"(A) the sentence of death was not imposed under the influence of passion, prejudice, or any other arbitrary factor; and

"(B) the information supports the special finding of the existence of every aggravating factor upon which the sentence was based, together with the failure to find sufficient mitigating factors as set forth or allowed in this section.

In all other cases the court shall remand the case for reconsideration under this section. The court of appeals shall state in writing the reasons for its disposition of the review of the sentence.".

TITLE II—INTERNATIONAL NARCOTICS CONTROL

SEC. 2001. SHORT TITLE.

This title may be cited as the "International Narcotics Control Act of 1986".

SEC. 2002. ADDITIONAL FUNDING FOR INTERNATIONAL NARCOTICS CONTROL ASSISTANCE AND REGIONAL COOPERATION.

(a) FUNDING.—Paragraph (1) of section 482(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2291a(a)(1); authorizing appropriations for assistance for international narcotics control) is amended—

(1) by striking out "$57,529,000 for the fiscal year 1987" and inserting in lieu thereof "$65,445,000 for the fiscal year 1987"; and

(2) by inserting "(A)" after "(a)(1)", and by adding at the end of the paragraph the following:

"(B) In addition to the amounts authorized by subparagraph (A), there are authorized to be appropriated to the President $45,000,000 for the fiscal year 1987 to carry out the purposes of section 481, except that funds may be obligated pursuant to this additional authorization only if the President has submitted to the Congress (i) a budget request for the appropriation of those funds, and (ii) a detailed plan showing how the funds will be used, including a description of how regional cooperation on narcotics control matters would be promoted by the use of those funds.

"(C) Not less than $10,000,000 of the additional funds authorized by subparagraph (B) shall be available only to provide helicopters or other aircraft to countries otherwise receiving assistance for fiscal year 1987 under this chapter. These funds shall be used primarily for aircraft which will be based in Latin America for use for narcotics control eradication and interdiction efforts throughout the region. Aircraft made available pursuant to this subparagraph shall be used solely for narcotics control eradication and interdiction efforts.".

(b) SPECIAL EFFECTIVE DATE RULE.—If the bill S. 1917, the Special Foreign Assistance

Act of 1986, is enacted and includes an amendment to section 482(a)(1) of the Foreign Assistance Act of 1961 which is identical to the amendment made by paragraph (1) of subsection (a) of this section, then the amendment made by that paragraph shall have no effect.

SEC. 2003. AIRCRAFT PROVIDED TO FOREIGN COUNTRIES FOR NARCOTICS CONTROL PURPOSES: RETENTION OF TITLE AND RECORDS OF USE.

Chapter 8 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2291 et seq.; relating to the international narcotics control assistance program) is amended by adding at the end the following new sections:

"SEC. 484. RETENTION OF TITLE TO AIRCRAFT.

"Any aircraft which, at any time after the enactment of this section, are made available to a foreign country under this chapter, or are made available to a foreign country primarily for narcotics-related purposes under any other provision of law, shall be provided only on a lease or loan basis.

"SEC. 485. RECORDS OF AIRCRAFT USE.

"(a) REQUIREMENT TO MAINTAIN RECORDS.—The Secretary of State shall maintain detailed records on the use of any aircraft made available to a foreign country under this chapter, including aircraft made available before the enactment of this section.

"(b) CONGRESSIONAL ACCESS TO RECORDS.—The Secretary of State shall make the records maintained pursuant to subsection (a) available to the Congress upon a request of the Chairman of the Committee on Foreign Affairs of the House of Representatives or the Chairman of the Committee on Foreign Relations of the Senate.".

SEC. 2004. PILOT AND AIRCRAFT MAINTENANCE TRAINING FOR NARCOTICS CONTROL ACTIVITIES.

(a) EARMARKING OF FUNDS.—Not less than $2,000,000 of the funds made available for fiscal year 1987 to carry out chapter 5 of part II of the Foreign Assistance Act of 1961 (22 U.S.C. 2347 et seq.; relating to international military education and training) shall be available only for education and training in the operation and maintenance of aircraft used in narcotics control interdiction and eradication efforts.

(b) RELATIONSHIP TO INTERNATIONAL NARCOTICS CONTROL ASSISTANCE PROGRAM.—Assistance under this section shall be coordinated with assistance provided under chapter 8 of part I of that Act (22 U.S.C. 2291 et seq.; relating to international narcotics control).

(c) WAIVER OF SECTION 660.—Assistance may be provided pursuant to this section notwithstanding the prohibition contained in section 660 of the Foreign Assistance Act of 1961 (22 U.S.C. 2420; relating to police training).

SEC. 2005. RESTRICTIONS ON THE PROVISION OF UNITED STATES ASSISTANCE.

(a) RESTRICTIONS.—Section 481(h) of the Foreign Assistance Act of 1961 (22 U.S.C. 2291(h)) is amended to read as follows:

"(h)(1) Subject to paragraph (2), for every major illicit drug producing country or major drug-transit country during each fiscal year—

"(A) 50 percent of the United States assistance allocated for that country for that fiscal year in the report to the Congress required by section 653(a) of this Act shall be withheld from obligation and expenditure; and

"(B) on and after March 1 of that fiscal year, the Secretary of the Treasury shall instruct the United States Executive Director of the International Bank for Reconstruction and Development, the United States Executive Director of the International Development Association, the United States Executive Director of the Inter-American Development Bank, the United States Executive Director of the Asian Development Bank, and the United States Executive Director to the African Development Bank, to vote against any loan or other utilization of the funds of their respective institution to or for such country.

"(2)(A) Subject to paragraph (4), paragraph (1) shall cease to apply with respect to a major illicit drug producing country or major drug-transit country for a fiscal year if, at any time during that fiscal year, the President determines and certifies to the Congress that—

"(i) during the calendar year in which that fiscal year begins, that country has cooperated fully with the United States, or has taken adequate steps on its own, in preventing narcotic and psychotropic drugs and other controlled substances produced or processed, in whole or in part, in such country or transported through such country, from being sold illegally within the jurisdiction of such country to United States Government personnel or their dependents or from being transported, directly or indirectly, into the United States and in preventing and punishing the laundering in that country of drug-related profits or drug-related monies; or

"(ii) for a country that would not otherwise qualify for certification under clause (i), the vital national interests of the United States require the provision of such assistance, financing, or preferential treatment to such country.

"(B) If the President makes a certification pursuant to subparagraph (A)(ii), he shall include in such certification—

"(i) a full and complete description of the vital national interests placed at risk should assistance, financing, or preferential tariff treatment not be provided such country; and

"(ii) a statement weighing the risk described in subclause (i) against the risks posed to the vital national interests of the United States by the failure of such country to cooperate fully with the United States in combatting narcotics or to take adequate steps to combat narcotics on its own.

"(3) In making the certification required by paragraph (2), the President shall give foremost consideration to whether the actions of the government of the country have resulted in the maximum reductions in illicit drug production which were determined to be achievable pursuant to subsection (e)(4). The President shall also consider whether such government—

"(A) has taken the legal and law enforcement measures to enforce in its territory, to the maximum extent possible, the elimination of illicit cultivation and the suppression of illicit manufacture of and traffic in narcotic and psychotropic drugs and other controlled substances, as evidenced by seizures of such drugs and substances and of illicit laboratories and the arrest and prosecution of violators involved in the traffic in such drugs and substances significantly affecting the United States; and

"(B) has taken the legal and law enforcement steps necessary to eliminate, to the maximum extent possible, the laundering in that country of drug-related profits or drug-related monies, as evidence by—

"(i) the enactment and enforcement of laws prohibiting such conduct,

"(ii) the willingness of such government to enter into mutual legal assistance agreements with the United States governing (but not limited to) money laundering, and

"(iii) the degree to which such government otherwise cooperates with United States law enforcement authorities on anti-money laundering efforts.

"(4)(A) A certification submitted to the Congress under paragraph (2) shall cease to be effective if the Congress enacts, within 30 days of continuous session (as defined in section 601(b)(1) of the International Security Assistance and Arms Export Control Act of 1976) after receipt of that certification, a joint resolution disapproving the determination of the President contained in that certification.

"(B) If the Congress enacts such a joint resolution, paragraph (1) shall apply with respect to that country for the remainder of that fiscal year unless the President submits another certification under paragraph (2) with respect to that country and the Congress enacts a joint resolution approving the determination contained in that certification.

"(C)(i) Any joint resolution under subparagraph (A) or (B) shall be considered in the Senate in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976.

"(ii) For the purpose of expediting the consideration and enactment of joint resolutions under subparagraph (A) or (B), a motion to proceed to the consideration of any such joint resolution after it has been reported by the appropriate committee shall be treated as highly privileged in the House of Representatives.".

(b) REPORTING DATE.—Section 481(e) of such Act is amended by striking out "February" and inserting in lieu thereof "March".

(c) DEFINITION OF MAJOR DRUG-TRANSIT COUNTRY.—Section 481(i) of such Act is amended—

(1) by striking out "and" at the end of paragraph (3);

(2) by striking out the period at the end of paragraph (4) and inserting in lieu thereof "; and"; and

(3) by adding at the end thereof the following new paragraph:

"(5) the term 'major drug-transit country' means a country—

"(A) that is a significant direct source of illicit narcotic or psychotropic drugs or other controlled substances significantly affecting the United States;

"(B) through which are transported such drugs or substances; or

"(C) through which significant sums of drug-related profits or monies are laundered with the knowledge or complicity of the government.".

SEC. 2006. DEVELOPMENT OF HERBICIDES FOR AERIAL COCA ERADICATION.

The Secretary of State shall use not less than $1,000,000 of the funds made available for fiscal year 1987 to carry out chapter 8 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2291 et seq.; relating to international narcotics control) to finance research on and the development and testing of safe and effective herbicides for use in the aerial eradication of coca.

SEC. 2007. REVIEW OF EFFECTIVENESS OF INTERNATIONAL NARCOTICS CONTROL ASSISTANCE PROGRAM.

(a) REQUIREMENT FOR INVESTIGATION.—The Comptroller General shall conduct a thorough and complete investigation to determine the effectiveness of the assistance provided pursuant to chapter 8 of part I of the

Foreign Assistance Act of 1961 (22 U.S.C. 2291 et seq.; relating to international narcotics control).

(b) REPORTS TO CONGRESS.—

(1) PERIODIC REPORTS.—The Comptroller General shall report to the Congress periodically as the various portions of the investigation conducted pursuant to subsection (a) are completed.

(2) FINAL REPORT.—Not later than March 1, 1988, the Comptroller General shall submit a final report to the Congress on the results of the investigation. This report shall include such recommendations for administrative or legislative action as the Comptroller General finds appropriate based on the investigation.

SEC. 2008. EXTRADITION TO THE UNITED STATES FOR NARCOTICS-RELATED OFFENSES.

Section 481(e)(3) of the Foreign Assistance Act of 1961 (22 U.S.C. 2291(e)(3); relating to the annual international narcotics control report) is amended by inserting after subparagraph (C) the following new subparagraph:

"(D) A discussion of the extent to which such country has cooperated with the United States narcotics control efforts through the extradition or prosecution of drug traffickers, and, where appropriate, a description of the status of negotiations with such country to negotiate a new or updated extradition treaty relating to narcotics offenses.".

SEC. 2009. FOREIGN POLICE ARREST ACTIONS.

Section 481(c) of the Foreign Assistance Act of 1961 (22 U.S.C. 2291(c); commonly known as the Mansfield amendment) is amended to read as follows:

"(c)(1) Notwithstanding any other provision of law, no officer or employee of the United States may engage or participate in any direct police arrest action in any foreign country with respect to narcotics control efforts, except that this paragraph does not apply in the case of a foreign country with respect to which the Secretary of State has made the determinations described in paragraph (2).

"(2) Paragraph (1) shall not apply, and paragraph (3) shall apply, with respect to a foreign country if the Secretary of State determines that the application of the prohibition in paragraph (3) rather than the prohibition in paragraph (1) with respect to that country—

"(A) would be in the United States national interest, and

"(B) would not harm United States relations with that country.

The Secretary shall keep the Congress fully informed of determinations made under this paragraph and of the activities carried out by officers and employees of the United States pursuant to those determinations.

"(3) In the case of a foreign country with respect to which the Secretary of State has made the determinations described in paragraph (2), an officer or employee of the United States may not directly effect an arrest in that country as part of any foreign police action with respect to narcotics control efforts, notwithstanding any other provision of law. This paragraph does not prohibit an officer or employee from assisting foreign officers who are effecting an arrest.

"(4) Paragraphs (1) and (3) do not prohibit an officer or employee from taking direct action to protect life or safety if exigent circumstances arise which are unanticipated and which pose an immediate threat to United States officers or employees, officers or employees of a foreign government, or members of the public.

"(5) With the agreement of a foreign country, paragraphs (1) and (3) shall not apply with respect to maritime law enforcement operations in the territorial sea of that country.

"(6) No officer or employee of the United States may interrogate or be present during the interrogation of any United States person arrested in any foreign country with respect to narcotics control efforts without the written consent of such person.

"(7) This subsection shall not apply to the activities of the United States Armed Forces in carrying out their responsibilities under applicable Status of Forces arrangements.".

SEC. 2010. ISSUANCE OF DIPLOMATIC PASSPORTS FOR DRUG ENFORCEMENT ADMINISTRATION AGENTS ABROAD.

The Congress commends the decision of the Secretary of State to issue diplomatic passports, rather than official passports, to officials and employees of the Drug Enforcement Administration who are assigned abroad. The Secretary shall report to the Congress before making any change in this policy.

SEC. 2011. INFORMATION-SHARING SO THAT VISAS ARE DENIED TO DRUG TRAFFICKERS.

(a) NEED FOR COMPREHENSIVE INFORMATION SYSTEM.—The Congress is concerned that the executive branch has not established a comprehensive information system on all drug arrests of foreign nationals in the United States so that information may be communicated to the appropriate United States embassies, even though the establishment of such a system is required by section 132 of the Foreign Relations Authorization Act, Fiscal Years 1986 and 1987.

(b) ESTABLISHMENT OF SYSTEM.—The executive branch shall act expeditiously to establish the comprehensive information system required by section 132 of the Foreign Relations Authorization Act, Fiscal Years 1986 and 1987, and submit to the Congress a report that the system has been established.

SEC. 2012. CONDITIONS ON ASSISTANCE FOR BOLIVIA.

(a) OPERATION BLAST FURNACE.—(1) It is the sense of the Congress that—

(A) the Government of Bolivia's recent drug interdiction operations in cooperation with the United States (Operation Blast Furnace) evinced a determination to combat the growing power of the narcotics trade and narcotics traffickers;

(B) the operation has had a dramatic effect on the coca trade in that country by dropping the price of coca below the cost of production;

(C) as a result of this operation the coca trade has in the short term been sharply constricted;

(D) the restoration of non-coca dependent economic growth in Bolivia is crucial to the achievement of long-term progress in controlling illicit narcotics production; and

(E) control of illicit drug production is crucial to the survival of democratic institutions and democratic government in Bolivia.

(2) The Congress, therefore, applauds the demonstrated willingness of the Paz Estenssoro government, despite the risks of severe domestic criticism and disruptive economic consequences, to cooperate with the United States in Operation Blast Furnace.

(b) CONDITIONS ON ASSISTANCE.—Paragraph (2) of section 611 of the International Security and Development Cooperation Act of 1985 is amended by striking out subparagraphs (A) and (B) and inserting in lieu thereof the following:

"(A) up to 50 percent of the aggregate amount of such assistance allocated for Bolivia may be provided at any time after the President certifies to the Congress that Bolivia has engaged in narcotics interdiction operations which have significantly disrupted the illicit coca industry in Bolivia or has cooperated with the United States in such operations; and

"(B) the remaining amount of such assistance may be provided at any time after the President certifies to the Congress that Bolivia has either met in calendar year 1986 the eradication targets for the calendar year 1985 contained in its 1983 narcotics agreements with the United States or has entered into an agreement of cooperation with the United States for implementing that plan for 1987 and beyond (including numerical eradication targets not less than those contained in its 1983 agreements with the United States), and is making substantial progress toward the plan's objectives, including substantial eradication of illicit coca crops and effective use of United States assistance.

"In the certification required by subparagraph (B), the President shall explain why the terms of the 1983 agreement proved unattainable and the reasons why a new agreement was necessary.".

(c) RELATION TO OTHER PROVISIONS.—Nothing in the amendment made by subsection (b) shall be construed as superceding any provision of section 481 of the Foreign Assistance Act of 1961.

SEC. 2013. NARCOTICS CONTROL EFFORTS IN MEXICO.

(a) PROSECUTION OF THOSE RESPONSIBLE FOR THE TORTURE AND MURDER OF DEA AGENTS.—Of the funds allocated for assistance for Mexico for fiscal year 1987 under chapter 8 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2291 et seq.; relating to international narcotics control), $1,000,000 shall be withheld from expenditure until the President reports to the Congress that the Government of Mexico—

(1) has fully investigated the 1985 murders of Drug Enforcement Administration agent Enrique Camarena Salazar and his pilot Alfredo Zavala Avelar;

(2) has fully investigated the 1986 detention and torture of Drug Enforcement Administration agent Victor Cortez, Junior; and

(3) has brought to trial and is effectively prosecuting those responsible for those murders and those responsible for that detention and torture.

(b) AIRCRAFT PROVIDED BY THE UNITED STATES TO MEXICO.—The Congress finds that the aircraft provided Mexico under chapter 8 of part I of the Foreign Assistance Act of 1961 have not been used efficiently and that the fleet of aircraft provided Mexico is plagued by rapidly rising maintenance costs.

SEC. 2014. REPORTS AND RESTRICTIONS CONCERNING CERTAIN COUNTRIES.

(a) REPORTS.—Not later than 6 months after the date of enactment of this Act and every 6 months thereafter, the President shall prepare and transmit to the Congress a report—

(1) listing each major illicit drug producing country and each major drug-transit country—

(A) which, as a matter of government policy, encourages or facilitates the production or distribution of illegal drugs;

(B) in which any senior official of the government of such country engages in, encourages, or facilitates the production or distribution of illegal drugs;

(C) in which any member of an agency of the United States Government engaged in drug enforcement activities since January 1, 1985, has suffered or been threatened with violence, inflicted by or with the complicity of any law enforcement or other officer of such country or any political subdivision thereof; or

(D) which, having been requested to do so by the United States Government, fails to provide reasonable cooperation to lawful activities of United States drug enforcement agents, including the refusal of permission to such agents engaged in interdiction of aerial smuggling into the United States to pursue suspected aerial smugglers a reasonable distance into the airspace of the requested country; and

(2) describing for each country listed under paragraph (1) the activities and identities of officials whose activities caused such country to be so listed.

(b) RESTRICTIONS.—No United States assistance may be furnished to any country listed under subsection (a)(1), and the United States representative to any multilateral development bank shall vote to oppose any loan or other use of the funds of such bank for the benefit of any country listed under subsection (a)(1), unless the President certifies to the Congress that—

(1) overriding vital national interests require the provision of such assistance;

(2) such assistance would improve the prospects for cooperation with such country in halting the flow of illegal drugs; and

(3) the government of such country has made bona fide efforts to investigate and prosecute appropriate charges for any crime described in subsection (a)(1)(C) which may have been committed in such country.

(c) RELATION TO OTHER PROVISIONS.—The restrictions contained in subsection (b) are in addition to the restrictions contained in section 481(h) of the Foreign Assistance Act of 1961 or any other provision of law.

(d) DEFINITIONS.—For purposes of this section, the terms "major illicit drug producing country", "major drug-transit country", and "United States assistance" have the same meaning as is given to those terms by section 481(i) of the Foreign Assistance Act of 1961.

SEC. 2015. COMBATING NARCOTERRORISM.

(a) FINDING.—The Congress finds that the increased cooperation and collaboration between narcotics traffickers and terrorist groups constitutes a serious threat to United States national security interests and to the political stability of numerous other countries, particularly in Latin America.

(b) IMPROVED CAPABILITY FOR RESPONDING TO NARCOTERRORISM.—The President shall take concrete steps to improve the capability of the executive branch—

(1) to collect information concerning the links between narcotics traffickers and acts of terrorism abroad, and

(2) to develop an effective and coordinated means for responding to the threat which those links pose.

Not later than 90 days after the date of enactment of this Act, the President shall report to the Congress on the steps taken pursuant to this subsection.

(c) ADMINISTRATION OF JUSTICE PROGRAM.—Of the amounts made available for fiscal year 1987 to carry out section 534 of the Foreign Assistance Act of 1961 (22 U.S.C. 2346c; relating to the administration of justice program), not less than $2,000,000 may be used to provide to Colombia or other countries in the region such assistance as they may request for protection of judicial or other officials who are targets of narcoterrorist attacks. Such assistance may include assistance to increase the investigative, judicial, or prosecutorial capabilities of those countries with respect to narcoterrorist attacks.

(d) REWARD CONCERNING JORGE LUIS OCHOA VASQUEZ.—It is the sense of the Congress that the authority of section 36(b) of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2708(b)), as amended by section 502(a) of the Omnibus Diplomatic Security and Antiterrorism Act of 1986 (Public Law 99-399; enacted August 27, 1986), should be used expeditiously to establish a reward of up to $500,000 for information leading to the arrest or conviction of Jorge Luis Ochoa Vasquez for narcotics-related offenses.

SEC. 2016. INTERDICTION PROCEDURES FOR VESSELS OF FOREIGN REGISTRY.

(a) FINDINGS.—The Congress finds that—

(1) the interdiction by the United States Coast Guard of vessels suspected of carrying illicit narcotics can be a difficult procedure when the vessel is of foreign registry and is located beyond the customs waters of the United States;

(2) before boarding and inspecting such a vessel, the Coast Guard must obtain consent from either the master of the vessel or the country of registry; and

(3) this process, and obtaining the consent of the country of registry to further law enforcement action, may delay the interdiction of the vessel by 3 or 4 days.

(b) NEGOTIATIONS CONCERNING INTERDICTION PROCEDURES.—

(1) The Congress urges the Secretary of State, in consultation with the Secretary of the department in which the Coast Guard is operating, to increase efforts to negotiate with relevant countries procedures which will facilitate interdiction of vessels suspected of carrying illicit narcotics.

(2) If a country refuses to negotiate with respect to interdiction procedures, the President shall take appropriate actions directed against that country, which may include the denial of access to United States ports to vessels registered in that country.

(3) The Secretary of State shall submit reports to the Congress semiannually identifying those countries which have failed to negotiate with respect to interdiction procedures.

SEC. 2017. INFORMATION RELATING TO ILLICIT NARCOTICS ACTIVITIES ABROAD.

The Congress urges the President to direct the appropriate Federal officials to give greater priority to the collection and sharing of information concerning narcotics-related activities abroad, including information relevant to estimating illicit drug production and information relevant to narcotics-related money laundering.

SEC. 2018. ASSESSMENT OF NARCOTICS TRAFFICKING FROM AFRICA.

The President shall direct that an updated threat assessment of narcotics trafficking from Africa be prepared. If it is determined that an increased threat exists, the assessment shall examine the need for the United States to provide increased narcotics control training for African countries.

SEC. 2019. POLICY TOWARD MULTILATERAL DEVELOPMENT BANKS.

Section 481(a) of the Foreign Assistance Act of 1961 is amended—

(1) by redesignating paragraph (3) as paragraph (4); and

(2) by inserting after paragraph (2) the following:

"(3) In order to promote international cooperation in combatting international trafficking in illicit narcotics, it shall be the policy of the United States to use its voice and vote in multilateral development banks to promote the development and implementation in the major illicit drug producing countries of programs for the reduction and eventual eradication of narcotic drugs and other controlled substances, including appropriate assistance in conjunction with effective programs of illicit crop eradication.".

SEC. 2020. MULTILATERAL DEVELOPMENT BANK ASSISTANCE FOR DRUG ERADICATION AND CROP SUBSTITUTION PROGRAMS.

(a) MDB ASSISTANCE FOR DEVELOPMENT AND IMPLEMENTATION OF DRUG ERADICATION PROGRAM.—The Secretary of the Treasury shall instruct the United States Executive Directors of the multilateral development banks to initiate discussions with other Directors of their respective banks and to propose that all possible assistance be provided to each major illicit drug producing country for the development and implementation of a drug eradication program, including technical assistance, assistance in conducting feasibility studies and economic analyses, and assistance for alternate economic activities.

(b) INCREASES IN MULTILATERAL DEVELOPMENT BANK LENDING FOR CROP SUBSTITUTION PROJECTS.—The Secretary of the Treasury shall instruct the United States Executive Directors of the multilateral development banks to initiate discussions with other Directors of their respective banks and to propose that each such bank increase the amount of lending by such bank for crop substitution programs which will provide an economic alternative for the cultivation or production of illicit narcotic drugs or other controlled substances in major illicit drug producing countries, to the extent such countries develop and maintain adequate drug eradication programs.

(c) NATIONAL ADVISORY COUNCIL REPORT.—The Secretary of the Treasury shall include in the annual report to the Congress by the National Advisory Council on International Monetary and Financial Policies a detailed accounting of the manner in which and the extent to which the provisions of this section have been carried out.

(d) DEFINITIONS.—For purposes of this section—

(1) MULTILATERAL DEVELOPMENT BANK.—The term "multilateral development bank" means the International Bank for Reconstruction and Development, the International Development Association, the Inter-American Development Bank, the African Development Bank, and the Asian Development Bank.

(2) MAJOR ILLICIT DRUG PRODUCING COUNTRY.—The term "major illicit drug producing country" has the meaning provided in section 481(i)(2) of the Foreign Assistance Act of 1961 (22 U.S.C. 2291(i)(2)).

(3) NARCOTIC DRUG AND CONTROLLED SUBSTANCE.—The terms "narcotic drug" and "controlled substance" have the meanings given to such terms in section 102 of the Controlled Substances Act (21 U.S.C. 802).

SEC. 2021. CONSULTATION AND AUTHORITIES RELATING TO AGRICULTURAL RESEARCH AND PILOT PROGRAM ACTIVITIES TO ENCOURAGE SUBSTITUTION FOR NARCOTIC CROPS IN MEXICO.

(a) FINDINGS AND PURPOSE.—

(1) The Congress finds that—

(A) the widespread geographic distribution of narcotic crop production in Mexico indicates that there likely are numerous other crops that could be substituted for such narcotic crops,

(B) there are other indications that substitute crops can be grown successfully and profitably under local conditions in Mexico,

(C) the Department of Agriculture has crop development, research, extension, and teaching resources that could be made available to assist Mexico implement a narcotic crop substitution program,

(D) a successful program to encourage substitute cropping in Mexico would effectively contribute to reducing the availability of illegal drugs in the United States, and

(E) substitute cropping in Mexico should be evaluated and considered for potential use in an overall cooperative program to eradicate the production of illegal drugs.

(2) The purpose of this section is to foster a program to encourage the substitution of selected crops for narcotic crops in Mexico used for the production of illegal drugs and to authorize agricultural research and pilot program activities related to demonstrating the feasibility of such substitute cropping.

(b) CONSULTATION.—The Secretary of State, with the assistance of the Secretary of Agriculture, shall consult with the appropriate authorities of the Government of Mexico on—

(1) the development and implementation of a program to train and assist agricultural producers in Mexico to substitute production of selected crops for narcotic crops used in the production of illegal drugs, and

(2) the provision by the United States of agricultural research, extension, and teaching assistance to implement such program.

(c) RESEARCH BY THE SECRETARY OF AGRICULTURE.—

(1) As appropriate based on the consultations provided for under subsection (b), the Secretary of Agriculture, acting through the Agriculture Research Service, shall conduct research to identify crops and other agricultural commodities that have the economic potential to be substituted for narcotic crops presently grown in Mexico.

(2) Research under paragraph (1) shall be conducted in cooperation and coordination with appropriate institutions and agencies in the United States and Mexico and may include studies on crop adaptability, postharvest physiology, marketing, and social acceptance.

(3) A crop or agricultural commodity will be deemed to not be appropriate for substitution if the Secretary determines that increased production of the crop or commodity in Mexico would measurably decrease consumption of amounts of that crop or commodity produced in the United States.

(d) PILOT PROGRAMS.—As appropriate based on the consultations provided for under subsection (b), the Secretary of Agriculture shall establish pilot programs to determine and demonstrate that crops or commodities identified under subsection (c) have the economic potential to be substituted for narcotic crops presently grown in Mexico. Such pilot programs shall be conducted in cooperation with appropriate institutions and agencies in the United States and Mexico and in coordination with programs conducted by Mexico to eradicate the production of illegal drugs.

(e) ASSISTANCE AUTHORITY.—The Secretary of Agriculture may enter into contracts, grant agreements, and cooperative agreements under section 1472 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3318) to carry out this section.

(f) AUTHORIZATION.—There are authorized to be appropriated such sums as may be necessary to carry out this section.

SEC. 2022. DRUGS AS A NATIONAL SECURITY PROBLEM.

The Congress hereby declares that drugs are a national security problem and urges the President to explore the possibility of engaging such essentially security-oriented organizations as the North Atlantic Treaty Organization in cooperative drug programs.

SEC. 2023. FINDINGS CONCERNING GREATER INTERNATIONAL EFFORT TO ADDRESS DRUG THREAT.

The Congress finds that—

(1) in response to the growing narcotics threat to the international community—

(A) the Single Convention on Narcotic Drugs, 1961, the 1972 Protocol amending that Convention, and the Convention on Psychotropic Substances were adopted under United Nations auspices, and

(B) the United Nations has created various entities to deal with drug abuse control and prevention; and

(2) a greater international effort is required to address this threat, such as additional or increased contributions by other countries to the United Nations Fund for Drug Abuse and Control and greater coordination of enforcement and eradication efforts.

SEC. 2024. INTERNATIONAL CONFERENCE ON DRUG ABUSE AND ILLICIT TRAFFICKING.

(a) CONGRESSIONAL SUPPORT.—The Congress hereby declares its support for United Nations General Assembly Resolution 40/122 adopted on December 13, 1985, in which the General Assembly decided to convene in 1987 an International Conference on Drug Abuse and Illicit Trafficking in order to generate universal action to combat the drug problem in all its forms at the national, regional, and international levels, and to adopt a comprehensive outline of future activities.

(b) UNITED STATES PARTICIPATION.—With respect to United States participation in the International Conference on Drug Abuse and Illicit Trafficking, the Congress calls on the President—

(1) to appoint the head of the United States delegation well in advance of the conference; and

(2) to ensure that necessary resources are available for United States preparation and participation.

(c) REPORT TO CONGRESS.—Not later than April 30, 1987, the President shall report to the Congress on the status of United States preparations for the International Conference on Drug Abuse and Illicit Trafficking, including the status of naming the delegation, the issues expected to arise, and United States policy initiatives to be taken at the conference.

SEC. 2025. EFFECTIVENESS OF INTERNATIONAL DRUG PREVENTION AND CONTROL SYSTEM.

(a) STUDY.—The United States should seek to improve the program and budget effectiveness of United Nations entities related to narcotics prevention and control by studying the capability of existing United Nations drug-related declarations, conventions, and entities to heighten international awareness and promote the necessary strategies for international action, to strengthen international cooperation, and to make effective use of available United Nations funds.

(b) REPORT TO CONGRESS.—Not later than April 30, 1987, the President shall report to the Congress any recommendations that may result from this study.

SEC. 2026. NARCOTICS CONTROL CONVENTIONS.

The Congress—

(1) urges that the United Nations Commission on Narcotic Drugs complete work as quickly as possible, consistent with the objective of obtaining an effective agreement, on a new draft convention against illicit traffic in narcotic drugs and psychotropic substances, in accordance with the mandate given the Commission by United Nations General Assembly Resolution 39/141; and

(2) calls for more effective implementation of existing conventions relating to narcotics.

SEC. 2027. MEXICO-UNITED STATES INTERGOVERNMENTAL COMMISSION.

(a) NEGOTIATIONS TO ESTABLISH.—In accordance with the resolution adopted by the 26th Mexico-United Interparliamentary Conference which recommended that the Government of Mexico and the Government of the United States establish a Mexico-United States Intergovernmental Commission on Narcotics and Psychotropic Drug Abuse and Control, the President should direct the Secretary of State, in conjunction with the National Drug Enforcement Policy Board, to enter into negotiations with the Government of Mexico to create such a joint intergovernmental commission.

(b) MEMBERSHIP.—The commission, which should meet semiannually, should include members of the Mexican Senate and Chamber of Deputies and the United States House of Representatives and Senate, together with members of the executive departments of each Government responsible for drug abuse, education, prevention, treatment, and law enforcement.

(c) REPORT TO CONGRESS.—Not later than 90 days after the date of enactment of this Act, the Secretary of State shall report to the Congress on the progress being made in establishing a commission in accordance with subsection (a).

SEC. 2028. OPIUM PRODUCTION IN PAKISTAN.

(a) FINDINGS.—The Congress finds that—

(1) the production of opium in Pakistan is expected to more than double in the 1985-1986 growing season, posing an increased threat to the health and welfare of the people of Pakistan and the people of the United States; and

(2) despite past achievements, the current eradication program in Pakistan, which employs manual eradication of opium poppies, has proven inadequate to meet this new challenge.

(b) NEED FOR MORE EFFECTIVE DRUG CONTROL PROGRAM.—The Congress urges that the Government of Pakistan adopt and implement a comprehensive narcotics control program which would provide for more effective prosecution of drug traffickers, increased interdiction, and aerial eradication of opium poppies.

(c) REPORT TO CONGRESS.—The Secretary of State shall report to the Congress not later than 60 days after the date of enactment of this Act with respect to the adoption and implementation by the Government of Pakistan of a comprehensive narcotics control program in accordance with subsection (b).

SEC. 2029. OPIUM PRODUCTION IN IRAN, AFGHANISTAN, AND LAOS.

The Congress calls on the President to instruct the United States Ambassador to the United Nations to request that the United Nations Secretary General raise with delegations to the International Conference on Drug Abuse and Illicit Trafficking the problem of illicit drug production in Iran, Afghanistan, and Laos, the largest opium poppy producing countries which do not have narcotics control programs.

SEC. 2030. INCREASED FUNDING FOR USIA DRUG EDUCATION PROGRAMS.

In addition to amounts otherwise authorized to be appropriated, there is authorized to be appropriated for the United States Information Agency for fiscal year 1987 $2,000,000 which shall be available only for increasing drug education programs abroad. These programs may include—

(1) the distribution of films and publications which demonstrate the impact of drugs on crime and health; and

(2) exchange of persons programs and international visitor programs involving students, educators, and scientists.

SEC. 2031. INCREASED FUNDING FOR AID DRUG EDUCATION PROGRAMS.

In addition to amounts otherwise authorized to be appropriated, there are authorized to be appropriated to the President for fiscal year 1987 $3,000,000 to carry out chapter 1 of part I of the Foreign Assistance Act of 1961, which amount shall be used pursuant to section 126(b)(2) of that Act for additional activities aimed at increasing awareness of the effects of production and trafficking of illicit narcotics on source and transit countries.

SEC. 2032. REPORTS TO CONGRESS ON DRUG EDUCATION PROGRAMS ABROAD.

The Director of the United States Information Agency and the Administrator of the Agency for International Development shall include in their annual reports to the Congress a description of the drug education programs carried out by their respective agencies.

TITLE III—INTERDICTION

Subtitle A—National Drug Interdiction Improvement

SEC. 3001. SHORT TITLE.

This title may be cited as the "National Drug Interdiction Improvement Act of 1986".

SEC. 3002. FINDINGS.

The Congress hereby finds that—

(1) a balanced, coordinated, multifaceted strategy for combating the growing drug abuse and drug trafficking problem in the United States is essential in order to stop the flow and abuse of drugs within our borders;

(2) a balanced, coordinated, multifaceted strategy for combating the narcotics drug abuse and trafficking in the United States should include—

(A) increased investigations of large networks of drug smuggler organizations;

(B) source country drug eradication;

(C) increased emphasis on stopping narcotics traffickers in countries through which drugs are transshipped;

(D) increased emphasis on drug education programs in the schools and workplace;

(E) increased Federal Government assistance to State and local agencies, civic groups, school systems, and officials in their efforts to combat the drug abuse and trafficking problem at the local level; and

(F) increased emphasis on the interdiction of drugs and drug smugglers at the borders of the United States, in the air, at sea, and on the land;

(3) funds to support the interdiction of narcotics smugglers who threaten the transport of drugs through the air, on the sea, and across the land borders of the United States should be emphasized in the Federal Government budget process to the same extent as the other elements of a comprehensive antidrug effort are emphasized;

(4) the Department of Defense and the use of its resources should be an integral part of a comprehensive, national drug interdiction program;

(5) the Federal Government civilian agencies engaged in drug interdiction, particularly the United States Customs Service and the Coast Guard, currently lack the aircraft, ships, radar, command, control, communications, and intelligence (C3I) systems, and manpower resources necessary to mount a comprehensive attack on the narcotics traffickers who threaten the United States;

(6) the civilian drug interdiction agencies of the United States are currently interdicting only a small percentage of the illegal, drug smuggler penetrations in the United States every year;

(7) the budgets for our civilian drug interdiction agencies, primarily the United States Customs Service and the Coast Guard, have not kept pace with those of the traditional investigative law enforcement agencies of the Department of Justice; and

(8) since the amendment of the Posse Comitatus Act (18 U.S.C. 1385) in 1981, the Department of Defense has assisted in the effort to interdict drugs, but they can do more.

SEC. 3003. PURPOSES.

It is the purpose of this subtitle—

(1) to increase the level of funding and resources available to civilian drug interdiction agencies of the Federal Government;

(2) to increase the level of support from the Department of Defense as consistent with the Posse Comitatus Act, for interdiction of the narcotics traffickers before such traffickers penetrate the borders of the United States; and

(3) to improve other drug interdiction programs of the Federal Government.

Subtitle B—Department of Defense Drug Interdiction Assistance

SEC. 3051. SHORT TITLE.

This subtitle may be cited as the "Defense Drug Interdiction Assistance Act".

SEC. 3052. AUTHORIZATION.

(a) IN GENERAL.—The Secretary of Defense shall use the funds described in subsection (b) to acquire aircraft and equipment for enhancement of drug interdiction assistance activities of the Department in amounts as follows:

(1) $138,000,000 for procurement of four aircraft configured with the AN/APS-138 radar.

(2) Such sums as may be necessary to refurbish and upgrade four E2B Hawkeye surveillance aircraft for drug interdiction purposes.

(3) $99,500,000 for procurement of seven radar aerostats.

(4) $40,000,000 for procurement of eight Blackhawk helicopters.

(b) SOURCE OF FUNDS.—Funds for the purpose of subsection (a) shall be derived as the Secretary determines from—

(1) amounts appropriated or otherwise made available to the Department of Defense for fiscal year 1987; and

(2) amounts appropriated or otherwise made available to the Department of Defense for any prior fiscal year and which remain available for obligation.

(c) LOAN OF EQUIPMENT TO LAW ENFORCEMENT AGENCIES.—

(1) NEW SURVEILLANCE AIRCRAFT.—(A) The Secretary of Defense shall make the aircraft acquired under section (a)(1) available to the United States Customs Service.

(B) The United States Customs Service shall have the responsibility for operation and maintenance costs attributable to the aircraft acquired under subsection (a)(1) following the receipt of those aircraft by the Customs Service.

(C) Upon enactment of this Act, the Commissioner of Customs shall immediately commence consultations with the Commandant of the United States Coast Guard regarding coordination of the deployment of the aircraft acquired under subsection (a)(1) and on loan to the United States Customs Service under this paragraph in order to maximize the detection, surveillance, and intelligence gathering capabilities of the drug surveillance aircraft on loan to the United States Customs Service. The Commissioner of Customs shall make quarterly reports to the Committees on Appropriations, Armed Services, and Finance of the Senate and to the Committees on Appropriations, Armed Services, and Ways and Means of the House of Representatives regarding drug interdiction plans developed under this subparagraph.

(2) REFURBISHED AND UPGRADED SURVEILLANCE AIRCRAFT.—The Secretary of Defense shall make the aircraft refurbished and upgraded under subsection (a)(2) available to the Coast Guard to meet their maritime surveillance requirements.

(3) AEROSTATS AND HELICOPTERS.—The Secretary of Defense shall make the radar aerostats acquired under subsection (a)(3) and the helicopters acquired under subsection (a)(4) available to agencies of the United States designated by the Chairman of the National Drug Enforcement Policy Board established by the National Narcotics Act of 1984.

(4) AUTHORITIES APPLICABLE TO LOANS.—Aircraft and radar aerostats shall be made available to agencies under this subsection subject to the provisions of chapter 18 of title 10, United States Code.

(d) LIMITATION ON PROCUREMENT.—Amounts appropriated or otherwise made available to the Department of Defense for procurement for fiscal year 1987 or any prior fiscal year may be obligated for equipment for enhancement of authorized drug enforcement activities of the Department of Defense under subsection (a) or any other provision of law only if the equipment—

(1) is fully supportable within the existing service support system of the Department of Defense; and

(2) reasonably relates to an existing military, war reserve, or mobilization requirement.

SEC. 3053. COAST GUARD ACTIVITIES.

(a) FUNDING FOR PERSONNEL ON NAVAL VESSELS.—(1) Of the funds appropriated for operation and maintenance for the Navy for fiscal year 1987, the sum of $15,000,000 shall be transferred to the Secretary of Transportation and shall be available only for members of the Coast Guard assigned to duty as provided in section 379 of title 10, United States Code (as added by subsection (b)).

(2) The active duty military strength level for the Coast Guard for fiscal year 1987 is hereby increased by 500 above any number otherwise provided by law.

(b) ENHANCED DRUG INTERDICTION ASSISTANCE.—(1) Chapter 18 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 379. Assignment of Coast Guard personnel to naval vessels for law enforcement purposes

"(a) The Secretary of Defense and the Secretary of Transportation shall provide that there be assigned on board appropriate surface naval vessels at sea in a drug-interdiction area members of the Coast Guard who are trained in law enforcement and have

powers of the Coast Guard under title 14, including the power to make arrests and to carry out searches and seizures.

"(b) Members of the Coast Guard assigned to duty on board naval vessels under this section shall perform such law enforcement functions (including drug-interdiction functions)—

"(1) as may be agreed upon by the Secretary of Defense and the Secretary of Transportation; and

"(2) as are otherwise within the jurisdiction of the Coast Guard.

"(c) No fewer than 500 active duty personnel of the Coast Guard shall be assigned each fiscal year to duty under this section. However, if at any time the Secretary of Transportation, after consultation with the Secretary of Defense, determines that there are insufficient naval vessels available for purposes of this section, such personnel may be assigned other duty involving enforcement of laws listed in section 374(a)(1) of this title.

"(d) In this section, the term 'drug-interdiction area' means an area outside the land area of the United States in which the Secretary of Defense (in consultation with the Attorney General) determines that activities involving smuggling of drugs into the United States are ongoing.".

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"379. Assignment of Coast Guard personnel to naval vessels for law enforcement purposes.".

(3) Effective on the date of the enactment of this Act, section 1421 of the Department of Defense Authorization Act, 1986 (Public Law 99-145; 99 Stat. 750), is repealed.

(c) COAST GUARD RESERVE.—The Selected Reserve of the Coast Guard Reserve shall be programmed to attain a strength as of September 30, 1987, of not less than 14,400. Of such number, not less than 1,400 shall be used to augment units of the Coast Guard assigned to drug interdiction missions.

(d) INSTALLATION OF 360-DEGREE RADAR ON COAST GUARD SURVEILLANCE AIRCRAFT.—The Secretary of Defense is authorized to use $45,000,000 for the installation of 360-degree radar systems on Coast Guard long-range surveillance aircraft. Funds to carry out this subsection shall be derived as described in section 3052(b). Any modifications of existing aircraft pursuant to this subsection shall comply with validated requirements and specifications developed by the Coast Guard.

SEC. 3054. REPORTS ON DEPARTMENT OF DEFENSE DRUG CONTROL ACTIVITIES.

(a) REPORT ON DEFENSE ENFORCEMENT ACTIVITIES.—Not later than March 1, 1987, the National Drug Enforcement Policy Board shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the manner and the extent to which the Department of Defense should be involved in United States law enforcement activities relating to the control and reduction of drug abuse. The Board shall include in such report the following:

(1) Its recommendation for a 5-year funding plan for the participation of the Department of Defense in United States drug law enforcement activities.

(2) A description of appropriate functions which members of the Armed Forces, including the National Guard, the Reserves, and the Civil Air Patrol, under the jurisdiction of the Secretary of Defense may perform in the national effort to control and reduce drug abuse, including the interdiction of illegal drugs.

(b) REPORT ON DEFENSE DRUG EDUCATION ACTIVITIES.—Not later than December 1, 1986, the Secretary of Defense, in consultation with the National Drug Enforcement Policy Board and the Department of Education, shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report containing a discussion of—

(1) the extent to which youth enrolled in schools operated by the Department of Defense for dependent members of the Armed Forces are receiving education on drug and substance abuse,

(2) the types of drug education programs that are currently being provided in such schools,

(3) whether additional drug education programs are needed in such schools, and

(4) the extent to which drug education for youth in grades kindergarten through 12 include or should include preventive peer counseling classes.

SEC. 3055. DRIVING WHILE IMPAIRED.

Section 911 of title 10, United States Code, is amended by inserting "or while impaired by a substance described in section 912a(b) of this title (article 112a(b))," after "manner,".

SEC. 3056. ASSISTANCE TO CIVILIAN LAW ENFORCEMENT AND EMERGENCY ASSISTANCE BY DEPARTMENT OF DEFENSE PERSONNEL.

(a) ASSISTANCE TO CIVILIAN LAW ENFORCEMENT.—Section 374(a) of title 10, United States Code, is amended by striking out the period at the end and inserting in lieu thereof "or with respect to assistance that such agency is authorized to furnish to any foreign government which is involved in the enforcement of similar laws".

(b) EMERGENCY ASSISTANCE.—Section 374(c) of such title is amended to read as follows:

"(c)(1) In an emergency circumstance, equipment operated by or with the assistance of personnel assigned under subsection (a) may be used as a base of operations outside the land area of the United States (or any territory, commonwealth, or possession of the United States) by Federal law enforcement officials—

"(A) to facilitate the enforcement of a law listed in subsection (a); and

"(B) to transport such law enforcement officials in connection with such operations.

"(2)(A) Subject to subparagraph (B), equipment operated by or with the assistance of personnel assigned under subsection (a) may not be used to interdict or interrupt the passage of vessels and aircraft.

"(B) In an emergency circumstance, equipment operated by or with the assistance of personnel assigned under subsection (a) may be used to intercept vessels and aircraft outside the land area of the United States (or any territory, commonwealth, or possession of the United States) for the purposes of communicating with such vessels and aircraft to direct such vessels and aircraft to go to a location designated by appropriate civilian officials if the Secretary of Defense, the Attorney General, and the Secretary of State jointly determine that an emergency circumstance exists and that enforcement of a law listed in subsection (a) would be seriously impaired if such use of equipment were not permitted. Such use of equipment may continue into the land area of the United States (or any territory or possession of the United States) in cases involving the hot pursuit of vessels or aircraft where such pursuit began outside such land area.

"(3) For purposes of this subsection, an emergency circumstance exists when—

"(A) the size or scope of the suspected criminal activity in a given situation poses a serious threat to the interest of the United States; and

"(B) the assistance described in this subsection would significantly enhance the enforcement of a law listed in subsection (a).".

SEC. 3057. ADDITIONAL DEPARTMENT OF DEFENSE DRUG LAW ENFORCEMENT ASSISTANCE.

(a) GENERAL REQUIREMENT.—(1) Within 90 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the Congress the following:

(A) A detailed list of all forms of assistance that shall be made available by the Department of Defense to civilian drug law enforcement and drug interdiction agencies, including the United States Customs Service, the Coast Guard, the Drug Enforcement Administration, and the Immigration and Naturalization Service.

(B) A detailed plan for promptly lending equipment and rendering drug interdiction-related assistance included on such list.

(2) The list required by paragraph (1)(A) shall include, but not be limited to, a description of the following matters:

(A) Surveillance equipment suitable for detecting air, land, and marine drug transportation activities.

(B) Communications equipment, including secure communications.

(C) Support available from the reserve components of the Armed Forces for drug interdiction operations of civilian drug law enforcement agencies.

(D) Intelligence on the growing, processing, and transshipment of drugs in drug source countries and the transshipment of drugs between such countries and the United States.

(E) Support from the Southern Command and other unified and specified commands that is available to assist in drug interdiction.

(F) Aircraft suitable for use in air-to-air detection, interception, tracking, and seizure by civilian drug interdiction agencies, including the Customs Service and the Coast Guard.

(G) Marine vessels suitable for use in maritime detection, interception, tracking, and seizure by civilian drug interdiction agencies, including the Customs Service and the Coast Guard.

(H) Such land vehicles as may be appropriate for support activities relating to drug interdiction operations by civilian drug law enforcement agencies, including the Customs Service, the Immigration and Naturalization Service, and other Federal agencies having drug interdiction or drug eradication responsibilities.

(b) COMMITTEE APPROVAL AND FINAL IMPLEMENTATION.—Within 30 days after the date on which the Congress receives the list and plan submitted under such subsection, the Committees on Armed Services of the Senate and the House of Representatives shall submit their approval or disapproval of such list and plan to the Secretary of Defense. Upon receipt of such approval or disapproval, the Secretary shall immediately convene a conference of the heads of the Federal Government agencies with jurisdiction over drug law enforcement, including the Customs Service, the Coast Guard, and the Drug Enforcement Administration, to determine the appropriate distribution of the assets, items of support, or other assistance to be made available by the Department of Defense to such agencies. Not later than 60 days after the date on which such

conference convenes, the Secretary of Defense and the heads of such agencies shall enter into appropriate memoranda of agreement specifying the distribution of such assistance.

(c) EQUIPMENT SUBJECT TO SECTION 3052(d).—Equipment identified in this section is subject to the provisions of section 3052(d).

(d) APPLICABILITY.—Subsections (a) and (b) shall not apply to any assets, equipment, items of support, or other assistance provided or authorized in any other provision of this title.

(e) REVIEW BY GENERAL ACCOUNTING OFFICE.—The Comptroller General of the United States shall monitor the compliance of the Department of Defense with subsections (a) and (b). Not later than 90 days after the date on which the conference is convened under subsection (b), the Comptroller General shall transmit to the Congress a written report containing the Comptroller General's findings regarding the compliance of the Department of Defense with such subsections. The report shall include a review of the memoranda of agreement entered into under subsection (b).

SEC. 3058. GRADE OF DIRECTOR OF DEPARTMENT OF DEFENSE TASK FORCE ON DRUG ENFORCEMENT.

During fiscal year 1987, the number of officers of the Marine Corps authorized under section 525(b) of title 10, United States Code, to be on active duty in grades above major general is increased by one during any period that an officer of the Marine Corps is serving as the Director of the Department of Defense Task Force on Drug Enforcement. An additional officer in a grade above major general by reason of this section may not be in the grade of general.

SEC. 3059. CIVIL AIR PATROL.

(a) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) the Civil Air Patrol, the all-volunteer civilian auxiliary of the Air Force, can increase its participation in and make significant contributions to the drug interdiction efforts of the Federal Government, and

(2) the Secretary of the Air Force should fully support that participation.

(b) AUTHORIZATION.—The Secretary of Defense may use up to $3,500,000 to acquire major items of equipment needed by the Civil Air Patrol for drug interdiction surveillance and reporting missions. Funds for the purpose of the preceding sentence shall be derived as described in section 3052(b). Equipment identified in this subsection is subject to the provisions of section 3052(d).

(c) REPORTS.—(1) The Secretary of the Air Force shall submit to the Committees on Appropriations and on Armed Services of the Senate and the House of Representatives quarterly reports which contain the following information:

(A) A description of the manner in which any funds are used under subsection (b).

(B) A detailed description of the activities of the Civil Air Patrol in support of the Federal Government's drug interdiction program.

(2) The first report under paragraph (1) shall be submitted on the last day of the first quarter ending not less than 90 days after the date of the enactment of this Act.

Subtitle B—Customs Enforcement

SEC. 3101. SHORT TITLE.

This subtitle may be cited as the "Customs Enforcement Act of 1986".

PART 1—AMENDMENTS TO THE TARIFF ACT OF 1930

SEC. 3111. DEFINITIONS.

Section 401 of the Tariff Act of 1930 (19 U.S.C. 1401) is amended—

(1) by inserting ", and monetary instruments as defined in section 5312 of title 31, United States Code" before the period in subsection (c);

(2) by striking out "The term" in subsection (k) and inserting in lieu thereof "(1) The term";

(3) by adding at the end of subsection (k) the following new paragraph:

"(2) For the purposes of sections 432, 433, 434, 448, 585, and 586, any vessel which—

"(A) has visited any hovering vessel;

"(B) has received merchandise while in the customs waters beyond the territorial sea; or

"(C) has received merchandise while on the high seas;

shall be deemed to arrive or have arrived, as the case may be, from a foreign port or place."; and

(4) by adding at the end thereof the following:

"(m) CONTROLLED SUBSTANCE.—The term 'controlled substance' has the meaning given that term in section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)). For purposes of this Act, a controlled substance shall be treated as merchandise the importation of which into the United States is prohibited, unless the importation is authorized under—

"(1) an appropriate license or permit; or

"(2) the Controlled Substances Import and Export Act.".

SEC. 3112. REPORT OF ARRIVAL OF VESSELS, VEHICLES, AND AIRCRAFT.

Section 433 of the Tariff Act of 1930 (19 U.S.C. 1433) is amended to read as follows:

"SEC. 433. REPORT OF ARRIVAL OF VESSELS, VEHICLES, AND AIRCRAFT.

"(a) VESSEL ARRIVAL.—(1) Immediately upon the arrival at any port or place within the United States or the Virgin Islands of—

"(A) any vessel from a foreign port or place;

"(B) any foreign vessel from a domestic port; or

"(C) any vessel of the United States carrying bonded merchandise, or foreign merchandise for which entry has not been made;

the master of the vessel shall report the arrival at the nearest customs facility or such other place as the Secretary may prescribe by regulations.

"(2) The Secretary may by regulation—

"(A) prescribe the manner in which arrivals are to be reported under paragraph (1); and

"(B) extend the time in which reports of arrival must be made, but not later than 24 hours after arrival.

"(b) VEHICLE ARRIVAL.—(1) Vehicles may arrive in the United States only at border crossing points designated by the Secretary.

"(2) Except as otherwise authorized by the Secretary, immediately upon the arrival of any vehicle in the United States at a border crossing point, the person in charge of the vehicle shall—

"(A) report the arrival; and

"(B) present the vehicle, and all persons and merchandise (including baggage) on board, for inspection;

to the customs officer at the customs facility designated for that crossing point.

"(c) AIRCRAFT ARRIVAL.—The pilot of any aircraft arriving in the United States or the Virgin Islands from any foreign airport or place shall comply with such advance notification, arrival reporting, and landing requirements as the Secretary may by regulation prescribe.

"(d) PRESENTATION OF DOCUMENTATION.—The master, person in charge of a vehicle, or aircraft pilot shall present to customs officers such documents, papers, or manifests as the Secretary may by regulation prescribe.

"(e) PROHIBITION ON DEPARTURES AND DISCHARGE.—Unless otherwise authorized by law, a vessel, aircraft, or vehicle may, after arriving in the United States or the Virgin Islands—

"(1) depart from the port, place, or airport of arrival; or

"(2) discharge any passenger or merchandise (including baggage);

only in accordance with regulations prescribed by the Secretary.".

SEC. 3113. PENALTIES FOR ARRIVAL, REPORTING, ENTRY, AND DEPARTURE VIOLATIONS.

(a) FOR VIOLATIONS OF ARRIVAL, REPORTING, AND ENTRY REQUIREMENTS.—Section 436 of the Tariff Act of 1930 (19 U.S.C. 1436) is amended to read as follows:

"SEC. 436. PENALTIES FOR VIOLATIONS OF THE ARRIVAL, REPORTING, AND ENTRY REQUIREMENTS.

"(a) UNLAWFUL ACTS.—It is unlawful—

"(1) to fail to comply with section 433;

"(2) to present any forged, altered, or false document, paper, or manifest to a customs officer under section 433(d) without revealing the facts;

"(3) to fail to make entry as required by section 434, 435, or 644 of this Act or section 1109 of the Federal Aviation Act (49 U.S.C. App. 1509); or

"(4) to fail to comply with, or violate, any regulation prescribed under any section referred to in any of paragraphs (1) through (3).

"(b) CIVIL PENALTY.—Any master, person in charge of a vehicle, or aircraft pilot who commits any violation listed in subsection (a) is liable for a civil penalty of $5,000 for the first violation, and $10,000 for each subsequent violation, and any conveyance used in connection with any such violation is subject to seizure and forfeiture.

"(c) CRIMINAL PENALTY.—In addition to being liable for a civil penalty under subsection (b), any master, person in charge of a vehicle, or aircraft pilot who intentionally commits any violation listed in subsection (a) is, upon conviction, liable for a fine of not more than $2,000 or imprisonment for 1 year, or both; except that if the conveyance has, or is discovered to have had, on board any merchandise (other than sea stores or the equivalent for conveyances other than vessels) the importation of which into the United States is prohibited, such individual is liable for an additional fine of not more than $10,000 or imprisonment for not more than 5 years, or both.

"(d) ADDITIONAL CIVIL PENALTY.—If any merchandise (other than sea stores or the equivalent for conveyances other than a vessel) is imported or brought into the United States in or aboard a conveyance which was not properly reported or entered, the master, person in charge of a vehicle, or aircraft pilot shall be liable for a civil penalty equal to the value of the merchandise and the merchandise may be seized and forfeited unless properly entered by the importer or consignee. If the merchandise consists of any controlled substance listed in section 584, the master, individual in charge of a vehicle, or pilot shall be liable to the penalties prescribed in that section.".

(b) INCREASE IN PENALTIES FOR DEPARTURE BEFORE REPORT OR ENTRY.—Section 585 of the Tariff Act of 1930 (19 U.S.C. 1585) is amended—

(1) by striking out "shall be liable to a penalty of $5,000," after "vessel"; and

(2) by striking out "$500" and inserting "$5,000 for the first violation, and $10,000 for each subsequent violation,".

SEC. 3114. PENALTIES FOR UNAUTHORIZED UNLOADING OF PASSENGERS.

Section 454 (19 U.S.C. 1454), is amended by striking out "$500 for each" and inserting "$1,000 for the first passenger and $500 for each additional".

SEC. 3115. REPORTING REQUIREMENTS FOR INDIVIDUALS.

(a) AMENDMENT.—Section 459 of the Tariff Act of 1930 (19 U.S.C. 1459) is amended to read as follows:

"SEC. 459. REPORTING REQUIREMENTS FOR INDIVIDUALS.

"(a) INDIVIDUALS ARRIVING OTHER THAN BY CONVEYANCE.—Except as otherwise authorized by the Secretary, individuals arriving in the United States other than by vessel, vehicle, or aircraft shall—

"(1) enter the United States only at a border crossing point designated by the Secretary; and

"(2) immediately—

"(A) report the arrival, and

"(B) present themselves, and all articles accompanying them for inspection;

to the customs officer at the customs facility designated for that crossing point.

"(b) INDIVIDUALS ARRIVING BY REPORTED CONVEYANCE.—Except as otherwise authorized by the Secretary, passengers and crew members aboard a conveyance the arrival in the United States of which was made or reported in accordance with section 433 or 644 of this Act or section 1109 of the Federal Aviation Act of 1958, or in accordance with applicable regulations, shall remain aboard the conveyance until authorized to depart the conveyance by the appropriate customs officer. Upon departing the conveyance, the passengers and crew members shall immediately report to the designated customs facility with all articles accompanying them.

"(c) INDIVIDUALS ARRIVING BY UNREPORTED CONVEYANCE.—Except as otherwise authorized by the Secretary, individuals aboard a conveyance the arrival in the United States of which was not made or reported in accordance with the laws or regulations referred to in subsection (b) shall immediately notify a customs officer and report their arrival, together with appropriate information concerning the conveyance on or in which they arrived, and present their property for customs examination and inspection.

"(d) DEPARTURE FROM DESIGNATED CUSTOMS FACILITIES.—Except as otherwise authorized by the Secretary, any person required to report to a designated customs facility under subsection (a), (b), or (c) may not depart that facility until authorized to do so by the appropriate customs officer.

"(e) UNLAWFUL ACTS.—It is unlawful—

"(1) to fail to comply with subsection (a), (b), or (c);

"(2) to present any forged, altered, or false document or paper to a customs officer under subsection (a), (b), or (c) without revealing the facts;

"(3) to violate subsection (d); or

"(4) to fail to comply with, or violate, any regulation prescribed to carry out subsection (a), (b), (c), or (d).

"(f) CIVIL PENALTY.—Any individual who violates any provision of subsection (e) is liable for a civil penalty of $5,000 for the first violation, and $10,000 for each subsequent violation.

"(g) CRIMINAL PENALTY.—In addition to being liable for a civil penalty under subsection (f), any individual who intentionally violates any provision of subsection (e) is, upon conviction, liable for a fine of not more than $5,000, or imprisonment for not more than 1 year, or both.".

(b) REPEAL.—Section 460 is repealed.

SEC. 3116. PENALTIES FOR FAILURE TO DECLARE.

Section 497 of the Tariff Act of 1930 (19 U.S.C. 1497) is amended to read as follows:

"SEC. 497. PENALTIES FOR FAILURE TO DECLARE.

"(a) IN GENERAL.—(1) Any article which

"(A) is not included in the declaration and entry as made; and

"(B) is not mentioned before examination of the baggage begins—

"(i) in writing by such person, if written declaration and entry was required, or

"(ii) orally, if written declaration and entry was not required;

shall be subject to forfeiture and such person shall be liable for a penalty determined under paragraph (2) with respect to such article.

"(2) The amount of the penalty imposed under paragraph (1) with respect to any article is equal to—

"(A) if the article is a controlled substance, 200 percent of the value of the article; and

"(B) if the article is not a controlled substance, the value of the article.

"(b) VALUE OF CONTROLLED SUBSTANCES.—(1) Notwithstanding any other provision of this Act, the value of any controlled substance shall, for purposes of this section, be equal to the amount determined by the Secretary in consultation with the Attorney General of the United States, to be equal to the price at which such controlled substance is likely to be illegally sold to the consumer of such controlled substance.

"(2) The Secretary and the Attorney General of the United States shall establish a method of determining the price at which each controlled substance is likely to be illegally sold to the consumer of such controlled substance.".

SEC. 3117. EXAMINATION OF BOOKS AND WITNESSES.

Section 509 of the Tariff Act of 1930 (19 U.S.C. 1509) is amended—

(1) by striking out ", required to be kept under section 508 of this Act," in subsection (a)(2) and inserting ", as defined in subsection (c)(1)(A),"; and

(2) by amending subsection (c)(1)(A) to read as follows:

"(A) The term 'records' includes statements, declarations, or documents—

"(i) required to be kept under section 508; or

"(ii) regarding which there is probable cause to believe that they pertain to merchandise the importation of which into the United States is prohibited.".

SEC. 3118. FALSE MANIFESTS; LACK OF MANIFEST.

Section 584 of the Tariff Act of 1930 (19 U.S.C. 1584) is amended—

(1) by striking out "$500" each place it appears and inserting in lieu thereof "$1,000";

(2) by striking out "$50" in subsection (a)(2) and inserting in lieu thereof "$1,000";

(3) by striking out "$25" in subsection (a)(2) and inserting in lieu thereof "$500"; and

(4) by striking out "$10" in subsection (a)(2) and inserting in lieu thereof "$200".

SEC. 3119. UNLAWFUL UNLOADING OF MERCHANDISE.

Section 586 of the Tariff Act of 1930 (19 U.S.C. 1586) is amended—

(1) by striking out "$1,000" wherever it appears and inserting "$10,000"; and

(2) by amending subsection (e)—

(A) by striking out "one league off the coast of the United States" and inserting "customs waters"; and

(B) by striking out "2 years" and inserting "15 years".

SEC. 3120. AVIATION SMUGGLING.

Part V of title IV of the Tariff Act of 1930 is amended by adding after section 589 the following new section:

"SEC. 590. AVIATION SMUGGLING.

"(a) IN GENERAL.—It is unlawful for the pilot of any aircraft to transport, or for any individual on board any aircraft to possess, merchandise knowing, or intending, that the merchandise will be introduced into the United States contrary to law.

"(b) SEA TRANSFERS.—It is unlawful for any person to transfer merchandise between an aircraft and a vessel on the high seas or in the customs waters of the United States if such person has not been authorized by the Secretary to make such transfer and—

"(1) either—

"(A) the aircraft is owned by a citizen of the United States or is registered in the United States, or

"(B) the vessel is a vessel of the United States (within the meaning of section 3(b) of the Anti-Smuggling Act (19 U.S.C. 1703(b)), or

"(2) regardless of the nationality of the vessel or aircraft, such transfer is made under circumstances indicating the intent to make it possible for such merchandise, or any part thereof, to be introduced into the United States unlawfully.

"(c) CIVIL PENALTIES.—Any person who violates any provision of this section is liable for a civil penalty equal to twice the value of the merchandise involved in the violation, but not less than $10,000. The value of any controlled substance included in the merchandise shall be determined in accordance with section 497(b).

"(d) CRIMINAL PENALTIES.—In addition to being liable for a civil penalty under subsection (c), any person who intentionally commits a violation of any provision of this section is, upon conviction—

"(1) liable for a fine of not more than $10,000 or imprisonment for not more than 5 years, or both, if none of the merchandise involved was a controlled substance; or

"(2) liable for a fine of not more than $250,000 or imprisonment for not more than 20 years, or both, if any of the merchandise involved was a controlled substance.

"(e) SEIZURE AND FORFEITURE.—Any vessel or aircraft used in connection with, or in aiding or facilitating, any of the unlawful acts described in this section (whether or not any person is charged in connection with such violation) shall be seized and forfeited in accordance with the customs laws.

"(f) DEFINITION OF MERCHANDISE.—As used in this section, the term 'merchandise' means only merchandise the importation of which into the United States is prohibited or restricted.

"(g) INTENT OF TRANSFER OF MERCHANDISE.—For purposes of imposing civil penalties under this section, any of the following acts, when performed within 250 miles of the territorial sea of the United States, shall be prima facie evidence that the transportation or possession of merchandise was unlawful and shall be presumed to constitute circumstances indicating that the purpose of the transfer is to make it possible for such merchandise, or any part thereof, to be intro-

duced into the United States unlawfully, and for purposes of subsection (e) or section 596, shall be prima facie evidence that an aircraft or vessel was used in connection with, or to aid or facilitate, a violation of this section:

"(1) The operation of an aircraft or a vessel without lights during such times as lights are required to be displayed under applicable law.

"(2) The presence on an aircraft of an auxiliary fuel tank which is not installed in accordance with applicable law.

"(3) The failure to identify correctly—

"(A) the vessel by name or country of registration, or

"(B) the aircraft by registration number and country of registration,

when requested to do so by a customs officer or other government authority.

"(4) The external display of false registration numbers, false country of registration, or, in the case of a vessel, false vessel name.

"(5) The presence on board of unmanifested merchandise, the importation of which is prohibited or restricted.

"(6) The presence on board of controlled substances which are not manifested or which are not accompanied by the permits or licenses required under Single Convention on Narcotic Drugs or other international treaty.

"(7) The presence of any compartment or equipment which is built or fitted out for smuggling.

"(8) The failure of a vessel to stop when hailed by a customs officer or other government authority.".

SEC. 3121. SEIZURES.

Section 594 of the Tariff Act of 1930 (19 U.S.C. 1594) is amended to read as follows:

"SEC. 594. SEIZURE OF CONVEYANCES.

"(a) IN GENERAL.—Whenever—

"(1) any vessel, vehicle, or aircraft; or

"(2) the owner or operator, or the master, pilot, conductor, driver, or other person in charge of a vessel, vehicle, or aircraft;

is subject to a penalty for violation of the customs laws, the conveyance involved shall be held for the payment of such penalty and may be seized and forfeited and sold in accordance with the customs laws. The proceeds of sale, if any, in excess of the assessed penalty and expenses of seizing, maintaining, and selling the property shall be held for the account of any interested party.

"(b) EXCEPTIONS.—No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to seizure and forfeiture under the customs laws for violations relating to merchandise contained—

"(1) on the person;

"(2) in baggage belonging to and accompanying a passenger being lawfully transported on such conveyance; or

"(3) in the cargo of the conveyance if the cargo is listed on the manifest and marks, numbers, weights and quantities of the outer packages or containers agree with the manifest;

unless the owner or operator, or the master, pilot, conductor, driver or other person in charge participated in, or had knowledge of, the violation, or was grossly negligent in preventing or discovering the violation.

"(c) PROHIBITED MERCHANDISE ON CONVEYANCE.—If any merchandise the importation of which is prohibited is found to be, or to have been—

"(1) on board a conveyance used as a common carrier in the transaction of business as a common carrier in one or more packages or containers—

"(A) that are not manifested (or not shown on bills of lading or airway bills); or

"(B) whose marks, numbers, weight or quantities disagree with the manifest (or with the bills of lading or airway bills); or

"(2) concealed in or on such a conveyance, but not in the cargo;

the conveyance may be seized, and after investigation, forfeited unless it is established that neither the owner or operator, master, pilot, nor any other employee responsible for maintaining and insuring the accuracy of the cargo manifest knew, or by the exercise of the highest degree of care and diligence could have known, that such merchandise was on board.

"(d) DEFINITIONS.—For purposes of this section—

"(1) The term 'owner or operator' includes—

"(A) a lessee or person operating a conveyance under a rental agreement or charter party; and

"(B) the officers and directors of a corporation;

"(C) station managers and similar supervisory ground personnel employed by airlines;

"(D) one or more partners of a partnership;

"(E) representatives of the owner or operator in charge of the passenger or cargo operations at a particular location; and

"(F) and other persons with similar responsibilities.

"(2) The term 'master' and similar terms relating to the person in charge of a conveyance includes the purser or other person on the conveyance who is responsible for maintaining records relating to the cargo transported in the conveyance.

"(e) COSTS AND EXPENSES OF SEIZURE.—When a common carrier has been seized in accordance with the provisions of subsection (c) and it is subsequently determined that a violation of such subsection occurred but that the vessel will be released, the conveyance is liable for the costs and expenses of the seizure and detention.".

SEC. 3122. SEARCHES AND SEIZURES.

Section 595(a) of the Tariff Act of 1930 (19 U.S.C. 1595(a)) is amended to read as follows:

"(a) WARRANT.—(1) If any officer or person authorized to make searches and seizures has probable cause to believe that—

"(A) any merchandise upon which the duties have not been paid, or which has been otherwise brought into the United States unlawfully;

"(B) any property which is subject to forfeiture under any provision of law enforced or administered by the United States Customs Service; or

"(C) any document, container, wrapping, or other article which is evidence of a violation of section 592 involving fraud or of any other law enforced or administered by the United States Customs Service,

is in any dwelling house, store, or other building or place, he may make application, under oath, to any justice of the peace, to any municipal, county, State, or Federal judge, or to any Federal magistrate, and shall thereupon be entitled to a warrant to enter such dwelling house in the daytime only, or such store or other place at night or by day, and to search for and seize such merchandise or other article described in the warrant.

"(2) If any house, store, or other building or place, in which any merchandise or other article subject to forfeiture is found, is upon or within 10 feet of the boundary line between the United States and a foreign country, such portion thereof that is within the United States may be taken down or removed.".

SEC. 3123. FORFEITURES.

Section 596 of the Tariff Act of 1930 (19 U.S.C. 1595a) is amended—

(1) by striking out "the proviso to" in subsection (a) and inserting "subsection (b) or (c) of";

(2) by striking out "shall" in subsection (a) and inserting "may"; and

(3) by adding at the end thereof the following new subsection:

"(c) Any merchandise that is introduced or attempted to be introduced into the United States contrary to law (other than in violation of section 592) may be seized and forfeited.".

SEC. 3124. PROCEEDS OF FORFEITED PROPERTY.

Section 613 of the Tariff Act of 1930 (19 U.S.C. 1613) is amended by adding at the end thereof the following new subsections:

"(c) TREATMENT OF DEPOSITS.—If property is seized by the Secretary under law enforced or administered by the Customs Service, or otherwise acquired under section 605, and relief from the forfeiture is granted by the Secretary, or his designee, upon terms requiring the deposit or retention of a monetary amount in lieu of the forfeiture, the amount recovered shall be treated in the same manner as the proceeds of sale of a forfeited item.

"(d) EXPENSES.—In any judicial or administrative proceeding to forfeit property under any law enforced or administered by the Customs Service or the Coast Guard, the seizure, storage, and other expenses related to the forfeiture that are incurred by the Customs Service or the Coast Guard after the seizure, but before the institution of, or during, the proceedings, shall be a priority claim in the same manner as the court costs and the expenses of the Federal marshal.".

SEC. 3125. COMPENSATION TO INFORMERS.

Section 619 of the Tariff Act of 1930 (19 U.S.C. 1619) is amended to read as follows:

"(a) IN GENERAL.—If

"(1) any person who is not an employee or officer of the United States—

"(A) detects and seizes any vessel, vehicle, aircraft, merchandise, or baggage subject to seizure and forfeiture under the customs laws or the navigation laws and reports such detection and seizure to a customs officer, or

"(B) furnishes to a United States attorney, the Secretary of the Treasury, or any customs officer original information concerning—

"(i) any fraud upon the customs revenue, or

"(ii) any violation of the customs laws or the navigation laws which is being, or has been, perpetrated or contemplated by any other person; and

"(2) such detection and seizure or such information leads to a recovery of—

"(A) any duties withheld, or

"(B) any fine, penalty, or forfeiture of property incurred;

the Secretary may award and pay such person an amount that does not exceed 25 percent of the net amount so recovered.

"(b) FORFEITED PROPERTY NOT SOLD.—If—

"(1) any vessel, vehicle, aircraft, merchandise, or baggage is forfeited to the United States and is thereafter, in lieu of sale—

"(A) destroyed under the customs or navigation laws, or

"(B) delivered to any governmental agency for official use, and

"(2) any person would be eligible to receive an award under subsection (a) but for the lack of sale of such forfeited property,
the Secretary may award and pay such person an amount that does not exceed 25 percent of the appraised value of such forfeited property.

"(c) DOLLAR LIMITATION.—The amount awarded and paid to any person under this section may not exceed $250,000 for any case.

"(d) SOURCE OF PAYMENT.—Unless otherwise provided by law, any amount paid under this section shall be paid out of appropriations available for the collection of the customs revenue.

"(e) RECOVERY OF BAIL BOND.—For purposes of this section, an amount recovered under a bail bond shall be deemed a recovery of a fine incurred.".

SEC. 3126. FOREIGN LANDING CERTIFICATES.

Section 622 of the Tariff Act of 1930 (19 U.S.C. 1622) is amended by inserting before the period at the end thereof the following: ", or to comply with international obligations".

SEC. 3127. EXCHANGE OF INFORMATION WITH FOREIGN AGENCIES.

Part V of title IV of the Tariff Act of 1930 is amended by adding at the end thereof the following new section 628:

"SEC. 628. EXCHANGE OF INFORMATION.

"The Secretary may by regulation authorize customs officers to exchange information or documents with foreign customs and law enforcement agencies if the Secretary reasonably believes the exchange of information is necessary to—

"(1) insure compliance with any law or regulation enforced or administered by the Customs Service;

"(2) administer or enforce multilateral or bilateral agreements to which the United States is a party;

"(3) assist in investigative, judicial and quasi-judicial proceedings in the United States; and

"(4) an action comparable to any of those described in paragraphs (1) through (4) undertaken by a foreign customs or law enforcement agency, or in relation to a proceeding in a foreign country.".

SEC. 3128. INSPECTIONS AND PRECLEARANCE IN FOREIGN COUNTRIES.

Part V of title IV of the Tariff Act of 1930 is further amended by adding at the end thereof the following new section:

"SEC. 629. INSPECTIONS AND PRECLEARANCE IN FOREIGN COUNTRIES.

"(a) IN GENERAL.—When authorized by treaty or executive agreement, the Secretary may station customs officers in foreign countries for the purpose of examining persons and merchandise prior to their arrival in the United States.

"(b) FUNCTIONS AND DUTIES.—Customs officers stationed in a foreign country under subsection (a) may exercise such functions and perform such duties (including inspections, searches, seizures and arrests) as may be permitted by the treaty, agreement or law of the country in which they are stationed.

"(c) COMPLIANCE.—The Secretary may by regulation require compliance with the customs laws of the United States in a foreign country and, in such a case the customs laws and other civil and criminal laws of the United States relating to the importation of merchandise, filing of false statements, and the unlawful removal of merchandise from customs custody shall apply in the same manner as if the foreign station is a port of entry within the customs territory of the United States.

"(d) SEIZURES.—When authorized by treaty, agreement or foreign law, merchandise which is subject to seizure or forfeiture under United States law may be seized in a foreign country and transported under customs custody to the customs territory to the United States to be proceeded against under the customs law.

"(e) STATIONING OF FOREIGN CUSTOMS OFFICERS IN THE UNITED STATES.—The Secretary of State, in coordination with the Secretary, may enter into agreements with any foreign country authorizing the stationing in the United States of customs officials of that country (if similar privileges are extended by that country to United States officials) for the purpose of insuring that persons and merchandise going directly to that country from the United States comply with the customs and other laws of that country governing the importation of merchandise. Any foreign customs official stationed in the United States under this subsection may exercise such functions and perform such duties as United States officials may be authorized to perform in that foreign country under reciprocal agreement.

"(f) APPLICATION OF CERTAIN LAWS.—When customs officials of a foreign country are stationed in the United States in accordance with subsection (e), and if similar provisions are applied to United States officials stationed in that country—

"(1) sections 111 and 1114 of title 18, United States Code, shall apply as if the officials were designated in those sections; and

"(2) any person who in any matter before a foreign customs official stationed in the United States knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, is liable for a fine of not more than $10,000 or imprisonment for not more than 5 years, or both.".

PART 2—UNDERCOVER CUSTOMS OPERATIONS

SEC. 3131. UNDERCOVER INVESTIGATIVE OPERATIONS OF THE CUSTOMS SERVICE.

(a) CERTIFICATION REQUIRED FOR EXEMPTION OF UNDERCOVER OPERATIONS FROM CERTAIN LAWS.—With respect to any undercover investigative operation of the United States Customs Service (hereinafter in this section referred to as the "Service") which is necessary for the detection and prosecution of offenses against the United States which are within the jurisdiction of the Secretary of the Treasury—

(1) sums authorized to be appropriated for the Service may be used—

(A) to purchase property, buildings, and other facilities, and to lease space, within the United States, the District of Columbia, and the territories and possessions of the United States without regard to—

(i) sections 1341 and 3324 of title 31, United States Code,

(ii) sections 3732(a) and 3741 of the Revised Statutes of the United States (41 U.S.C. 11(a) and 22),

(iii) section 305 of the Act of June 30, 1949 (63 Stat. 396; 41 U.S.C. 255),

(iv) the third undesignated paragraph under the heading "Miscellaneous" of the Act of March 3, 1877 (19 Stat. 370; 40 U.S.C. 34), and

(v) section 304 (a) and (c) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254 (a) and (c)), and

(B) to establish or to acquire proprietary corporations or business entities as part of the undercover operation, and to operate such corporations or business entities on a commercial basis, without regard to sections 9102 and 9103 of title 31, United States Code;

(2) sums authorized to be appropriated for the Service and the proceeds from the undercover operation, may be deposited in banks or other financial institutions without regard to the provisions of section 648 of title 18, United States Code, and section 3302 of title 31, United States Code; and

(3) the proceeds from the undercover operation may be used to offset necessary and reasonable expenses incurred in such operation without regard to the provisions of section 3302 of title 31, United States Code;
only upon the written certification of the Commissioner of Customs (or, if designated by the Commissioner the Deputy or an Assistant Commissioner of Customs) that any action authorized by paragraph (1), (2), or (3) of this subsection is necessary for the conduct of such undercover operation.

(b) LIQUIDATION OF CORPORATIONS AND BUSINESS ENTITIES.—If a corporation or business entity established or acquired as part of an undercover operation under paragraph (1)(B) of subsection (a) with a net value over $50,000 is to be liquidated, sold, or otherwise disposed of, the Service, as much in advance as the Commissioner or his designee determines is practicable, shall report the circumstances to the Secretary of the Treasury and the Comptroller General. The proceeds of the liquidation, sale, or other disposition, after obligations are met, shall be deposited in the Treasury of the United States as miscellaneous receipts.

(c) DEPOSIT OF PROCEEDS.—As soon as the proceeds from an undercover investigative operation with respect to which an action is authorized and carried out under paragraphs (2) and (3) of subsection (a) are no longer necessary for the conduct of such operation, such proceeds or the balance of such proceeds remaining at the time shall be deposited into the Treasury of the United States as miscellaneous receipts.

(d) AUDITS.—(1) The Service shall conduct a detailed financial audit of each undercover investigative operation which is closed in each fiscal year, and

(A) submit the results of the audit in writing to the Secretary of the Treasury; and

(B) not later than 180 days after such undercover operation is closed, submit a report to the Congress concerning such audit.

(2) The Service shall also submit a report annually to the Congress specifying as to its undercover investigative operations—

(A) the number, by programs, of undercover investigative operations pending as of the end of the 1-year period for which such report is submitted;

(B) the number, by programs, of undercover investigative operations commenced in the 1-year period preceding the period for which such report is submitted; and

(C) the number, by programs, of undercover investigative operations closed in the 1-year period preceding the period for which such report is submitted and, with respect to each such closed undercover operation, the results obtained and any civil claims made with respect thereto.

(e) DEFINITIONS.—For purposes of subsection (d)—

(1) The term "closed" refers to the earliest point in time at which—

(A) all criminal proceedings (other than appeals) are concluded, or

(B) covert activities are concluded, whichever occurs later.

(2) The term "employees" means employees, as defined in section 2105 of title 5 of the United States Code, of the Service.

(3) The terms "undercover investigative operation" and "undercover operation" mean any undercover investigative operation of the Service—

(A) in which—

(i) the gross receipts (excluding interest earned) exceed $50,000, or

(ii) expenditures (other than expenditures for salaries of employees) exceed $150,000; and

(B) which is exempt from section 3302 or 9102 of title 31, United States Code;

except that subparagraphs (A) and (B) shall not apply with respect to the report required under paragraph (2) of subsection (d).

PART 3—CUSTOMS SERVICE AUTHORIZATIONS AND FORFEITURE FUND

SEC. 3141. AUTHORIZATION OF APPROPRIATIONS FOR FISCAL YEAR 1987 FOR THE UNITED STATES CUSTOMS SERVICE.

(a) AUTHORIZATIONS.—Section 301(b) of the Customs Procedural Reform and Simplification Act of 1978 (19 U.S.C. 2075(b)) is amended as follows:

"(b)(1) There are authorized to be appropriated to the Department of the Treasury not to exceed $1,001,180,000 for the salaries and expenses of the United States Customs Service for fiscal year 1987; of which—

"(A) $749,131,000 is for salaries and expenses to maintain current operating levels, and includes such sums as may be necessary to complete the testing of the prototype of the automatic license plate reader program and to implement that program;

"(B) $80,999,000 is for the salaries and expenses of additional personnel to be used in carrying out drug enforcement activities; and

"(C) $171,050,000 is for the operation and maintenance of the air interdiction program of the Service, of which—

"(i) $93,500,000 is for additional aircraft, communications enhancements, and command, control, communications, and intelligence centers, and

"(ii) $350,000 is for a feasibility and application study for a low-level radar detection system in collaboration with the Los Alamos National Laboratory.

"(2) No part of any sum that is appropriated under the authority of paragraph (1) may be used to close any port of entry at which, during fiscal year 1986—

"(A) not less than 2,500 merchandise entries (including informal entries) were made; and

"(B) not less than $1,500,000 in customs revenues were assessed.".

(b) SPECIAL EFFECTIVE DATE RULE.—If the bill H.R. 5300 (providing for reconciliation of the budget for fiscal year 1987) is enacted and includes an amendment to section 301(b) of the Customs Procedural Reform and Simplification Act of 1978 which is identical to the amendment made by subsection (a) of this section, then the amendment made by subsection (a) shall have no effect.

SEC. 3142. CUSTOMS FORFEITURE FUND.

(a) AMENDMENT.—Section 613a of the Tariff Act of 1930 (19 U.S.C. 1613b) is amended—

(1) by amending subsection (a)—

(A) by striking out "1987" in the first sentence and inserting "1991";

(B) by inserting "(including investigative costs leading to seizures)" after "seizure" in paragraph (1);

(C) by inserting "and" after the semicolon at the end of paragraph (4);

(D) by striking out paragraph (5);

(E) by redesignating paragraph (6) as paragraph (5); and

(F) by amending the last sentence to read as follows:

"In addition to the purposes described in paragraphs (1) through (5), the fund is available for—

"(i) purchases by the Customs Service of evidence of—

"(I) smuggling of controlled substances, and

"(II) violations of the currency and foreign transaction reporting requirements of chapter 51 of title 31, United States Code, if there is a substantial probability that the violations of these requirements are related to the smuggling of controlled substances;

"(ii) the equipping for law enforcement functions of any vessel, vehicle, or aircraft available for official use by the Customs Service;

"(iii) the reimbursement, at the discretion of the Secretary, of private citizens for expenses incurred by them in cooperating with the Customs Service in investigations and undercover law enforcement operations; and

"(iv) the publicizing of the availability of rewards under section 619."; and

(2) by amending subsection (f) to read as follows:

"(f)(1) There are authorized to be appropriated from the fund for each of the fiscal years beginning with fiscal year 1987 not more than $20,000,000.

"(2) At the end of each of fiscal years 1987, 1988, 1989, and 1990, any amount in the fund in excess of $20,000,000 shall be deposited in the general fund of the Treasury. At the end of fiscal year 1991, any amount remaining in the fund shall be deposited in the general fund of the Treasury, and the fund shall cease to exist.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect October 1, 1986.

PART 4—MISCELLANEOUS CUSTOMS AMENDMENTS

SEC. 3151. RECREATIONAL VESSELS.

Section 12109(b) of title 46, United States Code, is amended by adding at the end the following: "Such vessel must, however, comply with all customs requirements for reporting arrival under section 433 of the Tariff Act of 1930 (19 U.S.C. 1433) and all persons aboard such a pleasure vessel shall be subject to all applicable customs regulations.".

SEC. 3152. ASSISTANCE FOR CUSTOMS OFFICERS.

Section 3071 of the Revised Statutes of the United States (19 U.S.C. 507) is amended to read as follows:

"SEC. 3071. (a) Every customs officer shall—

"(1) upon being questioned at the time of executing any of the powers conferred upon him, make known his character as an officer of the Federal Government; and

"(2) have the authority to demand the assistance of any person in making any arrest, search, or seizure authorized by any law enforced or administered by customs officers, if such assistance may be necessary.

If a person, without reasonable excuse, neglects or refuses to assist a customs officer upon proper demand under paragraph (2), such person is guilty of a misdemeanor and subject to a fine of not more than $1,000.

"(b) Any person other than an officer or employee of the United States who renders assistance in good faith upon the request of a customs officer shall not be held liable for any civil damages as a result of the rendering of such assistance if the assisting person acts as an ordinary, reasonably prudent person would have acted under the same or similar circumstances.".

SEC. 3153. REPORTS ON EXPORTS AND IMPORTS OF MONETARY INSTRUMENTS.

Section 5316(a)(2) of title 31, United States Code, is amended by striking out "$5,000" and inserting in lieu thereof "$10,000".

PART 5—AMENDMENTS TO THE CONTROLLED SUBSTANCES IMPORT AND EXPORT ACT

SEC. 3161. POSSESSION, MANUFACTURE, OR DISTRIBUTION FOR PURPOSES OF UNLAWFUL IMPORTATION.

(a) AMENDMENT TO ACT.—Section 1009 of the Controlled Substances Import and Export Act (21 U.S.C. 959) is amended—

(1) by inserting "POSSESSION," in the heading;

(2) by striking out "It shall" and inserting in lieu thereof "(a) It shall";

(3) by striking out "This section" and inserting in lieu thereof "(c) This section";

(4) by inserting "or into waters within a distance of 12 miles of the coast of the United States" after "United States" each place it appears in subsection (a); and

(5) by inserting after subsection (a) the following new subsection:

"(b) It shall be unlawful for any United States citizen on board any aircraft, or any person on board an aircraft owned by a United States citizen or registered in the United States, to—

"(1) manufacture or distribute a controlled substance; or

"(2) possess a controlled substance with intent to distribute.".

(b) CONFORMING AMENDMENT.—The table of contents of the Comprehensive Drug Abuse Prevention and Control Act of 1970 is amended by striking out "Manufacture" in the item relating to section 1009 and inserting in lieu thereof "Possession, manufacture".

Subtitle C—Maritime Drug Law Enforcement Prosecution Improvements Act of 1986

SEC. 3201. SHORT TITLE.

This subtitle may be cited as the "Maritime Drug Law Enforcement Prosecution Improvements Act of 1986".

SEC. 3202. IMPROVEMENT OF PUBLIC LAW 96-350.

The Act entitled "An Act to facilitate increased enforcement by the Coast Guard of laws relating to the importation of controlled substances, and for other purposes", approved September 15, 1980 (Public Law 96-350; 94 Stat. 1159) is amended by striking everything immediately after the enacting clause and inserting in lieu thereof the following: "That this Act may be cited as the 'Maritime Drug Law Enforcement Act'.

"SEC. 2. The Congress finds and declares that trafficking in controlled substances aboard vessels is a serious international problem and is universally condemned. Moreover, such trafficking presents a specific threat to the security and societal well-being of the United States.

"SEC. 3. (a) It is unlawful for any person on board a vessel of the United States, or on board a vessel subject to the jurisdiction of the United States, to knowingly or intentionally manufacture or distribute, or to possess with intent to manufacture or distribute, a controlled substance.

"(b) For purposes of this section, a 'vessel of the United States' means—

"(1) a vessel documented under chapter 121 of title 46, United States Code, or a vessel numbered as provided in chapter 123 of that title;

"(2) a vessel owned in whole or part by—

"(A) the United States or a territory, commonwealth, or possession of the United States;

"(B) a State or political subdivision thereof;

"(C) a citizen or national of the United States; or

"(D) a corporation created under the laws of the United States or any State, the District of Columbia, or any territory, commonwealth, or possession of the United States;

unless the vessel has been granted the nationality of a foreign nation in accordance with article 5 of the 1958 Convention on the High Seas; and

"(3) a vessel that was once documented under the laws of the United States and, in violation of the laws of the United States, was either sold to a person not a citizen of the United States or placed under foreign registry or a foreign flag, whether or not the vessel has been granted the nationality of a foreign nation.

"(c)(1) For purposes of this section, a 'vessel subject to the jurisdiction of the United States' includes—

"(A) a vessel without nationality;

"(B) a vessel assimilated to a vessel without nationality, in accordance with paragraph (2) of article 6 of the 1958 Convention on the High Seas;

"(C) a vessel registered in a foreign nation where the flag nation has consented or waived objection to the enforcement of United States law by the United States;

"(D) a vessel located within the customs waters of the United States; and

"(E) a vessel located in the territorial waters of another nation, where the nation consents to the enforcement of United States law by the United States.

Consent or waiver of objection by a foreign nation to the enforcement of United States law by the United States under paragraph (C) or (E) of this paragraph may be obtained by radio, telephone, or similar oral or electronic means, and may be proved by certification of the Secretary of State or the Secretary's designee.

"(2) For purposes of this section, a 'vessel without nationality' includes—

"(A) a vessel aboard which the master or person in charge makes a claim of registry, which claim is denied by the flag nation whose registry is claimed; and

"(B) any vessel aboard which the master or person in charge fails, upon request of an officer of the United States empowered to enforce applicable provisions of United States law, to make a claim of nationality or registry for that vessel.

A claim of registry under subparagraph (A) may be verified or denied by radio, telephone, or similar oral or electronic means. The denial of such claim of registry by the claimed flag nation may be proved by certification of the Secretary of State or the Secretary's designee.

"(3) For purposes of this section, a claim of nationality or registry only includes:

"(A) possession on board the vessel and production of documents evidencing the vessel's nationality in accordance with article 5 of the 1958 Convention on the High Seas;

"(B) flying its flag nation's ensign or flag; or

"(C) a verbal claim of nationality or registry by the master or person in charge of the vessel.

"(d) A claim of failure to comply with international law in the enforcement of this Act may be invoked solely by a foreign state, and a failure to comply with international law shall not divest a court of jurisdiction or otherwise constitute a defense to any proceeding under this Act.

"(e) This section does not apply to a common or contract carrier, or an employee thereof, who possesses or distributes a controlled substance in the lawful and usual course of the carrier's business or to a public vessel of the United States, or any person on board such a vessel who possesses or distributes a controlled substance in the lawful course of such person's duties, if the controlled substance is a part of the cargo entered in the vessel's manifest and is intended to be lawfully imported into the country of destination for scientific, medical, or other legitimate purposes. It shall not be necessary for the United States to negative the exception set forth in this subsection in any complaint, information, indictment, or other pleading or in any trial or other proceeding. The burden of going forward with the evidence with respect to this exception is upon the person claiming its benefit.

"(f) Any person who violates this section shall be tried in the United States district court at the point of entry where that person enters the United States, or in the United States District Court of the District of Columbia.

"(g)(1) Any person who commits an offense defined in this section shall be punished in accordance with the penalties set forth in section 1010 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 960).

"(2) Notwithstanding paragraph (1) of this subsection, any person convicted of an offense under this Act shall be punished in accordance with the penalties set forth in section 1012 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 962) if such offense is a second or subsequent offense as defined in section 1012(b) of that Act.

"(h) This section is intended to reach acts of possession, manufacture, or distribution committed outside the territorial jurisdiction of the United States.

"(i) The definitions in the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802) apply to terms used in this Act.

"(j) Any person who attempts or conspires to commit any offense defined in this Act is punishable by imprisonment or fine, or both, which may not exceed the maximum punishment prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

"SEC. 3. Any property described in section 511(a) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 881(a)) that is used or intended for use to commit, or to facilitate the commission of, an offense under this Act shall be subject to seizure and forfeiture in the same manner as similar property seized or forfeited under section 511 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 881).".

Subtitle D—Coast Guard

SEC. 3251. COAST GUARD DRUG INTERDICTION ENHANCEMENT.

(a) ADDITIONAL AUTHORIZATIONS FOR THE COAST GUARD.—

(1) There are authorized to be appropriated for Acquisition, Construction, and Improvements of the Coast Guard, $76,000,000.

(2) There are hereby authorized to be appropriated for Operating Expenses of the Coast Guard, $39,000,000. This amount shall be used to increase the full-time equivalent strength level for the Coast Guard for active duty personnel for fiscal year 1987 to 39,220.

(b) AMOUNTS IN ADDITION TO OTHER AMOUNTS.—The amounts authorized to be appropriated for the Coast Guard by this section are in addition to any amounts otherwise authorized by law.

(c) AUTHORIZATION ENHANCEMENT.—Nothing in this Act shall require the Coast Guard to recruit, compensate, train, purchase, or deploy any personnel or equipment except to the extent that—

(1) additional appropriations are made available in appropriations Acts for that purpose; or

(2) funds are transferred to the Secretary of Transportation for that purpose pursuant to this Act.

Subtitle E—United States-Bahamas Drug Interdiction Task Force

SEC. 3301. ESTABLISHMENT OF A UNITED STATES-BAHAMAS DRUG INTERDICTION TASK FORCE.

(a) AUTHORIZATION OF APPROPRIATIONS.—

(1) ESTABLISHMENT OF A UNITED STATES-BAHAMAS DRUG INTERDICTION TASK FORCE.—(A) There is authorized to be established a United States-Bahamas Drug Interdiction Task Force to be operated jointly by the United States Government and the Government of the Bahamas.

(B) The Secretary of State, the Commandant of the Coast Guard, the Commissioner of Customs, the Attorney General, and the head of the National Narcotics Border Interdiction System (NNBIS), shall upon enactment of this Act, immediately commence negotiations with the Government of the Bahamas to enter into a detailed agreement for the establishment and operation of a new drug interdiction task force, including plans for (i) the joint operation and maintenance of any drug interdiction assets authorized for the task force in this section and section 3141, and (ii) any training and personnel enhancements authorized in this section and section 3141.

(C) The Attorney General shall report to the appropriate committees of Congress on a quarterly basis regarding the progress of the United States-Bahamas Drug Interdiction Task Force.

(2) AMOUNTS AUTHORIZED.—There are authorized to be appropriated, in addition to any other amounts authorized to be appropriated in this title, $10,000,000 for the following:

(A) $9,000,000 for 3 drug interdiction pursuit helicopters for use primarily for operations of the United States-Bahamas Drug Interdiction Task Force established under this section; and

(B) $1,000,000 to enhance communications capabilities for the operation of a United States-Bahamas Drug Interdiction Task Force established under this section.

(3) COAST GUARD-BAHAMAS DRUG INTERDICTION DOCKING FACILITY.—(A) There is authorized to be appropriated for acquisition, construction, and improvements for the Coast Guard for fiscal year 1987, $5,000,000, to be used for initial design engineering, and other activities for construction of a drug interdiction docking facility in the Bahamas to facilitate Coast Guard and Bahamian drug interdiction operations in and through the Bahama Islands. Of the amounts authorized to be appropriated in this subsection, such sums as may be necessary shall be available for necessary communication and air support.

The Commandant of the Coast Guard shall use such amounts appropriated pursuant to the authorization in this subsection as may be necessary to establish a repair,

maintenance, and boat lift facility to provide repair and maintenance services for both Coast Guard and Bahamian marine drug interdiction equipment, vessels, and related assets.

(b) CONCURRENCE BY SECRETARY OF STATE.—Programs authorized by this section may be carried out only with the concurrence of the Secretary of State.

Subtitle F—Command, Control, Communications, and Intelligence Centers

SEC. 3351. ESTABLISHMENT OF COMMAND, CONTROL, COMMUNICATIONS, AND INTELLIGENCE CENTERS (C-3I).

There are authorized to be appropriated $25,000,000 to the United States Customs Service for the establishment of command, control, communications, and intelligence (C-3I) centers, including sector operations centers and a national command, control, communications, and intelligence (C-3I) center, in locations within the United States. The coordination of the establishment and location of such C-3I centers shall be conducted by the Commissioner of Customs together with the Commandant of the Coast Guard; the Attorney General of the United States; and the National Narcotics Border Interdiction System (NNBIS).

Subtitle G—Transportation Safety

SEC. 3401. AIR SAFETY.

(a)(1) Section 902(b) of the Federal Aviation Act of 1958 (49 U.S.C. App. 1472(b)) is amended by adding at the end the following new paragraph:

"(3) Nothing in this subsection or in any other provision of this Act shall preclude a State from establishing criminal penalties, including providing for forfeiture or seizure of aircraft, for a person who—

"(A) knowingly and willfully forges, counterfeits, alters, or falsely makes an aircraft registration certificate,

"(B) knowingly sells, uses, attempts to use, or possesses with intent to use a fraudulent aircraft registration certificate,

"(C) knowingly and willfully displays or causes to be displayed on any aircraft any marks that are false or misleading as to the nationality or registration of the aircraft, or

"(D) obtains an aircraft registration certificate from the Administrator by knowingly and willfully falsifying, concealing, or covering up a material fact, or making a false, fictitious, or fraudulent statement or representation, or making or using any false writing or document knowing the writing or document to contain any false, fictitious, or fraudulent statement or entry.".

(2) Section 501 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1401) is amended by adding at the end the following new subsection:

"INSPECTION BY LAW ENFORCEMENT OFFICERS

"(g) The operator of an aircraft shall make available for inspection an aircraft's certificate of registration upon request by a Federal, State, or local law enforcement officer.".

(3) That portion of the table of contents contained in the first section of the Federal Aviation Act of 1958 which appears under the side heading

"Sec. 501. Registration of aircraft nationality."

is amended by adding at the end the following:

"(g) Inspection by law enforcement officers.".

(b)(1) Subsection (q) of section 902 of the Federal Aviation Act of 1958 (49 U.S.C. 1472(q)) is amended to read as follows:

"VIOLATIONS IN CONNECTION WITH TRANSPORTATION OF CONTROLLED SUBSTANCES

"(q)(1) It shall be unlawful, in connection with an act described in paragraph (2) and with knowledge of such act, for any person—

"(A) who is the owner of an aircraft eligible for registration under section 501, to knowingly and willfully operate, attempt to operate, or permit any other person to operate such aircraft if the aircraft is not registered under section 501 or the certificate of registration of the aircraft is suspended or revoked, or if such person does not have proper authorization to operate or navigate the aircraft without registration for a period of time after transfer of ownership;

"(B) to operate or attempt to operate an aircraft eligible for registration under section 501 knowing that such aircraft is not registered under section 501, that the certificate of registration is suspended or revoked, or that such person does not have proper authorization to operate or navigate the aircraft without registration for a period of time after transfer of ownership;

"(C) to knowingly and willfully serve, or attempt to serve, in any capacity as an airman without a valid airman certificate authorizing such person to serve in such a capacity;

"(D) to knowingly and willfully employ for service or utilize any airman who does not possess a valid airman certificate authorizing such person to serve in such capacity;

"(E) to knowingly and willfully operate an aircraft in violation of any rule, regulation, or requirement issued by the Administrator of the Federal Aviation Administration with respect to the display of navigation or anticollision lights; and

"(F) to knowingly operate an aircraft with a fuel tank or fuel system that has been installed or modified on the aircraft, unless such tank or system and the installation or modification of such tank or system is in accordance with all applicable rules, regulations, and requirements of the Administrator.

"(2) The act referred to in paragraph (1) is the transportation by aircraft of any controlled substance or the aiding or facilitating of a controlled substance offense where such act is punishable by death or imprisonment for a term exceeding one year under a State or Federal law or is provided in connection with any act that is punishable by death or imprisonment for a term exceeding one year under a State or Federal law relating to a controlled substance (other than a law relating to simple possession of a controlled substance).

"(3) A person violating this subsection shall be subject to a fine not exceeding $25,000, or imprisonment not exceeding 5 years, or both.

"(4) A person who, in connection with transportation described in paragraph (2), operates an aircraft on which a fuel tank or fuel system has been installed or modified and does not carry aboard the aircraft any certificate required to be issued by the Administrator for such installation or modification shall be presumed to have violated subparagraph (F) of paragraph (1).

"(5) In the case of a violation of subparagraph (F) of paragraph (1), the fuel tank or fuel system and the aircraft involved shall be subject to seizure and forfeiture. The provisions of law relating to—

"(A) the seizure, summary and judicial forfeiture, and condemnation of property for violation of the customs laws;

"(B) the disposition of such property or the proceeds from the sale thereof;

"(C) the remission or mitigation of such forfeitures; and

"(D) the compromise of claims and the award of compensation to informers in respect of such forfeitures;

shall apply to seizures and forfeitures under this paragraph. The Secretary may authorize such officers and agents as are necessary to carry out seizures and forfeitures under this paragraph, and such officers and agents shall have the powers and duties given to customs officers with respect to the seizure and forfeiture of property under the customs laws.

"(6) For purposes of this subsection, the term 'controlled substance' has the meaning given to such term by section 102 of the Controlled Substances Act (21 U.S.C. 802).".

(2) That portion of the table of contents of the Federal Aviation Act of 1958 which appears under the side heading

"Sec. 902. Criminal penalties."

is amended by striking the item relating to subsection (q) and inserting the following::

"(q) Violations in connection with transportation of controlled substances.".

(c) Section 904(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1474(a)) is amended—

(1) by striking "$500" each place it appears and inserting in lieu thereof "$5,000";

(2) by inserting after the second sentence the following: "In addition to any other penalty, if any controlled substance described in section 584 of the Tariff Act of 1930 (19 U.S.C. 1584) is found on board of, or to have been unladen from, an aircraft subject to section 1109(b) and (c) of this Act, the owner or person in charge of such aircraft shall be subject to the penalties provided for in section 584 of the Tariff Act of 1930 (19 U.S.C. 1584), unless such owner or person is able to demonstrate, by a preponderance of the evidence, that such owner or person did not know, and could not, by the exercise of the highest degree of care and diligence, have known, that any such controlled substance was on board."; and

(3) by amending the third sentence to read as follows: "In the case the violation is by the owner, operator, or person in command of the aircraft, any penalty imposed by this section shall be a lien against the aircraft.".

(d)(1) Section 1109 of the Federal Aviation Act of 1958 (49 App. U.S.C. 1509) is amended by adding at the end thereof the following:

"REPORTING TRANSFER OF OWNERSHIP

"(f) Any person having an ownership interest in any aircraft for which a certificate of registration has been issued under this Act shall, upon the sale, conditional sale, transfer or conveyance of such ownership interest, file within 15 days such notice as the Secretary of the Treasury may by regulation require. The filing of a notice under this subsection shall not relieve any person from the filing requirements of section 501 or 503 of this Act.".

(2) That portion of the table of contents of the Federal Aviation Act of 1958 which appears under the side heading

"Sec. 1109. Application of existing laws relating to foreign commerce."

is amended by adding at the end thereof the following:

"(f) Reporting transfer of ownership.".

SEC. 3402. DRUGS AND HIGHWAY SAFETY.

(a) STUDY.—The Secretary of Transportation shall conduct a study to determine the relationship between the usage of controlled

substances and highway safety. Such study shall include a simulation of driving conditions, emergency situations, and driver performance under various drug and dosage conditions. Such study shall determine the incidence of controlled substance usage in highway accidents resulting in fatalities and the dosage levels for controlled substances which are most likely to result in impairment of driver performance.

(b) REPORT.—Not later than one year after the date of the enactment of this Act, the Secretary of Transportation shall submit to Congress a report on the results of the study conducted under subsection (a).

SEC. 3403. SAVINGS PROVISION.

In any proceeding under section 11344 of title 49, United States Code, involving an application by a rail carrier (or a person controlled by or affiliated with a rail carrier) to acquire a motor carrier, the Interstate Commerce Commission, and any Federal court reviewing action of the Commission, shall follow the standards set forth in the Commission decision in Ex Parte No. 438 if the applicant rail carrier, between July 20, 1984, and September 30, 1986 (1) filed an application with the Commission to acquire a motor carrier, (2) entered into a contract or signed a letter of intent to acquire a motor carrier, or (3) made a public tender offer to acquire a motor carrier.

Subtitle H—Department of Justice Funds for Drug Interdiction Operations in Hawaii

SEC. 3451. ADDITIONAL FUNDS FOR THE DEPARTMENT OF JUSTICE.

There are authorized to be appropriated to the Department of Justice for fiscal year 1987, in addition to any other amounts authorized to be appropriated to the Department for such fiscal year, $7,000,000 for helicopters with forward looking infrared radiation detection devices for drug interdiction operations in Hawaii.

TITLE IV—DEMAND REDUCTION

Subtitle A—Prevention Initiatives and Treatment Services

SEC. 4001. SHORT TITLE.

This subtitle may be cited as the "Alcohol and Drug Abuse Prevention and Treatment Act of 1986".

PART I—FINANCIAL ASSISTANCE TO STATES AND COMMUNITIES

SEC. 4002. ALLOTMENTS TO STATES.

(a) NEW AUTHORITY.—Title XIX of the Public Health Service Act is amended by inserting after part B the following:

"PART C—EMERGENCY SUBSTANCE ABUSE TREATMENT AND PREVENTION

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 1921. For the purpose of the Agency for Substance Abuse Prevention, treatment program evaluations under section 1923, and for allotments under sections 1924 and 1925, there is authorized to be appropriated $228,000,000 for fiscal year 1987.

"AGENCY FOR SUBSTANCE ABUSE PREVENTION

"SEC. 1922. Of the funds appropriated under section 1921, $28,000,000 shall be made available for the Agency for Substance Abuse Prevention established under section 508.

"TREATMENT PROGRAM EVALUATIONS

"SEC. 1923. Five percent of the funds appropriated under section 1921 which remain after funds are made available under section 1922 shall be used by the Secretary, acting through the Alcohol, Drug Abuse, and Mental Health Administration, to develop and evaluate alcohol and drug abuse treatment programs to determine the most effective forms of treatment. Such programs may be developed and evaluated through grants, contracts, and cooperative agreements provided private nonprofit entities. In carrying out this section, the Secretary shall assess the comparative effectiveness of various treatment forms for specific patient groups.

"ALLOTMENTS FOR TREATMENT SERVICES FOR ALCOHOL AND DRUG ABUSE

"SEC. 1924. (a) From three-fourths of the amount appropriated under section 1921 and available for allotments, the Secretary shall allot to each State an amount determined by a formula prescribed by the Secretary which is based equally on the population of each State in the age group 15 through 65 and on the population of each State weighted by its relative per capita income, except that the Secretary shall obligate 1.5 percent of the amount available for allotments to the Commonwealth of Puerto Rico, the Virgin Islands, the Northern Mariana Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands on the basis of a formula established on the relative populations of such areas. Any amount paid to a State from its allotment and remaining unobligated at the end of fiscal year 1987 shall be returned to the Treasury.

"(b)(1) Amounts paid to a State under its allotment under subsection (a) shall be used to—

"(A) increase the availability of treatment and rehabilitation services for alcohol and drug abuse,

"(B) provide treatment and rehabilitation services for high risk youth, and

"(C) provide access to vocational training, job counseling, and education equivalency programs for alcohol and drug abusers.

"(2) For purposes of paragraph (1)(B), the term 'high risk youth' means an individual who has not attained the age of 21 years, who is at high risk of becoming, or who has become, a drug abuser or an alcohol abuser, and who—

(A) is identified as a child of a substance abuser,

(B) is a victim of physical, sexual, or psychological abuse,

(C) has dropped out of school,

(D) has become pregnant,

(E) is economically disadvantaged,

(F) has committed a violent or delinquent act,

(G) has experienced mental health problems,

(H) has attempted suicide, or

(I) is disabled by injuries.".

"ALLOTMENTS FOR COMMUNITY-BASED PREVENTION ACTIVITIES

"SEC. 1925. (a) From one-fourth of the amounts appropriated under section 1921 and available for allotments, the Secretary, acting through the Agency for Substance Abuse Prevention established under section 507, shall allot to each State an amount determined on the basis of the relative population of each State in the age group of 5 through 24, except that the Secretary shall obligate 1.5 percent of the amount available for allotments to the Commonwealth of Puerto Rico, the Virgin Islands, the Northern Mariana Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands on the basis of a formula established on the relative populations of such areas.

"(b) Amounts paid to a State under its allotment under subsection (a) shall be used for—

"(1) the development by the State of a substance abuse prevention education program,

"(2) the development of community-based substance abuse prevention activities among school-aged children which will make the use of drugs unattractive to such children,

"(3) the development by the State of educational programs relating to the risks presented by alcohol and drug abuse to pregnant women and children, and

"(4) the development by the State of an education program relating to the risks of acquired immune deficiency syndrome among individuals who use drugs intravenously and relating to the transmittal of acquired immune deficiency syndrome from pregnant women to unborn children.

"GENERAL PROVISIONS

"SEC. 1926.(a) In order to receive an allotment under section 1924 or 1925 each State shall transmit an application to the Secretary. Each such application shall be in such form and transmitted by such date as the Secretary shall require. Each such application shall contain a plan for the use of amounts paid to the State under its allotment in accordance with this section and section 1924 or 1925. Each State shall include with its application a separate statement which shall contain—

"(1) such information as the Secretary may prescribe,

"(2) a description of the manner in which programs and activities conducted with payments under the allotment will be coordinated with other public and private programs and activities directed toward individuals who abuse alcohol and drugs,

"(3) assurances that, in the preparation of any application under this section, the State will consult with local governments and public and private entities, including community based organizations, involved in the provision of services for the prevention and treatment of alcohol abuse and drug abuse, and

"(4) assurances that payments made to the State under its allotment will supplement and not supplant any State or local expenditures for the prevention and treatment of alcohol abuse and drug abuse that would have been made in the absence of such payments.

"(b) A State may not use amounts paid to it under its allotment under section 1924 or 1925 to—

"(1) provide inpatient hospital services,

"(2) make cash payments to intended recipients of health services,

"(3) purchase or improve land, purchase, construct, or permanently improve (other than minor remodeling) any building or other facility, or purchase major medical equipment,

"(4) satisfy any requirement for the expenditure of non-Federal funds as a condition for the receipt of Federal funds,

"(5) pay administrative costs, or

"(6) provide financial assistance to any entity other than a public or nonprofit private entity.

"(c) The provisions of part B which are not inconsistent with subsection (a) or (b) or sections 1924 or 1925 shall apply with respect to allotments made under sections 1924 and 1925.".

(b) REPORT.—The Secretary shall report to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate within 180 days of the date of the enactment of this Act on the activities of the Secretary under section 1923 of the Public Health Service Act.

PART II—AGENCY FOR SUBSTANCE ABUSE PREVENTION

SEC. 4003. AGENCY FOR SUBSTANCE ABUSE PREVENTION.

(a) ESTABLISHMENT.—Part A of title V of the Public Health Service Act is amended by adding at the end the following:

"AGENCY FOR SUBSTANCE ABUSE PREVENTION

"SEC. 507. (a) There is established in the Alcohol, Drug Abuse, and Mental Health Administration the Agency for Substance Abuse Prevention (hereinafter in this section referred to as the 'Agency'). The Agency shall be headed by a Director appointed by the Secretary from individuals with extensive experience or academic qualifications in the prevention of drug or alcohol abuse.

"(b) The Director of the Agency shall—

"(1) sponsor regional workshops on the prevention of drug and alcohol abuse,

"(2) coordinate the findings of research sponsored by agencies of the Service on the prevention of drug and alcohol abuse,

"(3) develop effective drug and alcohol abuse prevention literature (including literature on the adverse effects of cocaine free base (known as 'crack'),

"(4) in cooperation with the Secretary of Education, assure the widespread dissemination of prevention materials among States, political subdivisions, and school systems,

"(5) support programs of clinical training of substance abuse counselors and other health professionals,

"(6) in cooperation with the Director of the Centers for Disease Control, develop educational materials to reduce the risks of acquired immune deficiency syndrome among intravenous drug abusers,

"(7) administer the allotment program under section 1925,

"(8) support the development of model, innovative, community-based programs to discourage alcohol and drug abuse among young people, and

"(9) prepare for distribution documentary films and public service announcements for television and radio to educate the public concerning the dangers to health resulting from the consumption of alcohol and drugs and, to the extent feasible, use appropriate private organizations and business concerns in the preparation of such announcements.

The Director may make grants and enter into contracts and cooperative agreements in carrying out this subsection.

"(c) The Secretary, acting through the Director of the Agency, shall establish a clearinghouse for alcohol and drug abuse information to assure the widespread dissemination of such information to States, political subdivisions, school systems, and the general public. The clearinghouse shall—

"(1) disseminate publications by the National Institute of Alcohol Abuse and Alcoholism, the National Institute of Drug Abuse, and the Secretary of Education concerning alcohol and drug abuse,

"(2) disseminate accurate information concerning the health effects of alcohol and drug abuse,

"(3) collect and disseminate information concerning successful drug abuse education and prevention curricula, and

"(4) collect and disseminate information on effective and ineffective school-based drug abuse education and prevention programs.".

(b) CONFORMING AMENDMENTS.—

(1) Subsection (e) of section 502 of the Public Health Service Act (42 U.S.C. 290aa-2) is repealed.

(2) Section 503(d) of the Public Health Service Act (42 U.S.C. 290aa-2(d)) is amended (1) by inserting "and" at the end of paragraph (2), by striking out ", and" at the end of paragraph (3) and inserting in lieu thereof a period, and (3) by striking out paragraph (4).

PART III—ADAMHA AND RELATED PROVISIONS

SEC. 4011. SHORT TITLE, REFERENCE.

(a) SHORT TITLE.—This part may be cited as the Alcohol, Drug Abuse, and Mental Health Amendments of 1986".

(b) REFERENCE.—Whenever in this part an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Public Health Service Act.

SEC. 4012. TECHNICAL REVISION OF ADAMHA.

Section 501 (42 U.S.C. 290aa) is amended to read as follows:

"ALCOHOL, DRUG ABUSE, AND MENTAL HEALTH ADMINISTRATION

"SEC. 501. (a) The Alcohol, Drug Abuse, and Mental Health Administration is an agency of the Service.

"(b) The following entities are agencies of the Alcohol, Drug Abuse, and Mental Health Administration:

"(1) The National Institute on Alcohol Abuse and Alcoholism.

"(2) The National Institute on Drug Abuse.

"(3) The National Institute of Mental Health.

"(4) The Agency for Substance Abuse Prevention.

"(c)(1) The Alcohol, Drug Abuse, and Mental Health Administration shall be headed by an Administrator (hereinafter in this title referred to as the 'Administrator') who shall be appointed by the President by and with the advice and consent of the Senate.

"(2) The Administrator, with the approval of the Secretary, may appoint a Deputy Administrator and may employ and prescribe the functions of such officers and employees, including attorneys, as are necessary to administer the activities to be carried out through the Administration.

"(d) The Secretary, acting through the Administrator—

"(1) shall supervise the functions of the agencies of the Administration in order to assure that the programs carried out through each such agency receive appropriate and equitable support and that there is cooperation among the agencies in the implementation of such programs;

"(2) shall assure that research at or supported by the Administration and each of its agencies is subject to review in accordance with section 507 and is in compliance with section 509A; and

"(3) shall assure that research on neuronal receptors and their role in mental health and substance abuse is provided adequate support.

"(e)(1) There shall be in the Administration an Associate Administrator for Prevention to whom the Administrator shall delegate the function of promoting the prevention research programs of the National Institute of Mental Health, the National Institute on Alcohol Abuse and Alcoholism, and the National Institute on Drug Abuse and coordinating such programs between the Institutes and between the Institutes and other public and private entities.

"(2) The Administrator, acting through the Associate Administrator for Prevention, shall annually submit to the Congress a report describing the prevention activities (including preventive medicine and health promotion) undertaken by the Administration and its agencies. The report shall include a detailed statement of the expenditures made for the activities reported on and the personnel used in connection with such activities.

"(f) The Administrator shall establish a process for the prompt and appropriate response to information provided the Administrator respecting (1) scientific fraud in connection with projects for which funds have been made available under this title, and (2) incidences of violations of the rights of human subjects of research for which funds have been made available under this title. The process shall include procedures for the receiving of reports of such information from recipients of funds under this title and taking appropriate action with respect to such fraud and violations.

"(g) The Secretary, acting through the Administrator, shall make grants to schools of the health professions and schools of social work to support the training of students in such schools in the identification and treatment of alcohol and drug abuse. Grants under this subsection shall be made from funds available under this title and section 303.

"(h) To educate the public with respect to the health hazards of alcoholism, alcohol abuse, and drug abuse, the Administrator shall use the clearinghouse established under section 508(c) to take such actions as may be necessary to ensure the widespread dissemination of current publications of the National Institute on Alcohol Abuse and Alcoholism and the National Institute on Drug Abuse relating to the most recent research findings with respect to such health hazards.

"(i)(1) The Administrator may obtain (in accordance with section 3109 of title 5, United States Code, but without regard to the limitation in such section on the number of days or the period of service) the services of not more than 20 experts or consultants who have scientific or professional qualifications. Such experts and consultants shall be obtained for the Administration and for each of its agencies.

"(2)(A) Experts and consultants whose services are obtained under paragraph (1) shall be paid or reimbursed for their expenses associated with traveling to and from their assignment location in accordance with sections 5724, 5724a(a)(1), 5724a(a)(3), and 5726(c) of title 5, United States Code.

"(B) Expenses specified in subparagraph (A) may not be allowed in connection with the assignment of an expert or consultant whose services are obtained under paragraph (1), unless and until the expert or consultant agrees in writing to complete the entire period of assignment or one year, whichever is shorter, unless separated or reassigned for reasons beyond the control of the expert or consultant that are acceptable to the Secretary. If the expert or consultant violates the agreement, the money spent by the United States for the expenses specified in subparagraph (A) is recoverable from the expert or consultant as a debt of the United States. The Secretary may waive in whole or in part a right of recovery under this subparagraph.

"(j) The Administrator shall, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title, relating to

classification and General Schedule pay rates, establish such technical and scientific peer review groups as are needed to carry out the requirements of section 507 and appoint and pay members of such groups, except that officers and employees of the United States shall not receive additional compensation for service as members of such groups. The Federal Advisory Committee Act shall not apply to the duration of a peer review group appointed under this subsection.

"(k)(1) The Alcohol, Drug Abuse, and Mental Health Advisory Board (hereinafter in this subsection referred to as the 'Board') shall—

"(A) periodically assess the national needs for alcoholism, alcohol abuse, drug abuse, and mental health services and the extent to which those needs are being met by State, local, and private programs and programs receiving funds under this title and parts B and C of title XIX, and

"(B) provide advice to the Secretary and the Administrator respecting activities carried out under this title and parts B and C of title XIX.

"(2)(A) The Board shall consist of 15 members appointed by the Secretary and such ex officio members from the National Institute on Alcohol Abuse and Alcoholism, the National Institute on Drug Abuse, and the National Institute of Mental Health as the Secretary may designate. Of the members appointed to the Board, at least 6 members shall represent State and private, nonprofit providers of prevention and treatment services for alcoholism, alcohol abuse, drug abuse, and mental illness, at least 6 members shall be individuals with expertise in public education and prevention services for alcoholism, alcohol abuse, drug abuse, and mental illness, and at least 3 members shall be appointed from members of the general public who are knowledgeable about alcoholism, alcohol abuse, drug abuse, and mental illness.

"(B) The term of office of a member appointed to the Board is 4 years, except that of the members first appointed to the Board—

"(i) 5 shall serve for terms of 1 year,

"(ii) 5 shall serve for terms of 2 years,

"(iii) 5 shall serve for terms of 3 years,

as designated by the Secretary at the time of appointment. Any member appointed to fill a vacancy occurring before the expiration of the term for which the predecessor of such member was appointed shall be appointed only for the remainder of such term. A member may serve after the expiration of the member's term until the successor of the member has taken office.

"(3)(A) Except as provided in subparagraph (B), members of the Board shall (i) be paid not more than the daily equivalent of the annual rate of basic pay in effect for grade GS–18 of the General Schedule for each day (including traveltime) during which they are engaged in the actual performance of duties vested in the Board, and (ii) while away from their homes or regular places of business and while serving in the business of the Board, be entitled to receive transportation expenses as prescribed by section 5703 of title 5, United States Code.

"(B) Members of the Board who are full-time officers or employees of the United States shall receive no additional pay, allowances, or benefits by reason of their service on the Board.

"(4) The Board may appoint such staff personnel as the Board considers appropriate.

"(5) The Secretary shall designate the chairman of the Board.

"(6) The Board shall meet at least 3 times each calendar year.

"(7) The Board shall report annually to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate on its activities during the prior year and shall include in such report such recommendations for legislation and administrative action as it deems appropriate.".

SEC. 4013. NATIONAL INSTITUTE OF MENTAL HEALTH.

Section 504(c) (42 U.S.C. 290aa–3(c)) is amended by adding at the end the following: "Special consideration shall be given to programs for training and research on the mental health needs of the elderly."

SEC. 4014. ADVISORY COUNCILS.

(a) AMENDMENT.—Part A of title V is amended by redesignating sections 505, 506, and 507 as sections 506, 507, and 508, respectively, and by adding after section 504 the following new section:

"ADVISORY COUNCILS

"SEC. 505. (a)(1) The Secretary shall appoint an advisory council for the National Institute on Alcohol Abuse and Alcoholism, for the National Institute on Drug Abuse, and for the National Institute of Mental Health. Each such advisory council shall advise, consult with, and make recommendations to the Secretary and the Director of the Institute for which it was appointed on matters related to the activities carried out by and through the Institute and the policies respecting such activities.

"(2) Each advisory council for a national research institute may recommend to the Secretary acceptance, in accordance with section 2101, of conditional gifts for study, investigation, or research respecting the diseases, disorders, or other aspect of human health with respect to which the institute was established, for the acquisition of grounds, or for the construction, equipping, or maintenance of facilities for the institute.

"(3) Each advisory council for a national research institute—

"(A)(i) may on the basis of the materials provided under section 507(d)(2) respecting research conducted at the institute, make recommendations to the Director of the institute respecting such research,

"(ii) shall review applications for grants and cooperative agreements for research or training and recommend for approval applications for projects which show promise of making valuable contributions to human knowledge, and

"(iii) may review any grant, contract, or cooperative agreement proposed to be made or entered into by the institute;

"(B) may collect, by correspondence or by personal investigation, information as to studies which are being carried on in the United States or any other country as to the diseases, disorders, or other aspect of human health with respect to which the institute was established and with the approval of the Director of the institute make available such information through appropriate publications for the benefit of public and private health entities and health professions personnel and scientists and for the information of the general public; and

"(C) may appoint subcommittees and convene workshops and conferences.

"(b)(1) Each advisory council shall consist of nonvoting ex officio members and twelve members appointed by the Secretary.

"(2) The ex officio members of an advisory council shall consist of—

"(A) the Secretary, the Administrator, the Director of the national research institute for which the council is established, the Chief Medical Director of the Veterans' Administration, and the Assistant Secretary of Defense for Health Affairs (or the designees of such officers), and

"(B) such additional officers or employees of the United States as the Secretary determines necessary for the advisory council to effectively carry out its functions.

"(3) The Members of an advisory council who are not ex officio members shall be appointed as follows:

"(A) 9 of the members shall be appointed by the Secretary from among the leading representatives of the health and scientific disciplines (including public health and the behavioral or social sciences) relevant to the activities of the national research institute for which the advisory council is established.

"(B) 3 of the members shall be appointed by the Secretary from the general public and shall include leaders in fields of public policy, law, health policy, economics, or management.

"(4) Members of an advisory council who are officers or employees of the United States shall not receive any compensation for service on the advisory council. The other members of an advisory council shall receive, for each day (including traveltime) they are engaged in the performance of the functions of the advisory council, compensation at rates not to exceed the daily equivalent of the annual rate in effect for grade GS–18 of the General Schedule.

"(c) The term of office of an appointed member of an advisory council is 4 years, except that any member appointed to fill a vacancy for an unexpired term shall be appointed for the remainder of such term and the Secretary shall make appointments to an advisory council in such manner as to ensure that the terms of the members do not all expire in the same year. A member may serve after the expiration of the member's term until a successor has taken office. A member who has been appointed for a term of 4 years may not be reappointed to an advisory council before 2 years from the date of expiration of such term of office. If a vacancy occurs in the advisory council among the appointed members, the Secretary shall make an appointment to fill the vacancy within 90 days from the date the vacancy occurs.

"(d) The chairman of an advisory council shall be selected by the Secretary from among the appointed members, except that the Secretary may select the Director of the national research institute for which the advisory council is established to be the chairman of the advisory council. The term of office of chairman shall be two years.

"(e) The advisory council shall meet at the call of the chairman or upon the request of the Director of the national research institute for which it was established, but at least three times each fiscal year. The location of the meetings of each advisory council is subject to the approval of the Director of the national research institute for which the advisory council was established.

"(f) The Director of the national research institute for which an advisory council is established shall designate a member of the staff of the institute to serve as the executive secretary of the advisory council. The Director of such institute shall make available to the advisory council such staff, information,

and other assistance as it may require to carry out its functions. The Director of such institute shall provide orientation and training for new members of the advisory council to provide them with such information and training as may be appropriate for their effective participation in the functions of the advisory council.".

(b) CURRENT ADVISORY COUNCILS.—

(1) The amendment made by subsection (a) does not terminate the membership of any advisory council for the National Institute on Alcohol Abuse and Alcoholism, the National Institute on Drug Abuse, or the National Institute of Mental Health which was in existence on the date of the enactment of this Act. After such date—

(A) the Secretary of Health and Human Services shall make appointments to each such advisory council in such a manner as to bring about as soon as practicable the composition for such council prescribed by section 505 of the Public Health Service Act,

(B) each advisory council shall organize itself in accordance with such section and exercise the functions prescribed by such section, and

(C) the Director of each such institute shall perform for such advisory council the functions prescribed by such section.

(2) Subsections (a) through (d) of section 217 (42 U.S.C. 218(a)-(d)) are repealed. Subsection (e) of such section is amended by striking out "(e)(1)" and inserting in lieu thereof "(a)", by redesignating paragraphs (2) through (4) as subsections (b) through (d), respectively, and by redesignating clauses (A) and (B) in subsection (c) (as so redesignated) as clauses (1) and (2).

SEC. 4015. PUBLIC HEALTH EMERGENCIES.

Part A of title V , as amended by section 4014, is amended by adding at the end the following:

"RESEARCH ON PUBLIC HEALTH EMERGENCIES

"SEC. 509. (a) If the Secretary determines, after consultation with the Administrator, the Commissioner of the Food and Drug Administration, or the Director of the Centers for Disease Control, that a disease or disorder within the jurisdiction of a national research institute of the Administration constitutes a public health emergency, the Secretary, acting through the Administrator—

"(1) shall expedite the review by advisory councils and by peer review groups of applications for grants for research on such disease or disorder or proposals for contracts for such research;

"(2) shall exercise the authority in section 3709 of the Revised Statutes (41 U.S.C. 5) respecting public exigencies to waive the advertising requirements of such section in the case of proposals for contracts for such research;

"(3) may provide administrative supplemental increases in existing grants and contracts to support new research relevant to such disease or disorder; and

"(4) shall disseminate, to health professionals and the public, information on the cause, prevention, and treatment of such disease or disorder that has been developed in research assisted under this section.

The amount of an increase in a grant or contract provided under paragraph (3) may not exceed one-half the original amount of the grant or contract.

"(b) Not later than 90 days after the end of a fiscal year, the Secretary shall report to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate on actions taken under subsection (a) in such fiscal year if any actions were taken in such fiscal year.".

SEC. 4016. PEER REVIEW.

Section 507(b) (42 U.S.C. 290aa-5(b)) (as redesignated by section 4014) is amended by inserting "applications made for" after "review of".

SEC. 4017. NATIONAL ALCOHOL RESEARCH CENTER.

Section 511(b) is amended—

(1) by striking "or rental" before "of any land"; and

(2) by striking "rental," before "purchase,".

SEC. 4018. RESEARCH AUTHORIZATION.

(a) SECTION 513.—Section 513 (42 U.S.C. 290bb-2) is amended to read as follows:

"AUTHORIZATIONS OF APPROPRIATIONS

"SEC. 513. There are authorized to be appropriated to carry out this subpart such sums as may be necessary for fiscal year 1987.".

(b) SECTION 517.—Section 517 (42 U.S.C. 290cc-2) is amended to read as follows:

"AUTHORIZATIONS OF APPROPRIATIONS

"SEC. 517. There are authorized to be appropriated to carry out this subpart such sums as may be necessary for fiscal year 1987.".

SEC. 4019. SUICIDE.

(a) INFORMATION.—Section 504 (42 U.S.C. 290aa-3) is amended by adding at the end the following:

"(h) The Director shall—

"(1) develop and publish information respecting the causes of suicide and the means of preventing suicide, and

"(2) make such information generally available to the public and health professionals.

Information developed, published, and distributed under this subsection shall especially relate to suicide among individuals under the age of 21.".

(b) REPORT.—Not later than one year after the date of the enactment of this Act, the Director of the National Institute on Mental Health shall report to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate on the activities undertaken under section 504(h) of the Public Health Service Act and shall include in such report an assessment of the effectiveness of such activities.

SEC. 4020. ANIMALS IN RESEARCH.

Part A of title V, as amended by section 4015, is amended by adding at the end the following:

"ANIMALS IN RESEARCH

"SEC. 509A. (a) The Secretary, acting through the Administrator, shall establish guidelines for the following:

"(1) The proper care of animals to be used in research conducted by and through agencies of the Administration.

"(2) The proper treatment of animals while being used in such research. Guidelines under this paragraph shall require—

"(A) the appropriate use of tranquilizers, analgesics, anesthetics, paralytics, and euthanasia for animals in such research; and

"(B) appropriate pre-surgical and post-surgical veterinary medical and nursing care for animals in such research.

Such guidelines shall not be construed to prescribe methods of research.

"(3) The organization and operation of animal care committees in accordance with subsection (b).

"(b)(1) Guidelines of the Secretary under subsection (a)(3) shall require animal care committees at each entity which conducts research with funds provided under this title to assure compliance with the guidelines established under subsection (a).

"(2) Each animal care committee shall be appointed by the chief executive officer of the entity for which the committee is established, shall be composed of not fewer than three members, and shall include at least one individual who has no association with such entity and at least one doctor of veterinary medicine.

"(c) Each animal care committee of a research entity shall—

"(1) review the care and treatment of animals in all animal study areas and facilities of the research entity at least semiannually to evaluate compliance with applicable guidelines established under subsection (a) for appropriate animal care and treatment;

"(2) keep appropriate records of reviews conducted under paragraph (1); and

"(3) for each review conducted under paragraph (1), file with the Administrator at least annually (A) a certification that the review has been conducted, and (B) reports of any violations of guidelines established under subsection (a) or of assurances required under subsection (d) which were observed in such review and which have continued after notice by the committee to the research entity involved of the violations.

Reports filed under paragraph (3) shall include any minority views filed by members of the committee.

"(d) The Administrator shall require each applicant for a grant, contract, or cooperative agreement involving research on animals which is administered by the Administrator or any agency of the Administration to include in its application or contract proposal, submitted after the expiration of the 12-month period beginning on the date of enactment of this section—

"(1) assurances satisfactory to the Administrator that—

"(A) the applicant meets the requirements of the guidelines established under paragraphs (1) and (2) of subsection (a) and has an animal care committee which meets the requirements of subsection (b); and

"(B) scientists, animal technicians, and other personnel involved with animal care, treatment, and use by the applicant have available to them instruction or training in the humane practice of animal maintenance and experimentation, and the concept, availability, and use of research or testing methods that limit the use of animals or limit animal distress; and

"(2) a statement of the reasons for the use of animals in the research to be conducted with funds provided under such grant or contract.

Notwithstanding subsection (a)(2) of section 553 of title 5, United States Code, regulations under this subsection shall be promulgated in accordance with the notice and comment requirements of such section.

"(e) If the Administrator determines that—

"(1) the conditions of animal care, treatment, or use in an entity which is receiving a grant, contract, or cooperative agreement involving research on animals under this title do not meet applicable guidelines established under subsection (a);

"(2) the entity has been notified by the Administrator of such determination and has been given a reasonable opportunity to take corrective action; and

"(3) no action has been taken by the entity to correct such conditions;

the Administrator shall suspend or revoke such grant or contract under such condi-

tions as the Administrator determines appropriate.

"(f) No guideline or regulation promulgated under subsection (a) or (c) may require a research entity to disclose publicly trade secrets or commercial or financial information which is privileged or confidential.

SEC. 4021. BLOCK GRANTS.

Section 1913(a)(1)(B) (42 U.S.C. 300x–1a(a)(1)(B)) is amended by striking out "1984" and inserting in lieu thereof "1985".

SEC. 4022. TECHNICAL AMENDMENTS.

(a) SECTION 504(e).—Subsection (e) of section 504 (42 U.S.C. 290aa–3) is amended by striking out the period at the end of paragraph (2)(A) and inserting in lieu thereof a semicolon.

(b) SECTION 504(g).—Subsection (g) of such section is amended by striking out "section 1915(e)" and inserting in lieu thereof "1916(e)".

(c) GENERAL AUTHORITY.—

(1) Section 504 (as amended by section 4019) is amended by adding at the end the following:

"(i) The Secretary, acting through the Director, may make grants to and enter into cooperative agreements and contracts with public and nonprofit private entities for research on mental illness.".

(2) Section 301(a)(3) (42 U.S.C. 241(a)(3)) is amended by striking out "or, in the case of mental health" and all that follows through "Council;" and by striking out "or the National Advisory Mental Health Council".

SEC. 4023. ALCOHOLISM AND ALCOHOL ABUSE TREATMENT STUDY.

(a) IN GENERAL.—The Secretary of Health and Human Services, acting through the Director of the National Institute on Alcohol Abuse and Alcoholism and in accordance with subsection (b), shall arrange for the conduct of a study to—

(1) critically review available research knowledge and experience in the United States and other countries regarding alternative approaches and mechanisms (including statutory and voluntary mechanisms) for the provision of alcoholism and alcohol abuse treatment and rehabilitative services,

(2) assess available evidence concerning comparative costs, quality, effectiveness, and appropriateness of alcoholism and alcohol abuse treatment and rehabilitative service alternatives,

(3) review the state of financing alternatives available to the public, including an analysis of policies and experiences of third party insurers and State and municipal governments, and

(4) consider and make recommendations for policies and programs of research, planning, administration, and reimbursement for the treatment and rehabilitation of individuals suffering from alcoholism and alcohol abuse.

(b) ARRANGEMENTS.—

(1) The Secretary shall request the National Academy of Sciences to conduct the study described in subsection (a) under an arrangement under which the actual expenses incurred by the Academy in conducting the study will be paid by the Secretary and with the consent of the Academy the Secretary shall enter into such arrangement.

(2) Under the arrangement entered into under paragraph (1), the National Academy of Sciences shall agree to—

(A) conduct the study in consultation with the Director of the National Institute on Alcohol Abuse and Alcoholism, and

(B) submit to the Secretary not later than 24 months after the date the arrangement is entered into a final report on the study.

The Secretary shall transmit the final report of the Academy to Congress not later than 30 days after the date the Secretary receives the report.

PART IV—INFANT FORMULAS

SEC. 4031. INFANT FORMULAS.

(a) NEW REQUIREMENTS.—Section 412 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 350a) is amended—

(1) by redesignating subsections (e), (f), and (g) as subsections (g), (h), and (i), respectively,

(2) by amending last sentence of paragraph (1) of subsection (g) (as so redesignated) to read as follows: "Such records shall be retained for at least one year after the expiration of the shelf life of the infant formula.",

(3) by striking out "(a) and (b)" in the first sentence of subsection (h)(1) (as so redesignated) and inserting in lieu thereof "(a), (b), and (c)",

(4) by striking out "(c)(1)" in the second sentence of such subsection and inserting in lieu thereof "(e)(1)",

(5) by striking out "(c)(1)(B)" in such sentence and inserting in lieu thereof "(e)(1)(B)",

(6) by striking out "(a) and (b)" in subsection (h)(2) (as so redesignated) and inserting in lieu thereof "(a), (b), and (c)", and

(7) by striking out subsections (a) through (d) and inserting in lieu thereof the following:

"(a) An infant formula, including an infant formula powder, shall be deemed to be adulterated if—

"(1) such infant formula does not provide nutrients as required by subsection (i),

"(2) such infant formula does not meet the quality factor requirements prescribed by the Secretary under subsection (b)(1), or

"(3) the processing of such infant formula is not in compliance with the good manufacturing practices and the quality control procedures prescribed by the Secretary under subsection (b)(2).

"(b)(1) The Secretary shall by regulation establish requirements for quality factors for infant formulas to the extent possible consistent with current scientific knowledge, including quality factor requirements for the nutrients required by subsection (i).

"(2)(A) The Secretary shall by regulation establish good manufacturing practices for infant formulas, including quality control procedures that the Secretary determines are necessary to assure that an infant formula provides nutrients in accordance with this subsection and subsection (i) and is manufactured in a manner designed to prevent adulteration of the infant formula.

"(B) The good manufacturing practices and quality control procedures prescribed by the Secretary under subparagraph (A) shall include requirements for—

"(i) the testing, in accordance with paragraph (3) and by the manufacturer of an infant formula or an agent of such manufacturer, of each batch of infant formula for each nutrient required by subsection (i) before the distribution of such batch,

"(ii) regularly scheduled testing, by the manufacturer of an infant formula or an agent of such manufacturer, of samples of infant formulas during the shelf life of such formulas to ensure that such formulas are in compliance with this section,

"(iii) in-process controls including, where necessary, testing required by good manufacturing practices designed to prevent adulteration of each batch of infant formula, and

"(iv) the conduct by the manufacturer of an infant formula or an agent of such manufacturer of regularly scheduled audits to determine that such manufacturer has complied with the regulations prescribed under subparagraph (A).

In prescribing requirements for audits under clause (iv), the Secretary shall provide that such audits be conducted by appropriately trained individuals who do not have any direct responsibility for the manufacture or production of infant formula.

"(3)(A) At the final product stage, each batch of infant formula shall be tested for vitamin A, vitamin B1, vitamin C, and vitamin E to ensure that such infant formula is in compliance with the requirements of this subsection and subsection (i) relating to such vitamins.

"(B) Each nutrient premix used in the manufacture of an infant formula shall be tested for each relied upon nutrient required by subsection (i) which is contained in such premix to ensure that such premix is in compliance with its specifications or certifications by a premix supplier.

"(C) During the manufacturing process or at the final product stage and before distribution of an infant formula, an infant formula shall be tested for all nutrients required to be included in such formula by subsection (i) for which testing has not been conducted pursuant to subparagraph (A) or (B). Testing under this subparagraph shall be conducted to—

"(i) ensure that each batch of such infant formula is in compliance with the requirements of subsection (i) relating to such nutrients, and

"(ii) confirm that nutrients contained in any nutrient premix used in such infant formula are present in each batch of such infant formula in the proper concentration.

"(D) If the Secretary adds a nutrient to the list of nutrients in the table in subsection (i), the Secretary shall by regulation require that the manufacturer of an infant formula test each batch of such formula for such new nutrient in accordance with subparagraph (A), (B), or (C).

"(E) For purposes of this paragraph, the term 'final product stage' means the point in the manufacturing process, before distribution of an infant formula, at which an infant formula is homogenous and is not subject to further degradation.

"(4)(A) The Secretary shall by regulation establish requirements respecting the retention of records. Such requirements shall provide for—

"(i) the retention of all records necessary to demonstrate compliance with the good manufacturing practices and quality control procedures prescribed by the Secretary under paragraph (2), including records containing the results of all testing required under paragraph (2)(B),

"(ii) the retention of all certifications or guarantees of analysis by premix suppliers,

"(iii) the retention by a premix supplier of all records necessary to confirm the accuracy of all premix certifications and guarantees of analysis,

"(iv) the retention of—

"(I) all records pertaining to the microbiological quality and purity of raw materials used in infant formula powder and in finished infant formula, and

"(II) all records pertaining to food packaging materials which show that such materials do not cause an infant formula to be adulterated within the meaning of section 402(a)(2)(C),

"(v) the retention of all records of the results of regularly scheduled audits conduct-

ed pursuant to the requirements prescribed by the Secretary under paragraph (2)(B)(iv), and

"(vi) the retention of all complaints and the maintenance of files with respect to, and the review of, complaints concerning infant formulas which may reveal the possible existence of a hazard to health.

"(B)(i) Records required under subparagraph (A) with respect to an infant formula shall be retained for at least one year after the expiration of the shelf life of such infant formula. Except as provided in clause (ii), such records shall be made available to the Secretary for review and duplication upon request of the Secretary.

"(ii) A manufacturer need only provide written assurances to the Secretary that the regularly scheduled audits required by paragraph (2)(B)(iv) are being conducted by the manufacturer, and need not make available to the Secretary the actual written reports of such audits.

"(c)(1) No person shall introduce or deliver for introduction into interstate commerce any new infant formula unless—

"(A) such person has, before introducing such new infant formula, or delivering such new infant formula for introduction, into interstate commerce, registered with the Secretary the name of such person, the place of business of such person, and all establishments at which such person intends to manufacture such new infant formula, and

"(B) such person has at least 90 days before marketing such new infant formula, made the submission to the Secretary required by subsection (c)(1).

"(2) For purposes of paragraph (1), the term 'new infant formula' includes—

"(A) an infant formula manufactured by a person which has not previously manufactured an infant formula, and

"(B) an infant formula manufactured by a person which has previously manufactured infant formula and in which there is a major change, in processing or formulation, from a current or any previous formulation produced by such manufacturer.

For purposes of this paragraph, the term 'major change' has the meaning given to such term in section 106.30(c)(2) of title 21, Code of Federal Regulations (as in effect on August 1, 1986), and guidelines issued thereunder.

"(d)(1) A person shall, with respect to any infant formula subject to subsection (c), make a submission to the Secretary which shall include—

"(A) the quantitative formulation of the infant formula,

"(B) a description of any reformulation of the formula or change in processing of the infant formula,

"(C) assurances that the infant formula will not be marketed unless it meets the requirements of subsections (b)(1) and (i), as demonstrated by the testing required under subsection (b)(3), and

"(D) assurances that the processing of the infant formula complies with subsection (b)(2).

"(2) After the first production of an infant formula subject to subsection (c), and before the introduction into interstate commerce of such formula, the manufacturer of such formula shall submit to the Secretary, in such form as may be prescribed by the Secretary, a written verification which summarizes test results and records demonstrating that such formula complies with the requirements of subsections (b)(1), (b)(2)(A), (b)(2)(B)(i), (b)(2)(B)(iii), (b)(3)(A), (b)(3)(C), and (i).

"(3) If the manufacturer of an infant formula for commercial or charitable distribution for human consumption determines that a change in the formulation of the formula or a change in the processing of the formula may affect whether the formula is adulterated under subsection (a), the manufacturer shall, before the first processing of such formula, make the submission to the Secretary required by paragraph (1).

"(e)(1) If the manufacturer of an infant formula has knowledge which reasonably supports the conclusion that an infant formula which has been processed by the manufacturer and which has left an establishment subject to the control of the manufacturer—

"(A) may not provide the nutrients required by subsection (i), or

"(B) may be otherwise adulterated or misbranded,

the manufacturer shall promptly notify the Secretary of such knowledge. If the Secretary determines that the infant formula presents a risk to human health, the manufacturer shall immediately take all actions necessary to recall shipments of such infant formula from all wholesale and retail establishments, consistent with recall regulations and guidelines issued by the Secretary.

"(2) For purposes of paragraph (1), the term 'knowledge' as applied to a manufacturer means (A) the actual knowledge that the manufacturer had, or (B) the knowledge which a reasonable person would have had under like circumstances or which would have been obtained upon the exercise of due care.

"(f)(1) If a recall of infant formula is begun by a manufacturer, the recall shall be carried out in accordance with such requirements as the Secretary shall prescribe under paragraph (2) and—

"(A) the Secretary shall, not later than the 15th day after the beginning of such recall and at least once every 15 days thereafter until the recall is terminated, review the actions taken under the recall to determine whether the recall meets the requirements prescribed under paragraph (2), and

"(B) the manufacturer shall, not later than the 14th day after the beginning of such recall and at least once every 14 days thereafter until the recall is terminated, report to the Secretary the actions taken to implement the recall.

"(2) The Secretary shall by regulation prescribe the scope and extent of recalls of infant formulas necessary and appropriate for the degree of risks to human health presented by the formula subject to the recall.

"(3) The Secretary shall by regulation require each manufacturer of an infant formula who begins a recall of such formula because of a risk to human health to request each retail establishment at which such formula is sold or available for sale to post at the point of purchase of such formula a notice of such recall at such establishment for such time that the Secretary determines necessary to inform the public of such recall.".

(b) CONFORMING AMENDMENTS.—

(1) Subsection (i) (as so redesignated) is amended—

(A) by inserting "(1)" after "(i)",

(B) by striking out "subsection (a)" and inserting in lieu thereof "paragraph",

(C) by striking out the colon and inserting in lieu thereof a period, and

(D) by adding at the end the following:

"(2) The Secretary may by regulation—

"(A) revise the list of nutrients in the table in this subsection, and

"(B) revise the required level for any nutrient required by the table.".

(2) Section 301(s) (21 U.S.C. 331(s)) is amended to read as follows:

"(s) The failure to provide the notice required by section 412(c) or 412(d), the failure to make the reports required by sections 412(f)(1)(B), the failure to retain the records required by section 412(b)(4), or the failure to meet the requirements prescribed under section 412(f)(3).".

PART V—MISCELLANEOUS

SEC. 4041. EFFORTS OF THE ENTERTAINMENT AND WRITTEN MEDIA INDUSTRY.

It is the sense of Congress that—

(1) whereas illegal drug and alcohol consumption and the trafficking in those illegal drugs and alcohol is a major problem in the United States,

(2) whereas the problem of alcohol abuse is particularly prevalent among and harmful to the Nation's young people, and

(3) whereas the values and mores portrayed in various forms of commercially produced entertainment have a profound effect on the attitudes of young people in this country,

the entertainment and written media industry should voluntarily refrain from producing material meant for general entertainment which in any way glamorizes or encourages the use of illegal drugs and alcohol and the entertainment and written media industry further is encouraged to develop films, television programs, records, videos, and advertising which encourage the rejection of illegal drugs and alcohol.

SEC. 4042. SENSE OF THE SENATE URGING THE CATEGORIZATION OF FILMS WHICH PROMOTE ALCOHOL ABUSE AND DRUG USE.

(a) FINDINGS.—The Senate finds that—

(1) the abuse of alcohol and the use of drugs has become a societal problem of epidemic proportions,

(2) it is in the interest of all citizens to contribute to the reduction of alcohol abuse and drug use, particularly among youth,

(3) the entertainment industry, particularly the motion picture industry's production of youth-oriented films, often depicts alcohol abuse and drug use in a benign, even glamorous way,

(4) the motion picture industry has a profound impact on societal norms and is a powerful medium which exerts great influence on the values of youth, and

(5) the motion picture industry has recognized the need to inform parents about the contents of movies regarding violence, sex, language, and nudity and therefore currently employs a voluntary rating system.

(b) CATEGORIZATION.—It is sense of the Senate that the Motion Picture Association of America should—

(1) incorporate a subcategory in its voluntary movie rating system to identify clearly films which depict alcohol abuse and drug use in a benign or favorable light, and

(2) give a special rating to movies that so depict alcohol abuse and drug use in order that parents can make an informed choice about the movies their children see.

SEC. 4043. SENSE OF THE SENATE WITH RESPECT TO POSSESSION OR DISTRIBUTION OF DRUGS UNDER STATE LAW.

It is the sense of the Senate that if the possession or distribution of a drug is an offense under the Controlled Substances Act, the laws of the States should not be amended or revised to provide that the possession or distribution, respectively, of such drug is not a criminal offense.

SEC. 4044. EXPANSION OF DRUG ABUSE RESEARCH.

Section 515(a)(5) of the Public Health Service Act (42 U.S.C. 290cc(a)(5)) is amended to read as follows:

"(5) effective methods of drug abuse prevention, treatment, and rehabilitation, particularly methods of intervention to reduce the incidence of drug abuse or the severity of addiction to specific drugs.".

SEC. 4045. ALKYL NITRITES.

In the administration of the Federal Food, Drug, and Cosmetic Act, alkyl nitrites and their isomers shall be treated as a drug under such Act unless alkyl nitrites and their isomers are not manufactured, processed, distributed, or sold for use by individuals.

SEC. 4046. ADMINISTRATOR OF VETERANS' AFFAIRS.

There is authorized to be appropriated for fiscal year 1987 to the Administrator of Veterans' Affairs $6,000,000 for the purpose of providing outpatient treatment, rehabilitation, and counseling under section 612 of title 38, United States Code, of veterans for their alcohol or drug dependence or abuse disabilities and for contract care and services under section 620A of such title for veterans for such disabilities.

Subtitle B—Drug-Free Schools and Communities Act of 1986

SEC. 4101. SHORT TITLE.

This subtitle may be cited as the "Drug-Free Schools and Communities Act of 1986".

SEC. 4102. FINDINGS.

The Congress finds that:

(1) Drug abuse education and prevention programs are essential components of a comprehensive strategy to reduce the demand for and use of drugs throughout the Nation.

(2) Drug use and alcohol abuse are widespread among the Nation's students, not only in secondary schools, but increasingly in elementary schools as well.

(3) The use of drugs and the abuse of alcohol by students constitute a grave threat to their physical and mental well-being and significantly impedes the learning process.

(4) The tragic consequences of drug use and alcohol abuse by students are felt not only by students and their families, but also by their communities and the Nation, which can ill afford to lose their skills, talents, and vitality.

(5) Schools and local organizations in communities throughout the Nation have special responsibilities to work together to combat the scourge of drug use and alcohol abuse.

(6) Prompt action by our Nation's schools, families, and communities can bring significantly closer the goal of a drug-free generation and a drug free society.

SEC. 4103. PURPOSE.

It is the purpose of this subtitle to establish programs of drug abuse education and prevention (coordinated with related community efforts and resources) through the provision of Federal financial assistance—

(1) to States for grants to local and intermediate educational agencies and consortia to establish, operate, and improve local programs of drug abuse prevention, early intervention, rehabilitation referral, and education in elementary and secondary schools (including intermediate and junior high schools);

(2) to States for grants to and contracts with community-based organizations for programs of drug abuse prevention, early intervention, rehabilitation referral, and education for school dropouts and for school-age children after school hours and during summer vacations and other periods of non-attendance;

(3) to States for model, demonstration, training, and technical assistance activities;

(4) to institutions of higher education to establish, implement, and expand programs of drug abuse education and prevention (including rehabilitation referral) for students enrolled in colleges and universities; and

(5) to institutions of higher education in cooperation with State and local educational agencies for teacher training programs in drug abuse education and prevention.

PART 1—FINANCIAL ASSISTANCE FOR DRUG ABUSE EDUCATION AND PREVENTION PROGRAMS

SEC. 4111. AUTHORIZATION OF APPROPRIATIONS.

(a) For the purpose of carrying out this subtitle, there are authorized to be appropriated $250,000,000 for each of fiscal years 1987, 1988, 1989, and 1990.

(b) Appropriations for any fiscal year for payments made under this subtitle in accordance with regulations of the Secretary may be made available for obligation or expenditure by the agency or institution concerned on the basis of an academic or school year differing from such fiscal year.

(c) Funds appropriated for any fiscal year under this subtitle shall remain available for obligation and expenditure until the end of the fiscal year succeeding the fiscal year for which such funds were appropriated.

(d) Notwithstanding any other provision of this subtitle, no authority to enter into contracts or financial assistance agreements under this subtitle shall be effective except to such extent or in such amount as are provided in advance in appropriation Acts.

SEC. 4112. RESERVATIONS AND STATE ALLOTMENTS.

(a) From the sums appropriated or otherwise made available to carry out this subtitle for any fiscal year, the Secretary shall reserve—

(1) 1 percent for payments to Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands, to be allotted in accordance with their respective needs;

(2) 1 percent for programs for Indian youth under section 4133;

(3) 0.2 percent for programs for Hawaiian natives under section 4134;

(4) 10 percent for programs with institutions of higher education under section 4131; and

(5) 4.8 percent for Federal activities under section 4132.

(b)(1) From the remainder of the sums not reserved under subsection (a), the Secretary shall allot to each State an amount which bears the same ratio to the amount of such remainder as the school-age population of the State bears to the school-age population of all States, except that no State shall be allotted less than an amount equal to 0.5 percent of such remainder.

(2) The Secretary may reallot any amount of any allotment to a State to the extent that the Secretary determines that the State will not be able to obligate such amount within two years of allotment. Any such reallotment shall be made on the same basis as an allotment under paragraph (1).

(3) For purposes of this subsection, the term "State" means any of the fifty States, the District of Columbia, and Puerto Rico.

(4) For each fiscal year, the Secretary shall make payments, as provided by section 6503(a) of title 31, United States Code, to each State from its allotment under this subsection from amounts appropriated for that fiscal year.

PART 2—STATE AND LOCAL PROGRAMS

SEC. 4121. USE OF ALLOTMENTS BY STATES.

(a) An amount equal to 20 percent of the total amount paid to a State from its allotment under section 4112 for any fiscal year shall be used by the chief executive officer of such State for State programs in accordance with section 4122.

(b) An amount equal to 80 percent of the total amount paid to a State from its allotment under section 4112 for any fiscal year shall be used by the State educational agency for grants to local educational agencies, intermediate educational agencies, and consortia for activities in accordance with section 4124.

SEC. 4122. STATE PROGRAMS.

(a)(1) Funds made available to the chief executive officer of a State under section 4121 shall be used for grants to and contracts with local governments and other public or private nonprofit entities (including parent groups, community action agencies, and other community-based organizations) for the development and implementation of programs and activities such as—

(A) local broadly-based programs for drug and alcohol abuse prevention, early intervention, rehabilitation referral, and education for all age groups;

(B) training programs for teachers, counselors, other educational personnel, parents, local law enforcement and judicial officials, other public service personnel, and community leaders;

(C) the development and distribution of educational and informational materials to provide public information (through the media and otherwise) aimed at drug-free communities in every State;

(D) technical assistance to help community-based organizations and local and intermediate educational agencies and consortia of such agencies—

(i) in the planning and implementation of drug abuse prevention, early intervention, rehabilitation referral, and education programs, and

(ii) in undertaking the coordination of such programs with related community efforts and resources; and

(E) other drug abuse education and prevention activities, consistent with the purposes of this subtitle.

(2) The Federal share shall not exceed 50 percent of the cost of programs and activities under this subsection. The non-Federal share shall be funds contributed by the State.

(b)(1) At least 50 percent of the funds available under section 4121(a) to the chief executive officer of a State shall be used for innovative community-based programs of coordinated services for high-risk youth. The chief executive officer of such State shall make grants to or contracts with community action agencies and other community-based organizations to carry out such services.

(2) For purposes of this subsection, the term "high risk youth" means an individual who has not attained the age of 21 years, who is at high risk of becoming or who has been a drug or alcohol abuser, and who—

(A) has dropped out of school;

(B) has become pregnant;

(C) is economically disadvantaged;

(D) is the child of a drug or alcohol abuser;

(E) is a victim of physical, sexual, or psychological abuse;

(F) has committed a violent or delinquent act;

(G) has experienced mental health problems;

(H) has attempted suicide; or

(I) has experienced long-term physical pain due to injury.

SEC. 4123. RESPONSIBILITIES OF STATE EDUCATIONAL AGENCIES.

(a) Each State educational agency shall use a sum which shall be not less than 90 percent of the amounts available under section 4121(b) for each fiscal year for grants to local and intermediate educational agencies and consortia in the State, in accordance with applications approved under section 4125. From such sum, the State educational agency shall distribute funds for use among areas served by local or intermediate educational agencies or consortia on the basis of the relative numbers of children in the school-age population within such areas. Any amount of the funds made available for use in any area remaining unobligated for more than one year after the funds were made available may be provided by the State educational agency to local or intermediate educational agencies or consortia having plans for programs or activities capable of using such amount on a timely basis.

(b) Each State educational agency shall use not more than 10 percent of the amounts available under section 4121(b) for each fiscal year for such activities as—

(1) training and technical assistance programs concerning drug abuse education and prevention for local and intermediate educational agencies, including teachers, administrators, athletic directors, other educational personnel, parents, local law enforcement officials, and judicial officials;

(2) the development, dissemination, implementation, and evaluation of drug abuse education curricular and teaching materials for elementary and secondary schools throughout the State;

(3) demonstration projects in drug abuse education and prevention;

(4) special financial assistance to enhance resources available for drug abuse education and prevention in areas serving large numbers of economically disadvantaged children, sparsely populated areas, or to meet special needs; and

(5) administrative costs of the State educational agency in carrying out its responsibilities under this part, not in excess of 2.5 percent of the amount available under section 4121(b).

(c) Each State educational agency shall submit to the Secretary a plan (renewable for each fiscal year, with appropriate modifications) which—

(1) describes the manner in which the State educational agency will coordinate its efforts with appropriate State health, law enforcement, and drug abuse prevention agencies, including the State agency which administers the Alcohol, Drug Abuse, and Mental Health block grant;

(2) provides assurances that the State educational agency will provide financial assistance under this part only to local educational agencies, intermediate educational agencies, and consortia which establish and implement mandatory drug abuse education and prevention programs in elementary and secondary schools;

(3) provides that the Federal funds made available under this part shall be used to supplement and, to the extent practical, to increase the level of funds that would, in the absence of such Federal funds, be made available for the purposes described in this part, and in no case supplant such funds;

(4) provides for an annual evaluation of the effectiveness of programs assisted under this part;

(5) provides that the State educational agency will keep such records and provide such information as may be required by the Secretary for fiscal audit and program evaluation;

(6) contains assurances that there is compliance with the specific requirements of this part; and

(7) includes such other information and assurances as the Secretary reasonably determines to be necessary in accordance with regulations.

SEC. 4124. LOCAL DRUG ABUSE EDUCATION AND PREVENTION PROGRAMS.

(a) Any amounts made available to local or intermediate educational agencies or consortia under section 4123(a) shall be used by such agencies for drug and alcohol abuse prevention and education programs and activities carried out by elementary and secondary schools, including—

(1) the development, acquisition, and implementation of elementary and secondary school drug abuse education and prevention curricula which clearly and consistently teach that drugs are wrong and harmful;

(2) school-based programs of drug abuse prevention and early intervention (other than treatment);

(3) family drug abuse prevention programs, including education for parents about the symptoms and effects of drug use;

(4) drug abuse prevention counseling programs (which teach that drugs are wrong and harmful) for students and parents, including professional and peer counselors and involving the participation (where appropriate) of parent or other adult counselors and reformed abusers;

(5) programs of drug abuse treatment and rehabilitation referral;

(6) programs of inservice and preservice training in drug and alcohol abuse prevention for teachers, counselors, athletic directors and other educational personnel, public service personnel (including law enforcement and judicial officials), and community leaders;

(7) programs in primary prevention and early intervention, such as the interdisciplinary school-team approach;

(8) community education programs and other activities to involve parents and communities in the fight against drug and alcohol abuse;

(9) public education programs on drug and alcohol abuse, including programs utilizing professionals, and former drug and alcohol abusers;

(10) on-site efforts in schools to enhance identification and discipline of drug and alcohol abusers, and to enable law enforcement officials to take necessary action in cases of drug possession and supplying of drugs and alcohol to the student population;

(11) special programs and activities to prevent drug and alcohol abuse among student athletes, involving their parents and family in such drug and alcohol abuse prevention efforts and using athletic programs and personnel in preventing drug and alcohol abuse among all students; and

(12) other programs of drug and alcohol abuse education and prevention, consistent with the purposes of this part.

(b)(1) Not more than 3.5 percent of any allotment under section 4123(a) for any fiscal year may be used for administrative costs of a local or intermediate educational agency or consortium in carrying out programs under this part.

(2) A local educational agency may receive its allocation of funds under this subtitle for any fiscal year for which its application to the State educational agency has been approved under section 4125.

SEC. 4125. LOCAL APPLICATIONS.

(a) In order to be eligible to receive a grant under this part for any fiscal year, a local educational agency, intermediate educational agency, or consortium shall submit an application to the State educational agency for approval. Such application shall—

(1) set forth a comprehensive plan for programs to be carried out by the applicant under this part;

(2) contain an estimate of the cost for the establishment and operation of such programs;

(3) as appropriate, establish or designate a local or regional advisory council on drug abuse education and prevention composed of individuals who are parents, teachers, officers of State and local government, medical professionals, representatives of the law enforcement community, community-based organizations, and other groups with interest and expertise in the field of drug abuse;

(4) describe the manner in which the applicant will establish, implement, or augment mandatory age-appropriate, developmentally-based, drug abuse education and prevention programs in elementary and secondary schools from the early elementary level through grade 12, and provide assurances that the applicant enforces related rules and regulations of student conduct;

(5) describe the manner in which the applicant will coordinate its efforts under this part with other programs in the community related to drug abuse education, prevention, treatment, and rehabilitation;

(6) provides assurances that the applicant will coordinate its efforts with appropriate State and local drug and alcohol abuse, health, and law enforcement agencies, in order to effectively conduct drug and alcohol abuse education, intervention, and referral for treatment and rehabilitation for the student population;

(7) provide assurances that the Federal funds made available under this part shall be used to supplement and, to the extent practical, to increase the level of funds that would, in the absence of such Federal funds, be made available by the applicant for the purposes described in this part, and in no case supplant such funds;

(8) provide assurances of compliance with the provisions of this part;

(9) agree to keep such records and provide such information to the State educational agency as reasonably may be required for fiscal audit and program evaluation, consistent with the responsibilities of the State agency under this part; and

(10) include such other information and assurances as the State educational agency reasonably determines to be necessary.

(c) Any materials produced or distributed with amounts alloted under this part shall reflect the message that the use of illegal drugs and the abuse of alcohol is wrong and harmful. The Secretary shall not review curricula and shall not promulgate regulations to carry out this subsection.

PART 3—NATIONAL PROGRAMS

SEC. 4131. GRANTS TO INSTITUTIONS OF HIGHER EDUCATION.

(a)(1) From sums reserved by the Secretary under section 4112(a)(4) for the purposes of this section, the Secretary shall make grants to or enter into contracts with institutions

of higher education or consortia of such institutions for drug abuse education and prevention programs under this section.

(2) The Secretary shall make financial assistance available on a competitive basis to institutions of higher education which apply under this section. An institution of higher education or consortium thereof which desires to receive a grant or enter into a contract under this section shall file an application with the Secretary at such time, in such manner, and containing or accompanied by such information as the Secretary may reasonably require.

(3) The Secretary shall make every effort to ensure the equitable participation of private and public institutions of higher education (including community and junior colleges) and to ensure the equitable geographic participation of such institutions. In the award of grants and contracts under this section, the Secretary shall give appropriate consideration to colleges and universities of limited enrollment.

(4) Not less than 50 percent of sums available for the purposes of this section shall be used to make grants under subsection (d).

(b) Training grants shall be available for—

(1) preservice and inservice training and instruction of teachers and other personnel in the field of drug abuse education and prevention in elementary and secondary schools;

(2) summer institutes and workshops in instruction in the field of drug abuse education and prevention;

(3) research and demonstration programs for teacher training and retraining in drug abuse education and prevention;

(4) training programs for law enforcement officials, judicial officials, community leaders, parents, and government officials.

(c) Grants shall be available for model demonstration programs to be coordinated with local elementary and secondary schools for the development and implementation of quality drug abuse education curricula. In the award of grants under this subsection, the Secretary shall give priority consideration to joint projects involving faculty of institutions of higher education and teachers in elementary and secondary schools in the practical application of the findings of educational research and evaluation and the integration of such research into drug abuse education and prevention programs.

(d) Grants shall be available under this subsection to develop, implement, operate, and improve programs of drug abuse education and prevention (including rehabilitation referral) for students enrolled in institutions of higher education.

SEC. 4132. FEDERAL ACTIVITIES.

(a) From sums reserved by the Secretary under section 4112(a)(5), the Secretary shall carry out the purposes of this section.

(b) The Secretary of Education in conjunction with the Secretary of Health and Human Services shall carry out Federal education and prevention activities on drug abuse. The Secretary shall coordinate such drug abuse education and prevention activities with other appropriate Federal activities related to drug abuse. The Secretary shall—

(1) provide information on drug abuse education and prevention to the Secretary of Health and Human Services for dissemination by the clearinghouse for alcohol and drug abuse information established under the Public Health Service Act;

(2) develop, publicize the availability of, and widely disseminate audio-visual and other curricula materials for drug abuse education and prevention programs in elementary and secondary schools throughout the Nation;

(3) provide technical assistance to State, local, and intermediate educational agencies and consortia in the selection and implementation of drug abuse education and prevention curricula, approaches, and programs to address most effectively the needs of the elementary and secondary schools served by such agencies; and

(4) identify research and development priorities with regard to school-based drug abuse education and prevention, particularly age-appropriate programs focusing on kindergarten through grade 4.

(c) The Secretary of Education in conjunction with the Secretary of Health and Human Services shall conduct, directly or by contract, a study of the nature and effectiveness of existing Federal, State, and local programs of drug abuse education and prevention and shall submit a report of the findings of such study to the President and to the appropriate committees of the Congress not later than one year after the date of the enactment of this Act.

SEC. 4133. PROGRAMS FOR INDIAN YOUTH.

(a)(1) From the funds reserved pursuant to section 4112(a)(2), the Secretary shall make payments and grants and enter into other financial arrangements for Indian programs in accordance with this subsection.

(2) The Secretary of Education shall enter into such financial arrangements as the Secretary determines will best carry out the purposes of this title to meet the needs of Indian children on reservations serviced by elementary and secondary schools operated for Indian children by the Department of the Interior. Such arrangements shall be made pursuant to an agreement between the Secretary of Education and the Secretary of the Interior containing such assurances and terms as they determine will best achieve the purposes of this title.

(3) The Secretary of Education may, upon request of any Indian tribe which is eligible to contract with the Secretary of the Interior for the administration of programs under the Indian Self-Determination Act or under the Act of April 16, 1934, enter into grants or contracts with any tribal organization of any such Indian tribe to plan, conduct, and administer programs which are authorized and consistent with the purposes of this title (particularly programs for Indian children who are school dropouts), except that such grants or contracts shall be subject to the terms and conditions of section 102 of the Indian Self-Determination Act and shall be conducted in accordance with sections 4, 5, and 6 of the Act of April 16, 1934, which are relevant to the programs administered under this paragraph.

(4) Programs funded under this subsection shall be in addition to such other programs, services, and activities as are made available to eligible Indians under other provisions of this subtitle.

(b)(1) Section 304 of the Indian Elementary and Secondary School Assistance Act (20 U.S.C. 241cc) is amended by—

(A) striking out "and" at the end of paragraph (1);

(B) striking out the period at the end of paragraph (2) and inserting in lieu thereof "; and"; and

(C) adding at the end the following new paragraph:

"(3) the training of counselors at schools eligible for funding under this title in counseling techniques relevant to the treatment of alcohol and substance abuse.".

(2) Section 423 of the Indian Education Act (20 U.S.C. 3385b) is amended—

(A) in subsection (a), by inserting "clinical psychology," after "medicine,"; and

(B) by adding at the end of the section the following new subsection:

"(e) Not more than 10 percent of the fellowships awarded under subsection (a) shall be awarded, on a priority basis, to persons receiving training in guidance counseling with a specialty in the area of alcohol and substance abuse counseling and education.".

(3) Section 1121 of the Education Amendments of 1978 is amended by adding at the end the following new subsection:

"(i)(1) All schools funded by the Bureau of Indian Affairs shall include within their curriculum a program of instruction relating to alcohol and substance abuse prevention and treatment. The Assistant Secretary shall provide the technical assistance necessary to develop and implement such a program for students in kindergarten and grades 1 through 12, at the request of—

"(A) any Bureau of Indian Affairs school (subject to the approval of the school board of such school); or

"(B) any school board of a school operating under a contract entered into under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).

"(2) In schools operated directly by the Bureau of Indian Affairs, the Secretary shall, not later than 120 days after the date of the enactment of this subsection, provide for—

"(A) accurate reporting of all incidents relating to alcohol and substance abuse; and

"(B) individual student crisis intervention.

"(3) The programs requested under paragraph (1) shall be developed in consultation with the Indian tribe that is to be served by such program and health personnel in the local community of such tribe.

"(4) Schools requesting program assistance under this subsection are encouraged to involve family units and, where appropriate, tribal elders and Native healers in such instructions."

(4) Section 1129 of the Education Amendments of 1978 is amended by adding at the end the following new subsection:

"(e)(1) A financial plan under subsection (b) for a school may include, at the discretion of the local administrator and the school board of such school, a provision for a summer program of academic and support services for students of the school. Any such program may include activities related to the prevention of alcohol and substance abuse. The Assistant Secretary of Indian Affairs shall provide for the utilization of any such school facility during any summer in which such utilization is requested.

"(2) Notwithstanding any other provision of law, funds authorized under the Act of April 16, 1934 (25 U.S.C. 452 et seq.) and the Indian Education Act may be used to augment the services provided in each summer program at the option, and under the control, of the tribe or Indian controlled school receiving such funds.

"(3) The Assistant Secretary of Indian Affairs, acting through the Director of the Office of Indian Education Programs, shall provide technical assistance and coordination for any program described in paragraph (1) and shall, to the extent possible, encourage the coordination of such programs with any other summer programs that might benefit Indian youth, regardless of the funding source or administrative entity of any such program.".

SEC. 4134. PROGRAMS FOR HAWAIIAN NATIVES.

(a) From the funds reserved pursuant to section 4112(a)(3), the Secretary shall enter into contracts with organizations primarily serving and representing Hawaiian natives which are recognized by the Governor of the State of Hawaii to plan, conduct, and administer programs, or portions thereof, which are authorized by and consistent with the provisions of this subtitle for the benefit of Hawaiian natives.

(b) For the purposes of this section, the term "Hawaiian native" means any individual any of whose ancestors were natives, prior to 1778, of the area which now comprises the State of Hawaii.

PART 4—GENERAL PROVISIONS

SEC. 4141. DEFINITIONS.

(a) Except as otherwise provided, the terms used in this subtitle shall have the meaning provided under section 595 of the Education Consolidation and Improvement Act of 1981.

(b) For the purposes of this subtitle, the following terms have the following meanings:

(1) The term "drug abuse education and prevention" means prevention, early intervention, rehabilitation referral, and education related to the abuse of alcohol and the use and abuse of controlled, illegal, addictive, or harmful substances, as determined by the Secretary in consultation with the Secretary of Health and Human Services.

(2) The term "Secretary" means the Secretary of Education.

(3) The term "school-age population" means the population aged five through eighteen, as determined by the Secretary on the basis of the most recent satisfactory data available from the Department of Commerce.

(4) The term "school dropout" means an individual aged five through eighteen who is not attending any school and who has not received a secondary school diploma or a certificate from a program of equivalency for such a diploma.

(5) The term "State" means a State, the District of Columbia, Puerto Rico, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, or the Virgin Islands.

(6) The terms "institution of higher education", "secondary school", and "nonprofit" have the meanings provided in section 1001 of the Elementary and Secondary Education Act of 1965 in effect prior to October 1, 1981.

(7) The term "consortium" means a consortium of local educational agencies or local educational agencies and an intermediate educational agency.

(8) The term "community-based organization" means a private nonprofit organization which is representative of a community or significant segments of a community and which provides educational or related services to individuals in the community.

SEC. 4142. FUNCTIONS OF THE SECRETARY OF EDUCATION.

(a) The Secretary shall be responsible for the administration of the programs authorized by this subtitle.

(b) Except as otherwise provided, the General Education Provisions Act shall apply to programs authorized by this subtitle.

SEC. 4143. PARTICIPATION OF CHILDREN AND TEACHERS FROM PRIVATE NONPROFIT SCHOOLS.

(a) PARTICIPATION OF CHILDREN.—To the extent consistent with the number of school-age children in the State or in the school attendance area of a local or intermediate educational agency or consortium receiving financial assistance under part 2 who are enrolled in private nonprofit elementary and secondary schools, such State, agency, or consortium shall, after consultation with appropriate private school representatives, make provision for including services and arrangements for the benefit of such children as will assure the equitable participation of such children in the purposes and benefits of this subtitle.

(b) PARTICIPATION OF TEACHERS.—To the extent consistent with the number of school-age children in the State or in the school attendance area of a local or intermediate educational agency or consortium receiving financial assistance under part 2 who are enrolled in private nonprofit elementary and secondary schools, such State, State educational agency, or State agency for higher education shall, after consultation with appropriate private school representatives, make provision, for the benefit of such teachers in such schools, for such teacher training as will assure equitable participation of such teachers in the purposes and benefits of this subtitle.

(c) WAIVER.—If by reason of any provision of law a State, local, or intermediate educational agency or consortium is prohibited from providing for the participation of children or teachers from private nonprofit schools as required by subsections (a) and (b) or, if the Secretary determines that a State, local, or intermediate educational agency or consortium has substantially failed or is unwilling to provide for such participation on an equitable basis, the Secretary shall waive such requirements and shall arrange for the provision of services to such children or teachers which shall be subject to the requirements of this section. Such waivers shall be subject to consultation, withholding, notice, and judicial review requirements in accordance with paragraphs (3) and (4) of section 557(b) of the Education Consolidation and Improvement Act of 1981.

Subtitle C—Indians and Alaska Natives

SEC. 4201. SHORT TITLE.

This subtitle may be cited as the "Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986".

PART I—GENERAL PROVISIONS

SEC. 4202. FINDINGS.

The Congress finds and declares that—

(1) the Federal Government has a historical relationship and unique legal and moral responsibility to Indian tribes and their members,

(2) included in this responsibility is the treaty, statutory, and historical obligation to assist the Indian tribes in meeting the health and social needs of their members,

(3) alcoholism and alcohol and substance abuse is the most severe health and social problem facing Indian tribes and people today and nothing is more costly to Indian people than the consequences of alcohol and substance abuse measured in physical, mental, social, and economic terms,

(4) alcohol and substance abuse is the leading generic risk factor among Indians, and Indians die from alcoholism at over 4 times the age-adjusted rates for the United States population and alcohol and substance misuse results in a rate of years of potential life lost nearly 5 times that of the United States,

(5) 4 of the top 10 causes of death among Indians are alcohol and drug related injuries (18 percent of all deaths), chronic liver disease and cirrhosis (5 percent), suicide (3 percent), and homicide (3 percent),

(6) primarily because deaths from unintentional injuries and violence occur disproportionately among young people, the age-specific death rate for Indians is approximately double the United States rate for the 15 to 45 age group,

(7) Indians between the ages of 15 and 24 years of age are more than 2 times as likely to commit suicide as the general population and approximately 80 percent of those suicides are alcohol-related,

(8) Indians between the ages of 15 and 24 years of age are twice as likely as the general population to die in automobile accidents, 75 percent of which are alcohol-related,

(9) the Indian Health Service, which is charged with treatment and rehabilitation efforts, has directed only 1 percent of its budget for alcohol and substance abuse problems,

(10) the Bureau of Indian Affairs, which has responsibility for programs in education, social services, law enforcement, and other areas, has assumed little responsibility for coordinating its various efforts to focus on the epidemic of alcohol and substance abuse among Indian people,

(11) this lack of emphasis and priority continues despite the fact that Bureau of Indian Affairs and Indian Health Service officials publicly acknowledge that alcohol and substance abuse among Indians is the most serious health and social problem facing the Indian people, and

(12) the Indian tribes have the primary responsibility for protecting and ensuring the well-being of their members and the resources made available under this subtitle will assist Indian tribes in meeting that responsibility.

SEC. 4203. PURPOSE.

It is the purpose of this subtitle to—

(1) authorize and develop a comprehensive, coordinated attack upon the illegal narcotics traffic in Indian country and the deleterious impact of alcohol and substance abuse upon Indian tribes and their members,

(2) provide needed direction and guidance to those Federal agencies responsible for Indian programs to identify and focus existing programs and resources, including those made available by this subtitle, upon this problem,

(3) provide authority and opportunities for Indian tribes to develop and implement a coordinated program for the prevention and treatment of alcohol and substance abuse at the local level, and

(4) to modify or supplement existing programs and authorities in the areas of education, family and social services, law enforcement and judicial services, and health services to further the purposes of this subtitle.

SEC. 4204. DEFINITIONS.

For purposes of this subtitle—

(1) The term "agency" means the local administrative entity of the Bureau of Indian Affairs serving one or more Indian tribes within a defined geographic area.

(2) The term "youth" shall have the meaning given it in any particular Tribal Action Plan adopted pursuant to section 4205, except that, for purposes of statistical reporting under this subtitle, it shall mean a person who is 19 years or younger or who is in attendance at a secondary school.

(3) The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians (including any Alaska Native village or regional or village corporation as defined in, or established pursuant to, the Alaska Native

Claims Settlement Act (43 U.S.C. 1601 et seq.)) which is recognized as eligible for special programs and services provided by the United States to Indians because of their status as Indians.

(4) The term "prevention and treatment" includes, as appropriate—

(A) efforts to identify, and the identification of, Indians who are at risk with respect to, or who are abusers of, alcohol or controlled substances,

(B) intervention into cases of on-going alcohol and substance abuse to halt a further progression of such abuse,

(C) prevention through education and the provision of alternative activities,

(D) treatment for alcohol and substance abusers to help abstain from, and alleviate the effects of, abuse,

(E) rehabilitation to provide on-going assistance, either on an inpatient or outpatient basis, to help Indians reform or abstain from alcohol or substance abuse,

(F) follow-up or after-care to provide the appropriate counseling and assistance on an outpatient basis, and

(G) referral to other sources of assistance or resources.

(5) The term "service unit" means an administrative entity within the Indian Health Service or a tribe or tribal organization operating health care programs or facilities with funds from the Indian Health Service under the Indian Self-Determination Act through which the services are provided, directly or by contract, to the eligible Indian population within a defined geographic area.

PART II—COORDINATION OF RESOURCES AND PROGRAMS

SEC. 4205. INTER-DEPARTMENTAL MEMORANDUM OF AGREEMENT.

(a) IN GENERAL.—Not later than 120 days after the date of enactment of this subtitle, the Secretary of the Interior and the Secretary of Health and Human Services shall develop and enter into a Memorandum of Agreement which shall, among other things—

(1) determine and define the scope of the problem of alcohol and substance abuse for Indian tribes and their members and its financial and human costs, and specifically identify such problems affecting Indian youth,

(2) identify—

(A) the resources and programs of the Bureau of Indian Affairs and Indian Health Service, and

(B) other Federal, tribal, State and local, and private resources and programs,

which would be relevant to a coordinated effort to combat alcohol and substance abuse among Indian people, including those programs and resources made available by this subtitle,

(3) develop and establish appropriate minimum standards for each agency's program responsibilities under the Memorandum of Agreement which may be—

(A) the existing Federal or State standards in effect, or

(B) in the absence of such standards, new standards which will be developed and established in consultation with Indian tribes,

(4) coordinate the Bureau of Indian Affairs and Indian Health Service alcohol and substance abuse programs existing on the date of the enactment of this subtitle with programs or efforts established by this subtitle,

(5) delineate the responsibilities of the Bureau of Indian Affairs and the Indian Health Service to coordinate alcohol and substance abuse-related services at the central, area, agency, and service unit levels,

(6) direct Bureau of Indian Affairs agency and education superintendents, where appropriate, and the Indian Health Service service unit directors to cooperate fully with tribal requests made pursuant to section 4206, and

(7) provide for an annual review of such agreements by the Secretary of the Interior and the Secretary of Health and Human Services.

(b) CHARACTER OF ACTIVITIES.—To the extent that there are new activities undertaken pursuant to this subtitle, those activities shall supplement, not supplant, activities, programs, and local actions that are ongoing on the date of the enactment of this subtitle. Such activities shall be undertaken in the manner least disruptive to tribal control, in accordance with the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), and local control, in accordance with section 1130 of the Education Amendments of 1978 (25 U.S.C. 2010).

(c) CONSULTATION.—The Secretary of the Interior and the Secretary of Health and Human Services shall, in developing the Memorandum of Agreement under subsection (a), consult with and solicit the comments of—

(1) interested Indian tribes,

(2) Indian individuals,

(3) Indian organizations, and

(4) professionals in the treatment of alcohol and substance abuse.

(d) PUBLICATION.—The Memorandum of Agreement under subsection (a) shall be submitted to Congress and published in the Federal Register not later than 130 days after the date of enactment of this subtitle. At the same time as publication in the Federal Register, the Secretary of the Interior shall provide a copy of this subtitle and the Memorandum of Agreement under subsection (a) to each Indian tribe.

SEC. 4206. TRIBAL ACTION PLANS.

(a) IN GENERAL.—The governing body of any Indian tribe may, at its discretion, adopt a resolution for the establishment of a Tribal Action Plan to coordinate available resources and programs, including programs and resources made available by this subtitle, in an effort to combat alcohol and substance abuse among its members. Such resolution shall be the basis for the implementation of this subtitle and of the Memorandum of Agreement under section 4205.

(b) COOPERATION.—At the request of any Indian tribe pursuant to a resolution adopted under subsection (a), the Bureau of Indian Affairs agency and education superintendents, where appropriate, and the Indian Health Service service unit director providing services to such tribe shall cooperate with the tribe in the development of a Tribal Action Plan to coordinate resources and programs relevant to alcohol and substance abuse prevention and treatment. Upon the development of such a plan, such superintendents and director, as directed by the Memorandum of Agreement established under section 4205, shall enter into an agreement with the tribe for the implementation of the Tribal Action Plan under subsection (a).

(c) PROVISIONS.—

(1) Any Tribal Action Plan entered into under subsection (b) shall provide for—

(A) the establishment of a Tribal Coordinating Committee which shall—

(i) at a minimum, have as members a tribal representative who shall serve as Chairman and the Bureau of Indian Affairs agency and education superintendents, where appropriate, and the Indian Health Service service unit director, or their representatives,

(ii) have primary responsibility for the implementation of the Tribal Action Plan,

(iii) have the responsibility for on-going review and evaluation of, and the making of recommendations to the tribe relating to, the Tribal Action Plan, and

(iv) have the responsibility for scheduling Federal, tribal or other personnel for training in the prevention and treatment of alcohol and substance abuse among Indians as provided under section 4228, and

(B) the incorporation of the minimum standards for those programs and services which it encompasses which shall be—

(i) the Federal or State standards as provided in section 4205(a)(3), or

(ii) applicable tribal standards, if such standards are no less stringent than the Federal or State standards.

(2) Any Tribal Action Plan may, among other things, provide for—

(A) an assessment of the scope of the problem of alcohol and substance abuse for the Indian tribe which adopted the resolution for the Plan,

(B) the identification and coordination of available resources and programs relevant to a program of alcohol and substance abuse prevention and treatment,

(C) the establishment and prioritization of goals and the efforts needed to meet those goals, and

(D) the identification of the community and family roles in any of the efforts undertaken as part of the Tribal Action Plan.

(d) GRANTS.—The Secretary of the Interior may make grants to Indian tribes adopting a resolution pursuant to subsection (a) to provide technical assistance in the development of a Tribal Action Plan. In allocating funds apropriated for such grants, the Secretary shall take into consideration, among other factors—

(1) the population of the Indian tribe receiving the grant,

(2) the size of the tribe's reservation or service area,

(3) the scope of intended efforts under a Tribal Action Plan as identified by the tribe in its resolution adopted pursuant to subsection (a), and

(4) the relative need of the tribal applicant.

There is authorized to be appropriated not to exceed $4,000,000 for each of the fiscal years 1987, 1988, and 1989 for grants under this subsection.

(e) FEDERAL ACTION.—If any Indian tribe does not adopt a resolution as provided in subsection (a) within 90 days after the publication of the Memorandum of Agreement in the Federal Register as provided in section 4205, the Secretary of the Interior and the Secretary of Health and Human Services shall require the Bureau of Indian Affairs agency and education superintendents, where appropriate, and the Indian Health Service service unit director serving such tribe to enter into an agreement to identify and coordinate available programs and resources to carry out the purposes of this subtitle for such tribe. After such an agreement has been entered into for a tribe such tribe may adopt a resolution under subsection (a).

SEC. 4207. DEPARTMENTAL RESPONSIBILITY.

(a) IMPLEMENTATION.—The Secretary of the Interior, acting through the Bureau of Indian Affairs, and the Secretary of Health

and Human Services, acting through the Indian Health Service, shall bear equal responsibility for the implementation of this subtitle in cooperation with Indian tribes.

(b) OFFICE OF ALCOHOL AND SUBSTANCE ABUSE.—

(1) In order to better coordinate the various programs of the Bureau of Indian Affairs in carrying out this subtitle, there is established within the Office of the Assistant Secretary of Indian Affairs an Office of Alcohol and Substance Abuse. The director of such office shall be appointed by the Assistant Secretary on a permanent basis at no less than a grade GS-15 of the General Schedule.

(2) In addition to other responsibilities which may be assigned to such Office, it shall be responsible for—

(A) monitoring the performance and compliance of programs of the Bureau of Indian Affairs in meeting the goals and purposes of this subtitle and the Memorandum of Agreement entered into under section 4205, and

(B) serving as a point of contact within the Bureau of Indian Affairs for Indian tribes and the Tribal Coordinating Committees regarding the implementation of this subtitle, the Memorandum of Agreement, and any Tribal Action Plan established under section 4206.

(c) INDIAN YOUTH PROGRAMS OFFICER.—

(1) There is established in the Office of Alcohol and Substance Abuse the position to be known as the Indian Youth Programs Officer.

(2) The position of Indian Youth Programs Officer shall be established on a permanent basis at no less than the grade of GS-14 of the General Schedule.

(3) In addition to other responsibilities which may be assigned to the Indian Youth Programs Officer relating to Indian Youth, such Officer shall be responsible for—

(A) monitoring the performance and compliance of programs of the Bureau of Indian Affairs in meeting the goals and purposes of this subtitle and the Memorandum of Agreement entered into under section 4205 as they relate to Indian youth efforts, and

(B) providing advice and recommendations, including recommendations submitted by Indian tribes and Tribal Coordinating Committees, to the Director of the Office of Alcohol and Substance Abuse as they relate to Indian youth.

SEC. 4208. CONGRESSIONAL INTENT.

It is the intent of Congress that—

(1) specific Federal laws, and administrative regulations promulgated thereunder, establishing programs of the Bureau of Indian Affairs, the Indian Health Service, and other Federal agencies, and

(2) general Federal laws, including laws limiting augmentation of Federal appropriations or encouraging joint or cooperative funding,

shall be liberally construed and administered to achieve the purposes of this subtitle.

SEC. 4209. FEDERAL FACILITIES, PROPERTY, AND EQUIPMENT.

(a) FACILITY AVAILABILITY.—In the furtherance of the purposes and goals of this subtitle, the Secretary of the Interior and the Secretary of Health and Human Services shall make available for community use, to the extent permitted by law and as may be provided in a Tribal Action Plan, local Federal facilities, property, and equipment, including school facilities. Such facility availability shall include school facilities under the Secretary of the Interior's jurisdiction: Provided, That the use of any school facilities shall be conditioned upon approval of the local school board with jurisdiction over such school.

(b) COSTS.—Any additional cost associated with the use of Federal facilities, property, or equipment under subsection (a) may be borne by the Secretary of the Interior and the Secretary of Health and Human Services out of available Federal, tribal, State, local, or private funds, if not otherwise prohibited by law. This subsection does not require the Secretary of the Interior nor the Secretary of Health and Human Services to expend additional funds to meet the additional costs which may be associated with the provision of such facilities, property, or equipment for community use. Where the use of Federal facilities, property, or equipment under subsection (a) furthers the purposes and goals of this subtitle, the use of funds other than those funds appropriated to the Department of the Interior or the Department of Health and Human Services to meet the additional costs associated with such use shall not constitute an augmentation of Federal appropriations.

SEC. 4210. NEWSLETTER.

The Secretary of the Interior shall, not later than 120 days after the date of the enactment of this subtitle, publish an alcohol and substance abuse newsletter in cooperation with the Secretary of Health and Human Services and the Secretary of Education to report on Indian alcohol and substance abuse projects and programs. The newsletter shall—

(1) be published once in each calendar quarter,

(2) include reviews of programs determined by the Secretary of the Interior to be exemplary and provide sufficient information to enable interested persons to obtain further information about such programs, and

(3) be circulated without charge to—

(A) schools,

(B) tribal offices,

(C) Bureau of Indian Affairs' agency and area offices,

(D) Indian Health Service area and service unit offices,

(E) Indian Health Service alcohol programs, and

(F) other entities providing alcohol and substance abuse related services or resources to Indian people.

PART III—INDIAN YOUTH PROGRAMS

SEC. 4211. REVIEW OF PROGRAMS.

(a) REVIEW.—In the development of the Memorandum of Agreement required by section 4205, the Secretary of the Interior and the Secretary of Health and Human Services, in cooperation with the Secretary of Education, shall review and consider—

(1) Federal programs providing education services or benefits to Indian children,

(2) tribal, State, local, and private educational resources and programs,

(3) Federal programs providing family and social services and benefits for Indian families and children,

(4) Federal programs relating to youth employment, recreation, cultural, and community activities, and

(5) tribal, State, local, and private resources for programs similar to those cited in paragraphs (3) and (4),

to determine their applicability and relevance in carrying out the purposes of this subtitle.

(b) PUBLICATION.—The results of the review conducted under subsection (a) shall be provided to each Indian tribe as soon as possible for their consideration and use in the development or modification of a Tribal Action Plan under section 4206.

SEC. 4212. INDIAN EDUCATION PROGRAMS.

(a) PILOT PROGRAMS.—The Assistant Secretary of Indian Affairs shall develop and implement pilot programs in selected schools funded by the Bureau of Indian Affairs (subject to the approval of the local school board or contract school board) to determine the effectiveness of summer youth programs in furthering the purposes and goals of the Indian Alcohol and Substance Abuse Prevention Act of 1986. The Assistant Secretary shall defray all costs associated with the actual operation and support of the pilot program in the school from funds appropriated for this section. For the pilot programs there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1987, 1988, and 1989.

(b) USE OF FUNDS.—Federal financial assistance made available to public or private schools because of the enrollment of Indian children pursuant to—

(1) the Act of April 16, 1934, as amended by the Indian Education Assistance Act (25 U.S.C. 452 et seq.),

(2) the Indian Elementary and Secondary School Assistance Act (20 U.S.C. 241aa et seq.), and

(3) the Indian Education Act (20 U.S.C. 3385),

may be used to support a program of instruction relating to alcohol and substance abuse prevention and treatment.

SEC. 4213. EMERGENCY SHELTERS.

(a) IN GENERAL.—A Tribal Action Plan adopted pursuant to section 4206 may make such provisions as may be necessary and practical for the establishment, funding, licensing, and operation of emergency shelters or half-way houses for Indian youth who are alcohol or substance abusers, including youth who have been arrested for offenses directly or indirectly related to alcohol or substance abuse.

(b) REFERRALS.—

(1) In any case where an Indian youth is arrested or detained by the Bureau of Indian Affairs or tribal law enforcement personnel for an offense relating to alcohol or substance abuse, other than for a status offense as defined by the Juvenile Justice and Delinquency Prevention Act of 1974, under circumstances where such youth may not be immediately restored to the custody of his parents or guardians and where there is space available in an appropriately licensed and supervised emergency shelter or half-way house, such youth shall be referred to such facility in lieu of incarceration in a secured facility unless such youth is deemed a danger to himself or to other persons.

(2) In any case where there is a space available in an appropriately licensed and supervised emergency shelter or half-way house, the Bureau of Indian Affairs and tribal courts are encouraged to refer Indian youth convicted of offenses directly or indirectly related to alcohol and substance abuse to such facilities in lieu of sentencing to incarceration in a secured juvenile facility.

(c) DIRECTION TO STATES.—In the case of any State that exercises criminal jurisdiction over any part of Indian country under section 1162 of title 18 of the United States Code or section 401 of the Act of April 11, 1968 (25 U.S.C. 1321), such State is urged to require its law enforcement officers to—

(1) place any Indian youth arrested for any offense related to alcohol or substance abuse in a temporary emergency shelter described in subsection (d) or a community-

based alcohol or substance abuse treatment facility in lieu of incarceration to the extent such facilities are available, and

(2) observe the standards promulgated under subsection (d).

(d) STANDARDS.—The Assistant Secretary of Indian Affairs shall, as part of the development of the Memorandum of Agreement set out in section 4205, promulgate standards by which the emergency shelters established under a program pursuant to subsection (a) shall be established and operated.

(e) AUTHORIZATION.—For the planning and design, construction, and renovation of emergency shelters or half-way houses to provide emergency care for Indian youth, there is authorized to be appropriated $5,000,000 for each of the fiscal years 1987, 1988, and 1989. For the operation of emergency shelters or half-way houses there is authorized to be appropriated $3,000,000 for each of the fiscal years 1987, 1988, and 1989. The Secretary of the Interior shall allocate funds appropriated pursuant to this subsection on the basis of priority of need of the various Indian tribes and such funds, when allocated, shall be subject to contracting pursuant to the Indian Self-Determination Act.

SEC. 4214. SOCIAL SERVICES REPORTS.

(a) DATA.—The Secretary of the Interior, with respect to the administration of any family or social services program by the Bureau of Indian Affairs directly or through contracts under the Indian Self-Determination Act, shall require the compilation of data relating to the number and types of child abuse and neglect cases seen and the type of assistance provided. Additionally, such data should also be categorized to reflect those cases that involve, or appear to involve, alcohol and substance abuse, those cases which are recurring, and those cases which involve other minor siblings.

(b) REFERRAL OF DATA.—The data compiled pursuant to subsection (a) shall be provided annually to the affected Indian tribe and Tribal Coordinating Committee to assist them in developing or modifying a Tribal Action Plan and shall also be submitted to the Indian Health Service service unit director who will have responsibility for compiling a tribal comprehensive report as provided in section 4230.

(c) CONFIDENTIALITY.—In carrying out the requirements of subsections (a) and (b), the Secretary shall insure that the data is compiled and reported in a manner which will preserve the confidentiality of the families and individuals.

PART IV—LAW ENFORCEMENT AND JUDICIAL SERVICES

SEC. 4215. REVIEW OF PROGRAMS.

(a) LAW ENFORCEMENT AND JUDICIAL SERVICES.—In the development of the Memorandum of Agreement required by section 4205, the Secretary of the Interior and the Secretary of Health and Human Services, in cooperation with the Attorney General of the United States, shall review and consider—

(1) the various programs established by Federal law providing law enforcement or judicial services for Indian tribes, and

(2) tribal and State and local law enforcement and judicial programs and systems

to determine their applicability and relevance in carrying out the purposes of this subtitle.

(b) DISSEMINATION OF REVIEW.—The results of the review conducted pursuant to subsection (a) shall be made available to every Indian tribe as soon as possible for their consideration and use in the development and modification of a Tribal Action Plan.

SEC. 4216. ILLEGAL NARCOTICS TRAFFIC ON THE PAPAGO RESERVATION: SOURCE ERADICATION

(a)(1) INVESTIGATION AND CONTROL.—The Secretary of the Interior shall provide assistance to the Papago Indian Tribe (Tohono O'odham) of Arizona for the investigation and control of illegal narcotics traffic on the Papago Reservation along the border with Mexico. The Secretary shall ensure that tribal efforts are coordinated with appropriate Federal law enforcement agencies, including the United States Custom Service.

(2) AUTHORIZATIONS.—For the purpose of providing the assistance required by subsection (a), there is authorized to be appropriated $500,000 for each of the fiscal years 1987, 1988, and 1989.

(b)(1) MARIJUANA ERADICATION.—The Secretary of the Interior, in cooperation with appropriate Federal, tribal, and State and local law enforcement agencies, shall establish and implement a program for the eradication of marijuana cultivation within Indian country as defined in section 1152 of title 18, United States Code. The Secretary shall establish a priority for the use of funds appropriated under subsection (b) for those Indian reservations where the scope of the problem is most critical, and such funds shall be available for contracting by Indian tribes pursuant to the Indian Self-Determination Act.

(2) AUTHORIZATIONS.—To carry out subsection (a), there is authorized to be appropriated not to exceed $1,000,000 for each of the fiscal years 1987, 1988, and 1989.

PART V—BUREAU OF INDIAN AFFAIRS LAW ENFORCEMENT

SEC. 4217. TRIBAL COURTS, SENTENCING AND FINES.

To enhance the ability of tribal governments to prevent and penalize the traffic of illegal narcotics on Indian reservations, paragraph (7) of section 202 of the Act of April 11, 1969 (25 U.S.C. 1302) is amended by striking out "for a term of six months and a fine of $500, or both" and inserting in lieu thereof "for a term of one year and a fine of $5,000, or both".

SEC. 4218. LAW ENFORCEMENT SERVICES.

(a) For the purpose of maintaining law and order and of protecting persons and property within Indian country as defined in section 1151 of title 18, United States Code, the Secretary of the Interior (hereinafter referred to as the "Secretary") may charge any officer or employee of the Department of the Interior with law enforcement responsibilities and authorize such officer or employee to exercise such of the following authorities as the Secretary may deem appropriate:

(1) Carry firearms within Indian country and while transporting prisoners or on other official duties outside Indian country.

(2) Secure and execute or serve within Indian country any order, warrant, subpoena, or other process which is issued under the authority of the United States or of an Indian tribe.

(3) Make an arrest without a warrant—

(A) for any offense committed within Indian country against the United States committed in the presence of the officer or employee;

(B) for any offense committed within Indian country against the United States constituting a felony if the officer or employee has reasonable grounds to believe that the person to be arrested has committed or is committing a felony; or

(C) for any offense committed within Indian country against an Indian tribe that has commissioned the officer or employee to enforce its laws if the officer or employee has reasonable grounds to believe that the person to be arrested is committing the offense in the officer's or employee's presence or view.

(4) Offer and pay a reward for services or information assisting in the detection or investigation of the commission of an offense committed within Indian country or in the apprehension of an offender.

(5) Make inquiries, and administer to, or take from, any person an oath, affirmation, or affidavit, concerning any matter which is material or relevant to the enforcement within Indian country of the laws of the United States or of any Indian tribe that has commissioned the officer to enforce its laws.

(6) Perform any other law enforcement duty that the Secretary may designate.

(7) Upon request, assist (with or without reimbursement) any Federal, tribal, State, or local law enforcement agency in the enforcement of the laws, ordinances, or regulations which they administer or enforce, but no Indian tribe, State, or political subdivision shall be deprived, by this section or by any such request, of any civil or criminal jurisdiction it may have.

(b)(1) The Secretary may utilize by agreements, with or without reimbursement, the personnel services and facilities of any Federal, tribal, State, or local government agency to the extent he deems is necessary and appropriate for effective enforcement of any Federal or tribal laws or regulations in Indian country. Where personnel, services, or facilities of State or local agencies are to be utilized, the consent of the tribe or tribes affected shall be required. The Secretary may commission law enforcement personnel of such agencies to exercise such of the authorities set out in subsection (a) of this section as the Secretary deems appropriate. Appropriate representatives of Federal agencies are hereby authorized to enter into and carry out such agreements with the Secretary or with duly authorized tribal officials.

(2) While acting in the capacity of a person commissioned by the Secretary pursuant to this section, any person who is not otherwise a Federal employee, shall be deemed a Federal employee for purposes of—

(A) section 3374(c)(2) of title 5, United States Code, and

(B) sections 111 and 1114 of title 18, United States Code.

(3) For purposes of subchapter III of chapter 81 of title 5, United States Code, an employee of a tribal, State, or local governmental agency shall be considered an eligible officer while acting in the capacity of an officer commissioned pursuant to this subsection.

(4) An agreement under this subsection for the enforcement of Federal laws shall be in accordance with an agreement entered into between the Secretary and the Attorney General of the United States.

(c) After consultation with the Attorney General of the United States, the Secretary may make and publish such rules and regulations as the Secretary deems necessary or proper for officers or employees of the Department of the Interior charged with law enforcement responsibilities and for employees of any Federal, tribal, State, or local governmental agency whose services are being utilized pursuant to subsection (b).

(d)(1) Nothing in this section shall be construed to invalidate any delegations of authority or law enforcement commissions issued by the Secretary, or the Secretary's

designates, prior to the date of enactment of this Act.

(2) The authorities provided by this section are in addition to, and not in derogation of, any existing authorities. Nothing in this section shall be construed to alter in any way the law enforcement, or investigative, or judicial authorities of any Indian tribe, State, or political subdivision thereof, or of any department, agency, court, or official of the United States other than the Department of the Interior and agencies or officials thereof.

(e) Notwithstanding section 5901(a) of title 5, United States Code, the uniform allowance for Bureau of Indian Affairs law enforcement officers shall not exceed $400 annually.

SEC. 4219. BUREAU OF INDIAN AFFAIRS LAW ENFORCEMENT AND JUDICIAL TRAINING.

(a) IN GENERAL.—The Secretary of the Interior shall ensure, through the establishment of a new training program or through the supplement of existing training programs, that all Bureau of Indian Affairs and tribal law enforcement and judicial personnel shall have available training in the investigation and prosecution of offenses relating to illegal narcotics and in alcohol and substance abuse prevention and treatment. Any training provided to Bureau of Indian Affairs and tribal law enforcement and judicial personnel as provided in subsection (a) shall specifically include training in the problems of youth alcohol and substance abuse prevention and treatment. Such training shall be coordinated with the Indian Health Service in the carrying out of its responsibilities under section 787.

(b) AUTHORIZATION.—For the purpose of providing the training required by subsection (a), there are authorized to be appropriated $1,500,000 for each of the fiscal years 1987, 1988, and 1989.

SEC. 4220. MEDICAL ASSESSMENT AND TREATMENT OF JUVENILE OFFENDERS.

The Memorandum of Agreement entered into pursuant to section 4205 shall include a specific provision for the development and implementation at each Bureau of Indian Affairs agency and Indian Health Service unit of a procedure for the emergency medical assessment and treatment of every Indian youth arrested or detained by Bureau of Indian Affairs or tribal law enforcement personnel for an offense relating to or involving alcohol or substance abuse. The medical assessment required by this subsection—

(1) shall be conducted to determine the mental or physical state of the individual assessed so that appropriate steps can be taken to protect the individual's health and well-being,

(2) shall occur as soon as possible after the arrest or detention of an Indian youth, and

(3) shall be provided by the Indian Health Service, either through its direct or contract health service.

SEC. 4221. JUVENILE DETENTION CENTERS.

(a) PLAN.—The Secretary of the Interior shall construct or renovate and staff new or existing juvenile detention centers. The Secretary shall ensure that the construction and operation of the centers is consistent with the Juvenile Justice and Delinquency Prevention Act of 1974.

(b) AUTHORIZATION.—For the purpose of subsection (a), there is authorized to be appropriated $7,500,000 for construction and renovation for each of the fiscal years 1987, 1988, and 1989, and $7,500,000 for staffing and operation for each of the fiscal years 1987, 1988, and 1989.

SEC. 4222. MODEL INDIAN JUVENILE CODE.

The Secretary of the Interior, either directly or by contract, shall provide for the development of a Model Indian Juvenile Code which shall be consistent with the Juvenile Justice and Delinquency Prevention Act of 1974 and which shall include provisions relating to the disposition of cases involving Indian youth arrested or detained by Bureau of Indian Affairs or tribal law enforcement personnel for alcohol or drug related offenses. The development of such model code shall be accomplished in cooperation with Indian organizations having an expertise or knowledge in the field of law enforcement and judicial procedure and in consultation with Indian tribes. Upon completion of the Model Code, the Secretary shall make copies available to each Indian tribe.

SEC. 4223. LAW ENFORCEMENT AND JUDICIAL REPORT.

(a) COMPILATION OF LAW ENFORCEMENT DATA.—The Secretary of the Interior, with respect to the administration of any law enforcement or judicial services program by the Bureau of Indian Affairs, either directly or through contracts under the Indian Self-Determination Act, shall require the compilation of data relating to calls and encounters, arrests and detentions, and disposition of cases by Bureau of Indian Affairs or tribal law enforcement or judicial personnel involving Indians where it is determined that alcohol or substance abuse is a contributing factor.

(b) REFERRAL OF DATA.—The data compiled pursuant to subsection (a) shall be provided annually to the affected Indian tribe and Tribal Coordinating Committee to assist them in developing or modifying a Tribal Action Plan and shall also be submitted to the Indian Health Service unit director who will have the responsibility for compiling a tribal comprehensive report as provided in section 4230.

(c) CONFIDENTIALITY.—In carrying out this section, the Secretary shall insure that the data is compiled and reported in a manner which will preserve the confidentiality of the families and individuals involved.

PART VI—INDIAN ALCOHOL AND SUBSTANCE ABUSE TREATMENT AND REHABILITATION

SEC. 4224. REVIEW OF PROGRAMS.

(a) IN GENERAL.—In the development of the Memorandum of Agreement required by section 4205, the Secretary of the Interior and the Secretary of Health and Human Services shall review and consider—

(1) the various programs established by Federal law providing health services and benefits to Indian tribes, including those relating to mental health and alcohol and substance abuse prevention and treatment, and

(2) tribal, State and local, and private health resources and programs,

(3) where facilities to provide such treatment are or should be located, and

(4) the effectiveness of public and private alcohol and substance abuse treatment programs in operation on the date of the enactment of this subtitle,

to determine their applicability and relevance in carrying out the purposes of this subtitle.

(b) DISSEMINATION.—The results of the review conducted under subsection (a) shall be provided to every Indian tribe as soon as possible for their consideration and use in the development or modification of a Tribal Action Plan.

SEC. 4225. INDIAN HEALTH SERVICE RESPONSIBILITIES.

The Memorandum of Agreement entered into pursuant to section 4205 shall include specific provisions pursuant to which the Indian Health Service shall assume responsibility for—

(1) the determination for the scope of the problem of alcohol and substance abuse among Indian people, including the number of Indians within the jurisdiction of the Indian Health Service who are directly or indirectly affected by alcohol and substance abuse and the financial and human cost,

(2) an assessment of the existing and needed resources necessary for the prevention of alcohol and substance abuse and the treatment of Indians affected by alcohol and substance abuse, and

(3) an estimate of the funding necessary to adequately support a program of prevention of alcohol and substance abuse and treatment of Indians affected by alcohol and substance abuse.

SEC. 4226. INDIAN HEALTH SERVICE PROGRAM.

The Secretary of Health and Human Services, acting through the Indian Health Service, shall provide a program of comprehensive alcohol and substance abuse prevention and treatment which shall include—

(1) prevention, through educational intervention, in Indian communities,

(2) acute detoxification and treatment,

(3) community-based rehabilitation, and

(4) community education and involvement, including extensive training of health care, educational, and community-based personnel.

The target population of such a program shall be the members of Indian tribes. Additionally, efforts to train and educate key members of the Indian community shall target employees of health, education, judicial, law enforcement, legal, and social service programs.

SEC. 4227. INDIAN HEALTH SERVICE YOUTH PROGRAM.

(a) DETOXIFICATION AND REHABILITATION.—The Secretary shall develop and implement a program for acute detoxification and treatment for Indian youth who are alcohol and substance abusers. The program shall include regional treatment centers designed to include detoxification and rehabilitation for both sexes on a referral basis. These regional centers shall be integrated with the intake and rehabilitation programs based in the referring Indian community.

(b) CENTERS.—The Secretary shall construct or renovate a youth regional treatment center in each area under the jurisdiction of an Indian Health Service area office. For purposes of the preceding sentence, the area offices of the Indian Health Service in Tucson and Phoenix, Arizona, shall be considered one area office. The regional treatment centers shall be appropriately staffed with health professionals. There are authorized to be appropriated $5,500,000 for the construction and renovation of the regional youth treatment centers, and $5,500,000 for the staffing of such centers, for each of the fiscal years 1987, 1988, and 1989.

(c) FEDERALLY OWNED STRUCTURES.—

(1) The Secretary of Health and Human Services, acting through the Indian Health Service, shall, in consultation with Indian tribes—

(A) identify and use, where appropriate, federally owned structures, suitable as local residential or regional alcohol and substance abuse treatment centers for affected Indians, and

(B) establish guidelines for determining the suitability of any such federally owned structure to be used as a local residential or regional alcohol and substance abuse treatment center for affected Indians.

(2) Any structure described in paragraph (1) may be used under such terms and conditions as may be agreed upon by the Secretary of Health and Human Services and the agency having responsibility for the structure.

(3) There are authorized to be appropriated $3,000,000 for each of the fiscal years 1987, 1988, and 1989.

(d) REHABILITATION AND FOLLOW-UP SERVICES.—

(1) The Secretary, in cooperation with the Secretary of the Interior, shall develop and implement within each Indian Health Service service unit community-based rehabilitation and follow-up services for Indian youth who are alcohol or substance abusers which are designed to integrate long-term treatment and to monitor and support the Indian youth after their return to their home community.

(2) Services under paragraph (1) shall be administered within each service unit by trained staff within the community who can assist the Indian youth in continuing development of self-image, positive problem-solving skills, and nonalcohol or substance abusing behaviors. Such staff shall include alcohol and substance abuse counselors, mental health professionals, and other health professionals and paraprofessionals, including community health representatives.

(3) For the purpose of providing the services authorized by paragraph (1), there are authorized to be appropriated $15,000,000 for each of the fiscal years 1987, 1988, and 1989.

(e) PREVENTION.—

(1) The Secretary, in cooperation with the Secretary of the Interior, shall develop and implement a program of prevention of alcohol and substance abuse among Indian youth through education intervention. Such a program shall include—

(A) the training of counselors and supervisors employed in Head Start programs serving in Indian tribes in methods to enhance the self-image of Indian children attending such Head Start program,

(B) the development and implementation of a program of instruction in alcohol and substance abuse in the curricula of Bureau of Indian Affairs' schools operated under contract entered into pursuant to the Indian Self-Determination Act, and

(C) the training of counselors, teachers, and other educational professionals in such schools in alcohol and substance abuse.

(2) For the purpose of carrying out—

(A) subparagraph (A) of paragraph (1), there are authorized to be appropriated $1,000,000 for each of the fiscal years 1987, 1988, and 1989,

(B) subparagraph (B) of paragraph (1), there are authorized to be appropriated $1,000,000 for each of the fiscal years 1987, 1988, and 1989, and

(C) subparagraph (C) of paragraph (1), there are authorized to be appropriated $1,250,000 for each of the fiscal years 1987, 1988, and 1989.

SEC. 4228. COMMUNITY EDUCATION AND TRAINING.

(a) COMMUNITY EDUCATION.—The Secretary, in cooperation with the Secretary of the Interior, shall develop and implement within each service unit a program of community education and involvement which shall be designed to provide concise and timely information to the community leadership of each tribal community. Such program shall include education in alcohol and substance abuse to the critical core of each tribal community, including political leaders, tribal judges, law enforcement personnel, members of tribal health and education boards, and other critical parties.

(b) TRAINING.—The Secretary shall require that existing health staff of the Indian Health Service, particularly those at the service unit level, shall receive the necessary training in alcohol and substance abuse to enable the Indian Health Service to address the problem in a coordinated manner with common approaches. In carrying out that responsibility, the Secretary shall make available to community health representatives funded by the Indian Health Service additional training in prevention strategies that will support a school-based program. Such training will also include techniques for early identification of symptoms of alcohol and substance abuse and support strategies for maintenance of alcohol and substance-free life-styles, including fitness programs, nutritional awareness programs, recreational alternatives, and cultural activities.

(c)(1) For the purpose of implementing the program established by subsection (a), there are authorized to be appropriated $3,000,000 for fiscal year 1987, $750,000 for fiscal year 1988, and $500,000 for fiscal year 1989.

(2) For the purpose of providing training under subsection (b), there are authorized to be appropriated $2,000,000 for fiscal year 1987, $1,000,000 for fiscal year 1988, and $500,000 for fiscal year 1989.

SEC. 4229. NAVAJO ALCOHOL REHABILITATION DEMONSTRATION PROGRAM.

(a) DEMONSTRATION PROGRAM.—The Secretary of Health and Human Services shall make grants to the Navajo tribe to establish a demonstration program in the city of Gallup, New Mexico, to rehabilitate adult Navajo Indians suffering from alcoholism or alcohol abuse.

(b) EVALUATION AND REPORT.—The Secretary, acting through the National Institute on Alcohol Abuse and Alcoholism, shall evaluate the program established under subsection (a) and submit a report on such evaluation to the appropriate Committees of Congress by January 1, 1990.

(c) AUTHORIZATION.—There are authorized to be appropriated for the purposes of grants under subsection (a) $400,000 for each of the fiscal years 1988, 1989, and 1990. Not more than 10 percent of the funds appropriated for any fiscal year may be used for administrative purposes.

SEC. 4230. INDIAN HEALTH SERVICE REPORTS.

(a) COMPILATION OF DATA.—The Secretary of Health and Human Services, with respect to the administration of any health program by an Indian Health Service service unit, directly or through contract, including a contract under the Indian Self-Determination Act, shall require the compilation of data relating to the number of cases or incidents which any of the Indian Health Service personnel or services were involved and which were related, either directly or indirectly, to alcohol or substance abuse. Such report shall include the type of assistance provided and the disposition of these cases.

(b) REFERRAL OF DATA.—The data compiled under subsection (a) shall be provided annually to the affected Indian tribe and Tribal Coordinating Committee to assist them in developing or modifying a Tribal Action Plan.

(c) COMPREHENSIVE REPORT.—Each Indian Health Service service unit director shall be responsible for assembling the data compiled under this section and section 4204 into an annual tribal comprehensive report which shall be provided to the affected tribe and to the Director of the Indian Health Service who shall develop and publish a biennial national report on such tribal comprehensive reports.

Subtitle D—Miscellaneous Provisions

SEC. 4301. ACTION GRANTS.

The Domestic Volunteer Service Act of 1973 is amended—

(1) in title I by adding after section 123 the following new section:

"SPECIAL INITIATIVES

"SEC. 124. The Director is authorized to engage in activities that mobilize and initiate private sector efforts to increase voluntarism in preventing drug abuse through public awareness and education (including grants, contracts, conferences, public service announcements, speakers bureau, public-private partnerships and technical assistance to nonprofit and for-profit organizations). In fulfilling the authority of this section, the Director is authorized to (1) coordinate the agency efforts with the White House and other Federal agencies, and (2) accept in the name of the ACTION agency funds received through solicitation of profit and nonprofit entities.";

(2) by amending subsection (c) of section 501 to read as follows:

"(c) There is to be authorized to be appropriated to carry out programs under part C of title I of this Act $4,484,000 for the fiscal year 1987 (of which $2,500,000 shall be available for drug abuse prevention), $1,984,000 for fiscal year 1988, and $1,984,000 for fiscal year 1989."; and

(3) by amending section 504 to read as follows:

"ADMINISTRATION AND COORDINATION

"SEC. 504. There is authorized to be appropriated for the Administration of this Act, as authorized in title IV of this Act, $25,812,000 for fiscal year 1987 (of which $500,000 shall be available for support of drug abuse prevention), $25,312,000 for fiscal year 1988, and $25,312,000 for fiscal year 1989.".

SEC. 4302. ESTABLISHMENT OF NATIONAL TRUST FOR DRUG-FREE YOUTH.

(a) ESTABLISHMENT.—In order to encourage private gifts of real and personal property to assist the Secretary in carrying out the national programs of drug abuse research, education, and prevention under subtitle B, there is hereby established a charitable, nonprofit, and nonpartisan corporation to be known as the National Trust for Drug Free Youth.

(b) BOARD OF DIRECTORS.—The National Trust for Drug-Free Youth shall be under the general direction of a Board of Directors. The overall priorities, policies, and goals of the National Trust shall be determined by the Board in consultation with the Secretary. The Board shall coordinate the activities of the National Trust for Drug-Free Youth with the Secretary. The Board shall be composed of three members appointed as follows:

(1) one member shall be appointed by the President;

(2) one member shall be appointed by the Speaker of the House of Representatives; and

(3) one member shall be appointed by the Majority Leader of the Senate.

(c) PRINCIPAL OFFICE.—The National Trust shall have its principal office in the District

of Columbia and for the purposes of venue in civil actions shall be considered an inhabitant and resident of the District.

(d) GENERAL POWERS.—The National Trust shall have the following general powers:

(1) to have succession until dissolved by Act of Congress, in which event title to the properties of the National Trust, both real and personal shall, insofar as consistent with existing contractual obligations and subject to all other legally enforceable claims or demands by or against the National Trust, pass to and become vested in the United States of America;

(2) to adopt, alter, and use a corporate seal which shall be judicially noticed;

(3) to sue and be sued, complain and defend in any court of competent jurisdiction;

(4) to adopt and establish such bylaws, rules, and regulations, not inconsistent with the laws of the United States or of any State, as the Board considers necessary for the administration of its functions, including among other matter, bylaws, rules, and regulations governing administration of corporate funds;

(5) to accept, hold, and administer gifts and bequests of money, securities, or other personal property of whatsoever character, absolutely or on trust, for the purposes for which the National Trust is created;

(6) to sell, exchange, or otherwise dispose of as it may determine from time to time the moneys, securities, or other gifts given or bequeathed to it;

(7) to appoint and prescribe the duties of such officers, agents, and employees as may be necessary to carry out its functions, and to fix and pay such compensation to them for their services as the National Trust is created; and

(8) to audit the financial records of the corporation.

(e) LIMITATIONS.—The National Trust shall not have authority—

(1) to issue shares or stock or declare or pay dividends; or

(2) to loan funds to its officers or directors.

(f) REPORTS.—The Board shall submit an annual report and independent audit to the Congress and the President concerning the expenditure of funds under the National Trust.

SEC. 4303. INFORMATION ON DRUG ABUSE AT THE WORKPLACE.

(a) The Secretary of Labor shall collect such information as is available on the incidence of drug abuse in the workplace and efforts to assist workers, including counseling, rehabilitation and employee assistance programs. The Secretary shall conduct such additional research as is necessary to assess the impact and extent of drug abuse and remediation efforts. The Secretary shall submit the findings of such collection and research to the House Committee on Education and Labor and the Senate Committee on Labor and Human Services no later than two years from the date of enactment of this Act.

(b) There is authorized to be appropriated the aggregate sum of $3,000,000 for fiscal years 1987 and 1988, to remain available until expended, to enable the Secretary of Labor to carry out the purposes of this section.

TITLE V—UNITED STATES INSULAR AREAS AND NATIONAL PARKS

Subtitle A—Programs in United States Insular Areas

SEC. 5001. SHORT TITLE.

This subtitle may be cited as the "United States Insular Areas Drug Abuse Act of 1986".

SEC. 5002. PURPOSES.

The purposes of this subtitle are to improve enforcement of drug laws and enhance interdiction of illicit drug shipments in the Caribbean and Pacific territories and commonwealths of the United States and to assist public and private sector drug abuse prevention and treatment programs in United States insular areas.

SEC. 5003. ANNUAL REPORTS TO CONGRESS.

The President shall report annually to the Congress as to—

(1) the efforts and success of Federal agencies in preventing the illegal entry into the United States of controlled substances from the insular areas of the United States outside the customs territory of the United States and states freely associated with the United States and the nature and extent of such illegal entry, and

(2) the efforts and success of Federal agencies in preventing the illegal entry from other nations, including states freely associated with the United States, of controlled substances into the United States territories and the commonwealths for use in the territories and commonwealths or for transshipment to the United States and the nature and extent of such illegal entry and use.

SEC. 5004. ENFORCEMENT AND ADMINISTRATION IN INSULAR AREAS.

(a) AMERICAN SAMOA.—(1) With the approval of the Attorney General of the United States or his designee, law enforcement officers of the Government of American Samoa are authorized to—

(A) execute and serve warrants, subpoenas, and summons issued under the authority of the United States;

(B) make arrests without warrant; and

(C) make seizures of property to carry out the purposes of this subtitle, the Controlled Substances Import and Export Act (21 U.S.C. 951-970), and any other applicable narcotics laws of the United States.

(2) The Attorney General and the Secretary of Health and Human Services of the United States are authorized to—

(A) train law enforcement officers of the Government of American Samoa, and

(B) provide by purchase or lease law enforcement equipment and technical assistance to the Government of American Samoa to carry out the purposes of this subtitle and any other Federal or territorial drug abuse laws.

(3) There are authorized to be appropriated $700,000 to carry out the purposes of this subsection, to remain available until expended.

(b) GUAM.—(1) The Attorney General and the Secretary of Health and Human Services of the United States may provide technical assistance and equipment to the Government of Guam to carry out the purposes of this subtitle and any other Federal or territorial drug abuse law.

(2) There are authorized to be appropriated $1,000,000 to carry out paragraph (1). Funds appropriated under this paragraph shall remain available until expended.

(c) THE NORTHERN MARIANA ISLANDS.—(1) With the approval of the Attorney General of the United States or his designee, law enforcement officers of the Government of the Northern Mariana Islands are authorized to—

(A) execute and serve warrants, subpoenas, and summons issued under the authority of the United States;

(B) make arrests without warrant; and

(C) make seizures of property to carry out the purposes of this subtitle, the Controlled Substances Import and Export Act (21 U.S.C. 951-970), and any other applicable narcotics laws of the United States.

(2) The Attorney General of the United States and the Secretary of Health and Human Services, as appropriate, are authorized to—

(A) train law enforcement officers of the Government of the Northern Mariana Islands, and

(B) provide, by purchase or lease, law enforcement equipment and technical assistance to the Government of the Northern Mariana Islands to carry out the purposes of this subtitle and any other Federal or commonwealth drug abuse law.

(3) There are authorized to be appropriated $250,000 to carry out the purposes of this subsection, to remain available until expended.

(4) Federal personnel and equipment assigned to Guam pursuant to subsection (b) of this section shall also be available to carry out the purposes of this subtitle in the Northern Mariana Islands.

(d) PUERTO RICO.—(1) There are authorized to be appropriated for grants to the Government of Puerto Rico—

(A) $3,300,000 for the purchase of 2 helicopters;

(B) $3,500,000 for the purchase of an aircraft; and

(C) $1,000,000 for the purchase and maintenance of 5 high-speed vessels.

Sums appropriated under this paragraph shall remain available until expended.

(2) The United States Customs Service should station an aerostat in Puerto Rico.

(3) Equipment provided to the Government of Puerto Rico pursuant to paragraph (1) of this subsection shall be made available upon request to the Federal agencies involved in drug interdiction in Puerto Rico.

(4)(A) The Attorney General and the Secretary of Health and Human Services of the United States may provide technical assistance and equipment to the Government of Puerto Rico to carry out the purposes of this subtitle and any other Federal or commonwealth drug abuse law.

(B) There are authorized to be appropriated such sums as may be necessary to carry out subparagraph (A). Funds appropriated under this subparagraph shall remain available until expended.

(e) THE VIRGIN ISLANDS.—(1) There are authorized to be appropriated for grants to the Government of the Virgin Islands—

(A) $3,000,000 for 2 patrol vessels, tracking equipment, supplies, and agents, and

(B) $1,000,000 for programs to prevent and treat narcotics abuse, such sums to remain available until expended.

(2) The United States Coast Guard should station a patrol vessel in St. Croix, Virgin Islands.

(3)(A) The Attorney General and the Secretary of Health and Human Services of the United States may provide technical assistance and equipment to the Government of the United States Virgin Islands to carry out the purposes of this subtitle and any other Federal or territorial drug abuse law.

(B) There are authorized to be appropriated such sums as may be necessary to carry

out subparagraph (A). Funds appropriated under this subparagraph shall remain available until expended.

Subtitle B—National Park Service Program

SEC. 5051. SHORT TITLE.

This subtitle may be cited as the "National Park Police Drug Enforcement Supplemental Authority Act".

SEC. 5052. NATIONAL PARK POLICE AUTHORIZATION.

In order to improve Federal law enforcement activities relating to the use of narcotics and prohibited substances in national park system units there are made available to the Secretary of the Interior, in addition to sums made available under other authority of law, $1,000,000 for the fiscal year 1987, and for each fiscal year thereafter, to be used for the employment and training of additional Park Police, for equipment and facilities to be used by Park Police, and for expenses related to such employment, training, equipment, and facilities.

TITLE VI—FEDERAL EMPLOYEE SUBSTANCE ABUSE EDUCATION AND TREATMENT

SEC. 6001. SHORT TITLE.

This title may be cited as the "Federal Employee Substance Abuse Education and Treatment Act of 1986".

SEC. 6002. PROGRAMS TO PROVIDE PREVENTION, TREATMENT, AND REHABILITATION SERVICES TO FEDERAL EMPLOYEES WITH RESPECT TO DRUG AND ALCOHOL ABUSE.

(a) IN GENERAL.—(1) Chapter 73 of title 5, United States Code, is amended by adding at the end the following:

"Subchapter VI—Drug Abuse, Alcohol Abuse, and Alcoholism

"§ 7361. Drug abuse

"(a) The Office of Personnel Management shall be responsible for developing, in cooperation with the President, with the Secretary of Health and Human Services (acting through the National Institute on Drug Abuse), and with other agencies, and in accordance with applicable provisions of this subchapter, appropriate prevention, treatment, and rehabilitation programs and services for drug abuse among employees. Such agencies are encouraged to extend, to the extent feasible, such programs and services to the families of employees and to employees who have family members who are drug abusers. Such programs and services shall make optimal use of existing governmental facilities, services, and skills.

"(b) Section 527 of the Public Health Service Act (42 U.S.C. 290ee-3), relating to confidentiality of records, and any regulations prescribed thereunder, shall apply with respect to records maintained for the purpose of carrying out this section.

"(c) Each agency shall, with respect to any programs or services provided by such agency, submit such written reports as the Office may require in connection with any report required under section 7363 of this title.

"(d) For the purpose of this section, the term 'agency' means an Executive agency.

"§ 7362. Alcohol abuse and alcoholism

"(a) The Office of Personnel Management shall be responsible for developing, in cooperation with the Secretary of Health and Human Services and with other agencies, and in accordance with applicable provisions of this subpart, appropriate prevention, treatment, and rehabilitation programs and services for alcohol abuse and alcoholism among employees. Such agencies are encouraged to extend, to the extent feasible, such programs and services to the families of alcoholic employees and to employees who have family members who are alcoholics. Such programs and services shall make optimal use of existing governmental facilities, services, and skills.

"(b) Section 523 of the Public Health Service Act (42 U.S.C. 290dd-3), relating to confidentiality of records, and any regulations prescribed thereunder, shall apply with respect to records maintained for the purpose of carrying out this section.

"(c) Each agency shall, with respect to any programs or services provided by such agency, submit such written reports as the Office may require in connection with any report required under section 7363 of this title.

"(d) For the purpose of this section, the term 'agency' means an Executive agency.

"§ 7363. Reports to Congress

"(a) The Office of Personnel Management shall, within 6 months after the date of the enactment of the Federal Employee Substance Abuse Education and Treatment Act of 1986 and annually thereafter, submit to each House of Congress a report containing the matters described in subsection (b).

"(b) Each report under this section shall include—

"(1) a description of any programs or services provided under section 7361 or 7362 of this title, including the costs associated with each such program or service and the source and adequacy of any funding such program or service;

"(2) a description of the levels of participation in each program and service provided under section 7361 or 7362 of this title, and the effectiveness of such programs and services;

"(3) a description of the training and qualifications required of the personnel providing any program or service under section 7361 or 7362 of this title;

"(4) a description of the training given to supervisory personnel in connection with recognizing the symptoms of drug or alcohol abuse and the procedures (including those relating to confidentiality) under which individuals are referred for treatment, rehabilitation, or other assistance;

"(5) any recommendations for legislation considered appropriate by the Office and any proposed administrative actions; and

"(6) information describing any other related activities under section 7904 of this title, and any other matter which the Office considers appropriate.".

(2) The analysis for chapter 73 of title 5, United States Code, is amended by adding at the end the following:

"Subchapter VI—Drug Abuse, Alcohol Abuse, and Alcoholism

"Sec.
"7361. Drug abuse.
"7362. Alcohol abuse and alcoholism.
"7363. Reports to Congress.".

(b) TECHNICAL AND CONFORMING AMENDMENTS.— The Public Health Service Act is amended—

(1) in section 521 (42 U.S.C. 290dd-1)—

(A) by striking out subsection (a);

(B) by striking out "similar" in subsection (b)(1); and

(C) by redesignating subsections (b), (c), and (d) as subsections (a), (b), and (c), respectively;

(2) in section 525 (42 U.S.C. 290ee-1)—

(A) by striking out subsection (a);

(B) by striking out "similar" in subsection (b)(1); and

(C) by redesignating subsections (b), (c), and (d) as subsections (a), (b), and (c), respectively.

SEC. 6003. EDUCATIONAL PROGRAM FOR FEDERAL EMPLOYEES RELATING TO DRUG AND ALCOHOL ABUSE.

(a) ESTABLISHMENT.—The Director of the Office of Personnel Management shall, in consultation with the Secretary of Health and Human Services, establish a Government-wide education program, using seminars and such other methods as the Director considers appropriate, to carry out the purposes prescribed in subsection (b).

(b) PURPOSES.—The program established under this section shall be designed to provide information to Federal Government employees with respect to—

(1) the short-term and long-term health hazards associated with alcohol abuse and drug abuse;

(2) the symptoms of alcohol abuse and drug abuse;

(3) the availability of any prevention, treatment, or rehabilitation programs or services relating to alcohol abuse or drug abuse, whether provided by the Federal Government or otherwise;

(4) confidentiality protections afforded in connection with any prevention, treatment, or rehabilitation programs or services;

(5) any penalties provided under law or regulation, and any administrative action (permissive or mandatory), relating to the use of alcohol or drugs by a Federal Government employee or the failure to seek or receive appropriate treatment or rehabilitation services; and

(6) any other matter which the Director considers appropriate.

SEC. 6004. EMPLOYEE ASSISTANCE PROGRAMS RELATING TO DRUG ABUSE AND ALCOHOL ABUSE.

(a) IN GENERAL.—Chapter 79 of title 5, United States Code, is amended by adding at the end the following:

"§ 7904. Employee assistance programs relating to drug abuse and alcohol abuse

"(a) The head of each Executive agency shall, in a manner consistent with guidelines prescribed under subsection (b) of this section and applicable provisions of law, establish appropriate prevention, treatment, and rehabilitation programs and services for drug abuse and alcohol abuse for employees in or under such agency.

"(b) The Office of Personnel Management shall, after such consultations as the Office considers appropriate, prescribe guidelines for programs and services under this section.

"(c) The Secretary of Health and Human Services, on request of the head of an Executive agency, shall review any program or service provided under this section and shall submit comments and recommendations to the head of the agency concerned.".

(b) CONFORMING AMENDMENT.—The analysis for chapter 79 of title 5, United States Code, is amended by adding at the end the following:

"7904. Employee assistance programs relating to drug abuse and alcohol abuse.".

SEC. 6005. SUBSTANCE ABUSE COVERAGE STUDY.

(a) STUDY.—The Secretary of Health and Human Services shall contract with the Institute of Medicine of the National Academy of Sciences to conduct a study of (1) the extent to which the cost of drug abuse treatment is covered by private insurance, public programs, and other sources of payment,

and (2) the adequacy of such coverage for the rehabilitation of drug abusers.

(b) REPORT.—Not later than one year after the date of the enactment of this Act the Secretary of Health and Human Services shall transmit to the Congress a report of the results of the study conducted under subsection (a). The report shall include recommendations of means to meet the needs identified in such study.

SEC. 6006. HEALTH INSURANCE COVERAGE FOR DRUG AND ALCOHOL TREATMENT.

(a) FINDINGS.—The Congress finds that—

(1) drug and alcohol abuse are problems of grave concern and consequence in American society;

(2) over 500,000 individuals are known heroin addicts; 5 million individuals use cocaine; and at least 7 million individuals regularly use prescription drugs, mostly addictive ones, without medical supervision;

(3) 10 million adults and 3 million children and adolescents abuse alcohol, and an additional 30 to 40 million people are adversely affected because of close family ties to alcoholics;

(4) the total cost of drug abuse to the nation in 1983 was over $60,000,000,000; and

(5) the vast majority of health benefits plans provide only limited coverage for treatment of drug and alcohol addiction, which is a fact that can discourage the abuser from seeking treatment or, if the abuser does seek treatment, can cause the abuser to face significant out of pocket expenses for the treatment.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) all employers providing health insurance policies should ensure that the policies provide adequate coverage for treatment of drug and alcohol addiction in recognition that the health consequences and costs for individuals and society can be as formidable as those resulting from other diseases and illnesses for which insurance coverage is much more adequate; and

(2) State insurance commissioners should encourage employers providing health benefits plans to ensure that the policies provide more adequate coverage for treatment of drug and alcohol addiction.

TITLE VII—NATIONAL ANTIDRUG REORGANIZATION AND COORDINATION

SEC. 7001. SHORT TITLE.

This title may be cited as the "National Antidrug Reorganization and Coordination Act".

SEC. 7002. FINDINGS.

The Congress finds that—

(1) the Federal Government's response to drug trafficking and drug abuse is divided among several dozen agencies and bureaus of the Government, ranging from the Department of Defense to the Department of Health and Human Services;

(2) numerous recent congressional hearings and reports, reports by the Comptroller General, and studies by Executive branch agencies have documented the waste and inefficiency caused by this division of responsibilities;

(3) interagency competition for credit and budget dollars imposes critical obstacles to efficient application of national resources in combating drug trafficking and drug abuse; and

(4) successfully combating such trafficking and drug abuse requires coherent planning that includes intelligent organization and operations of Executive branch agencies.

SEC. 7003. SUBMISSION OF LEGISLATION.

Not later than 6 months after the date of enactment of this title, the President shall submit to each House of Congress recommendations for legislation to reorganize the Executive branch of the Government to more effectively combat drug traffic and drug abuse. In the preparation of such recommendations, the President shall consult with the Comptroller General, State and local law enforcement authorities, relevant committees of the Congress, and the Attorney General and the Secretaries of State, the Treasury, Transportation, Health and Human Services, Defense, and Education.

TITLE VIII—PRESIDENT'S MEDIA COMMISSION ON ALCOHOL AND DRUG ABUSE PREVENTION

SEC. 8001. SHORT TITLE.

This title may be cited as the "President's Media Commission on Alcohol and Drug Abuse Prevention Act".

SEC. 8002. ESTABLISHMENT.

There is established a commission to be known as the President's Media Commission on Alcohol and Drug Abuse Prevention (hereinafter in this title referred to as the "Commission").

SEC. 8003. DUTIES OF COMMISSION.

The Commission shall—

(1) examine public education programs in effect on the date of the enactment of this title which are—

(A) implemented through various segments of mass media; and

(B) intended to prevent alcohol and drug abuse;

(2) act as an administrative and coordinating body for the voluntary donation of resources from—

(A) television, radio, motion picture, cable communications, and print media;

(B) the recording industry;

(C) the advertising industry;

(D) the business sector of the United States; and

(E) professional sports organizations and associations;

to assist the implementation of new programs and national strategies for dissemination of information intended to prevent alcohol and drug abuse;

(3) encourage media outlets throughout the country to provide information aimed at preventing alcohol and drug abuse, including public service announcements, documentary films, and advertisements; and

(4) evaluate the effectiveness and assist in the update of programs and national strategies formulated with the assistance of the Commission.

SEC. 8004. MEMBERSHIP.

(a) NUMBER AND APPOINTMENT.—The Commission shall be composed of 12 members appointed by the President within 30 days after the date of the enactment of this title, and should include representatives of—

(1) advertising agencies;

(2) motion picture, television, radio, cable communications, and print media;

(3) the recording industry;

(4) other segments of the business sector of the United States;

(5) experts in the prevention of alcohol and drug abuse;

(6) professional sports organizations and associations; and

(7) other Federal agencies, as designated by the President, including the Director of the Agency for Substance Abuse Prevention of the Department of Health and Human Services.

(b) TERMS.—(1) Except as provided in paragraphs (2) and (3), members shall be appointed for terms of 3 years.

(2) Any member appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term.

(3) A member may serve after the expiration of his term until his successor has taken office.

(c) BASIC PAY AND EXPENSES.—(1) Except as provided in paragraph (2), members of the Commission shall serve without pay.

(2) While away from their homes or regular places of business in the performance of services for the Commission, members shall be allowed travel expenses, including a per diem allowance in lieu of subsistence, in the same manner as persons serving intermittently in the Government service are allowed travel expenses under section 5703 of title 5, United States Code.

SEC. 8005. MEETINGS.

(a) IN GENERAL.—(1) The Commission shall meet at the call of the Moderator.

(2) The Moderator shall convene the 1st meeting of the Commission within 30 days after the date of the completion of appointments under section 4(a).

(b) MODERATOR.—One member of the Commission shall be designated by the President to serve as Moderator of the Commission.

(c) QUORUM AND PROCEDURE.—The Commission shall adopt rules regarding quorum requirements and meeting procedures as the Commission deems appropriate at the 1st meeting of the Commission.

(d VOTING.—Decisions and official acts of the Commission shall be according to the vote of a majority of members at a properly called meeting.

SEC. 8006. DIRECTOR AND STAFF; EXPERTS AND CONSULTANTS.

(a) DIRECTOR AND STAFF.—(1) Subject to paragraph (2), the Moderator, with the approval of the Commission, may employ and set the rate of pay for a Director and such staff as the Moderator deems necessary.

(2) Rates of pay set under paragraph (1) shall be less than the rate of basic pay payable under section 5316 of title 5, United States Code.

(b) EXPERTS AND CONSULTANTS.—The Moderator, with the approval of the Commission, may procure temporary and intermittent services under section 3109(b) of title 5, United States Code.

(c) STAFF OF FEDERAL AGENCIES.—Upon request of the Commission, the head of any Federal agency is authorized to detail, on a reimbursable basis, any of the personnel of such agency to the Commission to assist the Commission in carrying out its duties under this title.

SEC. 8007. POWERS OF COMMISSION.

(a) HEARINGS AND SESSIONS.—The Commission may, for the purpose of carrying out this title, hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Commission considers appropriate.

(b) OBTAINING OFFICIAL DATA.—Upon the request of the Moderator of the Commission, the Commission may secure directly from any department or agency of the United States information necessary to enable it to carry out this title.

(c) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property.

(d) MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(e) ADMINISTRATIVE SUPPORT SERVICES.—The Administrator of General Services shall provide to the Commission on a reimbursable

basis such administrative support services as the Commission may request.

SEC. 8008. REPORT.

The Commission shall transmit to the President and to each House of Congress a report not later than July 31 of each year which contains a detailed statement of the activities of the Commission during the preceding year, including a summary of the number of public service announcements produced by the Commission and published or broadcast.

SEC. 8009. TERMINATION.

The Commission shall terminate on a date which is three years after the date on which members of the Commission are first appointed, unless the President, by Executive order, extends the authority of the Commission.

TITLE IX—DENIAL OF TRADE BENEFITS TO UNCOOPERATIVE DRUG SOURCE NATIONS

SEC. 9001. SHORT TITLE.

This title may be cited as the "Narcotics Control Trade Act".

SEC. 9002. DETERMINATIONS REGARDING UNCOOPERATIVE DRUG SOURCE NATIONS.

(a) ANNUAL DETERMINATION.—The President, after taking into account the factors set forth in subsection (b), shall determine if any foreign country, during any fiscal year commencing after September 30, 1986—

(1) was a direct or indirect source of one or more illicit narcotic and psychotropic drugs and other controlled substances that is significantly affecting the United States; and

(2) did not cooperate with the United States Government in preventing narcotic and psychotropic drugs and other controlled substances from significantly affecting the United States.

(b) FACTORS.—For purposes of making a determination under subsection (a) regarding a foreign country, the President shall take into account the capabilities, effort, and progress of that country in—

(1) limiting legal narcotic crop production to levels required for legal purposes;

(2) licensing legal narcotic crop production and effectively controlling it to prevent significant diversion to the illicit traffic;

(3) limiting the legal manufacture of narcotic and psychotropic drugs and other controlled substances to levels required for medical purposes and effectively controlled manufacture to prevent significant diversion to the illicit traffic;

(4) detecting and eradicating the illicit cultivation of narcotic crops, and

(5) suppressing the illicit manufacture, processing, and traffic of narcotic and psychotropic drugs, under the control of the Single Convention of Narcotic Drugs of 1961 as amended by the 1972 Amending Protocol or the Controlled Substances Act of 1970 or the Convention on Psychotropic Substances of 1971.

(c) REPORT OF DETERMINATIONS.—The President shall submit to each House of the Congress the name of each foreign country regarding which an affirmative determination is made under subsection (a). The submission must be made on the first day on which both Houses are in session after the close of the fiscal year with respect to which the determination is made.

SEC. 9003. TARIFF TREATMENT OF PRODUCTS OF UNCOOPERATIVE DRUG SOURCE NATIONS.

(a) REQUIRED ACTION BY PRESIDENT.—The President shall, with respect to each foreign country regarding which an affirmative determination is made under section 9002(a) and to the extent considered necessary by the President to achieve the purposes of this title—

(1) deny to any or all of the products of that country tariff treatment under the Generalized System of Preferences, the Caribbean Basin Economic Recovery Act, or any other law providing preferential tariff treatment;

(2) apply to any or all of the dutiable products of that country an additional duty at a rate not to exceed 50 percent ad valorem or the specific rate equivalent;

(3) apply to one or more duty-free products of that country a duty at a rate not to exceed 50 percent ad valorem;

(4) eliminate or reduce any allocation provided to that country for products subject to quantitative restrictions; or

(5) take any combination of the actions described in paragraphs (1), (2), (3), and (4).

(b) DURATION OF ACTION.—The action taken by the President under subsection (a) shall apply to the products of a foreign country that are entered, or withdrawn from warehouse for consumption, during the period that—

(1) begins on October 1 of the fiscal year occurring after the fiscal year with respect to which an affirmative determination regarding that country was made under section 9002(a); and

(2) ends on the day on which the determination is cancelled under section 9005.

SEC. 9004. PROGRESS REPORTS.

The President shall include as a part of the annual report required under section 481(e)(1) of the Foreign Assistance Act of 1961 (22 U.S.C. 2291(e)(1)) an evaluation of progress that each major drug source nation has made during the reporting period in achieving the objectives set forth in section 9002(b).

SEC. 9005. CANCELLATION OF DETERMINATIONS.

If the President considers that a foreign country regarding which an affirmative determination was made under section 9002(a) has made significant progress, and will continue to make progress, in remedying those acts, programs, or policies on which that determination was based, the President may cancel the determination. The President must immediately notify each House of Congress of each cancellation made under this section.

SEC. 9006. DEFINITION.

For purposes of this title, the term "narcotic and psychotropic drugs and other controlled substances" has the same meaning as is given that term in section 481(i)(3) of the Foreign Assistance Act of 1961 (22 U.S.C. 2291(i)(3)).

SEC. 9007. CONFORMING AMENDMENTS.

(a) GENERALIZED SYSTEM OF PREFERENCES.—Section 502(b) of the Trade Act of 1974 (19 U.S.C. 2462(b)) is amended—

(1) by striking out paragraph (5);

(2) by redesignating paragraphs (6), (7), and (8) as paragraphs (5), (6), and (7); and

(3) by striking out "(5)," in the last sentence.

(b) CARIBBEAN BASIS ECONOMIC RECOVERY.—Section 212(b) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2702(b)) is amended—

(1) by inserting "and" after the semicolon at the end of paragraph (5);

(2) by striking out paragraph (6); and

(3) by redesignating paragraph (7) as paragraph (6).

TITLE X—BALLISTIC KNIFE PROHIBITION

SEC. 10001. SHORT TITLE.

This title may be cited as the "Ballistic Knife Prohibition Act of 1986".

SEC. 10002. PROHIBITION OF POSSESSION, MANUFACTURE, SALE, AND IMPORTATION OF BALLISTIC KNIVES.

The Act entitled "An Act to prohibit the introduction, or manufacture for introduction, into interstate commerce of switchblade knives, and for other purposes" (15 U.S.C. 1232 et seq.) is amended by adding at the end the following:

"SEC. 7. (a) Whoever knowingly possesses, manufactures, sells, or imports a ballistic knife shall be fined as provided in title 18, United States Code, or imprisoned not more than ten years, or both.

"(b) Whoever possesses or uses a ballistic knife in the commission of a Federal or State crime of violence shall be fined as provided in title 18, United States Code, or imprisoned not less than five years and not more than ten years, or both.

"(c) The exceptions provided in paragraphs (1), (2), and (3) of section 4 with respect to switchblade knives shall apply to ballistic knives under subsection (a) of this section.

"(d) As used in this section, the term 'ballistic knife' means a knife with a detachable blade that is propelled by a spring-operated mechanism.".

SEC. 10003. NONMAILABILITY OF BALLISTIC KNIVES.

Section 1716 of title 18, United States Code, is amended by inserting after subsection (h) and before the first undesignated paragraph after such subsection the following:

"(i)(1) Any ballistic knife shall be subject to the same restrictions and penalties provided under subsection (g) for knives described in the first sentence of that subsection.

"(2) As used in this subsection, the term 'ballistic knife' means a knife with a detachable blade that is propelled by a spring-operated mechanism.".

TITLE XI—HOMELESS ELIGIBILITY CLARIFICATION ACT

SECTION 11001. SHORT TITLE.

This title may be cited as the "Homeless Eligibility Clarification Act".

Subtitle A—Emergency Food for the Homeless

SEC. 11002. MEALS SERVED TO HOMELESS INDIVIDUALS.

(a) DEFINITION OF FOOD.—Section 3(g) of the Food Stamp Act of 1977 (7 U.S.C. 2012(g)) is amended—

(1) in clause (1), by striking out "and (8)" and inserting in lieu thereof "(8), and (9)";

(2) by striking out "and" at the end of clause (7); and

(3) by inserting before the period at the end thereof the following: ", and (9) in the case of households that do not reside in permanent dwellings and households that have no fixed mailing addresses, meals prepared for and served by public or private nonprofit establishments that feed such individuals, by public or private nonprofit shelters in which such households temporarily reside (except that such establishments and shelters may only request voluntary use of food stamps by such individuals, and may not request such households to pay more than the average cost of the food contained in the meal served by that establishment or shelter) and by private establishments that contract

with the appropriate State agency to perform such services at concessional prices".

(b) DEFINITION OF HOUSEHOLD.—The last sentence of section 3(i) of such Act (7 U.S.C. 2012(i)) is amended by inserting after "battered women and children," the following: "individuals who do not reside in permanent dwellings or have no fixed mailing addresses,".

(c) DEFINITION OF RETAIL FOOD STORE.—Section 3(k)(2) of such Act (7 U.S.C. 2012(k)(2)) is amended by striking "and (8)" and inserting in lieu thereof "(8), and (9)".

(d) REDEMPTION OF COUPONS.—The first sentence of section 10 of such Act (7 U.S.C. 2019) is amended—

(1) by striking out "and" after "battered women and children,"; and

(2) by inserting after "blind residents" the following: ", and public or private nonprofit establishments, private establishments that contract with the appropriate State agency, or public or private nonprofit shelters that feed individuals who do not reside in permanent dwellings and individuals who have no fixed mailing addresses".

Subtitle B—Job Training for the Homeless

SEC. 11004. JOB TRAINING FOR THE HOMELESS.

(a) ECONOMICALLY DISADVANTAGED TO INCLUDE HOMELESS.—Section 4(8) of the Job Training Partnership Act (29 U.S.C. 1503(8)) is amended—

(1) by striking out "or" at the end of subparagraph (D);

(2) by striking out the period at the end of subparagraph (E) and inserting in lieu thereof a semicolon; and

(3) by adding at the end thereof "(F) an individual who is homeless and whose total income is not in excess of the income levels described in subparagraph (B).".

(b) JOB TRAINING PLAN.—Section 104(b)(2) of the Job Training Partnership Act (29 U.S.C. 1514(B)) is amended by inserting before the semicolon a coma and the following: "and a description of how the program will provide services to the homeless".

(c) BARRIERS TO EMPLOYMENT RULE.—Section 203(a)(2) of the Job Training Partnership Act (29 U.S.C. 1603(a)(2)) is amended by striking out "or addicts" and inserting in lieu thereof "addicts, or homeless".

Subtitle C—Entitlements Eligibility

SEC. 11005. APPLICATION FOR SSI AND FOOD STAMP BENEFITS BY SSI PRE-RELEASE INDIVIDUALS.

Section 1631 of the Social Security Act (42 U.S.C. 1383) is amended by adding at the end thereof the following new subsection:

"PRE-RELEASE PROCEDURES FOR INSTITUTIONALIZED PERSONS

"(j) The Secretary shall develop a system under which an individual can apply for supplemental security income benefits under this title prior to the discharge or release of the individual from a public institution. The Secretary and the Secretary of Agriculture shall develop a procedure under which an individual who applies for supplemental security income benefits under this title shall also be permitted to apply for participation in the food stamp program by executing a single application.".

SEC. 11006. DELIVERY OF VETERANS' BENEFITS PAYMENTS.

(a) IN GENERAL.—(1) Section 3003 of title 38, United States Code, is amended by adding at the end thereof the following new subsection:

"(c) Benefits under laws administered by the Vetarns' Administration may not be denied an applicant on the basis that the applicant does not have a mailing address.".

(2) Section 3030 of title 38, United States Code, is amended by adding at the end thereof the following new subsection:

"(f)(1) In the case of a payee who does not have a mailing addresss, payments of monetary benefits under laws administered by the Veterans' Administration shall be delivered under an appropriate method prescribed to paragraph (2) of an appropriate method prescribed pursuant to paragraph (2) of this subsection.

"(2) The Administration shall prescribe an appropriate method or methods for the delivery of payments of monetary benefits under laws administered by the Veterans' Administration in cases described in paragraph (1) of this subsection. To the maximum extent practicable, such method or methods shall be designed to ensure the delivery of payments in such cases.".

(b) EFFECTIVE DATE.—(1) The amendment made by subsection (a)(1) shall take effect on the date of enactment of this Act.

(2) The amendment made by subsection (a)(2) shall take effect with respect to payments made on or after October 1, 1986.

TITLE XII—COMMERCIAL MOTOR VEHICLE SAFETY ACT OF 1986

SECTION 12001. SHORT TITLE.

This title may be cited as the "Commercial Motor Vehicle Safety Act of 1986".

SEC. 12002. LIMITATION ON NUMBER OF DRIVER'S LICENSES.

Effective July 1, 1987, no person who operates a commercial motor vehicle shall at any time have more than one driver's license, except during the 10-day period beginning on the date such person is issued a driver's license and except whenever a State law enacted on or before June 1, 1986, requires such person to have more than one driver's license. The second exception in the preceding sentence shall not be effective after December 31, 1989.

SEC. 12003. NOTIFICATION REQUIREMENTS.

(a) NOTIFICATION OF VIOLATIONS.—

(1) TO STATES.—Effective July 1, 1987, each person who operates a commercial vehicle, who has a driver's license issued by a State, and who violates a State or local law relating to motor vehicle traffic control (other than a parking violation) in any other State shall notify a State official designated by the State which issued such license of such violation, within 30 days after the date such person is found to have committed such violation.

(2) TO EMPLOYERS.—Effective July 1, 1987, each person who operates a commercial vehicle, who has a driver's license issued by a State, and who violates a State or local law relating to motor vehicle traffic control (other than a parking violation) shall notify his or her employer of such violation, within 30 days after the date such person is found to have committed such violation.

(b) NOTIFICATION OF SUSPENSIONS.—Effective July 1, 1987, each employee who has a driver's license suspended, revoked, or cancelled by a State, who loses the right to operate a commercial motor vehicle in a State for any period, or who is disqualified from operating a commercial motor vehicle for any period shall notify his or her employer of such suspension, revocation, cancellation, lost right, or disqualification, within 30 days after the date of such suspension, revocation, cancellation, lost right, or disqualification.

(c) NOTIFICATION OF PREVIOUS EMPLOYMENT.—

(1) GENERAL RULE.—Effective July 1, 1987, subject to paragraph (2) of this subsection, each person who operates a commercial motor vehicle and applies for employment as an operator of a commercial motor vehicle with an employer shall notify at the time of such application the employer of his or her previous employment as an operator of a commercial motor vehicle.

(2) PERIOD OF PREVIOUS EMPLOYMENT.—The Secretary shall establish by regulation the period for which previous employment must be notified under paragraph (1), except that such period shall not be less than a 10-year period ending on the date of application for employment.

SEC. 12004. EMPLOYER RESPONSIBILITIES.

Effective July 1, 1987, no employer shall knowingly allow, permit, or authorize an employee to operate a commercial motor vehicle in the United States during any period—

(1) in which such employee has a driver's license suspended, revoked, or cancelled by a State, has lost the right to operate a commercial motor vehicle in a State, or has been disqualified from operating a commercial motor vehicle; or

(2) in which such employee has more than one driver's license, except during the 10-day period beginning on the date such employee is issued a driver's license and except whenever a State law enacted on or before June 1, 1986, requires such employee to have more than one driver's license.

The second exception in paragraph (2) shall not be effective after December 31, 1989.

SEC. 12005. TESTING OF OPERATORS.

(a) ESTABLISHMENT OF MINIMUM FEDERAL STANDARDS.—Not later than January 1, 1989, the Secretary shall issue regulations to establish minimum Federal standards for testing and ensuring the fitness of persons who operate commercial motor vehicles. Such regulations—

(1) shall establish minimum Federal standards for written tests and driving tests of persons who operate such vehicles;

(2) shall require a driving test of each person who operates or will operate a commercial motor vehicle in a vehicle which is representative of the type of vehicle such person operates or will operate;

(3) shall establish minimum Federal testing standards for operation of commercial motor vehicles and, if the Secretary considers appropriate to carry out the objectives of this title, may establish different minimum testing standards for different classes of commercial motor vehicles;

(4) shall ensure that each person taking such tests has a working knowledge of regulations pertaining to safe operation of a commercial motor vehicle issued by the Secretary and contained in title 49 of the Code of Federal Regulations;

(5) in the case of a person who operates or will operate a commercial motor vehicle carrying a hazardous material, shall ensure—

(A) that such person is qualified to operate a commercial motor vehicle in accordance with all regulations pertaining to motor vehicle transportation of such material issued by the Secretary under the Hazardous Materials Transportation Act; and

(B) that such person has a working knowledge of—

(i) such regulations,

(ii) handling of such material,

(iii) the operation of emergency equipment used in response to emergencies arising out of the transportation of such material, and

(iv) appropriate response procedures to be followed in such emergencies;

(6) shall establish minimum scores for passing such tests;

(7) shall ensure that each person taking such tests is qualified to operate a commercial motor vehicle under the regulations issued by the Secretary and contained in title 49 of the Code of Federal Regulations to the extent such regulations are applicable to such person; and

(8) may require—

(A) issuance of a certification of fitness to operate a commercial motor vehicle to each person who passes such tests; and

(B) such person to have a copy of such certification in his or her possession whenever such person is operating a commercial motor vehicle.

(b) REQUIREMENT FOR OPERATION OF CMV.—

(1) GENERAL RULE.—Except as provided under paragraph (2), no person may operate a commercial motor vehicle unless such person has taken and passed a written and driving test to operate such vehicle which meets the minimum Federal standards established by the Secretary under subsection (a).

(2) EXCEPTION.—The Secretary may issue regulations which provide that a person—

(A) who passes a driving test for operation of a commercial motor vehicle in accordance with the minimum standards established under subsection (a), and

(B) who has a driver's license which is not suspended, revoked, or cancelled,

may operate such a vehicle for a period not to exceed 90 days.

(3) EFFECTIVE DATE.—Paragraph (1) shall take effect on such date as the Secretary shall establish by regulation. Such date shall be as soon as practicable after the date of the enactment of this title but not later than October 1, 1994.

(c) BASIC GRANT PROGRAM.—

(1) ELIGIBILITY FOR FISCAL YEARS 1987, 1988, AND 1989.—The Secretary may make a grant to a State in any of fiscal years 1987, 1988, and 1989—

(A) if the State enters into an agreement with the Secretary to develop a program for testing and ensuring the fitness of persons who operate commercial motor vehicles; and

(B) if the State has in effect and enforces in such fiscal year a law which provides that any person with a blood alcohol concentration of 0.10 percent or greater when operating a commercial motor vehicle is deemed to be driving while under the influence of alcohol.

(2) ELIGIBILITY AFTER FISCAL YEAR 1989.—The Secretary may make a grant to a State in a fiscal year beginning after September 30, 1989—

(A) if the State enters into an agreement with the Secretary—

(i) to adopt and administer in such fiscal year a program for testing and ensuring the fitness of persons who operate commercial motor vehicles in accordance with all of the minimum Federal standards established by the Secretary under subsection (a); and

(ii) to require that operators of commercial motor vehicles have passed written and driving tests which comply with such minimum standards; and

(B) if the State has in effect and enforces in such fiscal year a law which provides that any person with a blood alcohol concentration of 0.10 percent or greater when operating a commercial motor vehicle is deemed to be driving while under the influence of alcohol.

(3) ADMINISTRATION OF DRIVING TEST.—A State—

(A) may administer driving tests referred to in paragraph (2) and section 12009(a); or

(B) may enter into an agreement, approved by the Secretary, to administer such tests with a person (including a department, agency or instrumentality of a local government) which meets such minimum standards as the Secretary shall establish by regulation—

(i) if the agreement allows the Secretary and the State each to conduct random examinations, inspections, and audits of such testing without prior notification; and

(ii) if the State conducts at least annually one onsite inspection of such testing.

(4) MINIMUM AMOUNT OF GRANT.—The Secretary shall determine the amount of grants in a fiscal year to be made under this subsection to a State eligible to receive such grants in the fiscal year; except that—

(A) such State shall not be granted less than $100,000 under this subsection in the fiscal year; and

(B) to the extent that any States are granted more than $100,000 per State in the fiscal year under this subsection, the Secretary shall ensure that such States are treated equitably.

(5) LIMITATION ON USE OF FUNDS.—

(A) IN FISCAL YEARS 1987, 1988, AND 1989.—A State receiving a grant under this subsection in fiscal year 1987, 1988, or 1989 may only use the funds provided under such grant for developing a program for testing and ensuring the fitness of persons who operate commercial motor vehicles.

(B) THEREAFTER.—A State receiving a grant under this subsection in any fiscal year beginning after September 30, 1989, may only use the funds provided under such grant for testing operators of commercial motor vehicles.

(6) DEVELOPMENT OF TESTING PROGRAM DESCRIBED.—For purposes of this subsection and subsection (d), development of a program for testing and ensuring the fitness of persons who operate commercial motor vehicles includes but is not limited to studies of the number of vehicles which will need to be tested under such program in a calendar year, studies of facilities at which testing of such persons could be conducted, and studies of additional resources (including personnel) which will be necessary to conduct such testing.

(7) FUNDING.—There shall be available to the Secretary to carry out this subsection $5,000,000 from funds made available to carry out section 404 of the Surface Transportation Assistance Act of 1982 for each of fiscal years 1987, 1988, 1989, 1990, and 1991.

(d) SUPPLEMENTAL GRANT PROGRAM.—

(1) ELIGIBILITY AND PURPOSES.—The Secretary may make in a fiscal year grants to States eligible to receive grants under subsection (c) in such fiscal year. A grant made under this subsection in fiscal year 1987, 1988, or 1989 shall be used for developing a program for testing and ensuring the fitness of persons who operate commercial motor vehicles. A grant made under this subsection in any fiscal year beginning after September 30, 1989, shall be used for testing operators of commercial motor vehicles.

(2) DISTRIBUTION.—Funds granted under this subsection in a fiscal year beginning after September 30, 1989, shall be distributed among the States eligible to receive grants under subsection (c) in such fiscal year on the basis of the number of written and driving tests administered, and the number of drivers' licenses for operation of commercial motor vehicles, issued in the preceding fiscal year.

(3) FUNDING.—There shall be available to the Secretary to carry out this subsection $3,000,000 from funds made available to carry out section 402 of title 23, United States Code, by the National Highway Traffic Safety Administration for each of fiscal years 1987, 1988, 1989, 1990, and 1991.

(e) LIMITATIONS ON GRANT PROGRAMS.—

(1) MAINTENANCE OF EFFORT.—The Secretary may not make a grant to any State under this section unless such State agrees that the aggregate expenditure of funds of the State and political subdivisions thereof, exclusive of Federal funds, for testing of operators of commercial motor vehicles will be maintained at a level which does not fall below the average level of such expenditure for its last two fiscal years preceding the date of the enactment of this title.

(2) PERIOD OF AVAILABILITY.—Funds made available to carry out this subsection shall remain available for obligation by the State for the fiscal year for which such funds are made available. Any of such funds not obligated before the last day of such period shall no longer be available for obligation by such State and shall be available to the Secretary for carrying out the purposes of this title. Funds made available pursuant to this section shall remain available until expended.

(3) CONTRACT AUTHORITY.—Notwithstanding any other provision of law, approval by the Secretary of a grant to a State under this section shall be deemed to be a contractual obligation of the United States for payment of the amount of the grant.

SEC. 12006. CLASSIFIED DRIVER'S LICENSE.

Not later than January 1, 1989, the Secretary, after consultation with the States, shall issue regulations establishing minimum uniform standards for the issuance of classified drivers' licenses by the States and for information to be contained on such licenses. Such standards shall, at a minimum, require that—

(1) each person who is issued a classified driver's license passes a written and driving test for the operation of a commercial motor vehicle which complies with the minimum Federal standards established by the Secretary under section 12005(a);

(2) the classified drivers' licenses are, to the maximum extent practicable, tamper proof; and

(3) each classified driver's license contain the following information:

(A) the name and address of the person to whom such license is issued and a physical description of such person;

(B) the social security number or such other number or information as the Secretary determines appropriate to identify such person;

(C) the class or type of commercial motor vehicle or vehicles which such person is authorized to operate under such license;

(D) the name of the State which issued such license; and

(E) the dates between which such license is valid.

SEC. 12007. CLASSIFIED DRIVER'S LICENSE INFORMATION SYSTEM.

(a) DEADLINE.—Not later than January 1, 1989, the Secretary shall either enter into an agreement under subsection (b) for operation of, or establish under subsection (c), an information system which will serve as a clearinghouse and depository of information pertaining to the licensing and identification of operators of commercial motor vehicles and the disqualification of such operators from operating commercial motor vehicles. In carrying out this section, the Secretary consult the States.

(b) AGREEMENT FOR USE OF NON-FEDERAL SYSTEM.—

(1) REVIEW.—Not later than January 1, 1988, the Secretary shall conduct a review of information systems utilized by 1 or more States pertaining to the driving status of operators of motor vehicles and other State-operated information systems for the purpose of determining whether or not any of such systems could be utilized to carry out this section.

(2) AGREEMENT.—If the Secretary determines that one of the information systems reviewed under paragraph (1) could be utilized to carry out this section and the State or States utilizing such system agree to the use of such system for carrying out this section, the Secretary may enter into an agreement with such State or States for the use of such system in accordance with the provisions of this section and section 12009(c).

(3) TERMS OF AGREEMENT.—Any agreement entered into under this subsection shall contain such terms and conditions as the Secretary considers necessary to carry out the objectives of this title.

(c) ESTABLISHMENT.—If the Secretary does not enter into an agreement under subsection (b), the Secretary shall establish an information system pertaining to the driving status and licensing of operators of commercial motor vehicles in accordance with the provisions of this section.

(d) MINIMUM INFORMATION.—The information system under this section shall, at a minimum, include the following information concerning each operator of a commercial motor vehicle:

(1) Such information as the Secretary considers appropriate to ensure identification of such operator.

(2) The name and address of such operator and a physical description of such operator.

(3) The social security number of such operator or such other number or information as the Secretary determines appropriate to identify such operator.

(4) The name of the State which issued the driver's license to such operator.

(5) The dates between which such license is valid.

(6) Whether or not such operator has or has had a driver's license which authorized such person to operate a commercial motor vehicle suspended, revoked, or cancelled by a State, has lost the right to operate a commercial motor vehicle in a State for any period, or has been disqualified from operating a commercial motor vehicle.

(e) AVAILABILITY OF INFORMATION.—

(1) TO STATE.—Upon request of a State, the Secretary or the operator of the information system, as the case may be, may make available to such State information in the information system under this section.

(2) TO THE EMPLOYEE.—Upon request of an employee, the Secretary or the operator of the information system, as the case may be, may make available to such employee information in the information system relating to such employee.

(3) TO EMPLOYER.—Upon request of an employer or prospective employer of an employee and after notification of such employee, the Secretary or the operator of the information system, as the case may be, may make available to such employer or prospective employer information in the information system relating to such employee.

(4) TO THE SECRETARY.—Upon the request of the Secretary, the operator of the information system shall make available to the Secretary such information pertaining to the driving status and licensing of operators of commercial motor vehicles (including the information required by subsection (d)) as the Secretary may request.

(f) COLLECTION OF FEES.—If the Secretary establishes an information system under this section, the Secretary shall establish a fee system for utilization of the information system. The amount of fees collected pursuant to this subsection in any fiscal year shall as nearly as possible equal the costs of operating the information system in such fiscal year. The Secretary shall deposit fees collected under this subsection in the Highway Trust Fund (other than the Mass Transit Account).

(g) FUNDING.—There shall be available to the Secretary to carry out this section not to exceed $2,000,000 from funds made available to carry out section 402 of title 23, United States Code, by the National Highway Safety Traffic Administration for each of fiscal years 1987, 1988, and 1989. Such funds shall remain available until expended.

SEC. 12008. FEDERAL DISQUALIFICATIONS.

(a) DRUNK DRIVING; LEAVING THE SCENE OF AN ACCIDENT; FELONIES.—

(1) FIRST OFFENSE.—

(A) GENERAL RULE.—Except as provided in subparagraph (B) and paragraph (2), the Secretary shall disqualify from operating a commercial motor vehicle for a period of not less than 1 year each person—

(i) who is found to have committed a first violation—

(I) of driving a commercial motor vehicle while under the influence of alcohol or a controlled substance, or

(II) of leaving the scene of an accident involving a commercial motor vehicle operated by such person; or

(ii) who uses a commercial motor vehicle in the commission of a felony (other than a felony described in subsection (b)).

(B) SPECIAL RULE.—If the vehicle operated or used in connection with the violation or the commission of the felony referred to in subparagraph (A) is transporting a hazardous material required by the Secretary to be placarded under section 105 of the Hazardous Materials Transportation Act (49 U.S.C. App. 1804), the Secretary shall disqualify the person for a period of not less than 3 years.

(2) SECOND OFFENSE.—

(A) GENERAL RULE.—Subject to subparagraph (B), the Secretary shall disqualify from operating a commercial motor vehicle for life each person—

(i) who is found to have committed more than one violation of driving a commercial motor vehicle while under the influence of alcohol or a controlled substance;

(ii) who is found to have committed more than one violation of leaving the scene of an accident involving a commercial motor vehicle operated by such person;

(iii) who uses a commercial motor vehicle in the commission of more than one felony arising out of different criminal episodes; or

(iv)(I) who is found to have committed a violation described in clause (i) or (ii), and

(II) who is found to have committed a violation described in the other of such clauses or uses a commercial motor vehicle in the commission of a felony.

(B) SPECIAL RULE.—The Secretary may issue regulations which establish guidelines (including conditions) under which a disqualification for life under subparagraph (A) may be reduced to a period of not less than 10 years.

(b) CONTROLLED SUBSTANCE FELONIES.—The Secretary shall disqualify from operating a commercial motor vehicle for life each person who uses a commercial motor vehicle in the commission of a felony involving manufacturing, distributing, or dispensing a controlled substance, or possession with intent to manufacture, distribute, or dispense a controlled substance.

(c) SERIOUS TRAFFIC VIOLATIONS.—

(1) SECOND VIOLATION.—The Secretary shall disqualify from operating a commercial motor vehicle for a period of not less than 60 days each person who, in a 3-year period, is found to have committed 2 serious traffic violations involving a commercial motor vehicle operated by such person.

(2) THIRD VIOLATION.—The Secretary shall disqualify from operating a commercial motor vehicle for a period of not less than 120 days each person who, in a 3-year period, is found to have committed 3 serious traffic violations involving a commercial motor vehicle operated by such person.

(d) LIMITATION ON APPLICABILITY.—

(1) GENERAL RULE.—Notwithstanding any requirement of subsections (a), (b), and (c) of this section, the Secretary does not have to disqualify from operating a commercial motor vehicle any person who has been disqualified from operating a commercial motor vehicle in accordance with such requirement by the State which issued the driver's license which authorized such person to operate such vehicle.

(2) SATISFACTION OF STATE DISQUALIFICATION.—For purposes of paragraph (1), suspension, revocation, or cancellation of a driver's license which authorizes a person to operate a commercial motor vehicle by a State shall be treated as disqualification of such person from operating such vehicle.

SEC. 12009. REQUIREMENTS FOR STATE PARTICIPATION.

(a) IN GENERAL.—In order not to have funds withheld under section 12011 from apportionment, each State shall comply with the following requirements:

(1) TESTING PROGRAM.—The State shall adopt and administer a program for testing and ensuring the fitness of persons to operate commercial motor vehicles in accordance with all of the minimum Federal standards established by the Secretary under section 12005(a).

(2) TEST STANDARDS.—The State shall not issue a classified driver's license to a person unless such person passes a written and driving test for the operation of a commercial motor vehicle which complies with such minimum standards.

(3) DRIVING WHILE UNDER THE INFLUENCE.—The State shall have in effect and enforce a law described in section 12005(c)(1)(B), relating to blood alcohol concentration level for driving while under the influence.

(4) CDL ISSUANCE AND INFORMATION.—The State shall authorize a person to operate a commercial motor vehicle only by issuance of a classified driver's license which contains the information described in section 12006(a)(3).

(5) ADVANCE NOTIFICATION OF LICENSING.—At least 60 days before issuance of a classified driver's license or such shorter period as the Secretary may establish by regulation, the State shall notify the Secretary or the operator of the information system under section 12007, as the case may be, of the proposed issuance of such license and such other information as the Secretary may require to ensure identification of the person applying for such license.

(6) INFORMATION REQUEST.—Before issuance of a classified driver's license to a person, the State shall request from any other State which has issued a classified driver's license

to such person all information pertaining to the driving record of such person.

(7) NOTIFICATION OF LICENSING.—Within 30 days after issuance of a classified driver's license, the State shall notify the Secretary or the operator of the information system under section 12007, as the case may be, of the issuance.

(8) NOTIFICATION OF DISQUALIFICATIONS.—Within 10 days after disqualification of the holder of a classified driver's license from operating a commercial motor vehicle (or after suspension, revocation, or cancellation of such license) for a period of 60 days or more, the State shall notify—

(A) the Secretary or the operator of the information system under section 12007, as the case may be, and

(B) the State which issued the license,

of such disqualification, suspension, revocation, or cancellation.

(9) NOTIFICATION OF TRAFFIC VIOLATIONS.—Within 10 days after a person who operates a commercial motor vehicle, who has a driver's license issued by any other State, and who violates a State or local law relating to motor vehicle traffic control (other than a parking violation) in the State, shall notify a State official designated by the State which issued such license of such violation, within 10 days after the date such person is found to have committed such violation.

(10) LIMITATION ON LICENSING.—The State shall not issue a classified driver's license to a person during a period in which such person is disqualified from operating a commercial motor vehicle or the driver's license of such person is suspended, revoked, or cancelled.

(11) RETURN OF OLD LICENSES.—The State shall not issue a classified driver's license to a person who has a classified driver's license issued by any other State unless such person first returns the driver's license issued by such other State.

(12) DOMICILE REQUIREMENT.—The State shall issue classified drivers' licenses only to those persons who operate or will operate commercial motor vehicles and are domiciled in the State; except that the State, in accordance with such regulations as the Secretary shall issue, may issue a classified driver's license to a person who operates or will operate a commercial motor vehicle and who is not domiciled in a State which does issue classified drivers' licenses.

(13) PENALTY APPROVAL.—The State shall impose such penalties as the State determines appropriate and the Secretary approves for operating a commercial motor vehicle while not having a classified driver's license, while having a driver's license suspended, revoked, or cancelled, or while being disqualified from operating a commercial motor vehicle.

(14) RECIPROCITY.—The States shall allow any person—

(A) who has a classified driver's license—

(i) which is issued by any other State in accordance with the minimum Federal standards for the issuance of such licenses, and

(ii) which is not suspended, revoked, or cancelled; and

(B) who is not disqualified from operating a commercial motor vehicle;

to operate a commercial motor vehicle in the State.

(15) FIRST OFFENSES.—The State shall disqualify from operating a commercial motor vehicle for a period of not less than 1 year each person—

(A) who is found to have committed a first violation—

(i) of driving a commercial motor vehicle while under the influence of alcohol or a controlled substance, or

(ii) of leaving the scene of an accident involving a commercial motor vehicle operated by such person; or

(B) who uses a commercial motor vehicle in the commission of a felony (other than a felony described in paragraph (17));

except that if the vehicle being operated or used in connection with such violation or the commission of such felony is transporting a hazardous material required by the Secretary to be placarded under section 105 of the Hazardous Materials Transportation Act (49 U.S.C. App. 1804), the State shall disqualify such person from operating a commercial motor vehicle for a period of not less than 3 years.

(16) SECOND OFFENSES.—

(A) GENERAL RULE.—Subject to subparagraph (B), the State shall disqualify from operating a commercial motor vehicle for life each person—

(i) who is found to have committed more than one violation of driving a commercial motor vehicle while under the influence of alcohol or a controlled substance;

(ii) who is found to have committed more than one violation of leaving the scene of an accident involving a commercial motor vehicle operated by such person;

(iii) who uses a commercial motor vehicle in the commission of more than one felony arising out of different criminal episodes; or

(iv)(I) who is found to have committed a violation described in clause (i) or (ii), and

(II) who is found to have committed a violation described in the other of such clauses or uses a commercial motor vehicle in the commission of a felony.

(B) SPECIAL RULE.—The State, in accordance with such guidelines (including conditions) as the Secretary may establish by regulation, may reduce a disqualification for life in accordance with subparagraph (A) to a period of not less than 10 years.

(17) DRUG OFFENSES.—The State shall disqualify from operating a commercial motor vehicle for life each person who uses a commercial motor vehicle in the commission of a felony involving manufacturing, distributing, or dispensing a controlled substance, or possession with intent to manufacture, distribute, or dispense a controlled substance.

(18) SECOND SERIOUS TRAFFIC VIOLATION.—The State shall disqualify from operating a commercial motor vehicle for a period of not less than 60 days each person who, in a 3-year period, is found to have committed 2 serious traffic violations involving a commercial motor vehicle operated by such person.

(19) THIRD SERIOUS TRAFFIC VIOLATION.—The State shall disqualify from operating a commercial motor vehicle for a period of not less than 120 days each person who, in a 3-year period, is found to have committed 3 serious traffic violations involving a commercial motor vehicle operated by such person.

(20) NATIONAL DRIVER REGISTER INFORMATION.—Before issuing a classified driver's license to operate a commercial motor vehicle to any person, the State shall request the Secretary for information from the National Driver Register established pursuant to the National Driver Register Act of 1982 (23 U.S.C. 401 note) (after such Register is determined by the Secretary to be operational)—

(A) on whether such person has been disqualified from operating a motor vehicle (other than a commercial motor vehicle);

(B) on whether such person has had a license (other than a license authorizing such person to operate a commercial motor vehicle) suspended, revoked, or cancelled for cause in the 3-year period ending on the date of application for such classified driver's license; and

(C) on whether such person has been convicted of any of the offenses specified in section 205(a)(3) of such Act.

The State shall give full weight and consideration to such information in deciding whether to issue a classified driver's license to such person.

(b) SATISFACTION OF STATE DISQUALIFICATION REQUIREMENT.—A State may satisfy the requirements of subsection (a) that the State disqualify a person who operates a commercial motor vehicle if the State suspends, revokes, or cancels the driver's license issued to such person in accordance with the requirements of such subsection.

(c) NOTIFICATION.—Not later than 30 days after being notified by a State of the proposed issuance of a classified driver's license to any person, the Secretary or the operator of the information system under section 12007, as the case may be, shall notify such State of whether or not such person has a classified driver's license issued by any other State or has been disqualified from operating a commercial motor vehicle by any other State or the Secretary.

SEC. 12010. GRANT PROGRAM.

(a) ESTABLISHMENT.—The Secretary may make a grant to a State in a fiscal year if the State enters into an agreement with the Secretary to participate in such fiscal year in the classified driver's license program established by this title and the information system required by this title and to comply with the requirements of section 12009.

(b) MINIMUM AMOUNT OF GRANT.—The Secretary shall determine the amount of grants in a fiscal year to be made under this section to a State eligible to receive such grants in the fiscal year; except that—

(1) such State shall not be granted less than $100,000 under this section in the fiscal year; and

(2) to the extent that any States are granted more than $100,000 per State in the fiscal year under this section, the Secretary shall ensure that such States are treated equitably.

(c) LIMITATION ON USE OF FUNDS.—A State receiving a grant under this section may only use the funds provided under such grant for issuing classified driver's licenses and complying with the requirements of section 12009.

(d) CONTRACT AUTHORITY.—Notwithstanding any other provision of law, approval by the Secretary of a grant to a State under this section shall be deemed to be a contractual obligation of the United States for payment of the amount of the grant.

(e) PERIOD OF AVAILABILITY.—Funds made available to carry out this section shall remain available for obligation by the State for the fiscal year for which such funds are made available. Any of such funds not obligated before the last day of such period shall no longer be available to such State and shall be available to the Secretary for carrying out the purposes of this title. Funds made available pursuant to this section shall remain available until expended.

(f) FUNDING.—There shall be available to the Secretary to carry out this section $5,000,000 from funds made available to carry out section 404 of the Surface Transportation Assistance Act of 1982 for each of fiscal years 1989, 1990, and 1991.

SEC. 12011. WITHHOLDING OF HIGHWAY FUNDS FOR STATE NONCOMPLIANCE.

(a) FIRST YEAR.—The Secretary shall withhold 5 percent of the amount required to be apportioned to any State under each of sections 104(b)(1), 104(b)(2), 104(b)(5), and 104(b)(6) of title 23, United States Code, on the first day of the fiscal year succeeding the first fiscal year beginning after September 30, 1994, throughout which the State does not substantially comply with any requirement of section 12009(a) of this Act.

(b) AFTER THE FIRST YEAR.—The Secretary shall withhold 10 percent of the amount required to be apportioned to any State under each of sections 104(b)(1), 104(b)(2), 104(b)(5), and 104(b)(6) of such title on the first day of each fiscal year after the second fiscal year beginning after September 30, 1994, throughout which the State does not substantially comply with any requirement of section 12009(a) of this Act.

(c) PERIOD OF AVAILABILITY; EFFECT OF COMPLIANCE AND NONCOMPLIANCE.—

(1) FUNDS WITHHELD ON OR BEFORE SEPTEMBER 30, 1997.—

(A) PERIOD OF AVAILABILITY.—Any funds withheld under this section from apportionment to any State on or before September 30, 1997, shall remain available for apportionment to such State as follows:

(i) If such funds would have been apportioned under section 104(b)(5)(B) of such title but for this section, such funds shall remain available until the end of the second fiscal year following the fiscal year for which such funds are authorized to be appropriated.

(ii) If such funds would have been apportioned under section 104(b)(1), 104(b)(2), or 104(b)(6) of such title but for this section, such funds shall remain available until the end of the third fiscal year following the fiscal year for which such funds are authorized to be appropriated.

(B) FUNDS WITHHELD AFTER SEPTEMBER 30, 1997.—No funds withheld under this subsection from apportionment to any State after September 30, 1997, shall be available for apportionment to such State.

(2) APPORTIONMENT OF WITHHELD FUNDS AFTER COMPLIANCE.—If, before the last day of the period for which funds withheld under this section from apportionment are to remain available for apportionment to a State under paragraph (1), the State substantially complies with all of the requirements of section 12009(a) of this Act for a period of 365 days, the Secretary shall on the day following the last day of such period apportion to such State the withheld funds remaining available for apportionment to such State.

(3) PERIOD OF AVAILABILITY OF SUBSEQUENTLY APPORTIONED FUNDS.—Any funds apportioned pursuant to paragraph (2) shall remain available for expenditure until the end of the third fiscal year succeeding the fiscal year in which such funds are apportioned. Sums not obligated at the end of such period shall lapse or, in the case of funds apportioned under section 104(b)(5) of such title, shall lapse and be made available by the Secretary for projects in accordance with section 118(b) of such title.

(4) EFFECT OF NONCOMPLIANCE.—If, at the end of the period for which funds withheld under this section from apportionment are available for apportionment to a State under paragraph (1), the State has not substantially complied with all of the requirements of section 12009(a) of this Act for a 365-day period, such funds shall lapse or, in the case of funds withheld from apportionment under section 104(b)(5) of such title, such funds shall lapse and be made available by the Secretary for projects in accordance with section 118(b) of such title.

SEC. 12012. PENALTIES.

(a) NOTICE OF VIOLATION.—Paragraph (1) of section 521(b) of title 49, United States Code, is amended by inserting "or section 12002, 12003, 12004, or 12005(b) of the Commercial Motor Vehicle Safety Act of 1986" after "the Motor Carrier Safety Act of 1984" and by striking out "section" the second place it appears and inserting in lieu thereof "sections".

(b) CIVIL PENALTIES.—Paragraph (2) of such section is amended, by inserting "(A) IN GENERAL.—" before "Except as", by inserting "(other than subparagraph (B))" before ", except for recordkeeping violations", and by striking out the last two sentences and inserting in lieu thereof the following:

"(B) VIOLATIONS PERTAINING TO CDLS.—Any person who is determined by the Secretary, after notice and opportunity for a hearing, to have committed an act which is a violation of section 12002, 12003, 12004, or 12005(b) of the Commercial Motor Vehicle Safety Act of 1986 shall be liable to the United States for a civil penalty not to exceed $2,500 for each offense.

"(C) DETERMINATION OF AMOUNT.—The amount of any civil penalty, and a reasonable time for abatement of the violation, shall by written order be determined by the Secretary, taking into account the nature, circumstances, extent, and gravity of the violation committed and, with respect to the violator, the degree of culpability, history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice and public safety may require. In each case, the assessment shall be calculated to induce further compliance.".

(c) POSTING OF NOTICE.—Paragraph (3) of such section is amended by inserting "or section 12002, 12003, 12004, or 12005(b) of the Commercial Motor Vehicle Safety Act of 1986" after "the Motor Carrier Safety Act of 1984".

(d) OUT OF SERVICE ORDERS.—Paragraph (5)(A) of such section is amended by inserting "or section 12002, 12003, 12004, or 12005(b) of the Commercial Motor Vehicle Safety Act of 1986" after "the Motor Carrier Safety Act of 1984" and by striking out "section" the second place it appears and inserting in lieu thereof "sections".

(e) CRIMINAL PENALTIES.—Paragraph (6) of such section is amended by inserting "(A) IN GENERAL.—" before "Any person" and by adding at the end thereof the following:

"(B) VIOLATIONS PERTAINING TO CDLS.—Any person who knowingly and willfully violates—

"(i) any provision of section 12002, 12003(b), 12003(c), 12004, or 12005(b) of the Commercial Motor Vehicle Safety Act of 1986 or a regulation issued under such section, or

"(ii) with respect to notification of a serious traffic violation as defined under section 12019 of such Act, any provision of section 12003(a) of such Act or a regulation issued under such section 12003(a),

shall, upon conviction, be subject for each offense to a fine not to exceed $5,000 or imprisonment for a term not to exceed 90 days, or both.".

(f) CONFORMING AMENDMENTS.—(1) Paragraph (2) of such section is amended by inserting "CIVIL PENALTY.—" after "(2)", by indenting subparagraph (A), as designated by subsection (b) of this section, and aligning such subparagraph with subparagraph (B), as added by such subsection (b).

(2) Paragraph (6) of such section is amended by inserting "CRIMINAL PENALTIES.—" after "(6)" and by indenting subparagraph (A), as designated by subsection (e) of this section, and aligning such subparagraph with subparagraph (B), as added by such subsection (e).

(g) TECHNICAL AMENDMENTS.—(1) Paragraph (6) of such section is further amended by striking out "for a fine" and inserting in lieu thereof "to a fine".

(2) Paragraph (13) of such section is amended by striking out "section 4" and inserting in lieu thereof "section 204".

SEC. 12013. WAIVER AUTHORITY.

Notwithstanding any other provision of this title, after notice and an opportunity for comment, the Secretary may waive, in whole or in part, application of any provision of this title or any regulation issued under this title with respect to class of persons or class of commercial motor vehicles if the Secretary determines that such waiver is not contrary to the public interest and is consistent with the safe operation of commercial motor vehicles. Any waiver under this section shall be published in the Federal Register, together with reasons for such waiver.

SEC. 12014. REVIEW OF COMMERCIAL MOTOR VEHICLE ALCOHOL REGULATIONS.

Not later than January 1, 1989, the Secretary shall complete a review of the regulations the Secretary issued pertaining to the use of alcohol by operators of commercial motor vehicles under the Motor Carrier Safety Act of 1984. The purpose of such review shall be to determine—

(1) whether or not such regulations should be applied uniformly throughout the United States, and

(2) whether or not such regulations should establish uniformly throughout the United States a blood alcohol concentration percentage above which an operator of a commercial motor vehicle should be prohibited from operating such vehicle.

SEC. 12015. TRUCK BRAKE REGULATIONS.

Not later than the 90th day after the date of the enactment of this title, the Secretary shall revise the regulations of the Administrator of the Federal Highway Administration contained in section 393.42(c) of title 49 of the Code of Federal Regulations to require trucks and truck tractors manufactured after July 24, 1980, to have brakes operating on all wheels. The Secretary may provide for a delayed effective date (not exceeding 1 year) for trucks and truck tractors manufactured after July 24, 1980, and before such date of enactment.

SEC. 12016. RADAR DEMONSTRATION PROJECT.

(a) PROJECT DESCRIPTION.—Notwithstanding any other provision of law, the Secretary, in cooperation with State and local law enforcement officials, shall conduct a demonstration project to assess the benefits of continuous use of unmanned radar equipment on highway safety on a section of highway with a high rate of motor vehicle accidents. Such project shall be conducted in northern Kentucky on a hilly section of Interstate Route I-75 between Fort Mitchell and the Brent Spence Bridge over the Ohio River during the 24-month period beginning on the date of the enactment of this title.

(b) REPORTS.—

(1) INTERIM REPORT.—Not later than 18 months after the date of the enactment of this title, the Secretary shall transmit to Congress an interim report on the results of the demonstration project conducted under subsection (a), together with any recommen-

dations on whether or not to extend the duration of such demonstration project and whether or not to expand the scope of such project.

(2) FINAL REPORT.—Not later than 60 days after completion of the demonstration project conducted under subsection (a), the Secretary shall transmit to Congress a final report on the results of such project, together with any such recommendations.

SEC. 12017. LIMITATION ON STATUTORY CONSTRUCTION.

Nothing in this title shall be construed to diminish, limit, or otherwise affect the authority of the Secretary to regulate commercial motor vehicle safety involving motor vehicles with a gross vehicle weight rating of less than 26,000 pounds or such lesser gross vehicle weight rating as determined appropriate by the Secretary under section 12019(5)(A) of this Act.

SEC. 12018. REGULATIONS.

(a) AUTHORITY TO ISSUE.—The Secretary may issue such regulations as may be necessary to carry out this title.

(b) COMPLIANCE WITH TITLE 5.—All regulations under this title shall be issued in accordance with section 553 of title 5, United States Code (without regard to sections 556 and 557 of such title).

SEC. 12019. DEFINITIONS.

For purposes of this title—

(1) ALCOHOL.—The term "alcohol" has the meaning the term alcoholic beverage has under section 158(c) of title 23, United States Code.

(2) DRIVER'S LICENSE.—The term "driver's license" means a license issued by a State to an individual which authorizes the individual to operate a motor vehicle on highways.

(3) CLASSIFIED DRIVER'S LICENSE.—The term "classified driver's license" means a license issued by a State to an individual which authorizes the individual to operate a class of commercial motor vehicle.

(4) MOTOR VEHICLE.—The term "motor vehicle" means a vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power used on highways, except that such term does not include a vehicle, machine, tractor, trailer, semitrailer operated exclusively on a rail.

(5) COMMERCIAL MOTOR VEHICLE.—The term "commercial motor vehicle" means a motor vehicle used in interstate or intrastate commerce to transport passengers or property—

(A) if the vehicle has a gross vehicle weight rating of 26,000 or more pounds or such a lesser gross vehicle weight rating as the Secretary determines appropriate by regulation but not less than a gross vehicle weight rating of 10,000 pounds;

(B) if the vehicle is designed to transport more than 15 passengers, including the driver; or

(C) if such vehicle is used in the transportation of materials found by the Secretary to be hazardous for the purposes of the Hazardous Materials Transportation Act.

A motor vehicle which is used in the transportation of hazardous materials and which has a gross vehicle weight rating of less than 26,000 pounds (or such gross vehicle weight rating as determined appropriate by the Secretary under subparagraph (A)) shall not be included as a commercial motor vehicle pursuant to subparagraph (C) if such hazardous material is listed as hazardous pursuant to section 306(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9656(a)) and is not otherwise regulated by the Department of Transportation or if such hazardous material is a consumer commodity or limited quantity hazardous material as defined under section 171.8 of title 49 of the Code of Federal Regulations. The Secretary may waive the application of the preceding sentence to any motor vehicle or class of motor vehicles if the Secretary determines that such waiver is in the interest of safety.

(6) CONTROLLED SUBSTANCE.—The term "controlled substance" has the meaning such term has under section 102 of the Controlled Substances Act (21 U.S.C. 802).

(7) EMPLOYEE.—The term "employee" means an operator of a commercial motor vehicle (including an independent contractor while in the course of operating a commercial motor vehicle) who is employed by an employer.

(8) EMPLOYER.—The term "employer" means any person (including the United States, a State, or a political subdivision of a State) who owns or leases a commercial motor vehicle or assigns employees to operate such a vehicle.

(9) FELONY.—The term "felony" means an offense under State or Federal law that is punishable by death or imprisonment for a term exceeding 1 year.

(10) HAZARDOUS MATERIAL.—The term "hazardous material" has the meaning such term has under section 103 of the Hazardous Materials Transportation Act.

(11) SERIOUS TRAFFIC VIOLATION.—The term "serious traffic violation" means—

(A) excessive speeding, as defined by the Secretary by regulation;

(B) reckless driving, as defined under State or local law;

(C) a violation of a State or local law relating to motor vehicle traffic control (other than a parking violation) arising in connection with a fatal traffic accident; and

(D) any other similar violation of a State or local law relating to motor vehicle traffic control (other than a parking violation) which the Secretary determines by regulation is serious.

(12) SECRETARY.—The term "Secretary" means the Secretary of Transportation.

(13) STATE.—The term "State" means a State of the United States and the District of Columbia.

(14) UNITED STATES.—The term "United States" means the 50 States and the District of Columbia.

TITLE XIII—ELECTRONIC COMMUNICATIONS PRIVACY ACT OF 1986

SEC 13001. SHORT TITLE.

This title may be cited as the "Electronic Communications Privacy Act of 1986".

Subtitle A— Interception of Communications and Related Matters

SEC. 13011. FEDERAL PENALTIES FOR THE INTERCEPTION OF COMMUNICATIONS.

(a) DEFINITIONS.—(1) Section 2510(1) of title 18, United States Code, is amended—

(A) by striking out "any communication" and inserting "any aural transfer" in lieu thereof;

(B) by inserting "(including the use of such connection in a switching station)" after "reception".

(C) by striking out "as a common carrier" and

(D) by inserting before the semicolon at the end the following: "or communications affecting interstate or foreign commerce and such term includes any electronic storage of such communication, but such term does not include the radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit".

(2) Section 2510(2) of title 18, United States Code, is amended by inserting before the semicolon at the end the following: ", but such term does not include any electronic communication".

(3) Section 2510(4) of title 18, United States Code, is amended—

(A) by inserting "or other" after "aural"; and

(B) by inserting ", electronic," after "wire".

(4) Section 2510(5) of title 18, United States Code, is amended in clause (a)(i) by inserting before the semicolon the following: "or furnished by such subscriber or user for connection to the facilities of such service and used in the ordinary course of its business".

(5) Section 2510(8) of title 18, United States Code, is amended by striking out "identity of the parties to such communication or the existence,".

(6) Section 2510 of title 18, United States Code, is amended—

(A) by striking out "and" at the end of paragraph (10);

(B) by striking out the period at the end of paragraph (11) and inserting a semicolon in lieu thereof; and

(C) by adding at the end the following:

"(12) 'electronic communication' means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic or photooptical system that affects interstate or foreign commerce, but does not include—

"(A) the radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit;

"(B) any wire or oral communication;

"(C) any communication made through a tone-only paging device; or

"(D) any communication from a tracking device (as defined in section 3117 of this title);

"(13) 'user' means any person or entity who—

"(A) uses an electronic communication service; and

"(B) is duly authorized by the provider of such service to engage in such use;

"(14) 'electronic communications system' means any wire, radio, electromagnetic, photooptical or photoelectronic facilities for the transmission of electronic communications, and any computer facilities or related electronic equipment for the electronic storage of such communications;

"(15) 'electronic communication service' means any service which provides to users thereof the ability to send or receive wire or electronic communications;

"(16) 'readily accessible to the general public' means, with respect to a radio communication, that such communication is not—

"(A) scrambled or encrypted;

"(B) transmitted using modulation techniques whose essential parameters have been withheld from the public with the intention of preserving the privacy of such communication;

"(C) carried on a subcarrier or other signal subsidiary to a radio transmission;

"(D) transmitted over a communication system provided by a common carrier, unless the communication is a tone only paging system communication; or

"(E) transmitted on frequencies allocated under part 25, subpart D, E, or F of part 74, or part 94 of the Rules of the Federal Communications Commission, unless, in the case of a communication transmitted on a

frequency allocated under part 74 that is not exclusively allocated to broadcast auxiliary services, the communication is a two-way voice communication by radio;

"(17) 'electronic storage' means—

"(A) any temporary, intermediate storage of a wire or electronic communication incidental to the electronic transmission thereof; and

"(B) any storage of such communication by an electronic communication service for purposes of backup protection of such communication; and

"(18) 'aural transfer' means a transfer containing the human voice at any point between and including the point of origin and the point of reception.".

(b) EXCEPTIONS WITH RESPECT TO ELECTRONIC COMMUNICATIONS.—

(1) Section 2511(2)(a)(ii) of title 18, United States Code, is amended—

(A) by striking out "violation of this subparagraph by a communication common carrier or an officer, employee, or agent thereof" and inserting in lieu thereof "such disclosure";

(B) by striking out "the carrier" and inserting in lieu thereof "such person"; and

(C) by striking out "an order or certification under this subparagraph" and inserting in lieu thereof "a court order or certification under this chapter".

(2) Section 2511(2)(d) of title 18, United States Code, is amended by striking out "or for the purpose of committing any other injurious act".

(3) Section 2511(2)(f) of title 18, United States Code, is amended—

(A) by inserting "or chapter 121" after "this chapter"; and

(B) by striking out "by" the second place it appears and inserting in lieu thereof ", or foreign intelligence activities conducted in accordance with otherwise applicable Federal law involving a foreign electronic communications system, utilizing".

(4) Section 2511(2) of title 18, United States Code, is amended by adding at the end the following:

"(g) It shall not be unlawful under this chapter or chapter 121 of this title for any person—

"(i) to intercept or access an electronic communication made through an electronic communication system that is configured so that such electronic communication is readily accessible to the general public;

"(ii) to intercept any radio communication which is transmitted—

"(I) by any station for the use of the general public, or that relates to ships, aircraft, vehicles, or persons in distress;

"(II) by any governmental, law enforcement, civil defense, private land mobile, or public safety communications system, including police and fire, readily accessible to the general public;

"(III) by a station operating on an authorized frequency within the bands allocated to the amateur, citizens band, or general mobile radio services; or

"(IV) by any marine or aeronautical communications system;

"(iii) to engage in any conduct which—

"(I) is prohibited by section 633 of the Communications Act of 1934; or

"(II) is excepted from the application of section 705(a) of the Communications Act of 1934 by section 705(b) of that Act;

"(iv) to intercept any wire or electronic communication the transmission of which is causing harmful interference to any lawfully operating station or consumer electronic equipment, to the extent necessary to identify the source of such interference; or

"(v) for other users of the same frequency to intercept any radio communication made through a system that utilizes frequencies monitored by individuals engaged in the provision or the use of such system, if such communication is not scrambled or encrypted.

"(h) It shall not be unlawful under this chapter—

"(i) to use a pen register or a trap and trace device (as those terms are defined for the purposes of chapter 206 (relating to pen registers and trap and trace devices) of this title); or

"(ii) for a provider of electronic communication service to record the fact that a wire or electronic communication was initiated or completed in order to protect such provider, another provider furnishing service toward the completion of the wire or electronic communication, or a user of that service, from fraudulent, unlawful or abusive use of such service.".

(c) TECHNICAL AND CONFORMING AMENDMENTS.—(1) Chapter 119 of title 18, United States Code, is amended—

(A) in each of sections 2510(5), 2510(8), 2510(9)(b), 2510(11), and 2511 through 2519 (except sections 2515, 2516(1) and 2518(10)), by striking out "wire or oral" each place it appears (including in any section heading) and inserting "wire, oral, or electronic" in lieu thereof; and

(B) in section 2511(2)(b), by inserting "or electronic" after "wire".

(2) The heading of chapter 119 of title 18, United States Code, is amended by inserting "and electronic communications" after "wire".

(3) The item relating to chapter 119 in the table of chapters at the beginning of part I of title 18 of the United States Code is amended by inserting "and electronic communications" after "Wire".

(4) Section 2510(5)(a) of title 18, United States Code, is amended by striking out "communications common carrier" and inserting "provider of wire or electronic communication service" in lieu thereof.

(5) Section 2511(2)(a)(i) of title 18, United States Code, is amended—

(A) by striking out "any communication common carrier" and inserting "a provider of wire or electronic communication service" in lieu thereof;

(B) by striking out "of the carrier of such communication" and inserting "of the provider of that service" in lieu thereof; and

(C) by striking out ": Provided, That said communication common carriers" and inserting ", except that a provider of wire communication service to the public" in lieu thereof.

(6) Section 2511(2)(a)(ii) of title 18, United States Code, is amended—

(A) by striking out "communication common carriers" and inserting "providers of wire or electronic communication service" in lieu thereof;

(B) by striking out "communication common carrier" each place it appears and inserting "provider of wire or electronic communication service" in lieu thereof; and

(C) by striking out "if the common carrier" and inserting "if such provider" in lieu thereof.

(7) Section 2512(2)(a) of title 18, United States Code, is amended—

(A) by striking out "a communications common carrier" the first place it appears and inserting "a provider of wire or electronic communication service" in lieu thereof; and

(B) by striking out "a communications common carrier" the second place it appears and inserting "such a provider" in lieu thereof; and

(C) by striking out "communications common carrier's business" and inserting "business of providing that wire or electronic communication service" in lieu thereof.

(8) Section 2518(4) of title 18, United States Code, is amended—

(A) by striking out "communication common carrier" in both places it appears and inserting "provider of wire or electronic communication service" in lieu thereof; and

(B) by striking out "carrier" and inserting in lieu thereof "service provider".

(d) PENALTIES MODIFICATION.—(1) Section 2511(1) of title 18, United States Code, is amended by striking out "shall be" and all that follows through "or both" and inserting in lieu thereof "shall be punished as provided in subsection (4) or shall be subject to suit as provided in subsection (5)".

(2) Section 2511 of title 18, United States Code, is amended by adding after the material added by section 102 the following:

"(4)(a) Except as provided in paragraph (b) of this subsection or in subsection (5), whoever violates subsection (1) of this section shall be fined under this title or imprisoned not more than five years, or both.

"(b) If the offense is a first offense under paragraph (a) of this subsection and is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain, and the wire or electronic communication with respect to which the offense under paragraph (a) is a radio communication that is not scrambled or encrypted, then—

"(i) if the communication is not the radio portion of a cellular telephone communication, a public land mobile radio service communication or a paging service communication, and the conduct is not that described in subsection (5), the offender shall be fined under this title or imprisoned not more than one year, or both; and

"(ii) if the communication is the radio portion of a cellular telephone communication, a public land mobile radio service communication or a paging service communication, the offender shall be fined not more than $500.

"(c) Conduct otherwise an offense under this subsection that consists of or relates to the interception of a satellite transmission that is not encrypted or scrambled and that is transmitted—

"(i) to a broadcasting station for purposes of retransmission to the general public; or

"(ii) as an audio subcarrier intended for redistribution to facilities open to the public, but not including data transmissions or telephone calls,

is not an offense under this subsection unless the conduct is for the purposes of direct or indirect commercial advantage or private financial gain.

"(5)(a)(i) If the communication is—

"(A) a private satellite video communication that is not scrambled or encrypted and the conduct in violation of this chapter is the private viewing of that communication and is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain; or

"(B) a radio communication that is transmitted on frequencies allocated under subpart D of part 74 of the rules of the Federal Communications Commission that is not scrambled or encrypted and the conduct in violation of this chapter is not for a tortious or illegal purpose or for purposes of direct or

indirect commercial advantage or private commercial gain,

then the person who engages in such conduct shall be subject to suit by the Federal Government in a court of competent jurisdiction.

"(ii) In an action under this subsection—

"(A) if the violation of this chapter is a first offense for the person under paragraph (a) of subsection (4) and such person has not been found liable in a civil action under section 2520 of this title, the Federal Government shall be entitled to appropriate injunctive relief; and

"(B) if the violation of this chapter is a second or subsequent offense under paragraph (a) of subsection (4) or such person has been found liable in any prior civil action under section 2520, the person shall be subject to a mandatory $500 civil fine.

"(b) The court may use any means within its authority to enforce an injunction issued under paragraph (ii)(A), and shall impose a civil fine of not less than $500 for each violation of such an injunction.".

(e) EXCLUSIVITY OF REMEDIES WITH RESPECT TO ELECTRONIC COMMUNICATIONS.—Section 2518(10) of title 18, United States Code, is amended by adding at the end the following:

"(c) The remedies and sanctions described in this chapter with respect to the interception of electronic communications are the only judicial remedies and sanctions for nonconstitutional violations of this chapter involving such communications.".

(f) STATE OF MIND.—Paragraphs (a), (b), (c), and (d) of subsection (1) of section 2511 of title 18, United States Code, are amended by striking out "willfully" and inserting in lieu thereof "intentionally".

(2) Subsection (1) of section 2512 of title 18, United States Code, is amended in the matter before paragraph (a) by striking out "willfully" and inserting in lieu thereof "intentionally".

SEC. 13012. REQUIREMENTS FOR CERTAIN DISCLOSURES.

Section 2511 of title 18, United States Code, is amended by adding at the end the following:

"(3)(a) Except as provided in paragraph (b) of this subsection, a person or entity providing an electronic communication service to the public shall not intentionally divulge the contents of any communication (other than one to such person or entity, or an agent thereof) while in transmission on that service to any person or entity other than an addressee or intended recipient of such communication or an agent of such addressee or intended recipient.

"(b) A person or entity providing electronic communication service to the public may divulge the contents of any such communication—

"(i) as otherwise authorized in section 2511(2)(a) or 2517 of this title;

"(ii) with the lawful consent of the originator or any addressee or intended recipient of such communication;

"(iii) to a person employed or authorized, or whose facilities are used, to forward such communication to its destination; or

"(iv) which were inadvertently obtained by the service provider and which appear to pertain to the commission of a crime, if such divulgence is made to a law enforcement agency.".

SEC. 13013. RECOVERY OF CIVIL DAMAGES.

Section 2520 of title 18, United States Code, is amended to read as follows:

"§ 2520. Recovery of civil damages authorized

"(a) IN GENERAL.—Except as provided in section 2511(2)(a)(ii), any person whose wire, oral, or electronic communication is intercepted, disclosed, or intentionally used in violation of this chapter may in a civil action recover from the person or entity which engaged in that violation such relief as may be appropriate.

"(b) RELIEF.—In an action under this section, appropriate relief includes—

"(1) such preliminary and other equitable or declaratory relief as may be appropriate;

"(2) damages under subsection (c) and punitive damages in appropriate cases; and

"(3) a reasonable attorney's fee and other litigation costs reasonably incurred.

"(c) COMPUTATION OF DAMAGES.—(1) In an action under this section, if the conduct in violation of this chapter is the private viewing of a private satellite video communication that is not scrambled or encrypted or if the communication is a radio communication that is transmitted on frequencies allocated under subpart D of part 74 of the rules of the Federal Communications Commission that is not scrambled or encrypted and the conduct is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain, then the court shall assess damages as follows:

"(A) If the person who engaged in that conduct has not previously been enjoined under section 2511(5)(a)(i) and has not been found liable in a prior civil action under this section, the court shall assess the greater of the sum of actual damages suffered by the plaintiff, or statutory damages of not less than $50 and not more than $500.

"(B) If, on one prior occasion, the person who engaged in that conduct has been enjoined under section 2511(5)(a)(i) or has been found liable in a civil action under this section, the court shall assess the greater of the sum of actual damages suffered by the plaintiff, or statutory damages of not less than $100 and not more than $1000.

"(2) In any other action under this section, the court may assess as damages whichever is the greater of—

"(A) the sum of the actual damages suffered by the plaintiff and any profits made by the violator as a result of the violation; or

"(B) statutory damages of whichever is the greater of $100 a day for each day of violation or $10,000.

"(d) DEFENSE.—A good faith reliance on—

"(1) a court warrant or order, a grand jury subpoena, a legislative authorization, or a statutory authorization;

"(2) a request of an investigative or law enforcement officer under section 2518(7) of this title; or

"(3) a good faith determination that section 2511(3) of this title permitted the conduct complained of;

is a complete defense against any civil or criminal action brought under this chapter or any other law.

"(e) LIMITATION.—A civil action under this section may not be commenced later than two years after the date upon which the claimant first has a reasonable opportunity to discover the violation.".

SEC. 13014. CERTAIN APPROVALS BY JUSTICE DEPARTMENT OFFICIALS.

Section 2516(1) of title 18 of the United States Code is amended by striking out "or any Assistant Attorney General" and inserting in lieu thereof "any Assistant Attorney General, any acting Assistant Attorney General, or any Deputy Assistant Attorney General in the Criminal Division".

SEC. 13015. ADDITION OF OFFENSES TO CRIMES FOR WHICH INTERCEPTION IS AUTHORIZED.

(a) WIRE AND ORAL INTERCEPTIONS.—Section 2516(1) of title 18 of the United States Code is amended—

(1) in paragraph (c)—

(A) by inserting "section 751 (relating to escape)," after "wagering information),";

(B) by striking out "2314" and inserting "2312, 2313, 2314," in lieu thereof;

(C) by inserting "the second section 2320 (relating to trafficking in certain motor vehicles or motor vehicle parts), section 1203 (relating to hostage taking), section 1029 (relating to fraud and related activity in connection with access devices), section 3146 (relating to penalty for failure to appear), section 3521(b)(3) (relating to witness relocation and assistance), section 32 (relating to destruction of aircraft or aircraft facilities)," after "stolen property),";

(D) by inserting "section 1952A (relating to use of interstate commerce facilities in the commission of murder for hire), section 1952B (relating to violent crimes in aid of racketeering activity)," after "1952 (interstate and foreign travel or transportation in aid of racketeering enterprises),";

(E) by inserting ", section 115 (relating to threatening or retaliating against a Federal official), the section in chapter 65 relating to destruction of an energy facility, and section 1341 (relating to mail fraud)," after "section 1963 (violations with respect to racketeer influenced and corrupt organizations)"; and

(F) by—

(i) striking out "or" before "section 351" and inserting in lieu thereof a comma; and

(ii) inserting before the semicolon at the end thereof the following: ", section 831 (relating to prohibited transactions involving nuclear materials), section 33 (relating to destruction of motor vehicles or motor vehicle facilities), or section 1992 (relating to wrecking trains)";

(2) by striking out "or" at the end of paragraph (g);

(3) by inserting after paragraph (g) the following:

"(h) any felony violation of sections 2511 and 2512 (relating to interception and disclosure of certain communications and to certain intercepting devices) of this title;

"(i) any violation of section 1679a(c)(2) (relating to destruction of a natural gas pipeline) or subsection (i) or (n) of section 1472 (relating to aircraft piracy) of title 49, of the United States Code;

"(j) any criminal violation of section 2778 of title 22 (relating to the Arms Export Control Act); or";

"(k) the location of any fugitive from justice from an offense described in this section;

(4) by redesignating paragraph (h) as paragraph (l); and

(5) in paragraph (a) by—

(A) inserting after "Atomic Energy Act of 1954)," the following: "section 2284 of title 42 of the United States Code (relating to sabotage of nuclear facilities or fuel),";

(B) striking out "or" after "(relating to treason),"; and

(C) inserting before the semicolon at the end thereof the following: "chapter 65 (relating to malicious mischief), chapter 111 (relating to destruction of vessels), or chapter 81 (relating to piracy)".

(b) INTERCEPTION OF ELECTRONIC COMMUNICATIONS.—Section 2516 of title 18 of the United States Code is amended by adding at the end the following:

"(3) Any attorney for the Government (as such term is defined for the purposes of the Federal Rules of Criminal Procedure) may authorize an application to a Federal judge of competent jurisdiction for, and such judge may grant, in conformity with section 2518 of this title, an order authorizing or approving the interception of electronic communications by an investigative or law enforcement officer having responsibility for the investigation of the offense as to which the application is made, when such interception may provide or has provided evidence of any Federal felony.".

SEC. 13016. APPLICATIONS, ORDERS, AND IMPLEMENTATION OF ORDERS.

(a) PLACE OF AUTHORIZED INTERCEPTION.—Section 2518(3) of title 18 of the United States Code is amended by inserting "(and outside that jurisdiction but within the United States in the case of a mobile interception device authorized by a Federal court within such jurisdiction)" after "within the territorial jurisdiction of the court in which the judge is sitting".

(b) REIMBURSEMENT FOR ASSISTANCE.—Section 2518(4) of title 18 of the United States Code is amended by striking out "at the prevailing rates" and inserting in lieu thereof "for reasonable expenses incurred in providing such facilities or assistance".

(c) COMMENCEMENT OF THIRTY-DAY PERIOD AND POSTPONEMENT OF MINIMIZATION.—Section 2518(5) of title 18 of the United States Code is amended—

(1) by inserting after the first sentence the following: "Such thirty-day period begins on the earlier of the day on which the investigative or law enforcement officer first begins to conduct an interception under the order or ten days after the order is entered."; and

(2) by adding at the end the following: "In the event the intercepted communication is in a code or foreign language, and an expert in that foreign language or code is not reasonably available during the interception period, minimization may be accomplished as soon as practicable after such interception. An interception under this chapter may be conducted in whole or in part by Government personnel, or by an individual operating under a contract with the Government, acting under the supervision of an investigative or law enforcement officer authorized to conduct the interception.".

(d) ALTERNATIVE TO DESIGNATING SPECIFIC FACILITIES FROM WHICH COMMUNICATIONS ARE TO BE INTERCEPTED.—(1) Section 2518(1)(b)(ii) of title 18 of the United States Code is amended by inserting "except as provided in subsection (11)," before "a particular description".

(2) Section 2518(3)(d) of title 18 of the United States Code is amended by inserting "except as provided in subsection (11)," before "there is".

(3) Section 2518 of title 18 of the United States Code is amended by adding at the end the following:

"(11) The requirements of subsections (1)(b)(ii) and (3)(d) of this section relating to the specification of the facilities from which, or the place where, the communication is to be intercepted do not apply if—

"(a) in the case of an application with respect to the interception of an oral communication—

"(i) the application is by a Federal investigative or law enforcement officer and is approved by the Attorney General, the Deputy Attorney General, the Associate Attorney General, an Assistant Attorney General, or an acting Assistant Attorney General;

"(ii) the application contains a full and complete statement as to why such specification is not practical and identifies the person committing the offense and whose communications are to be intercepted; and

"(iii) the judge finds that such specification is not practical; and

"(b) in the case of an application with respect to a wire or electronic communication—

"(i) the application is by a Federal investigative or law enforcement officer and is approved by the Attorney General, the Deputy Attorney General, the Associate Attorney General, an Assistant Attorney General, or an acting Assistant Attorney General;

"(ii) the application identifies the person believed to be committing the offense and whose communications are to be intercepted and the applicant makes a showing of a purpose, on the part of that person, to thwart interception by changing facilities; and

"(iii) the judge finds that such purpose has been adequately shown.

"(12) An interception of a communication under an order with respect to which the requirements of subsections (1)(b)(ii) and (3)(d) of this section do not apply by reason of subsection (11) shall not begin until the facilities from which, or the place where, the communication is to be intercepted is ascertained by the person implementing the interception order. A provider of wire or electronic communications service that has received an order as provided for in subsection (11)(b) may move the court to modify or quash the order on the ground that its assistance with respect to the interception cannot be performed in a timely or reasonable fashion. The court, upon notice to the government, shall decide such a motion expeditiously.".

(4) Section 2519(1)(b) of title 18, United States Code, is amended by inserting "(including whether or not the order was an order with respect to which the requirements of sections 2518(1)(b)(ii) and 2518(3)(d) of this title did not apply by reason of section 2518(11) of this title)" after "applied for".

SEC. 13017. INTELLIGENCE ACTIVITIES.

(a) IN GENERAL.—Nothing in this title or the amendments made by this title constitutes authority for the conduct of any intelligence activity.

(b) CERTAIN ACTIVITIES UNDER PROCEDURES APPROVED BY THE ATTORNEY GENERAL.—Nothing in chapter 119 or chapter 121 of title 18, United States Code, shall affect the conduct, by officers or employees of the United States Government in accordance with other applicable Federal law, under procedures approved by the Attorney General of activities intended to—

(1) intercept encrypted or other official communications of United States executive branch entities or United States Government contractors for communications security purposes;

(2) intercept radio communications transmitted between or among foreign powers or agents of a foreign power as defined by the Foreign Intelligence Surveillance Act of 1978; or

(3) access an electronic communication system used exclusively by a foreign power or agent of a foreign power as defined by the Foreign Intelligence Surveillance Act of 1978.

SEC. 13018. MOBILE TRACKING DEVICES.

(a) IN GENERAL.—Chapter 205 of title 18, United States Code, is amended by adding at the end the following:

"§ 3117. Mobile tracking devices

"(a) IN GENERAL.—If a court is empowered to issue a warrant or other order for the installation of a mobile tracking device, such order may authorize the use of that device within the jurisdiction of the court, and outside that jurisdiction if the device is installed in that jurisdiction.

"(b) DEFINITION.—As used in this section, the term 'tracking device' means an electronic or mechanical device which permits the tracking of the movement of a person or object.".

(b) CLERICAL AMENDMENT.—The table of contents at the beginning of chapter 205 of title 18, United States Code, is amended by adding at the end the following:

"3117. Mobile tracking devices.".

SEC. 13019. WARNING SUBJECT OF SURVEILLANCE.

Section 2232 of title 18, United States Code, is amended—

(1) by inserting "(a) PHYSICAL INTERFERENCE WITH SEARCH.—" before "Whoever" the first place it appears;

(2) by inserting "(b) NOTICE OF SEARCH.—" before "Whoever" the second place it appears; and

(3) by adding at the end the following:

"(c) NOTICE OF CERTAIN ELECTRONIC SURVEILLANCE.—Whoever, having knowledge that a Federal investigative or law enforcement officer has been authorized or has applied for authorization under chapter 119 to intercept a wire, oral, or electronic communication, in order to obstruct, impede, or prevent such interception, gives notice or attempts to give notice of the possible interception to any person shall be fined under this title or imprisoned not more than five years, or both.

"Whoever, having knowledge that a Federal officer has been authorized or has applied for authorization to conduct electronic surveillance under the Foreign Intelligence Surveillance Act (50 U.S.C. 1801, et seq.), in order to obstruct, impede, or prevent such activity, gives notice or attempts to give notice of the possible activity to any person shall be fined under this title or imprisoned not more than five years, or both.".

SEC. 13020. INJUNCTIVE REMEDY.

(a) IN GENERAL.—Chapter 119 of title 18, United States Code, is amended by adding at the end the following:

"§ 2521. Injunction against illegal interception

"Whenever it shall appear that any person is engaged or is about to engage in any act which constitutes or will constitute a felony violation of this chapter, the Attorney General may initiate a civil action in a district court of the United States to enjoin such violation. The court shall proceed as soon as practicable to the hearing and determination of such an action, and may, at any time before final determination, enter such a restraining order or prohibition, or take such other action, as is warranted to prevent a continuing and substantial injury to the United States or to any person or class of persons for whose protection the action is brought. A proceeding under this section is governed by the Federal Rules of Civil Procedure, except that, if an indictment has been returned against the respondent, discovery is governed by the Federal Rules of Criminal Procedure.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 119 of title 18, United States Code, is amended by adding at the end thereof the following:

"2521. Injunction against illegal interception.".

SEC. 13021. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b) or (c), this subtitle and the amendments made by this subtitle shall take effect 90 days after the date of the enactment of this Act and shall, in the case of conduct pursuant to a court order or extension, apply only with respect to court orders or extensions made after this subtitle takes effect.

(b) SPECIAL RULE FOR STATE AUTHORIZATIONS OF INTERCEPTIONS.—Any interception pursuant to section 2516(2) of title 18 of the United States Code which would be valid and lawful without regard to the amendments made by this subtitle shall be valid and lawful notwithstanding such amendments if such interception occurs during the period beginning on the date such amendments take effect and ending on the earlier of—

(1) the day before the date of the taking effect of State law conforming the applicable State statute with chapter 119 of title 18, United States Code, as so amended; or

(2) the date two years after the date of the enactment of this title.

(c) EFFECTIVE DATE FOR CERTAIN APPROVALS BY JUSTICE DEPARTMENT OFFICIALS.—Section 13014 of this title shall take effect on the date of enactment of this title.

Subtitle B—Stored Wire and Electronic Communications and Transactional Records Access

SEC. 13031. TITLE 18 AMENDMENT.

Title 18, United States Code, is amended by inserting after chapter 119 the following:

"CHAPTER 121—STORED WIRE AND ELECTRONIC COMMUNICATIONS AND TRANSACTIONAL RECORDS ACCESS

"Sec.
"2701. Unlawful access to stored communications.
"2702. Disclosure of contents.
"2703. Requirements for governmental access.
"2704. Backup preservation.
"2705. Delayed notice.
"2706. Cost reimbursement.
"2707. Civil action.
"2708. Exclusivity of remedies.
"2709. Counterintelligence access to telephone toll and transactional records.
"2710. Definitions.

"§ 2701. Unlawful access to stored communications

"(a) OFFENSE.—Except as provided in subsection (c) of this section whoever—

"(1) intentionally accesses without authorization a facility through which an electronic communication service is provided; or

"(2) intentionally exceeds an authorization to access that facility;

and thereby obtains, alters, or prevents authorized access to a wire or electronic communication while it is in electronic storage in such system shall be punished as provided in subsection (b) of this section.

"(b) PUNISHMENT.—The punishment for an offense under subsection (a) of this section is—

"(1) if the offense is committed for purposes of commercial advantage, malicious destruction or damage, or private commercial gain—

"(A) a fine of not more than $250,000 or imprisonment for not more than one year, or both, in the case of a first offense under this subparagraph; and

"(B) a fine under this title or imprisonment for not more than two years, or both, for any subsequent offense under this subparagraph; and

"(2) a fine of not more than $5,000 or imprisonment for not more than six months, or both, in any other case.

"(c) EXCEPTIONS.—Subsection (a) of this section does not apply with respect to conduct authorized—

"(1) by the person or entity providing a wire or electronic communications service;

"(2) by a user of that service with respect to a communication of or intended for that user; or

"(3) in section 2703, 2704, or 2518 of this title.

"§ 2702. Disclosure of contents

"(a) PROHIBITIONS.—Except as provided in subsection (b)—

"(1) a person or entity providing an electronic communication service to the public shall not knowingly divulge to any person or entity the contents of a communication while in electronic storage by that service; and

"(2) a person or entity providing remote computing service to the public shall not knowingly divulge to any person or entity the contents of any communication which is carried or maintained on that service—

"(A) on behalf of, and received by means of electronic transmission from (or created by means of computer processing of communications received by means of electronic transmission from), a subscriber or customer of such service; and

"(B) solely for the purpose of providing storage or computer processing services to such subscriber or customer, if the provider is not authorized to access the contents of any such communications for purposes of providing any services other than storage or computer processing.

"(b) EXCEPTIONS.—A person or entity may divulge the contents of a communication—

"(1) to an addressee or intended recipient of such communication or an agent of such addressee or intended recipient;

"(2) as otherwise authorized in section 2516, 2511(2)(a), or 2703 of this title;

"(3) with the lawful consent of the originator or an addressee or intended recipient of such communication, or the subscriber in the case of remote computing service;

"(4) to a person employed or authorized or whose facilities are used to forward such communication to its destination;

"(5) as may be necessarily incident to the rendition of the service or to the protection of the rights or property of the provider of that service; or

"(6) to a law enforcement agency, if such contents—

"(A) were inadvertently obtained by the service provider; and

"(B) appear to pertain to the commission of a crime.

"§ 2703. Requirements for governmental access

"(a) CONTENTS OF ELECTRONIC COMMUNICATIONS IN ELECTRONIC STORAGE.—A governmental entity may require the disclosure by a provider of electronic communication service of the contents of an electronic communication, that is in electronic storage in an electronic communications system for one hundred and eighty days or less, only pursuant to a warrant issued under the Federal Rules of Criminal Procedure or equivalent State warrant. A governmental entity may require the disclosure by a provider of electronic communications services of the contents of an electronic communication that has been in electronic storage in an electronic communications system for more than one hundred and eighty days by the means available under subsection (b) of this section.

"(b) CONTENTS OF ELECTRONIC COMMUNICATIONS IN A REMOTE COMPUTING SERVICE.—(1) A governmental entity may require a provider of remote computing service to disclose the contents of any electronic communication to which this paragraph is made applicable by paragraph (2) of this subsection—

"(A) without required notice to the subscriber or customer, if the governmental entity obtains a warrant issued under the Federal Rules of Criminal Procedure or equivalent State warrant; or

"(B) with prior notice from the governmental entity to the subscriber or customer if the governmental entity—

"(i) uses an administrative subpoena authorized by a Federal or State statute or a Federal or State grand jury subpoena; or

"(ii) obtains a court order for such disclosure under subsection (d) of this section;

except that delayed notice may be given pursuant to section 2705 of this title.

"(2) Paragraph (1) is applicable with respect to any electronic communication that is held or maintained on that service—

"(A) on behalf of, and received by means of electronic transmission from (or created by means of computer processing of communications received by means of electronic transmission from), a subscriber or customer of such remote computing service; and

"(B) solely for the purpose of providing storage or computer processing services to such subscriber or customer, if the provider is not authorized to access the contents of any such communications for purposes of providing any services other than storage or computer processing.

"(c) RECORDS CONCERNING ELECTRONIC COMMUNICATION SERVICE OR REMOTE COMPUTING SERVICE.—(1)(A) Except as provided in subparagraph (B), a provider of electronic communication service or remote computing service may disclose a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications covered by subsection (a) or (b) of this section) to any person other than a governmental entity.

"(B) A provider of electronic communication service or remote computing service shall disclose a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications covered by subsection (a) or (b) of this section) to a governmental entity only when the governmental entity—

"(i) uses an administrative subpoena authorized by a Federal or State statute, or a Federal or State grand jury subpoena;

"(ii) obtains a warrant issued under the Federal Rules of Criminal Procedure or equivalent State warrant;

"(iii) obtains a court order for such disclosure under subsection (d) of this section; or

"(iv) has the consent of the subscriber or customer to such disclosure.

"(2) A governmental entity receiving records or information under this subsection is not required to provide notice to a subscriber or customer.

"(d) REQUIREMENTS FOR COURT ORDER.—A court order for disclosure under subsection (b) or (c) of this section shall issue only if the governmental entity shows that there is reason to believe the contents of a wire or electronic communication, or the records or other information sought, are relevant to a legitimate law enforcement inquiry. In the case of a State governmental authority, such a court order shall not issue if prohibited by the law of such State. A court issuing an order pursuant to this section, on a motion

made promptly by the service provider, may quash or modify such order, if the information or records requested are unusually voluminous in nature or compliance with such order otherwise would cause an undue burden on such provider.

"(e) NO CAUSE OF ACTION AGAINST A PROVIDER DISCLOSING INFORMATION UNDER THIS CHAPTER.—No cause of action shall lie in any court against any provider of wire or electronic communication service, its officers, employees, agents, or other specified persons for providing information, facilities, or assistance in accordance with the terms of a court order, warrant, subpoena, or certification under this chapter.

"§ 2704. Backup preservation

"(a) BACKUP PRESERVATION.—(1) A governmental entity acting under section 2703(b)(2) may include in its subpoena or court order a requirement that the service provider to whom the request is directed create a backup copy of the contents of the electronic communications sought in order to preserve those communications. Without notifying the subscriber or customer of such subpoena or court order, such service provider shall create such backup copy as soon as practicable consistent with its regular business practices and shall confirm to the governmental entity that such backup copy has been made. Such backup copy shall be created within two business days after receipt by the service provider of the subpoena or court order.

"(2) Notice to the subscriber or customer shall be made by the governmental entity within three days after receipt of such confirmation, unless such notice is delayed pursuant to section 2705(a).

"(3) The service provider shall not destroy such backup copy until the later of—

"(A) the delivery of the information; or

"(B) the resolution of any proceedings (including appeals of any proceeding) concerning the government's subpoena or court order.

"(4) The service provider shall release such backup copy to the requesting governmental entity no sooner than fourteen days after the governmental entity's notice to the subscriber or customer if such service provider—

"(A) has not received notice from the subscriber or customer that the subscriber or customer has challenged the governmental entity's request; and

"(B) has not initiated proceedings to challenge the request of the governmental entity.

"(5) A governmental entity may seek to require the creation of a backup copy under subsection (a)(1) of this section if in its sole discretion such entity determines that there is reason to believe that notification under section 2703 of this title of the existence of the subpoena or court order may result in destruction of or tampering with evidence. This determination is not subject to challenge by the subscriber or customer or service provider.

"(b) CUSTOMER CHALLENGES.—(1) Within fourteen days after notice by the governmental entity to the subscriber or customer under subsection (a)(2) of this section, such subscriber or customer may file a motion to quash such subpoena or vacate such court order, with copies served upon the governmental entity and with written notice of such challenge to the service provider. A motion to vacate a court order shall be filed in the court which issued such order. A motion to quash a subpoena shall be filed in the appropriate United States district court or State court. Such motion or application shall contain an affidavit or sworn statement—

"(A) stating that the applicant is a customer or subscriber to the service from which the contents of electronic communications maintained for him have been sought; and

"(B) stating the applicant's reasons for believing that the records sought are not relevant to a legitimate law enforcement inquiry or that there has not been substantial compliance with the provisions of this chapter in some other respect.

"(2) Service shall be made under this section upon a governmental entity by delivering or mailing by registered or certified mail a copy of the papers to the person, office, or department specified in the notice which the customer has received pursuant to this chapter. For the purposes of this section, the term 'delivery' has the meaning given that term in the Federal Rules of Civil Procedure.

"(3) If the court finds that the customer has complied with paragraphs (1) and (2) of this subsection, the court shall order the governmental entity to file a sworn response, which may be filed in camera if the governmental entity includes in its response the reasons which make in camera review appropriate. If the court is unable to determine the motion or application on the basis of the parties' initial allegations and response, the court may conduct such additional proceedings as it deems appropriate. All such proceedings shall be completed and the motion or application decided as soon as practicable after the filing of the governmental entity's response.

"(4) If the court finds that the applicant is not the subscriber or customer for whom the communications sought by the governmental entity are maintained, or that there is a reason to believe that the law enforcement inquiry is legitimate and that the communications sought are relevant to that inquiry, it shall deny the motion or application and order such process enforced. If the court finds that the applicant is the subscriber or customer for whom the communications sought by the governmental entity are maintained, and that there is not a reason to believe that the communications sought are relevant to a legitimate law enforcement inquiry, or that there has not been substantial compliance with the provisions of this chapter, it shall order the process quashed.

"(5) A court order denying a motion or application under this section shall not be deemed a final order and no interlocutory appeal may be taken therefrom by the customer.

"§ 2705. Delayed notice

"(a) DELAY OF NOTIFICATION.—(1) A governmental entity acting under section 2703(b) of this title may—

"(A) where a court order is sought, include in the application a request, which the court shall grant, for an order delaying the notification required under section 2703(b) of this title for a period not to exceed ninety days, if the court determines that there is reason to believe that notification of the existence of the court order may have an adverse result described in paragraph (2) of this subsection; or

"(B) where an administrative subpoena authorized by a Federal or State statute or a Federal or State grand jury subpoena is obtained, delay the notification required under section 2703(b) of this title for a period not to exceed ninety days upon the execution of a written certification of a supervisory official that there is reason to believe that notification of the existence of the subpoena may have an adverse result described in paragraph (2) of this subsection.

"(2) An adverse result for the purposes of paragraph (1) of this subsection is—

"(A) endangering the life or physical safety of an individual;

"(B) flight from prosecution;

"(C) destruction of or tampering with evidence;

"(D) intimidation of potential witnesses; or

"(E) otherwise seriously jeopardizing an investigation or unduly delaying a trial.

"(3) The governmental entity shall maintain a true copy of certification under paragraph (1)(B).

"(4) Extensions of the delay of notification provided in section 2703 of up to ninety days each may be granted by the court upon application, or by certification by a governmental entity, but only in accordance with subsection (b) of this section.

"(5) Upon expiration of the period of delay of notification under paragraph (1) or (4) of this subsection, the governmental entity shall serve upon, or deliver by registered or first-class mail to, the customer or subscriber a copy of the process or request together with notice that—

"(A) states with reasonable specificity the nature of the law enforcement inquiry; and

"(B) informs such customer or subscriber—

"(i) that information maintained for such customer or subscriber by the service provider named in such process or request was supplied to or requested by that governmental authority and the date on which the supplying or request took place;

"(ii) that notification of such customer or subscriber was delayed;

"(iii) what governmental entity or court made the certification or determination pursuant to which that delay was made; and

"(iv) which provision of this chapter allowed such delay.

"(6) As used in this subsection, the term 'supervisory official' means the investigative agent in charge or assistant investigative agent in charge or an equivalent of an investigating agency's headquarters or regional office, or the chief prosecuting attorney or the first assistant prosecuting attorney or an equivalent of a prosecuting attorney's headquarters or regional office.

"(b) PRECLUSION OF NOTICE TO SUBJECT OF GOVERNMENTAL ACCESS.—A governmental entity acting under section 2703, when it is not required to notify the subscriber or customer under section 2703(b)(1), or to the extent that it may delay such notice pursuant to subsection (a) of this section, may apply to a court for an order commanding a provider of electronic communications service or remote computing service to whom a warrant, subpoena, or court order is directed, for such period as the court deems appropriate, not to notify any other person of the existence of the warrant, subpoena, or court order. The court shall enter such an order if it determines that there is reason to believe that notification of the existence of the warrant, subpoena, or court order will result in—

"(1) endangering the life or physical safety of an individual;

"(2) flight from prosecution;

"(3) destruction of or tampering with evidence;

"(4) intimidation of potential witnesses; or

"(5) otherwise seriously jeopardizing an investigation or unduly delaying a trial.

"§ 2706. Cost reimbursement

"(a) PAYMENT.—Except as otherwise provided in subsection (c), a governmental entity obtaining the contents of communications, records, or other information under section 2702, 2703, or 2704 of this title shall pay to the person or entity assembling or providing such information a fee for reimbursement for such costs as are reasonably necessary and which have been directly incurred in searching for, assembling, reproducing, or otherwise providing such information. Such reimbursable costs shall include any costs due to necessary disruption of normal operations of any electronic communication service or remote computing service in which such information may be stored.

"(b) AMOUNT.—The amount of the fee provided by subsection (a) shall be as mutually agreed by the governmental entity and the person or entity providing the information, or, in the absence of agreement, shall be as determined by the court which issued the order for production of such information (or the court before which a criminal prosecution relating to such information would be brought, if no court order was issued for production of the information).

"(c) The requirement of subsection (a) of this section does not apply with respect to records or other information maintained by a communications common carrier that relate to telephone toll records and telephone listings obtained under section 2703 of this title. The court may, however, order a payment as described in subsection (a) if the court determines the information required is unusually voluminous in nature or otherwise caused an undue burden on the provider.

"§ 2707. Civil action

"(a) CAUSE OF ACTION.—Except as provided in section 2703(e), any provider of electronic communication service, subscriber, or customer aggrieved by any violation of this chapter in which the conduct constituting the violation is engaged in with a knowing or intentional state of mind may, in a civil action, recover from the person or entity which engaged in that violation such relief as may be appropriate.

"(b) RELIEF.—In a civil action under this section, appropriate relief includes—

"(1) such preliminary and other equitable or declaratory relief as may be appropriate;

"(2) damages under subsection (c); and

"(3) a reasonable attorney's fee and other litigation costs reasonably incurred.

"(c) DAMAGES.—The court may assess as damages in a civil action under this section the sum of the actual damages suffered by the plaintiff and any profits made by the violator as a result of the violation, but in no case shall a person entitled to recover receive less than the sum of $1,000.

"(d) DEFENSE.—A good faith reliance on—

"(1) a court warrant or order, a grand jury subpoena, a legislative authorization, or a statutory authorization;

"(2) a request of an investigative or law enforcement officer under section 2518(7) of this title; or

"(3) a good faith determination that section 2511(3) of this title permitted the conduct complained of;

is a complete defense to any civil or criminal action brought under this chapter or any other law.

"(e) LIMITATION.—A civil action under this section may not be commenced later than two years after the date upon which the claimant first discovered or had a reasonable opportunity to discover the violation.

"§ 2708. Exclusivity of remedies

"The remedies and sanctions described in this chapter are the only judicial remedies and sanctions for nonconstitutional violations of this chapter.

"§ 2709. Counterintelligence access to telephone toll and transactional records

"(a) DUTY TO PROVIDE.—A wire or electronic communication service provider shall comply with a request for subscriber information and toll billing records information, or electronic communication transactional records in its custody or possession made by the Director of the Federal Bureau of Investigation under subsection (b) of this section.

"(b) REQUIRED CERTIFICATION.—The Director of the Federal Bureau of Investigation (or an individual within the Federal Bureau of Investigation designated for this purpose by the Director) may request any such information and records if the Director (or the Director's designee) certifies in writing to the wire or electronic communication service provider to which the request is made that—

"(1) the information sought is relevant to an authorized foreign counterintelligence investigation; and

"(2) there are specific and articulable facts giving reason to believe that the person or entity to whom the information sought pertains is a foreign power or an agent of a foreign power as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801).

"(c) PROHIBITION OF CERTAIN DISCLOSURE.—No wire or electronic communication service provider, or officer, employee, or agent thereof, shall disclose to any person that the Federal Bureau of Investigation has sought or obtained access to information or records under this section.

"(d) DISSEMINATION BY BUREAU.—The Federal Bureau of Investigation may disseminate information and records obtained under this section only as provided in guidelines approved by the Attorney General for foreign intelligence collection and foreign counterintelligence investigations conducted by the Federal Bureau of Investigation, and, with respect to dissemination to an agency of the United States, only if such information is clearly relevant to the authorized responsibilities of such agency.

"(e) REQUIREMENT THAT CERTAIN CONGRESSIONAL BODIES BE INFORMED.—On a semiannual basis the Director of the Federal Bureau of Investigation shall fully inform the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate concerning all requests made under subsection (b) of this section.

"§ 2710. Definitions for chapter

"As used in this chapter—

"(1) the terms defined in section 2510 of this title have, respectively, the definitions given such terms in that section; and

"(2) the term 'remote computing service' means the provision to the public of computer storage or processing services by means of an electronic communications system.".

(b) CLERICAL AMENDMENT.—The table of chapters at the beginning of part I of title 18, United States Code, is amended by adding at the end the following:

"121. Stored Wire and Electronic Communications and Transactional Records Access..... 2701".

SEC. 13032. EFFECTIVE DATE.

This subtitle and the amendments made by this subtitle shall take effect ninety days after the date of the enactment of this title and shall, in the case of conduct pursuant to a court order or extension, apply only with respect to court orders or extensions made after this subtitle takes effect.

Subtitle C—Pen Registers and Trap and Trace Devices

SEC. 13041. TITLE 18 AMENDMENT.

(a) IN GENERAL.—Title 18 of the United States Code is amended by inserting after chapter 205 the following new chapter:

"CHAPTER 206—PEN REGISTERS AND TRAP AND TRACE DEVICES

"Sec.

"3121. General prohibition on pen register and trap and trace device use; exception.

"3122. Application for an order for a pen register or a trap and trace device.

"3123. Issuance of an order for a pen register or a trap or trace device.

"3124. Assistance in installation and use of a pen register or a trap and trace device.

"3125. Reports concerning pen registers and trap and trace devices.

"3126. Definitions for chapter.

"§ 3121. General prohibition on pen register and trap and trace device use; exception.

"(a) IN GENERAL.—Except as provided in this section, no person may install or use a pen register or a trap and trace device without first obtaining a court order under section 3123 of this title or under the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.).

"(b) EXCEPTION.—The prohibition of subsection (a) does not apply with respect to the use of a pen register or a trap and trace device by a provider of electronic or wire communication service—

"(1) relating to the operation, maintenance, and testing of a wire or electronic communication service or to the protection of the rights or property of such provider, or to the protection of users of that service from abuse of service or unlawful use of service; or

"(2) to record the fact that a wire or electronic communication was initiated or completed in order to protect such provider, another provider furnishing service toward the completion of the wire communication, or a user of that service, from fraudulent, unlawful or abusive use of service; or

"(3) where the consent of the user of that service has been obtained.

"(c) PENALTY.—Whoever knowingly violates subsection (a) shall be fined under this title or imprisoned not more than one year, or both.

"§ 3122. Application for an order for a pen register or a trap and trace device

"(a) APPLICATION.—(1) An attorney for the Government may make application for an order or an extension of an order under section 3123 of this title authorizing or approving the installation and use of a pen register or a trap and trace device under this chapter, in writing under oath or equivalent affirmation, to a court of competent jurisdiction.

"(2) Unless prohibited by State law, a State investigative or law enforcement officer may make application for an order or an extension of an order under section 3123 of this title authorizing or approving the installation and use of a pen register or a trap and trace device under this chapter, in writing under oath or equivalent affirmation, to

a court of competent jurisdiction of such State.

"(b) CONTENTS OF APPLICATION.—An application under subsection (a) of this section shall include—

"(1) the identity of the attorney for the Government or the State law enforcement or investigative officer making the application and the identity of the law enforcement agency conducting the investigation; and

"(2) a certification by the applicant that the information likely to be obtained is relevant to an ongoing criminal investigation being conducted by that agency.

"§ 3123. Issuance of an order for a pen register or a trap and trace device

"(a) IN GENERAL.—Upon an application made under section 3122 of this title, the court shall enter an ex parte order authorizing the installation and use of a pen register or a trap and trace device within the jurisdiction of the court if the court finds that the attorney for the Government or the State law enforcement or investigative officer has certified to the court that the information likely to be obtained by such installation and use is relevant to an ongoing criminal investigation.

"(b) CONTENTS OF ORDER.—An order issued under this section—

"(1) shall specify—

"(A) the identity, if known, of the person to whom is leased or in whose name is listed the telephone line to which the pen register or trap and trace device is to be attached;

"(B) the identity, if known, of the person who is the subject of the criminal investigation;

"(C) the number and, if known, physical location of the telephone line to which the pen register or trap and trace device is to be attached and, in the case of a trap and trace device, the geographic limits of the trap and trace order; and

"(D) a statement of the offense to which the information likely to be obtained by the pen register or trap and trace device relates; and

"(2) shall direct, upon the request of the applicant, the furnishing of information, facilities, and technical assistance necessary to accomplish the installation of the pen register or trap and trace device under section 3124 of this title.

"(c) TIME PERIOD AND EXTENSIONS.—(1) An order issued under this section shall authorize the installation and use of a pen register or a trap and trace device for a period not to exceed sixty days.

"(2) Extensions of such an order may be granted, but only upon an application for an order under section 3122 of this title and upon the judicial finding required by subsection (a) of this section. The period of extension shall be for a period not to exceed sixty days.

"(d) NONDISCLOSURE OF EXISTENCE OF PEN REGISTER OR A TRAP AND TRACE DEVICE.—An order authorizing or approving the installation and use of a pen register or a trap and trace device shall direct that—

"(1) the order be sealed until otherwise ordered by the court; and

"(2) the person owning or leasing the line to which the pen register or a trap and trace device is attached, or who has been ordered by the court to provide assistance to the applicant, not disclose the existence of the pen register or trap and trace device or the existence of the investigation to the listed subscriber, or to any other person, unless or until otherwise ordered by the court.

"§ 3124. Assistance in installation and use of a pen register or a trap and trace device

"(a) PEN REGISTERS.—Upon the request of an attorney for the Government or an officer of a law enforcement agency authorized to install and use a pen register under this chapter, a provider of wire or electronic communication service, landlord, custodian, or other person shall furnish such investigative or law enforcement officer forthwith all information, facilities, and technical assistance necessary to accomplish the installation of the pen register unobtrusively and with a minimum of interference with the services that the person so ordered by the court accords the party with respect to whom the installation and use is to take place, if such assistance is directed by a court order as provided in section 3123(b)(2) of this title.

"(b) TRAP AND TRACE DEVICE.—Upon the request of an attorney for the Government or an officer of a law enforcement agency authorized to receive the results of a trap and trace device under this chapter, a provider of a wire or electronic communication service, landlord, custodian, or other person shall install such device forthwith on the appropriate line and shall furnish such investigative or law enforcement officer all additional information, facilities and technical assistance including installation and operation of the device unobtrusively and with a minimum of interference with the services that the person so ordered by the court accords the party with respect to whom the installation and use is to take place, if such installation and assistance is directed by a court order as provided in section 3123(b)(2) of this title. Unless otherwise ordered by the court, the results of the trap and trace device shall be furnished to the officer of a law enforcement agency, designated in the court, at reasonable intervals during regular business hours for the duration of the order.

"(c) COMPENSATION.—A provider of a wire or electronic communication service, landlord, custodian, or other person who furnishes facilities or technical assistance pursuant to this section shall be reasonably compensated for such reasonable expenses incurred in providing such facilities and assistance.

"(d) NO CAUSE OF ACTION AGAINST A PROVIDER DISCLOSING INFORMATION UNDER THIS CHAPTER.—No cause of action shall lie in any court against any provider of a wire or electronic communication service, its officers, employees, agents, or other specified persons for providing information, facilities, or assistance in accordance with the terms of a court order under this chapter.

"(e) DEFENSE.—A good faith reliance on a court order, a legislative authorization, or a statutory authorization is a complete defense against any civil or criminal action brought under this chapter or any other law.

"§ 3125. Reports concerning pen registers and trap and trace devices

"The Attorney General shall annually report to Congress on the number of pen register orders and orders for trap and trace devices applied for by law enforcement agencies of the Department of Justice.

"§ 3126. Definitions for chapter

"As used in this chapter—

"(1) the terms 'wire communication', 'electronic communication', and 'electronic communication service' have the meanings set forth for such terms in section 2510 of this title;

"(2) the term 'court of competent jurisdiction' means—

"(A) a district court of the United States (including a magistrate of such a court) or a United States Court of Appeals; or

"(B) a court of general criminal jurisdiction of a State authorized by the law of that State to enter orders authorizing the use of a pen register or a trap and trace device;

"(3) the term 'pen register' means a device which records or decodes electronic or other impulses which identify the numbers dialed or otherwise transmitted on the telephone line to which such device is attached, but such term does not include any device used by a provider or customer of a wire or electronic communication service for billing, or recording as an incident to billing, for communications services provided by such provider or any device used by a provider or customer of a wire communication service for cost accounting or other like purposes in the ordinary course of its business;

"(4) the term 'trap and trace device' means a device which captures the incoming electronic or other impulses which identify the originating number of an instrument or device from which a wire or electronic communication was transmitted;

"(5) the term 'attorney for the Government' has the meaning given such term for the purposes of the Federal Rules of Criminal Procedure; and

"(6) the term 'State' means a State, the District of Columbia, Puerto Rico, and any other possession or territory of the United States.".

(b) CLERICAL AMENDMENT.—The table of chapters for part II of title 18 of the United States Code is amended by inserting after the item relating to chapter 205 the following new item:

"206. Pen Registers and Trap and Trace Devices ..... 3121".

SEC. 13042. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b), this subtitle and the amendments made by this subtitle shall take effect ninety days after the date of the enactment of this title and shall, in the case of conduct pursuant to a court order or extension, apply only with respect to court orders or extensions made after this subtitle takes effect.

(b) SPECIAL RULE FOR STATE AUTHORIZATIONS OF INTERCEPTIONS.—Any pen register or trap and trace device order or installation which would be valid and lawful without regard to the amendments made by this title shall be valid and lawful notwithstanding such amendments if such order or installation occurs during the period beginning on the date such amendments take effect and ending on the earlier of—

(1) the day before the date of the taking effect of changes in State law required in order to make orders or installations under Federal law as amended by this subtitle; or

(2) the date two years after the date of the enactment of this title.

SEC. 13043. INTERFERENCE WITH THE OPERATION OF A SATELLITE.

(a) OFFENSE.—Chapter 65 of title 18, United States Code, is amended by inserting at the end the following:

"§ 1367. Interference with the operation of a satellite

"(a) Whoever, without the authority of the satellite operator, intentionally or maliciously interferes with the authorized operation of a communications or weather satellite or obstructs or hinders any satellite transmission shall be fined in accordance with this title or imprisoned not more than ten years or both.

"(b) This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency or of an intelligence agency of the United States."

(b) CONFORMING AMENDMENT.—The table of sections for chapter 65 of title 18, United States Code, is amended by adding at the end the following new item:

"1367. Interference with the operation of a satellite.".

Subtitle D—Special Rule Relating to Effect of Title

SEC. 13061. SPECIAL RULE.

If the bill H.R. 4952, the Electronic Communications Privacy Act of 1986, is enacted, this title and the amendments made by this title shall have no effect after that enactment.

TITLE XIV—CYANIDE WRONGFUL USE

SEC. 14001. STUDY AND REPORT.

(a) STUDY.—The Administrator of the Environmental Protection Agency shall conduct a study of the manufacturing and distribution process of cyanide with a view to determining methods, procedures, or other actions which might be taken, employed, or otherwise carried out in connection with such manufacturing and distribution in order to safeguard the public from the wrongful use of cyanide.

(b) MATTERS TO BE INCLUDED.—Such study shall include, among other matters, the following:

(1) a determination of the sources of cyanide, including the name and location of each manufacturer thereof;

(2) an evaluation of the means and methods utilized by the manufacturer and others in the distribution of cyanide, including the name and location of each such distributor;

(3) an evaluation of the procedures employed in connection with the selling, at the wholesale and retail level, of cyanide, including a determination as to whether or not persons selling cyanide require the intended purchaser to identify himself or herself;

(4) a determination as to the extent to which recordkeeping requirements are imposed on, or carried out by, manufacturers of cyanide with respect to the specifications of each lot of cyanide produced by such manufacturer;

(5) a determination as to the feasibility and desirabilty of establishing a central registry of all lot specifications of cyanide for the purpose of providing quick access to investigative and law enforcement agencies;

(6) a consideration and review of all aspects of the matter of interstate versus intrastate to the extent that it involves the manufacturing, distribution, or use of cyanide;

(7) a determination as to the feasibility and desirability of requiring manufacturers of cyanide to color all such cyanide with a distinctive color that the consuming public can more readily identify products laced with cyanide;

(8) a determination as to the feasibility and desirability of requiring limited-access storage for cyanide at universities, laboratories, and other institutions that use cyanide for research or other purposes; and

(9) a determination as to the feasibility and desirability of issuing regulations to require any person who sells or otherwise transfers, at a retail level, any cyanide to record such sale or transfer, including the identity of the person purchasing or otherwise receiving such cyanide, the address of such person, and the intended use of such cyanide. Such records shall be available for such use, and retained for such period, as the aforementioned Administrator shall be regulation require.

(c) REPORT.—On or before the expiration of the 180-day period following the date of the enactment of this section, the Administrator of the Environmental Protection Agency shall report the results of such study to the Congress, together with his or her recommendations with respect thereto.

(d) DEFINITIONS.—As used in this section, the term—

(1) "person" means any individual, corporation, partnership, or other entity; and

(2) "cyanide" means sodium cyanide, potassium cyanide or any other toxic cyanide compound.

(e) AUTHORIZATION.—There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.

TITLE XV—SENATE POLICY REGARDING FUNDING

SEC. 15001. STATEMENT OF POLICY.

(a) The Senate finds that—

(1) there is an urgent critical need for funds to carry out the programs and activities authorized by the preceding provision of this Act in order to ensure a drug free America,

(2) this Act is the result of a bipartisan effort to combat our national drug abuse problem; and

(3) only the exceptional nature of the drug abuse problem warrants the expenditure of funds in excess of otherwise applicable budget limitations.

(b) Therefore, it is the sense of the Senate that—

(1) amounts authorized to carry out the preceding provisions of this Act should be provided as new budget authority for fiscal year 1987 in H.J. Res. 738, (99th Congress, 2d Session); and

(2) such amounts should not be provided through transfers from, or reductions in, any amount appropriated by such joint resolution for any other program, project, or activity for such fiscal year.

GENERAL LEAVE

Mr. PEPPER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks during the debate on House Resolution 576, the resolution just agreed to.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

AUTHORIZING THE CLERK TO MAKE A TECHNICAL CORRECTION IN THE ENGROSSMENT OF H.R. 5484, OMNIBUS DRUG ENFORCEMENT, EDUCATION, AND CONTROL ACT OF 1986

Mr. PEPPER. Mr. Speaker, I ask unanimous consent that in the engrossment of the House amendment to the Senate amendment to the bill H.R. 5484, the Clerk make the following technical correction:

In section 3056(b), in the proposed revision of section 374(c) of title 10, United States Code, strike out the period at the end of paragraph (1)(B) and insert in lieu thereof a semicolon and after paragraph (1)(B) insert the following: "if the Secretary of Defense, the Attorney General, and the Secretray of State jointly determine that an emergency circumstance exists.".

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

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APPOINTMENT OF CONFEREES ON H.R. 4613, FUTURES TRADING ACT OF 1986

Mr. DE LA GARZA. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 4613) to reauthorize appropriations to carry out the Commodity Exchange Act, and to make technical improvements to that act, with a Senate amendment thereto, disagree to the Senate amendment, and agree to the conference asked by the Senate.

The SPEAKER pro tempore (Mr. MURTHA). Is there objection to the request of the gentleman from Texas? The Chair hears none and, without objection, appoints the following conferees:

General conferees for consideration of the entire House bill and Senate amendment: Messrs. DE LA GARZA. FOLEY, JONES of Tennessee, STENHOLM, TALLON, MADIGAN, COLEMAN of Missouri, and EMERSON.

Additional conferees only for consideration of section 406 of the Senate amendment and modifications committed to conference: Mr. WHITLEY and Mr. SCHUETTE.

Additional conferees only for consideration of sections 407 and 501 of the Senate amendment and modifications committed to conference: Mr. HUCKABY and Mr. STANGELAND.

Additional conferees only for the consideration of section 407 of the Senate amendment and modifications committed to conference: From the Committee on Ways and Means: Messrs. ROSTENKOWSKI, GIBBONS, DOWNEY of New York, JENKINS, GEPHARDT, DUNCAN, CRANE, and FRENZEL.

Additional conferees only for consideration of section 503 of the Senate amendment and modifications committed to conference: Mr. ROSE and Mr. HOPKINS.

There was no objection.

WAIVING CERTAIN POINTS OF ORDER AGAINST CONFERENCE REPORT ON H.R. 2005, SUPERFUND AMENDMENTS AND REAUTHORIZATION ACT OF 1986, AND AGAINST CONSIDERATION OF SUCH CONFERENCE REPORT

Mr. DERRICK. Mr. Speaker, by direction of the Committee on Rules, I

call up House Resolution 577 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 577

Resolved, That upon the adoption of this resolution it shall be in order to consider the conference report on the bill (H.R. 2005) to amend title II of the Social Security Act and related provisions of law to make minor improvements and necessary technical changes, all points of order against the conference report and against its consideration are hereby waived, and debate on the conference report shall continue not to exceed three and one-half hours.

The SPEAKER pro tempore. The gentleman from South Carolina [Mr. DERRICK] is recognized for 1 hour.

Mr. DERRICK. Mr. Speaker, I yield the customary 30 minutes, for the purpose of debate only, to the gentleman from Tennessee [Mr. QUILLEN] pending which I yield myself such time as I may consume.

(Mr. DERRICK asked and was given permission to revise and extend his remarks.)

Mr. DERRICK. Mr. Speaker, House Resolution 577 is a rule providing for consideration of the conference report on H.R. 2005, the Superfund Amendments of 1985. The rule waives all points of order against the conference report and against its consideration. The rule also provides that debate on the conference report shall not exceed 3½ hours.

Mr. Speaker, this conference report represents several years effort by several of our colleagues in this body. It overhauls and expands by more than fivefold the Superfund Hazardous Waste Cleanup Program.

This conference agreement authorizes some $8.5 billion in Superfund spending for the next 5 years. These funds will be used to pay costs associated with Government-conducted hazardous waste site cleanups, enforcement efforts to require companies to clean up sites for which they are responsible, and other program costs.

This conference report will mandate that the Environmental Protection Agency begin cleanup activities at a minimum of 375 sites and establish statutory procedures for negotiated settlements between EPA and companies responsible for waste sites to ensure that the Agency will not enter into settlement agreements which could be interpreted as favorable to industry.

Mr. Speaker, there are many other important programmatic issues, such as the new program for underground petroleum tank cleanup, which will be fully discussed during the 3½ hours of debate provided on the conference report. It is also apparent, Mr. Speaker, that the revenue portions of this package will be fully debated.

The $8.5 billion in revenues to fund Superfund for the next 5 years will be raised from the following sources: $2.75 billion from taxes on petroleum; $1.4 billion from existing taxes on feedstock chemicals; $2.5 billion from a new broad-based tax on corporate income which is raised by levying a tax of $12 per $10,000 assessed on corporations under the "alternative minimum tax" adopted as part of the recent tax reform bill; $1.25 billion from general revenues; and $600 million from interest earned by the Superfund. Finally, a separate $500 million trust fund is established and funded by a 0.1-cent-per-gallon tax on motor fuels to pay for the cleanup of leaking underground storage tanks.

Mr. Speaker, some of our colleagues may argue with some of the revenue provisions carried in this conference report. Overall, however, the agreement provides the necessary funding and programmatic changes to ensure a committed national Superfund effort for the next 5 years. The conference agreement strikes a reasonable balance and represents a consensus on moving toward enactment of this necessary legislation.

Mr. Speaker, taxing authority for the Superfund Program expired on September 30, 1985. And although we have provided two separate interim funding bills for Superfund, cleanup activities at more than 200 hazardous waste sites have been delayed. We simply cannot wait any longer.

As our colleagues are no doubt aware, this conference report was adopted in the other Chamber last week on a vote of 88–8. It is time to lay aside differences over narrow issues and move toward enactment of legislation which will demonstrate our commitment toward resolving perhaps the major environmental challenge confonting us.

Mr. Speaker, I urge my colleagues to support this rule, and to support the conference report.

Mr. QUILLEN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, as Members are aware, this conference report was approved by the other body on a vote of 88 to 8. It is a good conference report with regard to the reauthorization of the toxic waste site cleanup program and a good conference report in regard to the taxing system devised to pay for it.

I hope it will receive an overwhelming bipartisan vote in the House as it did in the other body. We are now in the final days of the 99th Congress. We have worked on this bill all through this Congress. We are now at the point of final congressional approval. The need is urgent.

The Environmental Protection Agency is running out of money and has announced its intent to cancel a great number of vital cleanup projects already. More will follow if we fail to reauthorize the program and provide the money.

Mr. Speaker, we are rapidly approaching a desperate situation.

The Superfund Program is about to shut down. We must pass this conference report and get on with the job of cleaning up our dangerous toxic waste sites. The conferees have worked their hearts out on this important bill, and they have hammered out a good agreement. They deserve our commendation; they deserve our support.

I ask for a "yes" vote on the rule and a "yes" vote on the conference report.

Should there be an effort made to vote down the previous question, I oppose that and I urge you to vote for the previous question.

Mr. DERRICK. Mr. Speaker, for purposes of debate only, I yield 2 minutes to the gentleman from Kentucky [Mr. PERKINS].

Mr. PERKINS. I thank the gentleman for yielding time to me.

Mr. Speaker, if I may engage the gentleman from Ohio [Mr. ECKART], in a colloquy. I would like to clarify the legislative intent of section 101(b) which amends paragraph (20) of section 101 of CERCLA. Is it the gentleman's understanding that the national priorities list site located at Maxie Flats, Fleming County, KY, the Commonwealth of Kentucky is a 10-percent State cost-share site instead of a 50-percent site? This is because the Commonwealth of Kentucky only became owner or operator as a result of an involuntary acquisition by virtue of its position as a sovereign.

Mr. ECKART of Ohio. Mr. Speaker, will the gentleman yield?

Mr. PERKINS. I yield to the gentleman from Ohio.

Mr. ECKART of Ohio. I thank the gentleman for yielding.

Yes, the gentleman from Kentucky is correct, if the Commonwealth of Kentucky became owner or operator as a result of an involuntary acquisition by virtue of its position as sovereign.

Mr. PERKINS. I thank the gentleman.

Mr. QUILLEN. Mr. Speaker, I yield 1 minute to the gentleman from Minnesota [Mr. FRENZEL].

Mr. FRENZEL. Mr. Speaker, I usually do not vote for rules that have waivers like this one does. However, in this case I am going to vote for the rule, and I suggest that other Members may want to do so, too. The problem is that we are down to the 11th hour of this session. The need for this particular program is overwhelming, it is enormous.

Therefore, I believe we must vote "yes" to have a chance to vote this important bill out.

I yield back the balance of my time.

Mr. QUILLEN. Mr. Speaker, I yield 9 minutes to the gentleman from Nebraska [Mr. DAUB].

Mr. DAUB. I want to thank Mr. QUILLEN, our ranking member, for his generous allocation of time. I would like to spend a little time indicating to my colleagues why I rise in opposition to this rule and urge that Members vote against the previous question.

This country needs a strong Superfund Program to deal with the growing toxic waste problem.

I supported the House version when it originally passed and was sent to conference. Superfund is an important national priority and, given a reasonably sound piece of legislation, this body should hasten to pass a reauthorization bill.

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Unfortunately, the legislation before us today is fundamentally flawed, and I cannot support this conference report.

On the program side of this conference report, I was disappointed in our inability to move to a fault-based tort recovery system. Absent such a fault-based liability system, the liability insurance crisis in this area will continue to grow and, without affordable liability insurance, necessary cleanup resources and technologies will not be available.

Notwithstanding my concern in this liability area, my opposition to this conference report rests primarily with its tax title. While there are many times when each of us must hold our nose on portions of an otherwise good bill, the odor from this revenue title spoils the entire package.

Early on in the Superfund debate, the administration testified that it could only effectively administer $5.3 billion during the reauthorization period. Given available resources in technologies, the current size of cleanup activities and concerns about appropriate cleanup methods, this was a reasonable conclusion and was the administration's requested amount in this instance.

The conference report, however, would include $8.5 billion in the reauthorization and invite waste within the system. A recent Wall Street Journal editorial stated it right when it noted that, "No piece of legislation better exemplifies Congress' incapacity for budget management."

At a time when each of us has been asked to make the tough budget choices based on spending priorities, it seems senseless to engage in this game of how much money we can throw at this program just because it is an election year. It is a question of tax-and-spend mentality, and this Congress is faced with it, versus what ought to be some fairly exacting budgetary discipline.

The piper to be paid if Congress is committed to this funding level is to bite the bullet on new inflationary taxes.

During the early debate in this and the other body, the Superfund tax issue was largely one of using a broad-base tax versus more petroleum taxes. This conference report accomplishes the worst of all possibilities by including both a broad-base tax and increased petroleum taxes. These new taxes will be passed on to consumers, and the inflationary impact of the taxes will hit hardest with respect to this lower income and fixed income Americans who are least able to pay.

Some of my colleagues will suggest that the real inflationary effect of these new taxes will be minimal as the amounts are relatively small in comparison to the size of the American economy. At the current levels, this may be true. However, each of us must realize that this reauthorization is only the tip of the iceberg. In the long term, it has been estimated that the cleanup costs will exceed $100 billion.

In the case of the new petroleum tax, the new taxes would amount to 13 times higher than the original authorized amounts. For our troubled petroleum and petrochemical industries, the news is that those American industries will continue to bear the brunt of the Superfund tax burden. The American Petroleum Institute characterized this conference proposal as simply unjustified and unfair.

In the case of the new broad-base tax, this new tax on American business is not as broad-based as one might think. Instead of a simple gross receipt computation, the tax is based on a complicated corporate minimum tax calculation which undoubtedly falls harder on certain industries than others. The impact of this tax, based on the American industry, has not yet been flushed out. However, because there have been no hearings or debate in either of the tax-writing committees of this new tax or the appropriateness of the new tax for Superfund, we will convert from the way in which the tax bill authorized the broad-based tax calculation for the alternative minimum tax to a profits and earnings tax 3 years from now. It seems to me that we have certainly found a cash cow, a revenue source that will be indeed unbearable for most of American industry.

Now for many of my colleagues, I think that the vote today for this conference report will be difficult to reconcile with our frequent rhetoric and other decisions.

For instance, it would seem to me inconsistent that any Member signing the pledge not to increase income taxes following the tax bill could a week later vote for a $2.75 billion increase in petroleum taxes and a $2.5 billion increase in corporate taxes, most of which will be passed through in terms of consumer prices to the American taxpayer.

Similarly, if a Member intends to return to his or her home district and claim never to have voted for a tax increase, this is not a conference report which you could vote for.

And how is it that Congress can suggest that there is not enough money in the budget for revenue sharing and other programs, but we have an additional $3.2 billion to add to the request for Superfund?

While I realize that the conferees had very difficult choices to make, it is not necessary at this time to turn to greatly increased petroleum taxes or to broad-base taxes. In this bill, if you vote for it today, you will be voting for a tax that will be highly anticompetitive with respect to our imports and exports. This is a very antiexport kind of a bill for our Congress to be undertaking, very trade anticompetitive, for we will tax imported petroleum, adding to the Northeast, I might point out, and to all those who are interested in farming and agricultural issues, the highly inflationary impact of an import tax on the refined by-product of crude oil and import tax on oil. How many times have Members come to this well and said they would not under any circumstances vote for an import tax on home heating fuel or on farmers or on petrochemicals or chemicals for industry? How many times have you heard that? If you vote for this rule and/or for this bill, you will be voting for an import tax on imported oil.

During the markup of the House legislation in the Ways and Means Committee, I offered a concept to pay for the bill. We will have plenty of time to talk about that, I would imagine, when we are in the actual 3½ hours that have been allocated for the debate.

I would like to summarize that if in fact you would join me in voting to defeat the previous question, I will move promptly to amend the rule to take up the question of only the tax title, leaving the rest of the bill unamended in form under this closed rule, and in a position for this House to work its will on all of the other substantive provisions of the bill.

The American Petroleum Institute, the National Taxpayers Union, the merchandise folks, and the National Retail Merchants Association, as well as the Grocery Manufacturers of America, all join with me in asking you to vote down the previous question. Those are four of the many groups who ask all of you today to take a careful look at the tax section. Your opportunity when you would help me vote down the motion on the previous question would be to say that you do not like the tax title. That is all your vote would mean. And it gives you a chance to be on record opposed to this very convoluted process.

The Downey-Frenzel amendment was given up in conference. The issue of a waste-end tax was given up in conference. The House has lost every major battle with respect to the tax title, and I do not think that is a very fitting way for us to act in the 11th hour given the circumstances of fleeting logic, the element of fear and the loss of faith, in a process that would allow in the continuing resolution those funds which are currently fenced off in the conference now for Superfund to be added to a continuing resolution right along with the other 13 departments of government that we propose to continue to fund in that way without adding to the deficit and without shutting down the cleanup, or the prospects for cleaning up, any of the toxic waste and dump site locations that have been identified by EPA for that purpose during the next year and a half. Logic, merit, and good sense dictates to the House today we try and in the next 10 days to do a better job on title V. And it is for that reason that I urge my colleagues once again to join with me, to join with the Grocery Manufacturers of America, the American Petroleum Institute, the National Taxpayers Union, and the National Retail Merchants Association in voting your expression for tax increases by helping me vote down the previous question.

Mr. DERRICK. Mr. Speaker, for purposes of debate only, I yield 2 minutes to the gentleman from New Jersey [Mr. FLORIO].

Mr. FLORIO. Mr. Speaker, we will have plenty of time to discuss these matters the previous gentleman raised. But suffice it to say at this point that the point that the administration had supported only a $5 billion bill was correct. Both Houses of this Congress rejected that initiative, in large measure because it would have radically changed the nature of the Superfund Program by virtually giving back the responsibilities to the States. That proposal which was rejected immediately would have shifted and doubled the burden of the Superfund Program to the States.

We are left at this 11th hour of the Congress with a bill that both Houses are in the process of passing by overwhelming margins. The cost is as the gentleman talks about, a $9 billion bill for the total package. The administration has not yet to this day come forward with its suggestion as to how it should be funded.

The funding provision in this bill is one that is equitable. It is spread across a number of industries. It is one that had the support of the other body by an overriding margin of 88 to 8. And now we are at the point of making a determination as to how it is we should allocate the cost. The proposal before us is a reasonable approach.

The question with regard to cost has to be couched in terms of what it is going to cost us if we do not clean up these sites, and it is going to cost us far more in terms of public health, contaminated water, and a whole host of other environmental problems which will only get much worse if we do not deal with this problem now.

□ 1325

So I think this is a reasonable rule. I think the conference report is reasonable and has overriding support in a bipartisan way, and we should get about the effort of passing this bill.

The SPEAKER pro tempore (Mr. MURTHA). The Chair will remind the Members not to refer to votes that have been taken in the other body.

Mr. QUILLEN. Mr. Speaker, I yield 2 minutes to the gentleman from Pennsylvania [Mr. WALKER].

Mr. WALKER. I thank the gentleman for yielding me this time.

Mr. Speaker, the issue before us is the rule. Let me read to the Members from the rule. The rule says that we are "Waiving certain points of order against the conference report related to provisions of law to make minor improvements."

That is the operative language here; that we are making "minor improvements." If you regard a $2.5 billion, value-added tax as a minor improvement, then maybe you should vote for this rule. If you regard a $2.8 billion imported oil fee and domestic oil fee as a minor improvement, maybe you ought to vote for this rule.

I suggest that Washington has gone crazy if they think that the American people believe that a $5 billion increase in taxes is a "minor improvement." We are waiving points of order in order to make those things in order because the fact is you could not bring those taxes to this floor if you did not have this rule.

We are making an evasion around the rules of the House in order to bring at least that $5 billion worth of taxes to the floor. Those are the "minor improvements" that we are talking about.

My constituents do not regard a value-added tax that will raise the price of consumer products across this country as a minor improvement; they do not regard that as something minor. They do not regard the fact that you are going to raise their home heating bills and their gasoline bills this next year as some kind of minor improvement. They regard it as a fairly major item in their pocketbooks.

This will hit the Northeast particularly hard; it is going to hit the length and breadth of America. I would predict this: It will also have a dramatic impact on the economy. When you raise consumer prices, you are going to raise inflation rates. When you raise inflation rates you are going to raise interest rates. The bottom line is that what we are doing here could end up being an economic disaster.

I do not think tax increases are what the American people need at this point. The American people are not essentially undertaxed; they are overtaxed. This bill will add more. By adopting this rule, you are assuring that we will add more taxes to the pocketbooks of the American family. That is just plain wrong. It is not a minor improvement; it is a major change in policy that ought not be adopted.

Mr. DAUB. Mr. Speaker, will the gentleman yield?

Mr. WALKER. I yield to the gentleman from Nebraska.

Mr. DAUB. I thank the gentleman for yielding to me.

Mr. Speaker, I certainly applaud the gentleman's statement. I want to indicate to the previous speaker that by a one-margin vote in the Ways and Means Committee we lost the mechanism to provide $8.5 billion by phasing up the annual Superfund levels to reflect the way in which EPA itself could gear up over the 4 years of this reauthorization. Use borrowing authority and general revenues and other funds, including the dry weight, waste end tax at a reasonable amount to encourage the polluter pays idea. We have forgotten that; the House gave up on that. I think that is a major flaw in the bill.

Mr. WALKER. I thank the gentleman.

I would simply make the point again that when you adopt this rule you are literally saying to the American people that you regard a $5-billion increase in their taxes as a "minor improvement."

Mr. DERRICK. Mr. Speaker, I yield 2 minutes to the gentleman from Kansas [Mr. GLICKMAN].

Mr. GLICKMAN. I thank the gentleman for yielding me this time.

Mr. Speaker, there is an old expression: "The perfect is the enemy of the good," and in this case, listening to my colleagues, Mr. DAUB from Nebraska and Mr. WALKER from Pennsylvania, I see a scenario where we could end up with no Superfund bill because we could never find a perfect bill.

We have wrestled with this thing for years and years and years, and just in the last session I have never experienced as much difficulty and torture in getting a piece of legislation out. The work product I think is good; it is the most important environmental bill we will have voted on in this Congress for sure. I do not think there is any question about that.

Yes, there are some things that I would like not to see in the tax section that are currently there, and yes, there are some things in the substantive section, but we have got hundreds and hundreds of toxic waste sites in

America that have to be cleaned up. This bill is the only game in town to clean it up.

There were a couple of inaccuracies mentioned before in one of the speeches. One is that this is a value-added tax bill or a national excise tax. That is just entirely untrue. There is no value-added tax in this bill. There is no national excise tax. What the conferees did is they worked very hard to put together a combination of taxes that would be the least offensive in order to provide the revenues to clean up the toxic wastes that we have.

It seems the opponents of this rule want to do the thing that we have been doing for years in this country, they want to have the program but they do not want to have the money to pay to clean up the program. You just cannot do it.

Too many people will die of cancer, too many people will lose their children, too many people will have their health affected for years and years and years unless this clean up takes place.

This rule is a fair rule; we ought to go ahead and vote for the rule and for the bill. Start the process to clean up America. Our constituents deserve no less.

Mr. QUILLEN. Mr. Speaker, I yield back the balance of my time.

Mr. DERRICK. Mr. Speaker, I yield back the balance of may time and I move the previous question on the resolution.

The SPEAKER pro tempore. The question is on ordering the previous question.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. DAUB. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device and there were—yeas 311, nays 104, not voting 17, as follows:

[Roll No. 440]

YEAS—311

Abercrombie	Biaggi	Carper
Ackerman	Bilirakis	Chandler
Akaka	Bliley	Chapman
Alexander	Boehlert	Chappell
Andrews	Boggs	Clay
Annunzio	Boland	Clinger
Anthony	Boner (TN)	Cobey
Aspin	Bonior (MI)	Coble
Atkins	Bonker	Coelho
AuCoin	Borski	Coleman (MO)
Barnes	Bosco	Coleman (TX)
Bartlett	Boulter	Collins
Barton	Boxer	Conyers
Bates	Brooks	Cooper
Bedell	Broomfield	Coughlin
Beilenson	Brown (CA)	Courter
Bennett	Bruce	Coyne
Bentley	Bryant	Craig
Berman	Bustamante	Crockett
Bevill	Campbell	Daniel
Darden	Kostmayer	Roe
Daschle	Kramer	Rogers
Davis	LaFalce	Rostenkowski
de la Garza	Lagomarsino	Roth
Dellums	Lantos	Roukema
Derrick	Leach (IA)	Rowland (CT)
DeWine	Leath (TX)	Rowland (GA)
Dicks	Lehman (CA)	Roybal
Dingell	Lehman (FL)	Russo
DioGuardi	Leland	Sabo
Dixon	Lent	Savage
Dorgan (ND)	Levin (MI)	Saxton
Dowdy	Levine (CA)	Schaefer
Downey	Lipinski	Scheuer
Durbin	Livingston	Schneider
Dwyer	Loeffler	Schroeder
Dymally	Long	Schuette
Eckart (OH)	Lowry (WA)	Schumer
Eckert (NY)	Luken	Seiberling
Edgar	Lundine	Sharp
Edwards (CA)	MacKay	Shelby
Emerson	Madigan	Sikorski
Erdreich	Manton	Sisisky
Evans (IL)	Martin (NY)	Skelton
Fascell	Martinez	Slattery
Fawell	Matsui	Slaughter
Fazio	Mazzoli	Smith (FL)
Feighan	McCain	Smith (IA)
Fields	McCloskey	Smith (NJ)
Fish	McCurdy	Snyder
Flippo	McDade	Solarz
Florio	McGrath	Solomon
Foglietta	McHugh	Spratt
Foley	McKinney	Staggers
Ford (MI)	McMillan	Stallings
Ford (TN)	Meyers	Stangeland
Frenzel	Mica	Stark
Frost	Mikulski	Stenholm
Fuqua	Miller (CA)	Stokes
Gallo	Miller (WA)	Stratton
Garcia	Mineta	Studds
Gaydos	Moakley	Sundquist
Gekas	Molinari	Sweeney
Gephardt	Mollohan	Swift
Gibbons	Monson	Synar
Gilman	Montgomery	Tallon
Glickman	Moody	Tauzin
Goodling	Morrison (CT)	Thomas (CA)
Gordon	Morrison (WA)	Thomas (GA)
Gradison	Mrazek	Torres
Gray (IL)	Murphy	Torricelli
Gray (PA)	Murtha	Towns
Green	Natcher	Traficant
Guarini	Neal	Traxler
Gunderson	Nelson	Udall
Hall (OH)	Nichols	Valentine
Hall, Ralph	Nielson	Vento
Hamilton	Nowak	Visclosky
Hatcher	Oakar	Volkmer
Hawkins	Oberstar	Vucanovich
Hayes	Obey	Waldon
Hefner	Olin	Walgren
Hendon	Ortiz	Watkins
Henry	Owens	Waxman
Hillis	Oxley	Weaver
Horton	Panetta	Weber
Howard	Pashayan	Wheat
Hoyer	Pease	Whitley
Hubbard	Penny	Whittaker
Huckaby	Pepper	Whitten
Hughes	Perkins	Williams
Hutto	Pickle	Wilson
Jenkins	Price	Wirth
Johnson	Quillen	Wise
Jones (NC)	Rahall	Wortley
Jones (TN)	Rangel	Wright
Kanjorski	Ray	Wyden
Kaptur	Regula	Wylie
Kasich	Reid	Yates
Kastenmeier	Richardson	Yatron
Kennelly	Ridge	Young (FL)
Kildee	Rinaldo	Young (MO)
Kolbe	Ritter	Zschau
Kolter	Rodino	

NAYS—104

Anderson	Byron	Dannemeyer
Applegate	Callahan	Daub
Archer	Carr	DeLay
Armey	Chappie	Dickinson
Badham	Cheney	Donnelly
Bateman	Coats	Dornan (CA)
Bereuter	Combest	Dreier
Brown (CO)	Conte	Duncan
Burton (IN)	Crane	Dyson
Early	Lott	Shaw
Edwards (OK)	Lowery (CA)	Shumway
English	Lujan	Shuster
Evans (IA)	Lungren	Siljander
Fiedler	Mack	Skeen
Frank	Markey	Smith (NE)
Franklin	Marlenee	Smith, Denny (OR)
Gejdenson	Martin (IL)	Smith, Robert (NH)
Gonzalez	Mavroules	Smith, Robert (OR)
Gregg	McCandless	Snowe
Hammerschmidt	McCollum	Spence
Hansen	McEwen	St Germain
Hartnett	McKernan	Strang
Hertel	Michel	Stump
Hiler	Miller (OH)	Swindall
Holt	Moorhead	Tauke
Hopkins	Myers	Taylor
Hunter	Packard	Vander Jagt
Hyde	Parris	Walker
Ireland	Petri	Whitehurst
Jeffords	Porter	Wolf
Kemp	Pursell	Wolpe
Latta	Roberts	Young (AK)
Lewis (CA)	Robinson	
Lewis (FL)	Rudd	
Lightfoot	Schulze	
Lloyd	Sensenbrenner	

NOT VOTING—17

Barnard	Gingrich	Mitchell
Boucher	Grotberg	Moore
Breaux	Jacobs	Roemer
Burton (CA)	Jones (OK)	Rose
Carney	Kindness	Weiss
Fowler	Kleczka	

□ 1345

Messrs. ST GERMAIN, LUJAN, GEJDENSON, MAVROULES, and WOLPE changed their votes from "yea" to "nay."

Mr. WORTLEY and Mr. LOEFFLER changed their votes from "nay" to "yea."

So the previous question was ordered.

The result of the vote was announced as above recorded.

PERSONAL EXPLANATION

Mr. KLECZKA. Mr. Speaker, I was unavoidably detained for this morning's session. Had I been here I would have voted "aye" on rollcall No. 440.

The SPEAKER pro tempore. (Mr. MURTHA). The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Mr. WALKER. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 339, noes 74, not voting 19, as follows:

[Roll No. 441]

AYES—339

Abercrombie	Beilenson	Boucher
Ackerman	Bennett	Boulter
Akaka	Bentley	Boxer
Alexander	Bereuter	Brooks
Anderson	Berman	Broomfield
Andrews	Bevill	Brown (CA)
Annunzio	Biaggi	Bruce
Anthony	Bilirakis	Bryant
Aspin	Bliley	Byron
Atkins	Boehlert	Campbell
AuCoin	Boggs	Carper
Barnes	Boland	Carr
Bartlett	Boner (TN)	Chandler
Barton	Bonior (MI)	Chapman
Bateman	Bonker	Chappell
Bates	Borski	Clay
Bedell	Bosco	Clinger

Cobey	Hutto	Price
Coble	Hyde	Pursell
Coelho	Jacobs	Quillen
Coleman (MO)	Jenkins	Rahall
Coleman (TX)	Johnson	Rangel
Collins	Jones (NC)	Ray
Conte	Jones (TN)	Regula
Conyers	Kanjorski	Reid
Cooper	Kaptur	Richardson
Coughlin	Kasich	Ridge
Courter	Kastenmeier	Rinaldo
Coyne	Kennelly	Ritter
Craig	Kildee	Roberts
Crockett	Kleczka	Rodino
Darden	Kolbe	Roe
Daschle	Kolter	Rogers
de la Garza	Kostmayer	Rostenkowski
Dellums	Kramer	Roth
Derrick	LaFalce	Roukema
DeWine	Lagomarsino	Rowland (CT)
Dickinson	Lantos	Rowland (GA)
Dicks	Leach (IA)	Roybal
Dingell	Leath (TX)	Russo
DioGuardi	Lehman (CA)	Sabo
Dixon	Lehman (FL)	Savage
Dorgan (ND)	Leland	Saxton
Dornan (CA)	Lent	Schaefer
Dowdy	Levin (MI)	Schneider
Downey	Levine (CA)	Schroeder
Dreier	Lipinski	Schuette
Durbin	Livingston	Schulze
Dwyer	Loeffler	Schumer
Dymally	Long	Seiberling
Dyson	Lowery (CA)	Sharp
Early	Lowry (WA)	Sikorski
Eckart (OH)	Luken	Sisisky
Eckert (NY)	Lundine	Skelton
Edgar	MacKay	Slattery
Edwards (CA)	Madigan	Slaughter
Emerson	Manton	Smith (FL)
Erdreich	Markey	Smith (IA)
Evans (IA)	Martin (IL)	Smith (NJ)
Evans (IL)	Martin (NY)	Snyder
Fascell	Martinez	Solarz
Fawell	Matsui	Solomon
Fazio	Mavroules	Spratt
Feighan	Mazzoli	Staggers
Fiedler	McCain	Stallings
Fields	McCloskey	Stangeland
Fish	McCollum	Stark
Flippo	McCurdy	Stenholm
Florio	McDade	Stokes
Foglietta	McGrath	Stratton
Ford (MI)	McHugh	Studds
Ford (TN)	McKinney	Sweeney
Frank	McMillan	Swift
Frenzel	Meyers	Synar
Frost	Mica	Tallon
Fuqua	Michel	Tauzin
Gallo	Mikulski	Thomas (CA)
Garcia	Miller (CA)	Thomas (GA)
Gaydos	Miller (WA)	Torres
Gejdenson	Mineta	Torricelli
Gekas	Mitchell	Towns
Gephardt	Moakley	Traficant
Gibbons	Molinari	Traxler
Gilman	Mollohan	Udall
Gingrich	Monson	Valentine
Glickman	Montgomery	Vento
Goodling	Moody	Visclosky
Gordon	Moorhead	Volkmer
Gradison	Morrison (CT)	Vucanovich
Gray (IL)	Morrison (WA)	Waldon
Gray (PA)	Mrazek	Walgren
Green	Murphy	Waxman
Guarini	Murtha	Weaver
Gunderson	Natcher	Weber
Hall (OH)	Neal	Wheat
Hall, Ralph	Nelson	Whitley
Hamilton	Nichols	Whittaker
Hatcher	Nielson	Whitten
Hawkins	Nowak	Williams
Hayes	Oakar	Wilson
Hefner	Oberstar	Wirth
Hendon	Obey	Wise
Henry	Olin	Wolf
Hertel	Ortiz	Wolpe
Hillis	Owens	Wortley
Holt	Oxley	Wright
Hopkins	Panetta	Wyden
Horton	Parris	Wylie
Howard	Pease	Yates
Hoyer	Penny	Yatron
Hubbard	Pepper	Young (FL)
Huckaby	Perkins	Young (MO)
Hughes	Pickle	Zschau

NOES—74

Applegate	Ireland	Shumway
Archer	Jeffords	Shuster
Armey	Kemp	Siljander
Badham	Latta	Skeen
Brown (CO)	Lewis (CA)	Smith (NE)
Burton (IN)	Lewis (FL)	Smith, Denny (OR)
Callahan	Lightfoot	
Chappie	Lloyd	Smith, Robert (NH)
Cheney	Lott	
Coats	Lujan	Smith, Robert (OR)
Combest	Lungren	
Crane	Mack	Snowe
Daniel	Marlenee	Spence
Dannemeyer	McCandless	St Germain
Daub	McEwen	Strang
DeLay	McKernan	Stump
Donnelly	Miller (OH)	Sundquist
Duncan	Myers	Swindall
Edwards (OK)	Packard	Tauke
English	Petri	Taylor
Franklin	Porter	Vander Jagt
Gonzalez	Robinson	Walker
Gregg	Rudd	Watkins
Hammerschmidt	Sensenbrenner	Whitehurst
Hansen	Shaw	Young (AK)
Hiler	Shelby	

NOT VOTING—19

Barnard	Fowler	Pashayan
Breaux	Grotberg	Roemer
Burton (CA)	Hartnett	Rose
Bustamante	Hunter	Scheuer
Carney	Jones (OK)	Weiss
Davis	Kindness	
Foley	Moore	

□ 1400

Mr. LUNGREN changed his vote from "aye" to "no."

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

REQUEST FOR CONSIDERATION OF HOUSE JOINT RESOLUTION 746, FURTHER CONTINUING APPROPRIATIONS, 1987

Mr. WHITTEN. Mr. Speaker, I ask unanimous consent that the Committee on Appropriations be discharged from further consideration of the joint resolution (H.J. Res. 746) making further continuing appropriations for the fiscal year 1987, and for other purposes, and ask for its immediate consideration in the House.

The Clerk read the title of the joint resolution.

The SPEAKER pro tempore (Mr. MURTHA]. Is there objection to the request of the gentleman from Mississippi?

Mr. CONTE. Mr. Speaker, reserving the right to object, I would like to ask my good chairman what date certain the continuing resolution provides.

Mr. WHITTEN. Mr. Speaker, will the gentleman yield?

Mr. CONTE. I yield to the gentleman from Mississippi.

Mr. WHITTEN. Mr. Speaker, the date is through October 15, which is next Wednesday, I believe.

Mr. CONTE. Mr. Speaker, I think that we are starting to make some fairly good progress in the conference. But yesterday afternoon, when word circulated that the continuing resolution would be extended for a week, you certainly could hear the phones ring as meetings were canceled. We are proving once again that work will expand to fill the time available, plus 1 or 2 days.

Next Monday is a religious holiday, and Columbus Day also, and if we extend the continuing resolution for a week, then we will be here next week, and probably the week after that.

□ 1410

I met with the leadership, with the gentleman from Illinois, BOB MICHEL, and Jim Miller yesterday. They informed us, Mr. Chairman, that they would not go beyond a 48-hour continuing resolution.

Mr. WHITTEN. Mr. Speaker, will the gentleman yield?

Mr. CONTE. I am glad to yield to the gentleman from Mississippi.

Mr. WHITTEN. Mr. Speaker, may I respond to my colleague that the reason for the date of the 15th is the fact that we do have the holidays, and once we agree, if we should agree by Friday night, it would take 3 or 4 days, at least 3 days for the staff working day and night to put together all of the facts that have to be put together for the continuing resolution.

So my purpose was not to extend the time for us to get together, but to give the staff ample time to handle this in an expeditious manner. That was the reasoning behind the date.

Mr. CONTE. I understand what the chairman is saying. If we can complete our work by Friday night, it will take another 24 hours to get the papers ready. Even though the continuing resolution has expired, we are talking about Saturday, and Sunday, and then Monday, which is the holiday, so that we could come in here Tuesday and then, if we have not completed it, ask for another continuing resolution. The White House has informed me emphatically that they would veto anything over 48 hours. This is not my personal feeling, but I would have to object.

Mr. Speaker, I object.

The SPEAKER pro tempore (Mr. MURTHA). Objection is heard.

A PLEA FOR A REASONABLE CONTINUING RESOLUTION EXTENSION

(Mr. WRIGHT asked and was given permission to address the House for 1 minute.)

Mr. WRIGHT. Mr. Speaker, I am going to make a special appeal to my colleagues on behalf of the integrity of the legislative process that we be permitted to have a continuing resolution that goes a bit farther than just this Friday. It is a question of whether we in the legislative branch are able to assert our prerogatives under the Con-

stitution to write the appropriation bills, even in a manner in which we have tried to earnestly be conciliatory and to help the President of the United States present a united front when he goes to represent this country of ours in his meeting with Mr. Gorbachev.

In the colloquy we have just had it has been made clear that under the very best of circumstances, if there were an agreement today on the continuing resolution, the paperwork requirements would make it absolutely impossible for us to have it before us before next Tuesday. Therefore, if it were insisted upon, if it were insisted upon by objection that we could not go any further than this Friday, given the fact that we have a religious holiday on Sunday, Columbus Day on Monday, a national holiday, we wind up next Tuesday with the President of the United States in Reykjavik representing us, presumably speaking for a Nation united in purpose with his Government in disarray and the necessity of furloughing workers.

That is not the intent of Congress nor is it necessary. Therefore, why does it not make sense for us to go the second mile, as we on this side have repeatedly demonstrated a willingness to do—we have, indeed. I have personally told the President of the United States that we are willing to forgo consideration of those divisive issues which he fears would give the wrong impression to those on the other side of the world until next March, thereby giving him ample time and opportunity so that he might hold this summit and the summit that follows in a mood and in an atmosphere that bespeaks a bipartisan unity on the part of the United States. The Speaker has signed off on that, all of us have signed off on that.

If the Government comes crashing down and workers have to be furloughed on next Tuesday when the President of this country is meeting in an important international gathering with the head of the Soviet Union, then what impression would that leave? Let us be responsible.

REQUEST FOR CONSIDERATION OF HOUSE JOINT RESOLUTION 747, FURTHER CONTINUING APPROPRIATIONS, 1987

Mr. WRIGHT. Mr. Speaker, I ask unanimous consent that the Committee on Appropriations be discharged from further consideration of the joint resolution (H.J. Res. 747) making further continuing appropriations for the fiscal year 1987, and for other purposes, and ask for its immediate consideration.

Mr. Speaker, this is a new resolution that I have at the desk. It does not extend us until Wednesday. It is House Joint Resolution 747 now that ought to fly.

All we are asking is that we extend the continuing resolution until the earliest day that it would be physically and legally possible if we were to get agreement today on the terms of the continuing resolution for it to come before us so that we avoid the kind of foolish confrontation and impression that we inevitably otherwise would give the world of a government incapable of working under two-party leadership.

We are offering the olive branch, we are turning the other cheek, and we are asking under this resolution that we may extend it only until next Tuesday.

The SPEAKER pro tempore. The Clerk will report the title of the joint resolution.

The Clerk read the title of the joint resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

Mr. CONTE. Mr. Speaker, reserving the right to object, I agree with a lot of what the majority leader has said.

But first let me make a correction. The gentleman said if we finish our work tonight and resolve our differences on the continuing resolution it would be Tuesday at the earliest that we would be ready. That is not so. We could take it up Friday. It takes about 24 hours to get the papers in order, so we could do it Friday.

I am only expressing the opinion of the administration that they would rather have a 2-day extension and keep our feet to the fire. I personally would have no objection to coming in here Friday and if we have not completed our work then move for another continuing resolution until next Tuesday or Wednesday.

But I noticed even last night when the chairman called the meeting of all of the committee and subcommittee chairmen, the other body did not even show up. We have had that repeatedly.

They have had some other work over there that they had to attend to, the impeachment of Judge Claiborne, and other things. There have been a lot of reasons why we have not gotten together.

But with a short continuing resolution of 2 days keeping our feet to the fire we might resolve the continuing resolution by Friday night. I personally, way down deep, do not feel we can do it. But there is hope. Then we can come back in here and ask for another continuing resolution for 3 or 4 days if we have not resolved it.

Mr. WRIGHT. Mr. Speaker, will the gentleman yield?

Mr. CONTE. I am glad to yield to my good friend, the gentleman from Texas.

Mr. WRIGHT. Mr. Speaker, I appreciate the position that the gentleman from Massachusetts finds himself in, probably agreeing that it is unlikely that we should be able to complete our work by Friday and expressing his willingness if we go only until Friday, then if it becomes necessary, agree to a further extension until Tuesday or Wednesday of next week, whenever it should be deemed necessary. I recognize what he has said about the difficulties of getting an agreement with the other body, which sometimes seems this close.

□ 1420

Then suddenly, today, it was reported to have moved farther and farther away from an agreement. There really must come a time when an agreement is had and what it seems to hang upon is the fact that a preponderant majority of the Congress, House and Senate, both parties, both sides of the aisle; Republicans and Democrats, feel that it is in the interests of the United States that we maintain the SALT II numerical limitation.

You know, if we could just get some nod, some encouragement from the President to understand that he was not unilaterally going to put the United States in the position of violating those terms—we ought to be peacekeepers and not be cast in the other role of the obstructors who start the arms race again.

That is all we are trying to avoid, and I think that is little enough.

I think the gentleman will agree we have gone the second mile in an effort to be conciliatory and helpful to the President. We do not want to embarrass the President; we would like to help him.

If the gentleman would agree that Tuesday is a more reasonable expectation than Friday?

Mr. CONTE. I could not agree more, Mr. Speaker. I think Tuesday would be more reasonable, but I also feel, based on what you said, that if they know that Tuesday is the deadline rather than Friday night, they are going to prolong coming to a compromise on some of these knotty issues that we have between the two bodies and the executive branch.

After 28 years on the Appropriations Committee, and dealing with the other body, it seems that the only time you get something done is when there is a crisis, and then things start moving.

I think if you put it off until Tuesday they are going to say, "Hey, we've got plenty of time, we're going to leave those big issues to the very end; we'll come back Tuesday, we'll have a nice weekend, go back home, and come back Tuesday and tackle them."

Mr. WRIGHT. Mr. Speaker, will my good friend yield for just one more question?

Mr. CONTE. Certainly I yield to my good friend from Texas.

Mr. WRIGHT. Do I understand my friend to be saying that he would be constrained to object to this resolution which I have offered, and that if he did lodge an objection, he would agree to an extension until Friday and we would do our very dead level best to try to find some common ground on which we can satisfy the requirements of both the White House and the Congress?

Mr. CONTE. I certainly would. I give the gentleman my word on that, and then come Friday afternoon around this time, if it looks like we are not going to come to a settlement, then I would support my good chairman, which I have done many, many times, to have another continuing resolution which brings us into some other day next week.

Mr. WRIGHT. Let it be noted that it is 2:20 o'clock post meridian on Wednesday, and if we come around about this time on Friday not having resolved the issue, trying diligently and making an earnest attempt to resolve it, then we could go over until the middle of next week so as to accommodate our committees.

Mr. MICHEL. Mr. Speaker, will the gentleman yield under his reservation?

Mr. CONTE. I yield to the gentleman.

Mr. MICHEL. Mr. Speaker, might I explore whether or not the majority leader had considered at all our working on Saturday or an unanimous-consent request to continue the continuing resolution through Saturday.

It is my understanding that, as the gentleman from Massachusetts [Mr. CONTE] has indicated, that there has been some progress made. I recognize it is very difficult to get an agreement within 48 hours, but possibly within 72 hours, it could be done.

My concern, and I would be willing, then, under those circumstances, to have the bill hand enrolled rather than on parchment to facilitate the proceeding.

My feeling is that, as the gentleman from Massachusetts so well expressed, the moment we go over into another week, we all know what happens, no matter whether it is adjournment time or any time; it means practically the entire week; and some of us really do have some campaigning to do back in our own districts. We have made obligations and appointments thinking the 3d was a good prospective date; at most not beyond the 10th.

I just wondered if consideration is given at all to maybe extending that through Saturday and then really wrapping it up, and our imploring the other body over there, hopefully if they get to that vote this afternoon on the impeachment proceeding, that things could break and things could begin to fall in place.

The minute there is no deadline, then everything breaks down and everybody goes home and we have another full week ahead of us.

Mr. CONTE. Mr. Speaker, I yield to the gentleman from Texas [Mr. WRIGHT].

Mr. WRIGHT. Mr. Speaker, I thank my friend for yielding, and in response to the suggestion that has been made by the distinguished minority leader, if there were any realistic hope or expectation that we might finish on Saturday and adjourn sine die, I think all the Members would agree to coming in on Saturday.

Perhaps that question could be revisited on Friday; and inasmuch as Members on the gentleman's side of the aisle as well as Members on my side have had commitments for Saturday and we are trying to accommodate them, if it appears impossible to conclude the business of the session on Saturday then perhaps we could have at best a pro forma session permitting the continuing effort on the part of those on the Appropriations Committee to resolve these issues, I think the gentleman would agree that we would not want to meet on Sunday, it being not only a general religious holiday but in this case a high holy day of the Jewish faith, nor on Monday, which is a very important national holiday, celebrating Christopher Columbus.

So that if we could not complete things on Saturday, then perhaps the best we could expect to have would be a pro forma session in which the members of the appropriate committee might continue their labors, but Members at Large might be free to conduct the business that they have already scheduled in their home districts.

Would that sort of arrangement be satisfactory?

Mr. MICHEL. Mr. Speaker, if the gentleman from Massachusetts [Mr. CONTE] will yield further, I think so. I think one thing we want to do, in courtesy to our Members, because it is not one side or the other; it is both sides; so many commitments have been made, that come Friday, at a reasonable hour, we have got to make some kind of command decision whether we do or do not.

I would certainly be willing if the gentleman, in his exchange here, wants to request unanimous consent for a continuation through Friday, then Friday we will take another look at this thing and see where we are.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

Mr. CONTE. Mr. Speaker, I object.

The SPEAKER pro tempore. Objection is heard.

FURTHER CONTINUING APPROPRIATIONS, FISCAL YEAR 1987

Mr. WHITTEN. Mr. Speaker, I ask unanimous consent that the Committee on Appropriations be discharged from further consideration of the joint resolution (H.J. Res. 748) making further continuing appropriations for the fiscal year 1987, and for other purposes, and ask for its immediate consideration in the House.

The Clerk read the title of the joint resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Mississippi?

Mr. WALKER. Reserving the right to object, Mr. Speaker, I just want to make certain here that what we are doing is taking consideration only so that we would have an opportunity to vote on this particular resolution at the conclusion of debate. Is that correct?

Mr. WHITTEN. If the gentleman will yield, certainly.

Mr. WALKER. I also am somewhat concerned, in looking through the bill, that we have added a provision on it that appears to me to be something more than a clean continuing resolution.

As I understand the resolution we have before us, it is similar to the one that was passed the other day plus what has been added into it are those items that have been agreed on by the conferences; the conferences on HUD, the conferences on HHS, and one other conference have been added into this——

Mr. WHITTEN. Transportation.

Mr. WALKER. And transportation. So that it differs in that way, but this is the amount agreed upon within conference, and extends those not for the entire year but just for this 2-day period. Is that right?

Mr. WHITTEN. That is right.

Mr. WALKER. Now, the other thing that I am concerned about is that there is a provision that section 107, which has a drug coordination plan in it, it appears to me to be legislation in an appropriations bill which makes it something other than clean. It does not appear to be a great amount of money; on the other hand, it seems to me the kind of thing that will encourage the other body to decide that this is another one of those bills that they can add all kinds of policy language onto.

I am just wondering why we have to take this resolution, which in fact could be a clean continuing resolution and put additional, what looks to me to be extraneous language into it.

Mr. WHITTEN. Mr. Speaker, may I say this, that we are very much interested in drug control and eradication, as is the gentleman from Pennsylvania [Mr. WALKER].

I would call his attention to the fact that a continuing resolution is legislation as well as an appropriation.

I also would point out here that this will be a second resolution where we

may have made no mention of the drug effort.

Further, I say that as a former district attorney, having some experience in this area, it looks like up until this point we are throwing money in every direction without any concrete plan of effectiveness.

What this does here is, and I understand in other legislation, call on the President to come up with a plan.

Here I also call on the President with the help of those folks who are interested in this in Congress and those folks in law enforcement, that they get together with a concrete plan so that they are working in the same way.

□ 1430

Otherwise there are so many gaps in what we have done up to now, we will not have the effectiveness that we should. Also, I find that most folks do not realize that, prior to the new drug appropriations we are making, we already have $1.2 billion in this area. So I think for the reason of calling it to the attention of the people, for the reason I do not care to have my name on two resolutions without reference to it, it is well to put it in here. Again, we should have cooperation between our friends in Congress who work with it, the law enforcement agencies which we have, the 12 or 14 executive branch agencies which have something to do with it, they should be brought together and shoot in the same direction.

Mr. WALKER. Further reserving the right to object, the problem is that we had a bill go through here earlier today which is a massive bipartisan plan which everybody agreed to. It was roundly praised on the House floor. It won by an overwhelming margin. It includes coordination patterns and so on. This could interfere with the ability of the administration to implement that which we just agreed to today. It has $100,000 of money, it goes for more than the 2 days. It extends out until January 1, 1987. It is in fact legislation in an appropriation bill which goes beyond the scope of the legislation.

Mr. WHITTEN. May I say to the gentleman it is a hybrid, the continuing resolution is legislation and appropriation.

Mr. WALKER. Well, further reserving the right to object, I understand what the gentleman is saying.

It should not be, however. The problem is with this particular process we have assumed the mantle in one committee of virtually overriding everything else that the rest of the committees do around here. It seems to me that the pattern is getting worse, and this is just one example of the fact that the pattern is getting worse.

All of a sudden in a bill that should be a clean continuing resolution for 2 days, we are going to have language added to it which goes beyond the scope of the committee and it seems to me does damage, potentially, to the drug bill that we just agreed to earlier today. Because we are trying to get something done useful here, I am not going to object, but I would say to the gentleman that I think it ill behooves the process around here to have this kind of thing going on when we are trying to move something substantively in the House.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore (Mr. MURTHA). Is there objection to the request of the gentleman from Mississippi?

There was no objection.

The Clerk read the joint resolution, as follows:

H.J. RES. 748

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are hereby appropriated, out of any money in the Treasury not otherwise appropriated, and out of applicable corporate or other revenues, receipts, and funds, for the several departments, agencies, corporations, and other organizational units of the Government for the fiscal year 1987, and for other purposes, namely:

SEC. 101. (a)(1) Such amounts as may be necessary are hereby appropriated for programs, projects, or activities, not otherwise specifically provided for in this joint resolution, for which appropriations, funds, or other authority would be available in the following appropriation Acts:

District of Columbia Appropriations Act, 1987, H.R. 5175 as passed by the House on July 24, 1986, and as passed by the Senate on September 16, 1986;

Department of the Interior and Related Agencies Appropriations Act, 1987, H.R. 5234 as passed by the House on July 31, 1986, and as passed by the Senate on September 16, 1986;

Military Construction Appropriations Act, 1987, H.R. 5052 as passed by the House on June 25, 1986, and as passed by the Senate on August 13, 1986; and

(2) Appropriations made by this subsection shall be available to the extent and in the manner which would be provided by the pertinent appropriations Act.

(3) Whenever the amount which would be made available or the authority which would be granted under an Act listed in this subsection as passed by the House is different from that which would be available or granted under such Act as passed by the Senate, the pertinent program, project, or activity shall be continued under the lesser amount or the more restrictive authority: *Provided,* That where an item is included in only one version of an Act as passed by both Houses as of October 1, 1986, the pertinent program, project, or activity shall be continued under the appropriation, fund, or authority granted by the one House, but at a rate for operations not exceeding the current rate or the rate permitted by the action of the one House, whichever is lower, and under the authority and conditions provided in applicable appropriation Acts for the fiscal year 1986.

(4) No provision which is included in an appropriations Act enumerated in this subsection but which was not included in the applicable appropriations Act of 1986, and which by its terms is applicable to more than one appropriation, fund, or authority shall be applicable to any appropriation, fund, or authority provided in the joint resolution unless such provision shall have been included in identical form in such bill as enacted by both the House and the Senate.

(5) No appropriation or fund made available or authority granted pursuant to this subsection shall be used to initiate or resume any project or activity for which appropriations, funds, or other authority were not available during the fiscal year 1986.

(b)(1) Such amounts as may be necessary are hereby appropriated for programs, projects, or activities, not otherwise specifically provided for in this joint resolution, for which appropriations, funds, or other authority would be available in the following appropriations Acts:

Agriculture, Rural Development, and Related Agencies Appropriations Act, 1987, H.R. 5177 as passed by the House on July 24, 1986;

Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1987, H.R. 5161 as passed by the House on July 17, 1986;

Department of Defense Appropriations Act, 1987, H.R. 5438 as provided for in section 101(c) of H.J. Res. 738 which passed the House on September 25, 1986, and such Act shall be deemed to have passed the House for purposes of this joint resolution;

Energy and Water Development Appropriations Act, 1987, H.R. 5162 as passed by the House on July 23, 1986;

Foreign Assistance and Related Programs Appropriations Act, 1987, H.R. 5339 as provided for in section 101(f) of H.J. Res. 738 which passed the House on September 25, 1986, and such Act shall be deemed to have passed the House for purposes of this joint resolution;

Treasury, Postal Service, and General Government Appropriations Act, 1987, H.R. 5294 as passed by the House on August 6, 1986.

(2) Appropriations made by this subsection shall be available to the extent and in the manner which would be provided by the pertinent appropriations Act.

(3) Whenever an Act listed in this subsection has been passed by only the House as of October 1, 1986, the pertinent program, project, or activity shall be continued under the appropriation, fund, or authority granted by the House, at a rate for operations not exceeding the current rate or the rate permitted by the action of the House whichever is lower, and under the authority and conditions provided in applicable appropriations Act for the fiscal year 1986.

(4) No appropriation or fund made available or authority granted pursuant to this subsection shall be used to initiate or resume any project or activity for which appropriations, funds, or other authority were not available during the fiscal year 1986.

(c) Such amounts as may be necessary are hereby appropriated for programs, projects, or activities provided for in H.R. 5203, the Legislative Branch Appropriations Act, 1987, to the extent and in the manner provided for in the conference report and joint explanatory statement of the committee of conference (House Report 99-805) as filed in the House of Representatives on August 15, 1986, as if enacted into law.

(d) Such amounts as may be necessary are hereby appropriated for programs, projects,

or activities provided for in H.R. 5313, the Department of Housing and Urban Development/Independent Agencies Appropriations Act, 1987, to the extent and in the manner provided for in the conference report and joint explanatory statement of the committee of conference (House Report 99-977) as filed in the House of Representatives on October 7, 1986, as if enacted in to law.

(e) Such amounts as may be necessary are hereby appropriated for programs, projects, or activities provided for in H.R. 5233, the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1987, to the extent and in the manner provided for in the conference report and joint explanatory statement of the committee of conference (House Report 99-960) as filed in the House of Representatives on October 2, 1986, as if enacted into law.

(f) Such amounts as may be necessary are hereby appropriated for programs, projects, or activities provided for in H.R. 5205, the Department of Transportation and Related Agencies Appropriations Act, 1987, to the extent and in the manner provided for in the conference report and joint explanatory statement of the committee of conference (House Report 99-976) as filed in the House of Representatives on October 7, 1986, as if enacted into law.

(g) Such amounts as may be necessary for continuing the following activities, not otherwise provided for in this joint resolution, which were conducted in the fiscal year 1986, under the terms and conditions provided in applicable appropriations Acts for the fiscal year 1986, at the current rate or as otherwise provided herein: *Provided*, That no appropriation or fund made available or authority granted pursuant to this subsection shall be used to initiate or resume any project or activity for which appropriations, funds, or authority were not available during fiscal year 1986 unless otherwise provided for herein:

Refugee and entrant assistance activities authorized by title IV of the Immigration and Nationality Act, part B of title III of the Refugee Act of 1980, and section 501 of the Refugee Education Assistance Act of 1980 except that no activity authorized by such Acts shall be funded beyond September 30, 1987; and

Activities authorized by the Follow Through Act.

SEC. 102. Unless otherwise provided for in this joint resolution or in the applicable appropriations Act, appropriations and funds made available and authority granted pursuant to this joint resolution shall be available from October 1, 1986, and shall remain available until (a) enactment into law of an appropriation for any project or activity provided for in this joint resolution, or (b) enactment of the applicable appropriations Act by both Houses without any provision for such project or activity, or (c) October 10, 1986, whichever first occurs.

SEC. 103. Appropriations made and authority granted pursuant to this joint resolution shall cover all obligations or expenditures incurred for any project or activity during the period for which funds or authority for such project or activity are available under this joint resolution.

SEC. 104. Expenditures made pursuant to this joint resolution shall be charged to the applicable appropriation, fund, or authorization whenever a bill in which such applicable appropriation, fund, or authorization is contained is enacted into law.

SEC. 105. No provision in any appropriations Act for the fiscal year 1987 referred to in section 101 of this joint resolution that makes the availability of any appropriation provided therein dependent upon the enactment of additional authorizing or other legislation shall be effective before the date set forth in section 102(c) of this joint resolution.

SEC. 106. Appropriations and funds made available or authority granted pursuant to this joint resolution may be used without regard to the time limitations for submission and approval of apportionments set forth in section 1513 of title 31, United States Code, but nothing herein shall be construed to waive any other provision of law governing the apportionment of funds.

DRUG COORDINATION PLAN

SEC. 107. Pending the enactment of the Omnibus Drug Supplemental Appropriations Act of 1987, contained as Title II of the fiscal year 1987 Continuing Appropriations Act of 1987 (H.J. Res. 738), the President or his designee shall, out of the $1,200,000,000 made available for drug abuse prevention programs by House Joint Resolution 738 and continued by his resolution and in the regular appropriations bills for the fiscal year 1987, with the cooperation of those presently engaged in this effort in the executive departments, Members of Congress and others experienced in the field of law enforcement, use $100,000 to develop an overall drug abuse prevention plan that coordinates the government's efforts in combating the widespread use of illegal drugs: *Provided*, That this plan shall be presented to the Congress no later than January 1, 1987.

The SPEAKER pro tempore. The gentleman from Mississippi [Mr. WHITTEN] is recognized for 1 hour.

Mr. WHITTEN. Mr. Speaker, I yield 30 minutes to the gentleman from Massachusetts [Mr. CONTE] for purposes of debate only.

May I say to my colleagues that the reason, again, that we extended the time was so as to complete the paperwork. It was to be hoped then and to be hoped now that we will get through in 2 more days.

I might call attention to the fact that what we have here in this resolution are the rates of operation. Three bills that have passed both the House and Senate are carried at the lower of the House or Senate bill rates: District of Columbia, Interior, military construction. Six bills that have not passed the Senate are carried at the lower of the rate of either the bill as passed by the House of Representatives or the current rate: Agriculture, Commerce-Justice-State, Defense, energy and water, foreign operations and Treasury-Postal Service.

Four bills are provided for at the conference agreement rate: HUD-independent agencies, Labor-HHS-Education, legislative branch, and Transportation.

The termination date here is the 10th of October. The drug initiative which you have heard discussed here, may I say again, the primary difference is it calls attention to the $1,200,000,000 that we have available in the 13 regular bills in addition to whatever else we make available in title II of House Joint Resolution 738. Not only that, but we make it possible for the President to call up a plan. We say, in effect, talk to the Congressmen working with this, the agencies handling parts of this, law enforcement agencies, too, because when we get through spending these billions of dollars, we hope to have handled the problem. So this is some unsolicited advice but I think it is sound.

In the limitations: this resolution embraces those limitations on funding carried in fiscal year 1986 and continued in regular bills or contained in the conference agreements such as those regarding abortion funding.

Mr. Speaker, I reserve the balance of my time.

The SPEAKER pro tempore. The gentleman from Massachusetts [Mr. CONTE] is recognized for 30 minutes.

Mr. CONTE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the last time that Congress cleared all regular appropriations bills was in 1954.

In 1972, we began the process of reforming the budget, a process that resulted in the enactment of the 1974 Budget and Impoundment Control Act, and recently bloomed into the rose we all know as Gramm-Rudman-Hollings.

In 1973, we were told that the budget reform would make the Congress a more "respected institution and a more effective partner in Government by 1976." We were told that the reform would "eliminate the possibility of continuing resolutions." We were told that we would be "beginning the new fiscal year with a completed appropriations process and a total budget outlook."

Last December, we were told that the new timetables would "streamline the congressional budget process," "removing unnecessary obstacles to the consideration of authorization and appropriations bills."

And here we are today, Mr. Speaker. Eight days into the new fiscal year. A budget resolution was finally adopted 72 days late. Something loosely called a reconciliation bill has yet to be adopted. Not one of our regular appropriations bills has been enacted into law. We are now on our second continuing resolution. And I'm already collecting a list of programs that will require urgent supplementals and waivers of the Budget Act at the start of the 100th Congress. I can't even begin to count the number of times we have already waived the Budget Act since we enacted Gramm-Rudman-Hollings 10 months ago.

We were told back in 1973 that "the appropriations process would be assisted if Congress were to take over the job of setting early targets." Today, in conference with the other body on the largest omnibus spending bill ever con-

sidered in the world's history, we have yet to reach agreement on the definition of those targets. We're speaking five different languages on BA and outlay caps using CBO, OMB, Senate Budget, House Budget, and Appropriations Committee assumptions. And we have yet to reach agreement on a significant number of the 1,400 Senate amendments to our individual bills and the continuing resolution itself.

If the time was ripe for budget reform in 1974 and 1985, Mr. Speaker, the time for budget repeal is overdue in 1987.

We have no alternative tonight but to vote this short continuing resolution. Voting down this short-term extension will not make us finish the conference any faster. It would be like throwing steaks to a tiger in the belief that the tiger will become a vegetarian. I hope that the short continuing resolution is passed.

Mr. Speaker, I yield such time as he may consume to the distinguished minority leader, the gentleman from Illinois [Mr. MICHEL].

Mr. MICHEL. I thank the gentleman for yielding.

Mr. Speaker, might I inquire of the distinguished chairman of the committee. I was under the impression that this continuing resolution was a clean continuing resolution. Now I find it, particularly in view of the colloquy between the gentleman from Pennsylvania and the chairman, that there has been an add on, a section 107, which in my judgment is not going to be accepted by the other body, No. 1. No. 2, could the distinguished chairman tell me what is House Joint Resolution 738? Is that the previous continuing resolution? Is that the drug bill? What is that?

Mr. WHITTEN. Mr. Speaker, will the gentleman yield?

Mr. MICHEL. I yield to the gentleman from Mississippi.

Mr. WHITTEN. I thank the gentleman for yielding.

House Joint Resolution 738 is the one in conference which goes for the remainder of the year. That is the regular bill that passed the House, passed the Senate, and is now in conference.

Mr. MICHEL. But this provision, section 107, was not in the original continuing resolution, was it?

Mr. WHITTEN. It was not. House Joint Resolution 738 appropriates $2.1 billion above what is in the 13 regular bills for fiscal year 1987 for the new drug program. May I say again that, having been here and seeing and voting for it, giving money in every direction without any plan, calling on the President to come up with a plan, I thought it well and I thought everybody would agree that it should be done with the President, with the Members of Congress who have been active in the field, with the FBI or anyone else who is accustomed to enforcing the law.

I think it is a step in the right direction, and I think it is a very necessary step or you will spend billions of dollars and end up without any success.

Mr. MICHEL. Well, I have to differ with the gentleman's observation. I was under the impression it was strictly a clean continuing resolution. That is why I may have to vote against it.

Mr. CONTE. Mr. Speaker, I yield 2 minutes to the gentleman from Pennsylvania [Mr. WALKER].

Mr. WALKER. I thank the gentleman for yielding, and I would like to ask the gentleman from Mississippi to respond to a question. Are there any of the conference agreements or would any provisions of the conference agreements to be enacted into law be for more than the 2 days that we are passing this resolution?

Mr. WHITTEN. No, it would not. But may I say again in regard to the motion on drugs that anyone who objects to this, I think, is overlooking the fact that we had better do something to ride herd on the money we have appropriated without plan or palette. Because this is such a serious situation, I think in the history of this country it is a most serious situation, I do not want to have another appropriations bill here and leave all money out for the drug program and not recognize that we had better have some plan of operation or you just as well scatter your money to the wind.

Mr. WALKER. Well, I think I would agree with the minority leader, we have some difference of opinion on that, that maybe this $100,000 is the money that is being scattered to the wind, because the fact is the drug program that we passed today had a coordination plan in it. This appears to me to be a overlay over what we just adopted just a while ago.

But that is not really my question.

What I am trying to ascertain is whether or not there is anything else in the bill that goes for longer than the 2 days?

Mr. WHITTEN. It does not.

Mr. WALKER. There is nothing else in the bill other than the section 107, which is the $100,000, that goes for more than the 2-day period?

Mr. WHITTEN. That is right, and that is not an extra $100,000. It is out of the money we have appropriated.

Mr. WALKER. Well, that confuses this gentleman because we have appropriated no money at this point. I am not aware of any money that has been appropriated.

Mr. WHITTEN. You have not dealt with the $100,000 either, if you have not appropriated any at this point. All of it is together.

Mr. WALKER. If I understand the provision, though, we are allocating the $1.2 billion in a way different than the drug program, so we are already emasculating the drug program.

I yield to the gentleman from Massachusetts.

Mr. CONTE. Well, to answer the gentleman's question, there is nothing, nothing at all in this short continuing resolution that goes over 48 hours, nothing.

Mr. WALKER. Well, I thank the gentleman. And if I understand correctly, what the gentleman is saying is, once we get the $1.2 billion for the drug program, then this $100,000 of allocation will be taken out of that money at that point and that will be a requirement that there be a report by January 1, 1987, which means that what we have done is undercut the very drug program we only passed just a couple of hours ago, which strikes this gentleman as being a wrong kind of thing to do. And I say again I am sorry that we did it out here on the floor in this bill.

Mr. CONTE. Mr. Speaker, as I understand it, this drug thing that was tacked on to the short continuing resolution dies after 2 days.

Mr. WALKER. Well, if the gentleman would yield, can we get confirmation on that? At the end of the 2-day period, does that provision die?

Mr. CONTE. He dies, he dies. He will not be alive. It is hooked up to section 102.

Mr. WALKER. It would be better off dead, and I thank the gentleman.

Mr. WHITTEN. Mr. Speaker, I yield myself 1 minute.

May I say the $100,000 comes out of the appropriated money they already have and is not related to the new money that will come under these new bills.

May I say here it is my opinion that the President would probably call on these people to help with a plan anyway. I thought it well to point out what we believe is sound.

Mr. MYERS of Indiana. Mr. Speaker, will the gentleman from Mississippi yield?

Mr. WHITTEN. I yield to my colleague from Indiana, the gentleman from Indiana [Mr. MYERS].

Mr. MYERS of Indiana. I thank the gentleman for yielding.

I inquire of the gentleman from Massachusetts who says that this $100,000 dies at midnight on Friday night; is that to mean that DEA, the enforcement agencies have to rush out and spend that in 2 days, that $100,000, or it will not be available?

Mr. CONTE. No, no.

Mr. MYERS of Indiana. It does not die then, does it; it will remain available for the rest of the fiscal year?

Mr. CONTE. No, "provided that this plan shall be presented to the Congress no later than January 1, 1987."

Mr. MYERS of Indiana. All right.

One other question. There seemed to be a lot of talk about what we are doing here. This is a simple extension with the exception of the $100,000?

Mr. WHITTEN. That is right.

Mr. MYERS of Indiana. Through midnight Friday night?

Mr. WHITTEN. That is right.

Mr. MYERS of Indiana. And it was further understood between the majority leader and others here on the floor, the minority leader, that sometime Friday in the event that we cannot close this out, the continuing resolution, there might be an extension, am I correct on that? A decision will be made this Friday about a further continuing resolution carrying it sometime into next week, if necessary.

Mr. WHITTEN. Absolutely.

Mr. CONTE. That is our understanding.

Mr. CONTE. Mr. Speaker, I yield myself 1 minute.

Mr. Speaker, so that the RECORD is complete, that was the colloquy I had with the gentleman from Texas, the majority leader, Mr. WRIGHT: Come Friday around this time, if we have not reached any conclusion and it looks like we are not going to conclude the continuing resolution, then we are going to revisit with another continuing resolution sometime the following week.

□ 1445

GENERAL LEAVE

Mr. WHITTEN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and that I may include tabular and extraneous matter on House Joint Resolution 748, the joint resolution now being considered.

The SPEAKER pro tempore (Mr. PICKLE). Is there objection to the request of the gentleman from Mississippi?

There was no objection.

Mr. CONTE. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. WHITTEN. Mr. Speaker, I have no further requests for time, and I move the previous question on the joint resolution.

The previous question was ordered.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the joint resolution.

The joint resolution was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the joint resolution.

The question was taken, and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. CRANE. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 264, nays 151, not voting 17, as follows:

[Roll No. 442]

YEAS—264

Abercrombie	Fuqua	Mrazek
Ackerman	Garcia	Murphy
Akaka	Gaydos	Murtha
Alexander	Gejdenson	Myers
Anderson	Gibbons	Natcher
Andrews	Glickman	Neal
Annunzio	Gordon	Nelson
Anthony	Gradison	Nichols
Applegate	Gray (IL)	Nowak
Aspin	Gray (PA)	Oakar
Atkins	Green	Oberstar
AuCoin	Guarini	Obey
Barnes	Hall, Ralph	Olin
Bateman	Hamilton	Ortiz
Bedell	Hammerschmidt	Owens
Beilenson	Hatcher	Panetta
Bennett	Hawkins	Parris
Bentley	Hayes	Pease
Berman	Hefner	Pepper
Bevill	Hendon	Perkins
Biaggi	Hertel	Pickle
Bliley	Hillis	Price
Boggs	Holt	Rahall
Boland	Horton	Rangel
Boner (TN)	Howard	Reid
Bonker	Hoyer	Richardson
Borski	Huckaby	Rinaldo
Bosco	Hughes	Robinson
Boucher	Hutto	Rodino
Boxer	Jacobs	Roe
Brooks	Jeffords	Rogers
Brown (CA)	Jenkins	Rostenkowski
Bryant	Jones (NC)	Rowland (CT)
Bustamante	Jones (TN)	Rowland (GA)
Carper	Kanjorski	Roybal
Carr	Kaptur	Sabo
Chapman	Kastenmeier	Savage
Chappell	Kennelly	Saxton
Clay	Kildee	Scheuer
Clinger	Kleczka	Schneider
Coelho	Kolter	Schuette
Coleman (TX)	Kostmayer	Schumer
Collins	LaFalce	Seiberling
Conte	Lantos	Sharp
Conyers	Leath (TX)	Sikorski
Cooper	Lehman (CA)	Sisisky
Coughlin	Lehman (FL)	Skeen
Coyne	Leland	Skelton
Crockett	Levin (MI)	Smith (FL)
Daniel	Levine (CA)	Smith (IA)
Darden	Lipinski	Smith (NE)
Davis	Livingston	Smith (NJ)
de la Garza	Lloyd	Snyder
Dellums	Loeffler	Solarz
Derrick	Long	Spratt
Dicks	Lowry (WA)	St Germain
Dingell	Luken	Staggers
DioGuardi	Lundine	Stark
Dixon	MacKay	Stokes
Donnelly	Manton	Stratton
Dorgan (ND)	Markey	Studds
Dowdy	Martin (NY)	Swift
Downey	Martinez	Synar
Durbin	Matsui	Tallon
Dwyer	Mavroules	Tauzin
Dymally	Mazzoli	Thomas (GA)
Early	McCloskey	Torres
Edwards (CA)	McCurdy	Torricelli
Emerson	McDade	Towns
English	McHugh	Traficant
Erdreich	McKinney	Traxler
Evans (IL)	McMillan	Valentine
Fascell	Mica	Vander Jagt
Fazio	Mikulski	Vento
Feighan	Miller (CA)	Visclosky
Fish	Miller (OH)	Volkmer
Flippo	Mineta	Vucanovich
Florio	Mitchell	Waldon
Foley	Moakley	Walgren
Ford (MI)	Mollohan	Watkins
Frank	Montgomery	Waxman
Franklin	Moody	Weaver
Frost	Morrison (CT)	Wheat
Whitley	Wolf	Yates
Whitten	Wolpe	Yatron
Williams	Wortley	Young (AK)
Wilson	Wright	Young (FL)
Wise	Wyden	Young (MO)

NAYS—151

Archer	Gonzalez	Porter
Armey	Goodling	Pursell
Badham	Gregg	Quillen
Bartlett	Gunderson	Ray
Barton	Hall (OH)	Regula
Bates	Hansen	Ridge
Bereuter	Henry	Ritter
Bilirakis	Hiler	Roberts
Boehlert	Hopkins	Roth
Boulter	Hubbard	Roukema
Broomfield	Hunter	Rudd
Brown (CO)	Hyde	Russo
Bruce	Ireland	Schaefer
Burton (IN)	Johnson	Schroeder
Byron	Kasich	Schulze
Callahan	Kemp	Sensenbrenner
Chandler	Kolbe	Shaw
Chappie	Kramer	Shelby
Cheney	Lagomarsino	Shumway
Coats	Latta	Shuster
Cobey	Leach (IA)	Siljander
Coble	Lent	Slattery
Coleman (MO)	Lewis (CA)	Slaughter
Combest	Lewis (FL)	Smith, Denny (OR)
Courter	Lightfoot	
Craig	Lott	Smith, Robert (NH)
Crane	Lowery (CA)	
Dannemeyer	Lujan	Smith, Robert (OR)
Daschle	Lungren	
Daub	Mack	Snowe
DeLay	Madigan	Solomon
DeWine	Marlenee	Spence
Dickinson	Martin (IL)	Stallings
Dornan (CA)	McCain	Stangeland
Dreier	McCandless	Stenholm
Duncan	McCollum	Strang
Dyson	McEwen	Stump
Eckart (OH)	McGrath	Sundquist
Eckert (NY)	McKernan	Sweeney
Edgar	Meyers	Swindall
Edwards (OK)	Michel	Tauke
Evans (IA)	Miller (WA)	Taylor
Fawell	Molinari	Thomas (CA)
Fiedler	Monson	Walker
Fields	Moorhead	Weber
Foglietta	Morrison (WA)	Whitehurst
Ford (TN)	Nielson	Whittaker
Frenzel	Oxley	Wirth
Gallo	Packard	Wylie
Gekas	Pashayan	Zschau
Gilman	Penny	
Gingrich	Petri	

NOT VOTING—17

Barnard	Fowler	Moore
Bonior (MI)	Gephardt	Roemer
Breaux	Grotberg	Rose
Burton (CA)	Hartnett	Udall
Campbell	Jones (OK)	Weiss
Carney	Kindness	

□ 1455

The Clerk announced the following pair:

On this vote:

Mr. Weiss for, with Mr. Carney against.

Mrs. JOHNSON and Messrs. RUDD, LATTA, and LENT changed their votes from "yea" to "nay."

So the joint resolution was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

□ 1505

PARLIAMENTARY INQUIRIES

Mr. JACOBS. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore (Mr. PANETTA). The gentleman will state his parliamentary inquiry.

Mr. JACOBS. Mr. Speaker, when would it be in order to offer a privileged resolution to reschedule the election until after Christmas so that the Members of Congress can attend?

The SPEAKER pro tempore. The Chair does not consider that a parliamentary inquiry, but a very good question.

Mr. LOTT. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state his parliamentary inquiry.

Mr. LOTT. Mr. Speaker, my inquiry is, exactly where are we now? Are we about to proceed with 3½ hours of debate on the Superfund? Is that what is before the House at this point?

The SPEAKER pro tempore. The Chair is informed that the gentleman from California [Mr. MINETA] has a unanimous-consent request first, and then we will proceed to the Superfund conference report.

Mr. LOTT. For 3½ hours of general debate?

The SPEAKER pro tempore. It is for 3½ hours; the gentleman is correct.

Mr. LOTT. I thank the Chair.

WAIVING PRINTING ON PARCHMENT OF CERTAIN ENROLLED BILLS AND JOINT RESOLUTIONS

Mr. MINETA. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the joint resolution (H.J. Res. 749) waiving the printing on parchment of certain enrolled bills and joint resolutions during the remainder of the 2d session of the 99th Congress, and ask for its immediate consideration in the House.

The Clerk read the title of the joint resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

Mr. MICHEL. Mr. Speaker, reserving the right to object, and I will not, but by way of explanation, is this not the resolution that would implement the suggestion I had made earlier that, to facilitate sending several pieces of legislation down to the President for signature or veto or whatever, that instead of approving by enrollment process, hand enrolling, and as I understand, the bill references would be the continuing resolution, reconciliation, the drug bill, Superfund, and the tax bill. Is that correct?

Mr. MINETA. Mr. Speaker, will the gentleman yield?

Mr. MICHEL. I yield to the gentleman from California.

Mr. MINETA. Mr. Speaker, the gentleman is absolutely correct. This is to waive the requirement of its being printed on parchment, to enable us to hand enroll the bills that the gentleman has just described.

Mr. MICHEL. It would be limited, then, to these five referenced bills, all others would be normally considered?

Mr. MINETA. That is correct.

Mr. MICHEL. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

The Clerk read the joint resolution, as follows:

H.J. RES. 749

Resolved by the Senate and House of Representatives of the United States of America in Congress Assembled, That the requirement of sections 106 and 107 of title I, United States Code, that the enrollment of the following bills and joint resolutions be printed on parchment be waived during the remainder of the second session of the Ninety-ninth Congress, and that the enrollment of said bills and joint resolutions be in such form as may be certified by the Committee on House Administration to be truly enrolled: H.R. 2005; H.R. 3838; H.R. 5300; H.R. 5484; and H.J. Res. 738, or any other measure continuing appropriations.

The joint resolution was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

CONFERENCE REPORT ON H.R. 2005, SUPERFUND AMENDMENTS AND REAUTHORIZATION ACT OF 1986

Mr. DINGELL. Mr. Speaker, pursuant to the provisions of House Joint Resolution 577, I call up the conference report on the bill (H.R. 2005) to amend title II of the Social Security Act and related provisions of law to make minor improvements and necessary technical changes.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Pursuant to the rule, the conference report is considered as having been read.

(For conference report, see proceedings of the House of Friday, October 3, 1986.)

The SPEAKER pro tempore. Pursuant to House Joint Resolution 577, the gentleman from Michigan [Mr. DINGELL] will be recognized for 1 hour and 45 minutes and the gentleman from New York [Mr. LENT] will be recognized for 1 hour and 45 minutes.

PARLIAMENTARY INQUIRIES

Mr. CRANE. Mr. Speaker, may I be recognized?

Mr. DINGELL, Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state his parliamentary inquiry.

Mr. DINGELL. Mr. Speaker, is the time that is now being used being taken out of the time that is fixed under the rule?

The SPEAKER pro tempore. The gentleman has not been recognized yet, so this time is not being taken out of the gentleman's time.

Mr. CRANE. Mr. Speaker, may I inquire as to whether the majority or minority managers of this conference report are opposed to it?

The SPEAKER pro tempore. Is the gentleman from New York [Mr. LENT] opposed?

Mr. LENT. Mr. Speaker, the gentleman from New York is supportive of the conference report.

The SPEAKER pro tempore. The gentleman from Illinois [Mr. CRANE] would be entitled to one-third of the time if he opposes.

Mr. CRANE. Mr. Speaker, I do oppose, and under clause 2, rule XXVIII, as leader of the opposition, I will be reserved 1 hour and 10 minutes?

The SPEAKER pro tempore. The gentleman from Illinois will be entitled to that time.

Mr. CRANE. I thank the Chair.

Mr. DINGELL. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state his parliamentary inquiry.

Mr. DINGELL. I understand, under the ruling of the Chair, that the time is apportioned, one-third to the gentleman from Illinois [Mr. CRANE], or some Member in opposition to the legislation; one-third to the gentleman from New York [Mr. LENT]; and one-third to myself for subsequent apportionment.

The SPEAKER pro tempore. The gentleman is correct.

Mr. DINGELL. Mr. Speaker, pursuant to the agreement of the committees of jurisdiction, I ask unanimous consent that the 2 hours and 20 minutes controlled by myself and the gentleman from New York be equally divided and controlled as follows, with the right of Members controlling the time to yield time to other Members; 35 minutes between myself and the gentleman from New York [Mr. LENT] on behalf of the Committee on Energy and Commerce; 35 minutes, between the distinguished chairman and the ranking minority member of the Committee on Public Works and Transportation; 35 minutes between the distinguished chairman and ranking minority member of the Committee on Ways and Means; 15 minutes between the distinguished chairman and ranking minority member of the Committee on the Judiciary; 15 minutes between the distinguished chairman and ranking minority member of the Committee on Merchant Marine and Fisheries; and 5 minutes between the distinguished chairman and ranking minority member of the Committee on Armed Services.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

Mr. LENT. Mr. Speaker, reserving the right to object, I will not object because the gentleman and I have discussed this allocation of time in an effort to be fair to all of the parties who have an interest and have jurisdiction over this particular legislation, but the gentleman's request, in other words, provides for an equal allocation of time, 70 minutes to the majority, 70 minutes to the minority, and 70 minutes to the gentleman from Illinois [Mr. CRANE].

Mr. DINGELL. Mr. Speaker, will the gentleman yield?

Mr. LENT. I yield to the gentleman from Michigan.

Mr. DINGELL. Mr. Speaker, I am willing to do it that way, but I understand the rule is different. It will be 17½ minutes between the chairman of the Committee on Energy and Commerce [Mr. DINGELL] and my distinguished friend, the gentleman from New York [Mr. LENT], the ranking minority member.

The gentleman from Illinois [Mr. CRANE] has already gotten his time under the rule, that portion which is available to him.

Mr. LENT. I thank the gentleman, I thank the Chair, and, Mr. Speaker, I withdraw my reservation of objection.

Mr. CRANE. Mr. Speaker, reserving the right to object, the gentleman ran through the time allocations of the various committees of jurisdiction, but I did not get that total.

Mr. DINGELL. Mr. Speaker, will the gentleman yield?

Mr. CRANE. I yield to the gentleman from Michigan.

Mr. DINGELL. Mr. Speaker, the total would be two-thirds of the time fixed under the rule, two-thirds of 3½ hours. The other third would be apportioned to those who are opposed to the conference report.

Mr. CRANE. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. The Chair would state to the gentleman from Illinois that his 1 hour and 10 minutes is protected under his unanimous-consent request.

Is there objection to the request of the gentleman from Michigan?

There was no objection.

The SPEAKER pro tempore. The Chair recognizes the gentleman from Michigan [Mr. DINGELL] for 17½ minutes.

Mr. DINGELL. Mr. Speaker, I am pleased—at long last—to bring before the House the conference report on H.R. 2005, the Superfund Amendments and Reauthorization Act of 1986.

Superfund is one of this Nation's most important environmental programs. As a result of its unfortunate history of mismanagement, however, it is also the most beleaguered program the Environmental Protection Agency [EPA] administers. The situation has led to 3 years of congressional debate, not only over the effective means of cleaning up Superfund sites, but also over the level of confidence we as a nation should place in the EPA.

A few in this debate believed that Superfund should not be reauthorized.

Some sought persistently to increase funding but to make no changes.

The administration sought restricted program changes and 5-year funding at an inadequate level of $5 billion.

And some sought the politically expedient road: to flog EPA once again for its past, thoroughly repudiated administration of the Superfund Program by writing a law which is overly prescriptive of how the Agency should operate.

It was a difficult task to bring these divergent views together.

The bill we bring back to the House strengthens the Superfund Program in every way and is a thorough repudiation of those who sought no program changes. But the bill also retains the one underlying principle which is so necessary to an effective program—it is not so restrictive as to prohibit EPA from administering the program. When enacted, H.R. 2005 will give EPA the flexibility to revitalize the Superfund Program, to ensure cleanup of abandoned hazardous waste sites, and to protect communities exposed to the dangerous toxic chemicals that have been dumped at those sites.

While I wish this were a totally joyous occasion, I must note two recent events which disappoint me.

The first is the apparent decision by senior administration officials to recommend that the President veto this bill. I hope that the President will not heed such poor advice. There is clearly an overwhelming majority of Americans who support this program and want it to survive. I am confident that the House will join the Senate in voting, by a large margin, to send this conference report to the President. I hope the President will take note of the breadth of support these votes will represent.

Mr. President, a veto will kill the Superfund Program and throw the entire Environmental Protection Agency into disarray. You will be playing chicken with the health of the American public. Signing this bill, however, will be an opportunity to improve the otherwise dismal environmental record the administration has compiled.

The other event which has disappointed me was the statements inserted in the CONGRESSIONAL RECORD, without any opportunity for debate, during the other body's consideration of the conference report.

Normally, floor statements and colloquies serve a legitimate purpose. They allow Members to clarify provisions or to obtain specific interpretations of the intent of the conferees in relation to specific constituent concerns or ambiguities. This process is especially important for Members who have not been conferees and have no other opportunity to clarify an issue.

In the case of Superfund, the floor statements by the other body go far beyond their normally accepted role. The bulk of the statements are from Members who were conferees. During the 6 months of conference, these Members had ample opportunity to argue specific points of view and to clarify ambiguities. Views and clarifications which were agreed upon by a majority of the conferees have been included in the conference report. Unfortunately, some of the statements appear to be an attempt to reopen issues on which specific Members did not prevail during the conference process.

There are numerous specific references that are troubling, such as the statement that research and development moneys can be used for building renovation, a proposition specifically rejected by the conferees, and therefore excluded from the conference agreement. The areas in which the disparities between the conference report and the floor statements are greatest appear to be judicial review (section 113), response action contractors (section 119) and cleanup standards (section 121).

The conferees spent 6 months negotiating every word of the legislative language and the statement of managers. The House conferees believed that the two bodies had reached a full and complete compromise and the House will stand by that compromise. Much of what appears in floor statements during the other body's debate goes beyond the agreement of the conferees. Such statements are nothing more than opinions of individual Members about what the legislation might have said or what they wish it said.

Many of our colleagues played significant roles in bringing this legislation through the House and the conference committee. I would like to congratulate all of my colleagues on the committees of jurisdiction for their dedicated work on this bill: the members of the Committee on Energy and Commerce, the Committee on Public Works and Transportation, the Committee on the Judiciary, the Committee on Merchant Marine and Fisheries, and the Committee on Ways and Means.

I would like to express my appreciation also to all the Members who served on this difficult conference committee.

I would like especially to recognize the gentleman from Ohio [Mr. ECKART] and the gentleman from New

York [Mr. LENT] who had the foresight to draft the original version of the House-passed Superfund bill, H.R. 2817. Both were crucial players throughout House consideration of the bill and both played major roles in negotiating the tough compromises with the other body which were needed to complete the conference.

Several other Members also deserve the special appreciation of this body for the expertise they developed in specific areas and for negotiating the House position in those areas:

The gentleman from Kansas [Mr. GLICKMAN] took on the important role of defending the House position on the judicial issues including settlements, citizen suits, and judicial review, and on the response action contractor provision;

The gentleman from Washington [Mr. SWIFT] took an early role in shaping cleanup standards and played a critical role in conferencing a workable Community Right-to-Know Program;

The gentleman from Kentucky [Mr. SNYDER] provided important support in negotiating titles I and II of the final conference report;

The gentleman from Massachuetts [Mr. FRANK] played a critical role in defending the House position on the judicial issues; and

The gentleman from North Carolina [Mr. JONES] played a critical role in the areas of natural resource damages, ocean incineration and statutes of limitations, and he successfully pressed the Senate into considering oil spill legislation.

I have asked each of these Members to respond specifically to some of the misleading statements made by the other body.

I would also like to express my appreciation to:

The gentleman from Oregon [Mr. WYDEN] for authoring the original research and development provision and the risk retention provision;

The gentleman from Louisiana [Mr. TAUZIN] for his active participation in developing H.R. 2817 and his negotiations during the conference to protect the House's used oil provision;

The gentleman from Texas [Mr. HALL] for authoring and negotiating in conference the methane recovery provision; and

The gentleman from Louisiana [Mr. BREAUX] for his contributions to improving the hazard ranking system which is used to determine whether or not a site is included on the National Priorities List.

All of us owe a debt of gratitude to the gentleman from New Jersey [Mr. RODINO] for his invaluable leadership in developing a workable package of judicial issues in the House bill.

Finally, I would like to express my appreciation to Chairman HOWARD and to the subcommittee chairmen ROE and FLORIO for their roles as the determined opposition. Although we frequently had major differences of opinion, I appreciate their willingness to stick with what at times was a difficult process.

Mr. Speaker, H.R. 2005 provides $9 billion in additional funding to Superfund over the next 5 years to clean up the Nation's worst abandoned hazardous waste sites and uncontrolled leaking underground storage tanks. The bill builds on current law and strengthens it in all respects, while leaving the Agency with appropriate flexibility and discretion to respond to the multiplicity of Superfund sites which exist in this Nation. The bill:

Establishes national cleanup standards for Superfund sites;

Establishes a program for research and training in relation to hazardous substances;

Provides assistance to the States in fulfilling their role in the Superfund Program;

Enhances EPA response and enforcement authority; gives citizens the right to participate in cleanup decisions;

Establishes a program to ensure citizens have access to information about chemical substances that are being used in their communities;

Strengthens the role of the Agency for Toxic Substance and Disease Registry in determining the effects of hazardous substances on human health;

Ensures the cleanup of leaking underground storage tanks where responsible parties cannot be identified; and establishes a program for the training of workers at Superfund sites by providing grants which are intended to be awarded to nonprofit organizations such as joint labor-management training programs, labor unions and university-based programs that are directly involved in the training of workers.

Of special importance, the program contains a new provision (section 122) designed to facilitate settlement negotiations to expedite effective site cleanup by private parties while maintaining the liability standard of the 1980 act as it has been interpreted by the Federal courts. The courts have established, as a matter of Federal common law, that the liability of potentially responsible parties at Superfund sites is strict, joint and several, unless the responsible parties can demonstrate that the harm is divisible.

The reasoning of the court in the seminal case of *United States* versus *Chem-Dyne Corporation* 572, F Supp. 802 (S.D. Ohio 1983), which established a uniform Federal rule allowing for joint and several liability in appropriate cases, correctly expresses congressional intent. Nothing in this legislation is intended to change the application of the uniform Federal rule of joint and several liability enunciated in the Chem-Dyne case and followed by a number of other Federal courts.

The new amendments also contain a provision to ensure compliance by Federal facilities with Superfund. The Environmental Protection Agency's existing authority to issue administrative orders and bring civil judicial suits against executive branch agencies is preserved. To supplement the Environmental Protection Agency's normal enforcement authorities, which have not been used as aggressively as Congress intended, these amendments establish a process to ensure that releases or threatened releases of a hazardous substance or pollutants or contaminants at Federal facilities are expeditiously identified, assessed, and evaluated under the same criteria as are applied to private facilities. Specific mandatory time frames are established for commencement of remedial investigations and feasibility studies and commencement of on-site remedial action. These amendments significantly increase the role of the States and the Environmental Protection Agency in the cleanup activities at Federal facilities.

While the provision establishes a process which leads to listing of facilities on the National Priorities List, the obligations of Federal facilities under the Solid Waste Disposal Act, including corrective action, are maintained. Thus, the corrective action authorities of the Solid Waste Disposal Act apply to Federal facilities, even though they are listed on the National Priorities List. The time frames of these amendments establish the outer limits for response action and do not exclude more expeditious corrective action taken under the authorities of the Solid Waste Disposal Act.

In short, H.R. 2005 will revitalize the Superfund Program to permit substantial progress in addressing the most pressing environmental problems facing this Nation—the protection of the public from hazardous chemicals.

Mr. LENT. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of the Superfund conference report.

Mr. Speaker, first let me commend my colleagues who have been instrumental in getting this legislation before us. The distinguished gentleman from Ohio [Mr. ECKART] has worked tirelessly from the very beginning of this Congress, on behalf of the Superfund reauthorization. He is entitled to our congratulations and thanks. I also must commend the distinguished chairman of the Energy and Commerce Committee [Mr. DINGELL] for his stewardship of this important legislation.

Many other colleagues have worked on this legislation and deserve our commendation. Time will not permit me to name them all, but let me name

two who will not be in this body next year. The distinguished Member from Kentucky, and ranking minority member of the Public Works and Transportation Committee [Mr. SNYDER] has played a critical role in producing this legislation. He worked skillfully in the subconferences, which were responsible for breaking the deadlock between the two bodies. I would also like to remember and commend JIM BROYHILL, the former ranking minority member of the Energy and Commerce Committee, who left us to serve in the other body. He too was instrumental in forging the Superfund legislation before us today.

Mr. Speaker, thanks also are due the staffs of the four committees involved in this legislation. Without their dedication and talent, we would not be here today.

Finally, let me thank the Administrator of the EPA, Lee Thomas. Day after day, he endured our long conferences and caucuses. He and his fine staff provided valuable advice, in the process earning the respect of all the Members. The Superfund Program we authorize today will be in good hands with Mr. Thomas.

Mr. Speaker, I have been a strong supporter of Superfund reauthorization in both this and the 98th Congress. Although I urge my colleagues to vote to approve this conference report, I am compelled to point out that this legislation may not accomplish our goal of improving and expediting Superfund cleanups.

I strongly support the addition to the Superfund legislation of provisions on cleanup standards, health authorities, information to the community and emergency response planning. As a result of the diverse pressures on the conference, however, this legislation is not a clear congressional directive to those who must implement and abide by the program. Far too often, the resolution of complex issues was to be "fuzzy." That is why this act has already been dubbed the "Lawyers Relief Act of 1986" by certain Justice Department officials. In addition, we may be guilty of "legislating science" to the extent we establish requirements or expectations that cannot be met today—not because of a lack of desire to do it—but because of a lack of scientific or technological knowledge.

Unfortunately, due to Congress' inaction, the EPA Superfund Program was effectively derailed 1 year ago. With the new funding contained in the legislation, the EPA will be able to turn its attention to getting the program back on track. In addition to getting the program up and running again, however, EPA must extensively revise its existing regulations and issue many new ones to implement the detailed provisions contained in the more than 150 pages of legislation before us today. All of this will take time. Yet time is something we have not been willing to give EPA. If the EPA is unable to meet the objectives and deadlines we have set for it throughout the bill, I hope that Congress will remember that it is the Congress that created this situation.

Next, I would like to turn to some areas of the legislation of particular interest to me. First, I would like to address leaking underground storage tanks. I am very pleased that we were able to include in this conference report an amendment to the Solid Waste Disposal Act [RCRA] that fills in a gap we left in the 1984 RCRA amendments. Although the 1984 amendments to RCRA created a leaking underground storage tank program, that program did not include funds for the EPA to take corrective action where necessary. We correct that omission with this legislation. In this legislation, we also authorize EPA to recover administratively the moneys spent for corrective action from responsible owners and operators. We also authorize the EPA to use its discretion when recovering these costs, especially where the owner and operator has maintained the required evidence of financial responsibility and equity dictates that amounts above the financial responsibility requirement not be collected from certain businesses.

Second is settlements. This legislation includes settlement provisions that, back in May 1985, were considered "groundbreaking." I am pleased to report that the idea of encouraging settlements is no longer considered groundbreaking but now a simple and obvious matter of good policy. Costly, protracted litigation threatens the effectiveness of the Superfund Program and consumes resources better spent on cleanup. It is essential that EPA and private parties join together to accomplish cleanup. Where there are reasonable bases for allocating responsibility, this should be done. We have provided EPA with a sizable cleanup fund. This money should be used not only to clean up sites where no responsible party can be found, but also as seed money to allow cleanup where at least some of the responsible parties are willing to go forward.

Third is contractor incentives. All of the money in the world—and all of the congressional mandates to EPA to complete cleanups—will not guarantee effective cleanups unless there are responsible, skilled, cleanup contractors willing to do the work. For this reason, this legislation contains provisions that exempt cleanup contractors from the possibility of strict liability at the Federal level. Unfortunately, we did not include the House provision that would have exempted these contractors from strict liability at the State level. This omission was due to a concern for States' rights in this area and not because we believe that strict liability is an appropriate concept when applied to cleanup contractors. I believe that the States should seriously consider, as some States have already done, the enactment of statutory provisions that would allow the necessary cleanup work to be done.

The fourth area I would like to address concerns Title III—Community Right To Know. Although I support the concept of a community's right to know of the risks its businesses pose, I am concerned that the legislation, if misinterpreted, could result in any useful information being buried in an avalanche of unnecessary paperwork. For example, let us consider the toxic chemical release reporting requirements of title III. Under this provision facilities must inventory the amount of extremely toxic substances that are emitted into the environment. Extremely toxic substances include both specific chemicals and general categories or families of chemicals. EPA must prioritize these substances and require the reporting of emissions for only those specific chemicals, within a general family of chemicals, that are toxic. If EPA does not do this, communities will be inundated with useless information. For example, compounds that contain copper comprise a general family of chemicals. Copper sulfate and copper oxide are both members of this family, while copper sulfate is an irritant and toxic, copper oxide is not. Therefore, having to report a small emission of copper oxide, a nontoxic compound, is not necessary.

Although I was not a conferee on the funding issue, I do want to make one observation about the funding mechanism. It taxes imported oil differently than domestic oil. This is actually a "mini"-oil import fee. This is a dangerous precedent and one shouldn't think that congressional approval of the Superfund funding mechanism is support for oil import fees.

Mr. Speaker, the negotiation process involved in producing this agreement on the Superfund conference report was long and arduous. Every sentence in this report has been negotiated and renegotiated several times before agreement was achieved. For this reason, it is easy to understand why I was appalled on Monday, when I received my copy of the CONGRESSIONAL RECORD, to find that many of our Senate colleagues had taken the liberty to add new interpretive language to these provisions that went far beyond what the conferees had agreed upon. In many cases, the statements made in the CONGRESSIONAL RECORD directly conflicted with the conference report and cannot be substantiated in any manner on the basis of the statutory language or and the statement of man-

agers contained in the conference agreement.

I urge those who will work with this legislation in the future not to rely on postconference agreement statements that do not reflect the intent of the conferees. The intent of the conferees is best expressed by the legislative language, the statement of managers and the legislative history underlying the provisions adopted by the conferees from each body.

Although the Senate statements added to the CONGRESSIONAL RECORD of October 3, 1986, are peppered with inaccuracies, I would like to demonstrate this point through the example of two sections which I believe are extremely important: the new health authorities section and the cleanup standard section. I will address several other sections that are equally important in a colloquy at a later time in the debate. With regard to the cleanup standard section, I, along with my distinguished colleague from Kentucky, Mr. GENE SNYDER, and my distinguished colleague from Ohio, Mr. DENNIS ECKART, represented the House in the subconference group meetings where the agreement on the conference report language was first reached.

In the October 3, 1986, CONGRESSIONAL RECORD, Vol. 132, No. 135, on page S14897, a statement was made by a Senate conferee that the elements of a health assessment included "any other medical testing of individuals." This statement directly conflicts with the purpose of a health assessment and cannot in any way be supported by the agreed upon conference report. In the conference report, health assessments are defined in the following manner:

(F) For the purposes of this subsection and section 111(c)(4), the term "health assessment" shall include preliminary assessments of the potential risk to human health posed by individual sites and facilities, based on such factors as the nature and extent of contamination, the existence of potential pathways of human exposure (including ground or surface water contamination), the size and potential susceptibility of the community within the likely pathways of exposure, the comparison of expected human exposure levels to the short-term and long-term health effects associated with identified hazardous substances and any available recommended exposure or tolerance limits for such hazardous substances, and the comparison of existing morbidity and mortality data on diseases that may be associated with the observed levels of exposure. The Administrator of ATSDR shall use appropriate data, risk assessments, risk evaluations and studies available from the Administrator of EPA.

The conference report does not include any mention of medical testing as a part of a health assessment. This was done for a reason. The conference report requires health assessments at every facility proposed for inclusion on the National Priorities List by December 10, 1988. It would be impossible for EPA to conduct medical testing of the people near each facility and still meet the mandatory deadline for completion of all the health assessments. In most cases, medical testing will be unproductive, especially if the threat is a potential release and not an actual release. The conference report does require, in the context of a health surveillance program, "periodic medical testing where appropriate of population subgroups to screen for diseases for which the population or subgroup is at significant increased risk." A health surveillance program is initiated, however, only if the Administrator of ATSDR determines there is a significant increased risk of adverse health effects.

This same kind of error in accurately describing the conference report is also rampant in statements concerning the cleanup standards.

A few examples here are also warranted. On page S14916 of the October 3, 1986, CONGRESSIONAL RECORD, a Senator states that alternative concentration levels [ACL's] can only be used "when no other previously established standard or level of control—for example, water quality criteria or RMCL—applies to the hazardous substance, pollutant, or contaminant at issue." This language again directly conflicts with the conference report agreed to by the House and Senate conferees. In section 121(d)(2)(B)(ii) of the conference report, the proposed statutory language clearly gives EPA the authority to use ACL's in lieu of water quality criteria or maximum contaminated levels [MCL's] in meeting the ground water protection standard under the Solid Waste Disposal Act. Specifically, this clause states:

(ii) For the purposes of this section, a process for establishing alternative concentration limits to those otherwise applicable for hazardous constituents in groundwater under subparagraph (A) may not be used to establish applicable standards under this paragraph if the process assumes a point of human exposure beyond the boundary of the facility, as defined at the conclusion of the remedial investigation and feasibility study, except where—

(I) there are known and projected points of entry of such groundwater into surface water; and

(II) on the basis of measurements or projections, there is or will be no statistically significant increase of such constituents from such groundwater in such surface water at the point of entry or at any point where there is reason to believe accumulation of constituents may occur downstream; and

(III) the remedial action includes enforceable measures that will preclude human exposure to the contaminated groundwater at any point between the facility boundary and all known and projected points of human exposure may be at such known and projected points of entry.

In other words, meeting the ground water protection standard may involve using ACL's in lieu of meeting an MCL or water quality criteria in those circumstances where ACL's are permitted under section 121.

A second example of an erroneous description of the conference report with regard to cleanup standards occurs on page S14916. Here a Senator first correctly states that hazardous substances, pollutants, or contaminants can only be moved offsite if they are transferred to a facility in which the unit receiving the substances is not leaking into ground or surface water or soil and all releases from other units at the facility are being controlled by a corrective action program. Then the same Senator goes on to incorrectly state: "In this regard, such facilities can ordinarily only meet the second condition imposed by the legislation if the corrective action has already been performed in accordance with sections 3004 (u) and (v) and 3008(h) of the Solid Waste Disposal Act." This latter statement was never agreed to by the conferees and directly conflicts with the conference report language. The conference report language—section 121 (d)(3)(B)—specifically uses the present tense in describing corrective action at releases from other units at the facility:

(B) All such releases from other units at the facility are being controlled by a corrective action program approved by the Administrator under subtitle C of the Solid Waste Disposal Act.

A third and very important error in the CONGRESSIONAL RECORDS concerns the ability of the Administrator to waive fundamental cleanup standard requirements. On page S14925 of the October 3, 1986, CONGRESSIONAL RECORD, a Senator first correctly states that permanent solutions should be implemented to the maximum extent practicable. However, the Senator then makes the following unsupported statement:

The extent to which a particular technology or solution is feasible or practicable is not a function of costs. A determination that a particular solution is not practicable because it is too expensive would be unlawful. Tough choices on the basis of cost must be made under the fund balancing test that is set forth elsewhere in this section of the bill, not under the guise of being not practicable.

This statement has two fundamental flaws. First it defines the word "practicable" in a way that has not been agreed to by the conferees. It is our intent that the Administrator take into account several factors in determining whether a solution is practicable, including technical feasibility, cost, State and public acceptance of the remedy, and other appropriate criteria. Second, and more serious, it suggests that the Administrator can waive more than the application of specific environmental standards and criteria found in subsection (d). According to this statement, waivers, such as the fund balancing test, can be used to

waive more fundamental requirements found in subsection (b), including the requirement that the President select permanent solutions to the maximum extent practicable. This statement conflicts with the conference report language and could seriously undermine the implementation of the cleanup standards. The six waivers listed in subsection (d) can only be applied to the standards, limitations and criteria found under subsection (d). It cannot be applied to other requirements found in subsection (b) such as the requirement that the President select a remedial action that protects public health and the environment and that uses permanent solutions to the maximum extent practicable.

The above examples are only a sample of the many errors found in the statements in the October 3, 1986, CONGRESSIONAL RECORD concerning the Superfund conference report. They are by no means exhaustive. It is clear that many of the Senators do not have a clear grasp of the conference report language with regard to several important provisions. It is also clear, that many Senators are also using this opportunity to give interpretations to the language that has not been agreed to by the conferees.

The section in the report that is most prone to cause confusion and differing interpretations is the abovementioned cleanup standard section. This section addresses the how clean is clean issue by providing an important balance between the need for effective permanent remedies and the need for flexibility for the Administrator of EPA to select the most appropriate remedy at a specific site.

According to the provisions in this section, four basic requirements must be met in selecting remedial actions at Superfund sites. The remedial action must: First, protect public health and the environment; second, be cost effective; third, use permanent solutions or alternative treatment technologies to the maximum extent practicable; and fourth meet applicable or relevant and appropriate standards under Federal or State environmental law. In selecting a remedy at a site, the Administrator must evaluate the various alternative remedies on the basis of several factors including cost, reliability, long-term effectiveness, residual public health risk, ease or difficulty of implementation, and short-term impacts.

With regard to meeting Federal and State standards, section 121 specifically requires the Administrator to meet any standard, requirement, criteria, or limitation under Federal environmental statute or any more stringent State standard, requirement, criteria, or limitation which has been promulgated pursuant to State law if such requirement is legally applicable or relevant and appropriate. The Administrator may, however, waive those requirements if certain enumerated conditions are met.

In requiring EPA to select remedies that meet more stringent State promulgated standards, criteria, limitations, or requirements, it is important to note that CERCLA, as amended by the Superfund Amendments and Reauthorization Act of 1986, preempts other Federal and State environmental laws. It could not be otherwise given the structure of the statute. The laws themselves are preempted, but the Federal and State standards are to be applied through section 121. This this statute lays out its own scheme for dealing with these hazardous waste sites. The waivers provided in section 121, particularly the fund-balancing waiver, show that the other Federal and State statutes cannot as a matter of law apply to these actions taken under CERCLA, but that they serve rather as a source of standards to determine how clean the sites must be. The ability to disregard State siting requirements in certain limited circumstances also shows that those State laws are to be used as a source for the remedy determinations under this law, but are in fact preempted by it. The provision for conducting onsite cleanups without permits is another example of how this statute preempts the others while using them to help determine the extent of the cleanup under this statute.

This section also requires the Administrator to meet State facility siting laws, except where they could effectively result in the statewide prohibition of land disposal. The application of these State siting laws, however, does not require a siting board review or other administrative process.

One area that deserves further clarification is the application of maximum contaminant level goals, known as MCLG's, under the Safe Drinking Water Act, to Superfund cleanups. MCLG's must be applied at the point of use of the drinking water if they are relevant and appropriate under the circumstances of the release. For example, the Agency should look to the surrounding drinking water supplies in determining whether MCLG's are relevant and appropriate standards for drinking water at the tap. Where the ground water is contaminated, the appropriate ground-water standard should be applied when applicable or relevant and appropriate. If the remedial action involves water which is not used, or projected to be used as a drinking water source, the Administrator need not consider MCLG's in selecting the remedial action.

Relevant and appropriate standards for carcinogens are of particular concern. The Agency may never be able to meet a MCLG of zero due to the impossibility of totally removing all carcinogens from ground water. As the state of the art of detection progresses, it will become even more difficult. However, the Agency should comply with the MCLG's for carcinogens to the maximum extent practicable taking into account available technology and cost.

Another important issue concerns the appropriate use of alternative concentration limits in lieu of water quality criteria or MCLG's. As mentioned before, it is the intent of Congress the ACL's be used in lieu of water quality criteria or MCLG's in accordance with the specific conditions outlined in section 121. In the discussion of ACL's, several members have expressed concern about the legality of the ACL process and standards in the context of RCRA. This concern stems from misgivings about the scientific underpinnings of the fate and transport modeling that EPA considered using to establish ACL's. RCRA itself does not endorse or prohibit ACL's; rather, it directs EPA to establish standards, including ground-water protection standards, that protect human health and the environment. Similarly, the conference report of SARA neither endorses nor prohibits the use of ACL's under RCRA or other environmental laws.

In implementing the ground-water protection requirements, through ACL's or other standards, EPA may consider reliable predictions about the fate and transport of hazardous constituents in the environment as well as the likelihood of offsite exposure to such contamination.

It should be noted tht the term "facility" under CERCLA has a somewhat different meaning than that used under RCRA, particularly in the context of section 3004(n). Under RCRA, the facility definition circumscribes the set of solid waste management units for which corrective action is expected as a condition of getting the RCRA permit. This RCRA definition is in contrast to the SARA or CERCLA definition of facility.

The most important standard in section 121 requires the Administrator to select cost-effective remedies that protect the public health and the environment. Given sufficient resources and implementation time, several technologies, independently or in combination, may achieve the required level of protection of public health and the environment. The Administrator must select the most cost-effective remedy that achieves this level of protection.

This section, however, further requires the use of permanent and alternative treatment technologies or resource recovery technologies to the maximum extent practicable. In determining whether these technologies are practicable, the Administrator may take into account technical feasibility, cost, State, and public acceptance of

the remedy, and other appropriate criteria. Where these remedies are not practicable or cost effective, another remedy which meets the requirements of this section must be selected.

This language and the language in section 121(b) preferring remedial action in which a principal element is treatment which permanently and significantly reduces the volume, toxicity, or mobility of the hazardous substances does not require the selection of the "lowest levels achievable with available technology." Rather, it requires the EPA to carefully consider permanent remedies and select a permanent solution, to the maximum extent practicable, if it provides for a cost-effective response and if it protects the public health and the environment. This does not require the selection of the "most permanent" remedy available; it is not intended that EPA spend millions of dollars incinerating vast amounts of slightly contaminated materials where other cost-effective alternatives would provide a high degree of permanence and protection of public health and the environment. Although remedies will be more permanent after enactment of this provision, the EPA should consider a range of permanent solutions which meet, together or in combination, the requirements of this provision.

In other words, although this section establishes strict standards for cleanups, it does not direct the selection of foolish, costly remedies where alternative cost-effective remedies protect the public health and the environment.

In spite of some reservations, I believe passage of this legislation is essential. We must let EPA get on with the job of cleanup. Only by passing this legislation can we do that. I call upon all of my colleagues to vote to approve this conference report.

The conference report states that the Administrator shall establish evidence of financial responsibility for ocean incineration commensurate with the financial responsibilities appropriate for activities with similar risks. In establishing the level of financial responsibility, the Administrator shall make two inquiries; first, what are the activities with similar risks and second, what financial responsibilities are appropriate.

In determining what is an activity with a similar risk, it is appropriate to examine EPA's March 1985 Assessment of Incineration as a Treatment Method for Liquid Organic Hazardous Wastes. In this study, EPA identifies four activities associated with ocean incineration. These activities are land transportation of waste materials to the incinerator, transfer and storage, incineration, and ocean transportation. In assessing the risks associated with ocean incinerators, EPA compares the first three activities with land incineration and the last with the ocean transportation of chemicals and petroleum.

With respect to land transportation, EPA's assessment finds that the risks associated with land incineration and ocean incineration are essentially the same since the waste must be transported to the incinerator regardless of whether the incinerator is fixed or floating. In regard to transfer and storage, EPA notes that the storage systems used by land and ocean incinerators are virtually identical and, therefore, the risks are identical. The transfer of stored waste to the land incinerator or the ocean incinerator also present essentially the same risk.

For the incineration process itself, the EPA report notes that the health risks associated with ocean incineration are 30 to 40 times less than the health risks associated with land incineration. The environmental impacts associated with both incineration processes were also determined by EPA to be minor. If fact, EPA's assessment concludes that ocean incineration of such hazardous materials as PCB's would not result in a measurable effect on the marine ecosystem. Hence, the overall health and environmental risks associated with ocean incineration are substantially less than the risks associated with incineration on land.

In regard to the ocean transportation of the waste from the port to the incineration site, EPA's assessment compares this activity to the ocean transport of chemicals and petroleum. In considering the extent of the hazards, it is interesting to note that in 1983, for example, 274 million metric tons of hazardous substances and 270 million metric tons of petroleum were transported in the Gulf of Mexico in a total of 58,895 shipments. By comparison, the total volume transported by the *Vulcanus* in a year's operation would be 0.02 percent, or one five-thousandth, of the total volume of hazardous substances alone. More hazardous chemicals are shipped through Gulf Coast ports in just 2 hours than an incinerator vessel would carry in a whole year's operations. Even if examined on an individual vessel versus an industry basis, EPA's assessment concludes that the *Vulcanus* incineration vessel has a lower spill rate than other vessels. EPA attributes this to the special construction of the *Vulcanus* with its double hull, double bottom, controllable pitch propeller, and bow thruster.

EPA's assessment, and other EPA reports, establish what is a similar activity and appear to establish the comparative risks of these activities. With this resolved, the next issue for the Administrator is what level of financial responsibility is appropriate for activities with similar risks. The Congress has already established, by statute, the appropriate level of financial responsibility for the ocean transportation of hazardous chemicals and for the land incineration of such materials. Equity argues that similar activities with similar risks should have the same level of financial responsibility—and that level has been statutorily established by the Congress. If EPA believes that the level established by the Congress is inappropriate, then EPA should recommend changes to the Congress.

The conference report also notes that EPA recently announced its decision to promulgate revised ocean incineration regulations prior to issuing any research or operational permits. The conferees expect and intend that EPA will promulgate final revised regulations promptly. EPA has studied the issue of ocean incineration for several years and has received thousands of public comments on all aspects of the program. I believe that this body of information is sufficient for EPA to issue its revised regulations and that EPA should do so immediately.

Mr. CRANE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I do not think there is any dispute in this body as to the necessity of appropriating moneys for clear and present dangers. To the extent that we have identifiable toxic waste sites that do constitute a threat to public health and safety, clearly those problems should be addressed.

However, we must recognize that in the conference report that is before us today we have gone vastly beyond what even EPA says it can efficiently handle in addressing this problem because of the sheer magnitude of the funding level about which we are talking. In fact, it is more than a five-fold increase over the previous 5 years of funding for cleaning up toxic sites.

Second, I think it is important for individuals to recognize that the method of financing this puts a burden on targeted industries such as oil and chemicals as well as business in general, with a broad-based tax. The oil tax is on both domestic and imported oil. This will translate into higher prices, higher fuel costs especially to those living in our Northeastern States; but in addition to that, it is an added cost to people using our highways, because a part of the increased revenue comes in the form of increased gasoline taxes.

I think, Mr. Speaker, that we should if we are serious about this problem acknowledge that no new taxes are really necessary to address it.

First, a more reasonable level of funding along the guidelines that were submitted by the administration would be dictated as preferable.

Second, you can reduce levels of spending in other categories and real-

locate our priorities so as to stay within the guidelines of the Gramm-Rudman-Hollings legislation.

In addition to that, Mr. Speaker, the President has repeatedly stated that he will veto any legislation with increases in taxes.

Now, we have had a number of colloquies here on the floor of the House over the past several evenings initiated by our side of the aisle. We have a big pledge card that we put down there in the well of the House urging Members to take the pledge of no new taxes.

Mr. Speaker, I and a number of my colleagues have joined in that pledge. We will not vote for any increase in taxation.

I think it is important for my colleagues to recognize that this bill if supported by Members is an increase in taxation, a quite significant increase in taxation, after we just most recently reported out our revenue neutral comprehensive sweeping tax reform for the future.

We are now turning around and advocating in this legislation a significant increase in taxes.

In addition to that, another disturbing feature of this is that we are putting burdens on some troubled industries, and the oil industry is one, at the same time that the oil industry is in a virtual state of depression. The comprehensive tax reform bill that we passed a week ago already hammers the oil and gas industry to the tune of about $10 billion in increased taxes over the next 5 years. This is hardly a propitious time, it seems to me, Mr. Speaker, to be increasing burdens on that already troubled industry.

But more importantly, if we agree as a society that this is a problem that should be addressed, and we do, I do not think there is any debate on that point, then we must acknowledge that in dealing with that problem we should all assume responsibility for it.

The fact of the matter is that chemical feed stocks, for example, have played a vital role in improving the welfare of our lives in the post-World War II era. The clothes we wear, this carpeting on the floor, everything you can see in your car's interior, is a derivative of petrochemical feed stocks.

The truth is that we are the ones who have dictated this kind of innovation and modernization and improvement in the material welfare of our lives. That being the case then, why hammer industries that are not culpable? They are not culpable because we are talking about dealing with orphan sites where we cannot identify who contaminated the area.

The truth of the matter is that we have laws on the books right now to deal with those people who engage in midnight, illegal dumping. We have laws on the books, Mr. Speaker, to force the people who produce toxic waste to dispose of their toxic wastes in a proper way and to absorb the cost of the disposal.

Thus, if we are going to impose taxes, then all the funding of this legislation should come out of general revenues. Let each and every American who has a stake in cleaning up our society, assume a portion of the burden of the cost of that cleanup.

Mr. Speaker, I yield such time as he may consume to our distinguished colleague, the gentleman from Arkansas [Mr. HAMMERSCHMIDT].

Mr. HAMMERSCHMIDT. Mr. Speaker, I want to commend the hard-working members of this conference. I was a conferee; however, I want to join the gentleman in opposition to the Superfund report.

Mr. Speaker, the hundreds of abandoned toxic wastesites around this Nation are an intolerable situation, and the patience of the American people with the failure of Congress to reauthorize a sensible and workable Superfund program has been remarkable.

I wish that I could say that patience is being rewarded with the legislation before us today. However, that is not the case, and, therefore, I cannot in good conscience, vote for this bill.

This legislation, in a nutshell, gives the Environmental Protection Agency more money that it can effectively use, and then imposes such rigid standards and so much redtape it cannot properly manage the program with the money it does get.

Certainly the flaws in this bill do not reflect the lack of a good faith effort on the part of my fellow conferees. Many months have been devoted to reaching an agreement on this very complex piece of legislation. Yet, that very complexity makes this bill an administative nightmare.

Perhaps my greatest concern from the very outset of our conference deliberations has been the need for prudent management of this program. After all, we are talking about a great deal of money—almost $10 billion of the taxpayer's money.

The administration recommended a $5.3 billion bill, and EPA said from the very beginning that it could spend that amount. Yet, we have before us an $8.5 billion bill. And bear in mind that the $5.3 billion was all that EPA felt it could spend at a time when there would have been a smooth transition from the original program and its funding levels.

Unfortunately, due to congressional paralysis, the program has not been funded properly in over a year. A number of interim funding measures have been passed, but once again, the money has run out and the program is at the brink of extinction.

So, now the program has to gear back up again. Since projects are not going to be in the pipeline and EPA has not been able to do the necessary planning to move such projects along, I do not believe that the Agency will be able to properly spend the kind of money we are authorizing in this legislation.

What we are doing, in reality, is throwing money at the problem, and that, in my judgment, serves neither the taxpayers who will be paying for the cleanup nor the cleanup effort for itself.

To make matters worse, at the same time we are showering EPA with all this money, we are binding the Agency's hands with burdensome administrative regulations and very strict standards for cleanup. Generally, I feel that the bill has gotten into far too much detail. We have tried to prescribe a specific response to every possible contingency and left little or no room for EPA to use any discretion in dealing with the problems that arise.

We give the Agency directions to set management priorities to accomplish certain goals we set out in the bill, while at the same time, we make them the subject of litigation.

With the meager flexibility allowed them, EPA will find it difficult politically and legally to change any of the stringent standards this legislation requires. That will encourage the Agency to overreact, to simply gold-plate the cleanup. Instead of managing cleanup of the site as prudently as it should, EPA is likely to take the easy course of choosing the most costly solution and the one for which they can expect to get the least political and legal heat.

In doing this, the Agency would end up taking funds away from other toxic wastesites to provide treatment at a site more stringent than is actually needed to protect health and the environment.

Another burdensome area of the legislation is the community right to know provision. I agree with the basic premise that a community located near a hazardous wastesite should be aware of chemicals that threaten them, and I have no quarrel with a proper role for the Federal Government in that effort.

Unfortunately the community right to know title in this bill goes far beyond that. It would, in fact, place a tremendous burden on industry, and, in my judgment, an unmanageable burden on State and local government.

There are plenty of requirements but no funds to help State and local governments comply with the law. Consequently, there is the potential for massive noncompliance; and where companies do comply with the law, State and local agencies will be inundated with paperwork, thereby rendering the whole exercise useless.

Mr. Speaker, there are good things in this legislation, and certainly the intent of the bill is on target. The

problem of toxic waste is one that we have to deal with. However, for a number of reasons, some of which I have discussed, the bill is so flawed that I cannot give it my support. The best efforts of the conferees to provide a workable Superfund program have fallen short of the mark.

At this point, I feel that the most appropriate course of action is for Congress to provide sufficient funding through the appropriations process to keep the program going until we can come back and address this issue correctly early next year. As the wise saying goes, anything worth doing is worth doing right.

Mr. CRANE. Mr. Speaker, I reserve the balance of my time.

Mr. DINGELL. Mr. Speaker, on the Energy and Commerce Committee, we would like to reserve our time.

Mr. LENT. Mr. Speaker, the Energy and Commerce Committee minority will reserve the balance of our time.

The SPEAKER pro tempore. The next committee is the Committee on Public Works. The Chair recognizes the gentleman from New Jersey [Mr. ROE] for 17½ minutes.

Mr. ROE. Mr. Speaker, I yield such time as he may consume to the gentleman from California [Mr. ANDERSON].

Mr. ANDERSON. Mr. Speaker, I rise in strong support of the conference report to accompany H.R. 2005, to reauthorize the Superfund toxic waste cleanup program for 5 years.

As you know, the Superfund program was established in 1980 to address the growing problem of abandoned hazardous waste sites. Since that time, it has become clear that the problem of abandoned toxic dumpsites is much larger than anyone had first imagined. In fact, the Office of Technology Assessment estimates that there may be as many as 10,000 toxic hot spots scattered across the country. And the cost to clean up these sites could be as high as $100 billion.

This legislation we have before us today is a step in the right direction in tackling the problem of cleaning up these many hazardous dumpsites.

Although there are many fine provisions in the bill which I could highlight, I am particularly pleased with the community right to know program. This important provision insures that communities who happen to be located near chemical plants and hazardous facilities will be provided needed information on the types of chemicals produced, handled and stored at these facilities and information on how to deal with emergencies. Thus, in the future, chemical companies must provide communities with information about everyday releases of toxic chemicals and about the location and use of such chemicals. It also requires emergency notification and response planning in the event of a serious release in the environment.

In conclusion, I strongly urge my colleagues to support this legislation and ask that the President reconsider his veto threat of the bill so we can get on with the business of cleaning up the thousands of toxic wastesites across the United States.

Mr. ROE. Mr. Speaker, I yield such time as he may consume to the gentleman from Missouri [Mr. SKELTON].

Mr. SKELTON. Mr. Speaker, the legislation before us today marks an important turning point in the effort to clean up the Nation's worst hazardous wastesites and protect our citizens from the threat of soil and ground water contamination. I think it is fair to say that since its enactment in December 1980 the Superfund Program has not been a model of efficiency. Yet what we have learned over the past 6 years has lead to the changes contained in the pending amendments. Thanks to the skillful leadership of my distinguished colleagues, the gentleman from Michigan and the gentleman from Ohio, literally hundreds of improvements to the Superfund Program have been carefully drafted. Due to their tireless efforts, the program has new direction and purpose.

One of the most significant improvements contained in this bill concerns the more than 1 billion gallons of used oil that is generated each year. The amendment recognizes the need to improve and expand the system for recycling that oil. Currently approximately 57 percent of the used oil generated in this country is treated as a valuable product. In other words, it is burned as fuel or rerefined as a lubricant. Unfortunately, the rest of that oil, at least 241 million gallons each year, is improperly disposed of into sewers, backyards, or in the trash.

The purpose of this amendment, which is explained in greater detail in the statement of managers, is to create incentives that will encourage those who generate used oil to handle it safely. Under the amendment, service station dealers, and others such as truck stop operators and managers of oil change facilities who abide by EPA's forthcoming regulatory requirements and who offer a collection facility for used oil generated by do-it-yourselfers will be exempt from potential Superfund liability. Without this provision, there would be little incentive for managers of oil change facilities, truck-stop operators and service station dealers to accept any do-it-yourselfer-generated used oil because the threat of liability would create serious insurance and other problems.

While the amendment recognizes that the used oil recycling system in this country is essentially voluntary, and one that must be protected, I am concerned that the exemption provided in this bill is structured too narrowly. In my view, the protection from liability should extend to all those who participate in the recycling system and who manage used oil in accordance with EPA's regulatory requirements. However, I am encouraged by recent statements by the EPA's Assistant Administrator for Solid Waste who has indicated that the Agency does not intend to list used oil as a RCRA hazardous waste. EPA should be commended for this decision. In my view, it is a commonsense approach which recognizes that not only is used oil unique, but that the threat of liability and overregulation in this particular situation can severely undermine the basic goals of environmental protection.

Finally, I would like to clarify one important aspect of the role of service station dealers, truck-stop operators and others in providing collection centers for do-it-yourselfers' used oil. These businesses should be encouraged to take appropriate steps to assure that the used oil they receive has not been mixed or otherwise contaminated with hazardous substances such as pesticides or solvents. Thus, for example, businesses who insist that do-it-yourselvers certify that used oil being delivered has not been contaminated would not lose their exemption from liability if they refuse to take used oil from individuals who fail to certify. This and other forms of reasonable safeguards are consistent with the provision and should not adversely affect the exemption from liability.

Again, I commend the distinguished floor manager of this bill for his leadership on this issue and I urge my colleagues to vote for final passage of this worthwhile legislation.

Mr. ROE. Mr. Speaker, I yield 3 minutes to the distinguished gentleman from West Virginia [Mr. WISE].

Mr. WISE. Mr. Speaker, I rise in strong support of this Superfund bill, because it is the culmination of 2 years, and in the case of this Member, 4 years, and I know for some of the others here much longer than that, to bring to this floor a viable Superfund bill that truly addresses the concerns that we have.

Indeed, I am proud of the Superfund bill because much of it arises and concerns have been expressed about the chemical industry, particularly following the Bhopal tragedy and then a leak in my own district at Institute, West Virginia. Indeed, Institute and our area of the Kanawha Valley has been the subject of much interest concerning the chemical industry.

I am proud of the way that we have responded, because we set out to be a model for the country, and indeed much of the concerns that were expressed are now enveloped in this Superfund bill. This bill has for the first time, Mr. Speaker, an extensive community right-to-know provision that guarantees the Federal right-to-know

in every community. You have a right to know what is being produced in the plants around you.

Furthermore, it also guarantees that every community in this country will have emergency response to plans that will help them should there ever be a toxic emergency.

You know, we have been developing these for a long time in our area. Indeed, we think it is important in every area, no matter whether they have a chemical industry or not, to have these provisions, because it is the problems with chemical transportation, whether by rail, by barge, by truck, that can so often cause a problem.

You know, there was a leak in my district. A lot of attention was focused on that, but immediately then the national attention swung elsewhere as we recognized thousands being evacuated in different communities and it showed a need for this kind of legislation.

So I think that the Kanawha Valley has been a leader in putting together this community right-to-know and emergency response provisions.

At this time, Mr. Speaker, I would like to thank the gentleman from New Jersey, Congressman GALLO, who joined with me in drafting much of this legislation that is now being voted upon today.

Another important provision is that for the first time the Federal Emergency Management Agency will be able to assist local communities in developing emergency response plans with both training and equipment.

For the first time, there is a $5 million a year program to provide grants that should help these.

Mr. Speaker, I am also pleased that some agreement has been based on the taxation parts, because we cannot have a Superfund bill that taxes our chemical industry out of existence. Happily, this one does not. An agreement has been reached, and for the first time there is a beginning, the concept at least of a beginning of a broad-base tax that can be applied to all industries and so all users of chemical products, not just the chemical producers themselves, will pay this tax; so the burden will not fall unfairly on the chemical industry.

So for the first time look at what we have, a broad-base tax which I think is important. We have emergency right-to-know, community right-to-know provisions, guaranteeing that every community has a right to know what is being produced, and significantly, we have emergency response provisions guaranteeing that every community will have an emergency response plan. I think we have come a long way and I fully support this bill.

□ 1530

Mr. HOWARD. Mr. Speaker, will the gentleman yield?

Mr. ROE. I yield to the distinguished chairman of the Committee on Public Works and Transportation, the gentleman from New Jersey [Mr. HOWARD].

(Mr. HOWARD asked and was given permission to revise and extend his remarks.)

Mr. HOWARD. Mr. Speaker, I wish to thank everyone who worked on this legislation, especially the gentleman from Michigan [Mr. DINGELL], and also certainly the two champions of this legislation, Mr. ROE and Mr. FLORIO, from my own State of New Jersey.

Mr. Speaker, I rise in support of this legislation.

Mr. Speaker, a lot of people in this Nation will breathe a sigh of relief that the Superfund conference report is finally complete and ready to be brought before the House.

The conference report had a difficult road. In this body alone, the Superfund bill was referred jointly to two committees and sequentially to three others for the program aspects before reaching the Ways and Means Committee. The whole process was difficult for everyone involved.

I want to commend Mr. ROE, the chairman of the Subcommittee on Water Resources, for his diligent and strenuous efforts on this bill. He deserves congratulations for his work, as does the subcommittee staff.

However, we have finally reached the point where congressional action can be completed. The conference report is not everything that those of us committed to a strong environmental bill would have wanted but it does represent a major step forward in the toxic waste cleanup effort. I am pleased to have been a conferee and to have been involved in the development of this important legislation.

My main concern is that this bill will get the program moving again. For several years, there was a failure to implement the Superfund law of 1980 as intended by the Congress until the Committee on Public Works and Transportation took action against the Environmental Protection Agency. Just when it appeared that EPA was finally serious about administering the program, the authorization expired.

The problem that faces us is enormous. The Office of Technology Assessment estimates that there are 20,000 toxic waste sites around the Nation. The National Priorities List established by EPA contains less than 900 sites. It is time to get moving.

As a Member from the State with the most sites on that priorities list, I am acutely aware of the public demand to take action. It is not a matter of pointing fingers at the cause of the delay. It is a matter of a serious threat to public health, to the environment and water supplies that demands rapid and tough cleanup action.

This conference report will provide the mechanism for that cleanup. It authorizes $8.5 billion over 5 years for cleanup—more than five times the current program. It sets new standards to be met in cleaning up the site and it will extend the Superfund Program to the Nation's military bases.

It also includes a strong community right-to-know section that will require reports to local authorities on the use, transportation and storage of hazardous materials. It sustains the right of American citizens to know what toxic materials are in their neighborhoods.

Finally, I want to state that we expect EPA to implement this law. We will not accept any excuses this time for failure to move forward on the cleanup of Superfund sites. I intend to use the oversight authority of the Committee on Public Works and Transportation to see that the intent of Congress is followed. We acted against EPA before and we will do it again.

If implemented properly, H.R. 2005 can provide the proper resources and standards for the toxic waste cleanup effort. It has been a long time coming but it is the type of bill that the American public demanded.

The SPEAKER pro tempore (Mr. PANETTA). The gentleman from Kentucky [Mr. SNYDER] is recognized for 17½ minutes.

Mr. SNYDER. Mr. Speaker, I yield 2 minutes to the gentleman from Minnesota [Mr. STANGELAND].

Mr. STANGELAND. Mr. Speaker, I thank the gentleman for yielding time to me.

Mr. VOLKMER. Mr. Speaker, will the gentleman yield?

Mr. STANGELAND. I yield to the gentleman from Missouri.

Mr. VOLKMER. Mr. Speaker, I rise in support of the conference report on Superfund that is before us today. As we all know, this is an important toxic waste cleanup program. It is past time to seriously clean up the thousands of waste sites, including those in Missouri.

This conference agreement improves several parts of our Superfund Program, especially those that require cleanups necessary to protect public health and the environment.

Mr. STANGELAND. Mr. Speaker, it is with great personal pleasure and a certain element of relief that I rise in support of the conference report accompanying H.R. 2005, the Superfund Amendments and Reauthorization Act of 1986.

Mr. Speaker, I am sure that all of the Members of this and the adjoining body are aware of the great effort that has been required to bring this legislation to a successful resolution. The issues we were asked to resolve were both technically difficult and highly divisive. Strongly held positions separated not only the House and Senate but, at times, pitted individual Members of one body against other Members of that same body. In all, Members from six House committees and three Senate committees wrestled with the difficult issues in the bill for months, during which time funds for the program were nearly exhausted on a number of occasions.

Despite our differences and despite the complexity of the issues, or per-

haps because of them, we have achieved a significant victory not only for this body but for the Congress and the Nation as a whole. We have almost entirely rewritten and expanded the Superfund Program in a way that not only promises stringent environmental protection for all Americans but in a way that is fair to all parties concerned, including agriculture, business, labor, and industry.

A great measure of our success is due to the strong, resourceful, and dedicated leadership of the conference from both the House and Senate. I would like to take this opportunity to express my appreciation to the chairman of the conference, the gentleman from Michigan, Mr. JOHN DINGELL, who had the difficult task of trying to develop a comprehensive and cohesive package out of a crazy quilt of ideas and interests. I also want to express my thanks to all of the other House conferees that labored tirelessly through endless sessions of conference and subconference meetings, where agreements were hammered out.

Special thanks go to the gentleman from Kentucky, Mr. GENE SNYDER, the ranking Republican member of the House Committee on Public Works and Transportation, and to the gentlemen from New York, Mr. NORM LENT, the ranking Republican member of the Committee on Energy and Commerce, for their untiring effort to develop constructive, commonsense solutions on some of the toughest issues. Also, the gentlemen from Ohio, Mr. DENNIS ECKART deserves special mention as the Member who is probably most responsible for the way many of the issues in this bill were resolved. Also deserving of our commendation are the gentleman from Washington, Mr. AL SWIFT, for his work on community right to know, and the gentleman from Kansas, Mr. DAN GLICKMAN and the gentleman from Ohio, Mr. TOM KINDNESS, for their contributions to the judicial issues.

I also want to express my appreciation to the leadership and members of the Senate conference committee, particularly to Senators STAFFORD and BENTSEN for their patience and judgment in this long legislative process. Finally, I would be remiss if I failed to mention the major contributions made by the chairman of the Committee on Public Works and Transportation, JIM HOWARD, the chairman of the Subcommittee on Water Resources, BOB ROE, and also the gentleman from New Jersey Mr. JIM FLORIO. These gentlemen served as the conscience of the conference, constantly urging us to strive for the goals of environmental protection that are reflected so well in the conference report before us today. Staff as well, spent long hours. A special thanks to Errol Tyler and John Doyle of the Water Resources staff.

Mr. Speaker, this is a sound bill, offering major improvements in virtually all aspects of the existing Superfund law. While time would not permit me to go through all of the changes that I endorse, I feel obliged to mention some of the bill's major accomplishments.

First of all, the program we are recommending represents a major increase in program funding. The original law authorized a 5-year, $1.6 billion program. Today, we bring before this body a bill that authorizes almost six times as much for the next 5 years. In my own view, the amount authorized by this bill is at the absolute limit, and may be beyond what the EPA can reasonably manage. Nonetheless, I believe we must demonstrate this country's commitment to solving our hazardous waste problems.

Perhaps more controversial than the level of funding has been the question of the source of funding for the program. In the past, the overwhelming source of the fund's revenues has come from feedstock taxes imposed on the American petroleum and chemical companies. This has been because of our commitment to the principal that those responsible for the problem should be required to pay for its cleanup.

However, a five or sixfold increase in feedstock taxes would result in a serious, and many would say, crippling burden on the American petrochemical industry. Furthermore a review of the wastes found at Superfund sites discloses that these sites are often repositories of wastes from a broad spectrum of American industry, including manufacturing, food processing, and service-related industries. Accordingly, the conference agreement adopts a funding mechanism that seeks to broaden somewhat the cost of the program among a wider segment of our economy. I believe the plan that has been developed by the Senate Finance and House Ways and Means conferees is both fair and effective and I would urge my colleagues in the House to accept it and the President to approve it.

Perhaps the most criticized aspects of the first 5 years of the Superfund Program has been the abysmally slow pace of cleanups. In 5 years, only a handful of sites were cleaned up to EPA's satisfaction and, of those, at least one wound up leaking even after it was supposed to be cleaned up. I realize that this slow pace is due to a variety of factors, many of which are not the fault of EPA. Nonetheless, I and most of the other conferees felt that mandatory, but realistic, cleanup schedules were essential in a reauthorization package. I am happy to report that the conference agreement includes schedules which I helped develop with those ends in mind. While the schedules are not as demanding as some may have preferred, they nonetheless provide a realistic yardstick against which progress can be measured. I view the schedules as the minimum pace that EPA must be held accountable for. I would urge and expect them to do more than our bill requires. However, I realize that imposing a tougher schedule as an absolute legal requirement could be counterproductive—binding the Agency's hands and resulting in delay through litigation.

Another aspect of the program that had been criticized was the lack of any mandatory cleanup standards applicable at Superfund sites. Admittedly, each Superfund site is different from every other site and it is difficult to prescribe uniform standards that make sense in every case. However, we felt that it was important to require all cleanups to comply with uniform minimum requirements of "how clean is clean." For the most part, we have built in language from the House bill that was originally developed through EPA's regulatory process. We would require that in almost all cases, cleanups comply with legally applicable or relevant and appropriate Federal or State standards or criteria. The bill contains specific exemptions from this basic requirement for limited situations where the application of Federal or State standards might frustrate the goals of the act or would be clearly inappropriate. In all cases, however, EPA must select remedial actions which are protective of human health and the environment, are cost effective and, to the extent practicable, utilize permanent solutions and alternative treatment or resource recovery technologies.

The bill makes major improvements intended to stimulate settlements under which those responsible for placing hazardous waste at Superfund sites would agree to undertake cleanups. These improvements were absolutely essential to halt the unconscionable drain on resources being consumed by litigation. They were also essential because of the gradual disappearance of liability insurance coverage for Superfund related environmental risks. To achieve these ends, the conference report contains authorization for a settlement process under which EPA can employ an enforcement moratorium coupled with a nonbinding allocation of responsibility to facilitate settlements. In addition, the conference report specifically authorizes EPA to issue covenants not to sue to limit in specified circumstances, the liability of a party who enters into a settlement agreement.

One of the major new initiatives of this bill is the comprehensive new program to ensure that communities are given the information they need to react to the environmental risks posed

by toxic and hazardous chemicals. These provisions call for creation of State and local emergency planning organizations which would be provided with essential information concerning the amount and location of hazardous substances in their area. This information would be used to develop emergency plans to allow quick and effective response to environmental threats. This is an extremely ambitious new program and one that I believe should have been initiated on a somewhat more limited basis. It is a program, however, that all of us recognize needs to be started as quickly as possible. If we have to live in a society where hazardous chemicals are routintely manufactured and transported, we should all be apprised of the risks those chemicals may pose.

Another bold initiative included in the bill is an expanded program for cleanup of leaking underground storage tanks. The 1984 amendments to the Solid Waste Disposal Act authorized a regulatory program to address the problem of leaking underground storage tanks, including petroleum tanks which are not covered by Superfund. Under the amendments included in the conference report, the existing regulatory program is expanded upon to authorize EPA to require the owner of an underground petroleum tank to undertake cleanup if the tank should fail or allow EPA to undertake the work if the tank owner or operator can't or won't clean up the leak. A new $500 million fund would be established through a one-tenth of a penny per gallon tax on motor fuels to pay for cleanups undertaken by EPA. This is a significant new program that will greatly enhance society's ability to react to a growing national problem.

These are but the most significant aspects of the bill we bring before the House today. Major achievements in other areas include new initiatives in the area of research, development and training, public health authorities, cleanups at Department of Defense and other Federal facilities, reform of State procedural laws and change affecting methane recovery and ocean incineration activities. With respect to this last point, I note that the statement of managers accompanying the conference report comments on EPA's recent decision to promulgate revised ocean incineration regulations prior to issuing any research or operational permits. The conference report directs that these regulations be issued promptly. After three environmental impact statements, a five-volume environmental study, nine research burns and eight public hearings, there is no reason for EPA to delay issuing the final regulations. The regulations should be issued immediately, without reproposal and without any further regulatory negotiation process.

The statement of managers accompanying the conference report also states that the administrator shall establish evidence of financial responsibility for ocean incineration commensurate with that appropriate for activities with similar risks. In this regard, the Congress has established appropriate levels of financial responsibility for land incineration and for the ocean transportation of hazardous chemicals. If these activities are, in fact, similar to ocean incineration, then there should be no further question concerning the appropriate level of financial responsibility.

I realize that in a bill as lengthy and as complex as this there will be much that individual Members can find fault with. There are provisions in this conference report which I am not happy with myself. I also am sympathetic to the views expressed by those who argue that this bill may be a bit of a reaction to the sins of the past—that we should have kept a little more of EPA's discretion in the program. However, I realize that cleaning up this country's toxic waste is the most important environmental task with which we in Congress are confronted. We must move forward with vision to seek the solutions that will allow our children to live and play in a safe and healthy environment, while at the same time ensuring that the engine of American industry is not stifled by burdensome restriction and unnecessary costs.

Mr. SPEAKER, I believe this bill fundamentally achieves these goals. This legislation fulfills the promise of the original Superfund law. It converts a troubled, hesitant program, riddled with scandal and confusion, into what can truly be called a comprehensive environmental restoration, compensation and liability act. Therefore, I urge my colleagues in the House to join me in approving the conference report. It is, on balance, an excellent bill deserving of our support.

I realize that the President has expressed some concerns about the funding mechanism for this bill. I hope that after careful review he finds the bill as on balance as I do. We need to get this program moving again and do so quickly. This ur support.

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I realize that the President has expressed some concerns about the funding mechanism for this bill. I hope that after careful review he finds the bill as on balance as I do. We need to get this program moving again and do so quickly. This bill does that and, therefore, I support without reservation.

Mr. SNYDER. Mr. Speaker, I yield myself such time as I may consume.

(Mr. SNYDER asked and was given permission to revise and extend his remarks.)

Mr. SNYDER. Mr. Speaker, I rise in reluctant support of the conference report on H.R. 2005, the Superfund Amendments and Reauthorization Act of 1986.

The road to Superfund reauthorization has been long and torturous. Past problems at EPA, and ongoing controversy surrounding Superfund made our task difficult from the very beginning. As the conference unfolded, our task became even more difficult because of the large number of players involved, the sheer complexity of the issues, political grandstanding, pride of authorship, and the hidden agendas of certain staff members, especially in the other body.

I wish that I could stand here today and tell you to vote for H.R. 2005 because it is a good bill. But, in good conscience, I cannot do so. Even though the bill contains some good provisions, the final product is far from perfect. In fact, it is schizophrenic in nature. Let me cite a few examples of its dual personality.

Although the bill promises to speed up the cleanup of toxic waste sites, it contains a myriad of new requirements and cumbersome procedures which virtually assure that the cleanup program will strangle itself in redtape, especially during the next 2 or 3 years as EPA first attempts to implement it.

Although the bill promises to spend $8.5 billion on cleanups over the next 5 years, this level of funding is far higher than EPA says it can spend and far higher than Congress is likely to appropriate given the current state of the Federal deficit.

Although the bill sets clear goals and schedules for EPA to meet, those goals and schedules are ofter unrealistic. Moreover, the bill gives citizens and other interested parties the legal and procedural tools to upset and rearrange any management priorities that EPA might establish, thereby assuring that the goals and schedules will not be met.

Although the bill gives citizens the right to know about dangerous chemicals in their communities, it establishes a right-to-know program that has the potential to inundate unsuspecting communities with so much information that it will be virtually useless. The really important information will be buried in an avalanche of paperwork.

I could go on, but I think I have made my point. Sad to say, this bill is not all that it is built up to be.

Notwithstanding my objections to the legislation, I am going to urge you to vote for the Superfund reauthorization bill.

My reasons for doing so are threefold: First, the Superfund Program—which has almost been completely shutdown for the past year—desperately needs to be reauthorized. Second, given all of the controversy and the political grandstanding surrounding the bill, Congress probably would not do any better next year. And finally, it is probably good politics to vote for Superfund, even though the bill is flawed. This is one of those unfortunate times when good politics and good legislation don't coincide.

Mr. Speaker, my comments should not be construed as being critical of our conferees.

In fact, given the difficulties involved, I think the conferees did an admirable job. Our success in getting a bill approved—no small accomplishment, I might add—was due in great measure to the tenacious and conscientious leadership of conference chairman JOHN DINGELL. He guided the conference with reason, efficiency, and a dogged determination to get the Superfund Program back on its feet.

I would also point with great appreciation to the extremely important contributions of NORM LENT, who so ably represented the Republicans on the Energy and Commerce Committee; and DENNIS ECKART, Who played a major leadership role in the forging the substantive compromise on this very complex piece of legislation.

Mr. Speaker, I would also be remiss if I did not thank our Public Works Committee Chairman JIM HOWARD, our Water Resources Subcommittee Chairman BOB ROE, and our subcommittee ranking minority member ARLAN STANGELAND for their work on Superfund. They were instrumental in the development of the public works version of the bill, and played an important role in the Superfund reauthorization process.

Yet, it is that very complexity that flaws the legislation. Despite the best and most diligent efforts by most of our conference members and staff, the compromise bill on which we finally agreed is so thoroughly complicated, it will be difficult if not impossible to administer. Because it is a compromise of so many interests, almost every provision is convoluted and complex.

Perhaps that might have been expected from the involvement of six House committees, several Senate committees, and a host of interest groups. In any case, it matters little who will be charged with administering the program from this point on. Whether the Environmental Protection Agency Administrator is Lee Thomas or another Reagan administration appointee or a Democrat or Republican in future administrations, Congress is going to have a field day calling him or her to Capitol Hill to berate EPA for not being in compliance with the act.

Sad to say, the sins of the past will continue to haunt EPA as it attempts to effectively administer this critically important program. The complexity of the legislation before us is in part an outgrowth of the mismanagement that characterized the Superfund Program for a period of time. Suspicion and distrust of EPA's handling of Superfund lingers on both in and out of the Halls of Congress. Responding to frequent pressure not to trust EPA to do the job right, Congress has stepped in and prescribed in detail how the Superfund Program should be managed.

In so doing, we have compounded the problem, not relieved or solved it. We in Congress do not have the expertise or the information needed to properly manage the EPA, nor should we be trying to do so in the first place.

It would have been far better if we had simply given EPA clear guidance as to what we wanted to achieve with the program, while leaving the agency with discretion to deal with the problems that arise. Instead, we have in this legislation tried to prescribe a specific response to meet every possible contingency. In the process, we are binding the hands of the agency and will actually impede the level of program implementation we are seeking.

Actually we started this whole process with an imperfect product. The original Superfund bill was poorly drafted to begin with, and what we have done is make it worse. For instance, the Supreme Court, in a 1986 decision, said that the first Superfund bill was "not a model of legislative draftsmanship." It characterized one provision dealing with contribution to the fund as "at best inartful and at worst redundant." Again, a 1984 U.S. district court in Illinois concluded tht the statute was "hastily and inadequately drafted."

And one of our former Public Works and Transportation Committee colleagues, and at the time ranking minority member of the committee, Congressman Bill Harsha, was pretty blunt in his assessment of the act. He complained that the final version was vague and internally inconsistent to such an extent that, in his words, "the bill is not a Superfund bill—it's a welfare and relief act for lawyers."

Well, Bill Harsha was right. Superfund has been a relief act for lawyers, and it is going to get worse as a result of the bill before us today.

Yet, with all of the baggage this legislation carries. It is of overriding importance that we get the Superfund Program back on track. Therefore, in the interest of getting this program moving again and releasing the $8.5 billion for Superfund itself and another $500 million for the leaking underground storage tank program, I will vote for the bill.

The American people want these toxic waste sites cleaned up, and they want their underground water supplies free of contamination and the threat of contamination posed by leaking underground tanks. That is clearly what our citizens demand and what they have every right to expect.

Mr. Speaker, at this point I would like to make a few points about some of the provisions in the bill. However, in doing so, it is not my intent to undermine in any way the conference report on H.R. 2005, or the statement of managers accompanying such report.

I was surprised and dismayed by the legislative history created by the other body in Friday's CONGRESSIONAL RECORD—page S 14895 to S 14938. I was surprised because the vast majority of the "legislative history" was not actually spoken on the floor of the other body. The total debate time was only 30 minutes and very little of the actual debate dealt with the specifics of the legislation. Yet the CONGRESSIONAL RECORD is filled with what would have been hours and hours of debate. Almost all of this detailed explanatory material was simply inserted in the RECORD and was not actually brought to the attention of the Members of the other body before they voted on the Superfund Reauthorization Act.

I was dismayed by the other body's legislative history because so much of it was at variance with the conference report and the statement of managers. Many of the issues raised in the statements were issues that were raised in conference and rejected by the conferees. Obviously some staff members who were unable to persuade a majority of the conferees to accept particular statutory language have succeeded in having inserted in the legislative history statements favorable to their position, in the hope that a court will be persuaded to construe the statutory language in light of these statements. I hope that the courts will not be fooled by this tactic and will rely instead on the conference report and the statement of managers.

Let me cite just one example of how outrageous the Senate floor statements are. On page S 14917, during a discussion on the 30-day window on the effective date of the cleanup standards provision, the following statement is made:

> This requirement places a nondiscretionary duty on the Administrator, carrying out the responsibility of the President under section 121, to apply the requirements of section 121 in selecting remedial actions during the 30-day period following enactment.

With due deference to the views of my colleagues in the other body, I must take strong exception to this statement. The conference report reads in pertinent part:

The ROD was signed, or the consent decree lodged, within the 30-day period immediately following enactment of the act, the Administrator shall certify in writing that the portion of the remedial action covered by the ROD or consent decree complies *to the maximum extent practicable* with section 121 of cercla. [*added*]

The statement of managers reads as follows on this issue:

The requirements of section 121 apply *to the maximum extent practicable* to a remedial action for which the record of decision is signed (or the consent decree is lodged) within the 30-day period immediately following enactment of the act, and the EPA Administrator must certify in writing that such requirements have been complied with *to the maximum extent practicable.* [Italic added.]

Thus, it is clear in both the conference report and the statement of managers, that the requirements of section 121 apply only "to the maximum extent practicable" during the 30-day period immediately following enactment. Yet, notwithstanding this language, the Senate floor statement would have you believe that the Administrator is under a nondiscretionary duty to apply the requirements of section 121 during this 30-day period. This is nonsense. The requirements of section 121 only apply "to the maximum extent practicable" during this period.

What makes the Senate statement even more egregious is that the Senate staff had argued long and hard during the conference that the requirements of section 121 should apply without qualification during this period. They lost this battle. The conferees rejected their arguments and agreed to a 30-day window. Yet it is apparent that the Senate staff did not feel constrained by the decision of the conferees and succeeded in getting language in a floor statement which tries to undo this decision. I am sure that EPA and the courts will pay little attention to this blatant attempt to accomplish in a floor statement what could not be accomplished in conference.

I am not going to take the time of the House to rebut each and every statement of the other body. I will assume that the courts will see through the transparent ploy of the other body.

At this point, let me proceed with a discussion of some of the major provisions in the conference report.

I would like to start with one of the most important sections of the bill—section 121. This section provides a comprehensive approach to remedy selection at Superfund sites. As one of the two House conferees assigned to a subconference to work out the differences between the House and Senate versions of section 121, I feel especially well qualified to comment on this provision.

Section 121 accommodates congressional desire for more permanent, effective remedies at sites, while maintaining the EPA Administrator's flexibility to select the more appropriate remedy at a specific site. The section outlines four basic requirements in selecting remedial actions at Superfund sites. The remedial action must:

Protect human health and the environment;

Be cost effective;

Utilize permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable; and

Meet applicable and relevant or appropriate standards, requirements, criteria, or guidance under Federal or State environmental laws.

The language expresses a strong preference for the permanent reduction of the mobility, toxicity, or volume of hazardous substances through the use of treatment.

In making remedy selection decisions at a specific site, the Administrator should, at a minimum, evaluate the various alternatives on the following factors: cost, reliability and long-term effectiveness, residual public health risk, ability to implement, and short-term impacts.

Section 121(d) establishes the baseline level of protection for all remedial action selected or approved under Superfund. Any standard, requirement, criteria, or limitation under Federal environmental statutes or any more stringent State standard, requirement, criteria, or limitation which was duly promulgated pursuant to State law, must be met at Superfund cleanups if such requirement is legally applicable or relevant and appropriate under the specific circumstances of the release. The Administrator may waive those requirements if certain enumerated conditions are met.

Mr. Speaker, notwithstanding the statements made in the other body, the cleanup standards section of the bill preempts Federal and State cleanup standards and Federal and State permitting requirements under other Federal and State environmental laws. The laws themselves are preempted, but the Federal and State standards are to be applied through section 121. The waivers provided in section 121, particularly the fund-balancing waiver, show that the other Federal and State statutes cannot as a matter of law apply to these actions taken under CERCLA, but they serve rather as a source of standards to determine how clean the sites must be.

The ability to disregard State siting requirements in certain limited circumstances also shows that those State laws are to be used as a source for the remedy determinations under this law, but are in fact preempted by it. The provision for conducting onsite cleanups without permits is another example of how this statute preempts the others while utilizing them to help determine the extent of the cleanup under this statute.

Finally, subsection (d) requires the Administrator to meet the requirements of State facility siting laws, except where they could effectively result in the statewide prohibition of land disposal. Any substantive objective criteria of State siting laws should be applied to Superfund cleanups in the context of the remedial investigation/feasibility study and does not require a siting board review or other administrative process.

This section also provides for the selection of more permanent remedies. It expresses a strong preference for remedial action in which a principal element is the permanent and significant reduction of the volume, toxicity, or mobility of the hazardous substances. It requires the utilization of permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable. These requirements are not to be taken lightly; in the future, remedies will be more permanent. However, this language should not be read to constrain the Administrator's flexibility in selecting a cost-effective remedy appropriate for the specific site.

This preference for remedies incorporating permanent solutions and alternative treatment technologies means that such remedies should be selected to the maximum extent practicable. In determining whether these remedies are practicable, the Administrator may take into account technical feasibility, cost, State and public acceptance of the remedy, and other appropriate criteria of practicability.

In conclusion, let me emphasize that although this section sets forth strict requirements, it does not direct the selection of foolish, costly remedies where alternative cost-effective remedies provide comprehensive protection of public health and the environment. As long as cleanup officials have adequate flexibility to use their professional judgment, this section represents a significant improvement over the 1980 Superfund law, which contained no cleanup standards.

The bill also makes important changes to strengthen health-related authorities and encourage research, development, and training in hazardous waste management. The Agency for Toxic Substance and Disease Registry must prepare toxicological profiles on chemicals commonly found at Superfund sites and research the effects of exposure to each such chemical. The new law also calls for health assessments at every cleanup site. In

addition, the bill provides a new program of research into the safe storage, transport and destruction of hazardous wastes, and establishes university hazardous substance research centers to utilize the talents and resources of our Nation's academic institutions. H.R. 2005 also provides for a workers training program to ensure the safety of workers and surrounding communities.

Provisions regarding settlements and response action contractor are among the bill's most valuable contributions. Unlimited, retroactive liability under Superfund has led to a litigation explosion and, in turn, a liability insurance crisis. The settlements and cleanup contractor sections are positive steps toward the goals of less litigation, more available insurance, and faster, more effective cleanups.

For the first time, EPA is expressly authorized to enter into cleanup settlements allowing potentially responsible parties to conduct cleanups. All settlements become embodied in consent decrees entered before Federal courts where interested parties have the opportunity to review and comment on the final cleanup plans. EPA is also directed to seek separate settlements with small—de minimis—contributors. EPA's negotiation procedure, which includes enforcement moratoria and nonbinding allocations of responsibility, will minimize unnecessary litigation, facilitate negotiations and expedite cleanup.

The bill establishes a Federal standards of negligence for Superfund cleanup contractors. In other words, cleanup contractors are exempt from liability under Federal law unless they are negligent, grossly negligent, or engage in international misconduct. In addition, EPA may indemnify contractors for negligent acts if the contractor cannot obtain adequate insurance or indemnification from the responsible party. These important changes to Superfund's current liability scheme should help to make insurance available again, so that contractors can return to the business of cleaning up sites.

H.R. 2005 makes additional revisions to the Superfund liability scheme in other areas to promote fairness and wise environmental policy. "Innocent" landowners who unknowingly acquired contaminated property now have an affirmative defense to Superfund liability. Methane gas recovery operators receive special treatment as well, in recognition of their important work, which the current liability scheme often discourages. Service stations dealers who recycle used oil now have a similar exemption from the potential imposition of strict, joint and several liability under Superfund. This important change will clearly benefit the environment by creating incentives for oil recyclers and by discouraging "do-it-yourselfers" from disposing of oil improperly.

H.R. 2005 makes another improvement to current law by recognizing the unique features of special study wastes, such as fly ash. The Administrator must revise the hazard ranking system as it applies to facilities that contain substantial volumes of fly ash and other waste discussed in section 3001(b)(3)(A) of the Solid Waste Disposal Act that relate to the combustion of coal or other fossil fuels so that such facilities receive appropriate consideration of their site-specific characteristics. The provision improves current law by requiring EPA to focus on the concentration of hazardous constituents in—rather than the sheer volume of—fly ash when adding sites to the national priority list.

Despite these improvements, however, H.R. 2005 has some provisions which cause serious concern. For example, the funding provisions will result in a more than 500-percent increase in the amount of Federal tax revenues being dedicated to the Superfund program. The 1980 statute authorized $1.6 billion for 5 years; in stark contrast, H.R. 2005 authorizes $8.5 billion over the same period of time plus an additional $500 million for leaking underground storage tanks. This represents a quantum jump and is $3.5 billion more than the $5 billion level requested by the President. Because of technical and resource constraints at EPA, the extra $3.5 billion probably will not achieve more clean ups. Instead, as the agency itself recognizes, we may be merely throwing more money at the hazardous waste problem without increased benefits to the environment.

Another problematic area involves citizen suits and legally enforceable schedules and requirements built into the statute. Fortunately, the conferees deleted the so-called "third leg" of the House's citizen suit provisions which created an action for "imminent and substantial endangerment." This change will help to return the implementation and enforcement of Superfund to EPA and other appropriate agencies rather than the courts without depriving citizens of their right to sue polluters under other statutes.

Experience with other environmental laws such as the Clean Water Act has painfully shown that mandatory schedules, if unrealistic, only delay clean ups as more and more of the Agency's responses are spent defending lawsuits rather than doing clean up and enforcement work. Fortunately, the conferees substantially revised the unrealistic schedules contained in earlier versions of the House-passed bill. In the conference compromise, EPA must ensure that clean up begins at no fewer than 375 sites during the next 5 years. Other provisions set binding timetables for initiation of cleanup planning studies.

Even with the revised schedules, however, I am concerned that the bill's legally enforceable requirements, coupled with citizen suit provisions, will ultimately harm the Superfund Program. The cumulative load of deadlines throughout the bill may "set up" EPA, States, and others for failure which will, in turn, breed endless litigation and disrespect for the law. We must avoid imposing unrealistic requirements that result in courts—rather than EPA—running the Superfund Program. I hope, Mr. Speaker, this new bill will not set up an unhealthy spiral of missed deadlines, lawsuits, congressional distrust, more deadlines, more missed deadlines, more lawsuits, ad infinitum. If it does, then Congress should expect to revisit the whole issue again very soon.

Another troublesome area of the bill relates to the savings clause in title I of the Marine Protection, Research, and Sanctuaries Act, the Ocean Dumping Act. Section 127 provides a narrow amendment to section 106 of the Ocean Dumping Act, but in doing so does not completely overturn *Middlesex County Sewerage Authority* v. *National Sea Clammers Association*, —— U.S.—— (1981). In Sea Clammers, the Supreme Court held that the comprehensive regulatory scheme of the Ocean Dumping Act preempted Federal common law nuisance actions seeking abatement of or damages for ocean dumping. Just as importantly, however, the court ruled that the Ocean Dumping Act and the Clean Water Act, which expressly authorize citizen suits for statutory violations, do not implicity create any right of action for private parties to seek money damages. This amendment does not in any way disturb the latter holding.

Nor does the amendment affect the well-established rulings of Milwaukee I, II, and III involving the Clean Water Act. Taken together, these decisions hold that in interstate water pollution disputes a downstream plaintiff State may not apply Federal common law, nor the State common or statutory law of the downstream State against an upstream State with EPA-approved water pollution control requirements. In Milwaukee II, the Supreme Court held that the "all encompassing program of water pollution regulation" under the Clean Water Act preempted the Federal common law of nuisance. Section 127 does not in any way overturn this wise decision. Interstate water pollution should be and will remain to be the subject of uniform Federal law and not the conflicting laws of various States.

In summary, section 127's amendments to the Ocean Dumping Act are narrow in scope, leaving intact much of Sea Clammers and all of Milwaukee

I, II, III. To suggest that an amendment in the superfund bill implicitly extends to the Clean Water Act is not only implausible, but clearly beyond the specific intentions of the conferees. The conferees leave undisturbed the well-established principles of the Milwaukee cases. To do otherwise would be to distort completely the congressional purpose underlying the Clean Water Act. As stated by the Supreme Court:

> Congress has not left the formulation of appropriate federal standards to the courts through application of often vague and indeterminate nuisance concepts and maxims of equity jurisprudence, but rather has occupied the field through the establishment of a comprehensive regulatory program supervised by an expert administrative agency.

City of Milwaukee v. *Illinois*, 451 U.S. 304, —— (1981). Today Congress leaves this comprehensive regulatory mechanism intact and does not in any way imply that Federal common law remedies are available to supplant or supplement remedies already available under the Clean Water Act.

The community right-to-know provisions also cause me a great deal of concern. In fact, I was so concerned that I refused to sign the portion of the conference report related to community right-to-know. I fully recognize the importance of and need for a comprehensive program to provide communities and emergency response personnel with detailed information about chemical threats. Clearly, citizens and responsible health officials have a basic right to know about the presence and characteristics of chemicals within their community and regulatory jurisdiction. Just as important, however, is the need to establish a reasonable and workable program that does not create a massive and unnecessary flow of paper. Thus, I am pleased that the conferees clarified the vague language added on the House floor which established burdensome reporting requirements for emissions of chemicals presenting "chronic" hazards to health.

Despite this and other improvements to the House and Senate passed bills, I have some major concerns, however, about other provisions in the community right-to-know title of the final conference report. Title III of H.R. 2005 calls for a complex array of new and potentially overlapping reporting requirements. In our effort to include provisions of both bills, we may have created an unworkable compromise. Certain facilities will have to file at least three kinds of reports for use by fire departments, local emergency planning committees, State emergency response commissions, environmental agency personnel, and the public. Despite our good intentions, we may have established a program with so many different lists of chemicals and reporting requirements that it collapses from its own weight.

In order to give my colleagues a better idea of why I am so concerned about the community right-to-know title, I would like to pose a series of "questions" and "answers" to help clarify the issues.

Question. With respect to emergency planning, is it true that we require the local emergency planning committees to prepare comprehensive emergency evacuation plans for the so-called CEPP list of 401 chemicals, as well as any chemicals that EPA may add to the list on the basis of the criteria set forth in the bill? Is it true that this requirement applies to all businesses, regardless of size, that have more than the threshold planning quantities of these chemicals?

Answer. The answer to each of these questions is "yes".

Question. Now, with respect to emergency notification, is it true that we require that the local committees be notified of any reportable releases of the cercla hazardous substances (roughly 700 chemicals) as well as the 401 CEPP chemicals? Is it true that this requirement also applies to all businesses, regardless of size? Is it true that the local committees must also be supplied with followup emergency notice for each reportable release?

Answer. The answer to each of these questions is "yes".

Question. With respect to the MSDS requirements, is it true that the MSDS requirements apply to any facility which is required under OSHA regulations to prepare or have available to MSDS, and that it is estimated that some 50,000 to 60,000 substances might be covered? Is it true that we require that the local committee be supplied with either a copy of the MSDS for each chemical or a list of the chemicals? Is it true that some plants may have, on the average, up to several thousand MSDS's? And is it also true that, in some instances, other types of facilities may have up to 40,000 or more MSDS's? Is it true that as a practical matter many of these MSDS's would be submitted to the local committee if requested by any citizen, even if that person happens to work for a competitor?

Answer. The answer to each of these questions is "yes".

Question. With respect to the emergency and hazardous chemical inventory form, is it true that any facility to which the MSDS requirements apply must also provide so-called Tier I aggregate information by OSHA categories for all of these chemicals? Is it true that the facility, if requested by a member of the public, for whatever reason, must provide the more specific Tier II information on a chemical-by-chemical basis for any hazardous chemical stored at the facility in excess of 10,000 pounds? Is it true that the more specific Tier II information must also be provided for hazardous chemicals stored in amounts less than 10,000 pounds if requested by the local committee (either on its own initiative or in exercising its discretion to honor requests from the public)?

Answer. The answer to each of these questions is "yes".

Question. Now, with respect to the toxic chemical release form or the so-called emissions inventory, is it true that we also require certain facilities to supply emissions inventory data on "toxic chemicals"?

Answer. The answer to this question is "yes".

Question. Is it true that the list of chemicals for emergency planning, and the list of chemicals for emergency notification, and the chemicals subject to the MSDS requirements, and the list of chemicals for the emissions inventory are all different?

Answer. The answer to this question is "yes".

Question. Is it true that the state and/or the local committee must make all the emergency plans, all of the followup emergency notices, all of the MSDS's which are submitted, all of the Tier II inventory forms which are submitted, and all of the emissions inventory forms available to the public during normal working hours?

Answer. The answer to this question is "yes".

Question. Do we give the states and local committees any resources to help carry out these requirements?

Answer. The answer to this question is "no".

In summary, Mr. Speaker, I have reservations about certain aspects of H.R. 2005, but support the bill as a whole. Notwithstanding all of its shortcomings, the legislation does have considerable potential, if everybody can resist the temptation to politicize the situation. This has clearly been a politically and emotionally charged bill. Rather than concentrating on drafting something that is good and makes sense, everyone is afraid of how it will be perceived by this segment or that segment of our society.

Since I will be retiring at the end of this Congress, I will not have to face the issues surrounding the Superfund Program and the impact this legislation will have. I must, however, express as strongly as I can my belief that we should stop playing politics with this program. We need to stop using EPA as a whipping boy and start helping that agency administer the program as best as we can.

Quite frankly, we need to deal with the toxic waste cleanup issue with more professionalism and less hysteria and political opportunism, so that we can produce a really effective cleanup program.

I know that my colleagues in this body have the capacity to act in the interest of a strong and workable Superfund Program. My hope is that those of you in this and succeeding Congresses will have the will to do so as well.

Mr. Speaker, I urge my colleagues to vote for H.R. 2005, the Superfund Amendments and Reauthorization Act of 1986.

Mr. Speaker, the gentleman from Ohio [Mr. ECKART] participated in the subconference on cleanup standards, and I would like to engage in a short colloquy with him.

Mr. Speaker, when the Administrator of EPA cleans up a site in accordance with the requirements of section 121, may a State then seek to impose additional or more stringent State standards in a State court action, independent of section 121?

Mr. ECKART of Ohio. Mr. Speaker, will the gentleman yield?

Mr. SNYDER. I yield to the gentleman from Ohio.

Mr. ECKART of Ohio. Mr. Speaker, first I would like to thank the gentleman for his contributions to this conference report, and say that long after his physical presence is gone from here, we will remember his contributions on this bill.

Mr. Speaker, the answer to the gentleman's question is no. When a site is cleaned up in accordance with section 121, including requirements relating to State involvement, a State may not then bring a separate action in State court to impose additional or more stringent State standards. Of course, the requirements of the Solid Waste Disposal Act, as provided in section 120(i) continue to fully apply to any department, agency, or instrumentality of the United States.

Mr. SNYDER. I thank the gentleman.

Mr. Speaker, how much time do I have remaining?

The SPEAKER pro tempore. The gentleman from Kentucky [Mr. SNYDER] has 9½ minutes remaining.

Mr. SNYDER. Mr Speaker, I ask unanimous consent that I may yield the balance of my time to the gentleman from New York [Mr. LENT], under the same conditions that are now existing, and that he may yield time.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Kentucky?

There was no objection.

Mr CRANE. Mr. Speaker, I yield such time as he may consume to the gentleman from Texas [Mr. DELAY].

□ 1540

Mr. DELAY. Mr. Speaker, I rise in strong opposition to the Superfund conference report, notwithstanding the very hard work that the conferees had to go through to bring this bill to the floor. And I am not rising in opposition to toxic waste cleanup.

The intention of the Superfund Program was to clean up hazardous waste sites to protect dangers to the public health. In my district in the Houston area are a number of hazardous sites, some of which need immediate attention. In the Pearland, TX, area there are a number of homes that were built in radioactive fill dirt that inadvertently came from a contaminated chemical plant. The people who are effected are very concerned about the health effects to their families, and I am very concerned. I understand that EPA will step in just as soon as they have some money.

The urgency of these kinds of problems, however, are no excuse for passing this awful bill.

Mr. Speaker, this legislation is doomed to produce disaster. This bill has boondoggle written all over it. If this bill is enacted into law, we will look back 5 years from now and wonder whatever happened to our intentions.

I would rather call this the Colossal Fund than the Superfund because we have gone way beyond the scope of what the Superfund was intended to do. We will have spent 5 years from now more than $8 billion, an absolutely huge sum of money, and found that it was largely wasted. There will be a greater hue and cry for even more money because in the absence of good policy the only thing this Congress can do is throw money at the problem, our people's money, that is.

Why does this bill call for spending more than $8 billion? Because that is every penny that the environmentalists could get. They would have gone for $20 billion if they thought they could get it.

But it is the EPA that will have to administer the spending of this money; yet they have repeatedly told us that the maximum that they could spend effectively is a little over $5 billion. Any more and it will be wasted.

Why are we ignoring this warning? Are we doing it to demonstrate our no-holds barred commitment to cleaning up toxic waste? It looks more like to me that we are demonstrating our no-holds barred commitment to throwing good money down the drain, but we hardly need another demonstration of that here in this Congress.

Mr. Speaker, this bill makes promises that everyone involved knows are impossible and unrealistic. We have provided a cleanup schedule that cannot be met. That schedule will push EPA to clean up the easiest and least hazardous sites, leaving the largest dangers still in place. This bill forces EPA to spend large amounts of money right now to meet cleanup standards which go far beyond the goals of protecting the public health and safety.

In the near future, we can expect to have new technologies which will make these full cleanups much less expensive. Biotechnology, for instance, is now beginning to give us microbes which can eat hazardous chemicals right up. I have a company in my district that is developing biotechnologies to eat PCB's that right now would cut the cost of cleanup of PCB's to one-third.

But do we take this into consideration? No.

Why are we trying to force EPA to spend all of this money now when we do not even have the technology to do the job right? We should be trying to protect the immediate dangers to the public and developing the technology and the techniques to handle the long-term problems. We cannot just pretend that the goals set forth in this bill can be met and close our eyes to the reality.

So how are we going to pay for all of this? Well, Mr. Speaker, we are going to fund this greatly expanded program by making a lot of people pay for cleaning up messes for which they had absolutely no responsibility. We do this by making companies with deep pockets pay for cleaning up a mess in which they had only the slightest involvement.

We are going to tax companies which do not produce hazardous waste. We are going to greatly tax companies which are already responsible for paying for the messes that they did cause.

We are doing all of this to take care of what we all admit is a societal problem. Hazardous waste is a byproduct of our modern society. When we look to the Federal Government to solve this problem, we as a society are saying that we have a problem which affects all of us and, therefore, all of us should pay for the solution.

Some have said that the idea of Superfund is for the polluters to pay. But Superfund is only ultimately taxed to pay when you cannot find the polluter or the polluter does not have any money. To make someone else pay for it undermines the concepts of justice and equity on which our Nation is founded. The only way to ensure that justice is to pay for this program out of general revenues. Since we do not have any extra general revenues to pay for this new program, then what do we do? I say that we pick our priorities.

If the Superfund is more important than the revenue foregone subsidy to the Post Office, then substitute that money. If the Superfund is more important than subsidizing passenger railroads, then let us use the $600 million from Amtrak.

The point here is that we have not tried to do this kind of prioritizing. We just decided that this progam is so important that we will invent a new tax and greatly expand old taxes that have absolutely nothing to do with hazardous dump sites.

Here we are expanding the oil tax thirteenfold as if that had anything to do with chemical dumps.

Mr. Speaker, we need to give EPA an extension and completely rethink our approach to cleaning up our hazardous wastes. This bill, Mr. Speaker, allows an aggrieved party to sue the Government for failure to perform mandatory duties under Superfund, Colossal Fund, and to bring suit against any person for violating the law's requirements.

It also establishes the comprehensive emergency response, and more importantly a community right-to-know program, and establishes a program for cleanup of hazardous substances for Federal sites.

Mr. Speaker, this bill is full employment for lawyers and full employment and expansion of the fundraising capabilities of the environmental organizations. I urge the Members to reject this conference report.

SUPERFUND: A HAZARDOUS WASTE OF TAXPAYER MONEY

(By Fred L. Smith, Jr.)

House and Senate conferees are nearing agreement on an $8.5-billion, five-year reauthorization of the Superfund law (the Comprehensive Environmental Response, Compensation and Liability Act of 1980). Such a massive expansion of federal toxic waste cleanup efforts promises to unleash the largest pork barrel program in history, expend great sums to little result, and preempt more effective solutions to the problems posed by abandoned chemical dumps.

If this bill is enacted, the Reagan Administration will largely be to blame. The Environmental Protection Agency (EPA) and the While House have been remarkably feeble in challenging the hysterical zero-risk, antibusiness, technology-fearing advocates of this legislation. Instead, they have retreated into a defensive shell. Rather than opposing the waste cleanup legislation as bad environmental policy—regardless of its pricetag—White House officials have argued for a lower reauthorization increase (from the current $1.6 to $5.3 rather than $8.5 billion) and have quibbled over the proposal to finance Superfund with a new, broad-based business tax.

In addition, the Administration has provided conflicting signals to Congress—threatening a veto if the funding level, tax problems and liability rules aren't corrected, while simultaneously allowing EPA to send Congress a threatening letter of the "We're going to close the Washington Monument" variety unless new legislation is soon enacted. Its inconsistencies and failure to challenge the overall program have once again made it easy to caricature the Administration as an anti-environmental, pro-business penny-pincher standing in the way of congressional defenders of American health and safety.

Enactment of this bill would provide dramatic evidence of the failure of the Administration to develop any coherent approach to environmental policy.

As detailed below, the Administration knows full well that:

(1) Superfund stems from a total misreading of the Love Canal incident (a situation where private protections were thwarted by public mismanagement),

(2) The magnitude of health risks addressed by Superfund are small to nonexistent,

(3) The legislation contains few features designed to target funds to the more significant cleanup sites,

(4) The liability provisions encourage a "no-fault" concept that undermines the basic principle that polluters—not the innocent taxpayer—should pay pollution costs,

(5) The new taxes embodied in this bill constitute a serious threat to the business community, and

(6) The bill will preempt far more effective solutions to the problems posed by hazardous wastes.

For these reasons, the Administration should veto the proposed Superfund reauthorization bill, accept a short-term interim extension of the program, and seek aggressively to reframe the Superfund debate in the 100th Congress. Environmental policy is far too important to be transformed into another public works boondoggle.

ORIGINS OF SUPERFUND: LOVE CANAL 'DISASTER'

Superfund from its beginnings has been little more than a Superfraud. Launched in 1980 as a hastily concocted response to the Love Canal incident, the program is founded upon erroneous assumptions about the cause and nature of the hazardous waste threat.

Love Canal was an area near Buffalo in which the Hooker Chemical Co. had once discarded toxic chemical wastes. As chemical substances from the waste disposal site began to leach into the water table and infiltrate the soil in the surrounding residential community, the national media learned of the event and the "Love Canal Disaster" was born.

The EPA leadership seized upon this incident to garner political support for their then-languishing Superfund legislative proposal. EPA contracted for a "quickie" medical survey which appeared to show increased health risks for Love Canal residents and released these results at an "emergency" press conference covered by all the major television networks.

Americans were bombarded with powerful media images of oozing, noxious chemicals juxtaposed with nervous, concerned families. Love Canal and "chemical threats to your health" became national concerns and Superfund was approved by Congress.

Morever, Hooker Chemical seemed the perfect corporate villain, with its "no comment" response to the adverse publicity. Once more (so it appeared), a private firm motivated only by short-term profits had sought to economize by dumping deadly waste on an innocent and unsuspecting citizenry. The market having failed, so went the argument, the Superfund Act should be implemented as swiftly as possible.

As detailed in an investigative story by the Reason Foundation ("Love Canal: The Truth Seeps Out"), and, as was known at the time to EPA, Hooker Chemical had no direct control, or responsibility for the incident. In 1953, Hooker was forced, under threat of eminent domain, to deed over the site to the local school board, which wanted the land for a new school.

Hooker protested the land transfer. It argued that a hazardous waste disposal site was no place for a school. The company gave way only after further pressure from local officials and acknowledgment in the deed transfer document that the school board had been warned of the chemical wastes buried on the site.

At the time of the transfer, Hooker had taken considerable care in disposing of its waste materials. The company placed them in a clay-lined trench (the former canal) which was then capped with an additional four feet of clay. Today, such a landfill would probably receive EPA operating approval. Hooker undertook such relatively expensive precautions because, as a private property owner, it feared eventual damage claims if its waste ever came into contact with third parties.

This, private ownership of a potential hazard in a litigious society seemed to perform exactly as we might hope—a private party acted in a publicly responsible manner to protect its own self-interest.

On the other hand, the local school board politicos of Niagara Falls—as "public servants"—had few concerns about being sued and thus felt free to ignore any problems their carelessness might create.

Thus, the board began its school, but soon found that declining school populations required less land than originally anticipated. Acting more like stereotypical rapacious capitalists than disinterested public servants, the board then sought to sell the remaining land (including the dump site itself) to a residential developer. Despite Hooker's repeated warnings that the site contained potentially life-threatening materials and should not be used for residential housing, the board eventually found a local realtor unaware of the controversy and swiftly transferred the hot potato to him.

Unlike Hooker, neither the school board nor the unaware new owner concerned himself with preserving the integrity of the landfill. Much of the clay cap was scrapped away, at first during construction of the school and then again for a housing development. Sewers and roads to serve the latter were allowed to be built through the site itself.

All these activities eventually combined to allow the buried hazardous materials to leach from the disposal site into the surrounding water table, thereby triggering the Love Canal "disaster" story.

The real facts of Love Canal contradict the "evil capitalist" myth. When a private company (Hooker) owned the property, it was seriously concerned about the long-term consequences of its activities, and justifiably so, since it expected to be around for many decades and was fully aware of potential legal claims that could be brought against the firm.

On the other hand, political officials obsessed with the short run (holding down tax assessments) and having little concern over possible financial liability proved irresponsible guardians of public safety.

The neglected lesson of Love Canal is that it actually showed how private property rights encourage consideration of low-probability, long-range risks. But the "conclusions" promoted by Superfund advocates and the national media were that the free market had failed to handle the hazardous waste threat and a major new federal program was essential.

THE HEALTH HOAX

Love Canal convinced Americans that hazardous waste dumps posed a serious health risk and required an immediate, emergency response. Yet followup studies at Love Canal turned up no evidence of abnormal levels of morbidity or mortality.

For example, a distinguished panel of scientists appointed by New York Gov. Hugh Carey reported in October 1980 that "there has been no demonstration of acute health effects linked to exposure to hazardous wastes at the Love Canal site. The panel has also concluded that chronic effects of hazardous waste exposure at Love Canal have neither been established nor ruled out yet."

A study by the New York State Department of Health published in the journal *Science* in June 1981 concluded: "Data from the New York Cancer Registry show no evidence for higher cancer rates associated with residence near the Love Canal toxic waste burial site in comparison with the entire state outside of New York City."

In June 1983, the Center for Disease Control (CDC) noted no excess illness among persons living close to the Love Canal. Another CDC report in March 1984 found "no increase in the frequency of chromosomal abnormalities . . . of residents in the Love Canal areas."

The hysteria and political pressures that have led to the rapid expansion of Superfund reflect an extremely successful effort to repackage a traditional pork barrel program as a human health and cancer prevention measure.

Superfund defenders have convinced a lot of Americans that we are dealing with emergency situations and any effort to correct the program's problems will intolerably slow down urgent cleanup efforts. Unfortunately, such voodoo environmentalism remains largely unchallenged.

For many hundreds of years, mankind has produced waste materials that, if improperly handled, could create health problems and reduce the quality of the environment. The early dye works involved noxious chemicals, as did the alchemist shops of the Middle Ages. Superfund is predicated on the belief that this hazardous waste problem has reached crisis proportions and now poses an unusually severe risk to human health and the environment. The Superfund program embodies a sense of urgency in which normal requirements of proof and cost-benefit analysis are suspended. The house is on fire and there is no time for careful consideration.

Yet we really know little about the quality of underground water in the United States, and even less about the actual health hazards that might arise from toxic waste dumps. Six years after Love Canal, we still don't know which toxic materials in what doses are dangerous to human beings, nor whether these dosages are likely to occur given groundwater flows and normal countermeasures.

Evidence that hazardous materials in dump sites have migrated into groundwater and damaged human health has been difficult to produce. The original Superfund legislation charged the Department of Health and Human Services with investigating such toxic health hazards, but almost nothing has been done (in keeping with a long tradition of self-ignorance directing federal environmental policy).

The health threat of greatest salience in fueling reflexive support for Superfund is cancer, which accounts for about one-fourth of all deaths in the United States. But to the best estimates now available, lifestyle factors such as smoking, diet, and sunshine exposure account for the overwhelming portion of all cancer fatalities.

The small fraction of cancers attributable to man-made chemicals via all modes of exposure—both workplace and environmental—is perhaps 6 per cent. Since the levels of exposure are likely to be far higher in occupational settings, there is little evidence to date that environmental levels of contamination are at all linked to human cancer.

Even using a common estimate that about 1 per cent of all cancer can be traced to environmental pollution, one must recognize that such a figure includes pollution from airborne carcinogens, from surface contaminants, from food additives, from pesticide residuals, and other sources. Only a fraction of such risks can be associated with groundwater contamination. Superfund thus addresses a tiny speck of the cancer problem in the United States.

Moreover, there are no data that cancers caused by manmade substances are increasing. Epidemiological evidence, of course, cannot absolutely rule out the possibility of future risks from manmade substances; however, existing data coupled with the lack of any evidence of higher cancer incidence in Europe (where hazardous chemicals have a much longer history) suggest that any such risk is small. Indeed, growing research indicates that mankind actually lives, and has lived for thousands of years, in the midst of many natural carcinogenic materials. The argument that human beings are at risk primarily from novel, man-made chemicals (appealing to nostalgic fanciers of preindustrial society) now appears to be dead wrong.

Since the human health benefits from Superfund appear small, the case for a massive federal program in this area must rely on its value in protecting vital groundwater supplies. Certainly, some wastes are leaching into some aquifers which somewhat reduces their utility and such damages should be disciplined. However, here as elsewhere, data are extremely limited on the extent to which aquifers are actually threatened. There is certainly no evidence that hazardous wastes are a major or even significant threat in comparison to other factors endangering this vital resource; excessive depletion (allowing saltwater contamination, for example), government subsidized water supply (encouraging waste), government subsidized development (threatening water sheds), and the inefficient ownership rights which make it difficult for individuals to manage this resource privately.

Even in the area of contamination, the major health risk continues to be "natural" bacterial and viral contamination of water supplies, rather than chemical waste contamination. These risks are managed in a decentralized fashion, with each water supplier and each individual well user taking precaution directly. Nonetheless, there is no federal Sanitary Waste Superfund dedicated to digging up abandoned out-houses throughout the United States. (At least not yet.)

The health threat from hazardous waste sites addressed by Superfund appears small. What little we know suggests that any massive expansion of Superfund based on health reasons is unjustified.

HAZARDOUS WASTE CLEANUP: POLITICAL GROWTH INDUSTRY

Despite the deliberate misreading of the Love Canal incident and its human health consequences, Congress rapidly enacted the Superfund legislation to address "emergency" cleanup situations and orphan dumps and provided an initial funding of $1.6 billion. The program promised to make hazardous wastes "go away," at no cost to local communities. The federal government pays 90 per cent, and the state picks up the remaining expense. To the local citizenry, Superfund is a "free good" of all benefit and no burden. Naturally, the program has become extemely popular.

The number of sites "needing" attention has increased from the initial 400 priority sites (about one for every congressional district) to EPA's current estimate of 2,000 such locations. Superfund's sponsors further encouraged this feeding frenzy by avoiding any clear definition of starting or stopping rules in addressing risk management responsibilities, site selection, and determination of appropriate cleanup strategies.

The Superfund Act provides very little guidance on how serious threats are to be distinguished from mere nuisances. Under Superfund, hazards include any materials that are flammable (e.g. charcoal lighters), toxic (insecticides), corrosive (Clorox or Oven Off), or reactive (Drano)—or any substances that EPA designates as hazardous. Moreover, the legislation suggests and EPA has adopted a definition of "hazardous" that gives considerable weight to extremely unlikely situations. If something might happen, Superfund assumes it will happen. Under this worse case analysis, too many sites are classified as "hazardous" even though, as noted above, the evidence suggests that the overall human risk associated with all chemical wastes is low.

Since Superfund fails to target the most serious problems, EPA finds itself selecting projects based on their political and public relations value. In case after case, EPA had rushed to spend money for "cleanups" where the threat to health has been low to nonexistent or where responsibility could obviously be assigned. In Times Beach, Missouri, for example, EPA purchased all the homes in the area for $30 million on the basis of studies finding dioxin contamination of soil in the area. Experimental animal studies do show dioxin to be extremely toxic; however, as is often the case, animals respond differently from humans, and there is no evidence that any humans have ever suffered any chronic health problem from exposure to this substance. That finding is based on epidemiological studies of industrial accidents in which exposures have been many times those encountered at Times Beach. Elizabeth Whelan in her book Toxic Terrors noted, "Times Beach, like Love Canal, is an environmental problem turned into an environmental fiasco. Decisions and subsequent actions were based as much on political considerations as on public health realities." A recent Scientific American article on the dioxin scare noted:

"What the agency [EPA] has not done — and might be said to have a responsibility to do—is to try to dispel the public's fear on the basis of the evidence that exposure to low concentrations of TCDD (dioxin) in the environment appears not to have a serious chronic effect on human beings."

EPA might have taken such prudent actions, but given the value of scare tactics to an expanding Superfund budget, we can understand why it did not.

Superfund has also encouraged communities to seek federal funding rather than go after responsible parties. After all, the program was originally intended to clean up a small number of "abandoned, orphan" sites. However, as the Love Canal incident indicates, EPA has made Superfund monies available whenever penalizing the real polluters (the public officials in that case) would be politically difficult. As a result, Superfund's "priority" list now includes a number of sites operated by viable companies and even by the Department of Defense.

The "worst case" criterion for risk assessment also encourages EPA to add low-risk sites to the Superfund program. James Bovard, an investigative journalist, identifies one site, an inactive city dump in Windom, Minnesota, that was closed in 1974. As one would expect, the wells on site were indeed contaminated, but Bovard notes that EPA found that off-site municipal and residential wells were not. Nonetheless, the site was added to the "priority" list. Bovard notes: "If finding of non-contamination justifies adding this site to the Superfund list, why wouldn't every past and present city dump in the U.S. be included?"

With so few restraints on spending, it is not surprising that the Administration's initial request for a threefold Superfund funding increase to $5.3 billion was dismissed out of hand by both houses of Congress as "too

modest." Indeed, most believe even the $8.5 billion "compromise" now being considered will prove inadequate given the spending incentives now built into Superfund. A recent study by Putnam, Hayes & Bartlett estimates that total Superfund program costs could jump to as much as $81 billion. A 1985 Office of Technology Assessment study foresaw a "need" for over $100 billion to get the hazardous waste cleanup job done. But even this study admitted that increased spending might have little if any effect on the disposal of hazardous waste, because of bottlenecks in the supply of sufficiently trained technical personnel and a lack of rational standards for cleanups.

"Spending large sums before specific cleanup goals are set and before permanent cleanup technologies are available leads to a false sense of security, a potential for inconsistent cleanup nationwide, and makes little environmental sense," the report concluded.

FEEDING FUND'S APPETITE: SEARCH FOR DEEP POCKETS

Although the political popularity of Superfund has resulted in major pressures to increase funding, finding a way to finance such demands has delayed final congressional reauthorization of the program.

The initial funding sources for Superfund—taxes levied on the standard pariahs of American industry, the oil and chemical industries, and recoveries from "responsible parties," again largely oil and chemical companies—have been stressed by demands encouraged by this legislation. As a result, Congress has begun to consider new revenue sources.

Until recently, House conferees insisted upon increasing taxes on the oil and chemical industry while Senate conferees sought a broad-based tax on manufacturers, similar to a national value-added tax (VAT). Concern over the uncompetitive status of the financially strapped oil and chemical industries finally seems to have won out over the desire of many House members to bleed them dry. As a result, there is basic agreement upon using a broad-based business profits tax to supplement the existing oil and chemical tax.

But the inequity of the initial Superfund burden on the oil and chemical sector (why should anyone be singled out to address the problems of "orphan" dumps?) should not blind one to the equally inequitable decision to address pollution problems by taxing everybody from ice cream to furniture manufacturers. Two wrongs don't make a right and singling out any group of innocent parties and imposing on them the costs of cleaning up the pollution created by someone else is bad public policy.

Enactment of any new broad-based revenue measure, even on a limited basis, is akin to introducing a tactical nuclear weapon into a conventional war. Once unleashed, this seemingly "painless" taxation almost certainly will rapidly increase. It threatens uncontrollable escalation of the tax burden. Imagine the combination of Superfund's unquenchable thirst for popular pork barrel projects with such a renewable revenue resource—the fiscal equivalent of an out-of-control breeder reactor!

DEFINING "RESPONSIBILITY" IRRESPONSIBLY

Part of Superfund's cleanup expenses, of course, are supposed to be financed by those parties "responsible" for creating hazardous waste problems. The Superfund Act required EPA to identify such parties—no easy task in the case of what are after all supposed to be abandoned sites. But Superfund officials simply eliminated in practice any normal usage of the term "responsibility" for decisions as to who is to be held "responsible."

The program treats as a responsible party anyone who has any economic connection with the dumpsite. If a company is found to have deposited a single barrel of waste at a dumpsite, it can be held liable for all site cleanup costs. These rules make the jobs of EPA and Justice Department lawyers easier, at the sacrifice of fairness and efficiency.

In a recent hearing, an EPA enforcement lawyer noted that the legal responsibility standards now prevailing under Superfund have largely eliminated all arguments about guilt and innocence. The focus of attention is on who can pay.

A high-ranking EPA official recently admitted that the program was custom-made to go after big oil and chemical companies. Superfund's loose interpretation of joint and several liability makes it all too easy and all too tempting to prosecute wealthier firms, rather than the most responsible parties. But trying to impose legal responsibility on parties who feel they have done nothing wrong can create costs of its own—resistance in the form of lengthy litigation which delays actual cleanup operations and may actually exceed the latter's cost.

In practice, Superfund's liability rules make every party involved with hazardous wastes—the original source, the transporter, the site operator—potentially liable. Spreading the blame over such a wide range of individual parties not only diffuses responsibility, it also undermines safety incentives. After all, if individual actions can do little to reduce liability, there is little reason to adopt risk reduction measures. Why bother if your ultimate responsibility is determined largely by the acts of others outside your control?

Superfund abandons the "Polluter Pays" principle (the costs of pollution should be borne by the polluter) in favor of a "Deep Pocket" theory of justice. This approach may make it easier to recover revenues in the short run. But the move toward a "no-fault" pollution policy drastically weakens incentives for individual parties to adopt less polluting policies over time. Profitable "tax" policy isn't good environmental policy.

INSURERS: BEWARE

The heavy legal club created by Superfund may well put the fear of God into accused parties, but it almost certainly causes more harm than good. The unlimited liability that might fall upon anyone associated with a waste site has seriously damaged the insurance market for hazardous waste manufacturers, transporters and disposers. In the late 1970s, several private companies had sprung up to provide such parties with liability insurance coverage, and to encourage more effective hazardous waste management techniques. But with the onset of Superfund's megaliability threat, the insurers ran to the hills.

If the private insurance business for these risks had been allowed to develop, we would have seen far more progress in procedures to gauge the risk of various waste-handling techniques. Private insurers would have had every incentive to spend the money to find out exactly what the dangers were. Their efforts would have nicely supplemented EPA's work. Thanks to the revenue-hungry, joint-and-several-liability approach of Superfund, we wind up with neither private insurance nor the market-based regulation that it could provide.

NOTHING NEW UNDER THE GROUND

Instead of cleaning up hazardous waste, and protecting groundwater, Superfund remains more likely to produce financial waste. Its parallels to the Clean Water Act fiasco are alarming.

In 1972, Congress responded to the public outcry over fish kills and flaming rivers by expanding the Clean Water Act of 1963. It set such new goals as making all U.S. surface water "fishable and swimmable" by 1983, and requiring all firms and municipalities to achieve "zero discharge" by 1985.

Congress voted to cover 75 per cent of the capital construction costs for municipal waste treatment facilities. This encouraged thousands of communities to construct new and expanded sewage treatment plants. As a result, total wastewater spending by all levels of government exceeded $100 billion from 1972 to 1983.

Unfortunately, the Construction Grants Program under the amended Act proved to be highly inefficient and expensive. With little money of their own at stake, local politicians often elected to spend the federal largess to achieve local pork barrel benefits at the cost of real environmental improvements. Despite the massive governmental investment, overall national water quality has changed little since 1972.

A 1981 investigative series by the Washington *Post* ("Dirty Water: A Federal Failure") observed: "Elaborate hunks of expensive and failing machinery litter the American landscape—the wreckage of Washington's good intentions." It continued: "After nine years of massive federal investment to build or upgrade sewage treatment works in 18,000 communities, about 2,000 of the projects have been completed, and most are small plants in small communities where pollution threats are often the least serious."

In some localities, federal funding simply replaced money the community had already been prepared to spend directly. Other communities chose to wait for their representatives to finagle federal financing, while deferring local efforts that would have resulted in earlier cleanups. Moreover, when the federal government paid, there was less concern about designing local solutions that worked. The *Post* review of the wastewater treatment program discovered that up to 91 per cent of the new plants "don't perform up to antipollution requirements more than half the time."

Nonetheless, EPA and the environmental lobby kept pushing for more, more, more. Congress, driven by pork barrel politics, was much more eager to award further sums of money than to evaluate what these funds might be achieving.

Finally, after 10 years of increasing scandals and failed plans, the Administration, the Congress, and even the environmental community came to their senses. Among the substantial changes made in the Clean Water Act were these key adjustments: the federal share of construction costs was dropped to 55 per cent and the range of eligible projects was reduced. It was recognized that local governments were far more likely to build appropriately sized and designed facilities if their own funds were at risk.

Indeed, in many ways, the design of Superfund is far inferior to the deeply flawed design of the Construction Grant Program. The latter, after all, required substantial local cost sharing (up to 25%) compared to a zero requirement under Superfund. Moreover, waste treatment plants engender some

local opposition—they can create a local nuisance. In contrast, no one is likely to oppose a project to move a dump (hazardous or not) from his neighborhood. Moreover, the technology of waste water cleanup is far more developed and the ability to monitor what one has achieved far easier. The leak-proof dump and the zero-pollution treatment facility have not yet been invented and it is extremely difficult to determine what is happening underground. In fact, Superfund overkill may actually make the environment a more dangerous place. A "public health" program that begins by disturbing chemical graveyards raises serious questions. Extensive monitoring via test wells could create infiltration channels for groundwater contamination where none existed before. The movement of hazardous wastes is itself a hazardous activity, in may cases more risky than simply leaving the material where it was originally.

SUPERFUND NEEDS RETHINKING, NOT REAUTHORIZATION

The Supefund "debate" has barely moved beyond the proposition that hazardous wastes are potentially harmfull and therefore more federal spending is necessary. But Congress, having learned little from its past environmental policy failures, should not be allowed to write another blank check to pursue an undefined concept of cleanliness.

To sustain a veto of the reauthorization measure likely to come out of conference later this month, the Reagan Administration must seriously fight the Superfund steamroller on environmental, not just fiscal, grounds. It must make clear that although sharing the stated goals of Superfund's patrons, it finds serious problems in their means.

The Administration should express grave doubts about the benefits obtained from the $1.6 billion already expended, and assert that it sees no likelihood additional spending will be used more efficiently without major reform of the program's design flaws. At a minimum, it should insist upon higher local cost-sharing, more careful weighing of costs and benefits, and better targeted liability rules.

Tactically, the first step is to gain time to educate the public by substituting a short-term extension of Superfund (until the next Congress) in place of the sweeping five-year reauthorization. But if the Administration merely plays for time and exercises damage control with no large sense of purpose, it will have achieved little.

Strategically, the Administration must use the time wisely to come to grips with its greatest weakness in environmental policy—its failure to develop a market-oriented environmental policy. In the Superfund area, this means taking off the green eyeshades and arguing boldly for more imaginative, less intrusive alternatives to address the problems posed by hazardous dumps, primarily the protection of the nation's groundwater supplies. Developing an adequate strategy will take time; however, it would include reorganizing aquifer property rights, "labeling" of suspect site materials to ensure self-identifying of contamination, and reconsideration of other governmental policies (pricing, subsidies, conservation) which affect water quality.

More than five years into the "Reagan Revolution," it's time to stop running for cover on the environmental front and start taking the offensive.

Mr. Smith, who worked at the U.S. EPA for five years, now heads the Competitive Enterprise Institute, a pro-market public interest group. This article stems from research conducted under CEI's Free Market Environmental Program.

The SPEAKER pro tempore (Mr. PANETTA). The gentleman from Kansas [Mr. GLICKMAN] is recognized for 7½ minutes on behalf of the Committee on the Judiciary.

Mr. GLICKMAN. Mr. Speaker, I yield myself 2 minutes.

Mr. Speaker, there is a Kansas State expression which is "Ad astra per aspera," which means to the stars through difficulties, and I suppose that is an understatement from what we have done in this particular situation. We have reached the stars through the most incredible set of difficulties that I have ever experienced since I have been in Congress, and a lot of people deserve a great deal of credit, many of whom have been mentioned today. But I specifically want to refer to four of my colleagues. The two that deserve the greatest of praise are the gentleman from Michigan, JOHN DINGELL, and the gentleman from Ohio, DENNIS ECKART. They were the most tenacious folks that I have ever met, and we would never have gotten a bill without them. Also the gentleman from New Jersey, JIM FLORIO, and my friend, the gentleman from New York, NORM LENT, as well as other people, and all of the committee that have been mentioned make this bill a possibility. We have a program now through which this country can vigorously move to clean up the hazardous waste sites that threaten our citizens' health and the Nation's environment. This program has a tough cleanup standard, has a strong community right-to-know, and with respect to the Judiciary Committee's functions under our jurisdiction, and Chairman RODINO, it establishes a fair and full right for both citizens and potentially responsible parties to participate in the selection of the best means to clean up a hazardous waste site. It gives citizens greater access to State courts if they suffer personal injury or illness because of their exposure to hazardous substances. The settlement and judicial review sections are contained in my statement in greater detail, but I think we have a program here that we can all support very, very strongly.

Mr. Speaker, as those of us who worked on the Superfund reauthorization for many months know only too well, it has been a long and difficult legislative process to complete our work. Many of the issues involved are very complex and it is with genuine satisfaction—and not a little relief—that we have now reached the end of our work and recommend to this House a strong Superfund Program through which this country can vigorously move to clean up the hazardous wastesites that threaten our citizens' health and the Nation's environment.

This Superfund reauthorization bill has tough new cleanup standards, and a strong community and right-to-know program. It establishes a fair and full right for both citizens and potentially responsible parties to participate in the selection of the best means to clean up a hazardous wastesite. It gives citizens greater access to State courts if they suffer personal injury or illness because of their exposure to hazardous substances.

Mr. Speaker, there is one particular aspect of this conference report on which I would particularly like to comment. This provision, section 119, "Response Action Contractors," addresses the critically important question of who will perform the actual cleanup work required by Superfund. I cannot overemphasize the importance of having qualified and responsible response action contractors who are able and willing to participate in Superfund work if the program is to achieve its paramount purpose of cleaning up hazardous wastesites.

Under CERCLA and the tort law developing in its wake, several types of parties associated with a wastesite may be strictly, jointly, and severally liable for cleanup costs or injuries alleged to be caused by the hazardous substances at the site. This liability attaches under CERCLA to site owner/operators, generators of waste, and transporters of waste, and may more boradly attach under tort law to any party who ever had anything to do with the site.

A wastesite cleanup is often a major construction project, and it is necessary to hire qualified cleanup contractors to perform this work. Because of the type of work involved, these contractors can be viewed as generators and/or transporters of waste and/or operators at a site. Accordingly, with "strict, joint, and several liability," they could be held liable for future site cleanup costs and/or alleged personal injuries from the site, even though they performed a cleanup with all due care and fully in accordance with Government standards and regulations.

The effect of this is to place the cleanup contractors, who had no responsibility for creating the site in the first place, under the same strict, joint and several liability regime as those who did. Because of the potential for skyrocketing future cleanup costs and jury awards, and because such liability has become uninsurable, responsible firms have naturally been deterred from engaging in cleanup work.

The conference agreement provides a partial remedy by two principal means. First, the conference language provides a specific Federal statutory negligence standard to govern the liability of response action contractors. This liability standard would apply only to response action contractors and would not affect the liability of any other party involved at the particular waste site. This standard will assure response action contractors that their liability would be based only on fault, either under the Superfund statute or any other Federal law.

Second, EPA is provided with discretionary authority to offer indemnification to cover liability based on negligence. The EPA Administrator is expected to provide for a limited indemnification in circumstances where adequate and reasonably priced insurance is not

available at the time the response action contract is executed.

In the respective versions of the legislation passed by the House and the Senate, response action contractors were provided with additional protection beyond this. The Senate provided for indemnification to cover any claims arising under this standard, including those made under State law which would be based on a State strict, joint and several liability standard. The House would have applied the negligence standard for response action contractors at the Federal, State, and local levels. Concerted efforts of the conferees to fashion a compromise between these two different approaches resulted in a conference agreement which does not address strict liability under State law.

The conferees all recognized, however, that it would be incumbent upon the individual States to address the liability concerns of response action contractors in much the same way as Congress has done in the Superfund reauthorization. Therefore, the conferees decided not to address concerns about strict, joint and several liability being imposed on response action contractors under State law, with the expectation that each of the States should review its laws and judicial decisions with regard to their possible effects on the liability of response action contractors. This review should be undertaken by the States with a view to assuring that such contractors are fully encouraged to participate in cleanup activities within that State. Further, if necessary and appropriate, the State legislatures should enact legislation to protect response action contractors from the possible imposition of strict, joint and several liability under State law. Such legislation could address the matter either by establishing a specific negligence standard for response action contractors, as the conference agreement does with regard to Federal law, or by creating a State indemnity program. Other avenues may also be available to achieve the same purpose.

In sum, Mr. Speaker, the provision dealing with response action contractors in the conference agreement is responsive to the recognized needs of cleanup contractors, and goes as far as the conferees deemed appropriate. The conferees have decided not to preempt State law on this issue, nor to subject the trust fund to indemnities for the consequences of application of State strict liability standards. Rather, the judgment of the conferees was to leave it to each State to make whatever adjustments are necessary to insure the participation of qualified and responsible response action contractors in the cleanup of Superfund sites within each State.

Finally, Mr. Speaker, I want to thank all of those who worked so diligently on the entire Superfund conference, particularly my colleagues on the Judiciary Committee, who worked to resolve the many complex legal issues raised by the Superfund Program. I also wish to thank the members of each of the other four committees of the House who labored with us over this legislation, as well as our friends in the other body. As we all know, this has not been an easy task.

Despite the difficult legal, political, and technological issues that had to be addressed in order to reauthorize this program, we have finished our work. This is a good, strong bill that responds to the needs of this Nation. I urge its adoption.

Mr. Speaker, I yield 1 minute to the gentleman from Oklahoma [Mr. SYNAR], my colleague on the Judiciary Committee.

□ 1550

Mr. SYNAR. Mr. Speaker, the Subcommittee on Environment, Energy, and Natural Resources of the Committee on Government Operations has during the past 3 years investigated and documented severe pollution problems at Federal facilities such as Tinker Air Force Base and the Department of Energy facilities at Savannah River, SC, and Hanford, WA. Federal facility hazardous waste management practices and cleanup activities should serve as a model for the private sector. However, this has not been the reality, in part, because EPA and the Department of Justice have not aggressively pursued enforcement actions using civil litigation and administrative orders against recalcitrant Federal facilities. The Superfund Amendments and Reauthorization Act of 1986 preserve the clear statutory authority to bring civil actions and issue administrative orders against Federal facilities. In addition, the new amendments significantly strengthen the role of the States and EPA in expediting cleanup and in the selection of the proper remedial action.

It is also important to clarify that the corrective action authorities of the Solid Waste Disposal Act, particularly section 3004(u), apply to Federal facilities notwithstanding section 121(e) of the Superfund bill, which eliminates the permit requirements for the portion of any removal or remedial action conducted onsite. However, a delegated State or EPA may exercise the corrective action authorities of the Solid Waste Disposal Act to expedite cleanup for any such onsite cleanups or any solid waste management units on a Federal installation, if a permit is necessary for any treatment, storage or disposal facility at such installation. Section 120(i) is intended to make it crystal clear that neither section 121(e) nor any other provision of these amendments preempt the corrective action authorities of the Solid Waste Disposal Act.

Finally, section 120(a)(4), which originated in the Energy and Commerce Committee, is an explicit waiver of sovereign immunity allowing State laws, including State permits and State enforcement provisions, to apply to any removal or remedial actions at Federal facilities which are not conducted entirely onsite at the specific waste area which is listed as the National Priority List Facility.

Mr. LENT. Mr. Speaker, would the gentleman from Kansas [Mr. GLICKMAN] yield for a couple of questions?

Mr. GLICKMAN. I yield 3 minutes to my colleague, the gentleman from New York [Mr. LENT].

Mr. LENT. First let me compliment the gentleman from Kansas who so ably chaired the many meetings of the judicial issues subconference. I was surprised to read the remarks of the Senator from Vermont which were inserted in the October 3, 1986, RECORD. These remarks regarding section 113 on judicial review, section 121 on cleanup standards as referenced in section 113, and section 122 on settlements do not comport with my understanding of the conference agreement. Would the gentleman provide us with his understanding of the conference agreements on these sections?

Mr. GLICKMAN. Mr. Speaker, if the gentleman will yield, I would be happy to. First, let me point out that the Senate RECORD of October 3, 1986, is replete with statements attempting to revise the Superfund conference agreement under the guise of interpretation. For aid in interpreting this legislation, one should rely on the legislative language itself, the statement of managers accompanying the language—which statement was agreed to by all of the conferees—and the relevant underlying legislative history. Any after the fact statements that do not comport with the conference agreement are merely the opinions of the individual conferees.

In essence, new section 113(h) of CERCLA ratifies existing case law on the timing of review and establishes the circumstances under which courts will have jurisdiction to review response actions. Citizen suits and the opportunities for review noted in the cleanup standards section must be consistent with the timing of review provisions.

The timing of review section covers all lawsuits, under any authority, concerning the response actions that are performed by EPA and other Federal agencies, by States pursuant to a cooperative agreement, and by private parties pursuant to an agreement with the Federal Government. The section also covers all issues that could be construed as a challenge to the response, and limits those challenges to the opportunities specifically set forth in the section.

Thus, for example, citizens, including potentially responsible parties, cannot seek review of the response action or their potential liability for a response action unless the suit falls within one of the categories provided in this section. Similarly, the review of the response action within a contribution action will be consistent with the limitations on review set forth in this section. Such review may occur after a potentially responsible party has agreed to undertake the response, has agreed to pay for the response, or is

sued under section 106 or 107. Further, review under section 104(e), relating to access, does not open up the response itself to judicial review. Rather, only the President's reasonable belief that there had been a release or threatened release is subject to review.

The only opportunity for review that is not specifically provided for in the timing of review provision is the opportunity set forth in new section 121(f) (2) and (3), the cleanup standards section relating to remedial actions secured under section 106 and remedial actions at facilities owned or operated by a Federal agency. Under that section, a State may bring an action for the sole purpose of determining whether the finding of the President waiving a particular State or Federal standard is supported by substantial evidence. This opportunity does not exist for a fund-financed remedial action, since performance of the remedial action depends on the State's assurance of a share of the costs of cleanup; therefore, the State already has control over the application of State standards to fund-financed remedial action, and no additional process is needed.

The timing of review provisions refers, in its introductory language, to the general jurisdiction provision 28 U.S.C. 1332. This reference was made to ensure that actions in State court under State law can continue to be brought in Federal court if diversity jurisdiction exists. Actions within the scope of diversity jurisdiction may include, for example, a private nuisance suit against a person in another State who is not otherwise acting pursuant to an agreement with the Federal or State government. Thus, this reference to 28 U.S.C. 1332 does not create any additional rights or opportunities to obtain review of a Superfund response action.

The reference to diversity jurisdiction is not to create any additional right to review. Similarly, the reference to "Federal court" is simply to recognize existing section 113(b) of CERCLA, which provides that except for review of regulations, Federal district courts have exclusive jurisdiction over all controversies under CERCLA. Therefore, any controversy over a response action selected by the President, whether it arises under Federal law or State law, may be heard only in Federal court, and only under circumstances provided in this section.

There is one other phrase in the timing of review provision which should be addressed. The phrase "Taken or secured" as used in this section means that no person may bring any lawsuit in Federal court regarding a federally approved removal or remedial action except when the removal action has been completed or when the remedial action has been taken or secured. "Taken or secured" means that all of the activities set forth in a record of decision which includes the challenged action have been completed. Moreover, there is to be no review of a removal action when there is to be a remedial action at the site. Thus, for example, review of the adequacy of a remedial investigation and feasibility study, which is a removal action, would not occur until the remedial action itself had been taken.

The section is designed to preclude lawsuits by any person concerning particular segments of the response action, as delineated in separate records of decision, until those segments of the response have been constructed. Completion of all of the work set out in a particular record of decision marks the first opportunity at which review of that portion of the response action can occur.

I believe that the remarks of the Senator from Vermont, the distinguished chairman of the Senate Environment and Public Works Committee, inaccurately characterize the conference agreement.

In his remarks regarding the Judicial Review Section, the Senator from Vermont states his belief that:

> It is crucial, if it is at all possible, to maintain citizens' rights to challenge response actions, or final cleanup plans, before such plans are implemented even in part.

This is clearly contrary to the conference agreement in several regards.

First, this approach makes a distinction between so-called citizens and potentially responsible parties. This distinction does not exist in the conference report. The right of persons to use the courts to enforce Superfund is not so limited. Superfund defines persons broadly to include not only neighbors of waste sites but also individuals or corporations who may be liable under Superfund. In fact, the conferees explicitly agreed that all persons would have the same, limited access to preimplementation judicial review.

Second, this approach assumes that section 113(h) of the conference report allows judicial review of challenges to the selection of the remedy—cleanup plan—before the remedy is implemented—built. This is clearly not the effect of section 113(h). The statement of managers accompanying the conference report is explicit on this point.

> (A)n action under section 310 would lie following *completion* of each distinct and separable phase of the cleanup." (Empahsis added.)

To support his approach, the Senator from Vermont asserts that judicial challenges should be maintained:

> Before such plans are implemented even in part because otherwise the reponse could proceed in violation of the law and waste millions of dollars of Superfund money before a court has considered the illegality.

This is a valid argument and one which both neighbors of sites and potentially responsible parties have asserted. Neither of these persons want to see an inadequate or inappropriate remedy built. If the remedy is not adequate the neighbors may be injured and the potentially responsible parties may be liable under State law for those injuries. If the remedy has to be rebuilt, the potentially responsible parties may have to pay twice for the cleanup of one site. Notwithstanding these arguments, the conferees decided to ensure expeditious cleanups by restricting such preimplementation review. To balance this restriction on judicial review of the remedy selected by the EPA, the conferees included provisions that require EPA to develop extensive procedures for public participation in the selection of the cleanup plan and the compilation of an administrative record.

The Senator points out that responsible parties "have an obligation to come forward and present their best arguments and the evidence which best sustains those arguments" in the administrative process leading up to the selection of the remedy. While I concur with the Senator on this point, I would like to point out that the conference report does not limit this obligation to potentially responsible parties. This obligation extends to all persons affected by the cleanup, which include the State and the neighbors of the wastesite.

On the issue of what is the administrative record for purposes of judicial review of the selection of a response action, the Senator from Vermont introduced into the RECORD a letter transmitting to a Justice Department official a draft colloquy which was also introduced into the RECORD. Neither this draft colloquy, nor the Senator's comments regarding it, constitute the conference agreement. The conference agreement is clear in its own terms on what the administrative record for response actions will consist of, stating that:

> [New section 113(j) of CERCLA] clarifies the language of the House amendment to provide that the otherwise applicable principles of administrative law will govern as to whether supplemental material may be considered by the court.

Further, in discussing new section 113(k) of CERCLA, which requires the President to promulgate regulations for the establishment of an administrative record upon which the selection of a response action is to be based, the statement of managers discusses what will constitute the record until these regulations are promulgated:

> Until the promulgation of regulations under new section 113(k), the record shall consist of those materials developed under current procedures for selection of a response action. The record for a response action selected prior to implementation of these regulations shall consist of the record developed prior to such implementation. General principles of administrative law re-

specting such records are not affected by this provision.

The Senator also discusses the interplay between nuisance actions under State law and section 113(h). I am afraid he has also missed the point of the conference agreement in this section. Under this agreement, one cannot challenge the remedy selected by the President under the guise of a State nuisance law claim. Pursuant to section 113, Federal district courts have exclusive jurisdiction over all controversies under CERCLA. Therefore, any controversy over a response action selected by the President, whether it arises under Federal law or State law, may be heard only in Federal court, and only under the circumstances provided in this section.

The example cited by the Senator from Vermont for his justification for allowing nuisance actions to challenge the method of cleanup demonstrates exactly why all such controversies must be determined in Federal court, pursuant to the timing of review section contained in the conference report. The Senator from Vermont attempts to distinguish the nuisance plaintiff from the potentially responsible party plaintiff. For the nuisance plaintiff, Senator STAFFORD opines that where the nuisance plaintiff objects to the construction of a toxic waste incinerator as part of site response, only a before-the-fact remedy can adequately protect the parties. Clearly the conferees did not intend to allow any plaintiff, whether the neighbor who is unhappy about the construction of a toxic waste incinerator in the neighborhood, or the potentially responsible party who will have to pay for its construction, to stop a cleanup by what would undoubtedly be a prolonged legal battle. It was for this very reason that the conferees included section 113(h).

On the other hand, section 113(h) does not affect the ability to bring nuisance actions under State law for remedies within the control of the State courts which do not conflict with the Superfund legislation. The language preserving State nuisance actions in a limited manner is intended to preserve the use of State enforcement authority to compel private party cleanup or to otherwise assure that the State or private citizens can continue to abate nuisances resulting from hazardous waste disposal when such actions do not conflict with CERCLA.

Turning now to section 122, Settlements. The conferees adopted the House provision with several modifications based on the Senate provision.

The Senator from Vermont misses the point of the conference agreement in many respects. I will point out only one instance. He claims that the current Superfund statute "imposes strict, joint and several liability on those found responsible under section 106 or 107 of CERCLA." Neither the existing statute nor the Superfund bills passed by the House and Senate this Congress, nor the conference report, explicitly mandates the imposition of joint and several liability on all responsible parties. As was noted in the Energy and Commerce report of the Superfund Amendments of 1985—Report 99-253:

(E)xplicit mention of joint and several liability was deleted from CERCLA in 1980 to allow courts to establish the scope of liability through a case-by-case application of "traditional and evolving principles of common law" and pre-existing statutory law. (Citations omitted) The courts have made substantial progress in doing so. The Committee fully subscribes to the reasoning of the court in the seminal case of *United States v. Chem-Dyne Corporation*, 572 F. Supp. 802 (S.D. Ohio 1983), which established a uniform Federal rule allowing for joint and several liability in appropriate CERCLA cases.

The conferees continued this approach.

The items I have described here are only some of the items with which I take issue in the record of the Senate debate on the Superfund conference report. My silence on other issues does not indicate agreement with all of the record of the Senate debate but rather a desire to rely on the agreement set forth in the conference report and the accompanying and underlying legislative history. It is upon this agreement, and nothing more or less, that this body is acting.

Mr. LENT. Mr. Speaker, it is my understanding that the issue of whether the Congress should preempt State and local law with regard to the standard of liability applicable to the activities of response action contractors was one of the last items to be decided by the conferees. As chairman of the subconference which addressed this issue, could you please elaborate as to the provisions in the conference bill, how they differ from the House and Senate passed versions, how the Senate responded to House proposals for a uniform national negligence standard in conference, and whether recent statements in the Senate are consistent with the conference report on this issue?

Mr. GLICKMAN. The House version of the bill had provided for negligence as the standard of liability for cleanup contractors under Federal, State, or common law. The House version further authorized, in subsection (c), the indemnification of contractors in the event they are held liable for negligence, provided certain requirements were met.

The Senate version of H.R. 2005 had no specific provision with regard to what standard of liability should apply, and was also silent as to whether it should apply on a uniform national basis. The Senate bill did contain a separate section dealing with the circumstances under which contractors would be indemnified for liability which might arise under State law or Federal laws other than CERCLA. In fact, section 152 of the Senate bill mandates indemnification against damages arising from the application of a strict liability standard authorizes discretionary indemnification for damages arising out of and based on a negligence standard.

In conference, the Senate was adamant, I might even say intransigent, with regard to its insistence that no Federal standard of liability preempt State liability standards. Given this unyielding position, the House conferees reluctantly agreed to establish a negligence standard only at the Federal level. In addition, all conferees agreed to the following language for the statement of managers:

The conferees hope that this amendment will induce States to deal with the question of liability within their own borders. The conferees urge States to take note of the Federal standards and review their own standards of liability.

When this conference report was before the Senate last Friday, the distinguished senior Senator from Vermont, the leader of the Senate conferees, expressed at length his own views with regard to whether States should establish a negligence standard of liability at all. He openly encouraged States not to follow the example established by the Congress in this conference report.

It is not my intention to express myself with regard to the particular statements made by the Senator from Vermont. However, I believe it is vitally important for purposes of the legislative history that it be understood that the language of the conferees, as set forth in the statement of managers, is the best and surest expression of the intent of the House and Senate on this matter. The language of the conference statement is the best evidence of the intention of the conferees. As noted, the conferees do indeed urge the States to take note of the Federal standard and to review their own standards of liability. The conferees do not presume to know how any individual State will resolve to address this matter. All available options should be considered within the scope of options available to the States.

Mr. LENT. Mr. Speaker, I thank the gentleman for his explanation.

Mr. GLICKMAN. Mr. Speaker, I yield 1½ minutes to the gentleman from Massachusetts [Mr. FRANK].

Mr. FRANK. Mr. Speaker, I want to commend the gentleman from Kansas [Mr. GLICKMAN] and others in the Superfund conference for coming out with a very, very good bill under very difficult circumstances. To deal with a matter of this complexity and come out with such balance, given all the

pressures, is a significant accomplishment.

It is a good bill in that it protects the environment, but it does not unfairly burden people who ought not to be burdened, and I think it is a good model for how to deal with that.

I want to take a little time now to express my very strong opposition to one piece of this. I am going to vote for it anyway, but there is a differential in the tax piece that has the effect of taxing imported oil more heavily than others.

That has a very negative, in principle, effect on our part of the country. At the level of only 3½ cents a barrel that is in this bill, and given that we were over a barrel by some of the people who wanted to have no bill at all, I can accept this; although I held off signing the conference report to express my disagreement.

I think it ought to be clear that many of us, particularly in the Northeast who are supportive of Superfund and were prepared to make this rather small compromise here, do not consider this a precedent as a general revenue raiser, and any effort to broaden this and get the oil import fee differential to where it would be a very significant economic disadvantage would be opposed.

We will live with it here because we have to; because a place that we may not mention insisted on it, but it ought not to be considered a precedent; and it is only in that very narrow context that we can accept even this very small differential.

Mr. RODINO. Mr. Speaker, at long last, the House-Senate conference committee on the reauthorization of Superfund has successfully completed its work. This body now has the opportunity to adopt the conference agreement, and thus ensure that a strong and vigorous Superfund Program that is adequately funded will be in place to clean up hazardous waste sites between now and 1990.

Reaching this agreement has been an arduous task, one in which the conferees have grappled with many complex legal and technical issues, and one in which we have sought to address the legitimate, though often conflicting, concerns of those affected by the program.

Toxic waste cleanup is a critical, urgent problem facing this country. The conference report vigorously addresses this problem. It contains many significant provisions which strengthen the current Superfund Program in ways that are essential to the future of this Nation. It has new provisions on community right-to-know. It addresses the radon problem, an issue of great significance in many States, including my home State of New Jersey. It will allow individuals to sue for damages that result from exposure to toxic substances even if many years pass before they discover their injury or its cause. It ensures that affected localities, as well as responsible parties, will have a say in the type of cleanup to be conducted at a site.

Without question, this conference agreement will significantly strengthen the existing Superfund Program and fund it at an adequate level. While there are provisions that could be even stronger, I nevertheless believe we must act now to prevent this critical program from being crippled by still more interim funding proposals that prevent a vigorous cleanup program from addressing our toxic waste problems.

Finally, I wish to thank all my colleagues on both the Judiciary Committee and the other committees of jurisdiction for their tireless efforts to complete this conference. The result is one in which we can all take satisfaction, and I urge its adoption by the House.

Mr. GLICKMAN. Mr. Speaker, I ask unanimous consent that any remaining time I may have be given to the gentleman from Michigan [Mr. DINGELL].

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Kansas?

There was no objection.

The SPEAKER pro tempore. Is there a ranking minority member from the Committee on the Judiciary who wishes to be recognized at this point? If not, the Chair recognizes the gentleman from New York [Mr. LENT].

Mr. LENT. Mr. Speaker, I yield 1 minute to the gentleman from New Jersey [Mr. RINALDO].

Mr. RINALDO. Mr. Speaker, I wish to congratulate the members who put this piece of legislation together and who have worked so hard: The chairman of the full Committee on Energy and Commerce, the gentleman from Michigan [Mr. DINGELL], the ranking minority member, the gentleman from New York [Mr. LENT], the gentleman from Ohio [Mr. ECKART], and three colleagues from New Jersey who have done extensive work and were very diligent in their efforts: Congressman HOWARD, Congressman ROE, and Congressman FLORIO, who is also a member of the Committee on Energy and Commerce.

Today's action will restore public confidence in the Government's commitment to clean up the Nation's toxic waste dumps by reauthorizing the Superfund Program with increased funding.

Surveys have shown that the hazardous waste threat is a major environmental concern in every State in the country. This is particularly true in New Jersey which has 91 of the 703 hazardous waste sites on the Superfund national priority list. That is far more than any other State.

The program was authorized for 5 years in 1980 with a $1.6 billion budget derived primarily from an assessment on the chemical industry for the purpose of cleaning up the Nation's most dangerous toxic waste dumps.

The Superfund law enacted in 1980 called for a fund of $1.6 billion to pay for the cleanup of abandoned hazardous waste sites around the country. But we know far more about the problem today than we did then. According to estimates furnished by the Office of Technology Assessment, there may be as many as 10,000 such sites around the country; cleaning them up will cost billions of dollars.

Clearly, the dimensions of the problem we face are far beyond what Congress anticipated in 1980 and what the existing Superfund law can hope to accomplish. We need to adopt this bill and swiftly enact this new program to show our constituents that we are serious about addressing this national problem.

Hazardous waste sites are a toxic time bomb which threaten our health and safety. Leakage from underground storage tanks and the improper disposal of wastes into corroding barrels has meant the seepage of toxic contaminants into our ground water. We must act now before irreversible damage is done to our drinking water supply. To delay not only increases the costs of this vital clean up but raises the magnitude of this problem for our children and future generations.

This bill clearly is not perfect. It is a compromise. Our goal is not to enact a perfect bill: it is to improve upon the existing law by adopting the strongest possible measure that will lead to cleaning up these dangerous sites.

Mr. Speaker, I am pleased that the House finally has the opportunity to pass a strong Superfund bill, and I urge my colleagues to join with me in voting in favor of this important legislation.

Mr. CRANE. Mr. Speaker, I reserve the balance of my time.

Mr. LENT. Mr. Speaker, I yield 1 minute to the gentleman from Kansas [Mr. WHITTAKER], the ranking minority member of the Subcommittee on Commerce, Transportation, and Tourism.

Mr. WHITTAKER. Mr. Speaker, I would like to commend my many colleagues who have worked so hard and so ably to produce this conference report. I know that it was touch and go for a while on whether the major issues would be resolved so that we could take final action on reauthorization of this program.

Chairman DINGELL, Mr. FLORIO, and Mr. LENT deserve special credit for their good work on crafting this legislation.

Of course, the value and importance of the Superfund Program made their work so urgent. This program is vital to our efforts to protect the health and well-being of the American people and the environment in which we live. I urge the President to approve this legislation.

Mr. Speaker, one aspect of this conference report which is particularly critical to my district is the Radon Demonstration Program. The EPA recently identified the eastern one-fifth of the State of Kansas as an area

which could have elevated radon levels.

In my district we had large-scale mining operations for coal, lead, and zinc. This is the type of activity that is frequently coincidental with the presence of dangerous levels of radon.

The EPA has already done some radon testing at the Superfund site in Cherokee County, KS. This testing was not done under ideal circumstances and was completed before EPA released its radon guidelines in August.

Elevated levels of radon were found in this small sample of buildings and homes. The problem is evident and the people of these affected communities deserve attention.

The State of Kansas has very limited resources to deal with this potentially massive problem. However, the agency in charge is very sensitive to the problem and is ready to begin radon monitoring and research if funding is made available.

I have discussed this issue with EPA's regional office in Kansas City and am convinced that they are eager and able to take part in this demonstration program we are approving today. They believe that there is a critical necessity to define the radon problem in Kansas.

Mr. Speaker, I think these facts make it clear that the hidden dangers of radon are as real and urgent in Kansas as they are in Northeastern States. I call on the EPA to allocate sufficient funds from this demonstration program to address the critical radon situation in southeast Kansas.

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The SPEAKER pro tempore (Mr. PANETTA). Is there a member from the Committee on Merchant Marine and Fisheries who wishes to be recognized for the time assigned to that committee, on the majority side?

Is there a member from the Armed Services Committee who wishes to be recognized?

The Chair recognizes the gentleman from Oklahoma [Mr. MCCURDY] for 2½ minutes.

Mr. McCURDY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of the conference agreement, which deals with one of the most important public health issues that has come before this Congress.

I especially want to call my colleagues' attention to that portion of the legislation that sets up a Department of Defense Environmental Restoration Program to strengthen the cleanup of hazardous waste sites at military installations. I served as a conferee on this section, and much of the language is the result of several months of hard work by a number of members on the Armed Services Committee, who served on the bipartisan environmental restoration panel I chaired.

The conference agreement requires that the Defense Environmental Restoration Program be carried out in a manner consistent with CERCLA. The conference accepted the House provisions concerning the establishment of a research, development, and demonstration program, and the requirement that DOD provide a listing of hazardous substances with ATSDR.

The conference also accepted the House provisions regarding DOD notification of environmental restoration activities; the requirement for an annual report to Congress; and procedures governing DOD military construction environmental response actions.

Mr. Speaker, this is urgently needed legislation, and I urge the adoption of the conference report.

Mr. Speaker, I reserve the balance of my time.

The SPEAKER pro tempore. Is there a minority member on the Armed Services Committee who wishes to be recognized for their time? If not, the gentleman from New York [Mr. LENT] is recognized.

Mr. LENT. Mr Speaker, I yield 1½ minutes to the gentleman from Texas [Mr. FIELDS].

Mr. FIELDS. Mr. Speaker, I rise in reluctant support of this Superfund conference report. I rise in reluctant support because, while I support the reauthorization of Superfund, I am strongly opposed to the tax provisions which force the petroleum industry to shoulder a disproportionate amount of the cleanup cost of hazardous waste sites.

The House-Senate conference agreement raises $8.5 billion—$2.75 billion from a crude oil tax, $1.4 billion from chemical feedstocks taxes, $2.5 billion from a levy based on the corporate alternative minimum tax, $1.25 billion from general revenues and $600 million from interest plus moneys recovered from responsible companies.

The petroleum industry is required to pay a full 32 percent of the cost of abandoned hazardous waste site cleanup. I emphasize the word "abandoned." Superfund taxes are collected primarily to pay for the cleanup of sites for which no solvent responsible company or individual can be found. The slogan, "make the polluter pay," has been bandied about time after time during Superfund debate. Well, the polluter does pay. Individual companies already pay for cleanups when they are responsible. The polluter already pays to clean up his own waste. Superfund taxes determine who will pay for the other fellow's waste when the other fellow can't be found or is financially insolvent.

I suppose the petroleum industry happened to be the easiest target. The 1,275-percent increase in crude oil taxes contained in this conference report certainly has nothing to do with fairness or equity.

Many of my colleagues may not be aware that, since December, employment in the exploration and production sector of the domestic oil and gas industry has dropped by more than 22 percent. The U.S. drilling rig count had plummeted from over 1,900 to 800. Imports of crude and crude products escalated to 41 percent of U.S. consumption in August, up from 28 percent in August of 1985. Imports of crude from the Middle East more than tripled during that same period. Whether you represent a producing or a consuming State, OPEC's attempt to shut down U.S. domestic oil production should concern you. We are rapidly delivering the American consumer into the clutches of OPEC, again.

It is inconceivable to me that, instead of acting to preserve our national energy security, Congress is acting to further the deterioration of our domestic energy industry. The recently approved tax reform legislation is estimated to drain in excess of $10 billion over 5 years from the domestic oil and gas industry. And, if that isn't bad enough, here we are, only a few short weeks later, giving the domestic energy industry another $2.75 billion hit. While it is true that domestic crude will pay an 8.2-cent per barrel tax compared to an 11.7-cent per barrel tax on imported crude, this differential will provide little relief. It's a little like applying a Band-Aid to a hemorrhage.

Forcing the petroleum industry to bear the brunt of Superfund taxation isn't fair, it isn't equitable and it doesn't make sense.

I must commend the House conferees, however, for the adoption of a $2.5 billion broad-based tax. The broad-based tax component should have been larger. Nevertheless, the levy represents a recognition that hazardous wastes are a societal problem. Two industries, alone, cannot continue to bear the entire burden for the cleanup of abandoned hazardous waste sites.

Despite my disdain for increased petroleum taxes, I will support this conference report. The Superfund Program has been operating on a stop-gap for the past year. We must get on with the cleanup of hazardous waste sites.

I have worked to reauthorize Superfund from the bill's infancy stages in the Energy and Commerce Committee all the way through the conference committee on which I served.

The conference was an extremely difficult one. Chairman JOHN DINGELL deserves a great deal of praise for the fact that a conference report is before the House today. If it weren't for his able leadership, Superfund reauthorization would still be languishing in

conference. I have to pay my highest respect to Energy and Commerce ranking minority member, NORM LENT, for his able service, too. He worked tirelessly in crafting this Superfund bill. Likewise, I extend my thanks to my colleague, DENNIS ECKART and every other member who worked to bring this legislation through conference.

Finally, I want to thank the ranking minority member of the Senate Environmental and Public Works Committee and fellow Texan, Senator LLOYD BENTSEN, for his service on both the programmatic and tax portions of this package.

The Superfund reauthorization package before us today is not perfect. It is the product of intense negotiations resulting in countless compromise positions. Those negotiations did not always yield the result I would have liked, but such is the nature of compromises.

My colleague, Mr. LENT, has already provided the House with an excellent statement on the Superfund package, so I will be brief.

When Congress first enacted the Superfund Program 6 years ago, little was known about the extent of our Nation's hazardous waste problem. Now, we know a great deal more. We know the problem is bigger than anyone initially anticipated. We know the sites will be more expensive to cleanup than anyone initially anticipated. We know that the Superfund Program which is now is place has not worked as well its authors had hoped. Yet, there is still so much we don't know.

Scientific knowledge is increasing, technology is improving. But, hazardous waste cleanup is still in its infancy stages. Cleanup technologies are expensive and imperfect. There are no easy answers. That is why the Superfund reauthorization process has been so long and difficult.

When I examined the reasons the current Hazardous Waste Cleanup Program has not worked well, I concluded that the lack of cost-effective technology to cleanup complex hazardous waste sites was a major problem. But, I also concluded that the Superfund Program's strong emphasis on litigation was a very serious flaw. I discovered that as much as 50 percent of Superfund money was being spent on litigation, not cleanup of waste sites.

This Superfund reauthorization bill sends a strong signal to the Environmental Protection Agency and to the Department of Justice that Congress wants settlement, not litigation, with potentially responsible parties whenever possible. Paying immense lawyers' fees does nothing to protect health of American citizens. In fact, litigation merely extends the health threat to our citizens by delaying cleanups.

Senators BENTSEN, SIMPSON, and DOMENICI were key players in drafting language encouraging settlements over litigation. Congressmen LENT, TAUZIN and others joined me in advocating stronger settlement policy on the House side.

Under the settlement language included in the conference report, EPA and the Justice Department are given explicit authority to enter into settlement agreements. EPA is required to establish guidelines for development of nonbinding preliminary allocations of responsibility. Under this procedure, EPA would notify potentially responsible parties, provide them with the identity of other responsible parties and information on the volume and nature of the waste contributed by those parties. After providing such information, EPA would be required to suspend action for a period of 60 to 120 days to give the responsible parties time to develop a settlement offer.

Additionally, this conference report encourages settlements by EPA specific authority to use Superfund moneys to pay for so-called orphan shares. Orphan shares are those portions of cleanup costs for which no solvent responsible party can be found. Since Superfund tax revenue is collected to pay for the cleanup of sites where no solvent responsible party can be found, it is logical Superfund moneys should be used to pay for shares at a Superfund site when not all responsible parties can be found.

Finally, EPA is given authority to grant meaningful releases from future liability when specific conditions are met. Granting meaningful releases from liability ensure that a company which acts in the public interest to cleanup a hazardous waste site will not be sued again in the future. Meaningful releases from future liability will encourage settlements, too.

In closing, Mr. Speaker, I want to thank all Members from both sides of the Capitol for their hard work in reauthorizing Superfund.

Mr. DINGELL. Mr. Speaker, I yield 1 minute to the distinguished gentleman from New Jersey [Mr. FLORIO].

Mr. ROE. Mr. Speaker, I yield 2 additional minutes to the gentleman from New Jersey [Mr. FLORIO].

Mr. FLORIO. I thank the two gentlemen for yielding this time to me.

Mr. Speaker. I am pleased to rise in support of the conference report on legislation to extend and expand the Superfund Program. The bill provides $9 billion in funding for a second 5-year installment of the cleanup effort. It carries out several fundamental reforms of the program, including the establishment of uniform national cleanup standards and tougher deadlines for the cleanup of federally owned or operated facilities. The bill also creates two new and urgently needed national programs: a $500 million effort to clean up leaking underground gasoline storage tanks and a comprehensive community right-to-know disclosure program.

While we can all support this legislation, which gives the Environmental Protection Agency [EPA] the money and tools it needs to revitalize the cleanup of thousands of toxic hazards across the country, the legislation unfortunately leaves the pace of cleanup too much to the agency's discretion. Our failure to adopt strict schedules for cleanup means that the ultimate success of the program depends on the will of the agency and this administration to use tools and resources effectively.

I would like to commend all of those who participated in the long and difficult process that brought us to this day. This has been a terribly controversial piece of legislation and it is a tribute to all involved that we are here today to pass this conference report.

I would like to point out several things. It is a major goal of the Superfund Amendments and Reauthorization Act of 1986 [SARA] to establish a statutory bias toward the implementation of permanent treatment technologies and permanent solutions whenever they are feasible and achievable. The implementation of such solutions at sites cleaned up under the program is the only way to ensure the successful completion of the cleanup effort.

"Permanent treatment or alternative technologies" mean treatment methods that permanently and significantly reduce the volume, toxicity, or mobility of the hazardous substances, pollutants, and contaminants. Significant reduction is the minimization of volume, toxicity, and mobility of such substances to the lowest levels achievable. Such technologies change the fundamental nature and character of the substances at issue, either by destroying them, for example, incineration, or neutralizing them, for example, application of chemical or bioengineered neutralization agents. Mere reductions in volume of toxic and mobile substances would not constitute effective use of a permanent treatment or alternative technologies.

The legislation states that specific standards, requirements, criteria, or limitations developed under Federal and State health and environmental laws shall be applied to Superfund cleanups if they are applicable or "relevant and appropriate."

The first test of relevance and appropriateness is whether the standard, requirement, criteria, or limitation at issue was developed for the same environmental media as the media contaminated by the Superfund site. Standards developed under the Clean Water Act and the Safe Drinking Water Act would, therefore, be relevant both to contaminated ground and

surface water at a Superfund site. Similarly, Clean Air Act ambient air standards would be relevant to air emissions of hazardous substances, pollutants, or contaminants released from a Superfund site.

A central goal of the cleanup standards section of the legislation is to prohibit the writing off of potentially useful ground water supplies that have been contaminated by Superfund sites. Such natural resources are both finite and irreplaceable. The purpose of the Superfund Program is to reclaim such contaminated resources whenever possible.

Water quality criteria are essential to a comprehensive system of Superfund cleanup standards because such criteria established maximum exposure levels for some 140 chemicals found most frequently at Superfund sites, while all the analogous standards established under other major Federal environmental laws cover only some 20–30 such chemicals. The legislation specifically permits EPA to consider the purposes for which water quality criteria were developed in determining whether they are relevant and appropriate. This provision only affects the selection of the appropriate exposure level. Water quality criteria which were originally developed for surface water should be applied in situations where ground water is contaminated by a water quality criteria chemical.

The settlement provisions of the legislation are premised on the current Superfund Liability System, which imposes strict, joint and several liability on those found responsible under section 106 or 107 of the Comprehensive Environmental Response, Compensation and Liability Act [CERCLA].

The importance of placing the settlement procedures established under section 122 in the context of Superfund's liability scheme cannot be underestimated. Settlements are an alternative to full prosecution of strictly, jointly and severally liable parties and must always be evaluated in relation to the relief the Government could have obtained by litigating the case. Because Superfund imposes liability without regard to fault, and holds that when the harm is indivisible, each party is jointly and severally liable for the full costs of cleanup, settlements for only a portion of cleanup costs must be measured against a high standard. When a liability scheme is as strong as the scheme contained in Superfund, recoveries of amounts less than full costs are disfavored and may only be justified by exceptional circumstances.

One of the most important issues addressed by the legislation is the timing of citizens' suits challenging illegal EPA decisions. Such suits would involve allegations that the agency has violated the cleanup standards and other requirements of the law and that a citizen's health and environment would be threatened if the agency was allowed to continue with its illegal acts.

A major goal of the legislation is to establish specific, uniform national health standards that will apply to EPA's cleanup decisions at Superfund sites. While we fully expect the agency to adhere to these standards, past experience has demonstrated that enforcement of such legal requirements by affected citizens' groups—acting as private attorneys general—is an essential component in the implementation of any detailed statutory mandate. For this reason, the amendments establish an independent citizens' suit provision under new section 310 of the act.

In order to be fully effective in enforcing the law's cleanup standards provisions, such suits must be brought at a point in the cleanup process where the agency could easily be ordered to modify its violative behavior. A final cleanup decision, or plan, constitutes the taking of action at a site, and the legislative language makes it clear that citizens' suits under section 310 will lie alleging violations of law and irreparable injury to health as soon as—and these words are a direct quote—"action is taken."

Section 104(k) of the legislation, adding new subparagraph 104(c)(9) to the act, clarifies the President's authority to withhold Superfund money in States that fail to demonstrate good faith efforts to plan for adequate disposal capacity of hazardous wastes generated within the State, beginning 3 years after the date of enactment, for a 20-year period.

The 3-year deadline is not intended to impose a requirement that the States establish physical disposal capacity—that is, actually site, build, and permit disposal facilities—within the time period because we clearly recognize that this kind of assurance would be impossible for most States to provide. Instead, the language is intended to require States to make good faith efforts to plan for future disposal capacity for the cleanups that will be carried out in the State.

Finally, there is the important issue of whether the President's decisions under section 104(k) are judicially reviewable. When we adopted this language, we intended to make the decisions whether to withhold remedial actions and whether to approve State assurances discretionary, thereby precluding review by any outside party. We did not want to create a situation where potentially responsible parties at a site could use this provision as an excuse to stop cleanup despite EPA's decision to continue such remedial actions.

However, we recognize that a State might submit what it considered to be an adequate, good faith assurance, and EPA might reject the assurance in an arbitrary and capricious fashion. In such instances, we intended to give the State the ability to appeal the Agency's decision to the appropriate Federal court.

Sections 120 and 121 of the legislation, coupled with the citizens' suit provisions of new section 310, create a program for the cleanup of Federal facilities which significantly strengthens the authority of EPA, the States and citizens in selecting remedies and requiring compliance, including the imposition of penalties. The Federal facilities program under Superfund should be implemented to complement, and not replace in any manner, the corrective action authorities of the Solid Waste Disposal Act. Section 120(i) is an explicit clarification that, notwithstanding section 121(e), a delegated State continues to have the authority to enforce the corrective action requirements of sections 3004 (u) and (v) of the Solid Waste Disposal Act of any treatment, storage, or disposal facility of a Federal installation. Further, section 120(a)(4) provides that sovereign immunity is waived, and State laws have full force and effect, with respect to cleanups at Federal facilities of waste management areas which are not included on the national priorities list.

Section 210 of the bill adds a new title IV to CERCLA authorizing risk retention groups and insurance purchasing groups for pollution liability insurance. However, at the same time that we have been working on the present bill, Congress has been working on the Risk Retention Amendments of 1986, which create general authority for liability insurance risk retention and purchasing groups, including those providing pollution liability insurance. This general risk retention legislation contains safeguards for the public interest which are not explicitly provided for in the new title IV of CERCLA. The Risk Retention Amendments of 1986 contain a provision declaring that the safeguards of the risk retention amendments apply to title IV of CERCLA. Furthermore, the risk retention amendments explicitly do not restrict or otherwise affect the authority of Federal and State governments under any other Federal law, including CERCLA and the Solid Waste Disposal Act, to impose financial responsibility requirements, including the means of demonstrating such financial responsibility. As a principal involved in the development of both bills, I wanted to make the legislative intent on these points as clear as possible.

Mr. CRANE. Mr. Speaker, I yield 10 minutes to the distinguished gentleman from Ohio [Mr. ECKART].

Mr. ECKART of Ohio. I thank the gentleman for yielding time to me.

Mr. Speaker, I yield 2 minutes to the gentleman from Colorado [Mr. WIRTH] for purposes of a colloquy.

The SPEAKER pro tempore. Without objection, the gentleman from Colorado [Mr. WIRTH] is recognized for 2 minutes.

Mr. WIRTH. I thank the gentleman for yielding time.

Mr. Speaker, the attorney general from the State of Colorado has raised a concern about the application of sections 120 and 121 to hazardous waste facilities located within Federal installations.

My question for the gentleman from Ohio is, did the conferees intend for section 120(a)(4), concerning the applicability of State laws at facilities not on the national priorities list, to alter or affect the manner in which section 121 applies substantive State standards to facilities on the national priorities list?

Mr. ECKART of Ohio. If the gentleman will yield, the answer to the gentleman's question is no. Section 120(a)(4) does not alter the way section 121 applies substantive State standards to remedial actions at facilities owned or operated by a department, agency, or instrumentality of the United States which are on the national priorities list.

Mr. WIRTH. Section 120(i) continues the obligation of any department, agency, or instrumentality of the United States to comply with any requirements of the Solid Waste Disposal Act—including corrective action requirements.

Did the conferees intend that the phrase "any requirement of the Solid Waste Disposal Act" include compliance with State standards and regulations adopted by the State as part of their effort to obtain delegation of the Resource Conservation and Recovery Act [RCRA] Program?

Mr. ECKART of Ohio. Yes; any requirement includes the State standards and regulations the gentleman has referred to.

Mr. WIRTH. I thank the gentleman.

At this point, I want to commend the gentleman from Ohio, and the chairmen of the Energy and Commerce Committee, the Public Works Committee, and the Commerce subcommittee for their fine work in putting together a strong Superfund reauthorization package. I know they put in many long, hard hours in hammering out a compromise, but this conference report was well worth the effort.

Mr. Speaker, this conference report responds to the people of Colorado who are calling for action to clean up hazardous waste sites.

I know that the citizens of South Adams County, whose ground water has been contaminated, want to see this bill enacted into law. I know the citizens of Colorado Springs want to see the Arkansas River cleaned up.

This new, strengthened Superfund law gives EPA the tools and the resources it needs to get on with the job of cleaning up these sites and protecting the health of our citizens. And it preserves the State's right to be a partner with EPA in cleaning up these sites.

Mr. Speaker, this bill is a good bill for Colorado, and a good bill for the Nation. I urge all of our colleagues to vote to adopt this conference report. There will be no more important health and environmental protection vote this year.

I call upon the President to sign this bill, which took us 3 long, hard years to put together.

Mr. ECKART of Ohio. Mr. Speaker, I yield 1 minute for purposes of a colloquy to the gentleman from Florida [Mr. LEHMAN].

The SPEAKER pro tempore. Without objection, the gentleman from Florida [Mr. LEHMAN] is recognized for 1 minute.

There was no objection.

Mr. LEHMAN of Florida. I thank the gentleman for yielding time to me.

Mr. Speaker, if I may engage the gentleman from Ohio in a colloquy. The amendments to section 105 call for revision of the hazard ranking system and would apply the revision prospectively to new candidates for the national priorities list. This bill makes it clear that EPA is not obliged either to apply the revised hazard ranking system to sites already listed on the national priorities list or to rescore the sites.

I believe, however, that this should not preclude the EPA from rescoring a site if it determines that a significant scoring error has been made.

I am specifically referring to the Munisport site in the congressional district that I represent in the State of Florida. The city of North Miami acquired this site from the State in 1970 for a recreational complex. Before the complex could be built, fill was required. So, between 1976 and 1980, a municipal landfill was operated on designated portions of the site under county, State, and Corps of Engineer permits.

In 1983, without the knowledge of the city of North Miami, the site was placed on the national priorities list where it occupies the 466th spot. The site scored 32.37; and score above 28.5 qualified a site for listing. One of the main reasons for this high score was the fact that the scorer recorded two well fields serving the cities of North Miami Beach and North Miami within 3 miles of the site. However, the city of North Miami has stated that both well fields had permanently ceased operation because of salt water intrusion—one 3 years before, the other 2 months before the site was proposed for listing in 1982.

Florida's environmental agency recalculated the score as 10.57, a full 18 points below the qualifying score for the national priorities list. EPA acknowledged in its 1984 remedial action master plan for the site that both well fields have been closed. Both the State and the city have asked EPA to rescore the site, and remove it from the national priorities list.

I am a very strong supporter of the Superfund Program, but believe that the EPA needs to take a closer look at whether this site should be removed from the national priorities list. The city of North Miami and the State of Florida are already conducting a $205,700 study in preparation for capping and closing the site in accordance with State law. I believe that the EPA needs to work with the city and review this data instead of requiring a more costly remedial investigation before the agency will consider delisting.

Is it the position of the conference committee that a currently listed site can be rescored if the EPA concludes that there was a verifiable factual error? If the new score justifies it, can the site be removed from the national priorities list without a costly and time-consuming remedial investigation or cleanup effort?

Mr. ECKART of Ohio. Without agreeing or disagreeing with any of the factual representations made by the gentleman, the Environmental Protection Agency has the existing statutory authority to rescore a facility prior to a remedial investigation and feasibility study where the Administrator determines, in his discretion, that a significant factual error was made in the scoring of a facility and such error would cause the facility to be removed from the national priorities list.

Mr. LEHMAN of Florida. Mr. Speaker, I thank my friend, the gentleman from Ohio.

Mr. ECKART of Ohio. Mr. Speaker, for purposes of a colloquy, I yield such time as he may consume to my colleague, the gentleman from Ohio, Mr. LUKEN.

The SPEAKER Without objection, the gentleman from Ohio [Mr. LUKEN] is recognized.

There was no objection.

Mr. LUKEN. I thank the gentleman for yielding time to me.

I also want to admire the work of the committee, the chairman, the gentleman from Ohio, and others from the committee for the tremendous work in bringing about this minor miracle—including the gentleman from Louisiana, too.

Mr. Speaker, if I may engage the gentleman in a colloquy, I would like to clarify the legislative intent of section 202.

Section 202 requires the Department of Transportation [DOT] to promul-

gate regulations for the transport of hazardous substances, as defined by the Superfund statute. The list of hazardous substances has been compiled by incorporating substances on other, statutorily prescribed lists. Under some circumstances, substances such as chrome in metal finishing wastes or saccharin in foodstuffs may pose a threat to human health or the environment and have been included on the list of hazardous substances lists. Under other circumstances, however, such as a truckload of chrome bumpers or a truckload of saccharin or saccharin-containing beverage concentrates, the materials may not pose a threat to human health or the environment. I would like to clarify that it is not the intent of the conference to burden shippers of such listed substances which may not be hazardous because of the circumstances with substantial additional paperwork or other regulatory requirements that cannot be justified by the level of hazard these substances pose.

Mr. ECKART of Ohio. If the gentleman will yield. The gentleman is correct as usual. Section 202 was included to require that the Department of Transportation promulgate regulations which will ensure proper and safe handling of substances which pose a threat to human health or the environment should such materials be released during transport. The section does not require, however, that all listed hazardous substances be treated with identical regulations. It is the intent of the provision that DOT promulgate appropriate regulations for listed hazardous substances based on the threat to human health and the environment that those substances would pose should they be released during transport.

Mr. LUKEN. Mr. Speaker, I thank the gentleman. I think that does clarify the intent of section 202.

Mr. ECKART of Ohio. Mr. Speaker, I am pleased to yield such time as he may consume, for the purpose of a colloquy, to the gentlemen from Washington [Mr. SWIFT].

The SPEAKER pro tempore. Without objection, the gentlemen from Washington [Mr. SWIFT] is recognized.

There was no objection.

Mr. SWIFT. Mr. Speaker, am I correct that the conference agreement requires the President, in selecting a remedial action, to select a cost-effective remedial action that assures protection of human health and the environment, and that permanently solves the problem to the maximum extent practicable. As I understand the statutory language, a permanent treatment or alternative technology is one in which the permanent and significant reduction of the volume, toxicity or mobility of the hazardous substances, pollutants, and contaminants is a principal element. I do not understand the statute to require, as was suggested on the other body, that this means "the minimization of volume, toxicity and mobility of such substances to the lowest levels achievable with available technologies," or that such technologies must be chosen whenever they are feasible and achievable. Am I correct?

Mr. ECKART of Ohio. If the gentleman will yield, you are correct. First of all, the statute refers to the significant reduction of volume, toxicity or mobility—using the disjunctive "or" rather than the conjunctive "and." Second, neither the statute nor the joint statement includes a standard requiring such reductions to the lowest levels achievable with available technologies. A technology may be available but not be a cost-effective remedial action under the circumstances, and would therefore be ineligible for consideration under section 121. Finally, neither the statute nor the joint statement refer to a standard of "feasible and achievable." The statutory standard agreed upon by the conferees is the utilization of "permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable." Unlike a "feasible and achievable" standard, this standard requires the consideration of both technical and nontechnical factors.

Mr. SWIFT. I understand section 121(c) of the statute to require that if any of the hazardous substances, pollutants or contaminants remain at the site as part of the remedial action, the President must review that remedial action at least once every 5 years. Does that section require the President, as was stated in the other body, to initiate a new remedial action if, as a result of one of these reviews, he determines that a permanent or alternative treatment technology has been developed since the remedial action was first selected, and to implement such technologies wherever possible?

Mr. ECKART of Ohio. No, there is no such requirement in section 121(c) or elsewhere in the act. The purpose of the 5-year review is to assure that human health and the environment are being protected by the remedial action being implemented. If human health and the environment are not being protected, then the initial remedial action would have to be considered unsuccessful, and additional actions would be necessary. As for additional actions, including the implementation of new technologies that would go beyond the minimum protection of human health and the environment, section 121(c) authorizes the President to take or require such actions if "it is the judgment of the President that action is appropriate at such site in accordance with section 104 or 106 * * * ."

Mr. SWIFT. It was also stated in the other body that the statutory requirement for permanent solutions should not be read to constrain the Administrator's flexibility in selecting a cost-effective remedy appropriate for the specific site. It was my understanding of the conference agreement that it does indeed constrain the Administrator's flexibility, and that the statute requires the selection of permanent solutions in many cases where we haven't seen such solutions in the past. Is that a correct understanding?

Mr. ECKART of Ohio. That is a correct understanding. As an example of how this statute contrains EPA's flexibility, EPA has in the past been deterred from choosing more permanent remedial actions because the costs of such actions are usually greater than the costs of land disposal. This has sometimes been the case even when long-term costs are considered. The conference agreement requires EPA to consider permanent solutions even though they may be very costly, and makes it clear than EPA may not reject a permanent solution just because it may cost more than land disposal.

Mr. ECKART of Ohio. Mr. Speaker, I would retain the balance of my time yielded to me so kindly by the gentleman from Illinois [Mr. CRANE] for the purpose of further colloquy.

The SPEAKER pro tempore. Is the gentleman reserving his time? The gentleman does not have unanimous consent with regard to the time that was provided.

Mr. ECKART of Ohio. Mr. Speaker, if I may, I would like to request unanimous consent to reserve the balance of my time for the purposes of engaging in additional colloquies with two Members who are in other hearings at this time, specifically for the purpose of colloquies such as we have recently conducted.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

The SPEAKER pro tempore. The gentleman from New York [Mr. FISH] is recognized for 7½ minutes on behalf of the Committee on the Judiciary.

Mr. FISH. Mr. Speaker, I yield such time as he may consume to the gentleman from Connecticut [Mr. MCKINNEY].

Mr. MCKINNEY. Mr. Speaker, I would suggest that this is probably the most important time bomb in America's future as to how we treat our environment, and I congratulate the House on finally getting to it.

Mr. Speaker, I rise today in strong support of the Superfund conference report before the House. After almost 3 years of work on this Superfund reauthorization, Congress has developed legislation which will extend this vital environmental program into the 1990's.

Last Friday, the other body approved this measure by an overwhelming vote of 88 to 8.

I urge the House today to follow that strong example with an unambiguous message of its own: Superfund must be reauthorized now!

As my colleagues are now, and as our Nation's citizens are becoming increasingly aware, the magnitude of our hazardous waste cleanup problem is frightening. There are 847 sites on the EPA's national priorities list for Superfund cleanup. The 18 States of the Northwest and Midwest have 516 of the sites listed. New England has 57 sites, and there are 6 in my home State of Connecticut, with one in my congressional district.

These figures are shocking enough. However, let's keep in mind that these are only the sites that have been formally added to the priorities list. Thousands of additional sites have been proposed and are being studied for inclusion on the list.

The conference report before us today would allow our Nation to make great strides in meeting this challenge. Some of the critical elements of the conference agreement are:

A comprehensive program designed to provide the public and community emergency personnel with detailed information about chemical threats;

A timetable for Superfund cleanups to ensure that the EPA will act far more aggressively than in previous years;

Stringent standards for cleanup of Superfund sites, which mandate that each site meet appropriate standards set in other Federal environmental laws for specific hazardous substances;

A program for the cleanup of hazardous substances from federally owned property;

A special tax to pay for the cleanup of leaking underground gasoline storage tanks;

Requirements to ensure public participation in the cleanup decisionmaking process; and,

A process for reaching cleanup agreements between EPA and responsible parties;

This bill also authorizes $9 billion in revenue authority for the Superfund Program. This total will be comprised of: $2.5 billion raised through a new broad-based corporate tax; $2.75 billion through a petroleum excise tax; $1.4 billion through chemical feedstock taxes; $1.25 billion in general revenues; $0.5 billion in gasoline taxes; and $0.6 billion in interest and cost recovery.

Mr. Speaker, in my congressional district lies one of 847 national priorities List sites. This site is located along the western bank of the Norwalk River in Norwalk. It covers 10 acres and is owned and operated by the Norwalk First Taxing District Water Co. The EPA recently announced that it has selected a method to begin the first step in the long-term cleanup of the site. Passage of this conference report will mean that projects such as this one will ultimately be completed.

The House should take decisive action today and send a clear message to the White House that vetoing this vital legislation would be a mistake. Our Nation needs a strong national program for hazardous waste cleanup. We should adopt this conference report in an overwhelming obligation.

Mr. FISH. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of the legislation we have before us today to reauthorize Superfund, the Nation's toxic waste cleanup law. It is critical legislation that must be enacted immediately if we are to avoid the shutdown of a program already damaged by months of delay.

The first 5 years of Superfund have had mixed results. I do not believe that Congress understood the size of the problem when it first considered Superfund in 1980. Each new day brings the discovery of additional sites which require cleanup—sites which were not even identified when Congress first passed Superfund. Virtually every Member in this body has at least one site in his or her district requiring attention. The effects of these sites upon the health and safety of the Nation is obvious and is ample reason as to why this program is so important and why we must act today.

To begin, there were several ambiguities in the original statute which have led to a tremendous amount of litigation. Courts have spent a great deal of time deciding what the intent of Congress was in enacting the legislation because Congress itself failed to be specific.

Mr. Speaker, this statutory ambiguity has cost us more than the expenses involved in litigation. It has cost us precious time otherwise needed and better spent in cleaning up toxic waste sites. Superfund should not be a litigator's dream. It should be a mechanism by which prompt cleanup is directed in a fair and efficient manner. The experience of the first 5 years of the statute has not always reflected this goal.

In this regard, I do think we have made some progress in this reauthorization. For example, significant progress has been made in settlement policy. The changes in this bill will help keep the litigation costs down and, more importantly, will reduce the time needed to commence site cleanups as parties find ways to resolve legal issues in ways other than time-consuming litigation. This is the type of action the program so desperately needs to encourage. This is why this bill is so important.

Indeed, in reviewing the experience of the past 5 years, it is important to note that not only have we had to contend with the problems attendant to beginning a new environmental program, but we have also had to suffer through some very disturbing and turbulent years of EPA mismanagement. Time that would have otherwise been better spent directing cleanups was consumed in internal and external agency investigations. Again, this is time we can no longer afford. We have to get on with the business of cleaning up the Nation's toxic waste sites.

As a Superfund conferee from the Judiciary Committee, I had a strong interest in a number of issues considered in the conference bill. One of the most critical issues relating to Superfund reauthorization is that of response action contractor liability. Indeed, the most workable program changes and the fairest and most efficient tax provisions become meaningless if no one is willing to undertake the essential job of cleaning up sites. The House bill made tremendous strides forward by addressing the liability problems faced by these cleanup contractors. The establishment of a uniform negligence standard, I believe, would have helped create a more certain and stable environment for cleanup contractors by assuring that liability for acts over which they had no control was not assigned to them.

The conference agreement did not go quite this far in this final version. Rather, the conferees chose to establish a Federal negligence standard and leave the question of response action contractor liability under State law to the States. Throughout the deliberations on this matter, it was my clear understanding that this provision of the conference report was based on the conferees strong hope that such an amendment to Superfund would induce States to deal with the question of liability at the State level.

Obviously, Mr. Speaker, without the necessary and proper changes in the liability standards for cleanup contractors, the most qualified and effective contractors will shy away from such work. Those left to participate will be the inexperienced contractors with little to risk in the event of a release. Such policy runs complete counter to what the—we all want—safe and prompt cleanup of sites.

Therefore, Mr. Speaker, although the conference bill does not go as far as I would like to see it go in addressing the problems of strict, joint and several liability in the case of response action contractors, I do feel it a step in the right direction. It is my hope that our colleagues at the State level will indeed note our concerns and examine their own tort law accordingly.

I want to also note the provision concerning citizens suits. The right of citizens to sue to protect their health is fundamental. This provision of the conference bill, which is based on a modified version of the House-passed bill, provides that Federal officials responsible for enforcing Superfund are subject to suit when they fail to perform mandatory actions required by the law. Further, a cause of action against any person in violation of any standard, condition or requirement of the act is provided.

Under the bill passed by the House, citizen suits were barred in cases where the President had commenced and was diligently pursuing either a court action under this act, a court action under the Solid Waste Disposal Act or an administrative order under this act. In the conference bill, the first two bars are maintained while

the bar to suit in cases of an administrative order is deleted.

The conference bill further deletes a citizen suit provision for "imminent and substantial endangerment." I have consistently supported the rights of citizens to sue for imminent and substantial endangerment and was not persuaded by arguments that there is adequate overlap between Superfund and the Solid Waste Disposal Act provision for suits for imminent and substantial endangerment to protect citizens. I do, however, note that the action of the conference in no way impairs the rights of citizens to sue under other Federal or State law or common law.

Lastly, Mr. Speaker, I breathe a great sigh of relief that neither bill contained a Federal cause of action for personal injury and property damage. A proposed Superfund Federal cause of action was narrowly defeated in the House in the 98th Congress and overwhelmingly defeated in the House in this Congress. This body has consistently rejected expanding the Superfund statute to deal with legal rights aimed at compensation for damages arising out of injuries caused by the toxic substances involved.

Both Federal causes of action this body has considered and defeated with regard to Superfund contained extremely weak causal relationships between the actual disposal of the hazardous substances, the resulting exposure, and the asserted injury caused. Furthermore, the liability under such a cause of action would have been—in both instances—a codified standard of strict, joint and several. Under such circumstances, for example, a small business conceivably could be responsible for less than 1 percent of the hazardous waste at a particular site and, nevertheless, be made liable for up to 100 percent of the damages.

In sum, Mr. Speaker, I think this conference bill offers us the last, best chance to reauthorize this vital environmental law. While it is not perfect, it is workable and can be put into action. It accomplishes one of the most vital goals this body has had throughout its consideration of Superfund—namely, it helps reduce the time and expense required in the courtroom and leaves greater time and resources available to cleanup activities. We cannot afford to wait another year to renew this program. We must act now and I urge a "yes" vote.

Mr. KINDNESS. Mr. Speaker, I rise in support of this legislation to reauthorize Superfund. It is no secret that many of us on the conference committee and in the House have reservations about this bill. And there are many things that I'm sure many of us in this House would have done differently. But the time for such debate is long past.

There can be no denial of the seriousness of the problem or the lateness of the hour. We must have a bill now—even if it is imperfect. To delay any longer will mean that Congress has failed to protect the public health. Further debate and delay—however well intentioned and well placed—will not solve the problem of toxic waste. We must act and we must act now. There is no more time for delay. This, Mr. Speaker, is the reason I signed the conference report.

However, in so stating my belief as to the need for immediate action, I feel I must respond to statements made last Friday in the other body by the Senator from Vermont, Mr. STAFFORD. Although my interpretations differ significantly from his on a number of issues addressed by the conference, I will talk only about one—that of response action contractor liability.

In so doing, Mr. Speaker, I believe it absolutely critical that, for purposes of legislative history, the language of the statement of managers be viewed as the best and most accurate expression of the intent of the House and Senate on this matter. There can be no doubt that the language of the conference report is the best evidence as to what it is the Congress decided.

Mr. Speaker, I single out the issue of response action contractor liability for attention for several reasons.

First, I was an active member of the subconference which considered response action contractor liability. I attended all subconference meetings and took careful note as to their proceedings and results.

Second, the failure of the Congress to adequately and responsibly address the very legitimate concerns of the cleanup contracting community undermines the entire Superfund Program. The progress made in solving problems in other parts of the statute is, as a practical matter, rendered moot if responsible contractors refuse to do the work after enactment.

Indeed, Mr. Speaker, it may prove to be a Pyrrhic victory to those who, regardless of motive, opposed the House position on response action contractor liability if, in fact, cleanups slow or discontinue as a result of the obvious and legitimate liability problems facing contractors.

The Senator from Vermont in his statement says that—

The legislation does not affect in any manner liability imposed under State law, whether statutory or common, nor does it reflect a conclusion by the Congress that such laws should be changed to establish a rule of liability other than strict, joint and several.

I am afraid, Mr. Speaker, that I must take strong exception to the Senator's interpretation evidenced by this statement and several others pertaining to response action contractors. While I agree with the Senator that this provision does not affect liability imposed under State law, I must register severe disagreement with his interpretation as to the conclusions by the Congress concerning State liability standards. I note for the RECORD, Mr. Speaker, that the statement of managers says:

Liability which might arise under non-federal laws, however, is untouched by the conference substitute. The existing standard of liability for responsible parties under CERCLA is maintained. The conferees hope that this amendment will induce States to deal with the question of liability within their own borders. The conferees *urge* States to take note of the Federal standards and review their own standards of liability. (emphasis added).

Clearly, the statement of managers does reflect a strong realization that response action contractors are differently situated than responsible parties in the Superfund process. It was in light of this realization that the House passed a uniform negligence standard that took the cleanup contractors out of the Superfund chain of liablility except in those cases where the contractors own negligence caused the release and resulting injury and damage. The entire reason the House conferees decided to reluctantly agree to a nonpreemptive Federal negligence standard was because it was made clear that statement of managers language would stress the importance of this concept and express the hope of the Congress that States would deal with the question of response action contractor liability within their own borders, taking note of the new Federal standard.

Given the extraordinarily clear meaning of the statement of managers, I am uncertain as to how the Senator from Vermont reached the conclusions voiced in this statement of last week. The Senator states that this new Federal standard of liability does not—

• • • reflect a conclusion by the Congress that such laws should be changed to establish a rule of liability other than strict, joint and several.

However, Mr. Speaker, the statement of managers states:

The conferees hope that this amendment will induce States to deal with the question of liability within their own borders. The conferees urge States to take note of the Federal standards and review their own standards of liability.

The Senator from Vermont also states that:

This bill reflects a change in the Federal liability under Superfund. But it is a change that was only reluctantly agreed to and then only after it had become clear that if, in fact, insurance were unavailable, all of the reauthorization efforts would have been for naught. It is a reality in the United States, unlike many other industrialized nations, that businesses refuse to expose themselves to what many would consider the ordinary risks of free enterprise. Businesses and their managers view liability insurance as a precondition to entering or remaining in markets including, unfortunately, Superfund responses. Thus, the Congress was in a sense held hostage by the threat that insureres would refuse to provide coverage. There really was no choice but to pay the ransom and change the Federal standard.

Again, I agree, in part, with the Senator from Vermont—at least to the extent that there can be no doubt that all the reauthorization efforts would be for naught if the liability issues concerning response action contractors were not addressed. However, I must once again respectfully disagree with his interpretations of the conference agreement. Specifically, Mr. Speaker, the risks being assigned response action contractors are not what the Senator describes as the "ordinary risks of free enterprise." These are extraordinary risks

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because of the draconian impact of strict, joint and several liability. This liability standard, is, in reality, a near absolute standard given the extremely limited defenses available in the statute.

Risk under such a scheme makes it impossible to insure against because it cannot be predicted on any realistic basis. The reason, Mr. Speaker, that few industrialized nations suffer from the insurability and liability problems we suffer from in the United States is that new worship at the altar of strict, joint and several liability with the same fervor that many in this country do.

If anyone or anything is being held "hostage" under the current liability scheme, it is the health of the American public, which is being jeopardized by the extremely litigious nature of Superfund—litigation which drags out the time otherwise better spent cleaning up the sites which pose a danger to the public health.

Indeed, I believe the Senator from Vermont misses the point in examining Superfund liability of response action contractors. Because they are in a fundamentally different position than responsible parties and because responsible parties will always remain liable for the injuries and damages their wastes create, it makes little sense to ask those who clean up the sites to "bet the store" everytime they clean up a site.

If cleanup contractors are negligent, they continue to be liable for the injuries and damages caused by their actions. Nothing is gained by holding them strictly, jointly and severally liable—especially if, as in the Senate bill, there is mandatory indemnification of strict liability claims by the Federal Government. Contractors gain no further incentive to be careful under such a system. Further, holding them liable under strict, joint and several liability makes little sense since cleanup contractors do not select the remedies.

Permit me. Mr. Speaker, to digress a bit further. Many cleanup contractors are small companies. Although there are many large construction and engineering firms involved in the process, many of the ancillary services provided a prime cleanup contractors are provided by small businesses—small engineering firms, small surveying and mapping firms, and small architectual firms. They are operated by people who have spent their entire lives building and contributing to society. As is the case in most small businesses, the owners have most of their financial security tied up in their businesses.

I ask you, Mr. Speaker, is it fair to ask these people to bear the personal financial responsibility for the acts of others—especially on a retroactive and near-absolute basis and especially when the responsible parties are still on the liability hook? Remember, Mr. Speaker, that these small businesses will still remain on the liability hook if they are negligent.

Finally on this point, Mr. Speaker, I ask this: If the liability standard for cleanup contractors remains as is and the most competent and innovative firms are driven away from the job, then who will pioneer the new technologies necessary to permanently rid us of these problems? What signal do we send those who invest their resources—or those of their shareholders—in new cleanup technologies? If investment in research and development on new technology leads to liability for the acts of others—on a retroactive, near-absolute, joint and several basis—then who in their right mind is going to develop such technology? For a third time, Mr. Speaker, I remind the Members that cleanup contractors do still and will continue to remain liable for their negligent acts—that is, those acts that they negligently undertook pursuant to their cleanup activities.

Examining the Senator's statement a bit further, I note he also states:

States, however, do have other choices. The insurance industry is regulated at the State level and therefore can be compelled to cooperate. It is possible to require assigned risk pools, regulate premiums, authorize new forms of self-insurance or otherwise respond to the insurance dilemma in some fashion other than altering liability. Of course, some legislatures may well conclude that a change in liability is itself an appropriate response, but they must then confront the equally difficult question of whether a victim should bear the costs of an injury caused by the contractor and, if so, why. The real issue in these cases is not whether it is fair for the contractor to bear the cost of injuring another during the course of a cleanup, but whether it is fairer for the contractor or the victim to do so. A victim's only connection with the poisonous chemical is that he or she was injured; the contractor, in contrast, chose voluntarily and for profit to hold itself out as competent to perform safety tasks that were classified in advance by the Federal Government as among the most difficult and dangerous in the Nation.

The Senator states that State legislatures considering change in their liability laws will have to confront the question of who bears the costs of injury. He states that the only choice before the States will be between the cleanup contractor and the victim. I think again, Mr. Speaker, my friend from Vermont misses the mark with his interpretations.

This is not the case for several reasons. First, injured parties can recover damages from cleanup contractors if those injuries were caused by the contractor's negligent acts. Strict, joint and several liability is not the only basis upon which a lawsuit may be brought. Further, responsible parties—or polluters—continue to be strictly, jointly and severally liable for damages that occur to innocent citizens. Superfund has always been based on the principal that the "polluter pays." A negligence standard for cleanup contractors in no way undermines that concept.

Second, the gentleman from Vermont notes that contractors hold themselves out to be competent to perform the work they do. And on that basis, Mr. Speaker, they are fully willing to be held liable for the consequences of their negligent acts. But near-absolute liability assigns liability without regard to fault or competence. Further, cleanup contractors do not hold themselves to be competent for the actions of others in the Superfund liability chain. They can no more control the actions of other participants than any Member of Congress could. Yet, it seems that this is precisely what the Senator for Vermont would have them do.

In short, Mr. Speaker, I believe Congress can do better than to render Superfund a process under which injured parties become judgment creditors presiding over the liquidation of thousand of innocent small businesses who in no way caused or created the liability being assigned them under the present system. Such a system, Mr. Speaker, is not fair—especially when responsible parties remain liable for the damages caused by their waste and especially since contractors remain liable for their negligent acts.

I will close, Mr. Speaker, with one final comment. For brevity's sake, I will not address the remarks made by the Senator as to the idemnification portion of the conference report except to say that, again, these do not in every instance reflect the statement of managers. I which it were otherwise because I have the greatest respect for the Senator from Vermont. I would note for the record that the statement of managers makes a clear statement that indemnification limits and deductibles should not be set by the Government at such levels as to make the indemnification meaningless. This is very important, Mr. Speaker, because without the proper indemnification levels, the program will not move forward. I strongly urge those responsible for such indemnification agreements to be keenly aware of this critical fact.

Mr. FISH. Mr. Speaker, I yield 3 minutes to the gentleman from Michigan [Mr. DINGELL], and I yield back the balance of my time to the gentleman from New York [Mr. LENT].

Mr. DINGELL. Mr. Speaker, I ask unanimous consent that I may be permitted to reserve the 3 minutes.

The SPEAKER pro tempore (Mr. PANETTA). Is there objection to the request of the gentleman from Michigan?

There was no objection.

Mr. DINGELL. Mr. Speaker, I yield such time as he may consume to the gentleman from Minnesota [Mr. SIKORSKI].

Mr. SIKORSKI. Mr. Speaker, the Superfund legislation before us today is based on a fundamental premise: Americans have the right not to be poisoned by uncontrolled hazardous chemicals. I was proud to introduce a provision of this legislation which establishes an even more basic premise: Americans have the right to know whether they are being poisoned by these chemicals. Community right-to-know is just that: a guarantee that communities will know exactly what kind and exactly how much dangerous chemical waste is released into their air, water, and land. Such a guarantee is essential to the health of our children and our communities.

When it comes to toxic chemicals, ignorance is anything but bliss; 5,700 toxic chemical accidents a year expose thousands of Americans to life and health threatening toxic substances. Millions more Americans are exposed—24 hours a day, 7 days a week—to the routine discharge of anything but routine chemicals.

The Superfund legislation before us today is an acknowledgment that hazardous waste is a national problem. It is also a community and a personal family problem. That's why CRTK is important.

The names of communities which have been devastated by hazardous waste—Love Canal, Times Beach, Woburne—are familiar to us all. But the names of children threatened by cancer, birth defects, genetic disorders and other chronic health effects are generally unknown. They are protested by CRTK. All the vigilance of concerned and responsible parents cannot foresee this threat without CRTK.

Parents will now know the dangers confronting them and their children. The toxics released in their neighborhoods, the water they drink, the soil of their kid's playground, CRTK ensures that parents know the enemy they face. Hazardous wastes are a silent killer, slowly and incessantly wielding their lethal ax over years of exposure. CRTK is the first step in fighting this killer, identifying it.

The chemical industry is an essential part of our economy, many of our communities, and the Edgar-Sikorski CRTK provision is good for industry, and has already worked well in two States—New Jersey and Maryland. The provision sets reasonable thresholds which will not affect small businesses with minimal emissions. Reporting requirements will not be excessive; probalily less than a one-page report.

Community right-to-know lifts the veil of ignorance which has created mistrust and antagonism between community members and local industry. Community right-to-know will guarantee open access to information, dispelling the atmosphere of mistrust and replacing it with one in which community members and industry can openly cooperate in addressing the problems of toxic waste. Safe companies will be rewarded by a community knowledgeable of their good record in handling hazardous products, and unsafe companies will have a powerful incentive to clean up their act.

Superfund is the antidote to restore the health of our communities, and community right-to-know is the shot in the arm to prevent toxic waste problems from developing.

For this medicine to work, it cannot be sugar coated. Disclosure of hazardous waste emissions—both routine and emergency, acute and chronic—must be swift and complete. The requirements for disclosure are clearly defined. These requirements must be strictly and strenuously enforced.

I urge support for the Superfund bill, not only because we need to clean up hazardous waste-sites which threaten the health of our children and communities, but becasue we must allow parents and local communities to begin the process of preventing hazardous, cancer-causing releases.

Mr. DINGELL. Mr. Speaker, I yield such time as he may consume to the gentleman from Illinois [Mr. GRAY].

Mr. GRAY of Illinois. Mr. Speaker, now that we have passed Superfund legislation, current scientific ability to assess the political relationship of hazardous substances in the environment and possible human health effects is limited. This is particularly true where science must extrapolate from one chemical to a mixture of many chemicals and from average population health data to specific individuals or classes of individuals. Consequently, the health studies provided for in the section which has evolved from section 116 of the House bill and section 121 of the Senate bill should not be used to establish a basis for determining individual legal rights or remedies or those of any class of individuals. Rather, these health studies should be used for the purposes of the health authorities section; that is, to determine whether a more detailed understanding of the relevant toxicology, or local epidemiology or etiology is needed or whether some precautionary action should be considered for potentially exposed individuals.

This is the purpose for which these health studies are authorized. This is the purpose to which these health studies are suited. The use of this data for purposes other than those identified in the bill would be counter to the intention of the Congress. I would urge those who would use this data to do so with a recognition of its preliminary nature and scientific limitations, remembering the purposes for which it is authorized here.

Mr. Speaker, I am proud to have INMONT Division of BASE Corp. in my district at Salem, IL, and wanted to make these few remarks that hopefully help keep the purposes and limitations of health study data in perspective while carrying out the good provisions of the bill.

Mr. ROE. Mr. Speaker, may I inquire of the Chair how much time I have remaining?

The SPEAKER pro tempore. The gentleman from New Jersey [Mr. ROE] has 11½ minutes remaining.

Mr. ROE. Mr. Speaker, I yield 3 minutes to the distinguished gentleman from Pennsylvania [Mr. EDGAR].

Mr. EDGAR. Mr. Speaker, we are about to take an historic step today by providing the American people not only with a comprehensive and expanded toxic waste cleanup program, but by finally providing them with the fundamental right to learn about the true risks from their exposure to toxic chemicals. This legislation, which contains the Emergency Planning and Community Right-to-Know Act of 1986 will, at long last, unveil the ways in which toxic chemicals are handled in this country and provide the public with the information they need and deserve to learn about the hazards of toxic chemicals.

I am proud to have successfully sponsored an amendment to the House bill last year that established the philosophical foundation for the proposal before us today. The Edgar amendment made it crystal clear that the community's right-to-know extended not just to those substances that pose an immediate threat to human health, but also to chemicals that can only be called "slow killers"; chemicals that cause cancer, birth defects, liver disease and other chronic illnesses. The Edgar amendment sets the stage for the legislation before us today.

As one of the principal architects of the Emergency Planning and Community Right-to-Know Act of 1986, I consider it important to make several remarks clarifying and amplifying the congressional intent underlying this important new program.

The heart of the Federal Right-to-Know Program is its reporting requirements, which are intended to provide a comprehensive picture of the community's and Nation's exposure to toxic chemicals. As the Environmental Protection Agency, the States, and localities implement and oversee this program, they should be guided by several general principles.

First, Congress recognizes a compelling need for more information about the Nation's exposure to toxic chemicals. Until now, the success of regulatory programs such as the Clean Air Act, the Resource Conservation and Recovery Act and the Clean Water Act has been impossible to measure because no broad-based national information has been compiled to indicate increases or decreases in the amounts of toxic pollutants entering our environment. The reporting requirements, and the toxic chemical release forms in particular, are intended to provide this national information. As a result, the reporting provisions in this legislation should be construed expansively to require the collection of the most information permitted under the statutory language. Any discretion to limit the amount of information reported should be exercised only for compelling reasons.

A second major principle of this program is to make information regarding toxic chemical exposure available to the public, particularly to the local communities most affected. For too long, the public has been left in the dark about its exposure to toxic chemicals. Information that has been available under existing environmental statutes, such as the Clean Water Act or the Clean Air Act, has been difficult to aggregate and interpret, which has made it difficult, if not impossible, for the public to gain an overall understanding of their toxic chemical exposure. Consequently, the reporting requirements should be construed to allow the public the broadest possible access to toxic chemical information in formats that are straightforward and easy to understand.

Third, we intend to limit the scope of trade-secret protection afforded to those handling toxic chemicals. The economic interests of those required to report under these provisions may be affected by the reporting requirements. However, we consider the public's right to know about toxic hazards of such paramount importance that the trade-secret provisions in this act narrowly circumscribe the trade-secret protection afforded firms covered by the reporting requirements. As section 322(a) makes clear, the only information entitled to trade-secret protection under this act, and only under specific circumstances, is the specific chemical identity. All other information, such as information concerning the

amounts of chemicals entering the environment, is not entitled to protection and is available to the public regardless of the impact of disclosure on particular firms.

The final major principle of the Federal Right-To-Know Program is that this program does not preempt State or local right-to-know initiatives. The Federal program is intended to establish a floor which will require the basic information thought necessary for reporting across the country. However, Congress preserves the right of any particular State or locality to require the disclosure of additional information, the right to limit the availability of trade-secret protection, or to take any other steps to implement its own community right-to-know program.

Guided by these general principles, the reporting requirements in this act set forth the precise means by which this program shall be implemented. Although the statutory language and accompanying conference report describe these provisions, several additional clarifications are required.

First, the facilities required to provide material safety data sheets [MSDS's] under section 311 shall be the same as those facilities required to prepare or have available MSDS forms under regulations of the Occupational Safety and Health Act of 1970.

If those regulations are amended to include additional firms or chemicals covered or to add reporting requirements, the scope and content of the MSDS requirement in this act will change accordingly. However, section 311 is not entirely governed by the regulations developed under OSHA. In particular, the trade secret provisions of section 322 of this act would be unaffected by any changes made in OSHA's trade secret regulations, except to the extent OSHA determines under what conditions a chemical identity is not readily discoverable through reverse engineering—see section 322(c). In addition, any State or local community right-to-know requirement regarding MSDS's shall not be preempted, regardless of the preemptive affect of OSHA regulations on State or local worker right-to-know requirements. Section 321(b) makes it clear that such State or local community right-to-know laws enacted after August 1, 1985, shall use the Federal MSDS's form, but supplemental information may be required at the discretion of the State or localities.

Second, although the reporting requirements under section 312 are designed to balance the need for the community to have a comprehensive picture of toxic hazards against the need to limit the burden on the firms covered by this provision, this balance should not be construed to limit the availability of detailed tier II information to the public. Section 312(e)(3) makes it clear that tier II information is to be promptly provided to the public, upon request, as long as the information is in the possession of the local emergency response committee, the State emergency response commission, or other members of the public pursuant to requests made under section 312(e) (1) and (2), or section 312(e)(3)(C), or if the information pertains to a hazardous chemical stored in an amount in excess of 10,000 pounds. The State commission and local committee may not, under any circumstances, deny such a request for information. Furthermore, a request from the public, although it must be made with respect to a particular facility, need not contain a detailed list of hazardous chemicals. A request is sufficient if it asks for information regarding all hazardous chemicals at the facility.

Requests made by the public under section 312(e)(3)(C) for tier II information need not provide a detailed justification for the information. Only a general statement of need is required. The public may satisfy the statement requirement by indicating, for example, that the information is needed for research or needed for emergency planning or needed for toxic exposure assessments. The statement requirement is not intended to be a hurdle to public access to tier II information.

In addition, Congress intends that State commissions and local committees will presume that public requests under section 312(e)(3)(C) should be granted. Because Congress intends this act to provide greater public access to hazardous chemical information, requests under section 312(e)(3)(C) should be denied only when there are extraordinarily compelling reasons to do so.

The last clarification with respect to section 311 and 312 relates to EPA's authority to set thresholds for reporting under either of these sections. It should be noted that the act establishes no thresholds for reporting under sections 311 and 312, which reflects Congress' judgment that the public's right-to-know should presumptively extend to quantitive and qualitation information concerning all hazardous chemicals regardless of the amounts stored. Any decision by EPA to set thresholds under section 311 or 312 should be based on findings that the information which would no longer be available would not aid Federal, State, or local officials or the public in understanding actual or potential hazardous chemical exposure. In setting thresholds, EPA shall not consider the burdens on the facilities subject to the requirements of sections 311 or 312. Congress, by crafting these provisions with no thresholds, has determined that the right-to-know considerations outweigh the potential burdens on the facilities subject to these requirements. Only in the limited circumstances in which no right-to-know objectives would be served by disclosure of particular information should EPA set thresholds under these provisions.

Third, several clarifications need to be made with regard to section 313. Initially, it should be noted that if a form is required for a particular toxic chemical under section 313, the releases reported must include both routine releases and emergency releases which could require reporting under section 304. Reporting under section 304 does not relieve a covered facility from reporting such a release under section 313. The toxic chemical release form is intended to provide an aggregate estimate of releases during a calendar year and, as a result, must include all releases that may also require reporting under section 304.

Section 313(b) specifies the facilities covered by the toxic chemical release reporting requirements, but also provides the Administrator with the discretion to include additional facilities either by specifying additional SIC codes covered by the section—section 313(b)(1)(B)—or by designating specific facilities or classes of facilities to be covered—section 313(b)(2). Congress designated facilities in SIC codes 20–39 only as a starting point for this reporting requirement. The Administrator is expected to exercise his discretion to make additions if the additions would add SIC codes or particular facilities or classes of facilities which manufacture, process, or otherwise use toxic chemicals in a manner similar to those industries in SIC codes 20–39. The principal consideration is whether the addition would meet the objectives of this section to provide the public with a complete profile of toxic chemical releases. The fact that Congress applied the reporting requirement to those in the manufacturing sector should not be considered a limiting criteria in the Administrator's determination.

It is also important to clarify the intent of Congress in establishing thresholds for reporting under this section. Users of toxic chemicals must report under this section if they handle in excess of 10,000 pounds of a toxic chemical over the course of a year. The thresholds for manufacturers and processors decreases over a 3-year period from 75,000 pounds per year to 25,000 pounds per year. These thresholds were designed to obtain reporting on both a substantial majority of the Nation's toxic chemical releases and to obtain reporting from a large number of firms. These thresholds reflect Congress' judgment that such thresholds appropriately balance the need for information against the burden on facilities required to provide such information. The EPA is au-

thorized to revise these thresholds, but only if such revised thresholds continue to obtain a substantial majority of total releases. Any determination by EPA regarding the ability of revised thresholds to obtain reporting on a substantial majority of releases, especially if such revised thresholds raise the statutory levels, must be based on verifiable, historical data which presents a convincing case that the statutory levels must be revised.

With respect to the contents of the toxic release form, estimates of releases into each environmental medium must be provided. This shall include any releases into the air, water, land as well as releases from waste treatment and storage facilities. This should include all releases of toxic chemicals into surface waters whether or not such releases are pursuant to Clean Water Act permits. Similarly, all toxic chemicals dumped into land disposal facilties must be reported whether or not such facilities are regulated under the Resource Conservation and Recovery Act and whether or not such facilities are onsite or offsite. Estimated releases into the ground water, including spills or leaks from land disposal facilities, must also be reported.

This is a new Federal initiative, and I recognize the desire of some of my colleagues to move ahead cautiously to ensure that burdens imposed on industry are not excessive. Frankly, my concerns rest with the families that live in the shadow of these chemical and manufacturing plants. I have put myself in their shoes and have fought for a program that looks after their needs. This legislation gets us well on the path to the full disclosure they deserve.

The Emergency Planning and Community Right-to-Know Act of 1986 will offer the public and policymakers a vital opportunity to understand the magnitude and scope of toxic chemical exposures. A large measure of public concern over toxic chemicals in recent years has stemmed from inadequate, incomplete or nonexistent information. This lack of information has led to fear, misguided policies and misplaced priorities. This act is intended to provide a comprehensive view of toxic chemical exposure and, hopefully, provide a basis for more sensible and effective local, State, and national policies.

Mr. LENT. Mr. Speaker, I yield 1½ minutes to the gentleman from Ohio [Mr. OXLEY].

Mr. OXLEY. Mr. Speaker, I rise today in somewhat reluctant support of the conference agreement on H.R. 2005, the Superfund Amendments of 1985.

Mr. Speaker, as a member of the Energy and Commerce Committee, I know that a great deal of effort has gone into reauthorizing Superfund over the past several years. Energy and Commerce conducted extensive hearings on the subject, and finally our committee approved the House version of Superfund legislation well over a year ago. The other committees with jurisdiction also reported legislation, and, as we all know, the House passed its bill last December.

While I voted in favor of the bill at that time, I was not pleased with the bill on several accounts. Likewise, while I intend to support the conference report, I am not totally pleased with the legislation, nor with some of the precedents I believe it sets.

First of all, the size of the fund. The Administrator of EPA has stated from the beginning that the Agency could effectively use only $5.3 billion over 5 years. The House-passed bill would have nearly doubled that figure to $10.4 billion, and the conferees have agreed to a funding level of $9 billion. I wholeheartedly agree that the current Superfund funding level of $1.6 billion is inadequate, but I doubt that simply throwing money at the problem of cleaning up our hazardous waste sites will do much to correct it. Similary, the Administrator fears that providing excessive funding for the program could invite cost overruns and other wasteful practices.

I also have some concerns regarding the method the conferees have chosen to finance Superfund. I share the concerns of many in the Northeast and Midwest with regard to the "tax differential" placed on imported oil products, because these regions are more dependent on oil imports, especially of heating oil. I am pleased that the conferees have not adopted a "VAT" to finance Superfund, but I am concerned that the imposition of another profits tax—on top of the new corporate minimum tax enacted under the tax reform bill—may have adverse effects on many of this Nation's businesses.

However, notwithstanding these concerns and others, I intend to support this conference agreement. We all know that there are very few perfect pieces of legislation passed by this body, and this bill is not perfect. However, I believe it is the best bill we can get, especially at this late date. The conference agreement includes ambitious cleanup standards, a reasonable and enforceable cleanup schedule, a requirement to conduct health assessment at Superfund sites, mandatory public participation in all significant cleanup decisions, a comprehensive community-right-to-know provisions, and a new provision to clean up leaks from underground storage tanks. This is a strong bill that will greatly improve the Superfund Program.

Mr. Speaker, I am aware that some in the administration have threatened to veto this important legislation. I believe that this position should be reexamined. We need a strong and workable Superfund Program so that EPA can move forward with cleaning up our Nation's hazardous waste sites. A veto will only push us back to square one, where the whole process would begin again next year. Absent a concrete suggestion from the administration on how to finance an increased Superfund Program, I believe we should pass this conference report today and get on with the cleanup.

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Mr. STUDDS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in strong support of the conference report on the Superfund Reauthorization Act of 1986.

The stalemate that has brought the Superfund Program to a year long standstill has finally been broken. It should not have taken this long; the bill before us should—in my judgment—be somewhat stronger; but this measure is still the most important piece of environmental legislation considered by Congress this decade.

After we act today, the Superfund bill must survive a final test—a threatened veto from President Reagan. The President's decision on this issue will demonstrate quite clearly where the priorities of this administration lie. The President has lavished more than $1 trillion on the Pentagon these past 5 years; the question he faces now is whether to obligate less than one-hundredth of that amount to clean up toxic waste sites around the country. Unlike the Defense budget, the majority of the funds for hazardous waste cleanup will come not from the general taxpayer, but from industries that are directly or indirectly responsible for the generation of toxic waste.

There is no truly or totally fair way to finance a hazardous waste cleanup program. With respect to many waste sites, there was no villain, no lawless or reckless polluter, no midnight dumping of poison in a landfill or stream. The hazardous waste problem developed primarily because of ignorance, laziness, and indifference, characteristics we can no longer afford. The legislation before us today spreads the burden of financing waste cleanup in a manner that is about as fair as possible; and there can be no valid excuse for vetoing this bill.

The American people were ready years ago to declare war on toxic waste. Members of both parties in Congress are prepared to join that battle. The question now is whether President Reagan, the Commander in Chief, will lead the fight or—as his recent statements indicate—he will choose, instead, to surrender.

As those of us who were accorded the character-building and spirit-strengthening honor of serving as conferees on this legislation can attest, the bill before us is a compromise. It

gives EPA the legal and financial tools required to increase dramatically the pace and completeness of hazardous waste site cleanups around the country. But it does not dictate to EPA how it must proceed; nor does it give either the public or industry much opportunity to influence the process through litigation. From today forward, the responsibility for making the Superfund Program work will rest—at the insistent request of EPA, itself—almost solely with EPA. It will be the responsibility of Congress to make certain that EPA's performance is a match for the many promises we have heard during the months of negotiation on this bill.

I am particularly pleased by the inclusion in the conference report of provisions that I helped in some measure to develop to—

Restore the right of commercial fishermen and others to sue under Federal law for loss of income resulting from violations of the Marine Protection, Research and Sanctuaries Act [MPRSA];

Require that Superfund sites be cleaned up to an extent that will guarantee the protection of human health and the environment;

Establish a legally mandated schedule for the initiation of cleanups at hazardous waste sites;

Require EPA to periodically review the adequacy of cleanup at sites for which a complete and permanent cleanup remedy is not technologically or economically feasible;

Establish a program for rapid cleanup of spills from leaking underground petroleum storage tanks; and

Require that funds collected from polluters for natural resources damage at a site be used for the repair and restoration, or for the acquisition of comparable resources, if possible, at the site.

With respect to the first of these issues, I call Members' attention to the fact that the conference report adopts an amendment to section 106 of the MPRSA that is intended as a new savings clause for the statute. As original House sponsor of the amendment in the context of H.R. 1957, the Ocean Dumping Act Amendments, I am particularly pleased that it has been included here. The purpose of the amendment is to overturn a series of cases that have broadly construed the preemptive reach of the act and the Clean Water Act. The amendment is intended to make clear that Congress rejects these interpretations and intends that the preemptive reach of the MPRSA be narrowly construed.

The amendment establishes the general rule that State laws, standards or limitations are not preempted by the act. The amendment also establishes that remedies for damages under other Federal law, including maritime tort law, are not preempted where there is noncompliance with an ocean dumping permit. Not only does this amendment overturn judicial decisions broadly construing the preemptive reach of the act, but it creates a presumption against preemption.

This presumption against preemption requires a correspondingly strict, narrow construction of the reach of section 106(d), which prohibits States from regulating ocean dumping. Where there is a potential conflict between a State authority governing environmental quality, public health or welfare and the prohibitions in section 106(d), the presumption favors the continuing validity of State law. Similarly, enactment of the MPRSA is not to be interpreted as revoking by implication other Federal statutes. Where, for instance, the National Environmental Policy Act [NEPA] constrains Federal decisionmakers to consider environmental factors, NEPA continues to apply with full force to the MPRSA. Similarly, where the Coastal Zone Management Act [CZMA] requires Federal activities, permits and licenses to be consistent with approved State coastal programs, the CZMA applies with full force to the MPRSA.

I would like to turn now to a discussion of an issue of particular importance to southeastern Massachusetts, and to the integrity of the Superfund legislation, as a whole, This is the issue of cleanup standards.

The conference report states that any remedial action selected or required under sections 104 or 106 must—at a minimum—assure protection of human health and the environment. The general standard of "protection of human health and the environment" is the same standard that applies under the Solid Waste Disposal Act. This is the standard that must be met by any Superfund cleanup.

Under the new law, EPA will be required to specify the level of cleanup needed to protect human health and the environment and then prescribe what actions must be taken to meet this standard. The Agency shall not factor the costs of implementing the response into its analysis. The costs of compliance will only become a factor in determining which of several equally effective actions could meet the required standard of protection.

The requirement to "protect human health and the environment" is applicable both with respect to the degree of cleanup of any hazardous substance, pollutant or contaminant already released into the environment, and to the control of further releases.

Under certain circumstances, the legislation permits the use of a regulatory process for setting alternative concentration levels [ACL's] of contaminants. This process is being developed by EPA under the Resource Conservation and Recovery Act [RCRA]. As currently implemented by EPA, the ACL process permits the owner or operator of a RCRA facility to demonstrate that some alternative level of contamination does not threaten human health and the environment.

The conference report would permit the ACL process to be used when no other previously established standard or level of control; for example, water quality criteria applies to the hazardous substance, pollutant, or contaminant at issue. If any other standard or level of control is legally applicable, or relevant and appropriate, establishment of a separate ACL would not be allowed.

A second condition on the use of ACL's is that it must be based on a point of human exposure that is located no further than the boundary of the Superfund facility. The facility boundaries are to be defined at the conclusion of the remedial investigation and feasibility study [RI/FS] performed for the site.

"Facility" is defined under Superfund as the place where hazardous substances, pollutants, or contaminants have come to be located. The major purpose of an RI/FS is to determine the nature and scope of all contamination existing at, or caused by, a Superfund site. At the end of an RI/FS, EPA shall define the precise area, or "facility," where hazardous substances, pollutants or contaminants are located. The remedial action will then clean up the entire facility in a manner, and to an extent, that will prevent future releases. Neutral or buffer zones which have not yet been contaminated cannot constitute a "facility" at the completion of the RI/FS.

There are three narrow exceptions to the rule that the point of assumed human exposure used to establish an ACL cannot exceed the facility boundary. All three exceptions must be met before a different point of exposure may be used.

The first is that the contaminated ground water at the site is known to feed into a source of surface water such as a lake or stream.

The second is that at the specific point where the ground water first enters the surface water, there is, or will be, no statistically significant increase in hazardous constituents, nor any accumulation of those constituents downstream. Such accumulation could occur downstream in either the water sediment or biota due to bioaccumulation. This second exception can only be satisfied if there is sufficient attenuation of contamination to provide for adequate dilution in the ground water so that it is not measureably increased at the first point where the ground water feeds into surface water.

The third exception is that a legally enforceable measure must be in place to preclude human exposure to con-

tamination at any place between the facility boundary and the point of entry of the ground water into surface water. Enforceable measures mean measures that will remain in place as long as the waste remains hazardous.

The conference report states that whenever a remedial action involves the movement of hazardous substances, pollutants or contaminants offsite, they may only be transferred to a facility operating in compliance with sections 3004 and 3005 of the Solid Waste Disposal Act—or, where applicable, the Toxic Substances Control Act. These substances may be transferred to land disposal facility only if the President determines that the unit receiving the substances is not leaking into ground or surface water or soil, and all releases from other units at the facility are being controlled by a corrective action program. Although this provision does not require that a land disposal facility obtain a final RCRA permit before receiving Superfund wastes, it is intended to ensure that only secure facilities are chosen for hazardous waste disposal.

The conference report states that a remedial action which does not comply with a legally applicable, or relevant and appropriate standard, requirement, criteria or limitation may be selected only if the President makes one or more of several affirmative findings. These findings must be made on a site-by-site basis and are subject to the public participation requirements of the legislation.

The first finding is that the remedial action selected is only a phase in a longer-term remedial action, when the longer-term remedial action will complete cleanup at the facility and will meet all applicable, relevant and appropriate standards, requirements, criteria, or limitations. This provision gives the President some flexibility in conducting phases of cleanup, but does not permit indefinite delays in final cleanup.

The second finding is that compliance with a requirement would result in greater risk to human health and the environment than alternative options. This finding may apply to a few, relatively idiosyncratic sites where the application of available cleanup technologies would cause the release of hazardous substances, pollutants, or contaminants and would, therefore, pose a greater risk to human health and the environment than simply leaving the substances in place.

The third finding is that compliance with the requirements is technologically impracticable from an engineering perspective. Once again, this finding should apply only to a small number of situations where no technologies for hazardous waste treatment, destruction or disposal have been developed that would meet the requirements. In these cases, the conference report requires that sites must be periodically reviewed in order to permit the use of new technologies, once developed, to carry out the remedial action.

The fourth finding is that use of a method or approach other than one required under an otherwise applicable standard, requirement, criteria or limitation will achieve an equivalent standard of performance. This provision is designed for situations where a new or alternative technology not contemplated under existing regulations would work as well as the established approach. For example, RCRA might require placement of double liners at the bottom of land disposal facilities, but the hazardous substances, pollutants, or contaminants at a Superfund site may be susceptible to a new treatment technology that solidifies or neutralizes them in place. If the alternative technologies will prevent the migration of any hazardous constituents into ground or surface water near the site, the alternatives may be used.

The last finding reflects a recodification of the policy in current law commonly known as fund-balancing. Under this provision, the President may—if absolutely necessary—select a remedial action that does not meet Superfund cleanup standards. This option is only available if the President otherwise finds that there will not be enough resources left in the fund to respond to sites posing more immediate and severe threats to public health and the environment. Fund-balancing should be invoked only with full and readily apparent justification, and only where there is an irreconcilable conflict between the cost of a complete cleanup and the fund's ability to address sites posing much more serious hazards. Any use of this option should be accomplished by a full analysis of the manner in which the President evaluated the relative hazards at the sites in question. It is important to note that where the money to pay for a remedial action is provided by both the Federal trust fund and a private responsible party or parties, the fund-balancing finding shall apply only to the trust fund's share of the costs.

In closing, I want to pay particular tribute to the members of the Superfund conference committee on both sides of the Capitol who worked to inject at least a fair measure of integrity and spine into the final product. I believe that the conference report provides a solid basis for progress in hazardous waste cleanup over the next 5 years. It is a major accomplishment for this Congress and for the committees involved, and I am both thankful—and immensely relieved—that it is, the President willing, about to become law.

Mr. Speaker, I would like to engage in a colloquy with the gentleman from Ohio relating to natural resource assessments under these amendments. Is it the gentleman's understanding that the conferees have agreed that, as a general rule, the Superfund shall be available for natural resource damage claims but that, in any given year, the President retains the authority not to approve and certify such claims if public health related claims require all available funding?

Mr. ECKART of Ohio. If the gentleman will yield, yes, that is correct.

Mr. STUDDS. Is it also the gentleman's understanding that the prohibitions on the expenditures from the fund apply only to claims for natural resource restoration, and do not apply to the financing of natural resource assessments?

Mr. ECKART of Ohio. Yes, that is my understanding.

Mr. STUDDS. Mr. Speaker, I thank the gentleman for his cooperation.

Mr. ROE. Mr. Speaker, I yield such time as he may consume to the gentleman from California [Mr. MINETA].

Mr. MINETA. I thank the gentleman for yielding time to me.

Mr. Speaker, I rise in strong support of the conference report. The American people are entitled to a safe environment. They expect this Government to protect them from toxic and hazardous wastes, and we must fulfill that expectation.

Yet, over the last several years, the Superfund Program, if it has progressed at all, has moved slowly and haltingly toward its goals.

The bill before us today is not perfect. Many parts of it could be better, and I believe we will be back here in a year or two to tighten up this law even more. Yet it is a bill we must pass this session.

There are several sections of this bill I would like to discuss in more detail.

Included in the conference report is a provision that the Environmental Protection Agency must give high priority to sites that have contaminated drinking water supplies. This provision is taken directly from H.R. 3082, a bill that I introduced last year.

HEALTH STUDIES

Another important provision involves health effects studies and toxicological research. This important provision is drawn from many bills, including H.R. 3083, another bill I introduced.

The 1980 Superfund law recognized that evaluation, prevention, and treatment of the adverse health effects caused by toxic waste exposure was the ultimate—and primary—goal of the Superfund Program. That law created the Agency for Toxic Substances and Disease Registry [ATSDR] to carry out these crucial functions. Unfortunately, that mandate was actively sabotaged by the administration from the beginning. The Office of Management and Budget [OMB] refused to release Superfund money in order to set up ATSDR until it was sued by an unusual and commendable coalition including the Chemical Manufacturers' Association and the Environmental Defense Fund. Even after a court order set up the agency, OMB starved it of funds to do a credi-

ble job on the growing problems it was designed to address.

A major goal of the Superfund Amendments and Reauthorization Act [SARA] is to make Superfund's health authorities, and the Agency for Toxic Substances and Disease Registry, meaningful realities. The legislation accomplishes this goal in two ways—first, by guaranteeing substantial increases in funding and, second, by spelling out in precise and unequivocal terms what we expect ATSDR to do.

The most important, nondiscretionary duties imposed on ATSDR—in consultation with the Environmental Protection Agency—are the requirements that toxicological profiles be prepared for the most hazardous substances found at Superfund sites and that health assessment studies be conducted at all sites on the National Priorities List. The legislation establishes strict deadlines for these requirements, and the agencies' failure to meet any deadline would be subject to immediate citizens' suits under section 310 of the act.

The guiding principle that should affect the preparation of both toxicological profiles and health assessment studies is that the agencies should aggressively gather as much information as is reasonably available within the mandated timeframes, issue the profile or assessment on schedule, and then update or revise it as necessary. None of the supplemental requirements of the legislation—including, for example, the requirement that profiles (as opposed to assessments) be subject to peer review should be used as an excuse to delay issuance of the information required within the timeframes required.

The required elements of a health assessment study include: First, information necessary to ascertain the magnitude, scope, and duration of the exposure of individuals to the hazardous substance or substances at issue—including the source and degree of ground or surface water contamination, air emissions, and food chain contamination; second, an identification of all those in the community who may be exposed to the release of hazardous substances; third, toxicological and epidemiological evaluations of the impact of the exposure on affected individuals; and fourth, any necessary medical testing on individuals.

These elements are not intended to be an exclusive list and ATSDR and EPA should explore additional areas and gather more information where appropriate. We intend that the agencies retain maximum flexibility and discretion to go beyond the basic elements required by the legislation in developing useful and complete health assessments, although the minimal requirements and deadlines are nondiscretionary and fully enforceable through the citizens' suits provisions.

The legislation provides that if a health assessment indicates a significant risk to human health, the President shall take such steps as are necessary to eliminate or substantially mitigate such risk. The risks contemplated by this provision include both actual and potential, acute and chronic health effects. The steps which must be taken to eliminate or prevent such risks include, but are not limited to, the provision of alternative drinking water supplies or the temporary or permanent relocation of individuals. We intend to give the President maximum flexibility to take whatever action may be necessary to eliminate or prevent the risk as quickly as possible. In many instances, provision of alternative household water supplies may be the most effective solution, but in some circumstances, relocation may be the only effective alternative. In addition to the steps specified, other actions—such as the decontamination of soil—may prove most effective in fulfilling the primary goal of eliminating significant risk.

In the context of considering what steps to take to eliminate or prevent actual or potential adverse health effects, the legislation permits ATSDR to consider additional information on the risks to the potentially affected population from all sources of hazardous substances, including known point or nonpoint sources other than the facility in question. The purpose of this authority is to enable the agency to fully evaluate the most effective steps to eliminate or prevent adverse health to those studied in the assessment, ATSDR or EPA may need to take steps under other provisions of law to deal with such contamination. The provision is not intended to require a comparative risk assessment, or preclude or delay action while any or all other sources of contamination are studied.

Similarly, the legislation requires that whenever ATSDR determines to conduct a full scale or other study of health effects for selected groups of affected individuals, the letter of transmittal of such study shall include an assessment of risk factors, other than the release, that may be associated with any disease discovered, if such risk factors were not taken into account in the design of the study. Once again, this provision is not intended to require a comparative risk assessment or the determination of all other possible risk factors before completion of the full-scale study. It is intended to permit observations regarding other political causes of the adverse health effects in order to assist those responsible for providing medical treatment to the affected population.

INDEMNIFICATION OF CLEANUP CONTRACTORS

The legislation grants the President authority to indemnify cleanup contractors if a series of threshold requirements are met. These threshold requirements are divided into two categories: those that must be met every time an indemnification agreement is signed under the act and those additional requirements that apply to agreements covering cleanup work done under contracts with private responsible parties, as opposed to Federal or State governments.

The general requirements applying to all agreements contain three components. First, the President must determine that the liability covered by the indemnification agreement exceeds, or cannot be covered by private insurance available at a fair and reasonable price. The President must further determine that such insurance is not generally available to competitors of the contractor. Any individual firm's inability to find insurance therefore cannot justify use of indemnification authority. Rather, the President has authority to grant indemnification only if insurance is not generally available to viable competitors of the contractor, on a marketwide basis, at a "fair and reasonable" price. Determinations of the fairness and reasonableness of the price of private insurance shall not be made on the basis that insurance costs are limiting profits that might otherwise be achieved by the contractor. A price should only be judged unfair and unreasonable if the costs of insurance are so disproportionate to other business expenses as to result in a substantial inflation of cleanup costs.

The second determination which must be made before Federal indemnification can be granted is that the contractor has made diligent efforts to obtain insurance coverage from non-Federal sources. This determination is closely related to the finding that insurance is not generally available to all those potentially capable of performing response action work; however, the diligent efforts showing imposes the burden of demonstrating such unavailability on the party seeking indemnification as well as on the President.

The third and last requirement imposed by the legislation is that, in the case of indemnification agreements covering more than one facility, the contractor must make a separate showing of diligent efforts to obtain non-Federal insurance coverage before it begins work at each individual facility.

The special requirements covering indemnification agreements at sites where the contractor is hired by potentially responsible parties include a determination by the President that the total net assets and resources of the potentially responsible parties are not adequate to provide indemnification. The legislation contemplates a rigorous and comprehensive analysis of the financial status of such parties, in order to determine that they are unable to provide all or part of the indemnification required and that Federal indemnification is the only alternative.

Finally, the legislation provides that before the Federal Government pays any claims under indemnification agreements at private party sites, the contractor must have exhausted all administrative, judicial and common law remedies for covering indemnification claims against all potentially responsible parties participating in the cleanup of the facility. Once again, the burden of proving that such remedies have been exhausted resides with the contractor.

Any indemnification agreement signed under the authority of Superfund must contain appropriate deductibles and limits on the Government's liability for claims, including both limitations on the dollar amounts to be paid and conditions affecting the obligation to pay claims such as compliance by the contractor with sound engineering practices.

Although the President has authority to enter into indemnification agreements for cleanup at federally owned or operated facilities, claims paid under such agreements can never be made out of the Hazardous Substance Superfund but must instead be paid out of authorized appropriations from those agencies' budgets.

The primary purpose of Superfund is the cleanup of the thousands of hazardous sites that are endangering the health of millions of Americans across the country. The fund should only be used to provide indemnification

as an alternative to private insurance when no other option is available to achieve cleanup.

In conclusion, Mr. Speaker, let me just say that this is a critical piece of legislation, and we must not only pass this bill promptly, but also make sure thru our oversight function that the letter and the spirit of the law is enforced by the administration.

Mr. ROE. Mr. Speaker, I yield 2 minutes to the gentleman from New York [Mr. SCHEUER].

Mr. SCHEUER. I thank the gentleman for yielding me this time.

Mr. Speaker, it is frequently said that there is no army on Earth as powerful as an idea whose time has come. I think the American people feel that the time has come to get on with it and to clean up these disgusting, revolting, and shameful toxic wastes that are inflicted upon our landscape and upon our citizens from coast to coast.

In poll after poll when citizens are asked, regardless of party, regardless of whether they are liberal or conservative, "Do you want your toxic wastes cleaned up? Do you want the Government to protect your health and safety?", the answer is a resounding, overwhelming "yes." The people want this bill.

They want the overriding purpose of this bill which is to protect the lives, the health, and the safety and the well-being of the American public from these nauseating toxic wastes that litter our country by the thousands.

We have heard the expression for the last generation "Better living through chemistry." Yes, it is true. All Americans have benefited from the genius of the chemical industry and the marvelous products they have produced. But the very same technology that produced these wonderful products has left a legacy of deadly and poisonous byproducts.

Our Nation has inherited a legacy of toxic chemicals that affect the brain, the kidneys, the liver, and other vital organs. None of us is immune to the hazards of toxic wastes, but they are most serious for the elderly, the pregnant, infants, and most poignantly, the unborn.

Mr. Speaker, our Nation needs this Superfund bill.

Without an adequate cleanup program and the provision in this bill that provide for research and development of new technologies to destroy or detoxify toxic wastes, I fear that more families will be forced out of their homes, more families will lose hope and face despair, and more families will suffer sickness and death from toxic waste.

I will not suggest that this legislation is perfect, or that it is a cure-all for our toxic waste problems.

But the legislation is a quantum jump forward in our efforts to solve one of our Nation's most pressing environmental problems.

It specifies deadlines, targets and cleanup levels.

It limits the discretion of the EPA and OMB to procrastinate, delay or thwart the will of Congress and the American people.

It contains a new program to research, develop, and demonstrate new toxic waste cleanup technologies.

It establishes appropriate levels of liability for damages caused by leaking underground storage tanks.

And it incorporates the provisions of H.R. 2817, legislation I authored with the gentlewoman from Rhode Island, Miss SCHNEIDER, that authorizes a comprehensive indoor air quality research program that includes the study of radon and other indoor air pollutants.

The provision authorizes an indoor air quality research program at EPA and provides for a coordinated interagency research effort aimed at uncovering the sources, extent, and health risks associated with radon gas and other airborne toxic substances found indoors.

Mr. Speaker, we must get Superfund back on track.

This bill will do just that and I urge my colleagues to support this vital piece of legislation.

Mr. ROE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I want to most wholeheartedly recommend to the Members of our distinguished body that we would support this legislation overwhelmingly in every respect. I certainly want to extend my highest regards to the Members of Congress and the leadership in the four or five different committees that worked on this legislation for all of the outstanding work they have done.

It was a tough job; everybody did not agree. We had many differences of opinion, but when all is said and done, the House is working its will and I think they have done an extraordinary job.

The second point I would like to mention to those that are here and those that are listening or watching on their TV is that the staff, particularly, of the Congress and the respective committees and subcommittees involved did absolutely an extraordinary job in an extremely difficult situation and I believe that the House and the people of this country owes them a great debt of gratitude for the work and the energy they have brought forth to this success today.

Mr. Speaker, today we are fulfilling our commitment to the millions of Americans compelled to live near the hazardous waste sites which are the legacy of decades of environmental neglect. By securing the future of the Superfund program through 1991, we can assure and reassure our citizens that the nightmare of contaminated drinking water, contaminated soil and contaminated air will hopefully come to an end soon.

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Mr. Speaker, I do want to make just a few other comments. I have listened to both sides of the argument that is now coming out, can we afford to do this? Are we doing something in the budget? Is this a blockbuster?

It kind of riles my blood because I think that all of us agree that nobody, no industry, nobody, has the right to poison the natural resources of this country that belong to all the people. Nobody fundamentally has that right, and no system of government should allow that type of a situation to exist.

Therefore, what we are really talking about is the priorities of the country. Do we provide the millions and billions of foreign aid all over this world, or do we come back and say, in these instances, America's people and the needs of our people come first?

I think that this particular bill, in all of my experience and service in the Congress, is probably the most important bill that we could pass in the interest of the environment of this country and the very health and safety of the people of the Nation.

As the gentleman from Michigan [Mr. DINGELL], as the chairman of his committee, and the gentleman from New Jersey [Mr. HOWARD], as chairman of the Committee on Public Works, have pointed out, one thing we cannot afford to do is to destroy the water resources of this country.

There is no expenditure we could make in any area, short of the defense of the Nation itself, that would be more productive and more important to the people of this country than the passage of this Superfund bill to clean up the toxics that affect the very health and even the mutations of the future generations that are before us and will come.

Also, I hope to say to the President of the United States that it is not a question of what we cannot do, Mr. President, or what we will not do. The important point to the people of the country is to protect the health and the right and the environment and the estate of the people of the United States.

I do trust that the President will sign this bill in the interest of the American people.

The legislation we have before us will commit $9 billion to a massive new cleanup effort, instituting fundamental reforms of the program such as the establishment of uniform national cleanup standards. The legislation provides, for the first time, cleanup authority for leaking underground gasoline storage tanks and a community right to know disclosure program.

We have labored long and hard to reach this day and I commend all who fought so hard to make this bill a strong and effective effort to revitalize Superfund.

There are a few aspects of the legislation that deserve specific comment.

CLEANUP STANDARDS

The legislation establishes a statutory preference for the selection of remedial actions that involve application of "permanent treatment or alternative technologies." The legislation states that such technologies and "permanent solutions" shall be implemented to the maximum extent practicable. Where remedial actions can be broken into discrete units and treatment is feasible for some but not all units, permanent solutions must be chosen for those units where treatment is feasible.

"Permanent solution" means the application of permanent treatment or alternative technologies to hazardous substances, pollutants, and contaminants in a manner so that, when the remedial action has been completed, the release or threatened release, taken as a whole, no longer poses a hazard to human health or the environment on a permanent basis.

The legislation requires that onsite remedial actions selected or required under section 104 or 106 must comply with specific standards, requirements, criteria, or limitations established under other Federal or State laws, including those listed in the statute.

The list of Federal and State laws established by the legislation is intended to be a minimum and not an all inclusive list of sources for standards, requirements, criteria, or limitations that must be applied to Superfund remedial actions. If the President or the courts determine that other, unlisted laws contain standards which are legally applicable, relevant, or appropriate, such standards shall apply to such remedial actions. Where two applicable, relevant, or appropriate Federal or State standards, requirements, criteria, or limitations pertain to the same situation, or to the same hazardous substance, pollutant, or contaminant, the most stringent one shall be used in selecting a remedial action.

The legislation states that standards, requirements, criteria, or limitations that are not legally applicable shall nevertheless be applied to Superfund cleanups if they are "relevant and appropriate."

The test of relevance and appropriateness involves a determination of which environmental media serve as pathways for actual or potential human or environmental exposure to a hazardous substance, pollutant, or contaminant. Once such pathways are determined, the purposes for which the standard, requirement, criteria, or limitation at issue was developed should be considered. Such standards should be applied whenever the purposes for which they were developed involve reduction of the contamination of such pathways to safe levels. For example, Safe Drinking Water Act standards used to protect public drinking water supplies would not be appropriate for application to a briney aquifer, which would never be fit for human consumption even if it was cleaned up. At the same time, aquifers which may have a reasonably foreseeable use as a source of drinking water should be cleaned up to such standards whether or not they are currently used for drinking water supplies.

The legislation specifies the factors that are to be considered in determining whether water quality criteria developed under the Clean Water Act are relevant and appropriate. These factors are the designated or potential use of surface or ground water, the environmental media affected, the purposes for which such criteria were developed and the latest information available.

Water quality criteria are essential to a comprehensive system of Superfund cleanup standards because such criteria establish maximum exposure levels for some 140 chemicals found most frequently at Superfund sites, while all the analogous standards established under other major Federal environmental laws cover only some 20–30 such chemicals.

Water quality criteria typically contain three different exposure levels—or numbers—depending on whether the water at issue will be first, consumed by people; second, consumed by people and used to support aquatic life; and third, used only to support aquatic life. In determining how to apply such criteria, EPA should select the specific exposure level which best fits the circumstances presented by the Superfund site. For example, ground water typically does not support aquatic life. If ground water used or potentially usable as a source of drinking water is contaminated by a water quality criteria chemical, the contamination should be reduced to the exposure level set for water used for human consumption only.

The legislation specifically permits the Environmental Protection Agency [EPA] to consider the purposes for which water quality criteria were developed in determining whether they are relevant and appropriate. This provision affects the selection of the appropriate exposure level and does not mean that water quality criteria which were originally developed for surface water should not be applied in situations where ground water is contaminated by a water quality criteria chemical. Rather, the determining factor is whether the criteria were developed to protect people from drinking contaminated water. If the criteria apply to such situations, they should apply whether the drinking water source is surface or ground water.

PREENFORCEMENT REVIEW

One of the most important issues addressed by the legislation is the timing of citizens' suits challenging illegal EPA decisions. Such suits would involve allegations that the agency has violated the cleanup standards and other requirements of the law and that a citizen's health and environment would be threatened if the agency was allowed to continue with its illegal acts.

The legislation allows citizens to bring a lawsuit under section 310 as soon as the agency announces its decision regarding how a cleanup will be structured. A final cleanup decision, or plan, constitutes the taking of action at a site, and the legislative language makes it clear that citizens' suits under section 310 will lie alleging violations of law and irreparable injury to health as soon as—and these words are a direct quote—"action is taken."

It is crucially important to maintain citizens' rights to challenge agency actions, or final cleanup plans, before such plans are implemented because otherwise the agency could proceed in blatant violation of the law and waste millions of dollars of Superfund money before a court had considered the illegality.

For example, the agency, succumbing to pressure from the companies who are liable for the site, may decide to ignore readily available permanent treatment technologies like incineration, in direct violation of the law's requirements. Instead, it may decide to simply cap the site to keep the rainwater off and landscape the top of the cap. Under the amendments, citizens would be able to go to court to prevent the implementation of such an illegal remedy and not wait until the cap is built, and millions of dollars have been wasted.

The legislation intends that the courts will draw appropriate distinctions between dilatory lawsuits by potentially responsible parties involving only monetary damages and legitimate citizens' suits representing irreparable injury that can only be addressed during the course of implementing a cleanup.

When the essence of a lawsuit involves contesting the liability of the plaintiff for cleanup costs, the courts should apply the other provisions of section 113(h), which require such plaintiff to wait until the Government has filed a suit under sections 106 or 107 to seek review of the liability issue. The courts should not be misled by any effort to present such cases as legitimate "citizens' suits" challenging illegal action by the agency.

BASIC MANAGEMENT OF THE SUPERFUND PROGRAM

Under the current Superfund program, cleanups are divided into two separate categories: short-term, emergency "removal" actions, and long-term, more permanent "remedial" actions. The basic distinctions between the two categories are time and money. "Removal" actions under current law generally last less than 6 months or cost less than $1 million, unless the President finds that more is needed to mitigate an emergency. "Remedial" actions, on the other hand, are taken at national priorities list sites and can involve years of work and millions of dollars in cleanup costs.

The legislation changes the current law's limits on "removal" actions to 12—from 6—months and $2—from $1—million so that EPA would have more flexibility in conducting short-term, emergency responses that often end up being more expensive than they appeared at the outset. The legislation makes this change, and also adds a new criterion for exceeding these limits—that is whether "continued response action is otherwise appropriate and consistent with the remedial action to be taken."

There are two important ramifications of labeling a cleanup as a "removal" and not a "remedial" action. The standards and procedures of section 117—regarding public participation—and section 121—regarding cleanup standards—apply only to "remedial" actions. The rationale for this selective application is that short-term, relatively low-cost emergency activities do not need to be encumbered by the precise and demanding requirements of these important provisions.

In granting EPA the flexibility to apply increased limits in structuring emergency removals, and granting exceptions even to those limits in unusual cases, the Congress does not intend to encourage the agency to shift the focus of the program to such activities. Emergency removals should remain stopgap, interim and relatively short-term, and inexpensive actions which occupy a small portion of Superfund resources. The more flexible authority should not be abused by the agency to circumvent the more rigorous requirements regarding public participation and health standards.

SITE EVALUATION PROCESS

The legislation makes several changes in the process for evaluating Superfund facilities once they are identified. These changes, contained in section 105 of the legislation, require EPA to reassess the Hazard Ranking System [HRS] in order to address several problems brought to the Congress' attention during the reauthorization process. These problems include:

The current HRS, known commonly as the "mitre model" does not include a factor evaluating potential or actual contamination of the human food chain by releases of hazardous substances. Such contamination can pose a greater threat to human health than virtually any other type of contamination, other than contamination of household water supplies.

The current mitre model also contains an anomaly in its treatment of air emissions from Superfund sites. If and when actual measurements of such emissions exists, the model scores them as a threat to human health. But if no measurements happen to have been made of such emissions, the model ignores them in its ranking of the actual or potential hazards posed by the site. We expect EPA to revise the model to address this problem.

Mr. ECKART of Ohio. Mr. Speaker, under the time reserved by me, for purposes of a colloquy, I yield 1 minute to my friend, the gentleman from California [Mr. FAZIO].

The SPEAKER pro tempore. Without objection, the gentleman from California [Mr. FAZIO] is recognized for 1 minute

There was no objection.

Mr. FAZIO. Mr. Speaker, in most areas of the Superfund Amendments and Reauthorization Act of 1986 dealing with Federal facility cleanup, the conference agreement makes it clear that the responsible Federal agency or department should pay for all costs associated with implementing Superfund and that no money from the general "fund" should finance remedial activities at Federal facilities.

Is it the intention of the conferees that this same principle apply to the implementation of section 117 of the act which provides technical assistance grants to any group of individuals which may be affected by a release or threatened release at any facility—including Federal facility—which is listed on the National Priorities List?

Mr. ECKART of Ohio. Mr. Speaker, if the gentleman will yield, the answer to the question of the gentleman from California is yes. It is the intention of the conferees that the Environmental Protection Agency determine the eligibility of any group of individuals applying for a grant for technical assistance under the provisions of section 117 of the Act, and that the responsible agency shall, in a timely fashion and under terms mutually agreed upon, reimburse the Environmental Protection Agency for the Federal share of any such grants associated with facilities within its jurisdiction.

Mr. FAZIO. Mr. Speaker, I thank the gentleman for his clarification.

As one of the primary authors of section 120 and section 211 of the legislation, creating ground breaking new requirements for hazardous waste sites at Federal facilities and the Department of Defense [DOD] in particular, I wanted to make a few comments clarifying the intent of these provisions.

Since the original Superfund law was passed in 1980, we have become increasingly aware that a double standard exists in the treatment of privately owned or operated chemical dump sites and equally hazardous facilities owned or operated by the Federal Government. The Federal agencies and departments responsible for such facilities have lagged far behind the Environmental Protection Agency [EPA] and the private sector in their efforts to identify and assess dump sites in need of cleanup on roughly 549 military bases and 340 other Federal installations across the country.

The head of the DOD Environmental Restoration Program—the main cleanup effort applicable to Federal facilities—estimated in 1985 that it could cost between $5 and $10 billion to address military sites of comparable hazard to the private sites subject to the Superfund Program. Even those daunting figures may significantly underestimate ultimate cleanup costs. For example, the $5–$10 billion figure does not include the costs of cleaning up perhaps the most notorious Federal facility in the country—the Rocky Mountain Arsenal in Denver, CO—where cleanup costs have been estimated at over $1 billion. The magnitude of cleanup costs at other well-known Federal facilities are also expected to rise into the hundred million dollar range. The cost of the cleanup at McClellan Air Force Base, for example, located in my own congressional district in Sacramento, CA, is expected to exceed $100 million. To put that in perspective with McClellan's private sector counterparts, that's more than twice the estimated cleanup costs at Stringfellow Acid Pits—also located in California—which ranks 32d on EPA's list of the worst private sites in the Nation.

As for the total universe of Federal facilities which will need cleanup over the next several years, DOD estimated in September 1985 that there were 2,949 potentially hazardous sites at 549 military bases across the country. Others predict the number of DOD sites may climb to more than 4,000 as the Pentagon cleanup effort progresses. Moreover, these figures do not include sites operated by other Federal agencies and the Department of Energy [DOE], where radioactive and chemical wastes that were byproducts of the Nation's atomic weapons research and manufacturing programs are buried. The General Accounting Office [GAO] estimated in September 1984 that there were an additional 1,075 potentially hazardous waste sites at 340 Federal civilian agency installations nationwide. And, the GAO reported just last week that DOE's nine nuclear defense plants have contaminated the ground water with high levels of radioactive and chemical poisons. At the Y-12—Oakridge—plant in Tennessee, solvents and nitrates in ground water have each been detected at levels over 1,000 times the proposed drinking water standards. Mercury has been detected in an offsite creek bed at levels more than 2,000 times the background levels and 150 times greater than State safety and health standards. Moreover, the GAO concluded that it would cost more than $1 billion to bring just these nine DOE facilities into full compliance with existing environmental laws and regulations.

Efforts by most Federal agencies and departments to even identify and assess, much less clean up such facilities, have been sporadic at best over the past several years. DOD has made progress, but even the Pentagon, which has spent hundreds of millions of dollars on preliminary assessment and cleanup activities, suffers from a cleanup program that is often slow and inconsistent in implementation.

Although the 1980 Superfund law subjected Federal facilities to the same legal requirements which apply to private sites, the absence of aggressive enforcement by EPA and the Department of Justice [DOJ], partnered with lack of uniform national standards for cleanup, have led a Federal Cleanup Program that responds slowly and cautiously to community pressure around the best-known facilities but does not make a comprehensive effort to cope with lower profile facilities.

We must be particularly concerned about EPA and DOJ's reluctance to file formal enforcement actions, regarding Federal facilities under the liability provisions of Superfund, the Resource, Conservation and Recovery Act [RCRA] and other applicable Federal laws. It is clear on the face of these laws that such enforcement provisions apply to Federal facilities where violations have occurred and that there is no constitutional or other legal impediment to prosecution of such cases. While formal enforcement action against Federal owners, operators, generators or transporters should be the last resort of an effective cleanup program, such actions should be pursued in cases which cannot be resolved by negotiation among the Federal agencies involved.

We are aware that DOJ has taken the position that constitutional questions would arise if one executive branch agency sought to enforce Superfund requirements against another. According to DOJ, such cases would not be "justiciable" under article III because both agencies are subordinate to the President. We reject DOJ's interpretation of this legal question. Ample legal precedent supports the conclusion that a case brought by one executive branch agency challenging violations of applicable law by another agency or department do present a "justiciable" controversy that can be resolved by the Federal courts. See, e.g. *U.S.* v *Nixon, Icc* v *Jersey City,* 322 U.S. 503 (1944).

The provisions included in section 120 of the Superfund Amendments and Reauthorization Act of 1986 are designed to institute fundamental reforms of the Federal facilities cleanup effort in three key areas.

First, the amendments make it clear that EPA has final authority over other Federal agency or department compliance with the law. By putting the agency responsibility for implementing Federal environmental programs in the driver's seat, we will ensure that the cleanup effort at Federal facilities is both adequate and consistent with parallel efforts at privately owned or operated sites.

Second, the amendments require a comprehensive nationwide effort to identify and assess all Federal facilities that warrant attention. Building off the inventory required under the Hazardous and Solid Waste Act Amendments of 1984, the legislation requires EPA to assess such sites in the same manner that it assesses privately owned or operated facilities. The legislation further requires that any Federal facility meeting the criteria applied to private sites listed on the Superfund National Priority List [NPL] shall also be placed on the NPL. Although Superfund money cannot be spent to clean up such facilities, their placement on the NPL along side comparable private facilities will ensure that compliance with the law's standards is achieved by the Federal Government in an effective and timely manner.

Third, the amendments eliminate the current double standard between private and Federal sites by setting forth timetables both for the formulation of cleanup plans and for the initiation of cleanup at all Federal facilities qualifying for listing. The amendments reiterate the rule of current law that all cleanup standards and other legal requirements—except as specified—shall apply to Federal facilities in the same manner as they apply to private sites. These timetables, standards and requirements are enforceable under the citizens' suits provisions of the legislation as nondiscretionary duties of the Federal Government.

State law also continues to be applicable to Federal facilities. For Federal facilities that are listed on the National Priorities List, the amendments establish special rules and procedures for the application of State environmental and health laws. For all Federal facilities required to be cleaned up under either Superfund or RCRA, the legislation does not affect the current application of State law and does not preempt State law in any way. The only exception is a narrow provision stating that a State cannot create special rules for Federal facilities that are not otherwise applicable to similar situations at private sites and then expect these rules to be enforceable under Superfund.

The Hazardous Waste Compliance Docket created by the legislation is intended to be a full and comprehensive inventory of all potentially hazardous facilities in the country, including releases required to be reported under section 103 of the Comprehensive Environmental Response, Compensation and Liability Act [CERCLA]. Releases covered by CERCLA include, in addition to the traditional waste disposal or storage site, releases of hazardous substances that may occur on a more sporadic or idiosyncratic basis. All such releases must be included on the docket.

The administrator of EPA is responsible for ensuring that the Federal agencies and departments conduct their preliminary assessments on schedule and in an appropriate fashion, and for evaluating all facilities included on the Hazardous Waste Compliance Docket. The cost of such assessments and evaluations shall be paid by the Federal agency or department responsible for the facility, along with all costs of preparing remedial investigations and feasibility costs of preparing remedial investigations and feasibility studies, conducting other necessary studies and ultimately cleaning up the facility. In carrying out such requirements, EPA must be scrupulous in assuring that Federal facilities are treated exactly like private facilities and are not given any special treatment.

Following the listing of a Federal facility on the National Priority List, the legislation requires that the relevant Federal agency or department shall enter into an interagency agreement with the EPA administrator for the completion of remedial action at such facility. We intend that such agreements shall reflect the mutual agreement of the responsible Federal agency or department and EPA regarding what remedial action is appropriate for the facility. However, interagency negotiations have too ofter become stalemated when the responsible agency refused to comply with EPA's suggestions regarding what remedy was needed to protect human health and the environment. Because of these problems, the legislation explicitly gives EPA final authority to select a remedy over the objections of the responsible agency when necessary. This authority does not diminish the legal obligations of the responsible agency for ensuring the cleanup is carried out in a timely and effective manner and, should citizens' enforcement action at the facility be taken, the responsible agency should be a primary defendant from whom relief must be sought.

Further, the legislation does not affect in any manner the application of RCRA to facilities owned or operated by the Federal Government, including but not limited to the corrective action authority provided to EPA under section 3004(u) of that act. Congress expects that when EPA implements section 3004(u) with respect to Federal facilities, the same definition of what constitutes such a facility will apply as applies to facilities owned or operated by private parties. Once again, it may be appropriate for EPA to file formal enforcement actions under RCRA against Federal agencies or departments when compliance with the law's requirements cannot be achieved in any other way.

Section 120 also recognizes the reality that, in unusual cases, the national security may require issuance of circumscribed executive orders exempting a Federal facility from the requirements of the Superfund Amendments and Reauthorization Act of 1986. In all such cases, executive orders shall adopt the least burdensome method of protecting legitimate national security interests while still complying with the important environmental and health requirements imposed by the legislation. For example, it may be appropriate to require that all EPA employees reviewing cleanup plans obtain a national security clearance, but it would not be appropriate to exempt such plans from national cleanup standards simply because EPA employees are assigned to ascertain what standards should apply to the cleanup.

Section 211, the Department of Defense Environmental Restoration Program, is a direct response to a growing realization that over the years DOD has improperly disposed of literally billions of gallons of poisonous chemicals in nearly ever State in the Nation. From one end of the country to the other, the Defense Department has polluted surface and ground water, contaminated drinking water and fouled open waterways.

Section 211, in conjunction with section 117, 120 and 121 of the act, reflects the understanding that DOD can no longer cleanup their sites to a different standard, under less scrutiny, without direct participation from the

public, and without any oversight from EPA, and State and local health and environmental officials. Indeed, section 211 not only seeks to correct this past deficiency, but seeks to make cleanup actions at Department of Defense sites a model for other Federal and private remedial actions.

This section addresses a number of problems revealed in congressional hearings and through the work of the GAO.

First, section 211 establishes the Environmental Restoration Program for the DOD to provide centralized control of environmental activities in consultation with the Administrator of EPA. The bill makes it clear that while the Secretary of Defense has the basic responsibility for carrying out response actions subject to the requirements of, and in compliance with, CERCLA, the Secretary must consult with and is subject to the oversight of the Administrator of the Environmental Protection Agency. Further, the bill makes it clear that, as with other Federal agencies and departments, EPA shall have the authority to select a remedy over the objections of the Secretary of Defense when necessary. Again, this obligation does not diminish the legal obligations of the Department of Defense for ensuring the cleanup out in a timely and effective fashion.

Second, the legislation requires greater DOD coordination with Federal, State, and local health and environmental authorities and the public. GAO has found that the military's coordination with the affected officials has been insufficient to ensure the efficient and thorough cleanup of military toxic waste sites. The legislation mandates that the military coordinate all aspects of the Cleanup Program—from the identification and assessment of any possible contamination to the details of proposed and final cleanup plans—with Federal, State, and local authorities and the representatives of the affected community. In addition, the legislation requires DOD to establish technical review committees made up of representatives of the military, EPA, local citizens and State and local health and environmental regulatory authorities to review DOD cleanup plans and consider all data and information pertaining to releases or potential releases of hazardous wastes or substances from DOD facilities. It is intended that these technical review committees take an active role in the assessment and cleanup decisionmaking process. We further intended that DOD establish technical review committees at all facilities participating in the Installation Restoration Program and that such committees include as many members of the community as necessary to adequately represent the often diverse interests of those affected by releases or potential releases from the installation.

Third, section 211 sets up the environmental restoration transfer account in order to facilitate the funding of response actions. Congressional hearings and investigations by GAO identified the cumbersome DOD funding process as a major obstacle to an accelerated cleanup effort. The transfer account aggregates all environmental restoration funding in a single budget account and provides for the allocation of funds from the transfer account to the relevant appropriation accounts—including military construction, again, to facilitate the timely funding of response actions. The transfer account also preserves the existing account structure within the Department of Defense while at the same time providing the program with a greater degree of insulation from competing defense programs. It will ensure the program higher visibility and at the same time make it less vulnerable to unnecessary to capricious budget reductions. We further intended that all moneys appropriated to the environmental restoration transfer account be used only for authorized environmental restoration activities.

Fourth, the legislation requires DOD to establish a research, development, and demonstration program to develop innovative and cost-effective cleanup technologies. Devoting appropriate resources to research, development, and demonstration is the only way to significantly reduce the ultimate price tag of the DOD Cleanup Program—again, currently projected at between $5 and $10 billion—as well as promote the use of newly developing permanent cleanup technologies. DOD has entered into a cooperative agreement with EPA to jointly fund some research into new, more cost-effective cleanup technologies, and, we think the Department should intensify its efforts in this regard. The bill authorizes no specific funding level for this program, but it is intended that DOD develop and propose to the Congress a plan, including annual funding targets, for implementing a comprehensive and expedited 5-year plan for research, development and demonstration of innovative, permanent cleanup technologies. It is our strong belief that considerable environmental and economic benefits will result from such a program. While I am not committed to a particular funding level, I think it is clear that an investment in research, development, and demonstration of these innovative, permanent cleanup—and waste reduction—technologies of approximately $25 million a year would not be out of order.

Again, I encourage the Department of Defense to propose a comprehensive and aggressive RD&D plan as soon as possible.

And, fifth, section 211 requires the Agency for Toxic Substances and Disease Registry and EPA to generate fundamental health risk assessment data on the most commonly used DOD hazardous substances.

Finally, several sections of the Superfund Amendments and Reauthorization Act of 1986 put greater emphasis on addressing the legitimate concerns of the public and promoting effective public participation in site identification, site assessment, initial responses, cleanups, and long-term monitoring. The legislation makes it clear that information should not only be provided to the public but that the public should be involved in the decisionmaking process at all cleanup sites including those owned or operated by Federal agencies and departments. As both GAO and the Office of Technology Assessment have declared, an expanded public role in the Superfund Program promises to reduce delays by dealing with community concerns before substantial actions are taken and by providing useful oversight of activities.

In order to maximize the effectiveness of public participation, section 117 of the legislation provides grants to any group of individuals which may be affected by a release or threatened release at any facility—including Federal facility—which is listed on the national priorities list under the national contingency plan. Public participation, if given this critical Federal support for obtaining technical assistance, can lead to more effective cleanups for all communities, not just for those which happen to be better organized or fortunate enough to have citizens with political or technical expertise.

In all other areas dealing with Federal facility cleanups, the legislation is clear that the responsible agency should pay for all costs associated with implementing Superfund and that no moneys from the general fund should finance cleanup-related activities at Federal facilities. Therefore, we believe the administrator of the Environmental Protection Agency should, as soon as possible—within 6 months of enactment of this legislation, take such steps as are necessary to negotiate a memorandum of understanding, or an augmentation to an existing memorandum of understanding, with any Federal agency which has a facility within its administrative jurisdiction listed on the national priorities list. Such agreements shall specify that the Environmental Protection Agency is responsible for determining the eligibility of any group of individuals applying for a grant for technical assistance under the provisions of section 117 of the Superfund Amendments and Reauthorization Act of 1986. We further intend that the responsible agency shall reimburse the Environmental Protection Agency, through such means as are mutually agreeable and in an expeditious fashion, for the Federal share of any such grants associated with facilities within its jurisdiction.

In conclusion, Mr. Speaker, I would like to thank Mr. FLORIO, Mr. DINGELL, Mr. HOWARD, Mr. ROE, Mr. ECKART of Ohio, Mr. MOODY, and Mr. MCCURDY for their leadership on this issue and for their commitment to developing provisions of this bill that will substantially strengthen Federal facility compliance with the Superfund Act.

Mr. ECKART of Ohio. Mr. Speaker, I reserve the balance of my time for the purposes of colloquial debate.

Mr. LENT. Mr. Speaker, I yield 2 minutes to the gentleman from Indiana [Mr. COATS], a member of the Committee on Energy and Commerce.

Mr. HENRY. Mr. Speaker, will the gentleman yield?

Mr. COATS. I yield to the gentleman from Michigan.

Mr. HENRY. Mr. Speaker, I rise in strong support of the conference report.

Mr. Speaker, I want to draw attention to two particular aspects of the conference report on H.R. 2005, the Superfund Amendments and Reauthorization Act of 1986.

First, I am pleased that an idea which I first helped develop in the Science and Technology Committee way back at the beginning of this long process has been included in the conference report. One of the major problems with the Superfund Program has been that, in cleaning up NPL sites, we have sometimes simply moved the problem to another landfill, and created two hazardous sites rather than

one. Obviously a number of the provisions of this reauthorization bill are intended to deal with that problem and prevent it from recurring. Ironically, during these same years in which truly "getting rid of" hazardous waste has proven to be so difficult, the newspapers and magazines have frequently reported on new treatments and technologies advertised or promoted, with varying degrees of hype, as effective in neutralizing or destroying certain types of hazardous material. The problem has been in standardizing the testing and demonstration of these technologies, and disseminating the information on those which are shown to be effective.

Initially I proposed that a nonprofit, nongovernmental testing and evaluation center be established to evaluate and demonstrate these new technologies. Such a center would have no proprietary interest in the technologies being developed or be perceived as representing one interest or another in the inevitable conflicts which arise. The conference report, as did the House bill, instead directs the Administrator of EPA to establish an Office of Technology Development. The purpose of the Office of Technology Development, however, is the same—to select at least 10 sites which will be available to approved applicants for testing and evaluation of innovative technologies for treating hazardous waste. The office will also maintain a central reference library, available to the public, of information regarding alternative and innovative technologies. I believe this provision of the bill has great potential for both encouraging the development of alternative treatments for hazardous wastes and giving those treatments credibility and marketability which will allow us to move away from simply burying hazardous wastes, and where problems have developed, reburying it.

Second, the conference report carries forward the provision in both the House and Senate bills requiring that the Agency for Toxic Substances and Disease Registry perform a health assessment of each NPL site, as well as of other sites requested by affected private parties. Such health assessments are an important improvement in this bill, and will do much to address the fear and uncertainty which persons who live or work in the vicinity of a hazardous waste site understandably feel. The purpose of these health assessments is not to be the final word in terms of individual health effects or injury caused by hazardous waste site exposure—as our colleagues in the other body have noted, they are not intended to provide information likely to establish legal causation in an individual toxic tort case, nor are they intended to have a greater weight than would otherwise be accorded such a general assessment of potential health risks under the rules of evidence. But they will provide a preliminary body of information which to determine what further information or action by ATSDR or EPA may be appropriate or necessary. I encourage the agencies involved also to address them in this way so that they may be both timely and useful in the way in which the legislation envisions.

Mr. COATS. Mr. Speaker, I rise in support of the Superfund conference report. I enthusiastically support the extension and expansion of the Superfund Program to clean up our toxic wastes. I am less than enthusiastic about the way in which we finance this cleanup.

We do have a serious toxic waste disposal problem and we all recognize that there has not been enough action taken to date to address the cleanup of hazardous wastes. Now we have a consensus package before us that includes a fivefold increase in funding and greatly improves the administration of the Superfund Program. If we fail to act now, we will face the dilemma that has confronted us over the past year: No progress on one of the most important environmental problems facing the Nation. So I urge my colleagues to support this package despite the reservations that I know many of you have.

Let me briefly highlight some of the positive aspects of the conference report. H.R. 2005 greatly accelerates the pace of the program by requiring EPA to ensure that long-term cleanup work by the Government or by private parties begins at no fewer than 375 Superfund sites over the next 5 years. This measure calls for cleanup standards that generally would meet requirements of Federal and State environmental laws, but EPA could waive a requirement in specified circumstances. This proposal protects the public from the hazards of leaking underground storage tanks, establishes a procedure for negotiated settlements, sets up an emergency response and community-right-to-know program, and allows citizens the right to sue in cases where the law is not enforced or the Government has not performed its mandated duties.

This conference agreement provides far more protection against hazardous waste than any law has ever done before. In the past, we have been expending almost as much of our resources on litigation costs as we do on cleanup. While I question whether this proposal will actually change that direction, it is my hope that we can take the toxic waste cleanup effort out of the courtrooms and to the abandoned waste sites where it belongs.

While there is general agreement on the programmatic aspects of the Superfund Program, I continue to have reservations with how we fund the program. As many of you know, last year, I joined a majority in this House in opposing the manufacturer's excise tax, also known as a value-added tax. I feared that such a tax would unfairly impact American manufacturers, as well as presenting a very serious problem from a tax policy perspective. A value-added tax is a regressive tax that strikes hardest at lower- and middle-income people and has the potential to be increased over time. Instead, I supported the House position, which rejected the VAT and placed the burden of financing Superfund on those industries thought to be the major contributors to abandoned waste sites.

The financing proposal in this conference report contains some improvements from the earlier package. In lieu of the value-added tax, it includes a special alternative minimum corporate tax, which would raise $2.5 billion in revenue rather than the proposal from last year for a manufacturer's excise tax of $5.4 billion. Also, corporations with less than $2 million of such income would not be taxed. However, what disturbs me is that the alternative minimum tax would be imposed on companies regardless of their waste-management practices.

My preference would have been adoption of the substitute that was offered by Mr. LOTT in the Rules Committee. It would have allowed for adoption of the program portion to go forward, but would have provided only 1 year of funding, leaving the question of 5-year funding to next year's Congress. With so little time remaining in the 99th Congress, I fear we may be rushing to judgment on a proposal that will establish a dangerous precedent of taxing those who contribute little or nothing to hazardous waste.

So often, we have found ourselves in a politically divisive process that has resulted in no real progress in addressing this critical national problem. It is incumbent upon each and every Member in this legislative body to assure that we adopt a bill that will actually bring about meaningful cleanup of our Nation's hazardous waste sites. Therefore, I intend to support the conference report agreement, and hope my colleagues will join me in supplying this much needed legislation.

Mr. LENT. Mr. Speaker, I yield 1 minute to the gentleman from Colorado [Mr. SCHAEFER].

Mr. SCHAEFER. Mr. Speaker, I am happy to say that persistence has paid off. Since the Superfund reauthorization process began nearly 3 years ago, there have been times when we all wondered if a 5-year authorization would ever come about. Without the diligent efforts of so many—particularly Chairman DINGELL and ranking minority member Mr. LENT, DENNIS EKART of Ohio and former Congressman BROYHILL and now Senator—it might never have.

Cleanup of hazardous waste is not only desirable, it is essential. Hundreds of waste sites across the country have been identified by the EPA as ones deserving our foremost attention, and thousands more could potentially join this list. Citizens in my district are especially concerned about two sites—Lowry landfill and the Rocky Mountain Arsenal. Without adequate funding, the cleanup program at these locations could soon be delayed and

possibly terminated. Approval of this legislation can wait no longer.

The conference agreement we are considering sets stringent national standards and an aggressive schedule for cleanup of Superfund locations. In addition, it requires a reevaluation of the hazard ranking system ensuring that it accurately assesses the risks of potential sites. The funding of this program is as fair as can be expected, since both the broad-based and polluter pays advocates are given full consideration.

The compromise before us today is a tribute to the congressional process. Although no legislation of this magnitude is perfect, the many long hours of consideration have clearly resulted in improvements over the original measures approved by both bodies. I urge my colleagues to join me in support of the Superfund conference report thereby providing this much-needed program with adequate funding for years to come.

Mr. LENT. Mr. Speaker, I yield 1 minute to the gentleman from Utah [Mr. NIELSON], a member of the Committee on Energy and Commerce.

Mr. NIELSON of Utah. Mr. Speaker, I rise in reluctant support of this bill. I opposed the bill when it left the House because I did not like some of the amendments that were placed on the bill in the House, even though I supported the bill in committee.

I am happy to be back on the side of supporting a very important environmental bill. I especially would like to thank the chairman of the full committee, the gentleman from Michigan [Mr. DINGELL], and the gentleman from Ohio [Mr. ECKART], for giving such consideration to a problem I had in my district.

I would also like to thank the gentleman from New York [Mr. LENT] and other members of the committee. I think we have made very good progress and I congratulate the conferees.

Mr. DINGELL. Mr. Speaker, I yield 1½ minutes to the gentleman from Texas [Mr. RALPH M. HALL].

Mr. RALPH M. HALL. Mr. Speaker, I rise in reluctant support of the conference report, though I do not rise in reluctant support of my praise of the chairman, the gentleman from Michigan [Mr. DINGELL], his staff, as well as the gentleman from New York [Mr. LENT], and the minority staff, the gentleman from New Jersey [Mr. FLORIO], the gentleman from New Jersey [Mr. ROE], and, of course, the gentleman from Ohio [Mr. ECKART], for his very bold and imaginative leadership in steering this bill.

I think I would be forced to give some thanks to Pope Barrow, who provided a lot of institutional memory and set the standard for the stamina.

My reluctance stems not from the programmatic portion of this legislation, on which I was privileged to be a conferee and which I support, but from the tax title. The producing States, primarily Texas and Louisiana, are bearing a disproportionate burden of the financing of this program at a time when our State economies can least afford it. Consider the following:

Texas would pay about 27.5 percent of the crude tax, based on its share of refining runs; Texas would pay about 56 percent of the feedstock taxes; and Texas would pay about 16 percent of the broad-based taxes.

Three producing States, Texas, Louisiana, and Oklahoma, will pay more than three-fourths of the taxes raised under the Superfund Program.

Whereas, only about 3 percent of the national priority list sites are located in these three States.

Notwithstanding the fundamental inequity in the funding package, I am reluctantly supporting this conference report and urge the President to sign the bill because it is in the national interest that we continue the Superfund Cleanup Program. But I caution the Members of this House not to continue to look to the oil and gas producing States as limitless "deep pockets" to fund all the environmental cleanup efforts that need to be undertaken now. We have reached our limit, and from this point forward, we expect some substantial additional tax effort out of our friends in the Midwest and Northeast to finance acid rain and other environmental cleanup efforts in the future.

The producing States have already taken a tax hit in the so-called tax reform bill, we are taking an additional $6 billion hit in the legislation before us today, and we are being asked to take a further multibillion dollar tax hit on our economies in the acid rain bill now pending in the Energy and Commerce Committee. All of this at a time when our State economies are in shambles.

Mr. Speaker, the programmatic provisions contained in the conference report are the result of one of the difficult legislative efforts that I have been a part of in my years of public service. While I am less than thrilled with some of the parts of this title, such as the community right to know provisions, there are parts that I believe represent a major step forward in straightening out some of the more punitive aspects of the Superfund Program that were enacted in 1980.

I believe now there is a much greater likelihood that the EPA and private parties will be able to reach fair and equitable agreements that will lead to cleanups, rather than continued litigation. And the cleanup standards contained in the bill give to the Administrator a certain amount of discretion in tailoring the degree of cleanup needed to requirements of the site and the immediate environment. This I believe is a major, commonsense step forward that will enable us to make better use of the Superfund revenues. I am also pleased that the bill does not change the scope of the petroleum exclusion found in the definitions section of the act. That provision excludes from the definition of "hazardous substance" all types of petroleum, including crude oil, crude oil bottoms, refined fractions of crude oil, and tank bottoms of such which are not specifically listed or designated as a hazardous substance under other parts of the definitions section.

Thank you, Mr. Speaker, and I yield back the balance of my time.

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Mr. LENT. Mr. Speaker, I yield 2 minutes to the gentleman from California [Mr. ZSCHAU].

Mr. ZSCHAU. Mr. Speaker, today, after almost 1 year of delays, Congress will finally give its approval to Superfund legislation that will lead to the cleanup of our Nation's worst hazardous waste sites. It's about time.

I believe that we need a stronger and more effective Superfund. That is why I supported the House version of Superfund in 1984 and again in 1985; and that is why I rise today in support of the Superfund conference report, H.R. 2005. I believe that this carefully crafted measure will mean faster toxic waste cleanups and improve the quality of those cleanups. It achieves a workable compromise that underscores our Nation's commitment to cleaning up toxic wastes. Although I have some concerns about the financing mechanism, I strongly urge the President to sign this vital legislation when it reaches his desk.

I want to stress an important point: Under no circumstances should the Congress allow this critical environmental program to be put off until next year. The American people want and deserve action now. I am told by Environmental Protection Agency officials that if Superfund reauthorization is not enacted before Congress adjourns, it will result in terminating literally hundreds of cleanups throughout the Nation, including many sites in my home State of California. Our Nation cannot afford such a disaster.

Mr. Speaker, while it is vital for Congress to thoroughly debate and analyze the serious issues involved with Superfund, I believe that this important legislation has been debated and analyzed enough. Congress has spent nearly 3 years to develop Superfund legislation that would be acceptable to all interests. The time for action is now.

Today, we have a conference report that largely accomplishes that important goal. It is backed by environmentalists, the chemical industry, the electronics industry, the steel industry,

several oil and gas companies and most importantly the vast majority of the American people.

As my colleagues know, on October 3, the other body voted 88 to 8 in favor of the Superfund conference report. That vote clearly illustrates the widespread bipartisan support for this important environmental legislation. Today, the House has an important opportunity to once again demonstrate our very deep and fundamental commitment to the Superfund Program by promptly passing this conference report.

Mr. Speaker, I don't think you could find anyone in this Chamber who would say that the Superfund Program is not needed. While many Members have different views on how this program should be implemented, we all recognize that toxic waste is a critical problem that needs to be solved.

The House should approve this conference report, and I strongly urge the President to sign it so that the Nation can get on with the important business of cleaning up toxic waste.

Mr. LENT. Mr. Speaker, I yield 1 minute to the gentleman from Massachusetts [Mr. CONTE], the ranking minority member of the Committee on Appropriations.

Mr. CONTE. Mr. Speaker, I rise in support of this conference report on the Superfund reauthorization. Although I strongly support the program reauthorization, I have some reservations about the financing mechanism arrived at by the conferees. But since I recognize that this is probably the best compromise available at this time, and that putting in place a stable financing system is critical to the continuation and success of the program.

The States of the Northeast and Midwest have over 60 percent of the sites on EPA's national list of abandoned hazardous waste dumps scheduled for cleanup. Since the taxing authority for Superfund expired last year, excavation and containment work at these dump sites has come to nearly a complete standstill. Although we on the Appropriations Committee have twice provided interim funding to keep the program alive pending reauthorization, those funds ran out in September.

So the need for this reauthorization is clear, and I urge that it be adopted. But I would like to express my strong reservations about one aspect on the financing scheme.

The original House version of the Superfund legislation would have taxed oil at 11.9 cents per barrel, to raise $3 billion over 5 years, with no distinction in the tax rates between domestic and imported petroleum products.

The conference agreement, however, taxes domestic crude oil at 8.2 cents per barrel, while the tax on imported oil and refined products would be 11.7 cents per barrel. The tax on domestic crude would raise approximately $1.2 billion over 5 years, while the tax on imported oil and refined products would raise $1.55 billion over the same period.

It is this differential, Mr. Speaker, to which I take exception.

I have been opposed to an oil import fee since I came to the Congress. In fact, my first speech on the floor of this House was in opposition to then-President Eisenhower's imposition of an oil import fee in 1959. Although the differential fee on domestic and imported petroleum products in this conference report is not, strictly speaking, an import fee, it does share some of the same characteristics of one. It does adversely affect the Northeast and Midwest, which are proportionately more dependent upon imported oil than the other regions of the country. But the differential is sufficiently small, and the impact will be sufficiently diluted, that I believe it can be regarded as acceptable in the context of ensuring the future of the Superfund Program, which is so important to our region.

I want to make it clear, however, and I believe that I speak for my colleagues in the region on this point, that our acquiesence in this matter should not be regarded as any lessening of our absolute opposition to an oil import fee. We continue to oppose such a fee on grounds of national economic policy, on grounds of regional equity, on grounds of national security, and in the interest of keeping the national inflation rate under control.

The small difference between the domestic and imported petroleum fee contained in this conference agreement should in no way be regarded as a precedent for imposing an oil import fee, and I hope that my colleagues will not be any misapprehension on this point.

On that note, Mr. Speaker, I urge the adoption of the conference report.

Mr. DINGELL. Mr. Speaker, I yield 1 minute to the gentleman from Washington [Mr. SWIFT], who has contributed so much to make this legislation possible.

Mr. SWIFT. Mr. Speaker, the Superfund conference was a long, difficult process. The honest differences between the House bill and the bill passed by the other body were numerous and highly complex. Although negotiations on the programmatic sections went to virtually full-time for 5 months, often it appeared that agreement would be impossible.

Nevertheless, knowing that failure of the conference would mean that the country would be stuck another 5 years with the existing flawed program, we pushed on and finally reached an agreement that has broad support. Although there will always be different opinions as to what would be the ideal Superfund Program, I believe that almost everyone agrees that the conference report is far better than existing law.

The conference report requires Superfund cleanup actions to meet high standards of protecting human health and the environment. It requires those cleanup actions to be of a permanent nature to the maximum extent practicable. The preference for permanent solutions is one of the most important aspects of the conference report. We can no longer afford to just bury our hazardous wastes. We must use technologies that destroy them or render them nonhazardous. This has always been a basic premise of the House legislation, and I would not have supported a bill that did not have that thrust. Over the last 6 years, the Superfund Program has not led to permanent solutions to hazardous waste problems, and these provisions are designed to change that. In that light, it is important to establish in the legislative history of this bill that, notwithstanding remarks in the other body to the contrary, the language dealing with permanent treatments is clearly intended to constrain EPA's flexibility in selecting remedies.

This point is, I believe, clear from the statute itself. Any remedial action selected by EPA is required under section 121 to be, first and foremost, "protective of human health and the environment * * *." After identifying alternative remedial actions that achieve this fundamental goal, EPA is required to determine which alternatives are "cost-effective." The conference report clarifies that "[o]nly after the President [through EPA] determines * * * that adequate protection of human health and the environment will be achieved, is it appropriate to consider cost-effectiveness." Finally, choosing from those cost-effective remedial actions that are adequately protective of human health and the environment, EPA must select that cost-effective remedial action that provides the greatest degree of permanency.

EPA has no authority to reject a cost-effective permanent solution just because it is more expensive than another cost-effective action. Frequently, this may mean that the remedial action will require large sums of private party money or even moneys from the Fund; but if the permanent solution is a cost-effective solution, it must be applied. In other words, EPA may never select a nonpermanent remedial action where there is a cost-effective pemanent solution.

The conference report improves existing law in several other respects. It sets a schedule of cleanups for EPA to follow, and for Congress and the public to measure the program by. It gives EPA flexible but strong powers

to enforce the program, particularly against recalcitrant parties. And it allows citizens to be involved in the program from start to finish, and also provides for citizen suits so that they may seek the aid of the courts when necessary.

The conference report also establishes a new law, known as the "Emergency Planning and Community Right-to-Know Act of 1986." Most of my own participation in the conference was spent on this aspect of the bill, working closely with Representative LENT, Senator STAFFORD, Senator BENTSEN, and Senator LAUTENBERG in the so-called right-to-know "subgroup." On a personal note, I would like to thank all of these gentleman for their hard work, good-faith efforts, and cooperation, which led to agreement on a provision that, in my view, improves on both bodies' bills.

This new law will provide for the development of local emergency response plans in communities across the Nation. It will give important information to firefighters and other emergency response personnel about hazardous chemicals present at facilities that they may be called upon to deal with in an emergency. And it will require that people be informed of hazardous chemicals that are present in their communities, including estimates of the amounts that are released—whether routinely or accidentally—into the environment.

At this point, I would like to comment on some particular features of the emergency planning and community right-to-know provisions which require elaboration. I was present at all meetings of the right-to-know "subgroup," and I believe that these observations accurately reflect the proposal that the "subgroup" made to the full conference and which the conference adopted.

EMERGENCY NOTIFICATION

Section 304 requires immediate notification of releases of extremely hazardous substances from facilities that produce, use, or store hazardous chemicals. The notifications are to be sent to the community emergency coordinators and State emergency response commissions for the emergency planning districts and States likely to be affected by the release.

Since the State commissions are not required to be in place until 6 months after the date of enactment, and the local planning committees not until 10 months after enactment, the notification requirements in section 304 are not effective until those dates. If before those dates a facility experiences a release that would require notification under section 304, the owner or operator should provide such notification to relevant State and local emergency response personnel.

PROVIDING TIER II INFORMATION TO THE PUBLIC

Section 312(e)(3) provides that any member of the public may request detailed tier II information from a State emergency response commission or a local emergency planning committee. If the commission or committee has already acquired the information, it must retain that information and provide it to the requesting member of the public. If the commission or committee has not previously acquired the information it must do so, and provide it to the requesting member of the public, if the hazardous chemical in question has at any time in the preceding calendar year been stored at the facility in a quantity equal to or exceeding 10,000 pounds. In other words, if the facility has on hand a total of 10,000 pounds or more of the hazardous chemical at any one point in time during the course of the calendar year, the commission or committee must acquire and provide the tier II information if requested.

The commission or committee may, at its discretion, acquire tier II information even if the chemical is never present in a quantity equal to or exceeding 10,000 pounds. If the commission or committee does acquire such information, it must be made available to the public. This provision is intended to assure that the public receives useful information without imposing unreasonable burdens on the commissions and committees.

REVISIONS OF REPORTING FORMS

The Administrator is required to publish forms under both sections 312 and 313. Each section contains a deadline for such publication. Since the deadlines will occur shortly after enactment of the bill, the Administrator is not required to publish the forms for public comment prior to publishing the final forms by those deadlines. However, the Administrator is encouraged, to the extent feasible, to consult with interested organizations and the affected industry in order to make the forms as useful as possible. Furthermore, the Administrator may provide an opportunity for public comment on the final forms after they are published and, after receiving comments or after experience with the forms, revise them in order to improve reporting. Any such revisions should be published sufficiently before the beginning of the applicable reporting period to allow the affected industry adequate time to prepare for their use.

SCIENTIFIC BASIS FOR LISTING TOXIC CHEMICALS

Section 313(d) authorizes the Administrator to revise the list of toxic chemicals for which annual toxic chemical release forms must be submitted. The statutory language of section 313(d) clearly requires any such revision, whether it is to add or delete a chemical, to be based on solid scientific evidence. The statute provides that "[a] determination [to revise the toxic chemical list under section 313(d)] shall be based on generally accepted scientific principles or laboratory tests, or appropriately designed and conducted epidemiological or other population studies, available to the Administrator." The degree of scientific support needed for such a determination is to be judged not in comparison to the degree of scientific support needed to justify a regulation, as was suggested in the other body; that is not the issue here, and such comparisons are not particularly useful. Rather, the degree of scientific support to add or delete a substance needed is that stated in the statutory provision I just referred to. It is important that these reports be useful, and therefore the chemicals subject to the reporting requirements must be selected on the basis of solid scientific evidence.

TOXIC CHEMICAL LIST PETITIONS BY GOVERNORS

Section 313(e) allows members of the public to petition the Administrator to add or delete chemicals from the list of toxic chemicals published under section 313. Petitions from State Governors must be given special consideration under paragraph (2) of section 313(e). That paragraph requires EPA to respond to a Governor's petition to add a chemical within 180 days, either by initiating a rulemaking to add the chemical to the list or publishing an explanation why the petition does not meet the criteria for adding a chemical to the list. If EPA fails to respond within the 180-day period, the chemical must be added to the list. That is, the Administrator must promptly publish a final rule in the Federal Register which adds the chemical to the list.

TOXIC CHEMICAL REPORTING THRESHOLDS

Section 313(f) sets thresholds for reporting toxic chemical releases under section 313, and it provides the Administrator with the authority to revise those thresholds through rulemaking. Any revised threshold should be designed to improve the usefulness of the reports. It must be structured to obtain reporting on a substantial majority of the total nationwide releases of the toxic chemical at all facilities covered by section 313.

Reporting from all facilities will not necessarily be required in order to accomplish this goal. For example, if most of the releases for a specific chemical come in high volumes from only a few facilities, and the releases from other facilities, though numerous, are very small, the threshold might only result in reporting from the high-volume facilities. Similarly, if a particular type of use accounts for most of the releases of a chemical, the Administrator might require reporting only from those facilities that release

the chemical in connection with that use. This flexibility is given to the Administrator in order to achieve the goal of obtaining useful reports on the majority of releases without placing undue burdens on facilities which contribute little to such releases.

TRADE SECRET FACTORS

The trade secret provisions, including those dealing with health professionals, are modeled on those of the original House bill as modified by amendments that I offered in the House Energy and Commerce Committee. Although the conferees agreed to modify those provisions in order to address certain concerns raised by the other body, it should be clear that the trade secrets approach taken by the conferees originated in the House. Therefore, the legislative history in the House is particularly illuminating in understanding these provisions.

Section 322(b) sets forth the factors to be applied by the Administrator in determining whether a specific chemical identity has been properly withheld from submission under sections 303(d), 311, 312, or 313 as a trade secret. These criteria are well established and require little explanation. One criterion is that the information claimed as a trade secret is not required to be disclosed, or otherwise made available, to the public under any other Federal or State law. In making this determination, the Administrator must first consider whether such a State law is applicable to the facility making the claim. For example, in reviewing a claim asserted by a facility doing business only in Missouri, the Administrator would only look to the law of Missouri, and that of such other States as require the Missouri facility to disclose or make available to the public the information.

PROVIDING TRADE SECRET CHEMICAL IDENTITIES TO STATES

Section 322(g) allows State Governors to obtain trade secret chemical identities that otherwise may not be disclosed. The Governors will be able to disclose this information within their State governments; however, neither they nor any State employees obtaining the information may knowingly and willfully disclose it outside the State government without violating section 325(d)(2) and subjecting themselves to criminal liability. Of course, this does not limit their ability to disclose the same information if the State obtains it under its own authority independent of section 322(g).

INFORMATION ON ADVERSE EFFECTS

Section 322(h) requires that where the specific identity of a chemical is a trade secret, its adverse health and environmental effects must be disclosed in responding to requests for information. The purpose of this requirement is to assure that the maximum information possible be made available to the public without compromising the trade secret. It is important, however, that the information on adverse health and environmental effects be described in general terms so as not to provide a unique identifier of a particular trade secret chemical.

HEALTH PROFESSIONALS' USE OF TRADE SECRETS

Section 323 requires that under specified circumstances the owner or operator of a facility must provide certain health professionals with the specific chemical identity of hazardous substance even though such identity is a valid trade secret. This section only expands the rights of health professionals to obtain information, although it attaches certain responsibilities to health professionals who choose to exercise those rights. Health professionals who obtain trade secret information under the authority of this section must, except in specified emergency situations, sign a written confidentiality agreement before obtaining the information. State health professionals who obtain the information under section 322(g) are not required to sign confidentiality agreements.

The confidentiality agreement must allow the health professional to use the information for the purposes that the health professional sets forth in a written statement of need, which is to be submitted before disclosure of the information except in emergency situations. Frequently, health professionals need to consult with one another about symptoms, medical findings, and the treatment of disease. A confidentiality agreement should not prevent such consultation unless the consultation would compromise the trade secret. It is generally, but not always, the case that it is the linkage of a specific chemical with a specific facility or company that constitutes the trade secret. As the conference report states, "the confidentiality agreement should not prevent a health professional from discussing in a public forum the relationship between a specifically identified chemical and a particular disease, for example, so long as the chemical cannot be linked to the company that has claimed the specific chemical identity to be a trade secret." Of course, where such linkage is not needed in order to compromise the trade secret, or where the linkage is obvious, the confidentiality agreement may prevent such disclosure.

AVAILABILITY OF INFORMATION TO THE PUBLIC

Section 324(a) requires that emergency response plans, MSDS's, section 311(a)(2) lists, inventory forms, toxic chemical release forms, and emergency followup notices be made available to the public during normal working hours at designated locations. However, an owner or operator of a facility reporting under section 312 may request that the location of any specific chemical identified in tier II reporting be withheld from public disclosure by the State emergency response commission or the local emergency planning committee. It is recognized that while section 312 reports are not routinely filed with the Administrator, the Administrator may obtain copies of such reports in enforcing the provisions of this title, or under section 322 in the course of making trade secret determinations. If this information comes into the Administrator's possession through these mechanisms, the Administrator is also required to withhold such information from public disclosure.

CITIZEN SUITS

Section 326 authorizes persons other than the Administrator to bring suits to enforce certain provisions of title III. Section 326(a)(1) authorizes citizens to bring suits on their own behalf against owners or operators of facilities that fail to comply with certain requirements, the Administrator for failure to take certain actions, and State Governors and State emergency response commissions for failure to take certain actions. For purposes of section 326(a)(1), a State or local government may also qualify as a citizen and may bring suits. Section 326(a)(2) provides additional authority for State and local governments to bring actions against owners and operators of facilities for failure to provide information under section 322(g). None of these provisions provide for suits against local emergency planning committees.

Mr. Speaker, it has not been a smooth road that has led us to this day, but I believe that we can take pride in the result. The House of Representatives is about to vote on a bill that I believe will be a great leap forward in our efforts to clean up toxic dumps, and to protect the health and environment of millions of Americans.

One additional matter needs to be addressed. Some senior administration officials, including the Secretary of the Treasury, are urging the President to veto this bill. That would be a tragic action, particularly if the President were to pocket veto the bill, thus denying Congress a chance to either override a veto or to revise the funding provisions. It would be tragic because a pocket veto would mean that there would be no Superfund Program when Congress returns in January. The lives of millions of Americans would be put at risk.

I deeply hope that the President will sign this bill. No words I can use, however, put the matter more passionately than those of two mothers who have lost their children to toxic waste exposure. Last week, Norine Danley Brodeur and Cathy Hinds wrote to Mrs. Reagan, asking for her help in persuading the President to sign the Superfund bill. I submit a copy of their letter at the conclusion of my remarks:

AYER CITY HOMEOWNERS ASSOCIATION,
Lowell, MA, October 3, 1986.
First Lady NANCY REAGAN,
White House,
Washington, DC.

On Behalf of Victims of Toxic Waste Exposure in the United States, we wish to request a meeting with you, the First Lady Nancy Reagan to hear our appeal to pass legislation known as "Superfund", our last hope to get America's toxic waste cleaned up. As a mother and an active crusader against substance abuse that has needlessly taken the lives of children, we believe that you can deeply understand the necessity and urgency of our plight. Many of us are Mothers that have lost children to toxic waste exposure in our communities. We ask only 15 minutes of your time to listen to our plea and urge your husband President of the United States to sign into law our last hope—Superfund. Many Members of Congress have viewed Superfund as a tax issue, this could not be farther from the truth. Superfund is a Bill to prevent the needless death of our children from cancer and other health problems caused by toxic dumps in thousands of American communities. Once again we only ask that you listen to our side—the human side—of Superfund before the fate of this vital program is decided. We have worked for 3 years lobbying our Members of Congress, paying for trips to Washington we could scarcely afford and appealing to all our government officials for help. Please don't let our efforts go in vane. Both Cathy and myself have lost children due to toxic exposure. You are our last hope. Please give myself and several others 15 minutes of your time during the 1st week of the 99th Congress. Thank you for your time and consideration.

NORINE DANLEY BRODEUR.
CATHY HINDS.

Mr. DINGELL. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Kansas [Mr. SLATTERY].

The SPEAKER pro tempore (Mr. PANETTA). It is the intent of the Chair following the 2 minutes of the gentleman from Kansas to recognize the Ways and Means Committee for its time.

Mr. SLATTERY. Mr. Speaker, I rise in support of the Superfund conference report. This is a measure which has been debated for nearly 3 years.

It has strong bipartisan support, and it has the support of industry and environmentalists. The enormity of crafting a consensus bill on such a complex public health and environmental issue is a tribute to the members of the conference committee, and all the Members that have worked on this legislation.

The report before us today contains a detailed, structured program which will support an effective and aggressive response to the dangers of toxic waste.

This bill forces EPA and private parties to look toward the future in devising remedies at sites which are permanent solutions.

This legislation encourages the development of alternative treatment technologies that destroy or permanently immobilize hazardous waste.

It puts EPA on a schedule so we can measure performance and progress.

It encourages potentially responsible parties to come out of the woodwork and the courts, and settle on an environmentally acceptable cleanup plan.

It protects our ground water from contamination by leaking underground storage tanks by establishing a new Cleanup Program under RCRA.

It guarantees that communities across the country will know what hazardous chemicals are produced or handled at local plants—and, it assures residents that emergency response plans will be in place should an accident occur.

It puts the Federal Government on a schedule to clean up its own hazardous waste facilities.

And, it broadens the base of Superfund support by recognizing that many industries have contributed waste to Superfund sites.

This conference report provides the direction necessary to encourage EPA, the States, responsible parties, and affected communities to act together in addressing the problem of toxic waste sites. It is built upon the understanding that we are partners in this cleanup effort—and we cannot afford to fail each other.

I have heard the rumor that several of the President's advisers are recommending that he veto this legislation. I take this opportunity to remind the President that he is the final partner in the Superfund reauthorization effort—and, he should not fail us now.

This conference report is the product of 3 years of hard, bipartisan work. It is time to stop talking and start cleaning up toxic waste sites all over our country.

I urge the adoption and enactment of the Superfund conference report. Again, I commend the conferees and their staffs for their dedication and commitment to a quality environment for ourselves and our children.

Mr. LENT. Mr. Speaker, I yield 1 minute to the gentleman from Arizona [Mr. MCCAIN].

Mr. McCAIN. Mr. Speaker, I rise today in strong support of the Superfund conference agreement, at least the program provisions. I have reluctantly concluded that I must support the revenue provisions because of the importance of this program to our Nation and its environment. However, I do have grave misgivings in this area and I believe the conferees could have done a far better job.

The conference agreement before us reflects our increased understanding of the nature of the threat we face from the thousands of toxic waste sites which litter our Nation's landscape. In this first reauthorization of Superfund we have increased the funding more than fivefold and added many substantive provisions which should improve the EPA's effectiveness in dealing with this problem. Let me make special note of certain elements in this agreement that I think will improve the program's performance over the next 5 years.

I applaud the inclusion of cleanup schedules and standards. This should give the EPA a clearer picture of what Congress intends to achieve with this program and, hopefully, will result in a better record than occured over the first 5 years of Superfund. Our environmental laws are not individual entities. Rather they should be seen as a coherent strategy with a synergistic affect. The requirement that cleanups under this program comply with all applicable Federal environmental laws makes perfect sense when viewed in this context. It also makes sense to mandate a more aggressive pace in Superfund so that leaks from these sites do not complicate other efforts such as cleaning up our country's water supplies and preventing their further contamination.

I would also like to comment on the community right to know provisions in this agreement. I did not support the provision in the House-passed Superfund measure because I believed it unworkable and likely to cause more mischief than good. I am pleased with the work done by the conference in crafting a good scheme in this area which should immeasurably assist our communities deal with potential hazardous conditions resulting from nearby chemical manufacturing operations. The new plan specifies what substances are to be covered, in what amounts, and what human health effects we are concerned with. These elements were not adequately spelled out in the House-passed measure.

I also congratulate the conferees for the increased public participation called for by this legislation. From adding chemicals to the hazardous chemical reporting list, to adding sites to the National Priorities List for long-term cleanup, to allowing for citizen suits in specific cases to ensure proper conformance with the law, our citizens are given the opportunity to be heard in the operation of Superfund. I believe this reflects the fact that every individual should be concerned and involved in the effort to identify and eliminate the toxic timebombs spread about our country.

I will not dwell too long on the bad elements of this agreement but I cannot let the taxing provisions go by unmentioned. I believe it is regrettable that we have moved away from the polluter pays concept and have imposed another tax increase on corporations who are already facing a tax increase in the next couple of years. If, as some have argued, all of us have a responsibility to participate in funding the Superfund cleanup, then we should have been honest and used gen-

eral revenues. That is the broadest base tax we have. It would have been my desire to see a funding mechanism more closely approximating the Downey-Frenzel concept, which I supported. However, the importance of the program outweighs my misgivings in this area.

Mr. Speaker, overall this is a good agreement, a long overdue one that should be enacted promptly. I urge my colleagues and my President to support it.

Mr. DINGELL. Mr. Speaker, I yield 1½ minutes to the distinguished gentleman from Oregon [Mr. WYDEN], who was a great help in handling this difficult legislation.

Mr. WYDEN. Mr. Speaker, I thank my chairman for yielding me this time.

Mr. Speaker, it is time to put some super back in the Superfund.

Six years ago, at the close of an earlier Congress, we passed a bill called the Superfund. We were sure it would take care of our long legacy of leading landfills. But because we had no idea how big the problem was, Superfund turned out to be punyfund.

Today we are back to try again. This time, we recognize the beast for what it is. The problem of toxic chemical contamination in this country is so big, even this $9 billion bill will only address the worst of it. Perhaps it was the frustration of knowing that we could not do it all that made the conference on this bill so difficult. We had to make hard choices. But, as I think our work shows, we were committed to dealing with the problem. And we have produced a bill that will improve our cleanup program dramatically.

Mr. Speaker, several Members deserve special credit for this bill. Without the leadership and hard work of Chairman DINGELL we would not be standing here today. Mr. ECKART of Ohio and Mr. LENT put in uncounted late hours. Mr. SWIFT's work on the right-to-know provisions was essential to the conference's success. And I salute Mr. FLORIO for his unwaivering dedication to the crafting of a strong bill.

While I cannot possibly address all the features of this mammoth bill, I would like to highlight three aspects of it the might not otherwise receive the comment they deserve.

First, I would like to draw attention to the research provisions of the amendments, that, as my colleagues will remember, we worked so hard on in the House. Under these, Superfund money will go toward developing and implementing better ways of dealing with hazardous substances. I am especially proud that the conferees elected to earmark $100 million for development of innovative technologies for site cleanups. Often our cleanups today are nothing more than toxic waste merry-go-rounds, shifting waste from one side to another, without facing the question of how ultimately to get rid of it. There is no such thing as a safe landfill, and we must discover safe ways of disposing of the waste, or ways to avoid producing it in the first place. Researchers at institutions around the country, including the Oregon Graduate Center, Oregon State University, and CH2M Hill in Oregon, are beginning to attack these problems. The research provision will help accelerate these efforts.

The bill also sets up a new EPA Office of Technology Demonstration and allows EPA to experiment with and demonstrate new treatment technologies. To coordinate research efforts, the bill sets up an advisory council through the Department of Health and Human Services.

Also, the bill calls on EPA to fund 5 to 10 regional research centers at universities or other academic institutions. These will foster the sort of innovative, practical thinking we need to solve toxic waste problems.

Though all told, research will take only a fraction of the find, it may well be the best investment in the environment that we make.

Second are sections 120 and 121 of the amendments. These increase the role of EPA and the States in Superfund cleanups at the many Federal facilities with serious contamination problems, such as the Department of Energy's installation at Hanford, WA.

The Federal facilities cleanup scheme in these sections is designed to complement the corrective action authorities in the Solid Waste Disposal Act. The scheme does not in any way override or supplant the corrective action authority that act grants EPA and delegated States. Even though section 121(e) eliminates the permit requirements for removal or remedial actions conducted entirely onsite at a national priorities list facility, a delegated State continues to have the authority to issue corrective action orders or to require appropriate corrective action for those onsite cleanups if a permit is necessary for any treatment, storage, or disposal facility on the Federal installation.

Section 120(i) is intended to make it clear that section 121(e) does not preempt the corrective action authorities of the Solid Waste Disposal Act. In the spirit of a true Federal-State partnership, section 121(i) ensures the continued authority of the States to be full partners in selecting corrective actions and setting cleanup priorities at Federal facilities pursuant to the Solid Waste Disposal Act.

Further, when a cleanup is proceeding under the Solid Waste Disposal Act's regulatory authorities, the listing on the NPL according to criteria of the Hazard Ranking System Model as published in appendix A to the national contingency plan should not result in delay of the cleanup or an opportunity to change the choice of remedy. The area that should be listed as the NPL facility is the specific waste site, not necessarily the entire installation. The Federal Government should not set facility boundaries broadly as a means to avoid State jurisdiction.

Also, section 120(a)(4) provides that State laws concerning removal and remedial actions, including State laws regarding enforcement actions, apply to actions at Federal facilities not included in the NPL. The provision is meant to explicitly waive sovereign immunity. Therefore, Federal facilities should comply with the same State requirements and be subject to the same penalties as non-Federal facilities.

True, many of the Department of Defense and Department of Energy Atomic Energy Act facilities are building weapons to assist in the defense of this country. But America is not stronger if our natural resources are poisoned in the process. We can manage these facilities to protect both the environment and our Nation's security. These amendments, together with existing Solid Waste Disposal Act authorities, will help make Federal facilities the model citizens they should be.

Finally, I would like to point out an easily overlooked provision in the bill's used oil section. In this section the conferees tried to reconcile the need to encourage responsible collection and handling of used oil with the need to see that used oil pollution is redressed. To encourage recycling or responsible disposal, we granted special status to service station operators and a few select groups, including refuse collectors picking up used oil pursuant to a State mandate. This provision is intended to promote Oregon's new system of mandatory curbside pickup of recyclable materials and to encourage other States to experiment with similar systems.

Mr. DAVIS. Mr. Speaker, I yield myself 1 minute.

Mr. Speaker, I rise in support of this important reauthorization of Superfund. It is essential that we get this vital environmental program back on track. This reauthorization includes ambitious cleanup standards, a reasonable, enforceable cleanup schedule, health assessments at national priority sites; mandatory public participation in significant cleanup decisions; and a new program to cleanup underground gasoline storage tanks leaking into our ground water. Every American citizen has a stake in what we do here today. In northern Michigan, we are dealing with hazardous waste cleanups in such areas as Marquette, Charlevoix, Oscoda, Petoskey, Houghton, and Ellsworth.

We cannot allow an aggressive Superfund Program to be delayed any longer, and I urge my colleagues to support this reauthorization.

Mr. Speaker, I yield 3 minutes to the gentlewoman from Rhode Island [Miss SCHNEIDER].

Miss SCHNEIDER. Mr. Speaker, 6 years ago we made a promise to the American people to clean up some of the country's worst hazardous waste sites and today we have a chance to make good on that promise by strengthening the Superfund Program, but also by giving the money to the Environmental Protection Agency to do the job appropriately.

The question is, who is going to be picking up the tab of $9 billion? Last December the House very clearly said that those who make, use, or buy hazardous wastes should be the ones to bear the cost of the cleanup. It is a common sense policy, a policy that the polluter pays, has always been the cornerstone of our environmental policy. The question is, who are these polluters? Well, the Environmental Protection Agency, among others, have done numerous studies and indicated very clearly that the petrochemical industry is responsible for 70 to 80 percent of all Superfund wastes.

We can be proud of the tenacious fight that the House conferees made on behalf of that principle of polluter paying.

First on the list of achievements is the defeat of the value-added tax.

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The idea was to shift the Supefund tax burden away from the petrochemical industries and onto the backs of consumers through a regressive sales tax. That proved to be a legislative Edsel that the House just would not buy.

The bill does include, however, a broad-based tax that is tied to corporate income rather than the sale of consumer products. That is a slight improvement over the VAT. It is, however, a regrettable step away from the "polluter pays" principle, as it will be imposed on many companies that have no connection with the Superfund Program. I oppose it and I will vote for it with great distaste, because we are at the 11th hour, and the American people have waited too long for the bill.

Second, the oil companies are rightfully assessed a significant share of the Superfund tax. After all, oil is the raw material from which 80 percent of the organic chemicals found at Superfund sites are derived. Waste oils laced with contaminants have been identified at at least 153 Superfund sites in 32 States.

Finally, the oil tax will have a minimal impact on consumers. Even if all of this tax is passed forward to consumers—which is unlikely in today's soft energy market—the tax would raise the price of gasoline by no more than two to three tenths of a cent per gallon.

Unfortunately, while domestic oil is taxed at 8.2 cents per barrel, imported petroleum products are taxed at the higher rate of 11.7 cents. I see not justification for this distinction, as small as it is. I understand that it was forced on the House conferees by the Senate as the price of an agreement, and that the Committee on Ways and Means will not dignify it by considering it as any kind of precedent for any oil import fee in the future.

I regret that the conference report does not include a waste-end tax, which unfortunately became a victim of politics and the oil lobby. I want to express my deep appreciation to the House conferees, in particular my friends, the gentleman from Minnesota [Mr. FRENZEL], the gentleman from New York [Mr. DOWNEY], and the gentleman from Ohio [Mr. PEASE], who fought so very hard to keep the waste-end tax in the bill.

The SPEAKER pro tempore (Mr. PANETTA). The time of the gentlewoman from Rhode Island [Miss SCHNEIDER] has expired.

Mr. FRENZEL. Mr. Speaker, may I yield the gentlewoman 2 additional minutes from my time?

The SPEAKER pro tempore. Is the gentleman being recognized on behalf of the Committee on Ways and Means?

Mr. FRENZEL. Yes, Mr. Speaker.

The SPEAKER pro tempore. The gentleman may yield time.

Mr. FRENZEL. Mr. Speaker, I yield 2 additional minutes to the gentlewoman from Rhode Island [Miss SCHNEIDER]. She said something nice about me.

Miss SCHNEIDER. Mr. Speaker, the gentleman suspects that I have more nice things to say about him.

Mr. Speaker, I am very pleased that we are able to push ahead the first national pollution tax out of the realm of theory and into the practical world of policymaking, and to push it to the point where we convince the administration and the House of Representatives that it was workable. In part, that may be because there is something irresistible about the inherent logic of a waste-end tax.

It recognizes that to use the land as a dumping ground for hazardous waste jeopardizes the natural environment, which belongs not to any particular industry, but to all the American people. It recognizes that land disposal should no longer be a right, but rather a privilege for which industry should pay. The States have been quick to recognize this principle, and waste-end taxes have been adopted in more than 20, most recently in Ohio.

Charles Darwin said, "It is the customary fate of new truths to begin as heresies." If that is so, I believe that the waste-end tax has, through the long education process that I was privileged to be a part of, become a generally accepted truth, frustrated only temporarily by the power of the special interests.

I have enough faith in our system to believe that the truth will ultimately prevail. I say, we should return. To paraphrase Oliver Wendell Holmes, Jr., the race today may be over, but the work is never done while the power to work remains.

None of us is completely content with the financing components of the conference report on Superfund, but it is critical that we put our differences behind us and vote "yes" today if we are to keep our promise to the American people.

Mr. DINGELL. Mr. Speaker, I yield 1½ minutes to my dear friend, the gentleman from Louisiana [Mr. TAUZIN], another Member who has made a very valuable contribution to the compromise and to the enactment of this legislation.

Mr. TAUZIN. Mr. Speaker, I thank my chairman, and particularly my dear friend also, the gentleman from Ohio, Mr. DENNIS ECKART, for the enormous work they did, and I rise in great support of this compromise package.

Mr. Speaker, I recently had the occasion to visit the remote sensing laboratory at LSU. It was an eye opener for me. There I saw evidence of probable unreported Love Canal-type sites underlying playgrounds and schools and threatening residential communities throughout large and small cities in our country.

To those who complain that a $9 billion fund is too much, I answer shamefully perhaps it is too little.

Like my friend, the gentleman from Texas [Mr. RALPH M. HALL], I have problems with the financial package, because it does indeed impact a State like mine so very heavily. But representing a State that is heavily impacted by the crude oil tax, let me urge my President and yours not to veto this measure. It represents a compromise, as do the programmatic aspects, a pretty fair compromise, and one that will put our Superfund cleanup on track again.

To let this program expire would be hazardous to the welfare and health of our country, and perhaps even to someone's political fortunes, and perhaps it ought to be.

Mr. President, do not veto this act. Do not let this program expire. Mr. Speaker, let us keep our options open. If a veto does come, let us have the courage to stick around long enough to undo that dastardly deed, and to put the Superfund cleanup back on track for America's sake.

Mr. DAVIS. Mr. Speaker, I yield such time as he may consume to the gentleman from New York [Mr. SOLOMON].

Mr. SOLOMON. Mr. Speaker, I rise today in strong support of the Superfund conference report. Superfund provides the proper legal framework and musters the needed financial resources to make a frontal assault on the urgent problem of hazardous wastes.

As a fiscal conservative, I naturally examine carefully any legislation that proposes to spend billions of dollars. In this case, I sincerely believe that Superfund withstands the closest scrutiny. What we have to look at in weighing this bill is the reality that the money we spend now will save us money in the long run while at the same time improving the health and safety of our citizens.

Indeed, Mr. Speaker, in my own State of New York, in my own congressional district, Superfund is an essential device for cleaning up dumpsites and rehabilitating ground water drinking supplies. Superfund also plays a key role in encouraging the development of new disposal technologies, and guaranteeing that traditional disposal methods follow strict environmental standards.

In my congressional district only, there are some 16 toxic waste dumps that pose a distinct danger to public health and safety. Another 34 need careful investigation. The Superfund bill we are considering today would help provide the needed resources to add some of these sites, and others like them around this Nation, to the national priority list.

And indeed the Superfund itself is a national priority. The bill took this Congress a long time to develop but its effects will extend for generations to come.

I urge its adoption.

Mr. DAVIS. Mr. Speaker, I yield 2½ minutes to the gentleman from Washington [Mr. MILLER], a distinguished member of the Committee on Merchant Marine and Fisheries.

Mr. MILLER of Washington. Mr. Speaker, I rise in support of the reauthorization of the Superfund Program. Let us face it, for over a year, Congress has been playing chicken with a program which is vital to the improvement of our Nation's environment. But, finally, today we are telling the American people that they can have confidence that Superfund will be there to clean up toxic waste dumps from Love Canal to Puget Sound.

This Superfund bill contains tough cleanup schedules and standards, and ensures that the public has the right to know what chemicals threaten public safety. Most importantly, Mr. Speaker, this program is adequately, but not excessively, funded to make substantial progress toward cleaning up sites across the Nation.

The conferees needed some prodding and pushing along the way, but they delivered a reasonable bill. This bill will help restore 600 sites across the Nation over the next 5 years and get us organized to address the remaining 22,000 sites. In my district I have two sites proposed for the national priorities list: one at the Naval Undersea Weapons Station at Keyport, and one at Eagle Harbor. There are other sites around the Pacific Northwest which also concern me. My constituents want these dump sites cleaned up, and they want dump sites across the Nation cleaned up.

Mr. Speaker, we want a strong Superfund bill, we are going to pass a strong Superfund bill, and I hope that my President will sign a strong Superfund bill.

Mr. DINGELL. Mr. Speaker, I yield 1 minute to the distinguished gentleman from Illinois [Mr. BRUCE].

Mr. BRUCE. Mr. Speaker, I would like to commend the gentleman from Michigan [Mr. DINGELL], the gentleman from Ohio [Mr. ECKART], the members of the committee, as well as our friends in the other body for their diligence in working out a successful compromise on this vital piece of legislation.

My congressional district is a microcosm of the Nation's toxic waste dilemma. We had one of the worst sites on the national priority list in Greenup, IL. At the same time, we have businesses in Douglas County and Clark County that could not have survived some of the proposals made for financing the Superfund.

Yet, we are committed to both a safe environment and a strong industrial base.

This bill contains stringent cleanup standards, tough cleanup schedules, expanded health protection, and public participation requirements, a comprehensive community right to know provision, and a new program for cleaning up leaks that may seep into our ground water.

In addition, it provides a fair mechanism for funding these vital programs without resorting to the general income tax.

This bill combines safety and fairness with aggressive action.

I congratulate the committee for drafting it, and I ask my colleagues to join me in supporting it.

Mr. JONES of North Carolina. Mr. Speaker, I rise in strong support of the conference report on H.R. 2005 and urge its prompt passage.

First, I want to express my appreciation for the hard work of the chairman of the conference, the gentleman from Michigan [Mr. DINGELL]. Without his tireless efforts, we would not be this close in making fundamental changes to the Superfund law.

The many committees involved in the conference posed a difficult challenge, made more so by the importance of the issues before us.

For my own part, and on behalf of the Committee on Merchant Marine and Fisheries, I extend our appreciation for his diligence and leadership.

I also want to recognize the work of several other members, including the former ranking member of my committee, the gentleman from New York [Mr. LENT]. Others deserving of our appreciation include the subcommittee chairman, Mr. FLORIO, and the leadership of the Public Works Committee, Congressmen HOWARD, SNYDER, ROE, and STANGELAND. These, and my colleagues on the Judiciary Committee, all worked long and hard for this day.

Mr. Speaker, the Merchant Marine Committee originally became involved with H.R. 2005 because of our jurisdiction over natural resource matters, the U.S. Coast Guard, and marine pollution. Earlier in this Congress, our committee sponsored numerous amendments to the bill dealing with these areas.

I am happy to say that the large majority of those amendments remain in the conference report and I thank my colleagues in the conference for their support. Although my comments today will be brief, I direct my colleagues to the report of the Merchant Marine Committee for additional explanations of the amendments.

One major thrust of our amendments is to coordinate the natural resource program authorized by Superfund with the remedial program of EPA. This coordination is intended to increase the efficiency and effectiveness of both aspects of the program which, today, have not been well coordinated.

A second objective is to improve the rules governing the emergency response of the Coast Guard for spills into navigable waters.

A third set of amendments is intended to clarify several important issues relating to ocean incineration. All have been incorporated into the final conference agreement.

There is, Mr. Speaker, one major disappointment in the Superfund conference. I am referring to the refusal of the other body to act on the oil spill proposals which the House had included in the Superfund legislation.

Our committee, along with the administration, believes that a major revision of our oil spill laws is needed, and I am sorry that we were not able to accomplish it in H.R. 2005. In the remaining days of this Congress, however, I hope that we can find the time and the will to enact a separate oil spill measure.

Mr. Speaker, much hard work has gone into this Superfund conference report. The program has seen too much delay as it is.

I certainly hope that we can act quickly on H.R. 2005 and send it to the President for his signature. I urge my colleagues to support this conference report.

Several of the Merchant Marine Committee amendments deserve mention. First, as I have already noted, the conferees have sought to coordinate the national resource program authorized by CERCLA with the remedial program of EPA. The conferees have adopted an amendment to section 104(d) to require notification to Federal trustees of potential natural resource damages as soon as possible so that the trustees may participate in the planning and conduct of RI/FS from its inception. This amendment, as well as the many others mentioned below, are to apply at the time of enactment unless otherwise specified. They are to apply to all ongoing CERCLA actions, regardless of their stage of development.

Similarly, the conference report requires EPA to notify all Federal trustees of any ef-

forts to negotiate cleanup agreements with responsible parties where there may be damages for natural resources. In order to facilitate a coordinated Federal effort, EPA, the Department of Justice, and the Federal trustees should cooperate early—before negotiations begin—and throughout the process to maximize the effectiveness of the Federal effort. Early participation will enhance the prospects that satisfactory agreements may be concluded whereby potentially responsible parties undertake or finance the assessments and restorations required by the act.

Balanced against the need for close coordination is the recognition by the conference report that the principal responsibility for assessments and restoration lie with the appropriate Federal or State trustees. Thus, for instance, the conference report clarifies in section 122 that only trustees are authorized to negotiate with responsible parties for the conduct of assessments and restorations. The conference report also emphasizes that a covenant not to sue may be agreed to by a Federal trustee only if the responsible party agrees to restore, rehabilitate, or acquire the equivalent of damaged natural resources. Section 122(f) demonstrates, simply, that the trustee may not delegate its fiduciary responsibilities to a responsible party, but that it may enter into an agreement with that party for the carrying out of those responsibilities. The exercise of discretion relating to the trust must remain with the trustee, while ministerial functions may frequently be performed more quickly and efficiently by the PRP.

This principle extends to actions taken on Federal facilities. As reflected in the conference report, the Administrator of EPA and the Federal Land Manager is required to consult with and take into account the recommendations of the Federal natural resource trustees in developing plans for remedial actions for sites on Federal facilities where damages to natural resources may have occurred. The Administrator and the Federal Land Manager are also required to notify the appropriate natural resource trustee of interagency group negotiations to develop an RI/FSS and encourage those trustees to participate fully, as may be warranted by the injuries to natural resources on the site itself or in connection with the site.

The conference report encourages in several instances the undertaking of prompt, adequate damage assessments. Thus, while the conference report requires that trustees exhaust all remedies for recouping damages from PRP's before filing claims for the same against the fund, it also clarifies that the exhaustion requirement shall not apply claims for assessment funds. Nor is the exhaustion requirement intended as "preauthorization" authority whereby EPA could insist upon a "preapproval" of any claim prior to the filing of the claim.

Similarly, while the conference report authorizes the President not to pay claims for restoration costs if all available funds are required for public health threats, the conferees intend that the President ensure adequate yearly funding for all anticipated claims for assessments. As EPA has noted:

> The most cost-effective use of limited fund resources may be to provide funding to a trustee for an assessment (instrumental in many cases) and then encourage the trustee to institute a court action * * *.

The conference report contains several important amendments to section 107 relating to natural resources. First, the amendment to section 107(d) on rebuttable presumptions clarifies that these presumptions are available to Federal or State natural resource trustees who conduct assessments in compliance with regulations under section 301(c). Second, the amendment to section 107(f) clarifies that sums recovered by trustees are to be used only to restore the natural resources without further appropriation. The amendment reflects the restitutionary nature of the natural resource regime of CERCLA. The natural resource regime is not intended to compensate public treasuries. Nor are recovered damages to be diverted for general purposes. The purpose of the regime, rather, is to make whole the natural resources that suffer injury from releases of hazardous substances. Of course, the trustees may use such sums to reimburse them for the costs associated with recovering such damages, including the costs of damage assessments.

Third, the amendment also prohibits double recovery for natural resource damages. Section 107(f), as amended, provides that the measure of damages shall not be limited to the sums which can be used to restore natural resources, but that there shall be no double recovery in calculating such damages. The basic measure of damages under CERCLA, as it is under the Clean Water Act, is the costs of restoration, replacement or acquisition of the equivalent of natural resources injured by unlawful releases. Where, of course, restoration is technically impossible or the costs thereof are grossly disproportionate to the value of the resources to society as a whole, then other valuation measures, both market and nonmarket, must be used.

The value of lost uses between the release and completion of the restoration should also be accounted for; hence the proviso that the measures need not be limited by the costs of restoration. In no event, however, should double recovery occur under the regime by way of double counting in the initial valuation or by way of multiple claims for the same damages.

The last amendment contained in section 107(d) of the conference report extends the deadline for promulgation of natural resource damage assessment regulations under section 301(c) or CERCLA. The purpose of extending the time for promulgating these regulations is to allow the Department of the Interior sufficient time to revise their regulations as may be necessary and to account for the amendments in this act.

The conference report contains several significant modifications to the time limits for filing claims and for initiating lawsuits for natural resource damages. Where EPA is "diligently proceeding" with an RI/FS for a site on the NPL, the statute of limitations bars a natural resource action until the RI/FS is concluded. The purpose of this provision is to further integrate the remedial investigations under section 104 with natural resource assessments and the selection of a remedial plan itself with the selection of a natural resource restoration plan. The term "diligently proceeding" is intended to be strictly construed and require the vigorous and active conduct of an RI/FS through the significant commitment of time and agency resources to the effort. The concept was originally derived from a similar limitation proposed in section 310(D)(2)(c) of H.R. 2005 (citizen suits), as reported by the House Committee on the Judiciary.

This bar to a natural resource damage action until the RI/FS is completed is not intended to preclude an action governing that portion of a site not addressed by the RI/FS or, similarly, to preclude an action until the entire RI/FS for the whole site is completed where the cleanup is being undertaken in distinct and separate phases. In maintaining this distinction, this provision is comparable to the circumstances whereby preenforcement review is permitted for a distinct and separate phase of a cleanup, as explained in the conference report accompanying section 113(h).

Finally, the conference report contains several amendments in section 127 relating to ocean incineration which originated with the Merchant Marine Committee and which require elaboration. First, the amendments raise the liability limits or incineration vessels and direct administration to establish levels of financial responsibility commensurate with the financial responsibility required for other activities posing similar risks. The conferees recognize that the two principal components of ocean incineration are the incineration activity itself and the transportation of hazardous materials. Accordingly, the conferees anticipate that the administrator shall establish evidence of financial responsibility that is commensurate with the financial responsibility associated with these other activities.

Second, the conference report contains an amendment to section 106 of the Marine Protection, Research and Sanctuaries Act that is intended as a new savings clause for the statute. The purpose of the Amendment is to overturn a series of cases that have construed the preemptive reach of the act to broadly. The amendment is intended to make clear that Congress rejects these interpretations and intends that the preemptive reach of the MPRSA be narrowly construed.

The amendment establishes the general rule that State laws, standards, or limitations are not preempted by the act. The amendment also establishes that remedies for damages under other Federal law, including maritime tort law, are not preempted where there is noncompliance with an ocean dumping permit. Not only does this amendment overturn judicial decisions broadly construing the preemptive reach of the act, but it creates a strong presumption against preemption.

This presumption against preemption requires a correspondingly narrow construction of the reach of section 106(d) of the MPRSA, which prohibits States from regulating ocean dumping. Where there is a potential conflict between a State authority governing environmental quality, public health, or public welfare and the prohibitions in section 106(d), the presumption favors the continuing validity of State law.

Similarly, enactment of the MPRSA is not to be interpreted as revoking, by implication, other Federal statutes. Where, for instance,

the Endangered Species Act, the Fish and Wildlife Act, or the National Environmental Policy Act [NEPA] require Federal decisionmakers to consider certain specific factors, these statutes apply to actions under the MPRSA with full force. Similarly, where the coastal zone management act [CZMA] requires Federal activities, or private activities authorized by Federal permits and licenses to be consistent with approved State coastal programs, these requirements of the CZMA apply with full force to site designation and permitting actions under the MPRSA.

In addressing the matter of ocean incineration in this conference report, the conferees have attempted to resolve certain outstanding issues relating to liability, financial responsibility, third-party damages, the preemption of State authorities and the relation of the MPRSA to other Federal authorities. The conferees believe that, with these clarifications, the EPA should proceed promptly with final regulations for ocean incineration without reproposing those regulations. The conference report itself states that "[T]he Environmental Protection Agency should proceed promptly with its final regulations for all types of ocean incineration permits." The reference to final regulations rather than reproposals is intended to buttress this intent. The conferees expect EPA to act accordingly.

Mr. DAVIS. Mr. Speaker, do I have 1 minute left?

The SPEAKER pro tempore. The gentleman is correct.

Mr. DAVIS. Mr. Speaker, I have no requests for time under the Committee on Merchant Marine and Fisheries, so I ask unanimous consent to yield back 1 minute to the gentleman from New York [Mr. LENT].

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

□ 1710

Mr. DINGELL. Mr. Speaker, I yield 1 minute to the distinguished gentleman from Massachusetts [Mr. BOLAND].

Mr. BOLAND. Mr. Speaker, I appreciate the gentleman's yielding me this time.

Mr. Speaker, I rise in strong support of this bill and urge every Member in the House to support the bill. The controversy over Superfund reauthorization has been raging for almost 2 years. I know there are some provisions in this bill and the accompanying taxes that some Members don't like. I think the authorizing committees have done a good job. They have hammered the problems out and come up with an overall bill that is balanced and sound.

And most importantly, this provides a 5-year authorization and taxes for the program. This is what EPA needs. The Appropriations Committee has come to the rescue twice with short-term extensions over the past year—but the time for short-term extensions has passed. The last year has been crippling for Superfund. If we are going to start cleaning up hazardous waste sites across America, what we need is a 5-year bill with a guaranteed source of revenue.

I know the White House has indicated it has some problems with the tax package. But I would respectfully urge the President to look carefully at this bill on balance, it's a good bill—a bill which deserves to be signed. It's good for the environment and in the long run I think it will be good for business. When you look at the taxes that are drawing all the criticism, we are only talking about $1.5 billion a year in taxes. This amounts to a rounding error within the overall tax reform package we just passed.

The Ways and Means and Finance Committees had a tough time coming up with this package. No one wants to pay the bill, but hazardous waste is a fact of life. Somebody has got to foot the bill, and I think the package the tax committees have put together is a fair one and a balanced one.

Yesterday, the Appropriations Committees agreed at conference to a level of $1.4 billion for Superfund in 1987. The program is ready to go—but it can't go anywhere without reauthorization. I would urge you all to support the bill, and I certainly hope the President will see fit to sign the bill. It's time we put the Superfund Program back on track.

Mr. DINGELL. Mr. Speaker, I yield myself 30 seconds.

Mr. Speaker, my colleagues should know that during the time that we have been trying to extend the Superfund statute, that the work of the gentleman from Massachusetts [Mr. BOLAND] and his subcommittee has been absolutely critical to keeping the program going. I want to commend the gentleman and thank him for his labors.

Mr. BOLAND. I appreciate the kind remarks of the distinguished chairman of the Committee on Energy and Commerce.

The SPEAKER pro tempore (Mr. PANETTA). The gentleman from Illinois [Mr. ROSTENKOWSKI] is recognized for 17½ minutes on behalf of the Committee on Ways and Means.

Mr. ROSTENKOWSKI. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I ask my colleagues to support the conference agreement on H.R. 2005,

The House-Senate agreement on Superfund came hard. It began with the House defeat of last year's compromise over the Senate's insistence on a value-added tax.

In the months that followed we conferred with many outside interests both for and against the concept of such a trust fund. In the end we devised a formula that satisfies the revenue demands of the program—yet favors none of the interests that must pay the fare.

The package is not precisely what the House went after. That's the price of any negotiation. But the agreement comes far closer to the House starting point than the Senate's.

Let me underscore the fact that this legislation does not contain a value-added tax. The original Senate bill included a VAT to raise $5.4 billion of the revenue needed for Superfund.

There is no new regressive excise tax in this bill. The broad-based component of this bill imposes a tax on the corporate alternative minimum tax base sufficient to raise $2.5 billion over 5 years. All companies would be allowed to exclude alternative minimum taxable income below $2 million.

The agreement reimposes the former Superfund tax on chemical feedstocks to raise $1.4 billion. To help provide trade neutrality, a new tax would be imposed on imported chemical derivatives and a tax credit would be provided for exported chemical derivatives starting in 1989.

Under the conference agreement, the chemical feedstock taxes previously imposed on xylene are to be refunded or credited to the original taxpayers. To compensate for lost revenues, the tax rate on xylene is increased temporarily for the duration of the 5-year reauthorization period.

Section 513(h) of the conference agreement provides that rules similar to section 6416(a) of the code shall apply in determining the refund of tax on xylene for liability arising before October 1, 1985. It is the intention of the conferees that in the case of a sale of xylene for export by the purchaser, a credit or refund shall be allowed or made if the person who paid the tax establishes that he has not collected the amount of the tax from the person who purchased such article. The conferees understand that the world spot market price during the period the tax was imposed did not include the domestic tax on xylene. The necessity for clarification arises because exports of feedstock chemicals were not exempt from tax contrary to manufacturers' excise taxes imposed under chapter 32.

The former Superfund tax on petroleum would be imposed at a higher rate to raise $2.75 billion. The tax on domestic oil would be imposed at a rate of 8.2 cents per barrel while the tax on imported oil would be at a rate of 11.7 cents per barrel.

This 3.5 cents per barrel differential, when spread over the 42 gallons in a barrel of oil means a less than one-tenth of 1 cent difference in the per gallon tax liability of domestic and imported oil.

The oil industry will be required to pay its fair share of the funding liability under this bill. The Senate bill

originally would have raised only $200 million from the oil industry. The House bill would have raised $3.1 billion from oil. The conference agreement, which raises $2.75 billion from the oil industry, is much closer to the House position. In addition, the domestic oil industry will be subject to the environmental tax on minimum taxable income just like any other industry.

The House held on to the waste-end tax until the very last offer. It was the sacrifice that sealed the compromise. The tax was environmentally sound—but politically flawed.

The Superfund taxes together are designed to raise $6.65 billion over 5 years. The bill also authorizes $1.25 billion in general revenue to be deposited into the fund. When combined with interest and recoveries, the Superfund total would reach $8.5 billion over 5 years.

In addition to Superfund revenues, revenues would be provided for cleanup of leaking underground storage tanks. Motor fuels would be taxed at one-tenth of 1 cent per gallon over 5 years in order to place up to $500 million into the new leaking underground storage tank trust fund.

The bill would also repeal the post-closure liability trust fund and tax. The oil spill liability trust fund and tax which had been included in the House bill were deleted since the program provisions had also been dropped.

Mr. Speaker, the fundamental choice we face is whether the House is willing to raise the revenues to support the largest environmental program in years.

The Senate just voted 88 to 8 to accept the revenue package.

The vote belies the difficulty in bringing the Senate to the negotiating table—and then extracting a compromise that raised the tax on big oil.

This compromise makes no one happy. It deals out rough justice to a broad spectrum of interests whose products have led to the proliferation of hazardous wastesites.

My colleagues on the Energy and Commerce Committee struggled for months to produce a compromise that justly intensifies the campaign against toxic waste. That done, it fell to us to raise $8.5 billion over 5 years.

Our response is a combination of taxes that meet the revenue target—and do it as fairly as possible.

My colleagues, the vote on Superfund is the measure of our commitment to a clean environment.

The President has threatened to veto our work. It is not enough to just get it to the President with a majority. The Senate was very clear on this point. They provided more than the margin to expand—and fund—the cleanup of America's wastesites.

This is the vote that counts. We need well over two-thirds—not just to stay the President's veto pen—but to record this Congress once and for all as proenvironment and profuture.

If we don't provide that margin, we will have failed to make that declaration.

Mr. FRENZEL. Mr. Speaker, I yield myself 5 minutes.

Mr. FRENZEL. Mr. Speaker, I concur in the description of the bill which was given by the distinguished chairman of the Ways and Means Committee. Our committee is not an expert on the program side. We were concerned only with financing.

My first preference is the House financing package which was sustained three times in this House by strong majority vote. The broad-based tax is not a good way to fund, not the best way to fund the Superfund because it abandons the theory of linkage which we established when we passed the first Superfund.

We also should have had the House waste-end tax. It is a good way to finance because it establishes a different form of linkage but a good form of linkage.

Finally, Mr. Speaker, the differential tax on imported oil is something that the House conferees swallowed with great distaste. But it seemed to us there was no other way to settle the matter than to let that one become a part of the package. The Senate's financing in the Senate bill was mostly a VAT tax or a business-transaction tax. It was inevitable that they were able to get some sort of broad-based tax, and our committee had to agree to this modest—what I call a corporate surtax. The other body insisted, and we split the difference on the tax. My judgment is that the House was more mindful of the urgency of the need to complete and get this program going or rather to keep it up and going than perhaps the other body was.

But I do want to dwell just for a moment on the broad-based tax.

□ 1720

The Legislative Digest of the House Republican Conference called it today "a value-added tax on manufacturers and raw materials producers." That is not true, Mr. Speaker.

What this tax is, or how you compute it, is that a corporation first computes its regular taxable income before net operating losses. Then it adds the preference items, the accelerated depreciation, the expensing of R&D costs, the intangible drilling costs, percentage depletion, or whatever; and that establishes a tentative alternate minimum taxable income, which is itself subject to the $2 million exemption mentioned by the chairman.

Then one-half of the difference of the book income compared to minimum taxable income is added if the book income is greater; and then the minimum tax is paid on that balance at a rate of 0.012, or $12 per $10,000.

That becomes not a VAT, not a BTT, not even a consumption tax. The best description I can think of is that it is a surtax, although it has some of the trappings of an earnings-and-profits tax; and under the tax reform bill that we have just passed, the book income section becomes displaced by an earnings and profits tax, in 3 years.

Mr. Speaker, I said before, the House was more mindful of the urgency than I thought the other body was, and yet the other body voted for this bill, 88 to 8, I am told. I think it is fair to note that the conferees on the House side, of the conferees, 7 of the 9 of them signed the conference report.

This is a very high priority item. The Committee on Ways and Means was cognizant of the fact that the other committees had worked hard to build a good program compromise; and it involved lots of compromise.

There are a number of things in there that I think could be improved that every Member of this House would like to see different. Nevertheless, it was our job to provide the financing. For people who do not like what we have brought in front of them today for a tax program to sustain the other programmatic aspects of Superfund, I challenge them to find another way to finance it.

This is the best we could do between the two bodies. It is a satisfactory compromise. I believe it should be passed. In my judgment, this is a terribly high priority item. I hope the bill will be passed by a large majority and that it will be signed by the President after he gives full consideration to the fact that it will not become any easier next year, and that this bill is an acceptable compromise.

Mr. Speaker, I reserve the balance of my time.

Mr. CRANE. Mr. Speaker, I yield as much time as he may consume to the gentleman from Nebraska [Mr. DAUB].

Mr. DAUB. Mr. Speaker, before I proceed to use some time to talk about title 5 and the tax section, I would like the opportunity to enter into a colloquy with the distinguished chairman of the Committee on Ways and Means, if he would allow me that opportunity.

A number of my colleagues, and interested members of the public, share my concern that the broad-based Superfund tax may result in higher consumer prices for necessities such as food. The conference agreement provides that the broad-based Superfund tax is deductible for Federal income tax purposes. It is my understanding that the reasons for a deductible broad-based Superfund tax include a desire to mitigate the potentially re-

gressive impacts of this tax. Is this correct?

Mr. ROSTENKOWSKI. Yes. The conference committee was aware of these concerns and took them into account when deciding that the broad-based Superfund tax should be deductible.

Mr. DAUB. I thank the gentleman for the clarification. That will be an important part of the record on this matter.

Mr. Speaker, let me spend a little time talking about title V and why I think that the contents of that portion of the bill that fund what are otherwise, in my opinion, very appropriate improvements and increases in the level of activity that we must have to suggest an answer to my friend, the ranking member, Mr. FRENZEL, who posed the question:

But then those who would oppose this bill and if, for the reason particularly, the tax section in it, the revenue section, what would their alternative be, and is that doable in the week or two or three remaining for this Congress at this point in time?

First I think we should put on the record the actual amounts that are involved. Different Members of the Congress have, during this debate, indicated what they are, but so the public has a better understanding of it as well, let us break down the taxes that are contained in this Superfund financing agreement.

First, a crude-oil tax. The total amount of revenue to be generated from that is equated to $2.75 billion. It will be achieved by levying an imported crude-oil tax of 11.7 cents per barrel, that would be the rate; to raise approximately $1.5 billion, and a surtax or a rate of 8.2 cents a barrel on domestic crude oil and refined byproducts thereof, for a total of approximately $1.25 billion.

There is a chemical feedstock tax that raises, it is estimated, $1.4 billion. There is a general revenue section that takes from the actual Treasury itself, nonappropriated funds, $1.25 billion.

Cost recoveries in the cleanup process; fines and other things, I imagine, would amount to $0.3 billion. The interest on unspent amounts in the fund would amount to $0.3 billion. A new tax that would amount to a tenth of a cent per gallon on motor fuels would fund a program for the underground storage and leaky tank program, referred to often as LUST, at half a billion dollars.

Then this so-called broad-based tax, which is supposed to generate approximately $2.5 billion. This would be, I think I would agree, a combinaton of, intellectually, a surtax; the idea of a profit and earnings base—in fact, if it is not anything closer to it, it must be soulmate of a VAT if it is not a VAT; because it takes the intellectual pursuit of that and simply reorganizes it into a .12 percent of the alternative minimum tax.

Now that alternative minimum tax idea is of course a part of the income tax. It is an increase in the corporate rate, because it increases the amount due under the alternative minimum tax calculation. That would amount to $12 for every $10,000 of income subject to the alternative minimum tax for companies that earn over $2 million in gross sales.

That would be the function, with the understanding that this is supposed to raise $9 billion, my estimate on a healthy economy, an economy that would not change too much, and current rates of inflation, interest rates and/or employment levels, we will generate over the 5-year period I would estimate something closer to $19 billion. That this particular combination of six sets of taxes will generate not $9 billion, but closer to $19 billion in taxes.

What you are looking at in title V, I say to my colleagues, is a cash cow. A vehicle through which not only the expanded Superfund Program can be funded, but indeed, all sorts of other ideas that may be lying in the wait.

I guess what my disappointment amounts to is that the House caved in on its view of how we should approach the laying in of the additional revenues I, too, agree were needed to fund this piece of legislation.

There is no waste-end tax; that is gone. We have not maintained the idea that there ought to be a fairly direct connection between those who pollute and those who ought to pay.

I think it is very difficult for many of our colleagues who are in areas that depend for their refined byproducts from imported crude to take on the idea that they have got to go home and talk to their constituents and explain to them that not only will their motor fuel costs go up, not only will generally all their costs of other goods that they buy go up, but they are going to have to pay an awful lot more for their home heating fuel, because the differential tax of 3.5 cents that will be laid onto the imported barrel and its refined byproducts amounts to a home heating fuel tax.

Mr. CRANE. Mr. Speaker, will the gentleman yield?

Mr. DAUB. I yield to the gentleman from Illinois.

Mr. CRANE. Mr. Speaker, had we included this in comprehensive tax reform, during our debates on how to guarantee revenue neutrality, could we not have incorporated this, and in the process, with the anticipated increased revenues, saved IRA's for all working Americans?

Mr. DAUB. Mr. Speaker, the gentleman makes a good point. The fact of the matter is, the basic book-value calculation that is now in the tax bill yet to be inked by the President contains a function of a conversion of that basic calculation for the basic tax for companies or the alternative minimum tax that converts to a profit and earning tax 3 years later.

□ 1730

Had this concept been kept in the bill, it may very well have been possible to lower the revenue expenditures from tax reform and take into account the opportunity to fund many of the things that we would like to have seen in the tax bill.

Certainly one might argue that the tax bill as passed has become the stalking horse for those who had the idea that they could hold off a Superfund agreement on the tax bill long enough to lay the groundwork for this new tax to be included in the Superfund bill.

Since the Downey-Frenzel amendment has also been lost and the waste-end tax has also been lost, we are now looking at a home heating fuel tax, a motor fuel tax on everybody who buys gasoline for cars and for farming and for agriculture, and I think something else really has to be pointed out. While I have not been a supporter of a broad-based tax, the broad-based tax in this bill is even less satisfying than the previously proposed VAT tax.

For all of its faults, the VAT tax proposals were at least trade neutral, trade neutral, and it was less likely to drive American industry, particularly the petrochemical industry, offshore and lose the thousands and thousands of laboring jobs that go to the cracking, processing, refining of crude oil in this country.

It seems to me that as we now look at the configuration of the taxes contained in title V of the bill, we have certainly created a very serious problem for trade. You have a cheaper rate of differential on the domestic crude barrel and a more expensive rate on the imported crude barrel. What does that mean? What it might mean to those who have somewhat of a thought that this was put together to cook a deal, one might think if there was a chemical feedstock tax and a broad-based tax laid on the oil industry in America for the purpose of helping repay them for that agreement, they are going to turn around and collect more off the imported barrel and essentially pay back the oil and chemical industry for the other taxes that have been laid upon them. What a deal, what an alliance, what a compromise. What strange bedfellows we find.

We find the environmentalists in bed with the domestic oil companies in this country. Strange bedfellows for a Superfund bill.

It seems to me that this is as a result very GATT violative and creates a number of other serious problems for

us as we become less competitive in America as a result of the addition of the differential on imported crude versus domestic, the feedstock tax, the broad-based tax and its alternative calculation and indeed, as well, the increase in the motor fuel tax from the law's provisions.

For many of my colleagues who think that the vote today on this conference report would be difficult to reconcile with some of the other rhetoric we engage in around here, let us take a look at those Members, evidently some 90 to 120 who have signed the Walker resolution, asking the 100th Congress to avoid a tax increase. I think most of those Members would feel the same way about the current Congress right here at the tail end of business before the tax reform bill is even signed by the President we are engaged in laying upon the American individual and upon American business, upon the consumers of our country, a tax increase.

For instance, it would seem to me inconsistent that any Member signing the pledge not to increase income taxes allowing the tax bill had just been voted upon now earlier to turn right around a week later and vote to raise $2.75 billion in a petroleum tax and $2.5 billion in corporate taxes most of which will be passed through in terms of the consumer, right down to the price of a loaf of bread or the price of a gallon of gas at the pump.

Similarly, if a Member intends to return to his or her district and claim that they never voted for a tax increase, this is not a conference report that you can vote for. How is it that Congress can suggest that there is not enough money in the budget for revenue sharing and other programs but have an additional $3.2 billion to add to a request for Superfund?

I want to address for just a moment the idea of how we might pay for this if we did not do this. Now, I realize that our conferees had some very difficult choices to make and that it is not necessarily very easy to come to a conclusion on the bill. How many Members have already stood here in the well today and said, "I am going to have to vote for this bill but I don't like it" for a variety of reasons, but principally for the tax reasons? I do not know that that is a very good way to want to have to face your record: "It is a bad bill but."

Who are we afraid of?

I offered the following concept in a proposal before the Ways and Means Committee, and that proposal failed by one vote, by one vote.

I think it is salient because I think it gives a very good answer to my colleagues who wonder if they voted "no" on this bill how they could come back in the next week or 10 days or 15 days that we will be in session and try to figure out what they could do to have a reasonable bill, a reasonable funding mechanism.

We could have $8.5 billion of hard money, hard money, hard cash by phasing out the annual Superfund level, by using the chemical tax, the feedstock tax, the waste-end tax and general revenues to reflect the abilities of the Environmental Protection Agency to administer the fund while reaching levels consistent with that goal of $8.5 billion over a 5-year reauthorization period.

This would require lower total revenues and yet meet the long-term objectives of the environmental groups going into the next reauthorization. Use substantial borrowing authorities and general revenues during the phase up to permit EPA the maximum flexibility of expanding the program without committing more tax revenues than are actually needed and include a dry weight waste-end tax in a reasonable amount to encourage effective waste management.

The President has been implored by a number of our colleagues today to avoid doing this piece of legislation in by exercising a threatened veto.

The President has been very clear through his spokespersons at the White House to indicate that he favors the program improvements, the increase in the expanded parts, the subsidy parts of Superfund, but does oppose new taxes especially the broad based corporate levies that would require all firms with a taxable income over $2 million to pay on that at a rate of $12 for every $10,000 you earned. I think the President has very strong feelings about the need for responsible reauthorization. One cannot just look at it in a vacuum and consider only the subsidy portions can be authorized without the funding mechanism that is appropriate.

He has indeed proposed that. I would like to suggest that, if we can fund the continuing resolution just as we are to fund all the rest of the Government's activities, and we have been able through extensions to fund Superfund and allow new sites as well as old sites to continue to be added to the list and for cleanup to continue, that we can indeed pass the subsidy parts of this bill if the veto is sustained and go on to find the funding necessary for a year and a half or so right in the conference on the continuing resolution that is fenced off now but that could be unfenced to provide the necessary funds to operate the Superfund Program at the increased levels required by the substitute parts of the conference agreements.

I do want to say that it is not an easy task nor an assignment that I relish to speak in this particular way because I do think the Committee on Ways and Means labored hard and long to try to come up with their best answer to meeting the substantive requirements of the other committees of jurisdiction. I do know particularly that Mr. DINGELL, Mr. ECKART of Ohio, Mr. FRENZEL, Mr. DOWNEY of New York, and others worked very, very hard on this bill to try to pull the bill together that was doable, considering the very serious nature and explosive nature of toxic waste site management problems that we face.

I had the opportunity when I was in another world to serve on our Nebraska Environmental Control Board for 2 years. I had a chance to learn about toxic waste management, dump site cleanup, particulate emissions, point and nonpoint sources of pollution and what we needed to do to fund it. So I think the bill by and large is a good bill. I think the mechanism to fund it does not meet this Congress' objectives in its fines hour to do what is right by the American consumer and the American taxpayer.

So with those comments in mind, may I urge my colleagues to cast a "no" vote, not because they are opposed to the idea of getting on with the very important requirements of cleaning up this country's dump sites and solving the problems we have for consumers' rights to know and other things, which I think are very good parts of the bill, but I want to remind my colleagues there are a number of other groups that share the views I have tried to express here today. Among them are the National Taxpayers Union, which is opposed to the bill for many reasons, as I have indicated, the American Petroleum Institute, the National Retail Merchants Association, grocery manufacturers of this country.

I notice my colleague, Mr. DOWNEY of New York, who has labored hard and long is on his feet and perhaps would like to address the gentleman or perhaps ask me a question.

Mr. DOWNEY of New York. I thank the gentleman for yielding.

I want to also commend the gentleman because he worked hard in the committee. He raised one or two points that I think are for clarity and because he is, I think, a man of precision and I do not want him to be imprecise when he suggests that this bill could raise $19 billion.

The gentleman is aware, of course, that once we get $6.5 billion, the taxes shut down. So there is no opportunity here for a super revenue raiser.

That is No. 1. No. 2, I would submit that economically if the minimum taxes raise that much money or the other taxes involved, we would have a far more robust economy than any of us are looking to. We would have no problem with the deficit or anything else of that nature. This is a bill designed to raise the amount of money that we have set out and no more.

I just want to make sure that the gentleman is aware of that and all the others who are watching.

Mr. DAUB. I appreciate the clarification of the gentleman.

I want to point out because of my great concern, and I know it is his, that in the tax bill we have a base called "book" that will convert to profit and earnings before this Superfund authorization bill expires that will cause the Ways and Means Committee, in my opinion, to have to come back and revisit the tax mechanism. I also believe, in response to the gentleman's point, "what this place giveth, it could taketh away." The function of whether or not there is a cap or a limit as revenues are generated or not might become an interesting question, a very interesting question on the floor of the House if we did not deal with it now instead of later.

I thank the gentleman for his point.

At this point I have nothing more to add to the debate.

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. PANETTA). The gentleman has consumed 18 minutes.

The gentleman from New York [Mr. DOWNEY] has 8 minutes remaining.

Mr. DOWNEY of New York. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Texas [Mr. PICKLE].

Mr. PICKLE. Mr. Speaker, when we started the Superfund debate, we all agreed that more funding was necessary to clean up our worst abandoned hazardous waste sites. However, the line between the groups was clearly drawn as to who ought to pay for the cleanup. I am happy to say that after a long and exceptionally difficult debate, we have reached a reasonable compromise on this matter.

I think perhaps the most significant aspect of the compromise is the acknowledgment that two industries—chemicals and petroleum—should not shoulder the entire burden for funding the Superfund Program. Throughout the debate, I argued that responsible parties associated with known waste sites over 1,200 of them looked like a Who's Who of the Fortune 500. While some chemical and oil companies were identified on the lists, there also were an astonishing number of companies that have never been identified in the media with hazardous waste problems. Now, with the implementation of a broad-based tax, Congress has taken a major step in making this a more equitable funding approach.

Of course, I am disappointed about the level of taxes on crude oil. The petroleum industry has been hard hit during the past 2 years and I think it imprudent to add more of a burden. Unfortunately, we did not win that fight but we did secure the concept of a price differential between the tax on imported oil and the tax on domestic oil. This will be viewed as a favorable step, but I had hoped we could reach accord on a lower amount of crude oil taxes.

I am pleased we were able to eliminate the waste-end tax with its whole host of administrative problems and I am very pleased we fought off efforts to raise feedstock taxes beyond their current levels. When joined with the broad-based tax, this is an acceptable and reliable funding package.

Mr. Speaker, this is a well-balanced funding bill. Our environment must be cleaned up. It must be done in a meaningful way. This bill does that, and we ought to pass it overwhelmingly.

Mr. FRENZEL. Mr. Speaker, I yield 3 minutes to the distinguished gentleman from New Hampshire [Mr. GREGG], a member of the Committee on Ways and Means.

Mr. GREGG. I thank the gentleman from Minnesota.

Certainly those of us in New England and especially in the Northeast generally understand the importance of Superfund. In my own district we have had very serious problems with midnight dumpers. We have located dumps that represented serious health hazards. Those dumps have been cleaned up as a result of the Superfund.

Thus it is a very important environmental piece of legislation, and for that reason I have been a strong supporter of it.

This fivefold increase in funding of the Superfund is, I think, a very appropriate level at which to fund it so that we can ensure that not only the sites in the Northeast but the sites throughout the country will have adequate funding to be cleaned up.

There is, however, a downside to this bill, and that is the issue of where the money comes from to pay for this cleanup. For my part and I believe many other Members of the House, I think there should be a relationship between the sites and those who pollute and create the sites. I believe there should be more of a relationship certainly than the present tax scheme of this bill, more of a polluter-pay approach.

□ 1745

I am especially concerned about the fact that there is an imported oil fee in this bill. Yes, it is small. In fact, it is so small that I doubt that it will even be noticed by the consumer. But the fact is that this opens a precedent which I believe will create a battle next year, which is going to be one which we in the Northeast are going to have to join and join aggressively to assure that this type of tax is not expanded.

But on balance, this is a good bill. It is an essential bill if we are to retain the environmental integrity of States like New Hampshire. If we are going to retain the environmental integrity of the whole United States, it is essential that we pass this piece of legislation.

Mr. CRANE. Mr. Speaker, I yield such time as he may consume to the gentleman from New York [Mr. GILMAN].

Mr. GILMAN. Mr. Speaker, I rise in strong support of the conference report on H.R. 2005, the Superfund Amendments of 1985. I wish to thank all of the conferees who helped construct this vital legislation, especially the chairmen and ranking minority members of the five committees of jurisdiction. I know they worked long and hard to fashion responsible Superfund legislation within strict monetary constraints, and they are to be commended for their diligence and leadership.

While I must state that I prefer and voted for the Superfund legislation as adopted by the House last December, I believe the measure before us today will adequately continue Federal efforts to clean up the worst hazardous waste sites. The enormity of the hazardous waste problem has become frighteningly apparent since the discovery of contamination in the Love Canal area of Niagara Falls, New York, in the late 1970's. In 1980, Congress created a major Federal program to clean up the worst abandoned hazardous waste sites, and set aside $1.6 billion for the hazardous waste response trust fund, otherwise known as Superfund. The law requires the Environmental Protection Agency to determine the most dangerous siting and gives it the power to force those responsible to clean up the sites. When such action would not be fast enough, the EPA can use Superfund money to clean up the sites and later sue to recover the money from responsible parties.

In the intervening years since the enactment of Superfund, EPA has put well over 500 sites on the National Priorities List—a list of the Nation's most dangerous abandoned waste sites, "the dirtiest of the dirty"—and has proposed the inclusion of over 300 more. My own State, New York, has 29 sites listed on the National Priorities List, with 30 more that have been proposed to be placed on the list. To date, EPA has only completed cleanup work at 13 sites. EPA estimates that between 1,500 and 2,500 hazardous waste sites will require Federal cleanup and that up to $22.7 billion will be needed to complete this necessary task. The legislation before us today authorizes $8.5 billion over fiscal years 1987-91, a modest sum considering the magnitude of the problem and the health hazards these sites present.

In light of the slow progress made thus far by EPA, this measure sets a timetable by which to begin cleanup of abandoned hazardous waste sites. Cleanups are to begin at no fewer than 175 sites within 3 years of enactment, and an additional 200 sites within 5 years of enactment. Additionally, EPA is required to select permanent cleanup solutions to the maximum extent practicable.

I am pleased that the conferees were able to include funding for radon gas research along the Reading Prong area as part of a national assessment of the problem. High concentrations of radioactive radon gas have been discovered along the Reading Prong, a geological formation that runs through parts of New York, New Jersey, Pennsylvania, and Connecticut. Numerous cases of lung cancer have been attributed to the natural emission of radon gas, and questions remain as to other long-term effects of exposure to this dangerous gas. I am deeply concerned about this problem because it affects many of my own constituents, particularly in Orange County, NY. The research is intended to lead to Federal recommendations of methods to remedy radon contamination.

Another significant provision of H.R. 2005 is the establishment of a program to provide for cleanup of leaking underground gasoline storage tanks. Our drinking water supplies are much too precious to neglect. Once the waste from these storage tanks infiltrates the water table, it is virtually impossible to prevent it from contaminating our water supplies. This measure provides $500 million for cleanup of leaking underground storage tanks where the tank owners cannot be identified or are incapable of paying for cleanup.

I also commend the conferees on agreeing to two provisions similar to those adopted in the stronger House bill. I refer to the right of citizens to sue the Government and the community right-to-know provisions. The community right-to-know provision requires facilities that handle more than threshold amounts of some 400 extremely hazardous substances to notify State commissions so that they may develop emergency plans. Additionally, releases of extremely hazardous substances must be reported immediately to local and State commissions, and the facility owner or operator must provide a followup emergency notice. The conferees also agreed to allow aggrieved parties to sue the Government for failure to perform mandatory duties under Superfund, and to bring suit against any person for violating the law's requirements.

The Superfund legislation is imperative for the welfare and safety of our people and the protection of our environment. Congress must act now to stave off the serious health threats, both in the long and short runs, that these hazardous waste sites pose. While this is not a perfect bill, it will continue and expand Federal efforts, which are so desperately needed, to clean up these hazardous sites. EPA Administrator Lee Thomas has repeatedly warned Congress that the Superfund Program will be disbanded if it is not reauthorized before adjournment. We can not afford to allow that to occur. Accordingly, I urge my colleagues to join in supporting this conference report and to vote for its adoption.

I would also like to take this opportunity, Mr. Speaker, to make a personal plea to President Reagan to support this legislation. As a fellow Republican, Mr. President, I can understand some of your misgivings with H.R. 2005, but given the overriding importance of continuing Superfund, I urge you to sign this measure into law when it comes before you. The bill is a compromise bill, negotiated in good faith after almost 3 years of discussion. We must bear in mind that this bill is designed to protect the public from a menace—the menace of hazardous waste. Protecting the American public is a primary responsibility of the Federal Government. Accordingly, Mr. President, I urge you to lend your support to this vital legislation.

Mr DOWNEY of New York. Mr. Speaker, I yield 1½ minutes to the gentleman from New Mexico [Mr. RICHARDSON].

Mr. RICHARDSON. Mr. Speaker, there are four reasons why the President should sign this bill and the House should approve the conference report.

First, there is no more important environmental legislation in this session of Congress.

Second, it contains two provisions that make this bill even stronger, make it landmark legislation. First, the citizen's right to sue incorrect EPA decisions; and second, provisions dealing with leaking underground storage sites.

Third, it brings a more equitable financing system where no industry is unfairly burdened. It is a compromise between petrochemical, petroleum, and the general business community on who pays.

Fourth, as important as this legislation is, quite frankly, there are many of us who are tired of dealing with this issue. A lot of blood has been spilled on this. It is time to move on and pass this critical legislation.

I urge the President to sign this bill. Let him not be remembered as the President who killed Superfund. This bill is important enough for us to stay, election or no election.

Mr. Speaker, the gentleman from Michigan has been critical in this legislation. But I think there is one hero who deserves to be recognized, the gentleman from New Jersey [Mr. FLORIO], whose general policy guidelines in much of this legislation is now law. So I commend the chairman of this committee and the chairman of the subcommittee for their outstanding work, and, of course, many members of the minority who contributed greatly to critical legislation, perhaps the most important that we will pass this year.

Mr. FRENZEL. Mr. Speaker, I yield 1 minute to the gentleman from New Jersey [Mr. FLORIO] who was recently designated as a hero of the House.

Mr. FLORIO. Mr. Speaker, I rise only to respond to a point that was made by the gentleman from Nebraska [Mr. DAUB] when he offered his alternative as a funding mechanism.

The gentleman suggested, if I heard him correctly, that we fund the $8.5 billion program with a feedstock tax as contained in the bill—a dry weight waste-end tax and general revenues.

Well, the feedstock tax is $1.4 billion, the dry weight waste-end tax can raise at most $1 billion, which means general revenues would be required to raise $6 billion.

We all know that there are no general revenues just lying around. Therefore, we are going to have to borrow $6 billion in order to implement the gentleman's proposal. I do not think anyone really wants to go borrow $6 billion to have the general taxpayer be required to finance Superfund, letting off those who have caused the problem scot-free.

So I respect the gentleman's efforts to try to come up with an alternative, but the alternative the gentleman has suggested really means that the general taxpayer will end up paying this amount, and I do not think that is acceptable.

Mr. CRANE. Mr. Speaker, I yield such time as he may consume to the gentleman from Nebraska [Mr. DAUB].

Mr. DAUB. Mr. Speaker, I realize that the gentleman, always astute, could suggest that that would be a very large sum. We were looking for approximately $3 billion in a combination of reworking the other figures, a little higher chemical, a little higher feedstock, so that the combination of the numbers would have been changed around a little bit.

It is not such a bad idea, I would say to my friend, the gentleman from New Jersey, who is one of the most effective Members of the Congress, particularly when it comes to issues that deal with the environment, that we reach into the general revenue of this country for such a serious problem and share the burden much more equally than trying to carve out little niches and nooks and crannies.

I know the gentleman is concerned, for example, for a waste-end tax. So it

would seem to me that in a proposal that only lost in the Ways and Means Committee of the House by one vote, that we were not that far off from reaching the potential for bringing those revenues into sync with an $8.5 billion, I will agree as well, not $9 billion, but $8.5 billion over the term of the 5 years of the bill.

Mr. DOWNEY of New York. Mr. Speaker, I yield 2 minutes to the gentleman from Ohio [Mr. PEASE].

Mr. PEASE. Mr. Speaker, I rise in support of the Superfund conference report. The action we are about to take today is long, long overdue. In 1984, we thought we were going to be able to get Superfund reauthorized well in advance of its scheduled expiration in 1985, but that deadline slipped. Then even the program expiration date slipped by without a reauthorization. We have been fortunate that the EPA has managed to keep the program afloat while we have been arguing the details.

There is no environmental program more critical over the long term and more widely supported by people across the country and across the political spectrum. I think people have waited long enough for us to act—this conference report deserves the support of all of us.

Although I know that this conference report represents the best compromise we could achieve, I would like to make a couple of observations about the tax aspects of the conference report.

First, I am concerned that the financing package uses a broad-based tax to get over a quarter of the total funding. This House had repeatedly rejected a broad-based approach to Superfund taxation, and I was sorry to see us lose that principle. At least we were able in the conference to establish that the broad-based component not be a VAT or similar hidden consumption tax.

Second, I was disappointed that the House had to give in on the principle of establishing a waste tax as part of the funding package. I continue to believe that a tax on the disposal of hazardous wastes makes good tax policy sense and good environmental sense. If we had been able to include the House waste tax provision in the conference report, it would have nearly eliminated the need for a broad-based component.

Finally, regarding the petroleum excise tax, it concerns me that the conference report taxes imported oil at a higher rate than domestic oil. The difference is slight, to be sure, and its impact on consumer prices will be virtually unmeasurable. But the VAT we successfully fended off in the conference was negligible, too.

The problem in either case is the establishment of a dangerous precedent. Under the General Agreement on Tariffs and Trade, the United States is obligated to afford "national treatment" to imports from other countries which are signatories to the agreement. In other words, taxes must be applied in a nondiscriminatory fashion. For this reason, the differential tax treatment of domestic and imported petroleum products concerns me. In general, it is not responsible policy to shift a disproportionate share of the cost of Government services upon foreigners.

But even though the package isn't anyone's ideal solution to the Superfund financing problem, it is a good compromise that will provide adequate funding for this critical program. The American people have been waiting much too long for Congress to renew and strengthen the Superfund Program. Let's not disappoint them.

□ 1755

Mr. FRENZEL. Mr. Speaker, I yield 1 minute to the gentleman from California [Mr. DREIER].

Mr. DREIER of California. I thank the gentleman for yielding me this time.

Mr. Speaker, I rise in support of H.R. 2005, the conference report to reauthorize the Superfund hazardous waste cleanup program for 5 years. But I do so with great reluctance because this legislation unwisely calls for nearly $7 billion in new business taxes at a time when the tax reform bill is expected to increase business taxes by $120 billion. These taxes only contribute to higher levels of Federal spending. They allow Congress to avoid the tough spending choices that are necessary to restore sound fiscal management.

Locating and cleaning up our Nation's abandoned hazardous waste dumps is a high priority because of the potential danger to public health and the environment. But alternative funding sources are available. Instead of undermining economic growth by raising taxes, we should be cutting back on the many Federal programs that serve no useful purpose. For example, if we enacted the President's proposal to reform the Small Business Administration, the savings would nearly equal the total 5-year cost of the Superfund Program.

However, I am compelled to support H.R. 2005 because the extent of toxic waste contamination in this country is so overwhelming that environmental damage, in many instances, may be irreversible. This legislation provides the only means of ensuring that the program has sufficient resources to accomplish the required task.

There are close to 10,000 Superfund sites which have already been identified, and potentially thousands more could be discovered in the near future. Every region of the country is affected by the threat of toxic waste contamination. In my district alone, almost one-third of the water wells are so contaminated that they have either been shut down, or the water has been treated to meet State health requirements. The problem lies in identifying the sources of contamination, and that's why this Superfund Program is so important.

Mr. Speaker, H.R. 2005 epitomizes the irresponsible tax and spend policies that have encumbered this body for so long. The financing mechanism chosen to fund the Superfund Program is just another means for Congress to escape making the hard choices necessary to bring Federal spending under control. However, it is essential that were move rapidly to clean up permanently the Nation's worst abandoned hazardous waste sites. For this reason, I urge passage of this legislation.

Mr. CRANE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, in conclusion let me restate a couple of observations I made at the outset of the debate, which go back to the question of culpability.

I think that we are singling out industries here where we cannot show any cause-and-effect relationship. I do not mean to imply that chemicals do not pollute, or that part of the barrel of oil is not capable of producing pollution and toxic wastes. Rather, I am pointing out that we are not showing in this legislation a connection between those individuals and those industries today and the punishments, in effect, that are being heaped upon them in the form of increased taxes.

We already have taken care of that problem. We have laws on the books that are designed to punish people who engage in midnight dumping, people who do not properly dispose of their toxic wastes. In addition to that, we have adequate laws on the books right now to put the burden on those individuals who produce those wastes. The burden of the cost of disposal rests upon the man who is guilty of producing the wastes.

We are dealing here with orphan sites, sites where we cannot show a direct correlation between who produced the toxic waste and who should pay for it. It is a national, social problem and we are all committed as a people to working to clean up our environment.

I have no quarrel or fault with that; it is a wholesome objective. I think that being the case then that we ought to acknowledge that if we who are the consumers who are responsible really for creating the problem, that we as consumers should assume the responsibility and all of the funding, which in my estimation, should come through general revenues. That is the only fair kind of tax because when you put a tax burden like that contained in this legislation, for example, on gro-

ceries you are imposing a regressive form of taxation since the tax is built into the cost. It is a little bit like a sales tax but at least when we impose sales taxes we do provide exemptions for working poor people with regard to its application on food purchases and medical prescriptions.

There is no such distinction made when you put this kind of a burden on all businesses indiscriminately and they have to pass that cost on to consumers and that means that the poor person going through the checkout line in the grocery store is absorbing a disproportionate or inverted, weighted burden of taxation.

We have a Tax Code that we have defined as fair. Fair in terms of the way it is distributed on our citizens. That being the case, then we can, through that mechanism, if we find it necessary to actually increase taxes, fund the cleanup.

There is a question about whether we have to increase taxes to do it. The truth of the matter is Peter Grace has been lobbying for the past several years to get implementation of a variety of recommendations for eliminating waste and inefficiency in our Government that could reap, according to the Grace Commission, an estimated $434 billion in benefits to our Treasury within a 4-year timeframe. Let us assume that that is a gross exaggeration. However, are not talking about $434 billion, we are talking about $9 billion over a 4- or 5-year period. That being the case, accepting some of Mr. Grace's cost cutting proposals is one avenue that ought to have been pursued rather than turning to the idea of raising taxes after we had this big debate on the Tax bill that we insisted had to remain revenue-neutral; we were not going to impose new taxes on the American people, and just a week later, here we come back with a quite substantial tax increase.

I think there is another ingredient of this debate that requires attention, too. That is the discriminatory rates on the barrel of oil produced domestically versus the imported barrel of oil. That is a policy decision that I do not think received appropriate debate as to whether this is a wise policy direction we are taking; whether it is consistent with our long-term objectives in terms of trying to guarantee equity in the marketplace, and this disturbs me as well.

Finally, I would remind colleagues that the President has repeatedly stated that he would not accept the idea of increased taxes, and, as I noted, we can arrange priorities in such a way that we could achieve the same objective without raising taxes. It is just a question of what we deem more valuable than something else within our total budget picture.

Jim Miller sent a letter to our minority whip just recently in which he said:

> The administration has made it abundantly clear that it would strongly oppose new, broad-based corporate taxes or substantial increases in taxes on oil to fund the Superfund program.

A new broad-based corporate tax, a substantial increase in the petroleum tax, and an oil import fee, a new gasoline tax are all contained in the financing mechanism.

He concludes his letter by stating:

> We therefore call upon the Congress to pass legislation which will finance Superfund without the use of broad-based corporate taxes, substantial increases in the current petroleum tax, oil import fees or taxes on the American motorist.

Since the administration, has made its position abundantly clear to one and all, I think we have good reason to pause in rushing down this course. The fact of the matter is, we do not have to run the risk of a pocket veto because Congress is out of session. We can address it in a responsible way and we can do it before this Congress adjourns.

The final observation I would make goes back to a point that my colleague from Nebraska noted and that is the pledge that some of my colleagues on this side of the aisle, I do not know whether any on your side of the aisle have yet signed that pledge, not to vote for any tax increases. While I signed that pledge and a lot of others did, I know, I would simply remind those colleagues who signed that pledge that this will be their opportunity to demonstrate their commitment to no tax increases and follow the guidelines of this administration.

Mr. Speaker, I ask unanimous consent to yield 2 minutes to the gentleman from New York [Mr. DOWNEY].

The SPEAKER pro tempore. Without objection, the gentleman from New York is given 2 additional minutes.

There was no objection.

Mr. CRANE. Mr. Speaker, I yield 5 minutes to the gentleman from Illinois [Mr. PORTER].

Mr. PORTER. I thank the gentleman for yielding me this time.

Mr. Speaker, the conference report contains a new provision entitled "section 104N" that provides new authority to the agency to enter upon property for the purpose of pursuing a cleanup operation. I think that this provision undoubtedly is one of great general importance in the administration of the Superfund law.

□ 1805

However, I am concerned about a case in my own district, which is a well-known one, where PCB's have been spilled into Waukegan Harbor in Waukegan, IL, allegedly by the Outboard Marine Corp. That matter has been a matter of litigation between the EPA and OMC for almost 10 years now. It is one that we hope can be brought to a favorable conclusion.

The Supreme Court has recently granted certiorari to the Government to review a decision not favorable to it. At this moment, however, there are negotiations going on for the first time in that 10-year period between OMC and EPA that I want to nurture and encourage. My hope is that these negotiations be allowed to proceed to a favorable conclusion.

I would urge both the EPA and OMC to continue pursuing those negotiations. I would urge the EPA not to take advantage of this new provision of the Superfund legislation until the negotiations have run their full course.

My interest, obviously, is to completely clean up the PCB's in Waukegan Harbor as quickly as possible, to do it at as low a cost as is possible, and to keep the Outboard Marine Corp. a part of the Lake County, IL., community, providing the many jobs that it does to people of our area. I would like all of this to happen in a manner consistent with the plans of Mayor Robert Sabojian of Waukegan, to develop the Waukegan Harbor area to its fullest recreational and commercial potential

All of that, I think, can best be accomplished by working through the current negotiation process, by both sides staying at the table and continuing to fairly present their positions. I am very hopeful that this will come to a positive conclusion.

These negotiations, even at this early stage, are a very, very favorable development in this divisive matter. We are anxious to see that the negotiations continue. It seems to me that the worst thing that could happen now would be for the EPA to pull back from the bargaining table and invoke this new provision of the law while these delicate negotiations that seem so promising are being carried forward.

I hope for the sake of the citizens of Waukegan, the workers of OMC, and the potential workers employed through developing Waukegan Harbor, that the EPA and OMC will persist in their efforts to reach a favorable conclusion to their environmental problem which has plagued that community for almost an entire decade.

Mr. DOWNEY of New York. Mr. Speaker, I yield 3 minutes to the gentleman form Michigan [Mr. WOLPE].

Mr. WOLPE. Mr. Speaker, I rise in strong support of the Superfund agreement before us today.

After long months—even years—of struggle, this bill represents a new beginning for EPA's efforts to address one of the most serious environmental threats confronting us today. Its passage is essential to the well being of all Americans.

I am concerned, however about certain components of the Superfund financing package.

One is the broad-based corporate profits tax that represents a most unfortunate departure from the polluter-pays principle that has historically underpinned our approach to Superfund financing.

Moreover, it adds an unjustified element of tax regressivity by the inclusion of even food-related industries within its embrace.

My second concern centers on the proposed Superfund oil tax. The inclusion of this tax may well cause confusion about the position of Congress on another extremely unwise proposal, namely the oil import fee.

An oil import fee has been suggested many times over the years as a method of raising needed Federal revenues and bailing out the domestic oil industry and, no doubt, the issue will arise again in the coming Congress.

It is however, one of the most inefficient, regressive methods of raising revenues conceivable. By raising the price of imported oil, the fee gives domestic producers an opportunity to charge consumers more for their oil as well. For every $3 hard-pressed consumers must pay to support this policy, two go straight to the hands of oil producers and only one ends up in the Federal Treasury. Low and fixed income households, which spend a disproportionate share of their budgets on home heating, are particularly hard hit under this scheme. At best, the oil import fee is an inefficient revenue raising tool, at worst it is a massive subsidy for a multibillion-dollar industry at the expense of America's poorest citizens.

In light of these tremendous liabilities, I would like to clarify with my distinguished colleague and member of the House Ways and Means Committee, Mr. DOWNEY, that the Superfund oil tax sets absolutely no precedent for later acceptance of an oil import fee.

The most important difference between this tax and an oil import fee is that it will tax domestic oil as well as imported oil, is that right?

Mr. DOWNEY of New York. Mr. Speaker, will the gentleman yield?

Mr. WOLPE. I yield to the gentleman from New York.

Mr. DOWNEY of New York. Mr. Speaker, yes. What we are considering today is a small 3.5 cents a barrel differential in the amount of tax levied on oil, not a $5 to $10 a barrel tax on imports alone, as has been proposed in the past.

Mr. WOLPE. In addition, this tax is designed for the single narrow purpose of funding hazardous waste cleanup and has no other application, correct?

Mr. DOWNEY of New York. Yes, the oil tax is an important component of this package because petroleum products are major constituents of many Superfund sites, it has no broader significance outside the context of Superfund.

Mr. WOLPE. Mr. Speaker, I thank the gentleman for his clarification. As for the oil import fee, I know that the gentleman from New York has been a strong opponent of it in the past and I would like to assure him of my support in any future battles against this unfair, inefficient tax scheme.

Mr. FRENZEL. Mr. Speaker, I yield 2½ minutes to the distinguished gentlewoman from Maryland [Mrs. BENTLEY], a member of the Committee on Merchant Marine and Fisheries, who was instrumental in leadership in getting this bill out of her committee.

Mrs. BENTLEY. Mr. Speaker, many Members of this Congress are responsible for getting the Superfund reauthorization conference report to the House floor for consideration and vote.

I sit on another committee besides the Committee on Merchant Marine and Fisheries which had a part in this and that is the Committee on Public Works and Transportation. I want to commend the chairmen of all three of the committees involved, of which I know the gentleman from Michigan [Mr. DINGELL] from the Committee on Energy and Commerce and his minority leader, the gentleman from New York [Mr. LENT]; the gentleman from New Jersey [Mr. HOWARD], from the Committee on Public Works and Transportation; and the gentleman from Kentucky [Mr. SNYDER], the ranking minority member, and on the Committee on Merchant Marine and Fisheries, the gentleman from North Carolina [Mr. JONES], and also the gentleman from New York [Mr. LENT] was then on that committee, and now it is the gentleman from Michigan [Mr. DAVIS]. Despite the fact that this Superfund bill may not be perfect and is a result of compromises, it is necessary that reauthorization be enacted. I rise in support of passage of the Superfund conference agreement.

It is imperative that the 99th Congress pass legislation to address the crisis now facing our Nation in response to release and cleanup of toxic wastes. As equally important to providing Superfund reauthorization is ensuring that the funding of the necessary Superfund funds not adversely affect our domestic industrial base and the broader base of taxing laid out here that is expected to take care of that.

Within my home district, the Second Congressional District of Maryland, we have some 68 potential hazardous waste sites. Superfund will certainly help clean them up. Therefore, Superfund is necessary for a clean environment and keeping this vital program alive will continue cleaning up hazardous toxic waste.

As a result of anticipated conflicting opinions from key White House advisers to the President on whether to sign or veto the legislation, I have joined my colleagues in writing the President urging him to sign Superfund and not to veto it.

Mr. DOWNEY OF New York. Mr. Speaker, I yield myself 5 minutes.

Mr. ANDREWS. Mr. Speaker, will the gentleman yield?

Mr. DOWNEY of New York. I yield to the gentleman from Texas.

Mr. ANDREWS. Mr. Speaker, I rise in support of the Superfund conference report. It is critical that Congress act now to reauthorize Superfund. The 1-year stopgap measure enacted last year deprived Superfund of valuable momentum. Virtually no new work has been started for months. The emergency response program has operated at a drastically reduced level. Resources have been stretched to the limit. This Nation needs a tough, well-funded Superfund Program now.

Mr. Speaker, the conference report gives us such a program. The conference report reauthorizes $9 billion for Superfund over the next 5 years. I am convinced that we need every last penny. Of this, $500 million will be earmarked for a new program of cleaning up leaks into ground water from underground gasoline storage tanks. The conference report contains another new comprehensive program designed to provide the public with detailed information about chemical threats and the disclosure of toxic emissions into the air, soil, or water.

For the first time, a clear and specific set of cleanup standards is established. Each hazardous-waste-site cleanup must meet appropriate standards set in every other Federal environmental law for specific hazardous substances or, if applicable, a more stringent State law. A much-needed program of research into the storage, transportation and elimination of hazardous wastes to be eventually applied in the field is also a part of this agreement. Public participation in the cleanup decisionmaking process will be enhanced, and criminal and civil penalties for violations of the Superfund statute will be stiffened under the conference report. Significant progress has been achieved and sound public policy has been made on the programmatic side of the Superfund.

I am not as enthusiastic about the taxing provisions of the Superfund Program, Mr. Speaker. The tax on crude oil and feedstocks hits Texas industries disproportionately; while these firms will continue to finance almost one-half of the Superfund, their products make up less than 15 percent of the contents of Superfund toxic waste sites. Given the already depressed state of the energy industry and its effect on the Texas economy, I am disappointed that a lesser amount of Superfund revenue was not exacted from these industries.

At the same time, the financing package represents a compromise. For the first time, a significant amount of the Superfund comes from a broader based tax. I am pleased with this development. After all, toxic waste is a

problem caused by many components and industries and shared by our entire society.

In addition, the tax burden on domestic oil would be lightened by a tax differential placed on foreign imported oil. This, too, represents progress.

In the end, Mr. Speaker, everyone had to compromise to reach an agreement. Like many others, I am not happy with every aspect of the Superfund package. But the compromise, in the aggregate, is a good one, and should be supported. The compromise represents a strong 5-year plan to continue the critical national effort to clean up America's toxic-waste dumps. I want to encourage my colleagues to vote for the Superfund conference report and allow this vital work to go forward.

All too many of us represent districts with dangerous toxic-waste sites. These sites need to be cleaned up now. In my district lies the Geneva site, one of the worst in the Nation. It contains some of the highest recorded levels of PCB's and other highly dangerous toxic chemicals. The site is only 50 feet from a neighborhood and within 1 mile from a major public school. It is dangerous and frightening to those who live nearby. The time to act is now; let us clean up Geneva now and not wait for further debate. I urge my colleagues to vote for this important measure.

Mr. DOWNEY of New York. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am not going to start thanking everybody, because if I did, all of my time would be consumed thanking the people who worked on it.

I want to recognize, however, the work, in particular, of two people whom I worked with, the gentleman from New Jersey [Mr. FLORIO], who, without his guidance and assistance, I doubt that this bill would have become law; and my friend and colleague, the gentleman from Minnesota [Mr. FRENZEL], who was dedicated to the principle, as was I when we were trying to determine the financing, that the polluters should pay for this Superfund bill and no one else.

We blinked a little, and so did the other side, in attempting to figure out how to finance Superfund. As future students of this legislation will find, we attempted to mix oil and water in achieving a compromise on Superfund.

The other body, more dominated by oil and chemical interests, found the way to finance Superfund would be with a broad-based tax, a value-added tax. They called it a manufacturer's excise tax. We in the House came up with a plan that would have divided the financing between the oil, the chemical industries, and with a waste-end tax.

We both have to give ground, and there is good news and bad news in the way that we financed it. The good news it that the oil companies and the chemical companies bear a large burden, as they should, of financing the Superfund bill. We also managed to come up with $500 million to help deal with the problem of leaking underground storage tanks.

□ 1815

The bad news is that there is a $2.5 billion broad-base tax which I am sorry to see in this bill and there is no waste-end tax.

This was the price of getting this done, I say to my colleagues. For those who lament the fact that there are new taxes in this bill to clean up the Superfund sites, let me just say that you cannot talk Superfund sites clean, you have to pay to clean them up and whether you call it new taxes or old taxes, money is necessary, a lot of it, unfortunately to deal with this problem.

We have made a serious start on funding Superfund for the next 5 years, but more will be required.

I would hope that our colleagues in the other body and those who will be here in the future to deal with this problem will go back and take a look at a waste-end means of financing Superfund and also make sure that the chemical and the oil companies that are richly responsible for this problem pay their fair share.

Now, there is some rejoicing in the oil States, probably very little given the lamentable state of their economy these days, but they see a differential in the way that we have financed the oil portion of the tax. Draw no conclusions about a precedent, I would say to my friends who want to see an oil import fee. I will fight you and so will the other members of the Ways and Means Committee tooth and nail if you think you can raise money to pay for the deficit with an oil import fee.

We have a 3½-cent differential here because we had to have one to get a bill. We would have resisted it strongly under any other circumstance.

Last, let me just say something about the entire process. We believe in this House that this is the most important piece of environmental legislation that we will deal with this year. This administration has been appalling in its support of this legislation as it has moved through the process. All they have said is what they do not like. Not once have they seriously fought for a waste-end tax or any significant revenue to deal with this problem.

Understand this, Mr. President, if you are watching. We are going to pass this bill by a very wide margin and if you veto the bill, we will override your veto and if you want to pocket the veto, we will stay in town so that you cannot do it, because the American people believe that the toxic waste problem in this country is too important for ideology. It is too important for politics, that the time is now to deal with it. We have done that. We have compromised. We have got a good bill and I urge all my colleagues to support it strongly.

Mr. FRENZEL. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Arizona [Mr. KOLBE].

Mr. KOLBE. Mr. Speaker, I would like to add my voice to those expressing their strong support for passage of this conference report agreement on the Comprehensive Environmental, Response, Compensation, and Liability Act. I've been impatient with the frequent delays and short-term extensions that we've had to endure since the House and Senate passed the Superfund reauthorization last year. Now, we appear to have achieved a compromise that, even with its warts, will make some giant leaps in the direction of accomplishing the original goals of Superfund.

I am especially pleased about the resolution of several issues in a direction that was consistent with my original votes on these matters. The agreements on community right to know, and on adequate funding levels is very important to the future success of the Superfund Program. I also support the concept of a broader based method of funding Superfund, rather than heaping an unbearable burden on very specific industries. The cleanup of hazardous waste is society's problem, and won't be solved unless society is willing to pay a price for its clean air and water.

What it comes down to, Mr. Speaker, and what I believe most of us here today will acknowledge with little hesitation, is that Superfund is one of the most important pieces of legislation we will consider in the 99th Congress. I support prompt, vigorous cleanup of waste dumps, and prompt, vigorous prosecution of individuals and groups guilty of dumping toxic wastes and thereby placing citizens at risk. The public has a right to know its water and air is reasonably clean and safe. But the problems are monumental and it will require a national commitment on the order of the Space Program to affect a solution. The time to start is now.

I urge passage of the conference report, and I urge the President to sign the vital piece of legislation.

Mr. FRENZEL. Mr. Speaker, I yield myself 1 minute.

Mr. Speaker, there has been a lot of discussion about how awful the taxes are in this bill. I do not disagree. I do not like any taxes.

Those people who signed a pledge not to raise taxes I guess have no business voting for the Superfund bill, because there is no way we can finance it other than by taxing somebody.

I would speak to the position of the administration, which was very careful to tell us the taxes they did not want used in this bill, but never told us what was acceptable.

I submit, given the program that we have here, there is nothing we can do

but tax, raise some taxes to finance it. I think we have done the best we can to put the package together.

With respect to the oil import fee which seems to bother a number of our Members because it is a differential, I think it is fair to say it bothered the conferees as well; however, it is a de minimis. We are talking about a mill a gallon. I do not believe that is terribly important. It is not a precedent, should not be a precedent, certainly is not a good one if it is; but it is so small that I hope it is not going to be terribly bothersome.

With respect to the differential, we had been told that there was not enough appropriate debate. There was plenty of debate. What we did not have was enough votes to overpower the other body so that we would not have to have it in our bill.

Again, Mr Speaker, I believe that this is the best the House can do. We cannot do better next year.

I hope the the bill will be approved by an overwhelming margin.

Mr. Speaker, I yield back the balance of my time.

Mr. DINGELL. Mr. Speaker, I yield 5 minutes to the distinguished gentleman from Ohio [Mr. ECKART].

The gentleman from Ohio [Mr. ECKART] handled most of the work in conference, and his words should be heeded carefully by my colleagues.

Mr. ECKART of Ohio. Mr. Speaker, about 9 months ago I gave a speech concerning Superfund and I said that we really need to focus on the four R's dealing with it. The first was the Risk the problem posed; second, how we could deal with the Reality that the problem presented; third, how we could fashion a Responsible solution to it, and the fourth that I felt was so significant that surprised some, I said we have to deal with Republicans.

Yes, in fact what we tried to do is what we have accomplished, what brought us here today, and that is drawing a bipartisan veto-proof consensus from both this Chamber and the other which can survive a potential veto, a potential that looms very large.

We need to deal with these realities in a way that gives us a program that makes sense. We want these cleanups to be done promptly. We want them to be done right the first time. We do not want taxpayers' dollars wasted. We want them done efficiently.

Adherence to principles like these has resulted in significant improvements in the new Superfund Program: mandatory cleanup standards, health assessments at every site, mandatory public participation, comprehensive community right-to-know, protection of ground water from leaking underground storage tanks and effective settlement provisions that makes all the difference in the world between litigating and cleaning up while at the same time preserving the important enforcement tool of strict, joint and several liability.

In reviewing the discussion of this conference report in last Friday's CONGRESSIONAL RECORD, I notice that a remark was made to the effect that the assertions of one Member were likely to be contradicted by the assertions of dozens of other statements made that day. That turned out to be exactly the case last Friday evening; several contradictory statements about the meaning of this provision or that, about "our intent" and "the intent of the conferees" did indeed appear in the RECORD, and I regret that some of those statements must also be corrected or at least clarified here today.

For example, I came across certain comments on the health assessments and health effects studies required under newly expanded section 104(i), which attempted to leave the impression that the Superfund conferees had agreed that information gained from the performance of these assessments and studies was not to be entered as evidence in cases brought for damages by victims of exposure to hazardous substances, or that such information was unlikely ever to be useful in such cases.

As the primary sponsor of the House Superfund bill, and a very active member of the Superfund conference committee, I must emphasize that this does not in fact represent the intent of the conferees. In fact, this matter was never addressed by the conferees. Nowhere in the legislation itself or in any of its accompanying reports have we stated that the results of health effects studies are or are not to be used as an aid in establishing causation between exposure to hazardous substances and any adverse human health effects, or that they are unlikely to provide information of that kind. In my opinion, in fact, they are very likely to produce just that kind of information as we learn more about these substances in years to come. The amendments to section 104(i) do not change existing rules of evidence. However, neither do they limit in any way any legal rights or tools future plaintiffs may have at their disposal.

More briefly, I would like to clarify one point with respect to the application of maximum contaminant level goals [MCLG's], established under the Safe Drinking Water Act, to Superfund cleanups under section 121. Although it has been recently maintained that remedial actions involving water which is not used, nor projected to be used, need not consider MCGL's, this is not quite correct. MCGL's under the Safe Drinking Water Act should be considered and may in fact be relevant and appropriate in making cleanup decisions concerning water which has the potential to be used as a drinking water source, whether or not it is currently projected for that use.

Section 121(b) establishes a statutory preference for the selection of remedial actions that involve application of "permanent treatment or alternative technologies." The legislation states that such technologies and "permanent solutions" shall be implemented to the maximum extent practicable. This preference for remedies incorporating permanent solutions and alternative treatment technologies means that such remedies are presumed to be appropriate cost-effective remedial actions and should be selected to the maximum extent practicable.

The strict requirements of this section will result in significantly more costly remedies to achieve the goal of permanency. Some have suggested that EPA should evaluate the selection in terms of "overly costly remedies where alternative cost-effective remedies provide comprehensive protection of public health and the environment." Whether it is "overly costly" is not the proper criteria and does not in this Member's opinion represent the intent of the conferees.

As I have already noted, this legislation contains an important provision—section 122—designed to facilitate settlement negotiations and expedite effective cleanup at Superfund sites while maintaining a strong and aggressive Government enforcement policy. The legislation also confirms the Environmental Protection Agency's current authority to mix Superfund money with private party funds to complete settlements in those cases where it is in the public interest, according to the criteria of the Agency's settlement policy.

However, it is not expected that the Agency will use mixed funding as a quid pro quo for settlement, nor is mixed funding authority a device for obtaining fair share settlements. The legislation maintains the strict, joint, and several liability standards of current law, as enumerated in the leading case, United States versus Chemdyne Corporation, as the principal mechanism to obtain complete site cleanup by private parties. Further, it is expected that the EPA and the Department of Justice will vigorously pursue section 107 cost recovery actions for all moneys expended pursuant to the act where responsible parties can be identified.

Section 105 of the conference report directs the Environmental Protection Agency to review the hazard ranking system [HRS] in order to enable it to assess, more accurately, the relative risks presented by the sites considered. However, this is not intended to reverse or undermine the decision of the U.S. Court of Appeals for the District of Columbia Circuit in the case of *Eagle-Pitcher Industries* v. *EPA*, 759

F.2d 905 (D.C. Cir. 1985). The HRS must continue to function as a screening tool that will allow the evaluation of a large number of sites in an expeditious manner. To allow the Administrator to continue adding sites to the NPL while the HRS is being reviewed, the new amendments provide that the current HRS be applied until the effective date of the revised HRS.

The new amendments also add new subsection (g) to section 105 pertaining to the consideration of special study waste facilities in the interim pending review of the HRS. In implementing this section, EPA is only required to consider available information contained in the Agency's files from whatever source it was generated. EPA is not required to search out or collect additional site-specific or waste-specific data from other Government agencies or the private sector.

As I noted earlier, the health-related authorities of Superfund, contained in section 104(i), are significantly enhanced by this legislation—section 110—which provides for health assessments to be performed at every site on the national priorities list, and health effects studies, such as pilot studies, epidemiological studies, and health surveillance programs, to be performed as appropriate under the circumstances. The role of ATSDR is expanded, but this expanded role in the health authorities section is intended to compliment and not replace EPA's risk assessment guidelines and methodologies.

In addition, I would like to point out that, in implementing the cleanup requirements in this legislation, EPA should be particularly aware that in developing and implementing remedial actions involving dioxin, and dibenzofurans, Congress intends that the Administrator adhere to the criteria set forth in the statement of managers in the conference report. As my colleagues are aware, these chemicals are among the most toxic substances known to man. Permanent destruction of dioxin and dibenzofurans at Superfund sites is one of this bill's top priorities. In carrying out this mandate, as expressed in the legislation and the statement of managers, EPA should regard the permanent destruction of dioxin at Superfund sites as one of its top priorities as well.

The amendments also add a new section, 106(b)(2), which allows a party who receives and complies with an administrative order to petition the Agency for reimbursement of certain costs it will incur pursuant to the order. This new provision is intended to provide incentives for parties to undertake the work required in the order, even it they have legal objection to performing the work. Thus, effective after the date of enactment of these amendments, a party who receives an order can begin the work of environmental cleanup while preserving its right to raise objections in a subsequent proceeding. The amendments also clarify that penalties cannot be imposed for noncompliance with an administrative order issued under section 106 if the recipient had "sufficient cause" for noncompliance. As noted in the committee reports on this issue, we mean by "sufficient cause" an objectively reasonable and good faith belief either that the party is not liable under CERCLA or that the required response action is inconsistent with the national contingency plan. The court must base its strict scrutiny of the defendant's belief on objective evidence of the reasonableness and good faith of that belief.

New subsection 113(k) requires the President to promulgate regulations establishing procedures governing development of the administrative record and participation of interested parties. The section also requires that the President make a reasonable effort to identify and provide notice to potentially responsible parties before the response action is selected. This latter requirement is designed to bring as many PRP's into the record development process as is feasible.

However, notice under this section is not intended to trigger the procedures set forth in section 122—the settlements section—such as the moratorium for negotiations. The settlement procedures are in the President's discretion and are governed by a separate set of criteria. Nonetheless, if the President decides that the settlement procedures in section 122 should apply, the President may so state in any notice provided pursuant to the best efforts requirement of this section.

One of the most important achievements of the conference committee's deliberations is the provision on underground storage tanks. This provision, which is comprised of several amendments to subtitle I of RCRA, is designed to accomplish three fundamental objectives: First, to ensure that EPA and the States have adequate authority to order responsible parties to clean up releases from underground tanks; second, to require tankowners to be prepared to pay for the cost of cleanup and other remedial measures; and third, to provide a fund to pay for the cleanup of leaks from petroleum tanks in cases where a solvent owner or operator cannot be identified.

The first two components of the LUST provision are intended to improve the overall effectiveness of subtitle I. They are based on the commonsense principle that tankowners have to be responsible for the damage caused by leaks from their tanks. In other words, the burden and obligation to clean up contamination and compensate those who have been injured rests squarely with the tankowners.

The third component—the establishment of the leaking underground tank trust fund—will ensure that in cases where the owner or operator of a leaking tank cannot be located, or is not capable of paying for the cleanup, the problem will be addressed. The fund, which will be authorized for up to $500 million, is essential because the petroleum exclusion in Superfund—which is not affected by this legislation—precludes cleanup of contamination caused by petroleum leaks or spills.

With the enactment of this provision Congress will have completed the effort that was started in 1984 to address the threat of leaking underground storage tanks.

We include permanent destruction of dioxins in the conference report's statement of the managers to emphasize that we do want to end the toxic merry-go-round and the Superfund shell game that has plagued this program for so very long, and the leaking underground storage provision is of significance to my colleagues from Long Island, both Republican and Democrat, to deal with the very serious problem that plagues tens of thousands of sites all across this Nation.

Mr. Speaker, most importantly, I want to take a few minutes to thank some folks who were so very helpful in this process. Frankly, Mr. Speaker, we would not be here if we did not have competent staffs. For the staff of our ranking minority member I pay special tribute for they fought hard and valiantly for their positions.

To Mr. Clough and Mr. Frandsen and Mr. Ryan who worked so hard with me to help make this truly an effort that we can be so very proud of today.

To the gentleman from Washington [Mr. SWIFT] and to his aide, Mr. Gillette, who I invited to one meeting to help write one paragraph, and they turned out having to deal with the most difficult negotiations possible.

To our legislative counsel, Mr. Pope Barrow, who stayed up all night with us many nights working and drafting.

To Arnold Havens, the former ranking minority staff member of Energy and Commerce, who stayed with us so many nights.

To Janet Potts, we thank you for your work on behalf of the Judiciary Committee.

And to my staff person Anne Forristall who joined me 2 years ago to stay for 1 year on Superfund and has stayed instead to the very bitter end.

The last two people I wish to thank are two folks who made this difficult experience a pleasure. The first is the gentleman from New York [Mr. LENT] who joined me at a restaurant nearly 2 years ago and said, "Your know, we

ought to sit down and try to figure out how to do it right the first time." It took us a little longer than we expected, but he was a wonderful partner and I am very thankful for his work.

And to a man who I guess I am supposed to call Mr. Chairman, but who I have grown to call John over the years, who not only enabled me to work an issue, but loaned me his staff and gave me the opportunity to fashion the kind of consensus and compromise necessary. We have dealt with the risks and dealt with the reality while being responsible. The Republicans are an important part of a bipartisan veto proof consensus that brings us to the threshold of victory here today.

To those of you who have complained that the program is too big, the tasks take too long to finish, the details are too many and minute, let me say that under almost any set of circumstances, perfect always becomes the enemy of good.

To the President who says that we do too much, to the President who says we go too fast, to the President who says we may go too far, let me say to you, take that message to Love Canal or to Rock Creek Village, OH, or to the Rocky Mountain Arsenal in Colorado, for it is those people who have waited for months, for years, and in some instances for decades. These poisons are slowly leaking their way into the ground water and creating a veritable carcinogenic stew. We have discovered without doubt or reservation that the ground is not a sponge capable of endlessly soaking up these toxic substances.

This may very well be the last major reauthorization of this program. We have done all we can do. We now give to those who are best capable, qualified and trained to deal with it, the tools, the money and the legislative authority to make good things happen.

Vote for the bill. Support the program and give us the kind of Superfund Toxic Waste Cleanup Program of which we can all be proud.

Mr. LENT. Mr. Speaker, I yield 3 minutes to the gentleman from Washington [Mr. CHANDLER].

Mr. CHANDLER. Mr. Speaker, I thank the gentleman for yielding this time.

Mr. Speaker, the reauthorization of the Superfund Program brings a long overdue assurance to the Environmental Protection Agency, to industry, and to the public, that Congress shares the Nation's commitment to cleaning up hazardous waste. To let this session adjourn without acting on this bill would be a great legislative failure, as well as a great personal disappointment. I am hopeful the overwhelming approval in both Chambers last fall for this bill effectively demonstrates the strong support for this legislation as law.

The Superfund Program's ambitious cleanup agenda sets out to accomplish many far-reaching and diverse goals. We must never lose sight, though, of the primary motivation for this program—the cleanup of our Nation's hazardous waste sites. The number of sites found to be contaminated, unsafe, and threatening to our environment has steadily increased. As of August 1986 there are 703 sites on the national priorities list, and another 185 sites have been proposed. In addition, Congress expects that 1,600 to 2,000 sites will be added to the list within 4 years of enactment of this legislation.

Addressing this alarming trend with a stable program must not be postponed. The initial $1.6 billion Superfund Program proved that the EPA can join with industries and communities to recover, remove, and replenish in areas once damaged or threatened by hazardous waste. The long-term cleanup which has begun at 99 sites, the short-term removal actions at 714 sites, and the completed cleanups at 13 sites, are the success stories.

With the reauthorization of the Superfund Program, delays can finally end, new projects can start, and the EPA's ability to respond to the hazardous waste accidents can be assured.

The road to agreeing on legislation to meet these urgent needs has not been the smoothest. The conference has finally produced, against what at times appeared to be insurmountable odds, a bill which demanded compromise. Though it is apparent that we would not have a conference report without these concessions, I remain uncomfortable with the compromise of the original program's polluter pays philosophy. This concept was not completely sacrificed, but I believe the changes are a steep price to pay for broadening the program's scope.

But like all compromise, there is much to praise about this conference report, and I commend the wisdom of the conferees for their omission of a broader value-added tax. The regressive nature of this funding method would have set a dangerous precedent, and gone even further to destroy the essential polluter pays concept.

Despite individual provisions which may be disagreeable, we now have the opportunity to rise above the differences, to rescue and rejuvenate this critical national program, and to reaffirm our commitment to cleaning up the country's hazardous waste sites. I urge you to join me in supporting the Superfund conference report.

□ 1830

Mr. LENT. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from New York [Mr. GREEN], a member of the Committee on Appropriations.

Mr. GREEN. Mr. Speaker, there is much in this conference report that I do not like. It deviates very much from the principle that the polluter pays, and the differential in the oil tax between the oil import fee and the tax on domestic production is obviously an effort, small though it may be, as the gentleman from Minnesota has pointed out, to take some money from the pockets of those of us from consuming States, and put it in the pockets of those in producing States, and I do not like that.

But I have to say that I think that it would be far worse to vote this conference report down and have no Superfund because all the contracts are being terminated and the program is about to wind up unless we pass this conference report. It would be far worse to do that than to accept this conference report, whatever its imperfections.

So, as we often do, I think that we have to accept the best we can get. We have been at it for 1 year, and I for one shall hold my nose and vote "yes."

Mr. LENT. Mr Speaker, I yield myself 4 minutes.

Mr. Speaker, I guess this debate is very close to being over. We know that for the past 2 years the Superfund has limped along not knowing where the next dime was going to come from.

Finally, on this evening, the House of Representatives is about to adopt a tougher, stronger, and expanded Superfund to clean up the Nation's toxic waste sites. We have also provided EPA in this legislation with the money to get started with this huge task.

The other body passed this bill by a resounding margin, and I would urge my colleagues in the House to vote for this bill as well in strong numbers, so that we may also send a strong message to the President.

And to our President—to our President, my President, your President—I would hope that he does not veto this bill. That would be a grave error, and I would hope that our President would sign the bill. But if veto it he must, he should veto quickly, so that before the House adjourns, before the Congress adjourns, we would have the opportunity to override that vote.

Mr. DINGELL. Mr. Speaker, I yield myself 4 minutes.

Mr. ECKART of Ohio. Mr. Speaker, I yield my remaining 2 minutes to the gentleman from Michigan [Mr. DINGELL].

The SPEAKER pro tempore (Mr. PANETTA). Without objection, the gentleman from Ohio [Mr. ECKART] yields 2 minutes to the gentleman from Michigan [Mr. DINGELL] and the gentleman from Michigan [Mr. DINGELL] is recognized for a total of 6 minutes.

There was no objection.

Mr. DINGELL. Mr. Speaker, I thank my distinguished friend and colleague, who has had so much to do with this legislation, for his kindness.

It is just 4 years ago that the first subpoena was issued on the Superfund investigation conducted by our committee. Some years before that the committee found that there were 2,000 to 3,000 Superfund sites. That number across the Nation has now grown to 20,000 to 30,000.

The original program involved an expenditure of about $1.6 billion. That was thought to be a horrifyingly large sum in that day. Today the cost of cleanup across this Nation is estimated at being in excess of $100 billion, and each of our major industrial States can anticipate a total cost of better than $1 billion or $2 billion.

This bill is only a downpayment on the problem: $9 billion is authorized here, and will be expended.

The situation in the Nation is serious. The costs are terrifying. But the cost of inaction is vastly greater: cancer, birth defects, impairment of this generation's well-being, and future generations' well-being is only a part of the cost. Contamination of air, surface waters, soil, and ground waters—not contaminated for days, weeks, or years, but contaminated for millenia, and unseeingly poisonous and perilous to future generations—are some of the costs.

The costs of inaction here are vastly worse than the costs of vigorous action.

The bill is not perfect in any of its parts, but it is more than a good bill—it is an excellent bill. None of the Members of the House or the Senate who worked on this matter would have written the bill as it is before the Members today in the conference report on H.R. 2005. Four years of hard work, investigations, subpoenas, criminal trials, months of hearings, work in markup in committees and conferences, work here on the floor in the House and in the Senate, have brought us to where we are. Hours of debate, sometimes angry, has forged the legislation before us. Eight House committees, with 53 members on the conference committee, and three Senate committees, with 19 members on the conference committee, have contributed to what is before the Members.

The character of the problem and the nature of the situation affecting our people screams for action. Peril to health, environment, and the safety of our people is going to be the mark of failure on this legislation. Failure to enact this legislation carries with it some peculiar costs which I would like to give to my colleagues now in a letter which I will insert into the RECORD.

This is from Mr. Lee Thomas, the Administrator of EPA. He says this:

Superfund lost its momentum a year ago. Virtually no new work has been started for months. Our emergency response program has operated at a drastically reduced level. We have stretched our limited resources as far as we could. Now we have reached the end. I am writing to stress to you how critical the situation is. On October 1, in absence of reauthorization, I will send a 30-day termination notice to our Superfund contractors.

He goes on to say:

Should the Congress adjourn before completing reauthorization, I will also be forced to notify our employees and our unions that furloughs will begin to take place in late December.

He goes on to say this, and I want my colleagues to hear this, and I hope that the President is listening, because this is where we are today:

The situation is extremely serious. The consequences of failure to complete reauthorization of Superfund in this session would be immediate and extensive. By January, all emergency response and long-term cleanup work at the sites would have stopped. Many engineering studies under way or completed at national priorities list sites would be outdated. All enforcement cases against polluters would be halted. Superfund employees would have to be furloughed, and the impact of that process would disrupt the work of this Agency and other far beyond that problem.

Clearly the action on Superfund cannot wait. While it will only take a few months to totally dismantle this program, it will take years and many millions of dollars to rebuild it.

I urge my colleagues to vote for this legislation. I urge the President of the United States to heed the word of his Administrator of EPA. I urge him to heed the words and the concerns of the American people, and to sign Superfund when it is presented to him. I urge him to recognize that the problem is not short term or limited to one area of the country. It is nationwide. Every Member of the Congress has areas in his district or in his State which are affecting the health and the well-being of his constitutents, not only those who are here today, but those yet unborn.

I would urge the President to recognize that a good bill is vastly better than no bill. There is no such thing as a perfect bill which can be crafted in this body or by the administration. The way that we pay for it is relatively unimportant. The taxes which will be paid in the event of failure go far beyond and are far worse than those that would be imposed on American industry today. I know no Member of this body that likes taxes or wants to tax industry or to imperil worker jobs.

□ 1840

But I will tell you this: the consequences to this generation of Americans, to thousands of communities across this land, to millions of people and to generations of Americans to come of a failure to enact this legislation and failure of the President to sign it are far more important than the piddling economic consequences of the taxes which would be imposed under the legislation.

To discuss further this matter is folly. To act upon it now with vigor is wise.

I urge my colleagues to support the legislation overwhelmingly. I urge the President to sign it. It is time to resolve the question of Superfund. Let us move forward to clean up the land, to make it safe and to make a downpayment on one of the most desperate, pressing, and dangerous environmental and health problems that imperils the well-being of our children and the safety and the environment of generations now and generations to come.

ENVIRONMENTAL PROTECTION AGENCY,
Washington, DC, September 22, 1986.

Hon. JOHN D. DINGELL,
Chairman, Committee on Energy and Commerce, U.S. House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: As you know, Congress has grappled with reauthorization of the Superfund law for two years. We have worked together for many months completing the substantive revisions to the statute.

Despite this accomplishment, we now face a situation which threatens the very existence of the Superfund program. Time is the single most critical factor working against a full, five-year reauthorization.

Only a few weeks remain before the 99th Congress adjourns. Should adjournment occur before reauthorization is accomplished, there will be no Superfund program when Congress returns next January.

In August 1985, I notified you that I would slow down Superfund operations while Congress completed final debate on reauthorization. No one imagined at that time that we would find ourselves 13 months later, still with no reauthorization and virtually no resources. Twice, Congress has provided interim funding, but these resources have been exhausted.

Superfund lost its momentum over a year ago. Virtually no new work has been started for months. Our emergency response program has operated at a drastically reduced level. We have stretched our limited resources as far as we could. Now, we have reached the end.

I am writing to stress to you just how critical the situation is. On October 1, in the absence of reauthorization, I will send 30-day termination notices to our Superfund contractors. These notices will result in the complete or partial termination of 12 contracts as of October 31, 1986. Once the notices have been sent, the government becomes liable for significant termination costs, even if more funds become available before October 31.

I am providing a list of contracts which will receive termination notices October 1 (Attachment A), along with a list of projects where on-going work will cease by the end of October (Attachment B).

Should Congress adjourn before completing reauthorization, I will also be forced to notify our employees and their unions that furloughs will begin to take place in late December. As part of this process, I will freeze all hiring and internal personnel actions agencywide, and terminate temporary employees.

The impact of a furlough would be felt agencywide. All Superfund employees would be directly affected. But civil service procedures enable employees with seniority and high performance ratings to take positions of other employees in the event of a reduction in force. We project half of EPA's employees would be impacted as furloughed Superfund employees exercise retention rights.

The situation is extremely serious. The consequences of a failure to complete reauthorization of Superfund in this session would be immediate and extensive. By January, all emergency response and long-term cleanup work at sites would have stopped. Many engineering studies underway or completed at National Priorities List sites would be outdated. All enforcement cases against polluters would be halted. Superfund employees would have been furloughed, and the impact of that process would disrupt the work of this agency and others far beyond that program.

Clearly, action on Superfund cannot wait. While it will only take a few months to totally dismantle this program, it will take years and many millions of dollars to rebuild it.

Thank you for your continued leadership in this matter. Please let me know if I can be of assistance in any way.

Sincerely,

LEE M. THOMAS.

ENVIRONMENTAL PROTECTION AGENCY,
Washington DC, September 22, 1986.

Hon. ROBERT T. STAFFORD,
Chairman, Committee on Environment and Public Works, U.S. Senate, Washington DC.

DEAR MR. CHAIRMAN: As you know, Congress has grappled with reauthorization of the Superfund law for two years. We have worked together for many months completing the substantive revisions to the statute.

Despite this accomplishment, we now face a situation which threatens the very existence of the Superfund program. Time is the single most critical factor working against a full, five-year reauthorization.

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Thank you for your continued leadership in this matter. Please let me know if I can be of assistance in any way.

Sincerely,

LEE M. THOMAS.

ATTACHMENT A.—CONTRACTS TO BE TERMINATED ON SEPT. 30, 1986 DUE TO CERCLA REAUTHORIZATION DELAYS

Contract No.	Contract title	Prime contractor	Subcontractors	Complete (C) or partial (P) termination
68-01-6939	REM II	Camp Dresser and McKee (CDM)	Woodward Clyde; ICF; Clement Assoc.; Roy F. Weston; C.C. Johnson	P
68-01-7090	Superfund Policy Support	CH_2M Hill	Versar; ICF; Environ; Envir. Law Institute; Engineering and Economics Research, Inc.	P
68-01-7250	REM III	Ebasco Services, Inc	E.C. Jordan; Environmental Science and Engineering; ICF; NUS Corp; AEPCO; C.C. Johnson; Technos, Inc.; Weston Geophysical Corp.; Environmental Testing and Certification Corp.; Aquatec, Inc.	P
68-01-7251	REM IV	Ch_2M Hill	Ecology and Environmental; Planning Research Corp.; Black and Veatch; ICF.	P
68-01-7054	National Priorities List Program	The MITRE Corp	N/A	C
68-01-7253	Contract Lab Program Management	Viar	N/A	P
68-01-7159	QA/QC Support for Contract Lab Program	University of Las Vegas	N/A	P
68-03-3161	Aerial Imagery Interpretation and Analysis	Bionetics	N/A	P
68-03-3255	Emergency Environmental Response Unit	Enviresponse, Inc	NUS Corp; Princeton Aqua Science	P
68-03-3249	Collection and Analysis of Environmental Samples	Lockheed Engineering and Management Services Co. (LEMSCO).	N/A	P
68-03-3245	Remote Sensing	LEMSCO	N/A	P
68-03-3206	Hazardous Sample Repository	Northrop	N/A	P

Note.—Contracts in the Contract Laboratory Program [CLP] would not be terminated as we have met our minimum obligations under these contracts. However, additional work up to the contracts' maximums would not be ordered. This would significantly and adversely affect the 127 of our laboratory contracts.

ATTACHMENT B

(Remedial projects where work will stop on October 31, 1986)

SITE NAME

Region I

Coakley Landfill, CT
Yaworski Lagoon, CT
Saco Tannery, ME
Cannons/ Bridgewater, MA
Charles George, MA
Dover Municipal, MA
Iron Horse Park, MA
New Bedford, MA
Resolve, MA
Sullivan's Ledge, MA
Auburn Road, NH
Somersworth Landfill, NH
Davis Liquid, RI
Stamina Mills, RI

Region II

Bog Creek, NJ
Chemical Control, NJ
Chemical Insecticide, NJ
Cinnaminson, NJ
Combe Fill North, NJ
DeRewal Township, NJ
Ewan Property, NJ
Glen Ridge, NJ
Lipari Landfill, NJ
Montclair, NJ
Myers Property, NJ
Reich Farm, NJ
Roebling Steel, NJ
Syncon Resins, NJ
U.S. Radium, NJ
Vineland, NJ
Waldick, NJ
Katonah Well, NJ
Marathon, NY
Robintech National Pipe, NY
Sarney Farm, NY
Vega Alta, PR

Region III

Kane and Lombard, MD
Southern Maryland Wood, MD
Amchem/Ambler, PA
Bruin Lagoon, PA
L.A. Clarke, VA
Leetown, WV
Ordnance Works, WV

Region IV

American Creosote, FL
Tower Chemical, FL

Region V

Byron Salvage Yard, IL
Cross Brothers, IL
LaSalle Electric, IL
Peterson Sand And Gravel, IL
Envirochem Corp., IN

Main Street Wellfield, IN
Marion Bragg Dump, IN
Ninth Avenue, IN
Northside Landfill, IN
Forest Waste, MI
G&H Landfill, MI
Mason County Landfill, MI
West K&L Avenue, MI
Arrowhead, MN
Kummer Landfill, MN
New Brighton, MN
Oak Grove, MN
South Andover, MN
Coshocton, OH
Fultz, OH
Industrial Excess, OH
Laskin Poplar, OH
Miami County, OH
Powell Road, OH
Pristine, OH
Republic Steel, OH
Skinner, OH
Eau Claire, WI
Mid-State, WI

Region VI

Bayou Bonfouca, LA
Cleve Reber, LA
South Valley, NM
United Nuclear, NM
French Limited, TX

Region VII

Cherokee County, KS
Times Beach, MO
Hastings Groundwater, NE

Region VIII

California Gulch, CO
Central City, CO
Denver Radium, CO
Lowry Landfill, CO
Rocky Mountain Arsenal, CO
Sand Creek, CO
Anaconda Smelter, MT
East Helena site, MT
Silver Bow, MT
Sharon Steel, UT

Region IX

Atlas Asbestos, CA
Coalinga Asbestos, CA
Iron Mountain, CA
Montrose, CA
Operating Industries, CA
Purity, CA
Selma, CA
South Bay, CA
Stringfellow, CA

Region X

Bunker Hill, ID
Northwest Transformer, WA
Queen City Farms, WA

Mr. LIGHTFOOT. Mr. Speaker, I appreciate this opportunity to clarify the reasons why I intend to vote against final passage of the Superfund conference report. Since I support the Superfund Program and have voted in favor of it in the past, I want the record to show that it is not because I oppose the program itself that I am voting against this bill today.

The primary issue before us is not whether Superfund should be reauthorized or how strict should be the standards or how strict should be the cleanup schedule or any other issue at the heart of the Superfund Program. In fact, the primary issue before us has little to do with the actual intent of this legislation, which is to clean up the thousands of dangerous toxic waste sites in this country. Instead, what we are about to vote on is whether or not to create a new hidden tax on the American consumer.

As my colleagues will recall, the House passed a Superfund bill last year which I supported. That bill simply expanded taxes that already existed in the program, drawing upon general revenues, and imposing a fee on toxic waste-intensive industries to help ensure that polluters pay. A majority of the House several times voted against attempts of the other body to create a new broad-based manufacturer's excise tax. We sent a clear message to the other body that we would not stand for a new tax on the American consumer, and rightly so.

Nonetheless, this new hidden tax raises its ugly head once again in the bill before us, and I want to remind my colleagues of a few things about this tax that they may have forgotten during the past several months.

Call it whatever you wish, but the tax in this bill is very similar to what is commonly known as a value-added tax [VAT]. It is a politically smart way to raise revenues because the taxpayers do not see their dollars going directly into the Government coffer; instead, they pay higher prices for their goods. By the same token, the VAT is also very dangerous to the taxpayer, particulary in view of the apparent inability of this Congress to control spending. As the Wall Street Journal stated: "* * * allowing this Congress to enact a VAT for any purpose under our current budgetary conditon would be a large mistake * * *."

In Europe, where this type of tax is used extensively, we have many examples of how easily this tax can be abused. Sweden, for instance, adopted an 11-percent VAT tax in 1969; by 1980 it had risen to 23.5 percent. Denmark adopted a 10-percent VAT tax in 1967 which grew to 22 percent by 1980. The Netherlands adopted one at 12 percent in 1969, and a decade later it had climbed to 18 percent. Other European Nations have VAT taxes in the same range. The invariable pattern is to start out small, on the assumption that nobody will object to a bad tax as long as it's for a worthy purpose, such as Superfund. From there on, the tax never dies with the program, and almost always accelerates. The temptation is simply too great for most politicians to resist each time spending restraint fails.

I also want my colleagues to be aware that the tax in this bill is a regressive tax which places the greatest burden on the lower and middle class. Moreover, this tax would also tax processed food, which is one category which is usually exempt from taxation as a matter of fairness to the poor and elderly whose income is largely consumed by their grocery bill.

Another point we should bear in mind is that the level of funding in this bill is $8.5 billion, which places the total at $3.2 billion above the level beyond which the Environmental Protection Agency says it could not spend the funds effectively. I've promised my constituents that I will not vote for an increase in their taxes as long as I believe there is still room to cut Federal spending, and I don't intend to break that promise at this time in order to fund more than $3 billion in excess spending authority.

Mr. Speaker, I ask my colleagues to consider this new tax outside of the context of Superfund. In any other case, almost everyone would conclude that the economy does not need new taxes, and certainly not a Federal excise tax hidden in the price of all munufactured goods. As I stated, I support the Superfund Program and voted for the previous House-passed version that did not contain a new Federal excise tax; but the New Federal excise tax in this bill alone is enough reason to oppose it. I urge my colleagues to join me in voting down this bill and coming back with a more sensible approach that is more fair and honest to the American taxpayer.

Mr. RITTER. Mr. Speaker, for a year now, Superfund has been without formal authority or sufficient funds while we tried to work out an extension. We, the nontax conferees, completed our parts of the bill in August. After 3 years of effort, this new bill creates a $9 billion program over the next 5 years, up from the $1.6 billion of the first Superfund law.

Previous Superfund legislation raised funds by placing a tax on petroleum and petrochemicals, on the theory that these were the sources of most of the threatening substances in abandoned waste dumps. But, given the more than fivefold expansion of funding, the knowledge of so many others who contributed to the abandoned waste dumps and the current state of the world oil market, this legislation takes a more balanced approach to spreading the costs among those responsible.

First, the broad cross section of the U.S. economy which contributes wastes to dumps should also contribute to cleaning up those wastes. Those who produce and consume the disposed-of chemicals in batteries, used oil, household and industrial cleansers, drycleaning and degreasing fluids, and a variety of aerosols all contribute to these waste dumps.

Second, given the current state of our basic industries and our need to rely on them to not only provide crucial products, but also to provide jobs, it would be wrong to jeopardize their viability by so sharply raising their costs. Those higher costs would simply be passed on to consumers. And the consumers would purchase foreign products at lower prices. That means lost jobs.

This bill increases the Superfund budget approved back in 1980 by more than fivefold. To fund part of the expanded program, the tax conferees came up with a new tax on corporate profits. Companies with taxable income of more than $2 million would pay at a rate of $12 per $10,000. The burden would thus be spread more evenly across the whole society. The profits tax would be combined with increased oil and chemical taxes and some general revenues to make up the $9 billion.

Of the total for Superfund: $2.75 billion would come from increased taxes on petroleum; $1.4 billion from existing taxes on feedstock chemicals; $2.5 billion from a new broad-based tax on corporate taxable income; $1.25 billion from general revenues, and $600 million from interest on money in the fund and from money recovered from companies responsible for waste sites.

To support a new cleanup program for leaking underground gasoline tanks [LUST], a 0.1-cent-per-gallon tax on motor fuels would be levied to raise up to $500 million over 5 years. I am proud to have initiated this legislative concern in the Congress. My original interest grew out of problems with such leaks in Hanover Township, Northampton County and Cherryville in my congressional district.

The new Superfund legislation is a tough law. It provides more funds than either the administration's proposal or the Senate's bill. The legislation tightens the current Superfund law in every respect and gives rigorous direction to the Environmental Protection Agency [EPA] to proceed rapidly with the job of cleaning up abandoned hazardous waste sites.

The bill sets rigorous standards for cleanups of toxic waste dump sites, mandates minimum numbers of remedial project starts each year and requires new protections for neighboring communities and victims of contamination.

One new section contained in the bill helps deal with the radon problem in the Lehigh Valley and in Pennsylvania and elsewhere. This section originated in the Science and Technology Committee, and I am pleased it is now a part of this bill. It will provide funds for research and abatement of radon.

In addition, the bill permits citizens to sue the EPA for failing to perform a required action.

It promotes settlements with responsible parties, because it contains provisions that give explicit authority for EPA to enter into cleanup agreements with responsible parties giving some assurance that liability is not forever unlimited.

The agreement also would require States to establish emergency planning districts to prepare for chemical accidents at facilities, and require certain firms in the manufacturing industries to disclose information on the types and amounts of certain chemicals they have onsite or release to the environment.

We all know that the existing program had significant problems. Fortunately, many of these problems are now behind us. The EPA has new management, and the administration has recognized that there is legitimate government responsibility for hazardous waste cleanup. I believe that the Superfund law provides ample incentives for any administration and any EPA to move aggressively to clean up.

It is important too that the EPA have the flexibility to deal with the hundreds of different situations at hazardous waste sites across the country. The agency needs that flexibility to take appropriate actions, without being too burdened by detailed and narrowly drawn bureaucratic requirements that the agency can not meet, that bog us all down in litigation and that end up spreading lots of money on too little cleanup.

I urge the administration to allow us to get on whith the job of cleaning up these dumpsites with the understanding that the bill represents compromises not easily achieved and perhaps more difficult to come by in the future.

Mr. KEMP. Mr. Speaker, it is with great regret that I must state my opposition to the conference report on the Superfund reauthorization. I supported this legislation when it passed the House of Representatives last year because I believe the enactment of a strong and effective Superfund Program is among our top national priorities. We have waited much too long to respond to the pressing national need to clean up the abandoned hazardous waste sites that threaten so many families in this country. I am proud that my State of New York has taken the lead in meeting this challenge through its own Superfund Program, and I have joined my colleagues in urging New York State's voters to approve the environmental bond that will provide needed funds for the cleanup of sites within our State. My opposition to this conference report does not stem from any quarrel with the plan to clean up our Nation's hazardous waste sites—or even with the overall funding level recommended by the bill. It stems from a fundamental opposition to raising taxes on the American people to finance this program.

I have recently signed a tax pledge to oppose any new taxes. I cannot vote for this Superfund financing measure without breaching faith with that promise. Whether directly or indirectly, this measure will extract almost $10 billion in new taxes from the American people.

We are told that the value-added tax has been removed from this conference report. That is true. But the so-called alternative minimum tax, petroleum excise tax, and gasoline taxes are just as harmful to our manufacturing industries, just as burdensome to low- and middle-income Americans, the elderly and the poor, and just as tempting for Congress to increase in the future because they are hidden in the prices of basic commodities.

First, the so-called alternative minimum tax is a misnomer—it's not a minimum tax at all, it is really a $2.5 billion gross income tax that will be paid by every corporation in the country with more than $2 million of income. It is wrong to think it will be paid only by corporations with high income that escape taxes entirely by taking advantage of deductions.

If this gross income tax passes, every corporation will have to figure out their taxes twice: First, under the normal corporate tax; and then, second, under the alternative tax system in which deductions like depreciation, the foreign tax credit, and the oil exploration deductions will be disallowed.

These investment incentives were put into a Tax Code for very good reasons—to promote new capital investment, avoid double taxation of foreign income, and encourage domestic oil exploration. Moreover, these deductions have already been cut back under the new tax reform bill, but only in return for lower personal and business tax rates. We shouldn't alter this balance now by hurting the heavy manufacturing industries, other capital intensive sectors, and the hard-pressed oil industry.

I am also concerned that the $2.75 billion petroleum excise tax not only is a regressive tax, but also sets a bad precedent for the future by creating a higher rate for imported oil and refined products. Petroleum taxes increase heating oil and petroleum prices and fall disproportionately on the poor and elderly. But the petroleum tax also would be higher on imported products, which amounts to a precedent for an oil import fee. The American public doesn't need higher taxes on imported or domestic oil, we need lower taxes on energy. We don't need heavier taxes on domestic oil exploration, we need lower taxes to reduce dependence on Middle East oil.

In general, I think it is a bad idea for Superfund to be financed through hidden taxes on the American people. Excise taxes on certain products and industries are extremely inefficient and distortionary to the free market. And reducing investment incentives, without lowering tax rates, is simply not good for the economy and not good for the American consumer.

If the polluter cannot be found to pay for the cleanup, then we should indeed go to the broadest-base tax of all: general revenues.

I hope that my colleagues will work with President Reagan and those of us who support Superfund but cannot support tax increases on the American people to fashion a workable reauthorization of the Superfund Program that will help clean up the hazardous waste sites around the country that need attention and funding.

Mr. Speaker, bring this bill back clean, without a tax like this imposes and I will vote yes as I have before.

Mr. NELSON of Florida. Mr. Speaker, I rise today in support of this Superfund conference report.

Protection of our environment is a necessary priority as we approach the 21st century. It is imperative that we put the Superfund Program on an orderly timetable for completion of the Nation's cleanup efforts.

The American people consider Superfund to be the most important environmental issue of this decade. This report is a good, bipartisan compromise and deserves our immediate attention. The President's own environmental advisers have urged support for this agreement.

The bill is especially significant to the State of Florida. Florida ranks high on the national priorities list of sites which pose an immediate hazard to the public's health through groundwater contamination. The nature of our aquifer system—a giant water filled limestone sponge just below the land surface—makes Florida's water resources partially vulnerable to contamination.

These environmental challenges must be met. Our people must be protected from hazardous waste and pollutants that affect our health, our ground water and our environment.

I urge a yes vote on this conference report and urge the President not to veto this important and urgently needed legislation.

Mr. GALLO. Mr. Speaker, I rise today to support one of the most important pieces of environmental protection legislation ever to be brought before the U.S. Congress. The Superfund conference agreement will authorize the $9 billion, 5 year reauthorization of the Comprehensive Environmental Response, Compensation and Liability Act—Superfund—which will facilitate the cleanup of the Nation's worst abandoned hazardous waste sites, 11 of which are in my congressional district.

Mr. Speaker, I cannot overemphasize the importance of this program to the residents of New Jersey. Because New Jersey has been a leader in the national effort to find and clean up toxic waste sites, we are among the first to require cleanup funding. As these efforts continue across the country, the cost of cleanup and the number of sites involved in the Superfund Program will rise.

After 6 years of continuing efforts to identify the locations of toxic and hazardous materials that are a threat to our communities, we have now reached a critical point. Now that the EPA has concluded preliminary cleanup studies, we are ready to begin the actual cleanup process. Hundreds of sites across the country, including 5 of the 11 Superfund sites in my congressional district, are ready for cleanup. The costs of cleanup at those five sites alone is estimated by the EPA to be in the neighborhood of $100 million.

As the full national scope of our hazardous waste problem becomes more apparent and the cost estimates increase, we must be in a position to provide stable funding, which can only be accomplished by looking beyond the original Superfund funding sources. The Superfund tax conferees have reached a reasonable compromise to raise $9 billion over 5 years. This bill provides a balanced approach to the funding question by raising needed revenues from a number of sources in a manner that fairly apportions responsibility for the cleanup costs.

As a member of the Public Works and Transportation Committee I have had a unique opportunity to contribute to the development of this important environmental legislation. From a programmatic perspective, the new legislation sets forth stringent national standards for the cleanup of Superfund sites, establishes an aggressive schedule for EPA cleanup activities, and confirms EPA's authority to enter into agreement with responsible private parties to perform cleanups.

I am particularly pleased that the final legislation contains the community right-to-know provisions that I introduced during the Public Works Committee markup of the Superfund legislation. First, these provisions call for the States to establish emergency planning districts. They also require certain manufacturers to report to emergency and environmental officials regarding information on chemical inventories and emissions to the environment. These important provisions give our communities a "right-to-know" about chemical hazards from local manufacturing plants and will result in increased health protection for people who live near potentially dangerous sites and increased opportunities for them to take part in cleanup decisions.

The conference agreement would authorize $9 billion in Superfund spending during the next 5 years, more than a fivefold increase from the $1.6 billion authorized for the programs initial 5 years. The money pays costs of Government-conducted cleanups, enforcement efforts to require companies to cleanup sites for which they are responsible, and other program costs. An additional $500 million for the new underground petroleum tank cleanup program is also included.

The legislation also provides that cleanups generally would have to meet standards and requirements of Federal and State environmental laws, but EPA could waive a requirement in specified circumstances. The provisions also would bar disposal of superfund waste at leaking landfills, require permanent waste treatment when practicable, and require review of cleaned sites every 5 years. States would be given the opportunity for an active role in choosing sites and types of cleanup actions.

The EPA would also be required to ensure that remedial and long-term cleanup work by the Government or by private parties begins at no fewer than 375 Superfund sites over the next 5 years. The law also encourages negotiated settlements between EPA and companies responsible for waste sites concerning the conduct and financing of cleanups. The bill retains the current liability scheme, which makes any company that contributed to a waste site potentially liable for the entire cleanup cost.

The Superfund legislation also includes two provisions which are of particular importance to the residents of the 11th Congressional District. The first is an amendment that Congressman ROE and I originally introduced that prohibits the placement of a solid waste landfill over the Rockaway sole-source aquifer in the Passaic River basin in New Jersey. Our natural water resources are too precious to be ignored. Residents who rely on natural water supplies must be confident that their water will be protected. This amendment was introduced for that purpose.

The second amendment, which both Congressman ROE and I supported, provides $7.5 million to the State of New Jersey for the costs related to the removal of the radon-contaminated soil in the Montclair/West Orange area. I also regret that my earlier proposal during the markup of this legislation to mandate the disposal of this soil in a Federal low-level radioactive waste depository was unsuccessful.

Mr. Speaker, this legislation must be passed. It deals with problems that the American people want resolved—immediately. Yes, the cost of the program is high, but so are the risks to our citizens if we fail to act. When this legislation is enacted into law, Mr. Speaker, I want you to know that I will then be able to look back on my first term in Congress with the knowledge that the Federal Government has established an effective hazardous waste cleanup program that all Americans can be proud of.

Mr. LEVIN of Michigan. Mr. Speaker, I wish to express my support for the conference committee agreement to H.R. 2005, the Superfund hazardous waste cleanup reauthorization, and urge its adoption by the House.

Mr. Speaker, the cleanup of toxic waste is the single most important environmental issue facing this Nation. Few would question the pressing nature of the hazardous waste problem in this country, or the need for a strong Federal role in grappling with this problem. The protracted controversy surrounding this bill stems from the intense debate on the specific form and funding mechanism of this Federal role. In the last few months, the main issue has been the appropriate method for raising the funds required to support Superfund activities. The debate often has been polarized with arguments, on the one hand, in favor of almost total reliance on increased taxes on oil and chemical feedstocks and, on the other hand, near complete reliance on a broad-based tax on manufacturers. I have been among those favoring an equitable balance between these positions, and I am pleased that the conference committee has been able to strike this kind of balance.

This Superfund reauthorization would authorize $9 billion through fiscal year 1990 to clean up the worst of our Nation's abandoned toxic waste sites. In addition, the reauthorization establishes cleanup schedules to ensure EPA acts aggressively to identify and begin cleanup of these sites. The reauthorization also contains strong community right-to-know provisions and a program to clean up leaking underground storage tanks.

Mr. Speaker, the Senate has already voted to approve this conference report by a vote of 82 to 8. The White House has indicated that the President may veto this carefully crafted compromise. I would hope that the administration would avoid such a disasterous step. It is long since time for the important work of cleanup of this Nation's hazardous waste sites go forward.

I support expeditious House passage of this measure.

Ms. SNOWE. Mr. Speaker, I rise in support of this legislation, the conference report to reauthorize and expand the Superfund hazardous waste cleanup program. My support for the conference report lies in the overwhelming and urgent need to address the hazardous waste problem, in my own State of Maine and nationally.

With passage of this conference report today, Congress will have completed its work to expand and significantly strengthen the Environmental Protection Agency's [EPA] program to clean up this Nation's hazardous wastesites. This bill establishes a $9 billion program mandating EPA to begin work on over 375 sites within 5 years. It also includes important right-to-know notification requirements for communities, allows citizens to sue to force cleanup compliance, establishes a new ground water contamination cleanup fund, and brings waste problems on Federal facilities under EPA's authority. The cleanup provisions in this legislation constitute a vast improvement and a tremendous achievement by the Congress.

Since the funding authority for Superfund expired in September 1985, Superfund has been living by a shoestring. I believe it is vital to enact this legislation immediately if we are to prevent Superfund from being dismantled, to prevent a halt to work on over 100 sites where cleanup is now underway, and to keep over 1,500 EPA employees from being laid off. For this reason, Members of Congress on both sides of the aisle know we must complete our work on this legislation.

While I support adoption of the conference report to put this very important national environmental program back on track, I want to express my opposition to provisions in the conference report pertaining to the financing of the Superfund program.

This legislation includes a new fee on corporate income to help raise $1.4 billion over 5 years, requiring a $12 fee on every $10,000 in corporate taxable income. I strongly oppose this fee for two reasons: First, it moves this important environmental bill further from the "polluter pays" concept. I believe this is a mistake to spread our costs to thousands of businesses across this country which don't contribute to our Nation's hazardous waste problems. This method has never been, nor ever should be, the foundation behind any of this country's major environmental laws.

I am also concerned that the new financing provisions in this conference report requires increased taxes on petroleum. In effect, the larger fee this provision levies on imported oil and petroleum products, beyond that imposed on domestic products, amounts to an additional fee on imported oil. As a Member from a New England State which remains very reliant

on imported oil, I have consistently opposed efforts to place a fee on imported oil to help raise revenues.

In simple terms, generating additional revenues from fees on imported oil remains a very bad idea, and an idea which Congress has consistently seen the wisdom to oppose. A wide range of economic data and independent studies point to the inflationary impact of an oil import fee, its dampening effect on economic growth, the likelihood of its raising costs for hundreds of different businesses, and the hardships it will create for individuals in Maine and around the country. Furthermore, supporters of such a fee point to our current lower oil prices as a reason why this fee wouldn't hurt; however, more expensive imported oil, whether in times of falling or rising oil prices, is a bad idea.

Maine's elderly and low-income residents have to worry every winter about the cost of their heating bills, a serious economic and health concern for these people. In fact, the households of the New England region, as a whole, are disproportionately dependent on the use of heating oil. In sum, this additional cost to be applied to imported oil will only exacerbate the difficulties these people face, and will raise energy costs unfairly for the entire New England region.

Mr. Speaker, we need to get Superfund going again, and this bill greatly expands and improves the current program, an important achievement in the best interests of our efforts to contend with perhaps the most serious environmental problem this Nation faces today. I believe this is an important step for Congress to take, and the cleanup requirements in this bill, after many months of negotiations, are strong, indeed. But, again, we are establishing a method of financing Superfund that has some bad ingredients, which add up to a far from perfect legislative solution.

Mr. Speaker, I support this conference report, and I urge its adoption, but not without serious objections to the financing mechanism. Since we are at the end of the session, and the program is on the verge of expiring, there is no other recourse but to pass this legislation, particularly when considering the seven sites in Maine on EPA's national priority list. So, again, with these facts in mind, I will vote in favor of the conference report.

Mr. JEFFORDS. Mr. Speaker, I rise in support of the conference report on H.R. 2005, the Superfund Amendments of 1985. The strong public health and environmental protection provisions adopted by the program conferees outweigh my objections to some of the revenue measures used to fund the program.

Back in December, I voted on the House floor for a number of amendments designed to strengthen several key provisions of the House bill, H.R. 2817. Most of these strengthening amendments were adopted by the House, which passed the bill on December 10. As a cosponsor of Chairman FLORIO's bill and a strong supporter of the Superfund program, I am pleased that the House conferees have upheld many of the strong provisions contained in the House bill.

Five years ago, Congress entered new territory with the enactment of Superfund. It quickly became apparent that there were a number of political, legal, technical, and institutional obstacles to achieving the public health and environmental protection goals of the bill's sponsors. Permanent cleanup strategies were not being used. A great deal of money was being spent in the courts instead of cleaning up dangerous waste sites. EPA was unable, and some would say unwilling, to carry out the Congressional mandate on Superfund.

In this conference report, I believe we have removed a number of these obstacles. First, we have provided the money to get the job done. The $8.5 billion funding level should allow EPA to make concrete progress in cleaning up sites and also aggressively pursue court actions against polluters to recover cleanup costs. The goals of the original bill—immediate cleanups to protect public health and the environment combined with actions to force responsible parties to pay for them—will now be more fully achieved because EPA will have the money to get the job done.

Second, we have included important community right-to-know provisions in the bill. These provisions will require companies handling hazardous substances to notify State and local officials of the type and amount of hazardous materials used. As a result, emergency response personnel will have the tools to make contingency plans that will protect public health in event of an accident.

Third, the conference agreement includes mandatory cleanup schedules that should prompt EPA into action on our most dangerous sites. EPA must begin cleanups at no fewer than 175 sites within 3 years and at 200 additional sites within 5 years. In addition, a preliminary assessment of hazardous waste sites currently in EPA's inventory—approximately 23,000—must be completed by January 1, 1988.

Fourth, conferees agreed to adopt the House-passed standards for cleanup of Superfund sites. EPA must choose appropriate cost-effective remedial actions that consider permanent solutions and alternative treatment technologies "to the maximum extent practicable." Where nonpermanent remedies are pursued, sites must be reviewed every 54 years to ensure that human health and the environment are being protected

Finally, the conference report includes a program to clean up leaking underground storage tanks. Under the bill's provisions, EPA—or the State—is authorized to undertake these cleanups or require responsible parties to do so. The intent is identical to other Superfund provisions: to make those responsible parties pay for cleanups, yet in cases where the delays are imminent, provide the funds to do the job now and recover cleanup costs from those responsible later.

I again want to commend the conference for the hard work that has gone into this bill. I would like to take a few minutes to express some thoughts on the hazardous waste issue that are not directly addressed by this legislation.

As a nation, we continue to adopt reactive policies rather than attempting to address problems before they reach the crisis stage. In this bill, we take few steps to encourage the use of waste reduction and other pretreatment technologies that would reduce the volume of waste requiring disposal. Not only must we address the problem of existing sites, we must prevent the creation of future superfund sites.

The Congressional Office of Technology Assessment [OTA] released a report in 1984 outlining the inadequacy of all current methods of land disposal. Deep underground injection, the method of choice in the chemical industry, threatens aquifers into which wastes are injected. And the OTA report points out that all landfills, even "secured" landfills with clay liners, will eventually leak. In the Eastern United States, where a great deal of the Nation's hazardous waste is produced and disposed of, the water table is commonly within several hundred feet of the ground. This spells trouble for future water supplies.

The 1984 amendments to the Resource Conservation and Recovery Act help address this problem by creating new guidelines for the land disposal of certain extremely hazardous chemicals such as dioxins, PCBs, and some heavy metals. However, I think we need to do more to promote waste reduction and neutralization technologies for a broader list of hazardous substances.

I have cosponsored bills that would impose a "waste-end" tax on the land disposal of hazardous wastes. This type of marketplace incentive, together with strong RCRA regulations, can move us toward the day when only small quantities of waste are land disposed.

This brings me to a discussion of the revenue provisions included in the bill. I am disappointed that the waste end tax, set at $2 billion in the House bill, has been completely dropped in the conference report. For the reasons outlined waste end tax would complement current hazardous waste statutes by helping to internalize the costs of production processes that generate large quantities of hazardous waste.

The conferees approved a two-tiered oil and petroleum tax that sets higher rates on imported oil and petroleum. As a Member representing the Northeast, I want to make clear my opposition to any oil import fee. I want to assure the House that my vote in favor of this conference report should not be construed as a vote in favor of this differential taxing arrangement. I hope my colleagues from the South and West will not misconstrue the passage of this conference report as a precedent for future oil import fees. I think they will find that opposition to such a fee continues to be strong, not only in the Northeast and Midwest but throughout the country.

The bill also contains an earnings and profits tax. As a supporter of the "polluter pays" principle and one who has consistently opposed efforts to impose a value added tax for Superfund, I am not enthusiastic about this earnings and profits tax. However, I recognize that the oil price decline has created serious hardship for domestic oil producers and therefore grudgingly accept the conferees judgment on this matter. I commend the conferees for including provisions to guarantee that small businesses are not included in this tax.

Mr. Speaker, many Members may have problems with some portion of the tax provisions, as I do. However, the positive public health and environmental protection provisions more than outweigh the negative revenue provisions. I therefore urge all Members

to support this conference report. Let's pass this legislation and get on with the business of protecting the American people and the environment from past hazardous waste disposal practices. At the same time, we must continue to look ahead and encourage the development of technologies and practices that will ensure that the work of the Superfund Program will someday be complete.

Mr. McGRATH. Mr. President, today the House of Representatives is considering the conference report on H.R. 2005, better known as the Superfund bill. This long awaited reauthorization measure comes to the House in the nick of time. Without quick action, the future of the Superfund program would be in serious jeopardy.

Recently, congressional conferees reached agreement on a $9 billion Superfund toxic-waste cleanup program. The 5-year program represents a fivefold increase over the Superfund budget approved in 1980. Among the many provisions contained in the three which represent major breakthroughs. The first, the community right-to-know provision enables the public and community emergency personnel to have detailed information about chemical threats. Adopted first by the House in response to the emergencies that arose in Bhopal and in Institute, WV, the provision will ensure that communities are prepared in case of accidents and, more importantly, will help prevent such situations in the future.

Second, the bill provides, for the first time, a process for cleanups between the Environmental Protection Agency [EPA] and responsible parties. The measure establishes a negotiation process intended to minimize litigation and encourage effective remedial cleanups.

Third, the bill contains items designed to limit litigation while strengthening the standing of citizens living around Superfund sites. The citizens' suit provision assures that any citizen can go to court for injunctive relief from parties—including the Federal Government—violating the Superfund law.

There are more than a dozen toxic waste sites on Long Island that are on the EPA's list for inclusion in the Superfund program. For an area that is almost entirely dependent on groundwater for its everyday needs, the cleanup of these sites is of paramount concern to all who reside there. I urge all of my colleagues to join me in voting for a conference report designed to eliminate the ecological nightmare of toxic waste.

Mrs. BOXER. Mr. Speaker, I rise to comment on language contained in the statement of managers within the conference report, which accompanies this legislation.

Language directing the Environmental Protection Agency to proceed promptly with its final regulations for all types of ocean incineration permits is misguided. There is no urgency to implement this technology. In fact, the opposite is the case.

August 1986, the Office of Technology Assessment released its report, "Ocean Incineration: Its Role in Managing Hazardous Waste." Even this report, which was sympathetic with ocean incineration as an alternative to land based incineration, found that ocean incineration is a nonessential option in handling the Nation's hazardous waste problems. Less than 8 percent of the total waste stream is suitable for incineration of any type, and probably much less for ocean incineration.

Broad citizen opposition is evident. Over 6,000 attended a public hearing in Texas to protest when a site for burning was proposed off that coast, and over 2,000 attended and commented on the proposed research permit this spring for the east coast. The hearing officer's recommendations to EPA after the series of east coast hearings suggested that the agency not proceed with burning until legal, policy, and technical issues pertinent to the ocean incineration program were openly considered and resolved.

In addition, an environmental impact statement for ocean incineration has not been developed by EPA. I believe Federal law requires such a statement. Agency policy mandates that an EIS be issued whenever promulgating regulations under the Ocean Dumping Act, as they are doing. Instead, EPA has waived the EIS requirement. Additionally, the EPA's own Science Advisory Board has stated that substances released from at sea incineration stacks are largely unknown, as are the impacts emissions would have on the marine environment and human health.

I am the author of a bill which would prohibit ocean incineration until extensive further research is done to understand fully environmental and public health effects.

With the recent incident at Chernobyl and its consequences still fresh in our minds, let's stop and think of the dangers of surging ahead with insufficient knowledge. We should be urging restraint and further study, not a rush to a new unproven technology.

Mrs. LLOYD. Mr. Speaker, I rise in support of the conference report, but I do so with strong reservations. The cleanup of hazardous waste is of primary concern. When we began Superfund 5 years ago, we didn't know the magnitude of the problem. Hazardous waste is now recognized as a major threat to our environment. Almost 1,000 sites are on the Environmental Protection Agency's national priority list. Nealy 22,000 sites are on the suspected hazardous waste list.

But my main objection is not to the cleanup proposals but to the taxing mechanism for raising revenues. This is a seriously flawed bill, and my desire would be to see a more equitable funding system. I supported the House funding mechanism when we first voted on this bill, and I actively opposed any sort of value-added tax. I am glad to see that the conference report does not retain the mechanism passed by the other body, but I am also concerned about the hybrid tax that was created in conference.

I voted against the rule to send it back to committee so they could bring us back something more acceptable. But what this Congress is faced with now is the last train out. The necessity of Superfund is extraordinary. My reservations over the tax system pale in comparison to the magnitude of the problem of hazardous waste. If we drop the ball now, if we stall for another Congress, we will only have ourselves to blame. We have an imperative to give to our children and grandchildren, if not a world that's perfect, at least a world that is as clean as when we found it.

Of a technological nature, I would like to point out to my collagues that there ia a limited but critical amount of funding in this bill to attack waste problems with new technology. Although the total funding for reseach, development, and technology demonstrations totals just $100 million over 5 years, the Government and private sector savings which will result from incorporation of new waste disposal, control and reduction techniques will repay the taxpayer and private sector investment many times over. I have had first-hand experience with a Federal agency environmental problem resulting from hazardous waste at the Oak Ridge Y-12 facility. Unlike many Federal and private sector waste sites, the Oak Ridge National Laboratory had significant monitoring capability to provide reliable data on the extent of environmental problems at the complex. Nevertheless, these problems will cost several hundreds of millions of dollars to resolve and one must recognize that the total cleanup cost is staggering since there are many sites around the country that are not even properly characterized insofar as the potential risks they pose.

As the extent of Federal agency waste cleanup problems becomes apparent and as the Environmental Protection Agency recognizes the need for new technology to mitigate environmental impacts at Federal and private sites, the Oak Ridge National Laboratory [ORNL] has come to the forefront. Oak Ridge National Laboratory stands out because of its unique capability in environmental control technology, health effects research, and a remarkable track record of doing excellent work for other Government agencies. Thus, I believe that ORNL will become a preferred site for the demonstration of the new waste treatment technologies as well as a center for data gathering and storage for waste treatment.

I would have preferred that the R&D funding were much greater within the overall Superfund Cost, thus I believe that we must work hard to assure that the taxpayer gets the very most out of this $100 million authorization. We should also note that as the Office of Technology Assessment has recently stated in their report, "Serious Reductions of Hazardous Waste," there are great opportunities for reduction of waste through improved processes, practices, and technologies. However, less than 1 percent of pollution control funds are spent to reduce the generation of waste. I would hope that the Congress and executive will recognize that simply trucking waste from the one site to another or containing it by very primitive means are not acceptable options for the future. We must confront this unfortunate legacy with imagination and determination. We should look to the Federal and State governments and the private sector to encourage the researching, developing, demonstrating, and deploying of new waste treatement technologies. With some pride, I expect that the ORNL will play a significant role in that important enterprise.

Mr. McKERNAN. Mr. Speaker, I rise in support of the conference report on the Superfund Amendment of 1985. It has been a long and arduous process, one which has been more akin to a game of brinksmanship with the health and welfare of the citizens of this Nation hanging in the balance. However, while the final product may not be as tough as we

might have liked, the measure before us will put into place a vastly improved Superfund Program.

This agreement ups the funding level by more than fivefold, increasing the spending from the $1.6 billion provided for the initial 5 years of the Superfund to $8.5 billion over the next 5 years. Furthermore, the measure provides an additional $500 million for a new program to clean up leaking underground storage tanks. This program is designed to address the type of problem we have encountered in North Berwick, Kenduskeag, and Friendship, ME.

Other features of the conference agreement include: a cleanup schedule which requires the EPA to begin cleanup at 375 Superfund sites within 5 years; specified cleanup standards such as water quality criteria and recommended maximum containment levels established in other environmental statutes; a provision giving citizens the express right to sue the Federal Government for failure to carry out mandatory duties of the Superfund or anyone else who has violated the requirements of the law; a new program requiring companies using more than 25,000 pounds of toxic chemicals to disclose and develop emergency plans for 400 such chemicals in use so as to better inform and protect communities; and, a provision which directs the Federal Government to study health effects of toxic chemicals and conduct health assessments at Superfund sites. Also included in this measure is a new provision which requires each State to devise a plan for the disposal and treatment of toxic wastes generated within its borders.

Mr. Speaker, there are aspects of the conference agreement which are troubling to me, however, and I wish to make it clear that I believe that the funding mechanisms represents a departure from the customary polluter-pay principle. I do recognize that the problems associated with toxic waste pollution have grown to become a societal problem, and therefore, inclusion of revenues from the general treasury are not inappropriate. But, the differential tax on imported versus domestic oil and the broad-based tax which piggybacks on the new corporate minimum tax included in the tax reform bill are clearly not an appropriate means of paying for this problem. These onerous tax provisions have put many of us in a difficult position. I am opposed to the imported oil differential and the broad-based tax, but my concern about the urgent need to move the Superfund Program forward compels me to support the conference agreement. Because the rule under which the measure is being considered does not provide an opportunity to vote on the tax provisions separately from the programmatic provisions, I voted against the rule.

Nevertheless, it is vitally important that we get a strengthened Superfund Program on track so that we can complete the job of cleaning up the hazardous waste sites in Maine and thousands of others around this country. The present program has limped along for too long—it is time to once and for all put the problems of abandoned hazardous waste sites behind us. I therefore urge my colleagues to join me in voting to pass the conference report on the Superfund amendments of 1985.

Mrs. BYRON. Mr. Speaker, I rise today in support of the long-awaited conference report on the Superfund reauthorization bill. This legislation symbolizes consensus at its best. The final roadblock, the taxing authority, has been resolved. Nobody is totally happy with it, so that must mean that it's a pretty good compromise.

The conference report would authorize $8.5 billion in Superfund spending during the next 5 years, which is five times the amount of $1.6 billion at which the program was initially authorized. This much-needed money will pay the costs of Government-conducted cleanups and enforcement efforts to require companies to clean up sites for which they are responsible.

The conference report also includes requirements that cleanups meet standards of Federal and State environmental laws. And it contains a provision which is very important to my constituents in western Maryland: It bars the disposal of hazardous waste at leaking landfills, requires permanent waste treatment when feasible, and requires the review of these cleaned sites every 5 years.

I am hopeful that the new influx of Superfund revenues will allow the Environmental Protection Agency to continue addressing several current and potential cleanup sites affecting my district. Adamstown, located in my home county of Frederick, presently faces a particularly critical situation in which its ground water is contaminated to such an extent that bottled water is being provided for every use from drinking to bathing. This situation will continue until an acceptable solution is found. In the meantime, Superfund dollars are needed in order to maintain interim relief in the form of individual filters and to provide agency oversight of the independent "extent of contamination study."

Mr. Speaker, just last week, the other body passed this conference report by an overwhelming margin of 88 to 8. I urge my colleagues in the House to pass this urgently needed legislation by an equally wide margin. In this way, the American people will have spoken with a unified mind to our President: The cleanup of hazardous waste can no longer be delayed. The time is now. Thank you, Mr. Speaker.

Mr. CAMPBELL. Mr. Speaker, due to scheduling difficulties, I will miss the vote on final passage of the conference report to accompany H.R. 2005, reauthorizing the Superfund. Were I present, I would vote for this important legislation.

As a member of the Ways and Means Committee, which had partial jurisdiction over the bill, I was a cosponsor of a similar broad-based measure for I recognize the urgency of allowing the Environmental Protection Agency to resume the cleanup of hazardous waste-sites.

Mr. Speaker, it is expected that the conference report on H.R. 2005 will pass overwhelmingly, and I am pleased to express my support for this needed legislation.

Mr. GEPHARDT. Mr. Speaker, I rise today to voice my strong support for the passage of the conference report on the Superfund legislation. Any further delay in reauthorizing and refunding this program will have serious effects on the lives and property of countless Americans.

We cannot afford to not reauthorize Superfund. Throughout our country, there are as many as 10,000 hazardous waste sites. Our citizens want action. They have already waited to long.

In my own district and State, dioxin has disrupted whole communities. When dioxin is discovered, people must leave their homes and neighborhoods. Their plans and lives become disrupted by the day to day uncertainty as cleanup programs start and stop and as Agency cleanup plans change.

Just 3 weeks ago, the Environmental Protection Agency confirmed the existence of a new dioxin site in my own district, bringing to 45 the total number of toxic waste sites in Missouri. Once again, citizens in my area face a potential health risk and the burden of having to pick up and relocate.

I have always been a strong supporter of a Superfund Program that provides real results. In the past we simply haven't had the resources to do the job. The results have been sparse.

While this conference report does not contain the funding level which so many of us in the House feel to be necessary, it is a significant improvement over the program proposed by the administration and that originally passed in the other House.

This conference report—the product of so much effort on the part of many of my concerned colleagues—will provide real results. We can't eliminate all of the problems that have plagued the early years of Superfund, but this legislation will finally give us the resources to eliminate the bottlenecks and tackle the massive problem of hazardous waste. The American people are going to be the real winners.

Mr. DARDEN. Mr. Speaker, I am pleased to support this legislation which will provide for the cleanup of Superfund designated toxic waste sites and leaking underground storage tanks throughout the United States.

In May of this year, 1,700 waste-filled drums were discovered at a farm in Naomi, GA, within my district. The environmental protection division of the Georgia Department of Natural Resources stated that this site was the largest abandoned midnight dumping site ever discovered in Georgia. Since May, investigations have continued and local authorities believe they have identified the persons responsible for the dumping. The citizens of Walker County are lucky that a responsible party or organization may be identified. There are currently 703 abandoned sites on the national priority list which will require money from the Superfund for cleanup. At these sites no responsible party could be tracked down and identified for their criminal behavior. EPA believes that an additional 1,500 to 2,500 abandoned hazardous waste sites will be identified and placed on the national priorities list. I am pleased the community of Naomi will be restored to its former pristine beauty by the parties determined responsible for its chemical degradation.

However, for those communities within Georgia and the Nation which cannot identify

the criminals who have knowingly dumped hazardous chemicals on our land, I strongly endorse the passage of this bill which will establish the funds and the guidelines for the restoration of the land to its original nontoxic beauty.

This bill will reauthorize the Superfund Program for 5 years providing $9 billion to clean toxic waste sites and leaking underground storage tanks. The bill establishes schedules for the cleanup of 375 Superfund waste sites within 5 years of enactment. Cleanup efforts must begin at 175 waste sites within the first 3 years. The conference agreement sets nonbinding goals for the EPA to begin initial evaluation of sites to determine whether they should be on the national priority list, which makes them eligible for Superfund cleanup.

Provisions are included which will allow citizens to sue EPA or other Federal agencies for failure to carry out mandatory duties set out in this legislation, and to sue anyone that may be violating the requirements of the Superfund Act.

Additional provisions require the establishment of a program designed to provide the public and community emergency personnel with information about hazardous chemicals being produced or handled at local plants. The bill requires Governors to appoint State emergency response committees. The local committees must develop a plan on how to respond to community emergencies resulting from the release of dangerous chemicals.

The legislation also requires that certain types of facilities and plants submit material safety data sheets to the local emergency response committees. These sheets must include the identity of the hazardous chemicals stored or produced at local plants, the health hazards of the chemicals, and methods to treat exposure to the chemicals. The bill also requires these same facilities to submit emergency inventory forms, which specify the amounts and location of hazardous chemicals.

On behalf of all communities in the Nation that have experienced the discovery of toxic waste sites and never identified the responsible parties, I ask that my colleagues support this legislation and pass H.R. 2005, the reauthorization of Superfund.

Mrs. ROUKEMA. Mr. Speaker, today I would again stress my strong support for the Superfund conference report, and urge the President to sign the bill in recognition that this compromise measure is the best that can be arrived at to save this critically needed program.

It has been a long and unnecessarily contentious battle that brings us to this day, and I deeply regret of delays Congress has faced in its reauthorization efforts. Reauthorization of the Superfund Program continues to be the highest environmental priority for the people of New Jersey and for the citizens of our Nation, yet Congress has allowed the program to languish in uncertainty for an entire year. Fortunately, this situation will now come to an end with our approval of this conference agreement.

It would be hard to overstate the importance of this program. At thousands of sites across the country, toxic chemicals are poisoning our air, land, and groundwater. Nationwide there are 850 sites on the national priorities list, 98 of which are in New Jersey alone. My own district in northern New Jersey contains 4 sites listed on the national priorities list. The A.O. Polymer Co. in Sparta, the Maywood Chemical Co. in Maywood and Rochelle Park, the Metaltech/Aerosystems Co. in Franklin, and the Ringwood Mines and Landfill in Ringwood are all at various stages of cleanup actions under the Superfund Program. In fact, the Environmental Protection Agency last week was forced to give 30-day notice to contractors at the Metaltec/Aerosystems site that funding could run out before Congress acted. Fortunately, our actions today will alleviate this problem.

The compromise worked out by the conference committee is an equitable one, and deserves the support of my colleagues. It would authorize $8.5 billion over the next 5 years to clean up the Nation's worst abandoned hazardous waste sites. The costs of the program will be paid for through a mixture of feedstock chemical taxes, increased crude oil taxes, a broad-based value added tax on large manufacturers, and through general Government revenues. This system will retain the important principle that polluters should pay for the harm they cause to the environment, yet will also recognize that hazardous waste cleanup is a broad societal problem, the solution to which will benefit us all. The conference agreement, furthermore, will set forth stringent national standards for the cleanup of Superfund sites, will establish important community right-to-know rules, and will direct EPA to meet a strict schedule for beginning hazardous waste cleanups across the country.

Another important provision in the bill is the $5 million it provides for EPA programs to deal with the problem of naturally occurring radon gas. The serious health threat posed by natural radon has only recently come to the attention of the scientific and health community, and this important funding will go far in determining the extent of the radon hazard across the country.

The Superfund Program addresses literally life and death issues for our people and our environment. The health of present and future generations are in jeopardy—neighborhoods uninhabitable, people who cannot use tap water because of degradation of water supplies—and the problems continue to multiply. For these reasons I plead with President Reagan to sign this legislation into law. Mr. President, you have been a great leader. The hallmark of your Presidency has been your vision and your understanding of basic values. I ask you now—listen to the anxiety and concern in the voices of the American people who in poll after poll show they understand that degradation of the environment is irreversible. The people know that there is no price tag that can be attached to the human toll of death and suffering that we invite by inaction.

Mr. President, as you yourself have said, we are not a people who know the price of everything and the value of nothing. The people know the value of a clean environment is priceless. Society will pay—either now or later—and the toll on human health and the economic costs will only be greater.

Mr. President, listen to the experts, listen to the voices of the people. Sign the Superfund bill into law.

Mr. BROOMFIELD. Mr. Speaker, I am pleased that the Congress has finally come to this important point where we can revise and reauthorize the Superfund legislation.

This is an extremely important program and the conferees have accomplished a termendous task in bringing this bill before us. While I am sure each of us would prefer to change some part of the conference recommendations if we could, the over-all legislation deserve to be passed, and this important program needs to be reauthorized.

I wish to draw attention to one particular aspect of the bill, however. Section 110 of the bill requires the Agency for Toxic Substances and Disease Registry [ATSDR] to conduct national health studies at each of the National Priorities List [NPL] sites as well as at other sites if requested. This is an important step in trying to scientifically determine the relationship between substances at the NPL hazardous waste sites and possible human health effects. It will do much to increase our own general knowledge as well as address the fears of those who live and work in the vicinity of these sites.

However, a note of caution should be added in terms of trying to establish legal causation in an individual toxic tort case. These studies should not be considered as the final word with regard to individual health effects or injyry possibly caused by hazardous waste site exposure. Many factors from various chemicals acting together to combine life-style and genetic factors may or may not be involved in an injury, and these factors should be fully studied before trying to establish a predictive value to the required health studies.

Where the scientific data proves relevant, the health studies data may, of course, be admitted as evidence in litigation in accord with the existing rules of evidence. The data should not, however, have a greater weight than would otherwise be accorded such a general assessment of potential health risks beyond what the scientific data would allow. There is, of course, no presumption that such studies are in and of themselves either adminissable or relevant in any particular case.

With this caution about section 110, I would hope that the ATSDR will move expeditiously on the studies, and that my colleagues in the house will act to finally reauthorize this Superfund Program.

The SPEAKER pro tempore (Mr. PANETTA). Without objection, the previous question is ordered on the conference report.

There was no objection.

The SPEAKER pro tempore. The question is on the conference report.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. CRANE. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 386, nays 27, answered "present" 1, not voting 18, as follows:

[Roll No. 443]

YEAS—386

Abercrombie	Dornan (CA)	Jones (TN)
Ackerman	Dowdy	Kanjorski
Akaka	Downey	Kaptur
Alexander	Dreier	Kasich
Anderson	Duncan	Kastenmeier
Andrews	Durbin	Kennelly
Annunzio	Dwyer	Kildee
Anthony	Dymally	Kleczka
Applegate	Dyson	Kolbe
Aspin	Early	Kolter
Atkins	Eckart (OH)	Kostmayer
AuCoin	Eckert (NY)	Kramer
Badham	Edgar	LaFalce
Barnes	Edwards (CA)	Lagomarsino
Bartlett	Emerson	Lantos
Barton	Erdreich	Latta
Bateman	Evans (IA)	Leach (IA)
Bates	Evans (IL)	Leath (TX)
Bedell	Fascell	Lehman (CA)
Beilenson	Fawell	Lehman (FL)
Bennett	Fazio	Leland
Bentley	Feighan	Lent
Bereuter	Fiedler	Levin (MI)
Berman	Fields	Levine (CA)
Bevill	Fish	Lewis (CA)
Biaggi	Flippo	Lewis (FL)
Bilirakis	Florio	Lipinski
Billey	Foglietta	Livingston
Boehlert	Foley	Lloyd
Boggs	Ford (MI)	Loeffler
Boland	Ford (TN)	Long
Boner (TN)	Frank	Lowery (CA)
Bonior (MI)	Franklin	Lowry (WA)
Bonker	Frenzel	Lujan
Bosco	Frost	Luken
Boucher	Fuqua	Lundine
Boulter	Gallo	Lungren
Boxer	Garcia	MacKay
Brooks	Gaydos	Madigan
Broomfield	Gejdenson	Manton
Brown (CA)	Gekas	Markey
Brown (CO)	Gibbons	Martin (IL)
Bruce	Gilman	Martin (NY)
Bryant	Gingrich	Martinez
Bustamante	Glickman	Matsui
Byron	Gonzalez	Mavroules
Carney	Goodling	Mazzoli
Carper	Gordon	McCain
Carr	Gradison	McCandless
Chandler	Gray (IL)	McCloskey
Chapman	Gray (PA)	McCollum
Chappell	Green	McCurdy
Chappie	Gregg	McDade
Clay	Guarini	McEwen
Clinger	Gunderson	McGrath
Coats	Hall (OH)	McHugh
Cobey	Hall, Ralph	McKernan
Coble	Hamilton	McKinney
Coelho	Hansen	McMillan
Coleman (MO)	Hatcher	Meyers
Coleman (TX)	Hawkins	Mica
Collins	Hayes	Michel
Conte	Hefner	Mikulski
Conyers	Hendon	Miller (CA)
Cooper	Henry	Miller (OH)
Coughlin	Hertel	Miller (WA)
Courter	Hiler	Mineta
Coyne	Hillis	Mitchell
Craig	Holt	Moakley
Crockett	Hopkins	Molinari
Daniel	Horton	Mollohan
Dannemeyer	Howard	Monson
Darden	Hoyer	Montgomery
Daschle	Hubbard	Moody
Davis	Huckaby	Moorhead
de la Garza	Hughes	Morrison (CT)
Dellums	Hunter	Morrison (WA)
Derrick	Hutto	Mrazek
DeWine	Hyde	Murphy
Dicks	Ireland	Murtha
Dingell	Jacobs	Myers
DioGuardi	Jeffords	Natcher
Dixon	Jenkins	Neal
Donnelly	Johnson	Nelson
Dorgan (ND)	Jones (NC)	Nichols
Nielson	Scheuer	Synar
Nowak	Schneider	Tallon
Oakar	Schroeder	Tauzin
Oberstar	Schuette	Thomas (CA)
Obey	Schulze	Thomas (GA)
Olin	Schumer	Torres
Ortiz	Seiberling	Torricelli
Owens	Sensenbrenner	Towns
Oxley	Sharp	Traficant
Packard	Shaw	Traxler
Panetta	Shelby	Udall
Parris	Shumway	Valentine
Pashayan	Sikorski	Vander Jagt
Pease	Siljander	Vento
Penny	Sisisky	Visclosky
Pepper	Skelton	Volkmer
Perkins	Slattery	Vucanovich
Petri	Slaughter	Waldon
Pickle	Smith (FL)	Walgren
Porter	Smith (IA)	Watkins
Price	Smith (NE)	Waxman
Pursell	Smith (NJ)	Weaver
Quillen	Smith, Robert (NH)	Weber
Rahall		Wheat
Rangel	Smith, Robert (OR)	Whitehurst
Ray		Whitley
Regula	Snowe	Whittaker
Reid	Snyder	Whitten
Richardson	Solarz	Williams
Ridge	Solomon	Wilson
Rinaldo	Spence	Wirth
Rodino	Spratt	Wise
Roe	St Germain	Wolf
Rogers	Staggers	Wolpe
Rostenkowski	Stallings	Wortley
Roth	Stangeland	Wright
Roukema	Stenholm	Wyden
Rowland (CT)	Stokes	Wylie
Rowland (GA)	Strang	Yates
Roybal	Stratton	Yatron
Russo	Studds	Young (FL)
Sabo	Sundquist	Young (MO)
Savage	Sweeney	Zschau
Saxton	Swift	
Schaefer	Swindall	

NAYS—27

Archer	Edwards (OK)	Shuster
Armey	Hammerschmidt	Skeen
Burton (IN)	Kemp	Smith, Denny (OR)
Callahan	Lightfoot	
Cheney	Lott	Stump
Combest	Mack	Taylor
Crane	Marlenee	Walker
Daub	Roberts	Young (AK)
DeLay	Robinson	
Dickinson	Rudd	

ANSWERED "PRESENT"—1

English

NOT VOTING—18

Barnard	Gephardt	Ritter
Borski	Grotberg	Roemer
Breaux	Hartnett	Rose
Burton (CA)	Jones (OK)	Stark
Campbell	Kindness	Tauke
Fowler	Moore	Weiss

□ 1900

The Clerk announced the following pair:

On this vote:

Mr. Jones of Oklahoma for, with Mr. English against.

Mr. MORRISON of Washington, Mr. SILJANDER, and Mrs. SMITH of Nebraska changed their votes from "nay" to "yea."

Mr. ENGLISH changed his vote from "nay" to "present."

Mr. ENGLISH. Mr. Speaker, I have a live pair with the gentleman from Oklahoma [Mr. JONES]. If he were present, he would have voted "yea." I voted "nay." I withdraw my vote and vote "present."

So the conference report was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. ECKART of Ohio. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the conference report just agreed to.

The SPEAKER pro tempore (Mr. PANETTA). Is there objection to the request of the gentleman from Ohio?

There was no objection.

PERSONAL EXPLANATION

Mr. RITTER. Mr. Speaker, I was absent from the floor at the time of the vote on the Superfund bill. Had I been here I would have joined my colleagues, the 386 other Members of the House who supported the Superfund bill.

I would add that I supported this bill strongly in subcommittee and in full committee; I voted for it on the floor of the House, and as I have said, had I been present, I would have voted for the conference report which was agreed to just a short while ago.

FURTHER MESSAGE FROM THE SENATE

A further message from the Senate by Mr. Hallen, one of its clerks, announced that the Senate had passed without amendment joint resolutions of the House of the following titles:

H.J. Res. 748. Joint resolution making further continuing appropriations for the fiscal year 1987, and for other purposes; and

H.J. Res. 749. Joint resolution waiving the printing on parchment of certain enrolled bills and joint resolutions during the remainder of the 2d session of the 99th Congress.

FURTHER CONTINUING APPROPRIATIONS, 1987

Mr. WHITTEN. Mr. Speaker, I ask unanimous consent that the Committee on Appropriations be discharged from further consideration of the joint resolution (H.J. Res. 750) making further continuing appropriations for the fiscal year 1987, and for other purposes, and ask for its immediate consideration in the House.

The Clerk read the title of the joint resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Mississippi?

Mr. CONTE. Mr. Speaker, reserving the right to object, I do so only to ask my chairman to affirm my understanding that the joint resolution at the desk differs from the joint resolution passed earlier today in only one

respect, namely: that the Senate amendment No. 126 in the Transportation appropriations conference agreement would not be incorporated by reference by this joint resolution.

Mr. WHITTEN. The gentleman is correct.

The only change is the provision having to do with amendment No. 126 which I present here. May I say in advance that this leaves the question in the conference report and in House Joint Resolution 738 as a different matter entirely. This is so we can proceed today so that we can keep the Government from closing.

Mr. Speaker, it is my understanding that the President will veto the short-term continuing resolution which both the House and Senate passed earlier, because the conference report on the transportation appropriations bill contained an amendment concerning the air traffic controllers that was unacceptable.

In my opinion, since the passed resolution is only for 2 days, it is not necessary to deal with this issue in the short-term resolution. Therefore, I am presenting a resolution identical to the resolution passed earlier except it contains the following language: "Except that such conference agreement shall be considered as not including those provisions in section 331 of H.R. 2505 as passed the House of Representatives July 30, 1986." This language eliminates any reference to the air traffic controllers and avoids disruption of the Government at this time.

Again, this resolution is identical to that passed earlier except with respect to the issue governing the air traffic controllers. It goes to October 10, 1986.

Mr. CONTE. Mr. Speaker, with that explanation, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Mississippi?

Mr. LOTT. Mr. Speaker, reserving the right to object, I will be very brief. I had not heard and could not understand all of the discussion. I just want to repeat what I understand we are doing here.

This is another 2-day continuing resolution that does not include the reference to the language in the transportation conference report with regard to the air traffic controllers. That was an issue which the President had indicated very clearly that he would veto any continuing resolution along with some others, if it was included in a continuing resolution. That is why he has indicated he would veto it, and therefore that is being taken out. Other than that, this is a simple 2-day straight continuing resolution, is that correct?

Mr. WHITTEN. That is correct.

Mr. LOTT. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Mississippi?

Mr. WALKER. Reserving the right to object, Mr. Speaker, I do so to ask two questions.

First of all, the gentleman's request is for consideration only, the House will have a chance to vote on the measure, is that correct?

Mr. WHITTEN. Mr. Speaker, will the gentleman yield?

Mr. WALKER. I yield to the gentleman from Mississippi [Mr. WHITTEN].

Mr. WHITTEN. I thank the gentleman for yielding.

That is correct.

Mr. WALKER. I thank the gentleman.

Further reserving the right to object, does this particular congressional resolution also include the new section, the legislative language on the drug enforcement program?

Mr. WHITTEN. It contains exactly what we passed earlier except for that change which I mentioned.

Mr. WALKER. So the section that has the $100,000 in it for a drug program is also included in this particular resolution?

Mr. WHITTEN. I will correct the gentleman again: the money is already available at this time, the $100,000 is money they already have.

Mr. WALKER. Well, again I would say to the gentleman, further reserving the right to object, I have had a chance to check on that since we had the discussion the last time, and I am told that that is not the case, that there is no such money available and that we are in fact impacting on the drug program that we passed earlier today. But the gentleman evidently has a difference of opinion with that. That is the opinion that I get from some legal experts.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Mississippi?

Mr. LEHMAN of Florida. Mr. Speaker, reserving the right to object, I would like to ask the gentleman from Mississippi [Mr. WHITTEN] about the President's problem with the transportation section of the continuing resolution. This requirement to allow the rehiring of air traffic controllers is referenced because we have now filed our conference report. Is not that the customary way we deal with a short-term continuing resolution when we have filed a conference report?

Mr. WHITTEN. Mr. Speaker, will the gentleman yield?

Mr. LEHMAN of Florida. I yield to the chairman, the gentleman from Mississippi [Mr. WHITTEN].

Mr. WHITTEN. I thank the gentleman for yielding.

May I say to my colleague, the chairman of the Subcommittee on Transportation Appropriations, that this in no way resolves, or solves or does anything about the other. This is just a 2-day extension so that we may stay in business. It in no way reflects or settles that problem.

Mr. LEHMAN of Florida. I want to say that I think it is most unfortunate that the President vetoed the short-term continuing resolution for this reason, when for 1 day we have already allowed permission for this—we have already removed the prohibition for hiring air traffic controllers.

Mr. WHITTEN. It leaves that intact.

Mr. LEHMAN of Florida. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Mississippi?

There was no objection.

The Clerk read the joint resolution, as follows:

H.J. RES. 750

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are hereby appropriated, out of any money in the Treasury not otherwise appropriated, and out of applicable corporate and other revenues, receipts, and funds, for the several departments, agencies, corporations, and other organizational units of the Government for the fiscal year 1987, and for other purposes, namely:

SEC. 101. (a)(1) Such amounts as may be necessary are hereby appropriated for programs, projects, or activities, not otherwise specifically provided for in this joint resolution, for which appropriations, funds, or other authority would be available in the following appropriation Acts:

District of Columbia Appropriations Act, 1987, H.R. 5175 as passed by the House on July 24, 1986, and as passed by the Senate on September 16, 1986;

Department of the Interior and Related Agencies Appropriations Act, 1987, H.R. 5234 as passed by the House on July 31, 1986, and as passed by the Senate on September 16, 1986;

Military Construction Appropriations Act, 1987, H.R. 5052 as passed by the House on June 25, 1986, and as passed by the Senate on August 13, 1986; and

(2) Appropriations made by this subsection shall be available to the extent and in the manner which would be provided by the pertinent appropriations Act.

(3) Whenever the amount which would be made available or the authority which would be granted under the Act listed in this subsection as passed by the House is different from that which would be available or granted under such Act as passed by the Senate, the pertinent program project, or activity shall be continued under the lesser amount or the more restrictive authority: *Provided,* That where an item is included in only one version of an Act as passed by both Houses as of October 1, 1986, the pertinent program, project, or activity shall be continued under the appropriation, fund, or authority granted by the one House, but at a rate for operations not exceeding the current rate or the rate permitted by the action of the one House, whichever is lower, and under the authority and

conditions provided in applicable appropriation Acts for the fiscal year 1986.

(4) No provision which is included in an appropriations Act enumerated in this subsection but which was not included in the applicable appropriations Act of 1986, and which by its terms is applicable to more than one appropriation, fund, or authority shall be applicable to any appropriation, fund, or authority provided in the joint resolution unless such provision shall have been included in identical form in such bill as enacted by both the House and Senate.

(5) No appropriation or fund made available or authority granted pursuant to this subsection shall be used to initiate or resume any project or activity for which appropriations, funds, or other authority were not available during the fiscal year 1986.

(b)(1) Such amounts as may be necessary are hereby appropriated for programs, projects, or activities, not otherwise specifically provided for in this joint resolution, for which appropriations, funds, or other authority would be available in the following appropriations Acts:

Agriculture, Rural Development, and Related Agencies Appropriations Act, 1987, H.R. 5177 as passed by the House on July 24, 1986;

Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1987, H.R. 5161 as passed by the House on July 17, 1986;

Department of Defense Appropriations Act, 1987, H.R. 5438 as provided for in section 101(c) of H.J. Res. 738 which passed the House on September 25, 1986, and such Act shall be deemed to have passed the House for purposes of this joint resolution;

Energy and Water Development Appropriations Act, 1987, H.R. 5162 as passed by the House on July 23, 1986;

Foreign Assistance and Related Programs Appropriations Act, 1987, H.R. 5339 as provided for in section 101(f) of H.J. Res. 738 which passed the House on September 25, 1986, and such Act shall be deemed to have passed the House for purposes of this joint resolution;

Treasury, Postal Service, and General Government Appropriations Act, 1987, H.R. 5294 as passed by the House on August 6, 1986.

(2) Appropriations made by this subsection shall be available to the extent and in the manner which would be provided by the pertinent appropriations Act.

(3) Whenever an Act listed in this subsection has been passed by only the House as of October 1, 1986, the pertinent program, project, or activity shall be continued under the appropriation, fund, or authority granted by the House, at a rate of operations not exceeding the current rate or the rate permitted by the action of the House whichever is lower, and under the authority and conditions provided in applicable appropriations Acts for the fiscal year 1986.

(4) No appropriation or fund made available or authority granted pursuant to this subsection shall be used to initiate or resume any project or activity for which appropriations, funds, or other authority were not available during the fiscal year 1986.

(c) Such amounts as may be necessary are hereby appropriated for programs, projects, or activities provided for in H.R. 5203, the Legislative Branch Appropriations Act, 1987, to the extent and in the manner provided for in the conference report and joint explanatory statement of the committee of conference (House Report 99-805) as filed in the House of Representatives on August 15, 1986, as if enacted into law.

(d) Such amounts as may be necessary are hereby appropriated for programs, projects, or activities provided for in H.R. 5313, the Department of Housing and Urban Development-Independent Agencies Appropriations Act, 1987, to the extent and in the manner provided for in the conference report and joint explanatory statement of the committee of conference (House Report 99-977) as filed in the House of Representatives on October 7, 1986, as if enacted into law.

(e) Such amounts as may be necessary are hereby appropriated for progams, projects, or activities provided for in H.R. 5233, the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1987, to the extent and in the manner provided for in the conference report and joint explanatory statement of the committee of conference (House Report 99-960) as filed in the House of Representatives on October 2, 1986, as if enacted into law.

(f) Such amounts as may be necessary are hereby appropriated for programs, porjects, or activities provided for in H.R. 5205, the Department of Transportation and Related Agencies Appropriations Act, 1987, to the extent and in the manner provided for in the conference report and joint explanatory statement of the committee of conference (House Report 99-976) as filed in the House of Representatives on October 7, 1986, as if enacted into law except that such conference agreement shall be considered as not including those provisions in Section 331 of H.R. 5205 as passed the House of Representatives on July 30, 1986.

(g) Such amounts as may be necessary for continuing the following activities, not otherwise provided for in this joint resolution, which were conducted in the fiscal year 1986, under the terms and conditions provided in applicable appropriations Acts for the fiscal year 1986, at the current rate or as otherwise provided herein: *Provided*, That no appropriation or fund made available or authority granted pursuant to this subsection shall be used to initiate or resume any project or activity for which appropriations, funds, or authority were not available during fiscal year 1986 unless otherwise provided for herein:

Refugee and entrant assistance activities authorized by title IV of the Immigration and Nationality Act, part B of title III of the Refugee Act of 1980, and section 501 of the Refugee Education Assistance Act of 1980 except that no activity authorized by such Acts shall be funded beyond September 30, 1987; and

Activities authorized by the Follow Through Act.

SEC. 102. Unless otherwise provided for in this joint resolution or in the applicable appropriations Act, appropriations and funds made available and authority granted pursuant to this joint resolution shall be available from October 1, 1986, and shall remain available until (a) enactment into law of an appropriation for any project or activity provided for in this joint resolution, or (b) enactment of the applicable appropriations Act by both Houses without any provision for such project or activity, or (c) October 10, 1986, whichever first occurs.

SEC. 103. Appropriations made and authority granted pursuant to this joint resolution shall cover all obligations or expenditures incurred for any project or activity during the period for which funds or authority for such project or activity are available under this joint resolution.

SEC. 104. Expenditures made pursuant to this joint resolution shall be charged to the applicable appropriation, fund, or authorization whenever a bill in which such applicable appropriation, fund, or authorization is contained is enacted into law.

SEC. 105. No provision in any appropriations Act for the fiscal year 1987 referred to in section 101 of this joint resolution that makes the availability of any appropriation provided therein dependent upon the enactment of additional authorizing or other legislation shall be effective before the date set forth in section 102(c) of this joint resolution.

SEC. 106. Appropriations and funds made available or authority granted pursuant to this joint resolution may be used without regard to the time limitations for submission and approval of apportionments set forth in section 1513 of title 31, United States Code, but nothing herein shall be construed to waive any other provision of law governing the apportionment of funds.

DRUG COORDINATION PLAN

SEC. 107. Pending the enactment of the Omnibus Drug Supplement Appropriations Act of 1987, contained as Title II of the fiscal year 1987 Continuing Appropriations Act of 1987 (H.J. Res. 738), the President or his designee shall, out of the $1,200,000,000 made available for drug abuse prevention programs by House Joint Resolution 738 and continued by this resolution and in the regular appropriations bills for the fiscal year 1987, with the cooperation of those presently engaged in this effort in the executive departments, Members of Congress and others experienced in the field of law enforcement, use $100,000 to develop an overall drug abuse prevention plan that coordinates the government's efforts in combating the widespread use of illegal drugs: *Provided*, That this plan shall be presented to the Congress no later than January 1, 1987.

Mr. SPEAKER pro tempore. The gentleman from Mississippi [Mr. WHITTEN] is recognized for 1 hour.

Mr. WHITTEN. Mr. Speaker, I have no requests for time, and I desire no further time myself.

The SPEAKER pro tempore. Without objection, the previous question is ordered.

There was no objection.

The SPEAKER pro tempore. The question is on engrossment and third reading of the joint resolution.

The joint resolution was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the joint resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. WALKER. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 255, nays 150, answered "present" 1, not voting 26, as follows:

[Roll No. 444]

YEAS—255

Abercrombie	Anderson	Applegate
Ackerman	Andrews	Aspin
Akaka	Annunzio	Atkins
Alexander	Anthony	AuCoin

Barnes
Bateman
Bedell
Beilenson
Bennett
Bentley
Berman
Bevill
Biaggi
Billey
Boggs
Boland
Boner (TN)
Bonior (MI)
Bosco
Boucher
Boulter
Boxer
Brooks
Brown (CA)
Bryant
Bustamante
Carper
Carr
Chapman
Chappell
Clinger
Coelho
Coleman (TX)
Collins
Conte
Cooper
Coughlin
Coyne
Crockett
Daniel
Darden
Davis
de la Garza
Dellums
Derrick
Dicks
Dingell
DioGuardi
Dixon
Donnelly
Dorgan (ND)
Dowdy
Downey
Durbin
Dwyer
Dymally
Dyson
Early
Edwards (CA)
English
Erdreich
Evans (IL)
Fascell
Fazio
Feighan
Fish
Flippo
Florio
Foglietta
Foley
Ford (TN)
Frank
Franklin
Frost
Fuqua
Garcia
Gaydos
Gejdenson
Gibbons
Glickman
Goodling
Gordon
Gradison
Gray (IL)
Gray (PA)
Green
Guarini
Hamilton
Hatcher
Hayes
Hefner
Hendon
Hillis
Holt
Horton
Howard
Hoyer
Huckaby
Hughes
Hutto
Jacobs
Jeffords
Jenkins
Johnson
Jones (NC)
Jones (TN)
Kanjorski
Kaptur
Kastenmeier
Kennelly
Kildee
Kleczka
Kolter
Kostmayer
Lantos
Leath (TX)
Lehman (CA)
Lehman (FL)
Leland
Levin (MI)
Levine (CA)
Lipinski
Livingston
Lloyd
Loeffler
Long
Lowry (WA)
Luken
MacKay
Markey
Matsui
Mavroules
Mazzoli
McCloskey
McCurdy
McDade
McHugh
McKinney
McMillan
Mica
Mikulski
Miller (CA)
Miller (OH)
Mineta
Moakley
Mollohan
Montgomery
Moody
Morrison (CT)
Mrazek
Murphy
Murtha
Myers
Natcher
Neal
Nelson
Nichols
Nowak
Oakar
Oberstar
Obey
Olin
Ortiz
Owens
Panetta
Parris
Pease
Pepper
Perkins
Pickle
Price
Rahall
Rangel
Reid
Richardson
Rinaldo
Ritter
Rodino
Roe
Rogers
Rostenkowski
Rowland (CT)
Rowland (GA)
Roybal
Rudd
Sabo
Savage
Saxton
Scheuer
Schneider
Schuette
Schumer
Seiberling
Sharp
Sisisky
Skeen
Skelton
Smith (FL)
Smith (IA)
Smith (NJ)
Snyder
Solarz
Spratt
St Germain
Staggers
Stratton
Studds
Sweeney
Swift
Synar
Tallon
Tauzin
Thomas (GA)
Torres
Torricelli
Towns
Traficant
Traxler
Udall
Valentine
Vander Jagt
Vento
Visclosky
Volkmer
Vucanovich
Waldon
Walgren
Watkins
Waxman
Weaver
Wheat
Whitehurst
Whitley
Whitten
Williams
Wilson
Wise
Wolf
Wolpe
Wortley
Wright
Wyden
Wylie
Yatron
Young (AK)
Young (FL)
Young (MO)

NAYS—150

Archer
Armey
Badham
Bartlett
Barton
Bates
Bereuter
Bilirakis
Boehlert
Broomfield
Brown (CO)
Bruce
Burton (IN)
Byron
Callahan
Carney
Chandler
Chappie
Cheney
Clay
Coats
Cobey
Coble
Coleman (MO)
Combest
Conyers
Courter
Craig
Crane
Dannemeyer
Daschle
Daub
DeLay
DeWine
Dickinson
Dornan (CA)
Dreier
Duncan
Eckart (OH)
Eckert (NY)
Edwards (OK)
Emerson
Evans (IA)
Fawell
Fiedler
Fields
Ford (MI)
Frenzel
Gallo
Gekas
Gilman
Gingrich
Gregg
Gunderson
Hall (OH)
Hall, Ralph
Hammerschmidt
Hansen
Henry
Hertel
Hiler
Hopkins
Hubbard
Hunter
Hyde
Ireland
Kasich
Kemp
Kolbe
Kramer
Lagomarsino
Latta
Leach (IA)
Lent
Lewis (CA)
Lewis (FL)
Lightfoot
Lott
Lowery (CA)
Lujan
Lungren
Mack
Madigan
Marlenee
Martin (IL)
Martin (NY)
Martinez
McCain
McCandless
McCollum
McEwen
McGrath
McKernan
Meyers
Michel
Miller (WA)
Molinari
Monson
Moorhead
Morrison (WA)
Nielson
Oxley
Packard
Pashayan
Penny
Petri
Porter
Pursell
Quillen
Ray
Regula
Ridge
Roberts
Robinson
Roth
Roukema
Russo
Schaefer
Schroeder
Schulze
Sensenbrenner
Shaw
Shelby
Shumway
Shuster
Sikorski
Siljander
Slattery
Slaughter
Smith, Denny (OR)
Smith, Robert (NH)
Smith, Robert (OR)
Snowe
Solomon
Spence
Stallings
Stangeland
Stenholm
Stokes
Strang
Stump
Sundquist
Swindall
Taylor
Thomas (CA)
Walker
Weber
Whittaker
Wirth
Zschau

ANSWERED "PRESENT"—1

Gonzalez

NOT VOTING—26

Barnard
Bonker
Borski
Breaux
Burton (CA)
Campbell
Edgar
Fowler
Gephardt
Grotberg
Hartnett
Hawkins
Jones (OK)
Kindness
LaFalce
Lundine
Manton
Mitchell
Moore
Roemer
Rose
Smith (NE)
Stark
Tauke
Weiss
Yates

□ 1925

The Clerk announced the following pair:

On this vote:

Mr. Hawkins for, with Mr. Tauke against.

So the joint resolution was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

DESIGNATION OF HON. THOMAS S. FOLEY TO ACT AS SPEAKER PRO TEMPORE TO SIGN ENROLLED BILLS AND JOINT RESOLUTIONS UNTIL NOON ON OCTOBER 9, 1986

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, DC,
October 8, 1986.

I hereby designate the Honorable THOMAS S. FOLEY to act as Speaker pro tempore to sign enrolled bills and joint resolutions until noon on October 9, 1986.

THOMAS P. O'NEILL, JR.,
Speaker of the House of Representatives.

The SPEAKER pro tempore. Without objection, the designation is agreed to.

There was no objection.

WILD AND SCENIC RIVERS ACT AMENDMENTS

Mr. VENTO. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 4350) to amend the Wild and Scenic Rivers Act, and for other purposes, with a Senate amendment thereto, and concur in the Senate amendment with amendments.

The Clerk read the title of the bill.

The Clerk read the Senate amendment and the House amendments to the Senate amendment, as follows:

Senate amendment:

Strike out all after the enacting clause and insert:

TITLE I—CACHE LA POUDRE, COLORADO

SEC. 101. Section 3(a) of the Wild and Scenic River Act (16 U.S.C. 1274) is amended by adding at the end the following new paragraph:

"(56) CACHE LA POUDRE, COLORADO.—The following segments as generally depicted on the proposed boundary map number FS-56 and dated March 1986, published by the United States Department of Agriculture, each to be administered by the Secretary of Agriculture; except that those portions of the segments so designated which are within the boundary of Rocky Mountain National Park shall continue to be administered by the Secretary of the Interior:

"(A) Beginning at Poudre Lake downstream to the confluence of Joe Wright Creek, as a wild river. This segment to be designated the "Peter H. Dominick Wild River Area".

"(B) Downstream from the confluence of Joe Wright Creek to a point where the river intersects the easterly north-south line of the west half southwest quarter of section 1, township 8 north, range 71 west of the sixth principal meridian, as a recreational river.

"(C) South Fork of the Cache la Poudre River from its source to the Commanche Peak Wilderness Boundary, approximately four miles, as a wild river.

"(D) Beginning at the Commanche Peak Wilderness Boundary to a point on the South Fork of the Cache la Poudre River in section 1, township 7 north, range 73 west of the sixth principal meridian, at elevation 8050 mean sea level, as a recreational river.

"(E) South Fork of the Cache la Poudre River from its intersection with the easterly section line of section 30, township 8 north, range 72 west of the sixth principal meridian, to confluence of the main stem of the Cache la Poudre River, as a wild river.

With respect to the portions of the river segments designated by this paragraph which are within the boundaries of Rocky Mountain National Park, the requirements of section 102 shall be fulfilled by the Secretary of the Interior through appropriate revisions to the general management plan for the park, and the boundaries, classification, and development plans for such portions need not be published in the Federal Register. Such revisions to the general management plan for the park shall assure that no development or use of parklands shall be undertaken that is inconsistent with the designation of such river segments as a wild

river. For the purposes of the segments designated by this paragraph, there are authorized to be appropriated $500,000 for development and $2,500,000 for land acquisition.".

SEC. 102. Inclusion of the designated portions of the Cache la Poudre River and the Wild and Scenic Rivers system under section 101 of this title shall not interfere with the exercise of existing decreed water rights to water which has heretofore been stored or diverted by means of the present capacity of storage, conveyance, or diversion structures that exist as of the date of enactment of this title, or operation and maintenance of such structures. Nor shall inclusion of the designated portions of the Cache la Poudre River in the Wild and Scenic Rivers System be utilized in any Federal proceeding, whether concerning a license, permit, right-of-way, or other Federal action, as a reason or basis to prohibit the development or operation of any water impoundments, diversion facilities, and hydroelectric power and transmission facilities below Poudre Park located entirely downstream from and potentially affecting designated portions of the Cache la Poudre River, or relocation of highway 14 to any point east of the north-south half section line of section 2, township 8 north, range 71 west of the sixth principal meridian, as necessary to provide access to Poudre Park around such facilities: Provided, That due consideration shall be given to reasonable measures for minimizing the impact of such facilities and road relocation on the designated segments. Congress finds that development of water impoundments, diversion facilities, and hydroelectric power and transmission facilities located entirely downstream from the designated portions of the Cache la Poudre River below Poudre Park, in accordance with the provisions of this section, is not incompatible with the designation of portions of the Cache la Poudre River in the Wild and Scenic Rivers system under section 101 of this title. The reservation of water established by the inclusion of portions of the Cache la Poudre River in the Wild and Scenic Rivers System shall be subject to the provisions of this title, shall be adjudicated in Colorado Water Court, and shall have a priority date as of the date of enactment of this title.

SEC. 103. (a) GRANTS AND ASSISTANCE.—The Secretary of Agriculture, acting through the Chief of the Forest Service, shall provide grants and technical assistance to the City of Fort Collins, Colorado, to carry out a study regarding the designation of the following area as a national recreation area: the 18.5-mile segment of the Cache la Poudre River Corridor from the northwest boundary of the city of Fort Collins urban growth area to the Weld-Larimer County line.

(b) STUDY.—The study under this section shall include each of the following:

(A) a comprehensive evaluation of the public recreation opportunities and flood plain management options which are available with respect to the river corridor involved;

(B) an evaluation of the natural, historical, and recreational values of such corridor;

(C) patterns for possible land acquisition within the corridor which are deemed necessary for the purpose of resource protection, scenic and integrity, or management and administration of the corridor area;

(D) cooperative management proposals for the administration of the corridor area;

(E) the number of visitors and types of public use within the corridor area that can be accommodated in accordance with the full protection of its resources; and

(F) the facilities deemed necessary to accommodate and provide access for such visitors and uses, including the location and estimated costs of such facilities.

(c) REPORT TO CONGRESS.—Within three years of the date of enactment of this title, the Secretary of Agriculture shall transmit to the Congress a comprehensive report containing the results of the study conducted pursuant to this section.

(d) FUNDING.—There are hereby authorized to be appropriated up to $150,000 to carry out the provisions of this section.

(e) COST SHARING.—Not more than 75 per centum of the cost of the study carried out under this section shall be paid by the United States: Provided, That in no event shall the contribution of the United States exceed $150,000. The remaining portion of such costs shall be contributed by interested parties. The portion contributed by such interested parties may consist of appropriated funds or contributed services.

SEC. 104. Notwithstanding any other provision of law, the Secretaries of Agriculture and the Interior shall, within 30 days of the enactment of this title, complete the exchange as described in the Decision Notice and Finding of No Significant Impact, Trust For Public Land Proposed Land-for-Land Exchange, signed by the Rocky Mountain Regional Forester, on August 22, 1985, to acquire certain private lands in the portion of the Cache La Poudre River designated in section 3(a)(56)(B) of the Wild and Scenic Rivers Act (16 U.S.C. 1274(a)(56)(B)).

TITLE II—FARMINGTON, WEST BRANCH, CONNECTICUT AND MASSACHUSETTS

SEC. 201. This title may be cited as the "Farmington Wild and Scenic River Study Act".

SEC. 202. (a) The Congress finds that—

(1) the West Branch of the Farmington River and related land areas possess resource values of national significance, such as significant white water rapids, undeveloped lands, scenic and cultural areas, important sport fisheries, and prime agricultural lands;

(2) based on the National Rivers Inventory by the National Park Service, published in January 1982, this portion of the Farmington River is eligible for study for inclusion in the wild and scenic rivers system;

(3) there is strong support among local, State, and Federal officials, area residents, and river users for a concerted cooperative effort to manage the river in a productive and meaningful way; and

(4) in view of the longstanding Federal practice of assisting States and local governments in protecting, conserving, and enhancing rivers of national significance, the United States has an interest in assisting the States of Connecticut and the Commonwealth of Massachusetts and the appropriate local governments in managing the river.

(b) Section 5(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1276(a)) is amended by adding the following new paragraph:

"(92) FARMINGTON, WEST BRANCH, CONNECTICUT AND MASSACHUSETTS.—The segment from the intersection of the New Hartford-Canton, Connecticut, town line upstream to the base of the West Branch Reservoir in Hartland, Connecticut; and the segment from the confluence with Thorp Brook in Sandisfield, Massachusetts, to Hayden Pond in Otis, Massachusetts.".

(c) Section 5(b) of such Act (16 U.S.C. 1276(b)) is amended by adding at the end thereof the following new paragraph:

"(7) The study of the West Branch of the Farmington River identified in paragraph (92) of subsection (a) shall be completed and the report submitted thereon not later than the end of the third fiscal year beginning after the enactment of this paragraph. Such report shall include a discussion of management alternatives for the river if it were to be included in the national wild and scenic river system.".

(d)(1) At the earliest practicable date following the enactment of this title, but not later than forty-five days after enactment, the Secretary of the Interior (hereinafter in this title referred to as the "Secretary") shall establish the Farmington River Study Committee (hereinafter in this title referred to as the "Committee"). The Secretary shall consult with the Committee on a regular basis during the conduct of the study. Membership on the Committee shall consist of seventeen members appointed by the Secretary as follows:

(A) One member shall be appointed by the Secretary.

(B) Two members shall be appointed by the Secretary from a list of candidates supplied to the Secretary by the Governor of the State of Connecticut.

(C) Two members shall be appointed by the Secretary from a list of candidates supplied to the Secretary by the Governor of the Commonwealth of Massachusetts.

(D) Two members shall be appointed by the Secretary from a list of candidates supplied to the Secretary by the Farmington River Watershed Association.

(E) One member shall be appointed by the Secretary from each of the eight towns located along the West Branch of the river. The governing body of each of the eight towns shall provide a list of candidates to the Secretary from which the eight appointments under this paragraph shall be made.

(F) Two members shall be appointed by the Secretary from a list of candidates supplied to the Secretary by the Metropolitan District Commission of Hartford, Connecticut.

(2) The members of the Committee shall elect a chairman, vice chairman, and recording secretary from the membership at the first official meeting of the Committee. Official minutes shall be kept of each regular and special meeting of the Committee and shall be open for public inspection.

(3) Any vacancy on the Committee shall be filled in the same manner in which the original appointment was made. Any member appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. Vacancies in the membership of the Committee shall not affect its power to function if there remain sufficient members to constitute a quorum under paragraph (4) of this subsection.

(4) A majority of the members of the Committee shall constitute a quorum for all meetings.

(5) The Committee shall advise the Secretary in conducting the study of the Farmington River segment specified in section 5(a)( ) of the Wild and Scenic Rivers Act. The Committee also shall advise the Secretary concerning management alternatives should the river be included in the wild and scenic rivers system.

(6) Members of the Committee shall serve without compensation but may be compensated for reasonable and necessary expenses incurred by them in the performance of their duties as members of the Committee.

(7) The Committee may accept and utilize the services of voluntary, uncompensated personnel.

(8) The Committee shall terminate on the later of the following:

(A) the completion of the river study of the Farmington River described in section 5(a)(92) of the Wild and Scenic Rivers Act; or

(B) the publication of management alternatives should the river be included in the wild and scenic rivers system.

(e) As used in this title (other than in subsection (b)) the term "River" means the segments of the Farmington River described in paragraph (92) of section 5(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1275(a)).

(f) There are authorized to be appropriated up to $150,000 to carry out the purposes of this title.

TITLE III—GREAT EGG HARBOR, NEW JERSEY

SEC. 301. (a) STUDY.—Section 5(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1271-1287) is amended by adding at the end thereof the following new paragraph:

"(93) Great Egg Harbor River, New Jersey: The entire river.".

(b) COMPLETION DATE.—Section 5(b)(3) of such Act is amended by adding at the end thereof the following: "The study of the river named in paragraph 93 of subsection (a) shall be completed not later than three years after the date of the enactment of this sentence.".

(c) AUTHORIZATION OF APPROPRIATIONS.—Paragraph (4) of section 5(b) of such Act is amended by adding at the end thereof the following: "Effective October 1, 1986, there are authorized to be appropriated for the purpose of conducting the study of the river named in paragraph (93) not to exceed $150,000.".

TITLE IV—SALINE BAYOU, LOUISIANA

SEC. 401. Section 3(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1274(a)) is amended by adding the following new paragraph:

"(57) SALINE BAYOU, LOUISIANA.—The segment from Saline Lake upstream to the Kisatchie National Forest, as generally depicted on the Proposed Boundary Map, numbered fs-57, and dated March 1986; to be administered by the Secretary of Agriculture. For the purposes of the segment designated by this paragraph, their are authorized to be appropriated for fiscal years commencing after September 30, 1986, not to exceed $1,000,000 for the acquisition of lands and interests in lands and for development.".

TITLE V—GENERIC AMENDMENTS

SEC. 501. (a) Section 3(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1274(a)) is amended by redesignating the paragraphs relating to the Au Sable River, the Tuolumne River, the Illinois River, and the Owyhee River as paragraphs (52) through (55) respectively.

(b)(1) The first sentence of section 3(b) of the Wild and Scenic Rivers Act is amended as follows:

(A) Strike out "One year from the date of this Act" and substitute "one year from the date of designation of such component under subsection (a)".

(B) Strike out the second parenthetical statement, "(which boundaries shall include an average of not more than 320 acres of land per mile measured from the ordinary high water mark on both sides of the river)".

(C) Strike out the semicolon and the remainder of the sentence after the words "its various segments" and substitute a period.

(2) The second sentence of section 3(b) of such Act is amended by striking out "Said boundaries, classification, and development plans" and substituting the words "Notice of the availability of the boundaries and classification, and of subsequent boundary amendments".

(3) Section 3 of such Act is amended by adding the following new subsections at the end:

"(c) Maps of all boundaries and descriptions of the classifications of designated river segments, and subsequent amendments to such boundaries, shall be available for public inspection in the offices of the administering agency in the District of Columbia and in locations convenient to the designated river.

"(d)(1) For rivers designated on or after January 1, 1986, the Federal agency charged with the administration of each component of the National Wild and Scenic Rivers System shall prepare a comprehensive management plan for such river segment to provide for the protection of the river values. The plan shall address resource protection, development of lands and facilities, user capacities, and other management practices necessary or desirable to achieve the purposes of this Act. The plan shall be coordinated with and may be incorporated into resource management planning for affected adjacent Federal lands. The plan shall be prepared, after consultation with State and local governments and the interested public within 3 full fiscal years after the date of designation. Notice of the completion and availability of such plans shall be published in the Federal Register.

"(2) For rivers designated before January 1, 1986, all boundaries, classifications, and plans shall be reviewed for conformity within the requirements of this subsection within 10 years through regular agency planning processes.".

SEC. 502. Section 4 of the Wild and Scenic Rivers Act is amended by adding a new subsection (d) after subsection (c):

"(d) The boundaries of any river proposed in section 5(a) of this Act for potential addition to the National Wild and Scenic Rivers System shall generally comprise that area measured within one-quarter mile from the ordinary high water mark on each side of the river. In the case of any designated river, prior to publication of boundaries pursuant to section 3(b) of this Act, the boundaries also shall comprise the same area. This subsection shall not be construed to limit the possible scope of the study report to address areas which may lie more than one-quarter mile from the ordinary high water mark on each side of the river.".

SEC. 503. Section 5 of the Wild and Scenic Rivers Act is amended as follows:

(a) In subsection (a) paragraph (90) relating to the North Umpqua is redesignated as paragraph (91).

(b) At the end of subsection (b)(1) add: "Studies of the river named in paragraphs (38), (55), (83), and (87) shall be completed and the reports transmitted to the Congress not later than January 1, 1987.".

(c) Amend paragraph (4) of subsection (b) to read as follows:

"(4) For the purposes of conducting the studies of rivers named in subsection (a), there are authorized to be appropriated such sums as necessary.".

SEC. 504. (a) Section 6(e) of the Wild and Scenic Rivers Act is amended by striking out "Congress in authorized" and substituting "Congress is authorized".

(b) Section 6(a) of the Wild and Scenic Rivers Act is amended by striking out "donation, and lands" in the second sentence and substituting "donation or by exchange in accordance with subsection (d) of this section. Lands".

(c) Section 6(a) of the Wild and Scenic Rivers Act is amended by inserting "(1)" after "(a)" and by adding the following at the end:

"(2) When a tract of land lies partially within and partially outside the boundaries of a component of the National Wild and Scenic Rivers System, the appropriate Secretary may, with the consent of the landowners for the portion outside the boundaries, acquire the entire tract. The land or interest therein so acquired outside the boundaries shall not be counted against the average one-hundred-acre-per-mile fee title limitation of subsection (a)(1). The lands or interests therein outside such boundaries, may be disposed of, consistent with existing authorities of law, by sale, lease, or exchange.".

(d) Section 6(b) of the Wild and Scenic Rivers Act is amended as follows:

(1) Insert in the first sentence "outside the ordinary high water mark on both sides of the river" after the word "acreage".

(2) Insert "in fee title" after the word "owned".

SEC. 505. (a) The second sentence of section 7(a) of the Wild and Scenic Rivers Act is amended by deleting "approval of this Act" and substituting "designation of a river as a component of the National Wild and Scenic Rivers System".

(b) Section 7(b) of the Wild and Scenic Rivers Act is amended as follows:

(1) In the first sentence after clause (i) insert a new clause (ii) as follows:

"(ii) during such interim period from the date a report is due and the time a report is actually submitted to the Congress; and".

(2) Redesignate existing clause (ii) as clause (iii).

(3) At the end of the second sentence, delete "approval of this Act" and insert in lieu thereof the words, "designation of a river for study as provided for in section 5 of this Act".

SEC. 506. Section 8(a) of the Wild and Scenic Rivers Act is amended by adding the following at the end thereof: "This subsection shall not be construed to limit the authorities granted in section 6(d) or section 14A of this Act.".

SEC. 507. Section 9(b) of the Wild and Scenic Rivers Act is amended by striking out "issuance or leases" in the second sentence and substituting "issuance of leases".

SEC. 508. Section 11 of the Wild and Scenic Rivers Act is amended by deleting the second sentence in subsection (a) and by amending section (b) to read as follows:

"(b)(1) The Secretary of the Interior, the Secretary of Agriculture, or the head of any other Federal agency, shall assist, advise and cooperate with States or their political subdivisions, landowners, private organizations, or individuals to plan, protect, and manage river resources. Such assistance, advice, and cooperation may be through written agreements or otherwise. This authority applies within or outside a federally administered area and applies to rivers which are components of the Wild and Scenic River System and to other rivers. Any agreement under this subsection may include provisions for limited financial or other assistance to encourage participation in the acquisition, protection, and management of river resources.

"(2) Wherever appropriate in furtherance of this Act, the Secretary of Agriculture and

the Secretary of the Interior are authorized and encouraged to utilize the following:

"(A) For activities on federally owned land, the Volunteers in the Parks Act of 1969 (16 U.S.C. 18g-j) and the Volunteers in the Forest Act of 1972 (16 U.S.C. 558a-558d).

"(B) For activities on all other lands, section 6 of the Land and Water Conservation Fund Act of 1965 (relating to the development of statewide comprehensive outdoor recreation plans).

"(3) For purposes of this subsection, the appropriate Secretary or the head of any Federal agency may utilize and make available Federal facilities, equipment, tools and technical assistance to volunteers and volunteer organizations, subject to such limitations and restrictions as the appropriate Secretary or the head of any Federal agency deems necessary or desirable.

"(4) No permit or other authorization provided for under provision of any other Federal law shall be conditioned on the existence of any agreement provided for in this section.".

SEC. 509. Section 12(c) of the Wild and Scenic Rivers Act is amended by deleting the words "Secretary of the Interior" and inserting in lieu thereof the words "Administrator, Environmental Protection Agency".

SEC. 510. Section 14 of the Wild and Scenic Rivers Act is amended by inserting "(a)" after "14." and adding a new subsection (b) as follows:

"(b) For the conservation purposes of preserving or enhancing the values of components of the National Wild and Scenic Rivers System, and environs thereof as determined by the appropriate Secretary, landowners are authorized to donate or otherwise convey qualified real property interests to qualified organizations consistent with section 170(h)(3) of the Internal Revenue Code of 1954. Such interest may include, but shall not be limited to, rights-of-way, open space, scenic, or conservation easements, without regard to any limitation on the nature of the estate or interest otherwise transferable within the jurisdiction where the land is located. The conveyance of any such interest in land in accordance with this subsection shall be deemed to further a Federal conservation policy and yield a significant public benefit for purposes of section 6 of Public Law 96-541.".

SEC. 511. Section 16(c) of the Wild and Scenic Rivers Act is amended by adding at the end thereof: "For any designated wild and scenic river, the appropriate Secretary shall treat the acquisition of fee title with the reservation of regular existing uses to the owner as a scenic easement for purposes of this Act. Such an acquisition shall not constitute fee title ownership for purposes of section 6(b).".

TITLE VI

SEC. 601. Section 3(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1274(a)) is amended by adding at the end thereof the following new paragraph:

"(58) BLACK CREEK, MISSISSIPPI.—The segment from Fairley Bridge Landing upstream to Moody's Landing as generally depicted on a map entitled 'Black Creek Wild and Scenic River', numbered fs-58 and dated March 1986, to be administered by the Secretary of Agriculture as a scenic river area under section 2(b)(2). For the purposes of the segment designated by this paragraph, there are authorized to be appropriated up to $300,000 for the acquisition of lands and interests in lands and for development.".

TITLE VII—HENRY'S FORK OF THE SNAKE RIVER, IDAHO

SEC. 701. This title may be cited as the "Henry's Fork of the Snake River Protection Act of 1986".

SEC. 702. Except as set forth in section 703 and section 704 of this title, the Federal Energy Regulatory Commission (FERC) is prohibited from taking any action, other than denial, on any application for a license, preliminary permit, or exemption or any further action on an issued preliminary permit pursuant to sections 4(e), 4(f), and 30 of the Federal Power Act, as amended (16 U.S.C. 797(e-f, and 823), for any project proposed to be sited on or adjacent to that portion of Henry's Fork of the Snake River, Idaho (including that segment originating at Big Springs), or its tributaries within one-half mile of their confluence with Henry's Fork of the Snake River, from its point of origin at Henry's Lake, Idaho to the point of its confluence with the backwaters of Ashton Reservoir, Idaho.

SEC. 703. The prohibition in section 702 of this title shall not apply to the application for license filed for the Island Park Dam Hydropower project (FERC project numbered 2973) or the subsequent relicensing of said project: Provided, That such license may be approved only if FERC determines that significant and permanent alteration of streamflow, habitat, water temperature, and quality will not occur as a result of the project.

SEC. 704. The prohibition in section 702 of this title shall not apply to the relicensing of the Ponds Lodge Hydropower project (FERC project numbered 1413).

SEC. 705. (a) Nothing in this title shall be construed as authorizing (either expressed or implied) the appropriation or reservation of water by any Federal, State, or local agency, Indian tribe, or any other entity or individual. Nor shall any provision of this title (1) affect the rights or jurisdictions of the United States, the States, Indian tribes, or other entities over waters of any river or stream or over any ground water resource, (2) alter, amend, repeal, interpret, modify, or be in conflict with any interstate compact made by the States, (3) be construed to alter or establish the respective rights of States, the United States, Indian tribes, or any person with respect to any water or water-related right, or (4) otherwise be construed to affect the validity of any existing license, permit, or certificate (other than as set forth in section 702) issued by any Federal agency pursuant to any other Federal law.

(b) For the purposes of any Federal law authorizing an express or implied appropriation or reservation of water for any Federal purpose, the provisions of this title (other than this subsection) shall be deemed not to exist.

House amendments to the Senate amendment:

In section 101 of the Senate amendment, after the paragraph designated as (E) change the words "With respect to the portions of the river segments designated by this paragraph which are within the boundaries of Rocky Mountain National Park, the requirements of section 102" to read "With respect to the portions of the river segments designated by this paragraph which are within the boundaries of Rocky Mountain National Park, the requirements of subsection (b) of this section".

Strike out section 510 of the Senate amendment and renumber accordingly.

Strike out all of title VII of the Senate amendment.

Mr. VENTO [during the reading]. Mr. Speaker, I ask unanimous consent that the Senate amendment and the House amendments to the Senate amendments be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

Mr. LAGOMARSINO. Mr. Speaker, reserving the right to object, I do not object to the legislation, and I yield to the gentleman from Minnesota to explain the amendments.

Mr. VENTO. I thank the gentleman for yielding to me.

Mr. Speaker, the House passed H.R. 4350 on April 8, 1986, by voice vote.

The other body made several amendments in the House-passed version by deleting the designations of the North Fork and South Fork of the Kern River in California; changing the study provision for the Henry's Fork in Idaho to a prohibition against issuing any hydropower permits; adding a requirement for land exchange along the Cache la Poudre in Colorado and making some other minor modifications.

However, the bill, as amended, would designate segments of the Cache la Poudre River, CO; Saline Bayou, LA; and Black Creek, MS; for inclusion in the wild and scenic system. The bill also would provide that, with two exceptions, no hydropower licenses could be issued for the Henry's Fork River, ID; the Farmington River, CT and MA; and the Great Egg Harbor River, NJ, would be studied to determine eligibility for possible addition to the wild and scenic river system.

Because of problems of jurisdiction within the House, I am proposing to amend the bill and return it to the other body. Title V included technical amendments to the National Wild and Scenic Rivers Act but because of an overlap of jurisdiction with the Ways and Means Committee regarding section 510, the amended version would remove section 510.

Title VII of this bill, which was added in the other body, deals with issues related to Federal hydropower licensing which is within the jurisdiction of the Committee on Energy and Commerce. We have reached agreement to remove title VII from this bill and the chairman of the Energy Committee has included it in the hydropower bill. I am pleased that we have worked out the jurisdiction problem and wish to thank the chairman, JOHN DINGELL and his able staff for their cooperation. In addition, there is one minor technical amendment.

Mr. Speaker, we would not be here today if it were not for the leadership of many of our colleagues who saw the need for action to protect some of our outstanding river resources before those valuable national assets were de-

graded or destroyed. I want to express my thanks to NANCY JOHNSON, JERRY HUCKABY, RICHARD STALLINGS, HANK BROWN, CHIP PASHAYAN, TRENT LOTT, and BILL HUGHES. I also wish to thank our colleagues in the other body for acting on this legislation, especially Senators BENNETT JOHNSTON, JIM MCCLURE, and MALCOLM WALLOP.

Mr. Speaker, I urge my colleagues to support this bill.

Mr. LAGOMARSINO. Mr. Speaker, I rise in strong support of the amended version of H.R. 4350 before us today. As the subcommittee chairman has explained, this bill provides wild and scenic river designation for segments of the Cache la Poudre River, CO; the Saline Bayou, LA; and the Black Creek, MS. In addition, it provides for studies of several other rivers including the West Branch Farmington River, CT and Massachusetts; and the Great Egg Harbor River, NJ, for possible future designation.

Mr. Speaker, this bill is the result of several months of hard work and numerous compromises. It was originally passed by this body in April, and was recently amended and approved by the other body. We are now amending it again to remove some of the provisions which remain controversial or that are being taken care of in other legislation. As a cosponsor, I would like to commend all of the Members and staff who have worked on this measure, particularly the sponsors of the individual river bills included in this legislation, and the subcommittee chairman, Mr. VENTO. This outstanding, bipartisan bill is the culmination of their diligent and cooperative efforts.

Enactment of H.R. 4350 will protect some of our Nation's most spectacular scenic and recreational river resources as well as study other rivers for potential protection in the future. Therefore, I urge all of my colleagues to approve this measure.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

Mr. NIELSON of Utah. Mr. Speaker, reserving the right to object, I yield to the chairman of the subcommittee and ask him if this has anything to do with the Columbia River Gorge?

Mr. VENTO. I would say to the gentleman that no, it does not.

Mr. NIELSON of Utah. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from Minnesota?

There was no objection.

A motion to reconsider was laid on the table.

□ 1935

TOM HENRY CANDON

The SPEAKER pro tempore (Mr. MONTGOMERY). Under a previous order of the House, the gentleman from Vermont [Mr. JEFFORDS] is recognized for 5 minutes.

Mr. JEFFORDS. Mr. Speaker, I rise tonight just for a couple of moments to commemorate a retiring member of the Vermont House Legislature. I have not done this, I do not think, in the 12 years I have been here, but there is one special person who has retired this year who deserves being recognized here in this great body.

Mr. Speaker, Thomas Henry Candon, a member of the Vermont House of Representatives has served the people of Vermont and his district in Rutland City well.

For over 20 years, Tom has been a legislative stalwart at the statehouse in Montpelier, serving as both the house minority leader and the house majority leader.

In addition, to the leadership roles, he has served on the ways and means committee as its vice-chairman, has held the same position on the rules committee and has been a member of the government operations committee.

The fact that his colleagues respected his ability as a legislator is obvious as one looks at the record of his election to leadership roles. Their confidence was based on a legislative record that each of us would be honored to have. I would like to review that record, based on information provided to me by the clerk of the Vermont House, Robert Piche. Tom Candon sponsored or cosponsored 224 bills or resolutions; 149 of these became law for an average of 67 percent and only 5 were defeated. Think of it—over two-thirds of the bills or resolutions bearing his name were adopted.

Tom reported bills or resolutions for his committees 44 times, 34 of these measures became law, that is a 77 percent average. Only twice was a bill or resolution killed.

He served on committees of conference on 24 bills and resolutions, 22 became law, 2 died in committee. That is a 92 percent average.

In the legislature he placed in nomination or seconded a nomination of people for office 13 times, only twice was he on the losing side.

And finally, in his 2 decades of dedicated service, he made 597 motions of which 577 won approval—only 20 failed—for a very respectable average of 0.966.

In addition to the above he found time to be a devoted husband to Margaret, a loving father to his three children, fought to protect his country during times of war, served his country as an extraordinary civil service employee, served as a trustee for the University of Vermont to name but a few of his accomplishments.

Tom Candon is the classic Vermonter, full of Yankee ingenuity, resourcefulness, a sense of fair play, a true competitive nature, which finds him willing to take a chance, this willingness is found in his legislative record which has no equal. But, Tom does not always win, for every day he purchases a Vermont lottery ticket and has yet to win.

A SURVEY OF THE FIRST DISTRICT OF ARKANSAS

The SPEAKER pro tempore (Mr. VALENTINE). Under a previous order of the House, the gentleman from Arkansas [Mr. ALEXANDER] is recognized for 5 minutes.

Mr. ALEXANDER. Mr. Speaker, last month I asked my constituents to fill out a survey on their feelings about pending national issues. I have received more than 6,000 responses, and have tabulated the results which I now want to share with my colleagues.

The First District of Arkansas is comprised of 24 counties in the northeastern part of our State. The district is very rural, and our economy is heavily dependent on agriculture. In recent years we have been particularly hard hit by the farm crisis, and the absence of a meaningful national policy on trade. Unemployment in several counties exceeds 20 percent. The people of the First District are people with deeply held religious convictions and with a strong commitment to the values on which this country is built.

It is clear from the results of the survey that my constituents are more than willing to face the hard policy choices with which Congress has been wrestling during the past year. For example, it is clear they understand the greatest danger confronting our Nation is the budget deficit and that a combination of spending reductions and a postponement of tax cuts may be necessary to control that deficit. They also are clear that the administration's current farm program is not meeting the needs of farmers.

Mr. Speaker, I found an alarming trend in these results on the issues of crime and drugs. More than 72 percent of the respondents felt drugs had become a serious problem in their communities and the schools attended by their children. Nearly 1 in 5 respondents reported that they or a member of their immediate families had been the victim of a crime in the past 12 months. On international issues by a margin of nearly 3-to-1, they said they oppose further aid to the Contra army in Nicaragua, and by more than 87 percent they expressed support for cutting foreign military and economic aid as a means of reducing the deficit.

Mr. Speaker, I submit for the RECORD, these survey results because I believe the people of the first district are representative of the Nation, and that their attitudes and concerns can be useful to all of my colleagues: [1]

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[1] Results do not always add up to 100 percent in that some respondents chose not to answer all questions.

AGRICULTURAL POLICY

	Percent		
	Yes	No	Don't know
1. A record number of farm families in the First District face financial difficulty. Do you believe it should be the goal of Federal agricultural policy to help farmers stay in operation?	63.3	25.2	7.5
2. Do you believe farm programs should continue to be subject to annual across-the-board budget cuts as currently required under the Gramm-Rudman law?	32.2	46.8	16.1
3. Do you believe government policy should allow farm prices to be based on market forces without controls on production?	41.0	36.7	16.1
4. Do you feel farmers should be allowed to vote on farm programs in which they plan to participate?	77.7	12.2	6.7
5. Are you satisfied the present farm program is the best policy that can be achieved under the circumstances?	12.0	60.4	23.0
6. The Farmers Home Administration was established to provide credit to farmers who could not get credit from other sources. Which credit policy should it follow with present borrowers?			
48.8 continue present policy of not foreclosing unless all repayment efforts have failed.			
21.1 provide a moratorium on all foreclosures until the economy improves			
1.9 provide a moratorium on foreclosures only for selected young "deserving" farmers.			
16.3 set a strict policy on delinquent loans and require repayment on schedule.			
7. Do you think it would be a good idea for the Federal Government to buy surplus farm products and distribute them to needy families?	70.6	18.4	5.9

BUDGET PRIORITIES

Congress has now passed a budget for this year which cuts the deficit to a level below that recommended by the President. However, much more action wil be required to bring the budget into balance. For that to happen, Congress must make further cuts in spending, raise more revenue, or both. Which of the following actions would you support?

	Percent	
	Yes	No
8. Reduce the rate of growth military spending?	62.9	31.0
9. Reduce social security and other retirement programs?	9.5	86.2
10. Cut funding for highway construction and improvement?	32.5	59.9
11. Cut funding for law enforcement?	15.6	77.4
12. Cut funding for clean drinking water and clean air programs?	23.4	70.1
13. Cut education?	19.6	73.3
14. Reduce funding of space exploration?	72.3	21.8
15. Reduce foreign military and economic aid?	87.5	8.0
16. Place an import fee on foreign oil?	61.6	29.2
17. Impose a national sales tax?	27.6	62.9
18. Tax corporations at a rate at least equal to that of the average taxpayer?	85.2	9.3
19. Postpone any further tax cuts until the budget is balanced?	69.0	22.9
20. Impose a temporary 5% deficit surtax such as we had during the Vietnam War?	24.6	58.9
Other		

WAR ON DRUGS

Last month I was named to a special Congressional task force on drugs whose purposes is to draft comprehensive legislation to fight in our country especially among our young people. You could help me by offering your opinion on the following questions.

	Percent		
	Yes	No	Don't know
21. Do you believe drug use has become a serious problem in your neighbood of the schools attended by the children in your family.	72.1	13.8	11.6
22. Do you believe too often there is permissive message in movies and on TV about drug use?	79.7	12.4	5.1
23. Do you favor a life sentence without parole for drug traffickers?	71.8	16.4	8.3
24. Would you support efforts to change the Gramm-Rudman law to exempt law enforcement agencies like the FBI, the Customs Service, and the Drug Enforcement Agency from automatic across-the-board budget cuts.	43.5	37.1	14.9

CRIME

25. Do you believe crime is on the increase in you community?	63.7	25.6	8.9

CRIME—Continued

26. Have you or a member of your immediate family been the victim of a crime in the past twelve months?	18.3	78.2	1.8
27. What do you believe is the primary cause of crime in your community?			
35.6 Poor economy			
27.8 Belief among criminals that they will not be caught			
19.6 Breakdown of traditional family values			
3.3 Portrayal of violence on television and in movies			
4.8 Increased drug use			
1.0 Lack of education			
1.5 Inadequate prisons are a breeding ground for repeat offenders			
Other reasons			

LATIN AMERICA

28. This year Congress has voted to give President Reagan $100 million to support the Contras, who are seeking to overthrow the government of Nicaragua. The President has indicated that next year he will ask for more money for the same purpose. Should Congress appropriate money once again for this purpose?	20.6	63.3	12.9

TAX REFORM

29. Do you favor the tax reform bill now pending before Congress?	34.3	23.6	35.6

FOREIGN TRADE DEFICIT

30. Do you regard the record $150 billion trade deficit as a major national problem in need of immediate attention?	84.4	5.5	6.4
31. Do you believe that the United States should impose the same restrictions on imports from foreign trading partners that they impose on U.S. exports?	87.9	4.9	4.3
32. Do you support education and training, on an industry-wide basis, for workers adversely affected by trade to make America more competitive?	74.3	12.9	8.7

RETIREMENT

33. Social Security, civil service and military retirees, and disabled veterans have been promised that the pensions they've earned will include COLAs (cost-of-living adjustments) to protect against the effects of inflation. Some have suggested reducing or eliminating these COLAs. In your opinion, should government honor these COLAs in full?	73.3	16.2	5.6

BRUNSWICK COUNTIAN WRITES LAW BOOK

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from North Carolina [Mr. ROSE] is recognized for 5 minutes.

Mr. ROSE. Mr. Speaker, Betty Stone, from Brunswick County, NC, has written a lively, easy-to-read guide to law that everyone can read and understand. "In Praise of Law" covers international and U.S. law from their earliest beginnings. This book was designed for the general reader, but it will prove useful for legal secretaries, social studies classes, prelaw students, and to leaders and members of various study groups. With its full index, this 350-page paperback can also be used as an easy-to-understand legal dictionary. For information on how to order this book, contact Waterway Press, Route 2, Supply, NC 28462.

COMMUNICATION FROM CHAIRMAN OF COMMITTEE ON THE BUDGET REGARDING CURRENT LEVEL OF SPENDING AND REVENUES FOR FISCAL YEAR 1987

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from South Carolina [Mr. DERRICK] is recognized for 5 minutes.

Mr. DERRICK. Mr. Speaker, on behalf of Chairman WILLIAM H. GRAY III, pursuant to the procedures of the Committee on the Budget and section 311 of the Congressional Budget Act of 1974, as amended, I am submitting the official letter to the Speaker advising him of the current level of spending and revenues for fiscal year 1987. This will be the first filed current level for fiscal year 1987. This report reflects the budget resolution aggregates and an estimate of current level of spending and revenues consistent with the economic and technical assumptions of Senate Concurrent Resolution 120 adopted on June 26, 1986. This report includes the estimated funding levels for the continuing resolution, House Resolution 743, which provides temporary spending authority.

The current level is used to compare enacted spending and revenues after the start of a fiscal year with the aggregate ceiling on budget authority, outlays, and revenues established in a budget resolution and enforced by point of order pursuant to section 311(a) of the Budget Act. The term "current level" refers to the estimated amount of budget authority, outlays, and revenues that are available—or will be used—for the full fiscal year in question based only on enacted law.

In the House of Representatives, the procedural situation with regard to the spending ceilings—total budget authority and total outlays—is affected by section 311(b) of the Congressional Budget Act of 1974, as amended by Public Law 99–177. Enforcement against possible breaches of the spending ceilings under 311(a) of the Budget Act would not apply when a measure would not cause a committee to exceed its "appropriate allocation" made pursuant to section 302(a) of the Budget Act. The appropriate 302(a) allocation includes "new discretionary budget authority," "new entitlement authority," "new direct loan obligations," and "new primary loan guarantee commitments."

It should be noted that under this procedure the committee's outlay allocation is not considered. The intent of section 311(b) is to protect a committee that has stayed within its spending authority and credit authority allocations—discretionary budget authority, new entitlement authority, direct loan authority, and loan guarantee authority—from points of order if the total spending ceilings have breached for reasons outside of its control. The 302(a) allocations to House committees made pursuant to the conference report on Senate Concurrent Resolution 120 were printed in House Report 99–666, July 9, 1987.

As chairman of the Budget Process Task Force, and on behalf of Chairman GRAY, I intend to keep the House informed regularly on the status of current level.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE BUDGET,
Washington, DC, October 7, 1986.

Hon. THOMAS P. O'NEILL, Jr.,
Speaker, House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: On January 30, 1976, the Committee on the Budget outlined the procedure which it had adopted in connection with its responsibilities under Section 311 of the Congressional Budget Act of 1974 to provide estimates on the current level of revenues and spending.

Pursuant to Committee Rule 10, I am herewith transmitting the status report under S. Con. Res. 120, the Concurrent Resolution on the Budget for Fiscal Year 1987.

In the House of Representatives, the procedural situation with regard to the spending ceilings (total budget authority and total outlays) is affected by Section 311(b) of the Congressional Budget Act of 1974, as amended by P.L. 99-177. Enforcement against possible breaches of the spending ceilings under 311(a) of the Budget Act would not apply when a measure would not cause a committee to exceed its "appropriate allocation" made pursuant to Section 302(a) of the Budget Act. The appropriate 302(a) allocation includes "new discretionary budget authority", "new entitlement authority", "new direct loan obligations", and "new primary loan guarantee commitments". It should be noted that under this procedure the committee's outlay allocation is not considered.

The intent of Section 311(b) of the Budget Act is to protect a committee that has stayed within its spending authority and credit authority allocations—discretionary budget authority, new entitlement authority, direct loan authority, and loan guarantee authority—from points of order if the total spending ceilings have been breached for reasons outside of its control. The 302(a) allocations to House committees made pursuant to the conference report on S. Con. Res. 120 were printed in H. Rept. 99-666 (July 9, 1986).

Section 302(f) of the Congressional Budget and Impoundment Control Act of 1974, as amended, provides that it shall not be in order to consider any bill, resolution, or amendment which, if enacted, would exceed the appropriate allocation made pursuant to section 302(b) for a fiscal year of new discretionary budget authority, new entitlement authority, or new credit authority.

The enclosed tables compare enacted legislation to each committee's 302(a) allocation of discretionary budget authority, new entitlement authority, new direct loan obligations and new primary loan guarantee commitments.

Sincerely,

WILLIAM H. GRAY III,
Chairman.

REPORT TO THE SPEAKER OF THE U.S. HOUSE OF REPRESENTATIVES FROM THE COMMITTEE ON THE BUDGET ON THE STATUS OF THE FISCAL YEAR 1987 CONGRESSIONAL BUDGET ADOPTED IN SENATE CONCURRENT RESOLUTION 120

REFLECTING COMPLETED ACTION AS OF OCT. 3, 1986

[In millions of dollars]

	Budget authority	Outlays	Revenues
Appropriate level	1,093,350	995,000	852,400
Current level	1,053,806	990,680	857,098
Amount under ceilings	39,544	4,320	...
Amount over ceilings	...	...	...

REFLECTING COMPLETED ACTION AS OF OCT. 3, 1986—Continued

[In millions of dollars]

	Budget authority	Outlays	Revenues
Amount under floor	...	...	...
Amount over floor	...	...	4,698

BUDGET AUTHORITY

Any measure providing budget or entitlement authority which is not included in the current level estimate and that exceeds $39.544 million in budget authority for fiscal year 1987, if adopted and enacted, would cause the appropriate level of budget authority for that year as set forth in S. Con. Res. 120 to be exceeded.

OUTLAYS

Any measure providing budget or entitlement authority which is not included in the current level estimate and that exceeds $4,320 million in outlays for fiscal year 1987, if adopted and enacted, would cause the appropriate level of outlays for that year as set forth in S. Con. Res. 120 be exceeded.

REVENUES

Any measure that would result in a revenue loss which is not included in the current level estimate and exceeds $4,698 million for fiscal year 1987, if adopted and enacted, would cause revenues to be less than the appropriate level for that year as set forth in S. Con. Res. 120.

FISCAL YEAR 1987 BUDGET AUTHORITY COMPARISON OF CURRENT LEVEL AND BUDGET RESOLUTION ALLOCATION BY COMMITTEE, PURSUANT TO SEC. 302

[In millions of dollars]

House authorizing committee	*Current level budget authority*
Agriculture	+55
Armed Services	−7
Banking, Finance, and Urban Affairs	−395
District of Columbia	...
Education and Labor	+10
Energy and Commerce	+3,027
Foreign Affairs	+1
Government Operations	...
House Administration	...
Interior and Insular Affairs	+9
Judiciary	−53
Merchant Marine and Fisheries	+50
Post Office and Civil Service	+100
Public Works and Transportation	−10,501
Science and Technology	...
Small Business	+438
Veterans' Affairs	...
Ways and Means	+851

NOTE: Committees are over (+) or under (−) their 302(a) allocation.

FISCAL YEAR 1987 BUDGET AUTHORITY—COMPARISON OF CURRENT LEVEL AND BUDGET RESOLUTION SUBDIVISIONS OF THE HOUSE APPROPRIATIONS COMMITTEE, PURSUANT TO SEC. 302

[In millions of dollars]

House appropriations subcommittee subdivisions	Current level budget authority	Direct loans	Primary loan guarantees
Agriculture	−4,269	−3	−590
Commerce, State, Justice	−1,603	−5	−25
Defense	−19,503	...	...
District of Columbia	−31	...	...

FISCAL YEAR 1987 BUDGET AUTHORITY—COMPARISON OF CURRENT LEVEL AND BUDGET RESOLUTION SUBDIVISIONS OF THE HOUSE APPROPRIATIONS COMMITTEE, PURSUANT TO SEC. 302—Continued

[In millions of dollars]

House appropriations subcommittee subdivisions	Current level budget authority	Direct loans	Primary loan guarantees
Energy and Water	−1,359	...	...
Foreign Operations	−206	−9	−94
HUD/Independent Agencies	−5,085	−25	−6
Interior	−917	...	...
Labor, HHS, Education	−695	−51	...
Legislative Branch	−23	...	...
Military Construction	−318	...	...
Transportation	−436	−24	...
Treasury, Postal Service	−1,162	...	...
Total	−35,607	−117	−715

Note: Subcommittees are over (+) or under (−) their 302(b) subdivisions or discretionary action.

FISCAL YEAR 1987 ALLOCATION OF NEW ENTITLEMENT AUTHORITY (NEA), PURSUANT TO SEC. 302

[In millions of dollars]

Committee	Allocation	Enacted
Education and Labor	11	−75
Energy and Commerce	108	...
Post Office and Civil Service	−100	...
Veterans' Affairs	172	...
Ways and Means	−315	65

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 6, 1986.

Hon. WILLIAM H. GRAY III,
Chairman, Committee on the Budget, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: Pursuant to section 308(b) and in aid of section 311 of the Congressional Budget Act, as amended, this letter and supporting detail provide an up-to-date tabulation of the current levels of new budget authority, estimated outlays, estimated revenues, and direct and guaranteed loan levels in comparison with the appropriate levels for those items contained in the most recently agreed to concurrent resolution on the 1987 budget (S. Con. Res. 120). This report for fical year 1987 is tabulated as of close of business October 3, 1986. A summary of this tabulation is as follows:

[In millions of dollars]

	Current level	Budget resolution, S. Con. Res. 120	Current level +/− resolution
Budget authority	1,053,806	1,093,350	−39,544
Outlays	990,680	995,000	−4,320
Revenues	857,098	852,400	4,698
Direct loan obligations	34,433	34,550	−117
Guaranteed loan commitments	99,820	100,750	−930

This is my first report for fiscal year 1987. These amounts include estimated funding levels of the continuing appropriation legislation, H.J. Res. 743 (P.L. 99-434), which provides temporary spending authority pending the completion of regular 1987 appropriation legislation.

With best wishes,

Sincerely,

EDWARD GRAMLICH
(For Rudolph G. Penner).

PARLIAMENTARIAN STATUS REPORT, HOUSE SUPPORTING DETAIL, FISCAL YEAR 1987, AS OF CLOSE OF BUSINESS OCT. 3, 1986

[In millions of dollars]

	Budget authority	Outlays	Revenues
I. Enacted in previous sessions:			
Revenues			843,799
Permanent appropriations and trust funds	733,558	647,692	
Other appropriations		195,861	
Offsetting receipts	−165,990	−165,990	
Total enacted in previous sessions	567,568	677,563	843,779
II. Enacted this session:			
Federal Employees Benefits Improvement Act of 1986 (P.L. 99–251)		2	
Technical Corrections to Food Security Act (P.L. 99–253)	50	50	
VA Home Loan Guarantee Amendments (P.L. 99–255)		49	
Food Security Improvements Act of 1986 (P.L. 99–260)	−115	−115	
White Earth Reservation Land Settlement (P.L. 99–264)	10	10	
Omnibus Budget Reconciliation Act of 1985 (P.L. 99–272)	155	−3,553	2,503
FHA and GNMA Credit Committment Assistance Act (P.L. 99–289)		−178	
Federal Employees Retirement Act of 1986 (P.L. 99–335)	−150	−1,670	−666
Judicial Improvements Act (P.L. 99–336)	2		
Military Retirement Reform Act (P.L. 99–348)	−47	146	
Urgent Supplemental Appropriations, 1986 (P.L. 99–349)	−6,320	−914	
Temporary Extension of Certain Housing Programs (P.L. 99–345)		−85	
Panama Canal Commission Authorizing Act (P.L. 99–368)		2	
Omnibus Diplomatic Security and Anti-Terrorism Attack Act (P.L. 99–399)	1	1	
Children's Justice and Assistance Act of 1986 (P.L. 99–401)	10		
Conveying interests in certain lands in Socorro County, N.M. (P.L. 99–427)	−1	−1	
Total	−6,405	−6,255	1,837
III. Continuing resolution authority:			
Continuing Appropriations for 1987 (P.L. 99–434)	514,452	342,254	
Offsetting Receipts	−25,895	−25,895	
Total continuing resolution	488,557	316,359	
IV. Conference agreements ratified by both Houses:			
Tax Reform Act (H.R.3838)	65	65	11,462
Higher Education Amendments (S.1965)		−579	
Bankruptcy Amendments of 1986 (H.R.5316)	−55	−55	
Total	10	−569	11,462
V. Entitlement authority and other mandatory items requiring further appropriation action:			
Salaries of Judges	2	1	
Payment to the Foreign Service Retirement [1]	(12)	(12)	
Special Milk	5		
Child Nutrition	264		
Administration of Territories	35	30	
Compact of Free Association	14	14	
Fees and Expenses of Witnesses	1		
Advances to the Unemployment Trust Fund [1]	(9)	(9)	
Black Lung Trust Fund	314	313	
Payment to the Civil Service Trust Fund [1]	(150)	(150)	
Readjustment Benefits	9	9	
Burial Benefits	8	8	
Payment to CIA Retirement	24	24	
Payment to Air Carriers	11	10	
Coast Guard Retired Pay	6		
Special Benefits for Disabled Coal Miners	5		
Assistance Payments	326	326	
Family Social Services	61		
Guaranteed Student Loans	140		
Claims, Defense	12	12	
Military Pay Raises	1,566	1,539	
Civilian Pay Raises, Defense Agencies	559	549	
Civilian Pay Raises, Other	694	727	
Coast Guard Pay Raises	21	20	

PARLIAMENTARIAN STATUS REPORT, HOUSE SUPPORTING DETAIL, FISCAL YEAR 1987, AS OF CLOSE OF BUSINESS OCT. 3, 1986—Continued

[In millions of dollars]

	Budget authority	Outlays	Revenues
Total entitlements	4,076	3,582	
Total current level as of October 3, 1986	1,053,806	990,680	857,098
1987 budget resolution (S.Con. Res.120)	1,093,350	995,000	852,400
Amount remaining:			
Over budget resolution			4,698
Under budget resolution	39,544	4,320	

[1] Interfund transactions do not add to budget totals.

Note: Numbers may not add due to rounding.

TRIBUTE TO THE HONORABLE JOHN F. SEIBERLING

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Ohio [Mr. STOKES] is recognized for 60 minutes.

Mr. STOKES. Mr. Speaker, at the conclusion of the 99th session of Congress the gentleman from Ohio [Mr. SEIBERLING] will be retiring from the House. Undoubtedly, many of his friends and colleagues have asked him what he will do once he retires. Unlike many other retiring Members of Congress, JOHN SEIBERLING is in the enviable position of being able to physically view the fruits of his labor and efforts to protect the environment and preserve the Nation's natural and historic heritage. For these accomplishments, for his numerous other contributions to the House of Representatives and for his dedicated service to the citizens of the 14th District of Ohio, the State of Ohio and our Nation, I take the well today to pay tribute to my distinguished colleague and good friend, JOHN SEIBERLING.

Mr. Speaker, I first met JOHN on the campaign trail when he ran for Congress in 1970. We were introduced by a mutual friend, Cyrus Eaton, and I was immediately impressed with the potential he displayed when we met. He was confident, sincere, and thoroughly knowledgeable of the problems and issues facing the 14th District, the State of Ohio, and the Nation. Once elected to the House of Representatives, JOHN SEIBERLING not only fulfilled that initial potential, he surpassed it.

JOHN'S considerable talents and abilities have been fully utilized throughout his 16 years as a Member of Congress. I have worked most closely with him as a Member of the Ohio delegation and know that he is held in high esteem by all of our colleagues in the delegation. On the Democratic side of our delegation, early in his tenure, we elected JOHN to serve on the Policy and Steering Committee.

JOHN was a conscientious member of Policy and Steering and endeavored in every respect to assist both the Pennsylvania and Ohio delegation Members obtain the committee assignments they sought.

JOHN made a real contribution to our State through his participation in meetings with both our full delegation and our Ohio Democratic delegation. I shall remember JOHN for his promptness at those meetings and for his active participation. Whatever the subject, he always made his contribution. He exhibited a rare sense of diplomacy as well, adhering to the philosophy of working with the entire Ohio delegation on a nonpartisan basis whenever it was in the best interests of our State.

One of JOHN SEIBERLING'S greatest attributes was his unselfish attitude regarding other Members of the Ohio delegation. He delights in assisting Members of our delegation in legislative matters important to them and to our State.

I consider myself fortunate to have had the opportunity to work with JOHN on numerous projects affecting the Akron-Cleveland area. He frequently came to Cleveland to attend northeast Ohio area congressional delegation meetings, and I have visited Akron to attend the delegation meetings held there. Together, we have worked to improve the quality of life in our shared geographic area. JOHN SEIBERLING may take great pride in his contributions toward the growth and prosperity of the entire northeast Ohio area.

Mr. Speaker, while our colleague, JOHN SEIBERLING, is widely respected for his work on behalf of the State of Ohio, he deserves special recognition for his efforts to protect the environment and preserve our Nation's natural and historic heritage. I sincerely hope that after his retirement, JOHN will take time to travel around the country to see, experience, and enjoy our Nation's great natural resources and wilderness areas that have been preserved for the use and pleasure of all Americans as a result of his work.

Mr. Speaker, perhaps JOHN will have the opportunity to spend some time in Alaska—100 million acres of its breathtakingly beautiful wilderness has been preserved as a result of his management of the drafting and passage of the Alaska National Interest Lands Act. Or he may simply choose to go home to Ohio and camp in the Cuyahoga Valley National Recreation Area in northeast Ohio. He coauthored the legislation to preserve the scenic beauty of the Cuyahoga Valley, while bringing millions of tourists and visitors to the Akron-Cleveland area.

In fact, Mr. Speaker, JOHN SEIBERLING could visit any of the lower 48 States and be within striking distance of a part of the National Wilderness System, which he helped to preserve by drafting and managing numerous

bills. In addition, JOHN coauthored the 1977 Surface Mining Reclamation Act, to require environmentally sound coal stripmining and reclamation of stripped land; authored the 1980 Historic Preservation Act Amendments for enhanced local and State role in the preservation and protection of historic buildings and places; authored the 1976 law to triple the Land and Water Conservation Fund and create the Historic Preservation Fund; and authored the House-passed American Conservation Corps Act, to establish a program for hiring America's youth to do conservation work on public lands.

Mr. Speaker, I could go on and on listing the accomplishments of JOHN SEIBERLING in the House of Representatives. He has been an outstanding legislator, a dedicated servant to the people, and a man with the foresight to realize the necessity of preserving our Nation for the future. It has been both an honor and pleasure to work with JOHN SEIBERLING in the House of Representatives, and I have enjoyed many enriching occasions with both JOHN and his charming wife, Betty. I am sure that Betty will enjoy the time JOHN will be able to spend with her now. The two of you have a real team.

I wish JOHN and Betty all the best in the future. It has been a real pleasure and honor to serve with you JOHN and you have certainly left your own indelible mark on this institution. The 14th District of Ohio is losing an able and dedicated legislator. As you leave this institution you can take notice of the fact that because of you, America's beauty has been better preserved—because of you, we are a little more concerned about peace in the world—because of you we are aware of the need to continue the fight on behalf of the liberal causes you espoused and voted for in this House. Good luck JOHN.

Mr. Speaker, I want to include a letter from Richard F. Celeste, Governor of Ohio as a part of this special order.

TRIBUTE TO REPRESENTATIVE JOHN SEIBERLING

I want to add my congratulations and appreciation to those who are honoring Representative John Seiberling for his unfailing and historic achievements in areas ranging from international disarmament to nuclear energy safety. But most importantly, my friend John Seiberling has won the respect of Americans everywhere for his dedicated leadership in preserving our environment and protecting our nation's wilderness system.

Due to his leadership on the Public Lands Subcommittee of the House Interior Committee, 12.8 million acres of land were added to the National Wilderness Preservation System in the lower 48 state region, increasing the size of the system by 66%. And his contribution to the creation and expansion of the Cuyahoga Valley National Recreation Area will be remembered and enjoyed by Ohioans for generations.

It was also no small achievement when he championed the Alaska Lands Act through Congress, establishing 97 million acres of land for wilderness, parks, refuges and public lands. This is probably recognized as the greatest conservation success in the 20th century.

In addition to those achievements, John Seiberling has always recognized the vital link between a dynamic and clean environment and an efficient and affordable public transit system. He has never waivered from his support of a strong federal role in transit funding.

John Seiberling's leadership in Congress will be sorely missed by all of us who have come to depend on his tireless efforts on behalf of a better environment. I commend John for all he has done for Ohio, the country and the world.

RICHARD F. CELESTE,
Governor of Ohio.

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Mr. Speaker, at this time I yield to the gentleman from Pennsylvania [Mr. GAYDOS].

Mr. GAYDOS. Mr. Speaker, I want to thank my good friend for yielding.

I want to spread on the record on behalf of each and every Member of the Pennsylvania delegation, and I have that authority as the dean. We have talked about it. Some cannot be here, some will be here. They want to spread on the record their endearing thoughts of our good friend JOHN SEIBERLING.

He represented us on the Steering and Policy Committee. The gentleman in the well, the dean of the Ohio delegation, knows how close both our delegations worked together. All of our problems are worked out mutually with no difficulty, and particularly the appointment on the Steering and Policy Committee, that has always been done with full accord on both sides.

On that particular note let me point out when Mr. SEIBERLING was put on our Steering and Policy Committee, he did an incredible job. He was very sensitive to our needs. He was effective, and I want to thank the Ohio delegation for choosing him.

In conclusion, let me say that each Member will place their remarks in the RECORD and I am sure my friend will ask special leave for all to put their written remarks in the RECORD for those of our delegation who could not be here this evening.

Mr. STOKES. Mr. Speaker, I thank the distinguished gentleman from Pennsylvania.

I am pleased to yield to the distinguished chairman of the Committee on Interior and Insular Affairs, the gentleman from Arizona [Mr. UDALL].

Mr. UDALL. Mr. Speaker, there is an old rule, not widely known, UDALL's rule on congressional retirements. It says, "Them that ought to, don't; and them that shouldn't, do." JOHN SEIBERLING is the epitome of that great rule.

Mr. Speaker, JOHN SEIBERLING is leaving this House at the end of this term, and while I'm sorry in a very personal way to see him go, I can take comfort in knowing that the American conservation movement will continue to hear his voice.

I know that it will be impossible for a man with JOHN SEIBERLING's energy to simply fade into retirement, and we all will be the better for that. He has always been a man for whom the Herculean style has been commonplace, and I know that will continue to be his style.

The House is losing a good Member. I am losing the daily counsel of a good and close friend. The House Interior Committee is losing the services of a legendary workhorse. But how this man leaves an imprint.

JOHN SEIBERLING has had a major role in shaping monumental legislation dealing with land conservation, national parks and wilderness areas, surface mining regulations, water resources, nuclear energy, and other environmental issues.

But JOHN was not just a resource and energy Congressman, he was a generalist in the best sense of that term. If you had a debate on arms control, he was there. If you had a debate on foreign policy, he was there.

One of JOHN's greatest environmental accomplishments was his role in the enactment of the Alaska National Interest Lands Conservation Act, one of the most important legislative landmarks in the history of American conservation.

I learned in connection with that 6-year experience, which resulted in finally getting that bill passed after two vetoes, one of which we failed to override by one vote. JOHN SEIBERLING was always there when I needed him and I learned that if you wanted to get a reputation as a chairman with a good legislative record, it was to get some tough issues, tough issues, tough issues that came along and put them in the hands of JOHN SEIBERLING and stand back. He made me look very, very good on many occasions when he deserved the credit and I did not.

In 1977, JOHN was chosen to serve as chairman of the House Interior Committee's General Oversight and Alaska Lands Subcommittee, with wide jurisdiction over legislation to establish national parks, wildlife refuges, national forests and wilderness areas in the State of Alaska.

As chairman of that subcommittee, JOHN played a leading role in shaping the final bill, which settled most of the major questions about the allocation and management of the remaining Federal lands in Alaska by balancing the need for developing their mineral and other resources with the need to protect their wildlife, water, wilderness and other values.

JOHN SEIBERLING'S subcommittee heard 2,000 witnesses at 17 public

hearings, including more than 1,000 Alaskans at 5 formal hearings in larger towns and 20 town meetings in villages across Alaska. Another 2,000 citizens submitted written statements for the hearing record. During the Alaska hearings, one newspaper editor nicknamed SEIBERLING "Iron Pants," as he sat through hours of testimony without taking a break or calling a recess.

And he was, this man has the most prodigious capacity for work of anyone I have known.

In 1979, when JOHN became chairman of the Subcommittee on Public Lands, its jurisdiction over general public lands matters included the National Wilderness Preservation System.

Ours was the first country to set aside, to make a decision as a country to set aside some of the pristine wilderness so that our grandchildren could see it the way the Almighty created it. JOHN immediately started developing a legislative approach to deal with the huge task of completing wilderness designations in the National Forest System. As of January of this year, additions to the National Wilderness Preservation System in the lower 48 during JOHN's tenure as chairman have totaled some 12.8 million acres, an unprecedented 66-percent increase in the size of the National Wilderness Preservation System in the lower 48 States in less than 8 years. This was typical of his kind of achievement.

The list goes on and on, Mr. Speaker.

JOHN SEIBERLING and the Wilderness Protection Act. JOHN SEIBERLING and national parks and recreation. JOHN SEIBERLING and park protection, public lands, historic preservation, surface mining reclamation, nuclear waste, the Outer Continental Shelf.

A list, in fact, of JOHN SEIBERLING's accomplishments on behalf of all of these issues fills 24 typewritten pages. And it isn't fluff. It's tough, solid work.

In fact, there are few areas of the American conservation effort not touched by JOHN SEIBERLING. And there are few places where Americans may go in our parks of wilderness areas or monuments or forests or public lands where they will not find a debt owed this man.

His legacy truly will be vast, and good, for JOHN SEIBERLING has worked long and hard for the very best, on behalf of the treasures and grandeur that is our very soul. For generations to come, Americans will be able to go to so many of these places and to see them as the pioneers did.

There are a few times when words really are inadequate, and this is one of those times. JOHN SEIBERLING has been one of the hardest working, most conscientious Members of this House I have ever known. His determination, thoroughness and just plain tenacity will be difficult to replace.

I am proud to have worked with JOHN SEIBERLING. He is a good and decent friend. I shall miss him very much. I wish he and his wife, Betty, all the very best of what they seek in the years ahead.

JOHN, on the personal side, was and is an outstanding photographer. It was always a joke on our committee field trips that JOHN stopped every 10 yards or so to take pictures. I do not know where he and his wife are storing them, but they must have a private warehouse someplace; but he was an exceptional professional photographer.

I never heard this man say a sharp word about one of his colleagues or any citizen. He is one of the most decent men I have ever known. I never saw him raise his voice or get angry, except on one occasion and this was where he felt there had been some mistreatment of some people on a small island in the Pacific that was under his jurisdiction as part of the public lands.

This man was a poet and a singer. He would entertain us on committee trips.

There are so many things I would like to say about JOHN. He is a workaholic, a dedicated workaholic. I never saw him when he did not have 10 more things to do. He was a prodigious workhorse.

I remember Dean Rusk who served 8 years in the Cabinets of Presidents Kennedy and Johnson, never took a day off in 8 years. His wife said in a resigned tone one evening as this was pointed out, she said, "Dean's idea of a holiday is to put on a sport shirt and go to the office."

JOHN SEIBERLING I think followed that philosophy.

Back in the 1930's there was a book, a Babbitt type character in a book who prayed louder than anyone else in church and cheated widows and orphans for the rest of the week. Somebody said of him that he would have been as horrified to have heard Christianity doubted as he would have been to have seen it practiced.

JOHN was a true Christian with compassion for others, respect for his associates, compassion for those in trouble.

I am going to miss him very much. It is sometimes like somebody has taken my right arm away. I am beginning to feel this as the days go by.

I thank the gentleman for having this special order and I appreciate his kindness.

Mr. STOKES. Mr. Speaker, I thank the distinguished gentleman for his outstanding remarks. I know that JOHN would deeply appreciate every word that the gentleman has uttered.

Mr. Speaker, I yield to our distinguished colleague, the gentleman from Ohio [Mr. LUKEN].

Mr. LUKEN. Mr. Speaker, I might say that I just asked the distinguished gentleman from Arizona [Mr. UDALL] if he could read my eulogy, and he said, "The sooner the better."

Mr. Speaker, in this case the length of the peroration is in inverse ratio to the importance and the worth of the honoree, JOHN SEIBERLING from Akron, the apostle of the Interior, environmentalist supreme, ends up as we know in a lot of votes where there are only 20, 30, 40, or 50 of his compatriots on that side, and therefore he is a rugged individualist. I guess that is why the previous speakers noted with perhaps a tinge of surprise what a practical politician he turned out to be in representing Ohio and Pennsylvania on the Steering and Policy Committee; but that is typical of JOHN. He picked up those skills because he wanted to represent his friends in the family here in Ohio and in Pennsylvania.

In personal qualities, we can use the trite description of a man of integrity as applied to JOHN. He taught us all that a professional politician and a completely honest person could be embodied in the same person.

There are others who might fit that description, but JOHN is the original.

JOHN was concerned about energy and equally concerned about the environment. There are not many who could fit into that mold.

JOHN never cast a careless vote. We could always ask JOHN what were the real issues in any vote coming on the floor and he always knew them.

He is a true Ohio legislator, but more of a national legislator, if we recognize JOHN for his true qualities.

On human rights, on civil rights, JOHN SEIBERLING knows no peer.

I think we always claim for ourselves that we would like to call them as we see them. In JOHN's case, it is the greatest compliment to him that his seeming stubborness, obduracy, that is clinging to what he thought was right, and therefore he was not always the easiest person to talk into something; but I think that is the true reward and the highest compliment that we could pay to him, that he always stuck to his convictions, and therefore we relied upon him. We admire him and we will continue to do so.

Mr. Speaker, again I thank the gentleman from Ohio [Mr. STOKES] for yielding me this time.

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Mr. WEAVER. Mr. Speaker, will the gentleman yield?

Mr. STOKES. I yield to the distinguished gentleman from Oregon [Mr. WEAVER].

Mr. WEAVER. Mr. Speaker, I commend my colleague, the gentleman from Ohio [Mr. STOKES], for this special order.

Mr. Speaker, JOHN SEIBERLING is my dearest and deepest friend in the Congress. I have come to love him and respect him more than any individual whom I think I have ever known.

His dedication to the things that I consider to be right and good and true is deep and far-reaching. He knows that the world is in chaos, and he is trying to right it away from the arms race and away from foreign policy that speaks of hatred.

As to the environment of this Nation, I know of no other individual that this Nation owes more to than JOHN SEIBERLING. The wilderness areas that he has through the dint of his hard work—Chairman UDALL spoke of the countless hours, weeks, and months that JOHN SEIBERLING has spent on the road in all parts of this country in hearings listening to everyone, and then coming back here and telling the committee what needs to be done.

His command of detail has to me been almost incredible. Somebody might make an objection to a wilderness bill provision in committee, and JOHN would know the riverbank, and would be able to debate that point, someplace far out in the West or in the South. Through this command of detail and drive he incorporated so many areas into wilderness in this country that will be saved from exploitation for future generations that we owe him this great, deep debt.

Besides this, I would like to conclude by saying that he is one of the most interesting and amusing friends whom I have ever known, and if you do not believe me, go out with him sometime and have him recite the poetry that he knows from memory. One of the most tremendous evenings of my life was spent listening to him recite this poetry.

So we all owe this debt, and we all owe him our love.

Mr. PEASE. Mr. Speaker, will the gentleman yield?

Mr. STOKES. I yield to the gentleman from Ohio.

Mr. PEASE. Mr. Speaker, others have and will detail JOHN SEIBERLING'S actual accomplishments in the Congress. I would like to dwell for just a couple of minutes on some character traits which have caused me to become a great admirer of JOHN SEIBERLING.

JOHN is a serious legislator. He took the time and always takes the time to learn the issues, to become an expert in any field for which he is responsible. He took the time to work for legislation, not to be a dilettante in the legislative arena, and he brought to the task of legislating a formidable intellect, a high regard for facts and logic, an absolute ability to withstand the pressure of special interests, yet the wisdom to know that compromise is essential in a body like this, and the ability to reach fair compromises in the national interest.

As a legislator, JOHN SEIBERLING could well serve as the perfect role model for young legislators who will follow him in the years to come.

I have spoken of JOHN'S ability as a legislator, and that ability is formidable. Part of legislating is the casting of votes, and I have had the pleasure of observing and very greatly admiring JOHN as I have watched him over the years cast votes on hundreds and hundreds of issues. JOHN is a liberal—an unabashed one—but what counts in this body is not whether one is a conservative or a liberal or a moderate, but how one is a conservative, or how one is a liberal. JOHN SEIBERLING votes and always has voted with intelligence, with careful detailed study of the issues, and with great and absolute integrity.

Anytime JOHN SEIBERLING casts a vote, you know that it was well-considered, thoughtful, good for the common interest, free of pettiness, and, if the issue was politically volatile, you knew that his vote was the product of personal courage. JOHN never feared to be in the minority, whether that was a large minority or a minority of two or three others could see the issues clearly and who had the courage of their convictions to vote as they saw the issue.

JOHN is a serious man, concerned with serious, important issues. You would not talk with JOHN about the gossip—idle gossip—but rather about things of genuine importance to the people of our Nation, and yet he has an excellent sense of humor, a puckish sense of humor; he is a delightful person to spend time with.

Now I would like to say that in this body no Member can be—no Member who is married—can be a serious legislator without having a spouse who is equally devoted to the public interest. I would want to pay credit to Betty Seiberling, JOHN'S wife, for the contributions that she has made, both to his intellectual growth and to his ability to spend time legislating in the public interest.

Ten years ago my predecessor in Congress, Charles Mosher, retired. At that time he propounded what he called Mosher's Law. It is that it is better to retire too soon than too late. I think that that law applies to JOHN SEIBERLING as well. I suspect that that is why he chose to retire this year, much sooner than he would have had to have done. All of us will miss him very much and miss the contributions that he has made to this body.

My deepest regret about this special order is that there is not enough time for me to go on and on about all of the ways in which I value and respect and love this man. I wish him well in his retirement, and I thank the gentleman from Ohio for yielding me this time.

Mr. PEPPER. Mr. Speaker, will the gentleman yield?

Mr. STOKES. I am delighted to yield to the gentleman from Florida.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 3810, IMMIGRATION CONTROL AND LEGALIZATION AMENDMENTS ACT OF 1985

Mr. PEPPER, from the Committee on Rules, submitted a privileged report (Rept. No. 99-980) on the resolution (H. Res. 580) providing for the consideration of the bill (H.R. 3810) to amend the Immigration and Nationality Act to revise and reform the immigration laws, and for other purposes, which was referred to the House Calendar and ordered to be printed.

□ 2010

PARLIAMENTARY INQUIRY

Mr. SENSENBRENNER. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore (Mr. VALENTINE). The gentleman will state his parliamentary inquiry.

Mr. SENSENBRENNER. Mr. Speaker, the rule just filed by the distinguished chairman of the Committee on Rules, the gentleman from Florida [Mr. PEPPER] references 14 amendments which are made in order that are not contained in the rule but are contained in the report of the Committee on Rules. May I ask if the texts of those amendments are contained in the report of the Committee on Rules that has just been filed by the chairman of the committee as a privileged report?

The SPEAKER pro tempore. The Chair would say to the gentleman that the Chair presumes that that is the case.

Mr. SENSENBRENNER. A further parlimentary inquiry, Mr. Speaker: The gentleman from Wisconsin wishes to know if the text of the one substitute and the 14 amendments to the substitute that are referenced are in the report and thus available to the Members as of this legislative day?

The SPEAKER pro tempore. The Chair would state to the gentleman that there are 14 numbered amendments in the report.

Mr. SENSENBRENNER. A further parliamentary inquiry, Mr. Speaker: The resolution that was just filed by the chairman of the Committee on Rules also makes reference to an amendment in the nature of a substitute. Is the text of that amendment in the nature of a substitute contained in the report that has just been filed?

The SPEAKER pro tempore. The Chair would state to the gentleman that it is not, but it has been introduced separately and it will be printed and available to the Members in the morning.

Mr. SENSENBRENNER. I thank the Chair.

POINT OF ORDER

Mr. GONZALEZ. Mr. Speaker, I have a point of order.

The SPEAKER pro tempore. The gentleman will state his point of order.

Mr. GONZALEZ. Mr. Speaker, is it not necessary that at the time the motion is made to file a report that that report be in hand, completed as approved by the committee submitting the report?

The SPEAKER pro tempore. That is the rule as the Chair understands it, and that is the case.

Mr. GONZALEZ. Mr. Speaker, my understanding is that the rule as approved by the Rules Committee less than an hour ago is not complete and, therefore, cannot be presented in a complete form at this time, and I challenge the validity of that procedure.

The SPEAKER pro tempore. The Chair would say to the gentleman that the Chair believes that it is complete, and of course it has been filed.

Mr. GONZALEZ. Mr. Speaker, will the Chair point to the report as filed?

The SPEAKER pro tempore. The Chair would state to the gentleman from Texas that the report is here at the desk and available for examination by the gentleman from Texas.

Mr. GONZALEZ. Mr. Speaker, I thank the Chair and I withdraw my point of order.

The SPEAKER pro tempore. The gentleman from Ohio [Mr. STOKES] still has the time and may proceed.

Mr. STOKES. Mr. Speaker, I yield to the gentleman from Minnesota [Mr. VENTO].

Mr. VENTO. Mr. Speaker, it is with respect and admiration that I rise today to speak in tribute of JOHN SEIBERLING. During my 10 years of service with JOHN on the Interior Committee, I have seen him leave his indelible mark on almost every major piece of legislation considered by our committee. When history records the events of the 20th century regarding conservation policy clearly those who have served these past 10 years MO UDALL, the late Phil Burton and certainly JOHN SEIBERLING will be a significant measure of proud conservation achievement.

JOHN is committed to just and workable public land and natural resource policies. He carries forth his vision that the future should be able to behold with wonder a measure of what our forefathers saw when they set foot in this great country. Yes, JOHN understands the need and value of resource utilization, but his vision carries him far beyond the immediate needs of the day. He has crafted public policy with an eye toward the future's natural resource and recreation needs.

JOHN's work stands as an inspiration to many, including myself. Going beyond the immediate gain to be realized in the consumptive use of our natural resources, JOHN realizes these resources have a value far beyond what is measured in dollars and cents. The Alaska Lands Act and much of the National Wilderness System stand as testaments to his commitment to provide present and future generations with oases in a crowded world.

Though many have tried to paint him into a corner on occasion, few have succeeded. He has displayed an ability to disarm opponents by his soft spoken but forceful tenacity. More importantly, he has shown a true legislator's most important characteristic; he does his homework and comes prepared to make his case.

Two years ago, with the support and counsel of JOHN, I assumed the chairmanship of the Subcommittee on National Parks and Recreation, taking on responsibilities that JOHN had formerly handled. Through his efforts, the National Park System, and especially the Cuyahoga Valley National Recreation Area near his home in Akron, OH, will carry an enduring legacy in advancing the policy that certain features of our country shall be set aside to "conserve the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations."

By no means is today just a tribute to JOHN's past accomplishment. Rather, it is also a toast for that which is yet to come. JOHN leaves the House at the end of the year to accept a new challenge with a teaching professorship at the University of Akron.

So, Mr. Speaker, it is with sorrow that I note JOHN SEIBERLING's retirement from this body but we are all consoled knowing of his new challenges and many past accomplishments.

Shakespeare once noted that "our doubts are traitors that make us lose the good we oft might win by daring to attempt." Well, JOHN SEIBERLING dared to attempt with fairness, firmness, conviction, and foresight. Our environment is on sounder footing because with his vision without doubt he dared to attempt and established sound national policy for both America's natural and human resources.

Mr. Speaker, I am proud to consider JOHN my friend, and have been privileged to learn from him and serve with him these past 10 years in Congress. I wish JOHN and his wife Betty all the best in their new endeavors.

Mr. STOKES. Mr. Speaker, I thank the gentleman for his comments and I yield to the distinguished gentleman from Ohio [Mr. REGULA].

Mr. REGULA. Mr. Speaker, I thank the gentleman for yielding and commend him for taking this time for a special order to honor one of our outstanding colleagues.

JOHN SEIBERLING's district is next to mine. We serve many of the same people in the sense that because of our district locations many of my constituents work in his district and vice versa.

We have worked closely together on many projects that affect our districts jointly, the Akron-Canton Airport, recreational facilities, stream cleanups, economic development, and so on. I want to say that it has always been a pleasure to work with JOHN. Many times we would have differences on legislative issues, but when it came to providing service to the people of our adjoining districts there was never any partisanship. JOHN was always willing to work in a way that would best provide for the economic and social growth of the people and the communities that we both serve.

JOHN was always very cooperative in every effort that we would attempt and would put the interests of the community first in terms of achieving beneficial objectives.

JOHN will leave many legislative landmarks, but the one I think that will stand out over the years is the development of the Cuyahoga Valley National Park Recreation Area. Thanks to JOHN's leadership, we have in northern Ohio what will in some future time be the central park of this area. We are in a region that is developing and will continue to develop in terms of urbanization. Thanks to the efforts that JOHN made we have a 30,000-plus acre green space, a crown jewel for northern Ohio, that will be there to serve the people for all time. I can say without equivocation that without JOHN's leadership the Cuyahoga Valley National Park never would have happened, one of only three urban parks in the United States, as asset that will be without price in the years to come. Without his persistence, without his diligent efforts we would not have been able to achieve this magnificent goal. This park will be a living monument to JOHN's dedicated efforts for literally decades and centuries to come. People who use this facility in the years to come will be grateful for his work in establishing the Cuyahoga Valley National Park.

As a legislator, JOHN is intellectually honest. This is a wonderful characteristic for a person that serves in this body. You may disagree with him, but he has a position because he believes in it, and he articulates it very eloquently.

We will miss JOHN SEIBERLING and his leadership on matters involving the environment of this Nation as well as many other issues. I will miss him as a colleague in the adjoining district because it has always been a great satisfaction to be able to work with him in our service to people without any regard to partisanship.

I thank the gentleman for yielding.

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Mr. STOKES. I thank the gentleman.

Mr. Speaker, I yield to the gentleman from Ohio [Mr. ECKART].

Mr. ECKART of Ohio. Mr. Speaker, I applaud the gentleman from Ohio [Mr. STOKES] for taking this time and my colleagues for being here to share this with us. These events oftentimes sound a lot like eulogies.

It was said that a statesman is nothing more than a retired politician, and that a statesman is a person about whom you can name a school building and a politician is a person about whom you can name a scandal.

Well, JOHN SEIBERLING has been a statesman all the time that he has held public office, and it is a curious fact, however, of how he got his political views. His liberalism is a departure from his ancestors.

The so-called rubber barons of Akron were rock-ribbed Republicans of Summit County. His grandfather was a Republican; his grandmother was a Republican; his cousin who served in Congress before him was a Republican; and then along came JOHN.

In fact, when JOHN first ran and defeated a Republican incumbent, he was the first Democrat that the Akron Beacon Journal ever endorsed, which says a lot about the statesmanship qualities of JOHN SEIBERLING.

RUSSELL LONG, another giant who just announced his retirement and is leaving this esteemed Congress at the end of this session said that "You are never more loved than when you are retired or dead." Well, JOHN, wherever you are, we know you are not dead and we do know that you are loved. So I guess that means you must be getting to be retired.

It is so much better to retire than to be retired. I guess it is a lot like Jim Brown, the famous athlete from the Cleveland area, who retired at the top of his game; so has JOHN SEIBERLING.

My most fond memory of JOHN is when I first arrived here. He literally took me under his wing and we became office mates around the corner from each other; offered me his coffee; offered his staff help; offered his telephones—and it was indeed a difficult day when I was still trying to sort out which end was up.

I came to him and said, "JOHN, I read this quote about you in the Congressional Journal which said you identified yourself saying, in the landslide of Ronald Reagan's election: 'We need every liberal we can find.' " Well, this Congress needs every JOHN SEIBERLING we can find.

For JOHN being as kind as he was to me, and for JOHN being as loyal as he has been to his conscience and to his goals in life, we say "thank you" to JOHN SEIBERLING; we say thank you to the people of Summit County, and we wish you well in your future endeavors.

Mr. STOKES. I thank the gentleman for his comments and I yield to the distinguished gentleman from Florida [Mr. PEPPER].

Mr. PEPPER. Mr. Speaker, I am proud to have the opportunity to join my colleagues in tribute to JOHN SEIBERLING. He is truly one of the good and great Members of this House.

In certain areas, he was outstanding in his leadership, particularly in the area of energy and environment. I remember the numerous times he has appeared before the Rules Committee in respect to one of those matters, in doing something to further our great national parks and to make America a better place in which all of us can live.

JOHN SEIBERLING was one of those knowledgeable people who by his quiet persistence was able to achieve many legislative victories in this House. When he dedicated himself to a subject, he learned it thoroughly, and he effectively presented it to his committee or to his colleagues upon this floor.

JOHN SEIBERLING is a charming gentleman, a man of impeccable integrity, a man of high principles, a man of deep dedication.

As his able colleague has said, coming from a Republican environment in his youth, he became one of the most compassionate Members of this House, one of the most truly dedicated Democrats there was in this Chamber.

JOHN SEIBERLING will always be remembered for those noble personal qualities that he so beautifully exemplifies. He and I had many friends in common whom we used to discuss. He was one of the dearest friends I had upon this floor, Member of this House.

I shall miss him as much as I would miss any Member that might leave this body. Mr. Speaker, JOHN SEIBERLING was a heroic combat soldier. He was also a heroic legislator in his membership in this House. A grateful country will always be his debtor for both those services of distinction that he rendered.

May the Lord bless him and his family for many years of good health and great happiness, and let him know that he should be cherished in the hearts of the colleagues he leaves behind.

Mr. STOKES. I thank the distinguished chairman from Florida for those beautiful words.

Mr. Speaker, I yield to the distinguished gentleman from Pennsylvania [Mr. KOSTMAYER].

Mr. KOSTMAYER. Mr. Speaker, I know that there are others in the Chamber waiting to speak and I will be brief, but I wanted to say a word about our retiring colleague from Ohio, JOHN SEIBERLING.

I came to the Congress 10 years ago, elected in 1976, and arrived here in January 1977 and sought and was fortunately granted a seat on the Interior Committee and on its Alaskan Lands Subcommittee.

From that vantage point, as a member of that subcommittee, I and other members of the subcommittee and the full committee, and indeed of the Congress and the people of this country saw the work of JOHN SEIBERLING of Ohio in creating in Alaska acreage of wilderness a national park equal to the existing acreage at that time in the lower 48 States.

To those who seek his legacy, they can look closer than Alaska, and at the other States in which his hard work resulted in wilderness areas. In Colorado, Mr. Speaker, and in Indiana; in Missouri, and in West Virginia; in Vermont and New Hampshire and Wisconsin and in Florida; in Arkansas, in North Carolina—a State I traveled to with him as a member of the Public Lands Subcommittee—in Alabama and in Louisiana, in South Carolina and in Virginia; in Kentucky and in Tennessee; in Mississippi and Texas and Nebraska and in Georgia and finally, Mr. Speaker, in my own State of Pennsylvania, where he joined in writing the Pennsylvania wilderness legislation.

That Pennsylvania wilderness area, Mr. Speaker, which is in the central and the northern part of my State is wilderness area which is more accessible to the largest number of Americans than any other wilderness area in the country because of its location on the east coast, its near to about 92 million Americans who have access to that area.

So, we remember him for his work in Pennsylvania and in all of those States. We will miss, very much Mr. Speaker, his persistence, his almost irritating persistence at times; his determination; his gritty determination and his fight; his almost casual disregard of the political consequences of his actions here in Congress and what people back in Ohio might think. All of these characteristics, Mr. Speaker, remind me of another great Ohioan; a man who served not in the House but in the Senate, Steven Young of Ohio, who was a hero of mine long before I came here.

Steven Young and JOHN SEIBERLING I think came from the same mold. Both had a healthy and an important respect for the land of this country, for its mountains and for its rivers, for the States and for all of the territory of our country.

Most of all, they respected the people of our country, their values, our Constitution, and the diversity and the pluralism and the variety of viewpoint that the Constitution requires.

Let me say finally, Mr. Speaker, that a couple of years ago I went to a restaurant near my own district, across the Delaware River in New Jersey, to a small town called Sergeantsville, NJ.

I was having dinner there and the owner recognized me and came over to chat, and I asked him his name, and he said "My name is Frank Ayers. My father used to be a Congressman from Ohio." I said, "Isn't that the same Ayers that JOHN SEIBERLING replaced?" He said, "Indeed it is, but I want you to know that the Ayers family in Ohio have come to vote for JOHN SEIBERLING; they have come to respect him. They have come to admire him."

I think that is the way that people in the country, the people in the Congress, feel; we owe him a great deal. JOHN SEIBERLING has helped to make America a better place.

Mr. STOKES. Mr. Speaker, I yield to the gentleman from Arkansas [Mr. ALEXANDER].

Mr. ALEXANDER. Mr. Speaker, I, like my other colleagues, have come here this evening to pay tribute to our retiring colleague, JOHN SEIBERLING. I am not from Ohio; in fact, no member of my family has lived in Ohio since my great-great-grandfather was captured by the Indians when he was moving from New Jersey through Ohio to settle in the land we now call Arkansas. He wrote a book entitled "Indian Captivity" telling about Ohio in those days.

Nor do I serve on the Interior Committee with JOHN.

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I know him as a Member who serves in this Chamber. In recalling our association and friendship over the years that we have been here together, I cannot think of one time that I have ever been with him except in this Chamber, that comes to mind at this time. So, the knowledge and opinion that I have of him is that of a Congressman, a legislator.

The other day, in fact yesterday, I was catching the early flight from Memphis near my district back to work, and there were two salesmen behind me making their runs about the country, and they were talking about facts.

One said to the other, "Don't you know the facts?" The response was an alarming "I have no knowledge of the facts, nor do I respect the facts."

That seems to characterize an attitude that we are so commonly associated with in the public at large but as a stark contrast to JOHN SEIBERLING, who was diligent in learning the facts. He was also very reasonable with Members, and he was very attentive to our requests. He helped us pass a wilderness bill that affected my State of Arkansas, as in so many of the other States that have worked with him in that regard. I was pleased to join him in supporting the Alaska lands bill which was a great tribute to his work and service in Congress and to the Nation.

I will miss JOHN's departure here, but I hope he returns often to come back to be with those of us here who admire him and respect him and care about him and love him and wish him well. The only thing that alarms me about his departure is that I have been here one term longer than he has. And with all of this advice about retiring, it is certainly something that I am paying attention to, but I am announcing that I am not ready for that just yet.

I thank the gentleman for yielding.

Mr. STOKES. I thank the gentleman for his remarks.

I am pleased to yield to the gentlewoman from Ohio [Ms. KAPTUR].

Ms. KAPTUR. Mr. Speaker, I come before you today to pay special tribute to my friend and colleague from Ohio, the Honorable JOHN SEIBERLING. JOHN, the studious, patient, tireless man of the Midwest is a true leader of our Nation, a leader in that he held a vision for a better country, and spent his 16 years in Congress working toward that vision.

How I will miss his presence here. I have enjoyed our years together, his willingness to help a new Member like myself, his leadership on United States-Soviet relations and on conservation in our country, his integrity, and his humor. I love the sign that greets you as you enter his Congressional office. "This office belongs to the people of Ohio's 14th District." I will miss his bicycle parked in the rack in front of the Longworth Building, and I will miss our many walks to the floor to vote.

JOHN SEIBERLING will go down in the annals of Ohio's Congressional delegation as one of the greats. He is a classic; the type of man Thomas Jefferson would have been proud to know. Theodore Roosevelt and Gifford Pinchot would have applauded his efforts to continue their uniquely American commitment to protecting the environment for future generations.

JOHN SEIBERLING will be best remembered for his contribution to America's environment, her wilderness, and national parks. The Alaska National Interest Lands Conservation Act, an act he shepherded through the Congress, could only be achieved by total dedication and personal commitment. JOHN's professional dedication was demonstrated by his perseverance on the floor of the House, and by the thoroughness and fairness he displayed during the long deliberations. As chairman of the House Interior Subcommittee on General Oversight and Alaska Lands, he held nationwide hearings on the Alaska Lands Act. In Alaska, he held hearings in the cities and town meetings in villages throughout the State. He brought the issue of conservation and preservation of our lands and wildlife to the people, and the people rallied around him. JOHN led this grassroots effort in a struggle against a well-funded lobby in order to protect our wildlands for future generations. His personal commitment was pictured in the photographs he took of Alaska, photos which caught the beauty, the vastness, and the fragility of the Alaskan lands, photos which inspired us to conserve, to preserve, that which was given to us. His commitment to the native peoples of Alaska was reflected in his induction into the Clan of the Raven of the Tlingit Indians, Village of Angoon, Admiralty Island National Monument.

No other nation has so boldly proclaimed its commitment to the conservation of its land. JOHN SEIBERLING has been a leader in this commitment. Through the Alaska Land Act, America more than doubled the National Park System, tripled the national wilderness areas, and quadrupled the national wildlife refuges. Since the passage of this act, JOHN has not relented in his push toward the original intent and scope of the Alaska Land Act. Many pieces of current legislation demonstrate this—the effort to designate the Arctic Coastal Plain Wilderness as a wildlife refuge, repeal of section 705 of the Alaska Land Act in order to protect the Tongass National Forest, his successful fight against the sport hunting bill which would have designated certain parkland as preserve land and thus open to hunting, and the Admiralty Island land exchange which will, if approved by the Senate, protect the subsistence lifestyle of the Tlingit Indians of Admiralty Island National Monument.

For all these things, JOHN SEIBERLING will be remembered and revered. John's legacy is in that which he has left for future generations—living emblems of the wilderness—grizzly and polar bears, herds of caribou, clans of stellar sea lions, the walrus and the loon, deep-cut fjords edged by dense forests and fed by immense glaciers and icefields, magnificent mountain ranges encompassing thousands of miles, hidden lakes, unclimbed peaks, and spectacular spires and vistas, and the fragile and subtle beauty of the tundra. For all of this, each American, and indeed the world, can thank JOHN SEIBERLING.

I thank the gentleman for this time.

Mr. STOKES. I thank the gentlewoman for those beautiful remarks.

Mr. Speaker, I yield to the distinguished gentleman from Nevada [Mr. REID].

Mr. REID. Mr. Speaker, I am pleased to be able to join in a tribute to my good friend and colleague, JOHN SEIBERLING, who will be retiring his

congressional seat at the end of this year.

It has been my great pleasure and honor to have had the opportunity to work with Congressman SEIBERLING over the past few years. My first association with Congressman SEIBERLING was through his position as chairman of the Public Lands Subcommittee when, last year, it came time to resolve the issue of wilderness designation in the national forests of Nevada.

Congressman SEIBERLING, while still recovering from major surgery, selflessly came to Nevada and traveled throughout the State with me. He did this so that he could see first hand the most magnificent roadless areas in the State which would be under consideration for wilderness designation. It was with great sacrifice on his part that he came to Nevada, yet he cared so deeply about resolving the issue that he chose to spend his recuperative period in this way. That was my first glimpse into the kind of man JOHN SEIBERLING is.

It doesn't matter whether the discussion is centered on the basing of the MX missile in the fragile desert or facilitating a public land purchase so that a small Nevada town can build an airport. Congressman SEIBERLING is always there, with the same dogged determination to siphon out the facts and make the best decision possible.

This great statesman has, time after time, played a decisive role in ensuring that legislation which is good for Nevada has made it to the House floor. I have been witness to his tireless efforts at hammering out workable compromises; putting his personal wishes aside so that everyone could walk away with something. I am proud to say that for Nevada, that something will be the State's first National Park.

Congressman SEIBERLING is motivated by an overwhelming sense of justice. He is the kind of man who views his position as Congressman of the 14th District of Ohio, and as chairman of the Public Lands Subcommittee as a moral responsibility rather than a job. His integrity is unquestionable, and his commitment is unwavering. The residents of Akron are truly fortunate to have had a man of this caliber represent them for the past 16 years. I personally am honored just to have had the opportunity to serve and work along side JOHN SEIBERLING in Congress. He will be greatly missed by all of us in this Chamber.

I thank the gentleman.

Mr. STOKES. I thank the gentleman for his kind remarks.

Mr. Speaker, I yield to the gentleman from New Mexico [Mr. RICHARDSON].

Mr. RICHARDSON. Mr. Speaker, I rise today to pay tribute to the outstanding accomplishments of my dear friend and colleague, the Honorable JOHN SEIBERLING of Ohio. For the past 15 years in Congress, JOHN SEIBERLING has been an outstanding leader in the Congress on conservation, historic preservation, and environmental issues. As chairman of the House Public Lands Subcommittee, he has played a significant role in many important national issues. He has had the vision and foresight of advancing legislation that preserves our Nation's natural and historic heritage for future generations to come. JOHN SEIBERLING has been responsible for drafting and managing over 16 acts adding over 6 million acres to the National Wilderness System in the lower 48 States. During my tenure in Congress, I have had the honor and the priviledge of working closely with Chairman SEIBERLING in developing two wilderness bills for New Mexico which protect environmentally sensitive areas and at the same time provide an important economic development tool for the promotion of tourism. On behalf of the people of the great State of New Mexico I want to say thank you. I want to take this opportunity to thank you for your untiring efforts, your legislative skill, and vision for the future in protecting our public lands.

The marketplace in the West is clamoring for renewable economic activities by all sort of outdoor recreation such as hunting, rafting, birdwatching, camping, and hiking. JOHN SEIBERLING has heard that call. I know that there are many people who have taken advantage of the many national facilities that JOHN SEIBERLING has been responsible for preserving for the future.

Mr. Speaker, JOHN SEIBERLING has many achievements to his credit. Among them:

He is the cofounder and member of the executive committee of the Environmental and Energy Study Conference, a bipartisan group of Congressmen and Senators providing basic research and coordination on environment and energy issues.

As chairman of Alaska Lands Subcommittee and the Public Lands Subcommittee, he managed the passage of the Alaska National Interest Lands act, which preserved over 100 million acres of Alaska's spectacular wilderness, scenery, and wildlife and promoted the orderly development of Alaska's resources.

JOHN SEIBERLING was a leader in the successful effort to block Interior Secretary James Watt's plans to open wilderness areas to oil and gas development.

He coauthored the law providing for environmentally sound coal strip mining and reclamation of stripped land.

He authored the 1980 Historic Preservation Act providing for enhanced local and State roles in the preservation of historic buildings and places.

Congressman SEIBERLING authored the law that expanded the land and water conservation fund for open space and recreation land and developed the historic preservation fund.

Congressman SEIBERLING has had received numerous awards presented by most national conservation groups for his outstanding work in conserving our national resources and protecting the environment.

Mr. Speaker, I consider myself extremely lucky to have won a seat in the 98th Congress and with that a coveted appointment on Chairman SEIBERLING's Public Lands Subcommittee. JOHN SEIBERLING is known among his colleagues as an outstanding Member of Congress, a fair and honest man, a man of wit and humor, and a man who has a vision for the future which includes a commitment to protect environmentally sensitive lands for future generations to enjoy. Congressman SEIBERLING, you will be sorely missed by your colleagues and the hard work and dedication that are your trademarks are ideals that we can all strive to live up to. I want to wish you the best of luck in the future and want to extend to you an invitation to visit the Third Congressional District of New Mexico where you have many friends because of all the field hearings you have held in my district. Thank you JOHN and best of luck to you and Betty.

AWARDS PRESENTED TO JOHN F. SEIBERLING

Save Our Cumberland Mountains (SOCM) Distinguished Service Award, for efforts to prevent environmental damage due to improper stripmining practices, 1985.

The American Institute of Architects 1985 Institute Honor, for leadership in protecting the environment and preserving the nation's natural and historic heritage, 1985.

Jewish National Fund Tree of Life Award, for outstanding commitment to the welfare of the people of Ohio, the Nation, and the State of Israel, 1985.

Legislative Conservationist of the Year, Wyoming Wildlife Federation, for outstanding contributions to the wise use and management of the nation's natural resources, 1984.

National Award, National Association of Olmsted Parks, 1984.

Ohio Environmental Council's Environmental Recognition Award, 1984.

Colorado Open Space Council declared March 6, 1984 as John Seiberling Day in recognition of work on Colorado National Forest Wilderness Act during the 95th Congress.

National Park and Conservation Association's Conservationist of the Year Award, 1983.

Sierra Club of Northeast Ohio John Muir Award, 1983.

Ohio Historical Preservation Society's Award, for preservation of our nation's heritage, 1983.

The Wilderness Society's Ansel Adams Conservation Award, 1982.

Environmental Policy Center's 1982 Environmental Policy Award.

Sierra Club's Edgar Wayburn Award for extraordinary contribution to the success of

the Alaska National Interest Lands Legislation, RARE II, National Parks, Federal Land Policies, and other Critical Environmental Issues, 1981.

National Conference of State Historic Preservation Officers' Award for Leadership and Dedication to the Enactment of National Historic Preservation Legislation and Contributions to Safeguard our National Heritage, 1981.

Greater Akron Audubon Society's formal resolution to honor John Seiberling's unparalleled leadership in introducing and supporting ecologically sound legislation, 1980.

Preservation Action's Preservation Leadership Award for commitment to the conservation of our heritage and environment, 1979.

UDAG Award of Excellence for outstanding service and contribution to the ongoing revitalization of America's urban resources, U.S. Department of Housing and Urban Development, 1979.

Congressional Leadership Award of the National Recreation and Park Association, 1976.

Greater Cleveland Audubon Society's Honor Award for leadership on environmental issues, 1975.

[From the Akron Beacon Journal, Jan. 2, 1986]

THE SEIBERLING STYLE—HARD WORKING AND HONORABLE

(By David B. Cooper)

"It's a job you never get away from," John Seiberling said. "You're like a doctor; you're on call 24 hours a day, seven days a week. Your staff always knows where you are."

It was 8 a.m. Tuesday, barely daylight of the morning after Seiberling had told key campaign supporters he would not seek another term in Congress.

He and his wife Betty were already up in their home overlooking the Cuyahoga Valley National Recreation Area—the creation and development of which he regards with great satisfaction—and he was already being asked for yet another interview.

Filling his seat in Congress is sure to set off the dangedest donnybrook and the most intense political jockeying this area has seen in some time. Seiberling, now 67, was first elected in 1970 and has been re-elected ever since with victory totals often approaching 75 percent. He has often been viewed as an institution, as well as a darned good congressman for the district he serves.

Those who may now lust for the vacancy that will be created by his retirement will do well to reflect on the time, energy, and wear and tear required to be a good congressman.

"I generally put in about a 12-hour day," he reflected. "And then I go home. But after dinner I have to sit down and do my homework. It's a very demanding job if you're going to accomplish anything."

The job pays $75,000 a year, but a congressman is required to maintain two residences—one in his district and one in Washington, where members spend most of their time. Unless one is willing to cut corners or accept a lot of favors and free meals from lobbyists, which is not Seiberling's style, the costs are great. Washington is an expensive city.

"And there are frustrations," Seiberling said, "such as seeing legislation you thought was good get defeated on the floor.

"The worst of all is seeing your colleagues run for cover when a politically hot issue gets tossed on the table."

Could he recall an example? "Well, there's always the annual pork-barrel bill," he said. "I remember one time I voted against it, because I thought it contained a lot of bad stuff, and all the Cleveland congressmen came and said, 'How can you do that? There's a lot of money in there for the Cleveland harbor!' And I said, 'Yeah, but have you looked at everything else that's in there.'"

Satisfaction can also go with the job, he said: "If you do your job, you spend an awful lot of time helping people and making sure you have a good staff that can help people. I get dozens of letters every year from people we've helped with their Social Security or something else involving the federal bureaucracy. The bureaucracy was screwing them, and it's heart-rending, the people who have given up, and then they thought of calling their congressman. And if you're able to help, it's gratifying.

And, every so often, you can get good legislation passed. We've got the wilderness legislation in good shape now; the job is done. While it's not exactly what I would have liked, it is a major accomplishment for the country.

"The Cuyahoga Valley is a great satisfaction to me. The creation of that park was something that interested me and many others long before I was in Congress. One of the reasons I feel I can leave this job now is because Ralph Regula has told me he's going to keep getting us the money."

Seiberling is a Democrat and Regula is a Republican congressman from Stark County. While they may disagree on national politics and major national issues, a real strength for this region is the fact that the two have worked very closely together in the Congress on major regional issues, and especially on the growth and development of the federal park in the Cuyahoga Valley.

"He's a very good congressman." Seiberling said, referring to Regula. "The Cuyahoga Valley is my most satisfying achievement," Seiberling added. "Its far enough along now so that I don't think even Ronald Reagan can reverse that one."

Unstated in Seiberling's comments was the memory that James Watt, who was Reagan's first and a highly controversial secretary of the interior, appeared to try to scuttle the Cuyahoga Valley park shortly after he took office. The steadfast combination of Republican Regula and Democrat Seiberling stopped any such effort.

Along the way, whether protecting the Cuyahoga Valley or securing federal funds for worthy Akron-area projects, Seiberling has been helped by a competent staff, headed by his administrative assistant, Don Mansfield. "A good staff is very Important," Seiberling said. "Congress is totally dependent on staff. You can't handle all the cases, you can't follow the legislation, without good staff."

The job of a congressman really involves a triple role; taking care of individual constituent problems and questions, representing the district in Washington and doing what one can to secure legitimate federal funds for one's district, and helping shape, pass or defeat important national legislation.

A few years ago, I made a rough calculation that I had known and interviewed over 300 members of Congress and candidates for Congress. I can't recall any that I think have handled the job better or have been more attentive and successful in helping their districts than Seiberling.

He's leaving now because he thinks its time for someone younger and with more vigor who, as he put it, "can be prepared for the long haul."

"It's hard on your family," he said, "and I'm looking forward to a more relaxed time with my family. The time to leave this job is when you're still in good shape."

While the job is a grueling one, he said, "There are a lot of laughs as well as heartaches. Being in Congress is sort of like being in the Army. If it weren't for the laughs, it would be sort of grim."

[From the Cleveland Plain Dealer, Jan. 16, 1986]

SIEBERLING SETS OFF A SCRAMBLE

Summit County politicians are scrambling for the right to succeed Rep. John Seiberling, but it will take awhile before any successor achieves his stature. Seiberling, the patrician lawyer with the common touch, will retire next January after eight terms as Akron's voice in Congress.

A grandson of the founder of Goodyear Tire and Rubber Co., Seiberling grew up tromping the fields and woods surrounding the family manor house, Stan Hywet. The land became a park and the mansion a tourist attraction, but young Seiberling had been imbued with a love of the outdoors and a commitment to preserve the environment. His most visible legacies are the Cuyahoga Valley National Recreation Area and the 103 million acres of wilderness and park land set aside in the Alaska Lands Act, the country's major environmental achievement during the Carter years. He also has steered federal funds for Quaker Square and other Akron projects.

Equally enduring are his moral and political stands: his opposition to the Vietnam War, his membership on the House Judiciary Committee that voted to impeach President Nixon, and his role as a leading adversary of former Interior Secretary James Watt, especially in preserving the Cuyahoga Valley park. By any yardstick, Democrat Seiberling is a liberal, yet, he also is an independent thinker and someone who has worked well with Republicans for Akron-area needs.

His retirement decision caught many people by surprise, though he had confided during the 1984 Campaign that it might be his final race. Seiberling, 67, is said to have fully recovered from prostate cancer surgery last spring. He wants to devote more time now to his family and outdoor interests, and turn the job over to a younger person with the energy to fight on major issues for many years.

Akron has had just two congressmen in three decades. In 1970, Seiberling won a five-way Democratic primary and then upset Republican William H Ayres, who coincidentally, also had served eight terms. Seiberling has had mostly nominal opposition since then. In that perspective, the upcoming election will have a lasting impact. So will John Seiberling, who has served the 14h District and Ohio with distinction.

BIOGRAPHY OF JOHN SEIBERLING

Education: Columbia Law School, New York, New York; LL.B., 1949; Harvard College, Cambridge, Massachusetts; A.B., 1941; Staunton Military Academy, Staunton, Virginia; Buchtel High School, Akron, Ohio; and King Elementary School, Akron, Ohio.

Military service: U.S. Army, 1942-46; Enlisted as Private, Discharged as Major; Decoration: Legion of Merit, Bronze Star, 3 Battle Stars, Medaille de la Reconnaissance

Francaise (France), and Ordre de Leopold II (Belgium).

Career positions: Representative to Congress (14th District of Ohio), Washington, D.C.; 1971-present; Attorney, The Goodyear Tire & Rubber Company, Akron, Ohio; 1954-70; and Associate, Law Firm of Donovan, Leisure, Newton, & Irvine, New York, New York; 1949-54.

Community activities: Member, Akron Regional Development Board; Three Terms as President, Tri-County Regional Planning Commission, Akron, Ohio; Past Chairman, World Peace Through Law Committee, Akron Bar Association; Past Vice President, Stan Hywet Hall Foundation, Inc., Akron, Ohio; Former Member, United Community Council of Summit County, Program Review Committee; and Former Board Member, Akron Metropolitan Housing Authority.

Congressional activities: Member, Committee on the Judiciary, Subcommittee on Monopolies & Commercial Law;

Member, Committee on Interior and Insular Affairs, Subcommittee on Public Lands, Chairman; Subcommittee on National Parks and Recreation; Subcommittee on Energy and the Environment; Subcommittee on General Oversight, Northwest Power, and Forest Management.

Member and Past Vice President, Democratic Study Group;

Member, Northeast-Midwest Congressional Coalition;

Member and Past Chairman, Arms Control and Foreign Policy Caucus;

Member, Environmental & Energy Study Conference, Executive Steering Committee; and

Former Member, Democratic Steering and Policy Committee.

Personal: Born—September 8, 1918 in Akron, Ohio. Parents—Henrietta (Buckler) and J. Frederick Seiberling. Married—June 4, 1949 to the former Elizabeth Behr. Children—John B., David P., and Stephen M.

Mr. STOKES. I thank the gentleman for his kind remarks.

Mr. Speaker, I yield to the distinguished gentlewoman from Ohio [Ms. OAKAR].

Ms. OAKAR. I thank my colleague and dean of our delegation, our Ohio delegation, for yielding to me.

I guess this is a celebration really because JOHN SEIBERLING actually is in the gallery here, sort of taking all of this in.

My mother used to say that we ought to herald people while they are alive. JOHN SEIBERLING has a rich full life ahead of him. Unfortunately, he will not be part of the 100th anniversary of the Congress, the 100th class of the Congress when we partake in a celebration of the Constitution of the United States.

We have talked a lot about the environment and issues that he has protected, but I want to say, besides all of that, JOHN SEIBERLING is a protector of the Constitution of the United States. His service on the Committee on the Judiciary has been equaled by none. I think of him as a lawyer with a poet's heart. What a combination.

Of course, the people in greater Akron, OH, and the area there are so proud of him. He is a man of great quality, outstanding integrity and really he is brilliant. We all know this about him. In a way, we are all awed by JOHN.

I think of his family as adding a lot to the economy of Ohio, but most importantly I think of the Seiberling name and JOHN in particular and his family, his lovely wife and his lovely family, as adding to the culture of Ohio.

All you have to do is take a look in these beautiful days, particularly in my State in northeast Ohio, walk right through the Cuyahoga Valley Park and see the thousands of people who are out imbibing and partaking of the esthetics of God's plan.

Now, this is a microcosm of what he has done, as my colleagues from the other States have mentioned, not only for our own State but throughout the country. I think JOHN SEIBERLING has been courageous in his views and he has never compromised his principles. I guess that is why we really do not want him to leave. We need more people like JOHN in public service; indeed we need more educators like JOHN.

As a former educator, I know that he is going to be a magnificent asset to that very, very noble profession. I like JOHN. He will be such a form of inspiration to his students.

So his legacy and all of his values will still have a tremendous influence on people who are fortunate enough to take his classes.

I think he is a champion of peace, a champion of civil rights, a champion of the Constitution and a champion for ensuring that our land remains at least in part in the manner in which God created it.

JOHN, America is more judicious because of your work, and America is certainly more beautiful because of your efforts, JOHN SEIBERLING.

God bless you and yours, and I know that you are going to continue to live that marvelous productive life.

□ 2045

Mr. STOKES. Mr. Speaker, I also want to acknowledge that accompanying JOHN this evening is his beautiful and lovely wife, Betty, who is a person who all of us who know JOHN have come to love. Without her, JOHN would not be the great guy he is. We want to acknowledge her this evening, too.

Mr. Speaker, I yield to the gentleman from Wisconsin [Mr. MOODY].

Mr. MOODY. Mr. Speaker, I thank the gentleman for yielding to me.

Mr. Speaker, I want to add my voice to the tribute, the well-deserved tribute, to JOHN SEIBERLING.

I want to talk about historic preservation, but, before that, I want to identify with so many of the other wonderful things that have been said about JOHN.

Whenever you want to know what the decent side of any argument is, all you have to do is check with JOHN SEIBERLING. Whenever you want to know what the humane side of any argument is, check with JOHN SEIBERLING. Whenever you want to know what the courageous side of any argument is, check with JOHN SEIBERLING.

JOHN has always been fearless of any political consequences of vote, and in that way he has been a beacon for all of us.

JOHN has added too much to this House in the area of Soviet-United States understanding regarding arms race issues, regarding responsible fiscal policy and protection of the Constitution, to name just a few.

One of the things, of course, which JOHN SEIBERLING has done which we all owe him so much gratitude for is his special work in historic preservation. JOHN is more closely identified with national historic preservation than any other legislator in this body, and has played an instrumental role in the passage of a number of acts, including, of course, the National Historic Preservation Act of 1980, which created a structured program for natural resource conservation.

His support of historic preservation did not end with the passage of the 1980 amendments. He has included historic preservation components in all conservation legislation that he has introduced and supported. The Alaska lands law, the Surface Mining Act, the American Conservation Corps, and numerous other bills have language that support the efforts of both the public and private sector in the preservation of our history and prehistory.

Mr. SEIBERLING has also played a critical role in ensuring the continued funding historic preservation programs. Year after year, the Reagan administration has recommended zero funding for the historic preservation fund. The Interior Committee has successfully fought these recommendations—last year $24.7 million was appropriated after the Interior Committee recommended "not less than $30 million."

Through personal testimony given by JOHN SEIBERLING before the Budget and Appropriations Committees, visibility has been given to historic preservation—to the State programs and the national trust. Without the support provided by Congressman SEIBERLING in the appropriations process, funding for the National Historical Preservation Fund would be infinitely more difficult.

Mr. YATES. Mr. Speaker, with the exception of a short hiatus in the early 1960's, I have served in the House since 1949, and in all those years I know no one who has worked harder and achieved more than JOHN SEIBERLING. He is a dear friend and I am truly sorry that he is retiring.

We agree on practically everything and that, I might say, is an unusual situation in our respective roles as authorization and appropriation subcommittee chairmen. JOHN's legislative career demonstrates in the most vivid way possible that idealism and the realities of practical politics can be reconciled. That is the genius of JOHN SEIBERLING. The tangible evidence consists of the wilderness areas and many other environmental victories that John has achieved during his career in the House. I might add that many of these successful efforts to preserve and protect the Nation's natural heritage took place in recent years when the administration has been anything but supportive of environmental concerns.

Generations of Americans are going to remember and thank JOHN SEIBERLING for his service to this country. He is a wonderful friend and legislative partner and I will miss him.

Mr. MILLER of Ohio. Mr. Speaker, at the conclusion of the 99th session of Congress, this legislative body as well as the voting public will lose one of its most respected Members and strongest advocates on environmental issues. JOHN SEIBERLING, champion of the fight to conserve and protect our Nation's natural resources, leaves the House of Representatives after 16 years of dedicated service to the citizens of his Ohio congressional district and the Nation with the admiration of his friends and colleagues on Capitol Hill.

First elected in 1970, I have had the pleasure of serving with JOHN throughout his entire congressional career. His effectiveness as a legislator is evidenced by his masterminding efforts behind the enactment of the 1980 Alaska National Interest Lands Conservation Act. The law added significantly to our Nation's park and wildlife systems and at the same time settled disputes over developing the mineral and other resources of the Alaskan region.

A political career based upon commitment, that is the best summation of JOHN's term in the Congress and it goes without saying that we in this Chamber will miss him and his loyalty to a cause and purpose. We salute JOHN and wish him well in his retirement from public service.

Mr. ANDERSON. Mr. Speaker, today I rise to pay tribute to the Honorable JOHN SEIBERLING, who is retiring from this body at the end of this year.

After 16 years of distinguished service to the House of Representatives, JOHN certainly needs no introduction to the Members of this body. In addition to his public service in the House, JOHN also served his country in the Army during World War II. Here in the House, he has served as a prominent and distinguished member of the important Judiciary Committee. But JOHN is best known for his untiring efforts as an ardent and articulate advocate of conservation and environmental protection on the Committee on Interior and Insular Affairs. JOHN has established for himself a reputation for fairness and a responsible balance between development and preservation. His hard work on the Alaska Lands Act and now as the chairman of the Public Lands Subcommittee is well known and respected.

The unwavering support of the residents of the 14th Congressional District of Ohio is testimony to JOHN's conscientious and responsive nature. JOHN's service in the House is marked by his integrity, devotion, and wisdom. His diligence and quality of character are an inspiration to his colleagues. While we will certainly miss JOHN, we wish him the best in whatever pursuits he follows in the future.

Mr. BROOKS. Mr. Speaker, after 16 years of hard work and dedication to improving the quality of life for all Americans, our good friend and colleague JOHN SEIBERLING is leaving Congress. I have the highest respect for Congressman SEIBERLING as a diligent and committed legislator and know that he will be missed by all his colleagues.

While serving with JOHN on the Judiciary Committee, I have been impressed with his commitment to maintaining the integrity of Government, as demonstrated particularly during the impeachment hearings of former President Nixon, and with his sense of fairness and decency in the law.

In addition to these achievements, Congressman SEIBERLING is best known for his work in preserving our environment and protecting the natural and historic heritage of this great Nation. From his unfailing work on the Alaska National Interests Lands Act and numerous other bills to add millions of acres to our national wilderness system to his key role in historic preservation legislation, JOHN has established a remarkable record as a key leader in the fight to maintain a high quality of life for all our citizens. It is an accomplishment of which JOHN and his constituents in the 14th District of Ohio can be most proud. It is a legacy from which generations of Americans will benefit.

Congressman SEIBERLING has been a strong and steady advocate of all that is good in America and he will be sorely missed by those of us who have been privileged to know him and work with him. I join with his many, many friends here and in Ohio in wishing him well as he leaves this House.

Mr. ANNUNZIO. Mr. Speaker, I rise to join with my colleagues in the House of Representatives in paying tribute to the Honorable JOHN F. SEIBERLING, who is retiring from Congress after 16 years of dedicated service to his constituents from the 14th Congressional District of Ohio and to the people of this Nation.

JOHN SEIBERLING served our country with distinction in the U.S. Army for 4 years during World War II, and received the Legion of Merit, the Bronze Star, and three battle stars for his heroic actions. Leaving the Army with the rank of major, he was also decorated by the Governments of France and Belgium for his military service. He received his law degree from Columbia University, and also practiced law before coming to Congress.

Elected to the 92d Congress in 1970, JOHN SEIBERLING is highly respected by his colleagues for his great knowledge and expertise on conservation, historic preservation, and environmental issues. He has ably served as the chairman of Public Lands of the House Interior and Insular Affairs Committee, where he consistently demonstrated his deep commitment to preserving the natural beauty of our Nation. He also has served as a member of the Subcommittee on Monopolies and Commercial Law of the House Judiciary Committee.

JOHN SEIBERLING is a fine legislator, and a man of great compassion and courage who has been a leader in protecting our environment and preserving our natural resources. He will be sorely missed by all of us in the House of Representatives who have known him and have had an opportunity to work with him.

Mr. Speaker, I extend to JOHN SEIBERLING my best wishes for abundant good health and continued success in all of his future endeavors.

Mr. MRAZEK. Mr. Speaker, I rise today to pay tribute to a distinguished colleague, JOHN SEIBERLING, who will be retiring at the end of the 99th Congress after 16 years of championing environmental and liberal causes and providing dedicated service to the people of the 14th District of Ohio.

As chairman of the Public Lands Subcommittee, JOHN SEIBERLING has been an environmental giant. He has been an unrelenting people's advocate for the preservation of America's wilderness and parks, standing up to the powerful special interests that would have deprived generations of Americans of its natural pristine beauty and endangered the bountiful wildlife and delicate ecosystems. In the 98th Congress alone, he steered 20 wilderness protection bills, encompassing more than 8 million acres, to passage. His landmark achievement was the 1980 enactment of the Alaska National Interest Lands Conservation Act, which preserved over 104.3 million acres as wilderness parks and protected areas, while doubling the Nation's park and wildlife refuge system and tripling wilderness areas.

Any Member of this Chamber would be proud to be able to retire with the record of achievements JOHN SEIBERLING can claim on just the Interior Committee. But, ever the indefatigable crusader for civil liberties and morality, he never hesitated to use his post on the Judiciary Committee or to go directly to the floor to oppose misuse of Government powers in the conduct of its domestic or foreign affairs. He serves as an inspiration to all who desire to serve the public's interest—a "liberal's liberal" in the finest tradition of the term.

Though I have only served two terms with the distinguished gentleman from Ohio, I did have the privilege of working with him on the Tongass Timber Reform Act of 1986 (H.R. 5291), which I introduced to end the permanent subsidy for the timber industry at the last major virgin rain forest in the northern hemisphere. While we were not able to move the bill through Congress this year, I am confident that his leadership and efforts have cemented the foundation for its enactment next Congress. I deeply regret JOHN SEIBERLING won't be here then and that the House is losing one of its most conscientious and impassioned spokesmen for the environment and for justice. I join all my colleagues in wishing him good health, happiness, and prosperity in all his future pursuits.

Mr. LAGOMARSINO. Mr. Speaker, I want to say a few words about JOHN SEIBERLING, my colleague who I have worked with for many years on the Interior and Insular Affairs Com-

mittee. We have worked on many issues together, some of which have received a lot of publicity and interest. Others have not received the same interest probably due to the lack of a constitutent base. This is no doubt the case with the long-running issue of the Compacts of Free Association for Micronesia. It is through the tenacious and energetic actions of JOHN SEIBERLING that we are seeing the successful resolution of the Trust Territory of the Pacific Islands, the largest United Nations Trusteeship ever formed, and the emergence of island states in free association with the United States. The eminent statesman of Great Britain, Sir Winston Churchill, once said these memorable words, "Never was so much owed by so many to so few". Although that statement was made under different circumstances the meaning remains the same. The mutual benefits that will be enjoyed by the people of the Freely Associated States of Micronesia and the United States, can be attributed to the focused energies of only a few. JOHN SEIBERLING is one of those whose efforts I commend. Time will show that he was one of the key leaders in the development and enactment of legislation that provided for the strategic interests of the United States as well as a balanced and humanitarian compact with the Freely Associated States of Micronesia. His input into the legislative process and his presence will be missed by his friends and colleagues in the House of Representatives.

Mr. DELLUMS. Mr. Speaker, JOHN SEIBERLING and I were first elected to the Congress in 1970. We both came to the 92d Congress in 1971 as committed opponents of the illegal, immoral, and insane war that was being waged in the name of the American people, but without their consent, in Indochina.

For the past 16 years, with intelligence and integrity, JOHN SEIBERLING has been a staunch advocate for peace, human dignity and economic opportunity for all our citizens. He was a steadfast opponent of the Indochina War, and unyielding in his opposition to our criminal involvement in Central America. He has been a strong voice against the escalating madness of the nuclear arms race, and a sane voice for responsible arms reduction, both nuclear and conventional.

As a member of the House Judiciary Committee he played an historic role in the impeachment proceedings against Richard M. Nixon. He has served both that committee and the Nation in distinguished fashion by being a fierce defender of the Bill of Rights and other guarantees of individual freedoms in this society.

As a senior member of the House Interior and Insular Affairs Committee he has done heroic work in helping to preserve the environment, and in expanding our national parks and wildlife preservation areas. The citizens of the Eighth District in California will be forever in his debt, because he played a key role in helping me secure legislation that will preserve and protect the scenic beauty of the Tuolumne River and its estuaries for generations to come.

For 16 years JOHN SEIBERLING has stood with me in championing the cause of peace, in supporting my efforts to produce an alternative military budget that would redirect our national security policy priorities and lessen world tensions, and in trying to improve the quality of life for all, especially the poor and the powerless, the young, the old and the disabled in our society.

For 16 years JOHN SEIBERLING has been my colleague and my comrade in this struggle. But most important, he has been my friend—one whom I admire, respect—and love.

JOHN, the American people—and this Congress—have been enriched and ennobled by your presence and commitment. This House will be much poorer because of your absence in the 100th Congress. Vaya con Dios, mi compadre y amigo—and may you enjoy good health and much happiness in the years ahead.

Mr. HALL of Ohio. Mr. Speaker, I join my colleagues in paying tribute to a most distinguished and accomplished member of the Ohio delegation, JOHN SEIBERLING.

During his 16 years in the House of Representatives, JOHN has fought to enhance the quality of life in our State, in the Nation, and in the world. As difficult as those goals may be, he has achieved a rare success.

Among his many accomplishments, JOHN has made significant contributions to worldwide peace and human rights through East-West exchanges and programs encouraging East-West dialog.

However, he will be most remembered for his leadership in protecting and preserving this Nation's natural and historic heritage. His concern for protecting historic buildings and sites led to the passage of his Historic Preservation Act Amendments of 1980, which substantially strengthened the partnership between local, State, and Federal governments, resulting in more effective preservation efforts throughout the Nation.

He is the author of numerous other efforts, many of them still pending, which will help protect our important historical resources. Among these is a measure aimed at preserving landscapes designed by Frederick Law Olmsted, designer of the capitol grounds and many sites in the State of Ohio. Another is a measure to increase coordination of U.S. efforts which affect international historic preservation efforts.

Not content just to pass legislation, JOHN has demonstrated true commitment by following up through intensive oversight efforts. For the past 2 years, he has been holding oversight hearings and investigating the implementation of the Historic Preservation Act. His efforts have included numerous studies by the General Accounting Office, the Congressional Research Service, and even the Office of Technological Assessment. As a result, we have a clear picture of how well the Federal Historic Preservation Program is working.

JOHN was cofounder of the Executive Committee of the Environmental and Energy Study Conference, a bipartisan group which provides research and coordination on environmental and energy-related issues.

As chairman of the Alaska Lands Subcommittee and the Public Lands Subcommittee, JOHN guided the Alaska National Interest Lands Act to successful passage. This piece of legislation could very well be the single most important parks bill ever considered by Congress.

It is an understatement to say that all of his colleagues will miss him when he retires. However, his legacy—the preservation of our historic heritage and scenic resources—will last long after all of us have left this place. Such is his monument, which is a greater testimonial than any words I can offer.

I am proud of my association with my colleague and friend, JOHN SEIBERLING. I wish him luck and offer my thanks for his outstanding service and to our State and to our Nation.

Mr. HORTON. Mr. Speaker, with 435 Members in the House of Representatives, it is often easy to become "lost" in the crowd. Members of Congress can serve for many years but still not receive critical acclaim as the "author" or "primary mover" of a particular issue.

That is certainly not the case with my good friend and colleague JOHN SEIBERLING. JOHN has become the leader on an issue that rarely generates much congressional interest—much less press. JOHN'S efforts in carving out national wildernesses following the passage of the Wilderness Act are a lasting tribute to this dedicated and conscientious man.

In one fell swoop, JOHN managed to double the Nation's park and wildlife refuge systems and more than triple our wilderness areas with the passage of the Alaska lands bill, which set aside more than 100 million acres. In fact, in the 98th Congress alone, JOHN was responsible for the passage of 20 wilderness bills, covering 8 million additional acres.

JOHN also serves on the Judiciary Committee, where he plays an even less conspicuous role. It is Members such as the gentleman from Ohio that make this House so effective. Members willing to shun the public relations aspects of a particular bill or issue and simple work to gain passage of a final product. It's a thankless job, and JOHN has done it with agility and expertise. Following the adjournment of the 99th Congress, JOHN will head back to Akron with his wife, Elizabeth, for a well-deserved rest from the hectic pace of our Nation's Capitol. My wife, Nancy, and I wish JOHN and his family the very best in all they do.

Mr. KASTENMEIER. Mr. Speaker, since my colleague and good friend, JOHN SEIBERLING, came to the Congress in 1971, our paths have run in parallel lines. This is largely due to the fact that our interests lie in the same areas—war/peace issues, a clean environment and the civil rights and liberties of our fellow citizens—and to the fact that we served on the same committees for many years.

Until I voluntarily went off of the Interior Committee at the beginning of the 98th Congress, I served on that committee with JOHN SEIBERLING and had the opportunity to witness a total dedication to conservation and environmental protection. Perhaps the finest testament to his commitment and persistence is the Alaska lands bill which is largely the result of his work as chairman of the Public Lands Subcommittee. Enacted in 1980, this law set aside some 104.3 million acres of that State for wilderness parks and protected areas. This single law doubled the Nation's park and wildlife refuge system and tripled its wilderness area. And, it was only one of many

enacted under JOHN SEIBERLING'S chairmanship.

JOHN'S interest in Alaska was more than abstract. He had been there, saw its incredible and unique beauty. The Interior Committee hearing room in which this issue was considered for 3 long years was adorned with his photographs of Alaska. This all is so typical of the way JOHN operates. His style is total immersion, total commitment.

I also served with him on the Judiciary Committee and saw this style manifested there, as well. To those of us who cherish the civil liberties guaranteed our citizens by the Constitution, JOHN SEIBERLING'S tenure in this body has made us feel a bit more assured that those liberties would be guarded. For JOHN has always been a proud civil libertarian, never reluctant to defend what some might have viewed as unpopular causes.

And, with his legal background in the antitrust area, he quickly became one of the foremost experts in the House on antitrust legislation.

But, most of all, I value his work on issues of war and peace. Just as JOHN recognizes the importance of preserving our parks, wilderness, and public lands so that generations to come may enjoy their purity and beauty and understand the origins of this worldwide community, so too does he recognize that positive steps must be taken to preserve the very existence of this planet.

Once again, we saw total immersion—total commitment. The leadership he gave the Arms Control and Foreign Policy Caucus during his tenure as chairman was outstanding.

Mr. Speaker, the 100th Congress will be a little less vital, a little less interesting without JOHN SEIBERLING. On a purely personal level, my wife, Dorothy, and I will lose good friends with JOHN and Betty Seiberling's departure.

But, how lucky we are, how lucky the country has been, to have had JOHN SEIBERLING in this body for 16 years.

Dorothy and I wish JOHN and Betty well as they embark on new ventures.

Mr. MAZZOLI. Mr. Speaker, at the conclusion of every Congress, it is always sad to bid farewells to friends and colleagues who may choose other pursuits in their professional lives. The pressures of time in these last few days do not allow us to adequately recognize the contributions nor express our appreciation.

My congressional classmate, JOHN SEIBERLING has decided not to stand for reelection from Ohio's 14th Congressional District. This House will miss his outstanding service, not only to his district, but the Nation.

JOHN has compiled a brilliant career in Congress. It was presaged by a distinguished and highly decorated military service record and his successful early career as a corporate attorney. I have served with JOHN on the Judiciary Committee for 12 years and have the highest respect for the diligence, ability, and integrity that he has brought to his duties as a Member of the House or Representatives.

JOHN SEIBERLING'S work in environmental matters, where he may claim pride of authorship for a considerable body of major legislation, will be a hallmark of his tenure in Congress. Future generations will reap the rewards of his yeoman efforts in preserving and protecting the Nation's natural resources.

JOHN'S imprint will be greatly felt in my district and the Commonwealth of Kentucky. Wilderness Lands, the Surface Mining Reclamation Act, the Historic Preservation Fund, and the Olmsted Heritage Landscapes Act are only a few measures for which we all are indebted to his leadership.

In my hometown of Louisville, there is a quite active historic preservation movement, as evidenced by numerous completed and planned preservation projects. And, we have fine examples of landscape architect Frederick Law Olmsted's work, which will enjoy greater security as a result of JOHN SEIBERLING'S contributions.

As one Member, and one citizen, I simply would like to say "thanks" for your exemplary record of public service, which should be held up as a model for all to aspire.

I salute you, JOHN, and wish you good health, happiness, and all the best for the future.

Mr. LEHMAN of California. Mr. Speaker, I rise to speak in honor of my good friend and colleague, JOHN SEIBERLING who is retiring at the end of the 99th Congress. JOHN has been my friend and my teacher as we served together on the House Interior Committee. Whether we were crafting a California wilderness bill or creating a national scenic area at Mono Lake or ironing out border disputes between California and Nevada or enhancing law enforcement at Bureau of Reclamation projects, JOHN SEIBERLING has been untiring and unselfish in his willingness to work on problems of importance to me and my district and the Nation at large. And JOHN has made his skill and his interest in natural resource issues available to countless other Members of Congress—newcomers and old hands alike—Republicans as well as Democrats. No problem is too small to get his attention. No problem is too big to discourage him.

Mr. Speaker, when JOHN retires, he will leave a giant hole in the fabric we call Congress. For JOHN is what all of us strive to be—a statesman of the highest order. His integrity is above reproach. His intellect is respected throughout Congress and the executive branch.

But of all the qualities JOHN SEIBERLING exemplifies, the one I will remember the best is his innate fairness. I cannot recall a single time when JOHN SEIBERLING was anything but unfailingly polite and courteous to the legions of witnesses coming before his Subcommittee on Public Lands. I will always remember JOHN listening to all points of view, even those opinions he opposed.

Mr. Speaker, JOHN SEIBERLING has taught Congress the meaning of service—to our ideals and to our country. It is a lesson we will do well to remember.

Mr. BIAGGI. I wish to join with his many friends in the House in paying tribute to one of our finest colleagues, JOHN SEIBERLING, who has announced his plans to retire at the end of the 99th Congress.

It has been my privilege to have served with JOHN throughout his 16 years in the House. In fact, I recall the fact that we were neighbors on the second floor of the Longworth Building. From the outset, I was impressed with JOHN SEIBERLING as a hard-working Member with deeply held convictions and principles. Those feelings remain as strong today as they did 16 years ago.

JOHN SEIBERLING has toiled in some of the most important but least glamorous issues in the House these past 16 years. He has been the Congress' leader, defender, and advocate of public lands and wilderness. Consider this quote from the not always laudatory "Politics in America" "When he departs from Congress, he will leave behind a tangible legacy few of his contemporaries can equal. The Nation will have millions of acres of national parks and wilderness that would not be there if he had never served."

Consider that in the past Congress alone, JOHN SEIBERLING was responsible for no fewer than 20 wilderness bills covering more than 8 million acres. Let us put this in context. JOHN SEIBERLING'S leadership and dedication produced the preservation of tremendous quantities of wilderness land. Throughout our history there has been a struggle between the competing demands of conservation and development. Some would argue that development was getting ahead too quickly. I would argue that JOHN SEIBERLING has done more than anyone in Congress over the past 16 years to ensure there is a balance in our policy.

JOHN SEIBERLING also has to his credit a specific piece of landmark legislation, the Alaska National Interest Lands Conservation Act. This is the law which settled most of the major questions about the allocation and management of the remaining Federal lands in Alaska.

JOHN SEIBERLING has built an impressive and principled legislative record over the years. It mirrors the man in many ways. With JOHN SEIBERLING, you always knew where he stood on an issue. He had a position, and he advocated for it with great intensity. This would be on such just causes as fair housing and civil liberties or opposition to certain corporate mergers.

The House will truly be diminished by JOHN'S departure. This is an institution of diverse people with diverse interests. Yet, we are bound together with respect for one another. Few Members over the past 16 years have enjoyed the respect that JOHN SEIBERLING does. Few have done more to earn it than JOHN SEIBERLING.

I wish JOHN and his wife, Elizabeth, all the joys that retirement will bring to them. It is hard to imagine the House without JOHN but as is often the case, the House's loss becomes the Seiberling family's gain when JOHN is able to give them back some of the time that service in this House can take away from quality family time.

It has been my distinct honor to have been a friend of JOHN SEIBERLING. He will be missed by his friends in the House but we wish him nothing but the best in any and all endeavors he may find himself involved with in the future.

Mr. FUQUA. Mr. Speaker, I appreciate this opportunity to express my respects to JOHN SEIBERLING. He has been an excellent Member of this body and has served with great distinction.

Several years ago, I introduced an innocuous little bill called the Florida Wilderness Act. By the time it was enacted into law, it had gone through many modifications and been the subject of a Presidential veto. I took over 6 years to get that measure enacted into law and it was JOHN SEIBERLING who ramrodded the effort and made it all possible. For that I shall always be grateful. The Florida Wilderness Act is the most important environmental legislation affecting just Florida in recent memory and JOHN'S efforts have earned the praise and thanks of all Floridians.

Beyond that, however, JOHN has established a tremendous record for many accomplishments in Congress. He has always been forthright and honest in his dealings and been a great credit to this body.

As he and I leave Congress together this year, I wish him the very best in the years to come.

Mr. MATSUI. Mr. Speaker, I rise today to pay tribute to a colleague who is retiring at the end of this session, JOHN SEIBERLING of Ohio. I was privileged to serve with JOHN on the Judiciary Committee. He has been an outstanding leader on that committee where he distinguished himself from the start during the difficult deliberations over President Richard Nixon's impeachment.

We all owe JOHN a debt of thanks for his work on the Interior Committee. JOHN was the prime manager in the House of the Alaska Lands Act and led the effort for new parklands from his position as Chairman of the Public Lands and National Parks Subcommittee.

JOHN'S determination and legislative skills will be missed. I wish him all the best in his well-deserved retirement.

Mr. RUDD. Mr. Speaker, in his 13 years of congressional service, the distinguished Representative for Ohio's 14th District, JOHN F. SEIBERLING, has compiled a record of achievements and accomplishments many aspire to, but few can match.

My friend, Congressman SEIBERLING, has been a thoughtful, dedicated, and concerned representative for Ohio and the country.

Early in my congressional career, I had the privilege of serving with JOHN on the House Interior and Insular Affairs Committee. My experience serving on that important committee—which impacts heavily on my home State of Arizona—taught me that JOHN SEIBERLING is a recognized congressional leader in legislation to protect the environment and preserve the Nation's natural and historic heritage. His dedication to conservation, and his respect for the land and its beauty, are legacies JOHN SEIBERLING will leave in the House of Representatives. For these efforts, and on behalf of the people of Arizona, the Nation, and our future citizens, JOHN SEIBERLING deserves a "thank you" for his dedicated work and service in Congress.

Mr. AUCOIN. Mr. Speaker, JOHN SEIBERLING was a Member of Congress I'd heard plenty about before I was elected to represent Oregon's First District in 1974. Even before I saw him on television during the Nixon impeachment hearings in the House Judiciary Committee, he was well known as a strong opponent of the Vietnam war, an ardent conservationist, and an outspoken advocate for human rights. As I prepared to run for U.S. Congress on some of the same issues JOHN stood for during his first campaign, I aspired to his example as an effective and sincere Congressman.

The list of wilderness bills JOHN has managed amount to a computer printout 9 feet long—so we can imagine how many yards we'd have stacked up in front of us if we listed all his achievements during his 16 years in Congress. As an undaunted champion of environmental issues, JOHN'S accomplishments have ranged from the passage of the Alaska Lands Act, to the creation of the Historic Preservation Fund, to authorizing a 1976 law that tripled the amount of money in the Land and Water Conservation Fund, to the creation and funding of the Cuyahoga Valley National Recreation area in his own State of Ohio.

His work on behalf of his constituents to assure economic growth in the 14th District include securing funds to save Akron's Recycle Energy System; designating the Akron region as a Federal redevelopment area, thereby making local governments and businesses eligible for Federal grants and loans; and helping to secure many other grants and contracts for local business and development efforts.

JOHN is also a leader on national and international issues. He made sure that the United States military withdrawal from Vietnam was complete, and he has consistently promoted dialog between the United States and other nations as a member of the United States-European Parliament Exchange. He was a cofounder of the United States-Soviet Roundtable, which provides Members with a clearer understanding of United States-Soviet relations. His efforts for peace include important roles in the Peace through Law Education Fund and the Coalition for the Peaceful Uses of Space. JOHN has also been an active member and past chairman of the Arms Control and Foreign Policy Caucus, and has tirelessly supported congressional efforts on arms control.

For 12 of JOHN'S 16 years in the U.S. House of Representatives, I have had the privilege of watching JOHN SEIBERLING in action and learning why he is so effective. JOHN is a warm and compassionate man. He reads the poetry of Tristram Coffin to visiting lobbyists, greets visitors with a line or two from a Carole King song.

He is a master at building coalitions. He is well known for his ability to work with local, State, and Federal officials. He's bipartisan and encourages citizen involvement in the public policy process. JOHN and the hundreds of grassroots and public interest organizations he has worked with over the years share a mutual—and lasting—respect.

JOHN has received countless awards from countless organizations for his work in Congress. He has been praised by his colleagues on both sides of the aisle. I know this recognition will continue when JOHN returns to private life. And so will the spirit that he has given to all of us, to assure that we and our children, and our children's children, live in a clean and healthy environment and a peaceful and humane world. I am still as much in awe of him as when I joined him in the U.S. Congress in 1974.

Mr. CLAY. Mr. Speaker, I rise in warmest praise of our colleague from Ohio, JOHN SEIBERLING for his outstanding contributions to this House and our Nation.

The announcement of Congressman SEIBERLING'S retirement and the realization that he will no longer serve in this Chamber give us a chance to reflect on his exemplary career as a public servant and one of this body's most dedicated and effective legislators.

We will best remember our distinguished colleague from Ohio's 14th District for his unyielding commitment to protecting our natural environment. A passionate advocate of national parks and wilderness areas, the chairman of the Public Lands Subcommittee achieved a series of remarkable successes which will benefit generations of Americans.

Chairman SEIBERLING guided more than 20 wilderness bills through Congress. Indeed, more wilderness measures were adopted in the 98th Congress than in any since the Wilderness Act became law in 1964. JOHN SEIBERLING must be credited for the establishment of more than 8 million acres of national park and wilderness areas; a tangible legacy that few of our contemporaries can equal.

Congressman SEIBERLING will be remembered not only as one of this body's foremost defenders of the natural environment, but as a champion of civil liberties. A steady, positive influence on the House Judiciary Committee, JOHN SEIBERLING has been no less of a driving force in his dedication to preserving and protecting the civil rights of all Americans.

JOHN SEIBERLING'S career in public service has been dedicated to preserving the highest ideals on which our Nation was founded. He has served his constituents with his keen intellect, formidable strength, and deep compassion. He will be dearly missed.

Congressman SEIBERLING has helped shape a brighter future for this Nation. I salute JOHN and I extend my best wishes to him as he enters new pursuits in private life.

Mr. DE LUGO. Mr. Speaker, two thoughts struck me when I heard that my friend and colleague JOHN SEIBERLING planned to end his career of service in this body. The first was that I hate to think that a Member that I respect and admire so thoroughly will not be around. This will be a loss to each of us who return to serve in the 100th Congress. The second thought was that I feel privileged to have had the opportunity to serve with him.

As a member of the Committee on Interior and Insular Affairs, and one who has consistently served on his subcommittee, I can say without reserve that JOHN SEIBERLING has had a major impact on conservation, the environment, historic preservation, and on the territories and commonwealths that make up the U.S. insular areas. In each of these areas he has been a leader, and his imprint has been one of sensitivity and commitment to sound solutions to often difficult, if not confounding issues.

I am particularly going to miss JOHN'S concern for the U.S. insular areas. His knowledge of the political history of the territories and commonwealths, of their struggle for economic self-sufficiency and political autonomy is shared by less than a handful of our col-

leagues. I have been guided by his insight, and the knowledge that he will not be here is sharpened by this realization.

I certainly hope that this country will continue to be fortunate enough to find leaders like JOHN SEIBERLING. Personally, I certainly am going to miss him.

Mr. LEHMAN of Florida. Mr. Speaker, I want to thank the gentleman from Ohio, Mr. STOKES, for providing us with the opportunity to pay tribute to one of the finest Members to have served in this body.

JOHN SEIBERLING is a man I have long admired for his integrity and effectiveness. He is a purist in the best sense. Quite frequently, when I was not sure of how to vote on a particular matter, I looked to see what JOHN's vote was. I always knew that I couldn't be wrong if I voted with JOHN SEIBERLING.

I salute him for his exemplary record, particularly on environmental issues. JOHN has been closely associated with the landmark environmental legislation of the 1970's and 1980's. His greatest achievement was the enactment of the Alaska National Interest Lands Conservation Act. It was a tremendously complex and difficult bill to get through the House. We were all subjected to some very intense lobbying. JOHN courageously stood up to the special interests who wanted to exploit some of the most magnificent land on this continent, and persuaded his colleagues of the importance of preserving the beauty and natural resources of our 49th State.

I will miss JOHN when the 100th Congress convenes next year. I wish him well in his future endeavors, and I hope he will in some way continue to give us the benefit of his counsel.

Mr. CONYERS. Mr. Speaker, the word that comes to mind when remembering JOHN SEIBERLING's career in the U.S. House of Representatives is leadership; he will be remembered as a leader and statesman. His commitment to the environment, world peace, and civil rights will not be forgotten by his constituents nor his colleagues and is immortalized in a long list of successful legislative victories enacted during his 16 years as a leader in this House.

As all of us wish to leave office secure in our contribution to the United States and the world at large, JOHN SEIBERLING retires with proof of his historical role in protecting our environment, in preserving our heritage. In northeast Ohio, our colleague secured the Cuyahoga Valley National Recreation Area for generations to enjoy and appreciate. Yet his efforts were parochial and his vision was national and international. We recognize JOHN for spearheading the Alaska National Interest Lands Act guaranteeing the safekeeping of 103 million acres of park land in that great region, miles and miles from his own Ohio. His list of environmental achievements and deserving awards is lengthy and equally commendable. A news article once described our friend as a man with a vision. JOHN has succeeded in bringing his vision to life.

We admire you, JOHN, for your strong commitment to our national and international interests. I remember your urgency to end the Vietnam war. You were a leader on the Congressional roundtable of United States-Soviet relations and in the Democratic Party, including the Democratic Study Group.

During the years I have had the pleasure of serving with you on the Judiciary Committee. It has been my personal delight for the last 8 years to sit next to you during full committee meetings. Your wonderful sense of humor kept us both entertained. I will certainly miss my committee seatmate when we convene in January.

I've enjoyed a warm and friendly relationship with this distinguished gentleman from Ohio. Having had the pleasure of visiting his home in Ohio and meeting his charming wife and friends, I can sympathize with his desire to devote more time and energy to his family. On occasion I have campaigned on his behalf—always a joy for a man who is held in such high esteem by his constituents.

In an article highlighting his environmental achievements, JOHN was quoted as saying, "You can't take it with you, but you can leave something behind for other people to enjoy." JOHN, we thank you for the gifts you are leaving behind for us, and many generations to come.

Mr. SUNIA. Mr. Speaker, we are gathered here today to say goodbye to one of the most remarkable men Congress has ever known. To the very core, JOHN SEIBERLING represents what is best about America.

JOHN SEIBERLING is also a Congressman who has worked for the United States territories as if he were their elected representative to Congress. In fact, very few Members have done as much for the territories as our friend and colleague from Ohio.

In my 6 years in Congress, I have, time and time again, sought JOHN's help in matters relating to American Samoa. And I have never been disappointed. He made calls from his office, he argued in committee and he stood up on this floor on behalf of the territories. We have been the fortunate benefactors of the intelligence and compassion of this outstanding public servant.

With his unusual keenness of perception, JOHN had a habit of coming straight to the heart of the problem. It is little wonder that the people who first sent him to Congress in 1970 kept sending him back for all these years. It has been an honor to be associated with a man of such powerful insight, and I will sorely miss him.

On a bus in Guam during a recent congressional visit to the territories, JOHN recited with perfection Robert Louis Stevenson's famous words which are written on the side of the author's grave in Western Samoa. JOHN had learned the poem almost 50 years ago, and he did not miss a word:

Under the wide and starry sky,
Dig a grave and let me lie;
Glad did I live, and gladly die
And I lay me down with a will.
This be the verse he prayed for me,
Here he lies where he longed to be.
Home is the sailor, home from the sea
And the hunter home from the hill.

To the people of Ohio, their hunter is coming home from the Hill, coming home after serving his people and country with almost unmatched distinction.

Fa'afetai tele lava i lau susuga, JOHN, from the people of American Samoa.

Mr. GUARINI. Mr. Speaker, it is an honor today to join my colleagues in paying tribute to JOHN SEIBERLING, the respected representative of Ohio's 14th Congressional District who will end his long career in the House of Representatives at the close of the 99th Congress.

Mr. SEIBERLING will be remembered best for his untiring protection of America's public lands, and for his landmark legislation that preserves our precious environmental heritage for the future. Generations of Americans will reap the benefit of his foresight and diligence in the years to come.

For my part, I recall his intense interest in the national landmark that is dear to my own heart: the Statue of Liberty. When pending development proposals threatened the open, green space that makes up Liberty State Park in my congressional district, Mr. SEIBERLING scheduled a subcommittee hearing in Jersey City to examine the impact of such plans on the unobstructed view the park provides for the Statue of Liberty.

Mr. SEIBERLING is also a photography buff. He used the visit to New Jersey to exercise his considerable talent, taking magnificent photographs of the statue. To this day, I am proud to have an example of his artistic skill hanging on the wall of my congressional office for all to see.

In addition to his unparalleled dedication to preserving America's parks and wilderness areas, Mr. SEIBERLING demonstrated a highly valued interest in America's foreign affairs. He founded the congressional roundtable on United States-Soviet relations, informal dinner discussions between Members of Congress and experts on United States-Soviet affairs. He foresaw a need for us to understand more fully an opposing superpower that has posed a threat to the peace and security of the world. He has been a moving force in educating Members of Congress regarding every aspect of Soviet politics, economics, and social life.

Above all, Mr. SEIBERLING has been a kind, understanding man who willingly shared his wealth of knowledge with his colleagues. He gave advice freely, and eagerly offered assistance to his colleagues.

Mr. SEIBERLING is a family man with extraordinary talent and intellectual integrity. He sought to serve his fellowman and his Nation through public service, and has done so excellently. Few can look back at a record of achievements as illustrious as his. The institution of Congress, which was enriched by his presence, will be the poorer for his absence, he will be missed.

Mr. SMITH of Florida. Mr. Speaker, today I rise to honor the long and fruitful political career of my colleague, JOHN SEIBERLING. With his retirement from public office this year, Congressman SEIBERLING leaves behind him 16 years of public service to the people of Ohio—and to the citizens of the United States. His leadership and commitment will be missed by all who knew and worked with him.

As the chairman of the Public Lands Subcommittee at House Interior, Congressman SEIBERLING was one of Congress' foremost leaders on conservation and environmental issues. He shepherded dozens of wilderness

bills through Congress, including the Alaska lands bill which, in one stroke, doubled the Nation's parks and protected areas. JOHN SEIBERLING'S legacy is the millions of acres of national parks and wilderness that will remain untouched by development for generations to come.

As a member of the Judiciary Subcommittee on Monopolies and Commercial Law, I worked closely with Congressman SEIBERLING to redefine our antitrust laws and monitor the actions of our country's major corporations. And I have seen him work tirelessly to protect the interests of his constituents in Ohio's 14th Congressional District.

Congressman SEIBERLING has won the respect of every American who cares about preserving the natural beauty and character of our Nation. He is an inspiration to those who will follow in his footsteps. We honor this man's longstanding dedication to public service, his wisdom, his leadership, and his compassion. Both Sheila and I wish JOHN and Elizabeth much luck in the future.

Mr. HUTTO. Mr. Speaker, I very much appreciate this opportunity to participate in the special order to honor our distinguished colleague from the State of Ohio, Congressman JOHN SEIBERLING, who is retiring from the House of Representatives at the conclusion of the 99th session of Congress.

It has been a pleasure to serve here in the Congress with JOHN, who has so ably represented the 14th District of Ohio since 1971. His leadership in the fields of conservation, historic preservation, and the environment has been exemplary.

I take this opportunity to join with his many friends and colleagues in paying tribute to JOHN for his distinguished service as a Member of the House of Representatives. He will be long remembered as a dedicated, loyal American, who has given unstintedly of his time and efforts, not only for his home State of Ohio but also for this great Nation of ours.

I wish JOHN the very best in retirement, and may God bless him and his family richly.

Mr. BEVILL. Mr. Speaker, I rise today to pay special tribute to my good friend JOHN SEIBERLING who is retiring from the Congress after 16 years of dedicated service.

I enjoyed traveling with JOHN and I have long admired him for his leadership on environmental and conservation issues. He played a major role in assuring protection and wise management of our scenic Federal lands in Alaska.

The 1980 Alaska National Interest Lands Conservation Act stands as a hallmark to JOHN'S hard work.

I don't know of any man in the Congress who has done more than JOHN to preserve the beauty of our Nation.

At the same time JOHN worked so diligently in the national interest, he did a fine job for his constitutents in Ohio's 14th Congressional District.

JOHN is one of the most respected Members of Congress. His talents will be missed and he will be personally missed. However, we will not forget his fine record here.

I wish JOHN well in his future endeavors.

Mr. MARTINEZ. Mr. Speaker, I rise to honor my distinguished colleague from the State of Ohio, Congressman JOHN SEIBERLING, who will be retiring from the House of Representatives at the conclusion of the 99th session of Congress. Since his election in 1970, JOHN has ably represented the 14th District of Ohio. He has done much more than just represent Ohio's 14th District. Congressman SIEBERLING has lead the way both in preserving our country's heritage and in championing those who need a fair chance to benefit from this country's many opportunities.

As chairman of the Public Lands Subcommittee in its days of controversy with the then Interior Secretary James Watt, JOHN stood ground against wrongheaded policies that sought to despoil our wilderness heritage and the proposed policies of disinvestment which would have turned America recreation resources into "wreck-reation."

Congressman SEIBERLING combined his role as preserver of the environment with creating opportunities for the less fortunate. Youth unemployment stands out as one of our Nation's most troubling and intransigent economic and social problems. High rates of youth joblessness persist even during times of general economic recovery. Meanwhile the amount of conservation work that needs to be done is enormous and growing. Through this proposed legislation to create the American Conservation Corps, modeled on the Civilian Conservation Corps of the 1930's, opportunities for young people, particularly disadvantaged young people between the ages of 16 and 25, to perform this conservation work would be created. Projects could include conservation of forests, fish, wildlife, rangelands, and soils; revitalization of urban areas and preservation of historic and cultural sites; development of recreational areas; energy conservation and production; and other functions. Through creating opportunities for learning by doing, this program would create educational and training opportunities for young people while performing much needed work.

The American Conservation Corps has not yet come to pass, but I am hopeful that it will—both to achieve these important goals, and to provide a further testimony to the importance of conservation and caring. I want to take this opportunity to thank Congressman SEIBERLING for his outstanding work. His legacy of conservation and concern will long benefit our country. I hope that someone of equal statute will pick up his outstanding work.

Mr. FUSTER. Mr. Speaker, I would like to take this opportunity to publicly thank our colleague, JOHN F. SEIBERLING, for his inspired leadership in the Interior and Insular Affairs Committee.

JOHN has been a staunch friend of the insular areas and his interest and devotion to the conservation of our environment has led him to be a vigilant partner and defender of the Puerto Rican flora and fauna and a promoter of our parks and cultural monuments.

His unfailing dedication to the work of the Interior and Insular Affairs Committee has been an inspiration to me during the past 2 years, his counsel always wise and well reasoned. The people of the Commonwealth of Puerto Rico will miss his advocacy on our issues, his example will remain as a beacon to the rest of the Members enticing them to continue his unfinished business.

My thanks to Mr. SEIBERLING go with my best wishes for a long and productive life in his future endeavors as well as the warm appreciation of the 3.5 million citizens of Puerto Rico whom I represent for his outstanding performance as a Member of the U.S. Congress.

Mr. SHARP. Mr. Speaker, I am pleased to join the Ohio delegation and the rest of JOHN SEIBERLING'S friends in Congress in wishing him farewell as he completes his service in Congress.

I have served for nearly 10 years with JOHN on the House Interior and Insular Affairs Committee. His dedication, commitment, and thoroughness is second to none. I learned to respect his judgment, particularly on environmental issues, although we did not always agree on every issue. One could be certain he had researched and carefully analyzed all aspects of a bill he brought before the committee and the House. I hope he takes pride and satisfaction in his accomplishments, particularly on the Alaska National Interest Lands Conservation Act on which I had the honor to work with him. It will stand as an enduring testament to his hard work, foresight, and dedication to preserving our natural resources and heritage for the future.

JOHN'S contributions to Congress and the Nation will be remembered by generations to come. I wish him the very best as he concludes an important and distinguished career in the House of Representatives.

GENERAL LEAVE

Mr. STOKES. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on my special order today.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

FURTHER MESSAGE FROM THE SENATE

A further message from the Senate by Mr. Hallen, one of its clerks, announced that the Senate had passed without amendment a joint resolution of the House of the following title:

H.J. Res. 750. Joint resolution making further continuing appropriations for the fiscal year 1987, and for other purposes.

TRIBUTE TO THE HONORABLE ELDON RUDD AND THE HONORABLE JOHN McCAIN

The SPEAKER pro tempore (Mr. VALENTINE). Under a previous order of the House, the gentleman from Arizona [Mr. KOLBE] is recognized for 60 minutes.

GENERAL LEAVE

Mr. KOLBE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on this special order.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arizona?

There was no objection.

Mr. KOLBE. Mr. Speaker, as I listened for the last hour to the wonderful tribute to a retiring Member of this body, JOHN SEIBERLING from Ohio, I am very conscious of the fact that those of us who come from Arizona have a special difficulty or mandate upon us because of the size of our delegation, that we have to be especially alert and have to be on top of things more than perhaps some other States do. Perhaps we make up for it with the quality of the people who we send to this body.

It is interesting that in the course of time that Arizona has been a State and, other than the two States of Alaska and Hawaii outside of the continental United States, Arizona is the newest State. We have sent only 17 Members to represent this body in the House of Representatives, and tonight I am privileged to have this special order to honor two of those who are going to be retiring, ELDON RUDD, who has served 10 years, and JOHN MCCAIN, who leaves to seek another office in that other body after serving only 2 terms in this House.

I am especially privileged to begin this evening by yielding to one of my colleagues who represents the great tradition of Arizona, the living tradition of the kind of quality of people who we have sent to represent us in the House of Representatives from Arizona, the senior Member of our delegation, Mr. UDALL.

Mr. UDALL. Mr. Speaker, I thank my friend and colleague for yielding to me. I congratulate the gentleman and our colleague Mr. STUMP for taking this brief time this evening to honor two good men.

JOHN MCCAIN sought assignment to the committee that I have the honor to chair when he came here nearly 4 years ago. I learned to respect him and to work with him.

As the gentleman has indicated, JOHN and I are involved in some political battles that will be settled on November 4. I am not on his side. We are on opposite sides in that conflict, so I better maintain at least some semblance of neutrality. But he is a good man and he has made a mark in this House, and I am glad that we are honoring him tonight.

ELDON RUDD is a remarkable human being. I have never known anyone who had more of his calm, good-natured independence than ELDON RUDD, and I hate to see him go. ELDON is what makes America great, and that tells a lot about ELDON RUDD. He is solid, independent, fearless and called the shots the way he saw them.

I was trying to think the other day what was different about ELDON RUDD, why we respect him, and I thought of a least one or two things. One of them was that in this town which is dominated by gossip, backroom talk about colleagues and friends and people who are prominent, I think I never heard ELDON RUDD say a catty or malicious or gossipy thing about anyone. I have never seen a person who had such quiet, and respect. As Will Rogers said: "I never met a man I didn't like," I do not think ELDON met a man he did not like, at least one he was not decent, kind and thoughtful toward.

ELDON will be missed around here. He has made a great record in the Congress. I wish ELDON and his wife the very best.

I thank my colleague for taking this special order.

Mr. KOLBE. Mr. Speaker, I thank my colleague from Arizona for his comments. Every poll that has been taken of this body over and over again shows that the distinguished gentleman from Arizona, the senior Representative, MO UDALL, is one of the most respected, if not the most respected, Member of this body. For the gentleman to make those comments about our two retiring colleagues I know will be remembered long by them and the words the gentleman said will be cherished by them. I know I appreciate the gentleman's kind remarks about our two Members who are retiring.

Mr. Speaker, the first person to represent Arizona in the House of Representatives was Carl Hayden. There are Members of this body who will remember Carl Hayden, not from his service in the House of Representatives because he served here but 14 years, but then went on to the U.S. Senate to serve a total, with his combined service in the House of Representatives of 56 years, still far and away the longest time that any Member of the U.S. Congress has served in either body. So Carl Hayden set a tradition for Arizona of long and distinguished service to our State.

But there are other Members who have served this State very well in the House of Representatives. I think of Louis Douglas who went on to become the first head of the Bureau of the Budget and then the Ambassador to England during World War II.

Isabella Greenway, who was the first woman to serve from Arizona.

There was John Rhodes, the distinguished Member who served this body and our party, my minority party, as the Republican leader for several terms in the House of Representatives.

□ 2055

MO UDALL and his brother Stu have together represented Arizona in the House of Representatives now for 31 years, and MO is going on to begin another 2 years in this body.

So we do have a distinguished record of service from the State of Arizona as small as that delegation has been. Tonight I think we are very privileged to honor two of those who have served well and now retire and leave us. In one case to retire and join his wife and family in some well-deserved years of retirement. In the case of my other colleague, to seek an office in the other body.

ELDON RUDD represents the Fourth District of Arizona, a vast district which goes all the way from that beautiful Monument Valley and the vast and remote areas of the four corners of the Indian reservations to the downtown of Phoenix, AZ, and that bustling metropolis. It is a varied district, an unusual district. He brings to it an unusual and varied background that fits the district very well.

ELDON RUDD was a fighter pilot with the Marine Corps in World War II. He got a law degree from the University of Arizona and became an FBI special agent for 20 years. More than half of that career was on diplomatic assignment in Latin America. He is fluent in Spanish and that fluency in Spanish has brought to this body and to our parliamentary conferences that we have held a special degree of knowledge and influence on those conferences.

Since 1978, after one term in the House of Representatives, EDLON RUDD has served on the powerful Appropriations Committee. The Appropriations Committee is one of those committees where people do not get a lot of exposure. They do not get a lot of attention, but it is a lot of hard work and a lot of nitty-gritty. ELDON RUDD has been one of those that has done that nitty-gritty work. He has served on the Energy and Water Development Subcommittee, a subcommittee that I hardly need remind any of my colleagues this evening is of utmost importance to those of us in the West and most especially in Arizona.

The central Arizona project is the lifeblood of Arizona. From the central Arizona project Phoenix and Tucson will assure not only its survival but the ability to grow. Our agricultural community will assure its ability to go on providing food and cotton for the vast nation and for our export markets.

The central Arizona project is a dream that Carl Hayden had shortly after he came to the Congress of the United States many, many decades ago, and brought to fruition in the year of his retirement. ELDON RUDD in his tenure on the Appropriations Committee has made sure that the funds to get that project completed, that the dream of Carl Hayden and thousands and millions of Arizonans who have preceded him will be finished. That dream of bringing water from the Colorado River to central Arizona and to southern Arizona will become a reality.

That has been done by dint of hard work; of knowing the facts. Of knowing about the appropriations process. Of knowing what the needs of the central Arizona project are and making sure that when the final chips were down, when the final ink was dried on the final version of the appropriations bill on the Appropriations Conference Committee, that the central Arizona project did not get more than it deserved but got what it needed to make sure that the commitment that we have made to all Arizonans and all Americans and to the Indian populations of Arizona would be met by getting that project completed on time.

That achievement alone is worth the time that ELDON RUDD has spent in the House of Representatives. For that, along with his other many achievements, I salute him. ELDON RUDD is a quiet conservative who believes strongly in the principles that he espouses. He does not just talk about them, he acts on them. He votes them. He talks about them in our caucuses and in the subcommittees and the committees that he serves on and he acts on those every day in his community and in the district that he represents.

I think MO UDALL said it very well when he said he has never heard ELDON RUDD say a word in anger about another Member of this body. ELDON RUDD is one of those people who I have never heard engage in gossip about other Members nor have I ever heard him say anything that was an unkind word.

If he cannot say something kind, he does not say it. I think perhaps that kind of, not only respect for other individuals that serve in this body, but that kind of kindness and gentleness that he has shown to other people is something that all of us can learn a great deal from.

I am also privileged this evening to be able to speak about a colleague of mine that I have served with in my 2 short years that I have been here, JOHN MCCAIN. JOHN MCCAIN I think many of you know is an individual who comes with an extraordinarily unusual background. An individual whose father was in the Navy as well as his grandfather. His grandfather was commanding officer of the carrier forces in the Pacific under Admiral Halsey. His father was the commander-in-chief of the Pacific forces, CINCPAC we called it, when I was in the service in Vietnam. So in a sense at the time both JOHN and I served in Vietnam we had the same commanding officer, his father.

JOHN, of course, was a prisoner of war in Vietnam for 6 years and out of that experience has been forged an individual of tenacious ability, a willingness to fight for what he believes to be right, an incredible energy and hard-working ability. JOHN MCCAIN came back from that experience and continued to serve in the U.S. Navy as a liaison in the U.S. Senate. He retired in 1981 and ran in 1982 for the seat of John Rhodes who retired as the Republican leader from the House of Representatives in that year.

It was said when JOHN MCCAIN ran for that seat that it could not be done. One could not come into the State that quickly and establish his credentials even though Arizona has long been a State that has brought in others from outside and we have always welcomed outsiders into our State. It was said that somebody could not come in and run for political office that speedily, that quickly and be successful.

JOHN MCCAIN confounded a lot of the experts who said that it could not be done and swept a four-way primary. Not only swept it, but swept it fairly handily, and went on, of course, to win election that year and win reelection in 1984.

JOHN MCCAIN was personally very helpful to me in my own campaign for office both in 1982 and especially in 1884. So for that, of course, I am very grateful to him.

But his service in this body has been a very distinguished one. He has been on, and began, on the Education and Labor Committee and most recently has served on the Foreign Affairs Committee, but during all of the 4 years that he has been here he has served on the House Interior Committee. I think it is in that committee, again one of such great importance to Arizona, that he has made his mark. He has served on the Indian Affairs Subcommittee of the Interior Committee, and although his district of Arizona has no Indian reservation population in it, JOHN MCCAIN has championed the cause of American Indians not just in Arizona but throughout the United States. He understands from his own personal experiences what it is to be discriminated against, what it is not to have the things that many of the rest of us have available to us. He has championed the cause of the Indians in our State and in our Nation. For that I know the American Indians and Arizona Indians as well as all citizens of Arizona are very grateful to him.

I have served with him on the Select Committee on Aging and we have held at least two hearings that we have joined together in to discuss the problems of senior citizens and aging in our State. One in Tucson; another one down in a smaller community of Sierra Vista in southern Arizona.

I have always been impressed at those hearings and every other meeting that I have attended with JOHN and his ability to cut through all the talk, the rhetoric and get right to the heart of the matter. To ask the questions that really count and to make sure that those issues are being addressed.

I know that I speak for my colleagues in saying that whatever happens with JOHN MCCAIN we wish him well and we wish his wife, Cindy, well. JOHN has had the privilege of beginning a second family. He is the proud father of a daughter, Meagan, who is just over 2, and a son Jack, who is less than 1 year old. I know that in itself, in addition to his responsibilities of being a candidate for public office again this and serving, perhaps, in the other body beginning next year, will keep him extremely busy.

□ 2105

I join with my colleagues in wishing JOHN and Cindy well, and ELDON and Ann Rudd well, as they retire and begin another career.

I am pleased to be able to yield to my distinguished colleague, the gentleman from Arizona [Mr. STUMP], who came to this body at the same time as ELDON RUDD.

Mr. STUMP. Mr. Speaker, this year concludes the distinguished career of our colleague, ELDON RUDD, in the House of Representatives.

ELDON'S 10 years of service in the House will be remembered for his effectiveness in addressing the diverse concerns and problems to the residents of the Fourth Congressional District and the State of Arizona. ELDON'S honesty and integrity are the hallmark of his dedicated public service.

Among ELDON'S many achievements during his tenure in the House, is his contribution to one of Arizona's most complex concerns—water. Through his own expertise and understanding of water issues, and his membership on the House Appropriations Committee, ELDON has played an integral role in the funding needs of the central Arizona project and development of alternatives to meet the needs of competing water interests. He has used that expertise both in Washington and Arizona to build strong coalitions whose ability to work together have been productive and far-sighted. His manner has always been quiet, but tenacious, in addressing the water needs of a growing State at a time when such an approach has proven to be a key to success.

In a small delegation where strength is dependent on cooperation, ELDON'S willingness to lend a hand with resources available to him has been invaluable.

The beneficiaries of his generosity have been all the residents of Arizona and his colleagues, who have grown to depend on his counsel. I feel fortunate to call him a friend and to have had the opportunity to serve with him for the past 10 years.

The residents of the Fourth District can be proud of the man who has rep-

resented them for the last decade, and confident of the job he has done on their behalf.

ELDON's unwaivering commitment to a strong national defense has made a lasting contribution toward rebuilding our military capabilities. His support for the judicious use of those capabilities as a necessary instrument of our foreign policy has helped return the United States to its rightful position as respected leader of the free world. He has faithfully fulfilled his sworn duty to defend the Constitution of the United States.

As ELDON retires to enjoy more time with his family and friends at home, he can be assured beyond a doubt that he will be remembered, and missed.

My best to you, ELDON.

Mr. Speaker, the residents of Arizona's First Congressional District have been ably represented by JOHN MCCAIN during the last 4 year in a tradition fitting of Arizona's representation in Congress.

JOHN's tenure in the House is but one facet of his public service and dedication to addressing the needs of the future. While that public service will most likely take a new form in the next Congress, JOHN will be remembered for his accomplishments and energy on behalf of Arizona.

JOHN's boundless commitment to working on behalf of the diverse interests of a growing State have resulted in our meeting complex challenges head-on. The results speak for themselves, and can be seen in areas of natural resources, foreign policy and the elderly.

We in Arizona can be proud of JOHN's contributions, and confident of his continued service on our behalf in the U.S. Senate.

Mr. KOLBE. Mr. Speaker, I yield to the gentleman from Arizona [Mr. MCCAIN].

Mr. MCCAIN. Mr. Speaker, I thank the gentleman for yielding and I would just like to thank my good friend, the gentleman from Arizona [Mr. STUMP] and you for your very kind remarks about me.

I really rise and ask you to yield so that I could also join in saying a few words about ELDON RUDD, a man who has served this Nation with great distinction. Many of us do not know that ELDON RUDD was a Marine Corps pilot and a very distinguished one. He served in the Federal Bureau of Investigation for many years; he served in county government; and then, of course, has served since 1976 in an outstanding fashion in the House of Representatives.

There are many issues that are crucial to the State of Arizona and many of them we share with States throughout this country. But there is one issue that has united our delegation and our State for many, many years, and that is the central Arizona project.

I think a case could be made that the central Arizona project would not be nearing its fruition delivering water to Tucson, AZ, around the year 1991 if it had not been for the zealous, dedicated and intense efforts devoted by our colleague, ELDON RUDD, in that effort.

I think ELDON RUDD will be remembered for many things: His constituent service, his travels throughout the very large congressional district that is his, the numerous visits that he has made throughout his district in townhall meetings, correspondence and the constituent work that he has done, his involvement in issues in Latin and Central America, which he has a special expertise, given his being stationed in various places in Latin America while he was a member of the Federal Bureau of Investigation, and many others, including being a dedicated husband and family man.

But I must highlight the contribution that he has made in helping realize the dream of Americans, since they first came to our State of Arizona, and that is, the completion of our magnificent central Arizona project, which will ensure the growth of our State in an orderly and economically feasible fashion, not only for this generation, but for future generations ahead.

Some day I hope that we can honor ELDON RUDD at the aqueduct as it arrives at Tucson in a fashion which will be fitting so that not only those of us here in Washington can pay him tribute, but the grateful citizens of Arizona, also.

I want to also thank my colleague, the gentleman from Arizona [Mr. KOLBE] for taking this special order out. I know that the people of Arizona share the sentiments expressed by you and BOB STUMP and MO UDALL here tonight.

Mr. KOLBE. Mr. Speaker, I thank the gentleman for his comments. I know that all of us wish him well as he moves on to the other body.

I would just like to quote one of our colleagues about ELDON RUDD, because I think it very well. This Member of Congress wrote: "Above all, ELDON RUDD is a man of his people, the Arizonans, whom he represents. He has fought hard for those things his contituents needed, such as water, and against the things they opposed. He has come down against active incursions by the Government into our lives and the waste and abuse that are the hallmark of so many programs in this country."

ELDON RUDD will be remembered for those things that he has achieved.

I am pleased to yield to my colleague from Florida [Mr. MACK].

Mr. MACK. Mr. Speaker, I thank the gentleman for yielding.

It is a pleasure for me to take just a couple of moments to express my feelings about my good friend, JOHN MCCAIN. JOHN and I were first elected to the Congress together back in 1982, I from Florida, JOHN, of course, from Arizona.

I remember our first days together as the 25 or so of us were getting together trying to decide who was going to be the president of the freshman class and who was going to head the various slots that were open. JOHN won that election hands-down, and I got my first taste of why he was able to win that election when we went down to the White House to meet with the President for the first time. We had a breakfast, I guess. There were, again, the 24 or 25 of us, plus other members of the President's staff that were with us, and I was seated right next to the President.

I recall that I wondered what I was going to be able to say during that first meeting with the President. Before too much time went by, JOHN had the opportunity to introduce each of us around these five or so tables. Without any notes, he was able to go around and introduce each one of us, call us by name, and give a short resume, which I thought was a rather impressive thing to be able to do, without any notes.

JOHN, it has been a real pleasure for me. Again, I guess I remember what best exemplifies my feelings about you is that when I had the opportunity to ask you not too long after I got to know you about those difficult years when you were in North Vietnam, in the prison camp, I asked you what it was that got you through those difficult years. His response to me was his faith in God, his faith in his country, and his faith in his fellow man.

I think it is for those reasons that I feel so strongly about JOHN and toward JOHN and wish him all the success in his endeavor to move to the other body.

Mr. KOLBE. Mr. Speaker, I thank the gentleman from Florida for his comments and I appreciate his adding those to this discussion this evening.

I yield to the gentleman from Iowa.

Mr. LEACH of Iowa. Mr. Speaker, I thank the gentleman from yielding.

Congress today honors two Republicans and one Democrat, and I am particularly proud to have come into Congress with one of the Republicans, ELDON RUDD, whom I consider to be a fine and wonderful friend. ELDON has been well-described as a strong man, a silent man, a conservative man. A man who served his country by enforcing the laws as an FBI agent, and then later, in crafting the laws as a legislator.

JOHN MCCAIN, on the other hand, served his country enforcing the peace before he came to this body. He is known as a very careful, very conservative legislator who stands up for what is right, and frankly, my own sense is

he is just barely begun to define his role as a legislator. I, for one, wish him the very best in his endeavors to enter the lesser of these two Houses of Congress and am confident that when the annals of Congress are written centuries hence, the name JOHN MCCAIN will be well inscribed.

□ 2115

In JOHN SEIBERLING, we have a Democrat, but in some ways a real conservative, because JOHN understood that the root of the word conservative and the root of the word conservation are similar. I do not think there is any person who has ever served in this body who has held the conservationist ethic more dearly to his chest than JOHN has.

We will miss him. He is a giant of a man. I suspect he is retiring because of age, but it is interesting that his concerns were always for young issues, the future of life and the future of the planet.

I am privileged to honor these three great legislators.

Mr. KOLBE. Mr. Speaker, I thank the gentleman from Iowa for his comments and for his contribution to this discussion this evening.

Mr. WALKER. Mr. Speaker, will the gentleman yield to me?

Mr. KOLBE. I am pleased to yield to the gentleman from Pennsylvania.

Mr. WALKER. Mr. Speaker, I thank the gentleman for yielding. I want to express my gratitude to the gentleman for taking this time in honor of his two retiring Arizona colleagues, ELDON RUDD and JOHN MCCAIN.

Like my friend, JIM LEACH, I came to Congress with ELDON RUDD. ELDON has been a good friend for the 10 years that we served together here. I think he brought a great deal to this body, having served with the FBI prior to his congressional service and particularly because he served with the FBI outside of the country in a large part of Latin America and in Central America.

He brought a lot of depth to those issues as we discussed them, those issues that have emerged as important issues in this Congress. ELDON could discuss them with a depth of someone who had seen the society from the inside, who knew them from the perspective of someone who spoke the language articulately and brought a lot to bear on those issues.

He has also been somebody who has been a staunch conservative, who in his assignments in committees, in his work here in the House, could always be depended upon to be a guy that you could always count on to try to do the right thing from a conservative point of view.

So I have really admired the work that ELDON has done since he has been here. This body will be diminished by his leaving.

JOHN MCCAIN is someone who I have come to admire in the time he has been here. I think that is true of a broad base of the membership of this body. I spend a lot of time out here on the House floor and I listen to how Members proceed. JOHN is one of those people who despite the fact that he has only been here a short time is someone who is looked upon as a leader, particularly on certain issues. There will be people who come on to the floor and one of the first questions they will ask as issues are developing is, "Where is JOHN MCCAIN on this issue? What does JOHN have to say about this particular issue?" That is a mark of real respect for Members. Whether they end up agreeing with him or not, they want to know what his stand on the issue is before they take a stand.

Again, this body is going to be diminished by his leaving. I have a feeling, though, that across the Capitol in the other body it is going to be greatly enhanced by his arrival there; so we are not going to lose his legislative leadership. We are simply going to see it move on to the other body and hopefully we will bring some semblance of sense to that body. We have the feeling around here at times that there is not a great deal of commonsense being used in that body. The one thing that we have learned from JOHN MCCAIN is that he has a lot of commonsense.

While we hate to see him leave us, we will be glad to welcome him back to Capitol Hill in his new capacity.

I thank the gentleman again for taking this special order.

Mr. KOLBE. Mr. Speaker, I thank the gentleman for his comments.

The fact that three of the colleagues of ELDON RUDD, my own colleague from Arizona, BOB STUMP, and JIM LEACH and BOB WALKER, who came to this Congress with ELDON RUDD at the same time, have chosen to come here this evening and make these comments, and CONNIE MACK of Florida who came to the Congress at the same time as JOHN MCCAIN, I think is an indication of how those two gentlemen are held in esteem by those who have known them in the past, the ones that they came to Congress with, their classmates, if you will, in this body.

I appreciate all them participating in this special order this evening.

Mr. BURTON of Indiana. Mr. Speaker, JOHN MCCAIN is a true American hero. Over the past 4 years I've grown to admire and respect him not only as a patriotic American but as a fine Congressman.

Whenever the defense of America was debated JOHN MCCAIN was there. Whenever freedom needed to be supported or defended throughout the world JOHN MCCAIN was there. Whenever we debated reducing spending and holding the line on taxes, JOHN MCCAIN was there.

He is one of the finest Congressmen I've had the pleasure to know, and I'm certain he will be a great U.S. Senator. The people of Arizona are fortunate indeed to have a man of his caliber representing them.

Mr. BADHAM. Mr. Speaker, the Roman writer Seneca once said that adversity is the test of strong men. Certainly, our colleague JOHN MCCAIN is one who has faced great adversity in his life and whose morale and personal commitment to his Nation has remained unshaken.

In his two terms as a Member of this House, JOHN has demonstrated an admirable ability to embrace his conservative political roots and work at the same time to build effective coalitions to accomplish worthwhile goals. This pragmatic approach to consensus building has moved him quickly to the forefront of the House on many wide-ranging issues both at home and in the international arena.

It is this ability to bridge the gaps that sometimes separate us here in the House that has made JOHN so effective in representing his Arizona constituents—something he will continue to do upon his election to a seat in the other body this November 4.

Mr. Speaker, Arizona has sent only 17 Members to the House of Representatives in its 71 years of statehood and JOHN MCCAIN has upheld that standard with dignity and dedication. His service on the Foreign Affairs Committee, the Interior Committee, and the Select Committee on Aging will be missed but I know the future holds many new accomplishments and achievements for him.

Mr. MONTGOMERY. Mr. Speaker, I want to thank my colleagues BOB STUMP and JIM KOLBE for taking this time to honor the gentleman from Arizona, Representative JOHN MCCAIN. JOHN'S family if from Mississippi. In fact, the airfield in my hometown of Meridian, MS, is named after JOHN'S grandfather. I was a friend of his father, Adm. John McCain and his mother Roberta still lives here in the Washington area. Our colleague comes from a family with a very long and distinguished record of public service.

JOHN is a great American. I know we all have been inspired by his courage and perseverance. He was a prisoner of war in Hanoi for more than 5 years. I think that has strengthened his commitment to his country and the principles we all hold so dear.

JOHN MCCAIN has also been a distinguished Member of this Chamber. He served on the Foreign Affairs Committee, Interior Committee, and the Select Committee on Aging.

He has served the people of Arizona and this Nation very well. We will miss his leadership in the House.

Mr. HUTTO. Mr. Speaker, it is a pleasure to join my other colleagues in this tribute to Congressman JOHN MCCAIN.

I first met JOHN MCCAIN when he was with Navy liaison on the Senate side back in 1979. At that time, I was working on an issue that carried a great deal of interest for both me and JOHN. That was the proposal to consolidate the Navy's undergraduate helicopter pilot training with that of the Army. Perhaps both of us were coming from a somewhat biased position, but we both felt that this was a terrible proposition, like mixing apples and oranges. I not only did considerable work with my colle-

gues on the House side, but also with the Members of the other body.

Then, while over on the Senate side, I had the pleasure of meeting and getting to know JOHN MCCAIN. I know that he comes from a distinguished Navy background. He served in the Navy for some 22 years and was shot down over Vietnam. JOHN spent over 5 years as a prisoner of war. He has indeed given great service to America, and although he has been in the House for only a short time, I believe that he has proven that in addition to being a fine military leader, he is also a statesman, who will do well in anything he attempts.

I join in extending my best wishes to JOHN MCCAIN and his family. May God bless them richly.

Mr. COURTER. Mr. Speaker, it is a pleasure for me to stand here today to pay tribute to JOHN MCCAIN who will not be returning to this body next year. He is leaving us to run for the Senate seat of the retiring BARRY GOLDWATER.

JOHN has done an excellent job on the Foreign Affairs and Interior Committees. He has consistently demonstrated his leadership abilities. He was class president during his first term, a member of the President's speaker's bureau and the Presidential caucus teams, and he was a featured speaker at the 1984 Republican National Convention.

His military record is impressive. After graduation from the U.S. Naval Academy, JOHN went on to establish a 22-year military service career, including a 5-year period as a prisoner of war. His meritorious conduct serves as an inspiration to us all.

JOHN would make an excellent addition to the other body. I wish him continued best wishes and success. We will all miss his insightful views and dedication to the office.

Mr. HUTTO. Mr. Speaker, I am very pleased to be able to participate in this special order in behalf of our esteemed colleague, Congressman ELDON RUDD, of Arizona, who is retiring at the end of the 99th Congress after having served in this body for some 10 years.

My wife Nancy and I have been proud to call ELDON and Ann Rudd our good friends since we came to Washington some 8 years ago.

ELDON RUDD is a very pleasant individual and one, who to me, is the epitome of an effective Congressman, who can be sincere, polite, and agreeable even in times of legislative disagreement.

ELDON has a very distinguished background and one that equipped him for service in the Congress even before his election to the House back in 1976. He was a naval aviator in World War II; has been a practicing attorney in Tucson; and served as an FBI special agent for 20 years. A great deal of this time was served in Latin America. He is a multilingual person and one who relates to people of just about any nationality or political persuasion.

The Rudds are the kind of people who, in my opinion, make our country the great Nation that it is. I have noted ELDON's presence at our weekly Thursday morning prayer breakfast on many occasions, and it is heartwarming to know that he is one who, apparently, has his priorities in order.

Aside from Congressman RUDD's legislative contribution I know that there are many other personal reasons why he will be missed in the House of Representatives. I commend him on his outstanding career and would like to take this opportunity to wish him, Ann, and their family, the best in future years. May God bless each one.

Mr. SCHULZE. Mr. Speaker, I rise in tribute to and in honor of the gentleman from Arizona, ELDON RUDD.

I've known ELDON since he came to the Congress in 1977. He's a quiet man and, like so many reticent individuals, we often miss the depth of that individual unless we take the time to watch and study him. This is true of ELDON. I could easily have missed out on knowing him better, except for an occasion I had to sit next to him at a Republican conference meeting shortly after he arrived in Washington. We got to talking about each other, where we come from, what we did in our former lives, that type of thing. Before long, I was listening and asking him more about his experiences and what sparked his desire to run for elected office. The details of the conversation are not important—the feelings of the man are. Common threads of motivation running throughout all his careers—and they have been many—number among them a sense of justice and patriotic pride. I know we sometimes throw those terms around a little freely, but ELDON feels them deeply and has been guided accordingly. He served in the Marine Corps during World War II, and devoted 20 years of his life as a special agent in the Federal Bureau of Investigation. In both careers, he served his country directly, and the people indirectly. In his next two careers—as a member of a county board of supervisors and Member of Congress—he has served the people directly, and his country indirectly. Odd that he would embark upon these goals? Not if you know ELDON. He is truly driven by his twin desires of justice for the people and service to his country.

So while the House of Representatives is losing a fine statesman, some other American institution or organization is sure to gain one. ELDON, I wish you and Ann continued success and happiness in all that you do.

Mr. SHUMWAY. Mr. Speaker, I am pleased to have this opportunity to recognize the contributions of two departing members of the Grand Canyon State's delegation, and to wish the very best to ELDON RUDD and JOHN MCCAIN in their future endeavors.

I have known ELDON RUDD since my initial election to Congress, and he has always been a good friend as well as a respected colleague. A man of the highest integrity, he has represented the people of Arizona with diligence and responsiveness. From his days as a Navy aviator through his duties as an FBI special agent to his service in the Congress, ELDON has always served the people. He will be missed.

JOHN MCCAIN'S tenure here has been brief, but he has left his mark. A likable, dynamic, committed individual, JOHN, too, has devoted his life to serving his fellow Americans. His 22-year military career, including his 5 years as a POW, was public service personified.

I know that all of us in this Chamber join in appreciation for the contributions of these two fine colleagues, and in saying that they will long be remembered.

Mr. MONTGOMERY. Mr. Speaker, I join with my colleagues in paying tribute to our retiring colleague from Arizona, Representative ELDON RUDD. I will miss ELDON. He has been a great friend. We have taken several trips to different parts of the world. He is especially knowledgeable about Central America. He speaks Spanish and has always been helpful to me during our travels through Latin America.

ELDON RUDD has had an outstanding career in public service. First, he was a fighter pilot in the U.S. Marine Corps in World War II. After that he was a special agent with the FBI for 20 years and then "retired" to come to Washington in the 95th Congress.

He has been able to serve his home State of Arizona through his seat on the Appropriations Committee. He has also been a forceful and strong advocate for a strong national defense.

ELDON RUDD is a great American who has left a lasting contribution of public service to the State of Arizona and to this Nation. We will remember his hard work and love of country. He certainly will be missed in this Chamber.

Mr. LAGOMARSINO. Mr. Speaker, at the close of the 99th Congress, we will say farewell to one of our distinguished colleagues, close friend and senior Republican from Arizona, Hon. ELDON RUDD who will be returning to private life.

ELDON had served his country admirably and gained valuable experience before he arrived in the House of Representatives. ELDON was a naval aviator in World War II and prior to that served as a FBI special agent for 20 years, more than half of those years on diplomatic assignment in Latin America. I have long admired the hard work and dedication of ELDON as a member of the Appropriations and Budget Committees in attempting to responsibly deal with the budget deficit this Nation is facing.

I commend ELDON RUDD because in the spirit of true representation, he has not only been a leader, but also a servant—serving his constituents, State and Nation with pride. His presence will be missed in the House of Representatives. I salute Congressman ELDON RUDD and wish him the best of happiness and success.

Mr. MILLER of Ohio. Mr. Speaker, ELDON RUDD is a very good friend of mine and I am personally very sorry to see him retire from this Chamber in which he has served so admirably for five consecutive terms. It is appropriate that we take this time to pay tribute to one of the most respected Members of Congress for his dedicated service to both the citizens of his home State of Arizona and to this Nation.

Before being elected to the House of Representatives, ELDON had established a strong reputation of integrity and dedication having served for 20 years as a special agent for the FBI. Throughout his years of public service he has been a bulwark against the forces of evil; he has been unswerving in his efforts to make our society safer and sounder.

As a colleague of mine on the House Appropriations Committee, I have witnessed ELDON's unfailing pursuit to control unnecessary Government spending. He is a friend to the taxpaying citizens of this Nation always fighting the good fight for fiscal responsibility and accountability. His distinguishing quality to stand up for what he believes and his efforts to streamline Government programs and costs will be missed in the Congress.

ELDON's hardwork in these Chambers has paid off with much success and I wish him that same success as he leaves public office for the private sector.

Mr. LOWERY of California. Mr. Speaker, I would like to take this opportunity to commend my two colleagues from Arizona, JOHN MCCAIN and ELDON RUDD, for their tireless efforts on behalf of the people of the Grand Canyon State. They will be missed sorely in the Congress.

We share a State border and we share common concerns for the West such as water resources and illegal immigration. I have served with ELDON on the Military Construction Subcommittee of Appropriations and I will miss his knoweldge and guidance. Although I do not share a committee assignment with JOHN, he has proven his mettle in the House and will serve Arizona well in the Senate.

ELDON retires after five terms in the House that included his active support for the Central Arizona project, an irrigation system that will bring Colorado River water to the desert.

JOHN is in his second term but already has put forth his leadership potential and used his tenacious style to support the President's defense programs.

As JOHN and ELDON leave Congress the citizens of Arizona will find it difficult to find two other such qualified men to fill their boots.

Mr. BEVILL. I am proud to join my colleagues today in recognition of the many fine achievements of Congressman ELDON RUDD of Arizona.

ELDON is retiring after serving 10 distinguished years in the U.S. Congress. During that time, I don't think anyone has worked any harder for the good of our Nation or for his State and congressional district.

ELDON is a man of high integrity and he is well-respected. His congeniality has won him many friends on both sides of the aisle.

I have enjoyed working with ELDON on the Appropriations Committee where he has been an outstanding member. I know I could always count on ELDON not only to attend our hearings, but also to ask pertinent and enlightening questions of our witnesses.

ELDON worked hard for the completion of the Central Arizona project and he deserves to be recognized for his dedication to such a worthwhile goal.

I will miss ELDON and his many fine contributions to the Congress and to the Nation. I wish him all the best in the years to come.

Mr. BADHAM. Mr. Speaker, ELDON RUDD and I were freshmen together in this House and so it is with special feelings that I address myself to his consitituents in Arizona, who returned him unopposed to the House in 1984.

As Arizona's senior Member, ELDON brought to this Chamber a feeling of quiet conservatism that reflected his great personal honesty and integrity. I have been drawn particularly by his strong desire to bring some sanity to uncontrolled Federal spending by applying sound fiscal principles and austerity to our actions.

Drawing on his background in the FBI and the Marine Corps, ELDON has repeatedy stood firmly against the growing menace of international communism and its principal proponent, the Soviet Union. His strong principles on this issue have been voiced on a number of occasions as we confronted some of the Soviets' more blatant violations of international law and morality over the past decade.

Above all, ELDON RUDD is a man of his people—the Arizonans who he represents. He has fought hard for those things his constituents needed, such as water, and against the things they opposed, like the designation of valuable grazing land as a wilderness area. He has come down against active incursions by the Government into our lives and the waste and abuse that are the hallmarks of so many social programs in this country.

Mr. FUQUA. Mr. Speaker, I appreciate this opportunity to pay tribute to Hon. ELDON RUDD. He is a decent and honorable man and will be missed in this Chamber.

Prior to his assignment to the Appropriations Committee, ELDON served on the Science and Technology Committee, which I have the honor to chair. He was always diligent and straightforward in his committee work and dedicated to his beliefs.

Although he served just one term on the Committee on Science and Technology, he clearly left his mark. ELDON is remembered as a strong supporter of NASA and as a watchdog of the National Science Foundation. His fluent command of the Spanish language and his years spent at the U.S. Embassy in Mexico City also proved invaluable when the Science Committee needed information related to the large discoveries of oil in Mexico in 1978. At a time when our own Embassy had limited contacts with Mexico's state oil company PEMEX, he was able to go to Mexico for 1 week and get all the information our committee needed. He was granted a 45-minute private meeting in Spanish with then-President Lopez-Portillo. ELDON then opened doors for a committee delegation to Mexico the next year.

As he leaves Congress, I wish ELDON the very best in the years to come.

Mr. HORTON. Mr. Speaker, I join my colleagues tonight to bid farewell to two dear friends from Arizona. ELDON RUDD and JOHN MCCAIN will be leaving the House of Representatives after a combined total of 14 years of service to this body.

While it appears as though we will be losing ELDON to the pristine beauty of the Grand Canyon State, JOHN is considered a heavy favorite in the race to replace the Grand Master of Arizona politics, BARRY GOLDWATER. I might add parenthetically that the people of Arizona would make a sage choice indeed if those chose JOHN as their next great Senator.

Many Members come to Congress known only in their home districts or home State. They must often wait until they gain a leadership or committee chairmanship before becoming nationally known. This is not the case with Mr. MCCAIN. JOHN was a national hero before even entering these Chambers.

During his 22-year, highly decorated military career, JOHN was an outstanding Navy pilot. It was clear at an early date that the only Member of Congress born in the Panama Canal Zone was going places. JOHN is one of the brightest young Members of Congress. His freshmen Republican colleagues saw that early, as they selected him as their president.

JOHN's political dynamism will make him an instant force with which to be reckoned in the Senate. He will be always be a friend of mine, a friend of the Republican Party, and a champion of defense and veterans' affairs.

JOHN's senior colleague in Arizona also departing D.C., ELDON RUDD, is one of the true "nice guys" in the House. His personable nature has made him a favorite, among his colleagues in Washington and his constituents back home.

But his nice guy personality should never be taken for granted. That would be an extremely serious mistake. The gentleman from Scottsdale is a brilliant tactician and a wily orator. Sitting atop his post on the Appropriations Committee, ELDON has been one of the Government's strongest and most effective watchdogs in the never-ending battle to end Government waste.

As a former FBI agent, ELDON gained a reputation as an ardent and vocal opponent of communism. Recently, he has called for a ban on imports from the Soviet Union, arguing that by buying from the U.S.S.R., America was "a de factor accomplice to a system of slave labor." While this effort was not successful, he caused many to remember the oppressive nature of the Soviet Union Government.

ELDON, my friend, your company will be missed by me and by scores of other Members of this body. Should you decide retirement at the ripe age of 66 doesn't suit you, here's one Member to call for reelection support. My wife, Nancy, and I wish ELDON and his wife, Ann, "Godspeed."

Mr. LAGOMARSINO. Mr. Speaker, at the close of the 99th Congress, we will say farewell to one of our distinguished colleagues from Arizona, the Honorable JOHN MCCAIN, who is leaving the House of Representatives to better serve the people of Arizona in the U.S. Senate.

JOHN has served his country admirably and gained valuable experience and insight before he arrived in Congress. JOHN, during his 22-year military career, was shot down over Vietnam, spent over 5 years as a prisoner of war and returned to the United States as an authentic American hero. I have come to admire the dedication and expertise of JOHN on the Interior and Foreign Affairs Committees and the Afghanistan task force which we both serve on.

I commend JOHN MCCAIN because in the spirit of true representation, he has not only been a leader, but also a servant—serving his constituents, State and Nation with pride. While his presence will be missed in the House of Representatives, I look forward to working with Congressman JOHN MCCAIN in the 100th Congress as the junior Senator from Arizona.

Mr. BIAGGI. Mr. Speaker, it is my high privilege to pay tribute to one of the true gentlemen to serve in the House of Representa-

tives, my good friend ELDON RUDD of Arizona. ELDON has announced his plans to retire after 10 years of distinguished service in the House.

ELDON RUDD is the senior Republican member of the Arizona House Delegation. He has served with special distinction on both the House Appropriations and the Budget Committee's. He has been a strong force in the House on behalf of his constituents.

ELDON and I share a special comradery based on the fact that we both come from the ranks of law enforcement. For some 20 years, ELDON RUDD served as a special agent in the Federal Bureau of Investigation—more than one-half of that time on diplomatic assignment in Latin America. This relationship to law enforcement produced one of law enforcement's greatest supporters and advocates over these past 10 years.

ELDON RUDD and I may not always agree on the issues but I have enormous respect for his commitment to his positions and his efforts to advance policy.

Yet many of us will always remember ELDON RUDD for being the quiet unassuming first-class gentleman that he is. Of course, we cannot overlook his sartorial appearance which had a way of bringing light to every day.

I wish to extend to ELDON and his wife, Ann Merritt a most enjoyable future. ELDON has served his constituents and his Nation well, and he should go forth from this place with a sense of accomplishment.

Mr. RUDD. Mr. Speaker. JOHN MCCAIN has not been on Arizona's political scene for long—but he has certainly had a positive and powerful impact.

JOHN has been a dedicated and effective member of the House Interior Committee—which impacts heavily on our home State of Arizona. He has been a congressional leader, during his tenure on the committee, in the fight for better education and health care for native Americans.

Also serving on the Committee on Foreign Affairs, Congressman MCCAIN has been a strong defender of freedom in Central America and around the globe, and a solid supporter of the Reagan administration.

His job representing Arizona's First Congressional District has been exemplary. JOHN never stops working, asking, learning, and doing for Arizona. These qualities have endeared him to the State—and helped place him in the enviable, but deserved, position of succeeding Arizona's Senior Senator, BARRY GOLDWATER, in the 100th Congress.

JOHN MCCAIN is equally respected and liked by his colleagues in Washington. In a town where one's ability to work with diverse interests, and in a bipartisan manner, goes a long way—JOHN has been a marathon man. Elected class president during his first term, MCCAIN has been considered a bright star in the Republican Party since his election to Congress in 1982.

JOHN MCCAIN's loss to the House of Representatives will certainly be the other body's gain. Hopefully, Arizona will be holding on to JOHN MCCAIN in Congress for many years to come.

Mr. DANIEL. Mr. Speaker, today we bid farewell and extend our best wishes to 40 percent of the Arizona contingency. I sincerely hope this is not a trend, and that remaining delegations need not look to a similar condition.

It must be noted that the State's loss is also the Nation's loss. For ELDON RUDD and JOHN MCCAIN have served the Nation well, as they also served their State and their districts.

Although in different fields, both men had already given a full mesure of service to the Nation before they came to the Congress. ELDON served as a special agent with the FBI for two decades, was an accomplished linguist, and spent much time in Latin American countries. JOHN came to Congress following 25 years of service with the United States Navy, 5 of them as a prisoner of war in Vietnam.

Either of these men would have been justified in saying, "I have done enough: let someone else take over." But they did not. They have continued to serve the Nation in the Congress.

I have not discussed his future plans with ELDON RUDD, but I am certain he will only change arenas; it would not be in his nature to retire.

JOHN MCCAIN'S plans are better known; and if I may be permitted to prognosticate, he will be in the public eye for years to come.

To both these fine men, I add my personal wish for the best to those of all their colleagues in this body.

Mr. BROWN of Colorado. Mr. Speaker, we requested time today to honor two distinguished Members from Arizona, ELDON RUDD and JOHN MCCAIN, who are leaving this body at the end of the current session.

As many Members know, ELDON is retiring after 10 years in Congress and 20 years as a special agent of the FBI. Born in Camp Verde, AZ, ELDON went to Arizona schools, receiving his law degree from the University of Arizona. He served with distinction as a marine naval aviator during WWII and, while with the FBI spent several years in Latin America on diplomatic assignments. Active in local affairs in Arizona, ELDON was elected to the 95th Congress and has represented Arizona's Fourth District since 1976. He is a member of the House Appropriations Committee.

JOHN MCCAIN, a highly decorated war hero, came to Congress in 1982 and serves on the Foreign Affairs and Interior Committees. The son and grandson of admirals, JOHN spent 22 years in the Navy, 5 of them as a prisoner of war in North Vietnam. He is the recipient of the Silver Star, Legion of Merit, Purple Heart, Distinguished Flying Cross, and Vietnamese Legion of Merit. Born in CoCo Solo, Panama Canal Zone in 1936, JOHN attended high school in Alexandria, VA, before attending the U.S. Naval Academy in Annapolis.

By any measure, JOHN and ELDON have represented Arizona with great distinction. All of us wish them well as they leave this body, and all of us will miss them.

CONTRA AID REVISITED

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Georgia [Mr. RAY] is recognized for 30 minutes.

Mr. RAY. Mr. Speaker, this body has a plate full of issues and we tend to operate from time to time in a crisis atmosphere. It's very easy and quite natural for this body to leave issues behind as we go on to new business.

I want to focus on one of those unresolved items that will be springing back onto our agenda very soon, lest some of us might have forgotten.

The issue is that of Central America and in particular, the yet unfunded $100 million Contra aid package.

We will remember that on June 25 of this year, the House approved the Skelton-Edwards-Ray-Chandler amendment, which would, among other things, provide $100 million in humanitarian and military aid to the Contra freedom fighters.

On August 13 of this year, the Senate approved this same package.

The President of the United States has already announced repeatedly his support of this package.

Most of the American public thinks that the matter is over and done with—that the United States has sent $100 million in aid to the Contras.

But, in fact Mr. Speaker, this money has not been sent—the legislation has not been finally approved by Congress—and the President has had no opportunity to sign this aid package into law.

What has happened is that the Contra aid amendment has been tied to the military construction appropriations bill, which has yet to be brought to the floor. The Milcon appropriations bill has been waiting for the military construction authorization bill to pass—and this bill was never brought to the floor either.

The repercussions of this delay have been extremely serious for the Contras. As you will remember, one of the key point in the debate on this issue was the desperate situation of the Contra forces—

Lack of food, lack of clothing, lack of adequate equipment, lack of proper training, and lack of facilities and ability to care for hundreds of dependent wives, children, and parents.

While most Americans thought this need had been taken care of, in fact the situation has been growing more and more desperate for the Contras.

They have managed to survive this past 3 months by borrowing from their suppliers on the strength of the legislative action taken by Congress in June. To date, they have been advanced $3 million in food and staples—in order to feed and care for their military forces and dependents. This is money that will have to be repaid when they do finally receive the U.S. aid.

We are told that the delay in aid pushes back the progress made thus far. In fact, for each 1 day lost, it would require 3 days to gain it back.

In February, this body will take up the debate on supporting the anti-Sandinista forces in and around Nicaragua once again. Aid to the Contras has already been delayed so long that it will be impossible to determine how much effect the $100 million will have on their military ability. My concern is that members will point to the lack of progress and say, "but we sent them aid last June, and look how little they's accomplished."

What I am doing today, Mr. Speaker, is setting the record straight in advance. We have not sent the Contras aid and, although the money is included in the continuing resolution, it is already too late for us to be able to adequately judge the impact of that aid as early as February—3½ months from now.

The cumbersome legislative process which held up the aid has made it impossible for us to have a realistic picture of their improvements when we debate this issue again. We must remember that there has been no aid since 1984, except $27 million in humanitarian aid in 1985.

More importantly—this legislative holdup must not be used to deny further aid to that cause. The intent of this Congress and of the President of the United States has been thwarted in this instance—and we cannot allow the Democratic movement in Nicaragua to suffer.

The issue of Democracy in Nicaragua is not a passing interest for me—I am committed to doing all I can to support the growth of a solidly democratic movement in that region.

A number of other Members of this body share this commitment with me. We have formed a bipartisan committee, headed by Congressmen IKE SKELTON and MICKY EDWARDS, to watch over events connected with the Contras, share information, and communicate with the Congress, the administration, and the Contra leadership on this issue.

The fact that this group exists is testimony to our long-term commitment and one of our goals is to ensure that any future debate in Congress on this issue is based on solid information, and not conjecture and misinformation.

During the months since the Contra aid legislation passed, the freedom fighters have not been inactive. The Umbrella Contra Organization—UNO—and a number of the individual Contra groups have been actively working to improve their organization, credibility, and accountability. I want to give you a short update on some of their actions.

At the time we passed the legislation, UNO had established a three-member board of directors. As with any new organizational leadership, there have been some moments during these months when it was uncertain whether these three men—Calero, Cruz, and Robelo—would be able to work together.

But they are continuing to work through their differences, and they are making solid progress toward forming a leadership triumverate. Again and again we see that they are committed to forming an Umbrella Contra Organization—to tie together all the anti-Sandinista factions in a truly democratic fashion.

The need to broaden UNO has been recognized, and I consider this to be one of the critical factors in forming an organization that can be effective. Each of the Contra factions must have a voice in UNO, and it must be used to coordinate both the political and military movements.

UNO is also moving forward with forming a political strategy, as well as a military strategy.

Victory in Nicaragua will be a political one—not a military one, and the revolutionaries recognize this. Strong emphasis is being put on developing a political strategy which ties in both the internal opposition and the external opposition.

These are steps that UNO is taking, and I encourage them to continue the positive movements they've made in these directions.

Future support from this body should depend on seeing solid efforts by the Contras to broaden UNO and develop a coordinated military and political strategy. Our support should not be based on use of the $100 million in aid—since they won't have it in time for it's effect to be judged.

In closing Mr. speaker, I what to urge my colleagues to be concerned about Central America. Polls continue to show that 75 percent of Americans don't understand Central America, the economic and political problems and the threat which it poses to America.

The polls also point out that Americans do not care about Central America.

I would call attention to my colleagues that the economic and political problems in all of Central America are a prime reason why Cuba and Nicaragua are today in the Marxist camp.

Those same conditions exist which could eventually affect, Guatemala, Honduras, Costa Rica, El Salvador, and eventually Panama and Mexico.

In my opinion, Central America, is one of our strongest priorities and is worthy of consideration that we rethink the foreign aid that we are sending to less-important regions of the world.

So my colleagues, I urge that we keep Nicaragua in the forefront of our priorities.

The window of opportunity, to arouse its people against the Sandinistas may not be longer than 18 to 36 months, so there is a sense of urgency that we recognize how serious this situation is.

We must also focus strongly on strengthening the democratic Contras of Central America, because should Nicaragua be lost, it would be important that others that continue are economically and politically strong enough to ward off the assaults on their freedom which will follow.

ORDER OF BUSINESS

Mr. WALKER. Mr. Speaker, I ask unanimous consent that the gentleman from Iowa [Mr. LEACH] may be permitted to go immediately ahead of my special order.

The SPEAKER pro tempore (Mr. VALENTINE). Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

CONTRA AID: THE RULE OF LAW ON TRIAL

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Iowa [Mr. LEACH] is recognized for 60 minutes.

Mr. LEACH of Iowa. Mr. Speaker, there is much discussion in the press the past few days about the question of United States Government complicity in the downing in Nicaraguan territory of a munitions crammed aircraft. I personally accept the word of the U.S. Government officials that none of the occupants of the craft were direct employees of the CIA or any other branch of the U.S. Government; but the issue before us presents a public policy dilemma far thornier than that which might have been addressed if U.S. military officers or U.S. intelligence agents had been aboard the aircraft.

What we have is a constitutional, not policy crisis: The question of the role and rule of law, domestic as well as international.

Under vastly different geopolitical circumstances, Congress in 1794 passed the Neutrality Act to assure that U.S. citizens did not engage in private actions abroad which could rebound to jeopardize general national security. The times may have changed, but the principle is still valid today. Citizens still carry with them an obligation not to, by their private acts, endanger the security of our entire Nation.

Respect for the law is at the heart of both our national tradition and the fluid contract between the executive and legislative branches on foreign policy. In the case before us today, private citizens, frustrated with the struggle between their elected representatives over Central American policy, have decided to take foreign policy into their own hands. They have become international vigilantes, provisioners of posses accountable to no government.

The Neutrality Act reflects the democratic premise that the United States should only engage in warfare after public discussion and debate. Presidential use of covert private arm undermines a view of warfare that has been dominant since the 17th century and was incorporated into the Constitution: war should be public. Private actions that involve armed expeditions or invasions undermine the democratic decisionmaking processes in the Constitution and reflected in the Neutrality Act.

Apart from reflecting important Democratic values, the Neutrality Act also reflects a crucial international norm. Despite an increase in violations, the prevention of covert military interventions remains an important part of the principle of territorial integrity affirmed by the United Nations and in numerous treaties to which the United States is party. The duty of one nation to prohibit the initiation of hostile expeditions by persons within its territory against another nation has become an accepted principle of international law. It should not be cavalierly thrown to the winds.

In addition to the important constitutional rationales behind the Neutrality Act, historical experience has demonstrated that private warfare

should be avoided because it is not subject to state control even when authorized by government. The difficulty in controlling private hostile expeditions and the ensuing plunder and outrage likely to occur is one reason why the U.S. Government generally enforced the Neutrality Act throughout the 19th century and did not authorize such expeditions, even when they were in support of official Government policy.

The difficulty of the lack of state control over private expeditions is as clear today as it was in the 1800's. In the Nicaraguan situation where regional peace keeping negotiations are underway, the use of private armies makes attempts to terminate hostilities extremely problematic. Troops under Presidential command, as was the case in Vietnam, are clearly preferable to private armies precisely because they are state led and politically accountable. Today in Central America a privately funded nickel and dime war is driving a stake into the heart of international law and making the achievement of peace and stability a vastly more difficult prospect.

For decades there has been debate about whether the United States should play the role of policeman for the world, with some arguing that it is a chore for which we lack either a legal imprimatur of adequate resources to undertake. But a new dimension to this debate is implicit in the administration's privatization of the war in Latin America.

The administration seems to be suggesting that not only will we play the role of world policeman, but rather than enforcing the law, the interventionist cops American citizens are encouraged to support are themselves above the law.

The most fundamental issues of world politics are, in the first instance, how we can contain and constrain weapons of mass destruction and, in the second, how we can best advance the rule of law. If the United States, as the leading country in the free world, takes the position that that international order is most effectively advanced by international vigilanteism, what can we expect from our adversaries?

Today Congress faces an awkward and largely unprecedented dilemma. In the case of Vietnam, Congress abdicated to Executive discretion both in the appropriations process and in the Tonkin Gulf Resolution. But in the case of Nicaragua, Congress passed a resolution, which with Presidential signature became the law of the land, specifically prohibiting United States efforts to overthrow that government. This resolution, the Boland amendment, eventually lapsed, but Congress saw fit to proscribe active American participation in or near the civil war raging in Nicaragua.

Now we are faced with a problem of responsibility. Given the preemptive Executive decision to commence without congressional sanction a civil war in Nicaragua, and given the implicit encouragement of privatized war, Congress is placed in the difficult position of having to determine which is the greater misdeed: Pulling the rug out from under armed mercenaries who were trained and equipped in violation of U.S. law and who are currently marauding a countryside in violation of international law; or pulling the rug out from under the values we cherish as profoundly American: the sanctity of law, the rights of others to determine their own destiny in their own way, a decent respect for the opinions of mankind.

Every American citizen, however incensed he or she may be at the leftward lurch of the Sandinistas, should be concerned that the law of the land which the Executive is obligated to enforce, and the law of nations as reflected in treaties and governments to which our country is party, is being disregarded.

The time has come to reconsider this ill-chosen path. Liberals may have erred by believing the Sandinistas would not opt in the direction of police state controls. Nevertheless, our country has an obligation to stand by the side of law and a constitutionalist foreign policy, with the understanding that not only do procedural concerns matter, but that adherence to proper rules in the long run is more likely to produce proper results.

Mr. Speaker, I thank the gentleman from Pennsylvania for allowing me to proceed.

NO TAX INCREASE PLEDGE GAINING MOMENTUM

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Pennsylvania [Mr. WALKER] is recognized for 60 minutes.

Mr. WALKER. Mr. Speaker, earlier today we held a press conference out on the mall of the Capitol in what we call the triangle area to once again emphasize the growing movement in this country that is signing on the pledge not to raise taxes. This is an important development as it gains momentum, because it really does begin to frame the issue as we go into the 1986 political campaign of where does each Member of Congress stand. Where does each challenger who wishes to take a seat in the House of Representatives in the next Congress stand on the issue of taxes.

The pledge is an extremely important part of that. As our colleague, the gentleman from New Hampshire [Mr. SMITH] explained at that press conference this morning, this is not something that is new. It is something that has been tried in the State of New Hampshire, where for a period of some years now candidates have been required to take the pledge and in fact no one runs for statewide office in New Hampshire any longer and has any chance of success at all who has not taken the pledge not to raise taxes.

The point is that we can now have that kind of a system at the national level. We can now begin to ask candidates, "Will you take the pledge not to raise taxes?" That is the growing theme across the country. When I say it is a growing theme, at that press conference today were numerous groups who have signed on that this is a part of their agenda as they approach the 1986 election.

□ 2130

And so they represent thousands upon thousands of people across this country who are going to hear from those organizations about the pledge, and are going to begin to ask whether or not their Member of Congress has signed the pledge.

Members of Congress are coming forward to sign the pledge. A portion of them are represented on the charts here with me this evening. Some Members have signed on since the last time we came to the floor with this chart. It is a growing list of Members who have signed on to that chart.

I am also pleased to report that as Members have gotten involved with this effort, they are also signing on to the resolution that I have introduced to the Congress, the resolution which essentially takes the no-tax pledge, puts it in resolution form, and calls upon the 100th Congress not to raise taxes above the level of 15 and 28 percent for individuals and 34 percent for businesses.

That particular resolution now has 120 cosponsors. It is a bipartisan group of cosponsors and it is a growing list of Members. I would expect that we will within the next few days pass the point in cosponsorship that would allow us to sustain a veto of the President in the next session of Congress in this House. In other words, that would be about 146 Members of Congress having signed the resolution; it would be then a veto-sustaining number that we could count upon in the next Congress.

We are rapidly moving in that direction with this resolution, so this is a very much growing movement at the present time, and it seems to me that the American people will need to focus on exactly what is happening here, because the no-tax pledge should be a part of each of their agendas as they consider candidates in the upcoming election.

Mr. MACK. Mr. Speaker, will the gentleman yield?

Mr. WALKER. I yield to the gentleman form Florida.

Mr. MACK. Mr. Speaker, the gentleman mentioned a few minutes ago about the number of groups that were represented at the press conference this morning. I believe that the National Taxpayers Union was there, the National Tax Limitation Committee, and the Chamber of Commerce.

Tomorrow morning there will be a rally at the Chamber of Commerce, where we will see an expansion of the various groups that are involved that will be asked, and I am sure will be delighted to provide assistance, will be writing letters to all of their members all over the country.

Mr. WALKER. I think that the National Alliance for Senior Citizens is one of the groups that is also behind this effort, and a number of others as well, is that not correct?

Mr. MACK. Yes, that is correct. As I say, the number will be growing. Tomorrow we expect a pretty good sized rally at the Chamber. They are going to be asked to send letters out to their members throughout the country asking them to support the candidates around the country that have taken the pledge.

I believe that it is that kind of a grassroots movement that will bring pressure to bear, and I think that it is quite appropriate that during the 1986 election that we ask at the congressional level the same question that we asked at the Presidential level in 1984, and that was: "Are you for taxes, or are you for spending cuts?"

I notice that there are two charts up there, the no-tax-pledge chart, which seems to have somewhere in the neighborhood of what, maybe 36 names or so?

Mr. WALKER. Thirty-seven names.

Mr. MACK. On the other chart, the Mondale truth-in-taxing pledge, no one has come forward to sign that yet. Maybe there was a lesson that was learned in 1984.

The point that I was making is that in 1984 the issue never got down to the congressional races, or at least it was finessed in the congressional races in 1984. What we are trying to accomplish here in 1986 is at the congressional level for the issue to be raised, for the question to be asked: "Are you as a candidate, or as an incumbent, going to take the pledge and in essence say to the people in your district that the tax bill—the tax reform legislation, the most significant piece of tax legislation in maybe 40 or 50 years, that was passed in the 99th Congress, that established marginal tax rates of 15 and 28 percent for individuals, and 34 percent for business—are you going to pledge that you are going to hold those rates in the 100th Congress at the same level as they were established in the 99th Congress?"

The reason that I believe that that is important is that I believe that one of the most significant aspects of the tax legislation that changed the debate and really developed the momentum for passage of the tax reform bill was the low marginal tax rates, 15 percent and 28 percent. To then turn our backs on those rates in the 100th Congress and move them back up I think robs the American people of the plan that was put together in this Congress, and one that is going to I think move our economy forward in 1986 and beyond.

Mr. WALKER. I think the gentleman would agree with me that many of us who voted for the tax bill did so with some reservations about portions of the tax bill, but our vote was primarily based upon our belief that lower marginal rates and lower effective rates would, in fact, be enough of an economic incentive to make the new tax system better than the old, and thereby weighing the good and the bad, we decided that the good outweighed the bad, largely because of these lower rates.

Now if it is the intention of Members of this body and Members of the other body to come back and say, "Well, that was good to get the bill passed, but now we are going to raise the rates," that that will be a sellout of the very thing that drove the bill toward passage, and that that is something that the American people should protest vigorously, and it is something that those of us in this body who feel strong about lower effective and marginal rates should try to assure does not happen. This effort is really aimed at assuring that that does not happen.

Mr. KOLBE. Mr. Speaker, will the gentleman yield?

Mr. WALKER. I yield to the gentleman from Arizona.

Mr. KOLBE. I appreciate the gentleman's yielding.

Mr. Speaker, I am certainly glad that my colleague from Florida pointed out that there were no signatures on this second one here. I did not know whether my eyesight was going bad here and I just could not see any of them, but, sure enough, there are not any signatures.

We have not been hiding that, have we? That has been available to Members to sign?

Mr. WALKER. I would tell the gentleman that that has been out here every evening that the no-tax pledge has been out here, and despite the fact that we have had a number of Members of Congress say that they think that we ought to raise taxes as a way of dealing with the deficit, none of them have come forward to sign the Walter Mondale truth-in-taxing pledge. You would think that they were rejecting the man that they nominated for President in 1984.

Mr. KOLBE. Mr. Speaker, will the gentleman yield further?

Mr. WALKER. I am glad to yield to the gentleman.

Mr. KOLBE. That is what is puzzling me a little bit. I remember very well that nominating convention and that speech by Presidential candidate Mondale, and there were cheers and loud applause when he said, "I will tell you the truth, there will be a tax increase. I will tell you that, Ronald Reagan will not tell you that, but there will be a tax increase." That was followed by loud cheers and applause.

None of them have come through to follow through with this, and I think, if I am correct, that the distinguished chairman of the Committee on Ways and Means not long ago was quoted as saying that there will have to be a tax increase now in the marginal rates of taxation next year as a result of the tax reform bill that we have passed. It certainly seems to me that the chairman of the Ways and Means Committee ought to lead the way in signing the truth-in-taxing pledge. He certainly ought to be willing to say so.

I just want to make sure that every Member of this body knows that both of these pledges are available here, and that they can sign on to say that they will not increase taxes, or they can sign on, say very truthfully and very honestly, "We're going to raise taxes this next year."

Mr. WALKER. Our colleague from California [Mr HUNTER], makes the point that there is a secret plan among the Democrats and among liberals to raise taxes in the next Congress, and maybe he is right. Maybe they are hoping to keep it secret, and maybe by signing on to the Mondale truth-in-taxing pledge they would let the cat out of the bag, so to speak, and if they came out here and really told the American people what they intend to do, that might not sit very well, so it is better to just keep it secret at the present time.

There may be some resentment that some of us have let this little secret out of the bag and are, in fact, lining up people to oppose that action in the next Congress. It is a puzzlement to me. I think that we ought to probably have at least a few names on there, but I am becoming pessimistic. I do not think that we are going to have very many Members come forward and sign the Mondale truth-in-taxing pledge. I hate to tell the gentleman that, it saddens me that some people are not going to face up to the truth, but I am becoming somewhat of a pessimist about that.

□ 2140

Mr. KOLBE. If the gentleman will yield once more for a moment, perhaps we should not look at it pessimistically. Perhaps we should look at it

optimistically, that they have come to realize that the American people do not want it, and that the right thing to do is, if they cannot sign on to the no tax pledge, at least stay off, by gosh, the pledge to raise taxes.

Mr. WALKER. The gentleman raises my hopes. Maybe that is the optimistic way of looking at it. Maybe that is how we ought to look at it, at the very least they are going to stay in hiding about the issue, and maybe even will say some things in their districts that will sound like they are not for higher taxes that could come back to haunt them later on.

Mr. KOLBE. If we can get them to say things that sound like they are not far higher taxes, maybe we can get them to do things on the floor next year that will actually be not for higher taxes and more spending.

Mr. WALKER. I think the gentleman is going awfully far now. I think the gentleman is now stretching credibility quite a bit. I mean I was with him on the optimism, but to really say they would actually come out here and not raise taxes——

Mr. KOLBE. We can be hopeful.

Mr. WALKER. Yes, I guess we can be hopeful.

Mr. GINGRICH. Mr. Speaker, will the gentleman yield?

Mr. WALKER. I yield to the gentleman from Georgia.

Mr. GINGRICH. Mr. Speaker, I do not want to break into this good sense of good feeling too much, but let me just remind all of you that one of the major arguments in 1984 was that there had to be wiggle room that, in fact, the politicians in Washington, the morning after the election in 1984, were going to somehow pass a tax increase as soon as they could because the tax increase was the only way to solve the problem and, therefore, you had, you will remember, this big agument over the Republican platform that if we could just write it somehow that there was an escape clause so that we could all come running back here and raise taxes. And the newspapers and the media talked very openly, and they said obviously the Washington establishment wants to raise taxes. Obviously we have to take money away from the American people. So how can we sort of hoodwink the American people with wiggle room.

That experience convinced me that I guess I belong to the antiwiggle room part of the American politics. I think, by George, if I can disagree briefly with my friend from Arizona, I think the American public ought to demand flatly you tell us the truth before we hire you.

Nobody would hire somebody that walked into our office and said, you know, probably I will show up most days. We say, wait a second, let's have a clear sense of commitment here. Are you going to come in or you not going to come in. If you don't want to come in, I don't want to hire you if you are not going to come in. You want clarity before hiring. We are in an election purely and simply asking people to hire us to do a job, and we have a very fundamental and a very simple question for 1986. Are you willing to pledge that you will attempt to balance the budget by cutting out waste, by thinking up newer and better ways of getting the job done, by inventing an opportunity society approach to replace the liberal welfare state, or are you going to tell us that in order to pay for the liberal welfare state we have inherited from the past that you are going to raise taxes and take money away from the American people so that you can spend it in Washington? It is a very straightforward, cut and dried, which are you going to do. I think the American people owe it to themselves, and the news media owes it to the American people to push that question to the brink. I mean, they should say over and over again to the candidate who wants, after all, to be hired for a 2-year job, which is it, tell us before you ask us to vote for you, to hire you, which is it, new ideas, new approaches, cut out waste and pledge no tax increase, or a bunch of baloney, but the bottom line is yes, I am going to raise taxes?

I think that is a very, very important distinction, because the reason this Congress has been frankly a muddle is that in 1984 49 States voted for Presidential candidates who said no tax increase. But in over 250 House seats people were elected who felt comfortable defending the liberal welfare state and explaining that we cannot shrink it, we cannot change it, we cannot cut out the waste; therefore, the only thing we can do is raise taxes.

Mr. WALKER. If I may reclaim my time for a moment, and then I will yield again, I think our friend from New Hampshire [Mr. SMITH], put it very well at our press conference this morning. He said if you do not elect taxers you will not get tax increases. That is really the choice for the American people, are you going to elect a taxer or are you going to elect somebody who pledges not to raise taxes.

If you elect taxers, you are going to get tax increases. If you elect people pledged to no taxes, you will find people then who will find ways to solve the problems of Government; namely, the huge deficits that we now face, by not raising taxes, by reforming, as the gentleman from Georgia has pointed out, reforming this Nation away from the liberal welfare state into an opportunity society.

That is precisely the issue that is before us, and I thought that put it pretty succinctly this morning, that if the American people are going to elect taxers, they can expect tax increases and they had better then figure out who the taxers are before they elect them.

Mr. KOLBE. If the gentleman will yield further, the gentleman from Georgia and I do not disagree at all. In fact, I agree that we ought not to have the wiggle room, as he describes it. I guess maybe I have not been here long enough, I am just a little more optimistic. But I guess the first step in getting one to convert to no taxes is to get them off of saying they want to take a pledge saying they are for taxes.

So I think I am optimistic, in fact, that noboby has seen fit to come forth and sign a pledge saying they want to have more taxes.

I agree, they ought to be upfront and say so if that is what they intend to do. But now we need to go to work on those remaining 400 Members out there that we have not gotten to sign on to the no tax pledge to make sure we get them over on that side of this pledge that we are talking about here tonight.

Mr. GINGRICH. If the gentleman will yield further, I was very encouraged. I was talking with Congressman MCMILLAN from Charlotte, NC, a very able freshman Member of this body, and he had Secretary of the Treasury Jim Baker down to help him in his campaign over the weekend. The news media turned to the Secretary of the Treasury and said, well, what about tax increases, now that you have passed this tax reform, are you not going to raise taxes? And the Secretary of the Treasury said, well, Congressman MCMILLAN has taken the pledge. He is not going to vote to raise taxes. As Secretary of the Treasury, I am going to recommend not to raise taxes, and the President of the United States has promised personally he will veto any tax increase.

So we form a team that is telling you here we are not going to raise taxes.

I thought that was encouraging because the pledge is beginning to get out around the country. I saw an article today by a candidate for Congress from New Jersey who has taken the pledge and has said I am not going to raise taxes.

I talked with Congressman BILL COBEY from North Carolina who was saying that that is a major issue now in their discussions in North Carolina about who to hire in his district in 1986. I think it is useful as people begin to see this develop. Congressman JOE BARTON told me that has become a major question in his campaign down in Texas.

Mr. WALKER. I think I should point out that both the gentleman from North Carolina [Mr. COBEY] and the gentleman from Texas [Mr. BARTON] are among those people who have taken the pledge.

Mr. GINGRICH. And both of them said it really has clarified for their news media the difference between the person, the Democrat in each case, who is not willing to talk about this issue, and the Republican, who is willing to talk about it.

Now we have some Democrats. TOMMY ROBINSON, who was there today, and who is a Democrat from Arkansas, who said flatly he would be a cosponsor of this whole effort, he was committed to not raising taxes, and I would encourage other Democrats to join. I understand DAN DANIEL from Virginia has joined us in signing the no tax pledge.

Mr. WALKER. And also is a cosponsor of the resolution. In fact, there are half dozen Democrats who have cosponsored the no tax resolution that I have introduced. We have the gentleman from Georgia [Mr. RAY], the gentleman from Illinois [Mr. GRAY], the gentleman from Arkansas [Mr. ROBINSON], the gentleman from Virginia [Mr. DANIEL], and the gentlewoman from Tennessee [Mrs. LLOYD] who are all signers of the pledge resolution that I have put in. So we are, in fact, expanding that group.

Mr. MACK. Mr. Speaker, will the gentleman yield?

Mr. WALKER. I yield to the gentleman from Florida.

Mr. MACK. Mr. Speaker, let me kind of change the direction here. I think one of the questions that came up the first couple of days we got into this, someone was trying to say that really nobody on their side of the aisle, no Democrat was talking about raising taxes, that we were really just setting this whole thing up, as someone said at the end of the even years in October where that type of thing happens.

But I would just like to remind them and to quote several people from the Democratic leadership. Chairman ROSTENKOWSKI indicated, he says, "We all know that we are going to have to raise taxes." That is a quote.

Mr. WALKER. And this is the man who writes the tax bills?

Mr. MACK. That is correct. And I might add that he made the comments right as we were going through the last period of time before the passage of the tax reform package, which really set people back, and I think it was one of the reasons, if you will recall after we got back into session after the August break, that there was a lot of hesitancy about tax reform, there were a lot of people that were saying well, we are trying to make up our minds, and I think the hesitancy came into it because of folks like Chairman ROSTENKOWSKI that were implying that really what we are involved in here is closing the loopholes, broadening the base, drawing people in by reducing the marginal rates. Now after we have closed the loopholes, and we have expanded that base, it will be so much easier just to go back in and raise those rates.

Mr. WALKER. If I can reclaim my time just a moment to make one point, the contrast is really a contrast sometimes of parties in this body. The gentleman has pointed out that Chairman ROSTENKOWSKI made that statement about raising taxes. One of the names on this no tax pledge, as a matter of fact, is the name, the latest name on it, which is JOHN DUNCAN, who is the Republican who would be chairman of the Ways and Means Committee if the Republican Party controlled this body.

□ 2150

I mean, there is a real contrast. One man out saying, "Of course we've got to raise taxes" and one man, the leader of the Republican ranks on that particular committee, who is a signer on the "no tax pledge."

It draws a fairly distinct contrast, and makes the point very vividly, I think, of what we are all about.

Mr. Speaker, I am glad to continue to yield to the gentleman from Florida [Mr. MACK].

Mr. MACK. I think it might, then, be worth quoting another leader, the majority leader. One of those no votes will be from House Majority Leader JIM WRIGHT who said he would prefer a tax reform bill that shrinks budget deficits rather than reduce tax rates with revenue raised from curtailing tax preferences.

Mr. WALKER. JIM WRIGHT? The majority leader is for tax increases?

Mr. MACK. Well, that is—one could certainly draw that conclusion from that comment.

Mr. WALKER. Well, let me also point out, then, BOB MICHEL, the minority leader, is a cosigner of the no tax resolution. The Republican leader in the House, the minority leader, has signed on as a cosponsor on the no tax resolution that I am sponsoring.

I think there is a direct contrast there, I say to the gentleman.

Mr. MACK. Mr. Speaker, let me take the gentleman one step further. Again, the question has been raised as to, you know, are you fellows just raising this issue, you know, that those guys are really not going to propose raising taxes.

I think it is clear, and there are some other quotes here that we could raise, but I think it is clear that the leadership of the Democratic Party, they clearly have been talking about raising taxes. At the same time, they have been kind of taking shots at the President for lack of leadership on the deficit question, but failing to come out here and sign the truth in taxing, and a willingness to tell the American people really how they are going to raise those taxes and who they are going to raise them on.

Let me suggest to you where I think they might be headed. The easiest thing for them to do, as most of us know, in the tax reform package we did not go, in the first year, to the 15, 28, and 34; 34 on business. There is a transition period. That is, 1987 rates will be different than the 15 and 28.

What is in the bill is a series of tax percentages; different brackets that go from 11 to 15 to 28 to 35 to 38½, and I have heard people suggesting that what the move would be, similar to what people tried to do in 1983.

Remember? At the beginning of 1983 of discussion was, "Well, maybe if we could just do away with the third year of the President's tax cut that would provide revenue?"

I would suggest that one of the moves that might take place would be to say, "Look it. Let's just maintain the rates in 1988 the same as they are in 1987. Therefore getting rid of the 15 and 28." I think that is what we are going to have to guard against.

Mr. WALKER. They would reneg on their promise to the American people?

Mr. MACK. That depends on the pledge. If we can get people to sign on that pledge, then at least the American people would know who is reneging; at this stage of the game you do not know for sure.

Mr. WALKER. But it is the gentleman's suspicion that when he hears people talking around here about the need for increased revenues to solve the deficit problem, that what they plan on doing is reneging on the promise that is contained within the tax bill that the President has not even signed yet, about moving to a 28-percent top rate in 1988.

That is what the gentleman is telling us?

Mr. MACK. Let me just pose the question to you: Do you think that that would be the easiest way to go about it? I mean, they do not really have to change anything except saying that in 1988 we just retain the same rates as we had in 1987.

Mr. WALKER. Well, I certainly think it is plausible; and I think then it makes something clear. That is, that is the reason why it is important to have somebody like Ronald Reagan in the White House who would veto such a bill.

Because they would have to do it by a bill; they would have to pass a bill; they cannot just reneg on it without passing legislation.

So it is important to have somebody down there who is going to veto that bill, but then it is very important to have 146 people here who are going to sustain that veto. When that veto comes back up here, someone is going to have to stand up and sustain the vote; and so it becomes very important that we have at least 146 people who have signed on to the pledge, who are then going to stand against that in-

crease in taxes that would be embodied in that kind of move.

Once again it seems to me, as the gentleman from Georgia [Mr. GINGRICH] pointed out, the American people have got to be very, very careful about who they vote for. They have got to ask this question.

Mr. KOLBE. Mr. Speaker, will the gentleman yield?

Mr. WALKER. I yield to the gentleman.

Mr. KOLBE. Mr. Speaker, I am wondering if the gentleman from Florida [Mr. MACK] might answer a question for me. He serves on the Budget Committee. This whole question of whether or not we are going to solve the problem that we have of deficits with raising taxes, to increase the revenues, or whether or not we are going to cut spending; whether he has heard among the members of his committee, and particularly the leadership on the Democratic side, any talk about "Well, no we're not. We've passed a tax reform bill, but it does not increase overall our tax revenues; so the solution, obviously, is to cut spending."

I mean, are we talking? Is there some talk about next year's—where, what direction we are going to go next year in the Budget Committee to solve the deficit problem by reducing spending, cutting spending? Are they just leaving it up to saying "Well, we will have to raise taxes"?

Mr. MACK. Mr. Speaker, will the gentleman yield?

Mr. WALKER. I yield to the gentleman.

Mr. MACK. Mr. Speaker, I would say that maybe what we need to look at is, some of the proposals that came out during the reconciliation when the reconciliation bill was put together, there were a whole series of revenues from the standpoint of potential oil import fees, to a gasoline tax, to a cigarette tax that was proposed, and it was again—the President made it very clear that if that type of proposal were going to make it down to his desk, he was going to veto it.

So once again he was able to stop that. My point is that the impression that I get out of those discussions is that the simple answer is, to take money out of the pocketbooks of the hardworking Americans in this country and putting that money into the Government coffers.

Mr. KOLBE. Mr. Speaker, if the gentleman from Pennsylvania will yield further on that point, I remember well our discussion of that reconciliation bill. I thought it was a terrible bill; I thought it was abominable.

Then I presume what you are telling us is that the only discussion we are hearing is ways in which we can raise revenues either by selling the assets, apparently, of this country or now we are going to raise taxes; we call them consumer fees or various user fees; we have got it in Customs fees and a whole variety of other things; and we are going to raise it that way.

Nobody is talking about what we need to do with a budget resolution next year that is going to come in with a tougher budget, and with reduced spending in all these various departments, when we know perfectly well we can make these reductions in spending.

We have been saying and pointing out voting over on this side, time and time again, to make those reductions in spending; but there is no talk of that, I gather.

Mr. MACK. I would hope that I would have been able to tell the gentleman that each meeting that we would get together, that there would be a series of proposals about where to make these reductions; and I have to tell you that that is just not the case.

Mr. WALKER. I thought I should point out, Mr. Speaker, that as that colloquy was taking place, the gentleman from Indiana [Mr. BURTON] came forward and signed on to the pledge, so as of now we have 38 signers on to the no tax pledge that exists here on the floor. I thank the gentleman from Indiana for doing so.

Mr. Speaker, I yield to the gentleman from Georgia [Mr. GINGRICH].

Mr. GINGRICH. Mr. Speaker, I want to follow up on a point that my friend from Florida who serves on the Budget Committee is making and see if I understand it correctly.

It seems to me the real issue this fall, and the real issue in America in the next few years in our budget problem is a challenge between new ideas and new taxes.

That while we on the Republican side are trying to develop a new generation of ideas, the Democrats seem to be trying to develop a new generation of taxes.

Now, is it fair to say that you found that Democrats on the Budget Committee were disproportionately inclined to figure out a new way to get money out of the American people rather than to figure out a new way to get services out of the Government?

Mr. KOLBE. Let me be real blunt. The only reason that there was not a tax increase, either in the budget resolution or reconciliation is because the President said he would veto it. All of the discussion, whether that was just on a one-on-one basis or in small groups, came from the various Democrat members of that committee, all making the statement that everyone really knows that you are going to have to raise taxes.

Mr. WALKER. Is it not true that when they say that the President has not shown leadership on this issue that what they are really talking about is the fact that the President refuses to sign their additional taxes, and so in their minds, that is a lack of leadership?

Mr. KOLBE. Certainly. Certainly. But again, this is interesting to me, anyway, how long they have been able to get away with this charge of lack of leadership.

It seems to me that if one group says that their solution is reducing spending, and I would suggest that over the last 4 or 5 years that there have been many proposals that we have listened to from the White House, the administration, as to how one can modify spending, reduce spending, restrain spending, cut spending, whatever you want to talk about; and the other side the suggestion has been kind of quietly, since the truth in taxing comments by Mondale, rather quietly, but again behind the scenes saying that the answer is to raise taxes.

It seems to me it is incumbent on them, then, under the same guise of leadership, that they should be down here telling us and the American people how much they would raise in taxes, and from what source they would raise those taxes?

Mr. WALKER. Where do three-fourths of the American people stand on those two proposals?

It seems to me I have seen polls that show that three-fourths of the American people say we ought to cut spending rather than increasing taxes; that they want the deficit reduced; overwhelming numbers of the American people say we have got to do something about the deficit, but overwhelming numbers of the American people also say that we ought to do it by reducing spending.

□ 2200

So it seems to me that then the leadership needs to be on the side that the American people feels is the important thing, not to take 25 percent of the American people, or less in some polls—in some polls it is almost 90 percent of the American people saying cut spending rather than increase taxes, you know, so that leadership becomes identified with the 10 percent in trying to force taxes down their throat. That just does not make any sense to this gentleman.

Mr. GINGRICH. Let me try to make some sense and see if my friend from Florida will agree, that if you look at the world from the standpoint of a traditional Democrat and you remember that their leader in this House won his first election in 1936, that is literally 50 years ago he began the process of working with the coalition that built the modern welfare state, that the man most likely to be their leader next year won his first election in 1948 and has been part, ever since, of the process of building the welfare state; when the American people—and the gentleman from Pennsylvania is

right, it is about 3 to 1 or better—say "do not raise taxes, change the Government," and when 49 States vote against the guy who wanted to raise taxes, and we walk into a room and we say, "the American people sent us here and we need some new ideas and some new approaches," that is very hard. The truth is having studied this problem for over 8 years, it is hard to figure out how to reform the Pentagon, it is not easy. It is difficult to rethink welfare. It is complicated to have a workfare program that works.

So the average Democrat sits there and says, "Now, let's see, I could really spend hours trying to think through how to solve this problem and save money or in less than 5 minutes I can pass another bill to get another $30 billion out of the American people, which do I want to do this week?" And the average Democrat then says, "Well, why don't we pass the bill because we all know we have to raise taxes." We have a good friend of ours, a Democrat from the Ways and Means Committee here last night who says this plan would involve raising $60 billion rather than pass the tax reform as we passed it he would have passed the tax reform bill in which half of the loophole closing became a tax increase.

When I asked him that "that is about $60 billion, is it not," he said, "Yes." So he is saying flatly that rather than rethink enough of the Federal Government to save $60 billion, he just created $60 billion.

Now, all of us know from our childhood it is a lot easier to reach into the other person's pocket, to go home and say, "How about increasing my allowance?" or "how about giving me something special," and those of us who are parents know, from the other side, it is easier to say "Sure, give me some more money." It is harder to say, "Oh, you mean I really only have this amount of money?"

I think I would just say to my friends I think that has been the key on the Budget Committee. I would also say two quick things. Anyone who says we do not have enough revenue, I start out with the fact that the revenue this year is $857 billion. If they say, "Well, that is still unbalanced," if we simply had the same growth over the next 5 years in revenue that we had over the last 5 years, just by new employment, new jobs, higher income, we would balance the budget in 5 years if we just held spending even.

Now, the current budget is about $1 trillion. I think the other side of the no-tax-increase pledge ought to be that $1 trillion is a big enough budget for the U.S. Government, that we can probably find a way to defend America and take care of America for $1 trillion and that anybody who says, "No, no, we've got to raise taxes," ought to start with the premise that balancing the budget 5 years from now without a tax increase is not good enough and "I would rather raise your taxes because $1 trillion is not enough, and I just have to have more money."

Mr. WALKER. I yield to the gentleman from Florida.

Mr. MACK. Let me add one additional dimension to the discussion because I think what we have been saying off and on for the last several nights is that by getting enough people to sign on to the no-tax pledge we can literally take away the alternative of raising taxes as a means of providing for additional spending.

Where we run into problems is that there still is a loophole, not a loophole in the sense of taxes but the reason that we have been able to press for the major changes in the budget process is because everyone knows that if you cannot raise the taxes, you can still go out and borrow the money.

We attempted last year under the Gramm-Rudman proposal to do exactly that. We said, all right, we are going to hold the line on taxes and on Gramm-Rudman we said there were going to be very specific limits on the amount of money that could be borrowed.

I am raising this now because I think one of the things we ought to be aware of is that by the time we get out of this session, whenever that is going to be, my fear is that there will be no adjustment to the Gramm-Rudman automatic feature, that is the automatic enforcement mechanism, which says that if we do not control spending, if we do not meet targets, there will be an automatic reduction in spending, and without that automatic feature I am concerned that next year we are going to get into a situation where the target of 108 is going to be breached and there will be no way to hold the line.

So, without holding the line on borrowing, we are going to allow those that want to spend to get away with it because they will not have to raise taxes but they can force the Government to borrow the money necessary to keep those programs going.

Mr. WALKER. The gentleman makes an interesting point because when I am out here working on the floor looking at legislation as I sometimes am wont to do, little birdies whisper in my ear every once in a while. I had one whisper in my ear today about something that is happening. One of the gentlemen who has been quoted here about raising taxes is evidently putting a lot of pressure on one of the conference committees that is meeting on the CR. What is that pressure being put on for? The $32 million Federal office building in his district. Now, no one knows anything about a need for such a building, and so on, they do not even have the land for it at this point, it is just one of those things. But there is tremendous pressure being put on for a $32 million building.

Now, the question becomes, you know, to many of the American people, Why are we not trimming down on spending of that type rather than talking about tax increase? And the way to stop that is by taking the pledge, by simply saying we are not going to raise taxes.

I yield to the gentleman from Arizona.

Mr. KOLBE. I thank the gentleman for yielding because I would like to comment on a couple of the items mentioned by both the gentleman from Georgia and the gentleman from Florida.

As the gentleman from Georgia pointed out, it is tough to figure out how to reform education, it is tough to figure out how to reform the Pentagon. Those are things that take time, it takes a lot of nitty-gritty. It also represents change, it also represents a cutting into a constituency, a group out there, a group of the vested interests out there that has an interest in not changing, in continuing to spend the same way that we have been spending. It means cutting into some political constituency that is benefiting somebody in getting reelected. That is one of the problems we have created, as he pointed out. It has been 50 years since the Speaker of this House came to this body and during that time we have created this enormous welfare state in this country, we have created this enormous constituency for spending, a whole variety of spending programs, my little program, your little program, it is all there in everybody's district and in everybody's special interests.

Those conglomerations of special interests, it is much easier for that engine to go on and keep on going and say "let the next generation figure out how we are going to pay for it."

Now, when we speak about the big gap between spending and revenues, it is easier to say we will raise the taxes. But the fact is the American people are paying more taxes than they paid before. Not that we are not paying enough taxes, we are paying plenty of taxes. It is that we cannot control the appetite for spending, we cannot get into the very basic fundamental changes that need to be made to cut that down. Gramm-Rudman, I like to call it Gramm-Rudman and Mack because it really should have had our colleague's name on it, he was very much responsible for that, but the Gramm-Rudman legislation which this body enacted last year was an effort to try to force us to come face to face with the reality of making those changes in spending, and it is the problem that my colleague from Florida has pointed out, and he is ex-

actly right, that by the fact that we have lost that real lever, that hammer that we have in there in Gramm-Rudman that is the real danger that we face next year. I think this body needs to be sitting up and taking a real close look at that problem to make sure we do not lose the ability to force us to come face to face with the problem of spending next year.

Mr. WALKER. The gentleman from Arizona makes a very eloquent point. The fact is that the liberal welfare staters in this body and in Congress in general have become defenders of the status quo. The problem is the status quo has lost its vitality. It no longer can respond to the problems of the modern era. Yet these folks are here defending that status quo at all costs, and its costs are tremendous. It is the cost of that deficit that is being thrown over onto the future generations. But they are in fact the defenders of the status quo.

I will yield first to the gentleman from Indiana and then to the gentleman from Florida.

Mr. BURTON of Indiana. I thank the gentleman for yielding.

I want to congratulate my colleagues for taking these special orders night after night. I noticed the first night that you did this, speaking now to all of you, I noticed the first night you did this we had some of the more liberal Democrat Members come down to the floor to debate this issue. Then the second night that you did this a few of them came down to debate this issue. I noticed that tonight none of them are down here to debate this issue.

I challenge them to come down here and take issue with my learned colleagues who are debating this big spending versus a tax increase or no-tax-increase pledge. I think you have scared them off. I think they realize with an election looming on the horizon 4 weeks away that they might get their tails singed, and they do not want to debate this issue.

So I really appreciate your taking this special order, putting their feet to the fire and bringing this to the attention of the American people so vividly.

Mr. WALKER. I thank the gentleman, and I would say to the gentlemen that we will be very happy to have them on the floor. We would yield to them, we would engage them in a discussion because we are very anxious to hear from them. We would particularly love to have some of the people whom we have quoted as being in favor of tax increases come to the floor and defend those statements. We hate to quote them and maybe have them think that we are quoting them out of context. If that is the case, I would love to have them come out to the floor here and tell us just exactly what they meant by those statements, and we would be very glad to yield to them and to debate the issue with them. But the gentleman is absolutely right, we do not seem to have many of them around.

We have just about the same number of them around who have signed on to the Walter Mondale truth-in-tax-increase pledge, I would say to the gentleman.

I yield to the gentleman from Florida.

Mr. MACK. Let me make just one final point again speaking of the Gramm-Rudman deficit reduction plan. I would suggest that I think what we are going to find ourselves—I think the way this thing is being played out, talking about one of these behind-the-scenes discussions, is that there has not been any conference committee named yet for the debt ceiling, the debt ceiling conference, no conferees. What is going to happen is that the whole question of the debt ceiling is going to come down to being like the last issue that we are going to deal with. You know what is going to be said. They are going to say "How can we hold up the debt ceiling at this stage of the game? We have to get out of here, our work is done."

I would say to those of us participating in the special order this evening that we ought to begin getting the message to our colleagues, we ought to be saying on the question of raising the debt ceiling, that is raising the amount of money that we can borrow, that we are not going to allow that to happen unless we place some conditions on that borrowing. The condition is that if you do not meet the target, then there is automatic reductions.

So I would hope that you would support that.

Mr. WALKER. Well, I thank the gentleman, and the gentleman is absolutely right. This is a typical pattern around here, a classic pattern, that we get to the most difficult issues and we basically try to impact on the Members' schedules, and as this session drags on, and I think irresponsibly, somebody said to me the other day that the difference between Congress and the Cub Scouts is that the Cub Scouts have adult leadership, and we seem to be proving that every day on the House floor.

But it seems to me that is exactly what the scenario is going to be, that we are going to end up with major pieces of legislation out here, major decisions to be made, and what we still hear then is, "Well, you've got to make this decision. It doesn't matter how irresponsible the decision is, you ought to make it so that we can all go home and campaign." That is a terrible way to make decisions. It is a lousy way to run the country. We ought to be held accountable for those decisions and at least some of us ought to stand up and scream and say, "This is no way to conduct the business of the country."

I yield to the gentleman from Georgia.

Mr. GINGRICH. I want to ask my two colleagues from Arizona and Indiana: my impression is—and I did not serve in the State legislature—but my impression is that there are a lot of State legislatures that in fact every year face this difficult problem that they are only allowed to spend the amount of money that they have so they make real decisions, set priorities, pinch pennies and worry about actually spending the money that they have, not spending their children's and grandchildren's money.

So if the gentleman from Pennsylvania would yield to the two gentlemen, I would like to ask both of our colleagues to describe the difference between what they see in the Congress and what they had to go through in a disciplined body that actually had to make decisions.

Mr. WALKER. Surely, I will yield to both gentlemen, I yield to the gentleman from Arizona first.

Mr. KOLBE. I appreciate the gentleman yielding. And I appreciate that question. I think it does make a very good contrast to the way we do business around here. I must say as one who has come from a background of serving in the State legislature I am not only absolutely bamboozled by some of the procedures that we follow here but also just the whole tenor and the whole philosophy of this place when it comes to spending because there is no break, no discipline on spending.

I remember well in Arizona the 1982 recession when we faced just a horrendous drop in revenues in the State of Arizona, just a dramatic drop. Not just a relative drop because Arizona is a fast-growing State and had been experiencing extraordinary rise in revenues in the State and was fueling the increase in programs that we were doing, the building of the infrastructure and so on.

□ 2115

So it was not just a relative drop, it was an actual drop in revenues, a very, very dramatic drop from the projections of where we had been the year before.

Well, the result, of course, was that the Arizona Legislature, the Appropriations Committee—and by that time I had left the legislature—it began to happen just before I left, the last year that I was in the legislature—but the appropriations committee on which I served had to face up to the reality of this. During the middle of the year, this decline of revenues came about over the year of what had been planned. So when we came back in January the legislature for the last 6 months of the fiscal year had to take a wholesale slashing of all kinds of pro-

grams, programs that many people considered vital programs, social service programs, infrastructure programs, education programs, health care programs, mental health programs, you name it, everything that you could think of. We had cut programs, but we had to go through and do that. We had to literally make choices. It is called establishing priorities. There are certain things that the State government has to do, and we have to establish those as our first priority, and then we do what else we can with the revenues that are available to us, and we simply make do without for a year or two.

And what do you know, sure enough, the State of Arizona has come back and is strong. The revenues are better than ever. They are coming along faster than had been projected before, and many of those programs that are vital in many ways have been restored.

But we were able to make do during that time without those revenues, without those programs. It is just a matter of facing up to it. When you know you cannot do it, when the Constitution does not allow you to do it, you will not do it. It is a funny thing, but if we had a constitutional amendment to do something about it here, maybe we would solve that problem here at this end, too.

Mr. WALKER. That is a unique concept though, certainly unique around here, of setting priorities. Good heavens, that would be something that would come as a real shock to this place.

Let me yield to the gentleman from Indiana.

Mr. BURTON of Indiana. Mr. Speaker, I thank my colleague for yielding to me.

Like my colleague from Arizona, we have a constitutional provision in Indiana that mandates we live within our revenues. If we spend more than we take in, or if we appear we are going to spend more than we take in, we have to either cut spending or we have to raise taxes.

The funny thing about that is when we reach that point where we have to make that decision, when I was in the State legislature and when we reached that point where we had to make a decision on whether to cut spending or to raise taxes and we had to do it in front of God and everybody and all of our constituents, the pressure was always so great to be fiscally responsible and to cut spending that we ended up doing that instead of raising taxes.

I submit to you that in most cases that would be the same situation here in the U.S. Congress. If we had a provision in our Constitution, if we passed an amendment which mandated that we have a balanced budget, my colleagues who are the big spenders in this body, if they had to choose between raising taxes or cutting spending, they would opt to be fiscally responsible and they would go the spending-cutting route, and the people of this country would be spared the huge deficits that we have and they would be spared new tax increases.

Now the ones who are from the very safe districts here in the U.S. Congress, it seems to me that they are the ones who are advocating more taxes right now and bigger spending proposals. But I am convinced that if we have a constitutional amendment like we have in many of the States, Arizona and Indiana, mandating that we have a balanced budget, the people of this country are going to be much better served and we will not have those massive tax increases, and we will end up seeing spending cut across the board fair and evenly and it will be equitable for everybody.

Mr. WALKER. In fact, I think that it is more than 40 of our States that have either a constitutional amendment or a law that requires a balanced budget, and it works very well in those States.

Mr. BURTON of Indiana. If the gentleman will yield further, I think that 32 or 33 States have petitioned the Congress of the United States for a constitutional convention mandating that we have a balanced budget, so the States are in sympathy with us. It is just a matter of getting the big spenders here in Congress to agree to start to live within their means. They simply do not want to do it.

My colleagues on the other side of the aisle, on the side of the aisle where I am standing right now, as a matter of fact——

Mr. WALKER. There must be a number of them who are concerned about that as they view these proceedings.

Mr. BURTON of Indiana. Yes, I am sure they are.

But they have had control of this body every year I have been alive except for 4, and I am not a very young man anymore. I am 48 as a matter of fact. I know I look younger, but I am 48.

The fact of the matter is the only time that the Republicans have had control of this body was in 1948, I believe, and in 1952. Yet the big spenders, the ones who want to increase our taxes all the time and have gotten us into this fiscal mess, they continue to try to blame Ronald Reagan for it. They continue to try to pass the blame off on the Republicans.

Well, I am here and my colleagues are here to tell the American people, and our colleagues may be watching in their offices, you cannot fool the people. The people know who has been in control of this body where all appropriations originate, where all spending originates. It is the Democrats, the liberal big spenders. And it is high time we took them to task. We need a constitutional amendment to balance the budget. We need a no tax pledge. And I challenge my colleagues who may be watching on the other side of the aisle tonight to come over here and sign that document that we have before us.

Once again, I want to thank my colleague for taking this special order.

Mr. WALKER. I thank the gentleman. The gentleman makes an excellent point.

I would just make one other point as kind of an addendum to it is having worked on staff around the State legislature for a little while, it was my impression that State legislatures face the same kind of pressures we do here. They have the same kind of special interest concerns. They have the same kind of constituency concerns. They are politicians just like we are who have to face up to very difficult decisions along the way, too.

And to indicate that they are able to set priorities or that they are able to act responsibly when it came time to look at budgets indicates that it can be done. It is just that it will not be done around here until we get some kind of discipline in the system.

Mr. BURTON of Indiana. If I might interject just one point, and this is very important, the reason many big spenders at the State level are more responsible is because of that hammer that is held over their heads, and that hammer is either you cut spending or you have to raise taxes. So they cannot fool people all the time. They have to do one or the other. And if they are faced with the prospect of raising taxes in an election year, they are always going to opt to cut spending.

So I think that is the problem that we need to create here in this body, put pressure on those who are the big spenders.

Mr. WALKER. I guess one of our fears is that some of the people around here when we get past this election year are going to opt instead to raise taxes. So that is the reason why we come back here to the no tax pledge is get past the election year, get into 1987, and we are going to have a bunch of folks who are going to decide that the way to solve all of our problems around here is with a tax increase. That is what we want to prevent.

Let me yield to the gentleman from Georgia.

Mr. GINGRICH. I was going to say that it seems to me if we can summarize it the real issue for October for the American people is whether you want a new ideas party that is trying to bring a whole series of specific proposals to the attention of the Congress and the American people and is trying to improve farming, improve the problems of various industries, but looking

at what is the way we are going to get the job done, or a new taxes party that basically says to everybody whatever shape you are in right now, if your industry is in a little trouble, we will help you, we are going to raise taxes; if your industry is doing fine, we are going to help you, we are going to raise taxes; if you do not like the size of government, we will help you, we are going to raise taxes.

It seems to me that this explains one of the phenomena we are seeing around this country.

Mr. WALKER. Let me reclaim my time. Is the gentleman saying that anybody who goes out this year and promises on the campaign some new big spending program is probably saying that what he wants to do is raise taxes in order to pay for it? If people hear that message out across the country, can they assume that the guy who is telling them that he is going to give them new big spending programs is likely also to give them new taxes?

Mr. GINGRICH. I think it is fair to say that the Democrats have gotten fiscal responsibility at least to the level that they might not raise taxes enough to pay for everything they promise, but they pay taxes enough to pay for some of what they promised. In that sense, virtually any Democrat who promises you new programs this year will raise taxes somewhat.

As I said earlier, one of our colleagues who is a Democrat on the Ways and Means Committee was suggesting $60 billion in tax increases. That is not enough to pay for everything they might want to do, but is a start. So I think you can pretty well assume that if your local Democrat drops in and promises you three more programs, they will probably raise taxes enough to pay for two of them, and then borrow the third.

I want to carry this a stage further, because I think it explains something we have all been watching all year and both the New York Times and the Washington Post reported on this week. I had not quite understood it, but I think it is an intuitive feeling on the part of the American people.

Younger Americans, for the first time in my lifetime, are overwhelmingly choosing the Republican Party. They are doing so, for example, in Iowa which is in considerable economic distress, they are doing so in Oklahoma which is very concerned about things, they are doing so in a State like Georgia or Florida or Arizona where the economy is much better. But the fact is that all across America, almost without regard to local conditions, young people are choosing the Republican Party.

I think there are two answers. The first is, as we witnessed today in our fight with the House Democrats over the continuing resolution, young people are beginning to sense that Ronald Reagan and the Republicans are the party of strength and peace and safety, and that we want a country strong enough to go to Iceland with a sense of security. We are not going to handcuff the President of the United States as the Democrats have tried to do.

Second, if you are 18, 19, or 20 years of age and you grew up during the Carter-Mondale years listening to your parents talk about collapse and 13-percent inflation and 22-percent interest rates and your job being killed, and you look out there and you have now had 6 years of Democrats promising to raise taxes, and you are a young person like my older daughter who is 23 and out now working for a living—I mentioned yesterday she bought a used car because, much like us, she could not afford a new car. She looked at the new cars and the ones she could afford she did not want, and the ones she wanted she could not afford, so she decided to buy a used car, because it is her pocketbook.

□ 2225

She is being prudent because it is her pocketbook. She has instinctively come to understand that to vote Democrat is to vote for less take-home pay. To vote Democrat is to vote for a generation of having less in your pocket and less in your house and a smaller house and a smaller car and an older car because the Democrats are going to take away money to pay for a government that does not work, which is the second thing young people now know. That in fact this Government is obsolescent. In the age of the computer, we have an abacus government. We simply are not competitive with the modern world. We do not do things the way a modern, intelligent business would do them.

So young people are saying, "Wait a second, I do not mind going to McDonald's and actually getting a quarter-pounder if I pay for it, but if I go to the government I do not even get a dollar's worth of government for the dollar I pay. I get about 60 cents worth of government. You want me to raise taxes to give you more of my money to get 60 percent efficiency?" I think that is an underlying gut instinct that is very deep in young people and maybe more than anything else explains why young people are now becoming Republican in very large numbers.

I just mention that in passing because as we look at New Hampshire and we look at this tax increase pledge for 1988 and we start thinking about New Hampshire, I think young people are going to insist on Presidential candidates who take the pledge. I think they are going to take the New Hampshire experience and make it part of a national experience.

Mr. WALKER. I hope that the American people will insist this year that every person running for this job, running for the job in Congress take the pledge.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. NIELSON of Utah) to revise and extend their remarks and include extraneous material:)

Mr. MOORHEAD, for 60 minutes, October 9.

Mr. LEWIS of California, for 60 minutes, on October 9.

Mr. PACKARD, for 60 minutes, on October 9.

Mrs. BENTLEY, for 60 minutes, on October 10.

Mr. RITTER, for 5 minutes, today.

Mr. LEACH of Iowa, for 60 minutes, today.

(The following Members (at the request of Mr. MOAKLEY) to revise and extend their remarks and include extraneous material:)

Mr. ALEXANDER, for 5 minutes, today.

Mr. ANNUNZIO, for 5 minutes, today.

Mr. ROSE, for 5 minutes, today.

Mr. DERRICK, for 5 minutes, today.

Mrs. COLLINS, for 60 minutes, on October 9.

Mr. LAFALCE, for 60 minutes, on October 9.

Mr. WISE, for 30 minutes, on October 9 and 10.

Mr. RAY, for 30 minutes, on October 10.

Mr. GAYDOS, for 60 minutes, on October 14, 15, and 16.

Mr. SEIBERLING, for 60 minutes, on October 14.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

Mr. DAUB, preceding the vote on House Resolution 576 in the House today.

Mr. JEFFORDS, prior to the vote on the conference report on H.R. 2005, in the House today.

(The following Members (at the request of Mr. NIELSON of Utah) and to include extraneous matter:)

Mr. EMERSON in five instances.

Mr. BROOMFIELD.

Mr. COBEY.

Mr. CONTE.

Mr. MCCAIN.

Mr. CAMPBELL.

Mr. FISH.

Mr. CHENEY.

Mr. PORTER.

Mr. LAGOMARSINO in two instances.

Mr. COLEMAN of Missouri.

Mr. LIGHTFOOT.

(The following Members (at the request of Mr. MOAKLEY) and to include extraneous matter:)

Mr. MARKEY.
Mr. LEVINE of California.
Mr. MAVROULES.
Mr. MAZZOLI.
Mr. HAMILTON.
Mr. ROE.
Mr. MONTGOMERY.
Mr. CLAY.
Mr. RANGEL.
Mr. WALGREN.
Mr. EDWARDS of California.
Mr. LANTOS.
Mr. FASCELL in two instances.
Mr. FAZIO.
Mr. FEIGHAN in three instances.
Mr. GARCIA in two instances.
Mr. AUCOIN.
Mrs. BOGGS.
Mr. VENTO.
Mr. HOYER in two instances.
Mrs. BYRON in two instances.
Mr. EDWARDS of California.
Mr. ATKINS.
Mr. SCHEUER.
Mr. FRANK.
Mr. MRAZEK.
Ms. KAPTUR.
Mr. TORRICELLI.
Mr. NELSON of Florida.
Mrs. COLLINS.
Mrs. SCHROEDER.

ENROLLED BILLS AND JOINT RESOLUTIONS SIGNED

Mr. ANNUNZIO, from the Committee on House Administration, reported that that committee had examined and found truly enrolled bills and joint resolutions of the House of the following titles, which were thereupon signed by the Speaker:

H.R. 3773. An act to amend the Stevenson-Wydler Technology Innovation Act of 1980 to promote technology transfer by authorizing Government-operated laboratories to enter into cooperative research agreements and by establishing a Federal Laboratory Consortium for Technology Transfer within the National Bureau of Standards, and for other purposes;

H.R. 4718. An act to amend title 18, United States Code, to provide additional penalties for fraud and related activities in connection with access devices and computers, and for other purposes;

H.R. 5166. An act to designate certain lands in the Cherokee National; Forest in the State of Tennessee as wilderness areas, and for other purposes;

H.R. 5362. An act to extend the authority of the Supreme Court Police to provide protective services for Justices and Court personnel;

H.R. 5548. An act to amend the Export-Import Bank Act of 1945;

H.J. Res. 555. Joint resolution to designate the week beginning November 24, 1986, as "National Family Caregivers Week";

H.J. Res. 635. Joint resolution to designate the school year of September 1986 through May 1987 as "National Year of the Teacher" and January 28, 1987, as "National Teacher Appreciation Day";

H.J. Res. 671. Joint resolution designating 1987 as the "Year of the Reader";

H.J. Res. 741. Joint resolution to designate March 1987, as "Developmental Disabilities Awareness Month";

H.J. Res. 748. Joint resolution making further continuing appropriations for fiscal year 1987, and for other purposes; and

H.J. Res. 749. Joint resolution waiving the printing on parchment of certain enrolled bills and joint resolutions during the remainder of the second session of the 99th Congress.

SENATE ENROLLED BILLS SIGNED

The SPEAKER announced his signature to enrolled bills of the Senate of the following title.

S. 426. An act to amend the Federal Power Act to provide for more protection to electric consumers;

S. 2062. An act to designate the Federal Building and United States Courthouse to be constructed and located in Newark, NJ, as the "Martin Luther King, Jr. Federal Building and United States Courthouse";

S. 2069. An act to make certain amendments to the Job Training Partnership Act; and

S. 2788. An act to designate the Federal Building located in San Diego, CA as the "Jacob Weinberger Federal Building."

BILLS AND JOINT RESOLUTIONS PRESENTED TO THE PRESIDENT

Mr. ANNUNZIO, from the Committee on House Administration, reported that that committee did on this day present to the President, for his approval, bills and joint resolutions of the House of the following title:

H.R. 4216. An act to provide for the replacement of certain lands within the Gila Bend Indian Reservation, and for other purposes;

H.R. 4545. An act to authorize appropriations for the American Folklife Center for fiscal years 1987, 1988, and 1989, and for other purposes;

H.R. 5430. An act to amend the Gila River Pima-Maricopa Indian Community judgment distribution plan;

H.R. 5522. An act to authorize the release to museums in the United States of certain objects owned by the U.S. Information Agency;

H.J. Res. 210. Joint resolution designating the Study Center for Trauma and Emergency Medical Systems at the Maryland Institute for Emergency Medical Services Systems at the University of Maryland as the "Charles McC. Mathias, Jr. National Study Center for Trauma and Emergency Medical Systems";

H.J. Res. 588. Joint resolution commemorating January 28, 1987, as a National Day of Excellence in honor of the crew of the space shuttle *Challenger;*

H.J. Res. 617. Joint resolution to designate the week beginning September 21, 1986, as "National Adult Day Care Center Week"; and

H.J. Res. 686. Joint resolution to designate August 12, 1987, as "National Civil Rights Day."

ADJOURNMENT

Mr. KOLBE. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 10 o'clock and 29 minutes p.m.), the House adjourned until tomorrow, Thursday, October 9, 1986, at 10 a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

4319. A letter from the Secretary of Education, transmitting a copy of Final Regulations for Debt Collection (What Provisions Apply to Administrative Offset?), pursuant to 20 U.S.C. 1232(d)(1); to the Committee on Education and Labor.

4320. A letter from the Assistant Secretary of State for Legislative and Intergovernmental Affairs, transmitting a report of political contributions by Melissa Foelsch Wells, of New York, Ambassador Extraordinary and Plenipotentiary of the United States-designate to the People's Republic of Mozambique, and members of her family, pursuant to 22 U.S.C. 3944(b)(2); to the Committee on Foreign Affairs.

4321. A letter from the Deputy Assistant Secretary (Logistics and Communications), Department of the Air Force, transmitting notification that performance under contract is the most cost-effective method of accomplishing the Air Force's decision to convert the refuse collection function at Elmendorf Air Force Base, AK, pursuant to Public Law 99-190, section 8089 (99 Stat. 1216); jointly, to the Committees on Armed Services and Appropriations.

4322. A letter from the Secretary of Transportation, transmitting a draft of proposed legislation to amend the Railway Labor Act; jointly, to the Committees on Education and Labor and Energy and Commerce.

4323. A letter from the Secretary of Health and Human Services, transmitting the views of the Department on H.R. 5546, the "National Childhood Vaccine Injury Act of 1986," as reported by the Committee on Energy and Commerce; jointly, to the Committees on Energy and Commerce and Ways and Means.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. FASCELL: Committee on Foreign Affairs. H.R. 4568. A bill to clarify certain authorities of the Secretary of the Interior and of the Advisory Council on Historic Preservation, and for other purposes (Rept. 99-867, Pt. 2). Referred to the Committee of the Whole House on the State of the Union.

Mr. BROOKS: Committee on Government Operations. Report on the Department of Education's Limits on Publications: Saving Money or Censorship? (Rept. 99-978). Referred to the Committee of the Whole House on the State of the Union.

Mr. BROOKS: Committee on Government Operations. Report on Occupational Health Hazard Surveillance: 72 Years Behind and Counting (Rept. 99-979). Re-

ferred to the Committee of the Whole House on the State of the Union.

Mr. BEILENSON: Committee on Rules. House Resolution 580. Resolution providing for the consideration of H.R. 3810, a bill to amend the Immigration and Nationality Act to revise and reform the immigration laws, and for other purposes (Rept. 99-980). Referred to the House Calendar and ordered to be printed.

SUBSEQUENT ACTION ON REPORTED BILLS SEQUENTIALLY REFERRED

Under clause 5 of Rule X the following action was taken by the Speaker:

H.R. 4568. The Committee on Merchant Marine and Fisheries discharged from further consideration of H.R. 4568.

H.R. 5540. Referral of H.R. 5540 to the Committee on the Judiciary extended for a period ending not later than 12 noon October 14, 1986.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolution were introduced and severally referred as follows:

By Mr. WRIGHT:

H.R. 5664: A bill to strengthen Federal efforts to encourage foreign cooperation in eradicating illicit drug crops and in halting international drug traffic, to improve enforcement of Federal drug laws and enhance interdiction of illicit drug shipments, to provide strong Federal leadership in establishing effective drug abuse prevention and education programs, to expand Federal support for drug abuse treatment and rehabilitation efforts, and for other purposes; jointly, to the Committees on Agriculture; Armed Services; Banking, Finance and Urban Affairs; Education and Labor; Energy and Commerce; Foreign Affairs; Government Operations; Interior and Insular Affairs; the Judiciary; Merchant Marine and Fisheries; Post Office and Civil Service; Public Works and Transportation; Veterans' Affairs; and Ways and Means.

By Mr. RODINO (for himself and Mr. FISH):

H.R. 5665. A bill to amend the Immigration and Nationality Act to revise and reform the immigration laws, for other purposes; to the Committee on the Judiciary.

By Mr. BOULTER:

H.R. 5666. A bill making appropriations to carry out the project for water quality control in the Arkansas and Red River basin; to the Committee on Appropriations.

By Mr. CHENEY:

H.R. 5667. A bill to provide for a comprehensive energy policy for the United States; jointly, to the Committees on Ways and Means and Energy and Commerce.

By Mr. CLAY (for himself, Mr. WOLPE, Mr. BIAGGI, Mr. KILDEE, Mr. HORTON, Mr. MOAKLEY, Mr. DWYER of New Jersey, Mr. MURPHY, Mr. OBERSTAR, Mr. LUNDINE, Mr. KASTENMEIER, Mr. YATRON, Mr. HAYES, Mr. SOLARZ, Mr. MITCHELL, Mr. CARNEY, Mr. HERTEL of Michigan, Ms. KAPTUR, Mr. PRICE, Mr. HAWKINS, Mr. OWENS, Mr. DYMALLY, and Mr. FRANK):

H.R. 5668. A bill to establish a Federal annuity program to compensate participants in private pension plans which terminated before September 1, 1974, for nonforfeitable pension benefits which were lost by reason of the termination, and for other purposes; to the Committee on Education and Labor.

By Mr. DASCHLE:

H.R. 5669. A bill to amend the Consolidated Farm and Rural Development Act to require the Secretary of Agriculture to promote conservation practices on farmland acquired by the Farmers Home Administration; to the Committee on Agriculture.

By Mr. DERRICK:

H.R. 5670. A bill to designate the U.S. Post Office to be constructed in Barnwell, SC, as the "Solomon Blatt, Sr. Post Office Building"; to the Committee on Post Office and Civil Service.

By Mr. DORGAN of North Dakota:

H.R. 5671. A bill to amend title XVIII of the Social Security Act to permit payment for extended care services provided through home health agencies in underserved rural areas; jointly, to the Committees on Ways and Means and Energy and Commerce.

By Mr. FOWLER:

H.R. 5672. A bill to authorize the Secretary of the Interior to create a revolving loan fund to finance redevelopment in the Martin Luther King, Jr. National Preservation District in Atlanta, GA; to the Committee on Interior and Insular Affairs.

By Mr. GEKAS:

H.R. 5673. A bill to amend the Atomic Energy Act of 1954 to prevent persons of poor character from obtaining licenses to operate nuclear powerplants; to the Committee on Interior and Insular Affairs.

By Mr. KASTENMEIER:

H.R. 5674. A bill to amend title 28, United States Code, with respect to the composition of, and places of holding court in, certain judicial districts; to the Committee on the Judiciary.

By Mr. KEMP:

H.R. 5675. A bill to amend the Clean Air Act to reduce acid deposition, and for other purposes; to the Committee on Energy and Commerce.

By Mr. McCAIN:

H.R. 5676. A bill to amend the authority of the U.S. Geological Survey; to the Committee on Interior and Insular Affairs.

By Mr. MITCHELL (for himself, and Mr. McDADE):

H.R. 5677. A bill to extend through fiscal year 1988 SBA pilot programs under section 8 of the Small Business Act; to the Committee on Small Business.

By Mr. ROTH:

H.R. 5678. A bill to enhance the ability of the Secretary of Agriculture to enforce the Animal Welfare Act and the regulations issued thereunder; to the Committee on Agriculture.

By Mr. WHITTEN:

H.J. Res. 746. Joint resolution making further continuing appropriations for the fiscal year 1987, and for other purposes; to the Committee on Appropriations.

By Mr. WRIGHT:

H.J. Res. 747. Joint resolution making further continuing appropriations for the fiscal year 1987, and for other purposes; to the Committee on Appropriations.

By Mr. WHITTEN:

H.J. Res. 748. Joint resolution making further continuing appropriations for the fiscal year 1987, and for other purposes; to the Committee on Appropriations.

By Mr. MINETA:

H.J. Res. 749. Joint resolution waiving the printing on parchment of certain enrolled bills and joint resolutions during the remainder of the second session of the 99th Congress; considered and passed.

By Mr. WHITTEN:

H.J. Res. 750. Joint resolution making further continuing appropriations for the fiscal year 1987, and for other purposes; to the Committee on Appropriations.

By Mr. WALDON:

H. Res. 581. Resolution expressing the sense of the House of Representatives that the President should direct the Secretary of Education to form a National Task Force on the Problem of Functional Illiteracy; to the Committee on Education and Labor.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 480: Mr. ERDREICH.

H.R. 867: Mr. YOUNG of Alaska, Mr. MOAKLEY, Mr. MCKERNAN, and Mr. HENDON.

H.R. 888: Mr. SCHUMER, Mr. CONYERS, Mr. TRAFICANT, Mr. MANTON, Mr. RICHARDSON, Mrs. BOXER, Mr. GUARINI, Mr. LEVINE of California, Mr. BRYANT, Mr. Hayes, Mr. MINETA, Mr. BARNES, Mr. LEVIN of Michigan, and Mr. ABERCROMBIE.

H.R. 1902: Mr. RANGEL and Mr. MARTINEZ.

H.R. 2274: Mr. FORD of Tennessee.

H.R. 2761: Mr. MATSUI.

H.R. 3980: Mr. BARTON of Texas.

H.R. 4179: Mr. THOMAS of California and Mr. FROST.

H.R. 4223: Mr. JACOBS.

H.R. 4633: Mr. LUKEN.

H.R. 4871: Mr. GOODLING, Mr. DUNCAN, and Mr. BENNETT.

H.R. 4934: Mr. OWENS and Mr. MARKEY.

H.R. 4953: Mr. TORRICELLI and Mr. FISH.

H.R. 5039: Mr. BUSTAMANTE.

H.R. 5138: Mr. DASCHLE.

H.R. 5140: Mr. HALL of Ohio, Mr. FORD of Tennessee, Mr. STOKES, Mr. CLAY, Ms. OAKAR, and Mr. WISE.

H.R. 5350: Mr. CHAPMAN, Mr. MCCURDY, Mr. SIKORSKI, and Mr. COMBEST.

H.R. 5427: Mr. WEISS.

H.R. 5476: Mr. ABERCROMBIE, Mr. STANGELAND, Mr. STALLINGS, Mr. MURPHY, Mr. SISISKY, Mrs. VUCANOVICH, Mr. OLIN, Mr. NELSON of Florida, Mr. KINDNESS, Mr. COURTER, Mr. SOLOMON, Mr. ROBINSON, Mr. GORDON, Mr. SWEENEY, Mr. BREAUX, Mr. SPENCE, Mr. ROEMER, Mr. ROWLAND of Georgia, Mr. HENDON, Mr. BOUCHER, and Mr. TAYLOR.

H.R. 5477: Mr. ANTHONY and Mr. HOWARD.

H.R. 5552: Mr. WOLPE, Mr. GARCIA, Mr. FEIGHAN, Mr. ACKERMAN, Mr. GREEN, Mr. FRANK, Mr. FAZIO, Mrs. BURTON of California, Mr. RINALDO, Mr. BUSTAMANTE, Mr. LEVIN of Michigan, Mr. BRYANT, Mr. ABERCROMBIE, Mrs. BOXER, and Mr. TORRICELLI.

H.R. 5596: Mr. STRANG.

H.R. 5599: Mr. HORTON, Mr. BRYANT, Mr. LEWIS of Florida, Mr. DWYER of New Jersey, Mr. FAZIO, and Mr. BEREUTER.

H.R. 5600: Mr. DEWINE, Mr. GORDON, Mr. COELHO, and Mr. WYLIE.

H.J. Res. 90: Mr. LEACH of Iowa, Mr. ORTIZ, Mr. ROBERTS, Mr. SOLARZ, Mr. COOPER, and Mr. YOUNG of Missouri.

H.J. Res. 244: Mr. ROBERT F. SMITH and Mr. ROTH.

H.J. Res. 550: Mr. SHARP, Mr. FAUNTROY, and Mr. LOTT.

H.J. Res. 651: Mr. FIELDS.

H.J. Res. 693: Mr. MCCOLLUM AND Mr. CLAY.

H.J. Res. 706: Mr. DIOGUARDI, Mr. GREGG, Mr. APPLEGATE, Mr. BOSCO, Mr. IRELAND, Mr. STUDDS, and Mr. ROBERT F. SMITH.

H.J. Res. 709: Mr. FIELDS and Mr. MAZZOLI.

H.J. Res. 711: Mr. PEPPER, Mr. BOSCO, Mr. HORTON, Mr. WILSON, and Mr. FISH.

H.J. Res. 714: Mr. ACKERMAN, Mr. AKAKA, Mr. ANDERSON, Mr. ASPIN, Mr. AUCOIN, Mr. BATEMAN, Mr. BENNETT, Mrs. BENTLEY, Mr. BEVILL, Mr. BLAZ, Mr. BLILEY, Mrs. BOGGS, Mr. BONER of Tennessee, Mr. BOSCO, Mrs. BOXER, Mr. BREAUX, Mr. BROOKS, Mr. BRYANT, Mrs. BURTON of California, Mr. BUSTAMANTE, Mr. CALLAHAN, Mr. CARNEY, Mr. CARPER, Mr. CARR, Mr. CHAPPELL, Mr. CLINGER, Mr. CONTE, Mr. COYNE, Mr. DANIEL, Mr. DAVIS, Mr. DE LA GARZA, Mr. DELLUMS, Mr. DE LUGO, Mr. DICKS, Mr. DINGELL, Mr. DIOGUARDI, Mr. DORNAN of California, Mr. DOWDY of Mississippi, Mr. DWYER of New Jersey, Mr. DYMALLY, Mr. DYSON, Mr. EVANS of Illinois, Mr. FIELDS, Mr. FLIPPO, Mr. FOGLIETTA, Mr. FRANKLIN, Mr. FUQUA, Mr. FUSTER, Mr. GALLO, Mr. GEJDENSON, Mr. GREEN, Mr. RALPH M. HALL, Mr. HARTNETT, Mr. HEFNER, Mr. HERTEL of Michigan, Mrs. HOLT, Mr. HORTON, Mr. HUBBARD, Mr. HUCKABY, Mr. HUGHES, Mr. HUTTO, Mr. IRELAND, Mr. JENKINS, Ms. KAPTUR, Mr. KLECZKA, Mr. KOLTER, Mr. LEHMAN of California, Mr. LEHMAN of Florida, Mr. LELAND, Mr. LENT, Mr. LEVIN of Michigan, Mr. LEWIS of Florida, Mr. LIPINSKI, Mr. LIVINGSTON, Mrs. LLOYD, Mrs. LONG, Mr. LOWRY of Washington, Mr. LUNDINE, Mr. LUNGREN, Mr. MCHUGH, Mr. MCKERNAN, Mr. MCMILLAN, Mr. MANTON, Mr. MARTIN of New York, Mr. MARTINEZ, Mr. MAVROULES, Ms. MIKULSKI, Mr. MILLER of Washington, Mr. MOAKLEY, Mr. MOODY, Mr. MOORE, Mr. MORRISON of Washington, Mr. MRAZEK, Mr. NEAL, Mr. NELSON of Florida, Mr. NIELSON of Utah, Mr. NOWAK, Ms. OAKAR, Mr. ORTIZ, Mr. OWENS, Mr. PRICE, Mr. PURSELL, Mr. QUILLEN, Mr. RANGEL, Mr. RINALDO, Mr. ROEMER, Mr. ROSE, Mr. ROTH, Mr. SAVAGE, Mr. SAXTON, Mr. SCHUMER, Mr. SHAW, Mr. SHUMWAY, Mr. SMITH of Florida, Ms. SNOWE, Mr. SNYDER, Mr. STOKES, Mr. STUDDS, Mr. SUNIA, Mr. TALLON, Mr. THOMAS of Georgia, Mr. TOWNS, Mr. TRAXLER, Mr. VALENTINE, Mr. VANDER JAGT, Mr. WHITLEY, Mr. WILSON, Mr. WOLF, Mr. WORTLEY, Mr. YOUNG of Alaska, Mr. YOUNG of Florida, and Mr. YOUNG of Missouri.

H.J. Res. 718: Mr. COELHO, Mr. QUILLEN, Mr. LEVINE of California, Mr. WYDEN, Mr. HUBBARD, Mr. RUSSO, Mr. SHAW, Mr. COUGHLIN, Mr. LUNDINE, Mr. KASTENMEIER, Mrs. BYRON, Mr. SHARP, Mr. HAMMERSCHMIDT, Mr. WILSON, Mr. BIAGGI, Mr. LEWIS of Florida, Mr. TORRICELLI, Mr. YOUNG of Missouri, Mrs. ROUKEMA, Mr. YATES, Mr. ARCHER, Mr. AUCOIN, Mr. CARPER, Mr. WOLF, Mrs. HOLT, Mr. KOSTMAYER, Mr. LIGHTFOOT, Mr. LEACH of Iowa, Mr. LOTT, Mr. BEDELL, Mr. LEATH of Texas, Mr. NOWAK, and Mr. FORD of Michigan.

H.J. Res. 733: Mrs. BYRON and Mr. FISH.

H.J. Res. 739: Mr. TOWNS, Mr. WYLIE, Mr. LEVIN of Michigan, Mr. MCGRATH, Mr. MARTINEZ, Mr. LIPINSKI, Mr. FRENZEL, Mr. YOUNG of Alaska, and Mr. FISH.

H.J. Res. 740: Mr. OBERSTAR, Mr. ZSCHAU, Mr. YATRON, Mr. DELLUMS, and Mr. SIKORSKI.

H.J. Res. 745: Mr. MORRISON of Washington.

H. Con. Res. 129: Mr. WIRTH, Mr. BRUCE, Mr. SIKORSKI Mr. BROOKS, Mr. ACKERMAN, and Mr. WHITTEN.

H. Res. 573: Mr. BOEHLERT, Mr. COATS, Mr. GILMAN, Mr. HARTNETT, Mr. HILLIS, Mr. LIGHTFOOT, Mr. KRAMER, Mr. LENT, Mr. LOEFFLER, Mr. LOWERY of California, Mr. MADIGAN, Mr. MARLENEE, Mrs. MARTIN of Illinois, Mr. MCCOLLUM, Mr. PACKARD, Mr. ROTH, Mr. SCHUETTE, Mr. SHUMWAY, Mr. DENNY SMITH, Mr. TAYLOR, Mr. VANDER JAGT, Mr. WORTLEY, Mr. WYLIE, Mr. YOUNG of Florida, Mr. ZSCHAU, Mrs. LLOYD, and Mr. RITTER.

H. Res. 575: Mr. GEKAS.

EXTENSIONS OF REMARKS

CANCER-BASED EMPLOYMENT DISCRIMINATION: THE FIGHT CONTINUES

HON. MARIO BIAGGI

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 7, 1986

Mr. BIAGGI. Mr. Speaker, both the House and Senate recently passed a resolution I authored condemning employment discrimination against persons on the basis of cancer history and urging that these Americans receive fair and equal treatment in our Nation's workplace. For the first time in Congress, the rights of this very special constituency were addressed. I wish to commend my colleagues for recognizing that this terrible injustice exists, but even more importantly, for stating that this violation of rights just not be allowed to continue.

This resolution was an important first step in the fight to outlaw this employment discrimination. I urge my colleagues to grant equal rights, privileges, and opportunities to all cancer survivors—both in the workplace and society as well. These courageous conquerors deserve equal protection under the law.

For the benefit of my colleagues, I am submitting an article for the RECORD regarding this employment discrimination. The article recently appeared in the Herald Statesman. It is just one of hundreds of such articles published around the country on this issue. It is my hope that this media attention, coupled with the passage of the cancer rights resolution, will help increase public awareness and understanding of cancer, and ultimately, the employability of cancer survivors.

CANCER PATIENTS: MANY BATTLE JOB DISCRIMINATION, TOO

(By Matthew J. Doherty)

Willis Walker lost his right leg to cancer at age 16. The 32-year-old Riverdale resident eventually went on to a successful career in publishing and is now director of the Technical Books Club division of Simon & Schuster. He is lucky.

Unlike Walker, many people survive cancer only to face job discrimination because of their illness, according to experts who met in Tarrytown on Thursday to discuss employability and cancer. The conference was sponsored by the Westchester Division of the American Cancer Society.

Some people get passed up for promotions because their employers fear cancer will recur, several speakers said. Others lose their jobs after becoming sick. And in fewer cases, healthy job applicants with a cancer history are not hired because of their prior illness.

About 25 percent of all cancer survivors experience some kind of job discrimination, said Barbara Hoffman, a lawyer with the Foundation for Dignity, a nonprofit organization based in Philadelphia that represents the disabled in discrimination and civil rights cases.

"Employers have to be educated about cancer so they don't fall prey to the myths, or they're going to lose good people," she said during a luncheon address to about 40 people.

Hoffman listed the most common myths about cancer.

Cancer is a "death sentence."

Cancer is "contagious."

Workers afflicted with cancer are "unproductive."

As the number of people recovering from cancer grows because of medical advances, the number of discrimination cases will surge too, she predicted.

Earlier, several panelists agreed that hiring or firing based on an employee's cancer history is illegal and not smart business.

"If the person is able to do the job, they ought to be given a fair opportunity to be hired, employed and treated like anybody else," said Dr. Robert McKenna, past president of the American Cancer Society and clinical professor of surgery at the University of Southern California.

McKenna, who recounted several cases where employees lost their jobs after winning their personal battles with cancer, said other workers are "pigeonholed" and passed over for promotion because employers fear cancer will return.

"I could go on and on with cases," he said, noting that the government—and the Armed Services in particular, are the biggest offenders. People in the military who have had cancer are "discharged routinely," he claimed.

Douglas White, New York State Commissioner of Human Rights, said cancer victims who suffer employment discrimination have recourse under a state law protecting the rights of the disabled. "The burden is on the employer to prove that the disability will prevent them from doing the job," he said.

He urged people who feel they have been discriminated against to contact the state. "The New York state Division of Human Rights is committed to making sure cancer patients * * * are given a fair chance," he said.

He cited the case of a woman who had been fired from her job after going through extended chemotherapy. After a complaint brought against her employer, she was awarded $5,000 and restored to her job.

Hoffman helped draft an unsuccessful proposal by Rep. Mario Biaggi which would have amended the Civil Rights Act of 1964 to prohibit job discrimination against people with a history of cancer. She said people are protected to some degree in 47 states under laws designed to safeguard the rights of the disabled.

The downside of that, she noted is that cancer patients come under the umbrella of the disabled. "Is cancer a handicap?" she asked. Most of the panelists made it clear they believe it is not.

Walker certainly doesn't think cancer has held him back. If anything, he said, it has made him appreciate life—and his job—a lot more. "If you've gone through chemotherapy, a common cold doesn't keep you out of work," he said.

RAMIFICATION OF AN IRANIAN SUCCESS IN SOUTHERN IRAQ

HON. BILL RICHARDSON

OF NEW MEXICO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 7, 1986

Mr. RICHARDSON. Mr. Speaker, I want to take this opportunity to bring to the attention of my colleagues an article appraising the current phase of the Iran-Iraq war. The article was written by David Mangan, Jr., and Charles Waterman, international business consultants associated with Casey & Co., a Washington-based consulting firm. Mangan is a former Foreign Service officer specializing in the Mideast and Southeast Asia. Waterman is a former U.S. Government official specializing in the Mideast. I believe that this article is of great interest and would like to share it with my colleagues.

Since the Lebanon debacle, American foreign policy in the Middle East has supported a "back-burner" low-key approach to the area. This fall's widely predicted Iranian offensive on the Iraq trenches might change all that by forcing the United States to confront the potential for serious dislocations regarding its largest national interest in the area—control of the Gulf and its vital oil supplies.

The Iran-Iraq war's six years of carnage appears headed for a crescendo as the Iranians prepare for a gigantic push, which could conceivably result in the partial collapse of an exhausted Iraqi army. The success this spring of the Iranian offensive which took and held Iraq's Fao Peninsula, despite repeated Iraqi counterattacks, signaled to many observers that the Iranians had finally succeeded in integrating their religious militia (Pasdaran) with the reformed remnants of the Shah's regular armed forces. If this integration is complete, some experts predict that populous Iran (40-million) will in time overwhelm the well-equipped, technologically superior, but lackluster Iraqi army. Iraq has a population of 14-million, and its 1-million-man army is a great strain on its resources.

The object of this analysis is not to predict the likelihood of Iranian military success—a hotly debated issue on which no expert consensus exists—but rather to examine the political ramifications of an Iranian breakthrough in southern Iraq, including the ultimate capture of Basrah.

BLOW TO UNITED STATES

Barring the unlikely event of outside intervention on behalf of Iraq, a successful Iranian offensive in this sector would immediately produce a number of regional repercussions, none of which would advance America's overall foreign policy interests.

Within days of such an event, several preliminary tactical and strategic changes

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

would be likely to ensue. First of all, the underpinnings of the increasingly pragmatic Iraqi regime of President Saddam Hussein would be shaken. Inside the Ba'ath Party, splits would occur and pressure mount from various stripes of dissident party officials and army elements for Saddam's removal. If the President were ousted by a pro-Soviet clique—the most likely initial political repercussion—Iraq would halt its flirtation with the U.S. Greater Soviet military involvement and political influence would predictably follow.

An Iranian victory of this scope would summon up strong regional military support to Baghdad from Jordan and Egypt, which have more than half-a-million expatriates in Iraq. More ambivalent would be the Saudi response, whose military participation, if any, would be in the form of air support. Egypt has already signaled its intention to weigh in militarily in the face of an Iranian breakthrough. If Iranian forces maul the contingents of these various states, political discontent could be a collateral result in those countries. Grosso modo, the effect of a successful assault by Iran would be to intensify confrontation between secular Pan-Arab forces and Islamic militants throughout the area.

The first tremors of a successful Iranian onslaught would shake the oil-rich Arab sheikkdoms of the Gulf, inciting Shi'ite and ethnic Iranian minorities to assert their political rights and perhaps forcing the Gulf Cooperation Council (GCC), now dominated by Saudi Arabia, to accommodate to Iranian policies. Most immediately affected would be Kuwait and those portions of the UAE with large Shi'ite populations.

The GCC would predictably split further over whether to call for Western naval intervention against shipping to and from Iran. A compromise might be reached by requesting convoying and protection of petroleum traffic to and from the Arab states of the Gulf, excluding Iraq. More remote, but still conceivable, would be discreet Arab urging of a Western blockade of Iranian-bound oil traffic at the Strait of Hormuz.

Arab pressures for Western military aid to Iraq would intensify as long as Saddam remained in power—perhaps in the form of intelligence and sales of sophisticated military equipment. Less likely, but possible, would be Arab requests for collaborative logistical assistance from the United States and France. Geopolitics makes strange bedfellows: the United States, French and Soviets incline toward the Iraqis, at least for military assistance, whereas the British, Germans, China and Israel have at various times maintained supply relationships with Iran. How all this would sort out in a showdown is what keeps foreign policy analysts in business. Suffice it to say that military sales to either Iran or Iraq more often represent cash-and-carry business than ideological commitment.

Up to now, we have only considered the first phase of an Iranian breakthrough, and hypothesized how the various players would react if Iran's advance were tentative and its reversal still remotely possible. We will now examine the impact of a more robust Iranian success, and consolidation of an irreversible grip on southern Iraq.

In this case, the loyalty of southern Iraqi Shi'ites, comprising the bulk of the population as well as Iraq's lower-level army echelons, would become questionable. Despite strenous efforts at proselytization, the subversive Da'wa Shi'ite movement in southern Iraq has not been able to overcome the Iraqi Arab identification of the south Iraq population. Iraqi Shi'ite troops have, almost without exception, proven loyal. There have been few incidents of subversion in Iraqi Shi'ite areas. However, if Iranian troops overrun the southern territories, the Shi'ite population would for the first time have an option for defection without retaliation, and their latent religious loyalty might overcome their Arab Iraqi identification.

If the Iranian breakthrough solidifies into a long-term occupation, the likelihood of Saddam Hussein's ouster would increase geometrically. We would estimate the probable initial political complexion of such an upheaval would be pro-Soviet, as neither pro-Western moderates nor pro-Iranian Shi'ites would be likely to have the highly placed clandestine organization in Baghdad to mount a coup at the stage under consideration.

Fundamental incompatibilities between Iran's religious extremists and a more ideologically dogmatic leftist government than that of Saddam Hussein, would almost certainly ensure continued bloody conflict, fissures developing in the Iraqi military, and heightened Iranian insistence on up to $40-billion in war reparations from Iraq and its backers. The prospect of civil discord in Iraq would increase dramatically in a pro-Soviet junta scenario, with Iraq's Shi'ites and perhaps even some Sunni religious groups resisting secular political control.

Indeed, an Iranian military occupation of the south would result in a small, hard-pressed Sunni secular state in the north, deprived of Iraq's major southern oilfields. Access to the new oil pipeline through Saudi Arabia terminating at the Red Sea port of Yanbu would also be lost. Its only outlets to the sea would be through the friendly neighboring states of Jordan, Turkey, and northeast extremities of Saudi Arabia. The shelf-life of such a regime, wracked as it would be by internal dissension, may well be short.

As the long-term nature of Iran's stranglehold on Iraq's south became increasingly obvious, a new set of consequences would ensue. The Iranians would doubtless impose a Rhineland-style occupation on Iraq's southern petroleum-producing areas until reparations were paid. Unless the American and Soviet superpowers decided to cooperate on intervention—a most unlikely scenario indeed—Iran would assert increasing political and military hegemony over the Gulf and the Arabian peninsula. The Saudis would be forced to comply with Iranian demands for reparations, with the threat of outside military invasion and domestic subversion both looming. Washington's "special relationship" with Saudi Arabia would diminish almost to the vanishing point, due to Riyadh's adoption of neutralist policies less susceptible to Iranian populist exploitation.

In the event of such a convincing Iranian military ascendancy, inevitably inspiring the political turmoil in Baghdad described previously, the position of Syria would become pivotal. As a matter of balance-of-power politics, Syria's President Hafoz al-Assad would have an interesting strategic choice. He could attempt to cut a deal with Iran, perhaps suggesting partition of Iraq into a Syrian-influenced Sunni northern area, and a southern Shi'ite region under continued Iranian control. Bear in mind that the Syrian Ba'athist constitution calls for Syrian incorporation of Iraq, along with other territorial ambitions. Also included in a deal might be Syrian economic domination of the Kirkuk-Mosul oilfields, with their pipeline through Syria to Latakia already in place. (This pipeline has been shut down since the war broke out.)

Another very real option would be active Syrian opposition to a powerful Iran ensconced on its eastern borders—which could end up a serious military threat to Damascus. The continued cooperation of a leftist secular Syrian regime with an extreme nationalist Iranian theocracy appears highly unlikely under the conditions hypothesized herein, unless both Khomeini and Assad show uncharacteristic willingness to compromise over division of the spoils. Indeed, Assad might attempt to preempt any prospect of Iranian hegemony over the Fertile Crescent by embracing a pro-Soviet successor leftist regime to Saddam Hussein in Baghdad, should it appear.

The consequences of an Iranian military takeover of southern Iraq would not be confined to Mesopotamia. Flushed with success, Ayatollah Khomeini would be encouraged to pursue fundamentalist revolutionary activities in other susceptible areas. Even a sound partial defeat of Iraq—at one time the leading secular Arab government—would vindicate radical Islamic policies. Not only revolutionary Shi'ite enclaves in the Persian Gulf and Lebanon, but Sunni fundamentalists in Egypt, Tunisia, and elsewhere would be buoyed. Indeed, the victory of an Islamic regime would have ripple effects not only in the Arab world, but throughout the Muslim world as far afield as Africa and Soviet Asia. The failure of modern secular movements would stand in stark contrast.

DOMINATION OF OPEC

Perhaps more immediately unsettling to the West than a reinvigorated Islamic resurgence would be Iran's economic gains. With its troops perched on the borders of Saudi Arabia and Kuwait, Tehran would have the power to influence petroleum policies in most Arab oil-producing states decisively. Iranian bullying in matters of pricing and production would become the order of the day, with political agitation or even naked military threats the punishment for noncompliance. Iran and its radical allies would dominate OPEC, gradually forcing prices higher, and Iran's own production would soar relative to the weakened oil-rich peninsular Arab states—particularly Saudi Arabia. And the Iranian appetite for reparations would siphon off a large portion of peninsular Arab revenues, elevating the Iranian economy and military machine to a status of regional domination.

Another little-noticed side effect would be to agitate the Kurdish independence movement. Over 10-million Kurds, whose Pesh Merga insurgency has been active for decades in Turkey, Iran, and Iraq, would predictably increase their activity in the wake of a convincing Iranian advance in southern Iraq (ON 9/11). They would initially be inclined to seize upon Iraq's weakness and reassert their autonomy within that country's borders. At a later stage, perhaps supported by Moscow and Damascus, they could also make life difficult for a victorious Iran as well as Turkey. Although such efforts would almost certainly be doomed, the Kurds are another wild card in the deck of imponderables affected by the Iran-Iraq situation.

The foregoing analysis indicates that an Iranian military breakthrough in Iraq's South would likely end the current World War I style stalemate between Iran and Iraq and, at the very least, force Iraq and its

allies to react rapidly to the new situation. What is apparent is that an Iraq loss of its southern areas would have drastic regional repercussions. The realignments of power accompanying such an event could be profound—and intensify as Iranian influence increasingly affects Baghdad itself.

From a viewpont of American interests, the United States pledge by both Presidents Carter and Reagan to defend Saudi Arabia and the Gulf oil jugular would be sorely tested. Neutralization of Saudi Arabia, hostile control of oil policies, and estrangement of other Arab states as outlined above would diminish further American influence in the area. Concomitantly, Soviet political influence and military presence could well increase in certain specific areas. In the final analysis, unless Western intervention pulls a deus ex machina, an Iranian milltary success in Iraq would result in a major foreign policy setback for the Unites States graver than the Lebanon debacle by far.

Mr. Speaker, I thank my colleagues for their attention to this fine appraisal of the Iran-Iraq war, and hope that they found it to be informative and through provoking.

WILLARD SCOTT: HONORARY CONGRESSIONAL YOUTH AWARD

HON. FRANK R. WOLF

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 7, 1986

Mr. WOLF. Mr. Speaker, I rise today to recognize a true example of a volunteer who spends many hours of his time helping people—this time, the young people of our country. On September 26, Willard Scott volunteered his time to be the master of ceremonies for the Congressional Award Program and the premiere of the movie, "Dreams of Gold," at the Kennedy Center, in an effort to enhance recognition of the Congressional Award.

Established by Public Law 96-114 in 1979, the Congressional Award is the only award the U.S. Congress bestows on America's young people in recognition of personal achievement and commitment to public service.

Normally, under the award program, young people ages 14 through 23 have an opportunity to earn special recognition. But for his unselfish service to this program and to the youth of our Nation, it was a great honor to present an Honorary Congressional Youth Award Gold Medal to Willard Scott, longtime Washington media personality and now NBC "Today Show" weatherman and roving ambassador of good will. He set an example for our young people by sharing his time and talents through volunteer activities.

We all thank Willard Scott for his continued support and encouragement to our young people to pursue their "Dreams of Gold."

INSIST ON SOVIET COMPLIANCE WITH GRAIN AGREEMENT

HON. JAMES L. OBERSTAR

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 7, 1986

Mr. OBERSTAR. Mr. Speaker, last Friday I sent a letter to the President, signed by 27 of our colleagues and 10 Senators, urging him to press the Soviet Union to live up to its agreement to buy American grain, when he meets with General Secretary Gorbachev in Reykjavik, Iceland. Today I am introducing a resolution carrying out the intent of our letter. The text of our letter to President Reagan on Soviet grain purchases follows:

CONGRESS OF THE UNITED STATES,
Washington, DC, October 3, 1986.

The PRESIDENT,
The White House,
Washington, DC.

DEAR MR. PRESIDENT: We are writing to urge that at your meeting with General Secretary Gorbachev in Reykjavik, Iceland, you press the Soviet Union to live up to its agreement to buy U.S. grain. For the past two years, the Soviet Union has reneged on its promise to purchase between 9 to 12 million metric tons of grain from the United States annually, including a mimimum of four million metric tons of wheat. In FY 1986, they purchased less than 4% of the wheat they promised to buy.

Your recent effort to subsidize Soviet grain purchases was inadequate, and therefore was a complete failure. Instead of purchasing American grain, the Soviets last week bought a million metric tons of wheat from the French, and yesterday they signed a new agreement to purchase a minimum of five million tons of grain annually from Canada—beginning this year. Meanwhile, the American farm economy is in shambles as millions of tons of grain that the Soviets promised to buy under terms of the agreement you negotiated in 1983 rots in our silos.

Mr. President, we believe it is time for you to exhibit the same degree of concern over the Soviets' clear failure to live up to the terms of your grain agreement with them as you do over alleged violations of arms control agreements.

During your administration, American farmers—the most efficient and productive in the world—have watched farm exports drop 40 percent, from $44 billion in FY 1981 to $27 billion in FY 1986. Moreover, in May, June, and July of this year, the United States—for the first time in 27 years—imported more farm products than it exported. Pressing the Soviets to live up to their promise to buy American grain can be an important first step in restoring our farm exports, and will provide a much needed boost for hard-pressed American farmers.

Respectfully,

Representatives Bill Alexander (Ark.), Tony Coelho (Calif.), Richard H. Stallings (Idaho), Terry L. Bruce (Ill.), Richard J. Durbin (Ill.), Kenneth J. Gray (Ill.), Lane Evans (Ill.), Frank McCloskey (Ind.), Berkley Bedell (Iowa), Dan Glickman (Kans.), Jim Slattery (Kans.), John Breaux (La.), James L. Oberstar (Minn.), and Timothy J. Penny (Minn.).

Ike Skelton (Mo.), Harold L. Volkmer (Mo.), Pat Williams (Mont.), Byron L. Dorgan (N.D.), Glenn English (Okla.), James R. Jones (Okla.), Wes Watkins (Okla.), Mike Synar (Okla.), Dave McCurdy (Okla.), Thomas A. Daschle (Okla.), E de la Garza (Texas), Charles W. Stenholm (Texas), Thomas S. Foley (Wash.), and David R. Obey (Wisc.).

Senators David Pryor (Ark.), Paul Simon (Ill.), Tom Harkin (Iowa), Thomas F. Eagleton (Mo.), Max Baucus (Mont.), John Melcher (Mont.), Quentin N. Burdick (N.D.), J. James Exon (Nebr.), Edward Zorinsky (Nebr.), and David L. Boren (Okla.).

INTRODUCING STATE NUCLEAR SAFETY PARTICIPATION ACT

HON. EDWARD J. MARKEY

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 7, 1986

Mr. MARKEY. Mr. Speaker, I am today introducing legislation that will extend to the Governors of the States certain stipulated authority regarding the regulation of the safety of nuclear powerplants. This bill will permit Governors to veto the licensing of new nuclear powerplants when they find that the operation of such plants is contrary to the interests of their State. The bill also would prohibit licensing unless a Governor certifies that State and local emergency plans have been tested, approved, and are ready for implementation.

The American people elect their Governors, who are regularly accountable to them. It's time we let those Governors participate in the regulation of nuclear safety, instead of leaving it all up to the five appointees at the Nuclear Regulatory Commission [NRC] in Washington. The NRC has never permanently denied a license to any nuclear plant regardless of how serious the problems may be. The Governors should have some recourse from this excessively laissez faire attitude toward the regulation of nuclear safety.

The Nation's Governors have the traditional responsibility for protecting the health and safety of their citizens. There's no reason why they should be excluded from participating in the regulation of nuclear safety, especially in light of the threat of nuclear accidents like Chernobyl. Governors should be permitted to veto a plant's operation if they judge the dangers too great.

Under the bill, the NRC would have to notify a Governor of its intent to license a nuclear plant 60 days before issuing a license. Governors could veto the plant's license if they found that "the operation of any such facility would be contrary to the best interests of such State."

Similarly, the NRC couldn't issue an operating license unless the Governor of every State within 10 miles of the facility certifies to the Commission in writing that emergency plans have been approved, tested, and are ready to be implemented.

The bill would also permit States to set and enforce radiation protection standards for nuclear facilities as long as those standards were at least as stringent as those set by the Federal Government.

It's time for the so-called new federalism to include the regulation of nuclear safety. If a Governor finds that emergency planning for a nuclear accident is impossible or impracticable, as Governor Cuomo has found for the Shoreham Nuclear Plant in New York and Governor Dukakis has found in Massachusetts for the nearby Seabrook Plant, then the Nuclear Regulatory Commission could not license such a plant.

This legislation reflects the concerns of many of the Nation's Governors, as reflected in a recent resolution put forth within the National Governor's Association. That resolution explicitly advocated extending to the Governor's certain rights and responsibilities regarding the regulation of the safety of nuclear facilities within their States. This bill addresses those concerns directly by providing an initial vehicle to accomplish those objectives.

We are building a congressional consensus around this legislation now so that it will gain momentum for passage next year. I intend to focus attention on this legislation during upcoming hearings.

JAZZ IS AN AMERICAN TREASURE

HON. JAMES M. JEFFORDS

OF VERMONT

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 7, 1986

Mr. JEFFORDS. Mr. Speaker, as vice chairman of the Congressional Arts Caucus, I am pleased to join today as a cosponsor of House Concurrent Resolution 396, designating jazz as an American national treasure.

As is noted in the preamble of the resolution, jazz is indeed a uniquely American art form. Though ultimately its origins lie in the tribal chants and rhythms of Africa, the first manifestations of jazz appeared in ragtime at the turn of the century and Dixieland in the early 20 century. As a serious art form, jazz really began with the Louis Armstrong groups in the late twenties. Since that time, virtually every major influence in the music has been provided by native Americans (Duke Ellington, Count Basie, Charlie Parker, Miles Davis, Thelonious Monk, John Coltrane, Ornette Coleman, and so forth). Moreover, with some European and South American exceptions, the vast majority of notable jazz musicians and composers have been Americans.

But jazz is an American treasure for reasons quite apart from its illustrious personnel. If there is one factor which has contributed most to America's greatness, it is the confluence of many different nationalities and cultures. In coming together, these resulted in the combustion of creativity and innovation which has characterized our unique history. Quite literally, jazz symbolizes this combustion in a most dramatic fashion.

As I mentioned before, the foundation of jazz was established with the tragic slavery era in this country. Thousands of Africans were separated from their families and heritage during that era, but the rhythms and harmonies of their homelands survived in the field hollers and gospel music of the slaves. With ragtime, a direct linkage between the European classical and African rhythmic traditions was made by Scott Joplin and others. To this synthesis was added the uniquely American element of jazz—improvisation. Louis Armstrong and Earl Hines proved that, in a collective setting, the individual could still have a unique and spontaneous voice, thus enhancing that of the group as a whole.

Since its beginnings jazz has continued to grow—as has or country—as a fusion of cultures throughout the world. Today, there are few musical traditions which have escaped this blend. Meanwhile, the more traditional jazz forms—dixieland, swing, bop, and so forth—continue to flourish.

If jazz is indeed such an American fixture, is a bill such as House Concurrent Resolution 396 redundant? Unfortunately not. The reason is that, while jazz is recognized throughout most the world as one of America's greatest contributions to the arts, the only place it apparently fails to receive such widespread recognition is in America itself. While a great deal of lip service is paid to this great national treasure, how many American students can identify the names of Duke Ellington, Louis Armstrong or John Coltrane? You surely wouldn't stump these kids with Wolfgang Amadeus Mozart or Ludwig von Beethoven, great composers in the European tradition. How many culturally educated adults could identify Bix Biederbecke, Sonny Rollins, or McCoy Tyner? Surely, if you asked them about Casals or Segovia, they wouldn't bat an eyelash.

Ironically, the same observations could not be made about such countries as France or Sweden where so many American jazz greats have expatriated in order to live where their work is appreciated. Even behind the Iron Curtain, the audience for jazz is widespread, perhaps due to its obvious appeal to yearnings for freedom and individuality.

Obviously, this anomaly cannot be turned around overnight. Nor can it be accomplished solely with an act of Congress. But we surely can play a role by at least highlighting this great accomplishment of our Nation and hope that the schools, the media and other institutions shaping our cultural awareness will not be far behind.

STATES SUPPORT HOUSE RISK RETENTION BILL

HON. JAMES J. FLORIO

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 7, 1986

Mr. FLORIO. Mr. Speaker, as many Members are aware, final action on the Liability Risk Retention Act amendments is expected soon, similar bills having passed both Houses. I expect the final legislation to be a consensus bill.

I believe Members will be interested to know that provisions from the House version of the bill are favored by the National Association of Insurance Commissioners [NAIC]. I am inserting a copy of the NAIC letter on this matter in the RECORD for the information of all Members.

NAIC,

Kansas City, MO, September 26, 1986.

Re: Risk Retention Act.

Hon. JAMES J. FLORIO,

House of Representatives, Rayburn House Office Building, Washington, DC.

DEAR REPRESENTATIVE FLORIO: The National Association of Insurance Commissioners [NAIC] has been involved in the debate surrounding the expansion of the Risk Retention Act since the introduction of S. 2129. Due to the progress of negotiations in the Senate, the NAIC is obliged not to oppose S. 2129.

However, we believe that H.R. 5225 is the better bill because it enhances the ability of regulators to protect consumers. H.R. 5225 will not unduly burden any legitimate risk retention group or purchasing group but it will restrict those which are not. We, therefore, prefer H.R. 5225 over S. 2129 and urge you to consider our views.

Very truly yours,

JOSEPHINE M. DRISCOLL,
President, NAIC.

EDWARD MUHL,
Vice President, NAIC.

TRIBUTE TO "BUD" HILLIS

SPEECH OF

HON. MARIO BIAGGI

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 1, 1986

Mr. BIAGGI. Mr. Speaker, when the 99th Congress adjourns, this body will be losing one of its most respected Members. After 16 years of distinguished service, ELWOOD "BUD" HILLIS is retiring.

Through quiet, yet very effective leadership, BUD has helped to shape national policy on such vital issues as military preparedness, veterans affairs, and the domestic auto and steel industries, which are so important to his own congressional district.

In fact, BUD was a founder of the Congressional Automotive Task Force. He was a leader in the successful Chrysler loan guarantee effort, which prevented one of his district's largest employers from going out of business. He was also instrumental in extending the voluntary restraint agreement with Japan, which restricted the number of Japanese auto imports coming into the United States at a time when the United States auto industry depended on that relief for its survival.

He has similarly been a leader on issues affecting the steel industry, which also comprises a very large portion of his district's economic base. He was a founder of the congressional steel caucus and has been an outspoken advocate of trade legislation aimed at protecting our domestic steel industry from unfair foreign competition.

Central to BUD's congressional career has been his devotion to the needs of his constituents. He has won impressive election victories year in and year out because he takes care of the needs back home, a hallmark of any good legislator. The greatest tribute any of us can receive is a satisfied and supportive constituent. BUD has that, and deservedly so.

BUD HILLIS is never flashy, but always effective. BUD HILLIS is never loud, but his voice is

always heard. BUD HILLIS is never pretentious, but he will always be remembered by those of us fortunate to have served with him.

I wish BUD, his wife Carol, and his family a rich and fulfilling future.

CITATION FOR DISTINGUISHED SERVICE TO GUY W. WILLEY

HON. ROY DYSON

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 7, 1986

Mr. DYSON. Mr. Speaker, I rise today to honor the distinguished career of a dedicated public servant, Mr. Guy W. Willey. The U.S. Department of Interior recently bestowed its highest honor, the Distinguished Service Award, on Mr. Willey for his many contributions in the field of wildlife conservation with the U.S. Fish and Wildlife Service.

Interior Secretary Donald P. Hodel, stated in his citation:

Throughout his eminent career at the Blackwater National Wildlife Refuge [NWR], Mr. Willey's sincere dedication to wildlife conservation has significantly contributed towards gaining national recognition for the Refuge as a unique wildlife management area. He has an exceptional talent for communicating his concerns and knowledge of the marsh and wildlife with everyone from local residents to students to professors to ambassadors. As a result, Mr. Willey has gained the support of many with very positive tangible benefits. During the period when Blackwater NWR was experiencing rapid marsh losses, Mr. Willey was the moving force is a study program proposed by the University of Maryland and provided invaluable assistance in implementing recovery programs for the Delmarva fox squirrel and the southern bald eagle.

Mr. Willey's list of achievements go on to include the reestablishment of new colonies for the fox squirrel, and development of a protected area for the bald eagle. In addition, he served on the State of Maryland's Trapping Advisory Commission and helped to write new trapping statutes for the State.

I join the Department of the Interior on behalf of the residents of Maryland's First Congressional District and salute Mr. Guy Willey for his outstanding dedication to the preservation of the Chesapeake Bay and the natural environment of the wildlife in and around the State of Maryland.

FOR A PEACEFUL RESOLUTION OF THE CONFLICT IN PUNJAB

HON. MARY ROSE OAKAR

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 7, 1986

Ms. OAKAR. Mr. Speaker, my district in Greater Cleveland includes many constitutents who came to America from the subcontinent of India. Those who trace their origins to Punjab are predominantly Sikh. They worship at the Sikh Temple on West 25th Street in the heart of my district. In the past week, my office has been contacted by many Sikh-Americans who share a deep concern and anxiety for the safety and well-being of their fellow-Sikhs in Punjab, which is currently torn by violence and political differences. My constitutents are particularly concerned over the lack of independent press coverage of events in Punjab, a situation that allows excesses and results in distortions.

India, the second-most populous country in the world, was once a British colony. Many peoples from a great variety of cultures, speaking dozens of languages, were united under the British crown. The independence struggle in India was characterized by sectarian strife. Ultimately, the independence movement resulted in two new countries: Muslim Pakistan and predominantly Hindu India. The Sikh homeland of Punjab, bordering on Pakistan, became part of India. Over the last several decades, many distinguished Sikhs have served in the Indian Government and in the military. Punjab has also been very important economically to India. The vast majority of Sikhs are hardworking, enterprising people. Although Sikhs constitute only 2 percent of India's population, Punjab accounts for about a quarter of India's gross national product, including more than half of India's total grain production.

Over the years, issues involving Sikh rights and autonomy for Punjab have led to unacceptable acts of political violence, characterized by an Indian Army attack on the holiest place of Sikh worship, the Golden Temple, assassinations, reprisals and mass disturbances. There have been shocking accounts of mass murder based on blind hatred of a sectarian nature. It should be noted, that my constituents have condemned terrorism and rule it out as an uncivilized and unholy activity. Tragically, however, a spiral of violence appears to have been established, making a resolution of the political conflict increasingly difficult to achieve. In such an environment of violence, human rights violations become ever more prevalent.

The situation in Punjab is increasingly serious. Bloodshed and intolerance are growing. The concerns of my Sikh constituents are legitimate and understandable. I call upon a peaceful resolution of the conflcit in Punjab in manner that recognizes the rights of the Sikh people and one that restores harmony and mutual respect and tolerance.

THE 40TH ANNIVERSARY OF DEATH OF DRAZA MIHAILOVICH

SPEECH OF

HON. BARBARA F. VUCANOVICH

OF NEVADA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 1, 1986

Mrs. VUCANOVICH. Mr. Speaker, as we commemorate the 40th anniversary of the death of Yugoslavian Gen. Draza Mihailovich, I want to take this opportunity to point out to you and my colleagues the remarkable heroism of this man during World War II.

Mr. Speaker, the general was truly a hero with a special tie to our country, for not only was he a leader of his country's resistance to the Nazi occupation, but he was also a special savior to over 500 United States airmen fighting in Europe.

General Mihailovich spearheaded an operation designed to rescue American airmen who had been shot down in Yugoslavia behind the Nazi line. This operation sheltered and cared for at least 500 U.S. flyers until they were rescued, and in the end was responsible for saving their lives. Many of these people have family ties in my district. In 1948, President Harry Truman awarded the Legion of Merit to the general in recognition of his heroism and in gratitude for his help to the hundreds of U.S. airmen saved through his rescue operation.

It is unfortunate that a high-level Communist mole, by the name of James Klugman, got away for so long with trying to damage General Mihailovich by altering British intelligence coming out of Yugoslavia. It seems that Klugman also drafted bogus reports to make Mihailovich look like a Nazi collaborator.

Mr. Speaker, the National Committee of American Airmen rescued by General Mihailovich want to establish a memorial to him, at their own expense. They need the permission of Congress to do so, however, because they want to erect it on public land.

My Colleague, Representative PHIL CRANE, has introduced a bill to permit this, Mr. Speaker, and I am one of its 66 cosponsors. I do hope that nothing will stand in the way of this simple request so that the men saved by general Mihailovich might honor him and his heroism.

TRIBUTE TO HON. ELWOOD "BUD" HILLIS

SPEECH OF

HON. FLOYD SPENCE

OF SOUTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 1, 1986

Mr. SPENCE. Mr. Speaker, it is with profound sadness that we bid our distinguished colleague, BUD HILLIS, farewell as the 99th Congress draws to a close. BUD HILLIS has been a force for good in his 16 years of outstanding service in the House, and he is certainly deserving of a long and happy retirement.

BUD HILLIS and myself were members of the same freshman class. We were both elected in November 1970, and we took the oath of office as Members of the 92d Congress in January 1971. Since those initial days of service we have been close friends, and we enjoyed parallel service on the House Armed Services Committee.

I know of no one who does not consider BUD HILLIS a gentleman of the first order. His quiet demeanor and wonderful "Hoosier" sense of humor and fair play are characteristics that should be emulated by everyone who aspires to public office.

The Fifth District of Indiana will miss BUD very much. He is a Member of Congress par excellence, and he has fought hard for his constituents as a member of the Armed Services Committee, Veterans' Affairs Committee, and the Congressional Steel Caucus. I know how hard he works for his constituency and the Nation because we have had numerous

opportunities to join together on various defense projects of mutual concern to Indiana and South Carolina.

As most of us know, BUD HILLIS wrote a courageous and inspiring chapter in World War Two. He enlisted in the Army right out of high school and served for 27 months in the European theater. His service on the Armed Services Committee was a natural, and untold men and women in uniform have benefited from his dedication to their welfare and best interests. In fact, as a strong leader on the House Veterans' Affairs Committee, he has ably assisted and worked with that great chairman, SONNY MONTGOMERY, on monumental legislation affecting the well-being of our veterans.

When we think about BUD HILLIS there are many accolades that can be advanced, but maybe the example of Sir Thomas More would be best, as exemplified in the great play and film, "A Man For All Seasons." BUD HILLIS is such a man. He is true to his word and his convictions. He can be relied upon. He is a patriot and a defender of freedom and the rights of the individual. Such people made America the bastion of democracy, and we will forever need them to keep us free and strong.

BUD, my best wishes go with you. While we hate to see you and your dear wife, Carol, leave the congressional environment, we can take solace in the fact that both of you will continue to be involved prominently in matters that affect the welfare of Indiana and the entire Nation. God bless you.

ERLENE TOFANI

HON. GENE SNYDER

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 7, 1986

Mr. SNYDER. Mr. Speaker, it is with great regret and profound sadness that I bring to my colleagues' attention the passing yesterday of Erlene Tofani, wife of Joe Tofani, a greatly admired and respected Corps of Engineers official and former president of the Water Resources Congress.

Many of us in this body have enjoyed a long and pleasant association personally and professionally with Joe during his 33 years with the corps, his years of service as president of the Water Resources Congress, and his various corps-related activities thereafter.

Our association with Joe gave us the special opportunity to know Erlene, who was at his side during a long and distinguished career in Government and the private sector, and finally during a well-deserved Florida retirement.

Erlene was a sweet lady and a remarkable person, totally devoted to Joe and their lovely daughters, Jody and Peggy. As a wonderful wife, mother, and grandmother, Erlene will be missed terribly. Her sudden passing in Florida is a shock to all of us.

I know that Joe and Erlene's many friends in the House join me in extending our deepest and most heartfelt sympathy to her lovely family on this great loss.

A TRIBUTE TO CUNY'S SEEK AND COLLEGE DISCOVERY PROGRAM—20 YEARS OF EXCELLENCE

HON. MARIO BIAGGI

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 7, 1986

Mr. BIAGGI. Mr. Speaker, I rise today in support of legislation which I cosponsored, National SEEK and College Discovery Day.

As New York's senior member of the House Education and Labor Committee, I think it is fitting that we set aside a day to recognize the Search for Elevation, Education and Knowledge [SEEK] and College Discovery Program, originated by the City University of New York. This program targets the economically disadvantaged and educationally underprepared students, often minorities, who do not consider the option of postsecondary education and often do not meet the admissions requirements. By offering a unique, specialized and concentrated program of counseling, remedial instruction, tutorial services and financial aid, this program, which originated at a segment of CUNY's community colleges and 4-year institutions, served as a model and a forerunner for other remedial programs targeted at the educationally disadvantaged, including the TRIO programs, which have proved highly successful.

For 20 years, this program has focused on providing equal educational opportunities for all—especially those who are educationally disadvantaged. I commend CUNY's SEEK and College Discovery Program and urge other universities and postsecondary institutions to use this as a model for developing similar program focused on serving our most needy students.

IN MEMORY OF OFFICER ROBERT F. PYLES

HON. ROY DYSON

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 7, 1986

Mr. DYSON. Mr. Speaker, I rise today with great regrets to offer a memorial tribute to Officer Robert F. Pyles of the Maryland Toll Facilities Police. Officer Pyles was fatally wounded while attempting to arrest a wanted fugitive. He was one of four police officers gunned down in a night of terror in Havre de Grace, MD, on September 18, 1986.

Officer Pyles was a 19-year veteran of the Toll Facilities Police Department. During his career he received several commendations from other agencies and citizens as well as from his own department. He was well respected and highly regarded by his fellow officers and supervisors and was a charter member of the F.O.P. Lodge in Cecil County.

Robert Pyles was an avid outdoorsman who loved to fish and hunt. He enjoyed life to the fullest. However, when he wasn't fishing or hunting he was serving his community as a member of the Water Witch Volunteer Fire Department in Port Deposit.

At age 57, Robert Pyles was looking forward to an active retirement and teaching his grandchildren about the great outdoors. Instead however, in a moment of senseless violence, this dedicated servant of the people was struck down and taken from us.

His fellow officers will miss his presence, yet I know that they are dedicated professionals who will continue to perform their duties as they have always done in the past. I salute their dedication to duty.

To his widow, Clare, and the other members of his family, I offer my heartfelt condolences. We all owe Robert Pyles a great debt of gratitude.

RETIREMENT OF PHILIP F. JEHLE

HON. ROBERT H. MICHEL

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 7, 1986

Mr. MICHEL. Mr. Speaker, Philip F. Jehle, the Washington vice president of SmithKline Beckman Corp., is retiring. I thought this would be a good time to bring attention to his fine career.

Philip Jehle did his undergraduate work at both Joliet Junior College, in Joliet, IL, and Stanford University and graduated from Catholic University Law School in 1951. In 1950 and 1951, he served in the private sector as special counsel for the Globe Oil and Refining Co. of Lemont, IL, and practiced civil and criminal law here in Washington in 1951 and 1952. He then came to Capitol Hill and served for 7 years as chief counsel of the Senate Small Business Committee under two chairmen: Senator John Sparkman of Alabama and Senator Edward J. Thye of Minnesota.

Mr. Jehle held the position of Washington representative and associate general counsel of the National Association of Retail Druggists (NARD) from 1959 to 1965, under executive secretaries John W. Dargavel and Willard B. Simmons.

Phil Jehle is now retiring after more than 20 years of service as Washington vice president of SmithKline Beckman Corp., a worldwide health-care company, where his responsibilities included maintaining liaison between SmithKline Beckman and Members of Congress and other Government agencies and departments in Washington.

Philip F. Jehle married Marcelle Auclair of Lawrence, MA, in 1949. They have 5 children: Philip, Patricia Ann, Kathleen, Christopher, and Lawrence.

We wish him well after a fine career in public and private life.

HOMEWORK

HON. MARY ROSE OAKAR

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 7, 1986

Ms. OAKAR. Mr. Speaker, during my 10 years in Congress, I have spoken often and

forcefully about the need to provide more flexible employment opportunities for women, especially as many of them try to combine motherhood and work outside the home. I believe that this is one of the most important challenges facing employers in the 1980's.

I am, however, deeply dismayed by the recent action of the Reagan administration in legalizing industrial work in the home. This could lead to exploitation of women and not increased flexibility for women.

I urge my colleagues to think about this important issue and to read a recent New York Times article by Jay Mazur, president of the International Ladies' Garment Workers' Union.

Mr. Speaker, I submit this article to the RECORD.

BACK TO THE SWEATSHOP

(By Jay Mazur)

The Reagan Administration has decided to legalize industrial work at home in industries in which the Labor Department banned it almost a half century ago. The Administration would have us believe that restrictions on such work are a relic, but sweatshop conditions that Federal regulations seek to prevent have returned—with a vengeance.

The new sweatshop resembles the old—low wages, long hours, work taken home—sometimes after a day in the factory, sometimes instead of factory work. To legalize such work is to return to the industrial dark ages.

During the first four decades of the 20th century, state after state and then the Federal Government tried to regulate industrial homework by licensing it—the very experiment the Reagan Administration now proposes.

In 1942, the administrator of the Labor Department's wage and hour division responsible for enforcing the Fair Labor Standards Act, concluded that in certain industries the Government could not enforce the act, which prescribes minimum wages, maximum hours and other standards, if work at home was permitted.

Industries selected for the ban—women's apparel, jewelry, gloves and mittens, knitted outerwear, buttons and buckles, handkerchiefs, embroidery—were those most vulnerable to sweatshop conditions.

Sweatshops and homework have almost always gone hand in hand in the apparel industry. In a factory, no matter how exploitative, workers still may join in collective action, seek a union organizer and call in a Government inspector. But when work is sent home it is impossible for them to join in their own defense and for the Government to inspect for minimum-wage, child labor, health and safety conditions.

By the late 1970's, the sweatshop had reappeared in an industry that had barely changed in structure and technology in 50 years. Many factors, including large numbers of new immigrants, many of them undocumented and vulnerable to exploitation, growing competition from low-wage imports and cuts in labor standards enforcement because of Government budget cutting, contributed to the rise of the sweatshop. Labor departments across the United States found illegal industrial work at home for wages as low as $1 to $1.50 an hour.

The enforcement ability of many state governments is inadequate to the challenge of the new sweatshop. California in 1981, New York in 1981 and in 1986, passed new laws improving enforcement of labor standards in the apparel industry and strengthening bans on industrial homework.

Yet just as the states with the most apparel employment were strengthening labor laws, the Administration attempted in 1981 to legalize all industrial homework.

Despite strong opposition, not only from the International Ladies' Garment Workers' Union but also from employers, state departments of labor and five Secretaries of Labor, the Labor Department in 1984 substituted a more limited proposal: a system of homework certification in the knitted outerwear industry only.

The department has not fully revealed the results of its experiment, yet it is clear it has not been successful even in this one relatively small industry in which the certified home workers are mostly rural women.

Few employers in the knitted outerwear industry have registered. Even those who voluntarily did, knowing their operations would be scrutinized, have been found with numerous violations of the Fair Labor Standards Act. Moreover, little effort has been made to crack down on homework operations that did not register.

Despite the poor results of this legalization of homework, despite the long history of failure of any attempt to control industrial homework by licensing and despite growing sweatshop conditions in the apparel industry, the department has decided to legalize homework in the remaining six industries, including the large, sweatshop-prone women's apparel industry.

Why? The Reagan Administration feels compelled to pursue its ideological convictions regardless of suffering inflicted on the growing numbers of the poor, unemployed, homeless and exploited. It believes social protections built up over decades are merely a restraint on personal freedom. These ideological fantasies must be resisted.

To license industrial homework is to license exploitation.

A CALL FOR UNDERSTANDING NEW ZEALAND'S NUCLEAR POLICY

HON. TONY P. HALL

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 7, 1986

Mr. HALL of Ohio. Mr. Speaker, I rise to call attention to the ongoing tension between the United States and New Zealand resulting from the 1984 decision by newly elected Prime Minister David Lange's Labour Party to prohibit nuclear armed and powered warships from entering New Zealand's ports. Negotiations since that time have failed to reverse this policy, resulting in the June 1986 statement by Secretary of State George Shultz that the United States will no longer "extend its security responsibility to New Zealand." I am moved by a concern for the continued friendship between our two nations, a friendship that has now been put on a precarious footing.

New Zealand has long been one of our closest friends in the South Pacific region. Her markets are important to American trade. Together with the Australian people, New Zealanders constitute a strong Western presence in a region dominated by small nonaligned states. As such, New Zealand provides a social and economic deterrent to Soviet expansion in the South Pacific. Important, too, to deterrence is the support—support given without opposition—New Zealand provides to the conventional Armed Forces of the United States.

The tradition of mutual military cooperation between the United States and New Zealand is over 40 years old. The ties and reciprocal benefits of this relationship are many. Intelligence provided by the New Zealand Defense Force about the island regions and peoples of the South Pacific, for example, is acknowledged by the U.S. military as being the best available. New Zealanders benefit for their part by receiving American technology and weapons systems. A combined triad of defense consisting of the Australian, New Zealand, and United States Armed Forces is a solid guarantee that Western interests in the South Pacific will be protected.

I find the prospect of the permanent dismantlement of our potent defense triad—the ANZUS alliance—an unfortunate one. It is a possible end that can and ought to be avoided. To assure that an indefinite disruption of ANZUS does not occur, it is important to understand the position of the residents of the New Zealand people and their government.

Understanding does not come from an out of hand rejection of the New Zealand position. Our first step is dealing with the current impasse should be to fully appreciate the stance of the New Zealand people and to see the nuclear dilemma the way they see it. From understanding comes the increased likelihood that a solution favorable to both sides will be reached.

Therefore, I call to my colleagues' attention an article by political science professor Richard N. Kennaway of the University of Canterbury, and published in the November/December 1984 issue of *the New Zealand International Review.* In the interest of understanding the attitudes of a majority of New Zealanders, the text of Professor Kennaway's article follows:

[From the New Zealand International Review, November/December 1984]

CHANGING VIEWS OF ANZUS

(By Richard N. Kennaway)

We are currently experiencing the most significant reassessment of the fundamental assumptions of New Zealand foreign policy for many years. Since the early 1970s, there have been three main views of ANZUS and its role in New Zealand's security. There has been the traditional view, most clearly represented by successive National governments which have regarded ANZUS as the essential foundation for New Zealand's security. There has been the alternative view, which considers ANZUS rather as a hindrance to security. Over the last twelve years this view has been most clearly and consistently formulated in the political area by the Values Party but in recent years it has, with some variations, gained wider acceptance and support from other sources including Social Credit, the New Zealand Party, Manu Motuhake and some sections of the Labour Party. This wider acceptance has also owed a great deal to the backing it has received from the Nuclear Free Zone Committee and other sections of the peace movement.

There has also been the official Labour Party view which has followed what may best be termed as a combined strategy, in-

cluding elements of both the other views. It has wished to maintain ANZUS but to broaden it and place greater emphasis on economic and development aspects. It has wished to ban nuclear ship visits and to promote actively the concept of the South Pacific Nuclear-Weapons-Free Zone—to which the National Party has also paid lip service—but it has also wished to continue to rely in the last instance on the United States for protection against conventional attack.

Before we consider the assumptions, there is one preliminary point that needs to be made. In order to understand some of the difficulties and possible ways of resolving them, it is necessary to distinguish clearly between two aspects of ANZUS—as a treaty and as a political relationship. A good many discussions of ANZUS are confused because of the failure to make this distinction.

The ANZUS Treaty, or Tripartite Security Agreement, was a formal treaty signed by the three parties at San Francisco in September 1951. Unchanged to the present day, it consists of eleven short articles and a preamble. The commitments contained in the treaty are in very broad general terms. The most important commitments are that:

The Parties separately and jointly by means of continuous and effective self-help and mutual aid will maintain and develop their individual and collective capacity to resist armed attack. (Art II)

The Parties will consult together whenever in the opinion of any of them the territorial integrity, political independence or security of any of the Parties is threatened in the Pacific. (Art III)

Each Party recognizes that an armed attack in the Pacific area on any of the Parties would be dangerous to its own peace and safety and declares that it would act to meet the common danger in accordance with its constitutional processes . . . (Art IV)

BROADER RELATIONSHIP

The ANZUS alliance, however, may be taken to refer to the broader political relationship between the three countries, which goes much wider than the formal treaty commitments as such, and covers the broader political, economic, social and cultural aspects as well as the more specific security commitment. It is worth noting that formal treaties and broader political relationships do not necessarily coincide. New Zealand, for example, for a long time had a very close political relationship with Britain which was never embodied in a formal security treaty, despite the constitutional links. Similarly, it is equally possible to have a formal treaty which has ceased to symbolise a real political relationship. The South-East Asia Collective Defence Treaty, which was the foundation of SEATO, continues in existence; but the political relationship it represents has become quite tenuous.

There are many contrasts between ANZUS as a treaty relationship and as a broader political relationship. For example, in the terms of the treaty, no distinction is made between the rights and obligations of the United States, on the one hand, and of New Zealand and Australia, on the other. A situation of formal equality exists. In practical terms, however, there are many obvious and inevitable differences politically in the power and potential of the three member countries. The treaty relationship has so far been an unchanging one—and there is no provision for formal amendment in the treaty. In practical terms, however, the political relationship experiences many changes with its highs and its lows as new issues arise and new points of agreement and disagreement emerge among the three member countries. As a treaty relationship, each party has both the freedom and the responsibility to interpret its obligations in its own way, unaffected by the attitudes and policies of the other treaty partners. In practical terms, however, there is inevitably some element of reciprocity. Each country's view of the relationship is bound to be affected to a greater or lesser extent by the attitudes and policies of the other member countries. In my view it is the broader alliance relationship which reflects the more significant reality. The treaty commitments are, however, a significant symbol of the relationship as it has existed within the past thirty years, as well as having their own validity in formal and legal terms.

TRADITIONAL STRATEGY

What then have been the main assumptions on which the various strategies have been based? The traditional view of ANZUS seems to have embodied six main assumptions:

Perception of Threat. It is assumed that we need to be concerned about a range of possible threats to New Zealand's security. These would include the kind of direct threat with conventional forces that the Japanese posed during the Second World War. In recent years, increasing stress has also been placed on a possible direct nuclear threat, with discussion of the possibility of Soviet missiles being targeted against New Zealand.

Of course it is admitted by many proponents of the traditional view that there has been no immediate direct threat to New Zealand security in recent years. The assumption remains, however, that we live in an unpredictable world where unexpected threats may emerge, and that in any case defence planning is a long-term affair with an ever increasing lead time required to maintain and develop effective defence capabilities. As the 1983 Defense Review stated, 'It has been well said that when you can see the steel glinting in the morning it is too late to look to your defences.' We need, therefore, to be concerned with this area of foreign policy.

Conflict Prevention: armed deterrence through the alliance system. It is assumed that the best means of avoiding conflict which might threaten New Zealand's security is through the maintenance of strong armed forces; that New Zealand is unable on its own to develop armed forces large enough to fulfill this role; and it is therefore only by associating with larger allies that the role can be effectively fulfilled. On these assumptions potential aggressors will be deterred from launching an attack for two reasons. They will appreciate that it is useless since significant armed force will be available to repel an attack. They will also feel that it is dangerous because of the possibility that these forces may retaliate against the potential aggressor. It is worth noting that effective deterrence, especially in the nuclear age, does not depend on the certainty of effective protection and retaliation. Even a very small possibility of retaliation, especially by a nuclear power, can still on the traditional assumptions be a very effective deterrent. The existence of the alliance therefore makes it more likely that security will be preserved.

Conflict Management: armed defence through the alliance system. If the means of preventing the onset of conflict should not be effective, the traditional view is that security can best be maintained by means of armed protection or defence. Again it is assumed that New Zealand is unable to provide this defence effectively on its own. It is therefore assumed, as in the 1983 Defence Review, that the alliance permits New Zealand to integrate its own efforts into a larger and more comprehensive response should that be required, and that 'ANZUS thus remains fundamental to our defence interests'.

Policy Implications: The fourth assumption of the traditional view is that New Zealand cannot realistically expect its allies to make sacrifices to protect New Zealand security unless we are prepared to make some reciprocal contributions to the security goals of our allies. This was a view which received its classic expression in the 1966 Defence Review when it was stated that our aim of securing military assistance and protection in case of need 'requires New Zealand to demonstrate its willingness to make an appropriate degree of national defensive effort, and willingness and ability to assist our allies in matters affecting their national interests', even when New Zealand's own interests were not directly involved.

There has been less emphasis on this aspect in recent years. The 1983 Defence Review still, however, rejects the view that defence capacity should be limited to the defence of New Zealand itself. While the alternatives are not clearly spelt out, there is still reference to 'our obligation to help others in peace as in war', and an implication that such help would now be mainly confined to the more immediate regional environment of the South Pacific.

Identity Goals: influence and participation. That fifth assumption is that the alliance gives New Zealand the opportunity to further is identity goals, that is, to make a positive contribution to the kind of world that we wish to promote, and to fulfill a positive role in making this contribution. It is assumed that the alliance gives New Zealand as a small ally the regular opportunity for privileged consultation with a friendly super-power and thereby gives greater opportunity for influence and participation than would othewise exist. The 1978 Defence Review, for example, referred to 'giving New Zealand access to top decision-makers and thereby enabling us to exercise influence on a wide range of global problems' and the 1983 Review continues to refer to the 'maintenance of active linkage with major centers of influence'.

Economic Goals. The sixth assumption is that the alliance also assists New Zealand in furthering its economic goals; that the major economic partners in investment and trade are either alliance partners or also themselves major allies of the United States; that because of our dependence on temperate agricultural exports, we are particularly vulnerable to political constraints and that the alliance has played a useful part in helping to overcome those constraints.

FACTORS FOR CHANGE

The six assumptions outlined above have formed a relatively constant base for the traditional view that ANZUS is vital to New Zealand's security. This base had, however, been gradually eroded by various developments in recent years.

First, there have been no direct conventional threats of the type principally envisaged when the treaty was signed. This factor does not necessarily vitiate the logic of the traditional assumptions, and indeed

could be taken by some as evidence for the strategy's success. The impression has gained ground that no threats would arise whether or not the alliance existed, and therefore that the need for the alliance has become less urgent and less appropriate.

Second, there has been increasing concern over new dangers to which the traditional strategy is less clearly relevant. Probably the dangers of direct nuclear threat against New Zealand, whether it remains part of ANZUS or not, are very remote. But if such a threat should arise, it is no good 'acting to meet the common danger' once the missile is on its way; and it is neither very plausible nor very comforting to threaten nuclear retaliation against the nuclear aggressor.

Third, there has been increasing concern that New Zealand's security is put at risk not so much by direct attack but rather by the proliferation of nuclear weapons as such and the possibility of nuclear holocaust between the superpowers. Increasing scientific evidence appears to support the view that the ecological consequences of nuclear war in the Northern Hemisphere would be truly global and not, as many previously thought, confined to that hemisphere. Again, this is a very different kind of danger from those traditionally envisaged within the ANZUS alliance, and one to which the traditional concepts seem scarcely relevant.

There have also been growing doubts whether or how far the alliance serves New Zealand's identity and economic objectives.

ALTERNATIVE STRATEGY

Over the past fifteen years, therefore, we have seen the development of an alternative view which was perhaps first clearly formulated at the political level in the Values Party election manifesto of 1972, but which has recently received much wider support. The main assumptions of this view can be summarised as follows.

Threat Perception. There is little chance of direct conventional threat. We need, therefore, to be much more concerned about possible nuclear threats, both direct and indirect, and the consequences of nuclear war.

Conflict Prevention: peaceful persuasion or national deterrence. On this view, the best means to prevent the possibility of threats arising lie not in armed forces or defence pacts, but rather in friendship and cooperation with all. If New Zealand can persuade other countries that we will never threaten them, then they will not threaten us. In this perspective, the existence of the alliance acts rather as an incentive than as a deterrent to attack.

In the Social Credit variant, threats are best averted by maintaining a national defence force, so as to persuade any potential aggressor that the cost of attacking New Zealand will be too high. In either case, however, alliance membership creates more problems than it resolves.

Conflict Management: non-violent resistance or national defence. Similarly, if the means of preventing a threat fail, then the most appropriate response of this view is either non-violent resistance (Values, New Zealand Party variant) or New Zealand national defence (Social Credit). In either case, being defended by a super-power is likely to involve more costs than benefits.

Policy Implications. There is therefore no need for New Zealand to accept reciprocal obligations to assist in its allies' objectives. On the contrary, we need simply to develop our own resources for non-violent action or New Zealand national defence, and we can best make our contribution to wider goals by independent action and the example of developing a non-nuclear policy.

Identity Goals. New Zealand can make its most effective contribution towards the kind of world that we wish to promote, and play our most appropriate role, not by seeking to exercise influence within the alliance but rather by independent action and example.

Economic Goals. On these assumptions, trade with our allies depends more on mutual economic self interest than on political factors. There are unlikely therefore to be substantial adverse reactions to a change of policy. Even if such a reaction should occur, it could be counter-balanced by increased trade with new partners in other areas, such as the Middle East and Southeast Asia, where our trade has in any case been developing rapidly in recent years.

LABOUR POLICY

Labour policy, as explained above, has sought to combine elements of both the other strategies. Current policy is that the Government wishes to maintain a non-nuclear ANZUS alliance, but to renegotiate the ANZUS treaty so as to eliminate its nuclear aspects. Such a policy is seen by its proponents as combining the best elements of both the other strategies. There are many critics however from widely varying perspectives who believe that the strategies are basically incompatible, and that even the attempt to combine elements of both means that neither strategy can be effective. To what extent is it possible to find a middle ground?

It is of course true that the ANZUS Treaty commitments are very flexible. There is no specific provision in the Treaty which rules out a ban on nuclear ship visits—whether nuclear-powered or nuclear-armed—or the active promotion of a South Pacific Nuclear-Weapons-Free Zone. This is not surprising, since after all nuclear ship technology had scarcely been developed and the nuclear-weapons-free zone concept had not been devised when the Treaty was signed in 1951.

Furthermore, there are many precedents for flexible interpretation of the Treaty commitments. There are countries in the Latin American Nuclear-Weapon-Free-Zone which continue to maintain alliance ties with the United States in the Rio Pact, although the question of nuclear ship visits is up to the individual state. There are other United States allies, such as Norway and Japan, which theoretically anyway, ban visits by ships carrying nuclear weapons. It may well be possible in the short to medium term to combine at least some of these various policy elements.

DOMESTIC STANDPOINT

From the domestic standpoint it seems sensible to take some time to evolve an acceptable compromise. Just as more than sixty percent of New Zealanders voted for parties which favoured banning nuclear ship visits, so too eightly per cent of New Zealanders voted for parties which favoured maintaining ANZUS in some form. Polls have shown that public opinion generally favours both the maintenance of ANZUS, and introduction of a nuclear weapons-free zone and banning nuclear ship visits. Even in the longer term, it may well be possible to combine some elements of both strategies which the other countries mentioned have done.

While it is true that the ANZUS Treaty commitments are flexible, that flexibility has its limits. The Treaty commitments do after all include the obligation 'to develop . . . collective capacity for self defence', and one has to ask whether this is really compatible in the longterm with excluding a large and growing proportion of a major ally's fleet. It remains to be seen whether the Treaty can be renegotiated to put more emphasis on economic and non-nuclear issues. It is after all in essence and origin a security treaty, and it seems very doubtful that New Zealand's alliance partners will be interested in a formal renegotiation to turn it into something else.

DILEMMA

Even if it were possible to agree on a formula for the Treaty renegotiation, one would still have to ask whether a viable long-term political relationship could be maintained on that basis. It may be logical in theory to ask the Americans 'to keep their death ships from our ports' and also expect to be defended against conventional attack 'to the death of the last American' if the need should arise. It may well be hard, however, for our alies to understand in the longer term that both demands are compatible and reasonable.

Therefore, we really have to make up our minds. Do we consider the security relationship to be of positive value, and in that case what costs and obligations are we prepared to undertake to ensure that it will continue? Or, do we consider it to be of negative value, and in that case would it not be better to relieve our ANZUS partners of any obligation to maintain our security, just as we would wish to be released from any reciprocal obligation?

Whatever answer we give, we should remember that the global problems of nuclear proliferation and arms expenditure really do not depend on whether or not American warships visit New Zealand ports. However concerned we may justifiably be about the scale and gravity of the problems, there is no action that New Zealand can take which can directly resolve them.

We can, however, make a small but significant contribution in two ways. Through established channels of communication and influence within the alliance, we can use our alliance membership to exercise 'constructive leverage' to help resolve the global problems or we can make our contribution by the influence and example of developing a nuclear-weapons-free zone in the Pacific and banning nuclear ship visits.

In any event, they may well both be directed towards the same end of trying to resolve the global problems. We should not find it necessary, therefore, to seek to create world peace by creating bitter divisions on the issues within New Zealand.

A FREE PRESS SERVES A FREE PEOPLE: RON CICHON AND THE MONTICELLO NEWS

HON. DON FUQUA

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 7, 1986

Mr. FUQUA. Mr. Speaker, National Newspaper Week is observed each year to remind the American people just how important a free press is for our individual freedoms. In truth, freedom of the press is for our individual freedoms. In truth, freedom of the press is not so

much the right to publish and to broadcast, as it is the right of people to know.

In observance of National Newspaper Week, I would like to pay tribute to one of those individuals who make up the proud and honored profession of journalism. He is Ron Cichon, publisher of the twice-weekly Monticello News in Jefferson County, FL.

In honoring a respected friend, I am also paying tribute to the hundreds of thousands persons who are employed in the profession. It seems fitting at a time when Nicholas Daniloff has just been released from the Soviet Union, that we remember and understand that there are nations where freedom of the press and the right of the people to know is a mockery.

Let's look at a few statistics for just a moment.

In 1985 there were 1,782 daily newspapers and 7,704 weekly newspapers in the United States. Total circulation for U.S. daily newspapers was 62,756,000. That figure for weeklies was 48,900,000.

Those statistics are impressive. What I want to do today is to relate those statistics to that one American sitting in a home in Jefferson County, FL, reading the Monticello News.

A free press functions as the eyes, ears and voice of the free people it serves by providing acess to news and information not readily available to the individual.

As part of my tribute, I point to the growth and progress of the Monticello News under the direction of Ron Cichon. When he purchased the paper a decade ago, the staff consisted of two part-time employees and Chicon. Today there are 22 people on the staff.

"I distinctly remember 4 years of 70-hour weeks without a vacation." Cichon says. He wrote stories, took pictures, covered government meetings, wrote editorials and columns, swept out the office and delivered the newspaper to stores and stands.

Now the newspaper is hailed as the fastest growing business in the county.

Why has the Monticello News done so well under the leadership of a former Miamian who managed a group of 12 suburban newspapers prior to moving to north Florida?

"I really think the key is that we've earned the respect of the community. No, everybody does not love us because over the years we've printed many stories that upset people, but we were accurate in our reporting and fair to all concerned. The respect grows out of those standards," Cichon said.

That which has been done has been accomplished because the Monticello News is a part of the community, not apart from the community. That is why I feel the weekly press is so vital to this Nation. It serves local people with local news, views, comments and opinions. It records the births, it laments the deaths, it is a viable part of the life of those who reside in the area.

Like so many in his profession, Ron Cichon has found the time to be a part of the community by serving as an outstanding president of the chamber of commerce, and his peers in Florida honored him in 1984 when he served as president of the Florida Press Association, an organization I might add, that serves both the dailies and the weeklies in our great State.

When Cichon first moved to Monticello he notices several street signs were rusted and illegible and the town boasted many stop signs partially hidden behind tree limbs and shrubs.

Week after week a photo appeared in the newspaper documenting an illegible street sign or shrouded stop sign.

It wasn't very long after an edition hit the streets that city crews were out trimming around the obstructed stop signs. And within a few months the city purchased new street signs replacing the illegible ones.

People began to call the newspaper and ask that the shrouded stop sign or rusted street sign in their neighborhood be featured in the paper.

Over the years the Monticello News has campaigned for a myriad of community projects with many of them becoming realities. Targeted were industrial development, improved fire protection, a community food bank, restoration of the Historic Monticello Opera House, a memorial for war hero Boots Thomas, one of the marines who raised the American flag on Mount Suribachi on Iwo Jima, an expanded country library, and fund drives for families struggling with staggering medical bills.

Cichon remains convinced a community is best served by a newspaper that mirrors the community.

Under his leadership the newspaper has collected a host of awards for journalistic excellence.

As I stated at the outset, the Monticello News is a vital part of something bigger—a freedom for which many, like Boots Thomas, made the supreme sacrifice.

The theme for National Newspaper Week, October 5-11 this year, is "A Free Press Serves A Free People."

The men and women who make journalism their profession, like Ron Chichon, have reason to be proud of their contributions, but more importantly—that which they are doing to leave this legacy for tomorrow.

A BILL TO BAN SMOKING ON ALL DOMESTIC AIRLINE FLIGHTS

HON. JAMES H. SCHEUER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 7, 1986

Mr. SCHEUER. Mr. Speaker, in an effort to improve the environment on board domestic airline flights, and protect the health and safety of the passengers and crew, today I am introducing legislation to ban smoking on all domestic airline flights.

The National Research Council of the National Academy of Sciences recently completed an 18-month study at the request of Congress, on the issue of air quality and safety in airliner cabins. The study calls for a Federal ban on smoking on all domestic commercial airline flights to improve the health and safety of airline passengers and cabin crews.

The scientific panel concluded that both passengers and crew members were harmed by drifting smoke in aircraft cabins and that cigarette smoking posed a significant fire hazard on board as well.

Dr. C. Everett Koop, the Surgeon General of the United States, has repeatedly and forcefully pointed out the health hazards of passive smoking. According to Gallup surveys commissioned by the American Lung Association, the public, by an overwhelming margin, supports smoke-free air in public places. And now, the National Academy of Sciences has spoken.

Air quality on board commercial airlines warrants our serious concern. Contaminants—particularly environmental tobacco smoke—make the cabin air quality substandard compared with other closed environments such as trains and subways. In fact, ozone and other air contaminants, coupled with low relative humidity, may act with smoke to increase its harmful effects.

This legislation would lessen irritation and discomfort to passengers, reduce potential health hazards to cabin crews, bring cabin air quality into line with standards established for other closed environments, and remove the possibility of fires caused by cigarettes.

With 28 percent of the American public taking at least one trip a year, and with some 70,000 flight attendants working long hours inside planes, the time has come to do away with smoke on board. This bill will do just that.

CHESTER WISCH: A LIFE REMEMBERED

HON. JIM WRIGHT

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 7, 1986

Mr. WRIGHT. Mr. Speaker, on September 3, 1986, the brother of a dear and close friend of mine passed away. My friend, Jimmy Wisch of Fort Worth, TX, wrote a moving column in the Texas Jewish Post about his brother's life and of his sadness at his passing.

In that eulogistic column, Jimmy Wisch described with poignant words his tender recollections of his brother, Chester Wisch. From their boyhood together in Brooklyn to Chet's last days, Jimmy Wisch recalled in his article the many years of close friendship and deep mutual affection that characterized his relationship with his older brother.

During most of the 1930's, the Wisch family fell on hard times. Chet, 5 years Jimmy's senior, found various jobs in New York to help the family make ends meet. Jimmy believes that Chet was the first Jew in the United States to obtain and keep a job with the New York Telephone Co., a branch of AT&T.

But in order to get and keep his job, Chet had to lie about being Jewish. On the job application, Chet wrote: "Third Generation American." How sad it is that, not so very long ago, a loyal American had to deny his religious and ethnic background in order to find a job. And while we cannot ignore the fact that discrimination remains an ugly fact of life, we also should acknowledge how very far we have come in the direction of equality of opportunity.

Some years after Chet Wisch landed his job with the telephone company, after he had

proved himself as a top salesman, he was fired. When management found out that Chet was Jewish, they gave him notice.

Commonplace then, that kind of blatant, heavyhanded discrimination has since been outlawed through our much stronger civil rights statutes. These statutes need the support of all Americans because not only do they protect the rights of minorities in this country—they also protect all of us against abuse or tyranny.

In remembering the life of Chester Wisch, we should recall his spirit of perseverence and determination. In this, Chet's example should inspire us all to overcome obstacles that may appear in our paths through no fault of our own. And may his experience with discrimination remind us all of the central, compelling truth of our Declaration of Independence that "all men are created equal" and that they, therefore, deserve equal opportunities and equal protection of the law.

For those who knew and loved Chet, especially for his lifelong friend and beloved brother Jimmy, perhaps your burden of sorrow will be lifted somewhat by recalling this larger meaning of Chet's life, this larger context of generosity, commitment, love, and determination that made Chet's life such a quintessentially American life. You can be proud that he was the kind of man he was, that he lived the kind of life he lived, and that he has reminded us—by the hardships he faced—of the many evils of prejudice and discrimination.

For my colleagues in the House, I hope that in our considering the life and times of Chester Wisch, we are made better, more compassionate lawmakers in the process.

HONORING THE 57TH ANNIVERSARY OF THE LELAND A. CUPP AMERICAN LEGION POST AND AUXILIARY NO. 341

HON. ESTEBAN EDWARD TORRES

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 7, 1986

Mr. TORRES. Mr. Speaker, I ask my colleagues to join with me today in saluting the 57th anniversary of the Leland A. Cupp American Legion Post and Auxiliary No. 341.

On Saturday, October 25, 1986, the club will celebrate its 57th birthday with a special celebration.

It is important to note that the members of the Leland A. Cupp American Legion Post and Auxiliary No. 341 conduct charitable and civic projects for the veterans and residents of Pico Rivera. Annually, this club sponsors students from El Rancho High School in Pico Rivera to travel to Sacramento to attend boys and girls State programs so they can obtain first hand knowledge on how their State government works. In addition, the club raises funds for the Long Beach Veterans Hospital and proceeds from their annual "Poppy" sales are designated for emergency assistance to needy veterans and their families. These efforts, along with many other year-round projects contribute to making Pico Rivera a special place to live and work.

Mr. Speaker, I also ask my colleagues to join me in congratulating Cmdr. Bob Zambrano and all of the members of the American Legion Post and Auxiliary No. 341 during their Post's 57th birthday celebration.

AN EXCEPTIONAL BUSINESSWOMAN, JANICE MEISTER

HON. WILLIAM O. LIPINSKI

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 7, 1986

Mr. LIPINSKI. Mr. Speaker, I rise before my colleagues today to honor an exceptional woman and business leader in my district, Janice Meister. Mrs. Meister is chairman of the board of Bagcraft Corp. of America, headquartered in my district of Chicago.

Mrs. Meister, as a nationally influential businesswoman, had the unlikely background of being a classics major at the University of Wisconsin in the 1940's. She maintains, however, that this field of study helped her ". . . learn to think and make relationships between disparate ideas." After meeting and marrying her husband, Albert, Mrs. Meister's main occupation became that of housewife and mother to their two children. These experiences, though commendable in and of themselves, do not illustrate the abilities which she later put to use in chairing Bagcraft.

A look at the history of Bagcraft shows that Mrs. Meister was a key player from its founding in 1948. Noticing the great waste of food at restaurants from people who did not finish their meals, Albert Meister and his partner, Norman Ressner, thought up the idea of the now commonplace doggy bag. Mrs. Meister used her artistic talent, which she developed in creative work for department stores in New York following graduation from college, to design the artwork and verse which appeared on the bags. The greaseproof bags became an almost instant success.

After about 5 years at their initial modest plant in Cicero, Bagcraft moved to a larger plant nearby. Another 5 years of further expansion and Bagcraft moved to the 100,000-square-foot plant in Chicago that remains their headquarters today. Today, Bagcraft under Mrs. Meister's leadership has doubled their space at that site in addition to having plants in Joplin, MO, Carteret, NJ, and Atlanta, GA. Through the innovation, design, and marketing of additional food packaging products, Bagcraft has become a national leader in the flexible packaging industry. Their sales for 1985 were approximately $75 million. Particularly noteworthy is that the company has nearly doubled their sales since the untimely death of Albert Meister in 1977.

The company philosophy that Mrs. Meister follows is one where social responsibility and corporate profitability go hand in hand. Bagcraft offers its employees a number of attractive benefits including profit sharing, a scholarship fund for workers' children, and a cash prize for the best suggestion. This combination of the pleasant working environment and generous benefits creates a sense of loyalty among employees not often found in today's corporate world.

The well-known book, "In Search of Excellence" showcases exemplary corporations who combine profitability and service in humane and pleasant working environments. I'm sure my fellow Members of Congress will agree that Bagcraft Corp. of America, as chaired by Janice Meister, is indeed one of the model corporations in the Nation and wish her continued success.

THE 40TH ANNIVERSARY OF BELLEFONTE CHAPTER OF BUSINESS AND PROFESSIONAL WOMEN'S CLUBS

HON. WILLIAM F. CLINGER, JR.

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 7, 1986

Mr. CLINGER. Mr. Speaker, the Bellefonte Chapter of the National Federation of Business and Professional Women's Clubs, which is located in my congressional district, celebrates its 40th anniversary October 9.

The purpose of the organization, which held its first meeting on October 8, 1946, is to help elevate the standards of women in business and the profession; to promote the interest of business and professional women; to bring about a spirit of cooperation among business and professional women in the United States; and, to extend opportunities to business and professional women through education along lines of industrial, scientific, and vocational activities.

The organization is also a nonprofit group whose efforts support local charities and local programs and fellow women.

I know I am joined by all my colleagues in congratulating the Bellefonte Chapter of the National Federation of Business and Professional Women's Clubs on the occasion of its 40th anniversary, and in extending to its members best wishes for the future.

TRIBUTE TO MATT URBAN

HON. GERALD B.H. SOLOMON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 7, 1986

Mr. SOLOMON. Mr. Speaker, I had a rare privilege during a recent trip home to the 24th Congressional District of New York, and that was to meet the most decorated soldier in this Nation's history.

His name is Matt Urban, a retired lieutenant colonel in the U.S. Army. The reason he was participating in a bicentenary parade in Chatham, NY, was a long standing friendship with Benjamin Murell, a county supervisor from nearby Hudson, NY.

It's no surprise that a book and perhaps a movie about Matt Urban are being planned. His exploits in World War II are the stuff of which legends are made. I'm particularly proud that my friend Ben Murell played a major role in the Matt Urban Story.

Urban was wounded seven times. The man the Germans called "The Ghost" was finally out of the war for good when a bullet ripped through his throat. His life was saved only when Murell, a medic, kept Urban's throat

open with a ballpoint pen, and stopped the bleeding by pressing his hands against Urban's neck.

Due to an error in paperwork, Urban didn't get his Congressional Medal of Honor until 1980, 35 years after he was recommended for that highest of awards. He also received two Silver Stars, three Bronze Stars, the Legion of Merit, and the French Croix de Guerre, to go with his seven Purple Hearts and Medal of Honor after 20 months of combat.

Urban and Murell met back in 1941 at Fort Bragg, NC. Urban was coach of his division's boxing team, and Murel, a professional boxer before he joined the service, caught his attention by knocking out another fighter. Murell was instrumental in the European Boxing Championship the division won in 1943 in a competition involving seven corps.

The admiration is certainly mutual between the two men. Ben Murell's son Matt, director of the Youth Bureau in Columbia County, was named after Urban.

Urban now spends much of his time traveling across the country speaking before a variety of groups about his combat experiences, current events, and patriotism.

I think it's gratifying to note that Urban describes young people as the audience most receptive to his speeches on patriotism, with Vietnam vets right up there near the top of the list.

I also want to add that Urban credits President Reagan with the upsurge of patriotism in this country.

Mr. Speaker, Matt Urban and Ben Murell represent the countless heroes in America who put on uniforms, risked their lives to defend this country, and then put aside those uniforms to become productive citizens in their own quiet ways. I take this opportunity to put on record my salute to both men.

NATHAN HALE POST 1469 OF THE VFW

HON. ROBERT J. MRAZEK

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 7, 1986

Mr. MRAZEK. Mr. Speaker, on October 14, the Nathan Hale Post 1469 of the Veterans of Foreign Wars, located in Huntington Station, Long Island, will celebrate its 60th anniversary. I rise today to bring the attention of my colleagues to this milestone.

Post 1469 began in 1926 with 40 members, meeting in an old schoolhouse; 60 years later, the post boasts 935 members, including veterans of World War I, World War II, the Korean war, and the Vietnam war. It stands as the largest VFW post on Long Island and the fifth largest in New York State, and now holds meetings in a larger facility in Huntington Station.

Over the years, Post 1469 has maintained a record of strong, sharing visibility in the Huntington community. Among its current benevolent activities are sponsorship of the Voice of Democracy Program for schoolchildren, with resulting scholarship awards; ward parties for veterans in the nearby VA Hospital in Northport; Thanksgiving food baskets for the needy; patriotic instruction programs for area schoolchildren; grave decoration on Memorial Day; honor guards for area parades; the Lite-a-Bike Program for children; information programs on veterans' benefits; and other charitable activities.

On October 19, Mr. Speaker, Post 1469 will hold a dinner dance to celebrate its 60th year. The first commander of the Post, Edward W. Johnston, will be on hand to receive his 65-year membership pin. I'm sure that my colleagues will join me today in wishing the Nathan Hale Post 1469 of the VFW and its current commander, Harry Bridges, the warmest regards for a proud history on this special occasion.

CIVIL RIGHTS RESTORATION ACT OF 1985

HON. THOMAS J. TAUKE

OF IOWA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 7, 1986

Mr. TAUKE. Mr. Speaker, I note that today—1 year, 4 months, and 16 days after the committee acted—the Education and Labor Committee is filing its report on H.R. 700, the Civil Rights Restoration Act of 1985.

Unfortunately, this 500-day delay in filing this report blocked consideration of important civil rights legislation. The decision by the chairmen of the committees of jurisdiction to not file this report in a timely fashion prevented the House from considering and acting on what was called the most important civil rights legislation of the 99th Congress. I regret that this decision was made.

Much of the controversy that contributed to the decision by the chairmen to not move forward with this legislation is the result of an amendment I offered in the full Education and Labor Committee. This amendment rendered the bill and title IX of the Civil Rights Act neutral on the issue of abortion. The Education and Labor Committee approved this amendment to H.R. 700 by a vote of 18 to 14.

There is clearly bipartisan support for this amendment and for this legislation. The bill was approved by the Education and Labor Committee on a vote of 29 to 2 after the amendment was adopted. It is truly unfortunate that the leadership chose to put their personal opposition to an amendment to this bill ahead of the overall interests and wishes of the full committee.

One must ask, What motivated the leadership of the committees of jurisdiction to block this legislation? The abortion amendment adopted by the Education and Labor Committee does not jeopardize in any way the right of a woman to seek or have an abortion. The amendment simply eliminates any Federal mandates that abortion services be provided on demand and ensures that charges of discrimination cannot be successfully waged against an individual or institution that chooses not to provide abortion services. The amendment does not open the door to discrimination against women who have abortions.

One must assume that the proponents of H.R. 700 had a hidden agenda to expand abortion mandates. When this agenda was thwarted by the abortion-neutral amendment, these proponents of this major civil rights legislation withdrew their support and prevented further action on this bill.

I, for one, am disappointed that the legislative process was disrupted and that the House did not have an opportunity to consider H.R. 700. I suggest that proponents of civil rights legislation reassess their priorities prior to the convening of the next Congress.

A JOB WELL DONE

HON. IKE SKELTON

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 7, 1986

Mr. SKELTON. Mr. Speaker, 2 weeks ago the Congress passed the most significant reform legislation dealing with the Department of Defense since the creation of that institution in 1947. Last week, the President signed that legislation into law. Many people in the House, Senate, and elsewhere in the Washington scene were able to take credit for the end result; however, one individual, Arch Barrett, professional staff member of the House Armed Services Committee, merits special recognition for his quiet, persistent, and effective contribution to this milestone legislation.

Mr. Barrett performed yeoman like work on this issue over the past 4 years. The other body employed the talents of three able staffers; we on this side of the Capitol relied on Arch Barrett. And make no mistake about it, Arch Barrett was spread thin. LES ASPIN, BILL NICHOLS, LARRY HOPKINS, JOHN KASICH, and others including myself continually tasked Arch to take care of matters big and small concerning the matter of defense reorganization. This is especially true of the past year when the work of our committee shifted into high gear. His attention to detail can be seen throughout the entire package that finally emerged as legislation.

Arch Barrett performed his duties with intelligence and good humor. We on the Armed Services Committee are fortunate to have the services of such individuals as Arch Barrett. He is the epitome of a public servant in the finest sense of that term.

CONCERN FOR THE SIKH COMMUNITY IN INDIA

HON. EDWARD F. FEIGHAN

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 7, 1986

Mr. FEIGHAN. Mr. Speaker, I rise today to express my deep concern for the unrest surrounding the Sikh community in India. It is especially appropriate to speak about this pattern of continuing violence following last week's reported assassination attempt against India's Prime Minister Rajiv Gandhi. Sadly, this assassination attempt may be only the latest in a seemingly endless cycle of vengeance between Sikh and Hindu.

In June 1984, Indian Army troops entered the holiest shrine of India's 16 million Sikhs, the Golden Temple in Amritsar, to seize weapons stored there by Sikh radicals and to capture Sikh separatists who had found sanctuary in the temple. Several hundred Sikhs and 50 soldiers died in the battle which followed, and thousands of Sikhs reportedly were massacred during the week that followed. In October of that year, India's leader, Indira Gandhi, was shot to death by her Sikh bodyguards, apparently in retaliation for the assault on the Golden Temple.

The assassination sparked an immediate assault against India's Sikh community. Thousands of Sikhs were killed and their property destroyed. Independent investigations showed that Congress (I) Party members and local police were involved in the rioting against the Sikhs, as well. No arrests were ever made for the murders of nearly 3,000 Sikhs.

Prime Minister Rajiv Gandhi appears to be increasingly frustrated by his inability to settle Sikh demands and to end the cycle of Sikh-Hindu violence. At the same time, Hindu groups have been forming their own militant groups and threatening retaliation. Punjab, the heartland of the Sikh people, has been closed to all foreigners—including journalists—until January 2, 1987. Prime Minister Gandhi speaks of wiping out all terrorists in the area, and Sikhs report that innocent people are being killed under the guise of fighting terrorism.

I urge Mr. Gandhi to respect the human and civil rights of the Sikh community as he deals with the unrest in his country. When fighting terrorism, the Government should not terrorize the Sikh community in general, but instead arrest its suspects, charge them with their offenses, and give them fair and open trials. At the same time, Mr. Gandhi should allow foreign journalists to return to Punjab to witness the course of events in that troubled area. It is my hope that both sides will begin to work for an end to the violence and not allow extremists to add fuel to the flames.

NUCLEAR WHISTLEBLOWER'S PROTECTION ACT AMENDMENTS OF 1986

HON. THOMAS A. LUKEN

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 7, 1986

Mr. LUKEN. Mr. Speaker, today I am introducing legislation that will close a loophole in our laws that leaves many employees without protection if they blow the whistle against practices at nuclear facilities that endanger either the public or their coworkers. These employees are found at facilities that are owned by the Department of Energy and operated by private contractors.

Although workers at NRC-licensed facilities, such as civilian nuclear reactors, have redress if they are harassed because they have exposed health or safety problems, workers at DOE facilities are left vulnerable to employers' retribution. Two recent cases prove the necessity for offering protection to these workers. In my district, at the Feed Material Production Center, an internal auditor who had insisted that the facility comply with procedures established by DOE was pushed into a position in which his job was threatened and he was forced to resign. It has been recently revealed that an employee of a subcontractor at the Savannah River facility in South Carolina was dismissed after he made several attempts to bring accusations of drug abuse onsite to the attention of officials.

In the Fernald case, fortunately the auditor was able to gain the attention of his Congressman and the Subcommittee on Energy Conservation and Power which conducted a thorough investigation. At a hearing last August, DOE and the contractor were unable to respond to the charges made by the auditor. A subsequent investigation by DOE, promised during the hearing, resulted in a complete vindication for the employee. One has to wonder, however, how many other people out there are either remaining silent or are losing their jobs over their decisions to bring health and safety matters to the attention of authorities. This legislation is designed to bring the protections of the Nuclear Whistleblower Protection Act to employees such as the ones at Fernald and Savannah River.

In addition, the legislation would require that employers prominently post the rights of employees under the act and would extend the statute of limitations from the current 30 days to 1 year. The bill also makes it clear that anyone who avails himself or herself of the provisions of the Whistleblower Protection Act and files a complaint with the Department of Labor does not preclude their opportunity to seek other remedies.

We owe it to the employees at federally owned plants to provide the same protections available to private employees. Please join me in that effort.

HONORING THE KENTUCKY MOUNTAIN HOUSING DEVELOPMENT CORP.

HON. HAROLD ROGERS

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 7, 1986

Mr. ROGERS. Mr. Speaker, the Fifth Congressional District of Kentucky can be proud today of the achievements of the Kentucky Mountain Housing Development Corp. of Manchester, KY. Just yesterday, this model organization received international recognition as the winner of 1 of only 16 Special Merit Awards from the U.S. Department of Housing and Urban Development. This high honor is in addition to receiving the International Year of Shelter for the Homeless Award for 1987.

To those of us from Kentucky, and particularly from eastern Kentucky, the work of the Kentucky Mountain Housing Development Corp. is well known. Founded in 1973, Kentucky Mountain Housing has led the effort to provide safe, decent housing for hundreds of low-income families in Clay and Jackson Counties. Its efforts represent one of eastern Kentucky's finest examples of how the successful marriage of Federal, State, local, and charitable support can provide the reality of safe housing for our poorest citizens.

Now, however, this group has gained national and international recognition for its exemplary efforts on behalf of the homeless.

In 1982, the United Nations General Assembly officially designated 1987 as the International Year of Shelter for the Homeless. In connection with U.S. participation in this global project, the U.S. Department of Housing and Urban Development sought out model housing organizations and initiatives from all across this Nation; projects which capture the American spirit by finding innovative solutions to our plaguing housing problems.

Kentucky Mountain Housing Development Corp., under the leadership of Mr. Dwayne Yost, has assembled some of the most innovative methods of financing, constructing, and improving low-cost housing which can be found anywhere. It has, through hard work, leadership, and commitment, played a huge role in improving economic conditions and self-sufficiency in eastern Kentucky.

It is in recognition of these efforts that Kentucky Mountain Housing has received this Special Merit Award. And I can think of no organization which better personifies the underlying philosophies of this international accolade: commitment to the poor, commitment to the homeless, and commitment to the creation of opportunities for the disadvantaged.

Mr. Speaker, I congratulate and thank Kentucky Mountain Housing Development Corp. for its achievements, and its contributions to the welfare of the hopeful and proud people of eastern Kentucky.

A BILL REQUIRING U.S. OWNERSHIP AND CONSTRUCTION OF VESSELS

HON. DON YOUNG

OF ALASKA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 7, 1986

Mr. YOUNG of Alaska. Mr. Speaker, today I have introduced a bill that requires commercial fishing industry vessels to be owned by U.S. citizens and to be built in the United States in order to qualify for U.S. documentation, licensing, or registry. The bill has been developed in response to concerns expressed by certain communities in Alaska and certain representatives of shipyards and the commercial fishing industry.

I want to make clear that I recognize that the bill is controversial and needs careful analysis and hearings before it is enacted. It is my hope that the appropriate committee in the House will conduct such hearings in the next Congress. Only after we have heard from all interested parties should the legislation be considered.

At the same time, I believe that it is appropriate to introduce a bill now for two reasons. First, I think that the topic should be brought forward for discussion so that it can be considered properly when hearings are held. Second, I think that those corporations that are considering purchasing foreign vessels for use in the U.S. fisheries should be aware that new restrictions may be placed on foreign ownership and foreign construction of commercial fishing industry vessels.

Mr. Speaker, I look forward to having this bill proceed through the appropriate legislative process so that we can decide how to handle this important issue.

ANN ESKESEN: THE MASSACHUSETTS CHAMPION OF SBIR

HON. NICHOLAS MAVROULES

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 7, 1986

Mr. MAVROULES. Mr. Speaker, the President just signed into law an extension, until 1993, of the Small Business Innovation Development Act.

The controversies accompanying the initial passage of this landmark program in 1982 have largely subsided and those who opposed this program, with very few exceptions, have become strong supporters.

The credit, of course, should go to the dedicated individuals who have worked hard to make the program a success. Here, I wish to call attention to the important work of Ann Eskesen, president of Innovation Development Institute in Swampscott, MA. For the majority of our small high-technology firms, Ms. Eskesen's newsletter, InKnowVation, is the primary source of information on the SBIR Program. Also, her small company developed and manages the very popular "SBIR: Crosstalk" seminars which bring together SBIR awardees from across the country to discuss the business development aspects of effective SBIR usage.

Having been involved with the SBIR Program since its inception, Ms. Eskesen has perhaps the most detailed knowledge of how this important small business program works. She has been a principal witness at hearings on the achievements of the SBIR Program that have been held not only by my oversight subcommittee, but also by other committees in both the Senate and House.

It was Ann Eskesen's good counsel and tireless efforts that helped win overwhelming congressional support for the extension of the SBIR Program. I wish to salute her commitment to this very important program as well as her ongoing work to increase small business participation in the technology development of this country.

TRIBUTE TO LOTTIE MASSIE

HON. CARROLL HUBBARD, JR.

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 7, 1986

Mr. HUBBARD. Mr. Speaker, I would like to pay tribute to Lottie Louise Robinson Massie of Hopkinsville, KY, who died Saturday, September 13, 1986, at the age of 75.

Lottie Massie was a dear friend to many in Hopkinsville and western Kentucky. A native of Hopkinsville, she was the daughter of the late Frank and Addie Merriweather Robinson. She was a retired schoolteacher, having taught for 24 years in the Christian County school system at Booker T. Washington and Indian Hills Elementary Schools at Hopkinsville. In addition, she taught at an elementary school for 5 years in western Tennessee.

Mrs. Massie was a longtime active member of the Virginia Street Baptist Church in Hopkinsville, spending many years teaching Sunday School classes there. She was also very active in her community, having performed volunteer work for the Pennyrile Museum, the Red Cross, and the Medco Center Nursing Home.

Survivors of Lottie Massie include a son, Daniel Frank Massie of Louisville, KY; a daughter, Vivian Hooks of Hopkinsville; a brother, Milton Robinson of Ripley, TN; three sisters; Gladys Bronaugh and Sarah Cruce, both of Indianapolis, IN, and Piccola Bundrent of Louisville; and three grandchildren. Her late husband, John Daniel Massie, predeceased her in 1977.

Lottie Massie was a great asset to Hopkinsville and Christian County, and she will be missed for years to come.

My wife, Carol, and I join with the many friends of this outstanding Kentuckian in extending our sympathy to the family of Lottie Massie.

COMMENDING REPRESENTATIVE DON FUQUA FOR HIS YEARS OF SERVICE

HON. BILL McCOLLUM

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 7, 1986

Mr. McCOLLUM. Mr. Speaker, for 24 years, DON FUQUA has served the Second District of Florida and the rest of our great Nation with diligence, honesty and intelligence. Although I have not served on any of his committee assignments, I have always respected his judgment on the difficult issues facing our country today.

As a member of the Science and Technology Committee and chairman of the Committee since 1979, DON channeled his energy into our Space Program. Through his leadership, we witnessed the exploratory Apollo missions on to today's space transport systems. But DON'S committee work went far beyond the Space Program, he helped authorize and oversee research projects, from developing more fuel efficient autos to protecting the environment from hazards as common as water weeds and as advanced as nuclear waste.

In the 98th session of Congress, DON sponsored the Florida Wilderness Act which I cosponsored along with the entire Florida delegation. This act greatly increased the wilderness areas in Florida's three national forests and terminated the prospect of phosphate mining in the Osceola National Forest.

DON'S extraordinary record of public service has spanned six Presidencies. From the Kennedy era when he helped guide us through the turbulent 1960's to the Reagan era and the birth of a new manned space transport system. We will certainly miss his knowledge and experience during these days fraught with questions as to the future of NASA, post-*Challenger*. I am very sorry to see him leave but glad to have had the pleasure of working with him. I wish him the best of luck for his future as president and general manager of Aerospace Industries Association.

SENATE COMMITTEE MEETINGS

Title IV of Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules Committee—of the time, place, and purpose of the meetings, when scheduled, and any cancellations or changes in the meetings as they occur.

As an additional procedure along with the computerization of this information, the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the CONGRESSIONAL RECORD on Monday and Wednesday of each week.

Any changes in committee scheduling will be indicated by placement of an asterisk to the left of the name of the unit conducting such meetings.

Meetings scheduled for Thursday, October 9, 1986, may be found in the Daily Digest of today's RECORD.

MEETINGS SCHEDULED

No meetings scheduled.